BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

United Steelworkers of America, Local No. 5-6, AFL-CIO	)	
Complainant,	)	
v.	)	Case No. GC-2006-0060
Laclede Gas Company,	)	
Respondent.	)	

LACLEDE GAS COMPANY'S MOTION TO DISMISS AMENDED COMPLAINT AND, IN THE ALTERNATIVE, ANSWER TO AMENDED COMPLAINT

COMES NOW Laclede Gas Company ("Laclede" or "Company"), and submits its Motion to Dismiss the Amended Complaint (herein so called) filed against Laclede by the United Steelworkers of America, Local No. 5-6, AFL-CIO ("the Union"), formerly known as Paper, Allied-Industrial, Chemical, and Energy Workers Local No. 5-6. In the event the commission does not dismiss the Amended Complaint, Laclede also submits its Answer thereto.

BACKGROUND

1. In March 2005, Laclede announced that it would implement an automated meter reading system ("AMR") throughout its service territory, covering approximately 650,000 customers. Because nearly 40% of Laclede's meters are located inside customers' homes, the AMR program would eliminate both the need to regularly gain entry to these homes to read those meters, and the need to estimate customer usage when Laclede is unable to enter the home. Unquestionably, this technology will provide a major benefit to Laclede's customers. Other major gas and electric utilities in Missouri

have already adopted automated meter reading. In fact, Laclede has contracted with the same supplier of AMR units used by AmerenUE.

2. At the same time, implementation of AMR will also eliminate the need to physically obtain regular meter readings, functions currently performed by members of the Union. Despite the clear customer service benefits of AMR, the Union has opposed the Company's pleadings in two matters filed in connection with AMR.

3. In the first matter, Case No. GE-2005-0405, Laclede has requested a temporary variance from its statistical meter sampling program, so that the Company could focus its efforts on removing meters that it knows to be incompatible with the deployment of electronic AMR devices, rather than removing random samples of meters. Staff has recommended that Laclede's request be approved, just as it was for Missouri Gas Energy when that company implemented AMR. The Union has intervened in Case No. GE-2005-0405, and opposed Laclede's requested variance in support of AMR.

4. In the second matter, Laclede filed revised tariffs on May 10, 2005 (i) to confirm that AMR meter readings will be considered actual meter readings, and (ii) to provide that service initiation inspections, known as "TFTO inspections," will not be required, and therefore need not be paid for by the customer, when a new account is being established, but gas flow to the customer's premises has not been interrupted. These tariffs became effective on June 10, 2005.

5. In August 2005, the Union filed its original Complaint in this case, alleging that these tariff changes will eliminate safety precautions and calling into

question whether Laclede will fulfill its statutory obligation to provide safe and adequate service.[1]

6. On February 10, 2006, the Union filed the Amended Complaint, along with a Motion for Immediate Relief seeking to have the Commission require Laclede to immediately reinstitute the TFTO inspections. Laclede filed its opposition to the Motion for Immediate Relief on February 21, 2006.

7. As discussed more fully below, the Amended Complaint should be dismissed, because it fails to state a claim upon which relief may be granted by failing to allege any circumstances or facts that would even suggest a violation of any applicable safety law, or Commission rule, regulation or order. In the event the Commission declines to dismiss the Amended Complaint, Laclede's answer will show that its tariff changes will have no adverse impact on either the Company's compliance with Commission safety rules, or on the Company's provision of safe and adequate service.

MOTION TO DISMISS

8. Laclede hereby moves to dismiss the Complaint for failing to state a claim upon which relief may be granted, as provided under 4 CSR 240-2.070(6). In evaluating whether a complaint states a claim or cause of action, the Commission will consider as true all of the facts alleged by the complainant, and will then determine whether those facts meet the elements of a recognized claim. Eastwood v. North Central Missouri Drug Task Force, 15 S.W. 3d 65 (Mo. App. W. D. 2000). In this case, even assuming all of the facts alleged by the Union are true, the Amended Complaint fails to allege facts sufficient to state a claim under Missouri law or Commission rules.

[1] See Union Complaint in this case, paragraphs 6 and 11.

9. Section 386.390 of the Revised Statutes of Missouri authorizes the Commission to hear complaints. This section states: "Complaint may be made…setting forth any act or thing done or omitted to be done…in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission…" §386.390.1. This statutory section is also codified in Commission Rule 2.070(3).[2]

10. Therefore, in order to state a claim upon which relief may be granted, the Union must set forth facts (i.e., acts or omissions) that, if true, would constitute a violation of the law, or of a Commission rule, order or decision. The Commission should assume the truth of the facts alleged, but should not assume the truth of legal conclusions made by the complainant. State ex. rel. State Tax Commission v. Briscoe, 451 S. W. 2d 1 (Mo. 1970). "Mere conclusions of the pleader not supported by factual allegations are disregarded in determining whether a petition states a claim on which relief can be granted." Commercial Bank of St. Louis Co. v. James, 658 S.W. 2d 17, 21-22 (Mo. banc 1983).

11. In paragraph 6 of the Amended Complaint, the Union alleges (i) that tariff changes have allowed Laclede to treat remote meter readings (such as from its AMR units) as actual meter readings; (ii) that this will result in meter readers no longer annually visiting homes with inside meters; (iii) that two years ago, the meter readers began wearing gas detection devices, and (iv) that the cessation of the annual inside meter reads will cause this "mandatory safety precaution" to be lost. In evaluating this motion to dismiss, the Commission should assume the truth of the first three allegations of fact above, regardless of whether they are factually accurate. However, the fourth

[2] 4 CSR 240-2.070(3)

point makes a legal conclusion that having meter readers wear a gas detection device is a mandatory safety precaution. The Commission should not afford this legal conclusion the assumption of truth. In fact, it is inaccurate. There is no safety rule, mandatory or otherwise, that requires meter readers to either enter a home once per year, or to wear a gas detection device in the event they do enter a home. In conclusion, for purposes of this motion to dismiss, the Commission should treat as true all of the facts, but only the facts, alleged in paragraph 6, those facts being that Laclede will no longer send meter readers wearing gas detection devices to do annual meter reads at homes with AMR devices on inside meters.

12. In paragraph 7 of the Amended Complaint, the Union alleges as fact that, under Laclede's tariff, the company will require inspections upon reestablishing service only in those instances where gas has been physically disconnected at a premises, and that Laclede will not require an inspection upon transfer of service between customers where the flow of gas to the premises is not interrupted. For purposes of this motion to dismiss, the Commission should treat this allegation of fact as true.

13. In paragraph 9 of the Amended Complaint, the Union contends that the facts alleged in paragraphs 6 and 7 will adversely affect public safety. The Union's "contention" is not an allegation of fact, but an argument or conclusion, and the Commission should disregard it. (See Commercial Bank of St. Louis Co., *supra*). If the Commission simply accepts this conclusion as true, then such a conclusion could support any factual allegation, regardless of how ridiculous such allegation might be.[3]

[3] Certainly, if the Union alleged as fact that Laclede required all of its service personnel to wear yellow shirts, the Commission would not have to also accept a conclusory statement by the Union that such action would adversely impact public safety.

14. Likewise, in paragraph 11 of the Amended Complaint, the Union states that Laclede's actions preclude it from fulfilling its statutory obligations to provide safe and adequate service under Section 393.130, RSMo. Like the conclusory allegations in paragraphs 6 and 9, the Commission is precluded from simply accepting this legal conclusion. As stated above, if the Commission must accept a conclusion such as this, there would never be a legal ground for a motion to dismiss, no matter how ludicrous the underlying factual assertions are.

15. Assuming the fact scenarios alleged in paragraphs 6 and 7 to be true, the question for the commission then is, do these acts or omissions constitute a violation of law, or of a Commission rule, order or decision? The answer must be no. The Union does not, and cannot, allege a violation of a law, or of any Commission rule, order or decision resulting from these facts, in spite of the existence of extensive Commission rules covering gas safety.

16. The substance of the statutory requirement to provide safe and adequate service is fleshed out in detail in the Commission's rules (4 CSR 240-40.030). These rules specifically address issues raised in the Amended Complaint, including leak surveys (Rule 40.030(13)(M)2), corrosion inspections (Rule 40.030(9)(Q)), and gas safe turn-on inspections (Rule 40.030(12)(S)). Even assuming all of the Union's alleged facts to be true, there are simply no laws, rules, decisions or orders requiring Laclede or any other Missouri gas corporation to have a meter reader wearing a gas detection device annually enter a home to read an inside meter, or to perform a gas safe inspection when the flow of gas is not interrupted.

17. In other circumstances where there is a comprehensive set of regulations, the courts have not hesitated to find that mere conclusory allegations will not suffice to

support a cognizable claim upon which relief can be granted. This concept is illustrated by the case of Ingle v. Case, 777 S.W. 2d 301 (Mo. App. S. D. 1989), in which the Court affirmed the trial court's order of dismissal because the plaintiff in a car accident case failed to allege facts stating a cause of action for violation of school bus regulations:

> The plaintiffs are not aided by the conclusory allegation the defendants acted in disregard of the statutes, regulations and rules. The transportation of school children is governed by statute. §§ 304.050; 304.060. School bus routes and the operation of school buses are subject to numerous regulations. 5 C.S.R. 30-261 (1988). Such transportation may have been subject to properly adopted rules. But, the first amended petition does not allege *any fact* to establish either defendant did not act in full compliance with the statutes, regulations and rules. Such a general conclusory allegation of a violation does not state a cause of action. "Merely asserting that some provision of the constitution has been violated, without alleging any supporting facts, is the assertion of a legal conclusion and does not constitute a satisfactory statement of facts." State ex. rel. Chicago, Rock Island and Pacific Railroad Company v. Public Service Commission, 429 S.W. 2d 723, 726 (Mo. 1968).

18. The result is that the Commission must dismiss the Amended Complaint, because the Union does not, and cannot, claim that Laclede has violated any law or Commission rule, order or decision. The purpose of complaint cases is to address violations of laws or rules as they are, not violations of laws or rules as we wish they were. If the Union believes that there is a need to change the Commission's safety rules, it is free to file a petition under 4 CSR 240-2.180. While Laclede maintains that TFTO inspections should not be mandated upon consumers by Commission rule, and that the Union cannot sustain its position that there is any matter of public safety at issue here, a rulemaking request, and not a complaint, would nevertheless be the proper avenue for this pursuit.

ANSWER

19. In the event that the Commission does not dismiss this case, Laclede hereby files its Answer to the Amended Complaint. Upon information and belief, Laclede concurs with the assertions made in paragraphs 1-3 of the Amended Complaint.

20. With respect to paragraph 4 of the Complaint, Laclede admits that it submitted proposed tariff revisions on May 10, 2005, under Tracking No. JG-2005-0976, and that such tariffs became effective on June 10, 2005. Laclede is without sufficient knowledge to answer whether these tariff provisions became effective without comment from Staff, and so denies this allegation. If the Union means by this statement that Staff filed no formal pleading addressing these tariffs, then Laclede concurs. However, if the Union means to imply that Staff ignored such tariffs, this is likely untrue. Staff regularly reviews tariff filings, and if it finds a proposed tariff to be questionable or objectionable, Staff will recommend that such tariff be suspended or rejected. If Staff does not make such recommendation, the necessary presumption is that Staff found such proposed tariff to be acceptable.

21. With respect to paragraph 5 of the Complaint, Laclede admits that on June 20, 2005, the Union sought reconsideration of the effective tariffs. Laclede further admits that the Union alleged public safety concerns, but Laclede denies that such concerns are warranted.

22. With respect to paragraph 6 of the Complaint, Laclede admits that it revised Tariff Sheet No. R-11 to provide that remote meter readings constitute actual meter readings. However, Laclede denies that a public safety concern is created by acknowledging the obvious fact that a remote meter reading, such as one received through an AMR system, is an actual meter reading. Performing meter readings does not

raise a safety issue, but rather a measurement and billing issue. That is why meter reading issues are set forth in the Commission's "Service and Billing Practice" rules in Chapter 13, and not in the Chapter 40 safety rules. Laclede further denies the allegations in paragraph 6 of the Complaint that having meter readers wear natural gas detection devices is a mandatory safety precaution, or that safety will be compromised when these physical reads are discontinued.

23. Laclede is required to meet the obligations set forth in the Commission's rule on Gas Safety Standards, 4 CSR 240-40.030. Under Section 13(M)2 of this rule, Laclede is generally required to perform a leak inspection survey of its lines in residential areas at least once every three years (once per year for unprotected steel and soft copper lines). Laclede would further note that this requirement under the Commission's Safety Standards is already more stringent than its federal counterpart, which requires a leak survey only once every five years for lines in residential areas (once every three years for unprotected lines). *See* 49 CFR §192.723. Moreover, Missouri is one of 13 states that impose requirements for leak testing beyond the federal standard.[4] Under Section 9(Q) of the Commission's rules on Safety Standards, Laclede is also required to perform a corrosion inspection, at least once every three years, of each pipeline that is exposed to the atmosphere.

24. The methods used to perform the required inspections described above are left to the discretion of the utility, and such methods may be changed from time to time, so long as the utility maintains compliance with the Safety Standards. In homes with inside meters, where meter readers are able to obtain access to perform annual meter

[4] *Assuring the Integrity of Gas Distribution Pipeline Systems; A Report to the Congress*, U.S. Dept. of Transportation, Office of Pipeline Safety, Attachment 1, pp.1-2 (May 2005)

reads, the Company has equipped these meter readers with natural gas detection devices, so that the meter reader can perform a triennial leak inspection, along with a corrosion inspection, at the same time as the meter reading. With AMR, a physical yearly inside meter reading will no longer be necessary to comply with billing requirements. However, Laclede will still be required to, and will, utilize inspection personnel to perform the leak and corrosion inspections in compliance with Sections 13(M)2 and 9(Q).

25. It cannot be seriously argued that Laclede's decision to have meter readers jointly perform inside meter reads and leak and corrosion inspections is a safety requirement. First, there is no federal or state safety standard that requires a meter reader to either wear a gas detection device or periodically enter a customer's home to perform any such inspections. Second, nearly 400,000 Laclede customers have outside meters, such that any leak and corrosion inspections of these lines are not only accomplished by personnel other than meter readers, but are also accomplished without a Laclede employee ever entering the home. Third, since a customer reading his or her own meter constitutes an actual meter reading, even some of the annual inside meter reads have been, and are currently being, performed without a meter reader entering the customer's home. In such cases, the triennial inspections are performed by other non-meter reading personnel. Fourth, no other gas utility in the State of Missouri with automated meter reading is required to obtain an additional "actual" inside meter reading annually. Surely, none of these four circumstances would exist if the Commission believed that physical yearly meter readings were necessary to protect public safety..

26. With respect to paragraph 7 of the Complaint, Laclede admits that Tariff Sheet No. R-14 was revised in a manner that continues to require service initiation

inspections when Laclede physically turns on the flow of gas for a customer, but that no longer requires such inspections, or requires customers to pay them, when the physical flow of gas has not been interrupted. Although the Complaint does not specifically aver that discontinuing this practice compromises safety, Laclede nevertheless denies that safety is compromised. Again, the Commission's approved Safety Standard rule addresses this issue. Under Section 12(S) of this rule, Laclede is required to perform a gas safe inspection of the customer's equipment *at the time it physically turns on the flow of gas to a customer*.[5] There is no safety standard requiring a utility to inspect or test equipment when gas service is initiated without physically turning on the gas. Indeed, no other gas utility in Missouri is required to perform a gas safe inspection when service is transferred to a customer without affecting the flow of gas. Hence, requiring customers to pay for such inspections is not a true safety issue, but instead is an effort by the Union to have customers pay in perpetuity for work that is not necessary to provide them with safe and adequate service.

27. Laclede admits the allegations in paragraph 8 of the Complaint that Laclede and the Union have discussed this matter.

28. Laclede denies the allegations in paragraphs 9-11 of the Complaint that Laclede's tariff changes will adversely impact public safety and preclude Laclede from fulfilling its statutory obligation to provide safe and adequate service.

CONCLUSION

29. In summary, the Union's claim should be dismissed for failing to state a claim upon which relief may be granted. Even if all of the factual allegations made by

[5] Once again, it should be noted that the federal safety standards do not require utilities to inspect customer equipment, so Missouri's rule is again more stringent than its federal counterpart.

the Union are assumed to be true, these facts do not state any violation of a law, or of a Commission rule, order or decision, as required by the statute and Commission rule regarding complaints.

30. Substantively, implementation of AMR will provide direct benefits to customers with inside meters by reducing their inconvenience and cost in providing Laclede personnel regular access to their homes. At the same time, Laclede will continue to comply with the Commission's strict safety standards by performing required inspections to detect leaks and corrosion, and when initiating service by physically activating the flow of gas. Laclede is committed to following the same safety requirements that apply to all Missouri gas utilities. The Union's desire to impose costs on customers for unnecessary services does not justify singling out the Company for an investigation or calling into question whether it will fulfill its statutory obligation to provide safe and adequate service.

WHEREFORE, Laclede respectfully requests that the Commission dismiss the Amended Complaint filed by the Union in the above captioned case and grant the Company such other and further relief to which it may be entitled.

Respectfully Submitted,

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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 13th day of March, 2005 by United States mail, hand-delivery, email, or facsimile.

/s/ Rick Zucker