

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

United Steelworkers of America)	
Local No. 11-6, AFL-CIO)	
)	
Complainant,)	
v.)	Case No. GC-2006-0060
)	
Laclede Gas Company,)	
)	
Respondent.)	

**LACLEDE GAS COMPANY’S RESPONSE
IN OPPOSITION TO MOTION FOR IMMEDIATE RELIEF**

COMES NOW Laclede Gas Company (“Laclede” or “Company”) and submits its Response in Opposition to the Motion for Immediate Relief that was filed by the United Steelworkers of America Local No. 11-6, AFL-CIO (“the Union”) in this case on February 10, 2005. In support of its Response, Laclede states as follows:

1. Laclede filed revised tariffs on May 10, 2005 to (i) confirm that meter readings obtained through the Company’s Automated Meter Reading (“AMR”) devices will be considered actual meter readings, and (ii) provide that service initiation inspections will not be required, and therefore need not be paid for by the customer, in those circumstances where a new account is being established, but the flow of gas to the customer’s premises has not been interrupted (hereinafter “TFTO inspections”).¹ These tariffs became effective on June 10, 2005.

2. Although federal and state safety rules have never required that service initiation inspections such as the TFTO be performed in instances where the flow of gas

¹The term “TFTO” represents a situation where Laclede establishes a dividing line for billing purposes between an outgoing and incoming customer by “virtually” turning service off and on without actually interrupting the flow of gas. The inspection that accompanied this non-operational event was referred to as a TFTO inspection – a term that will be used throughout this pleading.

has not been interrupted (and no other gas utility in Missouri currently performs such inspections), the Union nevertheless filed a Complaint on August 4, 2005 in which it expressed concerns regarding these tariff changes. That Complaint was subsequently amended on February 10, 2006, in order to advise the Commission as to the specific relief that the Union was requesting. On the same day, the Union also filed the instant Motion for Immediate Relief in which it claims that TFTO inspections are such an important safety measure that the Commission should require Laclede to immediately recommence such inspections.

3. There are a number of reasons why the Commission should not grant the Union's Motion. First and foremost, whether a gas operator performs or does not perform TFTO inspections is not a matter of public safety. As discussed in the attached affidavit, such inspections are not mandated by federal safety rules nor required by this Commission's own safety rules. Nor are such inspections typically performed by other investor-owned or municipal utilities, either here in Missouri or anywhere else in the country. In fact, the Commission's own safety rules provide that where service is simply being transferred from one customer to another without any interruption of gas flow, the utility does not even have to perform a barhole leak test of the subsurface areas *outside* of the customer's premises – tests that are otherwise required where an odor call or other *actual* safety issue is being investigated. *See* 4 CSR 240-40.030(14)(B)6. Given these facts, it is nothing short of astounding for the Union to claim that a practice that no other gas operator is even required to perform is not only critical to public safety, but so critical that the Commission should take the extraordinary step of directing that such a practice be immediately commenced.

4. Second, there is no legal basis for the kind of immediate relief requested by the Union. To the contrary, the very complaint statute cited by the Union as authority for its requested relief clearly states that an evidentiary hearing must be held before the Commission can order any changes to Laclede's practices. See Section 386.310.1. (RSMo. 2000). As of this date, Laclede has not even had an opportunity to respond to the Union's Amended Complaint, let alone receive the evidentiary hearing to which it is legally entitled. There is, of course, a provision in Section 386.310.1 which states that the Commission may afford more immediate relief if it determines that the failure to do so would result in the "likelihood of imminent threat of serious harm to life or property." Again, since other utilities in Missouri and throughout the United States have been safely operating for *decades* without performing TFTO inspections, it stretches credulity to argue that the absence of such inspections creates "the likelihood of an imminent threat of serious harm to life or property."

5. Moreover, even if the absence of such inspections really did create such a threat, then the only permissible response to protecting public safety would be to require those utilities who have gone so long without making such inspections – indeed far longer than Laclede ever has – to begin making them. Indeed, if there was a safety justification for such inspections, maintaining and establishing consistent standards from one utility to the next would be even more important. Otherwise, as customers moved from one utility's service territory to another's, there would be significant and potentially dangerous confusion over whether it is the customer or the utility who has responsibility for maintaining the customer's natural gas equipment. Laclede wishes to emphasize that it does not believe that implementation of such a requirement is in any sense warranted

since the absence of TFTO inspections have not created any threat, imminent or otherwise, to public safety.² Nevertheless, should the Commission make a contrary determination, it would also have to recognize that the very same threat also exists for every other customer who happens to be served by an investor-owned or municipal utility in Missouri and be prepared to take whatever immediate steps were necessary to rectify it.³ Laclede respectfully suggests that the Commission should not place itself in such an untenable position.

5. Finally, the Commission should recognize the Union's Motion for what it is. At its core, the Motion, like the Union's Complaint, has nothing at all to do with public safety. Indeed, does anyone seriously believe that the issue of safety would have even been raised were it not for the impact of TFTO inspections on the level of work available to the Union's members? Of course not. Instead, the Union's Motion is simply the latest in a series of inappropriate efforts to embroil the Commission in a labor/management dispute, with the ultimate objective of having the Commission force Laclede to perpetuate and charge customers for work that is no longer needed to provide

² The information presented by the Union in which it identifies potential safety hazards found during TFTO inspections does not provide a tenable basis for imposing an added layer of inspections that go beyond those deemed necessary by both federal and state safety rules, as well as the practices of gas utilities across the country. As demonstrated by the attached Affidavit of Thomas A. Reitz, many of the items identified by the Union were *not* found as a result of TFTO inspections but through other means while other items were found under circumstances that call into question whether they constitute any kind of safety hazard at all. Still others are duplicates and a number of them are associated with unknown addresses. Moreover, the entire exercise performed by the Union begs the question. If one were to perform thousands of inspections of car brakes, 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, one would undoubtedly find hundreds of examples of potential hazards. None of these potential hazards speaks 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. Laclede would respectfully suggest that in not imposing such a system of inspections where the flow of gas has not been interrupted, this Commission, as well as federal and state authorities across the country and virtually every other gas utility in the United States have properly balanced these considerations, notwithstanding one Union's self-interested claims to the contrary.

safe or adequate utility service.

6. For legal reasons alone, the Commission should reject such efforts as being wholly inconsistent with those statutory limitations that prohibit the Commission from adjudicating labor matters that are governed by a collective bargaining agreement (*see* Section 386.315 (RSMo. 2000)), as well as those long-standing principles that bar the Commission from usurping management's right to direct the fundamental business affairs of the utility. (*State ex rel. City of St. Joseph v. PSC*, 30 S.W. 2d 8, 36 (Mo. 1930); *State ex rel. Kansas City Transit, Inc. v. PSC*, 406 S.W.2d 5 (Mo. 1966); *PSC Staff v. Southwestern Bell Telephone Co.*, 2 Mo. P.S.C. 3d 479, Case No. TC-93-224 (1993)). Moreover, there is also a very real question as to whether and when the Commission even has the jurisdiction to mandate inspections – by Laclede personnel or anyone else – of customer-owned gas appliances and piping. This is particularly true in those circumstances where there is no interruption or change in the flow of gas and the gas utility's tariffs properly provide, as do Laclede's, that it is the customer's responsibility to maintain such equipment. Even if these legal barriers did not exist, however, it is difficult to conceive of an instance where Commission interference in the labor/management process would be less warranted.

7. The fact remains that there are very few utilities in Missouri or across the country that utilize in-house union employees to the degree that Laclede does. On the regulated side, Laclede uses in-house union employees to perform virtually all of its new construction work as well as its pipeline replacement and maintenance work. In contrast, many other utilities out-source all or most of this work to independent contractors. Laclede also utilizes in-house union employees to perform virtually all of the field work

functions that a gas company typically undertakes with its own employees, as well as functions that are rarely done in house, such as full-time garage work on utility vehicles. Laclede also utilizes in-house union personnel, rather than outside agencies, to perform its call-center work, clerical functions, and a variety of other administrative work that other utilities have farmed out. And that's just on the regulated side of its operations. In contrast to many other utilities, Laclede also utilizes union employees to perform a variety of unregulated service work in its service territory – ranging from home sale inspections to appliance repair work.

8. Laclede has also made every effort to accommodate the legitimate needs of its Union workforce as the Company has gone about the task of implementing AMR consistent with the rights it has under its collective bargaining agreement with the Union. As a result of those efforts, Laclede estimates that virtually all of the permanent meter readers who have not transferred into other jobs or retired will still retain employment with the Company in one capacity or another even after AMR is fully implemented.

9. What Laclede will not do, however, is be intimidated into perpetuating work, such as the TFTO inspections, that serves no purpose other than to impose additional cost and inconvenience on the Company's customers. That is precisely what the Union has attempted to do with its Motion, its various requests for relief before this and other public bodies, and its unrelenting pattern of public misrepresentations that have unfairly and without cause disparaged the Company, its employees and even this Commission. It is also why Laclede feels compelled to state up-front that, should it be required to perform work that it does not believe is necessary to serve its customers, it will consider all of the options it has under its collective bargaining agreement to ensure

that such work is done as cost-effectively as possible, including its right to subcontract or bid-out work when introducing new technologies. In considering such steps, Laclede's only intent is to ensure that any determination made in this proceeding will be based solely on an assessment of what public safety requires – as it should be – and not clouded by any consideration of what additional work might be generated by imposing requirements on Laclede that are not imposed on any other utility in Missouri.

10. For all of these reasons, as well as those set forth in the attached affidavit, Laclede respectfully requests that the Union's Motion be denied.

WHEREFORE, Laclede respectfully requests that the Commission deny the Motion for Immediate Relief filed by the United Steelworkers of America Local 11-6, AFL-CIO on February 10, 2006.

Respectfully Submitted,

/s/ Michael C. Pendergast

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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 21st day of February, 2006 by United States mail, hand-delivery, email, or facsimile.

/s/ Rick Zucker

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AFFIDAVIT OF THOMAS A. REITZ

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

Thomas A. Reitz, of lawful age, being first duly sworn, deposes and states:

1. My name is Thomas A. Reitz. My business address is 3950 Forest Park Avenue, Room 111, St. Louis, Missouri 63108; and I am Superintendent of Service and Division Operations for Laclede Gas Company.

2. I have been in my current position since 2001. In that position, I have overall management responsibility for the Laclede Service Department and the Missouri Natural Gas Division of Laclede. This includes supervision of the Service Department's various functions. Those functions include, among others, all field service work done on customer meters and associated facilities, as well as any service work done on Company or customer-owned facilities located inside the customer premises, such as turning gas on and off, facility inspections, and appliance service and repair work. The Service Department is also the first responder to emergencies involving natural gas. In the eight years prior to assuming my current position (from 1994 to 2001), I held a variety of management positions with the Missouri Natural Gas Division, primarily related to the

overall operations of the Division. From 1991 to 1994, I was a Service Foreman at the Missouri Natural Gas Division during which time I directly supervised personnel who performed the type of service work described above. From 1986 to 1991, I was employed as a service man, meter reader and laborer. In those positions, I had direct “hands-on” experience with performing service work, connecting and disconnecting gas service, performing various facility inspections on the customer’s premises, and performing work on customer-owned appliances and piping.

3. Laclede filed a revised tariff on May 10, 2005 that provided that service initiation inspections will not be required, and therefore need not be paid for by the customer, in those instances where a new account is being established, but gas flow to the customer’s premises has not been interrupted. These inspections were referred to by Laclede as TFTO inspections. The tariff became effective on June 10, 2005.

4. The Union depicts a TFTO inspection as an important safety measure, and requests that the Commission require Laclede to immediately perform these inspections. The Union is incorrect. The TFTO inspection is a discretionary, cursory inspection that was only performed because personnel had to be on the customer’s premises for a different reason, namely to read the customer’s meter. 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 *unnecessary* from a safety perspective, because they are not required by the Commission’s safety rules.

5. Specifically, Commission Rule 40.030 (4 CSR 240-40.030) prescribes minimum safety standards for transportation of gas in Missouri (the “Missouri Safety Rule”). The Missouri Safety Rule standards apply to each Missouri 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”).

6. 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 own 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 both its own equipment (which generally ends at the meter) *and* the customer’s equipment, at the time a Laclede representative physically turns on the flow of gas to a customer.

7. There is no Federal or Missouri safety standard requiring 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, the Commission has decided that, where it is not necessary to physically turn on the gas (because it is already on), it is not necessary to inspect utility or customer facilities.

8. Indeed, to my knowledge, no other gas utility in Missouri is required to perform a gas safe inspection when service is transferred to a new customer without affecting the flow of gas. I am unaware of any unique or differing circumstances involving Laclede’s operations that would justify a finding that 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 investor and municipally owned gas utilities in Missouri. To the contrary, the fact that other utilities have provided safe service for decades without performing such inspections strongly indicates to me that such inspections ***are not*** necessary to protect public safety.

9. Further, I am not aware of any gas utility in the United States that is required to perform an inspection in a situation where the flow of gas is not affected.

10. 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. 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 return and charge the buyer for another, less comprehensive, TFTO inspection. 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 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.

11. Nor do such inspections 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 my knowledge, there are no recommendations regarding regular maintenance of inside piping. Laclede agrees with these recommendations, and adds that furnace maintenance is emphasized because it is generally the major unattended appliance in the home.¹ 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.

12. As evidence that TFTO inspections are needed immediately, the Union's Motion included a list purporting to show 342 instances over a five month period in which a hazard ticket was issued as a result of TFTO inspections. (see Affidavit of Joseph Schulte, par. 12) Although Laclede requires more time to fully review the list, I can state at this time that the information provided in the Affidavit is flawed for a number of reasons. First, the number of hazards is overstated due to duplicate entries. 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

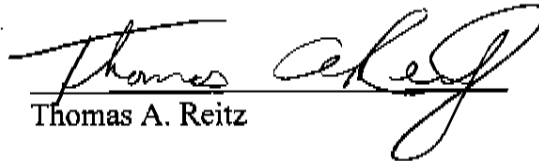
¹ An unattended appliance turns on and off by itself, as opposed to an attended appliance, such as a gas stove, which is turned on and off by the user.

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 code violations rather than a matter that is likely to lead to an incident. Finally, the fact that the party conducting the test is also motivated to find more hazards, skews the results. 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 hazard per month. I do not believe this kind of disparity could 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.

13. In summary, while Laclede will need additional time to review the list provided by the Union, I can find nothing in the list that would indicate to me that an incident would have occurred but for the performance of a TFTO. The absence of discretionary TFTO inspections will have no adverse impact on Laclede's compliance with Missouri Safety Rules.

14. I should also note that requiring such TFTO inspections will also impose unnecessary costs on Laclede's customers. Prior to AMR, Laclede would have to physically visit the property on a TFTO in order to obtain a meter reading for billing purposes. Since Laclede was already physically at the customer's property, if Laclede was able to gain access inside the building, it was feasible to cost-effectively perform the TFTO inspection. With the technology provided by AMR, Laclede can, like most other large gas and electric utilities, obtain a meter reading for billing purposes on a TFTO without having to physically visit the property. Therefore, requiring TFTO inspection would increase the cost and inconvenience to customers if Laclede now had to visit the property solely for the purpose of performing a TFTO inspection.

I hereby swear and affirm that my statements herein are true and correct to the best of my knowledge and belief.


Thomas A. Reitz

Subscribed and sworn to before me this 21st day of February, 2006.


Notary Public

KAREN A. ZURLIENE
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI, CITY OF ST. LOUIS
MY COMMISSION EXPIRES FEBRUARY 18, 2008