

**Exhibit No.:**  
**Issue:** **Complaint and  
Counterclaim Issues**  
**Witness:** **Michael T. Cline**  
**Type of Exhibit:** **Rebuttal Testimony**  
**Sponsoring Party:** **Laclede Gas Company**  
**Case No.:** **GC-2011-0098**  
**Date Testimony**  
**Prepared:** **April 19, 2011**

**LACLEDE GAS COMPANY**

**GC-2011-0098**

**REBUTTAL TESTIMONY**

**OF**

**MICHAEL T. CLINE**

1 **REBUTTAL TESTIMONY OF MICHAEL T. CLINE**

2 Q. Please state your name and address?

3 A. My name is Michael T. Cline and my business address is 720 Olive Street, St.  
4 Louis, Missouri 63101.

5 Q. Are you the same Michael T. Cline who filed direct testimony in this docket?

6 A. Yes.

7 Q. What is the purpose of your rebuttal testimony?

8 A. The purpose of my rebuttal testimony is to address some of the assertions made  
9 by Charles R. Hyneman in his direct testimony filed on behalf of Staff on March  
10 22, 2011. My rebuttal testimony will address Laclede's counterclaim and Mr.  
11 Hyneman's testimony regarding the gas supply affiliate pricing standards.

12 **STAFF'S COMPLIANCE WITH THE RULES AND THE CAM**

13 Q. Is it true that Laclede has filed a counterclaim against Staff in this case?

14 A. Yes. Laclede alleged in its counterclaim that Staff's approach to pricing affiliate  
15 transactions for gas sales and purchases is directly contrary to the pricing  
16 standards in the Commission's affiliate transaction rules (the "Rules"), and the  
17 standards in the Company's Cost Allocation Manual ("CAM"), endorsed by the  
18 parties to Case No. GM-2001-342.

19 Q. Did Staff witness Hyneman address Laclede's allegations in his direct testimony?

20 A. No. He made no attempt to explain Staff's position or to defend Staff against the  
21 allegations in the counterclaim.

22 Q. Did Mr. Hyneman make any statements that are consistent with Laclede's  
23 allegation that Staff has refused to honor the CAM and the Rules?

1 A. Yes. On page 5 of his direct testimony, Mr. Hyneman states that “the rules,  
2 coupled with effective utility oversight and effective enforcement...*somewhat*  
3 *lessen the risk* of excessive costs being charged to utility ratepayers.” (emphasis  
4 added)

5 Q. How is this statement inconsistent with the Rules?

6 A. In the “PURPOSE” clause of Rule 4 CSR 240-40.015, the Commission stated that  
7 “The rule and its effective enforcement will provide the public the assurance that  
8 their rates are not adversely impacted by the utilities’ nonregulated activities.” So  
9 in approving the Rules, the Commission was satisfied that the rules adequately  
10 protect ratepayers, but Mr. Hyneman’s testimony demonstrates that Staff is not  
11 satisfied. Instead, Mr. Hyneman’s testimony is consistent with Staff’s position  
12 that the rules are inadequate, and it explains the motivation behind Staff’s refusal  
13 to honor the terms of the Rules and the CAM. It also explains Staff’s attempt to  
14 eliminate gas supply affiliate transactions by insisting that the affiliate should sell  
15 gas supply to the utility at the affiliate’s cost, rather than at the fair market price.

16 Q. On page 5, lines 10-12 of his direct testimony, Mr. Hyneman states that “even  
17 with close oversight and the affiliate transaction rules, the incentive for utility  
18 management to subsidize nonregulated operations exists and will continue to exist  
19 as long as utilities are allowed to transact business with affiliates.” Do you agree  
20 with Mr. Hyneman’s statement?

21 A. Not at all. It was recognized by the Missouri Supreme Court in the *Atmos* case  
22 that, absent a rule, companies might try to use affiliate transactions to benefit an  
23 unregulated affiliate at the expense of the utility and its customers. The *Atmos*

1 court also recognized that, through the Rules, the regulator countered this concern  
2 by prohibiting utilities from providing such a benefit to their affiliates. The  
3 Rules, and the threat of penalties for violating them, create an incentive for  
4 utilities to act in good faith to enter into affiliate transactions that do not adversely  
5 impact utility customers.

6 Q. Does the Staff have the same incentive to honor the Rules and the CAM?

7 A. Laclede has repeatedly attempted to draw the Commission's attention to Staff's  
8 consistent pattern of conduct in which it substitutes its own views on affiliate  
9 transaction pricing for the standards that have been approved by the Commission  
10 in the Rules and Laclede's CAM. To date, Staff has been allowed to pursue  
11 adjustments, seek discovery and take other actions, both in its dealings with  
12 Laclede as well as Atmos, that are clearly unauthorized by and contrary to the  
13 requirement of the Rules and the CAM. The question to be answered by  
14 Laclede's counterclaim in this case is whether Staff, like the utilities it audits, is  
15 also required to make a good faith effort to honor the Rules and the CAM, or  
16 whether Staff may create and pursue its own affiliate standards with impunity.

17 **GAS SUPPLY AFFILIATE TRANSACTION PRICING STANDARDS**

18 Q. On pages 7-11 of his direct testimony, Staff witness Hyneman discusses how  
19 Laclede's CAM fails to take into account both fully distributed cost (FDC) and  
20 fair market price (FMP) in valuing gas supply affiliate transactions. Does he  
21 have a point?

22 A. No. First of all, if Staff truly believed that to be the case, than it should have said  
23 so nearly ten years ago when Laclede first submitted its CAM to the Staff, or at

1 least seven years ago when Laclede submitted its revised version of the CAM to  
2 Staff. If one assumes that Staff was doing what Mr. Hyneman says it should  
3 have been doing over this period – namely, engaging in “effective regulatory  
4 oversight” – it is exceedingly difficult to understand how Staff could have  
5 acquiesced all these years in a pricing standard that it knew to be wrong. Second,  
6 in addition to referencing FMP in its CAM, Laclede has explained to Staff on  
7 multiple occasions how it took FDC into account in determining the pricing of gas  
8 supply affiliate transactions. On none of these occasions has the Staff ever  
9 explained how FDC could be the applicable pricing standard in the kind of gas  
10 supply transactions at issue. Third, and most importantly, members of the Staff’s  
11 own gas procurement analysis department have recognized that FDC will be equal  
12 to or greater than FMP when a utility is purchasing gas from an affiliate. In fact,  
13 the manager of that department, Mr. David Sommerer, testified in an Atmos ACA  
14 case, Case No. GR-2008-0364, on October 20, 2010, that when a utility does not  
15 produce a product itself, then FDC is by definition going to be equal to or greater  
16 than FMP, and therefore the proper pricing standard for such an affiliate  
17 transaction is FMP. Given these considerations, it would appear that Mr.  
18 Hyneman’s assertions about the CAM and FDC are nothing more than a series of  
19 after-the-fact rationalizations developed by Staff in an effort to obscure its own  
20 violations of the CAM and the Commission’s Rules.

21 Q. Does this conclude your rebuttal testimony?

22 A. Yes, it does.

