

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

In the Matter of the Joint Application of       )  
Fidelity Natural Gas, Inc. and Laclede Gas       )  
company for an Order Authorizing the       )  
Sale and Transfer of Certain Assets of       )  
Fidelity Natural Gas, Inc., Located in       )  
Missouri to Laclede Gas Company and       )  
Either Authorizing the Transfer of       )  
Existing Certificates of Public       )  
Convenience and Necessity or Granting a       )  
New Certificate of Public Convenience       )  
and Necessity to Laclede Gas Company in       )  
Conjunction with Same.       )

Case No. GM-2006-0183

**STAFF RECOMMENDATION**

**COME NOW** the Staff of the Missouri Public Service Commission (Staff), and respectfully state as follows:

1. On October 21, 2005, Fidelity and Laclede filed a joint application (Application) seeking authority from the Missouri Public Service Commission (Commission) for the sale and transfer of certain assets from Fidelity to Laclede.

2. Fidelity and Laclede also filed a Motion for Expedited Treatment on October 21, 2005.

3. On November 1, 2005, Staff filed its Pleading Regarding Staff Recommendation. In this pleading, Staff emphasized that it could file a Staff Recommendation regarding the Application by December 9, 2005 if certain conditions were met.

4. On December 9, 2005, Laclede provided supplemental answers to Staff's Data Requests. The Parties filed a Joint Pleading on December 9, 2005, which deferred Staff's Recommendation until December 16, 2005 to allow Staff time to review the supplemental answers.

5. In the attached Memorandum, which is labeled Appendix A, the Staff recommends that the Commission find the transfer of and sale of certain assets from Fidelity to Laclede be approved subject to the conditions set forth in Appendix A.

6. The Commission has jurisdiction under § 393.190.1 RSMo 2000 to review certain sales by regulated gas corporations. This section provides that no gas corporation shall sell “the whole or any part of its franchise, works or system necessary or useful in the performance of its duties to the public...without first having secured from the Commission an order authorizing it so to do.” This section provides the basis for Commission jurisdiction to authorize this transaction.

**Legal Standard for approval**

7. Staff evaluated this proposal based on the standard of “not detrimental to the public interest.” *In the Matter of the Joint Application of Missouri Gas Company, a Missouri Corporation, Missouri Pipeline Company, a Missouri Corporation, and UtiliCorp United Inc., d/b/a MissouriPublic Service, a Delaware Corporation, for an Order Authorizing the Sale, Transfer and Assignment of Certain Rights, Properties and Assets from Missouri Gas Company and Missouri Pipeline Company to UtiliCorp United Inc., d/b/a Missouri Public Service, or to Wholly-Owned Subsidiary Corporation to be Formed by UtilitCorp United., and in Connection Therewith, Certain Other Related Transactions*, 3 Mo.P.S.C.3d 216, 226 (October 12, 1994, GM-94-252), the Commission stated:

The principle issue before the Commission, based on substantial and competent evidence contained in the record as a whole, and in accordance with the controlling rule in this case, 4 CSR 240-2.060, can be stated as follows: “Is the proposed transaction including the sale of assets and the transfer of certificates of convenience and necessity from MPC and MGC to UCU not detrimental to the public interest?” *See State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393 (Mo. Banc 1934); and *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466 (Mo. App. 1980).

8. In trying to determine whether this proposed transaction might harm the public, Staff defined “public interest” as the nature and level of the impact or effect that the proposed transaction might have on Laclede and Fidelity’s Missouri customers. The fundamental concern, and the reason that the Commission has jurisdiction is that the public being served will not be impacted adversely or harmed by this proposed transaction. *Southern Union Co. v. Missouri Pub. Serv. Com’n*, 289 F.3d 503, 507(8<sup>th</sup> Cir. 2002).

**WHEREFORE**, Staff respectfully recommends that the Commission approve the Application subject to the conditions set forth in Appendix A.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

/s/ Robert V. Franson  
Robert V. Franson  
Senior Counsel  
Missouri Bar No. 34643

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-6651 (Telephone)  
(573) 751-9285 (Fax)  
email: robert.franson@psc.mo.gov

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 16<sup>th</sup> day of December, 2005.

/s/ Robert V. Franson

## MEMORANDUM

TO: Missouri Public Service Commission Official Case File,  
Case No. GM-2006-0183, Laclede Gas Company/Fidelity Natural Gas Inc.

FROM: Missouri Public Service Commission Staff (Staff)

/s/Tom Imhoff                      12/15/05

/s/Robert Franson    12/15/05

/s/Steve Rackers              12/15/05

General Counsel's Office

Staff Department/Date

SUBJECT: Staff Recommendation on the Joint Application for the Sale and Transfer of Certain  
Assets of Fidelity Natural Gas Company to Laclede Gas Company

DATE: December 15, 2005

On October 21, 2005, Laclede Gas Company (Laclede) and Fidelity Natural Gas Company (Fidelity) (collectively "Joint Applicants") filed a Joint Application. This Joint Application seeks: an order authorizing the sale and transfer of certain assets of Fidelity to Laclede and either authorizing the transfer of the existing certificate of convenience and necessity (CCN) or granting a new certificate of public convenience and necessity to Laclede in conjunction with the sale. The Joint Applicants filed a Motion for Expedited Treatment requesting approval by no later than January 1, 2006 if possible at the time of the Joint Application

On October 25, 2005, the Missouri Public Service Commission (Commission) issued an Order Directing Notice and Establishing Date for Intervention by November 14, 2005. No interventions were filed.

On November 1, 2005, the Staff filed a Pleading Regarding Staff Recommendation, suggesting that the Staff would file its recommendation by December 9, 2005, provided the Joint Applicants would respond to Staff Data Requests within seven (7) days.

On December 9, 2005, Staff, Laclede and Fidelity filed a Pleading informing the Commission that the Staff Recommendation would be filed on December 16, 2005. The Office of the Public Counsel had no objection to this pleading.

### THE JOINT APPLICATION:

The Joint Applicants are specifically requesting that the Commission issue an Order authorizing the following:

- (a) Sale of certain Missouri assets of Fidelity, as more fully described in the Agreement, to Laclede;
- (b) Authorizing Fidelity and Laclede to enter into, execute and perform in accordance with the

terms of the Agreement and all other documents reasonably necessary and incidental to the performance of the Sale that is the subject of this Application;

(c) Authorizing Fidelity, through the Sale, to transfer to Laclede all the property rights, privileges, immunities and obligations of Fidelity, including, but not limited to the Certificates of Public Convenience and Necessity, works or systems or franchises, as described in the Agreement, effective as of the date of the closing of the transaction;

(d) Authorizing Laclede to provide gas service as a public utility subject to the jurisdiction of the Commission in the service areas presently served by Fidelity in Missouri by transfer of such certificates or pursuant to a new Certificate or Certificates of Public Convenience and Necessity, if necessary;

(e) Authorizing Fidelity to terminate its responsibilities as a gas corporation in Missouri;

(f) Authorizing Laclede to provide gas service in the areas previously served by Fidelity in accordance with the rules, regulations, rates, and tariffs of Laclede as may be on file with and approved by the Commission on the effective date of the Sale;

(g) Authorizing the inclusion of the Fidelity assets in Laclede's rate base at the depreciated, net book value of such assets at the time of Laclede's next general rate case proceeding; and

(h) Granting such other relief as the Commission may deem to be necessary to accomplish the purpose of this Joint Application and to consummate the Sale.

#### **STAFF'S INVESTIGATION:**

This Staff recommendation incorporates the suggestions of various Staff members from both the Utility Operations and Utility Services Divisions.

The Staff's investigation into the Joint Application included a review of the Joint Application, documentation supporting the Joint Application and additional data requested from and provided by Fidelity and Laclede. The Staff also attended meetings with Laclede and Fidelity Personnel.

#### **STAFF'S RECOMMENDATIONS**

Subject to the conditions listed below, the Staff recommends that the Commission issue its order authorizing Laclede to acquire the assets of Fidelity, pursuant to the September 1, 2005 Purchase and Sale Agreement between Fidelity and Laclede which was contained in Appendix 1 of the Application. In addition, the Commission should grant Laclede a Certificate of Convenience and Necessity to provide gas service in the service area previously served by Fidelity.

#### **(A) Service Quality Conditions:**

Laclede will continue its commitment to the customer service performance measures and customer service operating procedures previously agreed to by Laclede, Staff and the Office of Public Counsel in Case No. GR-2005-0284.

Further, the Company shall provide written notice to all customers in the Fidelity system to inform them of the change in Company management and ownership, including Laclede Gas Company's address and phone numbers. The written notice should include information that the Fidelity system will continue to be subject to regulation by the Missouri Public Service Commission for all matters including rates and service.

**(B) Depreciation:**

The Company, for purposes of accruing depreciation expense, will continue to use the depreciation rates currently ordered for Fidelity Natural Gas, Inc. For those accounts that do not currently have Commission ordered depreciation rates, the Laclede will use the most recently ordered rates for Laclede Gas Company. These rates are set forth in the attached Depreciation Schedule (Schedule XXX).

**(C) ACA/PGA:**

Fidelity has traditionally hedged a significant level of natural gas supply. This is illustrated by examination of its historical PGA rates, which often have been below the index price for natural gas. If Fidelity has failed to act prudently in its gas purchasing practices this winter, any responsibility for these actions should not be borne by Laclede's or Fidelity's customers. Fidelity's gas supply and transportation decisions will impact at least two Actual Cost Adjustment (ACA) periods. The Staff recommends the following condition:

Billing for the current Fidelity system will continue as a separate Fidelity system using Fidelity PGA and ACA factors. Laclede shall maintain separate books and records that include PGA and ACA rates for customers currently served by Fidelity. These records shall be kept separate and distinct from Laclede's current PGA and ACA rates until the effective date of rates for Laclede's next general rate case. Staff recommends that the 2004-2005 and 2005-2006 ACA cases and subsequent months which are impacted by Fidelity's decision making, will remain subject to Staff's review and Commission approved adjustments. Fidelity's ACA balance shall be reconciled on 10-31-06 and any over/under collection of gas costs at that time shall be amortized over the traditional annual ACA time period (which would be the 2006-2007 period) and billed separately to the Fidelity system. Laclede will accept responsibility for all Fidelity gas procurement decisions upon the closing of this transaction.

**(D) Tariff:**

Laclede will operate the Fidelity system to provide gas service in the areas previously served by Fidelity in accordance with the existing rules, regulations, rates, and tariffs of Fidelity as may be on file with and approved by the Commission from the effective date of the Sale until the effective date of a Commission Report and Order in Laclede's next general rate case. Laclede will operate the Fidelity system separately from the Laclede system and shall provide natural gas and transportation service to the customers previously served by Fidelity at the same rates, terms and conditions set forth in Fidelity's tariffs and shall adopt Fidelity's tariffs for such purposes. During the next general rate case, the rules, regulations, rates, and tariffs of Laclede including the former Fidelity service territory will be reviewed and determined by the Commission.

**(E) Acquisition Costs:**

For any plant item transferred to Laclede for which Laclede seeks inclusion in rate base in future rate proceedings at a value in excess of the amount reflected in the purchase price for these properties, it shall be Laclede's burden to demonstrate that it is reasonable and otherwise appropriate to include such value in the rate base used to establish just and reasonable rates. Nothing in the Commission's approval of this transaction places Laclede in a different position regarding the valuation of the Fidelity assets for ratemaking then existed for Fidelity prior to this Sale. Laclede will be bound by the same representations made by Fidelity regarding the Fidelity plant.

Laclede shall keep its books and records in such a manner that its plant in service balances can be segregated between amounts invested by Fidelity prior to the date of the closing of this Transaction, and the net original cost values that Laclede asserts may be invested following the date of the closing of this Transaction.

**(F) SURVEILLANCE:**

Upon approval of this transaction, Laclede will continue to provide surveillance reports to the Auditing Department of the Utility Services Division on the same basis as previously provided to the Staff prior to the closing of the transaction.

**(G) FINANCIAL ISSUES/COST OF CAPITAL:**

Laclede will not seek an increase in Cost of Capital as a result of this transaction. Any increases in the Cost of Capital Laclede seeks will be supported by documented proof and affidavits by cost of capital witnesses provided by Laclede that the increases are a result of factors not associated with this transaction; that the increases are not a result of changes in business, market, economic, or other conditions for Laclede caused by this transaction; or that the increases are not a result of changes in the risk profile of Laclede caused by this transaction.

The Financial Analysis Department supports the Laclede Gas Company's purchase of the natural gas distribution facilities of Fidelity Natural Gas. The \$1.9 million purchase price will be funded at the current short-term commercial paper interest rate.

The additional debt will lower Laclede's equity ratio by approximately 11 basis points, from 47.83% to 47.72%, and will raise Laclede's debt ratio from 52.04% to 52.15%. The proforma debt/total capital ratio is comfortably within the acceptable debt ratio range of 50%-55% for an 'A' rated utility with a business profile of '3'.

According to Standard & Poor's September 6, 2005 research bulletin, the Laclede Gas (A/Stable A-1) purchase of Fidelity Natural Gas "...does not affect the rating on the company or its parent, The Laclede Group Inc. (A/Stable/--). The size of the acquisition is nominal and will be funded with cash on hand..."

The Staff has verified that the Company has filed its annual report and is not delinquent on any assessment. The Staff has reviewed this filing and is unaware of any issue currently pending before the Commission that affects or is affected by this filing however; the following cases involving this Company are open:

GO-99-155	AX-2005-0364	GC-2006-0060
GO-2003-0506	GE-2005-0405	GW-2006-0110
GR-2004-0273	GC-2005-0487	GR-2005-0203

In addition, Commission Case No. GT-2001-329 is on appeal.

The Staff has reviewed this Joint Application and In the Staff's opinion, Commission approval of the Application, as conditioned by the Staff, is not detrimental to the public interest.

Copies:

- Director - Utility Operations Division
- Director - Utility Services Division
- General Counsel
- Manager - Financial Analysis Department
- Manager - Procurement Analysis Department
- Manager - Energy Department
- Manager - Engineering & Management Services
- Michael Pendergast, Vice President-Associate General Counsel (Laclede)
- James M. Fischer - Attorney for Fidelity (Fischer & Dority, P.C.)
- Office of the Public Counsel



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same. )

Case No. GM-2006-0183

**AFFIDAVIT OF THOMAS M. IMHOFF**

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF COLE     )

Thomas M. Imhoff, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Staff Memorandum, consisting of 5 pages to be presented in the above case, that the information in the attached memorandum were given by; that has knowledge of the matters set forth in such memorandum; and that such matters are true to the best of his knowledge and belief..


  
Thomas M. Imhoff

Subscribed and sworn to before me this 15<sup>th</sup> day of December, 2005.



My commission expires \_\_\_\_\_

DAWN L. HAKE  
My Commission Expires  
March 16, 2009  
Cole County  
Commission #05407643

  
Notary Public