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 IN COMPLIANCE WITH COMMISSION DIRECTIVE

COMES NOW Laclede Gas Company ("Laclede" or the "Company") and for its Response in Compliance to Commission Directive states as follows:

1. At the Commission's Agenda meeting on June 3, 2009, Commissioner Davis stated that he wanted to see Laclede's response to certain matters raised by Staff and the Office of the Public Counsel ("OPC") regarding the meaning and effect of the 2001 Stipulation and Agreement in Laclede's Holding Company proceeding, Case No. GM-2001-342 (hereinafter "Stipulation and Agreement"). The Commissioners had no objection to Commissioner Davis' request, and Chairman Clayton directed the Regulatory Law Judge, Judge Kennard Jones, by delegation of authority, to prepare an order that reflected Commissioner Davis' request.

2. However, instead of hewing to the Commission's directive, Judge Jones' June 4 Order required pleadings to be filed not just by Laclede, but also by Staff and OPC. Although Laclede filed a request that the June 4 Order be corrected to conform with the instructions that were actually given by the Commission at the Agenda Meeting, no action was taken in response to Laclede's request. As a consequence, Staff and OPC were permitted to submit another round of supplemental arguments, and Laclede was precluded from providing the full and final response requested by the Commission. Now

that Staff and OPC have completed the unauthorized process of supplementing their arguments, Laclede can now provide the final response that was directed by the Commission.

RESPONSE

3. The parties all agree that the Stipulation and Agreement in Laclede's Holding Company Case, Case No. GM-2001-342, contains language that protects utility ratepayers from subsidizing unregulated affiliates. As Laclede has explained in its prior pleadings, those protections arise out of the Cost Allocation Manual ("CAM") that the Stipulation and Agreement established for purposes of pricing out transactions and allocating costs between Laclede and its affiliates. Although Laclede has consistently followed the CAM (as well as the Commission's affiliate transactions rules) in conducting such transactions, Staff and OPC have once again made it clear that they have no intention of honoring this fundamental aspect of the Stipulation and Agreement. Instead, what they seek to do with their responses is rewrite the Stipulation and Agreement in a way that falsely suggests that it was designed to provide them with greater access to LER's records than that afforded by existing law, most notably the Commission's affiliate transactions rules.

RESPONSE TO STAFF

4. For its part, Staff's June 10 Response gives yet another lecture on the need to protect consumers from harms that may arise from affiliate transactions. As it has in the past, however, Staff's lecture omits crucial facts, namely that there *already* are affiliate transaction rules, that the Stipulation and Agreement *already* established a CAM for valuing affiliate transactions, and that these measures are both *already* designed to

protect consumers from affiliate abuses. The problem for Staff is that neither the CAM nor the affiliate transactions rules adopt the extra-legal standards for pricing such transactions that Staff seeks to retroactively impose on Laclede. In fact, the standards that Staff is proposing (and in pursuit of which it seeks the LER records at issue in this case) would make it impossible for Laclede to engage in transactions with LER at all, even though such transactions are explicitly permitted by both the CAM and the Commission's affiliate transactions rules.[1] That is precisely why the Commission determined in its April 22 Order in these cases that such information was not relevant, and no legally-unhinged series of platitudes by the Staff can or should change that result.

5. In apparent recognition of this fundamental deficiency, the Staff cites various provisions of the Stipulation and Agreement, as well as excerpts of Staff's pre-stipulation testimony filed in Case No. GM-2001-342, in an effort to convince the Commission that Laclede agreed to broaden the Commission's access to affiliate records beyond what is provided by existing law and the Commission's affiliate transactions rules. Laclede has already addressed most of the provisions cited by Staff and will not repeat its arguments here. It is instructive to note, however, the lengths to which Staff will go to distort the meaning and significance of the Stipulation and Agreement. For example, in paragraph 15 of its Response, Staff claims that Paragraph IV.1 of the

[1]Staff has never disputed Laclede's contention that Staff's purpose in submitting data requests 1a and 1b (relating to the amounts paid by LER for gas and transportation) is to find LER's lowest cost of gas so it can assign that cost to Laclede's purchase from LER, rather than determining a market price in accordance with the CAM and Affiliate Transaction Rules. Staff's goal in seeking this information is not to protect consumers, but to ensure that Laclede will not be able to purchase gas from its affiliate. Likewise, Staff's data requests 1c and 1d, seeking LER's profits on its sales to third parties (which may or may not have used capacity or gas sold to LER by Laclede), is unrelated to determining the market price of affiliate transactions between Laclede and LER, as required by the CAM and Affiliate Transaction Rules. It is instead directed at eliminating any profits lawfully earned by LER from those transactions, even though LER has different customers, contracts and risk tolerances than Laclede, and, in the process, making it impossible for Laclede to make such sales to LER in the future.

Stipulation and Agreement requires Laclede to provide the information Staff has requested. Even OPC admitted that this section does not apply to Staff's discovery requests because it pertains to "written information provided to common stock, bond or rating analysts," none of which Staff is asking for. (OPC Response, Paragraph 4). It appears that Staff is so bent on its unauthorized goal of obtaining LER records that it will claim that virtually any language in the Stipulation and Agreement supports its position – no matter how unconnected and irrelevant to the issue at hand.

6. Staff's attempt to support its position by citing excerpts from its pre-stipulation testimony in Case No. GM-2001-342 is an even more egregious example of its effort to distort what was agreed upon by the parties. As Staff well knows, the positions taken by parties in their testimony may not end up being reflected in whatever agreement is ultimately reached by the parties. In this case, the Stipulation and Agreement most assuredly did not reflect any intent to broaden the Commission's access to LER records beyond that provided by existing law.

7. Staff clearly agreed with this view at the time the parties entered into the Stipulation and Agreement. In contrast to Staff testimony that was filed *before* the compromises leading to the Stipulation and Agreement were reached, the Suggestions in Support filed by Staff immediately *after* the Stipulation and Agreement was submitted provide a far more compelling indication of what was actually agreed to. Those Suggestions (which are attached hereto as Attachment 1) contain a number of observations, all of which are far more consistent with Laclede's interpretation of the Stipulation and Agreement than Staff's. First, the only reference made by Staff in its Suggestions to the information access provisions of the Stipulation and Agreement is to

note that the Stipulation and Agreement provides access to "information provided to stock and bond rating analysts" as well as "access to records relating to corporate adherence to an appropriate Cost Allocation Manual." (Staff's Suggestions, p. 2). No mention is even made of providing information to ensure that other conditions are met. Second, the Suggestions emphasize that the Stipulation and Agreement provides that a CAM should be maintained "… to ensure that ratepayers were not being harmed by any affiliate transactions that might take place after the proposed restructuring." (Staff's Suggestions, p. 3). The Suggestions also note that "substantially all of the CAM suggestions sought by Staff were accepted by the Gas Company; that the CAM was extended to all personnel of the Gas Company; and that the CAM would be made a standard element of the Company's Code of Conduct. (Staff's Suggestions, pp. 3-4) Finally, the Suggestions confirm that nothing in the Agreement or the implementation of the proposed restructuring were designed to affect in any way (neither narrowing nor broadening) the scope of the Commission's existing ratemaking authority over Laclede relating to activities undertaken by LER. (Staff's Suggestions, p. 4).

8. In short, Staff's own contemporaneous Suggestions in Support of the Stipulation and Agreement clearly indicate that the Agreement was not designed to either add or detract from whatever authority the Commission had over Laclede relating to activities undertaken by LER, as Staff now claims, but instead to establish a CAM process to protect ratepayers from any detrimental effects, including those referenced in other provisions of the Stipulation and Agreement cited by Staff. Instead of adhering to this agreed upon framework, however, the Staff has attempted to create new discovery authority that is nowhere to be found in the Stipulation and Agreement while expressly

disregarding the very ratepayer safeguard that, as Staff once recognized, is provided for in the Stipulation and Agreement, namely the CAM. Like its prior attempts to evade the clear requirements of the Commission's affiliate transactions rules, this too should be rejected by the Commission.

RESPONSE TO OPC

9. For its part, OPC uses flawed logic and circular reasoning to support its arguments that the Commission April 22 Order Denying Motion to Compel should be reconsidered. For example, in paragraph 6, OPC argues that merely because Staff has made an unfounded allegation that Laclede may have migrated off-system sales revenues to LER, the Stipulation and Agreement therefore obligates Laclede to provide Staff with whatever information it has requested regarding LER's purchases from, and sales to, third parties. According to OPC, this is necessary to ensure that Laclede has complied with Section III-1 of the Stipulation and Agreement in which the Laclede Group "represents that it does not intend to take any action that has a material possibility of having a detrimental effect on Laclede's utility customers…"

10. The flaws in this logic are manifest. First, such a position willfully ignores the fact that transactions between Laclede and LER were done in complete compliance with the CAM – the very mechanism that the parties agreed in the Stipulation and Agreement would be used for ensuring that ratepayers would not suffer any detriment from Laclede's unregulated activities. Like the Staff, OPC may not ignore this key element of the Stipulation and Agreement. Second, such a position assumes that as long as Staff merely alleges something, any fishing expedition aimed at gathering information in pursuit of that allegation must be permitted. Such an approach, however,

would obliterate any meaningful limitation on the type or amount of affiliate information Staff may obtain since, as has been amply demonstrated in these proceedings, its ability to dream up allegations is virtually boundless. In the context of ACA cases, such allegations have invariably been rejected by either the Commission or the courts. For the reasons discussed by Laclede in its prior pleadings and during the oral argument in this case, there is similarly no basis for Staff's allegations in this case, and OPC is mistaken in believing that Staff can bootstrap itself from a baseless allegation into a full investigation.[2] Third, the LER purchase and sale information could not, in any event, prove that any hypothetical migration took place. The purchase information is completely unchained from this theory, and pertains only to Staff's attempt to find LER's lowest cost of goods, without regard to the market-based pricing requirements in the CAM. (*See* Footnote 1, *supra*) And the sale information would only show the details of LER's sales. LER has a basket of assets, the vast majority of which are obtained from unrelated parties at different times and for different durations, from which it makes sales that in most circumstances are not traceable to a particular contract source. Accordingly, discovery of these records could not lead to any indication that any improper migration had taken place, which assuredly did not occur. Instead, Staff's migration theory is plainly a diversion from Staff's true goal which, as stated above, is to capture any and all of LER's profits from affiliate transactions and by so doing, end them.

[2]As Laclede demonstrated during the oral argument in this case, the level of off-system sales revenues achieved by the Company continued to grow, and grow significantly, during the ACA periods under consideration in these cases – a factor that belies Staff's claim that such revenues were being improperly migrated to LER. Nevertheless, if Staff still believes that such a migration may have occurred despite this compelling evidence to the contrary, it should at a minimum be required to demonstrate a valid legal and factual basis for that belief before it is allowed to use it as a pretext for conducting a full scale audit of LER's records that is neither authorized nor permitted by the Commission's rules.

11. OPC's suggestion at page 6 of its Response that Laclede waived its right to object to any request for affiliate information on relevancy grounds is ludicrous on its face. Citing the last sentence of Paragraph IV.2 of the Stipulation and Agreement, OPC argues that Laclede's waiver of its right to object on relevancy grounds was unconditional and not, as Laclede asserts, limited to only those situations where the relevancy objection arose by virtue of the proposed restructuring. To buy OPC's argument, however, the Commission would have to conclude that Laclede and the other parties intended to give the Commission far greater access to the records of an unregulated affiliate than the Commission has the right to seek from Laclede in connection with its regulated operations. In other words, under OPC's interpretation, the Company could object on relevancy grounds to a data request directed at the regulated utility but not object on the same grounds to an identical data request directed at an unregulated affiliate. In addition to being flatly inconsistent with other provisions of the Stipulation and Agreement, which state that nothing in the Agreement is to affect the scope of the Commission's authority over LER, the very notion that Laclede or any other party would seek to give the Commission greater discovery powers over unregulated activities than it has over regulated activities is pure nonsense.

12. Finally, on June 18, 2009, OPC made yet another unauthorized attempt to supplement its Motion for Reconsideration by filing a Response to Laclede's Response. Like those before it, OPC distorts the law and the record to advance its position. Most notably, in paragraph 4, OPC falsely suggests that the Commission did not rely on the affiliate transactions rules and Laclede's CAM in determining in its April 22 Order Denying Motion to Compel that the information requested by Staff was not relevant to these proceedings. The April 22 Order clearly stated, however, that the Commission's ruling was based on the arguments of the parties,

and the record just as clearly indicates that Laclede has argued throughout these proceedings that the information requested by Staff is irrelevant because it is premised on pricing standards and access to information requirements that are flatly inconsistent with those found in the Commission's affiliate transactions rules and Laclede's CAM. Public Counsel's citation to an earlier Order Regarding Request for Clarification as support for its position that the Commission did not rely on these rules in Denying Staff's Motion to Compel is equally flawed because it fails to acknowledge that the April 22 Order came to a different conclusion than those earlier Orders, thereby rendering them moot. Finally, OPC's citation to several general statutory sections relating to discovery misses the point that discovery is always subject to the boundaries of relevance. Moreover, it is simply another plea to have the Commission ignore the fact that, through its promulgation of the affiliate transactions rules, the Commission has already determined the scope of access to affiliate records. While OPC has apparently been given free rein to ignore whatever procedural requirements govern Motions for Reconsideration, it cannot do likewise with these substantive rules that the Commission itself has approved.

WHEREFORE, for the foregoing reasons, Laclede respectfully renews its request 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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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 22nd day of June, 2009.

/s/ **Gerry Lynch**
Gerry Lynch

ATTACHMENT 1

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July 17, 2001

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JUL 17 2001
Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. GM-2001-342

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **SUGGESTIONS IN SUPPORT OF UNANIMOUS STIPULATION AND AGREEMENT.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Cliff E. Snodgrass

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CES:sw
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cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Laclede Gas Company for an Order Authorizing Its Plan to Restructure Itself Into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries	))))))	Case No. GM-2001-342

SUGGESTIONS IN SUPPORT OF UNANIMOUS STIPULATION AND AGREEMENT

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through one of its attorneys, and in support of the Unanimous Stipulation and Agreement filed in this case, states as follows:

1. Staff took the position that imposition of conditions or safeguards was necessary before this proposed transaction should be approved by the Commission (Commission). The Staff's primary effort in this case, in terms of safeguards, was devoted to ensuring against or minimizing any "detriment" to the ratepayers of the State of Missouri.

2. Through the process of negotiation Staff believes that it obtained enough safeguards memorialized in the Unanimous Stipulation and Agreement (Agreement) to warrant approval of the transaction sought by the Laclede Gas Company (Gas Company). This pleading will attempt to highlight several items in the Agreement that Staff respectfully believes warrant acceptance of the Agreement by the Commission.

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FINANCIAL SAFEGUARDS

Some of the financial "insulating" conditions obtained by the Staff to protect the Missouri ratepayers included the following: A commitment from the proposed holding company, The Laclede Group, Inc. (Holding Company), not to pledge the Laclede Gas Company's common stock as collateral or security for the debts of the holding company or a subsidiary of the holding company without Commission approval; an agreement by the Gas Company not to guarantee the notes, debentures, debt obligations or other securities of the Holding Company without Commission approval; a commitment from the Gas Company to maintain its equity at no less than 35% of its total capitalization unless unable to do so by circumstances beyond its control or changes in market conditions that could not have been reasonably anticipated; the Gas Company agreed to maintain its debt, and, if outstanding, its preferred stock rating at an investment grade credit rating unless events beyond the Company's control occurred; the Gas Company also agreed that customer rates should not be increased due to the unregulated activities of the Company's affiliates; lastly, to assist in monitoring corporate transactions in the event the restructuring is approved, access to the financial records of the Holding Company and the Gas Company related to information furnished to stock and bond rating analysts has been provided for along with access to records relating to corporate adherence to an appropriate Cost Allocation Manual (CAM).

Generally, the conditions summarized above comport with Staff witness Ron Bible's testimony that insulating conditions are necessary in restructuring transactions to ensure that the business and financial risk of unregulated corporate activities are not transferred to the regulated utility. In addition, a credit rating agency such as Standard and Poors considers that an entity's

credit worthiness reflects not only its own business and financial profile, but also its relationships with other corporate family members. Thus, financial safeguards are also essential in minimizing a diminution of credit worthiness of the regulated entity due to changes in corporate relationships. A reduction in credit worthiness increases the cost of borrowing money and these increased interest costs may be passed on to the ratepayers.

RESTRICTING LOSS OF COMMISSION JURISDICTION

Staff was concerned with potential loss of Commission jurisdiction if the proposed transaction was approved, specifically in connection with infusion of federal regulation through the Public Utility Company Holding Act (PUHCA). Therefore, a safeguard was negotiated that prohibits the Holding Company from seeking to become a registered holding company, or taking any action which has a material possibility of making it a registered holding company (subject to PUHCA), or subjecting any portion of its Missouri intrastate gas distribution operations to FERC jurisdiction without first obtaining Commission authorization.

COST ALLOCATION MANUAL

Staff witness Stephen Rackers filed testimony stating that a CAM should be maintained and submitted to ensure that ratepayers were not being harmed by any affiliate corporate transactions that might take place after the proposed restructuring. After extensive negotiation, substantially all of the CAM suggestions sought by Staff were accepted by the Gas Company. In addition, compliance with the CAM procedures was extended to all personnel of the Gas

Company and would be made a standard element of the Company's Code of Conduct applicable to employees. Staff had no general objection to the concessions to the union intervenors in this case. Staff's only concern was that all employees were required to comply with CAM procedures, regardless of their bargaining unit status.

MISCELLANEOUS PROVISIONS

The Gas Company agreed not to seek any recovery of any costs related to the restructuring from the ratepayers and these costs will be identified and accounted for in a manner that would enable the Staff to seek disallowance from rates, if necessary, in a future proceeding.

For monitoring purposes, the Holding Company agreed to provide the Staff with all new, revised and updated business plans for the Holding Company and its affiliates, and to provide the Staff with a description of all products and services offered by the Holding Company and its affiliates, with the exception of the regulated Gas Company.

In addition, the parties agreed that nothing in this Agreement or the implementation of the proposed restructuring, should affect the scope of any existing ratemaking authority the Commission has over the Gas Company relating to activities undertaken by Laclede Energy Resources or the Laclede Pipeline Company prior to implementation of the proposed restructuring or over ratemaking issues that may arise as the result of the formation of a service company.

For all of the foregoing reasons, the Staff believes the Stipulation and Agreement has adequately addressed the concerns of the Staff and is a document that offers protection to the ratepayers of Missouri. Staff thereby respectfully requests that the Commission approve the Unanimous Stipulation and Agreement filed in this case.

Respectfully submitted,

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General Counsel

Cliff Snodgrass

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 17th day of July, 2001.

Cliff Snodgrass

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