

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 6th day of
July, 2006.

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

ORDER DENYING MOTION TO DISMISS

Issue Date: July 6, 2006

Effective Date: July 6, 2006

On May 11, 2006, the Office of the Public Counsel filed a complaint against Laclede Gas Company. With the agreement of the parties, Public Counsel's complaint was consolidated with a complaint filed by the Staff of the Commission against Laclede. On June 12, Laclede filed its answer, and a motion asking the Commission to dismiss Public Counsel's complaint for failure to state a cause upon which relief can be granted. Laclede contends that the billing practices about which Public Counsel complains are clearly allowed by the controlling regulation and by Laclede's tariff. Public Counsel filed a response to Laclede's motion on June 20.

The standard for review for consideration of a motion to dismiss for failure to state a cause of action has been clearly established by Missouri's courts as follows:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.¹

By that standard, the Commission must consider Laclede's motion to dismiss based on the facts alleged in Public Counsel's complaint.

Public Counsel's complaint concerns Laclede's practice of adjusting customer bills where the customer has been undercharged for gas service for a period of greater than twelve months because of Laclede's use of estimated bills. In support of its complaint, Public Counsel points to Commission Rule 4 CSR 240-13.025(1)(B), which concerns billing adjustments that may be made by a gas utility to correct an undercharge. That section of the rule provides as follows:

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.* (emphasis added)

Laclede's current tariff also incorporates the requirements of the regulation.

The point of contention is the italicized language of the regulation. Public Counsel contends that the regulation means that if Laclede undercharges a residential customer for gas service, it may recover that undercharge for only a twelve-month period. Laclede interprets the regulation differently. It argues that the twelve-month undercharge that can be collected under the regulation is calculated from the date that the utility first notifies the customer that it needs access to the customer's premises to obtain an actual meter

¹ Eastwood v. North Central Missouri Drug Task Force, 15 S.W.3d 65, 67 (Mo. App. W.D. 2000).

reading. It argues that if a customer thereafter does not allow the utility to read the meter, the customer should be responsible for any undercharge for the twelve months prior to the notification, as well as for further undercharges that accumulate while the utility is trying to obtain an actual meter reading.

To illustrate the disagreement, consider a situation where Laclede has billed a residential customer for gas service based on estimated usage, rather than an actual meter reading, since January 1, 2004. On January 1, 2005, Laclede notifies the customer that it needs to enter the customer's home to obtain an actual meter reading. For whatever reason, Laclede is not able to obtain an actual meter reading until April 1, 2006. When the actual meter reading is obtained, it shows that the customer has been undercharged by \$100 per month since January 1, 2004. Under its interpretation of the regulation, Laclede could send a bill to the customer for the twelve months before it notified the customer that it needed access to the meter, as well as for the 15 months after notification before it actually obtained access to the meter. (27 months x \$100 per month = \$2,700) Under Public Counsel's interpretation of the regulation, Laclede can never bill for more than 12 months of undercharges. Therefore, when Laclede determines that the customer has been undercharged on April 1, 2006, it can send the customer a bill for only 12 months of undercharges. (12 months x \$100 per month = \$1,200)

Both Laclede and Public Counsel contend that their interpretation is based on the plain language of the regulation. However, both also offer public-policy arguments to support their interpretation. Public Counsel argues that a firm – twelve-month – limit on billing for undercharges is needed to provide Laclede with a strong incentive to obtain actual meter readings from its customers. Laclede counters that customers who delay

access to their meters should be responsible for resulting undercharges. It also argues that the strong incentive that Public Counsel seeks would effectively require Laclede to quickly take the drastic step of cutting off service to customers from whom it is having difficulty obtaining an actual meter reading.

For purposes of a consideration of Laclede's Motion to Dismiss, the Commission concludes that the language of the regulation is not so clear as to justify the dismissal of Public Counsel's complaint. Rather, the Commission will need to receive evidence from the parties regarding the impact of the regulation on the company and its customers before determining an appropriate interpretation of its regulation. Therefore, Laclede's Motion to Dismiss will be denied.

IT IS ORDERED THAT:

1. Laclede Gas Company's Motion to Dismiss is denied.
2. This order shall become effective on July 6, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Woodruff, Deputy Chief Regulatory Law Judge