

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

The Staff of the Missouri Public Service Commission,	)	
	)	
	)	
Complainant,	)	
	)	
v	)	<b><u>Case No. GC-2011-0098</u></b>
	)	
Laclede Gas Company,	)	
	)	
Respondent.	)	

**STAFF’S REPLY TO  
LACLEDE’S MOTION TO DISMISS COUNTS I AND V,  
AND MOTION TO LATE FILE**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, pursuant to Section 386.390, RSMo 2000,<sup>1</sup> and for its Reply to Laclede’s Motion to Dismiss Counts I and V, and Staff’s Motion to Late File, and states that no party will be harmed by the Commission granting Staff’s Motion to Late File and Staff further states: Counts I and V should not be dismissed. In further reply, Staff states as follows:

1. On October 6, 2010, Staff filed a Complaint against Laclede Gas Company (Laclede), The Laclede Group and Laclede Energy Resources.
2. On October 7, Staff filed an amended Complaint and the Commission approved Staff’s request to amend its October 6 Complaint.
3. On November 22, Staff also filed an Amended Complaint, which the Commission, on its own Motion in its December 2 Order Granting Staff Leave to Amend its Complaint, granted Staff leave to amend.

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<sup>1</sup> All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (“RSMo”), 2000, as currently supplemented.

4. On December 10, Laclede filed its Answer to Motion to Dismiss Counts I and V of the Complaint and made its Counterclaim.

5. Commission Rule 4 CSR 240-2.070 governs the formal complaint process. This rule requires the respondent to file an answer to the complaint within the time provided. In this case, Laclede did respond within the time ordered by the Commission.

6. There is no provision for filing a response to Respondents' Answer, however, Staff herein requests Commission grant Staff permission to late file as this filing is made more than thirty days after Laclede's Answer to Motion, stating that the press of other business, coupled with travel over the holidays, resulted in Staff Counsel's delay.

7. No party will be harmed by the Commission permitting Staff to Late File.

***Staff's Response to Laclede's Motion to Dismiss Counts I and V***

8. Neither Count I nor Count V should be dismissed. It is undisputed that Laclede Gas Company is a regulated utility under the jurisdiction of the Commission. The Commission should not dismiss any Counts in Staff's complaint, because all meet the requirements for bringing a Complaint at the Commission. Section 386.390 permits a complaint to be made "setting forth the thing done or omitted to be done by any public utility . . . including any violation, or claimed . . . violation of any provision of law, or rule or order . . . of the Commission."

9. What is required is that Complainant raise some matter within the Commission's jurisdiction.<sup>2</sup> All of Staff's Counts in its Complaint are sufficient in that Staff alleged violations

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<sup>2</sup> *St. Louis-San Francisco Ry. Co. v. Public Serv. Com'n*, 53 S.W.2d 868 (Mo.1932).

within the Commission's jurisdiction and, in doing so, provided notice of the issues raised.<sup>3</sup>

10. Laclede's argument the Complaint must meet some specific rules or pleading ignores the law.<sup>4</sup> The Commission acts under the police powers of the state to protect the public interest.<sup>5</sup> Importantly, "[c]omplaints before the . . . Commission are not tested by rules applicable to pleadings in general."<sup>6</sup> A Commission complaint is to be liberally construed<sup>7</sup> and is not tested by "technical rules of pleading; if it fairly presents for determination some matter which falls within the jurisdiction of the Commission, it is sufficient."<sup>8</sup> The Complaint meets this standard. All issues raised in Staff's Complaint fairly present matters that fall squarely within the Commission's jurisdiction. Laclede, Group and LER are not misled as to the issues being raised.

11. Staff has further alleged Laclede is in violation of the Commission's affiliate transactions rules, in numerous respects, in that Laclede Gas has failed to comply with the rules as affirmed by the Supreme Court's decision in *Atmos et. al v. Public Service Comm'n*, 103 S.W.3d 753 (Mo. 2003).

12. A motion to dismiss for failure to state a claim tests only the legal sufficiency of

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<sup>3</sup> *State ex rel. Chicago. B. & Q. R. v. Pub. Serv. Com'n*, 334 S.W.2d 54 (Mo. 1960).

<sup>4</sup> *Id.*

<sup>5</sup> *Kansas City v. Public Serv. Comm'n*, 524 S.W.2d 855 (Mo. 1975) (That act is an elaborate law bottomed on the police power. It evidences a public policy [which] recognizes certain generally accepted economic principles and conditions, to wit: That a public utility (like gas, water, . . . etc.) is in its nature a monopoly; that competition is inadequate to protect the public, and, if it exists, is likely to become an economic waste; that stte regulation takes the place of and stands for competition; that such regulation, to command respect from patron or utility owner, must be in the name of the overlord, the stte, and to be effective, must possess the power of **intelligent visitation and the plenary supervision of every business feature to be finally (however invisible) reflected in rates and quality of service**. It recognizes that **every expenditure, every dereliction**, every share of stock, or bond, or note issued as surely is finally reflected in rates and quality of service to the public (emphasis supplied).

<sup>6</sup> *Kansas City Terminal Ry. Co. v. Public Serv. Com'n*, 272 S.W. 957 (Mo. 1925).

<sup>7</sup> *Friendship Village v. Public Serv. Com'n*, 907 S.W.2d 339 (Mo. App. W.D. 1995).

<sup>8</sup> *St. Louis-San Francisco Ry. Co. v. Pub. Serv. Com'n*, 53 S.W.2d 868 (Mo.1932).

the complaint.<sup>9</sup> The facts must be liberally construed to support the complaint.<sup>10</sup> The complainant enjoys the benefit of all reasonable inferences.<sup>11</sup> The complaint should not be dismissed unless it shows no set of facts entitling it to relief.<sup>12</sup>

13. Likewise Count V should not be dismissed because it does meet the requirements noted above and does state facts which the Commission “must liberally construe.” Staff states that Laclede Gas gave preferential treatment to its affiliate Laclede Energy Resources by sharing confidential information through its common Vice President, in violation of 4 CSR 240-40.016 which requires, “[e]xcept as necessary to provide corporate support functions, the regulated gas corporation shall conduct its business in such a way as not to provide any preferential service, information, or treatment to an affiliated entity over any other party.

14. Corporate support functions are defined in the rule and limited by the rule to “those functions involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.”

15. Importantly, sharing confidential information about gas supply is not included in the list of permissible corporate support functions and is precisely the type of activity the rule prohibits.

16. Only those functions, which do not give LER a competitive advantage are listed among the permitted corporate governance activities permitted by the rule. None of the functions listed above permit Mr. Neises to provide confidential gas supply information to Laclede Energy Resources in a discriminatory manner.

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<sup>9</sup> J.R. Devine, Missouri Civil Pleading and Practice, § 20-4 (1986).

<sup>10</sup> *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. banc 1993).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

17. Staff understands the Commission has found that the rule permits corporate support functions, however, Staff asserts that sharing of confidential information through those corporate support functions violates the very essence of the purpose of the rules, which is to prevent a utility from providing a financial advantage to its affiliate. Because LER knew, among the vast amount of information available to Mr. Neises, Laclede's gas buying strategies, gas purchasing needs, and, all of Laclede's industry contacts this arrangement gave an impermissible unfair competitive advantage. Under these circumstances Laclede did provide a financial advantage to its affiliate in violation of Commission Rules.

18. Any suggestion Laclede did not understand Staff and Public Counsel had concerns with its CAM and Laclede's compliance with the Affiliate Transactions rules should be dismissed as false and misleading.

19. Staff and OPC met with Laclede in 2003 to review its CAM, but, unlike other meetings with gas utilities, the meeting with Laclede became a dispute. Other meetings also became heated discussions, leading nowhere. In an effort to reach some understanding, the Parties specifically included an Agreement in Laclede's 2007 rate case that the parties would meet to discuss Staff's issues with Laclede's CAM. In Case No. GR-2007-0208 paragraph 23 provides:

Within ninety(90) days of the effective date of the Commission's Report and Order in this case, Laclede, Staff and Public Counsel, shall begin meeting to discuss any issues or concerns they may have relating to Laclede's Cost Allocation Manual ("CAM"), the compliance of the CAM with the Commission's affiliate transactions rules and the transactions between Laclede and its affiliates. Such meetings shall not be construed as placing any restrictions on Staff's or Public Counsel's ability to investigate and file complaints concerning such matters.

**WHEREFORE**, having fully replied to Respondent's Motion to Dismiss, and filed its Motion to Late File, Staff prays the Commission will grant the relief sought in Staff's Complaint

and Staff's Response and grant such other and further relief as the Commission deems just in the premises.

Respectfully submitted,

**/Lera Shemwell**

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**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 17<sup>th</sup> day of January 2011, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Lera L. Shemwell