

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

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>File No. GC-2011-0098</u></b>
	)	
Laclede Gas Company,	)	
	)	
Respondent.	)	

**ORDER ADOPTING REVISED ISSUE NUMBER ONE**

Issue Date: July 22, 2011

Effective Date: July 22, 2011

The Commission’s Staff filed an amended complaint against Laclede Gas Company on November 22, 2010. The second count of that complaint alleges that Laclede’s Cost Allocation Manual (CAM) fails to comply with the Commission’s affiliate transaction rules because the CAM does not require Laclede to use asymmetrical pricing for its transactions with its gas marketing affiliate.

On May 19, in compliance with the procedural schedule, Staff and Public Counsel jointly filed a list of issues. They identified the first issue as “Does Laclede’s Cost Allocation Manual (CAM) violate the pricing standards of the Affiliate Transaction Rules?” Laclede refused to join in the list of issues filed by Staff and Public Counsel and instead offered a more narrow statement of the first issue as follows:

Does Laclede’s Cost Allocation Manual (CAM) violate the pricing standards of the Affiliate Transaction Rules by not including a reference to fully distributed cost (FDC) in the pricing provisions for certain energy-related transactions.

Staff, Public Counsel, and Laclede subsequently filed statements of position based on their lists of the issues.

On June 10, Laclede filed a motion asking the Commission to adopt its version of the first issue. Laclede contends that Staff and Public Counsel's version of the first issue is intentionally broad in order to allow Public Counsel to raise a new issue that was not included in Staff's complaint. Specifically, Public Counsel wants to argue that Laclede's CAM violates the affiliate transaction rule in the way it defines fair market price. That is a different argument than Staff's contention in Count II of its complaint. There Staff contends that the CAM violates the affiliate transaction rule in that it does not require Laclede to apply asymmetrical pricing to all affiliate transactions because it does not require Laclede to consider fully distributed cost when pricing gas in transactions with its affiliate.

Staff and Public Counsel responded to Laclede's motion on June 29. Public Counsel contends that it properly raised the issue of the definition of fair market price in the rebuttal testimony of Barbara Meisenheimer, filed on April 19, 2011. Staff's response points out that this is Staff's complaint and suggests that the Commission should be guided by the issue-framing pleadings of Staff's complaint and Laclede's answer. Nevertheless, Staff asks the Commission to adopt Staff's version of the first issue, which is also the issue as described by Public Counsel.

As Staff points out, a list of issues in a complaint case does not carry the same importance as it does in other types of cases before the Commission, such as a rate case, because the issues are framed through the pleadings. The issues are defined in Staff's complaint and Laclede's answer. The question of the definition of the issues is important

because Laclede has a due process right to fair notice of the allegations made against it so it can defend itself against the complaint.<sup>1</sup>

In this case, the allegations against which Laclede must defend itself are defined in Staff's complaint and that complaint defines the issue as Laclede's CAM's failure to require Laclede to use asymmetrical pricing for transactions with its gas marketing affiliate. Public Counsel attempted to expand Staff's complaint to address a broader issue regarding the CAM's general definition of fair market price that applies to non-energy related transactions by inserting testimony about that issue in its rebuttal testimony. Requiring Laclede to defend itself against the new issue Public Counsel attempts to inject into the complaint through its rebuttal testimony would deny Laclede its due process rights to a fair hearing.

This does not mean that the Commission cannot ultimately hear Public Counsel's issue. Public Counsel is free to raise the issue in its own complaint, or the matter can be addressed in any action the Commission may establish to review the entirety of Laclede's CAM. Furthermore, this decision does not preclude Public Counsel from presenting evidence about fair market pricing as it relates to the asymmetrical pricing issue identified in Staff's complaint.

While the Commission generally agrees with Laclede's argument, the language of the issue proposed by Laclede is narrower than the language of Staff's complaint. Therefore, the Commission will modify the language of the first issue to track the language of Count II of Staff's complaint.

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<sup>1</sup> *State ex rel. Missouri Pipeline Co. v. Missouri Pub. Serv. Comm'n*, 307 S.W.3d 162 (Mo. App. W.D. 2009).

Laclede's motion does not raise and this order does not address the admissibility of any portion of the testimony offered by any party. If any party wishes to challenge the admission of any testimony it will need to file an appropriate motion to do so.

**THE COMMISSION ORDERS THAT:**

1. The first issue in the List of Issues identified by the parties is defined as follows:

Does Laclede's Cost Allocation Manual (CAM) violate the pricing standards of the Affiliate Transaction Rules by not requiring Laclede to use asymmetrical pricing for transactions with its gas marketing affiliate?

2. This order shall become effective immediately upon issuance.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Morris L. Woodruff, Chief Regulatory  
Law Judge, by delegation of authority pursuant  
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 22<sup>nd</sup> day of July, 2011.