

**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,)	
Respondent.)	

**LACLEDE GAS COMPANY’S RESPONSE TO STAFF’S SECOND RENEWED
MOTION TO DISMISS LACLEDE’S COUNTERCLAIM**

COMES NOW Laclede Gas Company (“Laclede” or “Company”), and files this Response to Staff’s second Renewed Motion to Dismiss Laclede’s Counterclaim, filed on May 10, 2011, and in support thereof, states as follows:

1. Staff’s latest argument for dismissal of Laclede’s counterclaim is that Staff has complied with the Commission’s good faith pleading rule (4 CSR 240-2.080(7)) by virtue of the fact that Staff certifies that its complaint is not made for an improper purpose. In other words, Staff believes that it meets the good faith pleading test simply by stating that its complaint was filed in good faith and was not filed for an improper purpose.

2. Staff’s argument is wrong because Staff cannot comply with the good faith pleading rule simply by certifying that its pleadings are filed in good faith. Just *stating* that claims and contentions are made in good faith is not enough. The Commission’s good faith pleading rule requires parties to make claims and contentions that are *actually* warranted by law. Staff’s contentions in a number of ACA and complaint cases regarding the pricing of affiliate transactions were made in bad faith because they were not warranted by existing law or by a nonfrivolous argument for a change in the law.

3. Staff cannot self-certify its own good faith. The good faith pleading rule would be meaningless if a party could meet it simply by stating that its pleadings were offered in good faith. The purpose of the rule is not to obtain a certification of good faith from parties and their attorneys. The purpose of the rule is to ensure that claims and contentions made in pleadings and testimony are actually made in good faith.

4. Rule 2.080(7) prevents parties from making arguments that are not in good faith warranted under the law. It effectively requires attorneys to prevent their clients from presenting bad faith arguments to the Commission. It does not prevent attorneys or parties from making creative arguments. It does not prevent attorneys or parties from seeking a change in a law they disagree with.

5. In its counterclaim in this case, Laclede has alleged that Staff has filed pleadings and testimony with the Commission that have taken positions with respect to the Commission's Affiliate Transaction Rules that are not in good faith warranted under those rules. Specifically, Staff has contended that the pricing of affiliate transactions should not be based on the pricing standards in the Affiliate Rules, but should instead be priced at the affiliate's cost so as to preclude any opportunity for the affiliate to earn a profit.

6. From Laclede's experience in meeting with Staff on this issue, reviewing Staff's Recommendations in Laclede ACA Cases, and following Staff's testimony and arguments in Atmos' ACA case, Laclede fully comprehends Staff's antipathy to affiliate transactions. We understand that Staff prefers that Laclede stop entering into gas supply transactions with LER, which explains why Staff has taken positions and pursued adjustments designed to make it economically impossible to conduct such transactions. However, until the Commission's Affiliate Rules are changed, those Rules permit

affiliate transactions to be entered into, and they provide a market-based pricing standard that sensibly protects utility customers.¹

7. Staff's position that the utility must purchase gas from its affiliate at the affiliate's cost simply cannot be reconciled with any good faith argument under the Affiliate Rules.² Notwithstanding Staff's antipathy toward affiliate transactions, Staff is bound by Rule 2.080(7) to make good faith claims and contentions, and Staff has violated the rule by failing to do so. Staff can "certify" that its claims and contentions are made in good faith, but certifying doesn't make it so.

8. In paragraphs 7 and 10 of its May 10, 2011 Motion, Staff appears to defend the allegation that its complaint in the instant case was brought for an improper purpose under Rule 2.080(7)(A). While Laclede's counterclaim focuses more on the fact that Staff's claims and legal contentions are not warranted by law as provided in Rule 2.080(7)(B), Laclede has in fact filed testimony in this case in which it alleges that this complaint was brought against Laclede for an improper purpose – that is, as punishment for Laclede's resistance to Staff's bad faith affiliate pricing standards. Laclede's allegation is based on the fact that Staff filed its complaint (i) without first discussing the matters at issue with Laclede; (ii) shortly after the parties had reached agreement on other non-gas affiliate issues involving cost allocations; (iii) on a purported FDC issue which, based on Staff's discovery responses in this case and its sworn testimony in an Atmos case, Staff clearly understands to be groundless; (iv) on an issue involving Commission approval of a CAM that Staff has not raised in nearly 10 years, and has not applied to any

¹ Laclede understands that the pricing standard also includes a cost-based component that applies where Laclede produces a good for itself.

² The same applies to Staff's position that Laclede must sell gas to its affiliate at a price that strips the affiliate of any profit it may earn on resale of that gas.

other utility; and (v) on an issue in which Staff claims that Laclede should have submitted a document to Staff that is already in Staff's possession. None of the issues in Staff's complaint should be the subject of a complaint. The fact that they are the subject of a complaint has led Laclede to suspect an ulterior motive.

9. In conclusion, Staff is mistaken in believing that it can comply with the good faith pleading rule simply by certifying that its pleadings are filed in good faith. Rather, the pleadings must themselves meet the good faith test. In addition, Staff's argument only addresses Rule 2.080(7)(A) and ignores the allegations in the counterclaim that focus on Rule 2.080(7)(B).

10. Finally, Laclede has in fact made allegations and presented evidence in this case that Staff's complaint was filed for an improper purpose in violation of Rule 2.080(7)(A). Staff cannot eliminate this allegation simply by signing a pleading certifying its good faith.

WHEREFORE, Laclede respectfully requests that the Commission deny Staff's latest motion to dismiss Laclede's counterclaim in this case.

Respectfully submitted,

/s/Michael C. Pendergast

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Staff and on the Office of Public Counsel on this 20th day of May, 2011 by United States mail, hand-delivery, email, or facsimile.

/s/ Rick Zucker