

LACLEDE GAS COMPANY  
720 OLIVE STREET  
ST. LOUIS, MISSOURI 63101  
AREA CODE 314  
342-0536

THOMAS M. BYRNE  
ASSOCIATE COUNSEL

November 10, 1999

VIA FEDERAL EXPRESS

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
Harry S Truman Building  
301 W. High Street, 5<sup>th</sup> Floor  
Jefferson City, MO 65101

RE: Case No. GR-99-315

Dear Mr. Roberts:

Enclosed for filing, please find the original and fourteen copies of Laclede Gas Company's Motion to Strike and Request to Take Administrative Notice in the above-referenced case.

Please file-stamp the additional copy of this Motion and return the same in the pre-addressed, stamped envelope provided.

Thank you for your consideration in this matter.

Sincerely,



Thomas M. Byrne

TMB:jaa

cc: All parties of record

FILED<sup>2</sup>

NOV 12 1999

Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

NOV 12 1999

Missouri Public  
Service Commission

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

**LACLEDE GAS COMPANY'S MOTION TO STRIKE  
AND REQUEST TO TAKE ADMINISTRATIVE NOTICE**

COMES NOW Laclede Gas Company ("Laclede" or "Company") and in support of its Motion to Strike and Request to Take Administrative Notice, states as follows:

1. On November 1, 1999, the Staff of the Missouri Public Service Commission ("Staff") and the Office of the Public Counsel ("Public Counsel") filed their respective Reply Briefs in the above-referenced case.
2. At pages 4 and 7 of its Reply Brief, Public Counsel cites language from the Commission's Report and Order in the Company's 1996 rate case proceeding in support of its position on several issues, including Return On Equity ("ROE") and the appropriate level of short-term debt to include in the Company's capital structure. Specifically, at page 4 of its Reply Brief, Public Counsel asserts that "[t]his Commission has set Laclede's return on equity with the primary assistance of the DCF." In support thereof, Public Counsel recites language from the Report and Order in Case No. GR-96-193 in which the Commission stated that it "finds that evidence of Staff and MIEC, including DCF and CAPM analysis and evaluation of comparable companies, supports an ROE of 11 percent." *Re: Laclede Gas Company*, 172 PUR 4<sup>th</sup> 83, 88 (1996). Similarly, at page 7 of its Reply Brief, Public Counsel cites the following language from the same

Report and Order in support of its contention that use of a 12-month average of short-term debt in Laclede's capital structure is not a new phenomenon:

The stipulated revenue increase should result in a return on common equity (ROE) of 11 percent based on a capital structure which includes a 12-month average balance of short term debt, adjusted for test year financings and construction work in progress.

*Re: Laclede Gas Company, supra, at 87.*

3. As Public Counsel knows, however, and as the cited language itself indicates, the rate increase in Case No. GR-96-193 was recommended by the parties as part of a Stipulation and Agreement. Like most stipulations filed with the Commission, the settlement submitted by the parties in Case No. GR-96-193 contained the following provision:

None of the signatories to this Stipulation and Agreement shall be deemed to have 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 shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding, except as otherwise specified herein.

¶18: Stipulation and Agreement, *Re: Laclede Gas Company, supra, at 99.*

4. Given this language, Laclede does not believe it is appropriate, or consistent with the parties' agreement in Case No. GR-96-193, to use the Commission's order approving that agreement in a manner that implies that Laclede or any other party for that matter "approved or acquiesced" in any particular "ratemaking principle" or "method of cost determination" in that case. Nor is it appropriate to use the settlement in Case No. GR-96-193, or the Commission's order approving it, to prejudice Laclede's

position on the issues raised in this proceeding. To the extent Public Counsel seeks to do so, its references to the Report and Order in Case No. GR-96-193 should be stricken.

5. Alternatively, the Commission can conclude that Public Counsel's references are not inappropriate because, far from prejudicing Laclede's positions on these issues, they instead support them. For example, the Commission's statement in Case No. GR-96-193 that an 11% ROE was appropriate because it took into account *all* of the analyses performed by Staff, including the evaluation of comparable companies, supports Laclede's position that the Commission should do the same in this proceeding and view *all* of Staff's and Public Counsel's ROE analyses as supporting ROE ranges with upper ends of 11.48% and 11.51%, respectively<sup>1</sup>. Similarly, the Commission's statement in Case No. GR-96-193 that the capital structure in that case "includes a 12-month average balance of short-term debt, adjusted for test year financings and construction work in progress." (*Re: Laclede Gas Company, supra*, at 87 (*emphasis supplied*)), fully supports Laclede's position in this proceeding that the 12-month average balance of short-term debt recommended by Staff and Public Counsel in the current case should likewise be adjusted to take into account the full effects of the equity and debt financings completed by the Company during the true-up period in this proceeding. In view of these considerations, the Commission should either strike Public Counsel's inappropriate and misplaced references to the Report and Order in Case No. GR-96-193 or, in the alternative, permit them to be considered on the understanding that they support rather than prejudice the Company's positions on these two issues.

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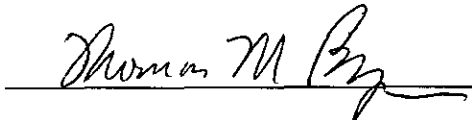
<sup>1</sup> It should be noted that the 11% ROE referenced in the Commission's Report and Order in Case No. GR-96-193 was at the upper end of Staff's ROE recommendations in that case. *Re: Laclede Gas Company, supra*, at 88.

6. Finally, at pages 25-26 and page 10 of their respective reply briefs, Staff and Public Counsel argue, for the first time, that Laclede's proposed off-system sales revenue amount of \$900,000 should be rejected because it is based on an estimate for the 1998-1999 time frame. Laclede had no reason to believe either during Case No. GT-99-303, where the issue of off-system sales was first raised, or during this proceeding, where the Commission determined that the issue should finally be decided, that the reliability of its off-system sales revenue estimate for the year ending September 30, 1999 would be subject to question. To the contrary, the \$900,000 amount estimated by Laclede was included in an exhibit that Public Counsel itself sponsored in Case No. GT-99-303, for the specific purpose of illustrating the impact of the Company's proposals in that case. (See Exh. 125, Case No. GT-99-303, Tr. 337-339, Exh. 45). Now that a question regarding the reliability of the estimate has been raised, however, Laclede respectfully requests that the Commission take administrative notice of the Gas Supply Incentive Plan ("GSIP") Monitoring Report filed by Laclede on November 4, 1999 in connection with its annual winter PGA filing. (See *North Central County Fire Alarm System, Inc. v. Southwestern Bell Telephone Company*, 28 Mo.P.S.C. (N.S.) 29, 34 (1985); *Re: Dump Truck Rates*, 23 Mo.P.S.C. (N.S.) 359, 371 (1980)). As that report shows, the actual level of off-system sales revenues realized by the Company for the year ending September 30, 1999 is consistent with the \$900,000 estimate reflected on Public Counsel's Exhibit No. 45 in Case No. GT-99-303.

**WHEREFORE**, for the foregoing reasons, Laclede respectfully requests that the Commission: (a) strike Public Counsel's references in its Reply Brief to the Commission's Report and Order in Case No. GR-96-193 or, in the alternative, permit

such references on the basis that the references support, rather than prejudice, Laclede's positions on the return on equity and short-term debt issues raised in this case; and (b) take administrative notice of Laclede's November 4, 1999 GSIP Monitoring Report for the limited purposes discussed herein.

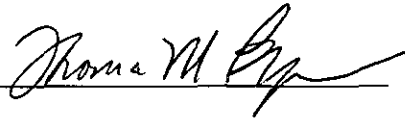
Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Thomas M. Byrne", is written over a horizontal line.

Michael C. Pendergast #31763  
Thomas M. Byrne #33340  
Laclede Gas Company  
720 Olive Street, Room 1520  
St. Louis, MO 63101  
(314) 342-0532 Phone  
(314) 421-1979 Fax

**CERTIFICATE OF SERVICE**

Thomas M. Byrne, Associate Counsel for Laclede Gas Company, hereby certifies that the foregoing Motion to Strike and Request to Take Administrative Notice has been duly served upon all parties of record to this proceeding by placing a copy thereof in the United States mail, postage prepaid, or by hand delivery, on this 10th day of November, 1999.

A handwritten signature in cursive script, appearing to read "Thomas M. Byrne", is written over a horizontal line.

Thomas M. Byrne