

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

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

**PUBLIC COUNSEL’S MOTION FOR
ORDER DISMISSING LACLEDE COUNTERCLAIM**

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Motion for Order Dismissing Laclede Counterclaim states:

1. This case was opened when the Commission’s Staff filed its Complaint against Laclede Gas Company. The Staff’s Complaint alleges that Laclede violated a Commission order when counsel for Laclede argued to the Circuit Court of Cole County that Laclede did not have “possession, custody or control” over Laclede Energy Resources (LER) documents regarding the purchase and sale of natural gas. Laclede’s argument is a direct violation of § IV.2 of the Stipulation and Agreement approved by the Commission in Case No. GM-2001-342, which prohibits Laclede from objecting to the production of records of an affiliate on the basis that the documents “are not within the possession or control of Laclede Gas Company.”

2. On September 22, 2010, Laclede filed the Counterclaim of Laclede Gas Company. Laclede’s Counterclaim seeks an order from the Commission finding that Staff has violated and misapplied Commission rules and Laclede’s Cost Allocation

Manual (CAM), and that the Staff “has attempted effectively to eliminate affiliate transactions...” Laclede states that its Counterclaim falls under Section 386.390.1 RSMo and 4 CSR 240-2.070. Section 386.390.1 authorizes complaints “setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission.”

3. Laclede states generally that the Staff violated the Commission’s Affiliate Transaction Rules, 4 CSR 240-40.015 and 40.016, and Laclede’s CAM. Nowhere does Laclede identify with any specificity the provision of the Affiliate Transaction Rules or the CAM that Laclede believes Staff violated.

4. OPC urges the Commission to dismiss Laclede’s Counterclaim. The Commission’s Staff cannot violate the Affiliate Transaction Rules because those rules apply to the practices of regulated utilities, not to the Staff’s attempt to investigate the prudence of gas purchases. Laclede’s allegation that an erroneous interpretation of a rule would itself constitute a violation of the rule has no legal basis and should be rejected. Looking at 4 CSR 240-40.015 section by section will help clarify this point.

5. The *Purpose* section of the rule clearly indicates that it applies only to regulated gas corporations. Section **(1) Definitions**, is simply a definitional section that defines the terms being used in the remainder of the rule. Section **(2) Standards**, prohibits a regulated gas corporation from providing a financial advantage to an affiliate. Section **(3) Evidentiary Standards for Affiliated Transactions**, requires the regulated gas corporation to maintain certain records of its affiliated transactions. Section **(4)**

Record Keeping Requirements, also requires the regulated gas corporation to maintain certain records of its affiliate transactions. Section **(5) Records of Affiliated Entities**, requires the regulated gas corporation, its parent corporation, and any affiliate to maintain certain records of transactions between affiliates. Section **(6) Access to Records of Affiliated Entities**, requires a regulated gas corporation to make available the books and records of its parent and any affiliate. Section **(7) Record Retention**, requires regulated gas corporations to maintain records for at least six years. Section **(8) Enforcement**, allows the Commission to apply any remedy in enforcing the affiliate transaction standards. Section **(9)** obligates a regulated gas company to train its employees on the affiliate transaction rules. Section **(10) Variances**, allows a regulated gas corporation to request a variance of the affiliate transaction rules. Lastly, Section **(11)**, says the rules are not meant to violate any antitrust laws.

6. A reading of the entire rule makes it obvious that nothing in 4 CSR 240-40.015 places any obligation on the Commission's Staff. The rule simply provides standards that can only be followed or violated by a regulated gas corporation and its affiliates. If Laclede's complaint is that the Staff has *misinterpreted* 4 CSR 240-40.015, which appears to be Laclede's real complaint, a rule misinterpretation by the Staff does not alone constitute a violation of the rule. Moreover, Laclede does not claim a specific section of the rules that was violated, which alone is a basis for dismissing Laclede's counterclaim.

7. The same analysis discussed above also applies to Laclede's claim that the Staff violated 4 CSR 240-40-016, which provides nearly identical affiliate transaction rules as they apply specifically to marketing affiliate transactions. Each section of 4 CSR

240-40.016 places obligations only upon regulated gas corporations engaging in marketing affiliate transactions, and can only be violated by such corporations. Staff is not a regulated gas corporation, nor does the Staff engage in marketing affiliate transactions. In fact, the only mention of Staff in either 4 CSR 240-40.015 and 40.016 is in the recordkeeping requirements where it states that the Staff has input into the electronic format of the data to be retained by the regulated gas company.

8. The same reasons for dismissing Laclede's claim of a rule violation by the Staff also apply to Laclede's claim that the Staff violated Laclede's unapproved CAM. CAMs are meant to provide the cost allocation, market valuation and internal cost methods used by the regulated gas company. 4 CSR 240-40.015(3)(D). CAMs are not meant to place obligations on the Commission's Staff. Furthermore, CAMs must be "commission approved," which Laclede's CAM is not. *Id.* Without a Commission order stating that the Commission's Staff must follow Laclede's CAM, and without the Commission having approved Laclede's CAM, Laclede's claim that the Staff has violated Laclede's unapproved CAM is baseless and should be dismissed.

9. Laclede's counterclaim is simply an attempt to reargue the same tired old arguments that the Commission already rejected in Laclede's contested PGA/ACA cases. The issue of this complaint case is whether Laclede's actions are a violation of a Commission order. This issue should not be expanded to encompass the PGA/ACA issues that are already being addressed in two other Laclede case. The transactions of Laclede's affiliate, LER, are relevant to the Commission's prudence review in the PGA/ACA cases because if Laclede engaged in transactions with LER that purposefully increased LER's profits at the expense of Laclede ratepayers, Laclede's involvement in

those transactions could be considered imprudent. Any arguments Laclede wishes to raise regarding the misinterpretation or misapplication of Commission rules during the prudency review should be raised in the cases where the Staff is interpreting and applying the Commission's rules in the manner alleged. Specifically, Laclede's counter arguments should be addressed in the PGA/ACA cases, Case Nos. GR-2005-0203 and GR-2006-0288, not collaterally in this case opened to address whether Laclede violated a Commission order.

10. Laclede's counterclaim should also be dismissed as a collateral attack on a Commission order. Section 386.550 RSMo states that "In all collateral actions or proceedings the orders and decisions of the commission which shall have become final shall be conclusive." The Commission's November 4, 2009 Order Directing Laclede to Produce Information in Case Nos. GR-2005-0203 and GR-2006-0288 specifically directs Laclede to produce certain information requested by the Staff. That order is final and conclusive. Laclede's counterclaim is simply another attempt to reargue the same old arguments previously rejected by the Commission when it denied Laclede's November 9, 2009 Application for Rehearing, or Alternatively, Request for Reconsideration filed in Case Nos. GR-2005-0203 and GR-2006-0288. Even Laclede's Application for Rehearing recognizes that the Commission previously rejected the very arguments it makes in its counterclaim. Laclede's Applications states that "the Commission summarily dismissed as "red herrings" the substantive arguments that Laclede had made as to why the Staff was not entitled to obtain such information under the Commission's affiliate transactions rules and Laclede's CAM..." Despite this recognition, Laclede continues with this same argument regarding affiliate transactions in the present complaint case, in direct violation of Section 386.550 RSMo.

WHEREFORE, the Office of the Public Counsel urges the Commission to dismiss Laclede's Counterclaim because: 1) Staff cannot violate Affiliate Transaction Rules and a Cost Allocation Manual that places obligations upon the utility company; 2) The arguments raised by Laclede will be address in Case Nos. GR-2005-0203 and GR-2006-0288; and 3) Laclede's counterclaim is a collateral attack on a Commission order.

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 28th day of September 2010.

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