

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

NOTICE OF EX PARTE CONTACT
ORDER SETTING PRE-HEARING CONFERENCE AND ADVISING THE
PARTIES HOW TO PARTICIPATE IN THE PREHEARING
CONFERENCE BY PHONE

Issue Date: January 17, 2008

Effective Date: January 17, 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. Since the complaint was filed, MGE and Mr. Cannon reached an agreement and natural gas service is being provided to the Cannons at 3223 E. 41st Street in the name of Swanita M. Carson-Cannon, Mr. Cannon's wife.

On December 21, 2007, MGE filed a Notice of Satisfaction, whereby it alleges 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 is now fully

resolved or if there are other remaining matters in dispute. Mr. Cannon was directed to respond 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, and the procedural process to follow with his complaint. Consequently, the RLJ will set this matter for a prehearing conference so that all of the parties to this action may be brought together. It is expected that the prehearing conference will provide an opportunity for the parties to further pursue settlement of this matter. The parties shall also be directed to jointly file a status report one week after the prehearing conference.

The Commission informs the parties that this prehearing conference is *not an evidentiary hearing*. Sworn testimony will not be taken and no final decision will result from

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 is being set in this order does not constitute an on-the-record proceeding.

this prehearing conference. However, all parties are required to be present for the prehearing conference. **Parties must arrive in person, or appear by phone, for the prehearing conference on or before the scheduled starting time of 9:30 a.m. in order to participate.** A court reporter will be present to make of record of the parties that appear. As previously noted, 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.

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. Once a hearing is adjourned, the parties who did enter an appearance and the court reporter are released. It is extremely difficult to have parties who were timely in their appearance, and court reporters that keep very busy schedules, return to the Public Service Commission for unscheduled hearing times. This is why the Commission issues advance notice of all hearings and extends various opportunities prior to any scheduled hearing for the parties to appear by phone or request a continuance. As set out below, any party who wishes to attend by telephone will be permitted to do so.

IT IS ORDERED THAT:

1. The parties shall appear at a prehearing conference to be held on February 5, 2008, beginning at 9:30 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.

2. The parties, in their discretion, may participate in the prehearing conference in person or by phone.

3. A conference call bridge has been established to accommodate the parties. Any party that wishes to participate in the conference by telephone may do so by calling (573) 526-5402 or toll free at (866) 630-9346 at the time set for the conference.

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 February 5, 2008, either in person or by phone, and shall provide the Commission with a list of dates when that party is available to appear. This pleading shall be filed no later than January 29, 2008.

5. Any party requesting a continuance shall serve a copy of the request on every party to this complaint.

6. No later than February 12, 2008, the parties shall jointly prepare and file a status report with the Commission.

7. This order shall become effective on January 17, 2008.

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 17th day of January 2008.