

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

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

**PUBLIC COUNSEL'S RESPONSE  
TO THE ORDER DIRECTING FILING**

COMES NOW the Office of the Public Counsel and for its response to the Commission's June 4, 2009 Order Directing Filing states as follows:

1. The Commission's Order directs "Laclede, Staff and OPC to further explain their positions that Section III, numbered paragraph 8, and Section IV, numbered paragraph 1" of the Stipulation and Agreement in Case No. GM-2001-342 "either operate or do not operate to require Laclede to provide the requested information."

2. These matters are being considered in the context of the pending Motions for Reconsideration of Staff and Public Counsel, and Public Counsel's pending Motion for Clarification. The outcome of this discovery dispute will determine whether Laclede should be required to answer discovery requests from the Commission's Staff in its investigation of Laclede's gas purchasing transactions. Before providing the Commission with Public Counsel's position and arguments regarding the Stipulation terms and conditions, Public Counsel reminds the Commission that the Commission's authority to direct Laclede to provide the requested information is independent from Laclede's Stipulation commitments to provide the information to Staff and Public Counsel. The Commission does not need to resort to the Stipulation to direct Laclede to

answer the discovery requests. Section 393.140 RSMo 2000. The fundamental question to be answered by the Commission is whether the Commission wants a full investigation into the serious allegations that may have forced consumers to overpay millions of dollars to Laclede, or whether the Commission wants to deny access to available information that will either prove or disprove the allegations.

3. The Order seeks input regarding two paragraphs of the Stipulation.

Section III, titled Financial Conditions, states in paragraph 8:

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 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

As stated above, the Commission does not need Laclede's acquiescence to Commission authority before it can compel Laclede to answer the Staff's discovery request. However, in this paragraph Laclede recognizes the Commission's authority to regulate *direct and indirect* transfers or disbursements of earnings from Laclede to Laclede Energy Resources (LER) that would jeopardize Laclede's ability to meet its utility obligations. One such utility obligation is Laclede's obligation to conduct prudent gas purchasing decisions and operations, which is the subject of these cases. The Staff's allegation that Laclede shifted earnings disbursements from Laclede to LER is specifically the type of improper affiliate transactions that this term recognizes.

4. The second paragraph referenced by the Order is Paragraph 1 of Section IV, titled Access to Information Conditions, which states:

The Laclede Group, Inc. and Laclede Gas Company shall provide the Staff and Public Counsel with access, upon reasonable written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond or rating analysts, which directly or indirectly pertains to Laclede Gas Company or any affiliate that exercises influence or control over Laclede Gas Company or has affiliate transactions with Laclede Gas Company. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, “written” information includes but is not limited to, any written and printed material, audio and videotapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed to be a waiver The Laclede Group, Inc’s or Laclede Gas Company’s right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.

This paragraph does not appear to apply to the issue at hand because the discovery requests do not appear to involve “written information provided to common stock, bond or rating analysts.” Public Counsel believes the Commission intended to reference Paragraph 2 of Section IV, Access to Information Conditions, which states in part:

Upon request, Laclede Gas Company and The Laclede Group, Inc. agree to make available to Staff, Public Counsel and PACE, upon written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, all books, records and employees of The Laclede Group, Laclede Gas Company and its affiliates as may be reasonably required to verify compliance with the CAM and the conditions set forth in this Stipulation and Agreement...

...Laclede Gas Company and The Laclede Group, Inc. shall also provide Staff and Public Counsel any other such information (including access to employees) relevant to the Commission’s ratemaking, financing, safety, quality of service and other regulatory authority over Laclede Gas Company; provided that Laclede Gas Company and any affiliate or subsidiary of The Laclede Group, Inc. shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and

personnel of affiliates or subsidiaries: (a) are not within the possession or control of Laclede Gas Company; or (b) 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.

The Laclede Group twice agreed to provide the information requested in the Staff's discovery request. First, the Laclede companies agreed to provide *all books, records and employees* of Laclede's affiliates to verify compliance with Laclede's Cost Allocation Manual (CAM) and the terms of the Stipulation. Second, the Laclede companies agreed to provide *any other such information relevant to the Commission's ratemaking authority*. These terms and conditions are addressed separately below.

5. The Laclede companies agreed to provide *all books, records and employees* of Laclede's affiliates to verify compliance with Laclede's CAM. CAMs include "the criteria, guidelines, and procedures" gas utilities "will follow to be in compliance with the [affiliate transactions] rule." 4 CSR 240-40.015(2)(E). In other words, Laclede agreed to provide access to all books and records to verify that Laclede has complied with the following affiliate transaction rules:

(2)(A): "A regulated gas corporation shall not provide a financial advantage to an affiliated entity."

(2)(B): "Accept as necessary to provide corporate support functions, the regulated gas corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time."

(2)(D): "The regulated gas corporation shall not participate in any affiliated transactions which are not in compliance with this rule..."

Although Laclede's CAM has not been approved by the Commission as required by 4 CSR 240-40.015(3)(D) and 4 CSR 240-40.016(4)(D), the obvious intent of the Section IV, Paragraph 2 reference to Laclede's CAM is to require Laclede to produce all books

and records that verify that Laclede has not provided a financial advantage to an affiliated entity. The Staff alleges that Laclede's gas purchasing transactions with an affiliate provided a financial advantage to the affiliate at the expense of ratepayers, and the discovery request seeks information to either prove or refute this allegation.

6. Paragraph 2 of Section IV also commits Laclede to providing Staff and Public Counsel with access to all books and records to verify compliance with "the terms of the Stipulation and Agreement." The terms of the Stipulation include the following term, included under the section "Financial Conditions", and access to the requested records is necessary before the Commission can verify Laclede's compliance:

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. (Section III, Paragraph 1, p.5).

The information sought in the Staff's discovery request will verify whether Laclede's actions had "a material possibility of having a detrimental effect" on ratepayers. All that is needed to trigger this term of the Stipulation and the production of "all books and records" to verify compliance with this term, is that there be a "material possibility" of detrimental effects. Public Counsel asserts that the material possibility of detrimental effects has been clearly shown in the Staff Recommendations of the Commission's Procurement Analysis Department.<sup>1</sup> The next question to be answered is whether detrimental effects actually occurred as a result of Laclede's actions, which will be answered by the information sought in the Staff's discovery request.

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<sup>1</sup> Staff Recommendation, Case No. GR-2005-0203, December 28, 2006, and Staff Recommendation, Case No. GR-2006-0288, December 31, 2007.

7. Paragraph 2 of Section IV also commits Laclede Gas Company and The Laclede Group, Inc. to “provide Staff and Public Counsel any other such information...relevant to the Commission’s ratemaking” authority. The Commission’s ratemaking authority includes the authority over prudence reviews of Laclede’s gas purchasing decisions and operations. In State ex rel. 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’s ratemaking authority includes the authority under Section 393.130.1 RSMo 2000 to review the prudence of a company’s “decision to enter into a particular contract when a less costly alternative is available.” Again, the information sought in the Staff’s discovery request is clearly relevant to the Commission’s prudence review and Laclede is required by the terms of the Stipulation to provide the requested information.

8. Paragraph 2 of Section IV also includes conditions on Laclede’s right to object to the discovery of affiliate information. Laclede agreed not to raise the following objections to discovery requests:

(a) That the records of affiliates “are not within the possession or control of Laclede Gas Company;” and

(b) That the records of affiliates “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.”

The Laclede companies agreed to release affiliate information even when that information is only in the possession of Laclede’s affiliate and not in Laclede’s possession. Laclede also agreed that it would not object to the discovery of affiliate information on the grounds of relevancy. Lastly, Laclede agreed not to object to the

discovery of affiliate information on the grounds that the information is not subject to the Commission's authority as a result of the restructuring. In a prior filing, Laclede responded to this interpretation of the Stipulation with its own interpretation, which appears to conclude that the agreement not to object on the grounds of relevancy is limited to relevancy "as a result of the implementation of the Proposed Restructuring." Laclede's nonsensical interpretation should be rejected. The "or" in the sentence clearly separates and distinguishes between objections based on relevancy and objections based on any alleged change to the Commission's jurisdiction as a result of the restructuring.

9. Even if the Commission were to accept Laclede's interpretation of the Stipulation language limiting Laclede's objection rights, Public Counsel asserts that Laclede's objection should still be rejected. Prior to restructuring, when LER was under the direct control of Laclede Gas Company, the Commission had the authority to review the resale of gas purchased for the benefit of Laclede's ratepayers and resold to a non-Laclede entity. Section 393.140, subsections (8), (9) and (12). Now Laclede is essentially claiming that due to the restructuring, gas purchased for Laclede's customers and resold to a non-Laclede entity is no longer discoverable when resold through the affiliate. Under either interpretation, Laclede has waived its right to object to the information sought in the Staff's data request on the basis of relevancy.

10. Laclede is desperately trying to restrict the ability of Staff and Public Counsel, and ultimately the Commission, to conduct a prudency analysis of Laclede's gas purchasing and operating decisions by keeping relevant information hidden. If Laclede's purchasing decisions were prudent, Laclede should have no concerns with answering the

Staff's discovery requests. Laclede has not identified any harm that will come from providing the requested information.

WHEREFORE, Public Counsel respectfully offers this response to the Commission's Order Directing Filing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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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 10<sup>th</sup> day of June 2009:

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