

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

¹ The remainder of the dates throughout this order refer to the year 2007 unless otherwise noted.

than January 25. On January 22, Staff filed a motion to file its report out of time and requested an extension of time for Complainant to file its response. Staff filed its report concurrently with its motion and the Commission granted Staff's request to accept the late filing and to extend the deadline for Complainant to respond to Staff's report and Laclede's answer. Staff's report concluded that Laclede should have acted more promptly in repairing its meter and limited its use of estimated billing, but also stated that it appeared Complainant was appropriately billed and found no violation of any statute, Commission Rules or Laclede's tariff provisions.

On January 23, the Commission extended Complainant's response deadline until February 7. On February 13, after missing that deadline, Complainant sought leave to file its response no later than February 16. The Commission granted that request. In its response, Complainant only argued issues of law involving the interpretation of Commission Rules and Laclede's tariff. Nevertheless, Complainant also requested a hearing.

On February 20, the Commission set a prehearing conference in this matter for March 5. On February 28, Laclede Gas Company ("Laclede") requested the date be reset for March 13 or 15 due to scheduling conflicts. On March 1, the Commission granted this request and reset the prehearing conference for March 15. In that same order, the Commission noted:

... after studying the parties' pleadings in this matter, there appears to be no disputed facts, but rather only issues of law to be determined. Therefore, the Commission will direct the parties to jointly file a stipulation as to all material facts not in dispute in this matter. If there remain any material facts in dispute, the parties shall so identify those facts in a separate pleading.

Specifically, it appears that what is at issue is the interpretation of Commission Rules 4 CSR 240-10.040(1), (2) and (5) and Laclede's Tariff Rule 10A. Consequently, the Commission ordered the above-described stipulation to be filed no later than March 14.

On March 2, Staff filed a motion requesting an extension of time for filing the stipulation. Staff asserted that after having discussed this matter with counsel for both Complainant and Respondent, they were all in agreement that the prehearing conference would provide the most appropriate time to discuss the stipulation and explore possibilities for settlement. The Commission granted Staff's motion and reset the deadline for filing the stipulation to March 22.

During the prehearing conference, the presiding officer discussed the required stipulation with the parties. All parties acknowledged that they understood the Commission's order to jointly file a stipulation as to all material facts not in dispute, and if any party believed there remained any material facts in dispute, that party would file a separate individual pleading listing any such facts and provide an explanation as to why that party believed said facts were material to this complaint.

The purpose for providing the parties with an opportunity to identify any material facts that remain in dispute is to allow the Commission to determine if a hearing is required in this matter. Indeed, the Commission has previously recognized that "[t]he time and cost to hold hearings on [a] matter when there is no genuine issue as to any material fact would be contrary to the public interest."²

On March 22, Staff filed a "Motion for Second Extension of Time to File Stipulation of Facts Not in Dispute." In its motion, Staff states that the parties have not yet agreed on a

² Determination on the Pleadings, *In the Matter of the Application of Aquila Inc. for an Accounting Authority Order Concerning Fuel Purchases*, Case No. EU-2005-0041 (Oct. 7, 2004).

stipulation. Staff's counsel states that it, and counsel for Laclede, have been unable to reach Complainant's counsel; consequently, Staff and Laclede have requested an extension of time for filing the stipulation and assert that they believe that Complainant would not object to this request.

The Commission notes its disappointment that the parties have been unable to timely comply with its order. Despite the multiple extensions of time granted to all of the parties and the passage of 126 days since the filing of this complaint, another extension of time has been requested. This time, the request appears to revolve around Staff's and Laclede's inability to reach Complainant's counsel in order to comply with an order to simply identify the facts of this case that the parties do not dispute. The parties, and particularly the Complainant, are reminded that failure to comply with a Commission order is grounds for dismissal of a complaint.³

The Commission does not wish to extend the burden of filing additional pleadings to Staff and Laclede, the parties who appear to have attempted to comply with the order to file the stipulation. Consequently, the Commission will deny Staff's and Laclede's request for an extension of time for the filing of the stipulation, and will instead direct the Complainant to file with the Commission a pleading identifying any material facts that Complainant believes remain in dispute and explain why it believes the Commission should grant it a hearing in this matter. Should Complainant fail to comply with this order, the Commission will take up for consideration Laclede's motion to dismiss. Should Staff and Laclede wish to file a joint, nonunanimous stipulation of facts in this matter, they may seek leave to late-file such a stipulation.

³ Commission Rules 4 CSR 240-2.070(6) and 4 CSR 240-2.116(3).

IT IS ORDERED THAT:

1. The Staff of the Missouri Public Service Commission's Motion for Second Extension of Time to File Stipulation of Facts Not in Dispute is denied.
2. No later than April 2, 2007, the Complainant shall file with the Commission a pleading identifying any material facts that Complainant believes remain in dispute and explaining why it believes the Commission should grant it a hearing in this matter.
3. Should the Staff of the Missouri Public Service Commission and Laclede Gas Company wish to file a joint, nonunanimous stipulation of facts in this matter, they shall seek leave to late-file such a stipulation.
4. This order shall become effective on March 23, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Harold Stearley, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 23rd day of March, 2007.