

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

The Office of the Public Counsel,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2006-_____
)	
Laclede Gas Company,)	
)	
Respondent.)	

**COMPLAINT AND
MOTION TO CONSOLIDATE**

COMES NOW the Office of the Public Counsel and for its Complaint and Motion to Consolidate states:

I. Complaint

1. Laclede Gas Company (“Laclede”) is a gas corporation subject to regulation by the Commission under Sections 386.020, 386.250, and 393.140 RSMo 2000. Laclede provides natural gas service to approximately 630,000 Missouri customers, including approximately 590,000 residential customers. Laclede’s business address is 720 Olive Street, St. Louis, Missouri 63101.

2. The Office of the Public Counsel (“Public Counsel”) is authorized to file complaints against public utility corporations under Section 386.390 RSMo 2000 and 4 CSR 240-2.070.

3. This Complaint addresses Laclede’s practice of adjusting customer bills where the customer has been undercharged by Laclede for a period greater than twelve months. Laclede is operating in violation of Commission rule 4 CSR 240-13.025(1)(B), which states:

(B) In the event of an undercharge, an adjustment shall be made for the entire period that the undercharge can be shown to have existed not to exceed twelve (12) monthly billing periods or four (4) quarterly billing periods, calculated from the date of discovery, inquiry or actual notification of the utility, whichever was first.

According to this rule, if Laclede undercharges a residential customer for gas service, Laclede may only make an adjustment on the customer's bill for a period not to exceed twelve (12) months.

4. Responding to a data request submitted by Public Counsel to Laclede in Case No. GC-2006-0318, *Staff of the Public Service Commission of the State of Missouri v. Laclede Gas Company*, Laclede provided Public Counsel with the following explanation of its billing practices when a customer has been undercharged for more than twelve consecutive months:

Laclede will only seek to bill customers for "catch-up" amounts for a period greater than 12 months from the date of the discovery if it has a remark on the customer's account or other data showing that the customer was specifically advised at the appropriate time of the Company's need to obtain an actual meter reading, but no such reading could be obtained.¹

This practice is a violation of 4 CSR 240-13.025(1)(B). Laclede is admittedly seeking bill adjustments for periods that exceed the 12 month limit. The rule does not make an exception in instances where Laclede has advised the customer of Laclede's need to obtain an actual meter reading. Laclede's practice allows undercharges and billing adjustments to occur indefinitely if there is a "remark" that the customer was notified.

5. Laclede's current tariff includes the same twelve month limit on adjustments for undercharges, which was approved by the Commission in Case No. GR-92-165 (Attachment B). Laclede's tariff states:

¹ Laclede's response to Public Counsel's Data Request Numbers 704 and 705, Case No. GC-2006-0318, responses received April 27, 2006 (see Attachment A).

In the event of an undercharge: An adjustment shall be made for the entire period that the undercharge existed not to exceed twelve consecutive billing periods, calculated from the date of discovery, inquiry or actual notification of the Company, whichever was first.

The Staff relied upon the language approved by the Commission for Laclede when it proposed the same language for United Cities Gas Company in Case No. GR-93-47. Staff proposed a twelve month limit on adjustments for undercharges and United Cities Gas Company proposed a five year limit. The Commission held in favor of the Staff, a finding which would lead directly to the adoption of the aforementioned rule. The Commission stated:

The Commission determines that Staff's position, which limits the billing adjustment period for an undercharge to one year prior to the date of discovery of the error, inquiry or actual notification of the Company, whichever occurs first, is correct. ... This instance creates a unique situation that should be the subject matter of regulation. A customer who is incorrectly billed loses the opportunity to curtail the usage of gas should such action become necessary in order to control the total amount of the monthly bill. The regulated relationship between the company and customer is such that accurate information about the price and total cost is a necessary contractual component. The Commission, therefore, determines that the Staff's billing adjustment proposal addresses this relationship and is an integral provision to the contract between the customer and the company. The regulated company receives a monopoly right; as a result, it may be appropriate for the Commission to require the company to enter into special contractual provisions that delineate and restrict its causes of action. Therefore, the Commission finds that limiting the right of a company to collect on or accrue a cause of action for an undercharge for residential customers is a proper regulatory limitation. This regulation obviously puts a responsibility on the company to eliminate undercharges. In so finding for the Staff, the Commission is not restricting Company from its right to collect for correctly billed charges, or in the case where the undercharge is caused by an act of the customer.²

Here the Commission explains how a customer who is incorrectly billed loses the opportunity to curtail the usage of gas should such action become necessary in order to control the total amount of the monthly bill. The Commission further explains that this requirement "obviously puts a

² *In the matter of United Cities Gas Company's proposed tariffs to increase rates for gas service provided to customers in the Missouri service area of the company*, GR-93-47, Report and Order, July 2, 1993; 2 Mo. P.S.C. 3d 280.

responsibility on the company to eliminate undercharges.” Laclede’s practice, however, pushes that burden back on the customer by allowing the customer to accumulate excessive undercharges.

6. The Commission’s rules 4 CSR 240-13.020(2)(A) and (B) prohibit a gas utility from estimating usage for a period greater than one year unless the estimation that goes beyond one year is: 1) to seasonally billed customers; 2) when extreme weather conditions, emergencies, labor agreements or work stoppages prevent actual meter readings; or 3) when the utility is unable to obtain access to the customer’s premises for the purpose of reading the meter or when the customer makes reading the meter unnecessarily difficult. Under this third condition, the utility is allowed to render a bill based on estimated usage for more than a year, but it does so at its own peril since 4 CSR 240-13.025 limits the adjustment to twelve months when the estimate results in an undercharge. For example, the utility is free to estimate usage under 4 CSR 240-13.020(2)(A) for two years, however, if after two years an actual read is obtained and the customer has been undercharged, the utility may only adjust the customer’s bill for the last twelve months under 4 CSR 240-13.025(1)(B). This gives the utility the incentive to keep undercharges to a minimum.

7. Laclede justifies its practice of adjusting an undercharge for a period in excess of twelve months because of Laclede’s inability to access the customer’s meter. Commission rule 4 CSR 240-13.050 authorizes Laclede to discontinue service to any customer that refuses “after reasonable notice to permit inspection, maintenance, replacement or meter reading of utility equipment.” Prior to discontinuing service, Laclede is required to send written notice to the customer ten (10) days prior to the date of the proposed discontinuance. The purpose of this notice is to allow the customer an opportunity to allow access to the meter and avoid a

discontinuance of service. Following this practice, rather than a practice that allows a customer to be billed an estimated charge indefinitely, will encourage the customer to allow access to the meter and will avoid the current situation where customers are being billed an adjustment for more than twelve months of undercharges.

8. This Complaint should not be misconstrued to suggest that Public Counsel wishes to reward Laclede customers that know the estimate is less than the actual reading and for this reason have intentionally prevented Laclede from obtaining the actual meter reading. Public Counsel does not wish to protect customers acting in bad faith. Public Counsel is concerned that customers acting in good faith have also faced bill adjustments for periods in excess of 12 months, which the Commission has determined to be unlawful. The importance of protecting the customer acting in good faith is not outweighed by the importance of preventing the customer acting in bad faith from “gaming” the system.

9. Public Counsel requests that the Commission issue an order as follows: 1) Finding Laclede is in violation of 4 CSR 240-13.025(1)(B); 2) Finding Laclede is in violation of the Commission’s Report and Order in Case No. GR-92-165 approving Laclede’s tariff provision regarding billing adjustments; 3) Ordering Laclede to cease adjusting customer bills for undercharged periods in excess of 12 months; 4) Directing the Commission’s Staff to investigate the scope of this issue to determine how many Laclede customers have been billed unlawfully; 5) Ordering refunds to customers that were unlawfully billed adjustments and that paid such unlawful adjustments; and 6) Directing its General Counsel to seek penalties for each offense under Sections 386.570, 386.590 and 386.600 RSMo 2000.

II. Motion to Consolidate

10. The issue raised by this Complaint is related to issues raised in Case No. GC-2006-0318, where the Staff filed a complaint alleging among other things that: 1) Laclede has failed to adequately notify customers that estimated bills may not reflect actual usage; 2) Laclede has failed to notify customers that the customer may read and report usage on a regular basis; and 3) Laclede has failed to attempt to secure an actual reading at least annually. As Laclede is in the process of installing an automated meter reading system (AMR), Staff states that Laclede will obtain actual meter reads and will adjust bills where customers have been based on estimates. Staff states that catch-up bills where usage has been underestimated is particularly difficult for customers because of the current extremely high price of natural gas.

11. The allegations from Staff's complaint could directly impact the issue of excessive billing adjustments raised in this complaint. Laclede's failure to adequately notify customers regarding estimates and the customer's ability to self-report usage could directly increase the number of customers whose bill is estimated for more than twelve months, and in turn increase the number of customers whose bills are undercharged in excess of twelve months. If Laclede's notice to the customer is inadequate, as alleged in Staff's complaint, the "remark" on the customer's account relied upon by Laclede could be based on an inadequate notice. Accordingly, the customer could be accumulating a large undercharge for no reason other than Laclede's failure to provide the customer with adequate notice of the problem. This problem could be compounded by the migration to AMR, which will increase the number of billing adjustments.

12. The statute which authorizes complaint cases to be filed with the Commission, §386.390.2 RSMo 2000, and the Commission's rule regarding complaint cases, 4 CSR 240-

2.070(12), state that all matters upon which a complaint may be founded may be joined in one hearing and further states that no motion for dismissal may be entertained against a complaint for misjoinder of causes of action. Commission rule 4 CSR 240-2.110(e) states that the Commission may order a joint hearing of any or all matters at issue “when pending actions involve related questions of law or fact.” Rule 66.01(b) of the Missouri Rules of Civil Procedure states that when actions involving a common question of law or fact are pending before a court, such matters may be properly consolidated so as to avoid unnecessary cost or delay. Both Complaints involve common questions of law and fact. Administrative efficiency and the public interest would be promoted by consolidating these two cases.

WHEREFORE, Public Counsel respectfully files this Complaint against Laclede Gas Company and requests that this case be consolidated with Case No. GC-2006-0318.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Senior Public Counsel

P. O. Box 2230

Jefferson City MO 65102

(573) 751-5558

(573) 751-5562 FAX

marc.poston@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 11th day of May 2006:

General Counsel
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO
65102
GeneralCounsel@psc.mo.gov

Laclede Gas Company
Michael C. Pendergast
720 Olive Street, Suite 1520
St. Louis, MO
63101
mpendergast@lacledegas.com

/s/ Marc Poston

Laclede Gas Company
Case No.: GC-2006-0318

REQUESTED BY: BARB MEISENHEIMER

REQUESTED FROM: MIKE PENDERGAST

DATE OF REQUEST: April 27, 2006

INFORMATION REQUESTED: PLEASE PROVIDE A DETAILED EXPLANATION OF LACLEDE'S BILLING PRACTICES WHEN A CUSTOMER HAS BEEN UNDERCHARGED FOR MORE THAN TWELVE CONSECUTIVE MONTHS.

RESPONSE: LACLEDE WILL ONLY SEEK TO BILL CUSTOMERS FOR "CATCH-UP" AMOUNTS FOR A PERIOD GREATER THAN 12 MONTHS FROM THE DATE OF THE DISCOVERY IF IT HAS A REMARK ON THE CUSTOMER'S ACCOUNT OR OTHER DATA SHOWING THAT THE CUSTOMER WAS SPECIFICALLY ADVISED AT THE APPROPRIATE TIME OF THE COMPANY'S NEED TO OBTAIN AN ACTUAL METER READING, BUT NO SUCH READING COULD BE OBTAINED.

☐ Printed Materials _____ Total Pages ☐ Magnetic Media _____ Number of disks or tapes

Please number each section of multiple pages as: File formats for data:

of Total

LIST PRINTED MATERIALS AND/OR FILES INCLUDED:

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present known facts to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE RECEIVED: _____

SIGNED BY: _____

TITLE: _____

Laclede Gas Company
Case No.: GC-2006-0318

REQUESTED BY: BARB MEISENHEIMER

REQUESTED FROM: MIKE PENDERGAST

DATE OF REQUEST: April 27, 2006

INFORMATION REQUESTED: PLEASE EXPLAIN WHETHER LACLEDE HAS BILLED OR CURRENTLY BILLS CUSTOMERS WITH CATCH-UP BILLS FOR A BILLING PERIOD OF GREATER THAN TWELVE MONTHS.

RESPONSE: PLEASE SEE THE RESPONSE TO DATA REQUEST NUMBER 704.

THIS RESPONSE INCLUDES:

☐ Printed Materials _____ Total Pages ☐ Magnetic Media Number of disks or tapes

Please number each section of multiple pages as: File formats for data:

 # of Total #

LIST PRINTED MATERIALS AND/OR FILES INCLUDED:

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present known facts to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE RECEIVED:

SIGNED BY:

TITLE: _____

Laclede Gas Company

Name of Issuing Corporation or Municipality

For Refer to Sheet No. E-1

Community, Town or City

RULES AND REGULATIONS

10. Meter Tests and Billing Adjustments (Continued).

Residential Customers:

In the event of an overcharge: An adjustment shall be made for the entire period that the overcharge existed not to exceed sixty consecutive billing periods, calculated from the date of discovery, inquiry or actual notification of the Company, whichever was first. In the event of an undercharge: An adjustment shall be made for the entire period that the undercharge existed not to exceed twelve consecutive billing periods, calculated from the date of discovery, inquiry or actual notification of the Company, whichever was first.

Customers Other Than Residential:

In the event of an overcharge: An adjustment shall be made for the entire period that the overcharge existed not to exceed sixty consecutive billing periods, calculated from the date of discovery, inquiry or actual notification of the Company, whichever was first.

In the event of an undercharge: An adjustment shall be made for the entire period that the undercharge existed not to exceed sixty consecutive billing periods, calculated from the date of discovery, inquiry or actual notification of the Company, whichever was first.

- (B) No billing adjustment will be made where the full amount of the adjustment is less than \$1.00.
- (C) Where, upon test, a meter error is found to be 2% or less, no billing adjustment will be made.
- (D) When evidence of tampering is found, or misrepresentations of the use of service by the Customer, the Company will calculate the billing adjustment period in accordance with the applicable statute of limitations for the prosecution of such claim after determining the probable period during which such condition existed from all related and available information.

DATE OF ISSUE August 21, 1992

DATE EFFECTIVE September 1, 1992

ISSUED BY

K. J. Neises
Name of Officer

Vice President, 720 Olive St., St. Louis, MO 63101
Address