

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

Andrew G. Smith,)	
)	
Complainant,)	
)	Case No. WC-2012-0189
v.)	
)	
Missouri-American Water Company,)	
)	
Respondent.)	

RESPONDENT'S OPPOSITION TO DISPOSITIVE MOTION

COMES NOW Respondent Missouri-American Water Company (MAWC) and for its Opposition to Complainant's Motion to Direct a Decision in Favor of Complainant states as follows:

1. On December 14, 2010 Complainant filed a complaint against MAWC. MAWC filed an Answer and Motion to Dismiss on February 3, 2012. Thereafter, Complainant filed a Motion to Direct a Decision in Favor of the Complainant on February 15, 2012.

2. By Order dated February 16, 2012, the Commission ordered the parties to file any opposition to the respective dispositive motions by February 23, 2012. This response is made pursuant to that Order.

3. Respondent admits that Complainant filed a Complaint in December 2011 challenging an adjustment MAWC added to his water bill. Respondent denies the remaining allegations in paragraph 1 of Complainant's Motion and the allegations in paragraphs 2 and 3 and responds as more specifically described below.

4. Complainant's Motion is based on his mistaken belief that Respondent did not act in accordance with its tariffs. Complainant alleges that the tariffs relied on by Respondent were not in effect at the relevant time. This position simply is not accurate.

5. First, Complainant alleges MAWC relies on a tariff of another company.

Complainant is mistaken. As stated in MAWC's Answer, the relevant tariff in place at the time of the events was St. Louis County tariff sheet Rule 7 (Form No. 13, P.S.C. MO. No. 6, Sheet No. R7.0). A copy of the tariff was attached as Appendix C to Respondent's Answer. Although the tariff references a predecessor company, what Complainant may not understand is that the tariff still is valid for the successor company, here MAWC, until it is canceled or replaced. That tariff was in place in August 2011. Thus, the tariff cited was appropriately identified as the tariff in place when the relevant events occurred.

6. Second, Complainant alleges MAWC relies on tariffs that took effect after his meter was replaced. MAWC filed new consolidated tariffs in or about July 2011, which became effective October 15, 2011. However, MAWC is not aware of any reliance on the new consolidated tariffs with regard to the adjustment made to Complainant's bill.

7. The relevant tariff in effect at the time of and relied on for the adjustments made to Complainant's bill states:

[T]he Company, as a basis for adjusting the billing to the customer, will determine the quantity of water used, either by a test of the meter, by the amount of water used during a corresponding period the preceding year, or by an estimate based on the average amount of water used during the preceding twelve months proportioned to the period during which the meter is shown to have become defective or inaccurate, at the Company's option.

See MAWC's Answer, Appendix C.

8. Respondent adjusted Complainant's bill according to this tariff. Complainant simply has no basis for his assertion that Respondent does not have valid authority for the billing adjustment made in this case. Thus, Complainant's Motion should be denied.

WHEREFORE, Respondent Missouri-American Water Company prays that the Public Service Commission of the State of Missouri deny Complainant's Motion to Direct a Decision in

favor of Complainant and instead dismiss the Complaint with prejudice at Complainant's cost and grant such other relief as the Commission deems reasonable and just.

Respectfully submitted,

MISSOURI-AMERICAN WATER COMPANY

By: /s/ Tracy D. Elzemeyer
Tracy D. Elzemeyer, MO Bar # 50683
727 Craig Road
St. Louis, MO 63141
tracy.elzemeyer@amwater.com
(314) 996-2279 (telephone)
(314) 997-2451 (facsimile)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed electronically and served either electronically or mailed postage prepaid the 23rd day of February, 2012, to:

Rachel Lewis
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Rachel.Lewis@psc.mo.gov

Office General Counsel
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Andrew G. Smith
10408 Manchester Rd, Suite 209
St. Louis, MO 63122-1523
smithagx@juno.com

Lewis Mills
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

/s/ Tracy D. Elzemeyer