

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

In the Matter of the filing of Laclede Gas        )  
Company's PGA factors to be reviewed in        )  
its 2008-2009 ACA filing.                                )  
Case No. GR-2010-0138

**STAFF RESPONSE T O**

**LACLEDE'S RESPONSE TO STAFF RECOMMENDATION**

COMES NOW the Staff of the Missouri Public Service Commission in the above-captioned matter and, in response to Laclede's Response to Staff's Recommendation Staff states:

Below, Staff numbers its Response to correspond to Laclede's section and paragraph numbering.

**I. Introduction**

On October 30, 2009, Laclede Gas Company (Laclede or Company) filed a tariff sheet proposed to become effective November 17, 2009. The tariff sheet was filed to reflect scheduled changes in Laclede's Purchased Gas Adjustment (PGA) factors as the result of an estimated change in the cost of natural gas for the upcoming winter season and changes in the Actual Cost Adjustment (ACA) factor.

On December 30, 2010 Staff filed its Memorandum and Recommendation for Laclede's 2008-2009 Actual Cost Adjustment (ACA). Staff made recommendations based on its review of Laclede's planning and gas purchasing activities. Staff's interest in performing the ACA audit is assuring natural gas utilities pass only prudently incurred gas costs through to customers.

Staff proposed no dollar adjustments to the Company's ACA balance at this time. Staff, however, recommends this case be held open pending the resolution of the Laclede Energy Resources (LER) discovery dispute from the prior ACA cases. Additionally, the issue of how

Laclede will respond to recommendations regarding overcharges paid to Missouri Pipeline Company (k/n/a MoGas) remains an unresolved issue which may change Staff's current recommendation. Staff also notes that absence of an item in this response does not necessarily mean there is agreement between Laclede and Staff.

## **RELIABILITY AND GAS SUPPLY ANALYSIS**

### **II. B. 1 - Laclede's Gas Supply Plans**

This issue of Laclede's gas supply planning was also raised in Laclede's 2007/2008 ACA, Case No. GR-2008-0387. Laclede responded to Staff 's Status Report in GR-2008-0387 on January 14, 2011, regarding Staff's recommendation Laclede perform an updated study for cost and volumes for baseload and swing gas supply for varying weather conditions. In that Response, Laclede states it will look into such an analysis prior to issuing its 2011 RFP this summer and will share results with Staff.

In this case, GR-2010-0138, Laclede's Response to Staff Recommendations refers to information provided on January 14, 2011, and subsequently on January 31, 2011. Laclede states it considers this matter to be fully addressed. Staff does not agree. The only information received from Laclede on January 31, 2011, was an email from Mr. Cline, which addressed the issues of: (1) Target Dates for Physical Supply Volumes, (2) Gas Purchases for On-System and associated GSC Schedule Documentation. This information is not the updated study recommended by Staff. This matter cannot be considered to have been fully addressed until after Laclede has performed the analysis to be done prior to issuing its 2011 RFP and provided the results to Staff, as agreed to in Laclede's Response to Staff 's Status Report in GR-2008-0387, filed on January 14, 2011.

## AFFILIATE TRANSACTIONS AND FAIR MARKET VALUE

### III. Assessing Fair Market Value for Affiliate Transactions

The purpose of the affiliate transactions rules is to prevent preferential treatment toward affiliates and cross-subsidization of non-regulated affiliates.<sup>1</sup> The ACA process is lawful because the utility is supposed to pass through to its customers the invoiced cost of gas without markup.<sup>2</sup> This means that only the actual cost of natural gas is to be passed through to customers, and that Laclede may not earn any return on the sale of natural gas to its customers. In other words, Laclede may earn a return on its delivery of natural gas, but not on the commodity itself.

Laclede has, however, fashioned a way around that prohibition by buying gas from its unregulated affiliate, LER. LER – owned by the same shareholders as Laclede – sells gas to Laclede at a profit. Laclede then passes the marked up gas through the ACA process. While Laclede asserts this is a perfectly reasonable business transaction, it is, in fact, an end run around the supposedly profitless PGA-ACA process and smacks of affiliate cross-subsidization.

Transactions between regulated utilities like Laclede and their unregulated affiliates are necessarily and unavoidably dangerous to the public interest because they are not arms' length transactions. Both sides are controlled by the same interests – often the same person or persons – and the possibilities for improper manipulation are unlimited. Under these circumstances, to assure that only prudently incurred costs are included in customers' rates, Staff has no choice but to give these transactions a higher degree of scrutiny.

---

<sup>1</sup> *Atmos Energy Corp. v. Public Service Com'n*, 103 S.W.3d 753 (Mo. 2003).

<sup>2</sup> *State ex rel. Midwest Gas Users Association and Office of the Public Counsel v. Missouri Public Service Com'n*, 976 S.W.2d 470 (Mo. App. 1998).

On page 5 of its Reply, Laclede asserts Staff's "concepts" regarding affiliate transactions are in direct conflict with the Commission's affiliate transactions rules and Laclede's Cost Allocation Manual (CAM). First, Staff states its "concepts" are not in conflict with the Commission's Affiliate Rules. Significantly, Laclede's CAM is not in compliance with the Commission's rules in numerous respects, including that it has never been approved by the Commission.

The idea that Laclede's CAM has the same force and effect as Commission rules is nonsensical and without merit. Further, Laclede's complaint that Staff "concepts" conflict with Laclede's CAM is equally meritless because Laclede's CAM, unlike the Affiliate Transaction Rules, has not been approved by the Commission. Laclede's unapproved CAM is, therefore, nothing more than a suggestion that the Commission may or may not choose to approve, should Laclede ever submit it for that approval.

Laclede further suggests Staff's position is that "there should be no affiliate transactions." (Laclede Response p. 5-6.) This is false. It is Staff's position that all affiliate transactions should be in compliance with the Commission's affiliate rules or the Company should file with the Commission asking for a waiver or variance from the rules as permitted in 4 CSR 240-40.016(11).

**Need to keep the case open.**

Laclede objects to leaving this case open. (Laclede Response p. 6.) It is not surprising Laclede urges the Commission to close this case in that Laclede has already passed all these costs on to customers through the ACA. There are several reasons this case should remain open including the MoGas issue. The ACA balance contains prior years overcharges from MoGas. It may become necessary for Staff to recommend adjustments to the ACA balance due to the

MoGas issue. The case should also remain open because of the on-going discovery dispute in Case Nos. GR-2005-0203 and GR-2006-0288. Depending upon the resolution of discovery matters in these prior ACA cases, it is possible Staff may recommend adjustments to the ACA balance in this case.

Laclede further suggests Staff and Staff Counsel are in violation of 4 CSR 240-2.080. The fact that Laclede disagrees with Staff's claims and arguments does not mean Staff's position is unfounded or otherwise in violation of 4 CSR 240-2.080. Once again Laclede claims that Staff is in violation Commission rule 4 CSR 240-40.2.080 (7) because Staff does not have a good faith, non-frivolous argument for its position. There is a good faith basis for Staff's position. The fact that Laclede disagrees with Staff' does not mean Staff's position is unfounded or otherwise in violation of 4 CSR 240-2.080. Importantly, Laclede has an obligation to follow the Commission's rules and only the Commission, can apply its rules to Laclede. The Commission may or may not agree with Staff.

### **III. B. 1 - Controls to Assure Affiliates are Not Receiving Preferential Treatment**

Laclede again suggests Staff promoted Laclede's unapproved and non-compliant CAM as "the definitive tool" to protect customers. While Staff may have supported use of a cost allocation manual in GM-2001-342, Staff disagrees with Laclede's characterization of Staff's support for Laclede's unapproved CAM. In GM-2001-342, before the affiliate transactions rules were promulgated, Staff recommended a CAM not as "the definitive tool" to protect customers, but as one such tool: "to assist in monitoring corporate transactions in the event the restructuring is approved, access to the financial records of the Holding Company and the Gas Company related to information furnished to stock and bond rating analysts has been provided for along with access to records relating to corporate adherence to an appropriate Cost Allocation Manual

(CAM).” Importantly, it is access to records relating to corporate adherence to an “appropriate Cost Allocation Manual” Staff considered to be one of the important safeguards to “protect Missouri ratepayers.” (Staff Suggestions in Support of Unanimous Stipulation and Agreement GM-2001, 342, p. 2.) Notably, Laclede’s current CAM is not “appropriate” because it does not contain the asymmetrical pricing provisions required by the rule for purchase of gas supply from an affiliate. 4 CSR 240-40.016.3(A)(1).

After the rules were promulgated, it is the Commission that requires the Company to develop a CAM to explain how it will operate to be in compliance with the affiliate rules. Laclede’s CAM does not fulfill that requirement.

Laclede suggests that rewarding its gas buyers and making sure the buyers understand the rules for pricing affiliate transactions are sufficient controls “best insure proper behavior.” Staff disagrees. Laclede has not shown that it has provided training to its personnel or that it takes any steps to assure compliance with the rules.

**III. B. 2. - Controls to Assure Affiliates are Not Receiving Preferential Treatment; Gas Supply with Affiliate**

\*\*

---

---

---

\*\*

---

\*\*

---

---

---

---

---

---

---

\*\*

In its February 14, 2011 Response to Staff Recommendations, Laclede continues its unwarranted attacks on Staff. Laclede states, among other things, that it appreciates Staff's willingness to provide constructive input on affiliate transactions, but then adds a footnote that it notes with caution the schizophrenic nature of Staff's advice. (Laclede Response p. 7.) Laclede then discusses an Atmos case. Staff will not discuss the issues related to Atmos with Laclede as Laclede is not a party to that case. Staff also notes that name calling does not assist in resolving this issue.

In its February 14, 2011 Response Laclede also states it intends to follow the Rules that require the Company to either obtain competitive bids or demonstrate why such bids were neither necessary nor appropriate. Laclede's response does not address the issue Staff raised that it should provide the same information to all bidders, so this issue is not resolved.

WHEREFORE, Staff asks the Commission accept this Response to Laclede's Response, leave this case open pending, among other things, further action by Laclede to respond to Staff's Recommendations, Laclede's pursuit of overcharge recovery from MoGas, and resolution of discovery matters in Laclede's currently pending ACA/PGA cases.

Respectfully submitted,

**/s/ Lera L. Shemwell**

Lera L. Shemwell  
Deputy General Counsel  
Missouri Bar No. 43792

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-7431 Telephone)  
(573) 751-9285 (Fax)  
lera.shemwell@psc.mo.gov

**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 28<sup>th</sup> day of February, 2011.

**/s/ Lera Shemwell**