

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

In the Matter of Laclede Gas Company's)	
Tariff to Increase its Annual Revenues)	<u>File No. GR-2010-0171</u>
for Natural Gas Service)	Tariff No. YG-2010-0376

**LACLEDE GAS COMPANY'S MOTION TO QUASH
SUBPOENAS AD TESTIFICANDUM**

COMES NOW Laclede Gas Company ("Laclede" or "Company") and for its Motion to Quash the two Subpoenas served on Laclede executives on July 7, 2010, states as follows:

1. On May 14, 2010, Laclede filed its Response in Opposition to Staff's Motion to Add Parties (the "Motion") in which Laclede stated, among other things, that the Motion serves no purpose other than to harass Laclede for objecting to Staff's circumvention of the Commission's affiliate transaction rules.

2. The harassment continues. Late in the afternoon of July 6, 2010, Staff filed in EFIS two letters sent to Mr. Steve Reed, Commission Secretary, requesting that he issue subpoenas for the top two officers in the Company to testify at a hearing on July 9, less than three days later. These officers are Laclede's CEO, Douglas H. Yaeger, and its Executive Vice President, Kenneth Neises. The Commission Secretary issued the subpoenas and they were served on Laclede on July 7, 2009, less than 48 hours prior to the hearing. The purported reason given as to why these executives are needed to testify regarding the Motion is that they are officers of both Laclede and other Laclede affiliates.

3. Commission Rule 2.100(2) provides that a subpoena shall not be issued fewer than 20 days before a hearing, except for a showing of good cause. These

subpoenas should be quashed because the Staff has failed to show good cause for issuing them fewer than 20 days before the hearing.

4. The subpoena for Mr. Yaeger makes no attempt to show good cause. It provides no explanation as to why a subpoena should be issued less than three days before the hearing, and should be rejected for that reason alone. In addition, as Staff correctly stated in its request letter, Mr. Yaeger filed direct testimony in this proceeding. That testimony was filed on December 4, 2009. Therefore, not only has the Staff issued numerous data requests in this case regarding affiliate cost allocations, but it can, and has, issued several data requests to Mr. Yaeger's attention directly, to which Mr. Yaeger responded. There is therefore no reason at all that he should be summoned to testify on a matter that Staff has had seven months in which to seek from him whatever information it believed was necessary and appropriate, much less summoned on such an unreasonably short notice that it would require him to disrupt the business activities he has scheduled for that day.

5. In effect, Staff's own argument, that these employees serve as officers for multiple affiliates, including Laclede Gas Company, serves as a basis to deny the subpoenas. Because this case has been brought by Laclede Gas Company, Staff may, and has, requested and received information from the Company as to cost allocations among the Company and its affiliates. Because Messrs. Yaeger and Neises are both officers of Laclede Gas Company, they would answer any of those questions that require their specific knowledge. In fact, although Mr. Neises, who also has other scheduled business to attend to on July 9, is not a witness in this case, he has received and responded to two data requests. In addition, since this case began, Staff has also had ample opportunity to

seek to depose Messrs. Yaeger and Neises in the event Staff believed they actually possessed information that was critical to their Motion. In view of these considerations, there is no good cause to subpoena either of them on such short notice.

6. The letter requesting a subpoena for Mr. Neises contains one sentence in which Staff states that it prepared the subpoena as soon as possible after the Commission's July 1 Order. Laclede disagrees. By Order dated June 24, 2010, the Commission informed the parties that it would need evidence in connection with the July 9 oral argument on the Motion. Staff has been on notice since June 24 that witnesses would be needed for the hearing. Staff has not shown good cause why it waited until July 6 to subpoena these witnesses.

7. Moreover, it should be noted that Laclede has already designated at least two witnesses to appear and testify on the issues identified by the Commission. The Company has selected these witnesses to represent it, because they are the witnesses who filed testimony regarding cost allocation in this case. Laclede has the right to designate its own witnesses, and to not have its busy executives lose an entire day to attend this hearing.

8. Finally, the purposes given by Staff in the subpoenas to support why the two executives must appear as witnesses are not appropriate for this hearing. These purposes apply to the actual substance of Staff's claim and have nothing to do with the procedural issue presented by the Commission regarding whether all of Laclede's affiliates must be joined in order for Staff to obtain the information it needs to do its job. It is one thing for Staff to diverge from the issues designated by the Commission. It is quite another for Staff to divert Laclede's top two executives while it does so.

9. At this point, it is clear that the Motion has no merit. Staff filed it on May 4 claiming that it needed to add affiliates to the rate case for discovery purposes. Yet as the time for discovery has dwindled, Staff has made no effort to move the matter along, has postponed the matter on questionable grounds, and has taken a position in its June 30 pleading (to set the hearing on the Motion for August 2) that would effectively moot the Motion. The parties are preparing for a July 9 hearing only because the Commission has taken the initiative to force the issue.

10. So what possible purpose can Staff have for the Motion other than to harass Laclede for refusing to agree with the Staff's unlawful position that an affiliate should sell gas to the utility at the affiliates' cost, and not at the market price as required by the affiliate transaction rules? Laclede respectfully suggests there is no other purpose.

WHEREFORE, for the foregoing reasons, Laclede Gas Company respectfully requests that the Commission quash the Subpoenas *ad Testificandum* served on Laclede on July 7, 2010.

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 pleading was served on the General Counsel of the Staff of the Missouri Public Service Commission and the remaining parties to Case No. GR-2010-0171 on this 7th day of July, 2010, by hand-delivery, facsimile, email or United States mail, postage prepaid.

/s/ Rick Zucker

Rick Zucker