

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 29<sup>th</sup> day of  
September, 2015.

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

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

**ORDER GRANTING MOTION FOR EXPEDITED  
TREATMENT, ORDER GRANTING MOTION TO  
COMPEL, AND ORDER GRANTING PROTECTIVE ORDER**

Issue Date: September 29, 2015

Effective Date: September 29, 2015

On August 26, 2015<sup>1</sup>, the Staff of the Commission filed a Motion to Compel and a Motion for Expedited Treatment. In its Motion to Compel, Staff argues that the Commission should compel Laclede Gas Company to submit un-redacted answers to data requests 0002, 0017, 0018, 0020, and 0024. Those data requests involve Laclede's projected financials and the goodwill analysis of MGE assets. Because the hearing is set in October, Staff asks for expedited treatment.

Laclede objects stating that the information Staff seeks **is irrelevant in that it** would not lead to the discovery of admissible evidence. Laclede further asserts work-product privilege in the information.

Litigants before the Commission may obtain discovery under the same conditions as in civil actions in the circuit court.<sup>2</sup> At circuit court, and, thus, at the Commission, parties

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<sup>1</sup> Calendar references are to 2015.

<sup>2</sup> Commission Rule 4 CSR 240-2.090(1).

may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action. It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.<sup>3</sup>

Laclede argues the Commission already decided the question of relevance in a 2010 Report and Order in a similar case involving Laclede and Staff.<sup>4</sup> While the Commission is not bound by the principle of *stare decisis*, in order to promote regulatory consistency, certainty, and predictability, the Commission should follow its prior decisions. However, if the Commission determines it will not follow a prior ruling, it should set forth reasons why that prior decision is inapplicable from a policy or legal perspective or show why it is distinguishable from the current issue.

The issue decided by the 2010 order 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.

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<sup>3</sup> Missouri Rule of Civil Procedure 56.01(b).

<sup>4</sup> Commission File GF-2009-0450 (Report and Order, June 16, 2010). The Commission notes it is not bound by the principle of *stare decisis*.

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. In addition, the standard for discoverable evidence is simply whether the information appears reasonably calculated to lead to the discovery of admissible evidence. The Commission finds Staff meets that standard.

Also, Laclede claims the information Staff seeks is privileged because it is work-product. The work-product privilege precludes an opposing party from discovering materials created or commissioned by counsel in preparation for possible litigation.<sup>5</sup> Because documents can be created for more than one purpose, courts can conduct an inquiry into "the primary motivational purpose behind the creation of the document."<sup>6</sup>

The primary purpose for which Laclede created the documents at issue was not for litigation, but to allow credit rating agencies to review Laclede's financial situation and assign it a credit rating. Laclede has not shown that the documents were prepared for litigation, prepared by an attorney, or provided to an entity whose interests are aligned with that of Laclede.

The Commission will grant Staff's motion to compel.

As a compromise, Laclede offered to provide the requested information as long as it was subject to a protective order. Staff does not object to a protective order, so long as the order meets certain conditions. Therefore, the Commission will grant the protective order with the conditions suggested by Staff.

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<sup>5</sup> *State ex rel. Friedman v. Provaznik*, 668 S.W.2d 76, 80 (Mo. banc 1984).

<sup>6</sup> *United States v. Davis*, 636 F.2d 1028, 1040 (5th Cir.), *cert. denied*, 454 U.S. 862 (1981). *Accord Binks Mfg. Co. v. National Presto Indus., Inc.*, 709 F.2d 1109, 1119 (7th Cir.1983) (quoting *Janicker v. George Washington Univ.*, 94 F.R.D. 648, 650 (D.D.C.1982)); *Barrett v. United States Banknote Corp.*, No. 91 Civ. 7420, 1992 U.S. Dist. LEXIS 9980, at \*3 (S.D.N.Y. July 6, 1992); *Hardy v. New York News, Inc.*, 114 F.R.D. 633, 644 (S.D.N.Y.1987).

**THE COMMISSION ORDERS THAT:**

1. The Motion for Expedited Treatment and the Motion to Compel filed by the Staff of the Commission are granted.

2. The Motion for Protective Order filed by Laclede Gas Company is granted, subject to the following conditions:

a) Laclede shall, within 5 business days of the order, provide full, complete, and un-redacted responses to Staff DRs 2, 17, 18, 20 and 24.

b) The responses will be treated as Highly Confidential.

c) In the event that Staff (or any other person or entity that is a party to this case and receives the information) intends to use the previously redacted information in any proceeding other than this case, Staff (or such other person or entity) must inform Laclede that it intends to use such information in such proceeding at least 30 days in advance of such use and Laclede may then seek an order from the Commission to prevent the use of such previously redacted information in such proceeding; furthermore, Laclede shall set forth this condition on its un-redacted responses and must clearly designate the previously redacted information subject to this condition.

d) The Commission makes no finding about whether the previously redacted information is privileged.

e) This order is to have no precedential effect whatsoever for Laclede or any other utility, no right to a future protective order should be inferred by Laclede or any other utility from the granting of the protective order, and no

conclusion should be drawn from the granting of the protective order that the type of information involved in the discovery dispute is privileged.

3. This order shall be effective on September 29, 2015.



**BY THE COMMISSION**

*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney,  
Rupp, and Coleman, CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge