

**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 RESPONSE TO LACLEDE GAS COMPANY’S MOTION TO DISMISS
COUNT II, THE LACLEDE GROUP AND LACLEDE ENERGY RESOURCES’
MOTION TO DISMISS AND AMENDED COMPLAINT**

COMES NOW, the Staff of the Public Service Commission (Staff), by and through the Chief Staff Counsel and undersigned counsel, pursuant to Section 386.390,¹ and for its Amended Complaint states:

Introduction

Staff has amended its complaint in response to the pleadings filed by Laclede Gas Company (Laclede), The Laclede Group (Group), and Laclede Energy Resources (LER) Answers and Motions to Dismiss and urges the Commission not to dismiss any parties or counts for the reasons described below:

Staff’s filed its Complaint to enforce compliance with the Commission’s affiliate transactions rules as those rules are currently written, and as they were interpreted and affirmed by the Missouri Supreme Court. *Atmos Energy Corp. v. Public Service Com’n*, 103 S.W.3d 753 (Mo. 2003), rehearing denied (May 27, 2003).

¹ All references are to the Revised Statutes of Missouri 2000 (as currently supplemented, unless otherwise noted.)

Laclede Gas'(Laclede), The Laclede Group's (Group) and Laclede Energy Resources' (LER) assertions that the Staff is attempting to rewrite the Commission's Affiliate Transactions Rules (Rules), or overturn any portion of the Rules is unfounded and an attempt to shift the focus from Laclede's violations of the rules, its defective Cost Allocation Manual(CAM), and its improper sharing of confidential information. As the Commission is aware, the Rules were initially drafted by Staff, approved by the Commission after contentious hearings, and affirmed by the Missouri Supreme Court. *Atmos Energy Corp. v. Public Service Com'n*, 103 S.W.3d 753 (Mo. 2003). The Commission asked Staff to draft rules as a result of complaints involving telephone companies and their relationships with affiliates. Staff supports the rules as written and their enforcement when utility companies violate the rules.

Complainant

1. Complainant is the Staff of the Missouri Public Service Commission (Staff), acting through the Chief Staff Counsel, as authorized by Commission Rule 4 CSR 240-2.070(1) and Sections 386.240 and 386.390.

Respondent

2. Laclede Gas Company (Laclede) is a monopoly utility company operating in eastern Missouri, serving approximately 630,000 customers.

3. Respondent, Laclede is a Missouri general business corporation in good standing, incorporated on March 2, 1857, as Laclede Gas Light Company. Its principle place of business is located at 720 Olive Street, St. Louis, Missouri 63101 and its registered agent is Mary Caola Kullman, 720 Olive Street, Suite 1517, St. Louis, Missouri 63101.

4. Laclede is a gas corporation within the intendments of § 386.020(18), RSMo, and a public utility within the intendments of § 386.020(43), RSMo, and therefore "subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]"

5. Laclede is a wholly-owned subsidiary of Group, a Missouri general business corporation in good standing, incorporated on October 18, 2000. Group's principal place of business is also located at 720 Olive St. St. Louis, Missouri 63101 and its registered agent is Mary Caola Kullman, 720 Olive Steet, Suite 1517, St. Louis, Missouri 63101.

6. In its latest 10-k filing with the Securities and Exchange Commission, Group describes its core business as a public utility engaged in the retail distribution and sale of natural gas: a public utility holding company formed through a corporate restructuring that became effective October 1, 2001. "Laclede Group is committed to providing reliable natural gas service through its regulated core utility operations while engaging in non-regulated activities that provide sustainable growth." All of Laclede Group's subsidiaries are wholly owned.

7. Laclede Energy Resources (LER) is a Missouri corporation in good standing, incorporated on May 28, 1981. Its principal place of business is 720 Olive Street, St. Louis, Missouri 63101 and its registered agent is Mary Caola Kullman, 720 Olive St., Suite 1517, St. Louis, Missouri 63101. It is wholly owned by Group.

COUNT I

8. The Commission has the jurisdiction and authority to hear and determine complaints against gas corporations pursuant to §386.390.1. "Complaint may be made . . . in writing, setting forth any act or thing done or omitted to be done by an corporation . . . in violation, or claimed violation, of any provision of law, or of any rule or order or decision of the Commission"

9. This Complaint is that the Rule applies to Laclede and its transactions with LER and Laclede is not in compliance with the rule in numerous respects.

10. Group is an affiliated entity which owns, controls, manages and directs Laclede's and LER's operations through common directors and officers. 4 CSR240-40.015(6) and 4 CSR 240-40.016(6).

11. Group brought itself and LER under the Commission's jurisdiction for this complaint by signing the stipulated agreements in GM-2001-342 in which the Commission approved the holding company corporate structure.

12. The stipulated agreements include Group's assurance that "it does not intend to take any action that has a material possibility of giving a detrimental effect on Laclede Gas customers." GM-2001-342 Stipulation and Agreement, p. 5 para. 1.

13. "Upon request Laclede Gas Company and The Laclede Group agree to make available to Staff. . . all books and records of the Laclede Group, Laclede Gas Company and its affiliates [LER is such an affiliate] as may be reasonably required to verify compliance with the CAM and the conditions set forth in this Stipulation and Agreement. . . ." GM-2001-342 Stipulation and Agreement, p. 8, para 2.

14. Laclede Gas, Group and LER must comply with the law including *Atmos*, 103 S.W.3d 753 (Mo. 2003) (holding, among other things, that the asymmetrical pricing standards, prohibit utilities from providing an advantage to their affiliates to the detriment of rate-paying customers.)

15. The Commission also has authority to investigate compliance with the Rules and "to police compliance, the rules require the utilities to ensure that they and their affiliates maintain records of certain transactions." *Atmos* at 764 (Mo. 2003)(emphasis supplied).

16. In addition, so that the Commission may police compliance, the rules require the utilities to ensure that they and their affiliates maintain records of certain transactions.” *Atmos* at 764 (Mo. 2003)(emphasis supplied).

17. “When enforcing these standards, or any order of the commission regarding these standards, the commission may apply any remedy available to the commission.”
4 CSR 240-40.015 (8)(A).

18. The rule requires Laclede to make available these records: (A) To the extent permitted by applicable law, and pursuant to established commission discovery procedures, a regulated gas corporation shall make available the books and records of its parent and any other affiliated entities when required in the application of this rule.

19. Not only does the Rule require Laclede to produce books and records of its parent or affiliates, the Group agreed to provide information to the Commission by signing the Stipulation and Agreement in GM-2001-585.

20. Group has therefore placed itself and its affiliates under this Commission’s jurisdiction.

COUNT II

21. Staff herein realleges and incorporates by reference paragraphs 1-20.

22. Laclede justifies its lack of Rule compliance by claiming it is following its Cost Allocation Manual (CAM)(see Attachment A).

23. On its face, Laclede’s CAM violates the Commission’s Rules.

24. Among other things, its CAM does not require Laclede to use asymmetrical pricing for transactions with its gas marketing affiliate. 4 CSR 240-40.3 (A).

25. The rules do not permit an exception to the asymmetrical pricing standards for gas services.

26. Laclede may not use another method for calculations of the price at which affiliate transactions are permissible under the rules without Commission approval. 4 CSR 240-40-015 (2)(A)(1) and (3)(A), 4 CSR 240-40.016 and 4 CSR 240-40.015(11).

27. Nor do the Rules permit Laclede to make up its own Rules as to how these transactions will be priced.

28. Because of Laclede's failure to apply the asymmetrical pricing, the Rule deems Laclede to be giving LER a prohibited financial advantage. 4 CSR 240-40.016(3)(A).

29. If Laclede believed it was a reasonable approach to create a different rule for itself and its gas services transactions, it could have filed for either Commission approval of its CAM or for a variance from the Rule provisions.

30. "The regulated [utility] shall not participate in any affiliated transactions which are not in compliance with this rule, except as otherwise provided in section (10) of this rule [which provides a procedure by which Laclede could have obtained a variance from these standards]." 4 CSR 240-40.015(2)(D).

31. Laclede has failed to request a variance.

COUNT III

32. Complainant hereby realleges and incorporates herein by reference paragraphs 1-31.

33. Laclede has never filed for Commission approval of its CAM.

34. The rule requires Laclede to make purchases from its affiliates using “a Commission approved CAM,” which sets forth certain criteria for those transactions. 4 CSR 240-40.015(3)(D).

35. Laclede has never applied to the Commission for approval of its CAM.

COUNT IV

36. Complainant hereby realleges and incorporates herein by reference Paragraphs 1 through 35.

37. While Laclede has periodically provided its CAM to Staff, and submitted “annual reports,” Laclede has not submitted a CAM on an annual basis. 4 CSR 240-40.015.(2)(E).

38. In December 2004, Laclede submitted a CAM, which it described as being “updated” to reflect the outcome of any final judicial resolution of the Commission’s affiliate transactions rules. “This version of the CAM seeks to accomplish that goal.”

39. That version did not accomplish that goal.

COUNT V

40. Staff herein realleges and incorporates by reference paragraphs 1-39.

41. Laclede also violates 4 CSR 240-40.015(2)(B) and (C) by providing confidential market information to its affiliate not available to non-affiliates by permitting Kenneth J. Neises, who, until September 30, 2010, was an executive officer with operational responsibilities for both Laclede and LER, and had full access to all information about both entities.

42. Corporate support services is defined in the rule “joint corporate oversight . . . involving payroll, shareholder services, financial reporting, human resources, pension management, legal services, and research and development.” 4 CSR 240-40.015(1)(D).

43. Gas purchasing is not among the listed types of corporate support services.

44. Additionally, when this definition is read in *pari materia* with the whole rule, sharing of competitive information with an affiliate, which is not shared with non-affiliates. 4 CSR 240-40.015(2)(B). Mr Neises signed for LER in contracts with Laclede.

45. Through the shared officers and directors, and especially Mr. Neises, who had operational responsibilities for both Laclede and LER, LER had full access to information about Laclede's gas operations including, but not limited to: Laclede's gas buying strategies, hedging operations, gas purchasing needs, customer usage, suppliers, storage and peaking facilities and operations, to which no non-affiliated entity has access.

46. It is unrealistic to think Mr. Neises, or any other common officer or director can avoid a conflict of interest, either potential or actual in the course of his implementing his duties. Conflicts, because of the nature of Mr. Neises' relationships with the two entities are unavoidable.

WHEREFORE, Staff prays that the Commission will give notice to Respondent as required by law and, after opportunity for hearing, enter its Order: (1) finding that Laclede's CAM, on its face, is in violation of the Commission's affiliate transactions rules; (2) finding that Laclede has impermissibly given its unregulated affiliate LER an advantage over non-affiliated marketing companies by sharing corporate officers; (3) ordering Laclede to either (a) submit a compliant CAM to the Commission for approval, or (b) petition the Commission for a waiver from the Commission's affiliate transactions rules; (4) ordering Laclede to comply with all non-discrimination provisions of the rules and requiring Laclede to cease giving LER any unfair advantage over non-affiliated marketing companies; (5) authorizing its General Counsel to

proceed in Circuit Court to seek such penalties as are authorized by law; and granting such other and further relief as is reasonable in this case.

Respectfully submitted,

/s/ Lera L. Shemwell

Lera L. Shemwell
Missouri Bar No. 43792
Annette Slack
Missouri Bar No. 50601
Kevin Thompson
Missouri Bar No. 36288

Attorneys for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7431 (Telephone)
(573) 751-9285 (Fax)
lera.shemwell@psc.mo.gov

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 22nd day of November 2010.

/s/ Lera L. Shemwell