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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

SURREBUTTAL TESTIMONY

OF

CHARLES R. HYNEMAN

LACLEDE GAS COMPANY

FILE NO. GC-2011-0098

Jefferson City, Missouri
May 2011

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Charles R. Hyneman

1 A. He asserts that his testimony supports Laclede’s counterclaim against the Staff
2 and also addresses my direct testimony regarding Laclede’s gas supply affiliate pricing
3 standards.

4 Q. What counterclaim does Mr. Cline discuss?

5 A. On page 1 of his testimony, Mr. Cline indicates his belief that Staff’s
6 approach to pricing for affiliate transactions for gas sales and purchases is directly contrary to
7 the pricing standards of the Rule and Laclede’s CAM which was endorsed by “the parties” to
8 Case No. GM-2001-342.

9 Q. What is Staff’s approach to pricing for any affiliate transactions?

10 A. The Staff’s approach is to follow what is in the Rules. The rules at 4 CSR
11 240-40.015(2)(A) require asymmetrical pricing. The Rules for utility companies with gas
12 marketing affiliates 4 CSR 240-40.016(3)(A) require asymmetrical pricing.

13 Q. Is Staff claiming Laclede should use pricing standards other than those
14 required by the Rules?

15 A. No.

16 Q. On page 2, lines 1-4 of his rebuttal testimony, Mr. Cline refers to page 5 of
17 your direct testimony where you discuss the purpose of the Rules. He takes issue with your
18 characterization that effective enforcement of the Rules only somewhat lessens the risk of
19 excessive costs charged to ratepayers. Please comment.

20 A. Mr. Cline does not deny that without ratepayer protections, ratepayers would
21 be subsidizing non-regulated operations. He also does not deny that affiliate transactions, by
22 their very nature, create incentives for utility management to shift costs to the regulated utility
23 to benefit the non-regulated entity. His testimony seems to indicate a position, to which

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1 I disagree, that the mere existence of the Rules eliminates utility incentives to subsidize
2 non-regulated operations.

3 Q. Mr. Cline states that simply by “approving the Rules,” the Commission was
4 satisfied that the rules adequately protect ratepayers. What is his basis for this statement?

5 A. His basis is that the Commission stated in the “Purpose” clause of the Rule
6 that, if effectively enforced, the Rule will provide the public the assurance that their rates are
7 not adversely impacted by the utilities’ nonregulated activities.

8 The purpose of the Rule is to prevent regulated utilities from subsidizing their
9 nonregulated operations. In order to accomplish this purpose, the Rule sets forth financial
10 standards, evidentiary standards and record keeping requirements for all Missouri
11 [Commission] regulated utilities that engage in affiliate transactions. The rule and its
12 effective enforcement of these standards and requirements will provide the public the
13 assurance that their rates are not adversely impacted by the utilities’ nonregulated activities,
14 but it does not remove the risk that utilities will engage in improper affiliate transactions with
15 affiliated entities (4 CSR 240-40.015).

16 Q. Why do you disagree with the proposition that the mere existence of the Rules
17 and their enforcement eliminates improper cross-subsidization of a regulated utility’s
18 unregulated affiliates?

19 A. The financial incentives for a regulated utility to improperly pass costs to its
20 ratepayers to benefit an unregulated affiliate are too strong. Monitoring and enforcement of
21 the rules with the threat of penalties may lessen the risk, but it does not eliminate the risk.

22 Q. Do you or the Staff have a “position” that the Rules are inadequate?

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1 A. No. I do, however, believe Missouri regulated utility companies must comply
2 with the rules and, if they refuse to do so, the rules must be enforced.

3 Q. At page 1, line 23 and page 2, line 13 Mr. Cline accuses the Staff of failing to
4 “honor” the CAM and the Rules. How do you respond?

5 A. I am not sure what Mr. Cline means by “honor.” Staff is not bound by
6 Laclede’s CAM. The Staff views Laclede’s CAM as a draft internal document. A CAM is
7 required by the rules to “set forth cost allocation, market valuation and internal cost methods.”
8 4 CSR 240-40.016 (4)(D).

9 Q. Has the Commission already addressed Laclede’s claims that Staff refuses to
10 “honor” Laclede’s CAM?

11 A. Yes. The Commission has addressed it in Case No. GC-2011-0006, in which
12 Laclede made the same argument. In its *Order Dismissing Counterclaim Of Laclede Gas*
13 *Company For Failure To State A Claim Upon Which Relief May Be Granted* the Commission
14 stated that “the affiliate transaction rules and Laclede’s Cost Allocation Manual impose no
15 obligation on Staff.” Therefore, it is not possible for Staff to violate either the rules or the
16 Cost Allocation Manual.

17 Q. Mr. Cline testifies “the parties” to Case No. GM-2001-342 endorsed Laclede’s
18 CAM. How do you respond?

19 A. The parties endorsed Laclede’s use of a CAM in GM-2001-342. By
20 supporting the GM-2001-0342 Stipulation and Agreement, the Staff supported the concept of
21 a CAM in the “form” of the CAM that was attached to the direct testimony of Laclede witness
22 Krieger in that case. The Stipulation provided:

SECTION VI

COST ALLOCATION MANUAL CONDITIONS

1. Upon implementation of the Proposed Restructuring, transactions involving transfers of goods or services between Laclede Gas Company and one or more of the Company's affiliated entities shall be conducted and accounted for in compliance with the provisions of a Cost Allocation Manual ("CAM") which shall be submitted to Staff, Public Counsel and PACE on or before April 15, 2003, and on an annual basis thereafter. The CAM shall be in the form contained in the direct testimony of Patricia A. Krieger, provided that the CAM, and the information that the Company is required to maintain and submit thereunder, shall be revised and supplemented within 120 days of the approval of this Stipulation and Agreement information as required to administer, audit and verify the Transfer Pricing and Costing Methodologies set forth in Section VIII of the CAM or such other Transfer Pricing and Costing Methodologies as may become applicable to the Company in the future:

In addition to supporting only the form of this CAM, the Staff supported additional conditions related to access to affiliate records and access to specific details of affiliate transactions. To my knowledge, Staff has never endorsed a Laclede CAM and Laclede has never produced a document in which the Staff states that it has reviewed and endorsed any particular Laclede CAM. Nor am I aware of Laclede filing with the Commission for approval of its CAM.

Q. Did Laclede address asymmetrical pricing in the draft CAM it included in Case No. GM-2001-342?

A. Yes. Ms. Krieger testified in that case:

Consistent with the concept embodied in the Commission's affiliate transactions rules, Section VIII provides that Laclede Gas Company will be charged for any facilities or services provided to it by an affiliated company at the lesser of the fair market value for such service or facility or the fully distributed cost to Laclede to provide the goods or services for itself. For facilities or services provided by Laclede to an affiliate, Section VIII provides that Laclede will charge for such

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1 services and facilities at the tariff rate or, if no tariff rate exists, at the
2 fully distributed cost incurred by Laclede in providing such facility or
3 service, unless an alternative method is prescribed by law.

4 Ms. Krieger testified that gas purchases (services provided to it) from LER will be
5 priced “the lesser of the fair market value for such service or facility or the fully distributed
6 cost to Laclede to provide the goods or services for itself.” I cannot locate any testimony filed
7 in Case No. GM-2001-342 where Laclede ever discussed any affiliate transaction pricing
8 method other than the one described here by Ms Krieger. There was no mention in this
9 CAM about separate affiliate transactions pricing standards for energy-related transactions
10 and non-energy related transactions.

11 Q. Why is it significant that the 2001 Krieger draft CAM did not have a separate
12 and distinct pricing scheme for gas supply affiliate transactions?

13 A. It is significant because Laclede is claiming that in approving the Stipulation
14 and Agreement (S&A) in GM-2001-342 the Commission approved Laclede’s CAM.

15 Q. Even if that were true, would that mean Commission approval of Laclede’s
16 current CAM?

17 A. No. Laclede’s CAM has changed at least twice since the Commission
18 approved the 2001 S&A. If the Commission approved Laclede’s CAM, this would mean the
19 Commission approved a document it did not see, hear evidence about, or determine the
20 reasonableness of or appropriateness of. It would mean the Commission approved a CAM
21 which is contrary to the Rules because it eliminated the requirement for Laclede to consider
22 its fully distributed cost (FDC) when it made gas supply purchases from its affiliate LER.

23 Q. When did Laclede change its pricing for gas supply?

1 A. Laclede submitted a CAM to Staff counsel, Cliff Snodgrass, in
2 December 2001. The date of the cover letter to this CAM is December 21, 2001 and the
3 Staff received this CAM on December 26, 2001. In that CAM Laclede significantly
4 changed its pricing scheme from what was in it's the February 2001 Krieger CAM in Case
5 No. GM-2001-342. The change added a completely new and separate pricing scheme for
6 affiliate transactions that were "energy-related." The December 2001 CAM added the
7 following provisions:

8 Energy-Related Goods and Services

9 The following energy commodity goods and services that are provided to
10 Laclede Gas Company by its affiliates will be priced in accordance with the
11 following provisions:

12 Gas supply purchases- shall be the fair market price which shall be
13 determined as the average price of similar purchases made by Laclede Gas
14 Company from non-affiliated entities entered into at similar times for
15 similar duration and location of such purchases. If such purchases do not
16 exist, the fair market price will be determined for the location and period in
17 question by using an industry accepted index price or index prices
18 applicable to such location published in either Gas Daily, Inside FERC, or
19 other similar publication widely accepted in the industry for determining the
20 value of such gas supplies.

21 Pipeline transportation and storage capacity releases - shall be the fair
22 market price which shall be determined as the price of similar capacity
23 transactions made by Laclede Gas Company with non-affiliated entities
24 entered into at similar times for similar duration and location of
25 transportation capacity. If such transactions do not exist, the fair market
26 price will be a price as posted on the applicable pipeline's bulletin board for
27 similar capacity for a similar duration. If such postings do not exist, the fair
28 market price shall be determined by using an industry accepted index price
29 or index prices published in either Gas Daily, Inside PERC, or other similar
30 publication widely accepted in the industry for determining the value of
31 such capacity.

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1 The following energy commodity goods and services that are provided by
2 Laclede Gas Company to its affiliates will be priced in accordance with the
3 following provisions:

4 Gas supply sales- shall be the fair market price which shall be determined as
5 the average price of similar sales made by Laclede Gas Company to non-
6 affiliated entities entered into at similar times for similar duration and
7 location of such sales. If such sales do not exist, the fair market price for the
8 location and period in question will be determined using an industry
9 accepted index price or prices applicable to such location published in either
10 Gas Daily, Inside FERC, or other similar publication widely accepted in the
11 industry for determining the value of such gas supplies.

12 Pipeline transportation and storage capacity releases - shall be the fair
13 market price as determined through a posting and bidding process in
14 accordance with the capacity release provisions contained in the pipeline's
15 FERC approved tariff.

16 Q. Mr. Cline testifies on page 3, beginning at line 22, that Staff acquiesced in
17 Laclede's use of a pricing standard that was contrary to the Rules and that "Staff acquiesces
18 all these years in a pricing standard it knew was wrong". Do you agree Staff acquiesced by
19 waiting to bring this to Laclede's attention?

20 A. No. First let me say that Staff cannot waive compliance with the
21 Commission's rules. Second, Staff began discussing Laclede's CAM and its compliance with
22 the Rules in a meeting with Laclede in 2003 to review its CAM. A Staff member who
23 attended verified this fact in an attachment to my Rebuttal testimony. Staff counsel,
24 Ms. Shemwell also attended this meeting.

25 Staff also notified Laclede of its concerns in Laclede's 2007 rate case. Case No.
26 GR-2007-0208 Stipulation and Agreement, paragraph 23 provides:

27 Within ninety(90) days of the effective date of the Commission's
28 Report and Order in this case, Laclede, Staff and Public Counsel, shall
29 begin meeting to discuss any issues or concerns they may have relating

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1 to Laclede's Cost Allocation Manual ("CAM"), the compliance of the
2 CAM with the Commission's affiliate transactions rules and the
3 transactions between Laclede and its affiliates. Such meetings shall not
4 be construed as placing any restrictions on Staff's or Public Counsel's
5 ability to investigate and file complaints concerning such matters.

6 Q. Have Staff's efforts to resolve affiliate transactions issues with Laclede proven
7 productive?

8 A. No. However, Attachment C to the Unanimous Stipulation and Agreement
9 reached Laclede's 2010 rate case, GR-2010-0171, hereto attached as Schedule 2, contains
10 agreements to address affiliate transaction problems found by Staff in that rate case. These
11 agreements do not address energy-related affiliate transactions.

12 Q. Does the section of Laclede's current CAM, which describes how its affiliate
13 transactions with LER for "energy-related" goods and services are priced, mention FDC in
14 any manner?

15 A. Not with respect to: 1) gas supply purchases from LER, 2) gas supply sales to
16 LER or 3) in transactions where Laclede would purchase capacity from LER. However in the
17 paragraph where Laclede describes how it would price capacity purchases from LER,
18 2004 CAM page 15, it does state that the sale would be at the higher of a Laclede-defined
19 FDC (not the FDC definition in the Rules) or a Laclede-defined fair market price (FMP).

20 Q. Mr. Cline testifies on page 4, lines 6-7 that Laclede has explained to Staff on
21 multiple occasions how it took FDC into account in determining the pricing of gas supply
22 affiliate transactions. Does he provide any support for this statement?

23 A. No. I do not know of the occasions to which Mr. Cline refers. He has
24 provided no documentation to support this statement. Nonetheless, even if Laclede has in fact

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1 “explained” to Staff that it does not believe it is required to perform a FMP-FDC analysis, this
2 “explanation” does not waive Laclede’s requirement to be in compliance with the Rules.

3 Q. In his rebuttal testimony on page 3, lines 7-10 Mr. Cline testifies that the Staff
4 has engaged in a “consistent pattern of conduct in which it substitutes its own views on
5 affiliate transaction pricing for the standards that have been approved by the Commission in
6 the Rules and Laclede’s CAM.” How do you respond to that?

7 A. First, while the Commission created the Rules, the Commission has never seen
8 a final version of Laclede’s CAM. Therefore, the Commission could not have approved
9 Laclede’s CAM. Staff reads the Rules as requiring a utility, which purchases information
10 assets goods or services from its affiliate, to submit its CAM for Commission approval.
11 4 CSR 240-40.015(3)(D)

12 Q. At page 4 of his rebuttal testimony Mr. Cline testifies that Laclede does not
13 believe that it is required to consider its FDC in pricing specific gas supply transactions.
14 Does the Rule provide an option to Laclede if it believed its method was reasonable
15 and appropriate?

16 A. Yes. Laclede could have filed for a variance or waiver. Instead Laclede
17 adopted a non-conforming method of pricing transactions which ignores the specific
18 requirement in the Rules to make a comparison between FDC and FMP in all affiliate
19 transactions.

20 Q. At page 4 of his direct testimony Mr. Cline testifies that Laclede does not
21 know if an FDC exists in its gas supply transactions or if it does exist, Laclede asserts that it is
22 equivalent to FMP. Do you agree?

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1 A. No. The Staff’s position is that FDC does exist or it would not be specifically
2 required by both the Affiliate Transaction Rules and the Marketing Affiliate Transaction
3 Rules. LER is a “marketing affiliate” and the Marketing Affiliate Transaction Rule,
4 which requires the FDC-FMP analysis, was written specifically for utilities with marketing
5 affiliates, which includes energy-related transactions between Laclede and LER.

6 Q. Mr. Cline testifies at page 3, line 13 that the question to be answered in this
7 proceeding is whether Staff is required to make a good faith effort to honor the rules and the
8 CAM. Has this question already been answered?

9 A. Yes. First there is no requirement for the Staff to honor a Laclede CAM.
10 Second, the Commission has answered this proposition, which Laclede introduced in
11 GC-2011-0006, concerning the Rules’ applicability to actions of the Staff. The Commission
12 stated: “an examination of those rules [affiliate transactions] reveals that they impose
13 numerous and detailed requirements on gas utilities that wish to engage in transactions with
14 affiliated companies. The rules also establish evidentiary standards to allow the Commission
15 to determine whether an affiliate transaction is proper under the rules. The rules do not,
16 however, require the Commission’s Staff to take any action, or to refrain from any action.”

17 *Order Dismissing Counterclaim of Laclede Gas Company for Failure to State a Claim on*
18 *Which Relief May Be Granted.* (Emphasis added.)

19 Q. Mr. Cline testifies at page 3, line 10 of his rebuttal testimony that Staff has
20 been allowed to seek discovery, both in its dealings with Laclede as well as Atmos, that is
21 clearly unauthorized by and contrary to the requirement of the Rules and the CAM. Does
22 Mr. Cline support this statement?

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1 A. No. Mr. Cline does not identify anywhere in the Rules where it describes the
2 types of discovery the Staff is authorized or not authorized to pursue.

3 Q. Has the Staff ever told Laclede how it should conduct or price its affiliate
4 transactions?

5 A. No. The Commission's Rules tell Laclede how to price its affiliate
6 transactions. I have heard Laclede make a representation to the Commission during an
7 Oral Argument in Case No. GR-2005-0203 that "the Staff came forward with a blueprint and
8 the blueprint says this is what you'll do, this is how your will conduct your transactions; this
9 is how you will price your transactions in order to ensure the ratepayers will be protected."
10 However, I have found no evidence that the Staff has provided any "blueprint" to Laclede
11 how it should conduct or price its transactions in any manner. If Laclede has any evidence of
12 the Staff providing such a blueprint, Staff suggests Laclede produce it in this case.

13 Q. Mr. Cline testifies, on page 3, line 22 that Staff has no point in its claim that
14 Laclede's CAM fails to take into account both fully distributed cost (FDC) and fair market
15 price (FMP) in valuating gas supply affiliate transactions. To support this claim he provides
16 three reasons. Please discuss these reasons.

17 A. He states that if Staff really believed Laclede's CAM does not provide for the
18 required FMP-FDC analysis it would have raised this issue long ago. Mr. Cline states that he
19 finds it exceedingly difficult to understand how Staff could have acquiesced all these years in
20 a pricing standard that it knew to be wrong.

21 Q. Did Staff "acquiesce" in Laclede's faulty affiliate transaction pricing
22 methodology for energy-related affiliate transactions?

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1 A. No. Even if Staff did acquiesce, which it did not, that does not excuse
2 Laclede's failure to comply with the Commission's Rules. Laclede's CAM is an internal draft
3 document created by and for the benefit of Laclede and does not include FMP-FDC analysis.

4 Q. What was Mr. Cline's third reason why he does not believe Staff has a point
5 that Laclede's CAM fails to account for the required FMP-FDC analysis?

6 A. His third, and what he considers his most important reason, is that
7 "members of the Staff's own gas procurement analysis department have recognized that FDC
8 will be equal to or greater than FMP when a utility is purchasing gas from an affiliate."
9 (Cline Rebuttal, p. 4, lines 10-17)

10 Mr. Cline cites an example where he believes Staff took the position in testimony in a
11 recent Atmos case that when a utility does not produce a product itself, then FDC is by
12 definition going to be equal to or greater than FMP, and therefore the proper pricing standard
13 for such an affiliate transaction is FMP. However, the Staff took no such general position.
14 The position taken by Staff in that case was related specifically to the facts and circumstances
15 of Atmos Gas in that specific case and for the specific facts and circumstances in that case.

16 While Mr. Cline he did not identify the specific testimony which supports his position,
17 it appears that he is referring to the testimony by Staff witness Sommerer, below:

18 In this case we did look at the Company's responses to data requests
19 and their testimony with regard to fully distributed cost. The company
20 made statements saying that fully distributed cost when you realize
21 that individuals in Houston are procuring the supply, there are
22 overheads involved in the procurement of that supply and we have a
23 definition here in the rule of what fully distributed cost is. It's, you
24 know, from the perspective of the LDC to produce the goods
25 themselves. If you're not producing wellhead supply, you're not making
26 it, it's not around in Hannibal. This is not a producer here, so you're
27 looking at sort of a wholesale cost and clearly the fully distributed cost

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1 includes direct and indirect cost that might be allocated pursuant to
2 general and administrative. The company's testimony is is that-- well,
3 you've got a wholesale price. If you layer in or you load in indirect cost
4 and administrative costs, almost by definition, you're looking at
5 something higher than the fair market value price so you know, we
6 inquired into what the company's view of fully distributed cost and for
7 purposes of this case and I won't say this universally, but for the
8 purposes of this case -- I understand that argument and to me the Staff's
9 position is not a concern about fully distributed cost being less than the
10 fair market value price. (emphasis added).

11 **Laclede witness Glenn Buck**

12 Q. At page 1 of his rebuttal testimony Mr. Buck testifies that Laclede's CAM has
13 been approved by the Commission. Do you agree?

14 A. No. Mr. Buck testifies that through the Commission's August 14, 2001
15 *Order Approving Stipulation and Agreement and Approving Plan to Restructure* in Case
16 No. GM-2001-342 ("2001 Report and Order"), the Commission approved Laclede's
17 then-existing CAM.

18 Q. Mr. Buck testifies on page 1 that Laclede has filed its CAM reports with the
19 Commission each year beginning in 2003. Is this accurate?

20 A. No. Laclede has submitted a list of affiliate transactions to Staff and the Office
21 of the Public Counsel ("OPC"). This is completely different than making a filing with the
22 Commission. Mr. Buck has not provided any case numbers for annual filings he claims were
23 made with the Commission.

24 Q. Did the CAM that Laclede proposed in Case No. GM-2001-342 include
25 affiliate pricing provisions that are similar to the pricing provisions included in Laclede's
26 current 2004 CAM?

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1 A. No. They are significantly different. It is inconceivable to argue, as Mr. Buck
2 does, that the Commission approved a CAM that is being used today that the Commission has
3 never seen. What is even more inconceivable is to argue that the Commission has approved
4 its current 2004 CAM which include affiliate pricing provisions that do not even resemble the
5 pricing provisions put forth by Laclede or any parties to the case in Case No. GM-2001-342.

6 Q. Mr. Buck testifies Laclede submitted its CAM again in 2004 with
7 “minor revisions” and that “[b]ased on custom and practice established by Staff” Laclede
8 believes the Commission approved its CAM. Mr. Buck further states he believes utilities
9 received approval through submissions of those CAMs to Staff. Do you agree?

10 A. No. Also, I have also been advised by counsel that a submission of a CAM to
11 Staff cannot substitute Commission approval. Laclede should know that the Staff has no
12 authority to bind or commit the Commission in such a manner.

13 Q. Mr. Buck suggests Staff is engaged in a “vendetta” and has suddenly raised the
14 issue, without notice. How do you reply?

15 A. Staff met with Laclede as early as 2003. I attached notes to my Rebuttal
16 testimony. Staff raised the issue of Laclede’s CAM in both Laclede’s 2007 rate case, No.
17 GR-2007-0208 and again in Laclede’s 2010 rate case, No. GR-2010-0171. In between rate
18 cases, Staff and OPC met with Mr. Buck and Mr. Pendergast, among others, to discuss Staff’s
19 concerns with Laclede’s CAM, including the fact that the CAM was not approved by the
20 Commission. Staff counsel informed me that Staff, now General Counsel Steve Reed,
21 and OPC, including Ryan Kind and counsel, Marc Poston, met with Laclede for a full day in
22 mid-October 2007 to discuss Laclede’s CAM. In addition I have attached as Schedule 1 to

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1 this testimony an email from Mr. Pendergast which is a follow-up to a September 7, 2010
2 meeting. Mr. Pendergast states:

3 I wanted to thank everyone for their participation in our last meeting in
4 which we discussed possible ways to resolve our differences regarding
5 the affiliate transactions issues that have arisen in a number of
6 proceedings. To that end, I wanted to transmit some additional
7 information on the subject in an effort to address some of the concerns
8 that were raised at the meeting and hopefully contribute to a
9 constructive resolution of these issues in the future.

10 The six-page letter Mr. Pendergast attached hereto as Schedule 1 was addressed to
11 Kevin Thompson. It is labeled Privileged and Confidential. I will not disclose any settlement
12 discussions, but note that Mr. Pendergast lists the following publicly available Commission
13 cases as ones in which Laclede's CAM has "arisen:" GC-2011-0006, GR-2005-0203,
14 GR-2006-0288, GR-2008-0140, GR-2008-0387 and Case No. 10 AC-CC00170.

15 With this evidence, it is misleading for Laclede to suggest Staff is raising concerns
16 with Laclede's CAM and its compliance with the Rules "without warning" (Buck Rebuttal,
17 page 2). Staff has been engaged with Laclede on issues of affiliate transactions for several
18 years with limited resolution of the problems. After the hearing in which Laclede asserted its
19 CAM was Commission approved, the Staff determined that it was time to bring these matters
20 to the Commission through a formal proceeding.

21 Q. Mr. Buck testifies the term "annual" seems out of place in the Commission's
22 rules at 4 CSR 240-40.015(2)(E) and that it does not make sense to send Staff the same paper
23 each year. Does that excuse Laclede's non-compliance?

24 A. No.

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1 Q. At page 2, lines 1-7 Mr. Buck describes his understanding that utilities
2 received approval by submitting CAMs to Staff and by filing of the CAM Annual Reports.
3 Do you agree that this is correct?

4 A. No. First Laclede only submitted the CAM annual reports and not its CAM to
5 Staff. Laclede did not submit a CAM along with its annual report of affiliated transactions of
6 the past calendar year to Staff since 2004, which it asserts is its current CAM. Informal
7 submission of documents to Staff does not and cannot result in Commission approval.

8 Q. In his sworn testimony before the Commission relating to the Staff's complaint
9 that Laclede has not sought Commission's approval of its CAM, Mr. Buck is advising
10 the Commission that its Staff is retaliating against Laclede because Laclede has challenged
11 the Staff on affiliate transactions. Have you reviewed commonly accepted definitions of the
12 word "retaliation"?

13 A. Yes. The primary definition I found is "to return like for like, especially
14 evil for evil." Staff is not engaged in retaliation.

15 Q. In his sworn testimony before the Commission relating to the Staff's complaint
16 that Laclede has not sought Commission's approval of its CAM, Mr. Buck is advising the
17 Commission that the Staff is conducting a vendetta against Laclede. Have you reviewed
18 commonly accepted definitions of word "vendetta"?

19 A. Yes. Merriam's primary definition of a vendetta is a blood feud, which it
20 describes as a feud between different clans or families.

21 Q. What is the total evidentiary support provided by Mr. Buck in his accusation
22 that the Staff is retaliating and engaging in a vendetta?

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1 A. Mr. Buck's only support for his accusations are that it is "the only thing that is
2 logical to him". He made the decision to provide sworn testimony to this Commission to
3 make totally unsupported attacks against the Commission's Staff with no evidence. It is not
4 retaliation or a vendetta that led to this proceeding. It was, in part, Laclede's statements to the
5 Commission in oral argument that it has a Commission-approved CAM.

6 Q. Has the Commission addressed Laclede's attacks on Staff?

7 A. Yes. During a November 4, 2010 hearing in Case No. GR-2005-0203,
8 Chairman Gunn asked Laclede's counsel if he agreed that what the Staff recommends or what
9 the Staff decides is not a decision in the case and that the decision is made by the
10 Commission. Laclede's counsel agreed with Chairman Gunn that the Staff does not make the
11 decisions in cases before the Commission.

12 In that same hearing in Case No. GR-2005-0203 on November 4, 2010, Laclede
13 apologized to the Commission for its behavior. While Chairman Gunn accepted Laclede's
14 apology, he did note that Laclede's comments in its filings in that case were some of the
15 harshest pejorative comments that he has ever seen. Commissioner Gunn even noted that
16 Laclede has accused the Commissioners of misconduct and Laclede's actions showed a basic
17 lack of respect for the Commission.

18 Q. At page 3 of his rebuttal testimony Mr. Buck describes Staff's finding in its
19 complaint that Laclede is not filing the CAM on an annual basis. Mr. Buck refers to this Staff
20 finding as "petty" and uses this Staff finding as support for his accusation that the Staff has a
21 vendetta against Laclede. Please comment.

22 A. The simple facts are that the Rules require Laclede to submit a CAM to the
23 Commission Staff and OPC every year. The clearest language in the rules that Laclede is

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1 required to submit a CAM on an annual basis is listed in Section 2(E) of the Rules, which
2 states that if Laclede's customer requests information from Laclede about an affiliate, Laclede
3 may provide information about its affiliate but must inform the customer that regulated
4 services are not tied to the use of an affiliate provider and that other service providers may be
5 available. This section of the Rule states that Laclede shall include in its annual CAM, the
6 criteria, guidelines and procedures it will follow to be in compliance with the rule.

7 Q. Why is it important for utility companies to get Commission approval of
8 their CAMs?

9 A. To prevent the exact type of activity engaged in by Laclede – creating a draft
10 procedure on affiliate transactions and never seeking Commission approval of that policy.
11 In addition, by not submitting its CAM annually, there is no way to determine if CAMs have
12 been changed or modified, or if the changes or modifications are appropriate. Similarly, there
13 is no way for the Staff to note that changes or modifications which should be made by
14 Laclede in its CAM have actually been made.

15 Q. Does Staff agree with Mr. Buck at page 3, line 18 of his rebuttal testimony that
16 Laclede's undated, CAM that has never been submitted for Commission approval, contains
17 the Company's draft plan for complying with Section 2(E) of the Rule?

18 A. Yes. However, the policy created by Laclede to comply with this Rule
19 provision has never been approved by the Commission.

20 Q. Mr. Buck refers to his direct testimony where he made the assertion that
21 he discussed with Staff whether Laclede needed to send the CAM itself each year, and that
22 Staff advised him that it did not need to receive the same CAM each year if there was no

Surrebuttal Testimony of
Charles R. Hyneman

1 change. Was Mr. Buck able to identify the name of the Staff member who he thinks made
2 such a statement?

3 A. No.

4 Q. Was Mr. Buck able to provide any documentation to support his recollection
5 that an unnamed Staff member made such a statement?

6 A. No.

7 Q. Is there any reason to believe that any Staff member made such a statement?

8 A. No.

9 Q. What would be the significance if Mr. Buck was actually correct that some
10 Staff member made such a statement?

11 A. None.

12 Q. Please explain.

13 A. Laclede should be aware of the fact that not even Staff management, let alone
14 an individual member of the Staff can speak for the Commission and waive specific
15 requirements of Commission rules.

16 Q. Mr. Buck states that it is not clear to him that there is an obligation to submit
17 the CAM itself each year. He also states that there is no provision in the Rules that explicitly
18 requires utilities to submit CAMs on an annual basis. Please comment

19 A. Mr. Buck is incorrect. 4 CSR 240-40.015 2(E) states that the regulated gas
20 corporation “shall include in its annual Cost Allocation Manual (CAM), the criteria,
21 guidelines and procedures it will follow to be in compliance with the rule.”

Surrebuttal Testimony of
Charles R. Hyneman

1 Q. Why would the Commission require a utility to include in its annual CAM
2 extremely important criteria, guidelines and procedures and then allow that CAM to just sit on
3 a utility company employee's desk until the next annual update?

4 A. It would not make any sense for the Commission to require this critical
5 information in a CAM then not review the CAM.

6 Q. Mr. Hyneman, do you believe that the Staff has acted in any unethical or
7 unprofessional manner in any of its actions in these proceedings or in any proceedings with
8 Laclede to which you are aware?

9 A. No. I have read hundreds of pages of testimony and other documents and
10 listened and watched hours of Commission hearings on affiliate transactions with Laclede.
11 I have also had meetings and discussion with Staff members who have extensive experience
12 working with Laclede on affiliate transactions issues and other rate case issues. I have noted
13 no unethical or unprofessional conduct on the part of any Staff member.

14 Q. Does this conclude your surrebuttal testimony?

15 A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Staff of the Missouri Public Service)	
Commission)	
)	
Complainant,)	Case No. GC-2011-0098
)	
v.)	
)	
Laclede Gas Company)	
)	
Respondent)	

AFFIDAVIT OF CHARLES R. HYNEMAN

STATE OF MISSOURI)
) ss.
 COUNTY OF COLE)

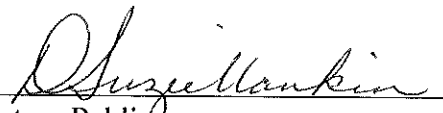
Charles R. Hyneman, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 21 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.



 Charles R. Hyneman

Subscribed and sworn to before me this 12th day of May, 2011.

D. SUZIE MANKIN Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: December 08, 2012 Commission Number: 08412071
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 Notary Public

Shemwell, Lera

From: Pendergast, Mike [MPendergast@lacledegas.com]
Sent: Friday, October 01, 2010 4:06 PM
To: Thompson, Kevin; Shemwell, Lera; Poston, Marc
Subject: Follow up to September 7 Meeting on Affiliate Transactions
Attachments: ACA Follow-up Letter 100110pm.pdf

Good afternoon everyone,

I wanted to thank everyone for their participation in our last meeting in which we discussed possible ways to resolve our differences regarding the affiliate transactions issues that have arisen in a number of proceedings. To that end, I wanted to transmit some additional information on the subject in an effort to address some of the concerns that were raised at the meeting and hopefully contribute to a constructive resolution of these issues in the future. After you and others on your respective staffs have had an opportunity to review these materials, Laclede would appreciate the opportunity to meet again, perhaps in conjunction with the work we are supposed to be doing on these issues as a result of our rate case settlement.

In the meantime, please do not hesitate to contact me if you have any questions or comments. Have a great weekend.

Sincerely,

*Michael C. Pendergast
Vice President & Associate General Counsel
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St. Louis, MO 63101*

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MICHAEL C. PENDERGAST
VICE PRESIDENT
ASSOCIATE GENERAL COUNSEL

October 1, 2010

PRIVILEGED AND CONFIDENTIAL
SUBJECT TO SETTLEMENT PRIVILEGE

Mr. Kevin Thompson.
Staff Counsel
Missouri Public Service Commission
200 Madison Street
P. O. Box 360
Jefferson City, MO 65102-0360

Re: Follow-up to Meeting on Resolving Affiliate Transactions Disputes

Dear Mr. Thompson:

As you know, Laclede Gas Company ("Laclede"), the Staff of the Missouri Public Service Commission ("Staff") and the Office of the Public Counsel ("OPC") met on September 7, 2010 to discuss potential resolution of a number of proceedings involving Laclede's transactions with its affiliate, Laclede Energy Resources ("LER"). Pursuant to those discussions, I am writing to follow-up on some of the items discussed at that meeting and convey why we believe it would be in the best interests of all involved to resolve our differences in a variety of cases, including Case Nos. GC-2011-0006; GR-2005-0203; GR-2006-0288; GR-2008-0140; GR-2008-0387 and Case No. 10 AC-CC00170.

A. **Introduction**

Affiliate Transactions Rules
Annual Reporting/Affiliate Allocations and Transactions

17. The Parties agree and recommend that Laclede shall implement the various reporting (Affiliate Transactions Rules Annual Reporting) modifications and commitments relating to the Company's Cost Allocation Manual and affiliate allocations as set forth in Attachment C to this Partial Stipulation and Agreement.

Billing Determinants

18. The Company agrees to use Staff's billing determinants, without prejudice to the Company's right to pursue at hearing Laclede witness Michael Cline's Customer Usage Refund proposal as part of the Rate Design issue.

Rate Switching

19. The Company shall provide documentation to Staff and Public Counsel on customers who are rate-switched as a result of this case. Such rate-switched customers shall remain in the same rate classification until the time of the Company's next rate proceeding, unless the customer requests and is eligible to be switched in between cases.

Other Provisions

20. None of the signatories to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation, depreciation or revenue-related method, or any service or payment standard; and none of the signatories shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other Commission or judicial review or other proceeding, except as otherwise expressly specified herein. Nothing in this Stipulation and Agreement shall preclude the Staff in future proceedings from providing

**Affiliate Transactions Rule Annual
Reporting Requirements**

This agreement relating to affiliate transactions rule annual reporting requirements shall not waive the record keeping requirements of Laclede Gas Company (LGC) or its parent, The Laclede Group, or any of its affiliates as required by the affiliate transactions rules including 4 CSR 240-40.015 (4) and (5), or the access to records of affiliated entities in 4 CSR 240-40.015 (6) or the requirements contained in 4 CSR 240-40.016. Pursuant to staff witness Lisa Hanneken's direct testimony, this reporting requirement agreement does not include the Energy-Related Goods and Services category, which is addressed through the PGA/ACA.

A report listing each and every affiliate transaction (including but not limited to each purchase, sale or service, including management services, provided by/to LGC from/to any affiliates) by affiliated entity, by type of transaction, by amount, by month will be included with the affiliate transactions rule required annual report. This listing will include the methodology used to record each type of affiliate transaction (e.g. 3-factor, payroll, fair market price, etc.). Documentation to support the basis used and to verify the price charged will be maintained by LGC in accord with the affiliate transactions rules recordkeeping requirements and copies of such documentation shall be made available to Staff and the Office of the Public Counsel (OPC) upon request.

Laclede shall provide the monthly management payroll and distributions on an annual basis with a highly confidential designation, in the same format as in the response to DR 233 in Case No. GR-2010-0171. Documentation to support the distributions shall be maintained by LGC in accord with the affiliate transactions rules recordkeeping requirements and copies of such documentation shall be made available to Staff and the OPC upon request. Staff and the OPC shall provide names of any Staff or OPC person who views the monthly payroll data.

Laclede shall provide a list of each work order that has charges to its parent or any affiliate, denoting both payroll and non-payroll charge accounts, amounts charged to each account and a description of the purpose of the work order.

Laclede shall provide a list of each intercompany accounts receivable transaction between Laclede and its parent or any other affiliate, with details including: the date, each account, the amount of each transaction, and the general ledger description of each transaction. If a general ledger description requires additional explanation, copies of this information shall be made available to the Staff and OPC within 20 business days upon request.

Laclede shall provide the annual calculation of all allocation factors including: all components used in the development of each and every CAM allocation factor, all source documents to support the basis used and to verify the price charge shall be maintained by LGC in accord with the affiliate transactions rules recordkeeping requirements and copies of such documentation shall be made available to the Staff and OPC upon request.

Laclede shall work with Staff and OPC on the format of the affiliate transactions rule required annual report, with such work to be completed within nine months of the effective date of new rates established in this case.

Laclede shall update its procedures and employee training related to time reporting to better document the actual time spent by employees working for the parent, LGC, and any of its affiliates and shall provide a copy of the procedures to Staff and OPC within nine months of the effective date of new rates established in this case.

LGC shall meet with Staff and OPC in a working group to review and discuss the allocations between LGC, its parent, and its non-regulated affiliates. This item shall also provide for a review of allocations within LGC for regulated services and unregulated services.

LGC shall request and the Staff and OPC shall support a waiver from the Commission of the calendar year affiliate transactions report and submission date of March 15th requirements of the affiliate transactions rule.