

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

Charles Harter,)	
)	
Complainant,)	
)	
v.)	File No. WC-2015-0311
)	
Missouri-American Water Company,)	
)	
Respondent.)	

**ANSWER, MOTION FOR SUMMARY DETERMINATION, AND
SUGGESTIONS IN SUPPORT OF MOTION FOR SUMMARY DETERMINATION**

COMES NOW the Respondent, Missouri-American Water Company (“MAWC”), pursuant to the *Order Giving Notice of Contested Case, Directing Filing and Directing Staff Investigation*, issued herein on May 21, 2015, and 4 C.S.R. 240-2.117(1), and for its Answer, Motion for Summary Determination, and Suggestions in Support of Motion for Summary Determination, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

Answer to Formal Complaint

For its Answer to the Formal Complaint of Charles Harter (“Mr. Harter”), filed with the Commission on May 21, 2015 (the “Formal Complaint”), MAWC states as follows:

1. MAWC admits the factual allegations of paragraph one of Mr. Harter’s Formal Complaint.
2. MAWC admits that there was a leak in piping owned and controlled by Mr. Harter, that MAWC was aware of this leak, that Mr. Harter reports that he eventually had the leak fixed, that MAWC was aware that Mr. Harter reported that he eventually had the leak fixed, that Mr. Harter asked for his water bill to be reduced, that MAWC did not reduce

Mr. Harter's water bill, and that MAWC followed its Commission-approved disconnection procedures due to Mr. Harter's failure to pay his water bill. MAWC otherwise denies the allegations of paragraph two of Mr. Harter's Formal Complaint.

3. MAWC admits that it was aware of one or more leaks in piping owned and controlled by Mr. Harter, that Mr. Harter contacted MAWC about the leak(s) and his water bill, that Mr. Harter informed MAWC that he would complain to the Commission, and that Mr. Harter made an informal complaint to the Commission prior to filing his Formal Complaint. MAWC otherwise denies the allegations of paragraph three of Mr. Harter's Formal Complaint.
4. MAWC denies all allegations of the Formal Complaint not specifically admitted herein, and MAWC denies that Mr. Harter is entitled to any relief from this Commission.
5. In further response to Mr. Harter's Formal Complaint, MAWC states that the Formal Complaint fails to state a claim upon which relief may be granted and should be dismissed, in that the Formal Complaint fails to allege any violation by MAWC of any law under the Commission's jurisdiction or of any Commission rule or order.
6. MAWC further states that Mr. Harter's Formal Complaint is barred by the doctrines of laches, collateral estoppel, and res judicata.

Motion for Summary Determination

Pursuant to Commission Rule 4 C.S.R. 240-2.117(1), MAWC moves for complete summary determination in its favor. There is no genuine issue as to any material fact, and, as a matter of law, Mr. Harter's Formal Complaint must be resolved in favor of MAWC.¹ Pursuant

¹ A determination on the pleadings in favor of MAWC, pursuant to Commission Rule 4 C.S.R. 240-2.117(2), would also be proper. MAWC has titled its request for summary disposition as a Motion for Summary Determination due to MAWC's reference to a prior

to Commission Rule 4 C.S.R. 240-2.117(1)(B), MAWC submits the following material facts as to which there is no genuine issue:

1. On April 25, 2013, Mr. Harter filed a Complaint against MAWC, assigned Commission Case No. WC-2013-0468 (the “2013 Complaint”).
2. The 2013 Complaint was regarding Mr. Harter’s residence at 827 S. Sappington in St. Louis, Missouri. (2013 Complaint, p. 1)
3. On November 26, 2013, the Commission issued its Report and Order, effective December 26, 2013, in Case No. WC-2013-0468.
4. With its Report and Order in Case No. WC-2013-0468, the Commission found that Mr. Harter “lives in a 1927 farmhouse that has leaks” and that the “Staff of the Commission attempted to address Complainant’s concerns about water leaks in 2011 but Complainant did not respond to Staff’s requests.” (Report and Order, p. 5, Case No. WC-2013-0468)
5. With its Report and Order in Case No. WC-2013-0468, the Commission denied Mr. Harter’s 2013 Complaint, concluding that “there is no basis for finding any wrongdoing on the part of” MAWC and that MAWC “has not violated any laws or rules.” (Report and Order, p. 10, Case No. WC-2013-0468)
6. Mr. Harter’s Formal Complaint was filed herein on May 21, 2015.
7. The current Formal Complaint is regarding Mr. Harter’s residence at 827 S. Sappington in St. Louis, Missouri. (Formal Complaint, p. 1)
8. There was a leak at Mr. Harter’s residence. (Formal Complaint, ¶2; MAWC’s Answer, ¶2)

complaint proceeding and MAWC’s affirmative defenses of laches, collateral estoppel, and res judicata. Reliance on this prior complaint proceeding is not necessary in order for summary disposition to be granted herein in favor of MAWC.

9. There is no allegation that the leak was in piping owned and/or controlled by MAWC.
(*See Formal Complaint*)
10. Mr. Harter, as the customer, is responsible for the construction and maintenance of his water service line from the main to his premises and is responsible for the construction and maintenance of all inside piping. (MAWC Tariff Book PSC MO No. 13, Sheet Nos. R 16- R 17)
11. There is no allegation that the leak was caused by any unlawful or improper action or inaction on the part of MAWC. (*See Formal Complaint*)
12. Mr. Harter reported to MAWC that he had the leak fixed. (Formal Complaint, ¶2; MAWC's Answer, ¶2)
13. At the hearing in Commission Case No. WC-2013-0468, the 2013 Complaint proceeding, Mr. Harter discussed the leak which is the subject of his current Formal Complaint. (Formal Complaint, ¶3; Case No. WC-2013-0468, Tr. Vol. 2, p. 23 ("I live in a 1927 farmhouse, it has leaks. And I would submit that that is a matter that needs be determined since I have complained about it."))

Suggestions in Support of Motion for Summary Determination

Pursuant to Commission Rule 4 C.S.R. 240-2.117(1)(B), MAWC submits its Suggestions in Support of its Motion for Summary Determination. There is no genuine issue as to any material fact, and, as a matter of law, Mr. Harter's Formal Complaint must be dismissed or resolved in favor of MAWC. The Formal Complaint fails to state a claim upon which relief may be granted, in that it fails to allege any violation by MAWC of any law under the Commission's jurisdiction or of any Commission rule or order. The leak at issue was in piping owned and

controlled by Mr. Harter. There is no law, rule, or order which would require MAWC to reduce Mr. Harter's water bill in these circumstances.

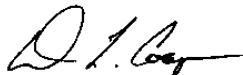
Additionally, Mr. Harter's Formal Complaint is barred by the doctrines of laches, collateral estoppel, and res judicata. Although the 2013 Complaint and Mr. Harter's current Formal Complaint are not identical, the subject leak and Mr. Harter's refusal to pay his water bill were at issue in Mr. Harter's 2013 Complaint. "(A) prior judgment bars a subsequent claim arising out of the same group of operative facts 'even though additional or different evidence or legal theories might be advanced to support' the subsequent claim." *Misischia v. St. John's Mercy Health Systems*, 457 F.3d 800, 804 (8th Cir. 2006), *quoting Chesterfield Village v. City of Chesterfield*, 64 S.W.3d 315, 320 (Mo. banc 2002). "The doctrine of claim preclusion bars not only the claims asserted in the first action but also claims 'which the parties, exercising reasonable diligence, might have brought forward at the time.'" *Id.* "The doctrine of res judicata would become meaningless if a party could relitigate the same issue . . . by merely positing a few additional facts that occurred after the initial suit." *Id.*, *quoting Dubuc v. Green Oak Township*, 312 F.3d 736, 751 (6th Cir. 2002).

WHEREFORE, having fully answered, MAWC requests that Mr. Harter's Formal Complaint be dismissed or that summary determination be issued in favor of MAWC and against Mr. Harter. MAWC requests such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Dean L. Cooper

MBE#36592

Diana C. Carter MBE #50527
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
Phone: (573) 635-7166
Fax: (573) 635-3847
E-mail:DCarter@BrydonLaw.com
DCooper@BrydonLaw.com

ATTORNEYS FOR MISSOURI-AMERICAN
WATER COMPANY

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail or U.S. Mail, postage prepaid, this 19th day of June, 2015, to:

Missouri Public Service Commission
Governor's Office Building
Jefferson City, Missouri 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel
Governor's Office Building
Jefferson City, Missouri 65102
opcservice@ded.mo.gov

Charles Harter
827 S. Sappington
St. Louis, MO 63126

