

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

In the Matter of the Application of Laclede )  
Gas Company for an Accounting Authority Order )  
Authorizing the Company to Defer for Future Recovery ) Case No. GU-2007-0138  
the Costs of Complying With the Permanent )  
Amendment to the Commission's Cold Weather Rule )

**STAFF'S POST-HEARING BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and for its post-hearing brief respectfully states as follows:

**STATEMENT OF FACTS**

The Commission issued an Order of Rulemaking in Case No. GX-2006-0434 adopting on a permanent basis an amendment to 4 CSR 240-13.055 on August 11, 2006. (Verified Application for Accounting Authority Order, page 2). The Office of Public Counsel (OPC) filed an Application for Rehearing in Case No. GX-2006-0434 on August 21, 2006. (Public Counsel's Application for Rehearing). OPC's Application for Rehearing was denied on August 29, 2006. OPC did not seek judicial review of the Commission's Order of Rulemaking in Case No. GX-2006-0434.

Laclede Gas Company (Laclede or Company) filed an application requesting that the Commission issue an Accounting Authority Order (AAO) authorizing it to defer and book as a regulatory asset for future recovery the costs of complying with 4 CSR 240-13.055 (the Cold Weather Rule or CWR) on September 29, 2006. (Verified Application for Accounting Authority Order, page 3). The Commission issued an Order granting the AAO on December 7, 2006. (Order Granting Accounting Authority Order Relating to the Costs of Complying with the 2006 Amendment to the Cold Weather Rule).

On October 31, 2007, Laclede filed a request to determine the cost of compliance with the CWR. (Request for Determination of the Cost of Compliance with the Permanent Amendment to the Cold Weather Rule). Laclede requested that its request be deferred until its next general rate case proceeding. (Request for Determination of the Cost of Compliance with the Permanent Amendment to

the Cold Weather Rule, page 5). The Office of the Public Counsel (OPC) objected to Laclede's request for deferment. (Public Counsel's Response Opposing Laclede's Request). Staff also objected to Laclede's Request for deferment. (Staff's Response to Laclede's Request to Defer Consideration of the Cost of Compliance). The Commission denied Laclede's request for deferment. (Order Denying Laclede's Request to Defer Consideration and Directing Staff and Public Counsel to Submit their Positions Regarding Laclede's request for Determination of Costs).

On February 28, 2008, Laclede and Staff filed a non-unanimous stipulation and agreement. (Non-Unanimous Stipulation and Agreement) (stipulation). In the stipulation, Staff and Laclede agreed that:

(a) Laclede should be authorized to recover in its next general rate case proceeding compliance costs associated with the Permanent Amendment in the amount of \$2,494,311. Additional interest at Laclede's annual short-term borrowing rate shall accumulate beginning September 30, 2007.

(b) Such compliance cost amount, plus interest, shall be amortized in rates over up to a five year period beginning with the effective date of the new rates established in Laclede's next general rate case proceeding. (Non-Unanimous Stipulation and Agreement, page 3). OPC did not join in the stipulation and filed its own position statement. (Public Counsel's Position Regarding Laclede's Request for Determination of Costs). OPC also formally objected to the stipulation. (Public Counsel's Objection to the Non-Unanimous Stipulation and Agreement). This matter proceeded to hearing on March 31, 2008.

## ARGUMENT

The issue raised by the parties for determination by the Commission is as follows:

Pursuant to 4 CSR 240-13.055(14)(F) and (G), what amount should Laclede be authorized to recover in its next rate case for its compliance with the Permanent Amendment to the Cold Weather Rule?

**Staff Position:** Laclede should be permitted to include \$2,494,311 as well as interest at Laclede's short-term interest rate and that these costs would be amortized

over up to a five year period beginning with the effective date of a Commission order in Laclede's next general rate case.

4 CSR 240-13.055(14)(F) provides:

The costs eligible for recovery shall be the unpaid charges for new service received by the customer subsequent to the time the customer is retained or reconnected by virtue of this section plus the unpaid portion of the difference between the initial payment paid under this section and the initial payment that could have been required from the customer under the previously enacted payment provisions of section (10) of this rule, as measured at the time of a subsequent disconnection for nonpayment or expiration of the customer's payment plan.

4 CSR 240-13.055(14)(G) provides that a utility may apply to the Commission for an AAO that allows the utility to book compliance costs as a regulatory asset. The company may apply to the Commission for a determination of the reasonably incurred costs of compliance with the rule. The rule also provides that the amount that the company is allowed to book may be carried forward and recovered in the company's next general rate case proceeding. The rule provides that the amount of the approved AAO is to be amortized over a period of no more than five years. The rule also allows the company to recover interest on its reasonably incurred expenses.

Laclede and Staff agreed in their Non-Unanimous Stipulation and Agreement that Laclede reasonably incurred \$2,494,311 to comply with the CWR from the period from November 1, 2006 to September 30, 2007. Laclede and Staff also agreed that this amount should be amortized over a period of up to five years. Staff believes that the amount calculated by Laclede is correct according to the CWR and that Laclede should be authorized to recover reasonable compliance costs in its next general rate case proceeding in the amount of \$2,494, 311. Laclede and Staff also agree that the company should be allowed to accrue interest at its short-term borrowing rate beginning on September 30, 2007. The method employed by Laclede to determine its costs is in accordance with the procedures set out in the CWR, and the Commission should grant such authorization as requested in Staff and Laclede's Non-Unanimous Stipulation and Agreement.

**A COLLATERAL ATTACK ON THE COLD WEATHER RULE IN THIS PROCEEDING IS  
IMPERMISSIBLE**

The Missouri Supreme Court has determined that challenges to PSC rulemakings are subject to the procedures set forth in Sections 386.500 and 386.510, RSMo (2000). *State ex rel. Atmos Energy Corp. v. Public Service Commission*, 103 S.W.3d 753, 758 (Mo.banc 2003). Section 386.500, RSMo (2000) sets out the procedures for rehearing before the Commission. Section 386.510, RSMo (2000) sets out the procedures for review by the circuit court. The procedures set out in Section 386.510, RSMo (2000) are the exclusive mechanism for judicial review of Commission orders or decisions. Section 386.515, RSMo (2000) (Supp. 2007). *See also, State ex rel. Public Counsel v. Public Service Commission*, 210 S.W.3d 344, 350 (Mo. App. W.D. 2006). Section 386.550, RSMo (2000) provides that “[i]n all collateral actions and proceedings the orders and decisions of the Commission which have become final shall be conclusive.”

OPC raised a number of objections to the Non-Unanimous Stipulation and Agreement. The challenges raised by OPC amount to a challenge to the CWR itself because the assertions raised by OPC are premised on the assertion that there is an ambiguity in the language of the CWR. OPC had the opportunity to participate in the rulemaking proceeding and did in fact participate and provide testimony in that proceeding. OPC also filed an Application for Rehearing in the rulemaking proceeding. That Application was denied by the Commission. Following the Commission’s denial of the Application, OPC had the opportunity to seek a writ of review in circuit court pursuant to Section 386.510, RSMo (2000). OPC did not avail itself of this opportunity, and the time for seeking a writ of review of the rulemaking proceeding has passed. The Commission’s Order of Rulemaking in Case No. GX-2006-0434 has become final and is not subject to collateral attack in this proceeding pursuant to Section 386.550, RSMo (2000). OPC’s arguments based on any alleged ambiguity or other defect in the CWR itself must be rejected and the Commission should issue an Order in accordance with the Non-Unanimous Stipulation and Agreement filed by Laclede and Staff.

**WHEREFORE**, for the reasons stated above, Staff requests that the Commission adopt the Non-Unanimous Stipulation and Agreement filed by Laclede and Staff.

Respectfully submitted,

/s/ Jennifer Heintz\_\_\_\_\_

**Jennifer Heintz**

Missouri Bar Number 57128

Lera Shemwell

Missouri Bar Number 43792

Missouri Public Service Commission

P.O. Box 360

Jefferson City, MO 65102

573-751-8701 (Voice)

573-751-9285 (Fax)

[jennifer.heintz@psc.mo.gov](mailto:jennifer.heintz@psc.mo.gov)

Attorneys for Respondents.

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 7<sup>th</sup> day of April, 2008.

/s/ Jennifer Heintz\_\_\_\_\_