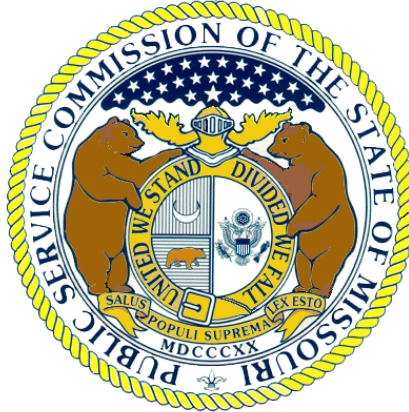


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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

Case No. GF-2015-0181

REPORT AND ORDER

Issue Date: February 10, 2016

Effective Date: March 11, 2016

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REPORT AND ORDER

APPEARANCES

Rick Zucker, Esq., Associate General Counsel, Laclede Gas Company, 700 Market Street, 6th Floor, St. Louis, Missouri 63101, for Laclede Gas Company.

Marc Poston, Esq., Deputy Public Counsel, Office of the Public Counsel, 200 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

Jeff Keevil, Esq., Senior Staff Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: **Ronald D. Pridgin, Deputy Chief.**

Procedural History

On April 15, 2015, Laclede Gas Company (“Laclede”) applied to the Commission for financing authority of \$550 million over the period ending September 30, 2018. The Staff of the Commission recommends the Commission approve financing authority of only \$300 million. Over Staff’s objection, the Commission granted Laclede temporary financing authority on June 24, 2015.

The Commission held an evidentiary hearing on November 18, 2015. Parties filed briefs on December 18, 2015, and reply briefs on January 8, 2016.

List of Issues

1. What amount of financing should be authorized by the Commission for Laclede Gas Company through September 30, 2018?
2. What conditions should the Commission place on Laclede Gas Company’s financing authority?

Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Findings of Fact

1. Laclede Gas Company ("Laclede") is a public utility incorporated under the laws of the State of Missouri, with its principal office located at 700 Market Street, St. Louis, Missouri 63101.¹

2. Laclede is a gas corporation subject to the jurisdiction of the Commission.²

3. 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. Laclede serves customers in the City of St. Louis and ten counties in Eastern Missouri. Laclede also serves customers under the name Missouri Gas Energy ("MGE") in the City of Kansas City and thirty counties in western Missouri.³

4. Laclede requests Commission authorization to issue \$550 million of financing. However, that request includes \$250 million it has no plans to issue.⁴

5. In opening statements, Laclede's attorney stated the extra authority would allow the company some flexibility to react or adjust to changing circumstances.⁵

¹ Ex. 1, p. 1.

² *Id.* at p. 2.

³ *Id.* at pp. 1-2.

⁴ Ex. 11, p. 2, 23. Although the \$300M Laclede plans to issue was filed as highly confidential, Laclede has waived that confidentiality by discussing it in a public forum. See, e.g., Tr. Vol. 2, p. 24.

⁵ Tr. Vol. 2, p. 31.

6. Laclede anticipates approximately \$550 million in capital expenditures but expects to cover \$250 million of this amount through operating cash flow rather than through financing.⁶

7. Laclede's rating agency presentation confirms the company only expects to issue \$300 million in financing between now and 2018. This financing would be for the purposes of refinancing short-term debt, funding capital expenditures, and retiring long-term debt scheduled to mature.⁷

8. This is in line with Laclede's projection, which was that Laclede's currently-known financing needs are less than the amount of the authority requested.⁸

9. Missouri's other utility companies request authority for financings they actually plan to issue that do not include financings that are unplanned or cannot be verified.⁹

10. Laclede can request financing as often as it needs to, and Laclede has funding options other than long-term financing.¹⁰

11. Prior financing authority the Commission gave to Laclede has proven to be excessive. For example, \$370 million of the financing allowed in Laclede's prior financing case, File No. GF-2009-0450, remained unused as of the beginning of this case.¹¹

12. Prior financing authority for Laclede has resulted in no detriment to the company or its customers.¹²

⁶ *Id.*, p. 78.

⁷ Ex. 11, pp. 2-3; *Id.* at DM-r2, p. 9; Tr. Vol. 2, pp. 75-76.

⁸ Ex. 2, pp. 13-14; Ex. 4, p. 15.

⁹ Ex. 11, p. 8.

¹⁰ Tr. Vol. 2, p. 113.

¹¹ Ex. 11, p. 4.

¹² Tr. Vol. 2, p. 129; Ex. 11, p. 11.

13. The amount of financing Staff recommends the Commission approve in this case - \$300 million – would be a relatively modest amount compared to the capitalization approved in previous Laclede cases, particularly considering the company has significantly increased in size with the acquisition of MGE.¹³

14. Laclede did not object to the conditions on the financing authority that Staff proposed in its testimony.¹⁴

Conclusions of Law

1. The Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested-to subject matter.¹⁵

2. In making its determination, the Commission may adopt or reject any or all of any witnesses' testimony.¹⁶

3. Testimony need not be refuted or controverted to be disbelieved by the Commission.¹⁷

4. The Commission determines what weight to accord to the evidence adduced.¹⁸

¹³ Ex. 4, p. 4.

¹⁴ Tr. Vol, 2, pp. 40-41.

¹⁵ Witness credibility is solely within the discretion of the Commission, who is free to believe all, some, or none of a witness' testimony. *State ex. rel. Missouri Gas Energy v. Public Service Comm'n*, 186 S.W.3d 376, 389 (Mo. App. 2005).

¹⁶ *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W.2d 870, 880 (Mo. App., W.D. 1985).

¹⁷ *State ex rel. Rice v. Public Service Commission*, 220 S.W.2d 61, 65 (Mo. banc 1949).

¹⁸ *Id.*

5. The Commission may disregard evidence which in its judgment is not credible, even though there is no countervailing evidence to dispute or contradict it.¹⁹

6. The Commission may evaluate the expert testimony presented to it and choose between the various experts.²⁰

7. Where the evidence conflicts, the Commission determines which evidence is most credible. No law requires the Commission to expound upon which portions of the record the Commission accepted or rejected²¹

8. The Commission is not bound by *stare decisis* based on its prior decisions, and departing from a previous policy is not unlawful as long as the Commission's decision is not otherwise arbitrary or unreasonable.²²

9. The power of gas 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.²³

10. Laclede may encumber its property²⁴ and issue bonds or other debt instruments "reasonably required for" purposes related to its property, service, or certain

¹⁹ *Id.*

²⁰ *Associated Natural Gas, supra*, 706 S.W.2d at 882.

²¹ *Stith v. Lakin*, 129 S.W.3d 912, 919 (Mo. App., S.D. 2004).

²² *State ex rel. Laclede Gas Co. v. Public Service Commission*, 392 S.W.3d 24, 36-37 (Mo. App., W.D. 2012).

²³ Section 393.180 RSMo 2000 (emphasis added).

²⁴ Section 393.190.1, RSMo. 2000.

payments²⁵, even if such debt is otherwise “reasonably chargeable to operating expenses or to income.” But Laclede must have “first secured from the commission an order authorizing it so to do” and “stating the purposes to which the issue or proceeds thereof are to be applied[.]”²⁶ If Laclede meets that statutory standard, then the Commission may issue such an order if the financing is not detrimental to the public.²⁷

Decision

The Commission does not wish to micromanage any utility. However, Missouri law requires the Commission to protect ratepayers by limiting a utility’s financing authority to purposes specified in the financing statute.

In Laclede’s prior financing case, File No. GR-2009-0450, the Commission denied \$82 million of Laclede’s financing request, saying “. . . flexibility is neither a purpose nor an amount. Flexibility is how fast Laclede uses its authorization to address market conditions.”²⁸ While the Commission is not bound by its previous decisions, in the interest of regulatory consistency, certainty, and predictability, a departure from previous policy should be reasonable and not arbitrary. If the Commission determines it will not follow a prior ruling, it should set forth its reasons, which may include policy considerations or

²⁵ Specifically, the allowable purposes include: “. . . 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, . . .” Section 393.200.1 RSMo 2000.

²⁶ Section 393.200.1 RSMo 2000.

²⁷ *State ex. rel. City of St. Louis v. PSC*, 73 S.W.2d 393, 400 (Mo. 1934).

²⁸ *In the Matter of Laclede Gas Company's Verified Application for Authority to Issue and Sell First Mortgage Bonds, Unsecured Debt and Preferred Stock, in Connection with a Universal Shelf Registration Statement, to Issue Common Stock and Receive Capital Contributions, to issue or accept Private Placement Securities, and to Enter Into Capital Leases, all in a Total Amount Not to Exceed \$600 Million*, Report and Order, File No. GF-2009-0450 (June 16, 2010).

different legal perspectives or an explanation of how the prior ruling is distinguishable from the current case. The Commission is faced with the same question in this case as in Laclede's previous case and adopts its prior conclusion; flexibility to respond to rapidly changing market conditions is not a specified purpose allowed under the law.

Thus, the appropriate amount for the Commission to authorize in this case is the \$300 million Laclede has specified to rating agencies that it plans to issue. This financing would be for the purposes of refinancing short-term debt, funding capital expenditures, and retiring long-term debt scheduled to mature. These purposes are necessary "for the improvement or maintenance of Laclede's service, or for the discharge or lawful refunding of its obligations."²⁹ And, in the opinion of the Commission, the money, property or labor to be procured or paid for by this financing is or has been reasonably required for the purposes specified in this order.³⁰

Finally, this Commission's previous financing authorizations for Laclede were not detrimental to the public interest. Granting \$300 million in authority in this case would be a modest grant compared to Laclede's previous financing authority, especially considering the recent expansion of Laclede through its acquisition of MGE. Thus, granting \$300 million of financing in this case is not detrimental to the public. Laclede may return to the Commission when it needs financing authority for purposes allowed by law.

This order should not reflect, and does not reflect, on the Commission's opinion of Laclede's credit-worthiness or investment-worthiness. The authorization is simply tied, per Section 393.200, to the amount of financing Laclede plans to issue. The Commission

²⁹ Section 393.200.1 RSMo.

³⁰ *Id.*

certainly could approve additional financing if Laclede makes a request for a specified amount supported by a specified purpose as the law requires.

Finally, the Commission finds the conditions recommended by Staff in its testimony to be reasonable. The Commission notes that Laclede does not oppose them. Thus, the Commission will impose those conditions.

THE COMMISSION ORDERS THAT:

1. Laclede Gas Company ("Laclede" or "Company") is 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. 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. 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. 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.

5. 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. Laclede Gas 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. Laclede Gas 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. Laclede Gas 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. 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 Gas Company and Staff shall operate under the general time frames set forth for financing cases in the 2004 case management roundtable project.

11. This Report and Order shall become effective on March 11, 2016.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Rupp, and Coleman,
CC., concur;
Kenney, C., dissents, with separate
dissenting opinion to follow;
and certify compliance with the provisions
of Section 536,080, RSMo.

Dated at Jefferson City, Missouri,
on this 10th day of February, 2016.