BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Laclede Gas Company's tariffs designed to permit early implementation of Cold Weather Rule provisions and to permit Laclede to collect the gas cost portion of its write-off's through the PGA	))))))	Case No. GT-2009-0026 Tariff number JG-2009-0033

REPLY BRIEF

OF

LACLEDE GAS COMPANY

FEBRUARY 27, 2009

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REPLY BRIEF OF LACLEDE GAS COMPANY

COMES NOW Laclede Gas Company ("Laclede" or "Company") and submits its reply brief for the Commission's consideration.

A. INTRODUCTION

This case is divided into two basic parts, legal matters and policy matters. The legal issues address whether in the context of this tariff case, the Commission can approve a rate design that permits Laclede to recover the gas cost portion of its bad debt in the PGA. The policy issue addresses whether the Commission should permit Laclede to do so. For the reasons stated below, Laclede strongly believes that the superiority of its position on both the legal and policy issues has been amply demonstrated by the initial briefs submitted in this case.

The Commission will of course make its own legal and policy determinations in this case. Laclede urges the Commission to reject Staff's and OPC's suggestion that the Commission unilaterally surrender its policy-making powers in advance, based on their tenuous and unpersuasive legal arguments. On appeal, the courts will independently consider whether the Commission has the legal authority to approve the tariff; we believe that they will find the Commission does have that authority. However, the courts will grant considerable deference to the Commission on the policy issue. Therefore, Laclede believes it is most important to focus on the policy matters and so, in this reply brief, Laclede will address this issue first. Laclede will demonstrate here, as it did in its initial brief, that including bad debt gas costs with other gas costs in the PGA is not only lawful but is also sound regulatory policy.

B. <u>ARGUMENT</u>

1. <u>The Policy Issue</u> ***The Commission should permit Laclede to recover the gas cost portion of its uncollectible revenues (bad-debt expense) through the PGA/ACA process.*** (Issue #3)

A. This case is only about the Gas Cost portion of bad debt.

In writing their briefs, Staff and Public Counsel seemed unable to grasp the fundamental concept that this case is about moving only the **<u>gas cost</u>** portion of bad debt to the PGA. Currently, the PGA is treated as if all gas costs are paid. As Laclede witness Buck and Public Counsel witness Trippensee agreed, gas costs are booked to the PGA when gas is acquired, but there is no adjusting entry made when customers' bills go unpaid. (Tr. 151-52; 246-47) The Company's tariff proposal simply acknowledges the indisputable fact that some gas costs are paid and some gas costs are not paid. Laclede asks the Commission to allow the PGA to account for all of the Company's prudently incurred gas costs, irrespective of whether or not customers who were charged for gas ultimately paid their bills.

Although all three issues in the case expressly refer to the "gas portion" of bad debt expense, Staff just cannot bring itself to mention the word "gas" in the same phrase as the words "bad debt." In its 8 page brief, Staff makes 15 references to "bad debt expense," three references to "bad debt," and one reference apiece to "uncollectible expense" and "bad debt costs." Amazingly, there are zero references in Staff's brief to what is actually at issue in this case, namely, the *gas cost* portion of bad debt. Staff's brief thus fails to specifically address any of the issues in this case, since Staff refuses to acknowledge that Laclede does not seek to move all of bad debt to the PGA, but rather just the portion of bad debt associated with the same gas costs that are already in the PGA.

Public Counsel also occasionally suffers from the same mind-set regarding "gas costs," most notably on page 6 of its brief, where it "narrowed" the issues to "general" questions, as follows:

1) Can the Commission lawfully include uncollectible expenses in the PGA?
2) Can the Commission lawfully make the requested change to rate design and rates outside of a general rate case?
3) Is it otherwise reasonable to allow Laclede to require consumers to pay Laclede's bad debt expense through the PGA?

Nowhere in this restatement of the three issues in this case does Public Counsel acknowledge that Laclede's proposal is to move only the gas cost portion of bad debt to the PGA. Likewise, on page 3 of its brief, Public Counsel repeatedly refers to the subject of this case as bad debt, rather than just the gas cost portion of bad debt.

B. This is a Rate Design case, not a rate increase case.

Staff and Public Counsel also seem to find it difficult to remember that this is a **rate design case**, not a filing to increase rates. Public Counsel's third restated issue above is particularly misleading because not only does it ignore gas costs, but it also leaves the impression that Laclede's proposal represents a rate increase wherein customers can only be on the paying end of a PGA reconciliation and never on the receiving end. Public Counsel commits this error repeatedly in its brief. (*see* page 11: "the tariff revision would cause ratepayers to incur an increase in rates…"; page 19: "Laclede is isolating an amount…and raising rates to recover a portion of that amount…"; and page 24: "Laclede's claim that the current rates are insufficient is not supported by the evidence").

Public Counsel's position blithely ignores the fact that, like all other gas costs, the gas costs associated with the Company's bad debts can move up or down. And given the direction of gas prices over the past eight months, that direction could very well be down. Indeed, the March NYMEX price expired this week at just over $4.00 per MMBtu, compared to $14.00 per MMBtu last July! Moreover, as Laclede pointed out in its initial brief, its PGA rates today are significantly lower than the PGA rates that were in effect at the time the existing gas cost portion of its bad debts were established. Under such circumstances, OPC's attempt to portray the Company's proposal as something that will only increase rates for its customers is akin to the hermit who thinks the sun only rises because his cave faces east.

A point made in Staff's brief also spotlights the fact that this is a rate design case and not a rate increase case. On page 8, Staff states that "It is fundamentally unfair to allow Laclede to require its paying customers to subsidize those who do not pay." Staff misses the point, because Laclede is <u>already</u> collecting from paying customers, through its base rates, estimated amounts that are designed to recover what non-paying customers don't pay. By its tariff filing here, Laclede seeks only to implement a rate design to change the <u>way</u> it recovers those unpaid amounts by reflecting the actual gas cost portion of that expense item in the PGA, while still reflecting and recovering the distribution portion in base rates. If the Staff is truly concerned about subsidizing customers who do not pay, that point can be raised and discussed when low-income energy assistance or weatherization programs are being considered, or when changes are being contemplated to the terms and conditions under which Laclede must restore or maintain service to customers who have demonstrated an inability to pay their utility bills. In this case, however, the concern is nothing but an obvious red herring, since Laclede's proposal is merely a change in rate design and not a new subsidy.

C. Laclede has only Limited Control over its bad debt expenses.

Notwithstanding the fact that this case is about gas costs, which have already been accorded tracking and reconciliation treatment through the PGA, both Staff and Public Counsel claim that the gas cost portion of bad debt is not different enough from other expenses, and hence does not deserve PGA treatment, because Laclede can exercise some control over the level of its bad debts. Under the legal principles set forth in ***MGUA***, however, discussed below, there is absolutely no need to demonstrate that a utility has *no* control over an expense item in order for it to be properly included in a tracking and reconciling mechanism like the PGA. To the contrary, while very limited, utilities have at least some control over the level of their gas costs, as evidenced by the existence of gas supply incentive mechanisms (which were also upheld by the court in ***MGUA***), the ability to use financial instruments to mitigate price volatility, and the exposure to proposed gas cost disallowances by the Commission Staff.

As discussed at length in Laclede's initial brief, the same thing is true of other expense items that the Commission has traditionally determined should be tracked and reconciled to actual costs between rate cases. Accordingly, the real issue is whether the utility's control over the expense item is relatively limited. As also discussed in Laclede's initial brief, bad debt is subject to volatility caused primarily by gas prices, weather, economic conditions and government mandates such as the Cold Weather Rule.

Laclede agrees that it has some influence over bad debt through its debt collection practices, but this influence is very limited by the above factors.

Laclede's limited control over bad debt is evidenced by the fact that Laclede's bad debt levels closely follow increases and decreases in revenues. As a percentage of total revenues, bad debt has consistently ranged between 1.0-1.2% for at least the past ten years. (Exh. 10, pp. 10, 13)[1] The total revenues charged by Laclede are, of course, a direct function of gas prices and weather. Hence, as gas prices and PGA rates fall, one would expect bad debt to also decline. Customers will not be able to share in such serendipity, however, unless the gas cost portion of bad debts is recovered in the PGA.

Staff claims at page 6 of its brief that bad debt costs are "largely within the control of the utility" and mentions as examples credit scoring, longer hours for collection, and deposit requirements. These examples bear scrutiny for they are all controlled not by Laclede, but by the governmental authority of the Commission. Credit scoring is used by Laclede as a means to better focus deposit requests on those who are more likely to default. Laclede is the only gas company in Missouri authorized to use credit scoring, and the only gas company authorized to expand the hours of collection. Laclede obtained the right to do both in 2005, and had them renewed in 2007, both times **on an experimental basis.** In other words**,** unlike other non-utility companies, Laclede can only use modern tools to determine the creditworthiness of its customers, and set the hours of collection, with the Commission's permission. In these two instances, the Commission has given it, and the Commission can take it away. Meanwhile, the other

[1] This is calculated in Exhibit 10 by simply taking the bad debt figures on page 10 and dividing them by the revenues for the prior year on page 13, as billed revenues in one year correspond to bad debt in the next year. (Tr. 48)

gas utilities can use neither credit scoring nor expanded collection hours, because the Commission's rules don't allow it.

The Commission's deposit rules closely control deposit practices. 4 CSR 240-13.030. Between April and October, Laclede can assess a deposit, but must do so in installments. The Company is precluded from collecting the deposit in advance, as deposits should be collected if they are to be effective. (Tr. 166-67) Moreover, between November and March, Laclede cannot collect a deposit at all under the Cold Weather Rule! (*See* the Cold Weather Rule, 4 CSR 240-13.055; Tr. 194-95) The Cold Weather Rule contains a host of other provisions that protect the customer and prevent the utility from taking collection actions, many of which have been changed over the years, at the urging or support of Public Counsel, to make them even more lenient for non-paying customers and more restrictive of the Company's collection activities. (*Id.*) As for any particular term of customer service, Laclede is always only one rulemaking away from having its collection rights altered.

On page 12 of its brief, Public Counsel supports its argument that Laclede has "significant control" over bad debt levels by misrepresenting the facts. Public Counsel cites Tr. 42 and Exh. 8, p. 5 in support of its point. On page 42 of the transcript, Laclede witness Cline candidly stated that the Company could have *some* impact on bad debt levels through its collection practices. On page 5 of Exhibit 8, Staff witness Solt stated that "Utilities have *some* level of control over bad debt write-offs…" (emphasis supplied). Neither cite can support a statement that Laclede can *significantly* control its bad debt.

D. Laclede's direct responsibility for the distribution portion of bad debt is sufficient incentive for the Company to maintain appropriate collection activity.

Both Staff and Public Counsel oppose the tariff on the grounds that it would reduce Laclede's incentive to pursue collection activities. (Staff Brief, p.8; Public Counsel Brief, pp. 20-21) These parties naturally view the status quo as creating the proper incentive. Therefore, they argue, reducing Laclede's bad debt exposure by the 67-75% attributable to gas costs is a bad idea.

Their position is wrong for two reasons. First, the evidence shows that exposure to 25-33% of changes in bad debt is more than enough incentive for the Company to continue to pursue adequate collection practices. (Exh. 3, pp. 8-9; Exh. 4, pp. 4-5; Tr. 147-49) If a situation occurred where, for example, bad debt threatened to increase by $3 million, there is no reason to expect that Laclede would stand idly by while it lost nearly $1 million.

Second, Laclede's proposal strikes the proper balance for bad debt in base rates, while the status quo of including the gas cost portion of bad debt in base rates inappropriately swells that figure. As the Company stated in its initial brief, all of its gas costs are in the PGA, except for the gas cost component of bad debt. Conversely, Laclede's base rates cover its non-gas costs, with the exception of bad debt, which includes gas costs along with non-gas costs, causing bad debt to be magnified by *three to four times* the size it would otherwise be if it did not include gas costs. Over a recent three year period, Laclede's total bad debt was roughly 1.1% of total revenues. (Exh. 10, pp. 10, 13) If we assume that distribution costs represent 27.5% of those total revenues (well within the range of 25-33% established by the evidence in this case), when the same total bad debt that is 1.1% of total revenues is applied to base rate revenues, it nearly quadruples to a whopping **4%** of base rate revenues.

This imbalance disproportionately affects the utility in a material way. The evidence shows that a 50% increase or decrease in bad debt might affect a residential customer's bill by less than 50 cents a month, but can equate to 10% or more of the Company's entire annual net income. (Exh. 3, p.6) It is neither just nor reasonable to take a cost item that is primarily influenced by factors outside the utility's control, add gas costs to bloat that cost item to three or four times its normal size, and then expect the utility to manage it. The Commission should find that a normal bad debt percentage of around 1.1% of base rate revenues is more than sufficient to motivate Laclede to maintain reasonable collection practices within the tightly circumscribed parameters mandated by the Commission.

E. Reconciling the gas cost portion of bad debt in the PGA is 75% more accurate than estimating it in base rates.

Staff and Public Counsel argue that [the gas cost portion of] bad debt should not be transferred to the PGA, because the cost does not come with a bill or invoice, but must be estimated. (Staff Brief, p. 3; Public Counsel Brief, p. 23) Both Judge Stith and Commissioner Jarrett exposed this argument as a red herring. In approving the Commission's order supporting the PGA in the ***MGUA*** case, discussed *infra*, Judge Stith stated:

> During the interim period between general rate cases, a utility's profits or losses will go up or down, depending on whether its rates were based on accurate predictions of its costs. The use of a PGA…is not invalid simply because it also suffers from some lack of perfection. However, the PGA process is in fact far less likely to result in excess

> profits or losses than is a traditional rate case, for it allows the PSC to correct for unanticipated errors in every yearly ACA review.

MGUA at 482. In other words, the PGA may not be perfect, but it doesn't have to be. Regardless, it is still more accurate than the backward-looking estimates we use in rate cases.

Commissioner Jarrett drove this point home at the January 5, 2009 hearing. In questioning Staff witness Solt, Commissioner Jarrett established that in a rate case all of bad debt expense, both the gas cost part and the non-gas cost part, is estimated for the purpose of setting rates. The commissioner then asked "So why is it different to estimate it in a PGA scenario versus when it's in rate base?" Mr. Solt's answer that the two different parts (gas costs and non-gas costs) are unknown begs the question because it doesn't address why estimates should be perfectly fine in one case but prohibited in the other. (Tr. 209)

Laclede witness Buck gave the correct answer to Commissioner Jarrett's question earlier in the day, an answer that corresponds to Judge Stith's finding in ***MGUA.*** Mr. Buck stated that, while PGA treatment of approximately 75% of bad debt costs would not be accurate to the penny, it would be about 75% more accurate than the base rate treatment. Mr. Buck concluded that an estimate that is approximately correct is better than one that is absolutely wrong. (Tr. 135) Mr. Solt himself confirmed this by testifying that where bad debt is recovered solely through base rates, customers faced with a $2 million downward variance between actual bad debt and the amount that was estimated for ratemaking purposes would still end up paying the full $2 million. Conversely, under Laclede's proposal, the PGA would pick up about 75% of the difference, leaving a variance of only $500,000 (25% of $2,000,000) to be paid by customers. (Tr. 213-215) Stated another way, under Staff's and Public Counsel's position, customers would have paid $1.5 million more than necessary to cover actual costs.

F. Laclede's proposal does not violate the Stipulation and Agreement approved in its 2007 rate case.

As stated by Public Counsel on page 4 of its brief, Laclede dropped its bad debt proposal in settlement of its 2005 rate case. Similarly, the bad debt proposal did not make it into the settlement of the 2007 rate case. Public Counsel accurately quoted from page 5 of the 2007 Stipulation that Laclede is no longer seeking approval of the original tariffs it filed along with the rate case. (Public Counsel Brief, p. 16) This is not an express moratorium; it is nothing more than a simple truism, for the Stipulation goes on to state that the new tariff sheets attached to the Stipulation "should be approved as complete replacements" for the original tariffs. (GR-2007-0208 Stipulation and Agreement, p. 5; Tr. 45)

There is no doubt that the parties to Laclede's 2007 rate case did not agree on the Company's gas cost bad debt proposal. But neither did they agree on a gas cost bad debt moratorium. There is no doubt that the Commission did not approve the proposal. But neither did the Commission reject it. The parties *did* agree on rates, and the Commission approved those rates. And yet the next day, Laclede could have filed a rate case seeking new rates without violating the Stipulation. Since its gas cost bad debt proposal was not even part of the Stipulation, Laclede is certainly entitled to file the tariff in this case.

Public Counsel argues on page 17 of its brief that, after having agreed in the Stipulation that no signatory shall be deemed to have approved or acquiesced in a ratemaking <u>principle</u> or <u>method</u> of cost allocation, Laclede has violated the Stipulation because its tariff filing forces upon Staff and Public Counsel an allocation of bad debt between gas costs and non-gas costs. (*See* Exh. 4, p. 7) This is plain error. Laclede has not claimed that either party has approved, acquiesced, or is otherwise forced to use any particular ratemaking principle or method of cost allocation. Instead, Laclede merely presented its own evidence of the level of bad debt it believes was included in rates and a conservative statement of how much of that bad debt is represented by gas costs. (Exh. 1, p. 4) Staff and Public Counsel were free to present their evidence on this subject using any principle or method they chose and producing any figure to which they would be willing to testify. Rather than present such evidence, they chose to remain mute (perhaps because they agreed with Laclede's number) and instead rely on legal arguments. Thus, the only evidence in the record is Laclede's. (Exh. 1, p. 4; Tr. 46-47, 68)

G. The Commission's authority to make a policy decision in this case is not hindered by the Uniform System of Accounts (USOA) or generally accepted accounting principles (GAAP).

Public Counsel once again trots out its argument that whatever proposal is at issue violates USOA and GAAP. (Public Counsel brief, pp. 21-22) However, we can avoid becoming entangled in an accounting morass owing to Public Counsel witness Trippensee's willingness to admit that notwithstanding these accounting standards, the Commission is authorized to make a policy decision as to whether the gas cost portion of bad debts should be included in the PGA. (Tr. 249, ll. 2-11) Further, it is hard to believe that USOA and GAAP have had a meaningful effect on this issue since 23 state commissions have managed to approve special treatment for the gas cost portion of bad debt, even though USOA and GAAP are in effect throughout the country. (Tr. 249, l. 12 to 250, l. 5)

H. Other arguments posed by Staff and Public Counsel are also unconvincing.

Public Counsel fears that Laclede could manipulate rates by changing its write-off rules. (Public Counsel Brief, pp. 22-23) A review of this theory shows that it holds no water. For example, if Laclede causes bad debt to be larger than it otherwise would have been, the Company will "break even" on the gas cost portion, which will be paid through the PGA, but will lose on the distribution portion. For example, if Laclede caused bad debt to increase by $3 million, its customers would each lose $3 through the PGA, while Laclede would lose about $1,000,000. The Commission need not be concerned about this ploy.

Conversely, if Laclede causes bad debt to be smaller than it otherwise would have been, the customers will keep 67-75% of the gains, while Laclede will keep 25-33%. Again, the customers do not require protection from this kind of bonus.

In its initial brief, Laclede addressed the claim of administrative difficulty raised by Public Counsel at page 23-24 of its brief. This is another common roadblock used by Staff and Public Counsel when they oppose a proposal. It is clearly a red herring. As stated above, 23 other jurisdictions somehow managed to find a way to implement special treatment for the gas cost portion of bad debt. The Commission should not be swayed by an argument that its Staff is inferior to those of other states. (Exh. 5, Sch. RAF-2, RAF-3)

Laclede addressed Staff's double recovery argument in its initial brief, and will repeat briefly here that the tariff will not allow the Company to double recover bad debt, but will merely provide better matching between the estimated and actual gas cost portion of bad debt. (Tr. 90, l. 21 to 91, l. 1) In fact, Laclede's conservative estimate that gas costs comprise 75% of bad debt is at the very top of the expected range, creating a PGA level that benefits customers compared to the current bad debt estimate in base rates.

Finally, on page 25 of Public Counsel's brief, the argument is made that, when adjusting for the costs associated with the Cold Weather Rule Amendment, Laclede's bad debts may only be in the neighborhood of $6 million, rather than nearly $11 million. Laclede does not agree with Public Counsel's analysis for a number of reasons. However, if Public Counsel is correct, and Laclede's bad debt allowance in base rates is overstated by $5 million, then, all else being equal, approving Laclede's proposal will earn roughly $3.5 million for customers through the PGA.

In conclusion, Laclede has limited control over both gas costs and bad debt. Both of these items tend to be volatile, and can swing wildly in either direction. For nearly a half century, the Commission has neutralized gas cost swings by reconciling the actual cost of gas in the PGA. Laclede has demonstrated good cause for the Commission to also include in the PGA the portion of gas cost that is in Laclede's bad debt expense, thus rectifying the incongruity whereby the PGA reflects only those gas costs that are paid by customers, and not those that are unpaid. Perhaps Public Counsel and Laclede agree on one point, as set forth on page 18 of Public Counsel's brief and in Laclede witness Cline's testimony on pages 47-48 of the transcript: even if the base rates set for bad debt were accurate in 2006, they will be three years out of date by the time Laclede makes its next PGA adjustment. If Laclede's tariff is approved, such PGA adjustments will at least keep the gas cost portion of bad debt from becoming stale.

2. <u>The Legal Issues</u>

The legal issues also break down into two parts: (1) whether the gas cost portion of bad debt qualifies for PGA treatment; and (2) whether this rate design change can be made outside the context of a rate case. The first legal issue is relatively straightforward because there are three major cases that pertain to the issue.[2]

A. The Commission can lawfully permit Laclede to recover the gas cost portion of its bad debt through the PGA/ACA process. (Issue 1)

Fifty years ago, the Commission assumed the authority to approve a tax adjustment clause for KCPL. In ***Hotel Continental***, the Court agreed that the Commission had such authority and affirmed the Commission's approval of the tax adjustment clause.

Thirty-five years ago, following an investigation, the Commission approved, outside of rate cases, a fuel adjustment clause (FAC) for residential customers of electric companies. The FAC was approved on an experimental basis for two years and extended for another two year term. The Commission's order approving the FAC was appealed and in ***UCCM***, the Court distinguished ***Hotel Continental*** and found that the Commission did not have the authority to approve a FAC.

A purchased gas adjustment (PGA) clause has been in effect in Missouri since 1962, when it was approved for Laclede outside of a rate case. It has been challenged and reaffirmed by the Commission on several occasions in the following decades. In Case No. GO-94-318, the PGA clause and a gas cost incentive mechanism for MGE were

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[2] ***Hotel Continental v. Burton,*** 334 S.W.2d 75 (Mo. 1960) ("***Hotel Continental***"); ***State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Serv. Comm'n,*** 585 S.W.2d 41 (Mo. 1979) ("***UCCM***"); ***State ex rel. Midwest Gas Users' Ass'n v. Public Service Comm'n,*** 976 S.W.2d 470 (Mo.App. W.D. 1998) ("***MGUA***");.

considered by the Commission, again outside the context of a rate case. In 1996, the Commission issued an order endorsing both the PGA clause and the incentive mechanism. The order was appealed and, ten years ago, the ***MGUA*** court issued its decision distinguishing the ***UCCM*** case, upholding the Commission's order, and approving the PGA clause for gas costs. In doing so, the MGUA court rejected arguments that the PGA clause violated the principles of single-issue ratemaking and retroactive ratemaking.

It is not surprising, then, that in their briefs opposing Laclede's tariff proposal in this case, both Staff and Public Counsel rely heavily on the ***UCCM*** decision. Nor should it be surprising that, in support of its tariff, Laclede relies on ***MGUA***. Laclede clearly has the better of the argument since ***MGUA*** is both the more recent case, and is directly on point because it pertains to the same PGA clause that is at issue here. Thus, Staff and Public Counsel are forced to argue that ***UCCM*** is controlling, and forced to treat ***MGUA*** as if it doesn't exist. In effect, their briefs re-argue the ***MGUA*** case, and conclude that ***MGUA*** was wrongly decided, that the ***MGUA*** Court should not have distinguished the ***UCCM*** case, but instead should have followed it and reversed the Commission order upholding the PGA. Fortunately, both Staff and Public Counsel lack the authority to overrule the ***MGUA*** court.

Alternatively, Staff and Public Counsel are left to take the facts and/or the law out of context in order to reshape ***MGUA***. For example, Staff states that "bad debt expense" should not be included in the PGA because the Company has some influence over it. Staff cites ***MGUA***, in which Judge (now Chief Justice) Stith emphasized the utility's lack of control over gas costs as a reason that gas costs receive special treatment. Staff quotes

Judge Stith as stating that "at the time use of a PGA clause was first adopted, the gas companies had no control over their fuel costs." (Staff Brief at 5-6; ***MGUA*** at 482) Staff's inference in adding this quote is that Judge Stith intended the special treatment of the PGA to apply when the utility had no control, but not where "the level of bad debt expense may be influenced by the company's actions." (Staff Brief, page 6)

This complete lack of control was true of course in 1962, and was still true at the time of the ***UCCM*** decision in 1979. However, it was not the case at the time of the ***MGUA*** decision in 1998. In fact, Judge Stith expressly acknowledged that, after 1992 when the gas industry became somewhat deregulated, the LDCs "gained some level of control over their fuel costs," although such control was still limited. (***MGUA*** at 482) Thus, the ***MGUA*** court clearly stated a legal standard of *limited* control, not a legal standard of *no* control. The evidence in this case overwhelmingly shows that while Laclede has some level of control over its bad debt, such control is limited. When compounded by its limited control of gas costs, it is evident that Laclede's control over the gas cost portion of bad debts is severely restricted.

Contrary to Public Counsel's discussion on pages 12-14 of its brief, Laclede's rate design proposal does not disturb the factors that the ***MGUA*** court pronounced in blessing the PGA. First, Public Counsel claims that the tariff fails because the Commission did not consider putting the gas cost portion of bad debt in the PGA in Laclede's last rate case. (Public Counsel brief at 13) Public Counsel misreads ***MGUA***, which states only that, by approving a PGA clause in a rate case, the "PSC is necessarily determining that…the fuel cost component of the rate must be treated differently than other components because it is different. (***MGUA*** at 480) The MGUA court sought only to show that the PGA rate is not a formula, but a rate that the consumer can see. Laclede's proposal does not change this approach; the PGA will still be presented as a rate, and the per unit charge for that rate will still be on customers' bills.

Moreover, as acknowledged on page 15 of Public Counsel's brief, the ***MGUA*** court concluded that the PGA does not constitute improper retroactive ratemaking because the charges are prospective. Likewise, the gas cost portion of bad debt write-offs would be used prospectively in the Company's ACA gas cost reconciliation, beginning only with those write-offs that occur on or after the effective date of the proposed tariff, not before. (Exh. 2, p. 6) Like the remainder of PGA gas costs, the gas cost portion of bad debt will be applied only to future customers on future bills. (***MGUA*** at 481)

Further, Public Counsel is mistaken in arguing that Laclede's proposal will undo the prudence process. (Public Counsel Brief, p. 14) Indeed, one Staff department will continue to have the responsibility to audit gas costs, just as it always has, and another department will maintain the job of checking collection activity and bad debt, just as it always has. (Exh. 9, p. 2; Exh. 7, p. 2)

B. The Commission can permit Laclede to recover the gas cost portion of its bad debt through the PGA/ACA process outside of a general rate case. (Issue 2)

On pages 9-10 of its brief, Public Counsel argues that the Commission cannot approve Laclede's tariff without the opportunity to adjust its ROE in a rate case. This is complete nonsense, as demonstrated at length in Laclede's initial brief. (*See* Laclede Brief, pp. 10-11, 21-25) Over the years, the Commission has considered, approved and/or modified numerous rules and tariffs, including PGA/ACA tariffs, that have had a direct financial impact on Laclede and other utilities, all without either a pending rate case or even a claim that an ROE adjustment, in either direction, was necessary or appropriate. (Tr. 226-27) If Public Counsel is correct, then the Commission could no longer change the Cold Weather Rule, consider gas cost disallowances or otherwise modify the PGA/ACA tariffs of gas utilities between rate cases, because it would cause a change in risk for utilities outside of a rate case. The historical record, however, provides compelling evidence that Public Counsel's legal view is not correct.

3. CONCLUSION

Laclede's proposal is not novel; it is not intended to break new ground. Public Counsel's claim on page 3 of its brief that the proposal is "unprecedented" flies in the face of the undeniable fact that some form of special treatment for the gas cost portion of bad debt has been approved in 23 states for well over 40 utilities.

In the end, the PGA exists so that Laclede can recover its actual gas costs, not more and not less. Today, the PGA permits Laclede to bill its gas costs, but does nothing about the fact that Laclede does not collect all of the gas costs it bills. Laclede's tariff proposal simply enables the PGA to recover the gas costs that Laclede has prudently incurred and billed to customers yet can't collect.

For all of the reasons discussed in its initial brief and in this brief, Laclede submits that both the law and the evidence in this case strongly support the legality and reasonableness of its proposal to reflect and reconcile the gas cost portion of its bad debt write-offs through the PGA/ACA mechanism. It should be approved by the Commission as a fair and equitable approach for the Company's customers and its shareholders.

Respectfully submitted,

/s/ Michael C. Pendergast

Michael C. Pendergast, #31763
Vice President & Associate General Counsel
Rick Zucker, #49211
Assistant General Counsel-Regulatory

Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101
Telephone: (314) 342-0532
Facsimile: (314) 421-1979
E-mail: mpendergast@lacledegas.com
rzucker@lacledegas.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Brief has been duly served on the General Counsel of the Staff and on the Office of the Public Counsel on this 27th day of February, 2009, by hand-delivery, facsimile, electronic mail, or regular mail.

/s/ Gerry Lynch

Gerry Lynch