

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

In the Matter of Laclede Gas Company's)
Purchased Gas Adjustment for 2008-2009) **Case No. GR-2010-0138**

LACLEDE'S REPLY TO STAFF RESPONSE

COMES NOW Laclede Gas Company (hereinafter "Laclede" or "Company") and submits its Reply to Staff's Response filed in this case on February 28, 2011. In support thereof, Laclede states as follows:

1. On December 30, 2010, the Staff of the Missouri Public Service Commission (hereinafter the "Staff") submitted its Memorandum and Recommendation ("Recommendation") in Case No. GR-2010-0138 for the Company's 2008-09 Actual Cost Adjustment ("ACA") period. On February 14, 2011, Laclede filed its response to the Staff's Recommendation. On February 28, 2011, Staff filed its response to Laclede's response.

2. Staff's February 28 Response further cements Staff's position as conflicting with the Commission's affiliate transaction rules ("Rule") and the CAM that the parties agreed to and the Commission approved in Case No. GM-2001-342. Staff's persistent refusal to obey these controlling instruments strikes at the very integrity of the regulatory process, which envisions that rules and agreements will be complied with until lawfully changed. At the same time, it doubly punishes the public by diverting resources from other lawful regulatory purposes and by needlessly driving up litigation expenses that, whether incurred by the Commission Staff or the Company, are ultimately reflected in customer rates.

3. In short, Staff's failure to enforce the Rules and the CAM, as written, is wasteful. It maximizes inefficiency, creates significant uncertainty in the law, and drives up costs for all stakeholders.

4. Moreover, it does these things for no good reason. The Rules and CAM require Laclede to buy gas from its affiliate, LER, at no more than a market price. This is a perfectly sensible standard that protects ratepayers from subsidizing affiliates, which is why the Commission embedded the policy in the Rule, and why it approved the CAM agreed to by Staff and Laclede back in 2001. Regardless of whether Staff still supports this standard, it is the law and must be complied with until changed.

5. But on page 3 of its Response, Staff avoids this standard by (i) treating Laclede's affiliate as if it did not exist, and (ii) treating the Rule as if it did not exist.

Here is Staff's argument:

Laclede is supposed to sell gas to its customers at Laclede's cost.
Laclede has bought gas from LER at a marked-up price.¹
Laclede has sold the gas to its customer at the same marked-up price.
Therefore, Laclede has profited on the gas it was supposed to sell at cost.

Staff imputes LER's efforts to Laclede, effectively refusing to recognize the separate corporate identities of Laclede, the utility, and LER, the gas marketer, without any basis for doing so. By employing this fiction, Staff seeks to completely ignore the Rule's pricing standard, discriminate against marketing affiliates in direct contradiction to the Rule's non-discrimination provisions and, in the process, effectively outlaw affiliate transactions. Staff attempts to justify this departure by stating on page 3 that affiliate transactions are not arms length transactions and therefore Staff has "no choice but to

¹ Staff sometimes concedes that the "marked-up" price is a fair market price, and sometimes does not. Staff insists, contrary to the Rules and CAM, that the fact that the price may be a fair market price is not dispositive, because Staff seeks to use the affiliate's cost as the pricing standard.

give these transactions a higher degree of scrutiny.” This is precisely where the Rule should apply, however, because the Rule sets that degree of scrutiny by requiring Laclede to buy gas from LER at no more than a fair market price. But Staff does not mention the Rule, because Staff seeks to apply a different standard and a different kind of scrutiny than the Rule prescribes.

6. If the Rule dictated that a utility should buy goods and services from its affiliate at the affiliate’s cost, then Staff’s approach would be proper. If the Rule had so stated, then Laclede would have been on notice to bid for gas from LER at LER’s cost. Undoubtedly, LER would have taken its business elsewhere, and sold its gas to another party at a market price. If that was the Rule, so be it.

7. But that standard is not in the Rule, nor is it in the CAM that the parties agreed to nearly 10 years ago. Laclede is willing to be judged based on the rules as they exist. Laclede understood the test to be fair market price and Laclede has the right to be graded on that test. Laclede respectfully submits that the Commission should conclude likewise and put an end to this needlessly wasteful approach that discredits the regulatory process and doubly penalizes customers.

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission accept this Reply to Staff’s Response.

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 of the Public Service Commission and the Office of the Public Counsel by hand delivery, email, fax, or United States mail, postage prepaid, on this 10th day of March, 2011.

/s/ Gerry Lynch

Gerry Lynch