

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

Staff of the Public Service Commission)	
of the State of Missouri)	
)	
Complainant,)	
)	Case No. GC-2006-0318, et al
v.)	
)	
Laclede Gas Company)	
)	
Respondent.)	

STAFF’S PREHEARING BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by
and through the Commission’s General Counsel, and for its Prehearing Brief,
states as follows:

Introduction:

Summary:

The Commission has established rules governing a Local Distribution Company’s (LDC) relationships with its captive customers, requiring an LDC to bill its customers for actual usage, to notify customers when the Company has issued three consecutive months of estimated bills and to offer customers alternative methods to get actual meter readings.

Missouri’s publicly held utility companies are monopolies serving captive customers. The Commission’s rules require Local Distribution Companies (LDC) like Laclede to deal fairly with its customers. Part of that obligation is to bill customers accurately and in a timely manner. This obligation is set forth in the

Commission's rules found in Chapter 13. Specifically, 4 CSR 240-13.025, governs billing adjustments, 4 CSR 240-13.020, governs billing requirements, and 4 CSR 240-13-020, specifically relates to actual versus estimated meter reading for more than three (3) consecutive billing periods and notification requirements.

For an undercharge, by Commission rule, at 4 CSR 240-13.025 an adjustment shall be made for the entire period that the undercharge can be shown to have existed but the adjustment is not to exceed twelve (12) monthly billing periods, calculated from the date of discovery, inquiry or actual notification of the utility, whichever was first. Many undercharges, the bill for which is referred to as a "catch-up bill," are the result of Laclede's failure to obtain an actual meter reading for a year or longer. (Fred Direct, p. 8.) The reasons for this failure vary widely.

Staff urges the Commission to find Laclede violated the Commission's Rules governing customer billing adjustments and order appropriate penalties and any further relief the Commission determines is reasonable.

Background:

These consolidated cases concern complaints against Laclede for the way it has billed its customers. Chapter 13 of the Commission's rules is designed to govern the way utility companies deal with their captive customers and is the source of the Company's obligations in this case.

Laclede owns the gas meters and is responsible for maintaining its meters and for obtaining actual accurate readings on a timely basis. The purpose of the

Commission's rule, 4 CSR 240-13.025 on Billing Adjustments, is to establish when and how a company is to make customer billing adjustments in the event of an overcharge or undercharge, which may be the result of, for example, the failure of a meter or the failure of the Company to get an actual read. This complaint specifically involves undercharges.

The Governing Standard:

According to 4 CSR 240-13.020 a utility "shall normally render a bill for each billing period to **every** residential customer in accordance with its tariff and that each billing statement rendered by the utility **shall be computed on the actual usage during the billing period.**" (emphasis added.) There are exceptions for seasonal customers and extreme weather conditions, emergencies and labor agreements or work stoppages, or if a utility is unable to obtain access to the customer's premises for the purpose of reading the meter or when the customer makes reading the meter unnecessarily difficult. There are also requirements that a utility where practicable, undertake reasonable alternatives to obtain a customer reading of the meter, such as mailing or leaving post-paid, preaddressed postcards upon which the customer may note the reading unless the customer requests otherwise. See 4 CSR 240-13.020.

The rule provides that for all billing errors, the utility will determine from all related and available information the probable period during which the condition giving rise to the error existed and shall make billing adjustments for the estimated period involved. The Complaint alleges Laclede estimated customer usage when the trace device attached to the customer's meter malfunctioned;

Laclede did not schedule customers for regular manual reads, did not use actual reads if acquired or did not notify the customer of the opportunity to self-read the meter and report usage.

Discussion

The parties submitted two issues in the List of Issues and the parties have resolved the issue regarding the situation where Laclede has locked a meter shut or has locked the service line at the curb, but gas usage continues to register on the meter. Staff alleged that Laclede has not acted quickly to investigate these conditions and take corrective action, resulting in a potential safety hazard as well as unrecovered gas costs to Laclede or its customers. The parties plan to file a Partial Unanimous Stipulation addressing this issue within the next week.

Improper and Untimely billing

The other issue, of improper billing, remains unresolved. The Staff's prehearing brief provides Staff's position on the issue of Laclede's improper billing of its customers in violation of this Commission's rules. Staff alleges that Laclede did not notify customers who had received more than three (3) consecutive estimated bills. (Fred Direct, p. 5.)

Staff also alleges that Laclede adjusted customers bills for more than 12 months in violation of Commission Rule 4 CSR 240-13.020 (3). For 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, calculated from the date of discovery, inquiry or actual notification of the utility, whichever was first. Laclede has failed to follow the Commission

rule on undercharges. For example, when Staff initially filed this complaint, Staff had identified approximately forty-eight (48) consumer complaints that dealt with estimated bills which for the most part dealt with undercharges. However, as of May 20, 2006, two-hundred ninety-nine (299) additional complaints filed directly identified as billing complaints related to estimated bills were filed with the Commission Staff.

At this time, Staff has been unable to determine the exact number of catch-up bills that Laclede has issued for more than a 12-month period, but believes it may be several thousand. Staff further believes Laclede could have avoided generating this many catch-up bills by notifying customers of the consequences of repeated estimated bills.

If Laclede would have provided written notice to consumers explaining the possible impact of ongoing estimated bills and the company's obligation and right to access its equipment for meter readings and routine maintenance/safety inspections, the consumers would have been better informed and more likely to have made arrangements with Laclede to avoid ongoing estimated bills.

Laclede claims its customers were advised that it needed to obtain an actual meter reading to prevent such "catch-up" bills through hang tags left on the customers' doors. There are, however, several problems in verifying that customers actually received notice. Laclede has not provided Staff with any copies of its meter readers' logs that might show that a hang tag was left on the customers' door. Even though Laclede has a policy that hang tags are to be left, without contemporaneous records by its meter readers verifying that customers

were notified by hang tag, the Commission cannot rely on Laclede's undocumented claims that customers received these hang tags. Without such documentation, Laclede cannot prove that it actually notified customers, who had received three consecutive estimated bills, of the Company's need to get an actual meter reading. This is a direct violation of Commission Rule 4 CSR 240-13.020 (3).

Staff asserts that if Laclede had provided the required written notice to consumers explaining the possible impact of ongoing estimated bills and the company's obligation and right to access their equipment for meter readings and routine maintenance/safety inspections, the consumers would have been better informed and more likely to make access arrangements with Laclede to avoid estimated bills. 4 CSR 240-13.020 (3) (Fred Direct, p. 4)

Additionally, the evidence that Laclede mailed letters to its customers advising them of the Company's need to obtain access to their gas meter in order to obtain an actual reading, is very weak. Laclede has provided Staff with an undated letter that went out as a mass mailing reportedly addressed only to Laclede's customers that had a meter reading device known as a "trace device." Laclede did provide Staff with a document titled, "Meter Reading Notice," often referred to by Laclede as the 9/22/05 letter. However, the "letter" is not dated and does not show any customers name. Additionally, Laclede only sent this "notice" to its customers who, according to Laclede's records, had a "trace device" (Fred Direct, Attachment A).

While proof that a letter has been mailed may create a rebuttable presumption that the letter has been received, in this case the “Meter Reading Notice” is insufficient to create any presumption. “A letter duly mailed is attended by the presumption of receipt by the addressee. A letter is duly mailed when it is placed in an envelope with the correct address of the recipient, stamped with sufficient postage, and deposited in the mail.” *Shelter Mutual Insurance Co. v. Flint*, 837 S.W.2d 524, 528 (Mo.App. 1992). If the customary volume of mail is large, so that direct proof that a particular letter was mailed is not feasible, “evidence of the settled custom and usage of the sender in the regular and systematic transaction of its business is sufficient” to give rise to the presumption of receipt by the addressee. *Id.*

This rule might apply to Laclede’s monthly bills, but this unusual if no unique mailing to a specific subset of customers not normally recipients of special customer mailings does not fall within “the settled custom of the sender in the regular transaction of its business.” *Id.* In order to show a customary practice, Laclede would have to show evidence that sending such a letter was “the settled custom and usage of the sender in the regular and systematic transaction of its business in order for there to be a presumption of receipt by addressee.” *Id.* at 595-596.

Significantly although Laclede does have a notation in **some** of its customer’s files that such a letter was sent, there is no copy of the actual letter in the customers file, and *no master list of customers* so the letter does not show either the date the letter was sent or that the “notice” was sent to the customers

correct address. Moreover, this “notice” is not a letter sent under any regular and systematic Company procedure. An undated “notice” with no indication of the list of customers to whom the letter may have been addressed is simply insufficient to establish a presumption that certain Laclede customers actually received the letter.

AMR

Laclede generates thousands of estimated bills on a monthly basis. Laclede testifies that this results from the significant number of inside meters in its territory. Staff does not agree that this situation excuses Laclede from obtaining actual meter readings from its customers and engaging in fair and reasonable billing practices.

Throughout its system Laclede has an unusually high number of inside meters, and that situation has led to Laclede generating thousands of estimated bills on a monthly basis to the point that when AMR was installed, many customers received catch-up bills for undercharges that exceeded a 12-month period.

Based on the complaints Commission Staff received, Staff has concluded Laclede was not prepared to deal with the billing issues that arose from the installation of AMR and has not taken adequate steps to managed the transition to AMRs effectively. In other words, Laclede should have known that AMR installation would result in many actual meter readings at locations where Laclede had not gotten an actual reading in more than twelve (12) months. Laclede should have taken steps to manage the various problem of AMR

installation. For example Laclede could easily have notified customers who would receive a catch-up bill that customers unable to pay the full amount due that they could contact the company for arrangements.

The issue with AMR installation is the undercharges it revealed. By rule, Laclede may only make an adjustment, not to exceed (12) monthly billing periods. As a result of AMR installation, Laclede has rendered catch-up bills to thousands of its customers without adequate maintenance of the records of the delivery of hang tags or letters to its customers.

Customer harm

Regulated utility companies must comply with the Commission's rules. Laclede argues that there has been no harm in its failure to comply because customers have not been injured, suffered property losses or been overcharged for service or otherwise been damaged by something the company has done or failed to do. Staff cannot agree that customer's have not been harmed.

The Commission Consumer Services Department has received a total of 2,351 complaints from Laclede customers from November 1, 2005 to September 27, 2006. Of the total number of complaints 1,172 have been directly related to estimated bills. Of the 1,172 estimated bill complaints identified, 183 complaints were investigated by Consumer Services which resulted in the customers were overcharged. Of course, Staff only addressed the customers who have actually complained; there are likely many more that may yet be identified.

Another concern of Staff is that customers must actually *request* the opportunity to pay any undercharges in installments, without incurring any

interest charges, but this payment arrangement is not routinely offered to customers receiving catch-up bills. It is Staff's experience that when customers contact our office they report that they have not been offered payment arrangements, but, instead, the company has told the customer that since the customer used the gas, the customer must pay for it and the Company has not offered any payment arrangement.

Proposed Remedy

Laclede has violated the Commission's rules by failing to properly notify and bill its customers for the actual amount of gas used and has unreasonably issued thousands of estimated bills without notifying customers of the possible consequences of the company's continued reliance on estimates. Laclede's inability to produce basic records to demonstrate that it has notified customers by leaving hang tags or by sending letters leave the Commission with no choice but to find Laclede violated its tariffs and should be held accountable.

The rules require no more than that a utility will bill its customers accurately and in a timely manner. Staff has shown that Laclede failed to do so, and that has resulted in Laclede attempting to collect undercharges from customers for greater than the twelve (12) months provided for by 4 CSR 240-13.025.

The direct result of Laclede's conduct is that thousands of customers were not timely billed for the actual amount of gas the customer used causing those customers unnecessary hardship and aggravation. The Commission's rules have been put in place to prevent such situations, and should be enforced.

Respectfully submitted,

/s/ Lera Shemwell

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Attorney for the Staff of the Missouri Public
Service Commission

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on all parties of record on this 24th day of October 2006, by hand-delivery, email, fax or United States mail, postage prepaid.

/s/ Lera Shemwell