

TRE

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 10th day of February, 1999.

In the Matter of the Laclede Gas Company's Tariff )  
Sheets to Extend and Revise the Company's Gas ) Case No. GT-99-303  
Supply Incentive Plan. )

ORDER SUSPENDING TARIFF, ESTABLISHING PROCEDURAL SCHEDULE,  
GRANTING PROTECTIVE ORDER, AND DENYING MOTION FOR EXPEDITED  
PROCEDURAL SCHEDULE

On January 14, 1999, Laclede Gas Company (Laclede) filed tariff sheets to extend and revise the company's Gas Supply Incentive Plan (GSIP), along with a Motion To Establish Expedited Procedural Schedule. The tariff sheets have an effective date of February 14. Laclede requests that an expedited procedural schedule be established to permit a final Commission decision by no later than July 1, 1999. Laclede states that although the proposed GSIP revisions would not go into effect until October 1, 1999, it is critical to the proper operation of the incentive mechanism proposed by Laclede, or any alternative adopted thereto, that Laclede know at least several months prior to the fall gas procurement period what specific procedures and standards will govern its gas supply acquisition activities. Laclede notes that the proposed procedural schedule should provide sufficient time for the company to conduct any activities required to determine the respective benchmarks for the upcoming heating season and to carry out and conclude any neces-

sary gas supply and pipeline service negotiations. Laclede proposed the following procedural schedule:

- Laclede files direct testimony - February 5, 1999
- All other parties file rebuttal testimony - March 22, 1999
- All parties file surrebuttal testimony - April 5, 1999
- Hearing memorandum filed - April 6, 1999
- Evidentiary hearings - April 19-20, 1999
- All parties file initial briefs - May 10, 1999
- All parties file reply briefs - May 24, 1999

On January 25, 1999, the Office of Public Counsel (OPC) filed a Response in Opposition to Laclede Gas Company's Request to Establish an Expedited Procedural Schedule. OPC states that it does not believe that the Laclede's proposed procedural schedule provides Staff, OPC and other interested parties with adequate time to review, evaluate and respond to Laclede's proposal. OPC also notes that the schedule does not give the Commission adequate time to decide whether Laclede's GSIP should continue, be modified, be replaced by a different program or be terminated. Furthermore, OPC points out that Laclede's current GSIP plan was approved by the Commission in Case No. GR-96-193 on an experimental basis. OPC states that the experiment should fully run its course, and the results should be thoroughly reviewed, before the Commission makes the GSIP a permanent part of Laclede's operation.

In addition, OPC states that the Commission and the other parties should not be forced to follow an expedited schedule because Laclede

failed to file its request to review its GSIP earlier. OPC argues that Laclede's proposed expedited schedule does not allow OPC adequate time to conduct discovery or to secure consultants necessary to review the workings of the current GSIP plan or to develop and propose alternatives to that plan. Consequently, OPC proposes the following procedural schedule:

- Direct testimony of all parties - May 27, 1999
- Rebuttal testimony of all parties - July 9, 1999
- Surrebuttal testimony of all parties - July 28, 1999
- Evidentiary hearing - As scheduled by the Commission

Staff filed a Motion for Procedural Schedule and for Protective Order on January 25, 1999. Staff indicates that it is currently planning to devise and submit a proposal for setting the price of natural gas, which is independent of modifications to Laclede's current GSIP. Staff will present its proposal in direct testimony, which cannot be prepared and presented in the time frame outlined by Laclede. Staff proposes the following procedural schedule:

- Direct testimony of all parties - May 20, 1999
- Rebuttal testimony of all parties - June 23, 1999
- Surrebuttal testimony of all parties - July 15, 1999
- Hearing memorandum - July 19, 1999
- Evidentiary hearings - July 26-30, 1999

Because of the time constraints imposed by the above schedule, and the importance of the issues, the Staff proposes that the Commission order that responses to data requests, issued between the filing of direct testimony and the filing of rebuttal testimony, be answered within ten days, and objections be lodged within five days, of the delivery of the data requests.

Staff also requested that the Commission issue its standard protective order in this case in anticipation of production of Laclede-specific confidential information.

On January 28, Staff filed a Memorandum regarding the tariff sheets filed to extend the GSIP. Staff notes that these tariff sheets will allow the company to leave a GSIP in place for three more years, through September 30, 2002.

Staff indicates that it has not had an adequate amount of time to evaluate Laclede's proposal and changes, and that it needs additional time to develop its recommendation regarding the information contained in this filing. Therefore, Staff recommends that the proposed tariff sheets to extend the GSIP filed by Laclede on January 14, 1999, be suspended for a period of at least six months beyond the requested effective date of February 14, 1999. Staff also recommends that the Commission adopt the proposed procedural schedule filed by Staff. The proposed tariff sheets to be suspended are:

P.S.C. MO. No. 5 Consolidated

Original Sheet No. 28-f  
Original Sheet No. 28-g  
Original Sheet No. 28-h  
Original Sheet No. 28-i  
Original Sheet No. 28-j  
Original Sheet No. 28-k  
Original Sheet No. 28-l  
Original Sheet No. 28-m  
Original Sheet No. 28-n  
Original Sheet No. 28-o  
Original Sheet No. 28-p

The Commission has reviewed Laclede's proposed tariff, the Motion of Laclede Gas Company to Establish Expedited Procedural Schedule, the Office of the Public Counsel's Response in Opposition to Laclede Gas Company's Request to Establish an Expedited Procedural Schedule, Staff's Motion for Procedural Schedule and for Protective Order, and the Staff Memorandum. The Commission finds that it is appropriate to suspend the tariff sheets for 180 days in order to give the parties adequate preparation time.

The Commission finds that the expedited procedural schedule proposed by Laclede does not allow sufficient preparation time. Due to previously scheduled hearings and scheduling conflicts, the Commission is unable to grant the procedural schedule proposed by Staff or the one proposed by the OPC. Consequently, the Commission will adopt a variation of the procedural schedules proposed by the parties. In addition, upon review of Staff's request for a protective order, the Commission finds that there is a need to protect confidential information and the request for a protective order is reasonable. The Commission has previously recognized the need to protect confidential information and the issuance

of protective orders has helped to minimize disputes in past cases. Therefore, the Commission concludes that a protective order should be granted.

**IT IS THEREFORE ORDERED:**

1. That the effective date of the tariff submitted by Laclede Gas Company on January 14, 1999, shall be suspended from February 14, 1999, to June 14, 1999, a period of 120 days.

2. That the following procedural schedule is adopted for this proceeding:

Direct testimony	- May 27, 1999 3:00 p.m.
Rebuttal testimony	- July 8, 1999 3:00 p.m.
Surrebuttal testimony by all parties	- July 28, 1998 3:00 p.m.
Hearing Memorandum	- August 10, 1999
Evidentiary hearing	- August 23-27, 1999 9:00 a.m.

3. That Laclede Gas Company's Motion to Establish Expedited Procedural Schedule is denied.

4. That the evidentiary hearing will be held in the Commission's hearing room on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone wishing to attend who has special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten days before the hearing at: Consumer Services Hotline — 1-800-392-4211 or TDD Hotline — 1-800-829-7541.

5. That the request for protective order made by the Staff is granted and the protective order attached to this order (Attachment A) adopted.

6. That this order shall become effective on February 14, 1999.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Ch., Crumpton, Drainer,  
Murray and Schemenauer, CC.,  
concur.

Ruth, Regulatory Law Judge

## PROTECTIVE ORDER

- A. The following definitions shall apply to information which a party claims should not be made public.

HIGHLY CONFIDENTIAL: Information concerning (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration in contract negotiations.

PROPRIETARY: Information concerning trade secrets, as well as confidential or private technical, financial and business information.

- B. During the course of discovery a party may designate information as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated information") and shall make such designated information available to the party seeking discovery, if such information is not objectionable on any other ground, under the restrictions set out in paragraphs C and D. The party designating the information as HIGHLY CONFIDENTIAL or PROPRIETARY shall provide to counsel for the requesting party, at the time the designation is made, the ground or grounds for the designation. The requesting party may then file a motion challenging the designation. The party



designating the information confidential shall have five (5) days after the filing of the challenge to file a response. No other filings are authorized.

C. Materials or information designated as HIGHLY CONFIDENTIAL may at the option of the furnishing party, be made available only on the furnishing party's premises and may be reviewed only by attorneys or outside experts who have been retained for the purpose of this case, unless good cause can be shown for disclosure of the information off-premises and the designated information is delivered to the custody of the requesting party's attorney. Outside expert witnesses shall not be employees, officers or directors of any of the parties in this proceeding. No copies of such material or information shall be made and only limited notes may be taken, and such notes shall be treated as the HIGHLY CONFIDENTIAL information from which notes were taken.

D. Disclosure of PROPRIETARY information shall be made only to attorneys, and to such employees who are working as consultants to such attorney or intend to file testimony in these proceedings, or to persons designated by a party as outside experts. Employees to whom such disclosure is to be made must be identified to the other party by name, title and job classification prior to disclosure. Information designated as PROPRIETARY shall be served on the attorney(s) for the requesting party. On-premises inspection shall not be required for PROPRIETARY information, except in the case of voluminous documents (see paragraph K). Any employees of

the party who wish to review such PROPRIETARY materials shall first read this order and certify in writing that (s)he has reviewed same and consented to its terms. The acknowledgment so executed shall contain the signatory's full name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of his/her employer. Such acknowledgment shall be delivered to counsel for the party furnishing the information or documents before disclosure is made.

- E. Attorneys, in-house experts or outside experts who have been provided access to material or information designated HIGHLY CONFIDENTIAL or PROPRIETARY shall be subject to the nondisclosure requirements set forth in paragraphs C or D, whichever is applicable, and S.
- F. If material or information to be disclosed in response to a data request contains material or information concerning another party which the other party has indicated is confidential, the furnishing party shall notify the other party of the intent to disclose the information. The other party may then choose to designate the material or information as HIGHLY CONFIDENTIAL or PROPRIETARY under the provisions of this Protective Order.
- G. Any party may use material or information designated as HIGHLY CONFIDENTIAL or PROPRIETARY in prefiled or oral testimony at hearing provided that the same level of confidentiality assigned by the furnishing party is maintained, unless otherwise classified by the Commission. In filing testimony all parties shall

designate as HIGHLY CONFIDENTIAL or PROPRIETARY only those portions of their testimony which contain information so designated by the furnishing party. If any party plans to use information and testimony which has been obtained outside this proceeding, it must ascertain from the furnishing party if any of such information is claimed to be HIGHLY CONFIDENTIAL or PROPRIETARY prior to filing.

H. A party may designate prefiled or live testimony, or portions thereof, submitted in this case as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated testimony"). Prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY shall be filed under seal and served upon all attorneys of record. Only those portions of the prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY should be filed under seal, and should be marked in a manner which clearly indicates which materials are considered HIGHLY CONFIDENTIAL and which are considered PROPRIETARY.

I. Within five (5) days of the filing of designated testimony, the party asserting the claim shall file with the Commission the specific ground or grounds for each claim. Such filing shall show the nature of the information sought to be protected and specifically state the alleged harm of disclosure. Such filing shall be filed under seal only if it contains either PROPRIETARY or HIGHLY CONFIDENTIAL information and shall be served upon all attorneys of record.

- J. Attorneys upon whom prefiled testimony designated HIGHLY CONFIDENTIAL or PROPRIETARY has been served shall make such testimony available only to those persons authorized to review such testimony under the restrictions in Paragraphs C or D, whichever is applicable.
- K. If a response to a discovery request requires the duplication of voluminous material or material not easily copied because of its binding or size, the furnishing party may require the voluminous material be reviewed on its own premises. Voluminous material shall mean a single document, book or paper which consists of more than 150 pages.
- L. Attorneys of record in this case shall require that the in-house or outside expert read this Protective Order and certify in a written nondisclosure agreement that the person has reviewed the Protective Order and consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, permanent address, employer and the name of the party with whom the signatory is associated. Such agreement shall be filed with the Commission. Attached hereto as Appendix "A" and incorporated by reference herein is a form for use in complying with the terms of this paragraph.
- M. In the event a witness discloses the contents of designated prefiled testimony in his or her own prefiled testimony, such testimony shall also be designated in the same manner as the

designated prefiled testimony and handled in accordance with this order.

- N. Unless good cause is shown, challenges to the confidential nature of prefiled designated testimony shall be filed with the Commission no later than ten (10) days after the grounds supporting the designations are filed or at the hearing, whichever occurs first. The party making the designation shall have five (5) days to respond to the challenge or may respond at the hearing, whichever occurs first.
- O. The Commission or Regulatory Law Judge may rule on the challenge to the designations prior to the hearing, or at the hearings.
- P. In the event no party challenges prefiled designated testimony, or in the event the Commission or its Regulatory Law Judge rules that testimony was properly designated, then such testimony shall be received into evidence, subject to any other objections being made and ruled upon, and kept under seal.
- Q. In addition, all live testimony, including cross-examination and oral argument which reveals the content of prefiled designated testimony or which is otherwise held to be confidential, including any argument as to whether certain testimony is properly designated, shall be made only after the hearing room is cleared of all persons besides the Commission, its Regulatory Law Judges, court reporters, attorneys of record and witnesses to whom the designated information is available pursuant to the terms of this Protective Order. The transcript of such live testimony or oral

argument shall be kept under seal and copies shall only be provided to the Commission, its Regulatory Law Judges, and attorneys of record. Such attorneys shall not disclose the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order. Persons who have access to the designated information under the terms of this Protective Order shall treat the contents of such transcript as any other designated information under the terms of this Protective Order.

- R. References to designated testimony, whether prefiled or live and transcribed, in any pleadings before the Commission, shall be by citation only and not by quotation. Subject to the jurisdiction of any reviewing court, references to designated testimony in pleadings or oral arguments made to such reviewing court shall also be by citation only.
- S. All persons who are afforded access to information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the information secure and in accordance with the purposes and intent of this order.
- T. Subject to the jurisdiction of any reviewing court, designated testimony constituting part of the record before the Commission

shall be delivered to any reviewing court under seal upon service of the appropriate writ of review.

- U. The Commission may modify this order on motion of a party or on its own motion upon reasonable notice to the parties and opportunity for hearing.
- V. Within ninety (90) days after the completion of this proceeding, including judicial review thereof, all designated information, testimony, exhibits, transcripts or briefs in the possession of any party other than Staff or the Public Counsel shall be returned to the party claiming a confidential interest in such information and any notes pertaining to such information shall be destroyed.
- W. The provisions of paragraph C, D, J and L of this Protective Order do not apply to Staff or Public Counsel. Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480, RSMo 1994. Staff and Public Counsel shall provide a list of the names of their employees who will have access to the designated information.
- X. Outside experts of Staff or Public Counsel who have been contracted to be witnesses in this proceeding shall have access to designated information and testimony on the same basis as Staff and Public Counsel except the outside expert shall read this order and sign the nondisclosure agreement attached as Appendix "A" hereto.

- Y. Outside experts of Staff and Public Counsel who have not been contracted to be witnesses in this proceeding are subject to the provisions of this Protective Order.
- Z. Prefiled testimony and exhibits, whether filed or offered at the hearing, shall be prepared in the manner described in Appendix "B".



STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

NONDISCLOSURE AGREEMENT

I, \_\_\_\_\_,  
have been presented a copy of this Protective Order issued in Case  
No. \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

I have requested review of the confidential information  
produced in Case No. \_\_\_\_\_ on behalf of \_\_\_\_\_  
\_\_\_\_\_.

I hereby certify that I have read the above-mentioned  
Protective Order and agree to abide by its terms and conditions.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_.

\_\_\_\_\_  
Signature and Title

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

1. If prefiled testimony contains parts which are classified as Proprietary or Highly Confidential, it shall be filed with the Commission's Secretary/Chief Regulatory Law Judge's Office as follows:
  - A. An original plus eight (8) copies of prefiled testimony with the Proprietary or Highly Confidential portions obliterated or removed shall be filed.
  - B. One (1) copy of those pages which contain information which has been designated as Proprietary, with any Highly Confidential portions obliterated or removed, shall be filed in a separate envelope. The portions which are Proprietary shall be indicated as described in D, below.
  - C. One (1) copy of those pages which have been designated as Highly Confidential shall be filed in a separate envelope. The portions which are Highly Confidential shall be indicated as described in D, below.
  - D. Six (6) copies of the complete prefiled testimony to be filed under seal for the Regulatory Law Judge and Commissioners. The Proprietary pages shall be stamped "P" and the Proprietary information indicated by two asterisks before and after the information, **\*\*Proprietary\*\***. The Highly Confidential pages shall be stamped "HC" with the Highly Confidential information indicated by two asterisks and underlining before

and after the Highly Confidential information, \*\*Highly Confidential\*\*.

Any deviations from this format must be approved by the Regulatory Law Judge.

2. Three (3) copies of exhibits, whether testimony or other, shall be filed at the hearing with the information separated as described in 1.A, 1.B and 1.C above with each copy of the Proprietary and Highly Confidential portions placed into separate envelopes to be marked as Exhibit \_\_, Exhibit \_\_P and Exhibit \_\_HC.

RECEIVED

FEB 10 1999

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION