

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

USW Local 11-6)	
)	
	Complainant,)
v.)	Case No. GC-2006-0060
)	
Laclede Gas Company,)	
	Respondent.)

MOTION FOR LEAVE TO FILE FOR SUMMARY DETERMINATION

COMES NOW Laclede Gas Company (“Laclede” or “Company”) and files this Motion for Leave to File for Summary Determination, and in support thereof, states as follows:

1. On February 10, 2006, USW Local 11-6 (the “Union”) filed an amended complaint in this case. On March 13, 2006, Laclede filed its answer and moved to dismiss the Union’s amended complaint on the grounds that, even if all of the facts alleged by the Union therein were true, the amended complaint failed to state a claim upon which relief can be granted. On April 4, 2006, the Commission issued its Second Order Denying Motion to Dismiss and Directing Filing.

2. On April 11, 2006, the Commission issued an Order Denying the Union’s Motion for Immediate Relief (the “Order”). On page 4 of the Order, the Commission stated that there has been no showing by the Union that Laclede’s current practice of not performing TFTO inspections violates any federal or state safety requirements; that the Union has likewise failed to demonstrate that such inspections are being performed by other utilities or that there are any distinguishing characteristics involving Laclede that would warrant imposing such a requirement on it but not on other utilities.

3. On May 5, 2006, the Union filed its direct testimony, sponsored by four witnesses who intend to adopt such testimony at the hearing. During the week of May 8, 2006, Laclede took depositions of three of these witnesses. On May 18, 2006, the parties filed their briefs in this case.

4. As stated in the attached Motion for Summary Determination, none of the pleadings or evidence submitted by the Union subsequent to the April 11 Order have addressed the shortcomings set forth in the Order.

5. Commission Rule 4 CSR 240-2.117(1)(A) states that a motion for summary determination will not be filed less than 60 days before the hearing except by leave of the Commission. Laclede therefore seeks leave of the Commission to file its Motion for Summary Determination. Laclede could not have filed such motion prior to the 60 day deadline, because it had not yet received the Union's May 5 testimony, nor had it taken depositions of Union witnesses. Laclede is filing this Motion as soon as reasonably possible under the circumstances.

WHEREFORE, Laclede respectfully requests that the Commission grant Laclede leave to file a Motion for Summary Determination in this case, a copy of which is attached hereto.

Respectfully Submitted,

/s/ Michael C. Pendergast

Michael C. Pendergast, #31763

Vice President & Associate General Counsel

Rick Zucker, #49211

Assistant General Counsel-Regulatory

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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 19th day of May, 2006 by United States mail, hand-delivery, email, or facsimile.

/s/ Rick Zucker

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MOTION FOR SUMMARY DETERMINATION

COMES NOW Laclede Gas Company (“Laclede” or “Company”) and files this Motion for Summary Determination, and in support thereof, states as follows:

1. On February 10, 2006, USW Local 11-6 (the “Union”) filed an amended complaint in this case. On March 13, 2006, Laclede filed its answer and moved to dismiss the Union’s amended complaint on the grounds that, even if all of the facts alleged by the Union therein were true, the amended complaint failed to state a claim upon which relief can be granted. On April 4, 2006, the Commission issued its Second Order Denying Motion to Dismiss and Directing Filing.

2. On April 11, 2006, the Commission issued an Order Denying the Union’s Motion for Immediate Relief (the “Order”). On page 4 of the Order, the Commission stated that:

- A. there has been no showing by the Union that Laclede’s current practice of not performing TFTO inspections violates any federal or state safety requirements; and
- B. the Union has likewise failed to demonstrate that such inspections are being performed by other utilities or that there are any distinguishing characteristics

involving Laclede that would warrant imposing such a requirement on it but not on other utilities.

3. On May 5, 2006, the Union filed its direct testimony, sponsored by four witnesses who intend to adopt such testimony at the hearing. During the week of May 8, 2006, Laclede took depositions of three of these witnesses. On May 18, 2006, the parties filed their briefs in this case.

4. None of the pleadings or evidence submitted by the Union subsequent to the April 11 Order have addressed the shortcomings identified in the Order. While the Union has attempted to support its request that the Commission require Laclede to restore the TFTO inspections and annual inside meter reads by referencing safety concerns, nowhere in its testimony or pleadings has the Union demonstrated that Laclede's current practice of not performing these activities violates any federal or state safety requirements, nor has the Union shown that such inspections and annual inside meter reads are being performed by other utilities, or that there are any distinguishing circumstances involving Laclede that would warrant imposing such a requirement on it but not on other utilities.

5. The Commission has afforded the Union ample opportunities to state a claim by alleging acts done or omitted to be done that violate a law, or a rule, decision or order of the Commission, in accordance with 386.390 RSMo 2000 and 4 CSR 240-2.070. The Union has wholly failed to state such a claim.

6. In fact, in depositions, Union witnesses conceded that Laclede's practices comport with current rules, and that they had no idea whether other gas utilities perform TFTO inspections or annual inside meter reads. (Deposition of Joseph Schulte, p.108,

1.2-13; Deposition of Stephen Hendricks, p.80, 1.18 to p.81, 1.8; Deposition of Kevin Stewart, p. 105).

7. The only witnesses who did directly address these issues were Staff witness Robert Leonberger and Laclede witness Tom Reitz, both of whom testified that no gas utility in Missouri or, for that matter, in the United States is required to perform a gas safe inspection when service is transferred to a new customer without affecting the flow of gas. (Leonberger Direct, p.4, 1.11-22; Reitz Direct, p.5, 1.12-16). Nor did Mr. Reitz or any other witness indicate that there are any unique or differing circumstances involving Laclede's operations that would suggest such inspections are necessary to provide safe service to Laclede's customers, but unnecessary to provide safe service to all of the other customers served by other utilities in Missouri and throughout the country. (Reitz Direct, p.5, 1.16-20).

8. This matter is ripe for summary determination because there are no genuine issues of material fact. The material facts are set forth in the following separately numbered paragraphs.

9. First, in connection with its implementation of an automated meter reading ("AMR") program, Laclede has stopped performing TFTO inspections, as alleged by the Union in its Amended Complaint. Such inspections are not required by any law, or rule, order or decision of the Commission.

10. Second, also in connection with its implementation of AMR, Laclede has stopped performing yearly manual inside meter readings, as alleged by the Union in its Amended Complaint. Such yearly manual meter readings are also not required by any law, or rule, order or decision of the Commission.

11. Finally, the complete absence of any allegation of violations in this complaint substantiates the position that the true motivation in this and other complaints brought by the Union is not safety-related, but rather to maintain the work functions that Union members have historically performed (See Schulte Deposition, p.110, 1.13-25 and p.158, 1.9-25). These work functions are, in turn, the subject of a collective bargaining agreement between Laclede and the Union. The Union is currently pursuing its rights under that agreement to challenge the actions that have been taken by the Company by filing grievances regarding these issues. Because these labor-management matters are the subjects of the collective bargaining agreement, they clearly fall outside of the Commission's purview pursuant to 386.315 RSMo 2002. The Commission should therefore dismiss this case.

12. A separate legal memorandum is attached hereto.

WHEREFORE, Laclede respectfully requests that the Commission grant Laclede's Motion for Summary Determination and dismiss this case.

Respectfully Submitted,

/s/ Michael C. Pendergast

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The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Complainant and all parties to this case on this 19th day of May, 2006 by United States mail, hand-delivery, email, or facsimile.

/s/ Rick Zucker

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Laclede Gas Company,)	
	Respondent.)

**LEGAL MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY DETERMINATION**

COMES NOW Laclede Gas Company (“Laclede” or “Company”) and files this Legal Memorandum in support of its Motion for Summary Determination, stating as follows:

1. Laclede and the Union are in agreement on the material facts set forth in the Unions’ Amended Complaint in this case. Those facts are:

2. First, in connection with its implementation of an automated meter reading (“AMR”) program, Laclede has stopped performing TFTO inspections, as alleged by the Union in its Amended Complaint. Such inspections are not required by any law, or rule, order or decision of the Commission.

3. Second, also in connection with its implementation of AMR, Laclede has stopped performing yearly manual inside meter readings, as alleged by the Union in its Amended Complaint. Such annual meter readings are not required by any law, or rule, order or decision of the Commission.

4. Neither in the Amended Complaint, nor in any of its testimony or other pleadings, has the Union yet been able to identify even one law or Commission rule, order or decision that it claims Laclede has violated. The Union’s general reference in its

May 18 Brief to two safety-related statutes, Sections 386.010 (sic)¹ and 393.130 RSMo 2000, cannot succeed given the fact that, pursuant to 536.010(4) RSMo 2000, the Commission has promulgated rules implementing safety requirements, and that these rules directly address the obligations of the Company and other gas corporations with respect to both periodic inspections of Company equipment and inspections required upon the initiation of gas service. In other words, the Commission cannot promulgate safety rules applicable to Laclede, and then find that Laclede is in violation of a safety statute by interpreting that statute in a manner that directly conflicts with the safety rules.

5. Although the Commission has provided the Union with ample opportunities to allege facts that constitute a violation of a Commission rule, order or decision, in the end, the Union was unable to do so. After filing numerous pleadings in this case, along with four pieces of testimony and three depositions, the Union still does not, and cannot, claim a violation.

6. With respect to TFTO inspections, Commission Rule 40.030(12)(S) specifically requires inspections of customer equipment only when the utility physically turns on the flow of gas. The action by Laclede to cease inspections when the flow of gas is not interrupted clearly does not violate Commission rules. This situation is analogous to driving 30 mph on a road with a speed limit of 40 mph. If the driver increases her speed to 35 mph, it could be argued that she might not be exactly as safe as when she was driving 30 mph, but it cannot be argued on these facts that, if she does not reduce her speed back to 30 mph, she has violated the speed limit and is subject to a citation. Similarly, the Union may prefer that Laclede continue to perform TFTO inspections, but

¹ The Union's quoted paragraph is from 386.310 RSMo.

if Laclede does not do so, the Union cannot state a cause of action under a complaint case.

7. The same analysis applies to the annual inside meter readings. There is no law, or Commission rule, order or decision that requires yearly manual inside meter readings. Under Commission Rules 40.030(13)(M)2 and 40.030(9)(Q), Laclede must perform periodic leak surveys and corrosion inspections. The Union does not, and cannot, complain that Laclede has failed to comply with these rules. Instead, the Union merely alleges that these surveys will not be performed by meter readers. The analogy to this would be for the Union to complain that Laclede's annual report to the Commission, which must be attested to by an Officer, was signed by its Vice-President of Finance, when the Union believes it should be signed by the Chief Financial Officer. Since both entities are eligible to sign the report, it does not state a claim to allege that one signed rather than the other. Likewise, the Union does not state a claim by complaining that Laclede will no longer choose to use meter readers to perform certain inspections.

8. In summary, the Union has completely failed to show that Laclede's current practice of not performing TFTO inspections violates any federal or state safety requirements, and likewise failed to demonstrate that such inspections are being performed by other utilities or that there are any distinguishing characteristics involving Laclede that would warrant imposing such a requirement on it but not on other utilities.

9. Finally, the complete absence of any allegation of violations in this complaint substantiates the position that the true motivation in this and other complaints brought by the Union is not safety-related, but rather to maintain the work functions that Union members have historically performed (See Schulte Deposition, p.110, 1.13-25 and

p.158, 1.9-25). These work functions are, in turn, the subject of a collective bargaining agreement between Laclede and the Union. The Union is currently pursuing its rights under that agreement to challenge the actions that have been taken by the Company by filing grievances regarding these issues. Because these labor-management matters are the subjects of the collective bargaining agreement, they clearly fall outside of the Commission's purview pursuant to 386.315 RSMo 2002. The Commission should therefore dismiss this case.

WHEREFORE, Laclede respectfully requests that the Commission accept this Legal Memorandum, grant the Company summary determination and dismiss the Amended Complaint filed by the Union in the above captioned case.

Respectfully Submitted,

/s/ Michael C. Pendergast

Michael C. Pendergast, #31763

Vice President & Associate General Counsel

Rick Zucker, #49211

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