

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Timothy M. Woodbury,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-2007-0198</u>
)	
Laclede Gas Company,)	
)	
Respondent.)	

ORDER DENYING REQUEST FOR MEDIATION AND SETTING
PREHEARING CONFERENCE

Issue Date: March 19, 2007

Effective Date: March 19, 2007

On November 27, 2006, Timothy M. Woodbury filed a formal complaint against Laclede Gas Company ("Laclede"), in which he requested the removal of an "extra unexpected charge" from his account stemming from an adjusted "back bill." Laclede issued that bill after the remote meter reading device attached to the gas meter located inside his home failed and he let Laclede representatives into his home to read the meter.

On November 29, 2006, the Commission notified Laclede of the complaint and allowed it thirty days in which to answer as provided by Commission Rule 4 CSR 240-2.070(7). The following 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.

On December 28, 2006, Laclede filed its answer to Mr. Woodbury's complaint. Laclede's answer indicates that after the remote meter reading device failed, it sent

Mr. Woodbury a notice in September 2005 which sought access to the home to obtain an actual meter reading. Laclede further answered that it was able to access the interior of Mr. Woodbury's home and obtain an actual meter reading on February 24, 2006. At that time, Laclede installed an automated meter reading module featuring newer technology. Shortly thereafter, says Laclede's answer, Laclede sent Mr. Woodbury an adjusted bill reflecting his actual gas usage for the twelve-month period from March 1, 2005 to March 1, 2006, which Laclede had underestimated by approximately \$213.00. Laclede's answer also states that this billing adjustment procedure was consistent with the Stipulation and Agreement approved for Laclede in Case No. GC-2006-0318; that Laclede would afford Mr. Woodbury the benefits of that Stipulation and Agreement by offering him the opportunity to spread payment of the \$213 or so in undercharges over a period of twelve months; and that Laclede had spoken with Mr. Woodbury and was working with him concerning payment arrangements as to certain unrelated but unpaid and undisputed billings for the months of May, June, August, and October 2006.

After completing its investigation, on January 10, 2007, Staff filed a verified report recommending that the Commission dismiss Mr. Woodbury's complaint since there was no basis, in law or in fact, for granting the relief sought in the complaint. Staff found that Laclede did not violate Commission Rule 4 CSR 240-13.025, which governs the issuance of billing adjustments by a utility in the event of an undercharge.

Then, on January 12, 2007, the Commission issued an Order Directing Filing which summarized all of the pleadings and allegations in the case. That order gave Mr. Woodbury until February 1, 2007 to file a response ("Response") to Laclede's answer and Staff's report, and to set forth any legal or factual reasons why he thought his formal complaint should not be dismissed.

On January 19, 2007, Mr. Woodbury filed a request for voluntary mediation of the issues presented in his case. On January 23, 2007, the Commission gave Laclede seven days to respond to Mr. Woodbury's request. Three days later, Laclede filed its Response to Request for Mediation, which stated, among other things, that before Laclede would consider mediating Mr. Woodbury's complaint, Mr. Woodbury would *first* have to negotiate an agreement with Laclede in which he either paid or entered into a good faith agreement to pay the undisputed (and totally unrelated) portion of his bill, which totaled nearly \$800.00.

On February 1, 2007, the Commission issued another Order Directing Filing, which (1) ordered Mr. Woodbury to specify, by no later than February 13, 2007, whether he consents to mediation under the conditions stated by Laclede in its January 26, 2007 Response to Request for Mediation; and (2) gave Mr. Woodbury until February 13, 2007 to file his Response.

Mr. Woodbury filed his Response on February 13, 2007. In this pleading, Mr. Woodbury replied to the allegations of Laclede's December 28, 2006 answer on a paragraph-by-paragraph basis, explaining the factual reasons why he agreed or disagreed with those allegations. Neither Staff nor Laclede have responded to this pleading.

However, the pleading did not specify whether Mr. Woodbury consented to voluntary mediation of his complaint under the conditions stated by Laclede. For this reason, and because voluntary mediation requires the mutual consent of both the complainant and the respondent, Mr. Woodbury's request for mediation shall be denied.

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.¹ In addition, a prehearing conference may offer the parties a valuable opportunity to resolve their differences or agree to voluntary mediation of their dispute.

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.² However, the 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 2:00 p.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.”

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, the Commission may rule in favor of the 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.

¹ See Commission Rule 4 CSR 240-2.090(6).

² 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.

IT IS ORDERED THAT:

1. Mr. Woodbury's January 19, 2007 request for voluntary mediation of the issues presented in his case is denied.

2. The parties shall appear at a prehearing conference to be held on April 2, 2007, beginning at 2:00 p.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.

3. Any party wishing to appear by telephone shall notify the Regulatory Law Judge by calling 573-751-7485 no later than March 26, 2007.

4. 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 April 2, 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 March 26, 2007, and shall also be served on every other party to this complaint by the party requesting the continuance.

5. This order shall become effective on March 19, 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 19th day of March, 2007.