

Bertha Anderson,)
Complainant)
v.)
Missouri-American Water Company,)
Respondent.)

MOTION TO DISMISS

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Motion to Dismiss* in this matter hereby states:

1. Bertha Anderson (Complainant) filed a *Complaint* against Missouri-American Water Company on March 30, 2017, alleging damage to her basement when a Missouri American pipe broke near her home. She seeks a determination of liability and money damages to compensate her for her alleged losses. In relation to the *Complaint*, the Commission held a procedural conference June 8, 2017. At that conference, the judge asked the parties to determine an appropriate procedural schedule for this matter.

2. Staff reached out to the Complainant who indicated to Staff that she does not want to proceed with a hearing before the Commission in this matter because she understands that the Commission cannot grant her money damages. Therefore, Staff asks the Commission to dismiss this matter, permitting Complainant to proceed to Circuit Court having exhausted her administrative remedies.

3. Commission Rule 4 CSR 240-2.070(7) states, “the Commission on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted”. As Staff stated in its *Supplement to Staff Report* the Commission has previously stated, “These important fact specific decisions

regarding liability, especially with regard to unregulated services, should be left to the judicial system”.¹ Additionally, “[t]he Public Service has full authority to investigate complaints about rates or service and can make orders to remedy the situation for the future, but it cannot grant monetary relief or compensation for past overcharges or damages.”²

4. Due to the clear intent of the Commission to leave determinations of liability and monetary remedies to the circuit court system, the Supreme Court’s ruling that the Commission cannot award monetary damages, and the desire of the Complainant not to have a hearing before the Commission on this matter, Staff would suggest that a claim of this nature is better suited for litigation in circuit court.

WHEREFORE, Staff on behalf of all parties prays that the Commission will accept its *Motion to Dismiss*; issue an order dismissing this *Complaint*, while preserving Complainant’s right to bring a claim in circuit court; and grant such other and further relief as the Commission considers just in the circumstances.

Respectively Submitted,

/s/ Whitney Payne

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¹ In the Matter of Laclede Gas Companys [sic] Tariff Revision Designed to Clarify its Liability for Damages Occurring on Customer Piping and Equipment, 2010 WL342481 (Mo.P.S.C.).

² *May Dept. Store Co. v. Union Electric Light & Power Co.*, 341 Mo. 299, 331-332; 107 S.W.2d 41,58 (Mo. 1937).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 30th day of June, 2017, to all counsel of record.

/s/Whitney Payne