

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

<b>In the Matter of Laclede Gas Company's Purchased Gas Adjustment for 2004-2005.</b>	) ) )	<b>Case No. GR-2005-0203</b>
<b>In the Matter of the PGA filing of Laclede Gas Company for 2005- 2006.</b>	) ) )	<b>Case No. GR-2006-0288</b>

**STAFF RESPONSE TO LACLEDE'S RESPONSE  
TO PUBLIC COUNSEL'S MOTION  
TO REJECT REQUEST FOR SPECIAL AGENDA MEETING**

COMES NOW the Staff of the Missouri Public Service Commission and In Response to Laclede's Response to Public Counsel's Motion to Reject Request For Special Agenda Meeting states:

1. Laclede indicates there should be no mistake regarding the nature and effect of the actions that a majority of commissioners have already taken to dispose of this matter." (Laclede Response p. 3, para. 6)

2. The Commission gave notice in its May 27 Agenda that it would discuss this case.

3. The Commission did discuss the case, but no vote was taken.

4. The following statements are on every Agenda notice:

Cases appearing on the agenda may be amended or changed by the Commission during the agenda meeting.

The resulting order may differ from the proposal indicated on the original agenda.

Cases appearing on the Weekly Docket of the Commission may be discussed as necessary on the days on which they appear on the Docket.

The Official Agenda of the Commission is posted on the 3rd Floor of the Governor Office Building in the vicinity of the receptionist's area and may include additional items.

5. Not only should the Commission not grant Laclede's request to adopt an unauthorized procedure, the Commission should not countenance Laclede's claims of Commission bias or a lack of impartiality.

6. The opinion of the majority is the decision of the Commission.<sup>1</sup> However, while opinions may have been stated, no vote was actually taken.

7. Commissioners may change their vote at any time during the Agenda discussion and, as noted above: "Cases appearing on the Weekly Docket of the Commission may be discussed as necessary on the days on which they appear on the Docket. Cases appearing on the agenda may be amended or changed by the Commission during the agenda meeting."

8. Most importantly, despite a vigorous discussion, the majority of the Commission did not vote. No formal vote was taken, and the result may not be implied from a discussion.

9. In *Philip Transit Lines*, the Court noted that decisions of the Commission must be by a majority: "[t]he powers and duties of boards and commissions may not be exercised by the individual members separately. Their acts, and, specifically, acts involving discretion and judgment, particularly acts in a judicial or quasi-judicial capacity, are official only when [actually voted on] by the members formally convened in session, upon a concurrence of at least a majority, and with the presence of a quorum or the number designated by statute."

10. Further, because of their experience and expertise, administrative decision makers are actually expected “to have preconceived notions concerning policy issues within the scope of their agency's expertise.”<sup>2</sup>

11. Laclede’s claims of bias are unsupported. “Administrative decision-makers must be impartial. . . in that they must be free of any interest in the matter to be considered by them.”<sup>3</sup> This means a personal pecuniary interest in the outcome. There is absolutely no evidence any Commissioner had any pecuniary interest in the outcome of this case.

12. Laclede’s extreme reaction to this Request for Reconsideration and its astonishing insistence the Commission adopt a particular vote when, in fact no vote was taken, must cause the Commission to ask what Laclede is hiding or protecting so fiercely.

WHEREFORE, the Staff recommends that the Commission deny Laclede’s Request to accept the extraordinary premise the Commission may adopt a vote when the majority of the Commission did not actually cast a vote should be denied.

Respectfully submitted,

**/s/ Lera L. Shemwell**

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<sup>1</sup> Section 386.130

<sup>2</sup> *Fitzgerald v. City of Maryland Heights*, 796 S.W.2d 52(Mo.App. 1990).

<sup>3</sup> *AG Processing Inc. v. Thompson*, 100 S.W.3d 915, 919(Mo.App. 2003)

**Certificate of Service**

I hereby certify that copies of the foregoing have been emailed, mailed, hand-delivered, or transmitted by facsimile to all counsel of record this 2<sup>nd</sup> day of June, 2009.

**/s/ Lera Shemwell**

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