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December 31, 2003

FILED
DEC 31 2003
Missouri Public Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

RE: *In the Matter of a Proposed Denial of Service Rule*
Case No. AX-2003-0574

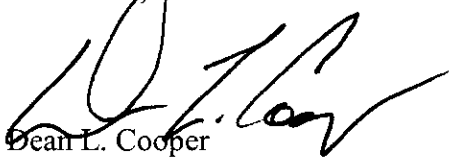
Dear Mr. Roberts:

Enclosed are an original and eight (8) copies of Comments of Laclede Gas Company, for filing in the above-referenced matter. A copy of this filing is being provided to the General Counsel of the Staff and to the Office of the Public Counsel.

Thank you for your assistance in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: 
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DLC/jar
Enclosures
cc: Office of the Public Counsel
General Counsel
Michael Pendergast

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of a Proposed Denial of Service Rule.	))	Case No. AX-2003-0574

COMMENTS OF LACLEDE GAS COMPANY

Pursuant to the Notice published in the December 1, 2003 Missouri Register, Vol. 28, No. 23, Laclede Gas Company ("Laclede" or "Company") respectfully submits the following comments in response to the Missouri Public Service Commission's ("Commission") proposed Denial of Service Rule.

A. Introduction/Summary of Comments

As set forth in the Missouri Register, the Commission's Proposed Denial of Service Rule (hereinafter also referred to as the "Proposed Rule") would establish certain standards to govern when utilities may and may not deny utility service to an applicant who requests it. At the outset, Laclede does not believe that there is any substantive justification for such a Rule. Laclede has operated for many years now without a formal rule relating to denial of service in place. Throughout this period, Laclede has, when determining whether to deny service, followed the same Commission-approved standards and restrictions that currently govern when it may discontinue service. Such an approach has worked well and Laclede is unaware of any actual or developing problems that would suddenly warrant the adoption of a formal rule. Nor have the proponents of the Proposed Rule provided such a justification. In view of these considerations, Laclede urges the Commission to withdraw the Proposed Rule.

Should the Commission nevertheless be inclined to adopt a formal Denial of Service Rule, however, it is imperative, in Laclede's view, that such a Rule impose no

greater restrictions on the ability of utilities to deny service than are currently imposed by the Commission on their ability to discontinue service (subject, of course, to any unique language that may be contained in a utility's particular tariff). Indeed, any effort to impose additional restrictions in a Denial of Service Rule would only lead to customer confusion, operational inefficiencies, and added costs for those customers who make a real effort to pay their utility bills.

Unfortunately, the Proposed Rule seeks to do just that by imposing a number of additional restrictions on denying service that are nowhere to be found in the Commission's rules governing discontinuance of service. For example:

- A utility can deny or discontinue service to an applicant or customer today if he or she received the benefit and use of utility service that remains unpaid and is the subject of a delinquent utility bill. Under the Proposed Denial of Service Rule, however, the applicant would now be able to obtain service (subject to subsequent discontinuance) if the delinquent bill was incurred more than five years before the customer's application.
- Similarly, service to an applicant or customer can be denied or discontinued today if there is an occupant with a delinquent bill at the same premises who continues to reside at that premises. Under the Proposed Rule, however, the applicant would seemingly be entitled to receive service, at least initially, without any arrangements being made to pay that delinquent bill.
- An applicant or customer can also have service denied or discontinued today if they fail to show that they did not live at the premises in question when a delinquent bill was incurred. Under the Proposed Rule, however, an applicant

would nevertheless be able to obtain service so long as the utility (rather than the customer) was unable to meet a new burden of proving where the applicant or customer lived at the time the unpaid service was rendered.

As outlined above, each of these new restrictions would serve to prevent utilities from denying service in circumstances where they are currently permitted to refuse and even discontinue service in accordance with long-standing Commission rules and utility practices. Notably, these current rules and practices that permit utilities to refuse or discontinue service under the circumstances described above have been carefully crafted over the years to reduce the kind of inappropriate or fraudulent access to utility service that drives up costs to all customers. And the need for such measures is just as compelling today. As discussed below, approximately 10% of the 30,000 to 40,000 requests for service that Laclede receives each year are made by applicants who give false identities, false social security numbers and other inaccurate or false information. And there are literally hundreds of other instances each year (that Laclede has at least been able to identify through investigations) where customers have tried to avoid payment for utility service by simply having someone else apply for service at their residence. Moreover, each year Laclede is able to identify hundreds of thousands of dollars in undisputed bad debts that customers have been able to avoid paying by staying out of the system for five years or more.

By diminishing the limited tools utilities currently have to collect their lawful charges in the face of this kind of fraudulent activity, the inevitable result of these new restrictions would be to increase the level of uncollectible expenses experienced by those utilities. At the same time, such restrictions would also increase the overall cost of

collecting these undisputed, past-due amounts. Moreover, far from ensuring that deserving customers receive utility service, such restrictions would only serve to encourage customers who have no intention of paying their utility bills to further game the system at the expense of those who do.

Such an outcome is clearly undesirable as a matter of sound regulatory policy. Moreover, such a result is also unlawful and directly contrary to the approach that the Commission has taken regarding other initiatives that could potentially affect utility revenues between rate cases. As discussed below, the courts have been very clear that if the Commission is to take some action that affects utility revenues outside the context of a general rate case proceeding, then it may only do so on a revenue neutral basis – i.e. it must allow the affected utilities to file tariffs to compensate for any adverse financial effects caused by such action. *See e.g.* cases discussed in ***State ex rel. Alma Telephone Company, et al. v. Public Service Commission***, 40 S.W.3d 381 (Mo.App. 2001).

This requirement for revenue neutrality between rate cases has also been recognized and enforced by the Commission itself on numerous occasions. Indeed, the Commission has repeatedly rejected utility tariff filings on the grounds that such tariffs would unlawfully allow the utility to increase its revenues between rate cases without a consideration of all relevant factors. *See* ***Re: UtiliCorp United Inc.'s Tariff Filed to Update the Rules and Regulations for Gas***, Case No. GT-2001-484; Order Rejecting Tariff (April 3, 2001) ***In the Matter of the Chapter 33 Tariff Filing of Miller Telephone Company***, Report and Order, Case No. TT-2001-257 (December 12, 2000); ***Re: Laclede Gas Company,*** Case No. GT-2003-0117, Report and Order (January 16, 2003).

Regardless of how one may view the merits of the Commission's approach to such matters, there is no legal basis for applying these principles differently based on whether the action is a rule that decreases revenues or a tariff filing that increases them. Accordingly, the Commission must either eliminate from its final Rule the key variances described above or immediately authorize utilities to file tariffs designed to make them whole for any adverse financial effects arising from the implementation of these provisions.

In addition to the key variances enumerated above, there are several other issues that bear mentioning. First, the Proposed Rule contains a new and unnecessary notice requirement, including a statement in Spanish, that must be provided when an applicant refuses to permit inspection, maintenance, replacement or meter reading of utility equipment and the utility believes that health or safety is at risk. Second, the Proposed Rule states that service must be provided as soon as possible on the day specified by the customer, but not later than three business days after that day. This provision should be amended to clarify that the deadline for commencing service only applies upon successful completion and acceptance of the prospective customer's application for service and to provide 5 business days to commence service. Third, the Proposed Rule would apparently permit a utility to deny service due to an unpaid delinquent bill only if the bill was for service rendered in Missouri. This impairment of a utility's ability to deny service for failure to pay utility charges accrued in other jurisdictions should be eliminated. Finally, the Proposed Rule would impose certain requirements regarding the payment of deposits when service is requested that are inconsistent with those set forth in Laclede's tariffs. The Proposed Rule should accordingly be revised to provide that such

tariff provisions will control until and unless they are changed in the legally prescribed manner.

The following discussion will provide further explanation of the ways in which the Proposed Rule varies from current discontinuance of service standards. For the Commission's convenience, Laclede has also attached to these comments proposed language for a denial of service rule that would resolve these deficiencies in the Proposed Rule. (*See* Attachment 1).[1]

B. Key Variances

1. The 5-Year Provision

The Commission's current discontinuance of service rule permits a utility to discontinue service to Customer B for failure to pay a bill that was in the name of Customer A at a location where Customer B received a substantial benefit and use of the service (e.g. Customer B lived at the premise where and when Customer A's bill became delinquent). *See* 4 CSR 240-13.050(2)(D). The obvious purpose of this provision is to prevent a customer from avoiding a lawful payment obligation (while simultaneously continuing to receive service) through the simple device of switching the utility account to the name of another family member, relative or roommate.

While the proposed Denial of Service Rule would likewise permit a utility to deny service to an applicant under these circumstances, unlike the Discontinuance of Service Rule, the Proposed Denial of Service Rule would also establish a five-year limit on the period of time for which an applicant could be held responsible for charges relating to

[1]In addition to addressing the inadequacies described above, the proposed rule language set forth in Attachment 1 would also resolve other discrepancies between the Proposed Denial of Service Rule and the Commission's Discontinuance Rule, including the former's failure to include provisions specifying that service may be denied because of an applicant's unauthorized interference, diversion or use of utility

service from which he or she received a benefit (*see* Subsection (2)(B)2 of the Proposed Rule). This artificial deadline will simply encourage customers who already tend toward non-payment of bills to further game the system, which could significantly drive up bad debt expenses, especially with customers who have a wide circle of family and friends.

As previously noted, this is not an inconsequential problem. During the course of a year, Laclede will receive upwards of 3,000 to 4,000 requests for service where the customer has given a false identity, used someone else's social security number, or provided other false information in an attempt to provide service. Moreover, in 2003 alone, Laclede was able to identify at least 550 instances in which customers sought to obtain or maintain service by simply switching an account into a relative's or friend's name. And those were just the instances that Laclede was actually able to detect after investigation. In addition, during 2003, Laclede identified nearly a million dollars in undisputed bad debts that customers applying for service had managed to avoid paying for 5 years or more by changing addresses, changing the names on accounts or otherwise evading any direct contact with Laclede's system.

In view of these considerations, it is clear that an artificial, 5-year limitation on how long customers can be held accountable for their lawful charges when applying for service would only exacerbate the level of bad debts that Laclede and its remaining customers must bear. Moreover, it would do so in a way that, in several respects, is even more advantageous for non-paying customers than a statute of limitations. A limitations statute prevents a creditor from actively pursuing collection of a debt that accrued at some time prior to the specific period set forth in the statute. This bar on pursuing

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service and failure to comply with the terms of a settlement agreement. *See* 4 CSR 240-13.050(1)(C) and (D).

collection of a debt, however, is subject to a number of exceptions that are not specifically recognized in the Proposed Rule. Moreover, even where a creditor is foreclosed from pursuing collection on a debt, the debt is not completely extinguished and the creditor may still use it defensively, such as to setoff a debt owed to the debtor and, of course, as a consideration in determining whether to do business with the debtor (or others seeking to obtain service on his behalf). Under the Commission's proposed 5-year provision, however, the utility would presumably be barred from acting in a similar manner when determining whether to provide service.

In addition, since there is no 5-year limit under the Discontinuance of Service Rule, it appears that the Proposed Denial of Service Rule would have the illogical result of requiring a utility to commence service to a customer who benefited substantially from an unpaid utility service, only to subsequently allow the utility to discontinue service to the customer for the very same reason. Even where the utility was successful in eventually discontinuing service for such a reason, however, it would nevertheless incur additional costs before it was able to do so. Among others, these would include the cost of labor and resources to activate, bill, notify and terminate service. They also include a likely increase in uncollectible expense during the minimum one to two month period during which service would be active. In fact, in a service territory like Laclede's, where a significant portion of the premises contain inside meters that are often difficult to access, the period over which additional bad debt expense might accrue could be significantly longer than one or two months. For all of these reasons, the 5-year limit provision should be eliminated from the Proposed Rule consistent with the revised Rule set forth in Attachment 1 hereto.

2. The Previous Occupant Remains an Occupant Provision

The Commission's current Discontinuance of Service Rule also permits a utility to discontinue service to an existing customer for failure to pay a delinquent bill where a previous occupant of the customer's premises remains an occupant. 4 CSR 240-13.050(2)(E). Once again, the purpose of such a provision is to prevent customers from maintaining service on a fraudulent basis by finding a friend, relative or other person who is willing to move into the customer's premises (or at least claim to have moved in) and then request that the service be placed in his or her name. The Proposed Denial of Service Rule, however, would apparently eliminate this circumstance as a reason for which service could be denied in that it is not listed under Section 13.035(1) of the Proposed Rule as one of the grounds for refusing service. As a result, the Proposed Rule would create yet another situation where a utility would be obligated to commence service even though an unpaid bill exists, only to be permitted to subsequently discontinue service based on that same unpaid bill. All of the operational inefficiencies and added costs described in connection with the 5-year limitation discussed above would also apply here, including an accompanying increase in bad debt expense.

In view of these considerations, the Commission should clarify that a utility may continue to deny service where an occupant with a delinquent bill continues to reside at the premises for which service is requested. Adoption of the revised Rule language in Attachment 1 would accomplish this clarification.

3. The Burden of Proof Provision

Although Section 13.035(2)(B) of the Proposed Rule allows the utility to deny service to an applicant who received substantial benefit and use of unpaid service, it

places the burden of proof to show that this has occurred on the *utility*. To meet this burden the utility must have reliable evidence that the applicant and the customer resided together where and when the bill was incurred. No special burden of this kind, however, is currently imposed when service is discontinued. Moreover, placing the burden on the utility makes no sense, since it is undeniably the customer, rather than the utility, who is in the best position to know and demonstrate where he or she lived prior to requesting service.

As a consequence, the primary effect of such a provision will be to increase costs, including bad debt expense, by making it far more difficult for utilities to hold customers accountable for utility charges associated with service that they used and received a benefit from. The Commission should accordingly eliminate this provision or, at a minimum, clarify that utilities will be able to demand proof of where the customer resided before activating service.[2]

C. Other Issues

In addition to these major departures from the Commission's existing Discontinuance of Service Rules, the Proposed Denial of Service Rule also adds other requirements that are not currently found in any Commission Rule applicable to gas corporations. First, the Proposed Rule contains a detailed notice requirement pertaining to an extremely rare situation where an applicant for service refuses to permit inspection, maintenance, replacement or meter reading of utility equipment and the utility believes that health and safety are at risk. In Laclede's experience, applicants seeking gas service

[2] The proposed Denial of Service Rule also imposes an obligation on the utility to show that it attempted to collect the unpaid bill from the original customer of record. (Subsection (2)(B)3). This is also a departure from the Discontinuance of Service Rule. Nor is there any explanation as to why it is necessary for the

generally desire safe conditions and therefore tend to be most cooperative at this stage. It is when Laclede seeks access to discontinue service that such access tends to be resisted. As a result, such a notice requirement is unnecessary.

Further, the notice also requires a statement in Spanish, which in and of itself is neither objectionable nor particularly expensive. However, the only thing the notice does is make the already obvious point in Spanish that if the applicant does not read English, they should find someone who does, so they can be informed that they should not refuse access to the gas company employee. If there is a problem where Spanish speaking people are not able to obtain gas service because the language barrier causes them to refuse access to gas company employees, Laclede is not aware of it.

Second, Section 13.035(3) of the Proposed Rule states that service must be provided as soon as possible on the day specified by the customer, but not later than three business days after that day. This rule should be amended to clarify that the deadline for commencing service only applies upon successful completion and acceptance of the prospective customer's application for service and to provide five business days to commence service.

Finally, Section 13.035(1)(B) of the Proposed Rule allows a utility to deny service if the customer fails to post a required deposit in accordance with the Commission's deposit rules, Rule 13.030. These deposit rules require a utility to offer the customer the means to pay the deposit in installments, unless the utility can show a likelihood that the customer does not intend to pay for the service. (Rule 13.035(4)(I)). However, based on Laclede's circumstances, its tariffs do not require it to offer deposit installments in some

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utility to assume an obligation for an act that it has every incentive to perform. Accordingly, this provision should also be eliminated by adopting the language set forth in Attachment 1.

instances. Until and unless these tariff provisions are changed in the manner prescribed by law, Laclede's rights to collect such deposits should and cannot be changed by rule.

D. Revenue Neutrality

As demonstrated above, several of the provisions of the Proposed Denial of Service Rule would have the effect of increasing utility expenses, especially uncollectible expenses, by diminishing the tools that utilities currently have to collect the revenues which utilities are lawfully entitled to. Laclede anticipates that the adverse financial effects of the Proposed Rule on its expenses and revenues would approximate $1,000,000 per year.

In recent cases, the Commission has been very clear that a regulatory action that tends to positively affect utility revenues, without taking into account all relevant factors, may not be considered outside the context of a rate case. For example, in its April 3, 2001, Order Rejecting Tariff in ***Re: UtiliCorp United, Inc.***, Case No. ET-2001-482, the Commission rejected UtiliCorp's tariff filing that was designed to synchronize late payment charges and other fees between its St. Joseph Light & Power and its Missouri Public Service divisions. The synchronization would have resulted in a temporary net increase in revenues to the utility of about $11,000, without changing any fixed charges. Even though the increased cost to customers appeared de minimus, the Commission determined that it was obligated to review and consider all relevant factors, and that it simply did not have the authority to engage in single issue ratemaking.

The Commission once again relied on this principle in rejecting Laclede's Experimental Low-Income Assistance Program in ***Re: Laclede Gas Company,*** Case No. GT-2003-0117. In its January 16, 2003 Report and Order in that case, the Commission

found that Laclede's program would result in higher earnings for the Company as a result of lower bad debt expenses. The Commission concluded that bad debt must be considered in the context of a rate case where all costs and reduction in costs may be considered. (Report and Order at 15). *See also:* ***Re: UtiliCorp United Inc.'s Tariff Filed to Update the Rules and Regulations for Gas***, Case No. GT-2001-484; Order Rejecting Tariff (April 3, 2001) ***In the Matter of the Chapter 33 Tariff Filing of Miller Telephone Company***, Report and Order, Case No. TT-2001-257 (December 12, 2000)

As previously noted, regardless of how one may view the merits of the Commission's approach to such matters, the Commission cannot lawfully choose to ignore or apply these principles depending on whether the action is a rule that decreases revenues or a tariff filing that increases them. Accordingly, the Commission must either eliminate from its final Rule the various provisions described above or immediately authorize utilities to file tariffs that will make them whole for any financial detriment caused by implementing the Proposed Rule.

Indeed, to do otherwise would violate not only the Commission's own long-standing approach to such issues, but also the principle of revenue neutrality that has been consistently recognized by Missouri courts. S*ee* ***State ex rel. Alma Telephone Company, et al. v. Public Service Commission***, 40 S.W.3d 381 (Mo.App. 2001)); ***State ex rel. Choctaw Telephone Company v. Public Service Commission***, Case No. CV193-66CC; ***State ex rel. Contel of Missouri, et al. v. Public Service Commission***, Cases Nos. CV190-190CC, CV190-191CC and CV190-193CC. Failure to take such action would also constitute an unlawful taking without just compensation in violation of the Missouri and United States Constitutions.

E. Conclusion

For all of the foregoing reasons, Laclede respectfully requests that the Commission either withdraw the Proposed Denial of Service Rule or modify it to be consistent with rule provision set forth in Attachment 1 to these comments.

Respectfully Submitted,

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Comments was served on the General Counsel of the Staff of the Missouri Public Service Commission and on the Office of the Public Counsel on this 31st day of December, 2003 by hand-delivery or by placing a copy of such Comments, postage prepaid, in the United States mail.

Draft of Proposed Rule on Denial of Service

4 CSR 240-13.035 Denial of Service

PURPOSE: This rule prescribes conditions under which utilities may refuse to commence service and establishes procedures to be followed by utilities to insure reasonable and uniform standards exist for the denial of service, consistent with rules for discontinuance of service and approved utility tariffs.

(1) A utility may refuse to commence service to an applicant for any of the following reasons:
- (A) Failure to pay an undisputed delinquent utility charge for services provided by that utility within the state of Missouri;
- (B) Failure to post a required deposit or guarantee in accordance with the utility's tariffs or 4 CSR 240-13.030;
- (C) Refusal to permit inspection, maintenance, replacement or meter reading of utility equipment;
- (D) Misrepresentation of identity;
- (E) Violation of any other rules of the utility approved by the commission which adversely affects the safety of the customer or other persons or the integrity of the utility's system;
- (F) Failure of a previous owner or occupant of the premises to pay a delinquent utility charge where the previous owner or occupant remains an occupant or user;
- (G) Unauthorized interference, diversion or use of the utility's service by the applicant, or by any occupant of the applicant's premise;
- (H) Failure to comply with terms of a settlement agreement;
- (I) As provided by state or federal law, including the utilities authorized tariffs.

(2) A utility may not refuse to commence service to an applicant for any of the following reasons:
- (A) The failure of the applicant to pay for merchandise, appliances or services not subject to commission jurisdiction as an integral part of the utility service provided by a utility;
- (B) The failure of the applicant to pay the bill of another customer, unless the applicant who is seeking service received substantial benefit and use of the service to that customer.
- (C) The failure of a previous owner or occupant of the premises to pay an unpaid or delinquent bill except where the previous occupant remains an occupant or user;

(3) The utility shall commence service in accordance with this rule as soon as reasonably possible, but in any event, for a premises with existing service, service shall commence within five (5) business days of the later of:
- (A) the future date which the applicant requests service to commence;
- (B) the date that the utility approves the applicant's application for service; or
- (C) the date on which all inspections required as a precondition of service have been satisfied.

(4) Notwithstanding any other provision of this rule, a utility may refuse to commence service temporarily for reasons of maintenance, health, safety or a state of emergency.

(5) Any provision of this rule may be waived or varied by the commission for good cause.