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June 28, 2002

Mr. 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

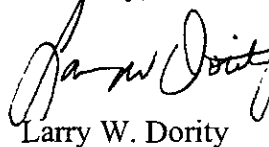
RE: *In the Matter of the Application of Laclede Gas Company for an
Accounting Authority Order, Case No. GA-2002-429*

Dear Mr. Roberts:

Please find enclosed for filing with the Commission in the above-referenced matter, the original and eight (8) copies of the Motion of Laclede Gas Company for Reconsideration of the Commission's June 20, 2002, Order Regarding Motion to Strike and Oral Argument.

Thank you for your attention to this matter.

Sincerely,



Larry W. DORITY

Enclosures

cc: Office of the Public Counsel
Dana K. Joyce, General Counsel
Counsel of Record

**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. GA-2002-429
Consideration its Just and Reasonable Costs of Providing)	
Public Utility Service that would otherwise be Un-)	
recovered due solely to the Extraordinary Impact of)	
Record Warm Weather on the Company's Operations)	

**MOTION OF LACLEDE GAS COMPANY FOR RECONSIDERATION
OF THE COMMISSION'S JUNE 20, 2002, ORDER REGARDING
MOTION TO STRIKE AND ORAL ARGUMENT**

COMES NOW Laclede Gas Company ("Laclede" or "Company") and, pursuant to §386.500 RSMo (2000) and 4 CSR 240-2.160 (2) of the Commission's Rules of Practice and Procedure, submits its Motion for Reconsideration of the Commission's June 20, 2002, Order Regarding Motion To Strike And Oral Argument ("Order") in the above-captioned case. In support thereof, Laclede states as follows:

1. On March 8, 2002, Laclede filed its Verified Application for Accounting Authority Order commencing the above stated case. At the same time, Laclede also filed a Motion for Protective Order seeking to protect certain information set forth in the Application. On March 18, 2002, the Commission granted Laclede's Motion for Protective Order and adopted the standard protective order for this case.

2. In the Application, Laclede sought to protect the amount it then estimated as the shortfall experienced by the Company due directly and solely to the effects of weather. Laclede designated this information for protection because (i) the designated amount was material and had not yet been disclosed to the investing public; and (ii) the

winter period had not yet ended, so the figure represented an incomplete assessment of the extraordinary effect of the winter of 2001-02.

3. The close of the winter season and the publication of Laclede's second quarter report on April 25, 2002, eliminated the need to keep this information confidential. Therefore, it can now be discussed that the information Laclede sought to protect was that the cost recovery shortfall due to weather exceeded \$11.5 million.

4. On March 21, 2002, Public Counsel issued a press release opposing Laclede's Application and identifying the amount Laclede claimed to have lost due to the effect of weather as "more than \$10 million." A dispute ensued as to the propriety of Public Counsel's disclosure.

5. On June 20, 2002, the Commission issued its Order finding that Public Counsel's disclosure did not violate the protective order in this case. In reaching this decision, the Commission found that general "order-of-magnitude" references with respect to protected information have been "common practice" before the Commission; that whether an order-of-magnitude reference violates a protective order is "a factual matter to be judged in light of the circumstances of the case"; and that "[b]ased on the facts of this case" Public Counsel's disclosure had not violated the protective order. Order, pp. 6-7. The Commission also determined that it was not necessary to make any modifications to its protective order at this time, or to make any provision for prior consultation between parties prior to "the release of protected information."

6. The propriety of protecting certain kinds of information from disclosure because of the harm that disclosure would otherwise cause to a utility, its customers or its employees has long been recognized by the Commission. In addition to issuing

protective orders in numerous cases to prevent such disclosures, the Commission has also adopted a specific rule providing for the use of such orders. *See* 4 CSR 240-2.085. With its June 20, 2002 Order in this case, however, the Commission has explicitly found that notwithstanding the issuance of a Protective Order in a particular case and a party's subsequent designation of certain information as proprietary pursuant to that Order, parties are nevertheless free to make "order of magnitude" references to such information. Moreover, the party is free to do so without any prior consultation with the party that has designated the information as proprietary. The Commission does state that the use of such "order of magnitude" references could violate a protective order based on the facts or circumstances of a particular case, but provides no guidance as to what those facts or circumstances are -- other than its apparent determination in this case that it was permissible to use a reference that was within 15% of the figure that was sought to be protected (\$10.0 million versus \$11.5 million).

7. Laclede would respectively submit that such determinations of the June 20 Order are unlawful, unreasonable, arbitrary and capricious in that they effectively eviscerate whatever protections from disclosure that the Commission has deemed to be appropriate with its adoption of a protective order. At a minimum, the Order would suggest that an "order of magnitude" estimate can be used to reference protected information, so long as the reference deviates by 15% or more from the designated information -- a result that in many cases, if not all, would render protection of the information meaningless. And it implies that an even more exact reference may be permissible based on unspecified facts and circumstances that are nowhere defined by the Commission in its Order.

8. Laclede believes that such determinations of the Order are also unlawful because they effectively make the protective provisions of the protective order so vague and ambiguous as to violate the constitutional due process rights of the parties operating under them. Due process, as guaranteed by Article I, §10 of the Missouri Constitution and the Fifth and Fourteenth Amendments to the United States Constitution requires that a penal statute¹ be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. *Verbeck v. Schnicker*, 660 F.2d 1260 (8th Cir. 1981) *cert. den.* 455 U.S. 921, 102 S.Ct. 1278, 71 L.Ed. 462. Vagueness, as a due process violation, takes two forms. One is the lack of notice to a potential offender because the statute is so unclear that “men of common intelligence must necessarily guess at its meaning.” *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 127, 70 L.Ed 332 (1926); *Broadrick v. Oklahoma*, 413 U.S. 601, 93 S. Ct. 2908, 37 L.Ed.2d 830 (1973). The second is that the vagueness doctrine assures that guidance, through explicit standards, will be afforded to those who must apply the statute, avoiding possible arbitrary and discriminatory application. *Grayned v. City of Rockford*, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed. 222 (1972). Where a provision is open to a wide range of meanings and interpretations, Missouri courts have found them to be constitutionally infirm. *State v. Young*, 695 S.W.2d 882 (Mo. banc 1985).

9. As previously noted, neither the Commission’s standard protective order nor any other orders or rules of the Commission define what an “order-of-magnitude”

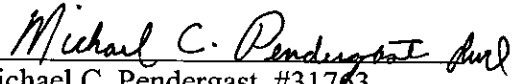
¹ As the Commission recognized at page 7 of its Order, violations of protective orders are subject to penalties under §§ 386.570 and 386.480 RSMo. 2000.

reference means.² Nor does the June 20 Order provide any firm guidance on what disclosures of protected information will be allowed and what disclosures will be prohibited under the order-of-magnitude practice. Is an "order-of-magnitude" test based on the absolute difference between the protected and disclosed figure, or is it based on a percentage, or both? If the test is based on a percentage, is it based on the percentage difference from the protected information (in this case, \$1.5 million/\$11.5 million, or 13%) or the percentage difference from the disclosed information (in this case, \$1.5 million/\$10 million, or 15%)? Or is "order-of-magnitude" calculated in some other manner? And once calculated, how much of a difference is required to qualify as an "order of magnitude" estimate rather than an impermissible disclosure? The Commission's Order offers no standards or guidance on these issues, but instead suggests that it will all depend on some undefined evaluation of unspecified facts and circumstances in each case. By failing to provide such guidance, the Commission has effectively engrafted an undefined order-of-magnitude exception onto the protective order process that is so vague and ambiguous as to preclude any party from knowing whether or under what circumstances information will or must be protected and to prevent a completely arbitrary and discriminatory application of such orders. Both those who depend on protective orders to safeguard sensitive information and those who seek to provide information require, and are constitutionally entitled to, greater clarity.

² In fact, the very use of the term "order of magnitude" affirmatively promotes vagueness and uncertainty, given the fact that it is defined as a "range of magnitude extending from some value to ten times that value." Merriam Webster's Collegiate Dictionary, 10th Edition, p.818.

WHEREFORE, for the foregoing reasons, Laclede Gas Company respectfully requests that the Commission issue an Order granting reconsideration of its June 20, 2002, Order for the reasons stated herein.

Respectfully submitted,


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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Motion for Reconsideration was served on the General Counsel of the Staff of the Missouri Public Service Commission and the Office of the Public Counsel on this 28th day of June, 2002, by hand-delivery or by placing a copy of such Motion, postage prepaid, in the United States mail.


Larry W. Dority