

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

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

MAWC’S REPLY BRIEF

COMES NOW Missouri-American Water Company (“MAWC” or “Company”) and, as its *Reply Brief*, states as follows to the Missouri Public Service Commission (“Commission”):

MAWC believes its *Initial Brief* has addressed the issues raised by Mr. DeFeo in his *Complainant’s Initial Brief*. Accordingly, MAWC will provide a summary of those positions and not repeat in total its previous arguments. Moreover, MAWC will not reply to the *Initial Brief* of the Staff of the Commission, as it is largely supportive of MAWC’s position.

Meter Issues

Specifically, Mr. DeFeo argues that MAWC failed to offer at hearing any physical evidence that he ever received the 40,000+ gallons of water in question in this case. As noted on page 1 of MAWC’s *Initial Brief*, Mr. DeFeo alone has the burden of proof to demonstrate that MAWC is violating any law, regulation, Commission-approved tariff, or is engaging in any unjust or unreasonable practices.¹ Further, the Company cites to evidence that all billing for Mr. DeFeo’s service address was based on actual metered usage, that the accuracy of the meter at the service address was verified at 99% accuracy via bench test following an investigative service order issued by the Company, and that Mr. DeFeo’s notion of physical evidence of receipt of the

water ignores plausible scenarios wherein no physical water damage or detention would occur, such as a leak from a toilet, reversal of the Complainant’s pool filtration system, or pilfering of the water by a neighbor. (Initial Brf., pp. 6-8).

Beecham Case

Mr. DeFeo then argues that the *Beecham* case² is dispositive in the instant case in that “actual evidence” of usage is determinative of use rather than the metered usage pursuant to the Company’s Commission-approved tariff. MAWC has addressed the issue by citing its own tariffs as the actual standard of measurement and billing³ and distinguishing the facts in *Beecham* from the instant case in that the metered usage in *Beecham* reflected a steady increase in usage over years that dramatically dropped upon the installation of a new meter, and in the present case, the increased usage occurred within 72 hour “spike” whereafter a bench test found the meter to be accurate. The holding in *Beecham* does not mean that customer testimony of usage must supplant the tariff as the actual standard of measurement and billing. (Initial Brf., pp. 8-9).

Speculation

Mr. DeFeo also alleges that the Company relied on speculation rather than “evidence of actual usage” to corroborate the metered usage. As addressed above, the scenarios proffered at hearing by Mr. Spratt and Ms. Figueroa point out situations ignored by Mr. DeFeo in which the water in question could have been delivered without “physical evidence” such as damage or detention. Merely pointing out the flaws in Mr. DeFeo’s argument does not obviate him of his burden of proof in this case, as stated above. (Initial Brf., pp. 6-8).

¹ See *AG Processing, Inc. v. KCP&L Greater Mo. Operations Co.*, 385 S.W.3d 511, 514 (Mo. App. 2012).

² *Beecham v. Missouri-American Water Company*, Case No. WC-2020-0181.

³ P.S.C. MO No. 13, 1st Revised Sheet No. R 32.

Appeal Notice

Mr. DeFeo argues that the Company was deficient in providing notice of a customer's right to file a complaint in that the Company stated that notice of the right is always available on the Company's website. However, this argument ignores the facts identified in *Initial Brief* regarding the Company's policy regarding compliance with Commission Rules 20 CSR 4240-13.045(9) and 20 CSR 4240-13.070(3). (Initial Brf., pp. 10-11). Namely, this argument ignores Ms. Figueroa's testimony describing the procedure by which notice is sent when all attempts at an internal resolution have been exhausted. Had Mr. DeFeo continued the review process with MAWC, a letter would have issued informing and instructing Mr. DeFeo on his right to file such a complaint and the procedure to file such a complaint with the Commission. (Initial Brf., p. 10). An example of this notice was earlier provided to Mr. DeFeo through a letter of instruction issued to him in 2019. Regardless, MAWC also pointed out that instructions for filing a complaint with the Commission are contained in its patient's rights materials and on its web site 24 hours of every day.

Satisfaction

Mr. DeFeo does argue for the first time that MAWC was non-compliant with the provisions of 20 CSR 4240-2.070(15)(A) in that MAWC did not "satisfy the complaint" within thirty (30) days of the filing of the Complaint. While it is true that MAWC did not file its *Notice of Satisfaction* until July of 2021, the regulation actually reads that default occurs when the public utility fails to satisfy the complaint *or file an answer* within thirty (30) days of notice. MAWC notes that it filed its *Answer to Complaint and Request for Mediation* in the instant case 28 days after notice of the filing of the *Complaint*. The important point is that Mr. DeFeo's requested remedy has been satisfied and, as a result, his Complaint fails to state a claim upon which the Commission may grant a remedy.

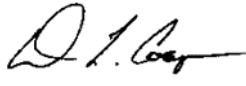
Clarification

Finally, Mr. DeFeo now requests as relief, that the Commission “clarify” the tariff with MAWC. The Complaint is fully satisfied by the repayment the \$250 in controversy thereby providing the relief requested in the *Complaint*. (Initial Brf., pp. 4-5). There is no longer any existing case or controversy upon which relief can be granted. Such relief would patently be a prohibited advisory opinion of the Commission in the most literal sense. The Commission may not issue orders that are of “no practical effect and that are only advisory as to future, hypothetical situations.”⁴ “The petition must present a ‘real, substantial, presently existing controversy admitting of specific relief as distinguished from an advisory or hypothetical situation.’”⁵

WHEREFORE, Missouri-American Water Company respectfully requests that the Commission consider this *Reply Brief* and, thereafter, issue such orders as it should believe reasonable and just.

Respectfully submitted,

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⁴*State ex rel. Mo. Parks Assoc. v. Mo. Dept. of Natural Res.*, 316 S.W.3d 375, 384 (Mo. App. 2010).

⁵*Akin v. Dir. of Revenue*, 934 S.W.2d 295, 298 (Mo. banc 1996) (citations omitted).

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail to all parties of record this 24th day of January 2022.

