

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

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

LACLEDE GAS COMPANY’S RESPONSE TO
THE MISSOURI OFFICE OF THE PUBLIC COUNSEL’S REPLY TO
THE MOTION TO STRIKE ITS BRIEF

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

1. Laclede disputes in part and agrees in part with Public Counsel’s Reply. In its Reply, Public Counsel complains that it could not have previously addressed certain issues because these issues were raised for the first time at the hearing. Laclede concurs with this view with respect to Public Counsel Brief Section C, regarding deposits, and Section D, regarding disconnection. In filing a formal complaint, a complainant is required to describe the nature of the complaint and the action taken to contact the utility. The respondent is then given an opportunity to answer the complaint, after which a hearing may be set. (4 CSR 240-2.070) This process gives the parties a fair opportunity to both know the issues and gather the facts prior to the hearing. The respondent in particular is given an opportunity to be informed in advance of the charge against it, and

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)

2. As presented in Laclede's Motion, trial by ambush, wherein a party files a complaint on issue X but then at hearing suddenly testifies to issues Y and Z and seeks a verdict on those issues, violates the respondent's right to due process.

3. This trial by surprise also renders meaningless the Commission-ordered Issues List, to which the parties jointly agreed. If the parties cannot rely on the Issues List to set the parameters of the case and define relevance, then a hearing becomes a free-for-all in which any party can testify to whatever it believes its opponent cannot readily refute.

4. Public Counsel also states in its Reply that without pre-filed testimony, "issues cannot be as easily identified..." While this is likely true, the respondent should not be penalized with the loss of its due process rights so that the complainant is not bothered to prepare pre-filed testimony.¹ Regardless, based on Dr. Harrison's written complaint and the written and oral exchanges between the parties, the issues in this particular case *were* identified and presented to the Commission in the Issues List. Arguing issues in its brief that were first raised at the hearing (Sections C and D) or that were not presented to the Commission as an issue in the case (Section A) violates the law, Commission Rule 2.070 and the orders rendered in the case.

5. In Section B of its brief, which actually pertains to one of the issues presented in this case (the bill adjustment), Public Counsel raises an argument regarding the date of discovery under Commission Rule 13.025(1)(B) that Laclede hears for the

¹ It has been Laclede's experience that, when presenting live direct testimony, pro se witnesses frequently make new and unsubstantiated assertions that were never before heard by the party opponent. In many cases, these assertions later prove to be inaccurate.

very first time after the hearing is over. Contrary to Public Counsel's claim that Laclede "cleverly" used its motion to respond to Public Counsel's brief, Laclede clearly *refrained* from responding to the substance of Public Counsel's argument (see Laclede's Motion, paragraph 10), and instead requested that Section B of Public Counsel's brief also be struck or, in the alternative, that Laclede be allowed to present evidence and/or file a responsive brief to the new argument presented by Public Counsel.

6. Public Counsel closes its Reply by arguing that addressing issues in this case that were first raised at the hearing, or raised outside of the Issues List, or first argued in the post-hearing briefs, would be a more efficient use of resources than having a separate complaint. Again, this is undoubtedly true. It is also true that criminal trials could be more efficiently dispatched if the accused didn't hear the charges against him or her until the trial. Fortunately, we do not elevate efficiency or convenience over constitutional rights.

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 25th day of June, 2008, by United States mail, hand-delivery, email, or facsimile.

/s/Rick Zucker _____