

**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 LEGAL MEMORANDUM
IN SUPPORT OF ITS MOTION FOR SUMMARY DETERMINATION**

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

1. Staff’s complaint in this case constitutes an impermissible collateral attack on the Commission’s November 4, 2009 Order, as well as on the Commission’s January 21, 2009 Order, and the Circuit Court’s June 25, 2010 Judgment. In the November 4 Order, the Commission agreed with Staff and specifically found that the Staff’s discovery requests were not made pursuant to the 2001 S&A (or the Rules), both of which were red herrings. Instead, the Commission decreed that the discovery requests are covered by the discovery rules of civil procedure. Having carried the day on this point, the Staff cannot now attack the Commission’s order on that same issue in this complaint case.

2. The parties to the 2001 S&A agreed to the manner in which affiliate transactions would be handled. 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”)...” The parties to the 2001 S&A also agreed how affiliate

transactions would be audited. 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) Since the subject of the discovery dispute involved the price at which Laclede purchased or sold gas from or to its affiliate, and since the parties clearly agreed in the 2001 S&A that the CAM would dictate the pricing of affiliate transactions, the above clause specifically covers the matter at issue. Any other clause in the 2001 S&A is either inapplicable or is of a broad general applicability. In either case, the specific application of the above quoted clause must control; to do otherwise would be to elevate the general over the specific, which violates the rules of contract interpretation.

3. Despite these clear prescriptions, when it came time to evaluate the affiliate transactions in the ACA cases, Staff wanted no part of the 2001 S&A or the CAM. Although the data requests were clearly severed from the 2001 S&A, Staff has nevertheless filed this complaint 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, the Commission’s January 21, 2009 Order clarifying that Laclede must produce information that is in its possession, the Commission’s November 4, 2009 Order confirming Staff’s position that the 2001 S&A is inapplicable, and the Cole County Circuit Court’s Judgment that Laclede must produce information in its possession, custody or control, 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.

4. The discovery requests were propounded in the ACA Cases. The relevance issues were argued in the ACA cases. Although Laclede disagreed with the outcome, it was decided in the ACA Cases that Staff was entitled to the documents, not pursuant to the 2001 S&A or the Rules, but pursuant to the discovery rules of civil procedure. Again, the Commission considered the 2001 S&A in relation to these data requests and specifically found in its November 4, 2009 Order in the ACA Cases that the 2001 S&A did not apply. The orders have been issued and the matter decided in the ACA Cases. Staff cannot now open up another case (this case) and complain that its data requests were propounded under the 2001 S&A, and that Laclede has violated the 2001 S&A, *when that matter was already decided in the ACA Cases*. Staff's complaint should be dismissed as a collateral attack on the orders issued in the ACA Cases, or on the grounds that the inapplicability of the 2001 S&A is the law of the case. This argument is in the nature of collateral estoppel and *res judicata*. In fact, it is not just the issue that has been decided; the matter itself was decided in the ACA Cases between the same parties and based on the same facts.

5. Nor can Laclede have violated the 2001 S&A as a matter of equity. The equitable maxim that applies here is that one who seeks equity must do equity. Staff cannot itself avoid the 2001 S&A on an affiliate matter, and yet expect to enforce the 2001 S&A against Laclede on the very same matter. Simply put, the 2001 S&A either applies or it does not apply. Staff cannot have it both ways. Since Staff has convinced the Commission that it does not apply to these transactions, it cannot now be enforced against Laclede.

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