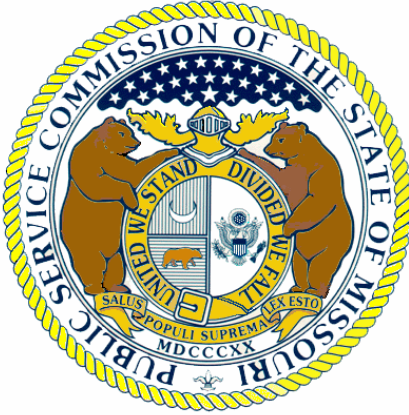


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



| | | |
|--------------------------------|---|-------------------------------------|
| Dr. Hortense Lucinda Harrison, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | <u>Case No. GC-2008-0041</u> |
| |) | |
| Laclede Gas Company, |) | |
| |) | |
| Respondent. |) | |

REPORT AND ORDER

Issue Date: November 6, 2008

Effective Date: November 16, 2008

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OF THE STATE OF MISSOURI

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| v. |) | <u>Case No. GC-2008-0041</u> |
| |) | |
| Laclede Gas Company, |) | |
| |) | |
| Respondent. |) | |

Appearances

Dr. Hortense Lucinda Harrison, *pro se*.

Rick Zucker, Assistant General Counsel, Laclede Gas Company, 720 Olive Street, Room 1516, Saint Louis, Missouri 63101, for Laclede Gas Company.

Marc Poston, Deputy Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Jennifer Hernandez and Lera Shemwell, Assistants General Counsel, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

SENIOR REGULATORY LAW JUDGE: Ronald D. Pridgin

REPORT AND ORDER

Procedural History

On August 10, 2006, Dr. Hortense Lucinda Harrison (hereafter "Dr. Harrison") filed a complaint against Laclede Gas Company (hereafter "Laclede"), alleging that Laclede overbilled her for her gas usage from November 2006 to March 2007. Laclede denied the

allegations. The Staff of the Commission (hereafter “Staff”) filed a Recommendation concurring with Laclede’s position, and asked that the complaint be dismissed.

Dr. Harrison, Staff and Laclede identified the following issues for the Commission to resolve:

1. In April 2007, Laclede rendered an adjusted bill on Dr. Harrison’s gas account charging the customer \$1233.10 for 1,010 CCfs of gas used between November 17, 2006 and March 27, 2007, and credited the customer \$429.91 for 330 CCfs previously billed between November 17, 2006, and February 26, 2007, resulting in an account balance of \$803.19. In rendering the Adjusted Bill, did Laclede violate its tariffs, any law, or any Commission rule or order?

2. What should the amount of charges be for gas service covered by the Adjusted Bill, from November 17, 2006 to March 27, 2007?

3. What should be the start date for Dr. Harrison’s billing account with Laclede?

4. If the Commission determined start date differs from Laclede’s account billing information, what is the appropriate amount of adjustment?

The Commission held a hearing on these issues on April 23. In its post-hearing brief, the Office of the Public Counsel (hereafter “OPC”) argued that the Commission should address additional issues. The Commission agreed, and convened a hearing on August 20 to address those issues, which are:

5. Did Laclede violate its tariff or Commission rules in rendering estimated bills to Dr. Harrison between December 2006 and March 2007?

6. Did Laclede violate Commission Rule 4 CSR 240-13.025(1)(B) when it issued an adjusted bill to Dr. Harrison for a period ending on March 27, 2007?

7. Did Laclede violate Commission Rule 4 CSR 240-13.030 regarding deposits?
8. Did Laclede violate Commission Rule 4 CSR 240-13.050 regarding disconnection?

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

1. When making findings of fact based upon witness testimony, the Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested to subject matter.

2. Dr. Harrison is a natural person and was, at all pertinent times, a customer of Laclede.¹

3. Laclede is a Missouri corporation engaged in the sale of natural gas at retail to persons in the region of St. Louis, Missouri.

4. Staff is represented by the Commission's General Counsel who is authorized by statute to "represent and appear for the Commission in all actions and proceedings involving this or any other law [involving the Commission]."²

5. The Public Counsel is an official of the State of Missouri, appointed by the Director of the Missouri Department of Economic Development, and is authorized to "represent and protect the interests of the public in any proceeding before or appeal from the public service commission[.]"³

¹ Petitioner's Ex. A.

² Section 386.071 RSMo 2000.

³ Section 386.70, .710(2) RSMo 2000.

6. On or about April 16, 2007, Dr. Harrison received a bill from Laclede for \$803.19.⁴ This is the bill Dr. Harrison disputes.

7. That bill stated that Dr. Harrison's past bills had been estimated based on past usage, that Laclede underestimated Dr. Harrison's gas usage, and that the bill in question was based upon an actual meter reading.⁵

8. The disputed bill covered the period from November 17, 2006 to March 17, 2007.⁶ However, Dr. Harrison did not take possession of the residence in question until December 6, 2006.⁷ Laclede agreed to bill the builder of Dr. Harrison's home, rather than Dr. Harrison, for the period of November 16, 2006 to December 6, 2006.⁸

9. The credit Dr. Harrison should receive for the November 16, 2006 to December 6, 2006 on her Laclede bill is \$90.⁹ Therefore, the amount in dispute is \$713.19.

10. Dr. Harrison requested that Laclede begin providing gas service to her residence beginning November 17, 2006.¹⁰

11. Laclede informed Dr. Harrison it would need access to her residence to establish gas service.¹¹

12. When Laclede arrived at Dr. Harrison's residence on November 17, 2006 to establish gas service, Dr. Harrison was not present.¹²

⁴ Complaint, Petitioner's Ex. B.

⁵ Petitioner's Ex. B, Tr. 113.

⁶ Tr. 110.

⁷ Tr. 57.

⁸ Tr. 99.

⁹ Tr. 181.

¹⁰ Respondent's Ex. A.

¹¹ Id.

¹² Tr. 97.

13. Laclede then began service at Dr. Harrison's residence beginning November 17, 2006, but retained the home builder's address as the billing address.¹³ As a result, Dr. Harrison did not receive bills from December 2006 until March 2007.¹⁴

14. On January 17, 2007, Laclede issued Dr. Harrison a bill that she did not receive. It was based on an estimated meter reading from November 17, 2006 through December 26, 2006. The charge for the 142 CCfs of usage was \$182.99. After receiving a \$200 payment from Dr. Harrison, her account had a credit balance of \$17.01.¹⁵

15. On February 20, 2007, Laclede issued Dr. Harrison a bill that she did not receive. It was based on an estimated meter reading through January 25, 2007 of 21 CCfs of usage. The charge for the 21 CCfs of usage was \$38.15. After applying the credit balance of \$17.01, the account balance was \$21.14.¹⁶

16. On March 1, 2007, Laclede issued Dr. Harrison a bill that she did not receive. It was based on an estimated meter reading from January 25, 2007, through February 26, 2007, of 167 CCfs of usage. The charge for the 167 CCfs of usage was \$208.77. Added to the prior balance of \$21.14, Dr. Harrison's balance became \$229.91, which she paid on April 3, 2007.¹⁷

17. Dr. Harrison did not call Laclede about her lack of bills until March 14, 2007.¹⁸

¹³ Tr. 99-100.

¹⁴ Id.; see also Laclede's Answer to Complaint, para. 4 (filed September 12, 2007).

¹⁵ Staff Ex. A, p. 3. (The Commission's Electronic Filing Information System reflects that this document is Highly Confidential; however, Staff did not offer a Highly Confidential version at hearing, and no one objected to its' offer into evidence at hearing. Therefore, the Commission will treat the document as public.)

¹⁶ Id.

¹⁷ Id. at 3-4.

¹⁸ Tr. 102-104.

18. Laclede underestimated Dr. Harrison's usage from November 2006 until March 2007 due to a faulty AMR module on her meter.¹⁹

19. On April 13, 2007, Laclede issued Dr. Harrison a bill that she received. It was based on actual meter readings from November 17, 2006 through March 27, 2007, for 1,010 CCfs. The charge for gas service was \$1,233.10, and after credit for previous bills, the account balance became \$803.19.²⁰

20. An April 21, 2007 special meter reading and a May 1, 2007 high bill inspection confirmed the April 13, 2007 bill.²¹

21. Although Laclede assessed a deposit to Dr. Harrison's account, she did not pay it, and Laclede removed the deposit.²²

22. Similarly, although Laclede sent Dr. Harrison disconnect notices, Laclede later suppressed those notices, and her service was never disconnected.²³

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

Jurisdiction:

Respondent is engaged in owning, controlling, managing, and operating gas plant for public use under a franchise granted by the state of Missouri or a political subdivision

¹⁹ Tr. 105-06.

²⁰ Staff Ex. A, p. 4.

²¹ Id.

²² Tr. 228-29; 259.

²³ Tr. 229-232; 260-61.

thereof, and is thus a gas corporation and a public utility within the intendments of Chapter 386, RSMo, and is subject to the jurisdiction of this Commission.

The Commission is authorized to hear and determine complaints made by customers against public utilities by § 386.390.1, which states:

Complaint may be made by ... any ... person ... by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation ... or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission[.]

However, authority to hear and determine the complaint does not necessarily equal authority to grant the relief therein requested. The Public Service Commission “is purely a creature of statute” and its “powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted.”²⁴ While the Commission properly exercises “quasi judicial powers” that are “incidental and necessary to the proper discharge” of its administrative functions, its adjudicative authority is not plenary.²⁵

Burden of Proof:

Dr. Harrison bears the burden of proof to prove the first four issues in a case such as this one in which the complainant alleges that a regulated utility has engaged in unjust or unreasonable actions.²⁶ Thus, Dr. Harrison must establish all facts necessary to support

²⁴ *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 47 (Mo. banc 1979); *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 928 (Mo. banc 1958).

²⁵ *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 75 (Mo. 1982), quoting *Liechty v. Kansas City Bridge Co.*, 162 S.W.2d 275, 279 (Mo. 1942).

²⁶ *Ahlstrom v. Empire District Electric Company*, 4 Mo.P.S.C.3d 187, 202 (1995); *Margulis v. Union Electric Company*, 30 Mo.P.S.C. (N.S.) 517, 523 (1991); *State ex. rel. GS Technologies Operating Co., Inc. v. Public Service Comm’n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

the relief she seeks by a preponderance of the credible evidence. Likewise, OPC has the burden to prove the issues it raised in its initial post-hearing brief.

Discussion:

Dr. Harrison and OPC fail to meet their burden. Dr. Harrison asks to have her entire disputed bill forgiven.²⁷

Laclede has made several errors, such as sending Dr. Harrison's bills to the wrong address and inadvertently sending her deposit and discontinuance notices. Regardless of errors Laclede made, however, Laclede is statutorily required to charge for, and Dr. Harrison is required to pay for, gas service according to the tariffs in effect when the service was provided.²⁸ These tariffs have the full force and effect of law.²⁹

OPC's theory of the case differs from that of Staff and Laclede. OPC claims that Laclede estimated Dr. Harrison's bills, and that, in so doing, it violated the precepts of Commission Rule 4 CSR 240-13.020. In contrast, Staff and Laclede talk in terms of Laclede underbilling Dr. Harrison, using Commission Rule 4 CSR 240-13.025 as authority for Laclede to recover from a billing error.

Commission Rule 4 CSR 240-13.020 – Billing and Payment Standards

Subsection (2)(A) states that a utility shall bill based on actual usage except for three circumstances.³⁰ OPC argues that because none of the three circumstances are present in this case, Laclede's estimated bills are improper. Assuming that the bill in question is estimated, and that none of those three circumstances are present, OPC's argument

²⁷ Tr. 43, 71, 72.

²⁸ Section 393.140(11) RSMo 2000.

²⁹ *A.C. Jacobs Co. v. Union Electric Co.*, 17 S.W.3d 579, 582 (Mo. App. 2000).

³⁰ They are: for seasonally billed customers, for extreme weather conditions, emergencies, labor agreements or work stoppages preventing actual meter readings, and for when the utility is unable to get to the customer's premises or when the customer makes meter reading unnecessarily difficult.

neglects to consider Subsection (2)(B). **However, the Commission finds OPC's argument logical, and the Commission will consider revising this rule to make subsections (2)(A) and (2)(B) clearer.**

Subsection (2)(B) allows a utility to render a bill based on estimated usage for not more than three consecutive billing periods, or one year, whichever is less, except under the conditions described in subsection (2)(A). Thus, read in tandem, subsection (2)(B) gives a utility the authority to render estimated bills for up to three monthly billing cycles before it must rely on the exceptions in subsection (2)(A) to render estimated bills.³¹

Laclede issued estimated bills for only: 1) November 17 to December 26, 2006; 2) December 26, 2006 to January 25, 2007; 3) January 25, 2007 to February 26, 2007. Thus, because only three monthly billing cycles were estimated, the rule has not been violated.

Commission Rule 4 CSR 240-13.025 – Billing Adjustments

Subsection (1)(B) states that a utility may, in the event of an undercharge, make an adjustment for the period of the undercharge, not to exceed 12 monthly billing periods, calculated from the date of discovery, inquiry or actual notification of the utility, whichever was first.³² Per OPC, the date of discovery could be deemed November 26, 2007, the date that Dr. Harrison ordered service for her new residence.

At most, the undercharge period in question runs from November 2006, when Dr. Harrison ordered Laclede service for her new residence, to April 2007, when she received the bill in dispute. This bill is most certainly for fewer than 12 monthly billing

³¹ See also Laclede P.S.C. Mo. No 5 Consolidated, Fifth Revised Sheet No. R-6 (effective September 1, 1996).

³² See also Laclede P.S.C. Mo. No 5 Consolidated Original Sheet No. R-9 (effective September 1, 1992).

periods. Without supporting legal authority, OPC argues that Laclede must repair a broken meter or AMR “immediately” and “without delay”. But this argument does not alter the Commission’s conclusion. The rule has not been violated.

Commission Rule 4 CSR 240-13.030 – Deposits and Guarantees of Payment

Subsection (2)(C) allows a utility to assess a deposit as a condition of continued service in certain circumstances. A deposit is a money advance to a utility for the purpose of securing payment of delinquent charges which might accrue to the customer who made the advance.³³ Dr. Harrison never made a money advance to Laclede for such a purpose; in fact, Laclede removed the charge from her account. Thus, the rule has not been violated.

Commission Rule 4 CSR 240-13.050 – Discontinuance of Service

Subsection (1) allows a utility to discontinue service under certain circumstances. Discontinuance of service is a cessation of service not requested by a customer.³⁴ While Laclede sent Dr. Harrison notices that her service could be discontinued, the service continued uninterrupted. Indeed, the rule contains a detailed notice provision that the utility must follow before discontinuance. The rule clearly states that a lack of notice would violate the rule; notice without actual discontinuation can hardly be a violation. Thus, the rule has not been violated.

³³ Commission Rule 4 CSR 240-13.015(1)(J); see also Laclede P.S.C. Mo. No. 5 Consolidated, First Revised Sheet No. R-3-a (effective July 27, 2002) .

³⁴ Commission Rule 4 CSR 240-13.015(1)(K); see also Laclede P.S.C. Mo. No. 5 Consolidated, First Revised Sheet No. R-3-a (effective July 27, 2002).

Decision

1. *In April, 2007, Laclede rendered an adjusted bill on Dr. Harrison's gas account charging the Customer \$1,233.10 for 1,010 CCfs of gas used between November 17, 2006 and March 27, 2007, and credited the Customer \$429.91 for 330 CCfs previously billed between November 17, 2006, and February 26, 2007, resulting in an account balance of \$803.19. In rendering the Adjusted Bill, did Laclede violate its tariffs, any law, or any Commission rule or order?*

No, Laclede did not violate its tariffs, any law, or any Commission rule or order.

2. *What should the amount of charges be for gas service covered by the Adjusted Bill, from November 17, 2006 to March 27, 2007?*

The amount should be \$713.91.

3. *What should be the start date for Dr. Harrison's billing account with Laclede?*

The start date should be December 6, 2007.

4. *If the Commission determined start date differs from Laclede's account billing information, what is the appropriate amount of adjustment?*

The appropriate adjustment is \$90. Subtracted from the \$803.91 bill originally disputed, the total balance due is \$713.91.

5. *Did Laclede violate its tariff or Commission rules in rendering estimated bills to Dr. Harrison between December 2006 and March 2007?*

No, Laclede did not violate its tariff or Commission rules.

6. *Did Laclede violate Commission Rule 4 CSR 240-13.025(1)(B) when it issued an adjusted bill to Dr. Harrison for a period ending on March 27, 2007?*

No, Laclede did not violate the rule.

7. *Did Laclede violate Commission Rule 4 CSR 240-13.030 regarding deposits?*

No, Laclede did not violate the rule.

8. *Did Laclede violate Commission Rule 4 CSR 240-13.050 regarding disconnection?*

No, Laclede did not violate the rule.

THE COMMISSION ORDERS THAT:

1. The complaint is denied.
2. All objections not ruled on are overruled and all motions or other requests for relief not specifically granted herein are denied.
3. This order shall become effective on November 16, 2008.
4. This case shall be closed on November 17, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton, Jarrett,
and Gunn, CC., concur and certify
compliance with the provisions of
Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 6th day of November, 2008.