

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 26<sup>th</sup> day of January, 2011.

The Staff of the Missouri Public Service Commission, )  
 )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 Laclede Gas Company, )  
 )  
 Respondent. )

**File No. GC-2011-0098**

**ORDER DENYING LACLEDE’S MOTION FOR ORDER OF DEFAULT**

Issue Date: January 26, 2011

Effective Date: January 26, 2011

Laclede Gas Company filed its answer to Staff’s second amended complaint on December 10, 2010, and at the same time, filed a motion asking the Commission to dismiss Counts I and V of Staff’s complaint as failing to state a claim upon which relief can be granted. In the same document, Laclede asserted a counterclaim against Staff. Staff was slow to respond to either Laclede’s motion or its counterclaim, and on January 13, 2011, Laclede filed a motion asking the Commission to find Staff in default and rule in Laclede’s favor on its motion and on its counterclaim.

Staff finally filed a reply to Laclede’s counterclaim on January 18. On the same day, Staff filed a separate reply to Laclede’s motion to dismiss counts I and V of Staff’s complaint. Staff filed motions requesting leave to late file along with both pleadings.

Commission rule 4 CSR 240-2.070 deals with complaints before this Commission. Subsection 2.070(9) of that rule provides that the Commission may enter an order of

default if a respondent fails to file an answer to a complaint within the time allowed by law. Subsection 2.070(8) of the same rule requires that complaints be answered no later than thirty days after the Commission sends notice of the complaint to the respondent. The rule is, however, silent on the timing of responses to counterclaims. Nor does the rule authorize the entry of a default order if a party fails to respond to a counterclaim.

Commission rule 4 CSR 240-2.080(15) generally allows parties ten days in which to respond to any pleading, unless a different response time is ordered by the Commission. By that standard, Staff filed its replies late. However, the Commission's rules do not provide any penalty for making a late filing. Rather the penalty for delay in filing a response to a motion is that the delaying party may miss its chance to respond if the Commission rules on the motion without waiting for a response.

Laclede has not established any authority by which the Commission could find Staff in default under these circumstances. The Commission will deny Laclede's motion.

**THE COMMISSION ORDERS THAT:**

1. Laclede Gas Company's Motion for Order of Default is denied.
2. This order shall become effective immediately upon issuance.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Clayton, Chm., Davis, Jarrett, Gunn,  
and Kenney, CC., concur.

Woodruff, Chief Regulatory Law Judge