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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Staff of the Public Service Commission)	
of the State of Missouri,)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-87-125</u>
)	
C. Ivan Davis and Willodean Davis, d/b/a)	
The Davis Water Company, 1201 Euel Road,)	
Poplar Bluff, Missouri 63901,)	
)	
Respondents.)	
)	

APPEARANCES: Andrew J. Snider, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

C. Ivan Davis and Willodean Davis, 1201 Euel Road, Poplar Bluff, Missouri 63901, pro se.

Hearing
Examiner: Cecil I. Wright.

REPORT AND ORDER

On April 28, 1987, the Staff of the Public Service Commission (Complainant) filed a Complaint against C. Ivan Davis and Willodean Davis, d/b/a The Davis Water Company (Respondents). This initial complaint contained five counts in which Staff alleged that Respondents had violated provisions of Respondents' tariffs, had failed to properly maintain the water system, had not filed timely annual reports, had failed to maintain adequate storage facilities, and had drilled a new well without proper authorization.

Notice of the Complaint was sent to Respondents by the Commission. The Respondents failed to respond within the 30 days allowed by 4 CSR 240-2.070(7). On June 1, 1987, Complainant filed a motion for default judgment.

On June 5, 1987, Respondents filed a letter with the Commission in answer to the Complaint. In the letter Respondents indicated they were now charging the proper tariff rates, that they had repaired the leak in question, that the company's annual reports were current, and they were in the process of obtaining a larger storage tank.

No action was taken on the complaint until April 26, 1988, when Complainant filed an Amended Complaint. The Amended Complaint contained four counts. The four counts are: (1) that Respondents had failed to make reasonable and necessary repairs to the water system; (2) that Respondents had charged customers more than the rates authorized in Respondents' tariffs and had made no refunds of past overcharges; (3) that Respondents had failed to file annual reports in a timely manner and had yet to file an annual report for 1987; and (4) that Respondents had failed to maintain adequate storage facilities for the increased demand for water on the system. Notice of the complaint was made to Respondents. Respondents failed to answer.

On May 27, 1988, Complainant filed a Motion For Hearing requesting a hearing date be set in this matter. Complainant stated that the seasonal demands for water required an expedited proceeding. By order issued June 3, 1988, the matter was set for hearing on June 24, 1988. The hearing was held and Respondents appeared pro se. A briefing schedule was set and Complainant filed a brief. Respondents did not file a brief.

On June 21, 1988, Complainant filed a second Amended Complaint. This second Amended Complaint was withdrawn prior to notice being sent and is not considered a part of this proceeding.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Davis Water Company serves approximately 237 customers in an area located 12 to 15 miles from Poplar Bluff, Missouri. Respondents owned the water company originally, then sold the system but regained it through a bankruptcy proceeding in 1979. The water system has two wells and two pumps and a 4,000 gallon storage tank.

Respondents provided water to their customers until 1984 from a single well. In 1984 Respondents drilled a well which was eventually connected to the company's water system. Respondents dug the well without authorization from the Department of Natural Resources (DNR). DNR allowed the well to be completed and connected to the system provided Respondents complied with certain requirements.

The major requirement was to hire an engineer who would examine the system and prepare a report recommending improvements to allow Respondents to operate with the second well connected. The engineering report was completed in July 1987. The report's general conclusion was that the water system could not maintain adequate water supply for the number of connections. The report contained certain recommendations for the operation of the water system.

The engineering report contained two recommendations which relate to the allegations in this proceeding. First, the report recommended that Respondents construct additional storage for the water system. The report recommended a storage capacity of 59,000 gallons but stated that the 20,700 gallon tank owned by Respondents would be adequate when used in conjunction with properly controlled high service pumps. Second, the report recommended that user meters be placed on the system to monitor water usage. The report estimated the improvements recommended would cost \$10,700 for materials and equipment. Respondents have failed to comply with either of the two recommendations.

The failure of Respondents to comply with the storage capacity recommendation is the basis for Count IV in the Amended Complaint. In addition to the report, Complainant presented additional evidence which supported the necessity of the

additional storage capacity and detailed Respondents' failure to comply with this requirement over the period of one and one-half years.

Staff witness Merciel testified the water system needed additional capacity to ensure a safe and adequate water supply for existing and future customers. Merciel recommended metering of customer usage to encourage conservation and encourage repair of leaks on customer premises. In addition, Merciel recommended a control panel to match the service pumps for more reliable and efficient operation, and that Respondents lock the well house and bolt down the lid to the existing 4,000 gallon storage tank.

Merciel testified Staff had attempted to work with Mr. Davis to help Respondents comply with the recommendations in the engineering report. Mr. Davis, Merciel testified, would agree to take certain actions but would not follow through. Respondents obtained a used tank for additional storage but have failed to have it cleaned and installed. Respondents obtained meters but have failed to have them installed. Based upon the failure of Respondents to properly manage the water system, Merciel recommended the hiring of a management company to run the water system for Respondents.

Respondent C. Ivan Davis admitted to his failure to comply with the recommendations in the engineering report. Mr. Davis testified he did not have the money to install the storage tank or the meters. The total cost would be in excess of \$20,000 since labor cost would equal the cost of materials and equipment. Mr. Davis testified he had installed three meters at residences but had not filed a new tariff for the meters. Mr. Davis testified he had two men look at the used storage tank but both men stated the tank could not be cleaned. Mr. Davis blamed a lack of rate relief for his failure to meet the requirements of the engineering report and his inability to obtain financing to meet the requirements.

Based upon the evidence the Commission finds that Respondents have failed to maintain a safe and adequate water supply. The Commission finds that Respondents

have shown a lack of initiative or understanding of their responsibilities as owners of a public utility. Respondents took over the water company in 1979. On June 17, 1980, the Commission issued an order in Case No. WC-80-245 requiring Respondents to install additional storage capacity and replace the plastic roll piping in the water system. The plastic roll piping is not suitable for commercial use and it has not all been replaced. Respondents took until 1987 to purchase additional storage capacity and have yet to make the required effort to add that capacity to the system.

The Commission finds that Respondents have failed to comply with Staff and DNR recommendations to add more storage and properly meter the water system. Although Respondents requested an increase in rates in 1987, they have made little attempt to understand and comply with the management and record-keeping requirements of a public water system which would enable them to support and justify the need for additional revenue. The Commission Staff recommended against a rate increase because of Respondents' failure to properly manage the water system. Respondents neither sought Commission review of that recommendation nor attempted to improve their management.

Respondents' handling of the meter recommendation is an excellent example of their failure to take the initiative to properly manage the water system. Respondents have purchased the meters but have not developed a plan for installation or filed a new tariff with the Commission for a rate for the meters. Even though Respondents have both commercial and residential customers, Respondents charge both the same rate for service and have made no attempt to meter the commercial customers to properly charge them for water usage. It is Respondents' responsibility to initiate new rates and properly manage the water system so that there is supporting data to justify the rates.

Based upon the above findings the Commission has determined that the General Counsel shall be authorized to seek maximum penalties for Respondents' failure to maintain a safe and adequate water supply by not providing adequate

storage for the water system. The Commission has determined Respondents shall, within 30 days of this order, determine whether the used storage tank is suitable for public water use. If the storage tank is suitable, Respondents shall contract to have the storage facility cleaned and attached to the water system. If the storage tank is not suitable Respondents shall obtain a storage tank of similar capacity for the system.

In addition, Respondents shall file a plan for installing meters on the water system. These meters should be installed on commercial and high volume users first. Staff shall work with Respondents to develop the plan for installation and to develop tariffs for a meter charge for all customers, once meters are installed, and a commercial rate for business customers on Respondents' system. Staff should also work with Respondents to determine if the current rates are sufficient for the cost of the service. Respondents must take the responsibility of meeting the record-keeping requirements as outlined in Exhibit 47, Staff's audit, so there is proper support for any increase in rates. If proper records are kept, a determination of the proper rates for service can be determined.

Count I of the Amended Complaint alleges that Respondents have failed to properly maintain the water system. As recent as June 17, 1988, Staff found ten leaks on the system. These leaks waste water, lead to reduced pressure on the system and are a source of possible contamination of the water supply.

Mr. Davis testified he had repaired the leaks found on June 17. The repair of leaks has been a continuing problem on the water system and Mr. Davis does not have an established procedure for searching for leaks and repairing them. If Staff can find ten leaks in a random inspection, Mr. Davis should be able to find the leaks through a regular inspection procedure.

The Commission understands that Respondents have contracted for repairs to the system in the past and have had the leaks repaired when they are called to their attention. The Commission finds, therefore, that the evidence does not support

penalties under Count I of the complaint. Respondents should contract for the repair work to be done and should establish a regular inspection procedure to ensure that leaks are repaired as soon as possible. In addition, Respondents should print an emergency number on their water bills so customers can contact them for repairs to the system.

Count II of the Amended Complaint alleges Respondents charged customers more than the tariffed rate for service connection and more than the bimonthly charge for service. Mr. Davis admitted the truth of this allegation and testified he had ceased the improper billing. The charging of customers rates other than those rates in Respondents' tariffs is a serious violation of the law. Section 393.130 prohibits discrimination in the rates charged by a public utility. The Commission finds that Respondents' overcharging is evidence of their overall lack of proper management of the system and that rather than keeping proper records and seeking new rates for water service, Respondents chose to charge customers according to their own design. As owners of a public water utility, Respondents must file rates for service which must be approved by the Commission. Respondents must then charge those rates and not discriminate among customers by charging different rates than those approved. The Commission has determined that Staff should be authorized to seek penalties for this violation.

The specific instances of alleged overcharges are set out in Exhibits 20 through 44. The Commission finds that only those instances of overcharges for which a copy of the water service bill was introduced and admitted into evidence are supported by competent and substantial evidence. Therefore, Staff shall only seek penalties for those instances of overcharges as listed below. These bills indicate charges for service other than the \$12.50 bimonthly charge in Respondents' tariffs.

1. Everett Jerls - bill for service of \$90.00 for 9-8-86 to 9-8-87. (Exhibit 44).
2. State Bank of Greenville - bills for service of \$45.00 for 3-15-86 to 6-15-86; of \$30.00 for 6-15-86 to 8-15-86; of

\$30.00 for 8-15-86 to 10-15-86; and of \$30.00 for 10-15-86 to 12-15-86. (Exhibit 44).

3. Daniel and Marcella Schlitt - bills for service of \$45.00 for 7-1-86 to 1-1-87 and of \$30.00 for 10-1-86 to 1-1-87. (Exhibit 44).
4. Kenneth DeMott - bills for service of \$15.00 for 7-23-86 to 9-23-86 and of \$15.00 for 9-23-86 to 11-23-86. (Exhibit 44).
5. John Fluchel - bill for service of \$15.00 for 8-25-86 to 9-25-86. (Exhibit 44).
6. Robert Owens - bill for service of \$45.00 for 8-22-86 to 2-22-87. (Exhibit 29).
7. James Eubanks - bills for service of \$15.00 for 7-21-86 to 9-21-86 and of \$15.00 for 9-21-86 to 11-21-86. (Exhibit 28).
8. VFW Post - bill for service of \$60.00 for 9-1-86 to 11-1-86. (Exhibit 26).

Count III of the Amended Complaint alleges that Respondents failed to timely file annual reports in 1984, 1985 and 1986, and have failed to file an annual report for 1987, which was due April 15, 1988. Mr. Davis admitted the truth of these allegations. Mr. Davis testified the 1987 annual report was late due to illnesses in Mrs. Davis's family. Staff also introduced evidence that Respondents had failed to pay their annual assessment for fiscal year 1987 and had not paid all of the fiscal year 1988 assessment. Respondents will be ordered to pay these assessments.

Conclusions

The Missouri Public Service Commission has arrived at the following conclusions.

The Commission has jurisdiction over this complaint pursuant to the provisions of Sections 386.390 and 393.130, R.S.Mo. 1986. The complaint contains four counts in which Respondents are alleged to have violated either their own tariffs, Commission rules or Section 393.130. Respondents have admitted the truth of the allegations in all four counts and the Commission has made findings based upon the evidence and those admissions.

The Commission has found that, even though admitted, the evidence does not support the seeking of penalties for Counts I and III. Based upon the findings in this order, the Commission concludes that Ivan and Willodean Davis, d/b/a The Davis Water Company, violated Section 393.130, R.S.Mo. 1986, by failing to maintain a safe and adequate water supply for customers and by charging customers rates other than those authorized by filed tariffs. The Commission found that the evidence supporting the violation of Counts II and IV was such that penalties should be sought by its General Counsel's office pursuant to Section 386.570, R.S.Mo. 1986. The Commission concludes that these penalties shall be sought to ensure that Respondents' customers have a safe and adequate water supply, and that Respondents do not charge customers other than the rates on file with the Commission.

It is, therefore,

ORDERED: 1. That Counts I and III of the Amended Complaint are dismissed.

ORDERED: 2. That C. Ivan Davis and Willodean Davis, d/b/a The Davis Water Company, violated Section 393.130, R.S.Mo. 1986, by failing to maintain a safe and adequate water supply for customers.

ORDERED: 3. That C. Ivan Davis and Willodean Davis, d/b/a The Davis Water Company, violated Section 393.130, R.S.Mo. 1986, by charging customers rates other than those authorized by the filed tariffs.

ORDERED: 4. That the Commission General Counsel's office is hereby authorized to seek the maximum penalties allowed by law for the violations found in Counts II and IV of the Amended Complaint.

ORDERED: 5. That C. Ivan Davis and Willodean Davis, d/b/a The Davis Water Company, are hereby ordered, within thirty (30) days of the effective date of this order, to contract for the cleaning of the used storage tank or purchase a storage tank of comparable size suitable for use on a public water system.

ORDERED: 6. That C. Ivan Davis and Willodean Davis, d/b/a The Davis Water Company, shall develop an installation plan for meters, beginning with commercial

customers and high volume users, and file tariffs to charge a rate for the meters. A separate rate for commercial customers should also be developed. The installation plan shall be filed with the Commission on or before November 29, 1988.

ORDERED: 7. That Commission Staff shall provide assistance to C. Ivan Davis and Willodean Davis, d/b/a The Davis Water Company, in developing the meter installation plan and tariffs ordered in Ordered 6.

ORDERED: 8. That C. Ivan Davis and Willodean Davis, d/b/a The Davis Water Company, shall pay the assessments owing for fiscal years 1987 and 1988. The assessment shall be paid on or before November 29, 1988.

ORDERED: 9. That C. Ivan Davis and Willodean Davis, d/b/a The Davis Water Company, shall cease and desist from charging other than tariffed rates to customers and shall develop a procedure for refunding or crediting past overcharges. The refunds or credits shall be made on or before November 29, 1988.

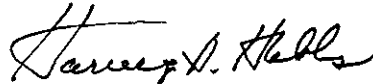
ORDERED: 10. That C. Ivan Davis and Willodean Davis, d/b/a The Davis Water Company, shall maintain their books and records in a manner as recommended by Staff's audit, Exhibit 47.

ORDERED: 11. That C. Ivan Davis and Willodean Davis, d/b/a The Davis Water Company, shall develop and maintain an inspection and maintenance schedule for the repair of leaks and other maintenance of the water system. The maintenance and inspection schedule shall be developed and filed with the Commission on or before November 29, 1988.

ORDERED: 12. That any objection or motion not specifically ruled upon at the hearing is hereby overruled or denied.

ORDERED: 13. That this Report and Order shall become effective on the
30th day of August, 1988.

BY THE COMMISSION



Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Musgrave,
Mueller, Hendren and Fischer,
CC., Concur.

Dated at Jefferson City, Missouri,
on this 17th day of August, 1988.