

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

**STAFF RESPONSE TO USW LOCAL 11-6'S REQUEST FOR ISSUANCE
OF ADDITIONAL SUBPOENAS, OR IN THE ALTERNATIVE,
MOTION TO QUASH SUBPOENAS**

Comes now the Staff of the Missouri Public Service Commission (Staff) and respectfully submits as follows:

1. The Hearing in this case commenced on December 11, 2006 and continued on December 12, 2006. The hearing is currently set to resume on February 14, 2007.

2. On December 21, 2006, USW Local 11-6 filed its Motion to File Testimony Out of Time About Newly Discovered Drill-Through and Major Leak (Motion). USW Local 11-6 filed the testimony of two witnesses (Mark Boyle and Jim Johnson) on January 8, 2006, the same day that the Commission issued its Order Granting Motion to File Additional Testimony and Removing Highly Confidential Designation of Motion. The Commission granted USW Local 11-6 until January 12, 2007, to file any additional testimony. USW Local 11-6 chose not to file any additional testimony after January 8, 2007.

3. On January 17, 2007, USW Local 11-6 filed its Request for Issuance of Additional Subpoenas (Request). This Request first notes that Local 11-6 was granted leave to file additional testimony and did so (Request at p. 1, paragraph 1).

4. In the Request, Local 11-6 states:

2. Local 11-6 anticipates that the witnesses' credibility may be wrongfully impugned in a manner that can only be rebutted by testimony from third parties who have refused to voluntarily appear in this matter. Local 11-6 bases this belief on statement by Laclede in its opening statement on December 11, 2006, as well as in its written opposition to Local 11-6's motion for leave to file additional testimony.

(Request at p.1, paragraph 2).

5. Local 11-6 then explains in detail how it anticipates that Laclede might attack the credibility or lack thereof of Local 11-6's two latest witnesses (Request at p. 2, paragraphs 3-4). Local 11-6 then states that it should be able to put yet additional witnesses whose testimony is unknown who might theoretically bolster the credibility of the two latest Local 11-6 witnesses after Laclede destroys such credibility at the hearing on February 14, 2007.

6. Local 11-6 seems to think that it can put on live testimony at the hearing to bolster the credibility of its witnesses who properly prefled testimony under Commission Orders and 4 CSR240-2.130. This rule, with one exception which is not applicable here, does not provide for live testimony to rebut prefled testimony as Local 11-6 seeks to do. In other words, the Parties are limited to the submission of prefled testimony and cross-examination of those witnesses who have so file. Local 11-6 seeks to have additional live testimony, at its sole discretion. This is not permissible and for this reason the subpoenas should not be issued or in the alternative, the subpoenas should immediately be quashed.

7. The Commission dealt with a similar issue in Case No. ER-2006-0315. In its Order Quashing Subpoenas issued on November 16, 2006 (p. 3-6), the Commission correctly declined

to allow two witnesses who had not prefiled testimony for the true-up portion of the hearing to be subpoenaed to provide live testimony.

8. Likewise, in the present case, the Commission should deny Local 11-6's attempt to put in additional live testimony. Local 11-6 is merely trying to bring in additional witnesses that, in order to testify, had to file prefiled testimony by January 12, 2007. The mere fact that Local 11-6 has just now realized that Laclede might reasonably attack the credibility of Local 11-6 witnesses is no justification to grant Local 11-6's Motion. The granting of the Request would deprive the other Parties of due process. For this reason also, the Request should be denied.

9. Finally, Local 11-6's attempt to rely on 4 CSR 240-2.130(8) is unreasonable. Rule 4 CSR 240.2130(8) provides as follows:

(8) No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed *which arise at the hearing* (emphasis added). This provision does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information with actual results.

10. Local 11-6's Request is unreasonable because, at the date of the filing of this Response, there are currently twenty-six (26) days prior to the hearing. Accordingly, it is impossible to give credence that Local 11-6 can state now that it will need the opportunity to address matters not previously disclosed which will arise at the hearing. Furthermore, Local 11-6's Request details what it thinks might happen at the hearing. Local 11-6 should know that Laclede might attack the credibility of its witnesses. That is obviously no surprise. Furthermore, Local 11-6 is not entitled to any relief because it failed to timely obtain the testimony of these witnesses.

WHEREFORE Staff requests that the Commission deny Local 11-6's Request, or if already granted, then quash any subpoenas already issued.

Respectfully submitted,

/s/ Robert V. Franson

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 19th day of January 2007.

/s/ Robert V. Franson