

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Laclede Pipeline Company

)

Docket No. ISO6-201-000

**RESPONSE OF LACLEDE PIPELINE COMPANY TO
MOTION TO INTERVENE AND PROTEST OF
THE MISSOURI PUBLIC SERVICE COMMISSION**

Pursuant to 18 C.F.R. § 343.3(b) and Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, Laclede Pipeline Company (LPC) hereby submits its Response to the "Motion to Intervene and Protest of the Missouri Public Service Commission" dated March 16, 2006 ("Protest").

The MPSC cites five reasons why it believes LPC's tariff filing should be suspended and the matter set for hearing. As discussed more fully below, none of these reasons warrant such relief. The Commission should accordingly deny the MPSC's request that LPC's tariffs be suspended and a hearing set in this matter and accept the filing.

Jurisdictional Status of Pipeline

The first reason given by the MSPC for suspending LPC's tariff consists of nothing more than the observation that LPC could theoretically operate its pipeline without a tariff if it were to transport its own product for its own consumption and did not hold itself out to transport on behalf of third parties. Protest at ¶ 1, p. 4.¹ This contention

¹ Citing *Champlin Refining Co. v. U.S.*, 329 U.S. 29 (1946) ("*Champlin I*"). It appears that the MPSC intended to cite *U.S. v. Champlin Refining Co.*, 341 U.S. 290 (1951), ("*Champlin II*"). *Champlin I* holds that interstate pipelines that only provide service for themselves may be jurisdictional. *Champlin II* holds that interstate pipelines that only provide service to themselves may not have to file tariffs.

mistakes the Commission's policy on jurisdictional pipelines and fails to consider the facts involving LPC.

LPC agrees with the MPSC that it was not under an obligation under the Interstate Commerce Act ("ICA") to file a tariff under its historical propane operations for the benefit of Laclede Gas Company ("LGC"). However, in order to provide additional revenues for the benefit of the LGC ratepayers, LPC has in the past provided commodity exchanges with third parties, as the MPSC is well aware – not common carrier transportation, but not solely proprietary transactions. *See* Attachment A, Glenn Buck Affidavit. More recently, those third parties have expressed a desire to obtain transportation, which clearly imposes the obligation to file a tariff.² Therefore, LPC is properly holding itself out to transport LPG on behalf of third parties subject to the terms and conditions of its tariffs. Under such circumstances, the MPSC's jurisdictional observation regarding *Champlin II* is simply irrelevant in that it addresses a scenario that is demonstrably at odds with the facts of this filing. In addition, the MPSC appears to completely ignore the benefits of obtaining additional throughput that would not otherwise exist with a private pipeline operation and that inures to the benefit of LGC ratepayers.

Alleged Over Recovery of Costs

The second reason given by the MPSC for suspending the filing relates to its concern that the instant tariffs create the "potential" for LPC to over-recover its costs.

² FERC has consistently held in cases involving pipelines that fit the circumstances of the *Champlin II* case that such pipelines must notify FERC of changes in operational status, including inter alia when potential shippers express an interest in receiving transportation service, so that FERC can re-evaluate its

According to the MPSC, this concern arises because the tariffs would allow LPC to recover the costs of the pipeline from charges to third parties at the same time that some of these costs are also being recovered by LGC – a local distribution company affiliate of LPC – through its Missouri-regulated rates for utility service.

In point of fact, LPC will only recover those costs that it is authorized to recover by its tariffs – which are designed to recover only its cost of service using revenues from both LGC and third parties. There is absolutely nothing in those tariffs (nor has the MPSC alleged there is anything in those tariffs) that would allow LPC to double or over-recover those costs. And that is precisely where the Commission’s inquiry should end.

Furthermore, if the MPSC’s concern is that somehow LPC’s tariff would provide for an over-recovery of LPC costs because in addition to LPC being permitted to bill third parties the rates shown on FERC No. 2, LGC would also be recovering costs associated with third party transactions in its rates, the MPSC’s concerns, as amply demonstrated by the affidavit of Glenn Buck, are totally misplaced and at odds with the MPSC Staff’s treatment of revenues in Missouri rate cases. It is abundantly clear that in past LGC rate proceedings LGC’s rates have been reduced to reflect third party revenues. On that basis, LPC believes that MPSC fails to raise an issue for hearing. See Attachment A.

As Mr. Buck demonstrates in his Affidavit, the MPSC has consistently and closely overseen the level of LPC costs recovered by LGC from its ratepayers, and has specifically required substantial credits to those costs to recognize that LPC engaged in some commodity exchanges involving unaffiliated parties. Attachment A at ¶¶ 5-6.

decision not to require a tariff filing. *See Hunt Refining Co. and East Mississippi Pipeline Co.*, 70 FERC ¶ 61,035 (January 18, 1995); *Sinclair Oil Corp.*, 4 FERC ¶ 62,026 (September 25, 1978).

Accordingly, unless the MPSC is requesting that this Commission usurp those ratemaking powers that properly rest with state regulatory bodies, its contention on this point should be rejected.

“Disgorgement” of Revenues

For its third point, the MPSC states that if LPC has already transported propane for third parties in interstate commerce without a FERC-authorized tariff then the Commission should at least consider whether LPC should be required to “disgorge” all or a portion of such revenues. Protest at 3. The Commission should dismiss this request, on several grounds:

- LPC’s past activities undertaken to serve Missouri consumers under close supervision by the MPSC did not violate the ICA.
- The Commission’s consistent policy has been to require prospective oil pipeline tariff filings and to allow examination of the reasonableness of the past transportation in a complaint proceeding.
- When potentially jurisdictional transportation prior to tariff filing has been challenged, the Commission has examined the past charges in reparations proceedings using the same rate reasonableness standards as it applies in regular proceedings –not a “disgorgement” of “revenues” standard.
- Procedurally, the MPSC’s concerns should be addressed, if at all, not in an ICA § 15(7) proceeding, but in a complaint proceeding under ICA § 13.

As noted above, the MPSC misconstrues the significance of *Champlin II*. LPC agrees that its operations have historically been those of a pipeline carrier that have not required a tariff filing, but notes that the case law on the subject is considerably more complex than the MPSC suggests. The commodity exchanges that LPC has undertaken in the past,

³ See generally, *Texaco Refining and Marketing, Inc. v. SFPP, L.P.*, 80 FERC ¶ 61,200, order denying rehearing, 81 FERC ¶ 61,388 (1997)(discussing *Champlin II* and other precedents in the context of the Watson Station facilities of SFPP).

with the express knowledge of the MPSC and for the purpose of reducing costs to Missouri natural gas consumers, have moved it slightly closer to jurisdictional status, but fall far short of having constituted a “holding out” to the public by LPC. However, LPC has received more recent expressions of interest by shippers in transportation that are not ambiguous in their import. In order to ensure that there is no question about the jurisdictional status of future activities, and in order to accommodate requests by third party shippers for common carrier transportation, LPC has filed tariffs. No third-parties, past or prospective, have protested or expressed concerns. Consequently, there is no basis for the MPSC’s suggestion that past transactions might have been in violation of the ICA.

The appropriate forum for challenging past charges would be a complaint, not a Section 15(7) protest. The question posed by LPC’s March 1, 2006 filing is whether the proposed tariffs comply with the Commission’s regulations and whether further investigation is necessary under ICA § 15(7). Issues related to alleged unlawful rates charged prior to the new tariffs are matters for a complaint. The brief and indistinct suggestion in the MPSC’s Protest falls far short itself of meeting the Commission’s requirements for a formal complaint.

⁴ The Commission has carefully distinguished between protests challenging the carrier’s justification of rate changes, and complaints against underlying or unchanged aspects of the carriers’ rates or services. See generally, *e.g.*, *SFPP, L.P.*, 107 FERC ¶ 61,334 (2004)(dismissing protests seeking to challenge the underlying rates of a carrier rather than the changes implemented by the tariff filing under the generic index).

⁵ Were the MPSC to submit a complaint alleging that prior activities were both jurisdictional and unlawful, it would need to demonstrate a number of facts: that the challenged transportation in the past was in fact jurisdictional under the ICA; that the charges, direct or indirect, made by LGC to LPC were unjust and unreasonable under the ICA; that the Missouri consumers that were the ratepayers of LGC actually paid the allegedly excess charges made by LPC; and that reparations would be appropriate in light of the MPSC’s continuous oversight and control over the charges made by LPC and the costs passed through to consumers by LGC. Numerous other issues would arise, but LPC submits that the brief claim regarding past activities taken by the Protest falls far short of the requirements of the Commission and the ICA. As

Moreover, the MPSC's claims ignore its own long-standing oversight over the pass-through of charges by LPC to LGC. It is disingenuous, at best, for the MPSC to suggest that LPC should be required to disgorge any revenues that may have been realized in the past from the operation of the pipeline. As the attached affidavit of Glenn Buck shows, the MPSC and its Staff have for many years actively monitored LPC's business activities, as a result of numerous audits conducted during general rate case proceedings involving LGC. Attachment A at ¶ 5. The MPSC and its Staff have also consistently made adjustments to LGC's cost of service to recognize any revenues as well as any costs associated with the operation of the pipeline. Attachment A at ¶ 6. As a result, to the extent LPC may have generated third party revenues, the Missouri ratepayers who the MPSC purports to represent have *already* received the benefit of those revenues and there would be therefore none left to "disgorge." Given this fact and its extensive knowledge of the scope and nature of LPC's business activities, the MPSC is in a singularly poor position to even raise such an issue.

Appropriateness of \$5.19 per Barrel Rate and 12.48% Return on Equity

For its fourth point, the MPSC raises only two briefly stated concerns over the lawfulness of the \$5.19 per barrel rate that would be applicable to LGC. In connection therewith, the MPSC questions: (1) the role of the discounted rates, ¶ 5 and (2) whether the 12.48% recommended return on equity (ROE) underlying the rate is too high, ¶ 4. Neither assertion raises any ground for investigation by the Commission.

the Commission has emphasized in the oil pipeline context, the requirements of Rule 206 may bar complaints. *See Continental Resources, Inc. v. Bridger Pipeline, L.L.C.*, 113 FERC ¶ 61,178 (November 18, 2005) at ¶¶ 8-14 (finding that the complainant failed to satisfy the requirements of Rule 206).

Background: the proposed rates do not increase LGC's historic cost responsibility. To the contrary, the likely revenue impact of the \$5.19 per barrel rate for LGC closely approximates what LGC has historically paid for services provided by LPC before consideration of the third party revenues that have traditionally been imputed in the establishment of LGC's rates approved by the MPSC. Since the cost to LGC of obtaining such service from LPC has been closely scrutinized during previous rate case proceedings before the MPSC (including one that just concluded in October of last year), it is difficult to understand why such a rate would be viewed by the MPSC with concern. Consistent with the manner in which such costs have been viewed in the past, the per barrel rate simply reflects the reality that LPC's primary function is to serve the high priority space-heating needs of LGC in the St. Louis market. Moreover, to the extent that the undiscounted rate may be perceived as somewhat high, its level is simply a function of the fact that it is based on an actual ten-year average of LGC propane requirements which have been relatively small. Significantly, the MPSC fails to note that the tariff also is designed to ensure that if the volumes transported by LGC rise above that historically low level, LGC will experience proportional decreases in rates, thus ensuring that LPC will not profit from weather-related increases in LGC volumes.

The ROE is calculated on the standard Commission DCF methodology. As demonstrated by the attached affidavit of Kathleen McShane, Attachment B, LPC's ROE recommendation has been made by a recognized expert in this area using a DCF analysis and standard FERC proxy group and methodology. The median DCF cost of equity for the proxy group consisting of Buckeye Partners, L.P., Enbridge Energy Partners, L.P. Kinder Morgan Energy Partners, L.P. and TEPPCO Partners, L.P. was 12.48%. Because

the Laclede Group common equity ratio was within the range of the median common equity ratio for the proxy group, LPC's consultant recommended that LPC's allowed ROE should likewise be set at the sample median.

In any event, the 12.48 % ROE is also consistent with the cost levels historically recognized by the MPSC for services provided by LPC to LGC. Indeed, after subtracting the inflation component of the recommended ROE, the overall return on rate base is comparable to the level that was built into the settlement of LGC's last rate case.

In short, the ROE recommendation underlying the rates proposed in the tariffs is not only fully consistent with this Commission's methodology for deriving an appropriate ROE but also approximates a result that has been recognized as reasonable by the MPSC. Accordingly, there is no basis for setting the filing for hearing on ROE grounds.

The 10 to 15 cents per Barrel Charge

For its final point, Protest at ¶ 5, the MPSC suggests that the 10 to 15 cents per barrel charge for certain shippers may be unduly preferential and asserts that no explanation has been provided. The discounted rates for opportunistic third party volumes is not unduly preferential and are readily explained. The discounted rates have been developed by LPC in an effort to *maximize* the revenues it receives from shippers who may desire to transport liquefied petroleum gas supplies over the pipeline. See Affidavit of Robert Glosier, Attachment C. To that end, the rate is designed to generate the maximum contribution to the pipeline's fixed costs that can be achieved given the competitive alternatives available to such shippers. Since LPC will bear the financial impact of any rate that is lower than it needs to be, it has every incentive to propose one

that is reasonably designed to accomplish this goal.⁶ The MPSC has merely noted the existence of a disparity in the discounted and undiscounted rates, not submitted any grounds to raise a question about the need for the discount. Given these considerations, there is nothing unduly preferential or otherwise inappropriate about this rate, and the MPSC's concern creates no basis for a hearing on the issue.

Conclusion

For all of these reasons, LPC submits that the MPSC has failed to provide any substantive justification for its request that LPC's tariff filing be suspended and a hearing held to consider the filing. The rates, terms and conditions set forth in the tariff filing are straight-forward, fully consistent with this Commission's prescribed methodologies for deriving pipeline charges, and suitably respectful of LPC's traditional role as a supplier to LGC. The Commission should accordingly permit the tariff filing to become effective as proposed.

⁶ See "Order Denying Rehearing," *Policy For Selective Discounting By Natural Gas Pipelines*, 112 FERC ¶ 61,173 at ¶ 107 (November 17, 2005). The Commission reaffirmed its longstanding policy of not requiring natural gas pipelines to provide detailed support for all discounts to their maximum rates, because as to discounts to non-affiliates, "the pipeline will always seek the highest rate for its services because it is in its own best interests to do so.")

Respectfully Submitted,

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Dated: March 21, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document pursuant to the Commission's regulations on each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: March 21, 2006

CHRISTOPHER J. BARR, ESQUIRE

**BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Laclede Pipeline Company)

Docket No. IS06-201-000

AFFIDAVIT OF GLENN W. BUCK

Glenn W. Buck, of lawful age, being first duly sworn on his oath, states that:

1. My name is Glenn W. Buck. My business address is 720 Olive Street, St. Louis, Missouri 63101; and I am currently employed by Laclede Gas Company ("LGC") as Manager of Financial Services.
2. As part of my duties as Manager of Financial Services, I am responsible for coordinating and preparing general rate filings before the Missouri Public Service Commission ("MPSC"). I am also responsible for managing the discovery process, negotiating settlement terms, and providing evidence before the Commission on unresolved issues.
3. On March 1, 2006, Laclede Pipeline ("LPC") filed tariffs to provide common carrier LPG transportation subject to the rules and regulations of the Commission.
4. The purpose of my affidavit is to discuss the level of scrutiny that the MPSC has provided in auditing both the revenues and expenses of LPC in determining just and reasonable rates for LGC.
5. As the MPSC is well aware, LPC has provided commodity exchanges with third parties in the past in order to provide additional revenues for the benefit of LGC ratepayers. To my knowledge, the MPSC Staff has had access to, and has audited, the books and records of LPC in connection with general rate filings of LGC for as long as

LPC has been in existence, most recently in a case that concluded with new rates going into effect on October 1, 2005 (GR-2005-0284). In determining LGC's rates in that proceeding, the Staff performed an analysis of, and considered, LPC's rate base investment, revenues (including third-party exchange revenues), and expenses to determine LPC's cost-based component of LGC overall rates. Although it was a "settled" case, a review of the Staff workpapers details the extent of their review, and indicates that the Staff included nearly \$400,000 of third-party exchange revenues as an offset to cost-of-service.

6. It can further be noted that, in LGC's last fully-litigated case before the MPSC (GR-99-315), the Staff again looked at all components of LPC's cost-of-service, including the effect of third-party exchanges. Clearly, in this, as well as other past cases, Laclede Gas' rates have been reduced to reflect those third-party revenues.

FURTHER AFFIANT SAYETH NOT.

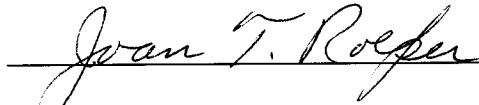
A handwritten signature in cursive script, reading "Glenn W. Buck", is written over a horizontal line.

Glenn W. Buck

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

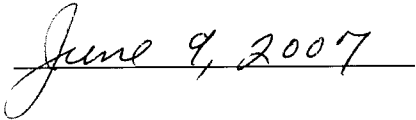
Glenn W. Buck, being duly sworn upon his oath, states that he has read the foregoing Affidavit and that the facts contained therein are true and correct to the best to the best of his knowledge and belief.

Subscribed and sworn to before me this 21st day of March 2006.


Notary Public

My Commission Expires:

JOAN T. ROEPER
Notary Public — Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: June 9, 2007



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**BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Laclede Pipeline Company)

Docket No. IS06-201-000

AFFIDAVIT OF ROBERT A. GLOSIER

Robert A. Glosier, of lawful age, being first duly sworn on his oath, states that:

1. My name is Robert A. Glosier. My business address is 3950 Forest Park, St. Louis, Missouri 63108; and I am currently employed by Laclede Gas Company ("Laclede" or "Company") as Superintendent-Gas Supply & Control.

2. As part of my duties as Superintendent-Gas Supply & Control, I am responsible for maintenance and operation of Laclede Pipeline ("Pipeline".)


3. The purpose of my affidavit is to support the \$.15 per barrel and \$.10 per barrel discounted rates that appear in footnote No. 2 on page 2 of Pipeline's proposed FERC Tariff No. 2. Based on my experience with the operation of Pipeline and my familiarity with the propane requirements of shippers in the St. Louis area, it is my belief that Pipeline's tariff would provide the maximum market-clearing transportation rates that would produce a sufficient economic incentive for third party shippers to use Pipeline. Without Pipeline discounting to these levels, it is likely that Pipeline would only transport for Laclede Gas Company and Pipeline would be under-utilized.

4. Based on past commodity exchange transactions between Pipeline and third parties, I estimate that the value for an equivalent service if it were provided on an unbundled basis that included a discrete transportation component would be approximately \$.15 per barrel.

5. Furthermore, the \$.15 per barrel rate is justified in order for Pipeline to compete with services provided by Marathon Pipe Line LLC ("Marathon".) Marathon's competing pipe segment extends between Wood River, Illinois and East St. Louis, Illinois. (Wood River, Illinois is in close proximity to Hartford, Illinois.) Marathon's Local Tariff for transporting propane between these points is presently 15.76 cents per barrel.

6. In order for Pipeline to compete with Marathon, it must do so by providing favorable pricing. Pipeline has therefore set its discounted rate at 15.0 cents per barrel for the first 700,000 barrels transported annually. In an effort to further encourage off-peak usage of its pipe, the rate of 10.0 cents per barrel for each barrel transported in excess of 700,000 barrels has been established.

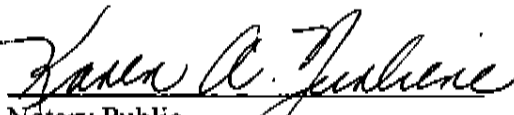
FURTHER AFFIANT SAYETH NOT.


Robert A. Glosier

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

Robert A. Glosier, being duly sworn upon his oath, states that he has read the foregoing Affidavit and that the facts contained therein are true and correct to the best to the best of his knowledge and belief.

Subscribed and sworn to before me this 21st day of March 2006.


Notary Public

My Commission Expires:

February 18, 2008

KAREN A. ZURLIENE
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI, CITY OF ST. LOUIS
MY COMMISSION EXPIRES FEBRUARY 18, 2008

Submission Contents

3196014_2.pdf.....	1-11
GWBAffidavit.pdf.....	12-14
KathleenMcShaneAffidavit.pdf.....	15-15
glosieraffidavit.pdf.....	16-18