

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

LOUIS DEFEO,

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Complainant,

)

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v.

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Case No. WC-2021-0075

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_MISSOURI AMERICAN WATER,

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Respondent,

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COMPLAINANT'S INITIAL BRIEF

There are three issues in this matter.

- Did the Company through its employees fail to correctly bill the Customer by refusing to consider evidence of actual water usage offered by the Customer but rather relied solely on the bias that meters are always accurate?
- Did the Company through its employee fail to respect Customer's right to appeal by failing to inform the Customer of his right to file an informal complaint with the PSC which is required?
- Did the PSC representative handling the informal complaint error by refusing to consider evidence of actual water usage offered by the Customer but rather relied solely on the bias that meters are always accurate? Did the PSC representative handling the informal complaint error by failing to inform the Customer of his right to file a formal complaint? (Complainant realizes that the Respondent is not responsible for the actions of the PSC staff but believes that it is in the public interest to call the need for PSC staff education to the attention of the Commission.)

Nowhere in the evidentiary hearing has the Company or PSC Staff offered evidence by testimony or exhibit of any actual physical evidence that the 43,000+ gallons of water were received by the Customer.

The Company's field representative after three visits could not find any actual evidence of 43,000+ gallons of water on the premise. His report to the Company is totally silent on evidence. See Exhibit 4.

The Company's field representative suggested that the Customer speak to his supervisor which he did. The Company's Senior Supervisor Operation arbitrarily refused to listen to information of actual physical facts and the sworn affidavit of the expert hydrologist.

The PSC field representative made a more complete inspection and found no actual evidence of 43,000+ gallons of water on the premises. (Transcript page 56 Line 9-25 to page 57, line 13). Left with no actual evidence, the Company is left with claiming meter readings are irrebuttable and offering speculations as evidence.

There is a hierarchy in American law. You cannot amend the Constitution by enacting a statute. You cannot amend a statute by adopting a regulation. You cannot repeal a regulation by entering into an agreement.

The Law:

The Statute:

Section 393.130. Safe and adequate service — charges — certain home rule cities, interest accrual, when. — 1. Every gas corporation, every electrical corporation, 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. **All charges made or demanded by any such gas corporation, electrical corporation, water corporation or sewer corporation for gas, electricity, water, sewer or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.** (Emphasis added.)

The Regulation:

4 CSR 240-13.020 Billing and Payment

Standards (2) Each billing statement rendered by a utility shall be computed on **the actual usage** during the billing period. (Emphasis added.)

Counsel for the Company offers in evidence the tariff agreement between PSC and the Company (Exhibit 101) quoting these words, “The Company's installed meter shall be the standard for measuring and/or billing water service.” The exact same words were in the tariff agreement in the Beechem case (Report and Order, page 11, Paragraph E. Also Footnote 62.) The Commission in Beecham did not find the one sentence in the tariff overrides the statute and regulation. The Commission in Beecham found against the Company when the Company attempted to make its case on the meter reading without any evidence of actual usage. The Company is wrong here.

Repeatedly the Company and staff have offered speculation. Here are examples:

- [Transcript page 45. Line 20-p. 46, L1]
20 “Q. (Mr. Cooper) Hypothetically if there is a leak in a fixture
21 within your house and the water goes down the drain,
22 will there be any evidence of that on the premises?
23 A. (Mr. DeFeo) There was no leak within the house or any
24 other place, the pool house. So if you want to talk --
25 I don't think hypotheticals are evidence, but physical

1 proof is evidence.

- [Transcript page 56, Lines 12- 23]

9 Q. (Mr. DeFeo) Mr. Spratt, would you just briefly describe
10 your investigation of the premises relevant to the water
11 use?

12 A. (Mr. Spratt) Yeah. I came to your home on September 29 to
13 look for any indications of leaks. We checked all the
14 fixtures, checked for any evidence of water running,
15 looked around the pool house, any possible damage to
16 drywall if the pool had overflowed. Nothing appeared to
17 show any sort of leak.

18 Q. Okay. We have seen floods around the country
19 and you see the damage that water can do as you
20 mentioned to drywall. There's also in the pool house
21 some wooden cabinetry. Did you notice any damage, water
22 damage to it?

23 A. I did not.

- [Transcript page P. 59, Lines 3-23]

3 Q. (Mr. Thompson) And I wonder if you could explain what those
4 are for us?

5 A. (Mr. Spratt) Well, as Mr. DeFeo mentioned, I took some
6 measurements out there with a 5-gallon bucket and timed
7 how long it would take to fill that bucket. Crude
8 measurements but a good indication. It took about 35
9 seconds according to the memo to fill that bucket. So I
10 estimated that was one gallon every seven seconds or
11 about 8.57 gallons per minute. Comes up to about 514
12 gallons per hour which is similar to what the numbers
13 were showing at the spike. One of my hypotheses was the
14 hose could have been left on filling the pool but it
15 would have to be draining at the same time. There is a
16 filter system that can be drained out to the sewer.
17 It's quite a stretch but it's something that could be
18 possible as a suggestion of where the water may have
19 gone.

20 Q. Now, is it possible that someone could have
21 surreptitiously attached a hose to an outdoor faucet at
22 Mr. DeFeo's premises and taken water?

23 A. That's also possible.

- [Transcript page 74, Lines 18-22]

18. Q. (Mr. Cooper)

19. And then lastly, can a, quote, unquote, stopped up toilet still leak water?

20. A. (Ms. Figueroa) I'm not a plumber; but if the flapper was awry

21. in any way or it held it open where water could flow

22. through the meter, it is a possibility.

The Company (and staff) rely on the meter readings and offer no actual physical evidence. Instead of actual physical evidence they offer speculations. On the other hand the customer has like the customer in Beecham case has offered actual physical evidence that 43,000+ gallons of water was never delivered to the customer.

There were no leaks in the plumbing in either the house or pool house. Complainant testified under oath to that fact. (Transcript pages 45-46.). The PSC representative also found no leaks. (Transcript page 56, Lines 16-17)

In response to the issue that the Company failed to comply with the regulation requiring that they notify the customer of their right to make an informal complaint to the Commission, the Company offers information that is on their website. Would the Commission accept as meeting the requirement of service posting it on the Internet? The fact is that many customers, especially poor persons, do not have access to the Internet.

Complainant's Response to Company's Notice of Satisfaction and Staff's Motion to Dismiss

The Company's Notice begins with a partial quote from the Complaint to wit "Complaint stated in part, that the amount at issue is "about \$250." The full sentence from the Complaint is: "The amount in question is about \$250 **but the more important issue is fairness to the customers.**" (Emphasis added.) Complainant has raised issues involving the failure of the Company to inform customers of their rights to file a complaint with the PSC and the Company's bias regarding meters being the sole proof of use and refusing to receive information of actual physical evidence. Even if the Complainant accepted the \$250 offered, which he has not, there remains two "more important issues."

The Company further quotes in part 20CSR4240-2.070(15)(A).

A more complete quote of the regulation is:

"The person, corporation, or public utility against whom the complaint has been filed is allowed thirty (30) days after the date of notice to satisfy the complaint or file an answer. **If the person, corporation, or public utility does not satisfy the complaint or file an answer within thirty (30) days**, the regulatory law judge may issue an order granting default and deeming the allegations of the complaint to have been admitted by the respondent." (Emphasis added.)

Under this regulation, the Company had 30 days to "satisfy the complaint." The Complaint was filed on September 18, 2020. The Company's Notice of Satisfaction was filed in July 2021, more than a year later. There is also a concept in law captured in the word "dilatatory."

As to the staff's Motion to Dismiss: Read as a whole under notice pleading, the Complaint clearly presents facts that the Company violated the PSC regulations requiring notifying customers of their rights to appeal to the PSC. Furthermore, by refusing to even listen to information offered by the Customer of actual physical facts, the Company violated 4 CSR 240-13.020 which requires billing be based on actual usage. If the Commission cannot enforce its own regulations, to whom may the citizen turn for **just and reasonable** treatment?

An example of how the Commission can address the violations here is by clarifying the tariff agreement with Company. This was discussed at some length between counsel for the Company and the Complainant during the Evidentiary Hearing. (Transcript page 38 and 40.)

WHEREFORE, the Complainant submit Complaint's Initial Brief.

Respectfully submitted,
s/ **Louis DeFeo**
Louis DeFeo, Complainant

CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing has been transmitted by electronic mail or to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, to all counsel of record, this 7th day of January 2022.

/s/ **Louis DeFeo**

