

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE
STATE OF MISSOURI

FILED

AUG 24 2006

Name: Missouri Coalition for Fair Competition
Complainant

Missouri Public
Service Commission

vs.

Case No.

Company Name: Laclede Gas Company
Respondent

COMPLAINT

Complainant resides at 612 East Capitol Avenue, PO Box 2051, Jefferson City, MO 65102

1. Respondent, Laclede Gas Company of 720 Olive Street, St. Louis, MO 63101, is a public utility under the jurisdiction of the Public Service Commission of the State of Missouri.

2. As the basis of this complaint, Complainant states the following facts:

1. On February 21, 2006, the Commission issued an Order Approving Unanimous Stipulation and Agreement for the Sale of Assets and Granting a Certificate of Public Convenience and Necessity, approving the sale of assets of Fidelity Natural Gas, Inc. ("Fidelity"), to Laclede Gas Company ("Laclede"). The Order authorized Laclede to take over the provision of services previously rendered by Fidelity in Fidelity's service area.
2. The Complainant contends that Laclede should not be permitted to provide services relating to heating, ventilating and air conditioning equipment ("HVAC Services").
3. Under the HVAC Services Act (Sections 386.754 to 386.764, RSMo), a gas, electric or steam heating utility may not provide certain services relating to HVAC Services unless it provides such services through an affiliate. A statutory exemption to this requirement exists in subsection 7 of Section 386.756 of the Act, which states: "A utility engaging in HVAC services in this state five years prior to August 28, 1998, may continue providing, to existing as well as new customers, the same type of services provided by the utility five years prior to August 28, 1998" (Section 386.756.7 RSMo). The Commission issued a Notice Recognizing Exemption in Case No. GE-2000-826 on August 31, 2000, granting Fidelity Natural Gas an exemption to provide a number of HVAC services.
4. The Complainant believes this exemption was inappropriately given to Fidelity, which was not providing such services in 1993. A letter sent by the Complainant to the Commission on February 13, 2006 ("February 13 Letter") observes that in 1993, Fidelity "had just received their franchise for gas distribution and were actually subcontracting the installation of gas piping lines for both commercial and residential customers to HVAC contractors." The February 13 Letter also contends that Fidelity subcontracted out such duties up until a year to eighteen months later, and was not providing HVAC Services to customers within five years prior to August 28, 1998.

5. According to the Code of State Regulations, utilities are required to render to each customer a bill for services provided (4 CSR 240-13.020). Utilities should have documentation of every service rendered to customers. Therefore, if Fidelity were providing HVAC Services to its customers prior to August 28, 1993, then there should be service records documenting the customer's name, address, and service provided. The Complainant has made a number of requests to view evidence that Fidelity was providing HVAC Services in 1993. It is the understanding of the Complainant that Laclede agreed to look into the matter and provide the requested documentation by the end of March 2006. No such evidence has been forthcoming.

6. There is evidence that supports the Complainant's contention that Fidelity was not providing HVAC Services in 1993, and thus should not have been awarded its exemption. If Fidelity were providing HVAC Services to customers in its service area, it is reasonable to assume that the President of said company would not subcontract an independent HVAC company to provide HVAC Services in his residence. However, as the documents of Attachment 1 demonstrate, there were five occasions between October 27, 1993, and August 30, 1995, where Mr. John T. Davis, President of Fidelity, had work done at his residence by Schuler Brothers (now Keeven Heating and Cooling, a member of MCFFC). While the Complainant understands that this is not conclusive evidence, these invoices serve to cast doubt on the question of whether Fidelity was providing HVAC Services in 1993.

7. The ultimate issue is *should Fidelity's exemption be passed on to Laclede?* The Complainant contends that the exemption should never have been granted to Fidelity because the company was not providing HVAC Services to customers in its service area five years prior to August 28, 1998, and therefore should not be extended to Laclede. This argument was present in the February 13 Letter. Laclede's response was not only unenlightened, but degrading: "To the extent that MCFFC is complaining about the above referenced services provided by Fidelity, it[s] complaints are nothing more than collateral attacks upon the Commission's order of August 31, 2000" (Joint Applicants Response to Order Directing Filing, 14 Feb, 2006). This response is also incorrect. It mentions the "Commission's order of August 31, 2000," and yet there was no "order." As noted one Commissioner at the February 21, 2006 meeting of the Commission, the only thing Fidelity had was a "Staff Recommendation" – not an "Order."

3. The Complainant has taken the following steps to present this complaint to the Respondent:

- | |
|---|
| 1. February 13 Letter, submitted to the Commission and shared with Laclede. |
| 2. Conference call following PSC hearing on or about 2/27/06. |

WHEREFORE, Complainant now requests the following relief:

- | |
|--|
| 1. Fidelity's exemption should not automatically be passed to Laclede. |
| 2. Laclede should be asked to provide <i>sufficient</i> and <i>satisfactory</i> evidence that Fidelity provided HVAC Services to customers within its service area prior to the date of August 28, 1993. This evidence must be in the form of service tickets or customer invoices – documenting customer names, addresses, and services provided. |
| 3. If Laclede is unable to produce evidence of a sufficient quantity and also of a satisfactory quality that Fidelity provided HVAC Services to customers within its service area prior to August 28, 1993, the Complainant respectfully requests that the Commission not extend Fidelity's exemption to Laclede. |

8/23/06
Date


Signature of Complainant

Attach additional pages, as necessary.
Attach copies of any supporting documentation.



Missouri Coalition For Fair Competition

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Law Offices

February 13, 2006

Jeff Davis
Chairman
Missouri Public Service Commission
Governor Office Building
200 Madison Street, PO Box 360
Jefferson City, MO 65102-0360

RE: Sale of Fidelity Gas Co. to Laclede Gas Co./Missouri Natural Gas Co.

Dear Chairman Davis:

In regards to the sale of Fidelity Gas Co., the Missouri Coalition For Fair Competition voiced protest as to the amount of service Fidelity Gas Co. was allowed to perform based on the provisions of the law. They were not performing any service in 1993. At that time they had just received their franchise for gas distribution and were actually subcontracting the installation of gas piping lines for both commercial and residential customers to HVAC contractors.

The gas line installation was performed by subcontractors for a period of about a year to eighteen months. Fidelity Gas Co. acquired their own crew and started to install gas lines from the meter into the customer's facilities. Somewhere shortly after that they started performing service on a fairly concealed basis. When we found that they were performing a sizable amount of service about a year later, we voiced our complaint to them and to the PSC. The reply received was that Fidelity Gas Co. had been grandfathered the right to do all service work per the PSC. Apparently they applied and were given rubber stamped approval when in fact they were not doing any of the service work that they were approved to do at the time they were supposed to have been performing it. Now with the sale of this gas company going on to Laclede Gas Co., MCFFC believes it necessary to again voice

Jeff Davis, Chairman
Public Service Commission
February 13, 2006
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complaint that the service aspect should not be passed on. It should be reviewed and denied by the PSC. Fidelity Gas Co. was not performing any service in 1993 to qualify for grandfathering.

In terms of specific proof of services provided in 1993, we recommend the PSC request service tickets from Fidelity for that time period. This should also include with the service ticket a service invoice and proof the customer actually paid the invoices. If services were provided free of charge to the customer, it is our position that should be the extent of the grandfather clause. Specifically, they should only be able to provide free services under the grandfather clause.

If you have any questions concerning this matter, please do not hesitate to contact Richard McIntosh, MCFFC's Governmental Consultant his office (573) 635-7570 or cell (573) 257-0078.

Sincerely,

A handwritten signature in cursive script that reads "Rick Pallardy".

Rick Pallardy
President
Missouri Coalition For Fair Competition

Davis, John
472 S. Taylor
Sullivan mo 63080
418-3223
468-1254

Quoted
4,336.00
Pdwidner
11/18/93

Job # 1049
Dair Camp 10/27/93

Equipment

Lennox
G230 5/6-125 Furnace
SN: 5893J50744
Lennox HS33-S11 A 1c
SN: 5193J14748
Lennox C16-S1 Coil
SN: 5192J710978
(2) Lennox WS-1 drum filters
SN: 5593H02849
SN: 5593H02857
2 Digital Memoslabs
1F90-F1's

Davis, John

NEED TO GO BACK TO FIND JOB WORK ORDER

SCHULER BROTHERS
PLUMBING, HEATING & A/C

224 John Chiles St.
SULLIVAN, MISSOURI 63080
(314) 468-6623 or (314) 459-2035

LEAK 4015

113 95

CUSTOMER'S ORDER NO.		DATE ORDERED
ORDER TAKEN BY		DATE PROMISED <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
BILL TO		PHONE
ADDRESS		SEE PAGE
CITY		HELPER
JOB NAME AND LOCATION		<input checked="" type="checkbox"/> DAY WORK <input type="checkbox"/> CONTRACT <input type="checkbox"/> EXTRA
DESCRIPTION OF WORK		

472 TAYLOR
SULLIVAN MO
472 TAYLOR
ADDED FREON TO UNIT TO
GET HEAT FOR UNIT - NEED TO
COME BACK & FIND LEAK

QUANTITY	DESCRIPTION OF MATERIAL USED	PRICE	AMOUNT
3 ^{1/2}	R-22	10 ⁰⁰	31.50

Mr. Davis - We were holding
this original service ticket
until we knew your
problem was resolved. I am
sorry you didn't receive it
with your second invoice
(which you already paid).

We did receive your letter
along with your payment and
understand your note about Gary.
We will do the best we can to meet your
wishes in the future. Thank You.

HOURS	LABOR	AMOUNT	TOTAL MATERIALS
1	MECHANICS	25.50	31.50
	HELPERS		4.00
1.25		7.50	
I hereby acknowledge the satisfactory completion of the above described work.		TOTAL LABOR	TAX
SIGNATURE		DATE COMPLETED	TOTAL
[Signature]		11/22/94	74.00

JOB WORK ORDER

S 4661

SCHULER BROTHERS
PLUMBING, HEATING & A/C224 John Chiles St.
SULLIVAN, MISSOURI 63080
(314) 458-6623 or (314) 459-2035

CUSTOMER ORDER NO.	DATE ORDERED
ORDER TAKEN BY	DATE PROMISED <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.

DEL. TO	PHONE
ADDRESS	MECHANIC
CITY	HELPER

JOB NAME AND LOCATION	<input type="checkbox"/> DAY WORK
	<input type="checkbox"/> CONTRACT
	<input type="checkbox"/> EXTRA

DESCRIPTION OF WORK
Replaced old compressor cleaned up
Replaced old suction liquid lines
Replaced old 3/10 lines

QUANT.	DESCRIPTION OF MATERIAL USED	PRICE	AMOUNT
	vacuum line 15B163		56.85
	liquid line 69H16		20.25
	compressor		- warranty -
	oil		8.00
	2' x 1/2" x 1/2" salt	2.25	4.50
	vacuum pump oil		8.00
	nitrogen		15.00
	1- Contractor 165170		16.40
	Subtotal		
	461 1128 ET - 041 - A4		
	2- 001621		
	vacuum pump		
	461 1128 ET - 041 - A4		
	461 112405		
	1- 20-7541 filter		1.60
	(4/4 hours total)		

HOURS	LABOR	AMOUNT	TOTAL MATERIALS
1 1/2	MECHANICS	35.00	140.63
	HELPERS		
3/4	vacuum pump	97.50	
	TOTAL LABOR	132.50	
	TAX		
	TOTAL	273.13	

I hereby acknowledge the satisfactory completion of the above described work.

SIGNATURE

TOTAL LABOR

DATE COMPLETED

TAX

TOTAL

JOB WORK ORDER

SCHULER BROTHERS
PLUMBING, HEATING & A/C

S 4661

8-30-95 224 John Chiles St.
SULLIVAN, MISSOURI 63080
(314) 468-6623 or (314) 459-2035

CUSTOMER'S ORDER NO.	DATE ORDERED
ORDER TAKEN BY	DATE PROMISED <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
PHONE	
MECHANIC	
HELPER	

BILL TO	NAME
ADDRESS	472 Taylor
CITY	
JOB NAME AND LOCATION	
DESCRIPTION OF WORK	<input type="checkbox"/> DAY WORK <input type="checkbox"/> CONTRACT <input type="checkbox"/> OTHER
Replaced old compressor & cleaned up. Also added suction & liquid lines 18" of pipe. Bore. 210 lb.	

QUANTITY	DESCRIPTION OF MATERIAL USED	PRICE	AMOUNT
1	Evaporator Drain 15B63		56 88
1	liquid line 69406a		20 35
1	compressor		8 00
	total storage		8 00
2	frank & blue solder	2.25	4 50
	vacuum pump oil		8 00
	nitrogen		15 00
1	Contractor 65C70		26 40
	old comp		
	AC 1178 ET-041-A4		
	for 001621		
	new comp		
	AC 1178 ET-041-A4		
	for 117405		
1	20x25x1 filter		1 60
	(4 1/2 hours total)		
HOURS	LABOR	AMOUNT	TOTAL
1 1/2	MECHANICS	35 00	140 63
	HELPERS		132 50
3 1/4	hourly @ 30 00	97 50	
	TOTAL LABOR	132 50	
	TAX		
	TOTAL		273 13

