

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI, EX REL. PUBLIC COUNSEL,
v.

Appellant

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
LACLEDE GAS COMPANY.

Respondent
Respondent

DOCKET NUMBER WD70647

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 22, 2009

Appeal From:

Circuit Court of Cole County, MO
The Honorable Jon Edward Beetem, Judge

Appellate Judges:

Division Three: Mark D. Pfeiffer, P. J., James Edward Welsh, and Karen King Mitchell, JJ.

Attorneys:

Marc D. Poston, Jefferson City, MO

Counsel for Appellant,

Attorneys:

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Co-Counsel for Respondent, Public Service
Counsel for Respondent, Laclede

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI, EX REL. PUBLIC COUNSEL, Appellant, v.
PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Respondent; LACLEDE GAS COMPANY, Respondent**

WD70647

Cole County

Before Division Three Judges: Mark D. Pfeiffer, P. J., James Edward Welsh, and Karen King Mitchell, JJ.

The Office of the Public Counsel appeals the Commission's decision authorizing Laclede Gas Company to defer for possible future recovery \$2,494,311 as Laclede's cost of complying with an amendment to the Commission's cold weather rule. The Public Counsel asserts that the Commission erred in its order deferring Laclede's cold weather rule costs because the order is unlawful and unreasonable, violates the prohibition against retroactive ratemaking, and relies on an agreement that violates the prohibition in Missouri Constitution article I, section 13 against *ex post facto* and retrospective laws.

AFFIRMED.

Division Three holds:

(1) The Commission's order allowing Laclede to defer its cold weather rule amendment costs was not unlawful and unreasonable. The Commission did not allow Laclede to defer for possible future recovery: (a) bad debts that accrued prior to the effective date of the cold weather rule amendment except as specifically allowed, (b) amounts that were not an incremental cost of the cold weather rule amendment, (c) amounts that Laclede would have incurred in the absence of the cold weather rule amendment, and (d) amounts that were not caused by compliance with the cold weather rule amendment.

(2) Laclede's contention that the Commission's use of an Accounting Authority Order to allow Laclede to defer its cold weather rule amendment costs constitutes retroactive ratemaking is without merit. The Accounting Authority Order simply allows for certain costs to be separately accounted for possible future recovery in a future ratemaking proceeding. No ratemaking occurred in this case.

(3) The Commission's order did not violate the prohibition in Missouri Constitution article I, section 13 against *ex post facto* and retrospective laws, nor did the Commission's use of the same method that it used in Laclede's prior rate case violate the parties' prior stipulation and agreement.

Opinion by: James Edward Welsh, Judge

December 22, 2009

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