

**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-2006-0208
Actual Cost Adjustment.)	

**PUBLIC COUNSEL'S REPLY TO THE
RESPONSE OF LACLEDE GAS COMPANY**

COMES NOW the Missouri Office of the Public Counsel and for its Reply to the August 15, 2008 Response of Laclede Gas Company (Laclede), states:

1. In response to Public Counsel's filing in support of the Staff's request to order Laclede to produce affiliate transaction records, Laclede accuses Public Counsel of unlawfully attempting to sway the Commission. These absurd claims, and Laclede's vehement efforts to keep its records hidden from Commission scrutiny, further escalate the suspicions surrounding the transactions between Laclede and its affiliate, Laclede Energy Resources (LER). Try as it might to distort the true issue before the Commission, the real issue is the production of documents. Laclede cannot deny the provisions of 4 CSR 240-40.015(6)(A) which require Laclede to "make available the books and records of its parent and any other affiliated entities," which enable the Commission and its Staff to "investigate the operations of a regulated gas corporation or affiliated entity and their relationship to each other for the sole purpose of ensuring compliance with this rule." 4 CSR 240-40-015(6)(B).

2. It is no surprise that Laclede is continuing its aggressive attempts to shield its affiliate transactions. When the Commission first promulgated the affiliate transaction rules, Laclede challenged the Commission's authority to prohibit utilities from providing

a financial advantage to their affiliates. Laclede's arguments were rejected by the *Missouri Supreme Court*, which explained that utilities such as Laclede have an incentive to "milk" the regulated monopoly to subsidize the unregulated affiliate. The Missouri Supreme Court upheld the affiliate transaction rules and concluded:

Respondents concede that the rules regulate certain aspects of the relationship between utilities and their affiliates. In its brief, the PSC explained that the rules are a reaction to 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. 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.** See *United States v. Western Elec. Co.*, 593 F. Supp. 846, 853 (D.D.C. 1984) ("**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 the 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. [emphasis added].¹

The requested affiliate transaction records must be reviewed by the Staff, Public Counsel, and ultimately the Commission, if the Commission is to "police compliance" with the affiliate transaction rules and prevent Laclede from engaging in affiliate transactions that enhance the earnings of its non-regulated marketing affiliate and harm customers of the regulated utility.

3. Another reason it is no surprise that Laclede is vigorously shielding its affiliate transactions is that Laclede's President and CEO has openly boasted, in statements to the investment community, about the manner in which Laclede's non-regulated marketing affiliate is utilizing the gas assets that were developed by the

¹ *State ex rel. Atmos Energy Corp. et al. v. P.S.C.*, 103 S.W.3d 753 (Mo. 2003).

regulated utility. The following quote is from Mr. Douglas Yeager, who simultaneously holds the President and CEO positions of the regulated utility and the holding company that houses the non-regulated marketing affiliate:

[LER is] a very strong entity that we have and it really, as you'll see in a minute, it trades around the gas assets that we have developed and utilized from the gas company.

We have again, experienced management in this regard and these are people we've moved out of the gas company into LER.²

4. Staff and Public Counsel seek only to obtain a complete review of all relevant data, not the limited review of data that Laclede wants the Commission and the Commission's Staff to review. Allowing such limited review, on the basis of Laclede's limited willingness to release data, is akin to forcing a prosecuting attorney to prosecute a case with nothing more than the evidence voluntarily handed over by the criminal defendant.

5. The documents requested by the Staff are necessary before the Staff, Public Counsel, and the Commission can audit the extent to which Laclede has complied with the affiliate transaction rules. Laclede is required under the rules to keep and make affiliate transaction records available for a period of six (6) years. 4 CSR 240-40.016(8). Without the requested documents, the Commission will be unable to fulfill its obligation to "keep informed as to the methods, practices, regulations and property employed by [Laclede] in the transaction of their business" and to fulfill the Commission's obligation to prevent Laclede from engaging in affiliate transactions that are "unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of the law." § 393.140(5) RSMo. In addition, the requested documents are necessary to

² Laclede Group presentation, March 2008, at Edward Jones Mid Cap Utility Conference.

ensure that Laclede has not directly or indirectly by any special rate or other device or method, collected or received from its affiliate greater or lesser compensation for its service than it charges a non-affiliate. § 393.130(2) RSMo; § 393.140(11) RSMo; State ex rel. Atmos Energy Corp. et al. v. P.S.C., 103 S.W.3d 753 (Mo. 2003).

6. Laclede argues in its response that the information sought by Staff “goes well beyond anything that is reasonably required to address the actual issues that have been raised in this case.” Laclede conveniently overlooks the July 9, 2001 agreement it signed, which was approved by the Commission, to allow Laclede to restructure into a holding company, regulated company, and unregulated affiliate. In the approved Stipulation and Agreement in Case Number GM-2001-342, *In the Matter of the Application of Laclede Gas Company for an Order Authorizing Its Plan to Restructure Itself Into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Laclede agreed that its right to object to the production of records *does not include* the right to object to the production of records of affiliates or subsidiaries on the basis of relevance. Instead, Laclede agreed, consistent with the affiliate transaction rules, to make available to Staff and Public Counsel “all books, records and employees of The Laclede Group, Inc., Laclede Gas Company and its affiliates.”

7. In response to Laclede’s accusations that Public Counsel acted unlawfully, it was clearly not the intent of Public Counsel to improperly sway the Commission’s decision on whether to require Laclede to produce records of its affiliate transactions. In Public Counsel’s statutorily defined role of representing the public, Public Counsel has an obligation to represent the interests of Laclede’s customers and make the positions and expectations of consumers known to the Commission, just as it is the obligation of

Laclede's counsel to represent the interest of the shareholders he represents; shareholders which could benefit greatly from transactions that allow Laclede to unlawfully subsidize its affiliate at the expense of Laclede's customers.

WHEREFORE, the Office of the Public Counsel respectfully offers this response and again urges the Commission to order Laclede to produce the records requested by the Staff.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 20th day of August 2008:

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