

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

Regarding an Investigation into the)
Service and Billing Practices for)
Residential Customers of Electric, Gas,)
and Water Utilities.)
Case No. GW-2007-0099

**PUBLIC COUNSEL’S SECOND
RESPONSE TO THE STAFF REPORT**

COMES NOW the Missouri Office of the Public Counsel and for its Second Response to the Staff Report states:

1. The Commission opened this case in September 2006 to address concerns with Laclede Gas Company’s estimated billing practices and the Commission’s desire to “investigate the extent of these problems and whether they extend to other utilities.” The Commission directed its Staff to investigate estimated billing issues and to submit a report of its findings.

2. After gathering and analyzing gas, electric and water utility data for the period from October 2005 to September 2006, the Staff submitted its Staff Report on September 4, 2007. The Staff Report identified the utilities with the highest number of estimated bills on average per month: Laclede (14.9%), Empire (5%), Missouri American Water Company (4.9%), and Atmos Energy Corporation (2%).¹ The remaining utilities had estimated bill averages that were less than 1% of all customer bills. The Staff Report

¹ The Commission authorized Atmos to estimate all bills for the months of June and August. Data from June and August was excluded from Atmos’ percentage.

concluded that “there does not appear to be a violation of a Commission rule or company tariffs on estimated billing practices,” and recommended quarterly reporting on estimated billing from all gas, electric and water utilities.

3. On September 19, 2007, Public Counsel filed a response to the Staff Report and questioned whether the data analyzed by the Staff was sufficient. Public Counsel requested additional time to review the data, gather more data, and determine whether Commission rules were violated. The Commission granted Public Counsel’s request and directed Public Counsel to submit status reports.

4. To determine how Missouri utilities have performed over the past year regarding estimated billing, Public Counsel sent new data requests to the utility companies with the highest number of estimated bills and requested updated estimated billing data through November 2007. Public Counsel is pleased to report that the number of estimated bills for the twelve months ending November 2007 declined from the number of estimated bills reported in the Staff Report. The average number of estimated bills per month, based upon data from the preceding twelve months, changed as follows:

<u>Company</u>	<u>Sept. 2006 Avg.</u>	<u>Nov. 2007 Avg.</u>
Laclede	14.9%	4.8% ²
Empire	5%	3.2%
MAWC	4.7%	4.6%
Atmos	2%	0.9%

This data suggests the frequency of estimated bills is decreasing, especially for Laclede as it continues to transition customers to an automated meter reading (AMR) system.

² Laclede’s monthly average is based upon data from the twelve months ending December 2007.

This data is encouraging, and suggests that the Staff Report accurately concludes that the high number of estimated bills reported in 2006 was for the most part not an industry-wide problem, and was caused mainly by Laclede's transition to AMR.

5. Despite these promising findings, Public Counsel nevertheless believes the Commission's estimated billing rules are being violated as they relate to the procedures employed to estimate bills. These issues are explained in more detail below.

6. Public Counsel's additional concerns are highlighted by the facts of Case No. GC-2008-0159, wherein Mr. Joseph Schneider complained of a Laclede gas bill that included a "catch-up" bill for estimated gas usage after the meter at Mr. Schneider's home stopped registering usage. A timeline of facts from Mr. Schneider's case, taken from the Staff's December 26, 2007 Recommendation and from data request responses by Laclede, are as follows:

- 12/19/06 Last actual meter read. x5188.
- January 2007 Meter malfunctions and stops registering. x5215.
- 1/22/07-2/21/07 Billed customer charge only. x5215.
- Late February 2007 **Laclede discovers the meter is broken.**³
- 2/21/07-3/22/07 Customer billed the customer charge only. x5215.
- 3/22/07-4/23/07 Customer billed the customer charge only. x5215.
- 4/23/07-5/22/07 Estimated bill. x5233.
- 5/22/07-6/21/07 Estimated bill. x5248.
- 6/21/07-7/23/07 Estimated bill. x5263.
- 6/26/07 **Laclede first notifies customer of estimate usage.**
- 6/27/07 Laclede reprogrammed AMR.
- 8/29/07 Adjusted bill for 381 Ccfs of un-metered gas from 12/19/06 to 6/28/07. Catch-up bill for \$351.53.

³ Laclede's response to a Public Counsel data request states "Laclede first became aware that the meter was not registering usage around the end of February 2007."

7. Public Counsel's first issue with Laclede's practices is Laclede's determination of the "date of discovery" per Commission rule 4 CSR 240-13.025(1)(B).

This subsection 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].

Public Counsel interprets this provision to state that once a utility discovers the undercharge (i.e. the date of discovery), the utility may bill the customer for the amount of the undercharge *retrospectively* from the date of discovery for no more than twelve months. This rule protects utility companies from meter or billing errors unknown to the utility by allowing the utility to recover the undercharge amount once the utility discovers the error. However, once the error is discovered, the utility has the duty to correct the error and protect the consumer from further undercharges. In the Schneider example, Laclede admittedly discovered that Mr. Schneider's meter stopped registering in late February 2007, but Laclede did not correct the problem until June 27, 2007. Laclede then re-billed Mr. Schneider for the period from December 19, 2006 to June 26, 2007. This is an unlawful billing adjustment. The rule only allows Laclede to adjust for the period of December 19, 2006 to late February, 2007 when the error was discovered. It was Laclede's duty to promptly replace or fix the meter or forego revenues from any additional usage that may occur. This duty to promptly correct the problem also has safety implications since Laclede did not know if the faulty meter was leaking gas.

8. Public Counsel's second issue with Laclede's estimated billing practices, as evidenced by the Schneider example, is that Laclede is violating Commission rule 4

CSR 240-13.020(2), which requires “each billing statement rendered by a utility shall be computed on the actual usage during the billing period...” The rule allows for only three exceptions, wherein “a utility may render a bill based on estimated usage”:

- a. To seasonally billed customers;
- b. When extreme weather conditions, emergencies, labor agreements or work stoppages prevent actual meter readings;
- c. When the utility is unable to obtain access to the customer’s premises for the purpose of reading the meter or when the customer makes the meter unnecessarily difficult.

In the Schneider example, the reason for the estimation was meter failure, not as a result of one of the three exceptions. Public Counsel believes this example represents Laclede’s practice of unlawfully estimating usage in violation of Commission rule 4 CSR 240-13.020(2).

9. Public Counsel’s third issue with Laclede’s practices as they relate to this example is how Laclede estimated Mr. Schneider’s usage when the actual usage was unknown. The Staff Recommendation included the following table showing a comparison that Laclede used to determine the usage estimate for Mr. Schneider:

<u>Dates of Service</u>	<u>HDDs</u>	<u>Ccfs</u>	<u>Average Usage</u>
12/17/04 – 06/21/05	3,026	370 – Actual	.1223 Ccfs per HDD
12/19/05 – 06/21/06	3,515	364 – Actual	.1036 Ccfs per HDD
12/19/06 – 06/28/07	2,952	381 – Estimated	.1291 Ccfs per HDD

The bottom row of this table shows that Laclede estimated Mr. Schneider used 381 Ccfs of gas. The estimate was based on 2,952 heating degree days (HDD), which were recorded for the period in question. The top two rows of the table showing actual usage during the two previous periods of December to June appears to suggest that Laclede’s estimate for the unknown usage period is inflated. The period of estimated usage

experienced fewer HDDs than the prior two periods, yet Laclede estimated Mr. Schneider's usage to be higher than the periods with greater HDDs. Without further explanation from Laclede, this appears to inflate the usage estimate to the consumer's detriment and to Laclede's advantage. In response to a Public Counsel data request, Laclede stated:

The usage estimate was calculated using the formula on Sheet R-40 of Laclede's tariffs. Based on this customer's usage pattern, Laclede developed a Base Load factor, or Norm, of .5333, and a heating factor, or average us per degree day, of .0822. Laclede used these factors to produce an estimate as permitted by Rule 10A on Sheet No. R-8 of its Tariff.

This response does not explain how these factors were developed. Assuming the factors are accurate, Laclede's calculation does not explain how these factors were used to determine the estimate. If the base load factor of .5333 is applied to the estimated period of 190 days, it produces 101.8 Ccfs. And if the heating factor of .0822 is applied to the 2,952 HDDs during the period, it produces 242.6 Ccfs. Added together, it appears Mr. Schneider's usage should be estimated at 344 Ccfs. Today Public Counsel sent an additional data request to Laclede requesting all inputs used to derive the .5333 base load factor and the .0822 heating factor. Public Counsel also requested a response from Laclede to Public Counsel's calculations above. Public Counsel requests additional time to review Laclede's responses to determine whether there is an issue related to the calculations used to estimate usage that should be further investigated by the Commission.

10. Public Counsel respectfully requests that the Commission issue an order interpreting its rule consistent with Public Counsel's interpretations above. At this time Public Counsel is considering its options regarding Laclede's actions, including the

option of filing formal complaints with the Commission. Public Counsel does not know to what extent these issues are also handled in similar fashion by other utility companies.

WHEREFORE, the Office of the Public Counsel respectfully offers this second response to the Staff Report.

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 19th day of February, 2008:

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