

Charles Harter, )  
)  
Complainant, )  
)  
v. ) **File No. WC-2013-0468**  
)  
Missouri-American Water Company, )  
)  
Respondent. )

## NP

time to file granted by the Commission.<sup>3</sup> Staff concluded that “MAWC has not violated any Commission statute, rule, order or MAWC specific tariff by the discontinuance of water service to the Complainant.”<sup>4</sup> A prehearing conference was held on September 20 with all parties present. Subsequent to the conference, MAWC filed a *Motion For Authority to Terminate Service* to Complainant’s residence for failure to pay the undisputed portion of the bill, arguing that per Commission rules, the Complainant is not required to receive water services, free of charge, during the pendency of a complaint. In Complainant’s response to the motion, Complainant asserted that termination of service would violate 4 CSR 240-13.9070(6) as the entire bill is in dispute between the parties not just one specific amount.<sup>5</sup> A bifurcated evidentiary hearing to hear evidence pertaining to the motion to terminate service, as well as the April 25 *Complaint*, was scheduled by Commission *Order* to be held on October 18.<sup>6</sup> The hearing took place as scheduled, during which the parties presented evidence and testimony for the record. At the hearing, Complainant represented himself as a *pro se* complainant under Commission Rule 4 CSR 240-2.040(5). All other parties were represented by counsel at the hearing.

## **PARTIES**

Mr. Harter, the Complainant, is a Missouri resident and a water customer of MAWC. Missouri American Water Company, the Respondent, is a Missouri Corporation engaged in the business of providing water service in Missouri to

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<sup>3</sup> Staff’s request for an extension of time to file its recommendation was granted by the Commission in an *Order* on July 10.

<sup>4</sup> Tr. Vol. 2 p. 73, ll. 11-16.

<sup>5</sup> This rule citation was misstated by Complainant because there is no such rule. See Rule 4 CSR 240-13.045 that deals with disputes between customer and utility.

customers in its service areas. Staff is represented by Staff Counsel, per rule 4 CSR 2.040(1); and the interest of the public is represented by Public Counsel, per rule 4 CSR 2.040(2).<sup>7</sup>

### **JURISDICTION**

The Commission has jurisdiction to hear and determine the *Complaint* against MAWC pursuant to Section 386.390.1 RSMo (2000),<sup>8</sup> which states as follows:

Complaint may be made by . . . any corporation or person . . . by petition or complaint in writing, setting forth 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 . . .

### **STATEMENT OF FACTS**

\*\*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>6</sup> On October 15, Complainant filed a request for Subpoena Duces Tecum to request that the Custodian of Records for MAWC and a Community Action Agency of St. Louis County representative appear for the October 18 hearing. The request was denied by *Order* on October 16, 2013.

<sup>7</sup> Office of Public Counsel has not filed any pleadings in this case and was not present at the hearing.

<sup>8</sup> All statutory references are to RSMo (2000) as currently supplemented unless otherwise specified.

<sup>9</sup> Staff Ex. 1, Schedule 4.

<sup>10</sup> Staff Ex. 1, p. 4.



[illegible]

<sup>20</sup> *Id.*

21 *Id.*

22 *Id.*

<sup>23</sup> *Id.* at 1.

<sup>24</sup> Staff Ex. 1, p. 5.

Tr. Vol. 2 p. 42, ll. 22-25; See also Tr. Vol. 2 p. 45, ll. 21.

<sup>26</sup> Tr. Vol. 2 p. 47, ll. 3-9.

27 Staff Ex. 1, p. 5.

28 *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] \*\*

### ISSUES

The issues before the Commission can be stated as follows:

1. **Whether MAWC violated any Commission statute, rule, order or Commission-approved Company tariff when they disconnected Complainant's water service on February 6, 2013?**
2. **Whether MAWC violated any Commission statute, rule, order or Commission-approved Company tariff when they denied Complainant a budget billing arrangement?**
3. **Whether MAWC violated any Commission statute, rule, order or Commission-approved Company tariff if they employed a third party contractor to perform disconnection proceedings?**

Staff respectfully recommends the Commission follow the initial findings of Staff's August 2 recommendation, finding MAWC has not violated any Commission statute, rule, order or Commission-approved Company tariff in discontinuing water service to Complainant's residence, denying the Complainant a budget billing arrangement and employing a third party contractor, to the extent they did so in this case, to initiate the disconnection proceedings.

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<sup>29</sup> *Id.* at Schedule 7.

<sup>30</sup> Staff Ex. 1, p. 6.

## ANALYSIS

1. **MAWC did not violate any Commission statute, rule, order or Commission-approved Company tariff when they disconnected Complainant's water service on February 6, 2013.**

MAWC complied with all the requirements of 4 CSR 240-13.050(5) regarding *Billing and Payment Standards* when the Complainant received bills and the proper discontinuance notices that contained all the required information by Rule 4 CSR 240-13.050(4), including the reason for discontinuance, total account balance due, date on or after that service will be discontinued and how the customer may prevent discontinuance. Moreover, Rule 4 CSR 240-13.050(1)(D) allows a customer's service to be discontinued by a Company for failure to comply with the terms of a settlement agreement. As such, MAWC did not violate any Commission statute, rule, order or Commission-approved Company tariff when they disconnected Complainant's water service on February 6, 2013.

2. **MAWC did not violate any Commission statute, rule, order or Commission-approved Company tariff when they denied Complainant a budget billing arrangement.**

A utility is under no obligation to provide a budget billing arrangement with customers who have an overdue balance.<sup>32</sup> However, at the utilities discretion, a settlement agreement may be entered into when a customer claims inability to pay the outstanding bill in full. See 4 CSR 240-13.060(1). The Complainant entered into payment arrangements with MAWC on October 18, 2012 and February 6, 2013, but failed to keep the terms of the October 18 agreement when he failed to make a timely

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<sup>31</sup> *Id.*

payment on the bills rendered to him. Rule 4 CSR 240-13.060 (3) provides that if a customer fails to comply with the terms and conditions of a settlement agreement, a utility may discontinue service after notifying the customer of certain information including that they are in default of the agreement and that unless full payment of all balances due is made, the utility will discontinue service. Further, Rule 4 CSR 240-13.060 (4) gives the utility the option to enter into an extension agreement for the date of service discontinuance, but the utility is not required to do so. Thus, MAWC did not violate any Commission statute, rule, order or Commission-approved Company tariff when they denied Complainant a budget billing arrangement subsequent to the October 18 breach.

**3. MAWC did not violate any Commission statute, rule, order or Commission-approved Company tariff if they employed a third party contractor to perform disconnection proceedings.**

In instances wherein a Complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, the burden of proof at hearing rests with Complainant.<sup>32</sup> There is no evidence in the record provided by the Complainant that MAWC employed third party contractors rather than the Company's employees to perform disconnection services, only the Complainant's unsupported assertions. Moreover, Staff does not have sufficient information to argue in support or against Complainant's assertion. However, assuming *arguendo* that Complainant's assertions are correct, this practice is not in violation of any Commission rule or statute as long as the third-party contractors follow the same discontinuance procedures as the Company is required to follow. "Customers of a public utility have a

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<sup>32</sup> Tr. Vol. 2 p. 85, ll. 20-21.

right to demand efficient service at a reasonable rate, but they have no right to dictate the methods which the utility must employ in the rendition of that service.”<sup>34</sup>

As such, MAWC did not violate any Commission statute, rule, order or Commission-approved Company tariff if they employed a third party contractor to disconnect Complainant’s water service.

### **CONCLUSION**

Although Staff sympathizes with Complainant’s situation, this sympathy cannot create a violation where one does not exist. The evidence in the record shows that Complainant was provided bills, notices and letters regarding his payment arrangement and requirements, which provided him the opportunity to be aware of the requested amount to pay and the due date in order to avoid disconnection. The Complainant has not met his burden of proof to allow the Commission to find that Missouri American Water Company violated any Commission statute, rule, order or Commission-approved Company tariff.

**WHEREFORE**, Counsel for Staff submits this *Post-Hearing Brief of Staff* to the Missouri Public Service Commission for consideration in the above stated case, and prays the Commission issue an order finding no statute, rule, order or Commission-approved Company tariff violation on the part of Missouri-American Water Company.

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<sup>33</sup> *Margulis v. Union Electric Company* 1991 WL 639117 (Mo. P.S.C. 1991).

<sup>34</sup> *City of St. Joseph v. Public Service Commission*, 325 Mo. 209, 223-224; 30 S.W. 2d 8, 14 (1930).

Respectfully submitted,

**/s/ Akayla J. Jones**

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this 1<sup>st</sup> day of November, 2013 by: United States Postal Mail, postage prepaid, to Charles Harter, 827 S. Sappington, St. Louis, MO 63126; electronically to Charles Harter at [harleycharter@sbcglobal.net](mailto:harleycharter@sbcglobal.net); electronically to Timothy W. Luft, counsel for Missouri-American Water Company at [Timothy.Luft@amwater.com](mailto:Timothy.Luft@amwater.com); and electronically to the Office of the Public Counsel at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov).

**/s/ Akayla J. Jones**