

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the matter of)	
)	
Utility Workers Union of America,)	
Local 335,)	Case No. WC-2011-0341
)	
and)	
)	
Missouri American Water Company.)	

RESPONSE IN OPPOSITION TO MOTION TO DISMISS

Missouri American Water Company (“MAWC”) moves to dismiss Utility Workers Union of America, Local 335 (“Local 335”)’s Complaint on the ground that Local 335 has failed to identify a violation of a statute or Commission rule. Because Local 335’s Complaint states a claim for relief, MAWC’s Motion to Dismiss must be denied.

In order to prevail on a motion to dismiss, all facts stated in the pleading must be accepted as true. See, e.g., State ex rel. Nixon v. American Tobacco Co., Inc., 34 S.W.3d 122, 134 (Mo. 2000). The motion may only be granted if these facts are insufficient as a matter of law. Id.

The statute governing complaints before the Missouri Public Service Commission is found at R.S.Mo. § 386.390. In relevant part, this provision reads:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, 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...

Local 335's Complaint fulfills the requirements of R.S.Mo. § 386.390. Pursuant to R.S.Mo. §393.130, MAWC is required to provide service which is "safe and adequate and in all respects just and reasonable."

MAWC nonetheless argues that the Complaint does not allege a failure to provide "safe and adequate" service. This is inaccurate. Assuming all facts alleged by Local 335 are true, MAWC has failed to maintain a valve maintenance program with regard to its mains and hydrants, and failure to maintain these valves is detrimental to customer service and creates safety hazards. Complaint ¶¶12, 14-18, 23-27. Moreover, Local 335 has alleged that MAWC has awarded ISRS contracts to subcontractors on a "no bid" basis, which creates the potential for conflicts of interest between the contractors and MAWC management, which may also adversely impact safety and adequacy of service. Complaint ¶¶36-37. Therefore, the Complaint sufficiently alleges that MAWC has failed to provide "safe and adequate" service.

Public Service Commission precedent also supports denial of the Motion to Dismiss. Indeed, the Commission denied a similar motion to dismiss in USW 11-6 v. Laclede Gas Co., Case No. GC-2006-0390 (Document 30) (issued August 10, 2006). In that case, a union alleged that Laclede gas was using subcontractors who were causing gas leaks through the installation of automated meter reading devices. The Commission reasoned that these allegations, if true, were sufficient to state a cause of action.

Furthermore, MAWC argues that its "decision to either use or not use outside contractors is beyond the Commission's jurisdiction." Answer/Motion to Dismiss at 12. This statement misrepresents Local 335's argument. Local 335 argues that MAWC's subcontracting practices implicate the safety and adequacy of the service it provides. Certainly, the Commission has

jurisdiction to determine whether or not MAWC's process for selecting subcontractors implicates its provision of "safe and adequate" service.

Finally, MAWC claims that Local 335's request that the Commission investigate into its valve/hydrant maintenance programs and subcontracting practices somehow shows the Complaint has failed to state a cause of action. It reasons that: "At best, the allegations and requests for relief ask that the Commission investigate MAWC's practices to determine if those practices might, at some point in the future, lead to the possibility of inadequate service." Answer/Motion to Dismiss at 10. For the reasons stated above, Local 335 has sufficiently alleged that MAWC's current practices fail to provide "safe and adequate" service.

Moreover, the relief requested by Local 335 is explicitly authorized by statute. Pursuant to R.S.Mo. §393.140(2), the Commission is empowered to investigate the "methods employed...in supplying and distributing water for any purpose whatsoever...and to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such...water...and those employed in the distribution thereof." It simply makes no sense how requesting relief explicitly contemplated by statute would transform an otherwise viable claim into an unviable one.

For these reasons, Local 335 asks that MAWC's Motion to Dismiss be denied.

Respectfully submitted,

/s/ Michael A. Evans

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was served on May 23, 2011, by United States mail, hand-deliver, email, or facsimile upon:

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