

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

<b>The Staff of the Missouri Public Service Commission,</b>	)	
	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b><u>Case No. GC-2011-0098</u></b>
	)	
<b>Laclede Gas Company,</b>	)	
	)	
<b>Respondent.</b>	)	

**STAFF’S MOTION TO LATE FILE AND REPLY TO  
LACLEDE GAS COMPANY’S COUNTERCLAIM**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, pursuant to Section 386.390, RSMo 2000,<sup>1</sup> and for its Reply to Laclede’s Counterclaim in this case and Staff’s Motion to Late File, and states that no party will be harmed by the Commission granting Staff’s Motion to Late File and Staff further states: Laclede’s Counterclaim should be dismissed. In further reply, Staff states as follows:

1. On October 6, 2010, Staff filed a Complaint against Laclede Gas Company (Laclede), The Laclede Group and Laclede Energy Resources.
2. On October 7, Staff filed an amended Complaint and the Commission approved Staff’s request to amend its October 6 Complaint.
3. On November 22, Staff also filed an Amended Complaint, which the Commission, on its own Motion, in its December 2 *Order Granting Staff Leave to Amend its Complaint*, granted Staff leave to amend.

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<sup>1</sup> All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (“RSMo”), 2000, as currently supplemented.

4. On December 10, Laclede filed its Answer to Motion to Dismiss Counts I and V of the Complaint, which has been answered in a separate pleading and made its Counterclaim, which is answered herein.

5. Commission Rule 4 CSR 240-2.070 governs the formal complaint process. This rule requires the respondent to file an answer to the complaint within the time provided. In this case, Laclede did respond within the time ordered by the Commission.

6. There is no provision for filing a response to Respondents' Answer, nevertheless, Staff herein requests Commission grant Staff permission to late file as this filing is made more than thirty days after Laclede's Answer to Motion, stating that the press of other business, coupled with travel over the holidays, resulted in Staff Counsel's delay.

7. No party will be harmed by the Commission permitting Staff to Late File.

8. Laclede's Counterclaim lacks merit and should be dismissed. In its Response, Staff has numbered its Response in the same order as presented in Laclede's December 10 pleading.

#### *Staff's Answer to Laclede's Counterclaim*

1. Admitted.
2. Admitted
3. Denied.
4. Staff denies the allegations of paragraph 4.

#### **FACTS**

5. Staff admits the allegations in paragraph 5, except denies the Affiliate Transactions Rules became effective in 2000 in that Laclede appealed the Commission's rules. The Supreme Court denied each utility claim and affirmed the rules in 2003, at which time the

rules took effect as to the appealing parties.

6. Staff denies the allegations in paragraph 6, except Staff acknowledges that Laclede has a Cost Allocation Manual or CAM, which it has never submitted to the Commission for approval and that a CAM was first developed pursuant to the Stipulation and Agreement adopted by the Commission in Case No. GM-2001-342. Since 2003 the Commission's Affiliate Transactions Rules have governed CAM requirements applicable to Laclede.

7. Staff denies the allegations in paragraph 7, except that Staff points out, regardless of what the CAM might say, Laclede has potentially used its transactions with its unregulated marketing affiliate LER as a subterfuge by which to add shareholder profit to its commodity costs that are passed on to ratepayers in the PGA/ACA process. This is not the place for Laclede try to explain its non-compliant gas supply provisions. It has never requested a waiver.

8. Staff denies the allegations in paragraph 8, except that Staff admits that its position is that Laclede should buy gas from LER at LER's acquisition price.

9. Denied except that Staff admits that its position that any profit realized on sales of gas by Laclede to LER should inure to the benefit of ratepayers, and notes LER is an affiliate so its relationship with Laclede Gas is not independent.

10. Staff denies the allegations in paragraph 10. Staff position is that Laclede is in violation of the Rule by engaging in transactions that are not in compliance with the Rule without requesting a variance.<sup>2</sup>

11. Staff admits that Mr. Thompson's testimony is as alleged, however, Staff does not agree with Laclede's interpretation of Mr. Thompson's remarks.

12. Staff denies the allegations of paragraph 12.

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<sup>2</sup> 4 CSR 240-40.015(2)D) The regulated [utility] shall not participate in any affiliated transactions which are not in compliance with this rule, except as otherwise provided in section (10) of this rule [provides a procedure by which Laclede could have obtained a variance from the standards].

13. Admitted. Staff asserts that the Atmos ACA case is a separate and with distinct issues.

14. Admitted.

15. Admitted.

16. Denied, because a utility's sale of gas to itself cannot be said to set a fair market price regardless of the use of an RFP process.

17. Denied, except that Staff admits that Mr. Sommerer's legal position is as described.

18. Denied, except that Staff admits that Mr. Sommerer's legal position is as described.

19. Denied, except that Staff admits that Mr. Sommerer is a CPA and has worked for the Commission for 26 years and is Manager of the Procurement Analysis Department.

20. Denied.

21. Staff admits the testimony of Mr. Sommerer, but denies the remainder of the allegations in paragraph 21.

22. Staff admits the testimony of Mr. Sommerer, but denies the remainder of the allegations.

23. Staff admits the Laclede has accurately stated Staff's position but denies the remainder of the allegations in paragraph 23.

24. Denied except to note that the asymmetrical pricing provisions of the rule speak for themselves.

25. Staff admits its Recommendation was filed on December 31, 2009. Staff further admits that it has been trying to inquire into the cost of Laclede's affiliated transactions without

success. Staff denies that remainder of the allegations of paragraph 25 as speculative and unsubstantiated on Laclede's part.

26. Staff admits the allegations of paragraph 26 as it pertains to the Recommendation filed on December 31, 2009. Staff denies the remainder of the allegations on paragraph 26. Staff admits the allegations of paragraph 27 as it pertains to the Recommendation filed on December 31, 2009. Staff denies the remainder of the allegations on paragraph 27.

27. Denied, except that Staff admits that Laclede has accurately quoted the cited Staff Recommendation.

28. Denied, except that Staff admits that Laclede has accurately quoted the cited Staff Recommendation.

29. Denied, except that Staff admits that Laclede has accurately quoted the cited Staff Recommendation.

30. Denied, except that Staff admits that Laclede has accurately quoted the cited Staff Recommendation.

31. Denied, except that Staff reiterates that affiliate transactions may not properly be used as a subterfuge by which to add to shareholders' profits to the commodity costs of natural gas, which is passed on to ratepayers through the PGA/ACA process.

32. Denied except Staff admits that affiliate transactions may not properly be used as a subterfuge by which to add shareholders' profits to the commodity costs passed on to ratepayers through the PGA/ACA process.

33. Denied except to the extent the Commission may issue whatever orders it deems just and proper in the circumstances.

34. Denied except Staff admits to numerous meetings and conversations over the

past years.

### *Laclede's Real Complaint*

Laclede's real complaint in this case is that Staff will not leave it alone to profit from its sale of gas to its customers. Gas utilities like Laclede are not permitted to sell the natural gas commodity to its customers at a profit, which is why the cost of natural gas may be passed through to customers through an adjustment mechanism that permits companies to change the charge as its costs change through the PGA-ACA process. Instead of just passing the actual gas cost through the PGA, Laclede has developed a scheme in which Laclede buys gas from LER, essentially the same as buying gas from itself - which sells gas to Laclede at a profit. In such a case, even though Laclede subsequently passes the gas on to the ratepayers at its cost, that cost nonetheless includes a profit to Laclede's shareholders. To Staff it seems like an end run around the supposedly profitless PGA-ACA process and qualifies as cross-subsidization.

Review of affiliate transactions requires much closer scrutiny because of Laclede's opportunity and incentive to subsidize its non-regulated operations by passing costs to the regulated and unlawfully transferring profits away from its regulated operations to its unregulated operations. Moreover, regulation of its affiliate activities is not harassment, but is the reason Laclede is permitted to operate as a monopoly utility company providing an essential service to Missouri consumers.

Laclede wants Staff to leave it alone so it may ignore the Commission's Affiliate Transactions Rules and profit on the sale of gas to its customers through its machinations with LER. When Laclede increases the cost of gas to its customers to benefit its affiliates, it harms other businesses who compete for Missouri consumers dollars.

**WHEREFORE** having fully answered Laclede's Counterclaim and filed its Motion to

Late File, Staff prays the Commission will Dismiss Laclede's Counterclaim as unfounded and meritless, and grant Staff's Motion to Late File.

Respectfully submitted,

/s/Lera L. Shemwell

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#### **Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 17<sup>th</sup> day of January 2011, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Lera L. Shemwell