

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 7th
day of December, 1999.

John McCullough,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-2000-197</u>
)	
Associated Natural Gas Company,)	
a Division of Arkansas Western)	
Gas Company,)	
)	
Respondent.)	

**ORDER GRANTING MOTION TO SET ASIDE DEFAULT ORDER, DENYING
REQUEST TO DISMISS COMPLAINT AND DIRECTING COMPLAINANT TO FILE
AN AMENDMENT TO HIS COMPLAINT**

On August 30, 1999, John McCullough filed a complaint with the Missouri Public Service Commission against Associated Natural Gas Company, a division of Arkansas Western Gas Company (ANG), regarding a billing disagreement. The Commission issued a Notice of Complaint on September 1, providing 30 days for ANG to file an answer, or, in the alternative, to file a request for mediation. ANG did not file an answer within 30 days and on October 12, the Commission issued an Order of Default. On October 14, ANG filed an Application for Rehearing and Motion to Set Aside Default Order.

The Commission did not immediately rule on ANG's application and motion because on November 2, this complaint was, by agreement of the parties, referred to the Center for Dispute Resolution at the University of Missouri School of Law for mediation. On November 22, a letter from the mediator was filed, indicating that the parties have met for mediation and were unable to reach an agreement. Consequently, the mediator referred this case back to the Commission. Because this matter is once again before the Commission, it is now appropriate to rule on ANG's Application for Rehearing and Motion to Set Aside Default Order.

4 CSR 240-2.070(9) permits the Commission to extend the filing date of an answer if it finds good cause for such an extension. ANG's Application for Rehearing and Motion to Set Aside Default Order indicates that ANG attempted to answer Mr. McCullough's complaint by mailing a letter to the Commission. A copy of that letter is attached to ANG's application and motion as Appendix A. The letter is dated September 23, is addressed to the Secretary of the Public Service Commission, and is signed by Mr. Steve Green, Division Operating Manager. Mr. Green's letter of September 23 does not appear in the file, except as Appendix A to the application and motion. Even if it had been properly filed in this case, the letter could not constitute ANG's answer because it is not signed by an attorney and ANG, as a corporation, cannot appear before the Commission unless represented by an attorney licensed in the state of Missouri.

Nevertheless, ANG did attempt to answer Mr. McCullough's complaint in a timely fashion and ANG did respond promptly when it

realized that a default order had been entered. Under the circumstances, good cause exists for setting aside the Order of Default issued on October 12.

ANG's Application for Rehearing and Motion to Set Aside Default Order also requests that the Commission grant rehearing and dismiss Mr. McCullough's complaint for failure to state a claim upon which relief can be granted and for lack of subject matter jurisdiction. ANG asserts that Mr. McCullough is complaining about paying a service charge that is established in ANG's tariff. ANG points out that, 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 representative of a governmental body, or by twenty-five customers of the service about which a complaint is made. Mr. McCullough's complaint is signed only by himself and therefore, ANG argues that the Commission lacks subject matter jurisdiction over Mr. McCullough's complaint.

ANG raises an interesting argument. If Mr. McCullough's complaint is indeed limited to an allegation that a charge established by a Commission approved tariff is not reasonable, then ANG's argument may be valid. However, the Commission will not rule on the validity of ANG's argument at this time because that argument is not properly before the Commission. At this point there is no evidence from which the Commission can determine the factual basis of Mr. McCullough's complaint or, indeed, the factual basis of ANG's defense, other than ANG's bare allegations of the contents of its tariffs. If ANG wishes

to file a motion for summary judgment, to which Mr. McCullough would be given an opportunity to reply, it may do so. However, the Commission will not dismiss Mr. McCullough's complaint on the basis of the motion for rehearing.

ANG also argues that Mr. McCullough's complaint is deficient and does not comply with the Commission's rules for the filing of a complaint because it does not specify the relief that is sought. ANG's argument about Mr. McCullough's complaint is valid. The complaint indicates that Mr. McCullough is unhappy with the treatment that he has received from ANG, but it does not indicate what he would like to have the Commission do to correct that treatment. The Commission will not dismiss Mr. McCullough's complaint. Instead it will give him an opportunity to amend his complaint to explain what he would like to have the Commission do to correct the situation that led to his complaint. If Mr. McCullough fails to file an appropriate amendment, the Commission may act to dismiss his complaint.

ANG also asks that its Application for Rehearing and Motion to Set Aside Default Order be considered as its formal answer to Mr. McCullough's complaint. The Commission will decline to do so. After Mr. McCullough files an amendment to his complaint, the Commission will notify ANG as to when it should file its formal answer.

IT IS THEREFORE ORDERED:

1. That the Order of Default issued on October 12, 1999, is set aside.

2. That Associated Natural Gas Company's request to dismiss the complaint of John McCullough is denied.

3. That John McCullough shall, no later than December 27, 1999, file an amendment to his complaint explaining what he would like to have the Commission do to correct the situation that led to his complaint.

4. That this order shall become effective on December 17, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
Schemenauer, and Drainer, CC., concur

Woodruff, Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION