

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

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

**PUBLIC COUNSEL'S RESPONSE TO  
LACLEDE'S REPLY TO STAFF'S NOTICE**

COMES NOW the Office of the Public Counsel (OPC) and for its response to Laclede's Reply to Staff's Notice states:

1. Public Counsel offers this response to Laclede's assertions in its February 2, 2010 Reply to Staff's Notice that discovery of the requested documents is improper because the documents are in the possession of Laclede Energy Resources (LER) and not Laclede Gas Company (Laclede).

2. OPC reminds the Commission of commitments and agreements made by Laclede and The Laclede Group, Inc. to obtain Commission approval of Laclede's 2001 restructuring. Laclede and The Laclede Group, Inc. (parent of both Laclede and LER) specifically agreed that they would not object to the production of documents on the basis that such documents were not in the possession of Laclede Gas Company, as further explained below.

3. In 2000 Laclede filed an application with the Commission seeking approval of a plan to restructure Laclede Gas Company into a holding company,

regulated utility company, and unregulated subsidiaries.<sup>1</sup> The Commission approved the restructuring along with a Unanimous Stipulation and Agreement in its August 14, 2001 Order Approving Stipulation and Agreement and Approving Plan to Restructure.

4. In the restructuring case, Laclede made specific commitments to the Commission, the Commission's Staff, and to its own customers through the Office of the Public Counsel, to gain approval of its restructuring. In Laclede's Application, Laclede committed that it would be forthcoming with information, including information in the possession of its affiliates:

Fourth, Laclede also commits that, pursuant to applicable current or future laws or regulations, it will provide access to the books and records of its affiliates as necessary to determine whether any charges to, or payments from, Laclede Gas Company are reasonable.

Now Laclede must honor this commitment and provide access to the books and records necessary to determine whether its charges are reasonable. This is the very purposes of the 2004-2005 and 2005-2006 PGA cases.

5. Laclede's commitment was adopted by the Commission when it approved the Unanimous Stipulation and Agreement in Case No. GM-2001-0342, which obligates Laclede and The Laclede Group, Inc. as follows:

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, Inc., 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,...

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<sup>1</sup> *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*, Case No. GM-2001-342.

Here Laclede and The Laclede Group, Inc. agreed that they would make available all books and records of Laclede's affiliates for purposes of verifying compliance with the terms of the Unanimous Stipulation Agreement. One such term includes the following:

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 affiliate and Laclede agrees, consistent with such standard, that rates should not be increased due to such activities.

The records sought by the Staff would help determine whether Laclede's gas purchasing transactions with LER were prudent, which would help verify compliance with this term of the Unanimous Stipulation and Agreement.

6. Laclede and The Laclede Group, Inc. also agreed in the Unanimous Stipulation and Agreement not to raise the objection they are now raising:

**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. [emphasis added].

Here Laclede and The Laclede Group, Inc. agreed that Laclede's right to object to the production of records specifically *excludes* the right to object to the production of records on the basis that such records "are not within the possession or control of Laclede Gas Company." These agreements and commitments were signed by Mr. Michael Pendergast on behalf of Laclede and by Mr. Gerald T. McNeive, Jr. on behalf of The Laclede Group,

Inc. Laclede's arguments and refusal to produce the documents are clearly violating the Commission's November 4, 2009 Order Directing Laclede to Produce Information in the present case, and the Commission's August 14, 2001 Order Approving Stipulation and Agreement and Approving Plan to Restructure in Case No. GM-2001-342.

7. Laclede's argument that it does not possess the records shows a lack of integrity that could indicate Laclede's willingness to violate other provisions of the Agreement, namely the provision that Laclede's affiliate transactions will not harm regulated ratepayers. OPC urges the Commission to direct its General Counsel to seek penalties and other remedies against Laclede and The Laclede Group, Inc. OPC believes the records being hidden by Laclede will reveal a scheme to boost the profits of The Laclede Group, Inc. on the shoulders of Laclede's regulated customers. OPC also urges the Commission to order Laclede and The Laclede Group, Inc. not to destroy the requested documents until directed otherwise by the Commission.

WHEREFORE, Public Counsel respectfully offers this Response to Laclede's Reply to Staff's Notice.

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 8<sup>th</sup> day of February 2010:

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**/s/ Marc Poston**

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