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October 4, 2002

Secretary of the Commission
Missouri Public Service Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102-0360

RE: *Laclede Gas Company*
Case No. GO-2002-1099

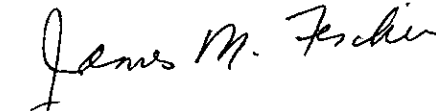
FILED⁴
OCT 04 2002
Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are the original and eight (8) copies of Laclede Gas Company's Response to Staff's Motion to Compel Discovery. A copy of the foregoing Response has been hand-delivered, emailed, and/or mailed this date to parties of record.

Thank you for your attention to this matter.

Sincerely,


James M. Fischer

/jr
Enclosures

cc: Office of the Public Counsel

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

In the Matter of Laclede Gas)
Company's Transfer of its Gas Supply)
Function to a Separate Corporation.)

Case No. GO-2002-1099

FILED⁴
OCT 04 2002
Missouri Public
Service Commission

**LACLEDE GAS COMPANY'S RESPONSE TO
STAFF'S MOTION TO COMPEL DISCOVERY**

COMES NOW Laclede Gas Company ("Laclede" or "Company") and submits its Response to Staff's Motion to Compel Discovery (the "Motion"), which was filed in the above captioned matter on September 24, 2002. In support thereof, Laclede states as follows:

1. Laclede objects to Staff's Motion to compel Laclede to respond to five of the 45 data requests ("DRs") issued in this case. All five DRs seek information on Laclede Energy Resources ("LER"), a non-regulated Laclede affiliate. The information sought on LER is irrelevant to Staff's investigation, and is not reasonably calculated to lead to the discovery of admissible evidence in the case

Background

2. On May 31, 2002, Staff filed its Motion to investigate what Staff characterized as a transfer by Laclede of its gas supply function. In this motion, Staff raised 10 issues regarding Laclede's delegation of certain gas supply administrative functions to its affiliate, Laclede Energy Services ("LES").

3. On June 10, 2002, Laclede responded to the Staff's May 31 motion. Laclede's response noted that, among other things, there was no reason to launch an investigation, because Laclede is still the entity responsible for all matters involving the

gas supply function, including gas supply administrative matters, and the Commission has a number of regulatory tools with which to ensure proper allocation of costs to Laclede, including the PGA, rate audits, and, in accordance with the Stipulation and Agreement in Case No. GM-2001-342, Laclede's Cost Allocation Manual ("CAM").

4. On June 28, 2002, Staff filed its response to Laclede's response. In paragraph 3 of Staff's June 28 response, Staff stated that:

"[t]here are four primary issues that remain unanswered after Laclede's response to Staff. First, what has Laclede transferred? Second, is its gas supply or gas supply risk management function an asset or part of Laclede's franchise? Third, does this transfer violate the Stipulation and [A]greement in Case No. GM-2001-342? Fourth, does this transfer require specific Commission approval and a finding that the transfer is not detrimental to the public interest? These questions are matters that require further investigation."

5. On July 16, 2002, the Commission issued its Order Granting Motion to Establish Case. On page 2 of the Order, the Commission stated that:

"Staff requests authorization to investigate exactly what Laclede has transferred, whether Laclede's gas supply or gas supply risk management is an asset or part of Laclede's franchise, whether Laclede has violated a provision of the agreement in Case No. GM-2001-342, and whether the transfer should have been specifically approved by the Commission.... The Commission determines that a case should be established to investigate the issues raised by Staff."

6. On August 20, 2002, the Staff issued to Laclede 45 DRs. Pursuant to Commission rules, Laclede responded by letter dated September 30. In the letter, Laclede objected to several of the DRs. Most of the objections were based on the grounds that the DRs sought information on LER that is not relevant to the Laclede-LES

issues that are the subject of this case, and therefore are not reasonably calculated to lead to the discovery of admissible evidence in the case.

7. On September 24, 2002, the Staff filed its Motion, amended by its October 1, 2002, Notice to the Commission Concerning Motion to Compel. Pursuant to the Notice, Staff asserts that it has not received full and complete responses to the following eight of the original 45 DRs: 3902, 3909, 3911, 3912, 3915, 3932, 3942, and 3944. Of these eight DRs, five (3909, 3911, 3915, 3942 and 3944) pertain to the LER issue discussed above. Laclede has given the Staff full and complete responses to the other 3 DRs (3902, 3912, and 3932).

The DRs

8. The five DRs that are at the heart of this dispute are as follows:

3909: Please provide a list of all employees of LER.

3911: Please provide copies of all bank statements of LER since 4-1-02.

3915: Please provide copies of all Board of Directors minutes since 1-1-00 for...LER.

3942: Please provide a list of all LER customers.

3944: Please indicate and fully describe any services that LER is providing other than marketing services that are available on the same basis from other marketers that serve Laclede Gas end-user transportation customers.

Why Staff Seeks Information on LER

9. In paragraph 10 of the Motion, Staff claims that because LES provides gas supply administrative services to both its regulated affiliate (Laclede) and to its unregulated marketing affiliate (LER), the manner in which LES provides these services might negatively affect Laclede ratepayers. Staff wonders, for example, whether LES

might arrange for LER to obtain gas supply at a lower price than Laclede. Second, Staff claims that it is concerned with the potential effect on Laclede should LER and/or LES run into financial difficulties. Finally, Staff seeks to know which LES employees are performing critical functions for both Laclede and LER.

Staff's Motion Should be Denied

10. As discussed more fully below, Staff's Motion should be denied for three main reasons. First, the information Staff seeks on LER is outside the scope of the investigation ordered by the Commission. Second, even if the investigation is expanded to include the concerns Staff raises in the preceding paragraph, these concerns relate to the Laclede-LES relationship and the performance of LES. There is no possible relevant link to the employees, bank statements, board minutes, customer list or services of LER, a non-regulated affiliate that is merely a customer of LES. Staff has not demonstrated such a link, nor can it. Third, even if the investigation is expanded to include the concerns Staff raises in the preceding paragraph, and the Commission's affiliate transaction rule was in effect, this rule would not lead to access to LER records, because there is no transaction between the regulated entity, Laclede, and LER to which the DRs apply. Instead, such rule would allow access to LES records, since LES does provide services to Laclede. Regardless, Laclede has fully cooperated with the Staff on all requests for information on LES.

11. As stated above, Staff's request for information on LER is completely irrelevant to the investigation, as posited by Staff and approved by the Commission. Staff has not and cannot demonstrate how LER's employees, bank statements, board minutes, customer list or services have any relationship to the issues approved by the

Commission for this investigation: i.e., what Laclede has transferred to LES, whether Laclede's gas supply or gas supply risk management is an asset or part of Laclede's franchise, whether Laclede has violated a provision of the agreement in Case No. GM-2001-342, and whether the transfer should have been specifically approved by the Commission. All of these issues pertain to Laclede and LES; none require any information from or about LER.

12. Moreover, the issues raised by Staff in the Motion are outside the scope of the investigation, as approved by the Commission. How LES treats LER versus Laclede is not relevant to what Laclede may have transferred to LES, whether Laclede's gas supply or gas supply risk management is an asset or part of Laclede's franchise, whether Laclede has violated a provision of the agreement in Case No. GM-2001-342, and whether the transfer should have been specifically approved by the Commission. Staff should not be permitted to unilaterally expand the investigation approved by the Commission.

13. Even if the Commission finds that the investigation in this case should be expanded to include the concerns raised by the Staff in the Motion, these concerns also relate to the Laclede-LES relationship and the performance of LES, and not to LER. As a customer of LES' services, LER is a level removed from the concerns raised by Staff that LES' divided loyalty might result in LES acquiring better terms for LER than for Laclede. The terms LES obtains and the approach LES takes are properly within LES' control, not LER's. Moreover, with respect to Staff's example, LES could not obtain better or worse pricing for Laclede on gas supply purchases, because LES does not enter

into purchase contracts for Laclede; this duty is handled by Laclede personnel. Instead, LES merely manages gas supply administrative functions for Laclede.

14. In any event, if the Staff is concerned about the performance of LES, discovery requests should be targeted at LES regarding LES' activity. Although LES is a non-regulated entity, Laclede and LES have committed to cooperating with Staff in its investigation. As Staff stated in paragraph 11 of its Motion "[c]ertainly questions related to the services that LES will be providing to LER are designed to produce information relevant to Staff's investigation." Without agreeing to the foregoing, Laclede maintains that, even if Staff's assertion is true, information on services LES provides would be relevant, but information on LER is not. And LER's employees, bank statements, board minutes, customer list or services are certainly not relevant to the services provided by LES.

15. Further, even the Commission's own affiliate transaction rule would not support Staff's foray into LER's business. The Commission's affiliate transaction rule is intended to govern transactions between regulated utilities and their unregulated affiliates. This rule has been stayed as it applies to Laclede and other utilities while on appeal. But even if it was effective, this rule would not support the Staff's attempt to reach LER. Section 6 of the rule, entitled Access to Records of Affiliated Entities, provides for the books and records of affiliates to be available "when required in the application of this rule." Since the rule applies to transactions between the regulated gas corporation and its affiliate, the rule could be construed to require Laclede to make available LES' books and records. However, since there are no transactions between Laclede and LER, the rule could not be construed to require that LER's books and

records be made available. In short, in requesting the LER information, the Staff seeks to go beyond even the discovery boundaries authorized by the Commission's own affiliate transaction rule -- an authorization that, in and of itself, is currently subject to a judicial stay. In addition to running afoul of this requirement, the result is also inconsistent with Section 393.140(12), which provides that other businesses conducted by gas corporations are not subject to Chapter 393 and need not make reports of their business.

Conclusion

16. In this investigation of the formation of LES by Laclede, the Commission should deny Staff's Motion to compel Laclede to produce information on LER's employees, bank statements, board minutes, customer list or services. The information sought in these five DRs is completely outside the scope of the investigation, as ordered by the Commission. Further, even if the scope of the investigation is expanded to cover the concerns expressed by Staff in its Motion, the information on LER requested by Staff is still irrelevant. LER's employees, bank statements, board minutes, customers and services cannot possibly lead to relevant evidence in this case. Even the Commission's affiliate transaction rule would not support the far-ranging requests of LER that Staff has attempted. As stated herein, Laclede and LES intend to cooperate fully in providing all of the information necessary and relevant to a determination of the issues that have been raised by Staff as a result of Laclede's formation of an affiliate to help administer gas supply tasks for Laclede affiliates. Laclede asks only that Staff's information requests focus on the information that is, in fact, relevant to those issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Response has been duly served upon the General Counsel of the Staff of the Public Service Commission by fax, email or by placing a copy thereof in the United States mail, postage prepaid, on this 4th day of October, 2002.

James M. Fisher