

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

Dr. Hortense Lucinda Harrison)	
)	
Complainant,)	
v.)	Case No. GC-2008-0041
)	
Laclede Gas Company,)	
Respondent.)	

STAFF’S SECOND POST-HEARING BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (Staff), through Counsel, and submits the following Second Post-Hearing Brief to the Missouri Public Service Commission (Commission). For said brief, Counsel for Staff respectfully states the following:

PROCEDURAL HISTORY SUMMARY

On April 23, 2008¹, the Commission conducted a one day hearing in the above named case. On May 29, the Commission issued its Notice Regarding Post-Hearing Briefs, advising all parties briefs were to be submitted by June 3. On June 2, Dr. Hortense Harrison (Dr. Harrison) and the Office of Public Counsel (OPC) filed post-hearing briefs, while Staff and Laclede Gas Company (Laclede or Company) filed on June 3. On June 13, Laclede filed a Motion To Strike The Brief Of The Missouri Office Of Public Counsel. The OPC filed its Reply To Laclede’s Motion To Strike on June 17, and Laclede filed its Response thereto on June 25. On July 1, the Commission issued its Order Denying Laclede’s Motion To Strike OPC’s Post-Hearing Brief And Reopening The Record For Receipt Of Additional Evidence. The Commission stated it would “reopen the record and permit the parties to present additional evidence on all the issues raised in OPC’s brief, then allow the parties to submit new post-hearing briefs fully addressing those issues.”

¹ Unless otherwise specified, all dates in this brief refer to the calendar year 2008.

On July 8, Counsel for Staff filed a Joint Motion To Set Hearing, on behalf of Dr. Harrison, Laclede, and OPC, collectively known as the Parties. The Commission granted the Motion, setting the second hearing for August 20. On August 7, 2008, Staff filed, on behalf of the Parties, the List of Issues, Witnesses, And Order Of Cross-Examination (List). The List contained the four issues for the Commission to decide at the August 20 hearing. On August 20, the Commission conducted a half-day hearing, and advised the parties it would issue a briefing schedule following the transcript. The transcript of the hearing was filed in EFIS on September 15, 2008, and the Commission issued its Order Setting Briefing Schedule on September 16. The Order directed that no later than October 1, the OPC, Laclede, and Staff shall file briefs, and Dr. Harrison may file if she chooses.

LIST OF ISSUES FILED BY STAFF

The issues raised in the OPC's June 2 post-hearing brief, and those to be decided by the Commission are:

- A. Did Laclede violate its tariff or Commission rules in rendering estimated bills to Dr. Harrison between December 2006 and March 2007?
- B. Did Laclede violate Commission rule 13.025 (1)(B) when it issued an adjusted bill to Dr. Harrison for a period ending on March 27, 2007?
- C. Did Laclede violate 4 CSR 240-13.030 regarding deposits?
- D. Did Laclede violate 4 CSR 240-13.050 regarding disconnection?

STAFF'S POSITION

Summary

Staff respectfully recommends the Commission follow the initial findings contained within Staff's Investigation Report, filed October 12, 2007. Additionally, Staff recommends the

Commission take notice of its testimony provided on August 20, and accept the legal arguments provided herein. It remains Staff's position that this case does not present a Commission rule or tariff violation on the part of Laclede. Staff sympathizes with the difficulties experienced by Dr. Harrison. This case has presented many areas where Laclede can work to improve its customer service. However, the Commission should not substitute findings on the issues of quality customer service for tariff or rule violations.

A. Laclede Did Not Violate Its Tariff Or Commission Rules In Rendering Estimated Bills To Dr. Harrison Between December 2006 And March 2007

OPC's First Post-Hearing Brief (Hearing Brief), filed June 2, asserts Laclede violated 4 CSR 240-13.020 (2) by rendering an adjusted bill to Dr. Harrison for the period between December 2006 and March 2007. First, OPC argues "[t]he rules make no exception that would allow estimated billing where the AMR failed under the circumstances of Dr. Harrison's Complaint." OPC's Hearing Brief at 3. However, the OPC fails to consider 240-13.020 (1) with (2)(B). 4 CSR 240-13.020(1) states "[a] utility shall normally render a bill for each billing period to every residential customer in accordance with its tariff," and (2)(B) states "[a] utility shall not render a bill based on estimated usage for more than three (3) consecutive billing periods or one (1) year, whichever is less, except under conditions described in subsection (2)(A) of this rule[.]" Additionally, Laclede's tariff, P.S.C. MO. No. 5 Consolidated, First Revised Sheet No. R-6 (A)(2) states "[e]ach bill rendered by the Company shall be computed on the actual usage during the billing period except as follows:(B) [t]he Company shall not render a bill based on estimated usage for more than three (3) consecutive billing periods, except under conditions described above." The plain reading of this rule and Laclede's tariff states the utility shall bill according to its tariff. However, a utility may render an estimated bill for up to three months, *without a particular reason*, but if the utility wishes to estimate usage over a longer

period, it must fit within a condition described in subsection (2)(A) of the Commission's rule, or (A)(2)(A) of Laclede's tariff. Staff's Exhibit B, "Laclede's Statement Of Bills And Payments July 23, 2008," (Statement of Account) shows that Laclede estimated Dr. Harrison's usage for no longer than three consecutive billing periods: November 17, 2006 to December 26, 2006², December 26, 2006 to January 25, 2007, and January 25, 2007 to February 26, 2007. Therefore, Laclede did not violate 4 CSR 240-13.020 (2) or its tariff.

Second, OPC's Hearing Brief argued that Laclede's actions were outside the scope of its tariff, P.S.C. MO. No. 5 Consolidated, Fifth Revised Sheet No. R-8. Staff's Exhibit C, Laclede's tariff Sheet No. R-8 states "[i]n the even of the stoppage or the failure of any meter to register, the customer shall be billed for such period on an estimated consumption based upon his use of gas in a similar period of like use." In Dr. Harrison's case, an automated meter reader (AMR) was attached to her meter, and was to transmit meter readings to Cell Net, which would then be downloaded to Laclede's billing system. OPC argues that since the original meter index never stopped advancing, the meter never stopped or failed to register usage. However, when an AMR device is installed on a meter, the original meter index is removed from the meter and placed on a transponder, which is then attached to the meter. (R. at 138). The AMR becomes part of the meter, essentially one component. (R. at 254).

4 CSR 240-13.015 (1)(M) defines "estimated bill" as "a charge for utility service which is not based on an actual reading of the meter or *other registering device* by an authorized utility representative." (emphasis added). Laclede's tariff definition mirrors that of the Commission's. As the AMR becomes part of the meter when it is installed, estimated consumption for an AMR's failure is allowed under 4 CSR 240-13.020(2)(B), and arguably under Laclede's tariff

² Staff's Exhibit B, Laclede's Statement of Account, indicates the period from November 17, 2006 to December 26, 2006, was an actual read, denoted by an "R" next to the meter index reading. At hearing, Laclede's witness testified that the "R" was placed on the account in error. The read was an estimated reading.

Sheet R-8. Important to remember though, is that even in the event the Commission considers the AMR and meter two different components, Laclede's tariff Sheet R-6 covers Laclede's estimation of Dr. Harrison's usage.

The OPC further argues that since Dr. Harrison was a new customer, "Laclede had no prior history on which to base an estimate under the tariff." OPC's Hearing Brief at 4. As Laclede's P.S.C. MO. No.5 Consolidated, Original Sheet No. R-40, Staff's Exhibit D states, "[t]he usage estimating procedure utilized by Laclede involves the development and periodic review of factors for each customer based on past usage for the premise where possible, and upon system averages where this is not possible." Laclede's witness testified it estimated usage for Dr. Harrison's account "based on the estimating factors that were set up in the account at the time that the meter installed on the new account was set up for the builder." (R. at 139). The factors are based on the information received from the builder and "[t]he Residential Sales Department just makes an educated guess as to the estimating factors when the new account is set up." (R. at 139). Laclede's tariff allows for system averages to be used when no prior history is available at a residence, therefore, Laclede was within the outlined estimating procedure of the tariff. (R. at 256-57).

B. Laclede Did Not Violate Commission Rule 13.025 (1)(B) When It Issued An Adjusted Bill To Dr. Harrison For A Period Ending On March 27, 2007

The OPC argues that the adjusted bill rendered to Dr. Harrison violated 4 CSR 240-13.025(1)(B). This provision is backward looking; thus, when Laclede discovered the AMR error, it had the right to back bill "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[.]" This provision is not applicable to this case.

As discussed above in section A, 240-13.020 (2)(B) and tariff sheet R-6 authorized Laclede to estimate Dr. Harrison's bill up to a period of three months. The record indicates that Laclede's estimates were within that rule. See Staff's Exhibit B. The record also indicates that Dr. Harrison declined a special meter test because she felt the meter was operating properly. (R. at 46). It is Staff's position that the individual who uses the services should pay for them, rather than have the costs imposed on others as increased rates. (R. at 258).

OPC argues that based on the language of 240-13.020 (2)(B), a utility has the duty to correct errors "immediately" and "without delay." OPC's Hearing Brief at 5-6. However, OPC does not state any authority for this proposition. Laclede sent Cell Net representatives out to reprogram the meter in January of 2007, when it discovered the AMR was not transmitting readings. (R. at 106). Laclede sent a Cell Net representative out again in March of 2007, when it discovered no read was being emitted. (R. at 108).

C. Laclede Did Not Violate 4 CSR 240-13.030 Regarding Deposits

In Part C of OPC's Hearing Brief, the OPC argues Laclede violated 4 CSR 240-13.030 (2)(A).³ 4 CSR 240-13.030 (2)(A) states "[a] utility may require a deposit or guarantee as a condition of continued residential service if—(A) [t]he service of the customer has been discontinued by the utility for nonpayment of a delinquent account not in dispute[.]" Deposit is defined in 4 CSR 240-13.015 (J) as "...a *money advance* to a utility for the purpose of securing payment of delinquent charges which might accrue to the customer who made the advance[.]" (emphasis added). "Discontinuance of service or discontinuance means a cessation of service not requested by a customer." 4 CSR 240-13.015 (1)(K). Also, the definitions of "Deposit" and "Discontinuance of Service or Discontinuance," included in Laclede's tariff PSC MO. No. 5

³ While OPC's Hearing Brief states "[a] deposit may only be assessed under this rule when the amount in question is *not* in dispute. 4 CSR 240-13.020(1)(A)," it is Staff's belief that OPC meant to cite 240-13.030 (2)(A) for its proposition. (emphasis in original).

Consolidated, First Revised Sheet No R-3-a, mirror those of the Commission's rule. The meaning of "deposit" and "discontinuance" must be considered in determining whether Laclede violated 240-13.030 (2)(A).

Missouri follows the plain meaning rule in the application of statutes. *See State v. Ewanchen*, 799 S.W.2d 607, 609 (1990). Where possible, statutes are to be given effect as written. *Id.*, citing *State v. Sweeney*, 701 S.W.2d 420, 423 (1985). An "advance" is "the payment of money before due." The American Heritage Dictionary Of The English Language 25 (3d ed. 1996). Staff's Exhibit B, Laclede's Statement Of Account, shows that Dr. Harrison never advanced a deposit to Laclede. Furthermore, Dr. Harrison's service was never disconnected. (R. at 230, 260). As the definitions make this provision inapplicable to this case, the more appropriate statutory provision to consider is 240-13.030 (2)(C). However, even when considering this provision, a deposit was never advanced by Dr. Harrison to invoke a violation.

4 CSR 240-13.030 (2)(C) states "[a] utility may require a deposit or guarantee as a condition of continued residential service if—(C) [t]he customer has failed to pay an undisputed bill on or before the delinquent date for five (5) billing periods out of twelve (12) consecutive monthly billing periods." Laclede's tariff Sheet R-5-a, mirrors the Commission's rule. Laclede's witness testified that Dr. Harrison failed to make the September 2007 usage payment in that month, as well as making up that payment in October, November, or December of that year. (R. at 225). Dr. Harrison also underpaid her bill in December of 2007, and January of 2008. (R. at 226). Arguably, according to Laclede's witness, Dr. Harrison missed five undisputed payments in 12 months. (R. at 225). This can be seen on Staff's Exhibit B. Thus, even if the Commission rejected Staff's "money advanced" argument, Laclede's actions fit under 240-13.030 (2)(C) and its tariff.

Finally, Staff will simply reassert its position in its June 3 Post-Hearing Brief. The deposit issue arose after Dr. Harrison filed her Complaint. (R. at 259). The deposit was removed prior to the Commission's April 23 hearing. (R. at 259). Staff's Exhibit B also shows the deposit was removed on March 31, prior to the Commission's first hearing. It appeared at the April 23 hearing, that the matter had been resolved between the parties. When told at hearing the deposit had been removed from her statement, Dr. Harrison did not address the issue further. (R. at 47, 48).

Testimony was presented at both hearings that Laclede's system automatically assesses a deposit, even if the amount unpaid is disputed, unless the deposit program is manually suppressed. (R. at 47, 227). While such actions may require revisions in customer service policies or programs, it remains Staff's position that such does not constitute a violation of tariff provisions or Commission rules.

D. Laclede Did Not Violate 4 CSR 240-13.050 Regarding Disconnection

The question as to whether Laclede violated this provision, again, revolves around the plain meaning of statutory language. 4 CSR 240-13.050 provides a list of circumstances whereby a gas utility may disconnect a customer's service. "Discontinuance of service or discontinuance means a cessation of service not requested by a customer." 4 CSR 240-13.015 (1)(K). Staff's Exhibit B shows that Dr. Harrison's service was never disconnected. Testimony provided at the second hearing lends the same conclusion. (R. at 230, 260). Again, Staff sympathizes with the difficulties and emotional distress expressed by Dr. Harrison. However, while such actions may require revisions in customer service policies or programs, it remains Staff's position that such does not constitute a violation of tariff provisions or Commission rules.

Conclusion

It remains Staff's position that this case does not present a Commission rule or tariff violation on the part of Laclede. Staff sympathizes with the difficulties experienced by Dr. Harrison. This case has presented many areas where Laclede can work to improve its customer service. However, the Commission should not substitute findings on the issues of quality customer service for tariff or rule violations.

WHEREFORE, Counsel for Staff submits this Second Post-Hearing Brief to the Missouri Public Service Commission for consideration in the above stated case, and respectfully recommends the Commission find no tariff or rule violation on the part of Laclede Gas Company.

Respectfully submitted,

/s/Jennifer Hernandez

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was mailed, electronically mailed, or hand-delivered to all parties to this cause on this 1st day of October 2008.

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/s/ Jennifer Hernandez