
**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

REPLY BRIEF OF STAFF

Respectfully submitted,

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INTRODUCTION

COMES NOW the Staff of the Missouri Public Service Commission and submits the following Reply Brief pursuant to the *Order Setting Briefing Schedule* issued herein on December 3, 2015, in reply to the initial brief of Laclede Gas Company ("Laclede" or "Company"). Rather than replying to every individual statement made by Laclede, having presented and argued its positions in its initial brief, Staff is limiting its replies to those matters which Staff believes will most aid the Commission. Therefore, the failure of this Reply Brief to address any matter raised in Laclede's initial brief should not be construed as agreement in any way therewith.

ARGUMENT

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

Laclede's initial brief is an excellent example of the regulated-utility maxim "when the facts are in your favor, argue the facts; when the law is in your favor, argue the law; and *when neither the facts nor law are in your favor, attack the Staff.*" Despite having the burden of proof¹, in its initial brief Laclede ignores the "when necessary" and

¹ Case No. GF-2009-0450 *Report and Order* issued June 16, 2010, page 9.

“reasonably required” provisions of Section 393.200.1, RSMo,² while accusing Staff of ignoring the applicable law – as well as repeatedly misstating Staff’s position and incorrectly implying that the burden of proof is on Staff rather than Laclede. At the bottom of page 3 of its initial brief Laclede goes so far as to state that “Staff’s view is that the Statute is flawed and should be ignored;” however, as set forth in detail in Staff’s initial brief³, Staff’s view is in fact grounded on the statute. Laclede’s argument in its initial brief is the same argument it made in the discovery dispute earlier in this very case; namely, that it needs only to fill out the “chart” provided by the Commission in its *Report and Order* in Case No. GF-2009-0450⁴ with dollar amounts related to “allowable purposes” for financing under Section 393.200.1, RSMo, and nothing more. However, as the Commission has already found, Laclede’s argument “would render meaningless the statute’s provisions that the requested financing be ‘necessary’ and ‘reasonably required’ for those allowable purposes.”⁵ In other words, the Commission has already found that Laclede’s argument – not Staff’s argument – is contrary to the statute.

Furthermore, Laclede’s argument in both the discovery dispute and its initial brief is based on Laclede’s interpretation of the Commission’s 2010 *Report and Order* in Case No. GF-2009-0450. As the Commission has already found, the dispute in the earlier case was regarding allowable *purposes for* financing – whereas the dispute in this case is what amount of financing is shown by the evidence to be *necessary* and *reasonably required*; i.e., what amount of financing is actually *needed* – therefore “[t]he

² See Initial Brief of Staff pages 3-4.

³ See Initial Brief of Staff pages 3-8.

⁴ Laclede’s initial brief at page 1 incorrectly refers to this case as GF-2010-0450.

⁵ 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, page 2.

issue decided by the 2010 order is distinguishable from the issue here.”⁶ Accordingly, Laclede’s argument throughout its initial brief simply misses the point and should be summarily rejected by the Commission. Given that Laclede’s own testimony admits it does not need the amount of financing authority it has requested in this case⁷ it should come as no surprise that Laclede wants to argue about something other than whether it actually needs the amount of financing authority it has requested and attempts to misdirect the Commission’s attention. However, the Commission should not fall for Laclede’s attempted Jedi mind tricks; simply because Laclede says something does not make it so.

Laclede attempts to justify its request for more than the \$300 million in financing authority recommended by Staff, and shown by the evidence to represent Laclede’s actual need for financing through September 30, 2018, by claiming it needs a “buffer” (see Laclede initial brief page 4). However, a “buffer” is not an allowable purpose for financing under either the statute (Section 393.200.1, RSMo) or the 2010 Commission order upon which Laclede purports to rely. Laclede claims on page 7 of its initial brief that its requested amount of financing authority is reasonable in comparison to past financing approvals; however, as the evidence shows, experience has proven that the amount of financing authority previously granted to Laclede was *not* needed (not necessary or reasonably required per the statute), but was in fact far in excess of what was needed.⁸ Other than demonstrating that Laclede’s currently-requested amount of financing authority is not needed, these references to amounts of past financing

⁶ *Id.*

⁷ Ex. 2, p. 14 lines 1-2.

⁸ Experience has shown that the level of financing authority granted to Laclede in the 2009 case exceeded the amount needed to finance Laclede’s operations for nine years. Ex. 11, p. 4 lines 19-21.

approvals (including the chart attached to Laclede's initial brief) are irrelevant to the current case.

Laclede's initial brief contains several misstatements of Staff's position, some of which are addressed in this reply brief. However, when reading any statements of Laclede's version of Staff's position, Staff encourages the Commission to check any evidentiary citations given. Better yet, rather than relying on Laclede's brief for Staff's position, the Commission should instead rely on Staff's initial brief.

Laclede's misstatement of Staff's view of the statute, Section 393.200.1, RSMo, has been addressed above. For another example, on page 3 of its initial brief Laclede states that Staff's recommended authority of \$300 million is lower than the amount calculated by Staff, *as if* Staff's recommendation was based on Laclede's "formula" approach. However, a review of the transcript reveals that Staff's witness stated clearly that Staff's recommendation was not based on a "formula," and that he had performed a formula calculation *only as an alternative if* the Commission believed it had to follow a "formula."⁹ In fact, in the Staff recommendation filed back on June 8, 2015, Staff stated that although Staff had gone through the process of calculating an amount of financing authority, "Laclede's projected financial statements [*i.e.*, not Laclede's 'formula'] indicate the amount of capital Laclede reasonably expects to need authority to issue over the next three years."¹⁰ As stated earlier, Laclede's own testimony admits it does not need the amount of financing authority it has requested in this case¹¹; this is proof that Laclede's "formula" approach alone does not suffice under the statute. In fact, the Commission should recognize that even Laclede does not actually support the "formula"

⁹ Tr. Vol. 2, p. 180 lines 14-23.

¹⁰ Ex. 11, Schedule DM-r2, page 9.

¹¹ Ex. 2, p. 14 lines 1-2.

approach it claims is required, as its “formula” calculation results in such a large amount as to be unreasonable on its face. Instead, Laclede essentially picked an amount out of thin air to request in this case, which is neither the result of Laclede’s “formula” nor the amount which is necessary and reasonably required for its Missouri natural gas operations.¹² Unlike Laclede’s unsupported request, Staff’s recommended financing authority of \$300 million of total capital issuance through September 30, 2018, is based on Laclede’s actual financing plans over the next three years – *i.e.*, Laclede’s 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.¹³

Another example of Laclede’s misstatement of Staff’s position can be found on page 12 of Laclede’s initial brief under Issue 2 where Laclede claims that “both parties agree” that Laclede “has never given the Commission any reason to believe” its past financing record will change. While Laclede’s witness may have said this, Staff’s witness did not. In fact, Staff’s witness indicated that Laclede’s parent company, Laclede Group, has embraced an aggressive growth strategy, as reflected by its acquisition of Alagasco through the issuance of debt which must now be serviced.¹⁴

After reading Laclede’s initial brief, beyond the misstatements and false accusations, it becomes apparent that Laclede’s underlying objection is with the regulatory process itself and the related statutes; Laclede simply does not want to be the subject of regulatory oversight unless it amounts to no more than a rubber stamp.

¹² Since Laclede has admitted it does not need the amount of financing authority it has actually requested in this case, it certainly does not need the even larger amount it calculated under its “formula.”

¹³ Ex. 11, p. 2 lines 3-5 and p. 25 lines 19-22.

¹⁴ Tr. Vol. 2, p. 165 line 23 through p. 166 line 20.

This is reflected on page 6 of its initial brief where Laclede asserts that the amount of financing authority it has requested [which includes the requested “buffer” amount not allowed under the statute] will “permit Laclede to react in a timely way . . . without having to first navigate an additional and *unnecessary regulatory process*” (emphasis added); on page 9 where it states “if the Company was required to seek administrative approval” (which, in fact, it is required to seek); and also on page 9 where it refers to its “requested authority” – *i.e.* authority it has admitted is in excess of the amount needed¹⁵ – as a “*more efficient way to use administrative resources*” (emphasis added). While Laclede’s desire to be unregulated may be understandable, under the law it is a “gas corporation” and a “public utility” as defined in Section 386.020, (18) and (43), RSMo, and subject to regulation as such – including, but not limited to, Section 393.200.1, RSMo. As discussed in greater detail in Staff’s initial brief, under Section 393.200.1, RSMo, 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, *and* 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.” (emphasis added) While it might be “more efficient” to grant Laclede a blank check, this is not what the statute requires.

¹⁵ “[C]urrently-known financing needs are less than the amount of the authority requested.” Ex. 2, p. 14 lines 1-2.

Issue 2: What conditions should the Commission place on Laclede Gas Company's financing authority?

In its initial brief Laclede fails to provide a complete list of those conditions to which it should be subject, listing on page 11 only three specific conditions after the words “among other things.” The Commission should be aware that conditions were placed on Laclede’s financing in *both* Case Nos. GF-2009-0450 [the case upon which Laclede relies for much of its brief, and which imposed several conditions, not merely three] *and* GF-2013-0085 [the case which extended Laclede’s financing authority with an additional condition]. In addition, in the Conclusion section of its brief, Laclede nonchalantly states that its application should be approved “subject to the usual conditions” without any indication of what it considers to be the “usual conditions.” Rather than providing a list of conditions to which it should be subject, Laclede uses Issue 2 of its brief to continue its argument of Issue 1, and should be disregarded by the Commission.

As stated in Staff’s initial brief, at the hearing Laclede indicated it had no issue with the 10 conditions set forth under Issue 2 of Staff’s initial brief.¹⁶ The Commission should therefore adopt those conditions as unopposed. In addition, 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 of Staff’s initial brief.

¹⁶ Tr. Vol. 2, pp. 40-41.

CONCLUSION

For the reasons set forth in its initial brief and this reply brief, Staff requests the Commission issue an order adopting Staff's position on each of the issues in this case as set forth in detail in Staff's initial brief.

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

Respectfully submitted,

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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 8th day of January, 2016.

/s/ Jeffrey A. Keevil