

separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of 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.

(C) Not more than thirty (30) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination. Attached thereto shall be any testimony, discovery or affidavits not previously filed that are relied on in the response. The response shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination, shall state the reason for each denial, shall set out each additional material fact that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits. The response may also have attached thereto a legal memorandum explaining why summary determination should not be granted.

(D) For good cause shown, the commission may continue the motion for summary determination for a reasonable time to allow an opposing party to conduct such discovery as is necessary to permit a response to the motion for summary determination.

(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. Respondent Laclede Gas Company ("Laclede") filed its *Motion for Summary Determination* on December 22, 2010, and the Commission thereafter established

January 21, 2011, as the date by which any response must be filed.¹ Laclede filed a purported memorandum of law with its motion but did not file any supporting affidavits, testimony or discovery in support of its motion.

4. As required by Rule 4 CSR 240-2.117(C), Staff hereby “admit[s] or den[ies] each of movant’s factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination, shall state the reason for each denial, shall set out each additional material fact that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits”:

1. Admitted.

2. Denied as incomplete because Laclede has, as usual, failed to quote all of the relevant language from Section IV.2 of the 2001 S&A. The first sentence of Section IV.2 the 2001 S&A, which Laclede quoted in part, reads in full as follows (emphasis added):

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 investigation 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.

Additionally, the third sentence of Section IV.2 the 2001 S&A reads in full

¹ *Order Establishing Time to Respond to Laclede’s Motion for Summary Determination*, issued December 27, 2010.

as follows (emphasis added):

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.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Denied. At the Oral Argument on March 26, 2009, in the ACA Cases, this exchange occurred (emphasis added):²

MR. REED: Everything that we're requesting, Commissioner, must be reasonably calculated to lead to the discovery of admissible evidence.

COMMISSIONER MURRAY: And for an ACA case, the Staff is going to be looking at whether Laclede complied with its tariff, including the Cost Allocation Manual that is included in its tariff; is that correct?

MR. REED: **As part of the ACA case, we'll review that information as well**, but the primary purpose for this information is to determine whether Laclede paid too much to LER for gas and determine what LER did with Laclede's capacity that was released to LER.

² Case Nos. GR-2005-0203 and GR-2006-0288, Oral Argument on March 26, 2009, Transcript vol. 2, p. 23, line 19, to p. 24, line 15.

COMMISSIONER MURRAY: And too much would be defined by the rule, would it not?

MR. REED: Not necessarily. Because if entering into the contract and taking action under the contract was not prudent in that it led to higher gas costs for the ratepayers, then that impacts the ACA.

COMMISSIONER MURRAY: So they could fully comply with their Cost Allocation Manual and still be imprudent, is that what you're saying?

MR. REED: Yes.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

5. Although Staff does not dispute the facts asserted by Laclede, Staff contends that Laclede is nonetheless not entitled thereby to any remedy. Why? Because the facts asserted by Laclede are not material to the cause of action asserted by Staff in its *Complaint*. Summary determination is only appropriate where the undisputed material facts entitle one of the parties to a remedy as a matter of law. In the present case, the undisputed facts entitle Staff to a remedy as a matter of law, but do not entitle Laclede to any remedy. The remedy Staff seeks, and to which it is entitled on the undisputed facts, is an action for monetary penalties against Laclede in circuit court. Staff directs the Commission to its accompanying *Memorandum of Law* for a full discussion.

WHEREFORE, having fully responded as required by Commission Rule 4 CSR 240-2.117(1)(C), Staff prays that the Commission will deny Laclede's *Motion for Summary Determination* and instead grant summary determination to Staff on 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 **12th day of January, 2011**, 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.

s/ Kevin A. Thompson