

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 26th day of January, 2011.

The Staff of the Missouri Public Service Commission,)
)
)
Complainant,)
)
v.)
)
Laclede Gas Company,)
)
Respondent.)

File No. GC-2011-0098

**ORDER REGARDING LACLEDE'S MOTION TO DISMISS COUNTS I
AND V OF STAFF'S COMPLAINT**

Issue Date: January 26, 2011

Effective Date: January 26, 2011

On October 6, 2010, the Commission's Staff filed a complaint against Laclede Gas Company, Laclede Energy Resources, Inc., and The Laclede Group, Inc. Staff initially amended that complaint on October 7, and then filed a second amended complaint against all three respondents on November 22. On December 22, the Commission dismissed Staff's second amended complaint against Laclede Energy Resources and The Laclede Group, but the complaint against Laclede Gas Company (Laclede) remains pending.

Laclede filed its answer to Staff's second amended complaint on December 10, and at the same time, filed a motion asking the Commission to dismiss Counts I and V of Staff's complaint as failing to state a claim upon which relief can be granted. Staff did not respond

to Laclede's motion to dismiss within the ten-day period allowed by Commission rule.¹ However, Staff filed a responsive pleading on January 18, along with a motion seeking leave to late-file its response.

On January 25, Staff filed a notice dismissing Count V of its complaint without prejudice. Commission rule 4 CSR 240-2.116 allows a complainant to voluntarily dismiss its complaint without an order of the Commission at any time before prepared testimony has been filed or oral evidence has been offered. No testimony or evidence has yet been offered in this case, so Staff is free to dismiss all or any part of its complaint. With Staff having dismissed Count V, the only remaining issue regarding Laclede's motion to dismiss concerns Count I of that complaint.

The Commission has the authority to decide this matter on the pleadings pursuant to Commission Rule 4 CSR 240-2.117(2), which states:

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

The Commission's rules do not establish standards for when it is appropriate to dispose of a case on the pleadings, so the Commission will instead look to Missouri's civil procedures for guidance.

In indicating when a case may be disposed on the pleadings, the Missouri Supreme Court has stated that for purposes of the motion, all facts stated in the challenged pleading are accepted as true. If those assumed facts are insufficient as a matter of law, the trial court may properly grant a motion for judgment on the pleadings.²

¹ Commission rule 4 CSR 240-2.080(15).

² *State ex rel. Nixon v. American Tobacco Co., Inc.*, 34 S.W.3d 122, 134 (Mo 2000).

Staff's second amended complaint now contains four counts, of which, Laclede challenges only the first count. Count I of that amended complaint offers a series of allegations intended to establish the Commission's jurisdiction over Laclede and its affiliates, The Laclede Group and Laclede Energy Resources. Aside from asserting the Commission's jurisdiction, Count I does not allege that Laclede has violated any statute, regulation, or tariff.

The Commission has already dismissed The Laclede Group and Laclede Energy Resources from this complaint so Staff's allegations purporting to establish jurisdiction over those companies is no longer relevant. Laclede is a natural gas distribution utility in eastern Missouri and is regulated by this Commission as a gas corporation as defined by Section 386.020(18) RSMo (Supp. 2009). Thus, the Commission's jurisdiction over Laclede is not in question.

Laclede asks the Commission to dismiss Count I because it fails to state a claim against Laclede. In fact, Count I does not state a claim against Laclede, or anyone else, nor does it appear to be intended to state such a claim. Rather, it simply asserts the Commission's jurisdiction over the respondents. To the extent Count I remains relevant after the dismissal of The Laclede Group and Laclede Energy Resources, it serves only to establish background information that may be relevant to the remaining counts of the complaint. Therefore, it is not properly denominated as a separate count.

The Commission will dismiss Count I, but since those paragraphs may retain some relevance to the remaining counts of the complaint, there is no reason to strike them from the complaint. Indeed, Laclede does not seek that relief. Therefore, the Commission will

grant Laclede's motion to dismiss Count I of Staff's complaint, but will allow those paragraphs denominated as Count I to remain as background for the complaint.

THE COMMISSION ORDERS THAT:

1. Laclede Gas Company's motion to dismiss Count I of Staff's second amended complaint is granted.
2. This order shall become effective immediately upon issuance.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur;
with Davis, C., concurring opinion to follow.

Woodruff, Chief Regulatory Law Judge