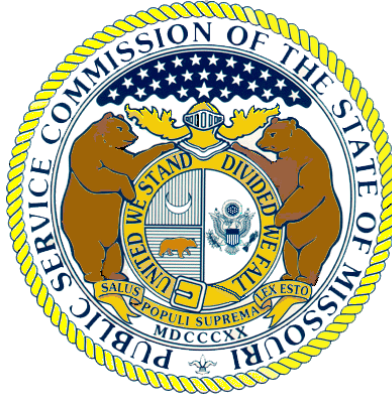


BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



Charles Harter,
Complainant,
v.
Missouri American Water Company,
Respondent

File No. WC-2013-0468

REPORT AND ORDER

Issue Date: November 26, 2013

Effective Date: December 26, 2013

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

| | | |
|----------------------------------|---|------------------------------|
| Charles Harter, |) | |
| Complainant, |) | |
| v. |) | <u>File No. WC-2013-0468</u> |
| Missouri American Water Company, |) | |
| Respondent |) | |

Appearances

Charles Harter, Complainant, *pro se*

Timothy Luft, Missouri American Water Company

Jennifer Hernandez, Staff of the Missouri Public Service Commission

JUDGE: Kennard Jones, Senior Regulatory Law Judge

REPORT AND ORDER

Syllabus: The Commission finds that Missouri American Water Company did not improperly disconnect Complainant's service or violate any terms of any agreement between it and Complainant. The Commission therefore concludes that the Company has not violated any statutes, Commission rules or Commission orders.

Background

On April 25, 2013, Charles Harter filed a complaint against Missouri-American Water Company alleging that the Company improperly disconnected his service and failed to honor a payment arrangement between him and the Company. The Company filed its answer, denying any wrongdoing. The Staff of the Commission filed its Recommendation and asserts that the Company has not violated any statutes, rule or orders.

Prior to the evidentiary hearing held on October 17, 2013, the Company filed a motion to discontinue Complainant's service. In opposition to the motion, Complainant argued that everything he owes to the Company is in dispute. And, because a formal

complaint is active, the Company is prohibited from discontinuing his service. In support of the opposition to the motion, Complainant posits that he should be credited for usage resulting from water leaks.¹

This Report and Order will dispose of this complaint and the underlying motion. What is at issue are Commission rules 4 CSR 240-13.050 (discontinuance of service) and 13.060 (settlement agreements).

Findings of Fact

1. Missouri-American Water Company is certificated by and authorized to provide water service through the Missouri Public Service Commission.²

2. On October 3, 2012, the Company sent an overdue notice of \$176.50 to Complainant.³

3. On October 10, 2012, the Company sent a discontinuance of service notice, informing Complainant that service would be discontinued on October 24, 2012.⁴

4. On October 17, 2012, the Company sent a final disconnection notice.⁵

5. On October 18, 2012, Complainant and the Company entered into a payment agreement.⁶

6. A letter dated October 19, 2013, memorializes the agreement entered into on October 18 and required Complainant to pay \$45.00 on October 22, \$65.75 on November 17 and \$65.75 on December 18, 2012.⁷

¹ EFIS No. 19, Transcript, page 23, line 23 to page 24, line 7.

² Case No. WM-84-22, December 30, 1983, Commission grants a Certificate of Service Authority to Missouri-American Water Company.

³ EFIS No. 19, Transcript, page 88, lines 21-25.

⁴ EFIS No. 19, Transcript, page 88, line 25 to page 89, line 3.

⁵ EFIS No. 19, Transcript, page 89, lines 3-4.

⁶ EFIS No. 21, Staff Exhibit 1, Appendix A, page 4; EFIS No. 19, Transcript, page 90, line 25 to page 91, line 4.

⁷ EFIS No. 21, Staff Exhibit 1, Schedule 4.

7. On October 22, 2012, Complainant made the agreed-upon payment of \$45.00.⁸
8. Complainant did not make the subsequent, agreed-upon payments of \$65.75 on November 17 or December 18, 2012.⁹
9. On November 27, 2012, the Company sent a disconnection notice, informing Complainant that his service would be disconnected on December 4, 2012.¹⁰
10. On December 3, 2012, Complainant sought assistance with his bill from Community Action Agency of St. Louis (CAASTL).¹¹
11. On December 4, 2012, Complainant made a \$12 payment.¹²
12. On December 17, 2012, the Company sent a bill for \$196.32, with a total balance due of \$315.82.¹³
13. On January 9, 2013, the Company denied Complainant's request to enter into a payment agreement because he defaulted on the agreement made on October 18, 2012.¹⁴
14. On January 14, 2013, the Company received a payment of \$120 from CAASTL.¹⁵
15. On January 22, 2013, the Company sent a disconnection notice for the delinquent balance of \$195.82.¹⁶
16. On January 24, 2013, Complainant called the Company to request a payment agreement but was again denied because he breached the agreement of October 2012.¹⁷
17. On January 30, 2013, the Company sent a final disconnection notice to Complainant advising him that his service would be disconnected on February 4, 2013.¹⁸

⁸ EFIS No. 21, Staff Exhibit 1, Appendix A, page 4; EFIS No. 19, Transcript, page 91, lines 4-5.

⁹ EFIS No. 21, Staff Exhibit 1, page 4; EFIS No. 19, Transcript, page 91, lines 4-5.

¹⁰ EFIS No. 19, Transcript, page 91, lines 6-8.

¹¹ EFIS No. 19, Transcript, page 91, lines 10-11.

¹² EFIS No. 19, Transcript, page 91, lines 12-13.

¹³ EFIS No. 19, Transcript, page 91, lines 13-15.

¹⁴ EFIS No. 19, Transcript, page 91, lines 18-20.

¹⁵ EFIS No. 19, Transcript page 91, lines 21-23; EFIS No. 21, Staff Exhibit 1, Appendix A page 4.

¹⁶ EFIS No. 19, Transcript, page 92, lines 1-2; EFIS No 21, Staff Exhibit 1, Appendix A, Schedule 2.

18. On February 4, 2013, Complainant made a payment of \$50 bringing the balance to \$145.82.¹⁹

19. On February 6, 2013, due to the remaining balance, a Company technician knocked on Complainant's door to inform him that his service would be disconnected.²⁰

20. Although the technician confirmed with the Company that Complainant made a payment of \$50 on February 4, Complainant's service was disconnected.²¹

21. On February 7, 2013, the Company entered into a payment agreement, which is memorialized in a letter dated February 8, 2013.²²

22. Complainant was required under the agreement to pay \$48.61 on March 17, \$48.61 on April 17 and \$48.60 on May 20, 2013.

23. On February 14, 2013, Complainant paid the entire balance of \$145.82.²³

24. On March 11, 2013, the Company billed Complainant \$267.51.²⁴

25. On April 25, 2013, Complainant filed a formal complaint with the Commission, incorporating in his complaint, several previous informal complaints.²⁵

26. On May 1, 2013, Complainant contacted the Company and entered into a payment agreement.²⁶

27. The agreement entered into on May 1 is memorialized in a letter dated May 2 and required Complainant to pay \$67 on May 5, \$50.13 on May 21, June 21 and July 22, and \$50.12 on August 22, 2013.²⁷

¹⁷ EFIS No. 19, Transcript, page 92, lines 2-5; EFIS No. 21, Staff Exhibit 1, Appendix A, page 5.

¹⁸ EFIS No. 19, Transcript, page 92, lines 6-7; EFIS No. 21, Staff Exhibit 1, Appendix A, Schedule 3.

¹⁹ EFIS No. 19, Transcript, page 92, lines 6-7.

²⁰ EFIS No. 19, Transcript, page 106, lines 11-13.

²¹ EFIS No. 19, Transcript, page 81, lines 7-14.

²² EFIS No. 21, Staff Exhibit 1, Schedule 1.

²³ EFIS No. 21, Staff Exhibit 1, Appendix A, page 5.

²⁴ EFIS No. 21, Staff Exhibit 1, Appendix A, page 5.

²⁵ EFIS No. 1, Complaint.

28. On May 1, 2013, Complainant made a payment of \$67, leaving a balance of \$200.51.²⁸

29. On July 19, 2013, the Company issued a bill, with a due date of August 12, showing a past due amount of \$200.51 and a current amount due of \$201.49, with taxes, etc., bringing the balance to \$423.65.²⁹

30. On September 5, 2013, the Company billed Complainant \$624.56, which includes the past due amount of \$423.65 and current charges of \$200.91.³⁰

31. On the evening before the evidentiary hearing, Complainant made a payment of \$175.73.³¹

32. Complainant lives in a 1927 farmhouse that has leaks.³²

33. 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.³³

²⁶ EFIS No. 21, Staff Exhibit 1, Appendix A, page 5.

²⁷ EFIS No. 21, Staff Exhibit 1, Schedule 7.

²⁸ EFIS No. 21, Staff Exhibit 1, Appendix A, page 6.

²⁹ EFIS No. 21, Staff Exhibit 1, Appendix A, page 6.

³⁰ EFIS No. 19, Transcript, page 93, lines 6-8.

³¹ EFIS No. 19, Transcript, page 93, lines 20-22; EFIS No. 20. Complainant Exhibit 1.

³² EFIS No. 19, Transcript, page 23, line 23.

³³ EFIS No. 19, Transcript, page 24, line 20-25.

Conclusions of Law

Jurisdiction

The Commission has jurisdiction over this matter because Charles A. Harter has filed a complaint with the Missouri Public Service Commission against Missouri-American Water Company; an entity regulated by this Commission.³⁴

Burden of Proof

The Complainant has the burden of proving that “more likely than not” Missouri-American violated a statute, rule, tariff or order of the Commission.³⁵

Whether Missouri-American improperly disconnected Complainant’s water service

Under Commission rule 4 CSR 240-13.050 a utility may disconnect a customer for nonpayment of an undisputed amount or, among other things, failure to comply with the terms of a settlement agreement. In addition to the substantive reasons for disconnection, there are certain procedural steps a Company must take prior to disconnection.

The history of this case goes back to October 3, 2012. At that time Complainant had an overdue balance. Due to that overdue balance, the Company sent a disconnection notice. Complainant avoided disconnection by entering into a payment agreement with the Company. Complainant then made one payment, in compliance with the agreement, but did not make the next two payments and was therefore in breach of the agreement. The Company then sent a second notice of disconnection. Complainant again avoided disconnection by securing a pledge from CAASTL to pay a certain portion of Complainant’s

³⁴ Section 386.390, RSMo.

³⁵ *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm’n of State of Mo.*, 116 S.W.3d 680, 693 (Mo. Ct. App. 2003). [addresses who has the burden]; *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007). [states that the burden of proof is a preponderance of the evidence]; *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999). [interprets “preponderance of the evidence” to mean “more likely than not”].

bill. After CAASTL made its pledge, but before CAASTL made the payment, the Company denied Complainant's request to enter into a payment agreement due to his breach of the agreement in October. The payment made by CAASTL was for \$120. However, a delinquent balance of \$195.82 remained on Complainant's bill. Based on that delinquent amount, the Company sent a notice of disconnection for nonpayment. Complainant has not shown that this amount was in dispute.

Nonpayment of an undisputed amount is a reason for discontinuance of service. This is the reason the Company discontinued Complainant's service. The Commission concludes the Company was in compliance with the Commission's rule regarding the reason for disconnection.

The rule also requires that the Company follow fairly specific procedures for disconnection. The Company sent the first notice of disconnection 11 business days prior to the date of disconnection, which was February 6. Then, on January 30, the Company sent a second notice of disconnection. Finally, on the day of disconnection, a technician contacted Complainant directly prior to disconnection. These steps are in compliance with 4 CSR 240-13.050. Although it is true that Complainant made a payment 2 days prior to disconnection, the amount did not satisfy the delinquent balance. Because Complainant has not shown otherwise, the Commission concludes that the Company did not violate any statute, tariff, Commission rule or order when it disconnected Complainant's water service.

Whether Complainant and Missouri-American were under a payment agreement at the time of disconnection

Consistent with Commission rule 4 CSR 240-13.060, Complainant and the Company entered into a payment agreement in October of 2012. Complainant paid the first of three payments but did not make the second payment, which was due on November 17. Thereupon, he was in breach of the agreement. Accordingly, the Company sent a

disconnection notice to Complainant, informing him that service would be disconnected on December 4.

Nevertheless, the Company did not disconnect Complainant's service on December 4. Presumably, this is because Complainant secured, just prior to the disconnection date, a pledge from CAASTL to pay a portion of the past-due amount. However, after CAASTL paid \$120 towards Complainant's arrearage, a balance remained. The Company then, again, initiated disconnection procedures by sending a disconnection notice to Complainant. This is consistent with Commission rules. Because Complainant defaulted on the October payment agreement, the Company denied his request to enter into another agreement. And, although Complainant made a payment prior to the disconnection date, the amount due remained unsatisfied and the Company disconnected Complainant's water service on February 6.

After service was disconnected on February 6, Complainant and the Company entered into a second agreement on February 7, 2013, which required Complainant to make three monthly payments beginning in March of 2013. Rather than pay incrementally, Complainant paid the balance of \$145.82 on February 14. On March 11, the Company billed Complainant for \$267.51. In April, Complainant filed this complaint and on May 1, the Company and Complainant entered into a third agreement. Complainant made the first of five payments on May 1 but made no more payments until the evening of October 17, prior to the hearing of this case on October 18; almost 6 months later.

Although Complainant and the Company have entered into payment arrangements three times, the Commission finds that there was no agreement in place on February 6, the day of disconnection. These facts also show that there is not now an agreement in place. Further, during the hearing, Complainant seemed to be under the impression that he has a

right to payment agreements. Complainant has not offered any authority to support this conclusion. And, the Commission's rule regarding settlement agreements states that the purpose of the rule . . . "establishes procedures where a customer may enter into a settlement agreement . . ." The use of the word "may" indicates that settlement agreements are discretionary.

Decision

Complainant asserts that the Company did not enter into an agreement with him on January 9, 2013, because CAASTL agreed on one date to make a payment then at a later date, after the due date of the bill, actually made the payment.³⁶ This is not true. The evidence supports the conclusion that the Company did not enter into the agreement with Complainant because he breached the agreement in October of 2012.

Additionally, Complainant used as a basis for opposing the Company's motion to discontinue Complainant's service, the possibility of leaks being the cause for the amount of water for which he was being billed. Complainant testified that he lives in an old farmhouse with leaks. It must be true that if there are leaks, such leaks are either on the Company's side of the meter, or on Complainant's side of the meter. If there are leaks on the Company's side of the meter, then Complainant's bill would not have been affected because no water passed through the meter. If, on the other hand, there are leaks on Complainant's side of the meter, then Complainant is responsible for those leaks and the cost of the water that passes through the meter.³⁷ Essentially, Complainant's assertion

³⁶ EFIS 19, Transcript, page 65, lines 18 -25; page 67, lines 17-21; page 70, lines 16-25; page 71, lines 2 -7.

³⁷ Missouri American Water Company's tariff, P.S.C. MO. No. 17, original SHEET NO. 8 Canceling P.S.C. MO. No. 15.

regarding leaks has no bearing on the question of whether Complainant must pay for the billed water usage.

Although the Commission empathizes with the difficulties Complainant has had in paying his water bill over the last year or so, there is no basis for finding any wrongdoing on the part of the Company. In concluding that the Company has not violated any laws or rules, the Commission makes no finding as to Complainant's credibility. Even in light of the facts as he has set forth, Complainant has not carried the burden of showing that the Company has violated any laws or rules. Complainant's complaint is therefore denied on the merits.

THE COMMISSION ORDERS THAT:

1. Charles Harter's complaint is denied.
2. Missouri-American Water Company may proceed, consistent with the law and the Commission's rules, with Charles A. Harter's account as it sees fit.
3. This order shall become effective on December 26, 2013.
4. This case shall be closed on December 27, 2013.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
and Hall, CC., concur, and certify
compliance with the provisions of
Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 26th day of November, 2013.

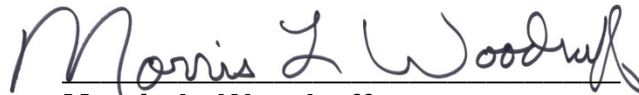
STATE OF MISSOURI

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 26th day of November 2013.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

November 26, 2013

File/Case No. WC-2013-0468

**Missouri Public Service
Commission**

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

Sincerely,



**Morris L. Woodruff
Secretary**

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