

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 4th day of
April, 2006.

USW Local 11-6,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-2006-0060</u>
)	
Laclede Gas Company,)	
)	
Respondent.)	

**SECOND ORDER DENYING MOTION TO DISMISS
AND DIRECTING FILING**

Issue Date: April 4, 2006

Effective Date: April 14, 2006

USW Local 11-6 filed a Complaint in which it alleges that Laclede may not be providing safe and adequate service as required by Section 393.130, RSMo. The particular areas of safety concern stem from recent revisions to Laclede's tariff with regard to meter readings and inspections. USW Local 11-6 amended its Complaint on February 8, 2006. On March 16, 2006, Laclede filed a motion asking the Commission to dismiss the Amended Complaint for failure to state a claim upon which relief may be granted.¹

Laclede's motion to dismiss argues that USW Local 11-6 has not pled sufficient facts in order to substantiate its claim of a statutory violation. In addition, Laclede argues

¹ The Commission previously denied Laclede's motion to dismiss the original Complaint on similar grounds.

that even if USW Local 11-6 has pled sufficient facts, “there are no laws, rules, decisions or orders requiring Laclede or any other Missouri gas corporation to have a meter reader wearing a gas detection device annually enter a home to read an inside meter, or to perform a gas safe inspection when the flow of gas is not interrupted.”

The standard for review in consideration of motions to dismiss for failure to state a cause of action has been clearly established by Missouri’s courts as follows:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff’s petition. It assumes that all of plaintiff’s averments are true, and *liberally* grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.²

Essentially, USW Local 11-6 has included the following facts in its Amended Complaint:

- A. Laclede used to be required under its previous tariff language to have annual inside meter readings.
- B. During those annual inside meter readings, meter readers would wear gas detection devices.
- C. If those gas detection devices sensed natural gas a service call with inspections was triggered.
- D. Under the previous tariff, Laclede used to conduct a physical inspection of all gas appliances at a customer’s house when service was conveyed from one customer to another.
- E. Under the recent tariff revisions, Laclede only conducts an inspection when service is conveyed from one customer to another where the flow of gas has been discontinued at the premises.

² *Eastwood v. North Central Missouri Drug Task Force*, 15 S.W.3d 65, 67 (Mo. App. W.D. 2000) (emphasis added).

USW Local 11-6 alleges that under these facts, Laclede is in violation of Section 393.130 for failure to provide safe and adequate service.

The Commission determines that if the factual allegations in USW Local 11-6's petition are accepted as true, as they must be for purposes of considering the motion to dismiss, that USW Local 11-6 has stated a cause upon which the Commission can grant relief. Only after hearing the evidence and arguments of the parties will the Commission be able to determine whether USW Local 11-6 has established that Laclede is in violation of the statute. In addition, in *Ingle v. Case*³ cited by Laclede, the court stated that the "petition does not allege any fact." Thus, that case can be distinguished from the current one since USW Local 11-6 has alleged some supporting facts in this case. On that basis, Laclede's motion to dismiss shall be denied.

In order to begin moving this matter toward a more expeditious resolution, the Commission shall direct the parties to file a proposed procedural schedule. The schedule shall set the time for an evidentiary hearing no later than May 19, 2006.

IT IS ORDERED THAT:

1. Laclede Gas Company's motion to dismiss the Amended Complaint is denied.
2. No later than April 14, 2006, the parties shall jointly or separately file a proposed procedural schedule, which sets the time for an evidentiary hearing as set out above.

³ *Ingle v. Case*, 777 S.W. 2d 301 (Mo. App. S.D. 1989).

3. This order shall become effective on April 14, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw, Clayton and Appling, CC., concur.
Murray, C., absent.

Dippell, Deputy Chief Regulatory Law Judge