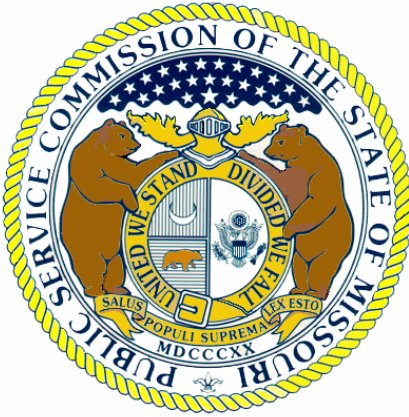


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Mrs. Walter L. Schwab,

Complainant,

v.

Missouri American Water Company,

Respondent.

Case No. WC-2008-0106

REPORT AND ORDER

Issue Date: March 11, 2008

Effective Date: March 21, 2008

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Mrs. Walter L. Schwab,)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-2008-0106</u>
)	
Missouri American Water Company,)	
)	
Respondent.)	

APPEARANCES

Mrs. Walter L. Schwab, *appearing pro se*, 3 Godwin Lane, St. Louis, Missouri 63124-1524.

Mary G. Sullivan, Corporate Counsel, 727 Craig Road, St. Louis, Missouri 63141. Attorney for Missouri-American Water Company.

Keith R. Krueger, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102. Attorney for the Staff of the Commission.

REGULATORY LAW JUDGE: **Cherlyn D. Voss**

REPORT AND ORDER

Summary

The Commission finds that the complainant has failed to present evidence to establish that an increased water bill resulted from a meter reading error or a defective water meter rather than actual increased usage. Complainant's complaint is denied.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

Procedural History

On October 15, 2007, Mrs. Walter L. Schwab filed a formal complaint with the Missouri Public Service Commission against Missouri-American Water Company ("MAWC"). Mrs. Schwab alleges that the \$566.62 water bill she received in September 2007 for residential water usage at 3 Godwin Lane, St. Louis, Missouri, (the "Schwab Residence") from June 1, 2007 through August 29, 2007, was "unreasonable and incorrect." Mrs. Schwab contends that the \$566.62 is unreasonably high given that her bill for usage from March 2, 2007, through June 1, 2007, was only \$64.21. Mrs. Schwab asks the Commission to order MAWC to correct her bill.

On October 17, 2007, the Commission issued notice of Mrs. Schwab's complaint to MAWC and ordered its Staff to investigate that complaint. MAWC filed its answer on November 15, 2007. MAWC contends that the September bill for service at the Schwab Residence was based upon actual water usage and consistent with historical water usage at that address during the months of July and August. MAWC further contended that it had

not violated its tariff or any Commission rule in the provision of service or bill rendition to the Schwab Residence.

The Commission's Staff filed its report on its investigation into this complaint on November 26, 2007. Staff concurred with MAWC's position and recommended that the Complaint be dismissed.

An evidentiary hearing was conducted on January 31, 2008. During the hearing, the Commission ordered MAWC to test the water meter at the Schwab Residence in the presence of a member of the Commission's Staff and file the results of that test as late-filed exhibit number 8. The meter test was conducted on February 7, 2008, in the presence of Staff member Jerry Scheible. On February 19, 2008, the results of that test were filed as late-filed Exhibit 8. More than ten days have passed and no party has objected to the admission of Exhibit 8. MAWC's late-filed exhibit, Exhibit 8, shall be admitted into evidence.

The Parties

MAWC is a "water corporation" and a "public utility" as defined in Section 386.020, RSMo 2000, and is subject to the jurisdiction of the Commission.¹ MAWC provides water and sanitary sewer service in multiple counties in Missouri, including St. Louis County, Missouri.² MAWC is a Missouri corporation with its principal office and place of business located at 727 Craig Road, St. Louis, Missouri 63141.³

¹ Answer page 1; and Tr. page 20, lines 19-21.

² Answer page 1.

³ *Id.*

Mrs. Schwab and her husband maintain a residence at 3 Godwin Lane, St. Louis, Missouri (the “Schwab Residence”).⁴ Mrs. Schwab and her husband reside in the Schwab Residence from March or April through October each year, and reside in Florida during the fall and winter months.⁵ Mrs. Schwab has had an account with MAWC or its predecessor for water service at the Schwab Residence for approximately ten years, and she held this account throughout the relevant time period of the billing dispute that is the subject of this complaint.⁶

Mrs. Schwab’s Complaint

The first week of September 2007, Mrs. Schwab received a water bill from MAWC in the amount of \$566.62 for service from June 1, 2007 to August 29, 2007.⁷ That bill was significantly higher than her previous bill for service from March 2, 2007 to June 1, 2007, which was only \$64.21.⁸

Mrs. Schwab contacted Missouri-American on September 5, 2007, to express her concerns that her bill was incorrect.⁹ MAWC responded by sending out a field service representative on September 7, 2007, to inspect her service line for leaks and to verify the meter reading.¹⁰ The field service representative confirmed that the meter reading was accurate and did not find evidence of a leak in the Schwab Residence’s service lines.¹¹

⁴ Complaint, Ex. 1, page 1.

⁵ Tr. page 38, lines 14-16 and page 39, lines 3-4.

⁶ Tr. page 32, lines 16-25, page 33 lines 2-10

⁷ Complaint, Ex. 1, page 1.

⁸ *Id.*; and Report of the Staff, Ex. 9HC, Schedule 2.

⁹ Tr. page 25, lines 1-5.

¹⁰ Tr. page 25, line 6 to page 26, line 11; and 9/12/07 Letter to Walter Schwab from Missouri American Water, Ex. 6.

¹¹ *Id.*

A letter advising Mrs. Schwab of the results of the September 7, 2007 inspection was sent out on September 12, 2007.¹² Upon receipt of the September 12, 2007 letter, Mrs. Schwab again contacted MAWC to request a second inspection.¹³

On September 24, 2007, MAWC sent out a second service representative to inspect the meter and water system at the Schwab Residence. The second service representative confirmed the accuracy of the original meter reading and found no movement of the meter, which indicated there was not a water leak on her service line at that time.¹⁴ A letter advising Mrs. Schwab of the results of the September 24, 2007 inspection was sent out on September 25, 2007.¹⁵

Despite the results of MAWC's two site inspections, Mrs. Schwab contends that the meter at the Schwab Residence must have been misread or malfunctioned based upon the unusually high amount of water usage appearing on her bill for the period from June 2, 2007 to August 29, 2007, compared to the amount appearing on the bill for the preceding three months.¹⁶

Mrs. Schwab testified that no new appliances that use water have been added to the Schwab Residence, and that there was no substantive change in water usage at the Schwab residence from June 2nd to August 29th of 2007 compared with previous years.¹⁷ However, Mrs. Schwab also testified that there is a sprinkler system in the yard of the

¹² 9/12/07 Letter to Walter Schwab from Missouri American Water, Ex. 6HC; and Tr. page 26, lines 7-13.

¹³ Tr. page 26, lines 14-17.

¹⁴ Tr. page 27, lines 5-25; and 9/24/07 Letter to Walter Schwab from Missouri American Water, Ex. 7HC.

¹⁵ 9/12/07 Letter to Walter Schwab from Missouri American Water, Ex. 6HC; and Tr. page 26, lines 7-13.

¹⁶ Complaint, Ex. 1, page 1.

¹⁷ Tr. page 40, line 16 to page 42, line 2.

Schwab Residence that they have been using for approximately ten years.¹⁸ She further testified they use that sprinkler system more or less depending upon how much rain falls.¹⁹

In support of its position, MAWC presented the testimony of Gina Myers. Myers is the operations supervisor for MAWC and supervises the field customer service representatives.²⁰ Although no evidence regarding rainfall in St. Louis County, the location of the Schwab Residence, was introduced into evidence, Myers testified that MAWC recorded historic water usage in St. Louis County during part of the billing period at issue.²¹

Myers further testified that the meter at the Schwab Residence is only three years old, and meters generally have a service life of between ten and fifteen years.²² Myers also explained that when a water meter does malfunction it will run lower, in other words, it will register less water than is actually used.²³ She also explained that a malfunctioning water meter would not register high usage in one period and low usage in a subsequent period.²⁴

Staff's witness, Marilyn Doerhoff, also testified regarding her investigation of Mrs. Schwab's complaint. Doerhoff is a consumer services coordinator for the Commission and is responsible for investigating consumer complaints.²⁵ Doerhoff testified that based upon her investigation of Mrs. Schwab's complaint, the bill MAWC rendered to

¹⁸ Tr. page 39, line 9 to page 40, line 15.

¹⁹ *Id.*

²⁰ Tr. page 19, line 25 to page 20, line 4.

²¹ Tr. page 29, lines 18-20.

²² Tr. page 22, lines 17-22; and

²³ Tr. page 22, line 23 to page 23, line 5.

²⁴ Tr. page 28, line 23 to page 29, line 3.

²⁵ Tr. page 61, line 23 to page 62, line 7.

Mrs. Schwab for service from June 2, 2007, to August 28, 2007, was accurate and based upon actual usage.²⁶

The following chart ("Historical Summer Usage Chart") shows the amounts billed and volume of water used for June, July and August from 2002 through 2007, excluding 2005 because comparable data was not available.²⁷

Quarter Billed	Days of service	Cubic Feet Used (x 100)	Amount Billed
6/3/02 – 8/28/02	90	241	\$418.34
6/3/03 – 9/2/03	90	158	\$281.91
6/9/04 – 8/31/04	91	107	\$198.33
6/2/06 - 9/1/06	91	197	\$362.86
6/2/07 - 8/29/07	89	301	\$566.62

The following chart (the "2006-2007 Quarterly Usage Chart") shows the amounts billed and volume of water used quarterly for the bill in question and the six preceding quarters:²⁸

²⁶ Report of the Staff, Ex. 9HC; and Tr. page 62, lines 12-21.

²⁷ Report of the Staff, Ex. 9HC, Schedule 2. (Data from the summer quarter of 2005 is omitted because estimated billing and out of sync meter reading dates made it impossible to ascertain comparable data for that period.)

²⁸ *Id.*

Quarter Billed	Days of Service	Cubic Feet Used (x 100)	Amount Billed
11/29/05 – 3/3/06	94	2	\$26.92
3/3/06 – 6/2/06	91	39	\$89.02
6/2/06 - 9/1/06	91	197	\$362.86
9/1/06 - 11/28/06	88	69	\$141.31
11/28/06 - 3/2/07	94	5	\$32.06
3/2/07 - 6/1/07	91	23	\$64.21
6/2/07 - 8/29/07	89	301	\$566.62
8/29/07- 11/28/07 ²⁹	91	96	\$199.66

Based upon the historical billing and usage data for the Schwab Residence, part of which is depicted in the two usage charts set out above, the bills rendered to Mrs. Schwab vary significantly from quarter to quarter, but are consistently higher during the third quarter.³⁰ The historical billing and usage data also show that the bill MAWC rendered to Mrs. Schwab for the third quarter of 2007 was higher than previous third quarters.³¹ The historical billing and usage data further shows that consistent with prior year's usage trends water usage at the Schwab Residence decreased in the fourth quarter of 2007.³²

The meter serving the Schwab Residence during the third quarter of 2007, period in question, was identified as 0049410265.³³ During the hearing the Commission ordered MAWC to remove and test that meter under the supervision of a member of the

²⁹ Usage and Billing data for 8/29/07 – 11/28/07 found at Tr. page 16, lines 23-25 and page s28, lines 17-20.

³⁰ Report of the Staff, Ex. 9HC, schedule 2; and Answer, Exhibit A.

³¹ *Id.*

³² Tr. page 16, lines 23-25 and page s28, lines 17-20; Report of the Staff, Ex. 9HC, schedule 2; and Answer, Exhibit A.

³³ Tr. page 54, lines 13-27.

Commission's Staff, and file the results of that meter test as late filed exhibit number 8.³⁴ In compliance with the Commission's order, MAWC removed and tested the Schwab's meter and John Scheible of the Commission's Staff supervised that test.³⁵ MAWC filed the results of the meter test as late filed Exhibit 8. That meter test established that when the meter from the Schwab Residence was removed and tested, it operated within normal parameters.³⁶

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

MAWC is a public utility as defined by Section 386.020(42), RSMo Cum. Supp. 2007. Furthermore, MAWC is a water corporation as defined by Section 386.020(58), RSMo Cum. Supp. 2007. As such, MAWC is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo 2000.

Section 386.390, RSMo 2000, authorizes a person, such as Mrs. Schwab, to bring a complaint before the Commission regarding a public utility. "In cases where a complainant alleges that a regulated utility is violating a law, its own tariff, or is otherwise engaged in unjust or unreasonable actions, the complainant has the burden of proof."³⁷ As the complaining party, Mrs. Schwab bears the burden of proving the allegations in her complaint.

³⁴ Tr. page 54, line 2 to page 55, line 12.

³⁵ Report on Meter Test, Ex. 8.

³⁶ *Id.*

³⁷ *David A. Turner and Michele R. Turner, Complainants, v. Warren County Water and Sewer Company, Respondent*, 9 Mo. P.S.C. 3d 548 (Mo. PSC 2001), *citing to*, *Margolis v. Union Electric Company*, 30 Mo. P.S.C. (N.S.) 517, 523 (1991); *Michaelson v. Wolf*, 261 S.W.2d 918, 924 (Mo. 1953); *Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

Decision

The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision. After applying the facts, as it has found them, to its conclusions of law, the Commission has reached the following decision.

During the hearing, Mrs. Schwab was given the opportunity to provide direct testimony and the testimony of any other witnesses on her behalf. Mrs. Schwab appeared by telephone, declined to present any witness testimony other than her own, and did not introduce any evidence beyond her own testimony.

Mrs. Schwab's complaint against MAWC rests on the assumption that the unusually high water bill for the third quarter of 2007 could only have resulted from either an error in the reading of her meter or a defective water meter. She did not, however, present any evidence to establish that the water meter was in fact misread or defective. On the contrary, the testing of the water meter by MAWC revealed that it was not defective at the time it was tested. Expert testimony offered by both MAWC and by Staff also established that the water meter was unlikely to have malfunctioned in the summer of 2007, without exhibiting the same defect when it was tested in February 2008. The expert witnesses offered by MAWC and Staff agreed that most likely the increased water usage in the third quarter of 2007 resulted from increased usage by the Schwabs.

While Mrs. Schwab genuinely believes that her third quarter 2007 bill from MAWC is incorrect, there is simply no evidence in the record to support her position. Mrs. Schwab's

complaint is not supported by the evidence and she has not met her burden of proof. The relief sought must be denied.

IT IS ORDERED THAT:

1. Missouri-American Water Company's late-filed exhibit, marked as Exhibit 8, is admitted into evidence.
2. The Missouri Public Service Commission finds in favor Missouri-American Water Company and denies Mrs. Walter L. Schwab's requested relief.
3. The complaint filed by Mrs. Walter L. Schwab on October 15, 2007, against Missouri-American Water Company is dismissed with prejudice.
4. All objections not ruled on are overruled and all motions not granted are denied.
5. This order shall become effective on March 21, 2008.
6. This case shall be closed on March 22, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
Appling, and Jarrett, CC., concur
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 11th day of March, 2008.