BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission, Complainant, v. Laclede Gas Company, Laclede Energy Resources and The Laclede Group, Respondents.	)	Case No. GC-2011-0098

AMENDED COMPLAINT

COMES NOW, the Staff of the Public Service Commission (Staff), by and through the Chief Staff Counsel and undersigned counsel, pursuant to Section 386.390,[1] and for its Amended Complaint states:

Introduction

Staff's complaint is that Laclede Gas Company (Laclede) has failed to comply with the Commission's Affiliate Transactions Rules (Rules)[2] in its dealings with its gas marketing affiliate Laclede Energy Resources (LER) in transactions pricing. The Laclede Group, Laclede and LER share common management resulting in, among other things, improper sharing of information in violation of the Rules prohibition against preferential treatment of affiliates.[3]

On its face, Laclede's Cost Allocation Manual (CAM)(see Attachment A)[4] is in violation of the Commission's Rules because it does not require Laclede to price certain affiliate

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[1] All references are to the Revised Statutes of Missouri 2000 (as currently supplemented, unless otherwise noted.)
[2] 4 CSR 240-40.016 is the Commission's Rule for Gas Marketing Affiliates and is almost identical to 4 CSR 240-40.015, except for the Non-discrimination standards in Section (2). Unless noted, references to the Commission's Rules should be considered reference to both for purposes of this Complaint.
[3] 4 CSR 240-40.015(2)(B). (…the regulated utility shall not provide preferential treatment to an affiliate.)
[4] Attachment A contains portions of Laclede's 2004 CAM.

transactions with its gas marketing affiliate in accord with the Rule's pricing standards. Because of this failure, the Rule deems Laclede to be giving LER a prohibited financial advantage. 4 CSR 240-40.016(3)(A).

Staff will also demonstrate that Laclede's CAM fails to comply with CSR 240-40.016 (Marketing Affiliate Transactions) (Rules) in that, among other things, the CAM does not contain or require Laclede to comply with the affiliate transactions cost standards.[5] "A regulated gas corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated gas corporation **shall be deemed** to provide a financial advantage to an affiliated entity if—"[6] it fails to price those transactions in accord with the Rule. 4 CSR 240-40.016(3).[7] (emphasis supplied.) The Rule's asymmetrical pricing standards are designed to prevent Laclede from improperly cross-subsidizing its gas marketing affiliate Laclede Energy Resources (LER) to the detriment of its captive customers.

Laclede is also violating the Rule by engaging in transactions that are not in compliance with the Rule, without requesting a variance. "The regulated [utility]shall not participate in any affiliated transactions which are not in compliance with this rule, except as otherwise provided in section (10) of this rule [which provides a procedure by which Laclede could have obtained a variance from these standards]." 4 CSR 240-40.015(2)(D).

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[5] 4 CSR 240-40.016(3)(A).

[6] (3) Standards.

(A) A regulated gas corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated gas corporation **shall be deemed** to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for goods or services above the lesser of—
   A. The fair market price; or
   B. The fully distributed cost to the regulated gas corporation to provide the goods or services for itself; or
2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of--
   A. The fair market price; or
   B. The fully distributed cost to the regulated gas corporation. (emphasis supplied.)

[7] 4 CSR 240-40.016 is the Commission's Rule for Gas Marketing Affiliates and is almost identical to 4 CSR 240-40.015. Unless noted, references to the Commission's Rules should be considered reference to both for purposes of this Complaint.

Complainant

1. Complainant is the Staff of the Missouri Public Service Commission (the Staff), acting through the Chief Staff Counsel, as authorized by Commission Rule 4 CSR 240-2.070(1) and Sections 386.240 and 386.390.

Respondent

2. Laclede Gas Company (Laclede) is a monopoly utility company operating in eastern Missouri, serving approximately 630,000 customers.

3. Respondent, Laclede is a Missouri general business corporation in good standing, incorporated on March 2, 1857, as Laclede Gas Light Company. Its principle place of business is located at 720 Olive Street, St. Louis, Missouri 63101 and its registered agent is Mary Caola Kullman, 720 Olive Street, Suite 1517, St. Louis, Missouri 63101.

4. On its website Laclede describes itself as "primarily a regulated natural gas distribution utility" and the "largest natural gas distribution utility in Missouri, serving approximately 630,000 residential, commercial and industrial customers" in "the Missouri portions of the St. Louis Metropolitan area and several nearby counties in Southeastern Missouri." www.lacledegas.com "About Laclede Gas" and "Mission Statement."

5. Laclede is a wholly-owned subsidiary of The Laclede Group, Inc. (Group), a Missouri general business corporation in good standing, incorporated on October 18, 2000. Group's principal place of business is also located at 720 Olive St. St. Louis, Missouri 63101 and its registered agent is Mary Caola Kullman, 720 Olive St., Suite 1517, St. Louis, Missouri 63101.

6. In its latest 10-k filing with the Securities and Exchange Commission, The Laclede Group describes itself as:

> a public utility holding company formed through a corporate restructuring that became effective October 1, 2001. Laclede Group is committed to providing

> reliable natural gas service through its regulated core utility operations while engaging in non-regulated activities that provide sustainable growth. All of Laclede Group's subsidiaries are wholly owned. The Regulated Gas Distribution segment includes Laclede Gas Company (Laclede Gas or the Utility), Laclede Group's largest subsidiary and core business unit. Laclede Gas is a public utility engaged in the retail distribution and sale of natural gas. Laclede Gas is the largest natural gas distribution utility in Missouri, serving approximately 630,000 residential, commercial, and industrial customers in the City of St. Louis and parts of ten counties in eastern Missouri.

7. Laclede Energy Resources (LER) is a Missouri corporation in good standing, incorporated on May 28, 1981. Its principal place of business is 720 Olive Street, St. Louis, Missouri 63101 and its registered agent is Mary Caola Kullman, 720 Olive St., Suite 1517, St. Louis, Missouri 63101.

8. In its 10-K SEC filing, LER is described as follows:

> The Non-Regulated Gas Marketing segment includes Laclede Energy Resources, Inc. (LER), a wholly-owned subsidiary engaged in the marketing of natural gas and related activities on a non-regulated basis. LER markets natural gas to both on-system Utility transportation customers and customers outside of Laclede Gas.

9. The holding company, the Laclede Group, is described in the 10-K as:

> The Laclede Group (NYSE: LG) provides a flexible way to operate and grow our business. It is the parent organization of the regulated core utility component — Laclede Gas Company — and of a non-regulated component being developed to achieve sustainable growth in a measured and manageable manner. The Laclede Group's largest non-regulated activity is Laclede Energy Resources, a subsidiary engaged in non-regulated efforts to market natural gas and related activities.

10. LER markets natural gas and related activities both on system to utility transportation customers and customers outside of Laclede Gas' traditional service territory, including large retail and wholesale customers. (Laclede's 10-K SEC filing, p. 5-6; http://www.snl.com/irweblinkx/docs.aspx?iid=4002506.)

Jurisdiction

11. Laclede is a natural gas corporation as defined in §386.020(19), RSMo.

12. The Commission has authority to hear and determine complaints against gas corporations pursuant to §386.390.1. "Complaint may be made . . . in writing, setting forth any act or thing done or omitted to be done by an corporation . . . in violation, or claimed violation, of any provision of law, or of any rule or order or decision of the Commission . . ."

Background of the Commission's Rules

13. The Commission's affiliate transactions rules, including 4 CSR 240-40.015 and 4 CSR 240-240-40.016, were promulgated and were affirmed by the Missouri Supreme Court in *State ex rel. Atmos Energy Corp. v. Public Service Com'n*, 103 S.W.3d 753 (Mo. 2003), rehearing denied (May 27, 2003).

14. The Court described the purpose of the rules: '"As long as a [public utility] is engaged in both monopoly and competitive activities, it will have the **incentive as well as the ability** to 'milk' the rate-of-return regulated monopoly affiliate to subsidize its competitive ventures... To counter this trend, the new rules, and in particular, **the asymmetrical pricing standards, prohibit utilities from providing an advantage to their affiliates to the detriment of rate-paying customers.** In addition, to police compliance, the rules require the utilities to ensure that they and their affiliates maintain records of certain transactions." *Atmos* at 764 (Mo. 2003)(emphasis supplied).

15. As the *Atmos* Court noted, the Rules were promulgated because of: the emergence of a **profit-producing scheme** among public utilities termed "**cross-subsidization,"** in which utilities abandon their traditional monopoly structure and expand into non-regulated areas" to the detriment of ratepayers. *Atmos* 103 S.W.3d at 764 (emphasis added).

Background of Laclede's CAM

16. In Case No. GM-2001-342, Laclede Gas applied to the Commission seeking authority to restructure as a holding company. The Direct Testimony of Patricia A. Krieger, in that case contained a proposed CAM. (Krieger CAM)

17. When Laclede filed the restructuring case, the Commission's Affiliate Transactions Rules were on appeal. Several companies, including Laclede, challenged the Commission's authority to promulgate the rules. In 2003, the Missouri Supreme Court, in a unanimous decision, affirmed the Commission's jurisdiction, authority and process used to promulgate the Rules. *Atmos Energy Corp. v. Public Service Com'n*, 103 S.W.3d 753 (Mo. 2003), rehearing denied (May 27, 2003).

18. Since the Rules were on appeal at the time Laclede sought to restructure, one of the conditions in Stipulation and Agreement (S&A) resolving that case, required that "[t]he CAM shall be in the form contained in the direct testimony of Patricia A. Krieger, provided that the CAM" shall also contain additional information . . . as listed in the S&A. (Attachment B)

19. Notably, the Krieger CAM (Attachment C) contains asymmetrical pricing provisions for affiliate transactions of *both* "fair market" pricing provisions and "fully distributed cost" to determine the pricing of charges paid by Laclede to LER for goods and services and payments made to Laclede by LER for goods and services. Laclede's current CAM, originally submitted in 2004, is *not* in the form contained in the direct testimony of Patricia A. Krieger.

History of Laclede's Non-compliance

20. Complainant hereby realleges and incorporates herein by reference Paragraphs 1 through 19.

21. Staff recognized problems with Laclede witness Krieger's proposed CAM as early as GM-2001-342 and made suggested changes to the CAM to address those issues.

22. After the Missouri Supreme Court affirmed the Commission's Affiliate Transactions Rules, (Rules) Staff met with all companies with affiliates, including Laclede in an attempt to address CAM issues and questions related to the Rules. Nothing was resolved in the initial Laclede meeting.

23. In 2004, Laclede submitted a CAM, which it described as being "updated" to reflect the outcome of any final judicial resolution of the Commission's affiliate transactions rules. "This version of the Cam seeks to accomplish that goal."

24. Laclede's CAM does <u>not</u> reflect the outcome of the *Atmos* case. It fails to include the Fully Distributed Cost (FDC) of Laclede in determining the appropriate price of gas supply purchases and pipeline transportation and storage capacity release when LER sells to Laclede (Attachment A, page 13) and when Laclede sells gas supply to LER that CAM provision does not include asymmetrical pricing (Attachment A page 14). These pricing provisions determine when a financial advantage is given to an affiliate. 4 CSR 240-40.015(2).

25. Recognizing the fact that Laclede's CAM did not comply with the Commission's Rules and were not in the form of the Krieger CAM, in Laclede rate Case No. GR-2007-0208, the Parties to that case agreed to meet to discuss issues with the CAM:

> 1. Within ninety (90) days of the effective date of the Commission's Report and Order in this case, Laclede, Staff and Public Counsel shall begin meeting to discuss any issues or concerns they may have relating to Laclede's Cost Allocation Manual ("CAM"), the compliance of the CAM with the Commission's affiliate transactions rules, and transactions between Laclede and its affiliates. Such meetings shall not be construed as placing any restrictions on Staff's or Public Counsel's ability to investigate and file complaints concerning such matters.

26. The parties did meet, but, despite a lengthy discussion of the issues, no progress was made in resolving any differences.

27. In Laclede's most recent rate case, the parties have attempted to resolve the corporate allocations issues,[8] but were unable to resolve the issues of Laclede's non-compliant gas procurement pricing still contained in Laclede's CAM causing the CAM to violate the Commission's affiliate transactions rules.

28. The parties, Laclede, the Office of the Public Counsel and Staff, met as recently as September 7, 2010, to discuss issues with the Company's CAM, but were unable to make any progress toward reaching any agreement as to the issues regarding Laclede's CAM and the Company's compliance with the Affiliate Transactions Rules.

29. The Commission has never approved Laclede's CAM and neither the Commission nor its Staff is bound in any way by provisions in Laclede's unlawful CAM.

Laclede's violation of the Rule's Asymmetrical Pricing Provisions

30. Laclede's CAM for Energy-Related Goods and Services indicates that "[t]o ensure compliance with both the transfer pricing and anti-discrimination provisions of the affiliate transactions and marketing affiliate transactions rules . . . the following standards will be applied to the purchase and sale of energy-related goods and services including natural gas supplies, transportation and storage capacity, between Laclede Gas Company and affiliated and unaffiliated entities alike."

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[8] See Partial Stipulation and Agreement in GR-2010-0171, paragraph 17 and Attachment C (attached hereto as Attachment E).

31. When it compensates LER for goods or services related to gas supply, if Laclede is not calculating both the fair market price[9] for the goods or service, and Laclede's fully distributed cost[10] for the goods or service, and paying the lower of the two values, it is overpaying LER in violation of the Commission's affiliate transactions rules. 4 CSR 240-40-015 (2)(A)(1) and (3)(A).

32. When Laclede transfers information, assets, goods or services related to gas supply to LER and Laclede is not calculating both the fair market value and Laclede's fully distributed cost, documenting both calculations, and charging LER the higher of the two values, Laclede is in violation of the Commission's affiliate transactions rules. 4 CSR 240-40.015 (2)(A)(2) and (3)(B).

33. In other words, Laclede's current CAM does not require Laclede's gas supply purchases from LER to be the lower of Laclede's fully-distributed cost or the fair market value but only requires "fair market price."

34. Laclede's provision for gas supply sales to affiliates does not require the sale to be the higher of fair market value or Laclede's fully distributed cost. Contrary to the Rules, the CAM defines fair market price as the average price[11] of other similar sales. (Attachment A, page 14.)

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[9] Fair market value is traditionally considered to be the amount something would sell for in an open market between a willing buyer and a willing seller who are both knowledgeable, informed and prudent and who are acting independently of each other.

[10] Fully distributed cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated (e.g., general and administrative) must also be included in the FDC calculation through a general allocation.

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

35. Laclede's CAM does not control its affiliate practices when it violates the Commission's Rules.

36. If a gas utility determines a non-compliant transaction is in the interest of its customers, the rules make provision for the utility to present its case to the Commission. 4 CSR 240-40.015(11)

37. Laclede has never requested a waiver or variance of the application of the asymmetrical pricing rules to its non-compliant transactions or for its unlawful CAM provisions.

38. If Laclede truly believes its transactions are to its customers' benefit instead benefitting its unregulated operations to the detriment of its customers , it should have filed for a variance.

39. If Laclede believes FDC is same as FMV it should ask for a waiver.

Laclede's Violation of the Rules Preferential Treatment Prohibitions

40. Laclede also violates 4 CSR 240-40.015(2)(B) and (C) by providing information to its affiliate not available to non-affiliates.

41. To meet its customers' reliability needs, Laclede needs firm supply. LER **may** be using interruptible supply which it sells to Laclede to meet Laclede's firm gas sales requirements.

42. LER has access to information about Laclede's gas operations including, but not limited to: Laclede's gas buying strategies, hedging operations, gas purchasing needs, customer usage, suppliers, storage and peaking facilities and operations, to which no non-affiliated entity has access.

43. Laclede and LER share corporate directors:

<u>Laclede Gas Company:</u>
Douglas H. Yaeger - Chairman of the Board, President and CEO

Kenneth J. Neises - Executive VP - Energy and Administrative Services (retired October 1)
Mark D. Waltermire - Senior Vice President and Chief Financial Officer
Mark C. Darrell - Senior Vice President and General Counsel
Mary Caola Kullman - Chief Governance Officer and Corporate Secretary
Michael C. Geiselhart - Vice President - Strategic Development and Planning
Lynn D. Rawlings - Treasurer and Assistant Secretary

Laclede Energy Resources
Douglas H. Yaeger - President
Kenneth J. Neises - Vice President
Mark D. Waltermire - Vice President
Scott E. Jaskowiak - Vice President - General Manager and former Laclede gas buyer
George Godat - Vice President - Resource Management former Laclede gas buyer
Lynn D. Rawlings - Treasurer and Assistant Secretary
Mary Caola Kullman - Corporate Secretary

44. Mr. Neises has had, and other top and mid-level executives have unreasonable conflicts of interest because they have executive compensation incentives to benefit both Laclede and LER. (SEC Proxy statement, Attachment D.)

45. Laclede attorneys represent LER, giving LER an advantage over non-affiliates in its understanding of Laclede's legal strategies at both this Commission and the Federal Energy Regulatory Commission.

46. Because of the perceived conflicts and the ability that the top executives have of sharing valuable and confidential information between the two companies, giving the affiliated entity an advantage a manner that discriminates in favor of the affiliated entity, Commission Staff asserts that Laclede is in violation of the Commission's affiliate transactions rules for this and all of the above stated reasons.

WHEREFORE, Staff prays that the Commission will give notice to Respondent as required by law and, after opportunity for hearing, enter its Order: (1) finding that Laclede's CAM, on its face, is in violation of the Commission's affiliate transactions rules; (2) finding that Laclede has impermissibly given its unregulated affiliate LER an advantage over non-affiliated marketing companies by sharing corporate officers; (3) ordering Laclede to either (a) submit a compliant CAM to the Commission for approval, or (b) petition the Commission for a waiver from the Commission's affiliate transactions rules; (4) ordering Laclede to comply with all non-discrimination provisions of the rules and requiring Laclede to cease giving LER any unfair advantage over non-affiliated marketing companies; (5) authorizing its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law; and granting such other and further relief as is reasonable in this case.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 7th day of October 2010.

/s/ Lera L. Shemwell