

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 14th day
of February, 2008.

Percy Cannon,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-2008-0169</u>
)	
Missouri Gas Energy,)	
)	
Respondent.)	

ORDER DISMISSING COMPLAINT

Issue Date: February 14, 2008

Effective Date: February 24, 2008

On November 19, 2007, Percy Cannon filed a complaint with the Commission against Missouri Gas Energy ("MGE"). Complainant claimed that MGE was erroneously refusing to establish natural gas service for him and his family, and that MGE was inappropriately seeking recovery of debts related to two other residences, which he maintains were not his addresses. Since the complaint was filed, MGE and Mr. Cannon reached an agreement and natural gas service is being provided to the Cannons.

On December 21, 2007, MGE filed a Notice of Satisfaction, whereby it alleged that the remainder of Mr. Cannon's complaint is now moot. MGE specifically states that it is no longer seeking recovery of debts related to two prior addresses where Mr. Cannon is alleged to have resided. The dispute over these debts comprised the remainder of Mr. Cannon's complaint. Consequently, the Commission directed Mr. Cannon to respond to MGE's Notice of Satisfaction and inform the Commission if his complaint was fully resolved or if there were other remaining matters in dispute. Mr. Cannon was directed to

respond to MGE's Notice no later than January 10, 2008. Mr. Cannon did not respond as directed by the Commission.

On January 16, 2008, the Regulatory Law Judge ("RLJ") assigned to this matter initiated an ex parte contact with Mr. Cannon by telephonic communication for the purpose of ascertaining the procedural posture of Mr. Cannon's response.¹ Mr. Cannon was instructed that he could not speak to the RLJ about any substantive matter concerning his case. The RLJ asked Mr. Cannon if and when he planned to file a response to the Commission's order, and Mr. Cannon indicated that he did not understand the status of MGE's Notice of Satisfaction. Consequently, the RLJ set a prehearing conference so that all of the parties to this action could be brought together with the expectation of resolving this matter or establishing a procedural schedule to culminate with an evidentiary hearing. Complainant failed to appear at the prehearing conference.

Commission Rule 4 CSR 240-2.090(5) provides that failure to appear at a prehearing conference without previously having secured a continuance shall constitute grounds for dismissal of a party unless good cause for the failure to appear is shown. Commission Rule 4 CSR 240-2.116(3) provides that any party may be dismissed from a case for failure to comply with a Commission order.

¹ Not all *ex parte* contacts are prohibited or inappropriate. Indeed, "[t]he mere opportunity to receive information outside the courtroom which has the potential to affect considerations in a case is no basis to require a judge [or regulatory law judge] to disqualify himself." *VonSande v. VonSande*, 858 S.W.2d 233, 237 (Mo. App. 1993); *J & H Gibbar Const. Co., Inc. v. Adams*, 750 S.W.2d 580, 583 (Mo. App. 1988); *Berry v. Berry*, 654 S.W.2d 155, 159 (Mo. App. 1983). "If the record discloses an opportunity to obtain information that would disqualify the judge, it may also disclose facts that negate any reasonable question concerning the trial judge's impartiality." *Id.* **Communications relating only to procedural matters, absent any discussion of the merits of a case, especially in light of no suggestion to the contrary, serve to dispel any further question of impropriety.** *Id.* Additionally, this contact does not violate Commission Rule 4 CSR 240-4.020, because the communication was not inappropriate and it occurred prior to setting an on-the-record proceeding. See 4 CSR 240-4.020(6) and (7). Commission Rule 4 CSR 240-4.020(7) defines an on-the-record proceeding as a proceeding where a hearing is set and to be decided solely upon the record made in a commission hearing. Consequently, even the prehearing conference that was set in this order does not constitute an on-the-record proceeding.

MGE has moved for the Commission to dismiss this case for having mooted Complainant's claims. At the prehearing conference the Commission's Staff voiced that it had no objection to dismissing this matter because there are no longer any contested issues pending before the Commission.

Complainant has failed to comply with the Commission's orders to respond to MGE's Notice of Satisfaction and to appear at the prehearing conference – both failures constituting independent grounds for dismissal. Moreover, MGE's Notice of Satisfaction, demonstrates that all of Complainant's contested issues have been resolved. Mr. Cannon was given ample opportunity to contest MGE's Notice of Satisfaction, and he has made no such attempt. Mr. Cannon's complaint has been rendered moot. Consequently, the Commission shall dismiss Mr. Cannon's November 19, 2007 complaint.

IT IS ORDERED THAT:

1. The complaint action filed by Percy Cannon on November 19, 2007, against Missouri Gas Energy is dismissed as having been satisfied; the grounds for his complaint being moot.
2. This order shall become effective on February 24, 2008.
3. This case shall be closed on February 25, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton, Appling,
And Jarrett, CC., concur.

Stearley, Regulatory Law Judge