

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

Lou DeFeo,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. WC-2021-0075</u></b>
	)	
Missouri-American Water Company,	)	
	)	
Respondent.	)	

**Staff’s Motion to Dismiss**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Motion to Dismiss*, states as follows:

1. On September 18, 2020, Complainant Lou DeFeo filed his *Formal Complaint*, alleging that Respondent Missouri-American Water Company charged him for 40,838 gallons of water that he did not in fact receive, in violation of various Commission regulations. Complainant further stated that the value of the dispute was “about \$250.00 but the more important issue is fairness to the customers.” For relief, Complainant’s demand stated “Customer requests that Company remove any charge base [sic] on this alleged use.”

2. Also on September 18, 2020, the Commission directed Staff to investigate the matter and file a report thereof.

3. Thereafter, on October 16, 2020, having been duly notified of the *Complaint*, Respondent filed its *Answer and Request for Mediation*, admitting that it provided service to Complainant but denying the other allegations of the *Complaint*. Respondent requested the Commission to provide mediation of the dispute.

4. On December 9, 2020, after two extensions, Staff filed its confidential *Staff Report*, concluding that the *Complaint* was without merit.

5. On December 16, 2020, Complainant filed his *Response* to the *Staff Report* as a public document, in which he challenged Staff's qualifications and methodology and disputed Staff's findings.

6. On December 16, 2020, the Commission appointed a mediator.

7. On July 13, 2021, Respondent filed its confidential *Notice of Satisfaction* stating that Complainant had been made whole and requesting that the case be closed.

8. On September 2, 2021, a Procedural Conference was convened. With respect to the *Notice of Satisfaction* filed on July 13, 2021, counsel for Respondent stated on the record: "the Company does plan to file a formal motion to dismiss, because we do believe with the Notice of Satisfaction and the credit of Mr. DeFeo's account the complaint is now moot. So we will be getting a motion to dismiss on file." Despite this announcement, the Company has not moved to dismiss. Complainant, upon inquiry, denied that his *Complaint* had been satisfied, stating "As you read, the \$250 was not the only matter in issue . . .," alluding to the statement in his *Complaint* that "the more important issue is fairness to the customers."

9. The only remedy Complainant specified in his *Complaint* was "that Company remove any charge base [sic] on this alleged use." Mr. DeFeo has received that remedy.

10. Inexplicably, despite the *Notice of Satisfaction* filed by the Company on July 13, 2021, on September 9, 2021, Staff and the Respondent each filed a proposed procedural schedule. Complainant followed suite on September 13, 2021.

On September 14, 2021, the Commission issued its *Procedural Schedule* and on October 15, 2021, Complainant filed his *Statement of Direct Testimony*.” The Commission has set an evidentiary hearing in this matter for November 19, 2021.

11. The Commission is authorized to hear and determine complaints by §§ 386.390, RSMo., *et seq.* The burden of proof is upon the complainant, ***State ex rel. GS Technologies Operating Co. v. Public Service Commission***, 116 S.W.3d 680, 693 (Mo. App., W.D. 2003) (*quoting Margulis v. Union Elec. Co.*, 30 Mo.P.S.C. (N.S.) 517, 523 (1991)). ***AG Processing, Inc. v. KCP&L Greater Missouri Operations Co.***, 385 S.W.3d 511, Mo. App., W.D. 2012), and technical rules of evidence and procedural formalities do not apply. Section 386.410, RSMo. Such a proceeding is a contested case, § 536.010(4), RSMo., and the procedures enumerated at §§ 536.063, RSMo., *et seq.*, therefore apply. Where the procedures set out in Chapter 386, RSMo., differ from those in Chapter 536, RSMo., the former control. “To the extent that there are matters not addressed by the PSC statutes and the administrative rules adopted by the PSC pursuant to section 386.410, [Chapter 536, RSMo.] ‘operates to fill gaps not addressed within the PSC statutes.’” ***State ex rel. Praxair, Inc. v. PSC***, 344 S.W.3d 178, 184 (Mo. banc 2011). The Commission has promulgated a rule setting out procedures for formal complaints, 20 CSR 4240-2.070.

12. A formal complaint proceeding, such as this one, is the species of Commission proceeding most like a traditional civil lawsuit in circuit court. The complainant files a complaint with the Commission in which he or she must specify the relief requested and enumerate the facts purportedly supporting that remedy.

Section 536.063.1, RSMo. [“Any writing filed whereby affirmative relief is sought shall state what relief is sought or proposed and the reason for granting it[.]”]

13. The factual allegations of an administrative complaint are generally to be judged against the standard of notice pleading rather than the stricter standard of fact pleading. **Sorbello v. City of Maplewood**, 610 S.W.2d 375, 376 (Mo. App., E.D. 1980); **Schrewe v. Sanders**, 498 S.W.2d 775, 777 (Mo. 1973); and see **Giessow v. Litz**, 558 S.W.2d 742, 749 (Mo. App.1977). The Missouri Supreme Court has stated that a complaint under the Public Service Commission Law is not to be tested by the technical rules of pleading; if it fairly presents for determination some matter which falls within the jurisdiction of the Commission, it is sufficient. **St. ex rel. Kansas City Terminal Railway Co. v. Public Service Commission**, 308 Mo. 359, 372, 272 S.W. 957, 960 (banc 1925).

14. Mr. DeFeo’s complaint undeniably “fairly presents ... some matter which falls within the jurisdiction of the Commission ....” However, Mr. DeFeo has already received the only relief he has requested. All that purportedly remains for hearing is his vague allegation that “the more important issue is fairness to the customers.” Mr. DeFeo has not specified any remedy in respect to this allegation and, indeed, it is difficult to imagine what such a remedy might be. The Staff has determined, by its investigation, that Missouri-American has complied with all applicable statutes, Commission rules, and Commission orders. Mr. DeFeo does not agree, but the point is immaterial since he is seeking no relief.

15. Given all the above, a hearing on the issue of “fairness to the customers” would serve no practical purpose. Like other administrative agencies, the Commission is not authorized to issue advisory opinions. **State ex rel. Laclede Gas Co. v. Pub. Serv.**

**Comm'n of State**, 392 S.W.3d 24, 38 (Mo. App., W.D. 2012). “The function of [the Commission] is to resolve disputes properly presented by real parties in interest with existing adversary positions.” **Wasinger v. Labor & Indus. Relations Comm'n**, 701 S.W.2d 793, 794 (Mo. App. 1985). The Commission was restricted to determining the complaint before it, and it should not be issuing decisions with “no practical effect and that are only advisory as to future, hypothetical situations.” **State ex rel. Mo. Parks Assoc. v. Mo. Dept. of Natural Res.**, 316 S.W.3d 375, 384 (Mo. App. 2010). “The petition must present a ‘real, substantial, presently existing controversy **admitting of specific relief** as distinguished from an advisory or hypothetical situation.” **Akin v. Dir. of Revenue**, 934 S.W.2d 295, 298 (Mo. banc 1996) (citation omitted; emphasis added). Because there is no remedy available for Mr. DeFeo, this case must now be dismissed.

**WHEREFORE**, on account of all the foregoing, Staff prays that the Commission will **DISMISS** this case; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, on this **3<sup>rd</sup> day of November, 2021.**

/s/ Kevin A. Thompson