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August 27, 1999

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

FILED²

AUG 27 1999

Missouri Public
Service Commission

Re: Case No. GR-99-315

Dear Judge Roberts:

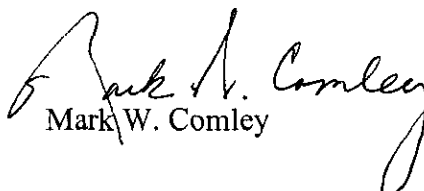
Enclosed for filing please find an original and fourteen copies of Laclede Gas Company's Response to Public Counsel's Motion to Strike, and Motion to Strike Portions of Staff's and Public Counsel's Prefiled Testimony in the above-referenced case. Please see that this filing is brought to the attention of the appropriate Commission personnel.

Thank you for your consideration in this matter.

Sincerely,

NEWMAN, COMLEY & RUTH P.C.

By:


Mark W. Comley

MWC:ab

Enclosure

cc: Office of Public Counsel
Thomas M. Byrne
All parties of record

FILED²

AUG 27 1999

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Laclede Gas Company's)
Tariff to Revise Natural Gas Rate) Case No. GR-99-315
Schedules.)

**LACLEDE GAS COMPANY'S RESPONSE TO PUBLIC COUNSEL'S MOTION
TO STRIKE, AND MOTION TO STRIKE PORTIONS OF STAFF'S AND
PUBLIC COUNSEL'S PREFILED TESTIMONY**

COMES NOW Laclede Gas Company ("Laclede") and in support of
its Response to Public Counsel's Motion to Strike and its Motion
to Strike Portions of Staff's and Public Counsel's Prefiled
Testimony, states as follows:

1. On August 17, 1999, the Office of the Public Counsel
("Public Counsel") filed a motion to strike portions of the
rebuttal testimony filed in this proceeding by Laclede witness
James A. Fallert. The specific portion of Mr. Fallert's rebuttal
testimony that Public Counsel proposes to strike contains Mr.
Fallert's recommendation that a "specific bar hole survey of all
copper service lines on the distribution system" be included in
Laclede's Safety Replacement Program Accounting Authority Order.
(Fallert, Rebuttal, p. 6, lines 11-22; p. 7, lines 1-2). Public
Counsel argues that this testimony is contrary to the Commission
rule that provides that "rebuttal testimony shall include all
testimony and schedules which are responsive to the testimony and
schedules contained in any other party's direct case." 4 CSR
240-2.130(7)(B).

2. Laclede believes that Public Counsel's motion to strike
Mr. Fallert's testimony is completely meritless. First of all,

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the rule cited by Public Counsel is inclusive, not exclusive. It enumerates things that should be included in rebuttal testimony, not those that should be excluded from such testimony. Although Laclede agrees that as a general rule it is improper to raise new issues for the first time in rebuttal or surrebuttal testimony, the Commission has always exercised common sense and fairness in applying this standard in rate cases. Because in rate cases companies are typically required to file their direct testimony prior to the end of the test year update period, it is impossible for them to include in their direct testimony a discussion of items which occurred after the filing of their direct testimony, but prior to the end of the update period established by the Commission.

3. That is exactly the situation that occurred with respect to Laclede's bar hole survey. Pursuant to the schedule established by the Commission in this proceeding, Laclede filed its direct testimony on March 11, 1999. Laclede conducted its first bar hole survey of copper service lines on March 24, 1999-- in the twenty-day window between the date its direct testimony was filed and the end of the update period ordered by the Commission for this case (March 31, 1999). Under such circumstances, it would be patently unfair to preclude Laclede from addressing this item in its rebuttal testimony. In effect, such a ruling would deprive Laclede of any opportunity to address items which arise after its direct testimony was filed and prior to the update period for the case.

4. The unfairness of such a result was explicitly recognized by the Commission in Laclede's last rate case proceeding when it permitted the Company to file supplemental direct testimony to address certain cost and revenue items that could not have been known and addressed by the Company in its prefiled direct testimony. See Order Granting Request for Clarification, Or in the Alternative, Application For Rehearing, of Order Establishing Test Year, Case No. GR-98-374 (August 27, 1998). The Commission did so even though the items addressed by the Company occurred after the update period. (Id.). The rebuttal testimony filed by Mr. Fallert in this case served the same exact function as the Company's filing in Case No. GR-98-374, albeit on a more limited basis. In view of these considerations, it is clear that the Commission's rules do not require that Mr. Fallert's testimony regarding bar hole surveys be stricken, and the Commission should deny Public Counsel's request to order such an unfair result.

5. On the other hand, Public Counsel has filed rebuttal testimony on two issues that clearly should be stricken. First, on pages 10-16 of Public Counsel witness Ted Robertson's rebuttal testimony, Public Counsel recommends for the first time that Laclede's Year 2000 compliance costs, including computer software costs, be amortized over a ten-year period. This is a position that obviously should have been included in Mr. Robertson's direct testimony. The relevant Commission rule provides: "Direct testimony and schedules shall include all testimony and schedules asserting and explaining that party's entire case-in-

chief." 4 CSR 240-2.130(7)(A). Unlike Laclede's situation with the bar hole surveys, there is absolutely no reason that Mr. Robertson was unable to recommend this change in the amortization rate for software costs in his direct testimony. Laclede had been incurring these costs for some time when Mr. Robertson filed his direct testimony, and the amortization period for such costs has been set at five years for more than a decade. (See Case No. GO-87-147). Consequently, there is no excuse for Mr. Robertson's failure to address this issue in his direct testimony, and therefore the portions of his rebuttal testimony which address this issue (specifically from p. 10, line 16 to p. 13, line 16 and the sentence that begins on p. 15, line 20) should be stricken.

6. In addition, Public Counsel has also filed rebuttal testimony recommending, for the first time, that Laclede's Safety Replacement Program Accounting Authority Order be completely eliminated. Again, this testimony should have been filed as direct testimony and it should be stricken. Laclede's direct case expressly requests continuation of this accounting authority order (See Fallert, Direct, p. 22) which has been in effect, in one form or another, for five years and is not scheduled to expire until December of this year. If Public Counsel disagreed with the continuation of this long-standing accounting authority order, it had an obligation to raise that issue in its direct testimony when it addressed and recommended the proper regulatory treatment for the other accounting authority orders granted by

the Commission, and even recommended that several be discontinued. (Robertson, Direct, pp. 2, 17, 57-58). Consequently, the portions of Mr. Robertson's rebuttal testimony which address this issue (specifically from p. 57, line 15 to p. 58, line 7) should be stricken.

7. Staff too has included various revisions to its weather adjustment that clearly should have been included in its direct testimony. Specifically, Revised Schedules 5 and 6 attached to Staff witness James A. Gray's rebuttal testimony and Revised Schedules 3, 4, 5 and 6 to Staff witness Henry Warren's rebuttal testimony contain adjustments, based on revisions to daily normal heating degree days by Staff witnesses Patterson and Hu, that Staff did not include in its direct case, apparently because it simply ran out of time prior to the filing deadline. (See Westerfield, Direct, p. 9; Warren, Direct, pp. 8-9). In the aggregate, these adjustments, if adopted by the Commission, would reduce Laclede's revenue requirement by approximately \$1.4 million. Like Public Counsel, Staff has no good excuse for filing this portion of its direct case in rebuttal testimony. Indeed, since Staff's adjustments are to weather data covering a 30-year period ending in 1990, Staff has had a number of years to work on them, and there is absolutely no reason for Staff's failure to present them in direct testimony. Under these circumstances, the above-referenced schedules attached to Staff's rebuttal testimony, and any other portions of Staff's rebuttal or

surrebuttal testimony or schedules which belatedly incorporate these adjustments, should be stricken.

WHEREFORE, for the reasons set forth herein, Laclede respectfully requests that the Commission deny Public Counsel's motion to strike portions of Laclede's rebuttal testimony related to the bar hole survey which was conducted after Laclede's direct case was filed, and that it strike the portions of Public Counsel's and Staff's rebuttal testimony which could have and should have been filed as direct testimony, as set forth herein.

Respectfully submitted

Thomas M. Byrne by Robert A. Conley

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CERTIFICATE OF SERVICE

Thomas M. Byrne hereby certifies that the Laclede Gas Company's Response to Public Counsel's Motion to Strike, and Motion to Strike Portions of Staff's and Public Counsel's Prefiled Testimony in this case has been duly served upon all parties of record to this proceeding by placing a copy thereof in the United States mail, postage prepaid, on this 27th day of August, 1999.

Patrick A. Conley for Thomas M. Byrne