

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 12th
day of June, 2008.

Kenny and Cathy Cox,)	
)	
Complainants,)	
)	
v.)	<u>Case No. WC-2008-0302</u>
)	
Missouri American Water Company,)	
)	
Respondent.)	

ORDER DISMISSING COMPLAINT

Issue Date: June 12, 2008

Effective Date: June 22, 2008

On March 12, 2008,¹ Kenny and Cathy Cox (the “Complainants”) filed a complaint with the Commission against Missouri American Water Company (“MAWC”). The Complainants alleged that MAWC engaged in a pattern of delaying and withholding information and deceitful practices resulting in over-billing the Complainants thousands of dollars over the course of more than two years in relation to a water line leak. Although MAWC provided the Complainants with a leak adjustment pursuant to its policies, the Complainants alleged that the adjustment was insufficient and requested the Commission to: (1) order MAWC to provide an additional adjustment; (2) order MAWC to compensate the Complainants, in the amount of \$500.00, for time spent on the phone dealing with MAWC’s customer service; and, (3) order MAWC to cease

¹ All dates throughout this order refer to the year 2008 unless otherwise noted.

collections on an unpaid portion of their bill (apparently the amount Complainants believed was in relation to the leak).

On April 14, MAWC responded denying Complainants' allegations, stating that: (1) Complainants did not contest the water used as registered by their water meter; (2) MAWC did not receive dozens of calls from Complainants over a two-year period, but rather the first completed phone contact from Complainants was on or around May 1, 2007, and proof of repairs were provided on or around August 14, 2007 (apparently Complainants called earlier on April 22, 2007, but terminated the call without completing a service order); (3) the leak in question was located on Complainants' service line, which is not the company's responsibility to maintain; and, (4) the leak adjustment provided by MAWC pursuant to company policy was a courtesy and was not required by law.² MAWC moved the Commission to dismiss the complaint for failure to state a claim upon which relief could be granted.

On April 30, the Staff of the Missouri Public Service Commission filed its report on the investigation into the complaint. In its report Staff states: (1) MAWC properly metered the water used and delivered to Complainants' residence; (2) the time associated with MAWC's knowledge of the water leak spanned at maximum 4 months based upon the phone calls placed to MAWC, not 2 years as Complainants alleged; (3) Complainants have only been receiving service from MAWC since September of 2006; (4) Complainants repaired the leak following their conversations with MAWC and provided proof of repairs to MAWC; (4) MAWC provided Complainants with a leak adjustment pursuant to their policy in the amount equal to one-half of the excess use during the two highest usage months of the four months immediately preceding the

² MAWC did offer to let Complainants pay the balance of their bill over a 12-month period.

leak; (5) no Commission Rule, State Statute or the Company's tariff requires MAWC to provide Complainants with a leak adjustment nor was there a violation of any Commission Rule, State Statute or the Company's tariff; and (6) the Commission does not have legal authority to grant monetary relief for any alleged damages for the time Complainants spent on the phone to MAWC. The Staff also recommended that the Commission dismiss the complaint.

On May 5, the Commission directed the Complainants to respond to MAWC's answer and to Staff's report. The Commission requested this response by means of a detailed letter explaining the Complainants' rights and obligations in association with a complaint action. The letter also advised Complainants that their complaint could face dismissal if they failed to: (1) respond to Commission orders (4 CSR 240-2.116(3)), prosecute their claim (4 CSR 240-2.116(2)), or attend a prehearing conference, hearing or mediation session (4 CSR 240-2.2.90(3) and 4 CSR 240-2.116(3)). Complainants were directed to respond to the Commission no later than May 16.

The Complainants failed to respond to the Commission's May 5 order. Consequently, on May 19, the Commission issued a show cause order directing the Complainants to respond and state why their complaint should not be dismissed. The order allowed the Complainants until June 5 to respond, but Complainants failed to respond to the show cause order. In addition to failing to comply with two Commission orders, as of June 10, ninety days had elapsed from the day Complainants filed their complaint, and no action has been pursued by the Complainants to further prosecute their complaint beyond the original complaint filing.

Commission Rule 4 CSR 240-2.116(3) provides that any party may be dismissed

from a case for failure to comply with a Commission order. Moreover, Commission Rule 4 CSR 240-2.116(2) provides that: "Cases may be dismissed for lack of prosecution if no action has occurred in the case for ninety (90) days and no party has filed a pleading requesting a continuance beyond that time."

Over ninety days have now elapsed since Complainants first filed their complaint on March 12 and Complainants have not filed any pleading with the Commission beyond the original complaint. Complainants have not complied with the Commission's order to file a response to MAWC's answer and Staff's investigation. Complainants have not complied with the Commission's order to show cause why their complaint should not be dismissed. Complainants have not requested a continuance in this matter, nor have they contacted the Commission in any manner in association with this complaint beyond their original filing.

IT IS ORDERED THAT:

1. Kenny and Cathy Cox's complaint against Missouri American Water Company filed on March 12, 2008, and assigned case number WC-2008-0302, is hereby dismissed without prejudice.

2. This order shall become effective on June 22, 2008.

3. This case shall be closed on June 23, 2008

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton, Jarrett,
and Gunn, CC., concur

Stearley, Regulatory Law Judge