

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
September 22, 2000**

CASE NO: WC-2001-195

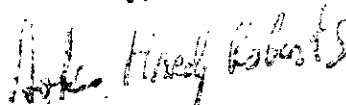
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

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

Legal Department
Osage Water Company
Route 2, Box 3347
Osage Beach, MO 65065

Enclosed find certified copy of 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.)	<u>Case No. WC-2001-195</u>
)	
Osage Water Company,)	
)	
Respondent.)	

NOTICE OF COMPLAINT

Legal Department
Osage Water Company
Route 2, Box 3347
Osage Beach, MO 65065
CERTIFIED MAIL

On September 21, 2000, the Staff of the Missouri Public Service Commission (Complainant) filed a complaint with the Missouri Public Service Commission (Commission) against Osage Water Company (Respondent), a copy of which is enclosed. Pursuant to Commission Rule 4 CSR 240-2.070, the Respondent shall have 30 days from the date of this notice to file an answer or to file notification that the nature of 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 is 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 mailed 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 22nd day of September, 2000.

Copy to: The Staff of the Missouri Public Service Commission
General Counsel, Missouri Public Service Commission
The Office of the Public Counsel

Hopkins, Senior Regulatory Law Judge

¶ BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

FILED²

SEP 21 2000 *jt*

Missouri Public
Service Commission

Staff of the Missouri Public Service Commission,
Complainant,
vs.
Osage Water Company,
Respondent.

Case No. WC-2001- 195

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the General Counsel, pursuant to § 386.390 RSMo 1994 and 4 CSR 240-2.070, and for its Complaint states as follows:

1. § 386.390(1) RSMo 1994 establishes, among other things, that parties may present a Complaint before the Missouri Public Service Commission (Commission) regarding any act or omission committed by any person, corporation or public utility. This statute also provides that the Complaint may be based upon any alleged violation of any provision of law or of any rule or decision of the Commission.

2. Commission Rule 4 CSR 240-2.070(1) provides, in part, that the Commission Staff has authority to file a Complaint through the General Counsel in connection with any violation of statute, rule, order or decision within the jurisdiction of the Commission.

3. The Commission has granted the Respondent a certificate of convenience to own and operate a water system in each of the following cases: Case Nos. WM-89-73, WA-92-141, WA-94-132, WA-97-110, WA-98-36, WA-98-236, and WA-99-437.

4. Osage Water Company (Osage or Respondent) is a corporation operating within the State of Missouri and has its principal business office located at Route 2, Box 3347, Osage Beach, Missouri 65065. Respondent is a "public utility" and a "water corporation" operating a "water system" primarily in Camden County, Missouri, and is subject to the jurisdiction of the Commission pursuant to Sections 386.250 (3)(5), and 386.020(42)(58)(59) RSMo Supp. 1999.

5. On Monday, July 24, 2000, at approximately 4:00 p.m., Osage disconnected and/or discontinued water service to a Lake of the Ozarks, "Harbor Bay" condominium building located within Osage's certificated area in Camden County, Missouri. The mailing address of the condominium at issue is HCR 77 Box 250, Sunrise Beach, Missouri 65079. This condominium has sixteen residential customers. The water entering this structure and serving customers was provided by the Respondent as a public utility and/or water corporation. Water to the condominium was restored or reconnected by the Respondent at approximately 1:00 p.m. on July 25, 2000.

6. Discontinuance of water service to customers located in this condominium was done without notice, and was based upon a dispute that Osage had with the developer of an adjacent and separate condominium also located in "Harbor Bay".

7. Staff was aware of the dispute between the Respondent and the developer and was made aware of the proposed discontinuation of service. Staff contacted Mr. Pat Mitchell, the Respondent's employee, and/or corporate officer by telephone and advised Mr. Mitchell not to discontinue service to the customers of the condominium at issue, before the discontinuance of service actually occurred.

8. § 386.570 RSMo 1994 provides, in part, that the failure of any corporation, person or public utility to comply with any law of the State of Missouri, or any order, decision, rule, direction, demand or requirement of the Commission is subject to a penalty for each offense. Penalties authorized by this enactment consist of not less than one hundred dollars or more than two thousand dollars for each offense. In addition, this statute also indicates that in construing and enforcing the provisions of Chapter 386, the omission or failure of any officer, agent or employee of any corporation or public utility, acting within the scope of his official duties of employment, shall in every case be deemed the act, omission or failure of such corporation, person or public utility.

9. § 386.600 RSMo 1994 provides that the General Counsel of the Commission has authority to bring an action to recover penalties or to enforce the powers of the Commission in Circuit Court.

Count I

10. Disconnection of water service to Missouri customers without notice is a violation of Commission Rule 4 CSR 240-13.050 (5) which provides, among other things, that a utility shall not discontinue residential service unless written notice by first class mail is sent to the customer at least ten (10) days prior to the date of the proposed discontinuance. Alternatively, this Rule also states that a utility may discontinue service to a customer within ninety-six (96) hours, if notice of the disconnection is delivered by hand to the customer affected. During the dispute with the developer, Osage did not provide either a notice by mail, or a hand-delivered notice to the customers of the previously identified condominium, prior to a discontinuance of their water service. Osage also failed to allow either ten days or ninety-six hours to elapse prior to discontinuance or disconnection of these sixteen residential customers on July 24, 2000.

Count II

11. Osage's discontinuance of service without notice to its customers is a violation of its current tariff on file with the Commission. Respondent's "Discontinuance of Water Service By Company" provisions are found in its tariff at P.S.C. MO No. 1, 1st Revised Sheet 17, Rule 7(b), a copy of which is attached to this Complaint, labeled as Appendix A, and incorporated herein by reference. This tariff indicates that discontinuance of service may occur after notice by first class mail is sent to the customer at least ten (10) days prior to the date of the proposed discontinuance, or, if written notice of discontinuance of service is hand-delivered to the customer, discontinuance may occur ninety-six hours thereafter. The Respondent failed to provide either notice of discontinuance of service by mail or by hand delivery, and it also failed to allow either ninety- six hours or ten days to elapse before it discontinued service to customers as a result of its dispute with the developer that occurred on July 24, 2000.

Count III

12. Osage's discontinuance of water service to its customers on July 24th, 2000, in connection with the condominium at issue, was a violation of Commission Rule 4 CSR 240-13.050(1)(A-H). Basically, this Rule lists the reasons for which service to customers may be discontinued by a regulated utility. None of the customers of the condominium described in this Complaint, had engaged in any of the conduct specified in the said Rule. Therefore, discontinuance of water service to these customers was in contravention of 4 CSR 240-13.050(1)(A-H). In essence, these residential customers were blameless and without fault of any kind. Discontinuance of their service was unjustified and unlawful.

Count IV

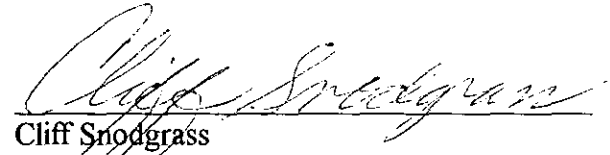
13. § 393.130 RSMo 1994 requires every water corporation to furnish such service as shall be safe and adequate service. Osage violated this statutory obligation to its customers because it failed to provide "adequate" water service to its customers during the time frame previously discussed herein. Osage provided no water whatsoever during the period of discontinuation, which again, was based upon a dispute unrelated to the customers that were deprived of this essential water service.

WHEREFORE, Staff, by and through the Office of General Counsel of the Commission, requests the Commission to:

- A. Find that Osage has violated Commission Rule 4 CSR-240-13.050 (5) by failing to provide the required notice to its customers before discontinuance of water service occurred on July 24, 2000.
- B. Find that Osage violated the provisions of its own tariff by failing to provide the required notice to its customers before discontinuance of water service occurred on July 24, 2000.
- C. Find that Osage violated Commission Rule 4 CSR-240-13.050(1)(A-H) because none of the affected customers had engaged in any of the conduct that allowed discontinuance of water service by a water utility.
- D. Find that Osage violated its statutory obligation under § 393.130 RSMo 1994 to provide adequate water service on July 24, 2000, because it provided no service whatsoever to its customers during the period of discontinuation of service previously specified in this Complaint.
- E. Authorize the General Counsel to seek penalties authorized under §386.570 RSMo 1994 in the appropriate Circuit Court of the State of Missouri.
- F. Issue such other findings and or Orders that the Commission deems just and appropriate.

Respectfully submitted,

DANA K. JOYCE
General Counsel

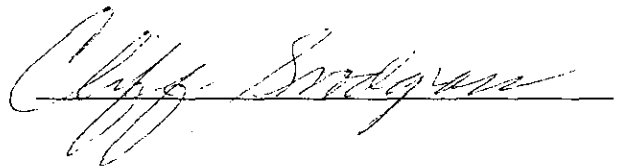


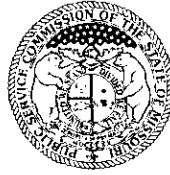
Cliff Snodgrass
Senior Counsel
Missouri Bar No. 52302

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-3966 (Telephone)
(573) 751-9285 (Fax)

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all parties of record as shown on the attached service list this September 21st, 2000.





Commissioners

SHEILA LUMPE
Chair

M. DIANNE DRAINER
Vice Chair

CONNIE MURRAY

ROBERT G. SCHEMENAUER

KELVIN L. SIMMONS

Missouri Public Service Commission

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

BRIAN D. KINKADE
Executive Director

GORDON L. PERSINGER
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
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 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.

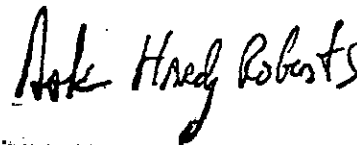
In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must 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.

Date: January 25, 1999



Dale Hardy Roberts
Secretary of the Commission

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.

3. Article Addressed to:

Legal Dept.
Osage Water Company
Route 2, Box 3347
Osage Beach, MO 65065

4a. Article Number

P102316558

4b. Service Type

- ☐ Registered ☒ Certified
☒ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

SEP 29 2000

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X *Robert*

8. Addressee's Address (Only if requested)

and fee is paid

PS Form 3811, December 1994

Domestic Return Receipt

P 102 316 558

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	
Osage Water Co	
Street & Number	
Route 2 Box 3347	
Post Office, State, & ZIP Code	
Osage Beach MO	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

Thank you for using Return Receipt Service.

PS Form 38

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 22ND day of September 2000.

Dale Hardy Roberts

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

