

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

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

**STAFF STATEMENT OF  
ITS POSITION ON THE ISSUES**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”) and for its Statement of Positions on the Issues states:

**1. Does Laclede’s Cost Allocation Manual (CAM) violate the pricing standards of the Affiliate Transaction Rules?**

Yes. Laclede’s CAM, does not comply with the required pricing provisions of the Commission’s affiliate transactions rules (Rules) because it does not require Laclede to use asymmetrical pricing in purchases from or sales to its affiliate. The issue is not whether or not Laclede has considered fair market value or whether the fair market price is the same as fully distributed cost. The issue is whether Laclede’s CAM requires it to apply asymmetrical pricing to all affiliate transactions as required by the Rules.

The Commission created financial standards, evidentiary standards and record keeping requirements that must be followed when a regulated utility participates in a transaction with any affiliate. One of these requirements is asymmetrical pricing of affiliate transactions. Laclede’s unapproved CAM does not require asymmetrical pricing for gas supply transactions. The CAM contains the following provision for energy-

related goods and services that are provided to Laclede Gas Company by affiliates: Gas supply purchases- shall be the fair market price . . .

Notably, Laclede' CAM on page 7, does require asymmetrical pricing for "Use of Facilities or Services" and defines both "Fair Market Price" and "Fully Distributed Cos" as its pricing standards. However, under "Gas supply services" on page 13, Laclede has a different pricing standard. (Laclede 2004 Cam, at p. 13):

Gas supply purchases - shall be the fair market price which shall be determined as the average price of similar purchases made by Laclede Gas Company or other firms from non-affiliated entities entered into at similar times for similar duration and location of such purchases. I such purposes do not exist, the fair market price will be determined for the location and period in question by using an industry accepted index price or index prices applicable to such location published in either Gas Daily, Inside FERC, or other similar publication widely accepted in the industry for determining the value of such gas supplies.

This is not the required asymmetrical pricing provisions required by the rules to be used by Laclede when it purchases goods from affiliates. Laclede's CAM violates the affiliate transaction rules because it does not require Laclede to determine the lesser (lower) of FMP or FDC when Laclede is pricing gas it purchases from LER, or the greater of FMP or FDC when Laclede is pricing gas it sells to LER. Further, Staff has serious questions as to whether or not Laclede's definition of "fair market price" is in compliance with the rules. The Commission should find that Laclede is in violation of the Commission's rules and order Laclede to change its CAM to require asymmetrical pricing of all its affiliate transactions to comply with the Commission's rules.

**2. Has Laclede violated the Affiliate Transaction Rules by failing to request Commission approval of its CAM?**

Yes. Laclede is not operating under a Commission approved CAM. The rules require “[i]n transactions involving the purchase of goods or services by the regulated gas corporation from an affiliated entity, the regulated gas corporation will use a commission-approved CAM, which sets forth cost allocation, market valuation and internal cost methods.” 4 CSR 240-40.015(3)(D). The Commission has never approved Laclede’s CAM; not in GM-2001-342. Neither the Staff nor OPC can approve Laclede’s CAM. The fact that Staff has agreed to work with Laclede in rate cases to address Staff’s concerns with Laclede’s CAM does not satisfy this provision of the Commission’s rules. Staff has searched the Commission’s filing system and has determined there is no case filing in which Laclede has requested Commission approval of its CAM. The Commission should order Laclede to seek Commission approval of its CAM, so that the Commission may address all CAM compliance issues.

**3. Has Laclede violated the Affiliate Transaction Rules by failing to submit its CAM annually?**

Yes. Staff has reviewed Laclede’s annual submissions and these submissions do not contain the criteria, guidelines and procedures Laclede will follow to be in compliance with the Rules. Staff’s review of the annual filings demonstrates Laclede’s Annual Report has a brief list of affiliate transactions types, but it does not contain the criteria, procedures or guidelines Laclede will follow to be in compliance with the Commission’s Rule nor does it contain the limited information specifically mentioned in Section 4 CSR 240-40.015(3)(E). The Commission should find Laclede has violated the Commission’s rules by operating without following the Commission’s rules.

## **LACLEDE COUNTERCLAIM**

### **1. Has Staff violated Commission Rule 4 CSR 240-2.080(7)?**

No. Laclede either misreads the rule, or is misrepresenting the purpose of the rule.

4 CSR 240-2.080(7) requires:

(7) By presenting or maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, brief, or other document filed with or submitted to the commission, an attorney or party is certifying to the best of the signer's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that—

(A) The claim, defense, request, demand, objection, contention, or argument is not presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(B) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(C) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

The purpose of the rule is to require an attorney or party to certify that a claim or defense is not presented or maintained for an improper purpose. Each time Staff Counsel signed documents, she certified that to the best of her knowledge, information, and belief, after an inquiry reasonable under the circumstances, the complaint is not made for any improper purpose.

Staff has complied with the requirements of the rule. There is no question that the pleadings have been signed. Staff, through counsel, has provided the certification required by 4 CSR 240-2.080(7) and complied with the rule. Laclede has failed to state a claim on which relief may be granted.

Laclede's counterclaim asserts Staff is acting in conflict with the affiliate transactions rules and Laclede's Cost Allocation Manual. In GC-2011-0006 the Commission noted that an examination of those rules shows that they impose numerous and detailed requirements on gas utilities that wish to engage in transactions with affiliated companies. The rules also establish evidentiary standards to allow the Commission to determine whether an affiliate transaction is proper under the rules. The rules do not, however, required the Commission's Staff to take any action or refrain from any action.

Laclede's Cost Allocation Manual does not require the Commission's Staff to take or refrain from taking any action. Laclede's counterclaim should be dismissed.

**WHEREFORE**, the Staff submits its Statement of Positions on the Issues in accord with the Commission's Order Adopting Procedural Schedule.

Respectfully submitted,

**/s/ Lera L. Shemwell**

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**ATTORNEY FOR THE STAFF  
OF THE MISSOURI PUBLIC  
SERVICE COMMISSION**

**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the parties to this case on this 25th day of May, 2011, by hand-delivery, e-mail, fax, or by United States mail, postage prepaid.

**/s/ Lera L. Shemwell**