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

APPLICATION FOR REHEARING

COMES NOW Laclede Gas Company ("Laclede" or "Company") and, pursuant to Section 386.500 (RSMo 2000) and 4 CSR 240-2.160 of the Commission's Rules of Practice and Procedure, submits its Application for Rehearing of the Commission's April 15, 2009 Report and Order in the above-referenced case. In support thereof, Laclede states as follows:

1. On April 15, 2009, the Commission issued its Report and Order in the above captioned case in which it rejected the tariffs that had been filed by Laclede to reflect and reconcile through its Purchased Gas Adjustment ("PGA")/Actual Cost Adjustment ("ACA") mechanism the gas cost portion of the Company's bad debt write-offs.

2. The Commission's Report and Order is unlawful, unreasonable, arbitrary and capricious and unsupported by the record in this case because its rejection of Laclede's tariff proposal is based on incorrect findings of fact and an erroneous interpretation of applicable Missouri law.

3. At the outset, it should be noted that the Commission's finding at page 6 of its Report and Order that bad debts are not a gas cost erroneously portrays the

positions of the parties to this case. No party, including Laclede, ever asserted that bad debts are a gas cost. Instead, Laclede's tariff proposal was based on the assertion that the ***gas cost*** portion of bad debts – and only the gas cost portion – is a gas cost that should be reflected in and reconciled through the PGA/ACA mechanism.

4. That said, to the extent the Commission meant to find that the gas cost portion of bad debts is not a gas cost, such a finding is illogical, counterintuitive, and unsupported by the competent and substantial evidence on the record. The undisputed evidence on the record shows that the gas supply, storage and transportation costs that the Company incurs to serve customers who do not pay their bills (and hence leave the Company with a bad debt comprised mostly of unreimbursed gas costs) are the very same gas supply, storage and transportation costs that the Company incurs to serve customers who do pay their bills and that the Company already recovers through the PGA/ACA process. (Tr. 185, lines 2-15). Indeed, as Public Counsel witness Trippensee acknowledged during cross examination, such costs are booked to the Company's gas cost accounts at the time they are incurred and they remain booked to those accounts regardless of whether a customer ultimately does or does not pay for them. (Tr. 246, line 9 – 247, line 9). In short, the dollars spent by Laclede to acquire, store and transport gas supplies to its service territory are considered gas costs reimbursable to the Company through the PGA at the time they are incurred, they remain reimbursable gas costs when Laclede bills them to customers along with approved charges billed for Laclede's distribution service, and they are still reimbursable gas costs whether or not the customer pays for them.

5. The Report and Order explicitly recognizes these facts at page 4 by acknowledging that the PGA mechanism "allows Laclede to recover the costs it incurs to purchase natural gas, as well as certain other gas related costs, from its customers by means of a separate charge on the customer's bill . . ." and by further noting that roughly 75 percent of the costs included in a customer's bill are "related to gas costs." Despite its acknowledgment that gas costs comprise a significant and separately identifiable portion of the customer's bill, the Report and Order nevertheless goes on to conclude that once a customer fails to pay his or her bill, such gas costs are suddenly transformed into a non-gas cost. (Report and Order, p. 6) How can that possibly be? The Report and Order offers only two observations to support such a proposition, neither of which can be reconciled with the record or the actual workings of the PGA/ACA process.

6. The first is the Commission's statement that Laclede "does not make a payment to anyone when it incurs a bad debt, rather it merely makes an accounting entry to recognize a loss of revenue." (*Id*.) The exact same thing is true, however, when the customer pays his bill and Laclede doesn't incur a bad debt. When that happens, there is no payment made by Laclede to a third party. Instead, Laclede simply makes an accounting entry – in this instance to recognize the *receipt* of revenue. The fact that Laclede doesn't make a payment to a third party but only makes an accounting entry doesn't magically transform the gas costs that have been included in the customer's bill into non-gas costs. To the contrary, such costs continue to be recognized for what they are: a gas cost. Given these considerations, there is simply no basis for the proposition that the gas cost portion of amounts billed to customers no longer qualify as gas costs simply because Laclede makes an accounting entry rather than a payment to a third party

when a customer fails to pay the gas cost portion of his bill. Nor does the occurrence of these accounting events in any way change the fact that these gas costs were recognized as gas costs and booked to Laclede's gas cost accounts at the time they were incurred.

7. The same thing is true regarding the second basis relied upon by the Commission for concluding that a customer's failure to pay his or her bill converts a gas cost into a non-gas cost, namely the Commission's statement that " . . . an increase or decrease in Laclede's level of bad debts has no effect on the amount its wholesale gas suppliers charge Laclede for the natural gas it purchases." (*Id*.) The same exact thing could be said, however, for a host of other costs that are already appropriately recognized as gas costs and accordingly recovered through the PGA/ACA process.

8. For example, increases and decreases in the amount of financial instruments purchased by Laclede to provide price protection for its customers have no direct affect on the amount Laclede's wholesale gas suppliers charge, and yet the cost of such instruments is considered a gas cost and recovered through the PGA. Increases and decreases in the carrying costs incurred by Laclede to maintain gas supply inventories has no effect on the amount its wholesale suppliers charge Laclede for natural gas purchases, and yet such costs are considered gas costs and recovered through the PGA. (Tr. 87, l. 13–88, l.2) Increases or decreases in customer usage due to weather likewise have no effect on the purchase price paid by Laclede for its gas supplies, but the PGA/ACA process nevertheless permits over and under-recoveries of gas costs associated with such usage changes to be reconciled and corrected through the PGA mechanism. Similarly, increases and decreases in the revenues achieved by Laclede through its off-system sales and capacity release efforts have no impact on what its suppliers charge, but are

nevertheless reflected and reconciled in Laclede's PGA/ACA process. So too are the increases and decreases in the savings achieved by Laclede under its Gas Supply Incentive Plan – increases and decreases that once again have no direct impact on what Laclede pays its suppliers.

9. Given these considerations, there is simply no basis for the Commission's finding that the gas cost portion of bad debts is not a gas cost simply because increases and decreases in that cost item do not affect the amount charged by Laclede's suppliers. That has never been the test of whether a particular item can be considered a gas cost, and the Commission's reliance on such criteria for its finding in this case is wholly unsupported by the record evidence in this case, inconsistent with the Commission's actual treatment of other cost and revenue items over the years, and for those very reasons, unreasonable, arbitrary and capricious.

10. Laclede also submits that there is no competent and substantial evidence in the record to support the Commission's finding that Laclede exercises "substantial influence" over the level of bad debts it incurs (Report and Order, p. 7) – a finding that the Commission relies on for its legal conclusion that the gas cost portion of such bad debts cannot lawfully be included in and reconciled through the PGA/ACA process with all other gas costs incurred by the Company. As the Court made clear in ***State ex rel. Midwest Gas Users' Ass'n v. Public Service Comm'n,*** 976 S.W.2d 470, 482 (Mo.App. W.D. 1998) ("***MGUA***"), the ability to exercise some control over a particular cost item does not preclude its recovery in an adjustment mechanism. Indeed, the Court in ***MGUA*** went on to uphold the legality of a gas supply incentive plan for MGE that had been approved by the Commission on the very premise that a gas utility could exercise some

control over the level of its gas costs. (*Id*. at 481-82) The real legal question is when does such control become so significant that an adjustment mechanism is no longer a lawful recovery vehicle.

11. In this case, the Commission's determination that Laclede exercises "substantial influence" over the level of bad debts it incurs is based on a distorted assessment of the record evidence. The evidence cited to support the Commission's finding only indicated that the Company's collection efforts could have "some impact" on bad debts (Tr. 42; lines 2-5); not the "substantial influence" found by the Commission. In fact, the great weight of the evidence showed that the Company's ability to control bad debts is quite limited. (Ex. 3, pp. 6-7; Ex. 4, p. 5; Ex 7, pp. 5-6; Tr. 169, ll. 12-15; Tr. 194-97). For example, while the Commission implied that Laclede could take measures to reduce bad debts, such as discontinuing service to customers, using social security numbers to prevent fraudulent receipt of service, or other collection tools, the evidence showed that such measures are already being followed by utilities. (Ex. 7, p. 5, ll. 3-13)

12. Even more significantly, the evidenced established (as the Commission itself recognized at page 7 of its Report and Order) that bad debt levels are influenced by a variety of largely uncontrollable factors, such as changes in wholesale prices, weather, the economy, and regulatory requirements. Laclede submits that there is no tenable basis for suggesting that the Company's limited ability to pursue collection activities in any way compensates for the impact that these largely uncontrollable factors have on the level of bad debts experienced by the Company. Indeed, the Commission itself has recognized that changes in revenues (which, in Laclede's case, would be driven primarily by changes in wholesale gas prices) play such a significant role in the level of bad debts

experienced by utilities that it has determined that the allowable bad debt levels for an electric utility should be factored-up when a revenue increase is approved. ***Re: Kansas City Power & Light,*** Case No. ER-2006-0314, Report and Order, pp. 62-63 (December 21, 2006). Of course, compared to electric utilities, gas utilities like Laclede are confronted with revenue changes that fluctuate even more significantly as wholesale gas prices increase and decrease. And unlike their electric counterparts, the bad debt levels experienced by gas utilities are also influenced far more profoundly by regulatory mandates that limit their ability to discontinue or refrain from serving customers who present a high risk of not paying. The millions of dollars in Cold Weather Rule compliance costs incurred by the Company over the last few years alone (most of which involve customer arrearages caused by changing regulatory requirements) amply demonstrates that point. Under such circumstances, there is really no tenable basis for the Commission's determination that gas utilities, like Laclede, exercise enough control over bad debt levels that it is unlawful to include the gas cost portion of such bad debts in the PGA/ACA mechanism.

13. The Commission's erroneous factual determinations that the gas cost portion of bad debts is not really a gas cost and that Laclede exercises substantial influence over its bad debt levels is part and parcel of its equally erroneous legal conclusion in the Report and Order that reflecting and reconciling such costs in the PGA/ACA mechanism would constitute unlawful, single issue ratemaking. (Report and Order, p. 10) The very case cited by the Commission in its Report and Order, however, indicates just the opposite. In ***MGUA***, *infra*, the Western District Court of Appeals specifically considered whether the PGA mechanism ran afoul of the same prohibition

against single issue ratemaking that the Court relied on in ***State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Serv. Comm'n,*** 585 S.W.2d 41, 49 (Mo. 1979) ("*UCCM*") to invalidate the fuel adjustment clause for electric utilities.[1] In determining that the PGA mechanism did not suffer from this legal deficiency, the Court noted that "[t]he gas costs which the PGA mechanism allows the companies to pass on [to customers through a surcharge] are almost entirely the cost of obtaining the gas itself; they do not include the type of labor and materials costs used in making electricity." (***MGUA*** at 482.) The Court further noted that the Commission was not required to treat all items of cost and expense in exactly the same way; that the Commission had properly found that, due to their unique nature, gas costs are different than other costs and should be treated differently, that recovery (i.e. reimbursement) of such costs through the PGA would serve the interests of both the utility and its ratepayers by preventing huge windfalls or under-recoveries due to highly volatile gas prices, and that the Commission had therefore properly and lawfully created a mechanism that allowed both gas cost increases and savings to be passed on in the amount incurred. (***MGUA*** *at* 479-482)

14. There is absolutely nothing in the Company's proposal to recover the ***gas cost*** portion of its bad debt write-offs through the PGA that would in any way change or disturb this key element of the PGA mechanism that the Court relied upon in upholding its legality. As previously discussed, the gas cost portion of the Company's bad debt write-offs are just that --- unreimbursed gas costs. Allowing unreimbursed gas costs currently dealt with outside of the PGA to join their companion gas costs inside the PGA furthers the very purposes of the PGA mechanism that were favorably noted by the

[1] It should be noted that the Missouri General Assembly subsequently enacted Section 386.266, which authorized the Commission to approve a fuel adjustment clause.

Court, namely the prevention of detriments to both ratepayer and the utility that would otherwise arise when volatile fluctuations in gas prices lead to either windfalls or losses for the utility. Given this consideration, it is simply impossible to read the Court's decision in *MGUA* as precluding the inclusion of these gas costs in the PGA mechanism. Nor is it at all clear to Laclede why the Commission would surrender its discretion to make such a determination based on such an implausible and counter-intuitive reading of this decision. In fact, inclusion of these unreimbursed gas costs in the PGA/ACA mechanism would do nothing more and nothing less than fully accomplish what the Commission claimed that mechanism already does, namely allow ". . . Laclede to recover the costs it incurs to purchase natural gas, as well as certain other gas related costs, from its customers by means of separate charge on the customer's bill." (Report and Order, p. 4). Absent implementation of the Company's proposal, that purpose is not and cannot be fully realized.

15. In its Report and Order. the Commission also expressed some concern regarding the amount of bad debt-related gas cost that Laclede asserted was included in its base rates from its last general rate case proceeding, even though the amount used by Laclede was based on a Staff recommendation. (Tr. 47, ll. 13-19) Although other parties had ample opportunity to present and support a different amount if they believed Laclede's recommended amount was incorrect, Laclede would have no objection to deferring implementation of its proposal until its next general rate case should the Commission grant its application for rehearing. For obvious reasons, Laclede believes that such an approach would address all of the concerns that have been raised regarding implementation of its proposal outside the context of a general rate case proceeding.

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission grant rehearing of its April 15, 2009 Report and Order in this case and, upon rehearing, approve the tariffs filed by Laclede in this case effective no later than the effective date of new rates established in Laclede's next general rate case proceeding.

Respectfully submitted,

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing pleading was served on all parties of record on this 24th day of April, 2009 by email, facsimile, hand-delivery or by placing a copy of such pleading, postage prepaid, in the United States mail.

/s/ Gerry Lynch