

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
May 3, 2001**

CASE NO: GT-2001-329

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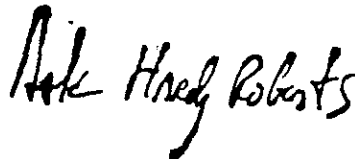
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 3rd
day of May, 2001.

In the matter of Laclede Gas Company's Tariff	)	
Filing to Implement an Experimental Fixed	)	<u>Case No. GT-2001-329</u>
Price Plan and Other Modifications to Its Gas	)	<u>Tariff No. 200100572</u>
Supply Incentive Plan.	)	

ORDER PERMITTING USE OF CERTAIN INFORMATION AND
ORDER GRANTING INTERVENTION AND REVISING
PROCEDURAL SCHEDULE

On April 18, 2001, the Staff of the Missouri Public Service Commission (Staff) filed its Motion for Order Permitting Use of Information and for Expedited Treatment. Staff requested that the Commission authorize it to use certain information of other Missouri local distribution companies (LDCs) in this case. Staff indicates that 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." Staff stated that it has advised counsel for the local distribution companies (LDCs) of its intent to file this motion, and that while the companies expressed concern over the potential dissemination of their data, none of the companies objected to Staff's use of this limited information on these restricted terms. Staff requested that the parties respond to its motion no later than

April 23, 2001, as the parties would need to know whether the motion was granted before rebuttal testimony is filed on April 30, 2001.¹

By order issued April 20, 2001, the Commission directed that responses to Staff's motion be filed no later than April 24, 2001.

On April 24, 2001, Laclede Gas Company (Laclede) filed its Response in Opposition to Staff's Motion. Laclede suggests that Staff's representation regarding the position of other LDCs is inaccurate in that at least one LDC has already moved to intervene and has filed a response requesting that the Commission deny Staff's motion. Laclede also argues that the motion is untimely in it was filed more than five months after Laclede's tariff filing, and on the virtual eve of the deadline for filing of rebuttal testimony. Laclede contends that in the time remaining, it will not 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.

Laclede argues that the information Staff seeks to introduce is more likely to obscure rather than illuminate the record, and that it is virtually impossible to draw any meaningful conclusions regarding the relative performance of LDCs from such broad-based comparisons. Furthermore, Laclede alleges that granting the relief requested by Staff would deprive Laclede of its due process rights. According to Laclede, Staff seeks to introduce information in this proceeding that has been prepared

¹ On April 26, 2001, the Commission issued an order extending the deadline to file rebuttal testimony from April 30, 2001, to May 3, 2001. By order issued May 2, 2001, the Commission extended the deadline to May 4, 2001.

and supplied to Staff by entities that are not parties to this proceeding. Laclede states that in the absence of extraordinary measures, it will 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 nonparty 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.

Laclede states that in the event the Commission nevertheless decides to grant Staff's motion, the company requests that the Commission direct Staff to provide or make available to Laclede, within ten days, all of the data and information set forth in Attachment 1 to Laclede's Response. Laclede states that such information represents some of the information that Staff itself has requested from Laclede in this proceeding in order to assess the company's performance under its GSIP. In addition, Laclede asks that it be given until at least June 7, 2001, to file its surrebuttal testimony. The company also suggests that the dates for filing the issues list and statements of position also be moved to June 11, 2001, and June 13, 2001, respectively.

On April 23, Union Electric Company, d/b/a AmerenUE (AmerenUE), filed its response in opposition to Staff's motion, arguing that the operational characteristics of each company are too different for a comparison to be meaningful. For example, Laclede acquires most of its gas supplies utilizing Mississippi River Transmission Corporation's interstate pipeline, which extends from receipt points in and around the

Gulf Coast to delivery points in the St. Louis area. AmerenUE utilizes Panhandle Eastern Pipe Line Company, which accesses gas in and around the Hugoton Basin in Kansas as the source for the majority of its gas supplies. AmerenUE states that comparison between gas supplies accessed from these very different sources is an apples-to-oranges comparison. Moreover, differences in the load profiles, population densities, and locations of customers served by each LDC further diminish the value of any direct comparison. AmerenUE is also concerned about maintaining the confidentiality of its gas supply information, particularly from other LDCs that are, in some cases, its competitors in purchasing gas supplies from the same suppliers. Even if discount information and other contract terms are treated as highly confidential, they will still be available to Laclede's attorneys and, potentially, other LDCs, who may review gas supply and pipeline transportation contracts and have other types of involvement in the negotiation of gas supply arrangements.

On April 24, 2001, Fidelity Natural Gas, Inc. (Fidelity), Atmos Energy Corporation (Atmos), and Southern Missouri Gas Company (SMGC) filed their joint response in opposition to Staff's motion, stating that they concur in, and adopt by reference, the statements and objections to Staff's motion as contained in AmerenUE's response.

Also on April 24, 2001, Missouri Gas Energy (MGE), and UtiliCorp United Inc. (UtiliCorp), d/b/a Missouri Public Service and d/b/a St. Joseph Light & Power, filed motions to intervene and objections to Staff's motion. MGE and UtiliCorp argue that the operational characteristics among the Missouri LDCs differ enough to make any Staff cost comparison between Missouri natural gas utilities for gas supply essentially meaningless. In addition, MGE and UtiliCorp are concerned

that the parties cannot be provided with an adequate opportunity to assess and respond to any comparison created by the Staff. Although Staff has suggested that it will treat the LDC information as highly confidential and subject to the protective order adopted in this case, this still creates an unmanageable web of protection where the parties are denied a meaningful opportunity to be heard as to the information viewed by the Commission.

On April 25, 2001, the Staff filed its Reply to LDCs' Responses to Staff's Motion for Order Permitting Use of Information and for Expedited Treatment. Staff indicates that it supports the intervention of the moving parties. Staff also clarifies that it intends to use volumes and prices of natural gas purchased, "at only the most summarized level, derived from audited data that has been previously submitted to the Commission in the context of ACA case proceedings for the respective LDCs." Staff indicates that it intends to compare price movements from year to year for each LDC, and compare those comparisons. Staff states that it has not used or referred to gas supply contracts, transportation contracts, or negotiations of LDCs in compiling its summary comparisons.

Staff points out that the risk regarding potential problems with the use of "highly confidential" information are the same risks that are intrinsic to every case before the Commission that contains "highly confidential" filings, and that the Commission should not limit its opportunities to view evidence or consider arguments in this case based on such considerations. Staff further notes that the arguments of the parties concerning discovery needs at some later point in time are premature, pointing out that parties object to evidence at the time it is offered at hearing, not a week before it is prefiled with the Commission.

Staff also denies that it misrepresented the position of other parties, noting that none of the intervenors has made an allegation that Staff's motion misrepresented anything.

On May 2, 2001, Laclede filed its Renewed Request of Laclede Gas Company for Order Directing Provision and Authorizing Use of Certain Information and Modification of Procedural Schedule. Laclede reiterates its arguments against permitting Staff to use the information in question. Laclede renews its discovery request and again asks that if the Commission does permit Staff to introduce the comparison, that Laclede be given additional time to prepare its case. Laclede also suggests that if the Commission grants the recent applications to intervene, that the Commission may wish to consider whether the one day currently scheduled for the hearing will be sufficient.

Staff responded to Laclede's May 2, 2001, Renewed Request on the same date, noting that it believes that the company's proposed changes to the procedural schedule would deprive Staff of discovery on Laclede's surrebuttal. Staff argues that Laclede's discovery demands are premature. Staff also indicates that it will work with the company to resolve discovery disputes as promptly as possible.

The Commission has reviewed Staff's Motion for Order Permitting Use of Information and for Expedited Treatment, and the opposition of Laclede and the LDCs, along with the official file. The Commission finds that Staff's motion requesting authority to utilize certain information of other Missouri LDCs should be granted. The Commission also finds that good cause exists to grant the late applications to intervene filed by AmerenUe, MGE, and UtiliCorp. The Commission notes that Fidelity, Atmos,

and Southern Missouri Gas filed responses in opposition to Staff's motion but did not specifically request intervention.

The Commission is aware that due to the timing of Staff's request, Laclede may find it difficult to prepare its case unless it is given some additional time. However, the Commission must balance Laclede's request for additional time with the needs of the other parties. Therefore, the Commission will amend the procedural schedule but not, at this time, to the extent requested by Laclede. The Commission also finds Laclede's discovery request regarding the data in Laclede's Attachment 1 to be premature at this time.

IT IS THEREFORE ORDERED:

1. That the Motion for Order Permitting Use of Information and for Expedited Treatment is granted.
2. That the application to intervene out of time, filed by Union Electric Company, d/b/a AmerenUE, on April 23, 2001, is granted.
3. That the application to intervene out of time, filed by Missouri Gas Energy on April 24, 2001, is granted.
4. That the application to intervene out of time, filed by UtiliCorp United Inc., d/b/a Missouri Public Service and d/b/a St. Joseph Light & Power, on April 24, 2001, is granted.
5. That the Procedural Schedule, adopted by Commission order issued February 15, 2001, is amended as follows:

<u>Event</u>	<u>Date</u>
Laclede Gas Company files surrebuttal testimony	May 24, 2001 3:00 p.m.
Issues list filed	May 31, 2001 3:00 p.m.

Parties file statements of
position on issues

June 7, 2001
3:00 p.m.

Hearing

June 18-19, 2001
8:30 a.m.

6. That Laclede Gas Company's request regarding discovery is not yet ripe and is denied.

7. That this order shall become effective on May 10, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Simmons,
and Gaw, CC., concur.
Murray, C., dissents, with
dissenting opinion attached.

Ruth, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Laclede Gas Company's Tariff	)	
Filing to Implement an Experimental Fixed	)	<u>Case No. GT-2001-329</u>
Price Plan and Other Modifications to Its Gas	)	Tariff No. 200100572
Supply Incentive Plan.	)	

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

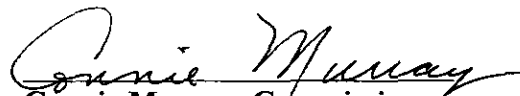
I respectfully dissent from the majority's decision to grant Staff's motion to use information of other Missouri local distributing companies (LDCs) in Laclede's tariff filing case. Today's Order will allow Staff to include in the record of this case certain highly confidential (HC) information furnished to the Commission by other LDCs in other proceedings.

If Staff is allowed to use the information to show price movements for each LDC and then compare those price movements to price movements of Laclede for purposes of discrediting Laclede's Experimental Fixed Price Plan and Gas Supply Incentive Plan, then Laclede must have access to the underlying numbers which Staff uses to support the trends it claims. In order to challenge the underlying numbers Laclede should be able to cross-examine the LDC personnel who reported the numbers in the other proceedings. Regardless of whether the Commission can afford Laclede such due process, which is unlikely, Laclede will have access to the HC cost and volume numbers of the other LDCs. This could place Laclede at a competitive advantage, notwithstanding Laclede's best efforts to "forget" the information.

Most importantly, the cost comparisons are irrelevant and potentially misleading because of the different gas supply sources, operational characteristics, load profiles, population densities and locations of customers of the various LDCs. It is difficult to see how these comparisons can have probative value for the issue of Laclede's tariff filing.

For these reasons, I would deny Staff's motion.

Respectfully submitted,


Connie Murray, Commissioner

Dated at Jefferson City, Missouri,
on this 3rd day of May, 2001.

ALJ/Secretary: Ruth / Pope

Date Circulated 5-3-01 GI-2001-329
CASE NO.

VS 92
Lumpke, Chair

NO
Drainer, Vice Chair

Am NO Dissent to attach
Murray, Commissioner

KS
Simmons, Commissioner

7/7/1
Gaw, Commissioner

Agenda Date _____

Action taken: 4-1 AS

Must Vote Not Later Than _____

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 3rd day of May 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

