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 RESPONSE
OPPOSING MOTION TO STRIKE TESTIMONY

COMES NOW Laclede Gas Company ("Laclede" or "Company") and submits its Response Opposing the Motion to Strike Testimony filed by Complainant (the "Union") in this case on February 2, 2007. In support of its Response, Laclede states as follows:

1. In its motion to strike testimony, the Union makes three assertions:

   A. Certain portions of Laclede witness Patrick Seamands' January 16, 2007 Affidavit and January 29, 2007, testimony pertaining to two new occurrences raised by the Union should be struck as hearsay;

   B. Laclede should have produced the AMR installers involved in these occurrences, since these witnesses are under Laclede's control;

   C. By not submitting their testimony, Laclede made it impossible for the Union to cross-examine either installer.

2. The Union's position is wrong on all three points. None of Dr. Seamands' testimony should be struck.

3. The Union's hearsay objection should be overruled for a number of reasons. First, with regard to the objection to Dr. Seamands' January 16 Affidavit, the law provides that any hearsay objection not made within seven days after service of the affidavit is waived. §536.070(12) RSMo (2000). Since Dr. Seamands' affidavit was

served late on January 16, 2007, the date to object to this sworn testimony as hearsay expired by January 24, and cannot be raised by the Union in its February 2 motion. Second, Dr. Seamands' affidavit and supplemental rebuttal testimony is admissible under Section 536.070(11) RSMo, as it reflects the results of a study, audit or survey, involving multiple interviews and the ascertainment of many related facts, made under Dr. Seamands' supervision. Dr. Seamands will be present at the hearing to confirm his testimony and the accuracy of such results, and will of course be subject to cross-examination.

4. Third, in matters such as those represented by the two subject occurrences, the Commission has historically permitted investigations to be done and reported without requiring every witness involved to appear before the Commission. In fact, much of the other evidence in this case has been presented in exactly that fashion. For example, in its amended complaint, the Union provided over 300 addresses purporting to be situations where a leak occurred in connection with an AMR installation. Dozens of service technicians responded to calls regarding these addresses, but the Union only produced a handful of these technicians to testify, although they were personally familiar with only a few of these matters. Further, Laclede took the addresses provided by the Union, performed an analysis and produced a spreadsheet containing the report of the service technician for each address and the result of the meter shop's examination of each meter. The Union attached this spreadsheet to the testimony of Union witness Pat White, although he did not even perform the analysis. In summary, the Commission should admit Mr. Seamands' testimony as showing the results of his investigation just as it has

for much of the other evidence in this case, and for so many other investigation reports over the years.

5. As a final note on the hearsay objection, Laclede states that the truly relevant point in this matter is whether AMR installers are appropriately trained so as not to jeopardize the provision of safe service, and not whether any particular worker may have made a mistake. The new occurrences submitted by the Union raise the question of whether AMR installers are using drills on meters and whether they know to call in a leak if they discover one while working at a home. The evidence in this case repeatedly demonstrates that Laclede has worked with CellNet to (i) insure that AMR installers are not issued drills and are trained to perform their work on a meter without using a drill; and (ii) train AMR installers to report any persistent or strong odor of gas they encounter. Everyone concedes that the standard for safe service does not require perfection by a work force; if it did, no group of workers would be qualified, because mistakes are bound to be made. While Dr. Seamands' investigation did not result in a finding that either AMR installer erred, even if both installers had done so, such isolated errors would not justify the relief sought in either the Unions' amended complaint or in its motion for immediate relief, because the safeguards are in place to ensure that any such errors are isolated.

6. Laclede also disputes the Union's second point (see paragraph 1B above) that the AMR installers involved in the two new occurrences are under Laclede's control. The installer involved in the commercial AMR installation on Mackenzie Road was no longer performing installations as of the end of November 2006 and is a private citizen

living in the Belleville, Illinois area.[1] Laclede has no more control than the Union over this individual, who has nevertheless been willing to cooperate with the Company in talking about his AMR duties. The installer involved in the residential reprogramming on Salerno works for a contractor hired by CellNet. While this individual is still performing work on behalf of CellNet and was also cooperative, Laclede does not assert direct control over him.

7. Finally, Laclede disputes the Union's third point (see paragraph 1C above) that by not submitting the AMR installers' testimony, Laclede made it impossible for the Union to cross-examine either installer. Because the parties in this case have been careful to avoid publicizing individual names and addresses, the installers' names were not specifically mentioned in Laclede's filings to avoid issues of confidentiality. However, their identities were not kept secret, either. Laclede has never refused to identify either AMR installer; the Union has never requested their identity, never requested any other information on them, and never made any attempt to depose them. So it was not impossible for the Union to question these individuals; rather the Union simply didn't pursue the matter.

8. In fact, the Union had a cooperative witness of its own, being the maintenance supervisor at the business on Mackenzie Road. The Union interviewed this witness and secured his cooperation as early as December 2006, but chose not to pursue having him provide either supplemental direct or supplemental surrebuttal testimony. Laclede arranged a deposition of this individual by serving him a notice of deposition and

[1] CellNet reported that it received no complaints on this worker over the several months that he was on the job, and that he was let go as part of a personnel cutback owing to the near completion of the job, and the lack of work remaining to be done.

communicating with him and his employer. Having made no effort to identify the AMR installers or to depose them, the Union should not now be heard to complain that it can't question them and therefore Dr. Seamands' testimony should be struck. For the reasons stated above, the results of Dr. Seamands' studies of these two matters should be admissible evidence, and the Union's motion to strike parts of his affidavit and testimony should be denied.

WHEREFORE, Laclede respectfully requests that the Commission deny the Motion to Strike Testimony filed by the Union on February 2, 2007.

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 12th day of February, 2007 by United States mail, hand-delivery, email, or facsimile.

/s/ Rick Zucker