

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Laclede Gas Company's Tariff to)
Increase Its Annual Revenues for Natural Gas Service)

File No. GR-2010-0171
Tariff No. YG-2010-0376

ORDER SETTING EVIDENTIARY HEARING ON MOTION

Issue Date: July 1, 2010

Effective Date: July 1, 2010

The Missouri Public Service Commission is scheduling an evidentiary hearing on *Staff's Motion to Add Parties* ("motion"). In the motion, Staff argues "that it is necessary for the Commission to add . . . as parties to this case"¹ non-utility entities ("affiliates") related to Laclede Gas Company ("Laclede"). In *Laclede Gas Company's Response in Opposition to Staff's Motion to Add Parties* ("response"), Laclede opposes the motion.

Staff alleges that "Adding all affiliated entities as parties to the general rate case will assist the Staff in discovering whether the capitalization, revenues, costs and expenses are properly apportioned."² Laclede alleges that granting the motion will deprive it of the due process of law. Both charges merit the Commission's full attention. But both parties rely on facts not in the record. For that reason, the Commission solicited the parties' suggestions for making a record that supports their allegations. Such suggestions were due on June 30, 2010.

Before weighing the parties' suggestions, a chronology of this action and the motion is in order.

A. Chronology

1. On December 4, 2010, Laclede initiated this action with the filing of a tariff seeking an increase in the amounts it charges for gas service.

¹ *Motion*, page 1, first paragraph, first sentence.

² *Motion*, page 3, paragraph 7.

2. On December 10, 2009, the Commission suspended the tariff, initiating a contested case.³

3. On May 4, 2010, Staff filed the motion with supporting suggestions.

4. On May 14, 2010, Laclede filed its response in opposition to the motion.

5. On May 20, 2010, the Commission scheduled oral argument on the motion for June 10, 2010.

6. On June 9, 2010, Staff filed a motion, agreed to or unopposed by all parties, to continue the oral argument. The Commission granted the continuance. Afterward, the Commission inquired as to whether the parties desired suspension of the procedural schedule and received status reports in response.

7. On June 21, 2010, Staff filed the *Parties Response to Commission's Order Regarding Procedural Schedule* ("response"), agreed to or unopposed by all parties, stating that the Commission should set the motion for oral argument for the week of July 5, 2010, because oral argument may be necessary despite the earlier continuance.

8. On June 22, 2010, the Commission scheduled oral argument on the motion.

9. July 9, 2010, is the date scheduled for oral argument on the motion.

10. August 2, 2010, is the date scheduled for starting two weeks of evidentiary hearings.

11. November 4, 2010, is the date on which the tariff's suspension ends and the tariffs take effect unless the Commission decides otherwise.

³ Section 393.150.1, RSMo 2000.

B. Suggestions⁴ and Analysis

Laclede suggests that the Commission use the July 9, 2010, oral argument date to take evidence before oral argument. Laclede's suggestion is persuasive. The motion is crucial, the July 9, 2010, date is already reserved, and the Commission could rule on the motion soon after that date.

Staff's arguments to the contrary are unpersuasive. Staff suggests that the July 9, 2010, oral argument date is too soon to take evidence. Staff argues that "there is not now sufficient time to prepare for and convene a separate hearing on the issues raised by Staff's motion."⁵ But, in the very next sentence, Staff alleges that ". . . much of the evidence on which it relies is already contained on pages 38 through 54 within Staff's May 10, 2010, Revenue Requirement Cost of Service Report previously prepared and filed in this matter,"⁶ which suggests that Staff has already compiled its evidence. Also, Staff filed the motion five months after the tariff's filing, asked for the continuance of the first oral argument setting, and suggested setting oral argument for the week of July 5-9, 2010. Further, Staff offered no suggestion for determining the facts supporting its own motion until the Commission asked.

Staff now suggests the following sequence: holding oral argument as scheduled, filing additional pre-filed testimony in support of its motion starting a week later, and taking evidence on the motion at the hearing on the merits. When the Commission should grant the motion, Staff does not say. Granting the motion, before taking evidence, moots Staff's own suggestion of taking evidence at the hearing on the merits. Granting the motion after

⁴ USW Local 11-6 also filed a response to the Commission's request for suggestions, but takes no position on this matter.

⁵ *Staff's Response to Commission's Order Directing Filing*, page 1, paragraph 2.

⁶ *Id.*

the hearing on the merits is too late for Staff to have discovery from the affiliates, which Staff claims is purpose for the motion. And the Commission will not convene a hearing on the merits without identifying the parties.

Ten days' notice of any evidentiary hearing in a contested case is generally necessary by statute.⁷ But the same statute allows shorter notice "where the public . . . interest may make a shorter time reasonable [.]"⁸ Those provisions make relevant the following considerations. Axiomatically, parties are crucial to the course and outcome of any contested case. In this contested case, the service and rates of a large utility are at issue. The merits of the issues are the subject of an evidentiary starting on August 2, 2010. Those facts, the Commission finds and concludes, constitute a public interest that makes a shorter time than ten days reasonable.

Therefore, the Commission will follow Laclede's suggestion and convene an evidentiary hearing before oral argument on the motion.

C. Issues

The purpose of the hearing is not to determine the propriety of the tariff, nor to inquire into, apportion, or award items between Laclede and the affiliates. The purpose of the hearing is to make a record on which the Commission will determine the facts relevant to the motion. Therefore, the motion and response shall circumscribe the issues for hearing as follows.

1.

⁷ Section 536.067(4), RSMo 2000. Commission regulation 4 CSR 240-2.070(11) sets a ten-day minimum notice for hearings, but applies only to a complaint.

⁸ Section 536.067(4), RSMo 2000.

Staff argues that “All Laclede affiliates must be added as Parties to this case so the Commission may consider all relevant factors in setting rates.”⁹ On that theme, Laclede alleges:

. . . an extraordinary level of cooperation that Laclede and its affiliates have shown in addressing Staff’s information needs in this case. Efforts that have permitted Staff to fully audit and make recommendations on all matters related to Laclede’s transactions with its affiliates. [¹⁰]

Nevertheless, Staff asks that “the Commission add [the affiliates] as parties to this case so the Commission may adequately perform its statutory duties.”¹¹ The statutory duties that Staff cites are as follows: “This Commission has the duty to set just and reasonable rates and in doing so has the power to investigate the relationships between the regulated utility and its affiliates and parent company.”¹²

Staff’s major premise is that, under Section 393.140(12),¹³ if a gas corporation does “other business” under following requirements:

. . . any other business than [gas service] which other business is not otherwise subject to the jurisdiction of the commission, and is so conducted that its operations are to be substantially kept separate and apart from [gas service,¹⁴

it gains certain exemptions from Commission regulation as follows:

[S]uch other business shall not be subject to any of the provisions of this chapter [393, RSMo,] and shall not be required to procure the consent or authorization of the commission to any act in such other business or to make any report in respect thereof. [¹⁵]

⁹ *Staff’s Suggestions in Support of Motion to Add Parties*, page 1, first paragraph, third sentence.

¹⁰ *Response*, pages 1-2. Laclede provides details id. at pages 8-9, paragraph 12.

¹¹ *Motion*, page 3, prayer for relief.

¹² *Staff’s Suggestions in Support of Motion to Add Parties*,” pages 3-4.

¹³ RSMo 2000.

¹⁴ *Id.*

¹⁵ *Id.*

Conversely, Staff argues, such other business loses the exemptions if it fails to meet the requirements.

Staff's minor premise is that the affiliates conduct Laclede's "other business" out of compliance with the requirement that "operations are to be substantially kept separate and apart from [gas service.]" Staff's conclusion is that the affiliates lose their exemption from the provisions of chapter 393, RSMo. Therefore, Staff argues, the Commission should subject the affiliates to chapter 393, RSMo.

2.

Yet, out of all chapter 393, RSMo, Staff cites only a substantive provision barring unduly discriminatory transactions¹⁶ and Section 393.140(12) itself:

. . . But this subdivision shall not restrict or limit the powers of the commission in respect to [gas service], and said powers shall include also the right to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the [gas service] as distinguished from such other business [. ¹⁷]

That language shows that the Commission always has the right to inquire into, apportion, and make a fair and just award of the listed items between Laclede and the affiliates.

In any such process, unduly discriminatory transactions must be at issue. And any process affecting affiliate transactions necessarily affect the affiliate. All this is true even if all requirements and exemptions are in place.

Therefore, Laclede and Staff shall be prepared to present evidence on what Staff gains if the Commission joins the affiliates as parties to this contested case, whether such

¹⁶ Section 393.130.2, RSMo Supp., 2009.

¹⁷ Section 393.140.

joinder “will assist the Staff in discovering whether the capitalization, revenues, costs and expenses are properly apportioned”¹⁸ between the affiliates and Laclede.

3.

As the language quoted above shows, Staff’s arguments address joinder in both mandatory and discretionary terms. Relevant to a discretionary joinder, Laclede argues that the affiliates have:

. . . the same rights to discovery, to the filing of direct, rebuttal and surrebuttal testimony, and to the other procedural rights that the existing parties to this proceeding have already had an opportunity to at least partially exercise.¹⁹

Laclede alleges that joinder will:

. . . impose on [the affiliates] the significant legal, administrative and other costs that effective participation in Commission proceedings require.²⁰

Specifically, Laclede alleges that each of the affiliates may need to pre-file its own testimony and present its own evidence. Laclede argues that the mere four weeks until the hearing on the merits of this action is insufficient time for the affiliates to prepare their case and may result in a deprivation of due process. Yet Laclede also acknowledges that the very definition of affiliates implicates the sharing of directors, officers, employees, resources, and interests. Therefore, Laclede and Staff shall be prepared to present evidence on what Laclede and the affiliates lose if the Commission joins the affiliates as parties to this contested case, considering the relationships among Laclede and the affiliates, and their shared or divergent resources, interests, and representation.

¹⁸ *Motion*, page 3, paragraph 7.

¹⁹ *Response*, page 7, paragraph 9, first line.

²⁰ *Id.*, at page 4, paragraph 5, last sentence.

THE COMMISSION ORDERS THAT:

1. The regulatory law judge ("RLJ") assigned to this case will convene an evidentiary hearing, to be followed by oral argument, on *Staff's Motion to Add Parties*. The hearing will begin at 10:00 a.m., on July 9, 2010 in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri.

2. The hearing and argument will be in a building that meets accessibility standards required by the Americans with Disabilities Act and any person who needs additional accommodations to participate in the pre-hearing conference shall contact the Commission before the hearing. Such contact shall be through the Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711.

3. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Daniel Jordan, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 1st day of July 2010.