

**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 ) **File No. GF-2015-0181**  
Authority Previously Approved by the Commission )

## **STAFF'S RESPONSE PURSUANT TO ORDER DIRECTING FILING**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and respectfully submits *Staff's Response Pursuant to Order Directing Filing* ("Staff Response"):

1. On September 8, 2015, Laclede Gas Company (“Laclede”) filed a pleading titled *Motion for Protective Order in Resolution of Discovery Dispute* (“Motion”). On the same day it filed the Motion, Laclede also filed *Laclede’s Response to Staff’s Motion to Compel* (“Laclede Response”).

2. On September 9, 2015, the Commission issued, by delegation of authority, an *Order Directing Filing* (“Order”) in which Staff was ordered to respond to Laclede’s Motion no later than September 16, 2015.

3. Staff is filing this Staff Response to Laclede's Motion as directed in the Order. Contemporaneously herewith Staff is also filing *Staff's Reply to Laclede's Response to Staff's Motion to Compel* ("Staff Reply") as a separate pleading.

4. To begin, the pre-requisite conditions under which Laclede is seeking a protective order are not entirely clear due to a conflict between Laclede's Motion and Laclede's Response. Paragraph 2 of Laclede's Motion (to which Staff was ordered to respond) states

Should the Commission nevertheless determine that such information is potentially relevant to the matters at issue in this proceeding, Laclede seeks a protective order specifying that Laclede's production of the work

product information is for purposes of this proceeding only and that such information will not be used against Laclede in any other proceeding (unless it is separately obtained through the discovery process undertaken in that separate proceeding). With these protections, ***Laclede is willing to agree to a limited waiver of its work product privilege.*** (emphasis added)

As shown in the quotation above, Laclede's Motion clearly assumes the requested information to be privileged work product information and states it is willing to agree to a limited waiver.<sup>1</sup> However, paragraph 12 of Laclede's Response states

***Should the Commission*** reject Laclede's position that the information requested by Staff is not relevant to the matters at issue in this proceeding, and ***also reject Laclede's assertion of privilege for this information***, the Company is separately seeking a Protective Order today under which the requested information would be made available solely for purposes of this case and not for any other proceeding unless obtained through the discovery process undertaken in such proceeding. (emphasis added)

Laclede's Response clearly indicates it is seeking a protective order only if the Commission rejects Laclede's assertion of privilege for the requested information – in direct contradiction of the portion of Laclede's Motion quoted above. As discussed in the separate Staff Reply being filed contemporaneously herewith, the requested information is not privileged work product information. Therefore, if the Commission grants Laclede a protective order, the Commission's order should clearly state that it is not finding such information to be privileged information and that no such conclusion should be drawn from the granting of the protective order.

5. Before granting Laclede a protective order for the information requested by Staff, the Commission should be aware that Staff has not encountered discovery problems for this type of information in financing cases filed by other utility companies; perhaps more

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<sup>1</sup> Although Laclede's Motion assumes that the requested information is privileged work product material, whether or not the requested information is privileged work product material is in dispute, is not conceded by Staff, and is one of the subjects of the separate Staff Reply being filed contemporaneously with this pleading.

significantly, in Laclede's previous contested financing case Staff did not encounter problems obtaining this information. Despite the oft-cited proposition that the Commission is not bound by *stare decisis*, Staff is concerned that if Laclede is given new and special treatment for information of this type that in the future Laclede – and possibly other utilities which have previously provided this information subject only to a Highly Confidential designation – will claim this information to be privileged work product information or claim to be entitled to a protective order even in the absence of proving such information to be privileged. Therefore, if the Commission grants Laclede a protective order, the Commission's order should clearly state that it is to have no precedential effect whatsoever for any utility, that no right to a future protective order should be inferred by any utility from the granting of the protective order, and that no conclusion should be drawn from the granting of the protective order that the type of information involved in the discovery dispute is privileged.

6. As noted above, one of the conditions Laclede is seeking in the protective order is “that [the requested] information will not be used against Laclede in any other proceeding (***unless it is separately obtained through the discovery process undertaken in that separate proceeding***).” (emphasis added) If the Commission grants Laclede a protective order Staff respectfully submits that requiring to Staff to re-engage in the discovery process – i.e., requiring Staff to request information already in its possession – would not be very efficient, nor make sense. Staff suggests that if a protective order is granted it would make more sense and be more efficient in the event that Staff (or any other person or entity that is a party to this case and receives the information) intends to use such information in any proceeding other than this case for Staff to simply inform Laclede in advance that it intends to use such information in such proceeding and allow Laclede to seek an order from the Commission to prevent the use of such information in such proceeding. Either way, Laclede will

need to clearly designate the information as subject to the restriction placed on the information by the Commission to guard against accidental misuse of the information.

7. Subject to the considerations and conditions set forth in this Staff Response, Staff would not object to the Commission issuing a protective order directing Laclede to provide un-redacted responses to the Staff DRs which are the subject of Staff's Motion to Compel which was filed on August 26, 2015, within 5 business days of the Commission's order. If the Commission decides to issue a protective order it should provide that:

- Laclede shall, within 5 business days of the order, provide full, complete, and un-redacted responses to Staff DRs 2, 17, 18, 20 and 24.

- The responses will be treated as Highly Confidential.

- In the event that Staff (or any other person or entity that is a party to this case and receives the information) intends to use the previously redacted information in any proceeding other than this case, Staff (or such other person or entity) must inform Laclede that it intends to use such information in such proceeding at least 30 days in advance of such use and Laclede may then seek an order from the Commission to prevent the use of such previously redacted information in such proceeding; furthermore, Laclede shall set forth this condition on its un-redacted responses and must clearly designate the previously redacted information subject to this condition.

- The Commission's order should clearly state that it is not finding the previously redacted information to be privileged information and that no such conclusion should be drawn from the granting of the protective order.

- The Commission's order should clearly state that it is to have no precedential effect whatsoever for Laclede or any other utility, that no right to a future protective order should be inferred by Laclede or any other utility from the granting of the protective order, and that no conclusion should be drawn from the granting of the protective order that the type of information involved in the discovery dispute is privileged.

**WHEREFORE** Staff respectfully submits the foregoing response as directed by the Commission's *Order Directing Filing* issued herein on September 9, 2015.

Respectfully submitted,

**/s/ Jeffrey A. Keevil**

Jeffrey A. Keevil

Missouri Bar No. 33825

Attorney for the Staff of the

Missouri Public Service

Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 526-4887 (Telephone)

(573) 751-9285 (Fax)

Email: jeff.keevil@psc.mo.gov

**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 16<sup>th</sup> day of September, 2015.

**/s/ Jeffrey A. Keevil**