

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

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
v.	)	Case No. GC-2011-0006
	)	
Laclede Gas Company,	)	
Respondent.	)	

**STATEMENT OF POSITION OF LACLEDE GAS COMPANY**

**COMES NOW** Laclede Gas Company (“Laclede” or “Company”), and submits its Statement of Position in the above captioned case. Laclede’s positions are presented in the same order as the List of Issues previously submitted by the parties.

**List of Issues**

1. In two Laclede ACA cases, Case Nos. GR-2005-0203 and 2006-0288, Staff has submitted to Laclede information requests seeking certain information from Laclede Energy Resources, Inc. (“LER”). Laclede has provided Staff with certain LER information, but has responded that it does not have possession, custody or control of other LER documents that may be responsive to this request.

(a) Is Staff precluded by prior Commission Orders from complaining that Laclede has violated its obligations under the Stipulation and Agreement in Case No. GM-2001-342 by virtue of its response to Staff’s information request?

(b) If Staff is not precluded from pursuing such a complaint, has Laclede violated its obligations under the Stipulation and Agreement in Case No. GM-2001-342 by virtue of its response to Staff’s information request?

## **Statement of Positions**

### **Issue 1(a)**

Prior Commission orders issued in Case Nos. GR-2005-0203 and GR-2006-0288 (the “ACA Cases”) found that Laclede should produce LER information that is in Laclede’s possession,<sup>1</sup> and further found that Staff’s request for LER information was not made or allowed pursuant to the Stipulation and Agreement in GM-2001-342 (the “2001 Agreement”), but instead was made and allowed pursuant to the discovery rules of civil procedure.<sup>2</sup> Laclede responded to the discovery requests in accordance with the rules of civil procedure and produced all responsive information that was in its possession, custody or control. The orders in the ACA Cases preclude Staff from bringing a complaint that Laclede violated its obligations under the 2001 Agreement by responding to those information requests in the ACA Cases pursuant to the rules of civil procedure.

On the subject of affiliate transactions, the 2001 Agreement is clear. Section VI.1 of the 2001 Agreement directs Laclede to conduct and account for affiliate transactions in accordance with the CAM. Section IV.2 assures to Staff the right to access information reasonably required to verify Laclede’s compliance with the CAM. (Direct Testimony of Patricia Krieger, pp. 6-7)

On the subject of gas supply affiliate transactions, the CAM is also specific and clear. These transactions must pass a market test, so that the utility does not buy gas from an affiliate above market price, nor sell gas to an affiliate below market price. The CAM language effectively mirrors the Commission’s own affiliate transaction rules (the

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<sup>1</sup> Order Regarding Request for Clarification, dated January 21, 2009.

<sup>2</sup> Order Directing Laclede to Produce Information, dated November 4, 2009.

“Rules”).<sup>3</sup> All of these documents are designed to protect the utility ratepayer by ensuring that the utility’s deal with the affiliate is comparable to what the utility could have gotten from a non-affiliate. In other words, the affiliate guidelines seek to make the utility indifferent between dealing with its affiliate or a non-affiliate. (Direct Testimony of Patricia Krieger, pp. 3-5)

So in performing its analysis, Staff could have followed the path set by the 2001 Agreement, the CAM and the Rules, by simply obtaining the data necessary to do a fair market price comparison in order to verify compliance with the CAM. Had it done so, the Commission’s rules and policies would have been honored, the utility ratepayers would have been protected, and the taxpayer would have received the value of his tax dollar.

But Staff did not do that. Staff instead ignored the 2001 Agreement, the CAM and the Rules and set out to do what it called a prudence analysis, but what was really an effort to gather LER’s data so that it could remove any returns that LER earned in its business dealings with Laclede. This complies with neither the Commission’s rules nor its policies. In effect, the Staff proceeded to follow its own policy that an affiliate not be permitted to profit from a transaction with the utility, regardless of market price. (Krieger, p 10; Direct Testimony of Michael Cline, pp. 6-7) So when Staff was questioned by the Commission about how its analysis corresponded with the CAM that was intended to guide affiliate transactions, Staff replied that its investigation wasn’t into compliance with the CAM, but was instead into whether Laclede paid too much for the

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<sup>3</sup> The Rules actually require a comparison between the fair market price and fully distributed cost (FDC), but as has been explained by Staff in GC-2008-0364, and by Laclede most recently in GC-2011-0098, FDC is either inapplicable to gas transactions because Laclede does not produce its own gas, or FDC will always fall outside of fair market price because it is the equivalent of fair market price with added cost.

gas it bought from LER.<sup>4</sup> Of course this is an absurd statement, as the CAM is the very document designed to determine whether Laclede paid too much for gas it bought from LER.

The Staff made it clear that it did not intend to be constrained by the information limits set forth in the 2001 Agreement and the Rules. Staff's view was that it was entitled to LER records, not pursuant to the controlling affiliate transaction regulations, but pursuant to its own view of prudence. Although Laclede agreed to and did tender information necessary for Staff to determine a fair market price for the gas supply affiliate transactions, Laclede objected to those requests for affiliate records which were premised on a pricing standard that was contrary to those endorsed by the 2001 Agreement, the CAM and the Rules. (Cline, pp. 4-6) However, on November 4, 2009, the Commission issued an order in the ACA Cases, determining that Staff could seek such LER information, not under the 2001 Agreement or the Rules, both of which it considered to be red herrings, but instead under the general discovery rules of civil procedure. Obviously, Laclede disagreed with the Commission on this point, but the decision was made. So be it.

The discovery rules of civil procedure require Laclede to produce information that is responsive to the requests and that is in Laclede's possession, custody or control. Laclede produced such information, but frankly disclosed to the Staff and the Commission that a large portion of the proprietary LER information sought by Staff was not in Laclede's possession, custody or control. The Commission sent the case to the Cole County Circuit Court to enforce the November 4, 2009 Order, and the Court agreed

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<sup>4</sup> Case Nos. GR-2005-0203; GR-2006-0288; March 26, 2009 Oral Argument Tr. at 16-17.

that Laclede should produce whatever responsive documents were in its possession, custody or control, which of course Laclede had already done.

In the November 4, 2009 Order, the Commission permitted the Staff to depart from the affiliate transaction provisions in the 2001 Agreement in seeking documents. The Staff cannot now collaterally attack that order and claim that the 2001 Agreement terms do not apply when it comes to asking the questions, but do apply when it comes to answering them. Section 386.550 RSMo prohibits Staff from collaterally attacking Commission orders and seeking a different result here on the same issue that was decided in the ACA Cases.

Staff may claim that its discovery request qualifies under Section IV.2 of the 2001 Agreement as “other” information relevant to “other” regulatory authority, and that Laclede may not object to these information requests on the grounds that the information is not within Laclede’s possession or control. Staff is wrong because the matter at issue is not about “other” information pursuant to “other” regulatory authority, but is specifically affiliate transaction information pursuant to the Commission’s authority to regulate affiliate transactions. As stated above, the 2001 Agreement is clear that the Staff is only entitled to affiliate information as may be reasonably required to verify compliance with the CAM. Staff recognized the applicability of the 2001 Agreement and the CAM, and purposely sought to avoid these authorities. The Commission also recognized the need to address the applicability of the 2001 Agreement in the November 4 Order, and did so by specifically stating that the 2001 Agreement did not apply to Staff’s discovery request. Having avoided the applicability of the 2001 Agreement to affiliate transactions, Section 386.550 RSMo precludes Staff from attacking the

November 4 Order and having the Commission find in this case that the 2001 Agreement applies to the discovery requests after all.

**Issue 1(b)**

For the same reasons set forth above, even if the Staff is permitted to pursue this complaint, Laclede has not violated its obligations under the 2001 Agreement by virtue of its response to Staff's information request. Section IV.2 of the 2001 Agreement unambiguously entitles Staff to affiliate information necessary to ensure compliance with the CAM. Laclede has provided such information to Staff, even in the face of Staff's refusal to consider it. (Cline, pp. 4-8) Staff seeks information that Staff admits is unrelated to the 2001 Agreement and the CAM. While Laclede has vigorously disputed Staff's right to ignore the 2001 Agreement's requirements regarding affiliate transactions, Staff has nevertheless received the Commission's authority to do so for purposes of Staff's information request. Since the authority granted to Staff in this regard emanates from the discovery rules of civil procedure, and not from the 2001 Agreement, it follows that the terms of the 2001 Agreement do not apply to Staff's information request, and Laclede may respond to that request in accordance with the rules of civil procedure.

**WHEREFORE**, for the foregoing reasons, Laclede Gas Company respectfully requests that the Commission accept for its consideration this Statement of Position.

Respectfully submitted,

**/s/ Michael C. Pendergast**

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ATTORNEYS FOR LACLEDE GAS  
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**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the parties to this case on this 4th day of February, 2011, by hand-delivery, e-mail, fax, or by United States mail, postage prepaid.

**/s/ Gerry Lynch**