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

RESPONSE TO STAFF'S MOTION
TO REJECT TARIFF AND DISMISS DOCKET
AND TO PUBLIC COUNSEL'S RESPONSE IN SUPPORT THEREOF

COMES NOW Laclede Gas Company ("Laclede" or "Company") and, pursuant to the Commission's October 31, 2008 Order in this case, submits its Response to Staff's Motion to Reject Tariff and Dismiss Docket and Public Counsel's Response in Support thereof. In support of its Response, Laclede states as follows:

1. On July 9, 2008, Laclede filed tariff sheets designed to enhance the ability of the Company and its customers to function more effectively in today's environment of increasingly volatile energy prices, including wholesale natural gas prices. To that end, the proposed tariff sheets would authorize the Company to reflect and reconcile through its Purchased Gas Adjustment ("PGA")/Actual Cost Adjustment ("ACA") mechanism the ***gas cost*** portion of its bad debt write-offs so as to more accurately charge customers for the amounts actually paid by the Company to acquire gas supplies in the increasingly volatile natural gas marketplace. The proposed tariff sheets would have also provided customers with additional tools to proactively address the payment challenges posed by these volatile prices. In particular, they would have authorized implementation of the

provisions of the Commission's Cold Weather Rule nearly three months earlier than usual.[1]

2. Subsequent to that filing, Public Counsel submitted a motion to suspend the Company's tariff filing and to request an evidentiary hearing. That was followed on July 22, 2008, by a Staff pleading which purported to support Public Counsel's motion to suspend, but also went further to suggest that the Commission consider rejecting the tariff filing. Instead of rejecting the tariff filing, however, the Commission scheduled a prehearing conference. As a result of that prehearing conference, the parties recommended, and the Commission approved, the current procedural schedule. Pursuant to that schedule, Laclede has already filed its direct testimony in this case, the Staff and Public Counsel have filed their rebuttal testimony, and an evidentiary hearing is scheduled to begin in slightly more than a month, on December 8, 2008.

3. Despite the fact that the procedural schedule is almost two thirds completed and the Staff has already taken one bite at the issue, the Staff nevertheless filed another motion on October 20, 2008, in which it again requests that the Commission reject Laclede's tariff filing and dismiss this case. Staff supplemented its Motion on October 22, 2008 and Public Counsel filed a supportive pleading on October 30, 2008. At the outset, it is disconcerting that, if this case is now dismissed, the effort expended by the parties thus far would become a tremendous waste of Laclede's, Public Counsel's and the Commission's resources.

[1]With the passage of time, Laclede's proposal for early implementation of the provisions of the Cold Weather Rule has obviously been rendered moot. However, its tariff proposal to use the PGA mechanism to reconcile decreases and increases in the gas cost portion of its bad debt write-offs remains ripe for consideration and decision by the Commission.

4. For the reasons stated below, the Company does not believe that either Staff or Public Counsel have articulated any legitimate basis for rejecting the Company's tariff filing. Not only are Staff's and Public Counsel's attempts to dismiss this case unauthorized by statute and Commission rule, but they are also premised on a grossly distorted view of the legal and policy implications of the Company's proposal. From the very outset, the Company stated that its proposal is primarily designed to ensure that customers are charged as accurately as possible for the gas cost portion of its bad debt write-offs – an objective that is particularly critical in light of the extreme and hard to predict volatility in the natural gas markets. And just since the Company filed its tariff proposal in July of this year, the markets have again demonstrated how incredibly volatile they can be. For example, on the first business day of 2008, the January 2009 NYMEX futures contract settled at $9.24/MMBtu. On the first day of July, as Laclede was preparing its tariff proposal, NYMEX futures contracts for January 09 were trading at $14.44, a nearly 60% increase in six months. On the first trading day of November 2008, the same contract traded at $7.09/MMBtu, or less than *half* of what it was just four months ago! This is precisely the sort of extreme, hard-to-predict and largely uncontrollable kind of cost volatility that, in fairness to both the utility and its customers, fully warrants the type of more accurate cost tracking and recovery process that would be provided by the PGA/ACA mechanism.

5. Nevertheless, the Staff and Public Counsel would have the Commission believe that it is powerless to recognize and reflect the impact of these tremendous gas cost declines on the level of bad debt write-offs incurred by the Company. They would have the Commission simply turn a blind eye to reality and rely instead on a guess of

such costs that could not possibly have foreseen these wild price movements. Even worse, Staff and Public Counsel would suggest that the Commission is powerless to do this, even though it simultaneously retains unquestioned authority to reflect and reconcile in the PGA all other increases and decreases in gas costs that arise due to volatile changes in the marketplace. Laclede respectfully submits that the Commission's powers are not nearly so pinched and circumscribed, that it can in fact determine that a gas cost is a gas cost regardless of whether it has been paid for by a specific customer, and that a mechanism that relies on actual costs rather than guestimates to charge customers for extremely volatile costs is the appropriate and preferred mechanism to use. For all of these reasons, and those discussed below, Staff's Motion should be denied.

Staff's Motion is not Procedurally Authorized by either Statute or Commission Rule

6. In its Motion, the Staff cites the Missouri Rules of Civil Procedure in support of its request that the Commission reject Laclede's tariff and dismiss this case. The Commission has its own procedural statutes and rules, however, and "where a procedure before the Commission is prescribed by statute, that procedure must be followed." ***State ex rel. Monsanto Co. v. Pub. Serv. Comm'n***, 716 S.W.2d 791, 796 (Mo. banc 1986). In this instance, the relevant statutory procedure for disposing of a tariff filing is found in Section 393.150 (RSMo. 2000). That statutory section clearly indicates that once the Commission suspends a gas corporation's schedule setting forth "a new rate or charge, or any new form of contract or agreement, or any new rule, regulation or practice relating to any rate" it may dispose of the filing only "after full hearing." There is nothing in the statute to indicate that this statutory requirement for a "full

hearing" may be circumvented (or ignored altogether) through the filing and granting of a motion to dismiss.[2]

7. Moreover, the Commission's own procedural rules relating to summary disposition seem to explicitly acknowledge that a case involving a suspended tariff filing cannot be disposed of in such a manner, at least absent agreement by the parties. Although 4 CSR 240-2.177 specifies two alternative procedures whereby a party can obtain summary disposition of a case without the necessity of a hearing (i.e. through a motion for summary disposition or a motion for determination on the pleadings) it clearly provides that neither alternative is available in cases, like this one, where the case is subject to an operation of law date because it was initiated by a tariff filing. Needless to say, it would make no sense to conclude that these forms of summary determination cannot be properly used in operation-of law cases only to find that another form of summary determination – namely, a motion to dismiss – can be used.

8. In any event, even if the kind of summary determination contemplated by Staff's Motion could be entertained by the Commission, Staff's Motion would still be inadequate to warrant such relief. At a minimum, such a motion should at least satisfy those minimum requirements that the Commission has set forth for granting summary determinations. That means, among other things, that the movant must separately identify each material fact and show, through specific reference to the pleadings, testimony, discovery or affidavits, that there is no genuine issue as to such facts. 4 CSR 240-2.117(1). Neither Staff's Motion nor its Suggestions in Support thereof even

[2]The Missouri Supreme Court has affirmed the validity of the "file and suspend" procedure set forth in Section 393.150. ***State ex rel. Jackson County v. Public Service Commission***, 532 S.W.2d 20 (Mo banc 1975); ***See also State ex rel Laclede Gas Co. v. Public Service Commission***, 535 S.W.2d 561 (Mo.App. 1976).

approach this basic threshold. Indeed, in its Motion, Staff does not even mention Laclede's pleadings or testimony, let alone any of the discovery that has been produced in this case. Instead, the Staff simply makes a variety of factual assertions in support of its Motion that, far from being undisputed, are directly contested by the only testimony Laclede has filed in this case.[3] And while Staff's Suggestions in Support mention at least a few of the assertions made by Laclede's witnesses in their direct testimony, Staff does so just to claim that such assertions are wrong – a circumstance that once again demonstrates that real factual disputes remain. For all of these reasons, the Commission should deny Staff's Motion outright on the grounds that it is unauthorized by statute or Commission rules.

Even if their Request to Dismiss this Case could be Entertained by the Commission, neither Staff nor Public Counsel have Presented Arguments that would Warrant such Relief.

9. In their pleadings, both Staff and Public Counsel raise a number of arguments in opposition to the Company's proposal to use its PGA mechanism to reflect changes in the gas cost portion of its bad debt write-offs. It needs to be remembered that bad debt write-offs have *always* been recognized as a normal cost of doing business and have *always* been paid for by customers in the rates they are charged for utility service. The only thing the Company's proposal would do is ensure a more accurate recovery of the ***gas cost*** portion of those write-offs by reflecting and reconciling such costs in the same PGA mechanism that has been used by Laclede for nearly a half century to recover other gas costs. Despite Staff's and Public Counsel's suggestions to the contrary, there is nothing at all harmful, in either theory or practice, about a ratemaking approach which

[3]To cite just two examples, Laclede's testimony directly contradicts Staff's assertions that the Company's Proposed Tariff would permit the Company to double recover the gas cost portion of its bad debt costs as

simply ensures a better matching between what customers pay for utility service and what the utility has actually incurred to provide it.

10. To the contrary, it is far easier to perceive customer harm in an approach, like the current one, that makes customers chronically over or under pay for a component of their cost of service simply because volatile market forces or other factors beyond the Company's control have driven write-offs above or below the level that was assumed when establishing rates. Indeed, the experience over the last several months alone – in which wholesale gas prices in the cash markets have declined by more than 50% -- has only underscored just how volatile these cost factors can be. To suggest that customers would be harmed by giving them the full benefit of these price declines, including any favorable impact they may have on the gas cost portion of the Company's write-offs, is nonsensical.[4] So too is the concept that customers would suffer some cognizable harm simply because they were being required, in a rising price environment, to pay charges that more closely approximated the rising cost of providing utility service.

11. The legal and policy arguments made by Staff and Public Counsel in an effort to suggest otherwise are without merit. Perhaps the most inexplicable claim made by Staff and Public Counsel is their assertion that reflecting the gas cost portion of bad debt write-off in the PGA would constitute unlawful, single issue ratemaking.[5] The very

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well as Staff's assertion that these are not direct gas costs.

[4]For example, if approved, customers would begin to receive the benefit of these price declines in Laclede's October 31 PGA filing, which lowered overall residential rates by 17% due to lower gas costs of approximately 22%.

[5]Staff and Public Counsel's erroneous conclusion regarding the legality of the Company's proposal may be due, in part, to a fundamental misunderstanding of what the Company's proposal actually is. Throughout its pleading, both parties imply that Laclede is seeking to reflect *all* of its bad debt write-offs through the PGA by repeatedly referring to bad debt expenses in general rather than only the gas cost portion of the Company's bad debts. As Laclede's tariff filing and the transmittal letter accompanying it make clear, however, the Company is seeking to have only the ***gas cost*** portion of its bad debt write-offs reconciled through the PGA. The portion relating to the Company's distribution costs would continue to be recovered through base rates.

case cited by Staff in support of this contention, however, indicates just the opposite. In ***State ex rel. Midwest Gas Users' Ass'n v. Public Service Comm'n,*** 976 S.W.2d 470 (Mo.App. W.D. 1998) ("***MGUA***"), 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.[6] As the Staff notes in its pleadings, the Court ultimately determined that the PGA mechanism did not suffer from this legal deficiency because "[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.*

12. In reaching this conclusion, the Court summarized the history, purpose and effect of the PGA mechanism in a way that is particularly instructive for the issue under consideration in this case. As the Court noted, the Commission first approved a PGA clause in Missouri in 1962 in response to an increase in rate cases caused by increasingly frequent changes in the wholesale price of natural gas.[7] *Id.* at 474. A PGA was also in place at the federal level wherein interstate pipelines used it to deal with variations in their costs for gas. In cases decided in 1987 and 1989, the Commission reaffirmed that the PGA was still the most efficient method of recovering purchased gas costs. *Id.* In 1996, in the case that resulted in the ***MGUA*** decision, the Commission

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

[7] It should be noted that the original approval of the PGA in 1962 was also done outside of a rate case. *In Re Laclede Gas Company, 10 Mo. P.S.C. (N.S.) 442 (1962).*

reconfirmed the PGA, stating that it is an effective way to handle the risk associated with short term fluctuations in the price of natural gas. *Id*. at 475. The Commission added that eliminating the PGA would be detrimental to both the ratepayers and the utility, because the volatility of gas costs could result in large swings that would create either windfalls or damaging losses. *Id*.

13. The Court in ***MGUA*** validated the PGA, finding that, like taxes subject to a tax adjustment clause,[8] the Commission was not required to treat all items of cost and expense in exactly the same way. *Id*. at 479-80. The Court further noted that the Commission had necessarily found that, due to their unique nature, gas costs are different than other costs and should be treated differently. *Id*. at 480. The Commission therefore properly and lawfully created a mechanism that allowed both gas cost increases and savings to be passed on in the amount incurred. *Id*.

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 the term implies, the gas cost portion of the Company's bad debt write-offs are just that --- gas costs. In fact, they are the very same gas supply commodity, storage and transportation costs that are routinely recovered through the PGA mechanism; an attribute that is in no way altered by whether or not the cost is ultimately paid for by a particular customer. To illustrate, dollars spent by Laclede to acquire, store and transport gas supplies to its service territory are considered gas costs recoverable through the PGA. These dollars remain gas costs when Laclede bills them to customers

[8]The Missouri Supreme Court approved a tax adjustment clause in the case of ***Hotel Continental v. Burton,*** 334 S.W.2d 75 (Mo. 1960).

along with approved charges billed for Laclede's distribution service. These dollars continue to be gas costs which are credited to the PGA when the bill is paid by the customer. However, if the customer fails to pay the bill causing a bad debt, the Staff would have the Commission believe that these dollars suddenly and inexplicably "lose" their character as gas costs.[9] In order to recover bad debts today, Laclede bills for its entire bad debt expense in its distribution charge, despite the fact that the large majority of that bad debt arose out of gas costs. Laclede's tariff filing simply rights this imbalance by including in the PGA that which belongs in the PGA.

15. Allowing 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 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 *Midwest Gas Users* as precluding the inclusion of these gas costs in the PGA mechanism. Nor is it at all clear to Laclede why the Staff would have the Commission surrender its discretion to make such a determination based on such an implausible and counter-intuitive reading of this decision. While administrative agencies should always strive to exercise their powers within the parameters of their statutory authority, they are not required to unilaterally disarm in the face of every potential and, in this case highly improbable, jurisdictional battle.[10]

[9] Throughout its Motion and Suggestions in Support, the Staff repeatedly claims that the gas cost portion of bad debt write-offs is not a "direct" gas cost and therefore not eligible for recovery through the PGA. The Staff never explains, however, what it means by "direct" gas cost or in what way the gas costs associated with a bad-debt write-off are in any way distinguishable from all other gas costs.

[10] In paragraph 11 of its Suggestions in Support, Staff also takes issue with Laclede's assertion that it is commonly understood that the PGA mechanism is designed to allow all prudently incurred gas costs to be recovered in the exact amounts that they were incurred. Laclede continues to believe, however, that this is

. 16. The other arguments raised by Staff and Public Counsel are equally meritless. First, Public Counsel suggests that Laclede's proposed PGA treatment of the gas cost portion of bad debt write-offs constitutes unlawful retroactive ratemaking because it would allow Laclede to adjust amounts charged to past customers on past bills. (Public Counsel Response, par. 5). Public Counsel's argument is misplaced. In fact, the same case law that held that PGA treatment of gas costs was *not* single-issue ratemaking also found that PGA treatment of gas costs was not retroactive ratemaking. ***MGUA*** *at 480-81*. Notably, Public Counsel's own argument cites this very case, but changes the finding to support its position. Laclede is not proposing to refund or recoup amounts charged, or not charged, on past bills. Rather, like the other gas costs in the PGA, adjustments to the gas cost portion of bad debt would only apply to future customers on future bills. This is in accord with the ***MGUA*** Court's affirmation of the PGA. ***MGUA*** *at 481*.

17. Even Public Counsel's suggestion that Laclede is seeking to *increase* the amount of bad debt recovery in rates is incorrect.[11] In fact, what Laclede's proposal seeks to do is reflect through the Actual Cost Adjustment component of the PGA *any* changes that have actually occurred in the ***gas cost*** portion of its bad debt write-offs, regardless of whether those changes represent an increase or a decrease from the level of

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an accurate reflection of how the purpose and operation of the PGA mechanism has been commonly understood at the Commission and indeed fairly summarizes not only the Commission's own description of the PGA process as set forth on its Website (*See* http://www.psc.mo.gov/natural-gas/Some_Facts_About_Natural_Gas_Rates.pdf), but also Staff's description in paragraphs 9 and 12 of its Motion.

[11]See Public Counsel Response, par. 3. Unless Public Counsel is suggesting that the current base rate treatment of all bad debt write-off costs chronically and persistently understates those costs – a result that would not be consistent with any reasonable or fair notion of appropriate ratemaking – there is no reason to believe that inclusion of the gas cost portion of bad debt write-offs in the PGA would result in an increase in overall rates. To the contrary, application of current wholesale gas prices to the proposed tariff change would more likely result in a decrease in overall rates.

cost that was built into Laclede's base rates in GR-2007-0208. Indeed, given even a moderate continuation of the huge declines that have recently occurred in wholesale gas prices, the ultimate effect of Laclede's proposal could very well be to *reduce* the overall amount of bad debt expense that the Company ultimately recovers in rates, both in the short and long-term. In Laclede's view, that would be a perfectly acceptable and appropriate result since the purpose of its tariff filing, consistent with the purpose of the PGA, is to more accurately reflect in rates what these costs actually are, regardless of whether they are going up or down. Given these considerations, there is simply no merit to Public Counsel's retroactive ratemaking argument.

18. Public Counsel argues that the tariff cannot be approved outside of a rate case because there is no opportunity to make an appropriate adjustment to Laclede's rate of return to reflect reduced business risk. This is, of course, an issue of fact as to whether a rate of return adjustment is necessary, and not a matter of law requiring summary determination, even if that remedy were permitted, which it is not. The parties will have an opportunity to demonstrate at the hearing whether a rate of return adjustment is necessary. Laclede maintains that the facts do not support a change to its rate of return. Indeed, the fact that a downward PGA adjustment appears at least as likely as, if not more likely than, an upward adjustment, would call for, if anything, a higher rate of return, because the more likely risk being avoided is the risk that Laclede will overcollect its bad debt expenses. The same considerations raised by Public Counsel in this case should apply to other non-rate case related changes, such as loosening of the terms of the Cold Weather Rule, which Public Counsel regularly supports. And yet Public Counsel has never agreed that a Cold Weather Rule change cannot be made between rate cases

because a utility's rate of return does not reflect the added risk of loss due to higher bad debts. And, as opposed to this tariff case in which a PGA change could ultimately move in either direction, Cold Weather Rule changes almost certainly lead to a risk of increased costs. Ironically, not only does Public Counsel pay no heed to any rate of return adjustment associated with a Cold Weather Rule change, but when the Company does get a cost recovery mechanism, Public Counsel fights it tooth and nail (see GU-2007-0138).

19. Public Counsel also argues that Laclede's proposal should be rejected because the Company's pursuit of it constitutes an abrogation of the Unanimous Stipulation and Agreement in its last rate case, Case No. GR-2007-0208. Although the Staff also made this argument in a prior pleading, it did not include it in its latest Motion to Reject Tariff and Dismiss Case. And for good reason. Simply put, there is not a single provision, paragraph or sentence from that Stipulation and Agreement, to support the contention that the Agreement somehow precludes the kind of filing that Laclede has made in this case. Indeed, the only thing that Public Counsel cites at all is the standard Stipulation and Agreement language which indicates that no party is agreeing to any particular ratemaking methodology or method of cost allocation. Laclede agrees! It has not taken the position in this filing that Public Counsel or anyone else agrees with either the Company's proposal or its computation of the gas cost portion of bad debt write-offs that is presently in rates. If Public Counsel has a differing opinion, it was and remains perfectly free to say so. What Public Counsel cannot do, however, is claim that the standard non-acquiescence language of the Stipulation and Agreement works the other way to bind Laclede from pursuing its proposal. Indeed, if carried to its illogical extreme, Public Counsel's approach would suggest that where a rate case settlement has

been reached no party may thereafter file a complaint that would seek to change the rates charged or terms of service offered by the affected utility because to do so would violate the settlement. Laclede suspects that Public Counsel would not concur in such a view.

20. For its part, the Staff also argues that approval of the Company's proposal would mean that "any expense agreed to in a rate case, could at a later date, be plucked from the rate case, estimated and then tracked against actual amounts." Staff's "slippery slope" argument, however, simply overlooks the nature and character of the expense that Laclede is addressing with its proposal. Laclede is not seeking to create an entirely new adjustment mechanism that would track for the first time an isolated item of expense that had always been afforded base rate treatment. Instead, it is simply proposing that an existing adjustment mechanism (that the courts have already determined to be lawful) be used to reflect and reconcile decreases and increases in *all* of the gas costs that the mechanism was designed to cover, rather than just those gas costs that have been paid for by a specific customer. Laclede is unable to think of another expense item that bears a similar relationship to an existing adjustment mechanism.

21. The Staff also argues that the Company's proposal may permit the Company to double recover its bad debt write-off costs. In making this argument, it is almost as if the Staff had not even bothered to review the Company's proposal. While the Staff may disagree with the precise gas cost amount that Laclede has calculated to already be included in base rates, it cannot pretend that Laclede has not taken that factor into consideration and made provision for it in its proposed tariff for the very purpose of avoiding a double collection. In fact, if it is truly important to Staff to avoid double recovery, including the gas cost portion of bad debt in the PGA will do just that.

22. Finally, Public Counsel argues that this case should be dismissed because the resources of the Commission, its Staff and Public Counsel are just too limited to handle it, while Laclede has unlimited resources with which to pursue any unlawful idea it can conjure. Leaving aside the fact that no one, least of all Laclede, has unlimited resources, there is simply no basis for the contention that the Company's proposal is either extreme or unlawful. To the contrary, the relief requested by Laclede is not only lawful but entirely sensible as well. Laclede is simply asking that certain gas costs be placed in the PGA, a mechanism that has been used to recover gas costs for decades in Missouri, and one which is in use in many other jurisdictions. Moreover, if Public Counsel needs to husband its resources, perhaps it should reconsider decisions such as forcing a hearing and appeal in the Cold Weather Rule cost recovery case (GU-2007-0138) so that it could do battle against its own cost recovery methodology. Finally, Public Counsel's theory that Laclede's right to seek fair and reasonable regulatory treatment should turn on the resources available to Public Counsel is, in and of itself, legally suspect.

23. For all of the foregoing reasons, Laclede respectfully submits that Staff's Motion to Reject Tariff and Dismiss Docket is procedurally unauthorized and improper. Laclede further submits that even if Staff's Motion could be entertained by the Commission, neither Staff nor Public Counsel have articulated a sufficient, let alone compelling, basis to grant the relief requested Staff. The Commission should accordingly deny Staff's Motion.

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission deny the Motion to Reject Tariff and Dismiss Docket filed by the Staff on October 20, 2008.

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 5th day of November, 2008 by email, facsimile, hand-delivery or by placing a copy of such pleading, postage prepaid, in the United States mail.

/s/ Gerry Lynch