

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

The Staff of the Missouri Public Service Commission,	)	
	)	
v.	)	Case No. GC-2011-0098
	)	
Laclede Gas Company,	)	
Respondent.	)	

**STATEMENT OF POSITION OF LACLEDE GAS COMPANY**

COMES NOW Laclede Gas Company (“Laclede” or “Company”), and submits its Statement of Position in the above captioned case. Laclede’s positions are presented in the same order as the List of Issues it submitted in this case on May 19, 2011.

**LIST OF ISSUES**

**STAFF COMPLAINT**

1. Does Laclede’s Cost Allocation Manual (CAM) violate the pricing standards of the Affiliate Transaction Rules by not including a reference to fully distributed cost (FDC) in the pricing provisions for certain energy-related transactions.
2. Has Laclede violated the Affiliate Transaction Rules by allegedly failing to request Commission approval of its CAM?
3. Has Laclede violated the Affiliate Transaction Rules by allegedly failing to submit its CAM to Staff on an annual basis?

**LACLEDE COUNTERCLAIM**

1. Has Staff violated Commission Rule 4 CSR 240-2.080(7)?

**STATEMENT OF POSITIONS**

**Staff Complaint - Issue 1**

Does Laclede’s Cost Allocation Manual (CAM) violate the pricing standards of the Affiliate Transaction Rules by not including a reference to fully distributed cost (FDC) in the pricing provisions for certain energy-related transactions.

**Laclede's Position:** No. Laclede has taken into account both fair market price (FMP) and FDC in the pricing of gas supply purchases and sales from its affiliate, as required by the Affiliate Rules. Laclede's analysis demonstrates that FMP will always be the appropriate standard, because Laclede, like the vast majority of other LDCs, does not produce or aggregate gas supplies for itself, but instead purchases them from brokers and marketers on the wholesale market. As a consequence, Laclede's FDC for acquiring gas supplies will always be equivalent to, or if additional direct and indirect costs are added, greater than, the FMP for such supplies on the wholesale market.

Laclede's focus on market pricing reflects the simple truth that the Company does not produce or aggregate gas supplies for itself, and therefore FMP determines the appropriate price. The Commission recognizes this concept on its own website. Moreover, during the nine plus years that the CAM has been in their possession, neither Staff nor Public Counsel have questioned this approach with Laclede until very recently. At the same time, the Staff testified in an Atmos ACA case that FDC will not produce a more favorable result for consumers than FMP, *for the very same reasons given by Laclede in this case.*

**Staff Complaint - Issue 2**

Has Laclede violated the Affiliate Transaction Rules by allegedly failing to request Commission approval of its CAM?

**Laclede's Position:** No. Laclede is not required by the Affiliate Rules to file a formal application for approval of its CAM, so this issue does not even raise a claim upon which relief can be granted. However, while Laclede is required to use a Commission-approved CAM, there are a number of ways to establish CAM approval. First, Laclede's original CAM and the process for revising it were approved by the Commission in Case No. GM-

2001-342 in August 2001. Pursuant to the Commission's order in that case, Laclede submitted its CAM to Staff and OPC in December 2001. Neither Staff nor OPC stated thereafter that further approval was necessary nor did Staff and OPC in any way object to the terms of that CAM.

Second, both Staff and OPC agreed to tariff language in 2001 that approved the use of Laclede's CAM to price off-system sales affiliate transactions. The Commission approved such use of the CAM in Tariff Sheet R-42. How can the CAM not be Commission-approved when the Commission approved the CAM for pricing affiliate transactions of off-system sales?

Third, Staff has adopted and implemented a process under which a "commission-approved CAM" is established not by a separate proceeding, but by having a utility's CAM reviewed in a rate case or other proceeding involving rates. For better or worse, Staff's approach is to test CAMs when the use of the CAM actually affects rates. In the past nine years, Laclede's CAM has stood this test through three rate cases and several ACA cases.

The existence of this approach is bolstered by (i) Staff's concession that there are no specific guidelines or procedures for obtaining a formal Commission order approving a CAM, (ii) Staff's admission that no other utility has formally filed for or received a Commission Order approving its CAM, and (iii) the fact that Staff has not filed even one complaint against another utility for failing to use a Commission-approved CAM.

### **Staff Complaint - Issue 3**

Has Laclede violated the Affiliate Transaction Rules by allegedly failing to submit its CAM to Staff on an annual basis?

**Laclede's Position:** No. First, there is no obligation in the Affiliate Transaction Rules to file or submit duplicate copies of the same CAM on an annual basis, and therefore, even if Laclede failed to do this, the Company has not violated the rules. In fact, Staff previously indicated to Laclede that there was no need to provide duplicate copies of the CAM each and every year, confirming that Staff shared this position with Laclede, at least until recently. There is a requirement to submit a CAM report annually, and all parties have agreed that Laclede has met this requirement. Second, Laclede provided its CAM to the parties in December 2001, made it available again to Staff as part of its 2002 rate case, discussed it with Staff and OPC in 2003, provided it again when it was revised in March 2004, discussed the pricing of specific transactions under the CAM during the Company's 2005 rate case and following the Company's 2007 rate case, and since that time has repeatedly discussed various provisions of the CAM with the Staff, OPC and the Commission. This historical record not only indicates Staff's concurrence in the process followed by the Company to have its CAM in Staff's hands on a current basis, but demonstrates that even if there is an obligation to submit the CAM annually to Staff, Laclede has substantially complied with it.

**Laclede Counterclaim – Issue 1**

Has Staff violated Commission Rule 4 CSR 240-2.080(7)?

**Laclede's Position:** Yes. Rule 2.080(7) requires pleadings to be filed in good faith. It prohibits parties from presenting to the Commission claims and other contentions that are not warranted by existing law, by a nonfrivolous argument for a change to the law, or for an improper purpose. Staff has violated the good faith pleading rule by making claims and contentions regarding affiliate transactions that are not warranted by the Affiliate

Rules or the Company's CAM that Laclede has been ordered to use to price such transactions.

Staff has filed numerous pleadings taking the position that Laclede should purchase gas supply from LER not at a fair market price, nor at Laclede's fully distributed cost, but at *LER's* cost. In other words, Staff contends that, despite the requirements of the Rules and the CAM, LER should sell gas supply to Laclede at LER's cost and thus, without the opportunity available to independent marketers to earn a profit. Staff has taken the same position with respect to gas supply sold by Laclede to LER.

As recently as January 17, 2011, Staff stated on p.3 of its Reply to Laclede's Counterclaim in this case that "Staff admits that its position is that Laclede should buy gas from LER at LER's acquisition price" and that "any profit realized on sales of gas by Laclede to LER should inure to the benefit of ratepayers." In its Recommendation in Laclede ACA Case No. GR-2008-0387, Staff similarly stated that the "fair market value of the gas [sold by LER to Laclede] may be more appropriately stated as the price LER paid to acquire the supply." Staff has also made similar statements in Laclede ACA Case No. GR-2008-0140 as well as other proceedings. These positions cannot in good faith be reconciled with the Affiliate Rules, and therefore violate Rule 2.080(7).

Staff has also taken similar positions in other company's cases. In Atmos ACA Case No. GR-2008-0364, Staff witness David Sommerer testified that "fair market value" was established not by a competitive bidding process, but instead by the affiliate's cost, and that the fair market price of Atmos' purchase of gas supply was AEM's cost to provide gas to Atmos.

All of these examples represent bad faith arguments by a Staff that informed Laclede in 2007 that Laclede should stop doing business with LER. Staff is entitled to its opinion on this subject, but is not entitled to assert disallowances against Laclede based on that opinion when it is directly contrary to the law. By doing so, Staff has violated the Commission's good faith pleading rule, Rule 2.080(7).

**WHEREFORE**, for the foregoing reasons, Laclede Gas Company respectfully requests that the Commission accept for its consideration this Statement of Position.

Respectfully submitted,

**/s/ Michael C. Pendergast**

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ATTORNEYS FOR LACLEDE GAS  
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### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the parties to this case on this 25th day of May, 2011, by hand-delivery, e-mail, fax, or by United States mail, postage prepaid.

**/s/ Gerry Lynch**