

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 10th day
of August, 2006.

USW Local 11-6,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-2006-0390</u>
)	
Laclede Gas Company,)	
)	
Respondent.)	

**ORDER DENYING MOTION TO DISMISS, GRANTING MOTION FOR MORE
DEFINITE STATEMENT, GRANTING MOTION TO STRIKE, IN PART,
SETTING PROCEDURAL TELECONFERENCE, AND DIRECTING FILING**

Issue Date: August 10, 2006

Effective Date: August 14, 2006

USW Local 11-6 filed a Complaint in which it alleges that Laclede Gas Company may not be providing safe and adequate service as required by Section 393.130, RSMo. The particular area of safety concern is the implementation of Laclede's automated meter reading (AMR) program. USW Local 11-6 alleges that the employees of Laclede's contractor, Cellnet Technology, Inc., are not receiving adequate training prior to the installation of the AMR devices and that "there have been numerous installations of AMR by Cellnet subcontractors that have resulted in meter damage and gas leaks."

Laclede filed a motion asking the Commission to dismiss the Complaint for failure to state a claim upon which relief may be granted, or, in the alternative, to direct USW

Local 11-6 to provide a more definite statement of the facts supporting the alleged violations. In addition, Laclede requests that the Commission strike the request for relief because the Commission lacks the jurisdiction to grant such relief.

Laclede's motion to dismiss argues that USW Local 11-6 has not pled sufficient facts in order to substantiate its claim of a statutory violation because USW Local 11-6 does not specifically set out the facts that identify acts or omissions of Laclede. The standard for review in consideration of motions 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

The USW Local 11-6 has alleged that Laclede's AMR implementation is not being done in a safe manner. The USW Local 11-6 has also alleged that Laclede's subcontractor's employees are causing damage to meters and are causing gas leaks. If these two facts are true then the Commission could find Laclede has violated Section 393.130, RSMo, and could order Laclede to conduct the AMR implementation in a safe manner. Furthermore, if the Commission found the facts to be true, it could order inspections of the meters where the AMR devices are already installed. Thus, the Commission shall deny Laclede's motion to dismiss for failure to state a cause of action.

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

That being said, however, the USW Local 11-6 admits in its response to Laclede's motion to dismiss that it knows the specific facts which constitute this alleged violation,² yet the USW Local 11-6 failed to state those facts specifically in its Complaint. It is the Complainant's burden to allege the facts to support its Complaint. If the USW Local 11-6 knows the specific facts, it should state those facts in its Complaint, thus giving Laclede an opportunity to admit or deny the allegations against it. Therefore, the Commission will grant Laclede's alternative motion for a more definite statement of the facts. USW Local 11-6 shall amend its Complaint to specifically set out the instances where it believes the installation of AMR devices has caused a leak or other safety hazard.

Finally, Laclede requests that the Commission strike the request for relief from the Complaint because USW Local 11-6 has failed to request relief which may be granted by the Commission. USW Local 11-6's request for relief is as follows:

15. Local 11-6 hereby requests that the Commission order Laclede to, from this date forward, continue the installation of the AMR devices with, or supervised by, its own trained *non-managerial* personal to ensure that the devices are installed without damaging the meters or causing gas leaks. Local 11-6 further requests that the Commission order Laclede to have its trained *non-managerial* personnel promptly inspect each of the meters that has been installed through Cellnet.³

Laclede correctly argues that the Commission cannot dictate how Laclede manages its business. However, the Commission has broad jurisdiction to order Laclede to provide safe and adequate services to its customers.⁴ Thus, the Commission could grant the requested

² Paragraph 2 of the USW Local 11-6's response states, "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."

³ Emphasis added.

⁴ Sections 386.310 and 393.130, RSMo.

relief with the exception of naming the specific personnel (i.e., “non-managerial”) that must be used. Therefore, the Commission shall grant Laclede’s motion to strike by striking the word “non-managerial” from the requested relief.

On August 7, 2006, Laclede filed a motion requesting that it be allowed to make a live demonstration for the Commission showing how an automated meter reading device is installed. On August 8, 2006, both the Staff and USW Local 11-6 filed responses in favor of the proposed demonstration. The Commission shall schedule a demonstration. Laclede shall be allowed to demonstrate the installation of an AMR device and USW Local 11-6 shall be allowed to make a rebuttal demonstration. In addition, the demonstration participants shall be under oath or affirmation and subject to questions from the Commission and cross-examination from the other parties. The parties shall be available as set out below for a teleconference with the Regulatory Law Judge to discuss the logistics of the demonstration and set a date for the demonstration.

In order to continue moving this matter toward resolution, the Commission shall direct the parties to file a proposed procedural schedule.

IT IS ORDERED THAT:

1. Laclede Gas Company’s motion to dismiss the Complaint is denied.
2. Laclede Gas Company’s motion for a more definite statement is granted.
3. Laclede Gas Company’s motion to strike the requested relief is granted in part.
4. USW Local 11-6 shall file an amended complaint no later than August 21, 2006, which specifically sets out the facts supporting its claim.
5. Laclede may file an amended answer no later than August 31, 2006.

6. The word “non-managerial” is stricken from the USW Local 11-6’s prayer for relief.

7. No later than August 21, 2006, the parties shall jointly or separately file a proposed procedural schedule.

8. The parties shall participate in a telephone conference on August 14, 2006, at 1:30 p.m. by calling 573-522-6043. In lieu of appearing by telephone, counsel may appear in person in the office of Deputy Chief Regulatory Law Judge Nancy Dippell, Suite 900, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65101.

9. That this order shall become effective on August 14, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

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

Dippell, Deputy Chief Regulatory Law Judge