

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day
of March, 2006.

USW Local No. 11-6,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-2006-0313</u>
)	
Laclede Gas Company,)	
)	
Respondent.)	

**ORDER DENYING MOTION TO DISMISS, AND SCHEDULING
A PREHEARING CONFERENCE**

Issue Date: March 16, 2006

Effective Date: March 16, 2006

On January 31, 2006, United Steelworkers of America, Local No. 11-6, AFL-CIO, filed a complaint against Laclede Gas Company. The Commission notified Laclede of the filing of the complaint in a notice issued February 2, and directed the company to file a response by March 4. On March 3, Laclede filed its answer and a motion asking the Commission to dismiss the complaint for failure to state a cause upon which relief can be granted. The union filed a response to that motion on March 13.

The standard for review for consideration of a motion to dismiss for failure to state a cause of action has been clearly established by Missouri's courts as follows:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are

credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.¹

By that standard, the Commission must consider Laclede's motion to dismiss based on the facts alleged in the union's complaint.

The union's complaint alleges that Laclede has recently implemented a new method for the changing of gas meters at customer premises. The new method uses a "Grunsky Bag" to avoid the necessity of shutting off the flow of gas to the premises while changing the meter. Because the gas flow is not shut off, the gas worker does not need to enter the premises to inspect the equipment and relight the pilot light for any gas appliances. The union contends that Laclede's use of the Grunsky Bag method and the resulting elimination of the need to inspect the customer's premises and equipment while relighting the pilot lights puts its workers and the public at risk from hazards that might otherwise be revealed by such an inspection.

Laclede's motion to dismiss contends that the Grunsky Bag method of changing a meter without interrupting the flow of gas is a widely accepted method used by natural gas utilities throughout the country for decades. It contends that the use of that method to change a meter without an accompanying inspection of the premises is completely safe. On that basis, Laclede asks that the Commission dismiss the union's complaint.

For purposes of a consideration of Laclede's Motion to Dismiss, the union's allegations concerning safety must be accepted as true. At this point, Laclede's representations regarding the safety of the Grunsky Bag method are simply the allegations of counsel, unsupported by affidavits or any other evidence. Viewed in that light, the

¹ Eastwood v. North Central Missouri Drug Task Force, 15 S.W.3d 65, 67 (Mo. App. W.D. 2000).


union's allegations are sufficient to state a cause of action that may be heard by this Commission, and Laclede's motion to dismiss must be denied.

With Laclede's motion to dismiss having been denied, this complaint must now move toward resolution. To that end, the Commission will schedule a prehearing conference for the purpose of developing a proposed procedural schedule.

IT IS ORDERED THAT:

1. Laclede Gas Company's Motion to Dismiss is denied.
2. A prehearing conference will be held on April 3, 2006, at 1:00 p.m., at the Commission's office at the Governor Office Building, Room 305, 200 Madison Street, Jefferson City, Missouri. This building meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this conference, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the conference.
3. This order shall become effective on March 16, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Woodruff, Deputy Chief Regulatory Law Judge