

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Proposed Amendment to)
Commission Rule 20 CSR 4240-13.050) Case No. AX-2023-0287
Regarding Discontinuance of Service)

RESPONSE TO PETITION TO AMEND RULE

COMES NOW the Office of the Public Counsel (the “OPC”) in response to Mr. Charles Harter’s Petition to Amend Rule (the “Petition,” Doc. 1), Amended Petition to Amend Rule to Elucidate (5) (the “Amended Petition,” Doc. 3), and Memorandum of Law in Support of the Petition & Amended Petition to Amend Rule (the “Memorandum in Support,” Doc. 6), within the time set by the Public Service Commission of the State of Missouri (the “Commission”) in its Order Directing Filing (Doc. 9), respectfully states:

I. Background

On March 20, 2023, Mr. Charles Harter filed his Petition and Amended Petition, requesting that the Commission amend the second sentence of 20 CSR 4240-13.050(5) to require that regulated utilities be required to obtain a postmark on their mailings of discontinuance notices.¹ (Pet. 1; Am. Pet. 1). Mr. Harter specifically requested that the Commission amend the second sentence of 20 CSR 4240-13.050(5) to read: “Service of notice by mail is complete upon mailing postmarked by the United States Postal Service.” (Pet. 3). In support of his request, Mr. Harter stated that he had

received a notice of discontinuance of service on Saturday more than halfway through the ten day period even though he believes mail in St. Louis has overnight local delivery ability, and even though the letter inside of the utility’s un-post-marked envelope carries a claimed date of the Monday before the Saturday received
...

¹ The OPC notes that the Commission’s electronic filing information system (“EFIS”) shows that Mr. Harter filed his Petition and Amended Petition on the same day, March 20, 2023. However, it appears that Mr. Harter signed the Petition on March 18, 2023, and the Amended Petition a few days later, on March 20, 2023. (Pet. 6; Am. Pet. 6). Though there are slight differences between the Petition and Amended Petition, it appears that Mr. Harter requests the same relief in both his Petition and his Amended Petition. (*See generally* Pet.; Am. Pet.).

(*Id.* 4). Mr. Harter also raised as concerns that

when a notice to discontinue service to a vital utility like electricity or water arrives on Saturday, there can be no ability to speak to a human customer service representative at the utility until the next Monday, which burns off another two days further depleting the supposed right to and protection of ten (10) day notice which, if these facts are correct and common among customers, is decimated if not ameliorated by eight of its ten days without this independent third party dating postmark.

(*Id.*). Mr. Harter further stated his understanding that “in the past[] all mail was postmarked and the rules and regulations of the Public Service Commission relied on this independent third party dating system to document the ten day notice requirements with little dispute.” (*Id.*). However, when the United States Postal Service began “allow[ing] entities including utilities to post bulk mail without postmark,” Mr. Harter asserts that “this independent resource was lost.” (*Id.*). Therefore, Mr. Harter requested that the Commission amend its rule to require a United States Postal Service postmark on discontinuance notices. (*See generally id.*).

On the same day that Mr. Harter filed his Petition and Amended Petition, the Commission ordered its Staff (“Staff”) to investigate Mr. Harter’s Petition and to file, no later than April 17, 2023, a recommendation regarding “whether the Commission should proceed with a rulemaking.”² (Mar. 20, 2023 Order 1, Doc. 2). The Commission ordered that “[a]ny other person or entity wishing to offer a recommendation . . . shall file a written comment no later than April 17, 2023.” (*Id.*).

After the Commission sent a notice letter and an amended notice letter to the Joint Committee on Administrative Rules and the Office of Administration, Mr. Harter filed the

² Following Staff’s Motion for Extension, the Commission extended Staff’s deadline to file its Recommendation to April 28, 2023; however, the Commission maintained the April 17, 2023 deadline for entities or persons other than Staff to file a comment. (Apr. 12, 2023 Order 2).

Memorandum in Support maintaining his original request and identifying possible legal grounds to support his request. (*See* Docs. 4-6).

II. Legal Standard

After receiving a Petition for Rulemaking, the Commission, within 60 days, must submit a written response “containing its determination whether such rule should be adopted, continued without change, amended, or rescinded, together with a concise summary of the state agency’s specific facts and findings with respect to the criteria set forth in subsection 4 of section 536.175.” § 536.041 RSMo.

The Commission’s rule 20 CSR 4240-13.050 governs discontinuance of utility service or “cessation of service not requested by a customer.” 20 CSR 4240-13.050; 20 CSR 4240-13.015(1)(M). In pertinent part, the rule provides

An electric, gas, or water utility *shall not discontinue residential service* pursuant to section (1) *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.* Service of notice by mail is complete upon mailing. As an alternative, a utility may deliver a written notice in hand to the customer at least ninety-six (96) hours prior to discontinuance. Except, a water utility shall not be required to provide notice when discontinuing water service for nonpayment of sewer bill by the terms of a contract between the water utility and any sewer provider, when the sewer provider has duly issued notice of discontinuance of service to its customer. A sewer utility shall not discontinue residential sewer service pursuant to section (1) unless written notice by certified mail return receipt requested is sent to the customer at least thirty (30) days prior to the date of the proposed discontinuance; except . . .

20 CSR 4240-13.050(5)(emphasis added).

III. Analysis: The Commission Should Open a Rulemaking Docket

If the OPC understands Mr. Harter’s various filings correctly, it appears that he is concerned that he did not receive the discontinuance notice in a timeframe that allowed him sufficient time to contact the utility to potentially avoid discontinuance of service. (*See* Pet. 4-5). Based on this understanding, the OPC requests that the Commission open a rulemaking docket.

However, again based on its understanding of Mr. Harter’s concern, the OPC is unsure, at this time, that Mr. Harter’s suggested amendment will provide the relief he seeks. Therefore, when the time comes to provide comments regarding Mr. Harter’s proposed amended rule, the OPC will likely suggest a change—namely extending the timeline for mailing discontinuance notices as opposed to requiring a postmark. Alternatively, the OPC requests that the Commission open a workshop docket to provide all interested parties an opportunity to discuss this concern further.

Mr. Harter appears to believe that the Commission’s rules require the customer to receive the discontinuance notice ten days prior to discontinuance. (*See* Pet. 4). However, the Commission’s rules require only that an electric, gas, or water utility mail discontinuance notices ten days prior to the date of the proposed discontinuance. *See* 20 CSR 4240-13.050(5). The Commission’s rules provide, “Service of notice by mail is complete upon mailing.” *Id.*

The OPC agrees with its understanding of Mr. Harter’s concern, namely that customers may not be receiving their discontinuance notices in sufficient time to contact the utility and potentially avoid a discontinuance of their service.³ This is especially true because, as pointed out by Mr. Harter, without a postmark there is no independent evidence to show that the utility mailed

³ If the OPC understands Mr. Harter’s Petition correctly, it appears that he had only two days to contact the utility regarding his service. (*See* Pet. 4 (referencing the depletion of eight of the ten days’ notice)). The OPC notes that some of the language of the rule at issue appears to require more notice than this. For instance, it states that as an alternative to mailing the discontinuance notice, “a utility may deliver a written notice in hand to the customer *at least ninety-six (96) hours prior to discontinuance.*” 20 CSR 4240-13.050(5) (emphasis added). This would presumably give a customer four days—twice the amount of time Mr. Harter allegedly had—to contact the utility regarding their service. (*See* Pet. 4). Further, the rule provides additional customer protections when a sewer utility sends a discontinuance notice. *See* 20 CSR 4240-13.050(5). Specifically, the rule requires that the discontinuance notice be sent by “certified mail return receipt requested . . . at least thirty (30) days prior to the date of the proposed discontinuance.” *Id.* The rule includes several exceptions for when a customer’s water service will be discontinued for nonpayment of sewer service. *See id.* This would not only provide additional protections through the use of certified mail, but it would likely provide at least three times the length of the notice. *See id.*

the discontinuance notice on the specified day.⁴ For this reason, the OPC recommends that the Commission open a rulemaking docket to consider changes to 20 CSR 4240-13.050(5).

However, the OPC is unsure that a postmark would solve Mr. Harter's concern as the OPC understands it. Namely, even if a utility mailed the discontinuance notice on the specified day, mailing delays not caused by the utility may mean the customer does not receive the notice for several additional days. In this instance, the utility could comply with the Commission's rule, but a customer may still not receive the notice in sufficient time to contact the utility and potentially avoid a discontinuance of their service. Therefore, when the time comes to file comments in response to Mr. Harter's proposed amended rule, the OPC will likely propose that the Commission instead extend the ten days' time for a utility to mail discontinuance notices.

Alternatively, should the Commission determine that it will not proceed with a rulemaking, the OPC requests that the Commission open a workshop docket to allow parties an opportunity to further investigate and discuss these important concerns.

Finally, the OPC notes that Staff stated in its Motion for Extension that it has several outstanding data requests as a part of its investigation. (Mot. Extension 1). To allow Staff additional time to complete its investigation, the Commission has extended Staff's deadline to file its recommendation regarding whether the Commission should proceed with the rulemaking until April 28, 2023. (Apr. 12, 2023 Order 2). The OPC is interested in reviewing the responses to Staff's data requests and to review Staff's recommendation. Therefore, it reserves the right to amend this recommendation, its recommendation regarding the proposed rule, and its alternative request for proceeding with a workshop docket.

⁴ The OPC notes that the Commission's rules require that a "utility shall maintain an accurate record of the date of mailing or delivery." 20 CSR 4240-13.050(6). However, this would not be independent evidence of the date of mailing in the same way that a postmark would provide.

IV. Conclusion

WHEREFORE, the OPC respectfully requests that the Commission open a rulemaking docket to consider Mr. Harter’s proposed amendment to the Commission’s rule, 20 CSR 4240-13.050(5), or, alternatively, open a workshop docket to further investigate Mr. Harter’s concern.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record and to Mr. Charles Harter this 17th day of April 2023.

/s/ Lindsay VanGerpen