

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

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

In the Matter of the PGA Filing of )  
Laclede Gas Company for 2005-2006 ) **File No. GR-2006-0288**

**SUBMISSION OF PROPOSED ORDER REGARDING  
STAFF'S INFORMATION REQUESTS**

**COMES NOW** Laclede Gas Company ("Laclede" or the "Company") and submits the attached Proposed Order for the Commission's consideration regarding the matter that was orally argued in the above-captioned cases on March 26, 2009. For the Commission's convenience, the Company has drafted the Proposed Order in a manner that does not include information that the Company considers to be Highly Confidential.

**WHEREFORE**, Laclede respectfully requests that the Commission accept the proposed order submitted by Laclede as attached hereto.

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 13th day of April, 2009.

**/s/ Gerry Lynch**  
Gerry Lynch

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

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

In the Matter of the PGA Filing of )  
Laclede Gas Company for 2005-2006 ) **File No. GR-2006-0288**

**PROPOSED ORDER DENYING  
STAFF'S INFORMATION REQUESTS**

Issue Date:

Effective Date:

On March 5, 2009, the Commission issued its Order scheduling an oral argument in this case to address the propriety of certain Staff requests for information from Laclede Gas Company. The information sought by Staff consists mostly of records of Laclede's marketing affiliate, Laclede Energy Resources (LER), pertaining to transactions between LER and third parties during the above referenced ACA periods. This includes information showing the cost of gas supplies purchased by LER from third parties, the margins made and prices charged by LER on its sales of gas to third parties and LER's use of capacity that was released to it by Laclede. The Staff also requested that Laclede be required to produce additional information relating to performance compensation provided to certain Laclede employees. According to Staff, it requires such information in order to determine the prudence of the price paid by Laclede to LER for certain baseload gas supplies, and to determine the prudence of the price charged by Laclede to LER for certain sales of gas and capacity to LER during these ACA periods.

As part of its March 5 Order, the Commission also directed the Staff to file a pleading specifically setting out the information it seeks from Laclede and directing Laclede to file a pleading setting forth its objection to each item Staff seeks. The Staff and Laclede both complied with the Commission's directive on March 12 and March 19, 2009, respectively. Public Counsel filed a pleading on this issue on March 25. The matter was orally argued before the Commission on March 26.

Based on the pleadings filed by the parties in these cases, as well as the arguments made by counsel during oral argument, the Commission sustains Laclede's objections and determines that Staff's request for information, as set forth in its March 12, 2009 pleading in this case, should be denied.

### **DISCUSSION**

As previously noted, almost all of the information sought by the Staff in its March 12, 2009, pleading involves the records of purchase and sales transactions between Laclede's unregulated marketing affiliate, LER, and third parties, unrelated to affiliate transactions between LER and Laclede. This Commission has previously determined that its access to the records of transactions between utility affiliates and third parties is not unlimited. As we observed in *Re: AmerenUE*

*"It is true that the Commission is authorized and required to examine the dealings of regulated entities with their unregulated affiliates. However...that authority applies to transactions between the affiliates and the regulated entity. It does not apply to transactions between the unregulated affiliates and third parties absent a specific showing of relevancy to transactions between the affiliates and the regulated entity. The Commission lacks any general authority to pry into the affairs of unregulated companies, or*

the third parties they do business with, merely because they are affiliates of regulated entities.”<sup>1</sup>

As the foregoing indicates, there must be a specific showing of how affiliate records are relevant to the transactions between a utility and the affiliate before access to such records may be granted. For its part, Laclede argues that a determination of whether the affiliate records sought by Staff in this case are relevant (and hence discoverable) must be based on the specific rules that the Commission has promulgated to govern transactions between gas utilities and their affiliates, as well as the Cost Allocation Manual (CAM) that Laclede developed and operated under during the ACA periods pursuant to those rules.<sup>2</sup> As Laclede points out, the Commission’s affiliate transactions rules establish specific standards to govern how transactions between utilities and their affiliates must be priced. For purchases made from an affiliate, like LER, it is the lower of the fair market price, or the fully distributed cost to the utility to provide the good or service for itself (FDC). Conversely, for sales made to an affiliate, it is the higher of the fair market price or cost to the utility for the good or service.<sup>3</sup>

The affiliate transactions rules also specify that utilities are to develop and use a CAM to codify in greater detail how such transactions will be priced and accounted for. Laclede’s CAM provides additional guidance on how transactions between Laclede and LER are to be priced.<sup>4</sup> Essentially, the CAM recognizes

---

<sup>1</sup>Case No. EO-2004-0108, Order on Reconsideration Concerning Discovery (Mo. P.S.C. February 26, 2004, *emphasis supplied*).

<sup>2</sup> See generally 4 CSR 240-40.015, 40.016.

<sup>3</sup> 4 CSR 240-40.015(2), 40.016(3).

<sup>4</sup> Pages 13-14 of the CAM specifically address how affiliate purchases of energy-related goods and services will be addressed in order to comply with both the pricing and non-

that in the context of gas supply purchases and sales, fair market price and cost to the utility are one and the same thing. In other words, because Laclede does not own its own production wells, its cost for acquiring gas supply is necessarily determined by the fair market prices being paid to sellers of gas in the competitive wholesale market. In specifying how this fair market price is to be determined, the CAM provides as follows:

**Gas supply purchases** – shall be the fair market price which shall be determined as the average price of similar purchases made by Laclede Gas Company or other firms from non-affiliated entities entered into at similar times for similar duration and location of such purchases. If such purchases do not exist, the fair market price will be determined for the location and period in question by using an industry accepted index price or index prices applicable to such location published in either Gas Daily, Inside FERC, or other similar publication widely accepted in the industry for determining the value of such gas supplies.

In terms of sales of gas supply and capacity to LER, the CAM also utilizes a fair market price standard for pricing such transactions based on comparable sales, published gas industry indices, or the results of competitive bidding on FERC's electronic bulletin board. The only additional requirement is that the sales price for gas reflect certain minimum cost requirements set forth in Laclede's off-system sales tariff and that the price for pipeline capacity reflect the seasonal cost of such capacity at the time the release is done.

---

discrimination standards of the Commission's affiliate transactions rules. As the CAM states:

**Energy-Related Goods and Services** – To ensure compliance with both the transfer pricing and anti-discrimination provisions of the affiliate transactions and marketing affiliate transactions rules as well as the requirements of federal law, the following standards will be applied to the purchase and sale of energy-related goods and services, including natural gas supplies, transportation and storage capacity, between Laclede Gas Company and affiliated and unaffiliated entities alike.

Notably, both the affiliate transactions rules and the CAM have provisions specifying that the utility shall make available the affiliate records necessary to verify compliance with the affiliate transaction rules, but only those records. In this case, where the pricing of affiliate transactions are at issue, Staff's access to LER's records extends only to those records that are truly necessary to verify Laclede's compliance with the pricing standards in the affiliate transactions rules and the Company's CAM.<sup>5</sup>

Laclede asserts that Staff's information requests simply ignore these legal limitations in that they seek LER records that have no relevance to the applicable pricing standards, but instead presume a dramatically different and unauthorized pricing standard of Staff's own invention. Specifically, Laclede argues that Staff's request to obtain various records relating to the costs incurred by LER to purchase gas supplies is only relevant if one adopts Staff's view that purchases of gas from an affiliate must be priced at the lowest cost of gas in the affiliate's supply portfolio.<sup>6</sup>

Laclede asserts that "lowest cost of gas in the affiliate's supply portfolio" standard cannot be used as a valid legal basis for Staff's efforts to obtain such records because such a standard is directly contrary to the fair market pricing

---

<sup>5</sup> (See 4 CSR 240-40.015(6); 40.016(7); Laclede CAM, p. 6)

<sup>6</sup>The LER cost data sought by Staff are contained in Information Request Nos. 1a and 1b. Information Request No. 1a seeks "a copy of all Laclede Energy Resources (LER) gas supply and transportation invoices, contracts and nomination records that were effective for the months of January 2005 and April 2005" and Information Request No. 1b seeks "a copy of all Laclede Energy Resources (LER) gas supply and transportation invoices, contracts and nomination records that were effective for the months of January 2006 and April 2006."

standard in the affiliate transactions rules and Laclede's CAM. According to Laclede, there is simply nothing in the wording of the rules or its CAM that in any way permits, let alone endorses, such a standard. In fact, Laclede asserts that the irreconcilable differences between Staff's standard and those set forth in the affiliate transactions rules can be easily gleaned from the simple fact that implementation of such a standard would make it impossible for Laclede to ever purchase gas from LER even though such transactions are permitted by our rules. For neither LER, nor any other marketer for that matter, would ever sell gas to a utility under conditions where it was not only precluded from making any profit or receiving any compensation for the service it has provided, but was also forced to allocate to the sale the lowest cost of gas in its supply portfolio, regardless of why or for whom that gas was acquired.

Finally, Laclede argues that such a standard would violate the non-discrimination standards of the marketing affiliate transactions rule<sup>7</sup> by treating transactions with LER in a manner that is radically different than purchase transactions with non-affiliated marketers. Because Staff's Information Request Nos. 1a and 1b are premised on an unauthorized and discriminatory standard that would effectively preclude the very kind of affiliate transactions that our rules allow, Laclede submits that there is simply no legal basis for Staff's request to obtain such information.

Laclede claims that these same deficiencies exist with respect to Staff's request for LER records showing the sales made and margins achieved by LER in its transactions with third parties, as well as records showing how LER used

---

<sup>7</sup> 4 CSR 240-40.016(2)

the capacity it purchased from Laclede to make such sales.<sup>8</sup> Once again, Laclede points out that such information is only relevant if one adopts Staff's view that sales made to an affiliate should be priced based not on the fair market value of the transaction at the time and place Laclede sold the gas or capacity to LER, but on the price that LER charged when it subsequently sold gas to a third party in the interstate wholesale market.

According to Laclede, there is nothing in the wording of the affiliate transactions rules or Laclede's CAM that supports such a standard. In fact, just like Staff's proposed pricing standard for purchases, such a standard is self evidently inconsistent with the affiliate transactions rules because it would effectively preclude Laclede from engaging in the very kind of sales transactions with LER that the rules explicitly contemplate and permit. This is necessarily the case because no marketer, including LER, would ever purchase gas or capacity from Laclede if they were subsequently required to remit to Laclede any profit they earned on a later sale of gas to any customer in the wholesale market that Laclede might have also been able make an off-system sales to. As with Staff's pricing standard for purchases, imposing such an onerous and anti-competitive standard on LER alone would also violate the non-discrimination standards in the marketing affiliate transactions rules.

---

<sup>8</sup>Staff Information Request No. 1c requests: "The ledgers or dealbooks or journals or other documents that record all of LER gas supply and transportation deals in summary form or report form or spreadsheet form or similar form. The response should include sale dates, sales and purchase volumes, sales and purchase prices, cost of gas sold, and net margin." Information Request No. 1d requests: "Documentation showing LER's use of any capacity released to LER by the Laclede Gas Company. The response should include receipt and delivery points, date of use, volumes nominated, and Transportation Service Agreement (TSA) number used to make the nomination."

Laclede further notes that even before the Commission promulgated its affiliate transactions rules, it had already considered and rejected the kind of affiliate sales standard that Staff is using in this case as a basis for its information requests. Specifically, Laclede cites a 1998 Utilicorp decision in Case No. GR-95-273, in which the Staff argued that UES, a marketing affiliate of UtiliCorp, should be required to purchase pipeline capacity from Utilicorp at the same price that UES subsequently sold that capacity, effectively eliminating any return for UES. Utilicorp's view was that the market rate was the appropriate basis for valuing capacity released to its marketing affiliate. Consistent with the rules that it would later promulgate, the Commission found that UtiliCorp's captive firm customers received the appropriate capacity release credits during the 1994-95 ACA period, because UtiliCorp's sales of released capacity to UES were made at market rate.<sup>9</sup>

Notably, the Staff has agreed in its pleadings in this case that the legal authority for its information requests resides in the Commission's affiliate transactions rules. Notwithstanding that acknowledgement, however, the Staff made clear during the March 26 oral argument in this case that it was pursuing standards for evaluating the propriety of Laclede's transactions with LER that are different from the standards set forth in the affiliate transactions rules and Laclede's CAM. Upon questioning by Commissioner Murray regarding Staff's view of the relevance of the pricing standards in the affiliated transactions rules and Laclede's CAM, counsel for Staff admitted that its proposed adjustments in

---

<sup>9</sup> (*Re 1994-1995 Actual Cost Adjustment*, Case No. GR-95-273, Report and Order, p.4, 1998 WL 988470 (Mo.P.S.C. October 6, 1998))

these cases, as well as its information requests, are not based on either the affiliate transactions rules or the CAM:

- 1 MR. REED: As part of the ACA case, we'll
- 2 review that information as well, but the primary purpose
- 3 for this information is to determine whether Laclede paid
- 4 too much to LER for gas and determine what LER did with
- 5 Laclede's capacity that was released to LER.
- 6 COMMISSIONER MURRAY: And too much would be
- 7 defined by the rule, would it not?
- 8 MR. REED: Not necessarily. Because if
- 9 entering into the contract and taking action under the
- 10 contract was not prudent in that it led to higher gas
- 11 costs for the ratepayers, then that impacts the ACA.
- 12 COMMISSIONER MURRAY: So they could fully
- 13 comply with their Cost Allocation Manual and still be
- 14 imprudent, is that what you're saying?
- 15 MR. REED: Yes.<sup>10</sup>

It is equally apparent from Staff's pleadings in these cases, that its definition of "higher gas costs", as well as its purported need for additional LER records, is premised entirely on its own, self-created standard that Laclede should pay LER a price equivalent to the lowest cost gas in LER's portfolio, without any profit or compensation of any kind for the services provided and risks

---

<sup>10</sup> March 26, 2009 Oral Argument Tr. at 14.

undertaken by LER in acquiring and delivering such gas supplies. As the Staff has said:

“This discretion in sourcing supply could result in gains for LER that should be allocated to Laclede Gas Company’s ACA.”  
(Staff Recommendation, GR-2005-0203, December 28, 2006, p. 10)

“No documentation was provided to ensure that LER was not paying its supplier a cheaper price for the supply and charging Laclede the higher price.” (*Id.*)

“There is no justifiable reason why Laclede’s marketing affiliate should be profiting from the commodity side of this bundled supply deal.” (*Id.*)

“Since the agreement allows LER discretion on where to source the gas, and Laclede has not shown that LER is not receiving more favorable pricing for this particular transaction, an adjustment is necessary to reflect the more favorable...pricing.” (*Id.*)

“The Staff has made attempts to fully understand how LER allocates gas supply to various deals, but has had limited access to LER information.”  
(Staff Recommendation, GR-2006-0288, December 28, 2007, p. 8)

“[Under the Laclede-LER contract], Laclede is bound to pay LER a contract price *that may not match the lowest cost in LER’s gas portfolio.*”  
(List of Documents required by Staff, July 25, 2008, p. 4, emphasis supplied)

“*Although the index used represents the market price for firm gas in the vicinity of the delivery points, Staff cannot verify LER’s acquisition price and whether LER derived further value beyond the payments required in the LER-LGC contracts.*”  
(Staff Recommendation, GR-2008-0140, December 31, 2008, p. 9, emphasis supplied)

It is clear to the Commission that such a standard for determining the propriety of a utility’s purchase of gas supplies from an affiliate has no relationship to those set forth in the Commission’s affiliate transactions rules and

Laclede's CAM.<sup>11</sup> Staff's proposed standard for evaluating the propriety of Laclede's sales of gas and capacity to LER is equally inconsistent with our rules and Laclede's CAM. In fact, such a standard is virtually indistinguishable from the one Staff proposed and the Commission rejected more than ten years ago in the *Utilicorp* case discussed above, in which we determined that Utilicorp's releases of capacity to its marketing affiliate, UES, should be priced based on the fair market value of those releases at the time they were made, not on the price charged by UES in a subsequent sale.

Since that time we have established affiliate transactions rules, and Laclede has developed and operated under a CAM, that essentially codifies the fair market pricing standard we endorsed in that case. Those rules were in effect and applicable during the subject ACA periods, as was the CAM developed by the Company and reviewed by the Staff pursuant to those rules. The Staff, just as much as the utilities subject to the Commission's jurisdiction, have a duty to follow them, both in undertaking affiliate transactions, and in issuing information requests for, and reviewing the propriety of, such transactions.

---

<sup>11</sup>Contrary to the fair market pricing standard established by the Rules and the CAM, Staff's questions are unrelated to similar purchases made by Laclede Gas Company or other firms from non-affiliated entities, entered into at similar times as the Laclede-LER transactions, for a similar duration as the Laclede-LER transaction, and at a similar location as the Laclede-LER transaction, all as provided in the CAM cited above. Instead, Staff seeks information on LER's purchases of gas supply at different times than the Laclede-LER transactions, for different durations than the Laclede-LER transactions, and at different locations than the Laclede-LER transactions. Nor are Staff's questions related to any industry accepted index price or prices applicable to the location of the Laclede-LER transaction, published in either Gas Daily, Inside FERC, or other similar widely accepted publication, as provided in the CAM. It is hard to imagine a less relevant route of inquiry pertaining to the appropriate legal standard.

Indeed, just last July we reaffirmed that the purpose of the pricing standards in our affiliate transactions rules is not to preclude such transactions, as Staff apparently seeks to do here. Instead, “the pricing mechanism in the affiliate transaction rule is designed to make the public utility indifferent as to whether it sells or receives goods and services from an affiliate or a third party.”<sup>12</sup> We further found in a 2007 case that the affiliate transaction rule does not, and cannot, require an unregulated affiliate to provide service to its regulated utility affiliate on advantageous terms not available otherwise.<sup>13</sup>

The information requests sought by Staff in this case are premised on a pricing standard that unquestionably violates both of these principles by completely diverging from the fair market pricing standards in the Rules and the CAM and replacing them with onerous conditions that would make it impossible for Laclede to conduct any business with LER. Because Staff Information Request Nos. 1a through 1d are based on a standard that is nowhere to be found in the controlling instruments that govern affiliate transactions – indeed a standard that would frustrate the pricing and non-discrimination provisions of the rules as well as preclude transactions that are explicitly permitted by such rules – Staff’s request to obtain such information must be denied.

Finally, with respect to Staff Information Request No. 1e, the Commission finds that the Staff should respond to the assertions made by Laclede in its March 19<sup>th</sup> objection in which Laclede claims that it has already provided Staff

---

<sup>12</sup> **Re Great Plains Energy, Inc. et al.**, Case No. EM-2007-0374, 266 P.U.R.4th 1, 71 (Mo. PSC July 1, 2008).

<sup>13</sup> **Re Union Electric Company dba AmerenUE**, Case No. ER-2007-0002, 257 P.U.R.4th 259, (Mo.P.S.C. May 22, 2007)

with the information it requests, except for the compensation information relating to Mr. Yaeger, which Laclede claims has not been properly limited to the matters at issue in this case.

Having resolved this outstanding discovery issue, the Commission further finds that the parties should consult and recommend, within 30 days of the date of this Order, a proposed procedural schedule to address any remaining issues in these cases.

**THE COMMISSION ORDERS THAT:**

1. Laclede's objection to the Staff's request for information as set forth in Staff's March 12, 2009, pleading is sustained, and Staff's March 12 information requests are hereby denied.

2. The parties are hereby directed to submit within 30 days of the date of this order a proposed procedural schedule for disposing of any remaining issues in these cases.

3. This order shall become effective upon issuance.

**BY THE COMMISSION**