BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of tariffs filed by Laclede Gas Company to reflect rate changes to be reviewed in the company's 1992-1993 Actual Cost Adjustment.	))))	Case No. GR-93-149

REPORT AND ORDER

Issue Date: December 8, 1995

Effective Date: December 19, 1995

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OF THE STATE OF MISSOURI

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APPEARANCES

Gerald T. McNeive, Associate General Counsel, and **Michael C. Pendergast**, Assistant General Counsel, Laclede Gas Company, 720 Olive Street, St. Louis, Missouri 63101, for Laclede Gas Company.

Lewis R. Mills, Jr., Deputy Public Counsel, **Douglas E. Micheel**, Senior Public Counsel, and **Michael F. Dandino**, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

William K. Haas, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE LAW JUDGE: **Joseph A. Derque, III.**

REPORT AND ORDER

Procedural History

This matter originated as the result of Laclede Gas Company's (LGC) Actual Cost Adjustment (ACA) filing of October 22, 1993, representing billed revenues and actual gas costs from October 1992 through September 1993, including the LGC computation of ACA rates.

The Staff of the Commission (Staff) filed its recommendation, after audit, on July 29, 1994. In that recommendation the Staff presented various objections to the LGC filing, one of which, a challenge to the prudence of LGC's operations under its supply agreements with Mississippi River Transmission Corporation (MRT), resulted in the litigation of this case.

Testimony by the Staff and LGC was submitted and cross-examination was completed on October 10-11, 1995. After the filing of briefs, this matter was finally submitted to the Missouri Public Service Commission (Commission) for decision on November 30, 1995.

Settled Issues

On January 4, 1995, the parties to this litigation filed with the Commission a joint proposed procedural schedule, including a partial resolution of issues in this matter as follows:

> (a) Proposed Gas Cost Disallowance (Staff Recommendations Nos. 1 and 2) - Staff agrees that it has reduced the amount of Staff's proposed Gas Cost Disallowance from $939,000 to $388,000. Staff will explain its original and revised adjustments in its rebuttal. There are no other agreements with respect to Staff Recommendations Nos. 1 and 2.
>
> (b) LP Sales ACA Balance (Staff Recommendation No. 3) - Laclede and Staff agree that the LP Sales ACA Balance is as stated in Staff Recommendation No. 3, and any issue arising out of or related to Staff Recommendation No. 3 is settled.
>
> (c) Documentation (Staff Recommendations Nos. 4-8 and 10). With the exception of the number of years for which the documentation is to be provided, Laclede and Staff agree that the furnishing by Laclede of certain documentation for the 1993-94 ACA period as set forth in Appendix A to Laclede's Response in Case No. GR-93-149 resolves and settles Staff Recommendations 4-8 and 10, and any issues arising out of or related thereto.
>
> (d) Propane Peak-Shaving (Staff Recommendation No. 9) - Laclede and Staff have agreed that in any month that Laclede purchases propane for peak-shaving from Phillips Petroleum, Laclede will also obtain propane price information from other suppliers. Laclede will furnish any such propane price information to the Staff annually for periods covered by future ACA filings.

The Commission finds the above agreed-upon matters to be reasonable and will approve the request.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions of all parties have been considered by the Commission in making this decision. Failure to reflect a piece of evidence, a position, or an argument of any party to this litigation in this Report And Order in no way indicates that the Commission has failed to consider relevant evidence, but indicates only that the omitted matter was not considered relevant to the decision or outcome.

The ACA period under consideration in this matter commenced on October 1, 1992, and ended on September 30, 1993. In August 1993 LGC entered into an agreement with its main transportation supplier, MRT, referred to in this matter as the sales service agreement. Under that agreement LGC negotiated a provision which specified that MRT would reimburse LGC for any FERC-mandated gas inventory charges which might be incurred by LGC in exchange for the requirement that LGC take sales gas from MRT equal to or exceeding 60 percent of LGC's total requirement. Gas inventory charges could be incurred by LGC during this time period for sales gas taken in excess of nominated contract demand amounts. The inventory charge was, generally, to reimburse MRT for obtaining and storing this extra gas supply.

Testimony reveals that this unique agreement was negotiated by LGC as a result of the anticipated restructuring of the natural gas industry by the Federal Energy Regulatory Commission (FERC). This restructuring was, in fact, fully implemented on November 1, 1993, by FERC Order 636. Prior to full implementation, various preliminary FERC orders were issued (e.g., Orders 436 and 500) allowing local distribution companies (LDCs) to gradually lower reliance on bundled services from the

transportation pipelines and increase the independent purchase of separate commodity and transportation services.

It is LGC's position that the sales service agreement with MRT was negotiated partially to insure that, after restructuring, LGC would have sufficient and reliable firm capacity on the MRT and other upstream transportation systems. (The process whereby the LDCs attempted to reserve firm capacity prior to the final FERC-mandated unbundling of service is usually referred to as "nomination".) In this matter, LGC chose to preserve, through the 1989 sales service agreement, what it felt was sufficient post-636 capacity on the MRT pipeline.

No dispute exists over the actual MRT and non-MRT purchases for the ACA period in question. LGC purchased 35.8 percent of its total annual distribution system requirements from sources other than MRT contract demand gas, falling 4.2 percent (of total annual requirement) short of the maximum amount allowable under the 1989 agreement. This is illustrated by Attachment A to this order, showing the various amounts of gas purchased from various sources by LGC during the ACA period. Put another way, LGC purchased 64.8 percent of its total annual requirements as sales gas (also referred to as contract demand gas or "CD-1" gas) in a bundled fashion from MRT. Typically, some savings may be obtained from the purchase of wellhead gas and the negotiation of transportation-only arrangements with the pipeline. This has become common practice since the final implementation of FERC Order 636.

During the time span of this ACA period, however, transition was taking place between the old, bundled system and complete unbundling of service, resulting in hybrid systems such as the one seen in the 1989 LGC/MRT contract.

The Staff maintains that, during the month of October 1992 and the months of June 1993 through September 1993, LGC could have purchased the additional 4.2 percent of total annual requirement of gas from suppliers other than MRT at a lower price than it paid for the MRT contract demand gas. The Staff maintains that its proposed adjustment of $388,000 reflects the difference between the cost of the MRT CD-1 gas and the average spot market price.

In addition, the Staff makes an oblique challenge to the prudence of the 1989 agreement by alleging that LGC could have increased its nomination percentage to some unspecified amount greater than the 40 percent amount agreed to. Finally, the Staff argues in its brief, but not in the evidentiary portion of the proceeding, that LGC should be held accountable for the 4.2 percent shortfall in its purchase of other than CD-1 gas from MRT due to the fact that it had "no gas procurement plan in effect to guide its gas supply department's decision-making process. . . ."

LGC defends its contractual arrangements and purchasing activities by stating that, at the time of the 1989 agreement, MRT would not agree to acquire reserves without assurance that it could recover the costs associated with such an acquisition. LGC could have, during the transition period, been faced with a FERC-approved gas inventory charge had it required additional, unplanned supplies off the MRT system. LGC points out that, by negotiating the 1989 agreement, it ensured reimbursement for current gas inventory charges and escaped responsibility for any future charges.

LGC also challenges the manner in which the Staff has calculated the proposed $388,000 adjustment as being unrealistic, contrary to the terms of the contractual agreements with MRT, and based on standards and assumptions which are artificial and impossible to attain.

LGC points out that the Staff made its calculations as to the proposed adjustment based on a published gas index price, compiled and averaged at the first of each month. In addition, LGC notes that the Staff applies the monthly price derived from the use of the index to average monthly allocations of gas. LGC points out that this pattern of allocation is patently artificial, having no relationship to the manner in which LGC is actually required to purchase gas and the available spot prices actually paid.

Finally, LGC maintains that the level of tolerance proposed by the Staff in regard to gas purchases, that being defined as 10 percent of the shortfall or four-tenths of one percent of the total system requirements, is unrealistic and impossible to maintain without incurring expensive penalties or failures in reliability.

In summary LGC maintains that, in alleging that LGC acted imprudently in its gas purchases, the Staff has proposed an adjustment which is based on alternative purchases at prices which were unavailable at the time, in a purchase pattern having no relationship to real purchase patterns, and without regard to contractual purchase constraints.

The Commission has thoroughly considered the merits of the cases presented by both parties and finds the evidence presented by the Staff to be insufficient to show that LGC acted imprudently in regard to its gas purchasing activities for the ACA period in question.

As LGC alleges, the Staff's calculations as to the proposed amount of adjustment do not reflect the realities of purchasing unbundled commodity and service on the open, or "spot", market, either in terms of price, time, or weather-related demand. LGC points out that the index price used by the Staff was calculated at the first of each month, failing to take into consideration the price and availability of spot market gas

supplies at the time LGC would actually need them. In addition, the averaged purchase patterns used by the Staff do not reflect the realities of maintaining supplies in the local distribution system on a daily basis.

Further, the Staff made no showing as to why the actions by LGC in negotiating its contractual arrangements with MRT, planning its gas purchases, or in making alternative purchases of 35.8 percent of its total annual system requirement (instead of the maximum 40 percent) should be considered imprudent business decisions. The Staff made only an attempt to show that LGC might have, under ideal and completely predictable conditions and on an average, not actual, basis, squeezed another $388,000 in potential savings by purchasing some 4.2 percent additional commodity on the spot market over the course of the ACA period. This is far below the level of support necessary for a showing, by substantial and competent evidence, that LGC acted imprudently in its gas purchasing arrangements and activities.

Therefore, for the above reasons, the proposed Staff adjustment of $388,000 to the ACA balance for firm and interruptible sales for the 1992-93 filing period is rejected.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Laclede Gas Company is a regulated public utility subject to the jurisdiction and regulation of the Missouri Public Service Commission pursuant to Chapters 386 and 393, R.S.Mo. 1994.

Sections 393.130 and 393.150, R.S.Mo. 1994, establish the authority in the Missouri Public Service Commission to determine whether

proposed rates are just and reasonable and to render orders in regard to rate proposals.

The above-stated sections also provide for parties to challenge the prudence of decisions underlying commodity-related gas costs.

The Commission concludes that Laclede Gas Company has shown, by substantial and competent evidence, that its purchase decisions for the ACA period of 1992-93 were just and reasonable, and that the Staff of the Commission has failed to maintain its burden of persuasion in showing that the activities discussed in the body of this Report And Order were imprudent.

Therefore, for the above-stated reasons, the ACA adjustment proposed by the Staff of $388,000 is hereby rejected.

The Commission finds the remainder of the agreed-upon matters, as set out in the "settled issues" portion of this Report And Order, to be reasonable and in the public interest and will approve the matters contained therein.

IT IS THEREFORE ORDERED:

1. That the settled issues, as set out in this Report And Order, are hereby approved and the parties are hereby ordered to comply with the specifics as contained therein.

2. That the Actual Cost Adjustment of $388,000, as proposed by the Staff of the Commission, is hereby rejected and this docket is closed.

3. That this Report And Order shall become effective on the 19th day of December, 1995.

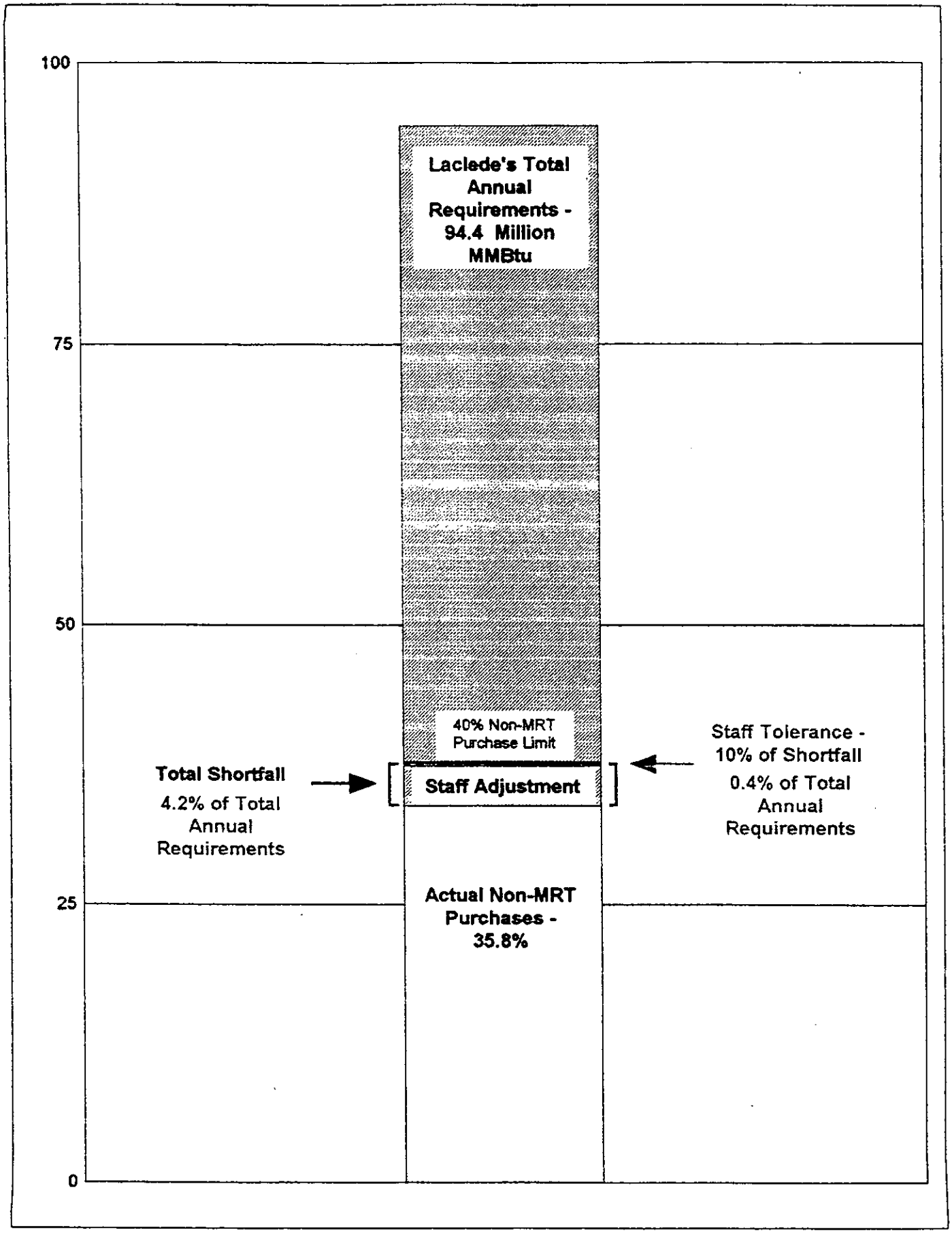
BY THE COMMISSION

David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Kincheloe and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, R.S.Mo. 1994.
Crumpton, C., absent.

Dated at Jefferson City, Missouri, on this 8th day of December, 1995.



Attachment A