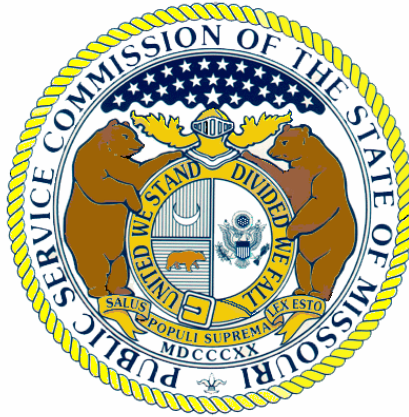


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



Teresita H. Fujii,

Complainant,

v.

Laclede Gas Company,

Respondent.

**Case No. GC-2008-0053**

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**REPORT AND ORDER**

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**Issue Date: March 26, 2008**

**Effective Date: April 5, 2008**

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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Complainant,	)	
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v.	)	<b><u>Case No. GC-2008-0053</u></b>
	)	
Laclede Gas Company,	)	
	)	
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## **Table of Contents**

<b>Appearances.....</b>	<b>1</b>
<b>Findings of Fact.....</b>	<b>2</b>
<b>Procedural History.....</b>	<b>2</b>
<b>Facts Regarding Ms. Fujii’s Allegations .....</b>	<b>3</b>
<b>Conclusions of Law .....</b>	<b>8</b>
<b>Decision .....</b>	<b>9</b>
<b>Ordered Paragraphs.....</b>	<b>11</b>

## **Appearances**

**Teresita H. Fujii**, 6363 Waterman Ave., University City, Missouri 63130, Pro Se.

**Blane Baker**, Legal Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

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

**REGULATORY LAW JUDGE:** Morris L. Woodruff, Deputy Chief Regulatory Law Judge

## **REPORT AND ORDER**

Syllabus: The Commission finds that the claimant has failed to prove her complaint against Laclede Gas Company and denies her request for relief.

### **FINDINGS OF FACT**

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

### **Procedural History**

On August 27, 2007, Teresita H. Fujii filed a complaint against Laclede Gas Company. Ms. Fujii's complaint alleges that between August 2006 and March 2007, Laclede over billed her for natural gas service at her home in University City, Missouri. Laclede filed its answer to that complaint on October 1.

The Commission conducted an evidentiary hearing regarding the complaint on January 14, 2008. Ms. Fujii, Laclede, and the Commission's Staff presented testimony at the hearing. The Office of the Public Counsel did not present testimony or otherwise participate in the hearing. Ms. Fujii, Laclede, and Staff filed post-hearing briefs on March 4.

### **Facts Regarding Ms. Fujii's Allegations**

Ms Fujii purchased the house located at 6363 Waterman Avenue in University City in August 2006.<sup>1</sup> The house was built in 1913,<sup>2</sup> is three stories high,<sup>3</sup> with four bedrooms, three and one half baths,<sup>4</sup> and a total of ten rooms.<sup>5</sup> It contains 3600 square feet of floor space.<sup>6</sup>

The house was in livable condition when Ms. Fujii purchased it, but she believed it needed updating and improvements before she was ready to move in.<sup>7</sup> Ms. Fujii, who is an architect, served as her own general contractor on the renovation project and hired the various subcontractors engaged in working on the house. She was at the property every day of the week, sometimes on weekends, and oversaw all the work of the subcontractors.<sup>8</sup> No one lived in the house during the renovations and the house contained no furniture during that time.<sup>9</sup> Ms Fujii finally began living in the house on January 6, 2008.<sup>10</sup>

The heating system for the house includes two components. In September 2006, after she purchased the house, Ms. Fujii installed electric heat pumps that operated to heat the house until November.<sup>11</sup> As the weather got colder, Ms. Fujii turned on the second

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<sup>1</sup> Transcript, Page 19, Lines 7-9.

<sup>2</sup> Transcript, Page 29, Lines 8-11.

<sup>3</sup> Transcript, Page 30, Lines 2-4.

<sup>4</sup> Transcript, Page 29, Lines 21-23.

<sup>5</sup> Transcript, Pages 29-30, Lines 24-25, 1.

<sup>6</sup> Transcript, Page 29, Lines 16-18.

<sup>7</sup> Transcript, Page 46, Lines 18-23.

<sup>8</sup> Transcript, Page 19, Lines 21-25.

<sup>9</sup> Transcript, Page 27, Lines 21-25.

<sup>10</sup> Transcript, Page 19, Lines 19-20.

<sup>11</sup> Transcript, Page 20, Lines 1-2.

source of heat, a natural gas fired boiler. The boiler, which is 40-50 years old,<sup>12</sup> heats water that is circulated through radiators to heat the house.<sup>13</sup> The boiler operates at approximately 60-70 percent efficiency.<sup>14</sup>

A thermostat located on the first floor of the house controls the boiler, heat pumps, and first-floor air conditioning unit. A second thermostat controls the air conditioning unit for the second and third floor.<sup>15</sup> The first floor thermostat includes three settings: the air conditioning setting, of course, controls the air conditioning; the heat setting controls the electric heat pump; and the emergency setting controls the natural gas boiler.<sup>16</sup> In order to change the temperature in the house in the winter, the thermostat must be set at either heat, to use the heat pumps, or emergency, to use the boiler. A desired temperature must then be programmed into the thermostat.<sup>17</sup> The electric heat pumps are not used when temperatures are in the thirties or below, so for most of the winter, the gas boiler was in use.<sup>18</sup>

In the winter of 2006-2007, while the house was being renovated, Ms Fujii set the thermostat that controlled the boiler at 58 degrees, except for a two-week period starting in December when the thermostat was set at 68 degrees to raise the temperature in the house so that fresh plaster could dry and cure properly.<sup>19</sup> Ms. Fujii did not authorize the

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<sup>12</sup> Transcript, Page 63, Lines 6-7.

<sup>13</sup> Transcript, Page 61, Lines 7-11.

<sup>14</sup> Transcript, Page 63, Lines 8-12.

<sup>15</sup> Transcript, Page 78, Lines 8-25.

<sup>16</sup> Transcript, Page 79, Lines 10-16.

<sup>17</sup> Transcript, Page 81, Lines 10-13.

<sup>18</sup> Transcript, Page 79, lines 19-21.

<sup>19</sup> Transcript, Page 20, Lines 3-12.

sub-contractors working in the house to change the settings on the thermostats.<sup>20</sup> Ms. Fujii testified that the workers probably would not know how to adjust the thermostat to raise the temperature for the boiler and furthermore that she checked the thermostat every day and knew the temperature at which it was set.<sup>21</sup>

When she examined her gas bill from November 17, 2006, Ms. Fujii believed the bill was extremely high for a house that was vacant.<sup>22</sup> Subsequently, she called Laclede to complain about her high bill. After an initial bad experience with a rude customer service representative at Laclede,<sup>23</sup> Ms. Fujii was able to arrange to have Laclede conduct a high-bill inspection of her home.

The high bill inspection took place on January 3, 2007. On that date, an inspector for Laclede walked through the house, accompanied by Ms. Fujii.<sup>24</sup> The inspector's report about that inspection is in evidence as Exhibit 3. The inspector reported that the temperature inside the house was 68 degrees and that the thermostat was set for 68 degrees. The inspection report does not indicate any conditions in the house that would cause a greater than expected use of natural gas.<sup>25</sup> The inspector did, however, report that the gas meter in the home was undersized and should be upgraded to a larger meter.<sup>26</sup>

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<sup>20</sup> Transcript, Page 21, Lines 1-2.

<sup>21</sup> Transcript, Page 21, Lines 1-13.

<sup>22</sup> Transcript, Page 21, Lines 14-16.

<sup>23</sup> Transcript, Page 68, Lines 4-16.

<sup>24</sup> Transcript, Page 31, Lines 1-13.

<sup>25</sup> Transcript, Page 138, Lines 10-14.

<sup>26</sup> Exhibit 3.

Ms Fujii requested that the existing meter be checked for accuracy and Laclede scheduled an appointment for January 23 to remove and replace the meter.<sup>27</sup> Laclede had to cancel the January 23 appointment because it did not have a replacement meter available.<sup>28</sup> Several subsequent appointments were also cancelled for various reasons by either Laclede or Ms. Fujii. Laclede finally removed and replaced the meter on March 14.<sup>29</sup>

Laclede tested the meter that it removed from Ms. Fujii's house for accuracy on April 26.<sup>30</sup> A Laclede employee did the testing at Laclede's meter shop in St. Louis<sup>31</sup> Laclede notified Ms. Fujii of the testing date and time by mail and she observed the test in person.<sup>32</sup>

Laclede tested the meter using a device called a bell prover, which runs a known quantity of air through the meter. The resulting reading on the meter is then compared to the known quantity of air sent through the meter to determine the percentage of accuracy of the meter.<sup>33</sup> Meters are tested at two speeds, 20 percent of capacity and again at 100 percent of capacity.<sup>34</sup> A Commission regulation requires gas meters to be accurate within plus or minus two percent.<sup>35</sup> A perfect meter would be 100 percent accurate, so a meter must test between 98 and 102 percent to have acceptable accuracy.<sup>36</sup>

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<sup>27</sup> Transcript, Page 22, Lines 13-14.

<sup>28</sup> Transcript, Page 22, Lines 14-16.

<sup>29</sup> Transcript, Page 23, Lines 22-23.

<sup>30</sup> Transcript, Page 96, Lines 24-25.

<sup>31</sup> Transcript, Page 95, Lines 3-5.

<sup>32</sup> Transcript, Page 97, Lines 6-25.

<sup>33</sup> Transcript, Page 98, Lines 4-11.

<sup>34</sup> Transcript, Page 100, Lines 7-14.

<sup>35</sup> Commission Rule 4 CSR 240-10.030(18).

<sup>36</sup> Transcript, Pages 98-99, Lines 22-25, 1.

When tested, the meter that was removed from Ms. Fujii's home registered at 99.5 percent when the known quantity of air that was moved through it at 20 percent of the meter's capacity. When tested at 100 percent of the meter's capacity, the meter registered at 99.1 percent.<sup>37</sup> Both readings are well within the tolerance allowed by the Commission's regulation.

Based on the results of the tests performed and reported by Laclede, the Commission concludes that the meter removed from Ms. Fujii's home was accurate at the time it was tested. A gas meter is a positive displacement-measuring device, meaning it contains measuring chambers that are filled, emptied, and counted by the meter.<sup>38</sup> The meter either accurately registers the gas flowing through it or it does not. If a meter is inaccurate, it will remain inaccurate unless repaired. As a mechanical device, it cannot repair itself. Therefore, a meter cannot operate erratically.<sup>39</sup> Since the meter was found to be accurate when tested after it was removed from Ms. Fujii's home, it must also have been accurate when it was in use at her home.

Laclede presented evidence through the testimony of its Manager of Utilization Engineering and Market Development, Ted Reinhart,<sup>40</sup> comparing gas usage in Ms. Fujii's home to gas usage at similar homes in her neighborhood. That evidence demonstrated that the amount of gas used in the Fujii home during the winter of 2006-2007 was consistent with usage in other homes in the area.<sup>41</sup> Reinhart also demonstrated that the gas usage reported by the meter closely tracked the outside temperature, further

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<sup>37</sup> Transcript, Page 100, Lines 5-24, and Exhibit 2.

<sup>38</sup> Transcript, Pages 114-115, Lines 23-25, 1-13.

<sup>39</sup> Transcript, Pages 102-103, Lines 20-25, 1-8.

<sup>40</sup> Transcript, Page 126, Lines 6-9.



demonstrating the accuracy of the meter.<sup>42</sup> Finally, Reinhart demonstrated that gas usage at the Fujii home tended to be higher on weekdays rather than on the weekends.<sup>43</sup> That usage pattern would be unusual for an occupied home, but would be expected for a home undergoing renovation in which workers were in the home on workdays.<sup>44</sup>

Reinhart also testified that in his experience it is possible for a vacant home with the thermostat turned down to use more gas during the winter than an occupied home with the thermostat turned up.<sup>45</sup> That counter-intuitive result is possible because a vacant home would not contain operating refrigerators, computers, lights, and human bodies, all of which generate heat in an occupied house.<sup>46</sup>

For the disputed period, Laclede billed Ms. Fujii approximately \$2,060. She has paid more than half of that amount and the remaining balance on her account as of October 18, 2007, was \$923.62.<sup>47</sup> To compensate her for the alleged overcharges, she asks the Commission to order Laclede to forego collection of the outstanding balance on her account.

### **CONCLUSIONS OF LAW**

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

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<sup>41</sup> Transcript, Page 130, Lines 2-4, and Exhibit 5.

<sup>42</sup> Transcript, Pages 145-146, Lines 21-25, 1-13, and Exhibit 4.

<sup>43</sup> Transcript, Pages 146-147, Lines 18-25, 1-21, and Exhibit 4.

<sup>44</sup> Transcript, Pages 147-148, lines 23-25, 1-22.

<sup>45</sup> Transcript, Pages 178-179, Lines 22-25, 1-9.

<sup>46</sup> Transcript, Page 179, Lines 12-15.

<sup>47</sup> Exhibit 1.

1. Laclede Gas Company is a “Gas Corporation” and “Public Utility,” as those terms are defined at Subsections 386.020 (18) and (42), RSMo Supp. 2007. As such, it is subject to regulation by this Commission.

2. Section 393.130.1, RSMo 2000, imposes an obligation on every gas corporation to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.” In addition, “[a]ll charges made or demanded by any such gas corporation ... for gas ... service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission.”

3. Section 386.390, RSMo 2000 allows a person, such as Ms. Fujii, to file a complaint before the Commission against a public utility, such as Laclede.

4. As the party bringing a complaint and asserting the affirmative of an issue, Ms. Fujii has the burden of proving the allegations in her complaint.<sup>48</sup>

5. Commission Rule 4 CSR 240-10.030(18) requires gas meters to be accurate within plus or minus two percent.

6 Commission Rule 4 CSR 240-10.030(20) requires a gas utility to test the accuracy of any gas service meter free of charge at the request of its customer. The utility is required to notify the customer of the time and place the meter will be tested so that the customer can witness the test if they so desire.

### **DECISION**

Ms. Fujii’s complaint alleges that from August 2006, until March 14, 2007, the bills she received from Laclede for gas service at her home were unreasonably high. Ms. Fujii

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<sup>48</sup> *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm’n*, 116 S.W.3d 680 ( Mo. App. W.D.

attributes the high bills to what she contends was a malfunctioning gas meter that she believes gave false readings about the amount of gas used at her home while it was vacant and being renovated. Ms. Fujii's support for her contention is simply her assertion that the bills were excessive for a vacant house in which the thermostat had been set back to 58 degrees.

To counter that assertion, Laclede presented the results of a test it conducted demonstrating that the meter removed from Ms. Fujii's home accurately registered the amount of gas used in the home. Ms. Fujii challenged the fairness of a test conducted and reported solely by Laclede. However, that test was conducted in a manner consistent with the Commission's regulation. Ms. Fujii did not present any evidence to demonstrate that Laclede's test of the meter was performed incorrectly or inaccurately.

Ironically, Ms. Fujii's most compelling evidence was presented by Laclede's witness, Ted Reinhart. The charts he produced showed that the amount of gas used in Ms. Fujii's home while unoccupied in the winter of 2006-2007 was comparable to the amount of gas used in her neighbor's homes while they were occupied. If Ms. Fujii's assertion that the temperature in the house was kept at 58 degrees except for two weeks during that winter, then it would seem that her gas usage should have been lower than, not comparable to, the amount of gas used to heat occupied homes that presumably were kept warmer than 58 degrees by their occupants.

However, all the Commission can really know is that Ms. Fujii set the thermostat at 58 degrees and forbade the workers in her home to change that setting, except for a two-week period when she turned it up to 68 degrees. Unfortunately, neither Ms. Fujii nor Laclede can actually say with any certainty what happened in the house during

renovations. It is possible that the workers left windows or doors open while they were in the house. Perhaps they turned the heat up without Ms. Fujii's knowledge. Perhaps, as Laclede's witness suggested, the lack of functioning appliances, computers, and other non-gas powered heat sources in the unoccupied home offset the gas saved by lowering the thermostat setting. All of this speculation cannot offset the clear evidence demonstrating that the gas meter removed from Ms. Fujii's home was tested in an appropriate and approved manner and found to be accurate.

Much of Ms. Fujii's testimony concerned problems she had with the customer service unit at Laclede. She testified that one customer service representative was rude to her when she first called to complain about her high bill. She also testified that Laclede's replacement of her meter was delayed for several weeks because the Laclede workers did not have the proper equipment. While the Commission is concerned to hear that a utility has treated a customer rudely, that allegation is not part of Ms. Fujii's complaint and does not prove that she was overcharged for natural gas service. Similarly, any delay in changing her meter resulting from Laclede's lack of preparation did not harm Ms. Fujii, given the Commission's conclusion that her meter was accurate during that delay. The Commission, however, directs Laclede to examine its customer service practices to ensure that all customers are treated with respect and dignity when they have need to contact the company.

The Commission notes that Laclede has promised it will not collect late-fees from Ms. Fujii's account for the period her bill was unpaid while this complaint was pending.<sup>49</sup> The Commission expects Laclede to honor that promise.

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<sup>49</sup> Transcript, Page 72, Lines 13-22.

Ms. Fujii's complaint alleges that Laclede overcharged her for the gas used in her home. She had the burden of proving her allegation but she was unable to present sufficient evidence to meet that burden. Therefore, the Commission must deny her request for relief and dismiss her complaint.

**IT IS ORDERED THAT:**

1. Teresita H. Fujii's request for relief against Laclede Gas Company is denied and her complaint is dismissed.
2. This Report and Order shall become effective on April 5, 2008.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton, Appling,  
and Jarrett, CC., concur as amended  
and certify compliance with the provisions  
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,  
on this 26<sup>th</sup> day of March, 2008.