

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

DISSENTING OPINION OF COMMISSIONER WILLIAM P. KENNEY **IN THE REPORT AND ORDER ISSUED FEBRUARY 10, 2016**

I respectfully dissent from the majority opinion in this case because I believe granting the full amount of financing Laclede requested is reasonable and necessary as required by statute, allows ample regulatory protection and constitutes good public policy for the Commission to follow in the future. Under Section 393.200, RSMo, Laclede is allowed to seek \$1 billion dollars in financing authority, but in this case Laclede requested only half of that amount per its reasonable interpretation of the decision in the prior financing case (2010 Order).¹ Laclede presented a justifiable purpose for seeking a certain amount in financing, has a record of using the authority with restraint and should have been given authorization to finance \$550 million. I think the action by the majority interferes with Laclede's management, creates uncertainty for the utility, and encourages regulatory interference rather than merely regulatory oversight.

The Commission is not bound by stare decisis.² In this case, I do not believe the reliance on the purpose of "flexibility" warranted the outcome of significantly reducing

¹ Commission File No. GF-2009-0450.

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

the amount of financing authority Laclede receives from the Commission. The majority states, “[i]f the Commission determines it will not follow a prior ruling, it should set forth its reasons, which may include policy considerations or different legal perspectives or an explanation of how the prior ruling is distinguishable from the current case.”³ I do not believe the majority decision is consistent with previous treatment of Laclede’s financing requests and I think the reliance on the 2010 Order is misplaced. Additionally, there are multiple public policy reasons to allow Laclede the total amount of financing requested.

Laclede has been a good steward of the financing it has received and currently has an A- credit rating. Laclede has maintained a strong credit rating through its recent financing cases.⁴ Laclede had an A credit in 2007 and an A - credit rating in 2010.⁵ During the 2007 and 2010 cases, Laclede was granted authority to finance \$500 million and \$518 million, respectively.⁶ Staff testified that there has been no harm to the public as a result of granting Laclede large amounts of financing authority.⁷ In 2010, Laclede did not use all of its authorized financing.⁸ The majority uses this fact as proof of excess financing authority, but I view it as proof of the Company’s good stewardship.⁹ In this case, there is sufficient reason to continue to treat Laclede as the Commission has in those past cases by allowing it to access more than \$500 million in financing authority.

Instead, the majority only allowed Laclede to finance \$300 million instead of the \$550 million it requested. That decision was made even though Laclede has doubled in

³ EFIS Item No. 74, Report and Order page 8.

⁴ Tr. Page 129, lines 8-9.

⁵ Tr. Page 41-42, lines 24-25; Tr. Page 42, lines 1-5.

⁶ Tr. Page 62 lines 6-7.

⁷ Ex. 11, page 11, line 11.

⁸ Ex. 11 page 4.

⁹ Ex. 11, page 4, Report and Order, page 5.

size from a merger with Missouri Gas Energy, and tripled its capital expenditure budget since the last financing case in 2010.¹⁰ That decision was made, in part, because that is the amount Laclede projected financing in a presentation to a rating agency. The \$300 million presented to the rating agency represents the middle point of the range of probable and possible outcomes that resulted from Laclede's financial forecasting.¹¹ This amount can change due to many variables including a change in capital expenditures or a change in accounting rules.¹² Some of those are out of the control of the utility but necessary for the utility to consider in its plans.

The Commission should not substitute its decision for the management decisions of a utility company. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs legally, within the appropriate regulations and does not harm the public.¹³ If Laclede believes it should build in an amount to take advantage of market conditions or respond to changed accounting rules by making changes to their plants, then the Commission should not interfere with that decision or micro-manage the Company. This is especially true since Laclede has repeatedly demonstrated credibility in prudently using prior finance approval. Laclede should not be punished as a result of using less than the financing authority it has been granted in the past. Even if Laclede sold all \$550 million worth of bonds, it would still have an investment grade credit rating.¹⁴

¹⁰ Tr. Vol 2 page 12.

¹¹ Tr. Vol 2, page 76 line 25 – page 77, lines 1-4.

¹² *Id.*

¹³ *State ex rel. Harline v. Public Service Commission of Mo.* 343 S.W.2d 177, 182 (Mo.App.1960).

¹⁴ Ex. 11, Murray Rebuttal page 22, lines 6-9.

Prudent management requires that provisions be made for uncertainties of future markets and other circumstances.¹⁵ Allowing Laclede access to more financing prevents additional regulatory costs because the company would not have to file additional requests to respond to market conditions or changes in management decisions. The requested amount gives the Company the ability to determine the appropriate mix of financing alternatives that is best calibrated to benefit customers based on changing market conditions.¹⁶ Laclede convincingly argued that the \$300 million it told the financial community it had plans to spend was only an estimate. It is possible that Laclede will have to exercise the total amount of financing authority requested in the event there are unexpected and dramatic changes in the capital markets, revisions in accounting rules such as those relating to operating versus capital leases, and unexpected changes in anticipated financing requirements.¹⁷ The Company should not be penalized for reasonable estimates given to the financial community. It is reasonable to give a utility enough authority to respond to contingencies that arise in the financial market that could benefit ratepayers. This is particularly true when some of the variables, such as changes in tax codes or accounting requirements, are outside their control. The Commission should not interfere with utility management decisions.

The result of this case may send a negative signal to the financial markets. In 1993, the financing amount as a percent of total capitalization for Laclede was approximately 26%; in 1995 it was approximately 29%; in 2000 it was approximately 50%; and the amount Laclede requested in this case would have been approximately

¹⁵ Ex 2, Rawlings Direct page 15, lines 9-22.

¹⁶ Ex 2, Rawlings Direct page 15, lines 18-22.

¹⁷ Ex 2, Rawlings Direct page 14, lines 4-9.

25% of total capitalization.¹⁸ If the percentages of 26-29% were reasonable in the past, a lower one as presented in this case should also be reasonable. A different result leads to inconsistent analysis in Commission cases and creates regulatory uncertainty.

The majority asserts that Laclede can request further financing as often as it needs to in the future. However, this would require a new filing and create a regulatory time constraint that would make it difficult for the Company to take advantage of positive financial opportunities and would consume additional time and resources. In this case, Laclede filed *Notice of Intent to File an Application for Approval of Financing Authority*¹⁹ on February 3, 2015 and filed its application on April 15, 2015.²⁰ On June 8, 2015, Staff filed its recommendation.²¹ A hearing was held on November 18, 2015²² and the Report and Order was issued on February 20, 2016.²³ In total, it took this finance case over one year from start to finish, and ten months from the day the application was filed. This timing is one month less than the time it takes to consider a general rate case proceeding where all relevant factors in ratemaking, including the prudence of a utility's financing decisions, are considered. While it is true that the Company may request more financing in a new case, it is burdensome on the Company, and ultimately the ratepayers, due to the additional use of necessary resources and length of time it takes when it is contested and the potential lost benefits of being unable to take advantage of the financial markets. Even when it is not contested like this case, in the bond markets two months can be an eternity.

¹⁸ Ex. 11, Murray Rebuttal page 10, lines 8-15, page 9, lines 17-18 page 4, line 6.

¹⁹ EFIS Item No 1 in GF-2015-0181.

²⁰ EFIS Item No. 2 in GF-2015-0181.

²¹ EFIS Item No. 6 in GF-2015-0181.

²² EFIS Item Nos. 53, 54 in GF-2015-0181.

²³ EFIS Item No. 74 in GF-2015-0181.

Laclede should have been given authority to finance \$550 million in this case as that decision is reasonable and necessary as required by statute, and constitutes good public policy for the Commission to follow in the future.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'WPK', followed by a horizontal line.

William P. Kenney
Commissioner

Dated this 9th day of March, 2016
at Jefferson City, Missouri