

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

In the Matter of Laclede Gas Company's)
Purchased Gas Adjustment for 2004-2005) Case No. GR-2005-0203
)
In the Matter of Laclede Gas Company's)
Purchased Gas Adjustment for 2005-2006) Case No. GR-2006-0288

LACLEDE GAS COMPANY'S

OBJECTIONS TO

STAFF INFORMATION REQUESTS

MARCH 19, 2009

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COMES NOW Laclede Gas Company ("Laclede" or the "Company") and, pursuant to the Commission's March 5, 2009 Order Directing Filing and Setting Oral Argument, submits these objections to the Information Staff Requests from Laclede, filed by Staff on March 12, 2009 (the "March 12 Information Request"). In support thereof, Laclede respectfully states as follows:

I. Introduction

1. For the reasons set forth below, Laclede objects to the information sought by Staff in paragraphs 1(a) – 1(d) of the March 12 Information Request. Laclede has provided to Staff information responsive to paragraph 1(e) of the March 12 Information Request regarding bonus information for Mr. Godat, Mr. Mathews and Mr. Neises, the officers who oversee Laclede's gas supply operations. The positive incentives created by this bonus information are discussed below, along with an explanation of why this employee bonus information is unnecessary, notwithstanding the fact that Laclede has provided it without objection. Contrary to Staff's statements in paragraph 7 of the March 12 Information Request, Laclede has not refused to provide compensation committee minutes or stock bonuses for these employees. There are no responsive compensation committee minutes that quantify or document the basis of any bonuses regarding these

employees or their companies. Stock awards are not based on particular goals and objectives, and therefore don't fit into Staff's theory on perverse incentives. However, Laclede has no objection to producing this information. In fact, stock awards for Mr. Neises, Laclede's executive vice-president, are displayed in the Laclede Group proxy statement and are public record.

2. Back in September 2008, Laclede stated that it wasn't sure if Staff is seeking bonus information on Mr. Yaeger, the Company's President and CEO. Laclede nevertheless provisionally objected to production of Mr. Yaeger's bonus information on the grounds that the request was, and is, overbroad and seeks documents that are not reasonably calculated to lead to the production of relevant information, since the request is in no way limited to the issues under consideration in this case, i.e. gas supply matters or matters involving LER. Staff has never responded to this objection.

3. Staff requests 1(a) – 1(d) are directed at LER's non-affiliate transactions, that is, transactions between LER and parties other than Laclede, at locations and times other than where Laclede and LER have transacted business. Pursuant to Missouri Supreme Court Rule 56.01(b)(1), Laclede objects to this wholesale invasion of LER as being neither relevant to the subject matter of this case, nor reasonably calculated to lead to the discovery of admissible evidence in this case. In addition, Staff's requests are burdensome and oppressive without any corresponding benefit.

II. The Company's Cost Allocation Manual and the Commission's Affiliate Transaction Rules Dictate the Pricing Standards for Affiliate Transactions

4. This case is about the pricing of transactions between Laclede and LER. Specifically, during the ACA periods at issue here, Laclede and LER entered into transactions in which Laclede was at some times the buyer, and at other times the seller.

Staff has questioned the propriety of the prices at which these transactions took place. Staff seeks to show that Laclede's agreement to these purchase and sale prices was imprudent.

5. The question then becomes: What is the standard for determining the appropriate price of an affiliate transaction? For the answer, we need look no further than the Company's Cost Allocation Manual ("CAM") and the Commission's Affiliate Transaction Rules (the "Rules"). Sheet R-42 of the Company's tariff, which has the effect of law, states that, subject to any waivers or modifications, off-system sales made to an affiliate shall be accounted for in accordance with the Company's Cost Allocation Manual or, when applicable, the Rules. Thus, the Rules and the CAM set the legal standard for pricing these transactions. And a review of that standard demonstrates intuitively that it is in line with how a reasonably prudent person would price its transactions.

6. The pricing standards set by the Rules are as follows:

For purchases by a utility from its affiliate: The lower of the fair market price, or the fully distributed cost to the utility to provide the good or service for itself (FDC).

For sales by a utility to its affiliate: The higher of the fair market price or FDC.

7. Pages 13-15 of the CAM specifically address how affiliate sales and purchases of energy-related goods and services will be addressed. The CAM states:

Energy-Related Goods and Services – To ensure compliance with both the transfer pricing and anti-discrimination provisions of the affiliate transactions and marketing affiliate transactions rules as well as the requirements of federal law, the following standards will be applied to the purchase and sale of energy-related goods and services, including natural gas

supplies, transportation and storage capacity, between Laclede Gas Company and affiliated and unaffiliated entities alike.

A. Pricing Standards for Purchases by Laclede from LER

1. Purchases of Gas Supply

8. The CAM states that purchases by Laclede of gas supply from an affiliate (in this case, LER) will be priced in accordance with the following provisions:

Gas supply purchases – shall be the fair market price which shall be determined as the average price of similar purchases made by Laclede Gas Company or other firms from non-affiliated entities entered into at similar times for similar duration and location of such purchases. If such purchases do not exist, the fair market price will be determined for the location and period in question by using an industry accepted index price or index prices applicable to such location published in either Gas Daily, Inside FERC, or other similar publication widely accepted in the industry for determining the value of such gas supplies.

This 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.

9. As set forth above, the fair market price standard basically looks for transactions that are comparable to Laclede’s gas supply purchase from LER. In a nutshell, the relevant data in determining a fair market price under the CAM and the Rules is:

- A. Similar purchases made by Laclede Gas Company or other firms from non-affiliated entities, entered into at similar times for similar duration and location;
- B. If the information in (A) is unavailable, then an industry accepted index price or prices applicable to such location published in either Gas Daily, Inside FERC, or other similar widely accepted publication.

2. Purchases of Pipeline Transportation and Storage Capacity

10. The CAM states that purchases by Laclede of pipeline transportation and storage capacity from an affiliate (again, LER) will be priced as follows:

Pipeline transportation and storage capacity releases – shall be the fair market price which shall be determined as the price of similar capacity transactions made by Laclede Gas Company or other firms with non-affiliated entities entered into at similar times for similar duration and location of transportation capacity. If such transactions do not exist, the fair market price will be a price as posted on the applicable pipeline’s bulletin board for similar capacity for a similar duration. If such postings do not exist, the fair market price shall be determined by using an industry accepted index price or index prices published in either Gas Daily, Inside FERC, or other similar publication widely accepted in the industry for determining the value of such capacity.

Like the purchases of gas supply, determining fair market price of capacity releases relies on comparable deals, if available, and provides for contingencies if comparables are unavailable. The hierarchy of, and relevant data for, determining the fair market price of these transactions is summarized below:

- A. First, similar purchases made by Laclede Gas Company or other firms from non-affiliated entities, entered into at similar times for similar duration and location;
- B. If (A) is unavailable, then the price as posted on the applicable pipeline’s bulletin board for similar capacity for a similar duration;

C. If (B) is unavailable, then an industry accepted index price or prices published in either Gas Daily, Inside FERC, or other similar widely accepted publication.

3. Staff's Requests Regarding Purchases By Laclede From LER Are Irrelevant And Not Reasonably Calculated To Lead To The Discovery Of Admissible Evidence

11. In the March 12 Information Request, Staff asks for the following information regarding purchases made by Laclede from LER:

1a. 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.

1b. 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.

By these information requests, Staff seeks to obtain LER's cost information for any purchases of gas supply and transportation made by LER. It is obvious from these questions that Staff's target is not even remotely related to the fair market price of Laclede's purchases from LER.

12. With respect to gas supply, Staff's questions are unrelated to similar purchases made by Laclede Gas Company or other firms from non-affiliated entities, entered into at similar times as the Laclede-LER transactions, for a similar duration as the Laclede-LER transaction, and at a similar location as the Laclede-LER transaction, all as provided in paragraph 9A above. Instead, Staff seeks information on LER's purchases of gas supply at different times than the Laclede-LER transactions, for different durations than the Laclede-LER transactions, and at different locations than the Laclede-LER transactions. Nor are Staff's questions related to any industry accepted index price or prices applicable to the location of the Laclede-LER transaction, published in either Gas

Daily, Inside FERC, or other similar widely accepted publication, as provided in paragraph 9B. It is hard to imagine a less relevant route of inquiry.

13. Since Staff has not identified a capacity release sale to Laclede by LER, it is of no consequence that Staff's questions are unrelated to the criteria identified in paragraph 10.

14. By its questions, Staff clearly seeks to perform a complete review of LER's business in order to determine the cost LER paid for gas supply and transportation. While this information may fit into Staff's desired affiliate transaction pricing standards, it is wholly irrelevant to the process of determining the fair market price for gas supply and transportation sold by LER to Laclede, as set forth in the Rules, or as fleshed out in Laclede's CAM. Staff is actually two full steps removed from the fair market (purchase) price paid by Laclede, which is the relevant standard in this case, because not only does Staff seek to review the costs of the seller, LER, but Staff also seeks to review these costs disconnected from the cost incurred under the actual transaction at issue.¹ For these reasons, the LER purchase information Staff seeks is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this case.

B. Pricing Standards for Sales by Laclede to LER

1. Sales of Gas Supply

15. The CAM states that sales of gas supply by Laclede to an affiliate (LER) will be priced in accordance with the following provisions:

¹ However, as indicated by Staff, it is impossible to accurately match LER's purchases of gas with its sales to Laclede. This is because LER purchases gas from many sources and sells the gas to numerous customers at many varied locations. Matching gas sales with purchases in most cases is virtually equivalent to asking the water company to identify the origin of the water molecules it sold to a particular customer.

Gas supply sales – shall be the fair market price, which shall be determined as the average price of similar sales made by Laclede Gas Company or other firms to non-affiliated entities, entered into at similar times for similar duration and location of such sales, provided that such price shall, at a minimum, reflect the reasonable allocation of costs for off-system sales of gas established under Laclede Gas Company’s approved tariffs applicable to such sales. If such sales do not exist, the fair market price for the location and period in question will be determined using an industry accepted index price or prices applicable to such location published in either Gas Daily, Inside FERC, or other similar publication widely accepted in the industry for determining the value of such gas supplies, provided that such price shall, at a minimum, reflect the appropriate allocation of costs for off-system sales of gas established under Laclede Gas Company’s approved tariffs applicable to such sales.

Like the purchase side of these transactions, sales of gas supply by Laclede to LER are to be compared to a “fair market price.” Again, this price is determined from the average price of similar non-affiliated sales at similar times, durations and places as the Laclede-LER sale. If these comparables do not exist, then fair market price will be determined using widely accepted indexes. The mention of a reasonable allocation of costs under Laclede’s off-system sales tariff refers to a minimum pricing requirement for Laclede’s off-system sales based on Laclede’s cost, and has no relationship to LER’s sales.²

2. Sales (Releases) of Pipeline Transportation and Storage Capacity

16. The CAM provides that sales or releases of pipeline transportation and storage capacity by Laclede to an affiliate (LER) will be priced in accordance with the following provisions:

Pipeline transportation and storage capacity releases – shall be the higher of: (a) a fully distributed cost calculation in which the price charged to an affiliate is equal to all variable costs, if any, incurred by Laclede Gas Company to complete the transaction plus an appropriate allocation of joint and common costs given the nature, location and timing of the transaction, or (b) the fair market price as determined through a posting and bidding process in accordance with the

² The off-system sales tariff requires Laclede to only make off-system sales that are at least as high as Laclede’s highest cost of goods sold for the pipeline on which the sale is made, so as to prevent a sale from having a negative margin

capacity release provisions contained in the pipeline's FERC approved tariff or through similar capacity transactions made by Laclede Gas Company or other firms with non-affiliated entities; provided that if the resulting price for the specific transaction as determined under (a) or (b) exceeds the maximum price authorized by Federal law, the price charged to the affiliate shall equal such maximum lawful price.

The pricing standards for capacity releases by Laclede are a little more complex, but in the end still rely on a fair market price. The complexity arises from the fact that most pipeline tariffs charge the same price year round for transportation capacity, while the secondary market pricing for pipeline capacity is sometimes well below the maximum FERC-approved rate, especially in the summer. For example, assume Laclede pays 12 cents per MMBtu for certain year-round capacity. In the summer, Laclede doesn't need the capacity to serve its native load, so Laclede tries to sell the excess capacity in order to obtain some value from it, for the benefit of Laclede and its customers. However, because there is very little demand for pipeline capacity in the summer, Laclede may only be able to sell a small portion of its excess capacity, and because of this reduced demand, the market price for such capacity may, for example, be only three cents per MMBtu. To ensure that such sales can still be made and at least some revenue achieved under such circumstances, the CAM clarifies that these seasonal or location driven market factors are to be taken into account when establishing the appropriate FDC.

3. Staff's Request Regarding Sales by Laclede to LER Are Irrelevant And Not Reasonably Calculated To Lead To The Discovery Of Admissible Evidence

18. In the March 12 Information Request, Staff asks for the following information regarding sales made by Laclede to LER:

- 1c. 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.

- 1d. 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.

By these information requests, Staff seeks to obtain LER's sales information for any of LER's sales of gas supply and transportation. Again, it is obvious from these questions that Staff's target is not even remotely related to the fair market price of Laclede's sales to LER.

19. With respect to gas supply, Staff's questions are unrelated to (i) similar sales made by Laclede Gas Company or other firms to non-affiliated entities, entered into at similar times as a Laclede-LER transaction, for similar duration as a Laclede-LER transaction, and at a similar location as the Laclede-LER transaction, all as provided in paragraph 15 above. Nor are Staff's questions related to any industry accepted index price or prices applicable to the location of the Laclede-LER transaction, published in either Gas Daily, Inside FERC, or other similar widely accepted publication..

20. With respect to transportation and storage capacity releases by Laclede to LER, Staff's questions are likewise unrelated to (i) a fully distributed cost calculation incurred by Laclede to complete the transaction; or (ii) the fair market price as determined through a posting and bidding process in accordance with the capacity release provisions contained in the pipeline's FERC approved tariff or through similar capacity transactions made by Laclede Gas Company or other firms with non-affiliated entities.

21. Rather, by its questions, Staff clearly seeks to perform a wholesale review of LER's business in order to determine LER's sales data, including its sales volumes,

sales prices, cost of gas sold and net margin. Further, Staff demands to see how LER made use of capacity released to it by Laclede. While this information may again be pertinent to Staff's own affiliate transaction standards, it is wholly irrelevant to the fair market price as set forth in the Rules or as fleshed out in Laclede's CAM. Staff has again wandered two full steps away from data relevant to determining Laclede's fair market (sales) price for gas supply sold by Laclede, which is the relevant standard in this case, because not only does Staff seek to review the sales revenues of the buyer (LER), but Staff also seeks to review these revenues disconnected from the cost incurred by LER under the actual transaction at issue.³ For these reasons, the LER sales information Staff seeks is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this case.

III. Staff's Standards for Valuing Affiliate Transactions Do Not Comply with the Rules or CAM

22. Staff's standard is not fair market price, or even Laclede's FDC. In fact, in the eight pages of its March 12 Information Request, Staff *never even mentions the Commission's affiliate transactions rules or the Company's CAM.* Staff provides an explanation of why affiliate transactions should be regulated, but does not acknowledge that they are regulated. Staff cites the Missouri statute that serves as authority for the Rules. (See March 12 Information Request at 6-8) Staff even quotes from the Missouri Supreme Court case that expressly upheld the Rules.⁴ But not once does Staff refer to the Rules' general pricing standards, mention the CAM's specific pricing standards, or

³ As Staff has indicated, it is impossible to accurately match LER's sales of gas with its purchases from Laclede. This is because LER accumulates gas from many sources and sells gas to numerous customers at many varied locations. In addition, Staff is incorrect with respect to how LER keeps information with respect to Request 1c. LER does not keep the information sought in summary or report form, but maintains gross purchases and sales to determine total net margins. Laclede only keeps information in the format Staff is familiar with because of the structure of the off-system sales tariff.

⁴ *Atmos Energy Corp. v. Public Service Comm'n*, 103 S.W.3d 753 (Mo. 2003)

acknowledge that either of these standards even exist. And this occurs only nine days after Staff filed a pleading stating that it needs LER's documents to determine whether "Laclede is in compliance with the Commission's affiliate transaction rules..." (Staff Response to Laclede's Request for Mediation, March 3, 2009, p. 1) It can be inferred from Staff's omission that Staff knows that it does not need LER's non-affiliate documents to determine whether Laclede is in compliance with the Commission's affiliate transaction rules.

23. Pursuant to the Commission's March 5 Order, in filing the March 12 Information Request, Staff needed only to recite the information it sought. Staff was neither prohibited nor required to argue its legal justification for that information. However, having chosen to make a legal argument, the Staff is obliged to act with candor toward the tribunal. It is one thing to distinguish the law, or even to disagree with it, but to treat a material legal standard as if it doesn't exist is, at best, questionable.⁵

24. In fact the Rules do exist, so that all parties can know just how affiliate transactions should be priced, and so that the Commission doesn't have to authorize an investigation each time an affiliate transaction takes place. The stated purpose of the Rules are as follows:

"PURPOSE: This rule is intended to prevent regulated utilities from subsidizing their non-regulated operations. In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and record keeping requirements applicable to any...commission regulated gas corporation whenever such corporation participates in transactions with any affiliated entity... The rule and its effective enforcement will provide the public the assurance that their rates are not adversely impacted by the utilities' nonregulated activities." (4 CSR 240-40.015)

⁵ See Missouri Supreme Court Rule 4-3.3, Candor Toward the Tribunal.

25. Instead, in place of the law regarding the pricing of affiliate transactions, the Staff has developed its own pricing standards as follows:

For purchases by Laclede from LER: The lowest cost of gas purchased by LER regardless of the time frames, duration or locations involved.

For sales by Laclede to LER: The price that LER eventually received for the gas supply that it purchased from Laclede, or that Laclede transported for it, regardless of the time frames, duration or locations involved.

Staff's data requests are relevant only to these standards. They have no relevance to the fair market price of specific transactions, nor do they even have relevance to the FDC to Laclede to obtain gas supplies for itself, which in most cases is the same as the fair market price, since Laclede does not produce gas for itself, but buys it from marketers like LER. A chart comparing the pricing standards in the Rules and the CAM to Staff's standards is attached hereto as Exhibit A.

26. Staff does not try to hide its standard or even pretend that a "fair market price" is meaningful. In its ACA Recommendations and other pleadings, Staff is fairly clear that its goal in these proceedings is to price Laclede's affiliate transactions in a manner that strips away any possibility that LER will earn a margin on its dealings with Laclede. Essentially, Staff seeks to treat the affiliate LER as if it does not have a separate existence, that is, Staff views Laclede and LER as one company, and that company is Laclede. Examples of this are plentiful:

"No documentation was provided to ensure that LER was not paying its supplier a cheaper price for the supply and charging Laclede the higher price."

(Staff Recommendation, GR-2005-0203, December 28, 2006, p. 10)

“The Staff has made attempts to fully understand how LER allocates gas supply to various deals, but has had limited access to LER information.”

(Staff Recommendation, GR-2006-0288, December 28, 2007, p. 8)

** _____

_____ **” (*Id.*, p. 9)

*** _____

_____ **”

(List of Documents required by Staff, July 25, 2008, p. 4)

*** _____

_____ **”

(Staff Recommendation, GR-2008-0140, December 31, 2008, p. 9, emphasis supplied)

Staff most clearly reveals its independent approach in this last quote, wherein Staff admits that the pricing in this affiliate transaction is market-based, as the Rules require, but Staff still wants to know whether LER derived “further value” (i.e. profit) beyond the contract payments. In other words, Staff seeks to enforce a standard that requires an affiliate to sell goods and services to the utility at the affiliate’s cost, which standard is plainly contrary to the Rules.

27. Finally, Staff has made an issue over whether Laclede is in possession or control of LER’s non-affiliate purchase and sale information. The fact that Laclede does not possess or control such information is beside the point, because possession or control is not at issue. The Rules are clear that Laclede must make available LER’s records

“when required in the application of this rule” and “for the sole purpose of ensuring compliance with this rule.” (4 CSR 240-40.015(6)(A) and (B)) These conditions represent the Commission’s acknowledgment that because it does not generally regulate non-utilities, the Commission intends to exert its authority only so far as is necessary to ensure compliance with the affiliate transaction rules. So the argument here is not whether Laclede possesses the information sought by Staff, but whether the production of this information is necessary to ensure compliance with the Rules. Laclede has shown herein that producing such information is not necessary to ensure compliance. For its part, in the face of Laclede’s repeated quotes of Rule 40.015(6), Staff errantly but unflinchingly insists that “Laclede must make available LER’s records” while consistently failing to acknowledge the remainder of the sentence that limits this obligation to “the sole purpose of ensuring compliance” with the Rule.

A. Staff Has Previously Tried to Enforce Its Unauthorized Standard

28. This is not an original idea for Staff, or for Public Counsel, for that matter. In fact, this is at least their third bite at this apple. In 1998, prior to the enactment of the Rules, Staff attempted to enforce these standards on Utilicorp in its transactions with its marketing affiliate, UES. Staff argued that UES should be required to purchase pipeline capacity from Utilicorp at the same price that UES sells that capacity, effectively eliminating any return for UES. The Commission summarized the testimony of Staff witness Wallis as follows:

Mr. Wallis testified that 94 percent of UtiliCorp's excess capacity on the Williams Natural Gas pipeline during the ACA period was purchased by UES, and that UES sells to 23 of UtiliCorp's 41 transportation end users. Mr. Wallis stated that these figures, combined with the fact that UES is providing a combined bill to these end users for the services supplied by both UES and UtiliCorp, indicate that there is a niche market for UES. Staff stated that UES is taking

advantage of UtiliCorp's system assets, i.e. its contracts with pipelines and the pipeline capacity itself. **Mr. Wallis testified that where a marketer is taking advantage of a niche market, the capacity release rate is not the market rate but whatever the marketer is receiving for the capacity. Specifically, Staff's position is that UES should make no profit on the excess capacity it purchases from UtiliCorp and sells to UtiliCorp's transportation customers. (Re 1994-1995 Actual Cost Adjustment, Case No. GR-95-273, Report and Order, p.4, 1998 WL 988470 (Mo.P.S.C. October 6, 1998) (emphasis supplied)**

29. Utilicorp's view was that the market rate was the appropriate basis for valuing capacity released to its marketing affiliate. The Commission summarized Utilicorp's testimony:

UtiliCorp stated in the Hearing Memorandum that the appropriate basis for valuing released capacity is the market rate. UtiliCorp's witness, Mr. Warnock, testified the company determines the market price of released capacity at the time of transfer by consulting the interstate pipeline's electronic bulletin boards, and by calling other LDCs, marketers, or brokers to determine their sale or purchase prices for similar capacity. Mr. Warnock testified that UtiliCorp does not transfer capacity to UES at rates lower than it would offer to a nonaffiliate; 'UES pays the prevailing market rate.'

... Mr. Warnock testified that, if UES is required to pay UtiliCorp an above-market rate for capacity releases, UES would probably purchase its capacity from another marketer, broker, or LDC, or purchase capacity directly from the pipeline. The result would be to remove UES as a viable competitor for UtiliCorp's excess capacity. According to Mr. Warnock the capacity ready for release is generally greater than the available market. There would be no guarantee that UtiliCorp could find another purchaser for its excess capacity. Mr. Warnock believes that if UES is forced out of the market for UtiliCorp's excess capacity, UtiliCorp's end users may actually receive lower capacity transfer credits than they are currently receiving due to a lack of buyers. Mr. Warnock testified that UES is not receiving a competitive advantage by purchasing UtiliCorp's excess capacity. He stated that any nonaffiliated marketer could provide the same services and that UtiliCorp transfers capacity to nonaffiliates using the same market-determined rate as used for UES. Generally unused interstate pipeline capacity is transferred at less than the maximum or tariff rate of the regulated utility. A list of nonaffiliated marketers to whom UES releases capacity is included in Warnock's Direct Testimony as Schedule DWW-1. (*Id.*)

30. Consistent with the Rules that it would later promulgate, the Commission found that UtiliCorp's captive firm customers received the appropriate capacity release

credits during the 1994-95 ACA period, because UtiliCorp's sales of released capacity to UES were made at market rate.

31. The Commission's decision to use the market rate as the pricing standard was the best decision for all parties. Stripped of any opportunity to earn a return, UES would simply cease to do business with Utilicorp, costing the utility the best customer it had for unloading its excess capacity, while at the same time substantially lowering the demand for that capacity, and thus its value. This in turn would harm Utilicorp's ratepayers who would undoubtedly receive less value for the utility's excess capacity. Thus, the Commission avoided the situation sought by Staff in which the utility would be thwarted from making sales at a fair market price for the sole reason that it was affiliated with the buyer.

32. Likewise, in the present case, the evidence will show that Laclede's purchases of LER's gas supplies were ** _____

_____ **

33. The second case occurred after the Rules became effective in the year 2000. In 2003, AmerenUE sought the Commission's authority to move its Illinois customers and facilities to its Illinois affiliate. In connection with this case, Public Counsel sought evidence related to transactions between AmerenUE's affiliates and third

parties. In a decision concurred in by Commissioners Gaw, Murray and Clayton, Judge Thompson wrote:

“It is true that the Commission is authorized and required to examine the dealings of regulated entities with their unregulated affiliates. However...that authority applies to transactions between the affiliates and the regulated entity. It does not apply to transactions between the unregulated affiliates and third parties absent a specific showing of relevancy to transactions between the affiliates and the regulated entity. The Commission lacks any general authority to pry into the affairs of unregulated companies, or the third parties they do business with, merely because they are affiliates of regulated entities.”

(Re: AmerenUE, Case No. EO-2004-0108, Order on Reconsideration Concerning Discovery (Mo. P.S.C. February 26, 2004)

Hence, the Commission has set the standard that a party cannot obtain information on transactions between unregulated affiliates and third parties, unless the party can show the relevancy of this information to the regulated entity's affiliate transactions. As stated above, the information that Staff requests in this case is only relevant to the pricing standard that Staff itself developed, which effectively requires LER to disgorge any margin it earns on transactions with Laclede regardless of the market price or Laclede's FDC. Staff has not, and cannot, show how this information bears upon the fair market price for a Laclede-LER transaction, or even upon Laclede's FDC.

B. Staff Cannot Connect its Request for LER Information to the Standards in the Rules or the CAM.

34. Staff's bare statement that it has shown this relevancy is wholly untrue and suffers from circular reasoning. Having invented its own affiliate pricing standard, Staff now claims that it must have LER's information to satisfy that standard. Staff cannot bootstrap itself into invading an affiliate's business in this manner.

35. Staff's claimed need for LER's non-affiliate business information is disconnected from its authority to audit affiliate transactions. Hence, there is no

relevance between the fair market price for a Laclede-LER transaction and LER's unrelated non-affiliated purchases, sales and margins. For example, assume that on X date, Laclede and LER enter into a contract in which LER will deliver gas on a daily basis for one year to Laclede at Point A at a price of NYMEX minus B cents per MMBtu. The prices at which Laclede, LER, or other companies not affiliated with each other were buying or selling gas for on or about X date in the vicinity of Point A would be relevant to the fair market price for this transaction. The prices at which LER bought gas on various dates throughout the year following X date, at points C, D and E would not be relevant to the fair market price of that transaction, because they would not be at similar times for similar durations or at similar locations.

36. For another example, assume Laclede releases pipeline capacity to LER between points A and B on X date at a price of Y. The prices at which Laclede, LER, or other companies not affiliated with each other were buying or selling pipeline capacity on or about X date for transportation between Points A and B would be relevant to the fair market price for this transaction. The price at which LER later sold the gas that it transported over the A-B route is not relevant to the fair market price of that transportation.

IV. Staff's Pricing Standard Violates the Rules' Non-Discrimination Provisions

37. Finally, it is one thing to have rules that ensure that an affiliate is charging or paying a market rate so as to not disadvantage the utility's customers. It is quite another for Staff to impose discriminatory pricing such that the affiliate is forced out of doing business with the utility. The Rules promote nondiscrimination standards, specifically under 4 CSR 240-40.016(2) entitled "Nondiscrimination Standards." Section

2(I) of Rule 40.016, for example, provides that a utility shall not make an off-system sale to a marketing affiliate on terms that it is not willing to extend on an identical basis to a nonaffiliated marketer. This means that Laclede cannot require LER to disgorge its margins on purchases and sales of gas supplies unless Laclede requires other marketers to do the same thing. Denying purchasers and sellers of its gas or transportation the opportunity to earn a return would quickly bring an end to Laclede's ability to buy or sell gas supplies.

38. The Commission has recently made decisions in two separate cases that both stand for the proposition that the purpose of the affiliate transaction rules is to prevent cross-subsidization, not to prevent affiliate transactions. Just last July, the Commission made a finding of fact that “the pricing mechanism in the affiliate transaction rule is designed to make the public utility indifferent as to whether it sells or receives goods and services from an affiliate or a third party.” *Re Great Plains Energy, Inc. et al.*, Case No. EM-2007-0374, 266 P.U.R.4th 1, 71 (Mo. PSC July 1, 2008). And in a 2007 case in which Staff tried to force an affiliate of AmerenUE to provide service at the affiliate's cost, the Commission stated that its affiliate transaction rule does not, and cannot, require an unregulated affiliate to provide service to its regulated utility affiliate on advantageous terms not available otherwise. *Re Union Electric Company dba AmerenUE*, Case No. ER-2007-0002, 257 P.U.R.4th 259, (Mo.P.S.C. May 22, 2007)

39. In the 1970s and 80s, numerous state courts reached decisions that utility commissions could not simply consider bona fide affiliates to be either one and the same with the utility, or be required to earn no more than the utility's return on equity. For example, a Michigan court found that an affiliate's profits could not be deemed excessive

simply because they existed. The commission was required to take into account evidence regarding the affiliate's risk factor, the fact that the price charged by the affiliate was the same, similar, or lower than prices which the utility would have paid to nonaffiliated companies for similar items, and the fact that the affiliate made substantial sales to nonaffiliated companies and determined its prices by factors other than the profit needs of the parent corporation. *General Tel. Co. v Michigan Public Service Comm'n.*, 260 N.W.2d 874 (Mich. App. 1977). In Minnesota, the court found it unreasonable to arbitrarily penalize the utility for doing business with an affiliate without evidence that ratepayers were harmed. *Northwestern Bell Tel. Co. v State*, 216 N.W.2d 841 (Minn. Sup. Ct. 1974). In sum, the Rules are intended to be used as a shield to protect the utility's ratepayers, not as a sword to slaughter the utility's affiliate.

V. Staff's Request is Burdensome to LER

40. The burden that Staff seeks to place on LER is significant. Basically, Staff seeks to force LER to produce virtually all of its business information, comprised of thousands of transactions over a two year period to satisfy a pricing standard that exists only on Staff's wish list. In the *AmerenUE* case above, the Commission also cited *State ex rel. Anheuser v. Nolan*, 692 SW2d 325, 328 (Mo. App. E. D. 1985) for the proposition that the Commission should "balance the need of the interrogator to obtain the information against the respondent's burden in furnishing it." Here, the burden is great and the need is non-existent.

41. Further, although the Staff claims that information showing the margins made by LER on its various sales must be kept on an easily produced spreadsheet, that is not the case. In fact, LER does not compute the margin on various sales by tying the sale

to a specific source of gas supply. Rather, LER accumulates gas from many sources and sells gas to numerous customers at many varied locations. Staff's error is understandable; Staff must believe that because Laclede maintains its off-system sales records in this format, LER must too. But Laclede does so only because there is a regulatory requirement that mandates such an approach for Laclede's off-system sales transactions.

VI. Response to Other Matters raised in the March 12 Information Request

A. Staff's Position on the ** Release Defies Logic

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43. ** _____

_____ ** This conflicts with reality. First, a capacity release

represents a form of off-system sale, the net revenues of which benefitted customers. Second, there is no indication that any off-system sale opportunities existed at the time

capacity was released. If they did, there is no doubt that, for a good portion of the year, capacity is plentiful enough to handle both the off-system sale and the capacity release to LER. Third, Laclede is not in the marketing business. While Laclede is proud of its performance in making off-system sales and obtaining value for the benefit of itself and its customers for assets that during certain times of the year are not fully utilized, which sales far exceed those of other regional utilities, Laclede's main role in buying gas supplies is to provide service to its native customers. Laclede leaves the buying and selling of gas to industrial customers, aggregations of schools, and other marketers, along with the attendant risks that accompany such a business, to its marketing affiliate. For the Staff to take a situation in which Laclede has gained an upper hand in unloading its excess capacity, and convert it into a scenario in which a *marketing company* is usurping a utility's sales opportunity, is ludicrous.

B. The Employee Bonus Information produced by Laclede Demonstrates That Controls are in Place to Promote Arms Length Transactions

44. Staff's justification for requesting employee bonus information – i.e. that it may reveal that certain personnel have a conflict of interest because they have oversight responsibilities for both utility and affiliate activities – is just another divergence from the Rules, which explicitly authorize common corporate governance and oversight of affiliated companies. The Rules recognize that management responsibility for different companies in a holding company system must eventually converge, at some point, in a single senior executive. This is neither unlawful nor even suspicious, but instead reflects the settled and informed judgment of the Missouri Public Service Commission that sharing corporate governance functions reduces costs for all companies in a holding company system, and therefore benefits even regulated companies.

45. The Rules also sensibly recognize that the way to address any real or perceived conflict associated with such shared management is to require that actual affiliate transactions be tested in accordance with the Rules' pricing standards. This approach, focusing as it does on the specific character and results of the transactions themselves rather than on amorphous perceptions of management intent, renders any perceived or actual conflict meaningless. In other words, the proof is in the pudding. The same argument applies to LER's non-affiliate business information. As the Commission confirmed in the Order on Reconsideration Concerning Discovery in the 2004 *AmerenUE* case (Case No. EO-2004-0108), it is neither necessary nor permissible to delve into an affiliate's transactions with unaffiliated third parties.

46. In short, no matter how Staff may try to obscure it, it is *the affiliate transactions themselves* that must pass scrutiny as to whether they were appropriately priced. As Staff has conceded, Laclede has made available extensive information pertaining to these transactions and it has earned the opportunity to demonstrate how its pricing of such transactions complies with those rules.

47. In any event, contrary to the "concerns" repeatedly expressed by Staff, the information provided for these individuals shows that their bonus compensation **____

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48. The same is true for Mr. Mathews, Laclede's Vice President in charge of gas supply. Once again, his bonus compensation for the two ACA periods under review in these proceedings was tied directly ** _____

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49. In fact, the only mention of ** _____

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C. Laclede Has Provided Significant Information To Staff, Sufficient For Staff To Try Its Affiliate Transaction Case

51. As part of these ACA reviews, Laclede has provided Staff with a mountain of documentation. Specific to the affiliate transaction issues, Laclede has provided Staff with ample information to conduct a case under the Rules and the CAM. For Laclede's purchases of gas supply from LER, Laclede has provided a comparable deal on the MRT Westline and, in response to Staff's complaint that the deal actually terminated in St. Louis, Laclede has provided comparable sales of gas to the St. Louis area. These comparables also represent Laclede's FDC information, because the cost to Laclede of acquiring these gas supplies for itself is the same as the comparables. However, if Staff wishes to view Laclede's actual cost of acquiring gas supplies, Staff has every invoice paid by Laclede for gas supply and transportation over the two ACA periods, along with all the contracts, nominations and any other relevant documentation routinely produced by Laclede in ACA cases.

52. For sales by Laclede to LER, Laclede has made available for Staff a host of evidence supporting the fair market price for these transactions. This evidence, a sample of which was included in Laclede's March 2 pleading, includes (i) InterContinentalExchange (ICE) sheets showing the state of the market at the time of the affiliate transactions; (ii) invoices for sales by Laclede to other non-affiliated companies at similar times, locations and durations; and (iii) Gas Daily publications indicating the market prices for the days and locations where some of the affiliate transactions took place. Laclede has even provided LER's invoices showing LER's cost for buying baseload gas delivered into the MRT's Westline. Laclede provided this invoice

information to Staff as a good faith gesture even though Laclede maintains that this information is not necessary to determine either the fair market price of gas delivered to Laclede or the cost to Laclede to have acquired the gas itself. Staff's view that, in addition to the irrelevant LER information that Laclede has already provided, Staff needs the rest of LER's irrelevant purchase and sale information, is at the heart of this dispute.

VII. Conclusion

53. As the Commission found in the *Utilicorp* case in 1998, in the *AmerenUE* case in 2004, in the *AmerenUE* case in 2007, and in the *Great Plains Energy* case in 2008, Laclede requests that the Commission again find that the pricing standards in the Rules and the CAM adequately protect ratepayers and should be complied with by the parties to this case both in the discovery process and on the merits.

WHEREFORE, Laclede respectfully requests that the Commission sustain Laclede's objection to Staff Information Requests 1a-1e, and grant Laclede such other and further relief to which it may be entitled.

Respectfully submitted,

/s/ Michael C. Pendergast

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CERTIFICATE OF SERVICE

Gerry Lynch hereby certifies that the foregoing pleading has been duly served upon the General Counsel of the Staff and the Office of the Public Counsel by email or United States mail, postage prepaid, on this 12th day of March, 2009.

/s/ Gerry Lynch

Gerry Lynch

AFFILIATE TRANSACTION PRICING STANDARDS

STANDARD/ INFOR MATION	<u>AFFILIATE TRANSACTION RULES</u>	<u>CAM</u>	<u>STAFF</u>
When Laclede Buys Gas Supply From LER	Lower of Fair Market Price, or Laclede's FDC	Fair Market Price (Assumes FDC = FMP) =Average Price of Similar Purchases; or Industry Accepted Index Price	LER's lowest cost of gas anywhere in its portfolio
Relevant Information	Information on Fair Market Price of the transaction, and on Laclede's FDC	Similar purchases between non-affiliates at similar times, duration and location; If none, then Gas Daily, Inside FERC or similar widely accepted publications	All of LER's purchase data, including invoices, without regard to location or duration
When Laclede Buys Pipeline Capacity From LER	Lower of Fair Market Price, or Laclede's FDC	Fair Market Price (Assumes FDC = FMP) Average Price of Similar Purchases; or Pipeline Bulletin Board price for similar purchase; or Industry Accepted Index Price	N/A
Relevant Information	Information on Fair Market Price of the transaction, and on Laclede's FDC	Similar purchases between non-affiliates at similar times, duration and location; If none, then Pipeline Bulletin Board data; If none, then Gas Daily, Inside FERC or similar widely accepted publications	N/A
When Laclede Sells Gas Supply To LER	Higher of Fair Market Price, or Laclede's FDC	Fair Market Price = Average Price of Similar Purchases; or Industry Accepted Index Price	The price at which LER ultimate sells the gas to its customer
Relevant Information	Information on Fair Market Price of the transaction, and on Laclede's FDC	Similar deals between non-affiliates at similar times, duration and location; If none, then Gas Daily, Inside FERC or similar widely accepted publications	All of LER's sales data without regard to location or duration
When Laclede Sells Pipeline Capacity To LER	Higher of Fair Market Price, or Laclede's FDC	Higher of Laclede's FDC (FDC = Variable Cost + Allocation of Joint and Common Cost); or Fair Market Price through FERC Posting and Bidding Process; or Similar non-affiliated Capacity Release Transactions	Price paid by LER plus any profit margin received by LER on sale of gas delivered over the pipeline
Relevant Information	Information on Fair Market Price of the transaction, and on Laclede's FDC	Variable, Joint and Common Costs incurred in releasing pipeline capacity; Pipeline Bulletin Board records; Similar deals between non-affiliates at similar times, duration and location;	All of LER's sales data showing sales of gas and profit margin at end points of pipeline releases from Laclede