



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.ecodev.state.mo.us/psc/>

August 27, 1999

GORDON L. PERSINGER
Acting Executive Director
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED²
AUG 27 1999
Missouri Public
Service Commission

RE: Case No. GR-99-315 - Laclede Gas Company

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **MOTION TO STRIKE**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

David J. Stueven
Assistant General Counsel
(573) 751-6726
(573) 751-9285 (Fax)

DJS/wf
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

AUG 27 1999

In the Matter of Laclede Gas Company's)
Tariff Sheets to Revise Natural Gas Rate)
Schedules.)

Case No. GR-99-315

Missouri Public
Service Commission

MOTION TO STRIKE

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its Motion to Strike states as follows:

1. The Missouri Public Service Commission's (Commission) rules regarding the prefiling of testimony can be found at 4 C.S.R. 240-2.130. These rules state, in part:

(7) For purposes of filing prepared testimony, the commission defines direct, rebuttal, and surrebuttal testimony and schedules as follows:

(A) Direct testimony and schedules shall include all testimony and schedules asserting and explaining that party's entire case-in-chief;

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony and schedules which are responsive to the testimony and schedules contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;

(C) Where only the moving party files direct testimony, rebuttal testimony and schedules shall include all testimony and schedules which explain why a party rejects, disagrees or proposes an alternative to the moving party's direct case; and

(D) Surrebuttal testimony and schedules shall be limited to material which is responsive to matters raised in another party's rebuttal testimony and schedules.

2. The Commission's rules further state:

(8) No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony or schedules unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information with actual results. (4 C.S.R. 240-2.130(8))

58

The Commission's rule prohibiting the supplementation of prefiled testimony is clearly intended to prohibit a party from presenting new information, not previously provided to the other parties, at this late stage in the proceeding, thus creating an inequitable situation for those parties who have complied with the Commission's rules.

3. On August 19, 1999, Laclede Gas Company (Laclede) filed the surrebuttal testimony of Richard A. Kottemann, Jr. on the issue of depreciation rates. Mr. Kottemann uses "recorded cost of removal and salvage activity for Mains and Services, from 1972 through 1998." (Kottemann Surrebuttal, p. 9, lines 3-5). This data is contained in table and graph format in Schedules 1, 2 and 3 in Mr. Kottemann's surrebuttal testimony.

4. Laclede had previously only provided data that was originally provided in GR-98-374.¹ Staff did not require, and Laclede did not request, that more current data be used, as Laclede was not required to provide the more current data until December 1999, in accordance with the settlement agreement in Case No. GO-97-79. Staff has not been given the work papers that this data is based on, Staff does not have an opportunity to verify the data, and Staff does not have the opportunity to properly analyze this data.

5. 4 C.S.R. 240-2.130(7)(A) clearly states that the Direct testimony shall include **all** testimony and schedules asserting and explaining that party's **entire** case-in-chief. To permit a party, such as Laclede, to change the data on which depreciation rates are based in surrebuttal testimony is clearly not permitted by the Commission's rules.

6. Allowing Laclede to utilize data previously not provided to, and unverified by, Staff in Laclede's surrebuttal filing allows Laclede to supplement its testimony without giving Staff adequate opportunity to respond. Further, as this testimony was filed a mere 11 days prior

¹ The data used in GR-98-374 was from the years 1982 through 1996.

to the evidentiary hearing, Staff does not have sufficient time to perform proper analysis and verification of Mr. Kottemann's new data, nor does Staff have sufficient time to determine whether it is appropriate to incorporate the data into Staff's position on the calculation of net salvage.

7. On August 19, 1999, Laclede filed the surrebuttal testimony of Zach Wagner on the issue of return on equity. Mr. Wagner states on page 1, that the purpose of his surrebuttal testimony is to comment on the "use of a market to book adjustment to the discounted cash flow model" (DCF).

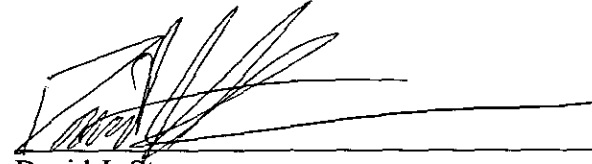
8. Mr. Wagner's testimony does not address the market to book adjustment to the DCF model as claimed. Instead, Mr. Wagner states on page 1 that the purpose of his surrebuttal testimony is to "set the record straight" regarding comments that he made at a symposium. Nowhere in the rebuttal testimony filed in this proceeding are the comments made by Mr. Wagner at the symposium raised or discussed. It is apparent that Laclede anticipates that the comments made at the March 1999 symposium might be introduced at the hearing and will be harmful to Laclede's return on equity position. Laclede's attempt to address Mr. Wagner's comments by introducing material that was not raised in rebuttal testimony is improper and contrary to the Commission's rules.

9. As outlined above, 4 C.S.R. 240-2.130 sets forth the rule regarding surrebuttal testimony. That rule limits surrebuttal testimony to "material which is responsive to matters raised in another party's rebuttal testimony." Accordingly, Mr. Wagner's entire surrebuttal testimony should be stricken as non-responsive to matters raised in the rebuttal testimony filed in this proceeding.

WHEREFORE, Staff respectfully requests that the Commission issue an order striking page 8, line 22, beginning with the word "To" and line 23; page 9, lines 1 - 17; and Schedules 1,2, and 3 of Mr. Kottemann's surrebuttal; and that it strike the entire surrebuttal testimony of Zach Wagner.

Respectfully submitted,

DANA K. JOYCE
General Counsel



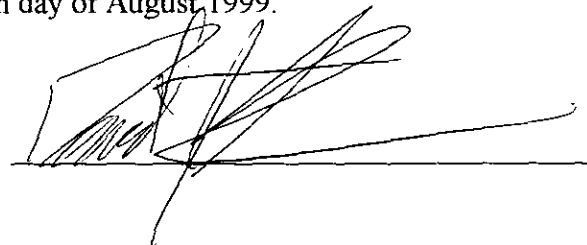
David J. Stueven
Assistant General Counsel
Missouri Bar No. 51274

Marc Poston
Assistant General Counsel
Missouri Bar No. 45722

Attorneys for the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8701 (Telephone)
(573) 751-9285 (Fax)

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 27th day of August 1999.



**SERVICE LIST FOR
CASE NO: GR-99-315
August 27, 1999**

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Ronald K. Evan/Susan B. Knowles
Union Electric Company d/b/a AmerenUE
1901 Chouteau Avenue
P.O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149

John D. Landwehr
Cook, Vetter, Doerhoff & Landwehr
231 Madison
Jefferson City, MO 65102

Robert C. Johnson
720 Olive Street, 24th Floor
St. Louis, MO 63101

Michael C. Pendergast
Laclede Gas Company
720 Olive Street
St. Louis, MO 63101

Diana M. Schmidt
Bryan Cave LLP
211 N. Broadway
St. Louis, MO 63102-2750

Richard Perkins
Diekemper, Hammond, Shinnars, Turcotte
7730 Carondelet, Suite 200
St. Louis, MO 63105