

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Office of the Public Counsel, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 Laclede Gas Company, and )  
 Missouri Gas Energy, )  
 )  
 Respondents. )

**Case No. GC-2016-0297**

**RESPONSE TO APPLICATION**  
**TO INTERVENE OF MISSOURI INDUSTRIAL ENERGY CONSUMERS**  
**AND REQUEST TO DEFER RULING PENDING IDENTIFICATION**  
**OF MIEC MEMBERS REPRESENTED IN THIS PROCEEDING**

COME NOW Respondents Laclede Gas Company (“Laclede” or “Company”), including its Laclede Gas (herein so called) operating unit, and Missouri Gas Energy (“MGE”), also an operating unit of Laclede, and submit their Response to the Application to Intervene (“Application”) of the Missouri Industrial Energy Consumers (“MIEC”) and Request to Defer Ruling Pending Identification of MIEC Members Represented in this Proceeding. In support thereof, Respondents state as follows:

1. On April 28, 2016, the Commission issued an order in this case which, among other things, set Friday, May 20, 2016 as the deadline to apply for intervention in this case. Timely applications were filed by the Missouri Energy Consumers Group and the Missouri Division of Energy.

2. MIEC filed its Application on Tuesday, May 31, 2016, claiming that it relied on the Commission’s calendar rather than the Commission’s Order in this case to assess when its Application was due. Leaving aside the lateness of its Application, MIEC’s Application should not be approved at this time because it fails to provide the Commission and Respondents with

enough information to determine whether MIEC has a sufficient interest in this proceeding to justify its intervention.

3. All that MIEC states in that regard is its assertion that it is a Missouri corporation and that its members are large industrial customers of Laclede Gas and Missouri Gas Energy. MIEC's own Articles of Incorporation on file with the Missouri Secretary of State, however, provide that MIEC "shall have no Members" and that the "affairs of the corporation shall be managed by its Board of Directors." (See Articles of Incorporation of Missouri Industrial Energy Consumers, which is attached hereto as Exhibit 1 and incorporated herein for all purposes). Accordingly, the primary factual assertion made by MIEC to substantiate whether it has a sufficient interest to intervene in this proceeding appears to be inaccurate.

4. Moreover, in contrast to prior proceedings involving Laclede, MIEC makes no effort to identify which larger industrial customers of Laclede Gas and MGE it is actually representing in this proceeding.<sup>1</sup> Nor does it identify which industrial customers of Laclede Gas and MGE are represented on MIEC's Board of Directors and, if they are, what action, if any, they may have taken to authorize intervention in this proceeding on their behalf or on behalf of other large industrial customers of Laclede Gas or MGE.

5. Absent such information, it is impossible for the Commission or Respondents to determine whether MIEC has a cognizable interest in this proceeding and whether or how that interest may or may not differ from that of the general public, as required by Commission Rule 4 CSR 240-2.075(3)(A)). For all the Commission and Respondents know, MIEC may be intervening at the direction of an industrial customer that is not even located in the respective service territories of Laclede Gas or MGE – a circumstance that would raise serious questions

---

<sup>1</sup> In each of Laclede Gas' three most recent rate case proceedings, MIEC specifically identified in its applications to intervene which industrial customers it was seeking to represent with its intervention request. See Case Nos. GR-2013-0171; GR-2010-0171; and GR-2007-0208.

about its interest in intervening in this proceeding. Or MIEC may be intervening on behalf of no utility customer at all, but simply as a means of keeping abreast of developments in the proceeding and gathering information that may be of use to it in other proceedings.

6. Whatever MIEC's real interest may be, however, Respondents submit that such an opaque approach to intervening in Commission proceedings is directly contrary to the goals of transparency that should govern such requests. Depending on what position MIEC may take in this proceeding, such an approach could also potentially infringe on Respondents' due process rights to be advised of, and have an opportunity to rebut, the claims being made against it. As the court recognized in *Colyer v. State Bd. of Registration for the Healing Arts*, 257 S.W.3d 139, 144-145 (Mo. App. W.D. 2008), due process requires notice and a hearing; moreover, the adequacy of the notice and the hearing must be evaluated in the context of the specific procedure at issue, in this case, an administrative proceeding. *Id.* at 144-45.

“In an administrative proceeding, due process is provided by affording parties the opportunity to be heard in a meaningful manner. The parties must have knowledge of the claims of his or her opponent, [and] have a full opportunity to be heard, and to defend, enforce and protect his or her rights.”

*Weinbaum v. Chick*, 223 S.W.3d 911, 913 (Mo. App. S.D.2007) (internal quotation omitted). “[A] party to an administrative hearing must be given the opportunity to hear evidence submitted against him, to confront and cross-examine witnesses, and to rebut testimony of such witnesses by evidence on his own behalf.” *Jackson v. Sayad*, 741 S.W.2d 847, 852 (Mo. App. E.D.1987).

7. Absent information on what specific customers MIEC is representing in this case, Respondents could be placed at a significant disadvantage in exercising their due process right to rebut any claims made against them regarding whether current rates are impermissibly excessive. While Respondents believe there is no basis for such claims, the degree to which such assertions

can be supported could vary significantly from customer class to customer class or even among customers within a specific class. As long as the customers represented by MIEC remain unidentified, however, Respondents' ability to conduct discovery, prepare rebuttal testimony and otherwise respond to such allegations based on these considerations could be severely compromised should such allegations be raised.

8. MIEC's failure to identify which specific customers it is representing is also problematic because it raises fundamental questions about who will be bound by any potential settlement agreement in this case or from collaterally attacking any final Commission Order that may be issued. For example, absent an identification of which customers MIEC is representing in this case, any attempt to enforce the terms of any settlement agreement may potentially be challenged (or collaterally attacked) by certain large industrial customers on the theory that they were not represented by MIEC and therefore are not bound by such terms. Although identifying which MIEC members are being represented by MIEC in this case may not completely obviate these kinds of unproductive challenges, it would certainly serve to make them less likely and bring the kind of repose to Commission settlements that should be encouraged.

9. For all of these reasons, Respondents respectfully submit that before the Commission acts on MIEC's Application to Intervene it should require MIEC to specifically identify which large industrial customers of Laclede Gas and MGE it is representing in this proceeding as well as any other entity that MIEC is representing in this case.<sup>2</sup>

WHEREFORE, Respondents respectfully request that the Commission issue its Order requiring MIEC to specifically identify which large industrial customers of Laclede Gas and

---

<sup>2</sup> Laclede would note that when KCPL raised similar concerns regarding MIEC's failure to identify who it was representing in an Application to Intervene, MIEC responded by identifying those customers. *See In the Matter of Kansas City Power & Light Company's Application for Approval of Demand-Side Programs and for Authority to Establish a Demand-Side Programs Investment Mechanism*, EO-2012-0008, Order Granting Intervention (February 1, 2012). It should do the same here.

MGE it is representing in this proceeding as well as any other entity that MIEC is representing in this case and that it defer ruling on MIEC's Application to Intervene until such information is provided.

Respectfully Submitted,

**/s/ Rick Zucker**

Rick Zucker, Mo. Bar #49211  
Associate General Counsel - Regulatory  
Laclede Gas Company  
Missouri Gas Energy  
700 Market Street, 6<sup>th</sup> Floor  
St. Louis, MO 63101  
Telephone: (314) 342-0532  
Fax: (314) 421-1979  
Email: rick.zucker@spireenergy.com

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the parties of record in this case on this 6th day of June, 2016 by United States mail, hand-delivery, email, or facsimile.

**/s/ Rick Zucker**

FEB 17 1999

ARTICLES OF INCORPORATION  
OF  
MISSOURI INDUSTRIAL ENERGY CONSUMERS

*Rebecca McDowell Cook*  
SECRETARY OF STATE

A Missouri Nonprofit Corporation

The undersigned, being a natural person of the age of eighteen years or more and a citizen of the United States, for the purpose of forming a corporation under the Missouri Nonprofit Corporation Act, hereby adopts the following Articles of Incorporation:

1. The name of the corporation is Missouri Industrial Energy Consumers.
2. This corporation is a mutual benefit corporation.
3. The period of duration of the corporation is perpetual.
4. The street address of the corporation's initial registered office in Missouri is 1 Metropolitan Sq., Su. 3600, St. Louis, Missouri 63102, and the name of its initial registered agent at such address is BCRA Co.
5. The name and address of the incorporator is:  
  
Connie B. Walsh  
211 N. Broadway, Suite 3600  
St. Louis, MO 63102-2750
6. The purpose of the corporation is to represent industry regarding energy matters.
7. The corporation shall have no Members. The affairs of the corporation shall be managed by its Board of Directors. The number of Directors and their terms shall be as provided in the Bylaws, provided that there shall not be less than three Directors. The Directors of the corporation shall be elected in the manner described in the Bylaws.
8. Bylaws of the corporation, consistent with these Articles, shall be adopted by the Board of Directors, and may be amended in the manner provided in the Bylaws.
9. These Articles may be amended by the Board of Directors in the manner provided by law.
10. Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, distribute all the assets of the corporation to Robert C. Merlo, Anheuser-Busch Cos., Inc., 3636 South Geyer Road, St. Louis, Missouri 63127.

FEB 17 1999

Rebecca McDowell Cook, JOK  
SECRETARY OF STATE, STATE

11.

(a) The provisions of this Article shall be in the nature of a contract between the corporation and each of its Directors and Officers made in consideration of such person's continued service to the corporation. The protection afforded to each Director or Officer by the provisions of this Article shall survive such person's term of office or employment. This Article may not be repealed, nor may the benefits to the Directors and Officers afforded hereby be diminished, except as to liability accruing in respect of acts or omissions occurring after the date of such repeal or modification.

(b) The corporation shall hold harmless and indemnify each Director and Officer to the fullest extent authorized or permitted by the provisions of Subsections 1 through 6 and 9 through 11 of Section 355.476, Missouri Revised Statutes, as amended (which Section, in its entirety, is hereinafter referred to as the "State Statute") or any other or additional statutory provisions which are hereafter adopted authorizing or permitting such indemnification.

(c) The corporation may purchase and maintain for the benefit of each Director or Officer, as named insured or additional insured, a policy or policies of general comprehensive liability insurance (covering claims arising out of death, illness or injury or arising out of property loss or damage) and directors' and officers' liability insurance (covering claims arising out of wrongful acts or omissions) in respect of liabilities asserted against and/or incurred by its Directors and Officers in either such capacity or otherwise in the performance of their services for the corporation.

(d) In addition to the foregoing, and subject only to the exclusions set forth in section (e) of this Article, the corporation shall, to the fullest extent authorized or permitted by the provisions of Subsection 7 of the State Statute, hold harmless and indemnify each Director and Officer: (i) against any and all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Director or Officer in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or in the right of the corporation) to which such Director or Officer is, was or at any time became a party, or is threatened to be made a party, by reason of the fact that such Director or Officer is, was or at any time becomes a Director, Officer, employee or agent of the corporation, or is or was serving or at any time serves at the request of the corporation as a Director, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; and (ii) otherwise to the fullest extent as may be provided to such Director or Officer by the corporation under the non-exclusivity provisions of the State Statute.

(e) No indemnity pursuant to section (d) of this Article shall be paid by the corporation: (i) except to the extent the aggregate of losses to be indemnified thereunder exceeds the amount of such losses for which the Director or Officer is indemnified either pursuant to section (b) of this Article or pursuant to any insurance of the type referred to in section (c) of this Article purchased and maintained by the corporation; (ii) in respect of remuneration paid to such Director or Officer if it shall be determined by a final decision of a court having jurisdiction in the matter that such remuneration was in violation of law; (iii) on account of such Director's or Officer's conduct which is finally adjudged by a court having jurisdiction in the matter to have

been knowingly fraudulent, deliberately dishonest or willful misconduct; or (iv) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful.

(f) All agreements and obligations of the corporation contained in this Article shall continue during the period the Director or Officer is a Director or Officer of the corporation (or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) and shall continue thereafter so long as the Director or Officer shall be subject to any possible claim or threatened, pending or completed action, suit or proceeding, whether civil, criminal or investigative, by reason of the fact that he or she was a Director or Officer of the corporation or was serving in any other capacity referred to in this Article.

(g) The corporation will pay, in advance of the final disposition of the action, suit or proceeding, all reasonable expenses of the Director or Officer incurred in defending any civil or criminal action, suit or proceeding against him or her, provided he or she shall have agreed to reimburse the corporation if and to the extent that it shall be ultimately determined that he or she is not entitled to be indemnified by the corporation for such expenses.

In affirmation of the facts stated above.

Connie B. Wald  
Incorporator

FILED AND CERTIFICATE OF  
INCORPORATION ISSUED

FEB 17 1999

Rebecca McDowell Cook  
SECRETARY OF STATE



# STATE OF MISSOURI



**Rebecca McDowell Cook**  
**Secretary of State**

CORPORATION DIVISION  
CERTIFICATE OF INCORPORATION  
MISSOURI NONPROFIT

WHEREAS, DUPLICATE ORIGINALS OF ARTICLES OF INCORPORATION OF  
MISSOURI INDUSTRIAL ENERGY CONSUMERS

HAVE BEEN RECEIVED AND FILED IN THE OFFICE OF THE SECRETARY OF  
STATE, WHICH ARTICLES, IN ALL RESPECTS, COMPLY WITH THE  
REQUIREMENTS OF MISSOURI NONPROFIT CORPORATION LAW;

NOW, THEREFORE, I, REBECCA MCDOWELL COOK, SECRETARY OF STATE  
OF THE STATE OF MISSOURI, BY VIRTUE OF THE AUTHORITY VESTED IN  
ME BY LAW, DO HEREBY CERTIFY AND DECLARE THIS ENTITY A BODY  
CORPORATE; DULY ORGANIZED THIS DATE AND THAT IT IS ENTITLED TO  
ALL RIGHTS AND PRIVILEGES GRANTED CORPORATIONS ORGANIZED UNDER  
THE MISSOURI NONPROFIT CORPORATION LAW.

IN TESTIMONY WHEREOF, I HAVE SET MY  
HAND AND IMPRINTED THE GREAT SEAL OF  
THE STATE OF MISSOURI, ON THIS, THE  
17TH DAY OF FEBRUARY, 1999.

*Rebecca McDowell Cook*  
Secretary of State



\$25.00