

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

In the Matter of Spire Inc.'s	)	
Acquisition of EnergySouth, Inc.	)	File No. GM-2016-____
and Related Matters	)	

**PUBLIC COUNSEL'S MOTION TO OPEN AN INVESTIGATION**

COMES NOW the Office of the Public Counsel ("OPC" or "Public Counsel") and hereby moves the Missouri Public Service Commission ("Commission") to open a docket pursuant to Chapters 386 and 393, RSMo., for the investigation of the announced acquisition of EnergySouth, Inc. ("EnergySouth"), by Spire Inc., to determine whether or not the proposed transaction is likely to be detrimental to the public interest and the interests of Missouri ratepayers. In support thereof, OPC states:

Background

1. On April 26, 2016, the Laclede Group, Inc. ("Laclede Group") announced an agreement with Sempra U.S. Gas & Power to acquire 100 percent of the outstanding equity of EnergySouth, the parent company of Mobile Gas in Alabama and Willmut Gas in Mississippi, for \$344 million. This acquisition follows the Laclede Group's acquisition of Alabama Gas Corporation ("Alagasco") in 2014.
2. On April 28, 2016, two days after announcing the agreement to acquire EnergySouth, Laclede Group amended its articles of incorporation changing its name to Spire Inc. ("Spire").
3. Spire is a Missouri corporation in good standing; its principle place of business is 700 Market Street, 6<sup>th</sup> Floor, St. Louis, Missouri 63101. Spire is a holding company and owns Laclede Gas Company and Missouri Gas Energy, utilities subject to regulation in Missouri by this Commission.

4. In 2001, this Commission authorized Laclede Gas Company to restructure itself as a holding company, the Laclede Group, Inc., with the regulated company becoming a subsidiary. The Commission authorized the reorganization in its August 14, 2001 *Order Approving Stipulation and Agreement and Approving Plan to Restructure*, in Case No. GM-2001-342. As explained above, the holding company is now Spire Inc.

5. In that order, the Commission approved the *Unanimous Stipulation and Agreement*, signed by Laclede Gas Company, the Commission's Staff, OPC, Missouri Energy Group, the Paper Allied-Industrial Chemical and Energy Workers Local Nos. 5-6 and 5-194, and The Laclede Group, Inc. (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*, Doc. No. 31).

#### Authority for Investigation

6. Under Section 393.140 RSMo., the Commission has, among other powers, general supervision of all gas companies. In support of this motion, OPC also directs the Commission to its *Order Approving Stipulation and Agreement and Approving Plan to Restructure*, in Case No. GM-2001-342. The Commission approved the stipulation and agreement stating:

The stipulation and agreement filed in this case contains certain conditions. These conditions are intended to protect the Missouri customers of Laclede. 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 allocation, and reporting requirements.

7. In granting the requested reorganization in GM-2001-342, the Commission cited to Sections 393.190 and 393.250 RSMo. as the source of its authority over the case (*See 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*, Doc. No. 34).

8. Among the conditions approved in the *Unanimous Stipulation and Agreement*, the Laclede Group (now Spire) agreed to submit to scrutiny of certain information by the Commission's Staff and OPC:

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.

(*Id.* at pp. 7-8).

9. The signatories further agreed:

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 or 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.

(*Id.* at 9). The condition on access to information is foundational to ensuring compliance with the financial conditions (listed in Section III), the cost allocation manual conditions (listed in Section VI), and the “miscellaneous” conditions (listed in Section VII) contained in the *Unanimous Stipulation and Agreement*. Importantly, when evaluating these conditions, the Western District Court of Appeals explained, “[t]his was a bargain Laclede struck to be able to restructure, which the Commission then approved and became a term of the 2001 Agreement.” *See State ex rel. Laclede Gas Company v. Public Service Commission of the State of Missouri*, 392 S.W.3d 24, 34 (Mo. App. W.D. 2012).

10. In addition to the “access to information” conditions, the signatories included a section on “Commission authorization conditions.” In Section V, the Laclede Group agreed to seek prior authorization from the Commission for certain transactions. In pertinent part, the agreement reads:

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.

(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*, Doc. No. 34, at pp. 9-10). This, too, is a part of the bargain struck by the parties to the restructuring case and should be enforced by the Commission.

#### Request for Investigation

11. Public Counsel moves this Commission open a docket to investigate, among other things:
  - a. 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;
  - b. whether Spire sought Commission approval prior to the 2014 acquisition of Alagasco;
  - c. whether Spire will seek Commission approval prior to the acquisition of EnergySouth;
  - d. whether the acquisition of Alagasco was detrimental to the public or otherwise impacted Missouri customers;
  - e. whether the acquisition of EnergySouth will be detrimental to the public or otherwise impact Missouri customers; and

f. whether the acquisition of EnergySouth will impact the Commission's access to information;

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

h. whether the acquisition of EnergySouth will impact the cost allocations among the affiliated companies, and;

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

12. At this time, it is unknown whether Spire's acquisition of Alagasco and EnergySouth impacts Missouri customers, the Commission's authority, or the rights of the signatories to the 2001 unanimous stipulation and agreement.

13. The Commission has the authority to conduct the requested investigation and recently exercised this option in Case No. EM-2016-0324 to investigate the acquisition of Westar Energy, Inc. by Great Plains Energy, Inc. ("GPE"), the holding company owning two electric utilities regulated by the Commission. In its Order opening the investigation, the Commission explained it "has a duty to determine whether the transaction threatens Missouri ratepayers." (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*, Doc. No. 7).

14. Opening the investigatory docket now requested by OPC will enable the Commission to examine the impact of Spire's recent acquisitions and ensure Missouri ratepayers suffer no detrimental effect.

WHEREFORE Public Counsel requests the Commission open a docket for the investigation of the announced acquisition of EnergySouth by Spire, to determine whether or not the proposed transaction is likely to be detrimental to the public interest and the interests of Missouri ratepayers.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 16<sup>th</sup> day of June 2016:

/s/ Tim Opitz