

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>File No. GC-2011-0098</u>
)	
Laclede Gas Company, Laclede Energy Resources and The Laclede Group,)	
)	
Respondents.)	

**ORDER GRANTING STAFF LEAVE TO AMEND ITS COMPLAINT AND
DIRECTING LACLEDE GAS COMPANY TO RESPOND TO THAT
AMENDED COMPLAINT**

Issue Date: December 3, 2010

Effective Date: December 3, 2010

The procedural status of this case became confused when the Staff of the Commission filed a second amended complaint on November 22, 2010. This order endeavors to clear up that confusion so that the Commission can begin to move Staff's complaint to resolution.

The case began on October 6, 2010, when Staff filed a complaint against Laclede Gas Company, Laclede Energy Resources, and The Laclede Group. The next day, October 7, Staff filed an amended complaint, along with a motion requesting leave to file that amended complaint. Staff's amended complaint contained a more specific prayer for relief, but did not change Staff's allegations against the Respondents. The Commission granted Staff's motion for leave to amend its complaint on November 12.

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. Thus far, Laclede Gas Company, which is represented by different legal counsel, has not responded to Staff's second amended complaint.

The first question is whether Staff must obtain leave from the Commission before filing its second amended complaint. The Commission rule on point is 4 CSR 240-2.080(20), which states: "Any pleading may be amended within ten (10) days of filing, unless a responsive pleading has already been filed, or at any time by leave of the commission." Thus, because more than ten days passed since Staff filed its first amended complaint, and because responsive pleadings were filed, Staff needs leave from the Commission to file its second amended complaint.

The next question is whether the Commission should grant leave for Staff to file its second amended complaint despite Staff's failure to request that leave. While Missouri's

Civil Rules of Procedure do not apply to administrative proceedings unless specifically authorized by statute,¹ the Commission may look to those rules for guidance by analogy.² Civil rule 55.33 indicates leave to amend a pleading is to be “freely given when justice so requires.” Staff’s filing of an amended complaint this early in the process will not cause hardship to any respondent, and indeed two of the respondent companies have already filed an answer and a motion to dismiss the second amended complaint. The Commission will grant Staff leave to file its second amended complaint.

The Missouri Supreme Court has indicated, “[o]nce an amended pleading is filed, any prior pleadings not referred to or incorporated into the new pleading are considered abandoned and receive no further consideration in the case for any purpose.”³ As a result, the Commission is also unable to consider Laclede Gas Company’s response to the previous version of Staff’s complaint. Therefore, Laclede Gas Company will need to answer Staff’s second amended complaint and may, if it wishes to do so, file a new motion to dismiss all or part of that second amended complaint.

THE COMMISSION ORDERS THAT:

1. Staff is granted leave to file its second amended complaint.
2. Laclede Gas Company shall answer Staff’s second amended complaint no later than December 10, 2010.

¹ *State ex rel. Rosenberg v. Jarrett*, 233 S.W.3d 757, 762 (Mo. App. W.D. 2007).

² *Staff v. Aspen Woods Apartment Associates, et al*, Order Regarding Motion for Leave to Amend Complaint, File No. WC-2010-0227, October 27, 2010.

³ *State ex rel. Bugg v. Roper*, 179 S.W.3d 893, 894 (Mo. banc 2005).

3. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Morris L. Woodruff, Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 3rd day of December, 2010.