

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

David Apted,)	
)	
Petitioner,)	
v.)	
)	<u>File No. GC-2017-0348</u>
Spire Missouri, Inc., f/k/a)	
Laclede Gas Company,)	
)	
Respondent.)	

NOTICE OF RECOMMENDED REPORT AND ORDER

Issued: January 28, 2019

Effective Date: January 28, 2019

The regulatory law judge is issuing a recommended report and order per Commission Rule 4 CSR 240-2.070 (15)(G). The regulatory law judge is also setting a deadline for comments on the recommended report and order. Such comments must comply with 4 CSR 240-2.070 (15)(H) and be filed within ten (10) days of this Notice:

“Any party subject to a recommended order disposing of the case or a recommended report and order issued by a regulatory law judge under this section may file with the commission, within ten (10) days of the issuance of the recommended order, comments supporting or opposing the recommended order. Any comments opposing the recommended order shall contain specific detailed grounds upon which it claims the order is unlawful, unjust, or unreasonable. The commission may approve or reject the recommended order based on the existing record without further hearing. If the commission rejects the recommended order, the commission shall issue its own order based on the evidence previously submitted, or upon such additional evidence, as the commission shall choose to receive.”

THE COMMISSION GIVES NOTICE AND ORDERS THAT:

1. The regulatory law judge's recommendation is attached to this notice.
2. Any party wishing to file comments supporting or opposing the attached recommended report and order shall do so no later than February 7, 2019.
3. This notice shall be effective on the date issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris Woodruff
Secretary

Paul T. Graham, Regulatory Law Judge,
by delegation of authority pursuant
to Section 388.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on the 28th day of January, 2019.

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

David Apted,)	
)	<u>File No. GC-2017-0348</u>
Petitioner,)	
v.)	
)	
Spire Missouri, Inc., f/k/a)	
Laclede Gas Company,)	
)	
Respondent.)	

RECOMMENDED REPORT AND ORDER

On December 10, 2018, the Missouri Public Service Commission (the “Commission”) conducted an evidentiary hearing on the Complaint of David Apted (“Mr. Apted”) against Spire Missouri, Inc., f/k/a Laclede Gas Company. At the conclusion of the hearing, the Commission took the case under advisement and the regulatory law judge issued notice of his recommended report and order per 4 CSR 240-2.070 (15)(H). The Commission will now issue its Report and Order.

Syllabus

The Commission concludes that Spire Missouri, Inc., f/k/a Laclede Gas Company has not violated any statute within the Commission’s jurisdiction, the company’s tariff, or any Commission rule or order.

Background

David Apted (“Complainant” or “Mr. Apted”) filed a *Complaint* disputing a bill in the amount of \$1950.94.¹ He requested the following relief:

“Complainant would like the Public Service Commission to force Laclede Gas to do a formal high bill investigation, would like gas meters tested and a Spreadsheet review of Laclede Gas bills from the previous 10 Years. Additionally would like an explanation as to how 3 separate apartments with different floor plans and different appliances can run the exact number of therms in a month.”

Findings of Fact

1. Mr. Apted bought the property in question in this case in December of 2016.² The property was located at 1736 Nicholson Place, Saint Louis, Missouri, and involved three apartment units in the same building.³ Mr. Apted’s second bill from Spire Missouri, Inc., f/k/a Laclede Gas Company (“Spire”), dated February 10, 2017, (“February Bill”) contained identical charges of \$132.12 for Apartments A and C.⁴ Apartments A and C had different floor plans.⁵ Mr. Apted also thought that the bills for the units were extraordinarily high.⁶

2. The total average bill for the six-month period following the February Bill for each of the two Apartments A and C was about \$650.⁷ Although he thought that the six-month averages were high, Mr. Apted did not think that six-month averages were “abnormally” high.⁸ Mr. Apted’s complaint, however, did not concern the six-month averages. It concerned only the charges stated on the February Bill:⁹

¹ EFIS Item No. 1.

² EFIS Item No. 36 (hereinafter, the “Transcript” or “Tr.”), p. 33.

³ EFIS Item No. 40; Exhibit 110; Tr. 34. The three units may be referred to as A, B, and C.

⁴ Exhibit 110; Tr. 34.

⁵ EFIS Items No. 41 and 42; Exhibits 111 and 112.

⁶ Tr. 33-34.

⁷ Tr. 46.

⁸ Tr. 46.

⁹ Tr. 45-46.

“No, Mike. I do think that is high [\$600 for six months in the winter for each apartment]. My problem and the reason we’re all here right now is because of Exhibit 110, February the 10th, 2017, Apartment A and Apartment C were identical in usage.”¹⁰

The Commission finds, accordingly, that the only charges which Mr. Apted is challenging in this case were those stated in the February 10, 2017, billings.¹¹

3. Each of the three units was two-story.¹² Apartments A, B, and C contained, respectively, about 1,150, 900 and 1000 square feet,¹³ Other than for the furnace(s) and water heater(s), no other appliances were serviced by gas in Apartments A and C.¹⁴ Commencing in January of 2017, Mr. Apted had been rehabbing the three apartments described on the February Bill.¹⁵ The rehab was a full rehabilitation, and the contractors had to bring things in and take things out of the units.¹⁶ While doing so, doors were opened and left opened.¹⁷ Mr. Apted was sure that the contractors left the doors “open more than [he] would approve of.”¹⁸ During the rehab period, Mr. Apted kept the thermostats at 55 degrees in Apartments B and C.¹⁹ He checked them about once a week.²⁰

4. Spire conducted what was characterized as a “high bill investigation meter change”.²¹ Spire’s investigation showed that there were different quantities of gas usage for the three units when looked at on a daily or hourly basis.²²

¹⁰ Tr. 46.

¹¹ Exhibit 110.

¹² Tr. 56.

¹³ Tr. 56-57.

¹⁴ Tr. 57. The water heater in B was heated by electricity.

¹⁵ Tr. 47.

¹⁶ Tr. 48.

¹⁷ Tr. 48-49.

¹⁸ Tr. 49.

¹⁹ Tr. 58.

²⁰ Tr. 59.

²¹ Tr. 73; 105.

²² Tr. 69; 105.

5. Spire had a protocol for high bill complaints and followed it in response to Mr. Apted's complaint.²³ This protocol included sending someone to the premises to find out what kind of construction work might be going on and to question construction workers.²⁴ Spire's investigation showed that one of the apartment units' furnaces was not working at the time of inspection per report dated February 17, 2017.²⁵ Spire's witness, Danielle Holland, testified:

"Just in my opinion I've seen other properties and stuff doing the billing in the work that I do that the billing has increased when the property is being rehabbed due to the traffic and sometimes the contractors may turn the heat up to be a lot more comfortable while they're working inside. That's my opinion and things that I've noticed over the time working for the gas company."²⁶

6. In response to Mr. Apted's high bill complaint, in addition to testing and inspecting the AMR ("automatic meter reading"), the Company replaced the meters.²⁷ Spire tested the replaced meters. Two of the three demonstrated no problems.²⁸ The third could not be tested because during transportation, water was found in it.²⁹ Spire also checked the AMR devices, and they showed no problems.³⁰

7. The actual monthly bills for Apartments A, B, and C, were as follows for January through June of 2017:³¹

- Apartment A

January 13, 2017 - \$178.06

February 10, 2017 - \$132.11

²³ Tr. p. 83 et seq.

²⁴ Tr. p. 84.

²⁵ Tr. p. 90, 91.

²⁶ Tr. p. 74.

²⁷ Tr. p. 74-75.

²⁸ Tr. p. 75.

²⁹ Tr. p. 75.

³⁰ Tr. p. 76; 90-91.

³¹ Tr. pp. 81-82.

March 13, 2017 - \$108.39

April 12, 2017 - \$90.58

May 11, 2017 - \$54.80

- Apartment B

January 13, 2016 - \$249.54

February 10, 2017 - \$161.99

March 13, 2017 - \$70.83

April 12, 2017 - \$35.60

May 11, 2017 - \$27.41

- Apartment C

January 13, 2017 - \$199.49

February 10, 2017 - \$132.12

March 13, 2017 - \$71.98

April 12, 2017 - \$74.85

May 11, 2017 - \$33.43.

The Commission finds on the basis of the testimony of Danielle Holland that the aforementioned bill amounts were not unusual for similar residential structures in the neighborhood of Apartments A, B and C.³²

8. Evidence developed during the hearing concerning a service disconnection. Mr. Apted testified that this disconnection had occurred without notice in May of 2018.³³ Spire's evidence was that the service had been properly terminated for non-payment the prior year, on June 12, 2017, but that unauthorized usage had, for some reason,

³² Tr. pp. 75-76.

³³ Tr. 54.

continued all the way to April 30, 2018, when the current was finally physically disconnected.³⁴ The Commission finds that Mr. Apted has filed no complaint with the Commission on this score³⁵; the parties' *List of Issues and Identification of Witnesses and Position Statements*³⁶ did not identify disconnection of service as an issue and, accordingly, cannot be construed as a consent to have the issue decided; and Mr. Apted has never requested relief or an order concerning a wrongful service disconnection. As a result, the Staff of the Missouri Public Service Commission has conducted no investigation and provided the Commission with no report on a wrongful service disconnection.

9. The Commission finds that the Company has substantially performed the investigation which Mr. Apted requested in his *Complaint*.³⁷ The Company performed a meter test (on two of the meters) on February 17, 2017, and found that they were working properly.³⁸ The Company provided four (4) years of historical usage on the three apartments and tested its AMR devices. Spire tested the meters at 100% (open rate) and 20% (check rate) of the meter capacity. This is called a two-point check since Spire was looking at two different flow rates. The meters were tested with equipment which was traceable to the National Bureau of Standards and Testing and in a climate controlled room. To test the meters, Spire removed the old meters and replaced them with different meters on February 17, 2017.³⁹ The meters had to be accurate within +/-2% accuracy of

³⁴ Tr. pp. 80-81.

³⁵ See EFIS Item Nos 1 and 7.

³⁶ EFIS Item Nos. 30 and 31.

³⁷ EFIS Item No. 37, Exhibit 100 (Staff's Report); Tr. p. 37.

³⁸ Exhibit 100, p. 5.

³⁹ Exhibit 100, p. 2.

each other to pass the tests. The meters for Apartment Units B and C passed.⁴⁰ The meter for Unit A could not be tested because of excessive water in the meter.⁴¹

10. The Commission finds that in response to Mr. Apted's request for a "high bill investigation", Spire also provided historical winter season usage data from December of 2013 through April of 2017 for the three apartment units.⁴² A graph plotting usage against average daily temperature for the time period from December of 2013 through April of 2017 illustrated that as the temperatures increased, the average daily usages decreased all the way to zero.⁴³

Conclusions of Law

1. Section 396.390.1, RSMO, permits any person to make a complaint setting forth any act or thing done or omitted to be done by any 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. . . ." The Company is a "utility". Section 386.020, RSMO. Complainant has filed a Complaint alleging that the Company has committed acts or omitted to do acts in violation of Section 393,130, RSMO. The Commission has jurisdiction in this case.

2. Rule 4 CSR 240-2.070 provides that a formal complaint shall set "forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, 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." The rule requires the complaint to state the relief requested.

⁴⁰ Exhibit 100, p. 2.

⁴¹ Exhibit 100, p. 2.

⁴² Exhibit 100, p. 3.

⁴³ Exhibit 100, p. 4.

3. Missouri law provides that every electrical corporation shall furnish and provide “such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”⁴⁴

4. Tariff Sheet No. R-8 of Spire’s currently effective tariffs and Commission Rule 4 CSR 240-10.030 require the Company to provide a meter test free of charge at the request of the customer, provided that only one such test must be conducted within a 12-month time frame absent an order by the Commission. Tariff Sheet No. 31-a provides that a customer will pay \$75 per meter for additional meter tests within the 12-month time frames unless the additional testing proves an inaccuracy by a factor of more than 2%⁴⁵

5. The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.⁴⁶ The Commission has no authority to require reparation or refund, cannot declare or enforce any principle of law or equity, and cannot determine damages.⁴⁷ Neither may the Commission grant equitable relief or abate a nuisance.⁴⁸

Decision

It is the decision of the Commission that Mr. Apted’s evidence was insufficient to establish that Spire billed him in error at any time. Facially, the bills contained no charge that was extraordinary as compared with other bills on the apartments in question. Again

⁴⁴ Section 393.130, RSMO.

⁴⁵ Exhibit 100, Footnote 1.

⁴⁶ See, e.g., *State ex. rel. City of St. Louis v. Missouri Public Service Comm’n*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm’n*, 406 S.W.2d 5, 8 (Mo. 1966).

⁴⁷ See, e.g., *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666, 668-669 (Mo. 1950).

⁴⁸ See, e.g., *State ex. rel. GS Technologies Operating Co., Inc. v. Public Service Comm’n*, 116 S.W.3d 680, 695 (Mo. App. 2003); *American Petroleum Exchange v. Public Service Comm’n*, 172 S.W.2d 952, 955 (Mo. 1943).

facially, although two identical bills on two different units might be an infrequent occurrence, such an occurrence does not alone prove an error or even support an inference of an error. Looking beyond the face of things to the results of investigations, no evidence supported any conclusion that the Company's service instrumentalities and facilities were inadequate, i.e., were faulty. The Commission, accordingly, finds that Mr. Apted failed to sustain his burden to establish that with respect to bills themselves, the Company violated any tariff or any Commission rule or order.

With respect to the Company's investigation and response to Mr. Apted's complaints, the Commission finds that the Company had no legal duty per any statute, tariff, regulation or Commission rule to perform the kind of "high bill investigation" described in Mr. Apted's *Complaint*. The Commission finds that the Company, nevertheless, substantially performed the investigation requested by Mr. Apted. The Commission, accordingly, finds that Mr. Apted failed to sustain his burden to establish that the Company's investigation and response to Mr. Apted's complaints violated its tariff or any Commission rule or order.

Finally, with respect to hearing testimony concerning a wrongful service disconnection, the Commission finds that because no wrongful disconnection allegations were stated in Mr. Apted's *Complaint*, *Amended Complaint*, or in the parties' *List of Issues* or *Amended List of Issues*⁴⁹, and because at no time has Mr. Apted ever requested any order or relief with respect to an alleged wrongful disconnection,⁵⁰ no such issue is properly now before the Commission for decision.

⁴⁹ EFIS Items No. 1, 7, 30 and 31.

⁵⁰ See 4 CSR 240-2.070(4), generally, and subsection (E) thereof requiring a formal complaint to state the "relief requested".

[The Regulatory Law Judge recommends that they SHOULD DENY Mr. Apted's
Complaint.]

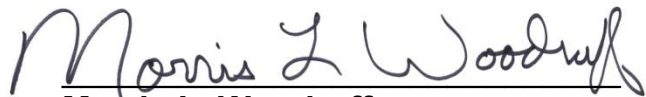
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 28th day of January 2019.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

January 28, 2019

File/Case No. GC-2017-0348

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Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.