

**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.)	

LACLEDE GAS COMPANY’S MOTION FOR SUMMARY DETERMINATION

COMES NOW Laclede Gas Company (“Laclede” or “Company”) and, pursuant to 4 CSR 240-2.117, files this Motion for Summary Determination of the Staff’s complaint in the above referenced case, and in support thereof states as follows:

INTRODUCTION

In connection with gas supply affiliate transactions between Laclede and its affiliate, Laclede Energy Resources, Inc. (“LER”), Staff has issued data requests to Laclede in two of its ACA cases¹ seeking a broad array of LER’s purchase and sale data. Staff’s requests for this information were *not* made pursuant to any of the authorities that control affiliate transactions, including the Unanimous Stipulation and Agreement in Case No. GM-2001-342 (the “2001 S&A”), the Company’s Cost Allocation Manual (“CAM”), and the Commission’s Affiliate Transaction Rules (the “Rules”). Rather, according to both Staff and the Commission itself, Staff’s requests were made under the general discovery rules of civil procedure. Laclede has responded to the data requests in accordance with those rules.

¹ Case Nos. GR-2005-0203 and GR-2006-0288, hereinafter collectively referred to as the “ACA Cases.”

Now Staff has filed a complaint in this case alleging that Laclede must turn over the LER documents it requested in accordance with Laclede's obligations under the 2001 S&A. However, as a result of Staff's position that its data requests have not been made pursuant to the 2001 S&A, and the orders issued by the Commission and by the Circuit Court confirming that position, Staff cannot now claim that it is entitled to the LER documents it seeks by referring to Laclede's obligations under the 2001 S&A.

Staff's filing of a complaint on the basis that the 2001 S&A is applicable is a collateral attack on the Commission's orders in the ACA Cases, and on a Court order, that explicitly stated that the discovery rules of civil procedure apply, and that the 2001 S&A is inapplicable. The matter has been litigated in the ACA Cases and in the Circuit Court, and the Staff may not relitigate it in this complaint case. It is especially egregious for Staff to have won a decision by arguing one side in the ACA Cases (that the 2001 S&A does not apply) and then file a complaint in reliance on the opposite side (the 2001 S&A does apply). Staff's complaint should be dismissed.

MATERIAL FACTS WITH NO GENUINE ISSUE

Pursuant to 4 CSR 2.117(1)(B), the following are the material facts as to which there is no genuine issue:

1. Section VI.1 of the 2001 S&A states that "transactions involving transfers of goods and services between Laclede Gas Company and [affiliates] shall be conducted and accounted for in compliance with the provisions of a Cost Allocation Manual ("CAM")..."

2. Section IV.2 of the 2001 S&A states that Laclede will make available the books and records of its affiliates “**as may be reasonably required to verify compliance with the CAM...**” (emphasis added)

3. On August 28, 2008, and again on March 12, 2009, Staff issued data requests to Laclede in Case Nos. GR-2006-0288 and GR-2005-0203 (the “ACA Cases”).

4. These data requests are set forth below, and seek a broad array of LER purchase and sale data::

For the 2004-2005 and 2005-2006 ACA periods, please provide the following:

1. For the 2004-2005 ACA: a copy of all Laclede Energy Resources (LER) gas supply and transportation invoices, contracts and nomination records that were effective for the months of January 2005 and April 2005.
2. For the 2005-2006 ACA: a copy of all Laclede Energy Resources (LER) gas supply and transportation invoices, contracts and nomination records that were effective for the months of January 2006 and April 2006.
3. The ledgers or dealbooks or journals or other documents that record all of LER gas supply and transportation deals in summary form or report form or spreadsheet form or similar form. The response should include sale dates, sales and purchase volumes, sales and purchase prices, cost of gas sold, and net margin.
4. Documentation showing LER’s use of any capacity released to LER by the Laclede Gas Company. The response should include receipt and delivery points, date of use, volumes nominated, and Transportation Service Agreement (TSA) number used to make the nomination.

5. On September 8, 2008, Laclede objected to the data requests on the grounds that such requests did not comply with the information provisions set forth in the Rules and the 2001 S&A, and were therefore not reasonably calculated to lead to the discovery of admissible evidence.

6. On January 21, 2009, the Commission issued its order in the ACA Cases directing Laclede to produce the information requested by Staff “to the extent that Laclede is in possession of the information.”

7. On February 4, 2009, Laclede submitted a response to Staff in which Laclede stated that it was not in possession of the LER documents requested by Staff. A copy of the body of the February 4 letter is attached hereto as Attachment 1.

8. Laclede also objected to Staff’s renewed data request filed in the ACA cases on March 12, 2009. Laclede again asserted that the data requests did not comply with the Rules and the CAM, as required in the 2001 S&A. (See Laclede’s Objections to Staff Information Requests in the ACA Cases, filed March 19, 2009)

9. Staff confirmed that it was reviewing the pricing of the Laclede-LER affiliate transactions not pursuant to the Rules or the CAM, but instead on the basis of “whether Laclede paid too much to LER for the gas they bought.” (ACA Cases, March 26, 2009 Oral Argument, Tr. 17) When asked whether “too much” would be defined by the rule, Staff replied that that was not necessarily the case. Staff explained that prudence governed the pricing of affiliate transactions not the Rules or the CAM, because if Laclede entering into the contract with LER was not prudent, it could lead to “higher gas costs for the ratepayers.” *Id.* at 14.

10. Examples of Staff’s statements to the Commission in the ACA Cases that tie its data requests to “prudence” and dissociate from the Rules and the CAM follow:

“Staff’s inquiry in the ACA process is whether Laclede acted prudently...in its dealings with affiliate LER. This is a separate question from whether Laclede violated the affiliate transaction rule.” (Staff Response, November 13, 2008, p. 3)

Staff seeks discovery “in order to determine whether Laclede has made prudent gas purchasing decisions when engaged in affiliate transactions with...LER.” (Staff Response, March 3, 2009, p.1)

“Neither the Commission’s own affiliate rules or Laclede’s CAM may act to limit production of relevant documents in this ACA case.” (Staff’s Proposed Order, April 14, 2009, p. 3)²

“Laclede’s arguments that it has complied with the affiliate transaction rules and its ever-changing CAM are attempts to divert the Commission’s attention from the real issue: prudence.”³ (Staff Motion, May 1, 2009, p. 4)

11. On April 22, 2009, the Commission issued an Order in the ACA Cases denying Staff’s Motion to Compel. After hearing the arguments of the parties, the Commission agreed with Laclede’s position and found that the information sought by Staff was not reasonably calculated to lead to the discovery of admissible evidence.

12. The Commission changed its position by order dated November 4, 2009. Although the Commission did not find that Staff’s request conformed with the 2001 S&A or the Rules, the Commission nevertheless decided that Staff was entitled to the information requested under the discovery rules of civil procedure. In emphasizing that the 2001 S&A did not apply to Staff’s discovery request, the Commission stated in the November 4 Order at page 2:

“...Staff and Public Counsel have asserted that Laclede is bound under an agreement reached in Case No. GM-2001-342 to provide the information Staff seeks.

The Commission emphasizes that Staff’s discovery request is not an investigation under the Commission’s Affiliate Transaction rule

² In fact, both the Rules and the 2001 S&A permit discovery of affiliate documents required to ensure compliance with the Rules and the CAM, but limit that discovery to only those purposes, which is appropriate when dealing with an unregulated entity, as provided in 393.140(12) RSMo. and in *Atmos Energy Corp. v. Public Serv. Comm’n*, 103 S.W.3d 753, 764 (Mo. 2003).

³ Other than a few minor edits made in March 2004, Laclede’s CAM has been unchanged since December 2001.

nor is it a complaint through which Staff or Public Counsel seeks enforcement of the agreement reached in Case No. GM-2001-342. These issues have but served as red herrings in what is a discovery request governed by the rules of civil procedure.”

13. On June 25, 2010, the Cole County Circuit Court recognized the Commission’s November 4 position in its Order granting the Commission’s motion for mandamus. The Court explicitly stated that Laclede was only required to provide that information which was in its “possession, custody or control.” (*Public Serv. Comm’n v. Laclede Gas Co.*, Case No. 10AC-CC00170, *Judgment and Writ of Mandamus*, issued June 25, 2010, p. 2)

CONCLUSION

The salient facts in this case are undisputed. As argued in the attached legal memorandum, the matter at issue is the pricing of gas supply transactions between Laclede and its affiliate, LER. Although the 2001 S&A unambiguously prescribes that such transactions are to be priced in accordance with the CAM, and that Laclede will make available the books and records of its affiliates as may be reasonably required to verify compliance with the CAM, Staff has clearly stated during these cases that it is not proceeding under the CAM or Rules, but is evaluating the pricing of Laclede’s affiliate transactions pursuant to a prudence standard under which Staff itself determines whether Laclede “paid too much” for the gas it purchased from LER.

By its orders in the ACA Cases, the Commission has ruled that Staff’s information requests are governed not by the 2001 S&A, but by the discovery rules of civil procedure. The Circuit Court has supported that position. Thus, the matter has been decided in the ACA cases. Staff cannot now create a new case and attack the

Commission orders of January 21, 2009 and November 4, 2009 in the ACA cases, or the Circuit Court's order of June 25, 2010. After having successfully argued to the Commission in the ACA Cases that the 2001 S&A does not apply to Staff's ACA data requests, Staff cannot now claim in this case that Laclede's actions in the ACA Cases violated the 2001 S&A. As set forth in the attached legal memorandum, doing so is not just a collateral attack on the Commission and Court orders, it is a direct attack. Under these circumstances, Laclede's actions in the ACA cases cannot have violated the 2001 S&A as a matter of law.

WHEREFORE, Laclede respectfully requests that the Commission grant this motion, dismiss Staff's complaint, and grant Laclede such other and further relief to which it is justly entitled.

Respectfully submitted,

/s/Michael C. Pendergast

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Motion was served on the Staff and on the Office of Public Counsel on this 22nd day of December, 2010 by United States mail, hand-delivery, email, or facsimile.

/s/ Rick Zucker