

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

Cesar M. Alba,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. GC-2007-0445</u></b>
	)	
Laclede Gas Company,	)	
	)	
Respondent.	)	

**ORDER DENYING MOTION TO PRODUCE**  
**AND ORDER DIRECTING FILING**

Issue Date April 11, 2008

Effective Date: April 11, 2008

**Background**

On November 7, 2007, the Missouri Public Service Commission held an evidentiary hearing in this matter. Evidence was offered and entered into the record. Thereafter, the Commission directed the parties to file post-hearing briefs. Cesar M. Alba was ordered to file an initial brief by February 15, 2008, with Laclede Gas Company filing its response no later than March 3. Complainant was further allowed to file a reply to Laclede's response no later than March 14.

Complainant did not file an initial brief as directed. Laclede, however, did file a "reply brief" though the brief was not in response to an initial brief. Complainant did not file a reply to Laclede's brief on March 14 as directed. Rather, he filed a motion requesting that Laclede be ordered to provide certain documentation. Complainant later, on March 18, filed a reply to Laclede's brief.

### **Complainant's Motion**

In his motion, Complainant requests that Laclede be directed to produce "all Laclede records on 7048-50 Dartmouth Ave five year[s] prior to May 2006 and gas usage to the present under the new owner." Complainant also requests that AT&T submit telephone records from the morning of December 19, 2006 from 8:00 am to 11:00 am. Complainant states that he wants the records from the Dartmouth address to prove that individual conservation will substantially lower the gas usage of the resident if he exercises and uses conservation methods. Complainant wants the telephone records to refute Laclede's assertion that Complainant called to report an odor of gas on December 19, 2006 at 8:42 am. Complainant asserts that the call was made "around 10:05 am right after the first technician installed the new AMR and left at 10:00 am."

### **Laclede's Response**

In its objection to Complainant's motion, Laclede argues that the time for discovery requests has passed, that the record is closed and that the motion does not seek information that is either new, important or relevant. However, Laclede states that it searched for electronic tapes of Mr. Alba's telephone conversation of December 18-19, 2006 and found one tape which, as a customer service gesture, it is willing to transcribe and send to Mr. Alba.

### **Mr. Alba's Telephone Call to the Judge**

On April 3, 2008, the Judge in this matter received a telephone call from Mr. Alba. Mr. Alba informed the Judge that Laclede had in fact sent him a transcript of the telephone conversation. Mr. Alba then informed the Judge that he would like to file something in the record in response to the information he now has. The Judge then informed Mr. Alba that if

he wants to file something, he may. This order will direct Mr. Alba to do so by a date certain.

## **Discussion**

Commission rule 4 CSR 240-2.150 (1) states that “[t]he record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.” Because the parties were directed to file briefs in this matter, the record in this case would stand submitted upon such filings. Mr. Alba’s final brief was due on March 14. He, however, did not file a brief until March 18. The Commission will not allow the Complainant, by not complying with the Commission’s briefing schedule, to extend the time that the record should have been submitted to the Commission. Midnight of the day the final brief would have been due is the day the record was submitted to the Commission. Mr. Alba filed his motion prior to this time. Hence, his motion was filed prior to the time the record stood submitted for consideration.

Commission rule 4 CSR 240-2.090 states that discovery may be obtained under the same conditions as in civil actions in the circuit court. Supreme Court rule 56.01(b)(1) states:

Parties may obtain discovery regarding any matter . . . that is relevant to the subject matter . . . if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The information sought by Mr. Alba concerning the Dartmouth address will not lead to admissible evidence. In seeking this information, Mr. Alba intends to show that conservation will lower gas usage. This is a fact not disputed by any party. In fact, Laclede has acknowledged that Mr. Alba’s usage at the Dartmouth address was less than that at the Minnesota address. Furthermore, the usage at the Dartmouth address is wholly irrelevant

to the claims asserted by Mr. Alba with regard to his present address. Hence, the information sought would lead only to irrelevant and redundant evidence.

### **Conclusion**

Based on the above discussion, the Commission concludes that Mr. Alba's request for information concerning the Dartmouth address shall be denied and that his request concerning the telephone conversation is moot. Further, the Commission will direct Mr. Alba to file, in response to the information provided to him, any pleading he wishes to file. The Commission forewarns Mr. Alba that if his pleading is not filed by the date set out in the ordered paragraphs below, it may not be accepted. The Commission will afford any appropriate response from Laclede. How Laclede may respond will depend on the substance of Mr. Alba's filing. The Commission will issue a later order in this regard.

### **IT IS ORDERED THAT:**

1. Cesar M. Alba's motion to produce is denied.
2. Cesar M. Alba shall file, no later than April 25, 2008, a pleading as described in the body of this order.
3. This order shall become effective on April 11, 2008.

( S E A L )

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

Kennard L. Jones, Senior Regulatory  
Law Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 11th day of April, 2008.