

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

Lynne P. Shewmaker,)	
Complainant,)	
v.)	Case No. GC-2006-0549
)	
Laclede Gas Company,)	
Respondent.)	

STAFF’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW the Staff of the Missouri Public Service Commission, by and through the General Counsel’s Office, and provides, in lieu of a Brief, the following Findings of Fact and Conclusions of Law for the Commission’s consideration.

Findings of Fact

The Parties:

1. Complainant Lynne P. Shewmaker (hereinafter “Complainant” or “Shewmaker,” is a natural person residing at 7330 Maple Avenue, St. Louis, Missouri. Complainant was, at all pertinent times, a customer of Laclede Gas Company.

2. Respondent Laclede Gas Company (hereinafter “Respondent” or “Company”) is a Missouri corporation engaged in the sale of natural gas at retail to persons in the region of St. Louis, Missouri.

3. Staff of the Commission (hereinafter “Staff”) is represented by the Commission’s General Counsel who is authorized by statute to “represent and appear for

the Commission in all actions and proceedings involving this or any other law [involving the Commission].”

4. The Public Counsel is an official of the State of Missouri, appointed by the Director of the Missouri Department of Economic Development, and is authorized to “represent and protect the interests of the public in any proceeding before or appeal from the public service commission[.]”¹

The Dispute:

5. Prior to the summer of 2005, a trace device was installed on Complainant’s meter in order to permit remote reading by Laclede.

6. Complainant’s monthly gas usage roughly doubled after the Company installed an automated meter reading (AMR) module on her meter in the summer of 2005.²

7. Complainant contends that the jump in usage described in Finding of Fact 6, above, is indicative of a defect in the AMR.

8. Because she believed the bills to be erroneous and based upon a defective AMR or meter, Complainant withheld from payment one-half of the amount billed by Laclede for several months in the fall and winter of 2005³. Complainant testified that, since the AMR was first installed, she has been billed \$3,694.00 and has paid \$2,889.00, and feels that she has been overcharged in the amount of \$1,256.00⁴.

¹ Sections 386.700 and 386.710., RSMo 2000. All statutory citations are to the Revised Statutes of Missouri (RSMo), revision of 2000, unless otherwise specified.

² Shewmaker Direct, page 2.

³ Transcript, Volume I, page 95, lines 1 – 7.

⁴ Shewmaker Direct, page 2.

9. A new meter and AMR were installed in February 2006, and the new devices showed usage consistent with the old AMR and meter⁵.

10. Complainant has requested that the AMR device be removed from her home, and that she be allowed to submit self-reads of the meter⁶. Complainant also requests that the Commission order Laclede to remove the existing meter, and permit, at Laclede's cost, Complainant to obtain a private testing of that meter's accuracy⁷, or that a new, factory-fresh meter be installed⁸.

11. Laclede requests payment of around \$800, reflective of the payments withheld in protest⁹. Laclede has waived the assessment of late fees for the billed amounts withheld in protest¹⁰.

12. Complainant's AMR and meter, removed in February 2006, were tested and found to be accurate.¹¹ The new AMR and meter, installed in February 2006, show usage consistent with the AMR and meter that were removed. Complainant was given the opportunity to witness the testing of the meter.

⁵ Transcript, Volume I, page 105, line 23 – page 106, line 2.

⁶ Shewmaker Direct, page 2.

⁷ Shewmaker Direct, page 2.

⁸ Transcript, Volume I, page 93, lines 9 – 11.

⁹ Transcript, Volume I, page 90 – lines 19 – 23.

¹⁰ Laclede Revised List of Issues and Witnesses, Order of Cross-Examination, Statement of Positions on the Issues, page 3.

¹¹ Transcript, Volume I, page 104, lines 9 – 25.

Conclusions of Law

Jurisdiction:

Respondent is engaged in owning, controlling, managing, and operating gas plant for public use under a franchise granted by the state of Missouri or a political subdivision thereof, and is thus a gas corporation and a public utility within the intendments of Chapter 386, RSMo, and is subject to the jurisdiction of this Commission.

The Commission is authorized to hear and determine complaints made by customers against public utilities by § 386.390.1, which states:

Complaint may be made by ... any ... person ... by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation ... or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission[.]

However, authority to hear and determine the complaint does not necessarily equal authority to grant the relief therein requested. The Public Service Commission “is purely a creature of statute” and its “powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted.”¹² While the Commission properly exercises “quasi judicial powers” that are “incidental and necessary to the proper discharge” of its administrative functions, its adjudicative authority is not plenary.¹³ “Agency adjudicative power

¹² *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 47 (Mo. banc 1979); *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 928 (Mo. banc 1958).

¹³ *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 75 (Mo. 1982), quoting *Liechty v. Kansas City Bridge Co.*, 162 S.W.2d 275, 279 (Mo. 1942).

extends only to the ascertainment of facts and the application of existing law thereto in order to resolve issues within the given area of agency expertise.”¹⁴

Burden of Proof:

The Complainant bears the burden of proof in a case, such as this one, in which the complainant alleges that a regulated utility has engaged in unjust or unreasonable actions.¹⁵ Thus, Ms. Shewmaker must establish all facts necessary to support the relief she seeks by a preponderance of the credible evidence.

Discussion:

Complainant has failed to prove her Complaint, through either prefiled testimony, or via the evidentiary hearing conducted on June 29, 2007.

Complainant has not shown that the meter readings, including the automated meter reading (AMR) modules attached to those meters, utilized to monitor gas flow into Complainant’s home, have resulted in Complainant being overcharged for her gas usage since June 2005. The meter and AMR removed in February 2006 were found to be accurate and the present meter and AMR produce consistent readings which must also be considered to be accurate. For this reason, Complainant’s case must fail.

It is plausible, as Laclede suggests, that the trace device that was removed in the summer of 2005 was missing a magnet and that this mechanical defect was responsible for Complainant being billed for only half of her actual usage in the several years

¹⁴ *State Tax Commission, supra.*

¹⁵ *Ahlstrom v. Empire District Electric Company*, 4 Mo.P.S.C.3d 187, 202 (1995); *Margulis v. Union Electric Company*, 30 Mo.P.S.C. (N.S.) 517, 523 (1991).

preceding the installation of the AMR.¹⁶ However, that defect has not been established, but is only a matter of hypothesis. Laclede is not asking for arrearages from the purported period of under-billing caused by the alleged trace device malfunction and Laclede has not established that any under-billing occurred.¹⁷

Even if Complainant prevailed, the Commission's rules and Laclede's tariff do not require Laclede to remove the AMR module from its meter inside the Complainant's home; likewise, they do not authorize Complainant to self-read that meter. Neither do they require Laclede to pay for independent testing.

Conclusion:

Complainant has failed to show that the bills rendered by Laclede were incorrect or inaccurate in any respect. The charges for gas service rendered to Complainant have been properly computed and Complainant must pay those charges.

Respectfully submitted,

s/ Kevin A. Thompson
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¹⁶ Transcript, Volume I, page 106, line 9 – page 108 line 19.

¹⁷ Transcript, Volume I, page 108, lines 8 - 11.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 1st day of August, 2007.

s/ Kevin A. Thompson
Kevin A. Thompson