BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Stanley Lewis,	)	
	)	
Complainant,	)	
	)	
v.	)	**Case No. GC-2007-0267**
	)	
Laclede Gas,	)	
	)	
Respondent.	)	

ORDER DENYING MOTION TO DISMISS AND SETTING PREHEARING CONFERENCE

Issue Date: April 17, 2007 Effective Date: April 17, 2007

Stanley Lewis filed a formal complaint against Laclede Gas Company ("Laclede") on January 16, 2007.[1] Mr. Lewis' complaint alleges that Laclede must be either overcharging him for gas or not giving him "real" meter readings because, based upon the square footage of his home, his gas bill is too high. Mr. Lewis asks that Laclede be ordered to give him some of his money back.

On January 17, the Commission notified Laclede of the complaint and allowed it thirty days in which to answer as provided by Commission Rule 4 CSR 240-2.070(7). The same day, pursuant to 4 CSR 240-2.070(10), the Commission ordered its Staff to commence an investigation of Mr. Lewis' formal complaint and to file a report concerning

[1] Unless otherwise specified, all dates in this order refer to the 2007 calendar year.

the results of its investigation no later than two weeks after Laclede filed its answer to the complaint.

Laclede filed its Answer and Motion to Dismiss Complaint on February 20.[2] The answer avers that Mr. Lewis has owned and received gas service at his current residence, 5739 Hamilton in Jennings, Missouri, since August 2000, and that his account is paid current. Laclede states that its meter is located on the outside of Mr. Lewis' home, that it has received regular and consistent meter readings from this meter, and that it has at all times issued bills to Mr. Lewis based on Commission-approved tariff rates.

Laclede's answer further indicates that according to St. Louis County real estate records, Mr. Lewis lives in a 760 square foot ranch style home with a full basement, built in 1959. While his gas usage has been somewhat higher than average for a home of this size, Laclede explains that square footage is only one of many factors in evaluating usage, including the age, condition and efficiency of the furnace, along with the weatherization quality of the home. Moreover, according to Laclede, over the past three years, Mr. Lewis' gas usage has steadily declined, going from 1,297 CCF in 2004 to 1,239 CCF in 2005, and then down to only 975 CCF in 2006. Laclede also explained that although those figures are not normalized to account for weather, Mr. Lewis' gas bills during this period were likely materially affected by the higher cost per CCF of the gas he used.

On March 2, Mr. Lewis filed a letter with the Commission indicating that as a certified journeyman carpenter with 29 years of experience, he had personally winterized his home at 5739 Hamilton. The letter also stated that when he bought that home in 2000, Laclede checked the gas furnace for proper operation.

[2] The Answer was filed four days (one business day) out of time. However, on February 22, the Commission granted Laclede's motion for leave to file it out-of-time.

Finally, on March 13, after investigating Mr. Lewis' complaint and performing an analysis of the billing statements related to his residence over the past three years, Staff filed its verified report.[3] In particular, Staff concluded:

> Mr. Lewis' annual gas usage over the past three years has trended downward, appearing to be the result of [his] efforts to improve energy efficiency. However, given the higher price of gas and the colder temperatures experienced this year, the actual usage and bills rendered for that usage appear correct based on Staff's investigation and analysis of Mr. Lewis' billing statements. Staff's investigation shows that Laclede has not violated its approved tariff or any Commission rules for the billings rendered to Mr. Lewis. Therefore, Staff recommends that the Complainant's case be dismissed in its entirety.

On March 22, the Commission issued an Order Directing Filing, which ordered Mr. Lewis to file, by no later than April 11, a pleading which addresses the statements contained in Laclede's answer and Staff's report in this matter and sets forth the legal or factual reasons why he agrees or disagrees with those statements. On April 12, Mr. Lewis complied with that order by filing such a pleading,[4] which is sufficient to overcome Laclede's February 20 Motion to Dismiss Complaint since it does state facts upon which, if believed, the Commission could conclude that he is entitled to some form of relief. Accordingly, the motion will be denied.

This matter is now at issue and a prehearing conference is appropriate to ensure its prompt resolution. In part, a prehearing conference is designed to permit the parties to pursue settlement discussions and to identify all remaining procedural or substantive matters of concern prior to the formal disposition of the issues in the case.[5] In addition, a

[3] Staff's report and recommendation were originally due on March 6. However, on March 2, the Commission granted Staff's motion for leave to file them on or before March 13.

[4] Although he did not file a motion for leave to do so, Mr. Lewis filed the pleading one day out of time. The Commission hereby grants such leave *sua sponte*.

[5] *See* Commission Rule 4 CSR 240-2.090(6).

prehearing conference may offer the parties a valuable opportunity to resolve their differences or agree to voluntary mediation of their dispute.

The Commission reminds the parties that this prehearing conference is *not an evidentiary hearing*. Sworn testimony will not be taken and no final decision will result from this prehearing conference.[6] However, the parties are required to be present for the prehearing conference, and a court reporter will be present to make a record of the parties that appear. **Parties must arrive in person or appear by telephone at or before the scheduled starting time of the hearing in order to participate.** Pursuant to Commission Rule 4 CSR 240-2.090(5), "Failure to appear at a prehearing conference without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown."

The Commission further advises the parties that arriving late to a prehearing conference is the equivalent of failing to appear. Parties are expected to appear at scheduled hearings on time, or to advise the Commission of their need to appear late or to timely request a continuance. If a party fails to meet those obligations, the Commission may rule in favor of the opposing party. This is why the Commission issues advance notice of all hearings and conferences and extends various opportunities prior to any scheduled event for the parties to appear by phone or request a continuance.

[6] Under Commission Rule 4 CSR 240-2.090(7), any facts the parties may discuss during the conference, including any settlement offers or discussions, are privileged and cannot be used against any participating party unless the parties agree to disclose them or they are fully supported by other, independent evidence.

IT IS ORDERED THAT:

1. Laclede Gas Company's February 20, 2007 Motion to Dismiss Complaint is denied.

2. The parties shall appear at a prehearing conference to be held on May 1, 2007, beginning at 10:00 a.m. The prehearing conference will be held in Room 305 at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, a building that meets the accessibility standards required by the Americans with Disabilities Act. Any person needing additional accommodations to participate in this prehearing conference should call the Public Service Commission's Hotline at 1-800-392-4211 or dial Relay Missouri at 711 prior to the conference.

3. Any party wishing to appear by telephone shall notify the Regulatory Law Judge by calling 573-751-7485 no later than April 24, 2007.

4. Any party wishing to request a continuance shall file a pleading with the Commission stating why they are unable to attend the scheduled prehearing conference on May 1, 2007, either in person or by phone, and shall provide the Commission with a list of dates when that party is available to appear. Any such pleading shall be filed no later than April 27, 2007, and shall also be served on every other party to this complaint by the party requesting the continuance.

5. A party's failure to appear at the prehearing conference without previously having secured a continuance will constitute grounds for dismissal of the party or the party's complaint unless good cause for the failure to appear is shown.

6. This order shall become effective on April 17, 2007.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

Benjamin H. Lane, Regulatory Law Judge, by delegation of authority under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri, on this 17th day of April, 2007.