

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

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

**LACLEDE GAS COMPANY’S RESPONSE IN OPPOSITION TO  
STAFF’S MOTION FOR SUMMARY DETERMINATION**

COMES NOW Laclede Gas Company (“Laclede” or “Company”) and, pursuant to 4 CSR 240-2.117(C), files this Response in Opposition to Staff’s April 8, 2011 Motion for Summary Determination (the “Staff Motion”), and in support thereof states as follows:

**INTRODUCTION**

The Staff Motion should be denied because genuine issues of material facts exist on each of the remaining counts in Staff’s second amended complaint. As noted on page 1 of the Staff Motion, Staff has alleged three specific counts of violations by Laclede of the Commission’s Affiliate Transactions Rules, 4 CSR 240-40.015 and 40.016 (the “Affiliate Rules”). These counts can be summarized as follows<sup>1</sup>:

- Count II Laclede’s Cost Allocation Manual (CAM) fails to take into account fully distributed cost (FDC) in determining the pricing of Laclede’s purchases of gas supply from LER, as required by the Affiliate Rules.
- Count III Laclede failed to file for Commission approval of its CAM.
- Count IV Laclede failed to submit its CAM to Staff on an annual basis.

---

<sup>1</sup> Counts I and V were withdrawn or dismissed from Staff’s second amended complaint.

With respect to Count II, Laclede's answer and testimony clearly present facts demonstrating that Laclede has taken FDC into account in pricing purchases of gas from its affiliate, LER. Laclede has also presented evidence, in the form of Staff testimony in an Atmos ACA case and Staff's response to a data request in this case, that Staff actually *agrees* with Laclede's position. Therefore, if summary determination was appropriate, it should be granted in favor of the Company, not against it. Staff's testimony in this case contradicts its own testimony in the Atmos case by insisting that Laclede is not properly considering FDC in its gas supply purchases from LER. Staff's response to Laclede's testimony in this case in both its Motion and its testimony is to either ignore Laclede's evidence or dismiss it. Staff's approach does nothing to eliminate the material fact issues on this count. To the contrary, Staff's approach entrenches the factual dispute.

With respect to Count III, Staff presents evidence that it could find no docketed file on EFIS in which Laclede has formally requested approval of its CAM. However, the Affiliate Rules do not require a formal request for approval, but instead require that the utility use a commission-approved CAM. As discussed herein, such approval can be garnered in a number of ways, and Laclede has provided ample factual evidence that it has used a Commission-approved CAM. Statements made by Staff in discovery responses further support this assertion. In summary, a failure to make a formal request for approval of the CAM does not even state a claim upon which relief can be granted. To the extent Staff has stated a claim, the facts material to this issue are still clearly in dispute.

With respect to Count IV, there are both legal and factual disputes. From a legal standpoint, Laclede disputes Staff's contention that the Affiliate Rules even require the

CAM to be submitted on an annual basis. From a factual standpoint, Laclede has presented evidence that it has in fact submitted or tendered the CAM to Staff annually in one form or another. Further, Laclede has presented evidence that, following the submission of its current CAM to Staff in 2004, Staff indicated that it was not necessary for Laclede to re-send Staff a CAM that was already in Staff's possession. It is not clear whether Staff disputes these allegations. In fact, one round of testimony, surrebuttal, is still outstanding and is not due until May 12. If Staff does dispute them, then they remain genuine issues of material fact. If Staff does not dispute them, then Staff should be estopped from pursuing this count at all. Finally, from a practical standpoint, it is simply ludicrous for Staff to bring and maintain a formal complaint that Laclede failed to send Staff a document that it already had. Surely, the Commission and the parties have better things to do with their time.

For all of these reasons, and those discussed below, Staff's motion for summary determination should be denied.

#### **RESPONSE TO MOVANT'S FACTUAL STATEMENTS**

1. Laclede agrees that Staff's complaint identifies three specific ways in which Staff alleges that Laclede has violated the Commission's Affiliate Rules.
2. Commission Rule 4 CSR 240-2.117(1) is not a factual statement. The rule speaks for itself.
3. Laclede agrees that it is the respondent in this case and that it has filed a responsive pleading.
4. Laclede agrees with paragraph 4 of the Staff's Motion.

5. Laclede denies that there are no genuine issues of material facts. Laclede avers that there are genuine issues of material fact.

6. Laclede agrees that Complainant is the Staff.

7. Laclede agrees with paragraph 7 of the Staff's Motion.

8. Laclede agrees with paragraph 8 of the Staff's Motion.

9. Laclede agrees with paragraph 9 of the Staff's Motion.

10. Laclede agrees with paragraph 10 of the Staff's Motion.

## **COUNT II**

11. Laclede agrees with paragraph 11 of the Staff's Motion. Laclede has alleged that it has taken into account both fair market price (FMP) and FDC in the pricing of gas purchases from its affiliate, as required by the Affiliate Rules. Laclede's analysis demonstrates that FMP will always be the appropriate standard, because Laclede does not produce gas for itself, and therefore, there is not an applicable FDC to compare with FMP. However, Laclede also considered FDC by creating a proxy FDC in which it "produced" gas for itself by purchasing it on the open market. Laclede recognized that such purchase would be made at a fair market price, resulting in an FDC that was equivalent to FMP. To the extent additional direct and indirect costs are added to this price, the resulting FDC would actually exceed FMP. Hence, this proxy FDC is always going to be as much as, or greater than, FMP.

As a result, the CAM does not ignore the FMP-FDC analysis; rather, the CAM reflects the obvious *outcome* of that analysis. Staff should, and does, understand this concept, because the manager of its Procurement Analysis Department explained it in detail to the Commission at a hearing in an Atmos ACA case, Case No. GR-2008-0364,

on October 20, 2010. Staff has also indicated in this case that it understands the concept based on its April 22, 2011 response to Laclede DR 21, a copy of which is attached hereto as Attachment 1. Laclede has also previously explained this concept to Staff, both in an ACA case and repeatedly in this complaint case.

**If Staff would simply acknowledge in this case what it explained to the Commission last October in the Atmos case, and what it acknowledged in its response to DR 21, Count II of the Complaint could be resolved.** Staff's refusal to do so cannot result in summary determination for Staff. At best, it maintains a material issue of fact for the Commission to decide at hearing.

12. Laclede denies paragraph 12 of the Staff's Motion. Staff claims that the truth of its assertion, that Laclede is not applying FDC to its pricing of gas supply transactions, is apparent from Staff witness Hyneman's direct testimony and Laclede's Answer. It is hard to believe Staff could make such an allegation if Staff actually read Laclede's December 10, 2010 Answer. On page 5 of that Answer, Laclede states,

First and foremost, Laclede declares that it has taken Fully Distributed Cost (FDC) into account in pricing gas supply sales and purchases with LER. Laclede has previously explained its approach to Staff.<sup>2</sup> Staff clearly understands and supports the reasoning behind this approach, as Staff's own witness, Mr. David Sommerer, testified to at a recent Atmos hearing. Based on these facts, Laclede is surprised that Staff even questioned the Company's approach, much less filed a complaint over it. "

---

<sup>2</sup> See for example p. 4 of Laclede's Objection to Staff Information Requests filed on March 19, 2009 in Case No. GR-2006-0288, wherein Laclede stated "This [CAM] rule sensibly sets the affiliate transaction price at a 'fair market price.' This makes sense as a protection for utility ratepayers because it requires Laclede to pay LER no more than Laclede would pay other gas marketers that it does business with. While the Rules also refer to Laclede's fully distributed cost (FDC) as a factor, the CAM recognizes that, for purposes of gas supply transactions, calculating Laclede's FDC is not a meaningful exercise because Laclede does not produce gas supplies for itself, but buys them from marketers like LER. Therefore, Laclede's FDC is, for all practical purposes, equivalent to the fair market price."

This point is further emphasized on pages 2-4 of the Direct Testimony of Laclede witness Michael Cline, and on page 4 of his rebuttal testimony. There is very little on this point in Laclede's rebuttal, because the Staff direct testimony ignored Laclede's well-established position on this issue. The fact that Staff witness Hyneman chose to ignore Laclede's position in his direct testimony and simply dismiss it in his rebuttal testimony does not prove the truth of Staff's assertion. To the contrary, by failing to meaningfully address Laclede's allegations, Staff has assured that a genuine issue of material fact will persist, even though the evidence in the case and Staff's attached response to DR 21 indicates that Staff actually agrees with Laclede's position.

13. Laclede denies paragraph 13 of the Staff's Motion. The paragraph of Laclede's Answer quoted by Staff actually states:

“In summary, for most gas supply transactions, the CAM requires only an FMP analysis, because Laclede has determined, as has Staff, that FDC either does not exist for these transactions or is greater than or equal to FMP. Hence, both FMP and FDC have been taken into account, as required by the Rules. Laclede therefore has not requested a variance and does not believe it needs a variance, because the CAM is applying the Rules in both letter and spirit.”

Laclede has presented facts that clearly allege that Laclede is complying with the Affiliate Rules. Laclede believes that Staff agrees with the Company. However, to the extent Staff still claims that it disagrees, Staff has, at best, raised an issue of fact that remains in dispute for decision at hearing. In no event can Staff turn its disagreement or disregard of Laclede's assertions (and its disagreement with its own assertions) into a matter for summary determination.

14. Laclede denies paragraph 14 of the Staff's Motion. Staff's quote in paragraph 14 of Commission Rule 40.015(3)(B) ends with the clause “and the fully

distributed cost to the regulated gas corporation” but notably omits the remainder of that sentence, which states “to produce the information, assets, goods or services for itself.” Staff’s omission of this clause represents Staff’s tacit confession of the merits of Laclede’s argument that the FDC of gas supply is not meaningful because Laclede does not produce gas supply for itself.

### **COUNT III**

15. Laclede agrees with paragraph 15 of the Staff’s Motion. Laclede notes that the allegation of Count III differs from the requirement of the Affiliate Rules. While the allegation is that Laclede has not submitted its CAM for approval, as discussed below, what the Affiliate Rules require is that Laclede use a commission approved CAM.

16. Laclede agrees with paragraph 16 of the Staff’s Motion.

17. Laclede is unclear as to paragraph 17 of Staff’s Motion. However, Laclede agrees that it and LER have entered into affiliate transactions involving gas supply.

18. Laclede denies paragraph 18 of the Staff’s Motion. Laclede is not required by the Affiliate Rules to file a formal application for approval of its CAM. It is required to use a Commission-approved CAM. There are a number of ways to establish CAM approval, as presented on pages 3-9 of the direct testimony of Laclede witness Patricia Krieger and on pages 1-2 of the rebuttal testimony of Laclede witness Glenn Buck. First, the original CAM and the process for revising it were approved by the Commission in Case No. GM-2001-342 in August 2001. Pursuant to the Commission’s order in that case, Laclede submitted its CAM to Staff and OPC in December 2001.

Neither Staff nor OPC stated thereafter that further approval was necessary nor did Staff and OPC in any way object to the terms of that CAM.

Instead, both Staff and OPC agreed to tariff language which further confirmed, consistent with the Stipulation and Agreement and Order in Case No. GM-2001-342, that the CAM was to be used for purposes of pricing Laclede's affiliate transactions. Attached as Attachment 2 is Laclede tariff sheet R-42 which, pursuant to Commission order, became effective on December 1, 2001. This Commission-approved tariff sheet is further evidence that Laclede's CAM is also Commission-approved. Thereafter, beginning in 2003, Laclede submitted affiliate transaction reports annually based on the CAM that was in Staff's possession.

Second, Attachment 1 hereto is Staff's response to Laclede's discovery requests on this issue. In its response, Staff concedes that there are no specific guidelines or procedures for obtaining a formal Commission order approving a CAM. (See Staff Response to Laclede DR 3) Staff also states that its review of CAMs is performed in cases that could have an impact on rates. (See Staff Responses to Laclede DRs 2, 7-9 and 11) Staff also admits that no other utility has formally filed for or received a Commission Order approving its CAM. (See Staff response to Laclede DRs 2 and 5) Yet Staff has not filed one complaint against another utility for failing to use a Commission-approved CAM. (See Staff Response to Laclede DR 6)

Therefore, it can be inferred that the Staff has adopted and implemented a process under which a "commission-approved CAM" is established not by a separate proceeding in which the Commission is asked to approve the specific provisions of a CAM, but by having a utility's CAM reviewed in a rate proceedings that is held



following the submission of the CAM. If, upon that review, no change is made to the CAM as a result of some deficiency noted by the parties it is deemed to be a commission-approved CAM. Accordingly, under the very approach taken by Staff to the whole issue of reviewing CAMs, Laclede contends that resolutions of its rate cases, agreed to by Staff and approved by the Commission in 2002 and 2005, resulted in a commission-approved CAM.<sup>3</sup> [The same applies for Laclede's ACA cases that have been processed each year since 2003 without any mention of the Staff's current allegation that the CAM used by the Company to process affiliate transactions relating to gas supply has not been approved.]

In summary, Staff's claim, that Laclede did not file a formal application for approval of its CAM, does not even state a claim upon which relief can be granted. Nevertheless, in this case, Laclede has provided substantial evidence that its CAM is commission-approved. To the extent that Staff does not agree, a genuine issue of material fact exists. To the extent that Staff does agree, such facts support a determination in Laclede's favor.

#### **COUNT IV**

19. Laclede admits part of paragraph 19 and denies part of paragraph 19. Laclede admits that it submits its CAM reports annually. Laclede denies that its report does not contain information required by the Affiliate Rules.

20. Laclede states that Rule 40.016(3)(E) speaks for itself. Staff has typed a portion of that rule in bold for its own purposes.

---

<sup>3</sup> This does not even take into account the orders approving resolutions of the 2007 and 2010 rate cases, in which Staff admittedly reviewed Laclede's CAM and affiliate transactions.

21. Laclede states that paragraph 37 of Laclede's Answer speaks for itself. Laclede admits that it appears that Staff has accurately quoted that paragraph. Laclede denies that it has not complied with the Affiliate Rules. Laclede admits that its 2004 CAM contains the criteria, guidelines and procedures Laclede will follow to be in compliance with the Affiliate Rules. Laclede admits that its annual reports are not intended to contain all of this information, but asserts that it contains information that the Staff and Laclede have long agreed is appropriate and that, prior to its complaint, Staff has never alleged was inadequate under the Affiliate Rules.

The initial question on this issue is whether there is even a legal obligation to provide an "annual" Cost Allocation Manual, and if so, where, when and to whom should it be provided. There is no express instruction in the Affiliate Rules regarding an "annual CAM." Instead, there is only a single, strange reference to an annual CAM in a rule (4 CSR 240-40.015(2)(E)) that discusses a completely different subject, that is, what to tell customers who ask the utility for information about services provided by an affiliate. There is a section of the Affiliate Rules, Rule 40.015(4), that explicitly covers annual reporting of affiliate information, and sets forth the information required. Nothing in this section requires that the CAM itself be submitted annually. Despite this unmistakable ambiguity, the Staff has stated with certainty that the rule does not require Laclede to file its CAM annually with the Commission, but does require the CAM to be provided to Staff and OPC annually, along with the Company's CAM annual report. (Hyneman Rebuttal, p. 7)

In effect, based on an ambiguous portion of a sentence pertaining to a different topic, and without having attempted to resolve or even raise the matter with

Laclede during three Laclede rate cases and several ACA audits,<sup>4</sup> the Staff's complaint on this count is that Laclede has failed to send Staff a document each year that Staff has had in its possession since 2004. This can only be described as dysfunctional regulation. For its part, Laclede is willing to commit, notwithstanding the obvious ambiguity, that in the future it will re-send its CAM to Staff and OPC on an annual basis along with its CAM annual report if the Commission concludes that this kind of submission of duplicative documents would in anyway be helpful or serve some purpose. But such an act is not in any way required by the Affiliate Rules as evidenced by the language of the Rules and Staff's decade-long acquiescence in how Laclede has complied with them.

One material fact that remains at issue on this count is whether Staff advised Laclede that it did not need to submit annual CAMs since Staff already was in possession of Laclede's current CAM. This fact is sponsored by Laclede witness Glenn Buck on page 3 of his direct testimony, and on pages 3-4 of his rebuttal testimony. It is not clear whether this fact is even disputed by Staff. This fact is material because it would tend to show that the Staff agreed that the Affiliate Rules do not require an annual submission of the CAM along with the CAM annual reports. Another material fact is how often Laclede did, in fact, submit the CAM if one assumes that there was some annual obligation to do so. As supported by the affidavit of Glenn W. Buck attached hereto as Attachment 3, Laclede knows that it submitted the CAM to Staff in 2001 and 2002, discussed it with Staff in 2003 at which a copy may have been furnished, submitted a revised copy of the CAM to Staff in 2004, discussed the data compiled pursuant to the procedures set forth in the CAM with Staff in 2005, provided an internal audit of the

---

<sup>4</sup> See Buck Rebuttal testimony, p. 5.

CAM to Staff in 2006, submitted copies to Staff in 2007 and 2008, held oral arguments that explicitly referenced the CAM in 2009 and 2010, and referenced the CAM repeatedly in pleadings submitted in 2009, 2010 and 2011. Accordingly, even if Staff's interpretation of the Rules' requirements in this regard is correct, there would be a factual issue as to whether Laclede has materially complied.

**RESPONSE TO STAFF'S MEMORANDUM IN SUPPORT OF ITS MOTION**

Staff's Motion was accompanied by its supporting Memorandum ("Memorandum"). While Laclede disagrees with much, if not most, of the Memorandum, one point made by Staff is particularly galling and requires a response. On page 8 of the Memorandum, Staff states in bold that "Staff has attempted to work cooperatively with Laclede in numerous meetings, but all efforts have failed to resolve these issues, resulting in continuing violations."

Nothing could be further from the truth. Rather than work cooperatively with Laclede, Staff has in these meetings consistently tried to pressure Laclede to stop conducting affiliate transactions. Why? Because Staff is opposed to the shareholders of a utility having any opportunity to profit from business involving utilities -- even if the utility's customers also profit! Staff's feelings on the issue are so strong that it is willing to compromise its reputation by taking bizarre and conflicting positions before the Commission in various ACA and complaint cases, and it is even willing to contradict the Commission's Affiliate Rules to accomplish this goal. Why? The Staff will have to answer that one for itself.

WHEREFORE, Laclede respectfully requests that the Commission deny Staff's Motion for Summary Determination in this case.

Respectfully submitted,

**/s/Michael C. Pendergast**

Michael C. Pendergast, Mo. Bar #31763  
Vice President and Associate General Counsel  
Rick Zucker, Mo. Bar #49211  
Assistant General Counsel - Regulatory

Laclede Gas Company  
720 Olive Street, Room 1516  
St. Louis, MO 63101  
Telephone: (314) 342-0533  
Fax: (314) 421-1979  
Email: mpendergast@lacledegas.com  
rzucker@lacledegas.com

**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Staff and on the Office of Public Counsel on this 9th day of May, 2011 by United States mail, hand-delivery, email, or facsimile.

**/s/ Gerry Lynch**

# **ATTACHMENT 1**

**Laclede Gas Company**  
**Case No. GC-2011-0098**

**Laclede Gas Company's**  
**First Set of Data Request to the Commission Staff**

1. Please provide copies of all written procedures, manuals, instructional memoranda, guides or other written materials, including electronic versions of such materials, developed by or on behalf of the Commission Staff that address, directly or indirectly, the process, criteria, standards or other parameters by which Staff monitors, audits, and or evaluates utility compliance with the Commission's affiliate transactions rules (See 4 CSR 240-40.015 and 4 CSR 240-40.015). For each document provided, please provide the following information:

- (a) The authors or authors of the document;
- (b) The date on which the document was completed;
- (c) A list of who the document was distributed to;
- (d) Any correspondence, explanatory material, or other accompanying material that was either distributed with the document or that summarizes the purpose of the document;
- (e) Any revisions subsequently made to the document after it was completed, including the date such revisions were made.

**Response:** Staff relies on the rule itself as the standard for compliance with the rules.

- (a) The Commission directed Staff to develop the rules.  
Attached are Reports to Division Directors regarding the Affiliate Rules. One is dated for the Division Directors' April 30, 2003 meeting and one is dated for July 28, 2004 meeting. Who the author was has not been determined at this time.
- (b) Unknown at this time
- (c) The document was intended for Division Directors. This is all Staff has regarding these documents at this time.
- (d) If anything responsive is found, Staff will forward it.
- (e) None known at this time.

Also, attached is a document Staff originally used. Janis Fischer developed this document. She does not know the date it was created and does not recall distributing this list to anyone else.

2. Please provide copies of all written procedures, manuals, instructional memoranda, guides or other written materials, including electronic versions of such materials, developed by or on behalf of the Commission Staff that address, directly or indirectly, the process, criteria, standards or other parameters by which Staff audits or examines cost allocation manuals submitted by utilities in compliance with the Commission's affiliate transactions rules. For each document provided, please provide the following information:

- (a) The author or authors of the document;
- (b) The date on which the document was completed;

- (c) A list of who the document was distributed to;
- (d) Any correspondence, explanatory material, or other accompanying material that was either distributed with the document or that summarizes the purpose of the document;
- (e) Any revisions subsequently made to the document after it was completed, including the date such revisions were made.

**Response:** See response above.

Since no utility has filed for Commission approval of its CAM, Staff has not developed procedures for review of CAMs to address such a filing. The review of existing CAMS is done in ACA cases and rate cases to the extent affiliate transaction activities may affect customers' rates.

3. Please describe what Staff believes constitutes "Commission approval" of a cost allocation manual under the Commission's affiliate transactions rules, 4 CSR 240-40.015 and 4 CSR 240-40.015. Include in the response:

- (a) A statement of whether Staff believes a formal Commission Order is required to reflect such approval
- (b) A statement of the procedures that Staff believes should be used to obtain such approval;
- (c) A description of the case designations typically given to such approval proceedings, if any.
- (d) A description of the filing process (i.e. tariff filing, application, etc. used to initiate a request for Commission approval.
- (e) A citation to the specific section of the Commission's Chapter 3 Rules relating to Filing and Reporting Requirements that governs the filing and approval process for Cost Allocation Manuals.

**Response:**

- (a) Yes.
- (b) Filing an application with the Commission requesting approval.
- (c) A GO designation would be appropriate. Staff is not aware of any filings
- (d) Application
- (e) There are general directions for filings that create cases in Chapter 2 and general descriptions of the Application requirements in Chapter 3 but Staff cannot identify a specific section of Chapter 3.

4. Please list each regulated public utility that Staff believes is subject to the Commission's affiliate transactions rules as set forth at 4 CSR 240-40.015 and 4 CSR 240-40.015.

**Response:** All Missouri regulated gas utility companies, which are subject to the Commission's jurisdiction, are subject to the rules 4 CSR 240-40.015, if they engage in affiliate transactions.



5. For each public utility identified in the response to DR 4, please provide the following information:

- (a) The Commission case or file number of the proceeding or proceedings in which the Cost Allocation Manual for the public utility was approved by the Commission as that term is defined by the Staff;
- (b) The Staff's recommendation, testimony or other similar document reflecting Staff's position regarding approval of the Cost Allocation Manual;
- (c) The date on which the Commission approved the Cost Allocation Manual.

**Response:** (a) N/A No gas utility has sought approval.  
(b) No gas utility has sought approval Commission approval of its CAM.  
(c) No gas utility has sought Commission approval of its CAM.

6. For each public utility that is required to maintain a Cost Allocation Manual under the Commission's affiliate transactions rules and which has not sought or received Commission approval for such Cost Allocation Manual, please provide the following:

- (a) A copy of any complaint filed by the Staff which alleges a violation of such rules as a result of the public utility's alleged failure to seek or obtain such approval;
- (b) If no such complaint has been filed, a full and complete explanation of Staff's reasons for not filing a complaint;
- (c) The name or names of the Staff personnel responsible for making the decision not to file a complaint.

**Response:** (a) Staff has not filed complaints but is considering an appropriate course of action.  
(b) In rate cases Staff has attempted to work cooperatively with utility companies to achieve compliance with the rules however, Staff is planning to file complaints for lack of compliance with this section of the rules requiring a commission approved CAM for those utility companies that .  
(c) There have not been any formal decisions not to file complaints. Staff is considering what course of action is appropriate.

7. For each annual Cost Allocation Manual report submitted by a utility during for the most recent five year period, please state:

- (a) The identify of the utility which submitted the annual report;
- (b) The date on which Staff commenced its audit or examination of the report and the transactions addressed therein;
- (c) The current status of Staff's audit or examination;
- (d) Whether any report has been completed based on Staff's audit or examination; and
- (e) The date on which Staff expects to complete its audit or examination if the audit has not yet been completed.

**Response:** (a) See attached reports.

- (b) No audit would begin until a utility submitted its CAM for approval
- (c) If a utility does not seek approval the CAM and affiliate transactions are addressed in rate and ACA cases.
- (d) Audits or examinations completed as a result of rate or ACA cases will be part of the record in those cases.
- (e) The rate case audits/examinations or ACA case examinations would be complete when the cases were closed, unless there was an order or agreement to continue addressing the issues after the close of such cases.

8. For the annual Cost Allocation Manual reports submitted by Laclede Gas Company during the most recent five year period, please state:

- (a) The date on which Staff commenced its audit or examination of the report;
- (b) The identity, job titles, professional and educational backgrounds of the Staff personnel assigned to conduct such audit or examination;
- (c) Copies of any reports, memoranda, workpapers, correspondence or other materials, whether in written or electronic form, reflecting the progress and/or results of such audit or examination;
- (d) Copies of any instructions, correspondence, memoranda, or other materials, whether in written or electronic form, that purports to provide specific guidance on how such audit or examination should be conducted.

**Response:** (a) To the extent Laclede is asking about the Annual Reports it submits to Staff, Staff has made audits or examination of Laclede's Annual Reports in both of Laclede's last rate cases.

- (b) The Staff assigned should be known by Laclede as those Staff members either filed testimony or negotiated with Laclede in the rate case process. The Staff involved include John Cassidy,, Lisa Hanneken, Mark Oligschlaeger, and Paul Harrison. Their educational background and experience is attached to testimony filed in these cases.
- (c) Staff directs Laclede to the testimony filed in each of Laclede's last two rate cases, and to the settlements and attachments for documents reflecting the process and results.
- (d) Staff uses the rules themselves as a guideline.

9. For the revised Cost Allocation Manual submitted by Laclede Gas Company to the Commission Staff in March of 2004, please state:

- (a) The date on which Staff commenced its review of the Cost Allocation Manual;
- (b) The identity, job titles, professional and educational backgrounds of the Staff personnel assigned to conduct such review;
- (c) Copies or any reports, memoranda, workpapers, correspondence or other materials, whether in written or electronic form, reflecting the progress and/or results of such review;

- (d) Copies of any instructions, correspondence, memoranda, or other materials, whether in written or electronic form, that purport to provide specific guidance on how such review should be conducted.

**Response:** (a) Staff does not know the date of initial review.  
(b)(c), and (d) Staff does review affiliate transaction and the CAM in rate cases and Staff has addressed concerns in both of Laclede's last rate cases. Staff's testimony in both of those cases is available on EFIS.

- 10. With respect to the Direct Testimony filed by Charles R. Hyneman in this case, please state whether and to what extent Mr. Hyneman reviewed the testimony, depositions, and/or cross examination of David Sommerer in Case No. GR-2008-0364 before filing such testimony.

**Response:** Mr. Hyneman has reviewed several documents and watched videos of several Commission proceedings involving Laclede and Atmos prior to, and subsequent to his filing direct testimony. He does not recall whether or not he reviewed Mr. Sommerer's referenced testimony, depositions and/or cross examination prior to filing his direct testimony on March 22, 2011.

- 11. At page 5 of his Direct Testimony, Mr. Hyneman states that the affiliate transactions rules must be coupled with "effective utility oversight and effective enforcement" to lessen the risk of excessive charges to ratepayers. Does Mr. Hyneman believe that "effective utility oversight" in the context of affiliate transactions requires the Staff to closely monitor and promptly review all cost allocation manuals and annual reports submitted by utilities pursuant to the affiliate transactions rules? Please explain why or why not.

**Response:** Not necessarily. The Commission Staff has typically reviewed the CAMs and annual reports submitted by a utility company in the context of a rate case or PGA/ACA case. When affiliate transactions are involved in rate setting, Mr. Hyneman believes that the transactions themselves should be closely monitored and promptly reviewed depending on a risk assessment of the probability of the activities affecting consumer rates.

- 12. Does Mr. Hyneman believe that "effective utility oversight" in the context of affiliate transactions requires that Staff promptly notify a utility if Staff believes the utility's cost allocation manual or annual report submissions contain terms or provisions that Staff believes are contrary with the Commission's affiliate transactions rules or otherwise inadequate to protect ratepayers from excessive costs? Please explain why or why not.

**Response:** Under the rules it is the utility's responsibility to ensure its CAM is in compliance with both the affiliate transaction rules and marketing transactions rules. It is incumbent on a utility to periodically review and use internal and external audits of its CAM to ensure it is in compliance with these rules. Current CAMs are submittals discussed between Staff, the Company and sometimes OPC. Mr. Hyneman believes that

effective utility oversight includes discussing with a utility if an audit of a utility's affiliate transactions indicates that a CAM is not in compliance with the affiliate transaction rules, the Staff should take appropriate actions. In a ratemaking proceeding, such action would include ratemaking adjustments and testimony to ensure that the Commission is aware of Staff's findings. Effective utility oversight in this context would require the Staff to take actions to lessen the risk of imprudent, inappropriate or excessive costs being included in rates to utility ratepayers.

13. Does Mr. Hyneman believe that "effective utility oversight" in the context of affiliate transactions requires that Staff promptly file a complaint if it determines that a utility is not seeking any Commission approvals required by the Commission's affiliate transactions rules? Please explain why or why not.

**Response:** No. Mr. Hyneman was specifically referring to ratemaking in his testimony regarding effective utility oversight. Mr. Hyneman is generally aware that Staff has addressed affiliate transactions issues with Laclede in the past two Laclede rate cases.

14. Does Mr. Hyneman believe that "effective utility oversight" in the context of affiliate transactions requires that Staff maintain records of its reviews of the cost allocation manuals and annual reports submitted by utilities pursuant to the Commission's affiliate transactions rules?

**Response:** Since reviews are done in the context of Laclede rate cases, the documentation of such review is integrated in the rate case documentation and testimony, which is publicly available on EFIS. The same is true for ACA cases.

15. Does Mr. Hyneman believe that "effective utility oversight" in the context of affiliate transactions requires that Staff review and make recommendations concerning the cost allocation manuals and annual reports submitted by utilities pursuant to the Commission's affiliate transactions rules in a consistent manner?

**Response:** Mr. Hyneman believes the rules apply to all utility companies engaged in affiliate transactions. Mr. Hyneman believes that the Rules are applied in a consistent manner, however, each utility is unique and circumstances are specifically handled in rate cases and PGA/ACA cases as applicable to each utility. One factor would be the extent of the affiliate transactions and the potential risk of inappropriate affiliate transaction costs being charged to utility ratepayers.

16. At page 9 of his Direct Testimony, Mr. Hyneman states that the pricing provisions in Laclede's CAM for gas supply purchases "obviously" does not comply with the Commission's affiliate transactions rules. If it is so obvious that this provision of the CAM does not comply with the affiliate transactions rules, please explain why the Staff did not advise the Company of its position in that regard at the time Laclede submitted the CAM to Staff in December 2001?

**Response:** Mr. Hyneman does not know the answer to this question, but notes the Rules were stayed and not applicable to Laclede at that time. Laclede was under a stay of the Affiliate Transactions Rule until summer 2003. Mr. Hyneman has did not attend the meeting but as a result of discussions with Ms. Shemwell I reference a meeting with Laclede in my Rebuttal testimony. Mr. Hyneman also notes CAM related issues that affect rates and gas costs charged to Laclede customers have been documented in cases before the Commission, specifically in rate cases, in stipulations and agreements with specific recommendations to address CAM and affiliate transactions rules.

17. If it is so obvious that this provision of the CAM does not comply with the affiliate transactions rules, please explain why the Staff did not advise the Company of its position in that regard at the time Laclede submitted its revised CAM to Staff in March 2004?

**Response:** Again Mr. Hyneman does not know the answer to that. Mr. Hyneman is aware the Staff and the Company have had numerous meetings to discuss Staff's concerns with Laclede's CAM.

18. Please identify which Staff member first determined that the CAM did not comply with the affiliate transactions rules and when such determination was made.

**Response:** Staff does not know the answer to that question.

19. Please provide copies of all memoranda, pleadings or other documents referencing that Staff's members determination.

**Response:** See response above.

20. Please provide copies of all memoranda, pleadings or other documents referencing any actions that Staff recommended be taken once such a determination was made.

**Response:** Staff will make a good faith search for these items, but notes any pleadings Staff have filed are public documents available in EFIS to which Laclede has access.

21. Please describe in detail how Staff would determine the fully distribution cost to the utility for natural gas purchases it makes to serve it customers. In providing such explanation, please outline all calculations that would be made and information needed to determine the fully distributed cost.

**Response:** FDC is defined in 4CSR 240-40.015(1)(F) as a: methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated (e.g., general and administrative) must also be included in the FDC calculation through a general

allocation. To calculate Laclede's FDC to acquire natural gas (a service provided to Laclede by its Gas Purchasing Department), Laclede would need to examine all costs to Laclede in relation purchasing natural gas. Some of these costs would be salaries and benefits of the Gas Purchasing Department, rent or capital costs associated with the facilities used by these employees, depreciation expense on equipment, and debt and equity costs associated with any investor-owned utility investments consumed in the process of purchasing natural gas. Laclede's FDC to purchase natural gas would be the actual cost of the natural gas purchased, plus all costs as described above. However, its relevant or actual FDC is its "net" or actual cost. Laclede's net FDC would be its gross costs, less the costs that are currently being recovered in utility rates. This is the relevant price that would be compared to the fair market price.

## **ATTACHMENT 2**

P.S.C. MO. No. 5 Consolidated, Original Sheet No. R-42  
CANCELLING All Previous Schedules

Laclede Gas Company

Name of Issuing Corporation or Municipality

For

Refer to Sheet No. R-1

Community, Town or City

RULES AND REGULATIONS

33. Off-System Sales

(1) Definitions:

Off-system marketing Sales (OS-Sales) are herein defined as any Company sale of gas, or gas bundled with pipeline transportation, made to parties at locations off the Company's distribution system. Subject to any waivers or approved modifications, OS-Sales made to an affiliate of the Company shall be accounted for in accordance with the Company's Cost Allocation Manual or, if and when applicable, the Commission's affiliate transaction rules.

Off-system Sale Revenues (OS-Revenues) are the actual revenues received by the Company from an OS-Sale.

Cost of Gas Supply (CGS) is the commodity cost related to the purchase of gas supply, exclusive of transportation costs.

Off-system Cost of Gas Supply (OS-CGS) is the CGS related to the purchase of gas supply for a proposed OS-Sale. In determining the OS-CGS, the costs of gas supplies: (1) which have been procured on behalf of the Company's on-system customers for a period greater than one month; and (2) which have a commodity price at the time of the OS-Sale that has been altered from an indexed price as a result of a hedge in a physical gas supply contract, shall not be considered. Nor shall the Company use such gas supplies for OS-Sales, unless the Company determines, and provides sufficient information to verify, that selling such gas supplies is not detrimental to its customers. Subject to the foregoing exclusion of certain gas supplies, the OS-CGS is equal to the highest CGS from the CGS-Schedule (as defined below) associated with the quantity of actual OS-Sales for the pipeline on which the sale is made, unless a lower CGS is documented and supported in accordance with the provisions of Section 3 of this rule. The total OS-CGS to be booked as a cost to the OS-Sales Accounts shall be equal to the sum of the multiplication of the gas cost of each individual transaction by the associated quantities actually sold as shown on the CGS-Schedule.

Off-system Cost of Transportation (OS-COT) is the incremental cost of transportation related to the delivery of the gas supply for an OS-Sale to the point of delivery. The OS-COT shall include all commodity related transportation costs, including fuel, associated with the OS-Sale. The OS-COT shall not include non-commodity related LDC system supply transportation costs.

Off-system Net Revenue (OS-Net-Revenue) is equal to OS-Revenues minus OS-CGS and OS-COT.

DATE OF ISSUE

November 21, 2001

Month Day Year

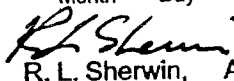
DATE EFFECTIVE

December 1, 2001

December 21, 2001

XXXXXXXXXXXXXXXXXXXX  
Month Day Year

ISSUED BY

  
R. L. Sherwin,

Name of Officer

Assistant Vice President, 720 Olive St., St. Louis, MO 63101

Title

Address



# **ATTACHMENT 3**



Glenn W. Buck  
Glenn W. Buck

Subscribed and sworn to before me this 9th day of May, 2011.

Karen A. Zurliene  
Notary Public

