

**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 Nos. GR-2005-0203 and
Audited in its 2004-2005 and 2005-2006)	GR-2006-0288
Actual Cost Adjustment.)	

**RESPONSE TO LACLEDE'S MOTION FOR
RECONSIDERATION, REQUEST FOR STAY AND REQUEST
FOR ESTABLISHMENT OF AN EVIDENTIARY HEARING**

COMES NOW the Missouri Office of the Public Counsel and for its Response to Laclede Gas Company's October 30, 2008 Motion for Reconsideration, Request for Stay and Request for Establishment of an Evidentiary Hearing states:

1. Laclede's Motion and requests to delay should be denied. The Missouri statutes give the Commission the authority to compel Laclede to prove the reasonableness and prudence of its natural gas purchasing, including the gas purchasing transactions between Laclede and its marketing affiliate Laclede Energy Resources (LER). The Order Granting Motion to Compel (Order) directed Laclede to produce critical evidence that must be reviewed to help the Commission determine whether Laclede's 2004-2005 and 2005-2006 gas purchasing decisions were prudent and reasonable.

2. This case is currently in the discovery phase. The Staff originally requested a much larger list of records from Laclede,¹ but withdrew and substantially reduced the records requested following an August 21, 2008 discovery conference between Laclede, the Staff and Public Counsel and conducted by the Commission's

¹ See Staff's July 25, 2008 "List of Documents" filed in this case.

regulatory law judge.² The Staff's September 18, 2008 Motion to Compel explained that "instead of requesting 24 months of documents relating to LER's gas supply, the Staff has requested only two months of records for each ACA period at issue." The Public Counsel also requested from Laclede the same records the Commission ordered Laclede to provide the Staff. Public Counsel seeks these records for the same reasons as the Staff; they are relevant and necessary to this ACA review. Pursuant to § 386.450, Public Counsel requests that the Commission deny Laclede's motion and direct Laclede to produce the records without further delay.³

3. Any question as to the relevancy or importance of the requested records has been resolved. The Commission determined in the Order Granting Motion to Compel that the records are relevant and necessary:

Staff seeks information concerning LER, Laclede's affiliate. Many of the concerns set out in Staff's memorandum have to do with LER and how LER acquires natural gas. In its memorandum in Case No. GR-2005-0203, after discussing discretion in sourcing supply, Staff specifically states: "This discretion in sourcing supply could result in gains for LER that should be allocated to Laclede's ACA." Additionally, in Case No. GR-2006-0288, Staff describes in its memorandum a transaction wherein Laclede may have shared the benefit of a sale with LER, thus receiving less than fair market value. Staff has demonstrated that in order to answer these questions, it must have access to the information it seeks. The Commission therefore concludes that the information Staff seeks appears reasonably calculated to lead to the discovery of admissible evidence. The Commission will therefore grant Staff's motion.

The Staff and Public Counsel must be allowed an opportunity to fully investigate the concerns raised in Staff's Memorandum.

² See the Staff's August 21, 2008 Motion.

³ All statutory references are to the Revised Statutes of Missouri 2000 unless otherwise noted.

A. Laclede Agreed to Provide the Requested Records

4. On July 9, 2001 Laclede entered into an agreement that was approved by the Commission to allow Laclede to restructure into a holding company, regulated company, and unregulated affiliate. In the Unanimous Stipulation and Agreement in Case Number GM-2001-342, *In the Matter of the Application of Laclede Gas Company for an Order Authorizing Its Plan to Restructure Itself Into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Laclede and The Laclede Group, Inc. agreed to make available to Staff and Public Counsel “all books, records and employees of The Laclede Group, Inc., Laclede Gas Company and its affiliates.”⁴ Contrary to that agreement, Laclede now wishes to make available less than “all” books and records of Laclede and LER. The Commission’s Order Granting Motion to Compel is consistent with this lawful agreement of the parties.

5. The Laclede Group, Inc. and Laclede also represented and agreed in the Unanimous Stipulation and Agreement as follows:

The Laclede Group, Inc., represents that it does not intend to take any action that has a material possibility of having a detrimental effect on Laclede Gas Company’s utility customers, but agrees that, should such detrimental effects nevertheless occur, nothing in the approval or implementation of the Proposed Restructuring shall impair the Commission’s ability to protect such customers from such detrimental effects.⁵

The Laclede Group, Inc. and Laclede Gas Company agree that the Commission has, and will continue to have, the authority after the Proposed Restructuring to regulate, through the lawful exercise of its current statutory powers, any direct or indirect transfer or disbursement of earnings from Laclede Gas Company to an affiliate that would jeopardize the Company’s ability to meet its utility obligations. The Laclede Group, Inc., and Laclede Gas Company also agree that the Commission has the authority, through the lawful exercise of its ratemaking powers, to ensure

⁴ Unanimous Stipulation and Agreement, p. 8, Case No. GM-2001-342, July 9, 2001.

⁵ *Id.* at p. 5.

that the rates charged by Laclede Gas Company for regulated utility service are not increased as a result of the unregulated activities of Laclede's affiliates and Laclede agrees, consistent with such standard, that rates should not be increased due to such activities.⁶

In addition, Laclede agreed that its right to object to the production of records specifically *excludes* "any objection that such records and personnel of affiliates or subsidiaries...are either not relevant or are not subject to the Commission's jurisdiction and statutory authority by virtue of or as a result of the implementation of the Proposed Restructuring."⁷ Laclede waved its right to make the very arguments it continues to raise in its pleadings fighting the production of records.

B. The Commission's Lawful Authority

6. The Commission's standard for reviewing Laclede's gas purchases comes from the § 393.130.1 mandate that all charges made by a gas company be just and reasonable. *Associated Natural Gas Company v. P.S.C.*, 954 S.W.2d 520 (Mo.App. 1997). The Commission's authority to compel Laclede to produce records is in § 393.140(8), which gives the Commission the authority to "examine the accounts, books, contracts, records, documents and papers of any" gas corporation. *See also* § 386.450. This authority is furthered by the Commission's § 393.140(5) power to "examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business."

7. The Commission's authority is also found, as discussed above, in Laclede's agreement to provide its affiliate transaction records, a concession Laclede made to garner Commission's approval of the restructuring that moved Laclede's gas

⁶ *Id.* at p. 7.

⁷ *Id.* at p. 9.

purchasing out from under Laclede and into an affiliate. Laclede and LER shared the same office space at 720 Olive Street in St. Louis, and LER's executive officers, including LER's president, two vice presidents and secretary, all held similar positions for Laclede during the ACA periods.⁸ These close ties and the need to fully understand the Laclede/LER transactions underscore the importance of the Commission's § 393.140(8) and § 386.450 authority to review records.

8. In *Midwest Gas Users' Association v. Office of Public Counsel*, 976 S.W.2d 470, 483 (Mo. App. 1998), the Missouri Court of Appeals for the Western District explained that the Commission has the authority to review the prudence of a company's "decision to enter into a particular contract when a less costly alternative is available." *Id.* The Commission does not conduct a prudence review of the purchased gas adjustment (PGA) before it goes into affect, and may disallow some or all of the adjustment sought when fuel costs are "unreasonable or the result of imprudent purchases." *Id.*

C. Response to Laclede's Claim A: the Order is Consistent with the PGA/ACA Procedure

9. On pages 3-4 of Laclede's Motion, Laclede alleges that the Commission's Order "would have the effect of circumventing the normal ACA procedure and...deprive the Company of its due process rights". Laclede cites to no rule, statute, or court decision or any other lawful authority to support these baseless claims.

10. These consolidated cases serve the required and essential purpose of reviewing rates to ensure they are just and reasonable. § 393.130.1. In Laclede's last

⁸ The Laclede Group and Laclede Gas Company Form 10-K Annual Report, filed with the Securities and Exchange Commission, for the fiscal year ended September 30, 2006.

ACA case, Mr. David Sommerer, Manager of the Commission's Procurement Analysis Department, explained the three primary purposes of the Staff's ACA review:

The Procurement Analysis Department conducts an Actual Cost Adjustment (ACA) Review annually at the end of each ACA period. The ACA process has a number of purposes. A primary purpose of the ACA process is to reconcile the company's actual gas costs with what it charged customers (its billed revenues). In its purchased gas adjustment (PGA) filings the Company estimates its gas costs for the upcoming year. In the ACA, the estimate is reconciled with the actual cost of gas. In this function the Procurement Analysis Department Staff reviews the gas purchases of the LDC to ensure that the claimed costs are properly attributed to the period under review and that the pipelines and natural gas suppliers have charged or invoiced the LDC for the volumes nominated and received at the proper contract rates. A comparison of billed revenue recovery with actual gas costs will normally yield either an over-recovery or under-recovery of the ACA balances.

Another purpose of the ACA process is to examine the reliability of the LDC's gas supply, transportation, and storage capabilities. For this analysis, Staff reviews the estimated peak day requirements and the capacity levels to meet those requirements, peak day reserve margin and the rationale for this reserve margin, and natural gas supply plans for various weather conditions.

A third purpose of the ACA process is to review the LDC's gas purchasing practices to determine the prudence of the Company's natural gas purchasing and operating decisions. Staff will consider the financial impact on customers of the LDC's use of its gas supply, transportation and storage contracts in light of the conditions and information available when the operational decisions were made.⁹

To protect Missouri consumers from paying rates that are unjust and unreasonable, the Commission must have an open understanding of the transactions of Laclede and its affiliate. Moreover, Laclede's ACA cases deserve *increased* scrutiny because they involve affiliate transaction questions that have not been raised in other ACA cases.

11. In 2004, the beginning year of the ACA periods covered by these cases, Mr. George Godat, Laclede's Director of Gas Supply, was aware of the evidence the

⁹ Direct Testimony of David Sommerer, September 8, 2006, Case No. GR-2004-0273.

Commission needed to perform a prudency evaluation. Mr. Godat stated in his prefiled testimony in Laclede's 2003-2004 ACA case:

Legal counsel has advised me that to make an adjustment based on imprudence, the Staff must show, and the Commission must find, that utility management acted imprudently compared to what a reasonable person would or should have done at the time the transaction took place. I have also been advised that any prudence determination must be based on the facts and circumstances that existed at the time the transaction took place and may not use hindsight to arrive at its conclusion.¹⁰

Laclede's Director of Gas Supply acknowledges that any prudence determination must be based on the facts and circumstances that existed at the time of the purchased gas transaction. It has been Laclede's responsibility to maintain these records, just as it is Laclede's responsibility today to produce the records that provide facts and circumstances that existed at the time of the gas purchases.

D. Response to Laclede's Claim B: the Order is Consistent with the Affiliate Transaction Rules

12. On pages 4-9 of Laclede's Motion, Laclede argues that ordering Laclede to provide the requested documents is contrary to the Commission's affiliate transaction rules. Laclede suggests that the Commission does not have the authority to access the records of affiliate transactions that could provide meaningful and relevant information for the Commission's prudency review.

13. Laclede continues to ignore its agreement in Case Number GM-2001-342 to provide *all* records of LER to Staff and Public Counsel, and its agreement not to object to the production of such records on the basis of relevancy or jurisdiction. Furthermore, Commission rule 4 CSR 240-40.015(6)(A) requires Laclede to "make available the books and records of its parent and any other affiliated entities," which in turn enables the

¹⁰ Direct Testimony of George Godat, Case No. GR-2004-0273, September 8, 2004.

Commission to investigate the operations of Laclede and LER to ensure compliance with this affiliate transaction rule.

14. Laclede is required under the rules to keep and make affiliate transaction records available for a period of six (6) years. 4 CSR 240-40.016(8). Without the requested documents, the Commission will be unable to fulfill its obligation to “keep informed as to the methods, practices, regulations and property employed by [Laclede] in the transaction of their business” and to fulfill the Commission’s obligation to prevent Laclede from engaging in affiliate transactions that are “unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of the law.” § 393.140(5). In addition, the requested documents are necessary to ensure that Laclede has not directly or indirectly by any special rate or other device or method, collected or received from its affiliate greater or lesser compensation for its service than it charges a non-affiliate. § 393.130(2) (2006 Supp); § 393.140(11); *State ex rel. Atmos Energy Corp. et al. v. P.S.C.*, 103 S.W.3d 753 (Mo. 2003).

E. Response to Laclede’s Claim C: Laclede’s Argument Attempts to Prematurely Limit the Commission from Reviewing Relevant Evidence

15. On pages 10-16, Laclede makes its third and final argument for reconsideration, and alleges that the Order relies on “an unsubstantiated and wholly implausible revenue migration theory.” Laclede asks the Commission to hold a premature hearing to allow Laclede to address issues in the PGA/ACA cases before the Staff and Public Counsel have a full and fair opportunity to review necessary records. This case should be viewed no differently than any other contested case where the parties are allowed to build the evidence through discovery to support their arguments. Laclede

is prematurely challenging evidence that it has not allowed the Staff or Public Counsel to review.

F. Conclusion

16. Conducting a hearing at this stage is an unnecessary waste of time and resources. If Laclede's purchasing decisions were prudent, Laclede should have no concerns with the Commission's Order directing Laclede to open its books and records regarding its affiliate transactions. Laclede has not identified any harm that will come from the Commission's Order and has provided no valid reason for the Commission to reconsider its Order. The Commission should allow the Staff and Public Counsel to review the records and submit as evidence those records they deem relevant. Laclede may object when an attempt is made to enter such evidence into the record, not when Laclede is being requested to produce the records it is required to provide and keep, and which Laclede previously agreed to give to the Staff and Public Counsel.

WHEREFORE, the Office of the Public Counsel respectfully urges the Commission to reject Laclede's motion and order Laclede to produce the records as required by the Order Granting Motion to Compel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 10th day of November 2008:

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