

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Procedural Conference
6 February 6, 2006
7 Jefferson City, Missouri
8 Volume 1

9 In the Matter of the Application)
of Laclede Gas Company for a)
10 Temporary Variance from Certain)
Portions of Rule 10.A of Its) Case No. GE-2005-0405
11 Tariff Regarding Meter Testing in)
Connection with Its Implementation)
12 of an Automated Meter Reading)
Program)
13
Paper, Allied-Industrial, Chemical,)
14 and Energy Workers Local No. 5-6,)
Complainant,)
15 v.) Case No. GC-2006-0060
16 Laclede Gas Company,)
Respondent.)
17
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19

20 NANCY M. DIPPELL, Presiding,
21 SENIOR REGULATORY LAW JUDGE.
22

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FOR: Staff of the Missouri Public
Service Commission.

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

2 JUDGE DIPPELL: This is Case No.
3 GE-2005-0405, in the matter of the application of Laclede
4 Gas Company for a temporary variance from certain portions
5 of Rule 10.A of its tariff regarding meter testing in
6 connection with its implementation of an automated meter
7 reading program, and Case No. GC-2006-0060, Paper,
8 Allied-Industrial, Chemical and Energy Workers Local
9 No. 5-6, Complainant vs. Laclede Gas Company, Respondent.

10 My name is Nancy Dippell. I'm the
11 Regulatory Law Judge assigned to this matter, and we've
12 come here today for a procedural conference, prehearing
13 conference in both of these cases, which are not
14 consolidated, but for the purposes of this conference
15 today we're going to discuss them together. They have the
16 same parties and similar issues involved.

17 So we'll begin with entries of appearances
18 from the attorneys. Staff?

19 MR. SCHWARZ: Tim Schwarz, Deputy General
20 Counsel, P.O. Box 360, Jefferson City, Missouri 65102,
21 appearing for the Staff of the Public Service Commission.

22 JUDGE DIPPELL: Public Counsel?

23 MR. DANDINO: Michael Dandino, Office of
24 the Public Counsel, Post Office Box 2230, Jefferson City,
25 Missouri 65102, representing the Office of Public Counsel

1 and the public.

2 JUDGE DIPPELL: Laclede?

3 MR. PENDERGAST: Michael Pendergast and
4 Rick Zucker appearing on behalf of Laclede Gas Company.
5 Our business address is 720 Olive Street, St. Louis,
6 Missouri 63101.

7 JUDGE DIPPELL: And the Union?

8 MS. SCHRODER: Sherrie Schroder,
9 7730 Carondelet, St. Louis, Missouri 63105, representing
10 USWA 11-6, formerly known as PACE 5-6.

11 JUDGE DIPPELL: Okay. And I will make a
12 note that Ms. Schroder appears by -- I'm sorry. Is it
13 Schroder?

14 MS. SCHRODER: Schroder, yes.

15 JUDGE DIPPELL: -- appears by telephone
16 with us today.

17 And we do have a couple of pending items,
18 one being a motion to amend the name of the Complainant
19 and a motion to amend the name of the Intervenor in each
20 of these cases. The union is now designated legally
21 apparently as United Steel Workers of American Local 11-6
22 AFL/CIO, and if there's no objection, I will grant those
23 motions. Seeing no objection, so those motions are
24 granted.

25 And I also will -- there was also a

1 withdrawal of Ms. Engelhardt from each of the cases and
2 the entry of appearance of Ms. Schroder. I'll make a note
3 of that also on the record.

4 I guess the first thing that I want to find
5 out from Ms. Schroder is how much time she expects to need
6 for discovery in these cases.

7 MS. SCHRODER: Okay. And I've looked at
8 that. We are anticipating issuing Data Requests by the
9 end of next week and probably earlier than that, but I
10 just wanted to be liberal on that so I didn't suggest
11 dates that were too soon. I'm assuming that there might
12 be a ten-day extension of time on those, and then the
13 depositions could basically start in April.

14 So my feeling is that, even with any
15 follow-up Data Requests that might come, I could certainly
16 have discovery completed, I should be able to get it
17 completed by the middle of May, and we could file
18 testimony by June if you wanted.

19 JUDGE DIPPELL: That's dragging out a
20 little longer. This has already been delayed here at the
21 Commission and --

22 MR. SCHRODER: Okay.

23 JUDGE DIPPELL: Mr. Schwarz?

24 MR. SCHWARZ: If I might, the first thing I
25 note is that in the complaint case, I think that it is --

1 it should not actually have been filed as a complaint.
2 That is, it does not comply with the Commission's
3 Rule 4 CSR 240-2.070, sub 5, specifically subsection D, in
4 that it -- I can't figure out what relief they're
5 requesting.

6 The Commission's complaint rule requires
7 that the complaint contain a specific request for relief,
8 and if there's one hiding in that complaint, I can't find
9 it. I think it is more likely a request to open an
10 investigation into the safety practices necessary when
11 automated meter reading takes -- a company transitions
12 from manual reads to automated meter reads.

13 And on that basis, I think it should
14 probably be denominated a GO docket and an investigation
15 rather than a complaint. If it continues to be treated as
16 a complaint, I'd move to dismiss or require an amendment
17 forthwith to specify relief that the Union thinks might be
18 appropriate consistent with the Commission's rule.

19 MS. SCHRODER: And you're talking about the
20 tariff revision complaint?

21 MR. SCHWARZ: The complaint case, yes.

22 MS. SCHRODER: I think there is definitely
23 a request for relief in there, and I'd be glad to address
24 that if Judge Dippell thinks this is the time to do so.

25 JUDGE DIPPELL: You may go ahead.

1 MS. SCHRODER: All right. We are
2 requesting that certain things they have asked for in the
3 tariff, like the gas appliance inspection upon transfer of
4 service that they're intending to cease as they put in the
5 automated meters, that that practice be reinstituted, that
6 the annual reads that -- and I may be mixing that up with
7 the variance on the annual reads. No, I don't think so.
8 No, I'm not.

9 The annual reads be continued through the
10 process of putting in the automated meters because those
11 are very important, and other safety -- I mean, we do want
12 to do some investigation because we think there are some
13 additional, possibly some additional safety steps that are
14 going to be sent to -- pushed to the side with the
15 institution of automated meter reading. But those are
16 definitely two things that we're very concerned with and
17 want relief for. We want those things reinstituted.

18 MR. PENDERGAST: Your Honor, if I could? I
19 don't see that specific relief requested anywhere in the
20 complaint, so I would need to echo Mr. Schwarz' comments.

21 And furthermore, I'd simply like to add
22 that what Laclede has proposed to do or has done with the
23 tariffs that were approved by the Commission and also with
24 the statistical meter sampling variance that's been
25 requested is nothing unique or unusual. They have been

1 practices that have been followed by other utilities
2 throughout this state. The Commission has gone ahead and
3 approved those.

4 If indeed the Commission wants to review
5 whether or not various kinds of inside inspections should
6 be done, that no other utility in this state is doing
7 today to my knowledge, then it would seem to me that the
8 proper place to do that is in a general investigation of
9 those particular practices.

10 I don't believe that kind of investigation
11 is necessary, but there is nothing unique or special about
12 Laclede that would suggest that if we're going to go ahead
13 and rewrite the practices that are followed by utilities
14 outside this state, that it should be done with Laclede
15 and Laclede only. These are things that, you know, aren't
16 required by any kind of a safety rule that the Commission
17 has imposed. They're not something that any other
18 utility, to my knowledge, does today.

19 And I would suggest that you don't even
20 have the necessary parties involved here, because if the
21 Commission should determine that there's some kind of
22 safety consideration that mandates some type of change in
23 practice from what we're observing today, then that's a
24 change in practice that would have to be, it seems to me,
25 as a matter of pure logic done throughout the state by

1 every LDC, every municipality that's subject to the
2 Commission's jurisdiction.

3 And it just seems to me to be a poor
4 vehicle for making that determination to have one company
5 being evaluated to see whether or not that should happen.

6 JUDGE DIPPELL: Mr. Schwarz?

7 MR. SCHWARZ: Well --

8 MS. SCHRODER: I'm sorry. Was that
9 Mr. Pendergast?

10 JUDGE DIPPELL: Yes.

11 MS. SCHRODER: All right. And who is this
12 getting ready to talk now?

13 MR. SCHWARZ: Tim Schwarz, Deputy General
14 Counsel for the Commission.

15 MS. SCHRODER: Thank you.

16 MR. SCHWARZ: Just going through the
17 allegations in the complaint, paragraph 6 ends, this
18 current mandatory safety precaution will be lost should
19 the annual readings be abandoned and remote meter readings
20 be allowed to constitute actual inside meter readings.
21 That is not a request for relief as I understand requests
22 for relief.

23 Paragraph 7, the last sentence says, under
24 the proposed tariff, Laclede may continue gas supply to
25 premises if requested by the succeeding customer, thus

1 nullifying the inspection currently made upon a transfer
2 of service from one party to another. That's an
3 allegation of fact. It is not a request for relief.

4 Paragraph 8, Local 5-6 has had
5 conversations with Laclede Gas regarding this matter.
6 Again, a statement of fact, not a request for relief.

7 Paragraph 9, Local 5-6 seeks the
8 opportunity to investigate the impact on public safety.
9 Again, if it is a request for re-- if that constitutes a
10 request for relief, it is not a complaint alleging a
11 violation.

12 Paragraph 10, PSC has jurisdiction.
13 Paragraph 11, Laclede is required to provide safe and
14 adequate service. And then the second numbered paragraph
15 11, which should of course be 12, I'm sure that's just a
16 typo, the steel workers is not the type of association
17 that requires a list of members.

18 If the Union wants three or four days to
19 amend the complaint to actually state specific -- a
20 specific basis for it, I think that would be suitable. In
21 the alternative, I think -- and I think more properly the
22 Commission should simply treat this as it was originally
23 pled, which is a request for an investigation as to the
24 safety implications of the AMR program.

25 I would point out in that respect that we

1 have two utilities in this state, Missouri Gas Energy on
2 the western end and Ameren scattered in various places,
3 whose gas operations use AMR, which might serve as at
4 least in part the basis for an investigation. But I think
5 that the thrust of the document that the Union filed to
6 initiate this case is far better characterized as a
7 request for an investigation as compared to a complaint.

8 JUDGE DIPPELL: Okay. This is Judge
9 Dippell. And we are -- we've already entertained motions
10 to dismiss in this matter and determined that the case
11 should go forward, so I'm not going to dismiss on that
12 basis.

13 I suppose that Mr. Schwarz is correct in
14 that the claim for relief may not be very clear in the
15 complaint. Looking at the complaint, though, I think it
16 was falling under the statute more than the rule. And in
17 order to come into compliance with the Commission's rule,
18 I will allow the Union to amend their complaint to clarify
19 their request for relief.

20 MS. SCHRODER: Thank you, your Honor, and I
21 will get that filed this week.

22 JUDGE DIPPELL: All right. Let's go back.
23 As to whether this should be an investigation into all
24 utilities or all of these types of utilities that are
25 operating in this way instead of a specific complaint, I'm

1 going to have to think about that one a little more, and
2 that would be something that the Commissioners would have
3 to be involved in if this were to become a more broad
4 complaint or investigation as the case may be.

5 As it's stated right now, specific parties
6 came in and complained about something specific that
7 Laclede is doing, and so we're going to move forward with
8 this complaint as it is in its form right now. I'm going
9 to let the Union amend that.

10 Mr. Schwarz, you look like you want to say
11 something else.

12 MR. SCHWARZ: Well, the procedural posture
13 of the two cases is different. Laclede is the proponent
14 in the GE case, which is the waiver case, and I can
15 understand if the union wants to do some discovery of the
16 company in that case.

17 But the Union is the party that's proposing
18 action in the GC case, and I think rather that the need
19 for discovery in the GC case is that of the company, the
20 Staff and the Office of the Public Counsel needing to
21 discover the basis of the Union's allegations and
22 assertions in the complaint case. That is, I think that
23 to the extent that the Union has filed its complaint, that
24 the need for discovery is on the side of the Staff and the
25 company and the Public Counsel.

1 And I would suggest that, in that regard,
2 the -- certainly the Staff is in the process of preparing
3 its discovery, which I quite frankly think would best be
4 handled directly by deposition, and I would be looking to
5 send a Notice of Deposition out this week probably for the
6 very near future, because it's my impression that the
7 Commission does not want these cases to lag.

8 JUDGE DIPPELL: You are correct on that
9 understanding. And so what's going to happen, then, is
10 I'm going to allow Ms. Schroder to go ahead and amend her
11 claim for relief if she'd like to make a case for this
12 being an actual specific complaint. Staff can continue on
13 with its requests, and they can respond to that amended
14 and make any recommendations for the Commission, how you
15 think the Commission should proceed, if it should be an
16 open investigation or proceed further, and the Commission
17 may very well change course on that.

18 I agree that the procedural posture of the
19 two cases is different, and the reason that I called this
20 conference together is because we're all the same parties
21 and similar issues. So I think that's how that's going to
22 go forward. As with the waiver, because the time is
23 running on that, I want that one to definitely -- I want
24 both of them to move along quickly from here on out, but I
25 definitely don't want that one to lag any longer than need

1 be.

2 MR. SCHWARZ: Might I inquire of the Bench,
3 does the Commission have some time horizon or schedule in
4 mind generally for the waiver case?

5 JUDGE DIPPELL: No. Just that the waiver
6 was requested through the end of 2006, so it's going to
7 become a moot point quickly if not acted on quickly.

8 Ms. Schroder, are you expecting that your
9 discovery in the waiver case will be similar to that?

10 MS. SCHRODER: Well, that was the timetable
11 that I was looking at for both of them, but I can
12 definitely consolidate that. So if you want to have all
13 of the discovery finished by the end of March, I suppose I
14 can do that.

15 MR. PENDERGAST: Your Honor, I think a
16 couple observations about discovery. This is a complaint
17 that's been brought by Laclede's union employees. These
18 are people that are familiar with our operations, that are
19 out in the field. The nature of their complaints would
20 suggest that they are motivated by their own observations
21 of what is necessary and what isn't.

22 And under those circumstances, it's not as
23 if they're a third party that comes to the enterprise
24 without any knowledge to begin with. It really seems to
25 me that the most productive way, as Mr. Schwarz indicated,

1 to conduct discovery is to have a quick round of
2 depositions, if that's necessary, and then have a quick
3 hearing to determine whether or not a variance that has
4 previously been granted to other LDCs in connection with
5 this very issue should or should not also be granted to
6 Laclede so that the variance will have some meaning before
7 AMR is completely implemented.

8 So we'll be happy to work with the Union,
9 but I think your observation that the waiver needs to go
10 ahead and be put on a faster track here is certainly our
11 perception as well, and we'd like to go ahead and try and
12 facilitate that with the quickest form of discovery that
13 we can.

14 MS. SCHRODER: And again, I don't have any
15 problem with accelerating discovery, but I don't want to
16 be kept from issuing Data Requests and getting documents
17 that support the, as Mr. Pendergast indicated,
18 observations from the field. We do have a basis of
19 observations from the field, but we're not in control of
20 documents, and the entity with the greatest control over
21 that documentation is going to be Laclede, and we need a
22 route to reach those documents.

23 Now, we can do that through document
24 requests with Deposition Notices, that's fine, or Data
25 Requests that are sent at the same time as the round of

1 depositions are going.

2 JUDGE DIPPELL: Okay. This is Judge
3 Dippell again. I'm not concerned about -- I'm going to
4 let you-all worry about which is the fastest way to do
5 discovery. If it's quickest for you to do some Data
6 Requests in conjunction with depositions or whatever,
7 that's fine, but I do want to move these along.

8 I don't think it's going to be necessary in
9 the waiver case for prefiled testimony and that kind of
10 thing to drag things out. I think we can set it for
11 hearing with live testimony and that kind of thing,
12 because that will just slow us down even more. I'm going
13 to let you-all work out your discovery.

14 Mr. Dandino?

15 MR. DANDINO: Your Honor, kind of following
16 up on what Mr. Schwarz asked, does the Commission have a
17 set -- set a date or can we set a hearing date now with
18 the idea of, you know, give us a target, and I think then
19 we can work the discovery in on that?

20 JUDGE DIPPELL: The Commission doesn't
21 specifically have a date. I did bring the updated version
22 of the Commission's calendar. And I would -- I would like
23 to see this set maybe the first week in April, if that's
24 available with the parties, at least with the waiver side
25 of it. We can determine about the complaint, like I say,

1 after we see the amended request for relief and go forward
2 from there.

3 I mean, I know this has been pending here
4 at the Commission and everything, but at least part of
5 that was the complaint. So it's not like discovery
6 couldn't have been going on while it was pending here at
7 the Commission. So I'm going to count on you-all to just
8 find the most efficient method from here on out and speed
9 it up and see what you can do about getting this set and
10 we'll get it decided.

11 Is there any other issues that need to be
12 brought up on the record?

13 MS. SCHRODER: Yes. Judge Dippell, I feel
14 that I should mention that we actually were getting ready
15 and are intending to file a motion pursuant to statute
16 386.310.1 seeking an immediate order that Laclede
17 reinstitute these gas appliance inspections that we
18 understand have actually ceased with regard to places
19 where they've already installed the AMR.

20 And we understand that they've now
21 installed about one-third of those meters, and that
22 that's -- basically, we're getting to kind of a critical
23 mass point where that issue really needs to be looked at
24 and decided pretty quickly. So we were going to do that,
25 and that would probably cause a very quick hearing anyway.

1 JUDGE DIPPELL: Well, we'll look forward to
2 the filing of your motion.

3 Are there any other issues that need to be
4 brought up on the record? What I'll do is give you-all a
5 copy of the Commission's calendar, and you-all can discuss
6 further your discovery and dates off the record and
7 anything else you need to discuss privately after I leave
8 the room.

9 Okay. Seeing nothing further, then I'll go
10 ahead and go off the record. Thank you.

11 WHEREUPON, the recorded portion of the
12 procedural conference was concluded.

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