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

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| 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 2004-2005 Actual Cost Adjustment | ) | **Case No. GR-2005-0203** |

## RESPONSE OF LACLEDE GAS COMPANY TO COMMISSION ORDER

**COMES NOW** Laclede Gas Company (hereinafter "Laclede" or "Company"), and for its Response to the Commission's February 3, 2010 Order to Show Cause Why the Commission Should not Direct its General Counsel to Seek Penalties and Other Remedies, states as follows:

1. On February 3, 2010, the Commission issued its Order in the above-captioned cases in which it directed Laclede to file a pleading stating why the Commission should not direct its General Counsel to seek all remedies available under Missouri law for Laclede's alleged failure or refusal to comply with a November 4, 2009 Order in which the Commission directed Laclede to produce — on three business days notice — records that neither belong to nor are possessed by Laclede, but would instead belong to and be possessed by Laclede's unregulated affiliate, Laclede Energy Resources, Inc. ("LER").[1] The Commission issued its Order, notwithstanding its unanimous and

[1]As the Staff notes, both Laclede and LER sought extraordinary writs from, first, the Western District Court of Appeals and, second, the Missouri Supreme Court (Laclede only), in an effort to obtain a judicial determination of the propriety of the Commission's actions to date. Neither court chose to intervene at this stage of the proceedings, as is the case in the overwhelming number of such requests for extraordinary relief. However, because both courts were silent on the reasons for denying relief, no inferences can be drawn as to whether the Court agreed or

unchallenged ruling on January 21, 2009, that under the general rules of discovery, Laclede was only required to provide documents that were in its possession, its November 4, 2009 ruling that neither the affiliate transactions rules nor the Stipulation and Agreement in GM-2001-0342 were applicable in this instance, and its unanimous December 9, 2009 Order in a similar case that a subpoena was the only lawful discovery vehicle for obtaining the kind of information sought here.

2. At the outset, Laclede would note that it takes its duty to comply with Commission orders and rules with the utmost seriousness, including those relating to the production of information. Indeed, over the past twenty years, Laclede has managed to meet the information needs of the parties to Commission proceedings in a way that has made the need for Commission intervention in the discovery process a true rarity. So when a dispute of this nature arises, the Commission can be assured that there are fundamental rights and principles involved, and not mere technicalities. From Laclede's perspective, the principles at stake here can be reduced to the simple question of whether the laws governing the Commission's exercise of its regulatory responsibilities are being observed and applied fairly and uniformly to all parties. Laclede sincerely believes that has not happened here.

3. That said, Laclede appreciates the opportunity to respond to the Commission's February 3 Order in these proceedings. To begin with, Laclede would note that the February 3 Order is itself incorrect because it does not accurately reflect the vote taken by the commissioners during the Commission agenda meeting, second because

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disagreed with the merits of Laclede's arguments, thought that the issue was not ripe for judicial intervention, or believed that Laclede had already complied with the Commission's Order to the extent is could and thus no action would ultimately be necessary if the Commission determined likewise.

it establishes Saturday – a day when the Commission's office is closed – as the due date for Laclede's filing, and third because it incorrectly states that Laclede has "refused" to comply with the Commission's Order.[2]

4. Notwithstanding these errors and their impact on the validity of the February 3 Order, however, very compelling reasons exist as to why the Commission should not direct its General Counsel to take any action at this point against Laclede. As discussed below, any action to enforce the November 4 Order would be inappropriate, unlawful and unreasonable because:

- The Commission cannot authorize its General Counsel to seek remedies based solely on Staff's unsworn allegations regarding Laclede's supposed failure to comply with a Commission order, but must instead afford Laclede an evidentiary hearing and a full opportunity to demonstrate that it has, in fact, complied with the Commission order;
- The November 4 Order itself is invalid and unlawful because it relies on a method of discovery that this Commission has unanimously decided is not authorized by law and is not available under the present circumstances;
- The November 4 Order is invalid and unlawful because it directed Laclede to take action which Laclede has no legal authority to take, which in any event was impossible to perform in the extremely limited time-frame provided by the Order and, assuming *arguendo* that Laclede had the legal authority to turn over documents in LER's possession, would have required LER to violate binding contractual agreements with numerous third parties;

[2]In addition to being incorrect, that conclusion was drawn based solely on Staff's suggestion, without even affording Laclede an opportunity to respond or acknowledging the response that Laclede hurriedly managed to file on February 2.

- The November 4 Order is invalid and unlawful because it purports to overturn a prior lawful order that found such information to be irrelevant under the Commission's existing affiliate transactions rules – an order that would (and should) still be controlling today but for a non-transparent, fundamentally unfair and impermissible effort to manipulate the administrative process and thwart the will of a majority of commissioners, all to the detriment of Laclede.

5. Standing alone, each of these deficiencies provides a sufficient basis for concluding that the Commission's General Counsel cannot and should not take any action, remedial or otherwise, in connection with the Commission's November 4, 2009 Order. Together, they constitute an overwhelming and complete bar to such an action.

**It is Improper to Seek Penalties or Sanctions Before Any Hearing has Been Afforded to Determine Compliance or Lack Thereof With a Lawful Order**

6. Laclede vehemently disputes Staff's assertion that the Company has failed or refused to comply with the Commission's November 4, 2009 Order. That Order purported to require that Laclede provide – on three business days notice – certain documents that are presumably kept by LER, not Laclede. In response, Laclede submitted a letter to the Staff on November 9, 2009, noting that substantial information, including LER information, had already been provided to Staff. This included thousands of pages of documents relating to the market price of gas throughout the areas where Laclede purchases and sells gas as well as hundreds of pages of invoices which LER had agreed to make available to Staff relating to its purchases of gas on the MRT West Line and the market price at which LER sold gas to customers in the St. Louis area. Consistent with the Commission's January 21, 2009 Order in these proceedings, which directed Laclede to produce only those LER documents that were in Laclede possession,

Laclede further stated that it possessed no other documents that were responsive to the Commission's Order.[3] Finally, because the Staff data requests sought information in a form that was not maintained by LER, Laclede reported that literally thousands of source documents would have to be provided instead. Given the volume of such information, and the fact that many of these documents were subject to confidentially agreements that would require the advance notification and even consent of third parties, Laclede indicated that it would not be possible in any event to provide such documents without violating such agreements, let alone provide them in such an extremely short period of time. The Commission should understand that the confidentiality provisions in the LER agreements are between LER and third parties and that *Laclede* is not legally entitled to have access to LER information that is protected pursuant to those agreements simply because it is an affiliate.

7. Nowhere in its January 28 Notice does the Staff even consider these matters. Staff does not acknowledge the receipt of or otherwise address the LER

[3]On February 8, 2010 the Office of the Public Counsel ("OPC") filed a pleading in these proceedings in which it claimed that Laclede was precluded under the Stipulation and Agreement ("Agreement") in Case No. GM-2001-0342 from objecting to the provision of affiliate information on the grounds that such information is not in its possession. Laclede has previously addressed in detail why OPC's interpretation of that Stipulation and Agreement is erroneous, including Laclede's position that it is the OPC and Staff, not Laclede, that have repeatedly violated the Agreement by completely ignoring the very Cost Allocation Manual which the Agreement established as the means for protecting customers from any detrimental rate impacts and defining the scope of the Company's obligation to provide information. *See* Laclede's June 2, 2009 *Response to Public Counsel's Motion to Reject Request for Special Agenda Meeting* and Laclede's June 22, 2009 *Response to Commission Directive*. Moreover, OPC's assertion flies directly in the face of the Commission's November 4, 2009 Order which stated that the applicability and enforcement of the affiliate transactions rules and the Agreement in Case No. GM-2001-0342 was a "red-herring." OPC cannot have it both ways by urging the Commission to enforce an Order on the one hand, while simultaneously attacking one of its primary findings on the other. Finally, OPC's harmful accusation, that LER's records "will reveal a scheme to boost the profits of The Laclede Group, Inc. on the shoulders of Laclede's regulated customers" has been published with reckless disregard of its truth or falsity and without any facts whatsoever being disclosed that would support such a belief. As such, this accusation is not just irresponsible, but defamatory.

documents it has been given, it does not address the meaning and effect of the Commission's January 21, 2009 Order as to what Laclede was obligated to provide, and it says nothing about the practical and legal concerns mentioned above. Instead, Staff has simply made a bald and baseless assertion that Laclede has failed or refused to comply with the Commission's Order. Due process demands that Laclede receive an evidentiary hearing to determine whether the Company has complied with the Commission's November 4 Order, and if not, whether Staff has been prejudiced as a result. ***State ex rel. Missouri Highway and Transportation Comm'n. v. Pully***, 737 S.W.2d 241 (Mo App. E.D. 1987) Until the Commission has afforded Laclede an opportunity to present evidence of its compliance with lawful orders, as opposed to the Commission simply accepting Staff's unsupported conclusions, any determination to seek penalties or other punishment by the General Counsel would be premature, inappropriate and unlawful.

**It is Improper to Seek Enforcement of an Order that Relies on a Discovery Method That the Commission has Determined to be Unauthorized by Missouri Law**

8. An enforcement action would also be inappropriate because it would seek to compel compliance with a discovery method (i.e. the submission of data requests to Laclede) that is neither authorized nor available under the circumstances existing here. Laclede bases that conclusion not on its own view of the law, but on the legal decisions and holdings that have been previously and repeatedly expressed by the Commission itself.

9. The Commission determined in its November 4, 2009 Order that it is not relying on its affiliate transaction rules to obtain the LER records, but is instead seeking to obtain them through Laclede pursuant to the general rules of civil discovery. If the

Commission, as it has stated, is indeed seeking production of LER records by using general discovery rules, then it is indisputable that a submission and enforcement of data requests to Laclede cannot be used. First, as the Commission recognized in a unanimous Order it issued in these proceedings on January 21, 2009, Laclede is only required under the general rules of discovery to provide LER information "to the extent that Laclede is in possession of the information." As the Commission stated:

> The Commission has ordered Laclede to produce information about its affiliate according to the rules of discovery not under the Commission's Affiliate Transaction Rule. Although it is true that by granting Staff's motion, Staff is permitted to investigate Laclede's affiliate transactions, such investigation is limited to information that may lead to evidence that is relevant to these ACA cases. To the extent that Laclede is in possession of the information, the Commission clarifies its order compelling Laclede to produce the information requested by Staff.

Order Regarding Request for Clarification, p. 1 (emphasis added).

10. To Laclede's knowledge, the Commission has never reversed this unanimous determination that the LER documents in question must be in Laclede's possession for Laclede to have any obligation to provide them. Nor was this determination challenged by Staff or OPC, the two other parties to these proceedings. It therefore remains "the law of the case" and must be followed.[4] And that is precisely

[4]The only statement that Staff makes in its Notice in response to the fact that these documents are not in Laclede possession is the bald assertion that there is a common officer, Mr. Neises, who has authority over both the operations of Laclede and LER. Because any corporate structure that has affiliated companies ultimately has to have a common officer at some point near the top of the corporate pyramid, the fact that one exists says nothing as to whether that officer can or must exert undue influence over one corporate entity for the benefit of another one. To the contrary, as the Western District Court of Appeals recently determined, in evaluating what action to take in a particular situation, a corporate board or officer has to make independent decisions that are consistent with its or his fiduciary duty to the entity in question. ***State ex rel. Public Counsel v. Public Service Commission,*** 274 S.W.3d 569, 582 (Mo. App. W.D. 2009). In effect, Staff is suggesting that Mr. Neises, as an officer of Laclede, should force LER to provide such information to Laclede without any consideration of whether it is in the best interests of LER and its suppliers and customers to do so, let alone whether there is any legitimate legal basis to support such an action.

what Laclede has done by repeatedly advising the Commission of whether, and to what extent, the requested LER documents are or are not in its possession, and by providing any documents that it may have had.

11. Perhaps in recognition of the fact that Laclede has indeed complied with the Commission's actual discovery orders in this case, as written, the Commission referenced another source of its authority to seek the LER documents in its pleadings before the Western District Court of Appeals and Missouri Supreme Court. Specifically, the Commission stated that it was seeking such records based on the authority granted by R.S.Mo § 386.450 which provides that:

> At the request of the public counsel and upon good cause shown by him the commission shall require or on its own initiative the commission may require, by order served upon any corporation, person or public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, <u>of any books, accounts, papers or records kept by said corporation, person or public utility</u> in any office or place within or without this state, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the public counsel when the order is issued at his request or by the commission or under its direction.

R.S.Mo. § 386.450 (emphasis added).

12. As indicated by the underscored language, however, this statutory provision only requires that a corporation, person or public utility provide accounts, papers or records that are actually "kept" by that entity in its offices. Absolutely no allegation has been made in these proceedings that LER's records are "kept" by Laclede. In fact, LER's records are kept by and are in the possession of LER, not Laclede. Accordingly, in providing whatever records it keeps, Laclede has fully complied in these proceedings with its obligations under this statute as well.

13. Given these facts, it is clear that if the Staff was intent on obtaining information from LER, the proper course of action was to seek such information from LER directly, through the issuance of a subpoena, rather than indirectly through the issuance of data requests to Laclede.[5] This course of action has been available over the many months that Staff has been intent on obtaining LER's information through a different party, namely Laclede. To this day, Staff is not prejudiced from pursuing this course of action.

14. Such an approach was recently endorsed by a unanimous Commission in another proceeding involving a prudence audit – in this instance a prudence audit of expenditures relating to an electric generating plant. In denying a Staff Motion to Compel answers to Staff data requests in that case, the Commission determined that a subpoena was the only discovery vehicle available for obtaining information in those instances where it is sought from a non-party, like LER, or where an investigation is being conducted outside the context of a contested case. As the Commission explained:

> The Commission has recognized the party – non-party distinction and has declared that data requests cannot be directed to non-parties in a contested case. [9] However, the Commission has also recognized that Staff and the Public Counsel may use data requests outside of the context of a contested case pursuant to the specific statutory authority in Section 386.450, RSMo 2000, [10] which provides:
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> > At the request of the public counsel and upon good cause shown by him the commission shall require or on its own initiative the commission may require, by order served upon any corporation, person or public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said corporation, person or public utility in any

[5]The Staff is certainly conversant with how to use the subpoena process in connection with obtaining information from Laclede affiliates, like LER. It has served LER directly in the past and recently deposed the Laclede Group's Corporate Secretary pursuant to a Subpoena Duces Tecum issued by the Commission and served to the Laclede Group.

> office or place within or without this state, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the public counsel when the order is issued at his request or by the commission or under its direction.
>
> Data requests, by definition, are informal written requests for documents and information, and when used outside of the framework of a contested case discovery rules do not provide any means to compel production of the information requested. Use of data requests in a non-case audit fall under the Commission's investigatory power, and production of documents in this procedural context can only be compelled by use of a subpoena as provided for in Sections 386.440 and 536.077, RSMo. Section 536.077 delineates the enforcement mechanism of subpoenas as follows:
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> > The agency or the party at whose request the subpoena is issued shall enforce subpoenas by applying to a judge of the circuit court of the county of the hearing or of any county where the witness resides or may be found for an order upon any witness who shall fail to obey a subpoena to show cause why such subpoena should not be enforced, which said order and a copy of the application therefor shall be served upon the witness in the same manner as a summons in a civil action, and if the said circuit court shall, after a hearing, determine that the subpoena should be sustained and enforced, said court shall proceed to enforce said subpoena in the same manner as though said subpoena had been issued in a civil case in the circuit court. The court shall permit the agency and any party to intervene in the enforcement action. Any such agency may delegate to any member, officer, or employee thereof the power to issue subpoenas in contested cases; provided that, except where otherwise authorized by law, subpoenas duces tecum shall be issued only by order of the agency or a member thereof. [11]
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> The proper procedure for Staff to have followed was to seek production of the disputed documents by means of a subpoena and its enforcement.

***In Re: Kansas City Power and Light,*** Case No. ER-2009-0086, Order Regarding Staff's Motion to Compel (December 9, 2009) (emphasis added, footnotes omitted).

15. Given this Commission's unanimously expressed view of the legal parameters governing its authority to compel the production of information in ***Kansas City Power and Light***, *supra,* it is clear that Staff was required to use a subpoena in the

event the Commission believed that it was entitled to obtain the LER information at issue. It is undisputed that LER is not a party to these proceedings. Moreover, like the prudence audit being undertaken in the ***Kansas City Power and Light*** *case,* it is also clear that the Commission considers these proceedings to still be in some kind of investigation stage, as evidenced by its persistent refusal to honor Laclede's request for an evidentiary hearing and the other procedural safeguards afforded by a contested case until the Staff's investigation is completed. While either one of these factors alone would mandate the use of a subpoena to obtain such information, together they conclusively compel such a result.

16. In addition to being compelled by the decision and legal analysis endorsed by the Commission in ***Kansas City Power and Light,*** the use of a subpoena is also the proper discovery vehicle because it is also the only one that permits LER, as a non-party, an opportunity to protect its rights in the manner provided by law. LER has indicated in its pleadings before the Western District Court of Appeals, that it has significant concerns regarding the legality and reasonableness of the information request at issue here, including the difficulty of notifying numerous suppliers and customers of the request for such information pursuant to confidentiality provisions.[6] That is precisely why the General Assembly has provided a means for the Commission and affected entities to obtain an enforcement hearing in the circuit court in the event there is a dispute over whether certain information should be provided. Laclede respectfully submits that the Commission has no authority under the law to short-circuit these protections by seeking such information from LER indirectly through Laclede. Indeed, that is the very legal

[6]Without a direct request from a governmental agency to produce documents, the confidentiality provisions described by LER in its pleadings raise doubt as to whether LER could even provide certain documents to Laclede without causing LER to breach its confidentiality obligations.

principle that the Commission recognized in its own recent decision in the ***Kansas City Power & Light*** case. Given these considerations, there is simply no lawful basis for authorizing the General Counsel to seek enforcement of a data request that the Commission has since affirmatively held is completely unauthorized by Missouri law.

**It is Improper to Seek Enforcement of an Order that, as Construed by Staff, Could not be Practically or Legally Complied With**

17. As previously discussed, the Commission's November 4 Order purported to require that Laclede produce within three business days documents that belong to LER, not Laclede. If the Order meant those documents within Laclede's possession, as the Commission's January 21, 2009 Order said it should have, there would be no problem providing the information requested. In fact, Laclede did so. If, however, the Order is to be construed, as Staff seemingly has, to cover thousands of source LER documents – many of which were subject to confidentially and notice provisions involving third parties – it would have been impossible for anyone, including LER to provide the documents and not breach these agreements within such a compressed time-frame.[7]

18. It is axiomatic that orders, rules, statutes and other legal requirements must be construed in a way that does not produce unreasonable, absurd or impossible results. (***Sisco v. Board of Trustees of the Police Retirement System of St. Louis***, 31 S.W.3d 114 (Mo App. E.D. 2000). Laclede submits that any construction of the November 4 Order which assumes that either Laclede or LER could have complied with such a massive undertaking in such a short period of time is inconsistent with this rule of construction and must be rejected as a basis for any enforcement action.

[7] The imposition of such a compressed time frame is even more striking and unwarranted given the many months that passed without any action by the Commission in connection with this matter; a period of inaction that was a direct result of the inappropriate attempt which took place in these proceedings to delay a final resolution of this issue in May of 2009.

**It is Improper to Attempt Enforcement of an Order that Seeks to Reverse, Through a Non-Transparent and Fundamentally Unfair Manipulation of the Administrative Process, a Prior Commission Determination that the Information Sought is Irrelevant under the Commission's own Affiliate Transactions Rules**

19. Any action to enforce the November 4, 2009 Order is also inappropriate because the Order itself is inconsistent with the Commission's prior determination that the information sought was irrelevant under the Commission's own affiliate transactions rules – a determination that should and would still be controlling today but for a highly irregular, prejudicial and unfair manipulation of the administrative process that was designed to thwart the majority's determination of this matter. As Laclede has previously pointed out, on April 15, 2009, a 3-2 majority of the Commission voted to deny Staff's Motion to Compel and in accordance with Commission procedure, approved an Order implementing that vote on April 22, 2009. The Presiding Judge apparently disagreed with the Commission's April 15 decision, as did the Chairman of the Commission, who had voted with the minority on April 15, 2009. As the retirement of Commissioner Connie Murray, who had voted with the majority, was imminent, the Presiding Judge and, to a lesser extent, the Chairman of the Commission, proceeded to embark on a series of extraordinary maneuvers that were contrary to Commission rules and procedures and that had the effect of nullifying the Commissioner's April 22, 2009 Order. Specifically,

- Motions for reconsideration, and by extension, orders granting reconsideration, must set forth specific grounds for reconsideration. 4 C.S.R. 240-2.160(2). Following the April 15, 2009 vote, the Presiding Judge should have presented an order reflecting the Commission's vote and the reasons supporting it. He instead presented an extremely short, legally questionable proposed order that did not reflect the Commission's reasons for its vote. The Presiding Judge did so even though the Commission had clearly stated those reasons and Laclede had submitted proposed findings of fact and conclusions of law for the order.

- The Commission promptly and summarily denies motions for reconsideration that do not set forth new legal or factual arguments. See, e.g., Re: Laclede Gas Company, Case No. GT-2009-0026 (Application for Rehearing filed on Friday, April 24, 2009, and denied on Wednesday, April 29, 2009). Pursuant to this practice, and especially since the April 22 Order was itself already the result of extensive briefing and an oral argument, the Presiding Judge should have placed the Staff and OPC motions for reconsideration (which stated no new arguments as the Presiding Judge himself acknowledged on the record) on one of the Commission's upcoming agendas (May 6, 13 or 21) for disposal. The motions were not placed on any agenda until May 27 when, incredibly, they were listed as a "discussion item," rather than as an "Order." As discussed below, this maneuver prevented a final vote and implementation of the Commission's decision at the May 27 meeting to reject the motions for reconsideration.

- Although on May 20, 2009, Laclede filed a request for the Commission to move the matter along by placing the motions for reconsideration on the May 21, 2009 Agenda, the Presiding Judge and the Chairman not only failed or refused to do so but, at the May 21 Agenda meeting, the Chairman attempted to cancel the May 27, 2009 Agenda meeting.

- Under settled law, the Presiding Judge is not authorized to act in contradiction of the authorization of the Commission. R.S.Mo. § 386.240. At the May 27 meeting, the Presiding Judge indicated to the Commissioners that he believed they had erred in entering the April 22, 2009 Order. Commissioner Murray, who was expected to retire on or about May 31, specifically admonished the Presiding Judge for taking a position adverse to the Commission's vote.

- At the May 27, 2009 Agenda Meeting, the Commission discussed the Motions for Reconsideration and by a vote of 3-2 resolved to deny them. Later that day, Commissioner Murray and Laclede separately requested a special agenda meeting to be held on May 28 or 29, so that an order implementing the May 27 vote could be formally approved before Ms. Murray retired. The Chairman failed to respond to either request. Since the Chairman had been made aware that Commissioner Murray's retirement was imminent, the result of his inaction was that the matter was not technically resolved before Commissioner Murray retired

- When the Presiding Judge raised the matter again at the June 3, 2009 Agenda Meeting for a vote to implement the Commission's May 27 decision, Commissioner Murray was gone. As both the Presiding Judge and the Chairman were well aware, also gone was the majority who had read the briefs, heard the oral argument, issued an order more than a

month before to deny the Motion to Compel, and voted just the week before to reject the motions to reconsider that order.

- According to the apparent plan, an order granting reconsideration was then issued on September 9, 2010. Notably, in direct contradiction of the Commission's own rules, none of the reasons typically given for why reconsideration is appropriate were included in the order. In fact, it simply noted that there was now a 5th commissioner who could vote in place of Commissioner Murray -- a circumstance made possible only by the improper actions described above.

20. Laclede's filings, and the improprieties raised therein, have been, and continue to be, ignored by the Commission. In issuing its February 3, 2010 Order, for example, the Commission did not even mention Laclede's February 2, 2010 response to Staff's Notice, let alone address the matters raised therein. It is as if the pleading had never been filed. Unfortunately, that is consistent with the treatment that has been routinely applied to other pleadings filed by Laclede in these cases. Indeed, not once throughout these proceedings has the Commission ever deigned to explain why the actions cited above took place, who directed them to take place, or why such actions were appropriate. This approach is wholly inconsistent with the values of openness, transparency and fairness to all parties that has presumably motivated the Commission to consider new standard of conduct rules to govern its proceedings. To even consider an enforcement action designed to perpetuate the results of such an unaccountable and unfair process is nothing short of unconscionable.

21. It is also antithetical to the principles of due process that should be available to all parties to Commission proceedings. "[D]ue process requires that administrative hearings be fair and consistent with rudimentary elements of fair play." ***State ex rel. Fischer***, 645 S.W.2d at 43. "Procedural due process requires the opportunity to be heard at a meaningful time and in a meaningful manner." ***Colyer v.***

***State Bd. of Registration for Healing Arts***, 257 S.W.3d at 145 (emphasis added). An agency such as the Commission violates the due process rights of the parties subject to its jurisdiction if it does not follow its own regulations or procedures. *Id.*; see also ***Derrickson v. Bd. of Educ. of the City of St. Louis***, 703 F.2d at 315. Laclede respectfully submits that the Commission has departed so dramatically from its usual procedures and acted in a manner so at variance with impartial adjudication that Laclede has been deprived of these due process rights. Under no circumstances should this deprivation be exacerbated further by any form of enforcement action.

**Conclusion**

22. In summary, the Commission should decline to direct its General Counsel to seek legal remedies for Laclede's alleged failure or refusal to comply with the Commission's November 4, 2009 Order. First, the Commission has no factual basis upon which to make a finding that Laclede has failed or refused to comply with the Order. While it may be Staff's view that Laclede has not complied, Laclede maintains that, notwithstanding the Company's practical and legal objections, it has complied with the Order. The Commission is required to hold a hearing and consider the evidence in order to determine otherwise. Second, the November 4 Order should not be enforced because it relies on a discovery method that the Commission itself has determined is not authorized under Missouri law. Third, the November 4 order should not be enforced because it was practically and legally impossible for Laclede to effect compliance in the manner sought by Staff. Finally, the Commission should acknowledge the voluminous improprieties that have occurred in this matter, and take action to help right these wrongs by declining to further enforce the November 4 Order.

23. For the foregoing reasons, Laclede Gas Company respectfully requests that the Commission find that there is no legal, policy or factual justification for moving forward with any enforcement action in connection with the Commission's November 4, 2009 Order in this proceedings.

**WHEREFORE**, for the foregoing reasons, Laclede respectfully requests that the Commission find that Laclede has shown why no such enforcement action is appropriate.

Respectfully submitted,

**/s/ Michael C. Pendergast**
Michael C. Pendergast, Mo. Bar #31763
Vice President and Associate General Counsel
Rick Zucker, Mo. Bar #49211
Assistant General Counsel - Regulatory

Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101
Telephone: (314) 342-0532
Fax: (314) 421-1979
Email: mpendergast@lacledegas.com
rzucker@lacledegas.com

## 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 12th day of February, 2010.

/s/ **Gerry Lynch**
Gerry Lynch