

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

In the Matter of Laclede Gas Company's     )  
Purchased Gas Adjustment for 2004-2005     )     **Case No. GR-2005-0203**

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

**RESPONSE TO PUBLIC COUNSEL'S MOTION TO REJECT  
REQUEST FOR SPECIAL AGENDA MEETING**

**COMES NOW** Laclede Gas Company ("Laclede" or the "Company") and for its Response to Public Counsel's Motion to Reject Request for Special Agenda Meeting, states as follows:

1.     On May 28, 2009, the Office of the Public Counsel ("OPC") filed (but did not serve on Laclede) a pleading in which it moved that the Commission reject Laclede's Request for a Special Agenda Meeting. In its Motion, OPC cites various provisions of the Stipulation and Agreement in Case No. GM-2001-342 which it claims are relevant to the Commission's disposition of the Motions for Reconsideration and/or Clarification that have been filed by Staff and OPC in this case (hereinafter "the Motions"). Predictably, OPC urges further delay so that the Commission may give additional consideration to these provisions. OPC's Motion, and the arguments it tenders in support thereof, are impermissible, meritless and moot and should accordingly be rejected.

2.     OPC's arguments are impermissible because they are nothing more than an unauthorized attempt to supplement the Motion for Reconsideration and/or Clarification that OPC filed on May 4, 2009. OPC does not have some special status that allows it to ignore the procedural rules that govern everyone else. Under those rules, parties have ten days following the issuance of an Order to file a Motion for

Reconsideration. That requirement cannot be circumvented, as OPC has attempted to do here, by simply adding additional or supplemental arguments to subsequent pleadings filed long after the ten day period has expired.

3. OPC's arguments are also meritless. Presumably, if the provisions cited by OPC were at all relevant to the issues at hand, OPC would have thought to address them at some point during the past six months as part of the numerous pleadings it has filed in this case, or at least spoken about them during the oral argument held in this case. Instead, OPC simply throws them against the wall at the last minute in the hope that something will stick. There is nothing in the provisions cited by OPC, however, that in any way varies, or even purports to vary, the legal standards and requirements that control the pricing of affiliate transactions and Staff's and OPC's access to affiliate records, and hence the disposition of this issue. To the contrary, the first provision cited by OPC on page 2 of its Motion, clearly indicates that any action taken by the Commission to protect ratepayers from any harm arising from regulated activities must be based on "the lawful exercise of its ratemaking powers." Similarly, the second provision cited by OPC conditions the Commission's authority to act on the "lawful exercise of its current statutory powers." As this Commission has already determined, the scope and nature of that authority – as well as the standards for determining whether any cognizable harm has occurred to ratepayers – resides in the Commission's affiliate transactions rules. No amount of out-of-context paraphrasing by OPC can change that core reality.

4. The third provision that OPC paraphrases at page 2 of its Motion is taken the farthest out of context. Although OPC cites Laclede's agreement to provide access to affiliate information that is relevant to the Commission's ratemaking authority, it does

not bother to mention other provisions of the Stipulation and Agreement that condition Laclede's obligation to provide such information on the following of "normal discovery procedures" and Laclede's exercise of the "right to object to such production of records or personnel on any basis under applicable law and Commission rules . . ." (page 8 and 9 of Stipulation and Agreement). Apparently, OPC believes that if it only misrepresents and distorts the contents of the Stipulation and Agreement in Case No. GM-2001-342 often enough, its false version of that document will eventually prevail. The words of that Agreement do not disappear, however, simply because OPC chooses to ignore them.

5. OPC's Motion and arguments are also moot, for two reasons. First, the Commission obviously did not schedule a special agenda meeting, as requested by Laclede and opposed by OPC. Although Laclede believes that the Commission should have scheduled a special agenda meeting to better formalize the action that was taken at the Commission's May 27 Agenda Meeting, the failure to do so effectively moots the issue.

6. Second, there should be no mistake regarding the nature and effect of the actions that a majority of commissioners have already taken to dispose of this matter. Specifically, at the May 27 Agenda Meeting a majority of commissioners took all of the substantive actions necessary to deny the Motions for Reconsideration and/or Clarification filed by Staff and OPC. The Commission's consideration of such Motions was noticed up and placed on the Agenda. The Sunshine laws of this State only require that a governmental body give notice of the time, date and place of a meeting, together with a "tentative agenda" (Section 610.020 RSMo. 2000); a step that was clearly complied with in this instance.

7. Moreover, it is clear from the web video of the Agenda meeting that a majority of three commissioners (all of whom were physically present at the meeting) expressed their decision to deny the Motions – an action that should also satisfy the requirement of Section 610.015 (RSMo. 2000) that the votes of the administrative body be recorded.<sup>1</sup> As recorded on the video, those votes were as follows:

Minutes:seconds on tape: 9:00 – 9:28

Commissioner Murray: And you don't see this as, I, I guess, game-playing?

Judge Jones: Because it's not a legal consideration, I don't see it.

Commissioner Murray: Ok. I do, Mr. Chairman. I think we should be voting on it.

Chairman Clayton: I understand. Um, I assume you're opposed to reconsideration?

Commissioner Murray: Yes, I would deny the motion for reconsideration.

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Minutes:seconds on tape: 13:28 – 13:40

Chairman Clayton: Commissioner Jarrett.

Commissioner Jarrett: I am for denying the motion to reconsider. I didn't see anything in the arguments that was different than what they argued before us.

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Minutes:seconds on tape: 48:05 – 48:21

Chairman Clayton: Back to item no. 1 under Case Discussion, GR-2005-0203, Laclede Gas. Commissioner Davis.

Commissioner Davis: I am for denying the motions for rehearing.

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<sup>1</sup> Section 610.010 provides that such votes may be electronically stored, a requirement that is met by the video record of the agenda meeting maintained on the Commission's website.

8. Given these considerations, the Commission should conclude that the only remaining thing that can and should be done is the ministerial act of issuing an Order that reflects the will of the majority of commissioners who attended the Agenda meeting. Laclede hopes that this is exactly what the Commission will do at its Agenda meeting tomorrow. As Laclede has previously stated, there have been serious lapses in the way in which these Motions have been handled – lapses which cast significant doubt on whether this proceeding has been conducted in the fair and impartial manner mandated by the Commission’s rules and applicable law. *See* 4 CSR 240-2.120; *State ex rel. Fischer v. Public Service Com'n of Missouri*, 645 S.W.2d 39, 43 (Mo.App. W.D. 1982). The failure to place these Motions on earlier Commission agendas (even though the Regulatory Law Judge acknowledged that they raised no new issues); the subsequent decision to place the Motions on the May 27 Agenda as a discussion item rather than as an order (even though there were no new issues that would warrant additional discussion); the apparent discussion of the Motions outside of the formal, public process established to dispose of such matters; and the failure to schedule a special agenda meeting to accommodate the final request of a commissioner who had honorably served this institution for twelve years (even though the request could have been satisfied by nothing more than the scheduling of a five minute agenda meeting), are among the factors that have led to such concerns.

9. By issuing the Order Denying Motions for Reconsideration and/Clarification that is currently on its Agenda, the Commission can do much to rectify these concerns as well as give proper recognition to the will that was expressed not just

once, but twice, by a majority of the commissioners who considered this issue.<sup>2</sup> To that end, Laclede accordingly requests that the Commission issue its Order Denying Motions for Reconsideration and/or Clarification consistent with the decision of the majority of commissioners as expressed at the May 27, 2009 Agenda meeting.

**WHEREFORE,** for the foregoing reasons, Laclede respectfully requests that the Commission issue its Order Denying the Motions for Reconsiderations and/or Clarification submitted by Staff and OPC.

Respectfully submitted,

/s/ Michael C. Pendergast

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<sup>2</sup> Although Laclede requests the purely ministerial act that a form order be issued so as to inform opposing parties that their appeals are at an end, even without that action, a valid and fully enforceable order denying the Motions already exists. As described above, lawful notice of the May 27, 2009 meeting considering the Motions was given. Further, all Commissioners were present and an actual vote was taken that denied the Motions. Neither Staff nor any other party has submitted another Motion to Reconsider. The vote taken at the May 27, 2009 meeting therefore finally resolved the issue. Opposing parties cannot undo either these facts or their consequences through additional procedural maneuvers.

**CERTIFICATE OF SERVICE**

I hereby certify 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 2nd day of June, 2009.

/s/ Gerry Lynch

Gerry Lynch