

**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 OF LACLEDE GAS COMPANY
TO ORDER DIRECTING FILING**

COMES NOW Laclede Gas Company ("Laclede" or the "Company") and submits this Response to the Order Directing Filing that was issued by delegation in the above-captioned cases on June 4, 2009. In support thereof, Laclede states as follows:

1. At its June 3, 2009 Agenda Meeting, the Commission instructed the Regulatory Law Judge assigned to this case to issue an Order directing Laclede to respond to certain arguments that had previously been raised by Staff and the Office of the Public Counsel ("OPC") in pleadings submitted subsequent to the filing of their Motions for Reconsideration and/or Clarification in this case. On June 4, 2009, Regulatory Law Judge Jones issued an Order Directing Filing in which Laclede, as well as the other parties to this case, were directed to address these arguments by the close of business on Wednesday, June 10, 2009.¹ To that end, Laclede submits the following response.²

¹As discussed in a separate pleading filed by Laclede on this date entitled "Request for Correction of Order to Conform it to Terms of Authority Delegated by the Commission" the June 4 Order also directed Staff and OPC to further elaborate on the arguments they had previously raised. In doing so, the June 4 Order clearly contravenes the explicit instructions that were given by the Commission at its June 3 Agenda Meeting. Even worse, it frustrates the primary purpose for which those instructions were issued; namely to give Laclede an opportunity to respond to the arguments that were raised by Staff and OPC. Under the Order, as written, however, Staff and OPC are presumably free, indeed even encouraged, to submit new round of supplemental arguments on this issue – a circumstance that effectively precludes a full and complete Laclede response since the Company cannot possibly respond to something it has not yet seen.

2. To date, Staff and OPC have been unable to identify anything in governing statutes, Commission rules (including the affiliate transaction rules) or anything in the Cost Allocation Manual that supports their claimed right to discovery of information relating to LER's transactions with unrelated third parties. Having been unsuccessful in finding any primary, secondary or even tertiary source of legal authority for their position, Staff and OPC attempt one last ditch effort, claiming that certain provisions of the Stipulation and Agreement approved by the Commission in Case No. GM-2001-342 obligate Laclede to provide some or all of the records of its affiliate which the Commission has previously determined Laclede is not required to produce. *See Order Denying Motion to Compel*, dated April 22, 2009. The notion that the Stipulation and Agreement created authority (broader than that found in any statute, rule or the Cost Allocation Manual) to examine transactions occurring solely between LER and unrelated third parties is demonstrably wrong.

3. As the Commission properly recognized in its Order Denying Motion to Compel, however, access to such records is governed by the Commission's affiliate transactions rules, and the Cost Allocation Manual ("CAM") that Laclede developed pursuant to those rules. As Laclede successfully argued, both the rules and the CAM limit access to only those affiliate records that are necessary to ensure compliance with the pricing standards and other requirements set forth in those instruments. Because the information sought by Staff was aimed at proving up a pricing standard that is clearly contrary to those set forth in the rules and the CAM (as well as contrary to the non-

²Laclede would also refer the Commission to prior pleadings in which it addressed these arguments, most notably pages 2 to 3 of Laclede's June 2, 2009 Response to Public Counsel's Motion to Reject Request for Special Agenda Meeting.

discrimination provisions of the rules), the Commission appropriately determined that such information was irrelevant and need not be produced.

4. In an effort to overcome this legal barrier and find some other basis to justify access to such information, OPC and Staff have from time to time cited several provisions of the July 9, 2001 Stipulation and Agreement in Case No. GM-2001-342 (hereinafter “Stipulation and Agreement”). As discussed below, there is nothing in the provisions of the Stipulation and Agreement that provides any support for OPC’s and Staff’s previously rejected positions. To the contrary, like the Commission’s affiliate transactions rules and Laclede’s CAM, the Stipulation and Agreement is just one more example of a binding legal obligation that Staff and OPC have chosen to ignore. Indeed, it is the very same Stipulation and Agreement that counsel for the Staff indicated it had no intention of honoring during the oral argument held in these cases less than two months ago.³ And yet, here we are, addressing whether a Stipulation and Agreement that Staff and OPC have done everything possible to dishonor somehow supports their efforts to circumvent other Commission approved rules that they have likewise disregarded. It does not.⁴

³During oral argument, counsel for Staff said in response to a question from Commissioner Murray that it simply didn’t matter to Staff whether Laclede had fully complied with the CAM that Staff, OPC and Laclede had agreed in the Stipulation and Agreement should be used to price out transactions between Laclede and its affiliates. (*See* Transcript, Vol. 2, p. 47). Instead, Staff indicated that it would price out such transactions in accordance with whatever definition of prudence Staff thought was appropriate. (*Id.*). It is difficult to imagine a more brazen repudiation by a party of its legal obligations under an approved agreement that it freely entered into.

⁴As discussed in a prior pleading, Staff’s and OPC’s arguments are not only incorrect but also impermissible because they are nothing more than an unauthorized attempt to supplement the Motion for Reconsideration and/or Clarification that Staff and OPC filed, respectively, on May 1 and May 4, 2009. OPC does not have some special status that allows it to ignore the procedural rules that govern everyone else. Under those rules, parties have ten days following the issuance of an Order to file a Motion for Reconsideration. That requirement cannot be circumvented, as

5. As approved by the Commission, the Stipulation and Agreement in Case No. GM-2001-0342 authorized Laclede to restructure itself into a holding company pursuant to certain terms and conditions. Notably, the Stipulation and Agreement did *not* change the status of Laclede and LER as separate corporate affiliates. As shown at pages 2 and 3 of the Stipulation and Agreement, LER was a separate corporate affiliate *before* the restructuring (in the form of a subsidiary of another Laclede subsidiary) and was a separate corporate affiliate *after* the restructuring (in the form of a sister subsidiary of Laclede's parent corporation). As a result, neither the Stipulation and Agreement, nor the restructuring it effectuated, did anything to change the scope or nature of the Commission's jurisdictional reach or powers with respect to LER. Whatever powers the Commission did or did not have before the restructuring, it continued to have or not have after the restructuring.

6. Indeed, this key concept is enshrined in the Stipulation and Agreement itself. As paragraph 6 of Section VII states:

Nothing in this Stipulation and Agreement or the implementation of the Proposed Restructuring shall affect in any way the scope of any existing ratemaking authority the Commission has over Laclede Gas Company relating to activities undertaken by Laclede Energy Resources or Laclede Pipeline Company prior to implementation of the Proposed Restructuring.

7. Given this explicit language disclaiming any affect on the scope of the Commission's authority over Laclede as it relates to the activities of LER and the fact that there was no change in LER's status as a separate corporate affiliate, it is ludicrous to suggest, as OPC and Staff have, that other provisions of the Stipulation and Agreement nevertheless conferred on the Commission additional powers to access the records of LER

OPC and Staff have attempted to do here, by simply adding additional or supplemental arguments to subsequent pleadings filed long after the ten day period has expired.

that are in excess of those provided by statute and the Commission's affiliate transactions rules. In addition to being inconsistent with paragraph 6 of Section VII, such a theory is also contrary to the well recognized legal principle that the Commission is an agency of limited powers, with the scope of its authority prescribed solely by statute, and not the agreements of the parties that appear before it. (Section 386.250 RSMo.; *Inter-City Beverage Co. v. Kansas City Power & Light Co.*, 889 S.W.2d 875 (W.D. Mo. 1994))

8. The theory that certain provisions of the Stipulation and Agreement sought to expand the scope of the Commission's authority to obtain information from LER is also repudiated by the specific language of the provisions themselves. Simply put, there is nothing in the provisions cited by OPC in its May 28, 2009 Response and Motion to Reject Request for Special Agenda Meeting that in any way vary, or even purport to vary, from the legal standards and requirements that control the pricing of affiliate transactions and Staff's and OPC's access to affiliate records, and hence the disposition of this issue. The first three provisions cited by OPC on pages 1 and 2 of its Response are paraphrased restatements of Paragraphs 1 and 8 of Section III of the Stipulation and Agreement. Paragraph 1 is simply a representation by Laclede that it does not intend to take any action that would have a detrimental impact on Laclede Gas Company's utility customers. (*See* Paragraph 1, on page 5 of Stipulation and Agreement). Paragraph 8 speaks of the Commission's authority to regulate any disbursement of earnings from Laclede to an affiliate that "would jeopardize the Company's ability to meet its utility obligations" and the Commission's authority to ensure that the rates charged by Laclede for regulated utility service are not increased as a result of the unregulated activities of Laclede's affiliates.

9. None of these provisions purport to confer any new or enhanced powers on the Commission to regulate Laclede or its affiliates or to access additional affiliate information in excess of what the Commission is entitled to see under the statutes and its own affiliate transactions rules. To the contrary, far from conferring new powers, Paragraph 1 simply states that: “. . . nothing in the approval or implementation of the Proposed Restructuring shall *impair* the Commission’s ability to protect such customers from such detrimental effects.” (emphasis supplied) Similarly, Paragraph 8 on page 7 of the Stipulation and Agreement states that the Commission’s ability and authority to regulate any disbursement of earnings to an affiliate or protect ratepayers from increased rates may only be effectuated “. . . through the lawful exercise of its current statutory powers . . .” and “. . . through the lawful exercise of its ratemaking powers.” As this Commission has already determined, the scope and nature of that authority – as well as the standards for determining whether any cognizable harm has occurred – resides in the Commission’s affiliate transactions rules and the CAM that Laclede has submitted pursuant to those rules. No amount of out-of-context paraphrasing by OPC can change that core reality.

10. The provision of the Stipulation and Agreement that OPC and Staff have taken farthest out of context is Paragraph 2 of Section IV relating to Access to Information. OPC and Staff would have the Commission believe that Laclede made some wholesale commitment to provide whatever affiliate information the Staff, OPC or other parties might desire without limitation. In fact, Paragraph 2 contains numerous limitations on Laclede’s obligation to provide such information. First, such information must be “reasonably required to verify compliance with the CAM and the conditions set

forth in this Stipulation and Agreement” or “relevant to the Commission’s ratemaking, financing, safety, quality and other regulatory authority over Laclede Gas Company.” (pages 8-9). As previously discussed, however, Staff never sought the LER information at issue in this case to verify compliance with the CAM; to the contrary it has expressed its intention to ignore the CAM and whether Laclede has, in fact, complied with it. (Tr. 47). Moreover, since the other conditions cited by OPC and Staff clearly tie the Commission’s ability to act to whatever authority it already possesses, reference to those provisions does not, and cannot, establish any new or additional authority on the part of the Commission to obtain LER records above and beyond what already does or does not reside in statutes and the Commission’s affiliate transactions rules. As the Commission already determined in its April 22 Order Denying Motion to Compel, it is also clear that the LER information sought by Staff is not relevant to the exercise of the Commission’s regulatory authority.

11. OPC and Staff also fail, and fail repeatedly, to mention the other language of Paragraph 2 that limits any obligation Laclede may have to provide affiliate information, including language in Paragraph 2 stating that Laclede’s obligation is subject to “normal discovery procedures” and Laclede’s exercise of the “right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates or subsidiaries: (a) are not within the possession or control of Laclede Gas Company; or (b) are either not relevant or are not subject to the Commission’s jurisdiction and statutory authority by virtue of or as a result of the implementation of the Proposed Restructuring.” (pages 8 and 9 of Stipulation and Agreement, emphasis supplied).

12. Laclede has objected to the information sought by Staff as the Company was freely permitted to do under the Stipulation and Agreement. At no time, however, has Laclede objected on the grounds that such information was not in its possession, or that such information was not relevant or subject to the Commission's jurisdiction, because the restructuring in 2001 made LER a sister affiliate rather than an indirect subsidiary affiliate – a change that has no significance to the determination of how the statutes and affiliate transactions rules apply to the issue at hand. Instead, Laclede has objected on the grounds that such information is not relevant because the affiliate transactions rules promulgated by this Commission, as well as the CAM developed by Laclede pursuant to those rules, say that such information is not relevant. That is the same exact ground that the Commission relied on in concluding in its April 22 Order in these cases that Laclede could not be required to produce such information and there is absolutely nothing in the Stipulation and Agreement that would support, let alone compel, a different result.

13. Finally, paragraph 1 of Section IV of the Stipulation and Agreement pertains solely to Laclede providing Staff and Public Counsel access to written information that Laclede provided to “common stock, bond, or bond rating analysts.” The information requests at issue in this case have absolutely nothing to do with written information provided to common stock, bond, or bond rating analysts.

14. In summary, the Stipulation and Agreement was not designed to either add to or detract from whatever authority the Commission had over Laclede relating to activities undertaken by LER, but instead to establish the use of a CAM that could then be used to protect ratepayers from the kind of detrimental effects referenced in other

provisions of the Stipulation and Agreement, including those provisions that have been cited by OPC and Staff. Instead of adhering to this agreed upon framework, however, both OPC and Staff have, in direct contradiction to the Stipulation and Agreement, attempted to create new discovery authority where none is contemplated, and expressly disregarded the CAM that Staff insisted be used to ensure that affiliate transactions would be conducted in a manner that did not harm ratepayers. Like their prior attempts to evade the clear requirements of the Commission's affiliate transactions rules, this too should be rejected by the Commission.

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission take note of this Response.

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 8th day of June, 2009.

/s/ Gerry Lynch

Gerry Lynch