

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

|                                      |   |                       |
|--------------------------------------|---|-----------------------|
| St. Louis Natural Gas Pipeline, LLC, | ) |                       |
|                                      | ) |                       |
| Complainant,                         | ) |                       |
| v.                                   | ) | Case No. GC-2011-0294 |
|                                      | ) |                       |
| Laclede Gas Company,                 | ) |                       |
| Respondent.                          | ) |                       |

**MOTION OF LACLEDE GAS COMPANY  
FOR RECONSIDERATION AND/OR CLARIFICATION**

COMES NOW Respondent, Laclede Gas Company (“Laclede” or Company) and, pursuant to 4 CSR 240-2.160 of the Commission’s Rules of Practice and Procedure, submits this Motion for Reconsideration and/or Clarification of the Commission’s Order Denying Laclede’s Motion to Dismiss and Directing Staff to Investigate issued on May 26, 2011. In support thereof, Laclede states as follows:

1. On May 26, 2011, the Commission issued its Order in the above-captioned case denying Laclede’s Motion to Dismiss the Complaint filed against the Company by St. Louis Natural Gas Pipeline, LLC (hereinafter “May 26 Order”). In that same Order, the Commission also directed the Commission Staff to investigate the allegations raised in the Complaint and report back to the Commission no later than July 1, 2011. For the reasons stated below, the Commission should reconsider its May 26 Order and grant Laclede’s Motion to Dismiss or, in the alternative, clarify that: (a) the Commission cannot and does not intend to mandate that Laclede enter into any interconnection agreement as a result of this proceeding, and (b) that the Commission will again entertain Laclede’s request to dismiss this matter upon the receipt and review of Staff’s report.

2. The Commission acknowledges at page 3 of the May 26 Order that “the Commission has no specific statutory authority to determine whether Laclede must

interconnect with a particular pipeline . . . .” This acknowledgement should have been sufficient to sustain Laclede’s motion to dismiss. However, the Commission went on to conclude that Laclede’s motion to dismiss should be denied because the Commission “does have authority and an obligation to ensure that Laclede provides service instrumentalities and facilities that are safe and adequate at rates that are just and reasonable.”

3. It is unclear to Laclede whether the Commission meant to imply that this general statutory grant of authority *does* give the Commission the power to order an interconnection, notwithstanding the absence of any specific statutory authority to that effect, or simply the authority to have its Staff evaluate whether there is any substance to the Complainant’s unsupported allegations that Laclede rejected its business offer for inappropriate reasons. Either interpretation is problematic, but the former is particularly pernicious because it would not only overstep the long-standing legal boundaries that govern the respective roles of the Commission and utility management, but would also purport to expand the Commission’s authority beyond Laclede’s operation of retail gas distribution facilities to encompass operational issues involving upstream interstate natural gas pipelines that are regulated pervasively by Federal agencies such as the Federal Energy Regulatory Commission (“FERC”) or the Department of Transportation Office of Pipeline Safety. Such an expansive view of the Commission’s authority would further create the prospect that the Commission will be inundated with scores of impermissible requests by rejected business suitors who view the Commission as the “go-to” option for obtaining through regulatory fiat what they cannot achieve based on the merits of their business proposition.

4. Indeed, if a utility's general obligation to provide "service instrumentalities and facilities that are safe and adequate<sup>1</sup>" at rates that are "just and reasonable" can be used to justify the kind of mandated interconnection relief requested by the Complainant, or to support Commission review of the types of issues related to the operations, safety or market power of interstate pipelines raised in the Complaint, then it is difficult to see what practical limits there would be to the Commission's power. RSMo. Section 393.130.1, the only statutory provision upon which the Commission relies in its May 26 Order, limits the Commission's authority to Laclede's operation of the gas distribution facilities that it owns or controls in service of its public utility obligations, and to the question of whether such operation is "safe," "adequate" and "just and reasonable." **How** Laclede chooses to operate such distribution facilities, or which vendors Laclede uses to perform such operations is squarely within Laclede's management discretion so long as Laclede's operation is safe and adequate at rates that are just and reasonable. Laclede is concerned that by entertaining this Complaint, the Commission is crossing the line and dictating matters that are within Laclede's management discretion, even though the Complainant made no *prima facie* showing that Laclede's retail distribution operations are unsafe, inadequate or unreasonably priced. *State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 181 (Mo.App., W.D. 1960). *State ex rel. Laclede Gas Company v. P.S.C.*, 600 S.W.2d 222, 228 (1980). Furthermore, a broad view of Section 393.130.1 suggested by the Commission's May 26 Order (and urged by the Complainant) would allow the Commission to prescribe what manufacturer of generating units should be chosen by an electric utility, what provider of

---

<sup>1</sup> Laclede would note that the Complainant has not raised an issue with Laclede's service instrumentation and facilities, so this ground is not even applicable to this case.

water treatment services should be selected by a water utility, or even what manufacturer of pipe should be used by a gas utility. Commission usurpation of these fundamental business decisions, as well as a host of others, could be similarly (and impermissibly) justified based on some manufacture's claim that selection of *its* product or service was necessary to ensure that utility service was being providing safely, reliably and at the most reasonable cost.

5. Accordingly, the Commission should either reconsider its Order and grant Laclede's motion to dismiss if that was indeed the kind of power the Commission erroneously intended to assume with its Order or, alternatively, clarify that the Commission cannot and does not intend to mandate that Laclede enter into any interconnection agreement as a result of this proceeding.

6. Such reconsideration or clarification is particularly appropriate given the degree to which an order purporting to require Laclede to interconnect to an interstate pipeline would also violate federal preemption principles. Notably, in the 1987 Order in which this Commission determined that it did not have the legal authority to substitute its judgment for that of utility management when it came to the selection of pipeline suppliers, (*see In the matter of developments in the transportation of natural gas and their relevance to the regulation of natural gas corporations in Missouri*, 29 Mo.P.S.C (N.S.) 137, 143 (1987)), the Commission also recognized that it was preempted by federal law from attempting to regulate the interstate transportation of natural gas. As the Commission observed:

The Commission now turns to the issue of interstate transportation of natural gas by pipelines to local end users. Section 7(b) of the Natural Gas Act specifically grants federal jurisdiction over the transportation of natural gas in interstate commerce. That jurisdiction has been noted in several cases. See:

*Panhandle-Indiana, supra; Federal Power Commission v. Louisiana Power & Light Co., supra.*

The Commission finds that the authority to regulate interstate transportation of natural gas is vested at the federal level. Although it is true that numerous changes are occurring federally, the Commission believes its lack of interstate transportation jurisdiction is apparent. The Commission finds it lacks authority to directly control transportation bypass.

*Id.* at 142-43.

7. Significantly, interconnection charges are subject to FERC jurisdiction under the Natural Gas Act ("NGA"). So too are the other terms and conditions of an interconnection agreement. As Section 4 of the NGA states:

(c) Filing of rates and charges with [FERC]; public inspection of schedules

Under such rules and regulations as the [FERC] may prescribe, every natural gas company shall file with the [FERC], within such time (not less than sixty days from June 21, 1938) and in such form as the [FERC] may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the [FERC], and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

15 U.S.C.A. § 717c(c).

8. An interconnection agreement is one such type of contract that "in any manner affect[s] or relate[s] to such ... services." *Id.* Therefore, FERC has exercised jurisdiction over interconnection agreements, as illustrated by the attached FERC order accepting the filing of a non-conforming interconnection agreement between an interstate natural gas pipeline (National Fuel Gas Supply Corp.) and an LDC.

9. The Complainant might argue that while FERC has jurisdiction over the construction of the pipeline and the construction of an interconnect, this Commission may nevertheless order Laclede to enter into the interconnection agreement. FERC and the courts have repeatedly rejected attempts to claim that state commissions and the

FERC can both exercise dual jurisdiction over a matter that has been made subject to FERC's exclusive jurisdiction. As the 10<sup>th</sup> Circuit Court of Appeals observed on this issue:

Finally, the petitioners argue that if the state commission cannot have exclusive jurisdiction, it should at least have concurrent jurisdiction. The WUTC argues that this should be the case even if we reject their argument that the bypass involves "local distribution." We disagree. It is settled that if the NGA grants jurisdiction to the Commission over a matter, as it does here, its jurisdiction is exclusive. *See, e.g., Northwest Cent. Pipeline v. Kans. Corp. Comm'n*, 489 U.S. 493, 510, 103 L.Ed.2d 509, 109 S.Ct. 1262 (1989); *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300-01, 99 L.Ed.2d 316, 108 S.Ct. 1145 (1988); *Northern Gas Co. v. Kans. Corp. Comm'n*, 372 U.S. 84, 89, 9 L.Ed.2d 601, 83 S.Ct. 646 (1963); *see also Public Util. Comm'n of Cal. v. FERC*, 283 App. D.C. 285, 900 F.2d 269, 274 (D.C. Cir. 1990) (citing "legion" of cases "affirming the exclusive character of FERC jurisdiction where it applies").

*Cascade Natural Gas Corp. v. FERC*, 955 F.2d 1412, 1421 (10th Cir. 1992).

10. For all of these reasons, Laclede respectfully submits that the Commission should reconsider its May 26 Order by granting Laclede's Motion to Dismiss or, in the alternative, clarify that the Commission cannot and does not intend to mandate that Laclede enter into any interconnection agreement as a result of this proceeding.

11. Finally, should the Commission choose not to reconsider its May 26 Order and grant Laclede's Motion to Dismiss outright, it should at a minimum also clarify that it will again entertain Laclede's request to dismiss this matter once it has the benefit of the report resulting from the investigation it has directed Staff to conduct.

**WHEREFORE**, Respondent Laclede Gas Company respectfully requests that the Commission reconsider its May 26 Order and grant Laclede's Motion to Dismiss or, in the alternative, clarify that: (a) the Commission cannot and does not intend to mandate that Laclede enter into any interconnection agreement as a result of this proceeding, and (b) that the Commission will again entertain Laclede's request to dismiss this matter once

it has the benefit of the report resulting from the investigation it has direct the Staff to conduct.

Respectfully submitted,

**/s/Michael C. Pendergast**

Michael C. Pendergast, Mo. Bar #31763

Vice President and Associate General Counsel

Rick Zucker, Mo. Bar #49211

Assistant General Counsel - Regulatory

Laclede Gas Company

720 Olive Street, Room 1516

St. Louis, MO 63101

Telephone: (314) 342-0533

Fax: (314) 421-1979

Email: mpendergast@lacledegas.com

rzucker@lacledegas.com

**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing Answer was served on the Staff and on the Office of Public Counsel on this 6th day of June, 2011 by United States mail, hand-delivery, email, or facsimile.

/s/ Gerry Lynch

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:  
Letter order Pursuant to § 375.307  
National Fuel Gas Supply Corporation  
Docket No. RP09-781-000

Issued: 7/16/09

National Fuel Gas Supply Corporation  
6363 Main Street  
Williamsville, NY 14221

Attention: David W. Reitz

Reference: Non-Conforming Interconnection Agreement

Dear Mr. Reitz:

On June 26, 2009, National Fuel Gas Supply Corporation (National Fuel) filed a revised tariff sheet<sup>2</sup> to include on its list of non-conforming service agreements an interconnection agreement between National Fuel and Somerset Gas Gathering of Pennsylvania, LLC (Somerset). Waiver of the Commission's 30 day notice requirements under section 18 CFR § 375.307 (a)(7)(iv) is granted, and the tariff sheet is accepted, effective June 24, 2009 as requested.

On March 4, 2009, Somerset acquired a section of Columbia Gas Transmission Corporation's (Columbia) system which had been used by Columbia to deliver gas to National Fuel at Smethport for National Fuel Gas Distribution Corporation (Distribution). Pursuant to Section 13.1 of the General Terms and Conditions (GT&C) of National Fuel's tariff, since Somerset is not an interstate pipeline who's FERC Gas Tariff incorporates the NAESB standards, Somerset must be a party to an interconnection agreement with National Fuel in order for National Fuel to accept nominations to receive gas at Smethport. Recognizing the absence of such an agreement, National Fuel filed a request for,<sup>3</sup> and received from the Commission, a temporary waiver of Section 13.1 to allow it to accept nominations from Distribution for the receipt of gas at Smethport until July 2, 2009 while it engaged in discussions with Somerset to implement an

---

<sup>2</sup> Sixteenth Revised Sheet No. 478 to FERC Gas Tariff, Fourth Revised Volume No. 1.

<sup>3</sup> 127 FERC ¶ 61,029 (2009), Docket No. RP09-452-000, Order granting Petition for Tariff Waiver by National Fuel.



interconnection agreement. The instant filing is the Interconnection Agreement required by Section 13.1 of the GT&C of National Fuel's tariff so that National Fuel can continue to receive Distribution's nominations at Smethport. National Fuel states that because of the unique context of the Smethport interconnection, the differences in the interconnection agreement making it non-conforming do not pose a risk of undue discrimination.

Public notice was issued on June 29, 2009, with comments due on July 8, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed. National Fuel Gas Distribution Corporation filed comments in support of the filing.

This acceptance for filing shall not be construed as a waiver of the requirements of section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of the referenced filing or of any rate, charge, classification, or any rule, regulation, or practice affecting such rate or service contained in your tariff; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. 385.713.

Sincerely,

Larry D. Gasteiger, Director  
Division of Tariffs and Market  
Development - East

cc: All Parties  
Public File