

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

|  |   |                   |
|--|---|-------------------|
| The Staff of the Missouri Public Service Commission, | ) |                   |
|  | ) |                   |
|  | ) |                   |
| Complainant,   | ) |                   |
|  | ) | Case No. WC-2010- |
| v.   | ) |                   |
|  | ) |                   |
| Missouri-American Water Company,                     | ) |                   |
|  | ) |                   |
| Respondent.  | ) |                   |

***Complaint***

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), by and through counsel, pursuant to Section 386.390, RSMo (2000), and 4 CSR 240-2.070, and for its Complaint respectfully states as follows to the Missouri Public Service Commission (PSC or Commission):

1. This matter arises from Respondent’s violation of its tariff.

***Parties***

2. Complainant is the Staff of the Missouri Public Service Commission. A “Complaint may be made. . .in writing, setting forth any act or thing done or omitted to be done by any corporation . . . in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission. . . .” Section 386.390.1, RSMo 2000.<sup>1</sup>

3. Respondent Missouri-American Water Company (MAWC) is a Missouri general business corporation in good standing with its principal place of business located at 727 Craig Road, St. Louis, MO 63141. Its Missouri registered agent is C T Corporation System, 120 S.

---

<sup>1</sup> Unless otherwise specified, all statutory references are to the Missouri Revised Statutes (RSMo), revision of 2000.

Central Ave., St. Louis, MO 63105. Relevant to this Complaint, MAWC provides water service, and subsequently bills for such service, to residential customers in the area of the City of Jefferson, Missouri, popularly known as “Jefferson City,” and adjacent areas of Cole County, Missouri.

4. Respondent MAWC is a “water corporation,” “sewer corporation,” and a “public utility” as those terms are defined in Section 386.020, RSMo Supp. 2008, and is subject to the jurisdiction and supervision of the PSC as provided by law.

### *Count I*

#### *Omission of Sales Tax from Customer Bills in Violation of Tariff*

5. On June 30, 2009, MAWC issued a letter to certain residential customers in its Jefferson City, Missouri, service area, advising them that the Jefferson City sales tax had been omitted from the monthly bills rendered between January 30, 2009, and June 5, 2009, and that this under-billing would be corrected by a one-time billing adjustment.<sup>2</sup> A true and correct copy of one such letter is attached hereto as Exhibit A and incorporated herein by reference.<sup>3</sup>

6. Specifically, MAWC’s letter states, in part:

Through a review of our billing records, we discovered that **the Jefferson City sales taxes were omitted from your monthly bill from January 30 to June 5, 2009.** To correct this omission, your next monthly bill will include your current sales tax charges **plus a one-time billing adjustment for the approximately four months when these taxes were not collected** for the city....

\*\*\*\*\*

\*\*\*\*\*

\*\*\*\*\*

This one-time sales tax amount will vary based on your water use during the period. However, **a typical customer will see a billing adjustment of less than \$1.50.**

**(emphasis added)**. See Exhibit A.

---

<sup>2</sup> Staff expects discovery to reveal the cause of MAWC’s failure to bill for this sales tax.

<sup>3</sup> Redacted from Exhibit A are the customer’s name, address and account number. Complainant will supply for inspection the original without redactions upon request.

7. MAWC's Commission-approved tariff, which sets out the terms and conditions of its billing of customers, requires that "[b]ills for water service will be distributed on a monthly basis." A true and correct copy of tariff sheet P.S.C. MO. NO. 3, 4<sup>th</sup> Revised Sheet No. 11, is attached hereto as Exhibit B and incorporated herein by reference.

8. With respect to the collection of municipal sales taxes, MAWC's tariff states in pertinent part:

There shall be added to the Customer's bill as a separate item, an amount equal to the proportionate part of a license, occupation, franchise, or other similar fee or tax now or hereafter imposed upon the Company by local taxing authorities, whether imposed by ordinance, franchise or otherwise, and which fee or tax is based upon a percentage of the gross receipts, net receipts, or revenues from sales of water or services rendered by the Company to the Customer.

**(Emphasis added)** A true and correct copy of this revised tariff sheet, P.S.C. MO. NO. 3, 4<sup>th</sup> Revised Sheet No. 5 for Jefferson City, MO and Cole County, MO adjacent to Jefferson City, is attached hereto as Exhibit C and incorporated herein by reference.

9. The Jefferson City, Missouri, has duly enacted a municipal sales tax on the sale of water services at retail that MAWC is required to collect from its residential customers in proportional monthly installments pursuant to the tariff provisions referred to in Paragraphs 7 and 8, above.

10. By failing to collect the Jefferson City municipal sales tax from certain residential customers in Jefferson City, Missouri, between January 30, 2009, and June 5, 2009, MAWC violated the tariff provisions referred to in Paragraphs 7 and 8, above.

**WHEREFORE**, Staff prays that the Commission will give notice to Respondent as required by law and, after hearing, find that Respondent has violated Respondent's tariff sheets referred to in Paragraphs 7 and 8, above, and further, find that each bill rendered by Respondent

to customers in Jefferson City, Missouri, that improperly omitted the Jefferson City municipal sales tax constitutes a separate violation.

## ***Count II***

### ***Authority to Seek Penalties***

11. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 10, above.

12. Section 386.570 RSMo (2000) provides:

1. Any corporation... or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or 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 in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation... 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.

3. In 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... or public utility.

13. Section 386.600 RSMo (2000) provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission.... In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture.... All moneys recovered as a penalty or forfeiture shall be paid to the public school fund

of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

**WHEREFORE,** Staff prays that 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 a violation of any law of the State of Missouri or of any order, decision, or rule of the Commission, authorize its General Counsel to proceed in the Circuit Court of its choosing to seek such penalties as are authorized by law.

Respectfully submitted,

/s/ **Shelley Syler Brueggemann**

Shelley Syler Brueggemann

Missouri Bar No. 52173

Attorney for the Staff of the  
Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 526-7393 (Telephone)

(573) 751-9285 (Fax)

[shelley.brueggemann@psc.mo.gov](mailto:shelley.brueggemann@psc.mo.gov) (e-mail)

### ***Certificate of Service***

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 24<sup>th</sup> day of July 2009.

/s/ **Shelley Syler Brueggemann**



AMERICAN WATER

## Missouri American Water

P.O. Box 578, Alton IL 62002  
1-866-430-0820

EXHIBIT A

AMW003 POHXOU 00005131

06/30/2009

Account Number: [REDACTED]

Premise Number: [REDACTED]  
[REDACTED]

Dear Jefferson City Customer:

Because you are a valued Missouri American Water customer, we want to alert you to a recently discovered billing issue that affects our Jefferson City residential customers.

Through a review of our billing records, we discovered that the Jefferson City sales taxes were omitted from your monthly bill from January 30 to June 5, 2009. To correct this omission, your next monthly bill will include your current sales tax charges plus a one-time billing adjustment for the approximately four months when these taxes were not collected for the city. This one-time adjustment will be shown on your next bill as Sales Tax Adjustment.

This one-time sales tax amount will vary based on your water use during the period. However, a typical customer will see a billing adjustment of less than \$1.50.

We apologize for any inconvenience that this may cause you. If you have questions, please contact us at 866-430-0820. Our representatives are available 24 hours a day to help you.

Sincerely,

Gilbert Cole  
Jefferson City Superintendent

EXHIBIT A

FORM NO. 13

P.S.C. MO. NO. 3

CANCELLING

(4<sup>th</sup> Revised)

SHEET NO. 11

(3<sup>rd</sup> Revised)

SHEET NO. 11

MISSOURI-AMERICAN WATER COMPANY  
NAME OF ISSUING CORPORATION

FOR CITY OF JEFFERSON CITY, MO AND COLE COUNTY,  
MO ADJACENT TO JEFFERSON CITY  
COMMUNITY, TOWN, OR CITY

**RULES AND REGULATIONS  
GOVERNING THE RENDERING OF SERVICE - Continued**

**TERMS AND CONDITIONS OF BILLING AND PAYMENTS**

Each customer is subject to a service charge or minimum charge, the amount of which is set forth in the Schedule of Rates according to size of meter. Payment of all bills must be made at the Company's office either in person, by mail or Electronic Fund Transfer ("EFT") on or before the due date printed on the bills, and are considered delinquent if not paid within twenty-one (21) days of the bill dated.<sup>1</sup> Bills for water service will be distributed on a monthly basis. The due date on the tariff shall be ten (10) days after the "date of rendition" of the bill to the customer. The customer's bill will be due and payable after this due date. The delinquent date printed on the bill will not be less than twenty-one (21) days after the date of the postmark of the bill. Any accounts remaining unpaid at the expiration of twenty-one (21) days shall be considered delinquent and the Company may take such action as specified in its filed rules and regulations.

In addition to any and all charges due the Company, a check or EFT that has been received as payment for service is returned by the bank unpaid, a Returned Deposit Item charge of ten dollars (\$10.00) will be assessed to cover the cost of processing this transaction.

Employees other than office employees of the Company, are not authorized to accept payment of water bills.

If for any reason service is discontinued before the expiration of one (1) month from commencement of service, a bill for at least the minimum charge for one (1) month will be rendered.

25. Customers are responsible for furnishing the Company with their correct address. Failure to receive bills will not be considered an excuse for non-payment nor permit an extension of the date when the account would be considered delinquent. All bills will be sent to the address entered in the application unless the Company is notified in writing by the customer of any change of address.
26. The use of water by the same customer in different premises or localities will not be combined, and each installation shall stand by itself.  
Water bills are rendered for the entire premises and will not be subdivided.
27. The Company may render a bill based on estimated usage pursuant to a billing procedure approved by the Public Service Commission if:

(1) Extreme weather conditions or emergencies prevent actual meter readings.

1. Pursuant to a variance issued by the Commission May 10, 1995 in its Case No. WO-95-6, previous balances for utility charges and charges for services not subject to Commission jurisdiction may not be separately itemized. Customers may contact Company's customer service department by telephone to obtain detailed itemization of any balance forward amounts.

\* Indicates new rate or text

+ Indicates change

DATE OF ISSUE

February 28, 2003

month day year

DATE EFFECTIVE

April 11, 2003

month day year

ISSUED BY:

David P. Abernathy, Vice President,  
Corporate Counsel and Secretary  
Name of Officer, Title

535 N. New Ballas Road  
St. Louis, MO 63141  
Address

**Filed**

**MO PSC**

EXHIBIT B

FORM NO. 13 P.S.C. MO. NO. 3

Should be 3rd Revised 5

CANCELLING ~~(4<sup>th</sup> Revised)~~ SHEET NO. 5  
 (3<sup>rd</sup> Revised) SHEET NO. 5

MISSOURI-AMERICAN WATER COMPANY  
 NAME OF ISSUING CORPORATION

FOR CITY OF JEFFERSON CITY, MO AND COLE COUNTY,  
 MO ADJACENT TO JEFFERSON CITY  
 COMMUNITY, TOWN, OR CITY

## + RATE F (continued)

**DURATION OF CLASSIFICATION** – Where a customer elects to be classified as a "Large Quantity User" and avail himself of this rate he shall remain so classified for a period of at least twelve (12) months. Should he elect to leave this "Large Quantity User" Classification after having elected to come under it, he shall not again be classified as a "Large Quantity User" until at least twelve (12) months have elapsed, but during such period shall obtain service under another available rate.

**TERMS OF PAYMENT** – All bills for service under this schedule will be rendered in arrears monthly. Bills for water service will be distributed on a monthly basis. The due date on the tariff shall be ten (10) days after the "date of rendition" of the bill to the customer. The customer's bill will be due and payable after this due date. The delinquent date printed on the bill will not be less than twenty-one (21) days after the date of the postmark of the bill. Any accounts remaining unpaid at the expiration of twenty-one (21) days shall be considered delinquent and the Company may take such action as specified in its filed rules and regulations.

## RATES A, B, D, E AND F – SURCHARGE

BILLING OF LICENSE, OCCUPATION, FRANCHISE, OR  
OTHER SIMILAR CHARGES OR TAXES

There shall be added to the Customer's bill as a separate item, an amount equal to the proportionate part of a license, occupation, franchise, or other similar fee or tax now or hereafter imposed upon the Company by local taxing authorities, whether imposed by ordinance, franchise or otherwise, and which fee or tax is based upon a percentage of the gross receipts, net receipts, or revenues from sales of water or services rendered by the Company to the Customer.

Where more than one such charge or tax is imposed by a taxing authority, the total of such charges or taxes applicable to the Customer may be billed to the Customer as a single amount.

Charges or taxes herein referred to shall in all instances be billed to Customers on the basis of Company rates effective at the time of billing, and on the basis of the tax rate effective at the time of billing is made.

\* Indicates new rate or text

+ Indicates change

DATE OF ISSUE February 28, 2003 DATE EFFECTIVE April 11, 2003  
 month day year month day year

ISSUED BY: David P. Abernathy, Vice President,  
 Corporate Counsel and Secretary  
 Name of Officer, Title

535 N. New Ballas Road  
 St. Louis, MO 63141  
 Address

Filed  
 MO PSC