

LACLEDE GAS COMPANY  
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AREA CODE 314  
342-0532

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March 21, 2001

FILED<sup>3</sup>

MAR 21 2001

Missouri Public  
Service Commission

HAND DELIVERED

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

RE: Case No. GO-2000-394

Dear Mr. Roberts:

Enclosed for filing, please find the original and eight copies of the Response of Laclede Gas Company to Staff's Motion to Suspend in the above-referenced case. Please see that this filing is brought to the attention of the appropriate Commission personnel.

Thank you for your consideration in this matter.

Sincerely,



Michael C. Pendergast

MCP:kz

cc: All parties of record

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MAR 21 2001

Missouri Public  
Service Commission

Case No. GO-2000-394

**TO STAFF'S MOTION TO SUSPEND**

1. On March 14, 2001, the Staff of the Missouri Public Service Commission ("Staff") filed a Motion to Suspend the tariff filing that had been made by Laclede on February 23, 2001 to comply with the Commission's February 13, 2001 *Order Modifying the Experimental Price Stabilization Program* (the "February 13, 2001 Order").

2. On March 19, 2001, Laclede filed a Motion with the Commission in which it addressed some of the assertions set forth in Staff's Motion and requested an opportunity to respond more fully in a subsequent pleading to the matters raised by Staff

in that Motion. On March 20, 2001, the Commission issued its Order granting Laclede's Motion.

3. Laclede appreciates the opportunity afforded by the Commission to address Staff's Motion in greater detail. As discussed below, Staff's Motion should be denied, because it is completely contrary to the Commission's February 13, 2001 Order in that it seeks to suspend a tariff filing that does nothing more than what the Commission directed Laclede to do, namely implement the terms of the Company's offer for contributing \$4 million to the funding of its Experimental Price Stabilization Program ("PSP" or "Program"). It should also be rejected because it proposes a course of action that would be counterproductive to the interests of Laclede's customers -- a course that would effectively eviscerate any effort to obtain meaningful price protection for Laclede's customers in advance of the next heating season. To understand why adoption of Staff's Motion to Suspend would be so detrimental to the interests of Laclede's customers, it is necessary to begin with a review of the events that led up to this filing.

4. At the on-the-record hearing held in this case on February 2, 2001, Laclede advised the Commission that it had achieved some \$28.5 million in gains and savings this winter under its PSP. (Tr. 34).<sup>1</sup> During the course of the hearing, Laclede also offered, or agreed to implement, several modifications to the PSP.

5. The first modification proposed by Laclede was designed to provide the Company's customers with immediate relief from the higher bills they were experiencing this winter as a result of record cold weather and sharply higher wholesale prices. To accomplish that goal, Laclede proposed that the Program benefits achieved on behalf of

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<sup>1</sup> The transcript references in this Motion are to the Transcript of Proceedings taken for the February 2, 2001 hearing.

its customers this winter be flowed through to them well in advance of the November ACA filing date on which such benefits would have otherwise been reflected in rates.

6. The remaining modifications were designed to enhance the Company's ability under the Program to obtain meaningful price protection for its customers in the future in the face of market prices that continue to remain at historically high levels. To that end, the Company offered to supplement the \$4 million in funding currently provided under the Program for purchasing financial instruments. Specifically, the Company offered to contribute, out of its share of the PSP benefits achieved this winter pursuant to its approved tariff, \$4 million in Program funding that would be added to the \$4 million provided by the Price Stabilization Charge for this coming winter. (Tr. 42, 50-51, 61). Laclede also offered to make a similar \$4 million contribution out of its share of the PSP benefits realized this winter to supplement Program funding for the following winter in the event the Program was renewed by the Commission for a fourth year. (*Id.*). In addition, to ensure that the PSP would remain in place as a vehicle for obtaining price protection for its customers, the Company also indicated its willingness to accommodate Staff's concerns regarding the window period during which the Company may opt out of the Price Protection Incentive Component of the Program. Specifically, the Company advised the Commission that it would not object to a modification that would reduce the window period from its existing 90 days to a period of 60 days. (Tr. 156-157). Finally, although it made no specific recommendation at the time, the Company also advised the Commission that if the market prices for financial instruments did not become more affordable, it might be necessary to seek, as it did last year, a reduction in the volumes

that are to be covered by the Program so that price protection could be obtained at a more reasonable and meaningful level. (Tr. 49-50).

7. On February 13, 2001, the Commission issued its *Order Modifying the Experimental Price Stabilization Program* in which it: (a) directed Laclede to make a tariff filing implementing its offer to contribute an additional \$4 million in funding to the Program for this coming winter and to reduce the window period from 90 to 60 days; (b) encouraged the parties to work together so that customers could benefit more quickly from the results achieved under the PSP; and (c) directed the parties to file a procedural schedule for purposes of determining whether the PSP should be continued for a fourth year.

8 Since the Commission issued its February 13, 2001 Order, substantial progress has been made in achieving the first goal of permitting Laclede's customers to benefit more quickly from the successes achieved under the PSP this year. On February 14, 2001, the Company made a second, unscheduled winter PGA filing in which it proposed to reduce its rates in order to flow through to its customers \$20 million dollars of the benefits achieved under the PSP this winter and to reflect the effects of recent price declines in the wholesale prices of gas. As a result of the Commission's prompt action and pursuant to the Company's request, this rate reduction was approved and made effective on an expedited basis. See *Order Granting Motion for Waiver and Approving Interim Rates*, Case No. GR-2001-387, issued February 20, 2001. In a subsequent filing made on February 23, 2001, the Company also requested and received prompt approval from the Commission for a waiver that permitted the Company to reflect this PGA reduction in its budget billings now rather than next summer when any budget billing

adjustments would have normally been made under the Company's tariff provisions. *See Order Granting Motion for Waiver to Make an Accelerated Adjustment to Budget Billings*, Case No. GR-2001-387, issued March 6, 2001.

9. Until very recently, progress had also been made on the second goal of enhancing the Company's ability under the Program to obtain meaningful price protection for its customers for next winter. Pursuant to the Commission's February 13, 2001 Order, the Company filed a tariff on February 23, 2001 to implement its offer to contribute \$4 million in additional funding for the PSP out of its share of the gains achieved under the Program this year. In addition, both the Program's TSP and CPL were established earlier this month.

10. Two factors, however, have continued to complicate the Company's efforts to obtain meaningful price protection for its customers. First, as the Company advised might be the case at the February 2, 2001 on-the-record hearing, market prices in general, and the prices for financial instruments in particular, have remained at relatively high levels. These high price levels have, in turn, been reflected in the TSP and CPL that were established earlier this month.<sup>2</sup> As a result, even with the additional funding provided by the Company for a total of \$8 million, the TSP and CPL established for the third year of the PSP are \$9.50 per MMBtu and \$10.00 per MMBtu, respectively. The Company has proposed a solution to this problem in a separate tariff filing made today in which it has recommended that the Required Price Protection volumes under the PSP be

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<sup>2</sup> The TSP represents the maximum level of price protection that can be achieved at the time it is established, assuming the Company spends the total funding amount authorized under the Program to cover 70% of the Company's winter flowing volumes, while the CPL is calculated by adding \$.50 per MMBtu to the TSP.

reduced from 70% to 40% in order to permit the establishment of a lower TSP and CPL of \$7.60 per MMBtu and \$8.10 per MMBtu, respectively.

11. Any effort to obtain meaningful price protection, however, will be futile in the event the second complicating factor -- i.e., Staff's Motion to Suspend -- is allowed to prevail. For without the \$4 million in additional funding provided by the Company's offer, Laclede will be faced with purchasing financial instruments at a TSP of \$12.45 per MMBtu. This is nearly \$2.50 higher than the highest price Laclede paid for flowing gas supplies this past winter, meaning that prices next winter would have to climb substantially above the unprecedented price levels experienced this winter before customers would receive any price protection.

12. As a practical matter, the establishment of such a high TSP would serve no purpose other than to permit Staff to achieve indirectly what it was unable to achieve directly when it recommended that the PSP be discontinued, namely to eviscerate the PSP as a vehicle for obtaining meaningful price protection for Laclede's customers. Laclede recognizes that the Staff did not support the PSP at its inception and vigorously opposed its continuation for a third year, notwithstanding the tens of millions of dollars in benefits that have been produced for Laclede's customers under the auspices of that Program. That is not a valid justification, however, for Staff's effort to overturn what the Commission decided in its February 13, 2001 Order. And that is precisely what the Staff has attempted to do with its Motion to Suspend -- a conclusion that is readily apparent from a review of the arguments presented by Staff in support of its Motion.

13. As previously noted, Staff has asserted in its Motion that Laclede's tariff filing should be suspended because it contains language that does not, in Staff's view,

adequately comply with the Commission's directive in its Order relating to the Company's contribution to the funding of the Program. That directive required that: "Laclede file, no later than February 23, 2001, a tariff revision implementing its *offer* to contribute, for the third year of the [Experimental Price Stabilization] program, an additional \$4 million of its own funds to the \$4 million that is currently authorized." (See Ordered Paragraph No. 3 of the Order, *emphasis supplied*).

14. Contrary to Staff's claim, it is clear that Laclede's February 23, 2001 tariff filing does nothing more and nothing less than implement the very "offer" that the Company made, and that the Commission accepted in its February 13, 2001 Order, to supplement the funding of the PSP with \$4 million of the Company's funds to be derived from its share of the gains achieved under this PSP this winter. The terms of this offer, including the source of the Company funds that were to be used to make this contributions, could not have been clearer or more definitive. As Laclede's counsel advised the Commission during his opening statement at the February 2, 2001 hearing that was held in this case:

And to make that additional funding possible, we're willing to take the gains that we would be entitled to under the cost reduction incentive component of the program and use those to supplement the hedging funds that would be available over the next two years. Right now it looks like that would be perhaps around \$8 million. As I said, that may be subject to a little change. But we would be willing to take that 4 million added to the 4 million that's already authorized under the program, to it for two years so that we have a more reasonable, more realistic opportunity of obtaining price protection for our customers in the future.

(Tr. 42).



The terms of Laclede's offer, including the source of the Company funds that would be used to make the \$4 million contribution, was further explained by Mr. Neises in response to a question from Chair Lumpe:

CHAIR LUMPE: Let me ask you another question, Mr. Neises. The \$28.5 million that are in your pleadings and we've read that, where precisely does that fit into? Are you telling me that the customers would have paid \$28.5 million more in their rates if you had not done the things you did? Was that shared? Where did the money go?

Mr. NEISES: That money is presently in ... accounts at Laclede Gas Company. That money has not yet been flowed through. ... [T]o answer your question, yes, these are real hard dollars. In other words, we had \$4 million to spend, and we produced gains of 28 million. So ... that's cash that's sitting there now.

Okay. What we're proposing to do -- now, of the 28 million under this program technically, ... the way the tariff is written, we're entitled to 8 million of that.

But what we're saying is, under the circumstances that we're under right now, recognizing that we need more money to fund this, the company's willing to take those \$8 million and say, let's spend that -- we'll put that money in to buy increased protection for the next two years. Add those 8 million -- or take four for one year and four for the next and add that to the existing four, and then we'll got \$8 million to deal with. That'll improve that picture. The company won't keep the money.

(Tr. 50-51).

15. There are also other places in the transcript where the terms of the Company's offer were expressed in equally clear terms. (*See e.g.* Tr. 61). In view of these clear expressions of the Company's offer, there should be absolutely no dispute over tariff language that states that the Company will supplement the \$4 million in funding currently provided under the Program with a portion of its share of the PSP benefits that were achieved this winter pursuant to the Program. (*See e.g.* Tr. 42, 50-51,

61). That is the offer the Company made, it is the offer the Commission approved in its February 13, 2001 Order, and it is the offer that was reflected in the tariff filing that the Staff now proposes the Commission suspend. Any suggestion to the contrary by Staff is both incorrect and wholly inconsistent with the factual record in this case.

16. Moreover, by proposing to contribute the amounts that the Company would have otherwise been permitted to retain under the PSP to the purchase of additional price protection for its customers, Laclede's offer should have eliminated any need, whether in an ACA proceeding or otherwise, to argue over the appropriate treatment to be afforded such amounts. More specifically, by making such an offer, Laclede has made its customers the direct beneficiaries of all of the gains and savings achieved under the PSP, with some of those benefits taking the form of a direct pass through of dollars and others taking the form of increased price protection for its customers next winter. And by approving this offer and directing the Company to implement it, the Commission has sanctioned this very method for ensuring that Laclede's customers would benefit from the \$4 million at issue here.

17. In view of these considerations, the other arguments raised by Staff in its Motion to Suspend are simply irrelevant to whether the Company's tariff filing should be allowed to go into effect. For example:

(a) At page 2 of the Memorandum accompanying its Motion, Staff asserts that the Company's tariff filing would be detrimental to Laclede's customers because it would conclusively establish that at least \$4 million of the gains generated under the PSP were properly classified as amounts that the Company was entitled to retain under the Program and would bar any future adjustment to such amounts. How can customers be

disadvantaged, however, if the same tariff filing also conclusively establishes, as it does in this case, that such an amount is *not* to be retained by the Company but instead used to buy additional price protection for the Company's customers, as the Commission contemplated? Indeed, the only possible reason why Staff would want to evaluate this amount further is if it intended to double dip the Company at some point in the future by having the Company contribute \$4 million to the Program now and then arguing later that the same dollars should also be flowed through to the Company's customers. Laclede would submit that such an obviously unfair objective provides no valid basis whatsoever for suspending a tariff that has been filed in compliance with a Commission order.

(b) At page 2 of its Memorandum, Staff also suggests that approval of the Company's tariff filing would be inconsistent with the Commission's recent determination in Case No. GR-2001-387 not to conduct an expedited review of the hedging activities of Missouri gas utilities in a separate, generic proceeding. Staff's assertion simply begs the question, however, in that it erroneously assumes that an ACA audit is necessary for an amount that the Company proposes not to retain and that the Commission has already determined should be used to fund the purchase of additional price protection for Laclede's customers next winter. In any event, it is exceedingly difficult to understand how the Commission's determination of a generic, procedural issue involving numerous utilities could possibly override the Commission's specific determinations involving Laclede, even if there was a conflict between the two, which there is not.<sup>3</sup>

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<sup>3</sup> Staff's assertion that a full fledged ACA proceeding must be held before this issue relating to Laclede's PSP can be finally resolved is also puzzling in light of the fact that this very case was opened over a year ago by the Commission, at Staff's request, for the very purpose of monitoring Laclede's performance under the PSP. Throughout this time period, Staff has had the opportunity to perform whatever audit it desires of Laclede's hedging efforts. Under such circumstances, Staff's claim that everything must be put on hold until it has had yet another opportunity to audit Laclede's hedging transactions is dubious at best.

(c) Finally, Staff implies at page 2 of its Memorandum that the Company could have achieved even greater benefits under the PSP than it did and that the Company's trading activities under the cost reduction incentive component of the program resulted in a net loss of \$5 million. Because it has provided no substantiation for its allegations, Laclede has absolutely no idea what Staff is talking about. Suffice it to say, that there is nothing in Staff's Motion that questions the fact that Laclede generated more than \$28.5 in real dollars under the PSP this winter, that \$20 million of that amount has already been flowed through to Laclede's customers, and that the Company has proposed to use the remaining amounts to buy increased price protection for its customers in the future. Moreover, whatever hindsight criticisms Staff may wish to level at the PSP, or the Company's performance thereunder, the fact remains that the Program has produced benefits far in excess of those that would have been produced had the hedging policies and approaches adopted by Staff over the years been approved by the Commission instead of the PSP. Indeed, given its track record, Staff is in a singularly poor position to criticize any hedging program that has actually produced net benefits for utility customers.<sup>4</sup>

18. In short, there is simply no justification for Staff's Motion to Suspend. Far from protecting ratepayers, adoption of Staff's Motion would leave them unprotected. Moreover, it would do so on the misguided -- indeed inexplicable -- theory that there is somehow something wrong with programs, like the PSP, that produce real financial

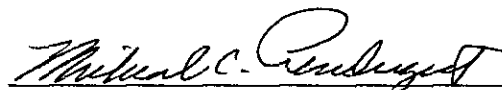
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<sup>4</sup> As Laclede has noted in previous pleadings before this Commission, Staff's proposed alternative to the PSP at the time it was approved consisted of a hedging program under which the Company would have been precluded from purchasing any financial instruments above a strike price of \$4.00 per MMBtu. Given market conditions over the past year, such an approach would have effectively precluded the purchase of any financial instruments this winter.

benefits for customers far in excess of their costs. For all of these reasons, Staff's Motion to Suspend should be denied by the Commission.

Wherefore, for the foregoing reasons, Laclede respectfully requests that the Commission issue its order denying Staff's March 14, 2001 Motion to Suspend the tariff filing made by Laclede on February 23, 2001.

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 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 21st day of March, 2001.

