

**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.	)

**LACLEDE GAS COMPANY’S MOTION TO DISMISS COMPLAINT OR, IN  
THE ALTERNATIVE, MOTION FOR A MORE DEFINITE STATEMENT, AND  
MOTION TO STRIKE REQUEST FOR RELIEF AND, IN THE ALTERNATIVE,  
ANSWER TO COMPLAINT**

**COMES NOW** Laclede Gas Company (“Laclede” or “Company”) and files this Motion to Dismiss Complaint or, in the alternative, Motion For a More Definite Statement, and Motion to Strike Request for Relief and, in the Alternative, Answer to Complaint, and in support thereof, states as follows:

1. In the first half of 2005, Laclede began installing automated meter reading (“AMR”) units throughout its system. In January 2006, representatives of USW Local 11-6 (“Local 11-6” or the “Union”) alleged to Laclede that numerous instances of gas leaks were being caused by AMR installations. Laclede denied that this was occurring, and requested that the Union provide details to support its allegation. No such details were provided. On April 11, 2006, Laclede received a Notice of a Complaint filed in this case by the Union. The gravamen of the Complaint is contained entirely in paragraphs 7 and 8, in which the Union alleges, solely “upon information and belief,” that (i) adequate training is not being provided to individuals who are installing AMR units on Laclede’s

residential meters; and (ii) numerous instances of meter damage and gas leaks have resulted from these installations.

**MOTION TO DISMISS OR, IN THE ALTERNATIVE,  
MOTION FOR A MORE DEFINITE STATEMENT**

2. Section 386.390.1<sup>1</sup> and Commission Rule 4 CSR 240-2.070(3) require the Complainant to set forth any act or thing done or omitted to be done that violates a law, or a rule, order or decision of the Commission. The Complaint fails to do so, and should therefore be dismissed.

3. While it is not fatal to a complaint to draw inferences based “upon information and belief,” those inferences should be drawn from actual facts that can be stated regarding things that were done or omitted to be done. Hence, in this case, the Complainant could allege through inference that there is an omission of adequate training, *if* the Complainant could factually state that AMR installers have indeed caused numerous instances of meter damage and gas leaks. Instead, the Complainant uses “information and belief” to first imply that the AMR installers have caused numerous instances of meter damage and gas leaks and then, from this unsupported implication, to infer that the AMR installers must be inadequately trained.

4. As it did earlier in the year, the Union makes its allegations without support. In fact, the Union does not offer *even one* example of a damaged meter or gas leak caused by an AMR installer, much less “numerous” instances.

5. Without such information, Laclede cannot, and should not be expected to, respond to the Complaint. By failing to set forth any act or thing done or omitted to be done, the Union’s unsupported allegations fail to comply with the Commission’s rules for

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<sup>1</sup> Except where otherwise indicated, all references are to the Revised Statutes of Missouri.

filing a complaint. Laclede therefore requests that the Commission dismiss the Complaint pursuant to Rule 2.070(3) and (6) or, in the alternative, require the Union to state facts that identify acts or things done or omitted to be done by Laclede that support the Union's information and belief that numerous instances of meter damage and gas leaks have resulted from AMR installations, and that adequate training is not provided to individuals who perform AMR installations.

6. In its current form, the Union's pleading is nothing more than a fishing expedition. Based on the positions taken by the Union in GE-2005-0405, GC-2006-0060 and GC-2006-0313, the clear purpose of this fishing expedition is to reel in more jobs or duties for Union members at the expense of ratepayers. Indeed, in the Complaint in this case, Local 11-6 dispenses with any pretense and makes a bald-faced demand that the Commission order Laclede to exclusively use Union members to install AMR units, and to check those units that have already been installed. As discussed below, the relief requested by the Union falls outside the bounds of the Commission's jurisdiction, and should therefore be struck.

#### **MOTION TO STRIKE REQUEST FOR RELIEF**

7. Local 11-6's request for relief is stated in paragraph 15 of the Complaint, in which the Union asks the Commission to order Laclede to (i) immediately begin using its own trained "non-managerial" personnel (i.e. Union members) to install, or supervise the installation of, AMR units; and (ii) have its trained "non-managerial" personnel promptly inspect each meter already installed by CellNet, the party contracted by Laclede to provide AMR service.

8. Notably, the Union does not request that Laclede be required to improve the training of the parties currently installing AMR units, or that Laclede even be permitted to use employees of its own choosing. Instead, the Union's requested relief confines the Commission to ordering Laclede to use only its trained non-managerial personnel to install AMR units.

9. While the Commission certainly has the regulatory powers to examine and be kept informed of the methods and practices employed by Laclede in the transaction of its business, as provided in Section 393.140.5, the Missouri Supreme Court has stated that the Commission's authority to regulate does not include the right to dictate the manner in which the Company shall conduct its business. (*See State ex rel. City of St. Joseph v. PSC*, 30 S.W. 2d 8, 36 (Mo. 1930); *State ex rel. Kansas City Transit, Inc. v. PSC*, 406 S.W.2d 5 (Mo. 1966). In *City of St. Joseph*, the Court stated: "The customers of a public utility have a right to demand efficient service at a reasonable rate, but they have no right to dictate the methods which the utility must employ in the rendition of that service."

10. In *State ex rel. Laclede Gas Company v. P.S.C.*, 600 S.W.2d 222, 228 (Mo. App. W.D. 1980), the Court stated that, although the Commission has the authority to regulate local distribution companies, it does not have the "authority to take over the general management of any utility."

11. The Commission has repeatedly followed this principle. Regarding Southwestern Bell's business meal expenses, the Commission stated: "It is not the function of the Commission to tell SWB how to run its business; rather, its duty is to set just and reasonable rates." (*PSC Staff v. Southwestern Bell Telephone Co.*, 2 Mo. P.S.C.

3d 479, Case No. TC-93-224 (1993)). Along these same lines, Missouri law also makes it clear that the Commission's authority does not extend to management-labor issues that are the subject of a collective bargaining agreement between the utility and a labor organization. (*See* Section 386.315.1).

12. Applying these principles to the instant case, the Commission may not dictate which specific personnel Laclede must use to install AMR units. Indeed, to Laclede's knowledge, the Commission has never even attempted to assert jurisdiction over issues such as whether a utility should use in-house legal services versus outside counsel, have its own accounting staff or use outside accounting services, or use its own employees to install utility facilities versus hiring an outside contractor to perform such work. The Commission has refrained from doing so for good reason -- namely because such an intrusion would strike at the very heart of a utility's recognized right to manage its business. Yet it is the very premise that the Commission may exercise such authority, and solely that premise, that underlies the Union's Complaint and request for relief. Consistent with decades of regulatory law and practice, the Commission should reject such an approach and strike the relief requested by the Union.

#### **ANSWER TO COMPLAINT**

13. Pending Commission action on Laclede's Motion for a More Definite Statement and Motion to Strike Requested Relief, Laclede submits the following as its Answer to the Complaint. In the event the Commission orders the Union to provide a more definite statement of its Complaint, or amend its requested relief, Laclede reserves the right to amend its answer thereto.

14. Laclede agrees with the allegations made in paragraphs 1-6 of the Complaint.

15. Without any specific facts regarding the “numerous” AMR installations that have resulted in meter damage and gas leaks, or the inadequacy of the training of AMR installers, Laclede is without sufficient information to provide a specific answer, and therefore denies the allegations made in paragraphs 7 and 8 of the Complaint.

16. Laclede denies the allegation in paragraph 9 of the Complaint that Local 11-6 has had conversations with Laclede. Local 11-6 has communicated to Laclede its desire to perform AMR installations, and its belief that the non-Local 11-6 AMR installers have caused numerous gas leaks, but upon request, Local 11-6 has failed or declined to provide specific information regarding these alleged numerous gas leaks. Laclede would not characterize a question followed by a non-response as a conversation.

17. Regarding paragraph 10 of the Complaint, Laclede is without knowledge to state whether Section 386.250 RSMo establishes Commission jurisdiction over other public utility commissions. Laclede avers that Section 386.390.1 pertains to complaints before the Commission, and speaks for itself. Regarding paragraph 11 of the Complaint, Section 393.297 RSMo speaks for itself.

18. Regarding paragraph 12 of the Complaint, Laclede agrees that Section 393.130 RSMo pertains to safe and adequate service. Laclede denies the allegation in the second sentence of paragraph 12.

19. Regarding paragraphs 13 and 14 of the Complaint, the referenced sections of the Missouri statutes speak for themselves.

20. As discussed above, Laclede denies that the relief requested in paragraph 15 of the Complaint is either within the Commission's jurisdiction or appropriate.

21. Laclede is without knowledge sufficient to answer the allegations in paragraph 16, and so denies the same.

WHEREFORE, Laclede respectfully requests that the Commission grant the Company's motions set forth herein and order such other and further relief to which it may be entitled.

Respectfully Submitted,

**/s/ Michael C. Pendergast**

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**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Complainant, the General Counsel of the Staff of the Missouri Public Service Commission, and the Office of Public Counsel on this 11th day of May, 2006 by United States mail, hand-delivery, email, or facsimile.

**/s/ Rick Zucker**