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I. INTRODUCTION

A. Summary of Staff’s Findings and Recommendations:

Based on the information it has obtained and reviewed to date, Staff reports that it has determined (1) that Spire has not complied with all of the conditions it willingly accepted, and which the Commission approved by order, in Case No. GM-2001-342; and (2) that the acquisitions offer no benefits to Missouri ratepayers and many potential detriments. Staff recommends that the Commission take action (1) to sanction Spire for its failure to comply with certain of the conditions imposed in Case No. GM-2001-342; and (2) to protect Missouri ratepayers from the negative consequences of Spire’s actions.

B. How Did This Investigation Come About?

1. Office of Public Counsel’s Motion to Open Investigation

On June 16, 2016, the Office of the Public Counsel (“OPC”) filed its *Motion to Open an Investigation* in response to the announcement on April 26, 2016, by Spire, Inc. (“Spire”) – then known as The Laclede Group, Inc.² -- of the acquisition from

² The name change was announced on April 28, 2016.

Sempra U.S. Gas and Power of EnergySouth, Inc., a holding company owning two natural gas utilities, Mobile Gas in Alabama and Willmut Gas in Mississippi, for \$344 million.³ OPC noted that Spire had acquired another Alabama natural gas utility, Alagasco, in 2014.⁴ In its motion, OPC moved the Commission to open a docket to investigate whether or not Spire had sought, or would seek, prior approval for the two acquisitions; whether either or both were, or would be, detrimental to the public interest; and whether the proposed acquisition of EnergySouth would impact the Commission's access to information; the credit rating or financial stability of Spire; cost allocations among the affiliated companies; or the reporting requirements contained in the *Stipulation and Agreement* approved by the Commission in Case No. GM-2001-342.⁵

Spire opposed OPC's *Motion*, asserting that it is not subject to the Commission's regulatory jurisdiction and that its acquisition of non-Missouri public utilities is not a matter subject to the Commission's jurisdiction.⁶ Spire further asserted that there is no evidence that either acquisition could have or would have any impact on the areas of OPC's concern or that either was or would be detrimental to the public interest.⁷ In particular, Spire expressed amazement that OPC would raise the issue of the

³ ***Public Counsel's Motion to Open an Investigation***, filed June 16, 2016.

⁴ *Id.*

⁵ *Id.*; referring to ***In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries***, Case No. EM-2001-342 (***Unanimous Stipulation and Agreement***, filed July 9, 2001).

⁶ ***Spire Inc.'s Verified Response Opposing Public Counsel's Motion to Open an Investigation***, filed June 27, 2016.

⁷ *Id.*

Alagasco acquisition for the first time now, when it had been fully briefed on it as long ago as May 27, 2014.⁸

Both OPC and Staff replied to Spire's *Verified Response*. OPC directed attention to the Commission's order opening a similar investigation into the announced acquisition by Great Plains Energy, Inc., of Westar, Inc., despite Great Plains' opposition on similar grounds.⁹ Staff replied that an investigation would be prudent.¹⁰ Both OPC and Staff echoed the Commission's explanation, from its order in the Great Plains-Westar case, that jurisdiction over either the holding company or the acquisition was unnecessary for the purposes of an investigation.¹¹

2. The Commission's Order Opening This Investigation

On July 20, 2016, the Commission granted OPC's *Motion*.¹² The Commission's *Order* authorizing this investigation is necessarily its charter and defines the scope, focus and expected product of Staff's investigation.

The Commission stated that it "has a duty to determine whether the transactions threaten Missouri ratepayers."¹³ In Ordered Paragraph 2, the Commission expressly directed Staff:

2. The Commission's staff ("Staff") is directed to investigate, and file a report including Staff's position on, whether the transactions described in the body of this order did or will:

⁸ *Id.*

⁹ **Public Counsel's Reply**, filed July 7, 2016, citing *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, Case No. EM-2016-0324 (*Order Granting Leave to File Reply Late, Granting Staff's Motion to Open an Investigation, and Directing Filing*, issued June 8, 2016).

¹⁰ **Staff's Response to Commission Order**, filed July 11, 2016.

¹¹ **Public Counsel's Reply**, pp. 1-2; **Staff's Response**, pp. 2-3

¹² **Order Granting Motion to Open an Investigation and Directing Filing**, issued July 20, 2016.

¹³ *Id.*, at p. 5.

- a. Have any effect on Missouri ratepayers;
- b. Cause any detriment to the public interest; and
- c. Are subject to the Commission's jurisdiction.

* * *

4. Any report described in ordered paragraph 2 ... shall be filed no later than September 2, 2016.

The Commission specifically did not rule on whether or not it has jurisdiction over the proposed transaction to take any action other than to investigate.¹⁴ However, the Commission did say:¹⁵

Spire argues that no mere agreement¹⁶ can bestow jurisdiction upon the Commission because the sole source of the Commission's jurisdiction is the statutes.

But, as OPC notes, the cited provisions are not mere promises. They are statutorily authorized orders that the Commission made on Spire's motion. The Court of Appeals has held that such conditions constitute requirements that are subject to enforcement before the Commission.¹⁷

3. Spire's Motion for Clarification or Reconsideration

On July 29, 2016, Spire moved for clarification or reconsideration, requesting that the Commission "[either] withdraw those portions of its Order that seek to construe the meaning and intent of Section 5 of the Holding Company Agreement, [or] it should reconsider those portions of its Order [and upon] reconsideration, the Commission should find and conclude that Section 5 was never intended to subject, and does not

¹⁴ *Id.*

¹⁵ *Id.*, at pp. 3-4.

¹⁶ Referring to the ***Unanimous Stipulation and Agreement*** approved by the Commission in Case No. GM-2001-342.

¹⁷ *Id.*, at pp. 2-3 (footnotes omitted), citing ***State ex rel. Laclede Gas Co. v. Public Serv. Comm'n of Mo.***, 392 SW3 24, 35 (Mo. App., W.D. 2012).

have the effect of subjecting, either the Alagasco or EnergySouth transactions to the Commission's jurisdiction since neither of those transactions would make Spire a registered holding company or subject the intrastate facilities of Laclede Gas to FERC jurisdiction."¹⁸

The Commission denied Spire's motion on August 17, 2016, stating "Spire argues that the order pre-judges, and constitutes an advisory opinion on, whether the Commission has jurisdiction over those transactions. The Commission has not made, is not making, and will not make that determination in this file."¹⁹

C. The Focus and Method of Staff's Investigation:

1. Questions Presented

OPC provided a specific list of questions for investigation in its *Motion to Open Investigation*, which the Commission specifically stated it was granting in its *Order Opening Investigation* of July 20, 2016:

1. Whether the terms of the unanimous stipulation and agreement required Spire (formerly named The Laclede Group) to seek Commission approval prior to the 2014 acquisition of Alagasco or the announced acquisition of EnergySouth;
2. Whether Spire sought Commission approval prior to the 2014 acquisition of Alagasco;
3. Whether Spire will seek Commission approval prior to the acquisition of EnergySouth;

¹⁸ *Spire Inc.'s Request for Clarification or, in the Alternative, Motion for Reconsideration*, p. 7.

¹⁹ *Order Denying Motion for Clarification or Reconsideration*, p. 1.

4. Whether the acquisition of Alagasco was detrimental to the public or otherwise impacted Missouri customers;
5. Whether the acquisition of EnergySouth will be detrimental to the public or otherwise impact Missouri customers;
6. Whether the acquisition of EnergySouth will impact the Commission's access to information;
7. Whether the acquisition of EnergySouth will impact the credit rating or financial stability of Spire as it relates to the cost of capital;
8. Whether the acquisition of EnergySouth will impact the cost allocations among the affiliated companies, and;
9. Whether the acquisition of EnergySouth will impact the reporting requirements contained in the stipulation and agreement in GM-2001-342.

As already noted, the Commission gave specific direction to Staff in its *Order*. In

Ordered Paragraph 2, the Commission directed Staff as follows:

2. The Commission's staff ("Staff") is directed to investigate, and file a report including Staff's position on, whether the transactions described in the body of this order did or will:

- a. Have any effect on Missouri ratepayers;
- b. Cause any detriment to the public interest; and
- c. Are subject to the Commission's jurisdiction.

* * *

4. Any report described in ordered paragraph 2 ... shall be filed no later than September 2, 2016.

Staff will also examine the issue of Spire's compliance with the *Unanimous Stipulation and Agreement* that conditioned Laclede's reorganization as a holding company in this report.

2. Methodology

As in its investigation of Great Plains' acquisition of Westar, Staff moved on July 28, 2016, for an order reducing the allowed interval in which to respond to DRs.²⁰ Spire filed a *Response* on August 1, 2016,²¹ and an *Amended Response* on August 2, consenting to an order shortening the objection and response intervals to 5 and 8 business days, respectively.²² The Commission did so on August 3, 2016, deeming all DRs already served to be served as of the date of the Commission's *Order*.

Staff subjected the information it gathered to multi-modal expert analysis and developed a consensus opinion on each of the questions presented for investigation. By "multi-modal expert analysis," Staff means the collaboration of experts from multiple disciplines. As directed by the Commission, Staff has embodied its findings, conclusions and recommendations in a report. Also as directed by the Commission, this investigation report includes a legal analysis of the Commission's jurisdiction over the transactions.

²⁰ *Staff's Motion to Shorten Time to Respond and Object to Data Requests and Motion for Expedited Treatment*, filed July 28, 2016.

²¹ *Response to Staff's Motion to Shorten Data Request Response Times*, filed August 1, 2016.

²² *Amended Response to Staff's Motion to Shorten Data Request Response Times*, filed August 2, 2016.

II. FINDINGS

A. Undisputed Facts:

Spire is a publicly-traded Missouri general business corporation in good standing and a public utility holding company; its principal place of business is 700 Market Street, 6th Floor, St. Louis, Missouri 63101 and its registered agent is Ellen Therooff, 700 Market Street, 6th Floor, St. Louis, Missouri 63101.²³ Prior to April 28, 2016, Spire was named The Laclede Group, Inc.²⁴ According to Spire, it is a public utility holding company whose primary business is the safe and reliable delivery of natural gas service.²⁵ Spire is a public utility holding company and obtained an exemption from FERC regulation under the LDC exemption to the Public Utility Holding Company Act of 2005, which was enacted as part of the Energy Policy Act of 2005.²⁶ Among other subsidiaries, Spire owns and controls two natural gas utilities that are subject to regulation in Missouri by this Commission, Laclede Gas Company (“Laclede”) and Missouri Gas Energy (“MGE”).²⁷ Laclede is a natural gas distribution utility system and serves customers in St. Louis and eastern Missouri.²⁸ MGE, acquired from Southern Union Company on September 1, 2013, is also a natural gas distribution utility system in Missouri and serves customers in Kansas City and western Missouri as a

²³ Records of the Missouri Secretary of State; The Laclede Group, Inc., Form 10-K, filed November 24, 2015.

²⁴ *Id.*

²⁵ *Laclede to Acquire Parent Company of Mobile Gas and Willmut Gas*, April 26, 2016 Press Release on Spire website.

²⁶ ***Spire Inc.'s Verified Response Opposing Public Counsel's Motion to Open an Investigation***, filed June 27, 2016.

²⁷ The Laclede Group 10-K *supra*.

²⁸ *Id.*

division of Laclede.²⁹ Together, Laclede and MGE serve 1.1 million Missouri customers and constitute the largest natural gas utility in Missouri.

Spire, then known as The Laclede Group, Inc., was formed by a restructuring of Laclede in 2001, pursuant to which Laclede sought, and obtained, authority from this Commission to restructure as a holding company and wholly-owned operating subsidiary.³⁰ The Commission approved that reorganization by order on August 14, 2001, in Case No. GM-2001-342.³¹ By the same order, the Commission also approved the *Unanimous Stipulation and Agreement*, filed on July 9, 2001, and executed on behalf of Laclede by Michael C. Pendergast and on behalf of Spire by Gerald T. McNeive, Jr., which sets out and applies a number of conditions to the reorganization.³² In particular, Section V of the *Unanimous Stipulation and Agreement* provides:

COMMISSION AUTHORIZATION CONDITIONS

1. The Laclede Group, Inc. agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility, or seek to become a registered holding company, or take any action which has a material possibility of making it a registered holding company or of subjecting all or a portion of its Missouri intrastate gas distribution operations to FERC jurisdiction, without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is

²⁹ *Id.*

³⁰ ***In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries***, Case No. GM-2001-342 (***Verified Application***, filed December 1, 2000).

³¹ ***In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries***, Case No. GM-2001-342 (***Order Approving Stipulation and Agreement and Approving Plan to Restructure***, issued August 14, 2001).

³² ***In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries***, Case No. GM-2001-342 (***Unanimous Stipulation and Agreement***, filed July 9, 2001).

not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility.

Laclede is a Missouri general business corporation in good standing, incorporated on March 2, 1857, as Laclede Gas Light Company; its principal place of business is located at 700 Market Street, 6th Floor, St. Louis, Missouri 63101 and its registered agent is Ellen Therooff, 700 Market Street, 6th Floor, St. Louis, Missouri 63101.³³ MGE is a registered fictitious name under which Laclede does business at 1117 South Pleasant Street, Independence, Missouri. MGE was a division of Southern Union Company prior to its acquisition by Laclede and is now a division of Laclede.³⁴ Laclede is in the business of using gas plant³⁵ that it owns, controls and operates to distribute natural gas to the public at retail for light, heat and power. Laclede consequently, is a gas corporation and a public utility within the intendments of the Public Service Commission Law.³⁶

Alagasco is a public utility engaged in the purchase, retail distribution and sale of natural gas principally in central and northern Alabama, serving more than 0.4 million residential, commercial and industrial customers with primary offices located in Birmingham, Alabama. Spire purchased 100% of the common shares of Alagasco from

³³ Records of the Missouri Secretary of State; The Laclede Group, Inc., Form 10-K, filed November 24, 2015.

³⁴ ***In the Matter of the Joint Application of Southern Union Company d/b/a Missouri Gas Energy, The Laclede Group, Inc. and Laclede Gas Company for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets and Liabilities from Southern Union Company to Laclede Gas Company and, in connection therewith, certain other Related Transactions***, Case No. GM-2013-0254 (***Joint Application***, filed January 14, 2013), ¶¶ 4 and 16.

³⁵ Section 386.020(19), RSMo.: “‘Gas plant’ includes all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power[.]”

³⁶ Section 386.020, (18) and (43), RSMo.

Energen Corporation on August 31, 2014. Spire did not seek or obtain prior approval from this Commission for the acquisition and Staff did not make any filings at the time raising the issue. However, the transaction was not a secret:

Spire “took steps to keep the Commission and other stakeholders fully informed about the existence, nature, and merits of the Alagasco transaction. These steps included efforts to alert Commission and OPC personnel regarding the terms of the proposed acquisition before it was publicly announced. The Company’s President and CEO, Suzanne Sitherwood, also formally briefed the Commission, Staff and OPC on the Alagasco acquisition during an on-the-record presentation³⁷ made on May 27, 2014, which was held as a series of follow-up meetings on the MGE acquisition that had been completed the year before. In addition to describing the key operational, geographic, and others features of the acquisition that made it a good fit for the Company and its existing and future customers, Ms. Sitherwood and other senior executives of the Company were available to answer, and did answer, questions about the transaction.”³⁸

EnergySouth, Inc., is a unit of Sempra Energy.³⁹ EnergySouth owns Mobile Gas Service Corporation and Willmut Gas and Oil Company, two gas utilities serving about 85,000 customers in Alabama and 19,000 customers in Mississippi, respectively.⁴⁰ Spire has entered into an agreement to acquire EnergySouth for \$344 million.⁴¹ The transaction would result in an increase of about 7% in Spire’s 1.56 million customer base, and a similar percentage increase to Spire’s current \$5.2 billion enterprise value.⁴²

³⁷ In fact, the witnesses were not sworn.

³⁸ ***Spire Inc.’s Verified Response Opposing Public Counsel’s Motion to Open an Investigation***, filed June 27, 2016, ¶ 8.

³⁹ *Id.*, ¶ 2.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

B. Effects on Missouri Ratepayers:

1. The Alagasco Acquisition:

Staff is of the opinion that the Alagasco acquisition has had effects on Missouri ratepayers, including higher rates due to the effects of increased holding company debt on Laclede Gas' credit rating; direct allocation of acquisition and transition costs; decreased customer service quality, including billing errors and the ongoing loss of experienced customer service representatives in the call centers. As noted elsewhere in this report, it appears that services have been provided by Laclede Gas Company to Spire and Alagasco in connection with this acquisition and that costs have been allocated to Laclede Gas Company in connection with this acquisition, all in violation of Commission Rule 4 CSR 240-40.015, pertaining to affiliate transactions.

2. The EnergySouth Acquisition:

Staff is of the opinion that the EnergySouth acquisition will have effects on Missouri ratepayers similar to those that the Alagasco acquisition has had.

C. Compliance with the Conditions Imposed in Case No. GM-2001-342:

In 2001 the Commission authorized Laclede Gas Company to restructure itself as a holding company, the Laclede Group, Inc. (now Spire), and the regulated public utility company became a subsidiary. The Commission approved that reorganization by order on August 14, 2001, in Case No. GM-2001-342. By the same order, the Commission also approved the *Unanimous Stipulation and Agreement*, filed on July 9, 2001, and executed on behalf of Laclede Gas Company by James M. Fischer, which sets out and applies a number of conditions to the reorganization.

1. Compliance with Section III, Financial Conditions:

Staff's investigation of the proposed transaction included verification of whether The Laclede Group, Inc. ("Spire") and Laclede Gas Company ("Laclede Gas"; jointly "the Companies") have complied and continue to comply with the conditions agreed to in Case No. GM-2001-342. Staff issued Data Request No. 11 requesting that the Companies demonstrate how they have complied with each of the conditions. The Companies' response, which was provided by Mr. Glenn Buck, is attached to this report as Schedule 14. Staff reviewed and analyzed other information, both public and highly confidential, to determine if it agreed with the Companies' representations of compliance. Staff will address each condition individually.

Financial Condition 1: The Laclede Group, Inc. represents that it does not intend to take any action that has a material possibility of having a detrimental effect on Laclede Gas Company's utility customers, but agrees that, should such detrimental effects nevertheless occur, nothing in the approval or implementation of the Proposed Restructuring shall impair the Commission's ability to protect such customers from such detrimental effects.

Staff's Response: The Companies' response to Staff Data Request No. 11 does not directly address this condition. However, it appears from the Companies' claim that it has complied with all of the other financing conditions, they don't believe these acquisitions had a material possibility of having a detrimental impact on Laclede Gas Company's customers. Although Laclede Gas Company has continued to have access to the funds it produces and secures, the finding as to whether this is still at a fair and reasonable cost in light of the additional debt carried by Spire will be determined in

subsequent rate cases involving the Laclede Gas and MGE divisions of Laclede Gas Company.

Financial Condition 2: Laclede Group, Inc., will not pledge Laclede Gas Company's common stock as collateral or security for the debt of the Holding Company or a subsidiary without Commission approval.

Staff's Response: Staff is not aware of any situation in which Laclede Group or any of its other subsidiaries have issued debt and pledged Laclede Gas Company's common stock as collateral or security. Laclede Group has not indicated it will violate this agreement. The Companies provided the following response to Staff Data Request No. 11:

- Neither Spire/LG nor Laclede Gas have pledged Laclede Gas' common stock as collateral or security for the debt of LG or a subsidiary of LG without Commission approval;

Financial Condition 3: Laclede Gas Company will not guarantee the notes, debentures, debt obligations or other securities of the Holding Company or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.

Staff's Response: Staff is not aware of any violation of this agreement. Laclede Gas has not indicated it will violate this agreement. The Companies provided the following response to Staff Data Request No. 11:

- Laclede Gas has not guaranteed the notes, debentures, debt obligations, or other securities of LG or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.

Financial Condition 4: The Laclede Group, Inc. agrees to maintain consolidated common equity of no less than 30 percent of total consolidated capitalization and

Laclede Gas Company agrees to maintain its equity at no less than 35% of its total capitalization, unless they are unable to do so due to events or circumstances beyond their control, including, but not limited to, acts of God, war, insurrection, strikes, civil unrest, material changes in market conditions that could not have been reasonably anticipated, or changes in the application, character or impact of laws, taxing requirements, regulations, or regulatory practices and standards governing the Company's regulated operations. Total capitalization is defined as common equity, preferred stock, long-term debt and short-term debt, excluding short-term debt supporting natural gas and propane inventories, purchased gas costs and cash working capital. Common equity is defined as par value of common stock, plus additional paid in capital, plus retained earnings, minus treasury stock. The Laclede Group, Inc. and Laclede Gas Company agree to notify the Staff and Public Counsel in the event they become aware of any material possibility that either or both companies will be unable to maintain their respective equity ratios. In the event either Company's equity ratio should fall below these specified levels, Laclede Gas Company shall file a plan with the Commission within 90 days of such occurrence proposing alternatives for raising the ratios to or above the levels specified herein.

Staff's Response: As of June 30, 2016, Spire had a consolidated common equity ratio of 49% and Laclede Gas had a common equity ratio of 57%. The Companies provided the following response to Staff Data Request No. 11:

- Spire has maintained a consolidated equity well in excess of 30 percent of its total permanent consolidated capitalization and Laclede Gas Company has maintained its equity at a level well in excess of 35% of its total capitalization.

- LG and Laclede Gas Company remain prepared to notify the Staff and Public Counsel in the event they become aware of any material possibility that either or both companies would be unable to maintain their respective equity ratios. No such circumstances have arisen in the 15 years since this commitment.
- Laclede Gas Company remains prepared to file a plan with the Commission within 90 days if either Spire's or Laclede Gas' equity ratio falls below these specified levels wherein it would propose alternatives for raising the ratios to or above the levels specified herein. No such circumstances have arisen in the 15 years since this commitment was made.

Spire is expected to continue to meet this condition after completion of the permanent financing issued to fund the EnergySouth transaction. As Laclede Gas Company is not issuing any capital for purposes of the proposed transaction, its common equity ratio would not be directly impacted by the transaction financing.

Financial Condition 5 -- Laclede Gas Company shall submit quarterly to the Financial Analysis Department of the Missouri Public Service Commission certain key financial ratios that will be calculated, to the extent practical, consistent with the methodology employed by Standard and Poor's Credit Rating Service. These key financial ratios shall include:

- (a) Pre-tax interest coverage;
- (b) After-tax coverage of interest and preferred dividends;
- (c) Funds flow interest coverage;
- (d) Funds from operations to total debt;
- (e) Total debt to total capital (including preferred); and
- (f) Total common equity to total capital.

Staff's Response: Financial Analysis Staff reviewed the monthly surveillance reports every quarter, starting from the March 2014 report (approximate time of the announcement of the Alagasco transaction) to the June 2016 report. Laclede Gas Company provided the ratio calculations for most quarters, except March 2014,

June 2015 and June 2016. Consequently, Laclede Gas Company is not in full compliance with this condition for the period Staff reviewed.

Financial Condition 6: Laclede Gas Company's total long-term instruments payable at periods of more than twelve months shall not exceed Laclede Gas Company's regulated rate base.

Staff's Response: As of Laclede Gas' June 2016 surveillance report it had a total rate base of approximately \$1,917 million. Laclede Gas' total long-term debt outstanding was approximately \$808.3 million as of June 30, 2016. In response to Staff Data Request No. 11, Laclede Gas responded:

- Laclede Gas has kept its commitment that its total long-term instruments payable at periods of more than twelve months not exceed Laclede Gas Company's regulated rate base.

Because Laclede Gas will not be issuing long-term debt for purposes of the transaction, it will not be in violation of this condition.

Financial Condition 7: Laclede Gas Company agrees to maintain its debt and, if outstanding, its preferred stock rating at an investment grade credit rating, unless it is unable to do so due to events or circumstances beyond its control, including, but not limited to, acts of God, war, insurrection, strike, civil unrest, material changes in market conditions that could not have been reasonably anticipated, or changes in the application, character or impact of laws, taxing requirements, regulations, or regulatory practices and standards of governing the Company's regulated operations. Laclede Gas Company agrees to notify the Staff and Public Counsel in the event it becomes aware of any material possibility that it will not be able to maintain such a credit rating with any established agency that typically rates Laclede's debt. In the

event Laclede Gas Company's credit rating should fall below investment grade, Laclede shall file a plan with the Commission within 90 days of such occurrence proposing alternatives for raising its credit rating above investment grade.

Staff's Response: The Companies provided the following response to Staff Data Request No. 11:

- Laclede Gas has kept its commitment to maintain its debt and, if outstanding, its preferred stock rating at an investment grade credit rating, unless it was unable to do so due to certain events or circumstances beyond its control. Currently, Laclede has a credit rating of A- applicable to these instruments.
- Laclede Gas Company is prepared to keep its commitment to notify the Staff and Public Counsel in the event it becomes aware of any material possibility that it will not be able to maintain such a credit rating with any established agency that typically rates Laclede's debt. No such circumstance has arisen in the 15 years since this commitment was made.
- Should its credit rating fall below –investment grade, Laclede Gas Company remains prepared to file a plan with the Commission within 90 days of such an occurrence proposing alternatives for raising its credit rating above investment grade.

Staff verified Laclede Gas' response to Staff Data Request No. 11 and agrees that it has maintained an investment grade credit rating. Based on Staff's review of rating agency feedback regarding Spire's proposed EnergySouth acquisition and Spire's Alagasco acquisition, Laclede Gas Company is expected to maintain its investment grade credit rating. However, Spire's issuance of a significant amount of holding company debt to finance its acquisitions may not allow Laclede Gas Company to be assigned a stronger credit rating if its stand-alone risk profile is stronger than Spire on a consolidated basis.

Financial Condition 8: The Laclede Group, Inc. and Laclede Gas Company agree that the Commission has, and will continue to have, the authority after the Proposed Restructuring to regulate, through the lawful exercise of its current statutory powers, any direct or indirect transfer or disbursement of earnings from Laclede Gas Company to an affiliate that would jeopardize the Company's ability to meet its utility obligations. The Laclede Group, Inc. and Laclede Gas Company also agree that the commission has the authority, through the lawful exercise of its ratemaking powers, to ensure that the rates charged by Laclede Gas Company for regulated utility service are not increased as a result of the unregulated activities of Laclede's affiliates and Laclede agrees, consistent with such standard, that rates should not be increased due to such activities.

Staff's Response: The Companies provided the following response to Staff Data Request No. 11:

- Spire and Laclede Gas Company continue to agree that the Commission has, and will continue to have, the authority after the Proposed Restructuring to regulate, through lawful exercise of its current statutory powers, any direct or indirect transfer or disbursement of earnings from Laclede Gas Company to an affiliate that would jeopardize the Company's ability to meet its utility obligations.
- Spire and Laclede Gas Company continue to agree that the Commission has the authority, through the lawful exercise of its ratemaking powers, to ensure that the rates charged by Laclede Gas Company for regulated utility service are not increased as a result of unregulated activities of Laclede's affiliates and Laclede continues to agree, consistent with such standard, that rates should not be increased due to such activities.

To Staff's knowledge, Laclede Gas Company has two legal avenues to transfer funds to any affiliates or its holding company. It can either distribute dividends to the holding

company or it can make intercompany loans. If Laclede Gas Company's access to capital at a reasonable cost is jeopardized by Spire's holding company leverage, then Staff would expect the Companies to restrict the funds transferred to Spire and other affiliates. Additionally, if Spire's increased financial risk causes higher debt costs to be incurred by Laclede Gas Company, then the Commission can consider this in determining a fair and reasonable capital structure and rate of return to allow for Laclede Gas Company.

Section IV Access to Information Condition 1: The Laclede Group, Inc. and Laclede Gas Company shall provide the Staff and Public Counsel with access upon reasonable written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond, or bond rating analysts, which directly, or indirectly, pertains to Laclede Gas Company or any affiliate that exercises influence or control over Laclede Gas Company or has affiliate transactions with Laclede Gas Company. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, "written" information includes but is not limited to, any written and printed material, audio and videotapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed to be a waiver of The Laclede Group, Inc.'s or Laclede Gas Company's right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.

Staff's Response: For purposes of this investigation, the Companies' accommodated Staff's requests for confidential information by making much of this information available at Laclede Gas Company's Jefferson City offices for review. However, Staff notes that some information was redacted without an explanation as to why it was redacted. Additionally, Staff is of the opinion that some of the information requested, such as various rating agency presentations and valuation analyses, should be provided directly to Staff and simply designated as "highly confidential." This type of cooperation would facilitate Staff's ability to complete its regulatory duties, especially on expedited investigations with limited resources.

--David Murray, Manager, Financial Analysis Unit.

2. Compliance with Section IV, Access to Information Conditions:

Among the conditions set out in the *Unanimous Stipulation and Agreement* are the following at Section IV, Access to Information Conditions:

1. The Laclede Group, Inc. and Laclede Gas Company shall provide the Staff and Public Counsel with access, upon reasonable written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond, or bond rating analysts, which directly or indirectly pertains to Laclede Gas Company or any affiliate that exercises influence or control over Laclede Gas Company or has affiliate transactions with Laclede Gas Company. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, "written" information includes but is not limited to, any written and printed material, audio and videotapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed to be a waiver of The Laclede Group, Inc.'s or Laclede Gas Company's right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.

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 investigation 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, Staffs 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.

3. Laclede Gas Company, each affiliate and The Laclede Group, Inc. will maintain records supporting its affiliated transactions for at least five years.

Spire and its family of corporations have not complied with these conditions.

On July 7, 2010, the Staff brought a complaint against Laclede Gas, Case No. GC-2011-0006, for its breach of these conditions by asserting, in the course of an action in circuit court to enforce a discovery order of the Commission arising from two actual cost adjustment ("ACA") cases, GR-2005-0203 and GR-2006-0288, that the information sought by Staff was not in its possession or control.⁴³ The Commission

⁴³ ***Staff of the Missouri Public Service Commission v. Laclede Gas Company***, Case No. GC-2011-0006 (***Report and Order***, issued February 4, 2011), pp. 6-7.

granted summary determination for the Staff on its complaint.⁴⁴ Laclede appealed and, although Laclede was victorious at the Circuit Court, the Missouri Court of Appeals reversed and affirmed the Commission.⁴⁵

In summary, Laclede violated the *Unanimous Stipulation and Agreement* approved in Case GM-2001-342 and Staff was able to obtain necessary information only with great difficulty, through litigation.

--Kevin A. Thompson, Chief Staff Counsel.

3. Compliance with Section V, Commission Authorization Conditions:

Among the conditions set out in the *Unanimous Stipulation and Agreement* are the following at Section V:

1. The Laclede Group, Inc. agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility, or seek to become a registered holding company, or take any action which has a material possibility of making it a registered holding company or of subjecting all or a portion of its Missouri intrastate gas distribution operations to FERC jurisdiction, without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility.

2. Laclede Gas Company shall not sell, lease, assign or transfer to any affiliate or third party any of its utility assets that are used and useful in the performance of Laclede's public utility obligations without obtaining Commission approval.

Spire, formerly The Laclede Group, completed the Alagasco acquisition in 2014 and never sought nor obtained authorization to do so from this Commission.

⁴⁴ *Id.*, p. 14.

⁴⁵ ***State of Missouri ex rel. Laclede Gas Company v. Public Service Commission of the State of Missouri***, 392 S.W.3d 24 (Mo. App., W.D. 2012).

Spire is currently engaged in acquiring EnergySouth and has not yet sought authorization to do so from this Commission. Its pleadings filed in this case indicate that it does not intend to do so. Staff necessarily concludes that Spire has violated Section V, Clause 1, of the *Unanimous Stipulation and Agreement* and thus the Commission's order of August 14, 2001, in Case No. GM-2001-342.

--Kevin A. Thompson, Chief Staff Counsel.

4. Compliance with Section VI, Cost Allocation Manual Conditions:

Among the conditions set out in the *Unanimous Stipulation and Agreement* are the following at Section VI, Cost Allocation Manual Conditions:

1. Upon implementation of the Proposed Restructuring, transactions involving transfers of goods or services between Laclede Gas Company and one or more of the Company's affiliated entities shall be conducted and accounted for in compliance with the provisions of a Cost Allocation Manual ("CAM") which shall be submitted to Staff, Public Counsel and PACE on or before April 15, 2003, and on an annual basis thereafter. The CAM shall be in the form contained in the direct testimony of Patricia A. Krieger, provided that the CAM, and the information that the Company is required to maintain and submit thereunder, shall be revised and supplemented within 120 days of the approval of this Stipulation and Agreement to include any and all of the following information as required to administer, audit and verify the Transfer Pricing and Costing Methodologies set forth in Section VIII of the CAM or such other Transfer Pricing and Costing Methodologies as may become applicable to the Company in the future:

(a) For all Laclede Gas Company functions that will provide support to nonregulated affiliates and the holding company:

(1) A list and description of each function;

(2) The positions and numbers of employees providing each function; and

(3) The procedures used to measure and assign costs to nonregulated affiliates and the holding company for each function.

(b) A list and description of each service and good that will be provided to Laclede Gas Company from each affiliate and the holding company.

(c) A list and description of each service and good that will be provided by Laclede Gas Company to each affiliate and the holding company.

(d) The dollar amount of each service and good charged to each affiliate and the holding company by Laclede Gas Company, and the total cost related to each service and good listed.

(e) The dollar amount of each service and good purchased from each affiliate and the holding company by Laclede Gas Company, and the total cost related to each service and good listed.

(f) A detailed discussion of the basis for determining the charges from Laclede Gas Company and each affiliate and the holding company, including:

(1) If costs are allocated, a detailed description of the allocation process employed for each service and good;

(2) Detailed descriptions of how direct, indirect and common activities are assigned for each service and good;

(3) A detailed description of how market values are determined for each service and good; and

(A) A detailed discussion of the criteria used to determine whether volume discounts and other pricing considerations are provided to Laclede Gas Company, affiliates, and the holding company.

(g) For each line of business that will be engaged in by Laclede Gas Company with non-affiliated third party customers following formation of a holding company and that would not reasonably be considered as a component of its regulated utility business, Laclede shall provide:

(1) A list and description of each nonregulated activity;

(2) The total amount of revenues and expenses for each nonregulated activity for the last calendar year; and

(3) A listing of all Laclede Gas Company cost centers and/or

functions that directly assign cost, indirectly assign cost and/or allocate cost to each nonregulated activity engaged in by Laclede Gas Company with non-affiliates.

2. Laclede agrees to make compliance with the procedures and requirements set forth in the CAM and the other terms of this Stipulation and Agreement a standard element of its Code of Conduct and to provide employee training and oversight in a manner that is reasonably designed to achieve such compliance. Laclede will conduct regularly scheduled audits to confirm compliance with its CAM and will annually review and update the CAM where necessary and submit such updates with its next CAM filing. Laclede will identify a function or position with responsibility for enforcing and updating the CAM.

3. As part of its CAM submittal, Laclede Gas Company will provide a list of all jurisdictions in which Laclede Gas Company, the holding company, affiliates, and service company, if formed, file affiliate transaction information.

4. As part of its CAM submittal, Laclede Gas Company will also provide Organizational Charts for The Laclede Group, Inc. (corporate structure), Laclede Gas Company and any other affiliate doing business with Laclede Gas Company and a copy of the annual holding company filing the Laclede Group, Inc. is required to file with the Securities and Exchange Commission.

When Laclede Gas filed Case No. GM-2001-342, seeking authority to restructure as a holding company, it filed a proposed Cost Allocation Manual ("CAM") with the Direct Testimony of Patricia A. Krieger. However, at that time, the Commission's Affiliate Transactions Rules were on appeal. Several companies, including Laclede, had challenged the Commission's authority to promulgate the rules. In 2003, two years after the reorganization case was over, the Missouri Supreme Court affirmed the Commission's rules.⁴⁶ Since the rules were on appeal at the time Laclede sought to restructure, one of the conditions in the *Unanimous Stipulation and Agreement* required

⁴⁶ *Atmos Energy Corp. v. Public Service Com'n*, 103 S.W.3d 753 (Mo. banc 2003).

that the CAM be in the form contained in the direct testimony of Patricia A. Krieger and that it contain a laundry list of information set out in the *Unanimous Stipulation and Agreement*.

The Krieger CAM contained asymmetrical pricing provisions for affiliate transactions, as do the Commission's rules. However, the CAM that Laclede Gas adopted in 2004 was not in the form contained in the direct testimony of Patricia A. Krieger as required by the *Unanimous Stipulation and Agreement*. It also did not comply with the Commission's Affiliate Transaction Rules.

Staff repeatedly expressed its concerns with the 2004 CAM to Laclede Gas after the Commission's Affiliate Transaction Rules became effective in mid-2003. Staff's expressions of concern were unavailing. Eventually, Staff filed a complaint on October 6, 2010 (Case No. GC-2011-0098), alleging that Laclede's CAM failed to comply with the Commission's Affiliate Transaction Rules; that Laclede failed to obtain Commission approval of its CAM; and that Laclede failed to annually submit its CAM to Staff. Laclede filed a counter-claim to Staff's complaint, alleging that Staff did not have a good faith, non-frivolous argument for its position and was therefore in violation of Commission rule 4 CSR 240-2.080(7).

The case was eventually settled and on July 16, 2013, Staff, Laclede Gas, and OPC jointly filed a *Unanimous Partial Stipulation and Agreement and Waiver Request and Request for Approval of Cost Allocation Manual* in eight cases, including GC-2011-0098, as well as seven other cases concerning Laclede's actual cost adjustments for 2004 through 2011. The *Unanimous Stipulation and Agreement* resolved Staff's complaint by submitting for Commission approval a revised CAM that

was acceptable to Laclede, Staff, and OPC. It included Laclede's agreement to file all current and future versions of its CAM in the Commission's electronic filing system ("EFIS") and to notify Staff and OPC of any such filings via e-mail. In addition, Laclede agreed to continue to file in EFIS its annual CAM report detailing its affiliate transactions for the preceding fiscal year. Upon the Commission's approval of the *Unanimous Stipulation and Agreement*, both Staff's complaint and Laclede's counter-claim in EC-2011-0098 were dismissed with prejudice.

In summary, Laclede violated the *Unanimous Stipulation and Agreement* approved in Case GM-2001-342 and was only brought into compliance through litigation.

--Kevin A. Thompson, Chief Staff Counsel.

5. Compliance with Section VII, Miscellaneous Conditions:

Among the conditions set out in the *Unanimous Stipulation and Agreement* are the following at Section VII, Miscellaneous Conditions:

1. Laclede Gas Company will not seek to recover any costs related to the Proposed Restructuring from ratepayers. These costs will be identified, described and accounted for in a manner that would enable the Staff and Public Counsel to seek disallowance from rates, if necessary, in a future proceeding.

2. Laclede Gas Company will provide the Staff and Public Counsel with an explanation for any final reorganization journal entry that deviates by more than ten percent (10%) from the estimated pro forma entries provided in Exhibit 4 of the Application. Copies of the actual journal entries will be provided to the General Counsel's Office no later than thirty days following the preparation of the final merger closing entries.

3. The Laclede Group and its affiliates (including Laclede) will provide the following documents to Staff and Public Counsel on an annual basis:

(a) All new, revised and updated business plans for The Laclede Group and its affiliates (including Laclede);

(b) Descriptions of any and all joint marketing/promotional campaigns between Laclede and The Laclede Group and any of its affiliates;

(c) Narrative description of all products and services offered by The Laclede Group and its affiliates (including Laclede), provided that Laclede shall not be required to provide narrative descriptions of its tariffed products and services;

(d) All information provided under this subsection shall be considered "highly confidential" or "proprietary" as those terms are used in 4 CSR 240-2 .085, and shall be treated as highly confidential or proprietary information by the Staff and Public Counsel;

(e) The Laclede Group, Inc. and its affiliates (including Laclede) shall also notify Staff, Public Counsel and PACE in the event and at such time as they commence a line of business that neither Laclede nor its affiliates were actively engaged in at the time of the Proposed Restructuring. Such notification can take the form of public announcements, press releases or other means of notification provided to the parties.

4. Laclede Gas agrees to notify the Staff, Public Counsel, and PACE in the event and at such time as any decision is made to transfer any department or function relating to the Company's provision of regulated utility services from the regulated gas corporation to a non-regulated affiliated entity or other third party; provided that nothing herein shall be construed as limiting or modifying in any manner any notice or other requirement Laclede may have relating to the transfer of bargaining unit employees or the work performed by such employees pursuant to the existing collective bargaining unit agreements between Laclede and Pace or applicable federal labor law. At the time of its annual CAM filing, Laclede will also provide Public Counsel, Staff and PACE information detailing the name, job description, and transfer dates of any employees that were permanently or temporarily transferred between Laclede and any affiliate during the preceding fiscal year.

5. Nothing in this Stipulation and Agreement shall be deemed to change in any way any of the rights and obligations of Laclede Gas Company or PACE under the collective bargaining agreements between them or under any non-PSC law, and by entering into this Stipulation and

Agreement, neither Laclede Gas Company or PACE waives any such rights.

6. Nothing in this Stipulation and Agreement or the implementation of the Proposed Restructuring shall affect in any way the scope of any existing ratemaking authority the Commission has over Laclede Gas Company relating to activities undertaken by Laclede Energy Resources or Laclede Pipeline Company prior to implementation of the Proposed Restructuring or over ratemaking issues that may arise as the result of the formation of a service company.

Staff is unaware of any violations of these conditions at this time.

--Kevin A. Thompson, Chief Staff Counsel.

D. Detriments to the Public Interest:

The Commission is authorized to approve utility mergers, acquisitions and restructurings upon a determination that the proposed transaction is not detrimental to the public interest.⁴⁷

1. Affiliate Transaction Detriments

Spire, previously known as Laclede Group Inc., acquired Alagasco on August 31, 2014, and is processing its acquisition of EnergySouth currently. The Algasco acquisition did have an impact on Missouri ratepayers. The EnergySouth acquisition will likely have an impact on Missouri ratepayers. The Algasco and EnergySouth acquisitions have a detrimental aspect of increasing the amount of holding company costs. Laclede Gas Company's September 30, 2015, Affiliate Transaction Report indicates on page 11 that any costs incurred by Laclede Holdings for general and administrative and general expenses are directly allocated to each of the affiliates, including Laclede Gas Company ("LGC"). The concern that this approach is in violation of the Commission's affiliate transactions is noted but should be noted in another venue.

⁴⁷ Sections 393.190.1 and 393.250, RSMo.

LGC is the only Missouri utility with an approved Cost Allocation Manual (“CAM”). LGC’s CAM was approved by the Commission effective August 24, 2013. A CAM is to include the criteria, guidelines and procedures a regulated gas corporation will follow to be in compliance with the Commission’s affiliate transaction rule. LGC’s operations have not been reviewed and compliance under its approved CAM has not been reviewed since LGC’s last rate case, which was July 2013 for its LGC division and May 2014 for its MGE division. A concern regarding compliance with the Commission’s affiliate transactions rule has arisen from the Staff review in GR-2014-0324 of Laclede’s MGE division’s 2013/2014 ACA case. These issues show the importance of review of LGC’s planned compliance with the Commission’s affiliate transactions rule with the addition of new affiliate companies for LGC to support.

Spire or Laclede Group lacks the ability to operate independently of its affiliates. Laclede Group’s Form 10 K (Annual Report) filing with the United States Securities and Exchange Commission for the fiscal year ended September 30, 2015, on page 10 states:

RISKS AND UNCERTAINTIES THAT RELATE TO THE BUSINESS AND FINANCIAL RESULTS OF LACLEDE GROUP AND ITS SUBSIDIARIES

As a holding company, Laclede Group depends on its operating subsidiaries to meet its financial obligations.

Laclede Group is a holding company with no significant assets other than the stock of its operating subsidiaries and cash investments. Laclede Group, and Laclede Gas prior to Laclede Group’s formation, have paid dividends continuously since 1946. Laclede Group’s ability to pay dividends to its shareholders is dependent on the ability of its subsidiaries to generate sufficient net income and cash flows to pay upstream dividends and make loans or loan repayments. In addition, because it is a holding company and the substantial portion of its assets are represented by its holdings in the Utilities, the risks faced by the Utilities as described under RISKS THAT RELATE TO THE GAS UTILITY SEGMENT below

may also adversely affect Laclede Group's cash flows, liquidity, financial condition and results of operations.

Since no acquisition approval requests have been filed with the Commission, this case is the first proceeding in which LGC's affiliate activities under its approved CAM have been considered in conjunction with the Alagasco and pending EnergySouth acquisitions. Staff's investigation showed that the holding company planned for LGC to operate its investment in Alagasco. It is assumed that the holding company is planning the same relationship for EnergySouth. The holding company lacks the resources to operate these affiliates. The items discussed in this investigation would have been detected earlier in a rate case or acquisition review.

A review of the Alabama Public Service Commission's order approving the transfer of ownership of 100% of the common stock of Alabama Gas Corporation to Laclede Group, Inc., shows that approval was based on the commitment of LGC being operationally qualified to operate Alagasco. Laclede Group, Inc., has no operational natural gas distribution experience let alone any history to demonstrate its qualifications as a natural gas utility. It is LGC that is operationally qualified in every respect to own and operate Alagasco. It is LGC, not Spire, which "is managerially qualified in all aspects to own, direct, and support Alagasco in the discharge of its obligations to serve the public." It is LGC, not Spire, that has a "seasoned and experienced team of leaders and a highly trained work force dedicated to providing safe, reliable natural gas service that will complement Alagasco's experienced leadership team and trained work force."

Laclede Group had no approval from the MoPSC to commit LGC to operate Alagasco or make commitments on its behalf to the Alabama Public Service Commission. The Alabama Public Service Commission nonetheless approved the

transaction in part based on these non-authorized LGC commitments. Spire operates by utilizing LGC resources. In LGC's most recent Affiliate Transaction Report for the year ending September 30, 2015, Laclede Group or Spire is not listed as an affiliate that is providing any information, assets, goods, or services to LGC. The Report appears to indicate on page 12 that LGC provided the holding company, Laclede Group (now Spire), at least \$31 million of services. This page appears to indicate that the Laclede Group then charged over \$33 million to its affiliates with LGC receiving over \$22 million of these charges. These charges are submitted using an approach inconsistent with the reporting requirements of the Commission's affiliate transaction rules. LGC is required to provide annually the amount of all affiliate transactions, by affiliated entity and account charged.

Prior to August 31, 2014, LGC employees operated Spire and all its affiliates. LGC obtained a waiver to the MoPSC affiliate transaction rule, 4 CSR 240-40.015(2)(A), 1 and 2, to allow it to provide or receive services at cost in transactions with Laclede Energy Resources ("LER") as long as LGC complied with its approved CAM and Standards of Conduct requirements. Laclede's compliance is a matter previously discussed as an outstanding issue in GR-2014-0324.

LGC does not have similar waivers for affiliate transactions with Algasco or EnergySouth nor has LGC requested such waivers. Without this waiver, the MoPSC affiliate transaction rules would require LGC to provide information, assets, goods, and services to Algasco and EnergySouth at the greater of full market price or LGC's fully distributed costs. Further, the MoPSC affiliate transaction rules would require LGC to pay for information, assets, goods, and services from Algasco and EnergySouth at the

lower of full market price or LGC's fully distributed costs to provide the information, assets, goods, and services for itself. These criteria were established so that compliant affiliate transactions would satisfy the rule requirements that companies such as LGC not provide a financial advantage to an affiliate.

MoPSC Rule 4 CSR 240-40.015(2)(D) requires LGC to not participate in any affiliate transaction which is not compliant with the rule. LGC has satisfied none of the requirements in 4 CSR 240-20.015(10) required to obtain a variance of the MoPSC affiliate transaction rules in relation to the exchange of assets, information, goods, and services between itself and its affiliates.

Laclede Group's Form 10 K (Annual Report) filing with the United States Securities and Exchange Commission for the fiscal year ended September 30, 2015, on page 12 and 13 states:

Recent acquisitions may not achieve their intended results, including anticipated efficiencies and cost savings. Although the Company and its subsidiaries expect that the recent acquisitions will result in various benefits, including a significant cost savings and other financial and operational benefits, there can be no assurance regarding when or the extent to which the Company and its subsidiaries will be able to realize or retain these benefits. Achieving and retaining the anticipated benefits, including cost savings, is subject to a number of uncertainties, including whether the assets acquired can be operated in the manner the Company and its subsidiaries intended. Events outside of the control of the Company and its 12 subsidiaries, including but not limited to regulatory changes or developments, could also adversely affect their ability to realize the anticipated benefits from the acquisitions. Thus, the integration of Alagasco may be unpredictable, subject to delays or changed circumstances, and the Company and its subsidiaries can give no assurance that the acquisitions will perform in accordance with their expectations or that their expectations with respect to integration or cost savings as a result of the Alagasco acquisition will materialize. In addition, the anticipated costs to the Company and its subsidiaries to achieve the integration of Alagasco may differ significantly from their current estimates. The integration may place an additional burden on management and internal resources, and the diversion of management's

attention during the integration process could have an adverse effect on the Company's and its subsidiaries' business, financial condition and expected operating results.

These acknowledged risks have not been examined as to their impact on LGC.

--Robert Schallenberg, Manager, Operational Analysis Department.

2. Billing Detriments

The Commission should be aware of billing issues that have impacted customers since the Commission approved the sale of MGE to LGC on July 17, 2013.⁴⁸

In September 2015, LGC integrated MGE's customer service and billing system with LGC's Customer Care and Billing system ("CCNB"). In doing so, LGC reduced the number of MGE billing cycles from 21 to 18. The reduction of billing cycles caused a significant number of MGE customers to receive a "long" bill covering a billing period in excess of 35 days.⁴⁹ Staff filed a complaint, Case No. GC-2016-0149, with the following introduction:

The Complaint concerns the failure to provide affected customers adequate notice of a change in meter reading routes or schedules resulting in a change of a billing cycle of 9 or more days in violation of Commission Rule 4 CSR 240-13.020(6), and/or the proration of certain fixed charges on a customer bills covering billing period in excess of 35 days in violation of Missouri Gas Energy's tariff.

Case No. GC-2016-0149 is currently pending.

In addition, in June 2016, Staff was notified that there had been
** _____ ** that potentially could affect ** _____ ** customer accounts.

Although this type of incident may occur in-house, Staff notes that it was an outsource

⁴⁸ Case No. GM-2013-0254.

⁴⁹ In violation of MGE's tariff.

call center that was involved in this particular breach.⁵⁰ In July 2016,

** _____ ** received a disconnection notice in error.

Staff is not asserting these types of concerns have or will occur in the Alagasco or EnergySouth transactions, but is informing the Commission of possible detriments that can result from transaction synergies.

--Kim Cox, Utility Policy Analyst II, Tariff/Rate Design Unit, Operational Analysis Dept.

3. Ratemaking Treatment of Merger Costs and Savings

Spire has stated in data request responses that it has no plans to seek direct ratemaking recovery of the merger premium incurred in relation to the Alagasco or EnergySouth transactions, nor seek recovery of the transaction costs recorded by Spire as a result of these transactions. However, pertaining to the EnergySouth transaction, Spire stated in its response to Staff Data Request No. 49 the following:

To the extent there are net financial benefits for Missouri ratepayers as a result of Spire's investment in a transaction for which Missouri customers were not asked to contribute, Laclede Gas may propose that such benefits, and the related transition expenses incurred to achieve them, be shared with its customers for some period of time.⁵¹

Based upon this response, Spire may seek to exclude a portion of the actual net transaction savings experienced by LGC MGE as a result of the EnergySouth and Alagasco transactions from cost of service in future LGC and MGE general rate cases in Missouri.

If Spire seeks this treatment of transaction savings and costs in future rate cases, the effect would be to attempt to state Missouri customer rates higher than what would

⁵⁰ An outsource call center is one that is operated by a contractor.

⁵¹ Spire made an identical statement in regard to the Alagasco transaction in its Response to Staff Data Request No. 62.

be justified as measured by the utilities' actual cost of service at the time of the rate proceedings. In the past, when similar proposals were made by utilities in the context of merger/acquisition applications, Staff opposed them as being inherently detrimental to customers in that the proposals were ultimately intended to provide the companies with a means to indirectly recover a portion of merger premium and transaction costs. When this issue was raised in the context of prior merger/acquisition applications, Staff addressed potential detriments of this nature by recommending that a condition be placed on any action by the Commission to approve the transaction forbidding both direct and indirect recovery of merger costs.⁵² However, unless Spire files to seek Commission approval of either or both of the Alagasco and EnergySouth transactions, Staff will by necessity wait to address potential detriments in this area until LGC and MGE file their next general rate proceedings in Missouri.

--Mark Oligschlaeger, Manager, Auditing Department.

4. Service Quality Detriments

Introduction and General Description

Regulated utilities perform many processes and practices including billing, credit and collections, meter reading, payment remittance, call center operations, service or work order processes and service connection, disconnection and reconnection; all of which affect and help define service quality. Service reliability and outage prevention are also critical components of service quality. It is the Staff's opinion that regulated

⁵² See, for example, the *Stipulation and Agreement* in Case No. EM-2016-0213, filed August 4, 2016, between The Empire District Electric Company/Liberty Utilities (Central) Co. and Staff, Section D.1, in which it states "Empire will not seek either direct or indirect rate recovery or recognition of any acquisition premium through any purported "savings "sharing" adjustment (or similar adjustment) in future rate cases." The same language pertaining to transaction costs can be found in Section D.2 of the *Stipulation and Agreement*.

utilities should perform these activities with effective and efficient internal control to promote acceptable levels of service for their customers. Customers pay for the entire cost of the service they receive, including the staffing, technology, management, training, buildings, infrastructure, vehicles, equipment, and other costs and they are entitled to quality service.

The Commission has specific rules that govern a variety of service quality processes including: service disconnection and reconnection processes, payment plans during cold weather, customer billing and payments, deposits, meter reading including estimated reads, denial of service, customer complaint processes, utility accessibility by its customers, rules regarding registered customers and others.

Service quality performance measurements or metrics are established and used by utilities to determine and monitor the service they are providing to their customers. These measurements are critical in that they serve multiple purposes including demonstrating past and current performance as well as both trends of improvement and decline. Such metrics are used in resource analysis, such as staffing and equipment needs, and provide some assurance to utilities, utility customers, shareholders and utility commissions that a certain level of customer service is being provided.

Some aspects of service quality, however, do not lend themselves to specific metrics or indicators. Examples include the consistent application of credit and collection practices, detection of billing errors, the effective training of customer service representatives to ensure the relaying of accurate and consistent information as well as courteous treatment of customers by company employees performing service calls.

Why Is Service Quality at Risk During Utility Merger or Sale Transactions?

There are a number of factors that place regulated utility service quality at risk during merger or sale cases. Transitions may place additional pressure on the utilities being combined due to the merging of different processes, practices, systems, procedures, cultures, organizational structures, and workforces. Transitions may require that previous focus be shared with determining how to combine two separate systems into one, often with additional pressures of expected efficiencies or synergies and cost savings. New or different ways of operating, while determined to be desirable, may disrupt or disturb stability, security of systems, operations, or staffs. In addition, natural human resistance to change should not be discounted. “When uncertainty or ambiguity about the future accompanies change, individuals and even groups will take action based on their perception of how the change will affect them.”⁵³

Among the greatest factors that place regulated utility service quality at risk during merger or sale cases are the financial constraint concerns and the desire or need to reduce costs. Mergers and sales can result in strong incentives to reduce costs in order to realize savings driven by the need to compensate for high acquisition premiums and the assumption of new debt to fulfill synergy commitments and expectations and others commitments. Such cost-cutting incentives may cause the deferral of system maintenance and facility upgrades and may also result in the termination of well-trained and experienced workforces whose development, training and expertise has been paid for by ratepayers. Cost reductions may also result in the outsourcing of functions previously performed in-house, that if not managed and controlled effectively can result

⁵³ John J. Hampton (ed.), *AMA Management Handbook*, pp. 9-70 (1994).

in reductions in service.⁵⁴ Cost-cutting can further result in the deferral of filling positions created by normal attrition. Ensuring that mergers are not detrimental to the public interest should include consideration and evaluation of such factors.

Cost-reductions that have negatively impacted service quality have occurred and been documented at more than one Missouri utility. Such documentation can be reviewed in the context of Case Nos. GR-98-140 (a MGE rate case), GO-95-177 (which resulted in 37 recommendations to MGE for service quality improvements after its purchase by Southern Union Company led to significant cost and ultimately service quality reductions) and cases GC-97-33 and GC-97-497, Staff and OPC complaints filed against MGE, respectively.

In Case No. ER-2004-0034 (an Aquila, Inc., rate case), Staff addressed declining call center performance at Aquila, Inc., which occurred after Aquila's decision to use temporary workers to staff its Raytown call center. In part, Aquila indicated it had utilized temporary staffing as a means to reduce costs. Aquila subsequently returned to recruiting, selecting and hiring its own call center and staffing at higher levels.

While the merger or sale experience of one Missouri utility does not necessarily predict a similar experience for future mergers, it is important to recognize the stress that mergers and acquisitions can place on regulated utility operations.

What Analysis did Staff Conduct in the context of the Present Investigatory Docket Regarding Risks to Missouri Customer Service Quality in the Spire Acquisition of EnergySouth?

Because Spire and EnergySouth did not file an acquisition application in Missouri, there are commitments to Missouri customers to review and inquire upon.

⁵⁴ ** This occurred nearly immediately to the MGE call center after the acquisition of MGE by Laclede which closed September 1, 2013. **

There also is no Spire management testimony filed in Missouri to review regarding the service quality safeguards Spire will employ to ensure the acquisition will not be detrimental to the Missouri public interest. Spire has indicated that it plans to integrate EnergySouth with Alagasco and that there are no “current plans to integrate EnergySouth’s customer facing functions and services with those of Laclede and MGE”⁵⁵

Staff has sent a number of data requests to Spire and some to Sempra/EnergySouth to inquire about actions and analysis performed to date to determine that there will be no detrimental impact upon Laclede Gas Company and MGE customers as a result of Spire’s acquisition of EnergySouth. As with virtually any merger or acquisition, the present acquisition contains potential service quality detriments to Missouri customers should the desire to reduce costs (for example because of acquisition premiums or other cost-reduction drivers) result in negative impacts to specific areas or processes. Those specific service quality areas or processes include, but are not limited to: call center operations, service order processes, meter reading, credit and collections, service connection and disconnection processes, payment remittance and others. Staff inquired about planned operational changes during and post-acquisition of EnergySouth in any and all service quality areas that include outsourcing and/or terminating current Laclede Gas Company and MGE employee headcounts⁵⁶ (Schedule 13). The Company indicated the following:

Response: Since there are no plans to integrate these EnergySouth functions with those of Laclede Gas Company (Laclede) and Missouri Gas Energy (MGE), the purchase is not anticipated to have any impact on

⁵⁵ Case No. GM-2016-0342, Response to Data Request No. 30.

⁵⁶ Data Request No. 28 in Case No. GM-2016-0342.

these functional areas or the quality of service provided by Laclede and MGE. The only possible exception would be if the transaction results in the identification of best practices that, if adopted might enhance service quality.

While the Company indicates it has no plans to integrate EnergySouth functions with Laclede and MGE, financial pressure on Spire due to the acquisition of additional companies could potentially result in further cost cutting and service quality declines to Spire's Missouri operations.

What Information does the Staff Possess Regarding the Service Quality of Spire's Operating Subsidiaries Missouri operations?

The Staff has considerable information about the service quality of Spire's Missouri operating subsidiaries, MGE and LGC, that it has obtained through a variety of means over many years. Staff has obtained service quality information through: formal case work including rate, merger, investigation, and complaint cases. Staff receives service quality reporting from both companies that encompasses the companies' call center performance (including their use of call deferral technology and staffing), meter reading including estimated reads, pay station locations, and other issues.

Staff also has access to customer complaint and comment data as well as operational information it obtains through regularly scheduled conference calls and occasional in-person meetings with representatives of both LGC and MGE. Such conference calls and meetings were agreed to in the *Stipulation and Agreement* that was filed in Case No. GM-2013-0254, the MGE acquisition case. The Commission approved the *Stipulation and Agreement* and it became effective on July 31, 2013. The sale, transfer and assignment of certain Southern Union assets to LGC closed on September 1, 2013.

Present MGE and LGC Call Center Performance Concerns

At this time, Spire indicates it does not have plans of combining call center operations as noted in its response to Data Request No. 41:

Currently, Alagasco has its own call center and its call center operations are separate from those of Laclede Gas and MGE. It is anticipated that EnergySouth's call center functions, which are currently performed independently of both Alagasco, Laclede and MGE's call center operations, will eventually be integrated with those of Alagasco.

However, Staff has had concerns with various aspects of the call centers of both MGE and Laclede since the sale of the MGE properties to LGC. As utilities have closed or consolidated local business offices that in the past accommodated walk-in-traffic and provided customers with a utility presence in their communities, the role of the call center has become increasingly critical as the primary point of contact for customers.

It is Staff's opinion that when Missouri regulated customers call their regulated utility they should be able to speak to a well-trained customer service representative in a reasonably expeditious manner and their requests, concerns and inquiries should be handled accurately, efficiently and with attention to good customer service. Call deferral technologies enable the call center to inform the customer that the hold times are excessive and as an alternative to being unable to speak to a representative in a reasonable amount of time, the customer may receive a return call later from the call center. A later returned phone call may be requested as either "next in queue" or the customer may request a return call at a later more specific time, assuming the call center can accommodate the time request. Some utilities consider this call deferral technology to be a "call peaking" tool which permits the call center to better manage heavy call volume periods. Staff agrees with such limited utilization of this technology.

In Staff's opinion, call deferral technologies can be a particularly useful management tool as a "call volume peaking device" (for example to be utilized on Monday morning when call volumes are expected to be at their highest during a given week). However, such technology should be used minimally and is not a sufficient substitute for a readily accessible, well-trained utility call center workforce nor should it be used as a means to defer hiring needed staff.

A Missouri regulated utility call center is very different than other types of call centers that handle non-essential, non-life-supporting utility services such as home shopping sales, concert and airline ticket sales, and other such items. Customers with critical utility needs, such as those with a pending service disconnection notice, those who need to make payment arrangements, those who need to schedule service turn-on orders, and similar pressing utility service concerns require the ability to speak to an expert utility call center representative quickly. Such well-trained representatives are depended upon to (1) know utility company policies and procedures, (2) know the Company's Customer Information System, (3) know the regulated Company's tariffs and how to efficiently research such tariffs, (4) know Missouri Public Service Commission rules and how to efficiently research such rules, and (5) know when to escalate a call to a supervisor for greater expertise. It is because of such critical "call quality" issues, in part, why all of the large Missouri-regulated utilities record 100% of their calls coming into their call centers and retain or archive those calls for extended periods of time, some in excess of twelve months.

Since the acquisition of MGE by LGC, there has been a complete
** _____ ** of MGE's call center and a partial ** _____ ** of LGC's

call center. The impact this ** _____ ** has had upon Spire's regulated Missouri customers is a concern for Staff. Call center turnover in a regulated utility environment can have numerous negative consequences in the handling of customer concerns, inquiries, the handling and processing of service orders, including requests for new service, payment arrangements, and other matters. Concerns regarding the ** _____ ** of MGE's call center were documented by Staff in MGE's 2014 rate case, Case Number GR-2014-0007, including the potential negative impact high turnover, associated with ** _____ ** call centers, may have on utility operations.⁵⁷ The experience of Aquila, Inc., during the period of financial constraints on the regulated company, provides an example of deficiencies resulting from high call center turnover directly related to the ** _____ ** of its call center operations. Aquila used five outsourced call center agencies within a four year time period in an effort to mitigate such high turnover and ultimately returned to in-house staffing.

The metric information the Staff receives from the companies has indicated performance that the Staff often considers to be in an unacceptable range for those specific service indicators. The conference calls and meetings with LGC and MGE mentioned previously have been targeted, in part, toward improving those metrics, including at various times: Abandoned Call Rates, Average Speed of Answer and the percentage of calls being offered call deferral technologies.

Schedule 1 is an August 15, 2016, letter from Spire's Senior Vice President, General Counsel and Chief Compliance Officer, Mark C. Darrell, to Jeffrey Keevil of the Missouri Public Service Commission Staff. Page 2 of the letter includes a section

⁵⁷ Case No. GR-2014-0007, Lisa Kremer Surrebuttal Testimony, pp. 9 – 22.

entitled "Impact on Customer Service Functions" which indicates toward the middle of the paragraph that:

"On a broader level, the customer service metrics maintained for Laclede Gas and MGE show that performance has improved significantly over a broad array of functional areas during the past three years as these acquisitions were being pursued and completed. These include, among others, improvements in call center metrics, average leak response times, and service response times. In fact the only temporary decline in call center metrics was related to the conversion of MGE to Laclede Gas Company's Customer Care and Billing information system, which was completely unrelated to the Alagasco acquisition. . ."

Staff does not agree with the statement made in Mr. Darrell's letter that MGE call center performance has improved since its acquisition by LGC and, instead, it is Staff's opinion that the MGE call center has experienced significant declines. Staff bases its assessment on call center metrics as well as the impacts of the complete ** _____ ** of MGE's call center, which has exposed regulated MGE Missouri customers to an approximate ** _____ ** turnover rate of the outsourced call center representatives.⁵⁸ The Staff requested the turnover rate in writing from Spire in Data Request Number 38 but the Company did not provide a response to that specific request for information.

Laclede representatives have informed Staff that in response to the high turnover rate, it has been moving locations of its ** _____ ** call center representatives from the original ** _____ **. The first ** _____ ** entity used by Laclede Gas for the MGE properties was an entity called ** _____ ** which was subsequently bought by ** _____ **. The Company has since added ** _____ ** representatives in

⁵⁸ ** Turnover rates estimated by the Company of 15% per month of the Alorica Call Center Representatives on the June 21, 2016, conference call calculating to an estimated 180% per year. **

** _____ ** and in ** _____ ** to mitigate and address problematic high turnover. It is Staff's understanding that these later ** _____ ** were chosen specifically as ** _____ ** where turnover may be less likely. Total ** _____ ** call center representatives including those handling customer credit and collection matters are presented in Highly Confidential Schedule 2. Such high ** _____ ** brings into question the Company's present ability to staff its call centers with qualified personnel to meet the requirements of 4 CSR 240-13 (2)(A) which states:

At all times during normal business hours qualified personnel shall be available and prepared to receive and respond to all customer inquiries, service requests, safety concerns and complaints.

Highly Confidential Schedules 3 through 9 demonstrate that nearly immediately upon purchase by LGC in calendar year 2014, MGE had record high percentages of calls being offered ** _____ ** as demonstrated by Highly Confidential Schedule 6. Such call ** _____ ** artificially lower (or artificially improve the appearance of) ACR and ASA performance metrics because the customers who agree to a return call are not actually placed in "queue" and their call is not counted as abandoned, even though a longer hold time might normally cause a caller to terminate or abandon such call. Average speed of answer is also shortened (improved) as call deferral technology does not count what the wait time would have been had the caller remained on hold, but is counted instead when the return call is placed to the customer. This is typically a much shorter time, usually a matter of seconds, because the system waits to dial the customer until the call center has an available representative.

Highly Confidential Schedules 3 through 9 demonstrate that both LGC's and MGE's call center performance have declined compared to 2012, the last complete year prior to MGE's acquisition by LGC. The subsequent years have been marked by ** _____ ** levels and higher percentages of calls being offered call ** _____ ** (with the exception of a few months for both companies in 2015). Call deferral technology is a lesser offering of service as the call center is indicating it is too busy to respond to customer calls and instead is deferring those calls to a later time. Highly Confidential Schedules 4, 5, 7 and 8 include ACR and ASA company goals for both MGE and Laclede at the time of the purchase of MGE by LGC. It is the Staff's understanding that neither MGE nor Laclede have established internal goals or "not-to-exceed thresholds" for utilization of their call deferral technologies.

Staff is aware of a number of other large regulated utilities that either (1) determined not to employ such call ** _____ ** or have (2) established internal thresholds of ** ____ ** or lower for its usage. LGC's and MGE's use of such call ** _____ ** far exceeds such thresholds. While ACR and ASA may appear in the "realm of reason," failing to consider those primary call center metrics in light of the high percentage of calls being offered call ** _____ ** is misleading and does not provide a full and complete assessment of regulated utility call center performance as measured by metrics.

In addition, Staff is the process of investigating a customer information ** _____ ** at the ** _____ ** call center which resulted in the identification of nearly ** ____ ** Missouri customers being potentially at

** _____ ** Staff is currently in the process of reviewing Company information provided in response to Staff requests.

Highly Confidential Schedules 10 and 11 demonstrate the call center ** _____ ** headcount customer service representatives totals for LGC and MGE, ** _ ** and ** _ ** respectively. Schedule 12 represents 136 MGE PSC complaints that included some element of deficiency, poor service, or process failure with the ** _____ ** call center.

Staff continues to work informally with utilities who have either outsourced functions that Staff believes resulted in a service quality detriment or who had discontinued the use of outsourced functions once they were included in customer rates, resulting in cost-cutting that negatively impacted call center performance.

While Staff is not asserting the Alagasco and EnergySouth transactions as currently proposed will create a service quality detriment to Missouri ratepayers, Staff is committed, at this time, to continuing its dialogue with Spire in the form of meetings and conference calls in an effort to alleviate any future or potential concerns.

--Lisa Kremer, Manager, Consumer & Management Analysis Unit.

5. Financial Detriments

Intent of Conditions from Case No. GM-2001-342:

It is important for the Commission to understand Staff's objective for the conditions that were imposed in Case No. GM-2001-342. Staff understood that the creation of Laclede Group was probably for the purposes of pursuing other business investments that may impact Laclede Gas' costs, including but not limited to its cost of

capital, whether directly or indirectly. The conditions proposed by Staff and approved by the Commission were intended by Staff to produce a stand-alone S&P credit rating for Laclede Gas that was a function of Laclede Gas' business and financial risks. If this had occurred, this would have alleviated Staff's concern about the potential of Laclede Group's other business and financial risks potentially causing an increased cost of capital to Laclede Gas. However, S&P never recognized these conditions as being significant enough to allow for a consideration of Laclede Gas' stand-alone risk for purposes of assigning Laclede Gas a rating. S&P has consistently stated the following in its ratings assessment of Laclede Gas: "Because there are no meaningful insulation measures in place that protect Laclede Gas from its parent, the issuer credit rating on the company is 'A-', in line with the group credit profile of Laclede of 'a-'." This is significant due to the fact that S&P believes Laclede Gas has a stand-alone risk profile consistent with an 'A' credit rating, but nonetheless assigns it an 'A-' credit rating due to its affiliation with Spire.

Consequently, even though Laclede Gas' credit rating has not been downgraded due to Spire's acquisition of Alagasco, it has not been allowed to improve to its stand-alone risk profile of 'A' due to its affiliation with Spire. However, S&P affirmed Spire's 'A-' rating, and consequently Laclede Gas' 'A-' rating, when it announced its planned acquisition of EnergySouth.

The suppression of Laclede Gas' credit rating is due to the significant amount of debt Spire issued to complete its acquisition of Alagasco. Spire issued approximately \$625 million of debt to help fund the \$1.35 billion purchase of Alagasco. This contrasts with the structure of the MGE acquisition in which Laclede Gas directly acquired the

MGE assets and issued \$450 million of debt at the Laclede Gas level rather than at the holding company level. While Moody's does assign stronger credit ratings to Spire's regulated utility subsidiaries, A3 for Laclede and A2 for Alagasco, it also expresses concern about the amount of holding company leverage Spire has due to the debt it issues to complete its transactions. After the acquisition of Alagasco, Spire's holding company debt accounted for close to 40% of total consolidated leverage. After Spire's issuance of debt to complete the proposed acquisition of EnergySouth, the amount of holding company debt is expected to exceed 40%. Although Moody's discusses its concern about Spire's holding company leverage, it currently has Spire's Baa2 unsecured rating on a "stable" outlook.

Potential Impact on Ratemaking Capital Structures and Cost of Capital

In past rate cases, LGC had recommended the use of Laclede Group's consolidated capital structure for ratemaking purposes. Staff had done so as well due to the fact that S&P assigned Laclede Gas a credit rating based on Laclede Group's consolidated capital structure and consolidated business risk. Staff considered this appropriate because it matched the cost of the capital with the risk underlying the capital structure.

Based on Laclede Gas' responses to Staff's data requests in this investigation, it appears that Laclede Gas will no longer be recommending the use of a holding company consolidated capital structure for purposes of setting Laclede Gas' allowed ROR. Laclede Gas maintains that this approach will allow it to be insulated from the holding company's acquisition activities and the financing associated with these activities. Staff will not debate this issue in this report because this can be addressed in

the context of a rate case, but Staff notes that, to the extent debt investors in Laclede Gas require a higher debt return because of its affiliation with Spire, Laclede Gas' ratepayers will not only pay higher rates to fund Laclede Gas' more equity-rich capital structure, but they will also pay higher debt costs than are justified by its lower risk capital structure.

Summary

Absent ring-fencing measures that S&P considers adequate to allow Laclede Gas to be assigned a rating consistent with its stand-alone risk profile of 'A', which in Staff's opinion can only be accomplished if the company collaborates with S&P through its own initiatives, Staff cannot provide the Commission assurance that Laclede Gas Company ratepayers will not pay higher capital costs due to Spire's increased financial risk associated with its acquisitions. Staff's experience from monitoring the activities of companies, such as Ameren Corporation's abandonment of its non-regulated generation subsidiary, is that the holding company will protect itself and its affiliates from a financially-troubled subsidiary, but rarely vice versa. Experience from Staff's efforts in Case No. GM-2001-342 has proven that proposing a list of untested conditions has not allowed for stand-alone ratings for Laclede Gas. Therefore, Staff recommends the Companies pursue such efforts and provide evidence that such efforts have been accepted by S&P as being sufficient to allow for Laclede Gas Company to be assigned a rating consistent with its stand-alone risk profiles.

Disclaimer

Staff has not been able to address all aspects of capital attraction and capital costs for this report. For example, Staff has not explored the details of Spire,

Alagasco and Laclede Gas' credit facilities. It is Staff's understanding that Spire may consider consolidating its credit facilities for all of its subsidiaries, but Staff does not know how this will impact costs at Laclede Gas.

--David Murray, Manager, Financial Analysis Unit.

D. Questions Raised by OPC:

OPC raised a specific set of questions in its *Motion to Open Investigation*. The Commission, in granting that motion, did not expressly direct Staff to answer OPC's questions. Nonetheless, Staff will do so here.

Whether the terms of the unanimous stipulation and agreement required Spire formerly named The Laclede Group) to seek Commission approval prior to the 2014 acquisition of Alagasco or the announced acquisition of EnergySouth;

Yes; see the "Commission Authorization Conditions," No. 1, set out at page 10, above, from the *Unanimous Stipulation and Agreement* executed by Spire and approved by the Commission in Case No. GM-2001-342. It states, "The Laclede Group, Inc. agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility . . . without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility." Alagasco is a natural gas public utility and EnergySouth owns two natural gas public utilities. The acquisitions by Spire unmistakably are within the

scope of the condition and Spire has not sought prior approval from the Commission for either of them.

Whether Spire sought Commission approval prior to the 2014 acquisition of Alagasco;

No.

Whether Spire will seek Commission approval prior to the acquisition of EnergySouth;

It has not done so yet and its pleadings in this case indicate that it does not intend to do so.

Whether the acquisition of Alagasco was detrimental to the public or otherwise impacted Missouri customers;

Yes, it has depressed the credit rating of Laclede Gas and thus increased its cost of capital which is reflected in higher rates. Additionally, Staff is of the opinion that acquisition and integration costs have improperly been allocated to Laclede Gas. Staff is also of the opinion that improper affiliate transactions are occurring on an ongoing basis between Laclede Gas and Spire and Alagasco.

Whether the acquisition of EnergySouth will be detrimental to the public or otherwise impact Missouri customers;

Yes, for all the reasons stated in response to the previous question.

Whether the acquisition of EnergySouth will impact the Commission's access to information;

At this time, Staff has no indication the acquisition will impact the Commission's access to information. The access to information provisions of the

Unanimous Stipulation and Agreement have been upheld by the Missouri Court of Appeals.⁵⁹

Whether the acquisition of EnergySouth will impact the credit rating or financial stability of Spire as it relates to the cost of capital;

At this time, Staff has no information to indicate the acquisition will impact the credit rate or financial stability of Spire as it related to the cost of capital. The value of the transaction is \$344 million; Spire's market capitalization is \$3.006 billion.

Whether the acquisition of EnergySouth will impact the cost allocations among the affiliated companies, and;

Perhaps, depending on how Spire organizes its group of subsidiaries in the future. In particular, Staff views affiliate transactions as likely.

Whether the acquisition of EnergySouth will impact the reporting requirements contained in the stipulation and agreement in GM-2001-342.

At this time, Staff has no indication the acquisition will impact the reporting requirements in the *Unanimous Stipulation and Agreement*.

III. MEMORANDUM OF LAW

Are the transactions in question subject to the Commission's jurisdiction?

A. *What is Jurisdiction?*

Jurisdiction is the authority of a court or administrative tribunal to hear and determine a particular case.⁶⁰ In general, courts have broad jurisdiction under the

⁵⁹ *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of State*, 392 S.W.3d 24, 34 (Mo. App., W.D. 2012).

⁶⁰ J. Devine, *Missouri Civil Pleading and Practice*, § 9-1 (The Harrison Co., 1986).

Missouri Constitution to hear and resolve any controversies brought to them.⁶¹ Administrative agencies, by contrast, have only limited jurisdiction to resolve matters within the scope of the specific authority conferred on them by statute.⁶² In Missouri, the issue of jurisdiction is considered to include the tribunal's authority to grant the requested relief.⁶³ Therefore, an administrative agency may lack jurisdiction because it is powerless to grant the requested relief although the subject matter of the dispute is within its delegated authority.

B. The Jurisdiction of the Public Service Commission:

The PSC is an executive branch administrative agency of the State of Missouri.⁶⁴ Like all administrative agencies, this Commission “is purely a creature of statute” and its “powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted.”⁶⁵ While the Commission properly exercises “quasi-judicial powers” that are “incidental and necessary to the proper discharge” of its administrative functions, its adjudicative authority is limited.⁶⁶ “Agency adjudicative power extends only to the ascertainment of

⁶¹ Mo. Const., Art. V, § 14(a): “The circuit courts shall have original jurisdiction over all cases and matters, civil and criminal.”

⁶² **Bd. of Educ. of City of St. Louis v. State**, 47 S.W.3d 366, 370 (Mo. banc 2001): “Administrative agencies possess only those powers conferred or necessarily implied by statute. The scope of power and duties for public agencies is narrowly limited to those essential to accomplish the principal purpose for which the agency was created.”

⁶³ *Id.*

⁶⁴ Mo. Const., Art. IV, § 12: “Unless discontinued all present or future boards, bureaus, commissions and other agencies of the state exercising administrative or executive authority shall be assigned by law or by the governor as provided by law to the office of administration or to one of the fifteen administrative departments to which their respective powers and duties are germane.”

⁶⁵ **State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission**, 585 S.W.2d 41, 47 (Mo. banc 1979) (“**UCCM**”); **State ex rel. City of West Plains v. Public Service Commission**, 310 S.W.2d 925, 928 (Mo. banc 1958).

⁶⁶ **State Tax Commission v. Administrative Hearing Commission**, 641 S.W.2d 69, 75 (Mo. 1982), quoting **Liechty v. Kansas City Bridge Co.**, 162 S.W.2d 275, 279 (Mo. 1942).

facts and the application of existing law thereto in order to resolve issues within the given area of agency expertise.”⁶⁷ The PSC is charged by statute with the implementation and enforcement of the Public Service Commission Law, particularly chapters 386 and 393, relating to public utilities that provide electric, gas, sewer, steam, and water services to the public.⁶⁸

Over the years, the courts have compiled a catalog of the things the Commission may not do: it may not award money damages⁶⁹ or grant refunds;⁷⁰ it may not construe or enforce contracts;⁷¹ it may not declare or enforce any principle of law or equity;⁷² it may not manage a public utility⁷³ or compel it to exercise any property right;⁷⁴ it may not limit the liability of a public utility for negligence resulting in damage to persons or

⁶⁷ ***State Tax Commission, supra.***

⁶⁸ Chapter 386, RSMo, creates the PSC and describes its organization, general powers and the procedures to be used by the PSC. Other statutory chapters grant additional powers to the Commission and define its responsibilities with respect to specific industries: telecommunications, Chapter 392, RSMo; gas, electric, water, steam heating, and sewer companies, Chapter 393, RSMo; rural electric cooperatives, Chapter 394, RSMo; and manufactured housing, Chapter 700, RSMo. Chapters 387 through 391, RSMo, also part of the Public Service Commission Law, relate to transportation. Until July 1, 1985, the Commission's jurisdiction included regulation of railroads and motor carriers (i.e., trucks). However, as a consequence of the national deregulation of the transportation industry, the Missouri General Assembly that year transferred the Commission's powers regarding transportation to the newly-created Division of Transportation, later the Division of Motor Carrier and Railroad Safety, of the Missouri Department of Economic Development. In 2002, the Division of Motor Carrier and Railroad Safety was abolished and its residual duties were transferred to the Missouri Department of Highways and Transportation. Thus, the State Highways and Transportation Commission now exercises what little remains of the authority over railroads and motor carriers once vested in the PSC.

⁶⁹ ***American Petroleum Exchange v. Public Service Commission***, 172 S.W.2d 952, 955 (Mo. 1943).

⁷⁰ ***State ex rel. Laundry, Inc. v. Pub. Serv. Comm'n***, 327 Mo. 93, 112, 34 S.W.2d 37, 46 (1931); ***State ex rel. City of Joplin v. Pub. Serv. Comm'n of State of Mo.***, 186 S.W.3d 290, 299 (Mo. App., W.D. 2005).

⁷¹ ***Kansas City Power & Light Co. v. Midland Realty Co.***, 338 Mo. 1141, 1149, 93 S.W.2d 954, 959 (1936).

⁷² ***State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission***, 585 S.W.2d 41, 47 (Mo. banc 1979).

⁷³ ***State of Missouri ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm'n of Missouri***, 262 U.S. 276, 289, 43 S.Ct. 544, 547, 67 L.Ed. 981, ____ (1923).

⁷⁴ ***State ex rel. Kansas City v. Public Service Commission of Missouri***, 301 Mo. 179, 192, 257 S.W. 462, 463 (Mo. banc 1923).

property.⁷⁵ The principal duties of the Commission are to set just and reasonable rates for utility services rendered⁷⁶ and generally to supervise the activities of the state's monopolistic public utilities;⁷⁷ but even within this area its authority is constrained. The Commission may not revoke a Certificate of Public Convenience and Necessity ("CCN") that it has granted.⁷⁸ The Commission cannot act as a receiver, however desirable that may be in any particular case.⁷⁹ However, the Missouri Supreme Court has held that the Commission has "plenary power to coerce a public utility corporation into a safe and adequate service."⁸⁰

The Commission's authority is best understood in the light of its purpose. In 1925, the Missouri Supreme Court stated as follows with respect to the Commission's duty and authority to set just and reasonable rates:⁸¹

The enactment of the Public Service Act marked a new era in the history of public utilities. Its purpose is to require the general public not only to pay rates which will keep public utility plants in proper repair for effective public service, but further to insure to the investors a reasonable return upon funds invested. The police power of the state demands as

⁷⁵ **Public Service Comm'n of State v. Missouri Gas Energy**, 388 S.W.3d 221, 230-231 (Mo. App., W.D. 2012).

⁷⁶ **State ex rel. City of Harrisonville v. Pub. Serv. Comm'n of Missouri**, 291 Mo. 432, 236 S.W. 852 (1922); **City of Fulton v. Pub. Serv. Comm'n**, 275 Mo. 67, 204 S.W. 386 (1918), *error dis'd*, 251 U.S. 546, 40 S.Ct. 342, 64 L.Ed. 408; **City of St. Louis v. Pub. Serv. Comm'n of Missouri**, 276 Mo. 509, 207 S.W. 799 (1919); **Kansas City v. Pub. Serv. Comm'n of Missouri**, 276 Mo. 539, 210 S.W. 381 (1919), *error dis'd*, 250 U.S. 652, 40 S.Ct. 54, 63 L.Ed. 1190; **Lightfoot v. City of Springfield**, 361 Mo. 659, 236 S.W.2d 348 (1951): "The Commission is vested with the state's police power to set "just and reasonable" rates for public utility services, subject to judicial review of the question of reasonableness."

⁷⁷ Section 386.250, RSMo.

⁷⁸ **State ex rel. City of Sikeston v. Pub. Serv. Comm'n of Missouri**, 336 Mo. 985, 997-98, 82 S.W.2d 105, 109-10 (1935).

⁷⁹ **State ex rel. Public Service Commission v. Bonacker**, 906 S.W.2d 896, 900 (Mo. App., S.D. 1995).

⁸⁰ **State ex rel. Missouri Southern R. Co. v. Public Service Commission**, 259 Mo. 704, ___, 168 S.W. 1156, 1163 (banc 1914).

⁸¹ **State ex rel. Washington University et al. v. Public Service Commission et al.**, 308 Mo. 328, 344-45, 272 S.W. 971, 973 (*en banc*).

much. We can never have efficient service, unless there is a reasonable guaranty of fair returns for capital invested. * * * These instrumentalities are a part of the very life blood of the state, and of its people, and a fair administration of the act is mandatory. When we say "fair," we mean fair to the public, and fair to the investors.

Another purpose of the Public Service Commission Law is to ensure that all consumers are treated fairly: "[t]he purpose of providing public utility regulation was to secure equality in service and in rates for all who needed or desired these services and who were similarly situated."⁸² Still another purpose is to restrain competition between utilities, which is considered to be undesirable due to the large, duplicative costs involved: "Let it be conceded that the act establishing the Public Service Commission, defining its powers and prescribing its duties, is indicative of a policy designed, in every proper case, to substitute regulated monopoly for destructive competition."⁸³ However, the primary purpose of the Commission is to protect the public from exploitation by monopolistic utilities: "[T]he dominant thought and purpose of the policy is the protection of the public while the protection given the utility is merely incidental."⁸⁴

Spire has asserted – with no analysis, examination of statutes or citation of controlling authorities -- that the Commission has no jurisdiction over it because it is a holding company and not a "gas corporation" or "public utility" within the intendments of § 386.020, RSMo.⁸⁵ As has been explained at some length, the Commission is a

⁸² *May Department Stores Co. v. Union Electric Light & Power Co.*, 341 Mo. 299, 317, 107 S.W.2d 41, 49 (1937). Fairness does not mean, however, that every customer pays the same rate: "Of course, this required classification for rates and service on the basis of location, amount used, and other reasonable considerations[.]" *Id.*

⁸³ *State ex rel. Electric Co. of Missouri v. Atkinson*, 275 Mo. 325, ___, 204 S.W. 897, 899 (1918).

⁸⁴ *State ex rel. Crown Coach Co. v. Public Service Com'n*, 238 Mo.App. 287, ___, 179 S.W.2d 123, 126 (1944).

⁸⁵ *Spire Inc.'s Verified Response Opposing Public Counsel's Motion to Open An Investigation*, pp. 1-3.

creature of statute and its jurisdiction in any situation must be found by reference to the plain language of the Missouri statutes.⁸⁶ However, appropriate statutory language is not hard to discover. Section 386.250, RSMo, provides:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter (1) To the manufacture, sale or distribution of gas, natural and artificial, . . . for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to gas . . . plants, and to persons or corporations owning, leasing, operating or controlling the same[.]

The cited language is somewhat complex. First, it grants jurisdiction to the Commission over two activities or entities, “the manufacture, sale or distribution of gas, natural or artificial, for light, heat and power, within the state” and “gas plants.” Second, in each case, it also grants jurisdiction to the Commission over “persons or corporations owning, leasing, operating or controlling the same.” Spire, as it insists, does not itself either manufacture, distribute or sell gas or have gas plants directly; but it is a corporation that controls both the distribution and retail sale of gas and gas plants by virtue of its ownership and control of Laclede and MGE. Section 386.250(1), RSMo., by its plain language, establishes Commission jurisdiction over gas utility holding companies.

This conclusion is reinforced by other language in the Public Service Commission Law. Section 386.020(18), RSMo., provides that a “gas corporation” is “every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any gas plant operating for public use under privilege, license or franchise now or hereafter granted by the state or

⁸⁶ *UCCM*, *supra*, 585 S.W.2d at 47.

any political subdivision, county or municipality thereof[.]” “Gas plant,” in turn, “includes all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power[.]” Section 386.020(19), RSMo. Like § 386.250(1), RSMo., the scope of §§ 386.020, (18) and (19), RSMo., extends to and encompasses Spire. A corporation need not own or operate gas plant to be subject to regulation, mere control is sufficient. And Spire certainly does control the gas plant owned and operated by LGC and MGE. The Missouri Supreme Court recognized long ago that a corporation and its subsidiary can together constitute an “enterprise” whose activities render it subject to regulation by the Commission.⁸⁷ The United States Supreme Court has recognized the same principle:

North American concedes that four of its direct utility subsidiaries, Union Electric Company of Missouri, Washington Railway and Electric Company, North American Light & Power Company and Wisconsin Electric Power Company, transmit energy across state lines and hence are engaged in interstate commerce. It further concedes that its subsidiary West Kentucky Coal Company is engaged in interstate commerce, although contending that the remaining five direct subsidiaries are not so engaged. In view of North American's very substantial stock interest and its domination as to the affairs of its subsidiaries, as well as its latent power to exercise even more affirmative influence, it cannot hide behind the facade of a mere investor. Their acts are its acts in the sense that what is interstate as to them is interstate as to North American. These subsidiaries thus accentuate and add materially to the interstate character of North American. They make even more inescapable the conclusion that North American bears not only a highly important relation to interstate commerce and the national economy, but is actually engaged in interstate commerce. It is thus subject to appropriate regulatory measures adopted by Congress under its commerce power.⁸⁸

⁸⁷ *May Department Stores Co. v. Union Electric Light & Power Co.*, 341 Mo. 299, 324-328, 107 S.W.2d 41, 53-56 (Mo. 1937).

⁸⁸ *North American Company v. Sec. & Exch. Comm'n*, 327 U.S. 686, 695-96, 66 S. Ct. 785, 791-92, 90 L. Ed. 945 (1946).

Like North American Company, Spire “dominates” its subsidiaries through its outright ownership of them and “its latent power to exercise even more affirmative influence” over LGC, and LGC’s acts are therefore Spire’s acts.

The care that the legislature took to extend the Commission’s authority to both gas utilities and gas utility holding companies is understandable in view of the palpable detriments to the public interest caused by such holding companies in the past:

The dominant characteristic of a holding company is the ownership of securities by which it is possible to control or substantially to influence the policies and management of one or more operating companies in a particular field of enterprise. To be sure, other devices may be utilized to effectuate control, such as voting trusts, interlocking directors and officers, the control of proxies, management contracts and the like. But the concentrated ownership of voting securities is the prime method of achieving control, constituting a more fundamental part of holding companies than of other types of business. Public utility holding companies are thereby able to build their gas and electric utility systems, often gerrymandered in such ways as to bear no relation to economy of operation or to effective regulation. The control arising from this ownership of securities also allows such holding companies to exact unreasonable fees, commissions and other charges from their subsidiaries, to make undue profits from the handling of the issue, sale and exchange of securities for their subsidiaries, to issue unsound securities of their own based upon the inflated value of the subsidiaries, and to affect adversely the accounting practices and the rate and dividend policies of the subsidiaries. Congress has found that all of these various abuses and evils occur and are spread and perpetuated through the mails and the channels of interstate commerce. And Congress has further found that such interstate activities, which grow out of the ownership of securities of operating companies, have caused public utility holding companies to be “affected with a national public interest.”⁸⁹

While the public’s first line of defense against such holding companies and the abuses they perpetrated was erected by the federal government through the Public Utility Holding Company Act of 1935 (“PUHCA”) and the Securities and

⁸⁹ *North American Company v. Sec. & Exch. Comm’n*, *supra*, 327 U.S. at 701-02, 66 S. Ct. at 794-95, 90 L. Ed. at ____ - ____.

Exchange Commission (“SEC”), the states were free to supplement the federal efforts.⁹⁰ PUHCA provided in relevant part that it did not preempt additional state jurisdiction over utility holding companies.⁹¹ While state jurisdiction could not conflict with any provision of PUHCA, it could supplement it.⁹²

PUHCA was repealed in 2005, but the applicable provisions of the Missouri Public Service Commission Law are still in force. In the past, the Commission has often chosen to not exert its authority over holding companies and has even, as Spire has pointed out, denied that such authority exists.⁹³ Administrative agencies are not bound by *stare decisis*, nor are PSC decisions binding precedent on any court.⁹⁴ These decisions have no effect on the scope of the jurisdiction granted by the statutes to the Commission.

C. Regulation of the Natural Gas Industry:

The natural gas industry in the United States has developed similarly in most states so that there is an agency in each state that is the equivalent of the Missouri PSC.⁹⁵ Generically, these are often referred to as “PUCs”; that is, public utility

⁹⁰ The purpose of PUHCA was to supplement State regulation, not supplant it. See **Rochester Telephone Corp. v. Public Service Comm'n of State of New York**, 201 A.D.2d 31, 614 N.Y.S.2d 454, 457 (1994); **Alabama Elec. Co-op., Inc. v. Securities and Exchange Comm'n**, 353 F.2d 905, 907 (D.C.Cir.1965).

⁹¹ 15 U.S.C. § 79a; repealed, Pub. L. 109–58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974.

⁹² *Id.*

⁹³ **Spire Inc.’s Verified Response Opposing Public Counsel’s Motion to Open an Investigation**, pp. 2-3.

⁹⁴ **State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n of State**, 120 S.W.3d 732, 736 (Mo. banc 2003).

⁹⁵ See www.naruc.org/about-naruc/regulatory-commissions: “Founded in 1889, the National Association of Regulatory Utility Commissioners (NARUC) is a non-profit organization dedicated to representing the State public service commissions who regulate the utilities that provide essential services such as energy, telecommunications, power, water, and transportation. NARUC’s members include all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. Most State commissioners are appointed to their positions by their Governor or Legislature, while commissioners in

commissions. Each is an agency of state government that exercises equivalent police powers over the rates and other intrastate activities of (at least) the state's investor-owned public utility companies providing natural gas utility service.⁹⁶

The interstate aspects of the natural gas industry are another matter. FERC regulates the transmission and sale of natural gas for resale in interstate commerce and the siting and abandonment of natural gas pipelines and storage facilities.⁹⁷ The Natural Gas Act authorizes FERC "to regulate the 'rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission * * *.' 'Natural-gas company' is defined by § 2(6) of the Act to mean 'a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.'⁹⁸ However, Congress specifically exempted intrastate natural gas transportation, local distribution of natural gas, and the production and gathering of natural gas from federal regulation by the FERC.⁹⁹ The natural gas industry, therefore, operates in a dual regulatory framework. The interstate transportation and sale at wholesale of natural gas are regulated by the FERC, while the local transportation, distribution and retail sale of natural gas are regulated by the state PUC.

14 States are elected. Our mission is to serve in the public interest by improving the quality and effectiveness of public utility regulation. Under State law, NARUC's members have an obligation to ensure the establishment and maintenance of utility services as may be required by law and to ensure that such services are provided at rates and conditions that are fair, reasonable and nondiscriminatory for all consumers."

⁹⁶ *State ex rel. Chicago, R. I. & P. R. Co. v. Pub. Serv. Comm'n*, 312 S.W.2d 791, 796 (Mo. banc 1958): "The public service commission is essentially an agency of the Legislature and its powers are referable to the police power of the state."

⁹⁷ FERC website: "What FERC Does"; retrieved August 23, 2016.

⁹⁸ *Phillips Petroleum Co. v. State of Wis.*, 347 U.S. 672, 676, 74 S. Ct. 794, 796, 98 L.Ed. 1035 (1954).

⁹⁹ 15 U.S.C. § 717(b).

D. The Commission's Jurisdiction over Spire and the Acquisitions:

The question of jurisdiction is really, “jurisdiction to do what?” A tribunal may have jurisdiction to do some things, but not others. The Commission has already recognized that it has jurisdiction to investigate the proposed transaction and to consider its possible deleterious effects on Missouri ratepayers. As the Commission put it, “the Commission has a duty to determine whether the transactions threaten Missouri ratepayers. If so, jurisdiction over the transactions may be necessary for an appropriate remedy.”¹⁰⁰ In that sense, the question of jurisdiction is the question of the Commission's authority to impose a particular remedy or condition in the event that it determines that the proposed transaction would otherwise be detrimental to the public interest.

Staff has already discussed the Commission's jurisdiction over Spire by virtue of its ownership and control of a gas corporation that uses gas plant to distribute gas to the public at retail in Missouri. The primary and most fundamental basis of jurisdiction is a party's presence in the forum. The Supreme Court said in a historic case:

One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil status and capacities of its inhabitants; to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations arising from them, and the mode in which their validity shall be determined and their obligations enforced; and also they regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed, and transferred. The other principle of public law referred to follows from the one mentioned; that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory.¹⁰¹

¹⁰⁰ *Order Granting Motion to Open Investigation and Directing Filing*, p. 5.

¹⁰¹ *Pennoyer v. Neff*, 95 U.S. 714, 722, 24 L. Ed. 565 (1877).

Spire is headquartered in Missouri and it owns, operates and controls Missouri's largest gas distribution utility. Moreover, Spire is a Missouri creation – it is a Missouri general business corporation; its very existence is a matter of Missouri law. By virtue of its creation in Missouri, Spire is a citizen of Missouri and a Missouri resident.¹⁰² Spire is undeniably present in the forum in the traditional sense.

Moreover, the Commission authorized Spire's creation by its order in Case No. GM-2001-342 permitting Laclede to reorganize. Spire executed the *Unanimous Stipulation and Agreement* as a *quid pro quo* for the Commission's authority for Laclede's reorganization;¹⁰³ the Commission adopted the *Unanimous Stipulation and Agreement* as a condition upon Laclede's reorganization, as § 393.250.3, RSMo., expressly authorizes. The Commission, by virtue of the Public Service Commission Law and Spire's presence in the forum, has authority over Spire that it lacks with respect to foreign holding companies that are not Missouri entities and which do not live in Missouri.¹⁰⁴ Spire asserts that this will put it at a competitive disadvantage with respect to non-Missouri holding companies, but that should not be a matter of concern to this Commission. The Commission's interest is that Spire continues, through its subsidiaries, to provide safe and adequate utility service to its Missouri ratepayers at just and reasonable rates.

The focus of Staff's investigation upon possible detriments to the interest of the public or of Missouri ratepayers reflects the legal standard that governs utility mergers

¹⁰² See generally *State ex rel. Henning v. Williams*, 345 Mo. 22, 131 S.W.2nd 561 (Mo. banc 1939), overruled on other grounds, *State ex rel. Webb v. Satz*, 561 S.W.2d 113 (Mo. banc 1978).

¹⁰³ *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n of Mo.*, 392 SW3 24, 34 (Mo. App., W.D. 2012).

¹⁰⁴ Though they may be subject to suit in Missouri.

and acquisitions in Missouri. A public utility must obtain prior authorization from the PSC to sell, assign, lease, or transfer utility assets,¹⁰⁵ to merge or consolidate,¹⁰⁶ to raise capital by issuing stock, notes, or bonds, or by mortgaging property,¹⁰⁷ and to acquire the stock of another utility.¹⁰⁸ The standard applicable to the Commission's exercise of this authority is whether or not the proposed action is likely to be detrimental to the public interest. By virtue of the Public Service Commission Law, this Commission has the same jurisdiction over Spire's activities that it has over those of a gas distribution utility such as Laclede.

1. Section 393.190.1, RSMo.

Section 393.190.1, RSMo., provides:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. The permission and approval of the commission to the exercise of a franchise or permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition or encumbrance of a franchise or permit under this section

¹⁰⁵ Section 393.190.1, RSMo.; see Rule 4 CSR 240-3.110, electric utilities; Rule 4 CSR 240-3.210, gas utilities; Rule 4 CSR 240-3.310, sewer utilities; 4 CSR 240-3.405, steam heat utilities; 4 CSR 240-3.605, water utilities.

¹⁰⁶ Section 393.190.1, RSMo.; see Rule 4 CSR 240-3.115, electric utilities; Rule 4 CSR 240-3.215, gas utilities; Rule 4 CSR 240-3.315, sewer utilities; 4 CSR 240-3.410, steam heat utilities; 4 CSR 240-3.610, water utilities.

¹⁰⁷ See §§ 393.180, 393.200, 393.210, and 393.220, RSMo.; *and* see Rule 4 CSR 240-3.120, electric utilities; Rule 4 CSR 240-3.220, gas utilities; Rule 4 CSR 240-3.320, sewer utilities; 4 CSR 240-3.415, steam heat utilities; 4 CSR 240-3.615, water utilities.

¹⁰⁸ See § 393.190.2, RSMo.; and see Rule 4 CSR 240-3.125, electric utilities; Rule 4 CSR 240-3.225, gas utilities; Rule 4 CSR 240-3.325, sewer utilities; 4 CSR 240-3.420, steam heat utilities; 4 CSR 240-3.620, water utilities.

shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture. * * * Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any corporation, person or public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation, person or public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

The leading case states:

Before a utility can sell assets that are necessary or useful in the performance of its duties to the public it must obtain approval of the Commission. The obvious purpose of this provision is to ensure the continuation of adequate service to the public served by the utility. The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.¹⁰⁹

That case relied, in turn, on an older Missouri Supreme Court case stating:

The owners of this stock should have something to say as to whether they can sell it or not. To deny them that right would be to deny to them an incident important to ownership of property. A property owner should be allowed to sell his property unless it would be detrimental to the public.

The state of Maryland has an identical statute with ours, and the Supreme Court of that state . . . said: "To prevent injury to the public, in the clashing of private interest with the public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be benefited, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.' "¹¹⁰

Given that the purpose of § 393.190.1, RSMo., is to ensure the continuation of adequate service to the public, the Commission typically has considered such factors as

¹⁰⁹ *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980) (internal citations omitted).

¹¹⁰ *State ex rel. City of St. Louis v. P.S.C.*, 335 Mo. 448, 459-460, 73 S.W.2d 393, 400 (Mo. banc 1934) (internal citations omitted).

the applicant's experience in the utility industry; the applicant's history of service difficulties, if any; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the assets safely and efficiently.¹¹¹ The Commission has sometimes said that denial of such an application requires compelling evidence on the record that a public detriment is likely to occur;¹¹² but has also said that the mere risk of harm to the ratepayers is a detriment to the public interest.¹¹³ The Commission has determined that the applicable standard requires a cost-benefit analysis:

What is required is a cost-benefit analysis in which all of the benefits and detriments in evidence are considered. . . . Approval should be based upon a finding of no net detriment. * * * In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that UE provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable. The presence of detriments, thus defined, is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service.¹¹⁴

¹¹¹ See *In the Matter of the Joint Application of Missouri Gas Energy, et al.*, Case No. GM-94-252 (*Report and Order*, issued October 12, 1994), 3 Mo. P.S.C.3rd 216, 220.

¹¹² See, e.g., *In the Matter of KCP&L*, Case No. EM-2001-464 (*Order Approving Stipulation & Agreement and Closing Case*, issued Aug. 2, 2001).

¹¹³ *In the Matter of Aquila, Inc.*, Case No. EF-2003-0465 (*Report & Order*, issued Feb. 24, 2004) pp. 6-7.

¹¹⁴ *In the Matter of Union Electric Company, d/b/a AmerenUE*, 13 MoPSC3d 266, 293 (2005); and see *In the Matter of Great Plains Energy, Inc., Kansas City Power & Light Company and Aquila, Inc.*, 17 Mo.P.S.C.3d 338, 541 (2008), "the Commission may not withhold its approval of the proposed transaction unless the Applicants fail in their burden to demonstrate that the transaction is not detrimental to the public interest, and detriment is determined by performing a balancing test where attendant benefits are weighed against direct or indirect effects of the transaction that would diminish the provision of safe or adequate of service or that would tend to make rates less just or less reasonable."

Additionally, “what constitutes the ‘public interest’” is “a matter of policy to be determined by the Commission.”¹¹⁵ In any proceeding on such an application, the applicant bears the burden of proof.¹¹⁶

In the present case, Spire is *buying* or *has bought* a public utility, not selling one. Section 393.190.1, RSMo., therefore, does not apply. However, the standard described above, developed in cases involving § 393.190.1, RSMo., also applies to § 393.190.2, RSMo.

2. Section 393.190.2, RSMo.

Section 393.190.2, RSMo., provides:

No such corporation [i.e., a gas corporation, electrical corporation, water corporation or sewer corporation] shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business, or proposing to operate or operating under a franchise from the same or any other municipality; neither shall any street railroad corporation acquire the stock or bonds of any electrical corporation, unless, in either case, authorized so to do by the commission. Save where stock shall be transferred or held for the purpose of collateral security, no stock corporation of any description, domestic or foreign, other than a gas corporation, electrical corporation, water corporation, sewer corporation or street railroad corporation, shall, without the consent of the commission, purchase or acquire, take or hold, more than ten percent of the total capital stock issued by any gas corporation, electrical corporation, water corporation or sewer corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any gas corporation, electrical corporation, water corporation or sewer corporation may, with the consent of the commission, acquire and hold the remainder of the capital stock of such gas corporation, electrical corporation, water corporation or sewer corporation, or any portion thereof.

¹¹⁵ 17 Mo.P.S.C.3d at 543.

¹¹⁶ *Id.*

In holding this statute to be constitutional despite its unabashed application to extra-territorial transactions, the 8th Circuit Court of Appeals said:¹¹⁷

For over fifty years, Congress has regulated the interstate transmission of natural gas (the Natural Gas Act), the interstate transmission of electric power (the Federal Power Act), and the ownership of utilities (the Public Utility Holding Company Act of 1935). A major purpose of these laws was to preserve and protect state and local regulation of the distribution of natural gas and electricity to local retail customers.

The statute here at issue [§393.190.2, RSMo.] is part of Chapter 393 of the Missouri Statutes, which authorizes the Commission to establish “just and reasonable” rates for the local distribution of natural gas, electricity, water, and sewer services. Rate regulation is a complex process. A public utility's investments in other companies can affect its regulated rate of return, if investment losses are allocated to the regulated business. Transactions between affiliated utilities can present rate regulators with difficult issues of preferential treatment and cost allocation. The abuses Congress identified in enacting the Public Utility Holding Company Act attest to the long-standing regulatory concern over interlocking ownership and management of public utilities. This concern does not mean that Southern Union's acquisition strategy is necessarily contrary to the public interest, but it tends to confirm the presumptive validity of Missouri regulating that strategy by requiring pre-acquisition approval.

The Commission asserts that § 393.190.2 is part of its rate regulation responsibilities. Southern Union does not deny that assertion, and the administrative record in this proceeding supports it. For this reason, Southern Union's contention that this is merely “extraterritorial” regulation of interstate commerce is incorrect. Though Southern Union's stock purchases are no doubt conducted from its corporate headquarters in Texas, the Commission scrutinizes these transactions because they potentially affect the company's regulated rate of return in Missouri. Thus, § 393.190.2 regulates interstate stock purchases because of their impact on Southern Union's regulated local activities in Missouri. Likewise, calling this “direct” regulation of interstate commerce does not make it per se unlawful. As the Fourth Circuit observed, the direct/indirect distinction is not analytically helpful when a state statute regulates interstate stock transactions for the purpose of protecting local consumers from public utility abuses.¹¹⁸

¹¹⁷ *Southern Union Co. v. Missouri Pub. Serv. Comm'n*, 289 F.3d 503, 507-08 (8th Cir. 2002).

¹¹⁸ *Baltimore Gas & Elec. Co. v. Heintz*, 760 F.2d 1408, 1421 (4th Cir.1985).

By its express terms, § 393.190.2, RSMo., requires Spire to obtain the Commission's *prior authorization* when it acquires the stocks or bonds of a public utility ("the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business"). Spire's acquisitions of Alagasco and EnergySouth, therefore, require the prior approval of this Commission; an approval that Spire has not sought. Whether that approval would be granted would be governed by the Commission's application of the "not detrimental to the public interest" standard.

3. Section 393.250, RSMo.

Section 393.250, RSMo., provides:

1. Reorganizations of gas corporations, electrical corporations, water corporations and sewer corporations shall be subject to the supervision and control of the commission, and no such reorganization shall be had without the authorization of the commission.

2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the commission, which in making its determinations, shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash; provided, however, that the commission may make due allowance for the discount of bonds.

3. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commission. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.

The *Unanimous Stipulation and Agreement* that Spire and Laclede executed in Case No. GM-2001-342 contained a series of specific conditions and the Commission's approval of Laclede's reorganization into a holding company (originally The Laclede Group, Inc., now Spire) with an operating subsidiary (Laclede Gas) was predicated

upon compliance with those conditions. Section 393.250.3, RSMo., expressly authorizes the Commission's imposition of conditions on a reorganization, so they are presumptively valid. Spire's commitment in the *Unanimous Stipulation and Agreement* to seek Commission approval of future acquisitions was at least an acknowledgement that such is required by the Public Service Commission Law.

Spire acquired Alagasco in 2014 and is now in the process of acquiring EnergySouth; but Spire has not sought Commission approval for either acquisition. Alagasco is a regulated natural gas distribution company and a public utility; EnergySouth is a holding company that owns two regulated natural gas distribution companies and public utilities. Staff necessarily must conclude that Spire has violated the *Unanimous Stipulation and Agreement* and the Commission's order approving the *Unanimous Stipulation and Agreement* and authorizing Laclede's reorganization subject to the conditions contained in the *Unanimous Stipulation and Agreement*. Neither acquisition need be detrimental; the violations were complete when the acquisition occurred without the Commission's prior approval.

4. Section 386.390.1, RSMo.

Separate from jurisdiction over the transaction itself, the Commission has complaint jurisdiction over "any corporation, person or public utility" for violating or failing to comply with the Commission's orders. Section 386.390.1, RSMo., provides:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, *setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be*

in violation, of any provision of law, or of any rule or order or decision of the commission. . . .(Emphasis added)

Also, Section 386.570.1, RSMo., states that:

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. (Emphasis added)

Section 386.020(11), RSMo., defines “corporation” as follows:

“Corporation” includes a corporation, company, association and joint stock association or company

There is no question that Spire, Inc. (formerly known as The Laclede Group, Inc.) is a “corporation.” The Laclede Group, Inc., was a signatory to the *Unanimous Stipulation and Agreement* in Case No. GM-2001-342.¹¹⁹ As the Commission recognized in its *Order Granting Motion to Open an Investigation and Directing Filing* issued on July 20, 2016, in this docket (GM-2016-0342), “Spire . . . became the holding company for Laclede Gas Company only by the Commission’s order in a 2001 case (“reorganization case”),” citing to the GM-2001-342 case. That 2001 Commission order in Case No. GM-2001-342 approved the *Unanimous Stipulation and Agreement* signed by The Laclede Group (now Spire), while recognizing that the stipulation contained certain conditions and stated that “The conditions relate to such matters as financial constraints, access to information, *prior authorization from the Missouri Public Service Commission for mergers and acquisitions*, method of cost

¹¹⁹ *In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Case No. GM-2001-342 (*Unanimous Stipulation and Agreement*, filed July 9, 2001).

allocation, and reporting requirements.” (Emphasis added) The 2001 order also specifically stated that it authorized Laclede Gas Company to reorganize “*subject to the conditions contained in the Unanimous Stipulation and Agreement.*” (Emphasis added)

As the Commission stated in its order opening this investigation, one of the conditions contained in the 2001 stipulation was that

*The Laclede Group, Inc. [now Spire] agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility, or seek to become a registered holding company, or take any action which has a material possibility of making it a registered holding company or of subjecting all or a portion of its Missouri intrastate gas distribution operations to FERC jurisdiction, without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility.*¹²⁰ (Emphasis added)

As the Commission also stated in its order opening this investigation, each of the events listed in the foregoing paragraph of the 2001 stipulation “is listed in the disjunctive with acquisition or merger, so the prior approval applies to any one of those events.”

Spire has given no indication that it intends to request the Commission’s approval of its acquisition of EnergySouth or a finding that the transaction is not detrimental to the public.¹²¹ Such lack of action would constitute a violation/failure to comply with the Commission’s 2001 order and the stipulation in GM-2001-342 and subject Spire to the Commission’s complaint jurisdiction.

¹²⁰ *Id.*, pp. 9-10.

¹²¹ Spire/The Laclede Group did not formally request the Commission’s approval of its acquisition of Alagasco either; however, the Alagasco transaction was discussed during Laclede’s presentations to the Commission regarding its acquisition of MGE as discussed elsewhere in this report.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions:

The “not detrimental to the public interest” standard requires a cost-benefit analysis.¹²² Staff is not aware of any benefits that the transactions have or will confer on the Missouri ratepayers of Laclede and MGE; but has identified potential detriments. Those detriments include higher capital costs due to Spire’s debt burden, taken on to fund its acquisitions, and costs improperly allocated to Spire’s Missouri operating company.

B. Recommendations:

The Alagasco acquisition is complete and cannot be undone; the EnergySouth acquisition is quite small. Therefore, Staff recommends that the best way to address the detriments it has identified is in the context of a general rate case for Laclede Gas Company. Additionally, Staff will pursue a complaint against Spire for its failure to seek prior approval from this Commission for the acquisitions of Alagasco and EnergySouth.

WHEREFORE, Staff prays that the Commission will accept its *Report* of its investigation of Spire’s acquisitions of Alagasco and Energy South.

¹²² *In the Matter of Union Electric Company, d/b/a AmerenUE*, 13 MoPSC3d 266, 293 (2005); and see *In the Matter of Great Plains Energy, Inc., Kansas City Power & Light Company and Aquila, Inc.*, 17 Mo.P.S.C.3d 338, 541 (2008).

Respectfully submitted,

/s/ Kevin A. Thompson

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Chief Staff Counsel

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Attorney for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 1st day of September, 2016, on the Public Counsel and on counsel for Spire and Laclede.

/s/ Kevin A. Thompson

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

In the Matter of Great Plains Energy, Inc.'s)
Acquisition of Westar Energy, Inc., and)
Related Matters)

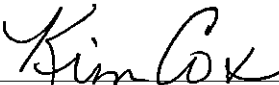
Case No. GM-2016-0342

AFFIDAVIT OF KIM COX

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

COMES NOW Kim Cox, and on her oath states that she is of sound mind and lawful age; that she contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to her best knowledge and belief.

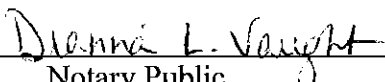
Further the Affiant sayeth not.



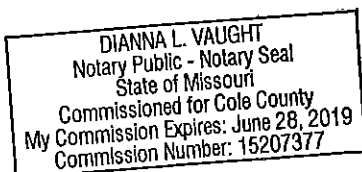
Kim Cox

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 1st day of September, 2016.



Notary Public



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

In the Matter of Great Plains Energy, Inc.'s)
Acquisition of Westar Energy, Inc., and)
Related Matters)

Case No. GM-2016-0342

AFFIDAVIT OF LISA A. KREMER

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

COMES NOW Lisa A. Kremer, and on her oath states that she is of sound mind and lawful age; that she contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.



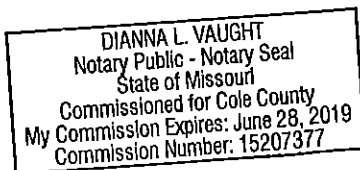
Lisa A. Kremer

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 15th day of September, 2016.



Notary Public



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

In the Matter of Great Plains Energy, Inc.'s)
Acquisition of Westar Energy, Inc., and)
Related Matters)

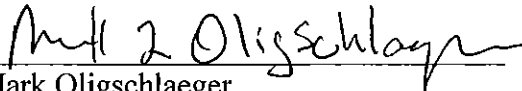
Case No. GM-2016-0342

AFFIDAVIT OF MARK L. OLIGSCHLAEGER

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

COMES NOW Mark Oligschlaeger, and on his oath states that he is of sound mind and lawful age; that he contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.



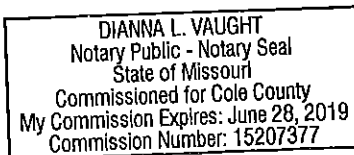
Mark Oligschlaeger

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 1st day of September, 2016.



Notary Public



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

In the Matter of Great Plains Energy, Inc.'s)
Acquisition of Westar Energy, Inc., and)
Related Matters)

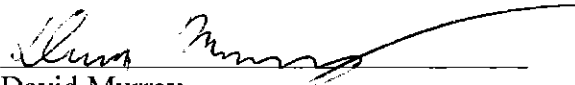
Case No. GM-2016-0342

AFFIDAVIT OF DAVID MURRAY

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

COMES NOW David Murray, and on his oath states that he is of sound mind and lawful age; that he contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to his best knowledge and belief.

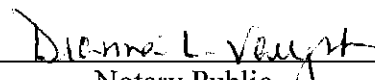
Further the Affiant sayeth not.



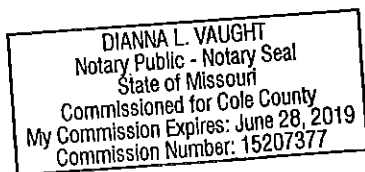
David Murray

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 1st day of September, 2016.



Notary Public



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

In the Matter of Great Plains Energy, Inc.'s)
Acquisition of Westar Energy, Inc., and)
Related Matters)

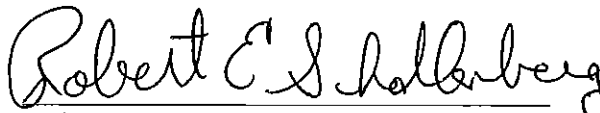
Case No. GM-2016-0342

AFFIDAVIT OF ROBERT E. SCHALLENBERG

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

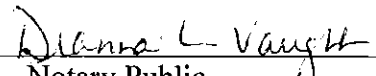
COMES NOW Robert E. Schallenberg, and on his oath states that he is of sound mind and lawful age; that he contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.


Robert E. Schallenberg

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 31st day of August, 2016.


Notary Public

