

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

In the Matter of Laclede Gas Company's)	
Purchased Gas Adjustment (PGA) to be)	Case No. GR-2005-0203 and
Audited in its 2004-2005 and 2005-2006)	GR-2006-0288
Actual Cost Adjustment)	

STAFF'S MOTION FOR RECONSIDERATION

COMES NOW, the Staff of the Public Service Commission, and for its Motion for Reconsideration states:

1. On April 23, 2009, the Commission considered Staff's Motion to Compel production of documents and determined that Staff's discovery requests were not reasonably calculated to lead to the discovery of admissible evidence.

2. The Commission has broad powers of discovery. Commission rule 4 CSR 240-2.090(1) states that discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court.

3. The inquiry in the Purchased Gas Adjustment cases is whether or not Laclede was prudent in its gas purchasing activities. Staff's discovery request is tailored to determining whether or not ** _____

_____** and keep the profits when the sale could and should have been made by Laclede and the profits shared with Laclede's customers. To state it another way, Staff's discovery requests are designed to inquire into whether Laclede imprudently shifted profit to LER at the expense of Laclede's captive customers.

4. Staff is seeking additional information and documents because the proffered documents do not resolve the most basic issues in a prudence review. Completely apart from the Commission’s affiliate transactions rules, the Commission possesses the “power” under § 393.140(12) “to inquire as to and prescribe the apportionment of earnings” between the utility and the affiliate. If Laclede is unreasonably and imprudently giving its affiliate preferential treatment, that is an issue Staff must pursue through discovery because Laclede possesses all of the documents.

5. The Missouri Supreme court has described this situation:

This expansion [into unregulated businesses] gives utilities the opportunity and incentive to shift their non-regulated costs to their regulated operations with the effect of unnecessarily increasing the rates charged to the utilities' customers. See [*United States v. Western Elec. Co.*, 592 F.Supp. 846, 853 \(D.D.C.1984\)](#) (“As long as a [public utility] is engaged in both monopoly and competitive activities, it will have the incentive as well as the ability to ‘milk’ the rate-of-return regulated monopoly affiliate to subsidize its competitive ventures...”)

Atmos Energy Corp. v. Public Serv. Comm’n, 103 S.W.3d 753 (Mo. 2003) citing *United States v. Western Elec. Co., Inc.*, 592 F. Supp. 846, 853 (D.D.C. 1984).

6. As the Staff pointed out in the oral argument before the Commission, this case is a discovery dispute over whether Laclede entered into an imprudent contract with LER. The requested documents are expected to reveal whether the price of gas that

**

**

7. Staff has requested ** _____

_____ ** The fair market price must be determined by

an arms-length transaction. The question is what ** _____

8. The Commission may require Laclede to produce documents under 393.140(12). The Commission’s powers shall include also the right to inquire as to, and prescribe the apportionment of earnings, debts and expenses fairly and justly to be awarded to or borne by Laclede as distinguished from LER.

9. In terms of its purchases from LER, Laclede’s argues that it has similar contracts with ** _____ ** Since the price term is similar, Laclede suggests the price ** _____ ** is a fair market price.

10. In fact, these two contracts differ in significant ways so the pricing is not comparable. The ** _____ ** does not prove Laclede was prudent in contracting with LER. For example, ** _____

_____ ** The fair market price is different at these two distinct points and neither is currently listed as an index pricing point so the fair market value cannot be determined without review of actual gas transactions. ** _____

**

11. Laclede did produce documents for the ** _____ **
with a NYMEX based price. But these are RETAIL transactions with customers and not
Local Distribution Company wholesale purchases that Laclede would engage in.

12. Since the small number of affiliate records offered by Laclede to date does
not prove prudence, Staff seeks documents which would demonstrate prudence.

13. Staff believes Laclede is also allowing ** _____
_____ ** Laclede may be foregoing off-system sales
opportunities to the detriment of its customers and to the advantage of LER. The
prudence standard requires the Staff to determine whether Laclede is acting to benefit
LER at the expense of Laclede's customers. This involves an assessment of ** _____

_____ **

14. There is a potential conflict of interest in that a dollar of value for an
** _____

_____ **

15. Laclede's arguments that it has complied with the affiliate transactions
rules and Laclede's unapproved and ever-changing CAM are attempts to divert the
Commission's attention from the real issue: prudence. Laclede's CAM was never
"approved" by the Commission and is still under review by the Staff and OPC. In fact, it

is possible that Laclede's CAM is designed by the same management that oversees LER's business activities. The fact that Laclede had a contract ** _____

_____ ** does not mean that the fair market price for gas is set by ** _____ **

The contracts are different.

WHEREFORE, the Staff prays that the Commission reconsider its decision in this case and issue an order compelling discovery.

Respectfully submitted,

/s/ Steven C. Reed

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, e-mailed or transmitted by facsimile to all counsel and parties of record this 1st day of May, 2009.

/s/ Steven C. Reed