BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
v.	)	Case No. GC-2011-0098
	)	
Laclede Gas Company, Laclede Energy Resources, and The Laclede Group,	)	
	)	
Respondents.	)	

PUBLIC COUNSEL'S POSITION STATEMENT

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Position Statement states:

1. This case seeks to resolve the Staff's Second Amended Complaint regarding Laclede's affiliate transactions and its Cost Allocation Manual (CAM). OPC's positions on the issues as identified in the Staff's prefiled Issues List are as follows:

Issue 1: Does Laclede's CAM violate the pricing standards of the Affiliate Transaction Rules?

2. OPC's position is that Laclede's CAM violates the asymmetrical pricing standards of the Commission's affiliate transaction rules in several respects. First, Laclede's CAM allows gas purchased by Laclede from its affiliate Laclede Energy Resources (LER) to be priced above the lesser of the fair market price (FMP) or the fully distributed cost (FDC) as prohibited by 4 CSR 240-40.015(2)(A)1 and 4 CSR 240-40.016(3)(A)1. Second, Laclede's CAM allows gas purchased by LER from Laclede to be priced below the greater of FMP or FDC as prohibited by 4 CSR 240-40.015(2)(A)2

and 4 CSR 240-40.016(3)(A)2. More specifically, Laclede's CAM violates the affiliate transaction rules because it does not require Laclede to consider the lesser of FMP or FDC when pricing gas purchased *from* LER, or the greater of FMP or FDC when pricing gas sold *to* LER. The Commission should find Laclede to be in violation of the rules and order Laclede to change its CAM to require asymmetrical pricing of affiliate transactions that comply with the Commission's rules.

3. Laclede's CAM applies a definition of FMP that also violates the asymmetrical pricing provisions of the affiliate transaction rules because it would allow Laclede to establish the FMP based upon nothing more than the affiliate's rate. This definition would allow Laclede and its affiliate (operating under common control and ownership) to single-handedly establish the FMP, which would allow the same abuses that the affiliate transaction rules were adopted to prevent. The Commission should find Laclede in violation of the Commission's rules and order Laclede to apply a lawful FMP definition in its CAM.

4. Laclede is also in violation of the asymmetrical pricing provisions of the Commission's rules in that Laclede applies an unlawful interpretation of how to determine FDC. Laclede claims that an FDC determination would apply only if Laclede were a gas producer as opposed to a gas distributor. OPC disagrees with Laclede because the FDC for Laclede's gas supply is the cost Laclede would incur to provide gas procurement, transport, and storage services for itself rather than through a marketing affiliate. The Commission should find Laclede to be in violation of the rules. Furthermore, the Commission should order Laclede to change its CAM and apply an appropriate FDC definition that maintains the purpose of the affiliate transaction rules.

Issue 2: Has Laclede violated the Affiliate Transaction Rules by failing to request Commission approval of its CAM?

5. OPC's position is that Laclede violated the rules by failing to request Commission approval of its CAM. The rules require that "in transactions involving the purchase of information, assets, goods or services by the regulated gas corporation from an affiliated entity, the regulated gas corporation will use a commission-approved CAM". 4 CSR 240-40.015(3)(D) and 4 CSR 240-40.016(4)(D). There is no ambiguity in this language – the CAM must be approved by the Commission before it can be used to price affiliate transactions. The notion that Laclede can write its own affiliate transaction parameters that vary from the Commission's rules without Commission approval should be rejected. Laclede's unilateral decision to include an unapproved definition of FMP in its CAM is indicative of why the rules require all CAM language to be pre-approved by the Commission. The Commission should find Laclede in violation of the Commission's rules and should direct Laclede to file its CAM for Commission approval. Once Laclede files its CAM for approval, the Commission will have an opportunity to review the CAM in its entirety and address all issues with Laclede's CAM at that time.

Issue 3: Has Laclede violated the Affiliate Transaction Rules by failing to submit its CAM annually?

6. OPC's position is that Laclede violated the affiliate transaction rules by failing to submit its CAM annually. The rules do not specifically state that natural gas corporations are to submit their CAM annually, however, the rules repeatedly refer to an "annual" CAM submission. Since every word in the rule has meaning, the Commission's rules indirectly require Laclede to annually submit its CAM. At a minimum, Laclede should have sought clarification or a waiver from the Commission. For these reasons, the

Commission should find Laclede in violation of the Commission's rules and should direct Laclede to submit its CAM annually.

Issue 4 (Laclede Counter-Claim Issue): Has Staff violated Commission Rule 4 CSR 240-2.080(7)?

7. Commission Rule 4 CSR 240-2.080(7) states that pleadings, motions, briefs and other documents filed with the Commission are to be non-frivolous and cannot be presented or maintained for any improper purpose. The Staff's filings in this case have not violated 4 CSR 240-2.080(7).

WHEREFORE, the Office of the Public Counsel respectfully offers this statement of OPC's positions on the issues before the Commission.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 25th day of May 2011:

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