

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Laclede)	
Gas Company for an Accounting Authority Order)	
Authorizing the Company to Defer for Future Recovery)	Case No. GU-2007-0138
the Costs of Complying With the Permanent)	
Amendment to the Commission's Cold Weather Rule)	

LACLEDE GAS COMPANY'S RESPONSE
IN OPPOSITION TO MOTION FOR WAIVER
FILED BY THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW Laclede Gas Company ("Laclede" or "Company") and, pursuant to the Commission's Procedural Order in this case, submits its Response in Opposition to the Motion for Waiver filed by the Office of the Public Counsel ("Public Counsel"). In support thereof, Laclede states as follows:

1. On April 10, 2008, Public Counsel filed a Motion seeking a waiver of the requirement in 4 CSR 240-13.055(14)(G)2 of the Commission's Rules that the Commission make its determination of the compliance costs at issue in this case within 180 days. According to Public Counsel such a waiver would "provide the Commission with more time to consider the arguments and the evidence, more time to discuss the matter in Agenda, and more time to render its decision." (Motion, p. 2).¹

2. Laclede recognizes that the Commission faces an extremely challenging workload and under normal circumstance would attempt to accommodate any reasonable request for more time to consider and decide a particular matter, especially if that request originated with the Commission. Laclede cannot, however, agree with Public Counsel's

¹Although Public Counsel filed a Response on this date indicating that it would not further pursue its Motion for Waiver, it did not withdraw the Motion and it continued to suggest that the Commission might wish to move forward on its own with a waiver. Accordingly, Laclede believes it must still respond to Public Counsel's Motion pursuant to the Commission's Order in this case.

assertion that it is either necessary or appropriate for the Commission to take additional time to consider the arguments and evidence in this case.

3. As the Staff conclusively demonstrated in the comprehensive pleading it filed yesterday, there is no legal basis or authority for Public Counsel to seek (or the Commission to grant) a unilateral waiver of the timelines provided in 4 CSR 240-13.055(14)(G)2, particularly in view of the explicit language in that Section which provides that all parties must agree to such an extension. Indeed, that is precisely why the Commission did not hesitate to deny Laclede's initial request to defer this matter until the Company's next rate case once Public Counsel and the Commission Staff exercised their right under (14)(G)2 to insist that the matter be decided NOW in a separate proceeding. Having already determined that the hearing procedures provided for in 4 CSR 240-13.055(14)(G)2 must be followed in this case because Public Counsel exercised its right to insist upon them, it would be singularly inappropriate (and destructive of the rights of the other parties) for the Commission to waive those procedures now.

4. Indeed, Public Counsel's continued view that it may still be appropriate for the Commission to take such action is simply another example of the disregard that Public Counsel has shown throughout this proceeding for the Commission's rules and for the long-standing legal requirements that govern the adjudication and appeal of issues before the Commission. Whether it be Public Counsel's launching of a collateral attack on a rule that it never bothered to seek judicial review of, its effort to rewrite the rule's provisions after the fact so as to exclude entire provisions that it has previously recognized as valid, or its most recent effort to waive the hearing procedures and timelines that it insisted be followed, it is clear that Public Counsel believes it should be

able to say and do anything it wants without regard to the limitations that apply to every other party before the Commission. There is no legal or equitable basis for such a view and the Commission should reject Public Counsel's latest effort to suggest otherwise.

5. Nor has Public Counsel demonstrated any "good cause" for the Commission to waive the timelines in 4 CSR 240-13.055(14)(G)2, whether such waiver be effected on the Commission own motion or in response to Public Counsel's Motion. To the contrary, to the extent the Commission has been placed in some kind of time crunch to decide this matter, it is a time crunch of Public Counsel's own making. Public Counsel could and should have raised the arguments it has made in this case more than a year and a half ago when the Commission first promulgated the provisions of 4 CSR 240-13.055(14) by adopting the Permanent Amendment to the Cold Weather Rule. After opposing the passage of the Permanent Amendment in August 2006 and failing in its attempt to secure a rehearing, however, Public Counsel declined to appeal the rule, making it final and unassailable. And then, between August 2006 and February 2008, Public Counsel (i) did not oppose Laclede's compliance tariff filing referencing the same language as the Permanent Amendment; (ii) did not oppose Laclede's AAO Application, which referenced the section of the Permanent Amendment Laclede would use to calculate compliance costs; (iii) filed testimony in Laclede's rate case using the same method that Laclede and Staff have employed in this case to derive the compliance cost amount they are recommending; (iv) supported that cost calculation as complying with the Permanent Amendment in testimony before the Commission; and (v) filed a pleading in this case in which it indicated that it had found *calculation* errors in the filing that is before the Commission today, but never mentioned any ambiguity in the rule, let alone

anything as significant as its current view that the rule does not permit recognition of the difference between initial payments under the new and old rule provisions.

6. Indeed, it wasn't until late February of this year, that Public Counsel *finally* advised the parties and the Commission of its new-found interpretation of the rule. As a consequence of this unexpected and extremely dilatory approach to making its present views known, both Laclede and the Staff have been put at a serious disadvantage in this case and both they and the Commission have had to expend significant resources and time to address issues that should never have been raised. Under such circumstances, there is no cause, let alone a good one, that would be served by circumventing these rules one more time in response to alleged timing constraints that only exist as a result of Public Counsel's own inappropriate, impermissible and irresponsible actions in prosecuting this case.

7. Nor is there any substance to Public Counsel's claim that good cause exists for waiving the timelines because it would give the Commission more time to consider the arguments and evidence in this case. That presumes, of course, that Public Counsel has actually presented some valid arguments or meaningful evidence that merit further consideration. As confirmed by its April 7, 2008 Brief in this case, however, Public Counsel has not done so.

8. To the contrary, it is abundantly clear that, at their core, Public Counsel's arguments represent nothing more than an unlawful and unsupported collateral attack on the Permanent Amendment. Specifically, Public Counsel's assertion that Accounting Authority Orders should only apply to extraordinary costs, should not guarantee recovery of the costs deferred, and that Laclede's calculation of costs under the Permanent

Amendment constitute single issue ratemaking (*See* Public Counsel’s Brief, pp. 3-5) are simply broadside attacks on the legality of the deferral mechanism authorized by 4 CSR 240-13.055(14). If Public Counsel actually believed that the Permanent Amendment suffered from such alleged legal infirmities (which it does not) than it could and should have raised such issues by seeking judicial review of the Permanent Amendment when it was promulgated or when Laclede filed tariffs to implement it. Public Counsel did not do that, and it would be wholly inappropriate to consider such arguments now.

9. Similarly, Public Counsel’s assertions: (a) that Laclede should not be allowed to collect the difference between 80% (of a customer’s balance) and 50% or \$500 (Public Counsel’s Brief, pp. 4, 8-9); (b) that Laclede should have estimated the additional arrearages that would have been caused by the old CWR and used that amount to offset the additional arrearages incurred under the CWR amendment (Public Counsel’s Brief, p. 7); (c) that Section (F)4 of the Permanent Amendment improperly allows recovery of costs that Laclede would have incurred without the CWR amendment (Public Counsel’s Brief, p. 9); (d) that Laclede’s cost calculation would permit double recovery (Public Counsel’s Brief, p. 11); and (e) that the Commission should explicitly direct Laclede to adjust such compliance costs in its next rate case to reflect “additional payments received” (in other words, cost recovery should be adjusted, but only down and never up) (Public Counsel’s Brief, p. 12), are nothing more than transparent requests for the Commission to re-write the cost calculation provisions of the Permanent Amendment. Once again, all of these arguments should have been made by Public Counsel in an appeal of the rulemaking or of Laclede’s tariff implementing it and should not be

considered now.² In short, there are no permissible or valid arguments that the Commission needs additional time to consider.

10. Equally unavailing is Public Counsel's contention that the Commission needs more time in order to consider the "evidence" that has been presented in this proceeding. Once again, a review of Public Counsel's Brief confirms that it has offered no evidence to support its arguments, even if such arguments had been properly raised. For example, at page 8 of its brief, Public Counsel agrees with Laclede's concept in making an offset for bad debts already recovered in rates, but states that Laclede has not provided competent and substantial evidence to support the basis for the amount of this calculation. In fact, Laclede's evidence, backed by its Controller and supported by Staff, is not only competent and substantial, but also uncontroverted. Indeed, in response to a question from Commissioner Clayton, Public Counsel's own witness, Mr. Trippensee, indicated that Public Counsel had accepted and was recommending that the Commission approve this cost component of the Company's filing. (Tr. 67).

11. The same paucity of evidence exists for Public Counsel's claim that, notwithstanding the plain language of Section (14)(F)4, the Commission should disallow the entire compliance cost amount relating to the difference in initial payments that could have been collected under the old and new rule provisions. In an apparent effort to support this draconian recommendation, Public Counsel makes a number of speculative assertions, including the contention that there may be some bad debts included in this

² Contrary to Public Counsel's assertions, Laclede could point to numerous AAOs and trackers that the Commission has approved over the years to mandate recovery of utility costs, including mandated pipeline safety costs, environmental costs, pension costs, and even cold weather rule compliance costs. None of these mechanisms have been deemed unlawful because they affirmatively assured that such costs would be recovered in subsequent rate cases, covered costs that someone might argue were not "extraordinary" in nature, or constituted single issue ratemaking. Since these legal challenges to the rule are impermissible, however, Laclede will not seek to elaborate further on these numerous examples of past Commission practices that belie Public Counsel's assertion.

amount, that some arrearages may have increased more because Laclede did not disconnect customers sooner, and that some costs might have been incurred by Laclede anyway. What Public Counsel does not do, however, is cite, let alone quantify, a single instance in its Brief where an actual bad debt or otherwise inappropriate cost has been reflected in this cost component, as calculated by the Staff and Public Counsel. Not a single instance! In fact, the only specific customer account cited by Public Counsel relates to a customer that ran up a large arrearage after being connected under the rule – an amount that is reflected in the cost component that Public Counsel has accepted. The same is true of Public Counsel’s assertion that the compliance cost amount being recommended by Laclede and the Staff needs to be trued up to prevent double counting. Once again, this assertion simply ignores the undisputed evidence on the record, as confirmed by Public Counsel’s own witness, that the September 30, 2007 arrearage amounts used in the cost calculation produces an extremely conservative number that is unlikely to do anything but go up. (Tr. 58, line 6 to 59, line 6; Tr. 98, lines 4-8)

12. Under such circumstances, Laclede respectfully submits that Public Counsel has completely failed to adduce *any* evidence in this case that would support its contention that some or any portion of the compliance cost amounts being recommended by Laclede and the Staff should be disallowed, as specifically required by Section 14(G)4. Nor has it provided any evidence to support its position that the potpourri of specious arguments it has made somehow warrant a complete disallowance of the entire difference between what Laclede could have collected under the old and new rule. As a consequence, Public Counsel’s claim that additional time is necessary to consider the evidence in this case is without merit.

13. For all of these reasons, Laclede believes that no waiver of the timelines set forth in 4 CSR 240-13.055(14)(G)2 is appropriate and that Public Counsel's Motion should therefore be overruled to the extent it is still before the Commission..

Respectfully requested,

/s/ Michael C. Pendergast

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing pleading has been duly served on the General Counsel of the Staff of the Missouri Public Service Commission and on the Office of the Public Counsel on this 11th day of April, 2008, by hand-delivery, facsimile, electronic mail, or by placing a copy of such Request, postage prepaid, in the United States mail.

/s/ Gerry Lynch

Gerry Lynch