

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

In the Matter of Laclede Gas Company's)
Purchased Gas Adjustment (PGA) to be) Case No. GR-2005-0203 and
Audited in its 2004-2005 and 2005-2006) GR-2006-0288
Actual Cost Adjustment)

INFORMATION STAFF REQUESTS FROM LACLEDE

COMES NOW, the Staff of the Public Service Commission and pursuant to the Commission's March 5, 2009 Order, files this pleading setting forth the information Staff seeks from Laclede:

INFORMATION SOUGHT

1. The information sought from Laclede Gas Co. (Laclede) is substantially the same as the information sought in Staff's September 18, 2008 Motion to Compel. Laclede has produced no information since the Commission's October 20, 2008 Order Granting Motion to Compel that is responsive to Staff's request:

- a) ** [REDACTED]
[REDACTED]
[REDACTED] **
- b) ** [REDACTED]
[REDACTED]
[REDACTED] **
- c) ** [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED].**

d) ** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]**

e) ** [REDACTED]

(1) [REDACTED]

(2) [REDACTED]

(3) [REDACTED]

(4) [REDACTED]

[REDACTED]**

RELEVANCE

2. The ** [REDACTED] [REDACTED]** that were effective for the months of January and April 2005 and January and April 2006 requested in a) and b) are relevant to the Staff's prudence review because, unlike any other supply contract produced in discovery, ** [REDACTED]

[REDACTED]

[REDACTED] **

3. The ** [REDACTED] ** requested in c) will summarize the ** [REDACTED] [REDACTED] ** identified in a) and b) above and are relevant for the same reasons.

** [REDACTED]

[REDACTED] ** It is highly likely LER maintains such a record that is also easily printed and could be easily produced. * [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **

4. ** [REDACTED] ** requested in d) is relevant to the prudence review because a ** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. ** [REDACTED]

[REDACTED]

INFORMATION PRODUCED

6. As demonstrated by Exhibit A attached, before the Commission issued its Order on October 20, 2008, directing Laclede to produce documents, ** [REDACTED]

[REDACTED]

NP

[REDACTED] ** Laclede has refused to comply with the Commission's order by producing any other documents responsive to a), b), or c) above.

7. As demonstrated by Exhibit A, before the Commission issued its Order directing Laclede to produce employee bonus information, Laclede produced cash bonus information for three employees. Laclede has refused to provide information regarding compensation committee minutes or stock bonuses for any employees, and has failed to provide any information regarding cash or other bonuses for ** [REDACTED].**

8. On February 5, 2009, Laclede produced ** [REDACTED]

[REDACTED]

[REDACTED] ** This information is not responsive to the Commission's October 20, 2008 Order compelling production or the Commission's January 21, 2009 Order again directing Laclede to produce information.

PROCEDURAL STATUS

9. On September 18, 2008, the Staff filed a Motion to Compel Laclede to produce documents for copying and inspection.

10. On September 29, 2008, Laclede filed a response to Staff's Motion claiming the following general defenses:

- a) Laclede has already committed to providing additional bonus information and Staff's request is moot;
- b) Producing LER documents is contrary to the Commission's affiliate rules;
- c) Staff is trying to circumvent the normal ACA process;
- d) Staff's request is unduly burdensome and seeks information that is not relevant.

11. The Commission should note that any and all defenses not timely raised by Laclede in its response to Staff's September 18, 2008 Motion to Compel are waived. 4 CSR 240-2.080(18) and Supreme Court Rules 58.01(c)1 and 3 and 61.01(a).

DISCUSSION

The Commission regulates monopoly utility companies providing an essential service to prevent abuse of monopoly power. Traditionally the Commission was charged with assuring that these monopolies treat their customers fairly and non-discriminatorily. §393.130. More recently, utilities expanded beyond their traditional roles into holding companies with unregulated operations, this Commission and many others as well as the Federal Energy Regulatory Commission adopted standards of conduct to control abuse.

[As monopoly utilities expand this creates] a profit-producing scheme among public utilities termed "cross-subsidization," in which utilities abandon their traditional monopoly structure and expand into non-regulated areas. This expansion gives utilities the opportunity and incentive to shift their non-regulated costs to their regulated operations with the effect of unnecessarily increasing the rates charged to the utilities' customers. "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. [*Atmos Energy Corp. v. Public Service Com'n*, 103 S.W.3d 753 \(Mo. 2003\)](#)

In this situation, Staff seeks information to assure Laclede is not discriminating in favor of its gas marketing affiliate, LER, and that, in doing so, it is not **limiting competition from other gas marketers**. The wholesale market for natural gas is unregulated and for that market to work and thrive, there must be competition. If other gas marketers cannot compete with LER because of Laclede's manipulation of the market competition cannot thrive. Permitting Laclede

to ignore the Commission's discovery rights limits the Commission's ability to assure fair play among gas marketers for the St. Louis area, and permits Laclede to take advantage of both its big and small customers.

The Commission's discovery power is statutorily based. In § 393.130.3, which prohibits any form of discrimination, the Commission may investigate to assure both customers and competitors are treated fairly by this state-created monopoly:

3. No gas corporation, . . . shall make or grant any undue or unreasonable preference or advantage to any person [or] corporation, . . . or subject any particular person, [or] corporation . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

In an early pre-hearing conference Judge Jones astutely posed to Laclede the question - if you [Laclede] have nothing to hide where is the harm? Laclede's over-the-top responses, its unyielding refusal to produce Commission-ordered relevant documents, its name calling, and its attacks on Commission authority can only lead to the conclusion Laclede has a lot to hide. Transparency is crucial to the Commission's oversight of regulated utilities and their transactions with affiliates.

Staff accepts that Laclede may earn a profit from both regulated and unregulated businesses. What Laclede is prohibited by statute from doing is abusing its monopoly status to squash competition and take unfair advantage of its customers. Staff urges the Commission to renew its earlier order to ensure Laclede is operating lawfully.

In *Atmos Energy Corp. v. Public Service Commission*, the Court found two reasons for Commission inquiry into the activities of a regulated utility. A regulated utility is prohibited from discriminating in favor of its affiliate. "[S]ection 393.140(11) . . . prohibits a utility from charging or extending to any person or corporation any form of contract or agreement . . . except as [are] regularly and uniformly extended to all persons and corporations . . ." [103 S.W.3d 753](#)

[\(Mo. 2003\)](#). The Commission may engage in discovery to determine whether such anti-competitive activity is occurring. Staff’s questions are relevant to this inquiry.

In *Atmos*, the Court also noted “where the affiliate is not one ‘substantially kept separate’ from the utility, the PSC is authorized to ‘inquire’ [through discovery] into certain aspects of the affiliates operations as they relate to the capitalization, debts, expenses, **etc.** [fairly and justly to be awarded to or borne by] the utility. By requiring [LER] to maintain records of . . . transactions with [Laclede] [the Commission asks] no more than is prescribed in section 393.140(12). *Id.* at 764.

Under section 393.140(11)¹ and (12)² the Commission has the statutory authority to require both Laclede and LER to maintain and produce records of transactions.

A utility’s costs are presumed prudent when parties deal with arms length transaction. But when the dealings are between affiliates, section 393.140(11) and 4 CSR 240-40.015 clearly remove any presumption of prudence and place the burden of record keeping and compliance with the law on Laclede Gas Company. “It is generally held that...the utility bears the burden of proving that expenses incurred in transactions with affiliates are reasonable.”³ “Throughout the

¹ [The Commission shall] [h]ave power to require every gas corporation, to file with the commission and to print and keep open to public inspection schedules showing all forms **

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² [The Commission’s] powers shall include also the right to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the ownership, operation, management or control of such gas plant, electric plant, water system or sewer system as distinguished from such other [affiliate] business.

³ *Boise Water Corp. v. Idaho Public Util. Commission [Boise Water I]*, 97 Idaho 832, 555 P.2d 163, 167-169 [1976]; *Boise Water Corp. v. Idaho Public Util. Com’n. [Boise Water II]*, 99 Idaho 158, 578 P.2d 1089, 1090, 1091 [1978]; *Washington Water Power v. Idaho Public Util.*, *supra* note 26, 617 P.2d at 1251 and *Southwestern Bell v. State Corp. Com’n of Kan.*, 4 Kan.App.2d 44, 602 P.2d 131, 133 [1979].

United States it is recognized that a public utility's dealings with affiliates require thorough investigation and close scrutiny by a public utility commission."⁴

WHEREFORE, the Staff moves the Commission to order Laclede to recognize the Commission's statutory discovery powers and comply with its *Order Granting Motion to Compel* and provide all the documents requested as well as the bonus calculations and supporting criteria and documents for the employees identified above.

Respectfully submitted,

/s/ Steven C. Reed

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⁴ *Turpen v. Oklahoma Corp. Comm.*, 769 P. 2d 1309, 1320 (Ok. Sup. Ct. 1988) citing *United States v. Western Elec. Co., Inc.* 392 F.Supp. 836,853 [D.D.C. 1984] See also *Smith v. Illinois Bell Teleph. Co.*, 282 U.S. 133, 157, 51 S.Ct. 65, 72, 75 L.Ed. 255, 267 [1930]; *General Tel. Co. of Upstate N.Y. v. Lundy*, 17 N.Y.2d 373, 271 N.Y.S.2d 216, 222-23, 218 N.E.2d 274, 278-279 [1966]; *New England T. & T. Company v. Dept. of Pub. Util.*, 371 Mass. 67, 354 N.E.2d 860, 868-869 [1976]; *Washington Water Power v. Idaho Public Util.*, 101 Idaho 567, 617 P.2d 1242, 1247-1248, 16 A.L.R.4th 435 [1980]; *Pacific Telephone and Telegraph Co. v. Flagg*, 189 Or. 370, 220 P.2d 522, 529-530 [1950] and *Town of New Shoreham v. R.I. Pub. Util. Com'n.*, 464 A.2d 730, 733 [R.I.1983].

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, electronically mailed or transmitted by facsimile to all counsel and parties of record this 12th day of March, 2009.

/s/ Steven C. Reed _____

APPENDIX A

**HAS BEEN DEEMED HIGHLY
CONFIDENTIAL IN ITS ENTIRETY**