

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

Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2006-0318
)	
Laclede Gas Company,)	
)	
Respondent.)	

The Office of the Public Counsel,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2006-0431
)	
Laclede Gas Company,)	
)	
Respondent.)	

**MOTION TO EXTEND PROCEDURAL
SCHEDULE AND RESPONSE TO MOTION TO DISMISS**

COMES NOW the Office of the Public Counsel and for its motion to extend the filing of direct testimony, and response to the Motion to Dismiss of Laclede Gas Company ("Laclede"), states:

A. Response to Motion to Dismiss

1. On May 11, 2006, the Office of the Public Counsel ("Public Counsel") filed its complaint in Case No. GC-2006-0431. This case was consolidated by the Commission with Case No. GC-2006-0318 on May 25, 2006. Public Counsel's Complaint alleges that Laclede is billing customers in violation of Commission rule 4 CSR 240-13.025(1)(B).

2. On June 12, 2006, Laclede filed its Motion to Dismiss. The basis of Laclede's Motion to Dismiss, and the difference between Public Counsel's position and Laclede's position, is a difference in interpreting 4 CSR 240-025(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.

This rule contains two main components. First, the rule states that 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.

3. Laclede's interpretation of the rule is that Laclede may estimate usage indefinitely, but can only go back 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 them 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" twelve 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.

4. Laclede's reading of the rule suggests that Laclede is under no obligation to limit lengthy periods of estimated billing. All Laclede would need to do under Laclede's interpretation is send a single letter 12-months after the last actual read stating that Laclede needs to obtain an actual read. Apparently Laclede does not believe it is under any obligation to attempt to mitigate the impact of extensive underestimated usage by disconnecting customers that, for whatever reason, continue to not be available or otherwise not responsive to requests for an actual read. This position contradicts the Commission's *Report and Order* in Case No. GR-93-47, wherein the Commission explained that the limitation on adjustments to bills "obviously puts a responsibility on the company to eliminate undercharges."¹ It also contradicts 4 CSR 240-13.020(2)(B) which requires utility companies to limit bills based on estimated usage to one-year. Under Laclede's interpretation of the law, it bears no responsibility in eliminating undercharges.

5. Laclede states in its Motion to Dismiss that "Public Counsel's interpretation of the rule and tariff eliminates the term "inquiry"...and is an incorrect application of the law." In response, Public Counsel acknowledges that an inquiry into obtaining an actual read may appropriately allow the utility to adjust for an undercharge that goes back 12-months from the inquiry. The difference in interpretations is that the Public Counsel believes Laclede may not bill a dime in excess of 12-months of undercharges. The purpose of this 12-month limitation is

¹ *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.

to encourage the utility to keep their estimated billing to no more than a year or suffer the inability to collect any undercharges going forward from the inquiry.

6. The regulations were written to operate in the following manner. First, Laclede attempts to obtain an actual read. If the customer does not allow access to the meter, Laclede sends notice to the customer stating that the bill is now based on estimated usage and again requesting an actual read. As each month passes without access to the meter, and as the bill continues to be estimated month after month, Laclede must do more than simply continue its estimated billing practice indefinitely. As the estimations approach a year, Laclede has two options under the rules. It may threaten the customer with disconnection for refusal to allow access to the meter under 4 CSR 240-13.050(1)(E), if it has not already done so, or it may continue to allow the customer to remain on the system with an estimated bill. If Laclede chooses the second option and continues estimating usage for more than 12-months, Laclede runs the risk that the estimated bill will result in an undercharge. Since an undercharge can only be adjusted for 12-months, Laclede risks incurring additional undercharges that it cannot lawfully adjust a customer's bill to recover.

7. The Commission does not need to look any further than complaints filed by Laclede customers for confirmation that excessive bill adjustments are a sincere problem for Laclede and Laclede's customers. In *Marcia Johnson v. Laclede Gas Company*, Case No. GC-2006-0456, the Complainant alleges that Laclede sent the Complainant an adjusted bill for \$1,550.19 due to Laclede estimating service at the residence from November 2003 to November 2005, a period of twenty-four (24) months. The Complainant further alleges that Laclede never notified the Complainant through a door-hanger of the attempt to read the meter. And in *Thomas C. DeClue v. Laclede Gas Company*, Case No. GC-2006-0380, the Complainant alleges that

Laclede underestimated the Complainant's natural gas usage from April 2004 to November 2005, a period of nineteen (19) months, and billed the Complainant to recover the undercharges for the entire period. The Complainant further alleges that during this period Laclede did not send any notice to arrange for an actual read. These are just two examples of recent complaints filed against Laclede, and highlight the need to resolve Laclede's estimated billing practices.

8. Laclede's practices are a violation of Section 393.140(11) RSMo 2000 in that Laclede is charging customers in excess of the charges allowed pursuant to the Commission's rules and Laclede's own tariffs. Public Counsel requests that the Commission deny Laclede's Motion to Dismiss.

B. Motion to Extend Filing of Direct Testimony

9. The Commission consolidated Case Nos. GC-2006-0318 and GC-2006-0431 on May 25, 2006. Consolidation introduced a new issue into the Staff's complaint regarding compliance with 4 CSR 240-13.025. Public Counsel promptly sent ten (10) data requests to Laclede on June 1, 2006 with the expectation that the answers to the data requests would be received prior to the Direct Testimony due date of June 23, 2006.

10. On June 12, 2006, Laclede responded to Public Counsel and objected to six (6) of the ten (10) data requests. As of the date of this motion the parties have discussed a resolution of the discovery dispute but Laclede has not provided the data requested in Public Counsel's data requests. Public Counsel's data requests sought data on the number of customers that may have been unlawfully billed an adjustment for a period exceeding twelve (12) months. These data requests were meant to provide Public Counsel and the Commission with an understanding of the scope of the bill adjustment issue.

11. Public Counsel is hopeful that with additional time, Public Counsel and Laclede can collaborate to determine what information can be gained from Laclede's billing system that will aid the parties and the Commission in addressing these billing issues. Public Counsel believes additional time is necessary to allow Public Counsel an opportunity to adequately address this issue in Direct Testimony. For this reason, Public Counsel requests an extension of time to file direct testimony from June 23, 2006 to July 21, 2006. Public Counsel has spoken with counsel for the other parties and all parties have expressed to the Staff that they have no objections to this request. This adjustment to the procedural schedule necessitates additional changes to the procedural schedule, and Public Counsel requests that the Commission direct the parties to file a revised procedural schedule prior to the filing of direct testimony.

WHEREFORE, Public Counsel respectfully files this Response to the Motion to Dismiss, and also requests an extension of the filing of direct testimony for the reasons stated above.

Respectfully submitted,

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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 20th day of June 2006:

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