

a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

* * *

(E) 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.

* * *

3. There is a Respondent in this case, to-wit: Laclede Gas Company ("Laclede"); and Respondent Laclede filed its *Answer* on August 9, 2010; this motion therefore, is filed after Respondent has filed its responsive pleading as required by Rule 4 CSR 240-2.117(1)(A).

4. Pursuant to the Procedural Schedule in this case, the evidentiary hearing will begin on February 22, 2011, which is more than sixty days after the filing of this motion as required by Rule 4 CSR 240-2.117(1)(A).

5. There is no genuine issue as to the material facts set out in Paragraphs 6 through 25, below.

6. Laclede admits that Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).

7. Laclede admits that it is Laclede Gas Company, a Missouri general business corporation in good standing, incorporated on March 2, 1857, as The Laclede

Gas Light Company; that its principal place of business is located at 720 Olive Street, Saint Louis, Missouri 63101 and that its registered agent is Mary Caola Kullman, 720 Olive Street, Suite 1517, Saint Louis, Missouri 63101.

8. Laclede admits that it is in the business of distributing natural gas to the public for light, heat and power, using gas plant, as defined at § 386.020(19), RSMo, that it owns, controls, operates, or manages; that it describes itself on its website as "the largest natural gas distribution utility in Missouri, serving approximately 630,000 residential, commercial and industrial customers in the city of St. Louis and ten other counties in Eastern Missouri;" and that "[a]s an adjunct to its gas distribution business, the Company operates an underground natural gas storage field, a propane storage cavern and propane vaporization facilities."

9. Laclede admits that, by virtue of its activities described in Paragraph 8, above, it is a gas corporation within the intendments of § 386.020(18), RSMo, and a public utility within the intendments of § 386.020(43), RSMo, and therefore "subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]"

10. Pursuant to law, this Commission has authority to hear and determine complaints against public utilities pursuant to § 386.390.1, RSMo, which provides that "[c]omplaint may be made . . . in writing, setting forth any act or thing done or omitted to be done by any corporation . . . in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission . . ."

11. Laclede admits that it is a wholly-owned subsidiary of The Laclede Group, Inc. ("LG"), a Missouri general business corporation in good standing, incorporated on

October 18, 2000; and that LG's principal place of business is also located at 720 Olive Street, Saint Louis, Missouri 63101 and that its registered agent is also Mary Caola Kullman, 720 Olive Street, Suite 1517, Saint Louis, Missouri 63101.

12. Laclede admits that LG describes itself on its website as "a public utility holding company committed to providing reliable natural gas service through its regulated core utility operations while engaging in non-regulated activities that provide opportunities for sustainable growth. Its primary subsidiary -- Laclede Gas Company -- is the largest natural gas distribution utility in Missouri, serving approximately 631,000 residential, commercial and industrial customers in the City of St. Louis and ten other counties in eastern Missouri. Its primary non-regulated activities include Laclede Energy Resources, Inc., a natural gas marketer located in St. Louis, Missouri."; and that other wholly-owned subsidiaries of LG include Laclede Venture Corp., Laclede Development Company, Laclede Investment LLC., Laclede Gas Family Services, Inc., and Laclede Pipeline Company.

13. Laclede admits that Laclede Energy Resources, Inc. ("LER") is a Missouri general business corporation in good standing, incorporated on May 28, 1981; and that its principal place of business is also located at 720 Olive Street, Saint Louis, Missouri 63101 and that its registered agent is also Mary Caola Kullman, 720 Olive Street, Suite 1517, Saint Louis, Missouri 63101.

14. Laclede admits that LER is described in LG's 10-K as "a wholly-owned subsidiary engaged in the marketing of natural gas and related activities on a non-regulated basis"; and that "LER markets natural gas to both on-system Utility

transportation customers and customers outside of Laclede Gas' traditional service territory, including large retail and wholesale customers."

15. Laclede admits that it has from time to time purchased natural gas from Laclede Energy Resources, Inc. ("LER").

16. Laclede admits that on December 1, 2000, Laclede filed an application with this Commission seeking authority to restructure as a holding company with subsidiaries; and that the Commission docketed Laclede's application as Case No. GM-2001-342.

17. Laclede admits that the Commission granted Laclede's application on August 14, 2001, based upon a Stipulation and Agreement signed by all the parties on July 9, 2001, which the Commission specifically approved in its order; and that true and correct copies of the Commission's Order and the Stipulation and Agreement are attached to Staff's Complaint.

18. An examination of the Stipulation and Agreement referred to in Paragraph 17, above, reveals this provision at § IV.2:

Upon request, Laclede Gas Company and The Laclede Group, Inc. agree to make available to Staff, Public Counsel and PACE, upon written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, all books, records and employees of The Laclede Group, Inc., Laclede Gas Company and its affiliates as may be reasonably required to verify compliance with the CAM and the conditions set forth in this Stipulation and Agreement and, in the case of PACE, to ensure that it continues to have the same degree and kind of access to information relevant to the investigating and processing of grievances and the enforcement of collective bargaining agreements, whether from affiliates or otherwise, as it currently has under Laclede's existing corporate structure. In addition to following standard discovery procedures, Staff's and Public Counsel's access to bargaining unit employees shall also be conditioned on Staff and Public Counsel providing reasonable notice to the employee's Union of their intent to seek such access and the right of such employee to be represented by the

Union. 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.)

19. Laclede admits that a discovery dispute arose between Laclede and the Staff in the course of proceedings involving Cases GR-2005-0203 and GR-2006-0288; and that a matter of particular concern to Staff in these cases, and the subject of the discovery dispute, is purchases by Laclede of gas from its affiliate, LER. Laclede refuses to admit as a legal conclusion Staff's assertion that these cases are Actual Cost Adjustment ("ACA") cases, in which the estimated cost of procuring gas supplies on an annual basis is adjusted to reflect the actual cost of those supplies, following scrutiny to identify and exclude any imprudent costs; however, Laclede itself refers to these cases as ACA cases in its *Answer*, for example, at Paragraph 17 thereof.

20. Laclede denies that the purpose of the discovery in Cases GR-2005-0203 and GR-2006-0288 was to determine whether Laclede's purchases from LER were prudent. However, the Commission has already determined this issue against Laclede and the propriety of Staff's discovery in Cases GR-2005-0203 and GR-2006-0288 is no longer an issue.

21. Laclede refuses to admit as a legal conclusion Staff's assertion that the Commission ultimately resolved the discovery dispute referred to in Paragraph 19 in

Staff's favor and, pursuant to an order of the Commission, the Commission's General Counsel brought an enforcement action in the Circuit Court of Cole County, Missouri, Case No. 10AC-CC00170. However, the truth of Staff's assertion is apparent from items 116, 117 and 118 on the official docket sheet maintained by the Secretary of the Commission for Case No. GR-2005-0203, which are, respectively, the Commission's *Order Denying Laclede's Application for Rehearing*, issued on March 17, 2010; the *Judgment and Writ of Mandamus* entered by the Circuit Court of Cole County on June 25, 2010; and *Laclede Gas Company's Return to the Writ of Mandamus*, filed on July 30, 2010; which documents Staff hereby incorporates herein by reference.

22. Laclede admits that the Circuit Court of Cole County, Missouri, convened a hearing on Case No. 10AC-CC00170 on May 11, 2010, at which Laclede, LG and LER were each represented by counsel. Laclede refuses to admit that, during the course of that hearing, 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. They belong to LER" (Tr. pg. 14, lines 9-11); and that Laclede's position, as articulated by Mr. Pendergast, was that "[w]e have, we being Laclede Gas Company, have provided everything that's in our possession. We have indicated to the Commission that we have provided everything in our possession" (Tr. pg. 14, lines 3-6); and that Mr. Pendergast further stated, "We don't believe that these are in our possession, custody and control" (Tr. pg. 45, lines 5-6); but stated rather that "the hearing transcript speaks for itself." The Commission may examine the transcript, which is attached to Staff's *Complaint*, and determine for itself whether Staff has accurately quoted Mr. Pendergast.

23. Laclede denies that, by arguing that the documents sought by Staff were not in its possession, custody or control, it violated § IV.2 of the Stipulation and Agreement referred to above and the Commission's Order of August 14, 2001, approving that Stipulation and Agreement. This is, of course, the ultimate issue and the Commission must determine for itself that Laclede has, in fact, violated the Stipulation and Agreement as charged by Staff.

24. Other violations are shown by the Affidavit of Staff witness Anne M. Allee, which is filed simultaneously with this motion, to-wit:

A. At a hearing before the Commission on November 4, 2010, in Cases GR-2005-0203 and GR-2006-0288, Mr. Pendergast stated, with respect to the documents sought in the discovery dispute, "Commissioner, if that's directed to me, I think we would go ahead and say our defense is we've complied and we've given everything we have and what we don't have is not in our possession. We have requested it from LER, they have declined to go ahead and provide it." (Case GR-2005-0203, Transcript, vol. 5, p. 350; Case GR-2006-0288, Transcript, vol. 5, p. 372). Staff hereby incorporates these transcripts herein by reference.

B. Also at the November 4, 2010, hearing, Mr. Pendergast offered a letter as an exhibit, which the Commission received and marked as Exhibit 3. That letter, dated November 9, 2009, and written by Mr. Pendergast to Kevin Thompson and Lera Shemwell, stated "Accordingly, and in compliance with the above mentioned orders, Laclede states that, other than the substantial volume of documents, including LER documents, that have previously been furnished to

Staff, Laclede is not in possession of any documents responsive to the information described in the October 20, 2008 Order.” Staff hereby incorporates Exhibit 3 herein by reference (Item 130 on the docket sheet for Case No. GR-2005-0203).

C. In the previously mentioned *Laclede Gas Company's Return to the Writ of Mandamus* (Paragraph 21, above), at Paragraph 3 thereof, Laclede states, “[a]lso attached hereto is a statement under oath by Laclede’s Vice President of Gas Supply affirming that Laclede has produced all of the information sought that is within Laclede’s possession, custody or control.” Attached to Laclede’s *Return* is the Affidavit of Steven F. Mathews in which he declares under oath, at Paragraph 3 thereof, that “[t]o the best of my knowledge and belief, Laclede Gas Company has produced all of the information in its possession, custody or control that is responsive to the above stated data requests.”

25. Pursuant to law, penalties are fixed for violations of the orders of the Commission in § 386.570, RSMo, which provides:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing

violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

26. Additionally, § 386.600, RSMo, provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

WHEREFORE, Staff prays that the Commission will grant summary determination of its *Complaint* filed herein and enter its order (1) finding that Laclede has violated the Commission's order by violating the approved Stipulation and Agreement as charged by Staff herein; (2) deeming each day that Laclede's violation existed to be a separate offense and authorizing its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law; and granting such other and further relief as the Commission deems just.

Respectfully Submitted,

s/ Kevin A. Thompson

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **15th day of December, 2010**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case, which date is not later than the date on which this pleading is filed with the Commission as required by Rule 4 CSR 240-2.117(1)(B), relating to Summary Determination.

s/ Kevin A. Thompson