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September 30, 2002

**FILED**<sup>3</sup>

SEP 30 2002

Missouri Public  
Service Commission

Mr. Dale Hardy Roberts  
Executive Secretary  
Missouri Public Service Commission  
200 Madison Street, PO Box 360  
Jefferson City, MO 65102-0360

RE: In the Matter of the Tariff Filing of Laclede Gas  
Company - Case No. GT-2003-0032  
Tariff No. JG-2003-0048

Dear Mr. Roberts:

Enclosed please find for filing the original plus eight (8) copies of the Rebuttal Testimony of Louie R. Ervin to be filed on behalf of Missouri School Boards' Association in the above-captioned matter.

If you should have any questions concerning the enclosed filing, please do not hesitate to contact me. Thank you.

Very truly yours,

HENDREN AND ANDRAE, L.L.C.

*Richard S. Brownlee III*  
for

Richard S. Brownlee, III

RSB\s  
Enclosures  
All Counsel of Record  
Melissa Randol  
Louie R. Ervin

**FILED<sup>3</sup>**

SEP 3 0 2002

**Missouri Public  
Service Commission**

Exh. No. \_\_\_\_\_  
Louie R. Ervin  
Rebuttal Testimony  
MSBA  
Case No, GT-2003-0032

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Tariff Filing of Laclede Gas Company	<b>CASE NO.</b>	<b>GT-2003-0032</b>
	<b>TARIFF NO.</b>	<b>JG-2003-0048</b>

**REBUTTAL TESTIMONY**

**OF**

**LOUIE R. ERVIN**

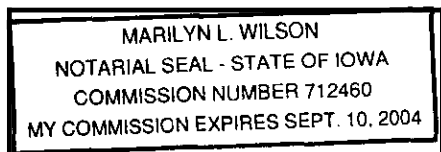
AFFIDAVIT OF LOUIE R. ERVIN

STATE OF IOWA )  
                  ) ss.  
COUNTY OF LINN )

Louie R. Ervin, of lawful age, on my oath states, that I have participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 16 pages, to be presented in this case; that the answers in the foregoing testimony were given by me; that I have knowledge of the matters set forth in such answers; and that such matters are true to the best of my knowledge and belief.

Louie R. Ervin  
Louie R. Ervin

Subscribed and sworn to before me this 23 day of September, 2002.



Marilyn L. Wilson  
Notary Public

My Commission Expires: Sept 10, 2004

**Q. Please describe the purpose of your rebuttal testimony.**

A. The purpose of this testimony is to rebut direct testimony of Staff witnesses Jennifer Markway, Thomas. M. Imhoff, James M. Russo and James A. Gray and Laclede Gas Company's witness Michael T. Cline.

**Q. Have you reviewed the direct testimony of Staff witness Markway and do you have any comments regarding that testimony?**

A. I have reviewed that testimony and agree with the position taken regarding franchise taxes. To comply with existing local franchise laws, computation of the legal franchise tax rate must be on the actual gas costs incurred by the school district- not the gas costs that would have been incurred had it continued sales service. To avoid Laclede having to pay taxes on the franchise taxes, the participating schools - not Laclede- necessarily must pay taxes to the taxing authority on the actual cost of gas paid by the school district. For example: if the actual schools' gas supply bill is \$100,000.00 and the local tax rate is 5% of the actual bill, then the franchise tax amount due is \$5,000.00. However, if the schools pay \$105,000.00 to Laclede (\$100,000.00 for gas supply and \$5,000.00 for franchise taxes) then Laclede's taxable revenue is \$105,000.00 and it must pay franchise taxes of \$5,250.00 (5% of \$105,000.00). The result of the Laclede approach is that the taxing authority will not receive the legally prescribed tax on the schools' actually billed gas costs. Using the Staff's and my recommended approach, there is no negative financial impact to the taxing authority, Laclede or other customers.

**Q. Have you reviewed the direct testimony of Staff witness Imhoff and do you have any comments regarding that testimony?**

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1 A. I have reviewed that testimony and, for the most part, agree with the positions taken  
2 regarding capacity reservation and transition costs. I particularly agree beginning on Page 2 at  
3 Line 22: "Capacity currently used to supply the participating schools should be made available,  
4 *in a workable manner*, to the school aggregator participating in the program consistent with the  
5 requirements of section 393/310 RSMo." (Italics and bold were added for emphasis.) Because  
6 the vast majority of Laclede's pipeline capacity is on the MRT pipeline, the MRT capacity is  
7 effectively representative of the Laclede system capacity. Using only MRT capacity, as proposed  
8 by Laclede, is most workable; but, I agree with Mr. Imhoff that the participating schools should  
9 pay for MRT capacity at the Laclede actual weighted average cost of capacity on pipelines  
10 connected directly to the Laclede distribution system. In that manner, the schools continue to  
11 equitably pay for capacity without negative financial impact to Laclede or to other customers,  
12 regardless of which pipeline or pipelines the released capacity is on.

13 **Q. What should be the term of capacity release?**

14 A. I agree with Mr. Imhoff that the initial capacity release should be for up to one year with  
15 annual determination by MSBA, or its agent, whether to continue the capacity release.

16 **Q. Please address the proposed tariff language regarding pre-approval of contract**  
17 **reformation costs.**

18 A. I agree with Mr. Imhoff, that it is unacceptable for the Laclede tariff to include pre-  
19 approval language for any costs incurred by Laclede's reformation of contracts for capacity  
20 deemed unnecessary or undesirable by Laclede. The schools do not want to become the dumping  
21 ground for any undesirable capacity contracts and the Staff and Commission should have an  
22 opportunity for review prior to approval of contract reformation costs.

1 **Q. Have you reviewed the direct testimony of Staff witness Russo and do you have any**  
2 **comments regarding that testimony?**

3 A. I have reviewed that testimony and, for the most part, agree with the position taken  
4 regarding adequacy of the \$0.004 per therm aggregation and balancing charge for the first year.  
5 The charge is intended to recover Laclede's incremental costs of program administration and  
6 daily balancing. I also agree with Staff's proposed true-up proposal after year one. However,  
7 because there may be more costs associated with tracking, documenting and reporting  
8 incremental costs than actual incremental costs incurred, the gas corporation should not be  
9 required to report incremental costs unless it deems some negative financial impact worthy of  
10 seeking recovery at a rate higher than \$0.004 per therm.

11 **Q. Do you have concerns regarding the future pass-through of incremental costs?**

12 A. My greatest concern here is that Laclede, MSBA and Staff work together to minimize  
13 incremental costs and to use the experience from the experimental program to hold the line on  
14 future incremental costs. There are many opportunities for program efficiency. One example is  
15 to have the MSBA program administrator calculate franchise taxes, because they are the only  
16 party with all the necessary information for timely billing. Another example is to eliminate  
17 running a weather model daily, except for critically cold days when it could have an impact on  
18 the Laclede system. Still another example is to eliminate the double contract negotiations,  
19 intermediate communications with suppliers, contract management and contract enforcement that  
20 goes with Laclede taking title to the gas supply from the marketer rather than the marketer  
21 reselling the gas directly to the schools.

22 **Q. Have you reviewed the direct testimony of Staff witness Gray and do you have any**  
23 **comments regarding that testimony?**

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1 A. I have reviewed that testimony and, for the most part, I agree with the positions taken. I  
2 particularly agree with the statement describing how the statute addresses how school districts  
3 may purchase natural gas, beginning on Page 6 beginning at Line 3: "Then, a marketer may  
4 purchase the natural gas from various suppliers, and the marketer may arrange the delivery of the  
5 gas to a Laclede delivery point on behalf of the eligible school entities." This Staff position is  
6 the way transportation service works and is far different than the proposed Laclede tariff  
7 requirement that Laclede interject itself in the middle of the transaction by taking title to the gas.

8 **Q. Do you agree with Mr. Gray on Page 9 at Line 20 where he concludes that, with**  
9 **regard to the aggregation and balancing charge, Laclede's tariff sheets do not comply with**  
10 **Section 393.310.4(2) RSMo. Supp.2002?**

11 A. I differ with Mr. Gray with regard to the statement concerning the \$0.004 per therm  
12 aggregation and balancing charge possibly not fully recovering actual costs. The Staff true-up  
13 mechanism in the 2nd and 3rd years should make the Laclede tariff sheets comply with the  
14 Statute with regard to adequacy of the aggregation and balancing charge to fully recover actual  
15 costs.

16 **Q. Do you agree with Mr. Gray on Page 10 beginning at Line 18 regarding the type of**  
17 **other standard or customary provisions for transportation tariffs?**

18 A. I agree with Mr. Gray's assessment regarding the **type** of other standard or customary  
19 provisions for transportation that should be addressed in the Laclede tariff. However, the  
20 **manner** in which the Laclede tariff addresses these provisions is neither standard nor customary  
21 for transportation tariffs. I know of no transport tariff that automatically returns a customer to  
22 sales service, at the utility's sole discretion, regardless of the quantity or duration of a failure to  
23 deliver supplies. Normally, failure to deliver creates penalties depending on quantities outside an

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1 allowable bandwidth, duration of the failure and whether or it is a force majeure condition. I  
2 know of no transport tariff that requires daily nomination changes using a weather equation even  
3 during the non-heating season. Normally, nominations are provided for each day prior to the  
4 beginning of the month and are only revised intra-month during critical days. Most importantly,  
5 I know of no transportation tariff that has the utility interject itself in the ownership chain by  
6 taking title to the customer's gas supply from the marketer.

7 **Q. Is it a standard or customary provision in transportation tariffs for the utility to**  
8 **take title to customer's gas supply?**

9 A. I know of no cases where the utility takes title to the transportation customer's gas from  
10 its marketer. None of the other Missouri gas corporations have such a provision and even  
11 Laclede's own large volume transportation tariff does not have that provision. The Statute does  
12 not require the gas corporation to take title to the gas supply. The Statute does require the gas  
13 corporation's tariff to provide for the aggregate purchasing and to provide for the resale of  
14 supplies and transportation at the gas corporation's costs, but the statute does **not** require the gas  
15 corporation to take title to the gas supply. The Statute requires the gas corporation to provide a  
16 balancing service, which requires some small utilization of the gas corporation's system gas  
17 supply and transportation at its cost of purchasing such gas supplies and transportation and, for  
18 this limited gas corporation supply for balancing service, Laclede should and does take title to the  
19 gas supply. However, there is absolutely no reason why the gas corporation should not interject  
20 itself in the middle of gas supply transaction between marketer and customer. The gas  
21 corporation will fully recover its cost of gas if it does not take title and does not have a cost  
22 associated with the gas supply. Providing small quantities of gas supply and transportation for



balancing service at the gas corporation's cost does not imply a statutory requirement that the gas corporation take title to the customer's supply from the marketer.

**Q. Do you agree with Mr. Gray's discussion beginning on Page 11 at Line 18 with regard to supply planning and weather forecasting?**

A. I agree that we can only assess the Laclede weather-equation upon it being provided. If it is a reasonable equation, I would accept its use, but only when needed during critical cold days.

**Q. Have you reviewed the direct testimony of Laclede witness Cline and do you have any comments regarding that testimony?**

A. I have reviewed that testimony and take exception to major parts of it.

**Q. (Cline Page 3 beginning at Line 5 and Tariff Paragraph A): Do the tariffs sheets filed by Laclede comply as required by Section 393.310.4(2) RSMo Supp. 2002?**

A. I do not believe that the tariffs filed by Laclede comply with Section 393.310.4(2) RSMo Supp. 2002 as it relates to providing for aggregate purchasing. Laclede proposes to take title to the natural gas supply and resell it to individual schools as sales service rather than as delivery of third-party supply under an aggregated transportation tariff. Industry practice for resale of natural gas for transportation customers is for third-party suppliers or marketers to purchase supplies from producers or wholesalers and resell the gas supply directly to end-users. The Statute does require the gas corporation to provide for the resale of such natural gas supplies, including related transportation service costs, to eligible school entities at the gas corporation's cost of purchasing of such gas supplies and transportation. "Providing for" and "taking title to" the third-party supply for resale are not the same. Certainly, the gas corporation will necessarily have to provide small amounts of its system natural gas to cover the daily imbalance between third-party deliveries and actual daily school use, for which the gas corporation is to charge its

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1 actual cost of purchasing such supplies and transportation and for which the gas corporation is to  
2 receive an additional "aggregation and balancing fee" to be determined by the Commission, not  
3 to exceed four-tenths of one cent per therm delivered during the first year. Laclede's proposed  
4 tariff includes the aggregation and balancing fee of \$0.004 per therm and a provision for the  
5 return of any of Laclede's system gas supply in kind during the subsequent month, which  
6 effectively satisfies the Statute of arranging for supply and transportation at its costs, without  
7 taking title to third-party gas supply.

8 **Q. Do the tariffs filed by Laclede provide for the resale of such natural gas supplies at**  
9 **the gas corporation's cost of purchasing of such gas supplies, including only Laclede**  
10 **supplies for imbalances and authorized use, or does it include taking title to supplies**  
11 **arranged by the school Association from a third-party supplier or marketer?**

12 A. I believe the proposed Laclede tariff includes more than costs for Laclede supplies, for  
13 imbalances and authorized use and, in fact, requires Laclede to take title to third-party supplies  
14 for resale to schools at the sales service, which is how Laclede currently provides service to  
15 schools and is not aggregate transportation service as intended by the Statute.

16 **Q. Does the Laclede proposed tariff provision regarding Laclede taking title to schools'**  
17 **natural gas supply allow aggregate purchasing through a not-for-profit school**  
18 **association?**

19 A. I believe that the proposed Laclede tariff effectively prohibits aggregate purchasing  
20 through a not-for-profit school association and fails to provide experimental experience with  
21 aggregate purchasing as contemplated by the Statute.

1     **Q.   (Cline Page 5, Line 22 and Tariff Paragraph E): Does the “MRT maximum” rate**  
2     **for released pipeline capacity, conform to the Act with regard to including related**  
3     **transportation service costs to the eligible school entities at the gas corporation’s cost?**

4     A.   The “MRT maximum” rate for released pipeline capacity does not conform to the Statute  
5     with regard to including related transportation service costs to the eligible school entities at the  
6     gas corporation’s cost. Laclede likely receives some discount from maximum rates, which  
7     discount should be a component to capacity prices paid by schools as is the case today under  
8     sales service.

9     **Q.   (Cline Page 2, beginning at Line 5 and Tariff Paragraph A): Do the Laclede tariffs**  
10    **not require telemetry or special metering, except for individual school meters over one**  
11    **hundred thousand therms annually as required by Section 393.310.4(3) RSMo Supp.**  
12    **2002?**

13    A.   The proposed Laclede tariff does not specifically address this matter. I interpret the  
14    Laclede tariff as not having a telemetry requirement regardless of a participating schools volume  
15    and therefore its does comply with 393.310.4(3) RSMo Supp. 2002 because there is no  
16    requirement stated for telemetry at any usage level.

17    **Q.   (Cline Page 8, beginning at Line 13): Is there sufficient evidence for the**  
18    **Commission to find that implementation of the aggregation program set forth in the**  
19    **Laclede tariffs will not have any negative financial impact on Laclede as required by**  
20    **Section 393.310.5 RSMo Supp. 2002?**

21    A.   I am not aware of any detriment to Laclede caused by its proposed aggregation tariffs. If  
22    the \$0.004 per therm fee allowed for aggregation and balancing services in the first year proves  
23    to be insufficient for Laclede to recover all of its incremental costs, the Commission can

1 approve a higher charge for Laclede, up to its actual incremental cost of providing aggregation  
2 and balancing services in subsequent years.

3 **Q. (Cline Page 8, beginning at Line 13): Is there sufficient evidence for the**  
4 **Commission to find that implementation of the aggregation program set forth in the**  
5 **Laclede tariffs will not have any negative financial impact on Laclede's other customers as**  
6 **required by Section 393.310.5 RSMo Supp. 2002?**

7 A. I am not aware of any detriment to the other customers of Laclede because Laclede has  
8 not proposed to increase charges to other customers and any such future attempt is subject to  
9 Commission approval.

10 **Q. (Cline Page 8, beginning at Line 13 and Tariff Paragraphs A and F): Is there**  
11 **sufficient evidence for the Commission to find that implementation of the aggregation**  
12 **program set forth in the Laclede tariffs will not have any negative financial impact on**  
13 **local taxing authorities as required by Section 393.310.5 RSMo Supp. 2002?**

14 A. No. MSBA believes that the method of calculation, collection and remittance of  
15 franchise taxes as proposed in the Laclede tariffs effectively changes existing law, which is  
16 prohibited by the Statute. The proposed Laclede tariffs would have Laclede to calculate local  
17 franchise taxes on an artificial gas bill as if Laclede provided sales service. Existing local tax  
18 laws provide for franchise taxes as a percentage of actual gas bills, which is the actual cost of gas  
19 supply paid by the school. The method of calculation, collection and remittance of franchise  
20 taxes as proposed in the Testimony of Staff Witness Jennifer Markway will minimize any  
21 detriment, provided that Laclede implements the methods described. The amount of franchise  
22 taxes will vary from heating season to heating season, reflecting the volume of gas sold and the  
23 price of natural gas.

1   **Q.   Does the Act change the local franchise tax rate and does the proposed Laclede**  
2   **tariff calculate local franchise taxes at the legal local tax rate on the actual cost of natural**  
3   **gas paid by the end-user?**

4   A.   The Act does not change the local franchise tax rate as proposed by the Laclede tariff.

5   **Q.   Does the Act require Laclede to be the only party to collect and remit local franchise**  
6   **taxes?**

7   A.   No, the Act does not require that the gas corporation be the only party to collect and remit  
8   local franchise taxes. The gas corporation should collect taxes on the bills it remits and the  
9   Association should collect taxes on the bills it remits.

10   **Q.   (Cline Page 8, beginning at Line 3 and Tariff Paragraph F): Is there sufficient**  
11   **evidence for the Commission to find that the aggregation charge is sufficient to generate**  
12   **revenue at least equal to all incremental costs caused by the experimental aggregation**  
13   **program as required by 393.310.5 RSMo Supp. 2002?**

14   A.   If there are unforeseen conditions or circumstances in this new program, any over or  
15   under recovery of the program costs can be dealt with in the second and third years.

16   **Q.   (Cline Page 5, beginning at Line 11 and Tariff Paragraphs A and F): Does the**  
17   **proposed Laclede tariff operate to allow schools to aggregate purchases?**

18   A.   Mr. Cline admits on Page 5 at Line 13 that participating schools simply "...remain sales  
19   customers of Laclede...". The proposed Laclede tariff is nothing more than continuance of sales  
20   service to individual school accounts with an overlay of additional costs and constraints and does  
21   not allow schools to effectively aggregate natural gas purchases.

1    **Q.    (Cline Page 2, beginning at Line 5 and Tariff Paragraph A): Does the proposed**  
2    **Laclede tariff meet the emergency clause intent of the Statute for aggregate purchasing**  
3    **beginning November 1, 2002?**

4    A.    No. The Laclede tariff provides that a list of schools must be provided to it by September  
5    1 in order to begin transportation service November 1. Even if Laclede waived that tariff  
6    provision in the first year, it is highly unlikely competitive suppliers can be found or that any  
7    schools would participate in the program with the multitude of tariff constraints, which do not  
8    exist in any other Missouri utility proposed experimental aggregation tariffs.

9    **Q.    (Cline Page 5, beginning at Line 18 and Tariff Paragraph F): Should the proposed**  
10   **Laclede tariff properly include only the ACA component of the Laclede PGA?**

11   A.    The ACA is a cost recovery or credit for prior period over or under recoveries of gas  
12   costs. Schools should continue to pay the ACA component of the PGA for up to one year.  
13   However, the Laclede tariff requires that schools pay other PGA components, which is  
14   inconsistent with recovery of only incremental program costs and would result in double  
15   recovery by Laclede.

16   **Q.    (Cline Page 4, beginning at Line 18 and Tariff Paragraph C): Does the Act require**  
17   **Laclede to be the party to provide a weather-based formula for forecasting daily use?**

18   A.    No, the Act does not require that the gas corporation be the party to provide a weather-  
19   based formula for forecasting daily use. The Association is required to do the forecasting and  
20   has a proven forecasting weather-based formula, which has actual utilization for school  
21   aggregation programs in Kansas and Iowa.

22   **Q.    Is it necessary, other than during severe weather, for the Laclede tariff to require**  
23   **the Association to forecast by 9:00 AM of each business day?**

1 A. It is only necessary to daily update forecasts during severe weather. School usage is very  
2 highly weather sensitive and predictable. Typical schools facilities use miniscule quantities of  
3 natural gas during non-heating months.

4 **Q. (Tariff Paragraph C 1.): Is it appropriate for the Laclede tariff to identify “loss and**  
5 **unaccounted for percentage” and is the “loss an unaccounted for percentage” used for**  
6 **PGA purposes appropriate?**

7 A. Yes, it is appropriate for the Laclede tariff to identify “loss and unaccounted for  
8 percentage” as currently used to bill PGA costs to schools.

9 **Q. (Tariff Paragraph D): Is it appropriate for the Laclede tariff to adjust usage for**  
10 **revenue cycle billing for suppliers nominated on a calendar basis?**

11 A. No, Laclede’s proposal to take title to the gas and resell it as sales service may require the  
12 intensive task of adjustment usage. Third-party supply resold by marketers directly to end-users  
13 is nominated and delivered on a calendar month basis, which requires no adjustment.

14 **Q. (Tariff Paragraph H): Is it appropriate for the Laclede tariff to allow Laclede, at its**  
15 **sole discretion, to recall pipeline capacity if the Association fails to deliver natural gas**  
16 **supplies for any reason, no matter how small the quantity, the time period or**  
17 **inconsequential nature of the Association failure?**

18 A. It is not appropriate for Laclede, at its sole discretion, to recall pipeline capacity without  
19 first bringing the issue to the Commission for resolution.

20 **Q. (Tariff Paragraph F): Does the Laclede tariff provision for billing the Association**  
21 **based on a difference relative to the Purchase Gas Adjustment, including costs of storage**  
22 **and pipeline capacity and volumetric charges, result in double recovery of gas costs for**  
23 **Laclede?**

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A. It is not appropriate for Laclede to bill the Association based on a difference relative to the Purchase Gas Adjustment, including costs of storage and pipeline capacity and volumetric charges, because double recovery of gas costs will result for Laclede.

**Q. (Tariff Paragraph E): Is it appropriate for the Laclede tariff to allow Laclede, at its sole discretion, to recall pipeline capacity and have schools revert to sales service if supplies are not so delivered in accordance with the Delivery Schedule tariff, for any reason no matter how small the quantity, the time period or inconsequential nature of the Association failure?**

A. It is not appropriate for Laclede, at its sole discretion, to recall capacity and revert school to sales service without first bringing the issue to the Commission for resolution.

**Q. Can you give us an example of how other utilities normally handle situations where the supply is not delivered as scheduled?**

A. Yes, normally, utility tariffs have penalty provisions for non-compliance with delivery schedules and do not force the customer back to sales service for any minor infraction. The following text is an example taken from the AmerenUE tariff: *"All Ccf of Company-owned gas consumed by customer with authorization from Company during periods of non-interruption of any sales service will be billed at the applicable service area's firm sales service Purchased Gas Adjustment (PGA) factor plus 40%. The payment of the Authorized Gas Use Charge will be in addition to the above Customer, EGM and Transportation Charges. Company will not actively market the sale of Company-owned gas to transportation customers and will sell such gas only in response to the transportation customer's request. Authorized Use Gas shall not be available to a transportation customer for more than twenty (20) days out of any calendar month. All Unauthorized Gas Use Charge revenues billed to customers will be considered as gas cost*



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- 1 *recovery and will be used in the development of the Actual Cost Adjustment (ACA) factor of the*  
2 *Company's Purchased Gas Adjustment (PGA) Clause."*

3 **Q. Does this conclude your testimony?**

4 **A.** Yes, it does. Thank you.