

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Filed
February 24, 2012
Data Center
Missouri Public
Service Commission

Andrew G. Smith,)	
)	
Complainant,)	
)	
v.)	File/Case No. WC-2012-0189
)	
Missouri-American Water Company,)	
)	
Respondent.)	

ANSWER TO RESPONDENTS' MOTION TO DISMISS

COMES NOW, Andrew G. Smith, Complainant, and states:

1. On February 3, 2012 Respondent (Company) filed its Answer and Motion to Dismiss in the above identified case. Before ruling on the motion, Complainant wishes to respond to certain assertions within Company's Answer.
2. In paragraph 2(a) Respondent begins with one of many spurious denials. In this case the denied claim is that the Complainant owns the apartment building at 637 Highland Park Drive. Company knows that Complainant has been paying its water bills for some years and could easily check the legal ownership. Instead, Respondent denies a simple fact and in so doing lends credence to Complainant's belief that it has no interest in settling this dispute. If Respondent is correct, perhaps 10 years of refunds are in order.
3. In paragraph 2(e) the Company insists that 4 CSR 240-13.025 (1) imposes two separate obligations on the utility and that the phrase "determine from all related and available information" only modifies "the probable period during which the condition existed." That is a very narrow reading of the paragraph and flies in the face of the plain language. Of course, that argument is advanced when the Company surreptitiously inserts bracketed numbers in the paragraph which don't exist in the rule. Clearly, the phrase also modifies "billing adjustments for the estimated period."
4. In paragraph 2(i) Company insists that it did not discover that the meter was no longer registering water until August 5, 2011. This statement is only true in the sense that one must be on site and see that the meter is not functioning before the meter is actually known to be defective. However, that is parsing

words. The Company's billing software would flag the anomaly in the first quarter it reported zero usage. That the Company did not check out the anomaly right away is the problem. The Company suggests that the customer should have informed the Company. The Complainant was only vaguely aware that there might be a problem in the first place and there are any number of reasons for why smaller but correct bills were being sent to the Complainant. Complainant receives a number of other water bills and does not dwell on them unless his attention is focused. But, maintenance of the system and issuance of correct bills are some of the things customers pay the Company to do. The Company shouldn't attempt to insist that its customers do its job. In any case calling the problem to the Company's attention would not have done any good in as much as it is Company's stated policy not to investigate a problem until it has existed for three billing periods.

5. In paragraphs 2(j) and 2(k) the Company continues to insist on its tortured construction of 4 CSR 240-13.025 (1) and on tariffs that either don't apply to the period in question or were issued by a company which has no relationship to Respondent.

6. In paragraph 2(k) the Company also asserts that changes in occupancy do not relate to changes in water usage. However, the tariffs asserted by the Company to apply are based on the assumption that where there is no change in the composition of the customer, water usage will be similar from period to period. It is clearly an inconsistent argument.

7. In paragraph 2(l) the Company issues another of its spurious and unsupported denials when it states that it was not charging Complainant for a defective meter. The Company's so-called customer service representative Courtney stated that Complainant was paying for the defective meter and only the defective meter with the fixed charges on his bill. Now, the Company's says that the fixed charge is for meter reading and billing. It would seem rather pricey for just meter reading and billing. The constant changing of answers is vexing to say the least.

8. In paragraph 3(a) the Company again issues one of its spurious denials and details efforts it says it made to communicate with the Complainant. It would seem though that the only person able to negotiate for the Company who ever tried to reach the Complainant was Ms. Chelsie Harmon. She tried exactly once. Within 2 hours of Ms. Harmon's call the Complainant called back but only reached a voice

message system. Complainant left a message stating when he would be available to answer Ms. Harmon's call but she never called again.

9. In paragraph 3(c) in regard to the Complainant's settlement letter and tendered check of October 5, 2011 Company says it "did not accept this payment as settlement of the outstanding balance on the account." If that was the case, Company should have returned the check. It did not. It is a settled tenet of contract law that when an offer to settle is tendered, if the opposing party cashes the check and keeps the money, that party is deemed to have accepted the settlement offer. It's a little late to reject the settlement offer now.

WHEREFORE, Complainant prays that the Missouri Public Service Commission enforce the settlement made and overrule the motion to dismiss.

Respectfully submitted,



Andrew G. Smith, Complainant

Certificate of Service

The Complainant certifies that a true and correct copy of the foregoing was faxed and/or mailed postage prepaid the 23rd day of February, 2012 to:

Secretary of the Missouri
Public Service Commission
Attn: Data Center
P.O. Box 360
Jefferson City, MO 65102-0360

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

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COMMENTS ON THE REPORT OF STAFF

COMES NOW Andrew G. Smith, Complainant, and states:

1. On February 14, 2010 the staff of the Missouri Public Service Commission (the Commission) submitted its Report of Staff (the Report) on the above designated case. Complainant is gratified that the Report is reasonably comprehensive. Complainant does disagree with several of its conclusions and believes some additional comment is necessary on some of its points.
2. On page 3 in the second paragraph the Report states that "the Company did not agree to any adjustment to the adjustment The effect on (sic) fewer people could not be determined by the Company because it is possible that fewer occupants could use less, the same or more water, and there was no way to make that determination." However, the rules cited are not reasonable unless you assume that a household that does not change its composition will use the same amount of water in the current year as in the past year. Using the Company's reasoning, more tenants could also use no water, a possibility that the Company does not permit.
3. On page 3 in the third paragraph the Report makes the statement that the "staff attempted to contact Mr. Smith on November 15, 2011, to discuss the Company's response and the usage figures. When Mr. Smith did not return Staff's call, a detailed closure letter was prepared and sent on November 17, 2011." It should be noted that this is the only statement that the staff of the Commission had difficulty reaching Mr. Smith. However, the Company continually complains that they attempted, but were unable to reach

Complainant. Complainant does not believe Company made a serious effort to reach Complainant. The Report would appear to agree with Complainant on that point. It should also be noted that Complainant was out of town from November 15th thru the 19th which was clearly stated in the Settlement letter Complainant wrote to the Company on October 5th - a copy of which was sent to the Commission at that time. Complainant attempted to contact the Commission on his return but because it was Thanksgiving week, he was unable to reach Pam until November 28.

4. On page 4 in the fifth paragraph the Report says, "The Company explained that their normal practice is to investigate the usage after three billing cycles and explained that the readings were obtained by meter readers in the field who would not have the information from the previous read for comparison to determine that zero usage was being reported." The paragraph also says that the difference in the two "adjustments" in the letters from the Company to the Complainant was the \$15.10 ISRS charge. However, the Report fails to explain what the ISRS charge is and whether it was appropriate.

5. In the middle of page 5 under STAFF FINDINGS the Report cites 4 CSR 240-13.020 in part as follows: "(B) A utility shall not render a bill based on estimated usage for more than (3) consecutive billing periods or one (1) year, whichever is less...." Complainant does not understand why the rule allows a utility three billing periods and up to a year to repair its system. Customers are not permitted three billing periods to pay their bills. The rule seems to codify an unreasonable relationship.

6. Also on page 5 near the bottom, the Report states, "Staff has concluded that the Company has not acted in violation of Commission rule or their tariff in their estimation process." Again on page 6 of the Report at the end of the first full paragraph, the Report states, "Staff has not determined that the Company has violated this rule or their tariff in the estimation procedure and" As Complainant has previously stated the tariffs cited do not apply because they are not valid tariffs of the Missouri American Water Company or took effect after the incident in question.

7. On page 7 of the Report the point is made that the Company was woefully deficient in its efforts to communicate with the Complainant and its threatened disconnection was way out of bounds and in

violation of Commission rules.

8. In the second sentence of the first paragraph after the rule printed on page 7 the Report says, "Additionally, when he was unable to speak with someone with sufficient authority to negotiate a settlement, Mr. Smith sent a check in an amount that he felt was not in dispute and reports that still he was not contacted regarding the disputed amount." This statement is factually incorrect. The check sent to the Company was not an attempt to pay an amount not in dispute. Rather the check was an offer of settlement which, since the Company cashed the check and kept the money, is deemed to be an acceptance of that offer.

9. But, on page 7 the last sentence makes a statement that is way beyond any rule Complainant is aware of, "Staff asserts that Mr. Smith bears some responsibility to be aware of the charges and to contact the Company when the charges are significantly different from the norm." Complainant pays Company to provide clean water and maintain its system. It is not Complainant's responsibility to do Company's work unless they wish to put him on the payroll or provide some other incentive. Complainant was vaguely aware that he had not received a large water bill in some time. However, Complainant does receive other water bills which are properly in the double digits (as opposed to triple digits) and there are a variety of reasons why smaller bills might be correct. For instance, the decline in tenants meant less usage and smaller charges, or the recent bills were correcting over estimates on previous bills, or there was a reduction in rates or a refund ordered by the Commission and on and on. For Complainant to know there was a problem would have required considerable expenditure of time to search his records, to assemble the bills, to review each of them and to determine that the meter wasn't registering usage. And, after that waste of time (which the Company would not have paid Complainant for) if he had called the problem to the attention of the Company, it would have done no good because, as previously stated, it was the policy of the Company to wait 3 billing periods before investigating a problem. I believe the staff conclusion in this regard is totally out of the realm of reality and at variance with the Company's policies.

10. In the second sentence of the first full paragraph on page 8 the Report in criticizing the Complainant's method of calculating the water usage states, "The use of only one month would not yield

as representative of (sic) an estimate as multiple months due to the changes in his tenancy and the weather." Be advised that three months were used - not just one month.

11. Complainant was gratified to see the research into climatic conditions that the staff had done. Unfortunately, staff reached exactly the wrong conclusion from their own data when they said on page 8 in the last sentence of the first full paragraph, "Staff concludes that Mr. Smith may be mistaken in his recollection of the amount of watering done at his property." When Complainant suggested that climatic conditions should be taken into account when estimating usage during the 10 months of the alleged failure of the water meter, he had in mind the fact that rainfall in the summer of 2011 was such that watering was not necessary whereas the dearth of rainfall in the summer of 2010 required considerable watering. This was communicated to the Commission. The data assembled by the staff show clearly that rainfall in June, July and August of 2010 was 5.93 inches and that rainfall in June, July and August of 2011 was 10.19 inches or 72% greater. Staff mistakenly took into account all rainfall during entire period beginning October 7 of each year and ending August 5 of each year. Very little lawn watering goes on between November and May of each year regardless of climatic conditions.

12. In conclusion, in a 9 page report staff alludes in five separate instances to errors, mistakes and violations by the Company. If taking those errors, mistakes and violations into account does not afford the Commission a chance to fashion a remedy, it is not making much of an effort.

Respectfully submitted,



Andrew G. Smith, Complainant

Certificate of Service

The Complainant certifies that a true and correct copy of the foregoing was faxed and/or mailed postage prepaid the 23rd day of February, 2012 to:

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P.O. Box 360
Jefferson City, MO 65102-0360

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