

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

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant	)	
	)	
v.	)	<u>Case No. GC-2011-0006</u>
	)	
Laclede Gas Company,	)	
Respondent.	)	

**DISSENT OF COMMISSIONER TERRY M. JARRETT TO THE  
REPORT AND ORDER REGARDING MOTIONS  
FOR SUMMARY DETERMINATION**

I respectfully dissent. The Staff is not entitled to Summary Determination because it has not established that there is no genuine issue as to any material fact that would entitle them to such relief.

Commission Rule 4 CSR 240-2.117(E) sets out the standard for granting a motion for summary determination:

The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

In its Motion, Staff argues that Laclede has violated a prior Commission order by violating the approved Stipulation and Agreement in Case No. GM-2001-342. Specifically, Staff asserts that, during a hearing on Case No. 10AC-CC00170 on May 11, 2010, Michael Pendergast, attorney for Laclede, argued that the documents sought by the Staff and ordered by the Commission to be provided, “aren’t something that Laclede Gas

has possession, custody or control over.” And, Mr. Pendergast further argued that “We have, being Laclede Gas Company, have provided everything we have in our possession. We have indication to the Commission that we have provided everything that’s in our possession.” Staff makes further allegations that in other on the record presentations, hearings or communications, Mr. Pendergast stated that Laclede is not in possession of the documents sought by Staff. Staff also alleges that in Laclede Gas Company’s Return to the Writ of Mandamus that Laclede states that it does not have the documents.

The pertinent part of the Stipulation and Agreement reads as follows:

Laclede Gas Company and The Laclede Group, Inc., shall also provide Staff and Public Counsel any other such information (including access to employees) relevant to the Commission's ratemaking, financing, safety, quality of service and other regulatory authority over Laclede Gas Company; **provided that Laclede Gas Company and any affiliate or subsidiary of The Laclede Group, Inc. shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates or subsidiaries: (a) are not within the possession or control of Laclede Gas Company; or (b) are either not relevant or are not subject to the Commission's jurisdiction and statutory authority by virtue of or as a result of the implementation of the Proposed Restructuring.** (Emphasis supplied.)

The key phrase here is “right to object.” According to the Stipulation and Agreement, Laclede has no right to **object** that the records sought by Staff are not within the possession and control of Laclede.

To “object” is a legal term of art. It is defined as follows:

In legal proceedings, to object (*e.g.*, to the admission of evidence) is to interpose a declaration to the effect that the particular matter or thing under consideration is not done or admitted with the consent of the party objecting, by is by him considered improper or illegal, and referring the question of its propriety or legality to the court.<sup>1</sup>

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<sup>1</sup> Black’s Law Dictionary, 5<sup>th</sup> ed. at 967 (1979).

Nowhere in Staff's Motion does it allege, much less show by the pleadings, testimony, discovery, affidavits, and memoranda on file, that Laclede ever "objected" to the production of the records at issue. The context of Laclede's representations in Circuit Court and appellate courts, and other hearings and communications relied on by Staff in its Motion, are not **objections**. In fact, they are representations in oral arguments before the Courts and this Commission and in other communications with Staff. In its Motion, Staff never asserts or proves by competent and substantial evidence that any Court or this Commission was ever presented with an objection by Laclede. The words spoken or written were not the type of objection contemplated by the Stipulation and Agreement.

Words in the law have meaning, and, the meaning of words does make a difference. What Staff accuses Laclede of doing simply did not occur, or at least Staff has not shown any evidence that Laclede objected as contemplated by the Stipulation and Agreement.

Based on the analysis set out above, Summary Determination is not appropriate. Staff's Motion should have been denied.

A handwritten signature in black ink, reading "Terry M. Jarrett". The signature is written in a cursive, flowing style.

Terry M. Jarrett  
Commissioner

Respectfully submitted,  
this 10<sup>th</sup> day of February, 2011.