

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

Stanley Lewis,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. GC-2007-0267</u></b>
	)	
Laclede Gas,	)	
	)	
Respondent.	)	

**ORDER GRANTING REQUEST TO PROVIDE STATUS REPORTS**

Issue Date: May 14, 2007

Effective Date: May 14, 2007

Stanley Lewis filed a formal complaint against Laclede Gas Company ("Laclede") on January 16, 2007.<sup>1</sup> Mr. Lewis' complaint alleges that Laclede must be either overcharging him for gas or not giving him "real" meter readings because, based upon the square footage of his home, his gas bill is too high. Mr. Lewis asks that Laclede be ordered to give him some of his money back.

On January 17, 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 same day, pursuant to 4 CSR 240-2.070(10), the Commission ordered its Staff to commence an investigation of Mr. Lewis' formal complaint and to file a report concerning

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<sup>1</sup> Unless otherwise specified, all dates in this order refer to the 2007 calendar year.

the results of its investigation no later than two weeks after Laclede filed its answer to the complaint.

Laclede filed its Answer and Motion to Dismiss Complaint on February 20,<sup>2</sup> in which Laclede averred that although Mr. Lewis' natural gas usage has been somewhat higher than average for a home the size of Mr. Lewis', his usage has been trending downward over the past few years. Laclede also stated that its meter is located on the outside of Mr. Lewis' home, that it has received regular and consistent actual readings from this meter, and that it can see no obvious evidence that he has been overcharged. On March 13,<sup>3</sup> after investigating Mr. Lewis' complaint and performing an analysis of the billing statements related to his residence over the past three years, Staff filed its verified report, which recommended that Mr. Lewis' case be dismissed in its entirety. Staff concluded:

Mr. Lewis' annual gas usage over the past three years has trended downward, appearing to be the result of [his] efforts to improve energy efficiency. However, given the higher price of gas and the colder temperatures experienced this year, the actual usage and bills rendered for that usage appear correct based on Staff's investigation and analysis of Mr. Lewis' billing statements. Staff's investigation shows that Laclede has not violated its approved tariff or any Commission rules for the billings rendered to Mr. Lewis. Therefore, Staff recommends that the Complainant's case be dismissed in its entirety.

On March 22, the Commission issued an Order Directing Filing, which directed Mr. Lewis to file, by no later than April 11, a pleading which addressed the statements contained in Laclede's answer and Staff's report in this matter and set forth the legal or factual reasons why he agreed or disagreed with those statements. On April 12, Mr. Lewis

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<sup>2</sup> The Answer was filed four days (one business day) out of time. However, on February 22, the Commission granted Laclede's motion for leave to file it out-of-time.

<sup>3</sup> Staff's report and recommendation were originally due on March 6. However, on March 2, the Commission granted Staff's motion for leave to file them on or before March 13.

complied with that order by filing such a pleading,<sup>4</sup> which was sufficient to overcome Laclede's February 20 Motion to Dismiss Complaint since it did state facts upon which, if believed, the Commission could conclude that he is entitled to some form of relief.

By order dated April 17, the Commission set the matter for a prehearing conference in Room 305 of the Governor Office Building on Tuesday, May 1, beginning at 10:00 a.m. Mr. Lewis requested to participate via telephone on April 26. No continuance was secured or requested by any party beforehand, and the hearing was convened at the scheduled time. While Mr. Lewis appeared via phone and the Commission's Staff and the Office of the Public Counsel appeared for the hearing by their counsel, Laclede did not appear, either in person or by telephone.

As the Commission explicitly advised the parties in its April 17 order, Commission Rule 4 CSR 240-2.090(5) 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." Furthermore, the order also expressly stated that "the parties are required to be present for the prehearing conference," either in person or by telephone. Since Laclede failed to appear at the May 1 prehearing conference without previously having requested or secured a continuance, under the plain terms of this Rule, Laclede is subject to dismissal as a party-opponent unless Laclede shows "good cause for [its] failure to appear."

As was explained to the parties who were present during the prehearing conference, under these circumstances the Commission would normally issue a show cause order

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<sup>4</sup> Although he did not file a motion for leave to do so, Mr. Lewis filed the pleading one day out of time. The Commission hereby grants such leave *sua sponte*.

granting Laclede fifteen days to file a pleading showing good cause for its failure to appear at the conference. However, in its “Request to Provide Status Reports,” which was filed on May 3, Laclede addressed the issue on its own initiative, explaining:

Laclede failed to attend the prehearing conference due to distractions caused by an illness in the family of Laclede’s attorney. Laclede apologizes to the Commission and the parties for this oversight.

As the Commission finds that attending to the needs of a sick family member qualifies as good cause for an attorney’s inadvertent failure to appear at a prehearing conference on behalf of his client, there is no longer any need to issue a show cause order.

At this point, the Commission would typically reschedule the prehearing conference and then order the parties to begin preparing a mutually-acceptable procedural schedule. Once again, however, there is no need to do so, at least at this time. This is because, as stated by Laclede in its May 3 Request:

[I]t appears that Mr. Lewis remains unconvinced that his billings are correct. Laclede seeks to work with Mr. Lewis to determine whether Mr. Lewis has in fact been overcharged or, if he has not been overcharged, why his usage is higher than normal. Accordingly, Laclede has contacted Mr. Lewis and obtained his agreement for Laclede to remove and test the gas meter at Mr. Lewis’ home, and to conduct a high-bill investigation in an attempt to find the source of his higher-than-normal usage. Laclede requests that it be permitted to file a status report in the next month on the progress and results of the usage investigation, in lieu of setting a procedural schedule at this time.

This request, which is not only reasonable but also entirely consistent with the underlying purposes of a prehearing conference,<sup>5</sup> is evidently acceptable to all parties, including

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<sup>5</sup> As the Commission explained in its April 17 order scheduling the original conference: “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. In addition, a prehearing conference may offer the parties a valuable opportunity to resolve their differences or agree to voluntary mediation of their dispute.”

Mr. Lewis, since no one has lodged any objections since it was filed eleven days ago.<sup>6</sup> Therefore, the Commission will grant Laclede's request and order Laclede to file a status report on its gas usage investigation at Mr. Lewis' home by no later than June 14, 2007.

**IT IS ORDERED THAT:**

1. Laclede Gas Company's May 3, 2007 Request to Provide Status Reports is granted.
2. Laclede Gas Company shall file a status report on its gas usage investigation at Stanley Lewis' home by no later than June 14, 2007, at which time further monthly status reports may be ordered.
3. This order shall become effective on May 14, 2007.

**BY THE COMMISSION**



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 14th day of May, 2007.

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<sup>6</sup> Under Commission Rule 4 CSR 240-2.080(15), parties are "allowed not more than ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission."