

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office in
Jefferson City on the 14th day
of August, 2001.

In the Matter of the Application of Laclede Gas Company)
for an Order Authorizing Its Plan to Restructure Itself) **Case No. GM-2001-342**
into a Holding Company, Regulated Utility Company, and)
Unregulated Subsidiaries.)

ORDER APPROVING STIPULATION AND AGREEMENT
AND APPROVING PLAN TO RESTRUCTURE

This order approves the unanimous stipulation and agreement of the parties and authorizes the restructuring of Laclede Gas Company into a holding company, a regulated utility company, and unregulated subsidiaries.

Procedural History:

On December 1, 2000, Laclede filed an application for authority to restructure, merge and form subsidiary companies. The Paper, Allied-Industrial, Chemical, and Energy Workers Local No. 5-6, AFL-CIO and the Paper, Allied-Industrial, Chemical, and Energy Workers Local No. 5-194, AFL-CIO were granted intervention on February 3, 2001. Barnes-Jewish Hospital, DaimlerChrysler Corporation, The Doe Run Company, Emerson Electric Company, Lone Star Industries, Inc., River Cement Company, SSM HealthCare, and Unity Health System (collectively known as the "Missouri Energy Group") were granted intervention April 3, 2001.

On July 9, 2001, the parties executed a Unanimous Stipulation and Agreement. On July 17, 2001, the Staff of the Missouri Public Service Commission filed its Suggestions in Support of the Stipulation and Agreement.

Findings of Fact:

Laclede is engaged in the business of distributing and transporting natural gas to customers in the state of Missouri.

Laclede seeks approval from the Commission to restructure itself as a holding company, The Laclede Group, Inc., with one of its subsidiaries, Laclede Gas Company, being the regulated public utility company within the state of Missouri. The proposed restructuring will not cause any change in the terms and conditions of the regulated utility services provided by Laclede. The reorganization will also have no effect on the tax revenues of any Missouri political subdivision.

Laclede proposes to restructure by a method known as reverse triangular merger. Laclede Gas Company will merge into Laclede Acquisition, Inc., and then Laclede Group, Inc., would hold all the common stock of Laclede Gas Company and its subsidiaries. Laclede Group, Inc., would then reorganize the subsidiaries, leaving all the regulated utility assets owned by the subsidiary named Laclede Gas Company.

The stipulation and agreement filed in this case contains certain conditions. These conditions are intended to protect the Missouri customers of Laclede. The conditions relate to such matters as financial constraints, access to information, prior authorization from the Missouri Public Service Commission for mergers and acquisitions, method of cost allocation, and reporting requirements. Staff supports the stipulation and

agreement and recommends that the Commission approve it. The Office of the Public Counsel is also a signatory of the stipulation and agreement.

Conclusions of Law:

Based on the facts found herein, the Commission makes the following conclusions of law.

Jurisdiction

Laclede is a "gas corporation" and a "public utility" within the intendments of Section 386.020, (18) and (42), RSMo 2000, and is thus subject to the jurisdiction of this Commission pursuant to Chapters 386 and 393, RSMo 2000.

No party has requested a hearing in this case. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.¹ Since no one has requested a hearing, the Commission may determine this case based on the pleadings.

Mergers, Transfers and Stock Ownership

Laclede seeks authority to reorganize as described above under Section 393.190, RSMo 2000. That statute provides that a Missouri gas corporation may not transfer or encumber any part of its system without Commission approval.² Likewise, it

¹ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

² Section 393.190.1, RSMo 2000.

may not merge with another corporation without permission from the Commission.³ Commission approval is also necessary for any corporation other than a utility to own more than ten percent of the total capital stock of a public utility.⁴

The Missouri Supreme Court, in *State ex rel. City of St. Louis v. Public Service Commission*, stated that, in considering such cases, the Commission must be mindful that the right to transfer or encumber property is an important incident of the ownership thereof and that a property owner should be allowed to do such things unless it would be detrimental to the public.⁵ The same standard is applied to proposed mergers and reorganizations. The Missouri Court of Appeals has stated that "[t]he obvious purpose of [Section 393.190] is to ensure the continuation of adequate service to the public served by the utility."⁶ This is the standard by which public detriment is to be measured in such cases. The Commission notes that it is unwilling to deny private, investor-owned companies an important incident of the ownership of property unless there is compelling evidence on the record showing that a public detriment is likely to occur.⁷

The Commission reads *State ex rel. City of St. Louis v. Public Service Commission* to require a direct and present public detriment.⁸ For example, where the sale of all or part of a utility's system was at issue, the Commission considered such factors as the applicant's experience in the utility industry; the applicant's history of service difficulties;

³ *Id.*

⁴ *Id.*

⁵ *State ex rel. City of St. Louis v. Public Service Commission*, 335 Mo. 448, 459, 73 S.W.2d 393, 400 (Mo. banc 1934).

⁶ *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980).

⁷ *In the Matter of the Joint Application of Missouri Gas Company et al.*, 3 Mo.P.S.C.3d 216, 221 (1994).

⁸ *Supra*, 335 Mo. at 459, 73 S.W.2d at 400.

the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the asset safely and efficiently.⁹ In the present case, there is no evidence of a direct and present public detriment in the record. If the reorganization is approved, Laclede will still be a public utility subject to regulation by this Commission; it will still serve the same customers with the same system pursuant to its existing tariffs.

Based on its consideration of the record before it, the Commission concludes that the reorganization as proposed in the verified application is not detrimental to the public interest and should be approved. Specifically, this includes approval for Laclede to merge with Laclede Acquisition, Inc., approval for the transfer of the stock of Laclede to The Laclede Group, Inc., approval for Laclede Group, Inc., to own more than ten percent of the common stock of Laclede Gas Company, and approval, to the extent that approval is needed, for any other transfers necessary to implement the reorganization as proposed in the verified application.

Reorganization

Laclede also seeks authority under Section 393.250, RSMo 2000. That statute provides that the reorganization of a gas corporation is subject to Commission "supervision and control" and may not be had without authorization from the Commission.¹⁰ It also empowers the Commission to set the capitalization amount of the reorganized entity.¹¹

⁹ See *In the Matter of the Joint Application of Missouri Gas Energy et al.*, Case No. GM-94-252 (Report and Order, issued October 12, 1994) 3 Mo.P.S.C.3d 216, 220.

¹⁰ Section 393.250.1, RSMo 2000.

¹¹ Section 393.250, 2 and 3, RSMo 2000.

Based on its consideration of the record before it, the Commission concludes that the proposed reorganization is reasonable and is not a detriment to the public interest. Therefore, it should be approved.

IT IS THEREFORE ORDERED:

1. That the verified application filed by Laclede Gas Company on December 1, 2000, is approved.
2. That the Unanimous Stipulation and Agreement filed on July 9, 2001, is approved.
3. That Laclede Gas Company is authorized to reorganize as described in its verified application referred to in Ordered Paragraph 1, above, subject to the conditions contained in the Unanimous Stipulation and Agreement referred to in Ordered Paragraph 2, above.
4. That Laclede Gas Company is authorized to take all necessary and lawful actions to effect and consummate the reorganization herein approved.
5. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties, transactions and expenditures herein involved. The Commission reserves the right to consider any ratemaking treatment to be afforded the properties, transactions and expenditures herein involved in a later proceeding.
6. That this order shall be effective on August 24, 2001.

7. That this case may be closed on August 25, 2001.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D".

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Simmons, Ch., Lumpe, and Gaw, CC.,
concur.
Murray, C., absent.

Nancy Dippell, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
August 14, 2001**

CASE NO: GM-2001-342

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Michael C. Pendergast
Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101

Lisa C. Langeneckert
Law Office of Robert C. Johnson
720 Olive Street, 24th Floor
St. Louis, MO 63101

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Jan Bond/Sherrie A. Schroder
Diekemper, Hammond, Shinnars, Turcotte
and Larrew, P.C.
7730 Carondelet Avenue, Suite 200
St. Louis, MO 63105:

Mark W. Comley
Newman, Comley & Ruth P.C.
601 Monroe, Suite 301
P. O. Box 537
Jefferson City, MO 65102

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

ALJ/Secretary: Dipeolu / Payne
8-8
Date Circulated GM-2001-342 CASE NO.
"KS"
Simmons, Chair am absent
Murray, Commissioner JS
Lumpke, Commissioner JS
Gaw, Commissioner JS
Commissioner
Agenda Date 8-14
Action taken: 3-0A5
Must Vote Not Later Than

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 14th day of August 2001.

Dale Hardy Roberts
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge