

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

**LACLEDE GAS COMPANY'S REPLY TO STAFF'S RESPONSE  
ON REHEARING AND RECONSIDERATION**

**COMES NOW** Laclede Gas Company ("Laclede" or "Company"), and files this reply to Staff's March 2 response on Laclede's application for rehearing and reconsideration ("Application") of the Commission's February 10, 2016 Order in this case (the "2016 Order"), and in support thereof states as follows:

1. On February 17, 2016, the Commission issued an order directing Staff to respond to Laclede's Application by March 2. Staff's March 2 Response provided nothing of substance to contest the points made in the Application.<sup>1</sup> Staff had virtually no answer to the point that, in following the 2010 Order,<sup>2</sup> the 2016 Order erred by rejecting flexibility that was both allowed and even favored by the 2010 Order. Staff also offered nothing of substance to contest the point that the Commission closely scrutinized the Statute<sup>3</sup> in 2010 and found that the amount of financing authority equaled the amount of expenditures made for the purposes of the Statute. Finally, Laclede relied on the Commission's regulatory consistency by providing information for

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<sup>1</sup>Rather than attempt to refute the substantive points raised by Laclede in its Application, Staff asserts in its Response that the Commission should deny the Application because it raised no new arguments. Contrary to Staff's assertion, the Application primarily raised the argument that, in attempting to follow the 2010 Order's rejection of flexibility for amounts *above* capital expenditures, the 2016 Order mistakenly rejected the kind of desirable flexibility that the 2010 Order had plainly endorsed, thus failing to give Laclede credit for its statutorily authorized expenditures consistent with the 2010 Order. Obviously this argument is new, because Laclede could not have made it until after the 2016 Order was issued.

<sup>2</sup> Commission's June 16, 2010 Report and Order in Case No. GF-2009-0450

<sup>3</sup> Section 393.200.1 RSMo

this case in the manner approved by the 2010 Order. Staff's criticism of Laclede's use of the chart provided in the 2010 Order is misplaced.

## **FLEXIBILITY**

2. In the Application, Laclede demonstrated that the 2010 Order clearly authorized the type of financing flexibility that was above planned financing estimates, so long as it was not above the amount of expenditures made for the purposes specified by the Statute. Applying that finding to the facts in the 2016 case substantiates financing authority above Laclede's minimum financing estimate of \$300 million, but not to exceed Laclede's Statutory expenditures of \$1.0 billion. Thus, the 2016 Order erred in its Decision denying a financing request of \$550 million, an amount squarely within the "flexibility" range determined by the Statute and the 2010 Order.

3. Staff's March 2 response contained exactly one sentence that addressed flexibility, and it was patently false. Staff stated that the 2010 Order did not "distinguish between different 'types of flexibility.'" (Staff Response, p. 5) On the contrary, the 2010 Order unequivocally approved flexibility above minimum planned estimates as not only beneficial, but critical;<sup>4</sup> and just as clearly disallowed flexibility for amounts in excess of expenditures reasonably required for the purposes of the Statute.<sup>5</sup> Staff's unsubstantiated denial of this obvious fact is not credible.

4. In summary, although the 2016 Order expresses the Commission's desire to avoid micromanaging utilities, by rejecting all of the 2010 Order's favored flexibility to react to market conditions, the 2016 Order wrests business discretion away from Laclede and hands it to Staff.

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<sup>4</sup> Application for Rehearing, p. 2; 2010 Order, p. 5

<sup>5</sup> Application for Rehearing, p. 3; 2010 Order, p. 10

## **AMOUNT = PURPOSE**

5. The 2010 Order and the Statute link the amount of financing authority to the amount expended for the purposes contained in the Statute, as reflected in Commission orders. In the March 2 Response, Staff again misuses the Statute's phrases "when necessary" and "reasonably required" to mean that financing authority is limited to only the amount that is 'necessary' and 'reasonably required.' The 2010 Order carefully considered the entire Statute, specifically including these terms, and repudiated Staff's position, stating:

"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.<sup>23</sup>

Purpose is the premise of any long-term financing authorization.

(2010 Order, p. 8, emphasis in original)

6. In other words, the financing issuances must have been made 'necessary' by expenditures that were 'reasonably required' for the mandated purposes. The undisputed evidence in this case demonstrated spending by Laclede of \$1.0 billion for past and projected capital expenditures and a refinancing, which are the purposes listed in the 2010 Order and the Statute. Nor did anyone dispute that these expenditures were reasonably required for those purposes.

7. Staff argues that authorizing \$550 million would provide Laclede preferential treatment compared to other Missouri utilities. This is not true. Laclede is requesting only the rights granted by the Statute - rights to which every utility is entitled. And Laclede, like every other utility, has discretion to request less than the maximum amount allowed by law. In fact, by seeking \$550 million in financing authority in this case, Laclede, like every other utility, has requested less than the maximum amount allowed by law.

8. In summary, the Commission was exactly right when it stated: “Missouri law requires the Commission to protect ratepayers by limiting a utility’s financing authority to purposes specified in the financing statute.” (2016 Order, p. 8) The Staff’s reading of the phrases ‘when necessary’ and ‘reasonably required’ conflict with the plain language of the Statute and the express findings of the Commission in the 2010 order.

### **REGULATORY CONSISTENCY**

9. In the 2016 Order, the Commission wrote:

“While the Commission is not bound by its previous decisions, in the interest of regulatory consistency, certainty and predictability, a departure from a previous policy should be reasonable and not arbitrary...The Commission is faced with the same question in this case as in Laclede’s previous case and adopts its prior conclusion; flexibility to respond to rapidly changing market conditions is not a specific purpose allowed under the law.”  
(2016 Order, pp. 8-9)

10. After decades of uncertainty over the strangely worded Statute, in 2010, the Commission painstakingly dissected it and decided what the law meant. This provided a roadmap in the form of a chart for Laclede to follow in applying for future financing authority. By deriding Laclede for just ‘fill(ing) out the ‘chart,’<sup>6</sup> Staff is effectively ridiculing Laclede for

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<sup>6</sup> Staff Response, p. 2

relying on the valuable tenets of regulatory consistency, certainty and predictability by following the dictates of the 2010 Order.

11. Laclede agrees with the Commission's quotes from the 2016 Order as cited in paragraphs 8 and 9 above. Laclede seeks only to clarify that the flexibility referred to in paragraph 9 is flexibility over and above expenditures made for the purposes in the Statute.

## **CONCLUSION**

12. The Commission should approve Laclede's application for \$550 million in financing authority, because the clear evidence in this case demonstrated that such amount is less than the amount of \$1.0 billion in capital that is to be procured or has been paid for by Laclede for the purposes of the Statute and the order enforcing the Statute. Laclede's requested authority is consistent with the Statute and the 2010 Order, and is lawful, reasonable and beneficial to consumers.

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission reconsider its decision and issue an order approving \$550 million in financing authority or, in the alternative, rehear this case.

Respectfully submitted,

**LACLEDE GAS COMPANY**

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**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 3rd day of March, 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**