

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

The Staff of the Missouri Public Service  
Commission,

Complainant,

vs.

Laclede Gas Company,

Respondent.

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**Case No. GC-2011-0006**

**STAFF’S SUGGESTIONS IN SUPPORT OF ITS  
MOTION FOR SUMMARY DETERMINATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its Suggestions in Support of its Motion for Summary Determination pursuant to Commission Rule 4 CSR 240-2.117(1), states as follows:

**Introduction**

Staff filed its *Complaint* on July 7, 2010, asserting that Respondent Laclede Gas Company (“Laclede”) has violated an order of the Commission by violating provisions of a Commission-approved Stipulation and Agreement. For relief, Staff prays that the Commission will (1) find that Laclede has violated the Commission’s order as charged by Staff and (2) authorize the Commission’s General Counsel to seek penalties in Circuit Court.

**Argument**

***Summary Determination:***

Commission Rule 4 CSR 240-2.117(1)(E) authorizes summary determination “if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is

no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest.” Filed simultaneously herewith are Staff’s motion and, as a supporting affidavit, the verified direct testimony of Staff’s witness, Anne M. Allee. These *Suggestions* constitute the “separate legal memorandum” that must be “attached” to a motion for summary determination pursuant to Rule 4 CSR 240-2.117(1)(B).<sup>1</sup> Staff suggests that its motion, affidavit and suggestions demonstrate that there is no dispute of material fact, that Staff is entitled to relief as a matter of law and that the public interest demands that Staff’s complaint be sustained.

Staff urges the Commission to understand that summary determination should be favored, not disfavored. In a proper case, summary determination conserves scarce resources, both fiscal and human, for the Commission and for all the parties. Why hold an expensive and time-consuming evidentiary hearing in a case like the present, in which the facts are not in dispute? The Commission would gain nothing thereby that it cannot get from holding an oral argument on Staff’s motion and Laclede’s anticipated opposition to that motion.

### ***What is this Case about?***

This case is about access to information. Laclede operates as one of a number of entities owned, directly or indirectly, by a holding company, The Laclede Group. Of these various Laclede entities, only Respondent Laclede Gas Company is a public utility regulated by this Commission. Laclede shares facilities, equipment and employees with its unregulated affiliates. In addition, Laclede’s employees perform services for the

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<sup>1</sup> Rule 4 CSR 240-2.117(1) states certain other requirements for summary determination, all of which are met here as detailed in Staff’s accompanying motion.

unregulated affiliates. This conduct is a matter of serious concern to Staff because of the very great opportunities and incentives thereby provided for inappropriate cross-subsidization.

Inappropriate cross-subsidization is the practice of maximizing the profits of unregulated enterprises by passing some of their costs on to regulated public utilities. In that way, the shareholders reap the harvest of enhanced profits at the expense of the ratepayers, who are paying rates that include some portion of the costs of unregulated activities. Staff's Revenue Requirement Cost of Service Report in Laclede's last general rate case, Case No. GR-2010-0171, stated at page 53, "The Staff has serious concerns that the Company's policies, procedures and methods for its allocation of costs to its various affiliates is inadequate to prevent Laclede Gas' customers from paying expenses that are related to affiliates." The Report explained at page 40, "While the opportunity to share certain administrative and other functions may introduce efficiencies, it may also lead to inappropriate cross-subsidization."

Laclede also engages in natural gas transactions with one of its unregulated affiliates, Laclede Energy Resources ("LER"). LER is described in The Laclede Group's consolidated 10-K dated September 30, 2010, as

a wholly-owned subsidiary engaged in the marketing of natural gas and related activities on a non-regulated basis. LER markets natural gas to both on-system Utility transportation customers and customers outside of Laclede Gas' traditional service territory, including large retail and wholesale customers. As such, LER's operations and customer base are more subject to fluctuations in market conditions than the Utility. Other subsidiaries provide less than 10% of consolidated revenues.

According to The Laclede Group's consolidated 10-K dated September 30, 2010, LER's operating revenues for fiscal year 2010 were \$858,782,000 compared to

Laclede's operating revenues of \$864,297,000. Laclede's transactions with LER also offer opportunities and incentives for inappropriate cross-subsidization that are a matter of concern for Staff. In fact, in ongoing litigation before this Commission, Staff is seeking to disallow Laclede's recovery of about \$4.5 million in gas costs attributable to transactions between Laclede and LER. The cases are GR-2005-0203 and GR-2006-0288.

***The Stipulation and Agreement in Case No. GR-2001-342:***

In order to safeguard the ratepayers against inappropriate cross-subsidization, Staff must carefully evaluate transactions between the regulated entity and its unregulated affiliates and parent. This requires access to information concerning these transactions. In order to safeguard its access to necessary information, Staff recommended that the Commission impose certain conditions upon Laclede when it allowed Laclede to reorganize into its present configuration. The conditions were embodied in a stipulation and agreement that both Staff and Laclede signed and which the Commission approved. The Commission authorized the reorganization subject to the conditions in the stipulation and agreement. Section IV of the stipulation and agreement, entitled "Access to Information Conditions," includes the following as Paragraph 2:

2. 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 . In addition to following standard discovery procedures, Staffs and Public Counsel's access to bargaining unit employees shall also be conditioned on Staff and Public Counsel providing reasonable notice to the employee's Union of their intent to seek such access and the right of such employee to be represented by the Union. 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 added.) The entire stipulation and agreement is attached to Staff's Complaint.

In its order issued on August 14, 2001, in Case No. GM-2001-342, the Commission approved the stipulation and agreement and authorized Laclede to reorganize, "subject to the conditions contained in the Unanimous Stipulation and Agreement referred to in Ordered Paragraph 2, above." The purpose of §IV.2 of the stipulation and agreement was to ensure the continued availability of information from the members of The Laclede Group on the same terms that it was formerly available from Laclede Gas Company.

***Cases GR-2005-0203 and GR-2006-0288:***

As mentioned above, Staff is seeking to disallow recovery by Laclede of about \$4.5 million in natural gas costs. Laclede is a gas distribution utility, an "LDC."<sup>2</sup> Unlike

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<sup>2</sup> "LDC" means Local Distribution Company; it is the industry term for a natural gas retail utility.

other utilities, in which the cost of service and the rates to be charged are set in a unified general rate case, the rates of natural gas distribution utilities are set in two separate proceedings. This is because of the unusual volatility of natural gas prices. One of these rate proceedings is the traditional general rate case in which rates reflecting all of the cost of service except the natural gas commodity itself and its transportation are set. The other rate proceeding is the annual PGA/ACA<sup>3</sup> rate case in which the rates for the commodity and its transportation are set.<sup>4</sup>

The PGA/ACA rate case itself has two parts. The first part, the PGA, encompasses a year-long period in which rates for gas may be adjusted several times to reflect changing forecasts of the market price of gas. The second part, the ACA, includes a true-up audit and prudence review. Unlike most utility rates, the PGA rates are collected on an interim basis, subject to refund, and no mark-up or profit on the commodity or its transportation is allowed. During the ACA true-up, it is determined whether the PGA rates collected enough money to cover the cost of the gas and its transportation or too much money. In the latter case, the ratepayers get a credit; in the former case, if enough money was not collected, the utility gets the credit. The credit, in whoever's favor, is reflected in an adjustment made to the annual rolling balance.

The prudence review part of the ACA is the issue in Cases GR-2005-0203 and GR-2006-0233. If the decisions made by the utility result in paying too much to acquire or transport the gas, then Staff recommends a corresponding disallowance and, if the Commission upholds the disallowance, the ratepayers will cover only a portion of the

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<sup>3</sup> "PGA/ACA" stands for Purchased Gas Adjustment/Actual Cost Adjustment.

<sup>4</sup> Following deregulation of the natural gas industry at the federal level, purchases of natural gas generally separate the purchase of the gas itself from the purchase of the transportation of that gas. Thus, gas may be purchased from one provider and its transportation from another.

gas purchase or transportation costs and the shareholders will eat the rest. In the present cases, that fairly straightforward analysis is complicated by the fact that gas purchases and sales, and transportation capacity purchases and sales, were made between Laclede and its unregulated, gas-marketing affiliate, LER.

Cases GR-2005-0203 and GR-2006-0233 have been stalled for over two years by a discovery dispute. Staff has sought to compel Laclede to provide a wide-range of documents essential to its prudence analysis. The Commission has sustained Staff's requests, the appellate courts have denied Laclede's efforts to quash the discovery and the local circuit court has issued a writ compelling Laclede to produce the documents, all to no avail. Laclede has not produced all of the documents and has explained its failure to produce the remaining documents by asserting that they are LER's documents and it does not have possession or control of them.

***Violations of the Stipulation and Agreement:***

By asserting non-possession, Laclede has violated §IV.2 of the Stipulation and Agreement. Laclede has done this repeatedly and continuously:

- In a pleading entitled *Laclede Gas Company's Return to the Writ of Mandamus*, filed in the Circuit Court of Cole County on July 30, 2010, and included in the record of Case No. GR-29005-0203, at Paragraph 3 thereof, Laclede states, "[a]lso attached hereto is a statement under oath by Laclede's Vice President of Gas Supply affirming that Laclede has produced all of the information sought that is within Laclede's possession, custody or control." Attached to Laclede's *Return* is the Affidavit of Steven F. Mathews in which he declares under oath, at Paragraph 3 thereof, that

“[t]o the best of my knowledge and belief, Laclede Gas Company has produced all of the information in its possession, custody or control that is responsive to the above stated data requests.” Staff incorporates this document and its attachments herein by reference.

- On May 11, 2010, a hearing was held before Judge Paul Wilson of the Circuit Court of Cole County on the Commission’s application to enforce its discovery orders against Laclede in Cases GR-2005-0203 and GR-2006-0233. The transcript is attached to Staff’s *Complaint*. During the hearing, Laclede’s attorney Michael Pendergast argued that the documents sought by the Staff and ordered by the Commission to be provided, “aren’t something that Laclede Gas has possession, custody or control over. They belong to LER” (Tr. pg. 14, lines 9-11). Laclede’s position was that “[w]e have, we being Laclede Gas Company, have provided everything that’s in our possession. We have indicated to the Commission that we have provided everything in our possession” (Tr. pg. 14, lines 3-6). “We don’t believe that these are in our possession, custody and control” (Tr. pg. 45, lines 5-6).
- At a hearing before the Commission on November 4, 2010, in Cases GR-2005-0203 and GR-2006-0288, Mr. Pendergast stated, with respect to the documents sought in the discovery dispute, “Commissioner, if that’s directed to me, I think we would go ahead and say our defense is we’ve complied and we’ve given everything we have and what we don’t have is not in our possession. We have requested it from LER, they have



declined to go ahead and provide it.” (Case GR-2005-0203, Transcript, vol. 5, p. 350; Case GR-2006-0288, Transcript, vol. 5, p. 372). Staff incorporates these transcripts herein by reference.

- Also at the November 4, 2010, hearing, Mr. Pendergast offered a letter as an exhibit, which the Commission received and marked as Exhibit 3. That letter, dated November 9, 2009, and written by Mr. Pendergast to Kevin Thompson and Lera Shemwell, stated “Accordingly, and in compliance with the above mentioned orders, Laclede states that, other than the substantial volume of documents, including LER documents, that have previously been furnished to Staff, Laclede is not in possession of any documents responsive to the information described in the October 20, 2008 Order.” Staff incorporates this exhibit herein by reference.

Each of these incidents constitutes a clear, undeniable and unambiguous violation of §IV.2 of the Stipulation and Agreement approved by the Commission in Case No. GM-2001-342.

***Penalties:***

Section 386.570.1, RSMo, provides for penalties for “[a]ny corporation, person or public utility which . . . fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission . . . .” Section 386.570.2, RSMo, provides that every violation “is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.” Section 386.600, RSMo, authorizes the Commission to bring an action to

recover penalties “in any circuit court in this state[.]”

Staff is by no means eager to seek penalties against a public utility. However, this case is an egregious case given the length of time that Laclede has fought Staff’s discovery requests and the number of proceedings, all of which has meant unnecessary costs to the ratepayers and the obstruction of the public business.

**WHEREFORE,** Staff prays that the Commission will grant summary determination of its *Complaint* filed herein and enter its order (1) finding that Laclede has repeatedly and continuously violated §IV.2 of the Stipulation and Agreement approved by the Commission in Case No. GM-2001-342; (2) authorizing the General Counsel to pursue penalties against Laclede in the Circuit Court; and granting such other and further relief as the Commission deems just.

Respectfully Submitted,

**/s/ Kevin A. Thompson**

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**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **15<sup>th</sup> day of December, 2010**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Kevin A. Thompson