

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

In the Matter of Laclede Gas Company's     )  
Purchased Gas Adjustment for 2005-2006    )     **Case No. GR-2006-0288**

**LACLEDE GAS COMPANY'S REPLY TO THE OFFICE OF PUBLIC  
COUNSEL'S RESPONSE IN SUPPORT OF THE STAFF'S LIST OF  
DOCUMENTS REQUIRED AND MOTION FOR ORDER TO PRODUCE**

COMES NOW Laclede Gas Company (hereinafter "Laclede" or "Company") and submits this reply to the response filed by the Office of the Public Counsel ("OPC") in support of Staff's pleading entitled "List of Documents Required by Staff to Analyze Laclede's ACA Filings and Motion for Order Directing Laclede to Produce" (sometimes referred to herein as the "List & Motion"). In support thereof, Laclede states as follows:

1. In its Response, OPC asserts that the Commission should simply grant Staff's request that it be given carte blanche access to virtually all of the records of Laclede's affiliate, Laclede Energy Resources ("LER"). In fact, OPC goes so far as to recommend that the Commission grant Staff a retroactive waiver of the rule requirements, apparently conceding that the Staff should have followed such rules before it sought an order from the Commission directing Laclede to provide such information.<sup>1</sup> For the reasons given below, however, the Commission should afford no consideration to OPC's pleading.

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<sup>1</sup>As discussed in Laclede's Response filed on August 4, 2008, Staff's pleading violates Commission Rule 2.090(8) in five different respects. In supporting Staff's violations, OPC's position is in some ways even worse. Having had the benefit of reviewing both the Staff's and Laclede's pleadings, OPC takes the incredible position that the Commission's rules should only be followed when OPC believes they would be beneficial. Specifically, OPC effectively argues that, if a party only *anticipates* a discovery dispute, it may ignore the Commission's specific discovery procedures and proceed in any way it deems fit. The Commission should not condone such brazen disregard of its rules by either its Staff or OPC.

2. OPC makes absolutely no effort in its pleading to explain why such unfettered access to LER's records is necessary, reasonable or in any way consistent with the legal requirements governing discovery, including the requirements set forth in the Commission's affiliate transactions rules. Indeed, there is no discussion at all by OPC of what those requirements are, how they apply to the information sought by Staff, or even how that information is relevant to the issues in this case. Instead, OPC seeks to justify Staff's request on grounds that have nothing to do with the case at hand and that, by any reasonable measure, are wholly improper.

3. First, rather than respond to Laclede's argument that it has already provided the Staff with information that is more than sufficient to demonstrate the Company's compliance with the Commission's affiliate transactions rules, OPC simply suggests that Laclede's refusal to provide the very information that "could prove its innocence only amplifies the suspicious nature of the affiliate transactions between Laclede and LER."<sup>2</sup> OPC makes this suggestion without any basis in law or in fact.

4. Contrary to OPC's assertion, Laclede and LER have made a significant amount of information available to both the Staff and Public Counsel relating to the affiliated transactions at issue in these proceedings. Staff acknowledged as much nearly a year ago when it filed a Status Report in Case No. GR-2005-0203 on September 14, 2007, stating: "At present, Laclede and Staff are actively engaged in discovery efforts;

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<sup>2</sup>In fact, the Company has already indicated that it is eager to have a hearing so that it can demonstrate the lack of merit in the disallowances that Staff has proposed in connection with the Company's dealings with LER and that the Staff has used as pretext for its recommendation that there needs to be a full scale investigation of LER. To suggest, however, that the Commission should short-circuit the normal ACA process and effectively grant Staff's recommendation before a hearing on Staff's claims is even held belies a complete indifference to the long-standing procedures that have been developed to determine whether such recommendations are reasonable.

specifically, the Staff is reviewing a large amount of information from LER provided by Laclede.” This and subsequent information includes, among other things:

(a) hundreds of pages of invoices showing how much LER paid for the baseload gas supplies that were used to satisfy its purchase contract with Laclede; all of which have been made available for over two months at the Company’s offices in Jefferson City;

(b) copies of the contracts with non-affiliate suppliers and index price information that show that the transactions with LER were competitively priced;

(c) copies of Laclede’s annual Cost Allocation Manual (“CAM”) Reports that, pursuant to the Commission’s affiliate transactions rules, show what the cost basis and pricing methodologies for these transactions were; and

(d) answers to the only set of data request that OPC has submitted in these ACA proceedings relating to such transactions.

5. In addition to this information, Laclede also arranged, at OPC’s request, a follow-up meeting in St. Louis on June 24, 2008, in which the Company’s gas supply personnel gave a live demonstration of how sale and purchase transactions between the Company and its suppliers, including LER, are now done on the Intercontinental Exchange (“ICE”) Trading system. Those same gas supply personnel also went through a number of concrete examples of how past transactions with LER had been priced and the documentation that had been relied upon to ensure that the transactions were done in accordance with the affiliate transaction rules. Aside from a few follow-up questions from OPC’s representative at the meeting (which were promptly answered), Laclede

received no further communications from OPC indicating that its information needs regarding these affiliate transactions had not been met.

6. Since counsel for OPC did not attend the June 24, 2008 meeting in Laclede's offices and has yet to make arrangements to review the LER information that has been sitting around for months within a five minute walk of OPC's offices in Jefferson City, he cannot possibly be familiar with all of the information that has already been provided by the Company. If he was, he would undoubtedly realize that the information sought by Staff in its List and Motion, goes well beyond anything that is reasonably required to address the actual issues that have been raised in this case. Indeed, Laclede has objected to Staff's massive fishing expedition for that very reason.

7. Given this apparent lack of familiarity with the kind of information that has already been provided by the Company and how such information relates to the issues at hand, OPC's pleading in support of Staff's Motion should carry no weight. In the end, it represents nothing more than an uninformed plea that Staff's discovery request be granted simply and solely because the Staff has made it.<sup>3</sup> If that alone were a sufficient reason to grant such relief, however, there would never be a need for the Commission to decide any disputes involving Staff discovery, as a decision in favor of Staff would be a foregone conclusion.

8. Even more troubling is OPC's assertion that anything short of a rubber stamp for Staff's discovery request would cause "the public [to have] . . . little faith that their interests are being protected" and cause "consumers to question the Commission's

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<sup>3</sup> Contrary to Public Counsel's criminally-tinged language, utility regulation is not an exercise in criminal enforcement, let alone one in which utilities are presumed to be guilty until proven innocent. Nor is it a process in which all of the traditional and long-standing limits on discovery – whether they be related to a recognized privilege, a jurisdictional limitation on the Commission's powers, or mere considerations of relevancy – can or should be casually ignored based on a meaningless bromide like the one offered by Public Counsel.

commitment to protect consumer interests by vigorously enforcing consumer protection laws.” Response, pages 1-2. Such an assertion is nothing short of outrageous. In effect, OPC appears to be suggesting that unless the Commission sees things OPC’s way and gives the Staff access to every bit of information it has requested, OPC will see to it that the Commission pays a price in the court of public opinion. In other words, OPC seeks to determine this discovery matter not on the basis of what the law provides, but on the basis of alarming the Commission over what the public might be misled into believing if it chooses to do its duty and follow the law in a manner not sanctioned by OPC.

9. This unveiled and improper attempt to influence the Commission’s decision through the threat of a public outcry if it decides the matter in a certain way, rather than through a consideration of the law and the factual record in this case, comes perilously close to violating the legal parameters for permissible conduct during Commission proceedings. Commission Rule 4 CSR 240-4.020(4) states that it “... is improper for any person interested in a case before the commission to attempt to sway the judgment of the commission by undertaking, directly or indirectly, outside the hearing process to bring pressure or influence to bear upon the commission, its staff or the presiding officer assigned to the proceeding.” It would appear that OPC is doing just that, however, by telegraphing to the Commission that any decision on this matter other than the one urged by OPC will lead to an adverse reaction by consumers – a reaction that, in all likelihood, would only materialize if OPC makes it materialize.

10. OPC’s attempt to secure a decision based on potential public sentiment rather than the law and the facts is also inconsistent with Missouri Supreme Court Rule 4-

3.5(a), which states that “A lawyer shall not...seek to influence a judge, juror, prospective juror, or other official by means prohibited by law.” This standard is applied to practice before administrative agencies pursuant to Supreme Court Rule 4-3.9 and Commission Rule 4 CSR 240-4.090(1). In discussing this Rule, the Comment to 4-3.5 states that “The advocate’s function is to present evidence and argument so that the cause may be decided *according to law*.” (Emphasis supplied). Rather than argue the facts and the law, however, OPC has resorted to arguing by public opinion.

11. OPC’s pleading is also contrary to Missouri statutes which prohibit the harassment, intimidation or influence of a judicial officer by engaging in conduct reasonably calculated to “harass or alarm” such judicial officer. (See Section 565.084 RSMo. 2008) By stating in its pleading that a decision adverse to Staff would cause consumers to lose faith in the Commission’s willingness to protect their interests, OPC seeks to alarm the Commissioners into making a decision based on matters outside the record in this case. Indeed, by emphasizing how the public may react rather than what the law provides, OPC seeks to effectuate the same result that was found to be impermissible in *State v. Adams*, 229 S.W. 3d 175, 180 (S.D. Mo. 2007). In that case, the defendant sent a letter to his criminal court judge threatening to sue him. At trial on the charge of tampering with a judicial officer, the judge testified that he felt the defendant was “trying to take over the case, to run it his way and to apply his rules to it rather than the rules of the state.” Likewise, OPC seeks to use the court of public opinion to influence the Commission to allow OPC to take over this case and apply its own version of discovery rules rather than the state’s rules adopted by the Commission. Such a result should not be permitted by the Commission.

**WHEREFORE**, for the foregoing reasons, Laclede respectfully requests that the Commission afford no consideration to the Office of the Public Counsel's pleading and deny the Staff's List and Motion.

Respectfully submitted,

**/s/ Michael C. Pendergast**

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**CERTIFICATE OF SERVICE**

Gerry Lynch hereby certifies that the foregoing pleading has been duly served upon the General Counsel of the Staff and the Office of the Public Counsel by email or United States mail, postage prepaid, on this 15th day of August, 2008.

**/s/ Gerry Lynch**

Gerry Lynch