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

Willie J. Harris, Jr.,)	
)	
Complainant,)	
)	
v.)	<u>File No. WC-2021-0129</u>
)	
Missouri-American Water Company,)	
)	
Respondent.)	

POST-HEARING BRIEF OF STAFF

Respectfully Submitted,

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 v.)
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 Missouri-American Water Company,)
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File No. WC-2021-0129

POST-HEARING BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, through counsel, and files its Post-Hearing Brief.

BACKGROUND

** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. **5 Family members

come by to pick up mail, cut the grass, and generally look after the home.⁶

¹ Ex. 1, Complaint, P. 2.
² Ex. 1, Complaint, P. 1.
³ Ex. 101, Report of the Staff, P. 2; Tr. 99: 24 – 100: 1; Tr. 104: 24 – 106: 2.
⁴ Ex. 1, Complaint, P. 1.
⁵ Ex. 1, Complaint, P. 1.
⁶ Tr. 204: 15 – 25; Tr. 205: 1.

Mr. Harris's water meter is located in his home's basement, and a wire runs from the meter to a touchpad outside his home.⁷ To take a reading, a technician must physically touch the touchpad with a handheld reader, which registers the reading of the meter inside the home.⁸ The meter does not have any Advanced Metering Infrastructure (AMI) attached.⁹ Mr. Harris and MAWC were unable to coordinate a time to upgrade the existing meter. Mr. Harris's meter was not tested during Staff's investigation, and MAWC has not tested or repaired the meter since it was installed in 2009. Mr. Harris never requested meter testing.¹⁰

Mr. Harris's water usage reflects sporadic use. His quarterly billings show usage consistently between zero and five units per quarter, with two recent exceptions. The first was for usage during the summer of 2019. ** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **12

MAWC informed Mr. Harris about unusual spikes in his water usage and attempted to help him discover the source(s) of the spikes. ** [REDACTED]

[REDACTED]

⁷ Ex. 307, Stipulation of Undisputed Facts, ¶ 11.

⁸ Ex. 307, Stipulation of Undisputed Facts, ¶ 11.

⁹ Ex. 307, Stipulation of Undisputed Facts, ¶ 11.

¹⁰ Tr. 162: 13 – 15.

¹¹ Ex. 103, Billing Statements, P. 27 – 30.

¹² Ex. 103, Billing Statements, P. 3 – 6.

[REDACTED]

[REDACTED] 13

[REDACTED]

[REDACTED]

[REDACTED] 14

[REDACTED], 15

[REDACTED]

[REDACTED] ** 16

Although Mr. Harris lives out of town, he knew or should have known about his spike in usage and MAWC’s letters to him. Mr. Harris and his family members testified at the hearing that someone goes to his house about every week to pick up the mail and notices and then alerts him about items requiring attention.¹⁷ Therefore, Mr. Harris should have known at the latest by mid-August of his \$1,865.64 water bill.

** [REDACTED]

[REDACTED]

[REDACTED] ** 18 During this call a service order was established for September 27, 2019. However, on September 23 Mr. Harris rescheduled the service order for October 18.¹⁹

¹³ Ex. 203, August 2019, November 2019 Letters, Discontinuance Notices, P. 1.
¹⁴ Ex. 203, August 2019, November 2019 Letters, Discontinuance Notices, P. 2.
¹⁵ ** [REDACTED] ** Ex. 200, Affidavit of Tracie Affidavit of Tracie Figueroa, ¶ 6.
¹⁶ Ex. 200, Affidavit of Tracie Affidavit of Tracie Figueroa, ¶ 6.
¹⁷ Tr. 139: 9 – 18.
¹⁸ Ex. 112, Data Request No. 3 and Response, P. 11; Tr. 399: 18 – 400: 18; Tr. 427: 24 – 428: 5.
¹⁹ Tr. 400: 16 – 401: 2.

A MAWC representative met Mr. Harris at his house on October 18 and according to MAWC's notes, Mr. Harris was upset and accused MAWC of fabricating readings.²⁰

In addition to making Mr. Harris aware of his usage and trying to help him discover the issue, MAWC attempted to accommodate him by giving him a large customer courtesy credit. ** [REDACTED]

[REDACTED] **²¹ and applied a one-time courtesy adjustment of \$1,822.19 to Mr. Harris's account in November 2019, which at that time had a balance of \$1,929.94.²² MAWC based this adjustment on Mr. Harris's usage during the same quarter the previous summer.²³ After the adjustment, Mr. Harris's account balance was \$107.75.²⁴ The parties stipulated that this credit was correctly calculated and applied.²⁵ Nevertheless, Mr. Harris refuses to make any payment on his account, even for the amount he agrees is correct²⁶ and the monthly service charges.²⁷

** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁰ Tr. 414: 12 – 22.

²¹ Ex. 203, August 2019, November 2019 Letters, Discontinuance Notices, P. 8.

²² Ex. 307, Stipulation of Undisputed Facts, ¶ 6.

²³ Ex. 307, Stipulation of Undisputed Facts, ¶ 6.

²⁴ Ex. 307, Stipulation of Undisputed Facts, ¶ 6.

²⁵ Ex. 307, Stipulation of Undisputed Facts, ¶ 6.

²⁶ Ex. 307, Stipulation of Undisputed Facts, ¶ 6.

²⁷ Tr. 60: 19 – 22.

²⁸ Ex. 1, Complaint, P. 2.

[REDACTED] .²⁹ [REDACTED]

[REDACTED]³⁰ [REDACTED]

[REDACTED]

[REDACTED] .^{** 31}

On November 4, 2020, the Commission ordered Mr. Harris to file a statement of the amount at issue by November 20, 2020.^{32 **} [REDACTED]

[REDACTED]

[REDACTED]^{.33} The Commission designated Mr. Harris's complaint as a small formal complaint on March 16, 2021, finding that the amount at issue is the amount due on Mr. Harris's account, which is less than \$800.³⁴

“ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] .^{** 35}

Staff filed its *Staff Recommendation* on February 4, 2021. ^{**} [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁹ Response to Staff Report on February 4, 2021, P. 2.

³⁰ Ex. 1, Complaint, P. 2.

³¹ Ex. 1, Complaint, P. 2.

³² Notice of Complaint and Order Setting Time for Answer, Directing Filing by Complainant, and Directing Staff Investigation and Report, P. 3.

³³ Response to Order, P. 2.

³⁴ Notice of Designation as Small Formal Complaint and Extension for Good Cause, P. 2.

³⁵ Answer to Complaint and Motion to Dismiss, ¶ 8.

[REDACTED]³⁶ [REDACTED]

[REDACTED]³⁷ [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. ** 38

An evidentiary hearing in this matter was held on May 4 and May 5, 2021. Mr. Harris presented five witnesses, including himself. Regarding the age of his meter, Mr. Harris claimed that MAWC fabricated the meter replacement documentation, and it did not actually replace his meter in 2009.³⁹ Mr. Harris claimed that he contacted MAWC by phone when he received the notice of the high bill.⁴⁰ Mr. Harris said he received a picture of the disconnection notice from Cicely Tucker, he believes on September 30, 2020.⁴¹ Mr. Harris admitted that MAWC credited his account over \$1,800,⁴² but MAWC did this only because he contacted a TV station regarding the issue.⁴³ Mr. Harris alleged that at the time of both high water usages he did not use that much water, and he stopped paying his bill because he no longer trusted MAWC to read his meter.⁴⁴

Mr. Harris's second witness was Cicely Tucker. Ms. Tucker is Mr. Harris's step-daughter and is married to Mr. Harris's nephew, Andre Tucker.⁴⁵ Ms. Tucker testified

³⁶ Ex. 101, Report of the Staff, P. 7.

³⁷ Ex. 101, Report of the Staff, P. 9.

³⁸ Ex. 101, Report of the Staff, P. 1.

³⁹ Tr. 51: 1 – 14.

⁴⁰ Tr. 52: 10 – 17.

⁴¹ Tr. 55: 3 – 15.

⁴² Tr. 60: 11 – 15.

⁴³ Tr. 52: 10 – 17.

⁴⁴ Tr. 61: 1 – 5; Tr. 75: 11 – 23; Tr. 163: 16 – 25; Tr. 164: 1 – 12.

⁴⁵ Tr. 203: 16 – 24.

that she visits Mr. Harris's house three to four times per month.⁴⁶ She checks the mail, walks around the outside of the house, checks the inside including the toilets and refrigerator, waters plants, and usually calls Mr. or Ms. Harris while she is there.⁴⁷ She stated that she would contact the Harrises if she saw a water leak.⁴⁸ She turns the water to the toilets off, although it's possible that sometimes she forgets.⁴⁹ She also testified that she calls or texts the Harrises about bills and other notices at their home to make sure they are aware of them and Mr. Harris normally pays them online.⁵⁰

Mr. Harris's third witness was Andre Tucker, Mr. Harris's nephew and husband of Cicely Tucker.⁵¹ Mr. Tucker testified that he also visits the house on occasion to check the mail, check the exterior and interior of the house, which includes checking the sinks, toilets, thermostat, furnace, and water heater.⁵² He testified that he generally visits the house twice a month during the summer, and once a month during the winter.⁵³ Some trips he accompanies his wife and some trips he goes by himself when his wife has to work.⁵⁴ He stated that he never saw signs of a leak during his exterior and interior checks, and that was something he checks for.⁵⁵

Mr. Harris's fourth witness was Antonio Bell, who is Ms. Tucker's brother.⁵⁶ Mr. Bell testified that he does not go over to the house routinely but occasionally when

⁴⁶ Tr. 205: 2 – 4.

⁴⁷ Tr. 206: 14 – 25; Tr. 207: 1 – 20.

⁴⁸ Tr. 209: 10 – 17.

⁴⁹ Tr. 214: 20 – 22; Tr. 219: 24 – 221: 6.

⁵⁰ Tr. 209: 25 – 210: 4; Tr. 221: 16 – 222: 3.

⁵¹ Tr. 228: 11 – 17.

⁵² Tr. 229: 17 – 23.

⁵³ Tr. 230: 1 – 5.

⁵⁴ Tr. 230: 1 – 5.

⁵⁵ Tr. 230: 10 – 25.

⁵⁶ Tr. 239: 7 – 8.

Mr. Harris asks him.⁵⁷ Mr. Harris asked him to check out the house after Mr. Harris received the high water bill.⁵⁸ Mr. Bell checked for leaks in the yard, near the street, and in the house, including the basement.⁵⁹ He installed the closet in the basement where the water meter was located; he testified that he was unsure when he installed the closet, but thought it was when he was living in Arkansas, which was between 2005 and 2008.⁶⁰ He testified that Ms. Harris was the only one at the house when he installed the closet.⁶¹ The closet has a cutout in the back so the water meter is accessible.⁶²

Mr. Harris's last witness was Bonita Harris, his wife, who testified that the water meter is inside a closet in the basement.⁶³ She also stated there have not been any leaks at the house because she has her son, daughter, or son-in-law check on things at the house, so if there was a problem she would know.⁶⁴ Mrs. Harris stated that she could not remember them being in St. Louis around Thanksgiving, so could not remember being in St. Louis in November 2009 when MAWC said it replaced their meter.⁶⁵ Mrs. Harris also stated that she only mentioned the water issue to the neighbor across the street, but otherwise she had not spoken to any neighbors about the high water usage.⁶⁶

Staff called two witnesses during the evidentiary hearing. Staff's first witness was Deborah Bernsen, a Senior Research Data Analyst in the Customer Experience

⁵⁷ Tr. 239: 20 – 25; Tr. 240: 1.

⁵⁸ Tr. 239: 4 – 14.

⁵⁹ Tr. 240: 10 – 16; Tr. 241: 4 – 25.

⁶⁰ Tr. 247: 17 – 25; Tr. 248: 1 – 5.

⁶¹ Tr. 243: 11 – 16.

⁶² Tr. 244: 22 – 24.

⁶³ Tr. 265: 15 – 17.

⁶⁴ Tr. 265: 18 – 24.

⁶⁵ Tr. 268: 5 – 25.

⁶⁶ Tr. 269: 18 – 25.

Department at the Missouri Public Service Commission.⁶⁷ Ms. Bernsen was a contributor to Staff's report. Ms. Bernsen explained that the meter can be a source of a problem, but she has witnessed many meter tests at test sites and has never seen one fail, and that meter failure seems very infrequent.⁶⁸ Ms. Bernsen explained that Staff did not visit Mr. Harris's home because of the pandemic.⁶⁹ She explained that MAWC applied a courtesy adjustment to Mr. Harris's account, although its tariff did not require it to do so.⁷⁰ Ms. Bernsen stated that in order for the meter to be tested, Mr. Harris would have had to arrange for someone to enter the home.⁷¹ Ms. Bernsen testified that according to MAWC's customer service notes, Mr. Harris first contacted MAWC after his notice of high usage on September 20, 2019.⁷²

Staff's second witness was David Roos, an associate engineer with the Missouri Public Service Commission⁷³ and contributor to Staff's report. Mr. Roos testified that if meters malfunction, they typically run slowly in the customer's favor, and it is highly improbable for a malfunctioning meter to correct itself.⁷⁴ He testified that based on the five years of data Staff obtained about Mr. Harris's meter, he determined that the meter read accurately.⁷⁵ Mr. Roos testified that it appears that one of Mr. Harris's neighbors has a swimming pool, so there is a possibility that Mr. Harris's water was used to not only to fill the pool, but also to clean/refill it.⁷⁶

⁶⁷ Tr. 272: 22 – 25.

⁶⁸ Tr. 288: 5 – 16.

⁶⁹ Tr. 289: 11 – 24.

⁷⁰ Tr. 291: 11 – 292: 5.

⁷¹ Tr. 305: 9 – 12.

⁷² Tr. 327: 6 – 23.

⁷³ Tr. 334: 13 – 15.

⁷⁴ Tr. 342: 21 – 343: 7; Tr. 354: 6 – 355: 21.

⁷⁵ Tr. 254: 8 - 18.

⁷⁶ Tr. 339: 3 - 9; Tr. 344: 20 – 345: 6.

MAWC's single witness was Tracie Figueroa, a MAWC Business Service Specialist. Ms. Figueroa introduced a service order and notes for a November 2009 meter replacement at Mr. Harris's house. ** [REDACTED]

[REDACTED]. ** 77 Ms. Figueroa testified that according to the MAWC customer service notes, Mr. Harris first contacted MAWC about his high bills on September 20, 2019,⁷⁸ which was about six weeks after ** [REDACTED]

[REDACTED]. ** 79 During this September 20 call, a service order was established for September 27, but Mr. Harris later rescheduled the service order for October 18.⁸⁰

Ms. Figueroa further testified based on her witnessing of meter tests, meters tend to slow down over time due to build up in the mechanism, benefiting the customer.⁸¹ Ms. Figueroa also stated that she has never seen a meter malfunction and then correct itself.⁸² Ms. Figueroa further testified that a faucet trickle leak can create a high water bill.⁸³ She explained that although water theft may be an issue,⁸⁴ toilet leaks are the largest cause of unexplained high water bills. Toilet leaks can be quiet.⁸⁵ She recounted a customer who had high water usage of 151,000 and 278,000 gallons of water in succeeding quarters due to a toilet leak.⁸⁶ Ms. Figueroa stated that a newer toilet with a leak can use up to 4,000 gallons of water a day, while an older toilet can use two to three

⁷⁷ Ex. 204, November 2009 Documents; Tr. 394: 10 – 396: 6.

⁷⁸ Tr. 399: 18 – 400: 18; Tr. 427: 24 – 428: 5.

⁷⁹ Ex. 203, August 2019, November 2019 Letters, Discontinuance Notices, P. 2 – 3.

⁸⁰ Tr. 400: 16 – 401: 2.

⁸¹ Tr. 401: 10 – 402: 6.

⁸² Tr. 402: 7 – 19.

⁸³ Tr. 406: 9 – 12.

⁸⁴ Tr. 406: 9 – 12.

⁸⁵ Tr. 404: 1 – 4; Tr. 405: 4 – 22; Tr. 425: 16 – 19.

⁸⁶ Tr. 404: 7 – 22.

times that amount.⁸⁷ Mr. Harris and his family members would not see pooling water from a toilet leak, because it would go down the drain.⁸⁸

Ms. Figueroa stated that MAWC first contacted Mr. Harris about installing an AMI on January 9, 2018,⁸⁹ and sent him a second letter on May 31, 2019.⁹⁰ If Mr. Harris had an AMI on his meter, MAWC could determine when the extra water was being used, which would help pinpoint the leak source.⁹¹ An additional advantage to having an AMI is that customers with AMIs receive monthly billing, which alerts them earlier about leaks.⁹² Ms. Figueroa recommended that Mr. Harris allow MAWC to replace his meter, install an AMI, and partner with MAWC to investigate possible leak sources.⁹³

BURDEN OF PROOF

Mr. Harris carries the burden of proof to show that MAWC violated a law, a Commission regulation, or MAWC's tariff. The Commission stated in *Harter v. Laclede Gas Co.* that "where a complainant alleges that a public utility has violated the law... the burden of proof lies with the Complainant to show ... [the public utility] violated the law or a Commission rule or order."⁹⁴ Mr. Harter was a pro se litigant who alleged that Laclede violated Commission rules regarding billing.

⁸⁷ Tr. 407: 16 – 21.

⁸⁸ Tr. 408: 9 – 17; Tr. 426: 14 – 21.

⁸⁹ Ex. 205, January 2018, May 2019 Letters, P. 1; Tr. 408: 18 – 25.

⁹⁰ Ex. 205, January 2018, May 2019 Letters, P. 2; Tr. 409: 1 – 9; Tr. 426: 22 – 427: 17.

⁹¹ Tr. 407: 22 – 408: 4; Tr. 409: 11 – 410: 4; Tr. 410: 20 – 411: 22.

⁹² Tr. 410: 5 – 19.

⁹³ Tr. 417: 1 – 418: 8.

⁹⁴ Report and Order, Harter v. Laclede Gas Co., GC-2010-0217, P. 7 (Nov 3, 2010) (citing State ex rel. GS Technologies Operating Co., Inc. v. Public Service Commission, 116 S.W.3d 680, 693 (Mo. App. 2003).

Pro se litigants are held to the same standards as attorneys and must satisfy their burden of proof.⁹⁵ Pro se litigants are not entitled to any leniency and are treated the same as if they were represented by counsel.⁹⁶ “Judicial impartiality, judicial economy, and fairness to all parties preclude courts from granting pro se litigants preferential treatment.”⁹⁷ The Western District Court of Appeals held in *Portwood-Hurt v. Hurt* that a lay person appearing pro se should be held to the same standard as counsel, and stated that a lay person’s ignorance of the law did not give merit to a claim requiring the court to provide a pro se litigant with findings of facts and conclusions of law.⁹⁸ In *Tatum v. Tatum*, the court required pro se litigants to comply with all Supreme Court rules, including rules setting out the requirements for appellate briefs.⁹⁹ Pro se litigants are subject to the same procedural rules as a party represented by counsel.¹⁰⁰ As a pro se litigant, Mr. Harris is not entitled to preferential treatment. He is held to the same standards that he would be held to if he was represented by an attorney. Mr. Harris must satisfy his burden of proof to prevail in this case.

ISSUES

On April 19, 2021, the parties submitted a stipulation agreeing to these four issues for hearing:

1. Did MAWC fail to replace Mr. Harris’s meter since 1987, in violation of statute, tariff, or rule?

⁹⁵ Pruett v. Pruett, 280 S.W.3d 749, 751 (Mo. App. W.D. 2009).

⁹⁶ Morfin v. Werdehausen, 448 S.W.3d 343, 349 (Mo. App. S.D. 2014).

⁹⁷ *Id.*

⁹⁸ Portwood-Hurt v. Hurt, 988 S.W.2d 613, 620-21 (Mo. App. W.D. 1999).

⁹⁹ Tatum v. Tatum, 577 S.W.3d 146, 149 (Mo. App. E.D. 2019).

¹⁰⁰ Porter v. Santander Consumer USA, Inc., 590 S.W.3d 356, 357 (Mo. App. E.D. 2019).

2. Did MAWC estimated Mr. Harris's meter readings rather than take actual reads, in violation of statute, tariff, or rule?
3. Did MAWC incorrectly read Mr. Harris's meter, in violation of statute, tariff, or rule?
4. If MAWC violated any statute, tariff, or rule, should the remedy be a bill credit?

DISCUSSION

1. Mr. Harris introduced insufficient evidence that his meter has not been replaced since 1987.

There is no water meter replacement schedule in Missouri law, Commission rules, or MAWC's tariff.¹⁰¹ ** [REDACTED]

[REDACTED].¹⁰² Mr. Harris's meter is located in his basement. He states that he would know if MAWC replaced it in 2009, because he would have let someone in his house to accomplish the replacement.¹⁰³ Mr. and Ms. Harris have lived primarily in Arkansas since 2005. Ms. Harris does not remember being in St. Louis during the Thanksgiving season, which is when in 2009 MAWC records show it replaced their meter.¹⁰⁴

¹⁰¹ MAWC is required to have a meter testing program, to be in compliance with 20 C.S.R. 4240-10.030(38). MAWC may satisfy the requirements of this rule by (1) obtaining a Commission order which allows it to test in a matter other than described in the rule, (2) testing in compliance with subsections A through D, or (3) demonstrating that the meter complies with 20 C.S.R. 4240-10.030(37). Mr. Harris has not alleged violation of the meter testing requirement.

¹⁰² Response to Staff Report, P. 1, Tr. 165: 18 – 21.

¹⁰³ Mr. Harris presented evidence about a closet that Antonio Bell built over his meter. He stated at the hearing that MAWC could replace the meter even with the closet. Tr. 168: 6 – 8. Pictures of the closet show a section cut away to accommodate the meter. Staff is unsure about the significance of this closet.

¹⁰⁴ Tr. 268: 5 – 25.

It is possible that the Harrises' memories are faulty, and they do not remember an event from over eleven years ago. ** [REDACTED]

[REDACTED] 105 [REDACTED]

[REDACTED] ** 106 [REDACTED]

MAWC attempted since January 2018 to work with Mr. Harris on upgrading his meter. MAWC sent letters to Mr. Harris on January 9, 2018,¹⁰⁷ and May 31, 2019,¹⁰⁸ requesting an opportunity to schedule the meter upgrade. However, MAWC and Mr. Harris could not set up a time compatible with Mr. Harris's schedule, and the upgrade was not done.¹⁰⁹ It is ironic that Mr. Harris would not allow MAWC or its contractor into his house for a meter upgrade at the same time he faults MAWC for allegedly not changing his meter. If MAWC and Mr. Harris could not set up a compatible time to schedule a meter upgrade, it is unlikely that MAWC and Mr. Harris could set up a compatible time to schedule a meter replacement.

Additionally, Mr. Harris fails to show how any MAWC violation regarding the replacement of his meter relates to his high water usage. Mr. Harris's case theory is that MAWC fabricated his bills in retaliation for him not letting MAWC or its contractor upgrade his meter; whether MAWC changed his meter in 2009 or 1987 or last week is irrelevant to his theory.

¹⁰⁵ Ex. 101, Report of the Staff, P. 21

¹⁰⁶ Ex. 101, Report of the Staff, P. 21.

¹⁰⁷ Ex. 205, January 2018, May 2019 Letters, P. 1; Tr. 408: 18 – 25.

¹⁰⁸ Ex. 205, January 2018, May 2019 Letters, P. 2; Tr. 409: 1 – 9; Tr. 426: 22 – 427: 17.

¹⁰⁹ Ex. 307, Stipulation of Undisputed Facts, ¶ 14.

2. Mr. Harris introduced no credible evidence that MAWC estimated his meter readings.

Commission rule 20 C.S.R. 4240-13.020 states that the utility shall render bills based on actual readings,¹¹⁰ with exceptions, none of which are relevant here.

Mr. Harris's water meter is in his basement. There is no AMI attached to Mr. Harris's meter. A wire runs from the meter to a touchpad outside the home. Because he does not have an AMI, MAWC meter readers must touch the touchpad with a handheld reader in order to get a meter reading.¹¹¹ ** [REDACTED]

[REDACTED] ** 112

** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹¹⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ** 115 Mr. Harris's statement that

a meter reader has not been to his house to read the meter is based on speculation,

¹¹⁰ 20 C.S.R. 4240-13.020(2).

¹¹¹ Ex. 307, Stipulation of Undisputed Facts, ¶ 11.

¹¹² Ex. 200, Affidavit of Tracie Figueroa, ¶ 7.

¹¹³ Ex. 200, Affidavit of Tracie Figueroa, ¶ 8.

¹¹⁴ Ex. 200, Affidavit of Tracie Figueroa, ¶ 8.

¹¹⁵ Ex. 200, Affidavit of Tracie Figueroa, ¶ 8.

because he primarily lives in Arkansas and has no way of knowing whether the meter readers stopped by while no one was home at his St. Louis residence.

Mr. Harris presented no credible evidence that the readings were estimated and only asserts so. MAWC presented evidence that the meter was not estimated but read by a meter reader. Meter readings were shown to be actual readings by MAWC because MAWC presented evidence showing that the meter number on the bills matched Mr. Harris's meter number. And again, similar to how Mr. Harris fails to show how any MAWC violation regarding his meter replacement relates to his high water usage, he fails to show how any violation regarding estimated reads relates to his theory that MAWC maliciously fabricated his bills.

3. Mr. Harris presented no credible evidence that MAWC incorrectly read his meter.

Mr. Harris only speculates that his meter readings were inaccurate and has no concrete evidence that his meter was read inaccurately or that a meter reader technician did not come to his house to read his meter. Mr. Harris's meter read 583 on August 1, 2019, and it read 126 on May 2, 2019.¹¹⁶ Mr. Harris was initially charged for 457 units, which was the difference in meter readings during that period.¹¹⁷ Ms. Figueroa testified that a technician went and read Mr. Harris's meter on August 1, 2019, and the meter read 583 units, and a technician went back on August 5, 2019, to confirm the reading and again read 583 units.¹¹⁸ The meter reading was not estimated but actually read by a technician.

¹¹⁶ Ex. 200, Affidavit of Tracie Figueroa, ¶ 14

¹¹⁷ Ex. 200, Affidavit of Tracie Figueroa, ¶ 14.

¹¹⁸ Tr. 440: 10 – 16.

Rather than trying to find the source(s) of his high usage, Mr. Harris repeatedly accuses MAWC of producing falsified bills, and his only evidence is his usage spikes.¹¹⁹ He believes that MAWC's motive for producing falsified bills is to retaliate because MAWC's contractor – which is not even MAWC – and he were unable to establish a mutually agreeable time to upgrade his water meter:

Q. So is it accurate to say that because of the magnitude of the water here you just really are not willing to entertain any other solution, or any possible causes of the situation because it's so much water; is that right?

A. That's evident.

Q. Okay.

A. There's too much water would leak and nobody knew it and my niece is out there every week. No, there's no other solution.

Q. Some of the documents that you filed in this case indicate that you think that the Company inflated your bills in retaliation because you wouldn't schedule with the Company for some work that they were going to do involving your meter?

A. That's exactly right. I never -- For 30 years I paid these people. I had no problem with them. I never questioned them. Then all of a sudden when they can't get them compatible, then I come up with this big water bill? What do you think?¹²⁰

Mr. Harris's certainty that MAWC has singled him out and produced false bills for his address¹²¹ has seemingly caused him to refuse to cooperate with MAWC to determine

¹¹⁹ Tr. 103: 8 – 11; Tr. 162: 21 – 163: 10; Tr. 165: 12 – 18; Tr. 170: 25 – 171: 4.

¹²⁰ Tr. 164:3 – 22.

¹²¹ Mr. Harris and the judge had the following discussion at the evidentiary hearing:

Q. ...So what did you do after you learned that you had this very high bill from Missouri-American in August of 2019 to try to figure out what caused that bill, sir?

A. Well, I knew that the bill that they said that I used too much water, there was no truth in it whatsoever period.

Q. So you've made it clear today that you do not believe that it's truthful and that you've indicated that you believe the Company deliberately lied about this --

A. -- should have been.

Q. And you've said that. What I'm actually asking you about is what you have done to figure out the possible causes of the high bill.

A. I know exactly what they did and I think I explained that to you.

Q. So I didn't ask about your theory. I'm asking you about what efforts you made to either rule out particular causes of this high bill or to determine exactly what caused it. So can you tell me what you did?

A. What do you mean determined what I did about a high water bill?

the source(s) of his high billing and facilitate installation of an AMI in order to better monitor his usage. Mr. Harris talked with his neighbor across the street about his water bills,¹²² but does not appear to have taken other steps to determine the source for the two spikes in his water bills. Mr. Harris talked to none of his other neighbors.¹²³ Mr. Harris never contacted a plumber.¹²⁴ He did not even talk with family members who watch over his house about possible reasons for his high water bills.¹²⁵ He did not request that MAWC test his meter because from his point of view, “Why should I when I know what they did.”¹²⁶

Not only has Mr. Harris not proactively sought an explanation for his high usage, he did not contact MAWC until his water was about to be disconnected for nonpayment. Mr. Harris told the Commission that he contacted MAWC immediately by telephone after he heard about the first high billing,¹²⁷ but the record shows otherwise. Ms. Bernsen and Ms. Figueroa testified that according to the customer service notes, Mr. Harris first

Tr. 152: 1 – 24.

¹²² Tr. 149: 9 – 15.

¹²³ Tr. 153: 15 – 154: 2; Tr. 156: 14 – 17; Tr. 157: 3 – 6.

¹²⁴ Tr. 154: 18 – 22; Tr. 157: 13 – 16.

¹²⁵ Tr. 153: 4 – 14.

¹²⁶ Tr. 162: 13 – 15.

¹²⁷ Mr. Harris and the judge discussed what Mr. Harris did after he received the first high usage bill:

Q. That bill was issued in early August. When did you learn of that bill?

A. Right away [Cicely] called me.

Q. So what's right away?

A. Well, as soon as she opened the bill and seen it, she called me.

Q. Okay. And when did you first try to contact the Company about that bill?

A. Right after I got it.

Q. Okay. And did you remember the attempt? How did you try to reach them? What method did you use?

A. Phone.

Q. So you called the Company up on the phone about that bill?

A. Right.

Tr. 142: 11 – 25.

contacted MAWC about his high bills on September 20, 2019,¹²⁸ which was about six weeks after MAWC sent him letters about his high usage.

Furthermore, there are other, plausible explanations for Mr. Harris's high usage. An invisible leak where there is no sound and the water goes down the drain is a possibility, as Ms. Figueroa described. She testified that a newer toilet with a leak can use up to 4,000 gallons of water a day, while an older toilet can leak two to three times that amount.¹²⁹ ** [REDACTED]

[REDACTED]

[REDACTED] **131

Mr. Harris testified that his toilet dates back to at least 2005,¹³² so it is possible his toilet is an older toilet that could have leaked even more.

Theft is another possibility. Mr. Harris stated that he distrusts his neighbors – he removes the handle from his outside water faucet on the back of his house,¹³³ because he is concerned someone might hook up a hose without his permission.¹³⁴ With the exception of possibly one neighbor's first name, he does not know his adjacent neighbors' names or contact information.¹³⁵ Mr. Harris testified that although he knows how to turn

¹²⁸ Tr. 399: 18 – 400: 2; Tr. 427: 24 – 428: 5.

¹²⁹ Tr. 407: 16 – 21.

¹³⁰ Ex. 102, David Roos' Spreadsheets, P. 2.

¹³¹ Ex. 102, David Roos' Spreadsheets, P. 2.

¹³² Tr. 168: 11 – 16.

¹³³ Tr. 106: 8 – 18; Tr. 137: 22 – 138:3; Tr. 149: 21 – 150: 11; Tr. 188: 7 – 13.

Mr. Harris and the judge had the following dialogue at the hearing:

Q. You told us that you remove the handles from the outdoor water spickets [sic].

Why do you do that?

A. Well, I do that because I've been doing it for years.

Q. And the reason that you've been doing it for years is?

A. I don't trust people.

Tr. 137: 22 – 138: 3.

¹³⁴ Tr. 108: 25 – 109: 3.

¹³⁵ Tr. 146: 22 – 148: 14.

off the main water shut off valve, he does not.¹³⁶ Therefore, water is always available and could be taken by twisting the outdoor valve with a pair of pliers.¹³⁷ Evidence was presented at the hearing regarding a swimming pool in the backyard of a neighbor two doors away from Mr. Harris's house.¹³⁸

Mr. Harris is certain that MAWC maliciously fabricated his bills out of spite. This is unrelated to whether MAWC read his meter incorrectly. All in all, Mr. Harris has not satisfied his burden of producing evidence that MAWC read his meter incorrectly.

4. Mr. Harris has not satisfied his burden of proof to show violation of statute, tariff, or rule and therefore cannot receive a remedy for his claims.

Mr. Harris cannot receive a remedy, because he has not met his burden of proof showing that MAWC violated a law, Commission rule or its tariff. Mr. Harris has an outstanding balance on his bill of \$759.76 based on actual readings of his meter, and he must pay it before his service is restored.

CONCLUSION

MAWC and Mr. Harris are at an impasse. MAWC will not restore his water service without payment. Mr. Harris will not pay even the monthly customer service charge or charges he agrees are correct. He threatens to contact the news media and an attorney.¹³⁹ If the Commission grants Mr. Harris his requested relief and directs MAWC to credit his account and his water service is returned, Mr. Harris's water usage may climb again.¹⁴⁰ Mr. Harris aptly demonstrated that his mind is made up and that he is not

¹³⁶ Tr. 136: 14 – 137: 1.

¹³⁷ Tr. 108: 13 – 16.

¹³⁸ Tr. 195: 7 – 199: 4.

¹³⁹ Tr. 192: 22 – 193: 6. See also Mr. Harris's Response to Commission Order Directing Post-Hearing Briefs, filed June 8, 2021.

¹⁴⁰ Ms. Figueroa mentioned this as a concern. Tr. 419: 17 – 22.

interested in finding the source(s) of his high water usage. Mr. Harris will view another high usage bill as further evidence that MAWC is attempting to intimidate him, at this point more so because he filed this complaint. Unless Mr. Harris comes to terms with the fact that MAWC holds no grudges against him and has not singled him out amongst its 470,000 customers, this situation may be a stalemate.

Nevertheless, Mr. Harris requested that the Commission order MAWC to credit his account, and there is no basis for doing this, because MAWC did not violate the law, a Commission rule, or its tariff. Therefore, the Commission should deny Mr. Harris's request for relief.

WHEREFORE, Staff submits this Post-Hearing Brief for the Commission's consideration and information.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing has been emailed to counsel of record for MAWC and mailed by United States postal service, postage prepaid to Mr. Harris (206 Topaz Lane, Horseshoe Bend, AR 72512-3817) on this 11th day of June, 2021.

/s/ Karen E. Bretz