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 RESPONSE TO STAFF'S MOTION IN LIMINE

COMES NOW Respondent, Laclede Gas Company ("Laclede"), and submits this response to the Motion in Limine filed by Staff on January 18, 2011, and states as follows:

1. Staff's Motion seeks to exclude most of the substance of Laclede's direct testimony in this case. The effect of Staff's motion would be to put blinders on the Commission, narrowing its view of the case to just what Staff wants it to see by excluding highly pertinent evidence of the meaning and operation of an agreement that Staff has repeatedly violated but now seeks to invoke as the basis for its Complaint. Here is a brief overall summary of events:

August 2001	The Commission approves an agreement in Case No. GM-2001-342 (the "2001 Agreement") between Staff and Laclede, among others. The parties agree that Laclede will conduct and account for affiliate transactions in accordance with a CAM in the form approved by the Commission, including certain agreed upon conditions to be added by December 2001.
December 2001	Laclede submits the CAM as directed by the Commission in the August 2001 order.
2002-2011	Laclede conducts and accounts for affiliate transactions in accordance with the CAM. Laclede bases the pricing of gas supply deals with LER on a fair market price, as provided in the CAM.
April 2003	Laclede submits its first CAM annual report, in accordance with the 2001 Agreement.
March 2004	Following the Supreme Court's final approval of the Commission's affiliate transaction rules ("Rules"), Laclede resubmits the CAM to the parties with minor changes.

December 2006	Staff files its recommendation in Laclede ACA case for 2004-05 (Case No. GR-2005-0203). Staff asserts a disallowance of $1.7 million based on the pricing of affiliate transactions. The proposed disallowance is not based upon the fair market price of the transactions, but is instead based on a proxy for LER's cost.
December 2007	Staff asserts a disallowance of $2.8 million on affiliate transactions in the 2005-06 ACA period (Case No. GR-2006-0288). Staff again eschews the fair market price standard, and instead complains that it had limited access to LER information that Staff believes is needed to "understand how LER allocates gas supply to various deals."
August 2008	Staff requests from Laclede a broad range of LER's proprietary business data. Laclede objects to the request. Staff files a motion to compel.
January 2009	The Commission grants Staff's motion to compel and orders Laclede to produce information in Laclede's possession.
March 2009	At oral argument, Staff advises the Commission that its ACA investigation was not being conducted pursuant to the 2001 Agreement and the CAM, but rather pursuant to a prudence analysis wherein Staff will determine whether Laclede "paid too much" for gas bought from its affiliate, LER.[1]
April 2009	On reconsideration, the Commission determines that Staff's request is not reasonably calculated to lead to admissible evidence, because it is not relevant to the standards in the Rules and the CAM.
November 2009	Upon further reconsideration, the Commission decides that Staff's data request should be permitted, because it is covered by the rules of civil procedure, and not by the Rules or the 2001 Agreement which directed Laclede to conduct and account for affiliate transactions in accordance with the CAM. Laclede states that it does not have LER documents responsive to Staff's request.
June 2010	The Cole County Circuit Court orders Laclede to produce the information requested by Staff to the extent that such information is in Laclede's possession, custody or control. Laclede states that it does not have LER documents responsive to Staff's request.

[1] This explanation becomes absurd once one realizes that whether Laclede "paid too much" is wholly dependent upon the pricing standards in the CAM and the Rules. Staff's explanation is the equivalent of Staff saying that whether a candidate meets the age requirement to run for President is not determined by reference to the Constitution, but rather to Staff's analysis of whether the candidate is old enough to be President.

2. Having successfully convinced the Commission that the 2001 Agreement does not even apply to its request for LER documents, let alone limit its access to those documents to verifying compliance with the CAM,[2] Staff now asks the Commission to ignore the above described events, ignore the specifically applicable portion of Section IV.2 of the CAM that limits Staff's access to affiliate data, and focus its attention solely on the portion of Section IV.2 that limits Laclede's right to object based on the fact that it does not possess affiliate records.

3. Staff cannot have it both ways. Staff cannot untether itself from certain provisions of the 2001 Agreement, and then expect to turn around and enforce those very same provisions against Laclede. Staff cannot have its discovery request approved in one case based on the fact that the 2001 Agreement is an inapplicable red herring, and then open up a second case to punish Laclede for not responding to that discovery request in accordance with that same agreement.

4. The appropriate course of action in response to Staff's attempt to rely on an agreement that it and the Commission have previously claimed was irrelevant to the matter at hand, would be to dismiss Staff's complaint outright. Since that hasn't happened, however, Laclede should at a minimum be allowed to submit evidence demonstrating how the Company, in contrast to Staff, has complied with the 2001 Agreement. And that is precisely what Laclede has done in this case. Specifically, having been accused in this case of violating the 2001 Agreement, Laclede responded with direct testimony seeking to establish that Laclede has in fact fully complied with the 2001 Agreement and has honored its obligations under that agreement to conduct and account for its affiliate transactions in accordance with a CAM that was agreed to by the parties and approved by the Commission.

[2] Section VI.1 of the 2001 Agreement directs Laclede to conduct and account for affiliate transactions in accordance with the CAM. Section IV.2 assures the Staff the right to access information reasonably necessary to verify Laclede's compliance with the CAM.

5. The following is a summary of Laclede's direct testimony:

Witness	**Pages of Testimony**	**Pages to be Excluded**	**Summary of Testimony**
Patricia Krieger	10	7	As the witness in Case No. GM-2001-342 that sponsored the original draft CAM, Ms. Krieger provides background on the 2001 Agreement, Staff's role in shaping the CAM, and how the CAM was intended to safeguard customers from affiliate transaction subsidies.
Michael Cline	7.5	4	As the employee who produces gas supply information to the Staff, Mr. Cline testifies to Laclede's actions in accounting for gas supply affiliate transactions in compliance with the CAM, along with Laclede's experience with Staff in seeking input on the CAM.
Glenn Buck	4.5	3	Mr. Buck testifies to Laclede's efforts in gathering data for and producing the CAM annual report, along with interactions with Staff on affiliate issues.

6. Staff's motion in limine now seeks to silence Laclede's attempt to show its compliance with the 2001 Agreement.[3] Staff's stated objections to Laclede's testimony primarily consist of allegations (i) that a lay witness provides a legal conclusion or an opinion on the ultimate issue, (ii) that certain testimony is irrelevant, and (iii) that certain testimony violates the parole (sic) evidence rule and best evidence rule regarding written agreements. Laclede will address each of these categories of objections below.

7. Lay Witness Providing Legal Conclusions or Opinions on the Ultimate Issue

As opposed to testimony that may prejudice a jury, there is no risk in this administrative context that a lay witness' opinion will unfairly sway the five attorneys who serve as commissioners. At the same time, rather than exclusively provide dry facts in pre-filed

[3] Staff seeks to exclude approximately 14 of Laclede's 22 pages of direct testimony, which is the large majority of Laclede's substantive testimony.

testimony, Laclede believes it is helpful to the Commission to fully understand the Company's position regarding the meaning and operation of the 2001 Agreement and why Laclede believes it has complied with that agreement. . Indeed, since the 2001 Agreement, at Staff's insistence, explicitly required that Laclede train and even discipline its employees based on whether they were complying with very provisions of the Agreement that are at issue here, receiving testimony from such employees on this subject is wholly appropriate. Surely Staff agrees with Laclede, for in Staff's direct testimony, its lay witness provided both her opinion on the ultimate issue and her legal conclusion.[4] Laclede understands that this is Staff's communication to the Commission of the effect of Laclede's position, and Laclede has not moved to exclude this testimony. However, what is ultimately good for the goose must also be good for the gander.

8. Laclede does not concede that Staff's objections are even accurate in each instance. For example, on page 8 of the direct testimony of Michael Cline, Mr. Cline states that he does not believe that the 2001 Agreement obligated the Company to provide the proprietary LER information requested. This is not a legal conclusion but an explanation of the reason why Laclede acted as it did. Staff's motion in limine should be denied as to this point for that reason alone.

9. Likewise, on page 2, lines 7-14, of Mr. Cline's direct testimony, he discloses his awareness of the 2001 Agreement and states his belief that the Company has complied with its obligations under that agreement. Mr. Cline states this belief as a Laclede employee responsible for providing to Staff information prescribed by that agreement. He does not represent that he is

[4] On three consecutive questions on pages 6-7 of the direct testimony of Staff witness Anne Allee, Ms. Allee testified that she knows and has personally witnessed Laclede taking a position inconsistent with the 2001 Agreement. Whether Laclede's positions are inconsistent with the 2001 Agreement is of course the ultimate legal issue to be decided in this case.

giving a legal opinion. Laclede believes that the Commission is aided by at least knowing whether an employee believed that he was doing the right thing.

10. Irrelevant Testimony.

Staff seeks to exclude a great deal of Laclede's testimony as irrelevant, including virtually all of the testimony of Laclede witness Glenn Buck. Laclede stands accused of violating the 2001 Agreement by not providing LER business information requested by Staff. Laclede's position is that the 2001 Agreement requires the Company to conduct and account for affiliate transactions in accordance with its CAM, and to provide information to Staff reasonably necessary for Staff to verify compliance with the CAM. Laclede's defense is that it provided all such information, that the LER information requested by Staff in the ACA cases is not related to the CAM, that Staff has never showed much interest in the CAM, aside from some work on corporate allocations, and that this lack of interest in the CAM could stem from Staff's dislike of affiliate transactions. To demonstrate that, Laclede has offered the testimony of Mr. Buck, the Company employee who manages the gathering of data and preparation of the CAM annual report. He has been involved in attempts by the Company to get feedback from Staff on the CAM. This information is relevant to the Commission getting a more complete picture of what the Company has done to comply with 2001 Agreement and how the Staff has pursued information from Laclede and its affiliates that is clearly not intended to be covered by the Rules and the CAM that was approved as part of the 2001 Agreement. .

11. Parol Evidence/Best Evidence Rule

In a few instances, Laclede witnesses referred to the terms of the 2001 Agreement in discussing Laclede's obligations regarding affiliate transactions. Staff seeks to exclude these portions of the testimonies as a violation of the parole (sic) evidence rule "to orally vary the scope of the parties' written agreement." The parol evidence rule provides that, absent fraud, common mistake, accident or erroneous omission, oral evidence may not be used to vary or contradict terms of an unambiguous and complete written instrument. ***Norden v. Friedman***, 756 S.W. 2d 158 (Mo. 1988) However, the Staff has erroneously assumed that Laclede's witnesses are attempting to "vary or contradict" the 2001 Agreement. Laclede's witnesses are not seeking to vary the terms of the 2001 Agreement in any way but are merely explaining Laclede's view of the agreement and what Laclede did to comply with it. Nor is Laclede trying to hide the 2001 Agreement, for as Staff points out, the agreement is attached to Laclede witness Krieger's direct testimony as Schedule PAK-3. While the 2001 Agreement is itself the best evidence of its terms, that does not prohibit any witnesses to this case from referring to the agreement in their testimony. Indeed, that is precisely what Staff has done in the testimony it has offered in this proceeding. The Commission can read the 2001 Agreement for itself in evaluating Laclede's testimony.

12. Staff is in the suspicious position of accusing Laclede of violating the 2001 Agreement while simultaneously trying to exclude Laclede's witnesses from discussing the Company's view of and actions taken under that agreement. If the Staff has nothing to hide, why must it direct its arguments to *erasing* Laclede's testimony rather than refuting it?

13. In summary, none of Staff's attempts to exclude Laclede's testimony has merit. In response to Staff's complaint that Laclede has violated the 2001 Agreement, Laclede submitted a fairly modest amount of direct testimony providing the Commission with insight into the formulation of the 2001 Agreement and the CAM, how these witnesses view the Company's obligations under the 2001 Agreement, what the Company does to comply with that agreement vis-à-vis the CAM, and how the witnesses have tried to work with Staff to implement the 2001

Agreement and the CAM. There is no reason to strike this testimony. To the contrary, this testimony provides the Commission with valuable information on what has been a highly contentious matter.

WHEREFORE, Respondent Laclede Gas Company respectfully requests that the Commission deny Staff's motion in limine.

Respectfully submitted,

/s/Michael C. Pendergast

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Answer was served on the Staff and on the Office of Public Counsel on this 28th day of January, 2011 by United States mail, hand-delivery, email, or facsimile.

/s/ Gerry Lynch