

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 21st day
of January, 2015.

Timothy and Diane Grady,)	
)	
Complainants,)	
)	
v.)	File No. SC-2015-0139
)	
Missouri American Water Company,)	
)	
Respondent.)	

**ORDERS FOR A SMALL FORMAL COMPLAINT, DENYING DISMISSAL,
AND DIRECTING FILING OF PROCEDURAL SCHEDULE**

Issue Date: January 21, 2015

Effective Date: January 21, 2015

The responses to Timothy and Diane Grady's complaint¹ from Missouri American Water Company ("MAWC")² and the Commission's staff ("Staff")³ each included a request that the Commission dismiss the complaint, but those requests are unsupported or unauthorized or both.

First, Staff is unauthorized to argue in favor of dismissal because Staff's own report⁴ describes this action as a small formal complaint,⁵ which restricts the pleadings of Staff:

¹ Electronic Filing and Information System ("EFIS") No. 1, *Complaint*, December 1, 2014. References to EFIS are references to this file no. except as noted otherwise.

² EFIS No. 4, *Missouri-American Water Company's Answer*, December 15, 2014.

³ EFIS No. 6, *Staff Recommendation*, January 14, 2015.

⁴ EFIS No. 6, *Staff Recommendation*, Staff Report of Investigation, January 14, 2015.

Staff shall not advocate a position beyond reporting the results of its investigation. If staff believes it should advocate a position, it may file a motion to change the status of the complaint [. ⁶]

Despite that provision, and without filing a motion to change status, ⁷ Staff advocates dismissal, a position beyond reporting the results of its investigation. Staff thus exceeds the pleading it is authorized to file, ⁸ which alone supports denial of Staff's request to dismiss.

Second, neither Staff nor MAWC cites any standard for dismissal. Dismissal requires a preponderance of the evidence, ⁹ and the relevant evidence depends on the legal grounds for dismissal. Dismissal may stand on any one of several grounds in the Commission's regulations, ¹⁰ and the motions need cite only one, ¹¹ but neither Staff nor MAWC cite any authority supporting dismissal.

For those reasons, the Commission will treat this action as a small complaint, will not dismiss the complaint, and will order the parties to file a proposed procedural schedule including a proposed hearing date and such other matters as the parties deem helpful.

⁵ 4 CSR 240-2.070(15).

⁶ 4 CSR 240-2.070(15)(D).

⁷ 4 CSR 240-2.070(15)(D).

⁸ This is not the first time the Commission has had to confine Staff to the regulations governing its practice in a small formal complaint case. File No. EC-2015-0058, *Jimmie E. Small Complainant v. Union Electric d/b/a Ameren Missouri, Respondent*, EFIS No. 13, *Orders for Small Formal Complaint, Denying Motions to Dismiss, and Setting Time For Filing*, October 15, 2014, page 2 to 3. But this time, it is Staff's own pleading that describes the complaint as subject to the small formal complaint procedure.

⁹ *Missouri Soybean Ass'n v. Missouri Clean Water Comm'n*, 102 S.W.3d 10, 22 (Mo. banc 2003) (citations omitted). Both Staff and MAWC rely on matters outside the complaint, which may also support a motion for summary determination, under 4 CSR 240-2.117(1). If that is the movants' intent, the motions fail on that basis, also. Summary determination always addresses the merits of a claim or defense. 4 CSR 240-2.117(1)(E). *State ex rel. City of Blue Springs, Missouri v. Schieber*, 343 S.W.3d 686, 690 (Mo. App., W.D. 2011). The matters cited outside the complaint are merely Staff's and MAWC's unverified allegations.

¹⁰ Under the Commission's regulations, dismissal may result from the Commission's lack of authority or a sanction against a party. 4 CSR 240-2.070(7), 4 CSR 240-2.090(5), 4 CSR 240-2.110(2)(A) and (B), 4 CSR 240-116(2) and (4), 4 CSR 240-2.125(E).

¹¹ 4 CSR 240-2.080(4) and 4 CSR 240-2.010(12).

THE COMMISSION ORDERS THAT:

1. The small formal complaint procedure shall apply to the complaint.
2. The requests for dismissal in *Missouri-American Water Company's Answer* and *Staff Recommendation* are denied.
3. The parties shall file a proposed procedural schedule as described in the body of this order no later than January 29, 2015.
4. This order shall be effective when issued.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp CC., concur.

Jordan, Senior Regulatory Law Judge