

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

In the Matter of Laclede Gas Company's)
Purchased Gas Adjustment for 2004-2005) Case No. GR-2005-0203

**LACLEDE GAS COMPANY'S RESPONSE TO THE STAFF'S LIST OF
DOCUMENTS REQUIRED AND ITS MOTION FOR ORDER TO PRODUCE
AND REQUEST FOR THE ESTABLISHMENT OF HEARING DATES**

COMES NOW Laclede Gas Company (hereinafter "Laclede" or "Company") and submits this response to the Staff pleading entitled "List of Documents Required by Staff to Analyze Laclede's ACA Filings and Motion for Order Directing Laclede to Produce" (sometimes referred to as the "List and Motion") which was filed in this case on July 25, 2008. Laclede also submits herein its request for the establishment of hearing dates. In support thereof, Laclede states as follows:

1. Staff's Motion for an order directing Laclede to produce the extensive list of documents set forth in Staff's pleading should be denied by the Commission. First, Staff's request constitutes a blatant violation of the rules and procedures that have been established by the Commission to govern how discovery should be conducted. Second, it represents a highly inappropriate and unauthorized attempt to prejudice the Commission on the substantive issues in this case through the use of a purported request for information that is, in reality, nothing more than a delivery vehicle for Staff's erroneous, exaggerated and in many cases outright false assertions regarding the nature and effect of certain transactions between Laclede and its marketing affiliate, Laclede Energy Resources, Inc. ("LER"). Third, Staff's Motion is an obvious attempt to run roughshod over the practices and procedures that the Commission has followed for years to process

its ACA cases. As employed by the Commission, those practices and procedures have always afforded the utility and other affected parties an opportunity to be heard, present and rebut evidence, cross examine witnesses, and otherwise exercise their due process rights *before* the Commission decides how to rule on a Staff ACA recommendation. Through its recent pleading, however, the Staff seeks to turn this process on its head by having the Commission effectively decide in Staff's favor one of its ACA recommendations in this case – namely, that the Commission should launch an “investigation” of Laclede’s marketing affiliate – all without affording Laclede or LER any opportunity to present evidence and rebut the blatant falsehoods that Staff has articulated in support of that recommendation. These kinds of tactics, which summarily disregard both the Commission’s own rules and procedures, as well as the due process rights of those affected by the Commission’s exercise of its regulatory authority, should not be countenanced.

2. Unfortunately, the Staff’s disregard for the Commission’s rules, procedures and practices governing both discovery and the ACA process is matched by a similar disregard by Staff for the meaning and effect of the Commission’s affiliate transactions rules. As this ACA proceeding has progressed, it has become increasingly evident to Laclede that the Staff has no real interest in pursuing compliance with the Commission’s affiliate transactions rule in a fair and even-handed manner. Even though it was the Staff itself that largely wrote these rules, and even though those rules clearly authorize such transactions to take place, the Staff has made it clear in both word and deed that it has a deep and abiding prejudice against such transactions. Rather than seek to change those rules to prohibit such transactions (assuming that should or even could be

done), however, the Staff has simply pursued unsupported and bogus adjustments, like the ones proposed in this case, that aim to penalize utilities who have dared to engage in them. And in the process, it has willfully ignored the very affiliate rule standards that specify how such transactions are to be evaluated and judged. Laclede believes that the Staff is every bit as obligated as the utilities to honor the affiliate transactions rules, and Laclede is confident that a hearing will demonstrate that the Staff has failed in this obligation. Nevertheless, until that hearing has been held, the Commission should not permit the Staff to compound that failure by granting the unauthorized and unsupported discovery motion that Staff has filed in this case.

Background

3. As a brief background, on December 28, 2006, the Staff filed its Memorandum and Recommendation in this matter (“Recommendation”) in which it recommended a disallowance of costs incurred by Laclede in connection with certain transactions between Laclede and LER. Laclede filed its response on February 16, 2007.

4. Since that date, Laclede has provided a great deal of information designed to assure the Staff that the affiliate transactions between the Company and LER complied with the Commission’s affiliate transaction rules. Specifically, Laclede provided copies of the supply contract between it and LER, as well as copies of contracts between it and other non-affiliate suppliers on the same pipeline, all of which showed that the LER contract was based on a competitive market price at the time it was executed. Pursuant to the terms of the Commission’s affiliate transaction rules, and the Cost Allocation Manual that Laclede submitted in March of 2004 in compliance therewith, the matter should have ended there.

5. To further assure the Staff, however, Laclede and LER also gave Staff auditors access at the Company's office in St. Louis to **_____

_____**. ** When Staff complained that such access was not convenient enough, Laclede and LER arranged to have the same information transferred to Laclede's office in Jefferson City, Missouri, which is located within a five minute walk of the Commission's offices. As part of this arrangement, Staff was advised that it could take as long as it liked to review the information. Indeed, no restrictions of any kind were placed on how often or for how long Staff could review the LER information. In addition to taking these steps, Laclede also made arrangements for its gas supply personnel to meet with Staff in Jefferson City to go over all of the information that had been provided or made available to the Staff. Despite these efforts, however, it became apparent to Laclede in April 2008 that a complete resolution of the issues was unlikely to occur.

6. Subsequent to the filing of Laclede's response, a pre-hearing conference was held on May 23, 2008 in GR-2006-0288, at which the Staff indicated that it still desired to obtain some information from Laclede regarding its transactions with LER. In an effort to avoid a potential discovery dispute that would need to be resolved by the Commission, Regulatory Law Judge Jones directed the Staff to prepare a list of the documents that Staff believed it needed. In response, Staff indicated that it would prepare such a list.

7. At the suggestion of Public Counsel, Laclede also made arrangements for Public Counsel and Staff representatives to come to the Company's offices in St. Louis on June 24, 2008. The purpose of the meeting was four-fold. First, Laclede's gas supply

personnel were to conduct a live demonstration of how sale and purchase transactions between the Company and its suppliers, including LER, are now done on the IntercontinentalExchange (“ICE”) Trading system. Since the identity of sellers and buyers participating in the ICE system are not known until a particular transaction has been completed, the use of this trading platform to execute transactions with LER seemed to offer a promising avenue for resolving any affiliate concerns over how those transactions are done. Simply put, it is not possible to “favor” an affiliate or anyone else for that matter if the Company does not know who is on the other side of the transaction until it is completed and ICE therefore seemed an ideal way to address many of the affiliate concerns raised by the Staff. Second, Laclede’s gas supply personnel were to run through a number of concrete examples of how past transactions with LER had been priced and the documentation that had been relied upon to ensure that the transactions were done in accordance with the affiliate transaction rules. Third, Laclede’s gas supply personnel were to answer Staff’s questions regarding the status of Company’s gas supply acquisition and hedging plans for the upcoming winter. Finally, Laclede agreed that it would try and use the meeting to answer some additional Staff questions on its purchasing activities if the Staff could tell Laclede in advance of the meeting what those questions were. The Staff did not, however, provide those questions until nearly three weeks later, on the afternoon of the day before the meeting was to take place. Accordingly, Laclede was only able to address some of the questions, with the understanding that Laclede would meet with the Staff later to answer any remaining questions.

8. Aside from a few follow-up questions from Public Counsel's representative at the meeting (which were promptly answered), Laclede received no further communications from the Staff on this subject. At no time did the Staff submit any follow up questions concerning affiliate transactions. Nor did Staff provide the Company with the list of documents that it had promised to provide at the May 23rd pre-hearing conference. Staff also did not request a follow-up meeting to address the questions it had transmitted the day before the June 24, 2008 meeting, or otherwise indicate that it was seeking information that had not yet been provided.¹

9. Instead, the Staff simply filed its List and Motion with the Commission in which it requests that the Commission direct Laclede to provide a massive amount of information concerning its affiliate LER, much of which Staff has never even asked for before. As discussed below, this action is directly contrary to the approach to discovery contemplated by the Commission's rules.

**Staff's Motion Should be Denied Because it Constitutes
a Blatant Violation of the Commission's Discovery Rules**

10. Even a quick perusal of the Commission's discovery rules shows that they are designed to limit the amount of time and resources that the Commission itself has to spend on resolving discovery disputes by affirmatively requiring that parties first attempt to confer and resolve such disputes themselves. To that end, Commission Rule 4 CSR 240-2.090(8) specifically provides that:

¹In fact, the only Staff action taken as a result of this meeting was Staff's apparent decision to use some of the information that the Company had provided in this informal setting in a Commission pleading that was filed at the Federal Energy Regulatory Commission several days after the meeting was held. Unfortunately, no effort was made by the Staff to notify the Company in advance that the Commission intended to disclose or otherwise use this information in a FERC proceeding.

Except when authorized by an order of the commission, the commission will not entertain any discovery motions, until the following requirements have been satisfied:

(A) Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion; and

(B) If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

11. In filing its List and Motion, the Staff has neglected to make any attempt whatsoever to comply with this rule. Specifically, the Staff filed its Motion for Order to Produce without satisfying the following requirements:

1. Staff failed or refused to first participate in a telephone conference with the presiding officer and opposing counsel;
2. Staff failed or refused to arrange such teleconference with the Commission;
3. Staff failed or refused to certify compliance with Rule 2.090(8) in its discovery motion;
4. Staff failed or refused to confer, or even attempt to confer, on the matter with counsel prior to the filing of the List and Motion; and
5. Staff did not even present data requests to the Company prior to filing the Motion for Order to Produce, as impliedly contemplated by Rule 2.090(8); instead, the information sought by the Staff was first seen by the Company in the Motion for Order to Produce.

12. The Staff's decision to proceed in this unauthorized manner is even more inexplicable and inexcusable given how directly it flies in the face of the Regulatory Law Judge's instructions at the May 23rd prehearing conference. Consistent with the rule cited above, the Judge's clear purpose in having Staff provide Laclede with a list of information and/or documents the Staff believed it still needed to obtain was to try and avoid the very kind of discovery dispute that has now arisen. The Staff has done just the opposite, however, by not only requesting that the Commission preemptively order Laclede to provide information that the Staff has never even requested before, but also by wrapping that request in a barrage of self-serving and pejorative accusations that, by their very nature, demand a negative response. In short, the Staff's Motion is designed to create and embroil the Commission in the very kind of discovery dispute that the Commission's rules are purposefully designed to prevent. For this reason alone, the Staff's Motion should be denied by the Commission.

**Staff's Motion Should be Denied Because it Constitutes
an Inappropriate Attempt to Prejudice the Commission
on the Substantive Issues in this Case Rather than a Legitimate
Request for Relevant Information**

13. The Staff would have the Commission believe that its List and Motion is just an earnest attempt to obtain information that it requires to conduct its ACA review. In reality, however, the List and Motion is nothing more than an inappropriate effort by the Staff to prejudice the Commission on the substantive issues in this case through the filing of an unauthorized and inappropriate pleading. Notably, the Staff does not even arrive at the list of information it says it needs *until page 8 of the pleading*. Six of the first seven pages (Pages 2-7) are dedicated to "poisoning the well," that is, making pejorative and unsupported assertions of fact and law, all of which are designed to create

the impression that there was something improper or unlawful about the Laclede/LER transactions at issue in this proceeding.² Only after completing this diatribe, does the Staff finally get around to listing the documents that it claims to need to conduct its review. And once it does, Staff essentially asks the Commission to order Laclede to produce every record, journal entry, contract, invoice, memo, work paper, board document, gas supply, transportation, purchase and sale invoice, and any other transactional document within the possession of LER for the entire period covered by these ACA proceedings.³ Moreover, the Staff requests that the Commission order this information to be produced without regard to whether or to what extent any of it actually relates to transactions involving Laclede and LER.

14. It is nothing short of preposterous to suggest that this massive request for information, nearly all of which involves the records of a Laclede affiliate rather than Laclede itself, is in any sense required for the Staff to conduct its ACA review. It should be noted that the major disallowance at issue in this case involves **_____

²The lengths to which the Staff has gone to prejudice the Commission on these transactions involving Laclede and its affiliate raises a fundamental concern regarding what other prejudicial statements the Staff may have made to the Commission in other proceedings concerning Laclede and LER, including FERC and state proceedings involving MoGas and Missouri Pipeline Company. Unlike the Staff, however, Laclede intends to conduct discovery in the manner authorized by the Commission's rules in order to address this concern before it makes any further comment on the matter.

³The broadness of Staff's discovery request for LER documents is nothing short of astounding. As the Staff itself notes in its Motion, its access to the records of a utility's affiliate is not boundless. Instead, it is limited to that information that is truly necessary to ensure compliance with the Commission's affiliate transactions rule. 4 CSR 240-40.015(6)(A) and (B). This limitation has been completely ignored by the Staff in its request that the Commission give it carte blanche access to all records of LER without regard to whether or not they have anything to do with transactions involving Laclede.

_____.** At any time over the past seven years, the Staff could have requested through the normal discovery process whatever information it deemed relevant to review the propriety and reasonableness of these purchases. However, the Staff never deemed it necessary or appropriate to request the kind of information that it now claims is necessary to conduct its review in this proceeding. Nor did the Staff deem it necessary to request such information either before or after the time that it proposed its first adjustment relating to Laclede's purchase of gas from LER in December 2006 in Case No. GR-2005-0203 or at the time it proposed a nearly identical adjustment in December 2007 in GR-2006-0288. Instead, the Staff has waited well over two years since it first commenced discovery in Case No. GR-2005-0203 to suddenly assert that such information is critical to its audit of Laclede's gas costs.

15. Unless one assumes that the Staff is completely inept at determining the kind of information it needs to prepare and support its ACA adjustments, there is absolutely no reason to believe that the information it now seeks is actually relevant or necessary to its audit of Laclede's gas costs.⁴ Instead, the Commission should conclude, as Laclede has, that Staff's Motion is a transparent attempt to prejudice the Commission on the substantive issues in this case through the submission of an unauthorized pleading that is as long on unsupported rhetoric as it is short on relevant discovery requests.

⁴Nor is there any justification for the apparent assumption underlying Staff's request that the Staff has a virtually unlimited time horizon for conducting discovery in ACA proceedings. Over the past *two-plus years* since Staff began its audit in Case No. GR-2005-0203, Laclede has provided the Staff with numerous boxes of information and documents in response to the hundreds of data requests that Staff has submitted. With its recent Motion, however, the Staff seeks to initiate an entirely new and massive round of discovery on top of all of the discovery it has already conducted. Laclede would respectfully submit that some reasonable limitation should be placed on how long Staff has to conduct such discovery in its ACA audits. Laclede would further submit that given the time limitations observed in other proceedings before the Commission, that reasonable limit has been more than exceeded in this case.

Staff's Motion Should be Denied Because it Seeks to Circumvent Normal ACA Procedures and, in the Process, Deprive the Company of its Due Process Rights to Present Evidence, Cross Examine Witnesses and Rebut the Assertions of Opposing Parties

16. The Staff's Motion is also an attempt to circumvent normal ACA procedures and, in the process, deprive the Company of its due process right to present evidence, cross-examine witnesses and rebut the assertions of opposing parties before the ultimate issue is decided. In this case, one of those ultimate issues relates to Staff's Recommendation at pages 10 to 11 of its December 31, 2007 Memorandum in this case that the Commission should open up an investigatory docket to explore whether Laclede has complied with the Commission's affiliate transactions rule in its dealings with LER.

17. The Staff's Recommendation for such an investigation was premised on the "concerns" that it has raised in this proceeding over transactions between Laclede and LER. Rather than go through the ACA process and give Laclede the opportunity to demonstrate to the Commission why those concerns are baseless (and hence do not warrant such an investigation), the Staff has attempted to short circuit the process by requesting that the Commission order Laclede to produce the very kind of information that Staff would presumably seek in such an investigation.

18. As Laclede explained in its May 1, 2008 Response in GR-2006-0288, the Company believes that any reasonable examination of the actual evidence in this proceeding will demonstrate – and demonstrate conclusively – that the Company has complied fully with the Commission's affiliate transactions rules in its dealings with LER. It will also demonstrate that there is no basis whatsoever for any of the nebulous concerns that have been raised by Staff in this proceeding, let alone any basis for its proposed disallowances. Despite Staff's false claims to the contrary, there is abundant

evidence in the form of long-standing contracts with non-affiliated suppliers, and other documentation, including published price indexes and NYMEX settlement prices, that conclusively demonstrate that Laclede's purchases from LER were competitively priced.

19. The motives behind Staff's desire to conduct an investigation are improper, overreaching and based on false assertions. While the affiliate transaction rules require compliance with certain pricing requirements when making affiliate transactions, they do not prohibit the affiliate from earning any profit on such transactions.⁵ Moreover, the fact that LER has expanded its non-affiliated business and increased its profits over the past few years does not warrant an investigation, as Staff appears to believe.⁶ Staff's reference to **_____** as a pretext for its discovery request is reminiscent of Staff's out-of-context and ultimately false claim in Laclede's prior ACA proceeding that Laclede's demand charges for swing supplies should be disallowed, in part, because they had "nearly doubled." After all the evidence was in, it was clear that Laclede's demand charges for swing supplies were reasonable compared to the increases that had also occurred in other kinds of gas supply charges paid not only by Laclede but by other LDCs as well. It was also abundantly clear that such charges had not "nearly doubled" as claimed by the Staff in its effort to criticize the Company decision to incur such demand charges. The Commission ultimately called the Staff to account for its misleading claim in this regard. (See *Re:*

⁵Although Laclede was not required to furnish it, Staff has demanded, and received, abundant information **_____**. **_____**. **_____**. Indeed, the evidence will show that Laclede's ratepayers have benefited, and benefited significantly, from these transactions.

⁶ Staff has in this case repeatedly referred to LER's financial performance, as if operating a successful gas marketing business is somehow improper. See Staff Recommendation, p. 8; Prehearing Conference Transcript, May 23, 2008, pp. 15, 22; List and Motion, pp. 4, 7 and Attachment 1.

PGA Filing for Laclede Gas Company, Case No. GR-2004-0273, Report and Order, Finding of Fact paragraph 43, June 28, 2007). Unfortunately, Staff's repeated reliance on the term **** _____ **** in the List and Motion to drum up excitement for its breathless assertions that LER needs to be investigated, shows that the Staff's penchant for using exaggerated hyperbole in an effort to promote its positions has not abated. As with Staff's previous contentions regarding increases in demand charges, the evidence will show that LER's financial performance over the past several years is hardly an anomaly given what has happened in the natural gas markets over that same period of time, and certainly not the kind of aberrant result that would warrant the relief requested by Staff.⁷

20. Finally, Staff's claim **** _____**
_____, ****** is simply untrue, a fact that is well known to Staff. In summary, there is no basis whatsoever for the kind of investigation that Staff is attempting to have the Commission initiate before Staff even proves up its unsupported claims in this case.

21. Given these considerations, Laclede respectfully submits that the Commission should, consistent with its normal procedures for processing ACA issues, evaluate the evidence in this case and determine for itself whether there is any validity to the claims and concerns that the Staff has raised regarding Laclede's affiliate transactions and upon which Staff has premised its discovery request. Laclede is confident that once it does, the Commission will conclude that there is no basis for Staff's discovery Motion,

⁷ While claiming to be greatly concerned over LER's improved financial performance over the past several years, Staff ignores the fact that Laclede's off-system sales have also increased over the same time period, a result that has significantly benefited Laclede's ratepayers. Noting the increased margins that Laclede and other sellers of gas have achieved over the past several years, of course, would detract from Staff's effort to make LER's financial results look suspicious.

let alone its recommendation that an investigatory proceeding be opened to address this matter.

22. Of course, Laclede can assert what it will and the Staff can do the same. What is really needed at this point is a hearing during which the claims of both Laclede and Staff can be tested in the hearing room through the procedures that have long been established to get at the truth of the matter. To that end, Laclede requests that the Commission establish a hearing date in this case as soon as reasonably possible so that this process can finally begin.

WHEREFORE, for the foregoing reason, Laclede respectfully requests that the Commission deny Staff's Motion and establish a hearing date in this case as soon as possible.

Respectfully submitted,

/s/ Michael C. Pendergast

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CERTIFICATE OF SERVICE

Gerry Lynch hereby certifies that the foregoing pleading has been duly served upon the General Counsel of the Staff and the Office of the Public Counsel by email or United States mail, postage prepaid, on this 4th day of August, 2008.

/s/ Gerry Lynch

Gerry Lynch