

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

Lou DeFeo,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. WC-2021-0075</u></b>
	)	
Missouri-American Water Company,	)	
	)	
Respondent.	)	

**Staff's Reply Brief**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Brief*, states herein as follows:

**INTRODUCTION**

***The Issues:***

This matter arises upon the several complaints of Mr. Lou DeFeo of Jefferson City, Missouri, Complainant, against both his water service provider, Missouri-American Water Company ("MAWC"), Respondent, and against the Commission Staff, as follows:

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 error 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?

4. Did the PSC representative handling the informal complaint error by failing to inform the Customer of his right to file a formal complaint? (Complainant realizes that the Respondent is not responsible for the actions of the PSC staff but believes that it is in the public interest to call the need for staff education to the attention of the Commission.)

The Company identified an additional issue, which is in the nature of an affirmative defense:

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

The Staff raised still another, threshold issue on November 3, 2021, by filing its *Motion to Dismiss*, questioning the Commission's jurisdiction to proceed:

6. Is Complainant seeking an unlawful advisory opinion in that he has already received the relief he sought in his Complaint?

### **ARGUMENT**

Staff moved to dismiss this case prior to hearing and Staff is still of the opinion that dismissal is not just the appropriate disposition, but the disposition required by law. This controversy is moot. Mr. DeFeo has already received, via a bill credit, the remedy he sought in his complaint. He has been unable to articulate any other remedy and, in any case, the remedies that the Commission is authorized to grant under the law are limited. Staff agreed in its *Initial Brief* that Mr. DeFeo had identified a rule violation by the Company. The Commission has the authority to direct its General Counsel to file

a complaint regarding that rule violation and to seek penalties therefor in Circuit Court. That is not, however, a remedy Mr. DeFeo has requested and it may be that Due Process prohibits it.

The scenario envisioned by Mr. DeFeo is that the meter at his residence inexplicably malfunctioned and measured the delivery of some 40,000 gallons of water that he claims he never received. The bill tendered to him by the Company, based upon the actual reading of this meter, was therefore, he contends, erroneous. The meter was tested and found to be accurate. Despite that finding, Mr. DeFeo asks the Commission to disregard the meter reading, although the law requires that he be billed according to the meter reading, and – what? He has already been made whole by a bill credit. There is nothing more to be done for him.

Mr. DeFeo relies upon the Commission's decision in a somewhat similar case in which the Commission relieved a consumer of responsibility for a bill in circumstances that suggested that a meter reading was in error. Mr. DeFeo seeks, it appears, to establish a principle by which a bill is to be based upon the totality of the circumstances, the meter reading being merely one of those circumstances. Such a principle would be contrary to law, in the form of the Company's tariff, and contrary to good public policy because every bill would thereby become subject to endless litigation. The rule is, and should be, that the customer must pay whatever the meter shows he owes, unless the meter is tested and found to be inaccurate. That is not the case here.

Mr. DeFeo has alleged that the Commission Staff is biased against consumers. In my 22 years at the Commission, I have found that, if anything, the opposite is true.

Staff generally portrays a professional skepticism towards the utilities it regulates. That is as it should be, since they are monopolistic, profit-driven enterprises. But in the area of billing and payment, the rules are clear and well-developed. According to those rules, Mr. DeFeo loses. By an act of grace, however, the Company has made Mr. DeFeo whole with a bill credit. Mr. DeFeo should be content with that.

### **CONCLUSION**

Mr. DeFeo has not shown that he was improperly billed because the bills in question were based upon the readings of a meter since tested and found to be accurate. While both the Company and Staff failed to apprise Mr. DeFeo of the next step available to him in seeking resolution of his complaints, he nonetheless took those next steps and so the failures in question amounted to harmless error. Finally, Mr. DeFeo has not shown any bias on the part of Staff or the Company, but rather that the applicable tariff was followed.

**WHEREFORE**, Staff prays that the Commission will dismiss this case as moot or, alternatively, determined each issue as Staff has here urged; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

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**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, on this **24<sup>th</sup> day of January, 2022.**

/s/ Kevin A. Thompson