BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2011-0098
	)	
Laclede Gas Company, Laclede Energy Resources and The Laclede Group,	)	
	)	
Respondents.	)	

JOINT MOTION TO DISMISS SECOND AMENDED COMPLAINT ON BEHALF OF LACLEDE ENERGY RESOURCES, INC. AND THE LACLEDE GROUP, INC.

COME NOW Laclede Energy Resources, Inc. ("LER") and The Laclede Group, Inc., ("LG") by counsel and, pursuant to 4 CSR 240-2.070 (6), submit this Joint Motion to Dismiss the Second Amended Complaint filed by Staff, and in support thereof, state:

INTRODUCTION

The procedural track of this Complaint has already had several unusual twists in its short existence. The original Complaint was filed on or about October 6, 2010. On or about October 7, 2010, the Staff of the Missouri Public Service Commission ("Staff") sought permission to file an Amended Complaint in order to add detail to its requested relief. The Commission granted permission to file the Amended Complaint, and LG and LER filed motions to dismiss, pointing out that, even as amended, the Complaint failed to set out any facts that constituted a violation of a rule or order. The Staff was given until November 22, 2010 to reply and on that date, it submitted two pleadings: (1) Staff's Answer to Laclede's Motion to Dismiss ("Staff Answer"); and (2) a confusingly entitled "Staff's Response to Laclede Gas Company's Motion to Dismiss

Count II, The Laclede Group and Laclede Energy Resources' Motion to Dismiss and Amended Complaint" ("Staff Response").

The Staff Response is actually a Second Amended Complaint (submitted without prior leave) consisting of five separate "Counts." As concerns LG, the Second Amended Complaint contains absolutely NO allegations of any violation of Commission Rules, Missouri statutes or other law. Further, the Second Amended Complaint does not even seek any relief against LG. (Second Amended Complaint, p. 8). Other than statements that it is the parent of Laclede Gas Company and LER, LG is a complete bystander to the Second Amended Complaint. Where the Complainant either fails to provide even bare-bones allegations of some violation of law or alleges only performance of legal conduct, the Complaint fails to state a claim upon which relief can be granted. See, ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371 (Mo. banc. 1993). Accordingly, LG should be dismissed from this action.

As concerns LER, the Second Amended Complaint likewise fails to state a claim upon which relief can be granted and it too should be dismissed. In recognition of the weakness of its claims, Staff dropped allegations from prior pleadings that shared corporate support such as legal services, which are explicitly permitted by the Commission's Affiliate Transaction Rules (the "Rules"), somehow violated the law. While Staff has finally admitted that the Respondents' lawful actions do not support a complaint, it persists in making just one last claim; that a conflict of interest exists because Laclede Gas Company and LER have common executive officers and that one of those officers allegedly signed an agreement between LER and Laclede Gas Company. As shown below, the Second Amended Complaint does not rely on any acts or omissions by LER that could state a claim, but instead relies upon a misrepresentation and misinterpretation of the Rules. The Second Amended Complaint should therefore be dismissed.

ARGUMENT

The Second Amended Complaint is absolutely devoid of any allegation that LG violated any statute, rule or case law. It seems too obvious to even state, but a complaint that fails to include any allegation of wrongdoing and omits any request for relief against a party necessarily and by definition fails to state a claim and should be dismissed. The Staff has now had three attempts to try and state a claim against LG and failed completely. In pleading, like in baseball, three strikes should make an out and LG should be dismissed with prejudice from this action.

With respect to LER, the Second Amended Complaint is also devoid of any allegation that LER violated a statute, rule or case law. In fact, in the "WHEREFORE" paragraph of the Second Amended Complaint, which is the only paragraph where relief is requested as required by 4 CSR 240-2.070 (5)(D), the Staff asked the Commission to give notice to "Respondent" (meaning Laclede Gas), not Respondents, and then proceeds to ask for an order that alleges wrongdoing only by Laclede Gas, and not by LER or LG. Since the allegations in the Second Amended Complaint state no facts indicating wrongdoing by LER, and seek no relief against LER, the Commission should dismiss LER from this case.

The only possible count that might pertain to LER is Count V, wherein Staff alleges that confidential market information was improperly shared between Laclede and LER. However, the Staff does not allege in this count that any sharing occurred through any specific acts or omissions of Laclede and LER, but simply by virtue of the fact that Laclede and LER have one or more common officers and directors. Staff concludes that it is unrealistic to think that any "common officer or director can avoid a conflict of interest, either potential or actual in the course of his implementing his duties." (Second Amended Complaint, par. 46).

The notion that "unavoidable" conflicts of interest exist by virtue of shared corporate executive officers was expressly rejected by the Commission. First, by definition, an organization with affiliates will naturally have at least one or two executives at the top of the organization that have oversight responsibility for multiple affiliates. This might include a Chief Executive Officer, a Chief Operating Officer, or a Senior Vice President. Ultimately, corporate management, like a pyramid, must come to a point at the top. By claiming that this reality creates an unavoidable conflict, the Staff is effectively asserting that the Commission is so shortsighted that it approved affiliate transaction rules that are inherently flawed. This is of course not the case. Common executives do not create an unavoidable conflict of interest, and Staff's allegation to the contrary does not state a claim.

Second, the Commission's Rules expressly permit corporate support functions across affiliates, but prescribe that utilities conduct their business in such a way as to not provide preferential service, information or treatment to an affiliate. (4 CSR 240-40.015(2)(B)) Thus, an allegation that Laclede and LER share common officers and directors, even if taken as true, cannot stand as the basis of a complaint since it does nothing but state that these entities do exactly what is permitted by law.

In its latest incarnation of this argument, Staff presumes (1) that an executive officer of two companies (2) has access to confidential market information for both companies, and therefore (3) has an unavoidable conflict of interest, and (4) will inevitably misuse confidential information. (Second Amended Complaint, pars. 41 – 46). However, Staff ignores the fact that common executives are permitted to exercise oversight and governance functions without violating the Rules. Staff avoids this legal obstacle by improperly editing the Rules in a manner that makes the Rules misleading. Staff claims that "Corporate support services is defined in the

rule 'joint corporate oversight … involving payroll, shareholder services, financial reporting, human resources, pension management, legal services, and research and development.'" (Second Amended Complaint, par. 42)(ellipses in original). In fact, Sections 4 CSR 240-40.015 and 4 CSR 240-40.016 each define "Corporate support" to include joint corporate oversight, **governance**, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities." (Id.)(emphasis added). Using ellipses, Staff omitted the word **"governance"** from the list of Commission approved activities that may be shared among utility affiliates, and ignored the term "oversight." Once joint corporate governance is restored to the Rule, along with joint corporate oversight, Staff can no longer reconcile the Rule with its allegation that use of shared corporate executives inevitably results in a conflict of interest and must be prohibited.

Through Staff's selective and inappropriate editing of the Rule, the Commission can again see that Staff seeks to rewrite the Rules, not enforce them. In adopting its Rules, the Commission obviously rejected the notion that a potential for conflict or information sharing were sufficient reasons to prohibit common management, governance and corporate support because these very intra-corporate functions are expressly permitted.

Nowhere in Count V of the Staff's Second Amended Complaint are any facts alleged that would indicate that Laclede Gas provided any preferential service, information or treatment to LER. The allegation in paragraph 44 that a common executive of Laclede and LER "signed for LER in contracts with Laclede," even if taken as true, does not state a claim, because the ministerial oversight act of signing an agreement by an executive officer does not allege

preferential treatment by the utility. Notably, the complaint fails to make any actual allegation of fact that anyone did anything wrong with respect to contracts.

Paragraphs 45 and 46 of the Second Amended Complaint make the previously discredited argument that unavoidable conflicts arise from use of joint executives. As noted, the Rules permit this and therefore the lawful activity described cannot support a complaint. These allegations describe a form of corporate governance that has been explicitly approved in the Rules.

CONCLUSION

In the Second Amended Complaint, Staff makes no allegation that anything improper has been done by either LG or LER. There are no statements of fact or law directed against LG and it should be dismissed with prejudice from this Complaint. With respect to LER, Staff alleged only that an "unreasonable" conflict of interest exists by virtue of using a lawfully approved corporate structure. Following Staff's logic in this Complaint, no utility could conduct business with an affiliate because, by definition, in any holding company system there must be a preeminent Board of Directors and executive managers responsible for overseeing all of the affiliated businesses in the group. Although Staff views this as an irresolvable conflict of interest, that is not the law. The best that the Staff could do to support its insufficient Complaint was to edit out the word **"governance"** from the list of permitted shared services set out in the Rules. Changing Commission Rules to fit a particular theory is a daring but impermissible act.

LG and LER respectfully request to be dismissed from this Complaint and for such other and further relief as may be warranted under the circumstances.

MATHIS, MARIFIAN & RICHTER, LTD.

By *s/William J. Niehoff*

William J. Niehoff #36448
23 Public Square, Suite 300
P.O. Box 307
Belleville, Illinois 62220
(618) 234-9800 Phone
(618) 234-9786 Fax
wniehoff@mmrg.com

Attorney for Laclede Energy Resources, Inc.

THE LACLEDE GROUP, INC.

By

Mark C. Darrell#57280
720 Olive Street, Suite 1504
Saint Louis, Missouri 63101
(314) 342-0520 Phone
(314) 421-1979 Fax
mdarrell@lacledegas.com

Attorney for The Laclede Group, Inc.

CERTIFICATE OF SERVICE

The above pleading has been served upon parties of record by First Class Mail, facsimile, and or electronic mail this 30th Day of November, 2010.

s/William J. Niehoff