

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 22<sup>nd</sup> day  
of December, 2010.

The Staff of the Missouri Public  
Service Commission, )  
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)  
Complainant, )  
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v. )  
)  
)  
Laclede Gas Company, Laclede Energy )  
Resources and The Laclede Group, )  
)  
)  
Respondents. )

**File No. GC-2011-0098**

**ORDER DISMISSING STAFF'S SECOND AMENDED COMPLAINT  
AGAINST LACLEDE ENERGY RESOURCES, INC.,  
AND THE LACLEDE GROUP, INC.**

Issue Date: December 22, 2010

Effective Date: January 1, 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.<sup>1</sup> Laclede Gas Company 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). Staff's complaint also names The Laclede Group and Laclede Energy Resources as respondents. Laclede Energy Resources is a gas marketing company that is not regulated by this Commission. The Laclede Group is a holding company that wholly owns both

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<sup>1</sup> Staff first amended its complaint on October 7 to include a more specific prayer for relief. The Commission granted Staff's motion for leave to amend its complaint on November 12.

Laclede Gas Company and Laclede Energy Resources, as well as other affiliated companies that are not named as respondents in this complaint. It also is not regulated by this Commission.

Laclede Gas Company filed its answer and a motion to dismiss count 2 of Staff's complaint on November 8. On the same day, Laclede Energy Resources and The Laclede Group filed a separate answer and a motion to dismiss Staff's complaint as to those two respondents. Staff responded on November 22 by filing two pleadings. The first is denominated "Staff's Answer to Laclede's Motion to Dismiss." The second is entitled "Staff's Response to Laclede Gas Company's Motion to Dismiss Count II, The Laclede Group and Laclede Energy Resources' Motion to Dismiss and Amended Complaint." Staff did not request leave to file this second amended complaint.

Laclede Energy Resources and The Laclede Group responded to Staff's second amended complaint on November 30 by filing a joint motion asking the Commission to dismiss that complaint as it concerns Laclede Energy Resources and The Laclede Group. Those two parties further responded on December 2 by filing their answer and affirmative defenses to Staff's second amended complaint. Laclede Gas Company did not initially respond to Staff's amended complaint.

On December 3, the Commission, acting on its own motion, granted Staff leave to file its second amended complaint. In the same order, the Commission required Laclede Gas Company to file its answer to Staff's second amended complaint by December 10, and gave Laclede Gas Company leave to file a new motion to dismiss all or part of that second amended complaint if it wished to do so.

Laclede Gas Company filed its Answer to Staff's Second Amended Complaint, Motion to Dismiss Counts I and V, and Counterclaim on December 10. The Commission will address that pleading in a separate order. This order will address only the joint motion to dismiss filed by The Laclede Group and Laclede Energy Resources.

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.<sup>2</sup>

Laclede Energy Resources and The Laclede Group contend Staff's second amended complaint against them should be dismissed because it fails to allege any violation of law or regulation by either company, and thus fails to state a claim upon which relief can be granted.

Staff's second amended complaint contains five counts. Count I of that amended complaint alleges The Laclede Group is affiliated with Laclede Gas Company and Laclede

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

Energy Resources. It also alleges The Laclede Group and Laclede Energy Resources are subject to the Commission's jurisdiction because The Laclede Group signed a stipulation and agreement in an earlier case, GM-2001-342, in which the Commission approved a holding company corporate structure for The Laclede Group and the affiliated companies it owns. Staff further alleges the stipulation and agreement requires The Laclede Group to make certain books and records available for review by the Commission's Staff. Finally, Staff alleges The Laclede Group, Laclede Energy Resources, and Laclede Gas Company must comply with the requirements of the Commission's affiliate transaction rules.<sup>3</sup> However, despite setting out the above described assertions about jurisdiction and the responsibilities of the companies, Count I does not allege The Laclede Group, Laclede Energy Resources, or Laclede Gas Company have violated any provision of the affiliate transaction rule or any other statute or regulation. Thus, Count I does not state a claim against The Laclede Group or Laclede Energy Resources.

Count II of Staff's second amended complaint alleges the cost allocation manual prepared and submitted by Laclede Gas Company violates the Commission's affiliate transaction rules. Staff further alleges the deficient cost allocation manual allows Laclede Gas Company to give Laclede Energy Resources a prohibited financial advantage. Nothing in the count makes any allegation against either The Laclede Group or Laclede Energy Resources, and thus does not state a claim against either company.

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<sup>3</sup> Staff also alleges that the respondents must comply with the holding of *State ex rel. Atmos Energy Corp. v. Public Service Com'n*, 103 S.W.3d 753 (Mo. banc 2003). That case upheld the validity of the Commission's affiliate transaction rules. However, in doing so, the Supreme Court did not establish any additional standards, apart from the requirements of the rules, with which any respondent is required to comply.

Count III of Staff's second amended complaint alleges Laclede Gas Company has never applied to the Commission for approval of its cost allocation manual. Count IV alleges Laclede Gas Company has not annually updated its cost allocation manual. Again, neither count makes an allegation against The Laclede Group or Laclede Energy Resources and does not state a claim against either company.

Finally, in Count V, Staff alleges Laclede Gas Company has violated the affiliate transaction rules by providing confidential market information to its affiliate, presumably Laclede Energy Resources, that was not available to non-affiliates. Staff alleges Laclede Gas Company committed this violation "by permitting Kenneth J. Neises, who, until September 30, 2010, was an executive officer with operational responsibilities for both Laclede [Laclede Gas Company] and LER [Laclede Energy Resources], and had full access to all information about both entities." Staff's complaint does not allege what Mr. Neises was permitted to do, but presumably, Staff is concerned about his dual role as executive officer with both Laclede Gas Company and Laclede Energy Resource. The only specific allegation Staff makes about Mr. Neises' dual role is that he signed for Laclede Energy Resources in contracts with Laclede Gas Company.

The Laclede Group and Laclede Energy Resources do not deny that Mr. Neises held executive positions with Laclede Energy Resources and Laclede Gas Company. However, they point out that such a dual management role is allowed to exist by the affiliate transaction rule. Specifically, 4 CSR 240-40.015(2)(B), a provision in the general affiliate transaction rule, states:

**Except as necessary to provide corporate support functions**, the regulated gas corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time. (emphasis added)

The rule defines corporate support as:

joint corporate oversight, **governance**, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities. (emphasis added)<sup>4</sup>

Thus, the affiliate transaction rule specifically contemplates that Mr. Neises can hold dual governing roles in affiliated companies.

The affiliate transaction rule does not allow Laclede Gas Company to conduct its business in such a way as to provide preferential information or treatment to an affiliated entity. However, Staff's complaint does not allege any specific conduct by The Laclede Group or Laclede Energy Resources that would violate that requirement of the rule. Instead, Staff merely asserts that through its shared officers and directors and especially Mr. Neises, Laclede Energy Resources would have had "full access to information about Laclede's gas operations", and asserts that it is "unrealistic" to think that a conflict of interest can be avoided in that situation.

Regardless of Staff's opinion about how realistic the affiliate transaction rules may be, those rules clearly allow for the existence of shared officers and directors. By merely alleging the existence of circumstances that are expressly allowed by the affiliate transaction rules, Staff has not alleged a violation of those rules, and has not stated a claim upon which relief against Laclede Energy Resources or The Laclede Group can be granted. Indeed, Staff's prayer for relief at the end of its second amended complaint does not ask the Commission for any relief against those two companies.

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<sup>4</sup> Commission Rule 4 CSR 240-40.015(1)(D). Exactly the same rule and definition are found in the Commission's rule that specifically regulates marketing affiliate transactions at 4 CSR 240-40.016(3)(B) and (1)(D).

Staff has not responded to the joint motion to dismiss filed by Laclede Energy Resources and The Laclede Group on November 30. However, in Staff's November 22 answer to the previous version of that motion, Staff asserts that complaints before the Commission are not to be tested by technical pleading rules, are to be liberally construed and are sufficient if they "fairly present[s] for determination some matter which falls within the jurisdiction of the Commission."<sup>5</sup> In this case, Staff merely alleges the existence of circumstances that are allowed by the controlling regulation and fails to fairly present for determination any violation of statute or regulation by The Laclede Group or Laclede Energy Resources. Under these circumstances, the Commission will dismiss Staff's complaint against those two unregulated companies.

**THE COMMISSION ORDERS THAT:**

1. The Joint Motion to Dismiss Second Amended Complaint on Behalf of Laclede Energy Resources, Inc. and The Laclede Group, Inc., is granted.
2. This order shall become effective on January 1, 2011.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Davis and Gunn, CC., concur;  
Jarrett, C., concurs with separate concurring opinion attached;  
Clayton, Chm., and Kenney, C., dissent.

Woodruff, Chief Regulatory Law Judge

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<sup>5</sup> Staff quoted *State ex rel. St. Louis-San Francisco Ry. Co. v. Public Service Com'n*, 53 S.W.2d 868, 871 (Mo. 1932).