

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

Matter of Missouri Coalition for Fair	)	
Competition Complaint against Laclede	)	
Gas Company,	)	
	)	
Complainant	)	
	)	
v.	)	Case No. GC-2007-0169
	)	
Laclede Gas Company,	)	
	)	
Respondent.	)	

**STAFF'S INVESTIGATION REPORT**

**COMES NOW** the Staff of the Commission and in Compliance with the Commission's Order Directing Staff to Investigate and File a Status Report, dated November 29, 2006, submits its Memorandum in response to the Commission's Order.

1. On October 26, 2006, the Missouri Coalition for Fair Competition filed a formal complaint against Laclede Gas Company (Laclede) alleging a violation of Section 386.757.7 RSMo. The Complaint states that an exemption given Fidelity Natural Gas, Inc. (Fidelity) to perform heating, ventilation, and air conditioning services (HVAC) was inappropriate, and therefore, the transfer of that exemption to Laclede, which bought Fidelity's service territories, is also inappropriate.

2. On October 27, 2006 the Commission issued its Notice of Complaint and directed Laclede to respond, which Laclede therefore did on November 27, 2006 when its Answer and Motion to Dismiss was timely filed.

3. In response to Commission's order to Investigate and File a Status Report, dated November 29, 2006, Staff has reviewed all available data including: Laclede's responses to five data requests; Public Service Commission Case No. GE-2000-0826 in which Fidelity applied for an exemption to perform HVAC services under subsection 7 of the HVAC statute at 386.756 RSMo.; the prior Staff recommendation filed in Public Service Commission Case No. GE-2000-0826; the Commission's prior issuance of a Notice recognizing Fidelity's exemption in Case No. GE-2000-0826; Section 386.756.7 RSMo.; and the Service orders submitted by Laclede in its Answer and Motion to Dismiss the current case.

4. Staff concludes that Fidelity was allowed to provide HVAC services in its service areas, and therefore Laclede's acquisition of the Fidelity service areas allows Laclede to also provide the same services Fidelity provided in those service areas, which would include HVAC services.

5. Staff therefore recommends the Commission grant Laclede's Motion to Dismiss the current case, with prejudice.

WHEREFORE Staff requests the Commission accept its Memorandum and issue an Order pursuant to Staff's Recommendation that the Commission grant Laclede's Motion to Dismiss, with prejudice.

Respectfully submitted,

/s/ Blane Baker

Blane Baker

Missouri Bar No. 58454

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Missouri Public Service Commission

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 6<sup>th</sup> day of December, 2006.

/s/ Blane Baker

Blane Baker

## MEMORANDUM

TO: Missouri Public Service Commission Official Case File,  
Case No. GC-2007-0169  
Laclede Gas Company

FROM: Tom Solt, Energy Department - Tariffs/Rate Design

/s/ Thomas M. Imhoff 12/06/06  
Energy Department/Date

/s/ Blane Baker 12/06/06  
General Counsel's Office/Date

SUBJECT: Staff Recommendation in the Matter of Missouri Coalition for Fair Competition  
complaint against Laclede Gas Company

DATE: December 6, 2006

On October 26, 2006, the Missouri Coalition for Fair Competition (Complainant) filed a complaint (Complaint) against Laclede Gas Company (Laclede or Company) alleging a violation of Section 386.757.7 RSMo. In its Complaint, the Complainant states that an exemption given to the former Fidelity Natural Gas, Inc. (Fidelity) was inappropriate, and that Laclede, which purchased the Fidelity territory early this year, may not perform Heating, Ventilation, and Air Conditioning (HVAC) services in the former Fidelity service areas.

On October 27, 2006, the Commission issued a Notice of Complaint, directing the Company to respond to the Complaint by November 27, 2006. On November 27, 2006, Laclede filed its Answer and Motion to Dismiss (Answer). On November 29, 2006, the Commission issued an Order Directing Staff to Investigate and File a Statue Report, which directed the Staff to file a status report on or before December 19, 2006, advising of a date certain by which the Staff will be able to file a report. This memorandum is in response to that Commission order.

The Commission's Energy Department - Tariffs/Rate Design Staff (Staff) issued five data requests to Laclede on November 7, 2006. Those data requests were answered on November 29.

In its Answer, Laclede points out that Fidelity applied for an exemption under subsection 7 of the HVAC statute at 386.756 RSMo, which was assigned Public Service Commission Case No. GE-2000-826. That case was filed June 16, 2000. In that filing, Fidelity stated that it had been performing HVAC services prior to August 28, 1993, and was therefore entitled to the exemption under the statute. On August 16, 2000, the Staff filed a recommendation that indicated:

Staff has reviewed Fidelity's pleading and responses to data requests regarding HVAC services provided by the Company for five years prior to August 28 1998 . Staff's review indicates that Fidelity has been in the business of performing the HVAC services identified in Attachment A to this recommendation. Staff's review also indicates that Fidelity has been performing these services since before August 28, 1998. In Staff's opinion, therefore, Fidelity qualifies for the exemption for those specific HVAC services listed on Attachment A and need not offer them through an affiliate pursuant to Commission Rule 4 CSR 240-40.017(8) and §386 .756 .1 of the Act.

The Commission issued a Notice Recognizing Exemption on August 31, 2000, in which it concluded that, "[b]ased on Staff's Recommendation, the Commission recognizes that Fidelity Natural Gas, Inc. is entitled to the exemption established by Section 386 .756(7), RSMo Supp . 1999."

Laclede points to Section 386.550 RSMo in its Answer, which states, "In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive." Staff, after consultation with its Counsel, does not see any exemption from this statutory provision that would apply to this Complaint. By waiting more than six years to bring its complaint, the Complainant is barred from doing so now.

Staff reviewed Section 386.756.7 to determine its applicability to this Complaint. Laclede purchased Fidelity as part of its Missouri Natural subsidiary. Based on the Commission's order in Case No. GE-2000-826, it appears that HVAC services were provided by Fidelity, prior to August 28, 1993. This Section states:

The provisions of this section shall not apply to any subsequently expanded areas of service made by a utility through either existing affiliates or subsidiaries or through affiliates or subsidiaries purchased after August 28, 1993, unless such services were being provided in the expanded area prior to August 28, 1993.

Given that the Commission determined in GE-2000-826 that such services were being provided in the Fidelity service area prior to August 28, 1993, Laclede's acquisition of the Fidelity service areas allows Laclede to provide the same services Fidelity was allowed to provide.

Staff's review of the service orders submitted by Laclede in its Answer, and dated the first seven months of 1993, show Fidelity was providing services such as those qualifying for the exemption granted in GE-2000-826. Staff does not believe it necessary for Laclede to again provide proof that HVAC services were being provided by Fidelity prior to August 28, 1993, as the Commission already determined that issue in GE-2000-826. However, given that the only evidence offered by the Complainant was invoices showing that John Davis had HVAC work done by outside contractors, Staff believes that Laclede has again provided sufficient evidence that Fidelity was providing HVAC services in its service territory prior to August 28, 1993, and therefore qualifies for the exemption allowed under 386.756.7.

In light of the above, Staff recommends the Commission grant Laclede's Motion to Dismiss, with prejudice.

My commission expires 9-21-10