

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

Claude Scott,)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-2020-0407</u>
)	
Missouri-American Water Company,)	
)	
Respondent.)	

POST-HEARING BRIEF OF STAFF

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through undersigned counsel, and for its *Post-Hearing Brief of Staff* respectfully states:

BACKGROUND

Claude Scott (“Complainant”) filed a formal complaint against Missouri-American Water Company (“MAWC” or “Respondent”) on June 22, 2020.¹ The Commission designated this matter a small formal complaint per Commission Rule 20 CSR 4240-2.070(15).

The Complainant alleges that Respondent is overbilling for water usage at Complainant’s residence by using estimated meter reads instead of actual meter reads. Complainant further alleges that Respondent has refused his request to replace his meter.

On July 23, 2020, per Commission Order, Respondent filed its *Answer to Complaint and Motion to Dismiss Pursuant to Rule 20 CSR 4240-13.070(7)*. The *Motion to Dismiss* was not taken up by the Commission due to it constituting a request for summary determination, and failure to comply with the procedural rules outlined under Commission Rule 20 CSR 4240-2.117.

¹ 20 CSR 4240-2.070(4) states the basis for filing a formal complaint:
A formal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, 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.

Due to pending DRs regarding the state of Complainant's meter replacement request, Staff requested and was granted two extensions to file its report per Commission Rule 20 CSR 4240-2.070(15)(D).

After concluding its investigation, Staff filed its report on August 20, 2020. Staff concluded that Respondent was using actual meter reads, and was not overbilling Complainant. However, based on Staff's investigation of Mr. Scott's complaint, Staff concluded MAWC violated its tariff by not testing Mr. Scott's meter after Mr. Scott requested MAWC do so.

The parties took part in a pre-hearing conference on August 27, 2020, and Staff and Respondent filed a proposed procedural schedule on September 10, 2020, per Commission order. Though Staff tried multiple times to share the proposed procedural schedule, Complainant remained silent. Staff and Respondent agreed to an evidentiary hearing date the week of November 16 or November 30, 2020. The Commission adopted the proposed procedural schedule on September 21, 2020, and scheduled the evidentiary hearing in this matter for November 19, 2020.

The Commission issued its *Notice of Extension for Good Cause* also on September 21, 2020 because a report and order could not be issued within 100 days of the filing of the complaint, per Commission Rule 20 CSR 4240-2.070(15)(G).

On October 27, 2020, the Commission ordered Staff to file a supplemental report concerning data requests issued to Respondent that were not answered prior to the filing of Staff's August 20, 2020 report. Staff filed its supplemental report on November 6, 2020, and while it did not change Staff's conclusion, Staff was able to confirm that Respondent replaced and tested Complainant's meter. The test confirmed the accuracy of Complainant's meter, and Staff attached the results to the supplemental report.

Due to changes within the Commission's hearing calendar, the evidentiary hearing in this matter was first suspended on November 10, 2020. Again, despite attempts from Staff, Complainant remained silent as to a new date for an evidentiary hearing. Staff and Respondent proposed a new evidentiary hearing date of January 6, 2021. That date also did not work for the Commission's schedule, so another filing was made, this time with Complainant's input, asking that the Commission set a hearing date for January 8, 15, or February 3, 2021.

In its order on December 21, 2020, the Commission scheduled the evidentiary hearing on January 15, 2021. However, on the eve of hearing, Complainant filed a motion for suspension, indicating that he did not have ample time to review the documents sent to him by Respondent. He further indicated that he had hired an attorney to help him with his review. When Respondent inquired as to the name of Complainant's attorney, Mr. Scott indicated that he was not actually retaining the attorney's services for hearing, just for review.

The parties again conferred, and for the fourth filing proposing dates for a hearing, the parties proposed February 19, March 19 or 26, 2021. Complainant preferred February 19, 2021, and the Commission issued its *Notice of Evidentiary Hearing* on February 3, 2021, scheduling the evidentiary hearing on Complainant's preferred date.

The Complainant again moved for a suspension of the evidentiary hearing, again on the eve of hearing, stating that he was unable to get off work. The Commission again suspended the evidentiary hearing, and asked the parties to provide a fifth set of dates. The Commission further pointed out that suspensions are at its discretion, and urged Complainant to agree to dates that he can honor.

Staff and MAWC responded to the Commission's order asking for a fifth set of dates by proposing April 22, 23, or May 21, 2021 for hearing. Complainant did not respond to any of Staff or MAWC's request for input regarding the proposed dates.

On March 24, 2021, for the fourth time, the Commission scheduled an evidentiary hearing in this matter, and set May 21, 2021 as the hearing date. There was no motion to suspend from the Complainant on the eve of hearing; instead, the Complainant did not show up to his scheduled hearing for his complaint. The Commission proceeded to hear testimony and accept exhibits from Staff and Respondent.

DISCUSSION

- 1. The Commission should dismiss the complaint, with prejudice, per Commission Rules 20 CSR 4240-2.110(2)(B) and 20 CSR 4240-2.116(3) and Missouri Rule of Civil Procedure 67.01.**

Commission Rule 20 CSR 4240-2.110(2)(B) states:

Failure to appear at a hearing without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown.

Commission Rule 20 CSR 4240-2.116(3) states:

A party may be dismissed from a case for failure to comply with any order issued by the commission, including failure to appear at any scheduled proceeding such as a public hearing, prehearing conference, hearing, or mediation session.

Over the course of this proceeding, Complainant has failed to comply with **FIVE (5)**

Commission orders:

1. *Order Directing Filing*, issued September 8, 2020. The parties were ordered to file a joint proposed procedural schedule. Complainant failed to respond to **six (6)** emails and **seven (7)** phone calls from Staff;²
2. *Notice of Hearing and Order Setting Procedural Schedule*, issued September 21, 2020. The Commission ordered the parties to file a Stipulation of Undisputed Facts by November 6, 2020, and a List of Issues, Witnesses and Exhibits by November 9, 2020. Complainant failed to respond to emails and phone calls from both Staff and Respondent to provide input on either filing;³
3. *Order Continuing Hearing and Directing Filing*, issued November 10, 2020. Complainant failed to respond to **four (4)** emails and **one (1)** phone call from Staff for input on new evidentiary hearing dates;⁴
4. *Order Continuing Hearing and Directing Filing*, issued February 18, 2021. Complainant failed to respond to **seven (7)** emails from Staff for input on new evidentiary hearing dates;⁵ and
5. *Order Setting Evidentiary Hearing*, issued March 24, 2021. Complainant failed to appear at the evidentiary hearing for his complaint.

The Commission provided Complainant every opportunity to prosecute his case. The Complainant instead chose to ignore the Commission. Complainant's behavior has stretched this small formal complaint far beyond the 100 days contemplated by Commission Rule 20 CSR 4240-2.070(15)(G); as of June 22, 2021, this complaint will be one year old.

² *Timeline of Event and Joint Proposed Procedural Schedule*, pg. 1-2, para. 2-8 (September 10, 2020).

³ *Stipulation of Undisputed Facts* (November 6, 2020). *List of Issues, Witnesses and Exhibits*, pg. 1 (November 9, 2020).

⁴ *Proposed Date for Hearing on Behalf of the Staff of the Missouri Public Service Commission and Missouri-American Water Company*, pg. 1-2, para. 2-6 (November 30, 2020).

⁵ *Response of Missouri American Water Company and Staff to Order Continuing Hearing and Directing Filing*, pg. 2, para. 5-10 and Appendix A (March 12, 2021).

As such, per the plain language of Commission Rule 20 CSR 4240-2.116(3), good cause has existed for dismissal since Complainant's first failure to comply with the Commission's September 8, 2020 *Order Directing Filing*. Furthermore, despite the Commission's charity in giving Complainant every opportunity to prosecute his complaint, he ultimately failed to appear at his hearing without attempting to get what would have been a third continuance. Complainant's failure to appear at his own evidentiary hearing is ample grounds to dismiss per the plain language of Commission Rule 20 CSR 4240-2.116(3).

This is also a continuation of another complaint brought by Complainant against Respondent, WC-2020-0194, in which Complainant failed to attend a prehearing conference.⁶ That complaint also involved allegations that Respondent was overbilling and estimating Complainant's usage.⁷ Staff concluded, as it did in this matter, that Respondent was not overbilling or estimating Complainant's usage.⁸ Following the issuance of its *Order Directing Complainant to Show Cause Why the Complaint Should Not Be Dismissed* and the subsequent *Amended Order to Show Cause*, the Commission dismissed the complaint filed in WC-2020-0194 on May 21, 2020. The Complainant filed this complaint one month later, on June 22, 2020.

To protect Commission resources from a third attempt to prosecute this complaint, Staff requests the Commission dismiss this case, with prejudice, per Mo. R. Civ. P. 67.01, in order to bar Complainant from asserting the claims of overbilling and estimated usage for the billing period of March 2018 through July 2020.

WHEREFORE, Staff hereby tenders its *Post-Hearing Brief of Staff*, and prays that the Commission dismiss this complaint, with prejudice.

⁶ *Claude Scott, Complainant, v. Missouri-American Water Company, Respondent*, File No. WC-2020-0194, *Order Dismissing Complaint* (issued May 21, 2020, effective June 20, 2020).

⁷ *Complaint*, File No. WC-2020-0194, *Complaint*, pg. 2 (January 6, 2020).

⁸ *Staff Report*, File No. WC-2020-0194, pg. 3 (March 6, 2020).

Respectfully Submitted,

/s/ Travis J. Pringle

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand delivered, transmitted by facsimile or electronically mailed to all parties and/or counsel of record this 21st Day of June 2021.

/s/ Travis J. Pringle