

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 4th day of November, 2009.

In the Matter of Laclede Gas Company's)
Purchased Gas Adjustment (PGA) to be)
Audited in its 2004-2005 and 2005-2006)
Actual Cost Adjustment)

**File Nos. GR-2005-0203
and GR-2006-0288**

ORDER DIRECTING LACLEDE TO PRODUCE INFORMATION

Issue Date: November 4, 2009

Effective Date: November 4, 2009

Procedural Background

In September of 2008, the Staff of the Missouri Public Service Commission filed a motion to compel Laclede Gas Company to produce information relevant to activities of a Laclede affiliate. By order issued on October 20, the Commission granted Staff's request. Laclede then filed a motion requesting that the Commission reconsider its order. Staff and the Office of the Public Counsel filed responses to Laclede's motion, to which Laclede filed replies. In December of 2008, the Commission denied Laclede's requests for reconsideration. Laclede then filed a request for clarification, to which Staff responded. In January of 2009, the Commission issued an order regarding Laclede's request for clarification.

In February of 2009, Staff notified the Commission of Laclede's refusal to produce the requested information. In its response to Staff's notification, Laclede requested oral argument. The Commission set the matter for oral argument, which was held on March 26. After oral argument, the Commission reversed its decision to compel Laclede to produce information and on April 22 issued an order denying Staff's request. Staff and Public

Counsel both requested reconsideration, with Laclede filing replies. After numerous other pleadings were filed, the Commission granted Staff's motion for reconsideration to the extent that additional oral argument was heard.

Discussion

Throughout this discovery dispute, the parties have discussed the Commission's Affiliate Transaction Rule and its applicability to Staff's discovery request. As the Commission stated in its Order Regarding Clarification,¹ although it is true that by granting Staff's motion, Staff is permitted to investigate Laclede's affiliate transactions, such investigation is limited to information that may lead to evidence that may be relevant to the instant cases and therefore, discoverable. Additionally, Staff and Public Counsel have asserted that Laclede is bound under an agreement reached in Case No. GM-2001-342 to provide the information Staff seeks.

The Commission emphasizes that Staff's discovery request is not an investigation under the Commission's Affiliate Transaction rule nor is it a complaint through which Staff or Public Counsel seeks enforcement of the agreement reached in Case No. GM-2001-342. These issues have but served as red herrings in what is a discovery request governed by the rules of civil procedure. Mirroring what was set out in the Commission's initial order granting Staff's motion to compel,² Commission rule 4 CSR 240-2.090(1) states that discovery may be obtained by the same means and under the same conditions as in civil actions. Under the rules of civil procedure, "it is not grounds for

¹ Issued on January 21, 2009.

² *Order Granting Motion to Compel*, issued October 20, 2008. The Commission herein incorporates the discussion set out in its order of October 20.

objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”³

After having considered the arguments, the Commission reaches its initial conclusion that Laclede must produce the information sought by Staff. The Commission will also direct Staff to file a notice informing the Commission of whether Laclede has complied with this order.

THE COMMISSION ORDERS THAT:

1. Laclede Gas Company shall produce, no later than November 9, 2009, the confidential information described in the Commission’s Order Granting Motion to Compel, issued on October 20, 2008.
2. The Staff of the Commission shall file on November 10, 2009, a notice informing the Commission of whether Laclede Gas Company has complied with this order.
3. This order shall become effective upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Gunn and Kenney, CC., concur.
Davis, C., dissents.
Jarrett, C., dissents, with separate dissenting
opinion to follow.

Jones, Senior Regulatory Law Judge

³ Missouri Rules of Civil Procedure, Rule 56.1.