

WASHINGTON, D.C.
NEW YORK, NEW YORK
KANSAS CITY, MISSOURI
JEFFERSON CITY, MISSOURI
OVERLAND PARK, KANSAS
PHOENIX, ARIZONA
LOS ANGELES, CALIFORNIA
IRVINE, CALIFORNIA

BRYAN CAVE LLP

ONE METROPOLITAN SQUARE
211 NORTH BROADWAY, SUITE 3600
ST. LOUIS, MISSOURI 63102-2750
(314) 259-2000
FACSIMILE: (314) 259-2020

RIYADH, SAUDI ARABIA
KUWAIT CITY, KUWAIT
ABU DHABI, UNITED ARAB EMIRATES
DUBAI, UNITED ARAB EMIRATES
HONG KONG
SHANGHAI, PEOPLE'S REPUBLIC OF CHINA
IN ASSOCIATION WITH BRYAN CAVE,
A MULTINATIONAL PARTNERSHIP.
LONDON, ENGLAND

DIANA M. VUYLSTEKE

DIRECT DIAL NUMBER
(314) 259-2543

INTERNET ADDRESS
DMVUYLSTEKE@BRYANCAVE.COM

June 28, 2002

By Hand Delivery

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360


Re: Case No. GA-2002-429

Dear Judge Roberts:

Enclosed for filing on behalf of the Missouri Industrial Energy Consumers in the above-referenced case are an original and eight (8) copies of the Rebuttal Testimony of **JOHN MALLINCKRODT**. I would appreciate it if you would have the additional copy file-stamped and returned to the person delivering this testimony to you.

Thank you for your assistance in bringing this filing to the attention of the Commission

Very truly yours,


Diana M. Vuylsteke

DMV:dv

cc: All Parties of Record

Enclosures

Before the
Missouri Public Service Commission
Case No. GA-2002-429

LACLEDE GAS COMPANY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Affidavit of John W. Mallinckrodt

John W. Mallinckrodt, being first duly sworn, on his oath states:

1. My name is John W. Mallinckrodt. I am a consultant with Brubaker & Associates, Inc., having its principal place of business at 1215 Fern Ridge Parkway, Suite 208, St. Louis, Missouri 63141-2000. My office address is 723 Gardner Road, Flossmoor, IL 60422. We have been retained by the Missouri Industrial Energy Consumers in this proceeding on their behalf.

2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony which was prepared in written form for introduction into evidence in Missouri Public Service Commission Case No. GA-2002-429.

3. I hereby swear and affirm that the rebuttal testimony is true and correct and shows the matters and things it purports to show.


John W. Mallinckrodt

Subscribed and sworn before this 27th day of June, 2002.


Notary Public

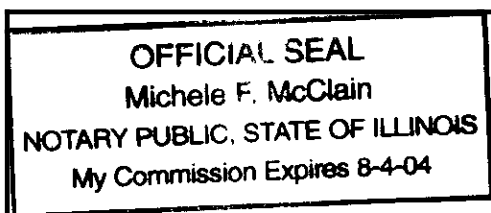


Exhibit No.:
Witness: John W. Mallinckrodt
Type of Exhibit: Rebuttal Testimony
Issues: Rejection of AAO
Request
Sponsoring Party: Missouri Industrial
Energy Consumers
Case No.: GA-2002-429

**Before the
Missouri Public Service Commission
Case No. GA-2002-429**

LACLEDE GAS COMPANY

Rebuttal Testimony of
John W. Mallinckrodt

On Behalf of
Missouri Industrial Energy Consumers

June 2002
Project 7761



BRUBAKER & ASSOCIATES, INC.
ST. LOUIS, MO 63141-2000

LACLEDE GAS COMPANY
Before the
Missouri Public Service Commission
Case No. GA-2002-429

Rebuttal Testimony of John W. Mallinckrodt

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A John W. Mallinckrodt; my business address is 723 Gardner Road, Flossmoor, IL
3 60422.

4 **Q WHAT IS YOUR OCCUPATION AND BY WHOM ARE YOU EMPLOYED?**

5 A I am a consultant in the field of public utility regulation. I am employed by the firm of
6 Brubaker & Associates, Inc., energy, economic and regulatory consultants. The
7 firm's main office is located at 1215 Fern Ridge Parkway, Suite 208, St. Louis, MO
8 63141.

9 **Q PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.**

10 A This information is included in Appendix A to my testimony.

11 **Q ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS CASE?**

12 A I am appearing on behalf of a group of large customers of Laclede Gas Company
13 (Laclede or Company), collectively known as the Missouri Industrial Energy
14 Consumers (MIEC). These customers purchase transportation and sales services
15 from Laclede.

John W. Mallinckrodt
Page 1

1 **Q ON WHAT SUBJECTS HAVE YOU BEEN ASKED TO TESTIFY?**

2 A I have been asked to testify to address Laclede's request for approval of an
3 Accounting Authority Order (AAO).

4 **Q PLEASE SUMMARIZE THE PRINCIPAL POINTS OF YOUR TESTIMONY.**

5 A The principal points of my testimony are summarized below:

- 6 1. The AAO filed by Laclede is not an appropriate regulatory request as Laclede
7 wants to defer revenues instead of costs. AAOs are for deferral of costs – not
8 revenues.
- 9 2. Laclede is not guaranteed a level of revenue, but is only allowed the opportunity
10 to earn an approved rate of return.
- 11 3. Recovery of a certain level of revenue, even though there is a change in weather
12 resulting in lower sales by Laclede, should not be allowed by the Missouri Public
13 Service Commission (Commission).
- 14 4. Laclede's request for an AAO does not meet the criteria to qualify as an AAO.
- 15 5. The request by Laclede for an AAO should be denied.

16 **AAO Request**

17 **Q WHAT DID LACLEDE REQUEST IN ITS AAO FILING?**

18 A Laclede filed an application for an AAO authorizing the company to defer for future
19 recovery consideration its alleged just and reasonable costs of providing public utility
20 service that would otherwise be unrecovered due solely to the extraordinary impact of
21 record warm weather on the company's revenues. The AAO, if approved, would
22 authorize Laclede "to defer and book certain costs to Account 182 for future recovery
23 consideration in its pending rate proceeding, Case No. GR-2002-356."¹

¹ Commission Order Regarding Motion to Strike an Oral Argument, Case No. GA-2002-429, June 20, 2002, page 1.

1 **Q WHAT IS THE BASIS FOR LACLEDE'S REQUEST FOR AN AAO?**

2 A "Laclede claims that the revenues it wants to defer and book to Account 182 are
3 unrecovered due solely to the extraordinary impact of weather on the company's
4 revenues from October 1, 2001, to March 31, 2002."² This deviation is from the
5 weather normal underlying the cost of service approved in Case No. GR-2001-629.
6 Laclede contends that it is seeking to defer those unrecovered costs that the
7 Commission has already approved as just and reasonable and necessary to the
8 provision of utility service. This deferral is for future recovery consideration over a
9 reasonable amortization period.

10 **Q WHAT ARE LACLEDE'S ARGUMENTS WITH RESPECT TO MEETING THE**
11 **CRITERIA FOR AN AAO?**

12 A Laclede contends that its request meets the criteria for granting an AAO, and that the
13 item being covered by the AAO is of an extraordinary and non-recurring nature.
14 Laclede contends that the weather effect satisfies such criteria since the November
15 2001 through January 2002 period was the warmest comparable period ever
16 recorded for the contiguous United States in the more than 105 years and that this
17 past January the global weather temperatures were the warmest recorded for a
18 comparable period in the past 123 years. Laclede points out that the weather in
19 Laclede's service territory this winter was fully consistent with the global and national
20 results as the temperatures experienced since October 1, 2001 have been 21%
21 above normal and the winter season could be the second warmest ever experienced
22 in Laclede's service territory. The Heating Degree Days (HDD) experienced during

² Id.

1 this period were 3,171, or some 828 below normal level of degree days. In addition,
2 Laclede claims that the cost recovery shortfall was also just as extraordinary.

3 Laclede contends that the effects of this extraordinary weather event have
4 deprived the Company of any meaningful opportunity to recover those costs of
5 providing public utility service, which this Commission determined in the last rate
6 case were necessary, just and reasonable.

7 **Q WHAT ARE LACLEDE'S ARGUMENTS WITH RESPECT TO MEETING THE**
8 **OTHER CRITERIA FOR THE GRANTING OF AN AAO?**

9 A The Commission has granted AAO treatment to costs that a utility is required to incur
10 in providing utility service. These include costs or other financial impacts that have
11 been experienced by utilities to comply with specific mandates by the Commission.
12 Laclede contends that the costs it seeks to defer meet this criteria since the
13 Commission determined in the last rate case that these costs were just and
14 reasonable and necessary to the Company's provision of public utility service.
15 Laclede states that it seeks to defer those unrecovered costs that the Commission
16 has already found to be reasonable and necessary to meet the public utility
17 obligations that have been imposed on Laclede as the result of an extensive set of
18 regulatory requirements and rules, and that would otherwise be unrecovered due
19 solely to the extraordinary and uncontrollable effects of a record warm weather event.

1 **Discussion of Laclede's AAO Request**

2 **Q WHAT POSITIONS HAVE OTHER PARTIES TAKEN ON LACLEDE'S AAO**
3 **REQUEST?**

4 A The Office of the Public Counsel (OPC) in a filed motion to dismiss or to request a
5 hearing argued, "that Laclede has made an inappropriate request to seek to
6 guarantee recovery of revenues that Laclede was given the opportunity to recover."
7 OPC argued that Laclede failed to demonstrate that its costs of providing service
8 increased as a result of the alleged warmer-than-normal weather, and notes that
9 Laclede has argued that its revenues have been less than projected as a result of the
10 weather. OPC also stated that the Commission has never granted an AAO when the
11 utility has not demonstrated that it incurred an increase in its costs resulting from an
12 extraordinary and non-recurring event.

13 **Q WHAT ELSE HAS OPC SAID ABOUT LACLEDE'S REQUEST?**

14 A OPC stated that Laclede fails to recognize that the Commission's extraordinary,
15 unusual and unique, and non-recurring criteria deals with events that "generate costs
16 which require special consideration." Laclede in its filing does not seek to defer any
17 extraordinary or non-recurring costs occasioned by an extraordinary, unusual or
18 unique event, but instead "seeks to defer revenues it claims it was entitled to recover
19 as a result of the weather normal agreed upon and underlying the cost of service
20 established in Case No. GR-2001-629."

21 In effect, Laclede is trying to bill customers in the future for gas usage that
22 was not experienced in the past because of warm weather. Laclede's, in its
23 application, has not indicated that its "cost" to provide service has increased, nor that
24 additional costs were incurred, due to allegedly warmer than normal weather.

1 Laclede just tries to present its AAO application as a cost recovery proposal, which
2 would require customers to pay additional revenues to replace revenues Laclede
3 feels it would have received if the weather had been colder. The OPC stated that,
4 "The Commission should reject Laclede's attempt to pervert the AAO process from
5 one in which the utilities are given an opportunity to defer extraordinary and non-
6 recurring cost increases for possible recovery to a process in which utilities are
7 allowed to defer revenue shortfall for possible recovery."

8 **Q WHAT ADDITIONALLY HAS OPC SAID ABOUT LACLEDE'S REQUEST?**

9 A OPC stated, "Laclede seeks to insulate shareholders completely from the risks of
10 weather fluctuation. The fact that weather can be warmer than 'normal' weather
11 determined when setting rates, or colder than the 'normal' weather determined when
12 setting rates, has been taken into account in the rate setting process." OPC also
13 stated, "Laclede seeks to alter the fundamental regulatory paradigm from one in
14 which Laclede is given an **opportunity** to recover its cost of service to one in which it
15 is **guaranteed** the ability to recover its cost of service. There is nothing extraordinary
16 about the fact that weather fluctuates from one year to the next."

17 When the weather was colder than normal in the winter of 2000/2001,
18 Laclede did not file an AAO to return excess monies collected from customers
19 because the weather was colder than normal.

20 OPC in that affidavit of Russell W. Trippensee, stated that Laclede seeks not
21 "to defer expenses, but in fact to defer revenue the Company alleges it did not
22 receive due to lower sales levels as a result of warmer weather. Revenues are not
23 costs." In addition, costs that are normally requested to be deferred in an AAO

1 proceeding are based on actual costs incurred, not on estimates of not even costs
2 but revenues that were not received.

3 **Q WHAT POSITION DID STAFF TAKE ON LACLEDE'S AAO REQUEST?**

4 A Staff, in its filed motion to dismiss or request a hearing, stated, "Laclede seeks
5 authority to calculate a hypothetical revenue amount that it did not bill and collect
6 from customers in the months of October 2001 through March 2002; to record that
7 amount on its books as a deferred 'cost;' and to seek recovery of such hypothetical
8 costs in rates in its pending rate case. . . . Staff suggests that there is no merit in
9 Laclede's request for a number of reasons. First, weather risk was neither
10 unanticipated nor unaccounted for in the rate case proceeding in which Laclede's
11 rates were set, Case No. GR-2001-629. Second, Laclede's proposal to estimate and
12 record amounts for service not provided in one period, and then to charge such
13 amounts to future customers in future periods, violates the prohibition against
14 retroactive ratemaking."³

15 **Q WHAT IS YOUR POSITION ON LACLEDE'S AAO REQUEST?**

16 A I agree with the comments of OPC and Staff. Laclede has made a request for
17 guaranteed recovery of revenues. Laclede is not guaranteed this recovery by
18 regulation, but is just given the opportunity to recover these revenues and to earn its
19 allowed rate of return. Laclede has requested an AAO to defer revenues. The
20 normal AAO authorization is to defer costs that have been incurred by the utility
21 because of extraordinary, unusual and unique, and non-recurring events (e.g.,
22 damage to electric lines due to an ice storm that caused the utility to incur additional

³ Commission Order Denying Request For Expedited Treatment, Scheduling Prehearing Conference and Denying Motion to Consolidate, Case No. GA-2002-429, April 24, 2002, page 2.

1 costs to replace and repair those lines to restore service to its customers). Laclede
2 does not argue that the event (warmer than normal weather) is unusual and unique.
3 Laclede's application is not seeking recovery of "costs" as traditionally considered in
4 AAO requests, but recovery of revenues.

5 Laclede has failed to prove that its "cost" to provide service has increased
6 because of warmer weather. Instead, it has asked to defer revenues the Company
7 alleges it did not receive due to lower sales levels as a result of warmer weather.
8 This is not a proper basis for authorizing an AAO.

9 **Recommendation**

10 **Q WHAT IS YOUR RECOMMENDATION FOR TREATMENT OF THE AAO BY THE**
11 **COMMISSION?**

12 **A** Laclede's AAO request should be rejected for the following reasons. First, Laclede is
13 asking for guaranteed recovery of revenues, which is contrary to regulatory rules.
14 Second, Laclede's request is not proper as it is asking to defer revenues, while a
15 normal AAO is authorized to defer costs. Third, no extraordinary, unusual and
16 unique, and non-recurring event has occurred that has increased Laclede's costs.
17 Laclede has only earned less revenue because of the event it describes. Fourth,
18 Laclede has failed to prove that its "cost" to provide service has increased.
19 Therefore, Laclede's request for an AAO does not meet the criteria for granting an
20 AAO and should be rejected.

21 **Q DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

22 **A** Yes, it does.

Qualifications of John W. Mallinckrodt

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A John W. Mallinckrodt. My business mailing address is 723 Gardner Road,
3 Flossmoor, IL 60422.

4 **Q WHAT IS YOUR OCCUPATION?**

5 A I am a consultant in the field of public utility regulation and am employed by Brubaker
6 & Associates, Inc., energy, economic and regulatory consultants.

7 **Q PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.**

8 A I hold a Bachelor's degree in Engineering from the University of Missouri, and a
9 Master of Business Administration degree from the University of Chicago.

10 From 1969 through 1989, I was employed by Natural Gas Pipeline Company
11 of America (NGPL), a subsidiary of MidCon Corporation. At NGPL, the positions I
12 held included Assistant Vice President of Engineering and Assistant Vice President of
13 Planning. My responsibilities as AVP of Engineering included system design, storage
14 reservoir engineering, code compliance and environmental matters. As AVP of
15 Planning, I was responsible for strategic and business planning for the Company.
16 During my years with MidCon/Peoples Energy, I also worked for The Peoples Gas
17 Light and Coke Company as Field Superintendent of Distribution and Administrative
18 Assistant to the President. I also have experience in pipeline design, construction
19 and operations.

1 In 1989, I was employed by K&W Design/Construction as General Manager of
2 Engineering and Construction. I directed the engineering, design and construction of
3 projects for major food, pharmaceutical and petrochemical client companies.

4 I joined the firm of Drazen-Brubaker & Associates, Inc. (DBA) in June of 1991.
5 In April 1995 the firm of Brubaker & Associates, Inc. was formed. It includes most of
6 the former DBA principals and staff. Since 1991, I have been engaged in the
7 preparation of studies relating to utility rate matters and have participated in interstate
8 pipeline, intrastate pipeline, oil pipeline, gas distribution and electric rate cases.

9 In addition to our main office in St. Louis, the firm also has branch offices in
10 Denver, Colorado; Chicago, Illinois; Asheville, North Carolina; Kerrville, Texas; and
11 Plano, Texas.

12 **Q HAVE YOU PREVIOUSLY APPEARED BEFORE A REGULATORY COMMISSION**
13 **OR A PUBLIC AUTHORITY?**

14 **A** I have submitted testimony and appeared before the Federal Energy Regulatory
15 Commission, the Delaware Public Service Commission, the Iowa Utilities Board and
16 the Public Utility Commission of Texas. In addition, I have submitted testimony in
17 cases before the Colorado Public Utilities Commission, the Illinois Commerce
18 Commission, the Louisiana Public Service Commission, the Missouri Public Service
19 Commission and the New York State Public Service Commission.

20 **Q ARE YOU A REGISTERED PROFESSIONAL ENGINEER?**

21 **A** I am a registered professional engineer in the State of Illinois.