

**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	)	<b>Case No. GF-2009-0450</b>
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 INITIAL BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) pursuant to the format ordered by the Commission's April 28<sup>th</sup> Post-Hearing Briefing Schedule and submits its Initial Brief in support of Staff's twelve (12) proposed Conditions for the approval of Laclede Gas Company's financing authority. These Conditions are identified in Staff's Prehearing Brief and were reviewed by the Parties with the Regulatory Law Judge at the April 20, 2009 Evidentiary Hearing. (Tr Vol 2, pp 56 – 60) (Laclede Gas Company is hereinafter referred to as "Laclede" or Company")

Staff recommends the Commission approve Laclede's Application for financing authority with Staff's proposed twelve (12) Conditions. Staff first addresses the Conditions disputed by Laclede.

**Proposed Conditions 1, 2, 8, 11, and 12 in Dispute**

**Condition 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. (Ex 9, Staff Dir, p 9 ln 20 – p 10 ln 6)

**Proposed Findings of Fact:**

1. Laclede seeks an authority from the Commission specifically authorizing it to issue, sell, accept and/or enter into Registered Securities, Common Stock, Private Placement Securities and Capital Leases in an aggregate amount not to exceed \$600 million at any time, or from time to time, for a three-year period following the Effective Date of the grant of authority. (Ex 1, Verified App, p 13).
2. Laclede is required under Commission Order in GM-2001-342 to keep the total amount of long term debt outstanding within 65% of its capital structure and to keep a 35% minimum equity ratio. (Ex 8HC Staff Dir p 6 lns 13-15; Ex 2 Laclede Dir p 8, lns 19 -23)
3. Laclede is obligated under GM-2001-342 to maintain its debt and preferred stock ratings at investment grade levels. ( Ex 2 Laclede Dir p 8 ln 23 to p9 ln 2)
4. If Laclede faced a deteriorating credit rating due to imbalance in its capital structure, Laclede may issue common equity to bring its capital structure back into balance. (Tr Vol 2, p 140 ln 10 to p 141 ln 4)
5. Laclede has no plans to issue preferred stock. (Tr Vol 2, p 106 lns 17-20)
6. Laclede stated the requested \$600 million authority represents 75% of Laclede's total capitalization. (Tr Vol 2, p 104, lns 5-14)
7. Both Laclede witnesses Rawlings and Waltermire testified at hearing that the requested authority includes the ability to issue up to \$275 million of long term debt. (Tr Vol 2, p 116 lns 19-21 and p 128, lns 16-22)
8. The ability to issue \$275 million of long term debt is in addition to any outstanding debt. (Tr. Vol 2, p 187, lns 1-4)
9. All Laclede plant, property and equipment collateralize the Company's current and prospective debt issuances. (Tr. Vol 2, p 189, lns 17 -25; p 130 lns 7 - 12)
10. The Company does not pledge its assets as collateral for common stock issuances. (Tr Vol 2, p 129 lns 11-17).

11. 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. (Ex 8HC Staff Dir, Sch 1).
12. The \$100 million long term debt limitation was achieved by rounding 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. (Ex 8HC, Sch 1; p 6 lns 4 – 12 and 18 – 22; p 7 lns 3 - 8)
13. Staff arrived at an estimated total amount of long term capital requirement of \*\* \_\_\_\_\_ \*\* million by estimating Laclede's total capital needs based on projected financial statements provided by Laclede from which Staff deducted the Company's Funds From Operations (FFO) to reach the total estimated required funding. (Ex 8HC Staff Dir, Sch 1)
14. The total \*\* \_\_\_\_\_ \*\* million includes \*\* \_\_\_\_\_ \*\* million of total estimated external funds needed for Laclede's proposed new investment and \$50 million that is required to refinance two \$25 million debt issuances; one in 2010 and one in 2012. (Ex 8HC Staff Dir, p. 6 lns 9 – 12 and Sch 1)
15. Staff testified at hearing that the purposes set forth by Laclede in its Verified Application support a \$100 million debt limitation. (Tr Vol 2, p 271 lns 18-22)
16. Laclede witness Rawlings testified that Staff's recommended \$100 million is based on a prospective look at what Laclede expects to incur in the way of capital expenditures. (Tr Vol 2, p 117 lns 6 -9)
17. Laclede witness Rawlings testified at hearing and in her prefiled direct testimony that "Laclede has requested a larger authorization than would be required solely to finance its planned capital expenditures and scheduled debt repayments, the amount of the authorization is nevertheless warranted by the company's potential need to respond on a timely basis to financing requirements that cannot be forecasted at this time because the future market and other circumstances that may drive them are impossible to predict." (Tr Vol 2 , p 103, lns 7-3 and Ex 2, Laclede Dir p 8 lns 4 – 9)
18. Laclede witness Rawlings stated at hearing "We're asking only for an authorization to issue securities should that become necessary." (Tr Vol 2 p 115 lns 18-20). Ms Rawlings could not specify an amount of the \$600 million authority that would be attributed to flexibility. (Tr Vol 2 p 116 lns 5-16; p 118 lns 2-4)
19. Laclede witness Waltermire testified at hearing the Company is seeking flexibility in its requested authority that will provide sufficient available unutilized authority to respond to things that may happen in the future that the

Company can't predict with certainty and to be able respond to a changing market environment, credit markets and "whatever it is." (Tr Vol 2, p 196 ln 23 to p 197 ln14).

20. Mr. Waltermire testified at hearing "The authorization we're asking for does not mean we're going to issue. What we're requesting is the ability to maneuver in the marketplace when those [situations] arise." (Tr. Vol 2, p 205, lns 10-14)
21. \*\* \_\_\_\_\_ \*\* (Tr Vol 3 In Camera, p 98 ln 12 to p 99 ln 18; Ex 3 HC "FitchRatings" p. 3)
22. In a presentation to the American Gas Association Financial Forum on May 9, 2009, Laclede witness Waltermire sponsored a slide presentation stating that Laclede Group in 2008 could fund all of its Capital Expenditures through internally generated funds and maintain a positive free cash flow. (Ex 11; Tr Vol 2, p 274 lns 11 – 19)
23. Mr. Waltermire testified at hearing that internally generated funds come from rates and that to the extent the internal funds don't support everything, that's why you have financing. (Tr Vol 2 p 148 lns 17-22)
24. Laclede did not identify to Staff any amount of their funds from operations (internally generated funds) that the Company would need for any other specified purpose. (Tr Vol 2 p 267 ln 22 to p 268 ln 4).
25. Laclede admits Staff considered in its recommendation that Laclede would fund its capital expenditures with funds from operations. (Tr Vol 3 In Camera, p 99 lns 15-18)
26. In support of its requested \$600 million authority, Laclede appended to its Verified Application (Ex 1) supporting Exhibit 3 "Statement of Unreimbursed Property Additions and of Unreimbursed Money Expended from Income to Discharge Funded Debt at March 31, 2009". The Company claims it had unreimbursed expenditures for net property additions and discharge of funded debt for the 5 year period, April 1, 2004 through March 31, 2009 in the amount of \$279,417,945. (marked at hearing as Ex 5; Tr. Vol 2 p 142 lns 6-13).
27. The \$279 million of claimed unreimbursed expenses (Ex 5) is part of Laclede's rate base. (Tr Vol 2, p 145 lns 10 -12).
28. Laclede has financed its claimed unreimbursed expenses of \$279 million (Ex 5) and that financing is part of the Company's capital structure. (Tr. Vol 2, p

142 ln 21 to p 143 ln 8; p 145 lns 13 – 15 and 18 – 21) Laclede has financed its \$279 million through equity and debt. (Tr Vol 2 p 188 ln 22 to p 189 ln 2)

29. Laclede is earning a rate of return on its rate base based on its capital structure. (Tr. Vol 2,p 145, lns 22-25)
30. Laclede is recovering its \$279 million of claimed unreimbursed expenses through depreciation. (Tr Vol 2, p 145 lns 10 -17) The Company recovers depreciation costs through its rates and provides cash into the treasury and is a form of reimbursement of expenditures. (Tr Vol 2, p 150 lns 7-13)
31. Long term capital that supports the Company's rate base has already been issued and is reflected on the Company's balance sheets. (Tr Vol 2, p 144 lns 22-25 and p 146 lns 12-21) Long term capital is used by the Company to allow it to invest in the assets in its balance sheet. (Tr Vol 2, p 149 ln 25 to p 150 ln 4)
32. Mr. Waltermire testified at deposition and at hearing that common stock and long term debt can be issued to reimburse the treasury. (Tr. Vol 2, p 148 ln 23 to p 149 ln 21) However, he also stated that long-term capital issued to support assets is not considered reimbursement of the treasury. (Tr Vol 2, p 146 lns 1 – 21) Therefore, long-term capital issued by Laclede in the past has not been to reimburse the treasury and Laclede has no intent to do so under its proposal in this Application. (Tr Vol 2, p 205 ln 15 – p 206 ln4; p 207 lns 22-23)
33. Laclede Direct witness Rawlings is the treasurer and assistant secretary of Laclede Gas Company, Laclede Group, Laclede Energy Resources, and Laclede Pipeline. (Tr Vol 2 p 93 lns 5-22)
34. Laclede Rebuttal witness Waltermire is a certified public accountant (Tr Vol 2 p 155 lns 9 -11) and is the senior vice president and chief financial officer of Laclede Gas Company, the chief financial officer of Laclede Group and the vice president of all other Laclede affiliates including Laclede Energy Resources and Laclede Pipeline. (Tr Vol 2 p 124 lns 16-19 and p 125 lns 17 – 25)
35. Mr Waltermire owes fiduciary duties to Laclede Gas Company and Laclede Group. (Tr Vol 2 p 126 lns 8 – 15) Mr. Waltermire is responsible for the preparation of the Laclede Group 10-K Report, signs off on its certification, and submits it to the SEC. (Tr Vol 2 p 160 lns 1-7).
36. Staff testified that it can respond quickly to an emergency need citing the example of Staff's quick turnaround of its recommendation in AmerenUE's financing application case EF-2008-0349 which allowed the Commission to issue its order by the date requested. (Ex 10 p 7 ln 19 to p 8 ln 18; Tr Vol 2 p

216 ln 20 to p 217 ln 4; p 270 ln 7 – 16) Staff can expedite a recommendation if the Company identifies a specific need in support of an emergency application. (Tr Vol 2 p 270 lns 22 -25)

### **Conclusions of Law:**

The Commission's approval of the financing application in this case falls under Section 393.200.1 RSMo, which states that Missouri corporations issuing stock, bonds, notes or other evidences of indebtedness must obtain from the Commission an order authorizing the issuance and that the money, property or labor to be procured or paid for is or has been reasonably required for the purposes permitted under the statute and specified in the order:

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 is Staff's].

Staff's condition that Laclede's authority be limited to \$100 million in long term debt issuances is based on information from projected financial statements the Company

provided to Staff. This Condition allows Laclede to fund all of its planned capital expenditures and to retire its two \$25 million dollar bonds through issuance of debt alone. Said another way, Laclede can cover all refinancing obligations and planned capital expenditures without issuing common equity. The decision whether to issue debt or equity and in what amounts rests with management.

It is possible the Company may decide to issue common equity to pay for its planned expenditures. Issuing equity, instead of debt, may maintain an acceptable debt-equity ratio for the credit ratings agencies, such as Fitch Ratings. The Company has flexibility to issue common equity in order to maintain a balanced capital structure consistent with its current targeted capital structure to allow the Company to maintain its current credit rating.

Of the total \$100 million, the planned \*\* \_\_\_\_\_ \*\* million of capital expenditures meet the requirement of Sect. 393.200.1 because they are “...*necessary for the acquisition of property, the construction, completion, extension or improvement of its plant or system*...” To get to the \*\* \_\_\_\_\_ \*\* million amount of capital expenditures, the Staff applied Laclede’s available internally generated funds, or Funds From Operations (FFO) for capital investment. Laclede did not provide any information in its Application to allow Staff to discern any other intended uses of FFO. Staff’s application of Laclede’s FFO toward its capital expenditures is consistent with Laclede management’s expectations as described by Laclede in \*\* \_\_\_\_\_  
\_\_\_\_\_ \*\* its presentation given to the American Gas Association Financial Forum in May 2009.

Staff rounded up to \$100 million from its actual total estimated amount of funding required of \*\* \_\_\_\_\_ \*\* million in order to allow Laclede reasonable operating flexibility that is consistent with the planned estimates and to make its debt more marketable.

Within the \$100 million long term debt limit, Laclede is statutorily allowed the “...*discharge or lawful refunding of its obligations*...” for its planned refinancing of \$50 million of old debt issuances.

And, the known planned capital expenditures and bond refinancing that support the \$100 million proposed debt limit are statutorily permissible because “...such purposes are not in whole or in part reasonably chargeable to operating expenses or to income.”

At the heart of the dispute over Condition 1 is Laclede’s request for an authority that would allow the Company to issue, over and above Staff’s proposed \$100 million, an additional \$175 million of long term debt – a total of \$275 million of long term debt authority<sup>1</sup>.

Because Company plant, property, and equipment collateralize debt issuances, and common equity does not, the authority to issue debt in excess of known identified capital needs creates a matter of serious concern on the pledging of public utility assets dedicated to serving ratepayers. Under Section 393.180, the ability of a gas utility to place liens against its property on its issuances of indebtedness is a “special privilege”.

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<sup>1</sup> Laclede’s Application did not propose a debt limit of \$275 million. Rather, the Application requested a broad authority to issue \$600 million of any type of financing. From testimony at hearing, Laclede stated that based on restrictions in place at this time, the Company could not issue any more than \$275 million of long-term debt. (Tr Vol 2, p 116 lns 5-21)



Commission oversight of such issuances is critical to protecting regulated assets from unnecessary encumbrances.

Laclede contends that it needs up to \$175 million more authority for purposes of flexibility and market impact. In support Laclede contends it needs to be able to respond to the unknown, to have the ability to maneuver in the marketplace, and to be able to respond to changing market conditions. Laclede even testified it is seeking more authority than it needs to meet its known and identified capital needs and cannot quantify a dollar amount needed for “flexibility”. Laclede has not demonstrated whether such “flexibility” is “*...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...*”

Indeed, “flexibility” is not a permitted purpose under the statute. Reasons of “flexibility” offered by Laclede do not fall within the “...*purposes to which the issue or proceeds thereof are to be applied.*” Laclede has identified no specific purpose for “flexibility” beyond providing scenarios of the unknown. Nor has the Company quantified a specific dollar amount of “flexibility” for the Commission to consider. Because the “flexibility” sought by Laclede does not fall within the purposes allowed by the statute, the Commission has no statutory basis on which to grant a higher authority than the \$100 million limit on debt issuances. Laclede’s Application and testimony support no more than that.

**Laclede’s claim for additional debt authority based on its reported \$279 million of Unreimbursed Expenses from 2004 to 2009 fails under Sect. 393.200.1**

With its Verified Application Laclede submitted supporting Exhibit 3 “Statement of Unreimbursed Property Additions and of Unreimbursed Money Expended from

Income to Discharge Funded Debt at March 31, 2009.” The Company claims it had unreimbursed expenditures for net property additions and discharge of funded debt for the 5 year period, April 1, 2004 through March 31, 2009, in the amount of \$279,417,945. The Commission received this statement into evidence as Exhibit 5 and heard testimony from Laclede’s witnesses on the merits of this claim.

The Company contends that its statement of \$279 million of unreimbursed expenses over the past 5 years somehow justifies that the Company be granted a prospective authority based solely on its past history of expenditures on net plant additions.

The language of the statute seems to permit such a schedule as long as it covers a five year period before the filing of the application. The phrase “... within five years next prior to the filing of an application with the commission for the required authorization...” may reasonably be interpreted to modify the preceding clause “...*for the reimbursement of moneys actually expended from income*, or from any other moneys in the treasury of the corporation...”

If the statute ended here, Laclede’s argument for an additional \$279 million of authority based on reported “unreimbursed” expenses might have some merit. But the statute goes on to limit “unreimbursed” expenses to those expenses not already secured or obtained from financing. This statutory limitation is critical to determining the merits of Laclede’s claim.

Section 393.200.1 conditions unreimbursed expenses “...*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.”

Laclede’s testimony and the facts clearly show: (1) the \$279 million of claimed unreimbursed expenses is part of Laclede’s rate base, (2) Laclede has financed its claimed unreimbursed expenses of \$279 million, (3) that financing is part of the Company’s capital structure, and (4) Laclede has financed its \$279 million through equity and debt.

Mr. Waltermire, the Chief Financial Officer of Laclede Gas and Laclede Group who is trained as a Certified Public Accountant, testified at deposition and at hearing that common stock and long-term debt can be issued to reimburse the treasury. Indeed, Laclede has reimbursed its treasury under the statute by financing its \$279 million through equity and debt. Mr. Waltermire is in a unique position to know that equity and debt issuances reimburse the Company treasury because he has fiduciary duties to Laclede Gas and other Laclede affiliates and he is responsible for the preparation and ultimate approval of the Laclede Group Form 10-K Filing to the Securities Exchange Commission.

The evidence of record leaves no doubt that long term capital supports the Company’s rate base, including the claimed \$279 million of “unreimbursed” expenses from 2004 to 2009, and that capital has already been issued. Long term capital is reflected on the Company’s balance sheets and it is used by the Company to support the assets on its balance sheet.

Therefore, the Commission must reject Laclede’s Exhibit 5 seeking \$279 million of authority for “unreimbursed” expenses because those expenses have been reimbursed

to the Company treasury through debt and equity financing and because the statute does not authorize the Commission to grant an authority to reimburse expenses that are secured by financing.

**Laclede may apply for a new authority should the Company face an emergency financing need**

Nothing in Commission rules or the statute prevents Laclede from filing a new application for financing authority in the event it identified a new or emergency financing requirement.

Staff cited the AmerenUE financing case EF-2008-0349 in which Staff provided a fast turnaround of its recommendation which resulted in the Commission issuing its order by the date requested. Should Laclede identify a specific need in the future, the Staff can expedite its recommendation to allow the Commission to issue an expedited order.

**Condition 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.

**Additional Proposed Findings of Facts:**

37. Staff witness Marevangeopo testified at hearing there are different types of preferred stock. Some preferred stock carries characteristics of debt and some the characteristics of stock. The debt limit that is decided by the Commission will apply to preferred stock that is debt-like. Preferred stock that is not debt-like will be treated as equity under the equity limit. (Tr Vol 2 p 218 lns 1 – 22)

**Conclusions of Law:**

Condition 2 requires that the Company, if it intends to issue preferred stock, shall specify to the Commission the type of preferred stock it plans to issue (debt-like or equity-like). Currently, the Company has no plans to issue preferred stock of any stripe.

However, should the Company decide to issue preferred stock, it must report to the Commission certain information on its issuance as required in Conditions 4 and 5 that are described below and are not in dispute with the Company.

Condition 5 provides the Company shall 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.

Under the ambit of Condition 5 it is reasonable the Company should report specifically to the Commission whether the terms and conditions of its prospective preferred stock issuance carry debt-like or equity-like characteristics. Certainly such a required disclosure is within the broad discretion of the Commission's oversight duties under Sections 393.200.1 and 393.180.

**Condition 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.

**Additional Proposed Findings of Facts:**

38. The Commission ordered the Kansas City Power & Light Company to file credit rating agency reports in case EF-2010-0178. (Tr Vol 2 p 43 lns 15 – 20)

**Conclusions of Law:**

On March 3, 2010, the Commission issued its *Order Authorizing The Issuance Of Debt* (Order) in EF-2010-0178. That Order directed "...the company shall file with the Commission as a non-case related submission any credit rating agency reports published on KCP&L's or GPE's corporate credit quality or the credit quality of its securities; [FN

3: Great Plains Energy, parent company of KCP&L and KCP&L Greater Missouri Operations]

The Commission recognized a significant legitimate public interest in the monitoring of the financial health of its investor-owned utilities when it required KCP&L and GPE to file credit rating agency reports.

Section 393.180 links the public interest of monitoring the financial health of regulated utilities with the Commission's oversight powers, stating in pertinent part "The power of gas corporations.....to issue stocks, bonds, notes and other evidences of indebtedness and to create liens up their property... is a *special privilege*, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe."

The Commission is obligated under Sect. 393.180 to exercise its statutory oversight by monitoring the financial health of Laclede when it issues debt collateralized by the regulated assets serving Missouri ratepayers.

It is reasonable, therefore, that the Commission require Laclede to provide it the most current credit rating agency reports. The Commission should require no less of Laclede than it does of KCP&L and GPE.

**Condition 11:**

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

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

**Additional Proposed Findings of Facts:**

39. Laclede testified that capital leases, which are a long term financing vehicle similar to debt financing, are booked on a company's balance sheet, and become part of the company's rate base upon which the company earns a return and are subject to depreciation. (Tr Vol 2 p 201 ln 1 to p 204 ln 7)
40. Laclede has not identified any dollar amount of existing operating leases that it might convert to capital leases. (Tr Vol 2 p 266 lns3-11)
41. Laclede has not identified any dollar amount of new capital leases that it may choose to enter into. (Tr Vol 2, p 266 lns 12-15)
42. The four GAAP criteria for classifying new capital leases are:
  - a. The lease conveys ownership to the lessee at the end of the lease term;
  - b. The lessee has an option to purchase the asset at a bargain price at the end of the lease term;
  - c. The term of the lease is 75% or more of the economic life of the asset; and
  - d. 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. (Ex 10, Staff Reb p5 lns 6 -21)

**Conclusions of Law:**

Because capital leases are financing vehicles similar to debt financing, it is a reasonable exercise of the Commission's discretion under Section 393.200.1 RSMo for the Commission to require that new capital leases apply to the \$100 million long term debt limitation in Condition 1. The Company has not identified any purpose or amount of new capital leases during the period of the requested authority. As discussed above, the Company has provided a total estimated amount of planned capital expenditures and debt refinancing that supports the \$100 million debt limitation.

The choice of financing "vehicle", whether that choice is long-term debt, capital leases, or common equity, is a decision that belongs within the discretion of Laclede

management. In the future, should Laclede identify a new purpose and amount needed for new capital leases, the Company may file an application for authority.

**Condition 12:**

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.

**Conclusions of Law:**

Condition 12 requires the Company to tell the Commission in future finance cases what has been financed and what has not.

The collateralization of regulated utility assets employed to serve ratepayers is a “special privilege.” Section 393.180. The Commission has a legitimate public interest in monitoring the financial health of the public utilities it regulates. Implicit within Sect. 393.200.1 is the requirement to keep detailed information on the types, amounts, and purposes of issuances of long term capital. This information is necessary for the Commission to perform its oversight function. Section 393.180.

With respect to maintenance and replacement items, Sect. 393.200.1 requires “...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 point here is the statute requires the Company to keep detailed records of certain expenditures so that the Commission may determine what purposes are appropriate for long term financing.

Therefore, Condition 12 is a logical extension of the statute’s record keeping requirement in that it requires the Company to keep separate information on what has already been financed with long term capital under a previous authority. That which has



already been financed should not be brought out again in a new application to be used as a basis for a new authority.

### **Staff's Proposed Conditions Not in Dispute**

In addition to the above disputed Conditions 1, 2, 8, 11, and 12, the Staff prays the Commission approve Laclede's Verified Application subject to the following undisputed Conditions 3, 4, 5, 6, 7, 9 and 10. (Tr Vol 2, pp 56 – 60)

#### **Condition 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.

#### **Condition 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.

#### **Condition 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.

#### **Condition 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 shall 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.

**Condition 7:**

That the Company shall submit to Staff and Public Counsel any communications and supporting information with credit rating agencies concerning individual debt securities issued under this Application.

**Condition 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.

**Condition 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.

**WHEREFORE**, the Staff prays the Commission accept its Initial Brief submitted as directed by the Commission and approve Laclede's Application for financing authority subject to Staff's proposed twelve Conditions.

Respectfully submitted,

**/s/ Robert S. Berlin**

Robert S. Berlin  
Senior Counsel  
Missouri Bar No. 51709  
Attorney for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 526-7779  
(573) 751-9285 (Fax)  
[Bob.berlin@psc.mo.gov](mailto:Bob.berlin@psc.mo.gov)

**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 21st day of May, 2010.

**/s/ Robert S. Berlin**