

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

Teresita Fujii,)	
)	
v.)	Case No. GC-2008-0053
)	
Laclede Gas Company,)	
)	
Respondent.)	

POST-HEARING BRIEF OF LACLEDE GAS COMPANY

In this case, Ms. Fujii, claims that she was overcharged for gas service during the winter of 2006-07 at her property located at 6363 Waterman Avenue in University City (the “House”). The evidence presented clearly demonstrates that Laclede Gas Company (“Laclede” or “Company”) billed the Complainant accurately during that winter. These bills were based on actual meter readings from a meter that passed an accuracy test performed in accordance with Commission rules. As further confirmation of the accuracy of these billings, Laclede also reviewed Ms. Fujii’s usage that winter for reasonableness, and found that the usage amount was normal and reasonable for the House, and the usage pattern corresponded appropriately to both the weather and to a power outage reported by the customer.

Although this normal usage pattern was higher than Ms. Fujii expected, two primary reasons exist which could explain this divergence. First, the Fujiis were renovating the House and the presence of several tradesmen over that winter, opening doors or windows or adjusting the thermostat, likely contributed to higher than expected usage. Second, Laclede suspects that, although the customer may have set the thermostat that controlled the air conditioner and the boiler to 58 degrees, the original boiler thermostat may still have been in operation and was set to 68 degrees. Thus, the House

was actually heated to 68 degrees for the entire winter, which led to the more normal usage pattern.

In summary, the evidence shows that the meter readings at the House were accurate, and the usage recorded was not only reasonable, but explainable. In a complaint case, the Commission is to determine whether the Company has violated any laws or rules, orders or decisions of the Commission. In this case, Laclede has clearly committed no such violations. To the contrary, Laclede has gone to great lengths to investigate the customer's complaint to confirm whether its gas bills are accurate. The Commission should therefore find that Laclede has violated no laws or Commission rules, orders or decisions and dismiss this complaint.

ISSUE

Did Laclede overcharge Ms. Fujii by billing her for 1,642 CCF (Hundred Cubic Feet) of gas, totaling \$2,069.11, for the period from November 17, 2006 to March 22, 2007?

CONCLUSION

For the reason discussed below, Laclede did not overcharge Ms. Fujii for gas service rendered from November 17, 2006 to March 22, 2007.

BACKGROUND

The Fujiis bought the House in the summer of 2006. (Transcript, p.19, ll. 7-9) The House was built about 95-100 years ago, contains about 3,600 square feet on three floors, has 9½-10 foot ceilings, 4 bedrooms, 3½ bathrooms, and 10 total rooms. (Tr. p.29, l.8 to p.30, l.4; p.27, ll.16-20; p.133, ll.22-25) The Fujiis decided to perform extensive renovations at the House and did not occupy it until January 2008, just last

month. (Tr. p.19, ll.17-20) Ms. Fujii testified that, during the winter of 2006-07, she was at the House every day of the week and sometimes on weekends, overseeing remodeling work done by various tradesmen. In September 2006, the Fujiis had a new Unico air conditioning system installed at the House, complete with electric heat pumps. (Tr. p.19, l.23 to p.20, l.3) New programmable thermostats accompanied this system, one on the first floor that controlled the first floor air conditioner and the boiler, and one on the second floor that regulated the second and third floor air conditioner. (Tr. p.80, l.16 to p.81, l.5; p.28, ll.8-14)

Ms. Fujii testified that, beginning in November 2006, she set the thermostat for the boiler at 58 degrees. In December, when one of the workmen told her that the temperature needed to be kept warm enough for the plaster to dry and cure properly, she raised the thermostat for two weeks to 68 degrees.¹ Other than these two weeks in December, the setting has not been at 68 degrees until November 2007, when she, her husband and her mother began working in the House. (Tr. p.20, ll.3-17)

Having been informed that, with the House still vacant but served by a new meter, her December 2007 usage was similar to the objectionable December 2006 usage recorded by the previous meter, Ms. Fujii came to the hearing prepared. She testified that, beginning in November 2007, the thermostat was set at a toasty 72-74 degrees. Suddenly, conservation was out and comfort was in. Based on these facts, Ms. Fujii naturally argued that the accurate December 2007 usage should be greater than, not equal to, the December 2006 usage, and that the fact that they were similar indicated that the December 2006 readings were overstated. (Tr. p.20, l.17 to p.21, l.1; p.44, ll.11-25)

¹ In her Complaint, Ms. Fujii claimed that the reset temperature was “between 65 and 68 degrees.”

Ms. Fujii also testified that the new thermostat was difficult to understand and that she had to have her contractor explain to her how it worked. She opined that the tradesmen who worked in her home were neither authorized nor skilled enough to operate it. Therefore, if she set the thermostat at 58 degrees, she believed that it would have stayed at 58 degrees. (Tr. p.60, 1.7 to p. 61, 1.6; p.21, 11.1-10)

In response to Ms. Fujii's complaint in late 2006 that her bills were too high, on January 3, 2007, Laclede sent a service representative to the House to perform a "high bill investigation" in order to determine if the billed usage had actually registered, and if so, why the usage might be at the level billed. The results of this investigation are set forth on Exhibit 3. Both Exhibit 3 and the testimony of Laclede witness Theodore Reinhart address the results of the high-bill investigation.² Mr. Reinhart confirmed that on January 3, 2007, Laclede's high bill investigator confirmed that the meter read was consistent with the usage billed. The investigator also found that the boiler was controlled by a non-programmable thermostat that was set at 68 degrees, and that the temperature in the House was in fact 68 degrees. (Exhibit 3; Tr. p.136, 1.22 to p.137, 1.13) Other than the fact that the House had a huge boiler capable of using 300,000 Btu/hour, and single pane windows, there was nothing remarkable about the remainder of the high bill investigation. It should be noted that, according to Ms. Fujii, the boiler was installed in the 1950s or 1960s, and operates at an efficiency of perhaps 60-70%. (Tr. p.62, 1.23 to p.63, 1.11)

² Mr. Reinhart is a registered professional engineer and has managed Laclede's Utilization Engineering Department since 1996. He has a bachelor's degree in physics from Rice University and a Masters degree in mechanical and aerospace engineering from the University of Missouri. (Tr. p. 127, 1.2 to p.128, 1.4)

Following the high-bill investigation, Ms. Fujii believed that the meter in the House was the source of the higher-than-expected gas bills. She and Laclede agreed that the meter would be replaced with a larger capacity meter, and that the original meter would be tested for accuracy. (Tr. p.22, ll. 7-12) An appointment was first scheduled to remove the meter on January 23, 2007, but after a number of postponements, the meter was removed on March 14, 2007. (Tr. pp. 104-08) Since the March 14 meter change, Ms. Fujii has had no complaints with the measurement recorded by the new meter.

As set forth on Exhibit 2, the meter easily passed the accuracy test. While Commission rules allow for a 2% variance, the meter actually tested within 1% of perfect accuracy. (4 CSR 240-10.030(18); Exhibit 2) Fred Maly, Laclede's Superintendent of Measurement, testified that the fact that the meter tested as accurate in the meter shop also meant that it had previously performed accurately at the House. Had the meter been inaccurate in measuring gas usage at the House, Mr. Maly testified, it would not later pass an accuracy test, because meters do not fix themselves. (Tr. p.117, ll. 9-15) Mr. Maly has headed Laclede's Measurement Department since 1997 and has chaired the Measurement and Control Committees for both the Midwest Energy Association and the Southern Gas Association. He has a Bachelor's degree in electronic engineering and a Masters degree in management. (Tr. p.91, l.22 to p.93, l.8)

ARGUMENT

1. The Meters' Passing of the Accuracy Test Determines the Issue.

At the hearing Ms. Fujii repeatedly admitted that she had no idea how much gas she used during the winter of 2006-07. Her prescribed remedy is for her to pay only what she happens to have paid to date for that winter, which is roughly 55% of the billings. She has no basis for reaching this remedy; it is merely a convenient outcome. In effect,

her argument is that, under the circumstances at the House she described, Ms. Fujii believes that she did not use the amount billed that winter by Laclede. (Tr. p. 70, ll.1-23; Tr. p.63, l.24 to p. 64, l.4)

Conversely, Laclede does not generally know what went on at the House during the winter of 2006-07. Other than when its inspector visited the House on January 3, 2007, to perform a high-bill investigation, Laclede has little ability to determine the living conditions and behavior of the people who visited or worked at the House. Nor does it need to.

Instead, Laclede relies on its meter to measure the gas that passes into the House. Still, neither Laclede nor the customer is required to blindly adhere to these meter readings. Rather under Commission rules and Laclede's approved tariffs the customer has the right to demand, which Ms. Fujii did, that the meter be removed and tested for accuracy. (4 CSR 240-10.030(20); Laclede Tariff Rule 10A.) In such cases, Laclede notifies the customer of the test time, which Laclede did, and the customer is given the opportunity to observe the test, which Ms. Fujii did. If the meter passes the accuracy test, which it did, that should satisfy the Commission's requirements and end the inquiry.

In opposition, Ms. Fujii produced no evidence upon which to base her usage for that winter. That is not Ms. Fujii's fault. Independent of the daily and monthly meter readings, Laclede would not know how much gas the customer used. So we must rely on the readings of a meter that passed the Commission approved standard for assessing meter accuracy. (*Id.*)

In the face of this overwhelming and uncontraverted evidence, Ms. Fujii could only complain about cancelled meter removal appointments and imply that the accuracy test is tainted because it is performed by Laclede. Ms. Fujii's version of the cancelled

appointments proved to be exaggerated.³ The taint argument is also meritless, because Commission rules require Laclede to maintain gas meter provers, each accompanied by a certificate of calibration indicating that it has been tested against a standard approved by the National Bureau of Standards or a testing laboratory of recognized standing. (4 CSR 240-10.030(22)) In addition, the Commission Staff performs periodic checks of Laclede's testing process, and Ms. Fujii herself actually witnessed the test. (Tr. p.43, ll.20-24)

In summary, abandonment of the system that produces an objective measure of gas usage would throw the entire measurement and billing process into chaos. It is therefore incumbent upon us to follow the system that the Commission has established to ensure meter accuracy and confirm Laclede's meter readings and billings in this case.

2. The Usage is Both Reasonable and Explainable.

In addition to the decisive accuracy test, Laclede also reviewed the customer's usage for the period November 2006 to March 2007 to confirm that it was reasonable for the House. First, Laclede checked the daily usage to see if it moved appropriately with the weather. Since the large majority of gas was used to heat the House, we would expect to see usage generally increase on colder days and decrease on warmer days. In Exhibit 4, Laclede witness Reinhart mapped the usage pattern against the weather pattern. He found a very close correlation between usage and weather, as you would expect with a properly working meter. (Tr. p.145, l.19 to p.146, l.13) He also found that weekday

³ In her Complaint, Ms. Fujii insisted that Laclede cancelled five separate appointments, each time claiming it did not have the correct meter available. At the hearing, Ms. Fujii admitted that she cancelled one appointment due to her illness, although she misremembered the date, while Laclede showed up for another appointment, but Ms. Fujii did not, because Laclede did not have the correct area code to contact her on her Chicago cell phone. In the end, Laclede conceded that on two occasions, its service personnel did not have the proper equipment required to install a larger meter at the House. (Tr. p.22, l.13 to p.23, l.23; pp.104-108)

usage exceeded weekend usage, the opposite of what you would normally find with a residence, but consistent with the fact that the House was occupied constantly on weekdays by Ms. Fujii and various workers, but generally unoccupied on the weekends. (Tr. p.146, l.14 to p.149, l.1; p.19, ll.23-24)

Second, in Exhibit 5, Laclede witness Reinhart charted the usage pattern at the House against the usage patterns of eleven other homes on Ms. Fujii's street that were of similar size to the House. This analysis placed the House's usage pattern comfortably in the lower half of gas users in the neighborhood, but generally near the middle. While the amount of gas billed for the winter of 2006-07 was higher than Ms. Fujii expected, it certainly is not an unusual or surprising amount for either the House or the neighborhood. (Exhibit 5; Tr. p.157, ll.2-21)

Third, since Ms. Fujii had asserted a loss of electricity to power the boiler in the first week in December 2006 due to an ice storm, Laclede checked the daily usage recorded during that week to see if it was consistent with a power outage. Again, Laclede witness Reinhart testified that gas usage, which had been substantial during a late November cold spell, nearly disappeared during the first week in December despite continued cold. This is fully consistent with a power outage that rendered the boiler inoperative but left the water heater using a minimal amount of gas to maintain water temperature. (Tr. p.149, l.7 to p.152, l.21)

Thus, in all three usage checks, the meter performed as expected, further confirming the accuracy that was established by the meter test. Even in the face of this mountain of evidence supporting the meter readings, Ms. Fujii remained skeptical, because she felt that the usage and bills did not reflect her conservation efforts. Two factors likely explain this divergence. First, the presence of workers renovating the

House could easily lead to increased usage, as the workers move in and out of the House, leaving doors or windows temporarily open, or turn up the heat for comfort or for other reasons, such as to dry plaster. As Laclede witness Reinhart testified, once various third parties are introduced into a home, one person can no longer exercise full control over gas usage. (Tr. p.132, l.3 to p.133, l.13)

The second reason that usage measured closer to normal may be that the House was in fact at all times heated to 68 degrees, and not to 58 degrees. While the customer may have set the new thermostat that controlled the air conditioner and the boiler to 58 degrees, unbeknownst to her, the original boiler thermostat was still in operation and was set to 68 degrees. Thus, the home was actually heated to 68 degrees for the entire winter. This theory provides the best explanation needed to unify the following group of puzzling facts:

1) In September 2006, the Fujiis installed a new Unico air conditioning system, and received new, programmable thermostats; but four months later, Laclede's inspector recorded that the thermostat he saw was ***non-programmable!*** (Tr. p.80, l.16 to p.81, l.5; p.28, ll.8-14; Exhibit 3; Tr. p.136, l.22 to p.137, l.13)

2) Ms. Fujii claimed that, except for two weeks in December 2006, the thermostat was at all times set to 58. Yet at the high bill inspection in January 2007, ***Laclede's inspector found the setting of the non-programmable thermostat to be at 68 degrees!*** (Tr. p.20, ll.3-17; Exhibit 3)

3) The House was supposed to be 58 degrees, ***but the inspector measured the temperature to actually be 68 degrees!*** (*Id.*)

4) Ms. Fujii testified that she used her heat pump in the fall and did not turn her thermostat to the boiler setting until November, yet by the time she received her first winter bill, ***she was already complaining about her level of usage!*** (Tr. p.19, l.25 to p.26, l.3; p.30, ll.21-24)

5) Ms. Fujii testified that she had difficulty understanding how to work the new thermostat. She was not aware that the boiler's old thermostat was still in service.⁴ (Tr. p.60, l.7 to p. 61, l.6; p.21, ll.1-10)

6) Why wouldn't Ms. Fujii have noticed that the indoor temperature was warmer than 58 degrees? She testified that her level of comfort tends to be in the 72-74 degree range. She may have found 68 degrees to be appropriately chilly. (Tr., p. 45, ll.1-4)

CONCLUSION

In summary, the evidence shows that, having passed an accuracy test, the meter must be considered to have accurately measured the gas consumed by the Fujiis. There is no evidence to contradict this. Further, the usage recorded by the meter was reasonable for the House and the neighborhood, and responded appropriately to weather patterns and a power outage. Finally, the fact that the usage is higher than the customer expected can be explained by the presence of contractors in the House, and by a real possibility that, in addition to the customer's new, programmable thermostat, an older non-programmable thermostat, set at 68 degrees, was also controlling the boiler.

Laclede has violated no laws or Commission rules, orders or decisions. To the contrary, Laclede has gone to great lengths to investigate the customers' claim and confirm whether its gas bills are accurate. The Commission should therefore find for the Company and dismiss this complaint.

WHEREFORE, Laclede respectfully requests that the Commission deny the relief requested by Complainant in this case and dismiss the Complaint.

⁴ After the hearing, Laclede contacted the local Unico system provider and alerted them to the possibility that the customer was unaware of the existence of a parallel thermostat. Laclede also contacted Ms. Fujii for permission to enter her home, but she declined.

Respectfully submitted,

/s/ Rick Zucker

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Complainant, the General Counsel of the Staff of the Missouri Public Service Commission, and the Office of Public Counsel on this 4th day of March, 2008, by United States mail, hand-delivery, email, or facsimile.

/s/ Rick Zucker