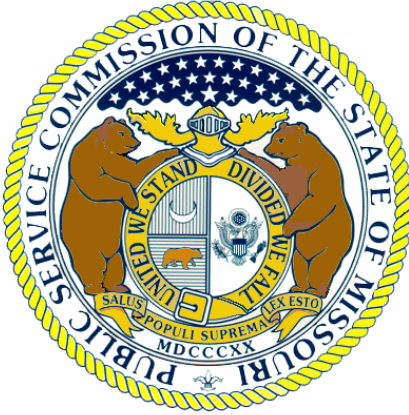


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Lynne P. Shewmaker,

Complainant,

v.

Laclede Gas Company,

Respondent.

Case No. GC-2006-0549

REPORT AND ORDER

Issue Date: August 16, 2007

Effective Date: August 26, 2007

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Lynne P. Shewmaker,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-2006-0549</u>
)	
Laclede Gas Company,)	
)	
Respondent.)	

Appearances

Lynne P. Shewmaker, 7330 Maple Avenue, Saint Louis, Missouri 63143, *pro se*.

Rick Zucker, Assistant General Counsel, Laclede Gas Company, 720 Olive Street, Room 1516, Saint Louis, Missouri 63101, for Laclede Gas Company.

Marc Poston, Deputy Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Kevin A. Thompson, General Counsel, General Counsel, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission, for the Staff of the Missouri Public Service Commission.

SENIOR REGULATORY LAW JUDGE: Ronald D. Pridgin

REPORT AND ORDER

Procedural History

On June 29, 2006, Lynne Shewmaker filed a complaint against Laclede Gas Company, alleging that Laclede over billed her for her gas usage from November, 2005 to February, 2006. Laclede denied the allegations. The Staff of the Commission filed a

Recommendation concurring with Laclede's position, and asked that the complaint be dismissed.

The parties identified the following issues for the Commission to resolve:¹

1. *Since June 2005, have the meter readings from the meters installed at the Shewmaker home, including the automated meter reading (AMR) modules attached to those meters, resulted in Ms. Shewmaker being overcharged for her gas usage?*

A. *If so, what should the amount of charges be for gas service rendered since the AMR installation in June 2005?*

B. *Should Laclede be required to remove late fees charged to Complainant's account since June 2005?*²

2A. *Should the Commission require Laclede to remove the AMR module from its meter inside the Shewmaker home, and permit the Complainant to send in self-reads of the meter in lieu thereof?*

2B. *Should the Commission require Laclede to also remove the existing meter inside the Shewmaker home, and permit the Complainant to have it privately tested to prove accuracy and return it to the Shewmaker home, such testing to be at Laclede's cost?*

Findings of Fact

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

¹ Instead of filing one agreed-upon List of Issues, the parties filed separate lists. This list is the Commission's attempt to reconcile these lists.

² This issue is no longer pending, as the parties have resolved it. Tr. 21.

1. When making findings of fact based upon witness testimony, the Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested to subject matter.

2. Complainant Lynne P. Shewmaker (hereinafter “Complainant” or “Ms. Shewmaker”) is a natural person residing at 7330 Maple Avenue, St. Louis, Missouri. Complainant was, at all pertinent times, a customer of Laclede Gas Company.³

3. Respondent Laclede Gas Company (hereinafter “Respondent” or “Company”) is a Missouri corporation engaged in the sale of natural gas at retail to persons in the region of St. Louis, Missouri.

4. The Staff of the Commission (hereinafter “Staff”) is represented by the Commission’s General Counsel who is authorized by statute to “represent and appear for the Commission in all actions and proceedings involving this or any other law [involving the Commission].”⁴

5. The Public Counsel is an official of the State of Missouri, appointed by the Director of the Missouri Department of Economic Development, and is authorized to “represent and protect the interests of the public in any proceeding before or appeal from the public service commission[.]”⁵

6. A heating degree day (HDD) is the amount by which 65 degrees exceeds the average temperature in a day; for example, if the high temperature for a day is 30 degrees,

³ Ex. 1, p. 1.

⁴ Section 386.071 RSMo 2000.

⁵ Section 386.70, .710(2) RSMo 2000.

and the low temperature is 20 degrees, there would be 40 HDDs for that day
 $(65 - (30 + 20))/2 = 40$.⁶

7. From 1992 to 1997, a “remote extension” (RE) device was on Ms. Shewmaker’s meter (Meter 1) in order to measure her gas usage.⁷

8. According to the RE, Ms. Shewmaker used 2618 cubic hundred feet (CCFs) of gas from March 28, 1995 until March 27, 1996.⁸

9. During that 12-month period, there were 4831 HDDs, which means that Ms. Shewmaker’s CCF/HDD ratio for that period was .542.⁹

10. According to the RE, Ms. Shewmaker used 2475 cubic hundred feet (CCFs) of gas from March 28, 1996 until March 27, 1997.¹⁰

11. During that 12-month period, there were 4850 HDDs, which means that Ms. Shewmaker’s CCF/HDD ratio for that period was .510.¹¹

12. The RE was removed, and a “trace device” was placed on a new meter (Meter 2) at Ms. Shewmaker’s home on October 25, 1997.¹²

13. For the first year the after the trace device was installed, which ended on October 23, 1998, it recorded that Ms. Shewmaker used 1123 CCFs over 4391 HDDs, for an average of .256 CCF/HDD.¹³

⁶ Ex. 2, p. 4

⁷ Ex. 2, pp. 3-4.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Ex. 2, p. 3; Ex. 4, p. 2.

¹³ Ex. 2, p. 4

14. The following year, ending October 25, 1999, the trace device recorded 1103 CCFs over 4189 HDDs, for an average of .263 CCFs/HDD.¹⁴

15. The trace device recorded a CCF/HDD ratio of .259 for the 12-month period ending in October 2000, a ratio of .249 for the twelve-month period ending in October 2001, and a ratio of .251 for the 12-month period ending in October 2002.¹⁵

16. The last meter reading Laclede received from the trace device was on or about May 29, 2003.¹⁶

17. The Trace Device was only registering half of Ms. Shewmaker's gas usage.¹⁷

18. Laclede removed the trace device and installed an automated meter reader (AMR 1) on the meter (Meter 2) at Ms. Shewmaker's home in June, 2005.¹⁸

19. After the trace device was removed, and an AMR installed in June, 2005, Ms. Shewmaker's meter readings increased back toward her pre-trace device levels.¹⁹

20. For the period of December 11, 2004 until December 22, 2005, the AMR measured Ms. Shewmaker's gas usage at a ratio of .476 CCF/HDD.²⁰

21. For the year from April 26, 2006 to April 26, 2007, the AMR measured Ms. Shewmaker's gas usage at a ratio of .337 CCF/HDD.²¹

22. Complainant contends that the jump in usage described in Finding of Fact 18, above, is indicative of a defect in the AMR.

¹⁴ Ex. 2, pp. 4-5.

¹⁵ Ex. 2, p. 5.

¹⁶ Ex. 4, p. 2.

¹⁷ Ex. 2., p. 6.

¹⁸ Ex. 2, p. 2.

¹⁹ Ex. 2, p. 6.

²⁰ Ex. 2, p. 7.

²¹ Ex. 2, p. 8.

23. Because she believed the bills to be erroneous and based upon a defective AMR or meter, Complainant withheld from payment one-half of the amount billed by Laclede for several months in the fall and winter of 2005. Complainant testified that, since the AMR was first installed, she has been billed \$3,694.00 and has paid \$2,889.00, and feels that she has been overcharged in the amount of \$1,256.00.²²

24. Laclede requests payment of around \$800, reflective of the payments withheld in protest.²³ Laclede has waived the assessment of late fees for the billed amounts withheld in protest.²⁴

25. On February 17, 2006, at Ms. Shewmaker's request, Laclede removed both the AMR model that was installed in June, 2005, and the meter that was installed in October, 1997, and installed another meter (Meter 3) that was equipped with an AMR (AMR 2).²⁵

26. The removed meter (Meter 2) showed an average usage of around 2100 CCFs per year for the nine year period and, when compared to the roughly 37,500 HDDs during those nine years, resulted in a CCF/HDD ratio of .487, which is consistent with the pre-1997 usage recorded by the prior meter and RE device.²⁶

27. On April 7, 2006, the removed meter (Meter 2) passed an accuracy test performed in Laclede's meter shop.²⁷

²² Ex. 1, p. 2.

²³ Tr., p. 90.

²⁴ Revised List of Issues and Witnesses, Order of Cross-Examination, Statement of Positions on the Issues filed by Laclede Gas Company (June 28, 2007).

²⁵ Ex. 2, p. 7; Ex. 4, p. 7.

²⁶ Ex. 2, p. 7

²⁷ Id.; Ex. 4, p. 7.

28. During the past two years, two teenagers who lived in Ms. Shewmaker's home have moved, and Ms. Shewmaker has closed off rooms and reduced the thermostat to 63 degrees.²⁸

Conclusions of Law

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

Jurisdiction:

Respondent is engaged in owning, controlling, managing, and operating gas plant for public use under a franchise granted by the state of Missouri or a political subdivision thereof, and is thus a gas corporation and a public utility within the intendments of Chapter 386, RSMo, and is subject to the jurisdiction of this Commission.

The Commission is authorized to hear and determine complaints made by customers against public utilities by § 386.390.1, which states: Complaint may be made by ... any ... person ... by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation ... or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or 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[.]

However, authority to hear and determine the complaint does not necessarily equal authority to grant the relief therein requested. The Public Service Commission "is purely a creature of statute" and its "powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically

²⁸ Ex. 1, p. 2

granted.”²⁹ While the Commission properly exercises “quasi judicial powers” that are “incidental and necessary to the proper discharge” of its administrative functions, its adjudicative authority is not plenary.³⁰ “Agency adjudicative power extends only to the ascertainment of facts and the application of existing law thereto in order to resolve issues within the given area of agency expertise.”³¹

Burden of Proof:

The Complainant bears the burden of proof in a case, such as this one, in which the complainant alleges that a regulated utility has engaged in unjust or unreasonable actions.³² Thus, Ms. Shewmaker must establish all facts necessary to support the relief she seeks by a preponderance of the credible evidence.

Discussion:

Complainant has failed to prove her Complaint, through either prefiled testimony, or via the evidentiary hearing conducted on June 29, 2007. Complainant has not shown that the meter readings, including the automated meter reading (AMR) modules attached to those meters, utilized to monitor gas flow into Complainant’s home, have resulted in Complainant being overcharged for her gas usage since June 2005. The meter and AMR removed in February 2006 were found to be accurate and the present meter and AMR

²⁹ *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 47 (Mo. banc 1979); *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 928 (Mo. banc 1958).

³⁰ *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 75 (Mo. 1982), quoting *Liechty v. Kansas City Bridge Co.*, 162 S.W.2d 275, 279 (Mo. 1942).

³¹ *State Tax Commission*, *supra*.

³² *Ahlstrom v. Empire District Electric Company*, 4 Mo.P.S.C.3d 187, 202 (1995); *Margulis v. Union Electric Company*, 30 Mo.P.S.C. (N.S.) 517, 523 (1991).

produce consistent readings which must also be considered to be accurate. For this reason, Complainant's case must fail.

It is more likely than not, as Laclede suggests, that the trace device that was removed in the summer of 2005 was missing a magnet and that this mechanical defect was responsible for Complainant being billed for only half of her actual usage in the several years preceding the installation of the AMR.³³ Ms. Shewmaker's regression analysis, although showing a pattern, is not inconsistent with Laclede's "missing magnet" theory. In fact, her claim that her household has begun conserving gas the last two years or so is consistent with Laclede's theory; as aptly put by Laclede, "[i]t makes no sense that [Ms. Shewmaker's] usage would have declined by half a number of years ago before these conservation efforts were made and then increased roughly 40% in the face of these conservation efforts."³⁴

Furthermore, the Commission's rules and Laclede's tariff do not require Laclede to remove the AMR module from its meter inside the Complainant's home; likewise, they do not authorize Complainant to self-read that meter.³⁵ Neither do they require Laclede to pay for independent testing. However, due to Ms. Shewmaker's history of billing problems with Laclede, the Commission will order its Staff to test the current meter in Ms. Shewmaker's home. Ms. Shewmaker shall, in no event, bear any cost for this test.

³³ Tr., pp. 106 –108.

³⁴ Ex. 2, p. 8.

³⁵ Laclede Gas Company, P.S.C. MO. No. 5 Consolidated, Fifth Revised Sheet No. R-8, No. R-11.

Decision

1. *Since June 2005, have the meter readings from the meters installed at the Shewmaker home, including the automated meter reading (AMR) modules attached to those meters, resulted in Ms. Shewmaker being overcharged for her gas usage?*

The Commission concludes that Laclede has not overcharged Ms. Shewmaker for her gas usage.

A. *If so, what should the amount of charges be for gas service rendered since the AMR installation in June 2005?*

Ms. Shewmaker has not been overcharged for gas usage, and owes the disputed amount of approximately \$800.

2A. *Should the Commission require Laclede to remove the AMR module from its meter inside the Shewmaker home, and permit the Complainant to send in self-reads of the meter in lieu thereof?*

The Commission concludes that it should not require Laclede to remove the AMR module.

2B. *Should the Commission require Laclede to also remove the existing meter inside the Shewmaker home, and permit the Complainant to have it privately tested to prove accuracy and return it to the Shewmaker home, such testing to be at Laclede's cost.*

The Commission concludes that the Staff of the Commission shall test Ms. Shewmaker's existing meter. Ms. Shewmaker shall be entitled to be present during said test. The Staff of the Commission shall conduct this test and file a report in this case that contains the results of that test no later than October 15, 2007.

IT IS ORDERED THAT:

1. Except as provided above, the complaint of Lynne P. Shewmaker is denied.
2. The Staff of the Commission shall test the Laclede Gas Company meter currently installed at Lynne Shewmaker's home as directed above, and shall file its report concerning its test no later than October 15, 2007.
3. All objections not ruled on are overruled and all motions not granted are denied.
4. This order shall become effective on August 26, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur and certify
compliance with the provisions of
Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 16th day of August, 2007.