

At a session of the Public Service Commission held at its office in Jefferson City on the 20<sup>th</sup> day of July, 2016.

File No. GM-2016-0342

Effective Date: July 20, 2016

## Procedure

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filed a response. OPC filed a reply.<sup>4</sup> No law requires an evidentiary hearing before ruling on the motion, and no legally protected interest of Spire is before the Commission, so this file does not constitute a case, contested<sup>5</sup> or non-contested.

OPC has authority to examine any public utility's "books, accounts, papers or records."<sup>6</sup> OPC also cites the Commission's statutory authority to investigate, which includes inquiry and examination of the personnel and documents of any gas corporation.<sup>7</sup> That includes Laclede Gas Company, the Commission-regulated entity for which the holding company is Spire.

Spire argues that it is not a gas company, nor any other public utility, subject to the Commission's jurisdiction. But Spire (then known as Laclede Holding Group, Inc.) became the holding company for Laclede Gas Company only by the Commission's order in a 2001 case ("reorganization case").<sup>8</sup>

### The Reorganization Case

OPC cites the reorganization case because, in that case, Spire and Laclede Gas Company agreed—as a substitute for litigation—to provide the following generally:

1. . . . all . . . information provided to common stock, bond, or bond rating analysts, which directly or indirectly pertains to Laclede Gas Company or [Spire]. Such information includes, but is not limited to, reports provided to,

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<sup>3</sup> EFIS No. 5 (July 11, 2016) *Staff's Response to Commission Order*.

<sup>4</sup> EFIS No. 4 (July 7, 2016) *Public Counsel's Reply*.

<sup>5</sup> Section 536.010(4), RSMo Supp. 2014.

<sup>6</sup> Section 386.450, RSMo 2000.

<sup>7</sup> Section 393.140(8) and (9), RSMo 2000; and Section 393.140(5), (9), and (10), RSMo 2000,

<sup>8</sup> File No. GM-2001-342, *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, and Holding Company, and Unregulated subsidiaries*. File No. GM-2001-0342 is available in EFIS as under File No. GM2001342xxx.

and presentations made to, common stock analysts and bond rating analysts.

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2. . . . 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 [. <sup>9</sup>]

OPC also cites Spire's and Laclede Gas Company's promise specifically to provide:

2. . . . all books, records and employees of [Spire], Laclede Gas Company and its affiliates as may be reasonably required to verify compliance with . . . the conditions set forth in this Stipulation and Agreement [. <sup>10</sup>]

Those conditions relate to finance, cost allocation, and other matters.<sup>11</sup> Further, OPC cites Spire's promise to seek the Commission's permission ("prior approval"):

[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 [Spire] only, public utility shall mean a natural gas or electric public utility.[ <sup>12</sup>]

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

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<sup>9</sup> File No. GM-2001-342, EFIS No. 31 (July 9, 2001) *Unanimous Stipulation and Agreement* page 7 to 8. The provisions governing disclosure of information are set forth at length in Appendix 1 of this order.

<sup>10</sup> File No. GM-2001-342, EFIS No. 31 (July 9, 2001) *Unanimous Stipulation and Agreement* page 8 to 9.

<sup>11</sup> Those provisions are set forth in Appendix 2 of this order.

<sup>12</sup> File No. GM-2001-342, EFIS No. 31 (July 9, 2001) *Unanimous Stipulation and Agreement* page 9 to 10, paragraph 1.

But, as OPC notes, the cited provisions are not mere promises. They are statutorily authorized<sup>13</sup> orders<sup>14</sup> that the Commission made on Spire's motion.<sup>15</sup> The Court of Appeals has held that such conditions constitute requirements that are subject to enforcement before the Commission.<sup>16</sup>

### Other Arguments

Spire also argues that there is no allegation, under the prior approval requirement, that Spire has taken:

. . . any action which has a material possibility of making [Spire] a registered holding company or of subjecting all or a portion of [Spire]'s Missouri intrastate gas distribution operations to FERC jurisdiction [.]

But that is irrelevant to OPC's allegation that Spire did and will:

. . . acquire or merge with . . . a public utility . . . without first requesting and . . . obtaining prior approval from the Commission.[<sup>17</sup>]

The prior approval requirement also listed events related to registered holding company status and FERC jurisdiction, but each is listed in the disjunctive with acquisition or merger, so the prior approval applies to any one of those events.

Spire further argues that the transactions are outside the Commission's jurisdiction because EnergySouth and Alagasco are not in Missouri. But that argument is irrelevant to whether the transactions impact Missouri ratepayers. No determination

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<sup>13</sup> Section 393.250.1, RSMo 2000.

<sup>14</sup> File No. GM-2001-342, EFIS No. 34 (August 14, 2001) *Order Approving Stipulation and Agreement and Approving Plan to Restructure*, page 6, ordered paragraph 3, incorporating by reference EFIS No. 31 (July 9, 2001) *Unanimous Stipulation and Agreement*.

<sup>15</sup> File No. GM-2001-342, EFIS No. 31 (July 9, 2001) *Unanimous Stipulation and Agreement*.

<sup>16</sup> *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n of Mo.*, 392 SW3 24, 35 (Mo. App. W.D. 2012).

<sup>17</sup> File No. GM-2001-342, EFIS No. 31 (July 9, 2001) *Unanimous Stipulation and Agreement* page 9 to 10.

on the merits of the transactions is pending in this file or any other, and none may ever be necessary, so the Commission is not making any determination on whether the transactions are within the Commission's jurisdiction in this order.<sup>18</sup>

Spire further argues that the EnergySouth transaction is too small and the Alagasco transaction is too far in the past to merit investigation. But that begs the question of whether the transactions impact Missouri ratepayers, which is what OPC seeks to discover, and Staff agrees that such examination is prudent. Staff's and OPC's arguments are more persuasive.

### Ruling

The Commission is not determining whether the transactions are subject to the Commission's jurisdiction. But 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. Therefore, the Commission will grant the motion and maintain this file as a repository for documents related to an investigation as set forth in the ordered paragraphs.<sup>19</sup> The investigation should be expeditious, so the Commission will set a date for the filing of a report.

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<sup>18</sup> Appropriately, Spire does not seek an advisory opinion on whether the transactions are subject to the Commission's jurisdiction, so it is unnecessary to address the past orders that Spire cites to show that the transactions are outside the Commission's jurisdiction.

<sup>19</sup> Outside the context of a contested case, no written order is necessary for the Commission and Staff to communicate, so no order is necessary for the Commission to delegate its authority to Staff. *State ex rel. Associated Nat. Gas Co. v. Pub. Serv. Comm'n of State of Mo.*, 37 S.W.3d 287, 294-95 (Mo. App., W.D. 2000). That is because the Commission's relationship with Staff is one of internal management; specifically, employer/employee. Section 386.240, RSMo 2000. But in certain circumstances, written communication and a file in EFIS are preferable because they afford the opportunity for input from affected entities, result in express public statements from the Commission, and promote administrative transparency, efficiency, and economy.

**THE COMMISSION ORDERS THAT:**

1. *Public Counsel's Motion to Open an Investigation* is granted.
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.
3. The Office of the Public Counsel ("OPC") may file a report.
4. Any report described in ordered paragraph 2 or 3 may be jointly or separately filed, and shall be filed no later than September 2, 2016.
5. This order shall be effective when issued.



**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Stoll, Kenney, Rupp, and  
Coleman, CC., concur.

Jordan, Senior Regulatory Law Judge

## Appendix 1: Spire's Agreement to Provide Information

### SECTION IV ACCESS TO INFORMATION CONDITIONS

1. [Spire] and Laclede Gas Company shall provide the Staff and [OPC] 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 [Spire]'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 [Spire] agree to make available to Staff, [OPC] and PACE, upon written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, all books, records and employees of [Spire], Laclede Gas Company and its affiliates as may be reasonably required to verify compliance with the [cost allocation manual ("CAM")] and the conditions set forth in this Stipulation and Agreement and, in the case of [the Paper, Allied-Industrial, Chemical, and Energy Workers Local Nos. 5-6 and 5-194, AFL-CIO ("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 [OPC]'s access to bargaining unit employees shall also be conditioned on Staff and [OPC] 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 [Spire] shall also provide Staff and [OPC] 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 [Spire] 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 [Spire] will maintain records supporting its affiliated transactions for at least five years.<sup>20</sup>

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<sup>20</sup> File No. GM-2001-342, EFIS No. 31 (July 9, 2001) *Unanimous Stipulation and Agreement* page 7 to 8.

## Appendix 2: Spire's Other Agreements

### SECTION III FINANCIAL CONDITIONS

1. [Spire] 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.
2. [Spire] will not pledge Laclede Gas Company's common stock as collateral or security for the debt of [Spire] or a Subsidiary without Commission approval.
3. Laclede Gas Company will not guarantee the notes, debentures, debt obligations or other securities of [Spire] or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.
4. [Spire] agrees to maintain consolidated equity of no less than 30 percent of its total permanent 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. [Spire] and Laclede Gas Company agree to notify the Staff and [OPC] 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.
5. Laclede Gas Company shall submit quarterly to the Staffs Financial Analysis Department and [OPC] 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.

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.

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, 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. Laclede Gas Company agrees to notify the Staff and [OPC] 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.

8. [Spire] 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. [Spire], 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.

## 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, [OPC] 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 VITI 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

(4) 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 [Spire] (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 [Spire] is required to file with the Securities and Exchange Commission.

## 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 [OPC] to seek disallowance from rates, if necessary, in a future proceeding.

2. Laclede Gas Company will provide the Staff and [OPC] with an explanation for any final reorganization journal entry that deviates by more than ten percent (10%) from the estimated proforma 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 [OPC] 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 [OPC];

(e) [Spire] and its affiliates (including Laclede) shall also notify Staff, [OPC] 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, [OPC], 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 [OPC], 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.<sup>21</sup>

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<sup>21</sup> File No. GM-2001-342, EFIS No. 31 (July 9, 2001) *Unanimous Stipulation and Agreement* page 3 to 15.

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 20<sup>th</sup> day of July 2016.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**July 20, 2016**

**File/Case No. GM-2016-0342**

**Missouri Public Service  
Commission**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.