

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

The Staff of the Missouri Public Service Commission,	)	
	)	
v.	)	Case No. GC-2011-0006
	)	
Laclede Gas Company,	)	
Respondent.	)	

**LACLEDE GAS COMPANY'S ANSWER TO COMPLAINT**

COMES NOW Respondent, Laclede Gas Company ("Laclede" or "Respondent"), and submits this Answer to the Complaint filed by the Commission Staff ("Staff" or "Complainant") on July 7, 2010, and in support thereof, states as follows:

1. Laclede states that the allegation contained in Paragraph 1 of the Complaint merely purports to state a legal conclusion, as to which no response is required. To the extent a response is required, Laclede denies the allegation contained in Paragraph 1. Laclede expressly denies that it violated the Stipulation and Agreement in Case No. GM-2001-342 (the "Stipulation and Agreement"), or the Commission order approving it.

2. Laclede admits the allegation contained in Paragraph 2 of the Complaint that Staff is the Complainant. The remainder of that allegation merely purports to state a legal conclusion, to which no response is required.

3. Laclede admits the allegations of paragraph 3.

4. Laclede admits the allegations of paragraph 4.

5. Laclede admits the allegation of paragraph 5.

6. Laclede states that the allegation contained in Paragraph 6 of the Complaint merely purports to state a legal conclusion, as to which no response is required.

7. Laclede admits the allegations of paragraph 7.

8. Laclede admits the allegations of paragraph 8.
9. Laclede admits the allegations of paragraph 9.
10. Laclede admits the allegations of paragraph 10.
11. Laclede admits that it has from time to time purchased natural gas from Laclede Energy Resources, Inc. (“LER”).
12. Laclede admits the allegations of paragraph 12.
13. Laclede admits the allegations of paragraph 13, although Laclede denies that the attachments are marked as represented.
14. Laclede denies the allegations of paragraph 14 on the grounds that the Staff has inaccurately indicated that certain portions of the cited paragraph of the Stipulation and Agreement are in bold type. Laclede states that the Stipulation and Agreement speaks for itself and is the best evidence of its contents.
15. For its response to Paragraph 15 of the Complaint, Laclede restates and incorporates by reference as if fully set forth herein its responses to Paragraphs 1 through 14 hereof.
16. Laclede admits the allegation in the first sentence of paragraph 16. Laclede states that the allegation in the second sentence of paragraph 16 merely purports to state a legal conclusion, to which no response is required. Laclede admits that the subject of the discovery dispute involves Laclede’s purchase of gas from its affiliate, LER, as alleged in the third sentence of paragraph 16. Laclede denies the allegation in the fourth sentence of paragraph 16, wherein Staff states that the purpose of its discovery was to determine whether Laclede’s purchases from LER were prudent.

17. Throughout the ACA proceedings in which these purchases from LER have been an issue, Staff has never alleged that Laclede purchased more gas than it needed, inappropriately or uneconomically sourced its gas purchases off of the pipelines available to it, or took any other action that would suggest its purchases from LER – or any other supplier for that matter – were imprudent. In the absence of such allegations, Laclede states that the only purpose of the discovery should have been to gather information necessary to determine whether the price at which Laclede purchased gas from LER complied with the pricing provisions of the Commission’s Affiliate Transaction Rules (“Rules”) and the Company’s Cost Allocation Manual (“CAM”), which require that purchases by a utility from its affiliate be made at no more than a fair market price. Laclede avers that the actual purpose of the discovery, however, was not to determine a fair market price for these purchases, but instead to determine what profits, if any, LER earned on sales of gas to Laclede. This information would then be used to support Staff’s legally unsustainable assertion that when Laclede purchases gas from LER (in contrast to purchases made from any other supplier) such purchases should be made not at a fair market price, but at LER’s cost.<sup>1</sup>

18. Staff’s pricing standard is contrary to the provisions and purpose of the Rules and the CAM. Staff’s pricing standard would result in treating transactions with LER differently than transactions with any other supplier in direct contravention of the non-discrimination provisions of the Rules. It would also result in the elimination of affiliate transactions that are freely permitted and sanctioned by the Rules, since no entity would enter into a business transaction that had no opportunity for profit. Indeed, the fundamental inconsistency between

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<sup>1</sup> Staff has taken this position regarding the pricing standard for affiliate transactions in statements it made in Recommendations in Laclede ACA cases, and through the prefiled sworn testimony of David M. Sommerer on behalf of Staff in an Atmos ACA case, Case No. GR-2008-0364.

Staff's self-invented pricing standard and the Rules' fair market pricing standard was confirmed by Staff's own general counsel, Kevin Thompson, who stated that:

“We understand [that] LER wouldn't sell the gas to Laclede if there wasn't some markup. I understand that. I think Staff understands that.”<sup>2</sup>

Nevertheless, Staff's pricing standard would eliminate LER as a potential supplier of gas to Laclede, as well as a potential customer for Laclede's off-system sales and capacity releases. Simply put, Staff's pricing standard is not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. By conducting its discovery, and by presenting and maintaining claims against Laclede based on this unlawful position, Staff has not only violated the Rules, the CAM and the Stipulation and Agreement, but has also made misrepresentations to the Commission in violation of 4 CSR 240-2.080(7).

19. Laclede states that the allegations contained in Paragraph 17 of the Complaint merely purport to state a legal conclusion, as to which no response is required. To the extent a response is required, Laclede denies the allegations contained in Paragraph 17.

20. Laclede admits that the Circuit Court of Cole County held a hearing on May 11, 2010 at which Laclede, Laclede Group and LER were each represented by counsel, as alleged in Paragraph 18 of the Complaint. Laclede states that the hearing transcript speaks for itself. Laclede denies each and every remaining allegation contained in Paragraph 18 not expressly admitted herein.

21. Laclede denies the allegation of paragraph 19. Section IV.2 of the Stipulation and Agreement states that Laclede will make available the books and records of its affiliates “**as may be reasonably required to verify compliance with the CAM.**” (emphasis added) Since the

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<sup>2</sup> Case Nos. GR-2005-0203; GR-2006-0288; October 1, 2009 Oral Argument Tr. at 247.

subject of the discovery dispute involves Laclede's purchase of gas from its affiliate, this section of the Stipulation and Agreement entitles Staff to obtain discovery of affiliate information reasonably required to verify compliance with the Company's Cost Allocation Manual ("CAM") which, among other things, establishes specific pricing standards applicable to such purchases. However, the Staff has expressly denied that the pricing standards of the CAM<sup>3</sup> apply to the discovery matter at issue in Laclede's ACA cases (Case Nos. GR-2006-0288 and GR-2005-0203). For example, during the March 26, 2009 oral argument in those cases, the Staff stated that it was pursuing pricing standards that differed from the standards set forth in the Rules and the CAM, as indicated in the colloquy below between Commissioner Murray and Staff Counsel Steven Reed:

COMMISSIONER MURRAY: So if there is -- and

22 at this point, I'd like to know, there is a specific way

23 that the Cost Allocation Manual provides for dealings with

24 an affiliate, correct?

25 MR. REED: Yes. That's right.

1 COMMISSIONER MURRAY: And it says the

2 higher -- depending on whether it's a sale or a purchase,

3 the higher of the fair market value or fully distributed

4 costs.

5 MR. REED: Right. Yes.

6 COMMISSIONER MURRAY: Or the lower of those

7 two things, right? So how does the information that Staff

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<sup>3</sup> The pricing standards of the CAM are consistent with those of the Rules.

8 has sought reasonably relate to whether that CAM has been

9 complied with?

10 MR. REED: The investigation isn't into

11 compliance with the CAM. The investigation is whether

12 Laclede paid too much to LER for the gas they bought.<sup>4</sup>

The discussion in the November 4, 2009 Order quoted below indicates that the Commission, erroneously or not, accepted Staff's position regarding the inapplicability of the CAM and the Stipulation and Agreement:

"The Commission emphasizes that Staff's discovery request is not an investigation under the Commission's Affiliate Transaction rule nor is it a complaint through which Staff or Public Counsel seeks enforcement of the [Stipulation and Agreement]. These issues have but served as red herrings in what is a discovery request governed by the rules of civil procedure."<sup>5</sup>

Thus, the Commission has considered the applicability of the Stipulation and Agreement to this discovery request, and found that the matter is governed by the rules of civil procedure and not the Stipulation and Agreement. In sum, having expressly disavowed the applicability of the Stipulation and Agreement and the CAM to the issue at hand, it is inconceivable that Staff could maintain a complaint alleging that Laclede violated a discovery provision in that same Stipulation and agreement.

22. For its response to Paragraph 20 of the Complaint, Laclede restates and incorporates by reference as if fully set forth herein its responses to Paragraphs 1 through 19 hereof.

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<sup>4</sup> Case Nos. GR-2005-0203; GR-2006-0288; March 26, 2009 Oral Argument Tr. at 16-17.

<sup>5</sup> Case Nos. GR-2005-0203; GR-2006-0288; November 4, 2009 Order, p. 2

23. For its response to Paragraph 21 of the Complaint, Laclede states that Section 386.570, RSMo speaks for itself.

24. For its response to Paragraph 22 of the Complaint, Laclede states that Section 386.600, RSMo speaks for itself.

### **AFFIRMATIVE DEFENSES**

1. Laclede has performed its obligations under Section IV.2 of the Stipulation and Agreement by making available to Staff all books and records of its affiliates reasonably required to verify compliance with the CAM.

2. Staff should be estopped from bringing a Complaint on this matter arising from the Stipulation and Agreement, because the Staff has expressly disavowed any connection between its discovery requests in the ACA cases and the CAM, which is the subject of Provision IV.2 of the Stipulation and Agreement.

3. Staff should be estopped from bringing a Complaint on this matter arising from the Stipulation and Agreement, because the Commission's November 4, 2009 Order in Case Nos. GR-2006-0288 and GR-2005-0203 specifically found the Stipulation and Agreement to be irrelevant to the discovery dispute.

4. Staff's Complaint has already been adjudicated by the Commission pursuant to its January 21, 2009 Order in Case Nos. GR-2006-0288 and GR-2005-0203 directing Laclede to produce information that was in its possession.

5. Staff is barred from any relief by the doctrine of unclean hands.

6. Laclede states that its customers have not suffered any damages. To the extent its customers have suffered damages, those damages were caused by Staff's own conduct by either

negligently or willfully failing to follow Commission orders and rules, as more fully described above.

Unless affirmatively admitted herein in its responses above, Laclede denies the allegations contained in Staff's Complaint. Additionally, Laclede reserves the right to supplement this pleading to add additional defenses and claims in connection with this Complaint.

WHEREFORE, Respondent Laclede Gas Company respectfully requests that the Commission dismiss the Complaint, and grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/Rick Zucker

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**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing Answer was served on the Staff and on the Office of Public Counsel on this 9th day of August, 2010 by United States mail, hand-delivery, email, or facsimile.

/s/ Gerry Lynch