BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

CHARLES HARTER, )

 COMPLAINANT )

V. )CASE NO.WC2013-0468

 )SMALL FORMAL COMPLAINT

MISSOURI AMERICAN WATER COMPANY, )

 RESPONDENT )

COMPLAINANT’S BRIEF

 In December of 2012, respondent accepted the pledge of CAASTL to pay the balance of the water bill for complainant, even though the actual payment from CAASTL was not received until January 14, 2013. By that time, the next water bill had become due. On January 24, 2013, respondent advised complainant that if he made a $50 payment before February 4, 2013 he could be set up on a payment arrangement. On February 2, 2013 complainant paid the $50 requested, called respondent, and was assured he was going to be set up on a payment agreement for the balance, which agreement was to be mailed to him, and that he would not be disconnected because he had taken the actions requested of him. 4 CSR 240-13.050(1)(D)

 Respondent claims that the February 2, 2013 payment did not post to its records until February 4. Some of this claim could be understandable, if it were not contradicted by its own records. When complainant made a payment the day before the hearing, respondent stated at the hearing that it was unaware of the payment. Thus it is possible that respondent could believe a payment made on 2/2 was not made until 2/4, if respondent is just going on its records. But the evidence shows that respondent was keenly aware that payment had indeed been made on 2/2.

 On February 6, respondent broke its word and disconnected complainant. When complainant objected, then respondent, for the first time, told complainant he was not eligible because he was late on his last payment of his last payment arrangement. That would be the CAASTL pledge. Complainant then filed an informal phone complaint with this Commission and through their auspices, was restored to service and put on a payment arrangement, which he successfully completed.

 Respondent, however, when it realized that it was denying eligibility for acts of CAASTL rather than acts of complainant, again changed its story and now said the eligibility problem related to October, not December. If that were true, however, then respondent would not accept the pledge from CAASTL in the first place and would have disconnected complainant in October, not threatened disconnection in December.

 Respondent has destroyed its credibility. At hearing, respondent produced a printed prepared “timeline of events” which was at direct odds with its own testimony to this Commission, given at the time of the disconnection complained of, February 7, 2013, according to the Staff Report and Recommendation page 2, as well as the Report of the Staff of August 2, 2013, page 2, 4 and 5.

 In their “timeline” presented as sworn testimony before this commission, they tried to make it appear that complainant refused to make any payment on his bill, that he was rightfully disconnected on February 4, then AFTER disconnection made a $50 payment and was then restored to service. Even this incorrect “timeline” accidentally supports complainant, in that the timeline purports that the payment and reconnection was done on 2-4, while it purports that the payment agreement was not entered into until 2-7. This reinforces what complainant has said, that the payment agreement was only to be set out after he made the payment.

But when did he make the payment? Respondent’s “timeline” and testimony at hearing asserts it was made on the 4th , after a disconnection, also made on the fourth, which if true, would justify their disconnection. However, if not true (that is to say false), would make their disconnection wrongful and would reinforce complainant’s testimony that he made the payment before the 4th and thus did not expect disconnectionwhich occurred after the payment.

 What are the findings of the Staff of the Commission on these points? In testimony at the hearing, Ms. Carol Gay Fred set out a procedure for a payment agreement that was substantially similar to complainant’s testimony of what respondent offered him. What Staff findings were made on the particulars? Were both payment and disconnection on the fourth, as asserted by respondent’s timeline? At page 2 the “Report of the Staff” states:

On February 7, 2013, at approximately 8:23 a.m., Staff received a response from Missouri American. In the Company’s reply, it provided the following explanation:

\*On 2/2/13 the customer called to report a $50.00 payment

\*On 2/6/13, the customer was turned off for nonpayment

Did the payment of $50 precede the disconnection as complainant says, or after the disconnection as asserted by respondent’s “timeline”? On page five, the “Staff Report and Recommendation” states:

Staff found that the Company’s technician called the Company cashier to inquire about the $50 payment mentioned to him by Mr. Harter prior to disconnecting his service. Staff found that the $50.00 payment was made at Dierbergs and receipt number was provided for confirmation. The cashier advised the technician that $50.00 had been paid on the account

Why would the technician seek to confirm a payment? In order to establish the payment agreement which claimant says existed. When did this happen? After the payment (perforce) and “prior to” the disconnection. There was only one contact between complainant and respondent after the payment yet before the disconnection. That was on February 2, when claimant says he made the payment and called respondent to establish the agreement. Surprisingly, now according to the findings and admissions of respondent, February 2 is also the date when respondent says claimant called and made a payment which respondent confirmed.

So, respondent knew and reported to the Commission, that payment was on the 2d (at Dierbergs) and disconnection on the 6th, and respondent knew it had researched a payment, but it presented through sworn testimony at the hearing, a “timeline” that showed occurring all together on the 4th , in the following apparent order:

 “Water service Disconnected

 $50 payment

Service was reconnected”

This “timeline” is misleading and deceptive, concerning the crucial event of the case. In addition, the Staff has made its finding that the payment was made “prior to disconnecting” and that respondent’s technician had informed respondent’s cashier of this. How could the respondent provide apparently false testimony on this point at hearing? I do not know. But respondent deserves no credibility in this case, in what is, essentially, a he said-she said.

 Complainant said respondent offered an arrangement. Complainant’s actions, to wit; the $50 payment, the February 2 phone call, even his “upset” at an unexpected disconnection, each support his credibility. Complainant prays that all penalties for late payment or disconnection fees be abated; that complainant not be disconnected; that a payment arrangement be installed so he can pay any arrearage; and that respondent be ordered to credit any pledge from CAASTL on the date that respondent accepts that pledge, and not treat customers as late pay so long as CAASTL makes payment within a reasonable time after the pledge.

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Charles A. Harter 28059 Attorney for Petitioner

827 S. Sappington, St. Louis, Mo 63126

314-821-1334 harleycharter@sbcglobal.net