

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

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

**MOTION TO STRIKE THE BRIEF OF THE
MISSOURI OFFICE OF PUBLIC COUNSEL**

COMES NOW Laclede Gas Company ("Laclede" or "Company") and files this Motion to Strike the Brief of the Missouri Office of Public Counsel ("Public Counsel"). In support thereof, Laclede states as follows:

1. Laclede moves to strike Sections A, C and D of Public Counsel's Brief as being outside the scope of the issues presented to the Commission for decision in this complaint case. Laclede moves to strike Section B of Public Counsel's Brief because it violates Laclede's due process rights to be informed of the theories and arguments against it prior to the hearing. Alternatively, Laclede should at least be permitted an opportunity to present evidence regarding Section B, if necessary, and to respond to the new arguments raised in Section B by Public Counsel for the first time in their brief.

2. On November 14, 2007, the Commission issued its Order Setting Complaint for Hearing, in which it directed the parties to "jointly prepare and file" a List of Issues, Witnesses and Order of Cross-examination by April 16, 2008 (the "List of Issues"). Despite this direction to jointly prepare and file the List of Issues, Public Counsel declined to join in such filing. On April 17, 2008, Staff filed the List of Issues,

Witnesses and Order of Cross-Examination in this case on behalf of itself, Laclede and Dr. Harrison.¹ Staff stated in this pleading that “The Office of Public Counsel (OPC) declined to join in this List.”

3. The List of Issues contained the following issues for decision by the Commission:

1. In April 2007, Laclede rendered an adjusted bill (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 crediting 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 court (sic) determined start date differs from Laclede’s account billing information, what is the appropriate amount of adjustment?

As indicated, Issues 1 and 2 pertain to the propriety and amount of the Adjusted Bill rendered to the customer for the four-month period ended March 27, 2007. Issues 3 and 4 pertain to Dr. Harrison’s argument that the start date for Laclede service should correspond to the closing date on her home, which was postponed from November 16, 2006 to December 6, 2006.²

¹ The Commission granted the parties permission to file the pleading one day late.

² Laclede has agreed to adjust its service start date to accommodate the customer’s actual closing date, so these two issues have been resolved.

4. The List of Issues informs both the parties and the Commission of the matters that will be decided at the hearing. In preparing its case for hearing, the Respondent should be able to rely on the issues recited on this list, and not be required to be prepared to present evidence, argue or defend against other matters that any party wishes to raise at or after the hearing.

5. Public Counsel did not participate in the List of Issues that was presented to the Commission, nor did it file any other pleadings in the case, let alone present evidence. Therefore, Public Counsel should not be heard to argue in its brief issues that were not explicitly included in the List of Issues. This practice violates Commission rules regarding formal complaints,³ Commission decisions regarding case administration procedures, and Laclede's due process rights to be apprised of the action brought against it and to be given an opportunity to present its objection. (*Re Missouri Gas Energy*, Case Nos. GR-98-140, GT-98-237, Order Granting Recommendation and Rehearing in Part (December 8, 1998) citing *Mullane v. Central Hanover Bank*, 339 U.S. 306, 314 (1950)). Specifically, Public Counsel should be prohibited from raising the issue of whether certain bills were lawfully or accurately estimated in Section A, the issue of whether Laclede properly assessed a deposit in Section C, or the issue of whether Laclede violated Commission Rule 13.050 regarding disconnection in Section D.

6. Dr. Harrison's complaint, filed on August 10, 2007, challenged Laclede's assertion that she used 1,010 ccf of gas during the winter of 2006-07, and sought to establish December 6, 2006 as the closing date on her home and the start date of her Laclede service. In fact, the Commission's November 14, 2007 Order recites the parties' desire to set the hearing in April 2008 in order to allow the parties to gather gas usage

³ 4 CSR 240-2.070

information over the 2007-08 winter season for comparison purposes. Nowhere in the complaint or in the List of Issues is the issue of estimated bills raised. Since this was not an issue in this case, and is not necessary for the Commission to determine the issues that were raised in the case, Public Counsel's discussion of this issue is not relevant and should be struck.

7. As further evidence of the inappropriateness of Public Counsel's argument in Section A of its brief, Public Counsel accused Laclede of falsely stating on the Adjusted Bill that the customer's gas bill had been previously estimated based on past usage when in fact Dr. Harrison was a new customer and had no prior history.⁴ Aside from being factually inaccurate and irrelevant, this criticism is particularly disturbing because the language on the Adjusted Bill was approved by Public Counsel itself in connection with the Stipulation and Agreement approved in Case No. GC-2006-0318. (See Attached)

8. Public Counsel's argument in Section C of the Brief pertaining to deposits, was based on a matter first raised in this case at the hearing. It is obviously not an issue requiring decision by the Commission. By the time the customer first complained that she had been assessed a deposit, Laclede had already, as a courtesy to the customer, removed the deposit from her account. (Tr. 131) Commission rules and due process require that Laclede be informed of the issues and arguments against it and be afforded

⁴ This position is factually inaccurate. Because Dr. Harrison is the second customer at the home, following the builder who used gas between September and December 2006, there was past usage at the home.

an opportunity to prepare a response.⁵ The fact that it appears that a deposit was justified underscores the impropriety of ambushing a party at the hearing with a new issue.

9. The same argument applies to Public Counsel Brief Section D, concerning disconnection, which was also raised for the first time at the hearing. Although Dr. Harrison testified that she received disconnect notices every month prior to the hearing (Tr. 38), Laclede's records indicate that the Company never received a call from her to complain about it. Instead, Dr. Harrison saved that complaint until the day of the hearing in April 2008. By that time, however, Laclede had already noticed that the disconnect notices were printing on Dr. Harrison's bill and had suppressed them, remedying the alleged oversight.⁶ (Tr. 77) Regardless, this issue is irrelevant to the matters presented to the Commission for decision and should be struck from the case.

10. The only part of Public Counsel's brief that even pretends to address one of the issues raised for decision is Section B, regarding whether Laclede lawfully adjusted Dr. Harrison's bill. Even here, Public Counsel makes legal arguments and interpretations and alleges rule violations that Laclede hears for the first time *after* the hearing has concluded and in the final document scheduled for submission in the case. These arguments could have been addressed if they were known in advance. At a minimum, due process requires that Laclede be informed in advance of the charge against it with an explanation of the basis for that charge. *State ex rel. Donelon v. Division of Employment Security*, 971 S. W. 2d 869, 876 (Mo. App. W. D. 1998) By providing

⁵ In fact, it turns out that Dr. Harrison failed to pay her September 2007 bill, which resulted in past due balances thereafter. Although it appears that a deposit was justified, Laclede does not intend to reassess it.

⁶ Dr. Harrison was well aware that Laclede had no intention of disconnecting her service over the disputed amount and her service was in fact never disconnected, so there could be no violation of Commission Rule 13.050, as argued by Public Counsel.

neither evidence nor an allegation, Public Counsel's attempt to sweep into a customer complaint case and create arguments after the record is closed is not consistent with due process. Therefore, Section B of Public Counsel's Brief should also be struck.

Alternatively, Laclede should be afforded an opportunity to present any evidence on the subject that it feels is necessary, and to file a reply brief to address the arguments raised by Public Counsel in Section B.

WHEREFORE, Laclede respectfully requests that the Commission strike Public Counsel's Brief, or in the alternative, strike Sections A, C and D of Public Counsel's Brief, and afford Laclede an opportunity to present any evidence on Section B that it feels is necessary, and to file a reply brief to address the arguments raised in Section B.

Respectfully submitted,

/s/ Rick Zucker

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Complainant, the General Counsel of the Staff of the Missouri Public Service Commission, and the Office of Public Counsel on this 13th day of June, 2008, by United States mail, hand-delivery, email, or facsimile.

/s/Rick Zucker