

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Abb D. Rhodes,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-2007-0406</u>
)	
Laclede Gas Company,)	
)	
Respondent.)	

ORDER SETTING PREHEARING CONFERENCE AND DIRECTING
FILING OF A PROPOSED PROCEDURAL SCHEDULE

Issue Date: June 15, 2007

Effective Date: June 15, 2007

Abb D. Rhodes, by and through counsel, filed a formal complaint against Laclede Gas Company ("Laclede") on April 18, 2007. Mr. Rhodes sought a Commission order requiring Laclede to perform an accounting, adjust his bill downward, and remove its equipment from a building he owns and replace it with properly functioning equipment. He also requested an award of costs, expenses, and attorney fees. Mr. Rhodes claimed he was entitled to an adjustment because in a bill it reissued to him on February 2, 2007 in the amount of \$4,361.92, Laclede overcharged him by an unspecified amount of money for gas used at the building from November 6, 2004 to October 18, 2006 as a result of the "negligence of Laclede Gas in installing and maintaining equipment and building and billing inaccuracies." On April 20, 2007, the Commission notified Laclede of the complaint and allowed it thirty days in which to answer as provided by 4 CSR 240-2.070(7). The same day, pursuant to Commission Rule 4 CSR 240-2.070(10), the Commission ordered its Staff

to commence an investigation and file a report concerning the results of that investigation by May 28.

On May 21, Laclede filed its answer to Mr. Rhodes' complaint, in which Laclede stated that in November 2005, Mr. Rhodes more than doubled the building's prior heating capacity by adding a 175,000 BTU boiler to supplement an older furnace with a capacity of 125,000 BTU. After receiving a report of gas odor in the building on February 7, 2007, Laclede found that the boiler was leaking. According to Laclede, on February 22, 2007, after the boiler had been repaired, the meter about which Mr. Rhodes is complaining was removed, tested, and found to be working properly. Laclede also alleged that it "accurately billed the 6815 CCF used by [Mr. Rhodes] between November 2004 and February 2007," further suggesting that Mr. Rhodes should not be surprised that his installation of an additional 175,000 BTU boiler would significantly affect his gas usage. Nevertheless, Laclede pledged "to continue to review this matter to determine if reasons exist that warrant further adjustment" to Mr. Rhodes' gas bill.

On May 29, 2007, Staff filed a verified report recommending that the Commission dismiss the complaint, as its inquiry revealed no evidence that Laclede had violated its tariff, any Commission rule, or statute in rendering its billing statements to Mr. Rhodes. Staff further noted that "[a]ny metered usage for gas leaks due to [a] customer's equipment is the customer's responsibility" and that none of Mr. Rhodes' meter readings suggested that he was billed for gas that was not delivered to the building in question. As to Mr. Rhodes' request for an award of costs, expenses, and attorney fees, Staff cited Missouri case law indicating that as the Commission's adjudicative authority is not plenary

and it is not a court, it “cannot enter a money judgment for one party against another” and “cannot grant monetary relief for compensation for past overcharges or damages.”¹

This matter is now at issue and a prehearing conference is appropriate to ensure its prompt resolution. In part, a prehearing conference is designed to permit the parties to pursue settlement discussions and to identify all remaining procedural or substantive matters of concern prior to the formal disposition of the issues in the case.² In addition, a prehearing conference offers the parties a valuable opportunity to attempt to resolve their differences by agreeing to voluntary mediation of their dispute. The parties shall jointly file a proposed procedural schedule within twenty days after the prehearing conference.

The Commission reminds the parties that this prehearing conference is *not an evidentiary hearing*. Sworn testimony will not be taken and no final decision will result from this prehearing conference.³ However, all parties are required to be present for the prehearing conference, and a court reporter will be present to make a record of the parties that appear. **Parties must arrive in person or appear by telephone at or before the scheduled starting time of 9:00 a.m. in order to participate.** Pursuant to Commission Rule 4 CSR 240-2.090(5), “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.”

¹ *May Dept. Stores Co. v. Union Elec. Light & Power Co.*, 107 S.W.2d 41, 58 (Mo. 1937); *see also Am. Petroleum Exch. v. Pub. Serv. Comm’n*, 172 S.W.2d 952, 955 (Mo. 1943) (Commission has no authority to award pecuniary relief or consequential damages).

² See Commission Rule 4 CSR 240-2.090(6).

³ Also, under Commission Rule 4 CSR 240-2.090(7), any facts the parties may discuss during the conference, including any settlement offers or discussions, are privileged and cannot be used against any participating party unless the parties agree to disclose them or they are fully supported by other, independent evidence.

The Commission further advises the parties that arriving late to a prehearing conference is the equivalent of failing to appear. Parties are expected to appear at scheduled hearings on time, or to advise the Commission of their need to appear late or to timely request a continuance. If a party fails to meet those obligations, that party may be dismissed and the Commission may rule in favor of an opposing party. This is why the Commission issues advance notice of all hearings and conferences and extends various opportunities prior to any scheduled event for the parties to appear by phone or request a continuance.

IT IS ORDERED THAT:

1. The parties shall appear at a prehearing conference to be held on July 11, 2007, beginning at 9:00 a.m. The prehearing conference will be held in Room 305 at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, a building that meets the accessibility standards required by the Americans with Disabilities Act. Any person needing additional accommodations to participate in this prehearing conference should call the Public Service Commission's Hotline at 1-800-392-4211 or dial Relay Missouri at 711 prior to the conference.

2. Any party wishing to appear by telephone shall notify the Regulatory Law Judge by calling 573-751-7485 no later than July 3, 2007.

3. Any party wishing to request a continuance shall file a pleading with the Commission stating why they are unable to attend the scheduled prehearing conference on July 11, 2007, either in person or by phone, and shall provide the Commission with a list of dates when that party is available to appear. Any such pleading shall be filed no later than

July 6, 2007, and shall also be served on every other party to this complaint by the party requesting the continuance.

4. The parties shall jointly prepare and file a proposed procedural schedule no later than July 25, 2007.

5. This order shall become effective on June 15, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Benjamin H. Lane, Regulatory
Law Judge, by delegation of authority
under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 15th day of June, 2007.