

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

PUBLIC SERVICE )  
 COMMISSION OF THE STATE )  
 OF MISSOURI, )  
 )  
*Relator,* )  
 )  
 v. )  
 )  
 LACLEDE GAS COMPANY, )  
 THE LACLEDE GROUP, INC., )  
 AND LACLEDE ENERGY )  
 RESOURCES, INC. )  
 )  
*Respondent.* )

Case No. 10AC-CC00170

JUDGMENT AND WRIT OF MANDAMUS

The Public Service Commission ("PSC") seeks this Court's assistance in compelling compliance with its discovery order dated November 4, 2009, in two cases (PSC Case Nos. GR-2005-0203 and GR-2006-0288) involving Laclede Gas Company ("LGC"). Pursuant to Section 386.360, the PSC is entitled to an order from this Court directing compliance with the Commission's November 4<sup>th</sup> order compelling LGC's production of the information identified in the October 20, 2008, order (collectively, the "PSC Discovery Order"). Therefore, this Court enters Judgment in favor of the PSC, and therefore issues this Writ of Mandamus directing LGC to comply with the PSC Discovery Order. LGC must file a return, on or before July 30, 2010, setting forth: (1) a summary description of the materials produced; (2) the dates of production; and (3) a statement under oath by

a responsible officer of LGC that LGC has produced all of the information sought by the PSC Discovery Order that is within its possession, custody or control.

The Court dismisses The Laclede Group, Inc., and Laclede Energy Resources, Inc., because neither was a party to the cases before the PSC, neither party was ordered by the PSC to do or produce anything in the PSC Discovery Order, and neither the PSC (nor the PSC Staff) sought to compel discovery of either company directly despite having the authority and ability to do so. Whether or not this Court has the authority to make these entities respondents to the Writ it issues today, the Court is not inclined to do so under Section 386.360.3 unless and until the PSC has exhausted its ability to secure relief from these companies on its own.

Both LCG and the PSC would have this Court engage on the propriety of the PSC Discovery Order. In particular, LGC asserts that the PSC Discovery Order seeks information that is not relevant to – or *should not be* relevant to – the issues in dispute in the cases before the PSC. The PSC, however, (at least at present) disagrees.<sup>1</sup> This Court does not – and will not at *any* time in this action—

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<sup>1</sup> Without descending too far into the regulatory weeds, the PSC maintains that the information sought regarding transactions between LGC and its affiliates is discoverable, even if it may not ultimately be admissible or, if admissible, particularly material or persuasive. LGC argues that transactions between affiliates are regulated by the PSC's Affiliate Transaction Rule and, therefore, if LGC's affiliate transactions are suspect, then the PSC must investigate them under that Rule. LGC asserts, based upon the lack of such an investigation, that its affiliate transactions have complied with all aspects of the Rule and then – with a Herculean leap of logic – concludes that such “lawful” affiliate transactions cannot

express an opinion as to whether the information sought is *relevant or admissible* in the PSC cases – let alone, if admissible, what weight should be given this information. It is sufficient for purposes of this action that this Court is convinced – and now holds – that, in deciding that the information was *discoverable*, the PSC did not abuse its discretion or exceed its authority.

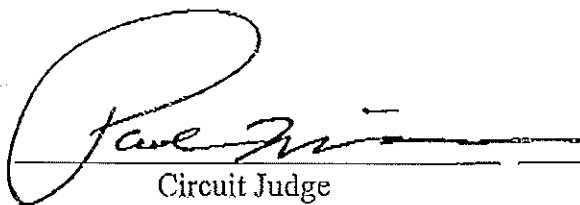
LGC seeks to avoid this Writ on the grounds that it has fully complied with the PSC Discovery Order. But, the PSC's November 4, 2009, order concludes that LGC has not. Despite the PSC's failure to make any factual findings or provide this Court with any specifics, this Court is content – at present -- to take the PSC at its word and issue the Writ it seeks. Once LGC files its Return as ordered above, the PSC may move for contempt if it believes that LGC has not complied with this Court's Writ and the PSC Discovery Order. In that event, the Court will take evidence concerning LGC's compliance (or lack thereof) and, if it finds LGC has not complied, will assess appropriate sanctions.

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be used by the PSC in ruling on an "Actual Cost Adjustment" ("ACA") proceeding. LGC might be right, but it is up to the PSC to decide, in the first instance, how to rule on its ACA cases and on what basis. This Court will not presume to instruct the PSC before it acts. Far less will this Court tell the PSC that it cannot even allow its Staff access to this information in discovery as it prepares its cases. Admissibility (and the weight to be afforded) at hearing is one thing, but discoverability is plainly something else.

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The Court is not unaware of the “hot potato” nature of this case,<sup>2</sup> but neither is the Court particularly interested. Section 386.360 gives this Court what the PSC lacks, the power to enforce the PSC’s orders with the full array of civil and criminal sanctions available under the law of contempt. But Section 386.360 does not allow – and certainly does not require – this Court to insert itself in the middle of litigation before the PSC. The PSC sits as a sometime regulatory, sometime adjudicatory, and sometime policy-making body. This Court fills a much different role. On matters coming before the PSC in its adjudicatory role, this Court’s involvement in the merits of such actions is strictly limited to reviewing the PSC’s decisions when – but *only* when – those decisions are final. This Court will not be dragged into the middle of litigation between the PSC Staff, the Office of Public Counsel, and regulated entities – even when it is the PSC that asks.



Circuit Judge

June 25, 2010  
Date

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<sup>2</sup> LGC was first ordered to produce the information sought by the PSC Staff on October 20, 2008. In the resulting litigation, the PSC’s position has changed as its members changed. Finally, on November 4, 2009, the PSC returned to its original position and ordered LGC to comply. On February 24, 2010, the PSC concluded that LGC had not complied and instructed its Staff to file this action.