

File No. GC-2017-0348

Effective Date: April 5, 2019

**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.)	

APPEARANCES

David Apted

Complainant, appeared pro se

Michael C. Pendergast

For Respondent, Spire Missouri, Inc., f/k/a
Laclede Gas Company

Whitney Payne

For Staff of the Missouri Public Service Commission

Regulatory Law Judge: Paul T. Graham

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” or “Complainant”) against Spire Missouri, Inc., f/k/a Laclede Gas Company (“Spire” or “the Company”). At the conclusion of the hearing, the Commission took the case under advisement. On January 28, 2019, the Regulatory Law Judge issued notice of his recommended report and order per 4 CSR 240-2.070 (15)(H). On January 30, 2019, Mr. Apted filed a *Post-Hearing Brief*. The Commission will accept Mr. Apted’s brief as a comment on the recommended report and order. The Commission will now issue its Report and Order.

Syllabus

The Commission concludes that Spire has not violated any statute within the Commission’s jurisdiction, the company’s tariff, or any Commission rule or order, and no other matter subject to the Commission’s jurisdiction requires decision.

Background

Mr. Apted filed a Complaint disputing a bill in the amount of \$1950.94.¹ The Complaint asked the Commission to require Spire to perform a formal high bill investigation, order that his gas meters be tested, and require a spreadsheet and review of Spire’s bills for his address from the previous 10 years. Additionally, he requested an explanation as to how three separate apartments with different floor plans and different appliances could run the exact number of therms in a month.

¹ Complaint, filed on June 23, 2017.

Findings of Fact

1. Mr. Apted bought the property in question in this case in December of 2016.² The property is located at 1736 Nicholson Place, Saint Louis, Missouri, and includes three separate apartment units in the same building.³ Mr. Apted's second bill from 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 contended that the charges were, therefore, likely in error. He 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 at the hearing he testified that he thought the six-month averages were high, he also stated that that he did not think they were "abnormally" high.⁸ At the hearing, Mr. Apted narrowed his support for his contention that his bills were not accurate reflections of his gas usage to the fact that two apartment units had identical bills:⁹

"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

² Transcript (hereinafter, "Tr."), p. 33.

³ Exhibit 110; Tr. 34. The three units may be referred to as A, B, and C.

⁴ Exhibit 110; Tr. 34.

⁵ Exhibits 111 and 112.

⁶ Tr. 33-34.

⁷ Tr. 46.

⁸ Tr. 46.

⁹ Tr. 45-46.

¹⁰ Tr. 46.

3. Each of the three units was two-stories.¹¹ Apartments A, B, and C contained, respectively, about 1150, 900, and 1000 square feet.¹² Other than the furnace(s) and water heater(s), no other appliances were served by gas in Apartments A and C.¹³ Spire's investigation showed that one of the apartment units' furnaces was not working at the time of the inspection per report dated February 17, 2017.¹⁴ 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 shut or 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

5. Spire has a protocol for high bill complaints and followed it in response to Mr. Apted's complaint.²³ This protocol includes sending someone to the premises to find

¹¹ Tr. 56.

¹² Tr. 56-57.

¹³ Tr. 57. The water heater in B was heated by electricity.

¹⁴ Tr. p. 90, 91.

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.

²³ Tr. p. 83 et seq.

out what kind of construction work might be going on and to question construction workers.²⁴ 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."²⁵

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.²⁶ Spire tested the replaced meters. Two of the three demonstrated no problems.²⁷ The third could not be tested because water was found in it during transportation.²⁸ Spire also checked the AMR devices, and they showed no problems.²⁹

7. The actual monthly bills for Apartments A, B, and C, were as follows for January through June of 2017:³⁰

- Apartment A

January 13, 2017 - \$178.06

February 10, 2017 - \$132.11

March 13, 2017 - \$108.39

April 12, 2017 - \$90.58

May 11, 2017 - \$54.80

²⁴ Tr. p. 84.

²⁵ Tr. p. 74. No objection to her opinion was made. She was a company employee who handled customer complaints. Tr. 74. She testified that she was generally familiar with the various causes and factors that affect energy usage at a particular location and stated that her opinion was based upon a knowledge of those factors. Tr. 73.

²⁶ Tr. p. 74-75.

²⁷ Tr. p. 75.

²⁸ Tr. p. 75.

²⁹ Tr. p. 76; 90-91.

³⁰ Tr. pp. 81-82.

- Apartment B
 - January 13, 2017 - \$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.³¹

8. There was testimony at the hearing concerning a service disconnection. Mr. Apted testified that his service was disconnected without notice in May of 2018.³² Spire presented evidence showing 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, continued all the way to April 30, 2018, when the gas was finally physically turned off.³³ Mr. Apted's complaint does not allege wrongful disconnection of service.³⁴ The

³¹ Tr. pp. 75-76.

³² Tr. 54.

³³ Tr. pp. 80-81.

³⁴ See Complaint and Mr. Apted's Response to Order Directing Filing, August 25, 2017.

parties' *List of Issues and Identification of Witnesses and Position Statements*³⁵ 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 the alleged wrongful service disconnection.

9. The Commission finds that the Company has substantially performed the investigation that Mr. Apted requested in his *Complaint*.³⁶ The Company performed a meter test (on two of the meters) on February 17, 2017, and found that they were working properly.³⁷ 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 that 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, 2017.³⁸ The meters had to be accurate within +/-2% accuracy of each other to pass the tests. The meters for Apartment Units B and C passed.³⁹ The meter for Unit A could not be tested because of excessive water in the meter.⁴⁰

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

³⁵ List of Issues, Position Statements and Identification of Witnesses, December 4, 2018; Amended List of Issues, Position Statements and Identification of Witnesses.

³⁶ Exhibit 100 (Staff's Report); Tr. p. 37.

³⁷ Exhibit 100, p. 5.

³⁸ Exhibit 100, p. 2.

³⁹ Exhibit 100, p. 2.

⁴⁰ Exhibit 100, p. 2.

of 2013 through April of 2017 for the three apartment units.⁴¹ 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.⁴²

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. Commission 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.

3. Complainants have the burden of proving that the Company’s alleged acts and/or omissions have violated the law or its tariff; or that the Company has otherwise engaged in unjust or unreasonable actions.⁴³

⁴¹ Exhibit 100, p. 3.

⁴² Exhibit 100, p. 4.

⁴³ *State ex rel GS Techs Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003).

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

5. Tariff Sheet No. R-8 of Spire’s currently effective tariffs and Commission Rule 4 CSR 240-10.030 requires 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

6. 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 The Commission cannot 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 identical bills on different units with different floor plans 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 a conclusion that the Company's service instrumentalities and facilities were inadequate or faulty. Finally, no evidence supported a conclusion that the Company ever charged Mr. Apted an unjust or unreasonable rate. The Commission, accordingly, finds that Mr. Apted failed to sustain his burden to establish that 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*.⁴⁹ 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*⁵⁰, and because at no time has Mr. Apted ever requested any

⁴⁹ Complaint, Paragraphs 5 and 6.

⁵⁰ Complaint; Response to Order Directing Filing, August 25, 2017; List of Issues, Position Statements and Identification of Witnesses, December 4, 2018; Amended List of Issues, Position Statements and Identification of Witnesses.

order or relief with respect to an alleged wrongful disconnection,⁵¹ no such question is at issue in the Complaint.

Any application for rehearing must be filed before the effective date of this Order.

THE COMMISSION ORDERS THAT:

1. The Complaint of David Apted is denied.
2. The Report and Order shall become effective on April 5, 2019.
3. This file shall close on April 6, 2019.



BY THE COMMISSION

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

Morris Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Graham, Regulatory Law Judge

⁵¹ See 4 CSR 240-2.070(4), generally, and subsection (E) thereof requiring a formal complaint to state the "relief requested".

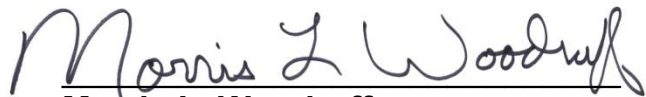
STATE OF MISSOURI

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 6th day of March 2019.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 6, 2019

File/Case No. GC-2017-0348

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

David Apted

Thomas R Applewhite
1108 Olive Street, Suite 200
Saint Louis, MO 63101
tom.applewhite@da-lawfirm.com

David Apted

Steven A Donner
1108 Olive Street, Suite 200
Saint Louis, MO 63101
steve.donner@da-lawfirm.com

**Missouri Public Service
Commission**

Whitney Payne
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
whitney.payne@psc.mo.gov

Spire

Michael C Pendergast
423 Main Street
St. Charles, MO 63301
mcp2015law@icloud.com

Spire

Rick E Zucker
14412 White Pine Ridge Ln
Chesterfield, MO 63017-6301
zuckerlaw21@gmail.com

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.