

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

The Office of the Public Counsel,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2006-0318, et al.
)	
Laclede Gas Company,)	
)	
Respondent.)	

**PREHEARING BRIEF OF
THE OFFICE OF THE PUBLIC COUNSEL**

The complaints filed by the Commission’s Staff and the Office of the Public Counsel against Laclede Gas Company allege Laclede’s estimated billing practices violate the Commission’s billing rules and Laclede’s tariff. Staff’s complaint also alleges that Laclede failed to follow the Commission’s safety rules by not taking action where usage registered on meters that were shut-off. If the Commission determines that Laclede’s practices violate the Commission’s rules, a third issue is to determine the appropriate remedy.

The evidence in this case will demonstrate that Laclede Gas Company has routinely failed to comply with the Commission’s billing rules, causing harm to Laclede’s residential customers. Public Counsel urges the Commission to listen to the public, to listen to the Commission’s own rationale for implementing the Commission’s billing regulations, and to order the relief requested by Public Counsel and the Commission’s Staff. It is Public Counsel’s understanding that the Staff and Laclede have reached an agreement regarding Count II. Accordingly, this brief will only address Staff’s Count I and Public Counsel’s complaint. The issue as identified by the parties states:

Has Laclede complied with the provisions of Commission Rules 4 CSR 240-13.020 and 13.025 related to its issuance of estimated bills, including adjustments of estimated bills, and if not, what should the remedy be?

A. Staff Complaint vs. Laclede

Count 1 of Staff's complaint includes several allegations regarding Laclede's practices regarding malfunctioning trace devices. The Staff's complaint states:

Laclede has estimated customer usage when the trace device attached to the customer's meter has malfunctioned. Laclede has failed to schedule such customers for regular manual reads, failed to use actual reads if acquired or has failed to notify the customer of the opportunity to self-read the meter and report usage.

These allegations suggest multiple violations of the Commission's billing rule 4 CSR 240-13.020. A thorough analysis of 4 CSR 240-13.020 is necessary to fully understand the extent of Laclede's disregard for the Commission rules and Laclede's repeated rule violations. To identify all occurrences, Public Counsel recommends nothing less than an extensive and thorough audit of Laclede's billing records and practices is necessary to identify each offense. Public Counsel believes the evidence in this case will demonstrate that Laclede has violated the following Commission rules:

1. Laclede Violated 4 CSR 240-13.020(2)(A)

Laclede is required to compute a customer's bill on actual usage except under limited circumstances. There are three situations where Laclede may base a customer's bill on estimated usage: 1) to seasonally billed customers; 2) when extreme weather, emergencies, labor agreements or work stoppages prevent actual meter readings; and 3) when the company is unable to obtain access to the customer's premises to read the meter, or when the customer makes reading the meter unnecessarily difficult. 4 CSR 240-13.020(2)(A). The focus of this case is on the third situation – where Laclede is unable to gain meter access. In this situation, 4 CSR 240-13.020(2)(A) requires Laclede to undertake reasonable alternatives to read the meter where

practicable, such as leaving self-read cards with the customer. Laclede is required to maintain records of compliance with this rule pursuant to 4 CSR 240-13.020(2)(D)1.

2. Laclede Violated 4 CSR 240-13.020(2)(B)

Commission rule 4 CSR 240-13.020(2)(B) states that Laclede “shall not” render a bill based on estimated usage for more than three consecutive billing periods except as described in the subsection 4 CSR 240-13.020(2)(A) discussed above. Laclede is required to maintain records of compliance with this rule pursuant to 4 CSR 240-13.020(2)(D)1.

3. Laclede Violated 4 CSR 240-13.020(2)(D)1

Commission rule 4 CSR 240-13.020(2)(D)1, mentioned above, requires Laclede to “maintain accurate records of the reasons for the estimate and the effort made to secure an actual reading.” This rule is an essential component of the Commission’s billing rules because it documents the Company’s compliance with the Commission’s rules and provides the only documented justification that Laclede properly followed the Commission’s rules when rendering bills based on estimated usage. Unless Laclede can document that its reason for estimating a customer’s bill, the Commission should not simply assume that Laclede complied with these rules.

4. Laclede Violated 4 CSR 240-13.020(3)

Commission rule 4 CSR 240-13.020(3) requires Laclede to step up the efforts to obtain an actual meter reading after three consecutive estimated bills and provide more to the customer than notice on the customer’s door. Among other things, this rule requires Laclede to: 1) advise the customer by first class mail or personal delivery that the bills are estimated and that the customer may self-report usage; and 2) offer appointments for meter readings on Saturday or

prior to 9:00 p.m. on weekends. Laclede is required to maintain records of compliance with this rule pursuant to 4 CSR 240-13.020(2)(D)1.

5. Laclede Violated 4 CSR 240-13.020(4)

Commission rule 4 CSR 240-13.020(4) *requires* Laclede to obtain a meter reading at least annually where the customer fails to report usage to the utility. There are no exceptions to this requirement. This rule also *requires* Laclede to advise the customer that if usage is not reported and access to the meter is not granted, “then service may be discontinued pursuant to 4 CSR 240-13.050.” Laclede is required to maintain records of compliance with this rule pursuant to 4 CSR 240-13.020(2)(D)1.

B. OPC Complaint vs. Laclede

1. Undercharge Adjustments are Limited by Rule to Twelve Months

Resolving Public Counsel’s complaint will require the Commission to interpret the Commission’s rule 4 CSR 240-13.025(1)(B). It is the Public Counsel’s position that Laclede unlawfully bills customers for undercharge adjustments for periods greater than the twelve (12) month limit, in violation of Commission rule 4 CSR 240-13.025(1)(B). This rule 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. [emphasis added].

The plain meaning of this rule is clear: the adjustment shall be for the entire period of the undercharge provided that period shall not exceed twelve months. There are no conditions placed on this restriction that would allow catch-up bill adjustments that exceed one year. The rule is simple – no catch-up adjustment shall be for a period of time greater than one year. Laclede and the Staff offer interpretations of the rule that would render the rule meaningless by

allowing undercharges for a period of time greater than twelve (12) months. The purpose of this rule is to protect residential customers by limiting the time period for which an adjustment may be made. The rule also protects gas utilities by allowing them to adjust for undercharges and giving them an entire year to discover and bill for such undercharges. The rule further acts as an incentive to gas utilities to ensure that no customer accounts will be estimated for a period in excess of one year or the utility will run the risk of foregoing the lawful ability to catch-up the customer's bill for the entire period of the undercharge.

The rule contains two main components. First, in the event of an undercharge, Laclede may make an adjustment but the "entire period" for the adjustment cannot exceed 12 months. Second, the rule provides guidance on how to calculate the 12 month period. The 12 month limitation is calculated from the date of discovery, inquiry or actual notification. Laclede offers a different interpretation of this rule. Laclede interprets the rule to allow Laclede to estimate usage indefinitely, but limits Laclede to adjusting twelve months from the date the undercharge was discovered or from the date Laclede requested access to the customer's meter. Once that date is "set" by discovery of the undercharge through an actual read, or by inquiry to the customer from Laclede seeking to obtain an actual read, Laclede believes this allows it to continue billing based on estimated usage indefinitely. For example, if Laclede is unable to obtain an actual read for two years after an "inquiry," and after the two years is able to gain an actual read based on three years of estimated usage, Laclede's position is that it may bill the customer for a three-year undercharge adjustment. This reading of the rule suggests that the "not to exceed 12 months" language only limits how far back Laclede may bill from the triggering occurrence (i.e. discovery or inquiry) and does not limit the total number of months allowed in an adjustment for an undercharge. Public Counsel disagrees with Laclede's interpretation.

Public Counsel interprets the rule to limit all adjustments for undercharges to no more than 12 months.

If the Commission agrees with Public Counsel's interpretation of the rule, then there appears to be no question that Laclede has violated this rule. Responding to a data request submitted by Public Counsel to Laclede in this case, 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 advised the customer of Laclede's need to obtain an actual meter reading. Accordingly, if the Commission concurs with Public Counsel's interpretation of the rule, the Commission has reason to conclude that Laclede has violated 4 CSR 240-13.025(1)(B).

2. The Commission's Final Order of Rulemaking Supports Public Counsel's Rule Interpretation

Public Counsel's interpretation is strongly supported by the Commission's rationale for adopting the twelve month limitation: to protect consumers. In the Commission's Final Order of Rulemaking, the Commission explained the decision to place greater responsibility on the gas utility by limiting the utility to twelve months for an undercharge adjustment while allowing the customer a greater period of time for an *overcharge* adjustment. The Commission stated:

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

The commission is of the opinion that the different billing periods for adjustments to overcharges and undercharges are necessary to reflect the utility's superior position to the customer and its obligation to be responsible for accurate billings. While there is no symmetry in the billing adjustment periods, there exists good cause to limit the utilities' time period to collect undercharges. Customers have come to expect utilities to bill correctly and feel that it is unfair to them to pay for the utilities' errors. Customers may have changed their usage patterns had they been correctly billed by the utility and would have been denied that opportunity.² [emphasis added].

Laclede's reading of the rule, which would allow Laclede to adjust bills for period greater than twelve months, is directly contrary to the Commission's stated purpose of the rule, and would essentially allow Laclede to: 1) disregard the customer's expectation that utilities will bill correctly; 2) disregard the customer's expectation that it is unfair for the customer to pay for the utilities' errors; and 3) deny customers the opportunity to change their usage patterns had they been billed correctly. Laclede's illogical interpretation of the Commission's rule is simply an effort by Laclede to justify practices that for years have been harming customers. Laclede's practices have disregarded its customers' expectation that the utility they rely upon for their essential gas service will bill them accurately. Laclede has disregarded customers' expectations that the utility will pay for its own billing errors. And Laclede has denied customers an opportunity to change their usage patterns had they been billed correctly. For years Laclede has effectively circumvented each protection the Commission believed it had implemented to protect consumers when it adopted 4 CSR 240-13.025(1)(B).

3. The Commission's History with Undercharge Adjustments Support's Public Counsel's Rule Interpretation

In Case No. EO-86-89, Arkansas Power & Light requested a variance from the Commission's rules to allow the company to utilize a sampling method for meter testing. In the

² Missouri Public Service Commission, Order of Rulemaking, *Missouri Register*, Volume 19, Number 8, April 15, 1994.

Commission's 1986 Order, the Commission expressed a concern for customers that "might become liable for make-up bills for substantial amounts." The Commission noted that utility tariffs vary from allowing only thirty (30) days of bill adjustments to an unlimited time period for adjustments. Due to this inconsistency among the various companies, the Commission noted:

The Commission is concerned that such provisions should be more uniform, and that customers should not be subject to unlimited backcharges because of conditions caused by the utility company or within the utility's control.³

In Case No. GR-92-165, the Commission approved the following undercharge language in Laclede's tariff:

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.⁴

The Staff relied upon this tariff language 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

³ In the Matter of the Application of Arkansas Power & Light Company for a permanent variance from the provisions of 4 CSR 240-10.030, Sub. 28(C), Order, May 6, 1986, p. 2.

⁴ Case No. GR-92-165, MPSC 3d 347.

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.⁵

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 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.

C. AMR Installations Uncovered Laclede’s Violations

Laclede argues that the estimated billing issues are the result of Laclede’s implementation of a new automatic meter reading system (AMR).⁶ This ridiculous excuse is completely without merit. The estimated billing issues are the result of Laclede’s ongoing rule and tariff violations dating back several years, and the recent AMR deployment simply uncovered these violations. This raises serious questions about Laclede’s attempts to gain access to inside meters for actual reads. By blaming AMR installation, Laclede is essentially admitting that access to the meter was obtainable by the AMR installers but, for whatever reason, Laclede’s meter readers were unable to gain access to the very same meters month after month.

⁵ *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.

⁶ Fallert Rebuttal, p. 5.

This raises serious doubt regarding Laclede's assertions that the reason for the estimated bill problem is Laclede's meter reader's inability to access the meter.

D. Conclusion

Surprisingly, the most alarming fact of this case is not Laclede's unlawful practices. The most alarming fact is Laclede's apparent inability to comprehend just *how* their practices have been harmful. Laclede's response to the unprecedented number of customer complaints against Laclede is to argue there has been no harm to customers, and to try and minimize the harm by presenting the number of complaints as a percentage of total customers. The more Laclede attempts to downplay the harm and downplay Laclede's responsibility towards their customers, the more questionable Laclede's practices become.

Public Counsel's position in this case is not intended, in any way, to reward customers that have acted in bad faith and have prevented Laclede from obtaining an actual reading. Public Counsel is concerned about customers acting in good faith that have faced bill adjustments for periods in excess of 12 months, which the Commission has determined to be harmful and 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. If Laclede has maintained appropriate records, as required by 4 CSR 240-13.020, an audit should determine which customers are truly entitled to account credits. An audit will also help determine every instance where Laclede has violated the Commission's billing rules and Laclede's own tariff.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 24th day of October 2006:

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