

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

The Staff of the Missouri Public Service Commission,))	
))	
Complainant,)		
v.)	Case No. GC-2011-0006	
)		
Laclede Gas Company,)		
Respondent.)		

**LACLEDE GAS COMPANY’S REPLY
TO STAFF AND PUBLIC COUNSEL’S RESPONSES
TO LACLEDE’S REQUEST FOR RECONSIDERATION AND REHEARING**

COMES NOW Laclede Gas Company (“Laclede” or “Company”) and submits this reply to the November 22, 2010 responses filed by Staff and Public Counsel to Laclede’s November 12, 2010 motion for reconsideration and rehearing (“Motion”). In support thereof, Laclede states as follows:

1. Neither Staff nor Public Counsel addressed the new facts and arguments raised by Laclede in its Motion. Neither Staff nor Public Counsel provided support for their rote declarations that Laclede failed to raise new arguments or identify errors in the Commission’s November 3 Order in this case (“Order”). Even a cursory review of the Motion shows that it raised new facts, made new arguments that had not been previously addressed by the Commission, and pointed out a contradiction in the Order.

2. The Motion specifically pointed to new facts on page 5, paragraphs 11A and 11B regarding further evidence of Staff’s reckless disregard for the Affiliate Transaction Rules (Rules) and Laclede’s Commission-approved CAM (“CAM”).

3. The Motion specifically made new arguments that addressed errors in the Order. First, in response to the Commission’s finding on page 5 of the Order that “advocating a position...does not, by itself, place the advocate...in violation of the rule,”

Laclede cited Commission Rule 2.080(7) for the principle that an advocate is free to take a good faith position on the law, but is *not* permitted to advocate frivolous positions that clearly contradict the law.

4. Second, Laclede identified a contradiction wherein the Order states on page 3 that the Rules and CAM impose no obligations on Staff, while on page 4, the Order concedes that Staff is “bound by the requirements of the [Rules].” In the Motion, Laclede argued that because Staff is bound by the Rules, Staff is therefore not at liberty to contradict the plain meaning of those Rules with impunity.

5. As neither Staff nor Public Counsel challenged or even mentioned any of these new facts and arguments, they remain uncontroverted.

6. Staff’s claim in its response that “the present case has a limited focus” is wishful thinking. Of course Staff would like to narrow the focus of the case to only Staff’s claims and have the Commission ignore Laclede’s claims on the same subject matter. Certainly it is easier for Staff to arrange a “no-lose” situation if it always gets to play offense, and never has to defend its own actions. However, that is not the way the rules work. Missouri Rule of Civil Procedure 55.32 permits a party to bring a compulsory *or* permissive counterclaim against an opposing party’s complaint. Therefore, the Commission is not permitted to limit Laclede to only playing defense in its ACA cases, or to require Laclede to wait and see whether the Commission will “ultimately agree with Laclede that the position Staff has asserted is inconsistent with the [Rules] and [CAM]...” (Order, p. 5) Rather, the Commission must entertain Laclede’s assertions that state a claim for relief.

7. This same argument renders meaningless Public Counsel's assertion in its response that Laclede misrepresented the issue raised in Staff's complaint.¹ While Laclede disagrees with Public Counsel's assertion, Laclede need not even address this argument, because Laclede's summary of Staff's Complaint is not relevant to whether Laclede may maintain its counterclaim. For the reasons discussed above, Laclede is entitled to raise a counterclaim, and as demonstrated in the Motion, Laclede has stated a claim for which relief may be granted.

8. Laclede is aggrieved by the Staff's violation of Commission Rules 2.080(7), 40.015 and 40.016, and by its violation of the Holding Company Order which established the CAM. Pursuant to Commission Rule 2.070(1), Laclede is entitled to complain about these violations and have its complaint heard by the Commission. Since Laclede has stated facts entitling it to relief, the Commission should reverse the Order dismissing the Counterclaim and proceed to hearing on the matters raised therein.

WHEREFORE, for the foregoing reasons, Laclede Gas Company respectfully requests that the Commission reconsider and reverse its November 3 Order dismissing Laclede's Counterclaim in this case, or grant rehearing on the matter.

Respectfully submitted,

/s/ Michael C. Pendergast

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¹ Laclede maintains that it accurately summarized the gravamen of Staff's Complaint. Public Counsel's argument amounts to a distinction without a difference.

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ATTORNEYS FOR
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the General Counsel of the Staff of the Missouri Public Service Commission, and the Office of the Public Counsel, on this 29th day of November, 2010 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/Gerry Lynch