

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 15th day of
February, 2007.

Tony Walker,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-2007-0162</u>
)	
Missouri Gas Energy,)	
)	
Respondent.)	

**ORDER GRANTING MOTION FOR SUMMARY DETERMINATION ON
THE PLEADINGS AND DISMISSING COMPLAINT WITH PREJUDICE**

Issue Date: February 15, 2007

Effective Date: February 25, 2007

On October 19, 2006,¹ Tony Walker filed a complaint with the Commission against Missouri Gas Energy ("MGE"). MGE filed its answer to the complaint on November 9, and the Staff of the Missouri Public Service Commission filed its Report on December 6.

Mr. Walker alleged that MGE had over billed him, or had failed to apply an assistance payment from United Services Community Action Agency (USCAA) to his account. Mr. Walker claims that he paid the amount of \$239.50 to pay off his balance with MGE. Mr. Walker states that he considers this amount to be appropriate and that his account balance should be zero. Mr. Walker calculated this amount by multiplying

¹ All dates throughout this order refer to the year 2006 unless otherwise noted.

\$23.95 times ten months, the number of months that he apparently failed to make any payments on his gas bill. However, Mr. Walker offers no factual basis or documentation to support his calculation that \$23.95 should be the correct gas bill for each of those ten months.

Staff's investigation reveals that Mr. Walker made no payments on his gas bill for the months of December 2005 through September 2006. Staff tracked Mr. Walker's bill and, even with accounting for all low energy assistance payments and his payment of \$239.50, his current outstanding balance totals \$1302.40. Additionally, the pledge of assistance that Mr. Walker referenced from USCAA was actually made to Kansas City Power and Light Company ("KCPL") to help pay his electric bill. Mr. Walker has confirmed this in a separate complaint that he has filed with the Commission against KCPL.

Staff found that MGE sent Mr. Walker a monthly billing statement for actual gas usage and that no estimated billing was performed. Staff also found that Mr. Walker had broken his previous Cold Weather Rule ("CWR") arrangement with MGE and that he now has the option to pay MGE 80% of his current balance, with the remaining amount placed on a twelve month CWR payment plan. Staff did not find that MGE was in violation of any statute, Commission rule, or tariff provision with its billing of Mr. Walker. Consequently, Staff recommends that this complaint be dismissed.

A prehearing conference was set in this matter for December 22. In the order setting the prehearing conference the parties were advised that, pursuant to Commission Rule 4 CSR 240-2.090, "Failure to appear at a prehearing conference without previously having secured a continuance shall constitute grounds for dismissal

of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown." The parties were also given the option to appear by telephone, but no such requests were made.

On December 22, the Staff and MGE entered their appearance at the prehearing conference. Mr. Walker did not appear. Mr. Walker had not requested a continuance. During the prehearing conference, the presiding officer made three attempts to contact Mr. Walker by phone using two phone numbers he had provided to the Commission, and a third number provided by another individual answering one of the calls. Mr. Walker could not be reached by phone.

Because Mr. Walker failed to make an appearance at the prehearing conference, he was directed to file a pleading with the Commission showing cause why his complaint should not be dismissed. Mr. Walker was advised that his response should explain to the Commission why he was unable to appear for the prehearing conference and why he believed he had a valid complaint given the Staff's report concerning his gas bill. The deadline for Mr. Walker's response was January 2, 2007. Mr. Walker failed to respond to the Commission's December 22 order.

It was brought to the Commission's attention that Mr. Walker changed his address. However, it should be noted that there is nothing in the record to indicate that Mr. Walker did not receive the Commission's prior orders. The Commission had not received any returned mail and service by mail is complete upon mailing.² Nevertheless, recognizing that Mr. Walker's mail may have been delayed, on January 3, 2007, the Commission re-mailed its December 22 show cause order to Mr. Walker's new address and issued a separate order extending the deadline for his response to

² 4 CSR 240-2.080(17)(C)(1).

January 12, 2007. Again Mr. Walker failed to timely respond to the Commission's orders.

On January 17, 2007, the Commission received a letter from Mr. Walker stating that he still wished to pursue his complaint. The letter provided yet another new mailing address. Although Mr. Walker stated he wished to pursue his complaint, he did not respond as ordered and failed to explain why he believed he had a valid complaint given MGE's Answer to the complaint and Staff's report concerning his gas bill.

The Commission, wishing to extend every possible opportunity to Mr. Walker to pursue his complaint, reset the prehearing conference for February 9, 2007. The presiding officer in this matter confirmed Mr. Walker's address by placing a phone call to the two new phone numbers provided. Mr. Walker confirmed his current mailing address per phone. All further correspondence has been directed to this final address. MGE's Answer to the complaint and Staff's Report concerning the complaint were re-mailed to Mr. Walker. The Commission has received no notices of returned mail.

The order resetting the prehearing conference provided the option for all parties to participate by phone. Initially, no party requested to appear by phone within the deadline provided in the order. However, the presiding officer called Mr. Walker and Mr. Walker agreed that he would participate in the prehearing conference by phone. The number for the phone bridge for the prehearing conference was provided to Mr. Walker by both phone and by written notice issued by the Commission. Mr. Walker again failed to appear at the prehearing conference. During the prehearing conference, the presiding officer again attempted to reach Mr. Walker at his home utilizing the phone numbers he had provided. Mr. Walker did not respond to those calls.

As previously noted, Commission Rule 4 CSR 240-2.090 states: "Failure to appear at a prehearing conference without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown." Commission Rule 4 CSR 240-2.116(3) provides that any party may be dismissed from a case for failure to comply with a Commission order. Additionally, Commission Rule 4 CSR 240-2.116(2) provides that: "Cases may be dismissed for lack of prosecution if no action has occurred in the case for ninety (90) days and no party has filed a pleading requesting a continuance beyond that time."

Mr. Walker failed to appear at two scheduled pre-hearing conferences. He did not request a continuance for either prehearing. Mr. Walker could not be reached by phone on the days of the pre-hearing conferences. Mr. Walker failed to comply with the Commission's December 22, 2006 and January 3, 2007 show cause orders. Additionally, more than 90 days have now passed from the date Mr. Walker filed his complaint and he has taken no further action to prosecute his complaint.

In addition to his procedural failures, the only basis Mr. Walker provided for his complaint was his statement that he paid MGE the amount that he considered he owed on his bill. Mr. Walker offered no factual basis or documentation to support his assertions.

MGE and Staff have both lodged motions to dismiss this action with prejudice for failure to prosecute and for violation of Commission Rules. Staff's report of its investigation into this matter was verified by affidavit, and Staff's position regarding Mr. Walker's bill is fully supported with documentation. Consequently, the Commission

will treat Staff's motion to dismiss as a motion for Summary Determination on the Pleadings. The Commission, having examined all of the pleadings, and Staff's verified report, which are hereby admitted into evidence, grants the motion for summary determination. Mr. Walker's complaint shall be dismissed with prejudice.

IT IS ORDERED THAT:

1. The Staff of the Missouri Public Service Commission's Motion for Summary Determination on the Pleadings is granted.
2. Tony Walker's complaint against Missouri Gas Energy filed on October 19, 2006, case number GC-2007-0162, is dismissed with prejudice.
3. This order shall become effective on February 25, 2007.
4. This case may be closed on February 26, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw and Appling, CC., concur
Clayton, C., absent

Stearley, Regulatory Law Judge