

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
September 19, 2001**

CASE NO: WC-2002-146

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

David Abernathy, Esq.
St. Louis County Water Co
D/B/A Missouri-American Water Co
535 North Ballas Rd.
St. Louis, MO 63141

Enclosed find certified copy of an NOTICE in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Staff of the Missouri Public Service
Commission,

Complainant,

v.

St. Louis County Water Company,
d/b/a Missouri-American Water
Company,

Respondent.

Case No. WC-2002-146

NOTICE OF COMPLAINT

David Abernathy, Esq.
St. Louis County Water Company
d/b/a Missouri-American Water Company
535 North Ballas Road
St. Louis, Missouri 63141
CERTIFIED MAIL

On September 13, 2001, the Staff of the Missouri Public Service Commission (Complainant) filed a complaint with the Missouri Public Service Commission against St. Louis County Water Company, d/b/a Missouri-American Water Company (Respondent), a copy of which is enclosed. Pursuant to 4 CSR 240-2.070, the Respondent shall have **30 days** from the date of this notice to file an answer or to file notice that the complaint has been satisfied.

In the alternative, the Respondent may file a written request that the complaint be referred to a neutral third-party mediator for **voluntary mediation** of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether or not the Complainant is also willing to submit to voluntary mediation. If the Complainant agrees to mediation, the time period within which an answer shall be due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

If the Complainant declines the opportunity to seek mediation, the Respondent will be notified in writing that the tolling has ceased and will also be notified of the date by

which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

All pleadings (the answer, the notice of satisfaction of complaint or request for mediation) shall be mailed to:

Secretary of the Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102-0360

A copy shall be served upon the Complainant at the Complainant's address as listed within the enclosed complaint. A copy of this notice has been delivered to the Complainant.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Dated at Jefferson City, Missouri,
on this 19th day of September, 2001.

Copy to: Keith R. Kreuger
Deputy General Counsel
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102

Thompson, Deputy Chief Regulatory Law Judge



Commissioners

KELVIN L. SIMMONS
Chair

SHEILA LUMPE

CONNIE MURRAY

STEVE GAW

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.state.mo.us>

ROBERT J. QUINN, JR.
Executive Director

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENGER
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Information Sheet Regarding Mediation of Commission Formal Complaint Cases

Mediation is a process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. Although many private mediators charge as much as \$250 per hour, the University of Missouri-Columbia School of Law has agreed to provide this service to parties who have formal complaints pending before the Public Service Commission at no charge. Not only is the service provided free of charge, but mediation is also less expensive than the formal complaint process because the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The mediator will not possess any specialized knowledge of the utility industry or of utility law.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case.

If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.

Dale Hardy Roberts
Secretary of the Commission

Date: September 19, 2001

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
SEP 13 2001
Missouri Public
Service Commission

Staff of the Missouri Public Service
Commission, _____)
)
Complainant,)
)
v.)
)
St. Louis County Water Company,)
d/b/a Missouri-American Water Company,)
)
Respondent.)

Case No. WC-2002-146

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission, pursuant to §§ 386.240 and 386.390, RSMo 2000¹ and 4 CSR 240-2.070, and for its Complaint states to the Missouri Public Service Commission as follows:

1. St. Louis County Water Company, d/b/a Missouri-American Water Company ("County Water") is a Missouri corporation with its principal office and place of business located at 535 N. New Ballas Road, St. Louis, MO 63141.

2. County Water is a "water corporation" and a "public utility" as those terms are defined in § 386.020 (58) and § 386.020 (42), respectively, and provides water service to customers in its certificated area in Missouri.

3. County Water is subject to the jurisdiction, regulation, supervision and control of the Commission pursuant to Chapters 386 and 393.

¹ All statutory references are to RSMo 2000, unless otherwise indicated.

4. Section 386.240 provides: "The commission may authorize any person employed by it to do or perform any act, matter or thing which the commission is authorized by this chapter to do or perform; provided, that no order, rule or regulation of any person employed by the commission shall be binding on any public utility or any person unless expressly authorized or approved by the commission."

5. Section 386.390.1 provides, in part: "Complaint may be made by the commission of its own motion ... by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission ..."

6. Rule 4 CSR 240-2.070 (1) provides, in part: "The commission on its own motion, the commission staff through the general counsel, or any person or public utility who feels aggrieved by a violation of any statute, rule, order or decision within the commission's jurisdiction may file a complaint."

7. Section 66.405 provides, in part, as follows:

1. If approved by a majority of the voters voting on the proposal, [St. Louis County] may, by ordinance, levy and impose annually, upon water service lines providing water service to residential property having four or fewer dwelling units, on a countywide basis, including both the incorporated and unincorporated areas of such county, a fee not to exceed one dollar per month or an equivalent rate collected at some other interval.

...

4. If a majority of the voters voting thereon approve the proposal authorized in subsection 1 of this section, the governing body of the county may enact an ordinance for the collection of such fee...

5. The county may contract with any provider of water service in the county to bill and collect such fees along with bills for water service and to pursue collection of such

amounts through discontinuance of service as may be directed by the county. ... The county may administer the program or may contract with one or more persons, through a competitive process, to provide for administration of any portion of implementation activities of any ordinance adopted and approved pursuant to this section, and reasonable costs of administering the program may be paid from the special account established pursuant to this section.

8. Pursuant to the provisions of § 66.405, St. Louis County enacted an ordinance which was designated as § 502.195, SCLRO 1974 as amended, and which reads in part as follows:

502.195 Water Service Line Repair Fee. – 1. A fee of One Dollar (\$1.00) per month is imposed upon all water service lines providing water service within the county to residential property having four or fewer dwelling units, to provide funds to pay for repair or replacement commencing July 1, 2001, of water lines extending from the water main to a residential dwelling due to failure of the line or for road relocation.

...

3. The County Executive is authorized to execute contracts with providers of water service in St. Louis County to bill and collect such fees along with bills for water service and to pursue collection of such amounts through discontinuance of service. All such contracts shall be approved by the Accounting Officer and shall contain such terms and conditions as are approved by the County Counselor.

9. On January 19, 2001, County Water entered into a written agreement with St. Louis County entitled "Contract for Collection of Statutory Service Line Repair Charges," a true and complete copy of which is attached hereto as Exhibit A. The said Contract provides, in part, as follows:

1. Beginning on March 1, 2001, [County Water] shall add to the bill of each residential customer having four or fewer dwelling units a separate and clearly described fee to be paid in advance, of one dollar (\$1.00) per month or three dollars (\$3.00) per quarter (and not pro-rata for periods of time less than one month, or quarter, whichever is applicable) during which service is provided, which such amount may be billed and collected monthly, quarterly or otherwise in the due course of [County Water's] usual and ordinary approved billing practices.

2. Amounts collected shall be accounted for on a calendar month basis and shall be remitted by the fifteenth (15th) of each month to S. Louis County. ...

3. [County Water] may reduce the amount of total remittance to St. Louis County by the amount deemed uncollectible from a prior billing period.

...

7. The parties hereto understand and agree that this Contract does not seek to invade, bypass or supersede the jurisdiction of the Missouri Public Service Commission, and accordingly this Contract shall be submitted to the Missouri Public Service Commission for its information, and if deemed necessary by such Commission, for its approval. This Contract shall at all times be subject to the actions of such Commission.

10. On January 25, 2001, pursuant to the aforementioned statute, ordinance and contract, County Water filed with the Commission a tariff sheet, to become effective February 26, 2001. The tariff sheet was entitled "ST. LOUIS COUNTY SERVICE LINE REPAIR PROGRAM," and was designated as P.S.C. MO No. 6 Original Revised SHEET No. RT 17.0." A true copy of the said tariff sheet is attached hereto as Exhibit B. The said tariff sheet provides, in part:

AVAILABILITY -- This rate is applicable from and after March 1, 2001 to residential customers in St. Louis County having four or fewer dwelling units, and only to the extent such charge shall continue to be authorized by and provided for in [the ordinance, statute and contract].

RATE -- One dollar (\$1.00) per month or three dollars (\$3.00) per quarter (and not pro-rata for periods of time less than one month or one quarter whichever is applicable) during which service is provided, to be billed and collected monthly, quarterly or otherwise in the due course of approved billing practices applicable to the customer.

...

The Commission assigned File No. 2001 00776 to the said tariff sheet for purposes of processing.

11. Prior to the effective date of the tariff sheet, members of the Staff informed County Water personnel that Staff was concerned about the contents of the subject tariff sheet and would probably recommend that it be suspended. In response, the Company informed the Staff that the Company would withdraw the subject tariff sheet. In reliance upon this

representation, the Staff took no action to suspend the tariff sheet. However County Water failed to withdraw the subject tariff sheet, which then went into effect by operation of law on February 26, 2001.

12. The statute, § 66.405, authorizes St. Louis County to impose *a fee upon water service lines* providing water service to certain residential property – that is, upon the owners of the said water service lines. Likewise, the ordinance, § 502.195, SLCRO, imposes *a fee upon all water service lines* providing water service to certain residential property – that is, upon the owners of the said water service lines – *commencing July 1, 2001*.

13. The Contract, however, provides that County Water shall add *a fee to the bill of each residential customer* in certain dwelling units, *beginning on March 1, 2001*. Likewise, the tariff sheet is applicable to *residential customers* in certain dwelling units, *from and after March 1, 2001*.

14. The terms of the Contract and the tariff sheet are thus different from, and inconsistent with the terms of the statute and the ordinance, in two respects:

- a. They impose the fee upon residential customers, instead of upon the owners of lines that serve residential property. In many cases, the owner of the service line is, in fact, the customer, but in other cases, the customer does not own the service line.
- b. They impose the fee commencing March 1, 2001, instead of July 1, 2001, as authorized by the statute and the ordinance.

The Contract and tariff sheet are therefore unauthorized and unlawful. In addition, it would be costly and impracticable for County Water to collect the fees from property owners who are not customers of the Company.

15. The Contract requires the Company to remit all “amounts collected” to St. Louis County by the 15th day of each month. There is no provision in the Contract or anywhere else that would authorize the Company to retain any portion of the fees collected for the purpose of

paying the administrative cost and expense it incurs in collecting, accounting for and remitting these fees. Consequently, the Company is using ratepayer-supplied resources for the collection of the fee at no cost to St. Louis County, and without recovering any of the costs related to collecting the fee. The Contract thus requires an imprudent use of ratepayer-supplied resources.

16. The tariff sheet is misleading and confusing to ratepayers in the following respects:

- a. It refers to the "Availability" of the fee, as if the ratepayer has a choice as to whether or not to pay the fee, when in fact the ratepayer has no such choice.
- b. It implies that the "Service Line Repair Program," and the Contract with St. Louis County, and the amount of the fee that is charged for the program have been approved by the Commission, when in fact they have not.
- c. It authorizes a reduction of the fee, if approved by the lawful action of St. Louis County; however if St. Louis County acts to reduce the fee, it would result in the rate shown on the tariff sheet being inaccurately stated.

17. Although the tariff sheet went into effect by operation of law on February 26, 2001, this only occurred because the Company stated that it would withdraw the tariff sheet, but then failed to do so.

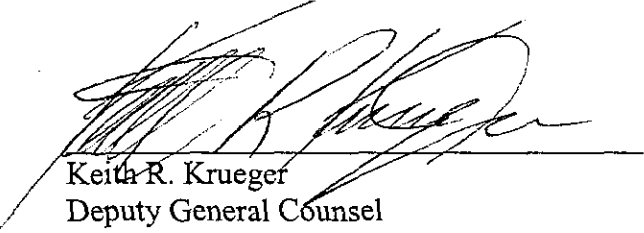
18. Members of the Staff have spoken to Company personnel, stating their objections to the tariff sheet and their concerns about it on several occasions since the tariff sheet became effective on February 16, 2001. On May 14, 2001, the Staff sent the Company a four-page memorandum, in which it specifically outlined its concerns about the tariff sheet and requested that the Company withdraw the tariff sheet. The Company responded in writing, stating that it could not agree to withdraw the tariff.

WHEREFORE, the Staff requests that the Commission order County Water to immediately cease charging its customers the fee specified in the Company's contract with St. Louis County, that it order County Water to refund fees heretofore collected from its customers,

and that it order the Company to rescind P.S.C. MO No. 6 Original Revised SHEET No. RT
17.0.

Respectfully submitted,

DANA K. JOYCE
General Counsel

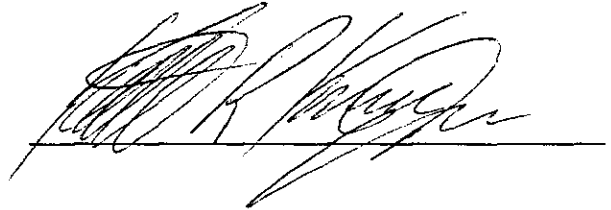


Keith R. Krueger
Deputy General Counsel
Missouri Bar No. 23857

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4140 (Telephone)
(573) 751-9285 (Fax)
kkrueg01@mail.state.mo.us (e-mail)

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 13th day of September 2001.



WC-2002-146

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

you for using Return Receipt Service.

3. Article Addressed to:

David Abernathy, Esq.
St. Louis County Water Co.
d/b/a Missouri-American Water Co.
535 N. Ballas Rd.
St. Louis, MO 63141

4a. Article Number

7099 3220 0009 3699 \$179

4b. Service Type

- | | |
|---|---|
| <input type="checkbox"/> Registered | <input checked="" type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail | <input type="checkbox"/> Insured |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD |

7. Date of Delivery

09-20-01

5. Received By: (Print Name)

6. Signature (Addressee or Agent)

X *[Signature]*

PS Form 3811, December 1994

U.S. Postal Service

CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

David Abernathy

Postage

\$

Certified Fee

Return Receipt Fee
(Endorsement Required)

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

\$

Postmark
Here

Name (Please Print Clearly) (To be completed by mailer)

David Abernathy

Street, Apt. No., or PO Box No.

535 N. Ballas Rd.

City, State, ZIP+4

St. Louis MO 63141

PS Form 3800, July 1999

See Reverse for Instructions

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 19th day of Sept. 2001.

[Signature: Dale Hardy Roberts]

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

