

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
February 21, 2002

CASE NO: GT-2001-329

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Michael C. Pendergast
Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101

Larry W. Dority/James M. Fischer
Fischer & Dority PC
101 Madison Street, Suite 400
Jefferson City, MO 65101

Thomas M. Byrne
Ameren Services Company
1901 Chouteau Avenue
PO Box 66149
St. Louis, MO 63166-6149

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Diana M. Vuylsteke
Bryan Cave LLP
211 N. Broadway, Suite 3600
St. Louis, MO 63102

Dean L. Cooper
Brydon, Swearngen & England, PC
312 E. Capitol Avenue, PO Box 456
Jefferson City, MO 65102

Enclosed find certified copy of an **DISSENTING OPINION** in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

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

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

Dissenting Opinion of Commissioner Steve Gaw

I respectfully dissent from the Order Denying Rehearing And Order Denying Request For Clarification of the Report and Order (R&O) issued September 20, 2001, in this case. While I voted for the original R&O, and agree with the final results, I did so with concerns as to whether it contained sufficient findings of fact to support the conclusions of law entered in the case. The motions since filed by Laclede Gas Company (Laclede) have convinced me that those concerns were valid.

My major objection to the R&O has to do with the adequacy of the findings of fact. There is no recitation of fundamental facts about the case so that a reviewing court would be able to understand what had been before this Commission for decision, at least not without such court delving into the record on their own.

The findings of fact in this case do not rise to the level required under §536.090, RSMo 2000. Describing the problems with the original R&O is a little like the story of the city dweller asking the farmer if the pig he was looking at was a good pig. "Well", said the farmer, "I suppose he would be a pretty good pig, for a horse." I am not sure that the "findings of fact" in the R&O rise to their given name. However, they are not adequate under Chapter 536.

An Order from this Commission should allow a reviewing court to understand the matters at issue, the basic facts relied upon by the Commission in reaching a decision and of course delineate the conclusions of law based upon those findings. In this case a reviewing court would have a

difficult time determining the issues that were in front of the Commission. Recently in *Noranda Aluminum v. Public Service Commission*, 24 S.W. 3d 243 (Mo.App. W.D. 2000) the Court stated: “The only means by which we could review the commission’s conclusion would be to comb through the record looking for evidence that supported it and presuppose that the commission accepted this evidence as true. This is unacceptable.”

In addition, there is little discussion of the appropriate legal standard for accepting or rejecting a tariff containing an incentive plan, in this case a gas supply incentive program (GSIP). This issue is critical to future cases that will come before the Commission, yet reading the R&O gives no guidance as to the legal threshold necessary for approval. What is a gas supply incentive program? Does this Commission have authority to disapprove any incentive program in its sole discretion? Is there a requirement that the Commission accept a GSIP unless it finds it detrimental to the public interest? Or, must the Commission find it is in the public interest before it approves such a tariff? None of these questions are answered adequately in the R&O.

The R&O does not explain the elements and structure of this GSIP nor what portions the Commission finds objectionable. The Commission should explain the proposed tariff in the R&O along with the GSIP that was in existence in the previous tariff and the modifications proposed by the Company. Unless the Commission concludes that any incentive program may be rejected at the Commission’s sole discretion, the Commission should analyze the benefits and detriments of the program to the public and the company, including the savings or losses customers have seen and could expect to see in the future as a result of the program, and the additional revenue, if any, to the company as a result of the incentive program.

Of course if this Commission may turn down any incentive program in its discretion, then this analysis is unnecessary. However, if the Commission must determine whether the incentive plan is in the public interest, an analysis is necessary. The Request for Clarification should be granted unless insufficient evidence exists in the record to make sufficient findings of fact, in which case the Application for Rehearing should be approved.

Respectfully submitted,



Steve Gaw
Commissioner

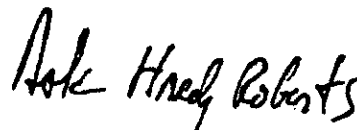
Dated at Jefferson City, Missouri,
on this 20th day of February, 2002.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 21st day of Feb. 2002 .



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

