

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 21st day
of April, 2010.

Charles A. Harter,)	
)	
Complainant,)	
)	
v.)	<u>File No. GC-2010-0217</u>
)	
Laclede Gas Company,)	
)	
Respondent.)	

ORDER DENYING MOTION TO STRIKE ANSWER AND DIRECTING FILING

Issue Date: April 21, 2010

Effective Date: April 21, 2010

Charles A Harter filed a complaint against Laclede Gas Company on January 19, 2010. The Commission issued notice of the complaint and Laclede Gas Company was given an opportunity to respond. Laclede filed its answer on February 19, 2010.

On March 23, 2010, Mr. Harter filed his Motion to Strike Answer of Respondent. In that motion, Mr. Harter moves that Laclede's answer be stricken because it violates Missouri Supreme Court Rules of Civil Procedure and "is used and intended for an improper purpose such as to harass complainant, cause unnecessary delay or needless increase in the cost of litigation."¹

Laclede filed a response to the motion to strike on April 1, 2010. In its response Laclede argued that its answer should not be stricken as it was intended to present all grounds of defense as required in 4 CSR 240-2.070(8).

¹ Motion to Strike Answer of Respondent, (filed March 23, 2010), page 3.

Laclede, additionally, included as a defense that the Commission approved its tariff and application for variance from the Commission's rules requiring paper billing.² Thus, if the Commission determines that Laclede lawfully conducted electronic billing, a factual question will arise as to whether Mr. Harter was properly billed and received notice under the approved tariff procedures, making some of the facts included in the answer relevant to the defenses of Laclede.

As an administrative agency and part of the executive branch of state government, the Commission is governed by Chapter 536, the Missouri Administrative Procedures Act. In addition, the Commission has procedural rules set out in 4 CSR 240-2. The Commission has not adopted the Missouri Supreme Court Rules of Civil Procedure. Thus, it is not proper to strike an answer for a violation of a rule of civil procedure which the Commission has not adopted.³

In addition, Mr. Harter believes that the answer is meant to harass and does not constitute an answer to the allegations. In response, Laclede has agreed to amend its answer to refer to Mr. Harter as "Complainant," to delete its general statement that the claims are patently false, to remove the phrase "to the contrary" in paragraph 5 of the answer, and to remove the words "bizarre and false" from paragraph 7.

Laclede has raised its defenses and even though it could have simply answered the allegations without reconstituting Mr. Harter's allegations, the Commission can distinguish between the allegations as set out in the complaint and the answers. Therefore, the Commission finds nothing in the answer as amended that is harassing or that must be stricken from the answer.

² Case No. GE-2002-1159.

³ *Johnson v. Missouri Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 626 (Mo. App. W.D. 2004).

Laclede's answer is amended as proposed in its response. The motion to strike the answer is denied.

The parties met in a procedural conference on April 12, 2010, at which they were directed to discuss any further procedural dates. The Commission shall direct the parties to jointly or separately file a proposed procedural schedule for the Commission's consideration.

THE COMMISSION ORDERS THAT:

1. Laclede Gas Company's Answer to Complaint is amended as stated in Laclede Gas Company's Response to Complainant's Motion to Strike Answer of Respondent and to Complainant's Memorandum in Opposition to Staff Investigation and Report.
2. The Motion to Strike the Answer of Respondent is denied.
3. The parties shall jointly or separately file a proposed procedural schedule no later than May 5, 2010.
4. This order shall become effective upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

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

Dippell, Deputy Chief Regulatory Law Judge