

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

The City of Houston Lake,)	
)	
Complainant,)	
)	
vs.)	Case No. WC-2014-0260
)	
Missouri-American Water Company, et al.,)	
)	
Respondents.)	

MOTION TO DISMISS AND ANSWER

COMES NOW Respondent Missouri-American Water Company (“MAWC”), by and through its undersigned counsel, and for its Motion to Dismiss and Answer to the Complaint filed herein by the City of Houston Lake, Missouri (“Houston Lake”), respectfully states unto the Missouri Public Service Commission (“Commission”) as follows:

1. MAWC admits the allegations of paragraph 1 of the Complaint.
2. With regard to paragraph 2 of the Complaint, MAWC admits that it is a “water corporation” and a “public utility” as those terms are defined in RSMo. §386.020 and is subject to the jurisdiction and supervision of the Commission as provided by law. MAWC also admits that it is a Missouri corporation in good standing, with its principal place of business at 727 Craig Road, St. Louis, Missouri, 63141.
3. With regard to paragraph 3 of the Complaint, MAWC admits that the Commission, as part of its duties, regulates certain utilities in the State of Missouri and has its principal place of business at 200 Madison Street, Jefferson City, Missouri, 65101.
4. With regard to paragraph 4 of the Complaint, MAWC states that RSMo. §386.120 speaks for itself and is the best evidence of its contents.

5. With regard to paragraph 5 of the Complaint, MAWC admits that it transacts business in the State of Missouri and admits that it provides water services to residences and entities in the City of Houston Lake, Missouri.
6. MAWC denies that Houston Lake had the authority to collect from or impose on MAWC a gross receipt tax as referenced in the Complaint. MAWC is otherwise without sufficient information or belief to admit or deny the allegations of paragraph 6 of the Complaint.
7. MAWC denies that Houston Lake had the authority to collect from or impose on MAWC an occupational license fee as referenced in the Complaint. MAWC is otherwise without sufficient information or belief to admit or deny the allegations of paragraph 7 of the Complaint.
8. MAWC denies that Houston Lake had the authority to collect from or impose on MAWC an occupational license fee or gross receipts tax as referenced in the Complaint. MAWC is otherwise without sufficient information or belief to admit or deny the allegations of paragraph 8 of the Complaint.
9. MAWC denies that Houston Lake had the authority to collect from or impose on MAWC an occupational license fee and/or penalty as referenced in the Complaint. MAWC is otherwise without sufficient information or belief to admit or deny the allegations of paragraph 9 of the Complaint.
10. With regard to paragraph 10 of the Complaint, MAWC states that RSMo. §393.275 speaks for itself and is the best evidence of its contents.
11. With regard to paragraph 11 of the Complaint, MAWC states that RSMo. §393.275 speaks for itself and is the best evidence of its contents.

12. With regard to paragraph 12 of the Complaint, MAWC states that RSMo. §393.275 speaks for itself and is the best evidence of its contents.
13. MAWC is without sufficient information or belief to admit or deny the allegations of paragraph 13 of the Complaint.
14. With regard to paragraph 14 of the Complaint, MAWC admits that, since 1986, five rate increases in excess of seven percent have been authorized by the Commission and enacted for MAWC's service area which includes Houston Lake.
15. MAWC admits the allegations of paragraph 15 of the Complaint.
16. MAWC denies the allegations of paragraph 16 of the Complaint.
17. With regard to paragraph 17 of the Complaint, MAWC admits that it provides water service to residential, commercial, and industrial customers in Houston Lake, as authorized by the Commission and other applicable law, and pursuant to tariffs on file with the Commission.
18. MAWC admits that from at least January 1, 2000, and until July 31, 2013, it collected a gross receipts tax from its customers in Houston Lake at the rate of one percent and remitted all amounts so collected to Houston Lake. MAWC denies the remaining allegations of paragraph 18 of the Complaint.
19. MAWC admits that from at least January 1, 2000, and until July 31, 2013, it collected a gross receipts tax from its customers in Houston Lake at the rate of one percent and remitted all amounts so collected to Houston Lake. MAWC denies the remaining allegations of paragraph 19 of the Complaint.
20. MAWC denies the allegations of paragraph 20 of the Complaint.

21. MAWC admits that the firm of Witt, Hicklin & Snider is representing Houston Lake herein. MAWC is without sufficient knowledge or information to admit or deny the remaining allegations contained in paragraph 21 of the Complaint.
22. MAWC admits that Houston Lake filed a petition in Platte County Circuit Court (Case No. 13AE-CV03760) and later voluntarily dismissed said petition, that counsel for Houston Lake has discussed this matter with representatives of MAWC, including Timothy Luft, and that counsel for Houston Lake has discussed this matter with counsel for MAWC, including Diana Carter. MAWC is otherwise without sufficient information or belief to admit or deny the allegations of paragraph 22 of the Complaint.
23. MAWC is without sufficient information or belief to admit or deny the allegations of paragraph 23 of the Complaint.
24. RSMo. §386.250 speaks for itself and is the best evidence of its contents. MAWC otherwise denies the allegations of paragraph 24 of the Complaint.
25. MAWC denies all allegations of the Complaint not specifically admitted above.
26. Even if all of Houston Lake's averments are taken as true and the Commission liberally grants to Houston Lake all reasonable inferences therefrom, the facts alleged by Houston Lake do not satisfy the elements of any cause of action under the jurisdiction of the Commission and/or a request for relief that may be granted by the Commission. As such, the Complaint should be dismissed for failure to state a claim.
27. The Commission is not a court of general jurisdiction and cannot enter a monetary judgment in favor of a complainant. *May Department Stores Co. v. Union Electric Light & Power Co.*, 107 S.W.2d 41, 58 (Mo. 1937); *see also American Petroleum*

Exchange v. Public Service Commission, 172 S.W.2d 952, 955 (Mo. 1943) (the Commission has no authority to determine damages or award pecuniary relief or consequential damages). This Commission . . . “cannot grant monetary relief . . .”
May Department Stores, 107 S.W.2d at 58.

28. Further answering, MAWC states that any damages which may have been sustained by Houston Lake were the direct and proximate result of the acts and/or omissions of Houston Lake or others for which MAWC is not responsible.
29. Further answering, MAWC states that from at least January 1, 2000, and until July 31, 2013, it collected a gross receipts tax from its customers in Houston Lake at the rate of one percent and remitted all amounts so collected to Houston Lake. MAWC never received a deficiency notice or a penalty notice from Houston Lake, and, until April of 2013, Houston Lake did not contact MAWC questioning the one percent gross receipts tax being collected and remitted to Houston Lake. On August 1, 2013, MAWC began collecting a gross receipts tax from its customers in Houston Lake at the rate of ten percent and remitting all amounts so collected to Houston Lake.
30. Further answering, MAWC states that Houston Lake has failed to mitigate any damages suffered by it.
31. Further answering, MAWC states that Houston Lake’s claim is barred by the equitable doctrines of estoppel, unclean hands, and/or laches.
32. Further answering, MAWC states that Houston Lake’s claim is barred in whole or in part by the applicable statutes of limitations and/or the time limitations contained in the applicable tariffs.

33. MAWC reserves the right to raise additional affirmative defenses which may become apparent through the course of discovery.

WHEREFORE, having fully answered, MAWC requests that Houston Lake's Complaint be dismissed and that Houston Lake take nothing thereby. MAWC requests such other and further relief as the Commission deems just and proper under the circumstances.

Respectfully submitted,

Brydon, Swearngen & England P.C.

By:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this pleading was filed in EFIS and that a true and complete copy of the foregoing was served by electronic transmission on the 1st day of May, 2014, on all counsel of record.

/s/ Diana C. Carter