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.	)	

BRIEF OF LACLEDE GAS COMPANY

COMES NOW Laclede Gas Company ("Laclede" or "Company") and hereby submits its Brief in the above-referenced case.

I. Introduction/Executive Summary

This complaint proceeding was initiated in June 2005 by USW Local 11-6 ("Local 11-6" or "Union"), a union that represents some of the Company's non-management employees. It is one of several complaints that the Union has filed in opposition to the Company's ongoing efforts to make utility service less costly and more convenient for its customers through the implementation of various operational efficiencies. In each of these proceedings, Laclede has taken the position that the safety concerns raised by the Union in these complaints are baseless and have been presented solely as a pretext for preserving work functions that are no longer necessary to serve Laclede's customers. As discussed below, the undisputed evidence presented in this case thoroughly confirms Laclede's position. Specifically, it illustrates a complete failure on the part of the Union to provide any studies, analyses, data, testimony or other hard evidence in support of its assertion that Laclede has somehow endangered public safety by doing nothing more than implementing more efficient operational practices that, even

today, continue to meet or exceed what every federal and state regulatory authority and, to Laclede's knowledge, every other gas utility in the United States has determined to be sufficient to protect the public.

In this case, the Union's complaint is directed at revisions that Laclede has made to its operational practices in order to bring to its customers the full benefits of its new Automated Meter Reading ("AMR") system. AMR is perhaps the most significant advancement in customer service ever undertaken by Laclede. With AMR, Laclede will be able to virtually eliminate the necessity to estimate bills – which can be a major source of customer dissatisfaction – by ensuring that actual meter readings can be obtained each month from all of the Company meters, including roughly 250,000 meters that are located inside customer's homes or businesses. In addition to obtaining actual reads, customers with manually read inside meters will be further spared the inconvenience of having to wait for a gas company employee to show up and perform meter reading tasks in their homes. AMR will also free tens of thousands of customers each year from the obligation to pay service initiation charges when establishing a new account. Finally, AMR will permit the Company to contain the cost of obtaining and processing meter readings for years to come – a result that will accrue to the long-term benefit of all of Laclede's customers.

In a transparent attempt to preserve work that is no longer necessary, the Union filed the instant complaint in which it seeks to reverse two of the major changes in operating practices that Laclede has implemented, with the Commission's approval, to bring these AMR-related benefits to its customers. Specifically, in addition to Laclede's obtaining automated reads from the AMR devices, the Union would have the

Commission require that Laclede obtain a yearly manual meter reading on all inside meters, and perform a "TFTO" inspection of the *customer's* piping and appliances every time service is transferred from one customer to another, even though the flow of gas has not been interrupted. Moreover, the Union would have the Commission impose these requirements on Laclede, even though the Union, like the Company and Staff, has fully acknowledged that the *customer,* not Laclede, is responsible for the maintenance and safety of such customer-owned equipment. (Tr. 326, line 24 to 328, line 8).[1]

If adopted, the Union's recommendations would effectively force hundreds of thousands of customers with inside meters to devote up to four hours of time each year so that a utility employee can obtain a manual meter reading that is already being supplied by an AMR device. (Reitz Direct, Ex. 13, p. 11, lines 19-23). Moreover, approval of the TFTO inspection requirement would force tens of thousands of other customers to not only wait at home each year for a gas employee to come to their premises, but also to pay a $36 service initiation fee in order to receive an inspection "service" they have not requested and do not need. (Ex. 13, p. 11, lines 4-6). Even worse, many of those affected by such a charge would be low-income customers who are already challenged enough to meet their utility obligations without having to pay for unnecessary work. (Ex. 13, p. 11, lines 6-8). In total, re-institution of these now unnecessary practices would require that Laclede's ratepayers spend at least $3 million more a year and devote hundreds of thousands of hours of their time that could be productively employed on

[1]As Staff witness Robert Leonberger observed, "[c]ustomer-owned piping and equipment is the responsibility of the customer." (Ex. 11, p. 5, lines 16-17). Under such circumstances, Mr. Leonberger correctly noted that it would make far more sense for local municipalities to require that customers obtain inspections of such equipment for themselves as a condition of occupancy in the event it was determined that there truly was a legitimate need to perform such inspections. (Ex. 11, p. 5, line 17 - p. 6, line 2).

other pursuits, solely to ensure that the Laclede's Union members can preserve work that no other utility is doing or has ever done. (Ex. 13, p. 11, line 16 to p. 12, line 2).

The Commission should reject these obvious efforts to impose unnecessary costs and service inconveniences on the Company's customers. As discussed more fully below, the undisputed evidence in this case demonstrates that there is simply no safety or operational justification for mandating either the TFTO inspections or the annual meter readings that have been recommended by the Union. Specifically, the evidence shows that such practices are not required by any of the state or federal gas safety rules that, based on real world experience, have been developed over the years for the express purpose of ensuring that natural gas service is provided on a safe basis. (Leonberger Direct, Ex. 11, p.4, lines 11-22; Ex. 13, p.5, lines 12-16). Indeed, Missouri's gas safety inspection rules not only surpass federal requirements, but are among the strictest inspection requirements in the country. But even this Commission has expressly determined in these rules that inspections of customer-owned equipment and piping, including inspections utilizing leak detection devices, are *not* necessary where the flow of gas has not been interrupted. *See* 4 CSR 240-40.030(14)6. Nor are such practices typically employed by other gas utilities, either in Missouri or elsewhere in the United States. (Ex. 13, p. 5, lines 12-16). Nevertheless, gas utilities from California to Maine have been able to render safe utility service for literally decades without undertaking such practices – a circumstance that proves as thoroughly and conclusively as any proposition can be proved that such practices are *not* necessary to protect public safety. (Ex 13, p. 5, lines 20-22).

Given these considerations, it is abundantly clear that the Union's Complaint has nothing to do with public safety and everything to do with preserving work for its members, no matter how unnecessary that work may be. And that point was driven home time and time again by the Union's own testimony in this case. If the Union's concern for public safety was, in fact, the motivating factor behind its complaint, then clearly it should have no problem with a Commission rule that mandated the kind of inspections it has proposed, but allowed qualified, non-Company HVAC personnel to perform such work. After all, these are the very same people who regularly install, maintain and repair gas appliances, piping and other gas-related equipment and therefore should be eminently qualified to handle such a task. (Ex. 11, p. 5, line 21 - p. 6, line 2). However, the Union indisputably objects to anyone other than its members performing such inspections because it wants to protect its member's jobs. (Tr. 356-359).[2]

The Union's witnesses also made it clear that safety concerns invariably take a back seat to preserving union work when Laclede disciplines employees for job misconduct that might actually endanger public safety. Whether that discipline is related to drug use that could impair an employee's ability to work safely or to an employee's direct failure to perform a safety-related job duty, the Union consistently claims that the discipline imposed by the Company is either unwarranted or too harsh. (Tr. 315-318). [3]

[2]As Mr. Schulte testified in his deposition, one of the main reasons he believes that Union personnel working for Laclede rather than independent HVAC personnel should perform any TFTO inspections is because "we [Union employees] have consistently done that work for years, that it is our work." (Tr. 359, lines 8-10). Mr. Schulte conceded, however, that such a consideration "had nothing to do with public safety", but instead was solely related to "protecting … employee's jobs." (Tr. 359, lines 13-18).

[3]*See, e.g.* Tr. 315-318 in which Mr. Schulte discusses the Union's opposition to a 15-day suspension for a Union employee who the Company proved had failed to perform an adequate leak check of sewers around the perimeter of a house where a gas leak had been reported. Although an explosion in the house occurred soon after the inadequate check was performed and a child was hospitalized with serious injuries, the Union nevertheless fought the Company's efforts to impose even a 15 day suspension. (Tr. 318).

Even more astounding, the Union has consistently argued that discharge – i.e. loss of the employee's job – is *never* appropriate, even in those instances where public safety has been threatened or harmed by an employee's intentional failure to perform a safety-related duty. (Tr. 320, lines 5-22; Tr. 323, lines 3-9).[4]

Perhaps most telling of all, however, was the Union's inability to substantiate any legitimate safety purpose that would be served by re-instituting these practices. Although the Union provided a list of alleged hazards that it claimed were discovered as a result of TFTO inspections, that evidence is incompetent, unreliable and irrelevant. First, those alleged hazards indisputably related solely to customer appliances and piping, all of which are the responsibility of the customers, not Laclede. Second, the Union witness sponsoring the list, Mr. Joseph Schulte, ultimately conceded that he did not supervise the activity, could not verify who had discovered and submitted the alleged hazards, could not testify as to the accuracy of any of the information set forth in the hazard list, and had not even reviewed most of the submitted hazards (Tr. 273-275), which makes the evidence inadmissible, and certainly unreliable, under the law. In other words, Mr. Schulte was completely incapable of substantiating whether any of the alleged hazards submitted by the Union actually posed a threat to public safety. Mr. Schulte also admitted that he could not substantiate his claim that customers would be safer if meter readers with pocket detectors were required to regularly enter customer homes to obtain readings. In support of that contention, Mr. Schulte had testified that having meter

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[4]Indeed, the Union has gone so far as to assert in arbitration and grievance proceedings that before any discipline can be imposed on an employee for such misconduct, Laclede must meet an exacting standard of proof that is typically observed only in criminal proceedings, namely, to show that the employee is culpable "beyond a reasonable doubt." (Tr. 318, line 25 to 319, line 6). Obviously, these efforts by the Union to hold Laclede to a standard of proof normally reserved solely for criminal proceedings, and to oppose

readers perform such activities had resulted in "a low rate of unintentional carbon monoxide poisoning, gas fires and gas explosions." When asked to provide the factual basis for such an assertion, however, Mr. Schulte had to admit on cross-examination that "[a]s far anything factual, I don't have *anything* factual." (Tr. 339, lines 4-11; *emphasis supplied*).[5]

Finally, if there was any doubt remaining that the Union's complaint is really about preservation of Union work rather than public safety, the testimony of the Commission Staff's own safety expert, Mr. Robert Leonberger, should put that doubt to rest. (*See* Exhibit 11). As someone whose sole obligation is to recommend all reasonable measures necessary to protect public safety, Mr. Leonberger has no reason or motive to either gild the lily with make-work requirements or propose anything less than what he believes, based on his substantial experience and expertise, is truly necessary to protect public safety. In concluding that the TFTO inspections and annual meter readings proposed by the Union are *not* necessary to protect public safety (Ex. 11, p. 7, line 18 - p. 8, line 23), Mr. Leonberger has confirmed what his predecessors and counterparts at the federal level and throughout the United States have long since determined, namely, that

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discharge no matter how grievous or intentional the harm occasioned by an employee's misconduct may be, speaks volumes about where the Union's true motivation in this proceeding lies.

[5]Unlike Mr. Schulte, Laclede witness Tom Reitz *did* review the list of alleged hazards submitted by the Union and found the information to be seriously flawed and unreliable. (Ex. 13, pp. 8-10). For example, over a fourth of the hazards were ***not*** even found by a TFTO inspection, but instead were discovered through some other form of inspection that is either required by the Commission's gas safety rules or performed on an unregulated basis, such as a Home Sale Inspection. (Ex. 13, p. 8, lines-16-19). Another significant number of the alleged hazards were "discovered" shortly after a previous Home Sale Inspection or other inspection had been performed by the Company's employees with *no* hazard having been identified. Obviously, this sudden ability to detect hazards that couldn't be detected at the same location just a few weeks or months before raises a substantial question as to whether the identified items actually constitute real hazards. (Ex. 13, p. 8, lines 19-21). In addition, some of the alleged hazards were also out-and-out duplicates, while others involved nothing more than technical imperfections, such as the absence of a "tip-over" device on the customer's stove, a deficiency that can also exist on electric stoves and that has nothing to do with the rendering of safe natural gas service. (Ex. 13, p. 8, line 14 - p. 9, line

there is simply no safety justification for the Union's request to re-institute these practices.

Given these considerations, coupled with the fact that Company personnel will no longer need to visit these properties to obtain meter readings, Laclede respectfully submits that there is no basis upon which the Commission could tenably assert that it even has the jurisdiction to require that Laclede perform such activities, let alone exercise it as the Union has requested. Nor is there any sound reason why the Commission should want to embark on such a path. The evidence is clear that such an action would do nothing but increase the cost of utility service to Laclede customers. And all that customers would receive in return is the inconvenience of having to spend hundreds of thousands of their valuable hours waiting at home so that they can receive a "service" they do not need and have not asked for.

Needless to say, it would be fundamentally inappropriate and unfair to subject Laclede and its customers to these burdens – burdens to which no other utility and no other group of customers in the state are subjected. For all of these reasons, as well as those set forth in Laclede's briefing of the specific issues identified in this proceeding, the Commission should reject the relief requested by the Union in its complaint.

II. Discussion of Specific Issues

A. Does any gas safety law, rule, order or decision of the Commission require Laclede to perform TFTO inspections and annual inside meter reads?

Although the Union depicts TFTO inspections as an important safety measure in its filings, and implies that annual inside meter reads may be as well, there is simply no

11). Given all of these flaws, Mr. Reitz properly determined that there was nothing in the list provided by the Union that raised any material safety concerns.

basis for such a claim. In the past, the only reason TFTO inspections were performed at all was because personnel had to be on the customer's premises for a different reason, namely to read the customer's meter in order to render a final bill. With the implementation of the Company's new AMR system, however, such readings can be obtained remotely. As a result, there is no longer any operational need for a gas employee to visit or obtain access to the customer's premises when the flow of gas is not being interrupted. (Ex. 13, p.3, lines 7-14).

Nor is there any operational need with the advent of AMR to obtain annual meter reads of inside meters. Indeed, the Union has presented nothing -- nothing at all -- to show that AMR technology cannot be relied upon to provide accurate meter readings, and therefore needs to be supplemented by manual readings of inside meters each year. To the contrary, modern AMR technology has proved its effectiveness time and time again as evidenced by its successful use over the years by every other large energy utility in Missouri and by countless utilities throughout the country. Clearly, this is simply another instance where the Union would have the Commission impose an unnecessary requirement on Laclede based on specious safety concerns. (Ex. 13, p.12, lines 7-16).

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 *un*necessary from a safety perspective, because they are not, and never have been, required by the Commission's safety rules. (Ex. 13, p. 4, l. 2-6).

Commission Rule 40.030 (4 CSR 240-40.030) prescribes the safety standards that must be followed by operators who transport natural gas in Missouri (the "Missouri Safety Rule"). The Missouri Safety Rule standards apply to each Missouri municipal and

investor-owned 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"). However, the Missouri Safety Rule is, in certain circumstances, more strict than the Federal Safety Rule. With respect to inspections, the Federal Safety Rule does not even require an inspection 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. (Ex. 13, p.4, line 7 – p.5, line 2)

There is nothing in the Federal or Missouri Safety Rules, however, that requires 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. To the contrary, the Missouri Safety Rules explicitly *exclude* from inside leak detection survey requirements those situations where a utility is only obtaining a "read-in/read-out" -- i.e. where the utility is only attempting to obtain a meter reading without altering the flow of gas. *See* 4 CSR 240-40.030(14)6. Thus, both the federal authorities that are responsible for such matters, and this Commission, have decided that, where there is no need to physically turn on the gas (because it is already on), it is not necessary to inspect utility or customer facilities. (Ex. 13, p. 5, lines 3-11).

As both Staff witness Robert Leonberger and Laclede witness Tom Reitz testified, no gas utility in Missouri or, for that matter, in the United States is required to perform a gas safe inspection when service is transferred to a new customer without affecting the flow of gas. (Ex. 11, p. 4, lines 11-22; Ex. 13 p. 5, lines 12-16). None of the Union witnesses dispute this testimony. (*See e.g.* Tr. 327, in which Joseph Schulte testified that he was unaware of any law, regulation, rule or Commission decision that requires Laclede or any other gas utility to perform TFTOs).

No witness testified to any unique or differing circumstances involving Laclede's operations that would suggest 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 other utilities in Missouri and throughout the country. Mr. Reitz testified that he was specifically not aware of any such circumstances. (Ex. 13, p. 5, lines 16-20).[6] The fact that other utilities have provided safe service for decades without performing such inspections affirmatively proves that such inspections ***are not*** necessary to protect public safety. (Ex. 13, p. 5, lines 20-22). Indeed, this was specifically confirmed by Mr. Leonberger during the evidentiary hearing when he testified that he has observed no

[6]The only attempt at all that the Union made to distinguish Laclede from other utilities was its effort to introduce general census data which was apparently offered to show that some of the service area in which Laclede operates is more densely populated. (See Ex. 10). The Union offered absolutely no testimony, however, to demonstrate what, if any, relevance this data had to the issue of whether such requirements could be validly imposed on Laclede for safety reasons but not on other gas utilities. Laclede witness Reitz did address the issue, however, and his undisputed testimony showed that county-by-county population density figures are meaningless in terms of the risks associated with a natural gas incident. (Tr. 551-555). As Mr. Reitz explained, counties with less overall population densities have the same kind of business districts, same kind of spacing between homes, same kind of block-by-block population densities and other characteristics that Laclede's service territory has in those areas where people actually reside. (Tr. 551-553). Moreover, even where there may be greater housing density in an urban area, the nature of the housing stock (i.e. houses with foundations two feet thick) can limit the impact of an explosion on other structures far more effectively than newer frame homes that may be spaced farther apart. (Tr. 554, lines 16-24). In view of these considerations, it is clear that there are no distinguishing characteristics that would warrant treating Laclede differently from other gas utilities in terms of imposing the kind of requirements advocated by the Union.

difference in the incident rates between Laclede and those Missouri utilities that do not perform TFTO's and annual meter reads during his many years of service on the Commission's Safety Staff. (Tr. 418-19; 422-23). And the Union admitted that it had no evidence to contest this point. (Tr. 347-50, 360-61, Ex. 15).

The same is also true of the Union's request that Laclede be required to annually inspect and obtain readings for all of the Company's inside meters. It is important to note that in terms of inspecting inside meters, the Missouri Safety Rule standards are already more strict than the Federal Safety Rule standards in that the former requires such inspections every three years while the latter requires them only once every five years. (*see* Missouri Safety Rule 13(M)). Neither the state nor federal safety rules, however, require annual inspections of such facilities. Nor do other utilities in Missouri conduct such annual inspections or obtain annual meter readings where AMR devices have been installed. Moreover, for many of the same reasons discussed below, such a requirement would make no sense from a safety standpoint, since it would subject customers with inside meters to far more inspections than other customers, without any sound reason for doing so. (Ex. 13, pp.12-13) In view of these considerations, the Union's claim that TFTO inspections and annual inspections of inside meters are necessary to protect public safety cannot be squared with what the Commission has already determined through its rules and orders is truly needed to accomplish that goal.

The Union has also suggested, without any evidentiary support, that, by not performing TFTO inspections and yearly manual inside meter readings, Laclede has violated an obligation to provide safe service pursuant to 393.130 or 140 RSMo 2000. This argument cannot succeed given the fact that, pursuant to 536.010(4) RSMo 2000,

the Commission has promulgated rules implementing these laws, and that these rules directly address the obligations of the Company and other gas corporations with respect to both periodic inspections of Company equipment and inspections required upon the initiation of gas service. Since Laclede is in compliance with these rules concerning such inspections, the Union's claim that Laclede is in violation of a safety statute is completely untenable because it interprets the statute in a manner that directly conflicts with the Commission's rules.

In summary, Laclede has violated no law, rule, order or decision of the Commission, because there is no legal requirement that Laclede perform TFTO inspections or annual inside meter reads.

B. If not, is there nevertheless a sufficient safety justification for considering a requirement to perform TFTO inspections and annual inside meter reads with their attendant costs?

In addition to not being required by any existing law, rule, regulation or decision, the evidence also shows that there is no safety justification, let alone a sufficient one, that would warrant a determination requiring Laclede to perform TFTO inspections and annual inside meter reads with all of their attendant costs. At the outset, it is important to recognize that virtually any inspection process will always find "something" that someone can allege is or could be a safety hazard. If one were to mandate that everyone's car brakes be inspected on a monthly basis, one could undoubtedly find more potential defects and problems than if such inspections were performed on a yearly basis. (Ex. 13, pp. 7-8). Potential hazards, including life-threatening hazards, could also be identified if one were to require monthly or even annual inspections of 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. (*Id.)* The mere fact that some potential hazards might be found, however, does not speak 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. (*Id*.) In the case of TFTO inspections and annual inside meter readings, however, this more pertinent question has already been answered by the cumulative actions of this Commission and other regulatory authorities which, in balancing these considerations, have determined that such actions are not needed. (*Id.*)

Moreover, no evidence has been adduced in this proceeding to warrant a change in that determination. To the contrary, requiring TFTO inspections under such circumstances would be flatly inconsistent with other safety or maintenance-related recommendations relating to the inspection of gas utilization appliances and equipment. (Ex. 13, p. 6, lines 1-12). For example, requiring such inspections would not comport with standard recommendations regarding the proper maintenance and inspection of natural gas equipment and facilities. (*Id.*). To Laclede's knowledge, there are no recommendations at all regarding regular maintenance of inside piping and, in the case of gas appliances, the recommendation is limited to having customers obtain a check of their furnace and any required maintenance by a qualified professional once per year. (*Id.*) Laclede agrees with these standard recommendations, and adds that furnace maintenance is emphasized because it is generally the major unattended appliance in the home. Furnace inspections, however, are not a part of the regulated service provided by Laclede, but can instead be obtained on the competitive market from Laclede or any qualified HVAC contractor. (*Id*.) Again, the customer, not Laclede, is responsible for the

customer's appliances, and there is no justification for imposing an inspection requirement on Laclede.

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. (Ex. 11, p. 5, lines 5-12; Ex. 13, pp. 6-7). For example, it is currently 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. (Ex. 13, pp. 6-7). 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 be required under the Union's proposal to return and charge the buyer for another, less comprehensive, TFTO inspection. (*Id.)*. 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 Home Sale Inspections and 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. (*Id.)* The Union had no choice but to concede how poorly designed, random and haphazard these inspections are. (Tr. 97, 343).[7] If some type of

[7]Specifically, Union witnesses conceded that the so-called hazards found during TFTO inspections could have existed for weeks, months or even years before they were allegedly discovered because ownership or occupancy just happened to have changed hands. (Tr. 340, lines 5-10). In addition, a Union witness conceded that a new hazard could crop up in as little as one day after a TFTO inspection. (Tr. 340, lines 11-17). Under such circumstances, it would be a matter of pure serendipity for such inspections to identify a hazard that represented an immediate threat to public safety and they pale in significance compared to those gas odorization and customer education measures that are truly designed to identify immediate threats to public safety.

additional safety inspection were truly necessary, these types of disparities would be completely unacceptable. (*Id.*).

Nor did the Union provide anything in the way of substantive evidence to demonstrate that public safety considerations would warrant a reinstitution of these practices. Mr. Schulte repeatedly conceded that the Union had no facts to support its position. For example, the Union conducted absolutely no studies or analyses that would show that implementing AMR, or the operational efficiencies it makes possible, has ever had an adverse impact on public safety. (Tr. 312, lines 18-23). Mr. Schulte also admitted that he had no statistics to show that AMR creates a greater hazard to customers or the general public than manual meter reading. (Tr. 312, line 24 - Tr. 313, line 2). In fact, when asked to provide any factual basis for his assertion that the practices followed by Laclede prior to implemented AMR had resulted in "a low rate of unintentional carbon monoxide poisoning, gas fires and gas explosions", Mr. Schulte admitted that "[a]s far anything factual, I don't have *anything* factual." (Tr. 339, lines 4-11, *emphasis supplied*).

In short, the Union has provided no systematic analysis of any kind to dispute what decades of experience both here and elsewhere have shown; namely, that natural gas service can be provided safely without undertaking such practices. Instead, all it has offered is a series of red-herrings in an effort to create the illusion public safety is somehow at issue in this case.

The first red herring takes the form of Mr. Schulte's affidavit, in which he listed three hundred instances over a five month period in which an alleged hazard was identified as the result of TFTO inspections. (see Affidavit of Joseph Schulte, Ex. 4, par. 12). As previously noted, however, Mr. Schulte ultimately conceded that the list, and the

activities were not prepared and conducted under his supervision and control, that he could not verify who had discovered and submitted the alleged hazards, could not testify as to the accuracy of any of the information set forth in the hazard list, and had not even reviewed most of the submitted hazards. (Tr. 273-275). Laclede objected to the admission of this list on the ground that it was incompetent under the applicable rules of evidence. (Tr. 267-76). Although the objection was overruled, there is absolutely no basis for finding that the Union's list of potential hazards constitutes either competent or substantial evidence for the proposition that such inspections are necessary to protect public safety.

Even if the list is considered by the Commission, the undisputed evidence shows that it does not support the Union's position. Laclede witness Reitz., unlike Mr. Schulte, *did* review the list of alleged hazards submitted by the Union. As Mr. Reitz' undisputed testimony shows, the information provided by the Union in its list is highly questionable, unreliable and does not, in any event, justify the kind of TFTO inspections that the Union would have the Commission impose on Laclede and its customers. Mr. Reitz arrived at this conclusion for several reasons. First, the number of claimed hazards is overstated due to duplicate entries alone. In fact, there are at least 25 instances in which the same property is listed twice in the exhibit. (Ex. 13, p. 8, lines 14-16). In addition, 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). (Ex. 13, p. 8, lines 16-19). There are also multiple 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 identified items actually constitute real hazards. (Ex. 13, p. 8, lines 19-21). Finally, many of these so-called hazards found during TFTO inspections are more accurately described as being in the nature of minor technical imperfections rather than a matter that is likely to lead to an incident. For example, nearly all of the claimed stove and range hazards involved the absence of an anti-tipping device on a gas stove. Such a device has literally nothing to do with whether natural gas service is being delivered on a safe basis, but instead is designed to ensure that a stove won't tip over and potentially burn someone if that person should stand on the oven door of the stove. (Ex. 13, p. 8, line 8 to p. 9, line 5). Notably, electric stoves also have requirements for anti-tipping devices for the same reason, and yet there is no requirement for electric utilities to inspect such appliances.

The potential hazards cited by the Union were also questionable because, as noted above, Laclede personnel in many cases had failed to identify them in prior inspections that had recently been conducted on the same premises. To this date, however the Union has not offered any explanation for this obvious inconsistency. To the contrary, when the Union was specifically asked about a number of these instances in various data requests it simply responded that it would not speculate on why one employee was able to identify a potential hazard while another one, who was supposedly looking for such hazards in the recent past, did not. (Ex. 13, p. 9, lines 12-19; Ex. 14) Nor could Mr. Schulte provide any explanation during his deposition or the evidentiary hearing, where he repeatedly denied having prepared the hazard list or being familiar with it. (Tr. 273-275). Unless one assumes that a significant number of employees were not doing their job in

performing these prior inspections, one can only assume that an intentional effort was made to exaggerate the nature and number of potential hazards cited by Mr. Schulte.

Unfortunately, there is abundant evidence to support a conclusion that the cited hazards were exaggerated. As Mr. Reitz testified, 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 potential hazard per month. As Mr. Reitz concluded, this kind of disparity could not have occurred unless there was a plan by or 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. (Ex. 13, pp. 9-10). Given all of these considerations, there is simply nothing in Mr. Schulte's Affidavit, or the alleged hazards cited therein, to show that incidents would be avoided or public safety enhanced if TFTO inspections were mandated.

A second red herring interjected by the Union was its claim that TFTO inspections are critical to public safety because Laclede recently discharged an employee

for failing to perform one during the period of time when Laclede was still doing them. As Mr. Reitz explained, however, the subject employee was terminated for a number of reasons, including his overall work record, failure to perform required duties, and falsification of Company records and had previously been suspended for theft of Company property. (Tr. 561-563). In addition to these factors, Laclede did, and continues to, consider it a serious offense for an employee not to perform a required inspection when on a customer's premises. As the Union well knows, Laclede takes that position not because TFTO inspections have any inherent safety justification, but because Laclede believes it needs to perform such inspections *any* time it is on the customer's premises.

And the reason for that is clear; it is to protect both the Company and its other ratepayers from the kind of tort liability that is all too likely to arise in today's litigious society. Such a concept should not seem foreign to the Commission. As Staff witness Leonberger noted in his testimony, the stricter inside inspection requirements adopted by the Commission in the 1989 revisions to its Gas Safety Rules were specifically designed to mitigate the liability exposure that an operator would face under existing case law as a result of its employees entering a customer's premises in order to relight equipment. (Ex. 11, p. 4, lines 2-10). That is also the reason, as Union witness Hendricks admitted, that Laclede requires customers to sign a form acknowledging the fact that the Company has found a hazard on a customer-owned appliance or pipe. (Tr. 125). Taking and *enforcing* these prudent steps to protect the Company and its customers from potentially significant liability exposure (and the costs that go with it), however, does not in any way justify a Union proposal that would only subject Laclede and its customers to even *greater*

liability exposure by making the Company inspect customer-owned appliances and piping in instances where no safety rule does.

For its final red-herring, the Union also suggested that the requirement for annual meter reads should be maintained because meter readers sometimes find potential leak hazards. It is clear from the evidentiary record, however, that the primary purpose of meter reading is billing, not customer safety, as evidenced by the fact that no meter reader has ever been disciplined for failing to find a leak (Tr. 158, 168, Tr. 329-30, Ex. 11, pp. 9-10). It is also clear that, as with Mr. Schulte's list of potential hazards, the evidence provided by the Union with respect to potential leaks or other hazards detected by meter readers was so variable from one telling to the next, as to be completely unreliable. (Tr. 177-84; 192-194). Finally, even the Union's own witness acknowledged that the legally required three year corrosion and leak inspection procedures -- which Laclede will continue to follow -- are sufficient safety procedures for this purpose. (Tr. 197-98).

Therefore, it is clear that neither the absence of discretionary TFTO inspections nor the absence of annual meter reads would have an adverse impact on public safety given Laclede's continuing compliance with those standards that are actually designed to protect public safety, namely, the standards set forth in the Missouri Safety Rule, along with the Union's complete inability to point to one instance where a failure to conduct a TFTO inspection or to manually read a meter ever resulted in personal injuries or damage. (Ex. 13, p.10, lines 16-22; Tr. 91, 122-23, 161, 168).

In contrast, mandating such requirements *would* have an adverse impact on customers by needlessly increasing the cost of providing utility service to Laclede's

customers. As Mr. Reitz explained, if the Company were required to conduct such inspections in the future, tens of thousands of customers would be required to pay a $36.00 service initiation fee for a TFTO inspection they do not want or need. Moreover, many of those affected would be low-income customers who already face enough challenges meeting their financial obligations without forcing them to pay for something of no real value. In addition, all of Laclede's customers would have to bear the cost of the labor that is not covered by the $36.00 charge as well as the cost of obtaining the annual reads of inside meters that the Union has proposed. On a very conservative basis, Mr. Reitz estimates that Laclede's customers would have to pay at least $3 million more per year to fund these unnecessary activities. (Ex. 13, p.11, lines 1-17).

Unfortunately, this is not the only kind of cost that would be imposed on Laclede's customers. Customers would also experience a significant cost in terms of inconvenience and lost productivity. In effect, adoption of the Union's proposal would literally force 250,000 to 300,000 of Laclede's customers to either return home or wait at home for multiple hours each year in order to give Laclede personnel access to their premises so that these unnecessary activities could be performed. On a conservative basis, that equates to more than half a million hours of lost time that customers could be devoting to something else. (Ex. 13, p.11, line 14 to p.12, line 2).

C. If there is such a safety justification, who can or should be responsible for performing TFTO inspections and annual inside meter reads and under what circumstances?

For all of the reasons previously discussed, the clear, undisputed evidence shows that there is no safety or other justification for the TFTO inspection and annual inside meter reads that the Union has proposed. No other conclusion is justified based on the

evidence. Without waiving that position, even if some incremental safety benefit would be achieved by having more inspections of customer-owned appliances and piping performed, there is absolutely no good reason why the gas utility -- rather than the customer or someone the customer hires -- should be responsible for identifying problems with such appliances and piping. This is particularly true for items such as stoves or wiring, discussed above, where there is no corresponding obligation on other utilities to identify these or similar problems. Indeed, there is no sound reason why gas utilities should be required to perform any non-emergency inspections of customer-owned appliances and equipment when no similar obligations are imposed on other utility providers. (Ex. 13, pp. 8-9).

The Union's position is that these functions must be performed by Laclede and not outside contractors, the main reason being that the Union wishes to maintain historical or legacy job functions for its members, and the specious reason being that some contractors may not be qualified even though they installed the very appliances and fuel runs that they are somehow not qualified to inspect. (Tr. 356-360). The Union's position flies in the face of its own witness' concession that contractors could be hired to inspect all of the hazards of customer-owned appliances identified by Union witness Hendricks. (Tr. 95-96).

Clearly, there is no basis for the Commission to conclude that Laclede should be performing such inspections as part of its regulated utility services. Indeed, such action would be beyond the Commission's jurisdiction because it would effectively force Laclede to use its property and engage in an activity that has little or no nexus to the safe provision of regulated natural gas service. While the Commission undoubtedly has broad

power to determine that the regulated services within its jurisdiction are being provided safely, that power is not unlimited. *See State ex rel. Southwestern Bell Telephone Company*, 416 S.W.2d 109 (Mo. Banc 1967), *State ex rel. Ozark Power & Water Co. v. Public Service Commission of Missouri et. al.*, 229 S.W. 782, 84-85 (Mo. 1921). It is clear that those limits would be exceeded by requiring Laclede to engage in inspection requirements that this Commission has never deemed necessary to the provision of safe and adequate utility service and that, based on the record in this case, never could.

Laclede would submit that there is a far better alternative for accomplishing such a goal than the one promoted by the Union. Specifically, unlike the Union, Laclede believes that customers should be given the **choice** of how, when and from whom they have their appliances and piping inspected rather than have such a requirement forced on them on a haphazard basis. To that end, Laclede is more than willing to cooperate with the Union in advising customers of their ability to obtain such inspections from qualified HVAC service providers. And as long as it continues to do Home Sale inspections, Laclede will also make its personnel available to perform such inspections on the same kind of basis that others in the HVAC marketplace do. The key consideration is that it will be the *customer* who makes the choice, not Laclede, the Union, or the Commission. Such an approach has apparently worked in virtually every other part of Missouri and the United States and there is absolutely no reason why such an approach won't work in Laclede's service territory as well. (Ex. 13, p. 13, lines 9-20).

D. If gas utilities can and should be held responsible for performing TFTO inspections and annual inside meter reads, should this be established through a complaint procedure or through a rulemaking?

Should the Commission conclude, despite the overwhelming evidence to the contrary, that there may be some safety justification for requiring TFTO inspections or annual inside meter reads, there can be no question that any effort to impose such requirements can only be properly done through a rulemaking proceeding. As the Commission observed in its April 11, 2006 Order Denying Motion for Immediate Relief, there has been no showing by the Union that Laclede's current practice of not performing TFTO inspections violates any federal or state safety requirements. (*Order, p.4).* As the Commission also noted in its Order, the Union has likewise failed to demonstrate that such inspections are being performed by other utilities or that there are any distinguishing characteristics involving Laclede that would warrant imposing such a requirement on it but not on other utilities. (*Id*. *See also* discussion of this issue in Section II. A, page 11 and footnote 6, *supra*).

As discussed above, the record established in this case clearly demonstrates that Laclede's actions are consistent with those of other gas corporations, and do not violate any safety requirement. There is simply no logical basis upon which the Commission could find that imposing a TFTO inspection requirement is necessary to protect public safety unless it is prepared to impose that requirement statewide. As Missouri law has recognized, however, a rulemaking proceeding is the only valid procedural vehicle under Missouri law through which the Commission could legally impose such a requirement on all utilities. (*See* 536.010(4), .021 (RSMo 2000); ***City of Springfield v. Public Service Comm'n***, 812 S.W. 2d 827 (Mo. App. W.D. 1991), *rev'd on other grounds*). Accordingly, should the Commission be inclined to impose such a requirement it should dismiss this complaint and institute a rulemaking proceeding at which all potentially

affected parties will have the opportunity to present their positions before any final determination is made.

Wherefore, for the foregoing reasons, the Commission should deny the relief requested by the Union and dismiss its complaint.

Respectfully Submitted,

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ATTORNEYS FOR LACLEDE GAS COMPANY

Certificate of Service

I hereby certify that copies of the foregoing have been sent by electronic mail, fax, hand delivery, or regular mail, postage prepaid, to all counsel of record in this case on this 7th day of July, 2006.

/s/ Rick Zucker
Rick Zucker