

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

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

**LACLEDE GAS COMPANY’S RESPONSE TO AND MOTION TO DISMISS  
COMPLAINANT’S APPLICATION FOR REHEARING**

**COMES NOW** Laclede Gas Company (“Laclede” or “Company”) and files this response to Complainant’s Application for Rehearing and moves the Commission to dismiss the Application. In support thereof, Laclede states as follows:

1. Laclede moves to dismiss the Application on the grounds that it was filed out of time. The Commission’s Report and Order (the “Order”) in this case was issued on November 3, 2010, with an Effective Date of November 13, 2010. Pursuant to Commission Rule 2.050(2),<sup>1</sup> a Commission order “is considered effective at 12:01 a.m. on the effective date designated in the order, whether or not the date is a Saturday, Sunday or legal holiday.” In this case, the Order became effective at 12:01 a.m. on November 13, 2010.

2. Commission Rule 2.160(1) provides that applications for rehearing are to be filed pursuant to statute. Section 386.500 of the Revised Statutes of Missouri requires a person to file an application *before* the effective date of an order to preserve the right to appeal that order. Therefore, in order for Complainant to preserve his right to rehearing, he must have filed his application on or before November 12, 2010. Pursuant to well-

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<sup>1</sup> All references to Commission rules refer to Title 4 of the Code of State Regulations, Division 240. The relevant Commission rule on Computation of Time is 4 CSR 240-2.050(2).

settled Commission case law and practice, Complainant's filing on November 15 is not timely, and his Application for Rehearing should therefore be dismissed. Mr. Harter is an experienced attorney and, as demonstrated by his pleadings and court demeanor, is well aware of legal practice and procedures.

3. In the event the Commission decides not to dismiss the Application for Rehearing as being out of time, it should reject the Application as lacking merit. In the Application, the Complainant argues that the Commission should enforce Commission Rule 13.050(5) as written, and find Laclede in violation of that rule for failing to send Complainant a 10 day notice of disconnection by written mail.

4. Complainant's argument ignores the Commission's recognition in the Order that it allowed Laclede a variance from Commission rules pursuant to Commission Rule 13.065. (Report and Order, p. 11) Specifically, the variance ordered in Case No. GE-2002-1159 approved Laclede's proposed tariff sheets permitting e-billing and amending provisions regarding disconnect notices.

5. As recognized in the Order, 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. The Commission found that Complainant (or his wife) had opted for e-billing and therefore, Laclede's July 31, 2009 electronic notice of disconnection complied with tariff requirements. (*Id.* at 6, 9, 10) Further, 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. The Commission found that Laclede sent a notice on August 18 through regular mail. (*Id.* at 6, 10) This notice met the requirements of Sheet R-12-c.

6. In summary, after Complainant opted for e-billing and later ceased paying bills, Laclede sent Complainant disconnect notices both electronically and via regular mail. (*Id.*) Complainant clearly received one or both of these notices, as evidenced by his timely protest to Laclede and his informal complaint to the Commission, both occurring three days prior to the scheduled disconnection.

7. Complainant's argument that, despite the existence of the variance, the Commission should enforce Commission Rule 13.050(5) as written is nothing more than a collateral attack on the Commission's order in Case No. GE-2002-1159 granting Laclede a variance and approving its tariffs regarding e-billing. Such collateral attacks are prohibited under Section 386.550 RSMo.

WHEREFORE, Laclede respectfully requests that the Commission dismiss or deny Complainant's Application for Rehearing.

Respectfully submitted,

**/s/ Rick Zucker**

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**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing Answer 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 17th day of November, 2010 by United States mail, hand-delivery, email, or facsimile.

**/s/ Gerry Lynch**