

**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) **Case No. GF-2009-0450**
Shelf Registration Statement, to Issue Common)
Stock and Receive Capital Contributions, to Issue)
and Accept Private Placement Securities, and to)
Enter Into Capital Leases, all in a Total Amount)
Not to Exceed \$600 Million)

STAFF’S PREHEARING BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and pursuant to the Commission’s March 30th Order Granting Continuance, And Amending Procedural Schedule, submits its prehearing brief in the above captioned proceeding and addresses the issues as they are presented in the list of issues and statements of position:

1. What conditions can and should the Commission place on Laclede’s financing authority?

Staff recommends approval of Laclede Gas Company’s Application for financing authority subject to the Staff’s proposed twelve conditions as described below. Conditions that are at issue are addressed below in Issues 1.A, 1.B, 1.C, and 2. Staff recommends these conditions to protect the ratepayer and because the Company’s exercise of its financing authority will substantially encumber the assets of the regulated utility. Therefore, the twelve conditions are intended to limit Laclede’s exercise of its financial authority as a means to ensure that the Company is not authorized to encumber its regulated utility assets for an amount that cannot be supported by the Company’s projected capital needs. It is also important for the Commission to protect Laclede’s debt capacity by restricting the amount of debt

financing because Laclede's regulated financing authority may be construed as debt capacity available for unregulated affiliates. Staff notes that it has modified Conditions 2 and 11 from the original conditions filed by Staff in its initial recommendation and direct testimony.

Staff's recommended twelve Conditions:

1. That the Company be authorized to issue and sell debt securities, solicit and accept private placements and issue common stock and receive paid-in capital in an aggregate amount not to exceed \$600 million at any time, or from time to time, for three years from the effective date of the Commission's Order, provided that the 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, and, provided further that the Company shall not be authorized to use any portion of the \$600 million for any purpose other than for the exclusive benefit of Laclede Gas Company's regulated operations, as such purposes are specified in Section 393.200.

This condition is more fully discussed in Issue 1. A. below.

2. The Company must specify the type of preferred stock it plans to issue and whether the preferred stock is to be issued in lieu of debt. Otherwise, the Commission's authority under this case will not include the authority to issue preferred stock.

This condition is more fully discussed in Issue 1. B. below.

3. That the current Commission Authority under Case No. GF-2007-0220 shall be superseded by the Commission Authority under Case No. GF-2009-0450.

4. That, if and when individual debt securities are issued under this Application, the Company 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.

5. That the Company shall also be required to file with the Commission all final terms and conditions on this financing 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. That 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; provided, however, that 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. That the Company shall submit to Staff and Public Counsel any information concerning communications with credit rating agencies concerning individual debt securities issued under this Application.

8. That the Company shall file with the Commission any credit rating agency reports issued on the Company, the Company's debt issuances, or on the Laclede Group.

This is more fully discussed in Issue 2. below.

9. That nothing in the Commission's order shall be considered a finding by the Commission of the value of these transactions for rate making purposes, and that the Commission reserves the right to consider the rate making treatment to be afforded these financing transactions and their results in cost of capital, in any later proceeding.

10. In seeking a renewal of the authority granted in this case, Laclede and Staff shall operate under the general time frames set forth for financing cases in the 2004 case management roundtable project.

11. If the Company converts operating leases to capital leases in compliance with Generally Acceptable Accounting Principles (GAAP), the amount of capital leases will not count against the \$100M debt limit.

If the Company enters into new capital leases, those leases must meet the stated criteria, and this amount will be counted toward the \$100M debt limit.

Staff points out that the four GAAP criteria for new capital leases are located on page 5 of Mr. Marevangepo's rebuttal testimony. They are:

1. The lease conveys ownership to the lessee at the end of the lease term;
2. The lessee has an option to purchase the asset at a bargain price at the end of the lease term;
3. The term of the lease is 75% or more of the economic life of the asset; and
4. The present value of the rent, using the lessee's incremental borrowing rate, is 90% or more of the fair market value of the asset.

12. That in future finance cases, the Company shall be required to provide detailed evidence 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.

This is more fully discussed in Issue 1. C. below.

Issue 1. A:

What Amount of Long Term Debt Financing Authority Should The Commission Authorize for Laclede:

Laclede Gas Company is seeking Commission authority to issue an amount of long term debt, outstanding at any given time, not to exceed the lesser of the value of Laclede's regulated rate base or an amount equal to 65% of Laclede's capital structure. This means that Laclede wants authority to issue various long term debt instruments that would not exceed an approximate amount of \$325 million of long term debt that would be supported by the collateralized assets of the regulated utility over the three year period of the authority.

Applicable Law:

The Commission's approval of the financing application in this case falls under Section 393.200.1 RSMo which states:

- 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 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 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. [emphasis added].

In approving similar past Laclede financing applications, the Commission summarized the governing statute, Section 393.200.1 RSMo 2000 as follows:

“...the Commission finds that the money, property or labor to be procured or paid for by the issuance of the Securities proposed in Laclede’s is or will be reasonably required for the purposes specified in the application and that such purposes are not in whole, or in part reasonably chargeable to operating expenses or to income.” (See p.4, *Order Granting Application*, Case No GF-2004-0025).

Based on the specific needs that Laclede has identified to Staff in support of its Application, the Staff recommends the Commission approve an authority to issue \$100 million of long term debt. (See attached HC Schedule 1 from Marevangepo’s Direct Testimony). This number was rounded up from the actual estimated amount of funding required of * _____ * million in order to allow Laclede some flexibility and to make its debt more marketable. In arriving at Staff’s actual estimated total of * _____ * million, the Staff estimated Laclede’s total capital needs based on projected financial statements provided by Laclede and then deducted the Company’s Funds From Operations (FFO) from these same projected financial statements to reach the total estimated required funding. This is consistent with the statutory requirement that such funding purposes “...are not in whole or in part reasonably chargeable to operating expenses or to income.”

Staff points out that limiting Laclede to \$100 million of long term debt allows the Company to fund all of its presently known capital expenditures and maturing long term bonds, and to do so without having to issue equity.

While Staff's recommended \$100 million limit on long term debt issuances is substantially less than the \$325 million putatively requested by Laclede in its Application¹ and its proposal not to exceed the lesser of the value of Laclede's regulated rate base or an amount equal to 65% of Laclede's capital structure, the Staff can not recommend approval of more debt authority without tying it to specific known needs as required under 393.200.1. Laclede has not specified any purposes for the additional debt authority beyond a need for flexibility. Though Laclede may argue that additional debt authority offers flexibility, Laclede remains free to file for additional authority as new financing needs are identified by the Company and Staff can then verify that these financing needs are acceptable for purposes of allowing the Missouri regulated utility assets to be encumbered.

In the event that Laclede should have an emergency or unforeseen funding need in the future, Staff encourages Laclede to come forward with that need on an expedited basis. Staff can timely respond if requested. For example, in Case No. EF-2008-0349, AmerenUE sought expedited treatment of its application to issue new indebtedness and to take advantage of market timing in volatile changing markets. In less than four weeks the Staff filed its recommendation and the Commission issued its order by the requested date.

¹ According to Exhibit 2, p.2 of 5, attached to Laclede's Verified Application, Laclede indicates an anticipated long term debt issuance of up to \$325 million.

Issue 1.B:

Should Laclede be allowed to issue preferred stock within the debt limit or above the debt limit?

Mr. Marevangepo testifies in his rebuttal testimony (page 5) that there are many different types of preferred stock, some of which are treated more like debt. Therefore, if Laclede should issue preferred stock in lieu of debt, that preferred stock should be allowed and accounted for under the recommended \$100 million debt limit. Otherwise, should the Company wish to issue preferred stock not in lieu of debt, the Company should be required to provide to the Commission the specific terms and conditions of preferred stock it proposes to issue above and separate from the proposed debt limit. The Company has not yet provided this information to Staff.

Issue 1. C:

What information should be considered appropriate for purposes of determining a reasonable amount of financing authority?

Section 390.200.1 requires that 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...". The statute anticipates and requires that the applicant keep track of its accounts so that the Commission can ascertain the amount of the Company's expenditures and the purposes for which those expenditures were made. Because the Commission must be able to review this information when it considers how much authority to grant the Company, it is a logical extension of the Commission's oversight function to require the Company to provide it with sufficient information on the purposes and needs to which the Company puts such funds to use.

That said, if Laclede should request authority to issue securities to fund projected capital needs, Laclede should provide projected financial statements that show the anticipated amount of such capital needs, the purposes of such needs, and the timing of such needs. Additionally, Laclede should file a plan on the anticipated type of security, the amount of security, and the timing of security issuances over the period of the authority requested.

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

Issue 2:

Can and should the Company be required to file with the Commission any credit agency reports issued on the Company, on its debt issuances, or on the Laclede Group?

Laclede can and should be required to file these reports in order to allow Staff and the Commission the ability to monitor credit rating agencies' evaluations of the Company's credit quality. This oversight is critical because Laclede Group and its unregulated business affiliates conduct unregulated business activities that may directly impact the credit quality of the regulated Laclede Gas Company. The Commission must remain informed of the credit quality of its Missouri utilities and it does so by requiring the submission of credit rating agency reports.

For example, the Commission currently monitors credit rating agency reports for KCP&L and Great Plains Energy. In Case No. EF-2010-0178, the Commission required KCP&L and Great Plains Energy to submit copies of credit ratings agency reports and

both companies are complying with the Commission's order to submit copies of those reports. Likewise so should Laclede.

WHEREFORE, the Staff prays the Commission accept its Prehearing Brief submitted as directed by the Commission.

Respectfully submitted,

/s/ Robert S. Berlin

Robert S. Berlin

Senior Counsel

Missouri Bar No. 51709

Missouri Public Service

Commission Staff

P.O. Box 360

Jefferson City, MO 65102

(573) 526-7779

(573) 751-9285 (Fax)

Bob.berlin@psc.mo.gov

ATTORNEY FOR THE STAFF
OF THE MISSOURI PUBLIC
SERVICE COMMISSION

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 13th day of April, 2010.

/s/ Robert S. Berlin

SCHEDULE 1

IS DEEMED

HIGHLY CONFIDENTIAL

IN ITS ENTIRETY