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.	)	

PRE-TRIAL BRIEF OF
LACLEDE GAS COMPANY

COMES NOW Laclede Gas Company ("Laclede" or "Company") and hereby submits its Pre-Trial Brief in the above-referenced case, and in support thereof, states as follows:

I. Introduction

This complaint proceeding was initiated in June of last year by USW Local 11-6 ("Local 11-6" or "Union"), a union that represents some of the Company's non-management employees. It is one of several complaints that the Union has filed in opposition to the Company's multi-year effort to implement a new automated meter reading ("AMR") program.

AMR is perhaps the most significant advancement in customer service ever undertaken by Laclede. With AMR, Laclede will be able to virtually eliminate the necessity to estimate bills – which can be a major source of customer dissatisfaction – by ensuring that actual meter readings can be obtained each month from all of the Company meters, including roughly 250,000 meters that are located inside customer's homes or businesses. AMR will free tens of thousands of customers each year from the obligation

to pay service initiation charges while sparing hundreds of thousands of other customers the inconvenience of having to wait for a gas employee to show up and perform tasks in their homes. Finally, AMR will permit the Company to contain for years to come the cost of obtaining and processing meter readings – a result that will accrue to the long-term benefit of all of Laclede's customers.

In a blatant attempt to preserve work that is no longer necessary, the Union filed the instant complaint in which it seeks to reverse two of the major changes in operating practices that Laclede has implemented, with the Commission's approval, to bring these AMR-related benefits to its customers. Specifically, the Union would have the Commission require that Laclede obtain a yearly manual meter reading on all inside meters and perform a "TFTO" inspection of the customer's piping and appliances every time service is transferred from one customer to another, even though the flow of gas has not been interrupted. If adopted, this recommendation would effectively have the Commission force hundreds of thousands of customers with inside meters to devote up to four hours of time each year so that a utility employee can obtain a manual meter reading that is already being supplied by an AMR device. Moreover, approval of the TFTO inspection requirement would force another 80,000 customers each year to wait at home and pay a $36 service initiation fee in order to receive a "service" they have not requested and do not need. And since the $36 fee no longer comes close to covering the cost incurred to provide such service, it would either have to be raised or all other ratepayers would be required to bear a higher remaining cost.

The Commission should reject these obvious efforts to impose unnecessary costs and service inconveniences on the Company's customers. As discussed more fully

below, the undisputed evidence in this case demonstrates that there is simply no safety or operational justification for mandating either the TFTO inspections or the annual meter readings that have been recommended by the Union. Indeed, this conclusion is inescapable given the telling absence of such requirements from any of the state and federal gas safety rules that have been developed over the years for the express purpose of ensuring that natural gas service is provided on a safe basis. It is also readily apparent from the experience of other utilities in Missouri as well as utilities throughout the United States who have been able to provide safe natural gas service for decades without undertaking these activities. Given these considerations, coupled with the fact that Company personnel will no longer need to visit these properties to obtain meter readings, Laclede respectfully submits that there is no basis upon which the Commission could tenably assert that it even has the jurisdiction to require that Laclede perform such activities, let alone exercise it as the Union has requested.

Nor is there any sound reason why the Commission should want to embark on such a path. The evidence is equally clear that such an action would do nothing but increase the cost of utility service to Laclede customers by approximately $3 million per year, with much of that additional burden falling on the Company's most vulnerable customers who can least afford to pay it. And all that customers would receive in return is the inconvenience of having to spend hundreds of thousands of their valuable hours waiting at home so that they can receive a "service" they do not need and have not asked for.

Needless to say, it would be fundamentally inappropriate and unfair to subject Laclede and its customers to these burdens – burdens to which no other utility and no

other group of customers in the state are subjected. For all of these reasons, as well as those set forth in Laclede's briefing of the specific issues identified in this proceeding, the Commission should reject the relief requested by the Union in its complaint.

II. Discussion of Specific Issues

A. Does any gas safety law, rule, order or decision of the Commission require Laclede to perform TFTO inspections and annual inside meter reads?

Although the Union depicts TFTO inspections as an important safety measure in its filings, and implies that annual inside meter reads may be as well, there is simply no basis for such a claim. In the past, the only reason TFTO inspections were performed at all was because personnel had to be on the customer's premises for a different reason, namely to read the customer's meter in order to render a final bill. With the implementation of the Company's new AMR system, however, such readings can be obtained remotely. As a result there is no longer any operational need for a gas employee to visit or obtain access to the customer's premises when the flow of gas has not been interrupted. (Direct Testimony of Thomas A. Reitz, p.3, l.7-14).

Nor is there any operational need with the advent of AMR to obtain annual meter reads of inside meters. Indeed, the Union has presented nothing -- nothing at all -- to show that AMR technology cannot be relied upon to provide accurate meter readings, and therefore needs to be supplemented by manual readings of inside meters each year. To the contrary, modern AMR technology has proved its effectiveness time and time again as evidenced by its successful use over the years by every other large energy utility in Missouri and by countless utilities throughout the country. As a result, this is simply

another instance where the Union would have the Commission impose an unnecessary requirement on Laclede based on specious safety concerns. (Reitz Direct, p.12, l.7-16).

Contrary to the Union's assertion, the TFTO inspection is not and never has been a mandatory safety measure. In fact, such inspections have effectively been determined to be *un*necessary from a safety perspective, because they are not, and never have been, required by the Commission's safety rules. (Reitz Direct, p.4, l. 2-6).

Commission Rule 40.030 (4 CSR 240-40.030) prescribes the safety standards that must be followed by operators who transport natural gas in Missouri (the "Missouri Safety Rule"). The Missouri Safety Rule standards apply to each Missouri municipal and investor-owned gas utility, including Laclede. The Missouri Safety Rule was originally adopted in 1968, and has since been amended 23 times. The Rule is 37 full pages of single-spaced, triple column print, and covers, among other things, metering, corrosion control, operation, maintenance, leak detection, and repair and replacement of gas pipelines. The Missouri Safety Rule is similar to the Minimum Federal Safety Standards contained in 49 CFR part 192 (the "Federal Safety Rule"). However, the Missouri Safety Rule is, in certain circumstances, more strict than the Federal Safety Rule. With respect to inspections, the Federal Safety Rule requires an operator to inspect only its <u>own</u> facilities when physically turning on the flow of gas. Under Section 12(S) of the Missouri Safety Rule, however, Laclede is required to perform a gas safe inspection of <u>both</u> its <u>own</u> equipment (which generally ends at the meter) *and* the <u>customer's</u> equipment, at the time a Laclede representative physically **<u>turns on</u>** the flow of gas to a customer.

There is nothing in the Federal or Missouri Safety Rules, however, that requires a utility to inspect or test either its own equipment or a customer's equipment in a TFTO situation, that is, when a new customer becomes responsible for gas service that is already flowing to the property. Thus, both the federal authorities that are responsible for such matters, and this Commission, have decided that, where there is no need to physically turn on the gas (because it is already on), it is not necessary to inspect utility or customer facilities. (Reitz Direct, p. 5, l. 3-11).

As both Staff witness Robert Leonberger and Laclede witness Tom Reitz testified, 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, l.11-22; Reitz Direct, p.5, l.12-16). None of the Union witnesses disputed this testimony. (Deposition of Joseph Schulte, p.108, l.2-13; Deposition of Stephen Hendricks, p.80, l.18 to p.81, l.8). Nor did Mr. Reitz or any other witness testify to 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, l.16-20). To the contrary, the fact that other utilities have provided safe service for decades without performing such inspections strongly indicates that such inspections ***are not*** necessary to protect public safety. (Reitz Direct, p.5, l.20-22).

The same is also true of the Union's request that Laclede be required to annually inspect and obtain readings for all of the Company's inside meters. It is important to note that in terms of inspecting inside meters, the Missouri Safety Rule standards are already

more strict than the Federal Safety Rule standards in that the former requires such inspections every three years while the latter requires them only once every five years. (*see* Missouri Safety Rule 13(M)). Neither the state nor federal safety rules, however, require annual inspections of such facilities. Nor do other utilities in Missouri conduct such annual inspections or obtain annual meter readings where AMR devices have been installed. Moreover, for many of the same reasons discussed below, such a requirement would make no sense from a safety standpoint, since it would subject customers with inside meters to far more inspections than other customers, without any sound reason for doing so. (Reitz Direct, pp.12-13) In view of these considerations, the Union's claim that TFTO inspections and annual inspections of inside meters are necessary to protect public safety cannot be squared with what the Commission has already determined through its rules and orders is truly needed to accomplish that goal.

The Union may attempt to sustain its complaint by clinging to the legal argument that, by not performing TFTO inspections and yearly manual inside meter readings, Laclede has violated an obligation to provide safe service pursuant to 393.130 or 140 RSMo 2000. This argument cannot succeed given the fact that, pursuant to 536.010(4) RSMo 2000, the Commission has promulgated rules implementing these laws, 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. Since Laclede is in compliance with these rules concerning such inspections, the Union's claim that Laclede is in violation of a safety statute is completely untenable because it interprets the statute in a manner that directly conflicts with the Commission's rules.

In summary, Laclede has violated no law, rule, order or decision of the Commission, because there is no legal requirement that Laclede perform TFTO inspections or annual inside meter reads.

B. If not, is there nevertheless a sufficient safety justification for considering a requirement to perform TFTO inspections and annual inside meter reads with their attendant costs?

In addition to the absence of any legal requirement, conducting TFTO inspections under such circumstances would also be inconsistent with other safety or maintenance-related recommendations relating to the inspection of gas utilization appliances and equipment. Simply put, such inspections do not comport with standard recommendations regarding the proper maintenance and inspection of natural gas equipment and facilities. In terms of inside customer piping and appliances, it is commonly recommended that customers have their furnaces checked and maintained by a qualified professional once per year. To Laclede's knowledge, there are no recommendations regarding regular maintenance of inside piping. Laclede agrees with these standard recommendations, and adds that furnace maintenance is emphasized because it is generally the major unattended appliance in the home. Furnace inspections, however, are not part of the regulated service provided by Laclede, but can be obtained on the competitive market from Laclede or any qualified HVAC contractor. (Reitz Direct, p.6, l.1-12).

The fact that there is no safety rationale or justification for TFTO inspections is also demonstrated by the ad hoc and non-systematic nature of such inspections. For example, it is standard practice for a customer selling a home in St. Louis under the Missouri form real estate agreement to obtain a gas safe inspection (known as a "Home Sale Inspection"). The Home Sale Inspection is a comprehensive inspection for which

Laclede charges approximately $100. (Reitz Direct, pp. 6-7). A few weeks after the Home Sale Inspection, when the sale of the home closes, and the buyer takes over the property and the uninterrupted gas service, Laclede would be required under the Union's proposal to return and charge the buyer for another, less comprehensive, TFTO inspection. (*Id.).* In this case, the home would have had two inspections of the customer's inside equipment within one month. On the other hand, a customer who lived in the same home for 30 years would have zero Home Sale Inspections and zero TFTO inspections in three decades. Likewise, one rental property may change hands three times in one year, receiving three TFTO inspections in that year, while another rental property changes hands zero times in three years, receiving no TFTO inspections over that period. If some type of additional safety inspection were truly necessary, these types of disparities would be completely unacceptable. (*Id.*).

Nor do the alleged hazards set forth in Mr. Schulte's affidavit justify a continuation of this haphazard inspection regime. To the contrary, during their depositions, Union witnesses demonstrated how poorly designed the TFTO inspection regimen is as a means of identifying hazards that pose an immediate threat to public safety. Specifically, Union witnesses conceded that the so-called hazards found during TFTO inspections could have existed for weeks, months or even years before they were allegedly discovered because ownership or occupancy just happened to have changed hands. (Schulte Deposition pp.143-47; Hendricks Deposition, pp.44-45). In addition, a Union witness conceded that a new hazard could crop up in as little as one day after a TFTO inspection. (Schulte Deposition, pp.206-07). Under such circumstances, it would be a matter of pure serendipity for such inspections to identify a hazard that represented

an immediate threat to public safety and they pale in significance compared to those gas odorization and customer education measures that are truly designed to identify such immediate threats.

It is also important for the Commission to recognize that virtually any inspection process will always find "something" that someone can allege is a safety hazard. If one were to mandate that everyone's car brakes be inspected on a monthly basis, one could undoubtedly find more potential defects and problems than if such inspections were performed on a yearly basis. Potential hazards, including life-threatening hazards, could also be identified if one were to require monthly or even annual inspections of bathtub flooring, home electrical systems, playground equipment, swimming pool fencing, home storage arrangements for firearms, flammable liquids, and poisons, or virtually any other potentially dangerous facet of modern life. The mere fact that some potential hazards might be found, however, does not speak to the question of whether and when a system of inspections should be mandated and imposed on people with all of the attendant cost and inconvenience. In the case of TFTO inspections, however, this more pertinent question has already been answered by the cumulative actions of this Commission and other regulatory authorities which, in balancing these considerations, have determined that such inspections are not needed where the flow of gas has not been interrupted. (Reitz Direct, pp.7-8) Even the Union witnesses agree that cost is a factor that must be considered in setting policies for safety requirements. (Schulte Deposition, pp. 81-84; Deposition of Kevin Stewart, pp.104-05).

Moreover, as Mr. Reitz explains in detail in his prepared testimony, the examples of alleged hazards provided by the Union in the form of Mr. Schulte's Affidavit are

highly questionable, unreliable and do not, in any event, justify the kind of TFTO inspections that the Union would have the Commission impose on Laclede and its customers. As evidence that TFTO inspections are needed, the Union's Motion included a list purporting to show 342 instances over a five month period in which a potential hazard ticket was identified as the result of TFTO inspections. (see Affidavit of Joseph Schulte, par. 12) The information contained in the Affidavit, however, is flawed for a number of reasons. First, the number of claimed hazards is overstated due to duplicate entries alone. In fact, there are at least 25 instances in which the same property is listed twice in the exhibit. Second, over a fourth of the items in the exhibit were ***not*** even found by a TFTO inspection, but through some other form of inspection or service either required by the Missouri Safety Rules or performed on an unregulated basis (e.g. a Home Sale Inspection). Third, there are instances in which some items were found during TFTO inspections that followed not long after a Home Sale Inspection or other inspection raising the question of whether the identified items actually constitute real hazards. Fourth, many of these so-called hazards found during TFTO inspections are more accurately described as being in the nature of minor technical imperfections rather than a matter that is likely to lead to an incident. For example, nearly a fourth of the claimed hazards involved the absence of an anti-tipping device on a gas stove. Such a device has literally nothing to do with whether natural gas service is being delivered on a safe basis, but instead is designed to ensure that a stove won't tip over and potentially burn someone if that person should stand on the oven door of the stove. (Reitz Direct, p.8, l.8 to p. 9, l.5). Notably, electric stoves also have requirements for anti-tipping devices for the same reason, and yet there is no requirement for electric utilities to inspect such appliances.

The potential hazards cited in Mr. Schulte's Affidavit were also questionable because Laclede personnel had failed to identify them in prior inspections that had recently been conducted on the same premises. To this date, however the Union has not offered any explanation for this obvious inconsistency. To the contrary, when the Union was specifically asked about a number of these instances in various data requests it simply responded that it would not speculate on why one employee was able to identify a potential hazard while another one, who was supposedly looking for such hazards in the recent past, did not. (Reitz Direct, p.9, l.12-19) Nor could Mr. Schulte provide any explanation during his deposition, where he repeatedly denied having prepared the hazard list or being familiar with it. (Schulte Deposition, pp.204-06).

Unless one assumes that a significant number of employees were not doing their job in performing these prior inspections, one can only assume that an intentional effort was made to exaggerate the nature and number of potential hazards cited by Mr. Schulte. Unfortunately, there is abundant evidence to support such a conclusion. As Mr. Reitz testified, after Laclede's tariff discontinuing TFTO inspections became effective in June 2005, the number of so-called hazards in the Union's "sampling" increased from 43 in May 2005, to 68 in August 2005, to 91 in September 2005 (not counting duplicates). In addition, 50% of the items were found in only one of Laclede's three districts, notably the district in which Laclede first installed AMR devices and ceased making TFTO inspections. Moreover, although 57 out of approximately 250 technicians who routinely perform these inspections identified the items listed on the exhibit, more than one-fourth of them were found by only 4 employees. In other words, 4 employees of the Company were, on average, identifying 5 potential "hazards" per month during this period, while

the other 53 employees were, on average, identifying only one potential hazard per month. As Mr. Reitz concluded, this kind of disparity could not have occurred unless there was a plan among certain employees to "find" and "identify" as many potential hazards as possible during their inspections, including items that would not necessarily have been considered a hazard during previous inspections. (Reitz Direct, pp.9-10)

Given all of these considerations, there is simply nothing in Mr. Schulte's Affidavit, or the alleged hazards cited therein, which shows that an incident would have been avoided if TFTO inspections were mandated. As a result, neither the absence of discretionary TFTO inspections nor the absence of annual meter reads would have an adverse impact on Laclede's compliance with those standards that are actually designed to protect public safety, namely, the standards set forth in the Missouri Safety Rule. (Reitz Direct, p.10, l16-22; Schulte Deposition, p.199, l.6-10; Stewart Deposition, pp. 60-61). In fact, a Union witness conceded that, with respect to corrosion inspections, the current three year requirement was adequate, adding, of course, that an annual inspection would be better. (Stewart Deposition, p.105).

In contrast, mandating such requirements would have an adverse impact on customers by needlessly increasing the cost of providing utility service to Laclede's customers. As Mr. Reitz explained, if the Company were required to conduct such inspections in the future, tens of thousands of customers would be required to pay a $36.00 service initiation fee for a TFTO inspection they do not want or need. Moreover, many of those affected would be low-income customers who already face enough challenges meeting their financial obligations without forcing them to pay for something of no real value. In addition, all of Laclede's customers would have to bear the cost of

the labor that is not covered by the $36.00 charge as well as the cost of obtaining the annual reads of inside meters that the Union has proposed. On a very conservative basis, Mr. Reitz estimates that Laclede's customers would have to pay at least $3 million more per year to fund these unnecessary activities. (Reitz Direct, p.11, l.1-17).

Unfortunately, this is not the only kind of cost that would be imposed on Laclede's customers. Customers would also experience a significant cost in terms of inconvenience and lost productivity. In effect, adoption of the Union's proposal would literally force 250, 000 to 300,000 of Laclede's customers to either return home or wait at home for multiple hours each year in order to give Laclede personnel access to their premises so that these unnecessary activities could be performed. On a conservative basis, that equates to more than half a million hours of lost time that customers could be devoting to something else. (Reitz Direct, p.11, l.14 to p.12, l.2).

C. If there is such a safety justification, who can or should be responsible for performing TFTO inspections and annual inside meter reads and under what circumstances?

For all of the reasons previously discussed, Laclede believes there is no safety or other justification for the TFTO inspection and annual inside meter reads that the Union has proposed. Should the Commission nevertheless conclude, however, that some incremental safety benefit would be achieved by having more inspections of customer-owned appliances and piping performed, there is absolutely no good reason why the gas utility -- rather than the customer or someone the customer hires -- should be responsible for identifying problems with such appliances and piping. This is particularly true for items such as the electric stoves or wiring, discussed above, where there is no corresponding obligation on other utilities to identify these or similar problems. Indeed,

there is no sound reason why gas utilities should be required to perform any non-emergency inspections of customer-owned appliances and equipment when no similar obligations are imposed on other utility providers. (Reitz Direct, pp. 8-9).

The Union's position is that these functions must be performed by Laclede and not outside contractors, the main reasons being that some contractors are inferior to Laclede employees, and that the Union wishes to maintain historical or legacy job functions for its members. (Schulte Deposition, pp. 80-82; 104-08; 109-110; 136-37; 150; 158).

In view of these considerations, there is no basis for the Commission to conclude that Laclede should be performing such inspections as part of its regulated utility services. Indeed, such action would be beyond the Commission's jurisdiction because it would effectively force Laclede to use its property and engage in an activity that has little or no nexus to the safe provision of regulated natural gas service. While the Commission undoubtedly has broad power to determine that the regulated services within its jurisdiction are being provided safely, that power is not unlimited. *See State ex rel. Southwestern Bell Telephone Company,* 416 S.W.2d 109 (Mo. Banc 1967), *State ex rel. Ozark Power & Water Co. v. Public Service Commission of Missouri et. al.,* 229 S.W. 782, 84-85 (Mo. 1921). It is clear that those limits would be exceeded by requiring Laclede to engage in inspection requirements that this Commission has never deemed necessary to the provision of safe and adequate utility service and that, based on the record in this case, never could.

Laclede would submit that there is a far better alternative for accomplishing such a goal than the one promoted by the Union. Specifically, unlike the Union, Laclede

believes that customers should be given the **choice** of how, when and from whom they have their appliances and piping inspected rather than have such a requirement forced on them. To that end, Laclede is more than willing to cooperate with the Union in advising customers of their ability to obtain such inspections from qualified HVAC service providers. And as long as it continues to do Home Sale inspections, Laclede will also make its personnel available to perform such inspections on the same kind of basis that others in the HVAC marketplace do. The key consideration is that it will be the *customer* who makes the choice, not Laclede, the Union, or this Commission. Such an approach has apparently worked in virtually every other part of Missouri and the United States and there is absolutely no reason why such an approach won't work in Laclede's service territory as well. (Reitz Direct, p.13, l.9-20).

D. If gas utilities can and should be held responsible for performing TFTO inspections and annual inside meter reads, should this be established through a complaint procedure or through a rulemaking?

Should the Commission conclude, despite all of the evidence to the contrary, that there may be some safety justification for requiring TFTO inspections or annual inside meter reads, there can be no question that any effort to impose such requirements can only be properly done through a rulemaking proceeding. As the Commission observed in its April 11, 2006 Order Denying Motion for Immediate Relief, 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. *Order, p.4.* As the Commission also noted in its Order, 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. *Id*.

As discussed above, the record established in this case clearly demonstrates that Laclede's actions are consistent with those of other gas corporations, and do not violate any safety requirement. There is simply no logical basis upon which the Commission could find that imposing a TFTO inspection requirement is necessary to protect public safety unless it is prepared to impose that requirement statewide. As Missouri law has recognized, however, a rulemaking proceeding is the only valid procedural vehicle under Missouri law through which the Commission could legally impose such a requirement on all utilities. (*See* 536.010(4), .021 (RSMo 2000); ***City of Springfield v. Public Service Comm'n***, 812 S.W. 2d 827 (Mo. App. W.D. 1991), *rev'd on other grounds*). Accordingly, should the Commission be inclined to impose such a requirement it should dismiss this complaint and institute a rulemaking proceeding at which all potentially affected parties will have the opportunity to present their positions before any final determination is made.

Respectfully Submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been sent by electronic mail, fax, hand delivery, or regular mail, postage prepaid, to all counsel of record in this case on this 18th day of May, 2005.

/s/ Rick Zucker
Rick Zucker