BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Staff of the Public Service Commission Of the State of Missouri,	)	
Complainant,	)	
v.	)	Case No. GC-2006-0318
Laclede Gas Company,	)	
Respondent.	)	
Office of the Public Counsel,	)	
Complainant,	)	
v.	)	Case No. GC-2006-0431
Laclede Gas Company,	)	
Respondent.	)	

LACLEDE GAS COMPANY'S
PREHEARING BRIEF AND STATEMENT OF POSITIONS

COMES NOW Laclede Gas Company ("Laclede" or "Company"), and submits its Prehearing Brief and Statement of Positions in the above referenced complaint cases and, in support thereof, states as follows:

STATEMENT OF POSITIONS[1]

Issue No. 1 Has Laclede complied with the provisions of Commission Rules 4 CSR 240-13.020 and 13.025 related to its issuance of estimated bills, including adjustments of estimated bills, and if not, what should the remedy be?

Laclede's Position: Laclede has complied with both Commission Rule 13.020 and 13.025 in issuing and adjusting estimated bills. Difficulty in accessing the large

[1] The Statement only addresses Issue No. 1, as Issue No. 2 has been resolved between Laclede and the Complainants.

number of inside meters in its service territory has always required Laclede to issue a significant number of estimated bills. However, Laclede has complied with Commission Rule 13.020 in both issuing estimated bills and providing notice to customers regarding such estimates. In addition, Laclede has, at considerable expense to itself, undertaken the deployment of an automated meter reading ("AMR") system throughout its entire service territory. Like other AMR deployments previously done by gas utilities in Missouri, Laclede's AMR deployment, coupled with unprecedented natural gas prices, has resulted in a temporary increase in customer complaints. However, as it nears completion of this mammoth project, Laclede is already substantially reducing the number of estimated bills it must issue and, in the process, is currently saving Laclede's customers millions of dollars in avoided service initiation charges and hundred of thousands of hours in productive time that would have otherwise been spent waiting for gas personnel to visit customers' premises.

Laclede has also complied with the requirements of Commission Rule 13.025 in adjusting estimated bills. Specifically, in reconciling undercharges, Laclede has limited its adjustment period to twelve months from the first to occur of discovery, inquiry or actual notification. Again, Laclede's efforts in establishing an AMR system designed to eliminate estimated bills will also substantially reduce the need for billing adjustments.

Given all of these considerations, Laclede's actions over the past several years have not only complied with the requirements of these Commission rules, but have significantly advanced their underlying objectives.

PREHEARING BRIEF

INTRODUCTION

The testimony submitted in this matter makes it clear that these Complaints should never have been filed in the first place. Having been filed, the testimony makes it equally clear that the Complaints cannot be sustained. Simply stated, there is no violation either of Missouri Public Service Commission ("MPSC") regulations or of Laclede Gas Company ("Laclede") tariffs. In fact, based on the views of Staff and Public Counsel, these are nothing more than complaints about there being too many complaints.

What is now apparent is that the MPSC Staff ("Staff") and the Office of Public Counsel ("Public Counsel") wrongly assumed that Laclede must have violated Commission rules and its own tariffs because the Company has experienced an unusually large number of consumer complaints concerning estimated bills since the fall of 2005. Based on that flawed assumption, they have requested that the Commission authorize its General Counsel to seek penalties.

In reality, however, the vast majority of the consumer complaints cited by Staff and Public Counsel in support of their positions have nothing to do with violations of Commission rules or Company tariffs. Instead, they are the natural by-product of two factors: (i) unprecedented gas prices during the 2005-06 winter, combined with (ii) the Company's ambitious program to implement a new AMR system on the entire universe of its meters, including approximately 250,000 inside meters. This combination of factors is aptly described by Staff witness Gay Fred in her Report in GW-2007-0099 (the "Report"). And Ms. Fred is clear that Staff's complaint is basically a reaction to a sharp increase in the number of billing complaints received from Laclede customers due to these factors and, in her view, Laclede's shortcoming in effectively managing the transition to AMR. (See Fred Surrebuttal, pp. 6-7). As stated above, these complaints are not about tariff or rule violations, but more about having an increase in consumer complaints during the transition to AMR at a time of unusually high gas prices.

Such an increase in consumer complaints, and the regulatory interventions that follow, are neither unprecedented nor indicative of whether a utility has run afoul of the Commission's billing rules. To the contrary, when Missouri Gas Energy ("MGE") installed its AMR system in the 1990's, there were scores of consumer complaints filed with the Commission as actual readings were obtained and estimated bills reconciled. And as Staff witness Fred indicated in the

Report, numerous consumer complaints, as well as a Staff investigation, occurred when AmerenUE installed AMR devices on its gas meters in 1999-2000. (See Report, page 2).

In contrast, Laclede is installing AMR modules on 650,000 meters, more than six times the AmerenUE installation, over a period when gas prices are more than double where they stood in 1999. And not only has Laclede had to install the devices on substantially more meters, including a large number of meters located inside the customers' premises, but it is doing so on an expedited basis -- a factor that has accelerated the reconciliation of estimated bills on accounts with hard-to-access inside meters. Moreover, Laclede has had to undertake this initiative in the face of fierce opposition from its own labor union. Given this combination of events, it is not surprising that complaints would also be registered by hundreds of Laclede customers out of the hundreds of thousands affected. Nor is it surprising given this history that the increased number of complaints, even though they represent only a small fraction of 1% of Laclede's customers, would engender interest by Staff and Public Counsel, as it did in other AMR installation projects.

High gas prices and hard-to-access inside meters are neither the fault of Laclede nor of its customers. Nevertheless, the Company has pursued the AMR program at considerable cost to itself because it is unquestionably the right thing to do, not only to address the estimated bill issues for those customers with inside meters but, just as important, to provide the long-term savings and service conveniences that all customers have already begun to receive, and will continue to receive as a result of this technology. In view of these considerations, any effort to impose penalties because of the temporary dislocations caused by such a huge and profoundly beneficial undertaking would be grossly unfair and send the regulated community a very counter-productive message concerning the wisdom of pursuing such large-scale service enhancements.

Regarding billing adjustments, it should also be noted that this is not a situation where specific customers have suffered some kind of recognizable harm due to any action that has or has not been taken by the Company. To the contrary, in every case where an undercharge has occurred, customers have simply been afforded more time to pay what they owe for the utility service they have received -- an outcome that Public Counsel in particular has endorsed in numerous other contexts as a *desirable* thing for customers.

In short, all of the competent and substantial evidence on the record shows that Laclede has fully complied with MPSC regulations and its own tariffs. And given the extraordinary expense and efforts it has undertaken to upgrade billing through universal AMR, Laclede cannot be found even to have breached the spirit of any regulation or tariff. Moreover, installing universal AMR will largely end the practice of estimated billing and therefore completely address any concerns that motivated the filing of the Complaints in the first instance. The quest for violations and penalties is, therefore, without any basis in fact or law and a decision in favor of Laclede is required.

REMAINING ALLEGATIONS IN THE COMPLAINTS

In their initial complaints, both Staff and Public Counsel alleged that Laclede had been estimating bills for too long a period of time without required notices being given. Public Counsel further claimed that Laclede had improperly billed customers for undercharges that accrued over a period greater than 12 months prior to the date an actual meter reading was obtained. According to Public Counsel's initial complaint, Laclede is prohibited by Commission rules from accruing and billing customers for more than 12 months of undercharges, regardless of any inquiries made or actions taken by the Company to procure an actual meter reading sooner. Staff and Public Counsel had also alleged that Laclede had not addressed in a prompt

enough manner those situations where service has been disconnected but there are indications that potential unauthorized use is occurring. As previously noted, however, this last issue has been resolved by Laclede and the Complainants.

In her direct testimony, Staff witness Gay Fred made several additional points of significance to the issues in this case. Specifically, she favorably cited the notice procedures that Laclede had implemented in consultation with the Commission Staff to address situations involving customers with malfunctioning trace devices. Ms. Fred also discussed some of the flaws in Public Counsel's interpretation of the Commission's billing adjustment rule, including its failure to recognize the customer's obligation to grant access to the Company for meter reading purposes and the limitations which other rule provisions place on the Company's ability to discontinue service where bills have been estimated for more than one year.

In her surrebuttal testimony, Public Counsel witness Meisenheimer also clarified that Public Counsel was not contending that Laclede was always prohibited from billing for undercharges for a period greater than 12 months, but instead that Laclede failed to demonstrate that exceptions to the Commission's billing adjustment rule applied to justify the extent of Laclede's alleged estimated billing. Both Staff and Public Counsel continued to contend in their surrebuttal testimony that Laclede had made excessive use of estimated bills and to question whether the Company had adequately demonstrated the effectiveness of its notice procedures for informing customers that they were receiving estimated bills. They also introduced for the first time in surrebuttal testimony two completely new issues relating to Laclede's actions in advising customers of the right to pay undercharges in installments and in documenting the reasons for issuing estimated bills. As they had in the direct testimony, both Ms. Fred and Ms. Meisenheimer continued to cite or attach gross numbers of customer complaints without any

effort to discuss or explain what those complaints actually show or how they support their respective positions. Indeed, many of the complaints cited have nothing whatsoever to do with the allegations in this proceeding.

AMR AND GAS PRICES: THE REAL GENESIS OF THE INCREASE IN CONSUMER COMPLAINTS

As previously noted, the increase in consumer complaints experienced by Laclede since last fall is due to two factors: unprecedented wholesale natural gas prices and the temporary issues associated with converting to a new AMR system. To understand why implementation of a new AMR system has contributed to the temporary estimated bill issues cited by Staff and Public Counsel, one has to begin with an understanding of one of the primary features of Laclede's distribution system that distinguishes it from many other utilities, namely, the high proportion of customers that have meters located inside their home or business. (Fallert Rebuttal, p.5, l.18 – p.6, l.2). In total, over 250,000, or about 40%, of Laclede's customers are served through these inside meters. (*Id*.).

Prior to the 1950s, most of the Company's meters were installed inside the customer's premises to ensure that the meter would not freeze up in extremely cold weather conditions. This potential for freeze-ups, however, only exists on the low pressure distribution system that Laclede operates in the older, primarily urban core section of its service territory. As a result, ever since Laclede began constructing higher pressure distribution facilities in the 1950s, the vast majority of meters have been installed on the outside of the customer's premises. (Fallert Rebuttal, p.6, ll.4-10).

Obviously, the main challenge for Laclede is obtaining access to meters for purposes of procuring actual meter readings, performing any required safety work and restoring or discontinuing service. (Fallert Rebuttal, p.6, ll. 12-14). And that challenge has only grown over

the years, as more and more households have no one at home during the day to permit access. (*Id*. at ll. 14-16). Because of these access problems, Laclede has always had to rely on estimated bills more than other utilities that serve all or the vast majority of their customers through outside meters. (*Id*. at ll. 19-21). In addition, customers with inside meters have had to wait at home for gas personnel to arrive when an existing account is terminated or when a new account is initiated so that an ending or starting meter reading can be obtained. (Fallert Rebuttal, p.6, l.21 – p.7, l.1). In both cases, customers have had to devote their time to something that they would just as soon not be spending it on. Moreover, customers starting a new account have also had to pay a $36.00 service initiation fee even in circumstances where the flow of gas has not been interrupted because a Company employee has to visit the premises to obtain a starting meter reading. The end result is that customers have had to spend millions of dollars and devote hundreds of thousands of productive hours each year because of this characteristic of the Company's system. (Fallert Rebuttal, p.7, ll.1-8).

In the past, Laclede has undertaken a number of measures to address the operational issues associated with having so many inside meters. These have included, among others, the previous installation of remote meter reading devices for those customers who indicated that they would be unable to arrange for regular access to their meter, moving inside meters outside in those rare instances where such actions were feasible, and efforts to advise customers of their option to obtain or provide meter readings. (Fallert Rebuttal, p.7, ll.11-17). Although each of these measures provided some help, Laclede concluded several years ago that a more comprehensive approach, in the form of implementing a new AMR system across its entire service territory, was the best long-term solution for its customers. (*Id*. at ll. 17-20).

Laclede recognized from the outset that the implementation of a new AMR system across its entire service territory would have significant, long-term implications for the cost and quality of the service it provides to its customers, and the Company went to extraordinary lengths over a four year period to make sure that it thoroughly explored the potential technologies, vendors and options for implementing such a system. (Fallert Rebuttal, p.7, l.22-p.8, l.7). The Company explored the offerings of several entities, and when negotiations toward the final contract ensued, Laclede went to great pains to fashion the most advantageous arrangement possible in terms of cost, reliability and service.

The end result was the selection of a state-of-the-art AMR system that will, and indeed has already begun to, provide the most significant advancement in service ever experienced by Laclede customers. With this system, Laclede will be able to virtually eliminate the need to estimate bills by ensuring that actual meter readings can be obtained each month from all of the Company's meters, including those that are located inside customers' homes or businesses. In addition to obtaining actual reads, customers with manually read inside meters will be further spared the inconvenience of having to wait for a gas company employee to show up and perform meter reading tasks in their homes. AMR will also free tens of thousands of customers each year from the obligation to pay service initiation charges when establishing a new account. Finally, AMR will permit the Company to contain the cost of obtaining and processing meter readings for years to come – a result that will accrue to the long-term benefit of all of Laclede's customers. (Fallert Rebuttal, p.8, ll.9-21).

Implementing this system has imposed significant, un-recovered cost on Laclede in the short term. Although Laclede has for some time now been paying for meter readings from its new AMR provider, Cellnet, as portions of the new system become activated, it has also

continued to retain many of its meter readers in their existing positions during the implementation process to perform various transition functions. The end result is that Laclede has actually incurred a significantly greater level of meter reading-related costs than what was provided for in its last general rate case proceeding and the amount it would have otherwise incurred had it not pursued AMR. (Fallert Rebuttal, p.9, ll.1-9). Laclede has also spent more on call center and accounting personnel costs in order to handle the increased call volumes and reconciling billing adjustments associated with installing such devices. Aside from these financial impacts, Laclede has also had to face and rebut repeated and unfounded public criticisms of AMR by its own union personnel -- all of which have been aimed at reversing these customer service enhancements. (*Id.* at 9-15). Despite these short-term costs and challenges -- burdens that could have been avoided if Laclede had simply taken a "business as usual" approach to meter reading -- the Company has remained steadfast in its commitment to implement the new AMR system as rapidly as possible because it is the right long-term thing to do for its customers.

The impact of AMR has been undeniably favorable. As of this date, Laclede has already installed new AMR devices on more than 580,000 of its 650,000 meters. As a result, Laclede's customers are already saving what will amount to literally millions of dollars in service initiation charges each year that they would have otherwise had to pay in the absence of such a system. (Fallert Rebuttal, p.9, l.22-p.10, l.3). Countless customers have also been spared the inconvenience over the past year of having to wait while gas personnel obtain access to their premises in order to read their meter. And many more with inside meters have begun receiving bills on a regular basis that are based on actual readings rather than estimates. (Fallert Rebuttal, p.10, ll.4-9). As mentioned before, these benefits will continue to accumulate, not just in the

immediate future but for years to come, as the AMR installation process is completed and the system becomes fully operational.

At the same time, the process of implementing a new AMR system has also caused some short-term inconveniences for some customers, as one would reasonably expect with a project of this magnitude. Unfortunately, Public Counsel and Staff have chosen to focus on these inconveniences in their respective complaints and testimony. For example, because it took several years to properly evaluate, negotiate and implement a new AMR system, there has been a longer than normal lag in replacing non-functioning meter reading devices with a new AMR device. (Fallert Rebuttal, p.10, ll.15-19). As Staff witness Fred recognized in her direct testimony, however, the Company took appropriate measures, in consultation with the Staff, to provide such customers with an alternative way of providing actual meter readings in the interim. (Fallert Rebuttal, p.10, ll.19-22). In other instances, the rapid installation of AMR resulted in a greater number of bill adjustments than normal as actual readings were obtained for locations where obtaining access has been problematic. (Fallert Rebuttal, p.10, l.22-p.11, l. 6). And all of these operational and billing challenges were greatly exacerbated by the impact of historically unprecedented gas prices on customer bills, and further aggravated by the constant agitation in the media by those with an interest in undermining the successful implementation of the AMR program. (*Id.*)

Given this environment, it is not surprising that a somewhat greater number of customers have complained to the Commission during this process. Even though estimated billing complaints have come from a small fraction of one percent of Laclede's customers, Laclede does not take them lightly and has taken reasonable steps to address each one. (Fallert Rebuttal, p.11, ll.6-10). Those complaints in no way, however, warrant the imposition of penalties. If the

Commission expects utilities to aggressively pursue long-term measures for enhancing the quality and cost of utility service, such as AMR, it must recognize that some temporary customer inconveniences will inevitably occur in the process. That is particularly true when the endeavor involves something as massive as the physical modification of 650,000 individual meters over a relatively short period of time. In this case, Laclede has, at considerable cost to itself, undertaken that precise kind of initiative, which is already providing substantial benefits to Laclede's customers in terms of both time and money saved. Given this good faith effort, it would be unfair to Laclede and inconsistent with the goal of encouraging long-term utility innovation, to penalize the Company for the short-term inconveniences resulting from this effort. This is especially true in this instance given the absence of any real harm to those customers who have been inconvenienced. (Fallert Rebuttal, p.11, l.13-p.12, l.2).

ABSENCE OF HARM

This is not a case where customers have been injured, suffered property losses, been overcharged for service or otherwise been damaged by something that a utility has done or failed to do. Instead, the only customer harm that Public Counsel and, to a lesser extent, Staff, have alleged relates to the fact that some customers have had to pay catch-up bills because they were undercharged for what they were actually using during the time they were receiving estimated bills. Indeed, Public Counsel goes to considerable lengths to portray this as something harmful not only for those customers who were undercharged but also for other customers as well. Although it is understandable that some customers would find it irritating to receive a catch-up bill, these customers are not truly "harmed" because they are at no time being asked to pay for more service than they actually received, albeit later and over a greater period of time than what could have otherwise been demanded. (Fallert Rebuttal, p.12, ll.6-18).

In reality, the Commission's rule on billing adjustments (Rule 13.025) already favors the customer. When estimated bills result in an undercharge, the utility is limited to a look-back period of one year from the earlier to occur of inquiry, discovery or actual notification, and the customer, upon request, is entitled to pay for the adjustment in installments. In Laclede's case, the installment period can be as long as the number of months that the adjustment period covered. In other words, a customer who has a ten month adjustment may have ten months to pay the adjusted amount. Conversely, when estimated bills result in an overcharge, the utility will go back up to five years in calculating the amount of the overcharge, and credit the customer's account immediately in the full amount.

Laclede's quarrel is not with the asymmetry of Commission Rule 13.025, but with Public Counsel's improper attempt to rewrite the rule to eliminate the term "inquiry" so as to alter the timeframe over which the Company may adjust an undercharge. In its Complaint and testimony, Public Counsel seeks to alter the billing adjustment rule to reduce deferred charges, while in other cases it argues for policies that increase deferred charges. For example, in various proceedings involving changes to the Commission's Cold Weather Rule, Public Counsel has argued that permitting customers to defer more of their current and past utility charges for payment at a later time is not only a desirable public policy goal but, indeed, a necessary one. (Fallert Rebuttal, p. 12, l.21 - p.13, l.13). In fact, Public Counsel has, at different times, argued that utilities should be affirmatively *required* to collect less money up front from customers who are in arrears, reduce the proportion of current charges that customers must pay to retain service, and stretch out over longer periods the time within which customers must repay what they owe. (*Id.*). Indeed, just within the last several months, Public Counsel urged the Commission to require that utilities reconnect customers upon payment of no more than 50% or $250 of the

customer's arrearages, whichever in less, in place of the 80% of arrearages that utilities could demand under the existing Cold Weather Rule. (*Id.*) Needless to say, it is difficult to understand how Public Counsel can so vigorously assert, on the one hand, that customers are harmed when a utility company bills them for less than the full cost of utility service while, on the other hand, repeatedly insisting that utilities be required to do just that in other proceedings.

In addition, Public Counsel's testimony provides a misimpression of the size of catch-up bills. The example of a $750 catch up bill provided by Public Counsel witness Meisenheimer was an extreme one and not representative of the average catch-up amounts that have typically been billed to most customers. (Fallert Rebuttal, p.13, l.21 - p.14, l.3). Based on a study that was furnished to Public Counsel and used to derive the figures cited by Ms. Meisenheimer, the average catch-up amount billed to customers has been approximately $155. (*Id.*). This means that the customer would have to pay a little less than $13.00 a month for twelve months in order to repay the full amount. This amount is relatively small, compared to a change in the Company's Purchased Gas Adjustment rate, which alone can easily impact a customer's bill by double or triple this monthly amount. Similarly, bi-annual adjustments in budget bill amounts to account for past under or over recoveries and future price estimates often exceed this amount. (Fallert Rebuttal, p.14, ll.5-13).

Even the most extreme example of a catch-up amount cited by Ms. Meisenheimer is small in comparison to the catch-up amounts that many customers can end up owing the Company because of policies that Public Counsel has actively promoted to limit the amount that customers must pay to regain or maintain service. Indeed, Laclede has literally thousands of customers with unpaid arrearages greater than the $750 catch-up amount cited by Ms. Meisenheimer. (Fallert Rebuttal, p. 14, ll. 17-21). And many of those arrearages are as high as

they are because customers were required to pay significantly less to have service reconnected due to policies that Public Counsel has previously advocated. (*Id.*).

Laclede recognizes that while the average catch-up amount is relatively small in comparison to other bill adjustments, it may nevertheless impose a financial burden on some customers. Indeed, that is precisely why the Commission's current rules and Laclede's tariffs permit all requesting customers the opportunity to pay any undercharge in installments, without incurring any interest charges, effectively affording customers an interest free opportunity to pay for past service over a longer period of time than would have otherwise been the case. While the value of this benefit may be relatively modest, it is certainly another factor that weighs against Public Counsel's selective attempt, at least in this proceeding, to portray customers who have received a catch-up bill for prior service as having suffered some kind of harm. (Fallert Rebuttal, p.16, ll.4-16).

Simply put, there is no basis for the assertion that customers have been harmed by having extra time to pay for service they actually used. To the contrary, Laclede's implementation of AMR has benefited, and will continue to benefit, all of the Company's customers, both individually and collectively.

ABSENCE OF RULE VIOLATIONS

The rule violations cited by Staff and Public Counsel are, by and large, either based on a misinterpretation of the Commission's rules and what they require or a misunderstanding of the actions that Laclede has taken to comply with them.[2] This is most graphically demonstrated by

[2] Despite the insistence of Staff and Public Counsel, there is no magic number of estimated bills that triggers a per se violation of Commission rules or tariffs. The fact remains that using estimates for billing purposes has always been an endemic and welcome feature of providing utility service. Every payment plan that the Company agrees to implement pursuant to the terms of the Cold Weather Rule or otherwise -- and there are tens of thousands of them each year -- utilizes estimates to derive the amount that is to be billed to the customer. Likewise, every budget or levelized billing arrangement -- and there are over 150,000 of those each year -- uses estimates to determine how

Public Counsel's initial position in this case on the meaning and effect of Commission Rule 4 CSR 240-13.025(1)(B) relating to when utilities may bill customers for previous undercharges. In its Complaint and direct testimony, Public Counsel misinterprets Commission Rule 4 CSR 240-13.025(1)(B) in asserting that Laclede has violated that rule by adjusting bills for undercharges for a period greater than 12 months from when an actual meter reading is obtained. As Laclede has demonstrated, the Company's billing practice is to adjust an undercharge for up to 12 months from the date of discovery, actual notification of the Company, or inquiry, ***whichever was first***, in accordance with the express language of that rule and Laclede's Tariff Rule 10. (Fallert Rebuttal, p.17, ll.9-21) Public Counsel concedes that this practice has been followed by Laclede, which conclusively demonstrates that Laclede's billing adjustment practice complies with 4 CSR 240-13.025(1)(B). (Meisenheimer Direct, p.25, ll. 4-7).

This provision is sensible because it only holds the customer responsible for undercharges over a period greater than 12 months if the customer has failed or refused, after notice, to cooperate in providing or permitting the Company to obtain a reading. From that point on, the undercharge can be attributed to an act of the customer, by not responding to Laclede's request. The customer should not benefit from that circumstance. Indeed, to interpret the rule otherwise would give customers an incentive not to be cooperative and deny access as long as possible to avoid paying any difference between their estimated bill and actual bill. (Fallert Rebuttal, p.18, ll.12-20)

Rather than dispute this clear view of the rule, Ms. Meisenheimer's quote from a Commission Report and Order in Case No. GR-93-47 actually supports the view that the 12

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much the customer will be billed. Each of these estimate-dependent billing mechanisms has been favorably endorsed over the years by the Commission, Public Counsel, Staff and other utilities as a good thing for consumers.

month undercharge provision was never intended to allow customers to escape undercharges caused by something the customer had done. As the Commission stated:

> "In so finding for the Staff, the Commission is not restricting Company from its right to collect…where the undercharge is caused by an act of the customer." (Meisenheimer Direct at 34)

In asserting that adjustments for an undercharge must never exceed 12 months regardless of the customer's actions or inaction, Public Counsel effectively and improperly eliminates the term "inquiry" from both the Company's tariff and the Commission's rules. By doing so, Public Counsel's interpretation would effectively mean that Laclede would have to disconnect customers within twelve months from the date the last actual meter reading was obtained, regardless of when or what inquiries were made, or simply lose the right to collect any portion of an undercharge for service prior to the most recent 12 month period. (Fallert Rebuttal, p.19, ll.12-19).

Whether interpreting statutes or rules, the same principles of construction are used. *Morton v. Missouri Air Conservation Commission, 944 S.W.2d 231, 238 (Mo. App. 1997); Vernon v. Director of Revenue, 142 S.W.3d 905 (Mo. App. 2004).* Moreover, words used are given their plain and ordinary meaning. *Id.* Proper construction is a question of law, not of fact. *Missouri Department of Social Services, Division of Medical Services v. Great Plains Hospital, Inc., 930 S.W.2d 429 (Mo. App. 1996).* When construing regulations, the judge must endeavor to give effect to the intent of the enacting authority. *Id.* Each word, clause, sentence and section should be given meaning. *Id.* By any measure, therefore, the interpretation by Public Counsel is absurd.

As Staff witness Fred recognizes in her testimony, this rewriting of the rule places no responsibility at all on the customer to cooperate in obtaining meter readings. Instead, it affirmatively rewards them for not doing so, and even motivates customers who know they are being undercharged to intentionally refuse to grant Laclede access to its meter. This flies in the face of the Commission's determination that customers should not be exonerated from the obligation to pay undercharges when they have played a role in creating them. (Fred Direct, pp. 9-13). As both Ms. Fred and Mr. Fallert also recognized it simply is not possible to reconcile Public Counsel's position that service can (and apparently should) be discontinued to customers whenever they have failed to permit access or provide readings for 12 consecutive months, with other rule provisions which affirmatively preclude discontinuance of service during cold weather or in multi-tenant situations. (Fred Direct, pp. 11-12).

Worse, Public Counsel's improper rewrite of Rule 13.025 is based on a highly paternalistic policy which assumes that the regulator knows exactly what is best for each and every customer and that discontinuance of service after 12 months of estimated reads is preferable to a potential billing adjustment. (Fallert Rebuttal, p.20, ll.7-9) Indeed, since Laclede will already be attempting to disconnect service to those customers who aren't paying their estimated bills, Public Counsel's policy is effectively targeted at those good paying customers who have decided that they have more important priorities than waiting at home so that a gas employee can read the inside meter, and are perfectly happy to take on the small risk of facing a catch-up bill. Nevertheless, Public Counsel would have the Commission tell them that they have no choice but to make themselves available for an actual meter reading or lose service entirely. Such a result is not "consumer friendly" and certainly is not consistent with the

Commission's rule on this issue. Finally, the point will be mooted by AMR, which will eliminate any need to perform long-term estimates.[3]

In summary, it is abundantly clear from the foregoing that Public Counsel has based its claims regarding alleged violations of 4 CSR 240-13.025(1)(B) on a deeply flawed interpretation of that rule provision and an inaccurate depiction of how Laclede has operated under that provision. Simply put, it is impossible to reconcile Public Counsel's interpretation with either the explicit language of that rule provision or with the contrary requirements set forth in other Commission rules. Nor does Public Counsel's interpretation square with any reasonable assessment of which approach best serves the interests of the Company's customers. (Fallert Rebuttal, p.24, ll.1-9). For all of these reasons, Public Counsel's position on this issue should be rejected.

The same flaws are inherent in Staff and Public Counsel's assertions regarding alleged violations of 4 CSR 240-13.020. Although Ms. Meisenheimer cites various provisions of this rule in support of her assertion, she does nothing to explain what those provisions actually mean or require or how they mesh with other rules. (Meisenheimer Direct, pp. 15-17). For example, in alleging that Laclede has relied too extensively on estimated bills, Ms. Meisenheimer recites

[3] It is also apparent that, in determining whether the Company has complied with 4 CSR 240-13.025(1)(B), Public Counsel based its position on an erroneous set of assumptions regarding the Company's actual practices. For example, on page 28 of her direct testimony, Ms. Meisenheimer posits a situation where the undercharge is discovered after 12 months. However, she inexplicably assumes that the undercharge adjustment is not made for another twelve months. In reality, Laclede's normal practice would have been to render a bill adjusting for the undercharge at the time it was determined to exist, not twelve months later. (Fallert Rebuttal, p.23, ll.1-3). Similarly, on page 29 of her direct testimony, Ms. Meisenheimer assumes that Laclede has adjusted a bill for an undercharge occurring over 24 months, even though the customer inquired about it after 12 months. If the customer inquired after 12 months, however, the Company would have arranged to obtain a meter reading at which point the adjustment would have been made. Under no circumstances would the Company have billed for more than 12 months had it not made such an effort. (Fallert Rebuttal, p.23, ll.11-12). Likewise, on page 30 of her direct testimony, Ms. Meisenheimer assumes that Laclede has billed for an undercharge over a 36 month period, after having left one door notice following the 12th month and one documented notice following the 24th month. In fact, under the circumstances assumed by Ms. Meisenheimer, Laclede would have left more than thirty door notices at the customer's premises over this period of time, and would have sent and had multiple notices to the customer documented in its system if it were to bill for an undercharge for more than 12 months from the date of discovery. Once again, Ms. Meisenheimer's example is not representative or relevant. (Fallert Rebuttal, p.23, ll.17-22).

various provisions of 4 CSR 240-13.020 that require utilities to obtain actual meter readings under various circumstances. What she ignores, however, is other provisions of the rule that explicitly permit a utility to use estimated bills, including for periods exceeding one year, when extreme weather conditions, emergencies, labor agreements, work stoppages, an inability to access the customer's meter, and other conditions are present. (See 4 CSR 240-13.020(2)(A) and (B)). In addition to ignoring these exceptions, Ms. Meisenheimer also fails to relate any of these provisions to specific actions that Laclede has allegedly taken or failed to take with respect to any particular customer. Under such circumstances, many of her contentions on pages 15 to 17 of her direct testimony regarding alleged rule violations are nothing more than generalized assertions that can't be proved or disproved without additional information that would permit Laclede's compliance with a particular rule to be evaluated based on a specific fact circumstance. (Fallert Rebuttal, p.24, l.20-p. 25, l.9).

Even without the benefit of customer-specific information, it is clear that some of her contentions are demonstrably untrue on their face. For example, on page 16 of her direct testimony, Ms. Meisenheimer states that Laclede's estimating procedures were not approved by the Commission as required by 4 CSR 240-13.020(2)(C)(1). This is simply inaccurate. Not only have the Company's estimating procedures been approved by the Commission, they are set forth in Laclede's filed and approved tariff sheets. They can be found at P.S.C. Mo. No. 5 Consolidated, Original Sheet No. R-40. By its own terms, that tariff sheet became effective October 27, 1998, or nearly eight years ago. (Fallert Rebuttal, p.19, ll.12-19).

Nor does the evidence of specific customer complaints offered by Staff and Public Counsel support their assertion that Laclede has violated the Commission's rules. The mere accumulation of complaints to prove a violation implicates rules regarding admissibility of

similar or other occurrence evidence. An appropriate foundation for admissibility requires that the proponent show that the occurrences: (1) be of like character; (2) occur under substantially the same circumstances; and (3) result from the same cause. *Jone v. Coleman Company, 183 S.W.3d 600 (Mo. App. E.D. 2005)*(numerous complaints to Consumer Product Safety Commission excluded).

In the present case, Staff and Public Counsel have failed to establish any such foundation and instead hope that simply reciting numbers will be found somehow to satisfy their burden. From a legal standpoint, the evidence that is offered is largely barred by long-standing principles governing admissibility which, in addition to the lack of any factual support, make the Complaints unsustainable. Most of the evidence offered by Staff and Public Counsel consists simply of accumulating complaints and without further analysis or investigation offering these to prove violations of regulations or tariffs. However, the party bringing a complaint has the burden of establishing its *prima facie* case by competent evidence. *Michaelson v. Wolf, 261 S.W.2d 918 (Mo. 1953).* The proponent of evidence must show that its offered proof is both logically and legally relevant. *Conley v. Kaney, 250 S.W.2d 350 (Mo. 1952).* "Logical relevance" is established if the evidence tends to make the existence of a material fact more or less probable. *State of Missouri v. Tripp, 168 S.W.2d 667 (Mo .App. W.D. 2005).* "Legal relevance" is determined by balancing the probative value of the evidence against the likelihood that it might result in unfair prejudice, confusion of the issues, misleading the fact finder, undue delay, or cumulativeness. *Id.*

In this case, it is clear that the evidence of consumer complaints offered by Public Counsel and Staff in support of their positions run afoul of these evidentiary principles. For example, it appears from Schedule BAM-1 to her direct testimony, that Ms. Meisenheimer

simply attached copies of all of the customer complaints that had been received and addressed by Laclede over several years without any effort to explain whether, or to what extent, those complaints relate to the issues raised in this case. In fact, it is clear from a review of those complaints that many of them have nothing whatsoever to do with the allegations made in this case, while others show on their face that the Company complied fully with its obligations under the Commission's rules. Indeed, much of the material provided by Ms. Meisenheimer shows that the Company takes its customer service obligations seriously and, in many instances, will go to extraordinary lengths to work with its customers and resolve their inquiries or complaints, even in those instances where those complaints are unreasonable or exaggerated. (Fallert Rebuttal, p.26, ll.1-12).

Based on a review of the first 25 customer inquiry/complaints contained in Ms. Meisenheimer's schedule, there were only seven instances in which a customer's bill was actually estimated for more than 12 months. Of these seven, one was clearly related to a situation where the Company was simply unable to obtain access to the customer's meter despite repeated attempts, while another involved a situation where the Company actually obtained a reading within the 12 month period, but that reading turned out to be erroneous. The other five were instances where a trace device had malfunctioned. As previously indicated, these devices were originally installed in locations where the Company was very unlikely to gain access. Rather than charge its customers for a new trace device that would soon become obsolete with the advent of the new AMR system, the Company exercised its right under Rule 12 of its approved rules and regulations for gas service to estimate the customer's bill pending the installation of the new technology. And in doing so, Laclede complied with the terms of an agreement with its union concerning the establishment of meter reading routes, all as permitted

by 4 CSR 240-13.020(2)(A) and (B). At the same time, these inquiries/complaints also show that in accordance with an agreement reached with Staff, Laclede sent such customers a special, documented notice advising them of their right to provide self-meter reads in the interim – a notice that was in addition to the multiple notices already mailed to trace customers in an effort to obtain an actual meter reading. (Fallert Rebuttal, Schedule JAF-1). Finally, these inquiries/complaints show that Laclede limited any adjustments for undercharges in a manner that was fully consistent with the Commission's rules and its own tariff. In short, the examples of customer complaints provided by Ms. Meisenheimer do not support the contention that Laclede violated the Commission's rules or its own tariff provisions. To the contrary, if they establish anything it is that Laclede has complied -- and complied fully -- with its obligations under the Commission's rules. Moreover, it shows that Laclede did so in a way that was calculated to result in the most efficient, least costly service for all of its customers. (Fallert Rebuttal, p.26, l.14-p.27, 1.18).

For her part, Staff witness Fred endorsed the notice used to advise trace customers of their option to provide self reads pending the installation of a new AMR device. (Fred Direct, p.6, ll. 4-9). And although Ms. Fred claimed that non-trace customers may not have been notified of the fact that their bills were being estimated and of their rights to receive or provide actual meter readings, that claim is based on a fundamental misunderstanding of the steps Laclede regularly takes to provide such notice. (Fallert Rebuttal, p.28, ll.12-16). Laclede Witness Fallert testified without contradiction, that Laclede notified non-trace customers[4] that their bills were being estimated. Mr. Fallert testified that each month that a meter reader fails to gain entry to read an inside meter, a door notice is left indicating that the bill will be estimated.

[4] Trace customers were notified by letter dated September 22, 2005. The decision to send the letter and its contents were the subject of meetings with the MPSC Staff in the summer of 2005.

(Fallert Rebuttal, p. 28, ll. 18-21). Each bill thereafter states that it is being estimated. (*Id.*, ll. 21-22). Increasingly more insistent door notices are left at the third and seventh attempted meter reading. (*Id.*, pp. 28-29, ll. 22- 1). Finally, a letter is sent seeking a meter reading after one year of unsuccessful attempts. (*Id.*, pp. 29, ll. 2-3). These notice procedures are entirely consistent with notice requirements set forth in the Commission's rules.[5]

Staff and Public Counsel would apparently have the Commission ignore these procedures and practices -- and Laclede's efforts to enforce them -- on the theory that Laclede has an obligation to affirmatively demonstrate that each and every one of its employees performed each and every one of these tasks on the millions of occasions that they were required to be performed. Indeed, both Ms. Meisenheimer and Ms. Fred go so far as to suggest that Laclede should have required its meter readers to make a special notation each time they left a hang tag at a customer's premise. (Meisenheimer Direct, p. 26; Fred Surrebuttal, p.6).

Such a position, however, goes well beyond anything that the Commission's rules have ever required -- a fact that is demonstrated by the complete failure of either of these witnesses to cite a rule provision that mandates or even implies that such a notation should be made. Such a position is also inconsistent with long-standing evidentiary principles governing what must be shown by a corporation to demonstrate that its actions are in compliance with a particular law or regulation. Those principles recognize that a corporation's routine practices constitute evidence that its actions were in conformity with the relevant standard. This principle is sometimes stated as follows:

[5]Copies of these door notices and letters, in addition to meter reading procedures that require that such notices be left when the meter reader cannot gain access, have been provided to both Staff and Public Counsel, and attached to the testimony of staff witness Fallert. (See Fallert Rebuttal, Schedule JAF-2.) As Mr. Fallert testified, Laclede also periodically reminds meter readers of their obligation to leave such notices at customers' homes, and sends supervisors to monitor whether the meter readers are, in fact, performing this required task.

> Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not, and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Federal Rule of Evidence 406. This rule is fully accepted and part of the law of Missouri. *See, First National Bank of Independence v. Mid-Century Insurance Company, 599 S.W.2d 50 (Mo. App. W.D.1977)* (evidence of custom and practice of sending cancellation notices was admissible in support of insurer's claim that it had in fact sent notice of cancellation of policy). Therefore, the testimony of Laclede witness Fallert that notice has been given to non-trace customers when their bills have been estimated stands uncontradicted and demonstrates complete compliance with applicable regulations and tariffs.

Aside from these legal flaws, the assertion that Laclede should have had its meter readers make specific notations whenever they left a hang tag defies common sense. It is always tempting in hindsight to suggest measures that could have been implemented to prove that some requirement was, in fact, met. From a practical standpoint, however, such a measure makes no sense regardless of when it was proposed. One could just as easily suggest that there be multiple check-off boxes on the meter reading sheet, each one separately confirming that the meter reader walked to and knocked on the customer's door, waited for a reasonable period of time for the customer to come to the door, and left the door notice. The problem with such an approach is that for those meter readers who already do their jobs consistent with the Company's approved practices, maintaining a running diary of each of these actions would have only been an inefficient and almost demeaning exercise. And in the event there ever was an employee who was not inclined to leave the required notice, it would be an easy enough matter for the employee to just check the box and claim that he or she had. Given these considerations, it is unreasonable to suggest that the Company should have somehow determined that this was a reasonable

practice to implement. Notwithstanding the fact that AMR will virtually eliminate the need for such a practice in any event, it would be grossly unfair to hold Laclede accountable for not implementing such a practice in the past, particularly since it was never required by any existing law, rule or regulation. (Fallert Rebuttal, p.30, l.10-p.31, l.5) In summary, Laclede has taken reasonable measures to ensure that the requirements are fulfilled, and there is no basis for concluding that Laclede has somehow failed to comply with its obligations under the Commission's rules in this regard.[6]

Staff Witness Fred also admitted in her surrebuttal testimony that customers have not been physically injured, suffered property losses or otherwise been damaged. (Fred Surrebuttal, p. 3, ll. 7-10). Like Ms. Meisenheimer, however, Ms. Fred attempts to prove that Laclede has violated Commission rules by simply citing the number of consumer complaints filed against Laclede and attaching some of them to her direct or surrebuttal testimony -- all without any effort to address the specific facts surrounding each complaint. (Id., p. 3, l. 10). Thus in her surrebuttal testimony, Ms. Fred states that in the 11 months from November 1, 2005 to September 27, 2006 that there have been 1,172 complaints related to estimated bills. Any probative value of such a statement is negated, however, by Ms. Fred's failure to identify the basic foundational elements required for the admission of accumulations of complaints as evidence. *Jone v. Coleman Company, 183 S.W.3d 600 (Mo. App. E.D. 2005).* In other words, there is no effort by Ms. Fred to show that these occurrences: (1) were of like character; (2) occurred under substantially the same circumstances; and (3) resulted from the same cause. *Id.*

[6]Nor is there any logical reason to believe that notating records would convert non-compliant employees into compliant ones. In fact, this argument is afflicted by the same logical deficiencies that bar evidence of subsequent remedial measures to show prior neglect. The contention that: "because the world grows wiser as it gets older, therefore, it was foolish before" is soundly rejected as the law in Missouri. *Hart v. Lancashire & Yorkshire Ry. Co., 21 L.T.R. N.S. 261 (1869).* Thus, simply because one can hypothesize about additional actions that *could* have been performed does not make the concrete steps *actually* taken to inform customers about estimated bills punishably insufficient. Given these considerations, it is unreasonable to suggest that the Company should have somehow determined that this was a reasonable practice to implement.

Nor is there any effort by Ms. Fred to explain in what specific way the Company's actions or inactions with respect to each of these customers ran afoul of a specific rule or tariff provision. Failing to establish these minimum foundation requirements for the admissibility of this kind of evidence precludes it from having any possible logical or legal relevance to the issues in these cases. *Conley v. Kaney, 250 S.W.2d 350 (Mo. 1952).*

The same is true of Ms. Fred's assertion that 183 of these complaints are identified as having been due to "overcharges". Again, Ms. Fred makes no effort to even describe what she means by "an overcharge," to provide any specific facts showing how a particular customer was overcharged, or to explain in what way the Company's actions with respect to these customers violated some Commission rule or Company tariff provision.

Finally, in their surrebuttal testimony, both Staff and Public Counsel sought to introduce new issues that go beyond the allegations set forth in their respective complaints. Both Staff witness Fred and Public Counsel witness Meisenheimer contend that Laclede should have informed customers that they could repay any undercharge over time without interest. There are a number of flaws fatal to this argument when used to attempt to achieve penalties against Laclede. First, such allegations were not made by either Staff or Public Counsel in their respective complaints and as a result are improperly raised at this stage of the proceeding. Second, there is nothing in the Commission's rules or Laclede's tariff that requires that such an offer be made at the time a customer is billed for an undercharge. To the contrary, the Commission's rule and the Company's tariff provision on this issue indicate just the opposite. Third, no evidence was offered to show that this is a serious problem in any event. To the contrary, the evidence consists of some undetermined number of customers on “several occasions” telling someone at the Commission that Laclede told them that the customer used the

gas and must pay for it and that Laclede did not offer payment plans. (Fred Surrebuttal, p. 4, ll. 6-10). This multi-layered hearsay testimony is completely unquantified as to how many (2, 3, 4, etc.) customers claimed that they did not know they could make payments over time. Further, it is Laclede's policy before a customer is disconnected to inform them that they can participate in a payment plan. Thus, no customer would have been disconnected for non-payment of an estimated bill without first having been given the opportunity to pay over time.

Near the end of her Surrebuttal testimony, Public Counsel witness Meisenheimer also asserted that while Commission Rules and Company tariffs do indeed permit undercharges to be collected for periods exceeding 12 months, Laclede had failed to maintain sufficient record to show that exceptions permitting such estimates existed. (Meisenheimer Surrebuttal, p. 5, ll, 4-7). This belated attempt to find some rule violation on the part of Laclede also represents an impermissible attempt to enlarge upon the complaint allegations properly at issue in this case. Moreover, such assertions cannot be reconciled with the uncontradicted testimony of Laclede witness Fallert to the effect that the Company followed its established routine in trying to obtain actual reads and in leaving numerous notices that bills were estimated when such reads could not be obtained. As noted previously, Mr. Fallert's testimony as to company routine and practice is (uncontradicted) evidence that the efforts and notices were actually undertaken. *See, First National Bank of Independence v. Mid-Century Insurance Company, 599 S.W.2d 50 (Mo. App. W.D.1977)*(evidence of custom and practice of sending cancellation notices was admissible in support of insurer's claim that it had in fact sent notice of cancellation of policy).

CONCLUSION

Rather than accept the most obvious conclusion that the use of estimated bills was due to the natural consequences of high gas prices and the effort to transition to a new AMR systems

which is already saving customers millions of dollars and millions of productive hours, the Public Counsel and Staff have instead unsuccessfully searched to find a rules violation. It would be decidedly bad law, and even worse policy, if these complaint cases were to result in Laclede being penalized for having pursued an AMR program that is providing, and will continue to provide, its customers with substantial net benefits for years to come or in good paying customers being cut-off from service simply because they have not permitted the Company to obtain an actual meter read after receiving 12 months of estimated bills. For all of these reasons, Laclede Gas Company prays that the Complaints be dismissed with prejudice and for such other and further relief as may be necessary or appropriate under the circumstances.

Respectfully Submitted,

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