

**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. GR-2015-0181  
Financing Authority Previously Approved by the       )  
Commission.       )

**RESPONSE TO STAFF RECOMMENDATION ON FINANCING AUTHORITY**

COMES NOW Laclede Gas Company ("Laclede" or "Company"), and for its Response to Staff's Recommendation on Financing Authority, states as follows:

1. On April 15, 2015, Laclede filed its Verified Application in this case (the "Application") in which it requested Commission authorization to re-establish and extend the financing authority previously granted by the Commission, effective June 30, 2010, in its Report and Order in Case No. GF-2009-0450 (the "2010 Order"). In the 2010 Order, which was attached to the Company's Application in this case, the Commission authorized Laclede, subject to certain terms and conditions, to issue registered securities and common stock, receive paid-in-capital, accept private placement investments and enter into capital leases (the "Financings") in an overall amount not to exceed \$518 million.

2. Such authorization was granted to Laclede for a three-year period, expiring on June 30, 2013. By Order dated October 24, 2012 in Case No. GF-2013-0085, such authorization was extended until June 30, 2015. On June 17, 2015, Laclede filed a motion to extend that authority pending the outcome of this case.

3. In the Application, the Company sought to extend this financing authority for just over three years, to September 30, 2018, while at the same time increasing the overall amount of financing authority from the \$370 million that currently remains under

the 2010 Order to \$550 million. The Company provided a variety of reasons in its Application as to why this requested increase was appropriate and fully supported by the Commission's prior interpretation of the Missouri statute governing utility financings, as set forth in the 2010 Order.

4. On June 8, 2015, the Staff issued its Recommendation and Memorandum (the "Recommendation") in which it proposed that the Commission authorize \$300 million in financing authority over a period ending September 30, 2018.

5. Laclede opposes the Recommendation on the grounds that it conflicts with the plain language of Section 393.200.1 RSMo (sometimes referred to herein as the "Financing Statute"), and conflicts with the Commission's recent, and only, interpretation of the Financing Statute, as set forth in the 2010 Order.

6. In the 2010 Order, the Commission went to great lengths to break down the Financing Statute and apply it to Laclede's situation. The result of the Commission's efforts was a roadmap that can be used to readily calculate the financing authority to be afforded to a utility.

7. In 2010, the Commission painstakingly examined the facts and determined that Laclede was entitled to financing authority to issue Financings over a three year period in the amount of \$518 million. Since 2010, Laclede has not only acquired MGE, nearly doubling its size, but it has also accelerated the rate of safety investments for both Laclede Gas and MGE, investments which form the basis for long-term financing authority. Given these circumstances, it was no surprise that the same financing roadmap used by the Commission in 2010 resulted in financing authority in this case of \$1.0 billion, roughly double the pre-MGE financing authority.

8. This case should be fairly simple for Laclede and Staff to resolve for two reasons. First, though the Staff opposed the position ultimately approved by the Commission in its 2010 Order, the roadmap provided by the Commission in that Order permits a straightforward calculation. In other words, thanks to the Commission's meticulous review of the Financing Statute, the amount of financing authority for Laclede can be easily calculated. Second, Laclede met with Staff in March 2015 to discuss renewal of the financing authority, and listened to Staff's concerns on the matter. Although the roadmap entitled Laclede to \$1.0 billion in financing authority, after meeting with Staff, Laclede filed its Application on April 15 seeking only \$550 million in authority, an amount that Laclede believed to be sufficient for management purposes while accommodating Staff's desire for a reduced amount.

9. Unfortunately, the case has not been resolved because Staff has declined to be constrained by either the Financing Statute or by the 2010 Order. In Exhibit 3 to the Application, Laclede replicated the same approach and format used by the Commission in the 2010 Order. Rather than conform its Recommendation to the requirements of the Financing Statute as exhaustively interpreted by the Commission, Staff states on page 5 of the Recommendation that "Staff does not agree that Exhibit 3 should form the basis for the maximum amount of financing authority the Commission should allow Laclede." Instead, based on the apparent belief that it knows what the parameters should be for determining such matters better than the Commission or the General Assembly, the Staff simply creates its own standards for deriving the amount of permissible financing authority that should be granted by the Commission.

10. Staff begins by observing that: “...experience has shown” that Laclede requests more financing authority than it reasonably requires. (*Id.*) Normally such judiciousness would be taken as a sign of fiscal prudence, rather than a reason for distrust and a need to seek unwarranted limitations. However, Staff reasons that Laclede should not be afforded the authority dictated by the Financing Statute and determined by the Commission because in the past, Laclede hasn’t fully used such authority. There is absolutely nothing in the Financing Statute, however, to suggest that a utility’s financing authority should be reduced because the utility has a history of using such authority in a conservative and judicious manner. To the contrary, such a construct would have the perverse result of constraining the discretion of those utilities that use their authority conservatively while expanding it for those who do not. That is hardly the kind of result that advances the goal of protecting ratepayers from excessive or imprudent financing activities.

11. Staff then proceeds to argue that the amount of financing authority determined by the Financing Statute and the 2010 Order is too high because, in Staff’s opinion, it is more than the amount reasonably required for the purposes specified in the order. In other words, application of the Financing Statute produces a result that Staff deems unreasonable and therefore should not be followed.

12. Staff attempts to bootstrap this argument through a plain misreading of the Financing Statute. The relevant portion of 393.200.1 states that “...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 reasonably required for the purposes specified in the order...” Staff would have the Commission believe, contrary to the Commission’s

prior findings, that the term “reasonably required” is a limitation on the *amount* of financing authority that may be granted, rather than a limitation on the *purpose* for which such authority must be used. A plain reading of this clause shows that it is the *money, property or labor* paid for by the Company that must have been reasonably required for the purposes in the order. What are those purposes? In the 2010 Order, paragraph 3 states that “Laclede shall not use any portion of the \$518 million for any purpose other than for the exclusive benefit of Laclede’s regulated operations as such purposes are specified in Section 393.200 RSMo.” In short, the financings authorized by the Commission should be used to pay for capital expenditures made to construct, complete, extend or improve its plant or system, for the acquisition of property, for the refinancing of obligations, and for the reimbursement of income or other moneys not already supported by long-term financing (money). There is no question that Laclede has used financings to pay for items reasonably required for the specified purposes.

13. In determining financing authority, the following chart sets forth the difference between the positions, and the results produced by those positions, approved by the Missouri General Assembly and the Commission on one side, and taken by the Staff on the other side.

| <u>The General Assembly and Commission authorize financing for:</u>  | <u>Amount (millions)</u> | <u>Staff authorizes financing for:</u>  | <u>Amount (millions)</u>  |
|--|--------------------------|---|---------------------------|
| Capital Expenditures made for the purposes set forth in Section 393.200.   | \$562                    | Capital Expenditures made for the purposes set forth in Section 393.200, minus operating cash flow items. | \$562<br>- \$460<br>\$102 |
| Unreimbursed capital expenditures for the past 5 years (i.e. Capex that exceeds previous net equity and long-term debt financings) | \$339                    | Capital Expenditures for the past 5 years, but only for those paid with retained earnings                 | \$75                      |
| Refinancing of long-term debt maturing in August 2018  | \$100                    | Refinancing of long-term debt maturing in August 2018   | \$100                     |
| <b>TOTAL</b>   | <b>\$1001</b>            |   | <b>\$277</b>              |

14. Nowhere in the statute does it provide for financing authority to be offset by operating cash flows. Debt and Equity investors provide the capital necessary to construct and improve plant. These investors expect a return of their invested capital and a return on that capital. Neither the General Assembly nor the Commission require the Company to reinvest its operating cash flows into new plant. Such a requirement would usurp management's discretion in how it finances new plant. Rather the statute allows the Company the discretion to reinvest returns of capital or use them in some other manner. Only the Staff seeks to exert control of the Company by directing how Laclede uses its cash flow. Investors who believe they have a right to a return of, and a return on, their capital would be surprised to hear that the Staff would prohibit them from recovering their investment by insisting that it be reinvested in the system, and by limiting Laclede's ability to obtain capital from new investors. Staff's position requiring

that operating cash flows be used to offset capital expenditures is contrary to the Financing Statute and the 2010 Order.

15. Likewise, Staff's view of how to calculate the unreimbursed expenditures over the past 5 years strays far afield from the Financing Statute and the 2010 Order. The 2010 Order approved a formula for determining unreimbursed expenditures. That formula simply consists of capital expenditures made during that period, offset by net long-term financings made during the period. This easily identifies capital expenditures which have not been reimbursed by long-term financings. However, on page 8 of its Recommendation, Staff declares that "experience has proven this formula is not practical for purposes of estimating a reasonable amount of financing authority." In other words, according to Staff, the law of the land errs in setting financing authority because it comes to a result with which Staff disagrees. Instead, Staff attempts to isolate one source for capital spending by the Company that is eligible for reimbursement – moneys expended from undistributed income – and ignores other sources for capital spending, such as other operating cash flows or short-term debt. It is especially unclear why Staff ignores short-term debt in its "formula," since Staff expressly acknowledges that issuing long-term capital to refinance short-term debt is an allowable source of financing, and one that Staff "routinely recommends." (Staff Recommendation, p. 8) In fact, Laclede's short-term debt grew by over \$150 million during the five year period. Even under Staff's own approach, this is an amount that should be included in the Company's financing authority.

16. Laclede opposes other assertions in the Recommendation, and reserves the right to address those matters during the pendency of this case.

17. Staff is right about one thing. In the recent past, Laclede has not used all of the financing authority granted by the Commission. This is a reason to congratulate Laclede for continuing its legacy of cautious and successful financial stewardship. This is not a reason to withhold financing authority to which Laclede is legally entitled by state statute and Commission order.

**WHEREFORE**, Laclede Gas Company respectfully requests that the Commission accept this response to Staff's Recommendation and schedule an early prehearing conference so that the parties can develop and propose a procedural schedule for addressing the issues raised in this proceeding.

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 18th day of June 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