

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of July,
2008.

Dr. Hortense Lucinda Harrison,)
)
 Complainant,)
)
v.)
)
Laclede Gas Company,)
)
 Respondent.)

Case No. GC-2008-0041

**ORDER DENYING LACLEDE’S MOTION TO STRIKE OPC’S POST-
HEARING BRIEF AND REOPENING THE RECORD FOR RECEIPT OF
ADDITIONAL EVIDENCE**

Issue Date: July 1, 2008

Effective Date: July 1, 2008

The Commission conducted an evidentiary hearing in this matter on April 23, 2008,¹ and the transcript was filed on May 12. Dr. Harrison and the Office of the Public Counsel submitted post-hearing briefs on June 2, while both Laclede and Staff submitted their post-hearing briefs on June 3. On June 13, Laclede filed its “Motion to Strike the Brief of the Missouri Office of Public Counsel.” OPC filed its “Reply to Laclede’s Motion to Strike” on June 17 and Laclede filed its Response thereto on June 25, so the issue has been fully briefed and is ripe for resolution.

OPC’s post-hearing brief is comprised of four sections. In Section A, OPC argues that Laclede unlawfully estimated Dr. Harrison’s gas usage. In Section B, OPC claims that

¹ Unless otherwise specified, all dates in this order refer to the calendar year 2008.

Laclede unlawfully adjusted Dr. Harrison's bill. In Section C, OPC contends that Laclede violated Commission Rule 4 CSR 240-13.030 regarding deposits, and in Section D, OPC urges the Commission to find that Laclede violated Commission Rule 4 CSR 240-13.050 regarding disconnection. In its Motion to Strike, Laclede argues that Sections A, C and D of OPC's brief should be stricken "as being outside the scope of the issues presented to the Commission for decision in this complaint case." Laclede further argues that Section B of OPC's brief should be stricken "because it violates Laclede's due process rights to be informed of the theories and arguments against it prior to the hearing." In the alternative, Laclede asks to be given an opportunity to present evidence regarding Section B and to respond in writing to the arguments made by OPC in Section B. Laclede claims that "Public Counsel should not be heard to argue in its brief issues that were not explicitly included in the List of Issues."

In its Reply, OPC explains that the only "new" issues raised in its brief were those that "were first brought to the Commission's attention during the evidentiary hearing," and that "the facts surrounding Laclede's [alleged] violation of Commission rules regarding disconnection and deposits were not known until the evidentiary hearing, making inclusion of these issues in the list of issue[s] not possible." OPC further claims that the issues raised in its brief responded directly to one of the issues contained in the list submitted by Laclede, Staff and Dr. Harrison, namely: "In rendering the Adjusted Bill, did Laclede violate its tariffs, any law, or any Commission rule or order?" Finally, to the extent its brief did raise new issues for the first time, OPC avers that "[i]t would be a more efficient use of resources to address these issues in the present proceeding rather than in a separate complaint."

In its Response, Laclede complains of “trial by ambush” and “trial by surprise,” reiterating its position that arguing issues “that were first raised at the hearing (Sections C and D) or that were not presented to the Commission as an issue in the case (Section A) violates the law, Commission Rule 2.070 and the orders rendered in this case.” Finally, Laclede contends that to address the new issues raised in OPC’s brief in this proceeding would “elevate efficiency or convenience over constitutional rights.”

The Commission believes that both Laclede and OPC have, to some extent, missed the mark. While the Commission will not sacrifice Laclede’s procedural and constitutional rights on the altar of administrative efficiency or convenience, neither will it turn a blind eye to OPC’s concerns about Laclede’s billing, deposit, and disconnection policies and practices by simply striking OPC’s brief in its entirety. Instead, the Commission will reopen the record and permit the parties to present additional evidence on all the issues raised in OPC’s brief, then allow the parties to submit new post-hearing briefs fully addressing those issues.

IT IS ORDERED THAT:

1. Laclede Gas Company’s June 13, 2008 Motion to Strike the Brief of the Missouri Office of Public Counsel is denied.
2. The Commission shall reopen the record in this matter to permit the parties to present additional evidence on all the issues raised in OPC’s June 2, 2008 post-hearing brief. The parties shall promptly meet and confer and submit, by no later than July 8, 2008, an appropriate joint pleading containing a proposed date and time for this hearing.

3. This order shall become effective on July 1, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton, Jarrett,
and Gunn, CC., concur.

Pridgin, Senior Regulatory Law Judge