

**Before the Public Service Commission
Of the State of Missouri**

In the matter of Laclede Gas Company's Tariff)
to Increase Its Annual Revenue for Natural) Case No. GR-2010-0171
Gas.)

MOTION TO COMPEL DISCOVERY

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and respectfully requests the Commission issue an order to: 1) compel Laclede to produce the documents shown in the Attachment to Staff's subpoena; 2) find Laclede Gas does have possession, custody and control of the requested documents; 3) find that Laclede has already produced the requested documents; and 4) order other sanctions against Laclede as the Commission deems just and reasonable for the Company's failure to comply with the Commission's subpoena. In support of its requests Staff states:

1. On July 12, 2010, Counsel for Staff served a subpoena *duces tecum* requiring deposition of the Custodian of records for Laclede Gas Company to produce records belonging to Laclede Gas.

2. Staff Counsel also served subpoenas *duces tecum* requiring deposition to the custodian of records for Laclede Energy Resources (LER) and The Laclede Group (Group) requiring production of certain documents.

3. Importantly, as Laclede stated in a conference with ALJ Daniel Jordan, Laclede has already produced all of these documents for Staff's review. Laclede has not, however, permitted Staff to make and retain copies of the documents. Since Laclede has already produced

the documents for Staff review, Laclede cannot now honestly claim lack of possession or control of the documents.

4. Not only has Laclede Gas already produced the documents, Laclede has the right, authority, and practical ability to provide the documents to the Staff because Ken Neises, in his role as Executive Vice President-Energy and Administrative Services for Laclede Gas and Vice President for LER has access to the LER information. Mr. Yaeger, as the Director and President of both Laclede Gas and LER, also has the right, authority, and practical ability to provide the documents to the Staff .

5. Laclede Gas, Group, LER and other affiliates have the following common management:

	<u>DEV</u>	<u>LER</u>	<u>FAM</u>	<u>GAS</u>	<u>GRP</u>	<u>INV</u>	<u>PIPE</u>	<u>VEN</u>
Yaeger	Director President	Director President	Director President	Chairman President CEO	Director President CEO	Director President	Director President	Director President
Neises	Director	Director VP	Director	Director Exc. VP		Director	Director VP	Director
Waltermire	Director VP	Director VP	Director VP	Director Sr. VP CFO	CFO	Director VP	Director VP	Director VP
Darrell				Sr. VP GC	GC			
Rawlings	Director Treasurer Asst Sec.	Director Treasurer Asst Sec.	Director Treasurer Asst Sec.	Treasurer Asst Sec.	Treasurer Asst Sec.	Director Treasurer Asst Sec.	Director Treasurer Asst Sec.	Director Treasurer Asst Sec.
Kullman	Secretary	Secretary	Secretary	Secretary CGO	Secretary CGO	Secretary	Secretary	Secretary

CEO - Chief Executive Officer
CFO - Chief Financial Officer
CGO - Chief Governance Officer
Exc. VP - Executive Vice President
VP - Vice President

Asst VP - Assistant Vice President
GC - General Counsel
Assoc GC - Associate General Counsel
Asst Sec - Assistant Secretary

Laclede Venture Corporation (Venture) offers services for the compression of natural gas to third parties who desire to use or to sell compressed natural gas for use in vehicles.

Laclede Pipeline Company (Pipeline) operates a propane pipeline that connects the propane storage facilities of Laclede Gas to propane supply terminal facilities located in Illinois.

Laclede Investment, LLC (Investment) invests in other enterprises and has made loans to several joint ventures engaged in real estate development.

Laclede Gas Family Services, Inc (Family Services) is a registered insurance agency in the State of Missouri and promotes the sale of insurance-related products.

Laclede Development Company (Development) participates in real estate development.

Laclede Energy Resources, Inc (LER) is engaged in non-regulated efforts to market natural gas and related activities.

Laclede Gas Company (Laclede Gas) is the largest natural gas distribution company in Missouri and is a regulated public utility.

The Laclede Group, Inc. (Group) is a public utility holding company that provides natural gas service through its regulated utility (Laclede Gas) while engaging in non-regulated activities. Laclede Group's main subsidiaries are Laclede Gas and LER.
Direct Testimony Lisa Hanneken, GR-2010-0171.

6. Discovery may be obtained at the Commission by the same means and under the same conditions as in civil actions in the circuit court. 4 CSR 240-2.090(1). Missouri Rule 58.01(a) provides for the production, copying and inspection of documents that are in the possession, custody, and control of the party upon whom the request is made.

7. However, Rule 58.01(a) "...is not limited to documents only in the possession of a party. Instead, Rule 58.01(a) provides that '[a]ny party may serve on another party a request (1) to produce...any designated documents...which are in the possession, custody *or control* of the party upon whom the request is served....'" *Hancock v. Shook*, 100 S.W.3d 786, 796 (Mo. banc 2003)(emphasis in original).

8. These documents are undoubtedly in the control of Laclede Gas and its officers.
As the Missouri Supreme Court *en banc* in Hancock court instruct:

The 'basic test of the rule is 'control' rather than custody or possession.... Control does not require that the party have legal ownership or actual physical possession of the documents at issue; rather, documents are considered to be under a party's control when that party has the right, authority, or practical

ability, to obtain the documents from a non-party to the action.... A court may require a party to produce documents held by a non-party if the party has the “practical ability to obtain the documents...irrespective of his legal entitlement to the documents.” *Id.* at 796-797(emphasis supplied).

9. Not only are the rules of civil procedure clear and the case law instructive, Laclede is required by Commission rule to have possession, custody and control of the documents under 4 CSR 240-40.015(6) and (7) which provide that:

...a regulated gas corporation shall make available the books and records of its parent and any other affiliated entities.... The Commission shall have authority to review, inspect and audit books, accounts and other records kept by a regulated gas corporation or affiliated entity....Records required under this rule shall be maintained by each regulated gas corporation for a period of not less than six (6) years.

10. Though Laclede may argue that this rule applies only to the Commission’s determination about compliance with the affiliate transactions’ rule, there can be no dispute that Laclede has “possession” and “control” of the documents as defined by the Missouri Supreme Court since Laclede has already produced these documents.

11. The documents are relevant to several issues in this case including proper and adequate allocation of costs, earnings and expenses, which the Commission has authority to review under Section 393.140(12).

12. Staff has relied on these documents as the basis for its testimony and requires copies to support its testimony.

13. Contrary to Laclede’s assertion that the issues have been settled among the parties to this rate case, (Laclede’s July 15 *Motion to Quash Subpoena and Objections to Subpoena*, p.1 para. 2), until a Stipulation and Agreement has been agreed to and signed by the parties and approved by the Commission in a final Order and Judgment, the issues addressed therein have not been finally resolved.

14. Missouri statute permits the Commission to pursue fines for failure to produce papers when ordered to do so. §386.460 RSMo. Commission rule 4 CSR 240-2.09 (1) permits the same sanctions for the abuse of the discovery process as are provided for in the rules of civil procedure. Missouri Court Rule 61.01 permits sanctions against the disobedient party, Laclede.

15. The public interest requires that the Commission and its Staff have access to documents necessary to answer the question of whether Laclede Gas' captive customers are cross-subsidizing its parent or affiliates to the detriment of the ratepayer.

16. Specifically, to enable the Commission to set just and reasonable rates, the Commission has statutory power to inquire into that relationship under 393.140(12). The Commission is not limited in its ability to inquire into “**and prescribe the apportionment of capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the ownership, operation, management or control of such gas plant, . . .** as distinguished from such other business.” (emphasis added).

WHEREFORE, for all the reasons stated above including that Laclede has already provided the documents for review, the Staff respectfully requests the Commission deny the Motion to Quash and order Laclede to produce the documents listed in the subpoena and provide any and other such relief as the Commission may deem just.

Respectfully submitted,

/s/ Annette Slack

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 16th day of July 2010.

/s/ Lera L. Shemwell