

**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 REPLY
TO THE RESPONSES OF STAFF AND PUBLIC COUNSEL**

COMES NOW Laclede Gas Company (“Laclede” or “Company”), and files this Reply to the Responses of the Commission Staff (“Staff”) and the Office of the Public Counsel (“OPC”), stating as follows:

1. Staff’s October 28, 2010 Response in this case fails to refute Laclede’s assertion that Staff is forcing upon utilities an affiliate pricing standard that contradicts the Commission’s Affiliate Transaction Rules (the “Rules”). In fact, Staff’s Response only strengthens the claim that Staff is violating the Rules. OPC’s Response fails to even address the contention that Staff is violating the Rules.

2. In filing its October 25, 2010 Answer to Laclede’s Counterclaim in this case, the Chief Staff Counsel was forthright enough to frankly disclose Staff’s actual position on the pricing of affiliate transactions, which is that affiliates be prohibited from earning any profit or receiving any compensation of any kind on such transactions, regardless of the fair market price of those transactions. For example, Staff stated its belief that LER should sell gas supply to Laclede at LER’s acquisition price. (Staff Answer, par. 8)

3. Laclede promptly reported in its October 26 Notice that Staff's acquisition price standard conflicted with the "fair market price" standard prescribed by the Rules.¹

4. Staff's October 28 Response offers nothing to suggest that Staff is adhering to the Rules. In fact, in paragraph 3 of its Response, Staff actually reconfirms that it is using this unauthorized acquisition price standard, not because it is arguably consistent with the Rules, but because Laclede has not provide Staff with certain LER documents that are only even potentially relevant if one erroneously assumes that Staff's unauthorized pricing standard is the correct one.

5. Staff's advocacy of this unauthorized standard has nothing to do with any purported failure by Laclede or Atmos to provide relevant information, but instead is based solely on Staff's erroneous and unsupported belief that affiliates should never be allowed to profit on their transactions with a utility. Staff has long held this belief, as evidenced by the fact that Staff recommended proposed disallowances for both Laclede and Atmos long before the current discovery disputes with either Company ever surfaced, and without even attempting to establish a fair market price. In short, Staff has manufactured a discovery dispute in both Laclede and Atmos ACA cases to avoid accountability for its continued use of a patently unauthorized pricing standard. The Commission should not countenance such a tactic.

¹As Laclede pointed out, Staff's pricing standard would make it economically impossible to conduct affiliate transactions, since it would eliminate any opportunity for an affiliate to ever profit from or receive compensation of any kind for its services by requiring the utility to flow through any such profit or compensation. By denying affiliated marketers the same opportunity to make a profit that non-affiliated marketers routinely receive, Staff's standard would also foster the very kind of discriminatory treatment that the Rules explicitly prohibit.

6. In short, in its desperation to defend the indefensible, Staff can only offer an Orwellian argument that because it has not been given all the information it deems necessary to prove up its unauthorized pricing standard, it “has no choice” but to continue to use that unauthorized standard. Such circular reasoning is as unconvincing as it is illogical, and does nothing to challenge the assertion that Staff is not complying with the Rules’ fair market pricing standards.

7. Also in paragraph 3 of its Response, the Staff admits that its standard for pricing affiliate purchases from a utility “says nothing about either fair market value or fully distributed price...” This is tantamount to an admission that Staff is ignoring the Rules’ pricing standards. Nevertheless, the Staff attempts to justify its equally unauthorized position that affiliates should never be allowed to profit on a sale of gas they acquired from a utility by stating that all profits should “inure to the benefits of ratepayers who bought the gas in the first place.” In addition to being flatly inconsistent with the fair market pricing standard in the Rules, Staff’s assertion that ratepayers pay for the gas used to make off-system sales is also spectacularly incorrect. In reality, any gas used to make an off-system sale to an affiliate (or to any other party for that matter), is never paid for by ratepayers, either through the PGA or otherwise. To the contrary, it is Laclede – and Laclede only – who pays for such supplies at the time they are acquired to make such a sale. The only time ratepayers enter the picture is when they share in the net margins made by Laclede as a result of such sales. Moreover, even in the instances where ratepayers pay for pipeline capacity released by Laclede, it has never been the practice or policy of the Commission to say that all profits from the resale of such capacity should inure to ratepayers. Instead, such profits are shared between Laclede and

its customers pursuant to Laclede's Commission-approved tariffs. In sum, Staff's statement conflicts with the Rules' pricing standards, is factually inaccurate, and is inconsistent with Commission policy.

8. In paragraph 4 of its Response, Staff claims that it is not seeking to prohibit affiliate transactions by enforcing a standard that requires them to be conducted at cost – a claim that is illogical and cannot be squared with Staff's repeated actions in this and other proceedings. Staff's final point, that it must have affiliates' business records so that it can determine whether Laclede is in compliance with the Rules, is belied by the fact that Staff has no interest in any records that would pertain to the fair market price of an affiliate transaction, which is what the Rules require.

9. In summary, Staff's Response failed to refute the assertion that Staff is violating the Rules by attempting to enforce an affiliate pricing standard that conflicts with the standard prescribed by those Rules.

WHEREFORE, Laclede respectfully requests that the Commission take notice of (i) Staff's admission that it is not adhering to the pricing standards of the Rules; (ii) Laclede's allegation that it feels aggrieved by Staff's departure from the Rules; and (iii) the principle that Staff has an obligation to comply with the law, and the Commission has an obligation to take supervisory action when it is so abundantly clear, as it is in this case, that Staff is not doing so.

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 Response was served on the Staff and on the Office of Public Counsel on this 2nd day of November, 2010 by United States mail, hand-delivery, email, or facsimile.

/s/ Gerry Lynch