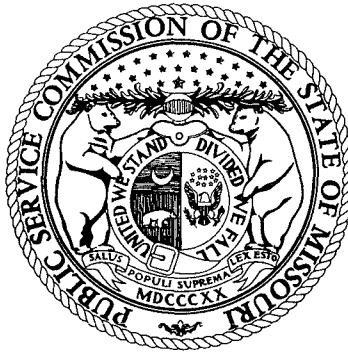


(TRS)  
RBH

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of Laclede Gas Company's )  
Tariff Sheets to be Reviewed in its )  
1995-1996 Actual Cost Adjustment. )

Case No. GR-96-181

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**REPORT AND ORDER**

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**Issue Date: April 20, 1999**

**Effective Date: April 30, 1999**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of Laclede Gas Company's       )  
Tariff Sheets to be Reviewed in its       )  
1995-1996 Actual Cost Adjustment.       )  
Case No. GR-96-181

**APPEARANCES**

Michael C. Pendergast and Thomas M. Byrne, Attorneys at Law, 720 Olive Street, St. Louis, Missouri 63101, for Laclede Gas Company.

Douglas E. Micheel, Senior Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65101, for the Office of the Public Counsel and the Public.

R. Blair Hosford, Assistant General Counsel, Post Office Box 360, Jefferson City, Missouri, for Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Lewis R. Mills, Jr.

**REPORT AND ORDER**

**Procedural History**

This case was created to review the actual gas costs of Laclede Gas Company (Laclede) during the 1995-1996 Actual Cost Adjustment (ACA) period for the purpose of establishing Laclede's ACA factor. Upon its examination of the costs and revenues during that period, the Staff of the Commission (Staff) recommended that Laclede's ACA balance be

adjusted by including \$3,569,843<sup>1</sup> in additional revenue. Staff believes that the proceeds from off-system sales of gas should be included in the ACA as an offset to Laclede's cost of gas. Staff proposed no other adjustments; the Office of the Public Counsel (Public Counsel) supports this adjustment and Laclede opposes it. Accordingly, the only issue presented to the Commission is whether Laclede's accounting of the proceeds from these off-system sales was appropriate and consistent with its tariffs.

### Discussion

The Commission will address this issue by first determining whether Laclede's then-effective tariffs required the off-system sales revenues to be flowed through to ratepayers. If so, then Laclede's failure to do so was improper. If not, then the arguments of Staff and Public Counsel that the revenues must be flowed through in the absence of any requirement in the tariff will be examined. Much of the argument advanced by Public Counsel and Staff depends on the question of whether the revenues from off-system sales should be addressed in the Purchased Gas Adjustment (PGA) and ACA process or in the rate case process. For example, Public Counsel asserts that Laclede "is not supposed to be allowed to profit from its sales of gas subject to the PGA/ACA." While this may be a valid argument, it is moot if the profits at issue are not from sales of gas subject to the PGA/ACA.

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<sup>1</sup> Staff's proposed adjustment would increase the Firm Sales ACA balance by \$3,554,727 to an over-recovery balance of \$29,379,755 and increase the Interruptible Sales ACA balance by \$15,116 to an over-recovery balance of \$62,440.

The PGA/ACA process was designed to ensure that a local distribution company charges its customers no more and no less than it paid for the gas it bought to serve them. The situation here (an LDC buying gas with the intent of selling it to someone other than its customers) was not contemplated when the PGA/ACA process was established.

Nowhere in Laclede's tariffs<sup>2</sup> was the revenue from off-system sales expressly mentioned. Public Counsel and Staff cite two tariff provisions that allegedly require the profits from these sales to be included in the ACA process: P.S.C. Mo. No. 5 Consolidated, Third Revised Sheet No. 15, paragraph A, and P.S.C. Mo. No. 5 Consolidated, Fifth Revised Sheet No. 20, paragraph C.

Sheet 15, paragraph A, states in part:

In the event of increases or decreases in the cost of purchased gas, charges for gas service contained in the Company's then effective retail rate schedules on file with the Missouri Public Service Commission (Commission) shall be increased or decreased by a Current Purchased Gas Adjustment (CPGA). The cost of purchased gas shall include but not be limited to all charges incurred for gas supply, pipeline transmission and gathering, contract storage, and related agency services.

Although this language is expansive, it refers to costs, not revenues, and so is of no relevance to the question presented here.

Sheet 20, paragraph C, states in part:

The Company shall maintain Deferred Purchased Gas Cost Account(s) which shall be credited by the amount of any gas cost revenue recovery in excess of actual purchased gas costs and debited by the amount of any gas cost revenue recovery which is less than said actual purchased gas costs.

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2 References to Laclede's tariffs are to the tariffs in effect during the ACA period at issue.

Public Counsel and Staff argue that this reference to "any gas cost revenue recovery" mandates the crediting of the revenues from the off-system sales. The Commission disagrees. Gas cost revenue recovery is precisely calculated in the tariffs, once for sales customers and once for transportation customers, and then added to the previous years balances (Fifth Revised Sheet 21, paragraphs C.3, C.4, and C.6.). Staff and Public Counsel discourse at length on the definition of "any," but give short shrift to the meaning of the phrase "any gas cost revenue recovery." Reading the tariffs as a whole, rather than simply focusing on the word "any," leads to the conclusion that the phrase "any gas cost revenue recovery" means revenue from sales or transportation of gas to any class of customer. It does not mean revenue from any source in any way related to gas.

This conclusion is supported by the fact that the tariffs make no provision for the split of off-system sales revenues between classes. If the tariffs were intended to flow all revenue from all sources related to gas supply to customers, then they would need a mechanism to determine this split. For the only source of revenue other than sales or transportation of gas to Laclede's customers (capacity release revenues), the tariffs clearly provide for the calculation of this split.

Staff and Public Counsel argue that the fact that, in the preceding ACA period, Laclede flowed approximately \$24,000 from six off-system sales transactions through the PGA/ACA shows that such flow through is the proper treatment. Laclede argues that both the nature of these earlier transactions and the relatively insignificant revenues

received from them makes them wholly different from the ones at issue here. Laclede also argues that it chose not to "pick a fight" with Staff and Public Counsel over \$24,000. The Commission finds that Laclede's treatment of the revenues from the off-system sales transactions in the preceding ACA period has no bearing on the issue herein.

Public Counsel argues that this Commission has followed the reasoning in a District of Columbia Court of Appeals case (DCC)<sup>3</sup> to determine the proper treatment of utilities' capital gains. The issue in this case is the proper treatment of revenues, not capital gains, and the Commission finds nothing of relevance in the DCC case or the Commission cases that followed it discussed by Public Counsel.

Because the Commission will not adopt Staff's proposed adjustment, it need not address Laclede's contention that the adjustment would constitute unlawful retroactive ratemaking.

### **Findings of Fact**

Because of the nature of the gas supply contracts that Laclede entered into in order to be able to meet its customers' needs on the coldest days, Laclede was able to purchase gas for the express purpose of reselling it at a profit. No party has argued that Laclede was imprudent in entering into these contracts, in reserving the volumes of gas covered by the contracts, or in making the sales that generated the revenue at issue, and the Commission finds that Laclede acted prudently

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<sup>3</sup> Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission, 485 F.2d 786 (D.C. Cir.1973) cert. denied sub. nom. Transit System, Inc. v. Central Democratic Commission, 415 U.S. 935 (1974).

both in entering into the contracts and in making the off-system sales. Laclede entered into approximately 250 off-system sales transactions during the ACA period, with a total profit of \$3,569,843. Laclede did not treat these profits as revenue to be flowed through the PGA/ACA process, but retained them as earnings.

Laclede also made six off-system sales in the preceding ACA period and flowed the revenue from them to customers. These sales were made for operational reasons to avoid penalties.

### **Conclusions of Law**

Laclede is a public utility engaged in the provision of natural gas service to the general public in the state of Missouri and, as such, is subject to the general jurisdiction of the Missouri Public Service Commission pursuant to Chapters 386 and 393, RSMo 1994.

The controlling issue herein is decided on the basis of Laclede's tariffs. Tariffs approved by this Commission have the same force and effect as a statute directly prescribed from the legislature. Allstates Transworld Vanlines, Inc. v. Southwestern Bell Telephone Co., 937 S.W.2d 314 (Mo.App. E.D. 1996).

### **IT IS THEREFORE ORDERED:**

1. That the proposal of the Staff of the Commission to adjust Laclede Gas Company's Actual Cost Adjustment balance by including \$3,569,843 in additional revenue is rejected.

2. That the 1995-1996 Firm Sales Actual Cost Adjustment balance shall be an over-recovery balance of \$25,825,028.

3. That the 1995-1996 Interruptible Sales Actual Cost Adjustment balance shall be an over-recovery balance of \$47,324.

4. That this order shall become effective on April 30, 1999.

5. That this case may be closed on May 3, 1999.

BY THE COMMISSION



Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Murray, Schemenauer  
and Drainer, CC., concur and certify  
compliance with the provisions of  
Section 536.080, RSMo 1994.  
Crumpton, C., absent

Dated at Jefferson City, Missouri,  
on this 20th day of April, 1999.

RECEIVED  
APR 21 1999  
COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION