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Witness: *Charles R. Hyneman*
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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

REBUTTAL TESTIMONY

OF

CHARLES R. HYNEMAN

LACLEDE GAS COMPANY

FILE NO. GC-2011-0098

Jefferson City, Missouri
April 2011

** Denotes Highly Confidential Information **

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1 **REBUTTAL TESTIMONY**
2 **OF**
3 **CHARLES R. HYNEMAN**
4 **LACLEDE GAS COMPANY**
5 **FILE NO. GC-2011-0098**

6 Q. Please state your name and business address.

7 A. Charles R. Hyneman, Fletcher Daniels State Office Building, 615 East 13th
8 Street, Kansas City, Missouri.

9 Q. By whom are you employed and in what capacity?

10 A. I am a Regulatory Auditor with the Missouri Public Service Commission
11 (Commission).

12 Q. Are you the same Charles R. Hyneman who filed direct testimony in this
13 proceeding?

14 A. Yes.

15 Q. What is the purpose of your rebuttal testimony?

16 A. I respond to the direct testimony of Laclede witnesses Patricia A. Krieger,
17 Glenn W. Buck and Michael T. Cline. I also support the Missouri Public Service Commission
18 Staff's (Staff) complaint against Laclede Gas Company (Laclede) and describe Laclede's
19 noncompliance with 4 CSR 240-40.015 Affiliate Transactions (Affiliate Transactions Rule)
20 and 4 CSR 240-40.016 Marketing Affiliate Transactions (Marketing Affiliate Transactions
21 Rule) (collectively "the Rules")

22 **Laclede witness Patricia A. Krieger**

23 Q. According to Ms. Krieger, what is the purpose of her direct testimony?

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1 A. It is “to provide the Commission with background on the events and
2 circumstances surrounding the origination of the Cost Allocation Manual (CAM) as part of
3 the Stipulation and Agreement approved by the Commission in Case No. GM-2001-342
4 (“2001 S&A”).”

5 Q. Does Ms. Krieger demonstrate that Laclede’s most current CAM, its 2004
6 CAM, complies with the Rules and require asymmetrical pricing for the purchase or sale of
7 energy related goods and services from an affiliate?

8 A. No she does not.

9 Q. In her testimony is Ms. Krieger able to cite a Commission case in which
10 Laclede has submitted its CAM for Commission approval?

11 A. No. Ms. Krieger does not provide a Commission case number in which
12 Laclede applied to the Commission for CAM approval. Instead Ms. Krieger argues
13 Commission approval of the Stipulation & Agreement in GM-2001-342 constituted approval
14 of Laclede’s CAM.

15 Q, Do you agree?

16 A. No, as I will discuss later Laclede has never submitted a final or complete
17 version of its CAM to the Commission for approval.

18 Q. Does Ms. Krieger deny that Laclede has engaged in “transactions involving the
19 purchase of information, assets, goods or services by the regulated gas corporation from an
20 affiliated entity,” which require Laclede to use a Commission approved CAM 4 CSR 240-
21 40.015(4)(D)?

22 A. No.

1 Q. At page 3 of her direct testimony Ms. Krieger describes the primary purpose of
2 Case No. GM-2001-342, which was resolved through the 2001 S&A, was to obtain
3 Commission approval for Laclede's corporate restructuring. Now Ms. Krieger suggests the
4 Commission's Order also involved Commission approval of Laclede's CAM. Do you agree
5 the Commission approved Laclede's CAM?

6 A. No. There is no question whatsoever that Laclede has never filed for
7 Commission approval of its CAM. If it did, it could provide a case number and a copy of its
8 filing requesting Commission approval. It has not provided such a document.

9 Q. Despite the fact Laclede has never submitted a complete CAM for Commission
10 approval, in her direct testimony Ms. Krieger discusses at length what she describes as Staff's
11 insistence on Laclede's use of a CAM, Staff's participation in the development of the CAM,
12 and the Commission's order approving the S&A in GM-2001-342. What does all of this have
13 to do with this case?

14 A. Very little. Ms. Krieger suggests, incorrectly, that Staff is the party that is
15 responsible Laclede's use of a CAM.

16 Q. Do you agree Staff is responsible for Laclede's CAM?

17 A. No. It was Laclede, and in fact, Ms Krieger herself, who first proposed to the
18 Commission that Laclede use a CAM. Ms. Krieger's testified in Case No. GM-2001-342 that
19 it was Laclede who voluntarily came forward with a CAM at the time it filed its direct
20 testimony in that case. The Company claims it did so in an effort to address, up front, any
21 concerns that might exist regarding potential cross-subsidies taking place between the
22 regulated gas company and its unregulated affiliates subsequent to the completion of the
23 Proposed Restructuring.

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1 Q. Does Ms. Krieger indicate the CAM attached to her testimony was an
2 incomplete and undeveloped document?

3 A. The term she used was “not excessively burdened with technical detail”. At
4 page 2 lines 1-11 of her surrebuttal testimony in Case No. GM-2001-342 Ms Krieger stated:

5 The CAM initially proposed by the Company, while not excessively
6 burdened with technical detail, documented the overall policy for,
7 among other things, the pricing standards and the allocations of direct
8 and indirect costs. Even with these efforts, the Company is always open
9 to suggestions on how the CAM could be further improved and will
10 continue to work with the parties toward that end.

11 Q. Did that original CAM nonetheless include asymmetrical pricing requirements
12 for **all** affiliate transactions related to facilities or services provided to Laclede by an affiliate
13 such as Laclede Energy Resources, Inc. (LER)?

14 A. Yes. Interestingly the CAM that was attached to Ms. Krieger’s testimony in
15 GM-2001-342 (the February 2001 CAM), is the only CAM ever actually filed with the
16 Commission. This CAM, which is also attached to Ms. Krieger’s direct testimony in this
17 case, actually does contain asymmetrical pricing provisions for all affiliate transactions in
18 which the facility or services are provided from an affiliate to Laclede.

19 Q. Ms Krieger states her understanding is that the Commission approved
20 Laclede’s CAM when it approved the 2001 S&A. Do you agree with her conclusion that in
21 approving the 2001 S&A the Commission approved Laclede’s CAM?

22 A. No. The S&A required the CAM be “in the form contained in the direct
23 testimony of Patricia A. Krieger” and contained only a description of other things the CAM
24 should contain when it was submitted to Staff and others within 120 days after the
25 Commission issued its order. The Commission never received a final version. Since the

1 revised and supplemented CAM was never submitted to the Commission, I do not agree that
2 the Commission's approval of the S&A constituted approval of Laclede's CAM.

3 Further, Laclede admits in the December 2001 CAM that it does not comply with the
4 Commission's rules: "[t]he present version of the CAM addresses some, but not all of the
5 regulations adopted by the Commission in its recent Rulemaking on affiliate transactions.
6 Those rules are currently under appeal and their implementation has been stayed during the
7 process. However this CAM can readily be updated to reflect the outcome of any final
8 judicial resolution of the Commission's affiliate transactions rules." (Laclede February 2001
9 CAM p. 1)

10 Q. At page 8 of her direct testimony in this complaint case Ms Krieger states that
11 when the Commission approved the 2001 S&A that it also explicitly approved "most of the
12 substantive provisions of the CAM as well as the specific process for completing the more
13 detailed descriptions of how particular goods and services should be priced, as Staff had
14 recommended in its testimony." Does the Staff agree with this assertion?

15 A. First, the Staff never addressed in Case No. GM-2001-342 how affiliate
16 transactions should be priced. To the extent Ms. Krieger is indicating otherwise, the Staff
17 would adamantly disagree. Her belief that the Commission's approval of the 2001 S&A is an
18 explicit approval of a draft CAM document seems to be a legal conclusion. I have read the
19 Commission's Report and Order and find no explicit approval of the CAM. Additionally,
20 Ms. Krieger's statements appear to be in direct contradiction to statements by Laclede's
21 internal auditors, as described below.

22 In a March 5, 2008 document sent to Mr. Glenn W. Buck from Laclede's
23 Internal Audit Supervisor Craig L. Franklin and Director of Internal Audit, D. Michael

1 Gibson, under the Heading “Subsequent Period Audit Considerations” the auditors conclude:
2 “Since Laclede’s CAM was created prior to the ATR and the Commission has never officially
3 approved Laclede’s CAM, there continues to be opportunities for interpretation regarding
4 how or if Laclede is currently in compliance with the ATR.” The document is attached as
5 Schedule 1 to this testimony.

6 Also included in the Schedule 1 is a Audit Planning Memorandum
7 (FY 2006\C-1-06 Cost Allocation Manual (CAM)\Audit Planning Memorandum.doc)
8 produced by Laclede’s Internal Audit Department. In this document it notes at page C.1.1
9 that the “Commission has never given their official approval to Laclede’s CAM.”

10 Q. Ms. Krieger suggests the Commission approved substantive provisions of the
11 CAM. Do you agree?

12 A. No. If the Commission approved anything it is that the “CAM shall be in the
13 form contained in the direct testimony of Patricia A. Krieger.

14 Q. Is the CAM Laclede subsequently submitted to Staff and the Office of the
15 Public Counsel (OPC) in the form contained in the direct testimony of Patricia A. Krieger?

16 A. No. It is not. The CAM in Ms. Krieger’s direct testimony in Case No. GM-
17 2001-342 actually contained the asymmetrical pricing provisions for affiliate transactions in
18 which Laclede receives facilities or services from affiliates. So, if the Commission did
19 approve a CAM in approving the S&A in GM-2001-342, which they did not, it would have
20 approved a CAM with asymmetrical pricing provisions for all affiliate transactions involving
21 purchases from LER. In the February 2001 CAM that Ms. Krieger asserts was approved by
22 the Commission, there was no distinction made between regular affiliate transactions and
23 “energy-related” affiliate transactions.

1 Q. Does the rule require a utility company to file its CAM with the Commission
2 annually?

3 A. No. The rule requires the CAM, which sets forth cost allocation, market
4 valuation and internal cost methods and annual reporting of affiliate transactions
5 (Annual Report) be provided to the Staff and the OPC. Section 4 CSR 240-40.015(3)(E)
6 requires that a utility company include in its annual CAM the criteria, guidelines and
7 procedures it will follow if a customer requests information from the regulated gas
8 corporation about goods or services provided by an affiliated entity. Despite the fact that this
9 information is in Laclede's unapproved 2004 CAM, Laclede has not included this required
10 information in its annual CAM and or Annual Report.

11 Q. Does Laclede include CAM in its Annual Report?

12 A. This "Annual Report," which Laclede submits to Staff and OPC is not
13 Laclede's CAM nor a replacement for its CAM. It is an extremely limited summary of
14 Laclede's affiliate transactions for the prior twelve months.

15 Q. Does this comply with 4 CSR 240-40.015(3)(E)?

16 A. No. This does not satisfy the rule's requirements.

17 Q. Does Laclede have to comply with the Commission's affiliate transactions
18 rules?

19 A. Yes. In fact, Laclede's own statements on page 1 of both its February and
20 October 2001 CAMs that the CAM "could readily be updated to reflect the outcome of any
21 final judicial resolution of the Commission's affiliate transactions rules indicates Laclede
22 understands it is required to comply with the Commission's affiliate transactions rules.

23 Q. Did Laclede ever submit its 2004 CAM for Commission approval?

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1 A. No. Laclede does not and cannot cite a case in which it filed for Commission
2 approval of its 2004 CAM, which is the CAM developed after the Rules became applicable to
3 Laclede.

4 Q. As it relates to Laclede's CAM, what did the Staff agree to in the 2001 S&A?

5 A. According to the 2001 S&A the Staff agreed to the following and only the
6 following as it relates to Laclede's CAM:

7 1. The Staff supported the "form" of the February 2001 CAM included
8 in Ms. Krieger's direct testimony in Case No. GM-2001-342;

9 2. The CAM was to be submitted on or before April 15, 2003 and on
10 an annual basis thereafter;

11 3. The February 2001 CAM would be revised and supplemented no
12 later than December 12, 2001 (120 days after the Commission
13 approved the 2001 S&A);

14 4. The CAM would include specific information required to
15 administer, audit and verify the Transfer pricing and Costing
16 Methodologies set forth in Section VII of the CAM or such other
17 Transfer Pricing and Costing Methodologies as may become applicable
18 to the Company in the future. This information is listed at Section VI
19 Cost Allocation Manual Conditions Paragraph 1 (a) through 1(g).

20 Q. Did the Laclede original February 2001 CAM include a description of how it
21 would price its affiliate transactions?

22 A. Yes.

23 Q. Please describe the affiliated transaction pricing methodology included in
24 Laclede's original February 2001 CAM.

25 A. The only description of how affiliate transactions were to be priced is included
26 in the first eight lines at page 6 Section VIII Transfer Pricing/Costing Methodology
27 paragraph A (i) and A (ii). This CAM language states that when an affiliate provides services
28 to Laclede, the price shall be the lesser of fair market price (FMP) or fully distributed cost to
29 Laclede to provide the goods or services to itself Fully Distributed Cost (FDC). When

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1 services are provided by Laclede to an affiliate, they will be priced at the tariff rate, or if there
2 is no tariff rate, Laclede's FDC, unless an alternative method for determining such charges is
3 provided by law.

4 Q. When Laclede proposed its February 2001 CAM was Laclede subject to the
5 Affiliate Transaction Rules?

6 A. No.

7 Q. Did Laclede subsequent to the 2001 S&A become subject to the Commission's
8 Affiliate Transaction Rules?

9 A. Yes.

10 Q. Do the Affiliate Transaction Rules, which became effective for Laclede after
11 the 2001 S&A require a different method for pricing affiliate transactions than Laclede's
12 February 2001 CAM?

13 A. Yes. Actually, Laclede's February 2001 CAM pricing provision for
14 transactions in which an affiliate provides services to Laclede (priced at the lower of FMP or
15 FDC) is consistent with the Affiliate Transaction Rules. However, the February 2001 CAM's
16 provisions that transactions involving the provisions of facilities or services by Laclede to an
17 affiliate at tariff rate or FDC was not in compliance with the Rules as they became effective.
18 Once the Rules became effective, Laclede was required to price these transactions at the
19 higher of the FMP or Laclede FDC. Therefore, once Laclede became subject to the Rules, it
20 should have revised its CAM and filed its CAM at the Commission. Alternatively, Laclede
21 could have filed its CAM for approval and sought a Commission waiver from the
22 asymmetrical pricing methods prescribed by the Rules, if it so desired.

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1 Q. Did Laclede's February 2001 CAM ever make distinctions between different
2 types of affiliate transactions for shared services, energy-related, or other transactions?

3 A. No. All affiliate transactions in the February 2001 CAM are classified as
4 either provided to an affiliate or provided to the utility. The Staff believes this is an
5 appropriate classification. Laclede, however, unilaterally decided to create additional
6 classifications of affiliate transactions.

7 Q. Can any action on Staff's part substitute for Commission approval of the
8 CAM?

9 A. No, based on discussions with counsel and my experience with the
10 Commission, I understand that the Staff does not have authority to modify or waive
11 Commission Rules. Neither does the Staff have the authority to modify the provisions of a
12 Commission approved Stipulation and Agreement.

13 Q. At page 9 line 1 of her direct testimony, Ms. Krieger states that to the best of
14 her knowledge the Staff did not express any concerns whatsoever regarding any provision of
15 the finalized 2001 CAM. Is this a true statement?

16 A. Staff can't speak to Ms. Krieger's knowledge. However, she certainly should
17 have such knowledge.

18 Q. Please explain.

19 A. As noted above, Schedule 1 to this testimony is a copy of a Laclede Audit
20 Planning Memorandum produced by Laclede's Internal Audit Department. It notes at
21 page C.1.1 that in a "Unanimous Stipulation and Agreement resulting from GR-2007-0208 on
22 July 26, 2007, Laclede and Staff were to conduct meetings to discuss Laclede's interpretation
23 and compliance with the Affiliate Transaction Rules. These meetings began during the first

1 quarter of fiscal 2008 and are expected to continue throughout fiscal 2008. The CAM is being
2 revised again based on the agreements made during these discussions with the PSC staff. As
3 of January 2008, a final version is not complete.”

4 Q. Did Ms Krieger file testimony in Case No. GR-2007-0208?

5 A. Yes.

6 Q. Did Staff raise issues about Laclede’s affiliate transactions in that case?

7 A. Yes. It was a significant auditing issue. Staff witness Mark Oligschlaeger
8 filed direct testimony in Case No. GR-2007-0208 advising the Commission on Staff’s
9 findings after a limited review of Laclede’s Annual Report of its affiliated transactions. Even
10 though the Staff only conducted a limited review of Laclede’s affiliated transactions during
11 this rate case, Staff had major concerns including: cost allocation,¹ the cost allocation
12 process,² and the reasonableness of the amount charged to Laclede Gas.³

13 Q. How did the Staff propose to address its affiliate transaction concerns in this
14 proceeding?

¹ 1) Laclede Group executives with oversight responsibilities over both Laclede Gas and non-regulated Laclede Group subsidiaries are charging only a minimal amount of their time to non-regulated operations;

² The Laclede Group’s allocation process currently assigns many common/overhead costs to its affiliates based upon an overall labor allocator. This allocator currently assigns approximately 98.9% of the Laclede Group’s total labor costs to Laclede Gas. Therefore, to the extent Laclede Group executives and employees are not charging their time accurately to the regulated and non-regulated affiliates, this problem carries over in large degree to the allocation of the Laclede Group’s common/overhead costs; and

³ Some of the common cost allocations of the Laclede Group on their face appear to be unreasonable. As an example, Laclede Group data processing costs were allocated 99.94% to the regulated Laclede Gas entity. For fiscal year 2006, Laclede Gas was allocated \$5.8 million of common data processing costs. In contrast, Laclede Energy Resources, Inc. (LER), a Laclede Group gas marketing subsidiary with total revenues of approximately \$690 million in fiscal year 2006, was allocated \$500 for data processing services during that same time period;

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1 A. Mr. Oligschlaeger testified that Staff made an adjustment to an Executive Vice
2 President's salary and recommended the Commission order a separate investigatory docket be
3 opened to allow an in-depth review of Laclede's affiliate transactions.⁴

4 Q. Were the issues between Staff and Laclede addressed in the Stipulation and
5 Agreement in Case No. GR-2007-0208?

6 A. Yes. Paragraph 23 of the Unanimous Stipulation and Agreement to Case No.
7 GR-2007-0208, page 21, paragraph 23, Cost Allocation Manual/Affiliate Transactions states
8 that:

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

17 Q. Should Ms. Krieger have been aware of these issues from the Commission's
18 Report and Order?

19 A. Yes. In its Order Approving Unanimous Stipulation and Agreement and
20 Authorizing Tariff Filing at page 3 the Commission noted the issues between Laclede and the

⁴ As discussed in the direct testimony of Staff witness Harrison, the Staff has proposed an adjustment to the salary of the Laclede Gas Executive Vice-president/LER Vice-president, Mr. Kenneth J. Neises, in order to allocate a more reasonable portion of this cost to The Laclede Group's non-regulated operations. Beyond this adjustment, however, the Staff believes that a more detailed review of The Laclede Group's cost allocation process is warranted at this time in light of the concerns cited in this and in Staff witness Harrison's testimony. The Staff recommends that the Commission order that a separate investigatory docket be opened to allow an in-depth review of Laclede's affiliated transactions by the Staff and other interested parties. The Staff's intent in suggesting this new docket be opened is to explore the need for changes to The Laclede Group's current cost allocation system and procedures to allow for a more fair and accurate assignment of The Laclede Group costs between its regulated and non-regulated operations.

1 Staff: Issue No. 10 identified by the Commission was “cost allocation manual and affiliate
2 transactions.”

3 Q. Ms Krieger states that Laclede’s CAM, much like the Commission’s Affiliate
4 Transactions Rules, established pricing standards to govern the transfer of goods and services
5 between Laclede and its affiliates. Do you agree with this statement?

6 A. I agree that both documents established pricing standards. However, Laclede
7 established pricing standards in its CAM that are in direct conflict with the pricing standards
8 in the Rules. The pricing standards included in Laclede’s CAM are not even similar to the
9 pricing standards required by the Commission’s Affiliate Transaction Rules.

10 Q. Please explain.

11 A. The Rules require asymmetrical pricing in 4 CSR 240-40.015 (2) Standards,
12 subparagraph A1 and A2. Subparagraph A1 addresses transactions in which Laclede makes a
13 purchase from an affiliate, subparagraph A2 governs when Laclede makes a sale to an
14 affiliate. Whenever Laclede purchases from an affiliate it has to do a pricing analysis or
15 evaluation. It must determine the fair market price (FMP) of the good or service. It also must
16 determine the fully distributed cost (FDC) to itself to produce or acquire the good or service.
17 Once these two prices or “costs” are identified, Laclede has to select the lower of the two
18 amounts.

19 Q. How does Laclede define fully distributed cost?

20 A. Laclede describes FDC in the December 2001 CAM as: “(1) Laclede Gas
21 Company’s cost of labor, materials and services that can be directly attributed and charged to
22 the asset or service; and (2) an allocated share of Laclede Gas Company’s indirect joint or
23 common labor and administrative and general costs.” (Dec. 2001 CAM; 2004 CAM P. 8(C))

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1 Q. How would FDC apply to purchases or sales of gas supply?

2 A. As it relates to purchasing gas supply, the costs would be how much it would
3 cost Laclede to use its own gas supply buyers, which Laclede currently employs, to purchase
4 the natural gas “for itself.” In the Staff’s opinion, the rules clearly require this type of
5 evaluation.

6 Q. Does Laclede’s 2004 CAM require Laclede to determine its FDC for gas
7 supply purchases?

8 A. No. In direct contradiction to the Rules’ mandatory requirement to evaluate
9 FDC for gas purchases, Laclede’s CAM does not require or even allow for such an evaluation.

10 Q. Does Laclede acknowledge this failure?

11 A. Yes. Laclede admits its CAM precludes any recognition or evaluation
12 whatsoever of how much it would cost Laclede (Laclede’s FDC) to acquire this natural gas
13 for itself and not transact with an affiliate.

14 Q. How does Laclede defend this failure?

15 A. Laclede claims it does not manufacture any product so FDC does not apply to
16 any energy-related affiliate transaction.

17 Q. Do you agree with this evaluation?

18 A. No. Laclede’s 2004 CAM at page 13 describes “energy-related” goods and
19 services as including natural gas supplies, and transportation and storage capacity. Nowhere
20 in the 240-40.015 Affiliate Transactions paragraph (2) Standards, subparagraph A1 and A2 is
21 there any waiver of the requirement to consider FDC in transactions that are “energy-related.”
22 Even if Laclede argues that 240-40.015 (2)(A1)(A2) did not contemplate energy-related
23 affiliate transactions; this argument would be without merit because the Gas Marketing

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1 Affiliate Transaction rules 240-40.016 (3)(A1)(A2) have the exact same pricing standard as
2 240-40.015 (2)(A1)(A2). The Commission's Gas Marketing Affiliate Transaction rules and
3 the pricing standards were specifically written in contemplation of transactions between a
4 regulated utility and a marketing affiliate in purchases and sales of natural gas – the exact
5 transaction Laclede says is not contemplated by the rules.

6 Q. What does Laclede's CAM require for energy related transactions?

7 A. Instead of making the FMP-FDC evaluation required by the Rules,
8 Laclede's 2004 CAM requires that the pricing of "energy-related" goods or services
9 purchased from LER be priced at how Laclede has defined the FMP. Laclede defines the
10 FMP of gas supply purchases for the purposes of these transactions as the "average price of
11 similar purchases made by Laclede, or average price of average price of similar purchases
12 made by other companies from non-affiliated entities entered into at similar times for similar
13 duration and location of such purchases." If, for some reason, Laclede or other firms have not
14 made any purchases of natural gas from non-affiliates at similar times, duration and location
15 as the transaction in question, Laclede's CAM provides a back-up definition of FMP. Under
16 these conditions, FMP is determined by using index prices for the location and period in
17 question (Laclede 2004 CAM page 13).

18 Q. Has Staff approved Laclede's alternate pricing provision?

19 A. No. The Staff does not approve CAMs or provisions in a CAM. Even if Staff
20 approved these provisions, which it has not, Laclede's CAM pricing provisions still violate
21 the Rules. In addition to not having authority to approve CAMs, the Staff also cannot waive
22 compliance with the Commission's rules. Also, as noted above, Laclede's decision to create a
23 new category of affiliate transactions which it calls "energy-related" was not included in any

1 CAM or testimony in Case No. GM-2001-342. It was only sometime subsequent to this case
2 and the 2001 S&A Laclede decided to create this new category.

3 Q. What could Laclede have done if it thought its pricing provisions were an
4 appropriate alternative to the Commission's rules?

5 A. Laclede could have filed for a Variance in accordance with 4 CSR 240-40.015.

6 **Laclede witness Glenn Buck**

7 Q. According to Mr. Buck, what is the purpose of his direct testimony?

8 A. To present evidence regarding Laclede's CAM.

9 Q. Does Mr. Buck present evidence that Laclede uses asymmetrical pricing for all
10 affiliate transactions?

11 A. No.

12 Q. Does Mr. Buck state that Laclede has requested and received a waiver to vary
13 its practices from the requirements of the Rules?

14 A. No.

15 Q. Does Mr. Buck present evidence that Laclede has submitted its CAM to the
16 Commission for approval?

17 A. No.

18 Q. Does Mr. Buck present evidence Laclede submitted its CAM on an annual
19 basis as required by 4 CSR 240-40.0(2)(E).

20 A. No. Instead of filing annually, Mr. Buck states that Laclede directs Staff to the
21 CAM in Staff's possession.

22 Q. Is this the procedure required by or allowed by the rule?

23 A. No, it is not.

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1 Q. Does Mr. Buck indicate Laclede has requested a waiver from the Commission
2 for this procedure?

3 A. No. Instead Mr. Buck states his belief that Staff indicated that it did not need
4 to be sent the CAM itself if there were no changes.⁵

5 Q. Does Mr. Buck even know the name of the Staff member whom he believes
6 made such comments?

7 A. No. Apparently he remembers what Staff said, but he does not remember who
8 on Staff said it. (Laclede's response to Staff Data Request No. 9)

9 Q. Even if Mr. Buck's recollections were accurate and some member of the Staff
10 indicated that he or she did not need to be sent a copy of the CAM, does a Staff have authority
11 to waive a Commission rule or grant a variance from a Commission rule?

12 A. No. Only the Commission can grant a variance, although the Staff might
13 support a request for variance if it were in the public interest to do so.

14 Q. Does Laclede's Annual Report substitute for filing an annual CAM?

15 A. No. Laclede's Annual Report does not provide the information required by the
16 rule.

17 Q. Mr. Buck testifies Staff committed to Laclede to review the CAM and provide
18 feedback and Staff never did so. What have you determined?

19 A. Staff counsel, Lera Shemwell, advises me that, in an attempt to discuss
20 Laclede's CAM, she and Ms. Janis Fischer, Mr. Ryan Kind and Mr. Douglas Micheel met in

⁵ At page 3 lines 8 through 14 Mr. Buck testifies that the Staff agreed to Laclede's decision to not file a CAM with the Commission every year but merely make reference to its CAM. Mr. Buck's sworn testimony states that "As I recall, Staff indicated that it didn't need to be sent the CAM itself each year if there were not changes to it. Staff said doing would just create more unnecessary paper."

1 the Office of the Public Counsel's conference room in June 2003 and had a discussion with
2 Mr. Buck, Mr. Michael Pendergast and Mr. Richard Zucker of Laclede. Staff also met with
3 Aquila and Ameren.

4 Q. What happened in the meeting with Laclede?

5 A. The meeting ended abruptly when Laclede's representatives became angry.
6 Issues regarding the CAM were not resolved.

7 Q. Is there any documentation of this meeting?

8 A. Yes. Attached are Ms. Fischer's notes to the meeting along with her affidavit.

9 Q. At page 4 line 16 through page 5 line 3 Mr. Buck describes his impression of
10 Laclede and Staff discussions associated with Laclede's 2007 rate case, No. GR-2007-0208.
11 What was the basis of these discussions?

12 A. Paragraph 23 (page 21) to the Unanimous Stipulation and Agreement reached
13 in that case requires Laclede, Staff and Public Counsel meet prior to October 27, 2007 to
14 discuss the following issues:

- 15 1. Any issues or concerns the parties may have related to Laclede's
- 16 CAM;
- 17 2. CAM compliance with the Commission's affiliate transaction rules;
- 18 3. Transactions between Laclede and its affiliates.

19 Q. What is the time interval between when those meetings were held and when
20 Mr. Buck filed direct testimony in this case describing his recollection of those meetings?

21 A. According to the Unanimous Stipulation and Agreement the meetings were to
22 be held no later than October 27, 2007. The period of time between October 27, 2007 and
23 March 22, 2011 is approximately 3.5 years.

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1 Q. How did Mr. Buck characterize his recollection of this meeting or meetings
2 held 3.5 years ago?

3 A. Despite one of the mandatory topics of these meetings being issues or concerns
4 the parties may have related to Laclede's CAM, Mr. Buck does not remember Staff
5 expressing any issues related to the CAM. His memory is very clear as to the point that Staff
6 "never discussed any specifics about the CAM or its applicability to gas supply transactions."
7 His recollection is that "most of the discussions centered around Staff's general distaste for
8 affiliate transaction."

9 Q. Does the Staff have evidence that Mr. Buck's memory of discussions held
10 between Staff and Laclede in which Laclede's CAM is discussed is not clear and cannot be
11 relied upon, especially as sworn testimony before the Commission?

12 A. Yes. Mr. Buck testifies that the meeting centered on Staff's general distaste
13 for affiliate transactions. This is in direct contradiction to an internal memo produced by
14 Laclede. In the Laclede Audit Planning Memorandum attached as Schedule 1, which was
15 produced by Laclede's Internal Audit Department, it notes at page C.1.1 that:

16 In a Unanimous Stipulation and Agreement resulting from GR-2007-
17 0208 on July 26, 2007, Laclede and MoPSC were to conduct meetings
18 to discuss Laclede's interpretation and compliance with the Affiliate
19 Transaction Rules. These meetings began during the first quarter of
20 fiscal 2008 and are expected to continue throughout fiscal 2008. The
21 CAM is being revised again based on the agreements made during
22 these discussions with the PSC staff. As of January 2008, a final
23 version is not complete. (emphasis added.)

24 This Memo confirms that not only is Mr. Buck's recollection of these meetings wrong,
25 Laclede had actually begun revising its CAM based on agreements made during these
26 discussions with Staff.

1 **Laclede witness Michael T. Cline**

2 Q. According to Mr. Cline, what is the purpose of his direct testimony?

3 A. Mr. Cline's direct testimony explains Laclede's understanding of the term
4 "fully distributed costs" as it relates to transactions between Laclede and LER. Mr. Cline is
5 also supporting Laclede's counterclaim in this case that Staff's approach to how Laclede and
6 LER should price affiliate transactions is contrary to "the pricing standards endorsed by the
7 parties" to Laclede's CAM and the Commission's Affiliate Transactions Rules.

8 Q. Does Mr. Cline present evidence that Laclede uses asymmetrical pricing for all
9 affiliate transactions?

10 A. No. Mr. Cline instead argues that Laclede has taken both FMP and FDC into
11 account in determining the pricing of affiliate gas purchases and sales as required by the rules.

12 Q. Does Laclede's CAM reflect that?

13 A. No.

14 Q. Does Mr. Cline state that Laclede has explained its approach to pricing energy-
15 related affiliate transactions that "[a]s a practical matter then, FMP provides the proper
16 outcome of an FMP-FDC comparison" to the Commission and requested and received a
17 waiver to vary its practices from the requirements of the rule?

18 A. No.

19 Q. Does Mr. Cline present evidence Laclede submitted its CAM to the
20 Commission for approval?

21 A. No.

22 Q. Does Mr. Cline present evidence Laclede submitted its CAM on an annual
23 basis as required by 4 CSR 240-40.0(2)(E)?

Rebuttal Testimony of
Charles R. Hyneman

1 A. No.

2 Q. Does Mr. Cline indicate Laclede has requested a waiver from the Commission
3 for this procedure?

4 A. No.

5 Q. Has Laclede provided the Staff or the Commission a copy of its CAM since it
6 filed its 2004 CAM in 2004?

7 A. No.

8 Q. As it relates to ratemaking considerations or ratemaking recommendations to
9 the Commission is it possible for the Staff be bound in any way by Laclede's CAM?

10 A. No, it is not possible. Laclede's CAM is a company-produced document that
11 has never been approved by the Commission. Unless ordered by the Commission, the audit
12 Staff would not ever agree to be bound for ratemaking considerations by any company-
13 created document.

14 Q. Does Mr. Cline anywhere in his direct testimony refer to or allude to any actual
15 requirement for the Staff to comply with Laclede's CAM?

16 A. No.

17 Q. At page 12 line 9 of his direct testimony Mr. Cline states that the Staff failed to
18 comply with a CAM it endorsed. Did the Staff ever endorse a Laclede CAM?

19 A. No. The Staff has never endorsed Laclede's CAM. However, for purposes of
20 this case, it really does not matter because the issue is whether the Commission had approved
21 Laclede's CAM. Staff cannot waive Laclede's requirement to seek Commission approval of
22 its CAM.

1 Q. At the time the Staff entered into the Stipulation and Agreement to Case No.
2 GM-2001-342 was Laclede subject to the Commission's affiliate transaction rules?

3 A. No. Laclede presented testimony in that case that it was not subject to the
4 Commission's affiliate transaction rules at that time. This case took place in 2001. It is my
5 understanding that Laclede challenged the legality of the Commission's Affiliate Transactions
6 rules in court. It was not until Laclede lost its argument in the Missouri Supreme Court in
7 2003 that it became subject to the rules.

8 Q. Does the Supreme Court ruling supersede Laclede's earlier CAMs?

9 A. Yes. And this fact is even recognized by Laclede in its February 2001 CAM.
10 At page 9 Section X of Laclede's February 2001 CAM it states:

11 X. EXCEPTIONS TO APPLICATION OF METHODOLOGIES

12 The methodologies set forth in this CAM provide general guidelines to
13 govern how Laclede Gas Company will allocate costs to or pay for
14 services received from or provided to affiliates. Such guidelines shall
15 not be applicable in the even another methodology is prescribed by law
16 for allocating costs to or pricing such services. Laclede Gas Company
17 may also employ a different allocation or pricing methodology than
18 those described herein in the event that it determines that application to
19 the methodologies or costing principles described herein would not be
20 in the best interests of its utility customers, provided that Laclede Gas
21 Company shall maintain information sufficient to show how costs
22 would have been allocated to such services pursuant to the
23 methodologies set forth in this CAM, and provided further that such
24 alternative methodology will be subject to review and adjustment in
25 any subsequent rate proceeding. [emphasis added]

26 Q. What is the effect of the language in Section X of Laclede's February 2001
27 CAM?

28 A. It is clear that Laclede only considered this CAM to provide general
29 guidelines. It is difficult to understand why, ten years later, in contested rate cases, Laclede
30 would try to hold the Staff accountable to the terms and conditions of this document, which

Rebuttal Testimony of
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1 1) was never approved by the Commission, 2) is in direct conflict with the Commission's
2 Affiliate Transaction rules, 3) does not contain any affiliate transaction pricing methodologies
3 "endorsed" by the Staff and 4) is a document that, Laclede itself admits, only contains
4 "general guidelines, which Laclede can change on its own volition.

5 Q. At pages 3 and 4 of his direct testimony does Mr. Cline admit that Laclede
6 does not make the required comparison between FMP and FDC, as is strictly required by the
7 affiliate transaction rules for Laclede's energy-related affiliate transactions?

8 A. Yes.

9 Q. At page 2 of his testimony Mr. Cline states that Staff alleges that Laclede is not
10 complying with the asymmetrical pricing standard. Does Mr. Cline state that Laclede is
11 actually complying with the asymmetrical pricing standard?

12 A. No. At page 2 line 16 through page 3 line 2, Mr. Cline correctly states that the
13 Rules require a comparison between FMP and FDC and that Laclede's CAM does not allow
14 for such a comparison. Mr. Cline does not refute this Staff assertion; he merely states that
15 while Laclede's CAM does not include the required FMP-FDC comparison, Laclede's CAM
16 does not ignore FDC in pricing gas supply transactions.

17 Q. How does Laclede's February 2001 CAM address the requirement to consider
18 FDC in affiliate transactions?

19 A. Laclede's February 2001 CAM does not make a distinction between regular
20 affiliate transactions and "energy-related" affiliate transactions. Laclede's February 2001
21 CAM correctly states that FDC is to be calculated and considered in both sales to affiliates
22 and purchases from affiliates.

1 Q. Does Laclede's current 2004 CAM ignore the specific requirement to consider
2 FDC in affiliate transactions other than "energy-related" affiliate transactions?

3 A. No. Laclede's 2004 CAM at Page 7 Section IX [A] Transfer Pricing/Costing
4 Methodology does not make a distinction between regular affiliate transactions and "energy-
5 related" affiliate transactions. Section IX [A] of Laclede's March 2004 CAM correctly states
6 that FDC is to be calculated and considered in both sales to affiliates and purchases from
7 affiliates.

8 Q. Does Laclede's current 2004 CAM ignore the requirement to consider FDC in
9 affiliate transactions that Laclede classifies as "energy-related" affiliate transactions?

10 A. Yes. Laclede's 2004 CAM at Page 13 Section IX [C] Indirect and Allocated
11 Costs is where Laclede added a whole new scheme for pricing affiliated transactions that was
12 not contemplated in any fashion in the 2001 S&A. Under this new pricing scheme for
13 "energy-related" affiliated transactions, Laclede made the unilateral determination that the
14 FDC rules did not apply. Laclede made the unilateral determination that it would ignore the
15 FDC rules in these types of transactions. What the Staff is finding out now is that Laclede has
16 created a novel theory, which I will refer to as Laclede's "widget theory" to justify its new
17 pricing scheme.

18 Q. What is Laclede's "widget theory" and how does Laclede attempt to justify its
19 failure to consider fully distributed cost and compare this FDC with FMP to determine the
20 appropriate price for "energy-related" affiliate transactions?

21 A. Mr. Cline gives the example at page 3 line 12 of his direct testimony that if
22 Laclede buys a widget from an affiliate and Laclede had the capability to build a widget, then
23 Laclede would be required to consider its cost (FDC) to make the widget and compare this

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1 cost with the FMP of the widget to determine which price applied under the Rules. Mr. Cline
2 then extends his “widget” example to the purchase and sale of natural gas. Mr. Cline says that
3 the requirement to calculate Laclede’s FDC does not exist for natural gas purchases and sales
4 because natural gas LDCs do not physically manufacture the natural gas it purchases and
5 sells. Since Laclede does not physically manufacture the gas, it does not have a cost to
6 acquire the gas for itself. Basically Laclede’s “widget theory” is that Laclede does not have a
7 cost to provide a good or service unless it physically constructed or built that good or service
8 itself.

9 Q. Does this “widget” theory make any sense to you?

10 A. No, none at all. A service is not a widget and Laclede provides natural gas
11 service to 630,000 customers. Laclede has specific costs (cost of service) to provide these
12 services to its customers. This is why Laclede’s rates are based on cost of service.
13 In a rate proceeding Laclede certainly has no problems identifying its costs and it has no
14 problems calculating its cost to acquire gas that it flows through the PGA/ACA mechanism.

15 Q. Please continue.

16 A. To illustrate why this theory does not make sense, one only has to expand the
17 “widget” theory to Laclede Gas Company as a regulated utility. Laclede does not
18 manufacture anything. Therefore, Mr. Cline’s theory, logically extended, would mean that
19 Laclede does not have any cost to itself (FDC) to provide any of the goods and services it
20 provides to its customers. This would include everything from natural gas transportation
21 services to retail customers to customer service (Laclede does not manufacture human
22 beings).

1 In a rate proceeding Laclede certainly has no problems developing its cost to install
2 service lines and mains and to pay employees to provide services. In the same manner, it has
3 no problems calculating its cost to acquire gas that it flows through the PGA/ACA
4 mechanism. Only when it comes to affiliate transactions does Laclede seem to have a
5 problem figuring out its cost to purchase or sell natural gas.

6 Q. Does the ability to calculate a FDC apply only for firms that manufacture the
7 product that it sells, as is implied by Laclede’s “widget theory”?

8 A. No. As is clearly set out in the Rules’ definition of FDC (as noted above), it is
9 a methodology that examines all costs of an enterprise in relation to all the goods and services
10 that are produced. Laclede provides or “produces” natural gas services. It is not necessary for
11 Laclede to make the natural gas to have a cost to produce natural gas services.

12 Q. Why is that important for Laclede to perform a FMP – FDC comparison?

13 A. It is required by the rules. The key question that Laclede needs to answer is
14 which is lower, its FDC or the FMP. Laclede is required by the rules to consider this
15 question.

16 Q. Based on your analysis of Laclede’s current 2004 CAM and the affiliate
17 transaction rules are the policies and procedures described in Laclede’s CAM as they relate to
18 “energy-related” goods and services consistent with and in compliance with the
19 Commission’s asymmetrical pricing standards of the Affiliate Transaction Rules?

20 A. No. The failure of Laclede to make an evaluation of its FDC when it makes
21 purchases from and makes sales to LER for “energy-related” goods and services, is a clear
22 and serious violation of the asymmetrical pricing standards. Laclede has no authority to
23 exempt FDC from the required pricing evaluation.

1 Q. Based on your analysis of Laclede's current 2004 CAM and the affiliate
2 transaction rules are there other policies and procedures that violate the Commission's
3 asymmetrical pricing standards of the Affiliate Transaction Rules?

4 A. Yes, but these are beyond the scope of this complaint.

5 Q. Mr. Cline supports Laclede's counterclaim against Staff. What does he
6 address?

7 A. Mr. Cline spends much of his testimony discussing ACA cases. This is not an
8 ACA case. He discusses at length Staff's position in Atmos ACA cases, which are currently
9 before the Commission and are not issues before the Commission in this case.

10 Q. What about Mr. Cline's claims Staff is violating the Rules and Laclede's
11 CAM?

12 A. In its Order Dismissing Counterclaim Of Laclede Gas Company For Failure To
13 State A Claim Upon Which Relief May Be Granted in Case No. GC-2011-0006, the
14 Commission found that

15 Certainly, Staff, as well as the Commission itself, is bound by the
16 requirements of the affiliate transaction rules. If Staff's position is
17 contrary to the standards set forth in those rules, the Commission will
18 reject that position in the appropriate ACA review cases. However,
19 Laclede's claim that Staff's position is inconsistent with the rules and
20 the Cost Allocation Manual does not state a claim that Staff has
21 violated the rules. Since neither the affiliate transaction rules, nor the
22 Cost Allocation Manual, impose any obligation on Staff, the
23 Commission cannot find Staff in violation of either. Simply put,
24 advocating a position before the Commission that may be contrary to
25 the requirements of a Commission rule does not, by itself, place the
26 advocate of that position in violation of the rule.

27 Q. Do you read that Order to reject other of Laclede's arguments?

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1 A. Yes. The Commission indicates if Staff's position regarding affiliate
2 transactions pricing and the utility company's ability to make such transactions is contrary to
3 the Rules, the Commission will address those issues in the appropriate ACA case.

4 Q. Several of Laclede's witnesses indicate Staff has a "general distaste" for
5 affiliate transactions rules (Cline Direct p. 6 at lines 8-12; Buck Direct p.5, line1). Is this your
6 understanding?

7 A. No. My understanding is that Staff is interested in utility companies operating
8 in compliance with the Rules and being transparent when they engage in affiliate transactions
9 so the Staff and Commission may verify compliance with the Rules.

10 Q. At page 12, lines 3-7 of his direct testimony, Mr. Cline questions Staff's
11 motives in making the argument that Laclede should enter into gas sale and purchase
12 transactions with LER at LER's cost is not made in good faith. How do you respond?

13 A. I have not seen any evidence produced that would tend to support any
14 conclusion about Staff's motives. I do have an opinion as a member of Staff and working
15 with other Staff members on this case is that the only motive Staff has is focusing on doing
16 its best to ensure that Laclede comply with the Rules. This too seems to be a matter the
17 Commission will address in ACA cases where it will have the opportunity to question the
18 Staff about its motives, if it so desires. In signing the attached affidavit I am affirming that
19 my testimony is true and correct to the best of my knowledge and belief.

20 Q. Does this conclude your rebuttal testimony?

21 A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION

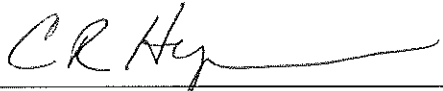
OF THE STATE OF MISSOURI

Staff of the Missouri Public Service)
Commission)
)
Complainant,) Case No. GC-2011-0098
)
v.)
)
Laclede Gas Company)
)
Respondent)

AFFIDAVIT OF CHARLES R. HYNEMAN

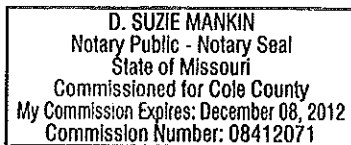
STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Charles R. Hyneman, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 28 pages to be presented in the above case; that the answers in the foregoing Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.



Charles R. Hyneman

Subscribed and sworn to before me this 19th day of April, 2011.





Notary Public

SCHEDULE 1 and 2

HAS BEEN DEEMED

HIGHLY CONFIDENTIAL

IN ITS ENTIRETY