

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

Staff of the Missouri Public Service Commission )  
)  
)  
Complainant, )  
v. )  
)  
Noel Water Company, Inc. and )  
Dan M. Harmon, President )  
)  
Respondents. )  
)  
)  
Service: )  
Dan M. Harmon )  
Registered Agent )  
101 Foster Street )  
Noel, MO 64854 )

Case No. WC-2011-\_\_\_\_\_

**COMPLAINT**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, pursuant to Section 386.390 RSMo (2000)<sup>1</sup>, and for its Complaint respectfully states as follows:

**Introduction**

1. This Complaint concerns Respondents unlawful and blatant disregard for its duty to provide safe and adequate service and to promote and safeguard the health and safety of its customers and the public.

**Complainant**

2. Complainant is the Staff of the Missouri Public Service Commission (Staff), acting through the Commission's Chief Staff Counsel's Office as authorized by Commission Rule 4 CSR 240-2.070(1). Section 386.390.1 RSMo (2000) provides a "[c]omplaint may be made by the commission of its own motion....in writing, setting forth any act or thing done or

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<sup>1</sup> All statutory references are to the Missouri Revised Statutes (2000) as currently supplemented.

omitted to be done by any corporation, [or] person...in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission...." 4 CSR 240-2.070(1) provides that the Commission's Staff through the Chief Staff Counsel's Office may file a complaint.

### **Respondents**

3. Respondent Noel Water Company, Inc., is a certificated water corporation created in May of 1957, owning, operating, controlling and managing a water system in Noel, Missouri, County of McDonald, and listed as active with the Missouri Secretary of State's Office.

4. Respondent, Dan M. Harmon, is a natural person owning, operating, controlling and managing a regulated water system in Noel, Missouri, County of McDonald, with a principal place of business at 101 Foster Street, Noel, Missouri 64854.

5. Respondent Harmon is the President of Respondent Noel Water Company Inc., and acts as chief operating officer of same.

6. Noel Water Company, Inc's registered agent listed on the Missouri Secretary of State's webpage is Dan M. Harmon, 101 Foster Street, PO Box 465, Noel, Missouri 64854.

7. For this Complaint, Respondent Dan M. Harmon and Respondent Noel Water Company, Inc. will be known together as Respondents.

### **Count I** **Failure to Provide Safe and Adequate Service**

8. Respondents are regulated by the Missouri Public Service Commission as a certificated water company.

9. Section 386.310.1 RSMo (2000) states, Commission shall have power "to require every person, corporation, municipal gas system and public utility to maintain and operate its

line, plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers and the public...”

10. Section 393.130.1 RSMo (Supp. 2009) states, “...every water corporation, and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”

11. Beginning at approximately 6:00 pm November 12, 2010, several areas located in and around Noel, Missouri did not have water service due to a failure of one of the company’s well pumps. See Attachment A, Report from Noel Marshall’s Office, which is hereby attached and incorporated by reference herein.

12. Water service was not restored to all of its customers until approximately the early morning hours of November 16, 2010.

13. Noel, Missouri and its surrounding area are within the Respondents’ water service territory.

14. Service could have been restored in a more timely fashion but Respondents were not willing to pay extra for someone to fix the service problem on the weekend because Respondents did not want to pay weekend rates. See Attachment A.

15. Respondents failed to notify and inform the City of Noel Fire Department that there was no service.

16. Respondents failed to notify and inform affected customers of the situation.

17. Respondents placed the health and safety of its customers and the public at risk and failed to safeguard against those risks in violation of Missouri law.

18. Respondents failed to provide safe and adequate service to its customers in violation of Missouri law.

**WHEREFORE**, Staff prays the Commission will give such notice to Respondents as is required by law, and after hearing, determine that the conduct herein described is in violation of the laws of the State of Missouri, including but not limited to §393.130 and §386.310, RSMo, (2000) and to provide any other relief as deemed appropriate by the Commission.

## Count II

### Authority to Seek Penalties for Failure to Provide Safe and Adequate Service

19. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs one through eighteen, above.

20. Section 386.570.1 RSMo (2000) provides: “[a]ny corporation, person or public utility ... which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission ... is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.”

21. Section 386.570.2 RSMo (2000) also provides: “[e]very violation of the provisions of this or any other law ... by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.”

22. Section 386.570.3 (2000) states: “[i]n construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.”

23. Respondents have failed to comply with the law by failing to provide safe and adequate water service to its customers and by failing to promote and safeguard the health and safety of its customers and the public. Each day's failure to comply with the law respecting the provision of water as a water corporation and public utility from approximately November 12 through November 16, 2010 is a continuing violation and constitutes a separate and distinct offense that carries a penalty of \$100 to \$2000 per day.

**WHEREFORE**, Staff prays the Commission will give such notice to Respondents as is required by law, and after hearing, in the event that any of the conduct herein described is determined to be in violation of any law of the State of Missouri or of any order, decision, or rule of the Commission, deem each day that such violation existed to be a separate offense, and authorize its General Counsel to proceed in circuit court to seek such penalties as are authorized by law.

Respectfully Submitted,

/s/ Rachel M. Lewis  
Rachel M. Lewis  
Deputy Counsel  
Missouri Bar No. 56073

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**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record on this 19 day of November, 2010.

/s/ Rachel M. Lewis

<b>Noel Marshal</b> <b>118 Gratz Street</b>				Page <b>1</b>		Case No. <b>NPD10-3901</b>					
				Best <b>EVE</b>		Rpt Dist <b>N</b>		Type: <b>OFFICER INITIATED</b>			
Crimes / Incident				Attempt <input type="checkbox"/>		Occurred		Date		Day	
Location of Incident <b>110 FOSTER, NOEL, MO</b>						On or From		<b>11/13/2010 10:00:00</b>		<b>Sat</b>	
						To					
						Reported					
Dispo: 'V' = Victim 'RP' = Reporting Party 'W' = Witness 'S' = Suspect / Arrestee 'O' = Other											
Name		Race	Sex	Age	HT	WT	Hair	Eyes	Home Phone		
<b>O HARMON, DAN</b>		<b>W</b>	<b>M</b>	<b>00</b>					<b>(417) 475-3811</b>		
Address		DOB		DL Number				State	Work Phone		
<b>210 S KINGS</b>											
City, State, Zip Code		SSN		Local ID #		State #		FBI #			
<b>NOEL MO 64854</b>											
Name ( )		Race	Sex	Age	HT	WT	Hair	Eyes	Home Phone		
Address		DOB		DL Number				State	Work Phone		
City, State, Zip Code		SSN		Local ID #		State #		FBI #			
Name ( )		Race	Sex	Age	HT	WT	Hair	Eyes	Home Phone		
Address		DOB		DL Number				State	Work Phone		
City, State, Zip Code		SSN		Local ID #		State #		FBI #			
Name ( )		Race	Sex	Age	HT	WT	Hair	Eyes	Home Phone		
Address		DOB		DL Number				State	Work Phone		
City, State, Zip Code		SSN		Local ID #		State #		FBI #			
Synopsis:											
				Confirmation Attached: <input type="checkbox"/>		Property List Attached: <input type="checkbox"/>					
				UCR:		Press Release: <input type="checkbox"/>		Domestic Violence Case: <input type="checkbox"/>			
				Gang Related: <b>N</b>		Hate Crime: <input type="checkbox"/>		Victim Senior Citizen: <input type="checkbox"/>			
				Pursuit: <input type="checkbox"/>		Force Used: <input type="checkbox"/>		Child Abuse: <input type="checkbox"/>			
								Disposition: <b>OPEN</b>			
								Connecting Case #			
Assigned To: _____						Date: _____					
Officer ID: <b>DPM Bryan Spitsnogle</b>				<b>9584</b>				Reviewed By: _____			
								Date: _____			



<b>NOEL MARSHAL'S OFFICE</b>		Page <b>2</b>	Case No. <b>NPD10-3901</b>
<b>118 Gratz Street</b>			Type: <b>OFFICER INITIATED</b>
Crime / Incident		Attempt <input type="checkbox"/>	<b>Narrative Report</b>

On 11-13-2010 at approx. 1435 hours, I Chief Deputy Marshal Bryan Spitsnogle attempted to make contact with the Noel Water Company. The water had been out in some areas of Noel since approx 1800 hours 11-12-2010 and now several areas of Noel had no water service. The entire area of town from Wayside campground out to Cotten Eyed Joes restaurant and all the housing areas in between had no water service. I spoke to some of the residents on Macy St who advised they were also out of water. All the residences in the area of the water tower on Bluff St and surrounding streets had no water service. I attempted approx. five times to call the emergency number given when I called the phone number for the water company. The phone just rang and no one would answer until I blocked the phone number and called again. This time Rick answered the phone. I asked Rick when the water would be back on and advised him that I did not see anyone working on it. Rick advised me that they would not be working on it until Monday. I advised Rick that we can not be without water until Monday. He told me that he just works there and all he could do was what he was told.

At approx. 1440 hours I called Dan Harmon, the owner of the water company. I asked Dan why there was no water. He told me there was a pump out and they would try to have it fixed hopefully by Monday. I asked him why no one was working on it now. Dan at first told me he could not get a crew lined up to do it. I told him that several areas had been out of water since Friday night and people need water. I told Dan that I was sure he could get someone to fix the pump in a situation like this. Dan then told me that he was not going to pay extra for someone to fix it on the weekend. I asked Dan what he expected people to do until Monday or Tuesday. He told me they can buy jugs of water at Harps because he was not going to pay weekend rates.

When I told Marshal Bolas about my conversation with Dan Harmon, he told me that the company that is going to fix the pump said they could fix it now, but Dan Harman would not let them do it until Monday.

I informed the Noel Fire Department about all of the areas I knew of that had no water service. It is my understanding that no one from the water company had even told the Fire Department about the water service being out.

Dan Harman has placed the entire City of Noel in Great Jeopardy in the event that there would be a fire in any of these areas without water service. He could have chosen to have the water service fixed, but instead chose to place the citizens of Noel in danger by refusing to fix the water service until Monday, so that he did not have to pay extra for someone to fix it on the weekend.

Officer ID: <b>DPM Bryan Spitsnogle</b>	<b>9584</b>	Reviewed By:	Date:
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