

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

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

**STAFF’S RENEWED MOTION TO DISMISS LACLEDE’S
COUNTERCLAIM AND RESPONSE TO
LACLEDE’S REQUEST FOR LEAVE TO FILE MOTION FOR SUMMARY
DETERMINATION**

COMES NOW the Staff of the Commission and, in support of its Motion to Dismiss Laclede’s Counterclaim and Response to Laclede’s Request for Leave to File Motion for Summary Determination, Staff states the Commission should Dismiss Laclede’s Counterclaim as contrary to the public interest and deny Laclede’s Request for Leave to File Motion for Summary Determination.

1. Staff filed its *Complaint* on October 6, 2010, pursuant to § 386.390.1, RSMo,¹ and its *Amended Complaint* on October 7. On November 22, Staff answered Laclede’s Motion to Dismiss and further amended its Complaint and filed its *Second Amended Complaint*. Staff’s *Complaint* is that Respondent, Laclede Gas Company (“Laclede”) has, in three specific ways, violated the Commission’s rules governing

¹ Unless noted otherwise, all references to Missouri statutes are to the Revised Statutes of Missouri 2000, as currently supplemented.

affiliate transactions (4 CSR 240-40.015) and affiliate transactions with gas marketing affiliates (4 CSR 240-40.016).

2. Staff's complaint addresses three discrete issues. Specifically, Counts II-IV allege that: (1) Laclede's Cost Allocation Manual ("CAM") violates the asymmetrical pricing provisions of the affiliate transactions; (2) Laclede has not obtained Commission approval of its CAM; and (3) Laclede has failed to submit its CAM to Staff on an annual basis.

3. On April 28, 2011, Laclede filed its Response to Staff's Renewed Motion to Dismiss Laclede's Counterclaim and Laclede's Request for Leave to File Motion for Summary Determination.

4. The Commission should dismiss Laclede's Counterclaim as contrary to the public interest.

5. Laclede reiterates the claims it made in GC-2011-0006, which the Commission dismissed, and contends Staff has violated 4 CSR 240-2.080(7) and failed to respond to Laclede's argument. This is false.

6. 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;

(emphasis supplied.)

7. 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.

8. By signing this pleading Staff Counsel continues to so certify. 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.

9. Laclede has failed to state a claim on which relief may be granted..

10. Laclede's claim Staff has "wholly failed" to address this "counterclaim" is false. By signing every pleading Staff counsel had made the required certification, stated that Staff's complaint is made in good faith and not for an improper purpose, and responded to Laclede's misdirected claim.

11. These are sufficient responses to Laclede's false claims that Staff has filed for an improper purpose or failed to respond to Laclede's unsupported assertions.

12. The Commission stated in its December 1, 2010 *Order Denying Laclede's Motion for Reconsideration and Application for Rehearing* in GC-2011-0006 that

“Laclede’s contention that Staff has violated Commission Rule 4 CSR 240-2.080(7) by advocating a frivolous position may state a claim that the Commission can address in an appropriate circumstance.” (emphasis supplied). Since Staff counsel made the required certification, this case is not “an appropriate circumstance.”

13. The Commission dismissed Laclede’s counterclaims in GC-2011-0006 stating:

Laclede’s counterclaim asserts that Staff has violated the affiliate transaction rules and Laclede’s Cost Allocation Manual. The Commission’s general affiliate transaction rule for gas utilities is 4 CSR 240-40.015. In addition, the Commission has promulgated a more specific rule controlling gas marketing affiliate transactions at 4 CSR 240-40.016. An examination of those rules reveals 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, require the Commission’s Staff to take any action, or to refrain from any action.

Similarly, Laclede’s complaint describes its Cost Allocation Manual as containing pricing standards that mirror those of the rules, while providing “more definite and practical detail in certain matters, including how to determine the fair market price of gas supply purchases and sales.” But again, the Cost Allocation Manual does not require the Commission’s Staff to take, or refrain from taking any action.

However, Laclede’s claim that Staff’s position is inconsistent with the rules and the Cost Allocation Manual does not state a claim that Staff has violated the rules. Since neither the affiliate transaction rules, nor the Cost Allocation Manual, impose any obligation on Staff, the Commission cannot find Staff in violation of either.

14. Laclede’s counterclaims, which are virtually identical to those in GC-2011-0006 and were filed under the same circumstances, should be dismissed for the same reasons here.

15. Staff recognizes that only the Commission may dispose of Laclede's counterclaims and respectfully requests the Commission do so here.

WHEREFORE Staff requests the Commission dismiss Laclede's counterclaims as wholly without merit and for failure to state a claim on which relief may be granted.

Respectfully submitted,

/s/ Lera L. Shemwell

Lera L. Shemwell
Deputy General Counsel
Missouri Bar No. 43792

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7431 (Telephone)
(573) 751-9285 (Fax)
lera.shemwell@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 10th day of May, 2011.

/s/ Lera L. Shemwell