

**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 MOTION FOR RECONSIDERATION,
REQUEST FOR STAY AND REQUEST FOR ESTABLISHMENT OF AN
EVIDENTIARY HEARING**

COMES NOW Laclede Gas Company (hereinafter "Laclede" or "Company") and pursuant to 4 CSR 240-2.160 moves the Commission for Reconsideration of the Order Granting Motion to Compel issued in the above-referenced cases on October 20, 2008 (the "Order"). Laclede further requests that the Commission stay its Order pending its ruling on Laclede's Motion for Reconsideration. Finally, Laclede renews its requests that the Commission establish an evidentiary hearing in this case to address the issues that have been raised in the proceeding, including the "concerns" that have been raised by Staff in its belated efforts to obtain additional access to LER's records. In support thereof, Laclede states as follows:

MOTION FOR RECONSIDERATION

1. On October 20, 2008, the Commission issued its Order Granting Motion to Compel in which it effectively granted, in full, Staff's request that Laclede be required to produce additional documents related to the business activities of Laclede Energy Resources ("LER"). Laclede respectfully submits that the Order is unlawful, unreasonable, arbitrary and capricious and should accordingly be reversed by the Commission upon reconsideration. As discussed below, in seeking to compel the

production of additional affiliate records involving LER's transactions with third parties, the Order:

- circumvents the Commission's ACA process, and the Commission's own rules for resolving issues on a summary basis, by effectively granting a Staff ACA recommendation on a contested issue without affording Laclede any opportunity to present evidence, cross examine witnesses or exercise the other procedural rights that the ACA process has always afforded parties before any such recommendations are adopted by the Commission;
- permits the Staff to launch an entirely new field of discovery (and, based on that discovery, presumably make a whole new series of ACA recommendations) literally months and even years after Staff's ACA recommendations were originally due;
- runs afoul of the explicit requirements of the Commission's own affiliate transactions rules governing when access to affiliate information is appropriate as well as the Commission's decision on a similar issue in a 2004 Ameren case; and
- relies on a completely unsubstantiated and implausible Staff theory on revenue migration that is not only inconsistent with the pricing standards in the Commission's affiliate transactions rules, but affirmatively assumes that Laclede should operate in a manner that is discriminatory, anti-competitive and otherwise inconsistent with federal regulatory and legal requirements

2. Most disturbing of all, the Order does these things with little or no analysis of what the Commission's affiliate transactions rules actually require and based on a completely uncritical acceptance of the inaccurate and unsupported assertions that Staff

has made regarding the nature and effect of a few transactions involving Laclede and LER. Even worse, the Order rejects, without any discussion as to why, the alternative which Laclede has repeatedly put forth as a way of addressing this matter in a manner that is truly fair for all parties – namely the holding of an evidentiary hearing to determine whether there is, in fact, any legal or factual basis for concerns raised by Staff in support of its request for such information. For all of these reasons, the Commission should, upon reconsideration, issue a new Order reversing its decision on Staff’s Motion to Compel and scheduling an evidentiary hearing in these two ACA cases.

A. The October 20 Order is unlawful, arbitrary and capricious because it would have the effect of circumventing the normal ACA procedures and, in the process, deprive the Company of its due process rights to present evidence, cross examine witnesses and rebut the assertions of opposing parties

3. The Order Granting Staff’s Motion is also unlawful, arbitrary and capricious because it sanctions a Staff effort that effectively seeks to circumvent the practices and procedures that the Commission has followed for years to process its ACA cases. As employed by the Commission, those practices and procedures have always afforded the utility and other affected parties an opportunity to be heard, present and rebut evidence, cross examine witnesses, and otherwise exercise their due process rights *before* the Commission decides how to rule on a Staff ACA recommendation. In this case, one of those recommendations was Staff’s suggestion at pages 10 to 11 of its December 31, 2007 Memorandum in this case that the Commission should open up an investigatory docket to explore whether Laclede has complied with the Commission’s affiliate transactions rule in its dealings with LER.

4. The Staff’s recommendation for such an investigation was premised on the “concerns” that the Order has now relied on to grant Staff’s Motion to Compel. Rather

than go through the ACA process and give Laclede the opportunity to demonstrate to the Commission why those concerns are baseless (and hence do not warrant such an investigation), the Staff has attempted to short circuit the process by requesting that the Commission order Laclede to produce the very kind of information that Staff would presumably seek in such an investigation.¹ Laclede submits that such an approach is fundamentally inconsistent with the processes and standards that the Commission has established to ensure fairness and accuracy in its consideration of ACA issues and that the Order sanctioning it should accordingly be reversed.

B. The Order is unlawful, unreasonable, arbitrary and capricious because its determination that Laclede should be compelled to provide the affiliate information requested by Staff is not only contrary to the specific provisions of the Commission's affiliate transactions rules governing access to affiliate records but also presumes standards for evaluating such transactions that are nowhere to found in the rules.

5. Under the Order, Laclede would be required to provide Staff with access to all of ** _____

¹It should be noted that the primary disallowance at issue in this case involves ** _____

** At any time over the past seven years, the Staff could have requested from Laclede through the normal discovery process whatever information it deemed relevant to review the propriety and reasonableness of these purchases. However, the Staff never deemed it necessary or appropriate to request the kind of information that it now claims is necessary to conduct its review in this proceeding. Nor did the Staff deem it necessary to request such information either before or after the time that it proposed its first adjustment relating to Laclede's purchase of gas from LER in December 2006 in Case No. GR-2005-0203 or at the time it proposed a nearly identical adjustment in December 2007 in this case. Instead, the Staff has waited well over two years to suddenly assert that such information is critical to its audit of Laclede's gas costs. Unless one assumes that the Staff is completely inept at determining the kind of information it needs to prepare and support its ACA adjustments, there is no reason to believe that the information it now seeks is actually relevant or necessary to its audit of Laclede's gas costs. Nor is there any justification for giving the Staff a virtually unlimited time horizon for conducting discovery in ACA proceedings. Over the past *two-plus* years since Staff began its audit in Case No. GR-2005-0203, Laclede has provided the Staff with numerous boxes of information and documents in response to the hundreds of data requests that Staff has submitted. With its recent Motion, however, the Staff seeks to initiate an entirely new and massive round of discovery on top of all of the discovery it has already conducted. Laclede would respectfully submit that some reasonable limitation should be placed on how long Staff has to conduct such discovery in its ACA audits. Laclede would further submit that given the time limitations observed in other proceedings before the Commission, that reasonable limit has been more than exceeded in this case.

_____** This includes both information that pertains to Laclede-LER transactions and information that pertains to LER's business with third parties. As a result, the Order requires Laclede to provide information without regard to whether the information is necessary to ensure that Laclede is complying with the Commission's affiliate transactions rules or the Cost Allocation Manual that Laclede has been following since March 2004 in accordance with those rules.

6. Contrary to the apparent assumption underlying the Order, the Staff's access to the records of utility affiliates is not unlimited. As the Commission observed in its Order on Reconsideration Concerning Discovery in Case No. EO-2004-0108:

It is true that the Commission is authorized and required to examine the dealings of regulated entities with their unregulated affiliates.^[15] However, as Union Electric points out, 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 that they do business with, merely because they are affiliates of regulated entities. (Order, p. 8, *emphasis supplied*).

7. The rules approved by the Commission to govern transactions between utilities and their affiliates also recognize that the Staff's access to affiliate records is not unlimited. Indeed, those rules specifically state that any Commission review of, or access to, the records or operational practices of an affiliate must be " ... for the *sole purpose* of ensuring compliance with ..." the provisions of the rule. 4 CSR 240-40.015(6)(B) 1 and 2. The rules go on to define what affiliate records and other forms of documentation are necessary to achieve that goal. In doing so, there is nothing in the rules that purports to

mandate or authorize access to cost, sales, net margin, revenue or any other information associated with transactions *between the affiliate and third parties*.

8. To the contrary, when describing what records must be maintained by the affiliate, the rules reference only those costs that are incurred by the affiliate “and charged to the regulated gas corporation.” 4 CSR 240-40.015(5)(A)1. Those portions of the rules that address what information is necessary to ensure compliance with the rules’ asymmetrical pricing standards (for sales of goods and services between utilities and their affiliates) also focus exclusively on information that is either in the possession of the regulated utility or available in the competitive marketplace. Specifically, in applying such standards, the rules contemplate that the *utility* will maintain information showing what costs the utility would or did incur to produce the good or service itself and what the market price of the good or service was at the time of transfer. 4 CSR 240-40.015 (3). Again, none of this requires or even permits an examination of the costs, margins or revenues associated with the affiliate’s transactions with third parties.

9. The same thing is true under the provisions of the Cost Allocation Manual (“CAM”) that the Company submitted to Staff and the Office of Public Counsel in March of 2004 in accordance with the affiliate transactions rules, as well as the Stipulation and Agreement approved by the Commission in Laclede’s 2001 corporate restructuring proceeding, Case No. GM-2001-342. Once again, the 2001 Stipulation and Agreement specifically ties access to the records of Laclede’s affiliates to “ ... what is reasonably required to verify compliance with ... ” Laclede’s CAM. *See Section IV, Paragraph 2 of Unanimous of July 9, 2001 Unanimous Stipulation and Agreement*. And the CAM itself has very specific instructions on what market and cost data is to be examined in

determining whether sales, purchases, or releases of gas and transportation capacity between Laclede and LER have been properly priced. (See Section IX of Laclede's CAM.) Again, none of these instructions, which Laclede has been operating under with Staff's full knowledge and consent since March of 2004, say anything about examining the costs, margins, or revenues associated with transactions between LER and third parties.

10. Despite these explicit limitations on access to affiliate records, the Order nevertheless directs Laclede to provide Staff with a broad assortment of LER records pertaining to transactions involving third parties. In support of the proposition that Staff requires access to such information, the Order cites ** _____

_____ ** Although the Staff has had access to this contract for several years, the Order nevertheless assumes (simply because the Staff has said so) that Staff requires access to *other* LER gas supply contracts because: (1) LER may have sourced some of the supplies that were used to serve Laclede off of other pipelines where the cost of gas was less and (2) because LER may have used some of the capacity Laclede released to it to make sales that could in theory have been made by Laclede instead for the benefit of its utility customers.

11. In doing so, however, the Order simply ignores the fact that under the Commission's affiliate transactions rule and Laclede's CAM, the propriety of Laclede's gas supply purchases from LER is to be determined NOT by LER's costs but by whether the price charged by LER was competitive with prices offered by non-affiliated suppliers. For years now Staff has had in its possession contracts and pricing terms from non-

affiliated suppliers, ** _____ ** that establish the competitiveness and propriety of the supply arrangement with LER. Under such circumstances, the Order's assumption that Staff is entitled to additional information regarding LER's gas supply contracts with other parties is simply wrong as both a matter of law and a matter of fact.

12. Moreover, even if it was appropriate under the affiliate transaction rules to look at what LER paid for the gas supplies used to satisfy its contract with Laclede (which it is not), the Order ignores the fact that Staff has already been given access to all of the information it would reasonably require to do just that. As previously noted, Laclede has voluntarily given Staff ** _____

_____ ** Staff has also been given (or has its own access to) an abundance of information showing what LER would have paid for gas sourced off of other pipelines assuming that such a consideration was even a relevant matter, which it isn't.² While it would be difficult to discern it from Staff's pleadings, anyone who follows or participates in natural gas purchases knows that the wholesale natural gas market does not operate in some kind of informational vacuum. There are published daily price indexes that reflect the cost of gas

²Even if one assumes, as Staff does, that LER sourced some of the gas it used to serve Laclede off of the Centerpoint East pipeline, ** _____

_____ ** Yet Staff's adjustment would assume that LER, in contrast to every other supplier in the wholesale market, should not be compensated a dime for having done so. Once again, this is a patently unreasonable approach that affirmatively assumes that an affiliate should be discriminated against and treated differently from non-affiliated companies – a concept that is antithetical to the Commission's affiliate transactions rules.

on virtually every pipeline segment that can be used to ultimately deliver gas to LER. Indeed, in proposing its disallowance in these two cases in connection with the LER contract, the Staff itself has relied on those very indexes to price out its adjustment. Moreover, Staff has used the same kind of information to price out various alternative scenarios for its adjustment. Given these considerations, there is simply no basis for concluding that the Staff needs additional information regarding LER's supply arrangements with third parties in order to pursue its position.

13. The Order also erroneously relies on Staff's mischaracterization of both the intent and effect of ** _____

_____ ** Incredibly, in true Alice in Wonderland fashion, the Staff has asserted that ** _____

_____ ** In fact, just the opposite is true. As the name implies, ** _____

_____ ** Staff's effort to paint this provision as something bad for Laclede's utility customers is just another example of the extreme lengths to which Staff will go to pursue its irrational hostility to transactions involving affiliates.

- C. The Order is unlawful, unreasonable, arbitrary and capricious because it relies on an unsubstantiated and wholly implausible revenue migration theory that is contrary to the pricing standards established by the affiliate transactions rule for determining the propriety of affiliate transactions and that affirmatively assumes that Laclede should operate in a manner that is discriminatory, anti-competitive and otherwise inconsistent with federal regulatory and legal requirements.**

14. Most egregiously of all, the Order erroneously relies on Staff's theory that virtually all of LER's transactions with third parties need to be reviewed by Staff because LER may have used pipeline capacity released by Laclede to make sales that in theory could have otherwise been made by Laclede to generate off-system sales. As a matter of law, the Order's reliance on this off-system sale "migration" theory is directly contrary to the requirements of the Commission's affiliate transactions rules and the Company's Cost Allocation Manual, which appropriately focuses on whether the transaction was properly priced at the time it was made (i.e. at the time Laclede released the capacity or sold the gas to LER).³ Rather than focus on that key element, however, the Order buys into the proposition that to determine the true market value of the capacity released or gas sold by Laclede to LER, it is appropriate to track what LER did with that capacity or gas and assess whether it earned some money that could have otherwise gone to Laclede. There is absolutely NOTHING in the affiliate transactions rules or Laclede's CAM, however, that supports such a view.

³In terms of sales of gas or capacity to LER, Laclede has also provided the Staff with extensive information, including market price data, to demonstrate why such transactions were fully consistent with the Commission's affiliate transactions rule. (See the Company's responses to DR Nos. 27, 33, 41, 51, 140, 148 in Case No. GR-2005-0203, and DR Nos. 67, 75, 83, 91, 111 in Case No. GR-2006-0288. Moreover, Laclede has made its personnel available to go over concrete examples of actual transactions that occurred during the ACA periods, all in an effort to demonstrate that such transactions complied with the Commission's affiliate transactions rules. Although a number of Staff members were apparently unable to attend this session, the notion that Staff has been deprived of the legitimate information it needs to evaluate compliance with the affiliate transactions rule is utterly without merit.

15. Indeed, to demonstrate just how far astray such a theory would take the Commission, assume that a utility rents office space to an affiliate at the higher of fully distributed cost or the current market value of the space. By its clear terms, the affiliate transactions rule would say the transaction is proper and that would end the inquiry. Under the Staff theory relied upon by the Order, however, the rental amount should be the higher of cost, market value, plus all of the net profits earned by the affiliate. Under this theory, the Staff would need to follow this and every other affiliate transaction into the future to determine if there are any affiliate profits to disgorge. Thus, the Commission would have to wait and see what the affiliate did with that office space. If the affiliate used the space to open up a successful energy consulting business, the Commission would presumably need to see what the profits from that business were in order to determine whether it should now impute a higher market value to the office space because it is being used to generate profits that perhaps the utility could have generated, had the utility decided to engage in the energy consulting business. Similarly, if the utility were to sell used utility vehicles to an affiliate at the higher of cost or market value, the Staff would nonetheless have the Commission examine what the affiliate did with those vehicles. Did it use them to start a taxi service, an HVAC business or maybe an appliance installation business? If it did use the vehicles for one of those purposes, exactly how much did the business make? And what does all that say about the “real” market value of the vehicles that were sold?⁴

16. It is precisely this unending smorgasbord of burdensome and irrelevant inquiries that the affiliate transactions rules and Laclede’s 2004 CAM were designed to

⁴The very term market value assumes that an asset has value because of what it can be used to produce. The Staff’s theory assumes that the price should include not only this potential value but indeed all of the value that was actually produced in connection with the asset.

prevent by establishing, up-front, how such transactions are to be priced. By directing that Staff be given access to a broad range of LER's non-affiliate related information, however, the Order would promote the very kind of unproductive mischief that the affiliate transactions rules seek to avoid.

17. In addition to its fundamental inconsistency with the pricing standards, Staff's revenue migration theory also assumes, in direct contraction to the legal requirements of the Commission's own rules and federal law, that Laclede should operate in a blatantly discriminatory and anti-competitive manner towards its affiliate. Even though the Staff has argued that the Commission's affiliate transactions rules prohibit Laclede from discriminating when making sales or releasing capacity to buyers in the wholesale market, adoption of its revenue migration theory would have that precise effect. ** _____

18. _____

_____ ** It is difficult to

overstate how egregiously discriminatory, anti-competitive and just plain unlawful such a requirement would be. No matter what its own view of fairness might be, the Staff of the Commission is not empowered, under the guise of enforcing affiliate transactions rules, to require that **_____

_____ ** To the contrary, such a requirement would be profoundly anti-competitive and inconsistent with FERC capacity release requirements, not to mention the Commission's own rules prohibiting discrimination. And yet that is precisely where Staff's "revenue migration" theory leads. Such a result should not and cannot be sanctioned by the Commission and efforts to obtain affiliate records for the purpose of establishing such a requirement should be rejected at the outset.

19. In addition to ignoring these legal considerations, which make Staff's access to the LER information both unnecessary and unlawful, the Order also overlooks (without any discussion as to why) all of the facts which demonstrate the fallacy of Staff's off-system sales "migration" theory. In an apparent effort to prove that Laclede personnel have adopted such a migration strategy, the Staff asked for the bonus compensation calculations and objectives for the gas supply personnel who are responsible for making such sales. And what did that information show? Contrary to the "concerns" repeatedly expressed by Staff, the information provided for these individuals shows that their bonus compensation **_____

_____ **

20. 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 ** _____

_____ **

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

_____**

22. In light of the forgoing, it is also clear that there is no basis for Staff’s assertion that its migration theory needs to be investigated because there are no “absolute controls” in place to prevent off-system sales from migrating from Laclede to LER. To the contrary, this bonus information shows that such controls are not only in place (in addition to those provided by the affiliate transactions rules), but are both robust and deeply integrated into Laclede’s corporate structure. Instead of simply relying on a written procedure, Laclede has provided significant ** _____

_____** In fact, such revenues increased by 20% or more in each of the ACA periods under review in these proceedings (from approximately \$12.2 million to \$15 million in the 2004/2005 ACA period and from approximately \$15 million to \$18

5** _____

_____**
6** _____

_____**

million in the 2005/2006 ACA period). These types of revenues have, in turn, greatly benefited the Company's customers. Indeed, over the past three years alone they have offset approximately 14% of the fixed charges the Company incurs to reserve gas supply and pipeline capacity to meet its customers' requirements.⁷ Nowhere in the Order are these considerations even acknowledged, let alone discussed.

23. In short, the revenue migration claim that the Order relies on to justify Staff's access to LER's records is as specious and unconvincing as the other arguments Staff has offered in an effort to get the Commission to disregard the clear limits that the Commission's own affiliate transactions rules place on Staff's access to affiliate information. **

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REQUEST FOR HEARING

24. Given these considerations, Laclede respectfully submits that there is no legitimate legal or policy basis for the Order Granting Staff's Motion to Compel. Perhaps its greatest error, however, is the Order's failure to even address, let alone adopt, Laclede's repeated request that an evidentiary be scheduled before the Commission decides this issue so that the legal and factual validity of Staff claims in these cases can be tested before Staff's ACA recommendation is adopted. Laclede believes that it has

⁷Staff's fixation on whether Laclede has wrung every possible dollar out of its off-systems sales and capacity release opportunities is even more difficult to understand given Staff's apparent disinterest in the far lower levels achieved by other utilities. Once again, it appears that Staff's idea of an appropriate response to utility efforts that produce comparatively superior results for customers is to never acknowledge the achievement, but instead to seek ways to penalize the utility that produced the benefits. This is hardly the kind of constructive regulation that will produce beneficial results for customers over the long-term.

demonstrated serious legal and factual flaws in the claims and theories that Staff has raised, not only in support of its proposed disallowance but also as a pretext for profoundly expanding its access to affiliate records beyond anything that has even remotely been authorized by the Commission's rules that address that very subject.

25. Accordingly, the Commission should, consistent with its normal procedures for processing ACA issues, evaluate the evidence in these cases and determine for itself whether there is any validity to the claims and concerns that the Staff has raised regarding Laclede's affiliate transactions and upon which Staff has premised its discovery request and recommendation that the Commission launch an investigation of LER. Laclede is confident that once it does, the Commission will conclude that there is no basis for Staff's discovery motion, let alone its recommendation that an investigatory proceeding be opened to address this matter.

26. Of course, Laclede can assert what it will and the Staff can do the same. What is really needed at this point is a hearing during which the claims of both Laclede and Staff can be tested in the hearing room through the procedures that have long been established to get at the truth of the matter. To that end, Laclede renews its request that the Commission establish a hearing date in this case as soon as reasonably possible so that this process can finally begin.

REQUEST FOR STAY

27. For the same reasons discussed above, Laclede respectfully requests that the Commission Stay the effectiveness of the Order pending its ruling on Laclede's Motion. Section 386.500.3 (RSMo. 2000) authorizes the Commission to stay the effectiveness of its orders and Laclede believes that it has demonstrate good cause in this

instance for the Commission to exercise that authority pending its determination of the matters raised in the Motion.

WHEREFORE, for the foregoing reason, Laclede respectfully requests that the Commission reconsider and reverse its October 20 Order Granting Motion to Compel and in its place issue an Order setting an evidentiary hearing and deferring its ruling on such Motion until the completion of that evidentiary hearing. Laclede further requests that the Commission stay the effectiveness of the October 20 Order pending its ruling on this Motion.

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 30th day of October, 2008.

/s/ Gerry Lynch

Gerry Lynch