

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



Charles A. Harter,

Complainant,

v.

Laclede Gas Company,

Respondent.

File No. GC-2010-0217

REPORT AND ORDER

Issue Date: November 3, 2010

Effective Date: November 13, 2010

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Charles A. Harter,)	
Complainant,)	
v.)	<u>File No. GC-2010-0217</u>
)	
Laclede Gas Company,)	
Respondent.)	

Appearances

Charles A. Harter, 827 S. Sappington, St. Louis, Missouri 63126, Complainant, an Attorney representing himself.

Rick Zucker, Laclede Gas Company, 720 Olive Street, St. Louis, Missouri, Attorney for Laclede Gas Company.

Jennifer Hernandez, P.O. Box 360, 200 Madison, Jefferson City, Missouri 65102, Staff Counsel, Independent of the Commission.

JUDGE: Kennard Jones, Senior Regulatory Law Judge

REPORT AND ORDER

Syllabus

Charles A. Harter, Complainant, has not shown that Laclede Gas Company has violated any statute, tariff provision or any Commission rule or order by sending Complainant electronic bills or by notifying him of an impending disconnection.

Background

Complainant's wife arranged to pay their bills through Bank of America's "Bill Pay" program, by which the bank would automatically pay bills out of the customer's account without the customer's further participation. At around the same time as the Bill Pay

program was set up Laclede received a request to send Complainant's bills electronically, rather than through the United States Postal Service. Complainant argues that he did not request electronic billing. Later, Complainant discontinued paying bills through his bank. However, Laclede continued to bill Complainant through his electronic mail account. Complainant's method of managing his bills depends on receiving bills through the mail. After automatic Bill Pay was cancelled, the electronic bills went unpaid and he accrued an arrearage. Due to the arrearage of about \$900, Laclede set a date for disconnection. When Complainant learned of the impending disconnection, he brought this matter to the Commission and filed this formal complaint.

Complainant does not allege that he does not owe the amount due and upon conclusion of the hearing, the parties agreed on a payment plan. Complainant's assertion is that Laclede violated the Commission's rule, 13.105(1)(T), requiring companies to send payments through the postal service. Although Complainant is aware that the Commission granted to Laclede a variance from this rule, he questions whether the Commission had the power to grant such a variance.

The Commission convened a prehearing conference on April 12, 2010, and on June 24 filed the following list of issues:

1. Until August 2008, the Respondent sent the Complainant paper bills delivered by regular mail. Beginning in August 2008 and extending through July 2009, the Respondent stopped mailing paper bills, and instead delivered electronic bills to Complainant.
 - a. When the Respondent stopped mailing paper bills to the Complainant and began sending e-bills, did the Respondent do so unilaterally and without the Complainant's knowledge or consent?
 - b. After the Complainant terminated his automatic bill pay program in February 2009, did the Respondent thereafter (through July 2009) fail and refuse to send the Complainant a bill for gas services by US Mail?

2. 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?
3. Did Respondent violate any provision of its tariffs, any law, or any Commission rule or order when it issued disconnection notices either by e-mail or US Mail to the Complainant between July 29 and August 21, 2009?
4. 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 the US Mail?

To resolve these issues, the Commission held an evidentiary hearing on July 8, 2010. The parties filed a joint stipulation of facts and, in addition to the offered testimony, the Commission received six exhibits into evidence.

Upon conclusion of the hearing, the parties were directed to file briefs, with Complainant filing an initial brief, Laclede and the Staff of the Commission responding, and finally, Complainant filing a reply. Complainant, however, later requested that he not be required to file an initial brief, but rather only a reply. In response to his request and after conferring with Staff, Laclede suggested that the parties either file simultaneous briefs or simultaneous proposed findings of fact and conclusions of law. The Commission directed the parties to file either document no later than September 20, the initial date by which Complainant would have filed a reply. Both Laclede and Staff filed Proposed Findings of Fact and Conclusions of Law on September 20. Complainant failed to make a filing, as directed by the Commission's order. Commission rule¹ allows no more than ten days for responsive pleadings. Ten days have expired and Complainant has not responded to the proposed findings and conclusions filed by Laclede and Staff. The Commission will therefore decide this matter without the benefit of Complainant's post-hearing input.

¹ Commission rule 4 CSR 240-2.080(15).

Findings of Fact

1. Complainant is the named party on a Laclede Gas Company account at his residence.²

2. Respondent, Laclede Gas Company, is a public utility providing gas service to Complainant at his residence.³

3. In August of 2008, Charles Harter's wife took over paying the bills and initiated "Bill-Pay" through their bank, Bank of America.⁴

4. On August 6, 2008, Laclede received an electronic bill registration from its vendor, CheckFree.⁵

5. Checkfree is Laclede's vendor through which a customer may initiate electronic billing.⁶

6. If a customer registers for electronic billing through their bank, the bank will then send a notice to Checkfree, who then forwards that information to Laclede.⁷

7. Laclede does not decide how a customer pays bills.⁸

8. Electronic billing and electronic payment operate independent of one another. A customer may wish to have bills sent through the mail, while paying electronically. A customer may wish to have bills sent electronically, while paying through the mail.

² Exhibit 1, Stipulation of Facts.

³ Exhibit 1, Stipulation of Facts.

⁴ Transcript, page 45, lines 11-19. All references to Transcript are to Volume 2.

⁵ Exhibit 2.

⁶ Transcript, page 102, line 25 through page 103, line 3.

⁷ Transcript, page 103, line 24 through page 104, line 3.

⁸ Transcript, page 141, line 25 through page 142, line 6.

A customer may wish to have bills sent electronically, while paying electronically. Or, a customer may wish to have bills sent through the mail, while paying through the mail.⁹

9. To sign up for electronic billing, the customer's account information, name, address, and e-mail address must be used.¹⁰

10. Kevin Kellar, Laclede's witness, has been with the company for 17 years.¹¹

11. Over 71,000 customers have electronic billing and Kevin Kellar has not heard of any claiming that they did not originate the process.¹²

12. During her time with the Commission in Customer Service, beginning in November of 2009, Mary Schierman-Duncan has not seen any customer complaints in which the customer claims they were registered for electronic billing without their knowledge or consent.¹³

13. Complainant did not know what was going on with regard to paying bills from August of 2008 to February of 2009 because he wasn't involved in paying the bills during that period.¹⁴

14. Complainant does not know whether his wife signed up for electronic billing.¹⁵

15. Complainant discontinued Bill Pay through his bank in February of 2009.¹⁶

16. In order to cancel electronic billing, the customer must contact Laclede. A customer service representative will then remove the electronic billing indicator.¹⁷

⁹ Transcript, page 122, line 18 through page 123, line 2. And, page 151, line 9-11.

¹⁰ Transcript, page 150, lines 1-17.

¹¹ Transcript, page 100, lines 8-9.

¹² Transcript, page 153, lines 10-13.

¹³ Transcript, page 156, line 17 through page 157, line 4.

¹⁴ Transcript, page 93, line 19 through page 94, line 10.

¹⁵ Transcript, page 55, line 23 through 56, line 7; page 58, lines 3-6, page 72, lines 4-9.

¹⁶ Transcript, page 83, lines 20-22.

¹⁷ Transcript, page 105, lines 14-20.

17. Complainant did not contact Laclede in February of 2009.¹⁸

18. Someone with access to Complainant's e-mail account opened electronic bills sent by Laclede for the service period of September of 2008 through July of 2009.¹⁹

19. Although Complainant did not make a payment in February of 2009, a payment of \$50 was made in March of 2009.²⁰

20. No payment was made on Complainant's account since March of 2009.²¹

21. On July 31, 2009, Laclede sent a notice with an electronic bill informing Complainant that the account was subject to disconnection on August 21, 2009, for nonpayment.²²

22. On August 18, 2009, Laclede notified Complainant through the mail of a disconnection to occur on August 21.²³

23. Complainant called Laclede to cancel electronic billing on August 21, 2009.²⁴

24. Laclede sent the next bill to Complainant by US Mail on August 28, 2009.²⁵

Conclusions of Law

Jurisdiction

Laclede is a gas corporation and a public utility as defined by Section 386.020(18) and (43), RSMo, and is subject to the Commission's jurisdiction under Sections 386.250 and 393.140, RSMo. Under 386.390, RSMo, a complaint may be made by any person, by

¹⁸ Transcript, page 112, lines 1-3. Exhibit 5, records of customers contacts from February of 2008 through January 2010.

¹⁹ Transcript, page 109, line 14 through page 110, line 6.

²⁰ Transcript, page 123, lines 6-13.

²¹ Transcript, page 125, lines 2-4. Exhibit 6, Staff Recommendation, Schedule 1-3.

²² Transcript, page 115, lines 9-21; Exhibit 1, Schedule SOF (HC).

²³ Transcript, page 115, line 22 through page 116, line 1; page 119, lines 6-8.

²⁴ Exhibit 5. And, Transcript, page 114, lines 17-20.

²⁵ Transcript, page 115, lines 3-8.

petition or complaint, setting forth any act or thing done or omitted to be done by any public utility in violation of any provision of law, or of any rule or order or decision of the Commission. Complainant has filed such a complaint with the Commission, which the Commission has the authority to resolve.

Burden of Proof

Where a complainant alleges that a public utility has violated the law, as Complainant has in this case, the burden of proof lies with the Complainant to show that Laclede violated the law or a Commission rule or order.²⁶

Issue 1: Did Laclede begin sending E-bills to Complainant unilaterally and without his consent?

This issue is one purely of fact and requires no conclusion(s) of law. Because it is relevant to the conclusion of whether Laclede violated the law by sending Complainant's bills electronically, it is discussed below under that issue.

Issue 2: After Complainant terminated automatic Bill-Pay in February, did Laclede fail and refuse to send the Complainant a bill for gas services by US Mail?

Like the first issue, this issue is also one of pure fact and requires no conclusion(s) of law. Because it is relevant to the conclusion of whether Laclede violated the law when it notified Complainant of an impending disconnection, it is discussed below under that issue.

Issue 3: Did Laclede violate any provision of its tariffs, any law, or any Commission rule or order when it issued e-bills to Complainant?

The first issue presented by the parties is whether Laclede began sending e-bills to Complainant unilaterally and without his consent. As noted above, it is an issue solely of

²⁶ *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Com'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

fact and is necessarily disposed of in reaching a conclusion as to whether Laclede violated the law when it began sending e-bills to Complainant.

Laclede's tariff defines an "E-bill" as a bill delivered electronically to the customer, or to a web site selected by the customer, that can be viewed on a computer screen.²⁷ Laclede's tariff defines "Rendition of a Bill" as the mailing, hand delivery or electronic posting or delivery of a bill by the company to a customer. The company shall be required to render a bill through only one of the foregoing methods.²⁸ Laclede's tariff defines a "bill" as a written demand for payment for service and the taxes and franchise fees related to it. Such bill may be in electronic form if agreed to by the customer and the company.²⁹ On July 25, 2002, in 4 CSR 240-13.015(1)(A), a bill is defined as a written demand for payment for service and the taxes and franchise fees related to it.³⁰ On July 25, 2002, in 4 CSR 240-13.015(1)(R), rendition of a bill is defined as the mailing or hand delivery of a bill by a utility to a customer.³¹ On July 25, 2002, the Commission issued an order granting Laclede's application for a variance from Commission rules 4 CSR 240-13.015(1)(A) and (R), approving tariff pages enabling Laclede to send bills electronically.³² A tariff has the same force and effect as a statute, and it becomes state law.³³

Laclede's tariff allows the company to send bills electronically if requested to do so by the customer. Although Complainant asserts he did not request that Laclede send bills

²⁷ Laclede's Tariff, P.S.C. MO. No. 5, First Revised Sheet No. R-3-a.

²⁸ Laclede's Tariff, P.C.S. MO. No. 5, First Revised Sheet No. R-3-b.

²⁹ Laclede's Tariff, P.S.C. MO. No. 5, Fourth Revised Sheet No. R-3

³⁰ See 4 CSR 240-13.015(1)(A), 12/31/95. The numbering of the rule has since been amended.

³¹ See 4 CSR 240-13.015(1)(R), 12/31/95. Because the rules have been renumbered, (1)(T) is now the old (1)(R).

³² Exhibit 1 attachment, Order Granting Application for Variance and Approving Tariff.

³³ *Bauer v. SW Bell Telephone Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997), *State ex rel. Mo. Gas Energy v. Pub. Service Comm'n*, 210 S.W.3d 330, 337 (Mo. App. W.D. 2006).

electronically, it is evident a request was made at the same time Complainant's wife set up Bill Pay with Bank of America. Complainant does not know whether his wife, while enrolling in Bill Pay, also requested that electronic bills be sent. The evidence supports an inference that Complainant's wife chose to receive bills electronically. Complainant has not shown otherwise.

Further, although it is not direct evidence of whether Laclede initiated electronic billing for Complainant, it is relevant that neither Laclede's nor Staff's witness is aware of a customer complaining of being signed up for electronic billing without their consent. This is in light of there being 71,000 customers who have electronic billing. Complainant has not shown that Laclede unilaterally begin sending electronic bills to Complainant. The Commission therefore concludes that Laclede has not violated any laws, Commission rule or orders when it began sending bills to Complainant electronically.

Issue 4: Did Laclede violate any provision of its tariff, any law, or any Commission rule or order when it issued disconnection notices either by e-mail or US mail to Complainant between July 29 and August 21, 2009?

Laclede's tariff allows disconnection of service for nonpayment of an undisputed delinquent charge.³⁴ Delinquent charge is defined in Laclede's tariff as a charge remaining unpaid by a customer after the delinquent date.³⁵ Delinquent date is defined in Laclede's tariff as being 21 days from the rendition of the bill by the company, or the extended payment date, if applicable, unless otherwise stated in the specific tariff sheet(s) under

³⁴ Laclede's tariff, P.S.C. MO. No. 5, Fourth Revised Sheet No. R-12.

³⁵ Laclede's tariff, P.S.C. MO. No. 5, Fourth Revised Sheet No. R-3.

which gas service is provided.³⁶ Commission rule 4 CSR 240-13.50(5) states that a utility shall not discontinue residential service unless written notice by first class mail is sent to the customer at least 10 days prior to the date of the proposed discontinuance of service or hand delivered at least 96 hours prior to discontinuance. Laclede's tariff mirrors the Commission's rule with regard to the definition of delinquent charge, delinquent date and the conditions under which service may be disconnected.³⁷ Laclede's tariff allows the company to send notice of its intent to disconnect by electronic mail, if the customer has opted for electronic billing.³⁸ As an alternative to sending an electronic notice of disconnection, Laclede can hand-deliver a notice at least 96 hours prior to disconnection.³⁹

Until the parties agreed on a payment plan at the close of the hearing on July 8, 2010, the last payment Complainant made was in March of 2009 in the amount of \$50. Laclede notified Complainant by electronic mail on July 31, 2009 of the impending disconnection scheduled for August 21. And, on August 18, sent notice by US Mail; the 96-hour notice. Although Laclede's tariff requires that a 96-hour notice be hand-delivered, this is an alternative to sending the notice 10 days prior to the disconnection date, which Laclede did.

The Commission has concluded that Laclede was within the law when it began sending electronic bills to complainant. Because it was lawfully sending electronic bills, it may lawfully send an electronic notice of disconnection. The bills were well over 21 days overdue and Laclede sent notice of disconnection at least 10 days prior to disconnection.

³⁶ Laclede's tariff, P.S.C. MO. No. 5, Fourth Revised Sheet No. R-3-a.

³⁷ The Commission takes official notice of this fact.

³⁸ Laclede's tariff, P.S.C. MO. No. 5, First Revised Sheet No R-12-b.

³⁹ Laclede's tariff, P.S.C. MO. No. 5, First Revised Sheet No R-12-b.

However, Laclede never disconnected Complainant's service. All of the steps Laclede took in notifying Complainant of an impending disconnection were made under the presumption that disconnection would follow. The first sentence of the relevant tariff provision states in part; "[t]he Company shall not disconnect residential service . . . unless written notice is sent at least 10 days prior to the date of the proposed discontinuance." Because Laclede ultimately did not disconnect Complainant's service, the steps Laclede took to notify Complainant become moot. The Commission concludes that Laclede has not violated any law or Commission rule or order when it issued disconnection notices to Complainant.

Issue 5: 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?

The Commission may allow a variance of rule 13.015(1)(T) under Commission rule 4 CSR 240-13.065(1). By order, the Commission granted such variance, allowing Laclede to send bills electronically. Laclede's then revised its tariff to reflect that variance, which the Commission approved. Complainant has presented no evidence or law to suggest that the Commission's order granting the variance was unlawful. To specifically address the issue, the Commission has not "waived" the relevant rule but rather has allowed a variance of the rule. Nonetheless, the Commission's order granting a variance of the rule to Laclede, and allowing the company to send bill electronically, is lawful.

Decision

Although it is unfortunate that Complainant accrued an arrearage, Complainant has not shown that such was the result of any violation of the law by Laclede. Under 386.390.1 Complainant bears the burden of showing such violation. Laclede sending bills electronically and notifying Complainant of disconnection for unpaid bills were consistent

with the law, and Commission rules and orders. Complainant has failed his burden and the Commission rules in favor of Laclede.

THE COMMISSION ORDERS THAT:

1. Complainant, Charles A. Harter, has failed to show that Laclede Gas Company has violated any law or Commission rule or order.
2. This Report and Order shall become effective on November 13, 2010.
3. This case shall be closed on November 14, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Davis, Jarrett, Gunn, and Kenney, CC.,
concur, and certify compliance with the
provisions of Section 563.080, RSMo.
Clayton, Chm., absent.

Dated at Jefferson City, Missouri,
on this 3rd day of November, 2010.