

---

---

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

In the Matter of Laclede Gas Company's       )  
Verified Application to Re-Establish and       )  
Extend the Financing Authority Previously       )  
Approved by the Commission                       )

**Case No. GF-2015-0181**

---

---

**INITIAL BRIEF OF STAFF**

---

---

Respectfully submitted,

**JEFFREY A. KEEVIL**, Mo Bar 33825  
Deputy Counsel

Attorney for the Staff of the  
Missouri Public Service Commission

December 18, 2015

---

---

**NP**

## **TABLE OF CONTENTS**

<b>INTRODUCTION</b>	<b>1</b>
<b>ARGUMENT</b>	<b>2</b>
<b>Issue 1:</b> What amount of financing should be authorized by the Commission for Laclede Gas Company through September 30, 2018?	<b>2</b>
<b>Issue 2:</b> What conditions should the Commission place on Laclede Gas Company's financing authority?	<b>9</b>
<b>CONCLUSION</b>	<b>10</b>

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

In the Matter of Laclede Gas Company's Verified       )  
Application to Re-Establish and Extend the Financing   )  
Authority Previously Approved by the Commission       )

**Case No. GF-2015-0181**

**INITIAL BRIEF OF STAFF**

**INTRODUCTION**

On April 15, 2015, Laclede Gas Company ("Laclede" or "Company") filed a *Verified Application of Laclede Gas Company*<sup>1</sup> ("Application") with the Missouri Public Service Commission ("Commission") pursuant to Sections 393.190 and 393.200, RSMo, and 4 CSR 240-2.060 and 4 CSR 240-3.220. According to its Application, Laclede is primarily engaged in the business of distributing and transporting natural gas to customers in both the eastern and western portions of the State of Missouri. Under the name Laclede Gas Company, Laclede serves customers in the City of St. Louis and ten counties in Eastern Missouri. Under the name Missouri Gas Energy ("MGE"), Laclede serves customers in the City of Kansas City and thirty counties in western Missouri. Laclede is a "gas corporation" and a "public utility" as defined in Section 386.020, (18) and (43), RSMo, subject to the jurisdiction, control and regulation of the Commission.

On June 8, 2015, Staff filed its Staff Recommendation in this matter (a copy of which is attached to Exhibit 11 as Schedule DM-r2). On July 28, 2015, Laclede filed the direct testimony of Lynn D. Rawlings. Staff filed the rebuttal testimony of David Murray on August 24, 2015, as highly confidential in its entirety and requested that Laclede inform Staff what portions of the testimony Laclede considered highly confidential so

---

<sup>1</sup> Ex. 1.

that Staff could later file both a highly confidential and a public version of the testimony; on September 15, 2015, Staff re-filed the rebuttal testimony in highly confidential and public versions after being informed by Laclede what portions of the testimony Laclede believed should be designated highly confidential. On September 18, 2015, Laclede filed the surrebuttal testimony of Lynn D. Rawlings.

On November 18, 2015, an evidentiary hearing was held at the Governor Office Building in Jefferson City, Missouri. Laclede, Staff, and the Office of the Public Counsel appeared at and participated in the hearing.<sup>2</sup> On December 3, 2015, after the transcripts and exhibits had been filed, an *Order Setting Briefing Schedule* was issued which ordered initial briefs to be filed in this matter no later than December 18, 2015.

## **ARGUMENT**

### **Issue 1: What amount of financing should be authorized by the Commission for Laclede Gas Company through September 30, 2018?**

The Commission should authorize \$300 million of total capital issuance for Laclede through September 30, 2018, subject to the conditions addressed under Issue 2 below.<sup>3</sup> This amount is based on Laclede's actual financing plans over the next three years – *i.e.*, its actual, identifiable *need* over the next three years – and is the amount that Laclede has communicated to the credit rating agencies that it believes will be issued over this period.<sup>4</sup> Staff's recommendation "is based on the simple fact that Laclede's own projected financial statements indicate that it expects to issue \$300

---

<sup>2</sup> Tr. Vol. 2, p. 8.

<sup>3</sup> Ex. 11, Schedule DM-r2, page 2.

<sup>4</sup> Ex. 11, p. 2 lines 3-5 and p. 25 lines 19-22.

million of capital over the next three years.”<sup>5</sup> Staff’s recommendation that the Commission grant such a broad financing authority over a three-year period is already an exception compared to how other Missouri utilities’ financing cases are processed; no Missouri utility in recent history, except Laclede, has requested a financing authority amount that required a contested hearing.<sup>6</sup> The burden of proof is on Laclede,<sup>7</sup> and Laclede simply has *not* shown a *need* or any requirement for the \$550 million of financing authority it has requested, as required by the Missouri statutes.

Section 393.180, RSMo, states that

393.180. The power of gas corporations, electrical corporations, water corporations, or sewer corporations to issue stocks, bonds, notes and other evidences of indebtedness and to create liens upon their property situated in this state is a special privilege, *the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law* and under such rules and regulations as the commission may prescribe. (Emphasis added).

In turn, Section 393.200.1, RSMo, provides that

393.200. 1. A gas corporation, electrical corporation, water corporation or sewer corporation organized or existing or hereafter incorporated under or by virtue of the laws of this state may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of its plant or system, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income, or from any other moneys in the treasury of the corporation not secured or obtained from the issue of stocks, bonds, notes or other evidence of indebtedness of such corporation, within five years next prior to the filing of an application with the commission for the required authorization, for any of the aforesaid purposes except maintenance of service and except replacements in cases where the applicant shall have kept its accounts and vouchers of such expenditure in

---

<sup>5</sup> Ex. 11, Schedule DM-r2, page 9.

<sup>6</sup> Ex. 11, p. 3 lines 6-9 and Schedule DM-r2, page 4; Tr. Vol. 2, p. 145 line 20 through p. 146 line 15.

<sup>7</sup> Case No. GF-2009-0450 *Report and Order* issued June 16, 2010, page 9.

such manner as to enable the commission to ascertain the amount of money so expended and the purposes for which such expenditure was made; provided, and not otherwise, that there shall have been secured from the commission an order authorizing such issue, and the amount thereof, and stating the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness is or has been reasonably required for the purposes specified in the order, and that except as otherwise permitted in the order in the case of bonds, notes and other evidence of indebtedness, such purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

For purposes of this case, the foregoing statute (Section 393.200.1 RSMo) can be summarized as follows:

393.200. 1. A gas corporation, . . . may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof [*i.e.*, long-term financing], **when necessary** for [statutorily allowable purposes] . . .; provided, and not otherwise, that there shall have been secured from the commission an order authorizing such issue, and the amount thereof, and stating the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, *the money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness is or has been* **reasonably required** *for the purposes specified in the order*, and that except as otherwise permitted in the order in the case of bonds, notes and other evidence of indebtedness, such purposes are not in whole or in part reasonably chargeable to operating expenses or to income. (Emphasis added)

Under this statute, a gas corporation such as Laclede *may only issue long-term financing when necessary* for the purposes allowed under the statute, *and only after* receiving an order from the Commission authorizing such action. Furthermore, under the statute, in its order authorizing the financing the Commission *must* find that “the money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness is or has been reasonably required for the purposes specified in the order.” Therefore, it is the “money, property or labor **to be**

***procured or paid for by the issue of [long-term financing]***’ which must be “*reasonably required* for the purposes specified in the order”; not just that money, property or labor is or has been reasonably required for statutorily allowable purposes as Laclede would argue.

So, what amount of financing authority is “necessary” or “reasonably required” for Laclede through September 30, 2018? The Merriam-Webster Dictionary defines “Necessary” as “1: absolutely needed: REQUIRED.”<sup>8</sup> (Emphasis in original) Laclede’s witness, Lynn Rawlings, admitted in her pre-filed direct testimony that Laclede’s “financing needs are less than the amount of the authority requested.”<sup>9</sup> She also admitted in her pre-filed surrebuttal testimony “that Laclede estimates, and even hopes, that it won’t use all of its [financing] authority”<sup>10</sup> – *i.e.*, it doesn’t need all that it has requested. Therefore, based on Laclede’s own pre-filed testimony and the controlling statute, Laclede’s requested amount of financing authority must be rejected.

In addition to the admissions of Ms. Rawlings, also showing that Laclede does *not* need the amount of financing authority it has requested – that such financing is not “necessary” nor “reasonably required” – are Laclede’s actual financing plans for the next three years and Laclede’s communications to rating agencies. As shown in Laclede’s response to data request number 18, which is Laclede’s June 2015 presentation to rating agencies, \*\* \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

---

<sup>8</sup> <http://www.merriam-webster.com/dictionary/necessary>

<sup>9</sup> Ex. 2, p. 14 lines 1-2.

<sup>10</sup> Ex. 4, p. 15 lines 10-11.

In its response to data request number 13,<sup>12</sup> Laclede also stated as follows:

Please note that the presentations provided to the Rating Agencies included \$300 million of long-term debt and our ratings were confirmed subsequent to the presentation with a stable outlook. If we were to incrementally finance beyond that level, we would re-evaluate the need for additional equity in the mix.<sup>13</sup>

The Commission should recognize that these are Laclede's own financing plans and communications with rating agencies – they were not developed by Staff. If Laclede has no plans to issue the amount of financing authority it has requested, such amount is certainly not needed – *i.e.*, it is neither “necessary” nor “reasonably required.”

Throughout this case, Laclede's position in a nutshell has been that it needs only to fill out the “chart” provided by the Commission in its *Report and Order* in Case No. GF-2009-0450 with dollar amounts related to “allowable purposes” for financing under Section 393.200.1, RSMo, and nothing more. However, Laclede's interpretation reads out of the statute the “*when necessary*” and “*reasonably required*” provisions of the statute discussed above. In other words, Laclede's case is premised on the proposition that it should, and could, receive financing authority for financing for which it has shown no need (the Commission must keep in mind that the burden of proof is on Laclede, not on Staff<sup>14</sup>). Laclede's interpretation is *not* supported by the statute.

The Commission may recall that only a few months ago – on September 29, 2015 – it issued an *Order Granting Motion for Expedited Treatment*,

---

<sup>11</sup> Ex. 13, page 21. See also Ex. 11, p. 3 line 6 and p. 20 lines 7-14.

<sup>12</sup> Ex. 12.

<sup>13</sup> *Id.* See also Ex. 11, p. 23 lines 17-21.

<sup>14</sup> Case No. GF-2009-0450, *Report and Order*, issued June 16, 2010, page 9.



*Order Granting Motion to Compel, and Order Granting Protective Order* in this case. In the September 29<sup>th</sup> Order, the Commission correctly found that:

The issue decided by the 2010 order [in Case No. GF-2009-0450] is distinguishable from the issue here. In the 2010 order, the Commission found the intent of the financing authority statute is “to restrict long-term financing to allowable purposes.” As Staff correctly notes in its Reply to Laclede’s Response to Staff’s Motion to Compel in this case, the dispute in that earlier case was regarding allowable projects, which is different than the focus of Staff’s discovery. More importantly, Laclede’s interpretation of the Commission’s 2010 order would render meaningless the statute’s provisions that the requested financing be “necessary” and “reasonably required” for those allowable purposes. Thus, the analysis in this case must be distinct from that on which the 2010 order rested.

Laclede’s relevance argument rests on the Commission’s 2010 order. But, as discussed above, because the Commission has distinguished this case from the 2010 case, Laclede’s relevance argument fails.<sup>15</sup>

As the Commission has already found, as noted in the above quotation, the dispute in Case No. GF-2009-0450 – the case upon which Laclede relies – was regarding what were *allowable purposes* for financing under the statute, not whether financing was *needed*. As the Commission found, the issue decided by the 2010 order in Case No. GF-2009-0450 is distinguishable from the issue here. Finally, as the Commission found, Laclede’s argument “would render meaningless the statute’s provisions that the requested financing be ‘necessary’ and ‘reasonably required’ for those allowable purposes.” In other words, the Commission has already found that Laclede’s argument is contrary to the statute by claiming it should receive financing authority for financing for which it has shown no need.

According to Section 393.200.1, RSMo, the Commission must only authorize that amount of financing which is shown by record evidence to be *necessary* and *reasonably*

---

<sup>15</sup> Case No. GF-2015-0181, *Order Granting Motion for Expedited Treatment, Order Granting Motion to Compel, and Order Granting Protective Order*, issued September 29, 2015, pages 2-3.

*required* – that amount of financing which is actually *needed* by Laclede. Laclede has admitted that its “financing needs are less than the amount of the authority requested [by Laclede].”<sup>16</sup> Based on Laclede’s actual financing plans and its communications with rating agencies, the Commission should authorize \$300 million of total capital issuance for Laclede through September 30, 2018, subject to the conditions addressed under Issue 2 below.

In addition to being statutorily required as discussed above, since Laclede is a subsidiary of an unregulated parent company (Laclede Group), it is even more important to make certain that Laclede’s financing authority is consistent with Laclede’s identifiable *needs* to safeguard against the excessive use of debt.<sup>17</sup> Ms. Rawlings testified at the hearing that, in her opinion, Laclede could use the financing authority granted by the Commission in order to raise funds to pay dividends to its unregulated parent company.<sup>18</sup> Therefore, if the Commission decides, for whatever reason, to authorize an amount of financing authority for Laclede higher than as recommended by Staff, the Commission should place a condition on such financing authority (in addition to the conditions addressed under Issue 2 below) so that Laclede cannot transfer funds raised under the financing authority to Laclede Group or its successor, directly or indirectly, in the form of dividends or otherwise.

---

<sup>16</sup> Ex. 2, p. 14 lines 1-2.

<sup>17</sup> Ex. 11, p. 11 lines 13-16. “[B]ecause Laclede is a subsidiary of Laclede Group, it has exposure to Laclede Group’s aspirations beyond its Missouri utility operations.” *Id.* at lines 22-23.

<sup>18</sup> Tr. Vol. 2, p. 70 lines 9-20.

**Issue 2:** What conditions should the Commission place on Laclede Gas Company's financing authority?<sup>19</sup>

If the Commission adopts Staff's recommendation that the Commission authorize \$300 million of total capital issuance for Laclede through September 30, 2018, it should include the ten (10) conditions set forth below. At the hearing Laclede indicated it had no issue with these 10 conditions.<sup>20</sup> Therefore, if the Commission adopts Staff's recommendation that the Commission authorize \$300 million of total capital issuance for Laclede through September 30, 2018, it should include the following conditions:

1. That Laclede Gas Company ("Laclede" or "Company") be authorized to issue registered securities (first mortgage bonds, unsecured debt and preferred stock), issue common stock and receive capital contributions, issue and accept private placement investments, and to enter into capital leases in an aggregate amount not to exceed \$300 million at any time, or from time to time, through September 30, 2018, provided that the Company shall not be authorized to use any portion of the \$300 million for any purpose other than for the exclusive benefit of Laclede Gas Company's regulated operations, as such purposes are specified in Section 393.200 RSMo.
2. That the total amount of the long-term debt, capital leases, and preferred stock issued and outstanding under such authorization shall not, at any time during the period covered by this authorization, exceed the lesser of the value of Laclede's rate base or 65 percent of its total capitalization, as such conditions are defined in Case Nos. GM-2001-342 and GF-2007-0220.
3. That the current Commission Authority under Case No. GF-2009-0450, which was extended in Case No. GF-2013-0085, shall be superseded by the Authority granted in Case No. GF-2015-0181.
4. That the interest rate for any debt issuance covered by the Authority shall not be greater than a rate that is consistent with similar securities of comparable credit quality and maturities issued by other issuers.

---

<sup>19</sup> If the Commission authorizes an amount of financing authority higher than the \$300 million recommended by Staff, the Commission should also include the condition addressed under **Issue 1** above in addition to the conditions set forth under **Issue 2**.

<sup>20</sup> Tr. Vol. 2, pp. 40-41.

5. That, if and when individual debt securities are issued under this Authority, the Company shall submit a verified report to the Commission's Budget and Fiscal Services Department (formerly the Internal Accounting Department) documenting such issuance, the use of any associated proceeds and the applicability and measure of fees under Section 386.300.2 RSMo.

6. That the Company shall also be required to file with the Commission all final terms and conditions on this financing including, but not limited to, the aggregate principal amount to be sold or borrowed, price information, estimated expenses, portion subject to the fee schedule and loan or indenture agreement concerning each issuance.

7. That the Company shall submit to Staff and The Office of the Public Counsel any information concerning communications with credit rating agencies concerning individual debt securities issued under this Authority.

8. That the Company shall file with the Commission any credit rating agency reports issued on the Company, the Company's debt issuances, or on the Laclede Group.

9. That nothing in the Commission's order shall be considered a finding by the Commission of the value of these transactions for rate making purposes, and that the Commission reserves the right to consider the rate making treatment to be afforded these financing transactions and their results in cost of capital, in any later proceeding.

10. In seeking a renewal of the Authority granted in this case, Laclede and Staff shall operate under the general time frames set forth for financing cases in the 2004 case management roundtable project.<sup>21</sup>

## **CONCLUSION**

For the reasons set forth in this brief and in Staff's Exhibits in this case, the Commission should issue an order adopting Staff's position on each of the issues in this case.

---

<sup>21</sup> Ex. 11, p. 26 lines 4-6 and Schedule DM-r2, pages 9-10.

**WHEREFORE**, Staff respectfully submits this Initial Brief of Staff for the Commission's consideration.

Respectfully submitted,

**/s/ Jeffrey A. Keevil**

Jeffrey A. Keevil, #33825

Deputy Counsel

Attorney for the Staff of the

Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 526-4887 (Telephone)

(573) 751-9285 (Fax)

Email: jeff.keevil@psc.mo.gov

### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 18<sup>th</sup> day of December, 2015.

**/s/ Jeffrey A. Keevil**