

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

In the Matter of Laclede Gas Company's	)	
Purchased Gas Adjustment (PGA) to be	)	Case No. GR-2005-0203 and
Audited in its 2004-2005 and 2005-2006	)	GR-2006-0208
Actual Cost Adjustment.	)	

**PUBLIC COUNSEL'S MOTION FOR AN ORDER  
DIRECTING LACLEDE TO COMPLY WITH THE  
COMMISSION'S ORDER GRANTING MOTION TO COMPEL**

**COMES NOW** Public Counsel and for its Motion for an Order Directing Laclede to Comply with the Commission's Order Granting Motion to Compel states:

1. The Commission's October 20, 2008 Order Granting Motion to Compel ("Order") directed Laclede to produce specific records of Laclede and its affiliate Laclede Energy Resources (LER). To date Laclede has not complied with the Commission's Order. The Commission did not issue a stay of its Order, and therefore Laclede is acting in direct violation of the Commission's Order by not producing the records.

2. For the past twenty-two (22) months, Laclede has filed pleading after pleading seeking to avoid or delay opening its books and records. Laclede has filed no fewer than nine pleadings opposing a review of its affiliate's records, pleadings that have totaled over one-hundred (100) pages of argument. If Laclede's records support a finding of prudent purchasing decisions, Laclede should have no objections to opening its books and allowing this case to move forward.

3. Laclede's arguments opposing a review of its books and records and those of its affiliate have been shifting in hopes to find an argument that sticks. When Laclede first opposed producing the documents in its August 4, 2008 pleading, Laclede argued that the Staff's *procedure* was inappropriate. Laclede identified no harm that could come

from producing the records. Eventually Laclede argued that the Staff was conducting “harassing requests for affiliate records” due to the Staff’s “irrational hostility.”<sup>1</sup> This absurd and baseless attack on the Commission’s Staff is indicative of Laclede’s desperate attempt to keep the facts surrounding its gas purchasing decisions hidden.

4. The Commission correctly concluded that under Missouri Rules of Civil Procedure 56.1 “it is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” The Commission also correctly found that the records requested by the Staff *are* reasonably calculated to lead to the discovery of admissible evidence, and that the staff “must have access to the information it seeks.”

5. The Missouri Supreme Court identified the importance of reviewing the requested records when it upheld the Commission’s affiliate transaction rules:

Respondents concede that the rules regulate certain aspects of the relationship between utilities and their affiliates. In its brief, the PSC explained that the rules are a reaction to the emergence of a profit-producing scheme among public utilities termed “cross-subsidization,” in which utilities abandon their traditional monopoly structure and expand into non-regulated areas. This expansion **gives utilities the opportunity and incentive to shift their non-regulated costs to their regulated operations with the effect of unnecessarily increasing the rates charged to the utilities’ customers.** *See United States v. Western Elec. Co.*, 593 F. Supp. 846, 853 (D.D.C. 1984) (“**As long as a [public utility] is engaged in both monopoly and competitive activities, it will have the incentive as well as the ability to ‘milk’ the rate-of-return regulated monopoly affiliate to subsidize the competitive ventures...**”) To counter this trend, the new rules – and in particular, the asymmetrical pricing standards – prohibit utilities from providing an advantage to their affiliates to the detriment of rate-paying customers. In addition, to police compliance, the rules require the utilities to ensure that they and their affiliates maintain records of certain transactions. [emphasis added].<sup>2</sup>

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<sup>1</sup> Laclede Gas Company’s Response to Staff’s Motion to Compel and Request to Establish Hearing Dates, September 29, 2008.

<sup>2</sup> *State ex rel. Atmos Energy Corp. et al. v. P.S.C.*, 103 S.W.3d 753 (Mo. 2003).

6. Laclede has the “opportunity and incentive” to shift costs from LER to Laclede, and for this reason, the Commission must strongly reject Laclede’s delay tactics and order Laclede to comply with the Commission’s Order and produce the records immediately to allow the Commission to conduct its prudency review.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission direct Laclede to comply with the Commission’s Order.

Respectfully submitted,  
OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston  
Marc D. Poston (#45722)  
Senior Public Counsel  
P. O. Box 2230  
Jefferson City MO 65102  
(573) 751-5558  
(573) 751-5562 FAX  
[marc.poston@ded.mo.gov](mailto:marc.poston@ded.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 26th day of November 2008:

Office General Counsel  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
GenCounsel@psc.mo.gov

Rick Zucker  
Laclede Gas Company  
720 Olive Street  
St. Louis, MO 63101  
rzucker@lacledegas.com

Michael Pendergast  
Laclede Gas Company  
720 Olive Street, Suite 1250  
St. Louis, MO 63101  
mpendergast@lacledegas.com

**/s/ Marc Poston**

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