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May 5, 2003

FILED²

MAY 05 2003

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Executive Secretary
Missouri Public Service Commission
200 Madison Street, PO Box 360
Jefferson City, MO 65102-0360

RE: In the Matter of the Tariff Filing of Laclede Gas
Company - Case No. GT-2003-0032
Tariff No. JG-2003-0048

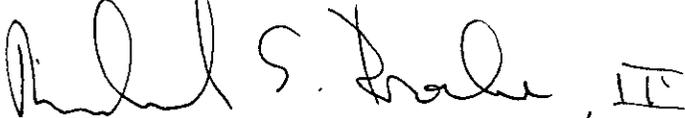
Dear Mr. Roberts:

Enclosed please find the original plus eight (8) copies of
the Brief filed on behalf of Missouri School Boards' Association
in the above-captioned matter.

If you have any questions concerning the enclosed, please
give me a call. Thank you.

Very truly yours,

HENDREN AND ANDRAE, L.L.C.


Richard S. Brownlee, III

RSB\sa
Enclosures
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General Counsel
All Counsel of Record
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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

MAY 05 2003

Missouri Public
Service Commission

In the Matter of the Tariff)
Filing Of Laclede Gas) Case No. GT-2003-0032
Company) Tariff No. JG-2003-0048

BRIEF OF MISSOURI SCHOOL BOARDS ASSOCIATION

COMES NOW, Missouri School Boards' Association (hereafter "MSBA") by and through its Counsel, Hendren and Andrae, L.L.C., Richard S. Brownlee, III, and for its Brief submits the following:

A. PROCEDURAL HISTORY

On August 1, 2002, Laclede Gas Company ("Laclede") submitted proposed tariff sheets dealing with natural gas aggregation for schools pursuant to Section 393.310 RSMo Supp. 2002. The sheets bore a proposed effective date of November 1, 2002.

On August 13, 2002, a procedural conference was held, and the date of August 26, 2002, was set for the submission of a proposed procedural schedule. On August 22, 2002, the Commission granted intervention to Missouri School Boards Associations ("MSBA"), which also represents the interests of the Cooperating Schools of St. Louis ("CSD"). On August 23, 2002, a technical conference involving all of the parties was

held. On August 26, 2002, the Staff filed a proposed procedural schedule. Also on August 26, 2002, Laclede filed a response to the proposed procedural schedule. On August 29, 2002, the Commission issued its Order Adopting Procedural Schedule and Expediting Transcripts. On August 30, 2002, CSD filed its application to intervene which was granted on September 23, 2002. On September 18, 2002, the Staff of the Missouri Public Service Commission filed a Motion to Revise Procedural Schedule and Motion for Expedited Treatment. Also on September 18, 2002, the MSBA filed a Motion to Amend Procedural Schedule, requesting that the hearing be moved from October 3, 2002 to October 7, 2002. On September 19, 2002, the Commission issued its Order Regarding Motions to Amend Procedural Schedule which adopted a modified procedural schedule. On September 26, 2002, the Associations filed a Renewed Motion to Amend Procedural Schedule. On September 30, 2002, the Commission issued its Order Rescheduling Hearing Date and Amending Procedural Schedule.

On October 11, 2002, the Parties filed a Unanimous Stipulation and Agreement. On October 17, 2002, the Commission issued its Order Approving Stipulation and Agreement. The Order approved the Parties' Unanimous Stipulation and Agreement, along with Tariff Sheets 41-45 (the Tariff) establishing an experimental school district aggregation service for Laclede customers.

In paragraph 6 of the Unanimous Stipulation and Agreement, the Parties stated as follows:

Subsequent Filing. The parties agree that, within 60 days of the effective date of the tariff establishing the experimental program, the Company, Staff, Office of the Public Counsel and the association representing the schools shall meet to determine if they can reach a mutually acceptable recommendation for revising the treatment of capacity costs or other program provisions subsequent to May 31, 2003. Such parties shall file either their joint recommendation or, if an agreement is not reached, their individual recommendations regarding such matters, by March 17, 2003, together with testimony explaining why such revisions are appropriate and consistent with the requirements of Section 393.310. The parties will request that the Commission issue its decision to be effective June 1, 2003. The parties agree that ESEs participating in the first year of the program will continue to participate through, at a minimum, the end of the first Aggregation Year, which is October 31, 2003, as set forth in Section C of the tariff. The parties further agree that any true-up of capacity revenues and costs will be consistent with the Commission's decision on the treatment of capacity as set forth in this paragraph.

Pursuant to the Stipulation and Agreement, the Parties participated in a phone conference regarding the issue of transportation capacity costs on December 11, 2002. The Parties did not reach a mutually acceptable recommendation for revising the treatment of such capacity costs. The Parties agree that this is the only issue remaining in this case.

On May 17, 2003; Staff, Laclede and MSBA filed Supplemental Direct Testimony. SLBD and the Office of the Public Counsel (OPC) did not file testimony. On April 1, 2003, Staff, Laclede

and the MSBA filed Supplemental Rebuttal Testimony. A hearing was held on April 15, 2003.

B. ISSUES PRESENTED

The parties stipulated as to the issues presented as follows:

"Laclede and MSBA have filed competing tariff proposals regarding the transportation capacity for which the eligible school entities should be responsible.

A. Does the Statute, Stipulation and Agreement, or the Tariff require eligible school entities to take or pay for interstate pipeline capacity acquired by Laclede to serve the requirements of the eligible school entities?

B. If so, which of the competing tariff proposals for the treatment of capacity costs under the Program may and should the Commission adopt?"

C. THE LEGISLATION

The Missouri 92st General Assembly, 2d Regular Session, passed CCS for SCS for HB 1402, which created Section 393.310, RSMo. This section required Missouri gas corporations to file tariffs allowing school districts to purchase natural gas and pipeline transportation in the aggregate. Laclede filed such tariffs.

Subsection 393.310.4 of the new law requires that the tariffs "at a minimum":

- (A) Allow school associations to negotiate, for eligible schools, aggregate contracts for the purchase "of natural gas supplies and pipeline transportation services,"¹
- (B) Allow "for the resale of natural gas supplies, including related transportation service costs, to the eligible school entities at the gas corporation's cost of purchasing . . . plus all applicable distribution costs . . . [and] an aggregation and balancing fee to be determined by the commission not to exceed four-tenths of one cent per therm delivered during the first year," and²
- (C) "Not require telemetry or special metering, except for individual school meters measuring over one hundred thousand therms annually."³

The Commission must approve the tariffs if it finds that:

"[I]mplementation of the aggregation program . . . will not have any negative financial impact on the gas corporation, its other customers or local taxing authorities and that the aggregation charge is sufficient to generate revenue at least equal to all

¹ Section 393.310.4(1).

² Section 393.310.4(2).

³ Section 393.310.4(3).

incremental costs caused by the experimental aggregation program."⁴

The Commission may approve a tariff under the statute even if it makes no finding on the issue of negative financial impact.

D. ARGUMENT

Missouri gas corporations, including Laclede, presently have tariffs on file with the Commission which provide for sales service and transportation service.

Natural gas sales service customers purchase a "bundled" service from gas corporations which includes three basic components: (1) the commodity from natural gas producers, brokers or wholesalers, (2) contracted interstate pipeline capacity to deliver the commodity from producing regions to the distribution system of the local gas corporation, such as Laclede, and (3) delivery and administrative services through the Laclede-type distribution system to the end-use retail customer meter. Unbundled natural gas transportation tariffs provide that customers can contract directly with third-party suppliers for traded natural gas commodity at market prices, including interstate pipeline delivery to the Laclede-type local utility system. Local utility transportation tariffs set forth charges for delivery through its distribution system to the end-

⁴ Section 393.310.5.

use customer's meter. Transportation service is an "unbundled" service and sales service is a "bundled service."

Laclede has large industrial and commercial natural gas users which regularly purchase third-party natural gas supply, including interstate pipeline delivery to the Laclede system, and it delivers the customer-owned supply to the meter under its transportation service tariff.

Under the provisions of Section 393.310 RSMo., all Missouri gas corporations filed tariffs for the school aggregate purchasing experimental program and received approval from the Commission to make these experimental tariffs effective November 1, 2002. The MSBA, under experimental natural gas aggregation programs, now has school participation in the experimental program on the systems of MGE, AmerenUE and Atmos. No schools on the Laclede system are currently participating in the aggregate natural gas purchasing program because of the outstanding issue regarding interstate pipeline capacity.

The issue dealing with interstate pipeline capacity is simple to articulate, but rather complex in understanding and application.

Utilities such as Laclede contract for interstate pipeline capacity for firm sales service customers. Transportation customers typically purchase gas supply from third-party marketers, which contract for their own interstate pipeline capacity and arrange for commodity deliveries for the customer

to the utility system at points called "town border stations" or "city gates." When a utility sales-customer switches to transportation service, the utility may have "freed-up" interstate pipeline capacity. Because large customers can and do switch from and to sales and transportation service, utilities must plan for pipeline capacity requirements by factoring in tolerance for sales growth or loss, switching of sales customers to transportation service and conversely. If the utility's forecast for pipeline capacity requirements show the utility will have "freed-up" pipeline capacity, the utility will typically release pipeline capacity to the market for purchase by others. Laclede has shown through statements in annual reports and response to data requests that it regularly releases pipeline capacity to the market. The Federal Energy Regulatory Commission (FERC) has regulatory jurisdiction over interstate pipeline tariffs, which specify procedures for electronically posting capacity for release.

Laclede has taken the position that it is required by the statute to release contracted pipeline capacity to schools on a take-or-pay basis, at prices that have been shown to exceed market prices that are available to Laclede's large industrial and commercial transport customers, and that schools must take-or-pay for 150% of the average daily consumption in the peak usage month during the 24 months ending September 30, 2002, for

the entire period of the experimental program through June 30, 2005. This means:

1. Schools in the experimental transportation program have to take Laclede's contracted pipeline capacity when no large industrial or commercial customer under Laclede transportation tariff has to take any Laclede released pipeline capacity.
2. Large industrial or commercial customers under Laclede's transportation tariff are free to purchase pipeline capacity from third-parties at market prices, but Laclede is insisting that schools pay above market prices for pipeline capacity.
3. Large industrial or commercial customers under Laclede's transportation tariff do not have to take Laclede's released pipeline capacity for a single day, but Laclede insists that schools take Laclede's capacity through June 30, 2005
4. Laclede is the only commission rate-regulated natural gas corporation that has insisted that schools take-or- pay for pipeline capacity for the full term of the experimental aggregate transportation program, through June 30, 2005.
5. Large industrial or commercial customers under Laclede's transportation tariff do not have any level of pipeline capacity mandated, but Laclede's

experimental tariff requires schools to take Laclede pipeline capacity at 150% of the average daily consumption in the peak usage month during the 24 months ending September 30, 2002, which is a period that includes near all-time low temperatures.

On the other hand, MSBA has taken the position that under Section 393.310 RSMo., the legislature intended that pipeline capacity under experimental school transportation tariffs be treated in exactly the same manner as in large volume transportation tariffs. Laclede's large volume transportation tariff does not require customers to take any level of Laclede contracted interstate pipeline capacity for any period and the same is intended for experimental school tariffs.

MSBA interprets Section 393.310 RSMo. that the aggregation and balancing fee is intended to ensure no negative financial impact to Laclede or other customers. MSBA does not agree that Section 393.310 intended to treat schools served by Laclede differently, with regard to pipeline capacity, than Laclede large volume transportation tariff treats its large commercial and industrial transportation customers or materially different than the commission approved experimental school aggregate transportation tariffs for all other commission rate-regulated Missouri gas companies. MSBA strongly disagrees with Laclede's position that Section 393.310 language regarding no negative financial impact means school are required to take or pay for

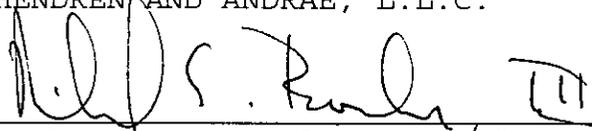
Laclede pipeline capacity at 150% of requirements, in excess through June 30, 2005.

Section 393.310-5 adds a layer of Commissions oversight which is the requirement that the implementation of the aggregation program will not have any negative financial impact on the gas corporation, its other customers or local taxing authorities, and that the aggregation charge is sufficient to generate revenue at least equal to all incremental costs caused by the experimental aggregation programs.

In conclusion, it is the position of MSBA that the statute's reference to no "negative financial impact" has no bearing on the issue of pipeline capacity, but instead only addresses the incremental costs caused by the experimental aggregation program. The statute never intended for schools to be treated differently with regard to pipeline capacity than all other large commercial and industrial transportation customers under Laclede's currently approved tariff. The Commission should adopt the tariff proposed by MSBA to be consistent with the tariffs it approved for Laclede's large commercial and industrial customers and the experimental school tariffs for all other Missouri gas corporations.

Respectfully submitted,

HENDREN AND ANDRAE, L.L.C.



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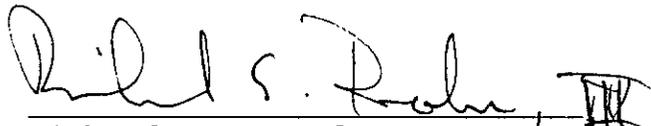
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been mailed or and-delivered to the following on this 5th day of May, 2003:

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