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November 18, 1999

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

RE: Case No. GR-99-315

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **SUGGESTIONS IN OPPOSITION OF LACLEDE GAS COMPANY'S MOTION TO STRIKE AND REQUEST TO TAKE ADMINISTRATIVE NOTICE.**

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
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Enclosure
cc: Counsel of Record

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Missouri Public
Service Commission

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

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

Case No. GR-99-315

**SUGGESTIONS IN OPPOSITION OF LACLEDE GAS COMPANY'S MOTION
TO STRIKE AND REQUEST TO TAKE ADMINISTRATIVE NOTICE**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") by and through its undersigned attorney, and for its Suggestions in Opposition of Laclede Gas Company's Motion to Strike and Request to Take Administrative Notice, states as follows:

1. On November 12, 1999, Laclede Gas Company ("Laclede" or "Company") filed a Motion to Strike and Request to Take Administrative Notice ("Motion to Strike") with the Missouri Public Service Commission ("Commission"). In Laclede's Motion to Strike, the Company seeks to have the Commission strike portions of the Office of Public Counsel's ("OPC") Reply Brief or, in the alternative, for the Commission to consider further argument in support of the Company's position. Laclede goes on to request that the Commission take administrative notice of Laclede's Gas Supply Incentive Plan ("GSIP") Monitoring Report filed on November 4, 1999. While Staff is not commenting on the relevance or persuasive value of any portion of the OPC's Reply Brief, Staff feels it necessary to address Laclede's Motion to Strike, and for the following reasons, said Motion to Strike should be denied.

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Motion to Strike Portions of OPC's Reply Brief

2. OPC, in its reply brief cites to the Commission's Report and Order in Case No. GR-96-193. The parties in that case entered into a Stipulation and Agreement that the Commission adopted in the Report and Order. Staff concurs that the Stipulation and Agreement contained language that none of the signatories approved or acquiesced in any "ratemaking or procedural principle, any method of cost determination or cost allocation, or any service or payment standard, and none of the signatories [would] be prejudiced or bound in any manner by the terms or any other proceeding..."¹. However, that language is irrelevant to the issue of citing a Commission Report and Order.

3. OPC did not cite the Stipulation and Agreement in that case; OPC cited the Report and Order. There is no prohibition contained in the Stipulation and Agreement that limits the ability of the parties to that case to cite the Report and Order. Further, the Commission is not a party to the Stipulation and Agreement and cannot be held to the terms of the Stipulation and Agreement. If Laclede believed that the Report and Order was not in accordance with the Stipulation and Agreement, the Company should have addressed it in that case, not the present one.

4. Laclede's contention that it was inappropriate for OPC to cite to a Commission Order is without merit. An attempt to prevent a party from citing a Commission Report and Order on the sole basis that there was a stipulation and agreement filed in the case is not valid and should be seen as such.

5. Laclede goes on to supplement its Reply Brief by submitting argument that the Company wishes the Commission to consider if the Commission does not strike

¹ ¶18, Stipulation and Agreement, Case No. GR-96-193.

OPC's Reply Brief. This is clearly inappropriate, and the Commission should not consider any substantive matters that Laclede included in its Motion to Strike.

6. 4 CSR 240-2.140 provides for the filing of briefs in a case before the Commission. The rule includes initial briefs and reply briefs. There is no provision for further argument to be submitted to the Commission. However, this is exactly what Laclede has done in its Motion to Strike. The Company lists examples to "fully support"² its position that the Report and Order in GR-96-193 is consistent with the Company's position in the present case.

7. Allowing Laclede to supplement its argument in this manner, clearly outside the procedural rules of the Commission, is prejudicial to the other parties in this case and a blatant attempt by Laclede to further argue its position and should not be tolerated by the Commission.

Request To Take Administrative Notice

8. Laclede's request for the Commission to take administrative notice of the Company's GSIP Monitoring Report that was filed by Laclede on November 4, 1999 is also inappropriate and an attempt to supplement the record outside of the Commission's procedural rules.

9. Reply briefs, in this case, were filed on November 1, 1999. Pursuant to 4 CSR 240-2.140(1), "[t]he record of a proceeding shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Therefore, the case was deemed submitted to the Commission for decision on November 1, 1999.

² Motion to Strike, page 3

10. Laclede, in its Motion to Strike, is requesting that the Commission consider evidence that was not before the Commission at the time the case was submitted for Commission decision. Further, the Staff has not audited this document and, as the GSIP Monitoring Report is considered in Laclede's Actual Cost Adjustment (ACA) process, will not submit a recommendation concerning that report until September 1, 2000.

11. Laclede's is attempting to introduce evidence that no other party will have a meaningful opportunity to review and comment on prior to a Commission decision in this case. To properly respond to the information contained in the GSIP Monitoring Report requires that the Staff (and OPC, if it so chooses) conduct an audit of that information, and analyze those results, as it would prior to filing a recommendation in the ACA process.

12. Laclede's attempt to supplement the record in this fashion is clearly prejudicial to the other parties to the case and clearly outside the Commission established procedures for a contested case before the Commission.

Conclusion

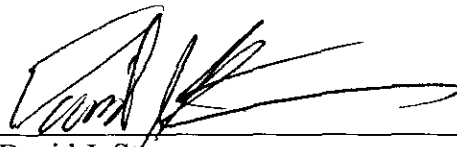
13. In submitting argument and requesting that the Commission take administrative notice of the GSIP Monitoring Report, Laclede is engaging in an extraordinary effort to inappropriately supplement the record in contravention of the Commission's procedural rules. Laclede has had the same opportunity as the other parties in this case to submit evidence, cross-examine witnesses and submit briefs to the Commission. Laclede is now requesting that the Commission allow them further

opportunity to not only argue their case, but to submit further evidence, without the other parties having an opportunity to do the same.

WHEREFORE, the Staff respectfully requests that the Commission deny Laclede's Motion to Strike in its entirety and not consider any evidence or substantive argument contained therein.

Respectfully submitted,

DANA K. JOYCE
General Counsel




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Assistant General Counsel
Missouri Bar No. 51274

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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 18th day of November 1999.



**SERVICE LIST FOR
CASE NO: GR-99-315
November 18, 1999**

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