

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 14th day of  
December, 2006.

In the Matter of Missouri Coalition for Fair Competition,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. GC-2007-0169</u></b>
	)	
Laclede Gas Company,	)	
	)	
Respondent.	)	

**ORDER DIRECTING FILING**

Issue Date: December 14, 2006

Effective Date: December 14, 2006

The Missouri Coalition for Fair Competition ("MCFC") filed a formal complaint against Laclede Gas Company ("Laclede") on October 26, 2006. The gist of MCFC's complaint is that the Commission improperly determined, in Case No. GE-2000-0826, that Fidelity Natural Gas, Inc. ("Fidelity") was entitled, under Section 386.756.7, RSMo, to continue providing the same types of heating, ventilation, and air conditioning (HVAC) services Fidelity had provided before August 28, 1993. For this reason, the complaint continues, Fidelity could not legally transfer its purported statutory exemption to Laclede when Laclede purchased Fidelity's service territories in 2006, and Laclede should not be allowed to perform HVAC services in the former Fidelity service territories.

MCFC's complaint requests the following relief:

1. Fidelity's exemption should not automatically be passed to Laclede.
2. Laclede should be asked to provide sufficient and satisfactory evidence that Fidelity provided HVAC Services to customers within its service area prior to the date of August 28, 1993. This evidence must be in the form of service tickets or customer invoices – documenting customer names, addresses, and services provided.
3. If Laclede is unable to produce evidence of a sufficient quantity and also of a satisfactory quality that Fidelity provided HVAC Services to customers within its service area prior to August 28, 1993, the Complainant respectfully requests that the Commission not extend Fidelity's exemption to Laclede.

On October 27, 2006, the Commission notified Laclede of the complaint and allowed it thirty days in which to answer as provided by Commission Rule 4 CSR 240-2.070(7).

Laclede filed its answer to MCFC's complaint on November 27, 2006, and also moved, in the same pleading, for dismissal of the complaint with prejudice on two alternative grounds: (1) that the complaint was an improper collateral attack on a previous determination by the Commission in Case No. GE-2000-0826, which is prohibited by Section 386.550, RSMo; and (2) that Laclede had attached to its answer a variety of "sufficient and satisfactory" documentary evidence establishing that MCFC was not entitled to the relief requested in its complaint inasmuch as the attached documentation clearly showed that Fidelity did, in fact, provide HVAC services to customers in its service area during the relevant time frame.<sup>1</sup> MCFC has not filed any response to Laclede's pleading.

On November 29, 2006, pursuant to Commission Rule 4 CSR 240-2.070(10), the Commission ordered its Staff to conduct an investigation into the legal and factual issues set out in the parties' pleadings and to file a report discussing the results of that

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<sup>1</sup> The documents, which are duplicate copies of a number of Fidelity's service orders for the time period in question, appear to contain all of the categories of information requested by MCFC in its petition.

investigation. On December 6, 2006, Staff filed a report, with accompanying verified memorandum, recommending that Laclede's motion for dismissal of MCFC's complaint with prejudice be granted on both grounds posited by Laclede. MCFC has not filed any response to Staff's pleading either.

Commission Rule 4 CSR 240-2.117(2), which is titled "Determination on the Pleadings," provides:

Except in a case seeking a rate increase or which is subject to an operation of law date, the commission may, on its own motion or on the motion of any party, dispose of all or any part of a case on the pleadings whenever such disposition is not otherwise contrary to law or contrary to the public interest.

Before determining whether it is appropriate, as requested by Laclede and recommended by Staff, to completely and finally dispose of this case on the pleadings, the Commission will give MCFC seven days to file a pleading showing cause why its complaint should not be dismissed with prejudice on the pleadings.

**IT IS ORDERED THAT:**

1. The Missouri Coalition for Fair Competition shall file a pleading, not later than 5:00 p.m. on Thursday, December 21, 2006, showing cause why its complaint against Laclede Gas Company should not be dismissed with prejudice on the basis of the pleadings currently before the Commission.

2. This order shall become effective on December 14, 2006.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Lane, Regulatory Law Judge