

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

In the Matter of Spire Inc.'s)	
Acquisition of EnergySouth, Inc.)	File No. GM-2016-0342
and Related Matters)	

PUBLIC COUNSEL'S REPLY

COMES NOW the Office of the Public Counsel ("OPC" or "Public Counsel") and offers its *Reply* to Spire Inc. ("Spire") formerly known as the Laclede Group as follows:

1. On June 16, 2016, OPC filed its motion asking the Commission to open an investigatory docket. Thereafter, on June 27, Spire filed its response in opposition to OPC's motion. *See* Doc. No. 2).
2. The Commission has investigatory authority under Section 393.140 RSMo. In its motion, OPC directed the Commission's attention to documents in Case No. GM-2001-342 showing Spire's predecessor agreed, among other conditions, to provide information to OPC and the Commission's staff.¹ The condition on access to information is essential to ensuring compliance with the other named conditions and, as it relates to OPC's request, is helpful in conducting an investigation. To circumvent argument that the conditions are not enforceable, OPC cited to a case wherein the Court of Appeals evaluated the conditions and explained, "[t]his was a bargain Laclede stuck to be able to restructure[.]" *See State ex rel. Laclede Gas Company v. Public Service Commission of the State of Missouri*, 392 S.W.3d 24, 34 (Mo. App. 2012).
3. OPC offers the summary above to reiterate the Commission has both the authority and the means to conduct the requested investigation. The Commission itself provided the reason it should conduct an investigation in Case No. EM-2016-0324, stating it "has a duty to determine

¹ In its motion, OPC noted the other conditions included: financial conditions, cost allocation manual conditions, and "miscellaneous" conditions. *See* Doc. No. 1, at 4.

whether the transaction threatens Missouri ratepayers.” *See* 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. Shortly after the Commission issued its order explaining its duty, OPC requested the Commission open an investigatory docket to determine whether the recent utility acquisitions by Spire will have a detrimental impact on Missouri ratepayers.

4. Nowhere in its response does Spire dispute the Commission’s authority to conduct the requested investigation. Instead, Spire argues the Commission has no jurisdiction to approve/disapprove Spire’s acquisition of utilities. The company’s position on approval/disapproval has no bearing on the Commission’s investigatory authority. OPC did not ask the Commission to approve or disapprove the acquisitions and the Commission need not make such a determination in the course of an investigation. Furthermore, OPC notes the Commission’s “jurisdiction” is not a settled issue.²

5. As a part of its “jurisdictional” argument, Spire asserts the 2001 Stipulation in GM-2001-342 does not require Commission approval for the acquisition of Alagasco because Spire “obtained from the FERC and has maintained an exemption from FERC jurisdiction under the ‘LDC Exemption’ to the Public Utility Holding Company Act of 2005.” Doc. No. 2, p. 7. Rather than support Spire’s point, this does the opposite. Setting aside the unresolved issue on the meaning of “public utility” in the 2001 Stipulation, Spire itself focuses on the provision regarding activities that have “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

² A similar issue is being examined in EM-2016-0324 regarding Great Plains Energy, Inc.’s acquisition of Westar, Inc.

jurisdiction”. Doc. No. 2, pp. 6-7. If the Alagasco transaction required an exemption, it involved more than a material possibility – it would be an actual effect.

6. Attempting to address the issue, Spire “certifies that neither the Alagasco acquisition nor the pending EnergySouth acquisition has, or would, make Spire a registered holding company or subject any of Laclede Gas’s intrastate gas distribution operations to FERC jurisdiction.” *Id.* Spire’s “certification” is nothing more than its own self-serving legal conclusion. This topic, and whether a separate exemption is necessary for the EnergySouth transaction, should be examined in OPC’s requested investigation.

7. Spire asserts OPC “does not articulate how either of these acquisitions has, does or even could impact these obligations [the obligations under the 2001 Stipulation].” Doc. No. 2, p. 4. But these are some of the questions that could be answered in the course of the investigation OPC is seeking. *See* Doc. No. 1, pp. 5-6.

8. Spire accuses OPC of “suggesting that the Commission, its Staff and OPC were simply ‘asleep at the switch’ when the Alagasco acquisition was consummated[.]” Doc. No. 2, p. 5. OPC made no such suggestion. The past action (or inaction) of stakeholders regarding the Alagasco transaction does not prohibit the requested investigation. Nor does it obviate the need to investigate the potential impact the EnergySouth transaction will have on Missouri ratepayers.

9. Spire goes on to assert, incorrectly, “the only thing that OPC has had to say about the Alagasco acquisition is that it may have produced synergies and other financial benefits that need to be passed through to customers though the pursuit of a Complaint against Laclede Gas and MGE that OPC has also attempted to launch in the last two months.” Doc. No. 2, p. 8. OPC made no such statement in its request for an investigation. *See* Doc. No. 1. The Company’s commentary on OPC’s separate complaint has no impact on this proposed investigation. Further,

OPC denies Spire has accurately represented OPC's positions in that case.³ Importantly, in this case, OPC merely requests the Commission open an investigatory docket to examine the acquisitions by Spire.

10. Spire also explains the Commission should not open an investigation because the \$344 million transaction to acquire EnergySouth is "extremely modest[.]" Doc. No. 2, p. 8. Spire compares its transaction to the Great Plains Energy acquisition of Westar:

[t]he Spire/EnergySouth acquisition is an extremely modest one. It would increase Spire's existing customer base and enterprise value by about 7%. In contrast, the Great Plains/Westar acquisition would boost Great Plains' existing customer base by over 75% (from 850,000 customers to 1.5 million customers) and based on a pre-announcement total enterprise value of \$12.2 billion paid, would increase its total enterprise value by approximately 135%.

Doc. No. 2, pp. 8-9. The size and scope of the transactions are, as Spire explains, different. Spire suggests the Commission should investigate the Great Plains/Westar acquisition. However, for its own acquisition of EnergySouth, Spire's position is the \$344 million transaction is "extremely modest" and does not merit an investigation. OPC disagrees. The terms of its 2001 Agreement make no reference to "modesty" or "size".

11. The Commission has opened a docket to investigate the Great Plains Energy/Westar acquisition and should open a similar investigation in this case to fulfill its "duty to determine whether the transaction threatens Missouri ratepayers."

³ That Spire is familiar with and interested in OPC's complaint case against Laclede and MGE is unsurprising. OPC notes whether or not public utility holding companies like Spire are exempt from regulation by the Commission is not a settled legal question.

WHEREFORE Public Counsel submits its *Reply* and 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

By: /s/ **Tim Opitz**
Tim Opitz
Senior Counsel
Missouri Bar No. 65082
P. O. Box 2230
Jefferson City MO 65102
(573) 751-5324
(573) 751-5562 FAX
Timothy.opitz@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 7th day of July 2016:

/s/ **Tim Opitz**