

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

In the matter of the Joint Application of Fidelity	)	
Natural Gas, Inc. and Laclede Gas Company	)	
for an order authorizing the sale and transfer	)	
of certain assets of Fidelity Natural Gas, Inc.	)	
located in Missouri to Laclede Gas Company	)	Case No. GM-2005-0183
and either authorizing the transfer of existing	)	
Certificates of Public Convenience and	)	
Necessity or granting a New Certificate of Public	)	
Convenience and Necessity to Laclede Gas	)	
Company in conjunction with same.	)	

**JOINT APPLICANTS' RESPONSE TO ORDER DIRECTING FILING**

COME NOW Fidelity Natural Gas, Inc. ("Fidelity") and Laclede Gas Company ("Laclede") (collectively "Joint Applicants"), pursuant to 4 CSR 240-2.080, by and through its undersigned counsel, and respectfully file their Response To Order Directing Filing issued on February 17, 2006. In support of their response, Joint Applicants respectfully state:

1. On February 17, 2006, a Notice of Ex Parte Contact was filed in this proceeding which attached a letter dated February 13, 2006, from Mr. Rick Pallardy to the Chairman of the Commission regarding the sale of the assets of Fidelity Gas Company to Laclede Gas Company ("February 13 Letter"). On the same date, the Commission also issued its Order Directing Filing which directed the parties to file a response to the letter filed with the Notice of Ex Parte Contact by 4:00 p.m. on February 21, 2005.

2. According to the February 13 Letter, Mr. Pallardy is president of an unincorporated entity which calls itself the "Missouri Coalition For Fair Competition"

(hereafter referred to as "MCFFC"). MCFFC does not identify its members, has not sought intervention in this case, and has not otherwise participated in any of the proceedings ordered by Commission in this case, including the local public hearing held in Sullivan, Missouri. Nevertheless, it has submitted (not filed) its February 13 Letter at the eleventh hour of this proceeding, long after the intervention date of November 14, 2005 has expired.

3. In its February 13 Letter, MCFFC expresses concern regarding Fidelity's provision of unspecified services<sup>1</sup>, and suggests that "MCFFC believes it necessary to again voice complaint that the service aspect should not be passed on [presumably to Laclede]".

4. Under the HVAC Services Act (*See* Sections 386.754 to 386.764, RSMo (Cum. Supp. 1998)), a gas, electric or steam heating utility may not provide certain services relating to heating, ventilating and air conditioning equipment ("HVAC Services") unless it provides such services through an affiliate. Subsection 7 of Section 386.756 of the Act, however, establishes a statutory exemption to this general requirement. Specifically, that subsection permits the utility itself to continue providing such HVAC Services so long as the utility provided the same type of HVAC Services five (5) years prior to August 28, 1998.

5. On August 31, 2000, the Commission issued its Notice Recognizing Exemption in Case No. GE-2000-826 (attached) which stated:

**Fidelity Natural Gas, Inc. is entitled to the exemption established by Section 386.756(7), RSMo Supp. 1999.**

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<sup>1</sup> The Joint Applicants believe that MCFFC is concerned about the provision of HVAC services since the members of this group are apparently HVAC contractors.

The Notice Recognizing Exemption was issued after the Staff filed its Recommendation in Case No. GE-2000-826 which stated that "it has investigated FNG's claim to exemption and concludes that FNG is entitled to the exemption for the following services:

- Conversion of Furnaces
- Conversion of Ranges and Ovens
- Conversion of Range Tops
- Conversion of Hot Water Heaters
- Conversion of Built-in Ovens
- Conversion of Clothes Dryers
- Conversion of Fireplaces
- Conversion of Gas Grills
- Conversion of Gas Deep Fryers
- Conversion of Gas Cooling Units of Air Conditioning
- Conversion of Gas Cooling Units for Refrigeration
- Conversion of Gas Operated Production Equipment
- Service and Repair of Gas Furnaces
- Service and Repair of Gas Appliances (residential)
- Service and Repair of Gas Appliances (commercial)
- Service and Repair of Gas Appliances (industrial)
- Service and Repair of Gas Operated Production Equipment (industrial)"

6. As the Commission knows, all orders of the Commission "shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter." Section 386.270 RSMo. To the extent that MCFFC is complaining about the above-referenced services provided by Fidelity, its complaints are nothing more than collateral attacks upon the Commission's order of August 31, 2000. The Commission should therefore dismiss its complaints, and proceed expeditiously to approve the proposed sale of assets from Fidelity to Laclede.

7. In any event, Laclede intends to follow the provisions of law following the closing of the proposed sale of assets. There is absolutely no basis for slowing the approval of the sale based upon the unsubstantiated allegations contained in the February

13 Letter which is nothing more than a collateral attack on the Commission's previous order in Case No. GE-2000-826.

**WHEREFORE**, the Joint Applicants respectfully request that the Commission accept this response, and approve the Unanimous Stipulation And Agreement which was filed on February 14, 2006 in this proceeding.

Respectfully submitted,

**/s/ James M. Fischer**

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**/s/ Sheldon K. Stock**

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ATTORNEYS FOR  
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**/s/ Michael C. Pendergast**

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ATTORNEYS FOR  
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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 17th day of February, 2006, to:

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/s/ James M. Fischer

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