

**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.)

**REPLY OF LACLEDE GAS COMPANY TO THE SEPARATE PROPOSED
PROCEDURAL SCHEDULE OF USW LOCAL 11-6**

COMES NOW Laclede Gas Company (“Laclede” or “Company” and for its response to the Separate Proposed Procedural Schedule of USW Local 11-6 (“Local 11-6” or "Union") states as follows:

1. By Order dated April 4, 2006, the Commission directed the parties to submit a procedural schedule in this matter within ten days of the issuance of that order.
2. On April 11, 2006, Laclede, the Staff of the Missouri Public Service Commission, and the Office of the Public Counsel submitted a proposed procedural schedule. On that same date, Local 11-6 also submitted a separate proposed procedural schedule. Although Local 11-6 agreed with the procedural dates recommended by the other parties, it separately requested an unrestricted right to submit live testimony at the evidentiary hearing in lieu of, or in addition to, any pre-filed testimony submitted on May 5, 2006.
3. Local 11-6’s request for an unrestricted right to pick and choose what testimony it will pre-file and what testimony it will present live should be rejected by the Commission. It should be remembered that it was Local 11-6 that initiated this proceeding with its Complaint. It was also Local 11-6 that chose to challenge inspection

practices by Laclede that are fully consistent with the terms of the Company's approved tariffs, the Commission's gas safety rules, and with the practices followed by virtually every other gas utility in the country. And it is Local 11-6 that has the burden of proving to this Commission why it is right and the rest of the nation is wrong. Under these circumstances, it is not too much to ask that Local 11-6 be required to prepare and file testimony in advance so that its extraordinary claims can be suitably tested. Indeed, Laclede's due process rights to be reasonably advised of the claims against it demand such a result. *Alma Telephone Company v. Southwestern Bell Telephone Company*, Case No. TC-2002-194, 2002 WL 1733974 (Order Issued June 21, 2002).

4. The legitimate interests of Laclede's customers in efficient service also demand such a result. If adopted, Local 11-6's request that Laclede be ordered to conduct inspections that the rest of the nation has deemed unnecessary would result in millions of dollars in additional charges being imposed on Laclede's customers each and every year. And the financial bill would be millions of dollars higher for Missouri consumers as a whole given the fact that such inspection requirements would, as a matter of pure logic, also have to be mandated for every other investor-owned and municipal utility in Missouri. There is simply no tenable basis for concluding that these significant and long-term financial costs should be imposed on Missouri consumers without the benefit of the procedural safeguards, including the advance filing of testimony, that this Commission has long employed to ensure that issues and positions are thoroughly and properly vetted.

5. Moreover, Local 11-6 has offered no sound, let alone compelling, reason why its request to present live testimony in lieu of pre-filed testimony should be adopted. First, Local 11-6 argues that this case is particularly appropriate for live testimony because the evidence of safety issues will be largely anecdotal and experience-based,

rather than empirical, and therefore it is "of great importance that the witnesses be subjected to immediate cross-examination and in-person assessment of credibility." Such a contention is simply ludicrous. Making a sound assessment of whether witnesses are credible will only be furthered by requiring that they present their factual allegations a week or two in advance of when they are cross-examined. With testimony submitted in advance, the cross-examiner would have at least some opportunity to investigate and ask informed questions regarding the accuracy of what is being alleged. Under such an approach, the Presiding Judge and Commissioners would also have the opportunity to evaluate and prepare meaningful questions aimed at assessing the credibility of the witness making such allegations. In contrast, live testimony would make it virtually impossible for either opposing parties or the Commission to prepare and ask meaningful questions on those factual matters that are being alleged for the first time on the day of the hearing. In short, Local 11-6's plea for live testimony is simply a way of reducing rather than enhancing the ability of the parties and the Commission to assess credibility.

6. Nor is there any substance to Local 11-6's assertion that live testimony is appropriate because of the Commission's request for a speedy hearing in this matter -- a circumstance that, according to Local 11-6, makes it impractical to file direct, rebuttal and surrebuttal testimony. This too is a red herring since the procedural schedule proposed by Laclede, Staff and OPC has already accommodated any need there might be for an expeditious hearing by limiting the parties to one round of pre-filed testimony. Local 11-6's claim that such a procedure is somehow unfair because it will deprive Staff and OPC of the opportunity to file rebuttal testimony and all parties of the opportunity to file surrebuttal testimony is also inaccurate. To the contrary, the procedural schedule proposed by Laclede, Staff and OPC effectively allows all parties to submit both direct

and rebuttal-like testimony as part of their May 5th filing and expressly reserves the right to present live testimony to address matters that could not reasonably have been addressed in the May 5th filing. This could certainly include testimony that was properly limited to those responsive matters commonly addressed through surrebuttal.

7. Local 11-6's claim that requiring it to prepare written testimony would impose an inappropriate burden on it is equally unavailing. The fact is that Local 11-6 has had well over nine months to prepare its case and put its position and the facts underlying it into writing. Under such circumstances, there is no basis for suggesting that it creates an undue or unfair burden to require that Local 11-6 finally commit its factual allegations to writing by May 5th. It is also by no means clear why fulfilling such a requirement would be any more burdensome to the Union than having to develop, organize and present the live version of such testimony a few weeks later at the evidentiary hearing.

8. Finally, Laclede wishes it could share Local 11-6's confidence that neither the Company nor the Commission will be sandbagged by unanticipated evidence at the hearing in the event Local 11-6 is permitted to present whatever evidence it chooses in a live manner. Although Local 11-6 asserts that this concern is groundless given the fact that Laclede has submitted two rounds of data requests and intends to conduct depositions, Local 11-6's lack of responsiveness to such discovery suggests just the opposite. Indeed, to this date, the Union has even refused to answer those data requests that Laclede has submitted to assess the validity of the alleged hazards that the Union has identified and relied upon to support the relief requested in its Complaint. Given this lack of responsiveness on the central piece of evidence that Local 11-6 itself has introduced to support its case, there is no reason to believe that discovery alone will provide Laclede

with an adequate opportunity to assess the nature and validity of any claims the Union may make in live testimony.

9. For all of these reasons, Laclede respectfully submits that the parties and the Commission will have a far better opportunity to address the issues in this case in an informed, orderly and effective manner by adopting the Proposed Procedural Schedule recommended by Laclede, the Staff and OPC. Laclede accordingly requests that the Commission adopt that schedule, and the procedure for handling pre-filed versus live testimony proposed therein, in lieu of the schedule recommended by Local 11-6.

WHEREFORE, for the foregoing reasons, Laclede respectfully requests that the Commission adopt the Proposed Procedural Schedule recommended by Laclede, the Staff and OPC and reject the modification proposed by Local 11-6.

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 all parties of record on this 17th day of April, 2006 by United States mail, hand-delivery, email, or facsimile.

/s/ Gerry Lynch