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June 26, 2001

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P. O. Box 360
Jefferson City, MO 65102

FILED³

JUN 26 2001

Missouri Public
Service Commission

RE: Case No. GM-2001-342

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **STAFF'S POSITION STATEMENT ON CONTESTED ISSUES**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Cliff E. Snodgrass
Senior Counsel
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CES:ccl
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED²

JUN 26 2001

Missouri Public
Service Commission

In the Matter of the Application of Laclede)
Gas Company for an Order Authorizing Its)
Plan to Restructure Itself Into a Holding)
Company, Regulated Utility Company, and)
Unregulated Subsidiaries.)

Case No. GM-2001-342

STAFF'S POSITION STATEMENT ON CONTESTED ISSUES

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through one of its attorneys, and herein respectfully states its position on the disputed issues presented in this case.

GENERAL ISSUES

Questions: Does the application for authority to reorganize as currently filed represent a detriment to the public interest? If so, what is the nature of that detriment to the approval of the application?

Answers: Yes. The transaction contained within the application for authority to merge and reorganize into a holding company structure is detrimental to the public interest without protective measures being put into place by the Commission to protect the Missouri ratepayer and to insure continued regulatory oversight.

The "nature of the detriment" is basically three-fold. Initially, without conditions being imposed that will insulate the regulated operations from the business risk and financial risk of the unregulated operations, the cost of capital will increase for the regulated operations and this cost will be borne by the ratepayers with no offsetting benefit to them.

Secondly, without conditions that require Commission scrutiny over the sale, lease, assignment or transfer of utility assets, and conditions that provide for access to books, records and personnel, appropriate Commission oversight could be lost or diminished. Staff is also concerned that approval of the application without certain conditions may allow for potential pre-emption by the SEC and FERC, and therefore this possibility may change or limit the Commission's authority over the regulated entity after the proposed reorganization takes place.

Lastly, Staff believes that if the proposed transaction in the application is approved an appropriate Cost Allocation Manual (CAM) should be imposed by the Commission to track affiliated, unregulated transactions and ensure that Missouri ratepayers are not being compromised as a result of these affiliated business dealings.

Questions: Should the Commission approve certain conditions before this proposed restructuring is approved? What, if any conditions discussed in the pre-filed testimony of the parties should be approved by the Commission?

Answers: Yes, the Staff believes that conditions are necessary before this proposed transaction is approved by the Commission. All the conditions proposed by the Staff and Public Counsel in the pre-filed testimony unless otherwise disposed of by a partial stipulation and agreement between the parties should be imposed by the Commission in this case.

Questions: Does Section 393.140 (12) RSMo 2000 prevent imposition of conditions limiting or requiring Commission approval of the business activities of the proposed holding company and its unregulated subsidiaries? Do other regulated utilities engage in unregulated business activities through subsidiary companies with or without Commission approval?

Answers: No. To accomplish the proposed restructuring the Laclede Gas Company (Laclede) will merge with another corporation and Laclede will survive. Because a merger of a regulated utility is proposed, Section 393.190 (1) RSMo 2000 becomes the threshold statute of inquiry, not Section 393.140 (12). The Public Service Commission statutes have been interpreted consistently by the Courts to mean that they were enacted to protect the public, and, that property interests in utilities should not be altered unless shown to be "not detrimental to the public interest." See State ex rel. City of St. Louis v. Public Service Commission, 73 S.W. 2d 393, 399, 400 (Mo. banc 1934) and also see State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W. 2d 466, 468 (Mo. App. 1980). 4 CSR 240-060 (8) (D) also states that authority to merge requires a showing that the merger will not be detrimental to the public interest. Thus, the impact on the public is the essential area of review, not whether regulated utilities, *not seeking to merge (emphasis added)* can operate unregulated enterprises without Commission approval. Obviously, since the Commission is charged with protecting the public interest, it has the implied authority to impose conditions that are necessary to protect that public interest in Missouri, see State ex rel. and to Use of Public Service Commission v. Padberg, 145 S.W. 2d 150, 346 Mo. 1133 (1941).

Whether other regulated utilities engage in unregulated business subsidiaries with or without Commission approval is irrelevant to this case because a *merger (emphasis added)* of a regulated utility is proposed in the transaction under review before the Commission. When such a merger is sought, the inquiry under both judicial precedent and our own rules requires an analysis of detriment to the public interest as the compelling point of inquiry.

ISSUES RELATING TO INTERVENOR UNIONS

Staff believes that all issues relating to the intervenor unions have been settled and will be memorialized in a partial Stipulation and Agreement to be filed and presented to the Commission in this case. Basically, Staff's concern in connection with the issues raised by the unions was merely that employees assigned to CAM compliance duties be accountable, regardless of their bargaining unit status. Staff had no objections to the unions being notified and/or union legal representation being present whenever a bargaining unit employee was being interviewed by any of the parties in connection with CAM compliance accountability.


MISSOURI ENERGY GROUP ISSUE

Question: Will the proposed restructuring have an adverse impact on the present or future rates for the customers of Laclede Gas Company?

Answer: Yes. Without the imposition of a majority or all of the conditions recommended by Staff and Public Counsel, the proposed restructuring would have an adverse impact on future rates for the customers of the Laclede Gas Company.

Respectfully submitted,

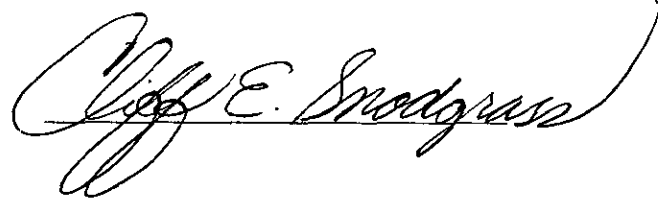
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 26th day of June, 2001.

A handwritten signature in cursive script, reading "Cliff E. Snodgrass". The signature is written in black ink and is positioned to the right of the text block above it.

**Service List for
Case No. GM-2001-342
Revised: June 26, 2001 (ccl)**

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