

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

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
v.	)	Case No. GC-2011-0098
	)	
Laclede Gas Company, Laclede Energy Resources, The Laclede Group	)	
Respondents.	)	

**LACLEDE GAS COMPANY’S RESPONSE TO STAFF’S REPLY TO  
LACLEDE’S MOTION TO DISMISS COUNTS I AND V  
OF STAFF’S SECOND AMENDED COMPLAINT**

COMES NOW Laclede Gas Company (“Laclede” or “Company”), and files this Response to the Staff’s Reply to Laclede’s Motion to Dismiss Counts I and V of Staff’s Complaint, and in support thereof, states as follows:

1. On December 10, 2010, Laclede filed its answer to Staff’s second amended complaint, along with its motion to dismiss Counts I and V of the complaint, and its counterclaim. On January 18, 2011, the Staff filed its reply to Laclede’s motion.
2. On December 22, 2010, the Commission issued an order (the “Order”) dismissing the second amended complaint as to Laclede Group and Laclede Energy Resources, Inc. In the Order, the Commission found that Count I does not allege that “Laclede Group, Laclede Energy Resources, or Laclede Gas Company have violated any provision of the affiliate transaction rule or any other statute or regulation.” (Order, p. 4) The Staff did not dispute this finding in its January 18 Reply. Having been decided and not challenged, Count I must be dismissed.
3. In Count V of the second amended complaint, Staff made no factual allegations which, if true, would constitute a violation of the affiliate transaction rules (“Rules”) cited by Staff, 4 CSR 240-40.015(2)(B) and (C). These rules state that the

utility shall not provide “preferential service, information or treatment” to an affiliate over another party, including information pertaining to specific customers. Count V contains no factual allegations which, if true, showed that Laclede had given such preferential treatment to LER or any other affiliate.

4. Instead, the Staff claims that the mere existence of a common officer or director creates an unavoidable conflict. This cannot be true for two reasons: first, in promulgating the Rules, the Commission must have known that in any multi-affiliate organization, the affiliates must ultimately report to a common executive officer at or near the top of the organization. The Commission simply could not have approved affiliate rules in a manner that created an automatic violation of those rules. Second, the Rules themselves provide an exception to the preferential treatment prohibition for the provision of corporate support functions. These functions include both joint corporate **oversight** and **governance**. In other words, affiliates are permitted to have common management without violating the rule *per se*.<sup>1</sup> In alleging that an officer or director has oversight and/or governance responsibilities over Laclede and one of its affiliates, the Staff is merely describing a status that is permitted under the Rules. Assuming the truth of the matter, such an allegation cannot state a claim upon which relief may be granted, and therefore Count V should be dismissed.

5. In the Order, the Commission discussed the exception to the Rules for corporate support functions. (Order, pp. 5-6) While the Commission appropriately recognized governance, for the avoidance of doubt, it should also be noted that the

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<sup>1</sup> It should be noted that Mr. Neises retired in November 2010 and is no longer an executive in the organization. The Vice-President of Laclede’s Gas Supply Department and the General Manager of LER both report directly to the company’s President and Chief Executive Officer.

Commission listed the term “oversight,” which is also a corporate support function. Between governance and oversight, there can be no doubt that an executive who manages two or more affiliates does not create a violation of the Rules by his or her very existence.

6. The Order proceeded to find that Count V was flawed in such a manner that rendered it defective as to all respondents, including Laclede, and not just Laclede Group and LER. On page 6 of the Order, the Commission found that

“...Regardless of Staff’s opinion about how realistic the affiliate transaction rules may be, those rules clearly allow for the existence of shared officers and directors. By merely alleging the existence of circumstances that are expressly allowed by the affiliate transaction rules, Staff has not alleged a violation of those rules...”

7. In its January 18 reply, the Staff neither alleges any new facts nor seeks to further amend its complaint.<sup>2</sup> Instead of alleging facts, Staff again states that:

Because LER knew, among the vast amount of information available to Mr. Neises, Laclede’s gas buying strategies, gas purchasing needs, and, all of Laclede’s industry contacts this arrangement gave an impermissible unfair competitive advantage.”

8. This restatement of the same point made in Count V should result in the same ruling that the Commission issued in its December 22 Order. Any other result could only be characterized as arbitrary and capricious. If Count V is not dismissed, how could Laclede respond to it? Staff has alleged no facts that Laclede can admit or deny. The Company admits that it and its affiliates ultimately report to an executive officer. If this is a violation, then every utility in the state that has affiliates is in violation of the Rules. It is simply unrealistic for multiple affiliates to each report to a common board of directors without an executive officer providing coordination and oversight.

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<sup>2</sup> In quoting the Rules’ definition of “corporate support services” in paragraph 42 of the Second Amended Complaint, the Staff omitted the term “governance.” In its January 18 Reply, Staff’s cite of corporate support functions now omits both “governance” and “oversight.”

9. Dismissal of Counts I and V would still leave Staff with Counts II, III, and IV, three counts that form the heart of Staff's case and in which Staff has at least properly alleged some violation of rules.

WHEREFORE, Laclede respectfully requests that the Commission dismiss Counts I and V of the Staff's Second Amended Complaint, and direct the parties to proceed with Counts II-IV of that complaint.

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 1516  
St. Louis, MO 63101  
Telephone: (314) 342-0533  
Fax: (314) 421-1979  
Email: mpendergast@lacledegas.com  
rzucker@lacledegas.com

**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Staff and on the Office of Public Counsel on this 25th day of January, 2011 by United States mail, hand-delivery, email, or facsimile.

**/s/ Gerry Lynch**