

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

R.J. Liebe Athletic Lettering Company,)	
)	
Complainant,)	
v.)	Case No. GC-2007-0192
)	
Laclede Gas Company)	
)	
Respondent.)	

**LACLEDE GAS COMPANY’S ANSWER
AND MOTION TO DISMISS COMPLAINT**

COMES NOW Laclede Gas Company (“Laclede” or “Company”), pursuant to the Commission’s November 21, 2006 Notice of Complaint in the above captioned case, and submits its Answer and Motion to Dismiss the Complaint filed against Laclede by Complainant R.J. Liebe Athletic Lettering Company (referred to herein as “Complainant” or the “Liebe Company”) on November 17, 2006. In support thereof, Laclede states as follows:

1. This case is about whether a commercial customer may avoid paying for natural gas service during a period when the meter serving the customer has failed to register the customer’s usage. Complainant interprets the Commission’s rules to state that a utility may estimate a commercial customer’s bill only when the utility is unable to gain access to the customer’s premises to read the meter, and therefore the utility is not entitled to issue an estimated bill when the meter has failed to register usage. Laclede asserts that the Commission’s rules do not limit a utility’s right to estimate bills to that single circumstance and, in addition, Commission rules and Laclede’s tariff specifically

provide that the customer shall be billed based on estimated consumption where the meter fails to register.

2. During the winter and spring of 2005-06, the meter at Complainant's business did not register properly. This situation can occur and is in fact addressed by Commission rules and by Laclede's tariff. The relevant portion of Commission Rule 4 CSR 240-10.040(5) states:

“Each utility shall adjust customer's bills for incorrect meter readings or improper meter registration in a reasonable and equitable manner consistent with the rules which it has on file with the commission.”

Laclede's Tariff Rule 10A is the rule on file with the Commission that permits the Company to adjust bills for improper meter registration such as occurred on the meter at the Liebe Company's business. Tariff Rule 10A on Sheet No. R-8 of Laclede's tariff states as follows:

“In the event 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.”

3. Accordingly, Laclede and Liebe Company representatives met on several occasions and worked out a reasonable solution for estimating the Liebe Company's gas use during the period when the meter failed to register, and the Liebe Company has paid for such usage. However, at these business meetings, despite being shown the tariff language cited above, Liebe Company representatives repeatedly claimed that Laclede was not authorized to charge Complainant for estimated consumption.

4. The Liebe Company has now asserted this position in its complaint, relying on its own interpretation of 4 CSR 240-10.040(1) and (2), and ignoring Laclede's tariff, in requesting that Laclede not be entitled to bill or collect for gas service that is not an accurate measurement of actual use, unless Laclede can show that it was unable to gain access to the customer's premises. The Liebe Company acknowledges the applicability of Laclede's tariff to situations where the meter fails to register usage, but insists that the Commission Rule 10.040(1) and (2) supercedes the tariff.

5. Commission Rule 10.040(1) and (2) state as follows:

(1) Whenever a utility is unable to gain access to a customer's premises for the purpose of reading and testing meters or servicing or maintaining the utility's equipment or for other appropriate purposes, following calls made at the customer's premises during the usual course of business, the customer, on request from the utility, in which a particular time is specified, shall give access to his/her premises to representatives of the utility for those purposes at the time specified, which shall be within the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, otherwise, the utility may estimate for billing purposes the meter reading subject to correction when the utility may read the meter.

(2) Except for the provisions of this rule, all bills rendered to customers for metered service furnished will show the reading of the meter at the beginning and end of the period for which the bill is rendered and shall give the dates of readings, the number of units of service supplied and the basis of charge or reference. Where, by reason of the use of postal or other card form of billing or for other good reasons, this information cannot reasonably be placed on the bills, any utility may present for filing with the commission, in conjunction with its rules, a proposed form of billing. The commission may authorize, deny or require modification of any such proposed form of billing.

6. The Liebe Company's interpretation of Commission Rule 10.040 is not only incorrect, but would also constitute bad regulatory policy. First, there is no conflict between Commission Rule 10.040(1) and (2) and Laclede's Tariff Rule 10A, because the

Commission rule and the tariff rule address two different situations. Both paragraphs of the Commission rule contemplate situations where the meter has registered usage, and paragraph 2 specifically addresses what information must be provided on a bill, not whether a utility may estimate a bill when the meter fails to register usage. Second, the Liebe Company's interpretation of the rule would establish a bad regulatory policy by permitting customers to reap a windfall from malfunctioning equipment, and by actually encouraging customers to sabotage such equipment.

7. Neither Commission Rule 10.040(1) nor (2) apply to situations involving meters that are not registering. To the contrary, both sections specifically contemplate that the meter has registered usage. Paragraph (1) stands for the proposition that the utility may estimate meter readings where it is unable to gain access "*subject to correction when the utility may read the meter.*" (emphasis added). This clearly contemplates cases where the meter is operating properly, but the utility is simply unable to gain access to read it.

8. Likewise, paragraph (2) also refers to "all bills rendered to customers for *metered* service furnished," and requires that those bills "*show* the reading of the meter at the beginning and end of the period for which the bill is rendered and shall give the dates of readings, the number of units of service supplied and the basis of charge or reference." (emphasis added). First, it could not be more clear that this paragraph applies specifically to those occasions where registered metered service is available for billing purposes, as opposed to occasions where the meter has failed to operate. Second, this paragraph pertains to what information must be shown on bills, and not whether a utility is authorized to estimate usage when the meter does not operate properly. Accordingly,

paragraph (2) presumes that the utility has meter readings and mandates that, for the beginning and end of a period, it must show this information on the bill it renders, along with the dates of the readings, the number of units of service supplied and the basis of the charge, unless the utility cannot reasonably place all of this information on a postcard bill, whereupon the utility may file with the Commission for approval of a different form of billing.

9. As stated above, it is Commission Rule 10.040(5), and not Commission Rule 10.040(1) or (2), that covers situations where a commercial customer's meter is not operating properly. Therefore, Complainant's reliance on paragraphs 1 and 2 of Commission Rule 10.040 is misplaced.

10. Moreover, when the Commission seeks to place limits on a utility's right to estimate bills, it does so through explicit language, dictating when a utility may render a bill based on estimated usage and when it may not do so. *See* 4 CSR 240-13.020(2) regarding estimated billing for residential customers. The fact that the language in Commission Rule 10.040(1) and (2) does not even appear to apply to the estimation of bills, much less explicitly apply to such issue, is further confirmation that the Complainant's reading of Commission Rule 10.040 is in error.

11. In summary, Commission Rule 10.040(1) and (2) simply do not address a situation in which the meter has malfunctioned and is not properly registering usage. In contrast, Commission Rule 10.040(5) and Laclede Tariff Rule 10 specifically addresses such a situation, and the tariff rule provides a reasonable and equitable solution that the customer's consumption be estimated based upon the customer's like use of gas in a

similar period. Therefore, the Commission rule and Laclede's tariff are consistent, and are not in conflict, as represented by Complainant.

12. If the Commission instead finds that harmonization between the Commission rule and Laclede's tariff is nevertheless necessary, Laclede would note that Commission Rule 10.040 was originally filed in 1953, and last amended effective February 26, 1993, while Laclede's Tariff Rule 10A was issued and approved in 1997. Since approved tariffs have the same effect of statutes, to the extent that there is any conflict between the Commission approved rule and the Commission approved tariff, the later approved tariff would control as the Commission's more recent statement on the issue. Moreover, given that the Commission Rule 10.040 has been in existence for over fifty years, it should be presumed that the Commission was aware of Rule 10.040 when it approved Laclede's Tariff Rule 10A and that it intended Tariff Rule 10A to address meters that do not register usage. The law is well settled on these points. In *St. Charles County v. Director of Revenue*, 961 S.W.2d 44, 47 (Mo. banc 1998), the Missouri Supreme Court proclaimed that when two statutory provisions are repugnant, the later act operates to the extent of the repugnancy to repeal the first. It should be noted that this opinion also references the statutory canon that Laclede believes is even more applicable here, namely that "if two statutes can be reconciled then both should be given effect." *Id.* As discussed above, only Laclede's interpretation provides such a reconciliation.

13. The Liebe Company's interpretation of Commission Rule 10.040, that utilities can only issue estimated bills when they are unable to access the meter and not when meters malfunction, would set a poor regulatory policy. In cases where the meter stops registering usage, it would permit customers to enjoy a windfall by pretending that

the customer actually used no gas, regardless of the customer's historical usage and regardless of the time of year. Obviously, the larger the customer's usage, the bigger the windfall. In addition, since the utility's meter is located on the customer's property and is within the customer's reach on a daily basis, providing a windfall to customers when the meter stops registering could motivate some more nefarious customers to attempt to stop the registration of metered usage. While it is a crime to tamper with utility equipment, it may be difficult to distinguish between tampering and malfunction. Under the current system, as represented by Laclede's Tariff Rule 10A, there is no windfall to be gained from tampering with the meter, since the utility is authorized to estimate consumption based on like usage during a similar period.

14. Finally, the Complainant's interpretation makes no sense because it would afford commercial customers an inexplicable and unreasonable advantage over residential customers, who are required to pay for estimated usage when meters stop or fail to register.

15. In paragraph 2 of the complaint, the Liebe Company states that in February and March of 2006, it received bills from Laclede in amounts exceeding \$125,000 and \$146,000, respectively, that Liebe Company representatives contacted Laclede to protest such bills, and that Laclede representatives responded that such bills should be disregarded and would be replaced with corrected billings. Laclede admits that it did send a bill for more than \$125,000, followed by another bill for just under \$20,000; that both of these bills arose from a malfunctioning meter at the Liebe Company's location, compounded by a clerical error on Laclede's part, and that both bills were clearly wrong. Laclede further admits that Liebe Company representatives did contact

Laclede to protest such bills, and that Laclede representatives immediately recognized that the bills were in error, and responded that such bills should be disregarded and would be replaced with corrected billings. Moreover, Laclede issued corrected billings well before this Complaint was filed, and well before the Liebe Company publicly discussed Laclede's error in this regard. Nevertheless, Laclede regrets the billing errors and has apologized to the Liebe Company for any inconvenience caused thereby.

Motion To Dismiss

16. Complainant's claim is based upon its legal interpretation of Commission Rule 10.040(1) and (2) and Laclede Tariff Rule 10A. This interpretation holds that Laclede is not entitled to issue estimated bills when a meter fails to register usage, but only when the Company is unable to gain access to the meter. The relief sought by the Liebe Company is a refund of all amounts it paid where Laclede cannot accurately measure usage on a failed meter. As demonstrated above, Complainant has misinterpreted Commission rules. The appropriate provision to apply in the instance of a meter that fails to properly register usage is found in Commission Rule 10.040(5) and Laclede Tariff Rule 10A, which supports Laclede's right to estimate consumption. Accordingly, even assuming the truth of all facts alleged by Complainant, Complainant is not entitled to the relief it requests, and Laclede hereby moves to dismiss the complaint for failure to state a claim upon which relief can be granted.

WHEREFORE, Laclede respectfully requests that the Commission accept Laclede's answer herein and dismiss this complaint on the grounds that Complainant is not entitled to the relief requested due to Complainant's incorrect application of the Commission's rules and the Company's tariff.

Respectfully submitted,

/s/ Rick Zucker

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Complainant, on the General Counsel of the Staff of the Missouri Public Service Commission, and on the Office of Public Counsel on this 21st day of December, 2006 by United States mail, hand-delivery, email, or facsimile.

/s/ Gerry Lynch