

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

In the Matter of a Proposed Amendment to)
Commission Rule 20 CSR 4240-13.050)
Regarding Discontinuance of Service)

File No. AX-2023-0287

Staff Report

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and hereby tenders to the Commission its *Report*, as directed by the Commission on April 12, 2023, with respect to the *Rulemaking Petition* filed by Charles A. Harter on March 18, 2023. Staff hereby reports that, after investigation, it does not recommend that the Commission proceed with this rulemaking because altering the existing rule at this time and in this manner is not in the public interest in that it has not been shown to be necessary and would likely impose significant costs without conferring significant benefits.

WHEREFORE, Staff prays that the Commission will accept its *Report* here tendered; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

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Missouri Public Service Commission

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 herein pursuant to the Service List maintained by the Commission's Data Center on this **28th day of April, 2023**.

/s/ Kevin A. Thompson

STAFF INVESTIGATION AND REPORT

RULEMAKING PETITION

FILE NO. AX-2023-0287

I. INTRODUCTION AND BACKGROUND

On March 18, 2023, Charles A. Harter (“Petitioner”) filed a petition asking the Missouri Public Service Commission (“Commission”) to amend its Discontinuance of Service rule, 20 CSR 4240-13.050, to require service by mailing to contain a postmark by the United States Postal Service. Specifically, the Petitioner requests the Commission incorporate an addition to 20 CSR 4240-13.050(5). The additional language is bolded and underlined in the otherwise unaltered rendering of the pertinent section of 20 CSR 4240-13.050(5) below:

*“An electric, gas, or water utility shall not discontinue residential service pursuant to section (1) unless written notice by first class mail is sent to the customer at least ten (10) days prior to the date of the proposed discontinuance. Service of notice by mail is complete upon mailing **postmarked by the United States Postal Service**. As an alternative, a utility may deliver a written notice in hand to the customer at least ninety-six (96) hours prior to discontinuance.”*

The Petitioner argues that the present rule, which does not require discontinuance notices to be mailed with a postmark from the United States Postal Service (“USPS”), needs to be updated in order to conform to present-day business practices. He contends that in the past all mail was postmarked by the USPS and that postmark provided an independent third party verification of the ten (10) days’ prior notice required in 20 CSR 4240-13.050(5). However, recent USPS regulations that allows utility companies to take advantage of bulk mailing do not require a postmark. Thus, the Petitioner argues that the lack of third party verification has rendered the rule ineffective. The Petitioner states his belief that the postmark can be affixed by the USPS to all discontinuance notices without charge, and therefore the Commission should adopt his proposed amendment to restore the guarantee that utility customers are afforded the protection of a full ten (10) days’ notice of discontinuance as prescribed in 20 CSR 4240-13.050(5).

On March 20, 2023, the Commission ordered the Missouri Public Service Commission Staff (“Staff”) to investigate the Rulemaking Petition and recommend whether the Commission should proceed with a rulemaking. In conduct of its investigation, Staff issued a total of fifty-two (52) Data Requests (“DR” or “DRs”) to every large Commission-regulated utility¹ as well as a selection of small water and sewer companies² and asked identical questions regarding their current discontinuance processes, the costs associated with mailing discontinuance notices, complaints they have received regarding lack of postmarking, and their opinion regarding the proposed rule change. In addition, the Petitioner requested

¹ The large utility companies for the purposes of this report are: Spire Missouri, Missouri-American Water Company, Summit Natural Gas, Evergy Missouri Metro, Evergy Missouri West, Liberty Utilities, Ameren Electric, and Raytown Water.

² Staff selected Confluence Rivers, S.K. & M Water and Sewer Company, Stockton Hills Water Company, Gascony Water Company, and Timber Creek Sewer Company.

that the investigation incorporate the viewpoint of USPS. At the advice of Staff Counsel, Staff contacted the Jefferson City Post Office on April 20, 2023 and interviewed the Acting Postmaster as well as a representative from the Post Office's Bulk Mailing Unit. Their insights, along with the responses provided by the utility companies, are incorporated in this report.

Upon concluding its investigation, Staff does not recommend that the Commission proceed with this rulemaking. Staff believes that altering the existing rule at this time and in this manner is not in the public interest because it has not been shown to be necessary and would likely incur significant costs without significant benefit. Staff's inquiries of the utility companies found that the large utility companies were not in favor of the proposed rule change while the small water and sewer companies were generally agreeable to the change. The following discussion presents these findings in detail.

II. CURRENT PRACTICES FOR MAILING 10-DAY DISCONTINUANCE NOTICES

Current practices for mailing discontinuance notices are largely consistent across large utilities. After a certain number of days after a bill is considered past due, the discontinuance process starts with a preliminary discontinuance notification sent by first-class mail ten (10) or more days before a proposed disconnection date. As with most of the utility's customer-directed mailings, the utility uses a third-party vendor who possesses a mailing permit³ from the USPS with permission to mail in bulk for a discounted rate. The utility notifies the vendor what needs to be mailed, and the vendor takes care of printing, preparing, and sending the discontinuance notices to USPS. The vendor keeps a log of these activities as proof of mailing. Each discontinuance notice includes a date on the letter that the utilities use as the date of mailing. Depending on the logistical practices of the utility, the discontinuance notice is mailed on either the day of or the morning after the date on the letter.

The small water and sewer companies, as well as Raytown Water and Liberty Utilities, do not utilize mail vendors and instead print, prepare, and mail the discontinuance notices themselves.

III. NECESSITY OF RULE CHANGE

Staff conducted an analysis in order to determine whether USPS procedures that do not require a postmark undermine the protections guaranteed to customers in Chapter 13 of Commission Rules. Staff also made inquiries of the utility companies and the Commission's Consumer Services Department to evaluate the severity of the problem described by the Petitioner. Staff was unable to find proof that the current rule is being exploited outside of the intent of the rule, or that customers have been deprived of their Chapter 13 protections regarding discontinuance of service notification.

Evaluation of 20 CSR 4240-13.050(5)

Commission Rule 20 CSR 4240-13.050(5) currently states:

"An electric, gas, or water utility shall not discontinue residential service pursuant to section (1) unless written notice by first class mail is sent to the customer at least ten (10) days prior to the date of the proposed discontinuance. Service of notice by mail is complete upon mailing. As an alternative, a utility may deliver a

³ A mailing permit is permission to use a certain postage payment method for commercial mailings. Instead of affixing a postage stamp, the mailer prints a permit imprint indicia on each envelope. More information can be found on the USPS website [here](#) and [here](#).

written notice in hand to the customer at least ninety-six (96) hours prior to discontinuance.”

The proposed amendment is based on the rationale that the customer is entitled to at least ten (10) days’ notice from the utility prior to discontinuance, and that proof of compliance should rely on third-party verification instead of the utility’s own date stamp.

Staff believes that this interpretation of 20 CSR 4240-13.050(5) is flawed. The above citation specifically states: “Service of notice by mail is complete upon mailing.” The USPS, as the delivery service, can take up to 3-5 days to deliver mail, depending on expected variables such as type of mail service and send/receive locations and unexpected variables such as weather events.⁴ Consequently, same day delivery is not possible now, nor was it possible when Chapter 13 was written. Staff concludes that the intent of the rule was never to guarantee that the customer *receives* a discontinuance notice precisely ten days or more in advance. The 10-day window cited in 20 CSR 4240-13.050(5) must be viewed from the utility’s perspective of sending rather than the customer’s perspective of receiving.

In further support of this interpretation, 20 CSR 4240-13.050(5) goes on to state: “As an alternative, a utility may deliver a written notice in hand to the customer at least ninety-six (96) hours prior to discontinuance.” The rule provides an alternative to the 10-day mailed notice by including provisions for a method of notice that would guarantee receipt only four days before discontinuance. Again, this dispels the notion that Chapter 13 designates ten days as the minimum threshold for sufficient notification of discontinuance.

The issue presented in this Rulemaking Petition concerning Commission Rule 20 CSR 4240-13.050(5), which is in effect a question of sufficient notification of discontinuance, must be evaluated within the context of Chapter 13 in its entirety. As such, Staff notes that 20 CSR 4240-13.050(5) does not exist in isolation. It works in conjunction with other provisions within Chapter 13 to make customers aware of the threat of discontinuance before it occurs and enabled to remedy the situation either before discontinuance or immediately afterward.

Commission Rule 20 CSR 4240-13.050(8) states:

“At least twenty-four (24) hours preceding discontinuance, a utility shall make reasonable efforts to contact the customer to advise the customer of the proposed discontinuance, and what steps must be taken to avoid it. Reasonable efforts shall include either a written notice following the notice pursuant to section (4), a doorhanger, or at least two (2) telephone call attempts reasonably calculated to reach the customer.”

Commission Rule 20 CSR 4240-13.050(9) states:

“Immediately preceding the discontinuance of service, the employee of the utility designated to perform this function, except where the safety of the employee is endangered, shall make a reasonable effort to contact and identify him/herself to the customer or a responsible person then upon the premises and shall announce the purpose of his/her presence. When service is discontinued, the employee shall

⁴ This statistic was provided to Staff by the Acting Postmaster at the Jefferson City Post Office.

leave a notice upon the premises in a manner conspicuous to the customer that service has been discontinued and the address and telephone number of the utility where the customer may arrange to have service restored.”

Commission Rule 20 CSR 4240-13.050(3) states:

“On the date specified on the notice of discontinuance or within thirty (30) calendar days after that, and subject to the requirements of these rules, a utility may discontinue service to a residential customer between the hours of 8:00 a.m. and 4:00 p.m. Service shall not be discontinued on a day when utility personnel are not available to reconnect the customer’s service, or on a day immediately preceding such a day.”

The above rules, in addition to the 10-day notice, require utility companies seeking to discontinue service to also give a second notification at least 24 hours prior to discontinuance and an in-person notification⁵ immediately preceding discontinuance. Discontinuance activities may only occur within a certain time frame and on days when reconnection can occur promptly. Provisions provided by Commission Rule 20 CSR 4240-13.055, known as the Cold Weather Rule, further enhance these notification protections for heat-related utility services from November 1-March 31. The 24-hour notice is extended to at least ninety-six (96) hours, extra notification procedures are mandatory for registered elderly or handicapped customers, and further temperature-related restrictions are placed on appropriate times for discontinuance.

USPS History of Postmarking Bulk Mail

This Petition states that the USPS has only “in recent years” allowed the utilities to send bulk mail without a postmark. However, Staff understands that the lack of postmark requirement for bulk mailing has been in place for a significant number of years. Although Staff was not able to independently verify an exact date of when the USPS made the decision that mail sent using a permit imprint does not require a postmark, it did pose this question to the representative at the Jefferson City post office bulk mailing unit. When speaking with the representative, he stated that he had worked for the USPS for thirty years and the current practice has been in place as long as he can remember. Chapter 13 has been amended multiple times over the last thirty years. Staff contends that if changes to USPS rules regarding postmarking bulk mail had occurred in the past, thus necessitating a language change to the rule, there would have been ample opportunity for this to occur. No recent significant changes regarding postmarking have occurred; therefore, it is not necessary to make a change to the rule in response.

Complaints Regarding Current Practices

Staff believes that the provisions of Rules 20 CSR 4240-13.050 and 20 CSR 4240-13.055 provide sufficient protection to customers regarding notification for impending discontinuance without requiring a USPS postmark. In order to investigate this, Staff requested information from each of the utility companies regarding any complaints that they have received regarding a lack of postmarking on their discontinuance

⁵ Some companies have requested a waiver from the in-person notification due to the proliferation of remote disconnect AMI meter technology.

notices. Staff also queried the Commission's Consumer Services Department for their perspective based on the calls that they have received from the public.

None of the utilities had record of any complaints about the lack of a postmark on discontinuance notices. The Consumer Services Department stated that it has received rare complaints that customers did not receive a mailed discontinuance notice or that customers did not have enough time to pay a bill from the time they received the bill in the mail. However, only one customer has contacted them with concerns about the lack of a postmark on a discontinuance notice. In speaking with a tenured representative in the Bulk Mailing Unit at the Jefferson City post office, he also could not recall any complaints about the lack of a postmark on bulk mail.

IV. IMPACT OF PROPOSED RULE CHANGE

As part of its investigation into the Petition for Rulemaking, Staff conducted an analysis of the impact of the proposed rule should it take effect. Staff's findings indicate that the additional language would not have the anticipated effect of providing customers with a full 10-day notice prior to discontinuance. Furthermore, the proposed change would incur substantial operating costs to all but the smallest of utility companies, which would then likely be passed on to ratepayers.

Full 10-Days' Notice

As noted in Staff's evaluation of Rule 20 CSR 4240-13.050(5), customers are not presently guaranteed at least ten (10) days' notice prior to discontinuance because mail delivery necessitates a time delay by a magnitude of days. After mailing a notice, the precise date of receipt by the customer includes factors outside of the control of the utility companies because they are reliant on USPS to facilitate the mailing. After postmarking the notice, the USPS would conduct its standard procedures for mail delivery, which would result in the customer receiving the notice up to 3-5 days after the postmarked date. If the USPS were to postmark every discontinuance notice upon receipt from the utility, the same factors that presently preclude a full 10-day notification would remain. Thus, the proposed rule would not have the intended effect.

Costs

As previously noted, almost all of the large utility companies utilize a mailing permit that allows commercial entities to mail letters in bulk through the USPS for a discounted rate. Bulk mailing does not require the USPS to stamp each individual piece of mail with a postmark. The Petition for Rulemaking suggests that the USPS would be willing to apply postmarks to the utilities' bulk mail upon request at no additional cost.

In response to Staff DRs, the large utility companies indicated their belief that requiring the USPS to postmark their discontinuance notices would incur significant additional costs from both the USPS and the utilities' third party mailing vendors for postage, envelope redesign, and labor costs. Depending on how many discontinuance notices the company sends out, the cost estimates varied from thousands to hundreds of thousands of dollars annually for the postage alone. For these reasons, all were opposed to the adoption of the proposed rule.

Staff's inquiries to the USPS support this belief. In Staff's research, it found that the USPS provides a significant discount to businesses who utilize a bulk mailing permit to send large amounts of mail on a

regular basis. This bulk mail does not require a postmark as provided in the Mail Processing Guide Handbook, section 1-1.3.⁶ When speaking with Bulk Mailing Unit of the Jefferson City post office, Staff was informed that systems used by the business doing the mailing are typically able to track when documents are mailed. Bulk mail customers who would like their mail postmarked would have to alter their method of sending mail by using a metered postage machine or hand-stamping; which would thereby forfeit the benefits of bulk mailing.

Staff did find exceptions in the utilities' responses regarding anticipated costs. The small water and sewer companies to which Staff submitted DR requests do not currently utilize bulk mailing to send their discontinuance notices. Consequently, none of them expressed a belief that the proposed rule change would impose additional costs on their operations and none opposed adoption of the rule.

V. SUMMARY AND RECOMMENDATION

Staff recommends that the Commission not proceed with the proposed rulemaking in this case. Staff believes that the expressed concerns and projected benefits presented in the Petition are not reflective of the intent of 20 CSR 4240-13.050(5), the experiences of the general public, or the real-world ramifications of the proposed additions. Thus, rulemaking on this basis would not serve the public interest.

In its *Response to Petition for Rulemaking*, OPC requested a rulemaking docket to consider Mr. Harter's proposed amendment or, in the alternative, a workshop docket to further investigate Mr. Harter's concern. After reviewing the data, Staff is not in support of opening a workshop docket at this time. The 10-days' mailing (not receipt) notice of discontinuance prescribed in 20 CSR 4240-13.050(5) must not be viewed in isolation. It works in conjunction with the rest of the notification process in 20 CSR 4240-13.050 as well as the additional protections in place during the Cold Weather Rule period. At this time, allegations that the entire process of discontinuance is inadequate in providing sufficient prior notification to customers are unsubstantiated.

⁶ [USPS Mail Processing Guidelines Handbook Section 1-1.3](#)

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

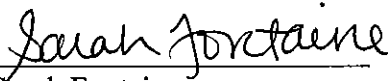
In the Matter of a Proposed Amendment to)
Commission Rule 20 CSR 4240-13.050) **File No. AX-2023-0287**
Regarding Discontinuance of Service)

AFFIDAVIT OF SARAH FONTAINE

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

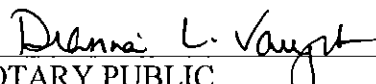
COMES NOW Sarah Fontaine, and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Staff's Memorandum*; and that the same is true and correct according to her best knowledge and belief, under penalty of perjury.

Further the Affiant sayeth not.

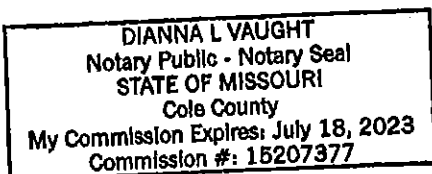


Sarah Fontaine

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 27th day of April, 2023.



NOTARY PUBLIC



In the Matter of a Proposed Amendment to)
Commission Rule 20 CSR 4240-13.050) **File No. AX-2023-0287**
Regarding Discontinuance of Service)

STATE OF MISSOURI)
)
COUNTY OF COLE) SS.

Charles Tyrone Thomason
Charles Tyrone Thomason

DIANNA L VAUGHT
Notary Public - Notary Seal
STATE OF MISSOURI
Cole County
My Commission Expires July 18, 2023
Commission # 15207977

Deanna L. Vaughn
NOTARY PUBLIC