

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

The Staff of the Missouri Public Service Commission,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. WC-2017-0007</u></b>
	)	
Missouri Utilities Company,	)	
	)	
Respondent.	)	<b><u>Case No. SC-2017-0008</u></b>
	)	
CERTIFIED MAIL	)	

**ORDER GIVING NOTICE OF CONTESTED CASE AND DIRECTING  
RESPONDENT TO FILE ANSWER**

Issue Date: July 14, 2016

Effective Date: July 14, 2016

On July 5, 2016, the Staff of the Missouri Public Service Commission filed a formal complaint against Missouri Utilities Company ("Missouri Utilities"), a public utility regulated by the Commission. A copy of the complaint accompanies this notice. This is a contested case<sup>1</sup> pursuant to Section 386.390, RSMo 2000.

The Commission will set a 30-day deadline for Missouri Utilities to file an answer. In the alternative, Missouri Utilities may file a written request that the complaint be referred to a neutral third-party mediator for voluntary mediation. Upon receipt of requests for mediation, the 30-day time period shall be tolled while the Commission ascertains whether Staff is also willing to submit to voluntary mediation. If Staff agrees to mediation, the time within which answers are due shall be suspended pending the

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<sup>1</sup> A "[c]ontested case' means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." Section 536.010.4, RSMo Supp. 2013.

resolution of mediation. Additional information regarding the mediation process is enclosed. If Staff declines to mediate the dispute, Missouri Utilities will be notified in writing that the tolling has ceased and will also be notified of the date by which answers must be filed. That period is usually the remainder of the original 30-day period.

As required by Section 536.067(2)(f), RSMo 2000, the Commission informs the parties that the Commission's provisions governing procedures before the Commission, including provisions relating to discovery, are found at Commission rule 4 CSR 240-2.090.

**THE COMMISSION ORDERS THAT:**

1. The Commission's Data Center shall send, by certified mail, a copy of this notice and order and a copy of the complaint to the following:

Attn: Missouri Utilities Company  
Gary V. Cover  
P.O. Box 506  
137 West Franklin  
Clinton, MO 64735

2. Missouri Utilities Company shall file an answer to the complaint or request mediation no later than August 13, 2016. All pleadings (the answer, the notice of satisfaction of complaint, or request for mediation) shall be filed using the Commission's Electronic Filing and Information System or by mail to the Secretary of the Commission.

3. This order shall be effective when issued.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Kim S. Burton, Senior Regulatory  
Law Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 14<sup>th</sup> day of July, 2016.

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	<b><u>Case No. WC-2017-</u></b>
v.	)	
	)	
Missouri Utilities Company	)	<b><u>Case No. SC-2017-</u></b>
Gary V. Cover	)	
P.O. Box 506	)	
137 West Franklin	)	
Clinton, MO 65739,	)	
	)	
Respondent.	)	

**COMES NOW** the Staff of the Missouri Public Service Commission, through the undersigned counsel, and pursuant to Section 386.390 RSMo (2000)<sup>1</sup> and 4 CSR 240-2.070(1), files this Complaint with the Missouri Public Service Commission against Respondent, Missouri Utilities Company, for violation of the Commission's statutes and rules relating to the filing of annual reports. In support of its Complaint, Staff respectfully states the following:

1. This matter concerns Respondents failure to timely file an annual report as required by Section 393.140(6), RSMo and Commission Rules 4 CSR 240-3.335 and 4 CSR 240-3.640.

<sup>1</sup> All statutory references are to RSMo 2000, as currently supplemented.

## **Parties**

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Staff Counsel's Office as authorized by Commission Rule 4 CSR 240-2.070(1).

3. Respondent Missouri Utilities Company ("Missouri Utilities" or "Company") is an administratively dissolved Missouri corporation. Respondent's official representative, as listed in EFIS, is Gary V. Cover, P.O. Box 506, 137 West Franklin, Clinton, MO 64735. This Commission granted Respondent a Certificate of Convenience and Necessity ("CCN") authorizing the Company to provide water service to the public for gain on January 15, 1993, in WA-92-291, and its most recent tariff sheet revisions became effective on January 22, 1993, in JS-2002-0044. Pursuant to that CCN, Respondent provides water and sewer service to approximately 151 residential customers in Henry County, Missouri.

## **General Allegations**

4. Respondent owns, controls and manages water sources and other plant and infrastructure by which they sell water to the public for gain and is therefore a "water corporation" as defined by § 386.020(59), RSMo. Respondent also owns, controls and manages water sewer systems, plants, or property for the collection, carriage, treatment, and disposal of sewage for the public for gain and is therefore a "sewer corporation" as defined by § 386.020(50), RSMo. Respondent is a "public utility" as defined by § 386.020(43), RSMo, and thus is subject to the jurisdiction of this Commission pursuant to § 386.250(3), RSMo.

5. Section 386.390.1, RSMo authorizes the Commission to entertain a complaint “setting forth any act or thing done or omitted to be done by any...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.”

6. Section 386.600, RSMo provides, “an action to recover a penalty...under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission.”

### **COUNT ONE**

#### **Respondent failed to submit its 2013 annual report**

7. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs one (1) through six (6) above.

8. Section 393.140(6), RSMo, requires every water corporation and every sewer corporation to file with the Commission an annual report, and Rules 4 CSR 240-3.335(1) and 4 CSR 240-3.640(1) require the annual reports to be filed with the Commission on or before April 15 of each year.

9. On May 2, 2014, Staff mailed a letter to the Company notifying Respondent that the Commission had not received the Company's 2013 annual reports and that Respondent would be subject to legal action if the Company did not file its 2013 annual reports by May 22, 2014.

10. Respondent did not file its 2013 annual reports by May 22, 2014.

11. As of the date of this filing, Respondent has failed, omitted, or neglected to file its calendar year 2013 annual reports.

12. Section 393.140(6), RSMO, states, “[a]ny such person or corporation which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same...”

**WHEREFORE**, Staff respectfully requests the Commission give notice to the Respondent as required by law and, after the opportunity for hearing, issue an order for Count One that finds the Respondent failed, omitted or neglected to file its annual reports for 2013 and authorizes the General Counsel's Office to bring a penalty action against the respondent in circuit court as provided by Sections 386.600 and 393.140(6), RSMo.

## **COUNT TWO**

### **Respondent has failed to submit its 2014 annual report**

13. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs one (1) through six (6) above.

14. Section 393.140(6), RSMo, requires every water corporation and every sewer corporation to file with the Commission an annual report, and Rules 4 CSR 240-3.335(1) and 4 CSR 240-3.640(1) require the annual reports to be filed with the Commission on or before April 15 of each year.

15. On July 9, 2015, Staff mailed a letter to the Company notifying Respondent that the Commission had not received the Company's 2014 annual reports and that the Respondent would be subject to legal action if the Company did not file its 2015 annual reports by August 9, 2015.

16. Respondent did not file its 2014 annual reports by August 9, 2015.

17. As of the date of this filing, Respondent has failed, omitted, or neglected to file its calendar year 2014 annual reports.

18. Section 393.140(6), RSMo, states, “[a]ny such person or corporation which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same...”

**WHEREFORE**, Staff respectfully requests the Commission give notice to the Respondent as required by law and, after the opportunity for hearing, issue an order for Count Two that finds the Respondent failed, omitted, or neglected to file its annual reports for 2014 and authorizes the General Counsel's Office to bring a penalty action against the respondent in circuit court as proved in Sections 386.600 and 393-140(6), RSMo.

### **COUNT THREE**

#### **Respondent failed to submit Missouri Utilities' 2015 annual report**

19. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs ONE (1) through six (6), above.

20. Section 393.140(6), RSMo requires every water corporation and every sewer corporation to file with the Commission an annual report, and Rule 4 CSR 240-3.640(1) require the annual reports to be filed with the Commission on or before April 15 of each year.

21. Respondent was granted a 30-day extension to file its 2015 annual reports pursuant to 4 CSR 240-3.640(6) and 4 CSR 240-3.335(6), it did not file Missouri Utilities' 2015 annual report by May 15, 2016.



22. On April 27, 2016, Staff mailed a letter to the Company notifying Respondents that the Commission had not received the Company's 2015 annual report and that the Respondents would be subject to legal action if the Company did not file its 2015 annual report by May 15, 2016.

23. As of the date of this filing, Respondent has failed, omitted, or neglected to file Missouri Utilities Company's calendar year 2015 annual reports.

24. Section 393.140(6), RSMo states, "[a]ny such person or corporation which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same..."

**WHEREFORE**, Staff respectfully requests the Commission give notice to the Respondent as required by law and, after the opportunity for hearing, issue an order for Count Three that finds the Respondent failed, omitted, or neglected to file its annual reports for 2015 and authorizes the General Counsel's Office to bring a penalty action against the Respondent in circuit court as provided in Sections 386.600 and 393.140(6), RSMo.

Respectfully submitted,

**/s/ Marcella L Mueth**

Assistant Staff Counsel

Missouri Bar No. 66098

Attorney for the Staff of the

Missouri Public Service Commission

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**Commissioners**

**DANIEL Y. HALL**  
Chairman

**STEPHEN M. STOLL**

**WILLIAM P. KENNEY**

**SCOTT T. RUPP**

**MAIDA J. COLEMAN**

***Missouri Public Service Commission***

POST OFFICE BOX 360  
JEFFERSON CITY MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.mo.gov>

**SHELLEY BRUEGGEMANN**  
General Counsel

**MORRIS WOODRUFF**  
Secretary

**WESS A. HENDERSON**  
Director of Administration  
and Regulatory Policy

**CHERLYN D. VOSS**  
Director of Regulatory Review

**KEVIN A. THOMPSON**  
Chief Staff Counsel

**Information Sheet Regarding Mediation of Commission Formal Complaint Cases**

Mediation is a process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as “facilitated negotiation.” The mediator’s role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who “wins.” Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. The Regulatory Law Judges at the Public Service Commission are trained mediators and this service is offered to parties who have formal complaints pending before the Public Service Commission at no charge. In addition, the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a “winner” and a “loser” although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as “win-win” agreement.

The traditional mediator’s role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant’s perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the

participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The Judge assigned to be the mediator will not be the same Judge assigned to the contested complaint.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case. If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.

A handwritten signature in dark ink, reading "Morris L. Woodruff". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Morris L. Woodruff  
Secretary

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 14<sup>th</sup> day of July 2016.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**July 14, 2016**

**File/Case No. WC-2017-0007 and SC-2017-0008**

**Missouri Public Service  
Commission**

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**Missouri Utilities Company**

Legal Department  
P.O. Box 506  
Clinton, MO 64735

***Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).***

***Sincerely,***



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.