LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON (1937-2012)
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY (Retired)
PAUL A. BOUDREAU
CHARLES E. SMARR
DEAN L. COOPER

312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-0427

GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
DIANA C. CARTER
SCOTT A. HAMBLIN
JAMIE J. COX
L. RUSSELL MITTEN
ERIN L. WISEMAN

March 31, 2016

FILED
MAR 31 2016
Missouri Public
Service Commission
1:27pm MA

**HAND DELIVERED**
Mr. Morris Woodruff
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, MO 65102

Re: Case No. GF-2015-0181, Notice of Appeal

Dear Mr. Woodruff:

I enclose herewith an original and four (4) copies of a Notice of Appeal and a Civil Case Information Form filed with your office in accordance with §386.510, RSMo. I ask that you stamp one copy "filed" and return it to the person delivering this filing to you. I have also enclosed a check in the amount of $70.00 payable to the Missouri Court of Appeals that represents the docket file required by Missouri Supreme Court Rule 81.04(d).

Thank you in advance for your assistance with this matter. If you have any questions regarding this filing, please feel free to give me a call.

BRYDON SWEARENGEN & ENGLAND P.C.

By: _____
Paul A. Boudreau

c: All Counsel of Record
Enclosures

# Missouri Public Service Commission

FILED

MAR 31 2016

Missouri Public Service Commission
1:27pm MA

(Date File Stamp)

| | |
|---|---|
| Judge or Division: Ron Pridgin, Deputy Chief Reg. Law Judge | Appellate Number: |
| Appellant: Laclede Gas Company vs. | Missouri Public Service Commission File Number: Case No. GF-2015-0181 |
| Respondent: Public Service Commission of Missouri | |

## Notice of Appeal

Notice is given that Laclede Gas Company appeals to the Missouri Court of Appeals ■ Western ☐ Eastern ☐ Southern District.

March 31, 2016
Date Notice of Appeal Filed
(to be filled in by Secretary of Commission)

Signature of Attorney or Appellant

The notice of appeal shall include the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section 386.420, a concise statement of the issues being appealed, a full and complete list of the parties to the commission proceeding, and any other information specified by the rules of the court. The appellant(s) must file the original and (2) two copies and pay the docket fee required by court rule to the Secretary of the Commission within the time specified by law. **Please make checks or money orders payable to the Missouri Court of Appeals.** At the same time, Appellant must serve a copy of the Notice of Appeal on attorneys of record of all parties other than appellant(s), and on all parties not represented by an attorney.

## CASE INFORMATION

| Appellant Name / Bar Number: | Respondent's Attorney / Bar Number: |
|---|---|
| Paul A. Boudreau - Mo Bar #33155 | Shelley Brueggemann - Mo Bar #52173 |
| Address: 312 E. Capitol Ave. Jefferson City, MO 65102 | Address: 200 Madison Street, Suite 800 Jefferson City, MO 65101 |
| Telephone: (573) 635-7166 Fax: (573) 636-6450 | Telephone: (573) 526-7393 Fax: (573) 751-9285 |

| Date of Commission Decision: | Date of Application for Rehearing Filed: | Date Application for Rehearing Ruled On: |
|---|---|---|
| February 10, 2016 | February 11, 2016 | March 9, 2016 |

### DIRECTIONS TO COMMISSION

A copy of the notice of appeal and the docket fee shall be mailed to the clerk of the appellate court. Unless otherwise ordered by the court of appeals, the commission shall, within thirty days of the filing of the notice of appeal, certify its record in the case to the court of appeals.

### Certificate of Service

I certify that on March 31, 2016 (date), I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.

See attached Civil Case Information Form. Served by hand delivery or by electronic communication.

Appellant or Attorney for Appellant

**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 |

**LACLEDE GAS COMPANY'S**
**APPLICATION FOR REHEARING AND RECONSIDERATION**

**COMES NOW** Laclede Gas Company ("Laclede" or "Company"), and files this Application for Rehearing and Reconsideration of the Commission's February 10, 2016 Order in this case (the "2016 Order"), and in support thereof states as follows[1]:

The 2016 Order departs from both Section 393.200.1 (the "Statute") and the Commission's June 16, 2010 Report and Order in Case No. GF-2009-0450 (the "2010 Order") without reason or rationale. In fact, this departure occurs even though the majority, in issuing the 2016 Order, clearly intended to follow the 2010 Order, and not deviate from it. The 2016 Order frustrates the stated intent of the majority and inadvertently reverses the 2010 Order, because it denies financing authority for capital clearly expended for the purposes of the Statute, and because it mistakes flexibility above current projected financing plans, which the 2010 Order allowed and even encouraged, for flexibility above those allowed purposes, which the 2010 Order denied. The undisputed evidence in this case demonstrated spending by Laclede of $1.0 billion for past and projected capital expenditures and a refinancing, which are the purposes set forth in the Statute and identified in the 2010 Order.

**THE 2010 ORDER**

In the 2010 case, the Staff recommended that Laclede be authorized to issue $100 million in debt, because that amount covered the Company's specific financing plans. Laclede requested

[1] Please see Exhibit A for information required to be submitted with applications.

$600 million in total financing authority because Laclede believed that amount covered the amounts expended for the purposes delineated in the Statute, with an added buffer for emergencies.

The Commission brushed aside the Staff's position in 2010, finding that position to be at odds with the terms of the Statute. The Commission found that "Staff has simply misread the statute" (2010 Order, p. 13) and that "Staff's reading is contrary to the statute's plain language." (2010 Order, p. 15) Instead, the Commission found that the Statute makes financing authority available for expenditures made for the purposes outlined in the Statute. The Commission found that the Statute represents the General Assembly's policy decision "to allow long-term financing for property, plant and system." (2010 Order, p. 12) As a result, the Commission rejected Staff's argument because Laclede's financing estimates are not the basis for determining financing authority.

The 2010 Commission even opined that limiting the Company to an amount that only covered its planned financings ($100 million) was unwise. The Commission made a finding of fact that flexibility above the minimum planned estimates was not only beneficial, but critical. The Commission's findings on this issue were as follows:

> A business's capacity to quickly exercise business judgment about issuing long-term finance instruments ("instruments") in response to changing market conditions is called flexibility. Flexibility includes the type and timing of instruments issued. ***Flexibility is critical for procuring capital quickly and favorably, especially during market instability.***
>
> During periods of market instability in gas and credit, flexibility has helped Laclede secure favorable long-term financing. For example, in 2008 Laclede issued $80 million in First Mortgage Bonds just before the interest rate on such instruments increased by approximately 2.50 percent in less than a month. ***In that instance, Laclede's flexibility saved $2 million per year, which ultimately benefitted Laclede's rate-payers.***
>
> (2010 Order, p. 5, emphasis added)

At the same time, the 2010 Commission also rejected a portion of Laclede's request for $600 million. The Commission found that $82 million of the $600 million was inappropriate, because it represented flexibility to cover other unknown amounts over and above those amounts reasonably required for the purposes of the Statute. The Commission stated:

> "In support of the $82 million, Laclede cites flexibility. But flexibility is neither a purpose nor an amount. Flexibility is how fast Laclede uses its authorization to address market conditions. Staff argues that Laclede has not shown that such amount is, or has been, necessary or reasonably required for any of the allowed purposes. Staff reads the statute and the record correctly. Laclede has not carried its burden of proving that an allowed purpose supports the $82 million. Therefore, the Commission will deny the application as $82 million." (2010 Order, p. 10)

Instead, the Commission approved financing authority of $518 million based on its reading of the Statute. The Commission found that the Statute authorized Laclede financing authority for the following purposes:

| **Purpose** | Amount ($millions) |
|---|---|
| the acquisition of property, the construction, completion, extension or improvement of its plant or system | 189 |
| discharge or lawful refinancing of its obligations | 50 |
| reimbursement of moneys actually expended for any of the aforesaid purposes | 279 |
| *Total* | *518* |

**FLEXIBILITY**

In effect, the Commission identified two types of "flexibility" in the 2010 Order. The Commission favored the first type of flexibility, being the amount above Laclede's planned financings. It denied Staff's attempt to confine Laclede's authority to only those estimates. The

Commission rejected the second type of flexibility, being flexibility over and above the amounts allowed under the Statute for the **purposes** identified in the Statute. It denied Laclede's attempt to obtain authority above the amounts specifically authorized by the Statute. Please see Exhibit B attached hereto for an illustration of the two types of flexibility.

**THE 2016 ORDER**

As it did in 2010, the Staff recommended in the 2016 case that Laclede be given financing authority in an amount that represented the Company's specific financing plans ($300 million). Laclede requested $550 million in total financing authority because Laclede believed that amount was not only well within the authority of $1.0 billion granted by the Statute, but it also reflected substantial use of cash flow from operations, as desired by Staff.

The Commission recognized that the 2016 case presented the same issues as the 2010 case, and the Commission decided to "adopt its prior conclusion" in the 2010 Order, because it had no reason to depart from that ruling. (2016 Order, pp. 8-9) However, the decision reached in the 2016 Order does exactly the opposite of its stated intent. The 2016 Order fails to grant financing authority for the same purposes that were specifically approved by the 2010 Order and the Statute, and the 2016 Order rejects the flexibility favored in the 2010 Order. Instead, the 2016 Order approves authority at only the amount of estimated financings, the very position rejected by the 2010 Order as a mis-reading of the Statute. And it does so despite a request by Laclede that was substantially below the clear and unrefuted evidence of allowed purposes in the amount of $1.0 billion. In so doing, the 2016 Order eliminates both the recognition of capital expenditures authorized in 2010, and the very flexibility it found to be beneficial, and even critical, in 2010.

In order to be consistent with the Statute and the 2010 Order that accurately interpreted the Statute, the 2016 Order would have to reject the Staff's recommendation of $300 million as an unlawful denial of statutory authority for capital spent for the **purposes** dictated by the Statute, and as an unwise and imprudent restraint on allowed and favored flexibility.

In order to be consistent with the Statute and the 2010 Order that accurately interpreted the Statute, the 2016 Order would have had to reject any request by Laclede that exceeded the $1.0 billion that Laclede justified under the Statute, as an inappropriate attempt to add rejected flexibility.

In order to be consistent with the Statute and the 2010 Order that accurately interpreted the Statute, the 2016 Order would have to approve Laclede's actual request of $550 million in financing authority, as seeking less than the $1.0 billion allowed by the Statute, and as seeking $0 in rejected flexibility above that $1.0 billion allowed by the Statute. In other words, Laclede's requested authority should be approved, because it does not include flexibility amounts rejected by the 2010 Order, and it does include flexibility amounts favored and encouraged by the 2010 Order.

Reviewing the 2010 Order and the present case side-by-side demonstrates this point:

| | 2010 | 2016 |
|---|---|---|
| **Purpose** | Amount ($millions) | Amount ($millions) |
| the acquisition of property, the construction, completion, extension or improvement of its plant or system | 189 | $562 |
| discharge or lawful refinancing of its obligations | 50 | $100 |
| reimbursement of moneys actually expended for any of the aforesaid purposes | 279 | 339 |
| *Total (2010 Order, p. 18)* | *518* | *1001* |
| Staff Recommendation | 100 | 300 |
| Laclede Request | 600 | 550 |
| Statutory Authorization Amount | 518 | 1001 |
| Commission Decision | 518 | 300 |

The discrepancy is readily illustrated in the chart above, and was recognized by the Commission in Finding of Fact 13 of the 2016 Order. (2016 Order, p. 6) Laclede's expenditures for Stautory purposes nearly doubled since 2010 (from $518 million to $1.0 billion), while the Commission decision allows Laclede barely half of its 2010 authority (from $518 to $300). Viewed another way, in 2010, the Commission found that Laclede spent $518 million for the purposes of the Statute, and afforded Laclede that amount in financing authority. In 2016, a much larger Laclede spent $1.0 billion for the purposes of the Statute, but was denied $550 million in financing authority and afforded only $300 million instead. Given this huge disparity between the financing authority amounts found appropriate in the 2010 Order versus the much smaller amount deemed proper in the 2016 Order, it is simply impossible – as a matter of pure

mathematics if nothing else – to conclude that the majority has in fact followed the approach charted by the Commission in that earlier order. Unless the Commission can explain and reconcile this obvious disparity in results, it should grant rehearing and issue an Order which actually effectuates the Commission's stated intent not to depart from the approach set forth in the 2010 Order. As mentioned above, Exhibit B depicts this disparity via a bar chart.

Perhaps Laclede is at fault for trying to accommodate Staff by requesting substantially less than the authority allowed under the Statute. Perhaps Laclede's failure to request the full $1.0 billion confused matters. Regardless, it is not too late to correct this unintentional error and issue a ruling consistent with the 2010 Order, as the majority intended.

**CONCLUSION**

In the first paragraph of the Decision portion of the 2016 Order, the Commission correctly notes that its role is "to protect ratepayers by limiting a utility's financing authority to purposes specified in the financing statute." (2016 Order, p. 8) Conversely, the Commission also concludes, as a matter of law that Laclede may issue long-term financings to procure or pay for capital (money, property or labor) that is or has been reasonably required for the purposes of the order approved by the Commission in carrying out the Statute. (2016 Order, pp. 7-8) The Commission should approve Laclede's application for $550 million in financing authority, because the clear evidence in this case demonstrated that such amount is less than the amount of $1.0 billion in capital to be procured or paid for by Laclede for the purposes of the Statute and the order enforcing the Statute. Laclede's requested authority is consistent with the Statute and the 2010 Order, and is lawful, reasonable and beneficial to consumers. Finally, we would note that the 2016 Order mistakenly reflects a vote of 4-1 with only Commissioner Kenney dissenting, but should be 3-2 with both Commissioners Kenney and Rupp dissenting.

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission reconsider its decision and rehear this case.

Respectfully submitted,

**LACLEDE GAS COMPANY**

By: /s/ Rick Zucker
Rick Zucker, #49211
Associate General Counsel
Laclede Gas Company
700 Market Street, 6th Floor
St. Louis, MO 63101
Telephone:(314) 342-0533
Facsimile: (314) 421-1979
E-mail: rick.zucker@thelacledegroup.com

**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on all parties of record on this 11th day of February, 2016 by hand-delivery, e-mail, fax, or by placing a copy of such document, postage prepaid, in the United States mail.

/s/ Marcia Spangler

## EXHIBIT A

### THE APPLICANT

1. Laclede is a public utility and gas corporation incorporated under the laws of the State of Missouri, with its principal office located at 700 Market Street, St. Louis, Missouri 63101. A Certificate of Good Standing evidencing Laclede's standing to do business in Missouri was submitted in Case No. GF-2013-0085 and is incorporated by reference herein for all purposes. The information in such Certificate is current and correct.

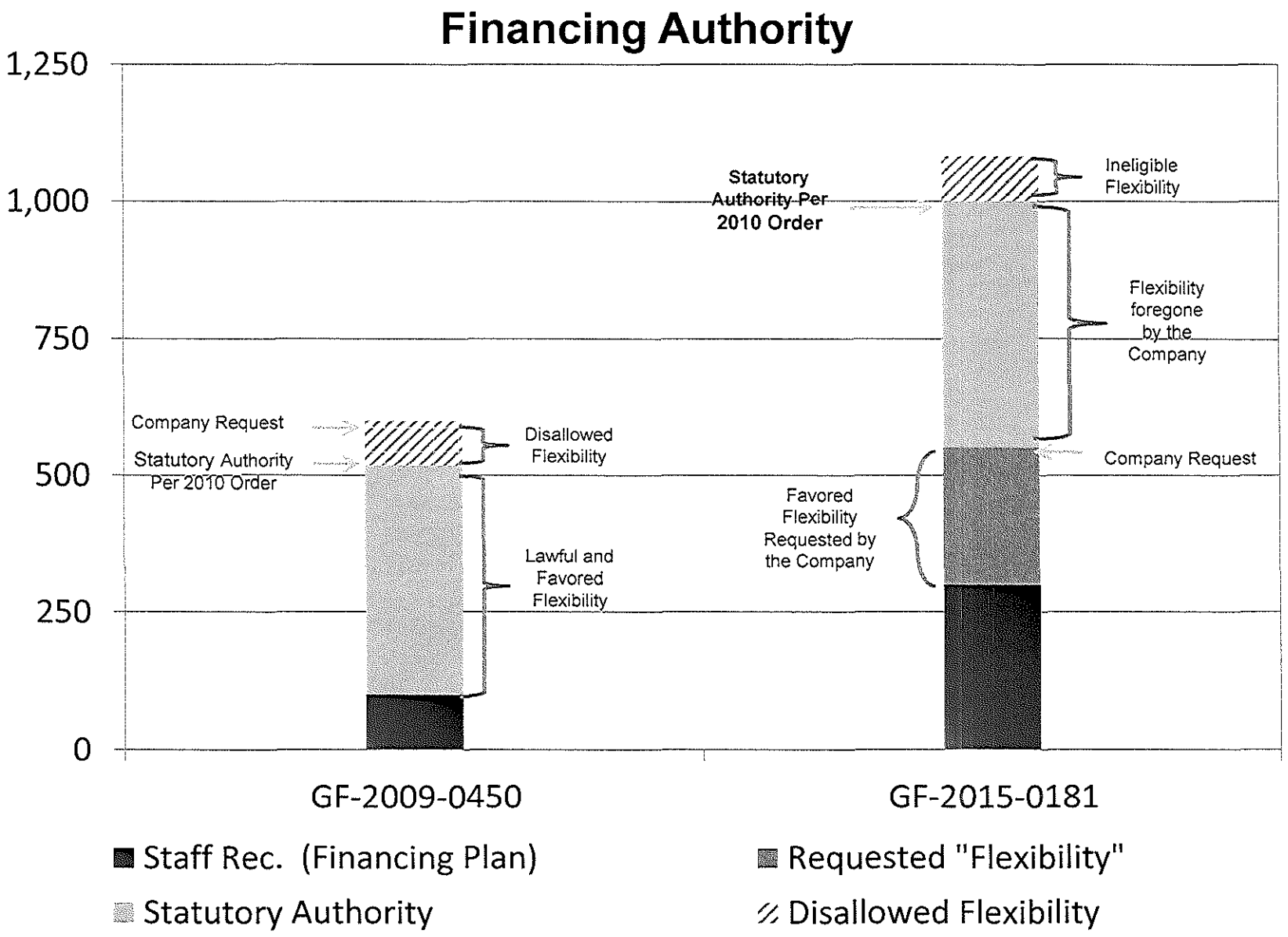
2. In its Laclede Gas service territory, Laclede is engaged in the business of distributing and transporting natural gas to customers in the City of St. Louis and the Counties of St. Louis, St. Charles, Crawford, Jefferson, Franklin, Iron, St. Genevieve, St. Francois, Madison, and Butler in Eastern Missouri, as a gas corporation subject to the jurisdiction of the Commission.

3. Communications in regard to this Application should be sent to the Laclede Gas Company's legal counsel who signed this Application.

4. Other than cases that have been docketed at the Commission, Laclede has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates within three years of the date of this application.

5. Laclede is current on its annual report and assessment fee obligations to the Commission; no such report or assessment fee is overdue.

Exhibit B


Financing Authority
1,250
1,000
750
500
250
0
Company Request
Statutory Authority Per 2010 Order
Disallowed Flexibility
Lawful and Favored Flexibility
Statutory Authority Per 2010 Order
Ineligible Flexibility
Flexibility foregone by the Company
Company Request
Favored Flexibility Requested by the Company
GF-2009-0450
GF-2015-0181
Staff Rec. (Financing Plan)
Requested "Flexibility"
Statutory Authority
Disallowed Flexibility

## VERIFICATION

State of Missouri )
) ss
City of St. Louis )

I, C. Eric Lobser, being of lawful age state: that I am Vice President, Rates and Regulatory Affairs of Laclede Gas Company; that I have read the foregoing Application and that the statements and information set forth herein are true and correct to the best of my information, knowledge and belief; and, that I am authorized to make this statement on behalf of Laclede Gas Company.

C. Eric Lobser

Subscribed and sworn to before me this 11th day of February, 2016.

Marcia A. Spangler
Notary Public

My Commission Expires: 9-24-18

MARCIA A. SPANGLER
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: Sept. 24, 2018
Commission # 14630361

## APPELLANT'S STATEMENT OF ISSUES BEING APPEALED

Appellant asserts that the Report and Order dated February 10, 2016 in Missouri Public Service Commission ("Commission") Case No. GF-2015-0181 is unlawful, unreasonable, arbitrary and capricious for all of the reasons set forth in its Application for Rehearing filed on February 11, 2016 and attached hereto. Without limiting the foregoing, Appellant asserts that the Order of the Commission:

1. Is unlawful in that it contravenes Section 393.200.1 RSMo (Cum. Supp. 2013), the statute that governs financing authority for utilities (the "Statute"), and more specifically fails to grant Appellant financing authority for capital investments that are or have been reasonably required for the purposes listed in the Statute, and as contained in Commission orders.
2. Is arbitrary, capricious and unreasonable in that it effectively reverses the Commission 2010 decision on the same financing issue without reason or rationale, and even though it purports to follow that decision.

**IN THE MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

CIVIL CASE INFORMATION FORM
(This form must be filed with the Notice of Appeal)

List every party involved in the case, indicate the position of the party in the circuit court (e.g., plaintiff, defendant, intervenor) and in the Court of Appeals (e.g., appellant, respondent) and the name of the attorney of record, if any, for each party. Attach additional sheets to identify all parties and attorneys if necessary.

| Party | Attorney |
|---|---|
| Laclede Gas Company (Appellant)<br>700 Market Street, 6th Floor<br>St. Louis, MO 63101 | Rick E. Zucker |
| Missouri Public Service Commission (Respondent)<br>200 Madison Street, Suite 800<br>Jefferson City, MO 65102 | Shelley Brueggemann, General Counsel |
| Missouri Public Service Commission (Respondent)<br>200 Madison Street, Suite 800<br>Jefferson City, MO 65102 | Jeff Keevil |
| Office of the Public Counsel (Statutory Party)<br>200 Madison Street, Suite 650<br>Jefferson City, MO 65102 | James Owen |

Date Notice filed with the Commission: March 31, 2016

==========

The Record on Appeal will consist of:

_X__ Legal File Only ____ Legal File and Transcript

**FACTUAL BACKGROUND:** (Events Giving Rise to Cause of Action. Attach one additional page, if necessary). The Missouri Public Service Commission issued a Report and Order in its Case No. GF-2015-0181 on February 10, 2016. On February 11, 2016, Appellant timely filed its Application of Rehearing and Reconsideration, which was denied by the Commission on March 9, 2016.

The Commission granted only $300 million of a $550 million financing request to include registered securities, common stock, private debt placements and capital leases (in a mix to be determined by Appellant) over a period ending September 30, 2018, which was filed by Appellant pursuant to §393.200, RSMo.

**ISSUES EXPECTED TO BE RAISED ON APPEAL:** (Attach one additional page, if necessary. Appellant is not bound by this list. Attach one copy of the post-trial motion, if one was filed).

Appellant asserts that the Report and Order dated February 10, 2016 in Missouri Public Service Commission ("Commission") Case No. GF-2015-0181 is unlawful, unreasonable, arbitrary and capricious for all of the reasons set forth in its Application for Rehearing filed on February 11, 2016. Without limiting the foregoing, Appellant asserts that the order of the Commission:

1. Is unlawful in that it contravenes Section 393.200.1 RSMo (Cum. Supp. 2013), the statute that governs financing authority for utilities (the "Statute"), and more specifically fails to grant Appellant financing authority for capital investments that are or have been reasonably required for the purposes listed in the Statute, and as contained in Commission orders.
2. Is arbitrary, capricious and unreasonable in that it effectively reverses the Commission 2010 decision on the same financing issue without reason or rationale, and even though it purports to follow that decision.