

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

USW Local 11-6)	
)	
)	
v.)	Case No. GC-2006-0390
)	
Laclede Gas Company,)	
)	
Respondent.)	

STAFF’S POST-HEARING BRIEF

COMES NOW the Staff of the Missouri Public Service Commission and states:

INTRODUCTION

In March 2005, Laclede Gas Company (Laclede) entered into a contract with CellNet Technology, Inc. (CellNet) to implement an automated meter reading (AMR) program. Under the contract, CellNet is responsible for installing AMR modules on virtually all of the meters in Laclede’s service territory. CellNet subcontracted the hiring and training of personnel to install AMR units to Honeywell, Inc. The personnel installing the AMR units were trained by Honeywell using training materials jointly prepared by Laclede and CellNet.

A careful review of the pleadings and other evidence in this case confirms the findings of Staff Witness Robert Leonberger - that there is no cohesion or explanation, as well as no merit, to USW Local 11-6’s case (Leonberger Rebuttal, p. 4, line 17 through p. 9, line 6). It also confirms that USW Local 11-6 only produced information about its allegations when compelled to do so even though it had possessed this information prior to the filing of its complaint on April 10, 2006 (Leonberger Rebuttal, p. 14, lines 9-16).

PROCEDURAL SYNOPSIS

THE INITIAL COMPLAINT

On April 10, 2006, USW Local 11-6, filed a formal complaint against Laclede (Initial Complaint). This Initial Complaint contained uncorroborated accusations that subcontractors were not adequately trained to install AMR devices on residential meters (Initial Complaint, p. 2, paragraph 7) and installation of AMR devices resulted in damaged meters and gas leaks (Initial Complaint, p. 2, paragraph 8). The Initial Complaint alleged that the unilateral change in the method of installing remote meter reading devices on meters significantly impairs Laclede's ability to provide safe and adequate service (Initial Complaint, p. 2, paragraph 12). USW Local 11-6 also asserted that it had conversed with Laclede about these matters but no resolution was reached (Initial Complaint, p. 2, paragraph 8).

As the remedy for the alleged problems, USW Local 11-6 sought a Commission Order permitting Laclede to continue installation of AMR devices but that Laclede must use its "own, trained non-managerial personnel" to ensure that the devices were installed without damaging the meters or causing gas leaks (Initial Complaint, p. 3, paragraph 15). This means that Laclede would only be allowed to use its own personnel, who happen to be Union members.

On May 11, 2006, Laclede filed its Motion to Dismiss Complaint or, in the Alternative, Motion for a More Definite Statement and Motion to Strike Request for Relief and, in the Alternative, Answer to Complaint (Answer). Laclede pointed out that in January 2006, prior to the filing of the Initial Complaint, USW Local 11-6 alleged to Laclede that numerous instances of gas leaks were being caused by AMR installations (Answer at 1, paragraph 1). Laclede denied this allegation and requested details from USW Local 11-6 to support this allegation, but

none were provided (Answer at 1, paragraph 1). The next time that Laclede heard about this matter was when the Initial Complaint was filed by USW Local 11-6 at the PSC (Answer at 1, paragraph 1).

Laclede sought more definite information to enable it to respond to the Complaint (Answer at p. 2, paragraphs 2-6). Laclede sought to strike a portion of the relief sought by the Union (Answer at p. 3-5, paragraph 7-12). Laclede stated that the Commission could not dictate which specific personnel Laclede must use to install AMR units (Answer at p. 5, paragraph 12).

Laclede denied the allegations of AMR installations causing leaks (Answer at p. 6, paragraph 15). Laclede also denied that installation of AMR devices resulted in unsafe and inadequate service (Answer at p. 6, paragraph 18).

On May 30, 2006, USW Local 11-6 filed its Opposition to Laclede's Motion. In its Motion at paragraph 2, USW Local 11-6 stated:

2. Laclede's insistence that it has not been shown any factual basis for the Union's complaint is premature and disingenuous. Laclede will have ample opportunity in this proceeding to conduct discovery about the Union's knowledge of leaks caused by AMR installation. Indeed, the Union has previously produced information of numerous leaks caused in this manner in the course of discovery and testimony in another case before the Commission, *USW Local 11-6 v. Laclede Gas Company*, GC-2006-0060.

USW Local 11-6's pleading notably lacked the name of a specific witness or page reference to support this allegation from Case No. GC-2006-0060. Furthermore, this is a tacit, if not a direct, admission that USW Local 11-6 knew that it had not produced any factual basis to support its allegations.

On June 8, 2006, Laclede filed its Response. Laclede emphasized that the Union had not provided specific information about gas leaks caused by installation of AMR units. Laclede

disputed USW Local 11-6's assertion that evidence of gas leaks, allegedly caused by AMR installation, was produced by USW Local 11-6 in Case No. GC-2006-0060 (Response at 1-4).

A review of the testimony and affidavits filed by USW Local 11-6 in Case No. GC-2006-0060 shows that the only reference to gas leaks allegedly caused by AMR installation is in the "Declaration of Kevin Stewart." This document contains no specific details such as addresses or other specific details of gas leaks allegedly caused by AMR installation.¹

On August 10, 2006, the Commission issued its Order Denying Laclede's Motion to Dismiss. The Commission found that USW Local 11-6 had alleged that Laclede's AMR implementation is not being done in a safe manner (Order at p. 2) and that USW Local 11-6 also alleged that the installers were causing damage to meters and causing gas leaks (Order at p. 2).

However, in this same order, the Commission granted Laclede's Motion for a more definite statement. The Commission expressly found that USW Local 11-6 failed to specifically state such facts even though it claims to know such specific facts (Order at 3).

On August 21, 2006, USW Local 11-6 filed its First Amended Complaint. For the first time, USW Local 11-6 provided details of its allegations that improper installation of AMR devices caused gas leaks. USW Local 11-6 provided specific addresses: some where gas leaks allegedly occurred; others without an allegation of any event; and, still others alleging improper installation. In a specific allegation, USW Local 11-6 alleged that one installer drilled through a meter while installing an AMR.

Staff first received USW Local 11-6's specific information regarding its allegations on August 21, 2006, the same day USW Local 11-6 filed its First Amended Complaint (Leonberger Rebuttal, p. 13, lines 3-7). This information contained over 300 Laclede customer addresses and

¹ Per EFIS on May 5, 2006, in Case No. GC-2006-0060, USW Local filed the testimony, affidavit or declaration of Steven Hendricks, Kevin Stewart, Joe Schulte and Robert Peterson. There is no other reference, besides by Kevin Stewart, to alleged leaks caused by AMR installation.

consisted of approximately 66 copied pages containing handwritten addresses (Leonberger Rebuttal, p. 13, lines 3-12). Mr. Leonberger only found one address where he believed that the installation of the AMR device caused a leak (Leonberger Rebuttal, p. 14, lines 17-21, p. 15, lines 10-17). This was at the same address previously mentioned where the installer was using a drill in an attempt to remove a stripped screw. Mr. Leonberger also provided an analysis, based on his investigation, of the addresses contained in USW Local's First Amended Complaint where USW Local 11-6 claimed a leak occurred due to an improper AMR installation and found no evidence to support the allegations (Leonberger Rebuttal, p. 15, line 5 through p. 17, line 10).

Laclede filed its Answer to the First Amended Complaint on September 20, 2006. Laclede denied most of the allegations of USW Local 11-6 but admitted the specific isolated allegation of an installer drilling through a meter while installing an AMR. Laclede explained that the damage was promptly called in and the meter was replaced and that the limited use of a drill to extract stripped index screws was ended (Answer at p. 2-3).

On September 26, 2006, USW Local 11-6 filed the testimony, affidavits, statements or deposition segments of approximately 29 people. The testimony includes several Laclede customers who wanted only a USW Local 11-6 member to install their AMR due to their support of the Union, some allegations of leaks at specific addresses and some complaints about AMR accuracy.

On September 29, 2006, Staff filed an objection to various affidavits filed by USW Local 11-6 on September 26, 2006 pursuant to Section 536.070(12). Laclede filed an objection to certain USW Local 11-6 on October 2, 2006 pursuant to the same statute.

On October 23, 2007, USW Local 11-6 filed a Motion for Leave to file testimony out of time. On October 27, 2006, USW Local 11-6 filed a Motion for Leave to file testimony out of time. These rather innocuous motions were just a precursor of many to come.

Staff and Laclede filed Rebuttal Testimony on November 8, 2006. The List of Witnesses, Order of Witnesses, Order of Cross-Examination and Order of Opening Statements was filed on November 22, 2006. The Evidentiary Hearing occurred on December 11-12, 2006 and February 26, 2007.

On December 21, 2006, USW Local 11-6 filed its *Motion to File Testimony About Newly Discovered Drill-Through and Major Leak*. In this Motion, USW Local 11-6 sought to introduce evidence that had not been included in its prefiled testimony. The exact time when USW Local 11-6 learned of these alleged incidents is not stated in the Motion. The Motion only states that learned about one November 9, 2006, “in the last few weeks” (Motion at p. 1, paragraph 3) and “just learned” about the other alleged incident (Motion at p. 1, paragraph 4).² The Motion alleged that the filing of the proposed testimony would not prejudice any party and would offer “them a more complete opportunity to investigate the incidents in question and prepare a response” (Motion, p. 3, paragraph 9).

Staff filed a Response on December 29, 2006. Staff noted the lack of detail in USW Local 11-6’s Motion and the lack of a request for other Parties to respond to further prefiled testimony by further rebuttal testimony did actually prejudice the other Parties. Staff suggested the need for an opportunity to respond. Laclede filed a Response on January 2, 2007 opposing the filing of further testimony. The Commission issued its Order on January 9, 2007 allowing

² On January 9, 2007, the Commission issued its Order Granting Motion to File Additional Testimony and Removing Highly Confidential Designation of Motion. The Commission reclassified USW Local 11-6’s Motion and Staff’s December 29, 2006 Response as Public.

the testimony and setting time for further testimony by other Parties. USW Local 11-6 filed additional testimony on January 8, 2007.

USW Local 11-6 continued its onslaught on January 8, 2007, with its Motion for Immediate Relief. This Motion was based on two incidents that USW Local 11-6 alleged in its testimony filed on January 8, 2007. Staff, in its Response filed on January 16, 2007, accurately pointed out that USW Local 11-6 wanted a Commission Order directing Laclede to undertake an onerous and unnecessary program to rectify a “problem” that had not been proven by USW Local 11-6. The remedy sought by USW Local 11-6 was really a thinly disguised attempt to obtain more work for “trained gas workers.” This could only mean Laclede trained gas workers who happen to be USW Local 11-6 members. Laclede’s response loudly echoed and supported this conclusion.

The Commission issued its Order Denying Motion for Immediate Interim Relief on January 23, 2007. The Commission stated:

The question before the Commission is whether the incidents described by Local 11-6’s witnesses justify the issuance of such immediate order. The Commission concludes no such immediate order is needed.

The incidents described by Local 11-6’s witnesses are serious, and the Commission has already ordered the parties to file additional testimony regarding these events. However, even if these incidents occurred exactly as described by Local 11-6, and those descriptions have been challenged by Laclede, they are still just two incidents involving two meters out of the 600,000 meters on which automatic meter reading devices have been installed by Cellnet employees. Local 11-6 has not shown any likelihood of imminent threat of serious harm to life or property such as would justify the entering of an immediate order under Section 386.310.1, RSMo 2000.

The relief that Local 11-6 seeks through its complaint is much the same as the interim relief that it seeks in this motion. The hearing on the complaint resumes on February 14, and Local 11-6 will have a full opportunity to present evidence to support its complaint. However, Local 11-6 has not justified the issuance of immediate interim relief and its motion seeking such relief shall be denied.

(Commission Order Denying Motion for Immediate Interim Relief, January 23, 2007, p. 3-4).

After various other Motions and Agreements among the parties as well as Commission authorization, the hearing resumed and concluded on February 26, 2007.

BURDEN OF PROOF

USW Local 11-6 has the burden of proof since it filed this Complaint (Section 386.310 RSMo 2000). Staff did not find any cases on the burden of proof standard regarding a complaint before the Commission but suggests that preponderance of the evidence would be the appropriate standard.

ISSUE A

A. Has the installation of AMR modules by Laclede violated Section 393.130.1 RSMo (safety and/or adequacy) or any gas safety law, rule, order, or decision of the Commission?

Staff's answer is no. The installation of AMR modules by Laclede has not violated Section 393.130.1 or any other gas safety law, rule, order or decision of the Commission. Staff further submits that there is no credible evidence to support such an allegation.

THE CREDIBLE EVIDENCE

Mr. Robert Leonberger is the Utility Regulatory Engineering Supervisor of the Gas Safety/Engineering section of the Commission's Energy Department. Mr. Leonberger is a recognized expert on natural gas and pipeline safety.

Mr. Leonberger presented several undisputed facts about AMRs:

- 1) Approximately 500,000 AMR devices have been installed in Missouri and several million of these devices have been installed in other states;
- 2) Installation of AMR devices is relatively simple and adequate training was provided to Cellnet contractors;

3) The failure rate of the AMR devices being installed in Laclede's program is not unusually high;

4) Of the AMR device failures, an extremely low percentage of them relate to any type of a leak, and

5) The AMR related leaks observed were not caused by the AMR itself; in fact they were likely identified as a result of the AMR installation.

(Leonberger Rebuttal, p. 3, lines 10-22).

Over 500,000 AMR devices had been installed on natural gas meters by Missouri Gas Energy and AmerenUE prior to Laclede's AMR project (Leonberger Rebuttal, p. 9, lines 8-15). There have been no known safety-related problems with these programs (Leonberger, p. 9, lines 16-18). The failure rate for these projects was about 2% (Leonberger Rebuttal, p. 10, lines 1-3).

As of October 22, 2006, Laclede had installed approximately 592,500 AMR devices with about 73,000 installations yet to be done and had about a 1.9% failure rate which is in line with the industry average of 1-3% (Leonberger Rebuttal, p. 10, lines 6-16).

This evidence is clearly unrefuted. In fact, there is further credible evidence in the case which supports Mr. Leonberger's facts. Mr. Korbisch verified that Cellnet has installed over three million, five hundred thousand AMR modules on gas meters without any explosions (Tr. 44, line 21 through p. 45, line 9).

Mr. Leonberger stated:

...(Staff) has only found one instance where the installation of AMR caused a gas leak and the installation practice that caused this leak was discontinued shortly thereafter. Therefore Staff does not believe that the installation of AMR devices by Cellnet is in any way a general safety hazard. On the contrary, it may be that safety was increased in the process of installing AMR because there were many occasions where pre-existing gas leaks were discovered due to AMR installation. The Staff believes the installation of an AMR device on existing meters is a simple process for which the installers for CellNet were adequately trained. When the odor of natural gas was detected, they were instructed to contact their supervisor, who then contacted Laclede Gas Company (Laclede or Company).

Except for the one instance noted, the Staff found no other instances where they believe a leak was caused by the installation of an AMR device...

(Exhibit 39NP, p. 4, lines 3-14).

Local USW 11-6 submitted no credible evidence to contradict or otherwise challenge this evidence.

USW LOCAL 11-6 HAS NOT MET ITS BURDEN OF PROOF

USW Local 11-6 produced no credible evidence to support its contention that the installation of AMRs by Laclede are somehow unsafe. Instead, it only produced conjecture, innuendo, nuance, and unsupported “belief.” This clear lack of credible evidence began with the pleadings and the repeated attempts to file more evidence as explained in the Procedural Synopsis and as a review of the pleadings in this case reveals.

This failure of proof continued in the case. The case began with a demonstration of an AMR installation. The clear purpose of this demonstration was to demonstrate the proper installation of an AMR device on a gas meter (Laclede ‘s Request to Make a Live Demonstration for the Commission of How an Automated Meter Reading Device is Installed, August 7, 2006). USW Local 11-6 supported this demonstration and wanted it expanded to demonstrate a “sample of the problems with AMR installation that have been discovered and reported” (USW Local 11-6’s Memorandum in Support of Live Demonstration, August 8, 2006).

USW Local 11-6 first presented the testimony of Ms. Gloria Harmon (Tr. 49-134). Ms. Harmon’s testimony is nothing other than speculation. Ms. Harmon has never been trained to install an AMR device and has never installed one (Tr. 64, line 7 through p. 65, line 1). She also has not ever seen an AMR installation done in the field (Tr. 66, line 6-8). Ms. Harmon’s job duties are largely reflected in her job title: “Large Meter Adjustor.” (Tr. 65, line 17-19). Ms. Harmon, when a large meter comes in, does a check test to test for accuracy and makes

adjustments if not within two percent (Tr. 65, line 20, p. 66, line 5). Ms. Harmon does not regularly work on residential meters (Tr. 66, lines 17-20).

In fact, Ms. Harmon only worked on residential meters early on in the AMR installation project (Tr. 1019, lines 2-7). She did not work on residential meters after that (Tr. 1020, lines 17-24). Starting in the last quarter of 2005, Laclede created a work area in the Meter shop for work on meters with AMRs installed and this area was staffed by Mr. William Whitfield and Mr. Allen Brocksmith (Tr. 1019, lines 8-19). These are the same two gentlemen mentioned by Ms. Harmon who did this work (Tr. 1019, lines 19-22). Neither Mr. Whitfield nor Mr. Brocksmith testified at the hearing (Tr. 1020, lines 1-5).

So instead of calling the two primary workers from the meter shop about AMRs on residential meters and the experience of the meter shop with such matters, Local USW 11-6 only called Ms. Harmon. Dr. Seamonds, Laclede's Chief Engineer, relied on the work of Mr. Whitfield and Mr. Brocksmith (Tr. 1013, lines 16-18; Tr. 1020, lines 7-16). Their work was part of a Laclede exhibit in this case and their work was provided to the Union (Tr. 1020, lines 7-16). In other words, Laclede relied on the work of Mr. Whitfield and Mr. Brocksmith and USW Local chose to avoid calling these gentlemen as witnesses and their work supports Laclede's assertions. Clearly, Ms. Harmon has very little knowledge about AMRs and Local USW 11-6 opted not to call more knowledgeable witnesses who apparently would not have testified favorably for Local USW 11-6. This is another example of the weakness of USW Local 11-6's case.

Another flaw in USW Local 11-6's case is the fact that installation of an AMR device is not particularly difficult. The installation of an AMR device requires the removal of a few bolts or screws (usually four) to remove the index cover and dials (Leonberger, p. 11, lines 4-7). Basic AMR installation is done on the outside of the meter and does not penetrate the gas

carrying portion of the meter (Leonberger, page 11, lines 7-9). AMR installation is a simple process of removing screws or bolts, installing the AMR device and reinserting screws or bolts. The persons installing AMRs for Laclede were adequately trained (Leonberger, p. 11, lines 3-22). USW Local 11-6 has not shown any credible evidence in its case.

Another weakness in USW Local 11-6's case is the presentation of two Wisconsin union members who supposedly had safety as their primary goal (Tr. 179-263, testimony of Steven McFarlane and Phil Gozy). Both of these men had no opinion about whether the AMR installers were doing a good job in Missouri (Tr. 191, lines 4-13; Tr. 251, lines 3-11). However, a closer examination of each of these matters shows another plausible motivation, Union jobs and/or dues.

Mr. McFarlane explained that a Union in Wisconsin obtained a Wisconsin Public Service Commission Order directing that an annual hazard survey be done (Tr. 192, lines 1-2). This was the result of a Union intervening in a case wherein a Utility Company was seeking authorization from the Wisconsin Public Service Commission to install AMRs (Tr. 191, lines 18-21). The Wisconsin union got its annual hazard survey requiring someone to visit each meter each year and only wanted it to be someone with "expertise," whether a company employee or an independent (Tr. 192, lines 3-7). Each year, one-third of the meters are tested for Flame Ionization, one-third corrosion survey and one-third hazard survey (Tr. 192, lines 12-14). These functions are done by college students who receive one week of training and who pay union dues (Tr. 192, lines 15-22). Clearly, AMR installation is simpler than this.

Mr. Gozy explained that his Union complained to the Wisconsin PSC when the Utility Company refused to discuss the matter with them (Tr. 230, line 16 through p. 231, line 5). He

states that the only motivation was “safety.” (Tr. 231, lines 11-13). However, the complaint was only made after the Company wouldn’t give the Union what it wanted.

One objective of the Union in Wisconsin was clearly Union work and Union dues. The same can be clearly argued here. This is especially true due to USW Local 11-6’s chosen remedy of seeking that Laclede’s non-managerial trained gas workers (who also happen to be USW Local 11-6 members) to install AMR modules. This specific remedy is simply not available as the Commission correctly ruled in its August 10, 2006 Order in this case. While the language changed slightly in the First Amended Complaint, the fact remains that more Union work is something that the Union clearly desires and winning this case would be good for the Union and could produce Union work inspecting over 600,000 meters (Tr. 738, lines 8-11).

The overall weakness of the Union’s case is further shown by its other witnesses. Mr. Pat White, the Union President, believes that Laclede employees are better qualified to install the AMR than the people actually doing it (Tr. 348, lines 16 through Tr. 349 line 1). Mr. White has not been trained to install and has not installed an AMR device (Tr. 349, lines 9-11, 19-21), but denies that people who have been trained to install AMR devices would know more about it than him (Tr. 349, line 22 through p. 350, line). Further cross-examination showed Mr. White’s essential lack of knowledge about AMRs or the Union’s latest theory of leaks found 4-6 months after installation being attributable to AMR installation (Tr. 349-394).

LACLEDE GAS WORKERS, LIKE AMR INSTALLERS, ARE NOT PERFECT

Another flaw in the Union’s case is that even a trained gas worker can cause very serious gas leaks by missing even obvious things such as obviously corroded pipe and failing to follow proper procedures. This is very clearly illustrated by the testimony of Mr. Everett Minton. Mr. Minton’s testimony relates how he caused a gas leak by using a 24” aluminum wrench (Exhibit

15NP, p. 2 and statement attached to Exhibit 15NP). Mr. Minton's testimony criticizes some unknown AMR installer for being in the same house to install an AMR but not seeing corroded pipe (Exhibit 15NP, p. 3, lines 12-17).

The absurdity of this attribution of blame to an unknown AMR installer to spot corroded pipe when a trained gas worker, Mr. Minton, didn't spot it prior to causing a gas leak with his 24" aluminum wrench is completely missed by USW Local 11-6. It was Mr. Minton who violated Laclede policy by not turning off the gas at the curb cock before going in to do work (Tr. 601, line 17 through Tr. 602, line 3). It was Mr. Minton who complained about darkness in the basement and admitted that he, a trained gas worker, did not spot any rotted, scaly pipe (Tr. 602, lines 10-13). Even if Mr. Minton did see a problem with the corroded pipe, he still put his 24" aluminum wrench on it and thereby caused a gas leak. Darkness in the basement did not stop him from proceeding to do his work and causing a gas leak (Tr. 602, lines 14-16, Exhibit 15NP and Exhibit 15HC). The mere presentation of such evidence is a glaring example of the weakness of USW Local 11-6's case.

Further weakness of USW Local 11-6's case is the testimony filed by USW Local 11-6's Motion to File Testimony Out of Time About Newly Discovered Drill-Through and Major Leak, USW Local 11-6 filed the testimony of Mr. Jim Johnson and additional testimony of Mr. Mark Boyle.

In support of its allegation of a "newly discovered drill-through," USW Local 11-6 filed the testimony of Mr. Jim Johnson. Mr. Johnson is a veteran Laclede employee. The evidence shows that Mr. Johnson has been a fitter for Laclede gas for 27 years (Exhibit 26, p. 8, lines 15-21). Mr. Johnson stated that he did not believe that the meter had been drilled through, but that the "...screws used to install the AMR device had penetrated the meter casing, thus causing the

leak.” (Exhibit 26, p. 104, line 23 through p. 105, line 12). The credible evidence of Mr. Johnson does not support USW Local 11-6’s contention of a drill-through. The cause of the leak is really undetermined.

USW Local 11-6 provided testimony from Mr. Mark Boyle about what he believed to be a gas leak supposedly attributable to a defective AMR installation (Tr. 731-750). Mr. Boyle, the new Business Manager of USW Local 11-6, did not actually evacuate people in this situation even though he may have told them to be ready to evacuate (Tr. 738-746). However, he had plenty of time to call the then Business Manager to advise him of the situation (Tr. 738-746). Mr. Boyle was clearly working on Union advantage in this case by notifying Mr. Patterson contemporaneously with being at the scene instead of devoting full attention to his work.

Neither one of these additional isolated incidents changed Staff’s position in this case.

Mr. Leonberger stated:

...After reviewing their testimonies, records generated by the leak calls and the depositions, my position in this case has not changed. As stated in my Rebuttal Testimony on page 4, lines 5-10, “Therefore, Staff does not believe that the installation of AMR devices by CellNet is in any way a general safety hazard. On the contrary, it may be that safety was increased in the process of installing AMR because there were many occasions where pre-existing gas leaks were discovered due to AMR installation. The Staff believes the installation of an AMR device on existing meters is a simple process for which the installers for CellNet were adequately trained.”

In fact, Mr. Johnson in his deposition, indicated that during his 27 years of employment with Laclede, he had been involved in the installation of previous generation remote reading devices (described as RE’s, ME’s, and Trace devices) (Johnson Deposition, p. 18, line 20 through p. 20, line 10). Mr. Johnson further indicated that there were leaks reported at locations where these remote reading devices had been installed by Laclede employees that after installation required a Laclede serviceman to respond (Johnson Deposition, p. 31, line 1 through p. 33, line 16). Accordingly, it is apparent that Laclede servicemen being called to respond to a report of a gas leak after the installation of a remote reading device is not limited solely to Laclede’s current AMR installation project. There were customer reported leaks that Mr. Johnson responded to at locations after remote reading devices (so called ME’s, RE’s, and Trace devices) were installed by

Laclede personnel. It would therefore not be unexpected to have customer reported leaks during the current project to install AMR devices by Cellnet subcontractors.

(Exhibit 40, Leonberger Supplemental Rebuttal Testimony, p. 2, lines 1-22).

Staff submits that the credible evidence shows that USW Local 11-6 has failed to prove that Laclede has violated Section 393.130.1 RSMo regarding safety and adequacy of service or any other gas safety law, rule, order, or decision of the Commission.

B. If so, what is the appropriate remedy?

Assuming the Commission finds a violation by Laclede, then the issue becomes what is the appropriate remedy? The Commission, as it noted in its August 10, 2006 Order has broad jurisdiction to order Laclede to provide safe and adequate service to its customers (Order at p. 3). However, the Commission noted that it cannot dictate how Laclede manages its business and thus could not order that specific personnel perform any remedial measures that the Commission might order (Order at 3-4).

Accordingly, any remedy should be carefully crafted by the Commission to remedy any problems with AMRs that the Commission determines to exist. However, per above, the Commission cannot order that specific personnel perform any remedial measures. Thus, USW Local 11-6's proposed remedy that Laclede use its "own trained personnel" is not a viable or legal option. That would be a management decision for Laclede.

WHEREFORE, Staff respectfully requests that the Commission overrule USW Local 11-6's Complaint.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 27th day of April, 2007.

/s/ Robert V. Franson