

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

In the Matter of Laclede Gas Company's Verified     )  
Application to Re-Establish and Extend the     )     Case No. GF-2015-0181  
Financing Authority Previously Approved by the     )  
Commission     )

**LACLEDE'S MOTION TO CLARIFY OR AMEND  
THE COMMISSION'S SEPTEMBER 29 ORDER**

**COMES NOW** Laclede Gas Company ("Laclede" or "Company"), and files this Motion to Clarify or Amend the Order issued by the Commission on September 29, 2015 in this case, and in support thereof states as follows:

1. On September 29, 2015, the Commission issued an Order Granting Motion for Expedited Treatment, Order Granting Motion to Compel and Order Granting Protective Order (the "September 29 Order"). Laclede requests that the Commission clarify or amend the September 29 Order to remove the discussion on privilege and to find that ordered paragraph 1 is effective except where it conflicts with ordered paragraph 2, because the implication that the Laclede documents are not privileged conflicts with ordered provision 2(d), which expressly states that the Commission makes no finding with respect to privilege. Laclede also requests that the Commission withdraw the portion of the order that discussed the relevance issue, as it is in conflict with the legal principle of encouraging settlements.

2. On August 26, 2015 Staff filed a motion to compel Laclede to produce certain projected financial information, which Laclede considered irrelevant and privileged. On September 8, Laclede responded to Staff's motion and, at the same time, filed a motion for protective order. The motion for protective order represented a suggested solution to the discovery impasse under which Laclede would provide Staff the information it sought, and Laclede would obtain the protection it sought.

3. On September 16, the Staff responded with two pleadings. One pleading opposed Laclede's arguments regarding relevance and privilege. The other pleading effectively accepted the protective order solution, subject to certain conditions, one of those conditions being that in granting the protective order the Commission was not finding the previously redacted information to be privileged, and no such conclusion should be drawn from the granting of the protective order.

4. On September 22, Laclede replied to Staff's second pleading, effectively agreeing to the Staff's conditions and asking the Commission to clarify that in granting the protective order, the Commission was not making *any* finding as to whether or not the information is privileged. Having reached an agreement on the protective order solution, Laclede made no further response to the Staff's first pleading on relevance and privilege, although Laclede disagreed with Staff's arguments, and certainly would have responded had the dispute not been resolved.

5. The Commission then issued the September 29 Order granting Laclede's motion for protective order, adopting the conditions suggested by Staff, and clarifying in condition (d) under ordered paragraph 2 that the "Commission makes no finding about whether the previously redacted information is privileged."

6. Laclede viewed the matter as settled, and expected this to be the extent of the September 29 Order. However, the September 29 Order proceeded to discuss both the relevance and privilege issues even though those matters would be mooted by the solution to which the parties assented, and though Laclede had ceased contesting them. Of more concern was the fact that the September 29 Order's discussion section purported to find that the documents were not

privileged, while at the same time the ordered section expressly made no finding regarding privilege.

7. The hearing on this matter was then postponed and other matters intervened for Laclede. However, with the hearing again approaching, Laclede is requesting that the Commission clarify or amend the September 29 Order to remove its discussion on the privilege issue, which conflicts with the finding that the Commission is not deciding the privilege issue.

8. Laclede also requests that the Commission clarify or amend the September 29 Order to remove the portion that decides the relevance issue, as it is not consistent with the legal principle encouraging settlements. Compromises and settlements are favored under the law, including settlements of administrative actions. *State ex rel. Malan v. Huesemann*, 942 S.W. 2d 424 (W.D. Mo. 1997) The Administrative Procedures Act explicitly favors settlements in contested cases. Section 536.060 states that “Nothing contained in sections 536.060 to 536.095 shall be construed...to prevent stipulations or agreements among the parties (including, in a proper case, the agency).” (Section 536.060 RSMo. 2014) In order to fulfill the spirit of the statute encouraging settlements, courts have found that such agreements do not even need to be express or formal, but may be informal. *Davis v. Long*, 360 S.W.2d 307, 313 (St. Louis Ct. App. 1962)

9. So while the protective order solution was not in the form of a formal stipulation and agreement, it was nevertheless a compromise between Staff and Laclede, expressly set forth via the pleadings. The Commission clearly recognized and accepted the parties’ compromise in the September 29 Order, stating the following:

“As a compromise, Laclede offered to provide the requested information as long as it was subject to a protective order. Staff does not object to a protective order, so long as the order meets certain conditions. Therefore, the Commission will grant the protective order with the conditions suggested by Staff.” (September 29 Order, p. 3)

10. The purpose of settlement agreements is for both parties to compromise their positions and avoid the risk of litigation. Settlement agreements will be discouraged if the Commission rules on compromised matters, because the parties will remain subject to the risk of litigation.

11. Certainly, in this case the Commission was not required to approve the protective order resolution. Perhaps Laclede, even though it had reached an accord with Staff in the pleadings, should have responded to Staff's arguments, should have continued to battle the relevance and privilege issues, and should have asked for oral argument to better present these issues to the Commission. However, given the law's promotion of compromise and settlements, Laclede believed that the Commission would encourage, rather than discourage, the parties' resolution. In its pleadings supporting the protective order resolution, Laclede stated:

"The issuance of a protective order simultaneously reconciles and satisfies two important goals of discovery. First, it facilitates Staff's access to information that Staff claims it needs to perform its regulatory responsibilities in this case. Second, it protects Laclede's equally important right to object in any other proceeding to the use of privileged information. Because a protective order would resolve the inherent tension that exists between these competing goals in a manner that meets both parties' needs, Laclede respectfully submits that the Commission should issue such an order."

12. Based on the foregoing, Laclede requests that the Commission clarify or amend its September 29 Order to remove the discussions on relevance and privilege and to find that ordered paragraph 1 is effective except where it conflicts with ordered paragraph 2.

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission clarify or amend its September 29 Order as requested herein.

Respectfully submitted,

**LACLEDE GAS COMPANY**

By: /s/ Rick Zucker

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**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on all parties of record on this 6th day of November, 2015 by hand-delivery, e-mail, fax, or by placing a copy of such document, postage prepaid, in the United States mail.

/s/ Marcia Spangler