

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

In the Matter of Laclede Gas Company's Purchased)
Gas Adjustment for 2005-2006) **Case No. GR-2006-0288**

In the Matter of Laclede Gas Company's Purchased)
Gas Adjustment (PGA) Factors to be Audited in its) **Case No. GR-2005-0203**
2004-2005 Actual Cost Adjustment)

LACLEDE GAS COMPANY
REPLY TO OPC'S RESPONSE

COMES NOW Laclede Gas Company (hereinafter "Laclede" or "Company"), and for its Reply to the Response filed by the Office of the Public Counsel ("OPC") in these proceedings on February 8, 2010, states as follows:

1. On February 8, 2010, OPC filed its Response to Laclede's Reply to Staff's Notice. In its Response, OPC once again asserts that Laclede has violated the terms of the Stipulation and Agreement in GM-2001-342 (hereinafter the "Agreement") by stating that certain LER documents are not in its possession. After mentioning the undersigned counsel, OPC goes on to state that Laclede's alleged failure to act in accordance with OPC's interpretation of the Agreement shows a lack of integrity, raises questions about what other violations Laclede may have committed, and casts doubt on whether the records being sought will be maintained.

2. Laclede has previously addressed in detail why OPC's interpretation of the Agreement is erroneous. See Laclede's June 2, 2009 *Response to Public Counsel's Motion to Reject Request for Special Agenda Meeting* and Laclede's June 22, 2009 *Response to Commission Directive*. It is sufficient to note here that Laclede believes that

it is OPC and Staff, and not Laclede, that have repeatedly violated the Agreement by ignoring the very Cost Allocation Manual (“CAM”) *which the Agreement itself* established as the mechanism for protecting customers from any detrimental rate impacts arising from affiliate activities, and for defining what information was relevant and necessary to accomplish that goal. Indeed, as shown below, it was Staff’s admission during the first oral argument in this case that it was simply ignoring the CAM in fashioning its adjustments and related information requests that led the Commission to conclude that the information sought by Staff was indeed irrelevant and need not be produced.

1 MR. REED: As part of the ACA case, we'll
2 review that information as well, but the primary purpose
3 for this information is to determine whether Laclede paid
4 too much to LER for gas and determine what LER did with
5 Laclede's capacity that was released to LER.

6 COMMISSIONER MURRAY: And too much would be
7 defined by the rule, would it not?

8 MR. REED: Not necessarily. Because if
9 entering into the contract and taking action under the
10 contract was not prudent in that it led to higher gas
11 costs for the ratepayers, then that impacts the ACA.

12 COMMISSIONER MURRAY: So they could fully
13 comply with their Cost Allocation Manual and still be
14 imprudent, is that what you're saying?

15 MR. REED: Yes.¹

...

COMMISSIONER MURRAY: So if there is -- and

22 at this point, I'd like to know, there is a specific way
23 that the Cost Allocation Manual provides for dealings with
24 an affiliate, correct?

25 MR. REED: Yes. That's right.

1 COMMISSIONER MURRAY: And it says the
2 higher -- depending on whether it's a sale or a purchase,
3 the higher of the fair market value or fully distributed
4 costs.

5 MR. REED: Right. Yes.

6 COMMISSIONER MURRAY: Or the lower of those
7 two things, right? So how does the information that Staff
8 has sought reasonably relate to whether that CAM has been
9 complied with?

10 MR. REED: The investigation isn't into
11 compliance with the CAM. The investigation is whether
12 Laclede paid too much to LER for the gas they bought.²

3. Given its own disavowal of these substantive provisions of the Agreement, OPC is in as equally a poor position as the Staff to complain that Laclede has not lived up

¹ March 26, 2009 Oral Argument Tr. at 14.

² March 26, 2009 Oral Argument Tr. at 16-17.

to its commitments under that Agreement. In fact, OPC's assertion that the Agreement precludes Laclede from using possession or control as a basis for objecting to the provision of affiliate information simply ignores the fact that Laclede's obligation to provide any information *at all* under the Agreement is explicitly conditioned on whether such information was "relevant" to the Commission's ratemaking, safety, financing and other regulatory activities; necessary to "determine whether charges to, or payments made by, Laclede Gas Company are reasonable" and "reasonably required to verify compliance with the CAM." (See provisions of the Agreement set forth in paragraphs 4, 5 and 6 of OPC's Response). By seeking information without regard to whether it is necessary to ensure compliance with the very mechanism that the Agreement established to ensure utility rates would not be adversely affected by affiliate activities – i.e. the CAM – Staff and OPC have made a mockery of the Agreement and its core provisions.

4. OPC's assertion also flies directly in the face of the Commission's November 4, 2009 Order which stated that the applicability and enforcement of the affiliate transactions rules and the Agreement in Case No. GM-2001-0342 were "red-herring[s]." Laclede submits that OPC cannot have it both ways by urging the Commission to enforce an Order on the one hand, while simultaneously attacking one of its primary findings on the other. Of course if OPC, unlike the Commission, wants to recognize the applicability of these instruments to the issue at hand, including the applicability of the CAM for determining the relevance of information sought, Laclede would welcome OPC's support of the Company's position in this case.

5. OPC's stated concern regarding the retention of the documents at issue is equally misplaced given the previous commitments that have been made to the

Commission regarding their safekeeping. Laclede has been advised that regardless of any internal record retention policies that may be applicable to LER, LER intends to preserve any source documents that may be responsive until this matter is concluded.³

6. Finally, Laclede suggests that counsel for OPC may wish to exercise greater caution when accusing others of a lack of integrity. Such an allegation arrogantly assumes that OPC's interpretation of the meaning and effect of the Stipulation and Agreement in Case No. GM-2001-342 is not only the correct one, but so self-obvious that anyone who acts in a manner contrary to that interpretation does so with improper motives. One would think that OPC's recent experience in challenging the Commission's implementation of the compliance cost provisions of the Cold Weather Rule Amendment would give it a greater appreciation of the possibility that the problem lies not in the actions of others but in the faulty legal analysis of OPC. There, as here, counsel for OPC impugned not only the motives of Laclede, but also the competence and judgment of a senior regulatory auditor from his own office, all because they disagreed with his new-found interpretation of the meaning and effect of those rule provisions. As it turns out, this new interpretation was eventually rejected with remarkable uniformity by every independent party that considered it, including the Commission Staff, the Commission, a Circuit Court judge, and a three member panel of the Western District Court of Appeals. Unfortunately, the experience appears to have done nothing to lessen the hubris with which counsel continues to challenge the honor of those who hold legal opinions different from his own.

³OPC's harmful accusation, that LER's records "will reveal a scheme to boost the profits of The Laclede Group, Inc. on the shoulders of Laclede's regulated customers" has been published with reckless disregard of its truth or falsity and without any facts whatsoever being disclosed that would support such a belief. As such, this accusation is not just irresponsible, but defamatory.

7. So be it. The fact remains that OPC's assertion on that score is as intemperate as its construction of the Agreement in Case No. GM-2001-342 is wrong. It should accordingly be rejected by the Commission.

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission accept this Reply to OPC's Response.

Respectfully submitted,

/s/ Michael C. Pendergast

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CERTIFICATE OF SERVICE

Gerry Lynch hereby certifies 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 16th day of February, 2010.

/s/ Gerry Lynch

Gerry Lynch