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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Oral Argument  
March 26, 2009  
Jefferson City, Missouri  
Volume 2

In the Matter of Laclede Company's )  
Purchased Gas Adjustment for ) Case No. GR-2005-0203  
2004-2005 )  
In the Matter of the PGA Filing of )  
Laclede Gas Company for 2005-2006 ) Case No. GR-2006-0288

KENNARD L. JONES, Presiding,  
SENIOR REGULATORY LAW JUDGE.

ROBERT M. CLAYTON III, Chairman,  
CONNIE MURRAY,  
JEFF DAVIS,  
TERRY JARRETT,  
COMMISSIONERS.

REPORTED BY:  
KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

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FOR: Staff of the Missouri Public  
Service Commission.

1 P R O C E E D I N G S

2 JUDGE JONES: Okay. We are on the record  
3 in Case No. GR-2005-0203 and GR-2006-0288. Although these  
4 cases have not been consolidated, they are being  
5 treated -- considered together because of the similarity  
6 in issues.

7 At this time let's take entries of  
8 appearances, beginning with Staff of the Commission.

9 MR. REED: Steve Reed and Lera Shemwell for  
10 Staff, P.O. Box 360, Jefferson City, Missouri 65102.

11 JUDGE JONES: And Laclede?

12 MR. PENDERGAST: Michael C. Pendergast and  
13 Rick Zucker appearing for Laclede Gas Company. Our  
14 business address is 720 Olive Street, St. Louis, Missouri  
15 63101.

16 JUDGE JONES: Office of the Public Counsel?

17 MR. POSTON: Thank you. Marc Poston  
18 appearing for the Office of the Public Counsel and the  
19 public, P.O. Box 2230, Jefferson City, Missouri 65102.

20 JUDGE JONES: Okay. Just prior to going on  
21 record, we were discussing the procedure by which we would  
22 proceed, and at this time we'll start with questions from  
23 Commissioner Murray towards the Staff.

24 COMMISSIONER MURRAY: Okay. Which counsel  
25 should I direct this to?

1 MR. REED: Should be me.

2 COMMISSIONER MURRAY: Mr. Reed, is the  
3 Staff bound by 4 CSR 240-2.090 subsection 8, which is the  
4 discovery -- discovery and prehearing rule?

5 MR. REED: Yes, I think so. Yes,  
6 Commissioner.

7 COMMISSIONER MURRAY: Would you -- do you  
8 have a way right now to take a look at that discovery  
9 rule?

10 MR. REED: I can get the rule or I can have  
11 Ms. Shemwell get the rule for me so we can discuss it,  
12 sure.

13 COMMISSIONER MURRAY: Okay. I would like  
14 to discuss it.

15 MR. REED: Can you hear me?

16 JUDGE JONES: I'm not sure your  
17 microphone's on.

18 MR. REED: It is on, but I'm not sure you  
19 can hear me.

20 JUDGE JONES: I can hear you. While we're  
21 waiting, I just remind everyone to turn your cell phones  
22 off.

23 MR. REED: Okay. Commissioner, I have  
24 the -- I have the rule in front of me. I'm ready.

25 COMMISSIONER MURRAY: Okay. Thank you,

1 Mr. Reed. And I'm looking at 4 CSR 240-2.090,  
2 subsection 8.

3 MR. REED: Yes.

4 COMMISSIONER MURRAY: That rule, correct me  
5 if I'm wrong, says that the Commission shall not entertain  
6 any discovery motions until the following requirements  
7 have been satisfied.

8 MR. REED: Yes.

9 COMMISSIONER MURRAY: And then if you read  
10 subsection A, it tells that the counsel for the moving  
11 party has to have in good faith conferred or attempted to  
12 confer by telephone or in person with opposing counsel  
13 concerning the matter prior to the filing of the motion.

14 MR. REED: Yes.

15 COMMISSIONER MURRAY: Merely writing a  
16 demand letter is not sufficient.

17 MR. REED: Yes.

18 COMMISSIONER MURRAY: And then the last  
19 sentence says, counsel for the moving party shall certify  
20 compliance with this rule in any discovery motion.

21 MR. REED: Yes, I see.

22 COMMISSIONER MURRAY: And when Staff filed  
23 a Motion to Produce, was that complied with?

24 MR. REED: I think it was, Commissioner,  
25 and here's why. I started with a bit of an unusual

1 procedure in that I filed a list that we had discussed at  
2 some -- I think a prehearing conference, a list of items,  
3 items that Staff needed to complete its ACC review, and  
4 with that I included a request for an order that Laclede  
5 produce those items. Well, what resulted was Judge Jones  
6 called a discovery conference.

7 COMMISSIONER MURRAY: I'm sorry. We're  
8 going to back up just a minute. You said you filed a  
9 request for an order to produce?

10 MR. REED: Yes, I did, something to that  
11 effect.

12 COMMISSIONER MURRAY: And at that time had  
13 you attempted to confer by telephone or in person  
14 regarding your request?

15 MR. REED: I don't recall, frankly.

16 COMMISSIONER MURRAY: And did you certify  
17 that you had so done?

18 MR. REED: I don't believe that I did in  
19 that particular pleading.

20 COMMISSIONER MURRAY: So there was a flaw  
21 in that pleading?

22 MR. REED: I believe there may -- yes. I  
23 withdrew that pleading.

24 COMMISSIONER MURRAY: Okay. Go on.

25 MR. REED: And after we met and had a

1 discovery conference with Judge Jones with Laclede, and  
2 near the end of the discovery conference Judge Jones  
3 determined that, okay, this will be considered compliance  
4 with 2.090 subparagraph 8 in that the parties have  
5 conferred, you've had your discussions with the judge,  
6 were unable to resolve the issue, and so if a Motion to  
7 Compel, if you elect to file one, then you're clear to  
8 file it, so to speak.

9                   So that was the next step. We withdrew the  
10 previous motion or list of items that I had filed and  
11 filed a separate and new Motion to Compel.

12                   COMMISSIONER MURRAY: And then -- and you  
13 said the judge determined in that conference that the rule  
14 had been complied with by the in-person prehearing  
15 conference; is that correct?

16                   MR. REED: I believe that was the -- yes,  
17 that was.

18                   COMMISSIONER MURRAY: Did you agree with  
19 that determination?

20                   MR. REED: I believe I did agree, yes.

21                   COMMISSIONER MURRAY: Did you read  
22 subsection 8 of -- I mean subsection B of section 8 and  
23 specifically the very last sentence that says, no written  
24 discovery motion shall be filed until this telephone  
25 conference has been held?

1                   MR. REED: Well, we met in person rather  
2 than have the telephone conference. That was my  
3 understanding of what the result of the discovery  
4 conference was, is that there was no disagreement that the  
5 discovery conference had satisfied this rule so that a  
6 Motion to Compel was allowed.

7                   COMMISSIONER MURRAY: Okay. And then did  
8 you meet the requirements in your written Motion to Compel  
9 that said you certified compliance with this rule and  
10 discovery motion?

11                  MR. REED: I don't recall. I'd have to  
12 look at the motion. I'd have to look at the motion.

13                  COMMISSIONER MURRAY: I would like to see  
14 whether you did comply.

15                  MR. REED: What I did was in paragraph 3 of  
16 that motion, I recited that at the time of the -- of the  
17 discovery conference, the judge indicated that the  
18 conference fulfilled the requirements of 4 CSR 240-2.090  
19 subparagraph 8. So that if -- if additional certification  
20 by counsel was required, the judge had indicated that, in  
21 fact, that had been satisfied. There was no objection to  
22 the -- to this motion on that basis in any event.

23                  COMMISSIONER MURRAY: Well, I wanted to get  
24 past that threshold issue because, in my opinion, if that  
25 had not been complied with, then we shouldn't even be



1 here.

2 But in light of what the judge ruled at the  
3 prehearing conference, I assume that everybody took that  
4 to have been a threshold that was met, and there was no  
5 objection filed or stated at that time.

6 MR. REED: That was my understanding,  
7 Commissioner. There were no additional requirements that  
8 needed to be met before the Motion to Compel could be  
9 filed.

10 COMMISSIONER MURRAY: All right. Thank  
11 you, Judge. I wanted to get that addressed before we went  
12 ahead with the arguments.

13 JUDGE JONES: Okay. With that, Staff, you  
14 may proceed.

15 MR. REED: Well, thank you for the  
16 opportunity to appear and discuss this discovery issue  
17 that we have with Laclede. This, of course, arises from  
18 two cases that are prudence reviews that we're talking  
19 about, and the question in those prudence reviews is did  
20 the ratepayers pay higher costs for gas because of  
21 Laclede's imprudence or whether decisions made by Laclede  
22 that resulted in higher gas prices for the ratepayers.

23 What we've been seeking, as you'll see in  
24 the motions and of course the most recent filing that we  
25 made, are LER supply documents. LER, the affiliates,

1 we're looking for the --

2 JUDGE JONES: Let me interrupt you quickly.  
3 You-all realize we are streaming, so if -- if you're going  
4 to go into information that's highly confidential, let me  
5 know.

6 MR. REED: I will. I certainly will, and  
7 if I don't, I hope not to misstep. I think I know what  
8 highly confidential is, so Mr. Pendergast will catch me.

9 All right. Sources of gas that LER used to  
10 satisfy a contract with Laclede, that's one of the things  
11 we're looking for. Also, LER, the affiliate's use of  
12 Laclede's pipeline capacity, that's another set of  
13 documents we've asked for.

14 Now, it's also important to understand that  
15 where we are in this particular case, because on January  
16 21, 2009, the Commission entered an Order that said  
17 Laclede shall produce no later than February 4th to the  
18 Staff the information set out in the Commission's Order of  
19 October 20th, 2008, produce it by February 4th.

20 February 4th came and went. Nothing  
21 responsive to that Motion to Compel or to the Commission's  
22 Order was produced by Laclede. It came and went. Laclede  
23 produced some information that was not responsive to what  
24 we'd asked for or what the Commission had ordered and did  
25 nothing else. Silence. No filing.

1                   So two weeks passed, and I notified the  
2 Commission that Laclede had failed to comply. I filed a  
3 notice indicating Laclede had failed to comply with the  
4 January 21 Order, and Laclede responded with a Motion for  
5 Mediation, and here we are, here to relitigate five months  
6 and hundreds of pages and many man hours of a discovery  
7 issue.

8                   So during the course of this case, just so  
9 we know where we all are, there have been three Orders  
10 from the Commission directing Laclede to produce this  
11 information, October 20th, 2008, December 17th, 2008,  
12 January 21st, 2009. I have copies of these Orders as well  
13 as some additional information that I'd like to  
14 distribute. I have them in binders. I'd like for each  
15 Commissioner to have a copy. I also have copies for the  
16 other attorneys if I could distribute those now.

17                   JUDGE JONES: Mr. Pendergast, have you had  
18 an opportunity to look at the information Mr. Reed has?

19                   MR. PENDERGAST: No, not yet, your Honor.

20                   JUDGE JONES: Before we look at it, why  
21 don't you let him take a look at it. You can go ahead and  
22 continue talking while he's looking. Do you need us to be  
23 looking at that while you're proceeding?

24                   MR. REED: I will in a moment.

25                   JUDGE JONES: Okay.



1 with whether an investigatory docket into the relationship  
2 between LER and Laclede should be opened or not. Laclede  
3 wanted clarification. Is the Commission really ordering  
4 an investigation into this relationship? The Commission  
5 issued its Order clarifying and said no, and by the way,  
6 Laclede, produce the documents by February 4th. So that's  
7 how we got here.

8 Now --

9 COMMISSIONER MURRAY: So Mr. Reed, the  
10 production of documents, then, is purely in relation to  
11 the ACA case --

12 MR. REED: It is.

13 COMMISSIONER MURRAY: -- that is before us;  
14 is that correct?

15 MR. REED: It is.

16 COMMISSIONER MURRAY: So everything that  
17 Staff is requesting must be reasonably related to -- I'm  
18 trying to get the wording correct here.

19 MR. REED: Everything that we're  
20 requesting, Commissioner, must be reasonably calculated to  
21 lead to the discovery of admissible evidence.

22 COMMISSIONER MURRAY: And for an ACA case,  
23 the Staff is going to be looking at whether Laclede  
24 complied with its tariff, including the Cost Allocation  
25 Manual that is included in its tariff; is that correct?

1                   MR. REED: As part of the ACA case, we'll  
2 review that information as well, but the primary purpose  
3 for this information is to determine whether Laclede paid  
4 too much to LER for gas and determine what LER did with  
5 Laclede's capacity that was released to LER.

6                   COMMISSIONER MURRAY: And too much would be  
7 defined by the rule, would it not?

8                   MR. REED: Not necessarily. Because if  
9 entering into the contract and taking action under the  
10 contract was not prudent in that it led to higher gas  
11 costs for the ratepayers, then that impacts the ACA.

12                   COMMISSIONER MURRAY: So they could fully  
13 comply with their Cost Allocation Manual and still be  
14 imprudent, is that what you're saying?

15                   MR. REED: Yes.

16                   COMMISSIONER MURRAY: Go ahead.

17                   MR. REED: Now, I know -- I know that  
18 Laclede is here to argue this whole case again, and I'm  
19 ready to do the same thing. We'll argue relevance. We'll  
20 argue the affiliate rules. We'll do the whole thing  
21 again. Five months of litigation, we'll do it all again.

22                   But the real issue here is why didn't  
23 Laclede produce the documents on February 4th? There's  
24 been no filing explaining why that wasn't done. There has  
25 been nothing filed in EFIS to explain why they didn't do

1 that. Motions for Reconsideration were denied. Motions  
2 for Clarification were granted. Here we are, we're at the  
3 end. The documents needed to be produced and they  
4 weren't. If the issue here is that the Commission got it  
5 wrong, then we have three Orders that weren't complied  
6 with, especially the final Order, produce it by  
7 February 4th.

8                   Because the Commission, like any court, is  
9 entitled to be wrong. This is a discovery issue. This is  
10 not the resolution of the case. This is do we get the  
11 documents or not? The Commission said produce the  
12 documents and Laclede just said -- what did they say? No.  
13 No. No. February 4th, no, you don't get them.

14                   Here's what Laclede is really claiming, and  
15 I'll bet you'll hear it at some point today. Laclede does  
16 not have possession of these documents. We don't have  
17 possession, so we can't produce them.

18                   Now, let's turn to the binder that's in  
19 front of you. If you look at the, I think it's the fourth  
20 document, Unanimous Stipulation & Agreement. All right.  
21 Now, this is the Stipulation & Agreement that I've been  
22 accused of misquoting or selectively quoting from, so I  
23 thought it important to bring it here today to let you  
24 Commissioners look at it, read it, tell me what you think,  
25 because I've been wrong before, but I have never

1 intentionally misled a court anywhere, and I will not do  
2 that with this Stipulation & Agreement.

3                   So let's turn -- by the way, this has to do  
4 with the restructuring, right, the restructuring of  
5 Laclede, where LER goes from being a subsidiary of Laclede  
6 Gas Company on page 2 to the change where the Laclede  
7 Group is the parent company for Laclede Gas and over here  
8 is LER, Laclede Energy Resources.

9                   Now, as a condition of the Commission's  
10 approval of this restructuring, turn to page 7. Here's a  
11 section, access to information conditions. It's at the  
12 bottom of the page. Peruse paragraph 1. It has to do  
13 with financial information. We turn to paragraph 2, we  
14 can see condition relating to information to verify  
15 compliance with the CAM, the Cost Allocation Manual. Read  
16 a little further.

17                   COMMISSIONER MURRAY: Mr. Reed, excuse me.  
18 That is as may be reasonably required to verify compliance  
19 with the Cost Allocation Manual; is that correct?

20                   MR. REED: Yes.

21                   COMMISSIONER MURRAY: So if there is -- and  
22 at this point, I'd like to know, there is a specific way  
23 that the Cost Allocation Manual provides for dealings with  
24 an affiliate, correct?

25                   MR. REED: Yes. That's right.



1                   COMMISSIONER MURRAY: And it says the  
2 higher -- depending on whether it's a sale or a purchase,  
3 the higher of the fair market value or fully distributed  
4 costs.

5                   MR. REED: Right. Yes.

6                   COMMISSIONER MURRAY: Or the lower of those  
7 two things, right? So how does the information that Staff  
8 has sought reasonably relate to whether that CAM has been  
9 complied with?

10                  MR. REED: The investigation isn't into  
11 compliance with the CAM. The investigation is whether  
12 Laclede paid too much to LER for the gas they bought.

13                  COMMISSIONER MURRAY: But you're citing  
14 something in the Stip & Agreement that indicates what  
15 Laclede has agreed to provide, and what you're reciting  
16 says they have agreed to provide this as may reasonably be  
17 required to verify compliance with the cost allocation  
18 manual.

19                  MR. REED: I don't dispute that's what it  
20 says, but this is not the -- this is not the part of the  
21 Stipulation & Agreement that is germane to whether Laclede  
22 produces these records. It's on the next page.

23                  COMMISSIONER MURRAY: Okay. Go ahead.

24                  MR. REED: You finish page 8 at the bottom  
25 and there's information about access to collective

1 bargaining employees. And then on page 9 you have to go  
2 down to line 3, Laclede Gas Company and the Laclede Group.  
3 This is a long sentence that ends paragraph 2, and it  
4 says -- you can see what it says, shall also provide any  
5 such -- any other such information relevant to ratemaking,  
6 financing, regulatory authority over the Laclede Gas  
7 Company. Read it for yourself.

8 COMMISSIONER MURRAY: Provided that Laclede  
9 Group shall have the right to object, and I know you're  
10 going forward to say that an objection that it's not in  
11 the possession or control of Laclede is not relevant  
12 because that's one of the exceptions --

13 MR. REED: Correct.

14 COMMISSIONER MURRAY: -- but don't they  
15 have the right to reject -- or to object based on  
16 relevancy?

17 MR. REED: Yes, unless it has -- unless it  
18 has to do with the proposed restructuring. They can, yes,  
19 they can object on relevancy, absolutely.

20 COMMISSIONER MURRAY: So if it's not  
21 relevant to the Cost Allocation Manual, they can object on  
22 that basis, can they not?

23 MR. REED: They can object, but the issue  
24 is whether it's relevant to the ACA review, whether  
25 Laclede paid too much for gas and whether Laclede should

1 not have released that capacity to LER because -- because  
2 Laclede could have and should have used that capacity.  
3 It's a different issue.

4 COMMISSIONER MURRAY: Okay. Go ahead.

5 MR. REED: I realize that Laclede wants to  
6 pigeonhole this thing into the affiliate rules and the  
7 CAM, but that's not where we're coming from. We're trying  
8 to decide --

9 JUDGE JONES: So if that's a different  
10 issue, why are we looking at the Stip & Agreement?

11 MR. REED: Because this says that  
12 possession, a lack of possession is not a defense.  
13 Laclede has access to affiliate records, period. It's  
14 right here.

15 COMMISSIONER MURRAY: But Mr. Reed, in our  
16 Order we limited what they had to produce to those things  
17 in their possession. Now, are you asking us to reconsider  
18 our Order?

19 MR. REED: Those things in Laclede's  
20 possession are also defined by this agreement, by this  
21 Stipulation & Agreement.

22 COMMISSIONER MURRAY: But we indicated  
23 those things that were in their possession, and you're  
24 citing something that says they can't object --

25 MR. REED: Right.

1                   COMMISSIONER MURRAY: -- to the production  
2 based upon it not being in their possession, but our Order  
3 only required them to produce what was actually in their  
4 possession.

5                   MR. REED: Well, they are in Laclede's  
6 possession. They are, by operation of this Stipulation &  
7 Agreement which is approved, which is law, they are in  
8 Laclede's possession.

9                   COMMISSIONER MURRAY: And where is  
10 possession defined?

11                  MR. REED: Well, possession is defined by  
12 the case law like Hancock v Shook. You have a copy of it  
13 in the binder. That's where -- where possession is  
14 defined. It's control, it's custody, it's the practical  
15 ability to obtain the documents from third parties.

16                  Of course Laclede has the practical ability  
17 to obtain these documents from LER. I mean, Mr. Neises is  
18 the vice president of both companies. He signs contracts  
19 for both of the companies, and you have copies of those in  
20 the binder as well. So possession is that -- is defined  
21 by the Missouri Supreme Court, and it's broad.

22                  COMMISSIONER MURRAY: Go ahead.

23                  MR. REED: So here's my point and I'll move  
24 to the relevance. Commission ordered Laclede to produce  
25 these documents, and it may have said the documents in

1 your possession ,but they have possession by virtue of  
2 this Stipulation & Agreement. They have possession. They  
3 agreed they have possession. It's a condition of the  
4 approval of the merger, of the restructuring. They also  
5 have possession by virtue of the Hancock v Shook case  
6 which says that possession is broad. It's control. It's  
7 access. It's the practical ability to obtain the  
8 documents from a third party, a party not a party to the  
9 case, a nonparty, to obtain those and produce them.

10 Now, Laclede never objected to possession  
11 ever, ever before. I mean, they've never done it  
12 formally. I think what they're saying is, well, the  
13 affiliate rules say that -- the affiliate rules say that  
14 Laclede must have possession for particular purposes.

15 Therefore, what Laclede is arguing is that  
16 if you're investigating the affiliate relationship between  
17 LER and Laclede, then I have the records, but if for any  
18 other reason I don't have them, I don't have them in the  
19 other hand. That's what Laclede is arguing.

20 But what we're saying here is that Laclede  
21 does have possession of these records and that we can  
22 access them under the general discovery provisions that  
23 the -- that the Supreme Court rules provide and the case  
24 law that follows and interprets those particular rules.

25 Now, that argument by Laclede that I have

1 them for one purpose but not another, that is Laclede  
2 using the affiliate rules as a shield and basically saying  
3 that unless the affiliate rules provide that you can have  
4 these LER documents, you can never have them, and that is  
5 contrary to the Missouri Supreme Court rules, to the  
6 general discovery provisions, to the case law that  
7 applies.

8 Do I have plenty of time left?

9 JUDGE JONES: You have about ten minutes  
10 left.

11 MR. REED: Okay. I'll be fine, then.  
12 Okay. I want to move to -- I want to -- the issue of  
13 prudence. Of course this is a prudence case. Was Laclede  
14 prudent in making purchases during the two ACA periods  
15 we're talking about? In particular, there are two  
16 contracts that you'll find in your binder between Laclede  
17 and LER. They are at document No. 6 and No. 7.

18 Now, as I indicated earlier in the things  
19 that we've filed, we're trying to obtain the sources of  
20 gas that LER used to perform under this contract with  
21 Laclede. You see the March 10, 2004 contract between  
22 Laclede and LER. Laclede Energy Resources is the seller.  
23 Laclede, the regulated company, is the buyer. So LER is  
24 selling gas to Laclede. Now, the delivery location,  
25 Laclede Gas Company aggregate. Okay. So that's St.

1 Louis.

2 JUDGE JONES: Is this highly confidential?

3 MR. REED: Yes, it is. Let's move to HC.

4 I'm sorry. Is it?

5 MR. PENDERGAST: Yes.

6 (REPORTER'S NOTE: At this point, an  
7 in-camera session was held, which is contained in  
8 Volume 2, pages 34 through 48 of the transcript.)

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1                   MR. PENDERGAST:  If it please the  
2 Commission, I too want to thank you for this opportunity  
3 to hold an oral argument on the important question at  
4 issue today, namely the propriety of Staff's information  
5 request of Laclede.  Mr. Reed previously indicated that  
6 what I was going to argue, and I have a few more things to  
7 say than maybe Mr. Reed had indicated, and where I'd like  
8 to begin is by saying that we object to having to provide  
9 this information for three reasons.

10                   The first reason is that it's based on a  
11 fundamentally misleading depiction of the relationship  
12 between Laclede and LER, one that is meant to give you a  
13 false impression that LER has achieved its success only by  
14 exploiting the gas supply assets of Laclede.

15                   Second, and I think Commissioner Murray got  
16 to this very quickly in her series of opening questions,  
17 the Staff's information requests are premised on the  
18 wholesale rewriting of the rules and standards that you've  
19 approved to govern access to the records of a utility's  
20 affiliate, rules and standards that Laclede and LER have  
21 operated under in good faith during the ACA periods in  
22 question, and that the Staff now seeks to retroactively  
23 change through the guise of an ACA adjustment.

24                   It's also inconsistent with the pricing  
25 standards that are in the Cost Allocation Manual, and as



1 the Commissioner asked, that's the information that we  
2 were obligated to provide was what was necessary to comply  
3 with the pricing principles in the Cost Allocation Manual  
4 and other requirements.

5                   Mr. Reed just basically said today, well,  
6 that's irrelevant. We come up with our own standard, we  
7 come up with our own way of pricing these things, and so  
8 you've got an obligation not to just provide information  
9 to show compliance with the affiliate transaction rules,  
10 which also limits it to information that's necessary to  
11 show compliance with the standards in there, but also with  
12 the CAM, because Mr. Sommerer has invented a new standard,  
13 and that's the standard that he seeks to go ahead and have  
14 information provided to go ahead and pursue it.

15                   Well, if we didn't have rules, if we don't  
16 have CAMS, if we didn't have requirements to say what  
17 those standards and rules are supposed to be, maybe  
18 Mr. Sommerer would be free to do that. But we do have  
19 rules, we do have standards. And I believe Mr. Zucker is  
20 going to go ahead and hand out relevant pages of the Cost  
21 Allocation Manual as well as some of the materials I'll be  
22 using.

23                   COMMISSIONER JARRETT: Mr. Pendergast, I'd  
24 like to ask a question. Mr. Reed started out by going  
25 through a timeline of Orders we had issued. I wanted to

1 give you a chance to respond. I believe it was he said on  
2 February -- we issued an Order that indicated that Laclede  
3 was supposed to respond and provide the documents by  
4 February 4th, and he said that Laclede just didn't  
5 respond, didn't --

6 MR. PENDERGAST: That's not true, your  
7 Honor.

8 COMMISSIONER JARRETT: Like I said, I  
9 wanted to give you a chance to respond.

10 MR. PENDERGAST: And I appreciate that.  
11 First of all ,in your Order you said that the set of  
12 documents were in our possession that we needed to  
13 provide, and the documents were not in our possession. We  
14 didn't object to providing the documents, but we said the  
15 Commission had indicated if they were in our possession we  
16 were supposed to provide them, and I indicated to Mr. Reed  
17 they weren't in our possession.

18 And what I also indicated to Mr. Reed is  
19 that we wanted to sit down and we wanted to talk about  
20 additional information that would indeed demonstrate that  
21 we were in compliance with the affiliate transaction rule  
22 and in compliance with the pricing standards in our CAM,  
23 which is the relevant criteria for determining what  
24 information we want to provide.

25 Staff said they weren't interested in

1 sitting down and talking about that, and that's because  
2 Staff has their own standard that they want to get  
3 information on. Unfortunately, it's not a standard that  
4 you've authorized, it's not one you've approved, and it's  
5 not one they've agreed on in the CAM.

6 COMMISSIONER JARRETT: Did you file  
7 anything in EFIS indicating, letting the Commission know  
8 that you did not have the records in your possession?

9 MR. PENDERGAST: I did not file something  
10 immediately in there. What I did is I sent a rather  
11 lengthy letter to Mr. Reed explaining that, and also  
12 explaining the information that we were willing to provide  
13 that we wanted to go ahead and discuss at a meeting that  
14 they weren't interested in having with us.

15 And two weeks later it was Mr. Reed that  
16 found that he had to file a request for clarification with  
17 the Commission to have you change your Order that we had  
18 complied with. So he asked for a request for  
19 clarification because he didn't like the result that we  
20 got under the Order that you had issued and said that you  
21 needed to go ahead and change your Order, and that's what  
22 he's trying basically to do today.

23 So I think that the real issue is, and I  
24 think Staff has recognized this as well, is that the scope  
25 of their access to affiliate records doesn't really depend

1 on possession. What it depends on is what the affiliate  
2 transaction rule says, which establishes specific criteria  
3 for what affiliate records have to be maintained.

4                   It specifically provides that an affiliate  
5 and a utility has to make records available to the extent  
6 necessary for the sole purpose of showing compliance with  
7 those standards, and, in fact, that's the same kind of  
8 language that we have in the CAM that Commissioner Murray  
9 asked Mr. Reed about. It says we've agreed to go ahead  
10 and provide information as necessary to go ahead and show  
11 compliance with the CAM. And I'm going to go over what  
12 those standards are in just a minute.

13                   COMMISSIONER MURRAY: Mr. Pendergast,  
14 excuse me, but does the Cost Allocation Manual incorporate  
15 all of the affiliate transaction rules or only a portion  
16 of them?

17                   MR. PENDERGAST: Well, it incorporates the  
18 concepts in the affiliate transaction rule with  
19 elaboration to show how they work in the context of the  
20 specific transactions that Laclede Gas deals with. And in  
21 the papers that we've provided you, the excerpts from the  
22 Cost Allocation Manual, what's really at issue here are  
23 those provisions that govern when we purchase gas supply  
24 or capacity from the affiliate, which would be Laclede  
25 Energy Resources, or when we sell gas supply or capacity

1 to an affiliate.

2                   And basically what the CAM recognizes is  
3 that it's a market test that you have to use in order to  
4 determine whether or not those particular transactions  
5 were reasonable. In the wholesale natural gas market,  
6 everything is determined by the market. It's what can I  
7 buy gas from, and if I'm buying gas from LER, what's the  
8 competitive market price for that gas as established by  
9 looking at other vendors who are also selling gas in the  
10 same market and the same location?

11                   And that's what we did to comply with the  
12 affiliate transaction rule. We provided Staff with  
13 information showing what that was. And if we could go  
14 in-camera for just a moment, I'd like to go ahead and kind  
15 of illustrate that up on the board if I could.

16                   (REPORTER'S NOTE: At this point, an  
17 in-camera session was held, which is contained in  
18 Volume 2, pages 55 through 87 of the transcript.)

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1                   COMMISSIONER DAVIS: All of the documents  
2 are highly confidential, correct?

3                   MR. PENDERGAST: I think most -- well,  
4 there are some orders in there and other things in there.

5                   COMMISSIONER DAVIS: The rules -- the  
6 affiliate transaction rule itself and any Commission  
7 decisions aren't, but --

8                   MR. PENDERGAST: Yeah. I think the others  
9 are.

10                  COMMISSIONER DAVIS: Anything that's a  
11 number relating to Laclede is highly confidential for the  
12 most part?

13                  MR. PENDERGAST: That's generally fair.

14                  COMMISSIONER DAVIS: Okay. Now,  
15 Mr. Pendergast, I understand that -- I'm going to throw  
16 out another scenario.

17                  MR. PENDERGAST: Sure.

18                  COMMISSIONER DAVIS: And I don't think it  
19 violates the affiliate transaction rule. Okay. But let's  
20 say, you know, it's -- it's an unexpected cold day in  
21 January and, you know, Laclede -- and maybe this may not  
22 even be technically feasible because Laclede may need all  
23 of its capacity on cold days, but okay.

24                  What is to stop someone -- if Laclede is  
25 earning close to its allowed return and whoever

1 represents, you know, Laclede in terms of capacity knows  
2 that, what's to stop them from calling up LER and saying,  
3 hey, looks like it's going to be a good day. The company  
4 can make a lot of money selling capacity off-system. You  
5 know, I'll sell it to you at fair market value, you mark  
6 it up and make whatever you can get, and you'll make off  
7 like bandits and in the end the company will benefit?

8 I mean, I can envision that scenario  
9 happening, and it causes me concern. It may not violate  
10 the affiliate transaction rule, but that don't mean we  
11 shouldn't do something about it.

12 MR. PENDERGAST: Well, and you know, I can  
13 understand how somebody might have that concern,  
14 Commissioner. What prohibits it from happening is, first  
15 of all, the guy that's going to make the call for the gas  
16 company, he gets rewarded based on whether he uses that to  
17 make off-system sales, not on whether Mr. Jaskowiak takes  
18 some and LER's earnings go up. okay. So that doesn't  
19 factor in to his earnings.

20 And secondly, if I can just put up the --  
21 as I showed before, our off-system sales have gone up  
22 tremendously, and I know there's a belief at times that  
23 every time a utility makes a decision there's some  
24 underlying financial calculation that's made, that you  
25 don't go ahead and necessarily do it just because it's the

1 right thing to do.

2                   But the fact of the matter is, if you look  
3 at how these have inclined, gone up, the amount that the  
4 company's been able to keep of these transactions has gone  
5 ahead and changed. Forget LER for a minute. It's been  
6 able to -- it's been changed significantly over this  
7 period of time.

8                   Used to be when, you know, back here when  
9 we were in a rate case, we kept everything, everything we  
10 made between rate cases. Okay. And then around here I  
11 think we went ahead and had to give 50 percent back once  
12 we got to 12 million. Okay. And then here, I think we  
13 got to the point where we had to give between 75 and 85  
14 percent back to our customers.

15                   Now, you know, if you just went ahead and  
16 responded to what the financial incentive was, and not  
17 that incentives aren't important, but that's the only  
18 thing that entered into your calculation, you wouldn't  
19 continue to work hard to go ahead and drive these things  
20 up even though you're only getting 30 percent of what you  
21 got before. I mean, you work hard because it's the right  
22 thing to do. You work hard because it's in your  
23 performance evaluation. You'll be rewarded on it.

24                   I submit to you -- you know, can you be  
25 absolutely 100 percent certain that nobody's ever made



1 that phone call? You know, you can't be absolutely  
2 100 percent certain about anything. But you're never  
3 going to go ahead and be able to have, I think, more  
4 robust information than this that we played it on the up  
5 and up.

6                   And, you know, once again, Commissioner,  
7 the rules themselves, the affiliate transaction rules  
8 themselves are designed to go ahead and not have to look  
9 into what somebody's motivation is. They're designed to  
10 not have to look into what your real intention is. The  
11 proof is in the pudding, and, you know, the pudding's been  
12 cooked up by the Commission in the form of its affiliate  
13 transaction rules.

14                   Those are the rules of the game we did  
15 business under. They're the rules of the game LER did  
16 business under. If people think the rules ought to be  
17 changed, the transactions ought to be outlawed, that there  
18 ought to be additional separation, you know, whatever,  
19 that's fine. I mean, you know, somebody can come forward  
20 and propose a change to the rule and then we can go ahead  
21 and debate that.

22                   But what we shouldn't do is retroactively  
23 go back and say, you know, we think a different standard  
24 ought to apply because we don't like the standard that the  
25 rule has gone ahead and imposed on everybody. I think the

1 rules work well, but if you're going to change it, it  
2 ought to be changed prospectively.

3 COMMISSIONER DAVIS: All right. Thank you,  
4 Mr. Pendergast.

5 MR. PENDERGAST: Thank you.

6 CHAIRMAN CLAYTON: Thank you, Judge. I  
7 just have a few quick, I hope they're quick questions.

8 MR. PENDERGAST: Sure.

9 CHAIRMAN CLAYTON: On the chart that you  
10 had up before where you set out a characterization of  
11 Laclede's position and Staff's position, if we assume that  
12 those characterizations are accurate the way -- and I'm  
13 not saying they're not --

14 MR. PENDERGAST: Sure.

15 CHAIRMAN CLAYTON: -- but assuming that's  
16 the case, as a matter of law, does the Commission have the  
17 power to adopt Staff's position and disallow amounts  
18 through this PGA?

19 MR. PENDERGAST: As a matter of law, I  
20 would say the Commission does not have the power to adopt  
21 the Staff adjustment that's based on a pricing standard  
22 different than what's in the affiliate transaction rule.

23 CHAIRMAN CLAYTON: So as a matter of law,  
24 we cannot adopt what Staff is doing?

25 MR. PENDERGAST: That would be my position,

1 yes.

2 CHAIRMAN CLAYTON: Aside from that, the  
3 question of law or the legality of it, more of a policy  
4 question. Is it Laclede's position that you are asking  
5 the Commission to decide the ultimate decision in this  
6 case, the way things have been framed up, without  
7 reviewing any type of sampling of the documents Staff is  
8 requesting?

9 MR. PENDERGAST: Yeah. Well, I guess --

10 CHAIRMAN CLAYTON: I mean, I look at this  
11 thing and you're saying, this is what the Staff wants to  
12 do, it's wrong, wrong, wrong, and we don't -- but this is  
13 really kind of a discovery discussion or an exchange of  
14 information discussion we're hearing here today. I guess  
15 that's what I'm trying to --

16 MR. PENDERGAST: Yeah. I guess what I  
17 would prefer is I would prefer if you looked at the Cost  
18 Allocation Manual documents, if you looked at the  
19 affiliate transaction rules, and if you looked at what  
20 we've said here today and what we've said in the pleading,  
21 if you could give clarification, yeah, that you really  
22 ought to be evaluated when you're buying gas from an  
23 affiliate on what the fair market price of that gas is as  
24 determined by, you know, other vendors and sellers and  
25 buyers in the market.

1                   That would be helpful. That would be  
2 helpful. It would be helpful to have some kind of clarity  
3 because, quite frankly, given where Staff has come from,  
4 we have absolutely no idea what the standard is that we're  
5 supposed to be operating under. We don't know when we're  
6 making money, not making money, when it's appropriate,  
7 when it's not. It would be helpful to go ahead and have  
8 that clarified.

9                   If you don't clarify it, if you don't feel  
10 comfortable going that far at this point, then what I  
11 would submit is we ought to have an evidentiary hearing at  
12 this point. Staff ought to come in, they ought to go over  
13 this purchase contract that they said they had concerns  
14 with, they ought to go over the sales stuff that they said  
15 they had concerns with, and they ought to say, this is my  
16 view of what the standard is in the rule, this is my view  
17 of what the standard is in the CAM, this is my view of  
18 why --

19                   CHAIRMAN CLAYTON: Can I stop you right  
20 there?

21                   MR. PENDERGAST: Sure.

22                   CHAIRMAN CLAYTON: The evidentiary hearing  
23 that you want to have, what would be the case? Is the  
24 case -- if you removed the PGA aspect of it, so basically  
25 does it become a rulemaking, a proposed rulemaking to

1 change policy? Or explain to me what type of evidentiary  
2 hearing, what type of case that would be.

3 MR. PENDERGAST: Yeah. What it would be is  
4 we would finally get -- I mean, you know, Staff made its  
5 first recommendation to disallow costs associated with  
6 this contract we had with LER I think two and a half years  
7 ago. Okay. And they said this is inappropriate, I have a  
8 problem with it, here's \$4.5 million worth of costs we  
9 ought to disallow. I think that's over two ACA periods.  
10 It's not really a good number because it does include some  
11 transportation that produces it.

12 But that notwithstanding, they ought to  
13 come in and they ought to say, here's why we think it's  
14 reasonable to go ahead and look at these other costs,  
15 here's why we think this disallowance is appropriate.

16 And if they want to go ahead and say, you  
17 know, here's the kind of information we think we should  
18 have gotten or we're entitled to get under our view of  
19 what the standard is, if you ultimately want to conclude,  
20 well, okay, we think there's some merit to what Staff has  
21 proposed here, we think, you know, they've shown us that  
22 there's some shenanigans here and we think we need to look  
23 forward, then fine.

24 But what I don't think we ought to do is  
25 say we want to send them off on an audit of 93 percent of

1 transactions that LER does with third parties based on  
2 these untested allegations that they've made. I mean,  
3 they made the allegations two and a half years ago. Why  
4 isn't it appropriate for them to come forward now and  
5 prove them up?

6 CHAIRMAN CLAYTON: Wouldn't -- wouldn't an  
7 evidentiary hearing in the PGA case, though, be an  
8 appropriate place for that?

9 MR. PENDERGAST: Yeah. I agree,  
10 absolutely. No, and I think that's what we should do.

11 CHAIRMAN CLAYTON: But I think what they've  
12 suggested is that they need to review some materials to be  
13 able to do that, and you-all are refusing to turn over  
14 those materials.

15 MR. PENDERGAST: Chairman, what they're  
16 saying is, we've refused to go ahead turn over some  
17 materials that we need to pursue a standard that's not in  
18 the affiliate transaction rule, that's not in Laclede's  
19 CAM, that's not in any of the seminal documents that we've  
20 operated under for the last four or five years.

21 Mr. Sommerer has got a different theory,  
22 different standard about how things ought to be priced,  
23 and you need to ignore your CAM -- Mr. Reed just said that  
24 today -- and you need to go ahead and ignore the affiliate  
25 transaction rule and give us what we want because I've got

1 a different theory and I've got a different standard, and  
2 that's not appropriate.

3 CHAIRMAN CLAYTON: Let me try and ask this  
4 question. I think it's a variation of what Commissioner  
5 Davis asked. In your chart, you are setting out that the  
6 company believes that the customer should be -- the gas  
7 should be priced at the fair market price?

8 MR. PENDERGAST: Absolutely.

9 CHAIRMAN CLAYTON: And Staff is suggesting  
10 something else. But if the Staff were to review the  
11 material that they are seeking, some sampling of it, and  
12 they were to find a consistent lower cost of gas going  
13 through LER which is lower than what the fair market price  
14 is, and that was happening on a consistent basis, do you  
15 believe that would support a finding of imprudent behavior  
16 on the part of Laclede?

17 MR. PENDERGAST: Well, first of all, since  
18 we've provided information that shows we've met the fair  
19 market price, I don't really understand how that could go  
20 ahead and happen.

21 But what it's effectively saying is that,  
22 you know, the criteria we've come up with for determining  
23 whether these transactions are proper or not, basically  
24 the fair market price and how you're supposed to calculate  
25 that fair market price, you know, really ain't working,

1 you know, and we need to go ahead and look behind and see  
2 if there's something else that's going on.

3                   You know, my view would be, if that's the  
4 case and we need to revisit the rules and we need to come  
5 up with something other than fair market price and we need  
6 to come up with a more specific way of determining what it  
7 should be, then I think that's fine to go ahead and do and  
8 look at.

9                   But what we shouldn't do is go back and  
10 say, you know, the standards you've been operating under  
11 for the last six or seven years we need to go ahead and  
12 revisit and we need to get information based on a  
13 different standard. I mean, you know, ACA --

14                   CHAIRMAN CLAYTON: Let me ask another  
15 question. I don't mean to cut you off. I know this has  
16 gone on for a while.

17                   What you're saying, I think you're saying,  
18 and please clarify if I'm wrong, is that basically  
19 customers should be entitled to the fair market price and  
20 no less?

21                   MR. PENDERGAST: Yes.

22                   CHAIRMAN CLAYTON: Is that what you're  
23 saying?

24                   MR. PENDERGAST: Yes.

25                   CHAIRMAN CLAYTON: So even if an affiliate



1 on a consistent basis is selling gas that is beneath that  
2 price to other customers outside of its native load or  
3 outside of where they're going otherwise, that those  
4 customers have -- they should not benefit at all from  
5 those other transactions, that they're only entitled to  
6 what your definition of what fair market price is?

7 (REPORTER'S NOTE: At this point, an  
8 in-camera discussion was held, which is contained in  
9 Volume 2, page 100 of the transcript.)

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1                   MR. PENDERGAST: And I think that once you  
2 have that kind of robust indication of this was a  
3 competitive contract and it's done at the fair market  
4 price, you know, there's not a need to look at anything  
5 else.

6                   And I certainly don't think that under  
7 those circumstances somebody's justified an investigation  
8 because something's rotten in Denmark, particularly when  
9 you look at the macro results we've achieved in off-system  
10 sales and how they've, you know, gone up on the gas  
11 company side so dramatically over the last four or five,  
12 six years when we were supposedly migrating them over to  
13 our affiliate.

14                  CHAIRMAN CLAYTON: From your perspective,  
15 is Staff arguing that the fair market price can be  
16 determined by looking at these documents?

17                  MR. PENDERGAST: I think Staff is arguing  
18 that if --

19                  CHAIRMAN CLAYTON: Rather than by your  
20 definition, I guess is what I'm asking.

21                  MR. PENDERGAST: I don't know whether Staff  
22 would go ahead and say they want to get what the fair  
23 market price is, but if that's the fair market price, what  
24 it's basically saying is the fair market price for an  
25 affiliate only is what that affiliate ultimately does with

1 your capacity and gas that you've sold to them. If they  
2 ultimately make another sale to somebody else that maybe  
3 the gas company could have made a sale to, then we want to  
4 go ahead and get those margins for the gas company.

5                   If I go ahead and I sell that same gas  
6 capacity to a BP Amoco or Conoco Phillips, the matter  
7 ends. They can go compete with me. They can sell it to  
8 anybody else they want. But if I do it with an affiliate,  
9 we need to go ahead and follow them, and then we need to  
10 go and have them give back any money they gave if we can  
11 establish at some point that that's a customer that you  
12 could have made an off-system sale to.

13                   You know, Chairman, I -- why would this  
14 suggest to anybody that Laclede's been involved in  
15 anything other than a robust effort to go ahead and grow  
16 its off-system sales for its regulated customers? I mean,  
17 you know, you can hypothecate and you can theorize, but  
18 sometimes just looking at the facts and looking at the  
19 real world and looking at what's happened is enough, and I  
20 think it is in this particular case. I just don't think  
21 you can treat an affiliate substantially different than  
22 you do a non-affiliate.

23                   CHAIRMAN CLAYTON: You've made some very  
24 interesting arguments here today on -- for the outcome of  
25 the whole case. Ultimately, though, today we have the

1 question before us of whether or not we are going to move  
2 forward with discovery and the exchange of this  
3 information.

4                   What is your response to me if I suggest  
5 that by not sharing some sampling of information, that  
6 perhaps that suggests that maybe there really is something  
7 that the Staff should be seeing, by not turning this over?  
8 And I don't want to get -- I understand you're advocating  
9 very strongly for your client. I don't want to -- but  
10 what is your response if I say, you know, the Staff's  
11 asking to look at this, don't want to turn over, so maybe  
12 there is something there? And I'm not suggesting that,  
13 but what's your response?

14                   MR. PENDERGAST: Well, my response to that  
15 is, No. 1, the reason they said they need to look at it is  
16 because they happen to go ahead and have a standard that's  
17 different than anything in the affiliate transaction rule,  
18 anything in the CAM. And we've given them the information  
19 to show compliance with that, and we shouldn't be required  
20 just to go ahead and prove our innocence, go ahead and  
21 provide them information that isn't required under any of  
22 those rules.

23                   And the second thing I would say on the if  
24 you don't have anything else to hide, you know, assume  
25 you're a judge and you go out there and you've ruled in

1 favor of somebody and then, you know, a couple weeks later  
2 you buy a new car. It's a pretty nice car. Can somebody  
3 on a judicial salary really afford that nice a car? Maybe  
4 moved into a new house. Somebody comes up to you and  
5 says, looks like you're doing pretty well there. I'd like  
6 to take a look at your financial records if you don't  
7 mind. And I think, you know, the response would be that's  
8 none of your business.

9                   And if they were to go ahead and come back  
10 and say, well, if you've got nothing to hide, why don't  
11 you go ahead and provide it to them, I think you might  
12 punch them in the nose. That's just not in my view a very  
13 reasoned objection to somebody not providing --

14                   CHAIRMAN CLAYTON: I understand. Point  
15 taken on that. And I'm not driving a new car. I want to  
16 be clear on the record. I haven't bought anything new.  
17 I've got bald tires on there. I've got problems with  
18 that.

19                   I take that point, but the difference is  
20 that there is a relationship that the Staff and the  
21 regulated entities and their affiliates have that is  
22 ongoing. So having exchanges of information are quite a  
23 bit different from just the simple making an accusation,  
24 go prove it. That's what we're here to do. This is our  
25 job.

1 MR. PENDERGAST: I understand.

2 CHAIRMAN CLAYTON: So that's why I'm -- is  
3 there any -- is there any compromise or sampling of  
4 information that would make sense in this instance if it  
5 is overly broad or perhaps overly burdensome?

6 (REPORTER'S NOTE: At this point, an  
7 in-camera session was held, which is contained in  
8 Volume 2, page 106 of the transcript.)

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1                   MR. PENDERGAST: Now, Staff's view on that  
2 was, well, that's just arbitrary. You're just taking data  
3 and you're just putting your own mental construct on it,  
4 and you're saying we ought to use an average instead of  
5 using the lowest or instead of using the higher end.

6                   I guess all I'm saying is, if you go and  
7 you start saying I need to sample information, what you're  
8 going to need to do is you're going to have to make a lot  
9 of subjective arbitrary assessments of what do I relate to  
10 what, what costs do I relate to what sales, how do I  
11 determine what was the margin? In a business where you go  
12 ahead and have a portfolio supply and transportation  
13 portfolio to customers and you don't draw lines from one  
14 to the other, I'm not sure that that's ever going to go  
15 ahead and get you anywhere.

16                   But we tried to give them some additional  
17 information. They said it's arbitrary. And, you know, if  
18 you have information on that 93 percent of the  
19 transactions that you did with other, whatever you come up  
20 with, I can guarantee you it's going to be arbitrary, it's  
21 going to be somebody's view of how things ought to be  
22 allocated.

23                   We're probably in all likelihood going to  
24 go ahead and disagree with it. And I think in the end  
25 you're not going to come up with anything that's any more

1 satisfying than the information that your own rules say  
2 ought to be provided to show some compliance with both the  
3 CAM and with the affiliate transaction standards.

4 CHAIRMAN CLAYTON: Should we be  
5 reevaluating our affiliate transaction rules?

6 MR. PENDERGAST: You know, I think it might  
7 be helpful to look at the affiliation transaction rules.  
8 Again, I think that, you know, we've learned some things  
9 about how you really need to price transactions. You  
10 know, for example, a lot of transactions, market and cost  
11 are the same thing. The rule might want to go ahead and  
12 recognize that.

13 I think also providing some additional  
14 elaboration on how you go ahead and determine some of  
15 those things under the rule might be helpful. I also  
16 think it's helpful for us to go ahead and try and come up  
17 with a way to better satisfy people's needs for this  
18 information. And quite frankly, you know, there are a lot  
19 of transactions out there. It's hard to keep up with  
20 them.

21 One thing we've talked about doing is  
22 coming up with a system where we could put these  
23 transactions on a secure website, we could go ahead and  
24 provide the contemporaneous market data that shows these  
25 transactions were competitive, give Staff a code, give



1 Public Counsel a code, so that we don't have to wait three  
2 or four years after these transactions took place to go  
3 ahead and go back and try and make that evaluation. We  
4 can make them as you go along.

5 I really think that's what we ought to be  
6 spending our time on rather than spending our time making  
7 up new standards, you know, and applying them  
8 retroactively.

9 CHAIRMAN CLAYTON: Thank you.

10 JUDGE JONES: Commissioner Davis.

11 COMMISSIONER DAVIS: Can I get Mr. Zucker  
12 to bring the LER sales to Laclede that --

13 MR. ZUCKER: Do what with it?

14 COMMISSIONER DAVIS: Can you bring that up  
15 here so I can --

16 MR. ZUCKER: You have that on paper.

17 MR. PENDERGAST: But it's kind of hard to  
18 see 2008.

19 COMMISSIONER DAVIS: Okay. All right.  
20 Thank you. This would be a highly confidential document,  
21 I'm assuming. I don't believe it's in our packet in terms  
22 of actual LER revenue, a chart like you have for Laclede  
23 in terms of you've got the chart there that has 5, 10 --  
24 you've got the sales percentage, but you don't have a  
25 dollar percentage for -- or dollar number for LER?

1 MR. PENDERGAST: Not for the percentages.  
2 We do have overall revenue for those four years, but not  
3 connected specifically to Laclede.

4 COMMISSIONER DAVIS: You've got that chart  
5 right there, that's in our packet, correct?

6 MR. PENDERGAST: Correct. That is and that  
7 is.

8 COMMISSIONER DAVIS: Can you produce  
9 another chart just like that one except make it for LER?

10 MR. PENDERGAST: Laclede sales to LER?

11 COMMISSIONER DAVIS: No. Just LER, you  
12 know, sales -- I don't guess LER has any capacity release.  
13 Okay.

14 MR. PENDERGAST: We've got total revenues  
15 here.

16 COMMISSIONER DAVIS: Okay. That's -- all  
17 right. That's total revenues, that's not net, and --

18 MR. PENDERGAST: Earnings you mean?

19 COMMISSIONER DAVIS: Yes. What is the  
20 amount on the previous -- let's go back to the -- is that  
21 net margins, is that what that is for Laclede?

22 MR. PENDERGAST: Yes.

23 COMMISSIONER DAVIS: Okay. So can you  
24 generate a chart just like that for LER?

25 MR. PENDERGAST: Oh, you mean -- yeah. We

1 can generate something that shows what the earnings are.

2 COMMISSIONER DAVIS: And will you do that  
3 and will you send it to us?

4 MR. PENDERGAST: Sure. And I think we  
5 have that -- I think we disclosed that with the -- yeah.

6 COMMISSIONER DAVIS: Okay. All right.  
7 Next question, and Mr. Pendergast, I've been listening to  
8 you intently here, and let me phrase it this way. Are you  
9 here today acknowledging that Laclede Gas may have, in  
10 fact, been gaming the system but that's okay just because  
11 it wasn't, in fact, prohibited by any regulation or  
12 agreement or anything else here at the Commission or in  
13 law?

14 MR. PENDERGAST: No, not at all,  
15 Commissioner. What I'm here today is to say that Laclede  
16 in conducting its affiliate transactions with LER has  
17 complied with the pricing standards that the Commission  
18 itself went ahead and approved. We've complied with the  
19 CAM provisions that were developed in compliance with that  
20 particular order, and that we've done everything on the up  
21 and up.

22 And I'm here to say today that  
23 Laclede -- the fact that LER's existence has been a  
24 benefit to Laclede's regulated ratepayers. They have not  
25 done anything but been a market for our off-system sales

1 capacity release revenues. They have provided us 50 or  
2 \$60 million worth of liquidity at very cheap rates during  
3 very tight credit market times, and they've been a  
4 reliable supplier of gas. And, you know, I don't think  
5 there's any question that LER has been good for Laclede's  
6 ratepayers.

7 JUDGE JONES: We're in open court again,  
8 just so you know.

9 COMMISSIONER DAVIS: One last question.  
10 How would you feel if this Commission appointed a, quote,  
11 special master or a third-party expert, someone who is  
12 truly independent and impartial to review these documents  
13 and make any recommendations to this Commission about what  
14 we should do, which could include promulgating an  
15 emergency rule to fix any gaps that may exist in the  
16 existing affiliate transaction rule?

17 MR. PENDERGAST: Well, it's interesting  
18 that you should mention that, Commissioner. One of the  
19 things we had proposed when we -- one of the numerous  
20 pleadings we filed in this case was, in the same pleading  
21 we asked for this oral argument, we also suggested that we  
22 have mediation, and the purpose of that was to get a third  
23 party to sit down and go over, No. 1, first the data we  
24 have provided that we say shows that these were  
25 competitive deals, shows that they were consistent with

1 the affiliate transaction rule, and have them look it  
2 over, and if they continue to have concerns, we could go  
3 to a different step.

4                   So I'm not averse to doing that. As far as  
5 turning over what would probably be 30 or 40,000 documents  
6 relating to purchases that LER made and an equal number of  
7 confirmations and sales data on sales they made over a  
8 two-year period and having that person try and make any  
9 sense out of that, I just really don't think that would  
10 get you anywhere.

11                   I just think that there's too much  
12 information. There's no direct line between the costs and  
13 the revenues. And you know, I honestly don't know what  
14 you do with it. I don't know what Staff would do with it  
15 if they went in and they looked at those 93 percent of  
16 LER's transactions that were with people other than  
17 Laclede Gas Company.

18                   But I do think it would be helpful if the  
19 Commission were so inclined to sit down and say, okay,  
20 here's all the information we've provided that shows we  
21 were in compliance with the standard in the affiliate  
22 transaction rule and have that master and try and, you  
23 know, have an understanding of what that rule is, have an  
24 understanding of what the documents are that we've  
25 provided and, you know, reach a conclusion as to whether

1 or not it satisfies it. I think that would be fine.

2 COMMISSIONER DAVIS: You referenced  
3 mediation, which I think of mediation as something  
4 where -- a process where you have two parties that have a  
5 dispute but don't necessarily have irreconcilable  
6 differences.

7 My concern here is that I don't think  
8 Laclede and the Staff are ever going to be able to  
9 reconcile any of those differences through mediation.  
10 What about binding arbitration?

11 MR. PENDERGAST: You know, I suppose that  
12 would depend on what the terms of it is and what was the  
13 binding thing about, whether -- if you're talking about  
14 the merits of the issue, whether you provide the  
15 information. I can't honestly tell you at this point that  
16 I would necessarily be comfortable with that.

17 COMMISSIONER DAVIS: Okay. I'm sorry. No  
18 further questions, Judge.

19 JUDGE JONES: I just have one question,  
20 Mr. Pendergast. Do you agree, then, with Mr. Reed that  
21 Laclede could have acted imprudently with regard to the  
22 standards under the ACA but been in compliance with the  
23 CAM and the affiliate transaction rule?

24 MR. PENDERGAST: I would agree with  
25 Mr. Reed that there are certain circumstances under which

1 that could happen. I would not agree with Mr. Reed that  
2 any of the circumstances and any of the transactions that  
3 Staff has pointed to are ones where you could have been  
4 both in compliance with the rule and at the same time  
5 imprudent.

6 JUDGE JONES: Well, we've gone -- we're  
7 past two hours now. Mr. Pendergast has gotten  
8 substantially large bulk of the argument time. Mr. Reed,  
9 do you need to reply?

10 MR. REED: I do, and I need to do so in  
11 about five minutes because I need to leave, and so I will  
12 be very quick, and I'd like to get this done now if we  
13 can.

14 JUDGE JONES: Okay. That's fine. Thank  
15 you, Mr. Pendergast.

16 MR. PENDERGAST: Thank you.

17 MR. REED: I just want to address a couple  
18 things. One is that this is not -- this case is not about  
19 whether Laclede violated the affiliate transactions rule.  
20 This case is about whether Laclede was prudent in entering  
21 into these contracts with LER. So the standard is, was  
22 Laclede prudent in entering into these contracts? Was it  
23 a good idea to enter into these contracts? Was the cost  
24 of gas higher for Laclede's ratepayers because of the  
25 contracts?

1                   Laclede so far has given us only the  
2 information that they believe will prove what they want to  
3 prove.

4                   (REPORTER'S NOTE: At this point, an  
5 in-camera session was held, which is contained in  
6 Volume 2, pages 117 through 118 of the transcript.)

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1 JUDGE JONES: Okay.

2 COMMISSIONER DAVIS: For the record, I  
3 think that was less than five minutes.

4 JUDGE JONES: Probably was. With that,  
5 then, we stand adjourned. Thank you.

6 WHEREUPON, the hearing in this case was  
7 adjourned.

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