

**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**

**LACLEDE GAS COMPANY'S RESPONSE
TO STAFF'S MOTION TO COMPEL AND REQUEST
TO ESTABLISH HEARING DATES**

COMES NOW Laclede Gas Company (hereinafter "Laclede" or "Company") and submits this response to the Staff's Motion to Compel filed on September 18, 2008 and Request to Establish Hearing Dates in the above-captioned case. In support thereof, Laclede states as follows:

1. In its Motion, the Staff requests that the Commission order Laclede to provide certain information relating to bonuses granted to several Laclede employees. The Staff also seeks to compel the production of additional documents related to the business activities of Laclede Energy Resources ("LER"). For the reasons set forth below, Staff's Motion as it pertains to obtaining additional bonus information is now moot. That portion of Staff's Motion which seeks to require the production of additional documents related to LER, however, should be denied outright by the Commission or, in the alternative, deferred for consideration pending the completion of the evidentiary hearing in this case.

Bonus Information

2. Turning to the bonus calculation issue first, Staff is correct in noting that Laclede agreed to make such information available for George Godat, Steve Mathews

and Ken Neises at the discovery conference held in this case on August 21, 2008. Staff is incorrect, however, in asserting that “Laclede’s response to date is that it has already provided this information in DR response.” As shown in the attached email, and as indicated in the DR responses attached to Staff’s Motion, Laclede had indeed provided bonus information for its gas supply personnel in March of 2006 and February of 2007. Since more than two and a half years had passed since the first round of this information had been furnished to Staff (and Staff had never complained that such information was insufficient) Laclede thought that these prior responses may have been overlooked by Staff and may have contained the kind of information that Staff was seeking with its recent discovery request. To make certain, however, Laclede alerted counsel for Staff to that fact that such information had previously been provided and asked him to check with the appropriate Staff personnel to ascertain whether it was sufficient to satisfy Staff’s current request for bonus-related information. When Staff counsel advised Laclede on the day before Staff filed its Motion to Compel that it did not consider such previously provided information to be adequate, counsel for Laclede assured him that additional information would be provided in the near future.

3. Despite these discussions, Staff nevertheless included this issue in its Motion to Compel. Regardless of why Staff chose to proceed in this manner, Laclede has already committed to providing the additional bonus information that Staff has now clarified that it wants, thereby rendering this particular aspect of its Motion moot. Nevertheless, to prevent any misimpression as to how this discovery “issue” arose, the record should be corrected to reflect what actually occurred.¹

¹It is not clear whether Staff is still seeking bonus information regarding Douglas Yaeger, Laclede’s President and CEO. If it is, Laclede would object on the grounds that such a request is overbroad and

4. Although the Company has agreed to furnish this information, Laclede also wants to make clear its strong disagreement with Staff's suggestion that such information is necessary because there may be "a conflict of interest" involving these personnel since one of them has high level oversight responsibilities for both Laclede and LER functions. Once again, such claims are simply another attempt by Staff to rewrite the Commission's affiliate transactions rules which explicitly allow the utility and its affiliate to share corporate support functions, including "joint corporate oversight" and "governance." 4 CSR 240-40.015(D) and 4 CSR 240-40.015(2)(B). Further, Staff's attempt to find some kind of incentive in the bonus program to motivate management to engage in improper affiliate transactions is a waste of time and effort, because the affiliate transactions themselves must independently pass the standards set forth in the rules, regardless of any motivations. If Staff believes these rules should be modified then it should follow the procedures established by law for promulgating rule changes. What it should not be permitted to do is attempt to effectuate ad hoc changes to the rule by taking positions in ACA proceedings or elsewhere that are at odds with the rules' clear provisions.

Additional LER Documents

5. These same considerations, as well as several others, also warrant denial of Staff's request that Laclede be required to provide blanket access to the LER records set forth in Exhibit 1 to Staff's Motion to Compel. As Staff has noted in its Motion to Compel and prior pleadings, Laclede, while reserving all rights and objections, has already voluntarily provided Staff with significant information from LER, including

seeks documents that are not reasonably calculated to lead to the production of relevant information since the request is in no way limited to the issues under consideration in this case, i.e. gas supply matters or matters involving LER.

hundreds of pages of invoices showing what LER paid for gas supplies on the MRT West Line – the very pipeline on which Laclede made the purchases from LER that are the subject of Staff’s proposed disallowance in this ACA proceeding. Laclede has also provided Staff with thousands of pages of market-related data ranging from contracts with non-affiliated suppliers to daily index price information to demonstrate that its transactions with LER were in full accord with the pricing requirements of the Commission’s affiliate transactions rule.²

6. What Laclede should not be required to provide is the kind of blanket access to LER records that is being requested in Staff’s Motion to Compel. As discussed below, such blanket access is contrary to the Commission’s own rules governing what kind of affiliate information Staff is entitled to obtain. Staff’s effort to obtain such information also constitutes a blatant effort to circumvent the normal ACA process by effectively asking the Commission to rule in Staff’s favor on a contested issue before Laclede has had any opportunity to present evidence, cross-examine witnesses or otherwise exercise its due process rights with respect to that issue. Finally, such a request

²Among other things, Laclede has provided Staff with copies of the supply contract between it and LER, as well as copies of contracts between Laclede and other non-affiliate suppliers on the same pipeline, all of which showed that the LER contract was based on a competitive market price at the time it was executed. Pursuant to the terms of the Commission’s affiliate transaction rules, and the Cost Allocation Manual that Laclede submitted in March of 2004 in compliance therewith, the matter should have ended there. To further assure the Staff, however, Laclede and LER also gave Staff auditors access at the Company’s office in St. Louis to **

*** When Staff complained that such access was not convenient enough, Laclede and LER arranged to have the same information transferred to Laclede’s office in Jefferson City, Missouri, which is located within a five minute walk of the Commission’s offices. As part of this arrangement, Staff was advised that it could take as long as it liked to review the information. Indeed, no restrictions of any kind were placed on how often or for how long Staff could review the LER information. In addition to taking these steps, Laclede also made arrangements for its gas supply personnel to meet with Staff in Jefferson City to go over all of the information that had been provided or made available to the Staff. When those measures still did not satisfy Staff, Laclede further agreed to make copies of the documents available so that Staff personnel could maintain the documents in their own offices in Jefferson City.

is objectionable because it is unduly burdensome and seeks information that is neither relevant nor calculated to lead to the discovery of relevant information.

A. **Staff's information request is not only contrary to the specific provisions of the Commission's affiliate transactions rules governing access to affiliate records but also presumes standards for evaluating such transactions that are nowhere to found in the rules.**

7. While Staff has cosmetically reduced the sheer number of its data requests from what it previously sought, it still seeks access to all of LER's gas supply and transportation invoices, contracts, nomination records, general ledger and dealbooks, journals, sales data, and net margins achieved by LER for all or portions of the relevant ACA periods. Moreover, the Staff seeks such information without regard to whether the information actually pertains to transactions between Laclede and LER (as opposed to transactions between LER and third parties) or is necessary to ensure that Laclede is complying with the Commission's affiliate transactions rules or the Cost Allocation Manual that Laclede has been following since March 2004 in accordance with those rules.

8. Contrary to Staff's argument, the Staff's access to the records of utility affiliates is not unlimited. As the Commission observed in its Order on Reconsideration Concerning Discovery in Case No. EO-2004-0108:

It is true that the Commission is authorized and required to examine the dealings of regulated entities with their unregulated affiliates.^[15] However, as Union Electric points out, that authority applies to transactions between the affiliates and the regulated entity. *It does not apply to transactions between the unregulated affiliates and third parties absent a specific showing of relevancy to transactions between the affiliates and the regulated entity.* The Commission lacks any general authority to pry into the affairs of unregulated companies, or the third parties that they do business with,

merely because they are affiliates of regulated entities. (Order, p. 8, *emphasis supplied*).

9. The rules approved by the Commission to govern transactions between utilities and their affiliates also recognize that the Staff's access to affiliate records is not unlimited. Indeed, those rules specifically state that any Commission review of, or access to, the records or operational practices of an affiliate must be “... for the *sole purpose* of ensuring compliance with ...” the provisions of the rule. 4 CSR 240-40.015(6)(B) 1 and 2. The rules go on to define what affiliate records and other forms of documentation are necessary to achieve that goal. In doing so, there is nothing in the rules that purports to mandate or authorize access to cost, sales, net margin, revenue or any other information associated with transactions between the affiliate and third parties.

10.. To the contrary, when describing what records must be maintained by the affiliate, the rules reference only those costs that are incurred by the affiliate “and charged to the regulated gas corporation.” 4 CSR 240-40.015(5)(A)1. Those portions of the rules that address what information is necessary to ensure compliance with the rules' asymmetrical pricing standards (for sales of goods and services between utilities and their affiliates) also focus exclusively on information that is either in the possession of the regulated utility or available in the competitive marketplace. Specifically, in applying such standards, the rules contemplate that the utility will maintain information showing what costs the utility would or did incur to produce the good or service itself and what the market price of the good or service was at the time of transfer. 4 CSR 240-40.015 (3). Again, none of this requires or even permits an examination of the costs, margins or revenues associated with the affiliate's transactions with third parties.

11. The same thing is true under the provisions of the Cost Allocation Manual (“CAM”) that the Company submitted to Staff and the Office of Public Counsel in March of 2004 in accordance with the affiliate transactions rules, as well as the Stipulation and Agreement approved by the Commission in Laclede’s 2001 corporate restructuring proceeding, Case No. GM-2001-342. Once again, the 2001 Stipulation and Agreement specifically ties access to the records of Laclede’s affiliates to “ ... what is reasonably required to verify compliance with ... ” Laclede’s CAM. *See Section IV, Paragraph 2 of Unanimous of July 9, 2001 Unanimous Stipulation and Agreement.* And the CAM itself has very specific instructions on what market and cost data is to be examined in determining whether sales, purchases, or releases of gas and transportation capacity between Laclede and LER have been properly priced. (See Section IX of Laclede’s CAM.) Again, none of these instructions, which Laclede has been operating under with Staff’s full knowledge and consent since March of 2004, say anything about examining the costs, margins, or revenues associated with transactions between LER and third parties.

12. In view of these considerations, it is difficult to understand why Staff would believe it is entitled to obtain the information it has requested. Nor has Laclede been able to discern any legitimate informational need that would be served by providing such information so late in the ACA process. After all, Staff has had no problem calculating an adjustment relating to Laclede’s purchases of gas from LER during the ACA periods. In fact, based on LER invoice information that has previously been made available to Staff, as well as Staff’s own knowledge of index prices on the pipelines from which Laclede sources its gas supplies, the Staff has demonstrated that it is perfectly

capable of formulating alternative scenarios for pricing out its adjustment. While Laclede vigorously disagrees that any adjustment at all is appropriate in connection with these transactions, it is simply untrue to suggest that Staff does not have all of the information it needs to fairly try this issue.

13. In terms of sales of gas or capacity to LER, Laclede has also provided the Staff with extensive information, including market price data, to demonstrate why such transactions were fully consistent with the Commission's affiliate transactions rule. (See the Company's responses to DR Nos. 27, 33, 41, 51, 140, 148 in Case No. GR-2005-0203, and DR Nos. 67, 75, 83, 91, 111 in Case No. GR-2006-0288. Moreover, Laclede has made its personnel available to go over concrete examples of actual transactions that occurred during the ACA periods, all in an effort to demonstrate that such transactions complied with the Commission's affiliate transactions rules. Although a number of Staff members were apparently unable to attend this session, the notion that Staff has been deprived of the legitimate information it needs to evaluate compliance with the affiliate transactions rule is utterly without merit.³

³The purpose of the meeting, which was held on June 24, 2008 was four-fold. First, Laclede's gas supply personnel were to conduct a live demonstration of how sale and purchase transactions between the Company and its suppliers, including LER, are now done on the Intercontinental Exchange ("ICE") Trading system. Since the identity of sellers and buyers participating in the ICE system are not known until a particular transaction has been completed, the use of this trading platform to execute transactions with LER offers a promising avenue for resolving any affiliate concerns over how those transactions are done. Simply put, it is not possible to "favor" an affiliate or anyone else for that matter if the Company does not know who is on the other side of the transaction until it is completed and ICE therefore seemed an ideal way to address the paranoia concerning affiliate transactions held by the Staff. Second, Laclede's gas supply personnel ran through a number of concrete examples of how past transactions with LER had been priced and the documentation that had been relied upon to ensure that the transactions were done in accordance with the affiliate transaction rules. Third, Laclede's gas supply personnel answered Staff's questions regarding the status of Company's gas supply acquisition and hedging plans for the upcoming winter. Finally, Laclede agreed that it would try and use the meeting to answer some additional Staff questions on its purchasing activities if the Staff could tell Laclede in advance of the meeting what those questions were. The Staff did not, however, provide those questions until nearly three weeks later, on the afternoon of the day before the meeting was to take place. Accordingly, Laclede was only able to address some of the questions, with the understanding that Laclede would meet with the Staff later to answer any remaining questions. Aside from a few follow-up questions from Public Counsel's representative at the

14. Given the lack of any legitimate need for the information Staff is now seeking, it has become increasingly obvious to Laclede that Staff is really seeking to rewrite the Commission's affiliate transactions rules rather than fairly and faithfully enforce them. Even though it was the Staff itself that largely wrote these rules, and even though those rules clearly authorize such transactions to take place, the Staff has made it clear in both word and deed that it has a deep and abiding prejudice against such transactions. Because it cannot prohibit all affiliate transactions directly, the Staff has pursued indirect means to eliminate affiliate transactions, such as unsupported and bogus adjustments (like the ones proposed in this case) that aim to penalize utilities who have followed existing rules, and by issuing harassing requests for affiliate records that it is decidedly not entitled to obtain. In the process, the Staff has willfully ignored the very affiliate rule standards that specify how such transactions are to be evaluated and judged. Laclede believes that the Staff is every bit as obligated as the utilities to honor the judgment of the Commission, expressed in its affiliate transactions rules, and Laclede is confident that a hearing will demonstrate that the Staff has failed in this obligation. Nevertheless, until that hearing has been held, the Commission should not reward the Staff's willingness to over reach by granting the unauthorized and unsupported discovery motion that Staff has filed in this case.

Staff's Motion Should be Denied Because it Seeks to Circumvent Normal ACA Procedures and, in the Process, Deprive the Company of its Due Process Rights to Present Evidence, Cross Examine Witnesses and Rebut the Assertions of Opposing Parties

meeting (which were promptly answered), Laclede received no further communications from the Staff on this subject. At no time did the Staff submit any follow up questions concerning affiliate transactions. Nor did Staff provide the Company with the list of documents that it had promised to provide at the May 23rd pre-hearing conference. Staff also did not request a follow-up meeting to address the questions it had transmitted the day before the June 24, 2008 meeting, or otherwise indicate that it was seeking information that had not yet been provided.

15. Staff's Motion to Compel should also be denied because it effectively seeks to circumvent the practices and procedures that the Commission has followed for years to process its ACA cases. As employed by the Commission, those practices and procedures have always afforded the utility and other affected parties an opportunity to be heard, present and rebut evidence, cross examine witnesses, and otherwise exercise their due process rights *before* the Commission decides how to rule on a Staff ACA recommendation. In this case, one of those recommendations was Staff's suggestion at pages 10 to 11 of its December 31, 2007 Memorandum in this case that the Commission should open up an investigatory docket to explore whether Laclede has complied with the Commission's affiliate transactions rule in its dealings with LER.

16. The Staff's recommendation for such an investigation was premised on the "concerns" that it has raised in this proceeding over transactions between Laclede and LER. Rather than go through the ACA process and give Laclede the opportunity to demonstrate to the Commission why those concerns are baseless (and hence do not warrant such an investigation), the Staff has attempted to short circuit the process by requesting that the Commission order Laclede to produce the very kind of information that Staff would presumably seek in such an investigation.

17. As Laclede explained in its May 1, 2008 Response in this case, the Company believes that any reasonable examination of the actual evidence in this proceeding will demonstrate – and demonstrate conclusively – that the Company has complied fully with the Commission's affiliate transactions rules in its dealings with LER. It will also demonstrate that there is no basis whatsoever for any of the nebulous concerns that have been raised by Staff in this proceeding, let alone any basis for its

proposed disallowances. Despite Staff's false claims to the contrary, there is abundant evidence in the form of long-standing contracts with non-affiliated suppliers, and other documentation, including published price indexes and NYMEX settlement prices, that conclusively demonstrate that Laclede's purchases from LER on the MRT West Line were competitively priced. The evidence will also demonstrate that Staff has mischaracterized both the intent and effect of the right of first refusal that Laclede negotiated with LER as part of the MRT Westline purchase agreement. Incredibly, in true Alice in Wonderland fashion, the Staff asserts that this provision has somehow worked to the benefit of LER rather than Laclede and its utility customers. In fact, just the opposite is true. As the name implies, this right of first refusal means that LER has an obligation to seek capacity from Laclede first when it has a need for such capacity and Laclede has the right, within the confines of FERC's capacity release regulations, to **refuse** to release such capacity to LER if the transaction does not make economic sense for Laclede and its customers. The end result is an arrangement that has produced millions of dollars in additional capacity release revenues for Laclede – revenues which have, in turn, been shared with Laclede's utility customers. Staff's effort to paint this provision as something bad for Laclede's utility customers is just another example of the extreme lengths to which Staff will go to vent its irrational hostility to transactions involving affiliates.

18. Given these considerations, Laclede respectfully submits that the Commission should deny outright Staff's Motion to Compel the production of additional documents from LER. In the alternative, the Commission should defer its ruling on

Staff's Motion pending the outcome of the evidentiary hearing in this case.⁴ In other words, the Commission should, consistent with its normal procedures for processing ACA issues, evaluate the evidence in this case and determine for itself whether there is any validity to the claims and concerns that the Staff has raised regarding Laclede's affiliate transactions and upon which Staff has premised its discovery request and recommendation that the Commission launch an investigation of LER. Laclede is confident that once it does, the Commission will conclude that there is no basis for Staff's discovery Motion, let alone its recommendation that an investigatory proceeding be opened to address this matter.

19. Of course, Laclede can assert what it will and the Staff can do the same.

What is really needed at this point is a hearing during which the claims of both Laclede and Staff can be tested in the hearing room through the procedures that have long been

⁴Staff may argue that it needs the information it has requested to try the issues it has raised in this ACA case and the immediately preceding one. It is nothing short of preposterous, however, to suggest that this massive request for information, nearly all of which involves the records of a Laclede affiliate rather than Laclede itself, is in any sense required for the Staff to complete its ACA review. It should be noted that the primary disallowance at issue in this case involves **

** At any time over the past seven years, the Staff could have requested from Laclede through the normal discovery process whatever information it deemed relevant to review the propriety and reasonableness of these purchases. However, the Staff never deemed it necessary or appropriate to request the kind of information that it now claims is necessary to conduct its review in this proceeding. Nor did the Staff deem it necessary to request such information either before or after the time that it proposed its first adjustment relating to Laclede's purchase of gas from LER in December 2006 in Case No. GR-2005-0203 or at the time it proposed a nearly identical adjustment in December 2007 in this case. Instead, the Staff has waited well over two years to suddenly assert that such information is critical to its audit of Laclede's gas costs. Unless one assumes that the Staff is completely inept at determining the kind of information it needs to prepare and support its ACA adjustments, there is no reason to believe that the information it now seeks is actually relevant or necessary to its audit of Laclede's gas costs. Nor is there any justification for giving the Staff a virtually unlimited time horizon for conducting discovery in ACA proceedings. Over the past *two-plus years* since Staff began its audit in Case No. GR-2005-0203, Laclede has provided the Staff with numerous boxes of information and documents in response to the hundreds of data requests that Staff has submitted. With its recent Motion, however, the Staff seeks to initiate an entirely new and massive round of discovery on top of all of the discovery it has already conducted. Laclede would respectfully submit that some reasonable limitation should be placed on how long Staff has to conduct such discovery in its ACA audits. Laclede would further submit that given the time limitations observed in other proceedings before the Commission, that reasonable limit has been more than exceeded in this case.

established to get at the truth of the matter. To that end, Laclede renews its request that the Commission establish a hearing date in this case as soon as reasonably possible so that this process can finally begin.

WHEREFORE, for the foregoing reason, Laclede respectfully requests that the Commission deny Staff's Motion, or alternatively defer its ruling on such Motion until the completion of the evidentiary hearing in this case. Laclede further requests that the Commission establish a hearing date in this case as soon as possible.

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 1520
 St. Louis, MO 63101
 Telephone: (314) 342-0532
 Fax: (314) 421-1979
 Email: mpendergast@lacledegas.com
 rzucker@lacledegas.com

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 29th day of September, 2008.

/s/ Gerry Lynch

Gerry Lynch