

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 2<sup>nd</sup> day of April, 2014.

The Staff of the Missouri Public Service Commission, )  
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 Complainant, )  
 )  
 v. )  
 )  
 Laclede Gas Company, d/b/a )  
 Missouri Gas Energy )  
 )  
 And )  
 )  
 Southern Union Company, formerly d/b/a )  
 Missouri Gas Energy )  
 )  
 Respondents. )

**File No. GC-2014-0216**

**ORDER REGARDING MOTIONS TO DISMISS**

Issue Date: April 2, 2014

Effective Date: April 2, 2014

On February 6, 2014, the Staff of the Commission filed a complaint against Laclede Gas Company, d/b/a Missouri Gas Energy (Laclede) and against Southern Union Company, formerly d/b/a Missouri Gas Energy. Staff's complaint contends the Commission should seek administrative penalties against the Respondents for the actions and inactions of Missouri Gas Energy (MGE) employees relating to a February 2013 natural gas explosion and fire at JJ's Restaurant in Kansas City. At the time of the explosion and fire MGE was owned and operated by Southern Union Company. Thereafter, MGE was sold to Laclede, which now owns and operates the company. After MGE was sold to Laclede, Southern Union Company was merged into Panhandle Eastern Pipe Line Company, LP (Panhandle). As a result,

Southern Union no longer exists as a corporate entity. On March 10, Laclede and Panhandle filed separate motions asking the Commission to dismiss Staff's complaint. Staff responded to those motions on March 20. Laclede replied to Staff on March 24. Panhandle replied to Staff on March 28.

### **Panhandle's Motion to Dismiss**

Panhandle contends the complaint against Southern Union should be dismissed because Southern Union no longer operates as a public utility in Missouri and indeed no longer has a corporate existence. For that reason, Panhandle contends it is no longer subject to the Commission's jurisdiction. In addition, Panhandle contends that under the Commission-approved agreement by which Laclede acquired MGE, Laclede assumed all the liabilities of MGE, including the liabilities alleged by Staff's complaint.

Even though Southern Union no longer operates as a utility regulated by the Commission, it was operating as a utility at the time of the explosion and fire. That is a sufficient basis for Staff to file a complaint before the Commission under Section 386.390, RSMo 2000. Southern Union no longer has a corporate existence, but when Southern Union was merged into Panhandle, Panhandle became answerable for the liabilities of Southern Union<sup>1</sup> and can be held to answer before the Commission.

Panhandle also points out that the Commission-approved purchase agreement whereby Laclede bought MGE from Southern Union provides that Laclede assumed MGE's liabilities and obligations, including its liabilities and obligations resulting from the explosion and fire. Based on that contractual provision, Panhandle contends the Commission has no jurisdiction to hear a complaint against Panhandle. Panhandle is mistaken. The purchase agreement between Laclede and Panhandle is merely a contractual arrangement between the

signatories. It may mean that Laclede will need to indemnify Panhandle for any penalties assessed against Panhandle, but it does not mean that Staff's complaint against Panhandle cannot proceed. The Commission will deny Panhandle's motion to dismiss.

### **Laclede's Motion to Dismiss**

Laclede, which is currently doing business as MGE, also filed a motion to dismiss, contending that Staff has failed to state a claim upon which relief can be granted. In the alternative, Laclede asks the Commission to either dismiss the complaint, or hold it in abeyance while Staff reopens its investigation into the explosion and fire. The gist of Laclede's motion is that Staff acted hastily in bringing its complaint before all information about the incident is known. Laclede urges the Commission to exercise discretion by waiting to proceed with this complaint until the facts of the incident are uncovered through the on-going civil litigation discovery process.

Laclede does not seriously contend that Staff has failed to state a claim upon which relief can be granted. Indeed, a review of Staff's complaint reveals that it adequately pleads sufficient facts about the conduct of MGE's personnel before the explosion and fire, which, if accepted as true, as they must be when considering whether a claim for relief has been stated, establishes a claim against MGE. Rather, Laclede urges the Commission to require Staff to wait to learn more about the incident before deciding whether to proceed with its complaint against MGE.

Laclede explains that the explosion and fire is the subject of extensive litigation in the Circuit Court of Jackson County. Numerous witnesses have already been deposed under oath in that litigation and the discovery process is still continuing. Laclede contends the civil

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<sup>1</sup> *State ex rel. Consol. School Dist. No. 8 of Pemiscot County v. Smith*, 121 S.W.2d 160 (Mo. 1938)

discovery process will uncover much more information than Staff has been able to reveal in its more limited investigation and urges the Commission to wait for that discovery process to conclude before pushing forward with this complaint.

Laclede makes some good points about the need to gather more information about this incident. However, Laclede's arguments do not lead to the conclusion that Staff's complaint should be dismissed or formally held in abeyance while discovery proceeds in the related civil litigation. The Commission will consider Laclede's arguments when deciding how quickly this complaint should proceed to a hearing, but will deny Laclede's Motion to Dismiss.

In a previous order the Commission extended the time allowed for Panhandle and Laclede to file their answers to Staff's complaint until ten days after it ruled on their motions to dismiss. With the issuance of this order, those answers will be due in ten days.

**THE COMMISSION ORDERS THAT:**

1. The motion to dismiss Staff's complaint against Southern Union Company formerly doing business as Missouri Gas Energy is denied.
2. The motion to dismiss Staff's complaint against Laclede Gas Company, doing business as Missouri Gas Energy is denied.
3. Panhandle Eastern Pipe Line Company, as successor to Southern Union Company formerly doing business as Missouri Gas Energy, shall file its answer to Staff's complaint no later than April 12, 2014.
4. Laclede Gas Company, doing business as Missouri Gas Energy, shall file its answer to Staff's complaint no later than April 12, 2014.

5. This order shall become effective upon issuance.

**BY THE COMMISSION**



*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

R. Kenney, Chm., Stoll, W. Kenney,  
and Hall, CC., concur.

Woodruff, Chief Regulatory Law Judge