

**EXHIBIT**

**Exhibit No.:**

421

**Issue(s):**

Pay for performance/  
Alagasco & Energysouth Savings/  
Decoupling/  
Rate Design/  
Energy Efficiency/  
Economic Development Rider: CHP

**Witness/Type of Exhibit:**

Marke/Surrebuttal

**Sponsoring Party:**

Public Counsel

**Case No.:**

GR-2017-0215 & GR-2017-0216

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**SURREBUTTAL TESTIMONY**

**OF**

**GEOFF MARKE**

Submitted on Behalf of the Office of the Public Counsel

**LACLEDE GAS COMPANY  
MISSOURI GAS ENERGY**

CASE NO. GR-2017-0215

CASE NO. GR-2017-0216

November 21, 2017

Public Schedules

OPC Exhibit No. 421  
Date 12/28/17 Reporter AS  
File No. GR-2017-0215, GR-2017-0216

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

In the Matter of Laclede Gas Company's )  
Request to Increase Its Revenues for Gas )           Case No. GR-2017-0215  
Service   )

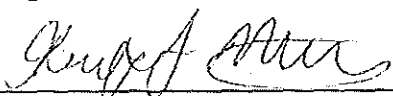
In the Matter of Laclede Gas Company )  
d/b/a Missouri Gas Energy's Request to )           Case No. GR-2017-0216  
Increase Its Revenues for Gas Service )

**AFFIDAVIT OF GEOFF MARKE**

STATE OF MISSOURI    )  
                                  )    ss  
COUNTY OF COLE     )

Geoff Marke, of lawful age and being first duly sworn, deposes and states:


1. My name is Geoff Marke. I am a Regulatory Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Geoff Marke  
Chief Economist

Subscribed and sworn to me this 21<sup>st</sup> day of November 2017.



JERENE A. BUCKMAN  
My Commission Expires  
August 23, 2021  
Cole County  
Commission #13754037

  
\_\_\_\_\_  
Jerene A. Buckman  
Notary Public

My commission expires August 23, 2021.

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**SURREBUTTAL TESTIMONY**

**OF**

**GEOFF MARKE**

**LACLEDE GAS COMPANY  
CASE NO. GR-2017-0215**

**MISSOURI GAS ENERGY  
CASE NO. GR-2017-0216**

1 **I. INTRODUCTION**

2 **Q. Please state your name, title and business address.**

3 A. Geoffrey Marke, PhD, Economist, Office of the Public Counsel (“OPC or “Public Counsel”),  
4 P.O. Box 2230, Jefferson City, Missouri 65102.

5 **Q. Are you the same Geoff Marke that filed rebuttal testimony in GR-2017-0215 and GR-**  
6 **2017-0216?**

7 A. Yes.

8 **Q. What is the purpose of your rebuttal testimony?**

9 A. The purpose of this testimony is to respond to the rebuttal testimony regarding:

10 • Pay for Performance

11       ▪ Laclede Gas Company & Missouri Gas Energy (“Laclede,” “MGE” or the  
12       “Company”) witness C. Eric Lobser

13       ▪ Missouri Public Service Commission Staff witness (“Staff”) Brooke M.  
14       Richter

15 • Alagasco & EnergySouth Savings

16       ▪ Company witness C. Eric Lobser

17 • Decoupling

18       ▪ Missouri Division of Energy (“DE”) witness Martin R. Hyman

19       ▪ Staff witness Michael Stahlman

20       ▪ Missouri Industrial Energy Consumers (“MIEC”) witness Greg Meyer



- 1           • Rate Design
- 2                 ▪ Staff witness Robin Kliethermes
- 3           • Energy Efficiency
- 4                 ▪ Company witness Shaylyn Dean
- 5
- 6           • Economic Development Rider: Combined Heat and Power Pilot
- 7                 ▪ DE witness Jane Epperson
- 8

9   **II. PAY FOR PERFORMANCE**

10 **Q. Please provide a brief overview of the Company proposed pay for performance metrics.**

11 A. In Mr. Lobser's direct testimony, he suggested that potentially four to six (undefined) pay for  
12 performance metrics could be chosen. Each pay for performance metric amount would equal  
13 up to plus (or minus) five basis points multiplied by the equity component of rate base  
14 established in this proceeding. These metrics would be based on differentials from, as yet,  
15 undefined baselines.

16 **Q. Did OPC inquire into the details surrounding Mr. Lobser's proposal?**

17 A. Yes. OPC issued several data requests for additional information regarding Mr. Lobser's  
18 proposal. For example, OPC DR-2077's question and the Company's reply is as follows:

19           **Question:**

20           Please provide a list of any and all performance metrics (e.g., call center response time)  
21           that the Company is aware of that are offered by other utilities in which an equity  
22           component of rate base is adjusted per the results.

23           **Response:**

24           The Company has not attempted to conduct a survey on this issue.<sup>1</sup>

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<sup>1</sup> See GM-1

1 Additionally, OPC DR-2078's question and the Company's reply is as follows:

2 **Question:**

3 Does the Company expect interveners and/or Staff and Public Counsel to offer up  
4 performance metrics suggestions in direct testimony? Or will specific metrics and  
5 parameters be determined outside of the rate case?

6 **Response:**

7 Such input would be welcome by the Company.<sup>2</sup>

8 **Q. Did OPC file direct or rebuttal testimony on this topic?**

9 A. No. OPC elected not to file direct or rebuttal testimony on this topic based on the lack of detail  
10 surrounding the initial proposal and the subsequent nonresponse from intervening parties.

11 **Q. Did the Company file rebuttal testimony on its proposal?**

12 A. Yes. Mr. Lobser filed rebuttal to confirm the lack of responses from intervening parties to his  
13 proposal and to offer, as an alternative that:

14 Because of the time constraints of this proceeding, the establishment of such metrics  
15 might be best achieved in a separate proceeding after the conclusion of these cases.<sup>3</sup>

16 **Q. Please summarize Staff's rebuttal response to this Company proposal.**

17 A. Staff witness Richter also acknowledges that the lack of substantive content from the Company  
18 regarding its proposal prevented Staff from taking a formal position. Ms. Richter states that at  
19 a minimum:

20 Specific and precise definitions of the metrics and how they are measured and/or  
21 calculated should be a part of any performance incentive proposal.

22 And that:

---

<sup>2</sup> See GM-2

<sup>3</sup> Rebuttal Testimony of C. Eric Lobser, p. 31, 15-16.

1                   If a working group is organized to determine specific metrics that may be used for  
2                   performance incentive proposals, Staff will participate in such a group.<sup>4</sup>

3   **Q.    What is OPC's position?**

4    A.    The Commission should reject the Company's proposal in total.

5   **Q.    Please explain why the pay for performance proposal should be rejected within the**  
6   **context of this case.**

7    A.    There are no specific metrics proposed on the record. As it stands, this is a deficient proposal  
8           without context and void of parameters. Additionally, on a practical level, it is difficult and  
9           arguably inappropriate to distill performance to a simple, and often single measure of  
10          performance. For example, assume the Company based the quality of customer service on the  
11          metric of the average length of a call with a customer. As a single measure, this metric fails to  
12          capture the quality of help given, such as whether the issue was resolved on the first call, or  
13          whether the customer was satisfied. Macro-level factors such as an economic downturn could  
14          also make employees appear to be performing to a lower standard independent of actual  
15          performance.

16   **Q.    Please explain why it is inappropriate for a future working group to be formed on this**  
17   **topic.**

18    A.    OPC is skeptical that a consensus could be reached and that this could become a platform for  
19          topics outside the purview of providing safe and reliable service at just and reasonable rates.  
20          Additionally, the creation of yet another "working group" without clear, agreed to deliverables  
21          or direction will further dilute the amount of finite time available to stakeholders with limited  
22          resources. Stated differently, what is the opportunity cost of providing resources and time to a  
23          nebulous topic without any framework? No doubt, there are many worthwhile, substantive  
24          regulatory issues worth exploring and investing time into. The sheer volume of regulatory

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<sup>4</sup> Rebuttal Testimony of Brooke M. Richter, p. 4, 12-13 and 17-18.

1 filings and subsequent working dockets opened up in the last few years underscores this point.  
2 Given the universe of issues to be examined and the lack of interests from stakeholders on this  
3 topic, it does not appear to merit serious consideration outside the context of a rate case.  
4 Carving out a profit-inducing “pay for performance” piece as a placeholder to be examined  
5 outside of the context of the Company’s rate case would also appear to constitute single-issue  
6 ratemaking as it effectively mutes all relevant factors utilized to set rates.

7 Not to be lost in this discussion (and stating the obvious), there is nothing preventing the  
8 Company from establishing in-house targets related to excellent performance and quality  
9 service. In fact, research suggests that better customer satisfaction has a positive correlation  
10 with rewarded ROE. For example, J.D. Power and Associates found that similar to profitability  
11 and credit ratings, customer satisfaction influences ROE. In a 2012 study, J.D. Power  
12 concluded that:

13 On average, a 10-point increase in customer satisfaction, based on the 1,000-point  
14 index scale utilized by J.D. Power and Associates, is associated with a .04% increase  
15 in ROE. More notable is the finding of a .5% increase in ROE among utilities in the  
16 top quartile of customer satisfaction one year prior to a rate case, compared with  
17 utilities in the bottom quartile of customer satisfaction during the same time frame.<sup>5</sup>

18 In short, the Company is already being rewarded/penalized, in part, based on its perceived  
19 (customer satisfaction) and realized (response leakage times) performance metrics. Companies  
20 routinely cite JD Power scores or other relevant scoring factors for consideration when filing  
21 a rate case.<sup>6</sup> Creating a separate, isolated, profit-plus-metric outside the context of a rate case

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<sup>5</sup>Heath, A. and D. Seldin, (2012) How customer satisfaction drives return on equity for regulated electric utilities.  
J.D. Power and Associates White Paper.

<http://www.jdpower.com/sites/default/files/How%20Customer%20Satisfaction%20Drives%20Return%20On%20Equity%20for%20Regulated%20Electric%20Utilities%20White%20Paper.pdf>

<sup>6</sup> See Direct Testimony of Steven L. Lindsey p. 7-12.

1 could expose ratepayers to a “gaming” of the outcome and potentially unintended  
2 consequences.<sup>7</sup>

3 **Q. Could you give an example of “gaming” the pay for performance outcome?**

4 A. Yes. For example, a baseline three-year average rate of caller response time could be utilized  
5 to set a pay for performance target. The utility could reduce that response time average by  
6 deploying a “virtual hold” or “call deferral” software program that would artificially reduce  
7 the caller response time but also result in an inferior customer experience. Alternatively, the  
8 Company could triple its call center staff (or its outsourced 3<sup>rd</sup>-party call center staff in Texas  
9 or New York) and achieve superior results based on inflated spending. Both examples would  
10 produce distorted outcomes (an apples to oranges comparison), an inferior customer  
11 experience, and potentially a perverse “Brewster’s Millions”<sup>8</sup> scenario where the Company is  
12 rewarded with money as a result of ... spending more money.<sup>9</sup>

13 **Q. Could you provide an example of the unintended consequences of an ill-designed pay for  
14 performance arrangement?**

15 A. Yes. Introducing pay for performance financial incentives for select areas may encourage  
16 utility management to shift attention away from other performance areas that do not have  
17 incentives. This creates the very real possibility that performance in the areas without  
18 incentives will deteriorate (i.e., “teaching to the test”).<sup>10</sup> It can also inhibit efficient utility

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<sup>7</sup> Ariely, D. et. al (2011) Large stakes and big mistakes. *Federal Reserve Bank of Boston Working Paper*: No. 05-11  
<http://rady.ucsd.edu/faculty/directory/gneczy/pub/docs/large-stakes.pdf>

<sup>8</sup> The 1985 Richard Pryor movie, *Brewster’s Millions*, centered on the premise that Brewster (Pryor) has to spend \$30 million within 30 days to inherit \$300 million. See:

[https://en.wikipedia.org/wiki/Brewster%27s\\_Millions\\_\(1985\\_film\)](https://en.wikipedia.org/wiki/Brewster%27s_Millions_(1985_film))

<sup>9</sup> See GM-3 for Staff’s analysis of Laclede and MGE’s call center declines following its recent acquisition.

<sup>10</sup> Gillam, S.J., Siriwardena, A. & N. Steel (2012) Pay-for-performance in the United Kingdom: Impact of the quality and outcomes framework—a systematic review. *Annals of Family Medicine*. 10:461-468.

<http://www.annfammed.org/content/10/5/461.full.pdf+html>

1 planning by encouraging the Company to focus on short-term solutions, which can easily  
2 become resource intensive, contentious, litigated affairs.<sup>11</sup>

3 At the most extreme, improperly designed and minimally regulated pay for performance  
4 schemes have resulted in fraud and criminal penalties such as the recent Wells Fargo account  
5 scandal<sup>12,13,14</sup> and the infamous Enron Corporation scandal.<sup>15,16</sup>

### 6 III. ALAGASCO & ENERGYSOUTH SAVINGS

7 **Q. What is the Company seeking in its proposed transition cost/savings calculation related**  
8 **to its Alagasco and EnergySouth acquisitions?**

9 **A.** Mr. Lobser provides three alternative options for the Commission to consider which are  
10 paraphrased as follows:

- 11 1. The Commission could deduct half of the transition costs from the Company's  
12 savings calculation incurred to make the acquisitions. Amortized over a five-year  
13 period this would represent a \$2.35 million offset;
- 14 2. The Commission could allow the Company to retain, on a one-time basis, a 50%  
15 (or 25% minimum) percentage of the cost savings; or

<sup>11</sup> Lacey, S. (2015) Lies, Damned Lies and Modeling: Energy Efficiency's Problem with Tracking Savings. Greentech Media <https://www.greentechmedia.com/articles/read/overcoming-energy-efficiencys-problem-with-tracking-savings#gs.b8ccQyc>

<sup>12</sup> Reckard, R.E. (2013) Wells Fargo's pressure-cooker sales culture comes at a cost. *Los Angeles Times* <http://www.latimes.com/business/la-fi-wells-fargo-sale-pressure-20131222-story.html>

<sup>13</sup> Keller, L.J. (2017) Wells Fargo plans to close more than 400 branches through 2018. *Bloomberg*. <https://www.bloomberg.com/news/articles/2017-01-13/wells-fargo-plans-to-close-more-than-400-branches-through-2018>

<sup>14</sup> Yerak, B (2016) Illinois treasurer: State will suspend Wells Fargo business. *Chicago Tribune*. <http://www.chicagotribune.com/business/ct-illinois-wells-fargo-suspend-business-20161003-story.html>

<sup>15</sup> Niskanen, W.A. (2005) After Enron: Lessons for public policy. Rowman & Littlefield Publishers, Inc.

<sup>16</sup> Khan, R. (2016) There's a problem with 'pay for performance' Business Insider. <http://www.businessinsider.com/theres-a-problem-with-pay-for-performance-2016-10>

1                   3. The Commission could adjust the Company's Commission-approved ROE by 10  
2                   to 25 basis points upward.<sup>17</sup>

3 **Q. Staff has rejected the Company's calculation. What is the basis for the Company's**  
4 **appeal?**

5 A. Mr. Lobser believes it is not "fair" from a "public policy standpoint."<sup>18</sup>

6 **Q. What is OPC's position?**

7 A. OPC supports Staff's position. For that reason and others (to be described below), OPC  
8 rejects the three options put forward by Mr. Lobser.

9  
10 **Q. Should the Commission be aware of any additional information?**

11  
12 A. Yes. On June 16, 2016, OPC filed a motion asking the Commission to issue an order  
13 opening an investigatory docket and directing Staff to investigate the acquisition of  
14 Alagasco and EnergySouth. The motion proposed that the Commission investigate  
15 whether the acquisition and proposed acquisition ("transactions") constituted a violation  
16 of a Commission order in that Spire failed to seek its prior approval for the transactions.  
17 The Commission granted the motion, and ordered the Staff to conduct the investigation  
18 and file a report setting forth the results of its investigation, including whether the  
19 transactions are within the Commission's jurisdiction. On September 1<sup>st</sup>, 2016 Staff filed  
20 its investigatory report with the following conclusion:

21  
22 **IV. CONCLUSIONS AND RECOMMENDATIONS**

23 **A. Conclusions:**

24 The "not detrimental to the public interest" standard requires a cost-benefit  
25 analysis. Staff is not aware of any benefits that the transactions have or will confer  
26 on the Missouri ratepayers of Laclede and MGE; but has identified potential

<sup>17</sup> Rebuttal Testimony of C. Eric Lobser, p. 30, 1-19.

<sup>18</sup> Rebuttal Testimony of C. Eric Lobser, p. 28, 21-22 & p. 29, 1-2.

1           detriments. Those detriments include higher capital costs due to Spire’s debt  
2           burden, taken on to fund its acquisitions, and costs improperly allocated to Spire’s  
3           Missouri operating company.

4           ***B. Recommendations:***

5           The Alagasco acquisition is complete and cannot be undone; the EnergySouth  
6           acquisition is quite small. Therefore, Staff recommends that the best way to  
7           address the detriments it has identified is in the context of a general rate case for  
8           Laclede Gas Company. Additionally, Staff will pursue a complaint against Spire  
9           for its failure to seek prior approval from this Commission for the acquisitions of  
10          Alagasco and EnergySouth.<sup>19</sup>

11          OPC also appeals to the principle of “fairness,” specifically, honoring the terms of the  
12          unanimous stipulation and agreement executed by the Company and approved by the  
13          Commission in GM-2001-342 which states:

14                The Laclede Goup, Inc. agrees that it will not, directly or indirectly, acquire or  
15                merge with or allow itself to be acquired by or merged with, a public utility or the  
16                affiliate of a public utility, where the affiliate has a controlling interest in a public  
17                utility . . . without first requesting and, if considered by the Commission, obtaining  
18                prior approval from the Commission and a finding that the transaction is not  
19                detrimental to the public, provided that for purposes of acquisitions by the Holding  
20                Company only, public utility shall mean a natural gas or electric public utility.

21          Additionally, OPC also appeals “from a public policy standpoint” and has included the entire  
22          77-page Staff investigation report in GM-4 (see also GM-2 & GM-5 for additional supporting  
23          schedules) for the Commission’s consideration. Parties, including OPC, entered into the  
24          unanimous stipulation and agreement in GM-2001-342 (see GM-6) in good faith that it would  
25          be honored and exercised. It’s clear from Staff’s investigative report that the Company has

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<sup>19</sup> GM-2016-0342 In the Matter of Spire Inc.’s Acquisition of EnergySouth, Inc. and Related Matters. Staff’s Investigation Report p. 77.



1 violated those terms and that the acquisitions were detrimental to the public. Regarding the  
2 impact to Missouri customers the Staff report states:

3 Yes, it has depressed the credit rating of Laclede Gas and thus increased its cost of  
4 capital which is reflected in higher rates. Additionally, Staff is of the opinion that  
5 acquisition and integration costs have improperly been allocated to Laclede Gas. Staff  
6 is also of the opinion that improper affiliate transactions are occurring on an ongoing  
7 basis between Laclede Gas and Spire and Alagasco.

8 As the Commission is well aware, an almost identical situation played out recently with  
9 respect to Great Plains Energy Inc.'s ("GPE") acquisition of Westar Energy.

10 In 2001, GPE was formed by a restructuring of KCPL, pursuant to which KCPL and GPE  
11 sought, and obtained, authority from this Commission to restructure as a holding company  
12 and wholly-owned operating subsidiary. The Commission approved that reorganization by  
13 order on July 31, 2001, in Case No. EM-2001-464. By the same order, the Commission  
14 also approved the *First Amended Stipulation and Agreement*, filed on July 9, 2001, and  
15 executed on behalf of KCPL and GPE by James M. Fischer, which states at Paragraph 7:

16 **Prospective Merger Conditions**

17 GPE agrees that it will not, directly or indirectly, acquire or merge with a public utility  
18 or the affiliate of a public utility, where such affiliate has a controlling interest in a  
19 public utility unless GPE has requested prior approval for such a transaction from the  
20 Commission and the commission has found that no detriment to the public would result  
21 from the transaction. In addition, GPE agrees that it will not allow itself to be acquired  
22 by a public utility or the affiliate of a public utility, where such affiliate has a controlling  
23 interest in a public utility, unless GPE has requested prior approval for such a

1 transaction from the Commission and the Commission has found that no detriment to  
2 the public would result from the transaction.<sup>20</sup>

3 Over the past year, a series of dockets have been opened (and subsequently closed) including  
4 EM-2016-0324, EM-2016-0226, and finally EE-2017-0113 which resulted in a contested  
5 hearing in front of the Commission. Regulators and relevant parties have effectively been  
6 denied their opportunity to review the acquisitions of Alagasco and EnergySouth even though  
7 Spire entered into a similarly worded stipulated agreement as GPE did that required the  
8 Company to seek Commission approval.

9 **Q. What are OPC's recommendations?**

10 **A.** That the Commission reject Mr. Lobser's request in its entirety and order an audit of the  
11 Company's affiliate transactions and cost allocations as a result of the Alagasco and  
12 EnergySouth acquisitions as recommended by OPC witnesses Azad and Hyneman.

13 **IV. DECOUPLING**

14 **Q. Please summarize other intervenor's response to the Company's proposed decoupling**  
15 **mechanism.**

16 **A.** Both Staff and MIEC rejected the Company's decoupling mechanism citing similar concerns  
17 as OPC. DE conditionally endorsed decoupling if it was adopted with continued energy  
18 efficiency support and a lower customer charge.

19 **Q. Has OPC's position changed?**

20 **A.** No. OPC shares the concerns outlined in Staff's and MIEC's rebuttal testimony and, like DE,  
21 supports a lower residential customer charge (specifically set at \$14.00) regardless of the  
22 decoupling mechanism. To be clear, OPC does not categorically reject decoupling; however,  
23 as outlined in my rebuttal testimony, the current environment does not justify the present

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<sup>20</sup> See also GM-7

1 adoption of this regulatory tool. Managing utility risk through ratemaking (outside of a rate  
2 case) is a zero-sum endeavor. To the extent that decoupling alleviates the utility's risk of  
3 revenue variability or volatility (which is the stated goal of the proposal) decoupling will result  
4 in a risk transfer to consumers who must pay additional rate adjustments. This transfer of risk  
5 should also explicitly recognize this reality in a reduction to the allowable return on equity  
6 (utility profit).

7 If the Commission elects to award the Company with a decoupling mechanism, OPC suggests,  
8 at a minimum, the following conditions be applied to help reduce the risk transfer to captive  
9 ratepayers:

- 10 • An initial notification to customers informing them of the decoupling process via  
11 mail, public notification for any future adjustments and a detailed explanation on the  
12 Company's website;
- 13 • Adjustments be confined to bi-annual true-ups (winter and summer) at this initial  
14 stage with filed EFIS surveillance reports similar to the electric fuel adjustment  
15 clause ("FAC") format;
- 16 • Any given adjustment should be "capped" at a 3% increase above rates set in this  
17 case with excess under-recovery carried over to future adjustments;
- 18 • Lower the residential customer charge to \$14.00 in line with nation-wide natural gas  
19 averages and the other investor-owned utilities in Missouri;
- 20 • Provide an explicit provision for the Commission to account and adjust for revenue  
21 volatility due to the occurrence of an economic recession/depression;<sup>21</sup> and

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<sup>21</sup> In 1991 the Maine PSC approved a decoupling mechanism for Central Main Power Company ("CMP"). Around the time of its adoption, Maine, as well as the rest of New England, was experiencing the start of a recession that resulted in lower sales levels. The lower sales levels caused substantial revenue deferrals that CMP was ultimately entitled to recover. By 1992, the recession had created a \$52 million risk shift transfer from CMP to its customers. See also *Proposed Increase in Rates, Order Granting Motion to Withdraw Proceeding*, Docket No. 91-174 (Jan. 10, 1992). As well as, *Consideration of Issues Concerning ERAM-Per-Customer for Central Maine Power Company, Order Approving Stipulation*, Docket No. 90-085-A (February 5, 1993).

- 1                   • Make an explicit downward adjustment to the allowed return on equity of at least 10  
2                   basis points to recognize the risk transfer from shareholders to ratepayers.

3       **V. RATE DESIGN**

4       **Q. Staff supports the Company's proposed low income pilot rate design. What is OPC's**  
5       **position?**

6       A. OPC supports the Company's proposed low-income rate design pilot and would suggest that  
7       the discount be set at the approved residential customer charge level set by the Commission in  
8       this case.

9       **Q. Does OPC have a position on Staff's proposed consolidation of the Company's**  
10       **commercial customer classes?**

11       A. OPC is still evaluating this proposal and reserves the right to adjust and comment accordingly  
12       based on information included from parties in surrebuttal if this specific issue goes to hearing.

13       **VI. ENERGY EFFICIENCY**

14       **Q. Please provide some context, from OPC's point-of-view, for the historical justification of**  
15       **ratepayer-funded natural gas energy efficiency programs.**

16       A. The following items are generally considered policy or regulatory justifications for ratepayer-  
17       funded natural gas energy efficiency programs:

- 18               • Hedge Value:  
19                 Reduces consumer exposure to seasonal volatility in gas commodity costs;  
20               • Demand reduction in price effect ("DRIPE"):  
21                 Aggregate supply-demand relationship can produce price reductions;  
22               • Defer supply-side investment (long-run marginal cost):  
23                 Local capital distribution system upgrades minimized;

- 1           • Environmental benefits:  
2                 Reductions in fossil fuel emissions;
- 3           • Energy and/or cost savings opportunities:  
4                 Direct monetary savings for participants;
- 5           • Economic development:  
6                 Helps support local contractors;
- 7           • Carbon tax and/or compliance regulation:  
8                 Serves as a complement to all-in compliance targets (e.g., Energy Efficiency  
9                 Resource Standards) and/or regulatory laws (e.g., Clean Power Plan);
- 10          • Sunk costs (if programs already in place):  
11                 Suspending programs loses administrative and marketing costs of program activity  
12                 to date; and
- 13          • Fuel selection (natural gas utility-specific):  
14                 Provides an “equal” opportunity for natural gas utility to “competitively” attract  
15                 new customers.

16 **Q. Please provide some context why these justifications have been minimized.**

17 **A.** Stable, reduced natural gas fuel prices have been a blessing for consumers but have, in turn,  
18 decreased the cost effectiveness of natural gas energy efficiency (“EE”) programs. Moreover,  
19 the near certain, erasure of sweeping regulatory environmental regulation in the form of the  
20 Clean Power Plan has minimized justification of natural gas EE programs as an emission-  
21 reduction complement to electric demand-side-management programs. Finally, equity issues  
22 persist regarding high numbers of free ridership (i.e., customers who would still purchase  
23 efficient natural gas appliances regardless of whether there was a rebate) making it more  
24 difficult to justify additional rate increases for these programs in the face of potential cuts to  
25 low-income programs such as state-funded Utilicare and federally-funded LIHEAP.

26

27

1 Q. Does OPC have concerns if energy efficiency funding is approved without policy  
2 objectives or parameters?

3 A. Yes. Historically, the collaborative members<sup>22</sup> have successfully worked together to provide a  
4 reasonable allocation of funds and marketing to “cost-effective” measures for all customer  
5 classes. The Company, in particular, has consistently produced a transparent record of activity  
6 for members and facilitated a productive collaborative environment in which, to my memory,  
7 there have been minimal disagreements. That being said, the collaborative has also operated  
8 with a degree of uncertainty and clear lack of regulatory guidance as to how to function that  
9 has since come to light as a result of this rate case. No doubt, if funding were continued, the  
10 collaborative would benefit from having greater certainty.

11 As it stands, if the Commission approves funding in this case without clear policy  
12 objectives or parameters, OPC has concerns that this funding would amount to a blank  
13 check with minimal regulatory oversight or any reasonable prudence standard.

14 The Commission should also be cognizant that the results of the Company’s third-party  
15 evaluation, measurement and verification (“EM&V”) have not been formally submitted to  
16 the existing collaborative and is not scheduled to be ready until after the hearing in this  
17 case concludes. All parties are basing testimony and making recommendations in this case  
18 on limited contextual support, without clear policy objectives or appropriate parameters.  
19 All of which underscore the uncertainty of these programs and heightens the possibility of  
20 future litigation when parties are demanding that funding levels be doubled, measures be  
21 added, and carve-out programs be included while natural gas fuel prices remain low and  
22 supply is abundant.

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<sup>22</sup> Historical participants have included (but not limited to) the Missouri Division of Energy: John Buchanan, Mary Ann Young, Sharlet Kroll and Erin Kohl; the Missouri Public Service Commission Staff: Henry Warren, Kory Boustead and Tammy Huber; the Missouri Office of Public Counsel: Ryan Kind and Geoff Marke; Laclede/MGE: Jim Travis, Jim Hearing, Mike Noack, Shaylyn Dean, Rae Lewis and Jonathan Schniper; and the Midwest Gas Users’ Association: Stu Conrad.

1 To illustrate the current predicament stakeholders find themselves in: presently there is not an  
2 agreed-to Commission approved cost-effective test or any guidance on whether the test  
3 should be applied at the measure, program or portfolio level let alone an agreed-to budget or  
4 what would happen if that budget is exceeded or unspent. In fact, historically, the budget has  
5 never been fully spent, and OPC worries about implementing non-evidence based spending  
6 floors.

7 With that in mind, and based on discussions arising from settlement, OPC has drafted the  
8 following questions to help facilitate dialogue around appropriate parameters and as a bridge  
9 to clear policy objectives if the Commission approves program funding.

10 Figure 1: OPC's outstanding questions related to natural gas energy efficiency programs

- 11 1. What is the goal?
- 12 • Is the goal to spend money? If no, what measurable deliverable should be used to
  - 13 gauge success?
  - 14 • What is the time frame to achieve success as determined by the measurable
  - 15 deliverables?
  - 16 • What happens if the program fails to accomplish those measurable deliverables
  - 17 within the time frame?
- 18
- 19 2. How should the budget be set and allocated?
- 20 • Should there be a floor or cap?
  - 21 • How should it be allocated across customer classes?
  - 22 • How much should be budgeted for administrative? Marketing? Other
  - 23 (membership, etc...)?
  - 24 • Should the budget focus on the "most cost effective" measures?
  - 25 • Should the budget focus on the "the most diverse" set of measures?
  - 26 • Should the budget favor "measures or programs" with minimal free ridership?
  - 27 • How much of the budget should be reserved for low-income programs?
  - 28 • How should low-income landlords be classified (for purposes of future cost
  - 29 allocation recovery)? How much budget should be allocated for programs that
  - 30 target low-income landlords?
  - 31 • How much of the budget should be allocated for EM&V?

- 1                   • How much of the budget for cost-effective tests?  
2                   • How much for co-delivery with an electric utility(s)?  
3                   • How should rebate incentives be set? How often can they be changed?  
4                    ○ Should there be an explicit carve-out for low-income landlords? Other  
5                    “programs?”  
6                   • How often should the budget be updated?  
7  
8           3. What cost-effective test is appropriate?  
9                   • Should it be applied at the measure, program or portfolio level?  
10                  • Should co-delivery be considered?  
11                  • How often should assumptions be examined?  
12  
13           4. Should the measures, programs, and portfolio contain an EM&V component?  
14                   • Should net savings be considered?  
15                   • Process evaluation? Impact evaluation? Deemed TRM savings?  
16                   • How often should EM&V be conducted?

17   **VII. ECONOMIC DEVELOPMENT RIDER: COMBINED HEAT AND**  
18   **POWER PILOT**

19   **Q. Please summarize DE’s proposal as it relates to the combined heat and power (“CHP”)**  
20   **pilot and the potential to marry it with a discounted commercial/industrial rate to attract**  
21   **new load.**

22   A. DE witness Epperson has proposed a \$5.1 million CHP pilot project as well as suggestions  
23   related to Economic Development Rider and Special Contracts. Additionally, Ms. Epperson  
24   has argued that an Economic Development Rider/Special Contract could be designed around  
25   the inclusion of future CHP projects.

26   **Q. Does OPC agree?**

27   A. In part. If a future customer met the predetermined qualifications for a special contract and  
28   elected to finance the construction of CHP through its own funding this would be acceptable.  
29   The business case for CHP is already well-established as evidence by the number of non-



1 ratepayer subsidized CHP projects already in existence in Missouri and included in Ms.  
2 Epperson's testimony and referenced in OPC witness John Robinett's testimony. The inclusion  
3 of CHP in an Economic Development Rider or Special Contract is without merit if the CHP  
4 provision means an additional (and unnecessary) financial subsidy by ratepayers.

5 **Q. Do you have any additional concerns or comments the Commission should be aware of?**

6 A. OPC witness Robinett and Staff witness Eubanks have already addressed many of the concerns  
7 surrounding this proposal as it relates to promotional practice issues and unwarranted  
8 subsidization of an already proven technology. The Commission should also be aware that  
9 historically, larger CHP projects have not been dependent on local natural gas distribution  
10 companies for service but have instead relied on wholesale interstate gas pipelines. According  
11 to the American Council for an Energy-Efficient Economy ("ACEEE") 2013 Report, "How  
12 Natural Gas Utilities Can Find Value in CHP" the paper notes that:

13 One challenge facing LDC's [local distribution companies] is that much of the CHP  
14 installed today is connected directly to interstate natural gas pipelines rather than the  
15 distribution infrastructure maintained by gas distribution companies (Noll et al. 2012).  
16 A recent analysis of existing CHP by the American Gas Association and ICF  
17 International showed that, of systems larger than 100 MW, about 40 to 50 percent have  
18 a direct connection to an "inter or intrastate pipelines," and for systems between 50MW  
19 and 100MW, only about 20 to 30 percent are connected to such pipelines. These  
20 systems convey no direct benefit to the local natural gas distribution systems because  
21 the revenue associated with the related gas sales is earned directly by the wholesaler of  
22 gas with which the CHP system owner maintains a contract (ICF and AGA 2013).  
23 Thus, LDCs will benefit more directly by encouraging CHP deployment at facilities  
24 like schools and hospitals rather than very large industrial operations.<sup>23</sup>

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<sup>23</sup> Chittum, A. & K. Farley (2013) How natural gas utilities can find value in CHP. ACEEE.  
<https://aceee.org/files/pdf/white-paper/chp-and-gas-utilities.pdf>

1 Ms. Epperson had already acknowledged this point in a roundabout way by suggesting that the  
2 CHP pilot projects could be targeted at universities and hospitals.

3 However, even this narrowly defined demographic (universities and hospitals) has already  
4 either independently shown that CHP does not require special promotion (university) or would  
5 merely offset existing standby generation investments before the end of its useful life  
6 (hospital).

7 **Q. Please explain.**

8 A. As the Commission is well aware, Washington University (“Wash U.”) in St. Louis has already  
9 invested in a CHP system on its campus as it works to meet its self-imposed emission reduction  
10 goals for 2020.<sup>24</sup> In fact, Wash U.’s Assistant Vice Chancellor for Sustainability, Phil Valko,  
11 presented the universities sustainability milestones and spoke at length to the Commission and  
12 various stakeholders of its achievements at the 2016 MEEIA Statewide Collaborative at the  
13 Governor’s Office Building (see GM-8).

14 Wash U. did not require Spire ratepayers to subsidize its CHP investment. That investment  
15 was based on an informed financial decision by its sustainability board. Clearly it would be  
16 inappropriate to suggest that there should be any sort of cash transfer from captive natural gas  
17 ratepayers to a private institution whose endowment approaches \$6.5 billion *and* has already  
18 financed one CHP investment. This is especially true given the plethora of customer comments  
19 from low income and fixed income customers who have expressed concern at being able to  
20 shoulder the additional burden of Spire’s large rate request. If Ms. Epperson were envisioning  
21 other universities, no doubt, Wash U. could serve as viable case study for those schools  
22 interested in examining the cost and benefits of CHP. And of course, existing channels of  
23 financial incentives already exist, in part, through Ameren Missouri’s or KCPL and GMO’s  
24 Commission-approved MEEIA commercial/industrial custom programs.

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<sup>24</sup> Washington University in St. Louis. (2017) Office of Sustainability: 2020 Emissions Goal  
<https://sustainability.wustl.edu/vision-progress/energy-emissions/greenhouse-gas-emissions/>

1           Regarding hospitals, it would surprise OPC if there were any hospitals in Spire's service  
2           territory that have not already invested heavily in back-up standby electric power in case of  
3           power interruptions.<sup>25</sup> These existing investments for standby generation minimize the  
4           attractiveness of deploying CHP at facilities under the pretense of reliability and no doubt raise  
5           cost-benefit concerns by prematurely retiring existing assets.

6           CHP does not need special promotion nor does it need to be included in any tariff revision  
7           regarding future Economic Development Rider's or Special Contracts for Spire moving  
8           forward.

9   **Q.    Does this conclude your testimony?**

10 **A.    Yes.**

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<sup>25</sup> See also Rules of Missouri Department of Health and Senior Services 19 CSR 30-20.030(25)(E): Standby  
Emergency Electric Service.

**Laclede Gas Company  
GR-2017-0215 and GR-2017-0216**

**Response to OPC Data Request 2077**

**Question:**

Please provide a list of any and all performance metrics (e.g., call center response time) that the Company is aware of that are offered by other utilities in which an equity component of rate base is adjusted per the results.

**Response:**

The Company has not attempted to conduct a survey on this issue.

Signed by: Glenn Buck

**Laclede Gas Company  
GR-2017-0215 and GR-2017-0216**

**Response to OPC Data Request 2078**

**Question:**

Does the Company expect interveners and/or Staff and Public Counsel to offer up performance metric suggestions in direct testimony? Or will specific metrics and parameters be determined outside of the rate case?

**Response:**

Such input would be welcomed by the Company.

Signed by: Glenn Buck

**Laclede Gas Company  
GM-2016-0342**

**Response to Staff Data Request No. 28**

Please provide a description and/or copies of all Spire Inc./The Laclede Group Inc. and/or Laclede Gas Company and Missouri Gas Energy actions taken to date, analysis and/or studies conducted to determine that the purchase of EnergySouth will not have any detrimental impact upon Laclede Gas Company and Missouri Gas Energy Missouri customers respecting the service quality / quality of service areas, including but not limited to: call center operations, service order processes, meter reading, credit and collections, connection and disconnection processes, payment remittance and others. Please include all planned or anticipated operational changes during and post-acquisition of EnergySouth in any and all service quality areas that include outsourcing and/or terminating current Laclede Gas Company and Missouri Gas Energy employee headcounts.

**Response:** Since there are no plans to integrate these EnergySouth functions with those of Laclede Gas Company (Laclede) and Missouri Gas Energy (MGE), the purchase is not anticipated to have any impact on these functional areas or the quality of service provided by Laclede and MGE. The only possible exception would be if the transaction results in the identification of best practices that, if adopted, might enhance service quality.

Signed by: Glenn Buck



formerly The Laclede Group

Spire Inc.  
700 Market Street  
St. Louis, MO 63101

August 15, 2016

VIA ELECTRONIC MAIL

Jeffrey Keevil, Esq.  
Missouri Public Service Commission Staff  
200 Madison Street  
Jefferson City, MO 65101  
jeff.keevil@psc.mo.gov

Re: Case No. GM-2016-0342; Completion of Responses to Staff Data Requests

Dear Jeff:

I am writing on behalf of Spire Inc. ("Spire" or "Company") to confirm that we have completed our responses to the Staff's Data Requests in the above referenced case. We have attempted to cooperate in meeting Staff's information needs as evidenced, in part, by our submission of responses to over half of the DR's earlier than required by the expedited discovery schedule.

The Company believes that these responses, as well as other external sources of information, clearly establish that neither the acquisition of Alabama Gas Corporation, which was completed some two years ago, nor the pending acquisition of EnergySouth, has had or will have any detrimental impact on Missouri ratepayers. To the contrary, Missouri ratepayers have been held harmless or affirmatively benefitted from each of the Company's acquisitions over the past three years, beginning with Laclede Gas' acquisition of Missouri Gas Energy ("MGE"), as shown by an evaluation of each of the metrics previously identified by Staff for assessing such matters. We firmly believe this will also be the case with EnergySouth, a much smaller transaction, for which we have developed considerable talent, knowledge, capabilities, and a track record for such integration into the Spire family:

- **Impact on Rates** – For the past six years, rate increases for both Laclede Gas and MGE have been limited solely to ISRS charges. The one rate case Laclede and MGE have each filed under our ownership resulted only in rebasing the ISRS charges that both operating units were already recovering in rates, with no additional amounts added to rates for non-ISRS costs. By comparison, over the seven years preceding these cases, Laclede Gas and MGE received approval to recover approximately \$90 million in non-ISRS costs in rates. While a number of factors have played a role in bending down the historical cost curve experienced by Laclede Gas and MGE, the synergies and other efficiencies achieved through the Company's acquisitions has certainly been a major factor. The Company submits that ratepayers are already benefitting from these transactions, because the synergies derived from them have permitted Laclede Gas to defer seeking rate increases for both operating units. The critical point is, however, that there is no reason for believing that the completed MGE and Alagasco acquisitions or the pending EnergySouth acquisition has had or would have any detrimental impact on the rates charged Missouri customers. Even OPC believes costs for the utilities may potentially be lower today, not higher, meaning customers could go even longer without a rate increase and continue to experience that benefit. Moreover, in the highly unlikely event there could be any potentially adverse impacts on costs from these

transactions, the Company has already agreed in the Holding Company Stipulation (and the Commission already has the power) to exclude such impacts from rates. Given these considerations, the Company submits there is no plausible basis for concluding that the Alagasco acquisition has had, or the EnergySouth acquisition will have, a detrimental impact on the rates charged by Laclede Gas or MGE for service to their Missouri customers.

- **Impact on Financial Health** – From the time the Company announced the MGE acquisition until now, there has been no degradation in Laclede Gas' financial health. Laclede Gas had an A- credit rating before these acquisitions began and it has an A-credit rating today. Laclede Gas has been able to achieve this strong credit rating by maintaining an equity ratio that exceeds 50% of its capital structure. It continues to be able to obtain access to the short-term and longer-term capital markets on very favorable terms and has demonstrated an ability to maintain these metrics separate and apart from any rating changes for its parent, Spire. Additionally, Spire has remained financially strong throughout this period. Despite the acquisitions, or perhaps more accurately because of them, Spire's stock price has risen by more than 50% (and is up over 45% since the Alagasco transaction was financed), meaning the financial market and sophisticated investment professionals believe the transactions have been beneficial to Spire and the utilities that comprise nearly all its value, meaning access to capital has not been detrimentally affected. Laclede Gas' parent, Spire, has maintained an equity ratio that exceeds 50% of its capital structure and it has been able to maintain access to the short and long-term capital markets on very favorable terms. Although Spire's credit rating was downgraded by one notch following the acquisition of Alagasco, it remains solidly investment grade and the downgrade has had no impact on Laclede Gas. In short, both Laclede Gas and Spire continue to substantially exceed the financial metrics that the Staff has previously identified as triggering the kind of financial concerns that would require any kind of remedial action (i.e. equity ratios below 35% and 30%, respectively; credit rating downgraded below investment grade). Laclede Gas and Spire also continue to comply with all of the financial conditions and requirements that Staff requested and the Commission adopted 15 years ago to protect ratepayers from any adverse financial impacts in the unlikely event such impacts arise as a result of Spire's acquisition activities. Given this positive financial history and the degree to which safeguards are already in place to protect Missouri ratepayers from any adverse financial impacts associated with the Alagasco and EnergySouth acquisitions (in the unlikely event there should ever be any), the Company submits that there is no tenable basis for concluding that either transaction has had or will have a detrimental impact on the financial health of either Laclede or Spire.
- **Impact on Customer Service Functions** – In the MGE acquisition case, the Staff was particularly concerned about the impact that the MGE acquisition might have on customer facing functions such as call center activities, disconnection and reconnection activities, customer billing, etc. As discussed below, because the local operations of these customer facing functions for Alagasco have not been integrated with those of Laclede Gas and MGE, and the customer facing functions of EnergySouth will be integrated with those of Alagasco, neither of these transactions have had or will have any impact, detrimental or otherwise, on these functions by Laclede Gas and MGE. In fact, the only possible impact would be the potential identification and application of best practices from one operating unit to another – a circumstance that would only enhance the quality of the services provided by Laclede Gas and MGE. On a broader level, the customer service metrics maintained for Laclede Gas and MGE show that performance has improved significantly over a broad array of functional areas during the past three years as these acquisitions were being pursued and completed. These include, among others, improvements in call center metrics, average leak response times, and service response times. In fact, the only temporary decline in call center metrics was related to the conversion of MGE to Laclede Gas' Customer Care & Billing information system, which was completely unrelated to the Alagasco acquisition. Given this positive performance history and the degree to which these customer service functions remain or will remain unaffected by the Alagasco and EnergySouth acquisitions, the Company would submit that there is no plausible basis for concluding that either transaction has had or will have a detrimental impact on the



quality of services provided to Missouri customers. Moreover, as a result of the Stipulation and Agreement in the MGE acquisition case, the Staff will continue to receive monthly call center and other information and will therefore be in a position to continue to monitor the Company's performance in these key customer facing areas.

- **Impact on Gas Supply/Reliability** – In the MGE acquisition proceeding, the Staff also expressed concern over the potential impact of that acquisition on the reliability and management of the gas supply assets used to serve MGE's customers. In the winter immediately following the acquisition, the Company managed to maintain the reliability of its gas supply assets without material disruptions of any kind, notwithstanding the fact that the winter was one of the coldest experienced by Laclede Gas and MGE in the past 30 years. In terms of the Alagasco and EnergySouth acquisitions, the impact of the transactions on the reliability of MGE's and Laclede Gas' supply assets is not even an issue. While there may be opportunities to further identify best practices in this area through the Company's shared service model, Laclede Gas and MGE are connected to different pipelines and have different sources of gas supply than the Alagasco and the EnergySouth utilities. The gas supply assets of Laclede Gas and MGE will remain physically separate from those of Alagasco and EnergySouth. Moreover, unlike the MGE acquisition, these transactions have not and will not require any transfer of gas supply assets, transportation contracts or other assets critical to the gas supply function. In light of these considerations, there is no credible basis for concluding that either transaction will have a detrimental impact on either Laclede Gas' or MGE's ability to provide a reliable gas service.

For all of these reasons, and those outlined in the Company's DR responses, we respectfully request that the Staff find and report that there is no reasonable basis for concluding that either the Alagasco or EnergySouth transactions have been or will be detrimental to Missouri customers. Thank you for your consideration of this request.

Sincerely,

/s/ Mark C. Darrell  
Senior Vice President, General Counsel  
and Chief Compliance Officer

**SCHEDULE 3 through 12**

**HAS BEEN DEEMED**

**HIGHLY CONFIDENTIAL**

**IN ITS ENTIRETY**

**Missouri Public Commission Service**  
**Complaint Inquiry Report**

Date of Report : 8/24/2016

List of Complaints submitted between 08/01/2015 and 12/31/2015

Utility Type : Gas

Company Name : Missouri Gas Energy (Laclede)

Complaint No.	Utility Company	Complaint Date	Complaint Issue	Complaint Sub Issue	Complaint Resolution	City
C201600490	Missouri Gas Energy (Laclede)- Investor(Gas)	9/17/2015	Service Quality	Phone Center Problem	Re-closed: Updated Information	Carrollton
C201600493	Missouri Gas Energy (Laclede)- Investor(Gas)	9/17/2015	Billing	Disputed Bill	Billing Adjustment Given	Kansas City
C201600512	Missouri Gas Energy (Laclede)- Investor(Gas)	9/21/2015	Service Quality	Service in General	Utility Resolved Matter	Lake Lotawana
C201600515	Missouri Gas Energy (Laclede)- Investor(Gas)	9/22/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Aurora
C201600573	Missouri Gas Energy (Laclede)- Investor(Gas)	10/1/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Joplin
C201600578	Missouri Gas Energy (Laclede)- Investor(Gas)	10/2/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Gladstone
C201600585	Missouri Gas Energy (Laclede)- Investor(Gas)	10/2/2015	Rules/Regulations	Denial of Service	Billing Adjustment Given	Saint Joseph
C201600588	Missouri Gas Energy (Laclede)- Investor(Gas)	10/5/2015	Billing	Minimum Bill	Customer Responsibility	Kansas City
C201600591	Missouri Gas Energy (Laclede)- Investor(Gas)	10/5/2015	Service Quality	Service in General	Utility Resolved Matter	Saint Joseph
C201600598	Missouri Gas Energy (Laclede)- Investor(Gas)	10/5/2015	Service Quality	Customer Service/Call Center	Information Provided	Kansas City
C201600600	Missouri Gas Energy (Laclede)- Investor(Gas)	10/5/2015	Rules/Regulations	Discontinuance of Service	Other / Misc.	Kansas City
C201600601	Missouri Gas Energy (Laclede)- Investor(Gas)	10/5/2015	Service Quality	Delayed Restoral		Kansas City
C201600607	Missouri Gas Energy (Laclede)- Investor(Gas)	10/6/2015	Service Quality	Delayed Restoral	Billing Adjustment Given	Camden Point
C201600609	Missouri Gas Energy (Laclede)- Investor(Gas)	10/6/2015	Service Quality	Service in General	Utility Resolved Matter	Camden Point
C201600618	Missouri Gas Energy (Laclede)- Investor(Gas)	10/6/2015	Service Quality	Customer Service/Call Center	Re-closed: Updated Information	Kansas City
C201600622	Missouri Gas Energy (Laclede)- Investor(Gas)	10/7/2015	Billing	Budget Plan	Utility Resolved Matter	Blue Springs
C201600636	Missouri Gas Energy (Laclede)- Investor(Gas)	10/9/2015	Billing	Incorrect Bill	Initial Bill Dispute Resolved	Blue Springs
C201600638	Missouri Gas Energy (Laclede)- Investor(Gas)	10/9/2015	Billing	Billing Cycle	Information Provided	Blue Springs
C201600678	Missouri Gas Energy (Laclede)- Investor(Gas)	10/16/2015	Billing	Received No Bills	Information Provided	Nixa

C201600691	Missouri Gas Energy (Laclede)- Investor(Gas)	10/19/2015	Service Quality	Customer Service/Call Center	Information Provided	Independence
C201600694	Missouri Gas Energy (Laclede)- Investor(Gas)	10/20/2015	Billing	Received No Bills	Re-closed: Updated Information	Blue Springs
C201600699	Missouri Gas Energy (Laclede)- Investor(Gas)	10/20/2015	Rules/Regulations	Discontinuance of Service	Re-closed: Updated Information	Kansas City
C201600700	Missouri Gas Energy (Laclede)- Investor(Gas)	10/20/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Lees Summit
C201600701	Missouri Gas Energy (Laclede)- Investor(Gas)	10/20/2015	Billing	Billing in General	Utility in Compliance w/Tariff and/or Rules and Statutes	Independence
C201600293	Missouri Gas Energy (Laclede)- Investor(Gas)	8/19/2015	Service Quality	Service in General	Utility Resolved Matter	Cameron
C201600422	Missouri Gas Energy (Laclede)- Investor(Gas)	9/8/2015	Service Quality	Delayed Restoral	Utility Resolved Matter	Kansas City
C201600435	Missouri Gas Energy (Laclede)- Investor(Gas)	9/9/2015	Billing	Payment Posting Problem	Utility Resolved Matter	Harrisonville
C201600461	Missouri Gas Energy (Laclede)- Investor(Gas)	9/14/2015	Service Quality	Phone Center Problem	Utility Resolved Matter	Kansas City
C201600969	Missouri Gas Energy (Laclede)- Investor(Gas)	12/2/2015	Billing	Cold Weather Rule	Utility in Compliance w/Tariff and/or Rules and Statutes	Kansas City
C201600978	Missouri Gas Energy (Laclede)- Investor(Gas)	12/3/2015	Billing	Paper Billing	Customer Not Participating in Their Own Resolution	Independence
C201600989	Missouri Gas Energy (Laclede)- Investor(Gas)	12/5/2015	Service Quality	Customer Service/Call Center	Service Quality Comment	Smithville
C201601021	Missouri Gas Energy (Laclede)- Investor(Gas)	12/10/2015	Rules/Regulations	Discontinuance of Service	Re-closed: Updated Information	Kansas City
C201601033	Missouri Gas Energy (Laclede)- Investor(Gas)	12/14/2015	Service Quality	Service in General	Service Restored (definition: outage/disconnect/reconnection delay/3rd pty delay)	Turney
C201601047	Missouri Gas Energy (Laclede)- Investor(Gas)	12/16/2015	Billing	Refunds	Utility Resolved Matter	Independence
C201601056	Missouri Gas Energy (Laclede)- Investor(Gas)	12/18/2015	Service Quality	Installation Delay	Service Restored (definition: outage/disconnect/reconnection delay/3rd pty delay)	Kansas City
C201601069	Missouri Gas Energy (Laclede)- Investor(Gas)	12/28/2015	Billing	Billing Cycle	No Jurisdiction Over Subject Matter	Gladstone
C201600719	Missouri Gas Energy (Laclede)- Investor(Gas)	10/23/2015	Billing	Billing in General	Information Provided	Excelsior Springs
C201600726	Missouri Gas Energy (Laclede)- Investor(Gas)	10/26/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Kansas City
C201600731	Missouri Gas Energy (Laclede)- Investor(Gas)	10/27/2015	Service Quality	Installation Delay		Raymore
C201600738	Missouri Gas Energy (Laclede)- Investor(Gas)	10/27/2015	Billing	Received No Bills	Utility Resolved Matter	Kansas City
C201600763	Missouri Gas Energy (Laclede)- Investor(Gas)	10/30/2015	Service Quality	Customer Service/Call Center	Requested Service Provided (definition: installation delay/property restoral)	St Joseph
C201600766	Missouri Gas Energy (Laclede)- Investor(Gas)	10/30/2015	Service Quality	Customer Service/Call Center	Billing Adjustment Given	Kansas City

C201600774	Missouri Gas Energy (Laclede)- Investor(Gas)	11/2/2015	Billing	Payment Posting Problem	Information Provided	: Independence
C201600776	Missouri Gas Energy (Laclede)- Investor(Gas)	11/2/2015	Service Quality	Customer Service/Call Center	Service Restored (definition: outage/disconnect/reconnection delay/3rd pty delay)	Joplin
C201600778	Missouri Gas Energy (Laclede)- Investor(Gas)	11/2/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Kansas City
C201600786	Missouri Gas Energy (Laclede)- Investor(Gas)	11/3/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Kansas City
C201600799	Missouri Gas Energy (Laclede)- Investor(Gas)	11/4/2015	Billing	Late Payment Charge	Billing Adjustment Given	Pleasant Hill
C201600804	Missouri Gas Energy (Laclede)- Investor(Gas)	11/5/2015	Billing	Payment Posting Problem	Utility Resolved Matter	Kansas City
C201600816	Missouri Gas Energy (Laclede)- Investor(Gas)	11/6/2015	Service Quality	Customer Service/Call Center		Raymore
C201600818	Missouri Gas Energy (Laclede)- Investor(Gas)	11/6/2015	Service Quality	Installation Delay	Billing Adjustment Given	Kansas City
C201600833	Missouri Gas Energy (Laclede)- Investor(Gas)	11/9/2015	Service Quality	Customer Service/Call Center	Billing Adjustment Given	Lees Summit
C201600834	Missouri Gas Energy (Laclede)- Investor(Gas)	11/9/2015	Service Quality	Customer Service/Call Center	Requested Service Provided (definition: installation delay/property restoral)	Belton
C201600838	Missouri Gas Energy (Laclede)- Investor(Gas)	11/10/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Liberty
C201600839	Missouri Gas Energy (Laclede)- Investor(Gas)	11/10/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Joplin
C201600840	Missouri Gas Energy (Laclede)- Investor(Gas)	11/10/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Belton
C201600844	Missouri Gas Energy (Laclede)- Investor(Gas)	11/10/2015	Service Quality	Gas Leak	Referred to Utility Company	Kansas City
C201600853	Missouri Gas Energy (Laclede)- Investor(Gas)	11/12/2015	Service Quality	Delayed Restoral	Utility Resolved Matter	Kansas City
C201600855	Missouri Gas Energy (Laclede)- Investor(Gas)	11/12/2015	Service Quality	Installation Delay	Re-closed: Updated Information	Kansas City
C201600856	Missouri Gas Energy (Laclede)- Investor(Gas)	11/12/2015	Rules/Regulations	Denial of Service	Re-closed: Updated Information	Joplin
C201600861	Missouri Gas Energy (Laclede)- Investor(Gas)	11/12/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Blue Springs
C201600864	Missouri Gas Energy (Laclede)- Investor(Gas)	11/12/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	GLADSTONE
C201600873	Missouri Gas Energy (Laclede)- Investor(Gas)	11/13/2015	Billing	Payment Posting Problem	Utility Resolved Matter	Kansas City
C201600889	Missouri Gas Energy (Laclede)- Investor(Gas)	11/16/2015	Service Quality	Defective Meter	Requested Service Provided (definition: installation delay/property restoral)	Duenweg
C201600890	Missouri Gas Energy (Laclede)- Investor(Gas)	11/16/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Lees Summit
C201600901	Missouri Gas Energy (Laclede)- Investor(Gas)	11/17/2015	Service Quality	Delayed Restoral	Utility Resolved Matter	Kansas City
C201600905	Missouri Gas Energy (Laclede)- Investor(Gas)	11/18/2015	Service Quality	Delayed Restoral	Cold Weather Rule Payment Arrangement	Kansas City

C201600907	Missouri Gas Energy (Laclede)- Investor(Gas)	11/18/2015	Rules/Regulations	Denial of Service	Requested Service Provided (definition: installation delay/property restoral)	Carrollton
C201600909	Missouri Gas Energy (Laclede)- Investor(Gas)	11/19/2015	Service Quality	Installation Delay	Utility Resolved Matter	Tipton
C201600917	Missouri Gas Energy (Laclede)- Investor(Gas)	11/19/2015	Rules/Regulations	Discontinuance of Service	Utility Resolved Matter	Grandview
C201600916	Missouri Gas Energy (Laclede)- Investor(Gas)	11/19/2015	Billing	Billing in General	Utility Resolved Matter	Neosho
C201600920	Missouri Gas Energy (Laclede)- Investor(Gas)	11/20/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Independence
C201600924	Missouri Gas Energy (Laclede)- Investor(Gas)	11/20/2015	Service Quality	Delayed Restoral	Utility Resolved Matter	St. Joseph
C201600927	Missouri Gas Energy (Laclede)- Investor(Gas)	11/23/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Carthage
C201600930	Missouri Gas Energy (Laclede)- Investor(Gas)	11/23/2015	Service Quality	Gas Leak	Service Quality Comment	Kansas City
C201600932	Missouri Gas Energy (Laclede)- Investor(Gas)	11/23/2015	Service Quality	Installation Delay		Unincorporated
C201600933	Missouri Gas Energy (Laclede)- Investor(Gas)	11/23/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Tipton
C201600934	Missouri Gas Energy (Laclede)- Investor(Gas)	11/23/2015	Service Quality	Delayed Restoral	Utility Resolved Matter	Clarksburg
C201600937	Missouri Gas Energy (Laclede)- Investor(Gas)	11/23/2015	Service Quality	Installation Delay	Utility Resolved Matter	Ozark
C201600938	Missouri Gas Energy (Laclede)- Investor(Gas)	11/23/2015	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Independence
C201600940	Missouri Gas Energy (Laclede)- Investor(Gas)	11/24/2015	Service Quality	Delayed Restoral	Utility in Compliance w/Tariff and/or Rules and Statutes	Pleasant Hill
C201600942	Missouri Gas Energy (Laclede)- Investor(Gas)	11/24/2015	Service Quality	Installation Delay	Requested Service Provided (definition: installation delay/property restoral)	Kansas City
C201600945	Missouri Gas Energy (Laclede)- Investor(Gas)	11/24/2015	Service Quality	Customer Service/Call Center	Utility in Compliance w/Tariff and/or Rules and Statutes	St. Joseph
C201600951	Missouri Gas Energy (Laclede)- Investor(Gas)	11/24/2015	Billing	Budget Plan	Billing Sustained	Kansas City
C201600953	Missouri Gas Energy (Laclede)- Investor(Gas)	11/30/2015	Rules/Regulations	Discontinuance of Service	Utility Resolved Matter	Kansas City

**Missouri Public Commission Service**  
**Complaint Inquiry Report**

Date of Report : 8/22/2016

List of Complaints submitted between 01/01/2016 and 08/22/2016

Utility Type : Gas

Company Name : Missouri Gas Energy (Laclede)

Complaint No.	Utility Company	Complaint Date	Complaint Issue	Complaint Sub Issue	Complaint Resolution	City
C201601420	Missouri Gas Energy (Laclede)-Investor(Gas)	3/10/2016	Billing	High Bill	Utility Resolved Matter	Kansas City
C201601422	Missouri Gas Energy (Laclede)-Investor(Gas)	3/10/2016	Billing	Billing in General	Billing Adjustment Given	Kansas City
C201601445	Missouri Gas Energy (Laclede)-Investor(Gas)	3/15/2016	Billing	Rebill	Payment Arrangement Reached	Kansas City
C201601450	Missouri Gas Energy (Laclede)-Investor(Gas)	3/17/2016	Rules/Regulations	Discontinuance of Service	Billing Adjustment Given	Kansas City
C201601461	Missouri Gas Energy (Laclede)-Investor(Gas)	3/20/2016	Rules/Regulations	Safety	Re-closed: Updated Information	Kansas City
C201601494	Missouri Gas Energy (Laclede)-Investor(Gas)	3/28/2016	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Higginsville
C201601517	Missouri Gas Energy (Laclede)-Investor(Gas)	3/31/2016	Service Quality	Delayed Restoral	Utility Resolved Matter	Independence
C201601521	Missouri Gas Energy (Laclede)-Investor(Gas)	4/1/2016	Billing	Payment Posting Problem	Utility Resolved Matter	Independence
C201601523	Missouri Gas Energy (Laclede)-Investor(Gas)	4/1/2016	Rules/Regulations	Discontinuance of Service	Utility Resolved Matter	Lees Summit
C201601527	Missouri Gas Energy (Laclede)-Investor(Gas)	4/4/2016	Billing	Billing in General	Information Provided	Independence
C201601531	Missouri Gas Energy (Laclede)-Investor(Gas)	4/5/2016	Billing	Rebill	Billing Adjustment Given	Kansas City
C201601555	Missouri Gas Energy (Laclede)-Investor(Gas)	4/11/2016	Rules/Regulations	Discontinuance of Service	Billing Adjustment Given	Lamar
C201601566	Missouri Gas Energy (Laclede)-Investor(Gas)	4/14/2016	Rules/Regulations	Discontinuance of Service	Billing Adjustment Given	Kansas City
C201601576	Missouri Gas Energy (Laclede)-Investor(Gas)	4/15/2016	Billing	Refunds	Utility Resolved Matter	Raytown
C201601598	Missouri Gas Energy (Laclede)-Investor(Gas)	4/22/2016	Billing	Auto Pay	No Jurisdiction Over Subject Matter	Saint Louis
C201601614	Missouri Gas Energy (Laclede)-Investor(Gas)	4/28/2016	Rules/Regulations	Discontinuance of Service-bill	Billing Adjustment Given	Grandview
C201601169	Missouri Gas Energy (Laclede)-Investor(Gas)	1/15/2016	Rules/Regulations	Discontinuance of Service	Utility Resolved Matter	Independence
C201601643	Missouri Gas Energy (Laclede)-Investor(Gas)	5/4/2016	Service Quality	Customer Service/Call Center	Utility Resolved Matter	Joplin
C201601648	Missouri Gas Energy (Laclede)-Investor(Gas)	5/5/2016	Rules/Regulations	Discontinuance of Service	Billing Sustained	Kansas City
C201601653	Missouri Gas Energy (Laclede)-Investor(Gas)	5/5/2016	Service Quality	Service in General	Utility Resolved Matter	Norborne
C201601666	Missouri Gas Energy (Laclede)-Investor(Gas)	5/10/2016	Rules/Regulations	Discontinuance of Service	Re-closed: Updated Information	Kansas City

G201601685	Missouri Gas Energy (Laclede)-Investor(Gas)	5/12/2016	Billing	Connection Charge	Re-closed: Updated Information	Kansas City
G201601686	Missouri Gas Energy (Laclede)-Investor(Gas)	5/12/2016	Billing	Connection Charge	Billing Adjustment Given	Kansas City
G201601695	Missouri Gas Energy (Laclede)-Investor(Gas)	5/13/2016	Rules/Regulations	Discontinuance of Service	Utility Resolved Matter	Lake Tapawingo
G201601699	Missouri Gas Energy (Laclede)-Investor(Gas)	5/16/2016	Rules/Regulations	Discontinuance of Service	Billing Adjustment Given	Lees Summit
G201601739	Missouri Gas Energy (Laclede)-Investor(Gas)	5/26/2016	Billing	Refunds		Kansas City
G201601742	Missouri Gas Energy (Laclede)-Investor(Gas)	5/26/2016	Rules/Regulations	Discontinuance of Service	Re-closed: Updated Information	Kansas City
G201601770	Missouri Gas Energy (Laclede)-Investor(Gas)	6/3/2016	Billing	Paper Billing	Utility Resolved Matter	North Kansas City
G201601772	Missouri Gas Energy (Laclede)-Investor(Gas)	6/6/2016	Billing	Final Bill	Billing Adjustment Given	Kansas City
G201601791	Missouri Gas Energy (Laclede)-Investor(Gas)	6/8/2016	Service Quality	Delayed Restoral	Utility Resolved Matter	Kansas City
G201601196	Missouri Gas Energy (Laclede)-Investor(Gas)	1/20/2016	Billing	Billing in General	Utility Resolved Matter	Kansas City
G201601237	Missouri Gas Energy (Laclede)-Investor(Gas)	1/27/2016	Billing	Disputed Bill	Billing Adjustment Given	Raytown
G201601247	Missouri Gas Energy (Laclede)-Investor(Gas)	1/29/2016	Billing	Incorrect Bill	Billing Adjustment Given	Republic
G201601282	Missouri Gas Energy (Laclede)-Investor(Gas)	2/5/2016	Rules/Regulations	Discontinuance of Service	Utility in Compliance w/Tariff and/or Rules and Statutes	Belton
G201601296	Missouri Gas Energy (Laclede)-Investor(Gas)	2/8/2016	Billing	Payment Posting Problem	Utility Resolved Matter	Kansas City
G201601316	Missouri Gas Energy (Laclede)-Investor(Gas)	2/16/2016	Billing	Billing in General	Information Provided	Blue Springs
G201601317	Missouri Gas Energy (Laclede)-Investor(Gas)	2/16/2016	Billing	Billing in General	Utility Resolved Matter	Grandview
G201601337	Missouri Gas Energy (Laclede)-Investor(Gas)	2/17/2016	Billing	Incorrect Bill	Re-closed: Updated Information	Independence
G201601367	Missouri Gas Energy (Laclede)-Investor(Gas)	2/24/2016	Rules/Regulations	Discontinuance of Service	Utility Resolved Matter	Independence
G201601371	Missouri Gas Energy (Laclede)-Investor(Gas)	2/24/2016	Billing	Billing in General	Utility Resolved Matter	Kansas City
G201601392	Missouri Gas Energy (Laclede)-Investor(Gas)	3/1/2016	Billing	Disputed Bill	Billing Adjustment Given	St. Joseph
G201601396	Missouri Gas Energy (Laclede)-Investor(Gas)	3/3/2016	Billing	Disputed Bill	Billing Adjustment Given	Smithville
G201601864	Missouri Gas Energy (Laclede)-Investor(Gas)	6/27/2016	Billing	Estimated Bill	Billing Sustained	Independence
G201601866	Missouri Gas Energy (Laclede)-Investor(Gas)	6/28/2016	Billing	Disputed Bill	Billing Adjustment Given	Lees Summit
G201601882	Missouri Gas Energy (Laclede)-Investor(Gas)	6/30/2016	Rules/Regulations	Discontinuance of Service-deposit	Billing Adjustment Given	Lees Summit
G201700011	Missouri Gas Energy (Laclede)-Investor(Gas)	7/6/2016	Service Quality	Refusal of Service	Utility Resolved Matter	Pleasant Hill
G201700014	Missouri Gas Energy (Laclede)-Investor(Gas)	7/7/2016	Billing	Transferred Bill	Utility Resolved Matter	Kansas City



C201700022	Missouri Gas Energy (Laclede)-Investor(Gas)	7/8/2016	Service Quality	Service in General	Utility Resolved Matter	Neck City
C201700027	Missouri Gas Energy (Laclede)-Investor(Gas)	7/11/2016	Service Quality	Customer Service/Call Center	Utility in Compliance w/Tariff and/or Rules and Statutes	Liberty
C201700071	Missouri Gas Energy (Laclede)-Investor(Gas)	7/18/2016	Billing	Refunds	Information Provided	St. Joseph
C201700111	Missouri Gas Energy (Laclede)-Investor(Gas)	7/26/2016	Billing	Refunds	Billing Adjustment Given	St. Joseph
C201700218	Missouri Gas Energy (Laclede)-Investor(Gas)	8/16/2016	Rules/Regulations	Discontinuance of Service	Payment Arrangement Reached	Joplin

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

In the Matter of Spire, Inc.'s, )  
Acquisition of EnergySouth, Inc., and ) . **Case No. GM-2016-0342**  
Related Matters )

**STAFF’S INVESTIGATION REPORT**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and hereby tenders its *Report* of its investigation into the proposed acquisition of EnergySouth, Inc. (“EnergySouth”), by Spire, Inc. (“Spire”), as directed by the Commission’s *Order* of July 20, 2016.<sup>1</sup>

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<sup>1</sup> *Order Granting Motion to Open an Investigation and Directing Filing*, issued July 20, 2016.

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## I. INTRODUCTION

### A. *Summary of Staff’s Findings and Recommendations:*

Based on the information it has obtained and reviewed to date, Staff reports that it has determined (1) that Spire has not complied with all of the conditions it willingly accepted, and which the Commission approved by order, in Case No. GM-2001-342; and (2) that the acquisitions offer no benefits to Missouri ratepayers and many potential detriments. Staff recommends that the Commission take action (1) to sanction Spire for its failure to comply with certain of the conditions imposed in Case No. GM-2001-342; and (2) to protect Missouri ratepayers from the negative consequences of Spire’s actions.

### B. *How Did This Investigation Come About?*

#### 1. Office of Public Counsel’s Motion to Open Investigation

On June 16, 2016, the Office of the Public Counsel (“OPC”) filed its *Motion to Open an Investigation* in response to the announcement on April 26, 2016, by Spire, Inc. (“Spire”) – then known as The Laclede Group, Inc.<sup>2</sup> -- of the acquisition from

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<sup>2</sup> The name change was announced on April 28, 2016.

Sempra U.S. Gas and Power of EnergySouth, Inc., a holding company owning two natural gas utilities, Mobile Gas in Alabama and Willmut Gas in Mississippi, for \$344 million.<sup>3</sup> OPC noted that Spire had acquired another Alabama natural gas utility, Alagasco, in 2014.<sup>4</sup> In its motion, OPC moved the Commission to open a docket to investigate whether or not Spire had sought, or would seek, prior approval for the two acquisitions; whether either or both were, or would be, detrimental to the public interest; and whether the proposed acquisition of EnergySouth would impact the Commission's access to information; the credit rating or financial stability of Spire; cost allocations among the affiliated companies; or the reporting requirements contained in the *Stipulation and Agreement* approved by the Commission in Case No. GM-2001-342.<sup>5</sup>

Spire opposed OPC's *Motion*, asserting that it is not subject to the Commission's regulatory jurisdiction and that its acquisition of non-Missouri public utilities is not a matter subject to the Commission's jurisdiction.<sup>6</sup> Spire further asserted that there is no evidence that either acquisition could have or would have any impact on the areas of OPC's concern or that either was or would be detrimental to the public interest.<sup>7</sup> In particular, Spire expressed amazement that OPC would raise the issue of the

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<sup>3</sup> *Public Counsel's Motion to Open an Investigation*, filed June 16, 2016.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*; referring to *In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Case No. EM-2001-342 (*Unanimous Stipulation and Agreement*, filed July 9, 2001).

<sup>6</sup> *Spire Inc.'s Verified Response Opposing Public Counsel's Motion to Open an Investigation*, filed June 27, 2016.

<sup>7</sup> *Id.*

Alagasco acquisition for the first time now, when it had been fully briefed on it as long ago as May 27, 2014.<sup>8</sup>

Both OPC and Staff replied to Spire's *Verified Response*. OPC directed attention to the Commission's order opening a similar investigation into the announced acquisition by Great Plains Energy, Inc., of Westar, Inc., despite Great Plains' opposition on similar grounds.<sup>9</sup> Staff replied that an investigation would be prudent.<sup>10</sup> Both OPC and Staff echoed the Commission's explanation, from its order in the Great Plains-Westar case, that jurisdiction over either the holding company or the acquisition was unnecessary for the purposes of an investigation.<sup>11</sup>

## 2. The Commission's Order Opening This Investigation

On July 20, 2016, the Commission granted OPC's *Motion*.<sup>12</sup> The Commission's *Order* authorizing this investigation is necessarily its charter and defines the scope, focus and expected product of Staff's investigation.

The Commission stated that it "has a duty to determine whether the transactions threaten Missouri ratepayers."<sup>13</sup> In Ordered Paragraph 2, the Commission expressly directed Staff:

2. The Commission's staff ("Staff") is directed to investigate, and file a report including Staff's position on, whether the transactions described in the body of this order did or will:

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<sup>8</sup> *Id.*

<sup>9</sup> *Public Counsel's Reply*, filed July 7, 2016, citing *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, Case No. EM-2016-0324 (*Order Granting Leave to File Reply Late, Granting Staff's Motion to Open an Investigation, and Directing Filing*, issued June 8, 2016).

<sup>10</sup> *Staff's Response to Commission Order*, filed July 11, 2016.

<sup>11</sup> *Public Counsel's Reply*, pp. 1-2; *Staff's Response*, pp. 2-3

<sup>12</sup> *Order Granting Motion to Open an Investigation and Directing Filing*, issued July 20, 2016.

<sup>13</sup> *Id.*, at p. 5.

- a. Have any effect on Missouri ratepayers;
- b. Cause any detriment to the public interest; and
- c. Are subject to the Commission's jurisdiction.

\* \* \*

4. Any report described in ordered paragraph 2 ... shall be filed no later than September 2, 2016.

The Commission specifically did not rule on whether or not it has jurisdiction over the proposed transaction to take any action other than to investigate.<sup>14</sup> However, the Commission did say:<sup>15</sup>

Spire argues that no mere agreement<sup>16</sup> can bestow jurisdiction upon the Commission because the sole source of the Commission's jurisdiction is the statutes.

But, as OPC notes, the cited provisions are not mere promises. They are statutorily authorized orders that the Commission made on Spire's motion. The Court of Appeals has held that such conditions constitute requirements that are subject to enforcement before the Commission.<sup>17</sup>

### 3. Spire's Motion for Clarification or Reconsideration

On July 29, 2016, Spire moved for clarification or reconsideration, requesting that the Commission "[either] withdraw those portions of its Order that seek to construe the meaning and intent of Section 5 of the Holding Company Agreement, [or] it should reconsider those portions of its Order [and upon] reconsideration, the Commission should find and conclude that Section 5 was never intended to subject, and does not

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, at pp. 3-4.

<sup>16</sup> Referring to the *Unanimous Stipulation and Agreement* approved by the Commission in Case No. GM-2001-342.

<sup>17</sup> *Id.*, at pp. 2-3 (footnotes omitted), citing *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n of Mo.*, 392 SW3 24, 35 (Mo. App., W.D. 2012).

have the effect of subjecting, either the Alagasco or EnergySouth transactions to the Commission's jurisdiction since neither of those transactions would make Spire a registered holding company or subject the intrastate facilities of Laclede Gas to FERC jurisdiction."<sup>18</sup>

The Commission denied Spire's motion on August 17, 2016, stating "Spire argues that the order pre-judges, and constitutes an advisory opinion on, whether the Commission has jurisdiction over those transactions. The Commission has not made, is not making, and will not make that determination in this file."<sup>19</sup>

**C. *The Focus and Method of Staff's Investigation:***

1. Questions Presented

OPC provided a specific list of questions for investigation in its *Motion to Open Investigation*, which the Commission specifically stated it was granting in its *Order Opening Investigation* of July 20, 2016:

1. Whether the terms of the unanimous stipulation and agreement required Spire (formerly named The Laclede Group) to seek Commission approval prior to the 2014 acquisition of Alagasco or the announced acquisition of EnergySouth;
2. Whether Spire sought Commission approval prior to the 2014 acquisition of Alagasco;
3. Whether Spire will seek Commission approval prior to the acquisition of EnergySouth;

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<sup>18</sup> *Spire Inc.'s Request for Clarification or, in the Alternative, Motion for Reconsideration*, p. 7.

<sup>19</sup> *Order Denying Motion for Clarification or Reconsideration*, p. 1.

4. Whether the acquisition of Alagasco was detrimental to the public or otherwise impacted Missouri customers;
5. Whether the acquisition of EnergySouth will be detrimental to the public or otherwise impact Missouri customers;
6. Whether the acquisition of EnergySouth will impact the Commission's access to information;
7. Whether the acquisition of EnergySouth will impact the credit rating or financial stability of Spire as it relates to the cost of capital;
8. Whether the acquisition of EnergySouth will impact the cost allocations among the affiliated companies, and;
9. Whether the acquisition of EnergySouth will impact the reporting requirements contained in the stipulation and agreement in GM-2001-342.

As already noted, the Commission gave specific direction to Staff in its *Order*. In

Ordered Paragraph 2, the Commission directed Staff as follows:

2. The Commission's staff ("Staff") is directed to investigate, and file a report including Staff's position on, whether the transactions described in the body of this order did or will:

- a. Have any effect on Missouri ratepayers;
- b. Cause any detriment to the public interest; and
- c. Are subject to the Commission's jurisdiction.

\* \* \*

4. Any report described in ordered paragraph 2 ... shall be filed no later than September 2, 2016.



Staff will also examine the issue of Spire's compliance with the *Unanimous Stipulation and Agreement* that conditioned Laclede's reorganization as a holding company in this report.

## 2. Methodology

As in its investigation of Great Plains' acquisition of Westar, Staff moved on July 28, 2016, for an order reducing the allowed interval in which to respond to DRs.<sup>20</sup> Spire filed a *Response* on August 1, 2016,<sup>21</sup> and an *Amended Response* on August 2, consenting to an order shortening the objection and response intervals to 5 and 8 business days, respectively.<sup>22</sup> The Commission did so on August 3, 2016, deeming all DRs already served to be served as of the date of the Commission's *Order*.

Staff subjected the information it gathered to multi-modal expert analysis and developed a consensus opinion on each of the questions presented for investigation. By "multi-modal expert analysis," Staff means the collaboration of experts from multiple disciplines. As directed by the Commission, Staff has embodied its findings, conclusions and recommendations in a report. Also as directed by the Commission, this investigation report includes a legal analysis of the Commission's jurisdiction over the transactions.

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<sup>20</sup> *Staff's Motion to Shorten Time to Respond and Object to Data Requests and Motion for Expedited Treatment*, filed July 28, 2016.

<sup>21</sup> *Response to Staff's Motion to Shorten Data Request Response Times*, filed August 1, 2016.

<sup>22</sup> *Amended Response to Staff's Motion to Shorten Data Request Response Times*, filed August 2, 2016.

## II. FINDINGS

### A. *Undisputed Facts:*

Spire is a publicly-traded Missouri general business corporation in good standing and a public utility holding company; its principal place of business is 700 Market Street, 6<sup>th</sup> Floor, St. Louis, Missouri 63101 and its registered agent is Ellen Theroff, 700 Market Street, 6<sup>th</sup> Floor, St. Louis, Missouri 63101.<sup>23</sup> Prior to April 28, 2016, Spire was named The Laclede Group, Inc.<sup>24</sup> According to Spire, it is a public utility holding company whose primary business is the safe and reliable delivery of natural gas service.<sup>25</sup> Spire is a public utility holding company and obtained an exemption from FERC regulation under the LDC exemption to the Public Utility Holding Company Act of 2005, which was enacted as part of the Energy Policy Act of 2005.<sup>26</sup> Among other subsidiaries, Spire owns and controls two natural gas utilities that are subject to regulation in Missouri by this Commission, Laclede Gas Company (“Laclede”) and Missouri Gas Energy (“MGE”).<sup>27</sup> Laclede is a natural gas distribution utility system and serves customers in St. Louis and eastern Missouri.<sup>28</sup> MGE, acquired from Southern Union Company on September 1, 2013, is also a natural gas distribution utility system in Missouri and serves customers in Kansas City and western Missouri as a

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<sup>23</sup> Records of the Missouri Secretary of State; The Laclede Group, Inc., Form 10-K, filed November 24, 2015.

<sup>24</sup> *Id.*

<sup>25</sup> *Laclede to Acquire Parent Company of Mobile Gas and Willmut Gas*, April 26, 2016 Press Release on Spire website.

<sup>26</sup> *Spire Inc.'s Verified Response Opposing Public Counsel's Motion to Open an Investigation*, filed June 27, 2016.

<sup>27</sup> The Laclede Group 10-K *supra*.

<sup>28</sup> *Id.*

division of Laclede.<sup>29</sup> Together, Laclede and MGE serve 1.1 million Missouri customers and constitute the largest natural gas utility in Missouri.

Spire, then known as The Laclede Group, Inc., was formed by a restructuring of Laclede in 2001, pursuant to which Laclede sought, and obtained, authority from this Commission to restructure as a holding company and wholly-owned operating subsidiary.<sup>30</sup> The Commission approved that reorganization by order on August 14, 2001, in Case No. GM-2001-342.<sup>31</sup> By the same order, the Commission also approved the *Unanimous Stipulation and Agreement*, filed on July 9, 2001, and executed on behalf of Laclede by Michael C. Pendergast and on behalf of Spire by Gerald T. McNeive, Jr., which sets out and applies a number of conditions to the reorganization.<sup>32</sup> In particular, Section V of the *Unanimous Stipulation and Agreement* provides:

#### **COMMISSION AUTHORIZATION CONDITIONS**

1. The Laclede Group, Inc. agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility, or seek to become a registered holding company, or take any action which has a material possibility of making it a registered holding company or of subjecting all or a portion of its Missouri intrastate gas distribution operations to FERC jurisdiction, without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is

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<sup>29</sup> *Id.*

<sup>30</sup> *In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Case No. GM-2001-342 (*Verified Application*, filed December 1, 2000).

<sup>31</sup> *In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Case No. GM-2001-342 (*Order Approving Stipulation and Agreement and Approving Plan to Restructure*, issued August 14, 2001).

<sup>32</sup> *In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Case No. GM-2001-342 (*Unanimous Stipulation and Agreement*, filed July 9, 2001).

not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility.

Laclede is a Missouri general business corporation in good standing, incorporated on March 2, 1857, as Laclede Gas Light Company; its principal place of business is located at 700 Market Street, 6<sup>th</sup> Floor, St. Louis, Missouri 63101 and its registered agent is Ellen Theroff, 700 Market Street, 6<sup>th</sup> Floor, St. Louis, Missouri 63101.<sup>33</sup> MGE is a registered fictitious name under which Laclede does business at 1117 South Pleasant Street, Independence, Missouri. MGE was a division of Southern Union Company prior to its acquisition by Laclede and is now a division of Laclede.<sup>34</sup> Laclede is in the business of using gas plant<sup>35</sup> that it owns, controls and operates to distribute natural gas to the public at retail for light, heat and power. Laclede consequently, is a gas corporation and a public utility within the intendments of the Public Service Commission Law.<sup>36</sup>

Alagasco is a public utility engaged in the purchase, retail distribution and sale of natural gas principally in central and northern Alabama, serving more than 0.4 million residential, commercial and industrial customers with primary offices located in Birmingham, Alabama. Spire purchased 100% of the common shares of Alagasco from

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<sup>33</sup> Records of the Missouri Secretary of State; The Laclede Group, Inc., Form 10-K, filed November 24, 2015.

<sup>34</sup> *In the Matter of the Joint Application of Southern Union Company d/b/a Missouri Gas Energy, The Laclede Group, Inc. and Laclede Gas Company for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets and Liabilities from Southern Union Company to Laclede Gas Company and, in connection therewith, certain other Related Transactions*, Case No. GM-2013-0254 (*Joint Application*, filed January 14, 2013), ¶¶ 4 and 16.

<sup>35</sup> Section 386.020(19), RSMo.: "Gas plant' includes all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power[.]"

<sup>36</sup> Section 386.020, (18) and (43), RSMo.

Energen Corporation on August 31, 2014. Spire did not seek or obtain prior approval from this Commission for the acquisition and Staff did not make any filings at the time raising the issue. However, the transaction was not a secret:

Spire “took steps to keep the Commission and other stakeholders fully informed about the existence, nature, and merits of the Alagasco transaction. These steps included efforts to alert Commission and OPC personnel regarding the terms of the proposed acquisition before it was publicly announced. The Company’s President and CEO, Suzanne Sitherwood, also formally briefed the Commission, Staff and OPC on the Alagasco acquisition during an on-the-record presentation<sup>37</sup> made on May 27, 2014, which was held as a series of follow-up meetings on the MGE acquisition that had been completed the year before. In addition to describing the key operational, geographic, and others features of the acquisition that made it a good fit for the Company and its existing and future customers, Ms. Sitherwood and other senior executives of the Company were available to answer, and did answer, questions about the transaction.<sup>38</sup>

EnergySouth, Inc., is a unit of Sempra Energy.<sup>39</sup> EnergySouth owns Mobile Gas Service Corporation and Willmut Gas and Oil Company, two gas utilities serving about 85,000 customers in Alabama and 19,000 customers in Mississippi, respectively.<sup>40</sup> Spire has entered into an agreement to acquire EnergySouth for \$344 million.<sup>41</sup> The transaction would result in an increase of about 7% in Spire’s 1.56 million customer base, and a similar percentage increase to Spire’s current \$5.2 billion enterprise value.<sup>42</sup>

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<sup>37</sup> In fact, the witnesses were not sworn.

<sup>38</sup> *Spire Inc.’s Verified Response Opposing Public Counsel’s Motion to Open an Investigation*, filed June 27, 2016, ¶ 8.

<sup>39</sup> *Id.*, ¶ 2.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

**B. Effects on Missouri Ratepayers:**

1. The Alagasco Acquisition:

Staff is of the opinion that the Alagasco acquisition has had effects on Missouri ratepayers, including higher rates due to the effects of increased holding company debt on Laclede Gas' credit rating; direct allocation of acquisition and transition costs; decreased customer service quality, including billing errors and the ongoing loss of experienced customer service representatives in the call centers. As noted elsewhere in this report, it appears that services have been provided by Laclede Gas Company to Spire and Alagasco in connection with this acquisition and that costs have been allocated to Laclede Gas Company in connection with this acquisition, all in violation of Commission Rule 4 CSR 240-40.015, pertaining to affiliate transactions.

2. The EnergySouth Acquisition:

Staff is of the opinion that the EnergySouth acquisition will have effects on Missouri ratepayers similar to those that the Alagasco acquisition has had.

**C. Compliance with the Conditions Imposed in Case No. GM-2001-342:**

In 2001 the Commission authorized Laclede Gas Company to restructure itself as a holding company, the Laclede Group, Inc. (now Spire), and the regulated public utility company became a subsidiary. The Commission approved that reorganization by order on August 14, 2001, in Case No. GM-2001-342. By the same order, the Commission also approved the *Unanimous Stipulation and Agreement*, filed on July 9, 2001, and executed on behalf of Laclede Gas Company by James M. Fischer, which sets out and applies a number of conditions to the reorganization.

1. Compliance with Section III, Financial Conditions:

Staff's investigation of the proposed transaction included verification of whether The Laclede Group, Inc. ("Spire") and Laclede Gas Company ("Laclede Gas"; jointly "the Companies") have complied and continue to comply with the conditions agreed to in Case No. GM-2001-342. Staff issued Data Request No. 11 requesting that the Companies demonstrate how they have complied with each of the conditions. The Companies' response, which was provided by Mr. Glenn Buck, is attached to this report as Schedule 14. Staff reviewed and analyzed other information, both public and highly confidential, to determine if it agreed with the Companies' representations of compliance. Staff will address each condition individually.

Financial Condition 1: The Laclede Group, Inc. represents that it does not intend to take any action that has a material possibility of having a detrimental effect on Laclede Gas Company's utility customers, but agrees that, should such detrimental effects nevertheless occur, nothing in the approval or implementation of the Proposed Restructuring shall impair the Commission's ability to protect such customers from such detrimental effects.

Staff's Response: The Companies' response to Staff Data Request No. 11 does not directly address this condition. However, it appears from the Companies' claim that it has complied with all of the other financing conditions, they don't believe these acquisitions had a material possibility of having a detrimental impact on Laclede Gas Company's customers. Although Laclede Gas Company has continued to have access to the funds it produces and secures, the finding as to whether this is still at a fair and reasonable cost in light of the additional debt carried by Spire will be determined in

subsequent rate cases involving the Laclede Gas and MGE divisions of Laclede Gas Company.

Financial Condition 2: Laclede Group, Inc. will not pledge Laclede Gas Company's common stock as collateral or security for the debt of the Holding Company or a subsidiary without Commission approval.

Staff's Response: Staff is not aware of any situation in which Laclede Group or any of its other subsidiaries have issued debt and pledged Laclede Gas Company's common stock as collateral or security. Laclede Group has not indicated it will violate this agreement. The Companies provided the following response to Staff Data Request No. 11:

- Neither Spire/LG nor Laclede Gas have pledged Laclede Gas' common stock as collateral or security for the debt of LG or a subsidiary of LG without Commission approval;

Financial Condition 3: Laclede Gas Company will not guarantee the notes, debentures, debt obligations or other securities of the Holding Company or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.

Staff's Response: Staff is not aware of any violation of this agreement. Laclede Gas has not indicated it will violate this agreement. The Companies provided the following response to Staff Data Request No. 11:

- Laclede Gas has not guaranteed the notes, debentures, debt obligations, or other securities of LG or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.

Financial Condition 4: The Laclede Group, Inc. agrees to maintain consolidated common equity of no less than 30 percent of total consolidated capitalization and



Laclede Gas Company agrees to maintain its equity at no less than 35% of its total capitalization, unless they are unable to do so due to events or circumstances beyond their control, including, but not limited to, acts of God, war, insurrection, strikes, civil unrest, material changes in market conditions that could not have been reasonably anticipated, or changes in the application, character or impact of laws, taxing requirements, regulations, or regulatory practices and standards governing the Company's regulated operations. Total capitalization is defined as common equity, preferred stock, long-term debt and short-term debt, excluding short-term debt supporting natural gas and propane inventories, purchased gas costs and cash working capital. Common equity is defined as par value of common stock, plus additional paid in capital, plus retained earnings, minus treasury stock. The Laclede Group, Inc. and Laclede Gas Company agree to notify the Staff and Public Counsel in the event they become aware of any material possibility that either or both companies will be unable to maintain their respective equity ratios. In the event either Company's equity ratio should fall below these specified levels, Laclede Gas Company shall file a plan with the Commission within 90 days of such occurrence proposing alternatives for raising the ratios to or above the levels specified herein.

Staff's Response: As of June 30, 2016, Spire had a consolidated common equity ratio of 49% and Laclede Gas had a common equity ratio of 57%. The Companies provided the following response to Staff Data Request No. 11:

- Spire has maintained a consolidated equity well in excess of 30 percent of its total permanent consolidated capitalization and Laclede Gas Company has maintained its equity at a level well in excess of 35% of its total capitalization.

- LG and Laclede Gas Company remain prepared to notify the Staff and Public Counsel in the event they become aware of any material possibility that either or both companies would be unable to maintain their respective equity ratios. No such circumstances have arisen in the 15 years since this commitment.
- Laclede Gas Company remains prepared to file a plan with the Commission within 90 days if either Spire's or Laclede Gas' equity ratio falls below these specified levels wherein it would propose alternatives for raising the ratios to or above the levels specified herein. No such circumstances have arisen in the 15 years since this commitment was made.

Spire is expected to continue to meet this condition after completion of the permanent financing issued to fund the EnergySouth transaction. As Laclede Gas Company is not issuing any capital for purposes of the proposed transaction, its common equity ratio would not be directly impacted by the transaction financing.

Financial Condition 5 -- Laclede Gas Company shall submit quarterly to the Financial Analysis Department of the Missouri Public Service Commission certain key financial ratios that will be calculated, to the extent practical, consistent with the methodology employed by Standard and Poor's Credit Rating Service. These key financial ratios shall include:

- (a) Pre-tax interest coverage;
- (b) After-tax coverage of interest and preferred dividends;
- (c) Funds flow interest coverage;
- (d) Funds from operations to total debt;
- (e) Total debt to total capital (including preferred); and
- (f) Total common equity to total capital.

Staff's Response: Financial Analysis Staff reviewed the monthly surveillance reports every quarter, starting from the March 2014 report (approximate time of the announcement of the Alagasco transaction) to the June 2016 report. Laclede Gas Company provided the ratio calculations for most quarters, except March 2014,

June 2015 and June 2016. Consequently, Laclede Gas Company is not in full compliance with this condition for the period Staff reviewed.

Financial Condition 6: Laclede Gas Company's total long-term instruments payable at periods of more than twelve months shall not exceed Laclede Gas Company's regulated rate base.

Staff's Response: As of Laclede Gas' June 2016 surveillance report it had a total rate base of approximately \$1,917 million. Laclede Gas' total long-term debt outstanding was approximately \$808.3 million as of June 30, 2016. In response to Staff Data Request No. 11, Laclede Gas responded:

- Laclede Gas has kept its commitment that its total long-term instruments payable at periods of more than twelve months not exceed Laclede Gas Company's regulated rate base.

Because Laclede Gas will not be issuing long-term debt for purposes of the transaction, it will not be in violation of this condition.

Financial Condition 7: Laclede Gas Company agrees to maintain its debt and, if outstanding, its preferred stock rating at an investment grade credit rating, unless it is unable to do so due to events or circumstances beyond its control, including, but not limited to, acts of God, war, insurrection, strike, civil unrest, material changes in market conditions that could not have been reasonably anticipated, or changes in the application, character or impact of laws, taxing requirements, regulations, or regulatory practices and standards of governing the Company's regulated operations. Laclede Gas Company agrees to notify the Staff and Public Counsel in the event it becomes aware of any material possibility that it will not be able to maintain such a credit rating with any established agency that typically rates Laclede's debt. In the

event Laclede Gas Company's credit rating should fall below investment grade, Laclede shall file a plan with the Commission within 90 days of such occurrence proposing alternatives for raising its credit rating above investment grade.

Staff's Response: The Companies provided the following response to Staff Data Request No. 11:

- Laclede Gas has kept its commitment to maintain its debt and, if outstanding, its preferred stock rating at an investment grade credit rating, unless it was unable to do so due to certain events or circumstances beyond its control. Currently, Laclede has a credit rating of A- applicable to these instruments.
- Laclede Gas Company is prepared to keep its commitment to notify the Staff and Public Counsel in the event it becomes aware of any material possibility that it will not be able to maintain such a credit rating with any established agency that typically rates Laclede's debt. No such circumstance has arisen in the 15 years since this commitment was made.
- Should its credit rating fall below –investment grade, Laclede Gas Company remains prepared to file a plan with the Commission within 90 days of such an occurrence proposing alternatives for raising its credit rating above investment grade.

Staff verified Laclede Gas' response to Staff Data Request No. 11 and agrees that it has maintained an investment grade credit rating. Based on Staff's review of rating agency feedback regarding Spire's proposed EnergySouth acquisition and Spire's Alagasco acquisition, Laclede Gas Company is expected to maintain its investment grade credit rating. However, Spire's issuance of a significant amount of holding company debt to finance its acquisitions may not allow Laclede Gas Company to be assigned a stronger credit rating if its stand-alone risk profile is stronger than Spire on a consolidated basis.

Financial Condition 8: The Laclede Group, Inc. and Laclede Gas Company agree that the Commission has, and will continue to have, the authority after the Proposed Restructuring to regulate, through the lawful exercise of its current statutory powers, any direct or indirect transfer or disbursement of earnings from Laclede Gas Company to an affiliate that would jeopardize the Company's ability to meet its utility obligations. The Laclede Group, Inc. and Laclede Gas Company also agree that the commission has the authority, through the lawful exercise of its ratemaking powers, to ensure that the rates charged by Laclede Gas Company for regulated utility service are not increased as a result of the unregulated activities of Laclede's affiliates and Laclede agrees, consistent with such standard, that rates should not be increased due to such activities.

Staff's Response: The Companies provided the following response to Staff Data Request No. 11:

- Spire and Laclede Gas Company continue to agree that the Commission has, and will continue to have, the authority after the Proposed Restructuring to regulate, through lawful exercise of its current statutory powers, any direct or indirect transfer or disbursement of earnings from Laclede Gas Company to an affiliate that would jeopardize the Company's ability to meet its utility obligations.
- Spire and Laclede Gas Company continue to agree that the Commission has the authority, through the lawful exercise of its ratemaking powers, to ensure that the rates charged by Laclede Gas Company for regulated utility service are not increased as a result of unregulated activities of Laclede's affiliates and Laclede continues to agree, consistent with such standard, that rates should not be increased due to such activities.

To Staff's knowledge, Laclede Gas Company has two legal avenues to transfer funds to any affiliates or its holding company. It can either distribute dividends to the holding

company or it can make intercompany loans. If Laclede Gas Company's access to capital at a reasonable cost is jeopardized by Spire's holding company leverage, then Staff would expect the Companies to restrict the funds transferred to Spire and other affiliates. Additionally, if Spire's increased financial risk causes higher debt costs to be incurred by Laclede Gas Company, then the Commission can consider this in determining a fair and reasonable capital structure and rate of return to allow for Laclede Gas Company.

Section IV Access to Information Condition 1: The Laclede Group, Inc. and Laclede Gas Company shall provide the Staff and Public Counsel with access upon reasonable written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond, or bond rating analysts, which directly, or indirectly, pertains to Laclede Gas Company or any affiliate that exercises influence or control over Laclede Gas Company or has affiliate transactions with Laclede Gas Company. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, "written" information includes but is not limited to, any written and printed material, audio and videotapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed to be a waiver of The Laclede Group, Inc.'s or Laclede Gas Company's right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.

Staff's Response: For purposes of this investigation, the Companies' accommodated Staff's requests for confidential information by making much of this information available at Laclede Gas Company's Jefferson City offices for review. However, Staff notes that some information was redacted without an explanation as to why it was redacted. Additionally, Staff is of the opinion that some of the information requested, such as various rating agency presentations and valuation analyses, should be provided directly to Staff and simply designated as "highly confidential." This type of cooperation would facilitate Staff's ability to complete its regulatory duties, especially on expedited investigations with limited resources.

--David Murray, Manager, Financial Analysis Unit.

2. Compliance with Section IV, Access to Information Conditions:

Among the conditions set out in the *Unanimous Stipulation and Agreement* are the following at Section IV, Access to Information Conditions:

1. The Laclede Group, Inc. and Laclede Gas Company shall provide the Staff and Public Counsel with access, upon reasonable written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond, or bond rating analysts, which directly or indirectly pertains to Laclede Gas Company or any affiliate that exercises influence or control over Laclede Gas Company or has affiliate transactions with Laclede Gas Company. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, "written" information includes but is not limited to, any written and printed material, audio and videotapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed to be a waiver of The Laclede Group, Inc.'s or Laclede Gas Company's right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.

2. Upon request, Laclede Gas Company and The Laclede Group, Inc. agree to make available to Staff, Public Counsel and PACE, upon

written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, all books, records and employees of The Laclede Group, Inc., Laclede Gas Company and its affiliates as may be reasonably required to verify compliance with the CAM and the conditions set forth in this Stipulation and Agreement and, in the case of PACE, to ensure that it continues to have the same degree and kind of access to information relevant to the investigation and processing of grievances and the enforcement of collective bargaining agreements, whether from affiliates or otherwise, as it currently has under Laclede's existing corporate structure . In addition to following standard discovery procedures, Staffs and Public Counsel's access to bargaining unit employees shall also be conditioned on Staff and Public Counsel providing reasonable notice to the employee's Union of their intent to seek such access and the right of such employee to be represented by the Union. Laclede Gas Company and The Laclede Group, Inc. shall also provide Staff and Public Counsel any other such information (including access to employees) relevant to the Commission's ratemaking, financing, safety, quality of service and other regulatory authority over Laclede Gas Company; provided that Laclede Gas Company and any affiliate or subsidiary of The Laclede Group, Inc. shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates or subsidiaries : (a) are not within the possession or control of Laclede Gas Company; or (b) are either not relevant or are not subject to the Commission's jurisdiction and statutory authority by virtue of or as a result of the implementation of the Proposed Restructuring.

3. Laclede Gas Company, each affiliate and The Laclede Group, Inc. will maintain records supporting its affiliated transactions for at least five years.

Spire and its family of corporations have not complied with these conditions. On July 7, 2010, the Staff brought a complaint against Laclede Gas, Case No. GC-2011-0006, for its breach of these conditions by asserting, in the course of an action in circuit court to enforce a discovery order of the Commission arising from two actual cost adjustment ("ACA") cases, GR-2005-0203 and GR-2006-0288, that the information sought by Staff was not in its possession or control.<sup>43</sup> The Commission

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<sup>43</sup> *Staff of the Missouri Public Service Commission v. Laclede Gas Company*, Case No. GC-2011-0006 (*Report and Order*, issued February 4, 2011), pp. 6-7.



granted summary determination for the Staff on its complaint.<sup>44</sup> Laclede appealed and, although Laclede was victorious at the Circuit Court, the Missouri Court of Appeals reversed and affirmed the Commission.<sup>45</sup>

In summary, Laclede violated the *Unanimous Stipulation and Agreement* approved in Case GM-2001-342 and Staff was able to obtain necessary information only with great difficulty, through litigation.

--Kevin A. Thompson, Chief Staff Counsel.

3. Compliance with Section V, Commission Authorization Conditions:

Among the conditions set out in the *Unanimous Stipulation and Agreement* are the following at Section V:

1. The Laclede Group, Inc. agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility, or seek to become a registered holding company, or take any action which has a material possibility of making it a registered holding company or of subjecting all or a portion of its Missouri intrastate gas distribution operations to FERC jurisdiction, without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility.

2. Laclede Gas Company shall not sell, lease, assign or transfer to any affiliate or third party any of its utility assets that are used and useful in the performance of Laclede's public utility obligations without obtaining Commission approval.

Spire, formerly The Laclede Group, completed the Alagasco acquisition in 2014 and never sought nor obtained authorization to do so from this Commission.

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<sup>44</sup> *Id.*, p. 14.

<sup>45</sup> *State of Missouri ex rel. Laclede Gas Company v. Public Service Commission of the State of Missouri*, 392 S.W.3d 24 (Mo. App., W.D. 2012).

Spire is currently engaged in acquiring EnergySouth and has not yet sought authorization to do so from this Commission. Its pleadings filed in this case indicate that it does not intend to do so. Staff necessarily concludes that Spire has violated Section V, Clause 1, of the *Unanimous Stipulation and Agreement* and thus the Commission's order of August 14, 2001, in Case No. GM-2001-342.

--Kevin A. Thompson, Chief Staff Counsel.

4. Compliance with Section VI, Cost Allocation Manual Conditions:

Among the conditions set out in the *Unanimous Stipulation and Agreement* are the following at Section VI, Cost Allocation Manual Conditions:

1. Upon implementation of the Proposed Restructuring, transactions involving transfers of goods or services between Laclede Gas Company and one or more of the Company's affiliated entities shall be conducted and accounted for in compliance with the provisions of a Cost Allocation Manual ("CAM") which shall be submitted to Staff, Public Counsel and PACE on or before April 15, 2003, and on an annual basis thereafter. The CAM shall be in the form contained in the direct testimony of Patricia A. Krieger, provided that the CAM, and the information that the Company is required to maintain and submit thereunder, shall be revised and supplemented within 120 days of the approval of this Stipulation and Agreement to include any and all of the following information as required to administer, audit and verify the Transfer Pricing and Costing Methodologies set forth in Section VIII of the CAM or such other Transfer Pricing and Costing Methodologies as may become applicable to the Company in the future:

(a) For all Laclede Gas Company functions that will provide support to nonregulated affiliates and the holding company:

- (1) A list and description of each function;
- (2) The positions and numbers of employees providing each function; and
- (3) The procedures used to measure and assign costs to nonregulated affiliates and the holding company for each function.

(b) A list and description of each service and good that will be provided to Laclede Gas Company from each affiliate and the holding company.

(c) A list and description of each service and good that will be provided by Laclede Gas Company to each affiliate and the holding company.

(d) The dollar amount of each service and good charged to each affiliate and the holding company by Laclede Gas Company, and the total cost related to each service and good listed.

(e) The dollar amount of each service and good purchased from each affiliate and the holding company by Laclede Gas Company, and the total cost related to each service and good listed.

(f) A detailed discussion of the basis for determining the charges from Laclede Gas Company and each affiliate and the holding company, including:

(1) If costs are allocated, a detailed description of the allocation process employed for each service and good;

(2) Detailed descriptions of how direct, indirect and common activities are assigned for each service and good;

(3) A detailed description of how market values are determined for each service and good; and

(A) A detailed discussion of the criteria used to determine whether volume discounts and other pricing considerations are provided to Laclede Gas Company, affiliates, and the holding company.

(g) For each line of business that will be engaged in by Laclede Gas Company with non-affiliated third party customers following formation of a holding company and that would not reasonably be considered as a component of its regulated utility business, Laclede shall provide:

(1) A list and description of each nonregulated activity;

(2) The total amount of revenues and expenses for each nonregulated activity for the last calendar year; and

(3) A listing of all Laclede Gas Company cost centers and/or

functions that directly assign cost, indirectly assign cost and/or allocate cost to each nonregulated activity engaged in by Laclede Gas Company with non-affiliates.

2. Laclede agrees to make compliance with the procedures and requirements set forth in the CAM and the other terms of this Stipulation and Agreement a standard element of its Code of Conduct and to provide employee training and oversight in a manner that is reasonably designed to achieve such compliance. Laclede will conduct regularly scheduled audits to confirm compliance with its CAM and will annually review and update the CAM where necessary and submit such updates with its next CAM filing. Laclede will identify a function or position with responsibility for enforcing and updating the CAM.

3. As part of its CAM submittal, Laclede Gas Company will provide a list of all jurisdictions in which Laclede Gas Company, the holding company, affiliates, and service company, if formed, file affiliate transaction information.

4. As part of its CAM submittal, Laclede Gas Company will also provide Organizational Charts for The Laclede Group, Inc. (corporate structure), Laclede Gas Company and any other affiliate doing business with Laclede Gas Company and a copy of the annual holding company filing the Laclede Group, Inc. is required to file with the Securities and Exchange Commission.

When Laclede Gas filed Case No. GM-2001-342, seeking authority to restructure as a holding company, it filed a proposed Cost Allocation Manual ("CAM") with the Direct Testimony of Patricia A. Krieger. However, at that time, the Commission's Affiliate Transactions Rules were on appeal. Several companies, including Laclede, had challenged the Commission's authority to promulgate the rules. In 2003, two years after the reorganization case was over, the Missouri Supreme Court affirmed the Commission's rules.<sup>46</sup> Since the rules were on appeal at the time Laclede sought to restructure, one of the conditions in the *Unanimous Stipulation and Agreement* required

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<sup>46</sup> *Atmos Energy Corp. v. Public Service Com'n*, 103 S.W.3d 753 (Mo. banc 2003).

that the CAM be in the form contained in the direct testimony of Patricia A. Krieger and that it contain a laundry list of information set out in the *Unanimous Stipulation and Agreement*.

The Krieger CAM contained asymmetrical pricing provisions for affiliate transactions, as do the Commission's rules. However, the CAM that Laclede Gas adopted in 2004 was not in the form contained in the direct testimony of Patricia A. Krieger as required by the *Unanimous Stipulation and Agreement*. It also did not comply with the Commission's Affiliate Transaction Rules.

Staff repeatedly expressed its concerns with the 2004 CAM to Laclede Gas after the Commission's Affiliate Transaction Rules became effective in mid-2003. Staff's expressions of concern were unavailing. Eventually, Staff filed a complaint on October 6, 2010 (Case No. GC-2011-0098), alleging that Laclede's CAM failed to comply with the Commission's Affiliate Transaction Rules; that Laclede failed to obtain Commission approval of its CAM; and that Laclede failed to annually submit its CAM to Staff. Laclede filed a counter-claim to Staff's complaint, alleging that Staff did not have a good faith, non-frivolous argument for its position and was therefore in violation of Commission rule 4 CSR 240-2.080(7).

The case was eventually settled and on July 16, 2013, Staff, Laclede Gas, and OPC jointly filed a *Unanimous Partial Stipulation and Agreement and Waiver Request and Request for Approval of Cost Allocation Manual* in eight cases, including GC-2011-0098, as well as seven other cases concerning Laclede's actual cost adjustments for 2004 through 2011. The *Unanimous Stipulation and Agreement* resolved Staff's complaint by submitting for Commission approval a revised CAM that

was acceptable to Laclede, Staff, and OPC. It included Laclede's agreement to file all current and future versions of its CAM in the Commission's electronic filing system ("EFIS") and to notify Staff and OPC of any such filings via e-mail. In addition, Laclede agreed to continue to file in EFIS its annual CAM report detailing its affiliate transactions for the preceding fiscal year. Upon the Commission's approval of the *Unanimous Stipulation and Agreement*, both Staff's complaint and Laclede's counter-claim in EC-2011-0098 were dismissed with prejudice.

In summary, Laclede violated the *Unanimous Stipulation and Agreement* approved in Case GM-2001-342 and was only brought into compliance through litigation.

--Kevin A. Thompson, Chief Staff Counsel.

5. Compliance with Section VII, Miscellaneous Conditions:

Among the conditions set out in the *Unanimous Stipulation and Agreement* are the following at Section VII, Miscellaneous Conditions:

1. Laclede Gas Company will not seek to recover any costs related to the Proposed Restructuring from ratepayers. These costs will be identified, described and accounted for in a manner that would enable the Staff and Public Counsel to seek disallowance from rates, if necessary, in a future proceeding.

2. Laclede Gas Company will provide the Staff and Public Counsel with an explanation for any final reorganization journal entry that deviates by more than ten percent (10%) from the estimated pro forma entries provided in Exhibit 4 of the Application. Copies of the actual journal entries will be provided to the General Counsel's Office no later than thirty days following the preparation of the final merger closing entries.

3. The Laclede Group and its affiliates (including Laclede) will provide the following documents to Staff and Public Counsel on an annual basis:

(a) All new, revised and updated business plans for The Laclede Group and its affiliates (including Laclede);

(b) Descriptions of any and all joint marketing/promotional campaigns between Laclede and The Laclede Group and any of its affiliates;

(c) Narrative description of all products and services offered by The Laclede Group and its affiliates (including Laclede), provided that Laclede shall not be required to provide narrative descriptions of its tariffed products and services;

(d) All information provided under this subsection shall be considered "highly confidential" or "proprietary" as those terms are used in 4 CSR 240-2 .085, and shall be treated as highly confidential or proprietary information by the Staff and Public Counsel;

(e) The Laclede Group, Inc. and its affiliates (including Laclede) shall also notify Staff, Public Counsel and PACE in the event and at such time as they commence a line of business that neither Laclede nor its affiliates were actively engaged in at the time of the Proposed Restructuring. Such notification can take the form of public announcements, press releases or other means of notification provided to the parties.

4. Laclede Gas agrees to notify the Staff, Public Counsel, and PACE in the event and at such time as any decision is made to transfer any department or function relating to the Company's provision of regulated utility services from the regulated gas corporation to a non-regulated affiliated entity or other third party; provided that nothing herein shall be construed as limiting or modifying in any manner any notice or other requirement Laclede may have relating to the transfer of bargaining unit employees or the work performed by such employees pursuant to the existing collective bargaining unit agreements between Laclede and Pace or applicable federal labor law. At the time of its annual CAM filing, Laclede will also provide Public Counsel, Staff and PACE information detailing the name, job description, and transfer dates of any employees that were permanently or temporarily transferred between Laclede and any affiliate during the preceding fiscal year.

5. Nothing in this Stipulation and Agreement shall be deemed to change in any way any of the rights and obligations of Laclede Gas Company or PACE under the collective bargaining agreements between them or under any non-PSC law, and by entering into this Stipulation and

Agreement, neither Laclede Gas Company or PACE waives any such rights.

6. Nothing in this Stipulation and Agreement or the implementation of the Proposed Restructuring shall affect in any way the scope of any existing ratemaking authority the Commission has over Laclede Gas Company relating to activities undertaken by Laclede Energy Resources or Laclede Pipeline Company prior to implementation of the Proposed Restructuring or over ratemaking issues that may arise as the result of the formation of a service company.

Staff is unaware of any violations of these conditions at this time.

--Kevin A. Thompson, Chief Staff Counsel.

**D. Detriments to the Public Interest:**

The Commission is authorized to approve utility mergers, acquisitions and restructurings upon a determination that the proposed transaction is not detrimental to the public interest.<sup>47</sup>

1. Affiliate Transaction Detriments

Spire, previously known as Laclede Group Inc., acquired Algasco on August 31, 2014, and is processing its acquisition of EnergySouth currently. The Algasco acquisition did have an impact on Missouri ratepayers. The EnergySouth acquisition will likely have an impact on Missouri ratepayers. The Algasco and EnergySouth acquisitions have a detrimental aspect of increasing the amount of holding company costs. Laclede Gas Company's September 30, 2015, Affiliate Transaction Report indicates on page 11 that any costs incurred by Laclede Holdings for general and administrative and general expenses are directly allocated to each of the affiliates, including Laclede Gas Company ("LGC"). The concern that this approach is in violation of the Commission's affiliate transactions is noted but should be noted in another venue.

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<sup>47</sup> Sections 393.190.1 and 393.250, RSMo.



LGC is the only Missouri utility with an approved Cost Allocation Manual ("CAM"). LGC's CAM was approved by the Commission effective August 24, 2013. A CAM is to include the criteria, guidelines and procedures a regulated gas corporation will follow to be in compliance with the Commission's affiliate transaction rule. LGC's operations have not been reviewed and compliance under its approved CAM has not been reviewed since LGC's last rate case, which was July 2013 for its LGC division and May 2014 for its MGE division. A concern regarding compliance with the Commission's affiliate transactions rule has arisen from the Staff review in GR-2014-0324 of Laclede's MGE division's 2013/2014 ACA case. These issues show the importance of review of LGC's planned compliance with the Commission's affiliate transactions rule with the addition of new affiliate companies for LGC to support.

Spire or Laclede Group lacks the ability to operate independently of its affiliates. Laclede Group's Form 10 K (Annual Report) filing with the United States Securities and Exchange Commission for the fiscal year ended September 30, 2015, on page 10 states:

**RISKS AND UNCERTAINTIES THAT RELATE TO THE BUSINESS AND FINANCIAL RESULTS OF LACLEDE GROUP AND ITS SUBSIDIARIES**

**As a holding company, Laclede Group depends on its operating subsidiaries to meet its financial obligations.**

Laclede Group is a holding company with no significant assets other than the stock of its operating subsidiaries and cash investments. Laclede Group, and Laclede Gas prior to Laclede Group's formation, have paid dividends continuously since 1946. Laclede Group's ability to pay dividends to its shareholders is dependent on the ability of its subsidiaries to generate sufficient net income and cash flows to pay upstream dividends and make loans or loan repayments. In addition, because it is a holding company and the substantial portion of its assets are represented by its holdings in the Utilities, the risks faced by the Utilities as described under RISKS THAT RELATE TO THE GAS UTILITY SEGMENT below

may also adversely affect Laclede Group's cash flows, liquidity, financial condition and results of operations.

Since no acquisition approval requests have been filed with the Commission, this case is the first proceeding in which LGC's affiliate activities under its approved CAM have been considered in conjunction with the Alagasco and pending EnergySouth acquisitions. Staff's investigation showed that the holding company planned for LGC to operate its investment in Alagasco. It is assumed that the holding company is planning the same relationship for EnergySouth. The holding company lacks the resources to operate these affiliates. The items discussed in this investigation would have been detected earlier in a rate case or acquisition review.

A review of the Alabama Public Service Commission's order approving the transfer of ownership of 100% of the common stock of Alabama Gas Corporation to Laclede Group, Inc., shows that approval was based on the commitment of LGC being operationally qualified to operate Alagasco. Laclede Group, Inc., has no operational natural gas distribution experience let alone any history to demonstrate its qualifications as a natural gas utility. It is LGC that is operationally qualified in every respect to own and operate Alagasco. It is LGC, not Spire, which "is managerially qualified in all aspects to own, direct, and support Alagasco in the discharge of its obligations to serve the public." It is LGC, not Spire, that has a "seasoned and experienced team of leaders and a highly trained work force dedicated to providing safe, reliable natural gas service that will complement Alagasco's experienced leadership team and trained work force."

Laclede Group had no approval from the MoPSC to commit LGC to operate Alagasco or make commitments on its behalf to the Alabama Public Service Commission. The Alabama Public Service Commission nonetheless approved the

transaction in part based on these non-authorized LGC commitments. Spire operates by utilizing LGC resources. In LGC's most recent Affiliate Transaction Report for the year ending September 30, 2015, Laclede Group or Spire is not listed as an affiliate that is providing any information, assets, goods, or services to LGC. The Report appears to indicate on page 12 that LGC provided the holding company, Laclede Group (now Spire), at least \$31 million of services. This page appears to indicate that the Laclede Group then charged over \$33 million to its affiliates with LGC receiving over \$22 million of these charges. These charges are submitted using an approach inconsistent with the reporting requirements of the Commission's affiliate transaction rules. LGC is required to provide annually the amount of all affiliate transactions, by affiliated entity and account charged.

Prior to August 31, 2014, LGC employees operated Spire and all its affiliates. LGC obtained a waiver to the MoPSC affiliate transaction rule, 4 CSR 240-40.015(2)(A), 1 and 2, to allow it to provide or receive services at cost in transactions with Laclede Energy Resources ("LER") as long as LGC complied with its approved CAM and Standards of Conduct requirements. Laclede's compliance is a matter previously discussed as an outstanding issue in GR-2014-0324.

LGC does not have similar waivers for affiliate transactions with Algasco or EnergySouth nor has LGC requested such waivers. Without this waiver, the MoPSC affiliate transaction rules would require LGC to provide information, assets, goods, and services to Algasco and EnergySouth at the greater of full market price or LGC's fully distributed costs. Further, the MoPSC affiliate transaction rules would require LGC to pay for information, assets, goods, and services from Algasco and EnergySouth at the

lower of full market price or LGC's fully distributed costs to provide the information, assets, goods, and services for itself. These criteria were established so that compliant affiliate transactions would satisfy the rule requirements that companies such as LGC not provide a financial advantage to an affiliate.

MoPSC Rule 4 CSR 240-40.015(2)(D) requires LGC to not participate in any affiliate transaction which is not compliant with the rule. LGC has satisfied none of the requirements in 4 CSR 240-20.015(10) required to obtain a variance of the MoPSC affiliate transaction rules in relation to the exchange of assets, information, goods, and services between itself and its affiliates.

Laclede Group's Form 10 K (Annual Report) filing with the United States Securities and Exchange Commission for the fiscal year ended September 30, 2015, on page 12 and 13 states:

**Recent acquisitions may not achieve their intended results, including anticipated efficiencies and cost savings.** Although the Company and its subsidiaries expect that the recent acquisitions will result in various benefits, including a significant cost savings and other financial and operational benefits, there can be no assurance regarding when or the extent to which the Company and its subsidiaries will be able to realize or retain these benefits. Achieving and retaining the anticipated benefits, including cost savings, is subject to a number of uncertainties, including whether the assets acquired can be operated in the manner the Company and its subsidiaries intended. Events outside of the control of the Company and its 12 subsidiaries, including but not limited to regulatory changes or developments, could also adversely affect their ability to realize the anticipated benefits from the acquisitions. Thus, the integration of Alagasco may be unpredictable, subject to delays or changed circumstances, and the Company and its subsidiaries can give no assurance that the acquisitions will perform in accordance with their expectations or that their expectations with respect to integration or cost savings as a result of the Alagasco acquisition will materialize. In addition, the anticipated costs to the Company and its subsidiaries to achieve the integration of Alagasco may differ significantly from their current estimates. The integration may place an additional burden on management and internal resources, and the diversion of management's

attention during the integration process could have an adverse effect on the Company's and its subsidiaries' business, financial condition and expected operating results.

These acknowledged risks have not been examined as to their impact on LGC.

--Robert Schallenberg, Manager, Operational Analysis Department.

## 2. Billing Detriments

The Commission should be aware of billing issues that have impacted customers since the Commission approved the sale of MGE to LGC on July 17, 2013.<sup>48</sup>

In September 2015, LGC integrated MGE's customer service and billing system with LGC's Customer Care and Billing system ("CCNB"). In doing so, LGC reduced the number of MGE billing cycles from 21 to 18. The reduction of billing cycles caused a significant number of MGE customers to receive a "long" bill covering a billing period in excess of 35 days.<sup>49</sup> Staff filed a complaint, Case No. GC-2016-0149, with the following introduction:

The Complaint concerns the failure to provide affected customers adequate notice of a change in meter reading routes or schedules resulting in a change of a billing cycle of 9 or more days in violation of Commission Rule 4 CSR 240-13.020(6), and/or the proration of certain fixed charges on a customer bills covering billing period in excess of 35 days in violation of Missouri Gas Energy's tariff.

Case No. GC-2016-0149 is currently pending.

In addition, in June 2016, Staff was notified that there had been  
\*\* \_\_\_\_\_ \*\* that potentially could affect \*\* \_\_\_\_\_ \*\* customer accounts.

Although this type of incident may occur in-house, Staff notes that it was an outsource

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<sup>48</sup> Case No. GM-2013-0254.

<sup>49</sup> In violation of MGE's tariff.

call center that was involved in this particular breach.<sup>50</sup> In July 2016,

\*\* \_\_\_\_\_ \*\* received a disconnection notice in error.

Staff is not asserting these types of concerns have or will occur in the Alagasco or EnergySouth transactions, but is informing the Commission of possible detriments that can result from transaction synergies.

--Kim Cox, Utility Policy Analyst II, Tariff/Rate Design Unit, Operational Analysis Dept.

### 3. Ratemaking Treatment of Merger Costs and Savings

Spire has stated in data request responses that it has no plans to seek direct ratemaking recovery of the merger premium incurred in relation to the Alagasco or EnergySouth transactions, nor seek recovery of the transaction costs recorded by Spire as a result of these transactions. However, pertaining to the EnergySouth transaction, Spire stated in its response to Staff Data Request No. 49 the following:

To the extent there are net financial benefits for Missouri ratepayers as a result of Spire's investment in a transaction for which Missouri customers were not asked to contribute, Laclede Gas may propose that such benefits, and the related transition expenses incurred to achieve them, be shared with its customers for some period of time.<sup>51</sup>

Based upon this response, Spire may seek to exclude a portion of the actual net transaction savings experienced by LGC MGE as a result of the EnergySouth and Alagasco transactions from cost of service in future LGC and MGE general rate cases in Missouri.

If Spire seeks this treatment of transaction savings and costs in future rate cases, the effect would be to attempt to state Missouri customer rates higher than what would

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<sup>50</sup> An outsource call center is one that is operated by a contractor.

<sup>51</sup> Spire made an identical statement in regard to the Alagasco transaction in its Response to Staff Data Request No. 62.

be justified as measured by the utilities' actual cost of service at the time of the rate proceedings. In the past, when similar proposals were made by utilities in the context of merger/acquisition applications, Staff opposed them as being inherently detrimental to customers in that the proposals were ultimately intended to provide the companies with a means to indirectly recover a portion of merger premium and transaction costs. When this issue was raised in the context of prior merger/acquisition applications, Staff addressed potential detriments of this nature by recommending that a condition be placed on any action by the Commission to approve the transaction forbidding both direct and indirect recovery of merger costs.<sup>52</sup> However, unless Spire files to seek Commission approval of either or both of the Alagasco and EnergySouth transactions, Staff will by necessity wait to address potential detriments in this area until LGC and MGE file their next general rate proceedings in Missouri.

--Mark Oligschlaeger, Manager, Auditing Department.

#### 4. Service Quality Detriments

##### **Introduction and General Description**

Regulated utilities perform many processes and practices including billing, credit and collections, meter reading, payment remittance, call center operations, service or work order processes and service connection, disconnection and reconnection; all of which affect and help define service quality. Service reliability and outage prevention are also critical components of service quality. It is the Staff's opinion that regulated

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<sup>52</sup> See, for example, the *Stipulation and Agreement* in Case No. EM-2016-0213, filed August 4, 2016, between The Empire District Electric Company/Liberty Utilities (Central) Co. and Staff, Section D.1, in which it states "Empire will not seek either direct or indirect rate recovery or recognition of any acquisition premium through any purported "savings "sharing" adjustment (or similar adjustment) in future rate cases." The same language pertaining to transaction costs can be found in Section D.2 of the *Stipulation and Agreement*.

utilities should perform these activities with effective and efficient internal control to promote acceptable levels of service for their customers. Customers pay for the entire cost of the service they receive, including the staffing, technology, management, training, buildings, infrastructure, vehicles, equipment, and other costs and they are entitled to quality service.

The Commission has specific rules that govern a variety of service quality processes including: service disconnection and reconnection processes, payment plans during cold weather, customer billing and payments, deposits, meter reading including estimated reads, denial of service, customer complaint processes, utility accessibility by its customers, rules regarding registered customers and others.

Service quality performance measurements or metrics are established and used by utilities to determine and monitor the service they are providing to their customers. These measurements are critical in that they serve multiple purposes including demonstrating past and current performance as well as both trends of improvement and decline. Such metrics are used in resource analysis, such as staffing and equipment needs, and provide some assurance to utilities, utility customers, shareholders and utility commissions that a certain level of customer service is being provided.

Some aspects of service quality, however, do not lend themselves to specific metrics or indicators. Examples include the consistent application of credit and collection practices, detection of billing errors, the effective training of customer service representatives to ensure the relaying of accurate and consistent information as well as courteous treatment of customers by company employees performing service calls.



### **Why Is Service Quality at Risk During Utility Merger or Sale Transactions?**

There are a number of factors that place regulated utility service quality at risk during merger or sale cases. Transitions may place additional pressure on the utilities being combined due to the merging of different processes, practices, systems, procedures, cultures, organizational structures, and workforces. Transitions may require that previous focus be shared with determining how to combine two separate systems into one, often with additional pressures of expected efficiencies or synergies and cost savings. New or different ways of operating, while determined to be desirable, may disrupt or disturb stability, security of systems, operations, or staffs. In addition, natural human resistance to change should not be discounted. "When uncertainty or ambiguity about the future accompanies change, individuals and even groups will take action based on their perception of how the change will affect them."<sup>53</sup>

Among the greatest factors that place regulated utility service quality at risk during merger or sale cases are the financial constraint concerns and the desire or need to reduce costs. Mergers and sales can result in strong incentives to reduce costs in order to realize savings driven by the need to compensate for high acquisition premiums and the assumption of new debt to fulfill synergy commitments and expectations and others commitments. Such cost-cutting incentives may cause the deferral of system maintenance and facility upgrades and may also result in the termination of well-trained and experienced workforces whose development, training and expertise has been paid for by ratepayers. Cost reductions may also result in the outsourcing of functions previously performed in-house, that if not managed and controlled effectively can result

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<sup>53</sup> John J. Hampton (ed.), *AMA Management Handbook*, pp. 9-70 (1994).

in reductions in service.<sup>54</sup> Cost-cutting can further result in the deferral of filling positions created by normal attrition. Ensuring that mergers are not detrimental to the public interest should include consideration and evaluation of such factors.

Cost-reductions that have negatively impacted service quality have occurred and been documented at more than one Missouri utility. Such documentation can be reviewed in the context of Case Nos. GR-98-140 (a MGE rate case), GO-95-177 (which resulted in 37 recommendations to MGE for service quality improvements after its purchase by Southern Union Company led to significant cost and ultimately service quality reductions) and cases GC-97-33 and GC-97-497, Staff and OPC complaints filed against MGE, respectively.

In Case No. ER-2004-0034 (an Aquila, Inc., rate case), Staff addressed declining call center performance at Aquila, Inc., which occurred after Aquila's decision to use temporary workers to staff its Raytown call center. In part, Aquila indicated it had utilized temporary staffing as a means to reduce costs. Aquila subsequently returned to recruiting, selecting and hiring its own call center and staffing at higher levels.

While the merger or sale experience of one Missouri utility does not necessarily predict a similar experience for future mergers, it is important to recognize the stress that mergers and acquisitions can place on regulated utility operations.

**What Analysis did Staff Conduct in the context of the Present Investigatory Docket Regarding Risks to Missouri Customer Service Quality in the Spire Acquisition of EnergySouth?**

Because Spire and EnergySouth did not file an acquisition application in Missouri, there are commitments to Missouri customers to review and inquire upon.

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<sup>54</sup> **\*\* This occurred nearly immediately to the MGE call center after the acquisition of MGE by Laclede which closed September 1, 2013. \*\***

There also is no Spire management testimony filed in Missouri to review regarding the service quality safeguards Spire will employ to ensure the acquisition will not be detrimental to the Missouri public interest. Spire has indicated that it plans to integrate EnergySouth with Alagasco and that there are no “current plans to integrate EnergySouth’s customer facing functions and services with those of Laclede and MGE . . . .”<sup>55</sup>

Staff has sent a number of data requests to Spire and some to Sempra/EnergySouth to inquire about actions and analysis performed to date to determine that there will be no detrimental impact upon Laclede Gas Company and MGE customers as a result of Spire’s acquisition of EnergySouth. As with virtually any merger or acquisition, the present acquisition contains potential service quality detriments to Missouri customers should the desire to reduce costs (for example because of acquisition premiums or other cost-reduction drivers) result in negative impacts to specific areas or processes. Those specific service quality areas or processes include, but are not limited to: call center operations, service order processes, meter reading, credit and collections, service connection and disconnection processes, payment remittance and others. Staff inquired about planned operational changes during and post-acquisition of EnergySouth in any and all service quality areas that include outsourcing and/or terminating current Laclede Gas Company and MGE employee headcounts<sup>56</sup> (Schedule 13). The Company indicated the following:

Response: Since there are no plans to integrate these EnergySouth functions with those of Laclede Gas Company (Laclede) and Missouri Gas Energy (MGE), the purchase is not anticipated to have any impact on

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<sup>55</sup> Case No. GM-2016-0342, Response to Data Request No. 30.

<sup>56</sup> Data Request No. 28 in Case No. GM-2016-0342.

these functional areas or the quality of service provided by Laclede and MGE. The only possible exception would be if the transaction results in the identification of best practices that, if adopted might enhance service quality.

While the Company indicates it has no plans to integrate EnergySouth functions with Laclede and MGE, financial pressure on Spire due to the acquisition of additional companies could potentially result in further cost cutting and service quality declines to Spire's Missouri operations.

**What Information does the Staff Possess Regarding the Service Quality of Spire's Operating Subsidiaries Missouri operations?**

The Staff has considerable information about the service quality of Spire's Missouri operating subsidiaries, MGE and LGC, that it has obtained through a variety of means over many years. Staff has obtained service quality information through: formal case work including rate, merger, investigation, and complaint cases. Staff receives service quality reporting from both companies that encompasses the companies' call center performance (including their use of call deferral technology and staffing), meter reading including estimated reads, pay station locations, and other issues.

Staff also has access to customer complaint and comment data as well as operational information it obtains through regularly scheduled conference calls and occasional in-person meetings with representatives of both LGC and MGE. Such conference calls and meetings were agreed to in the *Stipulation and Agreement* that was filed in Case No. GM-2013-0254, the MGE acquisition case. The Commission approved the *Stipulation and Agreement* and it became effective on July 31, 2013. The sale, transfer and assignment of certain Southern Union assets to LGC closed on September 1, 2013.

## **Present MGE and LGC Call Center Performance Concerns**

At this time, Spire indicates it does not have plans of combining call center operations as noted in its response to Data Request No. 41:

Currently, Alagasco has its own call center and its call center operations are separate from those of Laclede Gas and MGE. It is anticipated that EnergySouth's call center functions, which are currently performed independently of both Alagasco, Laclede and MGE's call center operations, will eventually be integrated with those of Alagasco.

However, Staff has had concerns with various aspects of the call centers of both MGE and Laclede since the sale of the MGE properties to LGC. As utilities have closed or consolidated local business offices that in the past accommodated walk-in-traffic and provided customers with a utility presence in their communities, the role of the call center has become increasingly critical as the primary point of contact for customers.

It is Staff's opinion that when Missouri regulated customers call their regulated utility they should be able to speak to a well-trained customer service representative in a reasonably expeditious manner and their requests, concerns and inquiries should be handled accurately, efficiently and with attention to good customer service. Call deferral technologies enable the call center to inform the customer that the hold times are excessive and as an alternative to being unable to speak to a representative in a reasonable amount of time, the customer may receive a return call later from the call center. A later returned phone call may be requested as either "next in queue" or the customer may request a return call at a later more specific time, assuming the call center can accommodate the time request. Some utilities consider this call deferral technology to be a "call peaking" tool which permits the call center to better manage heavy call volume periods. Staff agrees with such limited utilization of this technology.

In Staff's opinion, call deferral technologies can be a particularly useful management tool as a "call volume peaking device" (for example to be utilized on Monday morning when call volumes are expected to be at their highest during a given week). However, such technology should be used minimally and is not a sufficient substitute for a readily accessible, well-trained utility call center workforce nor should it be used as a means to defer hiring needed staff.

A Missouri regulated utility call center is very different than other types of call centers that handle non-essential, non-life-supporting utility services such as home shopping sales, concert and airline ticket sales, and other such items. Customers with critical utility needs, such as those with a pending service disconnection notice, those who need to make payment arrangements, those who need to schedule service turn-on orders, and similar pressing utility service concerns require the ability to speak to an expert utility call center representative quickly. Such well-trained representatives are depended upon to (1) know utility company policies and procedures, (2) know the Company's Customer Information System, (3) know the regulated Company's tariffs and how to efficiently research such tariffs, (4) know Missouri Public Service Commission rules and how to efficiently research such rules, and (5) know when to escalate a call to a supervisor for greater expertise. It is because of such critical "call quality" issues, in part, why all of the large Missouri-regulated utilities record 100% of their calls coming into their call centers and retain or archive those calls for extended periods of time, some in excess of twelve months.

Since the acquisition of MGE by LGC, there has been a complete  
\*\* \_\_\_\_\_ \*\* of MGE's call center and a partial \*\* \_\_\_\_\_ \*\* of LGC's

call center. The impact this \*\* \_\_\_\_\_ \*\* has had upon Spire's regulated Missouri customers is a concern for Staff. Call center turnover in a regulated utility environment can have numerous negative consequences in the handling of customer concerns, inquiries, the handling and processing of service orders, including requests for new service, payment arrangements, and other matters. Concerns regarding the \*\* \_\_\_\_\_ \*\* of MGE's call center were documented by Staff in MGE's 2014 rate case, Case Number GR-2014-0007, including the potential negative impact high turnover, associated with \*\* \_\_\_\_\_ \*\* call centers, may have on utility operations.<sup>57</sup> The experience of Aquila, Inc., during the period of financial constraints on the regulated company, provides an example of deficiencies resulting from high call center turnover directly related to the \*\* \_\_\_\_\_ \*\* of its call center operations. Aquila used five outsourced call center agencies within a four year time period in an effort to mitigate such high turnover and ultimately returned to in-house staffing.

The metric information the Staff receives from the companies has indicated performance that the Staff often considers to be in an unacceptable range for those specific service indicators. The conference calls and meetings with LGC and MGE mentioned previously have been targeted, in part, toward improving those metrics, including at various times: Abandoned Call Rates, Average Speed of Answer and the percentage of calls being offered call deferral technologies.

Schedule 1 is an August 15, 2016, letter from Spire's Senior Vice President, General Counsel and Chief Compliance Officer, Mark C. Darrell, to Jeffrey Keevil of the Missouri Public Service Commission Staff. Page 2 of the letter includes a section

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<sup>57</sup> Case No. GR-2014-0007, Lisa Kremer Surrebuttal Testimony, pp. 9 – 22.

entitled "Impact on Customer Service Functions" which indicates toward the middle of the paragraph that:

"On a broader level, the customer service metrics maintained for Laclede Gas and MGE show that performance has improved significantly over a broad array of functional areas during the past three years as these acquisitions were being pursued and completed. These include, among others, improvements in call center metrics, average leak response times, and service response times. In fact the only temporary decline in call center metrics was related to the conversion of MGE to Laclede Gas Company's Customer Care and Billing information system, which was completely unrelated to the Alagasco acquisition. . ."

Staff does not agree with the statement made in Mr. Darrell's letter that MGE call center performance has improved since its acquisition by LGC and, instead, it is Staff's opinion that the MGE call center has experienced significant declines. Staff bases its assessment on call center metrics as well as the impacts of the complete \*\* \_\_\_\_\_ \*\* of MGE's call center, which has exposed regulated MGE Missouri customers to an approximate \*\* \_\_\_\_\_ \*\* turnover rate of the outsourced call center representatives.<sup>58</sup> The Staff requested the turnover rate in writing from Spire in Data Request Number 38 but the Company did not provide a response to that specific request for information.

Laclede representatives have informed Staff that in response to the high turnover rate, it has been moving locations of its \*\* \_\_\_\_\_ \*\* call center representatives from the original \*\* \_\_\_\_\_ \*\*. The first \*\* \_\_\_\_\_ \*\* entity used by Laclede Gas for the MGE properties was an entity called \*\* \_\_\_\_\_ \*\* which was subsequently bought by \*\* \_\_\_\_\_ \*\*. The Company has since added \*\* \_\_\_\_\_ \*\* representatives in

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<sup>58</sup> \*\* Turnover rates estimated by the Company of 15% per month of the Alorica Call Center Representatives on the June 21, 2016, conference call calculating to an estimated 180% per year.\*\*



\*\* \_\_\_\_\_ \*\* and in \*\* \_\_\_\_\_ \*\* to mitigate and address problematic high turnover. It is Staff's understanding that these later \*\* \_\_\_\_\_ \*\* were chosen specifically as \*\* \_\_\_\_\_ \*\* where turnover may be less likely. Total \*\* \_\_\_\_\_ \*\* call center representatives including those handling customer credit and collection matters are presented in Highly Confidential Schedule 2. Such high \*\* \_\_\_\_\_ \*\* brings into question the Company's present ability to staff its call centers with qualified personnel to meet the requirements of 4 CSR 240-13 (2)(A) which states:

At all times during normal business hours qualified personnel shall be available and prepared to receive and respond to all customer inquiries, service requests, safety concerns and complaints.

Highly Confidential Schedules 3 through 9 demonstrate that nearly immediately upon purchase by LGC in calendar year 2014, MGE had record high percentages of calls being offered \*\* \_\_\_\_\_ \*\* as demonstrated by Highly Confidential Schedule 6. Such call \*\* \_\_\_\_\_ \*\* artificially lower (or artificially improve the appearance of) ACR and ASA performance metrics because the customers who agree to a return call are not actually placed in "queue" and their call is not counted as abandoned, even though a longer hold time might normally cause a caller to terminate or abandon such call. Average speed of answer is also shortened (improved) as call deferral technology does not count what the wait time would have been had the caller remained on hold, but is counted instead when the return call is placed to the customer. This is typically a much shorter time, usually a matter of seconds, because the system waits to dial the customer until the call center has an available representative.

Highly Confidential Schedules 3 through 9 demonstrate that both LGC's and MGE's call center performance have declined compared to 2012, the last complete year prior to MGE's acquisition by LGC. The subsequent years have been marked by \*\* \_\_\_\_\_ \*\* levels and higher percentages of calls being offered call \*\* \_\_\_\_\_ \*\* (with the exception of a few months for both companies in 2015). Call deferral technology is a lesser offering of service as the call center is indicating it is too busy to respond to customer calls and instead is deferring those calls to a later time. Highly Confidential Schedules 4, 5, 7 and 8 include ACR and ASA company goals for both MGE and Laclede at the time of the purchase of MGE by LGC. It is the Staff's understanding that neither MGE nor Laclede have established internal goals or "not-to-exceed thresholds" for utilization of their call deferral technologies.

Staff is aware of a number of other large regulated utilities that either (1) determined not to employ such call \*\* \_\_\_\_\_ \*\* or have (2) established internal thresholds of \*\* \_\_\_\_ \*\* or lower for its usage. LGC's and MGE's use of such call \*\* \_\_\_\_\_ \*\* far exceeds such thresholds. While ACR and ASA may appear in the "realm of reason," failing to consider those primary call center metrics in light of the high percentage of calls being offered call \*\* \_\_\_\_\_ \*\* is misleading and does not provide a full and complete assessment of regulated utility call center performance as measured by metrics.

In addition, Staff is the process of investigating a customer information \*\* \_\_\_\_\_ \*\* at the \*\* \_\_\_\_\_ \*\* call center which resulted in the identification of nearly \*\* \_\_\_\_ \*\* Missouri customers being potentially at

\*\* \_\_\_\_\_ \*\* Staff is currently in the process of reviewing Company information provided in response to Staff requests.

Highly Confidential Schedules 10 and 11 demonstrate the call center \*\* \_\_\_\_\_ \*\* headcount customer service representatives totals for LGC and MGE, \*\* \_ \*\* and \*\* \_ \*\* respectively. Schedule 12 represents 136 MGE PSC complaints that included some element of deficiency, poor service, or process failure with the \*\* \_\_\_\_\_ \*\* call center.

Staff continues to work informally with utilities who have either outsourced functions that Staff believes resulted in a service quality detriment or who had discontinued the use of outsourced functions once they were included in customer rates, resulting in cost-cutting that negatively impacted call center performance.

While Staff is not asserting the Alagasco and EnergySouth transactions as currently proposed will create a service quality detriment to Missouri ratepayers, Staff is committed, at this time, to continuing its dialogue with Spire in the form of meetings and conference calls in an effort to alleviate any future or potential concerns.

*--Lisa Kremer, Manager, Consumer & Management Analysis Unit.*

#### 5. Financial Detriments

##### Intent of Conditions from Case No. GM-2001-342:

It is important for the Commission to understand Staff's objective for the conditions that were imposed in Case No. GM-2001-342. Staff understood that the creation of Laclede Group was probably for the purposes of pursuing other business investments that may impact Laclede Gas' costs, including but not limited to its cost of

capital, whether directly or indirectly. The conditions proposed by Staff and approved by the Commission were intended by Staff to produce a stand-alone S&P credit rating for Laclede Gas that was a function of Laclede Gas' business and financial risks. If this had occurred, this would have alleviated Staff's concern about the potential of Laclede Group's other business and financial risks potentially causing an increased cost of capital to Laclede Gas. However, S&P never recognized these conditions as being significant enough to allow for a consideration of Laclede Gas' stand-alone risk for purposes of assigning Laclede Gas a rating. S&P has consistently stated the following in its ratings assessment of Laclede Gas: "Because there are no meaningful insulation measures in place that protect Laclede Gas from its parent, the issuer credit rating on the company is 'A-', in line with the group credit profile of Laclede of 'a-'." This is significant due to the fact that S&P believes Laclede Gas has a stand-alone risk profile consistent with an 'A' credit rating, but nonetheless assigns it an 'A-' credit rating due to its affiliation with Spire.

Consequently, even though Laclede Gas' credit rating has not been downgraded due to Spire's acquisition of Alagasco, it has not been allowed to improve to its stand-alone risk profile of 'A' due to its affiliation with Spire. However, S&P affirmed Spire's 'A-' rating, and consequently Laclede Gas' 'A-' rating, when it announced its planned acquisition of EnergySouth.

The suppression of Laclede Gas' credit rating is due to the significant amount of debt Spire issued to complete its acquisition of Alagasco. Spire issued approximately \$625 million of debt to help fund the \$1.35 billion purchase of Alagasco. This contrasts with the structure of the MGE acquisition in which Laclede Gas directly acquired the

MGE assets and issued \$450 million of debt at the Laclede Gas level rather than at the holding company level. While Moody's does assign stronger credit ratings to Spire's regulated utility subsidiaries, A3 for Laclede and A2 for Alagasco, it also expresses concern about the amount of holding company leverage Spire has due to the debt it issues to complete its transactions. After the acquisition of Alagasco, Spire's holding company debt accounted for close to 40% of total consolidated leverage. After Spire's issuance of debt to complete the proposed acquisition of EnergySouth, the amount of holding company debt is expected to exceed 40%. Although Moody's discusses its concern about Spire's holding company leverage, it currently has Spire's Baa2 unsecured rating on a "stable" outlook.

#### Potential Impact on Ratemaking Capital Structures and Cost of Capital

In past rate cases, LGC had recommended the use of Laclede Group's consolidated capital structure for ratemaking purposes. Staff had done so as well due to the fact that S&P assigned Laclede Gas a credit rating based on Laclede Group's consolidated capital structure and consolidated business risk. Staff considered this appropriate because it matched the cost of the capital with the risk underlying the capital structure.

Based on Laclede Gas' responses to Staff's data requests in this investigation, it appears that Laclede Gas will no longer be recommending the use of a holding company consolidated capital structure for purposes of setting Laclede Gas' allowed ROR. Laclede Gas maintains that this approach will allow it to be insulated from the holding company's acquisition activities and the financing associated with these activities. Staff will not debate this issue in this report because this can be addressed in

the context of a rate case, but Staff notes that, to the extent debt investors in Laclede Gas require a higher debt return because of its affiliation with Spire, Laclede Gas' ratepayers will not only pay higher rates to fund Laclede Gas' more equity-rich capital structure, but they will also pay higher debt costs than are justified by its lower risk capital structure.

#### Summary

Absent ring-fencing measures that S&P considers adequate to allow Laclede Gas to be assigned a rating consistent with its stand-alone risk profile of 'A', which in Staff's opinion can only be accomplished if the company collaborates with S&P through its own initiatives, Staff cannot provide the Commission assurance that Laclede Gas Company ratepayers will not pay higher capital costs due to Spire's increased financial risk associated with its acquisitions. Staff's experience from monitoring the activities of companies, such as Ameren Corporation's abandonment of its non-regulated generation subsidiary, is that the holding company will protect itself and its affiliates from a financially-troubled subsidiary, but rarely vice versa. Experience from Staff's efforts in Case No. GM-2001-342 has proven that proposing a list of untested conditions has not allowed for stand-alone ratings for Laclede Gas. Therefore, Staff recommends the Companies pursue such efforts and provide evidence that such efforts have been accepted by S&P as being sufficient to allow for Laclede Gas Company to be assigned a rating consistent with its stand-alone risk profiles.

#### Disclaimer

Staff has not been able to address all aspects of capital attraction and capital costs for this report. For example, Staff has not explored the details of Spire,

Alagasco and Laclede Gas' credit facilities. It is Staff's understanding that Spire may consider consolidating its credit facilities for all of its subsidiaries, but Staff does not know how this will impact costs at Laclede Gas.

--David Murray, Manager, Financial Analysis Unit.

**D. Questions Raised by OPC:**

OPC raised a specific set of questions in its *Motion to Open Investigation*. The Commission, in granting that motion, did not expressly direct Staff to answer OPC's questions. Nonetheless, Staff will do so here.

**Whether the terms of the unanimous stipulation and agreement required Spire formerly named The Laclede Group) to seek Commission approval prior to the 2014 acquisition of Alagasco or the announced acquisition of EnergySouth;**

Yes; see the "Commission Authorization Conditions," No. 1, set out at page 10, above, from the *Unanimous Stipulation and Agreement* executed by Spire and approved by the Commission in Case No. GM-2001-342. It states, "The Laclede Group, Inc. agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility . . . without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility." Alagasco is a natural gas public utility and EnergySouth owns two natural gas public utilities. The acquisitions by Spire unmistakably are within the

scope of the condition and Spire has not sought prior approval from the Commission for either of them.

**Whether Spire sought Commission approval prior to the 2014 acquisition of Alagasco;**

No.

**Whether Spire will seek Commission approval prior to the acquisition of EnergySouth;**

It has not done so yet and its pleadings in this case indicate that it does not intend to do so.

**Whether the acquisition of Alagasco was detrimental to the public or otherwise impacted Missouri customers;**

Yes, it has depressed the credit rating of Laclede Gas and thus increased its cost of capital which is reflected in higher rates. Additionally, Staff is of the opinion that acquisition and integration costs have improperly been allocated to Laclede Gas. Staff is also of the opinion that improper affiliate transactions are occurring on an ongoing basis between Laclede Gas and Spire and Alagasco.

**Whether the acquisition of EnergySouth will be detrimental to the public or otherwise impact Missouri customers;**

Yes, for all the reasons stated in response to the previous question.

**Whether the acquisition of EnergySouth will impact the Commission's access to information;**

At this time, Staff has no indication the acquisition will impact the Commission's access to information. The access to information provisions of the



*Unanimous Stipulation and Agreement* have been upheld by the Missouri Court of Appeals.<sup>59</sup>

**Whether the acquisition of EnergySouth will impact the credit rating or financial stability of Spire as it relates to the cost of capital;**

At this time, Staff has no information to indicate the acquisition will impact the credit rate or financial stability of Spire as it related to the cost of capital. The value of the transaction is \$344 million; Spire's market capitalization is \$3.006 billion.

**Whether the acquisition of EnergySouth will impact the cost allocations among the affiliated companies, and;**

Perhaps, depending on how Spire organizes its group of subsidiaries in the future. In particular, Staff views affiliate transactions as likely.

**Whether the acquisition of EnergySouth will impact the reporting requirements contained in the stipulation and agreement in GM-2001-342.**

At this time, Staff has no indication the acquisition will impact the reporting requirements in the *Unanimous Stipulation and Agreement*.

### **III. MEMORANDUM OF LAW**

Are the transactions in question subject to the Commission's jurisdiction?

#### **A. *What is Jurisdiction?***

Jurisdiction is the authority of a court or administrative tribunal to hear and determine a particular case.<sup>60</sup> In general, courts have broad jurisdiction under the

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<sup>59</sup> *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of State*, 392 S.W.3d 24, 34 (Mo. App., W.D. 2012).

<sup>60</sup> J. Devine, *Missouri Civil Pleading and Practice*, § 9-1 (The Harrison Co., 1986).

Missouri Constitution to hear and resolve any controversies brought to them.<sup>61</sup> Administrative agencies, by contrast, have only limited jurisdiction to resolve matters within the scope of the specific authority conferred on them by statute.<sup>62</sup> In Missouri, the issue of jurisdiction is considered to include the tribunal's authority to grant the requested relief.<sup>63</sup> Therefore, an administrative agency may lack jurisdiction because it is powerless to grant the requested relief although the subject matter of the dispute is within its delegated authority.

**B. The Jurisdiction of the Public Service Commission:**

The PSC is an executive branch administrative agency of the State of Missouri.<sup>64</sup> Like all administrative agencies, this Commission "is purely a creature of statute" and its "powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted."<sup>65</sup> While the Commission properly exercises "quasi-judicial powers" that are "incidental and necessary to the proper discharge" of its administrative functions, its adjudicative authority is limited.<sup>66</sup> "Agency adjudicative power extends only to the ascertainment of

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<sup>61</sup> Mo. Const., Art. V, § 14(a): "The circuit courts shall have original jurisdiction over all cases and matters, civil and criminal."

<sup>62</sup> *Bd. of Educ. of City of St. Louis v. State*, 47 S.W.3d 366, 370 (Mo. banc 2001): "Administrative agencies possess only those powers conferred or necessarily implied by statute. The scope of power and duties for public agencies is narrowly limited to those essential to accomplish the principal purpose for which the agency was created."

<sup>63</sup> *Id.*

<sup>64</sup> Mo. Const., Art. IV, § 12: "Unless discontinued all present or future boards, bureaus, commissions and other agencies of the state exercising administrative or executive authority shall be assigned by law or by the governor as provided by law to the office of administration or to one of the fifteen administrative departments to which their respective powers and duties are germane."

<sup>65</sup> *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 47 (Mo. banc 1979) ("UCCM"); *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 928 (Mo. banc 1958).

<sup>66</sup> *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 75 (Mo. 1982), quoting *Liechty v. Kansas City Bridge Co.*, 162 S.W.2d 275, 279 (Mo. 1942).

facts and the application of existing law thereto in order to resolve issues within the given area of agency expertise."<sup>67</sup> The PSC is charged by statute with the implementation and enforcement of the Public Service Commission Law, particularly chapters 386 and 393, relating to public utilities that provide electric, gas, sewer, steam, and water services to the public.<sup>68</sup>

Over the years, the courts have compiled a catalog of the things the Commission may not do: it may not award money damages<sup>69</sup> or grant refunds;<sup>70</sup> it may not construe or enforce contracts;<sup>71</sup> it may not declare or enforce any principle of law or equity;<sup>72</sup> it may not manage a public utility<sup>73</sup> or compel it to exercise any property right;<sup>74</sup> it may not limit the liability of a public utility for negligence resulting in damage to persons or

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<sup>67</sup> *State Tax Commission, supra.*

<sup>68</sup> Chapter 386, RSMo, creates the PSC and describes its organization, general powers and the procedures to be used by the PSC. Other statutory chapters grant additional powers to the Commission and define its responsibilities with respect to specific industries: telecommunications, Chapter 392, RSMo; gas, electric, water, steam heating, and sewer companies, Chapter 393, RSMo; rural electric cooperatives, Chapter 394, RSMo; and manufactured housing, Chapter 700, RSMo. Chapters 387 through 391, RSMo, also part of the Public Service Commission Law, relate to transportation. Until July 1, 1985, the Commission's jurisdiction included regulation of railroads and motor carriers (i.e., trucks). However, as a consequence of the national deregulation of the transportation industry, the Missouri General Assembly that year transferred the Commission's powers regarding transportation to the newly-created Division of Transportation, later the Division of Motor Carrier and Railroad Safety, of the Missouri Department of Economic Development. In 2002, the Division of Motor Carrier and Railroad Safety was abolished and its residual duties were transferred to the Missouri Department of Highways and Transportation. Thus, the State Highways and Transportation Commission now exercises what little remains of the authority over railroads and motor carriers once vested in the PSC.

<sup>69</sup> *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943).

<sup>70</sup> *State ex rel. Laundry, Inc. v. Pub. Serv. Comm'n*, 327 Mo. 93, 112, 34 S.W.2d 37, 46 (1931); *State ex rel. City of Joplin v. Pub. Serv. Comm'n of State of Mo.*, 186 S.W.3d 290, 299 (Mo. App., W.D. 2005).

<sup>71</sup> *Kansas City Power & Light Co. v. Midland Realty Co.*, 338 Mo. 1141, 1149, 93 S.W.2d 954, 959 (1936).

<sup>72</sup> *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 47 (Mo. banc 1979).

<sup>73</sup> *State of Missouri ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm'n of Missouri*, 262 U.S. 276, 289, 43 S.Ct. 544, 547, 67 L.Ed. 981, \_\_\_ (1923).

<sup>74</sup> *State ex rel. Kansas City v. Public Service Commission of Missouri*, 301 Mo. 179, 192, 257 S.W. 462, 463 (Mo. banc 1923).

property.<sup>75</sup> The principal duties of the Commission are to set just and reasonable rates for utility services rendered<sup>76</sup> and generally to supervise the activities of the state's monopolistic public utilities;<sup>77</sup> but even within this area its authority is constrained. The Commission may not revoke a Certificate of Public Convenience and Necessity ("CCN") that it has granted.<sup>78</sup> The Commission cannot act as a receiver, however desirable that may be in any particular case.<sup>79</sup> However, the Missouri Supreme Court has held that the Commission has "plenary power to coerce a public utility corporation into a safe and adequate service."<sup>80</sup>

The Commission's authority is best understood in the light of its purpose. In 1925, the Missouri Supreme Court stated as follows with respect to the Commission's duty and authority to set just and reasonable rates.<sup>81</sup>

The enactment of the Public Service Act marked a new era in the history of public utilities. Its purpose is to require the general public not only to pay rates which will keep public utility plants in proper repair for effective public service, but further to insure to the investors a reasonable return upon funds invested. The police power of the state demands as

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<sup>75</sup> *Public Service Comm'n of State v. Missouri Gas Energy*, 388 S.W.3d 221, 230-231 (Mo. App., W.D. 2012).

<sup>76</sup> *State ex rel. City of Harrisonville v. Pub. Serv. Comm'n of Missouri*, 291 Mo. 432, 236 S.W. 852 (1922); *City of Fulton v. Pub. Serv. Comm'n*, 275 Mo. 67, 204 S.W. 386 (1918), *error dis'd*, 251 U.S. 546, 40 S.Ct. 342, 64 L.Ed. 408; *City of St. Louis v. Pub. Serv. Comm'n of Missouri*, 276 Mo. 509, 207 S.W. 799 (1919); *Kansas City v. Pub. Serv. Comm'n of Missouri*, 276 Mo. 539, 210 S.W. 381 (1919), *error dis'd*, 250 U.S. 652, 40 S.Ct. 54, 63 L.Ed. 1190; *Lightfoot v. City of Springfield*, 361 Mo. 659, 236 S.W.2d 348 (1951); "The Commission is vested with the state's police power to set "just and reasonable" rates for public utility services, subject to judicial review of the question of reasonableness."

<sup>77</sup> Section 386.250, RSMo.

<sup>78</sup> *State ex rel. City of Sikeston v. Pub. Serv. Comm'n of Missouri*, 336 Mo. 985, 997-98, 82 S.W.2d 105, 109-10 (1935).

<sup>79</sup> *State ex rel. Public Service Commission v. Bonacker*, 906 S.W.2d 896, 900 (Mo. App., S.D. 1995).

<sup>80</sup> *State ex rel. Missouri Southern R. Co. v. Public Service Commission*, 259 Mo. 704, \_\_\_\_\_, 168 S.W. 1156, 1163 (banc 1914).

<sup>81</sup> *State ex rel. Washington University et al. v. Public Service Commission et al.*, 308 Mo. 328, 344-45, 272 S.W. 971, 973 (*en banc*).

much. We can never have efficient service, unless there is a reasonable guaranty of fair returns for capital invested. \* \* \* These instrumentalities are a part of the very life blood of the state, and of its people, and a fair administration of the act is mandatory. When we say "fair," we mean fair to the public, and fair to the investors.

Another purpose of the Public Service Commission Law is to ensure that all consumers are treated fairly: "[t]he purpose of providing public utility regulation was to secure equality in service and in rates for all who needed or desired these services and who were similarly situated."<sup>82</sup> Still another purpose is to restrain competition between utilities, which is considered to be undesirable due to the large, duplicative costs involved: "Let it be conceded that the act establishing the Public Service Commission, defining its powers and prescribing its duties, is indicative of a policy designed, in every proper case, to substitute regulated monopoly for destructive competition."<sup>83</sup> However, the primary purpose of the Commission is to protect the public from exploitation by monopolistic utilities: "[T]he dominant thought and purpose of the policy is the protection of the public while the protection given the utility is merely incidental."<sup>84</sup>

Spire has asserted – with no analysis, examination of statutes or citation of controlling authorities -- that the Commission has no jurisdiction over it because it is a holding company and not a "gas corporation" or "public utility" within the intendments of § 386.020, RSMo.<sup>85</sup> As has been explained at some length, the Commission is a

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<sup>82</sup> *May Department Stores Co. v. Union Electric Light & Power Co.*, 341 Mo. 299, 317, 107 S.W.2d 41, 49 (1937). Fairness does not mean, however, that every customer pays the same rate: "Of course, this required classification for rates and service on the basis of location, amount used, and other reasonable considerations[.]" *Id.*

<sup>83</sup> *State ex rel. Electric Co. of Missouri v. Atkinson*, 275 Mo. 325, \_\_\_, 204 S.W. 897, 899 (1918).

<sup>84</sup> *State ex rel. Crown Coach Co. v. Public Service Com'n*, 238 Mo.App. 287, \_\_\_, 179 S.W.2d 123, 126 (1944).

<sup>85</sup> *Spire Inc.'s Verified Response Opposing Public Counsel's Motion to Open An Investigation*, pp. 1-3.

creature of statute and its jurisdiction in any situation must be found by reference to the plain language of the Missouri statutes.<sup>86</sup> However, appropriate statutory language is not hard to discover. Section 386.250, RSMo, provides:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter (1) To the manufacture, sale or distribution of gas, natural and artificial, . . . for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to gas . . . plants, and to persons or corporations owning, leasing, operating or controlling the same[.]

The cited language is somewhat complex. First, it grants jurisdiction to the Commission over two activities or entities, “the manufacture, sale or distribution of gas, natural or artificial, for light, heat and power, within the state” and “gas plants.” Second, in each case, it also grants jurisdiction to the Commission over “persons or corporations owning, leasing, operating or controlling the same.” Spire, as it insists, does not itself either manufacture, distribute or sell gas or have gas plants directly; but it is a corporation that controls both the distribution and retail sale of gas and gas plants by virtue of its ownership and control of Laclede and MGE. Section 386.250(1), RSMo., by its plain language, establishes Commission jurisdiction over gas utility holding companies.

This conclusion is reinforced by other language in the Public Service Commission Law. Section 386.020(18), RSMo., provides that a “gas corporation” is “every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any gas plant operating for public use under privilege, license or franchise now or hereafter granted by the state or

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<sup>86</sup> *UCCM*, *supra*, 585 S.W.2d at 47.

any political subdivision, county or municipality thereof[.]” “Gas plant,” in turn, “includes all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power[.]” Section 386.020(19), RSMo. Like § 386.250(1), RSMo., the scope of §§ 386.020, (18) and (19), RSMo., extends to and encompasses Spire. A corporation need not own or operate gas plant to be subject to regulation, mere control is sufficient. And Spire certainly does control the gas plant owned and operated by LGC and MGE. The Missouri Supreme Court recognized long ago that a corporation and its subsidiary can together constitute an “enterprise” whose activities render it subject to regulation by the Commission.<sup>87</sup> The United States Supreme Court has recognized the same principle:

North American concedes that four of its direct utility subsidiaries, Union Electric Company of Missouri, Washington Railway and Electric Company, North American Light & Power Company and Wisconsin Electric Power Company, transmit energy across state lines and hence are engaged in interstate commerce. It further concedes that its subsidiary West Kentucky Coal Company is engaged in interstate commerce, although contending that the remaining five direct subsidiaries are not so engaged. In view of North American's very substantial stock interest and its domination as to the affairs of its subsidiaries, as well as its latent power to exercise even more affirmative influence, it cannot hide behind the facade of a mere investor. Their acts are its acts in the sense that what is interstate as to them is interstate as to North American. These subsidiaries thus accentuate and add materially to the interstate character of North American. They make even more inescapable the conclusion that North American bears not only a highly important relation to interstate commerce and the national economy, but is actually engaged in interstate commerce. It is thus subject to appropriate regulatory measures adopted by Congress under its commerce power.<sup>88</sup>

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<sup>87</sup> *May Department Stores Co. v. Union Electric Light & Power Co.*, 341 Mo. 299, 324-328, 107 S.W.2d 41, 53-56 (Mo. 1937).

<sup>88</sup> *North American Company v. Sec. & Exch. Comm'n*, 327 U.S. 686, 695-96, 66 S. Ct. 785, 791-92, 90 L. Ed. 945 (1946).

Like North American Company, Spire "dominates" its subsidiaries through its outright ownership of them and "its latent power to exercise even more affirmative influence" over LGC, and LGC's acts are therefore Spire's acts.

The care that the legislature took to extend the Commission's authority to both gas utilities and gas utility holding companies is understandable in view of the palpable detriments to the public interest caused by such holding companies in the past:

The dominant characteristic of a holding company is the ownership of securities by which it is possible to control or substantially to influence the policies and management of one or more operating companies in a particular field of enterprise. To be sure, other devices may be utilized to effectuate control, such as voting trusts, interlocking directors and officers, the control of proxies, management contracts and the like. But the concentrated ownership of voting securities is the prime method of achieving control, constituting a more fundamental part of holding companies than of other types of business. Public utility holding companies are thereby able to build their gas and electric utility systems, often gerrymandered in such ways as to bear no relation to economy of operation or to effective regulation. The control arising from this ownership of securities also allows such holding companies to exact unreasonable fees, commissions and other charges from their subsidiaries, to make undue profits from the handling of the issue, sale and exchange of securities for their subsidiaries, to issue unsound securities of their own based upon the inflated value of the subsidiaries, and to affect adversely the accounting practices and the rate and dividend policies of the subsidiaries. Congress has found that all of these various abuses and evils occur and are spread and perpetuated through the mails and the channels of interstate commerce. And Congress has further found that such interstate activities, which grow out of the ownership of securities of operating companies, have caused public utility holding companies to be "affected with a national public interest."<sup>89</sup>

While the public's first line of defense against such holding companies and the abuses they perpetrated was erected by the federal government through the Public Utility Holding Company Act of 1935 ("PUHCA") and the Securities and

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<sup>89</sup> *North American Company v. Sec. & Exch. Comm'n*, *supra*, 327 U.S. at 701-02, 66 S. Ct. at 794-95, 90 L. Ed. at \_\_\_\_ - \_\_\_\_.



Exchange Commission ("SEC"), the states were free to supplement the federal efforts.<sup>90</sup> PUHCA provided in relevant part that it did not preempt additional state jurisdiction over utility holding companies.<sup>91</sup> While state jurisdiction could not conflict with any provision of PUHCA, it could supplement it.<sup>92</sup>

PUHCA was repealed in 2005, but the applicable provisions of the Missouri Public Service Commission Law are still in force. In the past, the Commission has often chosen to not exert its authority over holding companies and has even, as Spire has pointed out, denied that such authority exists.<sup>93</sup> Administrative agencies are not bound by *stare decisis*, nor are PSC decisions binding precedent on any court.<sup>94</sup> These decisions have no effect on the scope of the jurisdiction granted by the statutes to the Commission.

### **C. Regulation of the Natural Gas Industry:**

The natural gas industry in the United States has developed similarly in most states so that there is an agency in each state that is the equivalent of the Missouri PSC.<sup>95</sup> Generically, these are often referred to as "PUCs"; that is, public utility

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<sup>90</sup> The purpose of PUHCA was to supplement State regulation, not supplant it. See *Rochester Telephone Corp. v. Public Service Comm'n of State of New York*, 201 A.D.2d 31, 614 N.Y.S.2d 454, 457 (1994); *Alabama Elec. Co-op., Inc. v. Securities and Exchange Comm'n*, 353 F.2d 905, 907 (D.C.Cir.1965).

<sup>91</sup> 15 U.S.C. § 79a; repealed, Pub. L. 109-58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974.

<sup>92</sup> *Id.*

<sup>93</sup> *Spire Inc.'s Verified Response Opposing Public Counsel's Motion to Open an Investigation*, pp. 2-3.

<sup>94</sup> *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n of State*, 120 S.W.3d 732, 736 (Mo. banc 2003).

<sup>95</sup> See [www.naruc.org/about-naruc/regulatory-commissions](http://www.naruc.org/about-naruc/regulatory-commissions): "Founded in 1889, the National Association of Regulatory Utility Commissioners (NARUC) is a non-profit organization dedicated to representing the State public service commissions who regulate the utilities that provide essential services such as energy, telecommunications, power, water, and transportation. NARUC's members include all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. Most State commissioners are appointed to their positions by their Governor or Legislature, while commissioners in

commissions. Each is an agency of state government that exercises equivalent police powers over the rates and other intrastate activities of (at least) the state's investor-owned public utility companies providing natural gas utility service.<sup>96</sup>

The interstate aspects of the natural gas industry are another matter. FERC regulates the transmission and sale of natural gas for resale in interstate commerce and the siting and abandonment of natural gas pipelines and storage facilities.<sup>97</sup> The Natural Gas Act authorizes FERC "to regulate the 'rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission \* \* \*.' 'Natural-gas company' is defined by § 2(6) of the Act to mean 'a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.'<sup>98</sup> However, Congress specifically exempted intrastate natural gas transportation, local distribution of natural gas, and the production and gathering of natural gas from federal regulation by the FERC.<sup>99</sup> The natural gas industry, therefore, operates in a dual regulatory framework. The interstate transportation and sale at wholesale of natural gas are regulated by the FERC, while the local transportation, distribution and retail sale of natural gas are regulated by the state PUC.

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14 States are elected. Our mission is to serve in the public interest by improving the quality and effectiveness of public utility regulation. Under State law, NARUC's members have an obligation to ensure the establishment and maintenance of utility services as may be required by law and to ensure that such services are provided at rates and conditions that are fair, reasonable and nondiscriminatory for all consumers."

<sup>96</sup> *State ex rel. Chicago, R. I. & P. R. Co. v. Pub. Serv. Comm'n*, 312 S.W.2d 791, 796 (Mo. banc 1958): "The public service commission is essentially an agency of the Legislature and its powers are referable to the police power of the state."

<sup>97</sup> FERC website: "What FERC Does"; retrieved August 23, 2016.

<sup>98</sup> *Phillips Petroleum Co. v. State of Wis.*, 347 U.S. 672, 676, 74 S. Ct. 794, 796, 98 L.Ed. 1035 (1954).

<sup>99</sup> 15 U.S.C. § 717(b).

**D. The Commission's Jurisdiction over Spire and the Acquisitions:**

The question of jurisdiction is really, "jurisdiction to do what?" A tribunal may have jurisdiction to do some things, but not others. The Commission has already recognized that it has jurisdiction to investigate the proposed transaction and to consider its possible deleterious effects on Missouri ratepayers. As the Commission put it, "the Commission has a duty to determine whether the transactions threaten Missouri ratepayers. If so, jurisdiction over the transactions may be necessary for an appropriate remedy."<sup>100</sup> In that sense, the question of jurisdiction is the question of the Commission's authority to impose a particular remedy or condition in the event that it determines that the proposed transaction would otherwise be detrimental to the public interest.

Staff has already discussed the Commission's jurisdiction over Spire by virtue of its ownership and control of a gas corporation that uses gas plant to distribute gas to the public at retail in Missouri. The primary and most fundamental basis of jurisdiction is a party's presence in the forum. The Supreme Court said in a historic case:

One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil status and capacities of its inhabitants; to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations arising from them, and the mode in which their validity shall be determined and their obligations enforced; and also they regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed, and transferred. The other principle of public law referred to follows from the one mentioned; that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory.<sup>101</sup>

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<sup>100</sup> *Order Granting Motion to Open Investigation and Directing Filing*, p. 5.

<sup>101</sup> *Pennoyer v. Neff*, 95 U.S. 714, 722, 24 L. Ed. 565 (1877).

Spire is headquartered in Missouri and it owns, operates and controls Missouri's largest gas distribution utility. Moreover, Spire is a Missouri creation – it is a Missouri general business corporation; its very existence is a matter of Missouri law. By virtue of its creation in Missouri, Spire is a citizen of Missouri and a Missouri resident.<sup>102</sup> Spire is undeniably present in the forum in the traditional sense.

Moreover, the Commission authorized Spire's creation by its order in Case No. GM-2001-342 permitting Laclede to reorganize. Spire executed the *Unanimous Stipulation and Agreement* as a *quid pro quo* for the Commission's authority for Laclede's reorganization;<sup>103</sup> the Commission adopted the *Unanimous Stipulation and Agreement* as a condition upon Laclede's reorganization, as § 393.250.3, RSMo., expressly authorizes. The Commission, by virtue of the Public Service Commission Law and Spire's presence in the forum, has authority over Spire that it lacks with respect to foreign holding companies that are not Missouri entities and which do not live in Missouri.<sup>104</sup> Spire asserts that this will put it at a competitive disadvantage with respect to non-Missouri holding companies, but that should not be a matter of concern to this Commission. The Commission's interest is that Spire continues, through its subsidiaries, to provide safe and adequate utility service to its Missouri ratepayers at just and reasonable rates.

The focus of Staff's investigation upon possible detriments to the interest of the public or of Missouri ratepayers reflects the legal standard that governs utility mergers

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<sup>102</sup> See generally *State ex rel. Henning v. Williams*, 345 Mo. 22, 131 S.W.2<sup>nd</sup> 561 (Mo. banc 1939), overruled on other grounds, *State ex rel. Webb v. Satz*, 561 S.W.2d 113 (Mo. banc 1978).

<sup>103</sup> *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n of Mo.*, 392 SW3 24, 34 (Mo. App., W.D. 2012).

<sup>104</sup> Though they may be subject to suit in Missouri.

and acquisitions in Missouri. A public utility must obtain prior authorization from the PSC to sell, assign, lease, or transfer utility assets,<sup>105</sup> to merge or consolidate,<sup>106</sup> to raise capital by issuing stock, notes, or bonds, or by mortgaging property,<sup>107</sup> and to acquire the stock of another utility.<sup>108</sup> The standard applicable to the Commission's exercise of this authority is whether or not the proposed action is likely to be detrimental to the public interest. By virtue of the Public Service Commission Law, this Commission has the same jurisdiction over Spire's activities that it has over those of a gas distribution utility such as Laclede.

1. Section 393.190.1, RSMo.

Section 393.190.1, RSMo., provides:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. The permission and approval of the commission to the exercise of a franchise or permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition or encumbrance of a franchise or permit under this section

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<sup>105</sup> Section 393.190.1, RSMo.; see Rule 4 CSR 240-3.110, electric utilities; Rule 4 CSR 240-3.210, gas utilities; Rule 4 CSR 240-3.310, sewer utilities; 4 CSR 240-3.405, steam heat utilities; 4 CSR 240-3.605, water utilities.

<sup>106</sup> Section 393.190.1, RSMo.; see Rule 4 CSR 240-3.115, electric utilities; Rule 4 CSR 240-3.215, gas utilities; Rule 4 CSR 240-3.315, sewer utilities; 4 CSR 240-3.410, steam heat utilities; 4 CSR 240-3.610, water utilities.

<sup>107</sup> See §§ 393.180, 393.200, 393.210, and 393.220, RSMo.; and see Rule 4 CSR 240-3.120, electric utilities; Rule 4 CSR 240-3.220, gas utilities; Rule 4 CSR 240-3.320, sewer utilities; 4 CSR 240-3.415, steam heat utilities; 4 CSR 240-3.615, water utilities.

<sup>108</sup> See § 393.190.2, RSMo.; and see Rule 4 CSR 240-3.125, electric utilities; Rule 4 CSR 240-3.225, gas utilities; Rule 4 CSR 240-3.325, sewer utilities; 4 CSR 240-3.420, steam heat utilities; 4 CSR 240-3.620, water utilities.

shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture. \* \* \* Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any corporation, person or public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation, person or public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

The leading case states:

Before a utility can sell assets that are necessary or useful in the performance of its duties to the public it must obtain approval of the Commission. The obvious purpose of this provision is to ensure the continuation of adequate service to the public served by the utility. The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.<sup>109</sup>

That case relied, in turn, on an older Missouri Supreme Court case stating:

The owners of this stock should have something to say as to whether they can sell it or not. To deny them that right would be to deny to them an incident important to ownership of property. A property owner should be allowed to sell his property unless it would be detrimental to the public.

The state of Maryland has an identical statute with ours, and the Supreme Court of that state . . . said: "To prevent injury to the public, in the clashing of private interest with the public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be benefited, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.'"<sup>110</sup>

Given that the purpose of § 393.190.1, RSMo., is to ensure the continuation of adequate service to the public, the Commission typically has considered such factors as

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<sup>109</sup> *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980) (internal citations omitted).

<sup>110</sup> *State ex rel. City of St. Louis v. P.S.C.*, 335 Mo. 448, 459-460, 73 S.W.2d 393, 400 (Mo. banc 1934) (internal citations omitted).

the applicant's experience in the utility industry; the applicant's history of service difficulties, if any; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the assets safely and efficiently.<sup>111</sup> The Commission has sometimes said that denial of such an application requires compelling evidence on the record that a public detriment is likely to occur;<sup>112</sup> but has also said that the mere risk of harm to the ratepayers is a detriment to the public interest.<sup>113</sup> The Commission has determined that the applicable standard requires a cost-benefit analysis:

What is required is a cost-benefit analysis in which all of the benefits and detriments in evidence are considered. . . . Approval should be based upon a finding of no net detriment. \* \* \* In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that UE provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable. The presence of detriments, thus defined, is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service.<sup>114</sup>

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<sup>111</sup> See *In the Matter of the Joint Application of Missouri Gas Energy, et al.*, Case No. GM-94-252 (*Report and Order*, issued October 12, 1994), 3 Mo. P.S.C.3rd 216, 220.

<sup>112</sup> See, e.g., *In the Matter of KCP&L*, Case No. EM-2001-464 (*Order Approving Stipulation & Agreement and Closing Case*, issued Aug. 2, 2001).

<sup>113</sup> *In the Matter of Aquila, Inc.*, Case No. EF-2003-0465 (*Report & Order*, issued Feb. 24, 2004) pp. 6-7.

<sup>114</sup> *In the Matter of Union Electric Company, d/b/a AmerenUE*, 13 MoPSC3d 266, 293 (2005); and see *In the Matter of Great Plains Energy, Inc., Kansas City Power & Light Company and Aquila, Inc.*, 17 Mo.P.S.C.3d 338, 541 (2008), "the Commission may not withhold its approval of the proposed transaction unless the Applicants fail in their burden to demonstrate that the transaction is not detrimental to the public interest, and detriment is determined by performing a balancing test where attendant benefits are weighed against direct or indirect effects of the transaction that would diminish the provision of safe or adequate of service or that would tend to make rates less just or less reasonable."

Additionally, "what constitutes the 'public interest'" is "a matter of policy to be determined by the Commission."<sup>115</sup> In any proceeding on such an application, the applicant bears the burden of proof.<sup>116</sup>

In the present case, Spire is *buying* or *has bought* a public utility, not selling one. Section 393.190.1, RSMo., therefore, does not apply. However, the standard described above, developed in cases involving § 393.190.1, RSMo., also applies to § 393.190.2, RSMo.

## 2. Section 393.190.2, RSMo.

Section 393.190.2, RSMo., provides:

No such corporation [i.e., a gas corporation, electrical corporation, water corporation or sewer corporation] shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business, or proposing to operate or operating under a franchise from the same or any other municipality; neither shall any street railroad corporation acquire the stock or bonds of any electrical corporation, unless, in either case, authorized so to do by the commission. Save where stock shall be transferred or held for the purpose of collateral security, no stock corporation of any description, domestic or foreign, other than a gas corporation, electrical corporation, water corporation, sewer corporation or street railroad corporation, shall, without the consent of the commission, purchase or acquire, take or hold, more than ten percent of the total capital stock issued by any gas corporation, electrical corporation, water corporation or sewer corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any gas corporation, electrical corporation, water corporation or sewer corporation may, with the consent of the commission, acquire and hold the remainder of the capital stock of such gas corporation, electrical corporation, water corporation or sewer corporation, or any portion thereof.

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<sup>115</sup> 17 Mo.P.S.C.3d at 543.

<sup>116</sup> *Id.*



In holding this statute to be constitutional despite its unabashed application to extra-territorial transactions, the 8<sup>th</sup> Circuit Court of Appeals said:<sup>117</sup>

For over fifty years, Congress has regulated the interstate transmission of natural gas (the Natural Gas Act), the interstate transmission of electric power (the Federal Power Act), and the ownership of utilities (the Public Utility Holding Company Act of 1935). A major purpose of these laws was to preserve and protect state and local regulation of the distribution of natural gas and electricity to local retail customers.

The statute here at issue [§393.190.2, RSMo.] is part of Chapter 393 of the Missouri Statutes, which authorizes the Commission to establish "just and reasonable" rates for the local distribution of natural gas, electricity, water, and sewer services. Rate regulation is a complex process. A public utility's investments in other companies can affect its regulated rate of return, if investment losses are allocated to the regulated business. Transactions between affiliated utilities can present rate regulators with difficult issues of preferential treatment and cost allocation. The abuses Congress identified in enacting the Public Utility Holding Company Act attest to the long-standing regulatory concern over interlocking ownership and management of public utilities. This concern does not mean that Southern Union's acquisition strategy is necessarily contrary to the public interest, but it tends to confirm the presumptive validity of Missouri regulating that strategy by requiring pre-acquisition approval.

The Commission asserts that § 393.190.2 is part of its rate regulation responsibilities. Southern Union does not deny that assertion, and the administrative record in this proceeding supports it. For this reason, Southern Union's contention that this is merely "extraterritorial" regulation of interstate commerce is incorrect. Though Southern Union's stock purchases are no doubt conducted from its corporate headquarters in Texas, the Commission scrutinizes these transactions because they potentially affect the company's regulated rate of return in Missouri. Thus, § 393.190.2 regulates interstate stock purchases because of their impact on Southern Union's regulated local activities in Missouri. Likewise, calling this "direct" regulation of interstate commerce does not make it per se unlawful. As the Fourth Circuit observed, the direct/indirect distinction is not analytically helpful when a state statute regulates interstate stock transactions for the purpose of protecting local consumers from public utility abuses.<sup>118</sup>

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<sup>117</sup> *Southern Union Co. v. Missouri Pub. Serv. Comm'n*, 289 F.3d 503, 507-08 (8th Cir. 2002).

<sup>118</sup> *Baltimore Gas & Elec. Co. v. Heintz*, 760 F.2d 1408, 1421 (4th Cir.1985).

By its express terms, § 393.190.2, RSMo., requires Spire to obtain the Commission's *prior authorization* when it acquires the stocks or bonds of a public utility ("the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business"). Spire's acquisitions of Alagasco and EnergySouth, therefore, require the prior approval of this Commission; an approval that Spire has not sought. Whether that approval would be granted would be governed by the Commission's application of the "not detrimental to the public interest" standard.

3. Section 393.250, RSMo.

Section 393.250, RSMo., provides:

1. Reorganizations of gas corporations, electrical corporations, water corporations and sewer corporations shall be subject to the supervision and control of the commission, and no such reorganization shall be had without the authorization of the commission.

2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the commission, which in making its determinations, shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash; provided, however, that the commission may make due allowance for the discount of bonds.

3. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commission. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.

The *Unanimous Stipulation and Agreement* that Spire and Laclede executed in Case No. GM-2001-342 contained a series of specific conditions and the Commission's approval of Laclede's reorganization into a holding company (originally The Laclede Group, Inc., now Spire) with an operating subsidiary (Laclede Gas) was predicated

upon compliance with those conditions. Section 393.250.3, RSMo., expressly authorizes the Commission's imposition of conditions on a reorganization, so they are presumptively valid. Spire's commitment in the *Unanimous Stipulation and Agreement* to seek Commission approval of future acquisitions was at least an acknowledgement that such is required by the Public Service Commission Law.

Spire acquired Alagasco in 2014 and is now in the process of acquiring EnergySouth; but Spire has not sought Commission approval for either acquisition. Alagasco is a regulated natural gas distribution company and a public utility; EnergySouth is a holding company that owns two regulated natural gas distribution companies and public utilities. Staff necessarily must conclude that Spire has violated the *Unanimous Stipulation and Agreement* and the Commission's order approving the *Unanimous Stipulation and Agreement* and authorizing Laclede's reorganization subject to the conditions contained in the *Unanimous Stipulation and Agreement*. Neither acquisition need be detrimental; the violations were complete when the acquisition occurred without the Commission's prior approval.

#### 4. Section 386.390.1, RSMo.

Separate from jurisdiction over the transaction itself, the Commission has complaint jurisdiction over "any corporation, person or public utility" for violating or failing to comply with the Commission's orders. Section 386.390.1, RSMo., provides:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, *setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be*

*in violation, of any provision of law, or of any rule or order or decision of the commission. . . .*(Emphasis added)

Also, Section 386.570.1, RSMo., states that:

*Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense. (Emphasis added)*

Section 386.020(11), RSMo., defines "corporation" as follows:

"Corporation" includes a corporation, company, association and joint stock association or company

There is no question that Spire, Inc. (formerly known as The Laclede Group, Inc.) is a "corporation." The Laclede Group, Inc., was a signatory to the *Unanimous Stipulation and Agreement* in Case No. GM-2001-342.<sup>119</sup> As the Commission recognized in its *Order Granting Motion to Open an Investigation and Directing Filing* issued on July 20, 2016, in this docket (GM-2016-0342), "Spire . . . became the holding company for Laclede Gas Company only by the Commission's order in a 2001 case ("reorganization case")," citing to the GM-2001-342 case. That 2001 Commission order in Case No. GM-2001-342 approved the *Unanimous Stipulation and Agreement* signed by The Laclede Group (now Spire), while recognizing that the stipulation contained certain conditions and stated that "The conditions relate to such matters as financial constraints, access to information, *prior authorization from the Missouri Public Service Commission for mergers and acquisitions*, method of cost

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<sup>119</sup> *In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Case No. GM-2001-342 (*Unanimous Stipulation and Agreement*, filed July 9, 2001).

allocation, and reporting requirements.” (Emphasis added) The 2001 order also specifically stated that it authorized Laclede Gas Company to reorganize “*subject to the conditions contained in the Unanimous Stipulation and Agreement.*” (Emphasis added)

As the Commission stated in its order opening this investigation, one of the conditions contained in the 2001 stipulation was that

*The Laclede Group, Inc. [now Spire] agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility, or seek to become a registered holding company, or take any action which has a material possibility of making it a registered holding company or of subjecting all or a portion of its Missouri intrastate gas distribution operations to FERC jurisdiction, without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility.*<sup>120</sup> (Emphasis added)

As the Commission also stated in its order opening this investigation, each of the events listed in the foregoing paragraph of the 2001 stipulation “is listed in the disjunctive with acquisition or merger, so the prior approval applies to any one of those events.”

Spire has given no indication that it intends to request the Commission’s approval of its acquisition of EnergySouth or a finding that the transaction is not detrimental to the public.<sup>121</sup> Such lack of action would constitute a violation/failure to comply with the Commission’s 2001 order and the stipulation in GM-2001-342 and subject Spire to the Commission’s complaint jurisdiction.

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<sup>120</sup> *Id.*, pp. 9-10.

<sup>121</sup> Spire/The Laclede Group did not formally request the Commission’s approval of its acquisition of Alagasco either; however, the Alagasco transaction was discussed during Laclede’s presentations to the Commission regarding its acquisition of MGE as discussed elsewhere in this report.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

##### **A. Conclusions:**

The “not detrimental to the public interest” standard requires a cost-benefit analysis.<sup>122</sup> Staff is not aware of any benefits that the transactions have or will confer on the Missouri ratepayers of Laclede and MGE; but has identified potential detriments. Those detriments include higher capital costs due to Spire’s debt burden, taken on to fund its acquisitions, and costs improperly allocated to Spire’s Missouri operating company.

##### **B. Recommendations:**

The Alagasco acquisition is complete and cannot be undone; the EnergySouth acquisition is quite small. Therefore, Staff recommends that the best way to address the detriments it has identified is in the context of a general rate case for Laclede Gas Company. Additionally, Staff will pursue a complaint against Spire for its failure to seek prior approval from this Commission for the acquisitions of Alagasco and EnergySouth.

**WHEREFORE,** Staff prays that the Commission will accept its *Report* of its investigation of Spire’s acquisitions of Alagasco and Energy South.

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<sup>122</sup> *In the Matter of Union Electric Company, d/b/a AmerenUE*, 13 MoPSC3d 266, 293 (2005); and see *In the Matter of Great Plains Energy, Inc., Kansas City Power & Light Company and Aquila, Inc.*, 17 Mo.P.S.C.3d 338, 541 (2008).

Respectfully submitted,

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Attorney for the Staff of the  
Missouri Public Service Commission

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 1<sup>st</sup> day of September, 2016, on the Public Counsel and on counsel for Spire and Laclede.

/s/ Kevin A. Thompson

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

In the Matter of Great Plains Energy, Inc.'s )  
Acquisition of Westar Energy, Inc., and ) Case No. GM-2016-0342  
Related Matters )

**AFFIDAVIT OF KIM COX**

STATE OF MISSOURI )  
 ) ss  
COUNTY OF COLE )

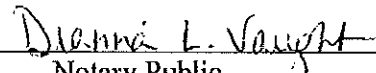
**COMES NOW** Kim Cox, and on her oath states that she is of sound mind and lawful age; that she contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to her best knowledge and belief.

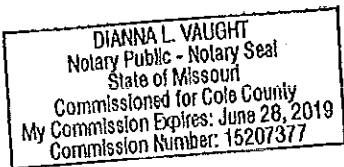
Further the Affiant sayeth not.

  
\_\_\_\_\_  
Kim Cox

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 1<sup>st</sup> day of September, 2016.

  
\_\_\_\_\_  
Notary Public





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

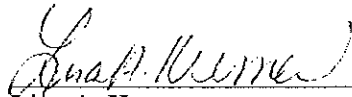
In the Matter of Great Plains Energy, Inc.'s )  
Acquisition of Westar Energy, Inc., and ) Case No. GM-2016-0342  
Related Matters )

**AFFIDAVIT OF LISA A. KREMER**

STATE OF MISSOURI )  
 ) ss  
COUNTY OF COLE )

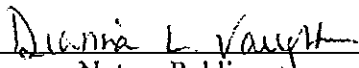
**COMES NOW** Lisa A. Kremer, and on her oath states that she is of sound mind and lawful age; that she contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to her best knowledge and belief.

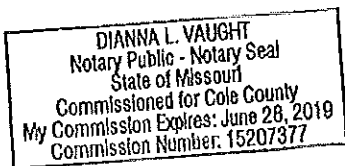
Further the Affiant sayeth not.

  
\_\_\_\_\_  
Lisa A. Kremer

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 15<sup>th</sup> day of September, 2016.

  
\_\_\_\_\_  
Notary Public



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

In the Matter of Great Plains Energy, Inc.'s )  
Acquisition of Westar Energy, Inc., and ) Case No. GM-2016-0342  
Related Matters )

**AFFIDAVIT OF MARK L. OLIGSCHLAEGER**

STATE OF MISSOURI )  
 ) ss  
COUNTY OF COLE )

**COMES NOW** Mark Oligschlaeger, and on his oath states that he is of sound mind and lawful age; that he contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to his best knowledge and belief.

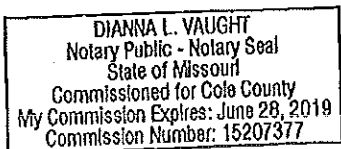
Further the Affiant sayeth not.

Mark L. Oligschlaeger  
Mark Oligschlaeger

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 1st day of September, 2016.

Dianna L. Vaught  
Notary Public



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

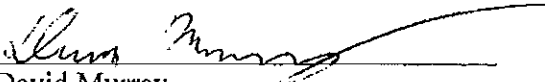
In the Matter of Great Plains Energy, Inc.'s )  
Acquisition of Westar Energy, Inc., and ) Case No. GM-2016-0342  
Related Matters )

**AFFIDAVIT OF DAVID MURRAY**

STATE OF MISSOURI )  
 ) ss  
COUNTY OF COLE )

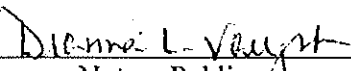
**COMES NOW** David Murray, and on his oath states that he is of sound mind and lawful age; that he contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to his best knowledge and belief.

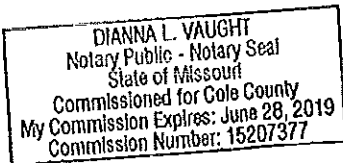
Further the Affiant sayeth not.

  
\_\_\_\_\_  
David Murray

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 15 day of September, 2016.

  
\_\_\_\_\_  
Notary Public



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

In the Matter of Great Plains Energy, Inc.'s )  
Acquisition of Westar Energy, Inc., and ) Case No. GM-2016-0342  
Related Matters )

**AFFIDAVIT OF ROBERT E. SCHALLENBERG**

STATE OF MISSOURI )  
 ) ss  
COUNTY OF COLE )

**COMES NOW** Robert E. Schallenberg, and on his oath states that he is of sound mind and lawful age; that he contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to his best knowledge and belief.

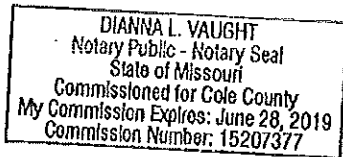
Further the Affiant sayeth not.

*Robert E. Schallenberg*  
Robert E. Schallenberg

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 31<sup>st</sup> day of August, 2016.

*Dianna L. Vaught*  
Notary Public



**Missouri Public Service Commission**

**Respond Data Request**

<b>Data Request No.</b>	0011
<b>Company Name</b>	Spire, Inc.-Investor(Gas)
<b>Case/Tracking No.</b>	GM-2016-0342
<b>Date Requested</b>	7/29/2016
<b>Issue</b>	General Information & Miscellaneous - Other General Info & Misc.
<b>Requested From</b>	Rick Zucker
<b>Requested By</b>	Jeff Keevil
<b>Brief Description</b>	GM-2001-342
<b>Description</b>	Please demonstrate how Spire Inc./The Laclede Group, Inc. and Laclede Gas Company are in compliance with each condition outlined in Case No. GM-2001-342. DR requested by David Murray (david.murray@psc.mo.gov).
<b>Response</b>	Please see attached.
<b>Objections</b>	NA

The attached information provided to **Missouri Public Service Commission** Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the **Missouri Public Service Commission** if, during the pendency of Case No. **GM-2016-0342** before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information. If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in the **Spire, Inc.-Investor(Gas)** office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to **Spire, Inc.-Investor(Gas)** and its employees, contractors, agents or others employed by or acting in its behalf.

<b>Security :</b>	Public
<b>Rationale :</b>	NA

**Laclede Gas Company  
GM-2016-0342**

**Response to Staff Data Request No. 11**

Please demonstrate how Spire Inc./The Laclede Group, Inc. and Laclede Gas Company are in compliance with each condition outlined in Case No. GM-2001-342.

**Response:**

- Neither Spire/LG nor Laclede Gas have pledged Laclede Gas' common stock as collateral or security for the debt of LG or a subsidiary of LG without Commission approval;
- Laclede Gas has not guaranteed the notes, debentures, debt obligations or other securities of LG or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.
- Spire has maintained a consolidated equity well in excess of 30 percent of its total permanent consolidated capitalization and Laclede Gas Company has maintained its equity at a level well in excess of 35% of its total capitalization.
- LG and Laclede Gas Company remain prepared to notify the Staff and Public Counsel in the event they become aware of any material possibility that either or both companies would be unable to maintain their respective equity ratios. No such circumstances have arisen in the 15 years since this commitment.
- Laclede Gas Company remains prepared to file a plan with the Commission within 90 days if either Spire's or Laclede Gas' equity ratio falls below these specified levels wherein it would propose alternatives for raising the ratios to or above the levels specified herein. No such circumstances have arisen in the 15 years since this commitment was made.
- Laclede Gas Company has kept its commitment to submit quarterly reports to the Staff's Financial Analysis Department and Public Counsel certain showing key financial ratios, including:
  - (a) Pre-tax interest coverage;
  - (b) After-tax coverage of interest and preferred dividends;
  - (c) Funds flow interest coverage;
  - (d) Funds from operations to total debt;
  - (e) Total debt to total capital (including preferred); and total common equity to total capital.
- Laclede Gas Company has kept its commitment that its total long-term instruments payable at periods of more than twelve months not exceed Laclede Gas Company's regulated rate base.
- Laclede Gas Company has kept its commitment to maintain its debt and, if outstanding, its preferred stock rating at an investment grade credit rating, unless it was unable to do so due to certain events or circumstances beyond

its control. Currently, Laclede has a credit rating of A- applicable to these instruments.

- Laclede Gas Company is prepared to keep its commitment to notify the Staff and Public Counsel in the event it becomes aware of any material possibility that it will not be able to maintain such a credit rating with any established agency that typically rates Laclede's debt. No such circumstance has arisen in the 15 years since this commitment was made.
- Should its credit rating fall below –investment grade, Laclede Gas Company remains prepared to file a plan with the Commission within 90 days of such an occurrence proposing alternatives for raising its credit rating above investment grade.
- Spire and Laclede Gas Company continue to agree that the Commission has, and will continue to have, the authority after the Proposed Restructuring to regulate, through the lawful exercise of its current statutory powers, any direct or indirect transfer or disbursement of earnings from Laclede Gas Company to an affiliate that would jeopardize the Company's ability to meet its utility obligations.
- Spire and Laclede Gas Company continue to agree that the Commission has the authority, through the lawful exercise of its ratemaking powers, to ensure that the rates charged by Laclede Gas Company for regulated utility service are not increased as a result of the unregulated activities of Laclede's affiliates and Laclede continues to agree, consistent with such standard, that rates should not be increased due to such activities.

Given the existence and continuing effectiveness of these protective measures, Laclede Gas believes that the existing regulatory framework not only contemplates acquisitions like the ones under investigation in this proceeding but has provided generic safeguards to ensure that Missouri ratepayers will not be harmed by such acquisitions.

Signed by: Glenn Buck

**FISCHER & DORITY**  
PROFESSIONAL CORPORATION

Attorneys at Law  
Regulatory & Governmental Consultants

James M. Fischer  
Larry W. Dority

101 Madison, Suite 400  
Jefferson City, MO 65101  
Telephone: (573) 638-6758  
Fax: (573) 638-0383

July 9, 2001

FILED<sup>3</sup>

JUL 09 2001

Missouri Public  
Service Commission

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, Missouri 65102

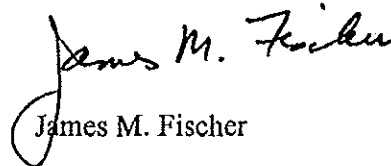
RE: *In the Matter of the Application of Laclede Gas Company for an Order Authorizing Its Plan to Restructure Itself Into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries, Case No. GM-2001-342*

Dear Mr. Roberts:

Enclosed are the original and eight (8) copies of the fully executed Unanimous Stipulation and Agreement for filing in the above-referenced matter. A copy of the foregoing Unanimous Stipulation and Agreement has been hand-delivered or mailed this date to each party of record.

Thank you for your attention to this matter.

Sincerely,

  
James M. Fischer

/jr  
Enclosures

cc: Michael C. Pendergast  
Douglas E. Micheel  
Dan K. Joyce  
Cliff Snodgrass  
Jan Bond  
Robert C. Johnson  
Gerald T. McNeive, Jr.



**FILED**<sup>3</sup>  
JUL 09 2001

Missouri Public  
Service Commission

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

In the Matter of the Application of Laclede )  
Gas Company for an Order Authorizing )  
Its Plan to Restructure Itself Into a Holding )  
Company, Regulated Utility Company, and )  
Unregulated Subsidiaries )

Case No. GM-2001-342

**UNANIMOUS STIPULATION AND AGREEMENT**

COME NOW Laclede Gas Company ("Laclede" or "Company"), the Staff of the Missouri Public Service Commission ("Staff"), the Office of the Public Counsel ("Public Counsel") the Paper, Allied-Industrial, Chemical, and Energy Workers Local Nos. 5-6 and 5-194, AFL-CIO ( collectively known as "PACE"), and Barnes-Jewish Hospital, DaimlerChrysler Corporation, The Doe Run Company, Emerson Electric Company, Lone Star Industries, Inc., River Cement Company, SSM HealthCare, and Unity Health System (collectively known as the "Missouri Energy Group"), and represent to the Missouri Public Service Commission ("Commission") that they have reached a Unanimous Stipulation and Agreement (hereinafter "Stipulation") or otherwise resolved all of their differences in the above-captioned case. For their Stipulation, each of the parties identified above, with the exception of the Missouri Energy Group (hereinafter "the Parties") state as follows:<sup>1</sup>

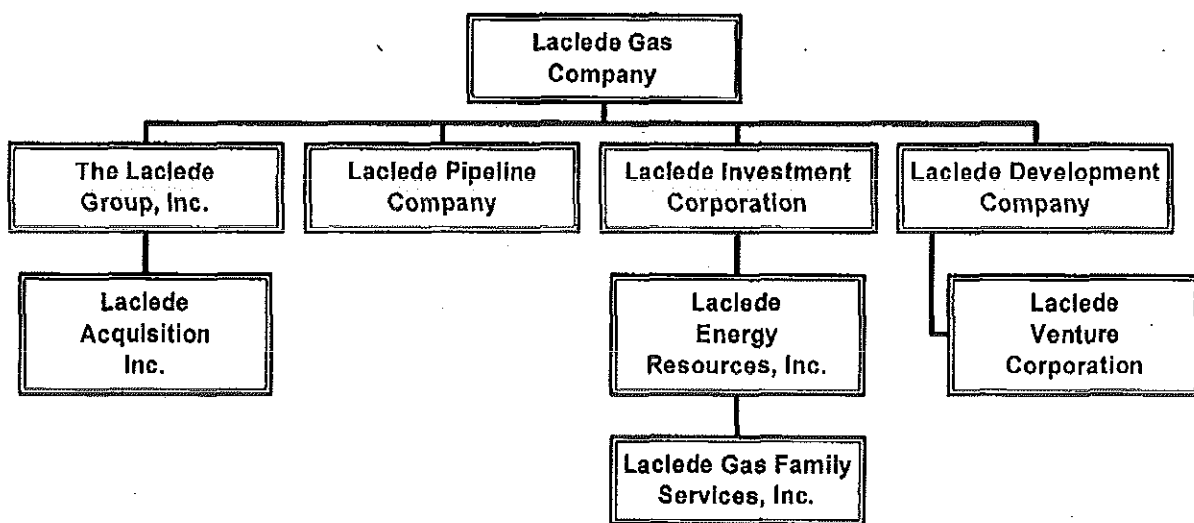
<sup>1</sup> The Missouri Energy Group are signing this Stipulation solely for purposes of indicating to the Commission that they neither support nor oppose the Stipulation and that such Stipulation may therefore be treated as Unanimous pursuant to the Commission's Rules of Practice and Procedure.

**SECTION I**  
**BACKGROUND**

1. On December 1, 2000, Laclede filed a Verified Application with the Commission in which it requested that the Commission issue an Order authorizing the Company to restructure itself into a holding company, regulated utility company and unregulated subsidiaries (hereinafter "the Proposed Restructuring").

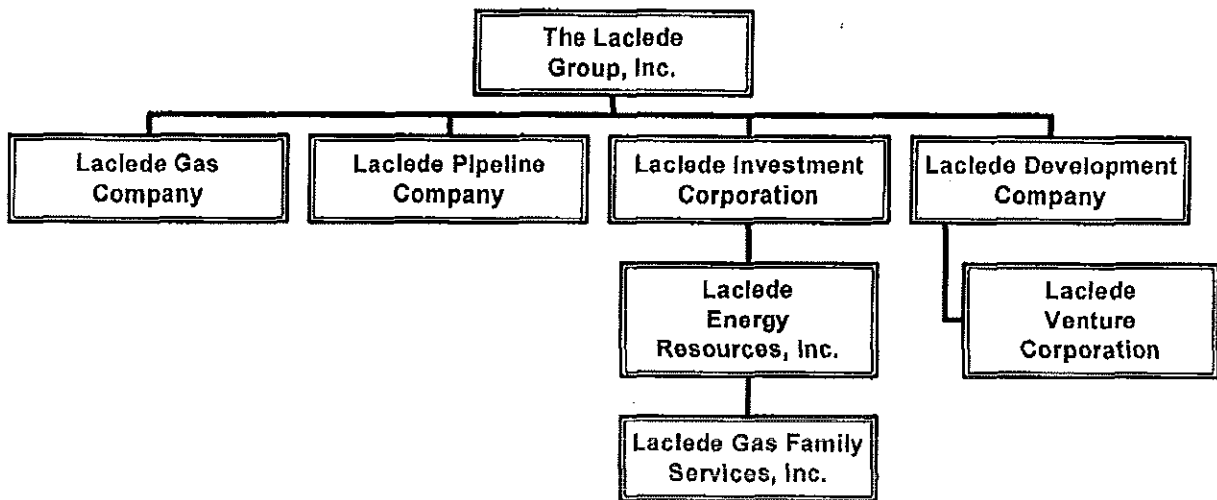
2. As described in that Verified Application, under its present corporate structure, Laclede Gas Company is the parent corporation of a number of unregulated subsidiaries, including Laclede Development Company, which has its own subsidiary Laclede Venture Corp.; Laclede Investment Corporation, which has two subsidiaries, Laclede Energy Resources, Inc. and Laclede Gas Family Services, Inc.; and Laclede Pipeline Company. Laclede has also created two other subsidiaries, The Laclede Group, Inc., and its subsidiary, Laclede Acquisition Inc., to facilitate the Proposed Restructuring. The organization chart presented below shows Laclede's present corporate structure:

**Present Corporate Structure**



3. Upon completion of the Proposed Restructuring, The Laclede Group, Inc. would become the parent holding company. Laclede Gas Company and the remaining unregulated subsidiaries would, in turn, become separate and independent subsidiaries of The Laclede Group, Inc. This Proposed Restructuring would be accomplished pursuant to a procedure commonly known as a "Reverse Triangular Merger." Under that procedure, Laclede Acquisition Inc. would be merged into Laclede Gas Company. Upon completion of the merger, Laclede Acquisition Inc. would no longer exist. The Laclede Group, Inc. would then hold all of the common stock of Laclede Gas Company as well as the other subsidiaries. The Organizational Chart presented below depicts this structure that would be in place following the Proposed Restructuring.

**Proposed Corporate Structure**



4. As discussed in the Verified Application, the Proposed Restructuring does not involve the transfer of any utility assets currently owned by Laclede Gas Company or any change in the terms and conditions of the regulated utility services provided by Laclede.

5. On December 29, 2000, and February 27, 2001, applications to intervene in this proceeding were filed by PACE and the Missouri Energy Group, respectively.

Both applications to intervene were subsequently granted by the Commission.

6. On January 5, 2001, the Commission issued notice of Laclede's Application and established a deadline for parties wishing to intervene in this proceeding. By subsequent Order dated February 13, 2001, the Commission scheduled a prehearing conference for the purpose of permitting the parties to engage in settlement discussions and, if necessary, to develop a procedural schedule for addressing any remaining, unresolved issues. The prehearing conference was subsequently held on March 13, 2001.

7. As a result of their discussion both during and following the prehearing conference in this case, the Parties have agreed to a resolution of all of the issues in this case, and hereby stipulate and agree as follows:

**SECTION II**  
**APPROVAL OF PROPOSED RESTRUTURING**

1. The Parties (except PACE) recommend that the Commission grant the relief requested by the Company in its Verified Application. Specifically, the Parties (except PACE) recommend that the Commission issue an Order, as soon as practicable, authorizing the Company to restructure itself into a holding company, regulated utility company and unregulated subsidiaries, as more fully described in the Company's Verified Application, and to perform and complete any transactions required to effectuate the Proposed Restructuring.

2. The Parties further recommend that such approval be conditioned on the agreements, understandings and requirements set forth in Sections III, IV, V, VI and VII of this Stipulation and Agreement. Provided such approval is so conditioned, PACE does

not object to the Commission granting the relief requested by the Company in its Verified Application.

**SECTION III**  
**FINANCIAL CONDITIONS**

1. The Laclede Group, Inc. represents that it does not intend to take any action that has a material possibility of having a detrimental effect on Laclede Gas Company's utility customers, but agrees that, should such detrimental effects nevertheless occur, nothing in the approval or implementation of the Proposed Restructuring shall impair the Commission's ability to protect such customers from such detrimental effects.

2. Laclede Group, Inc. will not pledge Laclede Gas Company's common stock as collateral or security for the debt of the Holding Company or a Subsidiary without Commission approval.

3. Laclede Gas Company will not guarantee the notes, debentures, debt obligations or other securities of the Holding Company or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.

4. The Laclede Group, Inc. agrees to maintain consolidated equity of no less than 30 percent of its total permanent consolidated capitalization and Laclede Gas Company agrees to maintain its equity at no less than 35% of its total capitalization, unless they are unable to do so due to events or circumstances beyond their control, including, but not limited to, acts of God, war, insurrection, strikes, civil unrest, material changes in market conditions that could not have been reasonably anticipated, or changes in the application, character or impact of laws, taxing requirements, regulations, or regulatory practices and standards governing the Company's regulated operations. Total capitalization is defined as common equity, preferred stock, long-term debt, and short-

term debt, excluding short-term debt supporting natural gas and propane inventories, purchased gas costs and cash working capital. Common equity is defined as par value of common stock, plus additional paid in capital, plus retained earnings, minus treasury stock. The Laclede Group, Inc. and Laclede Gas Company agree to notify the Staff and Public Counsel in the event they become aware of any material possibility that either or both companies will be unable to maintain their respective equity ratios. In the event either Company's equity ratio should fall below these specified levels, Laclede Gas Company shall file a plan with the Commission within 90 days of such occurrence proposing alternatives for raising the ratios to or above the levels specified herein.

5. Laclede Gas Company shall submit quarterly to the Staff's Financial Analysis Department and Public Counsel certain key financial ratios that will be calculated, to the extent practical, consistent with the methodology employed by Standard and Poor's Credit Rating Service. These key financial ratios shall include:

- (a) Pre-tax interest coverage;
- (b) After-tax coverage of interest and preferred dividends;
- (c) Funds flow interest coverage;
- (d) Funds from operations to total debt;
- (e) Total debt to total capital (including preferred); and
- (f) Total common equity to total capital.

6. Laclede Gas Company's total long-term instruments payable at periods of more than twelve months shall not exceed Laclede Gas Company's regulated rate base.

7. Laclede Gas Company agrees to maintain its debt and, if outstanding, its preferred stock rating at an investment grade credit rating, unless it is unable to do so due

to events or circumstances beyond its control, including, but not limited to, acts of God, war, insurrection, strikes, civil unrest, material changes in market conditions that could not have been reasonably anticipated, or changes in the application, character or impact of laws, taxing requirements, regulations, or regulatory practices and standards governing the Company's regulated operations. Laclede Gas Company agrees to notify the Staff and Public Counsel in the event it becomes aware of any material possibility that it will not be able to maintain such a credit rating with any established agency that typically rates Laclede's debt. In the event Laclede Gas Company's credit rating should fall below investment grade, Laclede shall file a plan with the Commission within 90 days of such occurrence proposing alternatives for raising its credit rating above investment grade.

8. The Laclede Group, Inc and Laclede Gas Company agree that the Commission has, and will continue to have, the authority after the Proposed Restructuring to regulate, through the lawful exercise of its current statutory powers, any direct or indirect transfer or disbursement of earnings from Laclede Gas Company to an affiliate that would jeopardize the Company's ability to meet its utility obligations. The Laclede Group, Inc, and Laclede Gas Company also agree that the Commission has the authority, through the lawful exercise of its ratemaking powers, to ensure that the rates charged by Laclede Gas Company for regulated utility service are not increased as a result of the unregulated activities of Laclede's affiliates and Laclede agrees, consistent with such standard, that rates should not be increased due to such activities.

#### **SECTION IV** **ACCESS TO INFORMATION CONDITIONS**

1. The Laclede Group, Inc. and Laclede Gas Company shall provide the Staff and Public Counsel with access, upon reasonable written notice during normal working

hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond, or bond rating analysts, which directly or indirectly pertains to Laclede Gas Company or any affiliate that exercises influence or control over Laclede Gas Company or has affiliate transactions with Laclede Gas Company. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, "written" information includes but is not limited to, any written and printed material, audio and videotapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed to be a waiver of The Laclede Group, Inc.'s or Laclede Gas Company's right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.

2. Upon request, Laclede Gas Company and The Laclede Group, Inc. agree to make available to Staff, Public Counsel and PACE, upon written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, all books, records and employees of The Laclede Group, Inc., Laclede Gas Company and its affiliates as may be reasonably required to verify compliance with the CAM and the conditions set forth in this Stipulation and Agreement and, in the case of PACE, to ensure that it continues to have the same degree and kind of access to information relevant to the investigation and processing of grievances and the enforcement of collective bargaining agreements, whether from affiliates or otherwise, as it currently has under Laclede's existing corporate structure. In addition to following standard discovery procedures, Staff's and Public Counsel's access to bargaining unit employees shall also be conditioned



on Staff and Public Counsel providing reasonable notice to the employee's Union of their intent to seek such access and the right of such employee to be represented by the Union. Laclede Gas Company and The Laclede Group, Inc. shall also provide Staff and Public Counsel any other such information (including access to employees) relevant to the Commission's ratemaking, financing, safety, quality of service and other regulatory authority over Laclede Gas Company; provided that Laclede Gas Company and any affiliate or subsidiary of The Laclede Group, Inc. shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates or subsidiaries: (a) are not within the possession or control of Laclede Gas Company; or (b) are either not relevant or are not subject to the Commission's jurisdiction and statutory authority by virtue of or as a result of the implementation of the Proposed Restructuring.

3. Laclede Gas Company, each affiliate and The Laclede Group, Inc. will maintain records supporting its affiliated transactions for at least five years.

**SECTION V**  
**COMMISSION AUTHORIZATION CONDITIONS**

1. The Laclede Group, Inc. agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility, or seek to become a registered holding company, or take any action which has a material possibility of making it a registered holding company or of subjecting all or a portion of its Missouri intrastate gas distribution operations to FERC jurisdiction, without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is not detrimental to the public, provided

that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility.

2. Laclede Gas Company shall not sell, lease, assign or transfer to any affiliate or third party any of its utility assets that are used and useful in the performance of Laclede's public utility obligations without obtaining Commission approval.

**SECTION VI**  
**COST ALLOCATION MANUAL CONDITIONS**

1. Upon implementation of the Proposed Restructuring, transactions involving transfers of goods or services between Laclede Gas Company and one or more of the Company's affiliated entities shall be conducted and accounted for in compliance with the provisions of a Cost Allocation Manual ("CAM") which shall be submitted to Staff, Public Counsel and PACE on or before April 15, 2003, and on an annual basis thereafter. The CAM shall be in the form contained in the direct testimony of Patricia A. Krieger, provided that the CAM, and the information that the Company is required to maintain and submit thereunder, shall be revised and supplemented within 120 days of the approval of this Stipulation and Agreement to include any and all of the following information as required to administer, audit and verify the Transfer Pricing and Costing Methodologies set forth in Section VIII of the CAM or such other Transfer Pricing and Costing Methodologies as may become applicable to the Company in the future:

- (a) For all Laclede Gas Company functions that will provide support to nonregulated affiliates and the holding company:
    - (1) A list and description of each function;
    - (2) The positions and numbers of employees providing each function;
- and

- (3) The procedures used to measure and assign costs to nonregulated affiliates and the holding company for each function.
- (b) A list and description of each service and good that will be provided to Laclede Gas Company from each affiliate and the holding company.
- (c) A list and description of each service and good that will be provided by Laclede Gas Company to each affiliate and the holding company.
- (d) The dollar amount of each service and good charged to each affiliate and the holding company by Laclede Gas Company, and the total cost related to each service and good listed.
- (e) The dollar amount of each service and good purchased from each affiliate and the holding company by Laclede Gas Company, and the total cost related to each service and good listed.
- (f) A detailed discussion of the basis for determining the charges from Laclede Gas Company and each affiliate and the holding company, including:
  - (1) If costs are allocated, a detailed description of the allocation process employed for each service and good;
  - (2) Detailed descriptions of how direct, indirect and common activities are assigned for each service and good;
  - (3) A detailed description of how market values are determined for each service and good; and

- (4) A detailed discussion of the criteria used to determine whether volume discounts and other pricing considerations are provided to Laclede Gas Company, affiliates, and the holding company.

(g) For each line of business that will be engaged in by Laclede Gas Company with non-affiliated third party customers following formation of a holding company and that would not reasonably be considered as a component of its regulated utility business, Laclede shall provide:

- (1) A list and description of each nonregulated activity;
- (2) The total amount of revenues and expenses for each nonregulated activity for the last calendar year; and
- (3) A listing of all Laclede Gas Company cost centers and/or functions that directly assign cost, indirectly assign cost and/or allocate cost to each nonregulated activity engaged in by Laclede Gas Company with non-affiliates.

2. Laclede agrees to make compliance with the procedures and requirements set forth in the CAM and the other terms of this Stipulation and Agreement a standard element of its Code of Conduct and to provide employee training and oversight in a manner that is reasonably designed to achieve such compliance. Laclede will conduct regularly scheduled audits to confirm compliance with its CAM and will annually review and update the CAM where necessary and submit such updates with its next CAM filing. Laclede will identify a function or position with responsibility for enforcing and updating the CAM.

3. As part of its CAM submittal, Laclede Gas Company will provide a list of all jurisdictions in which Laclede Gas Company, the holding company, affiliates, and service company, if formed, file affiliate transaction information.

4. As part of its CAM submittal, Laclede Gas Company will also provide Organizational Charts for The Laclede Group, Inc. (corporate structure), Laclede Gas Company and any other affiliate doing business with Laclede Gas Company and a copy of the annual holding company filing the Laclede Group, Inc. is required to file with the Securities and Exchange Commission.

**SECTION VII**  
**MISCELLANEOUS CONDITIONS**

1. Laclede Gas Company will not seek to recover any costs related to the Proposed Restructuring from ratepayers. These costs will be identified, described and accounted for in a manner that would enable the Staff and Public Counsel to seek disallowance from rates, if necessary, in a future proceeding.

2. Laclede Gas Company will provide the Staff and Public Counsel with an explanation for any final reorganization journal entry that deviates by more than ten percent (10%) from the estimated proforma entries provided in Exhibit 4 of the Application. Copies of the actual journal entries will be provided to the General Counsel's Office no later than thirty days following the preparation of the final merger closing entries.

3. The Laclede Group and its affiliates (including Laclede) will provide the following documents to Staff and Public Counsel on an annual basis:

- (a) All new, revised and updated business plans for The Laclede Group and its affiliates (including Laclede);

- (b) Descriptions of any and all joint marketing/promotional campaigns between Laclede and The Laclede Group and any of its affiliates;
- (c) Narrative description of all products and services offered by The Laclede Group and its affiliates (including Laclede), provided that Laclede shall not be required to provide narrative descriptions of its tariffed products and services;
- (d) All information provided under this subsection shall be considered “highly confidential” or “proprietary” as those terms are used in 4 CSR 240-2.085, and shall be treated as highly confidential or proprietary information by the Staff and Public Counsel;
- (e) The Laclede Group, Inc. and its affiliates (including Laclede) shall also notify Staff, Public Counsel and PACE in the event and at such time as they commence a line of business that neither Laclede nor its affiliates were actively engaged in at the time of the Proposed Restructuring. Such notification can take the form of public announcements, press releases or other means of notification provided to the parties.

4. Laclede Gas agrees to notify the Staff, Public Counsel, and PACE in the event and at such time as any decision is made to transfer any department or function relating to the Company’s provision of regulated utility services from the regulated gas corporation to a non-regulated affiliated entity or other third party; provided that nothing herein shall be construed as limiting or modifying in any manner any notice or other requirement Laclede may have relating to the transfer of bargaining unit employees or the work performed by such employees pursuant to the existing collective bargaining unit

agreements between Laclede and Pace or applicable federal labor law. At the time of its annual CAM filing, Laclede will also provide Public Counsel, Staff and PACE information detailing the name, job description, and transfer dates of any employees that were permanently or temporarily transferred between Laclede and any affiliate during the preceding fiscal year.

5. Nothing in this Stipulation and Agreement shall be deemed to change in any way any of the rights and obligations of Laclede Gas Company or PACE under the collective bargaining agreements between them or under any non-PSC law, and by entering into this Stipulation and Agreement, neither Laclede Gas Company or PACE waives any such rights.

6. Nothing in this Stipulation and Agreement or the implementation of the Proposed Restructuring shall affect in any way the scope of any existing ratemaking authority the Commission has over Laclede Gas Company relating to activities undertaken by Laclede Energy Resources or Laclede Pipeline Company prior to implementation of the Proposed Restructuring or over ratemaking issues that may arise as the result of the formation of a service company.

#### **SECTION VIII** **STANDARD PROVISIONS**

1. This Stipulation represents a negotiated settlement for the purpose of disposing of all of the identified issues in this case. None of the Parties to the Stipulation shall have been deemed to have approved or acquiesced in any ratemaking, procedural or legal principle, any method of cost determination or cost allocation, or any service or payment standard, and none of the Parties shall be prejudiced or bound in any manner by

the terms of this Stipulation in any other proceeding, except as otherwise expressly specified herein.

2. In the event the Commission approves this Stipulation and Agreement, all of the prefiled testimony submitted by the Parties in this proceeding may be received into evidence, and the Parties waive their respective rights to cross-examination, to submit oral argument or briefs, and their rights to judicial review of such determination.

3. The Staff shall file suggestions or a memorandum in support of this Stipulation and Agreement and the other parties shall have the right to file responsive suggestions. All memoranda submitted by the Parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules; shall be maintained on a confidential basis by all Parties; and shall not become a part of the record of this proceeding or bind or prejudice the Party submitting such memorandum in any future proceeding or in this proceeding, whether or not the Commission approves this Stipulation. The contents of any memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation, whether or not the Commission approves and adopts this Stipulation.

4. The Staff shall have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests; provided that the Staff shall, to the extent reasonably practicable, promptly provide other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. Staff's oral explanation shall be subject to public disclosure,



except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order in this case.

5. The agreements contained in this Stipulation have resulted from extensive negotiations among the Parties and are interdependent. In the event the Commission does not approve or adopt the provisions of this Stipulation in total, then this Stipulation shall be void and no signatory shall be bound by any agreements or provisions hereof.

6. To assist the Commission in its review and consideration of this Stipulation, the Parties also request that the Commission advise them of any additional information that the Commission may desire from the Parties relating to the matters addressed in this Stipulation, including any procedures for furnishing such information to the Commission.

WHEREFORE, the signatories hereto respectfully request that the Commission approve this Unanimous Stipulation and Agreement as expeditiously as possible.

Respectfully submitted,

Michael C. Pendergast

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Associate General Counsel  
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**CERTIFICATE OF SERVICE**

Michael C. Pendergast, Assistant Vice-President, Associate General Counsel for Laclede Gas Company, hereby certifies that the foregoing Unanimous Stipulation and Agreement has been duly served upon all parties of record to this proceeding by placing a copy thereof in the United States mail, postage prepaid, or by hand delivery, on this 9<sup>th</sup> day of July 2001:

Douglas E. Micheel  
Senior Public Counsel  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, Missouri 65102

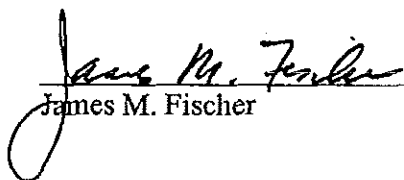
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James M. Fischer

FILED<sup>2</sup>  
JUL 9 2001

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

Missouri Public  
Service Commission

In the Matter of the Application of Kansas City )  
Power & Light Company for an Order Authorizing )  
Its Plan to Reorganize Itself Into a Holding )  
Company Structure. )

Case No. EM-2001-464

**FIRST AMENDED  
STIPULATION AND AGREEMENT**

As a result of discussions among the parties to Case No. EM-2001-464, the Staff of the Missouri Public Service Commission ("Staff"), the Office of the Public Counsel ("Public Counsel"), Kansas City Power & Light Company ("KCPL"), Great Plains Energy, Incorporated ("GPE") and Great Plains Power, Incorporated ("GPP), hereby submit to the Missouri Public Service Commission ("Commission") for its consideration and approval the following Stipulation And Agreement:

**I. Kansas City Power & Light Company's Application**

On February 26, 2001, KCPL filed its Application. KCPL is a vertically integrated electric utility company under the jurisdiction of the Commission. In its Application, KCPL proposed to reorganize into a registered holding company structure as follows:

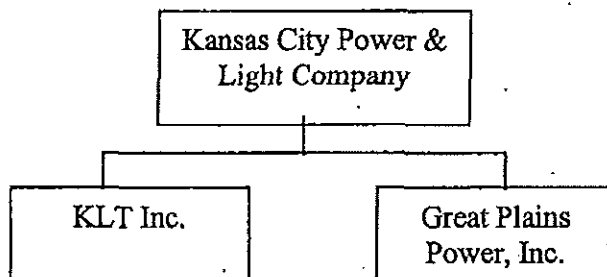
A. After reorganization, a new holding company, GPE<sup>1</sup> will be the sole owner of three subsidiary companies, all of which already exist - i.e., KCPL, KLT Inc. ("KLT") and Great Plains Power, Incorporated ("GPP"). KCPL will remain a vertically integrated electric utility subject to this Commission's jurisdiction and will not transfer any of its generating assets as a part of this proposed restructuring plan. KLT will continue to invest in competitive, high growth businesses. GPP will pursue opportunities in the competitive wholesale generation market. KCPL's existing corporate structure, and the corporate ~~structure that will exist~~

<sup>1</sup> The Articles of Incorporation for GPE were filed with the Missouri Secretary of State on February 26, 2001.

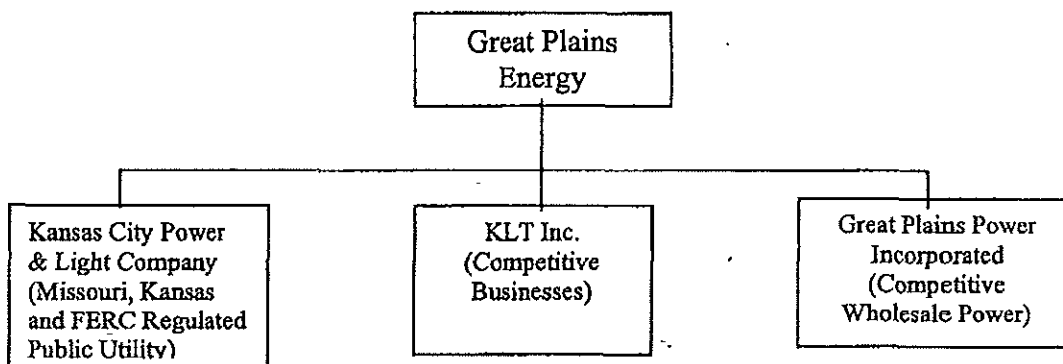
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immediately following the completion of the restructuring plan proposed herein, are illustrated below.

### CURRENT CORPORATE STRUCTURE<sup>2</sup>



### RESTRUCTURED COMPANY



The two corporate structures illustrated above are snapshots of KCPL at the beginning and end of the proposed restructuring process. KCPL's restructuring process contains several intermediary steps. KCPL has formed a wholly owned subsidiary, GPE. In turn, GPE will form a wholly owned, new subsidiary, NewCo. Pursuant to a merger agreement ("Merger Agreement") between KCPL, GPE and NewCo, KCPL then will merge with NewCo. A copy of the Merger Agreement was attached to the Application as

<sup>2</sup> The only other existing subsidiary of KCPL that is relatively significant in terms of its size is Home Services Solutions ("HSS"). It is anticipated that HSS will be sold or otherwise disposed of in the near future. None of KCPL's subsidiaries are involved in the provision of regulated utility services.

Exhibit 1. Under the terms of the Merger Agreement, the separate existence of NewCo will cease and KCPL will continue as the surviving corporation of the merger. At this point, KCPL will be a wholly owned subsidiary of GPE. As a part of the merger, each outstanding share of KCPL stock automatically converts into the right to receive one share of GPE stock. Similarly, each share of KCPL's various series of preferred stock will be converted into one share of an identical series of GPE preferred stock. The pro forma balance sheets and income statements of KCPL before and after the proposed restructuring plan were attached to the Application as Exhibit 2. Once the merger is consummated, KCPL will dividend its stock of KLT and GPP to GPE. At this point, GPE will be a publicly held corporation that owns 100% of KCPL, KLT and GPP.

B. KCPL further stated that KCPL anticipates that it will form a service company ("ServCo") within a certain period of time following the completion of the reorganization. The ServCo will provide certain shared services to the affiliated companies. A form of the General Services Agreement that will be used for the provision of support services was attached to the Application as Exhibit 3. A copy of KCPL's cost allocation manual ("CAM"), which describes the bases currently used by KCPL for allocating certain costs related to shared services, was attached to the Application as Exhibit 4. KCPL stated that the new holding company system will continue to use service agreements, work orders and a CAM to assure that costs are properly tracked and assigned. Upon completion of the reorganization, GPE will register with the SEC and become subject to additional regulation under the Public Utility Holding Company Act of 1935 ("PUHCA").

C. The proposed reorganization will not involve the transfer of any assets, including generating assets, from KCPL to affiliates. KCPL will remain a vertically integrated electric utility. It is the intent of this Stipulation And Agreement that this Commission will continue to have the authority to ensure that KCPL's retail electric customers receive electric service that is safe, reliable and reasonably priced.

## II. STIPULATIONS AND AGREEMENTS

Having considered the verified Application that KCPL submitted in this matter and having conducted settlement negotiations and discussions with other parties, KCPL and GPE, the Staff and the Public Counsel agree and recommend, subject to the conditions set forth below, that the Commission should approve KCPL's Application to restructure and reorganize, as proposed in its Application and as conditioned and modified in this Stipulation And Agreement.

### 1. Approval of the Proposed Restructuring and Reorganization

The signatories agree that the Commission should approve the restructuring and reorganization of KCPL as requested in the Application filed February 26, 2001, on the basis that, subject to the conditions and modifications set forth below, said restructuring and reorganization is not detrimental to the public interest. In addition, the Commission should grant KCPL authority to merge with NewCo with KCPL being the surviving corporation, grant GPE the authority to own more than ten percent (10%) of the common stock of KCPL, and grant all other approvals requested in KCPL's Application necessary to implement the restructuring plan described in KCPL's Application, including authority of KCPL to issue the stock dividends to GPE, as conditioned and modified in this Stipulation And Agreement.

2. **State Jurisdictional Issues**

In *Re Western Resources, Inc./Kansas City Power & Light Company*, Case No. EM-97-515, and *Re Union Electric Company/Central Illinois Public Service Company*, Case No. EM-96-149, the Commission approved settlement agreements designed to ensure the protection of customers of Missouri utilities that were to possibly become or became a subsidiary of a Registered Holding Company. KCPL and GPE hereby agree to those same conditions as set forth below. KCPL further commits that it and its affiliates will continue to comply with the provisions of 4 CSR 240-20.015 and 20.017 after the reorganization is completed. As used in this Stipulation And Agreement, and in all attachments to this document, any reference to "GPE" includes both GPE and its successors in interest.

a. **Access to Books, Records and Personnel**

GPE and KCPL agree to make available to the Staff and Public Counsel, at reasonable times and places, all books, records, employees and officers of GPE, KCPL and any affiliate of KCPL as provided under applicable law and Commission rules; provided that KCPL and any affiliate or subsidiary of GPE shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates or subsidiaries are not subject to the Commission's jurisdiction and statutory authority or are not in the control, custody or possession of KCPL, including objections based on the operation of PUHCA.

GPE and its affiliates (including KCPL) will provide the following documents to the Staff and Public Counsel on an annual basis:



- All new, revised and updated business plans for GPE and its affiliates (including KCPL).
- Description of any and all joint marketing/promotional campaigns between KCPL and GPE and any of its affiliates.
- Narrative description of all products and services offered by GPE and its affiliates (including KCPL). KCPL is not required to provide narrative descriptions of its tariffed products and services.
- All information provided under this subsection shall be considered "highly confidential" or "proprietary" as those terms are used in 4 CSR 240-2.085, and shall be treated as highly confidential or proprietary information by the Staff and Public Counsel.

At the Commission's request, officers and employees of GPE or its affiliates will be made available for deposition or cross-examination concerning affiliated transactions affecting KCPL and diversification plans.

**b. Contracts Required to be Filed with the SEC**

All contracts, agreements or arrangements of any kind, including any amendments thereto, between KCPL and any affiliate, associate, holding, mutual service, or subsidiary company within the same holding company system, as these terms are defined in 15 U.S.C. § 79b, as subsequently amended, that are required to be filed with and/or approved by the Securities and Exchange Commission ("SEC") pursuant to PUHCA, as subsequently amended, shall be conditioned upon the following without modification or alteration: Neither KCPL nor any of its affiliates, will seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost (including cost of capital) or allocation incurred or accrued by KCPL in, or as a result of, a contract, agreement, arrangement, or transaction with any affiliate, associate,

holding, mutual service or subsidiary company on the basis that such expense, charge, cost (including cost of capital) or allocation has itself been filed with or approved by the SEC or was incurred pursuant to a contract, arrangement, agreement or allocation method that was filed with or approved by the SEC.

**c. Electric Contracts Required to be Filed with FERC**

All wholesale electric energy or transmission service contracts, tariffs, agreements or arrangements of any kind, including any amendments thereto, between KCPL and any GPE subsidiary or affiliate, that are required to be filed with and/or approved by the Federal Energy Regulatory Commission ("FERC"), pursuant to the Federal Power Act, as subsequently amended, shall be conditioned upon the following without modification or alteration: Neither KCPL nor any of its affiliates will seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost (including cost of capital) or allocation incurred or accrued by KCPL in, or as a result of, a wholesale electric energy or transmission service contract, agreement, arrangement or transaction on the basis that such expense, charge, cost (including cost of capital) or allocation has itself been filed with or approved by FERC, or was incurred pursuant to a contract, arrangement, agreement or allocation method that was filed with or approved by FERC.

**d. No Pre-Approval of Affiliated Transactions**

KCPL agrees to provide the Commission and Public Counsel with copies of all documents that must be filed with the SEC or FERC relating to affiliate transactions. KCPL and GPE further agree that the Commission may make its determination regarding the ratemaking treatment to be accorded these transactions in a subsequent ratemaking proceeding.

e. **Contingent Procedure Stipulation Regarding  
Affiliate Contracts Required to be Filed With FERC**

KCPL agrees that in the exclusive event that any court with jurisdiction over KCPL, GPE or any of their affiliates or subsidiaries issues an opinion or order that invalidates a decision or order of the Commission pertaining to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost (including cost of capital) or allocation incurred or accrued by KCPL on the basis that such expense, charge, cost (including cost of capital) or allocation has itself been filed with or approved by FERC, then the Contingent Procedure Stipulation, attached hereto as Exhibit A, shall apply to FERC filings according to its terms, at the option of the Commission.

f. **Contingent Procedure Stipulation Regarding  
Affiliate Contracts Required to be Filed with SEC**

KCPL agrees that in the exclusive event that any court with jurisdiction over KCPL, GPE or any of their affiliates or subsidiaries issues an opinion or order that invalidates a decision or order of the Commission pertaining to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost (including cost of capital) or allocation incurred or accrued by KCPL on the basis that such expense, charge, cost (including cost of capital) or allocation has itself been filed with or approved by SEC, then the Contingent Procedure Stipulation, attached hereto as Exhibit A, shall apply to SEC filings according to its terms, at the option of the Commission.

g. **Stipulation Regarding the Creation of the Service Company**

KCPL agrees that it will file an Application with the Commission, pursuant to 4 CSR 240-2.060(7), and obtain the Commission's approval, before KCPL sells, assigns, leases or transfers any assets from KCPL to its proposed ServCo. KCPL agrees to provide the Staff and Public Counsel with copies of all documents that must be filed with the SEC or FERC relating to creation of ServCo.

4 CSR 240-20.015, Affiliate Transactions, sets forth financial standards, evidentiary standards and record-keeping requirements applicable to any Commission regulated electrical corporation whenever such corporation participates in transactions with any affiliated entity (except with regard to HVAC services as defined in Section 386.754, RSMo 2000). Section (5) (Records of Affiliated Entities) of said Rule provides, *inter alia*, that:

(A) Each regulated electrical corporation shall ensure that its parent and any other affiliated entities maintain books and records that include, at a minimum, the following information regarding affiliate transactions:

\*\*\* \*\*

5. Names and job descriptions of the employees from the regulated electrical corporation that transferred to a nonregulated affiliated entity;

In addition to the above-stated requirements, KCPL agrees to seek agreement with the Staff and Public Counsel concerning an appropriate notification procedure to be utilized regarding the transfer of functions to ServCo from KCPL.

KCPL further agrees that the Commission may make its determination regarding the ratemaking treatment to be accorded the creation of ServCo in a subsequent ratemaking proceeding. All contracts, agreements or arrangements of any kind, including any amendments thereto, between KCPL and ServCo, as these terms are defined in 15 U.S.C. § 79b, as

subsequently amended, that are required to be filed with and/or approved by the SEC pursuant to PUHCA, as subsequently amended, shall be conditioned upon the following without modification or alteration: Neither KCPL nor any of its affiliates, will seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost (including cost of capital) or allocation incurred or accrued by KCPL in, or as a result of, a contract, agreement, arrangement, or transaction with ServCo on the basis that such expense, charge, cost (including cost of capital) or allocation has itself been filed with or approved by the SEC or was incurred pursuant to a contract, arrangement, agreement or allocation method that was filed with or approved by the SEC.

3. **Surveillance Condition**

KCPL agrees that, following the close of the transaction, KCPL will continue to provide the Commission with annual surveillance reports on a total company and Missouri jurisdictional basis similar to the annual surveillance reports currently provided by KCPL.

4. **Modification and Enhancement to KCPL's Cost Allocation Manual**

KCPL agrees to the various modifications and enhancements of its Cost Allocation Manual ("CAM"), as identified in Exhibit B to the Stipulation And Agreement, and agrees to submit to the Staff a modified and enhanced CAM within 120 days of the close of the transaction.

**5. Financial Projections in Pro Forma Financial Statements**

KCPL believes that the financial information and accompanying adjustments contained in Exhibit 2 of the Application, as amended, are reasonable projections of the actual and expected financial condition of KCPL and its affiliates, based upon the information available at the time of the filing of Exhibit 2. However, KCPL also acknowledges that the financial information contained in Exhibit 2 may change before the transaction closes, as a result of normal business operations. KCPL agrees to provide to the Staff and Public Counsel a copy of the actual journal entries that are made by KCPL within thirty (30) days of completion of the journal entries on the books and records of KCPL following the close of the transaction. In the event that the actual results at the close of the transaction deviate from the projections contained in Exhibit 2, as amended, by more than ten (10%) percent, KCPL agrees to provide the Staff and Public Counsel with an explanation for any deviation from the projections contained in Exhibit 2, as amended.

**6. Financial Conditions**

In order to resolve concerns raised by the parties regarding financing issues, GPE and KCPL agree to the following:

- a. GPE ("Holding Company") and its subsidiaries will not conduct any material business activities that are not part of the "electric industry or natural gas industry business" or are not reasonably related to business activities derived from changes in the electric industry or natural gas industry as a result of competition, without Commission approval. With regard to expansion of KCPL's current operations in the telecommunications and information businesses, activities will be limited to those considered reasonably related to current operations.
- b. GPE will not pledge KCPL's common stock as collateral or security for the debt of the Holding Company or a subsidiary without Commission approval.

- c. KCPL will not guarantee the notes, debentures, debt obligations or other securities of the Holding Company or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.
- d. GPE agrees to maintain consolidated common equity of no less than 30 percent of total consolidated capitalization. GPE and KCPL agree to maintain KCPL's common equity at no less than 35 percent. Total capitalization is defined as common equity, preferred stock, long-term debt and short-term debt in excess of CWIP. Common equity is defined as par value of common stock, plus additional paid-in capital, plus retained earnings, minus treasury stock.
- e. Reports:

KCPL shall submit quarterly to the Financial Analysis Department of the Missouri Public Service Commission certain key financial ratios as defined by Standard and Poor's Credit Rating Service, as follows:

  - (1) Pre-tax interest coverage;
  - (2) After-tax coverage of interest and preferred dividends;
  - (3) Funds flow interest coverage;
  - (4) Funds from operations to total debt;
  - (5) Total debt to total capital (including preferred); and
  - (6) Total common equity to total capital
- f. KCPL's total long-term borrowings including all instruments shall not exceed KCPL's regulated rate base.
- g. KCPL shall maintain separate debt. KCPL agrees to maintain its debt at investment grade. This condition should not be construed to mean the Staff recommends or will recommend in any future application to the Commission or Commission proceeding the approval of any preferred stock issuance below investment grade.
- h. GPE, KCPL and the Staff agree that the allowed return on common equity and other costs of capital will not increase as a result of the reorganization.
- i. GPE and KCPL guarantee that the customers of KCPL shall be held harmless if the reorganization creating GPE, with KCPL as a subsidiary, results in a higher revenue requirement for KCPL than if the reorganization had not occurred.
- j. GPE and KCPL shall provide the Staff and Public Counsel unrestricted access to all written information provided to common stock, bond, or bond rating analysts, which directly, or indirectly, pertains to KCPL or any affiliate that exercises influence or control over KCPL, or has affiliate transactions with KCPL. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition,

“written” information includes, but is not limited to, any written and printed material, audio and videotapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed to be a waiver of GPE’s or KCPL’s right to seek protection of the information.

- k. The Holding Company will provide the Staff and Public Counsel, upon request and with appropriate notice, all information needed to verify compliance with the conditions authorized in this proceeding and any other information relevant to the Commission’s ratemaking, financing, safety, quality of service and other regulatory authority over KCPL.

**7. Prospective Merger Conditions**

GPE agrees that it will not, directly or indirectly, acquire or merge with a public utility or the affiliate of a public utility, where such affiliate has a controlling interest in a public utility unless GPE has requested prior approval for such a transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction. In addition, GPE agrees that it will not allow itself to be acquired by a public utility or the affiliate of a public utility, where such affiliate has a controlling interest in a public utility, unless GPE has requested prior approval for such a transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction.

**8. Transaction Costs**

KCPL agrees that it shall not seek to recover the amount of any transaction costs in rates associated with the transactions that are the subject of this proceeding in any Missouri proceeding, and agrees to account for transaction costs in a manner that will enable the Staff and Public Counsel to quantify and seek disallowances of such transaction costs, if necessary, from rates in any Missouri rate proceeding.



9. Combustion Turbines

Following the close of the transactions that are the subject of this proceeding, KCPL, GPE, and GPP expect that five (5) combustion turbine generation units will be leased and operated by GPP. KCPL currently has a memorandum of understanding dated January 10, 2001, with General Electric Company that gives KCPL the opportunity to enter into a contract to purchase or lease five (5) combustion turbine generation units.

KCPL presently anticipates that it will need an additional 231 megawatts of capacity in the next three years. KCPL, GPE, and GPP agree that, prior to the transfer of the rights contained in the memorandum of understanding, KCPL and GPP and/or any GPE affiliate to which the transfer of rights is made will initiate a proceeding before the Commission to address all issues related to the transfer of the rights contained in the memorandum of understanding. KCPL further agrees that, prior to the transfer of rights contained in the memorandum of understanding to any entity other than GPP and/or any GPE affiliate, it will provide timely notice to Staff and Public Counsel relating to the transfer of the rights contained in the memorandum of understanding. KCPL, Staff and Public Counsel reserve the right to assert their respective positions regarding this matter in this future proceeding.

KCPL might enter into a purchase supply agreement with GPP to acquire capacity and energy. Any purchase supply agreement that KCPL enters into with GPP or any GPE affiliate to acquire capacity and associated energy will be cost based. Any purchase supply agreement between KCPL and GPP and/or any GPE affiliate will be submitted by KCPL for review and approval by the Commission.

10. **Membership In A Regional Transmission Organization (RTO) and Transfer of Control of Assets Related To Membership In An RTO**

Commission approval shall be required for the sale, assignment, lease or other disposition, including but not limited to a transfer of control, of transmission facilities by KCPL to an affiliated or unaffiliated regional transmission organization, independent system operator, or similar entity that is subject to the jurisdiction of FERC. In the event that KCPL seeks to withdraw from its participation in an affiliated or unaffiliated regional transmission organization, independent system operator, or similar entity that is subject to the jurisdiction of FERC, KCPL shall file a notice of withdrawal with the Commission. Such withdrawal shall become effective when the Commission and other applicable regulatory bodies approve or authorize such withdrawal.

11. **The Commission's Rights**

Nothing in this Stipulation And Agreement is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, or any statutory obligation.

12. **Staff Requirement**

The Staff shall file suggestions or a memorandum in support of this Stipulation And Agreement and other parties shall have the right to file responsive suggestions or a memorandum.

13. **Staff's Rights**

If requested by the Commission, the Staff shall have the right to submit to the Commission an additional memorandum addressing the matters requested by the Commission. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission within five (5) days of receipt of the Staff's memorandum, a responsive memorandum which shall also be served on all parties. All memoranda submitted by

the parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation And Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation And Agreement, whether or not the Commission approves and adopts this Stipulation And Agreement.

The Staff also shall have the right to provide, at any agenda meeting at which this Stipulation And Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosures, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

**14. No Acquiescence**

None of the signatories to this Stipulation And Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, accounting authority order principle, cost of capital methodology, capital structure, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence, that may underlie this Stipulation And Agreement, or for which provision is made in this Stipulation And Agreement.

**15. Negotiated Settlement**

This Stipulation And Agreement represents a negotiated settlement. Except as specified herein, the signatories to this Stipulation And Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation And Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Stipulation And Agreement in the instant proceeding, or in any way condition its approval of same.

**16. Provisions Are Interdependent and Effect Of Failure To Receive Commission's Total, Unconditional Approval**

The provisions of this Stipulation And Agreement have resulted from negotiations among the signatories and are interdependent. In the event that the Commission does not approve and adopt the terms of this Stipulation And Agreement in total, it shall be void and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

If the Commission does not unconditionally approve this Stipulation And Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Stipulation And Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any party has to a hearing on the issues presented by the Stipulation And Agreement, for cross-examination, or for a decision in accordance with Section 536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the parties shall retain all procedural and due process rights as fully as though this Stipulation And Agreement had not been presented for approval, and any testimony or exhibits that have been offered or received in support of this Stipulation And Agreement shall thereupon become privileged as reflecting the substantive content of settlement discussions and

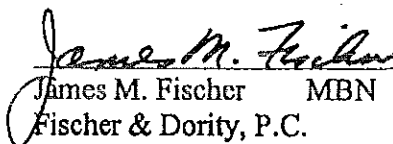
shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

17. Waiver Of Rights Upon Commission Acceptance

In the event the Commission accepts the specific terms of the Stipulation And Agreement, the signatory parties waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510 RSMo 2000. This waiver applies only to a Commission Report And Order respecting this Stipulation And Agreement issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation And Agreement.

WHEREFORE the Staff, the Office of the Public Counsel and Kansas City Power & Light Company, Great Plains Energy, Incorporated, and Great Plains Power, Incorporated hereby request that the Commission approve the instant Stipulation And Agreement.

Respectfully submitted:

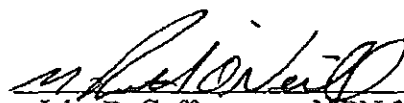
  
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Missouri Public Service Commission Staff

And

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Attorneys for  
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Great Plains Energy, Incorporated  
And Great Plains Power, Incorporated



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Attorneys for  
Office of the Public Counsel

## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Entry of Appearance has been hand-delivered or mailed, First Class, postage prepaid, this 9<sup>th</sup> day of July, 2001, to:

John B. Coffman,  
Office of the Public Counsel  
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Jefferson City MO 65102

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Missouri Public Service Commission  
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Missouri Public Service Commission  
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Duncan Kincheloe  
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Columbia MO 65203

William D. Geary  
Assistant City Attorney  
2700 City Hall  
414 E. 12<sup>th</sup> Street  
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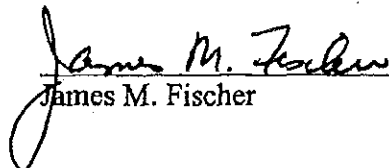
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Kansas City MO 64106

Robert C. Johnson  
Lisa C. Langneckert  
Law Office of Robert C. Johnson  
720 Olive Street  
Suite 2400  
St. Louis MO 63101

  
James M. Fischer

## **CONTINGENT PROCEDURE STIPULATION**

### **1.0 APPLICABILITY**

- 1.1 Principles stated in this Contingent Procedure Stipulation ("Procedure Stipulation") shall govern the situations described in Sections II (e) and (f) of the Stipulation And Agreement.
- 1.2 Changes to this Procedure Stipulation may be proposed from time-to-time by Kansas City Power & Light Company ("KCPL") or Great Plains Energy, Incorporated ("GPE"), the Commission Staff or the Office of the Public Counsel ("OPC" or "Public Counsel"), subject to the approval of the Commission; provided, however, that KCPL, the Commission Staff and the OPC shall meet and discuss any such proposed changes prior to the submission of such changes to the Commission by KCPL or GPE, the Commission Staff or the OPC.

### **2.0 DEFINITIONS**

When used in this Procedure Stipulation, the following terms shall have the respective meanings set forth below:

- 2.1 "Affiliate" means an entity that is GPE, a subsidiary of KCPL, a subsidiary of GPE (other than KCPL), or other subsidiary within the Holding Company organization.
- 2.2 "Affiliate Contract" means an Affiliate Operating Contract, an Affiliate Sales Contract, an Affiliate Surety Contract, a Section 205 Contract, a Service Agreement, or an amendment to any such contract.
- 2.3 "Affiliate Operating Contract" means a contract, other than a Section 205 Contract, between KCPL and one or more of its Affiliates providing for the operation of any part of KCPL's generating, transmission and/or distribution facilities by such Affiliate(s).
- 2.4 "Affiliate Sales Contract" means a contract, other than an Affiliate Operating Contract or a Section 205 Contract, between KCPL and one or more of its Affiliates involving the purchase of Assets, Goods or Services.
- 2.5 "Affiliate Surety Contract" means a contract between KCPL and one or more of its Affiliates involving the assumption by KCPL of any liability as a guarantor, endorser, surety, or otherwise in respect of any security or contract of an Affiliate.



- 2.6 "Assets" means any land, plant, equipment, franchises, licenses, or other right to use assets.
- 2.7 "Commission" means the Missouri Public Service Commission or any successor governmental agency.
- 2.8 "Commission Staff" or "Staff" means the Staff of the Missouri Public Service Commission.
- 2.9 "Entity" means a corporation or a natural person.
- 2.10 "FERC" means the Federal Energy Regulatory Commission, or any successor governmental commission.
- 2.11 "Goods" means any goods, inventory, materials, supplies, appliances, or similar property (except electric energy and capacity).
- 2.12 "Non-Utility Affiliate" means an Affiliate which is neither a public utility nor a Utility Service Company.
- 2.13 "OPC" or "Public Counsel" means the Office of the Public Counsel.
- 2.14 "Review Period" means a period of ninety (90) consecutive calendar days commencing on the first day immediately following the date that KCPL or GPE submits an Affiliate Contract to the Commission for the Commission Staff's review. Any part of the Review Period for a particular Affiliate Contract may be waived by agreement of KCPL, the Commission Staff and the OPC.
- 2.15 "SEC" means the United States Securities and Exchange Commission, or any successor governmental agency.
- 2.16 "Section 205 Contract" means an interconnection, interexchange, pooling, operating, transmission, power sale or ancillary power services contract or similar contract entered into between KCPL and an Affiliate and subject to regulation by the FERC pursuant to § 205 of the Federal Power Act, 15 U.S.C. § 824d, or any successor statute.
- 2.17 "Service Agreement" means the agreement entered into between KCPL, GPE, and an affiliated or subsidiary service company, under which services are provided by such services company to KCPL and GPE.
- 2.18 "Services" means the performance of activities having value to one party, such as managerial, financial, accounting, legal, engineering, construction, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, and other similar services.

- 2.19 "Subsidiary" means any corporation 10 percent (10%) or more of whose voting capital stock is controlled by another Entity; Subsidiaries of GPE are those corporations in which GPE owns directly or indirectly (or in combination with GPE's other Affiliates) 10 percent (10%) or more of such corporation's voting capital stock.
- 2.20 "KCPL's Holding Company" means GPE or its successor in interest.
- 2.21 "Utility Affiliate" means an Affiliate of KCPL which is also a public utility.
- 2.22 "Utility Service Company" means an Affiliate whose primary business purpose is to provide administrative and general or operating services to KCPL and Utility Affiliate(s).

3.0 AFFILIATE CONTRACTS REQUIRED TO BE FILED WITH THE SEC

The following will apply to Affiliate Contracts that are required to be filed with the SEC.

- 3.1 Prior to filing any such Affiliate Contract with the SEC or the Commission, KCPL will submit to the Commission Staff, the OPC, and the appropriate parties requesting a copy, a copy of the Affiliate Contract which it proposes to file with the SEC and the Commission.
- 3.1.1 If the Commission Staff clears the contract for filing, or does not object to it, and no objections from affected parties are submitted to KCPL (with a copy to the Commission Staff) during the Review Period for such contract, KCPL may file such contract with the SEC and the Commission. The contract will become effective upon the receipt of all necessary regulatory authorizations and will continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary regulatory authorizations.
- 3.1.2 If, during the expiration of the Review Period for such contract, the Commission Staff recommends that the Commission reject, disapprove or establish a proceeding to review such contract, or if an objection(s) is submitted to KCPL (with a copy to the Commission Staff) by an affected party (or parties), KCPL may file the contract with the Commission, but shall not file the contract with the SEC until at least thirty (30) days after the date that it is filed with the Commission; provided, that both such filings shall disclose the Commission Staff's recommendation or the objection(s) regarding the contract; provided, further, that if the Commission, within twenty (20) days after the contract is filed, institutes a proceeding to review such contract, KCPL shall not file the contract with the SEC unless and until KCPL receives a Commission Order which resolves issues raised with regard to the contract and which does not reject or disapprove the contract. The contract will become effective upon the receipt of all necessary

regulatory authorizations and will continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary authorizations.

- 3.2 After the Affiliate Contract has been filed with the Commission, the Commission may in accordance with Missouri law, reject or disapprove the contract, and upon such rejection or disapproval:
- 3.2.1 If such contract has not yet been accepted or approved by the SEC, KCPL will, as soon as possible, file to seek to withdraw its filing requesting SEC acceptance or approval of such contract; or
- 3.2.2 If such contract has been accepted or approved by the SEC and none of the other contracting parties are Utility Affiliates subject to any other state utility regulatory commission's jurisdiction, KCPL will:
- a. terminate such contract according to its terms; or
  - b. at its sole option, take such steps as are necessary to cause such contract to be amended in order to remedy the Commission's adverse findings with respect to such contract; KCPL will refile such amended contract with both the Commission and the SEC; such amendment will become effective only upon the receipt of all necessary regulatory authorizations, and the previous contract (to the extent already in effect) will remain in effect until such authorizations are received; if the SEC does not finally accept or approve such amendment within one (1) year from the date of KCPL's filing of such amendment with the SEC, KCPL will, upon request of the Commission, terminate the contract according to its terms.
- 3.2.3 If such contract has been accepted or approved by the SEC, and one or more of the other contracting parties are Utility Affiliates subject to another state utility regulatory commission's jurisdiction, KCPL will make a good faith effort to terminate, amend or modify such contract in a manner which remedies the Commission's adverse findings with respect to such contract. KCPL will request to meet with representatives from the affected state commissions and make a good faith attempt to resolve any differences in their respective interests regarding the subject contract. If agreement can be reached to terminate, amend, or modify the contract in a manner satisfactory to the contracting parties and the representatives of each state commission, KCPL shall file such amended contract with the Commission and the SEC under the procedures set forth in this Section 3. If no agreement can be reached satisfactory to each contracting party and to each affected state commission, after good faith negotiations, KCPL has no further obligations under this Procedure Stipulation. Nothing herein affects, modifies or

alters in any way the rights and duties of the Commission under applicable state and federal law.

4.0 AFFILIATE CONTRACTS REQUIRED TO BE FILED WITH THE FERC

The following will apply to Affiliate Contracts that are required to be filed with the FERC.

4.1 Prior to filing any Affiliate Contract with the FERC or the Commission, KCPL will submit to the Commission Staff, the OPC and appropriate parties requesting a copy, a copy of the Affiliate Contract which it proposes to file with the FERC and the Commission.

4.1.1 If the Commission Staff clears the contract for filing, or does not object thereto, and no objections from affected parties are submitted to KCPL, (with a copy to the Commission Staff) during the Review Period for such contract, KCPL may file such contract with the FERC and the Commission. The contract will become effective upon the receipt of all necessary regulatory authorizations and will continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary regulatory authorizations.

4.1.2 If, during or upon the expiration of the Review Period for such contract, the Commission Staff recommends that the Commission reject, disapprove or establish a proceeding to review such contract, or if any objection(s) is submitted to KCPL (with a copy to the Commission Staff) by an affected party (or parties), KCPL may file the contract with the Commission, but shall not file the contract with the FERC until at least thirty (30) days after the date that it is filed with the Commission; provided, that if the Commission, within twenty (20) days after the contract is filed, institutes a proceeding to review such contract, KCPL shall not file the contract with the FERC unless and until KCPL receives a Commission Order which resolves issues raised with regard to the contract and which does not reject or disapprove the contract. The contract will become effective upon the receipt of all necessary regulatory authorizations and will continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary regulatory authorizations.

4.2 After the Affiliate Contract has been filed with the Commission, the Commission may in accordance with Missouri law, reject or disapprove the contract, and upon such rejection or disapproval:

4.2.1 If such contract has not yet been accepted or approved by the FERC, KCPL will, as soon as possible, file to seek to withdraw its filing requesting the FERC acceptance or approval of such contract; or

4.2.2 If such contract has been accepted or approved by the FERC and none of the other contracting parties are Utility Affiliates subject to any other state utility regulatory commission's jurisdiction, KCPL will:

- a. terminate such contract according to its terms; or
- b. at its sole option, take such steps as are necessary to cause such contract to be amended in order to remedy the Commission's adverse findings with respect to such contract; KCPL will refile such amended contract with the Commission and the FERC; such amendment will become effective only upon the receipt of all necessary regulatory authorizations, and the previous contract (to the extent already in effect) will continue in effect until such authorizations are received; if the FERC does not finally accept or approve such amendment within one (1) year from the date of KCPL's filing of such amendment with the FERC, KCPL will, upon request of the Commission, terminate the contract according to its terms.

4.2.3 If such contract has been accepted or approved by the FERC and one or more of the other contracting parties are Utility Affiliates subject to another state utility regulatory commission's jurisdiction, KCPL will make a good faith effort to terminate, amend or modify such contract in a manner which remedies the Commission's adverse findings with respect to such contract. KCPL will request to meet with representatives from the affected state commissions and make a good faith attempt to resolve any differences in their respective interests regarding the subject contract. If agreement can be reached to terminate, amend, or modify the contract in a manner satisfactory to the contracting parties and the representatives of each state commission, KCPL shall file such amended contract with the Commission and the FERC under the procedure set forth in this Section 4. If no agreement can be reached satisfactory to each contracting party and each affected state commission, after good faith negotiations, KCPL has no further obligations under this Procedure Stipulation. Nothing herein affects, modifies or alters in any way the rights and duties of the Commission under applicable state and federal law.

**CAM MODIFICATIONS  
STIPULATION AND AGREEMENT  
KANSAS CITY POWER & LIGHT COMPANY  
CASE NO. EM-2001-464**

1. KCPL's Cost Allocation Manual ("CAM") will be modified to identify and describe all KCPL functions that will provide support to nonregulated affiliated business units, including the Holding Company.  
The information provided will include:
  - A. A listing of each function.
  - B. The positions and numbers of employees providing each function.
  - C. The procedures to be used to measure and assign costs to nonregulated business units for each function provided by KCPL.
  
2. The CAM will be modified to include:
  - A. A description of all services and goods that will be provided to KCPL from each affiliate of KCPL.
  - B. A description of all services and goods that will be provided to affiliated companies from KCPL.
  - C. The dollar amount of each service and good charged to each affiliate by KCPL, and the total cost related to each service and good listed.
  - D. The dollar amount of each service and good bought from each affiliate from KCPL, and the total cost related to each service and good listed.
  - E. A detailed discussion of the basis for determining the charges from the regulated utility, affiliated companies and the Holding Company, including:
    - a. If costs are allocated, a description of the cost allocation process employed for each service and good.
    - b. How direct, indirect and common activities are assigned for each service and good.
    - c. How market value for each service and good is determined.
    - d. A description of the criteria employed to determine whether volume discounts or other pricing considerations are to be provided to KCPL or affiliates.
  
3. The CAM will be modified to include a Code of Conduct to ensure adherence to the policies and procedures incorporated within the CAM.
  - A. Training will be provided and information disseminated regarding the current policies and procedures and any future modification to them.
  - B. KCPL will enforce penalties, up to and including possible termination, for noncompliance with its policies and procedures.
  - C. A designated person will be responsible for enforcement of the policies and procedures.

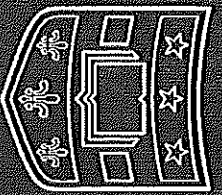
- D. KCPL will conduct regularly scheduled internal and/or external audits to examine compliance with its policies and procedures.
  - E. At least once a year, KCPL will consider whether modifications to the Code of Conduct are necessary to support appropriate compliance with the Company's policies and procedures. If modifications to the Code of Conduct are made by KCPL, they will be provided as part of the overall CAM filing.
4. KCPL will file as part of the CAM the following organization charts:
- A. Total family of companies within the Holding Company.
  - B. KCPL alone.
  - C. Affiliates doing business with KCPL.
5. The CAM will be modified to include a listing of all deregulated activities that will be provided within the regulated company (KCPL) to nonaffiliated third party customers following formation of the Holding Company. The information to be provided in this area shall include:
- A. The amount of revenues and expenses for each deregulated activity for the last calendar year.
  - B. Listings of all KCPL cost centers/functions that will directly assign, indirectly assign, or allocate costs to each deregulated activity listed.

All of the above information (Items 1 through 5) shall be provided by KCPL to the Commission on an annual basis through the CAM filing process.

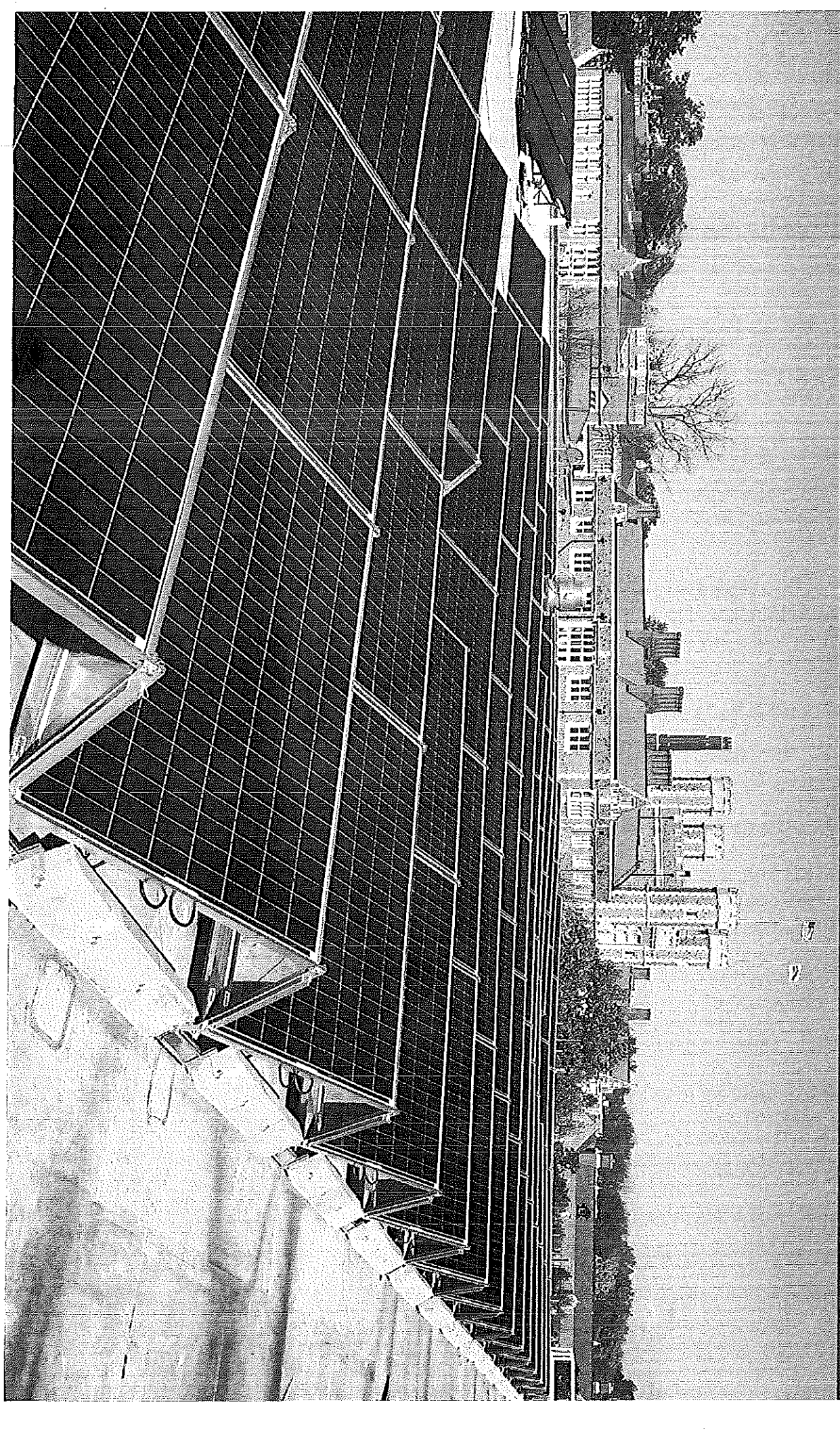
6. All CAM modifications agreed to as part of the Stipulation And Agreement resolving this case shall be filed with the Commission within 120 days of the effective date of the approval of the Stipulation And Agreement by the Commission.

Note: Any direct activities related to the study or formation of the Holding Company, or study or formation of new corporate entities after the Holding Company is implemented, will not be subject to allocation to regulated operations.





# Energy & Emissions Reduction at Washington University in St. Louis







# Washington University in St. Louis

**Established:** 1853

**Students:** 6,900 undergraduate, 6,400 graduate

**Employees:** 13,000 full-time faculty & staff

## SEVEN ACADEMIC SCHOOLS

Arts and Sciences

Business

Law

Art and Architecture

Engineering

Social Work

Medical School



# Our Campuses

DANFORTH CAMPUS  
169 acres

NORTH | WEST | SOUTH  
Administrative Campuses

OFF-CAMPUS PROPERTIES  
Residential & Commercial Units

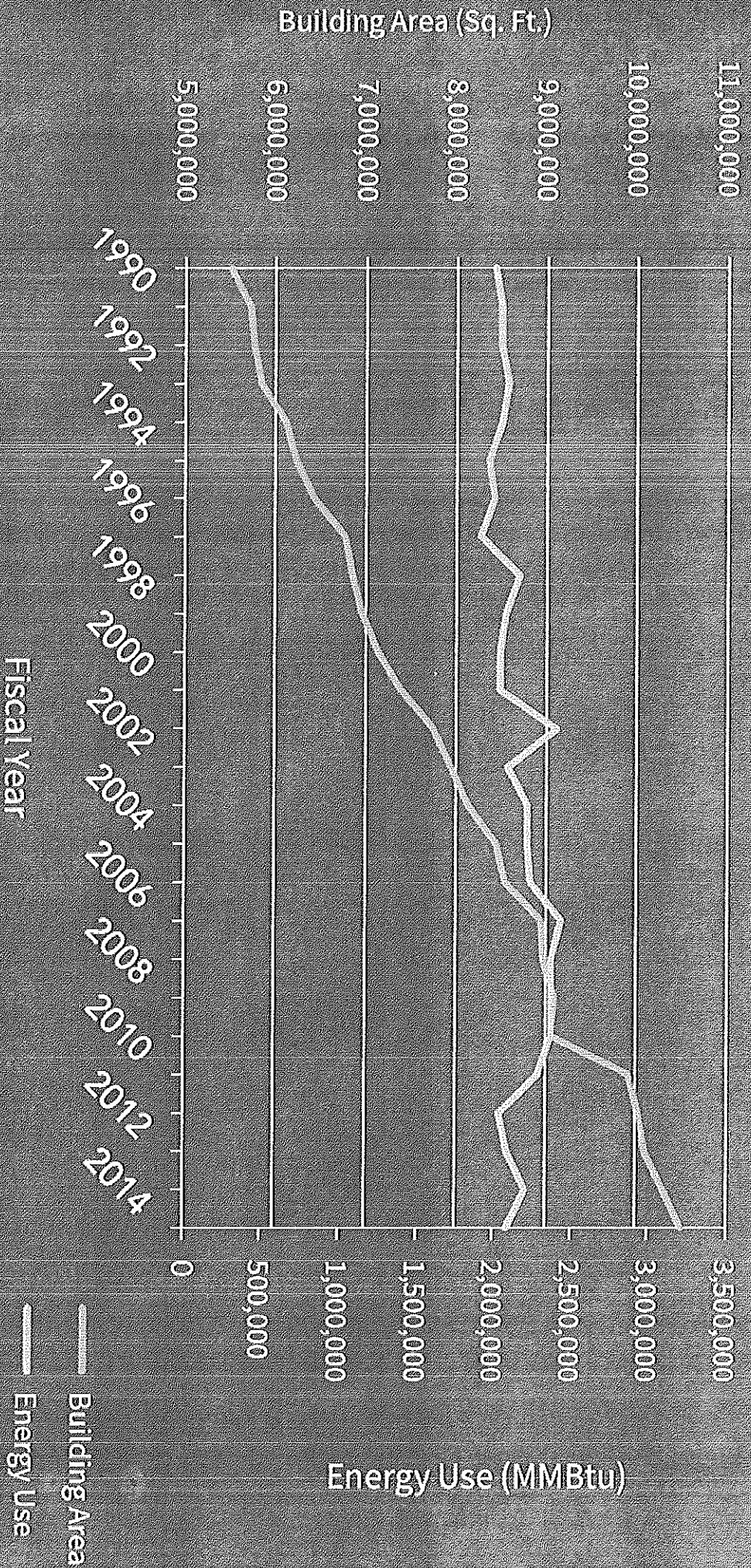
SCHOOL of MEDICINE  
164 acres





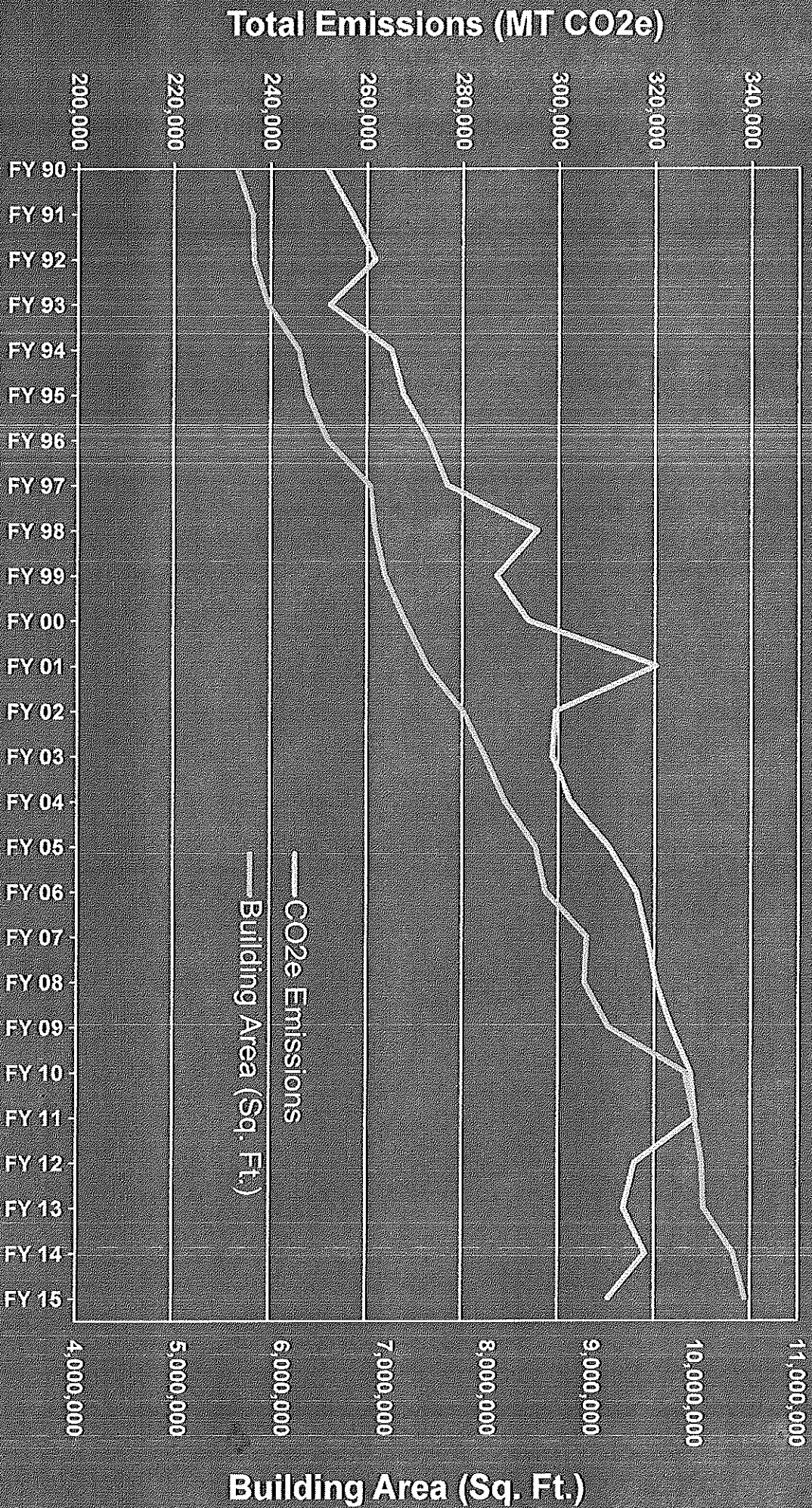
# Progress: Energy Conservation

## Building Area vs. Energy Use



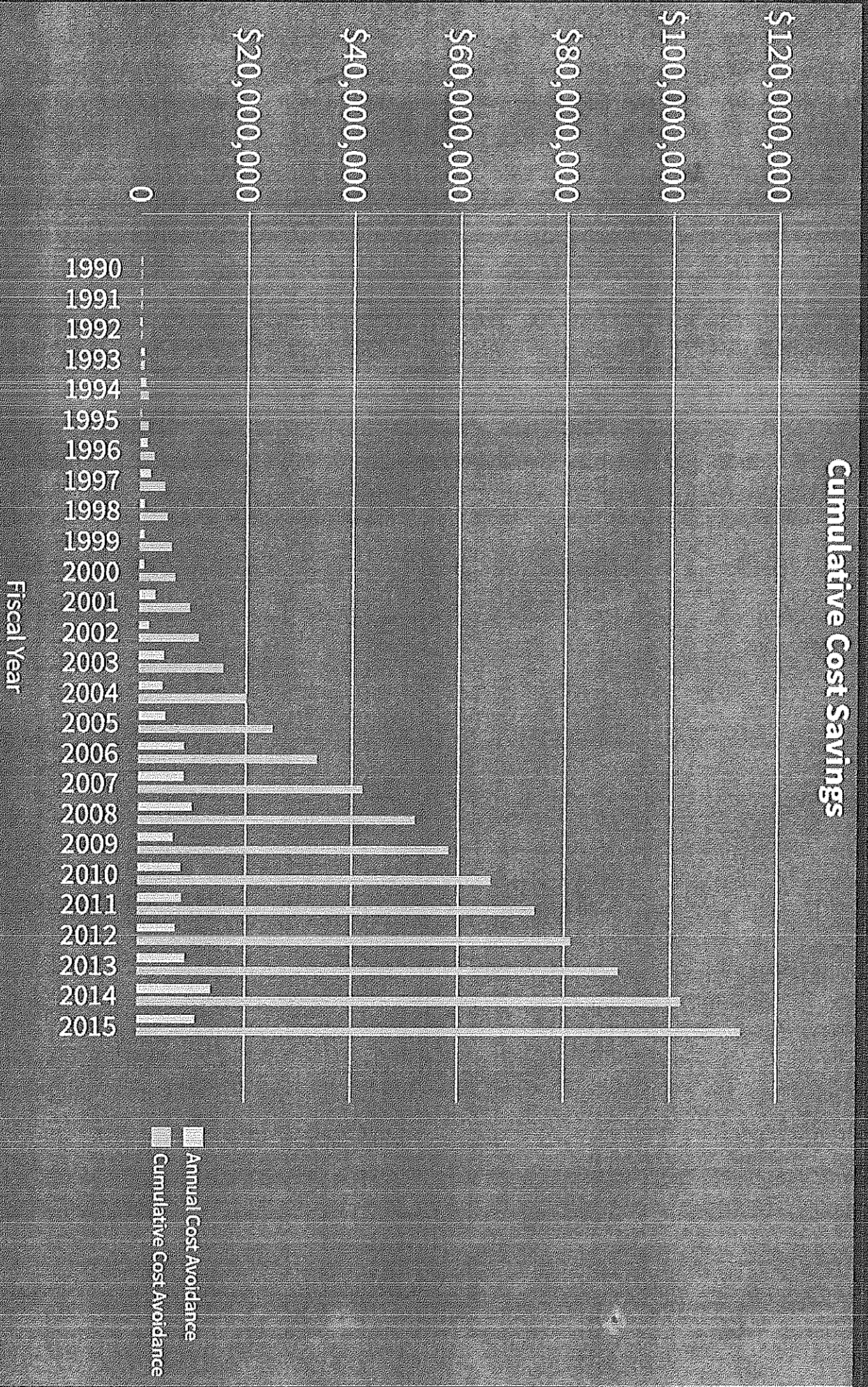


# Progress: Carbon Emissions Reduction





# Progress: Energy Cost Avoidance





2015-2020

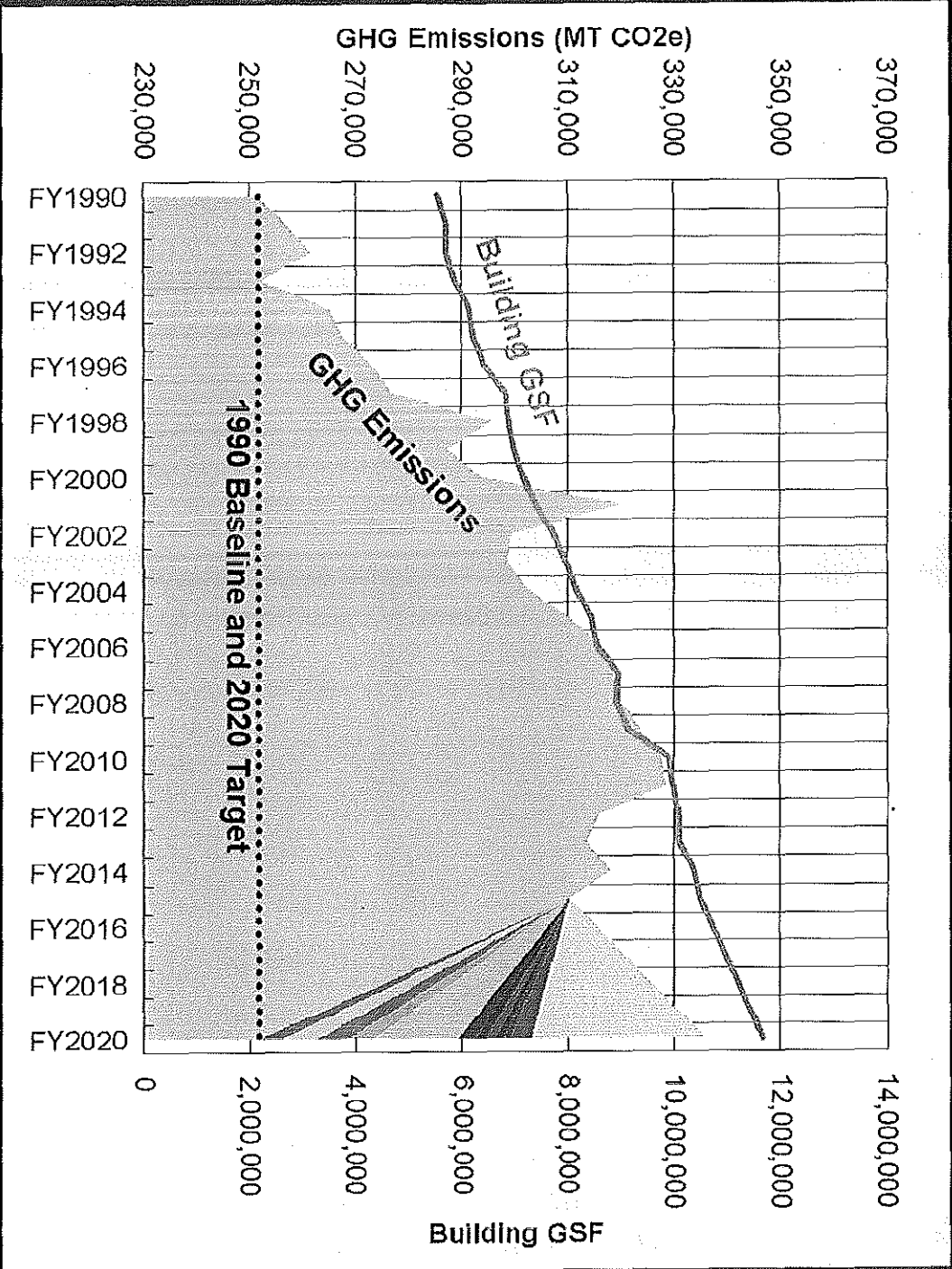
# Strategic Plan for SUSTAINABLE OPERATIONS





# 2015 Greenhouse Gas Reduction Goal

Reduce emissions to 1990 levels by 2020, including campus growth  
**1990 – 2020, without purchasing carbon offsets or RECs.**



## Reduction needed 2015 – 2020:

32,800 from grid  
51,300 from WU  
 84,100 metric tons

## Financials

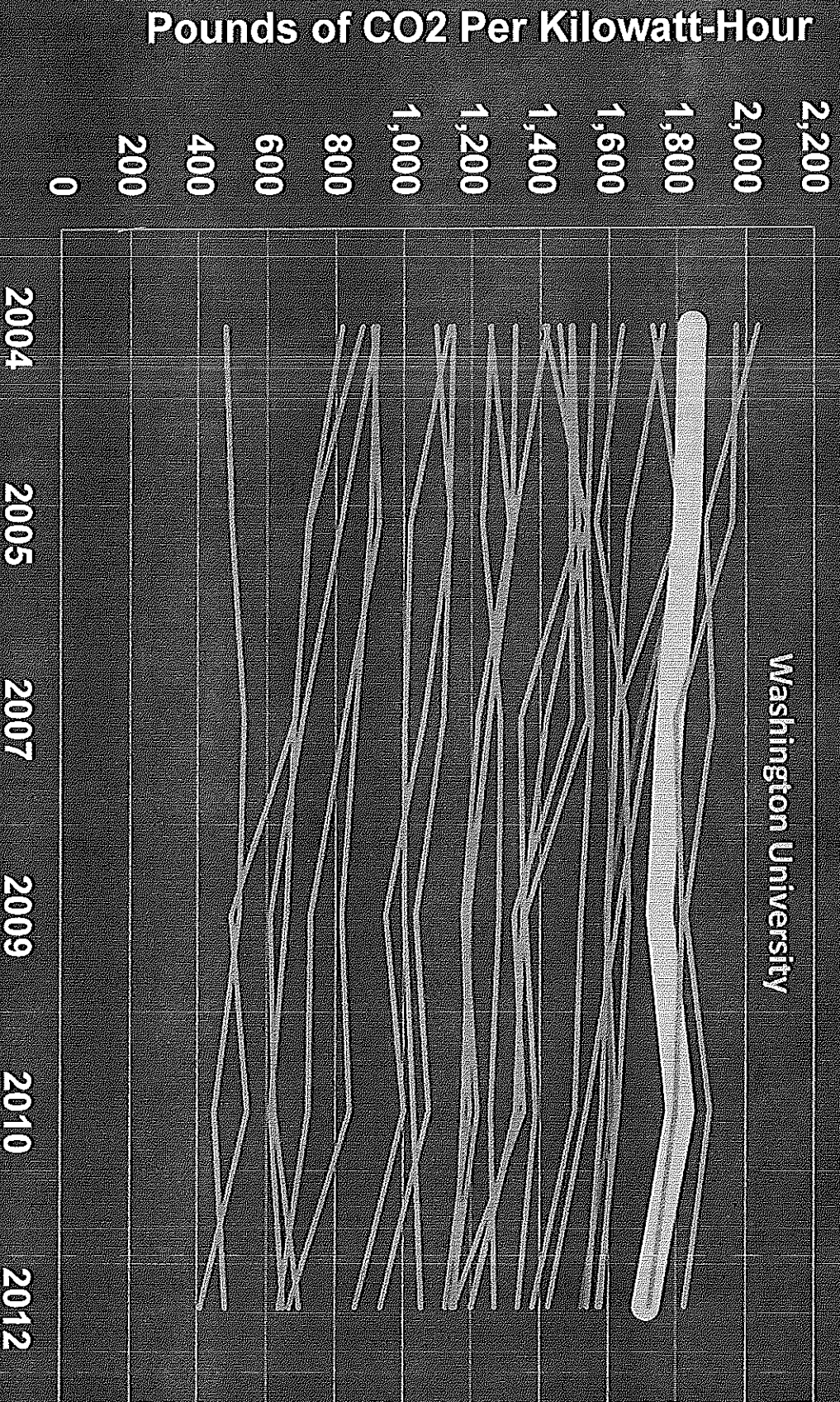
\$28M investment  
 7.4-year payback



# Carbon Intensity of Grid Electricity in Missouri

## Grid Electric Emissions by US Region

Washington University



Source: EPA eGRID



# Strategies to Achieve Energy and Emissions Goal

## Improve efficiency of existing infrastructure

- Utility systems
- Existing buildings

## Build highly efficient new buildings

## Invest in renewable energy where financially responsible

## Explore next generation low-carbon energy systems



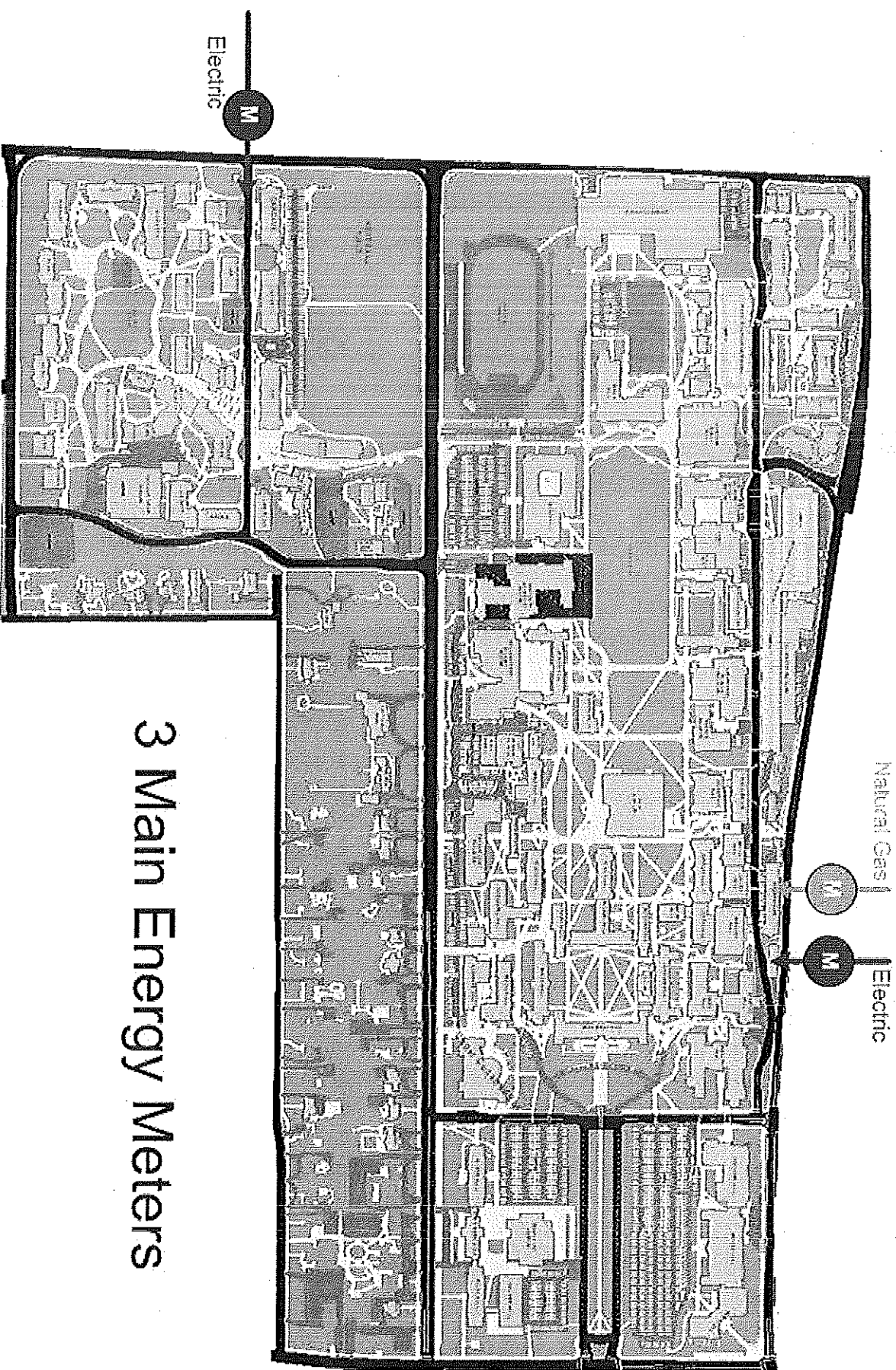
# Building Metering

Danforth and Medical campuses recently completed the installation of energy meters in all buildings – over 700 meters

Allows us to:

- Quickly flag and correct inefficiencies
- Identify unusually inefficient buildings to target for energy conservation projects
- Support incentive programs to encourage users to conserve energy
- Verify that new construction and energy efficiency projects are operating as designed

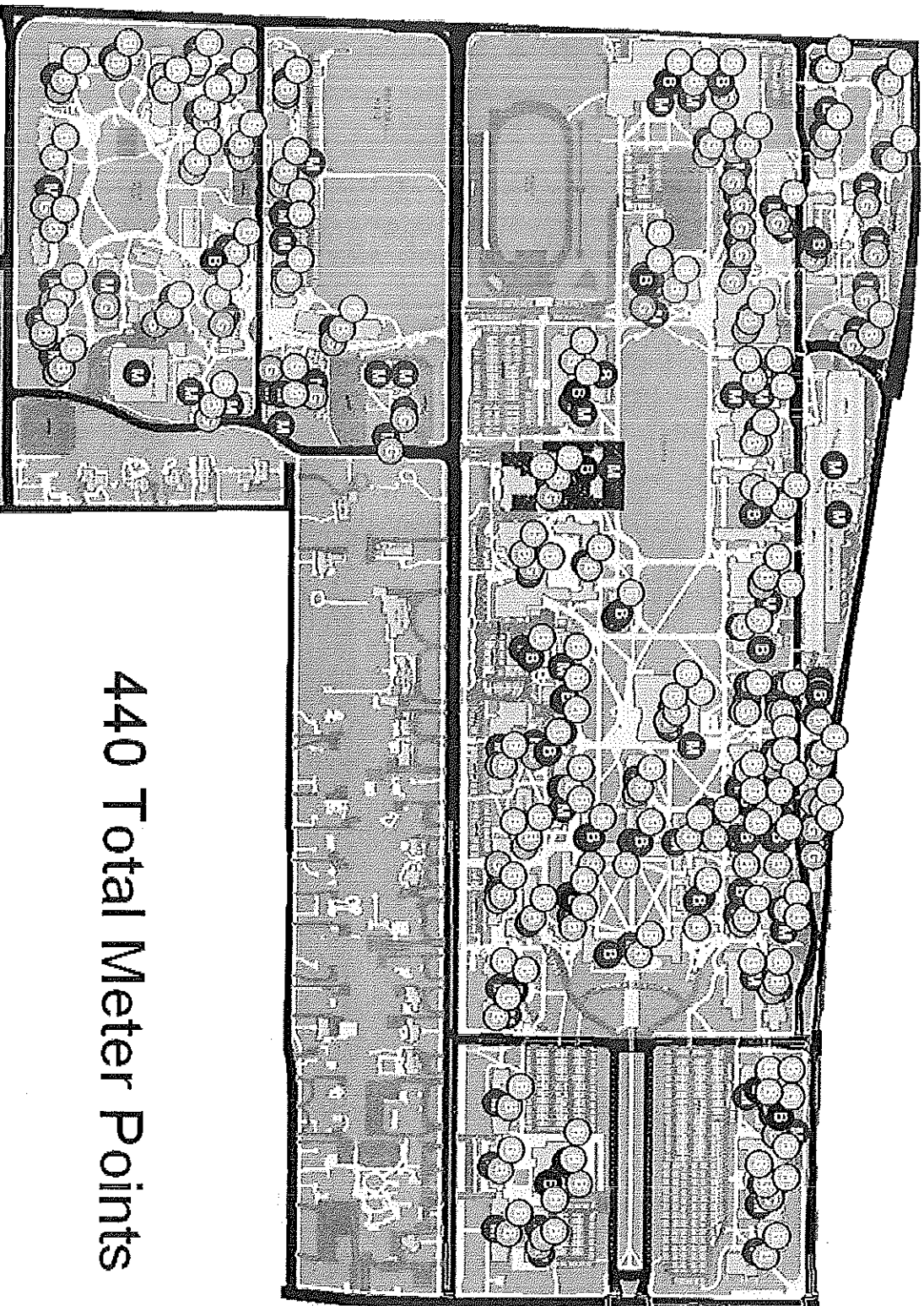
# Campus Energy Supply



3 Main Energy Meters



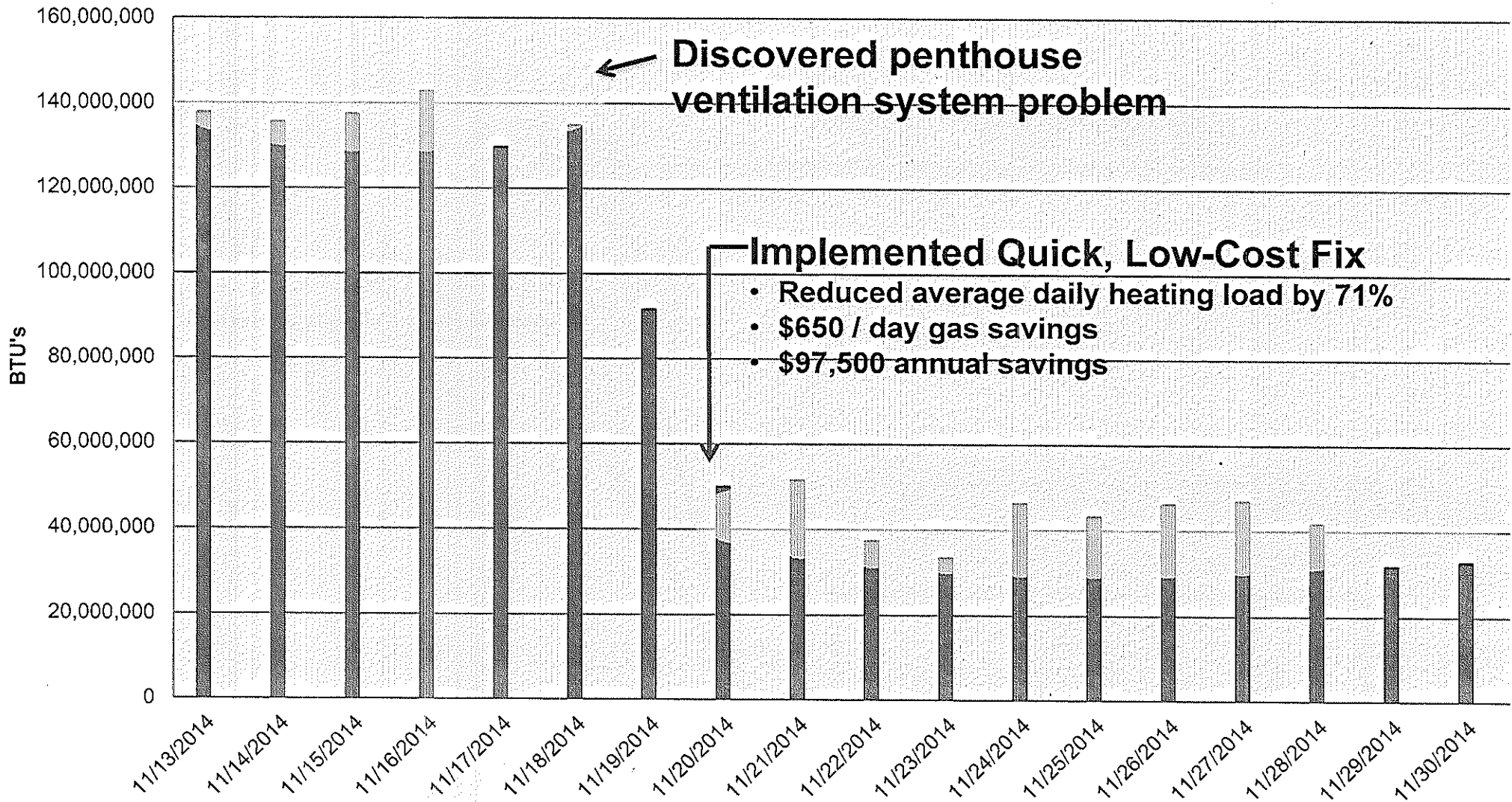
# Total Meter Points



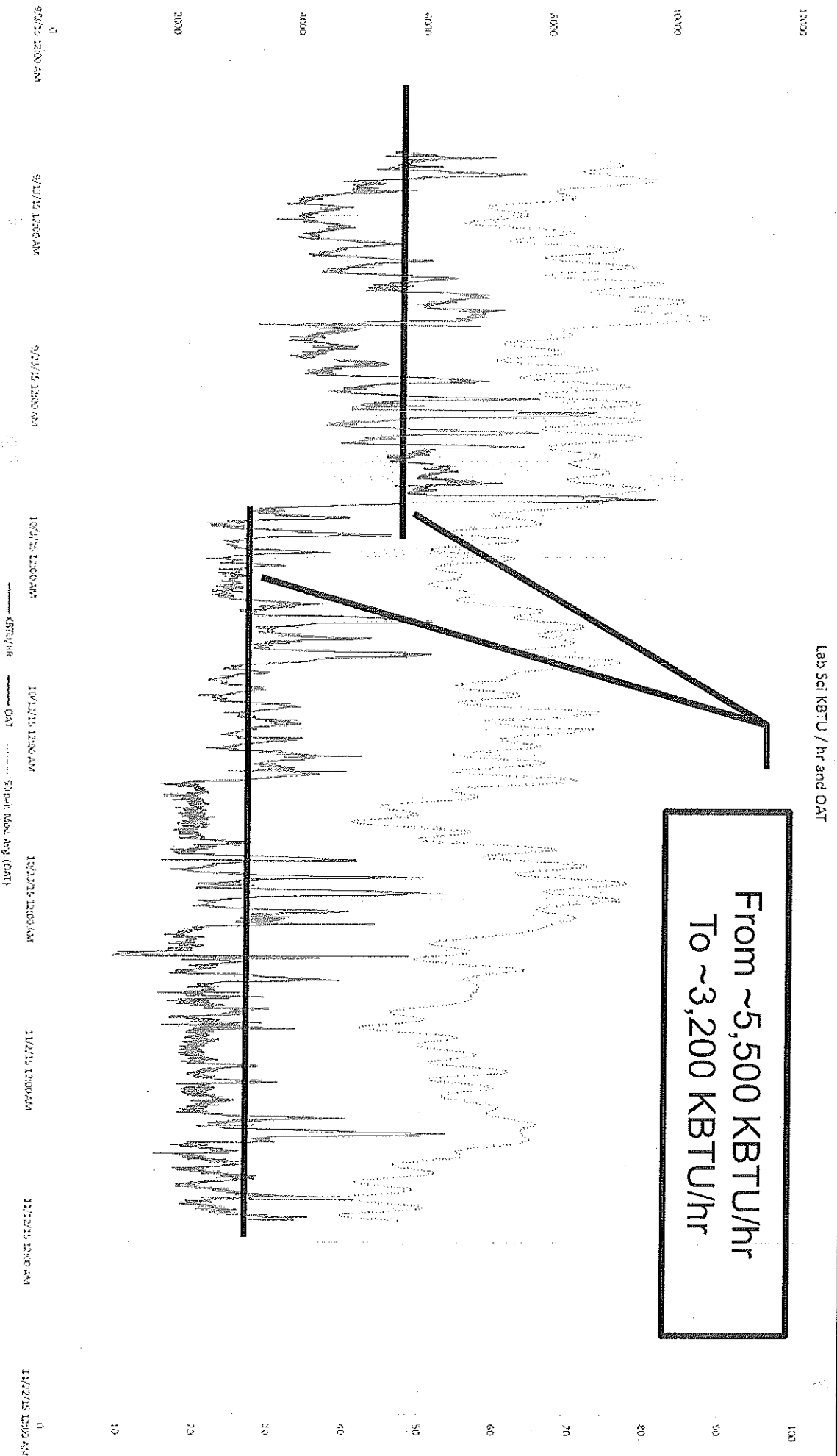
440 Total Meter Points

# Meters – Flag and Correct Anomalies

## Psychology Building Heating BTU's



# Validate Retro-Commissioning Results

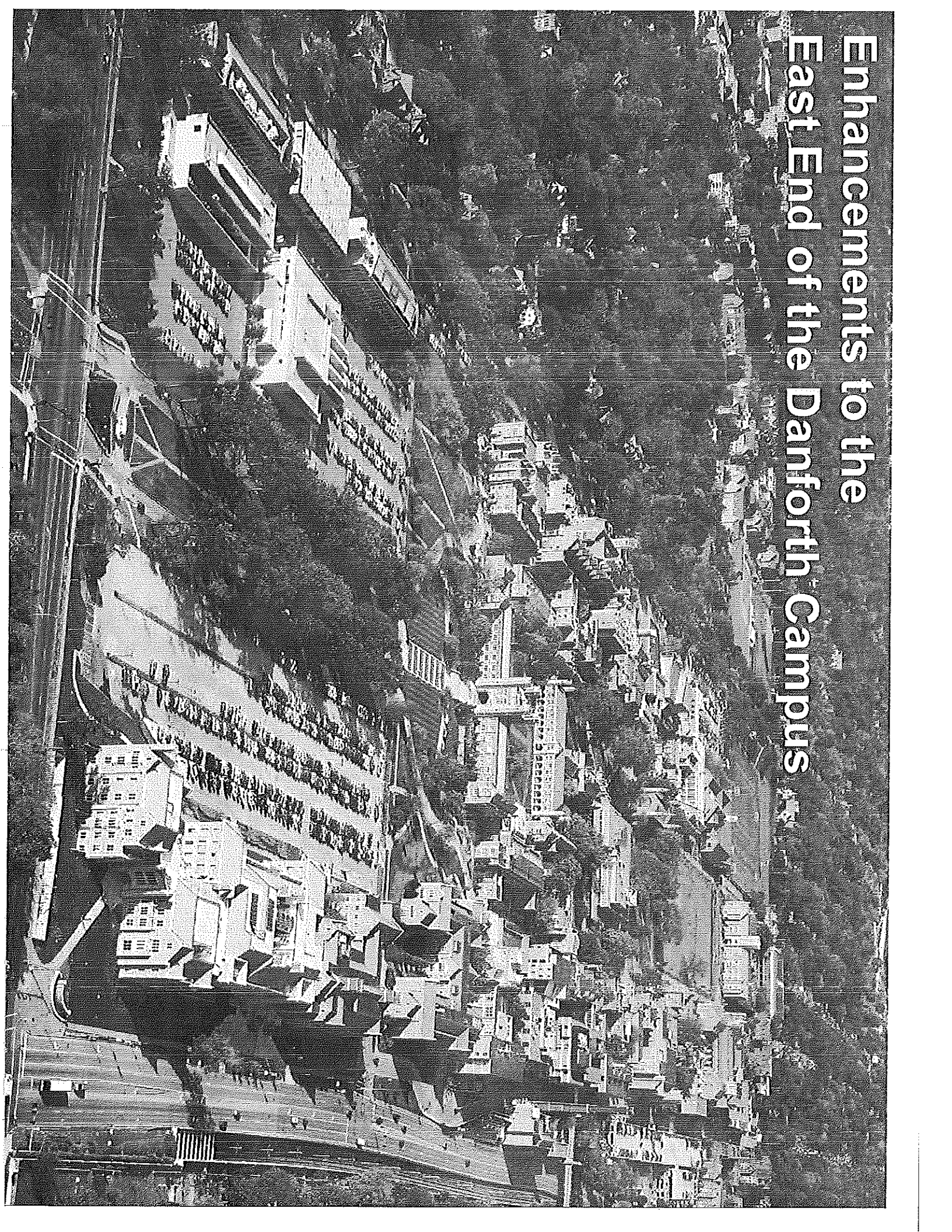




# Exploring Next Generation Low-Carbon Energy Systems

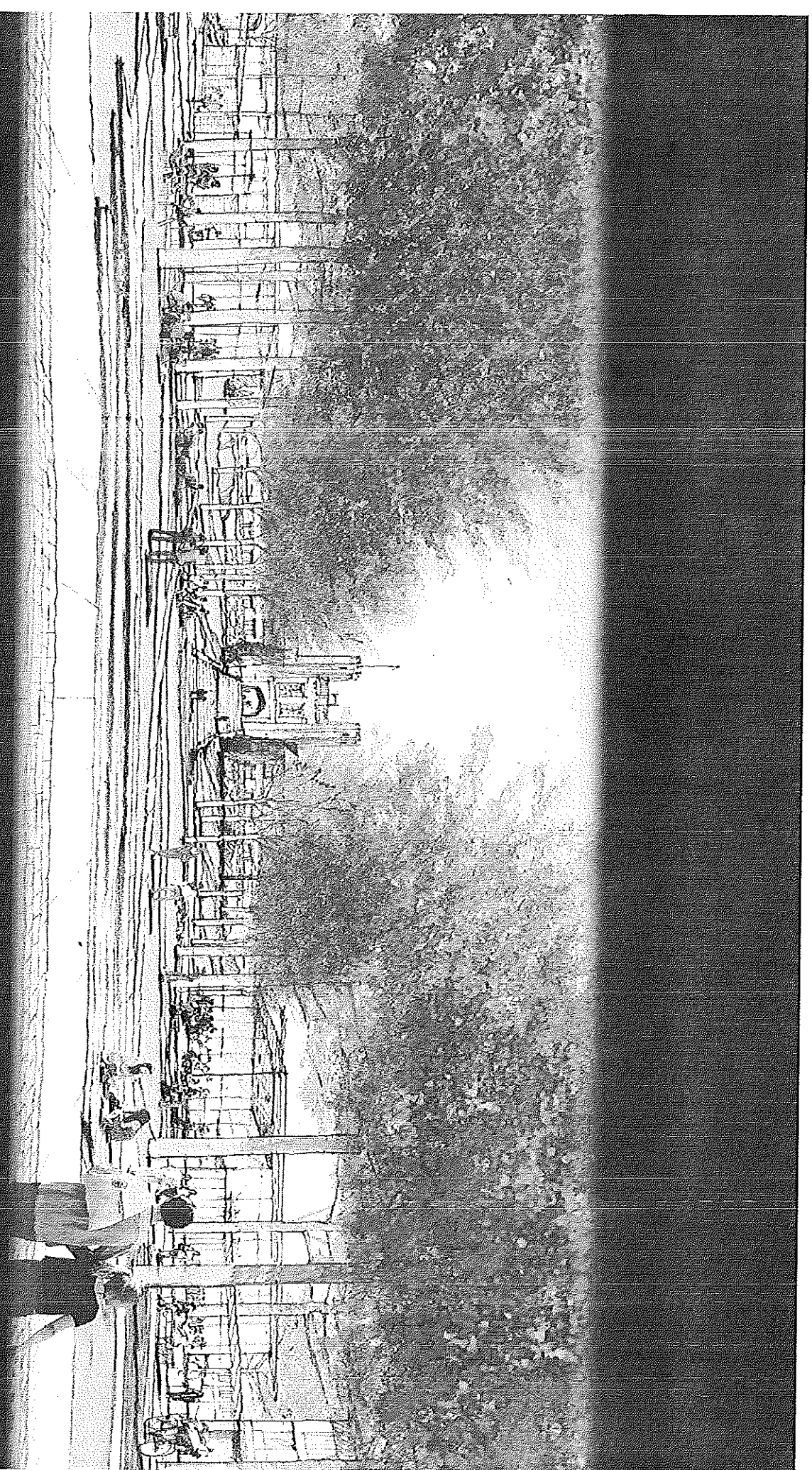


# Enhancements to the East End of the Danforth Campus









View of Central Green and Brookings Allée



# Continue to Push the Envelope On-Campus

EAST CAMPUS PLAN

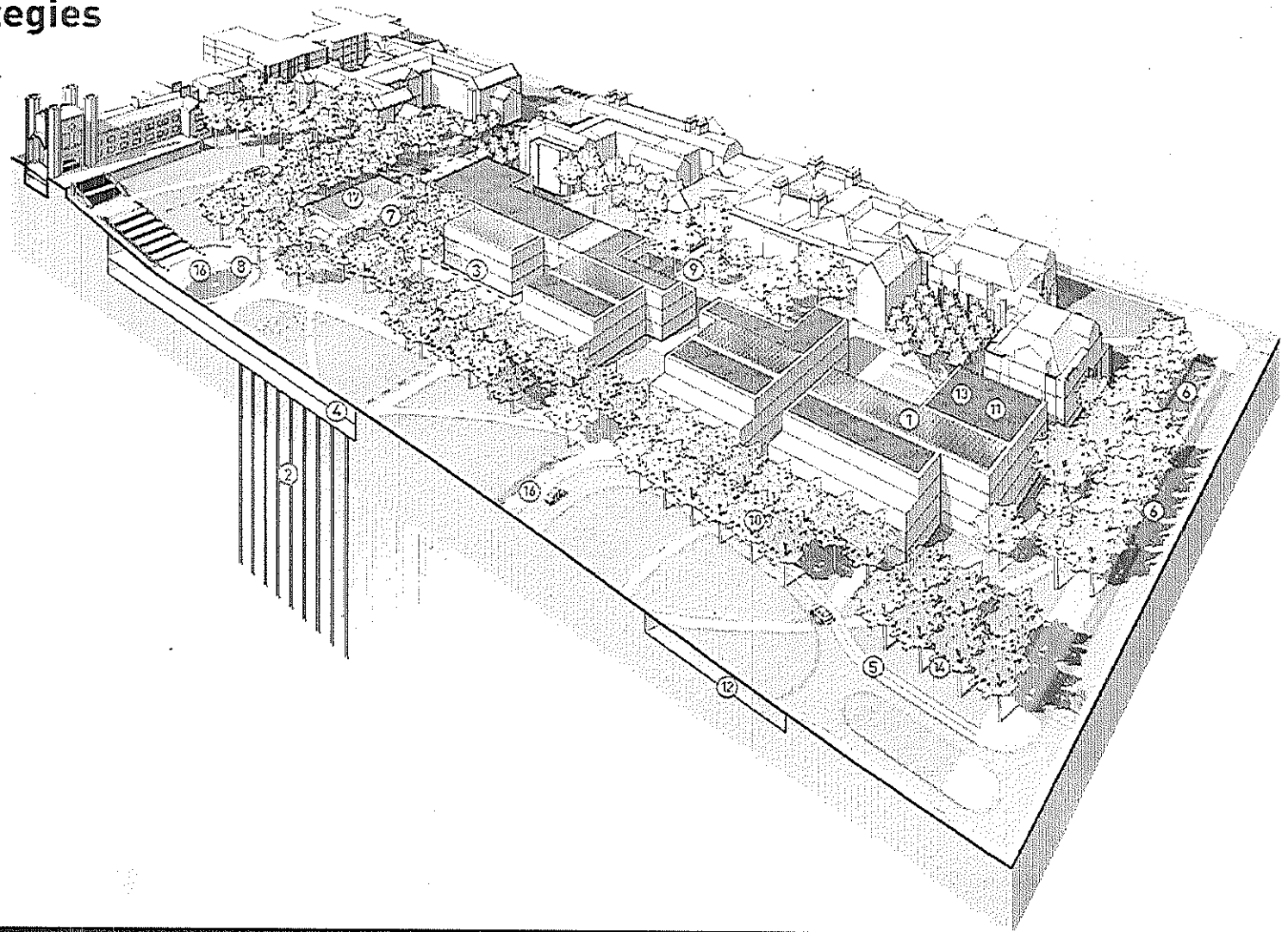
DRAFT

## Sustainability Strategies

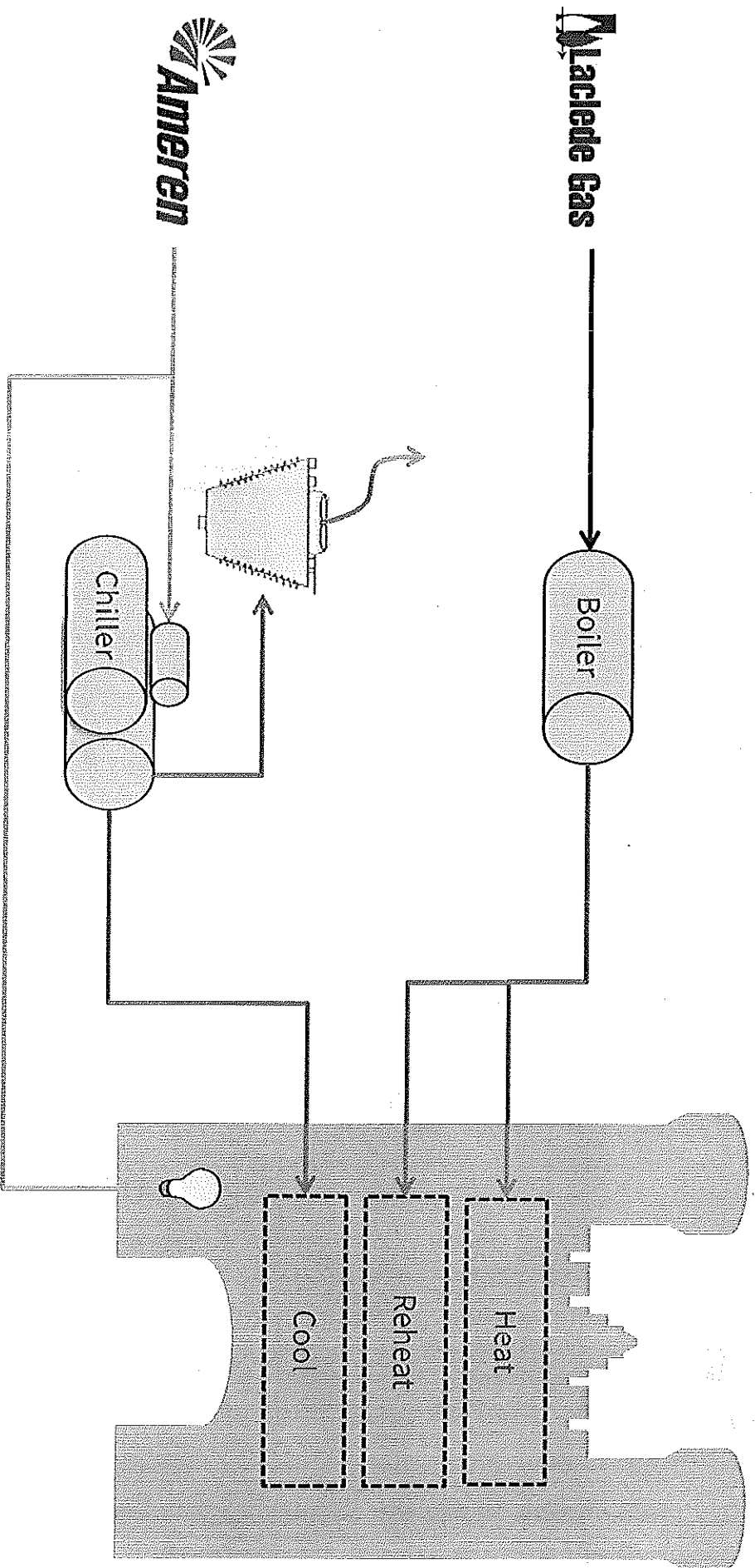
The East Campus Plan includes many sustainable strategies that integrate the 2015 (draft) Strategic Plan for Sustainability as well as current university standards. It also pushes performance to the next level in areas where there will be a reasonable payback when following the university's financial modeling guidelines.

The graphic to the right depicts some of the physical strategies that have been incorporated into the East Campus Plan and its respective budget. These are keyed to the opposite page's list of sustainability strategies by focus area.

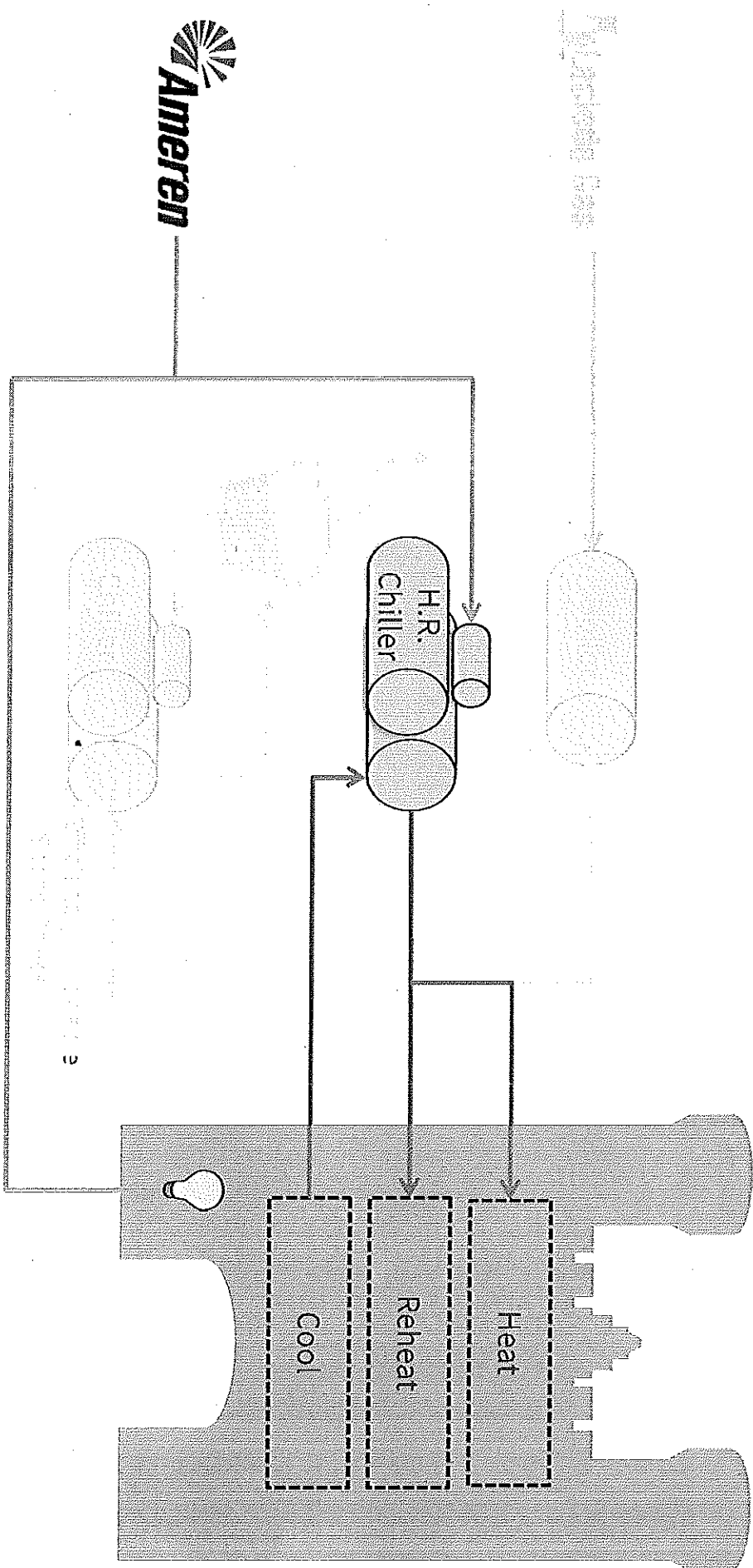
There are several infrastructural opportunities in the areas of energy and water that have been identified for further investigation. Further study needs to be conducted to prove these strategies have a greater return on investment and/or provide a positive impact on the community.



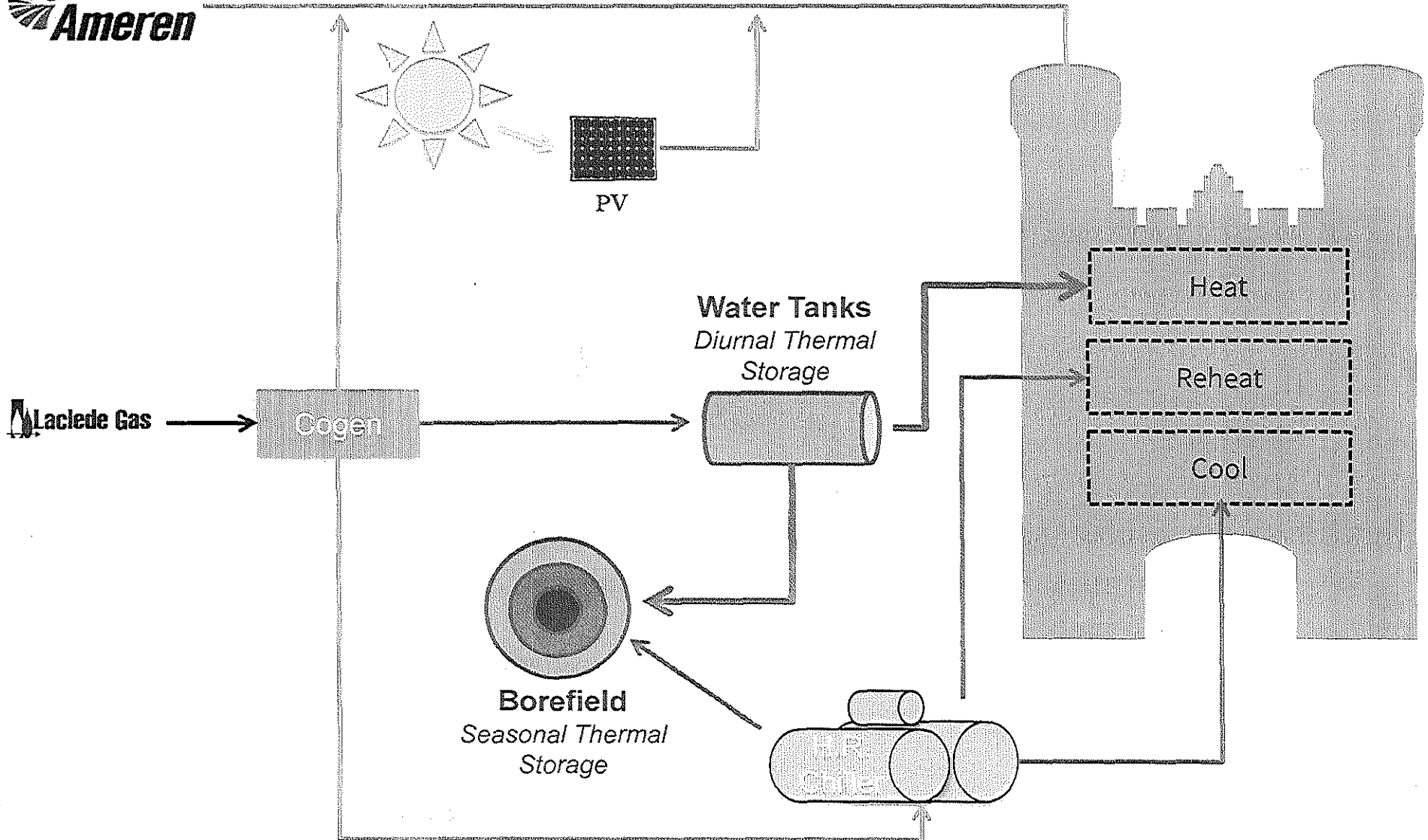
# Industry Standard Heating and Cooling



# WUSTL Standard Heating and Cooling

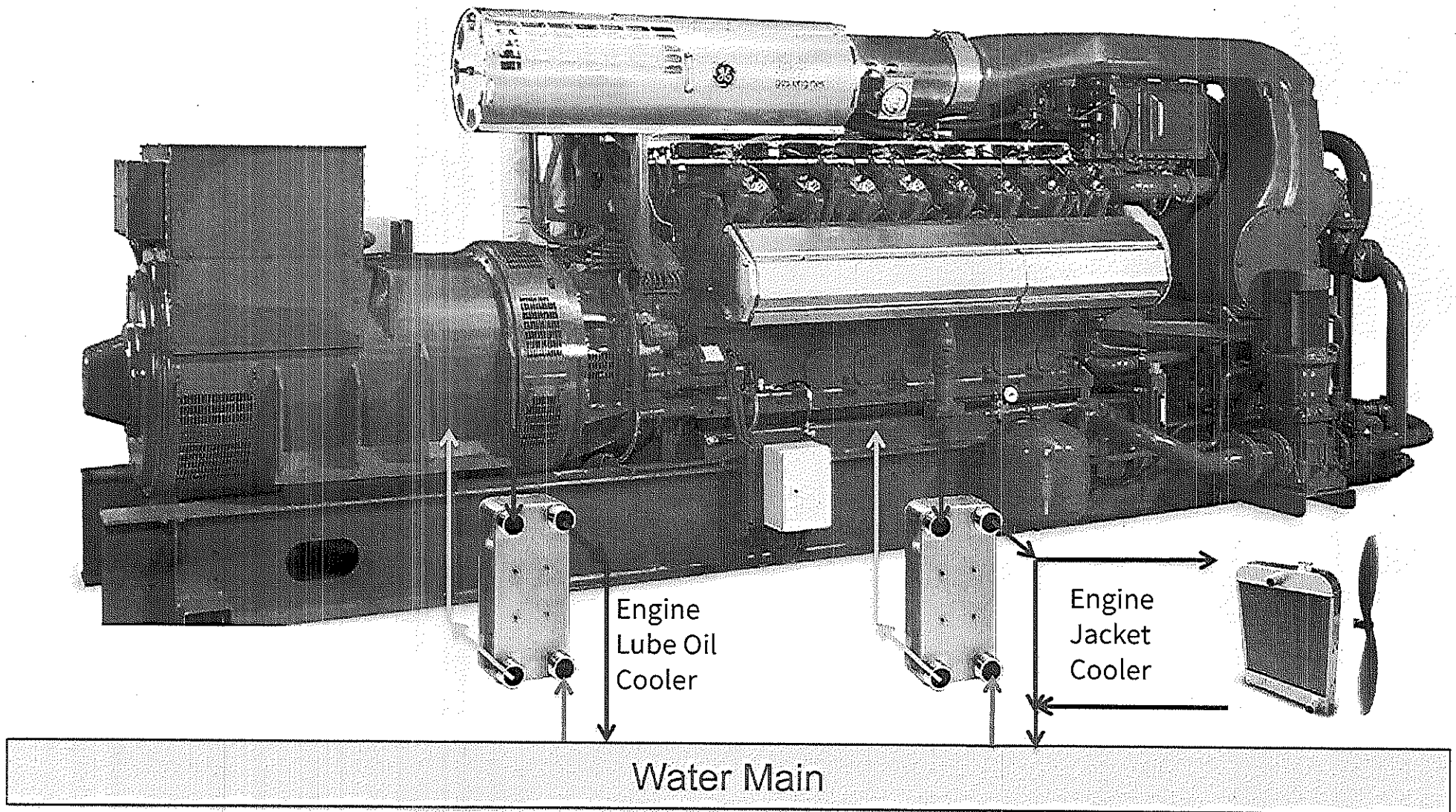


# Proposed Renewable District Energy System



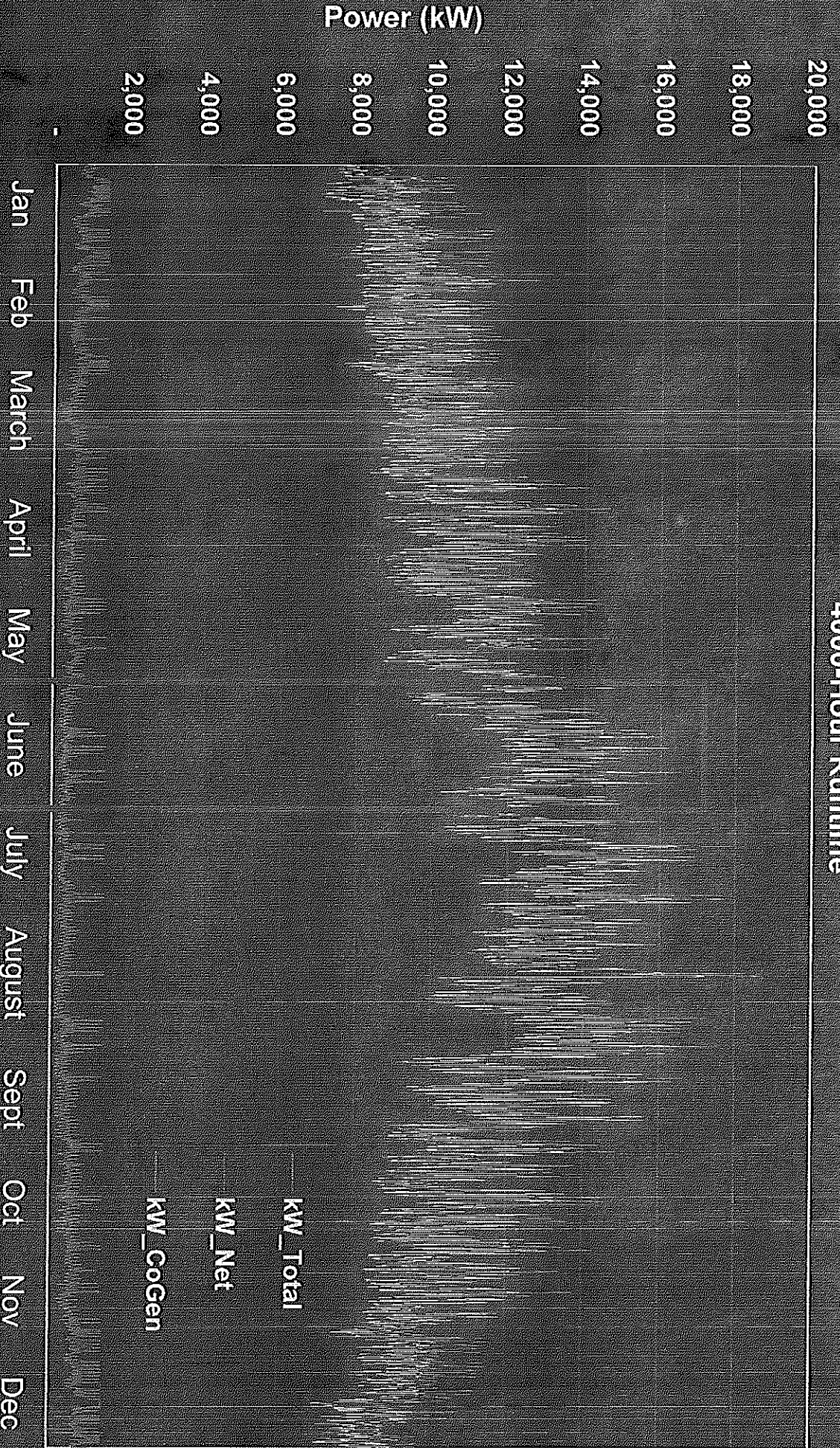


# CHP – 1.4 MW Reciprocating Engine



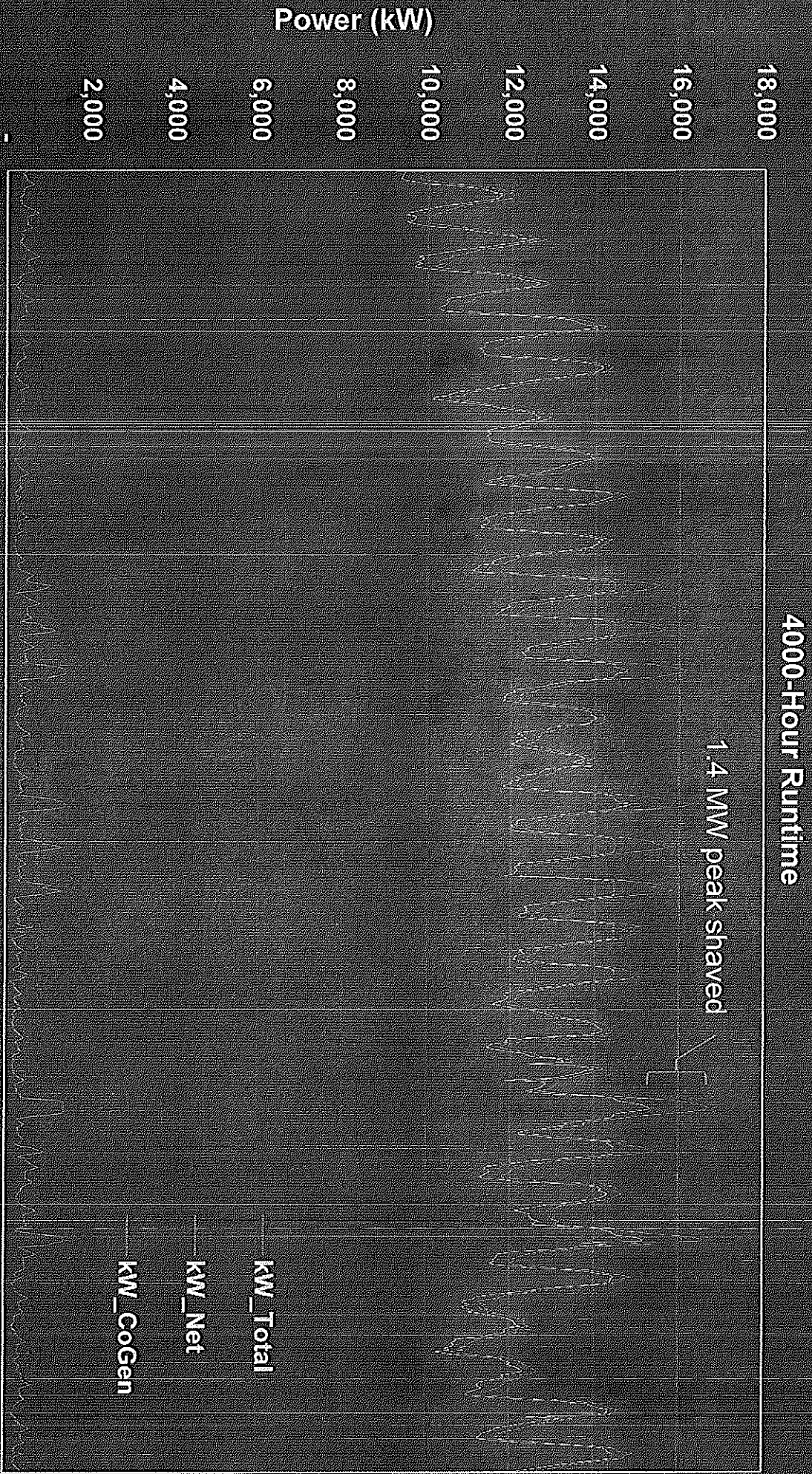
# CHP Peak Shaving Potential

4000-Hour Runtime





# CHP Peak Shaving Potential

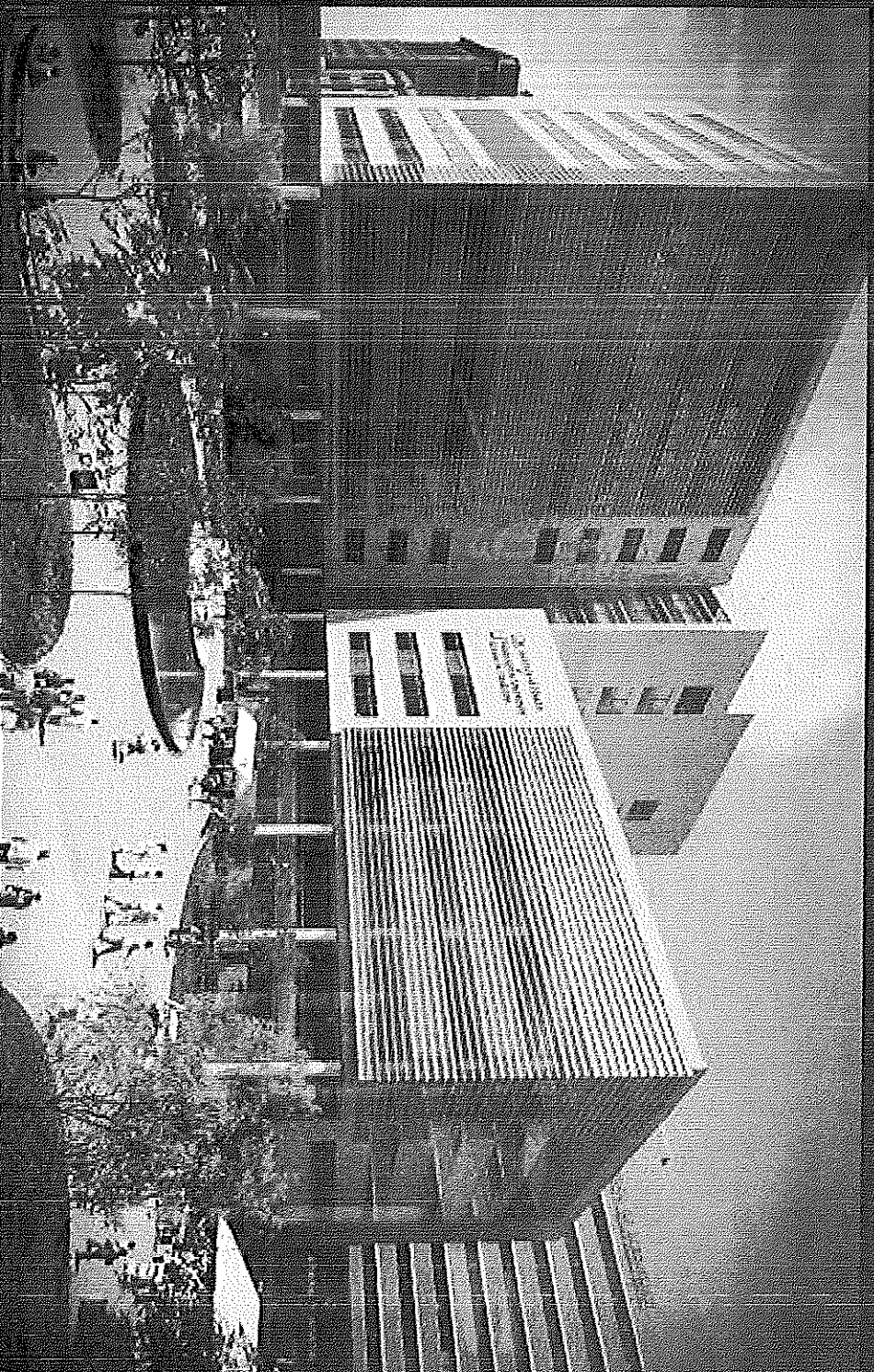


June



# Completed Feasibility Study for Second CHP

4.3 MW CHP turbine was found to be feasible for School of Medicine campus.





# Energy Efficiency Incentive and CHP

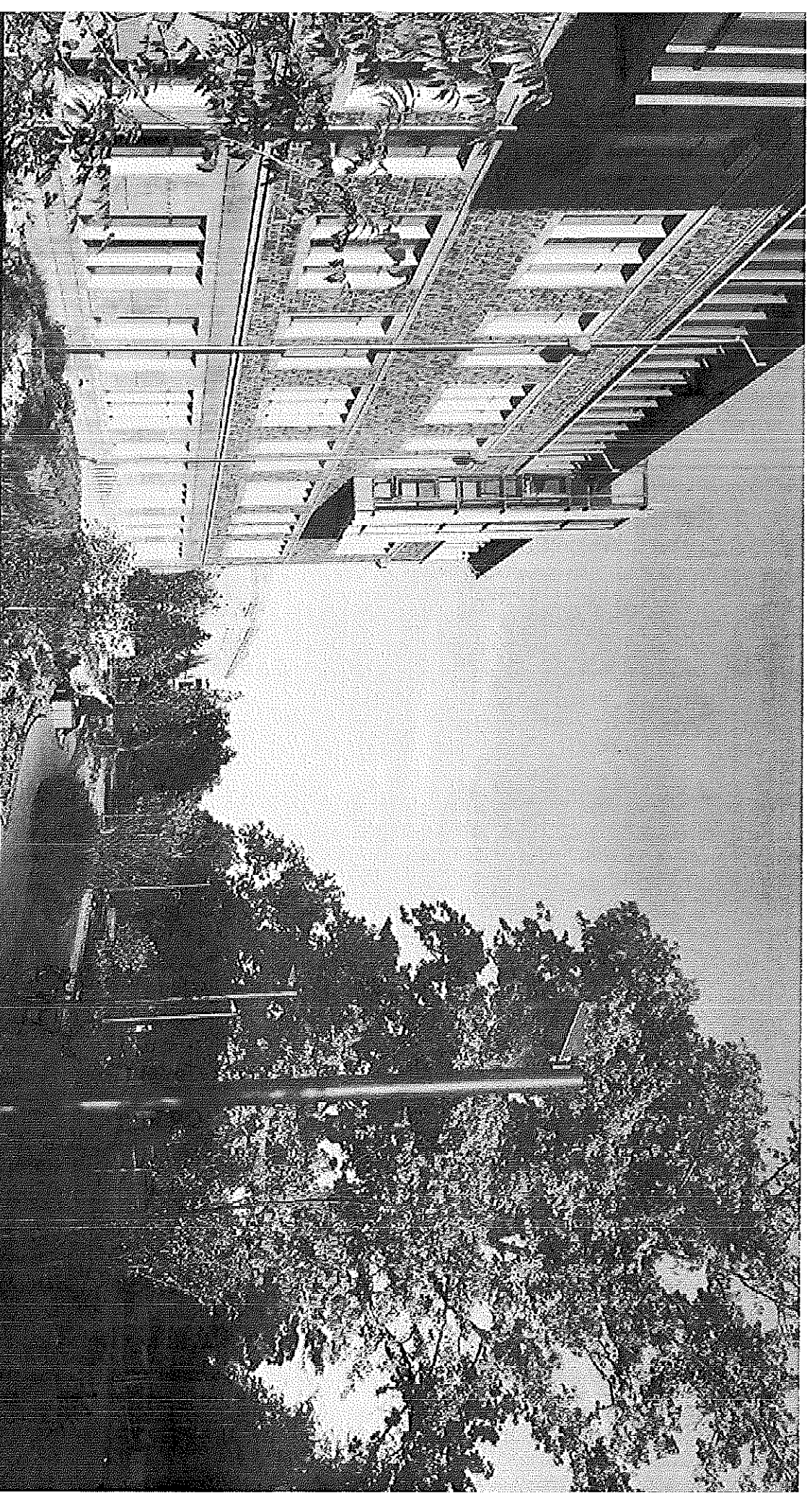
Develop and publish the rules for evaluating and valuing CHP projects under the EE incentive program.

CHP projects have long development time horizons. Any EE incentive for CHP should take this into account and provide a solution for projects that bridge EE program cycles.

Evaluating our options.







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**Sustainability**

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