

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Procedural Conference
August 2, 2018
Jefferson City, Missouri
Volume 1

DAVID APTED,)	
)	
Complainant,)	
)	
v.)	File No. GC-2017-0348
)	
LACLEDE GAS COMPANY,)	
)	
Respondent.)	

MICHAEL BUSHMANN, Presiding
SENIOR REGULATORY LAW JUDGE

REPORTED BY:
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Participating without counsel: David Apted

P R O C E E D I N G S

JUDGE BUSHMANN: We're on the record. Today is August 2, 2018. It's 2:30 p.m. The Commission has set this time for a Procedural Conference in the case captioned as David Apted, Complainant v. Laclede Gas Company, Respondent, File No. GC-2017-0348.

My name is Michael Bushmann. I'm the Regulatory Law Judge that's been assigned to this matter. We'll begin with attorneys making their entries of appearance.

Mr. Apted, am I correct that you're going to be representing yourself in this matter?

MR. APTED: No, that is incorrect. I have hired legal counsel.

JUDGE BUSHMANN: Do you know if that attorney is going to be appearing today?

MR. APTED: He will not.

JUDGE BUSHMANN: Okay.

MR. APTED: I mean, we can get into that later on. It's just me today.

JUDGE BUSHMANN: All right. Thank you. And appearing for Laclede Gas Company, otherwise known as Spire Missouri?

MR. PENDERGAST: Michael C. Pendergast. My business address is 423 South Main Street, St. Charles,

1 Missouri, 63301.

2 JUDGE BUSHMANN: Thank you. Commission staff?

3 MR. KEEVIL: Appearing on behalf of the
4 Commission staff, Jeffrey A. Keevil and Whitney Payne,
5 200 Madison Street, Jeff City, Missouri.

6 JUDGE BUSHMANN: And for the record there's no
7 appearance by the Office of Public Counsel.

8 As far as preliminary matters, I would like
9 staff to file on behalf of the parties a proposed
10 procedural schedule no later than August 9, and that
11 should just include the regular matters that are usually
12 included in procedural schedules. Since Mr. Apted does
13 not have an attorney right now but may have one in the
14 future, you may want to have a conversation about
15 whether or not prefiled testimony is going to be
16 necessary or whether we can just go ahead and do live
17 testimony at the evidentiary hearing. I don't have a
18 strong preference.

19 This case may be one that would be suitable
20 for live testimony. The parties might want to talk
21 about that. Mr. Apted, just for your information, just
22 to let you know what I'm talking about here, a
23 procedural schedule, which I've asked staff to file on
24 behalf of all the parties, is simply a list of the
25 deadlines or dates when certain things would be filed

1 and due in the case so that we have a schedule that
2 would lead up to an evidentiary hearing if necessary.
3 And that's something that once we go off the record and
4 I leave the room, then the parties will be able to talk
5 about and decide what you would like to propose as far
6 as dates. Did you have any questions about that?

7 MR. APTED: I do not. I understand.

8 MR. KEEVIL: Judge, I've got a -- He's
9 certainly by all means entitled to hire an attorney; but
10 if he's going to get an attorney, I see a problem
11 getting a procedural schedule hammered out by a week
12 from today.

13 JUDGE BUSHMANN: You think you need a little
14 more time?

15 MR. KEEVIL: Yeah, because I mean, once his
16 attorney comes in, he's going to obviously --

17 JUDGE BUSHMANN: Mr. Apted, do you know when
18 your attorney is going to start representing you?

19 MR. APTED: I was expecting a call back from
20 him today. I just hired the attorney a few weeks ago.
21 I'm assuming he's going to be asking for some more time
22 as well.

23 MR. PENDERGAST: Judge, maybe this is a good
24 time for me to go ahead and kind of update everybody.
25 We have had a chance to talk, we meaning Spire Missouri

1 and Mr. Apted. We went through a mediation process in
2 this case and as a result of that mediation process we
3 reached an agreement in principle to resolve the issues
4 in this complaint. I have since talked to Mr. Apted,
5 and he wants to go ahead and make sure that his attorney
6 is okay with that settlement agreement. And pending
7 that review, it would be our hope to be able to go ahead
8 and file a motion to dismiss on the grounds that we've
9 resolved this matter.

10 I understand that Mr. Apted's attorney still
11 needs to take a look at it. And so before we establish
12 a procedural schedule, I would suggest that within two
13 weeks we either file a motion to dismiss or indicate
14 that things fell apart and we will need to go ahead and
15 do a procedural schedule and, you know, on the advice of
16 the staff and Mr. Apted's attorney give you a date
17 certain for when we would be able to file that
18 procedural schedule.

19 If that kind of an approach works for you, you
20 know, hopefully we'll be able to go ahead and get this
21 matter resolved and there won't be a need for a
22 procedural schedule. Dave, does that kind of reflect
23 where you're at today?

24 MR. APTED: Not exactly in those terms, Mike.
25 I'd like to push back a little bit on that. I am not in

1 agreement with anything that we had discussed before. I
2 don't want to be on the record of being in agreement of
3 anything as of right now before I do speak to my
4 counsel. I'd like to go forward either a continuance or
5 some kind of a delay in procedural schedule until I have
6 time to get back with my attorney and really hammer this
7 out.

8 MR. PENDERGAST: That's fine, Dave. You know,
9 I thought that you were basically okay with the
10 agreement pending discussing it with your counsel. And
11 if you want to go ahead and say we don't have an
12 agreement yet, you know, we're willing to go ahead and
13 go a couple of more weeks. If we don't have an
14 agreement that we can file by then, then I think we need
15 to move forward with a procedural schedule and get this
16 matter resolved.

17 JUDGE BUSHMANN: Okay. Why don't we do this.
18 You think two weeks is sufficient for you to make a
19 determination about whether or not you're going to need
20 a procedural schedule?

21 MR. APTED: Judge, I'm actually out of town
22 the week of the 13th for some business. If we could
23 push that to either the third or fourth week of the
24 month preferably, that would be great.

25 JUDGE BUSHMANN: What about the 23rd? That's

1 three weeks from today.

2 MR. APTED: That would be fine, I think.

3 JUDGE BUSHMANN: Mr. Pendergast, does that
4 work for you?

5 MR. PENDERGAST: That works for me, Judge.
6 The only other thing that I want to, you know, put on
7 the record at this point is under the Commission's rules
8 you are permitted to collect half of the disputed amount
9 if you, you know, have a complaint of this nature and,
10 you know, if we can't reach an agreement, you know,
11 which I thought we really already had, then we will want
12 to move forward and collect that half of the amount that
13 was owed.

14 JUDGE BUSHMANN: Okay. Well, I'm going to
15 discuss that in just a minute. Let's get the filing
16 deadline figured out first.

17 MR. PENDERGAST: That's fine.

18 JUDGE BUSHMANN: Why don't we make it the 23rd
19 for a proposed procedural schedule and then if you reach
20 an agreement with Mr. Apted before then, then you can
21 file your notice of dismissal and we won't need to have
22 a proposed procedural schedule. I just ask you to keep
23 in contact with staff and counsel and make sure that
24 they know whether or not this is actually going to
25 settle or not so that they --

1 MR. KEEVIL: I was going to say, Judge, and
2 I've been in this situation before, not with Spire so
3 much but other companies, and when you put the burden on
4 staff to file something that may or may not be
5 necessary, which is completely out of staff's control,
6 it kind of puts us over a barrel.

7 I suspect Mr. Pendergast -- We're going to
8 have to talk about the schedule anyway if we're going to
9 need a schedule. But we won't know whether we need a
10 schedule until Spire and Mr. Apted's attorney have their
11 discussions.

12 JUDGE BUSHMANN: What are you proposing?

13 MR. KEEVIL: I was going to propose that
14 either the complainant or respondent have the burden of
15 filing the actual procedural schedule.

16 MR. PENDERGAST: Judge, we're fine with
17 undertaking that burden if we cannot file a notice of
18 dismissal prior to the 23rd.

19 JUDGE BUSHMANN: That works for me.

20 MR. PENDERGAST: We will go ahead and file a
21 proposed procedural schedule on that date after
22 consultation with the parties and if for whatever reason
23 we can't reach a unanimous, you know, decision on what
24 that procedural schedule shall be, we'll certainly note
25 that and other parties will be free to propose an

1 alternative on that date.

2 JUDGE BUSHMANN: I have no problem with that.
3 Spire Missouri can then file that on the 23rd if it's
4 going to be necessary.

5 MR. PENDERGAST: Okay, great.

6 JUDGE BUSHMANN: The other thing that you
7 brought up was your request in the amended answer that
8 Mr. Apted pay one-half of the amount at issue pending a
9 resolution of the case. And under Commission Rule
10 13.045, it states that when a customer disputes a charge
11 and the parties can't agree on the amount not in
12 dispute, the customer must pay to the utility the lesser
13 of up to 50 percent of the amount in dispute or an
14 amount based on usage during a similar period of time.

15 However, under that rule the remedy for the
16 utility if the customer does not pay that amount is
17 discontinuance of service, not an order from the
18 Commission ordering or requiring that payment. And the
19 Commission, since it's not a court of law and doesn't
20 have any equitable powers, for those reasons I'm going
21 to deny Laclede Gas' request to require that payment.

22 MR. PENDERGAST: Yes, and I understand your
23 reasoning perfectly, Judge, and it seems to me that the
24 appropriate way to approach is if we can't reach an
25 agreement and submit a notice of dismissal by that time,

1 it will be up to us to, you know, tell the complainant
2 that we need \$950 and if we don't then discontinuance of
3 service is the remedy.

4 JUDGE BUSHMANN: I think that's appropriate
5 under the rule. Any other parties have anything else
6 that needs to be addressed at this point?

7 MR. KEEVIL: No.

8 MR. APTED: Can you state that rule one more
9 time?

10 JUDGE BUSHMANN: Yes. It's 4 -- Do you have
11 something to write down with?

12 MR. APTED: Yes, go ahead.

13 JUDGE BUSHMANN: 4 CSR 240-13.045.

14 MR. APTED: Got it. Thank you.

15 JUDGE BUSHMANN: Okay. Anything else,
16 Mr. Apted, that you need to discuss today while we're on
17 the record?

18 MR. APTED: No.

19 JUDGE BUSHMANN: I guess that's it. We're
20 going to go off the record. And I brought a copy of the
21 adjudication calendar for the rest of the year I'm
22 leaving with staff so that you can talk about dates, and
23 the phone bridge will be available until 4:30. We're
24 off the record. Thank you very much.

25 (Off the record.)

CERTIFICATE OF REPORTER

I, Beverly Jean Bentch, RPR, CCR No. 640, Certified Court Reporter with the firm of Tiger Court Reporting, LLC, within the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

Beverly Jean Bentch

Beverly Jean Bentch, CCR No. 640



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