

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of Laclede Gas Company's	)	
Tariffs to Revise Natural Gas Rate	)	Case No. GR-2010-0171
Schedules.	)	

**STAFF'S SUGGESTIONS IN SUPPORT OF MOTION TO ADD PARTIES**

COMES NOW the Staff of the Missouri Public Service Commission, and for its Suggestions in Support of Motion to Add Parties states that Laclede Gas Company (Laclede), its parent company, The Laclede Group, Inc. (Group), and Laclede Energy Resources are not kept substantially separate and apart. All Laclede Gas affiliates must be added as Parties to this case so the Commission may consider all relevant factors in setting rates. *State ex. rel. Utility Consumers' Council, Inc. v. Missouri Pub. Serv. Comm'n*, 585 S.W.2d 41, 56 (Mo. banc 1979)

On December 4, 2009, Laclede Gas Company filed proposed tariff sheets designed to implement a general rate increase for retail gas service provided in its Missouri territory. Missouri law requires every gas corporation to charge only just and reasonable rates and not more than allowed by law. (§393.130.1.)

Section 393.140(12) authorizes a regulated utility company to have unregulated affiliates as long as the businesses of the unregulated affiliates are kept substantially separate and apart from the business of the regulated entity.

The following facts indicate Laclede's parent and affiliates are not kept substantially separate and apart:

1. The businesses operate in the same office space;
2. The entities have overlapping or similar officers:

Douglas Yaeger, Chairman, President and CEO of Group, Laclede Gas and Laclede Energy Resources (LER)

Kenneth Neises, Executive Vice President of Laclede Gas and LER.

Mark Waltermire, Chief Financial Officer, Laclede Group, Laclede Gas and LER

Mark Darrell, General Counsel, Group and Laclede Gas.

Mary C. Kullman, Chief Governance Officer, Secretary of Group, Laclede Gas and Secretary of LER

Footnoted in The Laclede Group Form 10-K Annual Report for the Fiscal Year Ended September 30, 2009, page 17, is the note that “many of the executive officers have served or currently serve as officers or directors of other subsidiaries of the Company.”

3. Laclede Gas and LER operations overlap. The SEC report notes that “LER markets to both on-system Utility transportation customers and customers outside Laclede Gas’ traditional service territory, including large retail and wholesale customers.” Having the same operational Vice President in Mr. Neises means LER has access to all of to Laclede Gas’ confidential gas purchasing and marketing information, and strategies.

While the transfer of employees from the regulated to the unregulated entity is permitted under the Commission’s affiliate transactions rules 4 CSR 240-40.016, as is the provision of support services, that does limit the Commission’s power under statute to assure proper allocations of capitalization, earnings, debts and expenses to affiliates in a rate case. §393.140(12). In a rate case, the Commission is required to consider all relevant factors, the relationship of the regulated entity to its affiliates and proper allocations of costs, capitalization, revenues, and expenses to and affiliates is a relevant factor.

Allocations are not the only relevant factor the Commission may consider. In *Associated Natural Gas Co. v. Missouri Public Service Com’n*, the Commission considered the structure of

the parent company to establish a reasonable rate of return for the Missouri regulated entity. “The record establishes that the Commission [considered the parent company’s cost of equity and] applied the double leverage adjustment in order to protect Missouri rate payers from paying excessive gas utility rates. The Commission fulfilled its function when it established a fair and reasonable rate of return by employing double leveraging.” *Associated Natural Gas Co. v. Missouri Public Service Com’n*, 706 S.W.2d 870, 880(Mo. App. 1986).(emphasis added).

In its appeal ANG set out several arguments including that: (a) [Its parent] is not regulated in Missouri; (b) [Its parent] is an electric supplier, not a gas supplier; (c) [its parent] is totally separate from the Company . . . .(e) Sections 393.140(12) and 393.230(3) and (4), RSMo. (Supp.1985), prohibit the consideration of unregulated activities of a company, and therefore the order went beyond the law. *Id.* at 880.

The court rejected each of these reasons, holding that the argument was “not well taken” and reiterated that provisions of Sections 393.140(12) grant the Commission such power, holding the Commission has the “right to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be ... borne by’ the utility in question.” *Id.*

The Court added: “[t]he conscious and voluntary corporate business decision that resulted in the hierarchy as exists here should not and cannot shield pertinent financial data from the Commission's scrutiny just because the ultimate owner does not provide the same service as the applicant and is not regulated.” *Id.*

This Commission has the duty to set just and reasonable rates and in doing so has the power to investigate the relationships between the regulated utility and its affiliates and parent

company. Moreover, under § 393.140, the Commission has the authority to apply the sections of Chapter 393 to an affiliate that is not kept substantially separate and apart.

WHEREFORE Staff moves the Commission to add The Laclede Group, Inc. and all affiliates named in *Staff's Motion to Add Parties* as parties to this case.

Respectfully submitted,

**/s/ Lera L. Shemwell**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 4<sup>th</sup> day of May, 2010.

**/s/ Lera L. Shemwell**