

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



Greg Stiens,)
Complainant,)
v.)
The Empire District Gas Company d/b/a)
Liberty,)
Respondent.)

File No. GC-2021-0395

REPORT AND ORDER

Issue Date: April 13, 2022

Effective Date: May 3, 2022

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OF THE STATE OF MISSOURI**

| | | |
|---------------------------------------|---|-------------------------------------|
| Greg Stiens, |) | |
| Complainant, |) | |
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| v. |) | <u>File No. GC-2021-0395</u> |
| |) | |
| The Empire District Gas Company d/b/a |) | |
| Liberty, |) | |
| Respondent. |) | |

REPORT AND ORDER

I. Procedural History

On April 26, 2021, Greg Stiens filed a complaint with the Commission against The Empire District Gas Company d/b/a Liberty. Mr. Stiens alleges that Liberty sent him a shut-off notice for failing to pay his gas bill after he had already paid it. Mr. Stiens' complaint alleges that this is a violation of Commission Rule 20 CSR 4240-13.025, concerning billing adjustments. Mr. Stiens alleges that Liberty overcharged him for his March 19, 2021, gas bill. Mr. Stiens has also questioned whether Liberty's rates are just and reasonable. Mr. Stiens has requested \$100.00 for receiving the shut-off notice and a \$30.00 credit for the overcharge. Because the amount in dispute is less than \$3,000, Mr. Stiens' complaint is being addressed under the small formal complaint procedures contained in Commission Rule 20 CSR 4240-2.070(15).

The Commission issued notice of the complaint, directed Liberty to file an answer, and directed the Staff of the Commission (Staff) to file a report on the complaint. On June 10, 2021, Liberty filed an answer to Mr. Stiens' complaint along with a motion to dismiss.

Staff filed its report and memorandum detailing its investigation and analysis on July 15, 2021. Staff concluded that Liberty did not violate any applicable statutes, Commission rules, or Commission-approved Company tariffs related to this Complaint. However, Staff recommended that Liberty make modifications to its shut-off notice to prevent future confusion by its customers. Staff requested that the Commission issue an order finding no violations by Liberty, but directing Liberty to modify its shut-off notices.

The Commission issued a procedural schedule scheduling a WebEx evidentiary hearing for October 14, 2021. Pursuant to that schedule, Staff filed a joint list of issues and stipulated facts on behalf of the parties that set forth a single issue for the Commission's determination: Did Liberty violate any applicable statutes, Commission rules, or Commission approved tariffs related to this Complaint?

At the October 14, 2021, WebEx evidentiary hearing Mr. Stiens asked if he could present his case in-person and not via WebEx. The presiding officer granted Mr. Stiens' request and rescheduled the hearing to December 16, 2021, at the Maryville Missouri City Hall, City Council Chambers.¹

At the evidentiary hearing, the Commission heard the testimony of four witnesses and received four exhibits onto the record. Angie Simkin, Liberty Central Region customer service manager; and John Harrison, Director of Customer Experience; testified for Liberty; and Scott Glasgow, Senior Research Data Analyst for the Customer Experience Department; testified for Staff. Mr. Stiens testified on his own behalf.

The Commission initially ordered post-hearing briefs, but upon reconsideration, issued an order making post-hearing briefs optional. Mr. Stiens submitted a post-hearing

¹ Commission Rule 20 CSR 4240-2.070(15)(E), requires that, unless otherwise agreed, any hearing shall be held in the county where service was rendered, or within 30 miles of where service was rendered.

brief. No other parties submitted briefs. On January 21, 2022, the case was deemed submitted for the Commission's determination pursuant to Commission Rule 20 CSR 4240-2.150(1), which provides that "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument."

Liberty's Motion to Dismiss

Liberty's motion to dismiss requested that the Commission dismiss Mr. Stiens' complaint for failure to state a claim to which the Commission could grant relief. Liberty's motion states that Mr. Stiens' complaint does not point to any statute, tariff, Commission rule or order that was allegedly violated by Liberty under the facts presented by Mr. Stiens. The Office of the Public Counsel (OPC) filed a pleading opposing Liberty's motion to dismiss, pointing out that Mr. Stiens did, in fact, cite to the Commission's billing rule. Additionally, OPC says that even if a complainant does not cite to a particular law or tariff, residential customers should still have their cases heard when a complaint explains in practical terms the basis for the complaint. OPC's Motion asserts that complainants are entitled to file complaints without an attorney's understanding of the applicable laws, orders, or tariffs. The Commission agrees with OPC. Mr. Stiens has described a sufficient basis for his complaint and the motion to dismiss will be overruled.

Notice of Agreement

On August 29, 2021, Liberty filed a Notice of Agreement. The Notice of Agreement indicated that Liberty agreed with Staff's recommendation that Liberty make modifications to its shut-off notice. The Notice of Agreement stated that Liberty was in the process of implementing Staff's recommendation. Liberty's shut-off notice language will provide "Disregard if this past due amount has already been paid" instead of "Disregard if payment

made after [date].” Liberty’s motion also requested that the Commission issue an order dismissing Mr. Stiens’ complaint. The Commission directed Mr. Stiens to respond to Liberty’s Notice of Agreement, and Mr. Stiens responded that Liberty’s Notice of Agreement did not resolve his issues with Liberty.

Recommended Report and Order

The Presiding Officer issued a Recommended Report and Order on March 23, 2022. Pursuant to 20 CSR 4240-2.070(15)(H), the parties were given ten days to file comments supporting or opposing the recommended order. Staff filed a recommendation to correct two typographical errors. Mr. Stiens filed an out-of-time *Comments, Facts, Opposition to Commission’s Order, Findings and Suggestions* on April 8, 2022. Mr. Stiens disagrees with the Commission’s interpretation of the evidence and the Commission’s decision. Mr. Stiens provided no additional argument sufficient to convince the Commission it incorrectly decided this complaint. Accordingly, no changes were made to this order as a result of Mr. Stiens filing.

Confidential Information

Customer specific information is confidential under Commission Rule 20 CSR 4240-2.135(2); however, the Commission may waive this provision under Commission Rule 20 CSR 4240-2.135(19) for good cause. Good cause exists to waive confidentiality as to Mr. Stiens’ billing information and gas usage because the Commission would be unable to write findings of fact or a decision that did not use some of Mr. Stiens’ customer specific information, and because Mr. Stiens waived the confidentiality of relevant information at the evidentiary hearing. The confidential information disclosed in this Report and Order is the minimal amount necessary to support the Commission’s decision.

II. Findings of Fact and Conclusions of Law

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

On October 1, 2021, Staff filed a list of stipulated facts on behalf of the parties. The Commission finds the undisputed facts in the stipulation to be conclusively established. Those undisputed facts are incorporated where necessary.

The Commission takes official notice of Mr. Stiens' complaint filed April 26, 2021.

Findings of Fact

1. Mr. Steins is a customer of The Empire District Gas Company d/b/a Liberty. Mr. Steins resides within Liberty's service area.²
2. Payment for Liberty gas utility bills is due 21 days after they are issued.³ Mr. Steins' March 19, 2021, billing statement was due April 9, 2021.⁴
3. Mr. Stiens mailed a check to Liberty as payment for his March billing statement on or around April 4, 2021.⁵
4. Mr. Stiens acknowledged that the post office has had problems delivering mail.⁶

² Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

³ Transcript, p. 79.

⁴ Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

⁵ Exhibit 2, Check number 716, and transcript, p. 49.

⁶ Transcript, p. 50.

5. Liberty's payment processing center is J. P. Morgan and is located in Dallas, Texas. Liberty employs a third-party payment processor to process mailed payments because they are more accurate and expeditious than processing payments at Liberty's office.⁷

6. Liberty allows a two-day grace period from a bill's due date before issuing a disconnect notice. A disconnect notice is automatically generated if payment is not posted to a customer's account.⁸ Liberty generated a shut-off notice on April 12, 2021.⁹

7. Liberty received Mr. Stiens' payment in their lockbox on April 12, 2021.¹⁰

8. Liberty processed Mr. Steins' payment for his March 19, 2021, billing statement on April 13, 2021.¹¹

9. Liberty mailed Mr. Stiens a shut-off notice on April 13, 2021.¹² That notice stated that Mr. Stiens' gas service could be shut off on or after April 23, 2021.¹³

10. Mr. Stiens felt upset and insulted at having received a shut-off notice.¹⁴

11. Mr. Steins credibly testified that he has never received a shut-off notice prior to the one sent April 13, 2021.¹⁵

12. Mr. Stiens contacted Liberty's customer service center on April 19, 2021.¹⁶

13. Mr. Stiens requested monetary compensation for having received the shut-off notice.¹⁷

⁷ Transcript, p. 81.

⁸ Transcript, p. 79.

⁹ Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

¹⁰ Transcript, p. 86-87.

¹¹ Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

¹² Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

¹³ Exhibit 1, Shut-off Notice

¹⁴ Transcript, p. 53, 59, and Exhibit 100, Recorded Call.

¹⁵ Transcript, p. 54.

¹⁶ Transcript, p. 76.

¹⁷ Transcript, p. 59, and Exhibit 100, Recorded Call.

14. Mr. Stiens talked to three Liberty customer service employees, and was transferred to a different employee twice at his request.¹⁸

15. All three customer service employees were polite and professional when conversing with Mr. Stiens.¹⁹

16. Customer service explained to Mr. Stiens that he was not charged a late fee, and that the late received payment would not be reported to a credit agency.²⁰

17. Customer service explained to Mr. Stiens that he could disregard the shut-off notice as he had already made payment and Liberty had processed that payment.²¹

18. Mr. Steins' gas service was never shut off.²²

19. Mr. Steins was not charged a late fee or other fee related to the incident.²³

20. Mr. Steins was not reported to a credit agency in relation to the incident.²⁴

21. Mr. Steins' March 19, 2021, gas bill was \$97.36, which was for gas usage of 146 cubic feet in comparison to 110 cubic feet in the same time period in the prior year.²⁵

22. Staff compared Mr. Stiens' March 2020 gas bill to his March 2021 gas bill. Temperatures for March 2021 were 25.3 percent colder than March 2020. Mr. Stiens' gas usage increased 32.7 percent, but the total bill amount only increased 20.8 percent to \$97.36.²⁶

¹⁸ Transcript, p. 77, and Exhibit 100, Recorded Call.

¹⁹ Transcript, p. 77, and Exhibit 100, Recorded Call.

²⁰ Transcript, p. 61-62.

²¹ Transcript, p. 94, and Exhibit 100, Recorded Call.

²² Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

²³ Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

²⁴ Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

²⁵ Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021, and Exhibit 200, Staff Report and Memorandum.

²⁶ Exhibit 200, Staff Report and Memorandum.

23. There is no evidence that Liberty overbilled Mr. Stiens for March 2021 gas service.²⁷

24. Staff did not find any violations by Liberty of any applicable statutes, Commission rules, or Commission-approved tariffs related to this Complaint.²⁸

25. Staff recommended in its Report that Liberty modify the language it uses in its shut-off notices, which Liberty agreed to modify.²⁹

26. Mr. Stiens questions whether Liberty's rates are just and reasonable.³⁰

Conclusions of Law

A. Liberty is a Missouri corporation and a "gas corporation" and "public utility" as defined by Section 386.020, RSMo, and is authorized to provide gas service to portions of Missouri.

B. Section 386.390.1, RSMo, states that a person may file a complaint against a utility, regulated by this Commission, setting forth violations of any law, rule or order of the Commission. Therefore, the Commission has jurisdiction over this complaint.

C. Section 386.390.1 RSMo, provides that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or

²⁷ Exhibit 200, Staff Report and Memorandum.

²⁸ Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

²⁹ Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

³⁰ Transcript, p. 39, and Complainant's Brief, January 18, 2022, p. 4.

purchasers, or prospective consumers or purchasers, of such gas service.

D. Commission Rule 20 CSR 4240-13.050(1) provides that service may be discontinued for nonpayment of an undisputed delinquent charge.³¹

E. Commission Rule 20 CSR 4240-13.050(5) states that, “An electric, gas, or water utility shall not discontinue residential service pursuant to section (1) unless written notice by first class mail is sent to the customer at least ten (10) days prior to the date of the proposed discontinuance.”³²

F. Commission Rule 20 CSR 4240-13.025 states that, “This rule establishes the requirements for making billing adjustments in the event of an overcharge or an undercharge.”³³

G. Complainant bears the burden of proof to show by a preponderance of evidence that Liberty has violated a law subject to the Commission’s authority, a Commission rule, or an order of the Commission.³⁴

H. The Commission has no authority to award Mr. Stiens a monetary judgment.³⁵

I. Mr. Stiens does not satisfy the statutory requirements to challenge the just and reasonableness of Liberty’s rates in this proceeding.³⁶

³¹ Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

³² Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

³³ Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.

³⁴ *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm’n*, 116 S.W.3d 680, 693 (Mo. App. 2003). Stating that in cases “complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, . . . the burden of proof at hearing rests with the complainant.”

³⁵ *State ex rel. GS Techs. Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003).

³⁶ Section 386.390.1 RSMo.

III. Decision

Mr. Stiens alleges that Liberty sent him a disconnect notice for failing to pay his gas bill after he had already paid it in violation of Commission Rule 20 CSR 4240-13.025, Billing Adjustments. Mr. Stiens' complaint states that Liberty knew (or should have known) this was an error. He states that Liberty failed to collect all information before they sent out a shutoff notice, and that they allowed only 14 days from the bill's due date before shutting off service.

Mr. Stiens has also questioned whether Liberty's rates are just and reasonable. The Commission will not address the justness and reasonableness of Liberty's rates in this Report and Order because Mr. Stiens does not satisfy the statutory requirements to make that allegation in this proceeding.

Commission Rule 20 CSR 4240-13.025 requires utilities to make billing adjustments for billing errors. Mr. Stiens alleged that he thought his bill was \$30 higher than it should be, but presented no evidence that he was overbilled for service. Mr. Stiens' gas usage for March 2021 was 32.7 percent higher than March 2020, but his bill only increased 20.8 percent. The Commission finds no evidence that Mr. Stiens was overbilled for his March 2021 gas service. Therefore, no billing error has occurred that would require a billing adjustment.

Mr. Stiens' bill due date for service provided in March was April 9, 2021. The shut-off notice was mailed on April 13, 2021, and stated that Mr. Stiens' gas service could be shut off on or after April 23, 2021. Mr. Stiens' complaint correctly states that Liberty allowed only 14 days from the bills due date until his service would be shut off. However, Mr. Stiens' complaint incorrectly states that this is less than the time allowed by the Commission. The Commission's Rule requires that a utility cannot discontinue unless

written notice by first class mail is sent to the customer at least ten days prior to shut off of service. Liberty provided notice ten days prior to an alleged shut off date. There is no statute, Commission rule, or Liberty tariff provision that requires Liberty to wait to send a shut-off notice within a certain number of days after a bill's due date. Liberty could have lawfully sent a shut-off notice any time after April 9, 2021. Liberty's company policy is to allow a two day grace period after a bill's due date before sending a shut-off notice.

Mr. Stiens is upset because he received a shut-off notice after having timely mailed payment for his March utility bill. He has also acknowledged that the post office has had difficulties getting mail delivered. Mr. Stiens mailed payment for his March bill on April 4, 2021, and Liberty processed it on April 13, 2021. Neither Mr. Stiens nor Liberty are responsible for any delay caused by the postal service. Mr. Stiens' complaint attempts to hold Liberty responsible for an apparent postal delay. It is understandable that Mr. Stiens is upset at having received a shut-off notice, but the Commission finds no credence in his argument that his reputation has been tarnished "forever."³⁷ Mr. Stiens took appropriate action by contacting Liberty customer service when he received the shut-off notice. Liberty customer service repeatedly assured Mr. Stiens that he could disregard any shut-off notice and that Liberty received payment. Liberty customer service also assured Mr. Stiens that his receipt of a shut-off notice would not be reported to any credit agency. At all times Liberty customer service was polite and professional with Mr. Stiens. Liberty transferred Mr. Stiens to a higher level customer service representative two times at his request. Mr. Stiens repeatedly asked each customer service representative to be financially reimbursed for the insult of having received a shut-off

³⁷ Complainant's Brief, January 18, 2022, p.7.

notice. Liberty was under no obligation to provide Mr. Stiens with a billing credit because no billing error had occurred.

The only issue before the Commission in this complaint is whether Liberty violated any applicable statutes, Commission rules, or Commission approved tariffs related to this Complaint. Mr. Stiens has failed to produce evidence sufficient to satisfy his burden to demonstrate that Liberty has violated any statute, rule, or tariff provision. Therefore, the Commission will deny his complaint. Any party wishing to request a rehearing or reconsideration shall file applications for the requested relief prior to the effective date of this Report and Order.

THE COMMISSION ORDERS THAT:

1. Mr. Stiens' complaint is denied.
2. Liberty's motion to dismiss is overruled.
3. This Report and Order shall become effective on May 3, 2022.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Clark, Senior Regulatory Law Judge


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 13th day of April, 2022.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

April 13, 2022

File/Case No. GC-2021-0395

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@opc.mo.gov

Greg Stiens

Greg Stiens
717 West Thompson
Maryville, MO 64468
greg.stiens@yahoo.com

Liberty (Empire)

Diana C Carter
428 E. Capitol Avenue, Suite 303
Jefferson City, MO 65101
Diana.Carter@LibertyUtilities.com

**Missouri Public Service
Commission**

Jamie Myers
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
jamie.myers@psc.mo.gov

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.