

Superior Bowen Asphalt Company,
LLC,

Complainant,

V.

Southern Union Company, d/b/a
Missouri Gas Energy,

Respondent.

Case No. GC-2011-0101

**JOINT MOTION FOR ORDER APPROVING STIPULATION AND AGREEMENT,
CANCELLING CONFERENCE AND DISMISSING CASE**

COMES NOW Southern Union Company, d/b/a Missouri Gas Energy (“MGE”), Superior Bowen Asphalt Company, LLC (“Superior Bowen”), and the Staff of the Missouri Public Service Commission (“Staff”) and jointly move the Commission for an Order approving their Stipulation and Agreement filed on April 2, 2012, cancelling the procedural conference set by the Regulatory Law Judge (“RLJ”) for April 13, 2012, and dismissing the present case with prejudice. In support of this Joint Motion, MGE, Superior Bowen and Staff state:

1. On April 2, 2012, MGE, Superior Bowen and Staff (collectively, the “Signatories”) filed their Stipulation and Agreement resolving all issues in this case between them and requesting the Commission to issue an order approving all of the specific terms and conditions of the Stipulation and Agreement.

2. The Office of the Public Counsel is a non-signatory party to this case and represented to the Signatories prior to filing of the Stipulation and Agreement that it would not oppose the Stipulation and Agreement, nor would it request a hearing.

3. On April 3, 2012, the assigned RLJ issued by delegation a procedural *Order Setting Conference* (“Order”) requiring the Signatories to attend a conference on April 10, 2012. On April 4, 2012, the RLJ issued by delegation an *Order Resetting Conference* to April 13, 2012. The Order states “*The parties have stipulated to an outcome but not to any facts supporting that outcome. Therefore, the Commission will convene a conference to discuss the procedure on the Non-Unanimous Stipulation and Agreement.*” This statement suggests a departure from established Commission procedure for approving such agreements.

4. Under Commission Rule 4 CSR 240-2.115(2), if no one objects to a non-unanimous stipulation and agreement within seven (7) days, the Commission may treat the stipulation and agreement as unanimous. The seventh day after the filing of the Stipulation and Agreement was yesterday, April 9, 2012, and since no one has filed a timely objection to the Stipulation and Agreement, it may now be treated as unanimous.

5. Since the Stipulation and Agreement may now be considered unanimous, unless the Commission rejects the Stipulation and Agreement, the RLJ’s concern regarding the need for stipulated facts is alleviated based on the following express language of Section 536.090 RSMo 2000:

Every decision and order in a contested case shall be in writing, and, **except in . . . or cases disposed of by stipulation, . . . or agreed settlement, the decision . . . shall include or be accompanied by findings of fact and conclusions of law.** (emphasis added)

6. To analogize, the Commission need look no further than its recent disposition of the non-unanimous stipulation and agreement settling all issues in GC-2011-0294, styled as *St. Louis Natural Gas Pipeline LLC v. Laclede Gas Company* (hereafter the “Laclede Complaint”). In that case, the Commission treated the non-

unanimous stipulation and agreement as unanimous per Commission rule 4 CSR 240-2.115(2)(B) and (C) and approved it without a procedural conference.

7. The settlement of the Laclede Complaint involved significantly more complex settlement terms and conditions (including a draft interconnection agreement) between the parties than the terms settling this case. In its October 2011 *Order Approving And Incorporating Nonunanimous Stipulation and Agreement* (attached hereto), the Commission decision paragraph stated:

“Based on the Commission’s independent and impartial review of the unopposed Agreement and the draft interconnection agreement, the Commission finds that the Agreement is consistent with the public interest and shall approve it. **Because the settlement disposes of this action, the Commission need not separately state its findings of fact.** [*citing Section 536.090, RSMo 2000*] **Therefore, the Commission incorporates the terms of the Agreement into this order.**” [emphasis added]

8. In reaching a settlement of the issues of this case, the Signatories have made an agreement as to how the \$175,032 main replacement cost that has already been paid by Superior Bowen to MGE should be apportioned. (See para.’s 1 and 2 of the Stipulation and Agreement).

9. This settlement disposes of this action in a way that is consistent with the public interest. Just like the Commission stated in its order approving the stipulation and agreement settling the Laclede Complaint, “...*the Commission need not separately state its findings of fact.*” Therefore there exists no procedural reason or basis for convening a procedural conference on April 13th. Furthermore, there are no compelling reasons to put Superior Bowen, MGE, the Staff, and the Commission to the added expense of holding a procedural conference.

WHEREFORE, MGE, Superior Bowen and the Staff pray the Commission for its Order declaring the Stipulation and Agreement filed April 2, 2012, to be a unanimous stipulation, approving the Stipulation and Agreement, cancelling the Conference on April 13, 2012, and dismissing the present case with prejudice and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,

/s/Jeremiah D. Finnegan

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**ATTORNEY FOR THE STAFF
OF THE MISSOURI PUBLIC
SERVICE COMMISSION**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mail to all counsel of record this 10th day of April 2012.

/s/ Robert S. Berlin

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day of
October, 2011.

St. Louis Natural Gas Pipeline, L.L.C.,)	
)	
Complainant,)	
)	
v.)	
)	
Laclede Gas Company,)	
)	
Respondent.)	

File No. GC-2011-0294

**ORDER APPROVING AND INCORPORATING
NONUNANIMOUS STIPULATION AND AGREEMENT**

Issue Date: October 19, 2011

Effective Date: October 29, 2011

Background

On March 22, 2011, St. Louis Natural Gas Pipeline, L.L.C. ("SLNGP"), filed a complaint against Laclede Gas Company ("Laclede"). SLNGP proposes to construct and operate an interstate natural gas pipeline running from Glen Carbon, Illinois to St. Louis, Missouri, and to interconnect its pipeline with local distribution facilities owned and operated by Laclede at Riverview Drive in St. Louis, Missouri. SLNGP alleged that while its proposed construction offers numerous advantages to Laclede and its customers, Laclede refused to enter into an interconnection agreement. SLNGP claims that Laclede's refusal to enter an interconnection agreement violates numerous laws and is contrary to the public interest.

On July 11, 2011, SLNGP and Laclede indicated that they were willing to negotiate to determine if a mutually acceptable interconnection agreement could be reached. These

parties proposed a negotiation schedule, and the Commission stayed the complaint and implemented that schedule. On September 30, 2011, SLNGP and Laclede filed a Stipulation and Agreement ("Agreement"). SLNGP and Laclede are the only signatories to the Agreement, but no other party to the complaint filed a response or opposed the Agreement.

The Agreement

The Agreement includes a draft interconnection agreement and multiple provisions describing the requirements for its execution. The major provisions of the Agreement are embodied in the first four numbered paragraphs as follows:

1. Laclede agrees to sign and execute the attached interconnection agreement (Attachment A) with SLNGP at such time, if any, that SLNGP receives all final federal approvals required to construct its proposed interstate pipeline, provided that such final FERC approvals are received within three (3) years of the date of this Stipulation and Agreement and such approvals or implementing tariffs are not inconsistent with the terms of this Settlement Agreement or the attached interconnection agreement. This three (3) year deadline shall not apply if Laclede or any of its affiliates or representatives takes action to oppose SLNGP's FERC application or takes action that delays decision on SLNGP's FERC application, including any appeal of FERC approval of SLNGP's pipeline project by any of the aforementioned.

2. The interconnection agreement set forth in Attachment A is substantially the same interconnection agreement initially submitted to Laclede by SLNGP with modifications designed to ensure that the interconnection agreement is truly risk free to Laclede, consistent with SLNGP's representations in this case. Among others, these modifications include the following:

- (a) The attached interconnection agreement seeks to ensure that Laclede and its customers will not be responsible in any future interconnection agreement for the O&M cost associated with maintaining the SLNGP take point unless or until such time as the proposed pipeline is regularly used by Laclede or customers behind Laclede's city gate. It does so primarily by adding provisions to the Agreement specifying that SLNGP would pay such costs until such time as the pipeline consistently achieved an annual average load factor for deliveries on behalf of Laclede equal to at least 20% of its capacity, with a proportional offset for any firm volumes taken by Laclede on

its own behalf in the unlikely event Laclede subscribes to firm transportation service on the pipeline.

(b) The interconnect agreement has been modified to ensure that Laclede and its customers would not be responsible for any costs, including any unanticipated cost overruns, incurred in constructing the interconnection facilities. This is primarily accomplished by having the interconnection agreement impose on SLNGP, rather than Laclede, the obligation to pay the contractor who would be installing the facilities, subject to Laclede's specifications, monitoring and approval.

(c) The interconnection agreement has been modified to ensure that Laclede and its customers shall bear no liability or cost exposure of any kind if the pipeline project does not attain sufficient subscriptions to keep it viable. This is primarily accomplished by including provisions in the interconnection agreement which make it clear that Laclede did not believe the project was economic, that SLNGP was knowingly taking on the risk that neither Laclede or other customers would subscribe to transportation service, that Laclede would have sole discretion (subject only to prudence reviews by the Missouri PSC) to determine whether it would or would not subscribe to such service in the future, and that SLNGP would release and indemnify Laclede from any and all claims by SLNGP and any of its affiliates and representatives relating to a lack of subscription.

3. The Parties further agree that this Stipulation and Agreement shall not be represented by SLNGP during the FERC approval process as signaling any interest by Laclede that it will subscribe to SLNGP's proposed FT service. Instead, any representations shall state, consistent with this Stipulation and Agreement, that Laclede's commitment is strictly limited to entering into a risk free interconnection agreement upon receipt of all required regulatory approvals, and should in no way be construed as constituting any form of commitment on the part of Laclede to subscribe to any transportation or other service offered by SLNGP on its pipeline.

4. In exchange for Laclede's commitments as outlined above, the Parties agree that the Complaint Case shall be dismissed with prejudice, and that SLNGP shall release, and hereby does release, Laclede and all of its affiliates and representatives from any and all related claims that SLNGP has or may have against them. Except as provided in this Stipulation and Agreement, including the attached interconnection agreement, SLNGP's release extends only to facts, circumstances or events occurring prior to the date hereof. Laclede and its affiliates and representatives release any and all claims against SLNGP and its affiliates and representatives to the same extent.

The interconnection agreement is incorporated as Attachment A to the Agreement.

Decision

The complaint is a contested case normally requiring a formal hearing procedure. But procedural formalities may be waived¹ and the case may be decided on the basis of a stipulation and agreement without convening a hearing.²

Commission Rule 4 CSR 240-2.115 provides that if no objection is made to a non-unanimous stipulation and agreement within seven days of its filing, the stipulation and agreement may be treated as unanimous. No party objected within the seven day deadline, nor were any comments or responses filed by the response deadline. Because no party has filed a timely objection to the Agreement, the Commission will treat the Agreement as being unanimous.

Based on the Commission's independent and impartial review of the unopposed Agreement and the draft interconnection agreement, the Commission finds that the Agreement is consistent with the public interest and shall approve it. Because the settlement disposes of this action, the Commission need not separately state its findings of fact.³ Therefore, the Commission incorporates the terms of the Agreement into this order.

THE COMMISSION ORDERS THAT:

1. The provisions of the nonunanimous Stipulation and Agreement filed by St. Louis Natural Gas Pipeline, L.L.C. and Laclede Gas Company on September 30, 2011 are approved and incorporated into this order as if fully set forth. The signatories shall comply with the terms of the Stipulation and Agreement. A copy of the Stipulation and Agreement is attached to this order as Appendix A.

¹ Sections 536.060(3) and 536.063(3), RSMo 2000.

² Sections 536.060, RSMo 2000 and 4 CSR 240-2.115.

³ Section 536.090, RSMo 2000.

2. The complaint filed by St. Louis Natural Gas Pipeline, L.L.C. on March 22, 2011 is dismissed with prejudice.

3. This order shall become effective on October 29, 2011.

4. This file shall be closed on October 30, 2011.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

Gunn, Chm., Davis, Jarrett, and
Kenney, CC., concur.

Stearley, Deputy Chief Regulatory Law Judge