

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

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

**REQUEST FOR CLARIFICATION**

**COMES NOW** Laclede Gas Company (hereinafter "Laclede" or "Company") and, in support of its Request for Clarification of the Commission's December 17, 2008 Order Denying Motion for Reconsideration, states as follows:

1. On December 17, 2008, the Commission issued its Order Denying Motion for Reconsideration (the "December 17 Order") in which it reaffirmed its October 20, 2008 Order granting Staff's motion to compel Laclede to provide certain information and records pertaining solely to business transactions between Laclede's affiliate, Laclede Energy Resources ("LER"), and third parties unrelated to Laclede Gas Company. Such information includes, among other things, copies of gas supply and transportation contracts between LER and unrelated third party suppliers, as well as information on the sales, volumes and margins made by LER in connection with its sales to unrelated third parties.

2. In making this determination, however, the Commission stated in the December 17 Order that it "assures Laclede that no decision will be made with regard to the above-captioned matters without the benefit of an evidentiary hearing." Laclede files this Request for Clarification because, in granting the Staff's motion to compel, it appears

that the Commission has effectively made a decision with regard to one of Staff's recommendations in the above-captioned matters without first holding the evidentiary hearing referenced in its Order. Specifically, a key issue in one of the above-captioned proceedings is Staff's recommendation, as set forth at pages 10 to 11 of its December 31, 2007 ACA Memorandum, that the Commission open up an investigatory docket to explore whether Laclede has complied with the Commission's affiliate transactions rule in its dealings with LER.<sup>1</sup> By granting Staff's motion to compel Laclede to produce information on LER's transactions with unrelated third parties, the Commission has not only effectively decided this matter in Staff's favor, but has gone even further, exceeding the authority under its own affiliate transaction rules by authorizing an investigation of the transactions of a non-regulated affiliate (LER) with unrelated third parties, all without the benefit of an evidentiary hearing.

3. Laclede respectfully submits that making such a determination at this time is flatly inconsistent with the Commission's assurances in the December 17 Order that "no decision will be made with regard to the above-captioned matters without the benefit of an evidentiary hearing." Accordingly, consistent with that Order, Laclede requests that the Commission clarify the December 17 Order to provide that it will indeed set and hold an evidentiary hearing in this case *before* it effectively decides the issue of whether the investigation sought by Staff should be conducted.

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<sup>1</sup> For all of the reasons stated in its previous pleadings in this case, Laclede reasserts that there is no legal or factual basis for the claims that Staff has made in support of that ACA recommendation. Moreover, Laclede has repeatedly requested that the Commission grant it an evidentiary hearing so that Laclede may properly challenge the validity of those claims and demonstrate why Staff's recommended investigation of LER is not justified by either the law or the facts.

4. Laclede believes that there are compelling reasons for the Commission to clarify the December 17 Order in the manner suggested above. This is no mere discovery dispute in which the Commission is simply determining whether a regulated utility subject to its jurisdiction should provide access to the utility's own information and records. In fact, this is not a discovery dispute at all. Rather, this is a final determination by the Commission, without hearing and based on nothing more than untested Staff allegations, granting an ACA recommendation for an investigation and asserting jurisdictional authority over the business operations of a separate and unregulated affiliate by sanctioning a request for records that in no way involve any transactions between that affiliate and the regulated utility.

5. For all of the reasons set forth in its prior pleadings, Laclede does not believe that the Commission has such authority under the standards that have already been approved to govern access to affiliate information, including those set forth in: (a) the Commission's own affiliate transactions rules, (b) the cost allocation manual submitted in compliance with those rules, (c) the terms of the 2001 Stipulation and Agreement which authorized Laclede's current holding company structure, and (d) the Commission's prior decision in the 2004 Ameren case that addressed this very issue and reached a diametrically opposite result.

6. Laclede is not asking the Commission to accept its position at face value. Nor does Laclede expect the Commission to accept at face value the allegations that Staff has made in support of its recommendation for an investigation of LER. Instead, all Laclede seeks is the evidentiary hearing that the Commission has assured the Company it can have before the Commission actually decides the key issues in this case.

7. Even at this late date, neither the Commission nor any other party has articulated any reason, let alone a compelling one, as to why granting such a hearing first would not be the fairest and most appropriate approach to resolving this issue. Such a hearing would accord Laclede the due process it is entitled to receive before a major jurisdictional issue and a key Staff ACA recommendation are effectively decided by the Commission. It would also provide the Staff with an opportunity to prove (and Laclede an opportunity to disprove) the allegations that Staff has made in support of its contention that an investigation of LER's transactions with unrelated third parties is necessary. At the same time, such an approach would give the Commission an opportunity to thoughtfully consider and determine what the specific terms and provisions of its affiliate transactions rules (and the other documents cited above) actually require Laclede and LER to provide under the circumstances of this case (in contrast to simply giving Staff access to every LER non-affiliate transaction-related record Staff has requested based on nothing more than unproven allegations). Just as critically, such an approach would completely preserve the Commission's opportunity to approve an appropriate investigation should the facts adduced at the evidentiary hearing and the law support such an outcome. In view of these considerations, Laclede submits that granting an evidentiary hearing on this issue now is unquestionably the fairest, least prejudicial and most appropriate and lawful way to proceed.

8. For all of these reasons, Laclede respectfully requests that the Commission clarify its December 17, 2008 Order to provide that it will, consistent with the assurances set forth in that Order, grant Laclede an evidentiary hearing on Staff's ACA recommendation pertaining to an investigation of LER before it decides that matter.

**WHEREFORE**, for the foregoing reasons, Laclede respectfully requests that the Commission grant this Request for Clarification.

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 26th day of December, 2008.

/s/ **Rick Zucker**

Rick Zucker