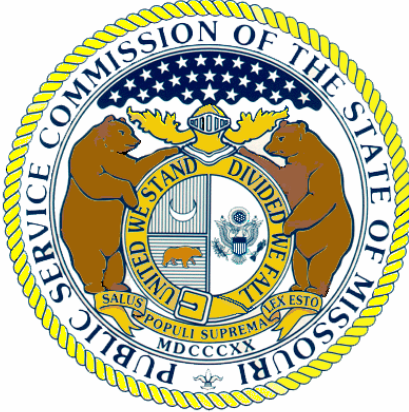


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



Cesar M. Alba,

Complainant,

v.

Laclede Gas Company,

Respondent.

**Case No. GC-2007-0445**

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**REPORT AND ORDER**

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**Issue Date:** May 29, 2008

**Effective Date:** June 8, 2008

**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.	)	

**APPEARANCES**

**Cesar M. Alba**, Post Office Box 300548, St. Louis, Missouri 63130, appearing pro se

**Rick Zucker**, 720 Olive Street, Room 1516, St. Louis, Missouri 63101, for Laclede Gas Company

**Marc D. Poston**, Post Office Box 2230, 200 Madison Street, Jefferson City, Missouri 65102, for the Office of the Public Counsel

**Steven C. Reed**, Post Office Box 360, 200 Madison Street, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission

**REGULATORY LAW JUDGE:**   **Kennard L. Jones**

# **REPORT AND ORDER**

## **Procedural History**

On May 23, 2007, Cesar M. Alba filed a complaint with the Missouri Public Service Commission against Laclede Gas Company. As directed by the Commission, Laclede filed a timely response and Staff filed its report and recommendation. An evidentiary hearing was held on November 7, 2007, and although Complainant did not file an initial post-hearing brief, Laclede filed a post-hearing response brief to which Complainant filed a reply. Also, after briefs were filed, Complainant filed a motion requesting that Laclede be compelled to provide certain records. As a result of Laclede voluntarily providing the information to Complainant, Complainant finally filed a motion to amend his complaint from negligence to fraud.

## **Complaint**

Complainant states that from October 2006 to February 2007, Laclede's negligence in checking for leaks in his system caused overcharges for which he should not be responsible. For his relief, Complainant alleges that Laclede was negligent and requests that all charges be dropped and punitive damages imposed; that Laclede be directed to use dish liquid soap with water rather than an aerosol spray with an unknown substance for detecting leaks; and that the Commission open an investigation to determine whether Laclede has shown a historical pattern of deception with regard Complainant's to apartment.

## **Laclede's Answer**

In its answer, Laclede stated that Complainant's bills were estimated from the time he began service in October of 2006 until the company was able to obtain an actual meter

reading, in December of the same year. Due to an overestimation, the company states that Complainant's account was adjusted to reflect his actual usage. The company denies that its service technician failed to effectively test for leaks.

### **The Staff of the Commission's Report**

In its report, Staff confirms that Laclede did overbill Complainant from October of 2006 to December 19, 2006 but that the company made the necessary adjustment to the account. With regard to Laclede's service initiation, leak testing procedures and meter reading, Staff found no violation of Laclede's tariffs or Commission rules.

### **FINDINGS OF FACT**

Upon consideration of the record, the Commission makes the following findings of fact.

1. On October 12, 2006, Complainant called Laclede to initiate gas service for 3931 Minnesota Ave ,in St. Louis, on October 12, 2006.<sup>1</sup>
2. On December 18, 2006, Complainant contacted Laclede to report concerns of his gas bill being too high.<sup>2</sup>
3. A meter reader arrived at Complainant's residence at around 10:00 am. to read the meter.<sup>3</sup>
4. The meter reader does not check for gas leaks but does carry a "pocket" leak detector that did not indicate a leak on December 18.<sup>4</sup>
5. On December 19, 2006, at 8:42 a.m., Complainant contacted Laclede to report the odor of gas.<sup>5</sup>

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<sup>1</sup> Tr. page 80, lines 6-12; page 29, lines 13-14; Exhibit 5, page 1.

<sup>2</sup> Tr. page 28, lines 14-18.

<sup>3</sup> Tr. page 66, lines 3-9; Exhibit 5, page 1.

<sup>4</sup> Tr. page 64, line 16 to page 65, line 24. and Exhibit 5, page 1.

<sup>5</sup> Tr. page 66, line 18 to page 67, line 6.

6. To investigate the odor of gas, Laclede dispatched a service technician who arrived at Complainant's residence at 9:05 am.<sup>6</sup>
7. The service technician detected a leak by noting a decrease in pressure in the service line.<sup>7</sup>
8. The service technician measured no gas in the air on Laclede's facilities.<sup>8</sup>
9. In addition to noting the leak, the service man installed an AMR-equipped meter.<sup>9</sup>
10. After completing his work the service man left the gas off.<sup>10</sup>
11. Laclede informed Complainant that he would need to hire a private contractor to find and repair the leak(s) in his apartment.<sup>11</sup>
12. Laclede returned to Complainant's residence on December 21 to restore gas service.<sup>12</sup>
13. Complainant did not smell any gas prior to December 19.<sup>13</sup>
14. The gas bill at Complainant's address during the winter of 2006-2007 was not unusually high<sup>14</sup> and was consistent with past usage at that address.<sup>15</sup>
15. In addition to testing the pressure of the system and using a Combustible Gas indicator, Laclede uses a solution to spray on joints with a spray bottle to test for leaks<sup>16</sup> not an aerosol can as described by Complainant.
16. Having at first overestimated his bill, Laclede adjusted Complainant's account to reflect his actual usage.<sup>17</sup>

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<sup>6</sup> Tr. page 67, lines 7 – 24. Exhibit 5, page 3.

<sup>7</sup> Tr. page 68, lines 15 – 25.

<sup>8</sup> Tr. page 70, lines 15-23; page, 88, lines 11-25.

<sup>9</sup> Tr. page 72, lines 1-10; Exhibit 5, page 6.

<sup>10</sup> Tr. page 73, lines 14-21. Exhibit 5, page 8.

<sup>11</sup> Exhibit 5.

<sup>12</sup> Exhibit 5.

<sup>13</sup> Tr. page 41, lines 8-10.

<sup>14</sup> Tr. page 47, lines 6-11

<sup>15</sup> Tr. page 92, lines 13-20; page 96, lines 22-25.

<sup>16</sup> Tr. page 54, line 4 – page 55, line 3; Exhibit 4.

<sup>17</sup> Exhibit 5, page 7.

## **CONCLUSIONS OF LAW**

Laclede Gas Company is a public utility, subject to the jurisdiction of the Missouri Public Service Commission.<sup>18</sup> In prosecuting his complaint, Complainant must show that Laclede has violated any provision of law, tariff, or any rule, order or decision of the Commission.<sup>19</sup> Section 393.130.1, RSMo 2000, imposes an obligation on every gas corporation to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.” In addition, “[a]ll charges made or demanded by any such gas corporation . . . for gas . . . service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission.” As the party bringing a complaint and asserting the affirmative of an issue, Complainant has the burden of proving the allegations in his complaint.<sup>20</sup>

## **Discussion**

Complainant’s contention that Laclede failed to properly test for leaks is not supported by the facts. His complaint and subsequent testimony were based on his memory of events that took place at least eight months prior. During the hearing Laclede produced work orders and notes that were taken at the time the events in question took place. These documents disprove Complainant’s contentions that Laclede improperly tested for leaks.

The record shows that Complainant initiated service on October 12, 2006. On December 18 he contacted Laclede with concerns that his bill was too high. A meter

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<sup>18</sup> Section 386.250 RSMo. 2000.

<sup>19</sup> Section 386.390.1 RSMo 2000.

<sup>20</sup> *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm’n*, 116 S.W.3d 680 ( Mo. App. W.D. 2003).

reader read his meter on that same day. On December 19, having not previously reported a leak, Complainant called Laclede to report an odor of gas. Laclede responded immediately, pressure tested Complainant's gas system, determined that there was a leak, replaced his meter with an AMR and informed him that because the leak was on his side of the meter he must hire a private contractor to find and fix the leak.

Upon request two days later, Laclede performed another pressure test and determined that the system was leak free and restored service to Complainant.

### **POST-HEARING MOTION FILED BY COMPLAINANT**

On March 14, 2008, Complainant filed a motion to subpoena the transcript of Laclede telephone records from the morning of December 19, 2006, and the gas service history from Complainant's prior address. He sought the latter of these for the purpose of comparing the cost of service at an old address to that of his current address. Thereafter, the Judge in this matter was informed that Laclede produced the transcript sought by Complainant. Laclede, however, objected to producing the usage history from Complainant's previous address.

On April 11, 2008, the Commission issued an order finding that the information concerning Complainant's previous address would not lead to admissible evidence. During the hearing, Laclede agreed that Complainant consumed less gas at his prior address than he does currently. However, that this is true has no bearing on Complainant's claim in this matter. With regard to the telephone transcript, the Commission denied this request as moot because Laclede provided the information to Complainant without being directed to do so.

Upon receiving the telephone transcript, Complainant filed a motion seeking to amend his complaint. Although he at first alleged that Laclede was negligent in testing for leaks, he now claims that Laclede has acted fraudulently by attempting to alter company records to cover up its negligence.

### **Discussion**

Commission rule 4 CSR 240-2.110(8) states that a party may request that the Commission reopen a case for the purpose of taking additional evidence if the request is made after the hearing but before briefs are filed. Further, the additional evidence must be facts that are alleged to have occurred since the conclusion of the hearing.

Complainant filed his request after two rounds of briefs had been filed. Further, the telephone transcript, upon which he partially bases his allegation of fraud, was created prior to the hearing and could have been discovered and introduced as evidence. Complainant's motion is therefore denied.

### **DECISION**

The Complainant has failed to show that Laclede has violated any law, tariff provision or Commission rule or order. Further, nothing Laclede has done in this case compels the Commission to investigate further or direct that Laclede do anything different in the future.

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

1. Cesar Alba's claim for relief is denied.



2. This Report and Order shall become effective on June 8, 2008.
3. This case shall be closed on June 9, 2008.

**BY THE COMMISSION**

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

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton,  
Jarrett, and Gunn, CC., concur and  
certify compliance with the provisions  
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,  
on this 29th day of May, 2008.