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September 20, 2001

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FILED²

SEP 20 2001

Missouri Public
Service Commission

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

RE: Case No. GT-2001-329-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.

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **STAFF RESPONSE TO REQUEST OF LACLEDE GAS COMPANY TO RECEIVE TASK FORCE REPORT AS A LATE-FILED EXHIBIT AND NOTICE OF ELIMINATION OF NEED TO RESOLVE ISSUE.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

David A. Meyer
Associate General Counsel
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Enclosure

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

FILED²
SEP 20 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

**STAFF RESPONSE TO REQUEST OF LACLEDE GAS COMPANY TO
RECEIVE TASK FORCE REPORT AS A LATE-FILED EXHIBIT AND
NOTICE OF ELIMINATION OF NEED TO RESOLVE ISSUE**

Comes Now Staff of the Missouri Public Service Commission ("Staff") and in response to the REQUEST OF LACLEDE GAS COMPANY TO RECEIVE TASK FORCE REPORT AS A LATE-FILED EXHIBIT AND NOTICE OF ELIMINATION OF NEED TO RESOLVE ISSUE ("REQUEST") filed September 18, 2001, states as follows:

1. Staff has not had adequate time to prepare a full response to Laclede's Request. At this time, Staff opposes the acceptance of the Request. The Company has been careful to call its motion a request and notice to avoid calling attention to the deficiencies in its filing. The Company's filing is deficient for four reasons. First, the other parties will not have adequate time to respond, and the filing does not contain a request for the Commission to order the parties to respond on an expedited basis. Second, the filing does not provide any assertions of the existence of "good cause" that should deny the other parties an opportunity to respond. Third, the Request contains improper and irrelevant argument, and at a minimum, the additional argument should be stricken from the record. Finally, the Request is untimely. The Commission faced a

similar situation recently in an AmerenUE case (EM-96-149) and denied AmerenUE's request, and it should do so here as well.

2. Laclede filed its Request a full 20 days after the Natural Gas Commodity Price Task Force Report ("Report") was filed in case GW-2001-398. Laclede must know that the other parties to this case cannot file a timely response and present their views to the Commission before the Commission must enter its Order addressing Laclede's incentive program in this case. Laclede participated as a member of the Task Force and knew of the likely substantive conclusions contained in the drafts even before the issuance of the final Report. Laclede has never notified Staff of its intent to make this filing, leaving an extremely short period to formulate a position on the Company's Request. Under Commission regulation 4 CSR 240-2.080(16), other parties would normally have ten days to file a response to the Request, which would be due Friday, September 28, 2001. Laclede's current incentive plan currently expires on Sunday, September 30, 2001. The Commission has three agenda days remaining to rule on Laclede's Request as well as make a determination on the incentive plan itself: September 20, 25, and 27. Laclede has forced the Commission to choose between extending the incentive plan beyond its expiration date, and making a decision partially based on additional unrebutted argument from Laclede. Staff suggests that Laclede's Request is untimely, and urges the Commission not to disrupt its process of considering the evidence that it has proceeded with since the evidentiary record was completed in this case in mid-June, some three and a half months ago.

3. Staff is not aware of any discussion during hearing or a request by any party or the Judge to leave the record open to permit the submission of the Task Force

Report. Commission regulation 4 CSR 240-2.130(14) permits the introduction of further evidence upon the authorization of the presiding officer, but Laclede should not be permitted to take advantage of this regulation at this late date when Laclede had the opportunity to seek approval for this submission at hearing, or at any time since the hearing -- especially in the twenty days since the Task Force Report came out. Moreover, 4 CSR 240-2.110(8) permits additional evidence only before briefs or oral argument; and 4 CSR 240-2.150(1) indicates that the "record of the case shall stand submitted for consideration by the commission after the recording of all evidence or, *if applicable*, after the *filing of briefs*" (emphasis added). As the Commission knows, the briefing cycle in this case was completed on August 1, 2001.

4. The Commission rejected AmerenUE's similar tactic in case EM-96-149. In that case, AmerenUE filed an "emergency motion" at the last minute to prevent the Staff from filing a complaint case to address AmerenUE's rates and extend its Experimental Alternative Regulatory Plan (EARP) that expired on June 30, 2001. Staff recommends that the Commission act consistently with its decision in that case, discourage the practice of last minute and untimely filings, acknowledge that the principle of laches has been implicated, and deny Laclede's Request.

5. Staff does not oppose the Commission's review of the Natural Gas Commodity Price Task Force Report. The Commission has already received the document in Case Number GW-2001-398, and is in the process of scheduling a Roundtable to consider properly designed incentive plans. However, Staff opposes Laclede's submission of the Report as a part of the record in *this* case. Laclede's Request allows the Company to be the only party in this case to 1) supplement its briefs and 2)

argue the merits and relevance of the Natural Gas Commodity Price Task Force Report recommendations from its perspective. The Company's Request denies the Commission the opportunity to receive informed and reasoned responses from the other parties addressing the relevance of the evidence Laclede proposes to introduce. If it chooses to grant the Request to admit the Report, the Commission should not consider any arguments put forth by Laclede on the merits or relationship of the Task Force recommendations to its extant or proposed incentive programs, and these arguments should be stricken from Laclede's filing.

6. Although Staff cannot adequately address the points raised in the Request in the mere day allowed before this response must be filed, there are two points in Laclede's filing that Staff must address, at least preliminarily. First, Laclede asserts that its incentive position is consistent with "properly structured" incentive programs mentioned in the Natural Gas Commodity Price Task Force Report. Second, Laclede implies that the Commission will be placed in some crisis if it does not adopt Laclede's latest incentive plan proposal.

7. Laclede's incentive plan is not a properly structured incentive program. Two aspects establish this fact. First, Laclede's incentive position changes regularly. The plan has never gone through any review without requiring change. The Company offered a modification to its existing program in its direct case in this proceeding. The Company modified its direct position after the parties to this case evaluated that position. Laclede proposes yet another change in this filing by modifying its fixed price feature and acknowledging reporting and information exchange deficiencies. These repeated changes illustrate the improper design of Laclede's formulaic approach to the ever-

changing natural gas market. Second, The Natural Gas Commodity Price Task Force Report does not cite or refer to Laclede's program as being an example or frame of reference of a "properly designed" incentive program. This is an extremely telling point, because the Laclede program was available and known to several of the participants on the Natural Gas Commodity Price Task Force. If the Task Force saw a need to maintain Laclede's program or use it as a model for a "properly designed" incentive program, then the Task Force had ample opportunity to make such a recommendation.

8. The second point that the Staff offers is that Laclede's filing is an improper way to address and implement the Natural Gas Commodity Price Task Force Report recommendations related to Laclede. The Company or other parties can initiate a separate case to allow the Commission to consider whatever proposal they believe best represents the appropriate methodology required to implement the Task Force recommendations that relate to Laclede. It is not credible that the Company's proposals, either the original or the modified versions -- designed before the Task Force recommendations were issued -- happen to be the best proposals to implement the Task Force's recommendations. The Task Force recommendations are better addressed in a separate case specifically designed to consider the proper approach to implement these recommendations. The fact that Laclede may revert to the current PGA/ACA process that applies to most of the LDC's in this State does not support a Commission rush to judgment and the adoption of Laclede's last minute proposal without the benefit of a full and complete record.

Wherefore, Staff respectfully requests that the Commission deny Laclede's Request of Laclede Gas Company to Receive Task Force Report as a Late-Filed Exhibit and Notice of Elimination of Need to Resolve Issue; and in the event that the Commission declines to grant Staff's request, Staff reserves right to supplement this response as opportunity presents itself until its regulatory deadline of September 28, 2001.

Respectfully submitted,

DANA K. JOYCE
General Counsel



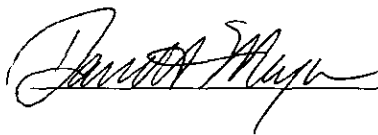
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 20th day of September, 2001.



**Service List for
Case No. GT-2001-329
Verified: July 23, 2001 (SW)**

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