

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

Barbara Ross,	)	
	)	
Complainant,	)	
	)	
vs.	)	
	)	Case No. GC-2002-388
Union Electric Company	)	
d/b/a AmerenUE,	)	
	)	
Respondent	)	

**BRIEF OF RESPONDENT
UNION ELECTRIC COMPANY d/b/a AMERENUE**

I. Procedural History

On February 28, 2002, Complainant Barbara Ross (“Ross”) filed a complaint with the Missouri Public Service Commission (“the Commission”) disputing charges for gas service provided to her by Union Electric Company during a time in which the gas meter at Ross’s residence failed to register usage. The Company filed an Answer to Ross’s Complaint. The Commission established a Procedural Schedule. Ms. Ross, the Company and the Staff of the Missouri Public Service Commission (“Staff”) filed testimony and investigatory reports in accordance with that schedule. Prior to the evidentiary hearing in this matter, the Company and the Staff separately filed Statements of Position and List of Witnesses. Neither Ms. Ross nor the Office of Public Counsel (“OPC”) filed a Statement of Position. The OPC participated in the evidentiary hearing but did not file testimony.

II. Witnesses

The following witnesses provided testimony to the Commission in this matter:

A. On Behalf of Complainant

Barbara Ross -- Ms. Ross filed direct testimony and testified at the hearing. She contends that the Company should not be able to send a catch-up bill based on estimated usage when such underbilling derives from equipment failure.

B. On Behalf of the Staff

Henry Warren -- Dr. Warren prepared and filed a verified report investigating Ms. Ross's complaint and adopted his report as his direct testimony in this matter. With respect to Ms. Ross' account, Dr. Warren reviewed three years' worth of meter reading data, billing and payment history as well as the Company's procedures for estimating usage. Dr. Warren found no evidence that suggests that the amount of gas usage estimated or the computation of the estimated bill were excessive.

C. On Behalf of the Company

Debra Buhr -- Ms. Buhr, a supervisor in the Missouri Customer Contact Center, testified as to the equipment malfunction at the Ross residence and the billing adjustment or "catch-up" bill sent to complainant, and the methodology employed in computing the bill.

D. On Behalf of the OPC

The OPC did not file testimony in this matter.

III. Statement of Facts

The underlying facts to this dispute are uncontroverted. Ms. Ross resides at 103 Belair Drive in Jefferson City, Missouri, and is both a gas and electrical customer of the Company. A gas meter at Ms. Ross's residence malfunctioned and failed to register gas usage or consumption at her residence. (Ms. Ross' home contains a gas water heater and furnace.) (Tr. p. 32) The

Company discovered the equipment failure in November 2001 when it tested for zero usage gas accounts. Because gas consumption can be nominal depending upon the type of appliance (i.e. electric or gas), November is selected as a more reliable month to check the gas system as a whole. As Ms. Buhr testified:

[W]ith gas customers not all customers use gas year round. A lot of them are seasonal. So the only times that we know for sure that a gas meter has stopped registering is when we get into the heating season, which is why we run the report in November each year, expecting that if no gas registers on a gas meter during the heating season, there's something wrong with the meter. And that's what triggers us going out and checking it. For example, a gas meter may provide service to a water heater, someone may replace their gas water heater with an electric water heater in July, August, September, whatever. There would be no usage registering.

(Tr. p. 72).

The meter at Ms. Ross' home failed to record gas usage during the time period of July 2001 until December 8, 2001, when the Company installed a replacement. (The meter ceased registering properly sometime during the month of July.) Ms. Ross was home during this period although her gas usage was fairly nominal in that she did not turn on her furnace until December. (Tr. p. 31). The Company issued a "catch-up" bill in January 2002 to reflect charges for the estimated amount of gas that Ms. Ross consumed during the period of unmeasured service. The specific methodology employed by the Company in calculating the bill is reflected in Tariff 57.1.¹

Ms. Ross challenges the appropriateness of those charges as well as the Company's ability, via Commission rules and approved tariffs, to issue an "estimated bill for an amount of

¹ The bill was issued sometime after January 16, 2002, **after** the effective date of the tariff. (Tr. p. 28) Having filed a new tariff with the Commission on December 14, 2000, the Company utilized the methodology set forth in Tariff 57 and 57.1 in calculating her bill. (Tr. p.66) Admittedly, given the newness of the procedure, the Company issued several bills to Ms. Ross. The Company stands by its first bill (\$89) as the amount owed by Ms. Ross as it is the most advantageous to her notwithstanding the fact that it understates usage by approximately \$23. (Buhr Rebuttal Testimony p 3; Staff Report).

gas usage that [the Company] failed to meter.” The specific amount on her bill (\$89) is not the real issue. Rather, Ms. Ross would like to see “the process change and the regulation change” and to prohibit the Company from charging for unmetered service. (Tr. 40).

IV. Issues

Based upon the applicable regulations and tariffs as well as the list of issues and position statements filed by the Staff and the Company, AmerenUE believes the issues before the Commission are as follows:

1. Did the Company comply with the terms of its tariffs and/or Commission requirements in issuing Complainant a bill for estimated, nonmetered charges for the period July through November 8, 2001?
2. What is the proper scope of relief?

V. Argument

Commission Rule and Company tariff both authorize the issuance of a catch-up bill for undercharges and that the specific bill may be done by estimation. (See 4 CSR 240-13.020(2), 13.025(1)(B); Tariff Nos. 56, 57 and 57.1). Ms. Ross bears the burden to show that these rules are unreasonable or unlawful. *Margulis v. Union Electric Company*, 30 Mo .P.S.C. (N.S.) 517 (1991). She contends that the failure of the Company’s equipment to measure usage negates her obligation to pay for gas she admittedly consumed. In effect, Ms. Ross argues that under these circumstances the Company is estopped from charging for gas usage. Such reasoning is contrary to Missouri law and was flatly rejected by the Missouri Court of Appeals in *Laclede Gas Company v. Solon Gershman*, 539 S.W.2d 534 (Mo. App. 1976). Ms. Ross has not, and can not, sustain her burden. As the Staff advises, her Complaint should be dismissed.

In resolving the issues raised by Ms. Ross’s complaint, the following statutory standards apply:

(2) No gas corporation, electrical corporation, water corporation or sewer corporation shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or recover from any person or corporation a greater or less compensation for gas, electricity, water, sewer or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

(3) No gas corporation, electrical corporation, water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 393.130 Mo. Rev. Stat.

The Commission is vested with the authority to determine whether the Company's practices are unjust, unreasonable, preferential or discriminatory, violative of any law and to determine "just and reasonable rates."

(5) [The commission shall] [e]xamine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed; and whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the property, equipment or appliances of any such person or corporation are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

Section 393.140 Mo. Rev. Stat.

In exacting the foregoing statutory provisions, the Missouri Legislature sought to abolish and prevent favoritism and discrimination. *Laclede Gas Company v. Solon Gershman*, 539 S.W. 2d 574 (Mo. App. 1976). These provisions constrain the Company from simply “having a happy customer” as Ms. Ross understandably desires. (Tr. p.37).

Ms. Ross Is Obligated Under Missouri Law To Pay For the Gas She Uses

A public utility must be compensated for the full amount due under its Commission-approved tariff. This is true even where a customer has been undercharged due to the utility’s alleged negligence.² In *Solon Gershman*, an action brought by the utility to recover a balance owed, the Missouri Court of Appeals ruled that a customer must pay for the gas consumed even if the undercharges resulted from the installation of a defective meter. In that case, Laclede Gas Company negligently installed metering equipment that registered only 50% of actual usage. The customer argued that such negligence barred the utility’s collection claim. The Court ruled that “[t]o permit the defense of estoppel would be merely another way of evading the provisions of the law prohibiting rate discrimination.” *Id.* at 576. See also *Bailiff v. Laclede Gas Company*, 27 Mo. P.S.C. (N.S.)(1984)(re-determined following remand)(“*Bailiff II*”). In *Bailiff v. Laclede Gas Company*, 26 Mo. P.S.C. (N.S.) 484 (1983)(*Bailiff I*), the Commission, critical of the utility’s reliance on an outside reading device and apparent delay in taking an actual reading, restricted the applicable period over which the utility could charge for gas consumed. Laclede appealed. Following remand from the circuit court, the Commission re-determined its findings

² As a preliminary matter and contrary to Ms. Ross’s conclusory opinion, there is no evidence that the Company was negligent. (Ross Direct, p. 1) A meter installed by the Company failed to record usage. The Company timely discovered and replaced the failed equipment. As Dr. Warren noted, “while it is unusual for a natural gas meter to

and stated: “The Commission finds, based upon the *Solon Gershman* decision, that complainant must pay for the gas used.”

The Commission’s own rules recognize that circumstances may justify bills rendered based on estimated usage and that, in order to render a bill based on estimated usage, the utility must submit its procedures to the Commission for approval. See 4 CSR 240-13.020 (rule establishing reasonable and uniform billing and payment standards to be observed by utilities and customers). The Company has submitted tariffs authorizing the use of estimated bill to the Commission and those tariffs have been approved.³

Moreover, the Commission’s own rules recognize that over and undercharges can occur in providing utility services. In such circumstances, the Commission has authorized billing adjustments.

Purpose: This rule establishes billing adjustments in the event of an overcharge or an undercharge.

For all billing errors, the utility will determine from all related and available information the probable period during which the condition existed and shall make billing adjustments for the estimated period as follows:

* * *

(B) In the event of 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 or four (4) quarterly billing periods, calculated from the date of discovery, inquiry or actual notification of the utility, whichever was first;

4 CSR 240-13.025

stop reporting volume, it is not unheard of.” (Staff Report Failure of equipment, in and of itself, does not equate to negligence. The issuance of a catch-up bill was well within the 12 month period allowed by regulation and tariff.

³ While it may certainly be a foreign concept to Ms. Ross, the Commission repeatedly has affirmed the appropriateness of billing adjustments for undercharges and the use of estimates to calculate usage. *See Beck v. Union Electric Company*, 22 Mo.P.S.C.(N.S.) 86 (1978); *Carter v. Laclede Gas Company*, 24 Mo.P.S.C. (N.S.) 28

***AmerenUE Has Proposed And the Commission Has Approved
Tariffs That Authorize Billing Adjustments and Estimated Calculations***

Sections VII and VIII of Union Electric Company's Gas Service Tariff book contain the Company's billing practices and adjustments. Section VII sets forth rules applicable to billing adjustments (Tariff No. 54) that have been in effect since at least 1989. In addition, procedures providing for the estimating of bills have been in effect since 1988 (See Tariff No. 56 and 57, effective date 1/1/89). Copies of the relevant tariffs are appended hereto. Tariff No. 56 and 57 employed two different methodologies for estimating gas usage depending upon whether an account was a "heating" or a "non-gas heating" account. For non-gas heating accounts, the estimate was based upon the usage (actual or estimated) in the corresponding month of the prior year. For gas heating accounts, the estimate was based on prior month usage and a gas space heating factor.

Revisions to Tariff Nos. 56 and 57 eliminated the distinction between heating and non-gas heating accounts. The new methodology, for single month estimated bills, is determined on the basis of the customer's prior month's usage, adjusted by a factor reflecting the difference in weather between the prior and current monthly billing periods. The new methodology, for multi-month estimated bills, calculates a customer's base usage and uses heating-degree days to eliminate anomalies based upon extreme weather conditions. At the time the Company issued its bill to Ms. Ross in mid-to-late January, these tariffs were in effect. More importantly, the new methodology reflected in these revised tariffs, favor the customer in that weather fluctuations

(1980); *Costello v. Laclede Gas Company*, 24 Mo.P.S.C (N.S.). 238 (1981); *Goodman v. Laclede Gas Company*, 26 Mo.P.S.C. 341 (N.S.)(1983).

from one year to the next are taken into account.⁴ Under any of the tariffs, revised or superceded, Ms. Ross' bill is appropriate. As Dr. Warren testified:

Ameren actually filed a methodology that would – and the – and their tariffs were approved that set forth a method of calculation that was based on heating degree days, which are a measure of cold weather. And under that new methodology, it would do a statistical estimate of the gas usage in the months that were being estimated based on the coldness of the weather or the temperature during the month.

I might add that one thing I had to look at in this was that the period of time that was being estimated was before these tariffs became effective. And so previous to this Ameren did not have a specific methodology on file for doing the computation. ***I did check to see if – under the previous tariff if the estimate would have been different than it would have been under the tariff that went into effect. And it appeared that the estimate was correct under either – either way – under either tariff.***

(Tr. p. 48; *see also* Staff Report).

Respondent's billing practices comply in all material respects with its tariffs filed with and approved by the Commission and regulatory requirements established by the Commission. The Staff agrees. "Staff has determined that the catch-up amount of \$89.25 in the January 2002 bill for estimated usage of 144 cc (hundred cubic feet) from July 2001 to December 8, 2001, when the meter was not recording is reasonable and that both sending a bill to the customer under the circumstances of this complaint and the calculation of the billed amount comply with AmerenUE's Commission-approved tariffs." So does OPC. (Tr. p. 18)

The bill amount tendered to Ms. Ross was not arbitrary. The Company did not select a number from the air and assign it to her bill. The Company used the methodology developed in consultation with the Staff and approved by the Commission. That methodology combines a variety of factors including Ms. Ross's actual gas usage

⁴ The Company believes that issuing a bill under the estimating procedures under the tariffs in place at the time of the events giving rise to Ms. Ross' complaint could result in a higher bill to Ms. Ross.

during the applicable comparison period in 2000, along with the number of heating degree-days for the corresponding period in 2001. This approach is designed to level out temperature fluctuations from one year to the next and assumes that basic gas usage patterns remain constant. It is, by definition, an estimate. If a customer believes that the estimate is too high due to a change in appliances, absences from the home, lower thermostat settings, etc., then the Company is always willing to adjust the bill downward to reflect such conditions. Ms. Ross is adamant, however, that she bears no financial responsibilities for the cost of the gas she admittedly consumed.

As the Staff notes, “the principles of rate design involved in the monthly customer charge and the formulas in the tariff used by AmerenUE to estimate bills are consistent with standards in the natural gas industry and Commission rules.” (Staff Report) Such rules and procedures are designed to assure that customers pay a reasonable amount for the gas that they use, even though their meter may not have been operating properly. Id. The Staff’s report constitutes competent and substantial evidence, and stands uncontroverted.

What Is The Proper Scope Of Relief?

Ms. Ross requests that the Commission propose regulations that disallow billing adjustments under such circumstances as when equipment fails or the Company is negligent. (Ross Direct Testimony p. 6) Specifically, Ms. Ross requests that the Commission: “Change the regulation to reflect greater accountability and responsiveness of AmerenUE to their customers. Disallow billing of customers for estimated service when utility Company equipment fails and/or it is the Company’s negligence.” (Complaint) If granted, such a ruling would be beyond the

proper scope of relief in this docket. Rather, such a determination would constitute a rulemaking and should be subject to the procedures set forth in 4 CSR 240-2.180.

While Ms. Ross is certainly entitled to her philosophical view as to the failure of government and the malfeasance of corporations⁵, she is not entitled to use her billing complaint as a springboard to a larger regulatory issue i.e, the appropriateness of estimated bills. Contrary to assertions by the OPC at the hearing, Ms. Ross did not narrowly tailor her request for relief. In fact, she believes that utilities should not be able to issue bills based on estimated usage as prescribed by Commission rule. (Tr. pp 38, 40, 43, 82). OPC also seemed to suggest that this case could serve as a vehicle to address a “larger issue about whether or not the 12 month period contained for a catch-up bill is an appropriate length of time on a going-forward basis.” (Tr. p. 18).

The Company’s ability to send a revised or adjusted bill based on estimated usage stems from regulation promulgated by the Commission. 4 CSR 240-13.020; 13.025. Changes to those regulations requires a rulemaking under 4 CSR 240-2.180, with its attendant due process requirements of notice and comment. Such relief is not appropriate within this complaint case. Accordingly, the Company respectfully suggests that to the extent Ms. Ross seeks broad regulatory relief (as her testimony at face value certainly indicates), the Commission should decline such relief.

⁵ Her criticisms are not limited to the Company. She believes that the entire regulatory process is corrupt and that the Staff, the OPC, and the Commission are failing in their responsibilities to serve the public interest.

Conclusion

AmerenUE has the obligation to provide gas service to Ms. Ross in accordance with its tariffs and requirements established by the Commission. Under Missouri law, the Company must do so without granting Ms. Ross undue preference or advantage. The Company has complied with its obligations. Ms. Ross has the burden to prove by clear and convincing evidence that the Company has violated either the statutes, regulations, or tariffs that govern its conduct. Ms. Ross has failed to sustain her burden. Accordingly, the Company respectfully requests that the Commission dismiss with prejudice Ms. Ross' Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via U.S. first-class mail on this 21st day of October, 2002, on the following parties of record:

CASE NO. GC-2002-388

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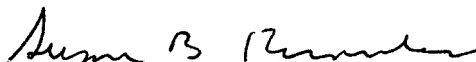
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