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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Hearing

8

May 22, 2006

Jefferson City, Missouri

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Volume 2

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USW Local No. 11-6,)

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Complainant,)

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vs.) Case No. GC-2006-0060

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Laclede Gas Company,)

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Respondent.)

)

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NANCY M. DIPPELL, Presiding,

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SENIOR REGULATORY LAW JUDGE.

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JEFF DAVIS, Chairman,

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STEVE GAW,

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ROBERT M. CLAYTON,

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LINWARD "LIN" APPLING,

COMMISSIONERS.

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REPORTED BY:

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KELLENE K. FEDDERSEN, CSR, RPR, CCR

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1 P R O C E E D I N G S

2 (EXHIBIT NOS. 1 THROUGH 19 WERE MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 JUDGE DIPPELL: This is Case No. 2006-0060,
5 USW Local 11-6 vs. Laclede Gas Company. My name is Nancy
6 Dippell. I'm the Regulatory Law Judge assigned to this
7 matter. We've come here today on Monday, May 22nd, 2006,
8 to take up this complaint, and we're going to begin with
9 entries of appearances. I'll begin with Laclede.

10 MR. ZUCKER: Thank you, your Honor. Rick
11 Zucker, Charles Elbert and Michael C. Pendergast here on
12 behalf of Laclede. Mr. Pendergast and my address is
13 720 Olive Street, Room 1516, St. Louis, Missouri 63101.

14 I would like to also introduce Charles S.
15 Elbert. He is a Missouri attorney with the firm of Kohn,
16 K-o-h-n, Shands, S-h-a-n-d-s, Elbert, Gianoulakis,
17 G-i-a-n-o-u-l-a-k-i-s, and Giljum, G-i-l-j-u-m, LLP,
18 One US Bank Plaza, Suite 2410, St. Louis, Missouri 63101.

19 JUDGE DIPPELL: Thank you. Union?

20 MS. SCHRODER: Good morning, your Honor.
21 Sherrie Schroder and Janine Martin for USW 11-6. Our
22 address is 7730 Carondelet, Suite 200, St. Louis, Missouri
23 63105.

24 JUDGE DIPPELL: And Staff?

25 MR. SCHWARZ: Tim Schwarz, P.O. Box 360,

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1 Jefferson City, Missouri 65102, appearing for the Staff of
2 the Commission.

3 JUDGE DIPPELL: And Office of the Public
4 Counsel?

5 MR. POSTON: Marc Poston for the Office of
6 the Public Counsel, P.O. Box 2230, Jefferson City,
7 Missouri 65102.

8 JUDGE DIPPELL: Okay. Before we went on
9 the record, we premarked all of the exhibits that the
10 parties knew that they were going to intend to offer
11 today, and I understand that there are some objections to
12 some of those exhibits that we know about. We also have a
13 motion for leave to file summary determination and that
14 leave for summary determination was filed on Friday. Are
15 there any other pending motions besides those? I see
16 none.

17 I want to begin then with -- I guess I want
18 to begin by seeing where we can meet in the middle, and
19 that is, were there any agreements as to stipulations as
20 to the facts? None were presented earlier.

21 MS. SCHRODER: No.

22 MR. RUCKER: We haven't done a formal
23 stipulation. I think in the motion Laclede has asserted
24 that there -- that the main facts in the Amended Complaint
25 are not disputed, those facts being that we have stopped

1 doing the TFTO inspections, and that we have also pursuant
2 to tariff change stopped doing the annual meter reads on
3 inside meters. So given those, that's the main
4 allegations in the Complaint or the Amended Complaint, on
5 that basis we filed our Motion for Summary Determination.

6 And in addition, on April 11th you issued
7 an Order that said that the Union had failed to show that
8 Laclede had violated any rules, federal or state safety
9 rules, and that no one else was performing these actions,
10 the TFTO inspections and the meter reads, and that there
11 was nothing to distinguish Laclede from the other
12 utilities in the state.

13 And since April 11th, the Union has put
14 nothing in the record to prove otherwise, and so that's
15 the main reason we renewed our motion to have a summary
16 determination, that Laclede is not in violation of a rule,
17 so, therefore, there can be no complaint.

18 JUDGE DIPPELL: Okay. With regards to the
19 motion for immediate relief, that was a motion for some
20 extraordinary relief, so I would -- I don't want that
21 order to be the standard for the outcome of the complaint
22 case. So I'm -- on that basis, you know, I don't think
23 that the Commission is going to grant your motion on
24 that -- on the basis of it doesn't comply with the order
25 that they sent out on the extraordinary relief.

1 MR. ZUCKER: Your Honor, without relying on
2 that order, though, the standard for a complaint is still
3 that they have to show a violation of a law or a rule
4 order, or decision of the Commission, and they have not
5 done that. They really don't dispute that fact.

6 MS. SCHRODER: Your Honor, are you wanting
7 us to address this yet? I mean, you hadn't reached the
8 motion for immediate relief, as far as I knew. If you
9 want us to address it, we're ready.

10 JUDGE DIPPELL: The motion for immediate
11 relief we --

12 MS. SCHRODER: I'm sorry. The motion for
13 leave to file the motion for summary determination.

14 JUDGE DIPPELL: I will give you an
15 opportunity to respond to the motion for summary
16 determination, Ms. Schroder. You can go ahead and respond
17 then. You can -- I can -- I'll grant Mr. Zucker's motion
18 for leave to file his motion.

19 MR. ZUCKER: Thank you.

20 JUDGE DIPPELL: And that motion is now
21 before us. So, Ms. Schroder, let's hear your response.

22 MS. SCHRODER: All right. Well, first of
23 all, I would just point out that although you have granted
24 their motion for leave to file it, their motion for
25 summary determination as I understood was the first time

1 that they had moved for a summary determination as opposed
2 to a motion to dismiss, which they've moved for twice now
3 and been denied twice, but -- and under your rules those
4 motions are to be filed 60 days in advance of the hearing
5 unless they receive leave.

6 In this case, of course, this motion was
7 filed at 4:38 the eve of the hearing, the workday eve.
8 There is nothing new, however, in Laclede's motion for
9 summary determination. It's the same arguments that
10 they've made and had rejected by the Commission twice in
11 motions to dismiss, plus, of course, the addition of
12 this --

13 JUDGE DIPPELL: The difference being,
14 Ms. Schroder, is that now your evidence is before -- the
15 evidence that you are planning to put on is before the
16 Commission. So can you --

17 MS. SCHRODER: Well, some of our evidence
18 is before the Commission. We haven't had the opportunity
19 to cross-examine the main witnesses for -- or the only
20 witnesses that I know for both the Staff and the company,
21 and I think that that will be very important evidence.

22 JUDGE DIPPELL: Are you planning to make
23 your direct case in cross-examination?

24 MS. SCHRODER: I'm planning on making some
25 of my case through cross-examination, yes. And we do

1 have -- you know, we have filed written testimony in this
2 case, but you have not -- the Commission has not had the
3 opportunity yet to speak with those people and make
4 credibility determinations, and they haven't had the --
5 they haven't had the benefit of rebuttal testimony for any
6 of those people either, if that becomes an issue.

7 JUDGE DIPPELL: And you feel that you've
8 made your direct case in your direct evidence?

9 MS. SCHRODER: I feel that the direct
10 evidence plus the cross-examination that we will be doing
11 today will make our direct case.

12 JUDGE DIPPELL: Well, isn't that a little
13 backwards, Ms. Schroder? Don't you have to make your case
14 before you get a chance to cross-examine?

15 MS. SCHRODER: Well, this will be our first
16 opportunity to speak with Mr. Leonberger and submit his
17 testimony, for instance. So I think that we have -- I do
18 believe that we have presented sufficient evidence to show
19 that there is -- that there could be a violation here of
20 the safe and adequate service requirement of the Missouri
21 statute, and we have always asserted that that is what we
22 believe Laclede has violated here in their -- you know,
23 there are regulations that relate to that. But primarily
24 we are standing on the statute for the safe and adequate
25 provision of service.

1 JUDGE DIPPELL: Okay. Because a majority
2 of the Commission, a quorum is not assembled today yet,
3 and because this is a contested motion, I'm not going to
4 be able to rule on the motion for summary determination.
5 So we're going to go ahead and begin the case, presenting
6 the witnesses, and we'll take up objections to the
7 testimony as it's presented.

8 MR. ZUCKER: Thank you, your Honor.

9 JUDGE DIPPELL: So let's go ahead and begin
10 with opening statements, then. Ms. Schroder, did you want
11 to make an opening statement?

12 MS. SCHRODER: Yes. Thank you.

13 JUDGE DIPPELL: You can either do it there
14 or you can come to the podium.

15 MS. SCHRODER: Do you have a preference?

16 JUDGE DIPPELL: It's up to you.

17 MS. SCHRODER: All right. We're here today
18 because we believe that Laclede with its tariff revision
19 has asked the Commission to roll the dice about natural
20 gas safety by abandoning a system with a proven safety
21 record in favor of a system that has not been
22 investigated, vetted or proven to be as safe.

23 As recent mine explosions and other
24 tragedies across the country have shown, there is never a
25 good time to cut corners or roll the dice with regard to

1 safety.

2 It is important at the outset that we
3 present to the Commission a number of red herrings that
4 Laclede already has or is expected to raise in this
5 proceeding. The first is Laclede's claim that the Union
6 is opposing automatic meter reading, which the company
7 asserts in its brief, prehearing brief here, is, quote,
8 perhaps the most significant advancement in customer
9 service ever undertaken by Laclede, end of quote.

10 This case is not a challenge to AMR. The
11 Union understands and accepts that AMR, or automatic meter
12 reading devices, are here. But just as the obesity of a
13 child or of a thousand children doesn't justify shutting
14 down the MacDonald's hamburger chain, so too the advent of
15 AMR cannot justify the termination by Laclede of the two
16 challenged practices.

17 Nor is this case about the Union's desire
18 to maintain jobs for meter readers and service persons, as
19 Laclede has repeatedly alleged and implied. Of course the
20 Union wants to maintain jobs. That will always be one of
21 the primary functions of a union. But unions have also
22 traditionally been greatly concerned with and motivated by
23 general employee and public well-being.

24 Thus, unions have initiated and vigorously
25 supported the drive to create the Occupational Health and

1 Safety Act, minimum wage laws, which do not directly
2 impact union members, the 40-hour work week, safe mining
3 practices, and we can go on from there. Unions have been
4 instrumental in funding and providing volunteer labor for
5 the rebuilding efforts in Louisiana and Mississippi after
6 Hurricanes Katrina and Rita and in rescue attempts
7 associated with 9/11.

8 So Laclede's allegation that this union is
9 motivated to bring this complaint for reasons other than
10 public safety is an insult to the Union. And the
11 implications that this Commission should summarily dispose
12 of the Union's complaint because of Laclede's false
13 assertion that the complaint is not motivated by concerns
14 about public safety is yet another red herring.

15 The Commission has a duty to investigate
16 concerns about whether natural gas distribution is being
17 safely and adequately provided by Laclede, no matter who
18 raises that complaint or even why.

19 This case challenges the termination of two
20 practices that Laclede has ceased in response to AMR,
21 especially since their termination does not necessarily
22 flow from AMR. This case is about restoring the former
23 status quo in order to ensure safe delivery of gas to the
24 public, at least until such time as either the safety
25 aspects of these procedures have been thoroughly

1 investigated and discounted, which has not occurred, or
2 this Commission or the Legislature has enacted alternative
3 safety provisions that address the protections that are
4 otherwise lost by these tariff revisions.

5 Nor is the Union asking the Commission to
6 impose a new cost on Laclede or on the public. The costs
7 at issue have been borne by Laclede, and through it by the
8 public, for some time for multiple decades with regard to
9 TFTOs, the turn off/turn on procedures, and for almost
10 15 years with regard to annual reads.

11 Turn off/turn ons or TFTO inspections were
12 previously required by Laclede's tariff. Until June 10th,
13 2005, Laclede's tariff required Laclede to inspect
14 customer premises every time a new occupant requested
15 service without regard to whether the flow of gas has been
16 interrupted. And that tariff is in front of you as
17 Exhibit 12, I believe, here today. Yes. Specifically
18 it's PSC No. 5 consolidated, fifth revised sheet No. R14.

19 Under the new tariff, Laclede no longer has
20 to perform TFTO inspections. This is the first of the two
21 practices that the Union wants returned to the former
22 status quo. In the course of a turn off/turn on
23 inspection, a service person using a leak detector known
24 as a combustible gas indicator, or CGI, inspects piping
25 into and out of the meter and the gas appliances for gas

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1 leaks and connection issues, checks to see that valves are
2 turned properly, that flues are in proper working order,
3 and that there is no blockage, carbon buildup or odor of
4 gas that could foreshadow carbon monoxide poisoning or
5 provide danger of fire or explosion.

6 In regard to TFTOs, please consider the
7 following: Decades ago someone thought these TFTO
8 inspections were an important enough safety measure to
9 require them as part of Laclede's tariff, and that did not
10 change until June 2005.

11 Staff has articulated the only change in
12 circumstances cited by anyone to justify terminating the
13 TFTO inspections. That was a purely economic change, that
14 with the advent of AMR, it is no longer necessary to
15 physically enter the premises to make the change in the --
16 the name of the gas, whose name the gas is in. Staff's
17 position in this regard is generally inaccurate and
18 reflects a critical misunderstanding of the initial
19 rationale behind the TFTO inspections.

20 Service employees have long performed TFTOs
21 on outside meters and on inside meters with some type of
22 remote reading device, neither of which required the
23 service employee to enter the premise to physically switch
24 service between the prior resident and the new resident.
25 Service employees were required to enter the residence in

1 those cases solely to perform the TFTO inspection.

2 This circumstance covers the vast majority
3 of Laclede's approximately 650,000 residential meters. In
4 other words, in the vast majority of those -- of those
5 situations, the only reason a Laclede service person
6 actually entered the resident's home was to perform the
7 turn off/turn on inspection, not because they had to do
8 anything physical to switch the gas service over.

9 Laclede has produced no study and no data
10 of any kind reflecting that TFTOs are not an important
11 safety device. Conversely, the Union has produced
12 evidence of regular safety benefits arising from these
13 inspections from the people who actually conduct these
14 inspections.

15 No one has indicated the economic savings
16 that Laclede gets from ceasing these practices. What is
17 the cost/safety ratio that this Commission finds
18 reasonable? Are those cost savings passed on to the
19 customer? There appeared to be no reduction for this
20 change in practice during Laclede's recent rate increase
21 hearings before the Commission, yet Laclede is asking that
22 any inspection duty be placed on the customer here and
23 that the customer bear the expense for this.

24 Laclede and the Staff -- I'm sorry. Are
25 the cost savings to the public from Laclede ceasing these

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1 practices, if they've been passed on at all to the public,
2 are they enough that they enable low-income families to
3 hire private inspectors to make up the safety difference?

4 Even if the Missouri citizenry can afford
5 to pay for the private gas inspection, does the average
6 layperson or even a highly educated layperson have
7 sufficient information about potential gas hazards to
8 recognize warning signs of hazards or to comprehend a life
9 and death need for regular safety inspections? When is
10 the last time that any of us in this room who are not
11 Laclede employees thought to have our gas piping and
12 appliances inspected?

13 The Union's also requesting the
14 continuation of the inspection associated with annual
15 meter reads on inside meters that use remote reading
16 devices. These reads were initially prescribed by the
17 Commission in the early 1990s to address billing
18 inaccuracies caused by remote reading devices.

19 One red herring that Laclede has asserted
20 in this matter is that there is no safety aspect to these
21 reads, merely because the Commission ordered their
22 institution for billing purposes rather than as a safety
23 measure. Putting aside the wisdom of continuing annual
24 reads of remotely read meters for billing reasons until
25 the accuracy of AMR is corroborated, the Union believes

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1 the brief inspections associated with these reads have
2 become a safety minimum that should remain intact for the
3 following reasons:

4 Even prior to the advent of AMR, the
5 majority of Laclede's inside meters were remote reading
6 devices of some sort. Because Laclede has had documented
7 difficulty with the accuracy of those remote devices,
8 Laclede personnel have continued contacts with customers
9 and inside meters more frequently than the company had
10 intended.

11 In addition, they've had this requirement
12 that they conduct annual reads. In the course of
13 performing those reads, meter readers have detected gas
14 leaks with their noses and visually detected potential
15 hazards, and since their institution approximately three
16 years ago, have detected gas leaks with a leak detector
17 device. I didn't say that very well. Since the
18 institution approximately three years ago of the use of a
19 pocket leak detector device by these meter readers, they
20 have detected gas leaks with this device.

21 Meters without remote devices have been
22 supposed to be read on a monthly basis by Laclede, at
23 which time meter readers conduct the same quick visual and
24 nasal inspection of the meter area and respond to any
25 customer voiced concerns. This regular contact provides

1 additional opportunities to catch and fix potential
2 hazards. By the end of 2006, however, Laclede expects
3 there to be no residential meter without a remote reading
4 device. So Laclede's on-premise contact with inside
5 meters will be virtually eliminated.

6 If AMR proves to be as accurate as Laclede
7 has led us all to believe, and we certainly hope it will,
8 Laclede personnel will no longer be in contact with inside
9 meters on a monthly basis, a sporadic basis, or even on an
10 annual basis. The only safety inspection of any type will
11 be performed on a three-year basis. That's the corrosive
12 pipe inspection.

13 Minor gas leaks that crop up during that
14 three-year period are likely to become major leaks if they
15 are left unattended, and they can cause gas to migrate
16 into a residence, creating a substantial risk of fire or
17 explosion.

18 If meters readers currently are regularly
19 locating even these minor gas leaks and other potential
20 hazards on a monthly or -- on their monthly reads of the
21 non-remote meters, remotely read meters, or on the annual
22 reads, in addition to during this three-year corrosion
23 inspection, it's clear that annual reads really do fill an
24 important safety component, even though that was not their
25 initial intended purpose.

1 It is even more -- it is even more
2 important now to maintain this unintended safety benefit
3 of annual reads because Laclede expects and intends AMR to
4 eliminate entirely the need for on-premises meter reads
5 and inspections, except again for the corrosive pipe
6 inspections that only occur on a three-year basis.

7 Let me mention at this juncture that
8 despite Laclede's apparent confusion on this issue, the
9 Union is not now and never has asked the Commission to
10 order Laclede to conduct monthly meter readings of these
11 remotely read meters. The Union is merely asking for the
12 restoration of the annual read inspection.

13 Laclede will undoubtedly attack the Union's
14 evidence and assert there is no measurable safety benefit
15 to the TFTO inspections and the annual read inspections.

16 The Union has asserted from the beginning
17 that it can only produce anecdotal evidence, nor is it
18 financially feasible for the Union to parade every meter
19 reader and every service employee in front of the
20 Commission to explain the safety benefits they've seen
21 from these practices. Moreover, most of those employees
22 would be too frightened of their job security to testify.

23 So the Union is left to present the
24 evidence of the brief written sampling it conducted
25 concerning TFTO inspections, the personal experiences of a

1 business agent who is retired from Laclede but was a
2 service employee there, and the personal experiences of
3 two long-time Laclede employees who are nearing
4 retirement. The Union's witnesses cannot provide
5 statistical evidence because they do not maintain the
6 documentation of their work. They can only testify to the
7 best recollection of the frequency that these inspections
8 occurred and that they turned up problems based on their
9 experience.

10 While the precise incidence cannot be
11 ascertained in this way, it is clear that Union members
12 regularly detect gas hazards through turn off/turn ons and
13 through these annual inspections. Moreover, Laclede has
14 failed to counter with its own incidence data, which
15 indeed it has steadfastly asserted in this proceeding that
16 it does not have.

17 This union does not have the financial
18 resources or the access to people and documents necessary
19 to bring in an expert and conduct a study of the safety
20 effectiveness of the two measures it wants restored.
21 Despite repeated requests for the information, again,
22 Laclede has refused to provide the Union with these
23 documents about hazards found through TFTOs or annual
24 reads, claiming that it doesn't keep that information in
25 that form and that it would be overly burdensome to

1 produce the approximately 79,000 hazard reports turned in
2 for 2005.

3 Although we modified and narrowed our
4 request repeatedly, Laclede continued to assert this
5 defense. And in regard to our final narrowing that they
6 produce the documents they apparently gathered for the
7 depositions of Steve Hendricks, Joe Schulte and Kevin
8 Stewart's depositions that occurred about two weeks ago,
9 Laclede has failed to respond to that at all.

10 Accordingly, we assume that just as we have
11 been denied the use of these documents, the Commission
12 will refuse to allow Laclede to use any such documents
13 here today. In any event, it seems clear that the
14 gathering of data on the efficacy of TFTOs and annual
15 meter read inspections as safety measures, if it has ever
16 been conducted, will have to be left to the PSC -- or I'm
17 sorry -- if it ever is going to be conducted, will have to
18 be left to the PSC to order.

19 In addition to the anecdotal evidence from
20 these front-line responders to gas issues, the Union is
21 also presenting to the Commission certain statements made
22 by Laclede management in the course of a recent
23 arbitration hearing over the discharge of Louis Jackson
24 that was conducted in March this year. These statements
25 constitute admissions against interest that, in fact,

1 Laclede does consider TFTO inspections to be an important
2 safety measure.

3 Laclede will likely counter with another
4 red herring, that the Union must not believe TFTOs to be a
5 safety measure since it defended the discharged employee.
6 As I said, this is a red herring. First, as a designated
7 representative of employees, of the bargaining unit who
8 has a statutory duty to fairly represent all of our union
9 employees, the Union challenged Laclede's finding that the
10 employee filed to conduct the inspection and further
11 challenged the extent of the penalty.

12 Secondly and more importantly, the Union's
13 defense of Mr. Jackson in no way negates the sworn
14 position of several members of Laclede management and of
15 Laclede's attorney at the hearing that TFTO inspections
16 are an important safety measure.

17 The Union is also presenting excerpts from
18 the Meter Reading Manual as evidence of Laclede's
19 acknowledgement of the safety aspect of the annual meter
20 reads.

21 Finally, the Commission has before it the
22 testimony of fire chief Steve Arnold, approximately
23 25 letters and e-mails from bipartisan state legislators,
24 at least seven resolutions from political subdivisions and
25 possibly a fire district, and at least one e-mail from a

1 concerned citizen, all attesting to their concerns about,
2 among other things, Laclede's request to cease performing
3 TFTO inspections and annual meter reads.

4 Laclede will ask you to disregard or
5 discredit those resolutions and letters, probably on the
6 grounds that the signatories were unduly influenced and
7 misrepresented to by USW 11-6. This is not true. Once
8 again, Laclede is positing a red herring in order to
9 distract the Commission from the real issues.

10 This red herring involves a very cynical
11 view of Missouri public servants. As public servants
12 yourselves, the Commission knows how important it is to
13 read and independently investigate public documents before
14 signing them. Indeed, if questioned, Laclede would have
15 to admit that the political subdivisions who submitted a
16 resolution to the PSC on these matters did so following
17 public meetings on the issue, at least some of which
18 Laclede was expressly invited to attend.

19 The Staff's position as to these letters
20 and resolutions appears to be that they may reflect a
21 valid concern about public safety, but that the answer to
22 that concern lies with changing the laws to require the
23 customer to pay for an inspection either at the time of
24 moving into a new residence or annually.

25 This position may seem reasonable at first

1 blush, but the consequence of this action would be to make
2 safety unaffordable for a large section of the population.
3 In other words, following the Staff's recommendation would
4 segregate the safe use of gas so that wealthy Missourians
5 would be safe and poor Missourians would not. It was not
6 the intended -- it was not intended that the public served
7 by the Commission be so classified.

8 Laclede and the Staff are going to argue
9 that Laclede is the only gas utility in Missouri and
10 perhaps in the United States that was required to perform
11 turn off/turn on inspections and annual reads. Laclede
12 should continue its prior practices of annual meter reads
13 and TFTO inspections even in the face of these arguments
14 because, first of all, Laclede has produced no evidence
15 that these other utilities don't perform these
16 inspections. They've only produced statements,
17 representations from Laclede that it and the Staff are not
18 aware of any utility that does.

19 This is a major distinction. Even if it's
20 true, other utilities in Missouri either do not have
21 unions to raise this issue and this concern or their
22 unions have not brought the issue to the PSC due to the
23 expense or apparent futility of doing so.

24 In addition, Laclede has the territory with
25 by far the densest population in Missouri. This density

1 poses risks not associated with other populations in
2 Missouri, such as substantial multi-family housing that
3 have different owners and residents, so the owner isn't
4 motivated by personal safety to conduct regular
5 inspections.

6 In addition, multi-family residence have
7 more frequent turnover and generally -- generally there's
8 more frequent turnover of residences in urban areas at
9 all, which increases the risk of gas hazards associated
10 with the unsafe removal of a gas appliance, unreported
11 damage to a gas appliance that occurs during a move, or
12 unauthorized or improvised repairs to a gas appliance by
13 this prior resident, all of which goes undetected, and the
14 harm therefrom is imposed not on the prior resident but on
15 the new resident and all those living in the immediate
16 vicinity or passing by at the time of the incident.

17 The likelihood that when an explosion or
18 fire occurs it will have more far-reaching impact because
19 the density of the population increases the likelihood
20 that multiple families will be touched is one more reason
21 why TFTO inspections and annual reads are very important.

22 Federal standards for gas distribution
23 utilities are minimum standards. They expressly state
24 that. These minimum standards simply are not enough to
25 ensure safety in these circumstances, at least in a dense

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1 population area where gas usage is widespread. The
2 minimum standards regarding inspections also do not take
3 into account the age of the housing stock into which the
4 natural gas is being distributed or whether the gas is
5 being pumped through extremely fragile copper pipe, as is
6 the case for much of Laclede's service area.

7 The inadequacy of minimum standards such as
8 these is reflected by this Commission's repeated
9 imposition on Laclede or gas utilities generally of
10 additional requirements, such as the corrosion inspections
11 occurring every three years rather than every five as the
12 federal standard sets, instrument detection -- I'm
13 sorry -- instrument leak detections being required within
14 business districts annually and somewhat less frequently
15 outside of business districts, and that CSR,
16 4 CSR 240-40.030(13)(m)(2) expressly notes that, quote,
17 the type and scope of the leakage control program must be
18 determined by the nature of the operations and the local
19 conditions, end of quote, with the above frequency of
20 instrument -- or aforesaid frequency of the instrument
21 leak detections serving as an absolute minimum.

22 The Commission has also ordered visual
23 inspection of piping, all connected equipment at turn on.
24 The Commission has ordered testing for leakage -- yeah,
25 testing for leakage at the time of turn on, and previously

1 annual meter reads of remote meters for billing reasons,
2 and further required that in the course of any meter
3 reading, that there be observation, quote, for the purpose
4 of detecting potential leaks by observing things such as
5 odors. That's 4 CSR 240-40 -- 40.030(12)(L).

6 The inadequacy of federal minimum standards
7 are further revealed by recent tragedies in other
8 contexts, such as the safety mechanisms on Ameren's
9 Taumsauk Dam, the height and thickness of the levees in
10 New Orleans, and the mine explosion in Kentucky that
11 occurred on May 20th, 2006, that killed five people,
12 capping a series of fatal mine incidents this year in the
13 United States.

14 Both human and mechanical errors and
15 malfunctions have and will continue to occur in the
16 distribution of natural gas by Laclede and every other gas
17 distribution utility. We believe that the measures we are
18 asking to have restored will reduce the likelihood and
19 lessen the impact of such errors and malfunctions.

20 We don't want anyone from Laclede or this
21 Commission or from any other public body to have to
22 explain or apologize to the public after an accident for
23 abandoning a system with a proven safety record in
24 exchange for an illusory cost savings. And I say that
25 this cost savings is illusory because one disaster would

1 wipe out any financial saving from elimination of these
2 practices. That's before we even reach the question of
3 the value of a human life or lives that were lost for that
4 savings.

5 We are merely asking today that instead the
6 Commission reinstate standards that appear to have worked
7 in the past at least for the time that it takes to conduct
8 a rulemaking investigation for all gas utilities in
9 Missouri or to let the Legislature enact greater
10 safeguards.

11 The Commission has this authority under
12 Missouri statutes Section 393.130, which requires
13 utilities to provide safe and adequate service, as well as
14 through 4 CSR 240-40(12)(b)(4), which permits the
15 Commission to require the company to, quote, amend its
16 plan and procedures as necessary to provide a reasonable
17 level of safety, unquote.

18 The Union believes that through its tariff
19 revisions Laclede is outsourcing to the public the
20 responsibility for some safety measures that Laclede
21 itself has taken in the past. Now, it doesn't threaten
22 anyone's safety if an airline outsources the
23 responsibility for purchasing a ticket online to the
24 computer illiterate. It is another matter entirely,
25 however, to outsource responsibility for gas safety to the

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1 natural gas illiterate.

2 When was the last time anyone in this room
3 other than a Laclede employee independently and
4 spontaneously arranged for a gas safety inspection with
5 Laclede or their gas utility? And the people in this room
6 are pretty well educated. I'm afraid, however, that we
7 are all natural gas illiterate.

8 It's the Union's fervent hope that after
9 hearing all of the evidence over the next two days, you
10 will agree to restore the former status quo of performing
11 TFTO inspections and performing inspections associated
12 with annual meter reads on inside meters again at least
13 until the necessary study or studies can be conducted to
14 get the continued viability of these practices.

15 Thank you for agreeing to hear this
16 important safety issue.

17 JUDGE DIPPELL: Thank you, Ms. Schroder. I
18 just wanted to clarify a couple of things before we move
19 on, and one is that we discussed off the record before we
20 started on the record, you mentioned the ex parte letters
21 we got from legislators and e-mail from consumers. While
22 those are a part of the Commission's record as such, they
23 are not, unless they're offered, part of the evidence that
24 the Commission can consider. So I will -- I just wanted
25 to clarify that so that was clear.

1 Also, just also so that it's clear, the
2 record will show it, but did the Union file any motions to
3 compel any discovery?

4 MS. SCHRODER: No, your Honor, we didn't,
5 because, in fact, Laclede has taken the position
6 throughout that it didn't have this information to
7 produce, and it was not until after these last depositions
8 when we -- I mean, it was during these depositions that
9 occurred two weeks ago that we learned that there was
10 apparently records that related to these three witnesses,
11 and we then asked for that, and we had not received a
12 response for that in time to -- we didn't receive a
13 response to that. We didn't know that we were going to
14 need to compel that.

15 JUDGE DIPPELL: I don't want to get into
16 any discovery disputes at this point, but I just wanted to
17 make that clear. It wasn't clear from your opening that
18 that was the case.

19 Staff?

20 MR. SCHWARZ: May it please the Commission?
21 How do you get your focus when you're standing between the
22 Hatfields and the McCoys and the lead is flying hot and
23 heavy?

24 I think the Commission needs to keep in
25 mind in this case that it's -- the specific focus of this

1 case is the safety of customer-owned piping and
2 customer-owned appliances. The status quo has not changed
3 in 70 years as far as I know, that the customer is
4 responsible for the maintenance of the piping and
5 appliances that the customer uses to consume the gas
6 that's delivered by Laclede.

7 The state and federal regulations are
8 uniform and longstanding that Laclede is responsible for
9 the safe transportation and distribution of the natural
10 gas up to the discharge orifice of its meters, which is
11 where the customer's piping connects, and the customer
12 becomes responsible for the natural gas thereafter.

13 It is not, as suggested by Local 11-6, that
14 Laclede is suddenly somehow trying to shift responsibility
15 of safety on customer premises from Laclede to the
16 customer. That's not the case. It has always been the
17 customer's responsibility.

18 As far as the Commission rules and the
19 federal rules are concerned -- well, at least the
20 Commission rules. The Commission rules require that when,
21 not just Laclede, but any gas utility interrupts the flow
22 of gas for any purpose and then restarts the flow of gas,
23 at that time the utility is required to go into the
24 customer's premises and make sure that the pilot lights
25 are lit, that the appliances are in working order, and to

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1 do a visual inspection of the customer's visible piping.

2 That has not changed. Laclede is not proposing that it

3 changes. Staff is not proposing that it changes.

4 The real question in this case is, are the
5 procedures specified in the Commission rules sufficient to
6 provide safe and adequate service? Local 11-6 suggests
7 not. They say that Laclede has had a different practice
8 than other utilities in the state, other utilities in the
9 country, and that because of those practices Laclede's
10 customers have been safe, and that changing that will have
11 a detrimental effect on the safety of consumers.

12 But that's a post hoc ergo proctor hoc
13 argument. It does not address the facts and the evidence
14 in this case. The construction that this Commission has
15 placed on the statutes that require utilities to provide
16 safe and local (sic) service reflect practices of the
17 Federal Government and practices that are uniform
18 throughout the state.

19 The focus has to be that customers are
20 responsible for the safety of their own property. You
21 cannot shift that burden to Laclede Gas Company, to the
22 Staff, to the Commission, to the ratepayers in general.
23 It has to be customer specific, because it is the
24 customers who control that property, it's the customers
25 who maintain that property, it's the customers who are

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1 there every day to see if the flue has been jangled out of
2 the wall, to see if the pilot lights are lit, to see if
3 the furnaces are operating properly. There is no
4 substitute for that.

5 Certainly it would be safer if a trained
6 professional came in twice a day to inspect the premises.
7 It would be somewhat less safe if they came in once a
8 week, somewhat less safe if they came in every two weeks,
9 but there is still the responsibility on the customer to
10 provide that.

11 The suggestion that Laclede is somehow
12 suggesting a changeover to private safety inspections I
13 think is misleading. That is, these are private
14 inspections. Laclede Gas Company is not the local
15 building inspector, it's not the local zoning inspector,
16 it's not the local fire marshal or fire chief. These are
17 private inspections.

18 They are -- the inspections that the
19 Local 11-6 is seeking to have restored do not address
20 uniformly, regularly or systematically all of the private
21 property of all of Laclede's customers. It will not catch
22 people who stay in their homes for 20 or 30 years. It
23 won't necessarily catch people whose meters are outside
24 their residences.

25 So the types of inspections that Local 11-6

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1 is seeking to restore are not critical elements of a
2 program to ensure that customer property is safely
3 maintained. This Commission has regularly and
4 systematically established rules that the company maintain
5 its property separately. That's why you have the required
6 three-year inspections. Those are inspections of company
7 property that is exposed to the atmosphere, such as
8 meters, possibly regulators, whether they be inside homes
9 or outside homes.

10 So it is -- the Commission rules in that
11 respect are directed to company property. The Commission
12 requires leak surveys on the service lines that run from
13 the mains to the regulators and meters. The Commission
14 requires inspections of company gas mains. The Commission
15 when necessary and supported by evidence has ordered the
16 replacement on a systematic and accelerated basis of
17 company mains, of company services.

18 But never has the Commission ordered any
19 utility to replace furnaces, to replace inside piping
20 that's owned and controlled by the customers.

21 Is this to say that customer -- the safety
22 of customer property is not a concern? Absolutely not.
23 The question, though, is how do you best obtain and
24 enforce that requirement? And I think that certainly from
25 the Staff's perspective, Ms. Schroder touched on it in her

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1 opening. That is, it is the responsibility of the local
2 authorities, the counties, the municipalities that also
3 exercise the police power of the State that are on the
4 scene locally. They know the local housing stock. They
5 know the age of the housing stock. They know the general
6 condition of the housing stock. They know what the local
7 customers can afford to pay. They have licensing
8 requirements for plumbers and HVAC operators to make sure
9 that anybody who does those inspections is, in fact, a
10 trained and qualified individual. And that is where
11 government should be operating, at the local level in this
12 case.

13 I think that it's clear from Staff's
14 perspective, and I think the evidence that I have read is
15 unremarked, that Laclede Gas Company with its current
16 tariffs is not violating any safety law, rule, order or
17 decision of the Commission.

18 Staff does not believe that there is a
19 sufficient safety justification with the attendant costs
20 of ordering Laclede to provide and charge its individual
21 customers with these sort of safety inspections. We do
22 not believe that there is such justification, but if there
23 is, it should probably be undertaken at the local level.

24 We think that the evidence in this case
25 that you'll be listening to will thoroughly support those

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1 conclusions. Thank you.

2 JUDGE DIPPELL: Thank you. Mr. Zucker?

3 MR. ZUCKER: Good morning, Judge Dippell,
4 Commissioners. My name is Rick Zucker. I'm here on
5 behalf of Laclede Gas Company.

6 I clearly agree with the statements made by
7 Mr. Schwarz. I'll try not to repeat too many of them.
8 I'm not sure if I represent the Hatfields or the McCoys,
9 but I am sure of one thing, though, and that is that the
10 AMR, the automated meter reading that we are implementing
11 now is the most significant advancement in customer
12 service ever undertaken by Laclede.

13 It will permit the company to obtain
14 regular meter readings from all of its customers, both
15 customers with inside meters and outside meters, virtually
16 eliminating the need to estimate bills or to reconcile or
17 later reconcile estimated bills when an actual reading is
18 obtained. Both of these things have been a major source
19 of dissatisfaction for our customers.

20 The established track record of reliability
21 by the AMR provider has allowed Laclede to relieve
22 customers with inside meters from the inconvenience of
23 having to arrange an appointment with and wait for Laclede
24 personnel to come out to the customer's home to manually
25 read a meter that is providing a daily meter read.

1 Further, AMR also permits Laclede to
2 remotely obtain a meter reading for billing purposes, or
3 for final billing purposes I mean, when there is a change
4 of customers at a location without interrupting the flow
5 of gas. Because Laclede need not visit the customer's
6 property to obtain that final meter reading, AMR allows
7 Laclede to stop burdening customers with the inconvenience
8 and cost of an inspection that is not necessary under
9 these circumstances.

10 While AMR will provide a great benefit to
11 Laclede's customers, it cannot be disputed that it will
12 result in less duties for the Union work force. But thank
13 goodness, as Ms. Schroder points out, that the Union does
14 not oppose AMR. I was worried about that because of the
15 recent spate of complaints against Laclede that appears to
16 be the Union's response to this customer service
17 advancement.

18 First, the Union opposed a request by
19 Laclede for a temporary variance from its meter sampling
20 requirements that supported AMR by removing older style
21 meters that are incompatible with AMR units. The Union
22 opposed that. The Union has filed a complaint opposing a
23 well-established method used to change certain outside
24 meters without stopping the flow of gas. And if there
25 were any doubt that the Union's motivation is the

1 preservation of its work, the Union has also filed a
2 complaint brazenly demanding that the Commission order
3 Laclede to use Union personnel to either install or
4 supervise the installation of AMR units.

5 In the complaint before you today, the
6 Union seeks to reverse the two customer-friendly advances
7 mentioned earlier and reinstate both the yearly annual
8 meter readings on AMR units that send daily readings and
9 also reinstate the TFTO inspections where there's a change
10 in customers without interrupting the flow of gas.

11 So this case can be summed up with one
12 phrase, preserving unnecessary union work. You may hear
13 frequent mention of the word safety, yet the testimony and
14 arguments will show that when you peel back the pretext of
15 safety, the Union's complaint is really about preserving
16 their work regardless of need.

17 The Public Service Commission, however, is
18 not charged with deciding labor relations issues.
19 Therefore, we are here today to address matters that
20 should never have been brought before this Commission and
21 do not belong here.

22 Ironically, the Union agrees with this
23 point in theory. In a recent grievance, which has been
24 marked as Exhibit 19 in this case, the Union complained
25 that Laclede was threatening to take action against them

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1 in federal court over what Laclede believed were false
2 statements being made by the Union in its efforts to
3 reverse these AMR advancements. The Union went on to
4 state that the grievance procedure under the collective
5 bargaining agreement should be the exclusive forum for
6 addressing such issues.

7 However, the same party who raised the
8 grievance as exclusive forum argument has nevertheless
9 felt free to file this complaint and other complaints here
10 at the Public Service Commission.

11 Although the Union believes that the
12 grievance province -- or the grievance process should be
13 the exclusive forum for handling these types of issues,
14 they are here today because they believe that they will
15 lose in the grievance process.

16 There is a clause known as the progress
17 clause of the collective bargaining agreement between
18 Laclede and the Union that permits Laclede to implement
19 technological advancements even when these changes may
20 adversely affect the wages, hours and working conditions
21 of the employees.

22 The Union would prefer to ignore the
23 progress clause and instead follow the principle that work
24 once done by the Union must continue to be done by the
25 Union into perpetuity. So since Laclede had performed

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1 TFTO inspections in the past, it must continue or resume
2 those inspections, and such inspections must be done
3 specifically by Laclede's nonmanagement work force.

4 In effect, under the guise of safety, the
5 Union is constricting you, the Public Service Commission,
6 to help them avoid having to live with the progress
7 clause, a provision they agreed to and that benefits the
8 public.

9 Specifically in this complaint the Union
10 wants you to order us, Laclede, to use Union workers to
11 mandate manual inside meter reads and TFTO inspections
12 whether customers wants them or not. This order must
13 apply to Laclede, according to the Union. They are not
14 interested in a rulemaking that would apply generally or
15 to an order that would apply to customers of Ameren or MGE
16 or Aquila or to customers anywhere else in Missouri west
17 of Wentzville.

18 Why must TFTO inspections and inside meter
19 reads apply only to Laclede? Because the Union members
20 work for Laclede, and they maintain more jobs only if
21 Laclede does this work, Union work, not safety. Why must
22 the order only apply to Union workers? Why can't
23 inspection work be done by outside contractors such as
24 HVAC contractors?

25 Well, on behalf of the Union, Mr. Schulte's

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1 answer is twofold. First, he asserts that Union members
2 are superior to outside contractors. And second, he
3 asserts that this was union work, so it must stay as union
4 work. If this were truly a safety issue, the goal would
5 be to ensure that customers, all customers receive the
6 inspection service. But the Union's approach is that who
7 receives the inspection service is not as important as who
8 provides it. Union work, not safety.

9 A complaint before the Commission requires
10 a violation of a law or a rule, order or decision of the
11 Commission. What about the fact that TFTO inspections are
12 not required by federal pipeline safety rules or by any
13 state's pipeline safety rules, including Missouri's, which
14 are among the strictest in the country? What is the
15 Union's answer to this? Missouri get stricter, more
16 inspections, more union work, not safety.

17 Does the Union have any evidence that the
18 unprecedented mandating of these inspections will avoid
19 fires or explosions or save lives? None. No studies or
20 information. Only the argument that two inspections are
21 better than one, four inspections are better than two,
22 eight inspections are better than four, et cetera. How
23 many inspections should be done to property, for example,
24 where a tenant moves out each month for a year? Each
25 month a tenant moves out of that property for a year. 12

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1 times a tenant moves. We asked the Union, how many
2 inspections should that have property have? And their
3 answer was 12. Union work, not safety.

4 TFTO inspections occur on a haphazard,
5 arbitrary and serendipitous basis. In one duplex a
6 landlord might be responsible for the gas bills. Though
7 tenants may move in and out every six months, there would
8 be no change in the gas customer for Laclede, and thus no
9 TFTO inspection. In the duplex next door, the tenants may
10 be directly responsible for the gas bill. With a new
11 tenant every six months, the occupants of this property
12 would receive and pay for two TFTO inspections each year.

13 When faced with such a clear flaw as this
14 in the TFTO inspection process, the Union's habit has been
15 to resort to a scare tactic. Someone is going to die.
16 They actually handed out pamphlets with that on them to --
17 at the various municipalities that they solicited.

18 The Union's approach is that no expense
19 should be spared to save even one life. This is a
20 specious and shameful argument meant to instill fear in
21 the uninformed in order to get them to reach for their
22 pocketbook. The truth is that society accepts some level
23 of danger each time it does things like set a speed limit
24 on a given road, permit the sale of cigarettes or alcohol
25 or allow the possession of firearms.

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1 Laclede and others in the industry
2 recommend that customers obtain an annual maintenance
3 check of their gas appliances, which can be done by any
4 qualified contractor, including Laclede. Why should a
5 haphazard system of TFTOs be enforced on Laclede when
6 other things are not enforced, such as annual bathroom
7 safety inspections, electrical wiring inspection, swimming
8 pool fencing inspections or firearms inspections? I
9 cannot make this point better than Mr. Schwarz did just a
10 few minutes ago.

11 Who is hurt by another 3 or \$4 million
12 spent on inspections and manual meter reads? The answer
13 is the customers who not only have to pay for this service
14 that they don't need and may not want, but who also suffer
15 the inconvenience of having to make an appointment and
16 then wait for Laclede personnel to arrive.

17 Ms. Schroder raised the point about the
18 cost savings. Since customers pay for TFTO inspections,
19 by not mandating them on these customers, the customers
20 will directly benefit from them. They will not have to
21 pay for them.

22 In response to the four issues listed in
23 this case, Laclede states the following: First, there is
24 no gas safety law, rule, order or decision of the
25 Commission requiring Laclede to perform TFTO inspections

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1 and annual inside meter reads. Staff agrees. The Union
2 does not dispute it. Even a Union witness agreed that the
3 three-year corrosion inspection program was sufficient,
4 but added without specific reason other than to add more
5 union work that a one-year program would be better.

6 Second, there is no safety justification
7 for adding a TFTO and annual inside read requirement. As
8 stated earlier, the TFTO regimen is haphazard and
9 nonsystematic. There is no evidence that a change of
10 customer creates a safety hazard that may not otherwise
11 exist in residences where there is no change of customer.
12 There is no precedent for this practice anywhere in the
13 country.

14 So basically what the Union would have you
15 believe is that it is right and the -- the Missouri
16 Commission is wrong and has been wrong for years, that the
17 other states are wrong to not have these inspections, and
18 that the federal safety rules are wrong. It is right.
19 The rest of the world is wrong.

20 Union witness Schulte sponsored a list of
21 hazards allegedly found during TFTOs. Upon review,
22 Laclede pointed out that many of these so-called hazards
23 were either duplicates, were not found by a TFTO
24 inspection at all, were of a minor technical nature that
25 did not present a true hazard, or were questionable for a

1 variety of reasons, including that they were identified in
2 an inspection that followed shortly after one or more
3 inspections that didn't identify the same issue. In
4 response to deposition questions about these hazards,
5 Mr. Schulte disavowed any knowledge of the items in his
6 own affidavit.

7 Finally, there is no indication that an
8 incident would have been avoided if TFTO inspections were
9 mandated.

10 Third, it is well established that
11 customers are responsible for the equipment and appliances
12 on their side of the meter, as you heard from Mr. Schwarz.
13 Laclede along with HVAC and other contractors are able to
14 provide maintenance and/or inspections on an as-needed
15 basis. Permitting customers choice as to when, how and by
16 whom they maintain their appliances is both legally and
17 practically preferable to mandated inspections.

18 Fourth, there is nothing unique about
19 Laclede or its customers as compared to an MGE or an
20 Ameren that justifies differing treatment regarding TFTO
21 inspections or annual inside meter reads. Therefore, a
22 rulemaking would be necessary to apply a safety
23 requirement to all gas utilities.

24 The census data proffered at the last
25 minute by the Union is unsupported by any facts. There is

1 no evidence that would indicate that a TFTO inspection is
2 more necessary in counties that have a higher density per
3 square mile. Any city, including St. Louis, Columbia,
4 Kansas City, Springfield and Jefferson City, have denser
5 populations in their urban cores. A county-wide figure
6 that includes population per square mile is meaningless.

7 In summary, this case is not about whether
8 the interest of safety demands that TFTO inspections and
9 annual inside meter reads be required. If one were to
10 create a new inspection regime, it would be difficult to
11 come up with one that is less worthy than the TFTO
12 inspection.

13 Instead, this case is about the Union
14 maintaining work levels despite a technological
15 advancement that calls for a change. The Union has agreed
16 that such situations may occur. They want you to help
17 them circumvent that agreement.

18 Laclede respectfully requests that you
19 decline to do so and dismiss this case. Thank you.

20 JUDGE DIPPELL: Thank you. Mr. Poston,
21 would you like to make an opening statement?

22 MR. POSTON: I have no opening statement.
23 Thank you.

24 JUDGE DIPPELL: All right. Let's go ahead
25 and we're going to take just a ten-minute break, and then

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1 we're going to come back and we'll begin the first witness
2 of the Union. Off the record.

3 (A BREAK WAS TAKEN.)

4 JUDGE DIPPELL: We're back from our short
5 break, and we're going to begin with the Union's case.
6 Ms. Schroder, I'll let you --

7 MS. SCHRODER: The Union calls as its first
8 witness Stephen Hendricks.

9 JUDGE DIPPELL: Mr. Hendricks, could you
10 raise your right hand.

11 (Witness sworn.)

12 JUDGE DIPPELL: Thank you. Go ahead and be
13 seated.

14 STEPHEN HENDRICKS testified as follows:

15 DIRECT EXAMINATION BY MS. SCHRODER:

16 Q. Mr. Hendricks, are you the Steve Hendricks
17 that provided written testimony to the Commission in this
18 matter in early May on this hearing?

19 A. Yes.

20 Q. I'm sorry. In this matter.

21 A. Yes.

22 Q. Do you have any corrections to your written
23 testimony?

24 A. I don't believe so.

25 Q. Would your answers be the same if those

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1 questions were asked to you today?

2 A. I believe so.

3 MS. SCHRODER: I would move for the
4 admission of the written testimony of Steve Hendricks.

5 JUDGE DIPPELL: Okay. Is there any
6 objection to the testimony of Mr. Hendricks?

7 MR. ELBERT: No, your Honor.

8 JUDGE DIPPELL: Seeing --

9 MS. SCHRODER: I'm sorry. Can I go on for
10 just a moment?

11 JUDGE DIPPELL: I'm sorry?

12 MS. SCHRODER: Can I ask Mr. Hendricks
13 another question at this time?

14 JUDGE DIPPELL: Sure.

15 BY MS. SCHRODER:

16 Q. Mr. Hendricks, did you also give a
17 deposition subsequent to providing your written testimony
18 in this matter?

19 A. Yes, I did.

20 Q. Is there -- are there issues on that
21 deposition that you would like to clarify today?

22 A. I don't believe so.

23 MS. SCHRODER: Would it be all right, your
24 Honor, if I take him through some of the issues that came
25 out in the deposition at this point?

1 JUDGE DIPPELL: Do you not want me to admit
2 the exhibit?

3 MS. SCHRODER: I do want the written
4 testimony admitted. I just -- there -- he was deposed
5 subsequently, and there were some additional questions
6 that came up after that time, and I was just going to
7 supplement his testimony in that regard. I can do it now
8 or I can do it on rebuttal.

9 JUDGE DIPPELL: Okay. I think we need the
10 written document to come in as it is, and then if you want
11 to make additions, we can talk about that. But I don't
12 think I want you to supplement his written testimony with
13 other things, unless there are actual errors or
14 corrections that need to be made. Is that what you're
15 telling me, that there are changes that need to be made to
16 the written document?

17 MS. SCHRODER: No, it's not changes that
18 need to be made to the written document.

19 JUDGE DIPPELL: Mr. Schwarz, you look like
20 you need to say something.

21 MR. SCHWARZ: If I would, I think that --
22 and Ms. Schroder is not a regular practitioner. I think
23 it might be well if -- the deposition itself has not yet
24 been offered or admitted. I think that if there are
25 questions about it on cross-examination, redirect, you'll

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1 have an opportunity to do redirect, at which time you can
2 ask him anything, any clarifying questions.

3 JUDGE DIPPELL: Yes. I'm sorry. Maybe I
4 should have run through sort of our standard procedure
5 before we got rolling with the witnesses. I forget
6 sometimes that Ms. Schroder is not as familiar with our
7 usual way of doing things here.

8 MS. SCHRODER: And I apologize for you
9 having to teach me this. I read the rules, but I didn't
10 see --

11 JUDGE DIPPELL: That's perfectly fine.
12 What I'm going to do is, seeing no objection to the
13 written testimony of Mr. Hendricks, I'm going to go ahead
14 and admit that.

15 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

16 JUDGE DIPPELL: If you had other items that
17 you needed Mr. Hendricks to sponsor, I'll let you offer
18 those. If there are changes, clarifications or whatever
19 to items that aren't in evidence, then I will let you do
20 redirect after the cross-examination.

21 MS. SCHRODER: All right. Thank you, your
22 Honor.

23 JUDGE DIPPELL: Okay. Do you have anything
24 further?

25 MS. SCHRODER: No, I don't have anything

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1 further at this time for Mr. Hendricks.

2 JUDGE DIPPELL: Okay. Then, Mr. Hendricks,
3 you also are new to this process, so thank you for coming
4 to give your testimony. And what we'll do next is allow
5 then cross-examination based on this written testimony
6 that you've provided.

7 So the order of cross-examination then,
8 which we adopted from the pleading that you-all filed,
9 we're going to begin with Public Counsel. Do you have
10 anything, Mr. Poston?

11 MR. POSTON: No questions for this witness.
12 Thank you.

13 JUDGE DIPPELL: Staff?

14 MR. SCHWARZ: I have no questions at this
15 time.

16 JUDGE DIPPELL: And Laclede?

17 MR. ELBERT: Your Honor, I do have
18 questions.

19 CROSS-EXAMINATION BY MR. ELBERT:

20 Q. Good morning, Mr. Hendricks.

21 A. Good morning.

22 Q. We've met before. As you know, my name is
23 Charles Elbert. I represent the Laclede Gas Company. I'm
24 just going to ask you a few questions today.

25 JUDGE DIPPELL: Let me interrupt again,

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1 Mr. Elbert, just because I didn't completely and I want to
2 make sure the witness is comfortable with what we're going
3 to do here. We usually allow for cross-examination by the
4 opposing counsel and then offer an opportunity for the
5 Commission or the Judge to ask any questions they might
6 have of the witness, and then we allow your attorney to do
7 redirect examination. We also allow after the questions
8 from the Commission, if there are additional
9 cross-examination questions, we usually allow those, and
10 then we allow at the end sort of a redirect. You can ask
11 any questions, ask clarifying questions and so forth that
12 came out on cross or from the questions from the Bench.

13 Okay. Mr. Elbert, sorry. Go ahead.

14 MR. ELBERT: Thank you, your Honor.

15 BY MR. ELBERT:

16 Q. How long have you been employed by Laclede
17 Gas Company?

18 A. Approximately 22 years.

19 Q. And during that 22-year period, how long
20 have you been involved in these TFTOs?

21 A. Approximately 20 years.

22 Q. What year did you start that? Was that
23 1986?

24 A. Yes, sir.

25 Q. And have you taken any courses regarding

00070

1 the minimum federal standards for transportation of
2 natural gas by pipeline?

3 A. No, sir.

4 Q. Have you taken any courses regarding
5 natural gas incident investigation?

6 A. No, sir.

7 Q. Have you had any training in natural gas
8 incident investigation?

9 A. No, sir.

10 Q. Have you taken any courses regarding state
11 regulations of customer-owned facilities?

12 A. Could you repeat that?

13 Q. Have you taken any courses regarding state
14 regulation of customer-owned gas facilities?

15 A. Customer-owned gas facilities?

16 Q. Yes, customer pipes, customer appliances.

17 A. I would say yes, that would be in turn off
18 school, special adjust school and fitter school.

19 Q. Do you recall me taking your deposition?

20 A. Yes, sir.

21 Q. And that was on May 10th of 2006, correct?

22 A. Yes, sir.

23 MR. ELBERT: May I approach the Bench?

24 JUDGE DIPPELL: Yes.

25 MR. ELBERT: I'd like to give you a copy of

00071

1 the original deposition transcript.

2 BY MR. ELBERT:

3 Q. And, Mr. Hendricks, I'd like to give you a
4 copy of your deposition transcript. Do you remember
5 taking an oath before you took that deposition?

6 A. Yes, sir.

7 Q. Did you promise to tell the truth?

8 A. Yes, sir.

9 Q. Did you tell the truth during that
10 deposition?

11 A. Yes, sir.

12 Q. I'd like you to -- I'd like to refer you to
13 page 9 of that deposition, line 13. Do you see that?

14 A. Yes, sir.

15 Q. Do you see where it says, have you taken
16 any courses regarding state regulations of customer-owned
17 facilities? Answer: No.

18 Do you see that?

19 A. Yes, sir.

20 Q. Was that a true statement when you made it
21 on May 10th of 2006?

22 A. It was a true statement regarding the way
23 you posed the question and the way I thought that the
24 question should have been answered as far as in the
25 training that we got.

1 Q. Is that a true statement as you sit here
2 today, Mr. Hendricks?

3 A. The one I just made or the one that's in
4 my -- here?

5 Q. The one that's in your deposition, is that
6 a true statement?

7 A. I don't know how to answer that one.

8 Q. Did you swear to tell the truth --

9 A. Yes, sir.

10 Q. You need to let me finish my question. Did
11 you swear to tell the truth today?

12 A. Yes, sir.

13 Q. And did you swear to tell the truth on
14 May 10th?

15 A. Yes, sir.

16 Q. Which answer is true, the one you gave
17 today or the one you gave on May 10th?

18 MS. SCHRODER: Objection. I think that the
19 witness has already testified that he understood the
20 questions to be different between the question that he's
21 received today and the question that he received on
22 May 12th -- 10th. Excuse me.

23 MR. ELBERT: Your Honor, first of all, if
24 we give you the deposition, we will -- I object to the
25 objection on the ground that it's a speaking objection.

1 It's totally improper. That's precisely what Ms. Schroder
2 did through the entire deposition to try to coach her
3 witnesses along, which is what she's doing again. And I
4 would request that the Court admonish her from making
5 speaking objections. If she wants to make an objection,
6 the objection is no foundation or misstates the evidence,
7 not going back and telling the witness what to say.

8 No. 2, I read the identical question from
9 the deposition transcript. I have the deposition
10 transcript open. I asked him the same question today that
11 I asked him on May 10th, and he's given two different
12 answers. Today he said yes. On May 10th he said no.
13 It's the identical question. There is no difference in
14 the question. And he didn't have any problem, if you look
15 at the deposition transcript, understanding the question
16 on May 10th.

17 JUDGE DIPPELL: Okay. First of all, like I
18 said in the beginning, I don't want to get into discovery
19 disputes now. That's over with. We're here. So I don't
20 want to hear arguments about what happened, he wouldn't
21 give me this and she wouldn't say that and -- I don't want
22 to hear that in here today.

23 Secondly, I heard the witness say that he
24 didn't understand your question when you asked it the
25 first time as it's written in this deposition. So he has

1 indicated that he had some misunderstanding. I'll let his
2 attorney clarify that on redirect. We don't need that
3 argument in the objection. But just ask -- I'm going to
4 let you ask him one more time what the answer to the
5 question is, and then if you want to offer his deposition
6 showing that he answered somehow differently at a
7 different time, I'll let you do that.

8 MR. ELBERT: Fine. Thank you, your Honor.

9 BY MR. ELBERT:

10 Q. Mr. Hendricks, I'm going to try the
11 question again. Have you taken any courses regarding
12 state regulations of customer-owned gas facilities?

13 A. As you ask that question now, I would say
14 no.

15 Q. Have you published any articles regarding
16 industrial safety?

17 A. No, sir.

18 Q. Have you published any articles regarding
19 natural gas safety?

20 A. No, sir.

21 Q. Have you received any type of awards or
22 honors in connection with industrial safety?

23 A. No, sir.

24 Q. Have you received any kind of awards or
25 honors in connection with natural gas safety?

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1 A. No, sir.

2 Q. Have you participated in any studies
3 regarding natural gas safety?

4 A. No, sir.

5 Q. Have you written about any studies
6 regarding natural gas safety?

7 A. No, sir.

8 Q. Have you personally performed any studies
9 regarding natural gas safety?

10 A. No, sir.

11 Q. When you do a TFTO, you work on customer
12 appliances such as water heaters, dryers, stoves, ovens,
13 gas lights; is that right?

14 A. That's correct.

15 Q. And are those always appliances that
16 Laclede has installed?

17 A. No, sir.

18 Q. Are those often installed by the
19 contractor?

20 A. Yes, sir.

21 Q. And does Laclede even install furnaces?

22 A. No, sir.

23 Q. And do contractors often work on customer
24 appliances within their house, to your knowledge?

25 A. Yes, sir.

00076

1 Q. Now, when you do TFTOs, over your 20 years
2 of doing them, how often do you find some sort of safety
3 hazard when you do the TFTO?

4 A. I would say often. I can't be precise
5 about the exact number, but it's often.

6 Q. Do you recall again the number that -- do
7 you recall again your deposition on May 10th?

8 A. Do I recall it?

9 Q. Yes.

10 A. I recall giving it, yes.

11 Q. And do you recall giving a percentage of
12 the time that you found safety hazards when you did TFTOs?

13 A. I believe that I gave an estimate of one
14 out of four.

15 Q. That's what you say you gave in your
16 deposition?

17 A. I believe in my estimate.

18 Q. I'd like to refer you to page 26 of your
19 deposition, which you have in front of you. Do you see
20 it, page 26, line 15?

21 A. Yes, sir.

22 Q. Question by Mr. Elbert: Yes. What
23 percentage of the time have you discovered safety hazards
24 when you've done a TFTO?

25 Answer: I would say that would be

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1 approximately 60 to 65, sometimes 70 percent of the time.

2 Do you see that?

3 A. Yes, sir.

4 Q. Was that a true statement at the time you
5 made it?

6 A. That was a true approximation.

7 Q. But today your true approximation is one in
8 four, which is 25 percent?

9 A. I was going on approximates, and I believe
10 that's what it says.

11 Q. Well, sir, does approximate mean to you
12 guess?

13 A. No.

14 Q. What does approximate mean?

15 A. It means a general overall view of what
16 I -- the hazards that I found on TFTOs.

17 Q. Would you agree that there's a substantial
18 difference between 25 percent and 60 to 70 percent?

19 A. I would agree to that.

20 Q. And would you agree that 25 percent is not
21 approximately 60 to 70 percent?

22 A. That's true.

23 Q. So I'm going to ask you, Mr. Hendricks,
24 which number is correct, 60 to 70 percent or 25 percent?

25 A. I would say maybe 25 percent, 25 to

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1 30 percent.

2 Q. 25 to 30 percent. Is 25 to 30 percent now
3 approximately 25 percent, is that what you're saying?

4 A. That's in the range, in the ballpark.

5 Q. Could it possibly be that you only found
6 safety hazards about 2 percent of the time? Is that
7 possible?

8 A. I don't think so.

9 Q. Do you know whether that's possible or not?

10 A. It's possible.

11 Q. It is possible, isn't it? And the reality
12 is, you don't know whether you found safety hazards
13 2 percent of the time, 25 percent of the time or 60 to
14 70 percent of the time, do you?

15 A. Precisely, no.

16 Q. Every time you found a safety hazard, you
17 either made a report of that safety hazard or you repaired
18 it and made a report; isn't that correct?

19 A. That's correct.

20 Q. And if you recall in your deposition, I
21 told you that over the 14-month period from March of 2005
22 until May of 2006, you had done 209 TFTOs. Do you recall
23 that?

24 A. I recall you saying that, yes.

25 Q. Do you know whether that's about true or

1 not?

2 MS. SCHRODER: Objection. I'm sorry. I
3 would just like to make an objection at this point that,
4 again, these are records -- and I understand you don't
5 want a discovery dispute here, but these are records that
6 we requested and were not given, and I would ask that
7 Laclede not be allowed to use information that they
8 refused to produce to the Union.

9 JUDGE DIPPELL: I guess I don't understand
10 that objection, Ms. Schroder. When did you request these?
11 When did you come to me and say, we're not getting our
12 discovery?

13 MS. SCHRODER: And again, what happened
14 with the discovery is that we made data requests, two data
15 requests early on, a data request and a follow-up data
16 request early on. Then -- and Laclede responded when we
17 asked about producing TFTO documentation and such that it
18 could not produce that documentation because it didn't
19 keep it in -- they didn't keep those records in a way that
20 would make them providable. They didn't keep that data in
21 the form we'd asked for.

22 And then following the deposition that
23 occurred on May 10th and the deposition that occurred --
24 two depositions on May 10th and one on May 9th, I believe,
25 or May 8th, where there were references to documents about

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1 TFTOs, we asked Laclede again for that information and
2 pointed out that they had referred to such information in
3 the depositions, and if they had it for these individuals,
4 that we needed it or we expected that they weren't going
5 to be using it at the hearing. We did not get a response.

6 JUDGE DIPPELL: And do you have the data
7 request where you requested the documents that Mr. Elbert
8 is referring to right now?

9 MS. SCHRODER: Yes, we do.

10 JUDGE DIPPELL: And the responses to that?
11 And would you like to respond?

12 MR. ELBERT: Well, your Honor, I'm not
13 using any documents.

14 JUDGE DIPPELL: It is true, you are not
15 using any documents. You are using information.

16 MR. ELBERT: I told -- excuse me. Go
17 ahead. I'm sorry.

18 JUDGE DIPPELL: You just asked the witness
19 about the number of inspections that he performed. I'm
20 assuming -- and maybe I am assuming something here.
21 Ms. Schroder, is that the information that you're
22 objecting to?

23 MS. SCHRODER: Yes, your Honor, it is.

24 MR. ELBERT: If I may, your Honor, what I
25 said was, and this is, I think, an accurate statement,

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1 that I advised Mr. Hendricks that we thought he performed
2 209 inspections, TFTO inspections during that 14-month
3 period of time. And if you allow me to go on, it really
4 doesn't make any difference --

5 JUDGE DIPPELL: Ms. Schroder, what's the
6 basis of your objection?

7 MS. SCHRODER: My objection is that he is
8 asking this witness about data that he has apparently
9 reviewed that the Union has asked for and has not been
10 able to review, and, therefore, not only can we not
11 corroborate it, but this witness certainly hasn't been
12 able to review it.

13 JUDGE DIPPELL: I'm going to overrule your
14 objection. The witness was able to answer the question.
15 It's about inspections that he performed. I'm -- if they
16 come forward with some documents, we can take it up again.
17 Go ahead, Mr. Elbert.

18 MR. ELBERT: Thank you, your Honor.

19 BY MR. ELBERT:

20 Q. If you did 209 TFTOs during that 14-month
21 period, and if you had, in fact, found safety hazards
22 60 to 70 percent of the time, that means that during that
23 14-month period you would have found somewhere between 125
24 and 145 safety hazards, wouldn't you?

25 A. I would guess.

1 Q. Okay. And if you had done 209 of those
2 inspections, TFTO inspections during that 14-month period
3 of time and you had found about 2 percent safety hazards,
4 what would that come to, about four to -- maybe four
5 safety hazards?

6 A. Approximately.

7 Q. Okay. And do you recall that we were --
8 what we found, what I told you during the deposition was
9 that we found three safety hazards. Do you recall that?

10 A. Yes, sir.

11 Q. For that 14-month period of time. Does
12 that sound about right to you, that you found about three
13 safety hazards?

14 A. At the time you asked that question, I said
15 I don't believe so.

16 Q. Okay. And do you know, have any idea how
17 many safety hazards you, in fact, found?

18 A. During that 14-month period?

19 Q. Yes.

20 A. I can't give a specific number, no, sir.

21 Q. Are you aware that during that 14-month
22 period you fixed a knob on a water heater? Do you recall
23 that?

24 A. I don't remember the exact job, no, sir.

25 Q. Do you know how many repairs you made

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1 during that 14-month period to customer-owned facilities,
2 during TFTO inspections? I'm sorry.

3 A. No, sir. I can't give a specific number,
4 no.

5 Q. Do you know how many repairs you made to
6 Laclede-owned facilities during TFTOs during that period
7 of time?

8 A. We're still talking about 14 months?

9 Q. Yes.

10 A. No, sir, I can't give a specific number.

11 Q. Do you recall stating at your prior
12 deposition that you found somewhere between 125 and 146
13 safety hazards during that 14-month period of time?

14 A. No, sir.

15 Q. Refer you to page 42 of your deposition,
16 line 5. Do you see that?

17 A. Page 42, line 5?

18 Q. Yes, sir. Do you see that?

19 A. Yes, sir.

20 Q. Question: Is it fair to say that based on
21 the average of 60 to 70 percent, if did you 209 TFTOs,
22 there would be approximately, based on that average,
23 somewhere between 120 and 140 hazardous appliance reports
24 that you would have done?

25 Answer: And that would vary from day to

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1 day.

2 A. That's correct.

3 Q. And is that -- does that accurately reflect
4 your testimony at that time?

5 A. Yes, sir.

6 Q. Question: I understand that it would vary
7 from day to day. We're talking about over a 14-month
8 period.

9 Do you see that?

10 A. Yes, sir.

11 Q. Ms. Schroder objected: Are you asking him
12 to do the math or are you asking him what the average is?

13 Do you see that?

14 A. Yes, sir.

15 Q. Then I said: Is that a fair statement or
16 not? Let's just read the question back. The question is
17 not complicated. Varies from day to day isn't responsive.
18 Let's read the question back. We can keep doing that.

19 Then the question was read back. Do you
20 see that?

21 A. Yes, sir.

22 Q. Ms. Schroder objected again and allowed you
23 to answer. The answer to the question is approximately.

24 Is that a true statement?

25 A. Yes, sir.

1 Q. So do you think that you did -- that you
2 found approximately 120 to 140 hazards during that
3 14-month period, or is it -- or could it be that you found
4 only four or five hazards during that 14-month period?

5 A. And again, I say approximately, and that
6 would vary.

7 Q. Well, approximately how many hazards did
8 you find during the 14-month period, Mr. Hendricks?

9 A. Sir, I don't know.

10 Q. So you don't know whether it was 120, 140,
11 5, 20 or 30, do you?

12 A. No, sir, I don't have the exact number.

13 Q. And likewise, you don't have the exact
14 number of hazards you found during the -- per year for the
15 preceding 20 years that you've been doing TFTOs, do you?

16 A. Could you repeat the question?

17 Q. Yeah. That was a little confusing. You've
18 been doing TFTOs for 20 years, correct?

19 A. Off and on.

20 Q. And do you have any idea what percentage of
21 the time you found safety violations over that 20-year
22 period when you were doing TFTOs?

23 A. I can't give you a specific number of
24 hazards that were found either on customer facilities or
25 on Laclede's facilities during that period of time, no,

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1 sir.

2 Q. When you find a safety hazard, do you know
3 how long that hazard existed at the time that you found
4 it?

5 A. No, sir.

6 Q. And under what circumstances would you do a
7 TFTO?

8 A. When the gas is transferred from one
9 customer to another.

10 Q. And so that could occur at a particular
11 residence several times a year, couldn't it?

12 A. That's correct.

13 Q. Or it could not occur for 20, 30 or 40
14 years if the customer, the same customer stays in the
15 premises, correct?

16 A. That's correct.

17 Q. So when you get there and you find a
18 hazard, do you know whether that hazard has been there for
19 an hour?

20 A. No, sir.

21 Q. Do you know whether that hazard has been
22 there for a week?

23 A. No, sir.

24 Q. Do you know whether that hazard has been
25 there for a month?

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1 A. No, sir.

2 Q. Do you know whether that hazard has been
3 there for a year?

4 A. No, sir.

5 Q. Do you know whether that hazard has been
6 there for decades?

7 A. No, sir.

8 Q. And isn't it true, therefore, that the same
9 safety hazards that you might find on a TFTO inspection
10 would also exist in a residence where there is no TFTO
11 inspection?

12 A. That's correct.

13 Q. And, in fact, if you look at your
14 affidavit, you list several different types of potential
15 safety hazards that you have found during TFTOs; is that
16 right?

17 A. That's correct.

18 Q. And isn't it true that every one of those
19 that you list on pages 3, 4 and 5 of your affidavit are
20 customer-owned facilities?

21 A. Okay. What pages were those again, please,
22 sir?

23 Q. I'm looking at pages 3, 4 and 5 of your
24 affidavit. You list the following examples: No. 1, flex
25 connectors; No. 2, vent piping; No. 3, delayed ignition;

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1 No. 4, cobweb buildup; No. 5, stacked books; No. 6, rusty
2 pipe.

3 A. That's correct.

4 Q. What I'm asking you, isn't it true that
5 each of those six safety hazards that you listed are all
6 part of customer-owned facilities?

7 A. That's true.

8 Q. None of those relate to Laclede's pipe or
9 the meter; is that right?

10 A. That's correct.

11 Q. Now, with respect to those six items that
12 you listed, isn't it true that every one of those can
13 occur in a house or apartment where there is no TFTO?

14 A. That is true.

15 Q. And I know this may sound like a silly
16 question, but a TFTO doesn't cause any of these safety
17 hazards, does it?

18 A. No, sir.

19 Q. And isn't it true that every one of these
20 safety hazards that you list in your answer -- I mean in
21 your affidavit could be handled by a contractor?

22 A. Possibly.

23 Q. You say possibly. Why do you say possibly?

24 A. Because of the training that we receive
25 from Laclede Gas to specifically target certain things.

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1 Q. Okay. But isn't it a fair statement,
2 Mr. Hendricks, that a contractor could very well have
3 installed each of the items that you are referring to here
4 in, well, in numbers -- well, each of the gas appliances
5 that are referred to in Items 1 through 6 of your
6 affidavit?

7 A. That's correct.

8 Q. And isn't it true that the contractors are
9 trained also?

10 A. I wouldn't know about their training.

11 Q. Well, then why do you say that they might
12 possibly be able to do this?

13 A. Because possibly their training is good.
14 Possibly it's not.

15 Q. Okay. And would you agree that there's
16 some Laclede employees that don't necessarily perform
17 their duties correctly?

18 A. Would you ask that again, please?

19 Q. Would you agree that there are some Laclede
20 employees who don't do the inspections they're assigned to
21 do?

22 A. I don't know how to answer that question,
23 sir.

24 Q. Does a change of customer increase the
25 likelihood of any of these alleged safety hazards that you

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1 found or that you mention on pages 3, 4 and 5 of your
2 affidavit?

3 A. Could you repeat the question?

4 Q. Sure. Does a change of customer increase
5 the likelihood that one of the hazards that you listed on
6 pages 3, 4 and 5 of your affidavit will occur?

7 A. Sometimes.

8 Q. And what are the sometimes?

9 A. A customer may remove an appliance.

10 Q. So if a customer moves an appliance, they
11 could conceivably not cap the line; is that what you're
12 talking about?

13 A. That's correct.

14 Q. And they could leave gas flowing into the
15 air; is that what you mean?

16 A. Well, normally it's where they leave a fuel
17 run uncapped, but it has a shutoff valve there.

18 Q. So normally gas isn't escaping, but you
19 have to cap the fuel run, as well as turn off the valve;
20 is that what you're saying?

21 A. That's correct.

22 Q. Are there any other circumstances that you
23 can think of in these items that you listed where a change
24 of customer will increase the likelihood that this hazard
25 will occur?

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1 A. No.

2 Q. You refer on paragraph 1 on page 3 of your
3 affidavit, you're talking about gas leaks. It says, in
4 the last two sentences, when this occurs gas, leaks around
5 the object or out from under the tape and into the kitchen
6 creating an uncapped fuel run. Do you see that?

7 A. Yes, sir.

8 Q. And then you said, flipping a light switch
9 in that circumstances could cause the room to
10 spontaneously ignite. Do you see that?

11 A. That's correct.

12 Q. That's never happened, to your knowledge,
13 has it?

14 A. Not to my knowledge, no.

15 Q. And I want to refer you to page 4, item
16 No. 6, rusty pipe. It says, there are also problems on
17 the Laclede side of the system that are detectable by a
18 TFTO and really will not be detected it except, and
19 there's an emphasis there, it's in italics, by a TFTO, a
20 turn on inspection or a meter reconnect inspection. Do
21 you see that?

22 A. Yes, sir.

23 Q. That's not a true statement, is it?

24 A. Yes, it is.

25 Q. That's a true statement?

1 A. That all of the above, all of the turn ons,
2 the TFTOs, reconnect, or when we come inside the building
3 to inspect the pipe.

4 Q. And those are the only circumstances where
5 that rusty pipe will be found, is that what you're saying?

6 A. Yes, sir.

7 Q. Let's look at pages 94 and 95 of your
8 testimony in the deposition. Page 94, line 4, do you
9 remember giving this testimony, Mr. Hendricks?

10 A. Yes, sir.

11 Q. Was it true at the time you gave it?

12 A. Yes, sir.

13 Q. Is it true as we sit here today?

14 A. Yes, sir.

15 Q. Question: Let's look at No. 6, rusty pipe.
16 You say in here that there are also problems on Laclede's
17 side of the system that are detectable by a TFTO and
18 really will not be detected except by a TFTO, a turn on
19 inspection or a meter reconnect inspection.

20 Do you see that?

21 A. Yes, sir.

22 Q. The answer: That's correct.

23 Correct, that's what it says?

24 A. Yes.

25 Q. What about the three -- the question: What

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1 about the three-year corrosion inspection?

2 Answer: Ask me that question again,
3 please.

4 Question: Wouldn't the problem with the
5 rusty pipe be detected through a -- isn't that what the
6 three-year corrosion inspection is for?

7 Answer: It's possible it could be detected
8 then.

9 Do you see that?

10 A. Yes, sir.

11 Q. Was that your answer that you gave in
12 response to that question?

13 A. Yes, sir.

14 Q. Question: Are you familiar with a
15 three-year corrosion inspection?

16 Answer: Yes.

17 Question: Have you ever done them?

18 Answer: Yes.

19 Question: Okay. What are they for?
20 What's the purpose?

21 Answer: To check cathodic projection for
22 the pipe coming through the wall.

23 A. That should be protection.

24 Q. Protection. Okay. Fine.

25 Question: And isn't that -- wouldn't you

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1 say in here, wouldn't be detected except by a TFTO, a turn
2 on inspection, a meter reconnect inspection, that's not a
3 true statement, is it?

4 Answer: That's a true statement. I just
5 left out one inspection.

6 Question: Well, that's a pretty major
7 inspection, isn't it?

8 Answer: It's a pretty major inspection.

9 Is that true?

10 A. That's true.

11 Q. And isn't really that the entire purpose of
12 the corrosion inspection is to catch these rusty pipes?

13 A. That's true.

14 Q. And isn't it done every three years?

15 A. Yes, sir.

16 Q. So why would you say in your affidavit, why
17 would you tell the Public Service Commission that that
18 rusty pipe couldn't be found except through a TFTO, a turn
19 on inspection or a meter reconnect inspection?

20 A. Because I didn't consider all of the
21 inspections that we do at the same -- at the time I
22 answered the question.

23 Q. Would you consider your affidavit to be
24 misleading?

25 A. No, sir.

00095

1 Q. So it's not misleading to leave out the
2 very inspection that is designed to find the rusty pipe?
3 That's not misleading to you?

4 A. No, sir, because I answered that question
5 to the best of my ability at the time I answered the
6 question.

7 Q. You would agree that Laclede is not
8 responsible for the customer's fuel run, wouldn't you?

9 A. That's correct.

10 Q. And you would agree that Laclede is not
11 responsible for the customer's appliances, wouldn't you?

12 A. That's correct.

13 Q. Would you agree that Laclede is not
14 responsible for the customer's improper acts unless
15 Laclede comes on the property and has notice of those
16 improper acts?

17 A. That's correct.

18 Q. And you would agree that a contractor for a
19 customer could inspect the customer's facilities on a
20 periodic basis, wouldn't you?

21 A. Say that again, please.

22 Q. You would agree that a contractor for the
23 customer could inspect the customer's facilities on a
24 periodic basis, wouldn't you?

25 A. That's correct.

00096

1 Q. And you would agree that a customer can
2 hire a contractor to clean the furnace, right?

3 A. That's correct.

4 Q. A customer can hire a contractor to check
5 the vent pipe, right?

6 A. That's correct.

7 Q. A customer can hire a contractor to check
8 the delayed -- the ignition system on an appliance, can't
9 it?

10 A. That's correct.

11 Q. And they can hire a contractor to check for
12 cobwebs, can't it?

13 A. That's correct.

14 Q. And it can check to make sure that the
15 furnace has adequate air to operate, can't it?

16 A. That's correct.

17 Q. Now, now this statement you made that
18 carbon monoxide could occur -- well, wouldn't you agree
19 that this carbon monoxide poisoning that you refer to on
20 these stacked books, that could occur without regard to
21 whether there's stacked books, couldn't it?

22 A. Yes, sir.

23 Q. Do you know whether Laclede Gas Company can
24 predict when a customer is going to move?

25 A. No, sir.

00097

1 Q. No, sir, you don't know, or no, sir --

2 A. I can't predict -- Laclede can't predict
3 when a customer's going to move.

4 Q. Could you predict when a customer is going
5 to move?

6 A. No, sir.

7 Q. So would you agree that these TFTO
8 inspections are random, haphazard inspections?

9 A. No, sir.

10 Q. Are they -- how can they be regularly
11 scheduled if Laclede and you don't know when the
12 customer's going to move?

13 A. Would you repeat the question?

14 Q. How can you predict when a TFTO inspection
15 is going to occur?

16 A. I can't predict that.

17 Q. Right. And we've already agreed that they
18 only occur when a customer moves, right?

19 A. That's correct.

20 Q. And that can happen several times a year,
21 or it could not happen for decades, right?

22 A. That's correct.

23 Q. So wouldn't you agree that the whole TFTO
24 inspection is a random, haphazard inspection process?

25 A. No, I can't agree to that.

00098

1 Q. Why don't you agree to that?

2 A. Because even though we don't know how
3 it's -- how it's set up or who it's set up by, there was a
4 purpose for that inspection.

5 Q. Well, I understand there was a purpose for
6 the inspection. What I'm trying to understand in your
7 testimony is if it's an important safety procedure, why
8 would it be -- this important safety procedure be based on
9 the unpredictable event of when a customer moves?

10 A. That I wouldn't know.

11 Q. Should there be a safety procedure that
12 would require periodic inspections of all customers?

13 A. That I wouldn't know.

14 Q. Do you know even how many customers move
15 within the central -- you work in the central district,
16 correct?

17 A. That's correct.

18 Q. And that's basically the City of St. Louis,
19 essentially?

20 A. Well, essentially, yes.

21 Q. And do you even know how many customers
22 move within the City of St. Louis in a year?

23 A. Not exactly, no.

24 Q. Well, do you have any idea what the
25 percentage is?

00099

1 A. No, sir.

2 Q. Do you believe that if we have a single
3 apartment and the customer changes every month, that there
4 should be 12 TFTOs during that year?

5 A. I would think that would be fair.

6 Q. That would be fair. And then we have the
7 apartment next door where the same tenant lives there for
8 20 years. There would be no inspection of that tenant's
9 property, right?

10 A. Not --

11 Q. No TFTO?

12 A. No TFTO, no.

13 Q. So if that tenant had cobwebs in the
14 furnace or a delayed ignition switch in the furnace, that
15 wouldn't be discovered, would it?

16 A. Not on a TFTO.

17 Q. Not on a TFTO. Thank you. I want to refer
18 you to page 5 of your affidavit where you talk about house
19 sale inspections. Do you see that?

20 A. I haven't gotten there yet. All right.

21 Q. The question that was posed, why would
22 these hazards not be detected through a house sale
23 inspection? Now, let's start with a house first of all,
24 not an apartment. A house sale inspection should find
25 every one of the hazards that you list on pages 3, 4 and 5

00100

1 of your affidavit, shouldn't it?

2 A. That's correct.

3 Q. Now, you say, well, there may not be such
4 an inspection where a rental house or apartment changes
5 tenants. So you're restricting, as I understand it, the
6 importance of the TFTO versus the house sale inspection to
7 apartments only; is that right?

8 A. Well, normally a house sale inspection is
9 done at a house, not an apartment.

10 Q. Right.

11 A. Unless it's a condo.

12 Q. So the house sale inspection, my point is
13 the house sale inspection would find, as we've just
14 agreed, all of the hazards that you've described in your
15 affidavit, correct?

16 A. Normally.

17 Q. Okay. But if it's an apartment, you're
18 saying, well, they wouldn't discover it because there is
19 no house sale inspection, right?

20 A. That's correct.

21 Q. Now, you also say that even in the event of
22 a property sale -- so there I think we're back to talking
23 about housing again -- the inspection is generally
24 performed before the seller has moved out. Do you see
25 that?

00101

1 A. Yes, sir.

2 Q. Okay. Now, isn't it true that all six of
3 the items that you've listed on pages 3, 4 and 5 of your
4 affidavit could be found during a house sale inspection
5 even with the seller still there?

6 A. Yes, sir.

7 Q. But you give an example of where they might
8 remove a dryer or a stove?

9 A. After the sale, after the inspection.

10 Q. Do you know how many times you've ever
11 found that?

12 A. I can't give a specific answer to how many
13 times. I know that I have found it.

14 Q. And do you -- and what you're saying there,
15 if I understand you, is that that could create the
16 probability of an uncapped fuel run?

17 A. It is an uncapped fuel run.

18 Q. Well, but the customer could put a cap on
19 the fuel run when they remove the appliance, couldn't
20 they?

21 A. That's possible.

22 Q. Or a contractor could put a cap on the fuel
23 run when they removed the appliance?

24 A. It's possible.

25 Q. Now, you also talk about this attic fan

00102

1 situation that -- and I -- I'm not sure I understand this,
2 but I think what you're talking about -- well, let me ask
3 you this question first of all. On a TFTO, is it part of
4 the procedure for what Laclede Gas to check the attic fan?

5 A. No, sir.

6 Q. Is it part of the procedure for Laclede Gas
7 to even determine whether there's an attic fan?

8 A. No, sir.

9 Q. Have you ever seen the situation that you
10 described in your affidavit on page 5 regarding the
11 negative pressure created by the attic fan then caused the
12 water heater to spill carbon monoxide back into the house
13 which is only discovered by the TFTO?

14 A. Have I ever?

15 Q. Have you ever seen that situation?

16 A. Yes, sir.

17 Q. Okay. And in that situation, do you know
18 whether or not the prior owner knew about this potential
19 problem?

20 A. I don't know if they knew about it.

21 Q. And when you turn on an attic fan, sir,
22 isn't it customary to open the windows in the house?
23 Isn't that how an attic fan works?

24 A. It's customary.

25 Q. Right. And if an attic fan is turned on

00103

1 and the windows in the house are open, this situation that
2 you described on page 5 of your affidavit could not occur,
3 could it?

4 A. Not normally, no.

5 Q. Well, is there any circumstance when the
6 windows are open and the attic fan is operating this
7 situation that you describe in paragraph 5 could occur?

8 A. Yeah, if the windows are not open wide
9 enough.

10 Q. You're saying -- and have you ever done a
11 study to determine how wide the windows must be open?

12 A. No, sir.

13 Q. Do you have any knowledge of how wide the
14 windows must be open?

15 A. No, sir, but normally -- no, sir.

16 Q. So in this situation, if Laclede performs a
17 house sale inspection and the person who performs the
18 house sale inspection doesn't find the hazard and a week
19 later you come in and do the TFTO inspection and find the
20 hazard, should the first employee of Laclede Gas Company
21 be disciplined for failure to find the hazard?

22 A. I wouldn't know.

23 Q. How often has that happened, to your
24 knowledge, where there's been a house sale inspection and
25 someone's come in, say, a week later and found a --

00104

1 A. I'm sure it's happened.

2 Q. You're sure it's happened. In fact, it
3 happened on some of the -- have you reviewed the list that
4 was attached to Mr. Schulte's affidavit of alleged safety
5 hazards that were found?

6 A. No, I haven't reviewed it, no.

7 Q. Do you know whether that list, there are
8 some instances where Laclede employees, one Laclede
9 employee was out there, missed the alleged hazard, and a
10 week later or two weeks later or a month later another
11 employee came out and found the hazard?

12 MS. SCHRODER: Objection, lack of
13 foundation.

14 MR. ELBERT: I asked him whether he knew.
15 I'm not sure what the foundation objection is. I asked
16 him whether he knows.

17 MS. SCHRODER: You previously asked him if
18 he reviewed the list. He doesn't even know what's on the
19 list.

20 JUDGE DIPPELL: I'm going to sustain the
21 objection. He's testified he doesn't know, he hasn't seen
22 the list.

23 MR. ELBERT: I can rephrase it.

24 BY MR. ELBERT:

25 Q. Have you ever gone out and done an

00105

1 inspection where you knew -- a TFTO inspection where you
2 knew someone did a house sale inspection before you?

3 A. Yes.

4 Q. In any of those inspections, did you ever
5 find a hazard that the other Laclede employee did not
6 find?

7 A. I can't -- I can't remember. I can't
8 remember that.

9 Q. Well, isn't it possible that that could
10 happen because a hazard could develop in the intervening
11 time period between the house sale inspection and the TFTO
12 inspection?

13 A. That's true.

14 Q. In fact, a hazard could occur -- if you did
15 a TFTO inspection, a hazard could occur a couple hours
16 after you walk out the door, couldn't it?

17 A. That's true.

18 Q. Do you know whether anyone's ever been
19 injured by this alleged chain of events that you describe
20 in paragraph number -- well, it's not paragraph -- on
21 page 5 with regard to the attic fan, have you ever heard
22 of anyone being injured by that chain of events?

23 A. No, but the possibility is there.

24 Q. Well, there are a lot possibilities that
25 there could be dangers with gas, aren't there?

00106

1 A. That's correct.

2 Q. Are you aware that Laclede adds mercaptan
3 to the gas so that people can smell it?

4 A. Yes.

5 Q. Don't customers often report to you that
6 they smell gas?

7 A. Yes, sir.

8 Q. Doesn't Laclede encourage all of its
9 customers to get periodic inspections of their appliances?

10 A. Yes.

11 Q. In fact, it's on -- Laclede sends out
12 material to customers advising them of that, don't they?

13 A. Yes.

14 Q. And Laclede has a website that advises them
15 to get periodic inspections of their appliances, doesn't
16 it?

17 A. I believe so.

18 MR. ELBERT: I have no further questions,
19 your Honor.

20 JUDGE DIPPELL: Thank you. Are there
21 questions for this witness from the Bench, Commissioner
22 Gaw?

23 COMMISSIONER GAW: I'll defer to
24 Commissioner Appling.

25 JUDGE DIPPELL: Commissioner Appling?

1 QUESTIONS BY COMMISSIONER APPLING:

2 Q. Good morning, Mr. Hendricks.

3 A. Good morning, sir.

4 Q. How you doing this morning?

5 A. Very good.

6 Q. I don't have any question of you, but I
7 would like for you -- is there anything else you would
8 like to add to this conversation this morning or your
9 testimony this morning concerning the safety for the
10 general public out there? Is there anything else you
11 would like to say while you have this opportunity?
12 Anything you can add that you haven't already said here?
13 I just wanted to give you an opportunity to say something
14 that you may have not had the opportunity to say.

15 A. Yes, sir. For the time I've worked for
16 Laclede, TFTOs along with other jobs have been very
17 important. There's a lot of things that we find that we
18 don't keep numbers of that are hazards, that are potential
19 hazards, that we find that -- you know, I've been asked
20 questions about the numbers. I believe I told Mr. Elbert
21 that we don't keep numbers. We just do the job.

22 And the number of jobs I've done over the
23 years I believe have definitely saved some people's lives.
24 Now, they can believe it. They can not believe it. I
25 just think that it's important that these continue for the

00108

1 general public. That's it.

2 Q. You realize that technology is coming up
3 behind us, don't you?

4 A. Yes, sir. But I also know that everything
5 that a man builds takes another man to take care of.

6 Q. I understand that. But you can't fault the
7 company for looking for new ways and new opportunities to
8 advance technology in checking the gas safety of residents
9 throughout St. Louis City?

10 A. No, sir, I don't fault the company. I
11 think that it can be done, but it can be done in a lot of
12 different ways.

13 COMMISSIONER APPLING: Thank you very much,
14 sir. Appreciate your comments.

15 THE WITNESS: Thank you.

16 JUDGE DIPPELL: Commissioner Gaw?

17 COMMISSIONER GAW: Thank you.

18 QUESTIONS BY COMMISSIONER GAW:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. I need some clarification from you in
22 regard to one area of questioning you had earlier as it
23 relates to your training. What kind -- generally what
24 kind of training do you get in regard to your job, just
25 very generally?

00109

1 A. Okay. When you start out in the SAID
2 department, normally you come in as a laborer, and you
3 assist a fitter or special adjust person. They kind of
4 show you what you've learned in school, how to apply it.

5 Q. Let me stop you just one minute. I want
6 you to go on, but you said what you've learned in school.

7 A. Right.

8 Q. What do you mean by that?

9 A. Okay. It's a class about Laclede's
10 procedures, a class on appliances, a class on leak
11 investigations, operating a combustible gas indicator,
12 just how to detect certain situations with an appliance,
13 how to make repairs on those appliances.

14 Q. Now, when did you get that school? When is
15 that school, in regard to when you come on board with
16 Laclede or --

17 A. Right, when you come on board with Laclede,
18 and it's an ongoing, updating, consistent training that
19 you receive once a year, twice a year. It used to be we
20 had personal qualifications every three years. Now it's
21 every year.

22 Q. So when you first came on board with
23 Laclede, you had this training?

24 A. That's correct.

25 Q. How long did that last, do you recall?

00110

1 A. When you first come on board, I think it's
2 approximately two weeks.

3 Q. Okay. And then the updates that you now --
4 that you now get, you say they're once a year. About how
5 long do they last?

6 A. Some last a day. Some last a couple of
7 days. When you are promoted to different positions, you
8 go through a special adjust school, a fitter school,
9 because in each graduating position, you have more
10 responsibility.

11 Q. Okay. So you actually graduate as you're
12 moving along in your career?

13 A. Yes, sir.

14 Q. From one --

15 A. You sign a bid, and that promotes you to a
16 higher level.

17 Q. Okay. How many -- do you know how many
18 levels there are in your general area, approximately? I'm
19 not needing an exact number.

20 A. Well, it used to be helper, meter change,
21 turn on, cut off, special adjust, and fitter, and then
22 ICI, ICI being the highest.

23 Q. Okay. And what are you designated as?

24 A. A general fitter.

25 Q. General fitter. And has that changed? You

00111

1 say it used to be. If it's changed, what is it now?

2 A. No. Well, there are very few ICI
3 classifications anymore. There are about maybe a handful
4 of people that are ICI.

5 Q. Working at Laclede?

6 A. That's correct.

7 Q. Okay. All right. What do people with that
8 designation generally do as far as their duties are
9 concerned?

10 A. Well, ICI is a fitter, but during the time
11 that they had gas air conditioners, they were the only
12 ones that could work on the gas air conditioners.

13 Q. So that's the reason that you don't see
14 very many of them anymore?

15 A. That's correct.

16 Q. Because you don't see very many gas air
17 conditioners?

18 A. That's correct.

19 Q. All right. So this training that you have,
20 you said that it does deal with appliances. Are you
21 talking about customer appliances or some other kind of
22 appliances?

23 A. Yes, sir. In special adjust school as well
24 as in turn on, they have a basement full of appliances
25 that you get to work on.

00112

1 Q. Such as?

2 A. Furnaces, ranges, water heaters. They have
3 a basement full of appliances that we work on.

4 Q. Now, earlier when you were getting
5 questions in regard to whether or not you had or hadn't
6 worked on things that dealt with the customer's side of
7 the meter.

8 A. That's correct.

9 Q. You're telling me now that in looking at
10 this, that you do have training in regards to those
11 appliances and things that a consumer would have in their
12 house or residence?

13 A. Yes, sir.

14 Q. All right. So I want you to help me
15 understand in regard to -- first let me ask you this: The
16 turn on/turn off designation that Laclede had up until
17 recently, was that something that Laclede itself had
18 implemented during the time frame you've been working for
19 them? I mean, was it -- has it been the case -- let me
20 ask you that way.

21 A. It was there when I came in.

22 Q. When you came on. Do you have idea how
23 long they had had that process before you came on board?

24 A. No, sir. But some of the older service men
25 when I came in were doing it, and they said they had been

00113

1 doing it for -- since they had come on board.

2 Q. You don't have -- you don't personally know
3 yourself?

4 A. No, sir.

5 Q. Now, in regard to that process, when you --
6 when you go in on a -- is it turn on/turn off, am I saying
7 that correctly?

8 A. That's correct.

9 Q. Generally, in the past, that was done
10 whenever there was a change in the occupant of the
11 residence?

12 A. That's correct.

13 Q. And if you know, was there some sort of a
14 reason why at that point in time you might want to check
15 to see whether or not there were particular issues inside
16 of the residence when someone was moving in or moving out?

17 A. Well, it was just an established procedure.

18 Q. Well, let me ask you a more specific
19 question. When someone moves in and someone else moves
20 out of a residence, are there sometimes connections or
21 disconnections of appliances within that residence that
22 would occur?

23 A. Yes, sir, sometimes.

24 Q. And is that one of the things that you
25 would look for when you went in to examine the residence?

00114

1 A. Yes, sir.

2 Q. You said that -- earlier you testified, I
3 believe, that you thought that there were times when
4 something that you had found during one of these
5 inspections and corrected might have saved a person or
6 persons' lives; is that accurate?

7 A. Yes, sir.

8 Q. Can you give me just maybe an example of
9 something that you had found on one of your inspections
10 that you felt could have resulted in a disastrous
11 consequence if it had not been corrected?

12 A. I can't give you a specific address or
13 anything like that.

14 Q. I'm not looking for that.

15 A. Okay.

16 Q. Just tell me what type of thing you might
17 have found or types of things you might have found that
18 you thought fell in that category.

19 A. Carbonized furnaces, cracked furnaces, vent
20 pipes missing, totally off the water heater, holes in the
21 vent pipes, chimneys blocked up, water heaters and/or
22 furnaces spilling. People have moved dryers and just left
23 the shutoff in the off position but the fuel run is not
24 capped. So if that shutoff is not 100 percent, then
25 you're going to -- you're going to have gas going into

00115

1 that building.

2 Q. And when you find something of that nature,
3 tell me who you communicate that issue or that problem
4 with.

5 A. Well, first it's to the customer.

6 Q. Directly?

7 A. Yes, sir.

8 Q. All right.

9 A. And we make them aware of what we found.
10 If it's a hazard that we can't make a repair on, we write
11 a 627 on it, which is a hazard report, and we leave the
12 appliance off. And if it's something like a fuel run
13 uncapped, we cap that fuel run.

14 Q. And then what do you -- do you also inform
15 the company of what you found, Laclede?

16 A. Well, normally you put down on the back of
17 the CIS form that you capped off the range and -- or
18 capped off the fuel run to the dryer.

19 Q. Now, normal business practice, when you
20 talk to the customer, you tell them about what the issues
21 are; is that correct?

22 A. Yes, sir.

23 Q. Do you leave them any document?

24 A. If you write a hazard on an appliance, yes,
25 sir, because they have to sign that, unless they refuse to

00116

1 sign it.

2 Q. They have to sign this document? What do
3 you do with that document that you get if they sign it,
4 assuming they sign it?

5 A. One copy goes on the appliance, one copy
6 goes directly to the customer, and the other copy comes to
7 Laclede.

8 Q. Okay. Do you know why Laclede wants to
9 maintain a signed copy acknowledging that you have told
10 the customer of the hazard that you have found?

11 A. Would you repeat that?

12 Q. Sure. Only if you know. Do you know why
13 Laclede would want to maintain a signed acknowledgement by
14 the customer that you have found a problem?

15 A. No, I wouldn't know specifically.

16 Q. Okay. But you think that was their
17 practice? You know that was their practice?

18 A. Yes, sir.

19 Q. Have you had a lot of conversations with
20 customers in your career about issues that you may have
21 found in their residences?

22 A. Yes, sir.

23 Q. Generally, would you say that their
24 reaction is that they already knew that that problem
25 existed or that they were not aware?

00117

1 A. Most of the time they're not aware.

2 Q. Okay. And generally, do they express
3 anything to you about being unhappy or happy or no feeling
4 about the fact that you've told them about the issues that
5 you found?

6 A. That depends, most of the time on the time
7 of the year.

8 Q. It does?

9 A. Yes, sir.

10 Q. Explain that for me.

11 A. Because if you go in on a TFTO in the
12 winter and the furnace was running and then you have to
13 shut it off because you found the hazard, then they're
14 pretty unhappy.

15 Q. Are they unhappy with the fact that you
16 found the problem or unhappy about the fact that they were
17 going to be without heat?

18 A. Well, they're happy that you found the
19 problem. They're just unhappy that they won't have heat.

20 Q. Sure. Now, once you tell them about the
21 problem, whose responsibility is it to go ahead and repair
22 the problem that you have found?

23 A. The customer and/or landlord.

24 Q. But you have -- you have in your experience
25 while you were performing these inspections taken care

00118

1 of -- as a rule taken care of the issue by stabilizing
2 whatever the issue was --

3 A. Yes, sir.

4 Q. -- until that could occur?

5 A. Yes, sir.

6 COMMISSIONER GAW: That's all I have,
7 Judge. Thanks. Thank you, sir.

8 JUDGE DIPPELL: Thank you. We'll do
9 recross-examination based on the questions from the Bench.
10 The Commissioners have to leave for -- agenda's actually
11 going to begin today at 12:15. So I think we'll just
12 finish up this witness before we take our lunch break.
13 Mr. Schwarz?

14 MR. SCHWARZ: I have two questions for this
15 witness.

16 JUDGE DIPPELL: Okay. Public Counsel?

17 MR. POSTON: No questions.

18 JUDGE DIPPELL: Mr. Schwarz.

19 RECROSS-EXAMINATION BY MR. SCHWARZ:

20 Q. In response to a question from Commissioner
21 Gaw, you referred to the SAID. Could you tell the
22 Commission what that is for the record?

23 A. That's the service and installation
24 department.

25 Q. And what other departments of Laclede would

00119

1 be involved in the kind of things we're talking about
2 today?

3 A. Such as?

4 Q. Well, I don't know. That's what I'm --
5 TFTO inspections, for instance, is that SAID?

6 A. That's SAID only.

7 Q. Okay. And you also referred to a cracked
8 furnace. Is that --

9 A. A cracked chamber in the furnace.

10 Q. Heat exchanger?

11 A. Right.

12 MR. SCHWARZ: Thank you.

13 JUDGE DIPPELL: Laclede, do you have
14 questions based on the questions from the Bench?

15 MR. ELBERT: I do, your Honor.

16 RE-CROSS-EXAMINATION BY MR. ELBERT:

17 Q. Just a few questions, Mr. Hendricks. As a
18 general fitter, you don't do just TFTOs, do you?

19 A. No, sir.

20 Q. Do you do other types of inspections?

21 A. Yes, sir.

22 Q. And is it your understanding of whatever
23 Laclede -- that you, whenever you set foot on a customer's
24 property, do you do an inspection?

25 A. Yes, sir.

00120

1 Q. Is there any circumstance where you don't
2 perform an inspection?

3 A. No, sir.

4 Q. And are TFTOs a major part of your work?

5 A. No, sir.

6 Q. Okay. I think we -- statistically, would
7 it be fair to say maybe it's about 15 percent of your job?

8 A. It's about 15 to 30 percent if I'm routed.

9 Q. If you're routed, but if you're not routed,
10 you're working off what they call the blank board --

11 A. Yes, sir.

12 Q. -- you don't do TFTOs at all, do you?

13 A. Yeah, there are TFTOs that come into play
14 sometimes, but not many.

15 Q. So let's say it's in the 15 percent, so 15
16 to 30 percent, whatever. That means that somewhere
17 between 85 -- if my math is correct, 70 to 85 percent of
18 the time you're doing jobs other than TFTOs, correct?

19 A. Yes, sir.

20 Q. And you're doing the same types of
21 inspections on those jobs, isn't that right, that you
22 would do on a TFTO?

23 A. Yes, sir.

24 Q. In fact, on some of those you would do a
25 more thorough inspection, wouldn't you, where you'd

00121

1 actually have to go out and maybe do a CGI out at the
2 curb?

3 A. Yes, sir.

4 Q. Combustible gas indicator test at the curb?

5 A. Yes.

6 Q. Or a combustible gas indicator test at the
7 sewer?

8 A. Yes, sir.

9 Q. Because you'd be looking for leaking and
10 migrating gas, right?

11 A. That's correct.

12 Q. And you don't do that on a TFTO, do you?

13 A. Yes, sir, if it has special SEI or SEI.

14 Q. Sir, on a TFTO, do you normally go out to
15 the street and look for the sewer?

16 A. Do you look for the sewer?

17 Q. Look for the sewer and do a combustible gas
18 indicator test on the sewer on a TFTO, is that normal
19 procedure?

20 A. It depends upon what the ticket says. If
21 the ticket says that you have to do a special SEI, extra
22 bore hole, yes, you would.

23 Q. That's a special circumstance, isn't it?

24 A. But it's a TFTO.

25 Q. That wasn't my question.

00122

1 A. Okay, sir.

2 Q. My question -- let me try it again. Maybe
3 my question was confusing. Is it normal procedure on a
4 TFTO to do a CGI at the sewer or a CGI at the curb?

5 A. Not normally.

6 Q. Thank you. These hazards that you referred
7 to when Commissioner Gaw was questioning you, you find
8 those on all these other inspections that you're doing
9 somewhere between 70 and 85 percent of the time, don't
10 you?

11 A. Yes, sir.

12 Q. And do you have any idea whether the
13 percentage of those inspections -- the percentage of
14 hazards found during those inspections is greater than the
15 percentage of hazards found on TFTOs?

16 A. I wouldn't know.

17 Q. You say you believe you save people's
18 lives. Are you aware of any circumstance where the
19 failure to conduct a TFTO has resulted in someone being
20 injured or property damaged?

21 A. Repeat the question, please.

22 Q. Sure. Are you aware of any circumstance
23 where the failure to conduct a TFTO has resulted in injury
24 to person or damage to property?

25 A. I don't have any personal knowledge of

00123

1 that.

2 Q. Okay. And when say you think you save
3 people's lives, is that just a guess on your part? Do you
4 know that?

5 A. On a TFTO?

6 Q. On a TFTO.

7 A. I wouldn't know that.

8 Q. And isn't it more likely that you probably
9 would, if you were saving people's lives, you'd probably
10 save them during one of these other inspections that
11 you're doing?

12 A. I'm sure of that.

13 Q. You're sure of that, because those would be
14 looking for leaks, for example, that were called in by the
15 customer, right?

16 A. That's correct.

17 Q. And just for the record, there's no
18 question that you've been trained on appliances and how to
19 repair appliances or you wouldn't be in the job you're in,
20 would you?

21 A. That's correct.

22 Q. Laclede wouldn't send out untrained people,
23 would it?

24 A. I don't believe so.

25 Q. And you say people can disconnect

00124

1 appliances when they move out, when there's a change in
2 occupant, right?

3 A. Yes, sir.

4 Q. And isn't it true they can also disconnect
5 appliances while they're still living -- are you all
6 right?

7 A. I've got a cramp.

8 Q. Are you okay?

9 A. Yeah, fine.

10 Q. Isn't it true that people can disconnect
11 appliances while they're still living in the unit?

12 A. Yes, sir.

13 Q. And that happens quite frequently, doesn't
14 it, where they disconnect their appliances and put in new
15 appliances?

16 A. I would assume so.

17 Q. And when Commissioner Gaw was asking about
18 why the company insists on a signed acknowledgement,
19 you're aware of that requirement, right?

20 A. Yes, sir.

21 Q. And do you think that has anything to do
22 with liability of the company because they've now set foot
23 on a customer's premises?

24 MS. SCHRODER: Objection, lack of
25 foundation.

00125

1 JUDGE DIPPELL: I believe his answer to the
2 question was he really didn't know why Laclede did it, so
3 I'm going to sustain the objection.

4 BY MR. ELBERT:

5 Q. Have you ever been told that the reason
6 that you sign those -- you have the customer sign those
7 forms is for liability purposes?

8 A. No, it's never actually told that. In
9 response to the Commissioner's question, I would assume
10 that.

11 MR. ELBERT: Thank you, Mr. Hendricks. I'm
12 finished.

13 JUDGE DIPPELL: Thank you. Is there
14 redirect?

15 MS. SCHRODER: There is. Did you say that
16 they had to be gone by 12:15?

17 JUDGE DIPPELL: That's fine. You can
18 continue, and they'll review the transcript when it comes
19 in.

20 MS. SCHRODER: All right. I wasn't sure if
21 I was supposed to squeeze it in.

22 JUDGE DIPPELL: We'll go ahead and finish
23 with the redirect, and then we'll take our lunch break and
24 the Commissioners will leave when they need to, which is
25 probably immediately.

1 REDIRECT EXAMINATION BY MS. SCHRODER:

2 Q. Okay. Mr. Hendricks, you were asked a
3 number of questions both by the Commissioners and by
4 Mr. Elbert about some of your written testimony, and I
5 want to go through and just clarify a few more things.

6 First of all, Mr. Gaw asked you --
7 Commissioner Gaw asked you about some of the training that
8 you've received from the company, and I just want to make
9 sure that the record is clear on what some of that is,
10 because you mentioned at one point specific classes on
11 appliance, leak investigations, CGI. Then you mentioned a
12 little bit later something about special adjust and turn
13 on. Did you get classes on turn on and special adjust as
14 well?

15 A. Did I get classes?

16 Q. Yes.

17 A. Yes.

18 Q. Did you also receive any classes
19 specifically directed at turn off/turn ons?

20 A. No.

21 Q. All right. And you said that, in response
22 to Commissioner Gaw's questions, that whenever you
23 received a promotion, you received new schooling.
24 Approximately how long was the schooling associated with
25 each promotion?

1 A. Well, as I said, you go to special adjust
2 school, that's normally approximately two weeks, and then
3 fitter school, which is approximately two weeks.

4 Q. All right. And you've attended both of
5 those; is that correct?

6 A. Yes.

7 Q. I want to ask you some more questions about
8 general aspects of your job. You testified in your
9 written testimony that you mostly perform emergency work?

10 A. That's correct.

11 Q. What is emergency work? Is that where you
12 receive calls and you go respond to them?

13 A. Yes. You receive odor complaint calls. We
14 respond to fires, building collapses, street leaks, both
15 residential and commercial.

16 Q. All right. So those are specific
17 situations in which you would be expected to do an
18 inspection; is that correct?

19 A. That's correct.

20 MR. ELBERT: Your Honor, I'm going to
21 object. That's leading.

22 JUDGE DIPPELL: Ms. Schroder, I'll ask you
23 to keep your questions non-leading.

24 MS. SCHRODER: All right.

25 BY MS. SCHRODER:

00128

1 Q. Mr. Hendricks, if a customer isn't calling
2 in about a specific complaint, is there a reason that they
3 would have a service -- well, what are the reasons that
4 they might have a service employee coming out to perform
5 an inspection for them? Do you understand my question?

6 A. Would you ask that again, please?

7 Q. Let me just rephrase it. Other than the
8 emergencies that you've just described and a turn off/turn
9 on, are there other reasons that a customer might have an
10 employee of Laclede Gas come out to perform an inspection?

11 A. Yes.

12 Q. All right. And can you just generally
13 describe for me what those would be?

14 A. To connect an appliance, they're having
15 problems with a furnace and/or water heater, and sometimes
16 it's where they want us to come out to get a reading off
17 the meter or the meter's making noise or something like
18 that.

19 Q. All right. Are there regular times that
20 employees -- I'm sorry -- that customers have -- I'm
21 sorry. Let me rephrase that.

22 Are there -- are there regularly scheduled
23 inspections of customers' appliances, to your knowledge?
24 And by that I mean like that occur on a periodic basis.

25 A. No.

1 Q. All right. And I think there's -- well,
2 strike that.

3 There are regularly -- are you aware of
4 regular inspections of meters, for instance, that may be
5 performed annually with some meters?

6 MR. ELBERT: Your Honor, I'm going to
7 object to this line of questioning. This has nothing to
8 do with what was brought up in cross or by any of the
9 Commissioners or by her on direct. We're getting into --
10 now we're getting into meter reads, which has nothing to
11 do with his testimony.

12 MS. SCHRODER: Actually, your Honor, I was
13 following up on Mr. Elbert's last questions about the fact
14 that every time he steps on the property he inspects
15 something, this man.

16 JUDGE DIPPELL: I think it is related to
17 the questions from cross-examination and recross.

18 BY MS. SCHRODER:

19 Q. But I am going to move on, actually.
20 Mr. Elbert asked you whether you knew of a single incident
21 where the failure to conduct a TFTO had, I think he said
22 caused a loss of life, and you said you weren't, you
23 weren't aware of that.

24 Have you ever failed to conduct a TFTO when
25 you were asked to do so?

00130

1 A. No.

2 Q. Until June 10th of 2005, wasn't Laclede
3 having TFTOs performed regularly?

4 MR. ELBERT: Objection. That's leading.

5 JUDGE DIPPELL: Sustained.

6 MS. SCHRODER: Yes. I'll rephrase.

7 BY MS. SCHRODER:

8 Q. Were TFTOs performed regularly prior to
9 June 10th, 2005 by Laclede?

10 A. Yes, they were.

11 Q. Would you have -- are you familiar with --
12 are you familiar with the situations that other gas
13 utilities -- strike that.

14 Mr. Elbert also asked you several times
15 about -- I'm sorry. Mr. Elbert and I think Commissioner
16 Gaw also asked you a little bit about capping the fuel
17 run, and I just want to clarify one area of that. You
18 said that if you capped the fuel run, that after informing
19 the customer about that you note that on the back of a CIS
20 form; is that correct?

21 A. Yes.

22 Q. What is a CIS form?

23 A. CIS form is a service ticket that either is
24 field originated or is sent down in a route.

25 Q. All right. And you turn that ticket back

00131

1 in to Laclede?

2 A. Yes, we do.

3 Q. Do you know what Laclede does with it after
4 it gets that ticket?

5 A. No, I don't.

6 Q. All right. So do you know whether, for
7 instance, Laclede would have counted things that you wrote
8 on the back of your CIS forms when they were computing how
9 many hazards you found in a 14-month period?

10 A. No, I wouldn't know that.

11 Q. All right. Are there other documents
12 besides a hazard form and a CIS form that you might
13 document, that you might note on?

14 A. Yes. There's a 686. There's a 712.
15 There's, let's see, a 686, 712, CIS, 627, a 626. There's
16 numerous paperwork that we fill out.

17 Q. All right.

18 A. Numerous forms I should say.

19 Q. And those forms aren't all official hazard
20 reports, are they?

21 A. No, they're not.

22 Q. But would you use all of those forms -- I
23 mean, you would be able to report, for instance, a hazard
24 that you found on a TFTO on any one of the forms you just
25 listed?

00132

1 A. Repeat the question.

2 Q. You just listed a number of records. Would
3 you use all of those forms in a TFTO situation?

4 A. No, you wouldn't use all of them. You
5 would probably use some of them.

6 Q. All right. And you might use any one of
7 the ones that you listed?

8 A. That's correct.

9 Q. And you were asked a number of questions
10 about whether -- about private inspectors coming in and
11 performing a similar kind of inspection to a TFTO. Do you
12 recall that?

13 A. Yes.

14 Q. All right. When you've conducted TFTOs in
15 the past, have you ever seen signs of poverty?

16 A. Yes, I have.

17 Q. All right. You were also asked a series of
18 questions about house sale inspections and whether they
19 should pick up everything that a TFTO would pick up.

20 First of all, are there reasons why the act of a customer
21 moving would increase the need to do an inspection?

22 A. Most of the time it's because after the
23 house sale inspection, we run into where the customer has
24 removed the dryer and/or the stove, and you know that
25 because when we do a house sale inspection normally a guy

00133

1 puts a sticker on one of the appliances, of the appliances
2 that he inspected, and when you go in to normally do the
3 TFTO, the transfer, and you don't see that appliance, then
4 you know that, you know, it was not as part of a house
5 sale, but it was there when he did the house sale.

6 Q. So in that case if there is a hazard that
7 relates to that removed alliance, you actually do know --
8 well, do you actually know whether that hazard was created
9 after the house sale inspection?

10 A. Yes, ma'am. Normally when the sticker says
11 that he inspected the furnace, the water heater and the
12 stove and you see where a dryer's been removed or the
13 stove has been removed, but it wasn't part of the
14 inspection.

15 Q. All right. And in the situation where
16 there's not a house sale inspection because it's an
17 apartment, do you see that sort of thing as well where it
18 appears that an appliance has been removed in a move?

19 A. Yes, ma'am.

20 Q. And are there visible signs or visible
21 evidence to you that an appliance has been removed fairly
22 recently?

23 A. Yes, ma'am.

24 Q. All right. Is the -- are hazards
25 associated with the removal of an appliance at the time of

00134

1 a move one of the more frequent problems that you find on
2 a turn off/turn on?

3 MR. ELBERT: Your Honor, I haven't
4 objected, but she's continuing to lead the witness. I
5 mean, these questions are --

6 JUDGE DIPPELL: She actually didn't on that
7 one.

8 MR. ELBERT: Sounded to me like it was.

9 JUDGE DIPPELL: Ms. Schroder, is it
10 possible for you to repeat that one?

11 MS. SCHRODER: I can try.

12 BY MS. SCHRODER:

13 Q. Are hazards associated with the removal of
14 an appliance --

15 JUDGE DIPPELL: I believe it was actually
16 what hazards do you find, typically find?

17 BY MS. SCHRODER:

18 Q. What is the most -- what are the most
19 frequent problems that you find on a turn off/turn on?

20 A. Normally uncapped fuel runs.

21 Q. And are those associated with removal of an
22 appliance?

23 A. That's correct.

24 Q. Now, I also wanted to clarify, in your
25 testimony, your written testimony, page 5 -- page 4, I'm

00135

1 sorry, paragraph 6.

2 A. Okay.

3 Q. All right. I believe that you testified on
4 cross-examination that this rusty pipe situation was
5 something that would occur on the customer side of the
6 system. Can that also occur on the Laclede side of the
7 system?

8 A. Yes, it can.

9 Q. All right. And I think you also testified
10 on cross-examination that that might be something that was
11 picked up by a corrosive leak inspection; is that right?

12 A. That's correct.

13 MR. ELBERT: Your Honor, this is all
14 leading.

15 MS. SCHRODER: I'm summarizing what went on
16 in the cross so I can ask him my question.

17 MR. ELBERT: You can ask open-ended
18 questions without summarizing what went on in the cross.
19 It's your own witness. You can't lead your own witness.

20 JUDGE DIPPELL: That last one was very
21 leading, Ms. Schroder.

22 MS. SCHRODER: All right. I'm sorry.

23 BY MS. SCHRODER:

24 Q. Are there other places that a rusty pipe,
25 other inspections a rusty pipe might be discovered in?

00136

1 A. Yes, there are.

2 Q. All right. And I think you testified about
3 part of that earlier. I won't go back through that. Have
4 you found -- have you seen a rusty pipe in a turn off/turn
5 on situation where a corrosive pipe inspection wouldn't
6 occur for some period of time?

7 JUDGE DIPPELL: Ms. Schroder, start over.
8 Try starting with where, when, what.

9 BY MS. SCHRODER:

10 Q. How frequently are corrosive pipe
11 inspections performed by Laclede?

12 A. I would assume every three years.

13 Q. All right. Are you very involved in doing
14 those?

15 A. No, ma'am.

16 Q. All right. Is that -- is the corrosive
17 pipe inspection one that you think about a lot when you're
18 thinking about the inspections that you perform?

19 A. Well, the inspections that we perform
20 depend upon the job that you do. Sometimes you'll get a
21 work order that says they want you to do a corrosion
22 inspection on the CIS itself. Sometimes you have a turn
23 on that says do a corrosion inspection.

24 Q. All right.

25 A. So it would just depend upon the job that

00137

1 you're doing, and I don't know what the frequency is that
2 they do it, but it depends upon the job. And if it's
3 stated on the CIS you would do it.

4 Q. All right. How long does it take a pipe to
5 rust out?

6 MR. ELBERT: Objection, no foundation.
7 There's been no -- there's been no evidence that he has
8 any expertise on metallurgy or whatever, what type of
9 pipes we're talking about. There's no foundation for this
10 question of any kind whatsoever.

11 MS. SCHRODER: I would think he would just
12 testify he didn't know if that's the case, but I'll
13 reframe it if you like.

14 JUDGE DIPPELL: Sustained. Can you
15 rephrase it, Ms. Schroder?

16 BY MS. SCHRODER:

17 Q. Mr. Hendricks, do you have any experience
18 that would indicate to you, any personal knowledge of how
19 long it might take a pipe in the Laclede system to rust
20 out?

21 MR. ELBERT: Objection, no foundation as to
22 the types of pipes in the Laclede system, where we're
23 talking about in the Laclede system. There are all
24 different types of pipes in all different locations.

25 MS. SCHRODER: That's all right. I'll

00138

1 rephrase.

2 BY MS. SCHRODER:

3 Q. Mr. Hendricks, you testified at paragraph 6
4 of your written testimony about pipes that lay against a
5 concrete wall. Do you have -- have you -- do you have
6 personal knowledge about the time frame that it might take
7 a pipe in that situation to rust out?

8 A. I do not have the actual time frame. I
9 know that over a period of time the acid in the concrete
10 begins to deteriorate the metal.

11 Q. In your experience, can that occur in less
12 than a three-year period?

13 MR. ELBERT: Objection, no foundation.

14 JUDGE DIPPELL: I'm going to overrule that
15 one. He did testify in his direct about rusty pipes and
16 nobody objected to that.

17 MR. ELBERT: The only reason I say no
18 foundation, your Honor, there's no -- there's no starting
19 point here, how long it would take. She has to establish
20 that he saw the pipe put in and how long it would take
21 before it would rust. To just come and say three years,
22 the pipe could have been there 20 years.

23 JUDGE DIPPELL: She's asking him about his
24 experience. I'm going to let him answer the question.

25 BY MS. SCHRODER:

1 Q. Mr. Hendricks, do you need me to repeat
2 that?

3 A. Yes, I do.

4 Q. All right. In your experience, can a pipe
5 that lays against a concrete wall rust out in less than
6 three years?

7 A. I couldn't give you a specific time frame.
8 As I said before, depending upon when the pipe was put in,
9 over time that pipe is going to begin to deteriorate, and
10 I don't know if it would be three years or what the actual
11 time frame would be.

12 Q. All right. In your experience in
13 conducting occasional corrosive pipe inspections, have you
14 come across pipes that are badly rusted out by the time
15 you've done the inspection?

16 A. Yes.

17 Q. Mr. Elbert asked you with regard to flex
18 connectors and your testimony on page 3, paragraph 1 of
19 your written testimony, whether you had ever seen the
20 situation occur that you described of the fuel run causing
21 the room to spontaneously ignite.

22 And my question is, are you taught that
23 this is one of the consequences for a flex connector, for
24 an uncapped fuel run?

25 A. Yes.

1 Q. And Mr. Elbert asked you whether an
2 appliance can be removed before a customer moves out and,
3 therefore, the hazards associated with an improper removal
4 can occur. Strike that. Never mind.

5 Mr. Elbert asked you about the attic fan
6 situation that you testified about in paragraph -- I'm
7 sorry -- page 6 of your written testimony. No, not 6.
8 I'm sorry. Page 5 of your testimony. And he asked if you
9 had ever seen that situation occur.

10 Can you describe briefly the first time you
11 came across that situation?

12 A. Yes. Once I transferred out to Hall Street
13 where I now work, I was doing a TFTO and it had recently
14 had a house sale. I didn't realize that they had an attic
15 fan on, and the furnace and water heater was spilling. I
16 wrote a hazard on it, and I talked to my supervisor, who
17 is now a superintendent, and he asked me did they have an
18 attic fan. And I said I didn't really know. He sent
19 somebody back.

20 That's when we found out that they had the
21 attic fan on and the windows were closed. And he always
22 told me from that point on to check to make sure that if
23 they've got an attic fan, that it's not running, or if it
24 is, that the windows are open.

25 Q. All right. And based on that experience,

00141

1 does it appear that customers always or that residents
2 always know how high they've got to keep their windows
3 open when they're running attic fans?

4 MR. ELBERT: Objection.

5 JUDGE DIPPELL: Sustained.

6 BY MS. SCHRODER:

7 Q. You were also asked by Mr. Elbert about
8 whether customers sometimes detected gas leaks because of
9 the smell of gas. Are you aware of Laclede employees or
10 have you ever found a gas leak that a customer didn't
11 smell?

12 A. Yes.

13 Q. All right. Mr. Elbert asked you a number
14 of questions at the beginning of his cross about the
15 number of turn off/turn ons that you performed in the last
16 14 months. Do you recall that?

17 A. Yes, I do.

18 Q. Is there any reason that you may have
19 performed fewer turn off/turn ons in the last 14 months
20 than you were previously performing?

21 MR. ELBERT: Objection. This is leading.

22 MS. SCHRODER: How is that leading? It's
23 an open-ended question.

24 MR. ELBERT: No, it's not open -- if I may,
25 an open-ended question, not that I'm trying to ask the

00142

1 question for you, is how many inspections have you
2 performed in the last 14 months and is it less, and then
3 you can go in whether that's less. You're asking him up
4 front, you're trying to get him to say what the reasons
5 are.

6 JUDGE DIPPELL: Okay. I'll sustain your
7 objection, and, Ms. Schroder, would you like to rephrase
8 your question?

9 MS. SCHRODER: Certainly.

10 BY MS. SCHRODER:

11 Q. Have you performed -- are there time
12 periods in your work with Laclede where you've performed
13 more or less TFTO inspections?

14 A. Well, we've performed -- or I've performed
15 less TFTOs over the past year and a half.

16 Q. All right. Is there a reason for that?

17 A. Well, I don't know the specific reason.
18 They don't come out in routes as heavily as they did.

19 Q. All right. Are there also times when
20 you're performing -- strike that.

21 Were you present today when Laclede
22 stipulated at the beginning of the hearing that they
23 ceased doing turn off/turn ons?

24 A. Yes.

25 Q. All right. There was some confusion about

00143

1 the percentage of turn off/turn ons that you perform when
2 you're doing certain types of work. First of all, I
3 believe in your written testimony -- let me direct your
4 attention to page 1 of your written testimony. At the
5 bottom of the page it says, when I performed route work,
6 approximately 60 to 80 percent of a route was usually TFTO
7 inspections.

8 Is there a reason that you -- why you said
9 when you performed route work, limited it that way?

10 A. Well, normally TFTOs do not come out on the
11 board, unless there's non-emergency work to do. In a
12 route is where you're going to have -- you may even have a
13 whole route of TFTOs. It varies from day to day.
14 Sometimes you have as little as two, and some days you
15 have as many as eight or sixteen.

16 Q. All right. And do you general-- do you
17 perform a great deal of route work?

18 A. I'd say maybe 20, 25 percent.

19 Q. All right. Mr. Elbert asked you about a
20 60 to 70 percent figure that was in your deposition, at
21 page 42 of your deposition. I want to direct your
22 attention to page 54. I'm sorry, 53. No. Actually, it
23 is 54 of your deposition. At that point, do you recall
24 the questioning -- strike that.

25 Did you correct with Mr. Elbert this 60 to

00144

1 70 percent figure on page 54?

2 MR. ELBERT: Objection, leading.

3 JUDGE DIPPELL: Sustained. Ms. Schroder,
4 can you --

5 MS. SCHRODER: Right.

6 BY MS. SCHRODER:

7 Q. Mr. Hendricks, you stated today that you
8 had some trouble quantifying the number of hazards that
9 you found in the number of TFTOs you've performed.

10 Have you performed TFTOs on and off over
11 the last 20 years, have you performed a significant number
12 of them?

13 A. Yes, I have.

14 Q. All right. Have you found hazards on --
15 have you found hazards when you performed TFTOs on a
16 regular basis?

17 A. Yes, I have.

18 Q. All right. You were asked by Mr. Elbert
19 about Laclede's responsibility for customer fuel runs and
20 appliances. When you perform a -- and he was talking
21 about the provision -- well, strike that.

22 When you perform a turn off/turn on
23 inspection, are you just looking at the customer's side?

24 A. No, we're not.

25 Q. What else do you look at?

1 A. You're checking the point of entry, which
2 is where the service comes into the wall. You're checking
3 the service pipe that comes up to the meter. You're
4 checking the meter itself. Where the customer's -- what
5 we've been told is the customer's responsibility starts a
6 foot off of that meter. And we check the fuel runs, we
7 check the appliances.

8 Q. I'm sorry. Now you're getting to things
9 that are on the customer side, right?

10 A. That's right.

11 Q. But the other things that you talked about,
12 were those all things that happened on the Laclede side?

13 A. Yes.

14 MS. SCHRODER: No further questions.

15 JUDGE DIPPELL: All right. I believe,
16 then, that that is all for Mr. Hendricks.

17 I do want to ask you, Ms. Schroder, you had
18 your meter readers manual that we'd originally marked as
19 Exhibit 1. You didn't need Mr. Hendricks to sponsor that?

20 MS. SCHRODER: No. Actually, that's going
21 to go through Mr. Stewart. I put that in the wrong order.
22 I apologize.

23 JUDGE DIPPELL: That's fine. I just wanted
24 to double check.

25 I believe that's all for you, then,

00146

1 Mr. Hendricks. You may be excused.

2 THE WITNESS: Thank you.

3 JUDGE DIPPELL: And we will take a lunch
4 break. Synchronize your watches to the clock in the back
5 of the room, whether it be correct or not, and we will
6 come back in a little over an hour at 1:45. Thank you.
7 We can go off the record.

8 (A BREAK WAS TAKEN.)

9 JUDGE DIPPELL: Let's go ahead and go back
10 on the record, and we've returned from our lunch break. I
11 apologize. Maybe an hour wasn't quite enough time. I
12 didn't realize the cafe was closed here. So we'll go
13 ahead then and begin with the Union's next witness, or
14 however Ms. Schroder would like to proceed.

15 MS. SCHRODER: The Union would like to call
16 Kevin Stewart.

17 JUDGE DIPPELL: Would you please raise your
18 right hand.

19 (Witness sworn.)

20 JUDGE DIPPELL: Thank you. Go ahead.

21 MS. SCHRODER: Yeah. Good. I was just
22 going to tell you that you need to speak up.

23 JUDGE DIPPELL: Yeah. And I will ask you
24 to speak into the microphone. I apologize. My view of
25 you is kind of obscured, but I can see you on the camera,

00147

1 actually.

2 THE WITNESS: Okay.

3 KEVIN STEWART testified as follows:

4 DIRECT EXAMINATION BY MS. SCHRODER:

5 Q. Mr. Stewart, are you the same Kevin Stewart
6 who submitted written testimony in this matter in early
7 May?

8 A. Yes.

9 Q. Have you reviewed that written testimony?

10 A. Yes, I have.

11 Q. Do you have any corrections to that
12 testimony today?

13 A. No, I do not.

14 Q. Would you answer the questions that you
15 were asked in the same way if you were asked them today?

16 A. Yes, I would.

17 MS. SCHRODER: And I would move for the
18 admission of Kevin Stewart's written testimony.

19 MR. ELBERT: No objection.

20 MR. SCHWARZ: No objection.

21 JUDGE DIPPELL: Seeing no objection, then I
22 will admit Exhibit 3, the direct testimony of Kevin
23 Stewart.

24 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

25 MS. SCHRODER: And can I also move at this

00148

1 time for the admission of Exhibit 1, excerpts from the
2 meter reading manual?

3 JUDGE DIPPELL: Would there be any
4 objection to the meter reading manual coming into the
5 record, those excerpts?

6 MR. ZUCKER: No objection, your Honor.

7 JUDGE DIPPELL: Seeing no objection, I will
8 admit Exhibit No. 1.

9 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

10 JUDGE DIPPELL: You may go ahead. Did you
11 have some additional questions, Ms. Schroder?

12 MS. SCHRODER: I thought I wasn't supposed
13 to ask them now.

14 JUDGE DIPPELL: Okay. I was just -- now
15 I've gotten confused, so...

16 MS. SCHRODER: I have that effect on people
17 sometimes.

18 JUDGE DIPPELL: Mr. Poston, any questions?

19 MR. POSTON: No questions.

20 JUDGE DIPPELL: Staff?

21 MR. SCHWARZ: None at this time.

22 JUDGE DIPPELL: Laclede?

23 MR. ELBERT: Yes, your Honor.

24 CROSS-EXAMINATION BY MR. ELBERT:

25 Q. Good afternoon, Mr. Stewart.

00149

1 A. Good afternoon, Mr. Elbert.

2 Q. What's your position at Laclede Gas

3 Company?

4 A. I'm a meter reader.

5 Q. How long have you been a meter reader?

6 A. 26 years.

7 Q. Have you held any other position at Laclede

8 Gas Company besides meter reader?

9 A. No, I have not.

10 Q. Have you ever taken any courses on

11 industrial safety?

12 A. No, I have not.

13 Q. Have you taken any courses regarding the

14 minimum federal standards for transportation of natural

15 gas and other gas by pipeline?

16 A. No, I have not.

17 Q. Have you taken any courses regarding

18 natural gas incident investigations?

19 A. No, I have not.

20 Q. Have you published any articles on natural

21 gas safety?

22 A. No.

23 Q. Have you conducted any studies on natural

24 gas safety?

25 A. No, I have not.

00150

1 Q. Have you participated in any studies on
2 natural gas safety?

3 A. No, I have not.

4 Q. It's my understanding, is it correct that
5 you worked in St. Charles from approximately 1989 to
6 December 31 of 2005?

7 A. That is correct.

8 Q. And how many of the meter -- how many
9 meters were you responsible for reading while you worked
10 in St. Charles, on a 21-day basis?

11 A. I would say between 8 and 10,000.

12 Q. And what percentage of those meters were
13 outside meters?

14 A. I would say 90 percent, 95 percent.

15 Q. 95 percent?

16 A. A high percentage.

17 Q. You had about, what, 500 inside meters?

18 A. Roughly.

19 Q. And were most of those in one apartment
20 complex?

21 A. Yes, they were.

22 Q. What were your hours -- what were your
23 hours of work when you worked in St. Charles?

24 A. It's 7:30 to 3:30.

25 Q. But as a meter reader, it's my

00151

1 understanding that most meter readers don't really work
2 until 3:30, do they?

3 A. It's a test job.

4 Q. It's a test job, so if you finish the job
5 at 11 o'clock in the morning, you can go home?

6 A. I only hope.

7 Q. Well, is it fair to say that on a good day
8 you're usually out of there by noon?

9 A. No, that's not correct.

10 Q. Okay. What time do you usually get out?

11 A. I would say it varies, probably 1:30 to 3.

12 Q. About 1:30 to 3? So about how many --
13 about how many meters do you read a day?

14 A. I would say on the average between 4 and
15 500.

16 Q. And is that a walking route that you had in
17 St. Charles?

18 A. Yes. The set of routes I had in
19 St. Charles was complete walk route set.

20 Q. So you would walk 4 or 500 meters in a
21 period of time that would be roughly six -- five, six,
22 seven hours, something like that?

23 A. Yes. And obviously weather conditions
24 would change the time and the length of the route.

25 Q. When you're reading outside meters, do you

00152

1 have pretty good vision?

2 A. Yes.

3 Q. Do you wear glasses?

4 A. No.

5 Q. And isn't it a fair statement when a meter
6 reader reads outside meters, they can read them from say
7 10 feet away?

8 A. I have read them from that far away in
9 cases of where a gate was locked or there was a dog
10 chained in the proximity of the meter.

11 Q. Well, isn't it a fair statement that in
12 order to read 4 or 500 meters in that period of time of
13 five, six, seven hours, you've got to move pretty quickly,
14 don't you?

15 A. You're constantly moving, yes.

16 Q. You're constantly moving and you can read a
17 meter walking by the meter, can't you?

18 A. No. There's more to it than just reading
19 the meter. You also have to check the meter number, and
20 normally that's much smaller numbers, and it takes more
21 time to read the meter number than actually to read the
22 meter.

23 Q. So are you saying you get up close to the
24 meter every time you read a meter?

25 A. No. As I stated before, sometimes if

00153

1 there's a gate or if there's a fence or if there's a dog,
2 I have to read it from ten foot away.

3 Q. And do you read them sometimes from three
4 or four feet away?

5 A. Sometimes if the angle of the meter, it's
6 better to read it from that far away. If it's on a hill
7 or basically at the bottom of a hill, the angle to check
8 the -- the angle of the dials is normally the best way to
9 read it.

10 Q. And isn't it true, Mr. Stewart, that when
11 you go by meters, the pace you're going by, a meter could
12 be leaking and you wouldn't know it; isn't that right?

13 A. No, sir, I don't believe that.

14 Q. You don't believe you've ever missed leaks
15 at meters?

16 A. None that I'm aware of.

17 Q. None that you're aware of?

18 A. Correct.

19 Q. Well, didn't you admit during your
20 deposition that you've missed leaks at meters?

21 A. No, I don't believe I did.

22 MR. ELBERT: Give you the original
23 deposition of Mr. Stewart.

24 BY MR. ELBERT:

25 Q. Mr. Stewart, I'm going to give you a copy

00154

1 of your deposition to refer to. I'd like to refer you to
2 page 24 of your deposition, line 10. Do you remember
3 taking this deposition?

4 A. Yes, I do.

5 Q. And were your statements -- were you sworn
6 to tell the truth when you took this deposition on
7 May 10th, Mr. Stewart?

8 A. Yes.

9 Q. Okay. Did you tell the truth when your
10 deposition was taken?

11 A. Yes, I did.

12 Q. Okay. I want to refer you to line 10.

13 Question: So what I'm asking you is, is it possible that
14 there were leaks in your 26 years at the meter inside or
15 outside that you didn't detect?

16 Answer: Like I said, I'm still confused on
17 the -- and my answer was we read the meters on a monthly
18 basis, if I was there the month before and I did not
19 detect the leak and I did not turn it in and a leak was
20 there the following month.

21 Question: That could have happened,
22 couldn't it?

23 Answer: Very often, yes.

24 Question: Very often, it could have
25 happened?

00155

1 Answer: Correct.

2 Is that the testimony you gave on May 10?

3 A. Yes, it was.

4 Q. And doesn't that testimony state that you
5 very often could have missed leaks at meters inside or
6 outside?

7 A. No. On this particular question, the way I
8 took it was that you had asked me if there might have been
9 already a leak present at the time I read the meter, and
10 my basic answer was that how I determined there was a leak
11 there that month was that I did not detect a leak there
12 the month before.

13 Q. I don't understand your answer. Your
14 testimony is right here that you didn't detect a leak, and
15 I did not turn it in and the leak was there the following
16 month. That could have happened, couldn't it? Very often
17 yes. What are you saying, that you -- I don't understand
18 what you're saying now.

19 A. Just how I said it, that I determined there
20 wasn't a leak there the month before because I had not
21 detected it. At the time of this month when I had
22 detected the leak, I assumed that the meter must have
23 started leaking from the last time I had read the meter,
24 due to that I did not detect it the month before.

25 You had asked me, I think, basically if the

00156

1 leak -- how did I know when the leak occurred at that
2 meter, and I had basically made the comment, like I had
3 said, that I have the set of books I read on a monthly
4 basis. If a leak is not there the month before, and I
5 find the leak the following month, obviously the leak must
6 have started between the last time I had read the meter
7 and at the time I detected the leak.

8 Q. What if you were ten feet away from the
9 meter, could you detect the leak?

10 A. If the odor of gas was strong enough, yes.

11 Q. If it was strong enough. But there could
12 have been a leak -- if you were ten feet away, there could
13 have been a leak that you couldn't detect; isn't that
14 right?

15 A. Or if the gate was locked or a dog was
16 there, I wouldn't be able to get close enough to detect a
17 leak also.

18 MR. ELBERT: Would you instruct the witness
19 to answer my question?

20 THE WITNESS: I'm sorry.

21 JUDGE DIPPELL: Answer his question,
22 Mr. Stewart, if you have the answer.

23 THE WITNESS: Would you please repeat the
24 question?

25 BY MR. ELBERT:

00157

1 Q. If you were ten feet away and the leak
2 wasn't very strong, it's entirely possible you didn't
3 detect the leak; isn't that correct?

4 A. Possible.

5 Q. That's possible. How do you detect leaks
6 on outside meters?

7 A. Normally we do an odor -- an odor is put in
8 the natural gas and we can smell the odor.

9 Q. So you say -- you would concede, wouldn't
10 you, Mr. Stewart, that there's certain times when walking
11 by a meter and you're keeping moving that you're not going
12 to detect a leak in an outside meter; isn't that correct?

13 A. I don't believe so.

14 Q. You believe you've detected every leaking
15 meter in your 8 to 10,000 a month, 95 percent of that by
16 walking by, you've detected every meter that's leaking; is
17 that your testimony?

18 A. As far as I know, correct.

19 Q. As far as you know. And you don't know
20 when the leaks began, do you?

21 A. As I stated before, no, I do not.

22 Q. You don't do TFTOs, do you?

23 A. No, I do not.

24 Q. What's your primary duty?

25 A. My primary duty is -- includes reading the

00158

1 gas meter.

2 Q. Okay. Go ahead.

3 A. Leak detection, corrosive pipe inspections,
4 annual reads.

5 Q. And every day when you read 4 to 500
6 meters, what are you doing? Are you reading it for
7 billing purposes or are you doing some sort of leak
8 detection?

9 A. We are reading the meters for the process
10 of the customers' bill, but we also have the
11 responsibility if there is a leak that it's our
12 responsibility to call that leak in.

13 Q. What's your primary function in reading a
14 meter?

15 A. To record -- or to actually read the
16 device -- or the dials on the meter.

17 Q. For what purpose?

18 A. For billing of the customer.

19 Q. That's the primary purpose of a meter
20 reader, isn't it?

21 A. Correct.

22 Q. And if a meter reader doesn't detect a
23 leak, Laclede doesn't discipline the meter reader, does
24 Laclede?

25 A. Not that I'm aware of, no.

00159

1 Q. Have you ever been disciplined for not
2 detecting a leak?

3 A. No.

4 Q. Now, if a meter reader happens to detect a
5 leak, then the meter reader must turn that leak in, right?

6 A. That is correct.

7 Q. And I think the Union put in this Union
8 Exhibit No. 1, excerpts from the meter reading manual, and
9 it says you're given a cell phone for that purpose,
10 correct?

11 A. Correct.

12 Q. And you're required to call a certain
13 number, aren't you?

14 A. Yes, the Laclede leak line.

15 Q. And do you know what that number is?

16 A. Yes, I do.

17 Q. What is it?

18 A. It's 342-0800, area code 314.

19 Q. And that's the leak line that you must
20 call, correct?

21 A. Correct.

22 Q. And you always call -- and you're supposed
23 to call from your cell phone, right?

24 A. That is correct.

25 Q. Now, in your deposition you claimed that

00160

1 part of a meter reader's job is to protect customer life
2 and property. You recall that?

3 A. Yes, I do.

4 Q. And you claim that was in the meter reader
5 manual, right?

6 A. Yes.

7 Q. Okay. And at your deposition you and your
8 attorney stipulated that you would provide for us -- when
9 we gave you the meter reader manual, you couldn't find it
10 at your deposition, right? You couldn't find any
11 reference to protecting life and property, right?

12 A. That is correct.

13 Q. And you stipulated that you would provide
14 such documentation if you had it, right?

15 A. Correct.

16 Q. And have you provided that documentation?

17 A. No. I was mistaken on where the
18 information came from.

19 Q. And you say the information, if I read the
20 change to your deposition -- is that what you're referring
21 to?

22 A. Yes, sir.

23 Q. And that has to do with the corrosive leak
24 inspection, right?

25 A. It was a combination of corrosive pipe

00161

1 class and also when we had received our combustible gas
2 detectors.

3 Q. Okay. And prior to the last three years,
4 did you carry any kind of leak detection equipment?

5 A. No.

6 Q. And now you've been issued leak detection
7 equipment for inside meters only, right?

8 A. That is correct.

9 Q. And you don't know why you were provided
10 with this leak detection equipment, were you -- do you?

11 A. No. Obviously to help detect gas leaks,
12 but we were never actually told why.

13 Q. And when you happened to come across a gas
14 leak that you detect with your nose, you have no idea how
15 long that leak's been there, do you?

16 A. No, sir.

17 Q. And has anyone, to your knowledge, been
18 injured or property damaged as a result of a leaking meter
19 that you were supposed to read?

20 A. No.

21 Q. Do you know the difference between Class 1,
22 Class 2 and Class 3 gas leaks?

23 A. No, sir. That was never given to us in any
24 of the classes that we had on our -- in the training
25 session we had as a meter reader.

00162

1 Q. Do you consider yourself to be a competent
2 meter reader?

3 A. Yes, I do.

4 Q. You've been doing it for a long time,
5 haven't you?

6 A. 26 years.

7 Q. And if part of your job is to detect leaks,
8 shouldn't you know the difference between a Class 1,
9 Class 2 and Class 3 leak?

10 A. That's the responsibility of the procedures
11 that Laclede lays down for us, and we have never been
12 instructed that we needed to know that information.

13 Q. Now, it's my understanding that -- what
14 year did you start again at Laclede?

15 A. May of 1980.

16 Q. In May of 1980, were there any annual reads
17 of meters?

18 A. Not that I'm aware of.

19 Q. In fact, for your 12 -- first 12 years of
20 employment, there were no annual reads of meters, were
21 there?

22 A. Not as a form of the annual reads that we
23 started in '91. I do believe they did have some special
24 routes that I had worked that they would read the in and
25 outside meters, but they weren't actually classified as

1 annual read routes. They might have been considered a
2 high bill.

3 Q. So that was the DNRs -- or DRs. Is that
4 what you're talking about?

5 A. I believe that's what they used to call
6 them.

7 Q. You never did an annual read, did you?

8 A. Yes, I've done annual read routes.

9 Q. I'm sorry. From 1908 to 1992, you didn't
10 do any annual reads, did you?

11 A. I had done routes that had the high bill,
12 that we were sent out for a high bill, and if it had a
13 remote meter, we were supposed to read the inside and the
14 outside meter, but like I said before, it wasn't actually
15 classified as an annual read route.

16 Q. From 1980 to 1992, did you believe that the
17 failure to conduct annual reads was a safety hazard?

18 A. At that time, we hadn't had the training
19 that we had when they started corrosive pipe inspection,
20 so I would have to say I was really unaware of it. As I
21 look back now, I would say it would probably be a safety
22 hazard, but at that time I was unaware of the situations.

23 Q. I'd like to refer you to page 36 of your
24 deposition, line 8. Are you there?

25 A. I'm getting there.

00164

1 Q. Are you there, Mr. Stewart?

2 A. Yes, I am.

3 Q. Okay. Do you consider this to be a safety
4 hazard? Well, let's go up a question. Let's go up to
5 question number -- line No. 4. If I understand your
6 testimony, from 1980 until 1992, there were no annual
7 reads of inside meters with remote reading devices. Do
8 you see that?

9 A. Yes, sir.

10 Q. Answer: Not as it was so-called.

11 Question: Okay. Did you consider that to
12 be a safety hazard?

13 Answer: At the time, probably yes.

14 Do you see that?

15 A. Yes, I do.

16 Q. Now, you just testified that at the time--
17 if I understood your testimony, you just testified that at
18 the time you didn't think it was a safety hazard?

19 A. I'm a little confused because I feel you're
20 asking me a question that I have knowledge of now that I
21 might not have had back then, and for me to answer now
22 that it's -- wasn't a safety hazard at that point, I mean
23 I realize it is now, but at that point in time, I probably
24 did not.

25 Q. Well, your testimony says at that time

1 probably you did, in your deposition.

2 A. Correct. And that's what I basically said.

3 At the time of the deposition, I have had the education
4 and we've had the class since '91, which as I look back
5 now, I was probably not aware of the situation prior to
6 the annual reads.

7 Q. Did you understand your words at the time,
8 probably yes?

9 A. Yes.

10 Q. And doesn't that mean at the time, 1980 to
11 1992? Isn't that what at the time refers to?

12 A. Yes.

13 Q. So weren't you telling me at your
14 deposition that, in fact, you thought it was a safety
15 hazard at that time?

16 A. Yes, I did.

17 Q. But now you're saying you didn't think it
18 was a safety hazard at that time?

19 A. At the time before we had the education
20 that we had when we started the annual reads and the
21 corrosive pipe inspections, I was probably not aware of
22 it. But knowing the knowledge I have now, I answered yes
23 the other day because I do have the knowledge that it
24 could be a safety hazard.

25 Q. So then your words at the time have no

00166

1 meaning, is that what you're telling me?

2 A. Correct.

3 Q. In fact, if we go on a little bit, it
4 said, well, wait a minute. I thought that your job was to
5 protect customer safety. Customer -- I think you said
6 customer life and property.

7 Answer: Life and property.

8 Question: Yes.

9 Answer: I'm sorry.

10 Question: Wouldn't -- if you had thought
11 that there was a safety problem, wouldn't it have been
12 your duty to report that?

13 Answer: A lot of times it wasn't up to me
14 on what procedures that they followed. We had procedures
15 set down by the gas company on what we were supposed to
16 do.

17 Question: I understand that. But I'm
18 asking you who -- I believe you testified that you believe
19 between 1980 and 1992 it was some sort of safety hazard
20 for Laclede Gas Company to remotely read meters without
21 going inside to inspect meter; is that right?

22 Correct.

23 Question: Okay. And it was your duty as a
24 meter reader, according to you, to protect the customers'
25 life and property, correct?

00167

1 Answer: Correct.

2 Then I'm asking you why you didn't report
3 that safety hazard.

4 Ms. Schroder: I'll object, that's been
5 asked and answered, but go ahead.

6 Answer: I have no other answer then.

7 Now, you went through that whole exchange
8 with me on the theory that you realized in 1980 to 1992
9 that there was a safety hazard by not doing annual reads,
10 but now you're telling this Commission that that was a
11 mistake, that you, in fact, didn't know from 1980 to 1992
12 that there was a safety hazard?

13 A. Would you repeat that once more, please?

14 MR. ELBERT: Is there any way I could get
15 that question read back?

16 (THE REQUESTED TESTIMONY WAS READ BY THE
17 REPORTER.)

18 THE WITNESS: I would have to say that I
19 probably answered that question with the knowledge that I
20 have now, and probably not the knowledge that we're not
21 aware of prior to the training that we received.

22 BY MR. ELBERT:

23 Q. Do you know of any studies or statistics to
24 show that remote reading devices create safety hazards?

25 A. No.

00168

1 Q. And you do know that the Public Service
2 Commission requires reading of meters for billing
3 purposes, don't you?

4 A. Yes, sir.

5 Q. To your knowledge, has failure to read a
6 meter ever resulted in injury to persons or damage to
7 property?

8 A. Not that I'm aware of.

9 Q. And Laclede has an honest effort rule,
10 doesn't it?

11 A. Yes, it does.

12 Q. And would you tell the Commission what the
13 honest effort rule is?

14 A. Basically, we're required to make an honest
15 effort to read every meter.

16 Q. And are you aware that numerous meter
17 readers have been disciplined or discharged for not making
18 an honest effort?

19 A. We are not told why our fellows employees
20 are discharged or fired.

21 Q. You know that numerous -- well, you attend
22 Union meetings, don't you?

23 A. Sometimes, yes, sir.

24 Q. And don't they discuss that at the Union
25 meetings why a meter reader might be discharged or

1 disciplined?

2 A. It has been brought up.

3 Q. And aren't you aware, Mr. Stewart, that
4 meter readers have been discharged or disciplined for
5 failure to make an honest effort?

6 A. Yes, sometimes through the Union meetings.

7 Q. And even though meter readers, when they
8 don't make an honest effort and they haven't read the
9 meter, there's still been no explosion or fire or other
10 damage to property or injury to person as a result of a
11 leaking meter, has there?

12 A. I have not been informed of any of that
13 knowledge.

14 Q. You're aware of this three-year corrosion
15 inspection, right?

16 A. Correct.

17 Q. And that's done once every three years at a
18 particular address, correct?

19 A. That is correct.

20 Q. And it only needs to be done once every
21 three years, correct?

22 A. That is correct.

23 Q. I want to refer you to paragraph 9 of your
24 declaration. Do you have that in front of you?

25 A. I'm sorry. What number was that again?

00170

1 Q. Paragraph No. 9. Do you see that?

2 A. Yes, I do.

3 Q. And in paragraph No. 9 it says, as part of
4 reading meters, the meter reader would check the meter for
5 gas leaks. When you said that, you were referring to this
6 three-year corrosion inspection -- inspection, correct?

7 A. No, I believe this is a part of our job
8 every day.

9 Q. How do you check the meter every day for
10 leaks?

11 A. Well, we carry CGD.

12 Q. That's for inside meters only, correct?

13 A. Yes, sir.

14 Q. And for outside meters, you don't carry any
15 detection equipment, do you?

16 A. No, we do not.

17 Q. Now, for the three-year corrosion
18 inspection, do you take some equipment to check it out?

19 A. Yes, sir, we have the CGD. We have a
20 mirror.

21 Q. The CGI?

22 A. CGD.

23 Q. Okay. The combustible gas -- what's that
24 called?

25 A. Detector.

00171

1 Q. Or I think it's often referred to as a CGI,
2 isn't it?

3 A. I think it's two different items. I think
4 the CGI is much more sensitive.

5 Q. Okay. So it's more sensitive than the
6 device that you take?

7 A. Correct.

8 Q. So the CGD, is that the thing you're
9 talking about in the pocket?

10 A. It is a pocket detector.

11 Q. Okay. That's the one you use to do the
12 three-year corrosion inspection protection; is that what
13 you're saying?

14 A. It's used for every time we go to an inside
15 meter.

16 Q. What -- are you required as part of a
17 three-year inspection, the corrosion inspection
18 protection, to fill out a form to indicate that you did
19 the inspection?

20 A. We need the CGD.

21 Q. Yes.

22 A. Right.

23 Q. And you have to do that every three years,
24 right?

25 A. Correct.

00172

1 Q. Now, these other times when you're talking
2 about, when you go in and do a meter reading, there's no
3 form you have to fill out other than the meter reading, is
4 there?

5 A. That's correct.

6 Q. Okay.

7 A. May I clarify something, though?

8 Q. Absolutely.

9 A. Sometimes on the daily route we will do
10 corrosive pipe inspections.

11 Q. Well, we went through this the other day,
12 and we can go through it again if you like. You're only
13 required to do those every three years, right?

14 A. Correct.

15 Q. So when you're talking -- you don't go in
16 and do those daily, you don't do those once a month, do
17 you?

18 A. No. No, sir. The corrosive pipe
19 inspection is a three-year inspection.

20 Q. And it may be given to you on your daily
21 route --

22 A. Correct.

23 Q. -- because the company knows that it needs
24 to be done, correct?

25 A. Correct.

00173

1 Q. I understand that. Now, where you say in
2 paragraph 9, it was determined that most leaks were
3 occurring at the location where the gas meter came through
4 the customer's wall, therefore making it critically
5 important regularly to check the meter for leaks. Do you
6 see that?

7 A. Yes, sir.

8 Q. And you were referring when you made that
9 statement to the corrosive pipe inspection, correct?

10 A. That is correct.

11 Q. You were not referring to monthly reads,
12 were you?

13 A. No, sir.

14 Q. And you were not referring to annual reads,
15 were you?

16 A. No, sir.

17 Q. Now, this house that you referred to in
18 paragraph 9, you say approximately 15 years ago, several
19 house explosions occurred due to faulty gas runs from the
20 outside pipe to inside the customers' homes. Do you see
21 that?

22 A. I'm sorry. What number was that?

23 Q. Still in paragraph No. 9 of your
24 declaration. Do you see that?

25 A. Yes, sir.

00174

1 Q. And it's true, isn't it, that you really
2 don't know why the houses exploded as referred to in
3 paragraph 9 of your affidavit; isn't that true?

4 A. From what I heard on the -- is that a yes
5 or no answer?

6 Q. Yes.

7 A. No.

8 Q. You don't know whether the gas might have
9 migrated from somewhere else to cause those explosions, do
10 you? Do you know?

11 A. No.

12 Q. Isn't it true that with regard to outside
13 meters, the construction and maintenance department does a
14 three-year annual survey?

15 A. I'm not aware of that.

16 Q. You don't know whether they check the meter
17 every three years outside?

18 A. That is correct. I do not know that.

19 Q. Do customers often report to you the smell
20 of gas?

21 A. Yes, they do.

22 Q. And are they often right?

23 A. Sometimes.

24 Q. Sometimes they're right, sometimes they're
25 not --

00175

1 A. Yes.

2 Q. -- is that what you're saying?

3 And are you always right when you smell
4 gas?

5 A. There is a leak there.

6 Q. So you're always right but the customer
7 sometimes isn't; is that what you're saying?

8 A. Yes.

9 Q. Never made a mistake on a gas leak in
10 26 years?

11 A. Not that I'm aware of.

12 Q. Well, how does a leak from a gas meter
13 cause a safety hazard?

14 A. Well -- I'm sorry. A gas leak in a home
15 where it has an ability to accumulate and you have the
16 right conditions can cause a fire or explosion.

17 Q. But in your 26 years, that's never
18 happened, has it, from a meter?

19 A. No, because if there was a leak, I turned
20 it in and that remedied the problem.

21 Q. Well, you think you turned it in?

22 A. I know I turned it in.

23 Q. If you found it?

24 A. Yes.

25 Q. And is it a possibility there were leaks on

1 meters that you went by that you didn't find?

2 MS. SCHRODER: Objection, your Honor, asked
3 and answered.

4 JUDGE DIPPELL: It has been asked and
5 answered. Sustain that.

6 MR. ELBERT: Okay. Well, let me try it a
7 different way.

8 BY MR. ELBERT:

9 Q. Would it be fair to say that you read about
10 somewhere between 96,000 and 120,000 meters per year?

11 A. That would be a correct statement.

12 Q. And you've been doing that for 26 years?

13 A. Yes, I have.

14 Q. So you've read literally millions of
15 meters?

16 A. Yes, I have.

17 Q. Of those millions of meters you've read,
18 has anyone ever told you after the fact that a meter was
19 leaking that you didn't detect?

20 A. No.

21 Q. And of those millions of meters, do you
22 have any way of knowing whether any of those meters were
23 leaking and you didn't detect it?

24 A. All I can say is when I went back by the
25 next month, the house was still there.

1 Q. Okay. Fair enough. Now, in your affidavit
2 on paragraph 18 -- do you see that, paragraph 18?

3 A. Yes.

4 Q. It says, during some of the reads after AMR
5 had been installed I found meters on which AMR had been
6 improperly installed. For example, I saw half-installed
7 AMRs, AMRs with broken screws, AMRs that had been
8 installed in such a way that they caused a gas leak and
9 AMRs that would not read at all because of poor
10 installation.

11 A. Yes, sir.

12 Q. And I estimate that I was finding one or
13 two gas leaks a day during the stage of AMR installation.

14 A. That is correct.

15 Q. And that is a correct statement?

16 A. Yes, it is.

17 Q. Okay. Now, we went through that at your
18 deposition at some length, didn't we?

19 A. Yes, we did.

20 Q. And we -- you testified at one point that
21 you found between -- over that three to four-month period,
22 that you found between 12 and 132 leaks, didn't you?

23 A. I believe on the corrections I sent in,
24 that we addressed that to where the numbers that you had
25 generated was on the basis that we read AMR meters every

1 day. During the initial phases when they started
2 installing AMRs, I did not have AMR meters on my route
3 every day. We might have one or two routes a week in the
4 initial phases of the installation of the AMR.

5 Q. Okay. I'd like to refer you to page 75 of
6 your deposition, Mr. Stewart, line 12. Do you see that?
7 Are you there?

8 A. Yes.

9 Q. I'm asking -- question: I'm asking you for
10 your testimony as we sit here today, how many leaks did
11 you find that were attributable to AMR during the period
12 April 1, 2005 to December 31, 2005?

13 Answer: I would just have to -- I would
14 have to go back and say many.

15 Question: So the answer is you don't know?

16 Answer: So -- answer: It was quite a few,
17 but yes, I don't know the exact number.

18 Question: It's somewhere between -- if I
19 understood your testimony today, somewhere between roughly
20 12 and 132?

21 Answer: That would be fine, yes.

22 Was that testimony true when you gave it?

23 A. At that time, yes, it was.

24 Q. And then you later testified, didn't you,
25 that you thought it was maybe closer to between 66 and

00179

1 132 leaks, didn't you?

2 A. Yes, sir.

3 Q. And then you testified later on that it was
4 between 60 and 160 leaks, didn't you?

5 A. Those were numbers -- like I had said
6 before in my deposition, those were numbers that you had
7 generated. My statement was I had ran across one to two
8 leaks per day, and after I had thought about the question,
9 with the numbers that you had put to me, I had realized
10 that you were figuring that I had been reading AMR meters
11 every day. And when the numbers I felt which was on the
12 high side, and I couldn't actually agree that I had called
13 in that many, I had basically thought through it and
14 decided that that was the problem was we did not read AMR
15 meters every day during the initial phases.

16 Q. After your deposition, did you go back and
17 check your testimony -- I mean, check your records to
18 determine how many leaks you actually did call in?

19 A. I don't have records of what I call in.

20 Q. How many leaks in those first three to four
21 months, from April of 2005 where you say here in your
22 deposition you were finding one or two a day, you would
23 have called every one of those leaks in, correct?

24 A. Yes.

25 Q. And how many did you call in?

00180

1 MS. SCHRODER: Objection, asked and
2 answered a couple of times.

3 MR. ELBERT: Not during that period of
4 time. I haven't asked that question.

5 JUDGE DIPPELL: I don't think he asked
6 about the calling in.

7 BY MR. ELBERT:

8 Q. I'm asking how many leaks did you call in
9 from the period April of 2005 through, let's say, August
10 of 2005?

11 A. Laclede does not give us feedback on the
12 amount of leaks we call in. I really would have no
13 awareness of the numbers I've called in. I do say it is a
14 true statement that on the AMR routes I had called in one
15 or two leaks a day.

16 Q. Well, during that period of -- you don't
17 say that here in your affidavit, sir. It doesn't qualify
18 to the AMR routes. Your affidavit makes a flat statement:
19 I estimate that I was finding one or two leaks a day
20 during the early stage of AMR installation, right? Isn't
21 that what your affidavit says?

22 A. Correct, on --

23 Q. Are you now telling the Commission that
24 that's a misleading statement?

25 A. I don't feel it's misleading.

00181

1 Q. Well, you didn't tell them that it was only
2 on AMR routes?

3 A. At the time when you had generated the
4 numbers, I was not aware that the number was so high. I
5 had no explanation for it.

6 Q. Well, you gave --

7 A. But then I realized that the readings
8 basically pertain to the one or two leaks a day on the AMR
9 routes.

10 Q. Well, then, tell me, sir, this is your
11 affidavit and your declaration that you're putting before
12 the Commission. What I want to know is, how many leaks
13 during this early three to four-month period, how many
14 leaks did you call in?

15 MS. SCHRODER: Same objection.

16 THE WITNESS: I have no way of giving you a
17 number --

18 JUDGE DIPPELL: Just a moment, Mr. Stewart.
19 I am going to let you answer because I don't think he ever
20 got an answer to the question.

21 MR. ELBERT: I'm not getting an answer.

22 BY MR. ELBERT:

23 Q. You're saying one or two per day. What are
24 you trying to tell the Commission as to how many leaks you
25 found?

1 A. We are not required to keep track of how
2 many leaks we call in. I honestly don't know, but I do
3 know it is a true statement that I would find one or two
4 leaks a day on AMR routes.

5 Q. During that four-month period, is it
6 possible you only found ten leaks?

7 A. I have no way of knowing.

8 Q. Well, the representation here and the
9 representation you made in your -- the representation in
10 your affidavit and what you told me in your deposition,
11 which you're now changing here today, is somewhere between
12 12 and 160 leaks during that three to four-month period.

13 A. If I may explain, like I said, my
14 deposition does state at the beginning that I am not aware
15 of how many I've called in. I said many. And then you
16 generated the numbers of how many that you thought I would
17 have called in and asked me if I agreed with it or not.

18 Q. Okay. Let's just go back here. Let's go
19 to page 78 of your deposition, line 22.

20 Question: And is it your testimony that
21 you were finding one or two leaks a day working six days a
22 week during that three to four-month period?

23 Answer: Yes, but when you're talking about
24 the six days a week, which I had brought up, I agree with
25 that on the sixth day, we weren't doing the normal reads.

00183

1 Question: So you were finding --

2 Answer: I would say during the early part
3 I would find a leak a day.

4 Question: So you were finding -- well, you
5 were saying here one or two, so you were finding somewhere
6 between five and ten leaks per week?

7 Answer: Yes.

8 And you found those for three to four
9 months; is that correct?

10 Correct.

11 So your testimony as we sit here today is
12 you were finding roughly 20 to 40 leaks per month; is my
13 math correct?

14 Answer: It would be closer to 20, yes. I
15 would say -- I mean, it would be close.

16 Question: So 20 to 40 weeks a month and
17 for three to four months, so that would be somewhere
18 between 100 -- I'm sorry. Let me redo that. So if my
19 math is correct, your estimate of leaks would be somewhere
20 on the 60 on the low side and 160 on the high side,
21 correct. That's what he's asking you.

22 Answer: I would say on the low side, yes.

23 Now, as you're sitting here today, I want
24 to know whether that testimony was true.

25 A. At that time, yes.

00184

1 Q. Well, what's made you change your mind?

2 A. To the point that I realized that when I
3 was speaking of one or two leaks a day, it pertained to
4 AMR routes, and I did not read AMR routes every day. You
5 were under the assumption that I read AMR routes every
6 day, and that the one to two leaks a day pertained to AMR
7 routes.

8 Q. Sir, that wasn't my assumption. That was
9 your assumption. That was your testimony. This isn't my
10 assumption. You're testifying.

11 MS. SCHRODER: Objection, your Honor.
12 First of all, I didn't hear a question.

13 JUDGE DIPPELL: We don't need to argue with
14 him about that.

15 MR. ELBERT: I have an exhibit number, I
16 guess will be Exhibit 20.

17 (EXHIBIT NO. 20 WAS MARKED FOR
18 IDENTIFICATION BY THE REPORTER.

19 BY MR. ELBERT:

20 Q. I'm going to show you what's been marked
21 for identification as Laclede Exhibit 20, which is a
22 Laclede Gas call detail report. Have you ever seen this
23 document before?

24 A. No, I have not.

25 Q. Is your cell phone number 392-3113?

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1 A. Honestly, sir, I don't know.

2 Q. You don't know your own cell phone number
3 for Laclede?

4 A. No, sir.

5 Q. Well --

6 A. We're not allowed to receive incoming calls
7 unless it's from a supervisor.

8 Q. Well, let's assume here for a moment that
9 this is your cell phone, okay?

10 MS. SCHRODER: Your Honor, I object to
11 that. I object to that for two reasons. First of all,
12 Data Request 6 asked for a copy of the call records of gas
13 odors from meter readers for the period of January 1st,
14 2001 through December 31st, 2005. Laclede again, as I had
15 indicated to you before, told us they could not produce
16 those records because specifically they said, USW 11-6 has
17 requested the call records of gas odors from meter readers
18 from January 1st, 2001 through December 31st, 2005.
19 Laclede states that it does not track the origin of a call
20 of a gas odor.

21 And then again, as I mentioned earlier,
22 after Mr. Stewart's deposition, when it appeared that they
23 were relying on some records of this sort of thing, we
24 sent out a reminder that we had sent a Data Request and
25 that we felt like if they had pulled these individual

1 records of these people that were responsive to our Data
2 Request, it needed to be given to us if they intended to
3 use them in hearing. They did not reply to that
4 follow-up. So we have every reason to believe that, in
5 fact, those records did not exist and they had not pulled
6 them. So I guess I'm requesting at this point a limiting
7 order preventing them from using these documents.

8 MR. ELBERT: Your Honor, I don't know about
9 the Data Request. I'm not trying to shirk responsibility
10 here, but I wasn't involved in that, but I do know that
11 this is the gas odor complaint here. This is his cell
12 phone record. I don't know that that's what -- this is a
13 cell phone record. I don't believe it was -- and she read
14 the Data Request, Ms. Schroder read it. That's not what
15 this is. This is all his cell phone calls.

16 JUDGE DIPPELL: Call records.

17 MS. SCHRODER: The call records. That's
18 the call records.

19 MR. ELBERT: No, it's not the call -- these
20 are cell phone records, not call records. Call records
21 are a different thing where people call in odors. There's
22 a different --

23 MS. SCHRODER: From meter readers. The
24 request provide a copy of all the call records of gas
25 odors from meter readers.

1 MR. ELBERT: This isn't -- this is a cell
2 phone record.

3 JUDGE DIPPELL: Okay. Okay. I'm
4 suspicious of the forthcomingness of Laclede to the
5 Union's Data Request just because of the contentious
6 nature of this entire case. I believe that there's been
7 some very strict interpretation of the wording of
8 discovery requests and testimony questions. However, I do
9 think that the time for objections to that was during
10 discovery and not at the hearing. I'm not convinced
11 that --

12 MS. SCHRODER: Your Honor, if I may?

13 JUDGE DIPPELL: No, I'm not finished yet.

14 MS. SCHRODER: I'm sorry.

15 JUDGE DIPPELL: I'm not convinced that
16 Mr. Elbert is going to be able to do anything with this
17 cell phone record because he certainly hasn't established
18 any foundation as to what this is even. This witness
19 certainly doesn't know anything about it. He doesn't even
20 know his cell phone number.

21 So I'm going to let him proceed to try to
22 get it in, and I'll let you make any objections that are
23 necessary as he goes along, but -- I am concerned about
24 your discovery issues, and I'm -- I want -- I want to get
25 that resolved. But I again think the time for that has

1 passed.

2 Mr. Schwarz, you're wanting to --

3 MR. SCHWARZ: Well, I'm not privy to the
4 materials, but if Laclede's answer to the Data Request
5 was, we can't provide this information, it doesn't exist,
6 that's an answer to the Data Request. It does not require
7 any motion to compel, any further discovery. That's an
8 affirmative response. If they object to the Data Request
9 and say, gee, we have it, but boy, it would be terrible
10 horrible awful to produce, that's when the proponent of
11 the Data Request would need to compel. Well, either
12 tailor their Data Request or compel an answer to it.

13 And I'm not clear which response they got
14 from Laclede, but if Laclede's answer was that this data
15 doesn't exist, then I don't think there's any additional
16 duty on any party to pursue further discovery along those
17 lines. And without reflecting on what the particular
18 rejoinders have been in this case, I want to make clear
19 that you have to pursue an objection to a Data Request,
20 but if the answer comes back, I don't have it, that's
21 answered. And if Laclede said I don't have these kind of
22 records, they certainly shouldn't be permitted to produce
23 them now.

24 JUDGE DIPPELL: All right.

25 MR. ELBERT: Well, I will say for the

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1 record, I don't disagree with anything he just said. I
2 agree, if we told them we don't have the records, I'm not
3 convinced that that is the question that they asked in the
4 Data Request.

5 JUDGE DIPPELL: Okay. Let's see the Data
6 Request. Do you have it there?

7 MS. SCHRODER: Yes, your Honor.

8 MR. ELBERT: We didn't provide it and we
9 didn't -- we had it, I agree.

10 MS. SCHRODER: Your Honor, do you want me
11 to approach?

12 JUDGE DIPPELL: Yes, please.

13 MS. SCHRODER: This is the Data Request
14 No. 6.

15 JUDGE DIPPELL: The Data Request No. 6
16 says, provide a copy of the call records of gas odors from
17 meter readers for the period of January 1, 2001 through
18 December 31st, 2005. The answer says, with respect to DR
19 No. 6, as the Union knows, Laclede does not specifically
20 track the origin of the call of a gas odor. It is
21 burdensome and oppressive for Laclede to be expected to
22 sift through five years worth the data to identify
23 information which may not even exist.

24 MR. ELBERT: In that case -- I'm sorry. I
25 don't know if you're finished.

1 JUDGE DIPPELL: When I read that, I read
2 the Union provide a copy of the call records of gas odors
3 from meter readers. I don't read that as provide
4 necessarily a cell phone report, but if Laclede had the
5 cell phone report, it could liberally have been read that
6 way.

7 MR. ELBERT: Your Honor, the call records
8 when we read something like that -- and I have to rely on
9 other people here. I've represented Laclede Gas for a
10 long time, and my understanding is, that's the record of
11 the operator that takes the call of the odor complaint.
12 That's not a cell phone record. We didn't read it as a
13 cell phone record, and frankly, the only time -- the
14 reason we went and got this was when we heard
15 Mr. Stewart's testimony that he did at his deposition that
16 he did between 60 and 160, we went and dug out his cell
17 phone records because we knew it wasn't true.

18 We don't have the call records that he --
19 that they're talking about. The call records we would
20 have had to sift through thousands and thousands of
21 documents to find it, and they could have moved to compel
22 on the call records. These are not the call records.

23 MS. SCHRODER: Your Honor, if I might, this
24 document that they are trying to introduce as an exhibit
25 is called Laclede gas call detail report, and the only

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1 phone, as was previously established through Mr. Elbert's
2 questioning of this employee -- I'm sorry -- this witness,
3 is that the only way they are supposed to call in these
4 odors are through their cell phones. And that's in the
5 meter reading manual at page 4. This is the call record.

6 MR. ELBERT: No, it is not the call record.
7 It's a cell phone record.

8 JUDGE DIPPELL: Once again, I don't believe
9 that the item requested, the scope of the request from the
10 DR is the same as what Mr. Elbert is using here. I again
11 am suspect of the fact that they just weren't generously
12 turning these cell phone records over, but that's their
13 role as attorneys for Laclede is to answer what's asked
14 for, and I think that what was asked for was different
15 than this document, so I'm going to allow him to continue.

16 BY MR. ELBERT:

17 Q. Do you have your cell phone here today?

18 A. No, I do not.

19 Q. Where --

20 A. It's at home on the charger.

21 Q. Would it surprise you to find out that
22 between April and August of 2005 you called in to the leak
23 line nine times?

24 MS. SCHRODER: Objection, lack of
25 foundation.

1 MR. ELBERT: I asked him whether it would
2 surprise him.

3 MR. SCHWARZ: Relevancy. His reaction to a
4 question is hardly relevant to the issues.

5 JUDGE DIPPELL: Thank you, Mr. Schwarz.
6 I'll sustain the objection. You can ask a different
7 question, Mr. Elbert.

8 BY MR. ELBERT:

9 Q. Here's what I'd like, then. I want to know
10 then from the last line of paragraph 18, how many times
11 did you call in between April of 2005 and August of 2005?
12 How many leaks did you call in during that period of time?

13 A. Laclede does not provide us with a record
14 of gas leaks we call in. I have no idea the number of
15 leaks that I had called in.

16 Q. Could it have been one?

17 A. No, it would have been more than that.

18 Q. Could it have been five?

19 A. I believe more than that.

20 Q. Do you know how many?

21 A. Not an exact number, no, sir.

22 Q. But now you're saying it wasn't between 66
23 and 132, right?

24 A. I think I said that at the beginning of
25 my -- on answering this question that I realized that the

1 number of leaks I called in pertained to the times I was
2 reading the AMR routes.

3 MR. ELBERT: Well, I would request that
4 this portion of his paragraph be stricken because there's
5 no factual foundation for it. He's admitted that it is
6 not accurate, and I ask that it be stricken from his
7 declaration.

8 MS. SCHRODER: Your Honor, may I?

9 JUDGE DIPPELL: Go ahead, Ms. Schroder.

10 MS. SCHRODER: First of all, he has not
11 admit that it's not accurate. He's explained, as I think
12 you can tell from the context, paragraph 17 and 18
13 together make it clear that he's talking about these gas
14 leaks that he's finding with AMR meters and he has
15 explained that that was with regard to AMR routes. You
16 have that clarifying testimony, and also in paragraph 20,
17 where he says, some meters on which AMR have been
18 installed are read on Saturday -- I'm sorry -- yeah,
19 Saturday confirmation routes. So there would have also
20 been some of these leaks picked up on the Saturday routes.

21 But I think especially with the clarifying
22 testimony that he has given repeatedly today, that these
23 were the number of leaks he found on routes where AMR was,
24 that this was for those early months that he was doing
25 this on the AMR routes, that this is completely accurate.

1 I would also point out that there was no objection to
2 paragraph 18 of Mr. Stewart's testimony when it was placed
3 into evidence. So it's already been admitted.

4 JUDGE DIPPELL: It has already been
5 admitted, and I'm not going to strike it. He has
6 repeatedly testified here today that he's -- he believes
7 he found one to two leaks a day in the beginning on AMR
8 routes, he doesn't know how many he called in. You've
9 made your point that his testimony was different in his
10 deposition.

11 MR. ELBERT: Well, I understand, thank you,
12 your Honor. The problem I'm having is from this
13 testimony, to say it's accurate, it has no meaning.
14 There's no way to determine how many --

15 JUDGE DIPPELL: Argue it in your Brief.

16 MR. ELBERT: Okay.

17 BY MR. ELBERT:

18 Q. Are you aware of any fires or explosions
19 that have resulted from the use of AMR or any other remote
20 device used by the company?

21 A. No.

22 Q. How long have remote meter reading devices
23 been used by Laclede Gas Company?

24 A. I believe you said the other day 1963.

25 Q. Is that your understanding of how long

1 they've been used?

2 A. They were -- they've been here the entire
3 time I've been here, which will be 26 years.

4 Q. Let's look at paragraph 20 of your
5 affidavit. The last line of paragraph 20 says, I would
6 estimate that almost half of the meters on a confirmation
7 route are found to be defective and must be replaced with
8 a new meter. See that?

9 A. Yes, sir.

10 Q. That doesn't have anything to do with
11 safety, does it?

12 A. No.

13 Q. That has to do with billing only; is that
14 correct?

15 A. That's correct.

16 Q. If you inspected a meter -- well, is it
17 your testimony today that in order to be safe, meter
18 readers should be inspecting meters on a monthly basis to
19 make sure there are no leaks?

20 A. I have no opinion on that.

21 Q. Okay. How about -- well, let's look at
22 page 101 of your deposition, starting with line 5. Do you
23 see that?

24 A. Yes.

25 Q. Question: You say, quote, I believe that

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1 annual reads of inside meters with AMR would detect a
2 significant number of similar problems, close quote. Is
3 that a true statement?

4 Answer: True.

5 Okay. Do you believe that monthly reads of
6 inside meters with AMR will detect a significant number of
7 similar problems?

8 Answer: Yes. Correct.

9 Right?

10 Ms. Schroder: Assuming that they were
11 done.

12 Answer: Yes.

13 Do you believe that daily reads of inside
14 meters with AMR would detect a significant number of
15 problems?

16 Answer: Yes.

17 Question: Do you believe that three-year
18 reads of inside meters with AMR would detect a significant
19 number of similar problems?

20 Answer: No.

21 Question: Every three years you wouldn't
22 detect a significant number of similar problems?

23 Answer: I think the shorter period of time
24 you would detect more of them. Oh, you mean --

25 Question: You detect.

00197

1 Answer: I'm sorry. Would you clarify?

2 Question: You would detect more -- if
3 meters were inspected every day, you think you would
4 detect more problems than if they were inspected every
5 three years?

6 No.

7 Would you detect the same number of
8 problems?

9 Answer: Yes.

10 Was that true when you -- was that
11 testimony true?

12 A. Yes, sir.

13 Q. Is it true as you sit here today?

14 A. Yes.

15 Q. And you would agree, wouldn't you,
16 Mr. Stewart, that you believe that the three-year
17 inspection required by law is sufficient; isn't that
18 right?

19 A. That is correct.

20 Q. And your only opinion is that the more you
21 would inspect the meter, you think the better that would
22 be, right?

23 A. Yes.

24 Q. Okay.

25 A. If it came to the problem of detecting

00198

1 dangerous situations earlier -- or sooner. I'm sorry.

2 Q. But you believe for safety purposes that
3 the three-year corrosion inspection is sufficient,
4 correct?

5 A. Correct.

6 Q. And you don't know whether any -- I'm
7 sorry. You don't know whether any leaks reported by meter
8 readers are imminent safety hazards, do you?

9 A. No, I do not.

10 Q. Do you know how many leaks were reported by
11 customers?

12 A. No, I do not.

13 Q. In paragraph 21, you allege that Laclede
14 has instructed meter readers to skip the homes that are
15 inside meter with AMR installed. Laclede told the meter
16 readers it would cost too much to read these inside meters
17 because reading them would require too much overtime work,
18 correct?

19 A. That's correct.

20 Q. And in fact, you don't know whether inside
21 meters are being read or not when they have AMR devices,
22 do you?

23 A. I know I'm not reading them on my routes.

24 MR. ELBERT: I have no further questions.

25 JUDGE DIPPELL: Thank you. Are there

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1 questions from the Bench for Mr. Stewart, Commissioner
2 Gaw?

3 COMMISSIONER GAW: No, not at this time.

4 JUDGE DIPPELL: Commissioner Clayton?

5 COMMISSIONER CLAYTON: No questions.

6 JUDGE DIPPELL: Commissioner Appling?

7 COMMISSIONER APPLING: I don't think so.

8 JUDGE DIPPELL: All right. That was quick.

9 Is there redirect?

10 MS. SCHRODER: Yes, your Honor. I'll try
11 to keep it brief.

12 REDIRECT EXAMINATION BY MS. SCHRODER:

13 Q. All right. Mr. Stewart, you were asked on
14 cross-examination about your statement in your deposition
15 that you had a duty to protect life and property, and I
16 just want to clarify, how did you say that that
17 information was conveyed to you?

18 A. We had a class on corrosive pipe inspection
19 and the CBG, and it was one of the test questions for us
20 to the test. It was a critical question. They allowed --
21 there was ten questions. You had to make seven of the
22 ten, but that question was a critical question. And any
23 of the critical questions, if you missed you'd have to
24 retake the test and go through the training again.

25 Q. And what was the answer to the critical

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1 question?

2 A. It was to --

3 Q. The proper answer. I'm sorry. Go ahead.

4 A. Protect life, customers' property, personal
5 safety and customer -- or company property.

6 Q. All right. Was the answer to that question
7 leading up to that test, was all of that covered by your
8 safety training?

9 A. Very much so, it was drilled into our
10 heads.

11 Q. All right. Did you receive any specific
12 training for the annual reads themselves?

13 A. No.

14 Q. Did you receive training about -- all
15 right. Did you receive specific training about leak
16 detection during meter reads?

17 A. Yes, we did.

18 Q. And what did that training consist of?

19 A. Basically, it taught us on the visual
20 aspects of finding leaks. Also on outside meters to be
21 able to distinguish underground leaks with the
22 discoloration of the grass dying. Many like dust blowing
23 or if it had rained and there was bubbles come up through
24 the ground, that there was -- that was one of the signs of
25 a gas leak.

1 Q. Other than visual aspects of determining
2 leaks, were there other ways that you were taught to
3 detect leaks?

4 A. We were trained in the CGD.

5 Q. And prior to the CGD, was there anything
6 else that you were taught?

7 A. Basically, we would smell the gas odors.

8 Q. All right. And I think you've already --
9 you already defined a CGD, didn't you? All right. We
10 won't go there. Were you told whether there would be
11 disciplinary consequences if you found a leak and didn't
12 report it?

13 A. Yes. Ever since the first day I started
14 here and went through training it was told that it was our
15 responsibility, it was our duties to call in a gas leak,
16 and under no circumstances we should not call in one.

17 Q. All right. You were also asked by
18 Mr. Elbert about the telephone policy that's reflected in
19 Exhibit 1, the meter reading manual, and I just want to
20 ask you, what is the cell phone policy with regard to
21 calling in gas leaks?

22 MR. ELBERT: Objection, your Honor. The
23 document speaks for itself. It's their own exhibit.

24 MS. SCHRODER: All right. Can I just
25 rephrase the question?

1 JUDGE DIPPELL: Sure.

2 BY MS. SCHRODER:

3 Q. All right. What do you understand the cell
4 phone policy to be with regard to gas leaks?

5 A. The cell phone was given to us at the same
6 time that the CGD was, and the main purpose of the cell
7 phone was to call in gas leaks, so we did not have to call
8 in the leaks from the customer's home.

9 Q. And why were you not supposed to call in
10 leaks from the customer's home?

11 A. Because that was a hazard.

12 Q. All right. When you were given your cell
13 phone -- strike that.

14 Have you ever called in a gas leak since
15 receiving the cell phone without your cell phone on
16 anything other than your cell phone?

17 A. There's probably one day I might have
18 called one in on my own -- my own phone, and that was only
19 due to that the charger I had for my cell phone was faulty
20 and my phone wouldn't charge correctly, so by the end of
21 the day my cell phone was dead, so I used my own phone to
22 call in a leak.

23 MS. SCHRODER: Your Honor, any I approach
24 the witness to give him Exhibit 1?

25 JUDGE DIPPELL: Yes.

1 BY MS. SCHRODER:

2 Q. Mr. Stewart, I just handed you Exhibit 1 to
3 this hearing, which is excerpts from the meter reading
4 manual that was issued in 2004. First of all, is this a
5 meter reading manual that you're familiar with?

6 A. Yes, it is.

7 Q. And in fact, those pages came out of your
8 particular meter reading manual, didn't they?

9 A. Yes, because I recognize the stain on the
10 front.

11 Q. All right. Directing your attention to
12 page 14 of the excerpts -- well, of the manual, there is a
13 section there labeled as K, and identified as service
14 work. What training did you receive about noting service
15 work when you did a meter read?

16 A. If it was not considered a hazard, we were
17 supposed to write the service work on the front of the
18 cover sheet and it would be turned in to our supervisor
19 the next day. If it was a hazardous situation, we could
20 call it in to the gas leak line not as a gas leak, but as
21 a dangerous situation.

22 Q. All right. Was there any discussion when
23 you received this training about whether this was a safety
24 measure?

25 MR. ZUCKER: I'm going to object, your

1 Honor. I don't see how this is rebuttal, how this
2 testimony could not have been provided on May 5th when we
3 all did direct testimony. I'm not sure what he's
4 rebutting.

5 MS. SCHRODER: Your Honor, if I may, they
6 have argued repeatedly since Mr. Stewart put his testimony
7 in that there is no safety aspect to these annual meter
8 readings, or to meter reads at all, and this goes directly
9 to that.

10 JUDGE DIPPELL: And you didn't know that
11 before you filed your direct testimony because?

12 MS. SCHRODER: Because it seemed very clear
13 that there was, in fact, a safety aspect to this. We
14 didn't understand that that was even going to be denied,
15 and --

16 JUDGE DIPPELL: I'm going to let you go
17 ahead and ask questions. I'm going to allow Laclede to
18 cross-examine based on these because I do believe this is
19 further direct testimony that --

20 MS. SCHRODER: All right. Thank you.

21 BY MS. SCHRODER:

22 Q. Let me direct your attention now to --
23 okay. I'm sorry. I don't think you actually answered
24 that question. Do you remember the question?

25 A. No, I do not.

1 Q. When you received the training on this
2 issue of service work, was there any discussion about
3 whether that was being -- whether -- was there any
4 discussion about whether you were being taught that as a
5 safety measure?

6 MR. ELBERT: Objection, leading.

7 JUDGE DIPPELL: Sustained.

8 BY MS. SCHRODER:

9 Q. All right. During your training on the --
10 on picking up service work through your meter reads, what
11 discussion was there about why you would be doing it?

12 A. The service work, basically that went all
13 the way back to the day when I first started. It was a
14 safety issue. Service work would be required if an index
15 window had been broken out, if an ME was off the wall.

16 JUDGE DIPPELL: What's an ME?

17 THE WITNESS: An ME is a -- it's an
18 extension reader, where it basically allowed us to read an
19 inside meter from the outside.

20 BY MS. SCHRODER:

21 Q. In fact, there's a number of initials
22 reflected under that K service work section on page 14.
23 What do -- and you don't need to go through the specific
24 initials, but what do those set of initials refer to?

25 A. Are you speaking of the RE, ME and RI?

1 Q. Yes, I am.

2 A. Okay. The RI was -- I believe it was the
3 first. I know it was here when I started, and basically
4 it was the meter face that they would extend outside the
5 home, and basically you were reading the meter, face of
6 the meter, which was mounted on the outside of the home.
7 The ME was a plug-in device that was also mounted on the
8 outside of the home, and we actually carried an ME that
9 would insert into the reader and then we would get the
10 reading through our reader. And the RI was similar to the
11 ME, except it was a digital readout.

12 Q. All right. I just want to make sure that I
13 understand. Are you saying all those are methods of
14 remote reading?

15 A. Yes, they are.

16 Q. All right. Directing your attention to
17 page 20 of the meter reading manual, and this page is
18 entitled annual reads; is that correct?

19 A. Correct.

20 Q. All right. Did you receive training on
21 this?

22 A. Yes, we did.

23 Q. All right. And No. 6, what does that refer
24 to, on this page?

25 A. Any time that we're going to an inside

1 meter, we carry a CGD, a combustible gas detector. And
2 this refers to as a part of the form we filled out if our
3 detector had -- had alarmed or not.

4 Q. All right. And directing your attention to
5 page 21, what is this document?

6 A. This is a sample copy of the annual read
7 sheets that we would carry when we would do the annual --
8 annual read routes.

9 Q. And Mr. Elbert asked you on
10 cross-examination if -- when you were doing your daily
11 routes, if there was any spot to note the result of your
12 CGD; is that correct?

13 A. Correct.

14 Q. All right. I want to ask you now, on your
15 annual reads, is there a spot to note whether the CGD
16 alarm goes off?

17 A. Yes, there is.

18 Q. And is that a required -- is that required
19 material on your annual meter read?

20 A. Yes, it is.

21 MR. ELBERT: Leading.

22 JUDGE DIPPELL: That one was kind of a tie.
23 I'm just going to let him answer that.

24 BY MS. SCHRODER:

25 Q. All right. Mr. Elbert also asked you

1 questions about how close you got to meters when you were
2 reading them. What is your standard operating procedure
3 for how close you get to a meter when you read it?

4 A. Obviously on outside meters it's --
5 normally they're low to the ground and you try to get as
6 close as possible, but a lot of times to get the correct
7 angle to get an accurate reading, you can't stand right up
8 on the meter. I would say probably two and half foot
9 would be the normal range, so you could get the correct
10 angle to read the meter. And I find that I find quite a
11 few leaks from that distance also.

12 Q. All right. Are annual reads performed on
13 outside meters?

14 A. No, they're not.

15 Q. What is your standard operating procedure
16 for how close you get to the inside meters that you read
17 when you perform an annual meter read?

18 A. Normally on inside meters, they require a
19 flashlight or obviously a light in the basement, and a
20 comfortable distance, I would say probably 12 to 18 inches
21 away.

22 Q. And is that close enough for you to
23 determine whether there is a gas odor?

24 A. Yes.

25 Q. Mr. Elbert also asked if you had ever been

1 disciplined for failing to find a gas -- for failing to
2 find a gas leak, and I just am a little bit confused here.
3 Have you -- to your knowledge, have you ever not found a
4 gas leak that was there?

5 A. Not to my knowledge, no.

6 Q. So have you ever been in that situation
7 where you might have been disciplined for not finding a
8 gas leak?

9 A. No, I have not.

10 Q. All right. Mr. Elbert also talked to you
11 about corrosive pipe inspections and whether having one of
12 those done every three years was adequate. And I
13 understood your testimony to be that, yes, that's
14 adequate; is that right?

15 A. That's correct.

16 Q. Is it your testimony that that's the only
17 kind of inspection that needs to be done every three
18 years?

19 A. I feel the corrosive pipe inspection is
20 necessary when you're speaking of the disintegration of
21 the actual gas line. I feel that possibly that the -- a
22 yearly or whatever for -- just to check the actual meter
23 itself for leaks, because I know a lot of times on the
24 annual reads, you know, we do run across leaks, and to
25 wait for a three-year period of time I would think would

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1 be excessive.

2 Q. Are corrosive pipes the only source of the
3 leaks that a meter reader may detect?

4 A. Sometimes we have regulator problems, which
5 they pertain normally to the outside meters. On the
6 inside meters, we do detect a lot at the unions and the
7 couplings and sometimes if the meter is mounted too close
8 to the wall. In our class they've actually showed us
9 meters where the back of the meter actually has
10 deteriorated away from being in contact with the concrete
11 wall.

12 Q. Finally, Mr. Elbert asked you a question
13 about whether you've always been right when you have
14 reported a gas smell, and you indicated that to your
15 knowledge you had been. What do you base that on?

16 A. None of my supervisors had ever came back
17 and basically informed me I'd missed any leaks, so that's
18 the only thing I have to go by.

19 Q. Have you ever been told that you're
20 reporting too many, I mean, that you're reporting leaks
21 that don't exist?

22 A. At one time I had called in a leak. It was
23 out in Lake St. Louis. The dispatcher called me back and
24 basically asked me to take a coffee break, and I explained
25 to them that, you know, we have 10 to 12 miles to walk a

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1 day, we're out in all different type of weather
2 conditions, and for me to stop and take a break really
3 wasn't feasible. And he basically said, well, I really
4 want you to take a break because you've called in three
5 leaks and we do not have the manpower right now to cover
6 those.

7 So I called my supervisor and asked him
8 what I should do. He said that he would contact the
9 dispatcher and for me to go on with my route and do -- if
10 I find a leak to call it in. I did run across a service
11 man who was called out on the first leak, and he said,
12 well, you've got the dispatcher upset. He told me if I
13 saw the meter reader's car to flatten his tires.

14 MS. SCHRODER: All right. On that note, I
15 have no further questions.

16 JUDGE DIPPELL: Okay. I'm going to allow
17 cross-examination on the testimony about -- from the meter
18 reading manual, if there is some.

19 MR. ELBERT: Thank you, your Honor. I just
20 have a little bit. And in that connection, I would like
21 to offer an exhibit, which would be 21, which would be the
22 entire meter reading manual, not just the excerpt that the
23 Union --

24 MS. SCHRODER: The Union has no objection.

25 JUDGE DIPPELL: Would there be any other

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1 objection?

2 MR. SCHWARZ: None whatsoever.

3 JUDGE DIPPELL: Then I will mark the entire
4 meter reading manual as Exhibit 21, and that is admitted.

5 (EXHIBIT NO. 21 WAS MARKED FOR
6 IDENTIFICATION BY THE REPORTER.)

7 (EXHIBIT NO. 21 WAS RECEIVED INTO
8 EVIDENCE.)

9 RE-CROSS-EXAMINATION BY MR. ELBERT:

10 Q. Mr. Stewart, if you'd look at company
11 Exhibit 21, does this appear to you to be a true and
12 accurate copy of the entire meter reading manual?

13 A. Yes.

14 Q. Okay. I'd like to refer you to the page
15 where -- page 14 where you were referring to the service
16 work needed. Do you see that? From Union Exhibit 1, it
17 was page 14. It's obviously still page 14.

18 A. Letter K?

19 Q. Yes. Letter K.

20 A. Okay.

21 Q. Now, when AMR is put in -- just as a matter
22 of clarifying the record here, with AMR there will no
23 longer be REs, MEs or RIs, will there?

24 A. No, there will not be.

25 Q. And secondly, this Section K, what portion

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1 of the -- what's the title of the section of the meter
2 reading document that K appears in?

3 A. Service work needed.

4 Q. Well, let's go back to page 6. You see
5 Roman Numeral 3 at the top of the page, meter reading
6 document?

7 A. That is correct.

8 Q. And then after page 6, just as you go
9 through this manual, you will note, I believe, starting
10 with A through -- letters A through M, do you see those,
11 which includes the K that you were referring to?

12 A. Yes.

13 Q. And aren't all those just telling you how
14 to fill out the meter reading document?

15 A. Correct. They were for training purposes.

16 Q. And in all those things, we've got
17 A through M, which is roughly I think about 13 categories,
18 I think it's about halfway through the alphabet. Do you
19 see that?

20 A. Yes, sir.

21 Q. Is that right?

22 A. Uh-huh. Yes, sir. I'm sorry.

23 Q. Okay. Will you show me the one that refers
24 to leaks with the meter readers -- can you show me where
25 it refers to leaks?

1 A. Since this is a training manual, actually
2 we report our leaks --

3 Q. I asked you to show me which one refers to
4 leaks, which letter under Roman Numeral 3 refers to leaks.

5 A. I don't believe I can answer that question.

6 Q. You can't answer it because there isn't
7 one; is that why you can't answer it?

8 A. No, sir, because the leaks are called in
9 and they're reported on the front of the cover sheet.

10 MR. ELBERT: Can you direct the witness to
11 answer my question, please?

12 JUDGE DIPPELL: Mr. Stewart, do you know
13 the answer to his question?

14 THE WITNESS: Your Honor, I can't answer
15 with a yes or no question (sic) or give him a -- because
16 that is not the policy or the procedures I was taught.

17 BY MR. ELBERT:

18 Q. Listen very carefully to my question. I
19 asked you, which letter item under Roman Numeral 3 refers
20 to leaks?

21 MS. SCHRODER: Your Honor, I would just
22 object that the document states what it states.

23 JUDGE DIPPELL: I agree.

24 MR. ELBERT: Okay. All right. Well, if
25 the document states what it states, I'd like all of his

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1 testimony stricken with respect to K, and I think I'm
2 entitled to that ruling.

3 JUDGE DIPPELL: I don't believe you are,
4 sir, and I will overrule that. He's speaking under his
5 previous testimony. He was explaining K, not telling us
6 what it says.

7 MR. ELBERT: Then I'm going to ask him to
8 explain to me which letter item under Roman Numeral 3
9 requires you to find leaks.

10 MS. SCHRODER: Same objection, your Honor.

11 JUDGE DIPPELL: I think that you need to
12 rephrase the way you're asking the question. If you want
13 him to say he doesn't know or there isn't one, then --

14 MR. ELBERT: I thought you ruled against me
15 on that already.

16 JUDGE DIPPELL: What I'm ruling against is,
17 we can all read what the titles and what's included in
18 those items. He has said that he can't answer your
19 question. Is that your answer, Mr. Stewart?

20 THE WITNESS: I cannot answer a yes or no
21 or give him one of the letters that he requests because
22 that's not our policy or procedure.

23 BY MR. ELBERT:

24 Q. Are you saying that this book is not your
25 policy or procedure? Is that what you're saying, that

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1 this is --

2 A. This is a meter reader manual.

3 Q. And this is the manual that you're supposed
4 to follow, isn't it?

5 A. Yes, sir, it is.

6 Q. Is there another meter reader manual?

7 A. Not that I know of.

8 Q. So you're supposed to follow the procedures
9 that are set forth in this manual, right?

10 A. Correct.

11 Q. Let's go through them, then. Just do this.
12 Under A, in this manual, the first instructions regarding
13 meter reading, is there anything in there that requires
14 you under the description of the meter reading documents
15 to report leaks?

16 A. I'm sorry. Would you give me a page number
17 again?

18 Q. That's on page 9.

19 A. And we are under the description meter
20 reading document?

21 Q. Yes. Does that require you to report
22 leaks?

23 A. No. 1? No, it does not.

24 Q. A, anywhere in Section A?

25 A. No, sir.

1 Q. All right. Let's go to verified readings.

2 Does that have anything to do with leaks? That's

3 paragraph B.

4 A. No, it does not.

5 Q. Does paragraph C, closes, have anything to
6 do with leaks?

7 A. No, it does not.

8 Q. These are all instructions, aren't they?

9 A. Yes, they are.

10 Q. Okay. Paragraph D, meter number
11 differences, does that have anything to do with leaks?

12 MS. SCHRODER: Your Honor, I would object.
13 I mean, we're just going through this page by page again,
14 and the document does say what it says. We can read it,
15 and I don't think it tells us much.

16 MR. ELBERT: I'm --

17 JUDGE DIPPELL: Where are you trying to go,
18 Mr. Elbert?

19 MR. ELBERT: I'm establishing that they're
20 trying to use the meter reader manual to show that there's
21 some duty to report leaks, and there isn't one. That's
22 where I'm trying to go with this.

23 JUDGE DIPPELL: What about the section
24 titled gas leaks?

25 MR. ELBERT: Where are you reading from?

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1 JUDGE DIPPELL: On page 26. The document
2 speaks pretty loud and clear, so let's move on.

3 MR. ELBERT: But that has to do with if you
4 actually find a leak. It doesn't have to do with whether
5 you have a duty to look for a leak. That's the
6 distinction that's here. If they happen upon -- and I've
7 asked this before and I know I'm not allowed to go through
8 it again, but the point is, whether there's a duty to find
9 a leak or whether you have to report a leak that you
10 happen to find. And he said they don't have the duty
11 to -- what I'm trying to establish here is there's no
12 duty.

13 JUDGE DIPPELL: Okay. Perhaps none of us
14 understood the point to your question, what you were
15 asking.

16 MR. ELBERT: Then that's my fault. I'm
17 sorry.

18 JUDGE DIPPELL: If you're asking the
19 witness where in the meter reader manual he believes he
20 has a duty to report gas leaks, then why don't you ask him
21 that question?

22 MR. ELBERT: My question is, where in the
23 manual does it say that you have a duty to find gas leaks?
24 That's my question.

25 JUDGE DIPPELL: Okay.

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1 MR. ELBERT: That's fine.

2 JUDGE DIPPELL: Can you answer that
3 question, Mr. Stewart?

4 THE WITNESS: During the first week I was
5 employed here, we went with a senior meter reader who
6 basically trained us.

7 MR. ELBERT: I'm going to ask that this
8 response be stricken. You have to answer my question.

9 JUDGE DIPPELL: You can strike that.

10 The question is, where in the manual does
11 it -- do you believe that it tells you you have a duty to
12 report gas leaks? Did I phrase that right, Mr. Elbert?

13 MR. ELBERT: That is right.

14 THE WITNESS: I do not know if there is one
15 in the meter reader manual.

16 BY MR. ELBERT:

17 Q. Thank you. And then if you find a gas
18 leak, the Judge correctly was referring to page 26. If
19 you find a gas leak, then you are supposed to call it in,
20 correct?

21 A. Correct.

22 Q. Okay. And you understand if you don't find
23 it, there's no discipline for it, right?

24 A. That is correct.

25 MR. ELBERT: Thank you. Sorry it took me

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1 so long. I apologize for that.

2 JUDGE DIPPELL: That's all right. Were
3 there any further questions from the -- I'm sorry,
4 Mr. Elbert, you had something additional?

5 MR. ELBERT: Yes. I just would like to put
6 in, in addition to moving the exhibit into evidence --

7 JUDGE DIPPELL: The entirety admitted?

8 MR. ELBERT: The entirety admitted -- well,
9 both exhibits that I had, 20 and 21, I'd also like to put
10 into evidence his entire deposition.

11 JUDGE DIPPELL: Okay. Let's start -- let's
12 jump back to 20, because you had not offered that
13 previously.

14 MS. SCHRODER: Actually, he did offer 20 --
15 I think you sustained objections about it. Yeah, you did.
16 That was the call record.

17 JUDGE DIPPELL: No, he didn't actually
18 offer it. We discussed possible objections to it. He is
19 now offering it, and I'm now asking if there are
20 objections to it.

21 MS. SCHRODER: There are. There's the
22 objection to foundation and relevancy, since first of all,
23 we have absolutely no idea whose call records these are,
24 on the record. And secondly, again, I would just
25 reiterate that I do believe that these were documents that

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1 were improperly denied to the Union.

2 MR. ELBERT: Your Honor, I'll make this
3 easy on 20. I will withdraw my request. We will put that
4 in -- we can put that in later with direct evidence from
5 our people.

6 JUDGE DIPPELL: All right.

7 MR. ELBERT: But I do request that
8 Exhibit 21 be admitted.

9 JUDGE DIPPELL: Okay. 21 I did admit. 20
10 has been withdrawn.

11 MR. ELBERT: Temporarily.

12 JUDGE DIPPELL: For now. And -- but there
13 was another one.

14 MR. ELBERT: I'd like to submit his entire
15 deposition.

16 JUDGE DIPPELL: Oh, okay. Yeah. Let's
17 talk about that. Why?

18 MR. ELBERT: Because I think if you read
19 his entire deposition, you will find it is so filled with
20 inconsistencies regarding -- which I think I brought out
21 already, but so filled with inconsistencies regarding the
22 number of leaks he's ever found that I think it's worth
23 being in the record.

24 JUDGE DIPPELL: I'm reluctant to just dump
25 an entire deposition into the record.

00222

1 MR. ELBERT: It's not a big deal.

2 JUDGE DIPPELL: If there are specific parts
3 of the deposition that you haven't already read into the
4 record that you would like to offer, I will let you come
5 in in the morning with those particular parts and offer
6 those.

7 MR. ELBERT: Thank you.

8 JUDGE DIPPELL: But I am reluctant to just
9 take entire depositions.

10 MR. ELBERT: That's fine. That will be
11 fine. Thank you.

12 JUDGE DIPPELL: And since I offered that,
13 I'm going to -- I'll mark it as Exhibit No. 22, just to
14 keep everything straight.

15 JUDGE DIPPELL: Now, were there some
16 additional questions from the Bench for this witness?
17 Commissioner Clayton?

18 COMMISSIONER CLAYTON: Judge, I had a few
19 questions of the witness that came up during the redirect
20 section.

21 QUESTIONS BY COMMISSIONER CLAYTON:

22 Q. I apologize if I didn't hear you correctly,
23 but I did want to ask you some questions about the
24 reference to a leak that you supposedly reported in Lake
25 St. Louis, I believe is where you said it was located,

00223

1 where either the dispatcher or supervisor made reference
2 to taking a coffee break. Do you recall that testimony
3 here today?

4 A. Yes, I do.

5 Q. First of all, when did that exchange occur
6 or do you recall what year, approximately, what month?

7 A. Approximately I would say November of last
8 year.

9 Q. So November of 2005 you were doing meter
10 reading in Lake St. Louis; is that correct?

11 A. That's correct.

12 Q. And could you describe when you arrived at
13 the house in question, what led you to believe that there
14 was a leak on those premises?

15 A. It was an odor of gas.

16 Q. And generally, if you smell gas, you
17 automatically assume that there is a gas leak; is that
18 correct?

19 A. That is correct.

20 Q. If you smell gas, do you believe that that
21 is an emergency situation or is that just because you
22 smell gas doesn't mean automatically that it's an
23 emergency?

24 A. We were taught in the CGD class and the
25 corrosive pipe class and also in the normal meter reading

00224

1 training that if you smell gas, that it must be a leak and
2 it is a potential hazard.

3 Q. Was anyone at home at the time that you
4 smelled the leak? Were you inside or were you outside the
5 premises?

6 A. They were outside meters.

7 Q. Outside. Okay. And the procedure is that
8 you were supposed to call that in using your cell phone?

9 A. That is correct.

10 Q. And did you, in fact, call that alleged
11 leak in to Laclede?

12 A. There was a total of three leaks I called
13 in, and yes, he called me back after I called in the third
14 leak.

15 Q. So this was the third leak during the day?

16 A. That morning, correct.

17 Q. That morning. Over what course of time did
18 you find those three leaks?

19 A. The leaks were relatively quick. I would
20 say it was no more than maybe an hour and a half from the
21 time I had found the first one to the time I had found the
22 third one.

23 Q. Okay. In each of the three circumstances,
24 do you recall what the result was of a further
25 investigation was done?

00225

1 A. No, sir. Our responsibility is just report
2 the leak. The gas company will then send out a service
3 man to investigate it.

4 Q. So do you have idea whether or not there
5 was actually a leak in each of those locations?

6 A. Yes. As I was reading the route and came
7 back down the other side of the street, I had ran into two
8 of the service men, and they both confirmed that they were
9 leaks.

10 Q. At all three locations?

11 A. Two of the three, I know for sure. I
12 didn't have a chance to talk to the third service man.

13 Q. Was the third service man the third leak?

14 A. As a matter of fact, the first leak was --
15 that I ran across was actually the second leak I had
16 called in. I'm sorry. The first service man I ran into
17 was the last leak I had called in.

18 Q. So you're telling me that a leak was found
19 at the premises and that when you called it in, you were
20 told to take a coffee break; is that correct?

21 A. That is correct.

22 Q. Did that mean that Laclede wasn't going to
23 take any action? Perhaps I don't understand. If you
24 report the leak, did they respond appropriately, in your
25 opinion?

1 A. Yes. I mean, all three service men came
2 out on the leaks that I had called in. What I was
3 concerned about was why the man wanted me to stop and take
4 a coffee break. And we're allowed two 15-minute breaks
5 but no lunch, and it's hard to take a break. You know, I
6 can be anywhere from seven, eight miles from my car.

7 Q. Did you take it as a suggestion that you
8 were finding too many leaks or something?

9 A. That's how I took it, yes.

10 Q. Is that the only time that you've ever
11 experienced that type of behavior?

12 A. Personally, yes. Another meter reader, he
13 had had the same thing happen about a month before.

14 Q. What was the position of the person who
15 told you to take a coffee break and --

16 A. He was a dispatcher. That's how he
17 introduced himself. This is John from dispatch.

18 Q. Were you concerned about that response from
19 the dispatcher?

20 A. Yes.

21 Q. And did you do anything about it?

22 A. I called my supervisor and informed him of
23 what was said to me, and he said that he would contact the
24 dispatcher and explain basically our circumstances of, you
25 know, how we were away from our car, we're out in

00227

1 inclement weather, and a lot of times it's not feasible to
2 take a break.

3 Q. Is that the point, though? Is that the
4 point that it's not feasible to take a break? Isn't the
5 point that you were being told to slow down from
6 supposedly finding leaks or something?

7 A. That's the way I took it, yes.

8 COMMISSIONER CLAYTON: I have no further
9 questions, Judge.

10 JUDGE DIPPELL: Commissioner Appling, did
11 you have anything?

12 COMMISSIONER APPLING: No.

13 JUDGE DIPPELL: Commissioner Gaw?

14 QUESTIONS BY COMMISSIONER GAW:

15 Q. I want you to hopefully clear up some
16 confusion that I have in regard to the questions of
17 whether or not you have a duty to report leaks, as opposed
18 to a duty to try to find them. There isn't any question
19 in your mind that you have a duty to call in leaks when
20 you find them, that's correct, isn't it?

21 A. That's correct.

22 Q. You were describing what you were doing out
23 walking that one day when you were just discussing with
24 Commissioner Clayton you were walking and didn't have a
25 vehicle with you. Can you give me a little more detail on

00228

1 what you were doing, what you would do in that
2 circumstance?

3 A. To read gas meters, there's two different
4 types of routes: One is a walk route, another is a car
5 route. A car route, the company provides a company
6 vehicle and it's basically to read meters that -- that
7 aren't relatively close together, a lot of commercial
8 accounts, sometimes if we have certain maxes, the maximum
9 number of stops we can have on a book, and if at that
10 point they go over, a lot of times they'll pull those
11 stops off and put them onto a car route.

12 That day I was on a walk route, and the job
13 description of a walk route is, a lot of times I park my
14 vehicle, walk eight to ten miles to read the meters on my
15 route, and then finish back at my car.

16 Q. And do you have a certain number that
17 you're supposed to read every day that you're out doing
18 that?

19 A. We're supposed to read every one on our
20 route.

21 Q. And in one day?

22 A. Correct.

23 Q. And how often do you do that?

24 A. Every day.

25 Q. Every day. So every day you have a certain

00229

1 number on your route for that day? Am I following you?

2 A. We average about 400 to 450 meters a day.

3 Q. Okay. And is it your understanding that
4 the reason that you're out there is just to read the
5 meters? Is that your only duty while you were there?

6 A. No, sir. It's -- it's to report leaks. If
7 we run across a leak in the performance of our job, it's
8 our responsibility to call in these leaks.

9 Q. Well, do you believe that that is part of
10 your duty to try to determine whether there are leaks
11 while you're out?

12 A. Yes.

13 Q. Would it surprise you -- would you
14 understand the company's position that the -- that the
15 only duty that you have is to read the meters, and that
16 incidentally to that, if you happen to discover leaks,
17 that you should call them in, as opposed to that that is
18 an additional duty that you have to look for leaks and
19 read the meters? Do you understand the difference I'm
20 drawing?

21 A. Would you explain that again?

22 Q. I'm trying to understand whether it is your
23 belief in your general role and your general duties that
24 you have, whether you are there just to read the meters
25 and if you happen on to leaks, you should report them, as

00230

1 opposed to your job is to look and read the meters and
2 attempt to determine whether there are any leaks.

3 A. All I can say on that, sir, is that the
4 26 years I've been here --

5 Q. Yes, sir.

6 A. -- it has always been a part of our job if
7 we come across a leak, it is our duty to report that leak.

8 Q. All right. Do you believe that part of
9 your duty is to try to find leaks while you are on your
10 routes?

11 A. Yes.

12 COMMISSIONER GAW: I'm going to pass back
13 to Commissioner Clayton for the time being.

14 FURTHER QUESTIONS BY COMMISSIONER CLAYTON:

15 Q. I'm sorry. Regarding this whole issue of
16 what duties or what responsibilities you have when you're
17 out reading meters, do you have a responsibility to
18 inspect the meters when you're out there? Do you have the
19 training to inspect a meter to determine whether it's
20 working properly or not working properly?

21 A. No, sir.

22 Q. You don't have that training?

23 A. (Witness shook head.)

24 Q. Do you do any assessment of a meter when
25 you take the read of it, perhaps if it's damaged?

00231

1 A. Yes, sir.

2 Q. What do you do when you make that
3 assessment?

4 A. Normally when we go into a home to read the
5 meter, we do a quick visual inspection, you know, of the
6 meter as we're walking up, to make sure that obviously the
7 index glass is not broken, that the meter hasn't been
8 tampered with to a point of gas steals. We receive a \$25
9 finder's fee if we find a gas leak -- steal. I'm sorry.
10 Not a gas leak, a gas steal. And then if it's just a
11 service-oriented item like a broken glass and if we don't
12 have an odor of gas, we will turn that in as a service
13 work, and then one of our clerks will fill out the form,
14 the necessary forms and send it to either to C&M or to the
15 SCID department.

16 Q. Is the primary reason safety when you find
17 problems with a meter or if it looks like there's been a
18 tamper -- where it's been tampered with or it looks like
19 it's not operating properly?

20 A. Yes, sir. Excuse me. Not operating
21 properly, but if we see something damaged on the meter or
22 if it's a possible steal.

23 Q. What does moisture in the glass indicate?

24 A. Possibly it's condensation.

25 Q. That's caused by what? And don't say

00232

1 water.

2 A. Actually, I think it has to do with the dew
3 point a lot of times, if the dew point changes, the
4 humidity.

5 Q. Does it indicate a problem with the meter?

6 A. Sometimes it can. Say that the meter's not
7 watertight. Other times, no, it's no indication.

8 Q. If dials are missing or broken, does that
9 indicate a problem?

10 A. Yes.

11 Q. Does it indicate a potential safety
12 problem?

13 A. No, sir.

14 Q. If a meter has been removed, does that
15 indicate a safety problem?

16 A. Yes, sir.

17 Q. Would you agree that it is your
18 responsibility to make those assessments and report when a
19 meter's been removed or if there are any of these other
20 indications of either tampering or something not looking
21 in the right way?

22 A. Personal experience, like working out in
23 St. Charles there's lot of mobile home courts, and a lot
24 of times when they move trailers, they won't call the gas
25 company, they'll just move the trailer. And I found

00233

1 several meters with the pipe disconnected and the meter
2 not locked off, and I always call those in as dangerous
3 situations.

4 Q. Okay. Do you get paid \$25 if you call in a
5 leak?

6 A. No, sir, just a steal.

7 Q. Just a steal. Thank you.

8 JUDGE DIPPELL: Did you have anything
9 further, Commissioner Gaw?

10 COMMISSIONER GAW: No.

11 JUDGE DIPPELL: All right. That appears to
12 be all the questions from the Bench, so I will allow for
13 recross from those questions, Laclede -- I'm sorry --
14 Staff?

15 MR. SCHWARZ: Just a couple. I think I'd
16 like to try to clarify a bit, if I might.

17 RECROSS-EXAMINATION BY MR. SCHWARZ:

18 Q. Commissioner Gaw and I think Commissioner
19 Clayton tried to discuss a duty to discover leaks, and
20 would you agree that you're expected to be alert for such
21 things, possible leaks?

22 A. Yes, sir.

23 Q. So whether it's an actual duty for which
24 you can be disciplined -- strike that.

25 Would you consider that if discipline is

1 not a possibility, then the action wouldn't be considered
2 a duty? Is that too many negatives? Let me rephrase the
3 question. I'll get there eventually.

4 If the company doesn't impose penalty for
5 failing to do something, then you wouldn't consider that
6 you have a duty, would you agree with that statement?

7 A. No, I wouldn't agree with that.

8 Q. Why?

9 A. My job at Laclede Gas Company is to read
10 gas meters, and even though there's been some dispute
11 about the protection of life or property, I feel it's a
12 necessary function that I do. If a customer approaches me
13 with a possible leak, I need to go the extra mile to call
14 in that leak. A lot of times customers will approach you
15 and say, you know, I've got these roses dying over by the
16 meter, can you look at this? And if we go over, if we
17 detect or if we see the signs of an underground leak,
18 we'll call that in as a leak.

19 Even if a customer approaches us and we
20 don't smell gas, it's our responsibility to call that leak
21 in, even though if we cannot detect it, and the customer
22 brings it to our attention. In all the classes we've ever
23 had, it's always been told it's better to be safe than
24 sorry and to always, no matter if you don't suspect a
25 leak, if you know -- I shouldn't say if you don't know for

1 a fact it's not a leak, but if it's a possibility of a
2 leak present, you need to call it in.

3 Q. So even if you're not taking a bottle of
4 soapy water and squirting the meter looking for obvious
5 leaks, you consider that -- that it's expected of meter
6 readers that you be alert for odors, for hissing sounds,
7 for dead vegetation?

8 A. That's correct.

9 MR. SCHWARZ: Thank you.

10 JUDGE DIPPELL: Laclede?

11 MR. ELBERT: Thank you.

12 FURTHER RECROSS-EXAMINATION BY MR. ELBERT:

13 Q. Mr. Stewart, you just said that Laclede, in
14 training, always tells you it's better to be safe rather
15 than sorry, correct?

16 A. That's correct.

17 Q. And that's the approach of Laclede Gas
18 Company, isn't it?

19 A. In the training I've had, yes.

20 Q. Isn't that true from your supervisors as
21 well?

22 A. Yes.

23 Q. And is it possible that the dispatcher who
24 mentioned the coffee break was joking with you?

25 A. If it would have been left at that, yes,

1 but when I met up with the service man that was on one of
2 the leaks I had called in, and he basically told the
3 service man, if you see that meter reader's car, flatten
4 his tires, I kind of took it a little bit more serious
5 then.

6 Q. These reads that you're talking about that
7 you've been questioned about by Commissioner Clayton and
8 Commissioner Gaw, these reads, you're talking about the
9 monthly meter reads, aren't you?

10 A. Yes, sir.

11 Q. And we're not here today about monthly
12 meter reads, are we?

13 A. No, sir.

14 Q. We're here about annual reads, right?

15 A. I didn't ask the question, sir, they did.

16 Q. I know, but I'm asking you.

17 A. Yes.

18 Q. I'm not asking you -- I understand they
19 asked the question. I'm just trying -- you know why we're
20 here; it's on annual reads?

21 A. Correct.

22 Q. I just want to refer you to your deposition
23 transcript, page 104, and I just want to make sure that
24 you agree with what you said there.

25 Question: Well, that's part of the issue.

00237

1 Why --

2 A. I'm sorry. What number?

3 Q. I'm sorry. Line 18, 104.

4 Question: Well, that's part of the issue.

5 Why are annual reads about safety?

6 Answer: On the chance of detecting a leak.

7 Why shouldn't there be daily reads on the
8 chance of detecting a leak?

9 Answer: There could be. It's not cost
10 effective, though.

11 Question: How do you know it's not cost
12 effective?

13 Answer: Obviously we'd be doing it if it
14 was.

15 Question: Why do you think annual reads
16 are not cost effective?

17 I believe that you have to provide some
18 type inspection for safety.

19 Question: And you don't believe that the
20 three-year inspection which is required by law is
21 sufficient?

22 Answer: No, I believe that it is.

23 Question: Okay. If the three-year
24 inspection required by law is sufficient, then why are you
25 sitting here today saying that annual reads are necessary?

00238

1 Answer: I think it's sufficient, but I
2 think it would be better if we had one more -- if we had
3 more inspections to rule out any chance of leaks.

4 Question: And you would agree that it
5 would be better to have daily inspections without regard
6 to cost?

7 Answer: Yes.

8 Is that your testimony?

9 A. Yes, sir.

10 Q. Was that true at the time you made it?

11 A. Yes.

12 Q. And is it true as you sit here today?

13 A. Obviously I do think it would be safer if
14 we had daily inspections, but...

15 Q. And just -- these outside leaks that you
16 find, 95 percent of your route is outside meters, right?

17 A. When I worked in St. Charles, yes.

18 Q. When you worked in St. Charles. And that's
19 what we've been talking about mostly, isn't it?

20 A. Well, I was in the County for nine years
21 before I worked in St. Charles and for -- from April 5th
22 of this year on.

23 Q. So from 1980 to 1989, you were in the
24 County?

25 A. Yes.

1 Q. And at that time, there were no annual
2 reads, correct?

3 A. That's correct.

4 Q. Okay. So the period of time where you've
5 had annual reads was from 1992 roughly forward --

6 A. Correct.

7 Q. -- until now?

8 And these leaks at outside meters, to your
9 knowledge -- well, what is the damage -- what is the
10 danger to the public resulting from an outside -- from a
11 leaking outside meter?

12 A. I think any time a leak has a chance to
13 accumulate or migrate, it is a chance as a safety hazard.

14 Q. So where would the -- from an outside
15 meter, is it likely that the gas would migrate anywhere or
16 would it just go into the atmosphere, in your experience?

17 A. Well, from the corrosive pipe and the CGD
18 class we had, they say it can migrate along the side of
19 foundations.

20 Q. I'm asking in your experience. In your
21 experience, have you found it migrating?

22 A. No.

23 Q. And just to reiterate, to your knowledge,
24 there's never been any damage to property or injury to
25 persons from a leaking outside meter, has there?

00240

1 A. Not that I know of, no.

2 MR. ELBERT: Thank you.

3 JUDGE DIPPELL: Is there any further
4 redirect?

5 MS. SCHRODER: Yes. Very briefly, if you
6 don't mind, I think I can clear up the issue that
7 Commissioners Gaw and Clayton had raised. Very quickly.

8 REDIRECT EXAMINATION BY MS. SCHRODER:

9 Q. Mr. Stewart, when were you issued a CGD?

10 A. Approximately three years ago.

11 Q. Were you told why at the time?

12 A. I don't believe so.

13 Q. Are you required to use it at any
14 particular time -- are there times when you're required to
15 use it?

16 A. Every time we read an inside gas meter.

17 Q. All right. Does that mean that you use it
18 every time you do an annual read?

19 A. Yes.

20 Q. Are you disciplined or are you subject to
21 discipline if you do not use it on an inside meter?

22 A. We are subject to discipline.

23 MS. SCHRODER: Thank you. No further
24 questions.

25 JUDGE DIPPELL: Okay. I believe that's all

1 for Mr. Stewart, then. And we will take a break until
2 five after four. So, Mr. Stewart, you can be excused.

3 And we can go off the record.

4 (A BREAK WAS TAKEN.)

5 JUDGE DIPPELL: During the break, counsel
6 indicated that they might like to change up the order of
7 witnesses, since we're getting near the end of the day.
8 Ms. Schroder, did you want to go ahead?

9 MS. SCHRODER: Yes. The Union is ready to
10 call Robert Eugene Peterson to the stand.

11 JUDGE DIPPELL: Could you please raise your
12 right hand?

13 (Witness sworn.)

14 JUDGE DIPPELL: Thank you.

15 ROBERT EUGENE PETERSON testified as follows:

16 DIRECT EXAMINATION BY MS. SCHRODER:

17 Q. Mr. Peterson, are you the same Robert
18 Peterson who gave written testimony in this matter in
19 written form earlier this month?

20 A. Yes.

21 Q. Do you go -- just so everybody is okay with
22 this, do you go by Gene instead of Robert?

23 A. Yes.

24 Q. All right. Have you -- do you have any
25 corrections to the written testimony that you gave in this

1 matter?

2 A. No.

3 Q. Would you answer the same way that you did
4 in your written testimony, if asked today?

5 A. That's correct.

6 MS. SCHRODER: All right. I would move for
7 the admission of written testimony of Robert Eugene
8 Peterson, which is Exhibit 7.

9 JUDGE DIPPELL: Would there be any
10 objection to Exhibit No. 7? Mr. Schwarz?

11 MR. SCHWARZ: I'm not sure. I'd like to
12 reserve objections until after -- I mean, I think the
13 foundation is pretty thin, but I think that may be fleshed
14 out a bit as we go along, but I would like to reserve an
15 objection until after we complete the testimony.

16 JUDGE DIPPELL: You want to do
17 cross-examination before?

18 MR. SCHWARZ: In lieu of a voir dire.

19 JUDGE DIPPELL: Okay. Would there be any
20 objection to that process?

21 MS. SCHRODER: Your Honor, I don't have any
22 objection.

23 MR. ZUCKER: I don't either.

24 JUDGE DIPPELL: Well, let's go ahead with
25 cross-examination. Mr. Poston?

00243

1 MR. POSTON: No questions, thank you.

2 JUDGE DIPPELL: Mr. Schwarz?

3 MR. SCHWARZ: Yes, I do.

4 CROSS-EXAMINATION BY MR. SCHWARZ:

5 Q. Good afternoon, sir. You indicate that
6 you're a business manager for IBEW Local No. 2. Where are
7 you physically located?

8 A. Physically located here in Jefferson City.

9 Q. In Jeff City?

10 A. Uh-huh.

11 Q. And does Local 2 represent both electric
12 and gas workers of AmerenUE?

13 A. Yes.

14 Q. You indicate you've worked for IBEW since
15 '96. Where were you employed before that?

16 A. Okay. I was right here in Jefferson City
17 since '92. I used to be dispatcher for Ameren before I
18 become assistant business manager.

19 Q. Okay. And prior to 1992?

20 A. Lived in Moberly, Missouri.

21 Q. And by whom were you employed?

22 A. Ameren. It was Union Electric at that
23 time. They've changed names.

24 Q. And when did you begin your employment with
25 Union Electric?

00244

1 A. Would have been 1984.

2 Q. And can you give us your employment history
3 with UE, just briefly, if you would?

4 A. I started out in Missouri Power & Light,
5 worked in the power plants that they had. Then I
6 transferred into the substation workgroup, and then from
7 the substation workgroup went to the dispatch office, and
8 then become the assistant business rep.

9 Q. Is it your testimony that Ameren per-- let
10 me strike that.

11 What's your understanding of TFTO
12 inspections?

13 A. Turn off/turn on procedure that they had,
14 used to we had meter readers. We'd lost 22 meter readers
15 when that come about, when Cellnet come in, and at that
16 time then they decided they'd just go ahead when a
17 customer called in, they didn't have to send anybody out.
18 They would just go ahead and take that read and start the
19 new reading before the new people moved into the condo,
20 project or the house, wherever it might be.

21 Q. But what's your understanding of what
22 happened when a gas worker was sent out to do a TFTO?

23 A. They would normally inspect the premises.
24 As a matter of fact, they would ask -- sometimes the
25 customer would ask them to inspect in their basement if

1 they had an appliance in the basement. But most of the
2 time when they went out to read, they'd also inspect the
3 premises and around the gas meter and they'd check the
4 piping for gas leaks.

5 Q. Are you familiar with the operations of
6 Aquila prior to the acquisition by AmerenUE of the Eastern
7 system properties of Aquila?

8 A. No, I really wasn't familiar with Aquila
9 until Ameren gained three employees down in the Rolla
10 area. We started representing them approximately two
11 years ago, I would say.

12 MR. SCHWARZ: I think that's all I have.

13 JUDGE DIPPELL: Okay. Laclede?

14 CROSS-EXAMINATION BY MR. ZUCKER:

15 Q. Good afternoon, Mr. Peterson.

16 A. Good afternoon.

17 Q. You go by Gene?

18 A. Yes, sir.

19 Q. Mr. Peterson, my name is Rick Zucker. I'm
20 an attorney for Laclede Gas Company. I'm just going to
21 ask you a few questions today.

22 You said that Ameren used to perform the
23 TFTO inspections?

24 A. Uh-huh.

25 Q. Is that when the meter was inside the home

00246

1 or the meters outside the home?

2 A. Wouldn't make any difference. If they was
3 inside the home, then they'd have to get access to the
4 home. Lot of times they'd leave a tag on the door that
5 they needed access.

6 Q. And did you actually perform TFTO
7 inspections yourself?

8 A. No. I would dispatch crews. I was a
9 dispatcher about nine years and we'd dispatch crews out to
10 do that particular type work.

11 Q. And you were a dispatcher between 1992 and
12 '96?

13 A. Yes.

14 Q. And prior to '92, what was your job?

15 A. Actually, I was a dispatcher back in
16 Moberly in 1988, so I was actually a dispatcher from 1988
17 to 1996.

18 Q. Okay. And where did the TFTO inspections
19 take place?

20 A. We would have them all over the system. We
21 had gas crews in Columbia, Jefferson City, Mexico,
22 Moberly, Boonville, Wentzville, Louisiana, Troy.

23 Q. And during what time period was this?

24 A. Would be the same time period that I was
25 dispatcher. Would be '88 through '96.

00247

1 Q. And then when did Ameren -- you never
2 worked for Aquila; is that correct?

3 A. No, sir.

4 Q. Okay. When did Ameren put in automated
5 meter reading devices from Cellnet?

6 A. I would have to look back in the records.
7 I know it's been a good five years, if not possibly longer
8 than that, but I know probably a good five years.

9 Q. So you're thinking around 2001?

10 A. Right. Uh-huh.

11 Q. And so did the TFTO inspections you're
12 saying took place until the Cellnet, take place until
13 2001?

14 A. Right.

15 Q. Are you still an active employee of Ameren?

16 A. No, sir. Full-time assistant business
17 manager.

18 Q. And that's since 1996?

19 A. Yes.

20 Q. And you represent electrical -- electric
21 workers also?

22 A. Yes.

23 Q. As part of the IBEW?

24 A. Right.

25 Q. And when two electric customers change

1 hands, is there an inspection done by the electric
2 company?

3 A. Not that I'm aware of.

4 Q. Ever?

5 A. Not that I'm aware of, no.

6 Q. Do you know why?

7 MS. SCHRODER: Objection, your Honor. This
8 goes beyond the scope of direct and it has no relevance to
9 this proceeding, which is about gas.

10 MR. SCHWARZ: It's cross-examination. It's
11 not limited to anything.

12 JUDGE DIPPELL: I believe we had actually
13 had some -- I guess that was from Laclede in their
14 testimony in this regard. I'm going to overrule the
15 objection and allow him to go ahead and ask the question.

16 MR. ZUCKER: Thank you.

17 BY MR. ZUCKER:

18 Q. Do you know why?

19 A. No, I really don't. I don't really know
20 what their procedure is. I never was involved lately with
21 any of that stuff. Haven't heard any of the guys talk
22 about it.

23 Q. Are you aware of fires caused by faulty
24 electrical wiring?

25 MS. SCHRODER: Objection. Same objection.

1 MR. ZUCKER: Same response. This is part
2 of our argument is, why are gas companies responsible for
3 taking care of anything having to do with gas in the home?
4 Electric companies aren't. Water companies aren't
5 responsible for drowning in a swimming pool. Why are gas
6 companies different?

7 JUDGE DIPPELL: I'm going to overrule the
8 objection and allow him to answer. He is familiar with
9 electrical workers and companies.

10 THE WITNESS: Occasionally we've heard we
11 have what we call line service workers, the same as gas
12 service workers that will go out and change meters and
13 that, and they'll report back if there's bare wires,
14 you've got wires slapping together, where trees are
15 rubbing on the wires, they'll report back on that case.
16 And it depends on what side of the meter it's on, whether
17 it's on the house side of the meter or being fed from the
18 primary or not and who's responsible for changing that
19 out.

20 BY MR. ZUCKER:

21 Q. When the electric company turns on
22 electricity, do they go visit the home or do they do it
23 remotely?

24 A. No, they're right there.

25 Q. And do they do an inspection at that time?

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1 A. Usually there's an inspector, uh-huh.

2 Q. But when there's a changeover without
3 interrupting electricity, then there is no inspection?

4 A. Usually not.

5 Q. And when did Ameren stop performing TFTOs
6 on gas service?

7 A. I'd say it's been a good five years
8 probably.

9 Q. Right after the Cellnet --

10 A. Uh-huh.

11 Q. -- installation?

12 You mentioned that there was a grievance
13 filed by I guess Local 2 at the time following the AMR
14 installation for Ameren?

15 A. That's correct.

16 Q. And what was the -- Local 2's argument in
17 the grievance?

18 A. The reason why we filed the grievance
19 because we knew we was going to lose about 22 jobs that
20 was going to disappear with automatic meter reading.

21 Q. And what was your --

22 A. We was trying to find a place to slot all
23 those people.

24 Q. Did the Union allege some wrongdoing under
25 the contract?

1 A. Right. We was concerned about going to
2 automatic meter reading, what that was going to do for
3 safety of the public, and also we was looking out for the
4 welfare of the 22 people that we represented.

5 Q. At what point did you decide not to bring a
6 case at the Public Service Commission over your safety
7 concerns?

8 A. Well, we never did because prior to that,
9 we lost a case before the Public Service Commission on
10 putting in some primary wire. Years ago we used to put
11 all the primary into subdivisions, and a case come up
12 where they was -- the contractor was able to put the
13 conduit system in, and then we was pulling wire in after
14 that. And we spent about \$42,000 on attorney fees, and
15 with a local that didn't have a lot of money, we couldn't
16 justify going forward.

17 Q. And what happened in that case?

18 A. In that case, the contractors was allowed
19 to put what we call the backbone system in, into the
20 subdivision, put the conduit in, and now they're even
21 pulling the wire that we used to pull.

22 Q. And the PSC made that decision?

23 A. That's correct.

24 Q. Do you know the case number?

25 A. No, sir.

1 Q. And so that would have been around 2001 --
2 well, let me ask you, do you know what year that the case
3 was on the primary wire in the subdivision?

4 A. I'm going to say somewhere around '99 to
5 2000, somewhere in that neighborhood.

6 Q. Do you remember who the Commissioners were
7 then?

8 A. No.

9 Q. And so based on that outcome, you
10 determined that the Public Service Commission was not
11 labor friendly?

12 A. That's correct.

13 Q. Do you believe that the Commission's
14 decision in that primary wire case was motivated by
15 anti-union sentiments, rather than based on the merits of
16 the case?

17 A. Really, I think they was favorable more to
18 the utility company than what they was to us.

19 Q. So they were biased in favor of the
20 utility?

21 A. That was my opinion.

22 Q. Do you believe this current Commission is
23 labor friendly?

24 A. Really have not had any dealings with the
25 current Commission, to be honest with you.

1 Q. If they rule for the Union in this case,
2 would you consider them labor friendly?

3 A. I absolutely would.

4 Q. If they rule against the Union in this
5 case, would you consider them to be not labor friendly?

6 A. Well, I'd have my concerns.

7 Q. What did you mean when you said that the
8 Union received short shrift in the primary wire case?

9 A. On that, we used to have several crews, we
10 had our own backhoes and had our own crews that went
11 around when all these new subdivisions was platted out and
12 put in the conduit system and pulled the wire, put the
13 pull boxes in, the transformers and what have you. We've
14 seen that decrease over the years.

15 Q. Okay. I guess I didn't understand that.

16 A. Where we used to have like five-man crews,
17 we're down to two-man crews. The backhoes that we had,
18 the trenchers that we had are no longer on the property.
19 It's all being done by non-Union.

20 Q. Okay. Let me read your testimony to you,
21 and I'll ask you the question again. It says, in the case
22 that you've now identified as a primary wire case, you
23 said, we spent approximately 42,000 in legal fees relating
24 to that matter but received short shrift from the PSC.

25 My question was, what did you mean by

1 receiving short shrift?

2 A. We don't believe they listened to our
3 testimony as earnestly as what they did on the utility
4 property.

5 Q. And you were clearly represented by counsel
6 in that case?

7 A. Yes.

8 Q. And your counsel was allowed to
9 cross-examine witnesses --

10 A. Right.

11 Q. -- and make opening statements, send in
12 Briefs?

13 A. And he was a scrooge, too.

14 Q. When you spend \$42,000, you expect to win,
15 right?

16 A. That's correct.

17 MR. ZUCKER: Thank you. No further
18 questions.

19 JUDGE DIPPELL: Thank you. Commissioner
20 Appling, did you have any questions for this witness?

21 COMMISSIONER APPLING: After his testimony,
22 I'm not sure. I think I'll skip it.

23 JUDGE DIPPELL: Okay. Is there redirect?

24 MS. SCHRODER: No, your Honor.

25 JUDGE DIPPELL: Should we take up the --

1 MR. SCHWARZ: I will alert the Commission
2 that I do not object to the exhibit.

3 JUDGE DIPPELL: Was there any other
4 objection to Exhibit No. --

5 MS. SCHRODER: 7.

6 JUDGE DIPPELL: -- 7?

7 MR. ZUCKER: No.

8 JUDGE DIPPELL: Seeing no objection, then I
9 will admit Exhibit No. 7 into the record.

10 (EXHIBIT NO. 7 WAS RECEIVED INTO EVIDENCE.)

11 JUDGE DIPPELL: I believe that's all for
12 you then, Mr. Peterson. Thank you. You may be excused.

13 All right. We are only going to go today
14 until five, and then I have to stop. Are there -- I
15 understand that Mr. Schulte's will probably take a little
16 bit more time. Is there any other items that we could
17 perhaps wrap up rather than starting Mr. Schulte, or
18 should we just --

19 MS. SCHRODER: I was wondering if maybe you
20 wanted to go ahead and get just the beginning thing, you
21 know, those first three questions out of the way so we
22 don't have to do that tomorrow, but I don't know.

23 JUDGE DIPPELL: I didn't know about your
24 own testimony that you wanted to --

25 MS. SCHRODER: Oh, thank you. Actually, I

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1 was going to -- and I was going to use Joe Schulte to get
2 that in, so I can do that right now, if you'd like.

3 JUDGE DIPPELL: Let's just go ahead and
4 begin Mr. Schulte. I have a feeling there may be some
5 objections to his testimony.

6 MS. SCHRODER: The Union calls Joe Schulte.

7 JUDGE DIPPELL: Would you please raise your
8 right hand?

9 (Witness sworn.)

10 JUDGE DIPPELL: Thank you. You may go
11 ahead.

12 JOE SCHULTE testified as follows:

13 DIRECT EXAMINATION BY MS. SCHRODER:

14 Q. All right. Mr. Schulte, I'm going to ask
15 you about two different matters right now. First of all,
16 were you present at an arbitration between USW Local 11-6
17 and Laclede Gas Company that occurred in March of this
18 year pertaining to the discharge of Louis Jackson?

19 A. Yes, I was.

20 Q. And have you reviewed the transcript of
21 that arbitration hearing?

22 A. Yes, I have.

23 Q. Are the -- have you also reviewed the
24 excerpts from that transcript that the Union has submitted
25 as testimony in this matter, that's testimony of Walter --

1 I won't say this probably right -- Reitz, Joseph Williams,
2 Mike Sisak and Stephen Ferris?

3 A. Yes, I did.

4 Q. Are the excerpts that the Union has
5 attached as testimony for those individuals, are they true
6 and accurate copies of the testimony that was -- are they
7 true and accurate renditions of testimony that was given
8 that day?

9 A. As far as I can tell, yes.

10 MS. SCHRODER: At this time, the Union
11 would ask for the admission of the testimony of Walter
12 Reitz, Joseph William, Mike Sisak and Stephen Ferris as
13 Exhibit A -- 8. Excuse me.

14 JUDGE DIPPELL: Is there any objection to
15 Exhibit 8?

16 MR. SCHWARZ: None from Staff.

17 MR. ELBERT: Yes, your Honor, there is from
18 Laclede Gas Company on multiple grounds.

19 JUDGE DIPPELL: Go ahead and give them to
20 me.

21 MR. ELBERT: Ground No. 1 is Mr. Schulte
22 has testified in his deposition that he walks in and out
23 of arbitrations, often isn't there. That is well
24 established. We went through that quite a bit in his
25 deposition. We'll be happy to go through that. So

1 with regard to the hearsay issue, I guess there's several
2 things about that. First of all, the testimony was under
3 oath. It was between two of the parties that are here
4 today. So it's basically testimony from another legal
5 proceeding between two of the same parties. And the
6 Commission's rules, as I read them, are not -- do not
7 formally accept all of the federal rules of evidence, so
8 it's the Union's position basically that these are
9 admissions against interest that would be a hearsay
10 exception anyway, but even if it weren't for that, the
11 hearsay rule does not necessarily apply to Commission
12 hearings.

13 JUDGE DIPPELL: Well, I will agree with you
14 that we don't follow necessarily the formal rules of
15 evidence. We do, however, have to have substantial and
16 competent evidence, and one good way to tell that
17 something is competent is if it falls under the rules of
18 evidence.

19 MS. SCHRODER: As admissions against
20 interest do.

21 JUDGE DIPPELL: Wasn't this arbitration --
22 actually, I mean, you said it was between two of the same
23 parties, but was it actually the Union --

24 MS. SCHRODER: Yes.

25 JUDGE DIPPELL: -- or is it actually the

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1 employee?

2 MS. SCHRODER: No. It's the Union's
3 grievance. The Union files the grievance on behalf of --
4 well, not even on behalf of the employee. The Union files
5 the grievance to grieve what occurred to the employee, but
6 there is actually a solid body of case law that supports
7 that it is the Union's grievance.

8 I might add that all four of the
9 individuals for whom the Union has submitted this
10 testimony are management of Laclede, so they certainly
11 qualify as people that we can use admissions against
12 interest against.

13 JUDGE DIPPELL: Did you consider
14 subpoenaing those witnesses, Ms. Schroder?

15 MS. SCHRODER: I did, but there wasn't
16 60 days in which to do it, and you have a 60-day rule.

17 JUDGE DIPPELL: We do from time to time
18 waive our rules.

19 MS. SCHRODER: I understand that, and maybe
20 in retrospect I should have asked for that. It did seem
21 to me, though, that this is a clear admission against
22 interest situation and that if Laclede wanted these people
23 to testify, they certainly have access to them and the
24 ability to bring them here to rebut anything that is
25 contained in this arbitration transcript.

1 In addition, because I did submit the
2 entire transcript, as well as notifying you of the pages
3 and lines that we were submitting, you did have the
4 ability to see the whole context for their testimony. So
5 it can't be asserted that we took things out of context.

6 MR. ELBERT: Your Honor, if I may --

7 JUDGE DIPPELL: Certainly.

8 MR. ELBERT: I mean, this clearly is
9 hearsay. It clearly crea-- it's clearly prejudicial in
10 the sense that we will not be entitled to cross-examine
11 the witnesses regarding the issues. They're trying to
12 say, well, it's an admission against interest. It was
13 under different facts and circumstances. It involved a
14 different situation. It involved a situation where we
15 were doing TFTOs, which we don't do now.

16 This was not -- it was a discipline
17 proceeding and it's being taken out of context here, and
18 we would need to be able to examine each of the witnesses
19 so that there would be adequate evidence before this
20 tribunal so that it could make a proper decision.

21 Absent that, this is pure hearsay. They
22 should have subpoenaed people if they wanted to have them
23 come here. They didn't do it, and they shouldn't be able
24 to short circuit the process and deprive us of the due
25 process to which we're entitled.

1 MS. SCHRODER: And again, your Honor, I
2 would just point out that they're claiming they're
3 prejudiced and don't have the ability to cross-examine
4 these people, but they clearly have the ability. These
5 are their employees. They could have brought them here.
6 They could have deposed them. They could have gotten
7 statements from them and submitted written testimony by
8 them.

9 You know, the Union did submit this
10 testimony -- well, at the same time that we submitted the
11 testimony of the three individuals who they did depose,
12 and those were all people they had to schedule with us.

13 MR. ELBERT: Your Honor, that reverses the
14 burden. The burden is on them to put their case together,
15 not on us to put their case together. We did take
16 depositions. We did. We were putting our case together.
17 The fact that the Union is not properly putting its case
18 together cannot be used against us. We have no duty to
19 prepare their case. She's got the burdens backwards.

20 MS. SCHRODER: And again, these are
21 admissions against interest. That is a very appropriate
22 way to put our case together.

23 JUDGE DIPPELL: I'm concerned about the
24 exception, just because I do believe it was a different
25 proceeding. I mean, it was a different issue at hand, and

1 so I'm not sure that Laclede would have been put on notice
2 during that proceeding that --

3 MS. SCHRODER: But that's not necessary for
4 admission. I'm sorry. I did not mean to interrupt you.

5 JUDGE DIPPELL: That's fine. Go ahead.

6 MS. SCHRODER: That's not necessary for
7 admissions against interests. That's one of the points of
8 admission against interest, that if a witness has said
9 anything in ten years or however long, you know, before
10 their testimony, before the case is even filed, that would
11 oppose the position that they're taking now, that that is
12 fair game.

13 And this was something well after the Union
14 had filed this complaint. They certainly knew this
15 complaint was out there. This testimony only occurred in
16 March. And yes, the context was different, it was a
17 disciplinary proceeding because they were firing this guy
18 for not having performed, they claimed, a turn off/turn
19 on, and they made statements in that -- in the course of
20 that arbitration proceeding that a TFTO was a very
21 important safety measure. That's -- that meets the
22 standard lock, stock and barrel of an admission against
23 interest.

24 MR. ELBERT: Your Honor, it's taken totally
25 out of context. The reality is when we set foot on a

1 customer's property as was admitted by Mr. Hendricks
2 earlier today, we require people to do inspections. And
3 when we had to go out and do turn off/turn ons, once we're
4 in there, we've made a policy decision that we'd better
5 check to make sure there isn't a problem, because if there
6 is a problem and we leave the premises, who's going to be
7 blamed?

8 So that was a policy that we followed. We
9 don't do those anymore, and that -- and that arose under
10 those circumstances, and yes, in that particular situation
11 we have taken the position that the employee must follow
12 our procedure. So I don't know, that doesn't have
13 anything to do with whether, in fact, it's a safety
14 inspection for the general benefit of the public.

15 That has to do with the liability issue for
16 Laclede Gas Company once we set foot on the property. And
17 to properly evaluate -- for your Honor to properly
18 evaluate that, either party's position here, you have to
19 hear the witnesses. It's not proper to try to judge that
20 off the transcript, even if they take a different position
21 as to what our reasoning was, which they undoubtedly will.

22 MS. SCHRODER: Your Honor, I guess there's
23 two responses to that. First of all, what Mr. Elbert has
24 just argued, that's all for a brief about weight, the
25 weight to which these admissions are worthy. He is also

1 inaccurate, actually, about the position they took at the
2 hearing that they didn't just take the position that this
3 was a liability issue and that this person disobeyed a
4 procedure that was in effect.

5 They specifically took the position that
6 this was a dischargeable offense because this was a safety
7 measure, a very important safety measure. And we
8 obviously wouldn't have submitted it in this case if they
9 had just taken the position that this was something that
10 the employee needed to follow because of Laclede's
11 liability.

12 MR. ELBERT: I didn't say that we took the
13 position that it was a liability issue. What I'm saying
14 is that that's the reason we do those inspections. Yes,
15 it's a safety issue in the sense that we need to -- once
16 we set foot on the property, we know that we could be
17 responsible. Do we call it safety? Yes. But my point is
18 it isn't an admission against interest because it's in a
19 different context, and that context in order to evaluate
20 it as an admission against interest, the tribunal must
21 fully understand the context, must hear the witnesses
22 testify.

23 It is inappropriate to admit this
24 out-of-court statement in to prove the fact that what
25 they're trying to argue that we claim it's just a safety

1 issue. That's a totally inappropriate -- that's precisely
2 what the hearsay rule is designed to prevent.

3 JUDGE DIPPELL: Okay. I'm going to cut off
4 arguments there. I'm having a hard time making this
5 decision because I see both sides of your arguments,
6 though I'm very bothered by the fact that these witnesses
7 aren't here for the Commission and everyone else and
8 Laclede, even though they're their employees, to ask them
9 questions. So what I'm going to do is punt for a little
10 while. I'm going to think about it.

11 MS. SCHRODER: Would you like us to brief
12 it?

13 JUDGE DIPPELL: No, I don't think that's
14 necessary. I'm going to just think about it and make a
15 ruling first thing when we go back on the record in the
16 morning.

17 All right. I'm assuming that you're
18 already prepared, so it won't matter which way I go.

19 MS. SCHRODER: All right. Do you -- should
20 we go on now with then --

21 JUDGE DIPPELL: Yeah. Go ahead with your
22 next.

23 MS. SCHRODER: All right.

24 BY MS. SCHRODER:

25 Q. Mr. Schulte, are you the same Joe Schulte

1 who has provided evidence in this matter through --
2 through three different affidavits?

3 A. What are you referring to?

4 Q. I'm sorry. Are you the same Joe Schulte
5 that has signed three different affidavits in this
6 lawsuit -- or this administrative proceeding?

7 A. Yes.

8 Q. All right. And are the statements that you
9 gave in each of those affidavits, are those statements
10 still true today?

11 A. To the best of my knowledge, yes.

12 Q. And do you have any corrections to those
13 statements?

14 A. No.

15 MS. SCHRODER: Then I would move for the
16 admission of the written testimony of Joe Schulte, which
17 is Exhibits 4, 5 and 6.

18 JUDGE DIPPELL: Okay. Would there be any
19 objection to Exhibit No. 4, which is the affidavit of Joe
20 Schulte?

21 MR. ELBERT: Yes, your Honor. There is a
22 very serious objection here on our part. We took
23 Mr. Schulte's deposition. He admitted at his deposition
24 that he has no personal knowledge of any of the items that
25 are described on the various exhibits to his deposition.

1 He did not -- he was not responsible for conducting any
2 sort of sampling. He didn't personally verify that any of
3 the sampling was accurate. He doesn't know whether this
4 sampling is accurate.

5 It is not -- despite the statement in his
6 deposition on page 8, that he says it's true to the best
7 of his knowledge and belief, none of that is based on his
8 knowledge. Every bit of that is hearsay, and it is -- he
9 would not tell us -- he would not say who did any of the
10 inspections. He wouldn't testify to that, couldn't
11 identify the people, couldn't remember.

12 And I think it's totally inappropriate to
13 have someone put in written testimony that's based on such
14 obvious hearsay. Therefore, we believe that this exhibit
15 should not be admitted into evidence.

16 JUDGE DIPPELL: And that's the Exhibit 1
17 attached to his testimony?

18 MR. ELBERT: I'm sorry. We believe the
19 whole affidavit should be stricken, but certainly every --
20 certainly the exhibit should be stricken.

21 MS. SCHRODER: Are you ready for me to
22 address this?

23 JUDGE DIPPELL: Go ahead, Ms. Schroder.

24 MS. SCHRODER: Okay. First of all, I want
25 to address that I haven't heard a single reason yet why

1 the entire affidavit should be stricken. All I've heard
2 is argument about Exhibit 1 to that affidavit. And so I
3 think that, first of all, is inappropriate.

4 With regard to Exhibit 1 to the affidavit,
5 Mr. Schulte was very clear when he -- in his affidavit
6 that this was a sampling that was conducted by the Union
7 because they had not been able to get certain documents
8 from the company. At that time, and they were doing their
9 best to -- you know, to do a sampling, and he very clearly
10 testified about the limits on that sampling, the
11 parameters that he had, the time period and that it was
12 just a sampling, that it certainly wasn't from every
13 employee.

14 JUDGE DIPPELL: I don't think any of that
15 is clear from his affidavit.

16 MS. SCHRODER: Well, I think it was
17 actually. I think it's in the footnote, that -- we're
18 pulling it, your Honor. And certainly to the extent that
19 it does need to be clarified, that can be handled on
20 cross-examination and it would go to the weight of the
21 evidence.

22 Mr. Schulte is a business representative
23 for the group that conducted the sampling. These were --
24 he was basically attesting to them on -- as a records
25 custodian of sorts. And I am looking for the footnote.

1 MR. ELBERT: Your Honor, while she's
2 looking, may I just read from his deposition transcript,
3 because I think it's very enlightening?

4 MS. SCHRODER: I'm sorry?

5 JUDGE DIPPELL: Ms. Schroder?

6 MS. SCHRODER: I would object to that.
7 This is not the time to be reading from somebody's
8 deposition testimony, I don't believe. I mean, we're
9 trying to make a ruling now about whether or not this is
10 hearsay, and I don't think that the deposition testimony
11 is -- that, again, goes to cross-examination and goes to
12 the weight of the evidence, rather than --

13 JUDGE DIPPELL: Well, the hearsay goes to
14 whether or not it comes into evidence, and if -- I'm --
15 are you saying it's not true that Mr. Schulte -- or you're
16 saying that Mr. Schulte has personal knowledge of this
17 exhibit?

18 MS. SCHRODER: He has personal knowledge of
19 the fact that the Union asked that this sampling be done,
20 and he does specifically talk about that sampling at
21 paragraph 12, page 3. He said, we further conducted
22 sampling of Laclede hazard tickets over a five-month
23 period, May 2005 to September 2005. That sampling, a true
24 and accurate copy of which is attached to Exhibit 1,
25 reflects numerous -- and he goes through that. I thought

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1 there was actually a -- and I'm sorry that I don't --
2 there does not seem to be a footnote to the extent that I
3 thought there was.

4 But he did describe that this was a
5 sampling. And again, the issues that have been raised --
6 the issues that have been raised by Laclede in objection
7 to the sampling are really issues that go to weight rather
8 than to admissibility.

9 MR. ELBERT: That's not correct, your
10 Honor. I mean, we can voir dire the witness if you want
11 me to do it that way, but his testimony is very, very
12 clear.

13 JUDGE DIPPELL: Let's do voir dire the
14 witness and find out exactly what he knows, because when I
15 read No. 12, we further conducted a sampling, I assume
16 that means Mr. Schulte is involved in the sampling, in
17 which case I wouldn't have a problem with it coming in.
18 But I'm going to allow you to go ahead, Mr. Elbert.

19 VOIR DIRE EXAMINATION BY MR. ELBERT:

20 Q. In paragraph 12 of your affidavit you refer
21 to a sampling process by Laclede Gas Company; is that
22 correct?

23 A. By the employees.

24 Q. By the Union. Okay. And you say there
25 that that sampling, a true and accurate copy of which is

1 attached here as Exhibit 1, reflects numerous potential
2 life-threatening problems that were discovered as a result
3 of turn off/turn on inspections, correct?

4 A. If that's what's in there. I don't have it
5 with me.

6 Q. Why don't I give you a copy of your
7 deposition?

8 MS. SCHRODER: And, Charles, does the
9 deposition copy you gave him also include the sampling?

10 MR. ELBERT: I believe it does have it,
11 Sherrie.

12 MS. SCHRODER: Joe, would you check the end
13 and see that that's the sampling there at the end of the
14 deposition, one of the exhibits? It would be attached to
15 your testimony.

16 May I approach, your Honor?

17 JUDGE DIPPELL: Yes, go ahead.

18 BY MR. ELBERT:

19 Q. Mr. Schulte, I'd like to refer you to
20 page 28 of your deposition, start with line 17.

21 A. Let me get there first. Okay.

22 Q. You see line 17?

23 A. Yes.

24 Q. Question: Well, I'm going to refer you to
25 paragraph 12 of your affidavit.

1 Answer: Okay.

2 By the way, let me just say, do you
3 remember giving this deposition?

4 A. Yes, I remember it.

5 Q. And did you --

6 JUDGE DIPPELL: Mr. Schulte, can I get you
7 to speak into the microphone?

8 THE WITNESS: Yes, I remember it.

9 JUDGE DIPPELL: Thank you.

10 BY MR. ELBERT:

11 Q. And you remember swearing to tell the
12 truth?

13 A. Yes, and I have told the truth.

14 Q. Did you tell the truth at the deposition?

15 A. To the best of my knowledge, I have.

16 Q. Okay. And have you read over this
17 deposition before today?

18 A. About a week ago.

19 Q. All right. And did it appear to be true
20 and accurate?

21 A. To the best of what I could recollect.

22 Q. Now, let's go back -- I'm sorry. We'll go
23 back to line 17.

24 Question: I'm going to refer you to
25 paragraph 12 of your affidavit.

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1 Answer: Okay.

2 Question: It says, we further conducted
3 sampling of Laclede hazard tickets over a five-month
4 period, May 2005 to September 2005. Do you see that?

5 Answer: Uh-huh.

6 Did that mean yes?

7 A. Yes.

8 Q. Question: Was that a true statement?

9 Answer: Yes.

10 Question: Were you involved in that
11 sampling process?

12 Answer: Not really, not all of it.

13 Question: Well, how do you know it's a
14 true statement then?

15 Well, I know that every member did not turn
16 in hazard tickets in. They would just come in and people
17 would bring them in and drop them off at the hall, so it
18 wasn't from every member that participated. That's my
19 understanding.

20 Question: Well, who at the Union coor--
21 who at the Union was coordinating this sampling?

22 Answer: It was mostly done from Kevin
23 Patterson and the president of the Union.

24 Question: Okay. Do you have any firsthand
25 knowledge of how the sampling was done?

1 Answer: No. All I know is a portion of
2 the people, I don't know how many or in which districts or
3 whatever.

4 Question: Did you actually go out to
5 confirm whether these -- the sampling information that was
6 given was accurate?

7 Answer: No.
8 Do you have any way of knowing whether the
9 information that was provided was accurate?

10 Answer: Just what was on the hazard
11 tickets that they supplied to us, which you have a copy
12 of.

13 Question: Did you personally review those
14 hazard tickets?

15 No.

16 Now, was that -- does that truly and
17 accurately reflect your testimony on May 8, 2006?

18 A. Yes, if that's what I said, that's what's
19 there.

20 Q. And is that true as we sit here today?

21 A. Yes.

22 MS. SCHRODER: Judge Dippell, I would just
23 add that if you go on through page 190, Mr. Schultz says
24 that he did review some of these hazard tickets as they
25 came in, and that goes on through -- that goes on through

1 page 191, line 1.

2 MR. ELBERT: Well he does say in there he
3 has no idea which ones he reviewed. He says he reviewed
4 some of them, no idea which ones. So our point is, your
5 Honor, that -- well, sorry.

6 JUDGE DIPPELL: That's fine. Did you want
7 to ask him any questions with regard to the other exhibits
8 attached to his testimony, or was there additional?

9 MR. ELBERT: I also would like to note,
10 your Honor, that in the data -- the first response to Data
11 Requests, which is Exhibit 14, I believe that you'll see
12 that the Union has said they don't know the iden-- in
13 response to numerous questions, that they don't know the
14 identity of any of the employees who allegedly submitted
15 this information that they're using in Exhibit 1 to
16 Mr. Schulte's affidavit.

17 I'm going to -- Rick Zucker is going to
18 handle the other exhibits.

19 MR. ZUCKER: We would also object to the
20 remaining exhibits, which are 2 through looks like 11.

21 MS. SCHRODER: It's 2 through 9 in this
22 exhibit.

23 MR. ZUCKER: 2 through 9. Thank you.
24 Again, Mr. Schulte has no direct knowledge of these
25 issues. Several of them are out-of-court statements.

1 MS. SCHRODER: Is that the extent of your
2 objection?

3 MR. ZUCKER: Not yet. I further believe
4 that the resolutions signed by the cities were solicited
5 by the Union in violation of the ex parte rules, the
6 Commission's ex parte rules and, therefore, should not
7 be -- the Union should not be permitted to benefit from
8 them by having them entered as exhibits.

9 MS. SCHRODER: Is that the extent of your
10 objections?

11 MR. ZUCKER: I reserve the right to object
12 more, but go ahead.

13 JUDGE DIPPELL: Well, now, let's do get all
14 of the objections. Let's start with Exhibit No. 2
15 attached to Mr. Schulte's testimony, which is a
16 photograph. Do you have objections to that, Mr. Zucker?
17 I'm reluctant to strike the entire affidavit. Let me just
18 put it that way. There is some testimony in there. So
19 let's look at what specifically you have objections to.

20 MR. ZUCKER: I'm trying to find the
21 reference to it here in his affidavit. I believe what he
22 said was a Local 11-6 member took a photograph, a true and
23 accurate copy of which is attached and incorporated herein
24 as Exhibit 2. He then goes on to explain Exhibit 2,
25 although he himself doesn't know anything else about it,

1 other than someone else took a photograph.

2 JUDGE DIPPELL: And the same for Exhibit

3 No. 3?

4 MR. ZUCKER: Same for Exhibit 3. He has no
5 personal knowledge of either of these exhibits.

6 JUDGE DIPPELL: Ms. Schroder?

7 MS. SCHRODER: Yes.

8 JUDGE DIPPELL: Do you want to respond to
9 all of them or just those two photos?

10 MS. SCHRODER: Those two photos.

11 JUDGE DIPPELL: All right.

12 MS. SCHRODER: First of all, these photos
13 are of common -- are of something that Mr. Schulte could
14 recognize from the photo, because he has been in
15 situations where he's seen these furnaces, et cetera, and
16 he's identifying in here what he sees by this photo. He
17 also --

18 JUDGE DIPPELL: How do you know what the
19 photo is, other than it's of -- I mean, how do you know
20 where it was, who took it?

21 MS. SCHRODER: Well, he knows that -- he
22 knows a Union member took it, and that that information
23 was -- the photo was submitted to him. It was a photo
24 that a Union member took and the Union member kept in the
25 ordinary course of business, and it was presented to him

1 in that regard, and he is describing what it represents
2 because he can see that. And then he's discussing
3 about -- he's discussing how that can be a danger, and
4 that is certainly information that he has personal
5 knowledge about.

6 And Exhibit 3 is the same way. This is --
7 this is a situation of where you have a membership of
8 approximately 1,000 members, and Mr. Schulte isn't going
9 to know exactly which member -- and this goes to Exhibit 1
10 as well -- which member turned in which hazard ticket.
11 But this was the result of a request from the Union that
12 individual service people turn in records about the TFTOs
13 they were conducting during that time period and that they
14 take pictures of anything that was particularly --
15 particularly egregious and that was visibly egregious.

16 And from that the Union culled a couple of
17 photographs that were clearly identifiable and presented
18 them here. We can't -- it's not practical to have 1,000
19 members come in and testify, even if they weren't so
20 worried about their jobs that they would come testify.

21 So this was -- this was the Union's means
22 of obtaining some of this data which it was unable to
23 obtain. It had previously requested some of this data in
24 an information request from the company prior to our
25 submitting Data Requests, which as you know, in the Data

1 Requests they said that they didn't have, that they didn't
2 have this information in a producible manner.

3 JUDGE DIPPELL: Okay. It's past
4 five o'clock now, and I said we were going to stop at
5 five. So what I'm going to do is, we're going to continue
6 the objection to this exhibit when we return in the
7 morning. I will allow -- for anything I strike, I will
8 allow an offer of proof, if you want to put that into the
9 record. If there's any other voir dire of the witness on
10 each of these things, I'll allow that. I'm not going to
11 strike -- I'll just say right now, I'm not going to strike
12 the whole affidavit.

13 Obviously, you know, the first stuff is
14 perfectly fine. But I will entertain objections to the
15 rest of that in the morning. Are there -- and then we
16 have the other two exhibits of Mr. Schulte, and are there
17 going to be objections to those as well?

18 MR. ZUCKER: Yes, your Honor.

19 JUDGE DIPPELL: Okay. And are there any
20 other exhibits we're aware of that there's going to be
21 objections on?

22 MR. ZUCKER: Yes. Exhibit 9, the testimony
23 of the fire chief.

24 JUDGE DIPPELL: Okay. All right. Well,
25 we'll take those things all first in the morning, we'll

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1 have a little exhibit time. Let's begin in the morning.

2 Will we be able to finish if we start at nine?

3 MS. SCHRODER: It's not looking like it,
4 your Honor. The Union's also going to have some
5 objections to some of the exhibits that Laclede has
6 indicated it intends to introduce.

7 JUDGE DIPPELL: Let's start at 8:30 in the
8 morning and we will take up these things, and hopefully
9 I'll be a little more decisive about them and we'll move
10 along. Let's go ahead and go off the record.

11 Whereupon, the hearing of this case was
12 recessed until May 23, 2006.

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