

**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.	)

**RESPONSE TO OBJECTION**

COMES NOW Laclede Gas Company (“Laclede” or “Company”) and for its Response to the Objection to Post-Hearing Exhibit filed by USW Local 11-6 (the “Union”) on June 8, 2006, states as follows:

1. Pursuant to the Presiding Judge's direction at the evidentiary hearing in this proceeding, Laclede submitted a post-hearing exhibit in this case on May 31, 2006, consisting of a two page affidavit. In the affidavit, Laclede listed various City and County Counsel meetings that had considered resolutions submitted by the Union concerning matters under consideration in this proceeding. Laclede also indicated in the affidavit whether it had been notified or invited to attend such meetings and, in instances where Laclede had attended, briefly discussed the extent, nature and circumstances surrounding Laclede's participation.

2. On June 8, 2006, the Union filed an objection to Laclede's post-hearing exhibit in which the Union requested that various portions of the affidavit be stricken. The Union asserts that such action is appropriate because the information which it seeks to strike exceeds the scope of what Laclede was instructed to put in the exhibit. The Union also claims that allowing such information to be considered would violate the

Union's due process rights to cross-examine or rebut Laclede's witnesses on the contents of such information and would therefore be prejudicial to the Union.

3. It is nothing short of astonishing that the Union would raise these procedural due process claims in response to Laclede's post-hearing exhibit. For months now, the Union has run roughshod over those very rules that are, in fact, designed to protect the due process rights of parties who appear before the Commission as well as ensure that the Commission's decisions are based on evidence that has been tested through the proper exercise of those rights. Specifically, the Union has, in direct contravention to Section 4 CSR 240-4.020(2) of the Commission's rule governing Conduct During Proceedings, repeatedly caused city and county councils, various state representatives and senators, and even fire district officials, to communicate with commissioners outside the official scope of this proceeding as to the merits of the cause under consideration in this case.

4. Moreover, they have done so in a clear, orchestrated and persistent attempt to "sway the judgment of the commission by undertaking, directly or indirectly, outside the hearing process to bring pressure or influence to bear upon the commission ...," in direct violation of Section 4 CSR 240-4.020(4) of the same rule. An illustration of this violation is represented in Exhibit 16 of the evidence in this case, which consists of (i) a Memorandum, dated May 4, 2006, from Union attorney Sherrie Schroder to various Fire Chiefs soliciting ex parte resolutions, and (ii) a letter dated May 19, 2006, from Laclede attorney Charles Elbert to Ms. Schroder demanding that notice be provided to various

entities, including the Commission, retracting the Union's false and misleading statements that support the ex parte solicitations.<sup>1</sup>

5. By broadly soliciting ex parte communications, the Union has managed to cause numerous persons to submit communications regarding the issues under consideration in this case before the Commission or individual commissioners, without any opportunity for Laclede to cross-examine the persons making those communications. As a result, Laclede has had *no* opportunity to test through cross-examination whether those making such communications had any substantive information regarding the real facts underlying the issues in this case or were instead misinformed or completely uninformed. Nor has Laclede had any opportunity to probe into whether such persons possess any technical expertise or experience that would qualify them to render a meaningful opinion regarding the matters at hand. Laclede has also been deprived of the opportunity to inquire into whether, in making such communications, these persons were motivated by any considerations other than a legitimate concern for public safety. Nevertheless, some of these ex parte communications, namely several council resolutions, have actually been admitted into the record of this case, albeit only for the limited purpose of expressing the councils' concern for public safety.

6. Although the post-hearing exhibit that Laclede was permitted to file does not provide an adequate substitute for Laclede's due process rights, it has at least given the Company a limited opportunity to demonstrate how these out-of-court communications were utterly unsupported by the kind of thoughtful consideration and factual testing that the Commission hearing process is designed to ensure. By doing so,

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<sup>1</sup> To date, the Union has not responded to Mr. Elbert's letter.

Laclede has done nothing more than partially mitigate the far more significant and egregious violations of its own due process rights that have resulted from the Union's persistent disregard for the Commission's rules -- violations that have continued unabated even after the close of the evidentiary hearing in this case. In view of these considerations, the Union's attempt to invoke due process and prejudice as a means of sustaining what it has achieved as a result of its own violations of those concepts should be rejected out of hand.

7. Moreover, contrary to the Union's claims, Laclede believes that its affidavit falls squarely within the parameters set by the Regulatory Law Judge. As previously noted, the statements made in the affidavit, including the portions which the Union seeks to strike, do nothing more than list the various City and County Council meetings that considered the Union's resolutions, indicate whether and to what extent Laclede attended, or was even given an opportunity to attend such meetings and, in the few instances where Laclede did attend, briefly describe the circumstances surrounding Laclede's participation. Laclede firmly believes that each of these statements falls squarely within the letter and certainly the spirit of the "parameters" that were set by the Judge. Laclede would further note that the Commission's own rules specify that whenever an ex-parte communication is made a report should be prepared specifying, among other things, "who participated in the ex parte communication, *the circumstances which resulted in the communication*, and the relationship of the communication to a particular matter at issue before the commission." 4 CSR 240.4.020(8) (*emphasis supplied*). Accordingly, to the extent Laclede's affidavit does nothing more than describe the circumstances resulting in these ex-parte communications, Laclede would

suggest that the submission of such information is in any event not only permissible, but affirmatively mandated, by these rule provisions.

8. In addition, the Union is not prejudiced by the portions of the affidavit to which it objects, because the affidavit is consistent with the testimony of the Union's own witness, Joseph Schulte, regarding the paucity of time that the municipalities afforded to the substantive issues in this case. As a result, the Union is not harmed by not cross-examining testimony to which it effectively agrees. Finally, it is important to note that the Judge's ruling requesting the post-hearing exhibit arose as a result of Mr. Schulte's testimony on this subject, which testimony was elicited by Union counsel on re-direct examination, which Laclede had no opportunity to challenge.

WHEREFORE, Laclede respectfully requests that the Commission overrule the Union's objection to Laclede's post-hearing exhibit.

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 and all parties to this case on this 19th day of June, 2006 by United States mail, hand-delivery, email, or facsimile.

**/s/ Rick Zucker**