

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

In the Matter of the Application of Southern)
Union Company d/b/a Missouri Gas Energy,)
The Laclede Group, Inc. and Laclede Gas Company))
for an Order Authorizing Sale, Transfer, and) Case No. GM-2013-0254
Assignment of Certain Assets and Liabilities)
from Southern Union Company to Laclede Gas)
Company and, in Connection Therewith, Certain)
other Related Transactions)

**RESPONSE OF SOUTHERN UNION COMPANY
TO FURTHER SUGGESTIONS OF MISSOURI INDUSTRIAL ENERGY
CONSUMERS' APPLICATION TO INTERVENE OUT OF TIME**

COMES NOW Joint Applicant Southern Union Company d/b/a Missouri Gas Energy (“SUG”), and for its Response to the Further Suggestions in Support of the Application to Intervene Out of Time of the Missouri Industrial Energy Consumers (“Suggestions”) respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. On May 24, 2013, The Missouri Industrial Energy Consumers (“MIEC”) filed its Suggestions in support of its Application to Intervene Out of Time in the captioned case and its response to Missouri Gas Energy (“MGE”) Motion for Reconsideration. MIEC states it has intervened in the pending rate case of Laclede Gas Company (“Laclede Gas”), Case No. GR-2013-0171. In paragraph 2 of the Suggestions, MIEC states that it made the judgment that it could “protect its interests” in this acquisition case solely by becoming a party in the Laclede Gas rate case. It states it has an interest in the capital structure of Laclede Gas, an issue that can be addressed in the rate case and in this case.

2. These statements do two things. First, they confirm that MIEC made an informed decision some months back not to intervene in this case (Case No. GM-2013-0254). Second, MIEC asserts without basis that its claimed concern about the capital structure of Laclede Gas

(presumably post-acquisition) could be addressed in Laclede's rate case – a case which was on track to be decided before this case is concluded. It is not plausible that a post-acquisition capital structure would be applied to a pre-acquisition Laclede Gas, so this claim, to be generous, is a misdirection on the part of MIEC. It certainly does not show good cause for a late intervention request in this acquisition case.

3. In paragraph 3 of the Suggestions, MIEC laments that the Laclede Gas rate case is “likely to settle”, and that it was left with “no option other than to object to settlement of the rate case or to intervene in this acquisition case”.¹ It is difficult to accept the premise that a likely settlement has come as a surprise to MIEC. After all, Laclede Gas successfully has settled many of its rate cases over the years. Also, MIEC has been an active participant in the settlement discussions based on its representations in the Suggestions. The situation described by MIEC is nothing more than a self-inflicted conundrum created by its informed decision not to intervene in this case in a timely fashion. This is not a good cause for the extraordinary relief MIEC is requesting.

4. MIEC's additional claim in paragraph 3 that Laclede Gas' in-house counsel has been acting as SUG's proxy in the rate case is not legally correct, nor is it credible. According to the Suggestions, counsel for Laclede Gas and SUG counsel initially registered their respective objections to MIEC's intervention in this acquisition case. Subsequently, counsel for Laclede Gas relented, stating that it would not object to MIEC's intervention request. MIEC states that it

¹ In paragraph 7 of the Suggestions, MIEC contends that the imminent settlement of the Laclede Gas rate case is good cause for late filing its application to intervene. MIEC claims it is an “abrupt change of facts”. Not in *this* case it isn't. The rate case is a separate proceeding with different issues (i.e., class cost of service, rate design, revenue requirement and ratemaking accounting) and with its own outcome. The Laclede Gas rate case has not been consolidated with this acquisition case and is, consequently, a wholly independent proceeding. MIEC should not be heard to complain that a settlement in a case in which it is a party affects its interests in a case in which it is not a party.

“assumed” that SUG also would not object, a claim that is difficult to fathom because there is no indication that SUG ever equivocated. Tellingly, counsel for MIEC never contacted SUG’s counsel to seek a clarification. SUG stands by its claim that MIEC’s failure to fully apprise the Commission of SUG’s clearly stated position was a material omission in the circumstances.

5. In paragraph 5 of the Suggestions, MIEC asserts that its interests are different than that of the general public. The Commission need not get to this question because MIEC has not shown good cause for a late intervention. In any event, its participation in other cases dealing with different issues does not provide a showing that its interests in this case are unique.² The only issue MIEC has mentioned (i.e., post-acquisition capital structure of Laclede Gas) is an issue Staff and other parties are more than capable of dealing with. MIEC does not claim otherwise. A subsequent rate case wherein capital structure and return on equity of Laclede Gas are at issue will provide an adequate safeguard for MIEC member interests.

6. In paragraph 7 of the suggestions, MIEC attempts to liken its circumstance to that of MGE in one case and Jackson County and the City of Riverside in yet another, but those attempted parallels do not hold up. MGE’s application to intervene in KCPL’s rate case was filed one day out of time. Additionally, MGE stated a specific pecuniary interest in that proceeding arising from the fact that its natural gas service territory substantially overlaps the electric service territory of KCPL. Where Jackson County and the City of Riverside are concerned, political subdivisions may be entitled to a certain degree of deferential courtesy in such matters. As noted in SUG’s previous filing, however, the MIEC is a group of very sophisticated corporate interests represented by one of the biggest law firms in the State of Missouri. By its own admission, MIEC is a frequent flyer in Commission proceedings. It should be held to a stricter standard in such

² The cases to which MIEC refers to in paragraph 7 of its Suggestions are rate proceedings, not merger or acquisition cases.

matters.

7. Finally, in paragraph 9 of the Suggestions, MIEC points to the apparent non-objection of Laclede Gas as evidence that MIEC's intervention is inconsequential and, also, to argue the righteousness of its cause.³ The reality, however, appears to be a good deal different than MIEC would have the Commission believe. In paragraph 3 of the Suggestions, MIEC states that it had no alternative but to object to the rate case settlement if it was not allowed to intervene in this case. The acquiescence of Laclede Gas may be explained by this prospect rather than as an indication on its part that the intervention is inconsequential. A stipulation and agreement in the rate case has not been filed so it is not possible to state for certain that this accommodation is an element of the rate case settlement. Nevertheless, it is a reasonable supposition given MIEC's statements as to the chronology of events. Based on MIEC's pleadings, the Commission should disregard any claim by MIEC that Laclede Gas not objecting to the late intervention is a tacit recognition by Laclede Gas that MIEC's intervention should be permitted.

8. It bears repeating that SUG does not object to MIEC's late intervention in a reflexive way. SUG did not object to the late-filed intervention of the IBEW Local 53 even though its claimed interest is directly and fully addressed by the language of the Purchase and Sale Agreement. In that case, however, the union local filed just several days late. In this case, MIEC filed three months late. This case has been on file since January. The parties which sought to timely intervene have been actively engaged in discussions. Having a new party participate in this case at such a late stage – without good cause and with new issues it will not fully disclose – not only hinders ongoing settlement discussions in this matter, but shows complete disregard for the Commission's rule on interventions.

9. MIEC's Suggestions do not provide good cause to allow its late intervention in this

³ See also, Suggestions, ¶5.

case. To the contrary, the *non sequiturs* and mischaracterizations it contains are good cause to deny the application to intervene. The late-filed application of MIEC to intervene should be denied.

WHEREFORE, SUG reiterates its request that the late-filed application of the MIEC to intervene be denied for failure to sufficiently state good cause for special treatment.

Respectfully submitted,

/s/ **Todd J. Jacobs**

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail on this 28th day of May 2013 to counsel of record.

/s/

Todd J. Jacobs