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Case Number:

Date Testimony Prepared:

Liability Tariff  
Barb Meisenheimer  
Rebuttal  
Public Counsel  
GT-2009-0056  
August 19, 2009

**REBUTTAL TESTIMONY**  
**OF**  
**BARBARA A. MEISENHEIMER**

Submitted on Behalf of  
the Office of the Public Counsel

**Laclede Gas Company**

**Case No. GT-2009-0056**

August 19, 2009

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

In the Matter of Laclede Gas Company's     )  
Tariff Revision Designed to Clarify its     )  
Liability for Damages Occurring on         )  
Customer Piping and Equipment.            )

Case No. GT-2009-0056

**AFFIDAVIT OF BARBARA A. MEISENHEIMER**

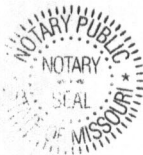
STATE OF MISSOURI     )  
                                      )     ss  
COUNTY OF COLE     )

Barbara A. Meisenheimer, of lawful age and being first duly sworn, deposes and states:

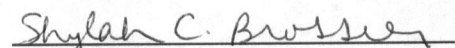
1. My name is Barbara A. Meisenheimer. I am Chief Utility Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
**Barbara A. Meisenheimer**

Subscribed and sworn to me this 19<sup>th</sup> Day of August 2009.



**SHYLAH C. BROSSIER**  
My Commission Expires  
June 8, 2013  
Cole County  
Commission #09812742

  
**Shylah C. Brossier**  
Notary Public

My Commission expires June 8<sup>th</sup>, 2013.

**Laclede Gas Company**

**GT-2009-0056**

**Rebuttal Testimony  
of  
Barbara Meisenheimer**

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

2 A. Barbara A. Meisenheimer, Chief Utility Economist, Office of the Public Counsel,  
3 P. O. 2230, Jefferson City, Missouri 65102.

4 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.**

5 A. I hold a Bachelor of Science degree in Mathematics from the University of  
6 Missouri-Columbia (UMC) and have completed the comprehensive exams for a  
7 Ph.D. in Economics from the same institution. My two fields of study are  
8 Quantitative Economics and Industrial Organization. My outside field of study is  
9 Statistics.

10 I have been with the Office of the Public Counsel since January 1996. I  
11 have testified on economic issues and policy issues in the areas of  
12 telecommunications, gas, electric, water and sewer.

13 Over the past 15 years I have also taught courses for the University of  
14 Missouri-Columbia, William Woods University, and Lincoln University. I  
15 currently teach undergraduate and graduate level economics courses and  
16 undergraduate statistics for William Woods University.

17

1     **Q.     HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?**

2     A.     Yes, I have testified regularly before the Missouri Public Service Commission.  
3             (PSC or Commission).

4     **Q.     WHAT ISSUES ARE ADDRESSED IN YOUR TESTIMONY?**

5     A.     My testimony addresses general policy concerns with the Laclede Gas Company  
6             (Laclede or the Company) proposal to modify its tariff to limit liability. I will  
7             also address concerns with specific tariff language. Our legal counsel will  
8             address Public Counsel's position on legal issues in this case including the issue  
9             of whether the Commission has authority to limit liability.

10    **Q.     WHAT MATERIAL HAVE YOU REVIEWED THAT IS RELEVANT TO THE PROPOSED**  
11       **TARIFF?**

12    A.     I reviewed the Company's current and proposed tariffs, the direct testimony of  
13             Mr. David Abernathy, filed on behalf of Laclede, the PSC Staff Recommendation  
14             filed in this case on November 19, 2008, portions of the Commissions rules,  
15             accounting schedules and other materials from Laclede's most recent rate case  
16             No. GR-2007-0208, Company testimony from Case No. GR-2001-629, Company  
17             data request responses submitted to the Staff and Public Counsel and materials  
18             regarding product and service offerings available on the websites of  
19             Company's referenced in the Staff Recommendation.

20    **Q.     WHAT IS THE PUBLIC COUNSEL'S RESPONSE TO THE STAFF**  
21       **RECOMMENDATION?**

22    A.     The Staff recommends rejection of the originally filed tariff sheets. In support of  
23             its recommendation the Staff cites numerous deficiencies with the originally filed  
24             tariffs. Public Counsel appreciates Staff's comprehensive review of the original

1 tariff and shares the concerns uncovered by Staff's initial evaluation. Public  
2 Counsel agrees with the Staff recommendation to reject the original proposed  
3 tariff sheets filed in this case.

4 **Q. WHAT IS THE PUBLIC COUNSEL'S POSITION ON THE MODIFIED TARIFF**  
5 **LANGUAGE FILED AS AN ATTACHMENT TO THE DIRECT TESTIMONY OF**  
6 **COMPANY WITNESS MR. ABERNATHY?**

7 A. Although the Company characterizes the modified tariff language as representing  
8 near consensus between Staff and the Company, Public Counsel continues to have  
9 significant legal and policy concerns regarding the modified tariff language and  
10 urges the Commission to reject both the original proposed tariff and the modified  
11 language contained in Mr. Abernathy's direct testimony.

12 **Q. WHAT ARE YOUR GENERAL POLICY CONCERNS?**

13 A. I am concerned that Laclede's modified tariff language weakens customer  
14 protections and weakens the Company's incentive to provide safe and adequate  
15 service. The Company's proposal to limit its liability under all circumstances,  
16 even when it is negligent, is unreasonable and against public interest.

17 The Company's proposal unreasonably shifts the risk to customers. When  
18 damage or loss occurs, whether or not fault can be assigned, individual customers  
19 may not have the financial wherewithal to sustain the loss or the ability to insure  
20 against this loss at a reasonable price. Public Utilities have historically acted to  
21 spread risk among and on behalf of all ratepayers in order to gain cost efficiencies  
22 and to avoid catastrophic loss. Insurance coverage purchased by the company is a  
23 reasonable method of spreading risk rather than saddling an individual home  
24 owner with the loss.

1           Laclede's customers have little independent control over the quality of  
2           service they receive and no control over the purchase, installation or maintenance  
3           of the company's equipment, meters, mains and other distribution system. They  
4           have to rely on Laclede to ensure the safety and reliability of service and  
5           equipment. Customers are usually banned from making repairs or otherwise  
6           working on the Company's equipment.

7           Limiting Laclede's liability regardless of fault or negligence or the degree  
8           of fault or negligence does not serve the public interest. The customer should not  
9           be assigned liability for all risks, loss and damages without the customer's express  
10          consent to assume that liability from the Company. It is overreaching for Laclede  
11          to include this significant assumption of liability in its tariff for its monopoly  
12          service. With liability comes responsibility and accountability, which gives an  
13          incentive for the Company to provide safe and adequate service. Insulating the  
14          Company from virtually all liability gives the company and its shareholders an  
15          unreasonable escape from liability, responsibility, and accountability.

16   **Q.     WHAT ARE YOUR SPECIFIC CONCERNS WITH THE TARIFF LANGUAGE?**

17   **A.     Public Counsel's specific concerns are summarized below:**

18           ***1) The modified tariff language is over broad in defining compliance***  
19           ***with duties and obligations in providing gas service and in limiting***  
20           ***liability related to accident or negligence.***

21           ***2) The Company's modified tariff language tariff does not make clear that***  
22           ***the liability limitations would apply only to regulated services.***

23           ***3) The Company's modified tariff language should not be used to***  
24           ***relieve shareholder liability for unregulated product or service offerings.***

25           ***4) The modified tariff language is ambiguous regarding the obligation***  
26           ***to provide gas free of constituents.***  
27  
28  
29  
30

1           5) *The modified tariff language should not be used to relieve*  
2           *shareholder liability when the Company fails to conduct regular*  
3           *inspections required by Commission rules.*

4  
5           6) *The modified tariff language may impact the Company's revenue*  
6           *requirement and is therefore best addressed in a rate case.*  
7

8   **Q.       PLEASE DISCUSS YOUR FIRST CONCERN WITH THE TARIFF LANGUAGE.**

9   **A.       1) *The modified tariff language is over broad in defining compliance with***  
10       *duties and obligations in providing gas service and in limiting liability related to*  
11       *accident or negligence.*

12           The modified tariff language suggests that adherence to a limited number of  
13           Commission rules should be considered full compliance with all duties and  
14           obligations of providing safe transmission and distribution of gas;

15           The company shall be responsible for the safe transmission and  
16           distribution of gas, free of constituents (water or debris) that  
17           materially interfere with or adversely affect the safe and proper  
18           operation of Customer Equipment, until such gas passes the Point  
19           of Delivery to the Customer in a manner that complies with the  
20           pressure, quality and other requirements set forth in the Safety  
21           Standards of the Pipeline Safety Regulations of the State of  
22           Missouri, 4 CSR 240-40.030, and the Pipeline Safety Regulations  
23           issued by the U.S. Department of Transportation, 49 CFR Part  
24           192. Such compliance shall constitute the safe transmission and  
25           distribution of gas by the Company and shall constitute full  
26           compliance with the Company's duties and obligations in the  
27           transmission and distribution of gas. Compliance with the above  
28           shall constitute a complete defense for the Company in any  
29           lawsuit against the Company by the Customer or any other  
30           person or entity for loss, damage or injury to persons or property,  
31           or death, arising in whole or in part from the transmission and  
32           distribution of gas by the Company.  
33

34           Public Counsel disagrees that compliance with a limited number of Commission  
35           rules should be considered full compliance with all duties and obligations of  
36           providing utility service. As described in the Purpose section of 4 CSR 240-  
37           40.030 and part 1(a) of 49 CFR Part 192 the rules provide only the minimum

1 safety requirements an LDC is required to follow. In certain circumstances,  
2 Laclede may need to exceed these minimum safety requirements to ensure the  
3 safe provision of service. The declaration of "full compliance" is too broad and  
4 overreaching. This limited liability tariff should not be used as a total shield  
5 against liability for issues or actions not specifically addressed or only generally  
6 addressed by Commission rules.

7 The modified tariff is also over broad in that it imposes extreme liability  
8 limitations on virtually every activity affecting gas service at the customer  
9 premise including limiting liability for accident or negligence;

10 Company will use reasonable diligence to furnish to Customer  
11 continuous gas service with natural gas that does not contain  
12 constituents (water or debris) that would materially adversely  
13 affect the proper and safe operation of Customer Equipment, but  
14 does not guarantee the supply of gas service against irregularities  
15 or interruptions. Company shall not be considered in default of  
16 its service agreement with customer and shall not otherwise be  
17 liable for any damage or loss occasioned by interruption, failure  
18 to commence delivery, or failure of service or delay in  
19 commencing service due to accident to plant, lines, or equipment,  
20 strike, riot, act of God, order of any court or judge granted in any  
21 bonafide adverse legal proceedings or action or any order of any  
22 commission or tribunal having jurisdiction; or, without limitation  
23 by the preceding numeration, any other act or things due to  
24 causes beyond Company's control. Any liability of the Company  
25 under this paragraph due to the Company's negligence shall be  
26 limited to the charge for service rendered during the period of  
27 interruption or failure to render service, which shall be the sole  
28 and exclusive remedy, and shall in no event include any indirect,  
29 incidental, or consequential damages.  
30

31 The broad terms of the liability limitations appear to result in a total  
32 exemption of all losses and damages except for the normal charges for service.



Under certain circumstances, the action of the company may justify its liability for some reasonable indirect, incidental, or consequential damages.

**Q. ON PAGE 10, LINES 7-11, MR. ABERNATHY STATES THAT "... IT WOULD BE VERY POOR PUBLIC POLICY FOR THE COMMISSION TO PRESUME THAT JUDGES AND JURORS, WHO HAVE NO PARTICULAR TECHNICAL EXPERTISE IN HOW NATURAL GAS SYSTEMS AND FACILITIES OPERATE, SHOULD NEVERTHELESS, SET THE STANDARDS FOR WHEN A UTILITY HAS OR HAS NOT MET ITS OBLIGATIONS TO PROVIDE NATURAL GAS SERVICE IN A SAFE MANNER..." ARE THE COMMISSION RULES SPECIFIC ENOUGH TO ELIMINATE JUDGEMENT REGARDING WHEN A UTILITY HAS OR HAS NOT MET ITS OBLIGATIONS TO PROVIDE NATURAL GAS SERVICE IN A SAFE MANNER?**

**A.** Not in my opinion. The Commission rules do not address every action or decision of the Company or its personnel.

**Q. DOES LACLEDE'S CURRENT TARIFF HOLD THE COMPANY'S CUSTOMERS FINANCIALLY RESPONSIBLE FOR CUSTOMERS NEGLIGENCE?**

Yes. While the Company seeks relief from liability due to negligence, customer are responsible for negligence with respect to customer extensions;

19 . Extension of Distribution Facilities

The customer shall protect the portions of the customer extension installed within his premises and shall, unless otherwise authorized by the Company, permit no one but the Company's employees or its authorized agents to handle same . In the event of loss or damage to such property of the Company arising out of carelessness, negligence, or misuse by the customer or his authorized agent the cost of making good such loss or repairing such damages shall be borne by the customer.

1 **Q. PLEASE DISCUSS YOUR NEXT CONCERN WITH THE TARIFF LANGUAGE.**

2 A. *2) The Company's modified tariff language tariff does not make clear that*  
3 *the liability limitations would apply only to regulated services.*

4  
5 On an unregulated basis, the Company sells carbon monoxide detectors and an  
6 extensive array of gas appliances and equipment including furnaces, water  
7 heaters, grills, outdoor lights, air conditioners, dryers, ranges, fireplace logs, pool  
8 heaters and backup generators. (See Attachment 1) Laclede also offers  
9 unregulated services including appliance installation and repair, maintenance and  
10 inspection services. (See Attachment 1) While branded and marketed as Laclede  
11 Gas products and services, most of these offerings are not governed by the  
12 Missouri Public Service Commission Rules.

13 Because the Company offers both regulated utility services and unregulated  
14 services, failing to include a statement regarding the application of the tariff only  
15 to regulated services may be confusing if not inaccurate. For example, the  
16 modified tariff states;

17 The Company does not own Customer Equipment, nor is it  
18 responsible for the design, installation, inspection, operation,  
19 repair, condition or maintenance of Customer Equipment, except  
20 for the testing and inspection requirements of 4 CSR 240-  
21 40.030(10)(J) and (12)(S), or unless the Company expressly  
22 agrees in writing to assume such obligations. The 10(J) and 12(S)  
23 requirements are intended only to ensure the safe introduction of  
24 gas into Customer Equipment As with any equipment, Customer  
25 Equipment can be defective, fail, malfunction or fall into  
26 disrepair at any time, and Customer shall be deemed to be aware  
27 of this fact. It shall be presumed that such testing and inspections  
28 were performed in a safe and appropriate manner if such  
29 Customer Equipment operates as designed for 48 hours after gas  
30 service is initiated.

1           However, the Company does perform installations, inspections, and repair and  
2           maintenance of Customer Equipment on an unregulated basis.

3       **Q.     DOES MR. ABERNATHY’S TESTIMONY MAKE CLEAR THAT THE COMPANY IS**  
4       **SEEKING LIMITATIONS ON LIABILITY FOR ONLY REGULATED SERVICES?**

5       A.    No. While Mr. Abernathy’s testimony primarily discusses liability related to  
6           regulated services, the following discussion that appears on page 6, lines 7-13, of  
7           Mr. Abernathy’s direct testimony appears to extend the application of the liability  
8           limitations to unregulated services;

9                        “...At the same time, the tariff also recognizes that the  
10                      Company is required by the Commission’s rules to inspect and  
11                      sometimes test such facilities when it initiates or turns on service  
12                      and that the Company may also undertake to perform certain  
13                      work in connection with such facilities at the customer’s request.  
14                      Under these circumstances, the tariff presumes that the Company  
15                      performed these activities in a safe and appropriate manner,  
16                      provided that the customer’s equipment operates as designed and  
17                      in a safe manner for 48 hours after gas service was initiated.”

18  
19           Another example appears on page 8, lines 3-5, of Mr. Abernathy’s direct  
20           testimony;

21  
22                      “...Similarly, there should be limits on how long a utility like  
23                      Laclede should be held financially responsible for claims arising  
24                      from defects or malfunctions of customer owned equipment that  
25                      it may inspect or work...”  
26

27       **Q.     ATTACHMENT D AND ATTACHMENT E OF THE STAFF RECOMMENDATION**  
28       **INCLUDE LIABILITY TARIFF PROVISIONS FOR ELECTRIC AND NATURAL GAS**  
29       **PROVIDERS IN MISSOURI AND OTHER STATES IN WHICH THE TARIFF LANGUAGE**  
30       **DOES NOT SPECIFY THAT LIABILITY LIMITATIONS APPLY ONLY TO REGULATED**  
31       **SERVICES. ARE CIRCUMSTANCES DIFFERENT WITH LACLEDE?**

1 A. Yes. While the tariffs included in Attachment D and Attachment E of the Staff  
2 Recommendation may not contain language specifying that the liability  
3 limitations apply only to regulated products and services, a review of these  
4 companies' websites suggest that they provide only a limited number, if any  
5 unregulated products and services (light bulbs, energy audits and bill paying  
6 services) to residential customers.

7 **Q. PLEASE DISCUSS YOUR NEXT CONCERN WITH THE TARIFF LANGUAGE.**

8 A. *3) The Company's modified tariff language should not be used to relieve*  
9 *shareholder liability for unregulated product or service offerings.*

10  
11 If interpreted to apply to unregulated services, sections of the modified tariff  
12 language appear to limit liability associated with unregulated services that  
13 Laclede may have provided. For example, the modified tariff states;

14 Subject to the Company's responsibility for the safe transmission  
15 and distribution of gas as provided above, and except as  
16 otherwise provided for herein, upon expiration of the Non-  
17 Incident Operational Period, as defined below, Company shall in  
18 no event be liable to Customer or anyone else, and Customer  
19 shall indemnify, hold harmless and defend the Company from  
20 and against any and all liability, claims, proceedings, suits, cost  
21 or expense, for any loss, damage or injury to persons or property,  
22 or death, in any manner directly or indirectly connected with or  
23 arising out of, in whole or in part (i) the release or leakage of gas  
24 on the Customer's side of the Point of Delivery; (ii) a leak and  
25 ignition of gas from Customer Equipment; (iii) any failure of, or  
26 defective, improper or unsafe condition of, any Customer  
27 Equipment; or (iv) a release of carbon monoxide from Customer  
28 Equipment.  
29

30 Another example relates to the meaning of the term "service agreement".

31 If interpreted to apply to service agreements for unregulated services, the

1 following sections of the modified tariff language appears to limit liability  
2 associated with unregulated services;

3 ...Company shall not be considered in default of its service  
4 agreement with customer and shall not otherwise be liable for any  
5 damage or loss occasioned by interruption, failure to commence  
6 delivery, or failure of service or delay in commencing service due  
7 to accident to plant, lines, or equipment, strike, riot, act of God,  
8 order of any court or judge granted in any bonafide adverse legal  
9 proceedings or action or any order of any commission or tribunal  
10 having jurisdiction; or, without limitation by the preceding  
11 enumeration, any other act or things due to causes beyond  
12 Company's control...  
13

14 The Company should not gain a competitive advantage in the provision of  
15 unregulated services by insulating liability related to unregulated services through  
16 language included in the regulated services tariff.

17 **Q. ON PAGE 8, LINES 9-12, MR. ABERTNATHY STATES THAT “...IN CONTRAST TO**  
18 **UNREGULATED FIRMS WHO PERFORM SIMILAR SERVICES ON CUSTOMER-OWNED**  
19 **APPLIANCES AND EQUIPMENT, MUCH OF THE INSPECTION AND TESTING WORK**  
20 **DONE BY THE COMPANY ON SUCH FACILITIES IS MANDATED BY THE COMMISSION**  
21 **AND PROVIDED WITHOUT ANY DIRECT CHARGE TO THE CUSTOMER...” DOES**  
22 **THE COMPANY COLLECT ANY DIRECT CHARGE FOR REGULATED INSPECTION**  
23 **AND TESTING DONE BY THE COMPANY?**

24 **A.** Yes. The Company collects a Service Initiation Fee and Reconnection Fee that  
25 are designed to recover the cost of inspections when gas is turned on. The work  
26 activities associated with these fees were described in the direct testimony of  
27 Company witness John J. Kozyrski Jr. in Case No.GR-2001-629. (See Attachment  
28 2) The cost of other regulated activities is directly recovered through rates.

1 **Q. PLEASE DISCUSS YOUR NEXT CONCERN WITH THE TARIFF LANGUAGE.**

2 A. *4) The modified tariff language is ambiguous regarding the obligation to*  
3 *provide gas free of constituents.*

4  
5 Shown below are two excerpts from the modified tariff language regarding

6 Laclede's obligation to provide gas free of constituents.

7 The Company shall be responsible for the safe transmission and  
8 distribution of gas, free of constituents (water or debris) that  
9 materially interfere with or adversely affect the safe and proper  
10 operation of Customer Equipment, until such gas passes the Point  
11 of Delivery to the Customer in a manner that complies with the  
12 pressure, quality and other requirements set forth in the Safety  
13 Standards of the Pipeline Safety Regulations of the State of  
14 Missouri, 4 CSR 240-40.030, and the Pipeline Safety Regulations  
15 issued by the U.S. Department of Transportation, 49 CFR Part  
16 192.

17  
18 Company will use reasonable diligence to furnish to Customer  
19 continuous gas service with natural gas that does not contain  
20 constituents (water or debris) that would materially adversely  
21 affect the proper and safe operation of Customer Equipment, but  
22 does not guarantee the supply of gas service against irregularities  
23 or interruptions.

24  
25 The second excerpt appears to weaken or contradict the absolute responsibility to  
26 provide gas free of constituents that is assigned to Laclede by the first excerpt.

27 **Q. PLEASE DISCUSS YOUR NEXT CONCERN WITH THE TARIFF LANGUAGE.**

28 A. *5) The modified tariff language should not be used to relieve shareholder*  
29 *liability when the Company fails to conduct regular inspections required by*  
30 *Commission rules.*

31  
32 For example, the modified tariff states;

33 Absent actual, specific knowledge of a dangerous condition on a  
34 Customer's premises, gained through notice to the Company by  
35 the Customer, or by the Company's discovery during the Non-  
36 Incident Operational Period described above, the Company's  
37 obligation to provide warnings or safety information of any kind  
38 to the Customer shall be limited to the obligations that are  
39 imposed by Sections (1)(K), (1)(L), (10)(J) and (12)(S) 2 of the  
40 Safety Standards of the Pipeline Safety Regulations of the State

1 of Missouri, 4 CSR 240-40.030(1)(K)-(L), (10)(1) (12)(S) 2; and  
2 Section 192.16 of the Pipeline Safety Regulations of the U.S.  
3 Department of Transportation, 49 CFR 192.16.  
4

5 While the Company is required to inspect pipes exposed to air at least once every  
6 three years (4 CSR 240-40.030(9)(Q)), if it had been more than three years since  
7 the Company was last at the customer's premises to perform testing, inspection or  
8 other work, the Company might be shielded from liability associated with  
9 providing customer notice despite having missed a required inspection.

10 **Q. PLEASE DISCUSS YOUR NEXT CONCERN WITH THE TARIFF LANGUAGE.**

11 A. *6) The modified tariff language may impact the Company's revenue*  
12 *requirement and is therefore best addressed in a rate case.*  
13

14 The Company argues that the modified tariff will not have an immediate affect on  
15 the cost associated with liability that are included in revenue requirement,  
16 however, the Company does not deny that there will be an impact. As discussed  
17 above, the proposed limitations on liability are extensive and seek to shift risk and  
18 associated cost to ratepayers. It seems reasonable that to the extent that the  
19 Commission grants liability limitations the impacts should be quantified and  
20 accounted for along with all other relevant factors in the context of a rate case.

21 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

22 A. Yes.