

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

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

POST-HEARING BRIEF OF LACLEDE GAS COMPANY

Utility regulations have long held that customers should, in general, pay for the gas service that they use, not more and not less. This simple, common sense concept is embodied in Commission Rule 4 CSR 240-13.025, and Laclede Tariff Rule 10B, both of which are entitled “Billing Adjustments.” Because gas utilities serve a high volume of customers in the general public by both delivering and measuring their product remotely, occasional billing errors are anticipated. When these errors occur, the rules generally provide that the utility can bill back up to one year to remedy an undercharge, and bill back up to five years to remedy an overcharge.

In this case, and in accordance with the abovementioned concept and rules, in April 2007, Laclede rendered an adjusted bill (the “Adjusted Bill”) to reconcile an undercharge on Dr. Harrison’s gas account at 40 Gateview Court in O’Fallon, Missouri 63367 (the “Property”). The Adjusted Bill charged a total of \$1,233.10 for 1,010 ccfs of gas used between November 17, 2006 and March 27, 2007, and credited \$429.91 for 330 ccfs previously billed over the period from November 17, 2006 to February 26, 2007. (Petitioner’s Exhibit B) The Adjusted Bill covered gas service actually used based on actual readings obtained from the meter on November 17, 2006 and March 27, 2007.

(Staff's Exhibit A, p. 4; Tr. 110, 113) The resulting balance of \$803.19 consisted of roughly \$200 for the current month's bill (February 26 to March 27), and \$600 as an adjustment of the undercharge. (Tr. 111)

Dr. Harrison protested the billed usage as inaccurate. However, the evidence at the hearing confirmed the accuracy of the usage of 1,010 ccf in several ways. First, Laclede performed a high-bill inspection and concluded that such usage was consistent with the amount of gas use expected at Complainant's new 3700 square foot home which she kept heated at 74 degrees.¹ (Respondent's Exhibit B; Tr. 118, 200) Second, Laclede found that the customer's usage of 1,010 ccf in her 3700 square foot home in the winter of 2006-07 compared favorably to her usage of 1,019 ccf in a 2700 square foot home in the warmer winter of 2005-06. (Resp. Exh. C) Third, Laclede found that the customer's usage of 1,010 ccf in her 3700 square foot home in the winter of 2006-07 was also consistent with her usage of 1,233 ccf at the same home in the colder winter of 2007-08. (*Id.*; Tr. 121-22) Fourth, Laclede found that the customer's usage of 1,010 ccf in her 3700 square foot home in the winter of 2006-07 was very consistent with the customer's hand-picked friend's usage of 1,005 ccf in a similarly sized home over a like period. (Resp. Exh. D; Tr. 126-27) Finally, the customer's usage would normally be definitively confirmed by submitting the meter that registered the disputed usage at the customer's home to an accuracy test. However, Dr. Harrison has repeatedly declined Laclede's offer to test the meter for accuracy. (Resp. Exh. B, p. 1; Tr. 45-46; 70-72)

¹ At the hearing, Dr. Harrison maintained that she actually kept the temperature at 76 degrees that winter, (Tr. 35, 84), and that despite the fact that the evidence showed that 68 was a normal conservation-oriented thermostat setting (Tr. 118), Dr. Harrison found 76 degrees to be desirable, while she considered 70 degrees to be uncomfortable. (Tr. 67)

For her part, Dr. Harrison resisted all attempts to understand explanations of the actual amount of gas she used in the winter of 2006-07. She claims to not understand the plain language contained on the Adjusted Bill explaining the undercharge. (Tr. 57-58; Pet. Exh. B) When faced with incontrovertable facts, she simply disagrees. (Tr. 64) Her proposed solution is to “[drop] the entire bill” and start over, in effect relieving her of any obligation to pay for either the undercharged usage billed up to February 26, 2007, or for any usage at all from February 26-March 27, 2007. (Tr. 43)

In summary, Laclede was entitled to render the Adjusted Bill, and in doing so, Laclede did not violate its tariffs, any law, or any Commission rule or order. Instead, the Company simply billed the customer for the gas service actually used; not more and not less. As more fully explained below, Laclede has also provided the customer a credit of approximately \$90 for gas service incurred during the period between November 17, 2006 (when the customer originally ordered service based on a November 16, 2006 closing date for her purchase of the Property) and December 6, 2006 (when she actually closed on the Property). Laclede has rebilled the builder, who maintained possession and ownership of the Property during this period.

FACTS

The evidence produced in this case showed that Complainant has a Bachelor’s degree in Elementary Education, a Master’s degree in Urban Education, and a Ph.D. in Curriculum and Instruction. She moved to the St. Louis area in January 2005 to become a Regional Vice President for Imagine Schools, a company that operates a charter school system. (Tr. 50-52) Dr. Harrison lived in Wentzville for most of 2005. She moved to 225 Fairway Green, also in St. Charles County, in December 2005 and lived there until December 2006, when she moved into the Property. (Resp. Exh. C; Tr. 56-57)

On October 23, 2006, Dr. Harrison called Laclede to initiate gas service at the Property beginning on November 17, 2006, based on an anticipated November 16 closing date, and to confirm her termination of gas service at her then current residence at 225 Fairway Green for that same day. On that call, Dr. Harrison gave the Property's address as 40 Gateview Court in Wentzville, zip code 63368. She disagreed with the Laclede's representative's accurate suggestion that the Property was in O'Fallon and that the zip code was 63367. (Resp. Exh. A) Despite the fact that Dr. Harrison got the city and zip code wrong on this call, she has been very critical of Laclede erroneously placing the Property in Lake St. Louis for tax purposes, rather than O'Fallon. (See Petitioner's Complaint, p. 2; Tr. 32) In fact, the political location of the Property is tricky. It is listed as being in the City of O'Fallon by the St. Charles County Assessor's Office, but has a Lake St. Louis mailing address. (Tr. 94) Dr. Harrison also stated that she has received mail addressed to the Property with a Wentzville address. (Tr. 205) Nevertheless, at the hearing, Laclede reported that it has amended its records to reflect that the Property is in O'Fallon for tax purposes. (Tr. 131)

Dr. Harrison testified that the closing on the Property was cancelled sometime on November 16, 2006, the closing day itself. Notwithstanding the late cancellation, Dr. Harrison claimed to have contacted Laclede that same day to cancel the November 17, 2006 service initiation. (Tr. 82, 88-89) Laclede's records showed no call from the customer cancelling the November 17 service initiation. Accordingly, Laclede showed up on November 17, but found no one home. Laclede proceeded to obtain a meter reading and set up the accounts necessary to bill the builder for service up to November 17, 2006, and to bill the Complainant beginning on November 17. (Tr. 97-99)

The failure of the customer to show up at the November 17 service initiation visit complicated the administration of these transactions and Laclede made an error by not removing the builder's billing address on the original account when activating the customer's account. This resulted in monthly bills and other notices being sent to the builder's address instead of the Property address. Meanwhile, Dr. Harrison completed the closing on December 6, 2006, and took possession of the Property on that day. (Pet. Exh. E) Despite the fact that Dr. Harrison never informed Laclede of the changed closing date, she expects to not be charged for gas service at the property until December 6. (See Petitioner's Complaint, p. 2; Tr. 82-83) Notwithstanding the customer's contribution to the problem, Laclede has taken responsibility for making the address error. (Tr. 100-01) Laclede has agreed to credit the customer's account for the period November 17-December 6, 2006, in the amount of about \$90, and assume responsibility for collecting that amount from the builder. (Tr. 99, 181)

Laclede produced the customer's first gas bill at the Property for the period ended December 26, 2006. However, since the AMR transponder at the customer's home failed to register the customer's gas usage, Laclede assigned its AMR service provider, CellNet, to address the matter. A CellNet representative reprogrammed the meter in January 2007 and also turned in an actual meter reading of x7470. Unfortunately, this actual reading could not have been accurate, since it was lower than the original meter setting of x7926 in the Fall of 2006. In retrospect, it appears that the reading should have been x8470; regardless, Laclede modified the reading to x8241 in accordance with its tariff on Modification of Questionable Meter Readings² and sent out its January bill based on that

² See Laclede Tariff, Rule 6B on Sheet R-6-c.

figure. (Tr. 105-07; 190-91) It should be noted that, pursuant to this tariff provision, this particular bill was not an estimate, but a modification of an actual, but questionable, meter reading.

The January reprogramming proved to be unsuccessful, as the meter's AMR module again failed to register with Laclede a reading for billing purposes in February. Therefore, Laclede issued an estimated bill for February, and again assigned CellNet to address the meter issue. Accordingly, CellNet reprogrammed the meter on March 7, 2007, and the meter has provided regular meter readings thereafter. Based on the read for the March 2007 billing cycle, Laclede issued the Adjusted Bill for actual usage from November 17, 2006 to March 27, 2007. (Tr. 107-110)

Dr. Harrison testified that, because she was not home to receive her bill in late December, but was out of town for the holidays, she made a payment of \$200 over the phone from Washington, D.C. Laclede's records confirm that it received a credit card payment of \$200 from Dr. Harrison on December 29, 2006. (Tr. 89, 104)

The \$200 payment is one of the few facts upon which the parties agree. Most of Dr. Harrison's other statements at the hearing conflict with Laclede's records and in some cases are simply incredible. As an initial matter, on April 17, 2008, the week before the hearing, the parties filed a List of Issues, Witnesses and Order of Cross-Examination, in which Dr. Harrison listed several persons as witnesses. None of those witnesses were present at the April 23 hearing or available at other sites. It goes without saying that a litigant should bring her witnesses to the evidentiary hearing. However, despite the April 17 filing and the obvious need to bring witnesses to a hearing, Dr. Harrison blamed the

Commission for not informing her that she needed to make her witnesses available at the hearing to testify and be subject to cross-examination.³ (Tr. 20)

In her testimony, Dr. Harrison claimed to have contacted Laclede by telephone once each month for four months, from October 2006 through January 2007, only to have Laclede repeatedly deny being her service provider. (Tr. 30-31) This assertion is clearly false. First, Respondent's Exhibit A is a transcript of the customer's first call to initiate service at the Property, in which Laclede took her order without even a mention of Laclede not serving the Property. Second, Laclede witness O'Farrell testified that, given the workings of the Company's computer system, it is just not possible that Laclede would have failed to recognize the Property as a customer location. (Tr. 103) The only possible way to reconcile this incredible position with reality is that maybe Dr. Harrison was referring to a communication not with Laclede, but with ChoicePay, a company that processes credit card payments on Laclede bills. Dr. Harrison testified that she would spend 20-30 minutes convincing the telephone representative that she was a Laclede customer, and "then they would take my money." (Tr. 54-55) However, Laclede doesn't accept direct credit card payments over the phone, but uses ChoicePay for this service. (Tr. 104-05, 144) Therefore, Dr. Harrison could not have been talking to Laclede when she made a payment, but could have been talking to ChoicePay. It should be noted that the customer only made one credit card payment during this period, so it was unlikely that this conversation happened multiple times, as she testified.

Dr. Harrison claims to have called Laclede at the end of January 2007, and after

³ Dr. Harrison also claimed that she knew nothing about an option to appear at the hearing through video conference at Staff's offices in St. Louis. (Tr. 20) This option was discussed extensively among the parties orally and/or in writing during the week prior to the hearing.

painstakingly convincing Laclede that it was her service provider, paid Laclede \$229.91 by phone. (Tr. 31) She then claims to have called again in February after failing to receive a bill, and never did receive a bill from Laclede until she received the Adjusted Bill on April 16, 2007. (Tr. 31-32) There are no fewer than six errors in this short piece of testimony. First, Laclede's records show that no call or other communication was received from Dr. Harrison in January 2007. Second, since she didn't call Laclede, there would have been no discussion regarding whether Laclede was her service provider. However, even if Dr. Harrison had called, it is simply not possible that Laclede would have denied being her service provider at the very same time that it was sending bills and notices in her name, albeit to the wrong address. (Tr. 101-103, 105, 162) Third, Dr. Harrison did not owe or pay \$229.91 in January 2007.⁴ (Tr. 166, 193) Fourth, Laclede's records show that no call or other communication was received from Dr. Harrison in February 2007. Fifth, according to Dr. Harrison herself, she received her first bill from Laclede in late March 2007, not April 16, and the bill she received was the one that preceded the Adjusted Bill. (Pet. Exh. A) Sixth, after actually calling Laclede on March 14, 2007, Laclede immediately corrected the billing address error and sent Dr. Harrison a copy of the bill for the period ending February 26, 2007. This bill carried a balance of \$229.91 which Dr. Harrison paid by mail, and not by phone, as she stated. (Pet. Exh. A; Tr. 105) Laclede's receipt of this mailed payment on April 3, 2007, invalidates the customer's contention that she never actually received a bill until April 14. (*Id.*)

⁴ This balance did not become due on her account until March 2007, and Laclede received payment of it on April 3, 2007.

ISSUES

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 Commission determines a start date that differs from Laclede's account billing information, what is the appropriate amount of adjustment?

CONCLUSIONS

1. Laclede rendered the Adjusted Bill in accordance with Commission and Company Tariff rules on billing errors. Laclede did not violate its tariffs, any law, or any Commission rule or order.
2. The Adjusted Bill properly charged the sum of \$1,233.10 for gas used between November 17, 2006 and March 27, 2007, and credited \$429.91 for bills previously issued for service between November 17, 2006, and February 26, 2007, resulting in an account balance of \$803.19.
3. Laclede has agreed to move the customer's start date from November 17 to December 6, 2006, as the customer has requested, so this point is no longer at issue.
4. Laclede will credit the customer in the amount of about \$90 for this period.

ARGUMENT

1. Laclede's rendering of the Adjusted Bill complied with Commission rules and Company tariffs.

Commission Rule 4 CSR 240-13.025 and Laclede Tariff Rule 10B provide that “For all billing errors, the utility will determine from all related and available information the probable period during which this condition existed and shall make billing adjustments for the estimated period involved...” This rule and tariff further provide that “in the event of an undercharge, an adjustment shall be made for the entire period that the undercharge existed not to exceed twelve [monthly] billing periods...calculated from the date of discovery, inquiry or actual notification, whichever was first.” The evidence demonstrates that Laclede first discovered the billing error when it obtained an actual, accurate meter reading on March 7, 2007. (Tr. 108) Pursuant to these rules, therefore, Laclede could have adjusted the customer's bill, if necessary, for up to twelve monthly billing periods preceding March 7, 2007. Of course, it was only necessary for Laclede to adjust for three full billing periods, which were the periods ending in December 2006, January 2007 and February 2007, along with the partial period ending March 7. Naturally, when the March 2007 billing period ended on March 27, Laclede also billed for the actual usage of 85 ccf that had occurred since the undercharge was discovered on March 7. (Tr. 109-110)

The March 7-27 usage is included in the Adjusted Bill, but is not part of the billing adjustment. Instead, it is actual usage billed in the ordinary course of business by Laclede. The facts in evidence demonstrate that, in compliance with these rules, Laclede determined from all related and available information that, from November 17, 2006 to March 7, 2007, the customer used 925 ccf of gas, and Laclede made a corresponding

billing adjustment. After taking into account the actual usage of 85 ccf to the end of the billing period, Laclede appropriately issued the Adjusted Bill for 1,010 ccf of gas (1,029.2 therms) for the period November 17, 2006 to March 27, 2007.

The Complainant believes that Laclede violated Commission Rule 4 CSR 240-13.020(2)(B) which prohibits the Company from issuing more than three consecutive estimated bills except in the circumstances provided in section (2)(A) of that rule. Although it is not necessary for the Commission to decide this point in order to determine the issues presented in this case, the Complainant is nevertheless mistaken. While Laclede disputes the Complainant's assertion for a number of reasons, the Company need go no farther than to demonstrate that the Adjusted Bill, which was based on actual usage between November 17, 2006 and March 27, 2007, was only the fourth bill issued by Laclede on this account. Therefore, it is impossible for Laclede to have issued more than three consecutive estimated bills since the Company had only issued a total of three bills prior to the Adjusted Bill.⁵ (Pet. Exh. B; Tr. 151-53)

2. The Adjusted Bill properly charged the sum of \$1,233.10 for gas used between November 17, 2006 and March 27, 2007, and credited \$429.91 for bills previously issued for service between November 17, 2006, and February 26, 2007, resulting in an account balance of \$803.19.

The Adjusted Bill was based on actual meter readings. Although Dr. Harrison protested the billed usage as inaccurate, she had absolutely no basis for doing so. She

⁵ The issues listed in this case also do not involve the propriety of Laclede's issuance of any of these three bills. However, as stated above, Laclede rendered two estimated bills and one modified bill. Laclede estimated the December and February bills in accordance with its tariff Rule 10B, because the meter's AMR module failed to register a reading for those months.

readily admitted knowing nothing about gas meters and how they work, nor ever studying meter usage data. (Tr. 52-53)

The evidence presented at the hearing overwhelmingly confirmed the accuracy of the usage of 1,010 ccf in several ways. First, Laclede performed a high-bill inspection and concluded that such usage was consistent with the amount of gas use expected at Complainant's new 3700 square foot home which she kept heated at 74 degrees. (Respondent's Exhibit B; Tr. 118, 200) Second, Laclede found that the customer's usage of 1,010 ccf in her 3700 square foot home in the winter of 2006-07 compared favorably to her usage of 1,019 ccf in a 2700 square foot home in the warmer winter of 2005-06. (Resp. Exh. C) Third, Laclede found that the customer's usage of 1,010 ccf in her 3700 square foot home in the winter of 2006-07 was also consistent with her usage of 1,233 ccf at the same home in the colder winter of 2007-08. (*Id.*; Tr. 121-22) Fourth, Laclede found that the customer's usage of 1,010 ccf in her 3700 square foot home in the winter of 2006-07 was very consistent with the customer's hand-picked friend's usage of 1,005 ccf in a similarly sized home over a like period. (Resp. Exh. D; Tr. 126-27)

The following testimony from Laclede witness O'Farrell demonstrates the ultimate reasonableness of the Adjusted Bill:

- 6 Q Okay. So how much did Dr. Harrison pay for gas
7 the winter before she moved into Gateview, the winter she
8 was at 225 Fairway Green?
9 A Let me check my records.
10 Q Let me check mine, too.
11 A Yeah. On Fairway, it's approximately \$1400.
12 Q Okay. And -- and do you know what period that
13 covers?
14 A I --
15 Q Well, is it the same period that's on the chart?
16 A 12/3/05 to 3/21/06.
17 Q Okay. And I believe you previously testified
18 that for the period 11/17/06 to 3/27/07, the amount was

19 \$1233; is that correct?

20 A Yes.

21 Q Okay. So -- so are you saying that Dr. Harrison
22 was billed \$1400 for the winter of '05/'06, and one year
23 later she can't believe that she has received a winter
24 bill of \$1233 in a home that's a thousand square feet
25 larger?

1 A That is correct.

(Tr. 124-25)

Finally, the customer's usage would normally be definitively confirmed by submitting the meter that registered the disputed usage at the customer's home to an accuracy test. However, Dr. Harrison has repeatedly declined Laclede's offer to test the meter for accuracy. (Resp. Exh. B, p. 1; Tr. 45-46; 70-72) She consistently refused these efforts to definitively prove whether the meter operated correctly, stating "it wouldn't serve any purpose to do that." Dr. Harrison does not want to know how much gas she used during the 2006-07 winter; she simply wants Laclede to forego collecting any more of the cost of that usage. (Tr. 72)

3. Laclede has agreed to move the customer's start date from November 17 to December 6, 2006, as the customer has requested, so this point is no longer at issue.

4. Laclede will credit the customer's account in the amount of about \$90 for this period.

As stated above, the start date is no longer an issue in this case, as Laclede has agreed to change the date from November 17 to December 6, as the customer requested. This change will result in a credit to the customer's account in the amount of about \$90. Laclede's testimony that the amount of this credit should be approximately \$90 for gas use during this period is the only evidence in the record on this point. (Tr. 181)

SUMMARY

In its rendering of the Adjusted Bill, the Company has violated no laws or rules, orders or decisions of the Commission. Although Laclede did err in failing to remove the builder's mailing address, such an error, while unfortunate and regrettable, does not constitute a violation of any laws.

Laclede was not aware that it was sending bills to the wrong address. However, Dr. Harrison knew that she was using gas and not receiving a bill, yet she did not bring this fact to Laclede's attention until March 14, 2007. Once raised, Laclede immediately remedied the erroneous address and sent Dr. Harrison a current bill. Dr. Harrison admitted to receiving that bill and in fact paid the balance of \$229.91 on April 3, 2007. Dr. Harrison also knows that she did not make a payment for gas service in either January or February 2007, the two coldest months of the year.

The evidence overwhelmingly supports the propriety and accuracy of the Adjusted Bill. The amount billed for four winter months at the 3700 square foot Property was accurate and reasonable, especially given the fact that the customer maintained her home at the toasty temperatures of 74-76 degrees. In rendering the Adjusted Bill, Laclede is only trying to charge Dr. Harrison for the gas she actually used, not more and not less.

WHEREFORE, Laclede respectfully requests that the Commission deny the relief requested by Complainant in this case and dismiss the Complaint.

Respectfully submitted,

/s/ Rick Zucker

Rick Zucker
Assistant General Counsel
Laclede Gas Company
720 Olive Street, Room 1516
St. Louis, MO 63101
(314) 342-0533 Phone
(314) 421-1979 Fax
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 3rd day of June, 2008, by United States mail, hand-delivery, email, or facsimile.

/s/Rick Zucker