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

<u>LACLEDE GAS COMPANY'S REPLY BRIEF</u>

COMES NOW Laclede Gas Company ("Laclede" or "Company"), and files its reply brief in response to the Initial Brief filed by Staff on December 18, 2015, and in support thereof states as follows:

Staff's position, at page 2 of its brief, that the Commission should base Laclede's financing authority in this case on the Company's "actual, identifiable *need* [for financing] over the next three years," conflicts with both the law and the facts for determining financing authority. Staff's position conflicts with the law because it inserts standards into the financing authority statute, Section 393.200.1 RSMo (the "Statute") that do not exist, and does so in a manner that directly contradicts the Commission's June 16, 2010 Report and Order in Case No. GF-2009-0450 (the "2010 Order") interpreting the Statute.[1] Staff's position conflicts with the facts because it ignores the evidence of capital expenditures and refinancings reasonably required for regulated purposes that overwhelmingly support the financing authority requested by the Company, and because it misinterprets the meaning of the Company's rating agency forecast for the next three years – even if that forecast was relevant to the Statute, which it is not.

In its interpretation of the Statute, Staff emphasizes the terms "when necessary" in the fourth line of the Statute reproduced in Attachment 1, and "reasonably required" in the third line from the bottom of Attachment 1. Staff calls the Commission's attention to these terms as if the Commission had not considered them in the 2010 Order. To the contrary, a review of the 2010

[1] For convenience, the language of the Statute is set forth in Attachment 1 to this Reply Brief.

Order reveals that the Commission carefully considered the entire Statute, specifically including these terms. On page 8 of the 2010 Order the Commission stated:

> "For all [of] subsection 1's convoluted digressions, its intent is simply to restrict long-term financing to allowable purposes. Subsection 1 accomplishes that intent by linking two matters: amount and purpose.
>
> The statutory standard is whether Laclede supports the amount it seeks with statutorily allowed purposes:
>
>> A gas corporation . . . may issue [financing] when **necessary** for [allowed purposes only if] there shall have been secured from the commission an order authorizing such issue, and the amount thereof, and stating the purposes to which the [financing is] to be applied, and that, in the opinion of the commission, the [financing] is or has been **reasonably required** for the purposes specified in the order.[23]
>
> Purpose is the premise of any long-term financing authorization. The Commission must issue:
>
>> an order . . . **stating the purposes** to which the [financing is] to be applied, and that, in the opinion of the commission, the [financing] is or has been reasonably required for **the purposes specified** in the order[.]"

The Commission's footnote 23 cites that the Commission itself inserted the **bolded** emphasis in the above quote. As such, it could not be clearer that the Commission expressly considered and addressed the meaning of these terms in arriving at its decision in the 2010 Order. It should also be noted that the 2010 Order was unanimously approved by Commissioners Clayton, Davis, Jarrett, Gunn and R. Kenney.

In short, the Commission's considered decision in the 2010 Order was that "when necessary" and "reasonably required" both refer to the purposes for which long-term financing is used. In effect, the Commission found that "when necessary" means that the necessary capital construction was present to justify the long-term financing. So, for example, if Laclede had constructed only $100 million in capital assets, it would not be able to issue $200 million in long-term financing, because that amount would not be <u>necessary</u> to finance capital assets.

Likewise, "reasonably required" also modifies the purposes that justify long-term financing. In other words, for capital spending to be eligible for long-term financing, such capital spending must be reasonably required for the allowed purposes. As another example, if Laclede spent capital to build a casino, this would not justify financing authority, because such amount is not <u>reasonably required</u> for Laclede's plant or system. Laclede's past capital, current capital and projected capital expenditures have been, and are, all supported exclusively by allowed regulatory purposes. No one has questioned this fact. But even if it had been questioned, Laclede's request is already $450 million below the amount of capital spending justified in the application.

In its brief, Staff re-interprets the phrase 'when necessary" to mean financing authorization be available to a utility only to the extent the utility absolutely needs such financing. (Staff Initial Brief, page 5) This re-interpretation of the Statute is flawed because it effectively means that long-term financing would only be authorized in situations where the utility had no other means of financing capital assets, that is, where the utility had used its last dollar of short-term financing and funds from operations and had no choice but to issue long-term financing. Neither the Staff nor any utility has ever been expected to act in this manner nor has anyone ever ascribed this meaning to the Statute.

Further, this view clearly conflicts with the Statute as interpreted by the Commission in the 2010 Order, wherein the Commission permitted financing authority for the acquisition or construction of property, plant and system, without offset for income or other funds from operations. (2010 Order, pp. 9-12) In that order, the Commission explicitly rejected Staff's attempt to offset allowed financing authority by the amount of Laclede's income. (*Id.,* p. 12). In this case, Staff withdrew its offset for income, but instead proposed to offset financing authority by a much greater amount, being all of the other funds from operations. (Tr. 132, line 15 to 133, line 15) Staff's attempt to rewrite the Statute and 2010 Order should be rejected.

On page 6 of its brief, Staff is critical that Laclede merely "filled out the chart" approved by the Commission in the 2010 Order. Although Staff ridicules Laclede, the Company did nothing more than apply the facts of this case to the law, as determined in the 2010 Order, while meeting its burden of proof by showing the amounts reasonably required for regulated purposes. Such amounts were far greater than the authority requested and were not disputed by Staff. (Exhibits 3 and 4 of the Appendix to Exhibit 1) Applying the facts to the law is standard practice and should be expected, not mocked.

Staff, on the other hand, has taken the unconventional and inappropriate approach of ignoring the chart in the 2010 Order and overriding the Commission's interpretation. Staff's reliance on its own interpretation of dicta in an interlocutory discovery order[2] to do so is very thin gruel in comparison to the exhaustive analysis of the Statute in the 2010 Order's 23-page decision. Staff's assertion that the 2010 Order is distinguishable from the present case is also misplaced. As shown below, the issues in the 2010 case are virtually identical to the issues in this case.

Issues in Case No. GF-2015-0181	**Issues in Case No. GF-2009-0450**
1. What amount of financing should be authorized by the Commission for Laclede Gas Company through September 30, 2018?	**1A. What amount of long term debt financing authority should the Commission authorize for Laclede?**
2. What conditions should the Commission place on Laclede Gas Company's financing authority?	**1. What conditions can and should the Commission place on Laclede's financing authority?**

[2] Staff Brief, page 7.

In addition to being inconsistent with the law, Staff's position also conflicts with the facts demonstrated by Laclede to support the amount of capital expenditures and refinancing reasonably required for regulated purposes, and because it misinterprets the amount of financing authority the Company may need over the next three years. Staff's repeated position in its brief is that the Statute dictates that the Commission approve only the financing amount *actually needed* by Laclede. (Staff Brief, pages 2, 3, 5, 7-8) It is Staff's position that this amount is $300 million, which is the amount Staff recommended. However, even if Staff's invented standard was meaningful under the Statute, the facts are clear that the $300 million is only an estimate for long-term financing over the next three years. It is a single forecast, an amount that represents one middle-ground scenario and does not provide a range of possible scenarios to fit financing needs. (Exh. 4, p. 15, lines 18-20) In effect, Laclede's position is that, while it has legally justified $1.0 billion in financing authority, it *needs* only $550 million in authority to meet estimated financing amounts and allow for reasonable contingencies. Stated another way, Laclede needs $550 million in financing authority to fulfill expected financings and to permit the Company to react in a timely way to market conditions in a manner that may benefit customers without having to first navigate an additional and unnecessary regulatory process. (Exhibit 2, p. 15, line 9 to 16, line 11)

Finally, while the parties generally agree on the conditions to be placed on the financing authority, Staff has omitted one standard condition, and proposed one new condition. Condition number 1 on page 9 of the Staff Brief should be amended to add the following: "Laclede shall not use such authorization in a manner that would prevent Laclede from maintaining an investment grade credit rating."

The condition which Staff proposes to add would prohibit Laclede from transferring to Laclede Group funds raised under the financing authority. The condition is based on unsubstantiated concerns that the money could be used to fund excessive dividends to its parent. This proposal is untimely, impractical, imprudent and unnecessary. First, it is untimely because the Staff completely failed to identify or discuss this condition in either its pre-filed rebuttal testimony or in its Statement of Position in this case. The Commission has a long procedural history of requiring that parties pre-file their testimony and articulate their positions in advance of the evidentiary hearing in order to prevent unfair surprise, ensure that all issues can be thoroughly explored and guarantee that such proceedings are conducted in an orderly and effective manner. For this reason alone, the Commission may choose to reject the proposed condition.

Second, it is impractical because dollars are fungible. As a result, it would be virtually impossible for Laclede to identify whether a dividend was paid with financed dollars or non-financed dollars. Notably, the Staff has offered nothing in its discussion of this untimely condition to explain how this inherent shortcoming could be cured.

Third, Staff's proposed condition is imprudent because it discriminates against equity owners. As noted by Laclede witness Lynn Rawlings, paying dividends to equity holders is as normal for regulated utilities as paying interest to bondholders. Prohibiting dividends would likely diminish that source of capital. (Tr. 80, lines 5-10)

Finally, Staff's proposed condition is unnecessary because regulatory oversight, financing conditions and other rules already prevent improper transfers. The best deterrent is the threat of a prudence disallowance related to a debt issuance in a subsequent rate case. In addition, under already existing conditions which the Company has proposed to continue in this case, Laclede could not issue debt to pay a dividend if that caused its total debt to exceed its rate base. In other words, there must be rate base available to support all of Laclede's long-term debt. Nor could Laclede issue debt to fund the dividend if such action caused the equity in its capital structure to fall below 35%, or conversely, cause debt to rise above 65%. This is a very effective limitation because incurring a large debt and then distributing the proceeds out of the Company causes an immediate and substantial increase in debt, and a corresponding immediate and substantial decrease in equity. (Tr. 99, line 17 to 101, line 16) Further, Laclede could not take such action if it caused the Company to lose its hard-earned investment grade credit rating. Given the protective conditions already in place, prohibiting dividends in the manner suggested by Staff is just further indication of Staff's desire to micromanage the Company's financing operations. Just as the Commission found in the 2010 Order, there is no evidence in this case that an improper dividend has occurred, is about to occur, or is even likely to occur. (2010 Order, pp. 19-20) Finally, Laclede could be stopped from issuing such a dividend by the debt covenants that accompany its first mortgage bonds. (Tr. 100, lines 5-12)

In conclusion, the Commission should approve Laclede's application for $550 million in financing authority, subject to the usual conditions as set forth in Staff's Brief, as amended herein. As demonstrated in Laclede's Initial Brief, its request is lawful, reasonable and beneficial to consumers. The Commission should order such authority to be effective through September 30, 2018, which is now less than three years away, or to such other later date that the Commission believes to be appropriate under the circumstances.

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission accept Laclede's Reply Brief in this case.

Respectfully submitted,

LACLEDE GAS COMPANY

By: **/s/ Rick Zucker**

Rick Zucker, #49211
Associate General Counsel
Laclede Gas Company
700 Market Street, 6th Floor
St. Louis, MO 63101
Telephone:(314) 342-0533
Facsimile: (314) 421-1979
E-mail: rick.zucker@thelacledegroup.com

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing pleading was served on all parties of record on this 8th day of January, 2016 by hand-delivery, e-mail, fax, or by placing a copy of such document, postage prepaid, in the United States mail.

/s/ Marcia Spangler

ATTACHMENT 1

393.200. 1. A gas corporation, electrical corporation, water corporation or sewer corporation organized or existing or hereafter incorporated under or by virtue of the laws of this state may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, <u>when necessary</u> 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 or for the reimbursement of moneys actually expended from income, or from any other moneys in the treasury of the corporation not secured or obtained from the issue of stocks, bonds, notes or other evidence of indebtedness of such corporation, within five years next prior to the filing of an application with the commission for the required authorization, for any of the aforesaid purposes except maintenance of service and except replacements in cases where the applicant shall have kept its accounts and vouchers of such expenditure in such manner as to enable the commission to ascertain the amount of money so expended and the purposes for which such expenditure was made; provided, and not otherwise, that there shall have been secured from the commission an order authorizing such issue, and the amount thereof, and stating the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, 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 <u>reasonably required</u> for the purposes specified in the order, and that except as otherwise permitted in the order in the case of bonds, notes and other evidence of indebtedness, such purposes are not in whole or in part reasonably chargeable to operating expenses or to income.