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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 9th
day of December, 1997.

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

**ORDER DENYING MOTION FOR SUMMARY REJECTION,
ESTABLISHING PROCEDURAL SCHEDULE AND PROVIDING NOTICE**

This docket was opened for the purpose of receiving and auditing the 1995-96 actual cost adjustment filing (ACA) of Laclede Gas Company (LGC). On September 3, 1997, the Staff of the Commission (Staff) filed its recommendation in this case. In that recommendation the Staff proposed to adjust the LGC firm sales ACA balance by approximately \$3.5 million in additional over-recovery. The Staff alleged that the over-recovery resulted from the LGC use of customer paid demand charges and gas supply contract premiums to engage in profitable off-system sales transactions.

On October 6 LGC responded to the Staff recommendation and moved for a summary rejection by the Commission of the proposed Staff adjustment for off-system sales. In its motion LGC requests that the Commission either grant the LGC motion for summary rejection of the Staff's adjustment or direct the parties to file a proposed procedural schedule for the litigation of the issues raised by the Staff's recommendation.

LGC states that the off-system sales in question occurred prior to its incentive rate plan, approved by the Commission in Case No. GR-96-193. This case became effective October 1, 1996, and approved the sharing

of revenues from off-system sales. LGC states that, prior to that time, it bore all of the risk and retained all profits from off-system sales.

LGC states that the Staff's position should be rejected summarily for the following reasons:

(a) Proposed treatment of the net revenues received from off-system sales is wholly inconsistent with the treatment traditionally afforded by the Commission and the Staff in connection with other sales or transactions made by utilities between rate cases;

(b) Is a fundamentally unfair, "pick and choose" brand of retroactive ratemaking under which a relatively limited gain from several isolated sales of gas to nonjurisdictional customers between rate cases would be fully captured (and used to reduce rates), while any corresponding risk, together with the substantially larger and undisputed earnings deficiency experienced by the company during the same period, are simply ignored;

(c) Is directly contrary to the long-standing policy that utilities should retain the gains, and stand the losses, associated with the sale of the assets which they own; and

(d) Is completely unauthorized by, and inconsistent with, the Commission-approved ACA tariffs which were in effect at the time such sales were made.

The Staff responded on November 20 stating that the appropriate procedure according to the Commission rules would be for LGC to simply request an evidentiary hearing. The Staff maintains that summary judgment can be maintained only where there is no genuine dispute as to the facts of a case and where the facts, as admitted, show a legal right to judgment. The Staff adds that summary judgment does not appear as a part of the Commission's rules of practice and procedure.

On November 20 the Office of the Public Counsel (OPC) also filed a response to the LGC motion. The OPC states that LGC is not entitled to a summary judgment for reason that the Commission has held in previous cases that treatment of gains should be dealt with on a case-by-case basis depending on the facts surrounding a particular transaction.

The OPC adds that treatment of gains from off-system sales is a case of first impression for the Commission.

Finally the OPC states that there are genuine disputes regarding the facts surrounding the Staff's proposed adjustment, for example, if the off-system sales do or do not constitute part of accountable gas costs and how, and whether, the Commission will apportion the off-system sales gains between the shareholders and the ratepayers.

The Commission finds, as stated by the OPC and Staff, that material questions of fact have been raised in the record in this matter that must be decided by the Commission after evidentiary hearing. The Commission does not find it appropriate to apply any of the various methods of apportionment of risk and gain or loss without first ascertaining the facts surrounding the transaction in question. Further, in light of the apparent complexity of the off-system transaction, the Commission does not find it possible to properly and accurately apply an ACA adjustment without a complete and thorough knowledge of the specific transaction and proposed adjustment.

Therefore, for the above-stated reasons, the Commission will deny the LGC motion for summary rejection and grant the alternative request to establish an early prehearing conference for the purpose of proposing a procedural schedule. The Commission also finds it appropriate to provide notice to the public and interested parties and to provide for the opportunity to intervene in this proceeding.

The Commission informs the parties that a prehearing conference will be held in this matter on February 2, 1998, for the purpose of proposing to the Commission a procedural schedule for the litigation of this matter.

The Commission finds that notice of this application should be given by the Records Department of the Commission by transmitting a copy of this order to the mayor of the City of St. Louis, Missouri, and county commission of each county within the service area of LGC. In addition, the Information Officer of the Commission shall provide notice to the members of the General Assembly representing each county in the LGC service area and the City of St. Louis and to all publications of general circulation in the LGC service area as set out in the ***Official Manual of the State of Missouri***.

The Commission also determines that proper persons shall be given the opportunity to intervene in this case. Applications to intervene shall be filed with the Secretary/Chief Regulatory Law Judge of the Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, by the close of business, January 12, 1998. Copies of applications to intervene should also be sent to Michael C. Pendergast, Laclede Gas Company, 720 Olive Street, St. Louis, Missouri 63101.

If no proper person requests a hearing, the Commission may determine that an oral hearing is not necessary and allow the parties to submit evidence in support of their positions by verified statement. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

IT IS THEREFORE ORDERED:

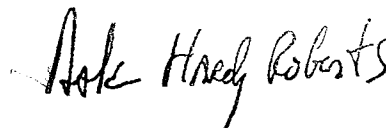
1. That the motion for summary rejection, filed October 6, 1997, by Laclede Gas Company, is hereby denied for the reasons as set out above.
2. That the request of the various parties for the establishment of a procedural schedule is granted to the extent that a

prehearing conference is set at 10:00 a.m., February 2, 1998, at the Commission offices, Suite 530, Conference Room 3, of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri, to allow the parties to propose such a schedule. That any person with special needs as addressed by the American with Disabilities Act should contact the Missouri Public Service Commission at least ten days prior to the hearing at one of the following numbers: Consumer Services Hotline -- 1-800-392-4211, or TDD Hotline -- 1-800-829-7541.

3. That any interested party wishing to intervene in this matter shall file an application with the Commission requesting intervention no later than January 12, 1998.

4. That this order shall become effective on December 9, 1997.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
and Drainer, CC., concur.

Derque, Regulatory Law Judge