

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

Louis DeFeo,

Complainant

v.

Missouri-American Water Company,

Respondent

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)
)
) **File No. WC-2021-0075**
)
)
)

NOTICE OF RECOMMENDED REPORT AND ORDER

Issue Date: February 28, 2022

The Regulatory Law Judge is issuing the recommended report and order attached. The parties have ten days to file comments supporting or opposing this recommended order.¹



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Ross Keeling, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 28th day of February, 2022.

¹ Commission Rule 20 CSR 4240-2.070(15)(H).

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



Louis DeFeo,)
)
 Complainant)
)
 v.)
)
 Missouri-American Water Company,)
)
 Respondent)

File No. WC-2021-0075

REPORT AND ORDER

Issue Date: , 2022

Effective Date: , 2022

APPEARANCES

Appearing For Louis DeFeo:

Louis DeFeo, Attorney at Law, 1700 Green Berry Road, Jefferson City, MO 65101

Appearing for Missouri American Water Company:

Dean L. Cooper, Brydon, Swearingen & England, PC, 312 East Capitol, Jefferson City MO 65102

Appearing for the Staff of the Missouri Public Service Commission:

Kevin Thompson, Chief Staff Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102-0360.

Regulatory Law Judge: Ross Keeling

REPORT AND ORDER

Procedural History

On September 18, 2020, Louis DeFeo filed a complaint with the Commission against Missouri-American Water Company (MAWC or Company), alleging that MAWC billed him for over 40,000 gallons of water that he did not receive. He also alleges that MAWC (1) failed to render a utility bill computed on the actual usage during the billing period, in violation of Commission Rule 20 CSR 4240-13.020(2); (2) failed to consider all related and available information including physical evidence offered by Mr. DeFeo and the analysis of a professional hydrologist, in violation of 20 CSR 4240-13.025(1); and (3) failed to inform him of his right to make an informal complaint to the Commission, and of the address and phone number where he could file an informal complaint with the Commission, in violation of 20 CSR 4240-13.045(9) and 20 CSR 4240-13.070(3). Mr. DeFeo also alleges that representatives of the Commission failed to inform him of his right to make a formal complaint in violation of 20 CSR 4240-2.070.

Mr. DeFeo requests that MAWC remove any charge based on the alleged receipt of over 40,000 gallons of water, and specified in his complaint that the amount in dispute was about \$250. Mr. DeFeo's complaint is being addressed under the small formal complaint procedures contained in Commission Rule 20 CSR 4240-2.070(15) because the amount in dispute was less than \$3,000.

The Commission issued notice of the complaint, directed MAWC to file an answer, and directed the Commission's Staff (Staff) to file a report on the complaint. MAWC filed an answer to Mr. DeFeo's complaint on October 16, 2020. The answer included a request

for mediation. Mr. DeFeo also filed a request for mediation on December 9, 2020, but requested that the mediation not be scheduled until after Staff's reports were available.

On December 9, 2020, Staff filed its recommendation and memorandum detailing its investigation and analysis (Report). In its Report, Staff concluded that MAWC had not violated any applicable statutes, Commission rules, or Commission-approved company tariffs related to the complaint. On December 16, 2020, the Commission issued its order granting the request for mediation and appointing a mediator. Mediation rendered no resolution to the matter.

On July 13, 2021, MAWC filed a notice of satisfaction, stating that the amount at issue had been credited to Mr. DeFeo's account, satisfying the complaint pursuant to Commission Rule 20 CSR 4240-2.070(8). On November 3, 2021, Staff filed a Motion to Dismiss based on MAWC's notice of satisfaction. The Commission took this motion with the case and scheduled an evidentiary hearing for November 19, 2021.

The parties presented a total of four issues to be determined by the Commission. Staff filed a list of issues on behalf of itself and MAWC. Mr. DeFeo elected to file separately, and presented the following issues:

1. Did the Company through its employee fail to correctly bill the Customer by refusing to consider actual evidence of water usage offered by the Customer but rather relied solely on the bias that meters are always accurate?
2. 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?
3. Did the PSC representative handling the informal complaint err by refusing to consider actual evidence of 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 err 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 staff education to the attention of the Commission.)

Staff and MAWC presented the following additional issue:

4. Did MAWC's Notice of Satisfaction filed on July 13, 2021, and the actions described therein, satisfy the Complaint?

At the evidentiary hearing, the Commission heard the testimony of three witnesses and received eight exhibits onto the record. Tracie Figueroa, Business Service Specialist, testified for MAWC; and David Spratt, PSC Utility Operations Technical Specialist, testified for Staff. Mr. DeFeo testified on his own behalf, and offered the pre-filed testimony of David Spratt as well.

Mr. DeFeo, Staff, and MAWC filed post-hearing briefs. On January 24, 2022, the case was deemed submitted for the Commission's determination pursuant to Commission Rule 20 CSR 4240-2.150(1), which provides that "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument."

Customer specific information is confidential under Commission Rule 20 CSR 4240-2.135(2); however, the Commission may waive this provision under Commission Rule 20 CSR 4240-2.135(19) for good cause. Good cause exists to waive confidentiality as to Mr. DeFeo's bills and water usage because the Commission would be unable to write findings of fact or a decision that did not use some of Mr. DeFeo's customer specific information. The confidential information disclosed in this Report and Order is the minimal amount necessary to support the Commission's decision.

Findings of Fact

The Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate the Commission has failed to consider relevant evidence, rather that the omitted material was not dispositive of this decision. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.¹

1. MAWC is a public utility that renders water services to customers in Missouri.²

2. MAWC provided and continues to provide water service to the Complainant Louis DeFeo (Mr. DeFeo) at the address at issue in this case, 1700 Green Berry Road, Jefferson City, Missouri.³

¹ An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. S.D. 2009). With respect to the appellate standard for reviewing Commission decisions, this case stated, further:

“[I]f substantial evidence supports either of two conflicting factual conclusions, ‘[we are] bound by the findings of the administrative tribunal.’ [citation omitted] The determination of witness credibility is a subject best left to the Commission, ‘which is free to believe none, part, or all of [a witness’s] testimony.’ [citations omitted] We will not re-weigh the evidence presented to the Commission. [citation omitted].”

² Exhibit 101, P.S.C. Mo No. 13, 1st Revised Sheet No. R32.

³ Ex. 2, DeFeo Direct Testimony, pp. 1-37; Ex. 200, p. 5

Billing

3. Mr. DeFeo received a bill dated April 3, 2020, covering the service period of March 4, 2020 to April 2, 2020, for \$129.76, an amount which was twice the amount of recent monthly bills. The usage for the period was 19,100 gallons.⁴ Mr. DeFeo's immediately prior bill, for example, was \$58.49, with a usage of 7,900 gallons.⁵

4. On April 21, 2020, Mr. DeFeo called the Company for advice on how to identify the source of the higher use. Mr. DeFeo was advised to check toilets for leaks. No leaks were found. Mr. DeFeo paid the bill.⁶

5. The following month, Mr. DeFeo received a bill dated May 8, 2020, covering the service period of April 3 to May 4, 2020. The amount was \$232.62, an amount almost four times the March bill. The usage on the May bill was 35,400 gallons.⁷

Meter Testing

6. On May 20, 2020, field service representative Cook from MAWC conducted an investigation of Mr. DeFeo's residence.⁸

7. A bench test of Mr. DeFeo's meter on May 22, 2020, showed it to be greater than 99% accurate.⁹

8. The data log for Mr. DeFeo's meter which showed his historical hourly usage indicated continuous water usage between 13:52 on April 1 and 15:52 on April 4, 2020.¹⁰

⁴ Ex. 8, DeFeo Direct Testimony, pp. 1-2; Transcript, p. 27:1-4.

⁵ Ex. 8, DeFeo Direct Testimony, p. 2.

⁶ Ex. 8, DeFeo Direct Testimony, p. 2.

⁷ Ex. 8, DeFeo Direct Testimony, p. 2; Tr. vol. 2, p. 27:15-21.

⁸ Ex. 200, Figueroa Rebuttal Testimony, p. 7; Ex. 8, DeFeo Direct Testimony, p. 2.

⁹ Ex. 200, Figueroa Rebuttal Testimony, p. 7; Schedule TF-3.

¹⁰ Ex. 200, Figueroa Rebuttal Testimony, p. 8; Schedule TF-4.

9. This usage spike affected Mr. DeFeo's April and May 2020 bills.¹¹

10. The meter reading at the time Mr. Cook tested Mr. DeFeo's water meter on May 22, 2020, was 144750.84.¹²

Water Features

11. Mr. DeFeo does not have an automatic water use system.¹³

12. Mr. DeFeo has no irrigation system, no water adding system, no system that automatically turns water on, except humidifiers on furnaces and an ice maker on a refrigerator.¹⁴

13. Mr. DeFeo has an indoor pool at his residence which is 36 feet by 18 feet, has an average depth of 4.1 feet, and has a capacity of 20,000 gallons.¹⁵

14. The pool has no bottom drain. The only way to empty the pool is to pump the water out. The pool has never been emptied since it was constructed in 2000. The pool will lose some water by evaporation and through small leaks in the vinyl liner. About once every five days, the pool is topped off by adding one-inch of water with a garden hose.¹⁶

15. There is a drain for the deck of the pool so when people splash water up on the deck it has somewhere to go. That drain is very slow.¹⁷

¹¹ Ex. 8, DeFeo Direct Testimony, p. 2:7-8.

¹² Ex 200, Figueroa Rebuttal Testimony, Schedule TF-3.

¹³ Ex. 8, DeFeo Direct Testimony, p. 2.

¹⁴ Ex. 8, DeFeo Direct Testimony, p. 3.

¹⁵ Ex. 8, DeFeo Direct Testimony, p. 3

¹⁶ Ex. 8, DeFeo Direct Testimony, p. 3; Transcript, pp. 29:20 – 30:8

¹⁷ Transcript, pp. 50:15 – 51:5

MAWC's Follow-Up

16. Mr. Cook visited Mr. DeFeo's residence three times, which were interviews and not inspections. Mr. DeFeo does not recall Mr. Cook inspecting either the house or pool house at Mr. DeFeo's premises. The only inspection mentioned in Mr. Cook's report to the Company was of the meter.¹⁸

17. On June 9, 2020, Mr. Cook informed Mr. DeFeo that the meter was tested in place and was found to be accurate.¹⁹

18. On June 9, 2020, Mr. Cook provided an electronic copy of the Data Log covering the water service in bi-hourly units from March 5, 2020, to June 9, 2020. The Data Log showed that the metered usage was not a steady leak over a 30-day period, but a sudden spike that lasted 73 hours, over a four-day period. The spike started on Wednesday, April 1, 2020, and ended on Saturday, April 4, 2020.²⁰

19. Mr. Cook returned to Mr. DeFeo's residence on June 10, 2020, and stated that he could not explain where the 43,000 gallons went. He suggested that Mr. DeFeo contact his supervisor with any further questions or concerns.²¹

20. Mr. DeFeo called Mr. Cook's supervisor, Nate Hart. Mr. Hart advised Mr. DeFeo that the meter reading was accurate. Mr. Hart did not inform Mr. DeFeo of his right to make an informal complaint to the Commission.²²

¹⁸ Ex. 8, DeFeo Direct Testimony, p. 2.

¹⁹ Ex. 8, DeFeo Direct Testimony, p. 2.

²⁰ Ex. 8, DeFeo Direct Testimony, p. 2; Ex. 3, Line Graph of Data Log Reading.

²¹ Ex. 8, DeFeo Direct Testimony, pp. 2-3; Transcript, p. 29:11-14

²² Ex. 8, DeFeo Direct Testimony, p. 3.

DeFeo Complaints

21. Mr. DeFeo worked from home due to the COVID-19 pandemic beginning March 1, 2020, and was therefore at home during the days of the spike and noticed no large water flow.²³

22. Mr. DeFeo consulted with Robert E. Criss, a hydrologist at Washington University, St Louis. Mr. Criss studied the Data Log provided by the Company and analyzed the situation. His affidavit is in evidence.²⁴

23. Mr. DeFeo initiated an informal complaint with the Commission on July 13, 2020, stating that he had been billed erroneously for usage by MAWC between the dates of April 1 and April 4, 2020, for approximately 40,000 gallons of water,²⁵ resulting in an overbilling of roughly \$250.

24. Sometime before September 18, 2020, MAWC offered Mr. DeFeo a leak adjustment and/or a payment arrangement to resolve his informal complaint. Mr. DeFeo declined MAWC's offer and, on September 18, 2020, filed his formal complaint with the Commission.²⁶

25. On July 13, 2021, MAWC credited the \$250 at issue to Mr. DeFeo's account and filed its Notice of Satisfaction in the above-captioned case.²⁷

26. At the hearing, Mr. DeFeo acknowledged receipt of the \$250 credit to his account, although he stated that he "did not accept it."²⁸

²³ Ex. 8, DeFeo Direct Testimony, p. 2.

²⁴ Ex. 1. Criss Affidavit; Ex. 8, DeFeo Direct Testimony, p. 3.

²⁵ Both 40,000 and 43,000 gallons are used as an estimate by the parties here. The difference is not material to this case.

²⁶ Ex. 100, Staff Report, Appx. A, pp. 1-2.

²⁷ Notice of Satisfaction.

²⁸ Transcript, p. 38:5-8.

Staff's Inspection

27. Staff witness David Spratt conducted an inspection of Mr. DeFeo's residence on September 29, 2020.²⁹

28. Although Mr. Spratt was unable to observe any evidence of water damage in or around the property that would indicate leaks or an over-filled pool, on cross-examination he proffered several scenarios that might explain such usage, such as reversal of the pool filter system while the pool was filling, which would drain the water to the sewer, pilfering of the water via an outdoor faucet, and a leaking toilet.³⁰

Notice of Appeal Rights

29. It is MAWC's standard procedure that once an interaction with a customer has reached a point where it is clear that the dispute cannot be resolved between the parties, and MAWC's customer services have exhausted all options in reaching a resolution, a letter from MAWC is sent to the customer notifying them of the opportunity to present a complaint to the Commission pursuant to 20 CSR 4240-13.045(9) and 20 CSR 4240-13.070(3).³¹

30. It is MAWC's standard procedure that before such a letter is sent, the complainant customer is directed to the Account Resolution Team at MAWC, which is comprised of the highest-level billing representatives within the customer service organization at MAWC.³²

²⁹ Ex. 100, Staff Report, Appx. A, p. 4.

³⁰ Transcript, pp. 59-61.

³¹ Ex. 200, Figueroa Rebuttal Testimony, p.10.

³² Ex. 200, Figueroa Rebuttal Testimony, p. 11.

31. Under MAWC's standard procedure, it is only after the Account Resolution Team is unable to resolve the issue that the resolution process would be considered exhausted, and the dispute considered unresolved, that a letter would issue from MAWC to the complainant customer directing them to the Commission's complaint process.³³

32. MAWC sent a letter dated May 22, 2020, to Mr. DeFeo stating that if he had any questions regarding MAWC's initial service order finding the meter reading to be accurate, he should contact a customer service representative.³⁴

33. Had Mr. DeFeo responded to the letter and contacted customer service, he would have been directed to the Account Resolution Team.³⁵

34. Were the situation not resolved by the Account Resolution Team, a letter would have issued directing Mr. DeFeo to the Commission's complaint process.³⁶

35. Instructions regarding customer's rights to bring unresolved issues with MAWC before the Commission are always available on MAWC website, and were so at all times relevant herein.³⁷

36. Mr. DeFeo received a letter from MAWC dated May 22, 2020, referring him to MAWC's customer service organization, to which he failed to respond. Responding to the letter would have escalated his complaint to the Account Resolution Team. He had previously learned the procedure to file an informal complaint with the Commission from a letter issued by MAWC regarding a dispute in 2019.³⁸

³³ Ex. 200, Figueroa Rebuttal Testimony, p. 11.

³⁴ Ex. 200, Figueroa Rebuttal Testimony, p. 10; Schedule TF-8.

³⁵ Ex. 200, Figueroa Rebuttal Testimony, pp. 10-11.

³⁶ Ex. 200, Figueroa Rebuttal Testimony, pp. 10-11.

³⁷ Ex. 200, Figueroa Rebuttal Testimony, p. 9.

³⁸ Transcript, pp.51-52.

Conclusions of Law

A. MAWC is a Missouri corporation and a “water corporation” and “public utility” as defined by Section 386.020, RSMo, (Supp. 2020), and is authorized to provide water and sewer service to portions of Missouri. The Commission has jurisdiction over MAWC’s services, activities and rates pursuant to Section 386.250 and Chapter 393, RSMo.

B. Section 386.390.1, RSMo, states that a person may file a complaint against a utility, regulated by this Commission, setting forth violations of any law, rule, or order of the Commission. Therefore, the Commission has jurisdiction over this complaint.

C. Section 386.390.3, RSMo states that the Commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

D. Commission Rule 20 CSR 4240-13.020(2), requires that each billing statement rendered by a utility shall be computed on the actual usage during the billing period.

E. Commission Rule 20 CSR 4240-13.025(1) provides that for all billing errors, the utility will determine from all related and available information the probable period during which the condition causing the errors existed and shall make billing adjustments for that period.

F. Commission Rule 20 CSR 4240-10.030(37) requires water meters to be accurate to within 5% when registering water stream flow.

G. Commission Rule 20 CSR 4240-13.040(1) requires utilities to adopt procedures which shall ensure the prompt receipt, thorough investigation and, where possible, mutually acceptable resolution, of customer inquiries.

H. Commission Rule 20 CSR 4240-13.045(9) requires that, in the event of a dispute, a utility must notify the customer that each party has a right to make an informal complaint to the Commission, and of the address and telephone number where the customer may file an informal complaint with the Commission if the utility does not resolve the dispute to the satisfaction of the customer.

I. Commission Rule 20 CSR 4240-13.070(3) provides that if a utility and a customer and/or applicant fail to resolve a matter in dispute, the utility shall advise the customer and/or applicant of his/her right to file an informal complaint with the Commission under 4 CSR 240-2.070 (now 20 CSR 4240-2.070).

J. Commission Rule 20 CSR 4240-13.070(4) provides that if the staff is unable to resolve the informal complaint to the satisfaction of the parties, the staff shall call the complainant and utility and note such conversation into the Commission's electronic filing and information system and send a dated letter or email to that effect to the complainant and to the utility. Staff shall also advise the customer of their right to file a formal complaint with the Commission under 4 CSR 240-2.070 (now 20 CSR 4240-2.070).

K. MAWC's tariff, P.S.C. Mo No. 13, 1st Revised Sheet No. R. 32, provides that the Company's installed meter shall be the standard for measuring and/or billing water service.

L. A tariff has the same force and effect as a statute, and it becomes law.³⁹

³⁹ *State ex rel Missouri Gas Energy v. Public Service Com'n*, 210 S.W.3d 330, 337 (Mo. App. W.D. 2006).

M. Mr. DeFeo, as the complainant, bears the burden of proof to show by a preponderance of evidence that MAWC has violated a law subject to the Commission's authority, a Commission rule, or an order of the Commission.⁴⁰

N. The determination of witness credibility is left to the Commission, "which is free to believe none, part or all of the testimony."⁴¹

O. Section 386.390.1, RSMo., authorizes complaints against "any corporation, person or public utility." The Commission Staff is not any of those things. The Staff of the Public Service Commission has no legal existence apart from the Commission itself and is not a proper respondent.

Decision

Issue 1 – Did the Company through its employee fail to correctly bill the Customer by refusing to consider actual evidence of water usage offered by the Customer but rather relied solely on the bias that meters are always accurate?

Mr. DeFeo contends that MAWC failed to correctly bill his account because it failed to compute actual usage of water in violation of Commission Rule 20 CSR 4240-13.020(2). Mr. DeFeo argues that there is no evidence that the water was deposited on his property because there are no physical signs that it was present, and that it would be impossible to hide 40,000 gallons of water.

The Commission-approved tariff (Tariff) determines the means by which water is measured for billing purposes and has the same force and effect as a statute.

⁴⁰ *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003). Stating that in cases "complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, . . . the burden of proof at hearing rests with the complainant."

⁴¹ In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service and Midwest Energy Consumers' Group v. Missouri Public Service Commission, 509 S.W.3d 757, 763 (Mo. App. W.D. 2016)

Commission Rule 20 CSR 4240-13.020(2) requires billing to be based on actual usage and the Tariff requires that the installed meter is the standard for measuring and billing water service. Hence, the actual usage referenced in the Commission Rule is the amount indicated by the installed meter, unless other factors indicate MAWC's water use record is inaccurate.

Facts challenging the accuracy of the utility's water use records are weighed against the empirical information provided by testing the meter for accuracy. If the accuracy of the meter cannot be verified by a test, facts challenging the water use record's accuracy are given more weight than if the meter has been tested. In this case the meter was tested by MAWC contemporaneously with this dispute and found to be greater than 99% accurate. This is more accurate than required under Commission Rule 20 CSR 4240-10.030(37).

Mr. DeFeo failed to rebut evidence showing that his water meter was accurate. The facts he presents do not address the accuracy of the meter or the quality of the test, but attempt to show that the water simply did not appear on his property. Mr. DeFeo testified that there was no evidence that the water had been deposited on his property. However, as testified to by Mr. Spratt, there are multiple outlets by which water could be diverted to the city sewers from Mr. DeFeo's property. Mr. DeFeo's failure to account for the water that passed through the meter to his property does not prove he did not receive it. The lack of physical evidence of a flood or a leak on his property is outweighed by the physical evidence provided by an accurate water meter and testimony on the other outlets by which water could be diverted to the sewers. Accordingly, Mr. DeFeo has not met his

burden to show that MAWC failed to bill him for water service based on actual usage or that MAWC violated Commission Rule 20 CSR 4240-13.020(2).

Mr. DeFeo argues that *Beecham v. Missouri-American Water Company*, File No. WC-2020-0181,⁴² controls in this case because here, like in *Beecham*, the customer is offering evidence that water was not delivered when the utility's records indicate otherwise. In *Beecham*, the customer's water use showed an upward trend over a term of years, and her meter had not been manually read for nearly a year at the time of the dispute. MAWC had relied on AMI remote transmission technology for meter readings during that period. In *Beecham*, the customer presented evidence that she did not use the amount of water that she was billed for, and MAWC failed to enter evidence of a test verifying the accuracy of its meter and of its water use record. As a result, evidence of *Beecham's* average usage, and a gradual drop in the metered usage after the installation of a new meter, became relevant. *Beecham* is distinguishable from the present case because no meter test results were offered or admitted as evidence in that case. In the current case the evidence of a contemporaneous meter test showing that the meter is greater than 99% accurate rebuts Mr. DeFeo's claims that the water was not delivered to his property through the meter.

The Commission does not find the affidavit of Mr. Robert Criss persuasive. Mr. Criss contends that it is not possible that 40,000 gallons of water could flow onto Mr. DeFeo's property without evidence of "where that huge amount of water went." However, as testified to by Mr. Spratt, there are multiple outlets by which water can be diverted to the city sewers wherein it would not flow "onto" Mr. DeFeo's property. Further,

⁴² *Beecham v. Missouri-American Water Company*, Report and Order, January 13, 2021.

in his affidavit, Mr. Criss does not indicate that he tested or inspected MAWC's data recording, transmission, and processing systems, and fails to articulate a reason to believe MAWC's remote gauging transmission system, or its meter, were defective or inaccurate. His opinion is therefore not instructive on this point.

Mr. DeFeo also contends that MAWC violated Commission Rule 20 CSR 4240-13.025(1) by failing to consider all related and available information, including physical evidence and the analysis of a professional hydrologist. That rule requires MAWC to determine the probable period during which conditions existed that caused billing errors. No billing errors were determined to have occurred at the time of the filing of the complaint in this case, but MAWC has provided information that identifies the exact period during which the alleged overcharge occurred. Therefore, Mr. DeFeo has not shown a violation of Commission Rule 20 CSR 4240-13.025(1).

Mr. DeFeo cites Commission Rule 20 CSR 4240-13.040(1) in his Complaint, which requires MAWC to adopt procedures which shall ensure the prompt receipt, through investigation and, where possible, mutually acceptable resolution of customer inquiries. Mr. DeFeo fails to explain how or offer any credible evidence to support a finding that MAWC may have violated that rule at any point, so the Commission will consider that issue abandoned, and will not address it.

Issue 2 – 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?

Mr. DeFeo argues that MAWC failed to provide notice of his right to make an informal complaint, as required by Commission Rule 20 CSR 4240- 13.045(9). That rule requires the utility to give the customer notice of his or her right to file an informal

complaint with the Commission if it does not resolve the dispute to the satisfaction of the customer.

Tracie Figueroa, MAWC's Business Service Specialist for Customer Experience, testified that MAWC's established procedure is to refer customers to its customer service organization, where it is then referred to the Account Resolution Team. The evidence also shows that if the Account Resolution Team cannot resolve the matter, a letter informing the customer of his right to an informal complaint with the Commission is sent to the customer.

By the letter, dated May 22, 2020, Mr. DeFeo was directed to contact a MAWC customer service representative if his complaint was not resolved to his satisfaction. However, Mr. DeFeo did not respond to the May 22, 2020, letter and did not contact MAWC customer service before filing his informal complaint with the Commission. Mr. DeFeo admits that he had previously received a letter from MAWC informing him of his right to file a complaint with the Commission in 2019 in a previous matter. Mr. DeFeo stated that he contacted the Commission to file an informal complaint in the current case based on knowledge gained from that 2019 letter.

It is apparent that a process for giving the required notice exists, and that MAWC followed that process in this case. Mr. DeFeo simply did not follow that process to its end, so he was not issued the notice. It is unreasonable to expect MAWC to anticipate when a customer may depart from the conflict resolution process before he has been referred to MAWC's customer service department. Mr. DeFeo has not shown that MAWC has violated Commission Rule 20 CSR 4240-13.045(9).

Issue 3 – Did the PSC representative handling the informal complaint err by refusing to consider actual evidence of 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 err by failing to inform the Customer of his right to file a formal complaint?

Mr. DeFeo also claims that Staff violated Commission Rule 20 CSR 4240-13.070(4) and (4)(B), by failing to advise him of his right to file an informal complaint and a formal complaint with the Commission. Staff has no legal existence apart from the Commission itself and is not a proper respondent in this matter. Section 386.390.1, RSMo., authorizes complaints against “any corporation, person or public utility.” The Commission Staff is not any of those things and Mr. DeFeo’s complaint against the Staff is therefore not authorized and cannot be entertained.

Issue 4 – Did MAWC’s Notice of Satisfaction filed on July 13, 2021, and the actions described therein, satisfy the Complaint?

MAWC filed a notice of satisfaction on July 13, 2021, explaining that it credited Mr. DeFeo \$250 to satisfy the issues in this matter. On November 3, 2021, Staff took up the matter in Staff’s Motion to Dismiss, arguing, among other things, that the payment rendered the matter moot because if judgment was rendered it would not have any practical effect upon any existing controversy.

Section 386.390.1, RSMo, provides that a complaint may be made by any person regarding any act or thing done or omitted to be done by any public utility in violation, or claimed to be in violation, of any provision of law, promulgated rule, utility tariff, or any order or decision of the Commission. Additionally, Section 386.390.3, RSMo, provides that the Commission is not required to dismiss any complaint because of the absence of direct damage to the complainant. Furthermore, the Commission has continuing

jurisdiction over public utilities regarding violations of law. As such, Mr. DeFeo is a proper party in this matter so long as he has a justiciable issue that the Commission may address. In this case, Mr. DeFeo alleged violations of Commission rules regarding improper billing procedures and failure to provide notice of his right to appeal, alleging fact patterns for the Commission to evaluate to determine whether a violation has occurred. This is anticipated and authorized in the Commission's statutory scheme. Moreover, and more importantly, the Commission has denied all of Mr. DeFeo's claims, and the motion to dismiss is therefore moot.

Mr. DeFeo has failed to produce evidence sufficient to satisfy his burden to demonstrate that MAWC has violated any statute, rule, or tariff provision. Therefore, the Commission need not address any remedies.

THE COMMISSION ORDERS THAT:

1. Mr. DeFeo's complaint is denied.
2. MAWC's motion to dismiss is denied as moot.

BY THE COMMISSION

Morris Woodruff
Secretary

[voting notation]

Keeling, Regulatory Law Judge


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission,
at Jefferson City, Missouri, this 28th day of February, 2022.





Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

February 28, 2022

File/Case No. WC-2021-0075

**Missouri Public Service
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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.