

LACLEDE GAS COMPANY  
720 OLIVE STREET  
ST. LOUIS, MISSOURI 63101  
AREA CODE 314  
342-0536

THOMAS M. BYRNE  
ASSOCIATE COUNSEL

October 14, 1998

FILED

OCT 19 1998

Missouri Public  
Service Commission

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Judge  
Missouri Public Service Commission  
Harry S Truman Building  
301 W. High Street, 5th Floor  
Jefferson City, MO 65101

RE: Case No. GA-99-107

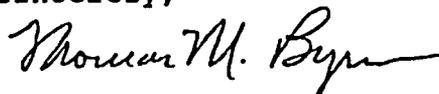
Dear Mr. Roberts:

Enclosed for filing on behalf of Laclede Gas Company please find the original and fourteen copies of the Application for Intervention of Laclede Gas Company in the above-referenced case. Please see that this filing is brought to the attention of the appropriate Commission personnel.

Please file-stamp the additional copy of such filing and return the same in the pre-addressed, stamped envelope provided.

Thank you for your consideration in this matter.

Sincerely,



Thomas M. Byrne  
Associate Counsel

TMB:jaa

Enclosures

cc: All parties of record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

OCT 19 1998

Missouri Public  
Service Commission

In the matter of the application of )  
Union Electric Company d/b/a AmerenUE )  
for a certificate of public convenience )  
and necessity authorizing it to )  
construct, install, own, operate, )  
control, manage and maintain )  
natural gas pipeline facilities and )  
a gas distribution system for the )  
public in a portion of St. Charles )  
County, Missouri, as an expansion )  
of its presently certificated area. )

Case No. GA-99-107

APPLICATION FOR INTERVENTION  
OF LACLEDE GAS COMPANY

COMES NOW Laclede Gas Company ("Laclede") and for its application to intervene in the above-referenced proceeding, states as follows:

1. Laclede is a natural gas public utility serving approximately 610,000 customers in eastern Missouri pursuant to certificates of public convenience and necessity granted by the Missouri Public Service Commission (the "Commission"). A division of Laclede, the St. Charles Gas Company Division, provides natural gas service in portions of St. Charles County, Missouri, including a large portion of the area sought to be certificated herein.

2. On September 16, 1998, Laclede received a copy of the Application filed in this proceeding by Union Electric Company d/b/a AmerenUE ("UE" or "Applicant"), Paragraph 9 of which stated:

Applicant is not aware of any other utility that is certificated by the Commission to provide natural gas service within the area sought to be certificated by this Application. St. Charles Gas Company, a division of Laclede Gas Company, provides gas service in portions of St. Charles County but to Applicant's knowledge, does not have authority from the Commission to provide service in Applicant's proposed service area. A copy of this Application is being mailed to counsel for Laclede Gas Company.

(See Application, p. 5)

3. Laclede has reviewed the area sought in the Application and has determined that, contrary to UE's statement, Laclede does have authority from the Commission to provide service in the unincorporated portions of the Application's proposed service area by virtue of a certificate of public convenience and necessity issued by the Commission on April 24, 1964 in Case No. 15,234 (a copy of which is attached hereto and designated Exhibit A). In such proceeding, St. Charles Gas Company was certificated to serve, among other things, the entire unincorporated area of St. Charles County, Missouri. Subsequently, Laclede acquired St. Charles Gas Company. (See Re: Laclede Gas Company, 11 Mo.P.S.C. (N.S.) 372 (1963).) The vast majority of the Applicant's proposed service area is comprised of an unincorporated portion of St. Charles County, and therefore is clearly within the service area for which Laclede is already the incumbent certificated natural gas provider. To the extent the Applicant's proposed service area includes portions of the City of Wentzville, Missouri, UE already has certificate authority to serve said area, and therefore an

additional certificate from the Commission is not required to enable UE to serve that area.

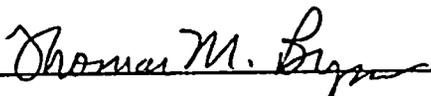
4. As the certificated natural gas supplier for the unincorporated portion of the Application's proposed service area, Laclede stands ready to provide natural gas service to any customers within such area pursuant to its tariff filed with the Commission. In addition, to address UE's stated need to reinforce its existing Wentzville system, Laclede is prepared to provide natural gas on reasonable terms to UE for that purpose pursuant to Laclede's tariff. The provision of such system reinforcement gas and service to customers can and should be done without the need for Applicant to build the proposed pipeline and will avoid the incurrence of additional costs for those purposes by Applicant. Consequently, Laclede is opposed to the grant of certificate authority requested by UE herein.

5. Because Laclede is the incumbent certificate holder for a large portion of the area UE has sought to certificate in this proceeding, Laclede has a direct and substantial interest in this proceeding which is different from that of the general public. In addition, Laclede's interests are not adequately represented by any other party to this proceeding.

WHEREFORE, for the above stated reasons, Laclede Gas Company respectfully requests that the Commission grant

Laclede's intervention herein, and establish a procedural schedule for this proceeding, to permit the issues raised by Laclede herein to be heard.

Respectfully submitted,

  
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Thomas M. Byrne #33340  
Ellen L. Theroff #40956  
Laclede Gas Company  
720 Olive Street, Room 1522  
St. Louis, MO 63101  
(314) 342-0508

EXHIBIT A

DOCUMENT QUALITY TARGET

THE FOLLOWING  
DOCUMENT  
BELOW STANDARDS  
FOR  
MICROFILM

mann, J. A. Marshall, and E. S. Richeson, all located in what is known as the Indian Creek neighborhood in Washington County and about 15 miles southeast of Sullivan.

ALL CONCUR

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In the matter of the Application of **ST. CHARLES GAS CORP.**, a corporation, for a Certificate of Convenience and Necessity to construct, operate and maintain an extension of its natural gas transmission and distribution system in a described area adjacent to and westward from the community of St. Charles, Missouri, and for further authorities and certificates; As first amended for the purpose of joining O'Fallon Gas Service, Inc., as a Joint Applicant in said matter and otherwise to modify and amend said Application and the authority requested therein.

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Case No. 15,234  
Decided April 24, 1964

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1. Gas, §7. Agreement for future sales by St. Charles Gas Corp. to O'Fallon Gas Service, Inc. approved.
2. Gas, §4. From the evidence adduced at the hearing, it is found that public convenience and necessity will be promoted by the granting of a Certificate of Convenience and Necessity to St. Charles Gas Corp. to extend its propane and natural gas service into all unincorporated areas in St. Charles County.

**APPEARANCES:**

*Hendren & Andrae*, by *John H. Hendren* and *John E. Burruss, Jr.*, Central Trust Building, Jefferson City, Missouri, and *Christian B. Peper* and *John C. Boyd*, 407 North 8th Street, St. Louis, Missouri, for Applicant, St. Charles Gas Corp.

*Joseph R. Nacy*, 117 West High Street, Post Office Box No. 352, Jefferson City, Missouri, for Protestant, O'Fallon Gas Service, Inc.

*Walker Pierce* for the Commission.

**REPORT AND ORDER**

The parties to this proceeding are St. Charles Gas Corp., a Missouri corporation, and O'Fallon Gas Service, Inc., also a Missouri corporation. The case originated before the Commission upon a filing

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MO. P.S.C. (N.S.)

St. Charles Gas on April 19, 1963, of an application for a Certificate of Convenience and Necessity to extend its area and gas distribution system westwardly into unincorporated areas of St. Charles County. O'Fallon Gas intervened in opposition to the requested Certificate. A hearing was had in the case on June 25, 1963. Further hearings were set, but were continued from time to time at the request of the parties. Subsequently, on February 27, 1964, St. Charles Gas filed an Amended Application for a Certificate of Convenience and Necessity covering propane and natural gas service in all unincorporated areas of St. Charles County. O'Fallon Gas joined in the Amended Application as a Joint Applicant and requested that the authority sought by St. Charles Gas be granted subject to certain rights of O'Fallon Gas. In the Amended Application the Joint Applicants also sought approval of an agreement between them dated December 9, 1963, relating to the development and subsequent transfer of central propane distribution systems presently existing and to be conducted by O'Fallon Gas in St. Charles County. Pursuant to notice given to interested parties, a hearing was held on the Amended Application on March 24, 1964. The matter was not protested by any party.

All of the following recitals, findings and conclusions are based on the testimony offered and the exhibits received in evidence and made a part of the record herein.

#### FINDINGS OF FACT

St. Charles Gas has its principal office and place of business at St. Charles, Missouri. It has charter authority to, and engages in, the business of distributing propane and natural gas as a public utility. It is presently engaged in such business in the City of St. Charles, Missouri, and the metropolitan area surrounding and adjacent thereto, pursuant to Certificates of Convenience and Necessity heretofore granted by the Commission. O'Fallon likewise has charter authority to distribute propane and natural gas as a public utility. Its principal offices and place of business are at O'Fallon, Missouri. O'Fallon Gas is engaged in the sale of propane gas as a public utility through central propane distribution systems in various subdivisions in St. Charles County. O'Fallon Gas is also engaged in St. Charles County in the non-utility sale of propane gas. With respect to its utility sales of propane gas, O'Fallon Gas operates under Certificate authority heretofore granted by this Commission to a predecessor corporation, Missouri Philgas of St. Peters, Inc., in cases numbered 14,558 and 14,349.

The parties have entered into an agreement dated December 9, 1963, copy of which was received in evidence, pursuant to which

O'Fallon Gas proposes to construct additional central gas distribution systems in St. Charles County and grants to St. Charles Gas options to purchase from time to time the present and future gas distribution systems of O'Fallon Gas upon certain terms and conditions set forth in said agreement.

Attached to and incorporated in the agreement is a map of the County of St. Charles, Missouri, upon which is designated an area which includes the Cities of O'Fallon and St. Peters and which is titled "Area B." Under the terms of the contract, St. Charles Gas has the option at any time to acquire such distribution systems of O'Fallon Gas as are located in areas other than Area B in the County of St. Charles. The option of St. Charles Gas to acquire distribution systems of O'Fallon Gas located within Area B may be exercised only after five years have elapsed from the effective date of the agreement. The agreement shall terminate 30 years after its effective date, but is subject to termination at the end of 15 years at the election of either party. The agreement provides that upon acquisition of any central distribution system of O'Fallon Gas, St. Charles Gas shall immediately provide natural gas within the system. In the event it becomes feasible to provide natural gas in the area designated "Area B" within five years after the effective date of the agreement, provision is made whereby St. Charles Gas may connect and sell natural gas to O'Fallon Gas to be used in such distribution system at a wholesale price to be approved by the Commission.

The agreement in general contemplates the gradual and orderly extension of natural gas service, as and when the same becomes feasible, to areas initially served with propane through the central distribution systems and the conversion of such systems to natural gas service. The amount to be paid by St. Charles Gas upon the exercise of an option is in general determined by the depreciated original cost of the system, excluding the parts thereof useful only in the distribution of propane gas.

All central gas distribution systems of O'Fallon Gas have been and will be constructed so as to be readily convertible to use for distribution of natural gas. The laying of the mains and service lines generally will precede the paving of streets in the areas involved and, if in the future natural gas becomes available in a particular area, the system can be converted without necessity of tearing up streets and lawns, but by the simple means of disconnecting the storage tanks and tying into the natural gas mains. The individual users will suffer a minimum inconvenience in the form of necessary adjustment of gas-burning appliances and accessories.

The evidence also shows that Laclede Gas Company of St. Louis,

Missouri, stock of \$ 15,404, has to which security of County. To to secure St. Charles In accordance Gas and ( capital stock Laclede Gas the Loan this Commission effective. further provided effective 18 receive have extended.

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The agreement reference constructe which are municipally from time areas. Separation of systems

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O. P.S.C. (N.S.)

St. Charles Gas, which has acquired ownership of 80 per cent of the capital stock of St. Charles Gas pursuant to authority granted in Case No. 10,400, has entered into an agreement with O'Fallon Gas pursuant to which Laclede Gas will lend monies to O'Fallon Gas upon the condition that the latter's central gas distribution systems in St. Charles County be constructed. This will provide assurance that O'Fallon Gas will be able to secure funds to carry out its obligations under the agreement with St. Charles Gas.

In accordance with its terms, the agreement between St. Charles Gas and O'Fallon Gas will become effective when 80 per cent of the capital stock of St. Charles Gas has been sold and delivered to Laclede Gas, and the Board of Directors of Laclede Gas has ratified the Loan Agreement between Laclede Gas and O'Fallon Gas, and the Commission has ordered or permitted the agreement to become effective. The first two conditions have been satisfied. The agreement further provides that either party may prevent it from becoming effective if all conditions have not been met by March 9, 1964. Exhibit A received in evidence shows that by mutual agreement the parties have extended the March 9 date to May 1, 1964.

It was testified that through allocations of its natural gas supplies under a gas interchange agreement with Laclede Gas, St. Charles Gas has an adequate supply of natural gas to serve additional areas in the same becomes feasible. It is the only distributor of natural gas in St. Charles County. St. Charles also has loan commitments from O'Fallon Gas and from Laclede Gas which assure the availability of adequate financing for the anticipated extensions of its natural gas distribution system.

An officer of O'Fallon Gas testified that his company now has constructed seven central gas distribution systems in St. Charles County serving approximately 750 customers a total of approximately one million gallons of propane annually.

The agreement between St. Charles Gas and O'Fallon Gas has reference to all central gas distribution systems now or hereafter constructed by O'Fallon Gas in St. Charles County, including those which are or may be constructed within the corporate limits of municipalities. However, the parties seek approval of the acquisition in time to time only of those systems located in unincorporated areas. Separate approvals will be sought with respect to acquisition of systems located within the corporate limits of municipalities.

The record shows that the County Court of St. Charles County has been notified of and has interposed no opposition to the authority herein requested and that the County Court would merely require the obtaining of permits to construct and maintain gas lines in the

(N.S.)

which has acquired ownership of 80 per cent of the capital of St. Charles Gas pursuant to authority granted in Case No. 100-100 entered into an agreement with O'Fallon Gas pursuant to which Laclède Gas will lend monies to O'Fallon Gas upon the condition that the latter's central gas distribution systems in St. Charles County will provide assurance that O'Fallon Gas will be able to meet its obligations to carry out its obligations under the agreement with O'Fallon Gas.

In compliance with its terms, the agreement between St. Charles Gas and O'Fallon Gas will become effective when 80 per cent of the stock of St. Charles Gas has been sold and delivered to O'Fallon Gas, and the Board of Directors of Laclède Gas has ratified the agreement between Laclède Gas and O'Fallon Gas, and the Commission has ordered or permitted the agreement to become effective. The first two conditions have been satisfied. The agreement provides that either party may prevent it from becoming effective if all conditions have not been met by March 9, 1964. Exhibit 1 in evidence shows that by mutual agreement the parties have extended the March 9 date to May 1, 1964.

Witness testified that through allocations of its natural gas suppliers under an interchange agreement with Laclède Gas, St. Charles Gas is able to provide an adequate supply of natural gas to serve additional areas in St. Charles County as becomes feasible. It is the only distributor of natural gas in St. Charles County. St. Charles also has loan commitments from O'Fallon Gas from Laclède Gas which assure the availability of adequate natural gas for the anticipated extensions of its natural gas distribution system.

Witness testified that O'Fallon Gas testified that his company now has installed central gas distribution systems in St. Charles County serving approximately 750 customers a total of approximately one million cubic feet of propane annually.

Witness testified that the agreement between St. Charles Gas and O'Fallon Gas has been approved by all central gas distribution systems now or hereafter operating in St. Charles County by O'Fallon Gas in St. Charles County, including those systems which may be constructed within the corporate limits of St. Charles County. Witness testified that the acquisition of the

roads and public ways of the unincorporated areas prior to such construction.

#### CONCLUSIONS

Consideration of the application and the facts found above has led to the conclusion that the authority and permission requested in the application as first amended and jointly filed will promote the public interest will meet a public need, and will work a convenience for the public, and that the application should be granted. In arriving at that conclusion, the Commission finds that the granting of said authority will nevertheless preserve the rights of O'Fallon Gas under presently existing orders of this Commission to the extent the same are necessary and appropriate to the performance by O'Fallon Gas of any of its obligations under the agreement between St. Charles Gas and O'Fallon Gas dated December 9, 1963; and further finds that the said agreement and the transactions contemplated thereunder, subject to further authorizations by the Commission in certain instances as set forth hereinafter, provide a fair and reasonable method, promotive of the public interest, for the orderly development of propane gas distribution service and extension of natural gas service in St. Charles County.

BURTON, Chm., McCLINTOCK, BARTON and MAY, CC., Concur.  
GUFFEY, C., Dissents in Separate Opinion.

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#### CASE No. 15,234

#### DISSENTING OPINION OF GUFFEY, C.

The Report and Order of the majority grants to St. Charles Gas Corp. a certificate of convenience and necessity with authority to construct, maintain and operate systems and extensions of its present system for the transmission and distribution of natural gas and propane gas in all areas within St. Charles County, Missouri, excepting areas located within the present corporate limits of all incorporated cities in said county other than the area within the City of St. Charles, which latter area is included within the presently existing service area of said applicant.

The issuance of certificates of convenience and necessity is one of the most important functions committed to the Commission's jurisdiction, and one which should be exercised only after a thorough investigation from which it can be determined, with reasonable certainty, that a proposed project is feasible. Applicants do not say that it is presently, or in the foreseeable future will be, feasible to distribute natural or propane gas to the whole or any substantial portion of the presently unincorporated areas of St. Charles County. A wit-

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presently unincorporated area in the county is at this time  
d. I do not believe that the Commission can foretell future  
s or make a finding now that public convenience and neces-  
sity require the exercise of the requested franchise in its entirety.  
It is in my opinion, in the public interest for the Commission to  
prevent in any form an attempt by a utility to pre-empt a certain  
service which the company is willing and able to promptly furnish  
to customers therein within a reasonable time and  
at reasonable rates.

Views hereinabove stated should not be interpreted to mean  
that I believe that the Commission cannot, or should not, under  
certain appropriate circumstances, grant so-called "blanket" certificates there-  
in providing for the necessity of prior approval for each and every  
franchise of service to a new area. It is my view, however, that if  
a certificate is granted it should be limited to an area concerning  
which it can be reasonably anticipated that it will be feasible to extend  
the service at reasonable rates within a reasonably foreseeable period

The inability to foretell future conditions compels me also to  
state that portion of the order which approves the acquisition  
of the St. Charles Gas Corp. and the sale by O'Fallon Gas of any dis-  
tributing system or systems presently owned or subsequently con-  
trolled by O'Fallon Gas within unincorporated areas in St. Charles  
County, Missouri, at any time within the next thirty years. Whether  
such a sale and transfer at some time during the next ten,  
fifteen or thirty years would or would not be detrimental to the  
public interest can only be judged in the light of the then existing  
facts and circumstances.

DONAL D. GUFFEY

CERTIFICATE OF SERVICE

Thomas M. Byrne, Associate Counsel for Laclede Gas Company hereby certifies that the foregoing Application for Intervention in this case has been duly served upon all parties of record in this proceeding by placing a copy thereof in the United States mail, postage prepaid, on this 14th day of October, 1998.

  
Thomas M. Byrne