

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

Willie J. Harris Jr.,

Complainant

v.

Missouri-American Water Company,

Respondent

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) **File No. WC-2021-0129**
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NOTICE OF RECOMMENDED REPORT AND ORDER

Issue Date: January 7, 2022

The Regulatory Law Judge is issuing the Recommended Report and Order attached. Pursuant to Commission Rule 20 CSR 4240-2.070(15)(H), the parties have ten days to file comments supporting or opposing this recommended order.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

John T. Clark, Senior Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 7th day of January, 2022.

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

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

RECOMMENDED REPORT AND ORDER

The Missouri Public Service Commission, having considered the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and the arguments of all of the parties have been considered by the Commission in making this decision. Any failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission did not consider relevant evidence, but indicates rather that omitted material is not dispositive of this decision.

Procedural History

On November 2, 2020, Willie J. Harris Jr. filed a complaint with the Commission against Missouri-American Water Company (MAWC). Mr. Harris alleges that MAWC (1) rendered erroneous bills and did not take actual meter readings in violation of Commission Rule 20 CSR 4240-13.020 and (2) has not changed his meter since 1987. Mr. Harris requests that his water service be reinstated at no charge, and without payment for services and account charges accrued from May 3, 2019 through September 29, 2020. Mr. Harris' complaint did not specify an amount in dispute, but the Commission

determined that the amount in dispute was less than \$800. Accordingly, this complaint is being addressed under the small formal complaint procedures contained in Commission Rule 20 CSR 4240-2.070(15).

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. Harris' complaint on December 11, 2020. The answer included a motion to dismiss the complaint for failure to state a claim to which the Commission could grant relief. MAWC's motion states that Mr. Harris' complaint does not cite a violation of statute, Commission regulation, or provision of Missouri-American's tariff. The Office of the Public Counsel (OPC) filed a pleading opposing MAWC's motion to dismiss, which pointed out that Mr. Harris did, in fact, cite a Commission Rule. Additionally, OPC says that even if a complainant does not cite to a particular law or tariff, residential customers should still have their cases heard when a complaint explains in practical terms the basis for the complaint. MAWC's motion to dismiss will be addressed in this Report and Order.

Staff filed a recommendation and memorandum detailing its investigation and analysis on February 4, 2021. Staff concluded that MAWC complied with its current approved tariff and Commission rules and regulations. Staff found no evidence explaining the high bill for the period of May 2, 2019 to August 1, 2019 or the high bill for the period of July 31, 2020 to September 29, 2020. Staff recommended that the Commission dismiss the complaint. Mr. Harris filed a response opposing Staff's recommendation. The Commission scheduled an evidentiary hearing for May 4, 2021.

Staff filed a list of issues for the Commission to determine on behalf of the parties, which set forth the following four issues for the Commission's determination:

1. Did MAWC fail to replace Mr. Harris' meter since 1987, in violation of statute, tariff, or rule?
2. Did MAWC estimate Mr. Harris' meter readings rather than take actual reads, in violation of statute, tariff, or rule?
3. Did MAWC incorrectly read Mr. Harris' meter, in violation of statute, tariff, or rule?
4. If MAWC violated any statute, tariff, or rule, should the remedy be a bill credit?

At the evidentiary hearing, the Commission heard the testimony of eight witnesses and received 35 exhibits onto the record. Tracie Figueroa, Business Service Specialist, testified for MAWC; and Debbie Bernsen, Customer Experience Analyst, and David Roos, Engineer, testified for Staff. Mr. Harris testified on his own behalf and offered the testimony of four additional witnesses: Bonita Harris, Cicely Tucker, Andre Tucker, and Anthony Bell.

Mr. Harris, Staff, and MAWC filed post-hearing briefs. On June 24, 2021, the case was deemed submitted for the Commission's determination pursuant to Commission Rule 20 CSR 4240-2.150(1), which provides that "[t]he 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. Harris' 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. Harris' 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

On April 12, 2021, Staff filed a Stipulation of Undisputed Facts on behalf of the parties. The Commission finds the undisputed facts in the stipulation to be conclusively established. Those undisputed facts are incorporated where necessary.

1. MAWC is a public utility under the jurisdiction of the Missouri Public Service Commission.¹

2. MAWC provides water service to about 470,000 customers in Missouri.²

4. Mr. Harris owns a residence in St. Louis that he purchased in 1990.³

5. Mr. Harris received residential water service at his St. Louis home from MAWC from 1990 until September 29, 2020.⁴

6. Mr. Harris purchased his Arkansas residence in 2005, and he and his wife have resided primarily in Arkansas since 2005.⁵

7. Mr. Harris continued water service to the St. Louis address because he periodically visits St. Louis and stays at the house.⁶

8. Mr. Harris generally visits the St. Louis residence for holidays, such as the 4th of July and Christmas, and also for funerals.⁷

¹ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

² Transcript, p.455.

³ Exhibit 1, Complaint.

⁴ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

⁵ Exhibit 1, Complaint.

⁶ Exhibit 101, Staff report.

⁷ Transcript, p. 115.

9. Mr. Harris is billed on a quarterly basis.⁸

10. Mr. Harris receives his account statements at his St. Louis address.⁹

Mr. Harris never requested that his home address be changed to Arkansas or that his billing statements be mailed to his Arkansas residence.¹⁰

11. Cicely Tucker, Mr. Harris' niece, gets Mr. Harris' account statements from his St. Louis residence and mails them to him in Arkansas.¹¹

12. Mr. Harris' St. Louis residence sits vacant most of the year.¹²

13. Ms. Tucker checks on the residence 3-4 times a month. During those visits Ms. Tucker checks the mailbox, checks to see that the doors are locked, walks around the outside of the house, and checks the inside. While she is there she will also flush the toilets if it appears they have dried up.¹³ Ms. Tucker testified that she then waits for the toilet to refill and turns off the water at the wall connection.¹⁴

14. Mr. Harris visited his St. Louis residence from June 22, 2019, until June 29, 2019.¹⁵

15. Mr. Harris did not visit his St. Louis residence in 2020.¹⁶

16. On August 6, 2019, MAWC sent a letter to Mr. Harris' St. Louis address stating that it was aware of the high water usage at his home, and advising him to contact

⁸ Transcript, p. 58.

⁹ Transcript, p. 58.

¹⁰ Transcript, p. 53.

¹¹ Transcript, p. 58.

¹² Exhibit 1, Complaint.

¹³ Transcript, p. 204-207.

¹⁴ Transcript, p. 219-220.

¹⁵ Transcript, p. 118, and Exhibit 1, Complaint and attachments, October 12, 2019 letter to MAWC.

¹⁶ Transcript, p. 119.

customer service if he was unable to determine the reasons for the high usage. A second letter similar to the first was sent to Mr. Harris' St. Louis address on August 7, 2019.¹⁷

17. Mr. Harris' niece informed him of the high water usage letter.

18. One billing unit is equivalent to 100 gallons.¹⁸

19. MAWC's read of Mr. Harris' meter for May 2, 2019, was 126 units.¹⁹

20. MAWC's read of Mr. Harris' Meter for August 1, 2019, was 583 units.²⁰

21. On August 6, 2019, MAWC sent Mr. Harris a water bill for \$1,866.12 for use of 457 units of water (341,836 gallons) (583 units – 126 units = 457 units).²¹

22. Mr. Harris' nephew checked the meter on September 6, 2019, the meter read 584.5 units.²²

23. Mr. Harris believes that the meter readings were incorrect because his meter read 126 units on May 2, 2019 and 583 units on August 1, 2019.²³

24. On September 20, 2019, Mr. Harris first contacted MAWC by telephone about the high water bill.²⁴

25. Mr. Harris and a MAWC representative met at Mr. Harris' home on October 18, 2019. During this meeting, the MAWC representative obtained an actual read of Mr. Harris' meter.²⁵

26. On November 1, 2019 MAWC applied a courtesy adjustment of \$1,822.19 to Mr. Harris' account balance, which at that time was \$1,929.94. After the \$1,822.19

¹⁷ Exhibit 101, Staff Report.

¹⁸ Exhibit 103, billing statements.

¹⁹ Exhibit 106, meter reads.

²⁰ Exhibit 106, meter reads.

²¹ Exhibit 103, billing statements and Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

²² Exhibit 1, Complaint and attachments, October 12, 2019 letter to MAWC.

²³ Transcript, p. 78.

²⁴ Transcript, p. 303.

²⁵ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

adjustment was made, Mr. Harris' account had a balance of \$107.75. MAWC appropriately calculated this adjustment utilizing past usage at the same time last year and the appropriate rates.²⁶

27. Mr. Harris did not pay that bill. Mr. Harris' last payment on his account was July 9, 2019. This was for water service received and service charges accrued during the prior quarter, which ran from February 5, 2019 through May 2, 2019.²⁷

28. Mr. Harris' testified that he did not pay the bill because he questioned MAWC's ability to read his meter and be honest with him.²⁸

29. Even though he did not pay his bill, Mr. Harris continued to receive water service at his St. Louis residence until September 29, 2020.²⁹

30. MAWC disconnected Mr. Harris' service on September 29, 2020 for nonpayment.³⁰

31. As of October 30, 2020 Mr. Harris' MAWC balance is \$759.76 for water he received from May 2019 through September 2020.³¹

32. Mr. Harris never requested that MAWC test his meter. Mr. Harris testified that he did not get his meter tested because he knew that MAWC was targeting him and had fabricated his billing charges.³²

33. Mr. Harris contends that meter ID number 87918668 was in the house when Mr. Harris purchased it.³³

²⁶ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

²⁷ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

²⁸ Transcript, p. 61.

²⁹ Transcript, p. 60.

³⁰ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

³¹ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

³² Transcript, p. 162.

³³ Transcript, p. 30.

34. Mr. Harris provided photographs of his meter, which bears serial number 87918668.³⁴

35. Mr. Harris claims his meter has not been changed since 1987.³⁵

36. MAWC does not have any information for Mr. Harris' meter prior to 1987.³⁶

37. Mr. Harris' meter was replaced on March 24, 1987, and that prior to its replacement its meter ID number was 199662017.³⁷

38. A Neptune water meter, ID number 87918668, was set on November 30, 2009.³⁸

39. Ms. Harris did not believe that she and Mr. Harris were in St. Louis during Thanksgiving 2009 but she was not certain.³⁹

40. MAWC's service order shows that they replaced Mr. Harris' meter in 2009.⁴⁰

41. MAWC contacted Mr. Harris about installing Advanced Metering Infrastructure (AMI) on his meter in January 2018, and continued to try to contact him about installing AMI during the summer and fall of 2019.⁴¹

42. MAWC attempted to upgrade Mr. Harris' meter to an AMI meter but were unable to schedule an appointment during a time satisfactory to Mr. Harris.⁴²

³⁴ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

³⁵ Transcript, p. 50-51.

³⁶ Exhibit 101, Staff Report.

³⁷ Exhibit 101, Staff Report.

³⁸ Exhibit 200, and Transcript, p. 359.

³⁹ Transcript, p. 268-269.

⁴⁰ Exhibit 204, Service order record.

⁴¹ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

⁴² Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

43. AMI would have allowed MAWC to determine the exact time period that water was being used at Mr. Harris' St. Louis residence, and how much water was being used.⁴³

44. Mr. Harris' provided the serial number on his meter and that serial number matched the serial number in MAWC's documentation.⁴⁴

45. Neptune meters are guaranteed to read accurate for 15 years.⁴⁵

46. MAWC determined that 15 years was the appropriate replacement time period for 5/8-inch meters based on the results of a 1990 meter study.⁴⁶

47. MAWC uses a service period of 15 years for 5/8-inch meter replacements.⁴⁷

48. Mr. Harris' meter was to be replaced on this 15 year schedule.⁴⁸

49. Mr. Harris provided no credible evidence that MAWC had not changed his meter since he purchased the St. Louis residence.

50. Mr. Harris' water meter is located inside his home and a wire runs from the meter to a touchpad outside his home. A technician must walk to the touchpad and physically touch the touchpad with a handheld reader to take a reading. The handheld reader registers the reading of the meter inside the home.⁴⁹

51. MAWC does not need to access Mr. Harris' basement to read his meter.⁵⁰

52. The touchpad was installed on November 30, 2009, at the same time as the meter installation.

⁴³ Transcript, p. 409-410.

⁴⁴ Exhibit 204, service order, and Exhibit

⁴⁵ Transcript, p. 377.

⁴⁶ Transcript p. 452, and Exhibits 200, Affidavit of Tracie Figueroa, and 303, 1990 study.

⁴⁷ Exhibit 200, Affidavit of Tracie Figueroa.

⁴⁸ Transcript, p. 422.

⁴⁹ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

⁵⁰ Exhibit 200, Affidavit of Tracie Figueroa.

53. Mr. Harris testified that MAWC knew what was on the meter in his basement, but he did not understand how MAWC knew the reading on his meter without MAWC having been in his house.⁵¹

54. According to Mr. Harris' billing statements from February 2015 through October 2020, all readings were actual readings, and the meter serial number on the bills matches the meter serial number in Mr. Harris' photographs.⁵²

55. MAWC's meters read cumulatively. Usage is determined by subtracting the prior reading from the current reading.⁵³

56. Mr. Harris' meter read for his final bill from August 1, 2020, through October 7, 2020, was estimated to be the same as the actual meter read on September 29, 2020, when his service was disconnected.

57. Staff's table in page 5 of its Report of the Staff, dated February 4, 2021, accurately represents Mr. Harris' water usage used in quarterly MAWC billings rendered from May 2015 through October 2020. During this period Mr. Harris used between zero and five units⁵⁴ per quarter, with two exceptions. Other than these two exceptions, described below, Mr. Harris' usage is consistent with him not living in the home and visiting it occasionally.⁵⁵

58. MAWC's last reading of Mr. Harris' meter was September 29, 2020 at the time his service was disconnected. According to this reading, Mr. Harris used 109 units (81,532 gallons) of water since the prior reading on July 31, 2020.⁵⁶

⁵¹ Transcript, p. 50.

⁵² Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

⁵³ Transcript, p. 39.

⁵⁴ A unit of water is equal to 100 cubic feet, or 748 gallons.

⁵⁵ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

⁵⁶ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

59. Mr. Harris does not have a water leak at his house.⁵⁷

Conclusions of Law

A. MAWC is a Missouri corporation and a “sewer corporation” and “public utility” as defined by Section 386.020, RSMo (Cum. Supp. 2020), and is authorized to provide water and sewer service to portions of Missouri.

B. Section 386.390, 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. MAWC is required to have a meter testing program, to be in compliance with 20 C.S.R. 4240-10.030(38). MAWC must test 5/8-inch meters every ten years or 200,000 cubic feet of water, whichever comes first.

D. 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.⁵⁸

Decision

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

MAWC contends that it changed the meter at Mr. Harris’ St. Louis residence on November 30, 2009. Mr. Harris contends that MAWC has not changed his meter since 1987. Mr. Harris’ only evidence that his meter has not been changed is his testimony that he does not remember allowing anyone onto the property to change the meter in

⁵⁷ Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

⁵⁸ *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.”

November of 2009. Mrs. Harris' testimony is unsupportive as she is not certain whether they were visiting their St. Louis residence during Thanksgiving 2009. MAWC has provided documentation that it changed Mr. Harris' meter in 2009. Photos of Mr. Harris' meter show that the meter is a Neptune meter and that the serial number 87918668 matches the number MAWC provided in its meter change service order documentation.

MAWC changes 5/8 meters, such as Mr. Harris', every 15 years. This is not because of any statute, Commission rule, or MAWC tariff provision, but because of meter accuracy studies conducted by MAWC. MAWC has a meter testing program in compliance with Commission Rule 20 C.S.R. 4240-10.030(38). Mr. Harris never asked MAWC to test his meter, and he has not alleged a violation of the meter testing rules. However, it is worth noting that if Mr. Harris' meter was replaced in 1987 and again in 2009, then it should have been tested no later than 1997. No evidence was presented regarding whether the meter was tested in 1997, other than Mr. Harris testifying that no MAWC workers had been in his residence.

There is no statute, Commission rule, or MAWC tariff provision that requires MAWC to replace meters on a particular schedule. The evidence shows that MAWC changed Mr. Harris' meter in 2009. Even if MAWC had not replaced Mr. Harris' meter, there would be no violation of statute, Commission rule, or MAWC tariff provision.

Issue 2 – Did MAWC estimate Mr. Harris' meter readings rather than take actual reads, in violation of statute, tariff, or rule?

Mr. Harris alleged that MAWC estimated his usage in violation of Commission rule 20 C.S.R. 4240-13.020, which requires that utility render bills based on actual readings. Mr. Harris' meter is read via a touchpad on the outside of his residence. MAWC does not

need access to the inside of Mr. Harris' residence to read his meter. All of the billing statements submitted in this case, with the exception of the October 7, 2020 bill, indicated that the meter readings were actual reads. Mr. Harris testified that MAWC knew what was on the meter in his basement, but he did not understand how MAWC knew the reading on his meter without MAWC having been in his house. Mr. Harris' final bill was estimated because it was a week after disconnection, and the assumption was that the meter would read the same as when it was disconnected. Therefore, Mr. Harris was not billed for any estimated usage, and there was no violation of a law subject to the Commission's authority, a Commission rule, Commission order, or MAWC tariff provision.

Issue 3 – Did MAWC incorrectly read Mr. Harris' meter, in violation of statute, tariff, or rule?

Mr. Harris alleges that his meter was read incorrectly. Mr. Harris speculates that the meter readings were incorrect because his meter read 126 units on May 2, 2019 and 583 units on August 1, 2019. Because meters read cumulatively, having a read of only 126 units in May 2019 is also supportive of MAWC having replaced the meter in 2009. Testimony indicates that if Mr. Harris had allowed AMI to be installed on his meter he would have been able to narrow down the time period and flow rate for the higher use. This information could have been helpful in determining what was causing the high water usage. Additionally, if Mr. Harris had asked or allowed MAWC to perform a meter test it might have been possible to determine whether the meter was malfunctioning.

Staff and MAWC both speculated as to what might have caused the high water usage, but there is no way to know from the evidence presented. The question before the Commission is not, what happened to the water, but whether MAWC violated any statute,

rule, or tariff provision. Mr. Harris did not provide sufficient evidence to support his assertion that, because the meter reading high, MAWC incorrectly read his meter.

Issue 4 – If MAWC violated any statute, tariff, or rule, should the remedy be a bill credit?

Mr. Harris 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. Harris' complaint is denied. MAWC may proceed with Mr. Harris' account consistent with the law, the company's tariffs and the Commission's rules.
2. MAWC's motion to dismiss is moot.
3. This Report and Order shall become effective on _____, 2022.
4. This file shall close on _____, 2022.

BY THE COMMISSION

Morris Woodruff
Secretary

[voting notation]

Clark, Senior 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 7th day of January, 2022.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

January 7, 2022

File/Case No. WC-2021-0129

Missouri Public Service Commission
Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel
Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@opc.mo.gov

Missouri Public Service Commission
Karen Bretz
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Karen.Bretz@psc.mo.gov

Missouri-American Water Company
Dean L Cooper
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

Missouri-American Water Company
Jennifer L Hernandez
312 E. Capitol Avenue
PO Box 456
Jefferson City, MO 65102
jhernandez@brydonlaw.com

Missouri-American Water Company
Timothy W Luft
727 Craig Road
St. Louis, MO 63141
Timothy.Luft@amwater.com

Willie J. Harris Jr.
Willie J Harris
206 Topaz Lane
Horseshoe Bend, AR 72512-3817
harriswildbill7925@sbcglobal.net

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.