

**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	)	

**SPIRE INC'S VERIFIED RESPONSE OPPOSING  
PUBLIC COUNSEL'S MOTION TO OPEN AN INVESTIGATION**

COMES NOW Spire Inc. ("Spire"), formerly known as The Laclede Group, Inc. ("LG") and submits its Response Opposing Public Counsel's Motion to Open an Investigation. In support thereof, Spire states as follows:

1. Spire is a Missouri corporation and holding company that owns natural gas distribution companies, including Laclede Gas Company and its operating unit, Missouri Gas Energy, in Missouri and Alabama Gas Corporation ("Alagasco") in Alabama. Spire also owns a number of unregulated businesses. Because Spire itself is not a "gas corporation" or "public utility" as defined by subsections (18) and (43), respectively, of §386.020 RSMo., it is not subject to the Commission's regulatory jurisdiction. Spire's submission of this Response should accordingly not be construed as any kind of acquiescence in, or acceptance of, such jurisdiction.

2. On June 16, 2016, the Office of the Public Counsel ("OPC") filed a Motion to Open an Investigation of Spire's pending acquisition of EnergySouth, Inc. from a unit of Sempra Energy. As a result of the EnergySouth transaction, Spire would add Mobile Gas Service Corporation and Willmut Gas and Oil Company to its corporate family, two gas utilities serving about 85,000 customers in Alabama and 19,000 customers in Mississippi, respectively. In total, the \$344 million transaction would result in an increase of about 7% in Spire's 1.56 million customer base, and a similar percentage increase to Spire's current \$5.2 billion enterprise value.

2. According to OPC, such an investigation is necessary to determine whether the pending acquisition would: (a) be detrimental to Missouri customers; (b) adversely impact Spire's credit rating or financial stability; (c) affect the ability of OPC or Staff to obtain access to information; (d) affect the allocation of costs between Spire and its utilities; or (e) impact the reporting requirements under the Stipulation and Agreement in the case in which the Commission approved the formation of a holding company by LG. *See* Case No. GM-2001-342. OPC also requests that the Commission investigate whether Spire sought approval of its completed acquisition of Alabama Gas Corporation in 2014 and whether that acquisition has been detrimental to Missouri consumers.

3. As previously noted, because Spire is not a gas corporation subject to the Commission's jurisdiction, its acquisition of non-Missouri utilities like Mobile and Willmut is not a matter subject to the Commission's regulatory powers and jurisdiction. As a result, such a transaction does not require or contemplate Commission approval. The Commission itself has long recognized this jurisdictional limitation on its authority to approve such transactions. *See e.g. In re Advanced TelCom, Inc. and Shared Communications Services, Inc.*, Case No. XM-2005-0111, Order Dismissing Application for Lack of Jurisdiction, (2004); *In re Proposed Acquisition of Cilcorp, Inc. by Ameren Corp.*, Case No. EO-2002-1082, Order Closing Case (2002). *In re Merger of SBC Commun. Inc. and Ameritech Corp.*, Case No. TM-96-76, Report & Order (1998); *In re Merger of American Water Works Co. with Nat'l Enterprises Inc. and the Indirect Acquisition by American Water Works Co. of St. Louis Water Co.*, Case No. WM-99-224, Report & Order, (1999); *In re Communications Central of Georgia, Inc. and Davel Commun. Group Inc. for Approval of Merger and Transfer of Control*, Case No. TM-98-268, Order Regarding Jurisdiction and Dismissing Application (1998); *In re Application of ALLTEL*

*Communications Inc. to Merge with Certain Wholly Owned Subsidiaries of ALLTEL Mobile Communications. Inc.*, Case No. TM-98-153, Order Dismissing Application (1977); *In re United Water Mo., Inc. for Authority for Lyonnaisse American Holding, Inc, to Acquire the Common Stock of United Water Resources. Inc.*, Case No. WM-2000-318, Order Closing Case, (1999); *In re Joint Application for Transfer of Control of Eclipse Telecomm. Inc., IXC Comm. Serv. Inc. and Telecom One. Inc. to Cincinnati Bell, Inc.*, Case No. TM-2000-85, Order Dismissing Application for Lack of Jurisdiction, (1999); *In re Proposed Acquisition of Mo.-Am. Water Co. and Am. Water Works Co. by the German Corp. RWE AG*, Case No. WO-2002-206, Order Closing Case (2001).

4. OPC does not contest this general limitation on the Commission's jurisdictional powers, but suggests that various provisions of the Holding Company Stipulation and Agreement ("S&A") in Case No. GM-2001-342 may somehow confer such jurisdiction or, at a minimum, justify its request for an investigation. It is well established, however, that the scope of an agency's subject matter jurisdiction cannot be enlarged or conferred by agreement of private parties. *Livingston Manor, Inc. v. Department of Social Services*, 809 S.W.2d 153, 156 (Mo. App. W.D. 1991). And even if an agreement could confer such jurisdiction there is nothing in the Holding Company provisions cited by OPC that even suggests, let alone justifies, the need for any Commission action in regard to the pending acquisition of EnergySouth, let alone the acquisition of Alagasco that closed nearly two years ago.

5. Two of the provisions of the S&A cited by OPC simply relate to the right of Staff and OPC to obtain "access to information," including information provided by the Company to common stock, bond, or bond rating analysts, and information that may be relevant to the Commission's ratemaking, financing, safety, quality of service and other regulatory authority

over Laclede Gas Company. (OPC Motion, pp. 3-4). These provisions do not confer jurisdiction upon the Commission to review the acquisition of EnergySouth (or belatedly of Alagasco), nor do they justify OPC's motion for investigation. Although OPC notes that these provisions were reviewed and upheld by the Western District Court of Appeals in 2012, it does not explain what possible nexus they have to the need for an investigation of the Alagasco or EnergySouth acquisitions. Specifically, OPC does not articulate how either of these acquisitions has, does or even could impact these obligations. In fact, OPC does not cite a single instance in the nearly two years since the Alagasco transaction was completed where it has resulted in any breach of these obligations or otherwise diminished their effectiveness in achieving their intended purpose. Nor does OPC explain why normal procedures for enforcing discovery would, in any event, be inadequate to address and resolve any disputes that might arise in connection with these obligations. Given these considerations, OPC's citation of these two provisions is nothing more than an academic exercise that provides no basis for the relief it requests in its Motion.

6. OPC also cites the following provision from Section V of the Holding Company Stipulation and Agreement in support of its contention that approval may be required of the pending acquisition of EnergySouth and might even have been required for the 2014 acquisition of Alagasco.

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. (emphasis supplied).

7. It is surprising, to say the least, that OPC would cite this provision as potentially requiring Commission approval of either the Alagasco or the EnergySouth acquisitions. In effect, OPC is suggesting that the Commission, its Staff and OPC were simply “asleep at the switch” when the Alagasco acquisition was being consummated nearly two years ago, completely oblivious to their supposed obligation under the S&A to approve or weigh in on the merits of the acquisition. This highly improbable suggestion is even more dubious given the fact that all of the above named parties were well aware of both the Holding Company S&A and the Alagasco acquisition, at the time the acquisition took place. As OPC notes in its Motion, some of the provisions of the Holding Company S&A cited by OPC had just been the subject of litigation and an appellate proceeding less than two years before the Alagasco acquisition was announced so its terms should not have escaped anyone’s memory.

8. Moreover, LG took steps to keep the Commission and other stakeholders fully informed about the existence, nature, and merits of the Alagasco transaction. These steps included efforts to alert Commission and OPC personnel regarding the terms of the proposed acquisition before it was publicly announced. The Company’s President and CEO, Suzanne Sitherwood, also formally briefed the Commission, Staff and OPC on the Alagasco acquisition during an on-the-record presentation made on May 27, 2014, which was held as a series of follow-up meetings on the MGE acquisition that had been completed the year before. In addition to describing the key operational, geographic, and others features of the acquisition that made it a good fit for the Company and its existing and future customers, Ms. Sitherwood and other senior executives of the Company were available to answer, and did answer, questions about the transaction. This would have been a perfect time, of course, for OPC who attended

the presentation to assert or at least inquire about the need for Missouri Commission approval for the acquisition if there was indeed any tenable basis for such an action. No such inquiry was made by OPC, however, as evidenced by the transcript of the proceeding, which can be found as Item No. 85 in the official EFIS case record of GM-2013-0254.

9. The most plausible explanation for OPC not claiming then that this provision of the Holding Company S&A required Commission approval of the Alagasco acquisition is that OPC had a better, more nuanced understanding of the meaning and intent of the provision two years ago than it does today. As previously noted, because private parties cannot, through agreement or otherwise, confer additional jurisdiction or powers on an agency that does not already exist under its enabling statutes, the term “public utility” as used in the provision should be construed under §386.020(43) to mean a gas or electric corporation subject to the Commission’s regulatory jurisdiction. Obviously, neither EnergySouth, nor its subsidiaries, Mobile Gas and Willmut, fit that definition. This is the same argument, of course, that was recently made by Great Plains in support of its contention that a somewhat similar provision in its Holding Company agreement did not confer jurisdiction on its proposed acquisition of Westar Energy.

10. In this instance, however, there is an additional reason why the provision in the Company’s Holding Company S&A cannot and should not be construed as even attempting to confer jurisdiction over a transaction like the EnergySouth acquisition. Specifically, unlike the Great Plains’ Holding Company S&A, the provision in Spire’s Holding Company S&A is, by its own terms, directed at acquisition or other 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 jurisdiction”. In other words, the provision does not even

attempt to require Commission approval of acquisitions unless such acquisitions would trigger one of these two results. OPC has not alleged, and Spire hereby 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. Indeed, during the Alagasco acquisition, LG 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. For this reason alone, OPC's suggestion that this provision may have somehow required Spire to obtain Commission approval for the Alagasco acquisition or obtain such approval for the EnergySouth acquisition must be rejected.

11. OPC's request that the Commission open an investigation to determine whether the completed Alagasco acquisition or pending EnergySouth acquisition is or would be detrimental to Missouri consumers is equally unfounded. OPC's request as it relates to the Alagasco acquisition is particularly ludicrous given the fact that it was completed nearly two years ago. Simply put, there is no need to investigate the impact of the Alagasco acquisition on Spire's credit rating and financial stability because we already know that it has had no adverse impact. Indeed, Spire has the same excellent credit rating today that it had before the Alagasco acquisition. Moreover, its stock price has risen since that time – a circumstance that reflects the market's judgment that the acquisition has been a good thing from a financial perspective.

12. There have also been no adverse operational impacts from the acquisition over this period of time. If there were, OPC would have known about them from the detailed operational reports it regularly receives from Laclede Gas and MGE as a result of the Stipulation and Agreement in the MGE acquisition case. Moreover, OPC would have undoubtedly cited them in its Motion so it would have at least some scrap of support for why the Commission

needs to conduct an investigation. Indeed, 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 through the pursuit of a Complaint against Laclede Gas and MGE that OPC has also attempted to launch in the last two months. Laclede Gas and MGE have already weighed in on why they believe OPC's Complaint is also without merit, noting that customers are already receiving the financial benefits of this acquisition in that any synergies have enabled both utilities to defer the filing of a rate case while maintaining reasonable levels of earnings. The critical point here is that OPC is in a singularly poor position to claim that the Alagasco acquisition needs to be investigated because it may have a detrimental impact on Spire's or Laclede Gas' financial metrics, while it simultaneously pursues a Complaint in which it is attempting to allege that Laclede Gas is overearning due to acquisition synergies. Spire's financial and operational track record since the acquisitions, as well as OPC's own actions, clearly show that this claim of detriment is not a valid concern.

13. OPC's contention that the EnergySouth acquisition needs to be investigated to determine whether it might be detrimental is also misplaced. To support its request, OPC points to the fact that the Commission has opened an investigation of the Great Plains/Westar acquisition and suggests that it should do the same regarding Spire's acquisition of EnergySouth. The two transactions are radically different, however, in terms of their scope and magnitude and their relative financial and operational impacts. As previously noted, the 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 850,800 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%. Clearly, not all acquisitions are created equal and the Commission's decision to permit an investigation of the potential impact of the far more consequential Great Plains/Westar acquisition says nothing about the advisability of instituting one for the Spire/EnergySouth acquisition. This is especially true in light of the fact that the proposed EnergySouth acquisition has had no detrimental impact on Spire's credit rating and its stock price has not suffered in any way since the acquisition was announced. For all of these reasons, the Commission should deny OPC's Motion to Open an Investigation of this transaction.

WHEREFORE, Spire respectfully requests that the Commission deny OPC's Motion to open an investigation into its pending acquisition of EnergySouth.

Respectfully Submitted,

**/s/ Mark C. Darrell**

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the parties of record in this case on this 27th day of June, 2016 by United States mail, hand-delivery, email, or facsimile.

**/s/ Mark C. Darrell**

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