

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 11th day of
January, 2007.

Gwenda Allen,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-2007-0007</u>
)	
Laclede Gas Company,)	
)	
Respondent.)	

ORDER DISMISSING CASE FOR FAILURE TO PROSECUTE

Issue Date: January 11, 2007

Effective Date: January 21, 2007

On July 5, 2006,¹ Gwenda Allen filed a complaint with the Commission against Laclede Gas Company. Ms Allen's "complaint" was comprised of a single statement: "*I Gwenda Allen are you her permission to call Great Things Incorporated Foundation And Urban League for the rest of my information on my bills for them pledge the money.*" Ms. Allen also attached several documents to her complaint reflecting that she had received some partial payments of her gas bill in the years 2003, 2004, and 2005 from some charitable organizations. Only one statement was from 2006 and that statement, dated May 5, 2006, was from Great Things Incorporated Foundation providing a pledge of \$329.21 to Laclede.

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

Nothing in the five statements provided indicated that any organization intended to completely pay Ms. Allen's gas bill. Three of the five statements instruct Ms. Allen that the contribution is in partial payment and that Ms. Allen needs to pay the remaining portion of her bills. One statement finds Ms. Allen ineligible for assistance, and the final statement from Great Things Incorporated Foundation has already been described.

On July 6, being unable to discern the nature of Ms. Allen's complaint, the Commission issued a Notice of Deficiency advising Ms. Allen's that her complaint was deficient for not having fully complied with Commission Regulations 4 CSR 240.070(5)(C), (D), and (E). Ms. Allen failed to state the nature of her complaint, the relief requested, and whether she had directly contacted Laclede concerning the complaint. The Commission further advised Ms. Allen that no action would be taken on this "complaint" until it was brought into compliance with all Commission regulatory requirements.

On August 31, the Commission issued a second notice to Ms. Allen stating that fifty-six days had passed since the Commission issued its Notice of Deficiency and that Ms. Allen had not yet brought her complaint into compliance with Commission Rules. Ms. Allen was advised that Commission Rule 4 CSR 240-2.116(2) states: "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." The Commission advised Ms. Allen that failure to bring her complaint into compliance by October 4, or failure to request a continuance, could result in the possible dismissal of her complaint.

On September 26, the Staff of the Missouri Public Service Commission requested that it be allowed to investigate this complaint and that Laclede be ordered to respond. Staff based its motion on the fact that Ms. Allen attached documents to her complaint that Staff believes are sufficient “to alert the Commission that this matter involves a low-income ratepayer that is unable to obtain heating service, a matter of great public interest in view of the potential danger to the health and welfare of Complainant and her family, if any, of a winter without heat.” Staff argued that it would be contrary to the public interest, and in derogation of Section 386.610 requiring liberal construction of Chapter 386, to apply a stringent application of the Commission’s pleading rules to this *pro se* complainant.

On October 3, Laclede responded to Staff’s motion. Laclede acknowledged that Staff “based its request on the fact that Ms. Allen appears to be a low-income customer who received a heating assistance grant pledge in the amount of \$329.21 from the Great Things Incorporated Foundation, and had a balance in 2003 of \$1574.70.” However, Laclede noted that Ms. Allen had availed herself of adequate resources for assistance in maintaining her gas service, that once the assistance was received her current balance would be in the \$400 range, and that the same sources of assistance would be available to Ms. Allen this winter. Laclede also pointed out that Ms. Allen would be able to take advantage of the recently amended Cold Weather Rule. Laclede believed that Ms. Allen should be permitted to decide whether she wished to further pursue a complaint and called attention to the fact that Ms. Allen had recently changed her billing address.

On October 4, because Ms. Allen had apparently changed her address, the Commission re-issued its notice of deficiency, instructing the Commission's data center to direct notice to both Ms. Allen's current address on record with the Commission as well as her new billing address. It should be noted that the Commission had not received any returned mail and that service by mail is complete upon mailing.² This was the third notice sent to Ms. Allen in an attempt to allow Ms. Allen an opportunity to proceed with her complaint. Ms. Allen was given until November 6 to bring her complaint into compliance with Commission rules and was specifically directed to make clear to the Commission if she was still interested in further pursuing her complaint.

On November 6, the deadline for Ms. Allen's response passed and she failed to bring her complaint into compliance. She did not request a continuance and did not file a pleading, as ordered, indicating any intention to further prosecute her complaint with the Commission. Consequently, on November 7, the Commission directed Ms. Allen to show cause why her complaint against Laclede Gas Company should not be dismissed. This was the Commission's fourth notice to Ms. Allen providing her with another opportunity to move her complaint forward. In that same order, Staff was directed to renew its September 26 motion to investigate Ms. Allen's complaint if it was still interested in pursuing the complaint on Ms. Allen's behalf. Staff did not renew its former motion.

Ms. Allen failed to respond to the Commission's November 7 order within the deadline prescribed. Consequently, on November 28, Staff was directed to investigate and file a report in this matter. Staff was specifically directed to contact Ms. Allen and determine if she wished to further pursue her complaint. Staff was also directed that it

² 4 CSR 240-2.080(17)(C)(1).

should inform the Commission if it wished to further pursue Ms. Allen's complaint on her behalf.

On December 14, Staff late-filed a report and memorandum following the completion of its investigation. Staff requested leave to file its report late because of the difficulty Staff had encountered with contacting Ms. Allen and with having her cooperate with Staff's investigation. That leave was granted.

Staff states that it made numerous attempts to contact Ms. Allen at her home and was finally able to obtain a cell phone number from Ms. Allen's brother. Numerous attempts to contact Ms. Allen by cell phone followed, but Staff was only able to communicate with Ms. Allen on one occasion on December 8. During that conversation, Ms. Allen indicated that she would like to proceed with her complaint and stated that she believed that Laclede was over-charging her because Laclede had brought forward the balance from her previous account to her current account. Ms. Allen stated she would call Staff back with additional information, but failed to follow through and contact Staff as stated. Following this conversation, Staff again made repeated attempts to contact Ms. Allen utilizing her home and cell phone numbers. Staff was unable to contact Ms. Allen and concluded in its December 14 report that the Complainant was uncooperative and suggested the complaint be dismissed.

Although Ms. Allen was not fully cooperative with Staff, because she indicated that she wished to pursue her complaint, the Commission issued notice on December 14, and shortened the time for Laclede to file an answer. The Commission also ordered Staff to further investigate. Laclede filed its answer, along with a motion to dismiss, on December 26.

Laclede states that after applying grants from Great Things Incorporated and Dollar-Help that Ms. Allen's account balance is \$394.59. Ms. Allen's service is currently off, a fact she did not convey to the Commission, but she can reconnect her service under the Cold Weather Rule by making an initial payment of \$197.30. Laclede's motion to dismiss without prejudice is based on Ms. Allen's failure to remedy the deficiencies in her complaint, and the fact that she has received the funding sought and her balance is at a manageable level. Laclede proposes that the complaint be dismissed without prejudice to Ms. Allen's so that she can re-file her complaint "to the extent that she still maintains a dispute with Laclede, and can clearly state the nature of such dispute."

On January 4, 2007, Staff filed its report on its second investigation. Staff again attempted to contact Ms. Allen by phone; however, once the call connected it was immediately disconnected. Staff has been unable to contact Ms. Allen. Staff traced back Ms. Allen's account history through her prior address to her current address. Staff has confirmed that Laclede's answer accurately reflects the balance on Ms. Allen's account, a balance of \$394.59. Staff also points out that under the Cold Weather Rule, Laclede could request a payment of 80% of this bill prior to restoring service as opposed to the 50% it has requested. Staff could find no evidence that Laclede violated any statute, Commission rule, or tariff provision, and Ms. Allen has not provided any evidence to the contrary. Consequently, Staff recommends that the Commission dismiss this action.

As previously noted in this order, 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.” Additionally, 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.

Ms. Allen filed her complaint on July 5, and she has pursued no further action of her own to prosecute the complaint. She has not brought her complaint into compliance with Commission rules. She has not requested a continuance. She failed to comply with the Commission’s October 4 and November 7 orders. She has also not cooperated with the Commission’s Staff in its attempt to assist her to move her complaint forward, and has not provided any evidence that Laclede is in violation of any statute, Commission rule or tariff provision, despite the multiple opportunities the Commission has provided to her to advance her complaint. Staff recommends this complaint be dismissed.

The Commission, having examined all of the pleadings and Staff’s Reports, determines that Ms. Allen’s complaint shall be dismissed without prejudice. Should Ms. Allen wish to re-file her complaint and prosecute it, she will be free to do so because there is no applicable statute of limitations.

IT IS ORDERED THAT:

1. Gwenda Allen’s complaint against Laclede Gas Company filed on July 5, 2006, case number GC-2007-0007, is dismissed without prejudice.
2. This order shall become effective on January 21, 2007.

3. This case may be closed on January 22, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale
Secretary

(S E A L)

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

Stearley, Regulatory Law Judge