

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

The Staff of the Missouri Public Service Commission,)
)
)
Complainant,)
)
vs.)
)
Laclede Gas Company,)
)
Respondent.)

Case No. GC-2010-

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, pursuant to Section 386.390, RSMo 2000, and for its Complaint states as follows:

Introduction

1. This Complaint concerns Respondent's violation of a Commission order by violating the Stipulation and Agreement approved therein.

Complainant

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).

Respondent

3. Respondent Laclede Gas Company ("Laclede") is a Missouri general business corporation in good standing, incorporated on March 2, 1857, as The Laclede Gas Light Company. Its principal place of business is located at 720 Olive Street, Saint

Louis, Missouri 63101 and its registered agent is Mary Caola Kullman, 720 Olive Street, Suite 1517, Saint Louis, Missouri 63101.

Jurisdiction

4. Laclede is in the business of distributing natural gas to the public for light, heat and power, using gas plant, as defined at § 386.020(19), RSMo, that it owns, controls, operates, or manages. Laclede describes itself on its website as "the largest natural gas distribution utility in Missouri, serving approximately 630,000 residential, commercial and industrial customers in the city of St. Louis and ten other counties in Eastern Missouri. As an adjunct to its gas distribution business, the Company operates an underground natural gas storage field, a propane storage cavern and propane vaporization facilities."

5. By virtue of its activities described in Paragraph 4, above, Laclede is a gas corporation within the intendments of § 386.020(18), RSMo, and a public utility within the intendments of § 386.020(43), RSMo, and therefore "subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]"

6. This Commission has authority to hear and determine complaints against public utilities pursuant to § 386.390.1, RSMo, which provides that "[c]omplaint may be made . . . in writing, setting forth any act or thing done or omitted to be done by any corporation . . . in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission . . ."

Background

7. Laclede is a wholly-owned subsidiary of The Laclede Group, Inc. ("LG"), a Missouri general business corporation in good standing, incorporated on October 18,

2000. LG's principal place of business is also located at 720 Olive Street, Saint Louis, Missouri 63101 and its registered agent is also Mary Caola Kullman, 720 Olive Street, Suite 1517, Saint Louis, Missouri 63101.

8. LG describes itself on its website as "a public utility holding company committed to providing reliable natural gas service through its regulated core utility operations while engaging in non-regulated activities that provide opportunities for sustainable growth. Its primary subsidiary -- Laclede Gas Company -- is the largest natural gas distribution utility in Missouri, serving approximately 631,000 residential, commercial and industrial customers in the City of St. Louis and ten other counties in eastern Missouri. Its primary non-regulated activities include Laclede Energy Resources, Inc., a natural gas marketer located in St. Louis, Missouri." Other wholly-owned subsidiaries of LG include Laclede Venture Corp., Laclede Development Company, Laclede Investment LLC., Laclede Gas Family Services, Inc., and Laclede Pipeline Company.

9. Laclede Energy Resources, Inc. ("LER"), is a Missouri general business corporation in good standing, incorporated on May 28, 1981. Its principal place of business is also located at 720 Olive Street, Saint Louis, Missouri 63101 and its registered agent is also Mary Caola Kullman, 720 Olive Street, Suite 1517, Saint Louis, Missouri 63101.

10. LER is described in LG's 10-K as "a wholly-owned subsidiary engaged in the marketing of natural gas and related activities on a non-regulated basis. LER markets natural gas to both on-system Utility transportation customers and customers

outside of Laclede Gas' traditional service territory, including large retail and wholesale customers."

11. LER also sells natural gas to Laclede.

12. On December 1, 2000, Laclede filed an application with this Commission seeking authority to restructure as a holding company with subsidiaries. The Commission docketed Laclede's application as Case No. GM-2001-342.

13. The Commission granted Laclede's application on August 14, 2001, based upon a Stipulation and Agreement signed by all the parties on July 9, 2001, which the Commission specifically approved in its order. A true and correct copy of the Commission's Order is attached hereto as Attachment A and is incorporated herein by reference; a true and correct copy of the Stipulation and Agreement is attached hereto as Attachment B and is incorporated herein by reference.

14. The Stipulation and Agreement referred to in Paragraph 13, above, included this provision at § IV.2:

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 investigating 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. In addition to following standard discovery procedures, Staff's and Public Counsel's access to bargaining unit employees shall also be conditioned on Staff and Public Counsel providing reasonable notice to the employee's Union of their intent to seek such access and the right of such employee to be represented by the Union. 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.**

Count I

Violation of the Commission's Order of August 14, 2001

15. Complainant hereby realleges and incorporates herein by reference Paragraphs 1 through 14.

16. A discovery dispute arose between Laclede and the Staff in the course of proceedings involving Cases GR-2005-0203 and GR-2006-0288. These cases are Actual Cost Adjustment ("ACA") cases, in which the estimated cost of procuring gas supplies on an annual basis is adjusted to reflect the actual cost of those supplies, following scrutiny to identify and exclude any imprudent costs. A matter of particular concern to Staff in these cases, and the subject of the discovery dispute, is purchases by Laclede of gas from its affiliate, LER. The purpose of the discovery was to determine whether Laclede's purchases from LER were prudent.

17. The Commission ultimately resolved the discovery dispute referred to in Paragraph 16 in Staff's favor and, pursuant to an order of the Commission, the Commission's General Counsel brought an enforcement action in the Circuit Court of Cole County, Missouri, Case No. 10AC-CC00170.

18. The Circuit Court of Cole County, Missouri, convened a hearing on Case No. 10AC-CC00170 on May 11, 2010, at which Laclede, LG and LER were each represented by counsel. During the course of that hearing, Michael Pendergast, attorney for Laclede, argued that the documents sought by the Staff and ordered by the Commission to be provided, "aren't something that Laclede Gas has possession, custody or control over. They belong to LER" (Tr. pg. 14, lines 9-11). Laclede's position, as articulated by Mr. Pendergast, was that "[w]e have, we being Laclede Gas Company, have provided everything that's in our possession. We have indicated to the Commission that we have provided everything in our possession" (Tr. pg. 14, lines 3-6). "We don't believe that these are in our possession, custody and control" (Tr. pg. 45, lines 5-6). A true and correct copy of the Transcript of the proceedings in Case No. 10AC-CC00170 on May 11, 2010, is attached hereto as Attachment C and is incorporated herein by reference.

19. By arguing that the documents sought by Staff were not in its possession, custody or control, Laclede violated § IV.2 of the Stipulation and Agreement referred to in Paragraphs 13 and 14, above, and the Commission's Order of August 14, 2001, approving that Stipulation and Agreement.

WHEREFORE, Staff prays that the Commission will give notice to Respondent as required by law and, after hearing, find that Respondent has violated the Commission's Order of August 14, 2001, by violating the Stipulation and Agreement therein approved and, further, Staff prays that the Court will deem the violation on May 11, 2010, to be a continuing one.

Count II

Authority to Seek Penalties

20. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 19, above.

21. Section 386.570, RSMo, provides:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

22. Section 386.600, RSMo, provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this

chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

WHEREFORE, Staff prays that the Commission will give such notice to Respondent as is required by law and, after hearing, in the event that any of the conduct herein described is determined to be a violation of any law of the State of Missouri or of any order, decision, or rule of the Commission, deem each day that such violation existed to be a separate offense and authorize its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law.

Respectfully Submitted,



KEVIN A. THOMPSON
Chief Staff Counsel
Missouri Bar No. 36288

Attorney for the Staff of the
Missouri Public Service Commission

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VERIFICATION

State of Missouri)
)
County of Cole)

The undersigned, Kim Happy, Data Center Manager of the Missouri Public Service Commission, being duly sworn, states that she has read the above Complaint and hereby verifies that the allegations therein contained are true and correct to the best of her knowledge, information and belief.

Kim Happy
Kim Happy

Subscribed and sworn to before me this 7th day of July, 2010.

D. Suzie Mankin
Notary Public

My Commission expires: 12-08-2012.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: December 08, 2012
Commission Number: 08412071