BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

USW Local 11-6,	)	
	)	
Complainant,	)	
	)	
v.	)	**Case No. GC-2006-0390**
	)	
Laclede Gas Company,	)	
	)	
Respondent.	)	

REPORT AND ORDER

Issue Date: June 22, 2007

Effective Date: July 2, 2007

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Appearances

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REGULATORY LAW JUDGE: Morris L. Woodruff, Deputy Chief Regulatory Law Judge

REPORT AND ORDER

Syllabus: The Commission finds that United Steelworkers Local 11-6 has not proved its allegations against Laclede Gas Company relating to the company's installation of automatic meter reading devices on its meters. Local 11-6's complaint is denied.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On April 10, 2006, United Steel Workers Local 11-6, the union that represents certain employees of Laclede Gas Company, filed a complaint against Laclede. The complaint alleged Laclede was implementing an automated meter reading (AMR) program by which an electronic device is installed on residential meters to remotely read gas usage on the meter. The complaint alleges that employees of CellNet Technology, Inc., the company Laclede has contracted with to install the AMR devices, are not receiving adequate training and as a result, numerous installations have resulted in meter damage and gas leaks. The complaint asks the Commission to order Laclede to continue installation of the AMR devices using its own "trained non-managerial personnel" to ensure the devices are installed without damaging the meters or causing gas leaks. The complaint further requests that Laclede be ordered to have its "trained non-managerial personnel" promptly inspect each of the meters already installed by CellNet.

By a notice issued on April 11, pursuant to Commission Rule 4 CSR 240-2.070(7), the Commission served a copy of Local 11-6's complaint on Laclede. Laclede timely responded on May 11, with a Motion to Dismiss Complaint, or in the Alternative, Motion for a More Definite Statement, and Motion to Strike Request for Relief, and, in the Alternative, Answer to Complaint.

On August 10, the Commission denied Laclede's motion to dismiss, but granted the motion for more definite statement, finding that Local 11-6 failed to plead sufficient facts to support its complaint. The Commission also granted, in part, Laclede's motion to strike a portion of the relief requested by Local 11-6. Specifically, the Commission found that it could not require Laclede to use specific personnel to carry out the Commission's order.

Therefore, the Commission struck the term "non-managerial" from the relief requested by Local 11-6. Local 11-6 was ordered to file an amended complaint, setting out the facts supporting its claim, no later than August 21. Local 11-6 filed its First Amended Complaint on August 21, and Laclede filed its answer on September 20.

The Commission established a procedural schedule requiring the parties to prefile written direct, rebuttal, and surrebuttal testimony. An evidentiary hearing convened on December 11, and continued on December 12. The hearing could not be concluded on those dates, so the hearing resumed, and was completed on February 26, 2007. Post-hearing briefs were submitted on April 27.

Installation of Automatic Meter Reading Devices

Gas distribution companies, such as Laclede, determine the amount of gas a customer uses during a given period of time by installing a meter on the premises to measure the amount of gas flowing into the home or business. Historically, that gas meter was read by a human meter reader who would visually read the dials on the meter and report the reading to the company. The company would then use the manual meter reading to bill the customer for the amount of gas used.

Sometimes, a gas meter is installed on the outside of the home or business. Other times, particularly in older neighborhoods, the meter is installed inside the customer's home. Laclede has approximately 250,000 inside meters in its gas distribution system.[1] While a gas company may have problems visually reading any meter, inside or outside, inside meters present particular problems for meter readers because someone must be at home to let the meter reader into the house if the meter is to be read.

[1] Seamands Rebuttal, Ex. 42, Page 3, Line 2.

If Laclede's meter reader is unable to get into a house to read the meter, the company must use an estimated usage amount to calculate the customer's bill for that month. If the company continues to have problems accessing the meter, it will continue to send out bills based on estimated usage until it is able to obtain an actual meter reading. If the actual meter reading eventually shows the estimated usage to be lower than actual usage, a customer may be asked to pay the undercharge in addition to his or her regular bill, resulting in many angry customers. Indeed, Laclede has recently faced a complaint before this Commission regarding problems arising from its estimated billing practices.[2] The problems resulting from the inability to access a customers meter can be alleviated by installing an electronic device on the meter to automatically read the meter and transmit the reading to the company.

In March 2005, Laclede entered into a contract with CellNet Technology, Inc. to automate the reading of all 650,000 meters in its service territories.[3] CellNet subcontracted with Honeywell Corporation to install the automated meter reading (AMR) devices.[4] Honeywell was paid a fee per device installed[5] and was responsible for hiring the workers needed to install the devices. Honeywell turned to Manpower, Inc., a temporary employment agency, to find the large number of temporary workers needed to install the

[2] Commission Case Number GC-2006-0318.

[3] Seamands Rebuttal, Ex. 42, Page 2, Lines 6-9

[4] Korbisch Rebuttal, Ex. 7, Page 3, Lines 20-21.

[5] Deposition of Redepenning, Ex. 31, Page 44, Lines 21-22

AMR devices on Laclede's meters. At the peak of the installation process, approximately 85 people were employed as installers.[6]

Temporary workers hired to install AMR devices were required to pass a prehire drug and alcohol test, and undergo a criminal background check, as well as a check of their driving record. The workers were also required to have a high school diploma or GED, and were required to provide their own vehicle.[7] After they were hired, the installers were given a training program, including safety information, using materials prepared jointly by Laclede and CellNet.[8] The installers were not, however, trained gas workers.

Deployment of the AMR devices began in July 2005.[9] At the time of the February 2007 hearing, over 600,000 AMR devices had been installed. Laclede anticipated that installation of the remaining devices would be complete by early summer 2007.[10] So by the time this order is issued, the installation process will likely be nearly complete.

At the beginning of the hearing, Clark Korbisch, Vice-President of Customer Operations for CellNet,[11] offered a demonstration of the technique used by Honeywell and Manpower employees to install the CellNet AMR devices on Laclede's existing meters. Korbisch's demonstration revealed the relative simplicity of the installation process. The installer simply unscrews four screws to detach the original index from the meter. He or she then screws the AMR module to the meter frame using the original screw holes, inserts

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[6] Id. at Page 59, Lines 9-14.

[7] Id. at Page 47, Lines 17-24.

[8] Korbisch Rebuttal, Ex. 7, Page 4, Lines 5-8.

[9] Seamands Rebuttal, Ex. 42, Page 2, Line 9.

[10] Transcript, Page 1025, Lines 13-23.

[11] Korbisch Rebuttal, Ex. 7, Page 1, Lines 5-7.

the original index into the AMR module, and attaches the AMR index cover over the module.[12] The AMR installation takes place entirely on the outside of the meter and never interferes with the flow of gas.

Does the Installation of an AMR Device Cause the Meter to Leak?

Local 11-6's complaint alleges that Laclede's ability to provide safe and adequate service to its customers is impaired by the installation of AMR devices on the meters by inadequately trained installers. Despite the simplicity of the installation process, Local 11-6 contends meters can be damaged during the installation process in two ways, either of which, it contends, could result in dangerous gas leaks. Local 11-6's first concern is based on a couple of incidents early in the installation process.

In their efforts to remove the existing index from some gas meters, the AMR installers occasionally encountered stripped screws that could not be removed with a screw driver. With the concurrence of Laclede, CellNet formed a team of experienced installers who specialized in using a power drill to drill into the stripped screw and then reverse the drill to back the screw out.[13] In separate incidents on January 17[14] and January 20, 2006,[15] an installer apparently drilled too deeply and penetrated into the area of the meter through which gas flows, causing gas to blow out of the meter. Following these incidents, Laclede discontinued the use of power drills by the installers.[16] No drilling on meters in the field is allowed. Problem meters are instead removed and repaired at Laclede's meter

[12] Transcript, Pages 5-15.

[13] Seamands Rebuttal, Ex. 42, Page 9, Lines 10-14; Transcript, Page 34, Lines 18-20.

[14] Pat White Direct, Ex. 5, Page 5, Lines 19-23.

[15] Boyle Direct, Ex. 15, Pages 2-3, Lines 15-22, 1-10.

[16] Seamands Rebuttal, Ex. 42, Page 9, Lines 17-18.

shop.[17] However, approximately 190,000 meters had been installed before the use of power drills was stopped.[18]

Despite Laclede's decision to stop the use of power drills in the installation of CellNet devices in early 2006, one more apparent drill-through incident was reported. On November 10, 2006, Jim Johnson, a Laclede service employee was dispatched to a St. Louis area business in response to a report of a gas smell in the building's boiler room. Johnson smelled gas when he arrived and detected a high gas-in-air reading near the AMR device at the top of the meter.[19] Although there was a high level of gas directly above the meter, the open-air reading in the room away from the meter was zero and the building was not evacuated.[20]

The maintenance supervisor at the business informed Laclede's gas worker that an AMR device had been installed on the meter the day before.[21] Upon investigating the source of the gas leak, Laclede's gas worker removed the AMR device and found that two of the screws used to install the AMR device had penetrated the meter casing, causing the leak.[22]

Laclede conducted a further investigation of this incident and found that the two punctures in the "hand hole plate" at the top of the meter appear to have been made by a drill.[23] As a result of his investigation and discussions with the installer, Patrick Seamands,

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[17] Transcript, Pages 313-314, Lines 25, 1-4.

[18] Transcript, Page 316, Lines 16-19.

[19] Jim Johnson Direct, Ex. 34, Page 1, Lines 3-16.

[20] Transcript, Page 716, Lines 2-7.

[21] Jim Johnson Direct, Ex. 34, Page 2, Lines 18-19.

[22] Id. at Page 3, Lines 6-8.

[23] Seamands Supp. Rebuttal, Ex. 43, Page 3, Lines 12-16.

Laclede's Chief Engineer, concluded that the installer did not drill the holes, and that Jim Johnson, the Laclede gas service worker, was unlikely to have caused the problem.[24] The appearance of drilled holes in the meter is therefore an unsolved mystery.

The safety of using a power drill on a meter through which gas is flowing is questionable. However, to its credit, Laclede stopped the use of power drills by CellNet installers after problems first became apparent. Aside from the mysterious incident in November 2006, there is no evidence that CellNet installers have used power drills on Laclede meters since the practice was discontinued in early 2006. The leaks resulting from the early drill-through incidents were readily apparent and quickly discovered. Any leak caused by a power drill before their use was discontinued would also be obvious and would have been discovered long ago. Therefore, the use of power drills in the installation process is no longer a concern.

Local 11-6's second concern about leaks from meters on which CellNet devices have been installed is less dramatic. Several members of Local 11-6, who are Laclede employees, testified that in the course of doing their jobs they have noticed more leaks from meters since Laclede began to install the AMR devices. Local 11-6 presented such testimony from several meter readers, as well as gas workers in Laclede's service department, and even from customers. The problem with this testimony is that it is entirely based on conjecture and anecdotal observations. These witnesses simply describe leaks they have observed and conclude that the leak must have been caused by the installation of an AMR device.

[24] Id. at Page 7, Lines 11-12.

While these witnesses appear to be sincere in their beliefs, it is apparent that they have little knowledge of the interior workings of a gas meter. For example, Jonathan Guelich, a meter reader, testified to having found leaks on numerous meters after installation of an AMR device. While acknowledging that he was not trained in the service area, he testified that it appeared to him:

> sometimes leaks would occur when the AMR device would be screwed on too tightly, pinching the gasket that prevents gas from escaping. In others, the AMR device was not screwed on tightly enough and the gasket would not effectively seal the meter. In both of these situations, the gasket would not contain any leaks within the meter itself and therefore gas could leak.[25]

At the hearing, during cross examination, Guelich made it clear that the gasket he was talking about was the "little black gasket" between the actual meter and the AMR device.[26]

Unfortunately for this theory about the cause for gas leaks, Clark Korbisch, during his demonstration of the installation of an AMR device, explained that the gasket around the index cover described by Guelich was designed only to keep insects and anything else out of the index. The gasket cover is not designed to seal in gas and in fact contains small vent holes designed to prevent the buildup of condensation in the index.[27] Thus, one theory of how an AMR installation could cause a gas leak was disproved. Yet, Guelich was not aware that the index cover is vented and is not intended to be gas tight.[28]

Even trained gas workers from Laclede's service department, who install and remove gas meters as part of their job, do not actually work on the meter mechanism. If a meter is not working properly, the service workers simply remove and replace the meter;

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[25] Guelich Direct, Ex. 37, Page 2, Lines 1-9.

[26] Transcript, Page 824, Lines 5-8.

[27] Transcript, Page 9, Lines 9-22.

[28] Transcript, Page 825, Lines 13-16.

the nonfunctioning meter is taken to the meter shop for any necessary repairs. Thus, the gas workers have little knowledge of the internal workings of a meter. For example, Pat White, the President of Local 11-6, and a service technician for Laclede,[29] acknowledged that he knows little about the details of how an AMR device works,[30] and further that he knows little about the inner workings of a meter.[31] That did not, however, stop Mr. White from offering his own theories about how the installation of an AMR device could cause a gas leak.

In his direct testimony, White repeats the theory that improper installation of the index cover gasket can cause a meter to leak.[32] He also was not aware that index covers are vented and are not designed to be gas tight.[33] However, in his surrebuttal testimony, White develops a new theory for how an AMR installation might cause a gas leak.

Laclede's Chief Engineer, Patrick Seamands explained in his rebuttal testimony that a meter uses a drive arm extending from the inside of the meter to turn the dials on the index on the outside of the meter to register gas usage. A small seal placed at the center box, the location where the drive arm emerges from the inside of the meter, prevents gas from escaping from the meter. Over time that internal seal may wear out resulting in a small gas leak, which Seamands describes as so small as to be non-hazardous.[34]

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[29] Pat White Direct, Ex. 5, Page 1, Lines 7 and 14.

[30] Transcript, Page 354, Lines 6-17.

[31] Transcript, Page 392, Lines 24-25.

[32] Pat White Direct, Ex. 5, Page 3, Lines 6-8.

[33] Transcript, Page 364, Lines 8-13.

[34] Seamands Rebuttal, Ex. 42, Pages 5-7

Pat White seizes on Seamands explanation to theorize that improper alignment of the AMR module on the drive axel can cause the drive axel to turn erratically, causing friction on the center box seal, resulting in a gas leak.[35] This new theory is based on nothing more than speculation; as White concedes, he has done no studies to test his theory.[36] He also concedes his lack of knowledge about the center box.[37] Nevertheless, White confidently offers his opinion that any meter leak discovered after an AMR device was installed was most likely caused by the installation.[38]

Laclede did conduct a study to determine whether meters are more likely to leak after installation of an AMR device. Beginning in October 2005 and continuing through August 2006, all residential meters with AMR devices that were brought into Laclede's meter repair shop were given to two employees, who kept track of the problems they identified with those meters. Their study revealed that meters with AMR devices were actually less likely to come into the shop with leaks than were meters without AMR devices.[39]

After considering the evidence presented by the parties, the Commission finds that the installation of AMR devices has not caused an increased number of gas leaks from meters on Laclede's system.

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[35] Pat White Surrebuttal, Ex. 6, Page 2, Lines 3-19.

[36] Transcript, Page 365, Lines 9-11.

[37] Transcript, Page 366, Lines 16-22.

[38] Transcript, Page 366, Lines 14-15.

[39] Seamands Rebuttal, Ex. 42, Pages 7-8, Lines 14-22, 1-17, and Schedule 1.

Other Safety Concerns

Aside from allegations of increased leaks from meters equipped with AMR devices, Local 11-6 alleges other, more general, safety concerns resulting from the installation of AMR devices. In particular, Local 11-6 argues that the minimally trained workers sent out to install the AMR devices may inadvertently cause other problems and are unlikely to identify gas safety hazards that are not directly related to the installation of the AMR device.

Certainly, the temporary workers hired by Honeywell and Manpower to install the CellNet devices are not trained gas workers. As described in the deposition testimony of Frank Meuting, a temporary worker who has actually installed the CellNet devices, the training the workers received was minimal and focused primarily on learning to read the dials of the meter so that the new device could be properly set.[40] The safety training the workers received related primarily to their safety while driving and on the job,[41] and did not allow them to be operationally qualified to perform operations tasks on gas meters within the meaning of state and federal gas safety requirements.[42] However, there is no reason that the workers installing the CellNet need to be trained gas workers.

As the Commission saw for itself during the demonstration offered at the beginning of the hearing, the installation of an AMR device is a simple task that does not require a great deal of education or training. The training the installers received was sufficient to prepare them for that task.

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[40] Testimony of Meuting, Ex. 4.

[41] Copies of the PowerPoint safety presentations shown to new temporary workers are attached to the Deposition of Debra Redepenning, Ex. 31.

[42] Transcript, Page 913, Lines 1-5.

Local 11-6 expressed concern that an installer who roughly handled a meter might inadvertently loosen the union connecting the meter to the gas line resulting in a gas leak.[43] Pat White testified that he had seen such leaks occur when trained gas workers were working on a meter so he assumed the same could happen when an installer was working on a meter.[44]

Local 11-6's concerns about installers handling meters roughly are really just speculations about what could happen. Nothing about the process for installing the AMR device requires the installer to handle the meter in a manner that is likely to loosen a union and cause a leak. Those installers carry pliers and screwdrivers, not hammers and pipe wrenches so it is unlikely they will routinely bang away on the meters.[45] Of course, strange things can happen, but if an installer smells gas while working on the meter, the installer is instructed to immediately report that leak to Laclede.[46] On numerous occasions, installers did report gas leaks they discovered while on the job.[47]

As it happens, a gas leak incident similar to the hypothetical problem described by Local 11-6 did, in fact, occur. On December 19, 2006, Mark Boyle was dispatched to a residence to investigate a reported gas smell. When he arrived, he found a high level of gas in the house. Boyle immediately turned off the gas and aired out the house, but did not

[43] Pat White Surrebuttal, Ex. 6, Page 1, Lines 11-13.

[44] Transcript, Page 375-376, Lines 17-25, 1-11.

[45] Transcript, Page 26, Lines 2-10.

[46] Transcript, Page 30, Lines 20-23.

[47] Ex. 10HC is a list of such calls.

evacuate the residents.[48] After the level of gas in the home dropped to a safe level, Boyle determined that the gas was leaking from a loose union. He was able to stop the leak by tightening the union.[49] Boyle testified that the leak probably resulted from a leaking rubber seal in a 30 year-old union.[50] A CellNet employee had been in the home less than an hour earlier to reprogram a previously installed AMR device. The CellNet employee denied smelling gas before he left the home.[51] No one knows what caused the gas leak, but it is possible the CellNet employee's activities in reprogramming the AMR device caused the old rubber seal to further loosen, allowing the leak to occur.[52]

This was an unfortunate incident that fortunately did not have tragic consequences. However, it was only one incident and there is no indication it was anything other than an isolated event. If the old rubber seal was in poor shape, the same leak could have occurred the day before if the customer had simply bumped the meter while cleaning house. Such things do happen and the only way to avoid any risk of a gas leak would be to station a trained gas worker in the home at all times.

Local 11-6's second safety concern does not involve hazards that may be created by the AMR installation process, rather it is concerned that the relatively untrained installation workers will be unlikely to discover unrelated safety hazards near the meter; hazards that a trained gas worker might be able to spot while working on the meter.

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[48] Boyle Deposition, Ex. 27, Pages 70-75.

[49] Id. at Page 106.

[50] Id. at Page 112.

[51] Seamands Supplemental Rebuttal, Ex. 43, Pages 10-11, Lines 20-23, 1-22.

[52] Id. at Page 17, Lines 12-22.

The temporary installation workers are not trained to spot corrosion, or other safety hazards, while they are installing the AMR devices. If trained gas workers were installing the AMR devices instead, they would presumably be more likely to be able to identify such dangerous conditions in the home. Testimony offered by Local 11-6 described several occasions on which hazardous conditions were identified shortly after installers had been on the premises, without noticing the danger. However, even trained gas workers may have difficulty identifying such dangers, as illustrated in the events described by gas worker Everett Minton, when a corroded pipe broke while he was working on it, causing gas to blow in to a basement.[53]

In considering Local 11-6's argument, it is important to realize that the installation of the AMR devices is not intended to function as a safety inspection. Commission rules require Laclede to perform leak and corrosion inspections on customer meters every three years.[54] Laclede also does home-sale inspections when a customer's home is sold.[55] Laclede will still do all those inspections, and the installation of the AMR device does not count as an inspection. In other words, the installation of the AMR device is in addition to, rather than a substitute for, the other ongoing safety inspection requirements.

Local 11-6's final safety concern is with the allegedly erratic movement of the test dials on meter indexes equipped with an AMR device. The dials in question are the half foot dial and the two foot dials, which are test dials not used in meter reading for billing purposes. Laclede explains that several years ago meter manufacturers made a design

[53] Transcript, Pages 597-620.

[54] Seamands Rebuttal, Ex. 42, Page 10, Lines 7-13.

[55] Transcript, Page 585, Lines 21-23.

change to meter indexes to reduce friction on the drive axel, which allows the test dials to move more freely.[56] Essentially, the dial hand can fall from force of gravity, ahead of the moving gears, with the gears catching up to the dial hand on the upswing. As a result, the movement of these test dials can be erratic, although the erratic movement does not affect the accuracy of the meter.

However, gas workers may "spot" the test dials on the meter to check for possible leaks downstream from the meter. Erratic movement can affect that spotting process. To deal with this problem, Laclede sent a technical update to its gas workers advising them that the test dials should be spotted when both test hands are on the upswing.[57] Laclede believes this simple solution corrects the problem,[58] and Staff's witness agrees.[59]

The Commission finds that any safety issues associated with the erratic movement of test dial have been adequately addressed by Laclede. Furthermore, Local 11-6's witness indicated that erratic movement of the test hands is also a problem with factory installed AMR indices.[60] Therefore, the erratic movement of test dials seems to be a hardware problem that is not the result of any installation error.

After considering the evidence presented by the parties, the Commission finds that Local 11-6's safety concerns about the installation of AMR devices are unfounded.

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[56] Seamands Rebuttal, Ex 42, Page 12, Lines 7-10.

[57] Exhibit 9.

[58] Seamands Rebuttal, Ex. 42, Page 12, Lines 14-18.

[59] Transcript, Page 970, Lines 8-17.

[60] Carlton Direct, Ex. 13, Page 3, Lines 5-9. Also, Transcript, Page 490, Lines 1-12.

Lack of Adequate Records

In its post-hearing brief, Local 11-6 concedes the "dearth of data from which an informed decision can be made in regard to the safety and adequacy of the AMR installation."[61] Local 11-6 blames this lack of evidence on what it describes as inadequate record keeping by Laclede and CellNet, and contends the inadequate record keeping creates a hazard for Laclede's customers.

Local 11-6 argues that Laclede should have conducted, and documented, an investigation before engaging CellNet to install AMR devices on its meters. Local 11-6 does not clearly describe precisely what would have been included in such an investigation, nor does it cite any rule or statute requiring Laclede to conduct such an investigation. The evidence presented to the Commission establishes that no gas safety incident reports resulting from AMR installation have ever been filed with the National Transportation Safety Board.[62] Furthermore, the evidence establishes that CellNet has been providing AMR service for more than ten years and has installed about 3.5 million AMR devices on gas meters in that time.[63] There is no basis to conclude that Laclede should have conducted any additional investigation before contracting with CellNet to install AMR devices on its meters.

Local 11-6 also alleges that Laclede and CellNet failed to keep adequate records regarding the installation of AMR devices. Again, Local 11-6 does not allege that Laclede has failed to comply with any particular statute or regulation regarding record keeping. The

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[61] USW Local 11-6's Post-Hearing Brief, Page 12.

[62] Transcript, Page 851-852, Lines 1-25, 1-14.

[63] Korbisch Rebuttal, Ex. 7, Page 2, Lines 11-16.

evidence shows that CellNet kept a record of anytime one of its employees discovers and reports a gas leak.[64] Indeed a record of such reports was offered into evidence by Local 11-6.[65] Laclede kept incident reports, known as CIS reports, about leak investigations during the installation process.[66] The Commission's Staff, which is responsible for reviewing the records maintained by Laclede, did not state any concerns about the utility's record keeping.

Local 11-6 has been unable to document safety hazards resulting from installation of AMR devices on Laclede's gas meters. Rather than concede the lack of such evidence, Local 11-6 asks the Commission to blame the lack of such evidence on poor record keeping by Laclede. There is no evidence to justify casting such blame on Laclede.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law:

1. Laclede is a "Gas Corporation" and a "Public Utility," as those terms are defined at Section 386.020 (18) and (42), RSMo Supp. 2006. As such it is subject to regulation by this Commission.

2. Section 393.130.1, RSMo Supp. 2006, provides:

> Every gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. . . .

[64] Transcript, Page 292, Lines 12-14.

[65] Ex. 10HC.

[66] Transcript, Page 544, Lines 14-16.

3. Local 11-6 is authorized to bring a complaint against Laclede by terms of Section 386.390, RSMo 2000.

4. As the party bringing a complaint, Local 11-6 has the burden of proving its allegations.[67]

5. Section 386.310.1, RSMo 2000, provides as follows:

> The Commission shall have power, after a hearing had upon its own motion or upon complaint, . . . to require every person, corporation, municipal gas system and public utility to maintain and operate its line, plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand, . . .

The pertinent portion of Section 393.130.1, RSMo Supp. 2006, provides as follows:

> Every gas corporation, . . .shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. . . .

These sections give the Commission authority to order Laclede to take appropriate and necessary actions needed to maintain the safety and reliability of its gas distribution system.

6. Local 11-6 presented testimony from several Laclede customers who, after learning about Local 11-6's concerns about installation of the AMR devices through the news media, asked Laclede to have a trained Laclede, union gas worker install the AMR device on the meter in their home. Laclede refused, in general, to accede to those requests; in some instances telling the customers that they would need to pay an extra fee

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[67] *State ex rel GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W.3d 680 (Mo. App. W.D. 2003).

to have the AMR device installed by a Laclede gas worker instead of a contracted installer.[68]

Testimony was presented at the hearing as to whether Laclede's tariffs allowed it to charge customers for such services. Staff testified that such charges were allowed by Laclede's tariff,[69] but there was no evidence indicating that any customer had actually been charged for installation of an AMR device by a union worker. The Commission does not need to determine whether Laclede's tariff would allow such charges, because customers clearly have no right to demand that a utility's work be done by a particular class of employee. As the Missouri Supreme Court has established, "[t]he customers of a public utility have a right to demand efficient service at a reasonable rate, but they have no right to dictate the methods which the utility must employ in the rendition of that service."[70]

DECISION

After applying the facts as it has found them to the applicable law, the Commission has reached the following decisions regarding the issues described by the parties in the List of Issues filed before the start of the hearing.

1. Has the installation of AMR modules by Laclede violated Section 393.130.1 RSMo (safety and/or adequacy) or any gas safety law, rule, order, or decision of the Commission?

As a public utility, Laclede is required to provide safe and adequate service to its customers. Local 11-6's complaint alleged that Laclede had failed to provide safe and

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[68] Waites Direct, Ex. 21, Page 1-2, Paragraph 5.

[69] Transcript, Page 758, Lines 19-23.

[70] *State ex rel City of St. Joseph v. Pub. Serv. Comm'n*, 30 S.W. 2d 8, 14 (Mo. banc 1930).

adequate service relating to the installation of AMR devices on its meters. Local 11-6 has failed to present sufficient evidence to prove its allegations. The Commission concludes that the service provided by Laclede relating to the installation of AMR devices on its meters is safe and adequate.

2. If so, what is the appropriate remedy?

Local 11-6 asks the Commission to order Laclede to 1) use trained gas workers to install all remaining AMR devices on meters not yet retrofitted, 2) use trained gas workers to inspect every meter that is equipped with an AMR device at the rate of 80,000 meters per month, 3) compile a hazard analysis schedule relating to the required inspections, and 4) require service employees to pressure test lines any time they have to shut the lock cock off or turn it on.[71]

Since the Commission has found the service provided by Laclede to be safe and adequate, no remedy is appropriate.

IT IS ORDERED THAT:

1. USW Local 11-6's First Amended Complaint is denied on its merits and is therefore dismissed.

[71] USW Local 11-6's Post-Hearing Brief, Pages 32-33.

2. This Report and Order shall become effective on July 2, 2007.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and Appling, CC., concur;
Gaw and Clayton, CC., dissent;
and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 22nd day of June, 2007.