

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

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
v.	)	Case No. GC-2011-0098
	)	
Laclede Gas Company, Laclede Energy Resources, The Laclede Group	)	
Respondents.	)	

**LACLEDE GAS COMPANY’S ANSWER AND  
MOTION TO DISMISS COUNT 2 OF THE COMPLAINT**

COMES NOW Laclede Gas Company (“Laclede” or “Company”), and files this response to the Staff’s Complaint filed in this case on October 6, 2010, stating as follows:

**EXECUTIVE SUMMARY**

In this two-count Complaint, Staff first asserts that Laclede’s Cost Allocation Manual (“CAM”) is deficient because it requires gas supply transactions between Laclede and Laclede Energy Resources, Inc. (“LER”) to be based on a fair market price (“FMP”), while the Affiliate Transaction Rules (“Rules”) require the Company to price such transactions based on a comparison of FMP versus fully distributed cost (“FDC”). The Company disagrees with Staff for two reasons. First, where the utility does not make or produce the goods purchased or sold, FDC will either not exist, or will always be greater than or equal to FMP. Second, Staff has already conceded the first point in another affiliate transaction case. While Laclede has other arguments that might support dismissal of the Complaint, for the reasons expressed below, Laclede would prefer to proceed to a substantive decision on an expedited basis.

Staff’s Complaint does not present facts other than alleging that the CAM contains deficient language. It doesn’t allege that any specific transactions that were

improperly priced. Because Staff's allegations are theoretical, the Complaint presents a fairly straightforward question of law with limited need for fact development. Laclede suggests that the Commission move quickly to establish a procedural schedule with one round of testimony, and a hearing shortly thereafter.

One of the key goals of regulation is to provide rules that are clear and certain, so that the utilities that operate under those rules know what is expected of them. Since it appears that Staff, through this Complaint, and Laclede, through its counterclaim in a related matter,<sup>1</sup> seek advisory opinions on the application of the Rules and the CAM, Laclede believes that an expedited decision in this matter will aid the parties and the Commission in beginning to resolve the unpleasant spate of litigation that currently exists.

The second count in the Complaint claims that Laclede has provided preferential treatment to its affiliate, Laclede Energy Resources, Inc. ("LER"), in violation of the Rules. However, Staff again alleged no facts in this count, but only made conclusory statements and offered hypotheticals that fail to even state claims, because the situations described by Staff are already contemplated by the Rules. The Commission should dismiss this portion of the Claim.

## **INTRODUCTION**

In this Complaint, Staff claims that Laclede has violated the following provisions of the Commission's Affiliate Transaction Rules ("Rules"): 2A, 2B, 2C, 2D, 3A and 3B.<sup>2</sup> Staff's claims should be rejected and a portion of the Complaint dismissed for five

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<sup>1</sup> See the Commission's Order Dismissing Counterclaim in Case No. GC-2011-0006

<sup>2</sup> The Rules can be found at 4 CSR 240-40.015 and 40.016. These cites from the Complaint are from Section 40.015. As Staff notes, Section 40.016 is almost identical.

primary reasons. First, Staff is incorrect in its allegation that Laclede has failed to consider FDC in pricing affiliate transactions. Laclede in fact has taken FDC into account for purchases and sales of gas supply, but found that because Laclede does not make or produce gas supply, there either is no FDC to calculate, or FDC is greater than or equal to FMP. Having reached this conclusion, Laclede has good cause to dispense with further consideration of FDC for these particular transactions and instead rely on FMP.

Second, Staff has recently acknowledged in sworn testimony in an Atmos ACA Case (Case No. GC-2008-0364) that the FDC to a utility for its purchase of gas from an affiliate will by definition be equal to or higher than the FMP of such supplies. Therefore, for these purposes, a gas corporation can use FMP as the sole and appropriate standard for pricing such transactions. In short, the Staff has already conceded that the pricing standard in the CAM is proper.

Third, the Staff's assertion that the CAM violates the Rules represents an impermissible collateral attack on the Commission's Order in Case No. GM-2001-342 which explicitly approved use of the CAM to govern transactions between Laclede and LER. It also represents an equally impermissible attack on the provisions of Laclede approved tariff sheets, which since 2001 have provided that the CAM should be used for purposes of pricing gas supply sales made to an affiliate.

Fourth, the Staff should be estopped from asserting that the CAM violates the Rules retrospectively, given the degree to which the CAM is a product of Staff's own prior actions. After all, it was the Staff which agreed to and actively promoted the use of the CAM to govern the pricing of affiliate transactions. It was the Staff which recommended that the CAM include provisions for determining the FMP -- the very kind

of provisions that are now claimed to be inconsistent with the Rules. It was also the Staff which insisted that Laclede include the CAM in its corporate Code of Conduct, train its employees to adhere to the provisions of the CAM at all times, and subject its employees to discipline, including termination, for failure to adhere to the CAM. Finally, it was the Staff which had countless opportunities over the past nine years to advise the Company of any alleged deficiencies in the CAM including the ones which it now claims violate the Rules. Despite having told the Company years ago that it would review the CAM page by page and alert Laclede to any problems it perceived, the Staff never articulated to the Company the kind of deficiency it says now exists in the CAM. In fact, until this latest complaint, the Staff has not taken issue with the Company's claims in pleadings and during oral argument that the Rules and Laclede's CAM require that such transactions be based on FMP. To the contrary, the Staff itself has repeatedly taken the position in both Laclede and Atmos ACA cases that FMP is the relevant standard.<sup>3</sup>

Fifth, except for the CAM language, Staff alleges absolutely no facts to support its claims. Instead, Staff's Complaint is filled with hypotheticals, "ifs" and "whens," and a host of conclusory statements. In alleging hypotheticals instead of facts, what Staff is really seeking is an advisory opinion. In other words, Staff would like to know whether actions taken under certain circumstances would in fact be a violation of the Rules. But because the Staff has failed to allege any acts done or omitted, it has not pled sufficient facts to state a claim upon which relief could be granted. As stated above, however,

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<sup>3</sup> Laclede notes that Staff accurately defines FMP in many of its pleadings, while at the same time distorting the concept and application of FMP beyond all recognition by, for example, claiming that the FMP of a sale by an affiliate to the utility equals the affiliate's acquisition cost.

Laclede does not seek to dismiss the Complaints' first count regarding the CAM, but does move for dismissal of Staff's second count regarding preferential treatment.

Sixth, Staff did not comply with Commission Rule 2.070(5)(E), because Staff failed to state whether it had directly contacted Laclede on the issues "about which complaint is being made." Had Staff made the required statement, Laclede contends that the answer should be no, because Staff has never directly discussed with Laclede the issue of FDC in connection with Laclede's gas supply transactions with LER. While Laclede has endeavored to discuss affiliate transactions with Staff numerous times over the past decade, and has in fact met with Staff on several occasions, Staff has never raised the issue about which it has now complained.<sup>4</sup> While Laclede notes this shortcoming for the record, Laclede again does not seek to rely on it as a basis for seeking dismissal of the case at this time.

### **THE ROLE OF FDC IN GAS SUPPLY AFFILIATE TRANSACTIONS**

First and foremost, Laclede declares that it has taken FDC into account in pricing gas supply sales and purchases with LER. Laclede has previously explained its approach to Staff.<sup>5</sup> Staff clearly understands and supports the reasoning behind this approach, as Staff's own witness, Mr. David Sommerer, testified to at a recent Atmos hearing. Based

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<sup>4</sup>In all fairness, Laclede should disclose that in a meeting between the parties on September 7, 2010, a Staff member did appear to begin to speak about comparing the CAM to the Rules, but this Staff member was immediately shushed by another Staff member, so the matter never came to light.

<sup>5</sup> See for example p. 4 of Laclede's Objection to Staff Information Requests filed on March 19, 2009 in Case No. GR-2006-0288, wherein Laclede stated "This [CAM] rule sensibly sets the affiliate transaction price at a "fair market price." This makes sense as a protection for utility ratepayers because it requires Laclede to pay LER no more than Laclede would pay other gas marketers that it does business with. While the Rules also refer to Laclede's fully distributed cost (FDC) as a factor, the CAM recognizes that, for purposes of gas supply transactions, calculating Laclede's FDC is not a meaningful exercise because Laclede does not produce gas supplies for itself, but buys them from marketers like LER. Therefore, Laclede's FDC is, for all practical purposes, equivalent to the fair market price."

on these facts, Laclede is surprised that Staff even questioned the Company's approach, much less filed a complaint on it. Nevertheless, Laclede will endeavor to again explain its rationale below.

Laclede's CAM was created as part of the settlement of Laclede's Holding Company Case, Case No. GM-2001-342 (the "Holding Company Case"). The CAM that was specifically approved in that case included a draft CAM proposed by Laclede with additions contributed by Staff. The final version of this CAM was sent to Staff in December 2001 (the "2001 CAM"). In working with Staff to prepare the 2001 CAM, and in amending the CAM in 2004, Laclede has tried to find a common sense method to conduct gas supply affiliate transactions in accordance with the Rules.

The 2001 CAM specifically addressed gas supply affiliate transactions. It provided for pricing of such transactions to be based on FMP. It excluded a reference to FDC, because in the context of purchasing or selling gas supply, FDC is meaningless. The explanation for this begins with the concept that FDC vs. FMP is really a "make or buy" decision. If, for example, a utility is buying a widget from its affiliate, the Rules prevent the utility from paying FMP to the affiliate if the utility could make, or build, the widget itself for less. With respect to gas supply, Laclede doesn't produce or manufacture gas. Laclede does not own wellhead supply. This fact alone is enough to dispense with FDC, since Laclede cannot accomplish a make or buy decision if it doesn't make the product. A further look into the analysis serves to confirm this position. Since Laclede is not a producer, the Company instead buys its gas from gas marketing companies for delivery to Laclede's customers. If we pretend that Laclede's purchase price for this gas is really its cost to "make" the commodity, then FDC is the same thing

as FMP, which is also the purchase price Laclede would pay to acquire gas from an unaffiliated entity. If we stop here, then  $FMP = FDC$ , and we can dispense with an FDC analysis and just concentrate on FMP. However, by definition, FDC would require Laclede to load onto that purchase price its direct and indirect costs. Adding any costs to FDC would necessarily cause FDC to exceed FMP.

The same reasoning that led Laclede to this conclusion in 2001 was described by Staff witness David Sommerer on October 20, 2010, at a hearing in an Atmos ACA case, Case No. GR-2008-0364. (*See* Tr. 197-98) In sum, when a utility does not produce a product itself, then FDC is by definition going to be equal to or, more likely, higher than FMP, and therefore the proper pricing standard for such an affiliate transaction is FMP.

The same goes for the sale of gas supply by a utility to its affiliate. When a utility is selling a widget to its affiliate, if the utility makes the widget, the Rules prevent the utility from charging only FMP to the affiliate, if it cost the utility more than FMP to make the widget. Since again Laclede does not produce gas, it does not have a cost to make or produce gas supply from which to form an FDC that can be compared to the FMP of the gas sale to the affiliate. Therefore, for purposes of a utility selling gas supply to its affiliate, FMP is again the proper standard. The same reasoning applies to releases of pipeline capacity, as the Staff agreed in a Utilicorp case.<sup>6</sup> However, out of an abundance of caution, Laclede did make an effort to reintroduce FDC into these capacity

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<sup>6</sup> Case No. GE-2000-639, *Order Approving Unanimous Stipulation and Agreement*, issued October 17, 2000.

release transactions when Laclede updated its CAM in 2004, but has found that FMP and FDC produce equivalent results for such transactions as well.<sup>7</sup>

### **STAFF'S REFUSAL TO DISCUSS THE FMP/FDC ISSUE**

Over the past nine years, Laclede has tried to work with the Staff to reach an understanding on pricing affiliate transactions. Laclede repeatedly sought the Staff's feedback and confirmation that the rationale described above was satisfactory and that the CAM adequately implemented the Rules. Laclede never received a definitive answer. The CAM was ignored for the first few years. Upon further requests by Laclede, Staff agreed to carefully review the CAM page by page and provide feedback. None was forthcoming. This is quite odd for a Staff that handles hundreds of regulatory cases per year in a timely fashion, including large rate cases, while through the ACA process, the Staff's Procurement Analysis Department audits every gas utility in the state. Perhaps Staff's reluctance to reach closure on this issue can be explained by the fact that in meetings with Staff over the years on the subject of affiliate transactions, Staff has evinced a clear and strong antipathy toward such transactions. It is obvious that Staff believes that such transactions are so fraught with danger that Staff would rather run the risk inherent in ignoring a Commission Rule than tolerate affiliate transactions.<sup>8</sup> Staff's latest tact – to brazenly claim that affiliate transactions should be priced at the affiliate's cost denying an affiliate any opportunity to earn any profit or be compensated in any way - is consistent with a goal of eliminating affiliate transactions. In summary, it is

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<sup>7</sup> Following the decision in the *Atmos* case, Laclede updated its CAM and sent the updated CAM to Staff, among others, in March 2004 (the "2004 CAM").

<sup>8</sup> Unfortunately, it appears that such a risk is fairly benign, as the Commission has recently dismissed Laclede's counterclaim alleging that Staff had violated the Rules, and has also studiously ignored such claims by utilities in both Laclede and *Atmos* ACA cases.



unconscionable for Staff to ignore or refuse to discuss the CAM for nine years and then suddenly and without warning file a complaint.

### **ANSWER**

The Introduction to the Complaint is a summary of Staff's allegations in the Complaint, and are not in numbered paragraphs. In this Answer, Laclede will address the specific allegations in the numbered paragraphs of the Complaint, and hereby incorporates its responses to those paragraphs into its response to Staff's Introduction.

#### **Background Sections**

1. Laclede admits that the Complaint is brought by Staff. The remainder of paragraph 1 is a legal conclusion to which no response is required.

2. Laclede admits that it is a utility and serves approximately 630,000 customers in eastern Missouri. The allegation that Laclede is a monopoly is a superfluous allegation apparently meant to be pejorative. Without a more definitive statement of what Staff means by its use of this term, Laclede can neither admit nor deny Staff's assertion.

3 -10. Laclede admits the allegations in paragraphs 3 through 10.

11. Laclede denies the allegation in paragraph 11.

12. Paragraph 12 is a legal conclusion to which no response is required. To the extent a response is required, Laclede denies the allegations in paragraph 12.

13. Paragraph 13 is a legal conclusion to which no response is required. The rules and case law cited in paragraph 13 speak for themselves.

14. Paragraph 14 is a legal conclusion to which no response is required. However, Laclede states that it appears that the Staff accurately quoted the *Atmos* case

(*State ex rel. Atmos Energy Corp. v. Public Service Comm'n*, 103 S.W.3d 753 (Mo. 2003)). It should be noted that the *Atmos* language quoted by Staff explained why the Commission believed that affiliate transaction rules were appropriate, and the *Atmos* decision *affirmed* those Rules, including the fair market pricing standards and the information requirements of the Rules. Ironically, the Staff that has often quoted in its pleadings this motivation behind the Rules is the same Staff that refuses to apply the Rules to affiliate transactions in ACA cases.

15. Paragraph 15 is a legal conclusion to which no response is required. However, Laclede states that it appears that the Staff accurately quoted the *Atmos* case and added its own emphasis. Again, this quote recites the reason behind the promulgation of the Rules that Staff refuses to apply or adhere to.

16. Laclede admits the allegations in paragraph 16.

17. Laclede admits the allegations in the first two sentences of paragraph 17. The third sentence is a legal conclusion to which no response is required. Laclede states that the *Atmos* case speaks for itself.

18. Laclede admits that the Staff accurately quoted language from the Holding Company Case Stipulation and Agreement so far as it went. Laclede denies all other allegations, including that Attachment B contains the additional information referenced by Staff. In fact, this “additional information” was the language added to the CAM in 2001 at Staff’s insistence and upon agreement of the parties.

19. Laclede denies that Attachment C referenced in paragraph 19 is even from the CAM, much less what Staff refers to as the Krieger CAM. Laclede admits that both the 2001 CAM and the 2004 CAM discuss criteria for FMP and FDC. As noted above,

the 2004 CAM was submitted after the appeal in *Atmos* became final and had a small number of minor changes from the 2001 CAM. Laclede denies the last sentence of paragraph 19. The 2004 CAM is in essentially the same form as the 2001 CAM.

20. Respondent hereby incorporates herein by reference its answers to paragraphs 1-19.

21. The allegations in paragraph 21 are vague and ambiguous, and on that basis Laclede denies them. Because Laclede does not believe that the allegations are important to a substantive decision in the case, the Company defers asking the Commission to require Staff to make a more definite statement. Laclede admits that during the Holding Company Case in 2001, Staff filed rebuttal testimony suggesting numerous additions to the CAM filed in Laclede's direct testimony. Laclede further admits that the information suggested by Staff was incorporated into the CAM in connection with the approved settlement of the Holding Company Case. However, Laclede denies it has received suggested changes to the CAM regarding gas supply transactions since it provided Staff the 2001 CAM in December 2001. To the extent this allegation means otherwise, Laclede denies it.

22. The allegations in paragraph 22 are vague and ambiguous, and on that basis Laclede denies them. Laclede is not aware of the meeting that is being referenced in paragraph 22. Again, because Laclede does not believe that the allegations are important to a substantive decision in this case, the Company defers asking the Commission to require Staff to make a more definite statement.

23. The allegations in paragraph 23 are vague and ambiguous, and on that basis Laclede denies them. The quotes in this paragraph are unattributed. Once again,

because Laclede does not believe that the allegations are important to a substantive decision in this case, the Company defers asking the Commission to require Staff to make a more definite statement. Laclede does admit that it provided an updated CAM to Staff in March 2004, which has been in Staff's possession now for more than six years.

24. Laclede denies the allegations contained in paragraph 24. Laclede addressed these allegations in detail in the section of this Answer entitled "The Role of FDC in Gas Supply Affiliate Transactions" and hereby incorporates that section into this response by reference.

25. Laclede admits that Staff accurately quoted paragraph 23 of the Unanimous Stipulation and Agreement in Case No. GR-2007-0208. Laclede denies the remaining allegations in the paragraph. Consistent with the discussion in the section above entitled "Staff's Refusal to Discuss the FMP/FDC Issue," paragraph 23 arose out of another request by Laclede for feedback from Staff (and Public Counsel) on its CAM. Staff did not indicate that it thought the CAM did not comply with the Rules or were not in the form of the 2001 CAM.

26. Laclede admits that the parties held the meeting discussed in paragraph 23 of the Unanimous Stipulation and Agreement in Case No. GR-2007-0208. At this meeting, Staff did shed some light on its view of corporate cost allocations, a matter that was further discussed and resolved in Laclede's most recent rate case, Case No. GR-2010-0171. Laclede avers that Staff provided no specific suggestions regarding the gas supply pricing portion of the CAM.

27. Laclede admits that the parties attempted to resolve, and were largely successful in resolving, affiliate transaction issues pertaining to corporate cost

allocations. Laclede denies the remainder of paragraph 27. The parties were not “unable” to resolve the gas procurement pricing issues in the CAM, but such issues were not resolved because, despite Laclede’s pleas, Staff refused to discuss them. For the reasons stated above, among others, Laclede denies that the CAM’s gas supply language is non-compliant with the Rules.

28. Laclede admits that the parties named in paragraph 28 met on September 7, 2010 to discuss affiliate transactions. Laclede denies the remainder of paragraph 28. The gist of Staff’s discussion at the September 7 meeting was not how to confirm Laclede’s compliance with the Rules, but instead how to stop Laclede from conducting any transactions with its affiliate, LER.

29. Laclede denies the allegations of paragraph 29.

**Count 1: Laclede’s Violations of the Rules Asymmetrical Pricing Provisions**

30. Laclede admits that Staff accurately quoted from Laclede’s CAM.

31. Paragraph 31 consists of a hypothetical. No facts are alleged at all. The hypothetical ends with a legal conclusion to which no response is required. To the extent a response is required, Laclede denies the premise of the hypothetical.

32. Paragraph 32 consists of a hypothetical. No facts are alleged at all. The hypothetical ends with a legal conclusion to which no response is required. To the extent a response is required, Laclede denies the premise of the hypothetical.

33. Laclede denies the allegations of paragraph 33. Laclede discussed above how Laclede’s CAM matches the FDC/FMP requirements of the Rules.

34. To the extent the allegations in paragraph 34 call for a legal conclusion, no response is necessary. Laclede denies the remaining allegations of paragraph 34.

35. Paragraph 35 is a legal conclusion to which no response is required. To the extent a response is required, Laclede denies the premise of the hypothetical in paragraph 35.

36. Paragraph 36 is a legal conclusion to which no response is required. To the extent a response is required, Laclede denies the premise of the hypothetical in paragraph 36.

37. Paragraph 37 contains legal conclusions to which no response is required. To the extent a response is required, Laclede denies the premise of the hypothetical in paragraph 37 that its CAM or affiliate transactions are not compliant with the Rules.

38. Laclede denies the premise of the hypothetical in paragraph 38.

39. Paragraph 39 is a legal conclusion to which no response is required. To the extent a response is required, Laclede denies that the conclusion is correct.

**Count 2: Laclede's Violation of the Rules Preferential Treatment Prohibitions**

40. Paragraph 40 contains legal conclusions to which no response is required. To the extent a response is required, Laclede denies the hypothetical in paragraph 40.

41. Laclede admits that it uses firm supply to serve its customers. The remainder of paragraph 41 does not allege a fact. Laclede is without knowledge or belief as to the nature of the underlying supply of LER, or of Laclede's other counterparties for that matter.

42. No specific facts are alleged in paragraph 42. Instead there is a conclusion without any supporting explanation. Laclede denies the conclusory statement in paragraph 42.

43. Laclede denies the allegations of paragraph 43. The allegations refer to directors, but then list officers of Laclede and LER, not directors. Laclede and LER do not “share” corporate directors. Laclede and LER each have their own directors, who have fiduciary duties to the companies they serve.

44. Paragraph 44 contains legal conclusions to which no response is required. To the extent a response is required, Laclede denies the conclusory statement in paragraph 44.

45. Paragraph 45 contains a conclusory statement to which no response is required. To the extent a response is required, Laclede denies that Laclede attorneys represent LER. Laclede and LER each have their own attorneys. Laclede denies the conclusion in paragraph 45.

46. Paragraph 46 contains legal conclusions to which no response is required. Laclede states that no facts have been alleged in this paragraph regarding information sharing. To the extent a response is required, Laclede denies the allegations in paragraph 46.

#### **AFFIRMATIVE DEFENSES**

47. For its affirmative defenses, Laclede asserts that the Staff is estopped from bringing this complaint. Laclede hereby incorporates herein by reference the discussions on pages 3-4 and 8 above.

48. Laclede asserts the defense of laches.

49. Laclede asserts the defense of performance, as contrary to Staff’s premises in its hypotheticals, Laclede has taken FDC into account in pricing affiliate transactions.

**MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**  
**UPON WHICH RELIEF CAN BE GRANTED**

50. As stated above, rather than expend time and resources on a dismissal of the first count, Laclede prefers to obtain a substantive decision in this case on an expedited basis. However, with respect to the second count on preferential treatment, Staff alleges absolutely no facts to support its claims. Instead, Staff's Complaint is filled with hypotheticals, "ifs" and "whens," and a host of conclusory statements. Since there are no specific facts, there is nothing for the Commission to assume to be true to test the sufficiency of the Complaint.

51. Moreover, the issues raised by Staff -- common officers, directors, and attorneys -- are nothing outside of the ordinary in a holding company structure and were certainly contemplated by the Commission at the time it passed the affiliate transaction rules. The fact that these situations might exist does not state a claim upon which relief can be granted. Here is an analogy: The problem to be addressed is the speed at which cars drive on a certain road. The government decides on a speed limit of 35 mph and posts signs on the road to that effect. Now the Staff has raised an alarm: Because Laclede owns a car, Laclede may very well drive that car faster than 35 mph on that road. Owning a car does not state a claim because when the speed limit was passed, the government understood that citizens would own cars that would be driven on that road. Based on the lack of facts alleged by Staff, the Commission should dismiss Count 2 for failing to state a claim upon which relief can be granted.

WHEREFORE, for the foregoing reasons, Laclede Gas Company respectfully requests that the Commission dismiss Count 2 of the Complaint, accept Laclede's



Answer and Affirmative Defenses, and move promptly to establish a procedural schedule that would lead to an expedited hearing on Count 1 of the Complaint..

Respectfully submitted,

**/s/Michael C. Pendergast**

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

Laclede Gas Company  
720 Olive Street, Room 1516  
St. Louis, MO 63101  
Telephone: (314) 342-0533  
Fax: (314) 421-1979  
Email: mpendergast@lacledegas.com  
rzucker@lacledegas.com

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Staff and on the Office of Public Counsel on this 8th day of November, 2010 by United States mail, hand-delivery, email, or facsimile.

**/s/ Gerry Lynch**