

**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

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its recommendation in this matter hereby states:

1. On April 15, 2015, Laclede Gas Company (“Laclede” or “Company”) submitted a verified application to re-establish and extend its financing authority pursuant to Section 393.200 RSMo., Commission Rule 4 CSR 240-3.220 and the Commission’s order in GF-2009-0450.

2. The Commission directed Staff to file a recommendation or status report no later than June 8, 2015. Staff hereby submits its recommendation in this matter, attached here as Appendix A and incorporated by reference.

Background

3. In June 2010, in GF-2009-0450, the Commission granted Laclede's application for authority to issue and sell first mortgage bonds, unsecured debt and preferred stock, to issue common stock and receive capital contributions, to issue or accept private placement securities, and to enter into capital leases in a total amount of \$518 million, out of Laclede's requested amount of \$600 million.¹

¹ GF-2009-0450, *Report and Order*, issued June 16, 2010.

4. The Commission granted this authority for a period of three years. On October 24, 2012, in Case No. GF-2013-0085, the Commission issued an order extending the financing authority to June 30, 2015.

5. With its application in this matter, Laclede requests the Commission authorize financing in the amount of \$550 million and extend the Company's financing authority through September 30, 2018, subject to the terms and conditions approved by the Commission in its 2010 and 2012 orders. Laclede requests the Commission issue an order that makes the finding required by Section 393.200.1 RSMo.: that the money, property or labor to be procured or paid for by the issuance and/or execution of the requested instruments are, or will be, reasonably required for the purposes specified in the order, and that such purposes are not in whole or in part reasonably chargeable to operating expenses or income.

6. Laclede states that this request is intended to increase the total amount of financing authority and extend the authorization period to September 30, 2018, but to otherwise leave intact the other terms in the 2010 and 2012 orders.

The Statute

7. As the Commission noted in GF-2009-0450, Section 393.200.1 RSMo. restricts a utility's long-term financing to allowable purposes, in an amount determined by the Commission to be "reasonably required for the purposes specified in the order."² The purpose of such utility finance authority statutes such as Section 393.200 RSMo are "to protect the public and... to protect and enforce the rights of the consuming as well as of the investing public; the one from increased rates, the other from improvident

² *Id.*, *Report and Order*, pgs. 7-9.

investment. And the protection of the public in both of these relations is closely bound up with the efficient operation and proper financing of the companies.”³

8. The statute provides that a gas corporation may issue long-term financing “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,” subject to the limitation that “such purposes are not in whole or in part reasonably chargeable to operating expenses or to income.” The statute also provides that utilities may finance cash outlays for the limited purposes (“reimbursement of moneys actually expended... for any of the aforesaid purposes except maintenance of service and except replacements”).⁴

Laclede’s last finance case: GF-2009-0450

9. In its June 2010 order in GF-2009-0450, the Commission approved authority in the amount of \$518 million, out of Laclede’s request for authority in the amount of \$600 million.⁵

10. In support of its claim in that case, Laclede offered certain amounts attached to certain statutory purposes. Staff and Laclede agreed on an amount of \$50 million for discharge or lawful refinancing of Laclede’s obligations.⁶

11. The Commission rejected Laclede’s request for \$82 million for the purpose of “flexibility,” because it found that Laclede did not meet its burden to prove that any statutory purposes supported that amount.⁷

³ *Issuance of Securities by Public Service Corporations*, *Yale Law Journal*, Vol. 37, No. 6 (April 1928), p 721.

⁴ Section 393.200.1 RSMo, GF-2009-0450 *Report and Order*.

⁵ GF-2009-0450 *Report and Order* p. 2.

⁶ *Id.*

12. As to the other purposes and requested amounts, the Commission granted Laclede's requested amounts as to property, plant and system,⁸ and as to reimbursement of monies expended.⁹ The Commission also ordered Laclede to comply with a list of conditions, including limits on long-term debt, debt securities and certain reporting requirements.¹⁰

Staff's Recommendation

13. In this matter, Staff recommends the Commission grant Laclede authority to issue financing in an amount designated as Highly Confidential.

14. In Staff's recommendation, attached here as Appendix A, Staff specifically disagrees with the implications of Laclede's Exhibit 3.

15. In its application, Laclede states that Exhibit 3 represents "the maximum amount that Laclede would be permitted to obtain under the Commission's detailed interpretation of Section 393.200 in the 2010 Order." Laclede's Exhibit 3 purports to show that "[p]ursuant to Missouri Revised Statute Section 393.200," Laclede is "allowed" finance authority in an amount in excess of \$1 billion.¹¹

16. Staff disagrees with the implication of Laclede's Exhibit 3, that the statute and the 2010 *Report and Order* in GF-2009-0450 establish a formula that this Commission must use to determine the outcome of this case. Rather, the Commission's decision must be guided by its determination of whether the financing is reasonably required for the statutory purposes.

⁷ *Id.* at p. 8.

⁸ *Id.* at p. 12

⁹ *Id.* at p. 14

¹⁰ *Id.* at p. 21-23.

¹¹ GF-2015-0181, *Verified Application of Laclede Gas Company*, p.3, pgph. 9 and Exhibit 3.

17. Section 393.200.1 RSMo. empowers the Commission with the discretion to consider whether the requested financing is “necessary” for the purposes set forth in the statute. The statute obligates the Commission to determine whether the financing “is or has been *reasonably required* for the purposes specified in the order,” and to state that “such purposes are not in whole or in part *reasonably chargeable* to operating expenses or to income.” (Emphasis added).¹² This is the conclusion the Commission reached in its order in GF-2009-0450; the order does not say that future Commissions must accept Laclede’s calculation of the amounts, or that such amounts automatically attach to Laclede’s stated purposes. Nothing in the 2010 order purports to supplant each Commission’s obligation to determine whether or not the requested amount of financing is reasonably required for the specified purposes—indeed, the order could not bind subsequent Commission’s to a particular formulaic analysis, because the Public Service Commission is not bound by *stare decisis*.¹³ Moreover, reading a rote formula into the statute would frustrate its purpose, which is to prevent a utility from improvidently encumbering the public utility assets necessary for safe and adequate service. Therefore, each financing application demands a reasonability analysis and determination by the Commission, not application of a rote formula that “permits” or “allows” any particular amount independent of the facts of a particular finance case.

18. In its recommendation, Staff provided its own analysis of Laclede’s reasonable need for financing authority. Staff’s Highly Confidential recommendation and analysis is contained in Appendix A and attachments.

¹² Section 393.200.1 RSMo.

¹³ *State ex rel. Ag Processing Inc. v. Missouri PSC*, 120 S.W.2d 732, 736 (Mo. banc 2003).

WHREFORE, Staff recommends the Commission issue an order approving financing authority for Laclede Gas Company in the amount and under the conditions as described in Staff's Highly Confidential recommendation, attached here as Appendix A and incorporated by reference.

Respectfully Submitted,

/s/ John D. Borgmeyer

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 8th day of June, 2015.

/s/ John D. Borgmeyer