

**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**

In the Matter of Laclede Gas Company's)
Purchased Gas Adjustment for 2005-2006) **Case No. GR-2006-0288**

**LACLEDE GAS COMPANY'S REPLY TO THE RESPONSE OF PUBLIC COUNSEL
TO LACLEDE'S MOTION FOR RECONSIDERATION,
REQUEST FOR STAY AND REQUEST FOR ESTABLISHMENT OF AN
EVIDENTIARY HEARING**

COMES NOW Laclede Gas Company (hereinafter "Laclede" or "Company") and submits this Reply to the Response filed by the Office of the Public Counsel ("OPC") to Laclede's Motion For Reconsideration, Request for Stay and Request for Establishment of an Evidentiary Hearing (the "Motion"), and in support thereof states as follows:

INTRODUCTION

1. Most of the arguments raised by OPC in its Response ("OPC Response") have been fully anticipated and addressed in Laclede's Motion for Reconsideration. Laclede's positions set forth in the Motion fully justify the relief requested therein, are adopted by reference and will not be repeated herein.

2. In its Response, however, OPC does raise for the first time an allegation that Laclede preemptively waived any right to object to discovery based on relevance or other rule. In support of its asserted position, OPC selectively cited language from the Unanimous Stipulation and Agreement in Case No. GM-2001-342. This short Reply will assist the Commission in evaluating this new argument and will show that the OPC's litigation positions are not supported by fact or law.

ARGUMENT

Laclede Did Not Waive All Rights To Object Based On Relevance

3. In its Response, OPC claims that Laclede specifically waived any right to object to discovery directed to any company in the Laclede Group system on relevance grounds. (OPC Response, pars. 4-5). In support of that claim, OPC relies on language quoted from page 8 of the Unanimous Stipulation and Agreement in Laclede’s restructuring case, Case No. GM-2001-342, as follows:

“[Laclede and The Laclede Group, Inc. agree[] to make available to Staff and Public Counsel] ‘all books, records and employees of The Laclede Group, Inc., Laclede Gas Company and its affiliates.’”

(OPC Response, par. 4).

4. Upon closer review, however, it is abundantly clear that OPC has selectively quoted from the language of the Unanimous Stipulation in a rather transparent attempt to mislead the Commission by changing the meaning and effect of the words actually used. In full, the sentence referred to by OPC states:

Upon request, Laclede Gas Company and The Laclede Group, Inc. agree to make available to Staff, Public Counsel and PACE, upon written notice during normal working hours and *subject to appropriate confidentiality and discovery procedures*, all books, records and employees of The Laclede Group, Inc., Laclede Gas Company and its affiliates *as may be reasonably required to verify compliance with the CAM and the conditions set forth in this Stipulation and Agreement* and, in the case of PACE, to ensure that it continues to have the same degree and kind of access to information relevant to the investigation and processing of grievances and the enforcement of collective bargaining agreements, whether from affiliates or otherwise, as it currently has under Laclede’s existing corporate structure.” (emphasis supplied)

The paragraph concludes as follows:

Laclede Gas Company and The Laclede Group, Inc. shall also provide Staff and Public Counsel any other such information (including access to employees) relevant to the Commission’s ratemaking, financing, safety, quality of service and other regulatory authority over Laclede Gas Company; *provided that Laclede Gas*

Company and any affiliate or subsidiary of The Laclede Group, Inc. shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates or subsidiaries: (a) are not within the possession or control of Laclede Gas Company; or (b) are either not relevant or are not subject to the Commission’s jurisdiction and statutory authority by virtue of or as a result of the implementation of the Proposed Restructuring.
(emphasis supplied)

5. Contrary to the baseless assertions made by OPC, it is obvious from the language used that Laclede did not waive all opportunity to object on the basis of relevance or existing discovery rules and procedures. First, it is clear from the language above that any obligation to provide affiliate information is subject to normal discovery procedures (which includes the right to object) and strictly limited to that information which is “reasonably required to verify compliance with the CAM...” As Laclede has previously pointed out in its Motion for Reconsideration, much of the information that Staff has requested is decidedly *not* necessary to verify such compliance, but instead pertains to LER’s business with third parties. As a consequence, far from supporting OPC’s and Staff’s efforts to obtain such information, the Stipulation and Agreement affirmatively *precludes* their access to the information requested. Second, it is equally clear that Laclede’s objections to production are not a result of the “implementation” of the restructuring, but rather are based upon Missouri statutes, Commission rules and Commission precedent defining relevancy. For example, had there been no restructuring and had LER instead continued to conduct its operations as an unregulated subsidiary of Laclede (which it was before the restructuring took place), the Commission would not have unfettered access to its records that are not related to affiliate transactions for the same reasons it does not today. Therefore, the objection is not based on any “implementation of the

Proposed Restructuring” but rather upon existing Missouri law as defined by statutes, rules and precedent.

6. Moreover, if one were to accept OPC’s overbroad argument, then there would be no limits to any discovery request by Staff or OPC. For example, by simply submitting a data request, Staff or OPC could presumably obtain any LER record, including those that have no conceivable relationship to any potential issue involving Laclede, affiliate transactions or any other matter within the Commission’s jurisdiction, because there would be no ability to object based on lack of relevance. This, in turn, would presume an access to affiliate records that is even greater and more expansive than the access that OPC or Staff have to the records of regulated utilities, like Laclede. Such a result would be patently absurd and neither the Order approving the restructuring nor Missouri law (statutes, rules or precedent) support a wholesale waiver of Laclede’s right to challenge these particular discovery requests.

Corporate Support And Facilities May Properly Be Shared

7. In paragraphs 6 – 8 of its Response, OPC claims that the fact that LER and Laclede share office space and that certain executive officers provided corporate support justify a blanket order requiring production without restriction of LER’s contracts with unrelated third parties. This argument willfully ignores the Commission’s previous determination in the affiliate transaction rules that approves sharing of offices and corporate support. This “justification” for expansive discovery of LER transactions with unrelated third parties is therefore expressly contradicted by the rules that permit such sharing. There is no allegation that Laclede Gas is improperly subsidizing LER by providing below market rents or shifting executive salaries to Laclede Gas.

The PGA/ACA Process Does Not Require Access To LER Third Party Transactions

8. In paragraphs 9 – 11 of its Response, OPC claims that it has the right to obtain an “open understanding of the transactions of Laclede and its affiliate.” This does not mean that Missouri law would permit unrestricted rights to gain an “open understanding” of LER transactions with third parties by accessing LER’s records. Functionally, this would be no different than seeking to obtain an open understanding of the business of any gas market participant by requesting unrestricted access to its business records. Such a request goes far beyond anything authorized by law.

9. There is no dispute that OPC can obtain an open understanding of Laclede Gas Company’s transactions with LER, or that it can obtain an open understanding of Laclede Gas Company’s transactions with third parties. Further, Laclede has voluntarily provided significant access to LER records and personnel as well as conducted presentations and answered questions regarding its transactions with LER. But as shown above and in the Motion for Reconsideration, an unrestricted fishing expedition into LER’s third party transactions would be a vast new expansion of the law that is neither authorized nor proper as part of a discovery request in an ACA process.

The Affiliate Transaction Rules Do Not Permit Access To All LER Records

10. In paragraphs 12 – 14 of its Response, OPC argues that the affiliate transaction rules support its right to access the books and records of any Laclede affiliate. Specifically, OPC quotes 4 CSR 240-40.015(6)(A) as stating that:

[Laclede Gas must] “make available the books and records of its parent and any other affiliated entities.”

For the second time in its pleading, OPC intentionally made only a partial citation, the result of which is to change the meaning of the rule and mislead the reader. In its entirety, Rule 40.015(6)(A) states:

“(A) To the extent permitted by applicable law, and pursuant to established commission discovery procedures, a regulated gas corporation shall make available the books and records of its parent and any other affiliated entities when required in application of this rule.” (emphasis supplied)

The misleading citation by OPC neglects to inform the Commission that records requested pursuant to its affiliate transaction rules are subject to “applicable law” and “established commission discovery procedures.” This conclusion makes perfect sense; the Commission did not (nor could it) by rule change preexisting Missouri statutes or court precedent requiring that discovery be relevant and not unduly burdensome as well as imposing other restrictions and limitations. Further, by this rule and its decision in Case No. EO-2004-0108 (quoted in Laclede’s Motion for Reconsideration), the Commission has expressed its intent to limit access to affiliate information to only those situations where such access is necessary to apply the affiliate transaction rules.

There Is An Obvious Need For A Hearing

11. As part of its request for relief, Laclede sought a hearing to fully present the complicated issues surrounding the Staff and OPC requests for information solely related to LER transactions with unrelated third parties. If it shows nothing else, the sheer volume of misinformation presented by Staff¹ and OPC makes it clear that witness testimony and cross examination is critically needed to provide a clear, thoroughly-tested and complete record upon which the Commission can properly consider the important jurisdictional and policy issues at

¹ Laclede will respond separately to the Staff pleading.

stake in this proceeding. It remains a mystery to Laclede why Staff and OPC seem so reluctant to test their claims and assertions in such an environment.

CONCLUSION

For the foregoing reasons, and those stated in the Motion for Reconsideration, Laclede respectfully requests that the Commission reconsider and reverse its October 20 Order Granting Motion to Compel and in its place issue an Order setting an evidentiary hearing and deferring its ruling on such Motion until the completion of that evidentiary hearing. Laclede further renews its request that the Commission stay the effectiveness of the October 20 Order pending its ruling on this Motion.

Respectfully submitted,

/s/ Michael C. Pendergast

Michael C. Pendergast, Mo. Bar #31763
Vice President and Associate General Counsel
Rick Zucker, Mo. Bar #49211
Assistant General Counsel - Regulatory

Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101
Telephone: (314) 342-0532
Fax: (314) 421-1979
Email: mpendergast@lacledegas.com
rzucker@lacledegas.com

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 20th day of November, 2008.

/s/ Gerry Lynch

Gerry Lynch