

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

|   |   |                       |
|---|---|-----------------------|
| Dr. Hortense Lucinda Harrison, Complainant vs | ) |                       |
| Laclede Gas Company, Respondent               | ) | Case No. GC-2008-0041 |
|   | ) |                       |

**OPINION OF COMMISSIONERS ROBERT M. CLAYTON III AND  
KEVIN GUNN, CONCURRING, IN PART, AND DISSENTING, IN PART**

These Commissioners concur in the majority's Report and Order, which broadly holds that the Complainant is required to pay for gas service she actually received over a three to four month period from December, 2006, to March, 2007, valued at \$713 19, pursuant to the utility's tariff and the Commission's rules. Despite utility company errors, customers are expected to pay for their actual usage and the record is clear that the above bill remains outstanding and due. However, the record is also clear that the utility has completely mishandled how it addressed the Complainant's legitimate concerns by (1) sending the bill to the wrong address, (2) misapplying the correct tax rate, (3) setting up an incorrect start date for billing, (4) failing to address a malfunctioning meter in a timely fashion, (5) erroneously demanding a deposit, (6) erroneously threatening disconnection and (7) improperly estimating the Complainant's bill. Following the Complainant's persistence and tenacity, Laclede has addressed almost all of these errors in the Complainant's favor. Unfortunately, Commission rules and the utility's tariffs do not offer any additional relief for the Complainant.

These Commissioners are compelled to dissent, in part, because of a disagreement over the single issue of whether Laclede violated Commission rule 4 CSR 240-13 020 2, which mandates that bills be based on actual usage or actual meter reads. There is an ambiguity in both Commission rule and the utility's tariff regarding the exceptions which permit estimated billing during limited amounts of time. Section 4 CSR 240-13 020(2) reads that bills are supposed to be

based on actual usage while subsection (2)(A) suggests three exceptions when a “utility may render a bill based on estimated usage ” Estimated bills are authorized for seasonally billed customers, extreme weather conditions, emergencies, labor agreements or work stoppages preventing actual meter readings, and when the utility is unable to obtain access to the customer’s premises to read the meter or when the customer makes reading the meter unnecessarily difficult

On the other hand, subsection (2)(B) sets further limitations, “[a] utility shall not render a bill based on estimated usage for more than three (3) consecutive billing periods or one (1) year, whichever is less, except under conditions described in subsection (2)(A) of this rule ” This provision limits the duration of estimated billing except during previously referenced exceptions, but makes a curious reference back to subsection (2)(A) There is no dispute that that the facts do not support a finding of any of the exceptions in subsection (2)(A)

The majority interpreted this rule to allow utilities to render estimated bills, *for any reason*, for a period of up to three consecutive billing periods, or one year, whichever is less by relying on subsection (2)(B) which refers back to the exceptions as *authorizing estimated bills* The majority assumes that the reference to (2)(A) should mean that estimated bills may exceed the three billing period limitation when any of the exceptions are present Conversely, the Office of Public Counsel (OPC) argues that the rule mandates utilities to compute bills based on actual usage and may *only* estimate bills for the reasons listed in subsection (2)(A), such as the above-mentioned emergencies or work stoppages Then, utilities may render estimated bills for *only* a period of up to the three consecutive billing periods, or one year, whichever is less OPC’s interpretation recognizes that utilities may need to send estimated bills at times, but that after three monthly billing periods, the utility should have had ample time to find a way to resume actual billing

As Laclede’s estimated billing was due to a faulty meter and other billing errors, and not for any of the outlined exceptions, these Commissioners agree with OPC and believe Laclede’s estimated billing in this case was a violation of Commission rule The majority’s reading of the

rule permits billing estimates, for any reason, and then, for the outlined exceptions in (2)(A), the interpretation permits indefinite estimates of bills. Estimated billing should be the exception, not the rule, and the Commission's rule suggests a fair manner of permitting estimated billing on a limited basis. The public policy reasons to encourage actual meter reading and billing include ensuring customers are treated fairly, that bills reflect actual usage, that collections match usage and to avoid excessive catch-up bills in the event of estimation errors.

While these Commissioners disagree with the majority in its interpretation of this rule, the majority does identify an actual conflict between the provisions, which should be addressed by a future rulemaking. This ambiguity in the rule necessitates a need for future amendment to send a clear message on estimated bills. These Commissioners believe that the clear direction should be in limiting, as much as practical, estimated billing.

Therefore, these Commissioners concur, in part, and dissent, in part.

Respectfully submitted,

  
Robert M. Clayton, Commissioner

  
Kevin Gurn, Commissioner

Dated this 2nd day of December 2008, at Jefferson City