

LAW OFFICES  
**BRYDON, SWEARENGEN & ENGLAND**

PROFESSIONAL CORPORATION

312 EAST CAPITOL AVENUE

P.O. BOX 456

JEFFERSON CITY, MISSOURI 65102-0456

TELEPHONE (573) 635-7166

FACSIMILE (573) 635-3847

E-MAIL: DEANBRE@SOCKET.NET

DAVID V.G. BRYDON  
JAMES C. SWEARENGEN  
WILLIAM R. ENGLAND, III  
JOHNNY K. RICHARDSON  
GARY W. DUFFY  
PAUL A. BOUDREAU  
SONDRA B. MORGAN  
CHARLES E. SMARR

DEAN L. COOPER  
MARK G. ANDERSON  
TIMOTHY T. STEWART  
GREGORY C. MITCHELL  
RACHEL M. CRAIG  
BRIAN T. MCCARTNEY  
DALE T. SMITH

OF COUNSEL  
RICHARD T. CIOTTONE

October 14, 1999

**FILED<sup>2</sup>**

OCT 14 1999

Missouri Public  
Service Commission

Mr. Dale Hardy Roberts  
Executive Secretary  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

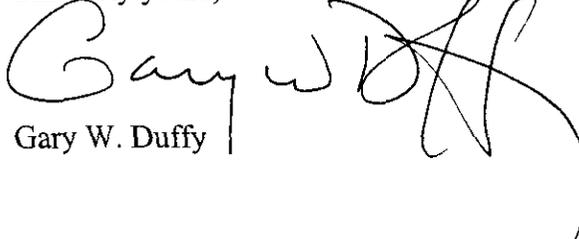
**RE:** Case No. GC-2000-197 John McCullough v. Associated Natural Gas Company

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and fourteen copies of an Application for Rehearing and Motion to Set Aside Default Order.

If you have any questions, please give me a call.

Sincerely yours,

  
Gary W. Duffy

Enclosures  
ccw/encl:

Office of Public Counsel  
PSC General Counsel  
John McCullough  
Jeff Dangeau

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

**FILED<sup>2</sup>**

OCT 14 1999

Missouri Public  
Service Commission

John McCullough, )  
Complainant, )  
v. )  
Associated Natural Gas Company, )  
a division of Arkansas Western Gas )  
Company )

Case No. GC-2000-197

**APPLICATION FOR REHEARING AND  
MOTION TO SET ASIDE DEFAULT ORDER**

COMES NOW Associated Natural Gas Company (hereinafter "ANG") and pursuant to § 386.500 RSMo 1994 and 4 CSR 240-2.160, respectfully states as follows:

1. On October 12, 1999, the Commission issued its "Order of Default" in this case and made the order effective on October 22, 1999.
2. ANG's counsel first learned of the existence of this case, and the possibility of the entry of an Order of Default, when it first appeared on the Commission's agenda. ANG's counsel asked for a copy of the order on October 12 and obtained a copy of it at approximately 4 p.m. on October 13, 1999. After review of said order, the Complaint, and the circumstances, ANG respectfully states that the Commission's Order of Default is unlawful, unjust and unreasonable in the respects set out herein, and requests that the Commission set aside the Order of Default and enter an Order of Dismissal.
3. As a preliminary matter, ANG did not ignore the Complaint as the Order of Default implies. For reasons which ANG cannot explain, the Commission apparently never received ANG's response to the Complaint. The response was mailed on September 23, 1999, to

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the Commission at its office in Jefferson City. A copy of ANG's response is attached hereto as **Appendix A**. ANG believes this response is sufficient given that the Commission's notice said that ANG could file "notice that the complaint has been satisfied."

4. The Commission should nevertheless set aside the Order of Default, or grant rehearing, and after rehearing dismiss the Complaint, because the Complaint fails to allege any facts which, if true, would create a cause of action or basis for a valid complaint against ANG. No violation of any provision of law or Commission rule or order or decision of the Commission is cited in the Complaint and none of the averments, if true, would give rise to a violation of law or said rule, order or decision. Thus, the Complaint failed to invoke the subject matter jurisdiction of the Commission and the Commission should therefore have dismissed the Complaint *sua sponte*.

5. There are additional reasons why the Complaint should never have been allowed to be filed with the Commission. 4 CSR 240-2.070(5)(D) requires that a formal complaint contain "the relief requested." No request for relief is contained in the Complaint since there is a blank after the phrase "WHEREFORE, Complainant now requests the following relief: ." 4 CSR 240-2.070(5)(E) requires that the Complaint contain information about "the jurisdiction of the commission over the subject matter of the complaint." No such information is contained in the Complaint. Therefore, the Complaint was not in substantial compliance with the Commission's rules and as a consequence, the Secretary should not have served a copy of the Complaint on ANG but should have returned the Complaint to the Complainant because it did not comply with the Commission's rules for the filing of a complaint.

6. Evidently, the Complainant, Mr. McCullough, turned his gas service off by himself in the mistaken belief that by doing so, he would not incur any future gas bills. ANG

believes he turned off his gas service sometime in May 1999. After Mr. McCullough turned off his own gas service, he of course continued to receive bills from ANG showing the minimum or "customer charge" amount. He then called ANG's office in Piedmont, Missouri, to complain about this. He was informed that his gas service account was still active and that he would have to continue to pay such a minimum bill so long as his account was active, and even if he did not use any gas, because that is the manner in which ANG's rate schedules, approved by the Commission, are structured. Mr. McCullough asked for a copy of ANG's rates and that was mailed to him on July 30, 1999.

7. Mr. McCullough then called ANG and asked to be disconnected. He was disconnected on August 2, 1999, and has not been reconnected. Mr. McCullough is no longer a customer of ANG, and he owes no outstanding balance to ANG.

8. The essence of Mr. McCullough's complaint is that he did not like having to pay the customer charge for natural gas service in months in which he did not heat his commercial building. The Complaint indicates that he felt "this is not right."

9. As ANG's September 23, 1999, letter to the Commission explained, Mr. McCullough is complaining about having to pay a charge which is established by the Commission. The customer charge for Mr. McCullough's commercial account is \$12.50 per month plus tax. This is specified in ANG's Small General Service rate schedule contained on PSC Mo. No. 6, 4<sup>th</sup> Revised Sheet No. 4. Therefore, Mr. McCullough is complaining about the reasonableness of an existing, approved charge of the Commission.

10. Under Section 386.390 RSMo 1994, complaints as to the reasonableness of any rates or charges of a public utility can only be entertained by the Commission if they are "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 purchasers, of such gas ... service.” Since Mr. McCullough’s complaint was to the reasonableness of an **existing rate** which was approved by the Commission, and it was not signed by any of the indicated parties allowed to sign such a complaint pursuant to the statute, the Commission did not have the subject matter jurisdiction to entertain the complaint in the first place. Because the Commission lacked subject matter jurisdiction over the Complaint, the Commission should have dismissed it before notice of it was even sent to ANG.

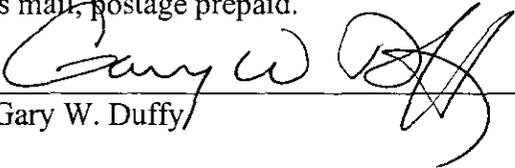
11. ANG understands that Mr. McCullough has initiated propane service at his business location. While ANG regrets the loss of a customer under these circumstances, ANG **could not have done anything differently** in this situation since ANG is required by law to abide by its tariff and charge the rates the Commission prescribes, which ANG did.

12. As stated earlier, ANG cannot explain why the Commission’s file does not contain ANG’s response to the Complaint since the letter ANG sent has not been returned to ANG, and it apparently was properly addressed to the Commission. In a proposed rule appearing at 24 **Mo.Reg.** 2326, the Commission indicates that a respondent to a complaint will be given seven days from the issue date of an order of default to file a motion to set aside the order of default and extend the filing date of the answer. It also indicates that the Commission may grant the motion to set aside the order of default and grant the respondent additional time to answer if it finds good cause. ANG made a timely response to the Complaint which the Commission apparently never received. Upon learning of the Order of Default, and obtaining a copy after requesting same, ANG has acted quickly to respond to the Order of Default. This Application for Rehearing and Motion to Set Aside Default Order should also be considered a formal answer



**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing document was served on Complainant and counsel of record in this proceeding this 14th day of October, 1999, either by hand delivery or by first class mail, postage prepaid.

  
\_\_\_\_\_  
Gary W. Duffy

Office of the General Counsel  
Missouri Public Service Commission  
Truman State Office Building  
Jefferson City, Missouri

Office of the Public Counsel  
Truman State Office Building  
Jefferson City, Missouri

John McCullough  
508 Kansas Drive  
Bismarck, Missouri 63624



**Associated Natural Gas  
Company**

A division of Arkansas Western Gas Company

533 North Tenth Street  
P.O. Box 267  
Blytheville, Arkansas 72316-0267  
(870) 762-1177 FAX: (870) 763-9307

September 23, 1999

Secretary of the Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102-0360

RE: John McCullough, Complainant, v. Associated Natural Gas Company Respondent.  
Case No. GC-2000-197

Dear Sir,

Mr McCullough's complaint is that he has to pay a reconnection charge to have service restored to his commercial property after he had the service disconnected at his request.

The Customer Charge for his commercial property is \$12.50 per month plus tax. This is service under our Small General Service rate which is explained on Form No. 13, P.S.C. Mo No. 6, 4th Revised Sheet No. 4. The section that Mr. McCullough has complaint about is clearly spelled out in the section entitled Reconnect Charge. Which states:

This schedule is a continuous service schedule. If service is disconnected at the request of the customer, and thereafter restored at the same location for the same occupant within a twelve (12) month period following the date of the service disconnection, a reconnection charge will become due and payable when service is restored. The charge shall be computed by multiplying the customer charge by the number of months and fractions of months that service is disconnected, plus an additional charge of \$37.50. If the reconnection is required outside normal working hours, an additional charge of \$40.00 will be levied to cover overtime costs.

As explained in this schedule, this rate is based on twelve months continuous service. Provisions have been made in the schedule to satisfy the continuous service by allowing us to collect the customer charge during the months and fractions of months that the customer has requested to be disconnected and then returns to service at the same address within twelve (12) months. Associated Natural Gas will charge Mr. McCullough only what is allowed in this rate schedule that was approved by the Missouri Public Service Commission and became effective on January 16, 1998.

Sincerely,

Steve Green  
Division Operating Manager

APPENDIX A