

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of
December, 2010.

The Staff of the Missouri Public)	
Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>File No. GC-2011-0006</u>
)	
Laclede Gas Company,)	
)	
Respondent.)	

**ORDER DENYING LACLEDE'S MOTION FOR RECONSIDERATION
AND APPLICATION FOR REHEARING**

Issue Date: December 1, 2010

Effective Date: December 1, 2010

On November 3, 2010, the Commission issued an Order Dismissing Counterclaim of Laclede Gas Company for Failure to State a Claim Upon Which Relief May be Granted. That order became effective on November 13. On November 12, Laclede filed a timely Motion for Reconsideration and Application for Rehearing. The Commission's Staff and the Office of the Public Counsel responded in opposition to that motion on November 22.

Laclede asks the Commission to reconsider or rehear its decision to dismiss Laclede's counterclaim against the Commission's Staff. In the dismissed counterclaim, Laclede contends Staff has refused to apply the fair-market-pricing standard established by the Commission's affiliate transaction rules and the company's cost allocation manual. Instead, in cases involving Laclede's actual cost adjustments for its purchases of natural

gas, Laclede claims Staff has advocated a pricing standard that would confiscate any profit earned by an affiliated gas marketer and force Laclede to pass that money to its ratepayers. On that basis, Laclede asks the Commission to declare that Staff has violated the affiliate transaction rules and the cost allocation manual.

The Commission dismissed Laclede's counterclaim because neither the affiliate transaction rules nor the cost allocation manual impose any obligation on Staff. Those rules establish a standard by which the Commission must evaluate Laclede's actions, but the Commission found that Staff's advocacy of a position before the Commission that might be contrary to the pricing standard established by the rule, did not place Staff in violation of the requirements of the regulation. Rather, if the Commission found Staff's position to be contrary to the standards established in the regulation, the Commission would reject Staff's position in the appropriate case.

In its motion for reconsideration and application for rehearing, Laclede concedes "all parties to a case are free to make nonfrivolous arguments in support of their positions."¹ However, Laclede argues Staff's argument is so clearly contrary to the language of the rules and the cost allocation manual that Staff cannot be making the argument in good faith. Laclede contends this places Staff in violation of Commission Rule 4 CSR 240-2.080(7)(B), which states that a party that presents or maintains a claim, defense, request, demand, objection, contention, or argument before the Commission has certified that its claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

¹ *Laclede Gas Company's Motion for Reconsideration and Application for Rehearing*, Page 5.

Laclede's contention that Staff has violated Commission Rule 4 CSR 240-2.080(7) by advocating a frivolous position may state a claim that the Commission can address in an appropriate circumstance. However, that contention was not raised in the counterclaim that the Commission dismissed, and it is not properly raised for the first time in Laclede's motion for reconsideration and application for rehearing.

Section 386.500.1, RSMo (2000), indicates the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." In the judgment of the Commission, Laclede has not shown sufficient reason to reconsider or rehear the Order Dismissing Counterclaim of Laclede Gas Company for Failure to State a Claim Upon Which Relief May be Granted. The Commission will deny Laclede's motion for reconsideration and application for rehearing.

THE COMMISSION ORDERS THAT:

1. Laclede Gas Company's Motion for Reconsideration and Application for Rehearing is denied.
2. This order shall become effective immediately upon issuance.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

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

Woodruff, Chief Regulatory Law Judge