

**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.	)	

The Office of the Public Counsel,	)	
	)	
Complainant,	)	
v.	)	Case No. GC-2006-0431
	)	
Laclede Gas Company,	)	
Respondent.	)	

**MOTION TO DISMISS OR,  
IN THE ALTERNATIVE, ANSWER TO COMPLAINT**

**COMES NOW** Laclede Gas Company ("Laclede" or "Company"), and submits this Motion to Dismiss the Complaint of the Office of the Public Counsel ("Public Counsel") in this case. In the alternative, Laclede also submits its Answer to Public Counsel's Complaint, and in support of both of the above, states as follows:

1. On May 12, 2006, the Commission issued a Notice of Complaint in Case No. GC-2006-0431, providing Laclede notice that Public Counsel had filed a Complaint (herein so called) and Motion to Consolidate against Laclede regarding billing practices employed when adjusting an undercharge. On May 25, 2006, the Commission issued an Order consolidating Case No. GC-2006-0431 with Case No. GC-2006-0318, as reflected above.

## **MOTION TO DISMISS**

2. The Complaint is based upon a response to a data request regarding when Laclede might adjust a customer's bill for an undercharge of longer than 12 months. In effect, Laclede's answer to this data request, as set forth on page two of the Complaint, was that Laclede will only seek to adjust a customer's undercharge for a period greater than 12 months *from the date of discovery* when it has first made *inquiry* seeking the customer's cooperation in obtaining an actual meter reading. In other words, Laclede's billing practice is that it will adjust an undercharge for up to 12 months from the date of discovery (or actual notification of the Company), or inquiry, ***whichever was first***.

3. Commission Rule 4 CSR 240-13.025(1)(B) and Laclede's Tariff Rule 10 have virtually identical language. They both state that in the event of an undercharge, an adjustment shall be made for the entire period that the undercharge existed not to exceed twelve monthly billing periods "calculated from the date of discovery, inquiry or actual notification of the utility, whichever was first."

4. In paragraph 3 of the Complaint, Public counsel states that:

"According to this rule, if Laclede undercharges a residential customer for gas service, Laclede may only make an adjustment on the customer's bill for a period not to exceed twelve (12) months."

Public Counsel's view of the rule and tariff improperly eliminates the phrase "calculated from the date of discovery, inquiry or actual notification of the utility, whichever was first" from these documents. Without waiving any arguments regarding "discovery" or "actual notification," the following example illustrates how Public Counsel's interpretation of the rule and tariff ignores the meaning of the term "inquiry." Assume that beginning after January 2005, a customer with an inside meter is unavailable

each month for the regular monthly meter reading. Laclede mails the customer a letter seeking to gain access to the customer's meter to get an actual reading in August 2005, and again in December 2005. In May 2006, Laclede finally obtains a meter reading and finds that it has undercharged the customer since the last reading in January 2005. Both the rule and tariff would permit Laclede to make an adjustment for 12 months from the date of inquiry, meaning back to August 2004 based on the August 2005 inquiry, or back to December 2004 based on the December 2005 inquiry. In either case, the adjustment would cover the period back to the last actual read of January 2005.

5. Public Counsel's position in this example, however, would be that Laclede may only adjust the undercharge between May 2005 and May 2006, because Laclede may only make an adjustment for 12 months, *regardless* of the date of inquiry. Public Counsel's interpretation of the rule and tariff eliminates the term "inquiry" in this example and as such is an incorrect application of the law. Thus, the Complaint fails to state a violation of a Commission rule, decision or order, as required by Section 386.390 RSMo and Commission Rule 4 CSR 240-2.070(3), and should be dismissed.

6. Laclede's billing practice, as communicated through its answer to Public Counsel's data request, is that Laclede will adjust undercharges for up to twelve months from the date of discovery of the undercharge, unless it has earlier made inquiry informing the customer that the Company needs to obtain an actual meter reading. In that event, Laclede will adjust undercharges for up to twelve months from the date of such inquiry. This practice, as stated in the Complaint, demonstrates *from the four corners of the Complaint itself* that Laclede's billing adjustment practice complies with its tariff and Commission Rules.

7. The rule and tariff make sense. If Laclede has sent notices to a customer at the appropriate time inquiring as to, or seeking to know, the customer's meter reading, and the customer fails or refuses to cooperate in providing that reading, then it is only fair to track the twelve month adjustment from the date of such inquiry because, from that point on, the customer has caused the undercharge by not responding to Laclede's request. Hence, in the quote from GR-93-47 set forth on page three of the Complaint, the Commission states:

“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.”

8. As Public Counsel reads the rule and tariff, Laclede *must* disconnect customers who don't respond timely to meter reading inquiry notices, or risk losing the right to collect a portion of an undercharge. This approach would cause disconnection of customers regardless of whether they are current or delinquent in paying their bills, regardless of whether they are actually being overcharged or undercharged, and regardless of whether they are purposely trying to avoid a meter reading, or they are just too busy to focus on the need to have an actual reading. Laclede believes that effectively mandating disconnection is not in the public interest and is not what the Commission intended when it placed a limit on the Company's right to collect an undercharge on a residential bill.

9. Moreover, there are times when Commission rules prohibit Laclede from disconnecting a customer, such as when the weather is below 32 degrees during the winter, or when Laclede cannot access inside meters in a multi-tenant building. Public

Counsel's position would have the confiscatory effect of having one rule prohibit Laclede from taking the only action available to avoid a financial loss under another rule.

10. In summary, Laclede emphasizes that the terms of the Complaint itself confirm that Laclede is not adjusting an undercharge for a period exceeding 12 months; it is merely counting the twelve months from the period of discovery, notification or inquiry, whichever came first, in accordance with its tariff and Commission rules. The Complaint alleges that, by adjusting undercharges for 12 months from the date of inquiry, Laclede sometimes makes an adjustment covering a period of longer than 12 months from the date of the later discovery. By making this allegation, the Complaint simply states a practice that the rule and tariff allow. Thus, assuming the truth of Public Counsel's allegations, Laclede is adjusting undercharges in a wholly permissible and lawful manner. Since Public Counsel's allegations do not constitute a violation of a Commission rule, order or decision, the Complaint should be dismissed.

### **ANSWER**

11. In the event the Commission does not dismiss the Complaint, Laclede incorporates herein the foregoing paragraphs 1-9 and provides the following as its Answer.

12. Laclede admits the allegations contained in paragraphs 1 and 2 of the Complaint.

13. Laclede denies both the factual and legal allegations in paragraph 3 of the Complaint.

14. Laclede admits that it provided the response to Public Counsel's data requests as set forth in paragraph 4 of the Complaint. Laclede clarified that response in

paragraph 2 above. Laclede denies the allegation that this practice is a violation of Commission Rule 13.025(1)(B).

15. Laclede admits that its tariff is accurately quoted and reproduced in paragraph 5 of and Attachment B to the Complaint. Laclede is without information to admit or deny the remaining allegations in paragraph 5. Laclede avers that Case No. GR-93-47 speaks for itself.

16. For the reasons stated above, Laclede denies the legal allegations and conclusions contained in paragraph 6 of the Complaint.

17. Laclede admits that it is authorized to discontinue service to customers as provided in Commission Rule 13.050, as stated in paragraph 7 of the Complaint. Laclede denies that it is required to disconnect service to customers who fail to respond to meter reading inquiries, or that such approach is necessarily preferable as a policy matter to continued bill estimations. Under Laclede's approach, customers who receive meter read notices can either respond to the notice or ignore the notice and receive either continued estimated bills that may potentially be subject to an undercharge adjustment or a disconnect notice. By taking the position that these customers must be threatened with and, if necessary, disconnected, Public Counsel has taken the choice away from the customer, and decided that it is in the customer's best interest to be disconnected, rather than continue to receive estimated bills.

18. Laclede denies the allegations made in paragraph 8 of the Complaint. This issue is not about whether customers are acting in good or bad faith, but simply Laclede's right to adjust undercharges for 12 months from the date of inquiry. It matters not whether the customer's intent is to purposely refuse access to the meter, or whether

the customer is simply too busy to focus on the need for an actual meter reading and respond to Laclede's inquiries.

19. For all of the reasons stated herein, Laclede denies that the Commission should grant any of the remedies requested in paragraph 9 of the Complaint.

**WHEREFORE**, for the foregoing reasons, Laclede respectfully requests that the Commission dismiss the Complaint, or in the alternative, accept this Answer thereto.

Respectfully submitted,

**/s/ Michael C. Pendergast**

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**CERTIFICATE OF SERVICE**

Rick Zucker hereby certifies that the foregoing pleading has been duly served upon all parties of record by hand delivery, email, fax, or United States mail, postage prepaid, on this 12<sup>th</sup> day of June, 2006.

**/s/ Rick Zucker**

Rick Zucker