

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

Charles A. Harter,)	
)	
v.)	Case No. GC-2010-0217
)	
Laclede Gas Company,)	
)	
Respondent.)	

**LACLEDE GAS COMPANY'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the Briefing Order issued on September 8, 2010 in this case, presented below are Laclede Gas Company's ("Laclede" or "Company") Proposed Findings of Fact and Conclusions of Law. For the Commission's convenience, Laclede has also provided a proposed Decision section consistent with these Proposed Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Based on the competent and substantial evidence on the record, the Commission makes the following findings of fact.

1. The parties filed a Stipulation of Facts which was entered into evidence as Exhibit 1 in this case. Based on the Stipulation of Facts, the Commission finds:

- | | |
|------------------|---|
| 1. 1994 | Commission Rule 13.015(1)(T) (4 CSR 240-13.015(1)(T)) provides the following definition: "Rendition of a bill means the mailing or hand delivery of a bill by a utility to a customer." |
| 2. July 25, 2002 | The Commission issued an order (the "Order") in Case No. GE-2002-1159, approving Laclede's proposed tariff sheets and application for a variance from Commission rules requiring paper billing. The tariff provides customers a choice between receiving a paper bill and receiving an electronic bill. The option to choose electronic billing can be made only by the mutual consent of the customer and the Company. |

3. Sept. 26, 2002 Charles A. and Mary Ann Harter became the owners of the property at 827 S. Sappington Road in Crestwood, Missouri (the Property).
4. Nov. 2002 Charles A. Harter (Complainant) became the named party on Laclede Gas Account No. 528806-001 (the Account) at 827 S. Sappington Road in Crestwood, Missouri (the Property).
5. 2006 Complainant's Account was on budget billing; he received paper billings through the U.S. Mail and made his payments electronically until November 2006.
6. 2007 Complainant continued to be billed on budget billing and received bills through the mail, but made payments by check, and not electronically.
7. Feb. 6, 2008 Laclede received an electronic payment on the Account in the amount of \$395.88, reducing the balance on the Account to \$81.12.
8. March 2008 Complainant's budget bill became \$122.00 per month. Complainant unilaterally resumed making regular monthly electronic payments through his bank, Bank of America, in the amount of \$122.55. He continued to receive paper bills through the U.S. mail.
9. Aug 2008 Laclede received a registration for e-billing for the Account, with an email address of harleycharter@sbcglobal.net, which is an email address used by Complainant.
10. Aug. 28, 08 Laclede mailed a paper bill to Complainant, a copy of which is attached to Exhibit 1 (Stipulation of Facts) as Schedule SOF-2. After mailing this final paper bill to Complainant, Laclede proceeds to send e-bills to Complainant and ceases sending paper bills through U.S. mail until August 2009.
11. Aug. 2008–
Jan 2009 Laclede caused the electronic posting of monthly e-bills on the Account. Complainant continued to make electronic payments through Bank of America's bill pay system. Payments of \$122.55 were received by Laclede on September 10, October 10, November 10, December 17, 2008, and January 16, 2009.
12. Feb-Jul 09 Laclede continued to send e-bills to Complainant through July 2009. Complainant discontinued paying bills electronically through Bank of America's bill pay system. Complainant made a \$50 payment in March.

13. July 31, 2009 Laclede caused an e-bill to post to harleycharter@sbcglobal.net with an amount due of \$884.79. A reproduction of that e-bill is attached to Exhibit 1 as Schedule SOF-3. This bill threatened disconnection on or after August 21, 2009.
14. Aug 21, 2009 Complainant filed an informal complaint with the Commission's Consumer Services Department alleging that Laclede was sending his bills electronically rather than via regular mail, and that Laclede was threatening to disconnect service although he had not received a disconnect notice.
15. Aug 28, 2009 Laclede sent a paper bill to Complainant through regular mail, for service from July 29 – August 26, 2009, and continued sending paper bills thereafter.

2. A customer who wishes to have Laclede bills sent electronically registers for electronic billing (e-billing) through either CheckFree, a company that serves as Laclede's e-billing vendor, or the customer's own bank. Laclede does not directly register customers for e-billing. Rather, Laclede receives an electronic file from CheckFree indicating that the customer has signed up for e-billing. (Tr. 102-04)

3. Laclede received a file from CheckFree originated on August 6, 2008 that represented a request that Complainant's account be billed electronically. The record contains Mr. Harter's name, address, account number and email address. (Exhibit 2; Tr. 105-08) Mr. Harter denied registering for e-billing, but testified that his wife had taken over the bill paying at the time of registration. Mr. Harter testified that he had no knowledge of his wife registering for e-billing; however, his wife did not testify in the case. (Tr. 45-47) Mr. Harter could not recall what his wife may have done while she was handling bill paying. (Tr. 58, 71-72)

4. After Laclede registered Complainant for e-billing, it mailed Mr. Harter a paper bill which informed the customer that e-billing had been activated and that he would not receive paper bills in the future. (Exhibit 1, Schedule SOF-2; Tr. 109)

5. Other than this case, there have been no complaints of Laclede registering customers for e-billing without their permission. (Tr. 104-05; 156-57)

6. After activating e-billing for Mr. Harter, Laclede sent e-bills to Mr. Harter from September 2008 through July 2009. (Tr. 109) Each of the e-bills was “clicked on” or opened by the recipient at Mr. Harter’s e-mail address. (Tr. 110)

7. Mr. Harter’s testimony indicated that he was unaware of the e-bills. However, he did not contact Laclede to complain about not receiving paper bills. In fact, he did not contact Laclede at all from the time e-billing began in September 2008 until April 3, 2009. (Exhibit 5, p. 1; Tr. 111-12)

8. On April 3, 2009, Complainant contacted Laclede to protest cancellation of his budget billing plan. Laclede had provided notification on its April 1 e-bill. Laclede did not provide any separate notice of budget bill cancellation other than on the April 1, 2009 e-bill. (Exhibit 5, p. 1; Tr. 112) Mr. Harter could not recall contacting Laclede in April 2009. (Tr. 76-77)

9. Laclede’s records show that it sent Mr. Harter a second disconnect notice by regular U.S. mail on August 18, 2009. (Exhibit 4; Tr. 116, 118-19)

10. Complainant first contacted Laclede on August 18, 2009, the same day that the second disconnect notice was mailed. (Exhibit 5, p. 1) Complainant also contacted Laclede on August 21, 2009, to protest disconnection and to cancel e-billing. (Exhibit 5, p. 1) Complainant recalled that he had contacted Laclede in August 2009, but could not recall how he became aware of the threat of disconnection. (Tr. 74-76)

CONCLUSIONS OF LAW

1. In the context of the Commission, a “rule” is the Commission’s statement of law or policy that is generally applicable. Section 536.010(6) RSMo. A properly

promulgated rule becomes the law of Missouri. *United Pharmacal Co. of Mo. Inc. v. Mo. Bd. of Pharmacy*, 159 S.W.3d 361, 365 (Mo. banc 2005).

2. A tariff is a document that lists the services of a particular public utility, and the rates for those services. *Bauer v. SW Bell Telephone Co.*, 958 S.W.2d 568, 570 (Mo.App. E.D.1997). A tariff has the same force and effect as a statute, and it also becomes state law. *Id.*

3. Commission Rules 4 CSR 240-13.015(T) and 13.020 require utilities to mail or hand-deliver a bill to a customer in accordance with the utility's tariff. The rule does not specify whether "mail" means solely United States mail, or whether it includes electronic mail.

4. Commission Rule 4 CSR 240-13.065(1) states that "Any utility may file an application with the commission seeking a variance from all or parts of Chapter 13, which may be granted for good cause shown." Commission Rule 4 CSR 240-13.065(3) adds that any variance granted by the commission shall be reflected in a tariff."

5. The Commission issued an order (the "Order") in Case No. GE-2002-1159, approving Laclede's proposed tariff sheets and application for a variance from Commission rules requiring paper billing. The tariff provides customers a choice between receiving a paper bill and receiving an electronic bill. The option to choose electronic billing can be made only by the mutual consent of the customer and the Company. The relevant portions of Laclede's tariff on e-billing have been copied into Exhibit 6, at Schedules 10-11.

6. Sheet R-12-b of the Company's tariff provides that the Company may deliver its first notice of disconnection electronically if the customer has opted for e-bill delivery. This tariff sheet is copied into Exhibit 6, Schedule 13. Sheet R-12-c of

Laclede's tariff provides for a second notice to be mailed through the postal service for normal delivery two to four days prior to the disconnection date.

DECISION

The parties filed a joint list of issues in this case on June 24, 2010, which issues are set forth below.

- a. Until August 2008, Respondent sent Complainant paper bills delivered by regular mail. Beginning in August 2008 and extending through July 2009, Respondent stopped mailing paper bills, and instead delivered electronic bills ("e-bills") to Complainant by causing emails to be sent to harleycharter@sbcglobal.net.
 - i. When Respondent stopped mailing paper bills to Complainant and began sending e-bills, did Respondent do so unilaterally and without Complainant's knowledge or consent?
 - ii. After Complainant terminated his automatic bill pay program in February 2009, did Respondent thereafter (through July 2009) fail and refuse to send Complainant a bill for gas services by US Mail?
- b. Did the Respondent violate any provision of its tariffs, any law, or any Commission rule or order when it issued e-bills to the Complainant?
- c. Did Respondent violate any provision of its tariffs, any law, or any Commission rule or order when it issued disconnection notices either by email or US Mail to the Complainant between July 29 and August 21, 2009?

- d. May the Respondent or the Commission waive, through a tariff, the requirement of law of Rule 4 CSR 240-13.015(1)(T) that requires the Respondent to send bills to consumers through US Mail?

Based upon the findings of fact and conclusions of law, the Commission makes the following decisions:

a.(i). The Commission finds that Laclede did not act unilaterally in switching the Complainant's account from paper billing to e-billing in August 2008. On or about August 6, 2008, Laclede received an electronic file from its e-bill vendor, CheckFree, indicating that Mr. Harter had applied for e-billing. The electronic file contained accurate personal information on Mr. Harter, including his name, account number, service address and e-mail address. Laclede acted consistent with its policy when it receives acceptable e-bill applications by registering Complainant in its e-bill program. Laclede mailed a paper bill to Complainant on August 28, 2008, indicating that e-billing would begin and paper billing would cease. It is very unlikely that the e-bill application originated outside of Complainant's household. The evidence presented by Mr. Harter would lead to the potential conclusion that, unbeknownst to him, Mrs. Harter registered for e-billing. Regardless, it is apparent that in registering Complainant for e-billing, Respondent did nothing that was unlawful or even unusual.

a.(ii). The parties stipulated to the fact that Laclede continued to send e-bills to Complainant through July 2009. There is no evidence that Complainant called before August 2009 to seek to terminate e-billing. In fact, Complainant contacted Laclede on April 3, 2009 to complain about termination of his budget billing plan, and failed to even mention e-billing. The evidence also showed that the e-bills that were sent to Complainant's email address were being "clicked on" and opened. Complainant's denial

of knowledge of these e-bills is belied by the fact that his April 3 contact regarding budget billing followed closely on the heels of the April 1 e-bill in which Laclede terminated budget billing. There doesn't appear to have been any other way for Mr. Harter to have gotten the budget billing information unless he had seen that e-bill. Finally, when Complainant did request cancellation of e-billing on August 21, 2009, Laclede mailed the next bill to the customer as a paper bill only one week later. Based on the foregoing, Laclede properly continued to e-bill Mr. Harter from February 2009 through July 2009.

b. Respondent did not violate any provision of its tariffs, any law, or any Commission rule or order when it issued e-bills to the Complainant. The Commission order in Case No. GE-2002-1159 granted Laclede a variance from Commission rules requiring paper billing, and approved Laclede's proposed tariff sheets instituting e-billing. Laclede's actions in establishing e-billing and issuing e-bills to the Complainant complied in all respects with the Company's tariffs and Commission rules and orders.

c. Respondent did not violate any provision of its tariffs, any law, or any Commission rule or order when it issued disconnection notices by email and U.S. Mail to the Complainant between July 29 and August 21, 2009. Laclede's July 31, 2009 e-bill was posted to Mr. Harter's e-mail address with a delinquent balance. This e-bill also included an electronic notice of discontinuance, set for August 21, 2009, in compliance with Laclede's tariffs. Laclede's second disconnection notice was a paper notice sent through regular mail on August 18, 2009, again in compliance with Laclede's tariffs regarding notice of disconnection.

d. Commission Rule 4 CSR 240-13.015(1)(T) requires utilities to mail or hand-deliver bills to residential customers. This properly promulgated rule is the law in

Missouri. However, Commission Rule 4 CSR 240-13.065 is also a properly promulgated rule that allows a utility to apply for a variance from all or parts of Chapter 13. In 2002, Laclede duly applied for such a variance in order to allow the Company to send electronic bills to a residential customer upon mutual agreement of the customer and Laclede. The Commission found good cause for Laclede's application and approved it. Laclede properly reflected the Commission's variance in its tariffs. By this process, Laclede lawfully obtained the right to offer its customers the option of receiving bills electronically over the internet rather than by paper via the U.S. mail service.

WHEREFORE, the Commission finds that Laclede has violated no laws, or Commission rules, orders or decisions and dismisses the Complaint.

Respectfully submitted,

/s/ Rick Zucker

Rick Zucker, Mo. Bar #49211
Assistant General Counsel - Regulatory
Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101
Telephone: (314) 342-0532
Fax: (314) 421-1979
Email: mpendergast@lacledegas.com
rzucker@lacledegas.com

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 20th day of September, 2010 by United States mail, hand-delivery, email, or facsimile.

/s/ Gerry Lynch