

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE
STATE OF MISSOURI

FILED³

DEC 19 2011

Name: ANDREW G. SMITH
Complainant

Missouri Public
Service Commission

vs.

Case No.

Company Name: MISSOURI AMERICAN WATER CO.
Respondent

COMPLAINT

Complainant resides at 671 INNSBROOK ESTATES, INNSBROOK, MO 63122
(address of complainant)

*MAIL SHOULD BE SENT TO COMPLAINANT'S OFFICE AT: 10408 MANCHESTER, STE 209, ST LOUIS, MO 63122

1. Respondent, MISSOURI AMERICAN WATER COMPANY
(company name)

of 727 CRAIG RD, ST LOUIS, MO 63141
(location of company), is a public utility under the

jurisdiction of the Public Service Commission of the State of Missouri.

2. As the basis of this complaint, Complainant states the following facts:

Complainant owns an eight family apartment building located at 637 Highland Park Drive in Chesterfield, Missouri.

Respondent provides water service for the said apartment building.

For more than 10 years Respondent sent Complainant quarterly bills based on metered usage of water which were always paid promptly by Complainant.

On August 10, 2011 in a letter from Respondent Complainant was informed that the water meter at 637 Highland Park Drive "had stopped registering water usage" and that Respondent would add an "adjustment" to the next bill of \$1149.15.

4CSR 240-13.025 states in part, "For all billing errors, the utility will determine from all related and available information ... adjustments for the estimated period involved"

Complainant asked for a detailed explanation of the calculation of the "adjustment."

By letter dated August 30, 2011 the Respondent stated that the adjustment was made based on historical usage applied to a period when it claimed the meter was defective.

The Respondent did not claim to have any evidence as to actual water usage during the period.

The Respondent did not explain why it waited 10 months to repair a water meter that it believed was defective.

The Respondent did not explain why it did not take climatic conditions into account.

The Respondent did not explain why it did not take apartment occupancy into account. Occupancy, in fact, was about 80% during the period of the allegedly defective water meter versus the occupancy during the historical period the Respondent used to calculate its "adjustment." 4 CSR 240-13.025 would appear to require such "related and available information" be taken into account.

The Respondent did not explain why it continued to charge complainant for a defective meter, why customer should pay for a defective meter or why it made no credit for the defective meter charges when it calculated its "adjustment."

The Respondent did not provide tariffs, as requested by the Complainant, that would support the calculation of Respondent's "adjustment." In fact, the only tariffs ever supplied to Complainant were effective after the alleged dates of the defective water meter.

3. The Complainant has taken the following steps to present this complaint to the Respondent:

First, Complainant attempted to contact the Respondent by phone on several occasions but was unable to reach anyone with the power to negotiate a settlement.

Then, due to out of town travel Complainant wrote a letter (copy attached) outlining his objections to the "adjustment" and proposing a settlement calculated at \$180.68. A check was enclosed for that amount.

Respondent cashed the check and did not then or subsequently refuse the settlement but has continued to threaten disconnection. Nor has Respondent adjusted the balance due for water usage in line with the settlement.

Complainant has received several written requests for payment and recorded phone message requests to call the Respondent. Complainant has returned the phone messages on several occasions but has never been successfully connected to anyone authorized to negotiate a settlement.

WHEREFORE, Complainant now requests the following relief:

That the Commission delay any disconnection until all issues are finally resolved.

That the Commission enforce the settlement offered by Complainant. In the alternative the Commission might fashion an appropriate remedy that (1) makes clear that a customer is not required to pay for a defective meter and that (2) should take into account factors such as occupancy and climatic conditions as well as (3) Respondent's negligent failure to maintain its system - and from such failure it should not be allowed to benefit financially.

12/14/11

Date



Signature of Complainant

(314) 966-5885

Complainant's Phone Number

SMITHAGX@Juno.com

Complainant's E-mail Address

FAX - SAME BUT MUST CALL FIRST

Attach additional pages, as necessary.

Attach copies of any supporting documentation.

ANDREW G. SMITH
ATTORNEY AT LAW
SUITE 209
10408 MANCHESTER ROAD
SAINT LOUIS, MISSOURI 63122-1523

(314) 966-5885

October 5, 2011

Mr. Frank Kartmann, President
Missouri American Water Company
727 Craig Road
St. Louis, MO 63141

Dear Sir:

In August I received a letter from Missouri American Water Company (copy attached) saying that I should expect a bill for \$1149.15 because my water meter at my apartment building had failed to register water usage from the period beginning October 7, 2010 until August 5, 2011. I called the 800 number provided to ask a few questions. Since I had been paying bills throughout the period in question, I wanted to know what I was paying for. Courtney told me that I was paying for the defective meter. I wanted to know why Missouri American Water had taken so long to fix the meter. She didn't know. I asked what statutory authority Missouri American Water had for issuing this bill for what is essentially a guess. She said it was part of Missouri American Water's tariffs. I asked for a complete explanation of how the guess was calculated. The conversation was rather unsatisfying.

Nevertheless, I received a letter with the calculation in September (copy attached). Again, I have problems with how you make the guess which I will detail below. Subsequently, I received a call from your billing department asking me when I was going to pay. I explained that I have considerable difficulty with your methodology, still hadn't received satisfactory answers to my questions and needed to speak to someone with authority to negotiate a settlement. Debbie Goforth has called twice. I assume that she has the authority I seek but, although I have called back twice, we have been unable to connect. As I am going out of town Monday, October 17 and will be out of town until nearly Thanksgiving, I decided that a letter could cut to the heart of the problem so that the issue might be settled before I leave.

1. If you have statutory authority for making this kind of guess as to water usage, I need to have a reference thereto. Tariffs are in the nature of contractual terms and do not carry the force of law. However, if you have filed such tariffs with the Missouri Public Service Commission, a reference thereto would be useful.

2. Furthermore, I need an explanation for why Missouri American Water waited 10 months to fix a defective water meter. Unless such an explanation is provided, it must be assumed that the company has been negligent in the maintenance of its system and it would be a violation of public policy to allow the water company to profit by such negligence.

3. As to the calculation, the rate used is at variance with the bills I received during the prior period. But, my overall problem is that your guess - based on prior usage - does not take into account changes in circumstances or usage. During the base period the apartments were nearly fully occupied (7.25 tenants per month during the period). During the ten months in issue there were only 5.9 tenants per month. It should be surmised that there was only $\frac{2}{3}$ of the usage in the 10 months since the meter breakdown as in the 12 months before. Furthermore, the extra rainfall in the Spring of 2011 meant that no lawn watering occurred in 2011. Whereas in 2010 I did considerable lawn watering in June and July. And, there seems to be an unexplained difference in the calculation of the adjustment in the two letters. Also, there was no

adjustment for the payments I had made for a defective meter. I don't think I should be asked to pay for a defective meter. Finally, I can remember at least one running toilet repaired during the base period which distorted water usage.

Consequently, if we are going to make a guess as to water usage, it should be made on a basis most favorable to me since Missouri American failed to correct the problem for 10 months and should not be allowed to profit by its own negligence.

But, I would like to settle this problem. I have enclosed a check for \$180.68. I calculated that amount by first taking the water usage charge from the last bill before the breakdown (\$93.31). I added the gross receipts tax from that last bill (\$6.34) which totaled \$99.65. I divided that sum by the three months involved and multiplied the result by the 10 months of the breakdown (\$332.17). I multiplied that total by the ratio of the tenant months in the 10 month period (5.9) divided by the tenant months in the 3 month period (7.33). From that result (\$267.37) I subtracted the payments made during the 10 month period (\$86.69) resulting in a balance of \$180.68. However, it must be stipulated that this is a settlement of contract terms - not water usage. Hence, MSD should not be told that there was any water usage during the 10 months.

If I do not hear from you before I leave town, I will assume this settlement is satisfactory to you.

Very truly yours,

Andrew G. Smith

Cc: Missouri Public Service Commission
Governor Office Bldg
200 Madison St.
P.O. Box 360
Jefferson City, MO 65102