

**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.)	

**BRIEF OF THE MISSOURI
OFFICE OF THE PUBLIC COUNSEL**

The Missouri Office of the Public Counsel urges the Public Service Commission (PSC) to find in favor of Complainant customer Dr. Hortense Lucinda Harrison with an Order concluding that Laclede Gas Company violated the PSC's rules and Laclede's tariffs. The record shows that Laclede committed numerous errors providing natural gas distribution service to Dr. Harrison, including the following specific errors identified in the record:

1. Laclede's Automatic Meter Reader (AMR) malfunctioned. (Tr. 105-106).
2. Laclede did not repair the broken AMR for four months.
3. Laclede unlawfully estimated Dr. Harrison's usage rather than obtain an actual read.
4. Laclede repeatedly sent Dr. Harrison's bill to the wrong address. (Tr. 100).
5. Laclede repeatedly assessed incorrect taxes. (Tr. 33-34).
6. Laclede incorrectly recorded the meter index. (Tr. 106-107).
7. Laclede grossly underestimated Dr. Harrison's usage with an unreasonable usage estimate. (Tr. 173-174).

8. Laclede's bill falsely stated that the estimate was based on past usage history that did not exist. (Tr. 139-140).
9. Laclede unlawfully adjusted the bill beyond the date of discovery.
10. Laclede continued to send disconnect notices despite a pending dispute. (Tr. 75; Petitioner Exhibit "I").
11. Laclede tried to assess a deposit despite a pending dispute. (Tr. 34; Petitioner Exhibit "J").

Public Counsel submits this brief in support of Dr. Harrison's complaint because this case and this record raise serious issues of customer service and customer protection. All Laclede consumers could benefit from a PSC Order that requires Laclede to adhere to strict consumer protection standards. The primary issue in this Complaint is to determine whether Laclede violated its tariffs, any law, or any PSC rule or order.

The record shows that Laclede violated its obligations under statutes and under the PSC's orders and rules that resulted in overcharges to the customer and violations of the customer's rights to fair and reasonable treatment pursuant to the standards set out in the rules, orders, and statutes. Further, the evidence shows that Laclede failed to conduct itself in conformity with its own tariff. For these reasons, Public Counsel asks the PSC to find in favor of Dr. Harrison and against the company, and direct Laclede to make all proper adjustment to the billing record and to immediately render to the customer any refunds or credits due.

A. Laclede Unlawfully Estimated Dr. Harrison's Usage

PSC rule 4 CSR 240-13.020(2) requires each billing statement rendered by a utility to be computed based on *actual* usage. The rules outline three (3) exceptions to this requirement: 1) to seasonally billed customers; 2) when extreme weather, emergencies, labor agreements, or work stoppages prevent actual meter reads; or 3) when

the utility is unable to obtain access to the meter. As the record shows, Laclede estimated Dr. Harrison's usage for reasons that did not meet any of these allowances. Laclede claims that it estimated Dr. Harrison's usage because of a faulty automatic meter reader (AMR). (Tr. 105-106). The rules make no exception that would allow estimated billing where the AMR failed under the circumstances of Dr. Harrison's Complaint. The three exceptions allowing estimated meter reads are all aimed at circumstances where the company is unable to access the meter or where the customer has agreed to seasonal billing. The evidence in this case shows that nothing prevented Laclede from sending a meter reader and obtaining an actual read from Dr. Harrison's outside meter. (Tr.138).¹

Laclede apparently believes that the switch to an AMR system allows it to ignore important and longstanding consumer protections requiring meter reading on reasonable and timely intervals and the accurate measurement of gas used. The importance of obtaining an actual meter reading is equally as important under an AMR system as it is under a system that employs only human meter readers. Under either scenario, the customer is protected best by a utility practice that bases customer bills on actual reads of customer usage whenever possible. When an AMR fails to transmit an accurate signal, Laclede is required to fix the problem immediately to ensure the accuracy and safety of its equipment. Laclede's decision to repeatedly estimate Dr. Harrison's bill rather than obtain an actual reading is inexcusable. Laclede's witness Ms. Rhonda O'Farrell, Assistant Manager of Laclede's Credit and Collection Department, acknowledged that Dr. Harrison's issues regarding accurate meter reads could have been avoided had Laclede dispatched a meter reader to get an actual read. (Tr. 138-139).

¹ Oddly enough, a Laclede serviceman visited Dr. Harrison's premises on several occasions but remained in his Laclede vehicle parked on the street. (Tr. 59).

Laclede's tariff does not allow Laclede an open-ended authorization to estimate usage. Laclede's P.S.C. Mo. No. 5 Consolidated, Fifth Revised Sheet No. R-8, states: "In the event of the stoppage or the failure of any meter to register, the customer shall be billed for such period on an estimated consumption based upon his use of gas in a similar period of like use." This provision of Laclede's tariff does not apply to Dr. Harrison's Complaint because the tariff is limited to instances *where the meter stops or fails to register usage*, and where prior history is available for estimation. Laclede's own evidence was that the meter never stopped and that the meter index continued to register usage. (Tr. 138). Furthermore, since Dr. Harrison was a new customer, Laclede had no prior history on which to base an estimate under the tariff.² Accordingly, the facts in this case did not fall within the tariff's parameters, so Laclede was not legally authorized to issue a bill to Dr. Harrison based on unlawful estimated usage rather than actual usage.

Laclede's witness Ms. O'Farrell testified that Laclede estimated Dr. Harrison's usage from the initial date of service, November 17, 2006, and continued estimating until the AMR was finally corrected on March 7, 2007. (Tr. 136). Other evidence suggests that Laclede first began estimating Dr. Harrison's usage around December 26, 2006. (Tr. 140). Regardless of which date Laclede began estimating Dr. Harrison's usage, such practice was unlawful. Public Counsel asks the PSC to find, based upon the clear and undisputed evidence that there was no factual support for triggering or quantifying the estimated billing and asks that the PSC find and conclude that Laclede violated 4 CSR 240-13.020(2) and Laclede's tariff, P.S.C. Mo. No. 5 Consolidated, Fifth Revised Sheet No. R-6, when Laclede failed to base Dr. Harrison's bill on actual usage.

² Even though Laclede had no prior history upon which to base an estimate, Laclede falsely claimed on Dr. Harrison's bill that the estimate was based on historical usage.

Rule violations are also subject to Section 386.570 RSMo, authorizing the PSC to seek recovery of \$100 to \$2,000 for each violation of a PSC “order, decision, decree, rule, direction, demand or requirement.” Public Counsel encourages the PSC to direct its General Counsel to seek maximum penalties against Laclede for each rule and tariff violation. Laclede’s indifferent disregard for the rules and tariffs that protect consumers should be dealt a heavy penalty to signal to Laclede and all other local distribution companies (LDCs) that the PSC will not tolerate practices that deviate from the strict application of the rules and tariffs designed to protect consumers, and will demand that Laclede and other LDCs place a high emphasis on practices that protect the citizens of Missouri.

B. Laclede Unlawfully Adjusted Dr. Harrison’s Bill

Public Counsel asks the PSC to find that Laclede’s billing adjustment violated PSC rule 4 CSR 240-13.025(1)(B). The adjustment was not properly calculated as required by the rule from the earliest of the date of discovery, inquiry, or actual notification. 4 CSR 240-13.025(1)(B) states:

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].

Once a utility discovers the undercharge (i.e. the date of discovery), the utility may bill the customer for the entire period of the undercharge, calculated from the date of discovery. This rule protects utility companies from unexpected meter or billing errors by allowing the utility to recover an entire year of undercharges. However, once the error is discovered, the utility has the duty to correct the error *immediately*; this protects the

consumer from accumulating unbilled charges and from suffering further harm due to inaction or disregard by the company. When such errors occur, Laclede must send an inspector to the meter without delay to determine the cause and to ensure the system is operating safely and accurately.

The AMR on the meter at Dr. Harrison's home did not function properly after the initial turn-on date of November 17, 2006, when it became apparent that the AMR was not transmitting an actual reading. (Tr. 136). At that point, the AMR was either sending a "stalled read" by sending the same index reading without advancing, or an "orphan read" by picking up no reading at all. (Tr. 136-137). Accordingly, November 17, 2006 could be deemed the "date of discovery" under 4 CSR 240-13.025(1)(B).

By adjusting Dr. Harrison's bill for a period that ignores the date of discovery, Laclede disregarded the rules, tariffs, and the harmful impact that continued bill estimation can place on a consumer. The impact is evident from the staggering \$803.19 catch-up bill Laclede issued to Dr. Harrison on April 16, 2007. (Staff Exhibit A). Laclede was obligated to remedy the broken AMR immediately upon discovery, but failed to do so, and directly caused the improper and unlawful issuance of the \$803 catch-up bill.

The evidence shows that Laclede adjusted Dr. Harrison's bill without the lawful basis to do so and the PSC should find that Laclede acted in violation of 4 CSR 240-13.025(1)(B) and P.S.C. MO No. 5 Consolidated, First Revised Sheet No. R-9. Public Counsel asks that Laclede be ordered to remove the adjustment for additional charges incurred after the date of discovery. In addition, Public Counsel again encourages the

PSC to direct its General Counsel to seek penalties against Laclede for the adjustment that violated the PSC's rule and Laclede's tariff.

C. Laclede Violated 4 CSR 240-13.030 Regarding Deposits

PSC rule 4 CSR 240-13.030(2) authorizes utility companies to assess a deposit as a condition of continued residential service. A deposit may only be assessed under this rule when the amount in question is *not* in dispute. 4 CSR 240-13.020(1)(A). Counsel for Laclede acknowledged that this rule was violated. (Tr. 77). Dr. Harrison testified that the total deposit assessed by Laclede was \$716.01. (Tr. 34). As example, Petitioner's Exhibit "J" shows that Laclede assessed this deposit as three \$238.67 payments. Rule violations are subject to Section 386.570 RSMo, authorizing the PSC to seek recovery of a \$100 to \$2,000 penalty assessment for each violation of a PSC rule or company tariff. Public Counsel encourages the PSC to pursue penalties against Laclede for this rule violation.

D. Laclede Violated 4 CSR 240-13.050 Regarding Disconnection

PSC rule 4 CSR 240-13.050(1) lists the circumstances whereby a gas utility is authorized to discontinue service to residential consumers. Service may only be discontinued for nonpayment when the amount is not in dispute. 4 CSR 240-13.050(1)(A). Laclede's tariff mirrors this language at P.S.C. Mo. No. 5 Consolidated, Fourth Revised Sheet No. R-12, which states that service may be discontinued for nonpayment of an *undisputed* bill. Petitioner's Exhibit "I" shows that Laclede threatened to discontinue Dr. Harrison's service even though the billing was disputed and Laclede had notice that the amount it sought to collect was disputed. Accordingly, Laclede issued disconnection notices to Dr. Harrison in violation of 4 CSR 240.13.050. Rule violations are subject to Section 386.570 RSMo, authorizing the PSC to seek recovery of a \$100 to

\$2,000 penalty assessment for each violation of a PSC rule or company tariff. Public Counsel encourages the PSC to pursue penalties against Laclede for this rule violation.

Conclusion

Dr. Harrison is a customer every utility should be eager to serve. *When a month went by with no bill, Dr. Harrison did what few customers would do and mailed Laclede a \$200 payment anyway.* She thought this would protect her from receiving a large catch-up bill. But despite Dr. Harrison's best efforts, Laclede's indifference toward the customer protections in the tariffs and rules forced an \$800 catch-up bill on Dr. Harrison. Laclede should be held accountable for its flagrant violations of PSC rules and its own tariffs. It is no secret that Laclede has had, and continues to have, serious customer service issues; Laclede has considerably far more complaints filed against it than any other gas utility in Missouri. (Tr. 202-203). Public Counsel respectfully requests that the PSC find in favor of Dr. Harrison and issue an order that (1) prohibits Laclede from collecting the \$800 catch-up bill resulting from Laclede's unlawful billing practices and (2) pursues penalties in Circuit Court that the PSC deems appropriate for Laclede's repeated violation of the law and Laclede's tariff.

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 2nd day of June 2008:

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