

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 6<sup>th</sup> day of  
April, 2017.

In The Matter of Laclede Gas Company's )  
Request to Increase its Revenues for Gas )  
Service )

**File No. GR-2017-0215**

**ORDER REGARDING MOTION TO COMPEL DISCOVERY**

Issue Date: April 6, 2017

Effective Date: April 6, 2017

On March 21, 2017, the Office of the Public Counsel filed a motion asking the Commission to compel Laclede Gas Company to answer three data requests. The data requests were submitted to Laclede on February 15, 2017, and the company's answers were due 20 days later, on March 7. Laclede objected to the data requests and has not answered them. Laclede responded to Public Counsel's motion to compel on March 28, and Public Counsel replied on April 5.

The crux of the dispute between Public Counsel and Laclede is not about the substance of the data requests. Indeed, Laclede has indicated its willingness to provide the information Public Counsel requests after its rate case is filed. Rather, the disagreement is about the timing of the issuance of those data requests.

Commission Rule 4 CSR 240-2.090(2) provides that "parties" may use data requests as a means of discovery. But, no one can be a "party" unless there is a case to which one has become a party. At this time, the file in which Public Counsel has filed its motion does not include a case in which either Public Counsel or Laclede is yet a party.

This file was opened on February 3, 2017, when Laclede filed a notice that it intends to file a general rate case sometime after the passage of sixty days, which would be after April 5, 2017.<sup>1</sup> Laclede is required to make such 60-day filing to comply with Commission Rule 4 CSR 240-4.020, which is the Commission's rule regarding *ex parte* and extra record communications. The filing of a notice does not itself create a case in that it does not require any action or any other response by the Commission. This file may ultimately contain a case if Laclede files a tariff to institute a general rate review. But until this file does contain a case, to which there can be parties, neither Public Counsel, nor any other entity that may one day become a party, has the ability to issue data requests or conduct any other discovery relating to this file.

If this motion to compel discovery had been brought by any other prospective party this would be the end of the discussion. But Public Counsel is not like any other entity that may become a party to a Commission case because Public Counsel has independent authority to obtain information from Laclede, or any other utility, apart from its role as a party in cases before the Commission.

Section 386.450, RSMo 2000 requires the Commission to order a utility to make information available to Public Counsel if Public Counsel shows good cause for doing so.

Specifically, the statute states:

At the request of the public counsel and upon good cause shown by him the commission shall require or on its own initiative the commission may require, by order served upon any corporation, person or public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said corporation, person or public utility in any office or place within or without this state, or, at its option, verified copies in lieu thereof, so

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<sup>1</sup> Laclede has indicated it intends to file the rate case on April 11, 2017.

that an examination thereof may be made by the public counsel when the order is issued at his request or by the commission or under its direction.<sup>2</sup>

Thus, if Public Counsel has shown good cause for issuing these data requests to Laclede at this time, the Commission must order Laclede to respond.

To decide whether Public Counsel has shown good cause, it is necessary to take a closer look at the appropriateness of Public Counsel's request for immediate discovery. Public Counsel explains that it sent the data requests to Laclede to begin an early review of Laclede's general books and records so that it can get a head start on preparing for the upcoming rate case. Public Counsel believes such a head start is appropriate because it lacks sufficient resources to fully examine every potential issue in a general rate case and could use the extra time to start its review. Public Counsel explains that the documents it is seeking should be readily available to Laclede and could quickly be provided by Laclede with little or no difficulty.

Laclede responds that it is unfair to require a utility to begin to respond to case-related data requests before it has actually filed a case. It contends that the required notice it filed, which resulted in the opening of this file, is intended to ensure there are no improper contacts between the utility and the Commission, not to give any party a head start on discovery. Laclede further complains that it and its employees are very busy preparing to file its rate case and should not be bothered by having to respond to data requests during that preparation time.

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<sup>2</sup> Laclede notes that this section is entitled "inspection of out of state record", and suggests the statute only provides for the production of inconveniently located records upon a showing of good cause. The title given to a statute by the compiler is not part of the statute and does not control the interpretation of the meaning of the statute. See, *State v. Lawson*, 181 S.W.2d 508 (Mo 1944). A reading of the statute clearly shows that the authority it grants is not limited to the production of inconveniently located documents.

After reviewing this matter, the Commission finds that Public Counsel has not shown good cause for its demand that it be given rate case related documents before the rate case is filed. The filing of the 60-day notice required by the Commission's ex parte and extra-record communications rule is designed to ensure that improper communications do not occur just before a contested case is filed. The 60-day notice filing does not itself institute a case, and indeed, a case may never be instituted. Thus, the 60-day notice filing should not be interpreted to allow Public Counsel, or any other potential party, to get a head start on case related discovery. The only cause Public Counsel claims for its demand for production of documents is its desire to start discovery before the rate case commences. While Public Counsel would like to be able to start its discovery as soon as possible, it has not shown that it should be allowed to begin that discovery before every other party that will ultimately take part in the case.

This does not mean that Public Counsel must always wait until a case commences before it is able to obtain documents from a utility. For example, in File No. GO-2017-0081, the Commission authorized Public Counsel to obtain documents from Laclede and other natural gas utilities relating to its investigation into expenses recovered through the infrastructure system replacement surcharge, apart from any pending case. Undoubtedly, there are other circumstances where Public Counsel can show good cause for a request for utility documents. But Public Counsel has not shown good cause in the circumstances of this request.

**THE COMMISSION ORDERS THAT:**

1. Public Counsel's Motion to Compel Discovery is denied.
2. This order shall be effective when issued.

**BY THE COMMISSION**



*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and  
Coleman, CC., concur.

Woodruff, Chief Regulatory Law Judge

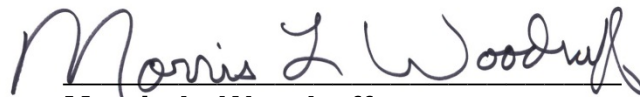
**STATE OF MISSOURI**

**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 6<sup>th</sup> day of April 2017.**



  
Morris L. Woodruff  
Secretary

**MISSOURI PUBLIC SERVICE COMMISSION**

**April 6, 2017**

**File/Case No. GR-2017-0215**

**Missouri Public Service  
Commission**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

*Sincerely,*



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.