

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

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

**ORDER DENYING MOTIONS AND SETTING PREHEARING CONFERENCE**

Issue Date: February 24, 2012

Effective Date: February 24, 2012

On December 19, 2011, Andrew G. Smith (“Complainant”) filed a complaint with the Missouri Public Service Commission (“Commission”) against Missouri-American Water Company (“MAWC”). On February 3, 2012, MAWC answered the complaint, making general denials and moving for dismissal for failure to state a claim. On February 15, 2012, Complainant filed a Motion to Direct a Decision in Favor of the Complainant.

**Missouri-American Water Company Motion to Dismiss**

The standard for review for consideration of a motion to dismiss has been clearly established by Missouri’s courts as follows:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff’s petition. It assumes that all of plaintiff’s averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the

elements of a recognized cause of action, or of a cause that might be adopted in that case.<sup>1</sup>

Complainant is only required to set forth in his complaint before the Commission “any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or 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.”<sup>2</sup> Complainant alleges in his complaint that MAWC violated Commission Rule 4 CSR 240-13.025 by failing to consider all related and available information when calculating an adjustment to Complainant’s bill during a period of time the Complainant’s water meter was not operating. Assuming that the facts alleged in Complainant’s complaint are all true, and granting Complainant all of the reasonable inferences therefrom, the facts alleged meet the elements of a recognized cause of action, satisfying both the requirements of Section 386.090 and the standard for denying a motion to dismiss.

### **Motion to Direct a Decision in Favor of the Complainant**

The Complainant filed a Motion to Direct a Decision in Favor of the Complainant, which the Commission will consider a motion for summary determination. Commission Rule 4 CSR 240-2.117(1)(E) allows the Commission to grant motions for summary determination if the record shows that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the Commission determines that it is in the public interest.

In his motion, Complainant argues that the Commission should direct a decision in his favor because MAWC failed to establish in its answer that it was acting under a

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<sup>1</sup> *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 463-464 (Mo. Banc 2001).

<sup>2</sup> Section 386.390.1, RSMo 2000.

valid tariff when adjusting the Complainant's water bill. MAWC contests these assertions. Whether or not there was a valid tariff or rule that pertained to MAWC's adjustment of the Complainant's bill and MAWC's compliance with such a tariff or rule remain genuine issues of material fact that are not resolved by allegations in the pleadings. Therefore, granting the Complainant's motion is not appropriate, and the Complainant is not entitled to relief as a matter of law.

Upon review of the pleadings, the Commission concludes that it should deny the Motion to Dismiss and the Motion to Direct a Decision in Favor of the Complainant. The Commission also finds that a prehearing conference is now appropriate. The parties or their representatives shall appear in person, or by telephone, at the conference. They should be prepared to discuss the nature of any discovery each will conduct, the time necessary to complete discovery, and to prepare for hearing. The parties should also be prepared to name the witnesses each expects to call at hearing; the number and nature of any exhibits each expects to offer at hearing; and the anticipated length of the hearing. Also, the parties should be prepared to discuss the stipulation of facts not at issue. The parties will also be encouraged to discuss settlement.

**THE COMMISSION ORDERS THAT:**

1. Missouri-American Water Company's Motion to Dismiss is denied.
2. Andrew G. Smith's Motion to Direct a Decision in Favor of the Complainant is denied.
3. A prehearing conference shall be held on March 8, 2012, beginning at 10:00 a.m., in Room 305 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. This meeting will be held in a building that meets accessibility

standards required by the Americans with Disabilities Act. If you need additional accommodations to participate, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the conference.

4. Any party wishing to appear by telephone shall notify the Regulatory Law Judge by calling 573-751-4393 no later than 5:00 p.m., March 7, 2012.

5. This order is effective immediately on issuance.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'S. Reed', is written over a faint, larger signature.

Steven C. Reed  
Secretary

( S E A L )

Michael Bushmann, Regulatory Law  
Judge, by delegation of authority pursuant  
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri  
on this 24th day of February, 2012.