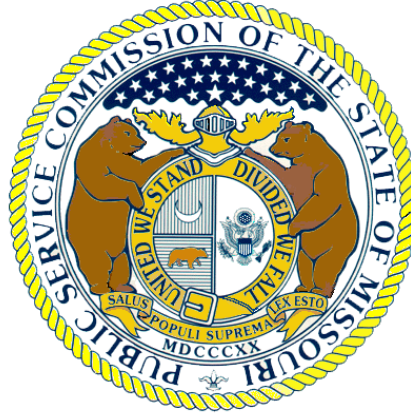


BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of Laclede Gas Company's)
Verified Application for Authority to Issue and Sell)
First Mortgage Bonds, Unsecured Debt and Preferred Stock,)
in Connection with a Universal Shelf Registration Statement,)
to Issue Common Stock and Receive Capital Contributions,)
to issue or accept Private Placement Securities, and)
to Enter Into Capital Leases, all in a Total Amount)
Not to Exceed \$600 Million)

File No. GF-2009-0450

REPORT AND ORDER

Issue Date: June 16, 2010

Effective Date: June 30, 2010

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REPORT AND ORDER

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The Missouri Public Service Commission is granting the above-titled application of Laclede Gas Company ("Laclede") in the amount of \$518 million and denying the remainder. The Commission is conditioning such authorization on a long-term debt limit at the value of Laclede's rate base or 65% of Laclede's total capitalization, whichever is less. Such authorization shall last three years.

By separate order, the Commission is also extending Laclede's temporary financing authority to coincide with this report and order's effective date.

The Commission considered all allegations and arguments of each party, and the whole record, but does not address matters that are not dispositive. The Commission's findings reflect its resolutions of conflicting representations and determinations of credibility. On those grounds, the Commission independently finds and concludes as follows.

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Appearances

Michael C. Pendergast, Vice President and Associate General Counsel, and **Rick Zucker**, 720 Olive Street, Room 1520 St. Louis, MO 63101, for applicant Laclede.

Kevin A. Thompson, Chief Staff Counsel, and **Robert S. Berlin**, Senior Counsel, 200 Madison Street, Suite 800 P.O. Box 360 Jefferson City, MO 65102 for the Commission's staff ("Staff").

Marc D. Poston, Deputy Public Counsel, P. O. Box 2230, Jefferson City MO 65102, for the Office of the Public Counsel ("OPC").

Daniel Jordan, Regulatory Law Judge.

Procedure

Laclede filed the application on June 30, 2009, seeking authorization to issue stocks, bonds, notes or other evidences of indebtedness ("financing") payable at periods of more than twelve months after the date of issuance ("long-term") in an amount not to exceed \$600 million over the course of three years.

After filing monthly status reports, Staff filed its recommendation on December 29, 2009, proposing that the Commission grant the application subject to 12 conditions. The Commission granted and extended temporary long-term financing authorization to Laclede by orders dated February 3, 2010; April 7, 2010; April 28, 2010; and June 9, 2010. On April 20, 2010, the Commission convened an evidentiary hearing on the application.

This case was ready for decision when Laclede and Staff filed reply briefs¹ on May 28, 2010. As of that date, the parties agreed on ten of Staff's proposed conditions. As

¹ OPC filed only an initial brief, and no reply brief, and did not otherwise participate in this action. OPC's brief endorses the evidence and arguments of Staff. Therefore, references to Staff's arguments include OPC.

to those ten conditions (“agreed conditions”), the Commission need not separately state its findings of fact because the agreement disposes of this action as to such agreed conditions.² But no agreement can, alone, determine whether Laclede meets the law’s standards.³ That decision is solely the task of the Commission, and the Commission must set forth its decision in a report that includes the Commission’s conclusions and decision.⁴

Therefore, the Commission independently finds and concludes that substantial and competent evidence on the whole record weighs in favor of the agreed conditions, and incorporates the agreed conditions into the ordered paragraphs of this *Report and Order*.

As to the matters remaining in dispute, the Commission makes the following findings of fact.

Findings of Fact

1. Laclede is a Missouri corporation authorized to do business as a gas corporation. The Commission’s most recent report and order authorizing Laclede’s long-term financing is in File No. GF-2007-0220. Such authorization expired on February 15, 2010.

2. Under the report and order in File No. GF-2007-0220, the Commission authorized Laclede to issue \$500 million in long-term financing. The Commission also set a debt limit related to the industry standard. The debt limit was the value of Laclede’s regulated rate base.⁵

3. Laclede has issued \$50 million in equity and \$80 million in long-term debt. As of December 31, 2009, Laclede’s long-term debt represented \$270 million less than the value of Laclede’s regulated rate base and constituted 48.5 percent of Laclede’s total

² Section 536.090, RSMo 2000.

³ **Weber v. Firemen's Retirement System**, 872 S.W.2d 477, 480 (Mo. banc, 1994).

⁴ Section 386.420.2, RSMo 2000.

⁵ File No. GF-2007-0220, page 6, paragraph 2(f).

capitalization. Laclede has not expended the proceeds of long-term financing on day-to-day operations.⁶ Laclede has an “A” credit rating.

4. Over the next three years, \$50 million of Laclede’s long-term bonds will expire.

5. Any business may need ready cash in large amounts on short notice because of events beyond such business’s control. For Laclede, such events include rising wholesale gas prices and margin calls in connection with Laclede’s hedging program. Margin calls alone may require \$300 million in nine months.⁷ For that reason, it would be imprudent for Laclede to rely solely on income to fund all its property, plant, and system to the exclusion of long-term financing.

6. A business’s capacity to quickly exercise business judgment about issuing long-term finance instruments (“instruments”) in response to changing market conditions is called flexibility. Flexibility includes the type and timing of instruments issued. Flexibility is critical for procuring capital quickly and favorably, especially during market instability.

7. During periods of market instability in gas and credit, flexibility has helped Laclede secure favorable long-term financing. For example, in 2008 Laclede issued \$80 million in First Mortgage Bonds just before the interest rate on such instruments increased by approximately 2.50 percent in less than a month.⁸ In that instance, Laclede’s flexibility saved \$2 million per year, which ultimately benefited Laclede’s rate-payers.⁹

8. For the five-year period ending on March 31, 2009, Laclede spent money—not generated by long-term financing and not reimbursed—on property, plant, and system and

⁶ Transcript vol. 2, page 143 line 18, through page 144 line 2.

⁷ Transcript vol. 2 page 240 lines 7-11.

⁸ Exhibit 2, page 10 line 11, through page 11, line 13.

⁹ *Id.*

on discharging obligations. The amount of such expenditures was over \$279 million.¹⁰

Laclede's expenses, and amounts available from financing, included the following:

- a. \$832,965,000 in net utility plant costs;¹¹
- b. \$37,882,000 in other property and investments;¹²
- c. \$201,441,000 from common stock and paid-in capital;¹³ and
- d. \$389,211,000 from long-term debt.¹⁴

9. As of the date of the evidentiary hearing:

- a. the cost of debt was approximately 6.5% and such payments constituted an income tax deduction.
- b. Laclede's cost of common equity was 9.5%.¹⁵

Conclusions of Law

The Commission has jurisdiction to decide Laclede's application for long-term financing authorization.¹⁶ Such authorization is necessary for Laclede to encumber any of its Missouri property.¹⁷ That authorization is also necessary for Laclede to issue any long-term financing.¹⁸ Such authorization constitutes, "a special privilege, the right of supervision, regulation, restriction and control ["conditions"] of which is and shall continue to be vested in the state [. ¹⁹]" The state exercises that right through the Commission's order.²⁰

¹⁰ Exh 1, twenty-fifth page, (the Application's Exhibit 3, page 1 of 3), bottom line.

¹¹ Exh 1, nineteenth page, (the Application's Exhibit 2, page 1 of 5), third line item.

¹² *Id.* at fourth line item.

¹³ Exh 1, 20th page, (the Application's Exhibit 2, page 2 of 5), left column, first line item.

¹⁴ *Id.* at sixteenth line item.

¹⁵ Transcript vol. 2, page 255 line 16, to page 256 line 2.

¹⁶ Section 393.200.1. All sections are in the 2000 Revised Statutes of Missouri unless otherwise stated.

¹⁷ Section 393.190.1.

¹⁸ Section 393.200.1 and .3.

¹⁹ Section 393.180.

²⁰ Sections 393.180 and 393.200.1.

The Statute

The Commission's order is subject to a statute that is simple in purpose but deceptively complex in construction: Section 393.200 ("the statute").²¹ Within the statute, the controlling provision is subsection 1. Subsection 1 consists of a single 315-word sentence. Such drafting is the product of practices in use 97 years ago. Those practices included using many successive modifying clauses. Understanding the controlling law requires setting forth subsection 1 at length, parsing its content, and determining which clauses modify which other clauses.²²

Subsection 1 sets forth its subject matter, which is long-term financing:

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 . . .

then lists the allowable purposes for long-term financing:

. . . when necessary 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. . .

which include outlays of cash for such purposes:

. . . 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

²¹ All indented quotations are from Section 393.100.1 unless otherwise stated.

²² For convenient reference, the Commission has also set forth the full text of Section 393.200 in the Appendix to this order.

amount of money so expended and the purposes for which such expenditure was made; . . .

and concludes with a description of the order under which such long-term financing occurs:

. . . 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 reasonably required 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.

For all 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 [.]

²³ All emphasis in every quotation is the Commission's.

The allowable purposes involve assets:

the acquisition of property, the construction, completion, extension or improvement of its plant or system[;]

service:

improvement or maintenance of its service[;]

paying off obligations:

discharge or lawful refinancing of its obligations[;]

subject to certain limits:

such purposes are not in whole or in part reasonably chargeable to operating expenses or to income.[]

Laclede may also finance cash outlays:

reimbursement of moneys actually expended . . . for any of the aforesaid purposes [;]

but that, too is subject to certain limitations including the following:

except maintenance of service and except replacements

In its reply brief, Laclede argues that such purposes support \$600 million in authorization.

Laclede's Claim

The burden of proof is with Laclede because Laclede seeks to change the status quo.²⁴ The status quo is that the authorization issued to Laclede in GF-2007-0220 expired on February 15, 2010, so Laclede has only the temporary authorization granted in the orders cited above. The quantum of proof is a preponderance of the evidence, because this case is an administrative action, which is civil in nature.²⁵

In support of its claim for \$600 million in authorization, Laclede offers the following purposes:

²⁴ **Tate v. Department of Social Services**, 18 S.W.3d 3, 8 (Mo. App., E.D. 2000).

²⁵ *Id.* and **State Board of Nursing v. Berry**, 32 S.W.3d 638, 641 (Mo. App., W.D. 2000).

<i>Purpose</i>	<i>Amount (\$million)</i>
the acquisition of property, the construction, completion, extension or improvement of its plant or system	189
improvement or maintenance of its service	0
discharge or lawful refinancing of its obligations	50
reimbursement of moneys actually expended for any of the aforesaid purposes	279
"[O]ther unknown amounts that may be needed for the purposes described above, including converting short-term debt into long-term debt and financing regulatory assets, etc." ²⁶	82
<i>Total Requested</i>	<i>600</i>

Laclede asks to have \$82 million on hand in case one of the allowed purposes comes up.

In support of the \$82 million, Laclede cites flexibility. But flexibility is neither a purpose nor an amount. Flexibility is how fast Laclede uses its authorization to address market conditions. Staff argues that Laclede has not shown that such amount is, or has been, necessary or reasonably required for any of the allowed purposes. Staff reads the statute and the record correctly. Laclede has not carried its burden of proving that an allowed purpose supports the \$82 million. Therefore, the Commission will deny the application as \$82 million.

The parties agree on the \$50 million for discharge or lawful refinancing of Laclede's obligations. The Commission independently finds and concludes that such amount is necessary or reasonably required for that purpose, and that purposes are not in whole or in part reasonably chargeable to operating expenses or to income. Therefore, the

²⁶ *Initial Brief Of Laclede Gas Company*, Exhibit 1, second line item. Laclede rounds up the specified purposes and rounds down the \$82 million to show a total of \$600 million. The Commission rounds down the specified purposes and rounds down the \$82 million to be consistent with the burden of proof.

Commission will grant the application as to discharge or lawful refinancing of its obligations in the amount that Laclede requests.

As to the remainder of Laclede's request, Staff argues that Laclede's purposes are not allowable.

A. Property, Plant, and System

As to the \$189 million for property, plant, or system, Staff argues that the Commission can reasonably charge certain amounts to income²⁷ and must, therefore, deny long-term financing of such amounts:

[T]here shall have been secured from the commission an order . . . stating the purposes to which the issue or proceeds thereof are to be applied, . . . and that except as otherwise permitted in the order in the case of [debt], such purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

If the Commission can reasonably charge amounts to income, the Commission may authorize long-term financing of that purpose only through debt. Staff seeks to offset Laclede's claimed amount with Laclede's projected income in the next three years.

Staff cites Laclede's statements about such income. Such statements include representations that Laclede's income was enough to fund all property, plant, or system expenses in 2008.²⁸ But for 2006 and 2007, Laclede notes, the same statements report Laclede's income as less than its property, plant, or system expenses.²⁹ Laclede also notes that the statements include qualifiers that income projections have limited use because of "various uncertainties and risks factors, many of which are beyond the control of [Laclede] including weather conditions, governmental and regulatory policy and action,

²⁷ In connection with these arguments, the parties cite evidence from highly confidential exhibits, which the Commission will not publish in this *Report and Order*.

²⁸ Exh 11, eighteenth page.

²⁹ *Id.*

the competitive environment and economic factors.”³⁰ Further, Laclede’s statements expressly include the Commission’s decisions as factors influencing its actual income.³¹

Staff also argues that Laclede has no better use for its income. That depends, according to Laclede, on conditions in various markets. Laclede argues that income is appropriate for future maintenance and replacements, and for reducing the short-term debt that Staff itself criticizes. Such considerations are likely the policy behind the General Assembly’s decision to allow long-term financing for property, plant, and system.

The Commission concludes that Laclede’s arguments are the more persuasive. Events outside Laclede’s control make projections of income and expenses insufficiently reliable to exclude the option of long-term financing for property, plant, and system. It is not reasonable to charge all Laclede’s projected income against property, plant, and system expenses to the exclusion of long-term financing authorization.

Therefore, the Commission will grant the application as to property, plant, and system in the amount that Laclede requests.

B. Reimbursement of Monies Expended

As to the \$279 million for reimbursement, Staff argues that Laclede’s expenditures of monies at issue (“expenditures”) are not allowable. Staff does not dispute that Laclede expended moneys on the “aforesaid purposes.” Instead, Staff offers arguments based on such expenditure’s source and timing and, on that basis, seeks a debt limit as a condition of Laclede’s authorization.

But, as Laclede points out, Staff’s premise does not support its conclusion. Staff’s premise is that Laclede’s purposes are not allowable. Allowable purposes are the same for debt as for equity so, if Laclede’s purpose does not support debt, the statute denies any

³⁰ Exhibit 11, thirteenth page.

³¹ Exhibit 7, last paragraph.

long-term financing for such purpose at all. This is true notwithstanding Commission discretion to set conditions³² and Staff's insouciance toward equity.³³ Staff has simply misread the statute.

Thus, much of the parties' argument over a debt limit condition actually addresses an element of Laclede's claim for long-term financing authorization. Staff recommends that the Commission authorize amounts for equity, but not debt, without any basis in law for the distinction, thus impeaching its own allegations and arguments. Nevertheless, the Commission will address Staff's arguments as guidance for future applications.

(i) Source

In its brief, Staff argues that Laclede has already financed or received reimbursement for the expenditures at issue.

In that regard, Staff's reading of the law is correct. Laclede must show that the expenditures at issue came from monies not generated by long-term financing and remain unreimbursed. Otherwise, the statute bars long-term financing of such expenditures' reimbursement:

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[.]

Staff's arguments begin with the expenditures' relation to Laclede's rate base.

³² Section 393.180, RSMo 2000.

³³ Transcript vol. 2, page 271 line 18, to page 272 line 14.

Staff argues that Laclede receives depreciation on its rate base in the rates that consumers pay, so Laclede must already have received reimbursement through income. That argument assumes that reimbursement is reasonably chargeable to income. The Commission has already concluded that charging property, plant, and system expenditures entirely to income is not reasonable.

Staff also argues that Laclede paid for its rate base with previous long-term financing, so Laclede must have generated the moneys from long-term financing. But Laclede showed that it does not use its current long-term financing to reimburse its treasury for the expenditures. It has also shown that its property, plant, and system expenditures exceeded its long-term financing as follows.

At the end of a five-year period ending on March 31, 2009, Laclede had the following unreimbursed expenses, and amounts available from financing, as shown in Finding 8:

<i>Item</i>	<i>Amount (\$)</i>
common stock and paid-in capital	201,441,000
long-term debt	389,211,000
total long-term debt and equity	<u>590,652,000</u>
net utility plant costs	(832,965,000)
other property and investments	(37,882,000)
unfinanced expenses	<u>(280,195,000)</u>

Laclede asks to finance \$279 million in unreimbursed expenses and Laclede's evidence supports that amount.

(ii) Timing: Past Expenditures

Staff argues that reimbursement is allowable only as to future expenses. Staff's reading is contrary to the statute's plain language. Staff's citations do not support its argument. Staff cites subsection 1's five year provision:

within **five years next prior to** the filing of an application with the commission for the required authorization, for any of the aforesaid purposes . . . 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 [.]

Staff emphasizes the word "shall" but, in this context of standards for granting an application, "shall" does not indicate a future event. "Shall" signifies a mandate and means "must" in the present tense.³⁴ And the "accounts and vouchers" are for "such expenditure," "money so expended," and "such expenditure . . . made,"³⁵ all of which are past events.

Also, Staff reads "five years next" as "the next five years," but that is not the statute's wording. "Five years next prior to an application" simply means "five years before an application." Which application does that mean? Staff argues the next application, and Laclede argues the pending application. The Commission agrees with Laclede.

As Laclede notes, the statute's wording specifically allows long-term financing of past events:

the money, property or labor **to be procured** or paid for by the issue of such [financing] is or **has been reasonably required**[.]

The long-term financing of past cash expenditures is specifically the subject of the five year provision—actually, two five year provisions.

³⁴ *State ex rel. Scott v. Kirkpatrick*, 484 S.W.2d 161, 164 (Mo. banc 1972).

³⁵ Section 393.200.1.

The other is a provision obsolete since 1968, formerly applicable to long-term financing expenditures through debt, in subsection 2. Comparing the two provisions is helpful because the subsections share the relevant language:

<p>2. Nothing herein contained shall prohibit the commission from giving its consent to the issue of</p> <p>bonds, notes or other evidence of indebtedness</p> <p>for the reimbursement of moneys heretofore actually expended from income</p> <p>for any of the aforesaid purposes, except maintenance of service or replacements,</p> <p style="text-align: center;">* * *</p> <p>if in the judgment of the commission such consent should be granted [.]</p>	<p>1. A gas corporation . . . may issue stocks,</p> <p>bonds, notes or other evidences of indebtedness . . .</p> <p>for the reimbursement of moneys actually expended from income . . .</p> <p style="text-align: center;">* * *</p> <p>for any of the aforesaid purposes except maintenance of service and except replacements</p> <p>in cases where the applicant shall have kept [certain records.]</p>
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Those subsections include the same components. Both generally allow long-term financing of past expenditures for the same purposes; specifically bar long-term financing of past expenditures for replacements and maintenance; and set forth a standard.

And, at the asterisks above, both subsections set forth their respective five year provisions:

<p>2. . . . prior to five years next preceding the filing of an application therefor, by any sewer corporation [.]</p>	<p>1. . . . within five years next prior to the filing of an application with the commission for the required authorization [.]</p>
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Reading the five year provisions in context reveals that they simply address how far in the past long-term financing of expenditures may reach: long-term financing of expenditures is generally subject to a five year time limit under subsection 1, and subsection 2 provided an

exception. That exception proves the rule: Subsection 1's five year provision looks backward from the filing of the pending application.

Laclede also cites the Commission's regulation requiring each application to include information on past expenditures. Regulation 4 CSR 240-3.220(1)(G) requires every application for financing authorization to include "A five (5)-year capitalization expenditure schedule as required by section 393.200, RSMo." Such schedule, the parties agree, reports expenditures from the past five years. Thus the regulation also includes long-term financing of past expenditures.

The Commission concludes that the statute allows long-term financing of past expenditures.

(iii) Conclusion as to Reimbursement of Expenditures

Therefore, the Commission will grant the application as to moneys actually expended in the amount that Laclede requests.

C. Total Long-Term Financing Authorization

The amounts that Laclede asks to procure or pay for by the issuance of stock, bonds, notes or other evidences of indebtedness are reasonably required for the purposes specified below; and are not in whole or in part reasonably chargeable to operating expenses or income; so the Commission will grant the application as to only the following purposes and amounts.

<i>Purpose</i>	<i>Amount (\$million)</i>
the acquisition of property, the construction, completion, extension or improvement of its plant or system	189
discharge or lawful refinancing of its obligations	50
reimbursement of moneys actually expended for any of the aforesaid purposes	279
<i>Total</i>	<i>518</i>

Staff's Conditions

Laclede's long-term financing authorization is subject to the Commission's "supervision, regulation, restriction and control"³⁶ ("conditions"). Staff proffers 12 conditions. In Laclede's position statement, Laclede agreed to seven conditions and, in Laclede's brief, Laclede agreed to three more ("agreed conditions"). As to the 10 agreed conditions, the Commission independently finds and concludes that they help protect against public detriment and will order them without further discussion.

Laclede disputes the two remaining conditions. Conditions do not negate any element of Laclede's claim, but require evidence not described in those elements, so the Commission concludes that Laclede has no burden of proof as to conditions. The burden of proof as to whether such conditions help prevent a public detriment is, therefore, with Staff.³⁷

Staff's expert witness endorsed Staff's proposed conditions. But the same witness opined that authorization, under only Laclede's proposed conditions, would not be imprudent.³⁸ In support of each condition, Staff suggested at hearing that Laclede might

³⁶ Section 393.180.

³⁷ ***State ex rel. City of St. Louis v. Public Service Com'n of Missouri***, 73 S.W.2d 393, 400 (Mo.1934).

³⁸ Transcript vol. 2, page 245 line 21, to page 246 line 1. The Commission finds the witness commendably

create a public detriment by diverting borrowed moneys to an affiliate. But such a transaction would violate state law, and Laclede's own by-laws, according to the uncontroverted evidence. No evidence shows that such event has occurred, is about to occur, or is any more likely to occur than any other violation. Staff's argument supports neither of its proposed conditions, which are as follows.

A. Long-Term Debt Limit

The parties dispute the following language in proposed condition 1:

[T]he total amount of long-term debt issued and outstanding under such authority shall not, at any time during the period covered by this authorization exceed \$100 million [.]

The parties agree that a limit on a utility's long-term debt helps to prevent public detriment, which may result if excessive debt over-encumbers assets.

Laclede advocates the industry standard. The industry standard is the lesser of two amounts: (i) the value of the utility's rate base or (ii) 65 percent of the utility's total capitalization. Laclede cites its history of prudent management as shown in Findings 2 and 3, and the lower cost of debt than equity as shown in Finding 9.

In its reply brief, Staff protests that the statute does not authorize the industry standard debt limit because the amount of Laclede's total capitalization "floats"—or changes—from day to day. Indeed, the statute does not mention a debt limit at all, it allows as much debt and equity as the purposes support. Also, subsection 1 is more generous with debt than equity, in that the Commission may authorize debt for purposes that are reasonably chargeable to income or operating expenses.³⁹

candid in that regard.

³⁹ Subsection 2's obsolete five-year provision took such generosity even further. It allowed long-term debt to finance reimbursement of money expenditures older, and under a standard far more lax, than under subsection 1.

Staff seeks a lower limit for Laclede's long-term debt at \$100 million. In support, Staff notes the differences between debt and equity as follows. The Commission sets the return on equity but does not control the contracted rate of interest on debt. Issuing equity does not create obligations the way that debt does. Laclede may forego paying dividends when it must still pay interest. Staff's arguments relate to the possibility that Laclede will over-encumber its assets with debt and use long-term debt to fund short-term operating needs. But, as with its diversion-of-proceeds scenario, Staff offered no evidence that such conduct has occurred, is imminent, or is even likely.

Staff has not shown that Laclede needs a limit other than the industry standard to avert public detriment. Staff offers no reason to restrict Laclede's flexibility in that regard. Therefore, the Commission will order a limit on long-term debt in accordance with the industry standard.

B. Future Applications

The parties dispute the following proposed condition:

That in future finance cases, the Company shall be required to provide detailed evidence to the Commission showing the amounts of long-term capital investments that have not been financed under the prior financing authority, the type of long-term securities they intend to issue and when the Company intends to issue such securities.

That condition has two components.

First, Staff asks that Laclede show amounts of long-term capital investments already financed. Laclede has shown that its application already contained that information with enough clarity for the Commission to base a decision on it. The Commission will reject that component.

Second, Staff asks that Laclede file a plan of future issuances by type and timing. In support, Staff offers its arguments as to Laclede's purposes, which the Commission has

already addressed. Also, the purpose and benefit of such plan is unclear. If merely informational, Staff has not shown the value of such a plan in this time of unstable markets. If mandatory, Staff has also not shown the benefit to ratepayers of holding Laclede to such plan when market conditions favor other actions. Findings 2 and 3 show that Laclede's business judgment has been cautious and prudent. That finding outweighs the need for requiring projections of limited use. The Commission will reject that component.

Order

Based on the foregoing,

THE COMMISSION ORDERS THAT:

1. Laclede Gas Company ("Laclede") shall be authorized to issue stock, bonds, notes or other evidences of indebtedness in an aggregate amount not to exceed \$518 million at any time, or from time to time, through June 30, 2013 ("authorization"). Such authorization shall include authorization to issue debt securities, solicit and accept private placements, enter into capital leases, issue common stock and receive paid-in capital. The authorization issued under this File No. GF-2009-0450 supersedes the current Commission authorization under Case No. GF-2007-0220.

2. The total amount of the long-term debt, private placements, capital leases entered into, and preferred stock issued and outstanding under such authorization shall not, at any time during the period covered by this authorization, exceed the lesser of the value of Laclede's regulated rate base or 65 percent of its total capitalization, as such conditions are defined in Case Nos. GM-2001-342 and GF-2007-0220.

3. 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. Laclede shall not use such authorization in a manner that would prevent Laclede from maintaining an investment grade credit rating.

4. If and when the individual debt securities are issued under this Application, Laclede shall submit a verified report to the Commission's Internal Accounting Department documenting such issuance, the use of any associated proceeds and the applicability and measure of fees under Section 386.300.2. Laclede shall also submit to the Commission's Internal Accounting Department by December 31st of each year an annual report stating the value of its new capital leases entered into in the immediately preceding fiscal year.

5. Laclede shall file with the Commission all final terms and conditions on these long-term financings including, but not limited to, the aggregate principal amount to be sold or borrowed, price information, estimated expenses, portion subject to the fee schedule and loan or indenture agreement concerning each issuance.

6. If debt securities are set at a fixed rate, the interest rate shall not exceed a rate equal to the greater of 300 basis points above the yield on a United States Treasury security with a comparable maturity at the time of the issuance of the debt or a rate that is consistent with similar securities of comparable credit quality and maturities issued by other issuers. If a variable rate is set, the basis for determining the interest rate shall be defined at the time of issuance, along with any maximum or minimum interest rates that may be specified for that series. The initial interest rate will not exceed a rate equal to the greater of 300 basis points above the yield on a United States Treasury security with a maturity comparable to the period that the initial interest rate would be in effect, or a rate that is consistent with similar securities of comparable credit quality and maturities issued by other issuers.

7. Laclede shall submit to the Commission's staff and Public Counsel any information concerning communications with credit rating agencies concerning individual debt securities issued under this Application.

8. Laclede shall file with the Commission any credit rating agency reports issued specifically on Laclede, Laclede's debt issuances, or on the Laclede Group if Laclede has received such report and Laclede has been able to obtain permission from the relevant agency to provide such report to the Commission.

9. Nothing in this *Report and Order* shall be considered a finding by the Commission of the value of these transactions for rate making purposes, and the Commission reserves the right to consider the rate making treatment to be afforded these long-term financing transactions and their results in cost of capital, in any later proceeding.

10. In seeking further authorization such as is granted in this case, Laclede and Staff shall operate under the general time frames set forth for long-term financing cases in the 2004 case management roundtable project.

11. This *Report and Order* shall become effective on June 30, 2010.

BY THE COMMISSION

(S E A L)



Steven C. Reed
Secretary

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC. concur;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 16th day of June 2010.

Appendix

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, when necessary 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 refinancing 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 reasonably required 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.

2. Nothing herein contained shall prohibit the commission from giving its consent to the issue of bonds, notes or other evidence of indebtedness for the reimbursement of moneys heretofore actually expended from income for any of the aforesaid purposes, except maintenance of service or replacements, prior to five years next preceding the filing of an application therefor, by any sewer corporation, if in the judgment of the commission such consent should be granted, provided application for such consent shall be made prior to January 1, 1968. For the purpose of enabling it to determine whether it should issue such an order, the commission shall make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents and contracts as it may deem of importance in enabling it to reach a determination. Such sewer corporation shall not without the consent of the commission apply said issue or any proceeds thereof to any purpose not specified in such order.

3. Such gas corporation, electrical corporation, water corporation or sewer corporation may issue notes, for proper corporate purposes and not in violation of any provision of this or any other law, payable at periods of not more than twelve months without such consent; but no such notes shall, in whole or in part, directly or indirectly, be refunded by any issue of stock or bonds or by any evidence of indebtedness running for more than twelve months without the consent of the commission; provided, however, that the commission shall have no power to authorize the capitalization of any franchise to be a corporation or to authorize the capitalization of any franchise or the right to own, operate or enjoy any franchise

whatsoever in excess of the amount, exclusive of any tax or annual charge, actually paid to the state or to any political subdivision thereof as the consideration for the grant of such franchise or right. Nor shall the capital stock of a corporation, formed by the merger or consolidation of two or more other corporations, exceed the sum of the capital stock of the corporations, so consolidated, at the par value thereof, or such sum and any additional sum actually paid in cash; nor shall any contract for consolidation or lease be capitalized in the stock of any corporation whatsoever; nor shall any corporation hereafter issue any bonds against or as a lien upon any contract for consolidation or merger.