

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

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

In the Matter of Laclede Gas Company's Purchased)
Gas Adjustment (PGA) Factors to be Audited in its) **Case No. GR-2005-0203**
2004-2005 Actual Cost Adjustment)

**RESPONSE OF LACLEDE GAS COMPANY
TO INQUIRY REGARDING COMMISSION OPTONS**

COMES NOW Laclede Gas Company (hereinafter "Laclede" or "Company"), and for its Response to Inquiry of Commissioner Kenney Regarding Commission Options states as follows:

1. At the Commission's agenda meeting on February 17, 2010, Commissioner Kenney requested that he be informed of the "options" for addressing the matters raised by the Commission's recent show cause order in these proceedings.

2. Apparently, those options will be provided to the Commission by the Regulatory Law Judge without any opportunity for Laclede to review or comment on them. In light of the concerns that Laclede has previously raised regarding the conduct of these proceedings, and the prejudicial impact that certain undisclosed actions have had on the Company, the Company feels compelled to briefly offer its own set of options for the Commission's consideration.

3. At the outset, the law is clear that the Commission does not presently have the option to take any action with regard to penalties or sanctions for failure to comply with a Commission order. To do this, the Commission must first determine if Laclede

has, in fact, failed to comply with a Commission order by not providing any document discoverable under the Commission's Rules and the Rules of Civil of Procedure. Laclede submits that it has provided Staff with all requested documents which are properly discoverable, and the Commission has conducted no evidentiary proceeding that would permit a finding to the contrary.

4. Second, Laclede believes that the best option is to refocus the Staff on treating affiliate transactions in accordance with the Commission's Affiliate Transaction Rule by reinstating the Commission's April 22, 2009 Order in these proceedings. Had this decision by the Commission been followed through upon, rather than reversed through inappropriate means, there would have already been a hearing in this case in which the Commission could have determined whether the affiliate transactions at issue in these proceedings did or did not comply with the very Rule approved by the Commission to protect customers when such transactions are conducted.

5. Alternatively, if the Commission is still intent on pursuing the information requested by Staff, then it should recognize that the issuance of a subpoena to LER is the only valid means for seeking such information. As Laclede has previously discussed at length, the Commission itself has recently decided that a subpoena is the only discovery mechanism authorized by law under the circumstances present in these proceedings. *In Re: Kansas City Power and Light*, Case No. ER-2009-0086, Order Regarding Staff's Motion to Compel (December 9, 2009). It is also the only discovery vehicle that provides a non-party like LER with the opportunity to exercise its legal rights to contest the propriety of a request to seek access to its records. Moreover, the pursuit of such an approach, in lieu of an enforcement action against Laclede, will allow a more timely and

efficient resolution of this matter should it be necessary to seek enforcement in the Circuit Court. Specifically, it would avoid the situation of having the Circuit Court potentially determine that the Commission's November 4, 2010 Order cannot be enforced because the Commission has not even pursued the only discovery method to obtain such information that the Commission itself has determined to be available.

6. Finally, if any kind of enforcement action is to be pursued, Laclede believes that the record should be supplemented to ensure that the circuit court has the fullest possible understanding of how and why we have arrived at this juncture. At a minimum, there should be an explanation of: (a) why there was an effort to cancel an agenda meeting in May 2009 on the grounds that there was nothing pressing before the Commission when, in fact, Laclede and one other utility had motions for expedited treatment pending before the Commission;¹ (b) why there was a delay of several weeks in disposing of the motions for reconsideration, even though the Regulatory Law Judge indicated that no new issues had been raised in such motions;² (c) why these motions for reconsideration were placed on the agenda for discussion rather than as an order, even though no new issues had been raised; (d) why Commissioner Murray's and Laclede's requests for a special agenda meeting to vote on the motions for reconsideration were not acted upon; and (e) the nature, circumstances and contents of any comments that may have been made by the Regulatory Law Judge outside the agenda room and off the official record regarding this matter.³

¹ See Archived webcast of May 21, 2009 Agenda meeting.

² See Archived Webcast of May 27, 2009 Agenda meeting.

³ *Id.*

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission accept this Response to Inquiry Regarding Commission Options.

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 23rd day of February, 2010.

/s/ Gerry Lynch

Gerry Lynch