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.	)	

POST-TRIAL 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.

USW 11-6 is a labor organization that represents approximately 1,000 employees of Laclede, including meter readers and service department employees. Tr.[1] at 305. 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

[1] The two-volume transcript of the hearing in this matter will be referred to in this brief as "Tr."

adversely impact public safety. As relief, USW 11-6 requested that the Commission order Laclede to reinstitute TFTOs and to reinstitute annual inside meter reads, even among meters equipped with Automatic Meter Reading Devices, at least until such time as the necessary study or studies can be conducted to determine the efficacy of these practices as safety measures.

A hearing was held on USW 11-6's Complaint on May 22-23, 2006. In support of its Complaint, USW 11-6 presented the testimony of Laclede Meter Reader Kevin Stewart; Laclede Service Department employee Stephen Hendricks; USW 11-6 Business Representative Joseph Schulte; and IBEW Local 2 Business Manager Robert Eugene Peterson. In defense, PSC Staff presented the testimony of Robert R. Leonberger, a PSC Utility Regulatory Engineering Supervisor in the Gas Safety/Engineering Section of the Energy Department of the Utility Operations Division. Laclede presented the testimony of Thomas A. Reitz, Superintendent of Service and Division Operations, and Mark Lauber, Superintendent of Maintenance Engineering. The parties also introduced twenty-five exhibits.

II. Issues

The four issues presented by the parties are:

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

A. Background

1. It is undisputed that gas leaks can have very serious consequences, particularly if the gas leak is inside the customer's home. 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." Exhibit 8, Transcript of Jackson Arbitration , pp. 19-20.

2. From at least December 1, 2001, through the current tariff revision, Laclede had been obligated by its tariff "to obtain an actual inside meter reading from locations having inside meters on an annual basis." Exhibit 12, P.S.C. Mo. No. 5 Consolidated, Fourth Revised Sheet No. R-11. As discussed in more detail in Section C, this annual read had a safety component.

3. At the hearing of this matter, Laclede stipulated that it has stopped performing annual reads on inside meters. Tr. at 22-23.

4. For many decades, through the current tariff revision, Laclede was obligated to perform a gas safe inspection as follows:

> When gas is being supplied to any customer, and Company receives notice that such customer intends to vacate the premises occupied, Company shall promptly . . . shut off the gas supply to the premises unless owner . . . requests Company to continue the gas supply. If continuance of gas supply is requested, Company shall inspect the premises to determine that they are in a gas safe condition.

Exhibit 12, P.S.C. Mo. No. 5 Consolidated, Fifth Revised Sheet No. R-14. This inspection has been referred to throughout this proceeding as a "turn on/turn off," or TFTO, inspection. As discussed in more detail in Section D, this TFTO had a safety component.

5. At the hearing of this matter, Laclede stipulated that it has stopped performing TFTOs. Tr. at 22-23.

6. 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.

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

B. The Tariff Revision

8. Because the implementation of AMR technology permits Laclede to obtain meter reads without visiting the customer home, Laclede requested 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.

9. Laclede filed its tariff revision on May 10, 2005, to become effective on June 10, 2005.

10. With its requested revision, Laclede submitted a cover letter stating that the revised tariff sheets were "being filed in conjunction with the Company's implementation of an Automated Meter Reading ("AMR") system." The ***only*** description in the letter of the intended revision was that the "proposed tariff changes are necessary to conform the Company's tariff to the various operational changes that will occur as a result of the AMR implementation." Exhibit 25 at 5. There was no mention in the 2 page cover letter from Laclede that one of the services sought to be discontinued was the TFTO inspection. *See* Exhibit 25 at 9. Nor was there any mention in the letter that the use of a "remote reading attachment" to "constitute actual meter readings" to satisfy the Commission's requirement that Laclede obtain an actual inside meter reading on each inside meter on an annual basis removed the one mandatory use of a leak detecting device at the premise of each customer who has an inside meter. *See* Exhibit 25 at 7. None of the changes to the tariff were red-lined to ensure their visibility.

11. PSC staff submitted a memorandum to the PSC, stating that

> The tariff sheets filed propose to change the Company's tariff to facilitate the implementation of Automated Meter Reading (AMR). The Company, or its agent, must have access to the customers' premises to install the AMR device on the customers' meters. One of the changes proposed in this tariff filing allows the Company to discontinue service if a customer fails or refuses to permit installation of equipment, **but the proposed tariff change does not significantly modify any other terms or conditions of service between the Company and customers.**

Exhibit 25 at 1 (emphasis added).

12. In his testimony, Robert Leonberger, a Utility Regulatory Engineering Supervisor in the Gas/Safety Engineering Section of the Energy Department of the Utility Operations Division of the PSC, acknowledged that Laclede did not provide any data or studies related to safety issues that might be implicated by the tariff revision nor about any cost savings that would accrue to Laclede due to the tariff revision. Tr. at 432-435. His only discussion with Laclede regarding safety was as follows:

> **Q (Ms. Schroder)**: All right. So your only discussion with Laclede about safety was whether or not it was required by a specific regulation; is that right?
> **A (Mr. Leonberger):** That was right.

Tr. 445.

13. Furthermore, Leonberger, the only PSC Staff person responsible for evaluating the safety implications of the revision, neither reviewed nor conducted any other studies related to the safety implications of the revision. Tr. at 437-438. In recommending the tariff revision, Leonberger relied solely on the absence of a specific Commission regulation requiring annual reads and/or TFTOs, and his experiential knowledge that other utilities in the state did not do either. [2] Tr. at 442.

14. Although USW 11-6 does not object to the implementation of AMR technology, it is concerned about the impact on public safety of the manner of implementation. Neither Laclede nor the PSC have even acknowledged a potential safety impact in revising the tariffs, even though specific language in the existing tariff connects the performance of a TFTO inspection with ensuring a gas-safe situation. However, the

[2] Leonberger's assertion in this regard was contradicted by Robert Eugene Peterson, Business Manager for IBEW Local 2, the union representing gas workers for Ameren, who stated that Ameren only recently discontinued TFTOs. (Tr. at 250.)

installation and implementation of AMR does not eliminate the necessity for safety inspections of customer premises but eliminates only the need to read a meter for billing purposes. In fact, as Hendricks and Stewart testified, the improper installation of AMR has itself created gas leaks. Exhibit 2, Testimony of Stephen Hendricks, pp. 5-7; Exhibit 3, Declaration of Kevin Stewart, ¶¶ 18-20.

C. The Safety Impact of Annual Reads

15. As stated above, for more than a decade prior to the recent tariff changes, meter readers employed by Laclede had physically read, on an annual basis, those inside meters outfitted with remote reading technology. If a meter had not been outfitted with remote reading technology, that meter was read monthly. Exhibit 3, Declaration of Kevin Stewart, ¶ 5.

16. Laclede asserted at hearing that the only purpose of the annual read was billing. However, the testimony of Meter Reader Kevin Stewart made clear that regardless of the original reason for requiring the annual read, the annual read also had a safety component. Stewart, who has worked for Laclede for over 26 years, explained: "My job at Laclede Gas Company is to read gas meters, and even though there's been some dispute about the protection of life or property, I feel it's a necessary function that I do." Tr. at 234. He testified further that he believes it is a component of his job as a meter reader that he be alert for odors, for hissing sounds, for dead vegetation--in short, for signs of leaking gas. Tr. at 235.

17. The Introduction to Laclede's Meter Reading Manual, states: "It is critical that all meters are read accurately and, if necessary, inspected . . ." Exhibit 21. The Meter Reading Manual contemplates such inspection as part of the meter reader's job,

setting forth an obligation by the meter reader to report "all situations where service work is needed on the meter or where the meter has been damaged or defaced." Exhibit 1, p. 19. Furthermore, Section IV of the Manual, which sets forth the procedure for Annual Read Routes, requires the reader to inspect piping and record the appropriate inspection code. Exhibit 1, p. 20. "All inspections must also answer the question: 'Did the detector alarm? Yes/No' (Circle One). Follow appropriate procedures if detector did alarm." Exhibit 1, p. 20. The appropriate procedures are then set forth at Section VIII of the manual, entitled Gas Leaks: "If you discover any odor of gas, your Combustible Gas Detector (CGD) alarms, or you are told of one by the customers, report it immediately to Odor Control at 342-0800." Exhibit 1, p. 26. The meter readers are given cell phones to use for this purpose. Exhibit 1, p. 4.

18. As Stewart testified, during the physical reading of a meter that is being read annually, the meter reader checks the meter for gas leaks. Although he must maintain a continuous pace in order to read the approximately 400-500 meters per day on a meter route, Stewart explained that other than in unusual situations, he is able to get close enough to the meters to stop or smell signs of a gas leak. Tr. at 208.

19. When performing an annual read, in addition to checking for gas leaks at the meter, if the meter reader smells gas upon entering the premises/basement or if the customer reported smelling gas to the meter reader, the meter reader checks the premises to determine if the odor is gas and if so, from where it is coming. Tr. at 234.

20. Until approximately three years ago, gas leaks at the customer's premises were detected by odor. About three years ago, meter readers in the Laclede service area (as opposed to those in the Missouri Natural Gas division of Laclede) were issued

combustible gas detectors (CGDs), which are leak detection devices that emit an alarm if a gas leak exists in the premises. Exhibit 3, Declaration of Kevin Stewart, ¶¶ 10-11; Tr. at 521-522.

21. The meter readers who were provided CGDs were told by Laclede that failure to wear the CGDs when reading an inside meter would result in discipline. Exhibit 3, Declaration of Kevin Stewart, ¶ 12; Tr. at 240.

22. Stewart estimated that while performing routes of annual meter reads on Saturdays, he would discover approximately one or two gas leaks per route on AMR routes. Tr. at 180.

D. The Safety Impact of TFTOs

23. As stated above in paragraph 2, prior to the tariff revisions at issue, Laclede's tariff required a gas-safe inspection of customer premises at the time that service was transferred from one customer to another, even if the gas flow was not interrupted. The Laclede employees who perform TFTOs were instructed by Laclede that TFTOs were required for safety purposes. Exhibit 2, Testimony of Stephen Hendricks, p. 3.

24. Thomas A. Reitz, Laclede's Superintendent of Service and Division Operations, testified incorrectly in his written testimony that "the only reason Laclede ever performed any kind of TFTO inspection in the past was because it had to have an employee visit the customer's premises in any event to obtain an initial meter read prior to commencing service." Exhibit 13, p. 3. Reitz then explained that with the advent of the new AMR system, such readings can be obtained remotely, thereby obviating the need both to access the customer's premises and to perform a TFTO. However, Laclede

has had various types of remote reading devices on certain of its meters for many years, which permitted a service person to obtain a reading without accessing the customer's premises. Even though a reading could be obtained on those meters without customer inconvenience, Laclede still required access to the premises to change service and to perform a TFTO. Tr. at 387.

25. The TFTO inspections are performed by employees in Laclede's Service and Installation Department (SAID). Tr. at 118. Employees in this department receive training in the performance of their duties when they first start working for Laclede, which training is updated on a yearly basis. Among other things, the training includes classes on Laclede's procedures; on detecting problems with, and repairing, appliances; on how to conduct leak investigations; and on the proper operation of the combustible gas indicator. Tr. at 109. The employees receive additional training each time they are promoted to a new position. Tr. at 110.

26. Twenty-year SAID employee Stephen Hendricks, who performs TFTOs as part of his job, described a TFTO as

> 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.

Exhibit 3, Testimony of Stephen Hendricks, p. 2. The TFTO is an inspection of both company-owned piping as well as customer-owned piping. Tr. at 415-416.

27. Like the meter readers, the service employees who perform TFTOs use leak detection devices during the performance of their job, although the devices issued to

the service employees are the more sensitive combustible gas indicators (CGIs). The CGI provides percentage reads of gas and air and also checks for carbon monoxide. Tr. 522. Failure to bring the CGI into a customer's residence when performing a TFTO will result in discipline. Exhibit 8, Transcript of Jackson Arbitration.

28. Laclede Labor Relations Manager Walter Reitz explained in testimony given in an arbitration between Laclede and USW 11-6 that Laclede's procedure requires that any time a Laclede employee enters a customer home for a TFTO 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." Exhibit 8, Transcript of Jackson Arbitration, p. 50. The purpose of this requirement is "to make sure that the customer's home is . . . gas safe." Id.

29. In his testimony, Hendricks identified several types of safety hazards and potential safety hazards that he has found while conducting a 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.

Exhibit 2, Testimony of Stephen Hendricks, pp. 3-5.

30. Hendricks acknowledged that he was unable to provide a specific number of hazards or potential hazards that he has found while performing TFTOs. He testified

that he has performed a significant number of TFTOs over the last 20 years and that he regularly found hazards while performing them. Tr. at 144. His estimate was that he found safety issues in about a quarter of the homes at which he had performed TFTOs. Exhibit 2, Testimony of Stephen Hendricks, p. 5.

31. As Hendricks stated in response to an inquiry from Commissioner Appling:

> . . . For the time I've worked for Laclede, TFTOs along with other jobs have been very important. There's a lot of things that we find that we don't keep numbers of that are hazards, that are potential hazards, that we find that -- you know, I've been asked questions about the numbers. I believe I told Mr. Elbert that we don't keep numbers. We just do the job.
>
> And the number of jobs I've done over the years I believe have definitely saved some people's lives. Now, they can believe it. They can not believe it. I just think that it's important that these [TFTOs] continue for the general public. That's it.

Tr. at 107-108.

32. Beginning in May 2005 and continuing through September 2005, Local 11-6 conducted a 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." Joe Schulte, USW 11-6 Business Representative, identified at Exhibit 1 to his first Affidavit a summary of the reports from Laclede employees regarding specific 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 Exhibit 1) This danger was noted most recently on the union sampling 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)
- **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 Exhibit 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)

Exhibit 4, Schulte Affidavit and exhibits thereto.

33. Laclede challenged Exhibit 1 to Schulte's Affidavit for containing 25 instances where the same property was listed twice; for including hazards not found on TFTOs; for listing "technical" violations rather than actual hazards; and for being found at TFTOs that occurred shortly after Home Sale Inspections.

34. In regard to the repeat listings, at least some of those involved different hazards found at the same address; for instance, on page 1 of the exhibit, 1838 Woodbridge is listed with a furnace hazard while on page 2, the same address is listed

due to a water heater hazard. Even if true, 25 repeats out of approximately 342 hazards is hardly significant.

35. Laclede further asserts that the "technical" violation of an anti-tip device on a stove comprises nearly a fourth of the claimed hazards. However, a review of the exhibit shows only a total of 11 anti-tip hazards on an exhibit listing approximately 342 hazards -- far from one-fourth of all claimed hazards.

36. Laclede also contended that many of the hazards were not found at TFTO. However, it produced no evidence other than Thomas Reitz's assertion to support this claim even though the documentary evidence to support the claim would be in Laclede's possession.

37. Finally, Laclede contended that "there are instances in which some items" were found shortly after Home Sale Inspections at which such hazards should have been found if they really existed. However, Laclede does not state whether this is two instances, twenty instances, or 200 instances, thus making it difficult to determine whether this factor does in fact undercut the reliability of the exhibit. Furthermore, it ignores the situation in which an appliance is removed by the owner after the Home Sale Inspection and before the TFTO for the new customer. As Hendricks testified,

> Between the time of that inspection and closing, the seller moves out, sometimes disconnecting and removing a washer and dryer, a stove or some other gas appliance. That creates situations in which we might see uncapped fuel running without a shut off. Third, if there is an increase in temperature between the time of the inspection and the time of closing, the new resident may be likely to turn on the attic fan, so the service department employee checks the house with that in mind. The negative pressure created by the attic fan may cause the water heater to spill carbon monoxide back into the house, which is only discovered by the TFTO.

Exhibit 2, Testimony of Stephen Hendricks, p. 5.

38. TFTOs are conducted both when a residence is sold and also when rental property changes tenants. Exhibit 2, Testimony of Stephen Hendricks, p. 2. In the case of rental property, however, there is no Home Sale Inspection at all. The only verification of gas safety at the time of a tenant change has been the TFTO inspection. Hendricks explained that a change in customer can increase the chances of a gas hazard because tenants often remove appliances when they vacate a premise and may neglect to cap the fuel run. Tr. at 90.

39. Robert Eugene Peterson, Business Manager of IBEW Local 2, testified at hearing that his employer, Ameren, performed TFTOs at least from 1988 through 1996, but no longer performed TFTOs after the installation of AMR by Cellnet. Tr. at 250. Although Laclede and the PSC Staff both asserted that no other utilities in the United States perform TFTOs, neither produced any actual evidence to support the assertion. Leonberger stated that he never saw any records indicating that TFTOs were performed by Ameren, or other Missouri utilities. Tr. at 419. In regard to the practice of utilities in other states, Leongberger testified only that he belonged to some regional and national utility groups and he "never had heard anyone that was doing an inspection like that." However, he never specifically asked about such inspections at the meetings. Tr. at 454. Reitz testified only that to his knowledge, no other gas utility in the state of Missouri does TFTOs. Tr. at 546. Although he referenced some sort of survey, the survey was not produced. Tr. at. 547.

IV. Discussion

USW Local 11-6 is not objecting to the implementation of an AMR system by Laclede. However, support for AMR does not mean that all changes Laclede wants to make to its standard operating procedures should be rubber-stamped because linked by Laclede to AMR. In the present case, USW 11-6 believes that the PSC must carefully review the changes stemming from the recent tariff revision to ensure that these changes do not have a negative impact on gas safety.

Laclede's basic argument in defense is an attack on their own employees and their employees' union -- "this case can be summed up with one phrase, preserving unnecessary union work," "the Union would prefer to ignore the progress clause [of the collective bargaining agreement] and instead follow the principle that work once done by the Union must continue to be done by the Union into perpetuity," "the Union wants you to order us, Laclede, to use Union workers to mandate manual inside meter reads and TFTO inspections whether customers want them or not," etc. Tr. at 55-57. This attack distracts from the real issue of whether the tariff revision has a negative impact on gas safety.

A. ISSUE A

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

USW 11-6 is aware that there are no existing gas safety laws, rules, orders, or decisions of the Commission specifically requiring gas distribution companies in Missouri to conduct TFTO inspections when the name of the customer account changes but when there has been no interruption of gas flow or to conduct annual meter reads.

Exhibit 11, p.4. However, until the tariff revision at issue in this matter, Laclede's PSC-approved tariffs required a TFTO inspection under the circumstances above described and such inspections have always been performed by Laclede; likewise, the tariffs required an annual inside read of meters equipped with remote reading technology.

Even in the absence of an existing, specific regulation regarding TFTOs and annual reads, Laclede has an obligation to provide gas service in a safe manner. 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." In a recent labor arbitration hearing between Laclede and USW 11-6, Laclede's Manager of Labor Relations, Walter Reitz, acknowledged this statutory duty and cited it as the rationale for performing TFTO inspections. Exhibit 8, Transcript of Jackson Arbitration, p. 20. In condemning the grievant in the previously-referenced arbitration for allegedly failing to conduct two TFTOs, Labor Relations Manager Reitz testified that this failure created "exposure to gas leaks, fires, explosions, carbon monoxide poisoning." Exhibit 8, Transcript of Jackson Arbitration, p. 20, *see also* Ex. 8 pp. 80, 236-37. He and other managers in that hearing further explained that the TFTO included checking for migrating gas. Exhibit 8, Transcript of Jackson Arbitration, p. 35; *see also* Ex. 8 pp. 70, 75, 236. Another Laclede management employee in that hearing concluded that failure to conduct a TFTO could result in "loss of life or property." Exhibit 8, Transcript of Jackson Arbitration, p. 80.

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 . . . .

Furthermore, while there may not be a specific regulation on annual reads or TFTOs, the PSC regulations do contemplate safety checks during meter reading visits and upon customer-owned equipment and piping. In that regard, the regulations require that gas pipeline operators prepare a procedural manual for operations, maintenance and emergencies that sets forth written procedures for conducting operations and maintenance activities. 4 C.S.R. § 240-40(12)(C)1. Among other things, the manual must include procedures to provide safety during normal operations as follows:

> L. Continuing observations during all routine activities, including, but not limited to, meter reading and cathodic protection work. . . . Potential leak indications must be recorded and responded to in accordance with section (14); and
>
> M. Testing and inspecting of customer-owned gas piping and equipment.

Id. at (12)(C)2. Subsection 4 of this part requires the manual to include "instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions . . . ." Again, Laclede managers recently provided sworn testimony in the Jackson discharge arbitration to the effect that TFTOs enable service personnel to recognize conditions with the potential for such safety-related conditions as “gas leaks, fires, explosions, carbon

monoxide poisoning" and migrating gas. Exhibit 8, Transcript of Jackson Arbitration , pp. 20, 35, 70, 75, 80, 236-37.

The system of gas safety set forth in the regulations establishes only "minimum" requirements for gas safety. See, e.g. 4 CSR 240-40(8), ("prescrib[ing] minimum requirements for installing customer meters.") If the PSC determines that a gas utility is not operating safely, it clearly has the authority to issue an order to require the utility to take actions above and beyond those set forth in the admittedly minimum standards set forth in its regulations. As Robert Leonberger testified

> If [the PSC] find[s] problems that --- of the specific nature that we believe that need to be addressed above and beyond the current rules, we would try to address those by more frequent . . . leak surveys, replacement of pipe or something like that.

Tr. at 421. As an example, Leonberger testified that the PSC has required the replacement by Laclede of 8,000 copper service lines a year and the performance of annual leak surveys on them, even though these requirements are not in the regulations. Tr. at 421.

In addition, in the course of granting Laclede's request for a variance from 4 CSR 240-10.030(19), to allow replacement of meters based on statistical sampling rather than automatically based on age, the Commission in PSC Case No. GO-95-320 recognized the importance of requiring Laclede to conduct safety inspections on customer-owned equipment and appliances.

> The Commission finds that the piping and appliance inspections conducted by Laclede when it turns on the gas supply to a residence provide important opportunities to observe and correct unsafe conditions. . . . The Commission finds that this decline of 20,000 visits [due to a decrease in the number of meters replaced

> due to the interim variance] will eliminate 20,000 opportunities to observe and remedy potentially unsafe conditions.

PSC Case No. GO-95-320 at 6. The Commission therefore issued a forceful statement recommending "implementation by [Laclede] of a program which recaptures those lost opportunities [to perform piping and appliance inspections when replacing meters every 10 years] elsewhere in Laclede's safety inspection program." PSC Case No. GO-95-320 at 6. Through the tariff revisions at issue in this case, Laclede has further reduced these important opportunities to observe and correct unsafe conditions.

Thus, the lack of an existing regulation specifically mandating TFTOs and annual reads is not determinative in this matter.

B. ISSUE 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?

The Union asserts that the answer to the above issue is a resounding "yes." At the very least, this is an issue that justifies an investigation into the safety implications of permitting Laclede to stop making the formerly required visits to customer premises for annual reads and TFTOs.

1. Lack of Review of the Safety Impact of the Tariff Revision

As a preliminary matter, USW Local 11-6 states that the annual reads and TFTOs affected by the tariff revision should be reinstated until such time as an adequate inquiry is made into whether the revision has a negative impact on customer gas safety. As discussed above in the Statement of Facts, ¶¶ 6-11, the testimony at hearing was clear that no consideration was given to the safety implications of this revision beyond

determining that no specific PSC regulation covered TFTO or annual reads. Laclede presented no data or studies showing that either the TFTO or the annual read have had no impact in preventing gas mishaps; the PSC reviewed no other study or data on this point. This is not surprising in light of Laclede's unwillingness to acknowledge in its original tariff revision submission to the PSC that there could be any safety implications from the revision. Thus, Laclede failed to mention the elimination of the TFTO and the elimination of an annual CDG on all inside meters bearing remote reading devices, but instead focused exclusively on AMR and the alleged necessity to conform the tariff to unspecified "operational changes" resulting from AMR. Exhibit 25 at 4-5. In this way, and by failing to attach red-lined versions of the tariff pages containing the revision, Laclede succeeded in pushing the tariff revision under the safety radar.

Laclede has supported its requested tariff revision only with information related to billing efficiencies. Indeed, the written testimony of Thomas Reitz emphasized the alleged 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?) 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.

In fact, it appears quite clear that there is no data either in Laclede's or the PSC's possession that provides any insight into the effect of ceasing these visits to the customer's home and of relying solely on a once every three year visit. Neither Laclede nor the PSC know how many hazards are detected or prevented by the annual read and

the TFTO. Thomas Reitz testified that Laclede does not keep track of the origin of a call of a gas odor, Tr. at 526, and, while found leaks are recorded on the work order form, also referred to as the customer information system (CIS) form, Laclede does not keep track of what percentage of gas odors are found by the CGI or CGD, by the meter reader by smell, by the customer, or by other manner. Thus, Laclede does not know how many gas leaks are detected on annual reads or on TFTOs. Tr. 526-529. Likewise, Laclede does not maintain data on the number or percentage of other hazards discovered during TFTOs. Tr. at 540. Furthermore, neither Laclede nor the PSC maintain data on gas incidents arising on the customer side; Leonberger admitted in his testimony that the PSC does not even have data or statistics on the frequency of customer-side fires or explosions. Tr. at 486.

While perhaps not a perfect approach to ensuring gas safety, the annual read requirement and the TFTO inspection ensured for many homeowners and renters a visit by a trained gas professional that provided an extra modicum of gas safety in their premises. And, as the Union witnesses and exhibits revealed, gas hazards are being found on TFTOs and annual reads. Whether the additional protection provided by these visits can be safely removed should only be determined after a review of actual data, which data neither Laclede nor the PSC seem to have, and not just on unsupported assumptions.

2. There Is a Sufficient Safety Justification To Continue TFTO Inspections and Annual Inside Meter Reads

USW 11-6 asserts that the testimony of the witnesses at hearing, and the exhibits, demonstrates that there are sufficient safety reasons to continue the performance of TFTOs and annual meter reads. USW 11-6 disputes the repeated contention of Laclede

that this matter involves no issues of safety, but only an attempt by USW 11-6 to maintain its members' jobs.[3]

As is clear from the testimony of the Union's witnesses and the exhibits, both the annual reads and the TFTO inspections discover gas hazards. See Statement of Facts, ¶¶ 21, 25-27. While not a systematic process for ensuring gas safety, the annual read inspection is a process that has worked to ensure gas safety at some of the more obvious places of hazard, e.g., where the meter enters the home; and the TFTO inspection is a process that has worked to ensure gas safety at some of the more frequent times for hazards, e.g., when a customer moves out, taking appliances along. As Laclede pointed out at hearing, there is often no way to know how long a hazard existed before it was found on an annual read or a TFTO; however, there is no disputing that hazards are found, regardless of how long they were there prior to being found, and that finding the hazard is the first step to repairing it and ensuring that it does not result in harm to persons or property.

Both the facts as described above in the Statement of Facts 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

[3] Laclede makes a similar argument that USW 11-6's representation of its member shows that it is not really interested in safety. This cynical argument ignores the federal statutory duty of a union to fairly represent its members in regard to their terms and conditions of employment. 29 U.S.C. §§ 158, 185. Grieving and arbitrating the discipline of a member is not an admission that the underlying misconduct for which said member was disciplined, if proven, was safe.

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.

Laclede also contends that the lack of safety justification for performing TFTOs and annual reads is evident in the fact that no other Missouri utility performs either. As discussed above in paragraph 34 of the Statement of Facts, however, neither the PSC Staff nor Laclede produced any actual evidence to support this assertion. USW 11-6, on the other hand, produced an employee of Ameren who testified that while working as a dispatcher for Ameren from 1988 through 1996, when Cellnet finished its AMR installation, he dispatched crews to perform TFTOs throughout Ameren's service territory. Tr. at 246.

Even if accurate, without some foundation, the lack of TFTOs and annual reads by another utility has little meaning because other Missouri utilities may be visiting customer premises' for other reasons and performing other safety inspections, rendering TFTOs and annual reads redundant. Without information on this point, testimony that neither TFTOs nor annual reads are performed by other utilities is meaningless as a comparison of Laclede's safety procedures vis a vis that of other utilities.

C. ISSUE 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?

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 potentially a 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 and the PSC Staff suggest that responsibility for gas safety after the gas "leaves" Laclede's pipeline and enters the customer's home be placed on the shoulders of its customers. Both state that the customer has "always" been responsible for the safety of his or her own piping and equipment. However, this assertion is only partially correct; while Laclede is not responsible for the customer's piping and equipment, it has until recently verified gas safety on the customer's side before continuing service when alerted to a change in customer. In addition, on its annual reads, it has provided a quick safety check of the customer's meter and the meter's environs for indications of gas leaks. USW 11-6 recognizes that this system of TFTOs and annual reads might not catch every potential gas hazard or result in an annual visit to every gas customer's home; however,

this system has caught numerous potential gas hazards that are then repaired before a safety incident occurs.

Although the regulations do impose responsibility on the customer for their own piping and appliances, the regulations also contemplate that the gas utility will play a role in ensuring gas safety on the customer side. The regulations require that gas pipeline operators prepare a procedure manual for operations, maintenance and emergencies that sets forth written procedures for conducting operations and maintenance activities that must include safety procedures for:

> L. Continuing observations during all routine activities, including, but not limited to, meter reading and cathodic protection work. . . . Potential leak indications must be recorded and responded to in accordance with section (14); and
>
> M. **Testing and inspecting of customer-owned gas piping and equipment.**

Id. at (12)(C)2 (emphasis added).

Furthermore, as the gas distribution utility, Laclede should maintain the responsibility of performing annual meter reads and TFTO inspections. Oddly, Laclede argues that it should not have to perform TFTOs or annual reads due to the cost to its customers, which Laclede believes the customers should not have to, or do not want to, bear, while simultaneously arguing that all gas-safe inspections of customer-owned appliances and piping should be the sole financial responsibility of the customer, who should call a contractor for the service. Laclede has not produced any evidence about its customers' preferences in this regard, not even casual surveys. It certainly has not proposed to refund to its customers the saved costs it has accrued by no longer having to perform annual reads and TFTOs. Before accepting Laclede's argument about society's

willingness to accept "some level of danger," Tr. at. 59, there ought to be some evidence that society understands the issue and in fact, has expressed its agreement that Laclede cease these visits to the customer's premises.

Regardless of customer preference, imposing sole responsibility on the customer 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. 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.

As evidenced by the following testimony of Robert Leonberger, there are serious hurdles to imposing sole responsibility for gas safety on the customer:

> **Q (Ms. Schroder):** Would you agree that some Missouri residents don't even have the money necessary to even pay their heating bills without help?
> **A (Mr. Leonberger):** I agree with that.
> **Q:** And the PSC has felt that it was necessary to create a program that helps those people afford the gas to heat their homes; isn't that right?
> . . . .
> **A:** The State has one, yes.
> **Q:** And you would agree that those same people who can't afford to pay their heating bills are not going to be able to pay for those private inspections either; is that right?
> **A:** The -- I'll just go back to what I said before. I believe that they're responsible for their own pipe and equipment.
> . . . .
> **Q:** Would you agree that if they can't pay for the heat and they can't pay for the inspections, they just should go without the inspections?
> **A:** I guess they would have to.

Tr. at 475. While no one suggests that Laclede be responsible for thoroughly checking customer piping and equipment yearly, taking the opportunity to check the customer's side when alerted to a move or checking the meter and its environs annually when reading the meter is a step that provides enough of a safety benefit to require its continuance.

D. 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 of performing annual meter reads on inside remote meters and TFTO inspections in the meantime.

RELIEF REQUESTED

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.

CONCLUSION

For the foregoing reasons, the relief requested by USW 11-6 should be granted.

Respectfully submitted,

/s/ Sherrie A. Schroder
Janine M. Martin, MBN 46465
Sherrie A. Schroder, MBN 40949
HAMMOND, SHINNERS, TURCOTTE, LARREW and YOUNG, P.C.
7730 Carondelet Avenue, Suite 200
St. Louis, Missouri 63105
(314) 727-1015 (Telephone)
(314) 727-6804 (Fax)
jmartin@hstly.com (E-mail)
saschroder@hstly.com (E-mail)
Attorneys for USW Local 11-6

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was served on July 7, 2006, by United States mail, hand-delivery, email, or facsimile upon:

General Counsel Office
Missouri Public Service Commission
GenCounsel@psc.mo.gov

Lewis Mills
Office of Public Counsel
opcservice@ded.mo.gov

Marc Poston
Office of Public Counsel
marc.poston@ded.mo.gov

Tim Schwarz
Missouri Public Service Commission
Tim.Schwarz@psc.mo.gov

Michael C. Pendergast
Vice President – Associate General
Counsel of Laclede Gas Company
mpendergast@lacledegas.com

Rick Zucker
Laclede Gas Company
rzucker@lacledegas.com

/s/ Sherrie A. Schroder