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October 10, 2001

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102

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Missouri Public
Service Commission

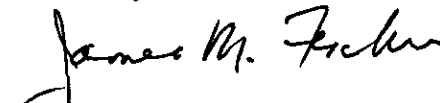
RE: *Laclede Gas Company*
Case No. GT-2001-329

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are the original and eight (8) copies of the Application for Rehearing of Laclede Gas Company. A copy of the foregoing Application has been hand-delivered or mailed this date to each party of record.

Thank you for your attention to this matter.

Sincerely,


James M. Fischer

/jr
Enclosures

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
OCT 10 2001

Missouri Public
Service Commission

In the Matter of Laclede Gas Company's)
Tariff Filing to Implement an Experimental) Case No. GT-2001-329
Fixed Price Plan and Other Modifications)
To its Gas Supply Incentive Plan)

APPLICATION FOR REHEARING

COMES NOW Laclede Gas Company ("Laclede" or "Company") and, pursuant to §386.500 RSMo. 2000 and Rule 4 CSR 240-2.160 of the Commission's Rules of Practice and Procedure, submits its Application for Rehearing. In support thereof, Laclede respectfully states as follows:

1. On September 20, 2001, the Commission issued its Report and Order in the above-captioned proceeding in which it determined that the Company's Gas Supply Incentive Plan ("GSIP") should be permitted to expire on October 17, 2001 (hereinafter the "Report and Order"). In its Report and Order, the Commission also rejected certain tariff sheets that had been filed by Laclede on November 17, 2000 for the purpose of continuing and modifying the GSIP. (Report and Order, p. 14).

2. Laclede strongly disagrees with the Commission's decision to permit the GSIP to terminate. Such a decision promises to deprive the Company's customers of a valuable mechanism that the overwhelming evidence in this case shows has been successfully used on their behalf to extract tens of millions of dollars in additional savings and revenues from out-of-state gas and transportation providers. Just as significantly, such a decision represents the latest in a series of dramatic and harmful

policy shifts on the part of the Commission that have seriously eroded the financial resources available to the Company to meet its public utility obligations.

3. Laclede recognizes that it may be difficult, at times, for the Commission to separate the wheat from the chaff when it comes to claims of financial distress. There is no ambiguity at all in this case, however, regarding how detrimental the Commission's decision, if allowed to stand unaltered, would be on the financial health of Laclede. Unlike virtually every other large energy utility in this state, Laclede is a Missouri corporation that provides utility service only in Missouri. As a consequence, it must look to this Commission and this Commission alone for the financial resources required to maintain its 15,000 miles of distribution pipes, pay its employees, compensate its investors and do all the other things necessary to provide utility service. (See Exh. 24, p. 1).

4. Over the past five years, it has become increasingly difficult to obtain these financial resources from the Commission. As discussed at length in the testimony of Laclede's President and Chief Executive Officer, Mr. Douglas Yaeger, which was admitted as Exhibit 24 in this proceeding, the Company has seen the Commission adopt one regulatory policy after another over that time span -- all with the effect of reducing the money available to the Company to carry out its public utility obligations. For example, in its past several rate cases the Commission Staff has taken an extremely aggressive position on recognition of pension plan gains, thereby creating substantial non-cash credits that reduce current revenue requirement at the expense of future ratepayers and the Company's ability to finance its operations. (Exh. 24, p. 4). Unfortunately, none of these non-cash credits can be used to purchase gas supplies or pay the cost of installing and maintaining a distribution system. As shown in the below

table, nearly a *third* of the Company's earnings are now being generated by these non-cash accounting conventions -- an amount that is many times greater than the percentage of the pension-related earnings being experienced by other LDCs.

Fiscal 1999 Pension Expense/(Income)			
Company	Pension Expense/(Income) (Millions)	Pre-tax Income ("IBIT") (Millions)	Pension Expense/(Income) as a % of IBIT
Laclede	(\$12.3)	\$40.4	30.4%
AGL Resources	\$7.5	\$113.5	-6.6%
Connecticut Energy	\$0.8	\$24.6	-3.4%
Indiana Energy	(\$0.6)	\$62.5	0.9%
Northwest Natural Gas	(\$0.4)	\$69.5	0.6%
Peoples Energy	(\$21.9)	\$145.2	15.1%
Piedmont Natural Gas	\$0.2	\$96.6	-0.2%
Washington Gas light	(\$0.3)	\$110.0	0.3%

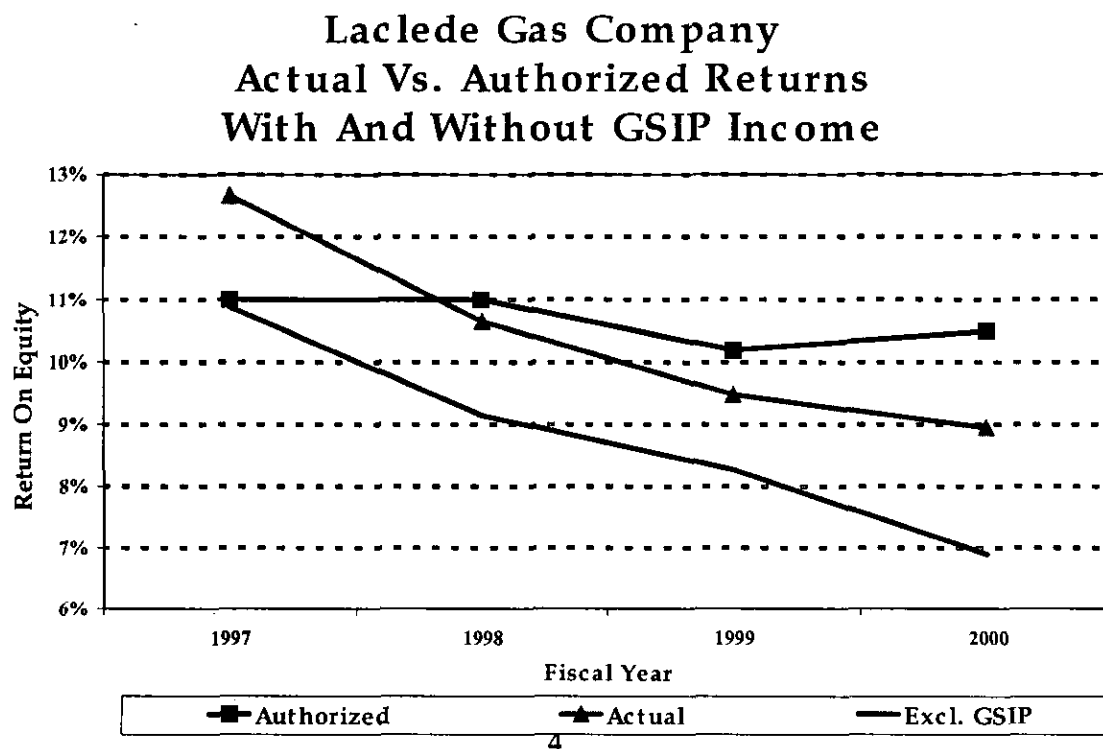
(Exh. 24, p. 5). Notably, each of the LDCs depicted in the above table were included in the comparable company analysis performed by Staff in its return on equity testimony in Laclede's last rate case. *Id.*

5. There has also been a sea change in depreciation methodology that significantly understates current depreciation expense -- once again at the expense of future ratepayers and a serious degradation in the level of available cash flow to the Company to meet its public utility obligations. (Exh. 24, p. 4). Specifically, as a result of the Commission's decision in the Company's last rate case to adopt a new method for determining the net salvage component of the Company's depreciation rates, Laclede now has among the *lowest* depreciation rates of any local distribution company in the country. (Exh. 24, pp. 4-5).

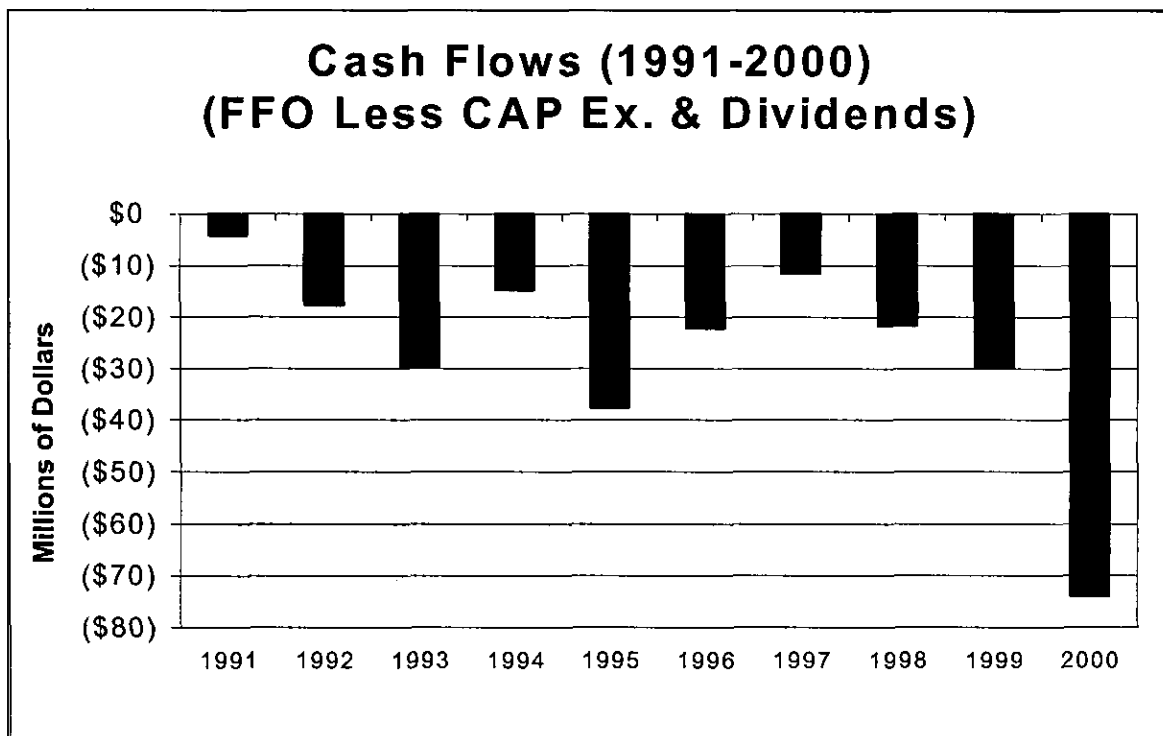
6. There has also been a failure to fully recognize and make suitable adjustments for the financial costs and risks that have been imposed on Laclede as a result of its additional merchant functions in the wake of FERC Order 636, which shifted

to the Company the responsibility for acquiring and financing volatile natural gas inventories in the summer period for use in the winter months, without also providing for a complete recovery of its costs. (Exh. 24, p. 4; *See also* Exh. 8). As the evidence in this proceeding showed, in addition to financing the huge costs associated with the gas supply storage inventories needed to serve our customers, the Company has also incurred significant carrying costs and the earnings impact of rising uncollectible expense associated with permitting customers to make extended payment arrangements and complying with the other safety net requirements mandated by the Commission's Cold Weather Rule. (Exh. 24, pp. 5-6).

7. The cumulative impact of these new regulatory policies on the Company has been profound. As the undisputed evidence in this case showed, the Company has routinely earned significantly less than its authorized return. And, as the graphic presentation of the table on page 4 of Exhibit 8 indicates, this is true even when one includes the income achieved by the Company as a result of the GSIP.



8. A simple review of the Company's cash flow experience over the past ten years also illustrates how precarious the situation has become over time.



9. As the above graph shows, the Company has been placed in the position of borrowing more and more money over this period in order to finance its day-to-day operations. (Exh. 24, p. 7). These cash shortfalls are even more glaring than the earnings shortfalls illustrated earlier because an increasing portion of the Company's earnings have been provided by the non-cash effects of the depreciation and pension accounting policies described above. (Exh. 24, pp. 7-8). Indeed, the growing disparity between what the Company needs to operate its utility business and what it is receiving in rates is perhaps best illustrated by the fact that by the conclusion of its current rate case, the Company will have gone more than five years with only a single, \$11.24 million increase in its base rates. See *Re: Laclede Gas Company*, Case No. GR-99-315, Report and Order

(December 14, 1999). Under no circumstances, would this have been possible without the GSIP.

10. It is against this backdrop that the Commission has now decided to eviscerate Laclede's GSIP and in the process deprive the Company of yet another critical source of revenue. Moreover, at the very time it is eliminating the only opportunity Laclede has been given to at least partially offset the financial effects of the other draconian regulatory policies adopted by the Commission over the past several years, the Commission has also subjected Laclede to even greater risk in its merchant function by subjecting it once again to a full range of prudence reviews on its gas costs. This downward, unrelenting spiral is simply not sustainable. It is also fundamentally inconsistent with the interests of Laclede's customers who, in one fell swoop, will be effected by a regulatory action that not only further weakens the financial ability of the Company to provide them with critical utility services, but does so through the elimination of an incentive mechanism that the evidence in this case shows has produced tens of millions of dollars in financial benefits for them over the past five years.

11. Laclede submits that it is simply not possible to reconcile such a result with the evidentiary record in this case. Indeed, it is clear from a review of its Report and Order, that the Commission has not even acknowledged the existence of most of the evidentiary record produced in this case, let alone tried to explain how it was factored into the Commission's ultimate determinations. Despite this fact, however, Laclede has nevertheless given careful consideration to the policy preferences expressed by the Commission in its Report and Order. And the Company has attempted to react in a constructive manner to what the Commission has said.

12. For example, in response to the reservations expressed by the Commission in its Report and Order regarding the preapproval of specific parameters for the purchase of financial instruments, Laclede recently withdrew its proposal to extend its Price Stabilization Program ("PSP") for another year. *See Motion to Suspend Procedural Schedule and Terminate Proceeding*, Case No. GO-2000-394. Although Laclede believes that the PSP, like the GSIP, has benefited both the Company and its customers, it has listened to what the Commission has had to say on this subject and has acted accordingly by proposing to end a program that would have required some degree of preauthorization. In addition, Laclede recently filed a Request for Clarification in this proceeding in which it sought nothing more than the right to retain a share of savings or revenues on the two components of the GSIP -- i.e. firm transportation discounts and capacity release revenues -- that the state's second and third largest gas utilities are currently authorized to earn on.¹ Moreover, in exchange for this opportunity to do nothing more than what the Commission has already authorized other utilities to do, Laclede also renewed its pledge to do something extra for its most vulnerable customers. Specifically, it repeated its willingness to devote 1/7 of its earnings under these provisions to help fund additional energy assistance for low income customers through the Dollar-Help program.

13. In taking these steps, Laclede has attempted to suggest a constructive approach for "wrapping up" its existing gas cost incentive programs pending a subsequent determination by the Commission of what form of incentive program should

¹See *Re: Missouri Gas Energy's Fixed Commodity Price PGA and Transportation Discount Incentive Mechanism*, Case No. GO-2000-705, Order Approving Stipulation and Agreement (August 1, 2000); *Re: Missouri Gas Energy*, Case No. GR-2001-292, Order Approving Second Revised Stipulation and Agreement (July 5, 2001); *Re: Union Electric Company d/b/a AmerenUE for Authority to Extend its*

be approved generally for Missouri gas utilities. It is an approach that, among other its other attributes, would:

- implement the vast bulk of the Commission's Report and Order in this case while, at the same time, reconciling that Order with actions that have been taken by the Commission in connection with similar issues involving other utilities;
- permit the Commission and the parties to focus their resources on preparing for the future rather than litigating the past; and
- temper, at least to some degree, the draconian impact that the Commission's decision would otherwise have on Laclede, while still providing real and substantial benefits for Laclede's customers, including its most vulnerable customers.

14. Most significantly, however, Laclede submits that such an approach is far more consistent with the evidentiary record in this case and far more supportable than the Commission's apparent determination in its Report and Order to let the GSIP expire in its entirety with nothing to replace it. To the contrary, the Commission's determination is, by any objective measure, unreasonable, wholly unsupported by the competent and substantial evidence on the record as a whole, arbitrary and capricious, and otherwise contrary to law.

15. Nowhere are these deficiencies more evident than in the Commission's wholesale failure in its Report and Order to provide findings of fact sufficient to show how it resolved -- or indeed whether it even attempted to resolve -- the controlling issues identified and presented in the record in this case. Under Missouri law, the Commission has an affirmative duty to support its determinations with adequate findings of fact. *See*

§§386.420 and 536.090. The Commission's fulfillment of this duty is absolutely essential since it provides the only means by which the courts can exercise meaningful judicial review of the Commission's decision and the only "...basis for determining whether the Commission's decision was supported by substantial and competent evidence." *Noranda Aluminum, Inc. v. Public Service Commission*, 24 S.W.3d 243, 246 (Mo. App. 2000). Accordingly, Missouri courts have consistently held that such findings must be "sufficiently definite and certain under the circumstances of the case to enable the court to review the decision intelligently and ascertain if the facts afford a reasonable basis for the order without resorting to the evidence." *State ex rel. U.S. Water/Lexington v. Missouri Public Service Commission*, 795 S.W.2d 593, 594 (Mo. App. 1990). See also *Office of the Public Counsel v. Missouri Public Service Commission*, 782 S.W.2d 822, 825 (Mo. App. 1990). Conversely, such findings will be deemed inadequate if they are completely conclusory and provide no insight into if and how controlling issues were resolved. *State ex. rel. Fischer v. Public Service Commission*, 645 S.W.2d 39, 42 (Mo. App. 1982).

16. With all due respect, the Report and Order issued by the Commission in this case does not even make a pretense of complying with this fundamental statutory requirement. To begin with, the Commission makes absolutely no effort in its Report and Order to address the specific issues that were actually identified and litigated by the parties to this case. Those issues were, of course, identified and submitted by the parties pursuant to the Commission's own directive in this case. See *Order Adopting Procedural Schedule and Further Suspending Tariff*, paragraphs (c) (e) and (g) (February 15, 2001). Moreover, pursuant to that same directive, the parties were also required to brief those issues in the same order that they were identified. *Id.* Having imposed this burden on the

parties, however, the Commission proceeds in its Report and Order to address only a smattering of the contentions made and issues raised by the parties to this case and then only in the most cursory and disjointed fashion. Indeed, the Report and Order gives the distinct impression that the Commission decided from the outset to reject the GSIP in its entirety, and then began to search for snippets from the evidentiary record in this case that might justify such a result. The end result is a hodgepodge of irrelevant, inaccurate and, in some cases, simply incomprehensible "findings" and "conclusions" that bear little or no relationship to the actual issues identified and presented in this case and that bespeak of a complete unwillingness to sort through the evidentiary record and decide the specific matters that were, in fact, presented to the Commission for decision.

17. The most glaring deficiency in that regard concerns the Commission's failure to make any substantive findings in this case regarding what the Commission itself states are the two central considerations in this case, namely whether the GSIP is of "benefit both to the company and to the ratepayers." Report and Order, p. 6; *See Midwest Gas Users' Association v. Public Service Commission of the State of Missouri*, 976 S.W.2d 470, 476 (Mo. App. 1998).

18. As to whether the GSIP has benefited ratepayers, the Commission makes absolutely no effort in its Report and Order to address the evidence and other considerations which thoroughly demonstrated that the GSIP has, in fact, produced substantial benefits for customers. For example, the Commission does not even mention, let alone discuss, the fact that on three separate occasions, the Commission itself has found the GSIP to be in the public interest. Nor does the Commission discuss or even acknowledge that when it last approved the GSIP, it did so pursuant to a Stipulation and Agreement that specifically envisioned the development and implementation of a

"workable multi-year incentive plan." (Exh. 1, p. 6). The Commission is also completely silent on the fact that in both 2000 and 2001 it approved or reauthorized gas cost incentive plans or other provisions for the State's second and third largest utilities that permit those utilities to retain savings or revenues in some of the very areas covered by Laclede's GSIP.² Nor does this Commission attempt to deal with the fact that the Natural Gas Cost Commodity Price Task Force, which the Commission itself established to examine such issues, has recently issued a Report in which it strongly endorsed the concept that properly structured incentive programs should be used in the gas cost area. In fact, the Report and Order inexplicably suggest that the Commission has yet to receive the findings of the Task Force.

19. The Commission also makes no mention in its Report and Order -- indeed does not say even a single word -- about the customer benefits analysis that was submitted by Laclede in both this case and in Case No. GT-99-303. Consistent with the Commission's own prior determinations regarding the public interest attributes of the GSIP, this analysis identified, in extensive and specific detail, nearly \$65 million in financial benefits that Laclede was able to directly tie to the GSIP and the Company's superior performance thereunder during its first four years of operation. (Exh. 6HC, pp. 4-9; Schedule 1). Reading the Commission's Report and Order, however, would lead one to believe that such an analysis was never introduced into evidence in this case. Finally, there is nothing in the Commission's Report and Order that even acknowledges the substantial concessions that Laclede proposed to make in this case to further enhance the level of benefits received by Laclede's customers under the GSIP, including its most vulnerable customers. (See Exh. 2, pp. 3-26).

² See footnote 1.

20. In short, it matters not what the Commission has previously determined to be in the public interest, what the evidentiary record says about net ratepayer benefits, what the Commission has found to be reasonable for other utilities, what the diverse membership of its own Task Force has said about the need for incentives in the gas cost area, or what efforts the Company has made to further enhance the benefits received by customers under the GSIP. Having decided to terminate the GSIP, the Commission simply avoids in its Report and Order any discussion of these considerations or any other factors that would compel a different result, as if record evidence and the Commission's own prior actions may be casually ignored as long as they are never acknowledged. Such an approach is, of course, wholly inconsistent with the Commission's obligation to support its decisions with findings of fact that are sufficient to show how it resolved the controlling issues in this case. *State ex. rel. Fischer v. Public Service Commission*, 645 S.W.2d 39, 42 (Mo. App. 1982). Moreover, it is the hallmark of the very kind of arbitrary, capricious and unreasonable action by an administrative agency that is expressly prohibited by law. §536.140 RSMo. 2000.

21. Just as striking as its failure to make proper findings on the issue of ratepayer benefits, is the Commission's complete disregard in its Report and Order for the impact that eliminating the GSIP would have on the Company and the resources available to it to meet its public utility obligations. The undisputed evidence in this proceeding clearly showed that even with the earnings retained by the Company under the GSIP, Laclede was not able to earn its authorized rate of return in three out of the past four years. (Exh. 8, p. 4). It also showed that the earnings shortfalls being experienced by Laclede were due, in part, to the Company's incurrence of significant, unrecovered costs to provide a safety net for its customers as part of the same merchant function that is

subject to the GSIP. (Exh. 8, pp. 3-4). In short, far from being a vehicle for making excess profits, the GSIP has only given the Company a fighting chance to achieve a level of earnings that, while well below the level explicitly authorized by the Commission, has at least been adequate to provide the financial resources necessary to perform its public utility obligations.

22. In discussing this evidence, the Commission nowhere disputes in its Report and Order that Laclede has been earning significantly less than its authorized return, even with the earnings retained by the Company under the GSIP. To the contrary, rather than discuss this circumstance and its relevance to whether the GSIP should be continued, the Commission simply observes at pages 7-11 of its Report Order that Laclede's quantification of its merchant costs may be overstated because, among other reasons, such costs may provide a tax break on profits earned by Laclede elsewhere. The Commission also observes at page 10 of its Report and Order that the GSIP-related earnings retained by the Company in fiscal years 1997 to 2000 comprised between 14% and 22.9% of Laclede's total net income and that such earnings have been incorporated into the Company's earnings program, "which was never its purpose."

23. These findings, if they can even be called that, provide absolutely no support for the Commission's ultimate decision. The Commission's apparent observation that it was never the purpose of the GSIP to produce earnings that could be "incorporated into the Company's earnings program" is simply ludicrous. The GSIP, as well as every other incentive program, rests on the basic proposition that by permitting utilities to retain earnings (or absorb) losses depending on how well they perform in a given area, they will be motivated to take prudent risks and pursue exceptional performance to the benefit of both the utility and its customers. Given this fundamental rationale, it simply makes no

sense to assert that Laclede was somehow supposed to be oblivious to such earnings or the opportunity to achieve them. Indeed, the very purpose of the GSIP was to focus Laclede's attention on achieving such earnings since such a result would also bring even greater financial benefits to its customers.³ As Missouri courts have repeatedly recognized to permit meaningful judicial review, "it is a minimum requirement that the evidence, along with the explanation thereof by the witnesses and be the Commission itself, make sense to the reviewing court." *State ex rel. City of Lake Lotawana v. Pub. Serv. Comm'n*, 732 S.W.2d 191, 195 (Mo.App. 1987). See also *State ex rel. Capital City Water v. PSC*, 850 S.W.2d 903, 914 (Mo.App. W.D. 1993); *State ex rel. GTE North v. Missouri PSC*, 835 S.W.2d 356, 370 (Mo.App. W.D. 1992). As was the case in *Capital City Water, supra*, only the dissenting opinion in this case satisfies that fundamental requirement.

24. The Commission's reference to the percentage of total income that the Company has derived from the GSIP over the past five years also provides no support for its position. The relative magnitude of those earnings in comparison to the earnings received by Laclede through base rates has as much, or more, to do with how inadequate the latter has been as it does with any increase in the former. Under such circumstances, the Commission's attempt to use such percentages as an indictment of the GSIP is completely misplaced. To the contrary, if they do anything, such percentages only serve to further illustrate the inadequacy of the Commission's ratemaking practices and policies

³ In fact, the only provision that Laclede is aware of that directly deals with this issue is a provision in the Stipulation and Agreement which first recommended approval of the GSIP in 1996 and which provided that GSIP earnings were not to be considered when setting base rates. See *Re: Laclede Gas Company*, Case No. GR-96-193, Report and Order, Stipulation and Agreement, p. 5, ¶ 3B. Once again, the purpose of this provision was to ensure that the GSIP's earnings incentive would not be extinguished by the simple device of imputing all those earnings in the ratemaking process. In other words, the provision was designed to

for establishing base rates. Finally, nowhere in its Report and Order does the Commission even attempt to explain why such percentages should in any event be viewed with concern. During the course of this proceeding, the Commission's own Staff repeatedly recognized that incentives tend to focus a firm's resources and efforts to those areas where they are offered. Since the cost of gas represents well in excess of 60% of the Company's overall costs (Exh. 24, Schedule 2), how can it possibly be excessive to make less than 25% of the utility's income dependent on how well it performs in that area? The Commission offers absolutely nothing in its Report and Order that would even begin to provide an answer to that question.

25. In view of these considerations, the Commission's decision to terminate the GSIP, with its predictable and severely detrimental financial impact on the Company, is clearly unsupported by sufficient findings of fact and contrary to the competent and substantial evidence on the record. For the same reasons, it also constitutes an unlawful and unconstitutional deprivation of the Company's property in violation of the Missouri Constitution and the Fifth and Fourteenth Amendments of the United States Constitution.

26. In addition to the deficiencies discussed above, the Commission's Report and Order also contains other legal errors and misstatements of the evidentiary record that further illustrate the lack of any support in this case for the Commission's decision. For example:

- The Commission begins its Report and Order with a Conclusions of Law Section that, among other things, purports to set out the legal standards governing judicial review of a Commission decision. It is unclear to Laclede why the Commission has

ensure that Laclede *could* count on those earnings not, as the Commission suggests, to preclude it from incorporating such earnings in its earnings program.

devoted part of its Order to an analysis of the legal standards that the courts must follow when reviewing the Commission's decision rather than an analysis of the legal standards the Commission itself must observe. Nevertheless, the legal citations discussed in this Section only serve to highlight the legal inadequacies of the Commission's Report and Order. For example, the Missouri Supreme Court's decision in *State ex rel. Monsanto, et. al v. Public Service Commission of Missouri*, 716 S.W.2d 791 (Mo. banc. 1986), only notes in passing that the Commission had observed that the utility had the burden of proof in that case, but did not squarely address the issue itself. *Id.* at 795.⁴ What the court did address, however, was the Commission's failure to provide sufficient findings of fact and otherwise meet its statutory duty to explain why it adopted the rate design recommendation that had been proposed by certain parties in the Commission case under review. *Id.* at 795-796. According to the Court it was not enough for the Commission to simply criticize the alternative rate design recommendation that had been made by the protesting party. *Id.* It also had an affirmative obligation to explain and support the recommendation it reached. *Id.* The Commission's Report and Order in this case suffers from the same exact deficiency in that all of its "findings" are directed at criticizing the GSIP rather than explaining why a return to the old PGA/ACA process -- as contemplated by its decision -- is appropriate.

- The Commission states at page 13 of its Report and Order that "given the deficiencies of the GSIP, the Commission will allow it to expire." Nowhere in its Report

⁴ At page 4 of this Section of its Report and Order, the Commission also repeats the legal principle that the "Commission's order has a presumption of validity, and the burden is on the party attacking it to prove its invalidity." Since the Commission has, through lawful orders, previously determined the GSIP to be in the public interest on at least three separate occasions, this principle would suggest, contrary to what the Commission now states in its Report and Order, that those opposing a continuation of the GSIP had a burden to show why it should not be continued. This is particularly true in connection with the issue of the

and Order does the Commission even cite, let alone discuss, however, any purported deficiencies in the capacity release, mix of pipeline supplier, or gas supply demand components of the GSIP. Indeed, the only mention of these components is the Commission's observation that Laclede will continue to have an opportunity to profit from its release of pipeline capacity and its statement that the GSIP has not created any significant savings on the demand cost of gas. Report and Order, pp. 10-11. The evidence in this proceeding demonstrates that the Commission is simply wrong when it states that the GSIP has not resulted in any "significant" savings on the demand cost of gas, as millions of dollars in such savings were specifically identified in the record. (See Exh. 6HC, pp. 5-7; Schedule1). Even if only one dollar in savings for customers was generated under the GSIP for this component, however, that cannot under any definition of the word be deemed a deficiency. Moreover, these components of the GSIP cover activities and incentives that no one in this proceeding has alleged had anything to do with the nationwide run-up in wholesale gas prices last winter or the Company's response thereto (See e.g. cross-examination of Staff witness David Sommerer (Tr. 1040-41) in which Mr. Sommerer testifies that it was the commodity component, rather than the transportation discount, mix of pipeline supplier, and capacity release components of the GSIP, which, in Staff's view, contributed to the events of last winter). Under such circumstances, there is simply no evidentiary basis for the Commission's statement that deficiencies in the GSIP justify a decision to permit it to expire in its entirety.

- As originally issued, the Commission's Report and Order incorrectly identified Exhibits 18 and 35 as "Laclede" Exhibits. See Report and Order, p. 11. Those

proper baseline to use for the transportation discount component since the Commission explicitly approved that baseline in its Report and Order in Case No. GT-99-303.

Exhibits were not, however, sponsored by Laclede but instead were the rebuttal testimony of Staff witness David Sommerer and Public Counsel witness Barbara Meisenheimer, respectively. The fact that the Commission was apparently unaware of who actually sponsored the *only* evidentiary exhibits cited by the Commission in support of its decision raises fundamental questions regarding the rigor with which the Commission exercised its statutory obligation to review the evidence in this proceeding. After all, it is extremely difficult to conclude that a trier of fact has carefully evaluated the credibility and competence of a witnesses' testimony when such testimony is incorrectly attributed to a completely different party.

- The Commission's findings regarding the transportation discount component of the GSIP are also inaccurate. At page 11 of its Report and Order, the Commission states that according to Exhibit 18, "ratepayers are worse off under the GSIP than they would have been without the GSIP." However, the testimony contained in Exhibit 18 makes no such allegation. What it does allege is that on a going forward basis, "performance under the GSIP would have to be significantly improved for customers just to break even." (Exh. 18, p. 9). And even this statement erroneously assumes that such improved performance is necessary to pay for the discounts retained by the Company -- an assumption that completely ignores the fact that a portion of these discounts only exist because the Company had incentives to maximize them in the negotiation process. Indeed, by making such an assumption, this statement is just another way of saying that incentives don't work -- a proposition that the Commission has apparently rejected already with its statement that it will continue to pursue the development of incentive programs. In any event, there is nothing in the Commission's Report and Order that would justify depriving the Company of a share of the savings it

achieved as a result of its successful efforts last year to renegotiate at very favorable discounts, and for multi-year periods, a majority of its upstream pipeline transportation discounts. (Tr. 851-853). As discussed in its Request for Clarification, rather than negotiate shorter term transportation contracts which, due to their limited duration, might have given Laclede a slightly greater discount during a period where its right to retain a share of such discounts was certain, the Company negotiated longer-term arrangements that were designed to maximize over several years the cumulative savings for both it and its customers. (See Tr. 354, 413-414; Exh. 3, p. 3). It would be neither equitable nor in the best interests of Missouri consumers to penalize the Company's efforts to maximize the amount and duration of such savings by prematurely ending any opportunity by the Company to benefit from its efforts. *Id.*

27. For all of these reasons, the Commission's Report and Order, and the determinations made therein, are unsupported by competent and substantial evidence on the whole record, unreasonable, arbitrary and capricious, unsupported by adequate findings of fact, and otherwise contrary to law. Laclede accordingly requests that the Commission grant rehearing and upon rehearing enter a Report and Order approving the Company's proposals relating to the non-commodity components of the GSIP.

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission grant rehearing as requested herein and upon such rehearing enter a Report and Order approving the Company's proposals relating to the non-commodity components of the GSIP.

Respectfully submitted,

Michael C. Pendergast
Michael C. Pendergast #31763 *by DM*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Application for Rehearing 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 10th day of October, 2001.

James M. Fischer
James M. Fischer