

**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

**STAFF RESPONSE TO LACLEDE GAS COMPANY'S
APPLICATION FOR REHEARING AND RECONSIDERATION**

COMES NOW the Staff of the Missouri Public Service Commission and submits the following Response to Laclede Gas Company's Application for Rehearing and Reconsideration (the "Rehearing Application") as ordered by the Commission's *Order Directing Filing* issued herein on February 17, 2016. It should be noted that Staff does not necessarily agree with, or acquiesce in, statements made in Laclede's Rehearing Application which are not specifically addressed in this Response. Rather than replying to every individual statement made in Laclede's Rehearing Application, having presented and argued its positions in both its initial and reply briefs Staff is limiting this Response to those matters which Staff believes will most aid the Commission. Therefore, the failure of this Response to address any matter raised in Laclede's Rehearing Application should not be construed as agreement therewith or acquiescence therein.

Although Laclede's Rehearing Application makes no reference thereto¹, presumably Laclede filed the Rehearing Application pursuant to Section 386.500, RSMo. Section 386.500, RSMo, provides as follows:

¹ Commission rule 4 CSR 240-2.080(4) requires that "Each pleading shall include a clear and concise statement of the relief requested, *a specific reference to the statutory provision or other authority under which relief is requested*, and a concise statement of the facts entitling the party to relief." (emphasis added)

386.500.1. After an order or decision has been made by the commission, the public counsel or any corporation or person or public utility interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, *if in its judgment sufficient reason therefor be made to appear*, if a rehearing shall be granted the same shall be determined by the commission within thirty days after the same shall be finally submitted.

2. No cause or action arising out of any order or decision of the commission shall accrue in any court to any corporation or the public counsel or person or public utility unless that party shall have made, before the effective date of such order or decision, application to the commission for a rehearing. *Such application shall set forth specifically the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust or unreasonable.* The applicant shall not in any court urge or rely on any ground not so set forth in its application for rehearing.

3. An application for a rehearing shall not excuse any corporation or person or public utility from complying with or obeying any order or decision or any requirement of an order or decision of the commission, or operate in any manner to stay or postpone the enforcement thereof except as the commission may by order direct.

4. If, after a rehearing and a consideration of the facts, including those arising since the making of the order or decision, the commission shall be of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same. An order made after any such rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision.

(Emphasis added)

The essence of Laclede's argument in the Rehearing Application is the same argument it has made throughout this case; namely, that it needs only to fill out the "chart" provided by the Commission in the GF-2009-0450 *Report and Order*, and nothing more. However, as Staff has previously argued in this case – and as the

Commission has previously found in this case², even prior to the *Report and Order* – Laclede’s interpretation reads out of Section 393.200.1, RSMo, the “when necessary” and “reasonably required” provisions of the statute.³ The Commission has long rejected applications for rehearing which are based on the same argument(s) previously made and rejected in a case, since they present nothing new and do not constitute “sufficient reason” for rehearing pursuant to Section 386.500.1, RSMo, as quoted at length above.⁴

In the *Report and Order* issued on February 10, 2016, the Commission correctly found “that Laclede’s currently-known financing needs are less than the amount of the authority requested” (Finding of Fact number 8); that “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” (Finding of Fact number 9); that “Laclede can request financing as often as it needs to, and Laclede has funding options other than long-term financing” (Finding of Fact number 10); and that “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” (Finding of Fact number 11). The

² 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.

³ As the Commission correctly concluded in the *Report and Order* in this case in Conclusion of Law number 8, “The Commission is not bound by *stare decisis* based on it[s] prior decisions.” However, the Commission is bound by the controlling statutes. Under the statute (Section 393.200.1, RSMo), a gas corporation may only issue long-term financing *when necessary*.

⁴ See, e.g., *Mark v. Southwestern Bell Telephone, L.P.*, 2006 WL 3377560 (Mo. P.S.C.), Order Denying Application for Rehearing; *Re St. Louis County Water Company*, 2001 WL 410279 (Mo. P.S.C.), Order Denying Rehearing; *In the Matter of the Application of AT&T Communications of the Southwest, Inc.*, 2001 WL 1917119 (Mo. P.S.C.), Order Denying Rehearing.

result reached by the *Report and Order* is consistent with these findings.⁵ However, if the Commission were to adopt Laclede's argument, it would be treating Laclede differently than Missouri's other utility companies and granting Laclede financing authority greater than its financing needs – as the Commission correctly found, prior financing authority has proven to be excessive by hundreds of millions of dollars. Under Laclede's argument, the Commission is bound to ignore the lessons learned from past experience and would be bound to continue to grant Laclede financing authority which is excessive by hundreds of millions of dollars. Adopting Laclede's argument would contradict the findings of fact in the *Report and Order* set forth above; surely this is not what the Commission intended. Staff does not believe the Commission is required to ignore the lessons of the past, learned from the actual results of prior orders, nor should Laclede be given preferential treatment as compared to Missouri's other utility companies and receive financing authority in excess of its financing needs – financing which is not necessary, as required by Section 393.200.1, RSMo.

Laclede's Rehearing Application clearly takes certain statements from the GF-2009-0450 *Report and Order* out of context. For example, the Rehearing Application quotes that order as saying 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)." However, a review of the order reveals that the quotation from page 13 was in regard to differentiating between authorization for debt versus authorization for

⁵ By quoting specific findings of fact from the *Report and Order* Staff does not mean to imply that other findings of fact were incorrect, or that the result reached in the *Report and Order* is inconsistent with other findings of fact, or that Laclede's argument is consistent with the other findings of fact.

equity⁶ as related to allowable purposes for financing under the statute. Similarly, the quotation from page 15 was in regard to differentiating between future expenses versus past expenses under the statute. In other words, both of these quotations dealt with issues in that case which were not issues in the current case; the issues in the two cases were not identical. Neither does the 2010 order distinguish between different “types of flexibility.”

One thing on which Staff and Laclede agree is that the current *Report and Order* reflects a vote of 4 - 1, with only Commissioner Kenney dissenting. However, based on the voice vote at the Commission’s agenda session, the vote should be reflected as 3 – 2, with both Commissioners Kenney and Rupp dissenting. However, this error can be corrected without granting rehearing.

WHEREFORE, for the foregoing reasons, Staff respectfully requests that the Commission issue an order reflecting the correct vote for the *Report and Order* issued on February 10, 2016, and in all other respects denying Laclede’s Application for Rehearing and Reconsideration.

⁶ In the current case, the issue was what amount of *total capital* issuance should be authorized; this includes both debt and equity. As the Commission’s ordered paragraph number 1 in the current case stated: “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.” The foregoing clearly includes both debt and equity.

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 2nd day of March, 2016.

/s/ Jeffrey A. Keevil