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May 2, 2001

FILED³

MAY - 2 2001 *mb*

Missouri Public
Service Commission

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

Re: Case No. GT-2001-329

Dear Judge Roberts:

Enclosed for filing please find the original and eight copies of a Renewed Request of Laclede Gas Company for Order Directing Provision and Authorizing Use of Certain Information and Modification of Procedural Schedule.

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
Mark W. Comley

MWC:ab

Enclosure

cc: Hon. Vicky Ruth
Doug Micheel, Office of Public Counsel
Tim Schwarz, General Counsel's Office
Michael C. Pendergast

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED³

MAY - 2 2001 *W*

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

Missouri Public
Service Commission

**RENEWED REQUEST OF LACLEDE GAS COMPANY FOR
ORDER DIRECTING PROVISION AND AUTHORIZING USE OF CERTAIN
INFORMATION AND MODIFICATION OF PROCEDURAL SCHEDULE**

COMES NOW Laclede Gas Company ("Laclede" or "Company") and for its
Renewed Request for Order Directing Provision and Authorizing Use of Certain
Information and Modification of Procedural Schedule, 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 requested 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. On April 24, 2001, Laclede filed its Response in Opposition to Staff's
Motion in which it asserted that Staff's Motion should be denied. Among other things,
Laclede argued that such a result was appropriate because Staff's Motion: (a) was
untimely; (b) sought 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 (c) would seriously compromise the due process rights of Laclede and potentially other utilities. In the alternative, Laclede requested 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 the Response. Laclede also requested that the Commission modify the procedural schedule in the event it was inclined to grant Staff's Motion.

3. Since Laclede filed its April 24, 2001 Response, the already limited amount of time previously scheduled between the filing dates for rebuttal and surrebuttal testimony has been further reduced. As a consequence, the need for an expeditious resolution of Laclede's alternative request for relief -- a request that is critical to Laclede's ability to prepare its surrebuttal testimony in the event Staff's Motion is granted -- has become even more pressing. As Laclede pointed out in its April 24, 2001 Response, the Commission has repeatedly recognized that broad-based industry comparisons of the kind that Staff proposes to make in this case are of very little, if any, value in gauging the relative performance of individual utilities given the differing circumstances under which such utilities operate. *See, e.g., Staff of Mo. Public Service Commission v. Southwestern Bell Telephone Company*, 29 Mo.P.S.C. (N.S.) 607 (1989); *Re: Union Electric Co.*, 27 Mo.P.S.C. NS 183, 66 PUR 4th 202 (1985); *Re: Kansas City Power & Light Co.*, 28 Mo.P.S.C. NS 228, 281 (1986). This is particularly true in the case of natural gas local distribution companies ("LDCs").¹

¹As noted by both Laclede and AmerenUE in their respective responses to Staff's Motion, there are a variety of differences that make each LDC unique and that can profoundly affect its relative gas cost performance over time. These include differences in the mix of the interstate and intrastate pipelines which serve the LDC, 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 how they have changed over time, and the relative impact of differing weather variations on the pattern, amount and cost of each LDC's gas supplies and transportation services.

4. Nevertheless, in the event the Commission is inclined to permit such comparisons to be introduced, due process, as well as the Commission's interest in ensuring that it has available to it all the information necessary to properly evaluate such comparisons, requires that Laclede be given a meaningful opportunity to investigate the accuracy, relevance and completeness of such information, and to prepare surrebuttal testimony addressing each of these issues. See *Ellis v. Union Elec. Co.*, 729 S.W.2d 71, 74-76 (Mo.App. 1987); *State ex rel. Brown v. City of O'Fallon*, 728 S.W.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). At a minimum, this requires that Laclede be given access to the kind of information that the Commission itself has traditionally recognized as highly relevant to the issue of whether industry comparisons can be relied upon; namely, information pertaining to the similarities and differences in the circumstances under which each LDC operates.

5. To that end, Laclede renews its requests that the Commission direct the Staff to provide or make available to Laclede, within ten days from the date Laclede filed its April 24, 2001 Response in this case, all of the data and information set forth in Attachment 1 to that 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 as they apply to the other LDCs referenced in Staff's Motion. 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 evaluation can be made of how differences in operating characteristics may have influenced each LDCs results and relative performance over the entire length of the program. In addition, Attachment 1 contains a number of additional questions that Laclede believes are essential to any meaningful effort to evaluate the differences between it and 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 and make it available to Laclede at the earliest possible opportunity.

6. In the event the Commission grants Staff's Motion, the Company also requests that it be given until at least 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. Laclede believes these extensions are absolutely essential 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, the fact that the Company will, in all likelihood, have to hire outside consultants to review such information given its highly confidential nature, and the delay that has already occurred in the filing of Staff's rebuttal testimony.

7. Laclede wishes to emphasize that it remains opposed to Staff's Motion. On various occasions in the past, indeed in Laclede's last GSIP proceeding, Staff refused to provide Laclede with information regarding discrete aspects of another utility's

activities that may have been of value to the Company in litigating a particular issue on the grounds that Staff was constrained by statute from making such information available. (See Attachment A, Staff Response to Data Requests Nos. 38 and 41). It is, to say the least, troubling that Staff is now seeking to use its special access to, and knowledge of, such information to gain a litigation advantage that is available to no other party to Commission proceedings. In effect, such an approach will provide the Staff with a unique and unilateral ability to pick and choose from a universe of non-public information that is available only to it and use for litigation purposes only that information, or portions thereof, that Staff deems to be helpful to its position on a particular issue. At the same time, information that might be damaging to Staff's position or helpful to another party's position will never be made available because no other party will be aware of it. Laclede submits that such a use of Staff's special access to non-public information is fundamentally unfair to other parties and is likely to result in a far less balanced presentation of evidence to the Commission.

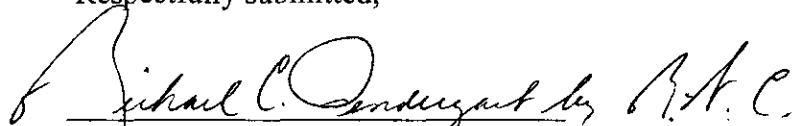
8. Since any further material delay in obtaining access to the information requested by the Company will make it impossible to conduct any meaningful evaluation of such information, Laclede respectfully requests that the Commission adopt the alternative recommendations set forth herein in the event, and at such time, as it issues an order granting Staff's Motion.

9. Finally, in the event the Commission is inclined to grant the applications to intervene that have recently been filed by other parties in this case, it may wish to consider whether the one day currently scheduled for the hearing in this case will be sufficient to accommodate the additional witnesses, cross-examination, opening

statements and other time requirements that will be imposed by the presence of additional parties.

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 the information requested in Attachment 1 to Laclede's April 24, 2001 Response and adopting the modifications to the procedural schedule recommended herein.

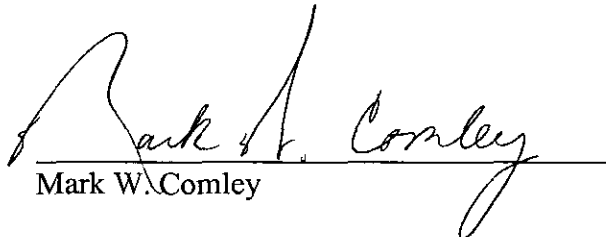
Respectfully submitted,



Michael C. Pendergast #31763
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Assistant Vice President and
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Renewed Request 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 2nd day of May, 2001.


Mark W. Comley



Attachment "A"

Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

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Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

June 15, 1999

Thomas M. Byrne
Associate Counsel
Laclede Gas Company
720 Olive Street
St. Louis, Missouri 63101


By facsimile and mail

Case No. GT-99-303

Dear Tom:

Please find enclosed Staff's Responses to Laclede Data Requests Nos. 1-43. These were prepared by Mike Wallis of the Commission's Staff. If you should have any questions or comments, please do not hesitate to contact me. Thank you.

Sincerely yours,


Bruce H. Bates
Assistant General Counsel

Attachments

BHB/

- Q. Please provide all studies, analysis, and related documentation used by Staff in the development of the RFP process for each utility utilizing such process in the State of Missouri.
- A. To Staff's recollection it has developed no such RFP process, but see Staff testimony in ANG Case No. GR-90-38.

Data Request No. 40

- Q. Regarding each case in which Staff has been involved in the development of the RFP process, please provide details of all recommendations by Staff which helped develop the structure of a gas procurement RFP.
- A. Please see response to Data Request 39.

Data Request No. 41

- Q. Please provide all pricing information including both the requests and responses pursuant to any gas procurement RFP utilized by a Missouri utility since 1996. You may omit identification of both the requestor and the respondent in order to limit the potential disclosure of proprietary information.
- A. Staff has objected to this data request in that it asks for highly confidential information.

Data Request No. 42

- Q. Please identify the first time Staff recommended the use of fixed price contracts, collars or any other means of pricing firm gas as an alternative to index pricing.
- A. In a 1992 United Cities rate case Staff witness Sommerer proposed limiting the newly proposed Order 636 PGA tariffs to a specified maximum price based on concerns about high potential prices. In the series of ACA recommendations following the winter of 1996-1997, the Staff recommended consideration of ways to mitigate index price volatility.

Data Request No. 43

- Q. Please list all instances in which Staff has recommended that any Missouri utility consider purchasing gas at a fixed price. Please include copies of studies, analyses, workpapers and all supporting documentation used by Staff to support its recommendation regarding the use of fixed price contracts in each case.
- A. Staff has not recommended that any LDC engage in a fixed price contract purchasing strategy. Also see Data Request 42 above.

- Q. With respect to the Outline of MOPSC Staff Gas Supply Incentive Plan, Section IV.B, what is meant by Staff's "current discovery rights"?
- A. Staff is merely referring to its normal discovery rights which it can and does exercise in any proceeding before the Commission.

Data Request No. 33

- Q. With respect to the Outline of MOPSC Staff Gas Supply Incentive Plan, does Section I.B.2.a.(4) preclude the introduction of any new pipeline supplier if the total delivered cost of gas is greater than historical costs? Please explain.
- A. The Staff is still reviewing the operation of this provision. The provision is intended to preclude the use of an uneconomic transaction that does not reduce city-gate delivered price.

Data Request No. 34

- Q. With respect to the Outline of MOPSC Staff Gas Supply Incentive Plan, Section I.B.2.a.(4), what happens if a discounted transportation rate is used rather than a "FERC/PSC approved rate"?
- A. Please see response to Data Requests 18, 19, and 31.

Data Request No. 35

- Q. With respect to the Outline of MOPSC Staff Gas Supply Incentive Plan, Section I.B.2., are there any carrying costs associated with any over or under recovered costs?
- A. No.

Data Request No. 36

- Q. Does the Staff currently recommend the use of requests for proposals (RFPs) in the gas procurement process for Missouri utilities? If so, when did the Staff first advocate the use of RFP's in the gas procurement process for a Missouri utility?
- A. Yes. Staff is unsure of the date when it first recommended to an LDC the use of an RFP process but believes one of the earliest references is in Associated Natural Gas (ANG) Case No. GR-90-38. Associated Natural Gas Company, 3 MPSC 3d 495 (1995).

Data Request No. 37

- Q. For each utility in the State of Missouri, please list the docket numbers containing recommendations of any kind by Staff regarding the using of RFPs.
- A. The requested information on PGA/ACA Cases is available in the Commission's records room on the 5th floor of the Truman Building. A specific case Staff is aware of involves ANG Case No. GR-90-38.

Data Request No. 38

- Q. Please list all utilities in the State of Missouri which have used or are using RFP's in the gas procurement process. For each utility, describe the process through its evolution, including the type of contract structures being requested, the amount of supply being purchased pursuant to the RFP process and the period of time such process has been in use.
- A. Staff has objected to Laclede Data Request No. 38 because this data request calls for the provision of proprietary detail, which is protected by statute from disclosure.

Data Request No. 39