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April 24, 2001

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

**FILED<sup>2</sup>**

APR 24 2001

Missouri Public  
Service Commission

Re: Case No. GT-2001-329

Dear Judge Roberts:

Enclosed for filing please find the original and eight copies of the Response of Laclede Gas Company in Opposition to Staff's Motion.

Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

Thank you.

Sincerely,

NEWMAN, COMLEY & RUTH P.C.

By:

*Mark W. Comley by RKA*  
Mark W. Comley

MWC:ab

Enclosure

cc: Office of Public Counsel  
General Counsel's Office  
Michael C. Pendergast

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

APR 24 2001

Missouri Public  
Service Commission

In the Matter of Laclede Gas Company's )  
Tariff Filing to Implement an Experimental )  
Fixed Price Plan and Other Modifications )  
To its Gas Supply Incentive Plan

Case No. GT-2001-329

**RESPONSE OF LACLEDE GAS COMPANY  
IN OPPOSITION TO STAFF'S MOTION**

COMES NOW Laclede Gas Company ("Laclede" and "Company") and pursuant to the Commission's April 20, 2001, Order in the above-captioned case, submits its Response in Opposition to Staff's Motion for Order Permitting Use of Information. In support thereof, Laclede states as follows:

1. On or about April 18, 2001, the Staff of the Missouri Public Service Commission filed a Motion for Order Permitting Use of Information and for Expedited Treatment in the above-captioned case (hereinafter the "Motion"). In its Motion, the Staff requests that the Commission issue an Order authorizing it to use certain information pertaining to the cost of gas and volumes of gas experienced by nine Missouri natural gas utilities. According to Staff, the purpose of this information would be to allow the "Commission to efficiently and conveniently compare the performance of other companies to the performance of Laclede Gas Company." (Motion, p. 1).

2. Laclede respectfully submits that the Commission should deny Staff's Motion. As discussed more fully below, the Commission should deny Staff's Motion because it: (a) is based on inaccurate representations regarding the positions of other parties; (b) is untimely; (c) seeks to introduce information that is of highly questionable

relevance to this proceeding and more likely to obscure rather than illuminate the record in this case; and (d) would seriously compromise the due process rights of Laclede and potentially other utilities. In the alternative, should the Commission nevertheless be inclined to grant Staff's Motion notwithstanding these serious deficiencies, Laclede requests that the Staff be required to answer or make available to Laclede within the next ten days all of the information set forth in Attachment 1 to this Response. Laclede further requests that in such an event the Commission also adjust the procedural schedule as recommended below.

**Staff's Motion Should be Denied Because it is  
Based on Inaccurate and Incomplete Representations**

3. In support of its Motion to utilize the non-public gas cost information supplied by other utilities, Staff states at page 2 of its Motion that while all of these companies "have expressed some concern over the potential dissemination of their data, none of the local distributing companies have objected to Staff's use of this limited information on these restricted terms." (Motion, p.2). Staff's representation regarding the positions of other local distribution companies (LDC's), however, is obviously inaccurate. At least one of the LDCs alluded to by Staff has already moved to intervene in this proceeding and has filed a response requesting that the Commission deny Staff's Motion and the relief requested therein. (*See AmerenUE's Response to Staff's Motion Permitting Use of Information and For Expedited Treatment*, pp. 2-3.) It is also worth noting that the Staff made absolutely no effort prior to the filing of its Motion with the Commission to contact Laclede and advise the Company of its intent to file the Motion. Nor did Staff attempt to ascertain the Company's position or concerns regarding the propriety of Staff's Motion or its potential impact on the course of this proceeding.

Accordingly, when Staff states at page 2 of its Motion that it "advised counsel for each of the local distributing companies of its intention to file this motion," that courtesy was not extended to the one LDC – Laclede – that stands to be most profoundly affected by Staff's Motion. In view of these considerations, any suggestion by Staff that its Motion is appropriate because no Missouri LDC has found the relief requested therein to be objectionable is both an incomplete and inaccurate representation of the utilities' true positions.

**Staff's Motion Should Be Denied Because it is Untimely**

4. Staff's Motion should also be denied because of its untimely nature. It has been more than five months since this proceeding was initially commenced by Laclede's tariff filing. And yet Staff has waited until the virtual eve of its testimony filing in this case to advise the Commission and the other parties to this proceeding that it desires to introduce and make an issue of the gas cost experience of every other investor-owned LDC in the state. Notably, this is the same Staff that has repeatedly advised the Commission over the past several months that the most recent ACA reviews of these same utilities, and these same gas costs, cannot possibly be completed by the end of this year as initially directed by the Commission. *See e.g. Staff's Notifications in Re: Missouri Gas Energy, Case No. GR-2001-382; Re: St. Joseph Light and Power Company, Case No. GR-2000-574.* Apparently, in every other context, the Staff believes that the complexity of the audit process, the amount of data to be reviewed, and the fact that the ACA periods have not even ended, makes it impossible to complete most of the ACA proceedings until sometime next year.

5. With its Motion in this case, however, the Staff would now have the Commission believe that such data can suddenly be used to draw meaningful conclusions regarding each LDC's relative procurement performance months in advance of when Staff intends to complete its audit of such data. Moreover, the Staff would also have the Commission conclude that in the space of a month or so Laclede will have a meaningful opportunity to evaluate such data, conduct any discovery of the gas supply and transportation contracts, accounting records, procurement plans, and other source documentation underlying the data, and prepare and present the results of its analysis of these nine LDCs procurement efforts. It is unlikely that such a gargantuan task could have been performed by Laclede, or any other LDC for that matter, even if Staff had notified the Company of its plans at the commencement of this proceeding. By Staff's own reckoning and representations to this Commission in the underlying ACA proceedings, however, such an undertaking is plainly impossible in the limited time remaining in this proceeding. The Staff should not be rewarded and Laclede should not be penalized for Staff's failure to divulge its intentions to use such data in sufficient time to permit a meaningful evaluation and analysis of such data or the source information underlying it. Staff's Motion should accordingly be denied.

**Staff's Motion Should be Denied Because it is Highly Unlikely  
To Lead to any Evidence of Relevance to the Issues in this Case**

6. Staff's Motion should also be denied because it is highly unlikely to produce any evidence of relevance to the issues under consideration in this case. See Rule 56.01 (b) of the Missouri Rule of Civil Procedures. To the contrary, the information which Staff seeks to introduce in this proceeding is far more likely to obscure rather than illuminate the record in this case.

7. According to Staff, the information which it seeks to use will be employed for the purpose of allowing the "Commission to efficiently and conveniently compare the performance of other companies to the performance of Laclede Gas Company." (Staff's Motion, p. 1). As AmerenUE has noted in its Response in Opposition to Staff's Motion, however, it is virtually impossible to draw any meaningful conclusions regarding the relative performance of LDCs from such broad-based comparisons. Simply put, each LDC is unique in terms of the mix of the interstate and intrastate pipelines which serve it, the location of the production fields from which its gas supplies are sourced, its relative mix of storage and flowing supplies, the tariff limitations imposed on the LDC in connection with its use of third party storage facilities and transportation services; the character and magnitude of the traditional customer demands that must be met by the LDC, and the relative impact of differing weather variations on the pattern, amount and cost of each LDC's gas supplies and transportation services. Indeed, in some cases these differences are so fundamental that they even transcend entire industries, as evidenced by the number of combination gas and electric utilities in Missouri that must procure gas not only to serve their LDC customers but also to fuel the generation needed to serve their electric customers.

8. Given these differences, it is highly unlikely that simple, broad-based industry comparisons of gas costs and volumes will yield any meaningful insight into the relative performance of Laclede and other LDCs. And this very point has been repeatedly recognized by the Commission itself in other cases where utilities or the Staff have asked it to use broad-based, industry comparisons to gauge the performance of a particular company. For example, in *Staff of Mo. Public Service Commission v.*

*Southwestern Bell Telephone Company*, 29 Mo.P.S.C. (N.S.) 607 (1989), the Commission explicitly rejected the use of both a nationwide and a statewide comparison of telephone company operating results that had been offered by Southwestern Bell and the Staff, respectively, to gauge the management efficiency of that company. In doing so, the Commission discussed the flaws inherent in such comparisons:

The Commission has addressed the value of comparisons with industry averages or other utilities in other decisions. Re: *Union Electric Co.*, 27 Mo.P.S.C. NS 183, 66 PUR 4<sup>th</sup> 202 (1985); Re: *Kansas City Power & Light Co.*, 28 Mo.P.S.C. NS 228, 281 (1986). The Commission finds industry comparisons or averages to be of little value in setting an individual company's revenue requirement. Each company is different and each company must be examined based upon its own costs, revenues and investments. The comparisons used by SWB do not indicate its management efficiency but only its general ranking with other RBOC's, which may or may not operate under similar circumstances. Staff's comparisons with Missouri LECs suffer from the same flaws.

(*Id.* at 654-55).

9. The same considerations which prevented the Commission from relying on broad-based industry comparisons to assess Southwestern Bell's performance in the above-referenced case are equally applicable here. Indeed, the differences between LDCs, which involve not only differences in the LDCs themselves but also differences in their upstream gas supply and transportation resources, would appear to be even more significant than the variations that may exist from one telephone company to the next. Under such circumstances, it is highly unlikely that the information sought by Staff will produce information of value or relevance to this proceeding. Staff's Motion should accordingly be denied.

**Staff's Motion Should be Denied Because Granting the Relief  
Requested therein would Deprive Laclede of its Due Process Rights**

10. It is axiomatic under Missouri law that due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. *State ex rel Fischer v. Public Service Commission*, 645 S.W.2d 39, 43 (1983) citing *Tonken v. Jackson County Merit System Commission*, 599 S.W.2d 25, 32-33 (Mo.App. 1980). Among others things, this entails that parties be afforded a reasonable opportunity to investigate in advance of the hearing, through discovery or otherwise, the basis for the opinions, conclusions and other evidence that is to be offered by another party at the hearing. *Ellis v. Union Elec. Co.*, 729 S.W.2d 71, 74-76 (Mo.App. 1987). It also requires that parties be given the right to cross-examine witnesses regarding the reliability, accuracy and completeness of the evidence presented at such a hearing, as well as a reasonable opportunity to prepare and present evidence themselves and to rebut the evidence of other parties. See *State ex rel. Brown v. City of O'Fallon*, 728 S.W.2d 595, 596-97 (Mo. App. 1987); *State ex rel. Kansas City Public Service Comm'n v. Waltner*, 169 S.W.2d 697, 703 (Mo. 1943); see also *Rohmbach v. Rohmbach*, 867 S.W.2d 500 (Mo. 1993); §536.070(2) (RSMo. 2000).

11. In direct violation of these principles, the Staff seeks to introduce information in this proceeding that has been prepared and supplied to Staff by entities that are not parties to this proceeding. In the absence of extraordinary measures, Laclede will presumably have no opportunity to cross-examine the individuals who prepared and submitted such information to Staff in order to test the reliability, accuracy, and completeness of such information. Nor will Laclede have any meaningful opportunity to



conduct discovery of these non-party entities in order to assess the actual relevance of such information to the issues in this proceeding and to prepare the kind of detailed analysis that might be required to evaluate and potentially rebut such evidence. Instead, *Laclede*, the Commission and the other parties to this case will have to simply accept such information as accurate, complete and relevant without any means available for making certain that such is actually the case. Such a result is wholly inconsistent with the fundamental requirements of due process and warrants denial of Staff's Motion. Indeed, it creates the very kind of "trial lawyer's nightmare" that the court determined warranted an entirely new trial in *Ellis v. Union Elec. Co.*, *supra*, at 75. For all of these reasons, Staff's Motion should be denied.

#### **Laclede's Alternative Request For Relief**

12. In the event the Commission nevertheless decides to grant Staff's Motion, despite the numerous deficiencies described above, Laclede requests that the Commission grant such authorization subject to terms that will give Laclede at least some opportunity to evaluate the accuracy and completeness of such information and its relevance to this proceeding. Specifically, Laclede requests that the Commission direct the Staff to provide or make available to Laclede within ten days, and for each LDC, all of the data and information that is requested in Attachment 1 to this Response. Such information represents some, but not all, of the information that Staff itself has requested from Laclede in this proceeding in order to assess the Company's performance under its Gas Supply Incentive Plan ("GSIP"). Accordingly, Laclede assumes that Staff would not question the relevance of such information requests. Consistent with the period of time during which the GSIP has operated, such information has been requested for the past

five years so that a full comparison of results and relative performance over the entire length of the program can be made. In addition, Attachment 1 contains a number of additional questions that Laclede has added in an effort to evaluate, to at least some degree, the differences between it and the other Missouri LDCs and how those differences may account for variations in gas costs. Laclede hopes that Staff will have much of this information in its possession. If it does not, however, Laclede requests that Staff be immediately instructed to request such information from the respective LDCs.


13. Finally, in the event the Commission grants Staff's Motion, the Company requests that it be given at least an additional three weeks, or until June 7, 2001, to file its surrebuttal testimony so that it will have some time to conduct a meaningful evaluation of such information and prepare its testimony. Laclede would recommend that the date for filing the issue list and statements of position also be moved to June 11, 2001 and June 13, 2001, respectively. Given the magnitude and complexity of the information that the Company would have to review in order to conduct its analysis of the data Staff wishes to use, Laclede believes these procedural modifications are the absolute minimum necessary.

14. Laclede wishes to emphasize that it does not favor this alternative request or believe that it will adequately address all of the deficiencies described above. The Company remains convinced that Staff's Motion should be rejected outright for all of the reasons discussed herein. When all is said and done, Staff's Motion seeks to put Laclede and potentially other parties to a tremendous burden so that it can attempt to introduce information of very dubious value to this proceeding. Moreover, Staff has done so at a stage in this proceeding where its actions threaten to delay the agreed upon course of this

case, as evidenced by the fact that even now new parties are seeking to intervene in this proceeding as a result of Staff's actions. In view of all of these considerations, Staff's Motion should be denied.

**WHEREFORE**, for the foregoing reasons, Laclede respectfully requests that the Commission issue an order denying Staff's Motion for Order Permitting Use of Information or, in the alternative, directing Staff to provide within ten days all of the information requested in Attachment 1 and adopting the modifications to the procedural schedule recommended herein.

Respectfully submitted,

  
Michael C. Pendergast #31763 by PCH

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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 in Opposition to Staff's Motion 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 24 day of April, 2001.

Michael C. Pendergast by RKA

Attachment 1

Case No. GT-2001-329  
First Set of Data Requests from Laclede Gas Company  
to the Staff of the Missouri Public Service Commission

1. For each of the Missouri natural gas utilities referenced in paragraph 1 of Staff's April 18, 2001 Motion for Order Permitting Use of Information and For Expedited Treatment in Case No. GT-2001-329, please provide or make available within the next ten days the following information for each of the five most recent ACA periods for these utilities, including the ACA period ending in 2001:
  - (a) copies of all correspondence (including e-mails) between each utility and all other interstate and intrastate pipelines regarding new pipeline services including drafts and final contracts;
  - (b) a listing by name and purpose of all electronic journals, diaries, memoranda, spreadsheets and reports routinely used by the gas purchasing function at each utility;
  - (c) copies of any studies performed by each utility, or for the utility by a third person, that analyzed the mix of pipeline services, changes in transportation and storage contracts;
  - (d) copies of all requests for proposals issued by each utility that related to the procurement of natural gas supply, transportation, and storage services;
  - (e) copies of all requests for proposals issued by each utility for risk management services;
  - (f) copies of all requests for proposals and any other contract with suppliers, marketers, producers, etc. that show that the utility has requested such pricing alternatives as: fixed prices, ceilings, costless collars, and other variations to index pricing, including copies of all supplier or potential supplier responses to these requests and all documentation relating to any existing hedging program;
  - (g) a schedule showing all cost information for each purchase of natural gas supplies made by each of the utilities;
  - (h) an explanation of the process whereby each utility ensures that system supply customers that are subject to the PGA receive the lowest gas costs as compared to off-system sales customers;
  - (i) a schedule showing, on a monthly basis, the level of off-system sales profits realized by each utility;

- (j) a complete description of how each utility ensures that it is nominating and dispatching the lowest cost gas for the system supply customer;
  - (k) copies of all documentation which establishes that the utility considers variable transportation costs in its analysis to order the lowest cost supplies for its system supply customers;
  - (l) a copy of all procedures each utility uses to nominate gas;
  - (m) copies of each utility's gas procurement plans;
  - (n) copies of each utility's internal audit reports and analyses of its gas supply function;
  - (o) copies of each utility's external audit work papers that related to its gas supply function;
  - (p) copies of all interstate and intrastate transportation agreements that were in effect for each utility during the subject ACA periods;
  - (q) copies of all gas supply contracts that were in effect for each utility during the subject ACA periods;
  - (r) copies of all analyses, including provision-by-provision analyses of significant changes and improvements in each utility's interstate pipeline contracts, intrastate pipeline contracts, and gas supply contracts that have changed during the subject ACA periods;
  - (s) copies of all firm supply nomination confirmations for each utility;
  - (t) copies of all spot supply nomination documents for each utility;
  - (u) copies of all proposals received from suppliers for each utility; and
  - (v) copies of all analyses performed by each utility that identifies actual purchases by producing region and type of supply (baseload, swing, combination, spot, etc.).
2. For each of the Missouri natural gas utilities referenced in paragraph 1 of Staff's April 18, 2001 Motion for Order Permitting Use of Information and For Expedited Treatment in Case No. GT-2001-329, please provide:
- (a) a full and complete description of the natural gas storage capabilities of each utility, including: (i) the total volume of natural gas that each utility is entitled to store on an annual basis pursuant to any contract with a third party; (ii) the specific contractual terms and conditions under which such

volumes may be stored, including rates for storing the gas and any and all contractual limitations on injections and withdrawals; (iii) the location of the storage facilities subject to such contractual storage rights, together with a listing of any interstate or intrastate pipeline facilities that connect with such storage facilities; (iv) the annual and monthly volume of gas delivered into and transported from each storage facility through each of the respective interstate or intrastate pipelines listed in the preceding subpart (iii); (v) the location, physical capabilities and operational constraints of any storage facilities owned or operated by the utility; (vi) a schedule showing the utility's actual monthly injections into and withdrawals from all such storage facilities over the past five ACA periods;

- (b) a full and complete description of the interstate and intrastate pipeline facilities used by each utility to transport to or receive at its city gates the gas supplies utilized to serve the requirements of its Missouri utility customers, including: (i) the specific contractual terms and conditions under which gas may be transported on such pipelines, including a full and complete breakdown of what portion of the transportation service taken by the utility is firm or interruptible; (ii) the maximum authorized rates that the pipeline may charge for such service pursuant to its FERC approved tariff's; (iii) the rates actually paid for transportation service by the utility, including a quantification of the total annual dollar value of any discounts negotiated by the utility from such maximum rates for each of the five most recent ACA periods; (iv) the monthly and annual volumes transported by or on behalf of the utility through each pipeline facility for each of the five most recent ACA periods; (v) the production areas that can be accessed by each interstate and intrastate pipeline facility utilized by the utility; (vi) the specific terms and conditions governing the release of pipeline capacity held by the utility; (vii) the total volume of capacity released by the utility on each pipeline; (viii) the total amount received by the utility for each release of pipeline capacity for each of the five most recent ACA periods;
- (c) a full and complete description of the gas supply contracts held by each utility, including: (i) the specific contractual terms and conditions of each contract; (ii) the monthly and annual volumes that may be purchased under each contract; (iii) the commodity and demand charges authorized by each contract; (iv) the total annual and monthly volumes purchased by the utility for the five most recent ACA periods with a quantification of what portion of those volumes were baseload, swing, combination and/or peaking volumes;
- (d) a full and complete description of the load characteristics and customer demand requirements of each utility, including: (i) the annual and monthly sales volumes experienced by each utility during each of its five most

recent ACA periods; (ii) the highest daily sales volume experienced by each utility during the period covered by its five most recent ACA periods; (iii) the annual customer load factor experienced by each utility during its five most recent ACA periods; (iv) the relative percentage of sales volumes made to residential versus non-residential customers; (v) a description and copies of any Missouri Commission approved curtailment, unauthorized use, transportation, standby or other tariffs that may impact the volume of each utility's customer gas demands during certain periods; (vi) a full and complete description of whether the LDC or any affiliate of the LDC also purchases gas supplies to fuel electric generation and, if so, a full explanation of any interrelationship between, or coordination of, the purchases made for gas and electric operations; and

- (e) a full and complete description of the relative impact of weather variations on the pattern, amount and cost of each utility's purchases or gas supplies and transportation services. Also please include: (i) the average heating degree days experienced by each utility on a monthly and annual basis for each of its five most recent ACA periods; (ii) the highest heating degree days experienced by each utility on any single day during the past five years.

3. For each of the Missouri natural gas utilities referenced in paragraph 1 of Staff's April 18, 2001 Motion for Order Permitting Use of Information and For Expedited Treatment in Case No. GT-2001-329, please provide within the next ten days copies of all Staff reports, memoranda, testimony, correspondence, internal and external e-mails, and any other document written by or on behalf of the Staff that addresses any matter pertaining to such utility's management and utilization of its gas supply, transportation and storage assets for each of the utility's five most recent ACA periods.