BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

The Staff of the Missouri Public)
Service Commission,)
Complainant	ĵ
	Case No. GC-2011-0098
)
v.)
)
Laclede Gas Company, Laclede Energy)
Resources and The Laclede Group)

CONCURRING OPINION OF COMMISSIONER TERRY M. JARRETT IN THE ORDER DISMISSING STAFF'S SECOND AMENDED COMPLAINT AGAINST LACLEDE ENERGY RESOURCES, INC., AND THE LACLEDE GROUP INC.

The majority of the Commission assumes in its Order that the Commission has jurisdiction over Laclede Energy Resources and The Laclede Group in granting the dismissal of Staff's Second Amended Complaint Against Laclede Energy Resources, Inc., and The Laclede Group Inc. for failure to state a claim. I concur in the result of the majority but not in the methodology for reaching that result.

Staff argues that the affiliates are subject to jurisdiction because of a signed Stipulation and Agreement in an earlier case. However, jurisdiction is a matter of law. Section 393.140(12), RSMo 2000 limits this Commission's jurisdiction over other businesses operated by entities regulated by the Commission, specifically outlining the thresholds – which if and when crossed – would establish a basis for jurisdiction by the Commission. Nothing before this Commission demonstrates that the "regulatory veil" has been pierced so as to place this matter before the Commission. Jurisdiction is not a matter of "agreement" between parties to settlement agreements, and no stipulation and agreement can confer jurisdiction to this Commission which is not conferred by law. Therefore, I would have dismissed the Staff's Second Amended Complaint Against Laclede Energy Resources, Inc., and The Laclede Group,

Inc., for a lack of jurisdiction over these two entities, as opposed to dismissal for failure to state a claim. The basis for dismissal here, failure to state a claim, misses the mark because it implies that this Commission currently has jurisdiction over the two Laclede affiliates. Finally, neither the Affiliate Transaction Rule or the Marketing Affiliate Transaction Rule, 4 CSR 240.04.015 and 4 CSR 240.04.016 respectively, confer jurisdiction to this Commission over the Laclede affiliates. While transactions and activities of affiliates are encompassed within these two rules, jurisdiction of this Commission is limited to the regulated entity, unless the limitations set out in Section 393.140(12), RSMo 2000 are met, and only then can this Commission assert jurisdiction over an affiliate.

Because this Commission lacks jurisdiction over the two Laclede affiliates at this time I concur in the result of this Commission Order but differ on the manner in which I would have reached that result.

Sincerely,

Terry M. Jarrett, Commissioner

Issued this 22st day of December, 2010.