

**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 LERA SHEMWELL’S APPLICATION TO INTERVENE**

COMES NOW Laclede Gas Company (“Laclede” or “Company”) and files this Response to the Application to Intervene filed by Lera Shemwell on July 11, 2011. In support thereof, Laclede states as follows:

1. Laclede has filed a counterclaim in this case alleging that Staff violated the Commission’s good faith pleading rules by taking a position, contrary to the Commission’s Affiliate Rules, that affiliates should be prohibited from earning a profit on gas supply transactions with utilities. Lera Shemwell has now withdrawn as Staff Counsel and applied to intervene in this case on her own behalf, because she believes that she could be subject to disciplinary action by the Missouri Bar if Laclede prevails on its counterclaim.

2. Laclede’s counterclaim was filed against the Staff, and not against Ms. Shemwell personally. The documents referenced in the counterclaim were mostly signed by David Sommerer, who is quoted extensively throughout the counterclaim, and who is the main proponent of Staff’s unlawful position. Attorneys who also signed Staff Recommendations and one other pleading cited in the counterclaim include Robert Franson, Steve Reed, Bob Berlin, and Kevin Thompson. None of the pleadings

referenced in the counterclaim were signed by Lera Shemwell. The only pleading that was signed by Ms. Shemwell that is even referenced in the testimony in this case is a January 17, 2011, reply to Laclede's counterclaim in this case, in which Ms. Shemwell, along with Annette Slack and Kevin Thompson, admitted that Staff's position was that an affiliate was effectively precluded from earning a profit on gas supply affiliate transactions with the utility. While admitting that your client is taking a position that is so clearly contrary to the requirements of the law is troubling, it certainly does not rise to the same level as arguing or advocating the unwarranted position itself, as Mr. Sommerer has clearly done in testimony and in ACA recommendations.

3. In fact, Ms. Shemwell appears to have studiously avoided advocating Staff's unlawful pricing standard, perhaps in recognition of its frivolous nature. Not only has she not been a co-signer of any of the Staff recommendations in Laclede's ACA cases, but at a hearing before the Commission on November 4, 2010 in Case No. GR-2006-0288, when she was asked a direct question by Commissioner Kenney as to whether Staff was arguing that affiliates should not be allowed to earn profits on gas supply affiliate transactions, Ms. Shemwell said "No, sir." (Tr. 313-15)

4. In the end, Ms. Shemwell's actions in the related ACA and complaint cases have left her virtually unexposed to any allegation of professional misconduct. Rather, it appears that Ms. Shemwell's filings this month are more likely designed to accomplish a goal of avoiding representing Staff in defending against a counterclaim that she recognizes has merit.

5. Laclede understands and respects Ms. Shemwell's efforts to divorce herself from Staff's meritless position. Laclede also appreciates Ms. Shemwell's

refreshing acknowledgement that there should possibly be some modicum of personal accountability when specious claims are pursued over and over again without regard to the law or the burdens they impose on parties who must defend against them.¹ That does not entitle Ms. Shemwell to intervene in this case, however, given the paucity of evidence against her personally, and given her failure to cite even one pleading that she signed that allegedly subjects her to disciplinary action.

6. What appears to be happening is that Mr. Sommerer, who is not subject to attorneys' ethical obligations, is using his informational advantage as the long-time manager of the Staff's Procurement Analysis Department to impose his own agenda regarding affiliate transactions on the Staff. Unfortunately, no one at Staff has yet been willing to stand up to Mr. Sommerer and say that Staff should not advocate an affiliate pricing standard that is so clearly contrary to the pricing standard in the Affiliate Rules.

7. The result of this situation is that Staff and its attorneys find themselves making foolish arguments, such as an argument that a utility overpaid its affiliate for gas even though Staff admits that the affiliate was the winning (low) bidder in a legitimate bidding process;² or an argument that a utility overpaid its affiliate for gas even though Staff admits that purchase was made at market price.³ These senseless cases waste the

¹ Laclede notes that Mr. Thompson, who is substituting for Ms. Shemwell as Staff Counsel in this case, has stated the unlawful standard on a number of occasions. On October 1, 2009, he stated that he understood that there would naturally be some mark-up when an affiliate sells goods to a utility. However, he later signed Staff pleadings that, in direct contradiction to this earlier statement, denied that an affiliate could earn a profit on a gas supply affiliate transaction on June 30, 2010 (See Staff's Position Statement in Case No. GR-2008-0364), October 25, 2010 (See Staff's Answer to Laclede's Counterclaim, Case No. GC-2011-0006, p. 2), and January 17, 2011 (see paragraph 2 above). Under these circumstances, Ms. Shemwell should not be allowed to intervene when Mr. Thompson does not even see a need to withdraw.

² See *re Atmos*; Case No. GR-2008-0364

³ See *re: Laclede*; Case No. GR-2008-0140, Staff Recommendation filed December 31, 2008, p. 11.

resources of the Commission and the utilities, in addition to those of Staff and Public Counsel, all of which are paid for by the utility customers and taxpayers of this state.

8. What is the solution to this morass? One solution may lie in proceeding to a final and prompt resolution of this case. Another may lie in the solution that was suggested at the November 4, 2010 hearing referenced above, in which Ms. Shemwell herself participated:

MS. SHEMWELL: ...We are suggesting that the Commission look at how it interprets the affiliate transaction rules, consider how it would interpret those and how they would apply to Laclede and I suppose, by extension perhaps other companies.

CHAIRMAN CLAYTON: Does that suggest a need to revise the affiliate transaction rule?

MS. SHEMWELL: Absolutely not.

CHAIRMAN CLAYTON: But if we're talking about challenges and interpretation, wouldn't it be helpful doing a rulemaking that would provide greater clarity?

MS. SHEMWELL: I think –

MR. THOMPSON: We were thinking of a workshop docket. Looking at the rule as it exists, the problems that have arisen, the issues that have arisen among the various parties and – and what can be done on a going-forward basis to improve compliance and enforcement of the rule. That's what we were thinking.

CHAIRMAN CLAYTON: We do a lot of workshops around here. Mr. Pendergast?

MR. PENDERGAST: Mr. Chairman, I think that's an outstanding suggestion.

9. Laclede still believes that it is an outstanding suggestion to bring the industry and regulatory stakeholders together in an effort to reach a consensus on the meaning of the affiliate transaction rules and the propriety of the company CAMs that

implement them on a going forward basis. Laclede will continue to discuss both of these options with the Staff and OPC as part of the parties' ongoing settlement discussions in this case. In the meantime, however, Laclede believes the Commission should deny Ms. Shemwell's application to intervene..

WHEREFORE, Laclede Gas Company respectfully requests that the Commission issue an order denying Ms. Shemwell's application to intervene.

Respectfully submitted,

/s/ Michael C. Pendergast

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ATTORNEYS FOR LACLEDE GAS
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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 21st day of July, 2011, by hand-delivery, e-mail, fax, or by United States mail, postage prepaid.

/s/ Gerry Lynch