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.	)	

PRETRIAL BRIEF OF USW LOCAL 11-6

I. Introduction

On May 10, 2005, Laclede submitted proposed tariff revisions in issue JG-2005-0976, which became effective on June 10, 2005, without comment from Staff. The revisions were to 1) P.S.C. MO. No. 5 Consolidated, Fifth Revised Sheet No. R-11 to permit remote meter readings to constitute actual meter readings; and 2) to P.S.C. MO. No. 5 Consolidated, Sixth Revised Sheet No. R-4 to permit the discontinuance of service initiation inspections (referred to as "turn on-turns offs" or "TFTOs") where a new account is established, but the flow of gas to the premises is not interrupted.

On August 4, 2005, after being refused the opportunity to intervene in JG-2005-0976, USW 11-6 filed its Complaint against Laclede Gas, requesting the opportunity to investigate public safety issues relating to the elimination of annual meter readings of inside gas meters and of the TFTOs. On February 8, 2006, USW 11-6 filed an Amended Complaint regarding the same tariff revisions, asserting that the changes have or will adversely impact public safety. As relief, USW 11-6 requested that the Commission order Laclede to:

1. reinstitute gas appliance inspections upon transfer of residential service, even among meters equipped with Automatic Meter Reading Devices; and

2. reinstitute annual inside meter reads, even among meters equipped with Automatic Meter Reading Devices.

On February 9, 2006, USW 11-6 filed a Motion for Immediate Relief Pursuant to R.S. Mo. § 386.310.1, requesting both that Laclede be ordered to reinstitute full inspections when transferring gas service at residences, and to conduct full inspections at all the residences that missed those inspections during a transfer of gas service from July, 2005 to date. On April 11, 2006, the Commission denied the motion and ordered a hearing on the matter.

II. Issues

The parties have raised the following issues that the resolution of this case requires the Commission to decide:

A. Does any gas safety law, rule, order, or decision of the Commission require Laclede to perform TFTO inspections and 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 its attendant costs?

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?

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?

III. Statement of Facts

1. In 2005, Laclede began implementing a program to install automated meter reading (AMR) units on virtually all of the meters in its service territory. Through cellular technology, AMR units send meter reads directly to Laclede's offices. Issue List, ¶ 1.

2. The AMR technology allows Laclede to receive meter reads without physically visiting the customer's property. Issue List, ¶ 1.

3. Due to the implementation of AMR technology, Laclede sought, and received, approval of tariff changes that eliminated the requirements that it 1) visit the customer's premises to perform an annual meter read on certain inside meters; and 2) visit the customer's premises to perform a service initiation inspection, or a TFTO, where service was transferred without the flow of gas being interrupted. Issue List, ¶ 1.

4. For more than a decade prior to the recent tariff changes, Laclede physically had read on an annual basis those meters outfitted with remote reading technology. Meters not yet outfitted with remote reading technology were read monthly. Declaration of Kevin Stewart, ¶ 5.

5. As Meter Reader Kevin Stewart testifies, during the physical reading of the meter, the meter reader checks the meter for gas leaks. Until approximately three years ago, gas leaks were detected in that situation primarily by odor but about three years ago, the majority of meter readers were issued leak detection devices that emit noise if a gas leak exists in the premises. Declaration of Kevin Stewart, ¶¶ 10-11.

6. Once provided the leak detection devices, the meter readers were told that failure to wear the leak detection devices when reading an inside meter would result in discipline. Declaration of Kevin Stewart, ¶ 12.

7. In addition to checking for gas leaks at the meter, if the meter reader smelled gas upon entering the premises/basement or if the customer reported smelling gas to the meter reader, the meter reader would check the premises to determine if the odor was gas and if so, from where it was coming. Deposition of Kevin Stewart, p. 63.

8. In his deposition, Meter Reader Kevin Stewart estimates that while performing routes of annual meter reads on Saturdays, he discovered approximately one or two gas leaks per route. Deposition of Kevin Stewart, p. 61.

9. Gas leaks are very serious, particularly if the gas leak is on an inside meter. As Pattonville Bridgeton Terrace Fire Protection District Fire Chief Robert Stephen Arnold has attested, "emergencies and evacuations from explosions, fires, and natural gas leaks occur almost everyday in this county in all types of facilities, from commercial to the residential setting." Testimony of Robert Stephen Arnold, p. 2.

10. Laclede Labor Relations Manager Walter Reitz explained in his testimony in the arbitration of the discharge of Louis Jackson that "there's inherent danger with natural gas that requires the work to be performed safely because of the nature of gas and the fact that gas can leak and migrate and cause fires and explosions, things like that." Transcript of Jackson Arbitration , pp. 19-20.

11. Prior to the tariff revisions at issue, gas-safe inspections of both Laclede property and customer-owned appliances were conducted at the time that service was transferred from one customer to another, even if the gas flow was not interrupted. These

inspections at turn on-turn off (or TFTO) are referred to as "service entrance inspections" (SEIs) and are required when a TFTO is performed. Transcript of Jackson Arbitration, p. 35.

12. Like the meter readers, the service employees who perform TFTOs use leak detection devices during the performance of their job. Failure to bring this equipment into a customer's residence when performing a TFTO will result in discipline. See generally Transcript of Jackson Arbitration.

13. Reitz explained further that Laclede's procedure requires that any time a Laclede employee enters a customer home that that employee obtain a CGI reading and perform a gas safety inspection: "Once we go in to obtain the meter read, we're required to perform the inspection." Transcript of Jackson Arbitration, p. 50. The purpose of this requirement is "to make sure that the customer's home is . . . gas safe." Id.

14. Laclede Service and Installation employee Stephen Hendricks, who performs TFTOs as part of his job, explains in his written testimony that the TFTO

> is an inspection conducted immediately following the transfer of gas service at a residence to ensure the meter and every gas appliance in the residence are properly connected and not leaking, valves are turned properly, flues are in proper working order and there is no blockage, carbon build-up or odor of gas that could foreshadow carbon monoxide poisoning or danger of fire or explosion.

Testimony of Stephen Hendricks, p. 2.

15. TFTOs are conducted not only when a residence is sold, but also, and frequently, when rental property changes tenants. Testimony of Stephen Hendricks, p. 2.

16. In his testimony, Hendricks identified several types of hazards that can be found at TFTO:

1. *Flex Connectors.* I have frequently discovered uncapped fuel runs going to the stove. Flex connectors are the corrugated pipe that is generally attached to the back of a stove unit to permit a resident to pull the stove forward to clean behind it. The flex connector is supposed to have a shut-off valve on the opposite end from the stove unit. When someone leaving a residence decides to take the stove unit, it is not uncommon for them to unhook the flex connector from the stove, rather than from the shut off valve. The person then may stuff an object into the opening and/or cover the opening with tape, rather than locate and turn off the shut-off valve. When this occurs, gas leaks around the object or out from under the tape and into the kitchen, creating an uncapped fuel run. Flipping a light switch in that circumstance could cause the room to spontaneously ignite.

2. *Vent Piping.* Furnaces each have a vent pipe, which is necessary to expel carbon monoxide from the house. Many things can happen to make a vent pipe ineffective, causing carbon monoxide poisoning, such as erosion creating a hole in the pipe, a seam in the pipe opening up due to age or moisture, or a pipe that was not screwed in falling off.

3. *Delayed Ignition.* Furnaces sometimes develop delayed ignition because of dirt that causes blockage of a cross-over track. When this occurs, gas builds up and an explosion is likely once the gas finally ignites.

4. *Cobweb Build-up.* Cobwebs build up in the chamber of the furnace's burner orifice, and gas cannot penetrate the web membrane. This causes the flame to back up and go out the front of the furnace. Cobweb build-ups can cause an explosion because of delayed ignition. Alternatively, it can cause a boom, followed by flames that roll up to six feet. If a customer investigates the boom by kneeling in front of the furnace, s/he could get burned by the flash of flames out the front.

5. *Stacked Books.* Furnaces in apartments are often stored behind a closed door that looks like a closet. Students sometimes use the furnace cupboard as a closet, stacking books in the front. This causes the furnace to carbonize, which in turn leads to carbon monoxide poisoning. The student resident may not realize that s/he is feeling ill due to poisoning, so the carbonized furnace is not discovered until a Laclede service employee performs a TFTO. If no TFTO was performed, the situation would

> continue to get worse; in a tight house, the carbon monoxide would eventually kill the resident.
>
> 6. *Rusty Pipe.* There are also problems on the Laclede side of the system that are detectable by a TFTO and really will not be detected *except* by a TFTO, a turn on inspection, or a meter reconnect inspection. Laclede is responsible for all piping before the point of entry into the residence. It is not uncommon for that piping to rust out, especially if the pipe lays against a concrete wall, because the acid in the wall eventually erodes the outside layer of metal pipe. This creates a #1 leak, the worst type, because it causes uncontrolled gas to migrate into the home. The negative pressure furnace will suck that gas into the house causing a fire or explosion.

Testimony of Stephen Hendricks, pp. 3-5.

17. Hendricks estimates that he finds safety issues in about a quarter of the homes at which he performs TFTOs. Testimony of Stephen Hendricks, p. 5.

18. Joe Schulte, USW 11-6 Business Representative, also identified at Exhibit 1 to his first Affidavit reports from Laclede employees regarding safety issues discovered during TFTOs, including:

- **carbonized heat exchangers caused by burning the wrong mixture of gas and air, which blocks the chambers of the heat exchanger, causing flames to float or roll out of the front of the furnace**. This creates an immediate fire hazard and can lead to an explosion. (Schulte Affidavit, ¶13 and Ex. 1) This danger was noted most recently on the union sampling[1] on September 20, 2005. (Exhibit 1 at 11)
- **a hole in a vent pipe or an improperly fitted vent or flue pipe**, sometimes due to normal erosion to the mortar, as appears to be the case in Exhibit 2. (Schulte Affidavit, ¶14) Such holes and improper fittings — **which allow carbon monoxide to leak into a house and may lead to the residents' death by carbon monoxide poisoning** — have resulted when bricks or mortar fell in due to erosion; when pigeons that roosted on the warm flue top got dizzy from carbon monoxide and fell in, then flew into the pipe while trying to escape; and from roof work or hail damage. (Schulte Affidavit, ¶14) This danger was noted most recently on the union sampling on September 23, 2005. (Exhibit 1 at 11)

[1] Beginning in May 2005 and continuing through September 2005, Local 11-6 conducted sampling of the form that meter readers and service persons are required to complete when alerted to a safety hazard at a residence, referred to herein as the "union sampling."

- **appliance connector hazards that allow gas or carbon monoxide to leak into a house and may lead to an explosion, a fire or the residents' death by carbon monoxide poisoning**. (Schulte Affidavit, ¶¶15-16 and Ex. 1 at 2, 8, 13) For example, one time a departing resident who removed a gas stove left the stove pipe uncapped with a plastic sandwich bag wrapped around it and held into place with a rubber band. Gas was already leaking into the house through the bag. If the bag — which was inflated like a balloon — had ruptured, the house would likely have exploded within a few hours, killing residents and passersby, destroying that residence and damaging houses adjacent and across the street. (Schulte Affidavit, ¶15) Another example of this hazard is reflected by Exhibit 3, a photograph of a busted connector for a range or clothes dryer that permitted carbon monoxide to leak into the house. (Schulte Affidavit, ¶16) This danger was noted most recently on the union sampling on September 23, 2005. (Exhibit 1 at 13)
- **delayed ignition ovens caused by white carbon build up, which causes the oven to fill up with gas and eventually explode**. (Schulte Affidavit, ¶18)
- **irregularities in the gas line going into and out of the meter due to poor installation or normal erosion, which cause gas to seep into the residence**. (Schulte Affidavit, ¶19)

19. The installation and implementation of AMR does not eliminate the necessity for safety inspections of customer premises. In fact, as Hendricks and Stewart testify, the improper installation of AMR has itself created gas leaks. Testimony of Stephen Hendricks, pp. 5-7; Declaration of Kevin Stewart, ¶¶ 18-20.

IV. Discussion

ISSUES A, B and C[2]

Laclede Should Continue to Perform TFTO Inspections and Annual Inside Reads Both Under State Law and Due to Safety Considerations

Pursuant to its obligation to provide safe and adequate service, Laclede is required to continue to perform TFTO inspections and annual inside meter reads. Missouri Revised Statutes Section 393.130 places a duty upon "every gas corporation . . [to] furnish and provide such service instrumentalities and facilities as shall be safe and

adequate and in all respects just and reasonable." To ensure the provision of safe and adequate service, Section 386.010, RSMo., provides that the Public Service Commission

> shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every person, corporation, municipal gas system and public utility to maintain and operate its line, plant, system equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the pubic may demand . . . .

Although Laclede argues repeatedly that it should not have to continue to perform such inspections because such a requirement is not in the Code of State Regulations, it is clear from a review of the CSR that the regulations addressing safe gas service are "minimum" requirements. See, e.g. 4 CSR 240-40(8), which "prescribes minimum requirements for installing customer meters." Based on the grant of authority in the statute quoted above, and recognizing that the CSR requirements are only "minimum" requirements, it is evident that the Commission has the authority to determine in any given case whether a gas utility is operating safely and if it is not, "by general or special orders, rules, or regulations, or otherwise," to rectify the problem.

In this case, Laclede asserts that there are no laws or rules requiring Laclede to have a meter reader wearing a gas detection device annually enter a home to read an inside meter or to perform a gas-safe inspection when the flow of gas is not interrupted. However, until recently, Laclede operated in accordance with tariffs, approved by the

[2] USW 11-6 is discussing these issues simultaneously because the issues overlap and

Commission, that required an annual meter read of certain inside meters and that required TFTO inspections upon transfer of service. Even though not codified in either the Missouri statutes or the CSR, the tariffs addressing these issues could not be changed without Commission approval. Furthermore, Laclede itself insisted, on a safety basis, that its employees perform gas-safety inspections and wear leak detection devices whenever entering a customer's home. See paragraph 13, supra. Failure to follow these procedures resulted in discipline for Laclede employees.

Both the facts as described above and Laclede's own emphasis on the importance of gas safe inspections during TFTO and annual reads establish that eliminating the inspections simply because the meter can be remotely read is unsafe. Laclede has discharged employees for not performing inspections, or simply for failing to bring their leak detection devices into a residence; as recently as March, 2006, it has supported its right to so discharge employees by emphasizing the danger of gas and the critical importance of the gas safe inspections. It is incredible that two months after asserting such argument, Laclede is arguing that these very same inspections are not necessary for public safety. Laclede cannot have it both ways: either these inspections are critical to safety, as Laclede argued in March in support of the Jackson discharge, or they are not, as Laclede now argues, which leads to the question of why an employee lost his job for not carrying a leak detection device on a TFTO that Laclede now considers unnecessary.

USW Local 11-6 suggests that Laclede's current argument is the one without merit. In fact, Laclede has supported its requested tariff revision only with information related to billing efficiencies, and has provided no information regarding the safety of such revisions. Indeed, the written testimony of Thomas Reitz emphasizes the alleged

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cannot be meaningfully separated.

issues of increased cost and inconvenience to customers of doing the inspections as much as the safety issue. (Although it is not clear why maintaining a current practice results in increased cost; will one see a decrease in costs to consumers with the cessation of these inspections?) Based on the lack of response by Laclede to USW 11-6's requests for information related to the number of reports of safety issues reported by employees conducting either annual reads or TFTOs, it appears that Laclede itself simply has no idea to what extent the inspections during the annual reads and TFTOs contributes to the provision of safe service to its customers.

The reality is that Laclede widely distributes gas to residences (and businesses) in the densely populated areas of St. Louis City and County, as well as in St. Charles County, Franklin County and Jefferson County, Missouri. Gas distribution is admittedly a potentially highly dangerous activity. A residential gas hazard that results in a fire or explosion does not have an isolated impact. It not only maims or kills the people residing where it occurred, but may also maim or kill people in nearby residences, schoolchildren walking by the residence, and other passersby. Moreover, the property damage from a fire or explosion may be widespread. These concerns for the safety of consumers of gas, their homes and their communities are echoed by various municipalities and counties who have issued resolutions on the issue, which resolutions are part of the record in this matter. Laclede's suggestion that total responsibility for gas safety be placed on the shoulders of its customers is unworkable; many homeowners and tenants are simply unaware of the necessity of such inspections while others lack the financial means to make such inspections a necessity.

The value of a single life is generally agreed to be greater than the value of any amount of money needed to make an operation safe enough to avoid unnecessary safety risk. And, if even one resident using Laclede gas is poisoned by carbon monoxide or is killed in an explosion or house fire due to gas delivery, not only will the public lose an irreplaceable and invaluable community member and possibly that member's residential property, but Laclede itself will receive substantial negative publicity that will likely harm its reputation in the communities it serves, not to mention its stock price. Thus, until Laclede can demonstrate that its own safety documents show minimal or no benefit from the gas safe inspections performed during annual meter reads and TFTOs, such inspections should continue.

ISSUE D

Should Responsibility for Performing TFTOs and Annual Reads be Determined through Rulemaking?

USW 11-6 asserts that this issue is a red herring. The case involves only whether Laclede Gas, a company supplying gas in densely populated area of Missouri, should continue to perform what it has previously insisted to its employees are safety measures. USW 11-6 has not requested an industry-wide rule, but a single, company-specific determination regarding a requested tariff revision. The grant of authority to the Commission in Section 386.010, RSMo., clearly establishes in the Commission the right for it to issue an order, based on a complaint, to safeguard public safety.

In the event that the Commission believes that an industry-wide rule on these issues is necessary or desirable, USW 11-6 asserts that Laclede should be ordered to

restore the status quo or performing annual meter reads on inside remote meters and TFTO inspections in the meantime.

CONCLUSION

Fire Chief Arnold testified in written testimony that

> [w]hen Laclede stops performing the aforementioned inspection procedures, a very important public safety step is being removed and leaving the inspection responsibility solely on the residential homeowner. Annual inspections of gas appliances may or may not occur based on the homeowner's financial situation or simply remembering to have the inspections done by a private heating & cooling company.

Imposing the inspection responsibility solely on the customer impacts even more severely renters of property, who will be dependant on representations by landlords that may or may be true. Placing total responsibility on homeowners and landlords for the safe provision of gas service, and largely removing it from the utility profiting from such provision, is nonsensical and irresponsible. Therefore, Laclede should be ordered to:

1. reinstitute gas appliance inspections upon transfer of residential service, even among meters equipped with Automatic Meter Reading Devices;

2. reinstitute annual inside meter reads, even among meters equipped with Automatic Meter Reading Devices; and

3. conduct full inspections at all the residences that missed those inspections during a transfer of gas service from July, 2005 to date.

Respectfully submitted,

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was served on May 18, 2006, by United States mail, hand-delivery, email, or facsimile upon:

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