

LACLEDE GAS COMPANY
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AREA CODE 314
342-0532

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ASSISTANT VICE PRESIDENT
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September 14, 2000

VIA FEDERAL EXPRESS

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor Office Building
200 Madison Street
P. O. Box 360
Jefferson City, MO 65102-0360

FILED²
SEP 18 2000
Missouri Public
Service Commission

RE: Case No. GC-2001-19 65-2000-525

Dear Mr. Roberts:

Enclosed for filing, please find the original and eight copies of the Reply of Laclede Gas Company to Staff's Response in the above-referenced case.

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

Thank you for your consideration in this matter.

Sincerely,


Michael C. Pendergast

MCP:kz

cc: All parties of record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

SEP 15 2000

Missouri Public
Service Commission

The Staff of the Missouri Public Service
Commission,)

Complainant,)

v.)

Laclede Gas Company)

Respondent.)

Case No. GC-2001-19

GS-2000-525

**REPLY OF LACLEDE GAS COMPANY
TO STAFF'S RESPONSE**

COMES NOW Laclede Gas Company ("Laclede" or "Company"), and for its
Reply to Staff's Response states as follows:

1. On or about July 11, 2000, the Staff of the Missouri Public Service Commission ("Staff") filed a Complaint against Laclede in connection with an incident which occurred on February 7, 2000 at 1904 Birchwood Drive in Barnhart, Missouri (the "Barnhart Incident"). A Laclede employee, Mr. Kenneth Ferguson, lost his life as a result of injuries received during the incident when the home located at that address exploded. At the time of the explosion, Mr. Ferguson and a number of other Laclede employees were working to squeeze off the flow of gas in a 4-inch plastic main that had been ruptured by a contractor installing buried telecommunication facilities for Southwestern Bell Telephone Company. The rupture occurred when the contractor – A-B Contracting, Inc. – pierced the four-inch plastic natural gas main with a boring drill that was being used to install the telecommunications facilities. The contractor hit the facilities even though their exact location had been correctly marked.

2. On August 16, 2000, Laclede filed its Answer and Motion to Dismiss Staff's Complaint (hereinafter "Motion"). In its Motion, the Company discussed a number of reasons why it believed Staff's Complaint was inappropriate and should be dismissed. Specifically, Laclede noted that in responding to this incident Laclede's employees had taken the very kind of venting actions specifically mentioned in the Commission rule that Staff claimed Laclede had violated. Laclede also noted that, based on readings being obtained on the site, Laclede's employees reasonably believed that such actions were having their desired effect of reducing, if not completely eliminating, any migration of gas -- a fact that has been confirmed by information subsequently provided to the Staff. In view of these considerations, and Staff's inability to recommend alternative approaches that would not have carried their own safety risks, Laclede asserted that Staff's Complaint should be dismissed.

3. At the same time, however, Laclede reaffirmed in both its Motion, as well as its Response to Staff Recommendations in Case No. GS-2000-525, the Company's continued willingness to consider additional measures that could help to avoid a similar incident in the future. These measures included not only steps that the Company could take to enhance its response to situations where its facilities are damaged by third parties but also steps to prevent such damage in the first place. In the latter category, these included steps aimed at: (1) enforcing the Commission's existing rules on how telecommunications companies, other utilities and their contractors are supposed to install buried cable when other underground facilities are located nearby; and (2) passing legislation that would more specifically detail the standard of care to be followed by

companies that are engaged in horizontal drilling under circumstances that may be beyond the Commission's safety jurisdiction.

4. On August 7, 2000, the Staff filed its Response to Laclede's Motion. Laclede respectfully suggests that the Staff has presented nothing in its Response to counter the basic point underlying Laclede's Motion to Dismiss. Specifically, the Staff has failed to demonstrate any basis for its assertion that Laclede's employees acted unreasonably in responding to the Barnhart Incident, let alone that they violated the rule that is the subject of Staff's complaint. In particular, the Staff has failed to explain why it is appropriate to impose an after-the-fact penalty on Laclede and its employees for allegedly failing to take emergency corrective actions on a timely basis, when the procedures they did follow: (1) appeared to be working on the day of the incident; (2) are the same kind of emergency procedures – indeed the *only* kind of emergency procedures – that are explicitly mentioned in the rule that Laclede is accused of having violated; and (3) are the same emergency procedures that Laclede's employees have used on countless occasions in the past to successfully respond to such incidents. That is not to suggest, of course, that no further enhancements to those procedures are possible. As previously noted, Laclede has and will continue to pursue such enhancements whenever the safety of its employees or the public would be advanced. It is fundamentally inappropriate in the meantime, however, to assert that measures and recommendations developed with the benefit of perfect hindsight and after more than three months of study should be used to second guess and even penalize the dedicated efforts of utility employees who were doing their best to protect the public interest.

5. Finally, and perhaps most importantly, Laclede takes great issue with Staff's assertion that the concerns raised by the Company regarding third-party damage to its facilities and the need for Commission enforcement of its regulations relating to the installation of buried cable on behalf of utilities subject to the Commission's safety jurisdiction, are irrelevant to this proceeding. (Staff Response, p. 2). After all, it was the Staff, not Laclede, that found it relevant to note in its Complaint that the "probable cause of the incident" was the third-party damage that occurred to Laclede's facilities when a contractor installing buried cable on behalf of a telecommunications company bored through Laclede's plastic main. (See Staff Complaint, pp. 2-3). Indeed, the only certain thing that can be said about the Barnhart Incident, and the consequences of the actions taken or not taken that day, is that the incident would have been avoided had this damage not occurred. It was also the Staff, rather than Laclede, that included numerous recommendations in its Barnhart incident report regarding the steps that Laclede should take to alert contractors and other third-parties of the need to be more careful when operating boring equipment around underground gas facilities. (See Staff's Gas Incident Report, Case No. GS-2000-525). Finally, it was the Staff in its own Response that linked the growing amount of third-party damage being inflicted on Laclede's facilities to the need to ensure that corrective actions are taken on a timely basis. (Staff Response, p. 6).

6. In view of these considerations, Laclede believes it has the right and the obligation to both its employees and its customers to raise this enforcement issue whenever and wherever it can. In doing so, Laclede is not seeking to divert the Commission's attention away from anything. Rather it is seeking to focus it on the fact that the pursuit of public safety does not begin and end with the Commission's

enforcement of pipeline safety rules against gas utilities. To its credit, the Commission has recognized as much by adopting detailed rules and standards to govern how telecommunications and electric utilities must install buried cable so as to avoid the type of horizontal boring accident that damaged Laclede's facilities on the Barnhart site. (See 4 CSR 240-18.010; 4 CSR-240-32.060). In contrast to its comprehensive safety enforcement program for gas utilities, however, it does not appear that the Staff has taken any meaningful action to enforce these rules. For example, to Laclede's knowledge, there have been no reporting or other informational requirements established to determine whether, or to what extent, such rules are being complied with or to notify the Commission when the activities covered by the rules have resulted in serious damage to other underground facilities that threatens public safety. Nor to Laclede's knowledge have any incident reports or complaints ever been filed, or any proceedings ever been opened, to address the numerous instances where buried cable has been installed in a manner that damaged other facilities and, in the process, failed to comply with the rules' various requirements.

7. It is, to say the least, difficult to explain to Laclede's employees the fairness of an enforcement system that seeks to hold them accountable for alleged failures and omissions that were not spelled out in any rule and that arose in the course of their risking their health and very lives to protect the public from a safety threat wrought by some other parties' negligence. The task becomes impossible, however, when that same enforcement system does nothing to enforce the very detailed and very clear rules that were specifically designed and adopted to prevent those other parties from creating the threat in the first place. In effect, such an approach is analogous to a fire prevention

program that does nothing about the fire code violators who cause the blaze, but instead focuses solely on punishing the responding firemen based on theoretical, after-the-fact reviews of what they might have done differently to contain the blaze once it was started.

8. In contrast, Laclede has recommended a comprehensive approach that deals with the cause and not just the result; that recognizes it is never irrelevant for the Commission to consider preventative solutions that will better safeguard Missouri residents and communities. Moreover, it is an approach which fundamentally recognizes that Laclede, its employees, and its customers are entitled to equal protection under the laws of this state, particularly when it comes to matters as critical as public safety. This includes the right to alert the Commission when such equal protection of the laws is not being afforded. Staff's attempt to claim otherwise by suggesting that the issues in this proceeding can be artificially limited to only those deemed relevant by Staff should and must be rejected.

9. Finally, Laclede appreciates Staff's comments that it will work with Laclede and others in the future to address the damage prevention issue. To that end, Laclede believes that it would be extremely helpful to send a copy of the Commission rules, and the relevant portions of the National Electrical Safety Code, that relate to buried cable installations, to every utility subject to the Commission's safety jurisdiction, together with a letter reminding them that they must comply with such rules and ensure that their contractors do as well. Consistent with Staff's recommendations in Case No. GS-2000-525, Laclede believes that similar information should be also sent to all contractors who can be identified as working for entities that are beyond the Commission's safety jurisdiction. Laclede believes the safety benefits to be achieved

from such an effort would far outweigh the minimal costs involved, assuming that the Commission authorizes such a mailing. As it has for the past six months, Laclede will also continue to work with contractors, the State Fire Marshall's Office, the Attorney General's Office, business groups, the Commission Staff and other interested parties to press for enforcement of existing legislation, and passage of any new legislation, that may be needed to ensure safe boring practices by those entities that are beyond the broad reach of the Commission's safety jurisdiction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Michael C. Pendergast, Assistant Vice President and Associate General Counsel for Laclede Gas Company, hereby certifies that the foregoing Reply of Laclede Gas Company to Staff's Response has been duly served upon the General Counsel of the Staff of the Public Service Commission, Office of the Public Counsel and 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 14~~th~~ day of September, 2000.

