

Exhibit No.:
Issue: Commission Approval of the
CAM and CAM Annual
Submission
Witness: Glenn W. Buck
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Laclede Gas Company
Case No.: GC-2011-0098
Date Testimony
Prepared: May 12, 2011

LACLEDE GAS COMPANY
GC-2011-0098
SURREBUTTAL TESTIMONY
OF
GLENN W. BUCK

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1 Q. Please state your name and business address.

2 A. My name is Glenn W. Buck, and my business address is 720 Olive St., St. Louis,
3 Missouri, 63101.

4 Q. Are you the same Glenn W. Buck who filed direct and rebuttal testimony in this docket?

5 A. Yes.

6 Q. What is the purpose of your surrebuttal testimony?

7 A. The purpose of my surrebuttal testimony is to address some of the assertions made in the
8 rebuttal testimony submitted by Staff witness Charles R. Hyneman and Office of the
9 Public Counsel (OPC) witness Barbara Meisenheimer, respectively, on April 19, 2011.
10 Specifically, I will address the assertions made by these witnesses relating to the two
11 Staff counts alleging that Laclede has violated the Commission’s Affiliate Transactions
12 Rules (Rules) (a) by not obtaining Commission’s approval of Laclede’s Cost Allocation
13 Manual (CAM) and (b) by not submitting its CAM annually.

COMMISSION APPROVAL OF THE CAM

15 Q. Do both Staff witness Hyneman and OPC witness Meisenheimer assert in their rebuttal
16 testimony that Laclede has never obtained Commission “approval” of its CAM.

17 A. Yes. For his part, Mr. Hyneman asserts that Laclede has not obtained Commission
18 approval of its CAM and further claims that this lack of approval constitutes a violation
19 of the Rules. For her part, Ms. Meisenheimer also states at page 12 of her rebuttal
20 testimony that the Commission has not approved the Company’s CAM, although she
21 acknowledges that the Commission approved the form of the CAM. Unlike Mr.

1 Hyneman, however, Ms. Meisenheimer does not express an opinion on whether this
2 alleged lack of Commission approval constitutes a violation of the Rules.

3 Q. Since you filed your rebuttal testimony has the Staff shed any additional light on what it
4 believes qualifies as Commission approval of a CAM?

5 A. Yes. In response to DR 3 of Laclede's First Set of Data Requests, which responses I
6 have attached to my surrebuttal testimony as Schedule GWB-S1, the Staff states that a
7 formal application for a Commission Order approving a utility's Cost Allocation Manual
8 is necessary to meet the requirements of the Rules. Mr. Hyneman also repeats this claim
9 that a formal application is necessary on pages 2-3 of his rebuttal testimony.

10 Q. Is that the standard, in your opinion?

11 A. No. The Commission's Rules state that in purchasing goods or services from an affiliate,
12 the utility will use a Commission approved CAM. There is no discussion of how that
13 approval is to be obtained.

14 Q. Does the Company use a Commission-approved CAM?

15 A. Yes. For the reasons discussed below, I believe it is impossible to reconcile Staff's
16 current claim regarding the need for a formal Commission order approving a utility's
17 CAM with Staff's historical approach to this issue. But even assuming a formal order is
18 required, Laclede has satisfied that requirement. As Laclede's witnesses have previously
19 testified, in Case No. GM-2001-342, the Commission explicitly approved both the major
20 terms of the Company's CAM and the process for completing the additional details that
21 Staff had requested be included in the CAM. Because Laclede fully complied with that
22 process, its CAM has, in fact, received the very kind of Commission approval
23 contemplated by the parties and the Commission itself.

1 Q. But isn't Ms. Meisenheimer correct when she states at page 12 of her rebuttal testimony
2 that the CAM was not approved by the Commission because it is not mentioned in the
3 Commission's August 14, 2001 Order Approving Stipulation and Agreement and
4 Approving Restructuring in Case No. GM-2001-342?

5 A. No. First of all, Ms. Meisenheimer's comments are somewhat misleading. While the
6 Commission may not have explicitly mentioned the term "Cost Allocation Manual" in its
7 August 14 Order, it did state that the Stipulation and Agreement it was approving
8 contained certain conditions that were "intended to protect the Missouri customers of
9 Laclede." Among the conditions cited by the Commission was one relating to "the
10 method of cost allocation" – a clear reference to the CAM. Moreover, I have been
11 advised by legal counsel that a Commission Order approving a Stipulation and
12 Agreement means that every provision of the Stipulation and Agreement has been
13 reviewed, considered and determined to be reasonable by the Commission. Accordingly,
14 it is completely irrelevant whether the Commission's Order actually recited the detailed
15 provisions of the Stipulation and Agreement that addressed the CAM or simply approved
16 the Stipulation and Agreement containing those provisions.

17 Q. In addition to the Commission's August 14, 2001 Order in Case No. GM-2001-342, are
18 there other formal actions taken by the Commission which recognized that the CAM
19 would be used to price affiliate transactions?

20 A. Yes. Three months after the Commission issued its Order in Case No. GM-2001-342, the
21 Commission approved a Unanimous Stipulation and Agreement in Laclede's 2001
22 general rate case proceeding, Case No. GR-2001-629. As part of that Stipulation and
23 Agreement, the parties proposed, and the Commission approved, tariff language which

1 stated that Laclede's off-system sales would be conducted in accordance with the
2 "Company's Cost Allocation Manual or, if and when applicable, the Commission's
3 affiliate transactions rule." This Commission-approved tariff, which is attached hereto
4 as Schedule GWB-S2 became effective December 1, 2001.

5 Q. Did Staff agree to a tariff provision that used the CAM as part of the settlement of
6 Laclede's 2001 rate case?

7 A. Yes. Consistent with Staff's antipathy to affiliate transactions, Staff at first attempted to
8 have the tariff actually state that Laclede shall not make off-system sales to its affiliate.
9 But the matter was resolved with the parties agreeing that Laclede would use its CAM to
10 price off-system sales to its affiliates.

11 Q. Did the Staff subsequently recognize that the tariff approved by the Commission in 2001
12 provided authorization of the Company's CAM?

13 A. Yes, in the very next general rate case proceeding filed by Laclede, Case No. GR-2002-
14 356, the Staff submitted DRs to Laclede relating to the CAM, including one which asked
15 "Pursuant to Laclede Gas Company tariff sheet R-42 (Off-System Sales) please provide a
16 copy of the Company's Cost Allocation Manual(s) *in effect* from October 2000 through
17 current date." (emphasis added) A copy of this Staff data request and the Company's
18 response thereto, is attached hereto as Schedule GWB-S3.

19 Q. What is the significance of this tariff provision and Staff's follow up data requests in
20 Laclede's subsequent rate case?

21 A. They are significant for three reasons. First, they reconfirm in an official way what all of
22 the parties and the Commission intended by, respectively, agreeing to and approving the
23 settlement in Case No. GM-2001-342, namely, that the CAM completed by Laclede in

1 December 2001 and sent to the parties was indeed the instrument that was to be used to
2 govern the pricing of transactions between Laclede and its affiliates. Second, they
3 reconfirm that the CAM being used by Laclede included the fair market pricing
4 provisions for gas supply transactions that Mr. Hyneman and Ms. Meisenheimer seem to
5 want to walk away from now years later. Third, they reconfirm that Staff and OPC not
6 only had every opportunity to review the CAM in 2002 (just as they did when Laclede
7 first submitted it to them in December of 2001), but that the Staff seized that opportunity
8 and apparently did not take issue with those pricing provisions.

9 Q. Did the tariffs approved as a result of the 2002 rate case proceeding continue to reference
10 the CAM?

11 A. Yes. As they continue to do today.

12 Q. Although it is clear from your answers above that Laclede believes it has complied with
13 what Staff says is required by the Rules – namely, a formal Commission Order approving
14 a utility’s CAM – do you believe that such an interpretation is even correct?

15 A. No. And I fail to understand how the Staff could come before this Commission and say
16 so without seriously impugning the quality of its regulatory oversight over affiliate
17 transactions.

18 Q. Why do you say that?

19 A. If a formal Commission Order approving a CAM was actually required by the Rules one
20 would have expected to see utilities subject to the Rules to have filed for such approval
21 during the ten years or so that the Rule has been in effect. One would also expect to find
22 Commission Orders that granted such approvals or otherwise disposed of such filings.
23 Finally, if utilities had failed to seek such approvals – as Staff now claims they should

1 have – one would have expected to see a series of complaints by the Staff, similar to the
2 one filed in this case, seeking to hold utilities accountable for such non-compliance.

3 Q. Has any of this happened?

4 A. No. According to Staff’s Response to Laclede’s First Set of Data Requests, not a single
5 Missouri utility has filed for Commission approval of its CAM. Not one. (Schedule
6 GWB-S1, p. 2, Response to Question 2). As a result, Staff was unable to cite a single
7 docket number or CAM approval order of the kind Mr. Hyneman suggests should have
8 been obtained by Laclede.

9 Q. Given this unrelenting and persistent record of seeming non-compliance by every utility
10 in the State of Missouri, has the Staff filed complaints or taken any other action to
11 address what it would have the Commission believe is an obvious failure to obey the
12 law?

13 A. No. Mr. Hyneman went to great lengths in his prefiled testimony to explain why the
14 Commission’s Affiliate Transactions Rules must be accompanied by “effective utility
15 oversight” on the part of the Staff in order to ensure that consumers are adequately
16 protected. Despite the asserted need for such oversight, however, the Staff stated in its
17 DR Responses that it has never filed a complaint against any Missouri utility relating to
18 this so-called violation of the Rules. (Schedule GWB-S1, p. 3, Response to Question
19 6(a)) Indeed, Staff indicated in its Responses that it is only now – roughly a decade after
20 the Affiliate Transactions Rules were promulgated, and after it initiated the current
21 complaint against Laclede – that Staff is finally considering filing complaints against the
22 other utilities for this alleged “violation.” Clearly, if the Rules really did contemplate that
23 each utility’s CAM must be specifically approved by the Commission through a formal

1 order, then one can only conclude that Staff has been seriously derelict in its job of
2 ensuring “effective oversight” of Missouri utilities’ compliance with the Rules.
3 Conversely, if Staff’s current interpretation is incorrect, as Laclede believes it is, then
4 Staff’s error is at least limited to a matter of rule misinterpretation rather than a decade
5 long pattern of grossly inadequate regulatory oversight.

6 Q. Are there other reasons to believe that Staff’s recent interpretation of this Rule provision
7 is incorrect?

8 A. Yes. If the Rule really contemplated that utilities must file for and obtain a formal
9 Commission order approving their CAMs, then the Staff would have presumably
10 developed some auditing procedures or manuals to guide its review of such CAM filings.

11 Q. Has it?

12 A. No. In response to a DR question which asked the Staff to produce any auditing
13 procedures or manuals that addressed its review of utility CAM submissions, the Staff
14 indicated that “[s]ince no utility has filed for Commission approval of its CAM, Staff has
15 not developed procedures for review of CAMs to address such a filing.” (Schedule
16 GWB-S1, p. 2, Response to Question 2). In fact, Staff goes on to indicate that rather than
17 review CAMs as part of some separate approval proceeding, it has been Staff’s general
18 approach to review utility CAMs in general rate cases and other proceedings where
19 affiliate transactions might have an impact on customer rates, and to make
20 recommendations based on those reviews. (Id.). Again, this pattern of Staff conduct is
21 flatly inconsistent with the claim that the Rules require a utility to seek a formal
22 Commission order approving its CAM.

1 Q. If a formal Commission order approving a utility's CAM was required by the Rules, is it
2 reasonable to believe that the Commission's Chapter 3 Reporting and Filing
3 Requirements Rules would address the subject?

4 A. That would certainly be reasonable. The Chapter 3 Rules address the informational and
5 filing requirements for a wide variety of circumstances where utilities must submit data
6 to, or obtain approval from, the Commission. To name just a few, these Rules address
7 the filing requirements for large and small rate case proceedings, depreciation studies,
8 promotional practices, mergers and acquisitions, financings, certificates of convenience
9 and necessity, annual reports, cold weather rule reporting obligations, ISRS requests,
10 written drug and alcohol testing programs, natural gas incidents, and requests to transfer
11 assets. Given the wide variety of filings covered by the Chapter 3 Rules, it is clear that
12 the Commission has made a concerted effort to identify and establish filing requirements
13 for those regulatory matters that it must routinely process and approve.

14 Q. Has the Commission established similar requirements for obtaining Commission
15 approval of a utility's CAM?

16 A. No. While the Staff would have the Commission believe that its Affiliate Transactions
17 Rules affirmatively require the Commission to routinely consider and approve utility
18 CAMs, there is nothing in the Commission's Chapter 3 Rules that purport to address how
19 a utility would go about seeking such approval or what information would need to be
20 included in a filing requesting such approval.

21 Q. Did the Staff agree that there is nothing in Chapter 3 addressing CAM filings?

1 A. Yes. When asked to identify a specific section of Chapter 3 that would apply to utility
2 CAM filings, Staff responded that it could not. (Schedule GWB-S1, p. 2, Staff Response
3 to Question 3(e)).

4 Q. Are there other reasons to question Staff's assertion that Laclede violated the Affiliate
5 Transactions Rules by not obtaining the kind of Commission approval Staff says is
6 required?

7 A. Yes. Laclede has met with the Staff on many occasions to discuss the CAM and the
8 Rules, including meetings in 2003, 2005, and 2007. The CAM was also the subject of
9 much discussion and debate in at least two oral arguments held before the Commission in
10 2009, as well as numerous pleadings submitted in 2009 and 2010. Indeed, as Mr.
11 Hyneman's own Schedule 1 to his Rebuttal Testimony shows, the approval status of the
12 Company's CAM was even the subject of an internal audit report that the Staff requested
13 to see in 2006 in connection with its investigation of certain claims that had been made
14 by a fired Laclede employee, as well as an internal audit report written in 2008. Despite
15 these numerous meetings and other opportunities that the Staff has had to articulate its
16 current view that utilities must obtain a formal Commission order approving the specific
17 provisions of a CAM, it was not until 2010 that the Staff actually did so. It is just not
18 plausible in my view to believe that the Staff was so uninformed about what the Rules
19 require that it did not realize that formal Commission approval of utility CAMs was
20 required for nearly a decade. And if it did believe that such approval was required all
21 along, its failure to raise the issue directly and forthrightly with the regulated community
22 is simply inexcusable.

1 Q. Is the Staff's failure even more egregious in light of the 2006 internal audit plan and the
2 2008 internal audit report that Mr. Hyneman discusses at page 6 of his rebuttal
3 testimony?

4 A. Yes. Notably, Mr. Hyneman does not discuss in his testimony that the 2006 audit plan
5 and the subsequent 2008 audit report referenced by Mr. Hyneman found that the
6 Company had conducted its affiliate transactions for the relevant period in compliance
7 with the CAM and in compliance with the Commission's Affiliate Transactions Rules.
8 Instead, he focuses on a few statements in the plan and the report that mention the
9 absence of a formal Commission order approving the CAM.

10 Q. What is the significance of these statements?

11 A. Mr. Hyneman of course would like to portray them as legally significant. The
12 statements, however, do not purport to address the legal significance of the Commission's
13 order in Case No. GM-2001-342 approving the CAM's primary features and establishing
14 a process for completing the CAM (with which Laclede fully complied). Nor do they
15 discuss the legal effect of the tariff provision approved in Case No. GR-2001-629
16 authorizing the use of the CAM for pricing off-system sales affiliate transactions.

17 Q. Did the 2008 Internal Audit report indicate that Laclede was in full compliance with its
18 CAM?

19 A. The Audit Report states that the Company has complied fully with its CAM and the
20 Rules, even though the preliminary un-vetted planning document also contains language
21 stating that a formal Commission order approving the CAM had not been issued.
22 Notably, the PSC Staff conducted an informal investigation into whether these documents

1 as well as other allegations made by the terminated employee who authored the 2006 plan
2 indicated any pattern of improper conduct on the part of the Company.

3 Q. As a result of its informal investigation, did the Staff ever communicate to the Company
4 that it believed the absence of a formal order approving the CAM constituted a violation
5 of the Commission's Affiliate Transactions Rules?

6 A. No. Apparently, the Staff was satisfied at the time with the proposition reflected in the
7 documents that a utility could be in compliance in with the Rules and not have a formal
8 Commission order approving its CAM. If the Staff thought otherwise, I am at a complete
9 loss to understand why, upon the conclusion of its investigation, it would not have
10 immediately alerted Laclede of its conclusion that the Company was doing something
11 improper or unlawful by failing to have sought and obtained a formal Commission order
12 approving its CAM. The only credible explanation for that failure, of course, is that Staff
13 knew full well at the time that no such formal approval is required.

14 Q Were the findings of Staff's investigation communicated to the Commission's Executive
15 Director?

16 A. Yes.

17 Q You also indicated earlier that OPC witness Meisenheimer has taken the position that
18 there is no formal Commission order approving Laclede's CAM, but she has not asserted
19 that the alleged absence of such an order is a violation of the Rules. Do you know why
20 OPC has not joined with Staff on this claim?

21 A. That, of course, is something that only OPC can definitely answer. What I can say,
22 however, is that OPC has some direct experience with this very issue.

23 Q. Please explain.

1 A. In AmerenUE's 2007 rate case proceeding, Case No. ER-2007-0002, Ryan Kind
2 submitted direct testimony on behalf of OPC, the relevant portions of which are attached
3 to my testimony as Schedule GWB-S4. As part of that testimony, Mr. Kind questioned
4 whether AmerenUE's purchase of certain gas-fired generating units from an affiliate had
5 complied with the Commission's Affiliate Transactions Rules. One of the areas of non-
6 compliance alleged by Mr. Kind was AmerenUE's asserted failure to obtain a
7 Commission Order approving its CAM. As Mr. Kind noted at the time, he was "unaware
8 of any efforts that UE has made to have this purported "CAM" approved by the
9 Commission as provided for in 4 CSR 240-20.015(3)(D)". (Schedule GWB-S4, pages
10 33-34 of Kind's Direct Testimony).

11 Q. What eventually happened with Mr. Kind's claim that AmerenUE had failed to obtain
12 what he believed was required Commission approval for its CAM?

13 A. From what I have been able to determine, the contention disappeared and was not raised
14 again by OPC. Although the underlying purchase transaction at issue was fully litigated,
15 a review of OPC's Pre- and Post-Hearing Briefs in that case (see Schedule GWB-S5)
16 show that Mr. Kind's claim regarding the need for Commission approval was never
17 mentioned again. Nor was it addressed by Staff or mentioned in the Commission Order
18 that ultimately decided the issue. Given this history, I can only conclude that Mr. Kind
19 either re-evaluated his position on this matter and determined that the Rules do not
20 require that the Commission issue a formal order approving AmerenUE's CAM, or he
21 was subsequently advised to that effect by an OPC attorney. In either case, I am
22 assuming that is why Ms. Meisenheimer has not joined in Mr. Hyneman's contentions to
23 the contrary in this case.

1 Q. Please summarize the Company's position regarding this issue.

2 A. When all is said and done, I think there are only two possible explanations for the
3 evolution of Staff's position on this issue. Either the Staff has been asleep at the
4 regulatory switch for the past ten years when it comes to providing effective oversight of
5 utility compliance with the Rules, or the Staff has simply concocted an alleged violation
6 of the Rules in retaliation for Laclede's repeated claims that it is the Staff that has failed
7 to adhere to the Rules with its completely unauthorized standards for pricing such
8 transactions. While neither scenario is acceptable, the historical record strongly indicates
9 that the latter explanation of these events is a far more credible one. It is equally clear
10 from Staff's responses to the data requests in Schedule GWB-S1 that Staff does not
11 believe that a CAM must be reviewed and explicitly approved by the Commission, but
12 instead considers a CAM that has been submitted by the utility and reviewed and found
13 to be acceptable by the Staff in a general rate case or other appropriate proceeding to be
14 Commission-approved.

15 Q Should the Company's CAM be considered Commission-approved by this standard as
16 well?

17 A. Yes. The Staff and any other party had an opportunity to review the Company's 2001
18 CAM in its 2002 rate case proceeding, as well as review the Company's revised 2004
19 CAM in the Company's 2005 rate case proceeding. The Staff has also had occasion to
20 review the CAM in connection with affiliate transactions in ACA cases. The Staff has
21 seized these opportunities and in no case has identified any problems with the CAM.
22 Accordingly, under the very approach utilized by Staff, the Company's CAM should be
23 considered Commission-approved.

ANNUAL CAM

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Q. Does Mr. Hyneman continue to insist in his rebuttal testimony that Laclede has violated Section 2(E) of the Rule, because its CAM has not been filed annually?

A. Yes. Although in his rebuttal testimony he has clarified that a utility does not need to file its CAM annually, but simply submit it annually to the Staff and Public Counsel.

Q Does Ms. Meisenheimer make a similar claim in her rebuttal testimony that it is a violation of the Rules not to submit the CAM in its entirety each and every year?

A. No.

Q. Has Mr. Hyneman explained in his rebuttal testimony why it would make sense to interpret the Rules as requiring that a utility resubmit the entirety of its CAM each year to the Staff and OPC, even though the provisions of the CAM have not changed?

A. No. Mr. Hyneman does not explain why sending the same pieces of paper over and over again to the Staff would make sense. In fact, such an interpretation is flatly inconsistent with any notion of efficiency and conservation of resources. The Commission and Staff are already bombarded with electronic and paper versions of documents that, in contrast to a CAM that has not changed, actually contain new information that the regulator hasn't seen before. To suggest that the Rules should be construed in a manner that would simply add hundreds or thousands of pages of duplicative documents to this mountain of information defies common sense.

Q. Are there other reasons for believing that the Rule does not require the utilities and the Commission to needlessly squander resources in such a manner?

A. Yes. Mr. Hyneman has indicated in his Responses to Laclede's Data Requests that the Staff pays little or no attention to the annual Affiliate Transactions filings that are

1 actually made by utilities. In fact, according to Mr. Hyneman, Staff's general approach
2 to reviewing affiliate transactions is to only look at such transactions and the information
3 submitted in connection with them when a utility has a rate case or other proceeding that
4 may affect rates. (See Schedule GWB-S1, Staff responses to DRs 2 and 7) Although I
5 firmly believe that Staff should give utilities more timely feedback on their affiliate
6 transactions submissions than this approach contemplates, it is ludicrous for the Staff to
7 suggest, on the one hand, that utilities are required to submit duplicative copies of their
8 CAMs each and every year while simultaneously acknowledging, on the other, that such
9 submissions will simply gather dust in someone's office or electronic file until a new rate
10 proceeding comes along.

11 Q. At page 17 of his rebuttal testimony, Mr. Hyneman suggests that even if someone at the
12 Staff had advised the Company not to resubmit duplicative copies of its CAM each and
13 every year to the Staff, that such advice would have been unauthorized since Staff cannot
14 waive the requirements of the Commission's Rules. Do you agree?

15 A. If the Rules required such annual submissions, Mr. Hyneman might have a point. But
16 they don't. And once again, I think that is evidenced by the fact that Staff has accepted
17 the Company's annual CAM reports for at least seven years without once suggesting that
18 the entire CAM had to be resubmitted each year in connection with those reports. In fact,
19 Staff indicated precisely the opposite, that it did not need duplicative copies of the CAM.

20 Q Has the Staff demonstrated that it knows how to work with the Company to have the
21 Company seek a waiver from the Rules where it believes one is necessary?

22 A. Yes. In the Company's most recent rate case proceeding, the Staff insisted and the
23 Company agreed to seek a waiver of the date on which it submits its annual CAM

1 reports. Although Laclede believed that such a waiver was unnecessary since it was
2 submitting most of its affiliate transactions information well in advance of what the Rule
3 required, it nevertheless agreed to seek a waiver given Staff's concerns.

4 Q. Why didn't Laclede also seek the kind of waiver that Mr. Hyneman says is necessary if
5 the Company does not wish to submit duplicative copies of its entire CAM each year?

6 A. Because the Company, and apparently the Staff as well, did not think it was necessary to
7 do so during the recent rate case, which came at a point in time that was only a few
8 months shy of when the Staff filed the instant complaint. Again, if the Staff actually
9 believed there was something deficient in the way the Company was submitting its CAM
10 materials, the time to mention it would have been during the Company's 2010 rate case
11 (or its 2007 rate case, or its 2005 rate case) when the Staff was attempting to have the i's
12 dotted and the t's crossed in connection with how the Company treated these materials
13 for regulatory purposes. Even though it had deliberately considered what was required in
14 this regard, however, there was no mention by the Staff of any legal obligation to
15 resubmit the entire CAM each year – a further indication of how little merit there is in
16 Staff's insistence today that such a requirement exists.

17 Q. If there was an obligation to submit the CAM each year to the Staff, has Laclede met that
18 obligation?

19 A. Laclede can make a good faith assertion that it has provided or discussed the CAM
20 enough times with Staff over the years that it has achieved substantial compliance, if such
21 an obligation existed.

22 Q. How so?

1 A. It has been well established that Laclede submitted the CAM to Staff in 2001 and 2002,
2 discussed it with Staff in 2003 (see below), at which time a copy may have been
3 furnished, submitted a revised copy of the CAM to Staff in 2004, discussed the CAM at
4 some length with Staff in connection with the 2005 rate case, provided an internal audit
5 of the CAM to Staff in 2006, submitted copies to Staff in 2007 and 2008, held oral
6 arguments that explicitly referenced the CAM in 2009 and 2010, and referenced the
7 CAM repeatedly in pleadings submitted in 2009, 2010 and 2011.

8 Q. In response to your earlier testimony that Staff promised to provide Laclede with
9 feedback on its CAM but never did, Mr. Hyneman references a June 7, 2003 meeting at
10 pages 17 and 18 of his rebuttal testimony during which he claims that the Staff attempted
11 to provide such feedback. He claims, however, that Staff efforts to provide such
12 feedback were thwarted because the Company got angry and, as a result, discussions
13 came to an abrupt halt. Is this true?

14 A. No. It is a completely false depiction of the meeting. I was at that meeting. Mr.
15 Hyneman was not at that meeting, nor at any other meeting with Laclede involving the
16 CAM. At no time during the June 2003 meeting did Company personnel express anger,
17 let alone end the meeting abruptly. Instead, we listened respectfully to what Staff had to
18 say and responded with our questions and viewpoints. It should be pointed out that Staff
19 member Janis Fischer's contemporaneous notes of the meeting (which Mr. Hyneman has
20 attached to his rebuttal testimony as Schedule 2) lend absolutely no support to Mr.
21 Hyneman's second hand characterization of Laclede's comportment during this meeting.
22 To the contrary, the notes indicate that the meeting progressed and ended in a normal
23 fashion.

1 Q. Is this the meeting where the Staff indicated that it would go through Laclede's CAM
2 page by page and give the Company feedback on any problems it found?

3 A. No. That meeting occurred after the Company submitted its March 15, 2004 CAM that
4 had been sent to Staff with minor revisions designed to ensure that the CAM was fully
5 consistent with the Commission's Affiliate Transactions Rules. In that meeting, it was
6 Mr. Robert Schallenberg who provided these assurances to Laclede. I should note that
7 the Company did not get angry and abruptly end that meeting either.

8 Q. On page 28 of his rebuttal testimony, Mr. Hyneman denies your assertion that Staff has
9 displayed a general distaste for affiliate transactions. Do you have any rebuttal to Mr.
10 Hyneman's claim?

11 A. Yes. Following the conclusion of our 2007 rate case, I attended a meeting in Jefferson
12 City on October 26, 2007, with other members of Laclede, and with Staff and OPC. Mr.
13 Hyneman did not attend. At the meeting, Laclede personnel requested that the parties
14 reach an understanding on how the Rules should be applied, and on any corresponding
15 CAM revisions, so that it would be easier for Company to understand how to comply
16 with the Rules. Staff responded that if Laclede wanted to make it easier, it should stop
17 doing business with LER. Staff stated its belief that Laclede has better access to gas and
18 transport than LER and should therefore be able to buy gas more cheaply than LER. In
19 effect, Staff thought that Laclede should not buy gas from LER; rather Laclede should
20 acquire gas from wherever LER was acquiring it, but at a better price.

21 Q. Were you surprised by Staff's position?

22 A. Yes. I did not think it was appropriate for a regulator to respond to a question about rule
23 compliance by advising the utility not to take actions permitted by the Rule.

1 Q. Nevertheless, does Staff's position make sense?

2 A. As better explained by Laclede witnesses Michael Cline and John Reed, it does not make
3 sense because Laclede and LER, just like any typical LDC and marketer, are in two
4 different businesses, with different risk profiles, business objectives, supply sources,
5 markets and customer characteristics. Given these differences, it makes no more sense to
6 make the facile assumption that Laclede could simply do what LER does, and save
7 money in the process, than to assume that the vast majority of LDCs in this country who
8 also purchase their gas supplies from marketers could save money by becoming
9 marketers themselves

10 Q. Please summarize your surrebuttal testimony.

11 A. I think it is abundantly clear from the historical record that Staff's claims that Laclede has
12 violated the Rules by not obtaining a formal Commission order approving its CAM, and
13 by not submitting the entirety of its CAM each and every year, are without merit. Indeed,
14 given Staff's regulatory approach to these same issues over the past decade – an approach
15 that is wholly inconsistent with its current position – it is all too obvious that Staff has
16 concocted these alleged violations for the sole purpose of diverting attention from and
17 making Laclede pay for its principled opposition to Staff's unauthorized approach to
18 affiliate transactions. Having worked cooperatively and constructively with the Missouri
19 Staff for almost a quarter of a century on rate cases and various other matters, I hope the
20 Commission will put an end to this dysfunctional and impermissible behavior by its Staff.

21 Q. Does this conclude your surrebuttal testimony?

22 A. Yes, it does.

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

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

A F F I D A V I T

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

Glenn W. Buck, of lawful age, being first duly sworn, deposes and states:

1. My name is Glenn W. Buck. My business address is 720 Olive Street, St. Louis, Missouri 63101; and I am Manager-Financial Services of Laclede Gas Company.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony, on behalf of Laclede Gas Company.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Glenn W Buck

Glenn W. Buck

Subscribed and sworn to before me this 12th day of May, 2011.

Karen A. Zurliene

Notary Public



**Laclede Gas Company
Case No. GC-2011-0098**

**Laclede Gas Company's
First Set of Data Request to the Commission Staff**

1. Please provide copies of all written procedures, manuals, instructional memoranda, guides or other written materials, including electronic versions of such materials, developed by or on behalf of the Commission Staff that address, directly or indirectly, the process, criteria, standards or other parameters by which Staff monitors, audits, and or evaluates utility compliance with the Commission's affiliate transactions rules (See 4 CSR 240-40.015 and 4 CSR 240-40.015). For each document provided, please provide the following information:

- (a) The authors or authors of the document;
- (b) The date on which the document was completed;
- (c) A list of who the document was distributed to;
- (d) Any correspondence, explanatory material, or other accompanying material that was either distributed with the document or that summarizes the purpose of the document;
- (e) Any revisions subsequently made to the document after it was completed, including the date such revisions were made.

Response: Staff relies on the rule itself as the standard for compliance with the rules.

- (a) The Commission directed Staff to develop the rules.
Attached are Reports to Division Directors regarding the Affiliate Rules. One is dated for the Division Directors' April 30, 2003 meeting and one is dated for July 28, 2004 meeting. Who the author was has not been determined at this time.
- (b) Unknown at this time
- (c) The document was intended for Division Directors. This is all Staff has regarding these documents at this time.
- (d) If anything responsive is found, Staff will forward it.
- (e) None known at this time.

Also, attached is a document Staff originally used. Janis Fischer developed this document. She does not know the date it was created and does not recall distributing this list to anyone else.

2. Please provide copies of all written procedures, manuals, instructional memoranda, guides or other written materials, including electronic versions of such materials, developed by or on behalf of the Commission Staff that address, directly or indirectly, the process, criteria, standards or other parameters by which Staff audits or examines cost allocation manuals submitted by utilities in compliance with the Commission's affiliate transactions rules. For each document provided, please provide the following information:

- (a) The author or authors of the document;
- (b) The date on which the document was completed;

- (c) A list of who the document was distributed to;
- (d) Any correspondence, explanatory material, or other accompanying material that was either distributed with the document or that summarizes the purpose of the document;
- (e) Any revisions subsequently made to the document after it was completed, including the date such revisions were made.

Response: See response above.

Since no utility has filed for Commission approval of its CAM, Staff has not developed procedures for review of CAMs to address such a filing. The review of existing CAMS is done in ACA cases and rate cases to the extent affiliate transaction activities may affect customers' rates.

3. Please describe what Staff believes constitutes "Commission approval" of a cost allocation manual under the Commission's affiliate transactions rules, 4 CSR 240-40.015 and 4 CSR 240-40.015. Include in the response:

- (a) A statement of whether Staff believes a formal Commission Order is required to reflect such approval
- (b) A statement of the procedures that Staff believes should be used to obtain such approval;
- (c) A description of the case designations typically given to such approval proceedings, if any.
- (d) A description of the filing process (i.e. tariff filing, application, etc. used to initiate a request for Commission approval.
- (e) A citation to the specific section of the Commission's Chapter 3 Rules relating to Filing and Reporting Requirements that governs the filing and approval process for Cost Allocation Manuals.

Response:

- (a) Yes.
- (b) Filing an application with the Commission requesting approval.
- (c) A GO designation would be appropriate. Staff is not aware of any filings
- (d) Application
- (e) There are general directions for filings that create cases in Chapter 2 and general descriptions of the Application requirements in Chapter 3 but Staff cannot identify a specific section of Chapter 3.

4. Please list each regulated public utility that Staff believes is subject to the Commission's affiliate transactions rules as set forth at 4 CSR 240-40.015 and 4 CSR 240-40.015.

Response: All Missouri regulated gas utility companies, which are subject to the Commission's jurisdiction, are subject to the rules 4 CSR 240-40.015, if they engage in affiliate transactions.

5. For each public utility identified in the response to DR 4, please provide the following information:

- (a) The Commission case or file number of the proceeding or proceedings in which the Cost Allocation Manual for the public utility was approved by the Commission as that term is defined by the Staff;
- (b) The Staff's recommendation, testimony or other similar document reflecting Staff's position regarding approval of the Cost Allocation Manual;
- (c) The date on which the Commission approved the Cost Allocation Manual.

Response: (a) N/A No gas utility has sought approval.
(b) No gas utility has sought approval Commission approval of its CAM.
(c) No gas utility has sought Commission approval of its CAM.

6. For each public utility that is required to maintain a Cost Allocation Manual under the Commission's affiliate transactions rules and which has not sought or received Commission approval for such Cost Allocation Manual, please provide the following:

- (a) A copy of any complaint filed by the Staff which alleges a violation of such rules as a result of the public utility's alleged failure to seek or obtain such approval;
- (b) If no such complaint has been filed, a full and complete explanation of Staff's reasons for not filing a complaint;
- (c) The name or names of the Staff personnel responsible for making the decision not to file a complaint.

Response: (a) Staff has not filed complaints but is considering an appropriate course of action.
(b) In rate cases Staff has attempted to work cooperatively with utility companies to achieve compliance with the rules however, Staff is planning to file complaints for lack of compliance with this section of the rules requiring a commission approved CAM for those utility companies that .
(c) There have not been any formal decisions not to file complaints. Staff is considering what course of action is appropriate.

7. For each annual Cost Allocation Manual report submitted by a utility during for the most recent five year period, please state:

- (a) The identify of the utility which submitted the annual report;
- (b) The date on which Staff commenced its audit or examination of the report and the transactions addressed therein;
- (c) The current status of Staff's audit or examination;
- (d) Whether any report has been completed based on Staff's audit or examination; and
- (e) The date on which Staff expects to complete its audit or examination if the audit has not yet been completed.

Response: (a) See attached reports.

- (b) No audit would begin until a utility submitted its CAM for approval
- (c) If a utility does not seek approval the CAM and affiliate transactions are addressed in rate and ACA cases.
- (d) Audits or examinations completed as a result of rate or ACA cases will be part of the record in those cases.
- (e) The rate case audits/examinations or ACA case examinations would be complete when the cases were closed, unless there was an order or agreement to continue addressing the issues after the close of such cases.

8. For the annual Cost Allocation Manual reports submitted by Laclede Gas Company during the most recent five year period, please state:

- (a) The date on which Staff commenced its audit or examination of the report;
- (b) The identity, job titles, professional and educational backgrounds of the Staff personnel assigned to conduct such audit or examination;
- (c) Copies of any reports, memoranda, workpapers, correspondence or other materials, whether in written or electronic form, reflecting the progress and/or results of such audit or examination;
- (d) Copies of any instructions, correspondence, memoranda, or other materials, whether in written or electronic form, that purports to provide specific guidance on how such audit or examination should be conducted.

Response: (a) To the extent Laclede is asking about the Annual Reports it submits to Staff, Staff has made audits or examination of Laclede's Annual Reports in both of Laclede's last rate cases.

- (b) The Staff assigned should be known by Laclede as those Staff members either filed testimony or negotiated with Laclede in the rate case process. The Staff involved include John Cassidy,, Lisa Hanneken, Mark Oligschlaeger, and Paul Harrison. Their educational background and experience is attached to testimony filed in these cases.
- (c) Staff directs Laclede to the testimony filed in each of Laclede's last two rate cases, and to the settlements and attachments for documents reflecting the process and results.
- (d) Staff uses the rules themselves as a guideline.

9. For the revised Cost Allocation Manual submitted by Laclede Gas Company to the Commission Staff in March of 2004, please state:

- (a) The date on which Staff commenced its review of the Cost Allocation Manual;
- (b) The identity, job titles, professional and educational backgrounds of the Staff personnel assigned to conduct such review;
- (c) Copies or any reports, memoranda, workpapers, correspondence or other materials, whether in written or electronic form, reflecting the progress and/or results of such review;

- (d) Copies of any instructions, correspondence, memoranda, or other materials, whether in written or electronic form, that purport to provide specific guidance on how such review should be conducted.

Response: (a) Staff does not know the date of initial review.
(b)(c), and (d) Staff does review affiliate transaction and the CAM in rate cases and Staff has addressed concerns in both of Laclede's last rate cases. Staff's testimony in both of those cases is available on EFIS.

- 10. With respect to the Direct Testimony filed by Charles R. Hyneman in this case, please state whether and to what extent Mr. Hyneman reviewed the testimony, depositions, and/or cross examination of David Sommerer in Case No. GR-2008-0364 before filing such testimony.

Response: Mr. Hyneman has reviewed several documents and watched videos of several Commission proceedings involving Laclede and Atmos prior to, and subsequent to his filing direct testimony. He does not recall whether or not he reviewed Mr. Sommerer's referenced testimony, depositions and/or cross examination prior to filing his direct testimony on March 22, 2011.

- 11. At page 5 of his Direct Testimony, Mr. Hyneman states that the affiliate transactions rules must be coupled with "effective utility oversight and effective enforcement" to lessen the risk of excessive charges to ratepayers. Does Mr. Hyneman believe that "effective utility oversight" in the context of affiliate transactions requires the Staff to closely monitor and promptly review all cost allocation manuals and annual reports submitted by utilities pursuant to the affiliate transactions rules? Please explain why or why not.

Response: Not necessarily. The Commission Staff has typically reviewed the CAMs and annual reports submitted by a utility company in the context of a rate case or PGA/ACA case. When affiliate transactions are involved in rate setting, Mr. Hyneman believes that the transactions themselves should be closely monitored and promptly reviewed depending on a risk assessment of the probability of the activities affecting consumer rates.

- 12. Does Mr. Hyneman believe that "effective utility oversight" in the context of affiliate transactions requires that Staff promptly notify a utility if Staff believes the utility's cost allocation manual or annual report submissions contain terms or provisions that Staff believes are contrary with the Commission's affiliate transactions rules or otherwise inadequate to protect ratepayers from excessive costs? Please explain why or why not.

Response: Under the rules it is the utility's responsibility to ensure its CAM is in compliance with both the affiliate transaction rules and marketing transactions rules. It is incumbent on a utility to periodically review and use internal and external audits of its CAM to ensure it is in compliance with these rules. Current CAMs are submittals discussed between Staff, the Company and sometimes OPC. Mr. Hyneman believes that

effective utility oversight includes discussing with a utility if an audit of a utility's affiliate transactions indicates that a CAM is not in compliance with the affiliate transaction rules, the Staff should take appropriate actions. In a ratemaking proceeding, such action would include ratemaking adjustments and testimony to ensure that the Commission is aware of Staff's findings. Effective utility oversight in this context would require the Staff to take actions to lessen the risk of imprudent, inappropriate or excessive costs being included in rates to utility ratepayers.

13. Does Mr. Hyneman believe that "effective utility oversight" in the context of affiliate transactions requires that Staff promptly file a complaint if it determines that a utility is not seeking any Commission approvals required by the Commission's affiliate transactions rules? Please explain why or why not.

Response: No. Mr. Hyneman was specifically referring to ratemaking in his testimony regarding effective utility oversight. Mr. Hyneman is generally aware that Staff has addressed affiliate transactions issues with Laclede in the past two Laclede rate cases.

14. Does Mr. Hyneman believe that "effective utility oversight" in the context of affiliate transactions requires that Staff maintain records of its reviews of the cost allocation manuals and annual reports submitted by utilities pursuant to the Commission's affiliate transactions rules?

Response: Since reviews are done in the context of Laclede rate cases, the documentation of such review is integrated in the rate case documentation and testimony, which is publicly available on EFIS. The same is true for ACA cases.

15. Does Mr. Hyneman believe that "effective utility oversight" in the context of affiliate transactions requires that Staff review and make recommendations concerning the cost allocation manuals and annual reports submitted by utilities pursuant to the Commission's affiliate transactions rules in a consistent manner?

Response: Mr. Hyneman believes the rules apply to all utility companies engaged in affiliate transactions. Mr. Hyneman believes that the Rules are applied in a consistent manner, however, each utility is unique and circumstances are specifically handled in rate cases and PGA/ACA cases as applicable to each utility. One factor would be the extent of the affiliate transactions and the potential risk of inappropriate affiliate transaction costs being charged to utility ratepayers.

16. At page 9 of his Direct Testimony, Mr. Hyneman states that the pricing provisions in Laclede's CAM for gas supply purchases "obviously" does not comply with the Commission's affiliate transactions rules. If it is so obvious that this provision of the CAM does not comply with the affiliate transactions rules, please explain why the Staff did not advise the Company of its position in that regard at the time Laclede submitted the CAM to Staff in December 2001?

Response: Mr. Hyneman does not know the answer to this question, but notes the Rules were stayed and not applicable to Laclede at that time. Laclede was under a stay of the Affiliate Transactions Rule until summer 2003. Mr. Hyneman has did not attend the meeting but as a result of discussions with Ms. Shemwell I reference a meeting with Laclede in my Rebuttal testimony. Mr. Hyneman also notes CAM related issues that affect rates and gas costs charged to Laclede customers have been documented in cases before the Commission, specifically in rate cases, in stipulations and agreements with specific recommendations to address CAM and affiliate transactions rules.

17. If it is so obvious that this provision of the CAM does not comply with the affiliate transactions rules, please explain why the Staff did not advise the Company of its position in that regard at the time Laclede submitted its revised CAM to Staff in March 2004?

Response: Again Mr. Hyneman does not know the answer to that. Mr. Hyneman is aware the Staff and the Company have had numerous meetings to discuss Staff's concerns with Laclede's CAM.

18. Please identify which Staff member first determined that the CAM did not comply with the affiliate transactions rules and when such determination was made.

Response: Staff does not know the answer to that question.

19. Please provide copies of all memoranda, pleadings or other documents referencing that Staff's members determination.

Response: See response above.

20. Please provide copies of all memoranda, pleadings or other documents referencing any actions that Staff recommended be taken once such a determination was made.

Response: Staff will make a good faith search for these items, but notes any pleadings Staff have filed are public documents available in EFIS to which Laclede has access.

21. Please describe in detail how Staff would determine the fully distribution cost to the utility for natural gas purchases it makes to serve it customers. In providing such explanation, please outline all calculations that would be made and information needed to determine the fully distributed cost.

Response: FDC is defined in 4CSR 240-40.015(1)(F) as a: methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated (e.g., general and administrative) must also be included in the FDC calculation through a general

allocation. To calculate Laclede's FDC to acquire natural gas (a service provided to Laclede by its Gas Purchasing Department), Laclede would need to examine all costs to Laclede in relation purchasing natural gas. Some of these costs would be salaries and benefits of the Gas Purchasing Department, rent or capital costs associated with the facilities used by these employees, depreciation expense on equipment, and debt and equity costs associated with any investor-owned utility investments consumed in the process of purchasing natural gas. Laclede's FDC to purchase natural gas would be the actual cost of the natural gas purchased, plus all costs as described above. However, its relevant or actual FDC is its "net" or actual cost. Laclede's net FDC would be its gross costs, less the costs that are currently being recovered in utility rates. This is the relevant price that would be compared to the fair market price.

P.S.C. MO. No. 5 Consolidated, Original Sheet No. R-42
CANCELLING All Previous Schedules

Laclede Gas Company

Name of Issuing Corporation or Municipality

For

Refer to Sheet No. R-1

Community, Town or City

RULES AND REGULATIONS

33. Off-System Sales

(1) Definitions:

Off-system marketing Sales (OS-Sales) are herein defined as any Company sale of gas, or gas bundled with pipeline transportation, made to parties at locations off the Company's distribution system. Subject to any waivers or approved modifications, OS-Sales made to an affiliate of the Company shall be accounted for in accordance with the Company's Cost Allocation Manual or, if and when applicable, the Commission's affiliate transaction rules.

Off-system Sale Revenues (OS-Revenues) are the actual revenues received by the Company from an OS-Sale.

Cost of Gas Supply (CGS) is the commodity cost related to the purchase of gas supply, exclusive of transportation costs.

Off-system Cost of Gas Supply (OS-CGS) is the CGS related to the purchase of gas supply for a proposed OS-Sale. In determining the OS-CGS, the costs of gas supplies: (1) which have been procured on behalf of the Company's on-system customers for a period greater than one month; and (2) which have a commodity price at the time of the OS-Sale that has been altered from an indexed price as a result of a hedge in a physical gas supply contract, shall not be considered. Nor shall the Company use such gas supplies for OS-Sales, unless the Company determines, and provides sufficient information to verify, that selling such gas supplies is not detrimental to its customers. Subject to the foregoing exclusion of certain gas supplies, the OS-CGS is equal to the highest CGS from the CGS-Schedule (as defined below) associated with the quantity of actual OS-Sales for the pipeline on which the sale is made, unless a lower CGS is documented and supported in accordance with the provisions of Section 3 of this rule. The total OS-CGS to be booked as a cost to the OS-Sales Accounts shall be equal to the sum of the multiplication of the gas cost of each individual transaction by the associated quantities actually sold as shown on the CGS-Schedule.

Off-system Cost of Transportation (OS-COT) is the incremental cost of transportation related to the delivery of the gas supply for an OS-Sale to the point of delivery. The OS-COT shall include all commodity related transportation costs, including fuel, associated with the OS-Sale. The OS-COT shall not include non-commodity related LDC system supply transportation costs.

Off-system Net Revenue (OS-Net-Revenue) is equal to OS-Revenues minus OS-CGS and OS-COT.

DATE OF ISSUE

November 21, 2001

Month Day Year

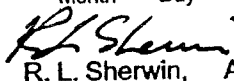
DATE EFFECTIVE

December 1, 2001

December 21, 2001

Month Day Year

ISSUED BY



R. L. Sherwin, Assistant Vice President, 720 Olive St., St. Louis, MO 63101

Name of Officer

Title

Address

Schedule GWB-S

D.R. No. 5012

LACLEDE GAS COMPANY
Case No. GR-2002-356

Pursuant to Laclede Gas Company tariff sheet R-42 (Off-System Sales) please provide a copy of the Company's Cost Allocation Manual(s) in effect from October 2000 through current date. In addition, please indicate the dates that such manuals were effective.

LACLEDE GAS COMPANY
720 OLIVE STREET
ST. LOUIS, MISSOURI 63101

AREA CODE 314
342-0532

MICHAEL C. PENDERGAST
ASSISTANT VICE PRESIDENT
ASSOCIATE GENERAL COUNSEL

December 21, 2001

VIA FEDERAL EXPRESS

Mr. Cliff Snodgrass
Missouri Public Service Commission
200 Madison Street
Jefferson City, MO. 65101

Mr. Doug Micheel
Office of the Public Counsel
200 Madison Street, Suite 650
Jefferson City, MO 65101


Ms. Jan Bond
Diekemper, Hammond, Shiners, Turcotte
and Larrew
7730 Carondelet Ave., Suite 200
Clayton, MO 63105

Dear Cliff, Doug and Jan:

Pursuant to the Stipulation and Agreement approved by the Commission in Case No. GM-2001-342, attached for your handling is a copy of the Company's revised Cost Allocation Manual. As required by Section VII(2.) of the Unanimous Stipulation and Agreement, I have also included a copy of the actual journal entry recorded on Laclede Gas Company's books related to the final reorganization on October 1, 2001.

Please do not hesitate to call me if you have any questions regarding the enclosed matter.

Very truly yours,


Michael C. Pendergast (KZ)

MCP:kz
Enclosure

DRAFT

COST ALLOCATION
MANUAL

October, 2001

The Laclede Group, Inc.
Laclede Gas Company
Laclede Investment LLC
Laclede Development Company
Laclede Pipeline Company
Laclede Energy Resources, Inc.
Laclede Venture Corp.
Laclede Gas Family Services, Inc.

720 Olive Street - St. Louis, MO 63101

I. INTRODUCTION

On August 14, 2001, the Missouri Public Service Commission issued an Order authorizing the Company to restructure itself into a holding company (The Laclede Group, Inc.), a regulated utility company (Laclede Gas Company), and unregulated subsidiaries. In order to preserve and supplement existing protections against improper cross-subsidization, Laclede Gas Company submits this Cost Allocation Manual (CAM) effective October 1, 2001. The CAM sets forth policies and procedures to be followed when Laclede Gas Company engages in any transactions with its affiliates. The CAM and procedures set forth herein will be submitted to Staff, Public Counsel, and PACE on or before April 15, 2003, and on an annual basis thereafter, for the twelve-month period ended September of the prior year.

The present version of the CAM addresses some, but not all of the regulations adopted by the Commission in its recent Rulemaking on affiliate transactions. Those rules are currently under appeal and their implementation has been stayed during this process. However, this CAM can readily be updated to reflect the outcome of any final judicial resolution of the Commission's affiliate transactions rules.

II. SCOPE OF AFFILIATE TRANSACTIONS

The number and scope of affiliate transactions are limited. Laclede Gas Company is the largest company in the new structure and remains devoted to providing high quality gas service.

Nonetheless, there are or may be opportunities to share certain administrative and other functions among system companies to introduce efficiencies to purchasers of regulated and unregulated services alike. This CAM is designed to ensure that such cost-saving opportunities are accounted for in a manner that, consistent with applicable law and regulation, reasonably prevents inappropriate cross-subsidization.

III. SERVICES AND FACILITIES AGREEMENT

The Laclede Group and each affiliate taking or receiving services, sharing facilities or having other affiliate transactions with Laclede Gas will sign and become a party to a Services and Facilities Agreement (“SFA”). The SFA establishes procedures, terms and conditions for providing shared services and facilities and other activities. A copy of the SFA is attached hereto as Appendix 1.

IV. ACCOUNTING PROCEDURES

Laclede Gas Company shall maintain adequate books and records with respect to the transactions described in this CAM and in the SFA to record the costs to be apportioned to the other Parties. Laclede Gas Company shall be responsible for ensuring that the costs associated with transactions covered by this CAM are properly and consistently allocated and billed in accordance with the terms and provisions of the SFA.

Laclede Gas Company, each affiliate and The Laclede Group, Inc. will maintain records supporting its affiliated transactions for at least five years. Laclede Gas Company shall conduct audits of this CAM and the SFA on a periodic basis. Computer systems, billings and source documentation will be examined to ensure the services, facilities or other activities provided are authorized, documented and accurately recorded.

V. SERVICES, FACILITIES AND ACTIVITIES

Each company will determine the appropriate level of services, facilities or other activities it requires and will make such requests as it deems appropriate.

A. Facilities. Upon the terms and subject to the conditions of the CAM and SFA, a Party may request, without limitation, the use of:

(a) facilities, including office space, warehouse and storage space, natural gas transportation and storage facilities, including third party facilities reserved for Laclede's use pursuant to contract, repair facilities, manufacturing and production facilities, fixtures and office furniture and equipment;

(b) computer equipment (both stand-alone and mainframe) and networks, peripheral devices, storage media, and software;

(c) communications equipment, including audio and video equipment, radio equipment, telecommunications equipment and networks, and transmission and switching capability;

(d) vehicles, including automobiles, trucks, vans, trailers, transport equipment, material handling equipment and construction equipment; and

(e) machinery, equipment, tools, parts and supplies.

A Party shall have no obligation to provide any of the foregoing to the extent that such item or items are not available (either because such Party does not possess the item or the item is otherwise being used). A Party has sole discretion in scheduling the use of facilities, equipment or capabilities so as to avoid interference with that Party's operations.

B. Services. Upon the terms and subject to the conditions of the CAM and the SFA, a Party may request, without limitation:

(a) Administrative and management services, including accounting (i.e., bookkeeping, billing, accounts receivable administration and accounts payable administration, and financial reporting); audit; executive; finance; insurance; information systems services; investment advisory services; legal; library; record keeping; secretarial and other general office support; real estate management; security holder services; tax; treasury; and other administrative and management services;

(b) Personnel services, including recruiting; training and evaluation services; payroll processing; employee benefits administration and processing; labor negotiations and management; and related services;

(c) Purchasing services, including preparation and analysis of product specifications, requests for proposals and similar solicitations; vendor and vendor-product evaluations; purchase order processing; receipt, handling, warehousing and disbursement of purchased items; contract negotiation and administration; inventory management and disbursement; and similar services; and

(d) Operational services, including drafting and technical specification development and evaluation; consulting; engineering; environmental; construction; design; resource planning; economic and strategic analysis; research; testing; training; public and governmental relations; and other operational services.

A Party shall have no obligation to provide any of the foregoing to the extent that it is not capable of providing such service (either because such Party does not have personnel capable of providing the requested service or the service is otherwise being used). A Party has sole discretion in scheduling of services so as to avoid interference with the Party's operations.

C. Joint Purchasing. A party may also request that another Party or Parties enter into arrangements to effect the joint purchase of goods or services from third parties. Under the SFA, Laclede Gas will only participate in such arrangements if its fully distributed cost for such goods or services is not thereby increased.

No Party shall be required to purchase a service that it is otherwise capable of providing or obtaining. In the event that any such arrangements are established, one Party may be designated as, or serve as, agent for the other Parties to the arrangement and may administer the arrangement (including billing and collecting amounts due the vendor(s)) for the other Parties.

D. Cash Management. The Parties may enter into one or more arrangements providing for the central collection, management, investment and disbursement of cash by a Party. If such an arrangement is established, then pursuant to the SFA:

(a) the Parties participating in such arrangement shall establish appropriate inter-company accounts to track the amount of cash transferred and/or received by each Party to such arrangement and the pro rata portion of the earnings received or interest paid by each such party from the investment or borrowing of cash; and

(b) the Party responsible under the arrangement for the management and investment of such cash shall establish a separate account or accounts for such purpose, which account(s) and the records associated therewith shall clearly indicate that other Parties have an interest in said account(s) and the proceeds thereof and shall not be subject to set-off by the bank or other institution holding the same except to the limited

extent of expenses arising from the management, handling and investment of the account(s).

E. Agreements, Etc. A Party may evidence their agreement with respect to the availability, provision or use of the facilities, services and activities described in this CAM by entering into an agreement, lease, license or other written memorandum or evidence consistent with the terms of the SFA.

VI. ASSET TRANSFERS

Laclede Gas Company shall not sell, lease, assign or transfer to any affiliate or third party any of its utility assets that are used and useful in the performance of Laclede's public utility obligations without obtaining Commission approval.

VII. CHARGES; PAYMENT

A. Charges. Charges for the use of facilities, equipment, capabilities or services shall be determined in accordance with the section below regarding cost principles. By requesting the use of facilities, equipment, capabilities and/or services, a Party shall be deemed to have agreed to pay, and shall pay, to the Provider or Providers the charge determined therefor in accordance with the CAM and the SFA.

B. Payment. Payment for the facilities, services and other activities shall be accounted for on a monthly basis and shall accrue interest if not made by the last day of the month following the month in which the service was rendered. Late payments shall bear interest at a simple rate per annum equal to the prime bank lending rate as published in The Wall Street Journal (on the first day of the month) minus one percentage point. Such interest shall be based on the period of time that the payment is late.

VIII. ANNUAL REPORTING REQUIREMENTS

The following information, as required to administer, audit, and verify the Transfer Pricing and Costing Methodologies set forth in Section IX of this CAM or such other Transfer Pricing and Costing Methodologies as may become applicable to the company in the future, shall be submitted on an annual basis to Staff, the Office of the Public Counsel and PACE beginning April 15, 2003 and continuing each year thereafter.

- A. For all Laclede Gas Company functions that will provide support to nonregulated affiliates and the holding company:
 - (a) A list and description of each function;
 - (b) The positions and numbers of employees providing each function; and
 - (c) The procedures used to measure and assign costs to nonregulated affiliates and the holding company for each function.

- (B.) A list and description of each service and good that will be provided to Laclede Gas Company from each affiliate and the holding company.

- (C.) A list and description of each service and good that will be provided by Laclede Gas Company to each affiliate and the holding company.

- (D.) The dollar amount of each service and good charged to each affiliate and the holding company by Laclede Gas Company, and the total cost related to each service and good listed.

- (E.) The dollar amount of each service and good purchased from each affiliate and the holding company by Laclede Gas Company, and the total cost related to each service and good listed.

- (F.) For each line of business that will be engaged in by Laclede Gas Company with non-affiliated third party customers following formation of a holding company and that would not reasonably be considered as a component of its regulated utility business, Laclede shall provide:
 - (a) A list and description of each nonregulated activity;
 - (b) The total amount of revenues and expenses for each nonregulated activity for the last fiscal year; and
 - (c) A listing of all Laclede Gas Company cost centers and/or functions that directly assign cost, indirectly assign cost and/or allocate cost to each nonregulated activity engaged in by Laclede Gas Company with non-affiliates.

(G.) As part of its CAM submittal, Laclede Gas Company will provide a list of all jurisdictions in which Laclede Gas Company, the holding company, affiliates, and service company, if formed, file affiliate transaction information.

(H.) As part of its CAM submittal, Laclede Gas Company will also provide Organizational Charts for The Laclede Group, Inc. (corporate structure), Laclede Gas Company and any other affiliate doing business with Laclede Gas Company and a copy of the annual holding company filing The Laclede Group, Inc. is required to file with the Securities and Exchange Commission.

IX. TRANSFER PRICING/COSTING METHODOLOGY

A. Use of Facilities or Services. (i) Facilities or services provided to Laclede Gas Company by an affiliated Provider shall be charged at the lesser of the fair market price for such facilities or services or the fully distributed cost to Laclede Gas Company to provide the goods or services for itself.

(ii) Facilities or services provided by Laclede Gas Company to an affiliate shall be charged by Laclede Gas Company at the tariffed rate or, if no such tariffed rate exists, the fully distributed cost incurred by Laclede Gas Company in providing such facility or service, unless an alternative method for determining such charges is provided by law.

B. Fair Market Price. Except as otherwise provided in this CAM, the fair market price of an asset or service as used in subsection A (i) means: (1) the prevailing price for which the same or similar facilities, services or goods are offered for sale by the affiliate or, if no such prevailing price exists, (2) the price at which nonaffiliated vendors offer the same or similar facilities, services or goods for sale determined by reference to quoted market prices, independent appraisals, benchmarking studies or other objectively determinable evidence.

C. Fully Distributed Costs. The fully distributed cost of an asset or service as used in subsections A (i) and (ii), means: (1) Laclede Gas Company's cost of labor, materials and services that can be directly attributed and charged to the asset or service; and (2) an allocated share of Laclede Gas Company's indirect joint or common labor and administrative and general costs. The fully distributed cost of an asset or service shall be identified and charged or allocated to the asset or service in accordance with these general principles, as more fully outlined below:

(i) Direct Costs. Costs incurred for materials or services that are specifically attributable to goods or services provided to an affiliate shall be charged directly to the books and records of the affiliate, using standard voucher account distribution procedures. Such charges will be visible in the accounting records through cash vouchers, invoices, or other source documents.

(ii) Direct Labor Costs. Amounts for direct labor used in providing a service to an affiliate shall be charged to the accounts of affiliates based on direct labor rates as applied to time-keeping records. For most employees, direct labor shall be charged under a positive time reporting methodology under which an employee shall report each pay period the amount of time incurred in performing the service. Based on the time reported each pay period, the regular, predetermined account distribution for the employee shall be adjusted to reflect the distribution of direct labor charges to the service.

Some departments or organizations are expected to provide a recurring, predictable level of services to a Party or Parties. For these departments or organizations, periodic reviews shall be performed to determine a normal distribution of time to such services. The distribution percentages derived from such reviews shall then be used to allocate time with respect to each pay period. For these departments or organizations, direct labor shall be charged to the service under an exception time reporting methodology. That is, significant deviations of actual activity

from these predetermined percentages shall be reported and shall result in adjustments to the predetermined distribution of direct labor charges to the affiliate functions. Officers of Laclede Gas Company shall also utilize either a positive time or an exception time reporting methodology.

Overtime shall be reflected in the direct labor rates charged to a service. Direct labor shall be charged based either on the base and overtime pay amounts actually incurred by Laclede Gas Company or, as adjusted on a departmental or organizational basis, to reflect estimated overtime incurred based on an overtime review performed periodically.

All charges for direct labor charges shall reflect a cost for nonproductive time. The cost for nonproductive time shall be based either on actual nonproductive time incurred by Laclede Gas Company, or as adjusted on a departmental or organizational basis, to reflect estimated nonproductive time derived from a periodic review. The cost for nonproductive time reflects time incurred for vacations, holidays, and other paid absences.

Many payroll-related costs are charged through separate journal entries via clearing account distributions that directly follow the payroll charged to the accounts of the affiliate and as described below.

(iii) Indirect and Allocated Costs. When costs benefit more than one entity or when costs cannot be specifically associated with a particular activity, the fully distributed cost of each expense item (including administrative and general costs, and the cost of facilities, equipment, machinery, furniture and fixtures used to provide the service) shall be allocated as set forth below. For some expense items, three components are combined to determine an allocation factor. This three-component allocation factor is derived by calculating the percent of each affiliate's share of the total for fixed assets and investments, revenues, and direct payroll. These

three amounts are averaged to determine the three-component allocator for each affiliate. The following expense items are allocated as indicated below:

Administrative & General Expenses – Total miscellaneous administrative and general expenses charged to the utility shall be allocated to affiliated entities based on the percentage of each affiliates direct payroll charges as compared with total payroll charges. These expenses include phone charges, office and computer supplies, printing, subscriptions, travel, and other general expense items. Administrative and general expenses identifiable and specific to a particular affiliate will be charged directly to that affiliate.

Annual Report & SEC Reporting Costs – These costs shall be allocated to each affiliated entity based on the three-component allocation method as applied to the previous fiscal year.

Board of Director Fees – These costs shall be allocated to each affiliate based on the three component allocator.

Depreciation – An allocation of depreciation expense related to the cost of utility-owned facilities, equipment, machinery, furniture or fixtures utilized by an affiliate or in providing a service to an affiliate shall be charged to each affiliate based on the portion of time each asset or class of asset is dedicated to non-utility work. Furniture and fixtures will be allocated on a cost per employee basis as applied to direct manhours reported for each affiliate.

Employee-related costs – Expenses related to payroll taxes, medical, dental, and vision insurance costs, pension and other post-retirement benefit costs, incentive compensation plan costs, and employee savings plan costs will be allocated based on direct payroll hours charged to each affiliate.

Information Systems – The costs of projects dedicated to affiliates will be charged directly to each affiliate. All costs related to the operation of mainframe systems will be

allocated based on a percentage of operating and production time dedicated to routine affiliate activities as compared to the total for each system. Such allocations shall be based on a study performed annually. Costs related to network applications will be allocated based on the number of personal computers assigned on a departmental basis. The departmental allocation of costs will be appropriately allocated to affiliates based on the proportion of direct labor reported by each department for an affiliate.

Insurance – The cost of insurance directly related to the property or activities of any affiliate will be charged directly to each affiliate. The cost of insurance policies applicable to more than one entity will be allocated based on the proportion of each affiliate’s share as compared with the total company as follows:

- Property & Liability Insurance – fixed assets at book value (net plant)
- Workmen’s Compensation – actual claims cost will be charged directly and the administrative fees will be allocated based on number of employees
- Officers & Directors Liability Insurance – three-component allocator as described above

Such allocations shall be based on the above parameters at September 30 of the previous fiscal year.

Rent – Rent expense for space dedicated to affiliated operations will be priced on a cost per square foot basis and charged directly to each affiliate. In addition, an allocation of indirect costs for rent will be made based on an annual cost per manhour of rent expense as applied to direct payroll hours charged to each affiliate.

Vehicle costs – The operating costs related to applicable vehicle groups will be allocated based on direct payroll hours charged to each affiliate and/or through the allocation of administrative and general expense described above.

Energy-Related Goods and Services – The following energy commodity goods and services that are provided to Laclede Gas Company by its affiliates will be priced in accordance with the following provisions:

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 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.

Pipeline transportation and storage capacity releases – shall be the fair market price which shall be determined as the price of similar capacity transactions made by Laclede Gas Company with non-affiliated entities entered into at similar times for similar duration and location of transportation capacity. If such transactions do not exist, the fair market price will be a price as posted on the applicable pipeline's bulletin board for similar capacity for a similar duration. If such postings do not exist, the fair market price shall be determined by using an industry accepted index price or index prices published in either Gas Daily, Inside FERC, or other similar publication widely accepted in the industry for determining the value of such capacity.

The following energy commodity goods and services that are provided by Laclede Gas Company to its affiliates will be priced in accordance with the following provisions:

Gas supply sales – shall be the fair market price which shall be determined as the average price of similar sales made by Laclede Gas Company to non-affiliated entities entered into at similar times for similar duration and location of such sales. If such sales do not exist, the fair market price for the location and period in question will be determined using an industry accepted index price or 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.

Pipeline transportation and storage capacity releases – shall be the fair market price as determined through a posting and bidding process in accordance with the capacity release provisions contained in the pipeline’s FERC approved tariff.

X. DISPUTE RESOLUTION

If there is a dispute between Laclede Gas Company and any affiliate regarding a billing, representatives of all involved parties will meet to resolve the issues. Managers and other executives of the affected parties may also be consulted. In the event that a resolution cannot be reached, the issue will be referred to senior management for final resolution.

XI. EXCEPTIONS TO APPLICATION OF METHODOLOGIES

The methodologies set forth in this CAM provide general guidelines to govern how Laclede Gas Company will allocate costs to or pay for services received from or provided to affiliates. Such guidelines shall not be applicable in the event another methodology is prescribed by law for allocating costs to or pricing such services. Laclede Gas Company may also employ a different allocation or pricing methodology than those described herein in the event it determines

that application of the methodologies or costing principles described herein would not be in the best interests of its utility customers, provided that Laclede Gas Company shall maintain information sufficient to show how costs would have been allocated to such services pursuant to the methodologies set forth in this CAM, and provided further that such alternative methodology will be subject to review and adjustment in any subsequent rate case proceeding.

Submitted,

The Laclede Group, Inc.
Laclede Gas Company
Laclede Investment LLC
Laclede Development Company
Laclede Pipeline Company
Laclede Energy Resources, Inc.
Laclede Venture Corp.
Laclede Gas Family Services, Inc.

Appendix 1

SERVICES AND FACILITIES AGREEMENT

Dated as of _____, 2001

Among

**The Laclede Group, Inc.
Laclede Gas Company
Laclede Investment LLC
Laclede Development Company
Laclede Pipeline Company
Laclede Energy Resources, Inc.
Laclede Venture Corp.
Laclede Gas Family Services, Inc.**

720 Olive Street - St. Louis, MO 63101

SERVICES AND FACILITIES AGREEMENT

THIS SERVICES AND FACILITIES AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____ 2001, among The Laclede Group, Inc., Laclede Gas Company, Laclede Investment LLC, Laclede Development Company, Laclede Pipeline Company, Laclede Energy Resources, Inc., Laclede Venture Corp., Laclede Gas Family Services, Inc., and each of the entities identified on Exhibit A hereto, as such Exhibit A may be amended from time to time in accordance with the provisions of this Agreement.

WITNESSETH:

WHEREAS, the parties are related by virtue of common ownership, directly or indirectly, of their equity securities by The Laclede Group, Inc.; and

WHEREAS, the parties believe that the central management of certain services and the provisions to each other of certain services and facilities are or may be efficient and cost effective, and the parties desire to make provision for these and other transactions as between Laclede Gas Company and another Laclede Group Entity or Entities;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree as follows:

ARTICLE I

Definitions and Interpretation

Section 1.1. *Definitions.* As used in this Agreement, the following terms shall have the respective meanings set forth below unless the context otherwise requires:

"*Commission*" means the Missouri Public Service Commission.

"*Cost Allocation Manual*" or "*CAM*" means the then effective version of the Laclede Gas Company Cost Allocation Manual.

"*Laclede Group Entity*" means The Laclede Group, Inc. and any of the entities identified on Exhibit A.

"*Party*" means each, and "*Parties*" means all, of the entities who are from time to time a party to this Agreement.

"*Provider*" means a Party who has been requested to, and who is able and willing to, furnish facilities, provide services or have other transactions with a Requestor under the terms of this Agreement.

"Requestor" means a Party who desires to use facilities, receive services or have other transactions with a Party and has requested another Party to furnish such facilities, provide such services or transactions.

Section 1.2. *Purpose and Intent; Interpretation.* (a) The purposes and intent of this Agreement are to set forth procedures and policies to govern (i) transactions between a Laclede Group Entity and Laclede Gas Company, whether such transactions occur directly or indirectly as the end result of a series of related transactions and (ii) the allocation of certain joint service costs. It is not intended to govern transactions between Laclede Group Entities that do not involve Laclede Gas Company, although such entities may elect to apply the provisions of this Agreement to transactions among themselves. This Agreement shall be interpreted in accordance with such purposes and intent.

(b) The headings of Articles and Sections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

ARTICLE II

Use of Facilities and Services

Section 2.1. *Facilities.* Upon the terms and subject to the conditions of this Agreement, a Requestor may request a Provider or Providers to make available or provide facilities and equipment as described in the CAM. A Provider shall have no obligation to provide any facilities to the extent that such item or items are not available (either because such Provider does not possess the item or the item is otherwise being used); and it is understood that a Provider has sole discretion in scheduling the use by a Requestor of facilities, equipment or capabilities so as to avoid interference with such Provider's operations.

Section 2.2. *Services.* Upon the terms and subject to the conditions of this Agreement, a Requestor may request a Provider or Providers to provide services as described in the CAM. A Provider shall have no obligation to provide any service to the extent that it is not capable of providing such service (either because such Provider does not have personnel capable of providing the requested service or the service is otherwise being used); and it is understood that a Provider has sole discretion in scheduling the use by a Requestor of services so as to avoid interference with such Provider's operations.

Section 2.3. *Joint Purchasing.* A Party may also request that another Party or Parties enter into arrangements to effect the joint purchase of goods or services from third parties. Under the SFA, Laclede Gas will only participate in such arrangements if its fully distributed cost for such goods or services is not thereby increased.

Section 2.4. *Cash Management.* The Parties may enter into one or more arrangements providing for the central collection, management, investment and disbursement of cash by a Party. If such an arrangement is established, then such procedures as are set forth in the CAM will apply.

Section 2.5. *Agreements, Etc.* A Party may evidence their agreement with respect to the availability, provision or use of the facilities, services and activities by entering into an agreement, lease, license or other written memorandum or evidence consistent with the terms of this SFA.

ARTICLE III

Charges; Payment

Section 3.1. *Charges.* (a) Charges for the use of facilities, equipment, capabilities or services provided to or by Laclede Gas Company shall be determined as set forth in the CAM.

Section 3.2. *Accounting.* Each Party shall maintain adequate books and records with respect to the transactions subject to this Agreement and shall be responsible for maintaining internal controls where applicable to ensure the costs associated with such transactions are properly and consistently determined and billed in accordance with the terms and provisions of this Agreement and the CAM.

Section 3.3. *Payment.* Payment for the facilities, services and other activities shall be on a monthly basis and shall be made in accordance with the procedures set forth in the CAM.

ARTICLE IV

Cost Apportionment Methodology

The cost allocation and pricing principles and methods specified in the then effective CAM shall be used to price and allocate costs relating to services provided to or by Laclede Gas Company under this Agreement.

ARTICLE V

Limitations of Liability

Section 5.1. *No Warranties for Facilities or Services.* Each Party acknowledges and agrees that any facilities, equipment or capabilities made available, and any services provided, by a Provider to a Requestor hereunder, are so made available or provided WITHOUT ANY WARRANTY (WHETHER EXPRESS, IMPLIED OR STATUTORY AND NOTWITHSTANDING ANY ORAL OR WRITTEN STATEMENT BY A PARTY'S EMPLOYEES, REPRESENTATIVES OR AGENTS TO THE CONTRARY) WHATSOEVER. ALL SUCH WARRANTIES (INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY DISCLAIMED AND EXCLUDED.

Section 5.2. *No Partnership.* The Parties acknowledge and agree that this Agreement does not create a partnership between, or a joint venture of, a Party and any other

Party. Each Party is an independent contractor and nothing contained in this Agreement shall be construed to constitute any Party as the agent of any other Party except as expressly set forth in Sections 2.3 and 2.4.

Section 5.3. *No Third Party Beneficiaries.* This Agreement is intended for the exclusive benefit of the Parties hereto and is not intended, and shall not be deemed or construed, to create any rights in, or responsibilities or obligations to, third parties.

ARTICLE VI

Term

Section 6.1. *Term.* This Agreement will be effective on the date it is signed and shall continue, unless terminated as provided in Section 6.2 or renewed as hereinafter provided, until the tenth anniversary of such date (the "Initial Term"). Unless written notice that this Agreement shall terminate on the last day of the Initial Term or any then current renewal term is provided by a Party at least 30 days prior to the expiration of the Initial Term or such renewal term, this Agreement shall continue for successive renewal terms of five years as to such Party and any other Parties not providing any such termination notice.

Section 6.2. *Termination.* Any Party may terminate this Agreement as to it by providing at least 30 days prior written notice to the other Parties of the effective date of such termination. Any such termination shall not affect the terminating Party's accrued rights and obligations under this Agreement arising prior to the effective date of termination or its obligations under Section 8.4.

ARTICLE VII

Confidential Information

Each Party shall treat in confidence all information which it shall have obtained regarding the other Parties and their respective businesses during the course of the performance of this Agreement. Such information shall not be communicated to any person other than the Parties to this Agreement, except to the extent disclosure of such information is required by a governmental authority. If a Party is required to disclose confidential information to a governmental authority, such Party shall take reasonable steps to make such disclosure confidential under the rules of such governmental authority. Information provided hereunder shall remain the sole property of the Party providing such information. The obligation of a Party to treat such information in confidence shall not apply to any information which (i) is or becomes available to such Party from a source other than the Party providing such information, or (ii) is or becomes available to the public other than as a result of disclosure by such Party or its agents.

ARTICLE VIII

Miscellaneous

Section 8.1. *Entire Agreement; Amendments.* Upon its effectiveness as provided in Section 6.1, this Agreement shall constitute the sole and entire agreement among the Parties with respect to the subject matter hereof and shall supersede all previous agreements, proposals, oral or written, negotiations, representations, commitments and all other communications between some or all of the Parties. Except as provided in Section 8.2 with respect to new Parties and except that Laclede Group may amend Exhibit A to this Agreement to delete any terminated Party, this Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties hereto.

Section 8.2. *New Parties.* Any other entity which is or may become an affiliate of The Laclede Group or any of the other Parties to this Agreement may become a party to this Agreement by executing an agreement adopting all of the terms and conditions of this Agreement. Such agreement must be signed by The Laclede Group in order to become effective, but need not be signed by any other Party to this Agreement. Upon such execution by The Laclede Group, such entity shall be deemed to be a Party and shall be included within the definition of "Party" for all purposes hereof, and Exhibit A shall be amended to add such entity.

Section 8.3. *Assignment.* This Agreement may not be assigned by any party without the prior written consent of The Laclede Group.

Section 8.4. *Access to Records.* During the term of this Agreement and for any period thereafter required by law, Laclede Gas Company shall maintain and provide reasonable access to any and all books, documents, papers and records of Laclede Gas Company which pertain to services and facilities provided to or received by Laclede Gas Company.

Section 8.5. *Partial Invalidity.* Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

Section 8.6. *Waiver.* Failure by any Party to insist upon strict performance of any term or condition herein shall not be deemed a waiver of any rights or remedies that such Party may have against any other Party nor in any way to affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

Section 8.7. *Governing Law.* This Agreement shall be governed by, construed and interpreted pursuant to, the laws of the State of Missouri.

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be executed by a duly authorized representative as of the day and year first above written.

The Laclede Group, Inc.

Laclede Venture Company

Laclede Gas Company

Laclede Gas Family Services, Inc.

Laclede Investment LLC

Laclede Pipeline Company

Laclede Development Company

Laclede Energy Resources, Inc.

EXHIBIT A

The Laclede Group, Inc.
Laclede Gas Company
Laclede Investment LLC
Laclede Development Company
Laclede Pipeline Company
Laclede Energy Resources, Inc.
Laclede Venture Corp.
Laclede Gas Family Services, Inc.

Appendix 2

Laclede Gas Functions Providing Support to Non Regulated Affiliates

Appendix 2(a)

List and Description of Each Function

Appendix 2(b)

Positions and Numbers of Employees Providing Each Function

Appendix 2(c)

Procedures Used To Measure and Assign Costs to Nonregulated Affiliates and The Holding Company for Each Function

Appendix 3

**List and Description of Each Service and Good Provided to Laclede Gas Company from
Each Affiliate**

Appendix 4

**List and Description of Each Service and Good Provided by Laclede Gas Company to Each
Affiliate**

Appendix 5

Dollar Amount of Each Service and Good Charged to Each Affiliate by Laclede Gas Company, and the Total Cost Related to Each Service and Good Listed

Appendix 6

Dollar Amount of Each Service and Good Purchased From Each Affiliate by Laclede Gas Company, and the Total Cost Related to Each Service and Good Listed

Appendix 7

Each Line Of Business Engaged In By Laclede Gas Company With Non-Affiliated Third Party Customers That Would Not Reasonably Be Considered As A Component Of Its Regulated Utility Business

Appendix 7(a)

List and Description of Each Nonregulated Activity

Appendix 7(b)

**Total Amount of Revenues and Expenses for Each Nonregulated Activity for the Last
Fiscal Year**

Appendix 7(c)

Laclede Gas Company Cost Centers and/or Functions That Directly Assign Cost, Indirectly Assign Cost and/or Allocate Cost To Each Nonregulated Activity Engaged In By Laclede Gas Company With Non-Affiliates

Appendix 8

**All Jurisdictions In Which Laclede Gas Company, The Holding Company, Affiliates, And
Service Company, If Formed, File Affiliate Transaction Information**

Appendix 9

Organizational Charts For The Laclede Group, Inc. (Corporate Structure), Laclede Gas Company And Any Other Affiliate Doing Business With Laclede Gas Company And A Copy Of The Annual Holding Company Filing The Laclede Group, Inc. Is Required To File With The Securities And Exchange Commission

Exhibit No.:
Issue(s): Off System Sales/
Conditions Ordered in Case No. EO-2004-0108/
SO₂ Sales Revenues/
Electric Energy, Inc. Joppa Plant/
Peno Creek, Pinckneyville and
Kindmundy Generation Facilities
Witness/Type of Exhibit: Kind/Direct
Sponsoring Party: Public Counsel
Case No.: ER-2007-0002

DIRECT TESTIMONY

OF

RYAN KIND

Submitted on Behalf of
the Office of the Public Counsel

UNION ELECTRIC COMPANY D/B/A AMERENUE

**** denotes highly confidential information ****

NP

Case No. ER-2007-0002

December 15, 2006

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

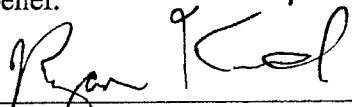
In the Matter of Union Electric Company d/b/a)	
AmerenUE for Authority to File Tariffs Increasing)	Case No. ER-2007-0002
Rates for Electric Service Provided to Customers)	Tariff No. YE-2007-0007
in the Company's Missouri Service Area.)	

AFFIDAVIT OF RYAN KIND

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Ryan Kind, of lawful age and being first duly sworn, deposes and states:

1. My name is Ryan Kind. I am a Chief Utility Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my direct testimony.
3. I hereby swear and affirm that my statements contained in the attached affidavit are true and correct to the best of my knowledge and belief.




Ryan Kind

Subscribed and sworn to me this 15th day of December 2006.



JERENE A. BUCKMAN
My Commission Expires
August 10, 2009
Cole County
Commission #05754036



Jerene A. Buckman
Notary Public

My commission expires August 10, 2009.

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1 **CUSTOMERS IN STATES WITH ELECTRIC RETAIL COMPETITION) AND ENDED UP WITH**
2 **EXCESS PEAKING CAPACITY THAT IT COULD NOT SELL PROFITABLY INTO**
3 **COMPETITIVE MARKETS.” CAN YOU PROVIDE SOME REFERENCES FROM SEVERAL**
4 **YEARS AGO WHICH ILLUSTRATE THE VIEWS THAT AMEREN HELD AT THAT TIME**
5 **ABOUT FOCUSING ON THE ADDITION OF NON-REGULATED GENERATING FACILLITITES?**

6 A. Yes. Ameren’s employee newsletter, Ameren Journal, had several articles in the years
7 2000 and 2001 that illustrated the philosophy of focusing on non-regulated generation
8 that was held by Ameren’s senior management at that time. In the May 2000 issue of
9 Ameren Journal, Ameren’s current CEO Gary Rainwater stated on page 2 that:

10 We’re competing with companies that have 30,000 or 40,000 megawatts
11 of capacity, so we’ll **either have to move the AmerenUE plants into**
12 **the genco [Ameren’s non-regulated generating subsidiary] at some**
13 **point or gain control of additional capacity in other ways.** We don’t
14 know if the state of Missouri will allow us to do that in the future, but
15 that’s the most critical issue we’ll face in the years to come. (emphasis
16 added)

17 In the July 2000 issue of Ameren Journal, Ameren’s current CEO Gary Rainwater stated
18 on page 3 that:

19 AmerenEnergy Resource’s mission is to be the growth engine of the
20 corporation. Therefore, a prime financial KPI [key performance
21 indicator] for us will be to achieve high earnings growth rates. That is
22 not an appropriate indicator for regulated generation because it’s
23 virtually impossible to grow earnings at returns that justify new
24 generation investment. **We need to put our investment on the non-**
25 **regulated side of the generation business,** so we can’t expect regulated
26 generation to achieve earnings growth. (emphasis added)

27 In the May 2001 issue of Ameren Journal, Ameren’s current CEO Gary Rainwater stated
28 on page 10 that:

29 We have proposed legislation that would allow utilities to move their
30 generating assets into affiliated companies....Until legislation is enacted,
31 **AmerenUE could face years of growing dependence on purchased**
32 **power. The company currently plans to add a 45 MW peaking unit**
33 **at its [AmerenUE] Meramec Plant next summer, while Ameren’s**
34 **non-regulated generation subsidiary, Ameren Energy Generating**

Direct Testimony of
Ryan Kind

1 (AEG) plans to add about 850 MW of capacity this summer alone.
2 (emphasis added)

3 In addition to the statements made in Ameren Journal articles, the former Senior Vice-
4 President of Ameren Services, Paul Agathen, addressed this issue in May 2001 in a guest
5 editorial in the Joplin Globe where he stated that "Missouri's state regulated utilities have
6 no plans to build new generating plants."

7 **VII. TRANSFER OF PINCKNEYVILLE AND KINMUNDY GENERATING**
8 **FACILITIES FROM AEG TO UE**

9 **Q. WAS UE'S ACQUISITION OF THE PINCKNEYVILLE AND KINMUNDY PLANTS FROM ITS**
10 **AFFILIATE, AEG, SUBJECT TO THE REQUIREMENTS OF THE MISSOURI AFFILIATE**
11 **TRANSACTIONS RULE (4 CSR 240-20.015)?**

12 A. Yes. This rule would apply to this transaction since the rule became effective for UE
13 during 2003 and the Pinckneyville/Kinmundy transaction was completed on May 2,
14 2005. The Pinckneyville/Kinmundy transaction involved the acquisition of gas-fired
15 generating units at the Pinckneyville and Kinmundy sites from AEG (an affiliated entity)
16 to UE (a regulated Missouri electrical corporation).

17 **Q. HAS UE COMPLIED WITH THE AFFILIATE RULE WITH RESPECT TO THE**
18 **PINCKNEYVILLE/KINMUNDY TRANSACTION?**

19 A. No. UE made not attempted to comply with several sections of the rule with respect to
20 this transaction. I have reviewed the annual affiliate rule informational filing for calendar
21 year 2005 that UE provided to Public Counsel on March 15, 2006 pursuant to the
22 requirement in 4 CSR 240-20.015(4)(B) and followed up on this filing with several data
23 requests. The annual filing provided by UE was entitled "AmerenUE Cost Allocation
24 Manual, March 2006" I am not aware of any efforts that UE has made to have this

Direct Testimony of
Ryan Kind

1 purported "CAM" approved by the Commission as provided for in 4 CSR 240-20.015(3
2 (D).

3 **Q. WHAT STANDARD FROM THE AFFILIATE TRANSACTIONS RULE WOULD APPLY TO THE**
4 **PINCKNEYVILLE/KINMUNDY TRANSACTION?**

5 A. Section (2) of 4 CSR 240-20.015 states:

6 (2) Standards.

7 (A) A regulated electrical corporation shall not provide a financial advantage to an
8 affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be
9 deemed to provide a financial advantage to an affiliated entity if—

10 1. It compensates an affiliated entity for goods or services above the lesser of—

11 A. The fair market price; or

12 B. The fully distributed cost to the regulated electrical corporation to provide the goods
13 or services for itself; or

14 2. It transfers information, assets, goods or services of any kind to an affiliated entity
15 below the greater of—

16 A. The fair market price; or

17 B. The fully distributed cost to the regulated electrical corporation.

18 **Q. HAS UE PROVIDED THE DOCUMENTATION REQUIRED BY THE AFFILIATE RULE TO**
19 **DEMONSTRATE THAT IT DID NOT PROVIDE A FINANCIAL ADVANTAGE TO AEG**
20 **BECAUSE OF THE LEVEL OF COMPENSATION THAT IT PROVIDED TO AEG FOR THE**
21 **PINCKNEYVILLE AND KINMUNDY GENERATION FACILITIES?**

22 A. No. UE also has not sought a variance from any requirements of the Affiliate Rule with
23 respect to the Pinckneyville/Kinmundy transaction.

24 **Q. PLEASE DESCRIBE SOME OF THE SPECIFIC PROVISIONS OF THE AFFILIATE RULE THAT**
25 **UE FAILED TO COMPLY WITH FOR THE PINCKNEYVILLE/KINMUNDY TRANSACTION.**

Direct Testimony of
Ryan Kind

1 A. Section (3)(A) and (3) (B) of 4 CSR 240-20.015 state:

2 (A) When a regulated electrical corporation purchases information,
3 assets, goods or services from an affiliated entity, the regulated electrical
4 corporation shall either obtain competitive bids for such information,
5 assets, goods or services or demonstrate why competitive bids were
6 neither necessary nor appropriate.

7 (B) In transactions that involve either the purchase or receipt of
8 information, assets, goods or services by a regulated electrical
9 corporation from an affiliated entity, the regulated electrical corporation
10 shall document both the fair market price of such information, assets,
11 goods and services and the FDC to the regulated electrical corporation to
12 produce the information, assets, goods or services for itself.

13 UE has failed to comply with both of the above provisions.

14 **Q. GIVEN UE'S FAILURE TO COMPLY WITH THE AFFILIATE RULE AND PROVIDE**
15 **SUFFICIENT DATA TO DOCUMENT THE "FAIR MARKET PRICE" OF THE ASSETS THAT IT**
16 **ACQUIRED FROM ITS AFFILIATE, WHAT IS PUBLIC COUNSEL'S RECOMMENDATION FOR**
17 **THE VALUE OF GROSS PLANT THAT SHOULD BE REFLECTED IN UE'S REVENUE**
18 **REQUIREMENT FOR THE PINCKNEYVILLE AND KINMUNDY GENERATION FACILITIES?**

19 A. As Attachment 7 shows, UE acquired the Pinckneyville facility for \$502/kW and
20 acquired the Kinmundy facility for \$412/kW. Both of these prices appear to be well
21 above the market value of the facilities. Therefore, Public Counsel recommends using
22 the blended price/kW of the recently acquired Audrain, Goose Creek, and Raccoon Creek
23 Plants for ratemaking purposes. As shown on Attachment 7, this blended cost is
24 \$193.80/kW. As a secondary recommendation, OPC recommends using the 2002
25 Audrain offer price of \$312.50/kW. The \$200,000,000 (\$200,000,000 /640mWs=
26 \$312.50) initial offer price of NRG to UE is shown towards the bottom of the first page
27 of the letter included in Attachment 8.

28 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

3/6/07

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

In the Matter of Union Electric Company)
d/b/a AmerenUE for Authority to File)
Tariffs Increasing Rates for Electric) Case No. ER-2007-0002
Service Provided to Customers in the)
Company's Missouri Service Area.)

PREHEARING BRIEF
OF THE OFFICE OF THE PUBLIC COUNSEL

INTRODUCTION

On July 7, 2006, Union Electric Company d/b/a AmerenUE filed with the Missouri Public Service Commission tariffs seeking a general rate increase in its retail electric rates. The Commission suspended those tariffs on July 11, 2006, and set two weeks of evidentiary hearings to be held in this case during the weeks of March 12 and March 19, 2007.

On September 12, 2006, the Commission adopted a procedural schedule in this case, set the test year as the 12 months ending June 30, 2006, with a true-up for certain items as of January 1, 2007, and scheduled an additional week of evidentiary hearings during the week of March 26, 2007.

On September 29, 2006, AmerenUE filed Direct Testimony respecting its requested fuel adjustment clause ("FAC") and a related FAC tariff, together with Supplemental Direct Testimony to update the three-months of budgeted data included in its original filing to actual data for the last three months of the test year adopted by the Commission.

Pursuant to the Procedural Order, the Staff, with input from the other parties, assembled the statement of the issues. Not all parties agreed upon the phrasing of the issues, and the Staff

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was the final arbiter of disagreements over the wording of the issues (as well as the scheduling of issues and witnesses).

This brief will only address in detail the issues on which Public Counsel is sponsoring witnesses and testimony. As filed, dozens of issues were raised in the parties' testimony, and Public Counsel has not analyzed all of them in order to take a position. This brief will, on issues other than those of Public Counsel witnesses, indicate Public Counsel's position. On a number of issues, Public Counsel has not yet developed a position. Public Counsel reserves the right to support issues raised by other parties at the hearing or in post-hearing briefs.

ISSUES¹

Overview and Policy: In addition to "cost of service," what policy considerations should guide the Commission in deciding this case?

Other than the sheer magnitude of the difference in revenue requirement between AmerenUE and the other parties, this case is not too terribly different from any other rate case. For instance, there are issues in which AmerenUE has acted to benefit itself to the detriment to its ratepayers, and the parties representing those ratepayers seek to have the Commission address those actions in this case. Electric Energy, Inc. (EEInc.) is an example of such an issue (it will be discussed in greater detail below). AmerenUE opted to not pursue renewal of the decades-old arrangement by which the owners of the Joppa plant received the available power from that plant at cost. Instead, it opted to allow its corporate parent, Ameren Corporation, to generate more profits by selling that power on the market. AmerenUE made an adjustment to its test year books to remove the benefits of the EEInc. power, and Public Counsel (and the Staff and the

¹ This brief was begun before the list of issues was finalized and filed. As a result, there may be some minor differences between the way the issues are defined in this brief and the way they are defined in Staff's March 6 filing of the list of issues. The issues are set forth in italics. Public Counsel's position on each of those issues is set forth in regular type.

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State of Missouri) seek to have the Commission reverse that adjustment. This is typical of many of the issues in this case, and is typical of the types of issues generally raised in rate cases.

One new issue that has definite policy implications is the issue concerning the fuel adjustment clause (FAC). While there are policy considerations specific to the issues on the FAC, and the Commission should address them clearly in this case of first impression, there are no “overarching” policy considerations that should steer the Commission in this case in a direction different than it has historically taken.

The historical policy considerations, and the approach the Commission should take in this case, all involve the Commission’s role as the protector of the public. AmerenUE is a monopoly, and the sole reason that the Commission exists is to protect the public from the power of monopoly utilities. “The Act establishing the Public Service Commission is indicative of a policy to protect the public. The protection given the utility is incidental.” State ex rel. Dail v. Public Service Com., 240 Mo. App. 250, 251 (Mo. Ct. App. 1947). “[T]he guiding star of the public service commission law and the dominating purpose to be accomplished by such regulation is the promotion and conservation of the interests and convenience of the public.” State ex rel. Crown Coach Co. v. Public Service Com., 238 Mo. App. 287, 298 (Mo. Ct. App. 1944). “The Commission's principal interest is to serve and protect ratepayers...” State ex rel. Capital City Water Co. v. Missouri Pub. Servs. Comm'n, 850 S.W.2d 903, 911 (Mo. Ct. App. 1993). It cannot be disputed that these cases set forth the policy considerations that should guide the Commission’s decision in this case.

Pinckneyville and Kinmundy: *What amount should be included in rate base for AmerenUE’s purchase of these CTG plants from affiliated companies?*

This issue pertains to the cost at which AmerenUE acquired from its affiliate Ameren Generating Resources (AEG) the gas-fired generating stations at Pinckneyville and Kinmundy.

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This transaction was completed on May 2, 2005. AmerenUE acquired the Pinckneyville facility for \$502/kW and acquired the Kimmundy facility for \$412/kW. Both of these prices appear to be well above the market value of the facilities. Public Counsel, in the direct testimony of Ryan Kind at page 35, recommends using for ratemaking purposes the blended cost of \$193.80/kW of the recently acquired Audrain, Goose Creek, and Raccoon Creek Plants.

Peno Creek: What amount should be included in rate base for AmerenUE's construction purchase of this CTG plant?

Public Counsel recommends that the gross value of this plant reflected in AmerenUE's revenue requirement be reduced from the gross plant amount associated with the \$550/kW all inclusive construction cost to \$390/kW. (Kind Direct, p. 30). The source of the \$390/kW figure is a benchmark figure presented by AmerenUE for the cost of constructing new gas-fired generation in Case No. EA-2000-37. Public Counsel witness Ryan Kind explains the rationale for applying this figure to the Peno Creek plant:

At the time UE added the Peno Creek units they were building this new generation facility in a rush make up for a generating capacity deficit at UE that they had created due to their pursuit of the Ameren HoldCo strategic objective of building all new generation in AEG (Genco) and attempting to get Missouri legislation passed that would permit them to transfer UE's generation to the Genco. UE's ratepayers should not be forced to absorb higher generation costs because of the pursuit of non-regulated strategic initiatives by UE's parent company, Ameren HoldCo. (*ibid.*)

AmerenUE does not dispute that Peno Creek was built on an expedited basis. Common sense, as well as the evidence produced by Public Counsel, should convince the Commission that there are costs associated with a significant construction project built on a "hurry-up" basis. Those costs are clearly shown in the \$550/kW that AmerenUE paid for the plant. The Commission should adopt Public Counsel's much more reasonable \$390/kW figure.

4/23/07

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

In the Matter of Union Electric Company)
d/b/a AmerenUE for Authority to File)
Tariffs Increasing Rates for Electric) Case No. ER-2007-0002
Service Provided to Customers in the)
Company's Missouri Service Area.)

POST-HEARING BRIEF
OF THE OFFICE OF THE PUBLIC COUNSEL

INTRODUCTION

On July 7, 2006, Union Electric Company d/b/a AmerenUE ("AmerenUE or simply "UE") filed with the Missouri Public Service Commission tariffs seeking a general rate increase in its retail electric rates. The Commission suspended those tariffs on July 11, 2006, and set two weeks of evidentiary hearings to be held in this case during the weeks of March 12 and March 19, 2007.

The primary purpose of this post-hearing brief is to summarize the important points brought out at the evidentiary hearing. As such it, contains a significant number of citations to and quotes from the transcripts of the evidentiary hearings in this case. References to the transcript are noted as (Tr. [page number]). This brief will only address in detail the issues on which Public Counsel is sponsoring witnesses and testimony.

PINCKNEYVILLE AND KINMUNDY

This issue pertains to the cost at which AmerenUE acquired from its affiliate Ameren Generating Resources (AEG) the gas-fired generating stations at Pinckneyville and Kinmundy.

This transaction was completed on May 2, 2005. AmerenUE acquired the Pinckneyville facility for \$502/kW and acquired the Kinmundy facility for \$412/kW. Both of these prices appear to be well above the market value of the facilities. This issue in this case is the first time the Missouri Public Service Commission will have the opportunity and the responsibility for determining the value of assets that UE got through this affiliate transaction.

Some previous cases touched on Pinckneyville and Kinmundy but certainly did not establish a value for rate-making purposes in Missouri. The Metro East case was not designed to evaluate the value for rate-making purposes of Pinckneyville and Kinmundy. It was designed to allow the Commission to use a cost benefit analysis for purposes of the Metro East transfer. The case at FERC was not about establishing value for rate-making for Missouri retail rates. It was about establishing whether or not this purchase would have any impact on market power.

UE does not dispute that the purchase of Pinckneyville and Kinmundy was from an affiliate and subject to the Commission's Affiliate Transaction Rules. According to those rules, UE's Cost Allocation Manual covering calendar year 2005 (Exhibit 438) should demonstrate its valuation of the assets subject to that transaction. It does not; there is no useful information in it with respect to valuing that Pinckneyville and Kinmundy transaction. (Exhibit 438; Tr. 3281, 3285)

The evidence adduced at the hearing clearly showed that the price paid by UE for these two generating stations was above market value and not compliant with the Commission's affiliate transaction rule. Public Counsel, in the direct testimony of Ryan Kind at page 35, recommends using for ratemaking purposes the blended cost of \$193.80/kW of the recently acquired Audrain, Goose Creek, and Raccoon Creek Plants.

UE witness Voytas admitted that the price of combustion turbines declined steadily from 2002 through 2005. (Exhibit 435; Tr. 3085) He also agreed that the prices in 2002 were not comparable to the prices in 2006. (Tr. 3097-3098).

Mr. Voytas conceded that he only directed one Question and Answer in his testimony to Public Counsel witness Kind. (Tr. 3088) As a result, most of the points that Mr. Voytas attempted to make in his testimony in responding to Staff witness Rackers simply do not apply to Mr. Kind's approach to valuing Pinckneyville and Kinmundy. (Tr. 3090-3117)

Although Mr. Voytas was adamant that the price at which NRG offered to sell its Audrain in 2002 was an "indicative proposal," he admitted that he did not know if UE could have closed a deal with NRG at that price. (Tr. 3114-3115) Mr. Voytas considered that that plant had only "salvage value," but included it in a table in his testimony with a value of \$508/kw. Mr. Voytas conceded that he was not familiar with the specific units shown in his table. (Tr. 3121).

In response to questions from Commissioner Murray, Mr. Voytas conceded that the best proxy to use for determining the value of Pinckneyville and Kinmundy is the RFP issued in July of 2005. (Tr. 3169) The prices for the purchase of the three units acquired through that RFP were established in the second half of 2005. (Tr. 3244)

Mr. Voytas attempted to show the value of Pinckneyville and Kinmundy using a table of sales of other CTs. Of course, there are some readily apparent problems with his list, not the least of which is that some of them are affiliate transactions rather than arms-length transactions. (Tr. 3174)

Mr. Kind offered the Commission two approaches to valuing Pinckneyville and Kinmundy. His main approach results in a value of approximately \$194/kw and his secondary proposal serves merely to set just another reference point at \$312/kw. (Tr. 3235) In establishing

a price that should be used for ratemaking purposes, Mr. Kind did not rely just on the units in those two approaches, but instead “considered a whole lot of transactions that have taken place over the last few years and any general knowledge in that area.” (Tr. 3240)

PENO CREEK

In the years leading up to the time when Penno Creek was constructed, Ameren was trying very hard to enact Missouri legislation that is commonly referred to as Genco legislation, and as a result, held off for a long period of time building needed capacity. When it became clear that the Genco legislation was not going to pass in Missouri, UE needed the capacity and needed it in a hurry. And what happened was, as is common when you try to building in a hurry, you pay more for it.

The evidence will clearly show that the Penno Creek station was built on a very quick turnaround under an “engineer/procure/execute” contract for which UE paid a very high price, and that's reflected in the actual as-built cost of Penno Creek.

Public Counsel recommends that the gross value of this plant reflected in AmerenUE's revenue requirement be reduced from the gross plant amount associated with the \$550/kW all inclusive construction cost to \$390/kW. (Kind Direct, p. 30). The source of the \$390/kW figure is a benchmark figure presented by AmerenUE for the cost of constructing new gas-fired generation in Case No. EA-2000-37. Public Counsel witness Ryan Kind explains the rationale for applying this figure to the Penno Creek plant:

At the time UE added the Penno Creek units they were building this new generation facility in a rush make up for a generating capacity deficit at UE that they had created due to their pursuit of the Ameren HoldCo strategic objective of building all new generation in AEG (Genco) and attempting to get Missouri legislation passed that would permit them to transfer UE's generation to the Genco. UE's ratepayers should not be forced to absorb higher generation costs

because of the pursuit of non-regulated strategic initiatives by UE's parent company, Ameren HoldCo. (*ibid.*)

AmerenUE does not dispute that Peno Creek was built on an expedited basis. Common sense, as well as the evidence produced by Public Counsel, should convince the Commission that there are costs associated with a significant construction project built on a "hurry-up" basis. Because of UE's failure to plan ahead to address its capacity needs, it was put in the awkward – and ultimately expensive – position of needing to have capacity installed in just a year. Because of that timetable, its options were limited to aero-derivative CTs; the cheaper (Tr. 3319) large-frame CTs were off the table because the lead times in ordering them were longer than UE could afford to wait.

Mr. Voytas testified under oath at the FERC in Case No. EC-03—053-000 that at the time UE built Peno Creek, a CT should cost \$450/kw. (Exhibit 440; Tr. 3324) He also testified that when you construct facilities like Peno Creek on in a compressed time frame, there are additional costs involved. (Exhibit 440; Tr. 3324-3325) Those costs are clearly shown in the \$550/kW that AmerenUE paid to construct the plant.

Although UE argues that there were system benefits to constructing an aero-derivative CT as opposed to a cheaper large-frame CT (that it could not have built anyway under its self-imposed time limits), it never quantified those benefits. (Tr. 3328-3329) Furthermore, although UE now alleges that there were load-following benefits from using aero-derivatives, there is no mention in the resource planning documents from that period of time of an urgent need for additional load following capability. (Tr. 3359-3360)

It is interesting to note that, on this issue, UE chose not to respond in prefiled testimony to Public Counsel witness Kind's assertions that the rush to build Peno Creek caused added costs. (Tr. 3336)