

**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'S RESPONSE TO STAFF'S MOTION TO COMPEL

COMES NOW Laclede Gas Company ("Laclede" or "Company"), and files this Response to Staff's August 26 Statement Describing Discovery Concerns, Motion to Compel and Motion for Expedited Treatment (the "Motion"). In a separate, but related, pleading Laclede is also filing a Motion for Protective Order as a proposed resolution of the discovery dispute. In support of this Response, Laclede states as follows:

1. In the Motion, Staff makes two requests: (a) that the Commission compel Laclede to provide to Staff workpapers supporting the testimony of Laclede witness Lynn Rawlings; and (b) that the Commission compel Laclede to provide unredacted projected financial statements in response to Staff DRs 2, 17, 18, 20 and 24.

WORKPAPERS

2. Staff has asked for workpapers associated with Lynn Rawlings' testimony. Ms. Rawlings testimony basically adopted the information and figures contained in the Application and the exhibits to the Application, and explained how that information complied with the Commission's June 16, 2010 Order in the previous Laclede financing case, Case No. GF-2009-0450 (the "2010 Order"). As a result, Ms. Rawlings has no specific workpapers, a fact which Laclede confirmed to Staff on August 26, prior to the filing of Staff's Motion. Laclede notes that the Application and Exhibits have been in Staff's hands since at least back to the filing date of April 15, 2015, and have certainly been subject to data request since that time.

DATA REQUESTS

3. During the course of this proceeding, Laclede has provided responses to nearly 50 data requests submitted by the Commission Staff. Most of these responses have been provided by the Company on an expedited basis and in many instances such responses have been furnished even though the Company believed that the requested information was not relevant to the matters at issue in this proceeding. With respect to the subject data requests, Laclede has in fact provided a host of projected financial information, even though it believes such information is not reasonably calculated to lead to the discovery of admissible evidence.¹ Laclede has only objected to providing a very limited amount of information sought by such data requests, that being projected income, because that information is not only irrelevant, but is also privileged, as discussed below.

RELEVANCE

4. Pursuant to Rule 56.01(b)(1) of the Missouri Supreme Court's Rules on Civil Procedure, the question is whether the data requested is reasonably calculated to lead to the discovery of admissible evidence. As Staff correctly notes, Staff bears the burden of demonstrating relevance. While the scope of discovery is certainly broader than what turns out to be admissible, there must be meaning given to the phrase "reasonably calculated." Whether Staff was reasonable in its calculation that this request would lead to the discovery of admissible evidence comes down to a simple question: Is Staff required to adhere to the Commission's legal interpretation of a statute enacted by the General Assembly? If the answer is yes, then the request cannot be reasonably calculated to lead to the discovery of admissible evidence. On the

¹ For example, on page 20 of Staff's Rebuttal Testimony, Staff uses the information Laclede provided in response to Staff DR 18 to produce a chart with future credit metrics, a completely meaningless exercise in determining whether the amount of capital investment is sufficient to justify Laclede's request for long-term financing authority. The Staff was able to produce this chart because Laclede provided the information notwithstanding its relevance objection to DR 18.

other hand, if the Staff is not required to adhere to the Commission's legal conclusions, then Staff may broaden discovery as far as that same Commission will allow. Permitting such an approach, however, would seem to create significant uncertainty and a "wide open field" in each and every case regarding what is subject to discovery or objectionable – a result that would be detrimental to the fair and efficient conduct of the Commission's regulatory proceedings.

5. This financing authority case is governed by Section 393.200.1 RSMo. (the "Statute"). That section places parameters on the Company's rights to issue equity and long-term debt, that is, debt that does not come due for at least one year. The statute permits the Company to issue such equity and debt for certain purposes including, among others, the acquisition of property and the construction, completion, extension or improvement of its plant or system for regulated purposes.

6. According to the Commission, the Statute unmistakably allows Laclede to issue long-term financing for these capital investments. The Statute's "intent is simply to restrict long-term financing to allowable purposes." (2010 Order, p. 8)

7. The Statute asks no more. Therefore, within the authority granted by the Commission, and subject to the required purposes, Laclede management is allowed discretion as to whether, when and in what debt/equity proportions it uses such authority.²

8. The Commission so found in the 2010 Order, which is the seminal interpretation of the Statute. In the 2010 Order, the Commission laid out a chart which covered the purposes and amounts for financing in conformance with the dictates of the Statute. The first line in this chart shows \$189 million for "the acquisition of property and the construction, completion, extension or improvement of its plant or system." (2010 Order, p. 10) This amount was derived

² However, Laclede has also agreed to maintain both an investment grade credit rating and at least 35% equity in its capital structure.

from Laclede's three year capital budget, was not challenged by the Staff, and was accepted by the Commission. The Staff then argued that Laclede should not have authority to issue long-term financing for all of these projected capital improvements, but should be required to apply its income to fund these capital expenditures, thereby reducing the amount of authority allowed for long-term financing. The Commission found that the Statute allows long-term financing for property, plant and equipment, and that income cannot be used to exclude the right to long-term financing for such long-term assets. (2010 Order, pp. 11-12) As a result, Staff's request for projected income is not reasonably calculated to lead to the discovery of admissible evidence.

9. This case for long-term financing authority is simple. It should have been concluded long ago. The matter was settled by the Commission in 2010 by the finding that the Statute permits long-term financing to the extent of long-term capital investment. The projected income and other projected financial information sought by Staff is for no purpose other than re-arguing a hard-fought case which decided that very issue. It is not reasonably calculated to lead to the discovery of admissible evidence.

PRIVILEGE

10. In addition to being irrelevant, the projected income sought by Staff is privileged work product. It is privileged because it is based on the Company's analysis and conclusions regarding the likely outcome of future rate case litigation.³ While this information would not necessarily prejudice Laclede in this case, it very well could do so in a rate case or other regulatory proceeding.

³ Such a work product privilege is well recognized as reflected by the fact that Staff itself objected to answering three of the ten data requests submitted by Laclede in this case on the very same grounds.

11. Laclede did not waive the privilege by providing unredacted information to credit rating agencies, as Staff suggests. The purpose of the work product privilege is to protect the adversary process, so that a party does not have to provide to an adverse party information prepared in anticipation of litigation. Disclosing such information confidentially to non-adversarial parties does not waive the privilege. (*Gutter v. E.I. DuPont de Nemours & Co.*, 1998 WL 2017926 (S.D. Fla. 1998); *In re Pfizer Inc. Securities Litigation*, 1993 WL 561125 (S.D. NY 1993)) In Laclede's case, disclosure to a credit rating agency did not increase the opportunities for potential adversaries, such as Staff, to obtain the information since this information was not made public and is the subject of a strict Confidentiality Agreement, and therefore did not constitute a waiver of the work product privilege.

12. 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.

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission find that Laclede did not withhold workpapers from Staff, and deny Staff's Motion to Compel the disclosure of irrelevant and privileged material.

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 8th day of September 2015 by hand-delivery, e-mail, fax, or by placing a copy of such document, postage prepaid, in the United States mail.

/s/ Marcia Spangler