

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

Charles A. Harter,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. GC-2010-0217</u></b>
	)	
Laclede Gas Company,	)	
	)	
Respondent.	)	

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Missouri Public Service Commission (Commission), having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

1. On January 19, 2010, Charles A. Harter filed a formal *Complaint* against Laclede Gas Company (Laclede or Company).<sup>1</sup>
2. The Complainant alleged that Laclede enrolled him in an electronic bill pay program without his consent, thereafter sending E-bills on his account, instead of paper bills, in violation of the Commission rule 4 CSR 240-13.015 (1)(T).<sup>2</sup>
3. The Complainant also alleged that Laclede proposed disconnection of his natural gas service without notice through first class mail in violation of 4 CSR 240-13.050 (5).<sup>3</sup>
4. Laclede is a Missouri corporation with its principal office and place of business located at 720 Olive Street, Saint Louis, MO 63101.
5. Laclede is a “gas corporation” and “public utility” as defined in Chapter 386, and since 1913 has engaged in providing natural gas and natural gas distribution services to

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<sup>1</sup> Exhibit No. 6, Schedule 6 (HC).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

residential, commercial and industrial customers in the service areas certificated to it by the Commission.

6. On July 25, 2002, the Commission issued an order in Case No. GE-2002-1159, that approved Laclede's application for a variance from the Commission's rules requiring paper billing. The tariff provides customers a choice between receiving a paper bill or an electronic bill. Only mutual consent between the customer and the Company can initiate electronic billing (E-billing).<sup>4</sup>

7. Since November 2002, Laclede has named the Complainant as account holder for natural gas services provided to 827 S. Sappington, Saint Louis, MO 63126.<sup>5</sup>

8. From November 2002 through August 2008, the Complainant received bills for natural gas service from Laclede through the U.S. postal mail, but paid some of the bills using various methods of electronic payment.<sup>6</sup>

9. In August of 2008, the Complainant's wife "took over the family chore of paying bills, not just for Laclede but all of them...."<sup>7</sup>

10. Laclede receives electronic billing services from the vendor CheckFree.<sup>8</sup>

11. A customer wishing to initiate E-billing for a Laclede account can either register for the program with CheckFree, or through use of the customer's personal banking institution.<sup>9</sup>

12. Laclede's customer information system indicates that the Company registered the Complainant's account for E-billing on August 8, 2008, after receiving a data file from CheckFree.<sup>10</sup>

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<sup>4</sup> Exhibit No. 1, Schedule SOF-1.

<sup>5</sup> Exhibit No. 1, paragraph 4 (HC).

<sup>6</sup> Exhibit No. 1, paragraphs 4, 5, 7, and 8 (HC).

<sup>7</sup> Transcript Vol. 2, p. 55, lines 15-20.

<sup>8</sup> Transcript Vol. 2, p. 103, lines 1-3.

<sup>9</sup> Transcript Vol. 2, p. 102, lines 22-25; Vol. 2, p. 103, lines 1-3; Exhibit No. 6, Schedule 8 (HC).

<sup>10</sup> Transcript Vol. 2, p. 105, lines 24-25; Vol. 2, p. 106, lines 1-23; Exhibit No. 2 (HC).

13. The data file from Checkfree indicates that the Complainant, or someone with knowledge of the Complainant's gas account information, registered the Laclede account for E-billing on August 6, 2008.<sup>11</sup>

14. A customer is not required to register for E-billing to make an electronic payment on their account to Laclede.<sup>12</sup>

15. After a customer signs up for E-billing, Laclede sends a final paper bill to the customer that includes a notification that it is the final paper bill, and that Laclede will send all future bills electronically.<sup>13</sup>

16. As of July 8, 2010, over 71,000 Laclede customers have registered to receive electronic billing.<sup>14</sup>

17. Laclede is unaware of any other complaints that allege the Company has placed a customer on E-billing without the customer's consent.<sup>15</sup>

18. The Staff of the Commission has not seen any other customer complaints in which a customer claims a utility registered them for E-billing without their knowledge or consent.<sup>16</sup>

19. The Complainant, or someone with access to the Complainant's e-mail account information, opened and viewed E-bills sent by Laclede for the service period of September 2008 through July of 2009.<sup>17</sup>

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<sup>11</sup> Exhibit No. 2 (HC); Transcript Vol. 2, p. 107, lines 23-25; Vol. 2, p.108, lines 1-24.

<sup>12</sup> Transcript Vol. 2, p. 122, lines 18-25; Vol. 2, p. 151, lines 9-11.

<sup>13</sup> Transcript Vol. 2, p.152, lines 13-21; Exhibit No. 1, Schedule SOF-2 (HC); Exhibit No. 6, Schedule 8 (HC)

<sup>14</sup> Transcript Vol. 2, p. 153, lines 10-13.

<sup>15</sup> Transcript Vol. 2, p. 153, lines 14-16

<sup>16</sup> Transcript Vol. 2, p. 156, line 25; Vol. 2, p. 157, lines 1-4.

<sup>17</sup> Transcript Vol. 2, p. 109, lines 14-25; Vol. 2, p. 110, lines 1-6.

20. The Complainant's April 2009 E-billing contained a notice that Laclede had canceled budget billing on the account due to irregular payments.<sup>18</sup>

21. The only notification that Laclede provides if it cancels budget billing on an account is through a notice on the customer's bill, regardless of whether the form is paper or electronic.<sup>19</sup>

22. Laclede's customer service representatives enter remarks on a customer's account whenever there is activity on the account, such as a phone call from the customer.<sup>20</sup>

23. The Complainant called the Company on April 3, 2009, to discuss restoring his account to budget billing.<sup>21</sup>

24. Laclede sent notice with the Complainant's July 31, 2009 E-billing, that stated the account was subject to disconnection on August 21, 2009, for non-payment.<sup>22</sup>

25. Laclede sent a 96-hour notice of disconnection by U.S. postal mail to the Complainant's service address on August 18, 2009.<sup>23</sup>

26. Laclede did not receive any communication from the Complainant to cancel E-billing until August 21, 2009.<sup>24</sup>

### **Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law:

### **Jurisdiction and Authority**

Laclede is a gas corporation and a public utility as defined by Section 386.020 (18) and (43) RSMo, respectively, and is subject to the jurisdiction of the Commission pursuant to

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<sup>18</sup> Transcript Vol. 2, p. 112, lines 8-25.

<sup>19</sup> *Id.*; and Transcript Vol. 2, p. 114, lines 9-16.

<sup>20</sup> Transcript Vol. 2, p. 110, lines 7-21.

<sup>21</sup> Transcript Vol. 2, p. 112, lines 8-20.

<sup>22</sup> Transcript Vol. 2, p. 115, lines 9-21; Exhibit No. 1, Schedule SOF-3 (HC).

<sup>23</sup> Transcript Vol. 2, p. 115, lines 22-25; Vol. 2, p. 116, lines 1, 12-18; Vol. 2, p. 119, lines 4-8; Exhibits Nos. 3 and 4 (HC).

<sup>24</sup> Transcript Vol. 2, p. 114, lines 17-20.

Sections 386.250 and 393.140 RSMo. Commission regulated utilities must operate within certain boundaries. The Public Service Commission Law, Chapter 393 RSMo, Laclede's Certificate of Convenience and Necessity (CCN), Laclede's approved tariff<sup>25</sup> and the Commission's regulations provide the parameters within which the Company must operate. A "[c]omplaint may be made by...any...person...by petition or complaint in writing, settling forth any act or thing done or omitted to be done by any...public utility...in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission...."<sup>26</sup>

### **Electronic Billing**

4 CSR 240-13.015 (1) (T) defines rendition of a bill as "...the mailing or hand delivery of a bill by a utility to a customer." Additionally, Laclede's tariff, P.S.C. MO No. 5 Consolidated, Fourth Revised Sheet No. R-3, defines "Bill" as "[a] written demand for payment for service and the taxes and franchise fees related to it. Such bill may be in electronic form if agreed to by the customer and the Company." Sheet No. R-3-a defines "E-bill" as "[a] bill delivered electronically to the customer, or to a web site selected by the customer, that can be viewed on a computer screen."

The Commission finds no violation on the part of Laclede in the rendition of E-bills to the Complainant. Pursuant to its tariff, Laclede may render electronic billing in lieu of paper bills when requested by the customer. As of July 8, 2010, over 71,000 Laclede customers have registered to receive electronic billing. Experts for both Laclede and the Staff testified that they were unaware of any other complaints that alleged that Laclede had placed an account on E-billing without the customer's consent.

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<sup>25</sup>The Court in *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 337 (Mo. App. W.D. 2006) stated "a tariff is a document which lists a public utility[']s services and the rates for those services. A tariff has the same force and effect as a statute, and it becomes state law." (internal citations omitted).

<sup>26</sup>Section 386.390 RSMo.

Based on the evidence in the record before it, the Commission finds that it takes a deliberate attempt by a customer to enroll in electronic billing, and multiple steps exist in the process to prevent a customer from inadvertently enrolling. Electronic payment is a different process from E-billing, and payment electronically does not automatically enroll you in Laclede's E-billing program. From November 2002 through August 2008, the Complainant paid some of the account bills received through U.S. postal mail by using various methods of electronic payment, without being subsequently enrolled in E-billing.

The Complainant, or someone with knowledge of the Complainant's gas account information, registered the customer account for E-billing on August 6, 2008. After a customer signs up for E-billing, Laclede sends a final paper bill to the customer that includes a notification that it is the final paper bill, and that Laclede will send all future bills electronically. The Commission finds that Laclede provided adequate explanation to the Complainant on his next bill, August 28, 2008, that electronic billing would replace the Company's rendition of paper bills.

The Complainant, or someone with access to the Complainant's email account, opened and viewed the E-bills sent by Laclede for the service period of September 2008 through July of 2009. The Complainant's April 2009 E-billing contained a notice that Laclede had canceled budget billing on the account due to irregular payments. The only notification that Laclede provides if it cancels budget billing on an account is through a notice on the customer's bill, regardless of whether the form is paper or electronic. While not dispositive on its own, when the Complainant called Laclede on April 3, 2009, he only discussed restoring his account to budget billing, and did not mention a concern for E-billing. This is the only activity marked on the account by the Company's customer service representative during this service period, and was

not disputed by the Complainant at hearing. The Commission finds no violation on the part of Laclede in the rendition of E-bills to the Complainant.

### **Discontinuance of Service**

Regarding discontinuance of service, 4 CSR 240-13.050 (5) states “[a] utility shall not discontinue residential service pursuant to section (1) unless written notice by first class mail is sent to the customer at least ten (10) days prior to the date of the proposed discontinuance. Service of notice by mail is complete upon mailing. As an alternative, a utility may deliver a written notice in hand to the customer at least ninety-six (96) hours prior to discontinuance...”

Laclede’s tariff, Sheet R-12-b also addresses notification prior to disconnection and provides

...(5)...[t]he Company may serve notice by first class mail, which is complete upon mailing. The Company may deliver such notice electronically if the customer has opted for e-bill delivery. Service of electronic notice is complete upon delivery of the notice to the site where the e-bill is posted. As an alternative, the Company may deliver a written notice in hand to the customer at least ninety-six (96) hours prior to discontinuance.

The record indicates that Laclede sent notice with the Complainant’s July 31, 2009 E-billing, that stated the account was subject to disconnection for non-payment on August 21, 2009. This meets the notice requirements as Laclede provided the notice 21 days ahead of the proposed disconnection date, well in advance of the ten (10) day requirement. In addition, Laclede’s tariff, Sheet R-12-b, allows the electronic posting of a notice in lieu of first class mail notification.

Laclede’s website explains the disconnection process for users of E-bill by stating: “[i]f we must send you disconnection notices, we may deliver the first notice with your e-bill. We will deliver subsequent disconnection notices in the same manner that we deliver them to all customers.” The record indicates that Laclede sent a 96-hour notice of disconnection by U.S. postal mail to the Complainant’s service address on August 18, 2009. The Complainant attached

both notices to the *Complaint* as exhibits. The Commission finds no violation on the part of Laclede in the rendition of disconnection notices to the Complainant.

Respectfully submitted,

**/s/Jennifer Hernandez**

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above document was served upon Rick E. Zucker, attorney for Laclede Gas Company via electronic mail at [rzucker@lacledegas.com](mailto:rzucker@lacledegas.com); the Office of the Public Counsel via electronic mail at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov); and Mr. Charles A. Harter, via First-class United States mail postage prepaid at 827 S. Sappington, Saint Louis, MO 63126, and electronic mail at [harterandharter@yahoo.com](mailto:harterandharter@yahoo.com) this 20<sup>th</sup> day of September 2010.

**/s/ Jennifer Hernandez**