

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

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2011-0098
	)	
Laclede Gas Company, Laclede Energy Resources and The Laclede Group,	)	
	)	
Respondents.	)	

**STAFF’S ANSWER TO LACLEDE’S MOTION TO DISMISS**

COMES NOW, the Staff of the Public Service Commission (Staff), by and through the Chief Staff Counsel and undersigned counsel, and states the motion to dismiss should be denied. In support Staff further states:

***Staff’s Complaint is sufficient***

Staff’s complaint is sufficient to give Laclede, the Laclede Group (Group) and Laclede Energy Resources (LER) the required notice.<sup>1</sup> Staff’s Complaint was sufficient in that it alleged violations within the Commission’s jurisdiction and, in doing so, provided notice of the issues raised. Appellant’s argument the Complaint must meet some technical pleading rules ignores the law. “Complaints before the . . . Commission are not tested by rules applicable to pleadings in general.”<sup>2</sup> A Commission complaint is to be liberally construed<sup>3</sup> and is not tested by “technical rules of pleading; if it fairly presents for determination some matter which falls within the

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<sup>1</sup> *Kansas City Terminal RY. Co. v. Public Serv. Com’n.*, 272 S.W. 957 (Mo. 1925).  
<sup>2</sup> *State ex rel. Chicago. B. & Q. R. v. Public Serv. Com’n*, 334 S.W.2d 54 (Mo. 1960).  
<sup>3</sup> *Friendship Village v. Public Serv. Com’n*, 907 S.W.2d 339 (Mo. App. W.D. 1995).

jurisdiction of the Commission, it is sufficient.”<sup>4</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.

***Laclede’s current CAM is not approved***

Laclede incorrectly claims Staff’s Complaint is a collateral attack on the Commission’s Order in GM-2001-342, in which the Commission “approved use of the CAM to govern” Laclede’s transactions with LER (Laclede Answer, p. 3). First, the Complaint is not that Laclede is not using a CAM to govern its transactions, but that its CAM does not comply with the Commission’s Rules. Secondly, the CAM Laclede is currently using is not the CAM that was presented to the Commission in GM-2001-342. Further, neither that CAM nor any CAM has been specifically approved by the Commission.

***Compliance with the CAM is Laclede’s Responsibility***

Staff has repeatedly expressed its concerns with the CAM to Laclede since the Commission’s Rules became effective in mid-2003. Since that time, Laclede has not submitted its CAM for Commission approval or filed for waivers of its non-compliant conduct. Importantly, Staff cannot take any action to waive Laclede’s responsibility to comply with the Commission’s Rules. Staff has taken many opportunities to inform Laclede of its concerns with Laclede’s CAM. In meetings to discuss the CAM, Staff members have been called names, threatened, and bullied, but have, nonetheless, consistently expressed their concerns with Laclede’s CAM and its transactions with LER.

***Documentation of transactions is required***

Laclede’s claim that it has taken fully distributed cost (FDC) into account or told Staff of its process does not comply with the rules’ requirements that when affiliate transactions involve

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<sup>4</sup> *St. Louis-San Francisco Ry. Co. v. Pub. Serv. Com'n*, 53 S.W.2d 868 (Mo.1932).

“the purchase or receipt of information, assets, goods or services [by Laclede from/to LER, Laclede] shall document both the fair market price or such information, assets, goods and services and the fully distributed costs to [Laclede] to produce the information, assets, goods or services for itself. Taking FDC “into account” is insufficient. Explaining its rationale is insufficient. Laclede is not in compliance with the Rule and must file for a waiver.

Laclede pretends the rule only applies if Laclede manufactures something. This is untrue. Laclede is required to consider and document for every transaction both the fully distributed cost and the fair market value. The rule also includes services and information. Laclede has a FDC to purchase natural gas and transportation services for its customers. Failure to document this calculation for every affiliate transaction with LER violates the rules’ requirements. 4 CSR 240-40.015(3). Laclede has never requested a variance for its non-compliance. Staff comments, testimony in unrelated cases, or that Staff might “understand” does not permit non-compliance with the Rules or waive the requirement to request a variance from the Commission for non-compliance. Moreover, Staff disagrees with Laclede’s interpretation of FDC and the way Laclede uses its interpretation to defend its CAM and circumvent the Rule.

***Staff met numerous times with Laclede about the Affiliate Transaction Rules***

The idea that Laclede did not get feedback from the Staff is absurd and false. The fact that Laclede admits it repeatedly sought Staff’s confirmation that its rationale was satisfactory indicates (Laclede Answer at 8) Laclede knew its “rationale” was questionable. Even if Laclede had been fully satisfied with Staff’s response and Staff had supported its rationale, Laclede still had to ask for a waiver. It failed to do so.

Continually making pejorative comments and *ad hominem* attacks on the Commission's Staff only serves to emphasize Laclede's failures to take responsibility for its obligation to comply with the Commission's rules.

**WHEREFORE**, Staff prays that the Commission will accept Staff's Response to Laclede Gas Company's Motion to Dismiss Count II, The Laclede Group's and Laclede Energy Resources' Motion to Dismiss and Amended Complaint as well as this Answer and Deny all Motions to Dismiss; grant the Relief requested in Staff's Amended Complaint, establish a procedural schedule including opportunity for discovery and grant such other and further relief as is reasonable in this case.

Respectfully submitted,

/s/ Lera L. Shemwell

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**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 22<sup>nd</sup> day of November 2010.

/s/ Lera L. Shemwell