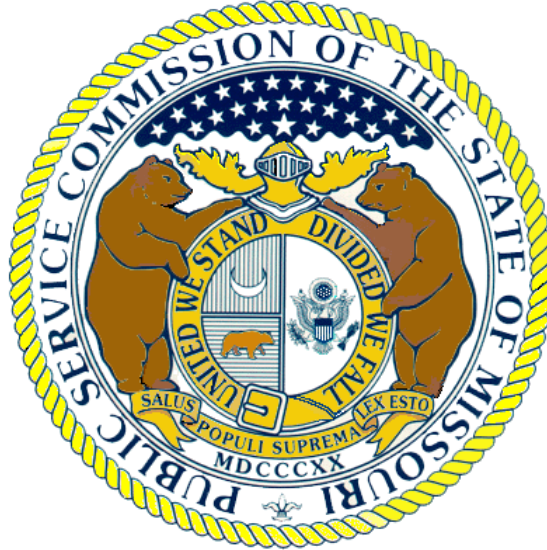


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Linda Beecham,)
)
Complainant,)
)
v.) **File No. WC-2020-0181**
)
Missouri-American Water Company,)
)
Respondent.)

AMENDED REPORT AND ORDER

Issue Date: April 28, 2021

Effective Date: May 28, 2021

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

| | | |
|----------------------------------|---|-------------------------------------|
| Linda Beecham, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | <u>File No. WC-2020-0181</u> |
| |) | |
| Missouri-American Water Company, |) | |
| |) | |
| Respondent. |) | |

Appearances

Linda Beecham
Complainant, appeared pro se

Jennifer L. Hernandez
Timothy W. Luft
Attorneys for Missouri-American Water Company

Karen Bretz
Attorney for the Staff of the Commission

Judge: Paul T. Graham

Procedural History

This is a consumer formal complaint filed on December 20, 2019, where Linda Beecham disputes the recorded water usage and associated billing charges for water service provided by Missouri-American Water Company (MAWC) from October 27, 2014, to July 27, 2018.¹ She alleges an amount at issue of approximately \$6,000.00. An evidentiary hearing was held on June 25, 2020. On September 16, 2020, the Commission

¹ The Complaint does not expressly identify the parameters of the time period. See Exhibit 1, Complaint. Exhibit 200, Figueroa Rebuttal, p. 2.

reopened the record and ordered MAWC to file its records under proper affidavit showing with respect to Ms. Beecham's meter, whether it complied with or had a waiver from Commission Rule 20 CSR 4240-10.030(38), which requires water meters be tested every ten years.² On September 25, 2020, MAWC filed the Affidavit of Tracie Figueroa in response to the Commission's Order (Affidavit). On September 29, 2020, the Commission issued a second order directing MAWC to clarify its prior response to the September 16 order, noting therein that MAWC's Affidavit did "not address MAWC's compliance with the 10-year inspection and testing requirement of 20 CSR 4240-10.030(38), nor does it indicate whether the Commission has granted MAWC a waiver from that requirement of the rule."³ The September 29 order set October 26 as a deadline for objections to the receipt of MAWC's Affidavit and subsequent clarification. On October 13, 2020, Ms. Beecham submitted a filing captioned Rebuttal to Procedures of the Testing of My Meter. MAWC, the Staff of the Commission (Staff), and Ms. Beecham filed post-hearing briefs. On January 13, 2021, the Commission issued a Report and Order, and on February 11, MAWC filed an Application for Rehearing. This application challenged the Report and Order in part based on MAWC's September 25, 2020 Affidavit, arguing, in essence, that the Commission had given no consideration to the Affidavit.

The Commission did receive, consider and weigh the evidence presented in the Affidavit and its attachments, and the Commission will amend its January 13, 2021 Report and Order to clarify the consideration which the Commission gave in its Report and Order

² (38) Unless otherwise ordered by the commission, each water service meter installed shall be periodically removed, inspected and tested in accordance with the following schedule, or as often as the results obtained may warrant to insure compliance with the provisions of section (37) of this rule: (A) Five-eighths inch (5/8") meter-ten (10) years or two hundred thousand (200,000) cubic feet whichever occurs first. . . .

³ Order Directing Filing, September 29, 2020.

to the Affidavit. The Amended Report and Order will be given a thirty-day effective date, allowing parties until May 28, 2021 to file any applications for rehearing of the Amended Report and Order.

Section 386.480, RSMo, provides that “[n]o information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.”⁴ Rule 20 CSR 4240-2.135 contains provisions for the protection of customer information. In this case, Ms. Beecham has placed her water usage and bills at issue and no evidence relevant to that issue will be considered confidential. Only information pertaining to Ms. Beecham’s address, the name and address of her daycare business and the identity of her employees will be considered confidential.

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 of the 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, but indicates 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

⁴ All RSMo citations will be to 2016 unless otherwise indicated.

to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.⁵

1. MAWC is a water corporation that owns, operates, manages, and controls a water supply, distributing water for gain in the state of Missouri.⁶

2. At all times herein stated, Ms. Beecham has been a water customer of MAWC.⁷

3. After Ms. Beecham filed her formal complaint on December 20, 2019, Staff conducted a full investigation of that complaint.⁸

The Water Usage Record

4. Ms. Beecham moved into her home in January of 1998.⁹ Since then she has had either one or two daughters residing with her at any time.¹⁰ She began running a daycare center in August 2000.¹¹ She is licensed for up to ten children.¹² Attendance varied between three and nine children, with an average of approximately six, between January of 2014 and September of 2019.¹³

⁵ 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].”

⁶ Exhibit 201, Answer to Complaint, p. 1.

⁷ Exhibit 100, Staff Report, Official Case File Memorandum, and Exhibit 201, Answer to Complaint, p. 1

⁸ Ex. 100, Staff Report, Official Case file Memorandum.

⁹ Transcript, p. 31.

¹⁰ Transcript, pp. 32 to 33.

¹¹ Transcript, p. 33.

¹² Transcript, p. 33.

¹³ Transcript, p. 33-34; Family Home Inspection Reports prepared by the Missouri Department of Health and Senior Services, Section for Child Care Regulation, for inspections conducted on January 24, 2014; August 26, 2014; February 2, 2015; September 25, 2015; February 18, 2016; August 24, 2016; August 29, 2017; February 15, 2018; August 20, 2018; and September 5, 2018, show that during these inspections,

5. Ms. Beecham continues to run a daycare facility in her home and has had approximately eight children in her daycare consistently since December of 2017.¹⁴ She provides daycare five days a week.¹⁵ The parents leave a change of clothes with her, and she does two loads of laundry for the children every other weekend.¹⁶ Ms. Beecham cooks two meals per day for the children and runs her dishwasher once a day.¹⁷ She has followed this and her housecleaning routines consistently for the last eight years.¹⁸ She does not have a pool or lawn sprinkler system.¹⁹ There have been no significant repairs to her plumbing or changes in her lifestyle or water usage.²⁰

up to three staff members had been present in the home in addition to up to nine children, Attachment C of Answer to Complaint, received without objection as Exhibit 201.

¹⁴ Transcript, p. 52.

¹⁵ Transcript, p. 36.

¹⁶ Transcript, pp. 37, 38.

¹⁷ Transcript. p. 43.

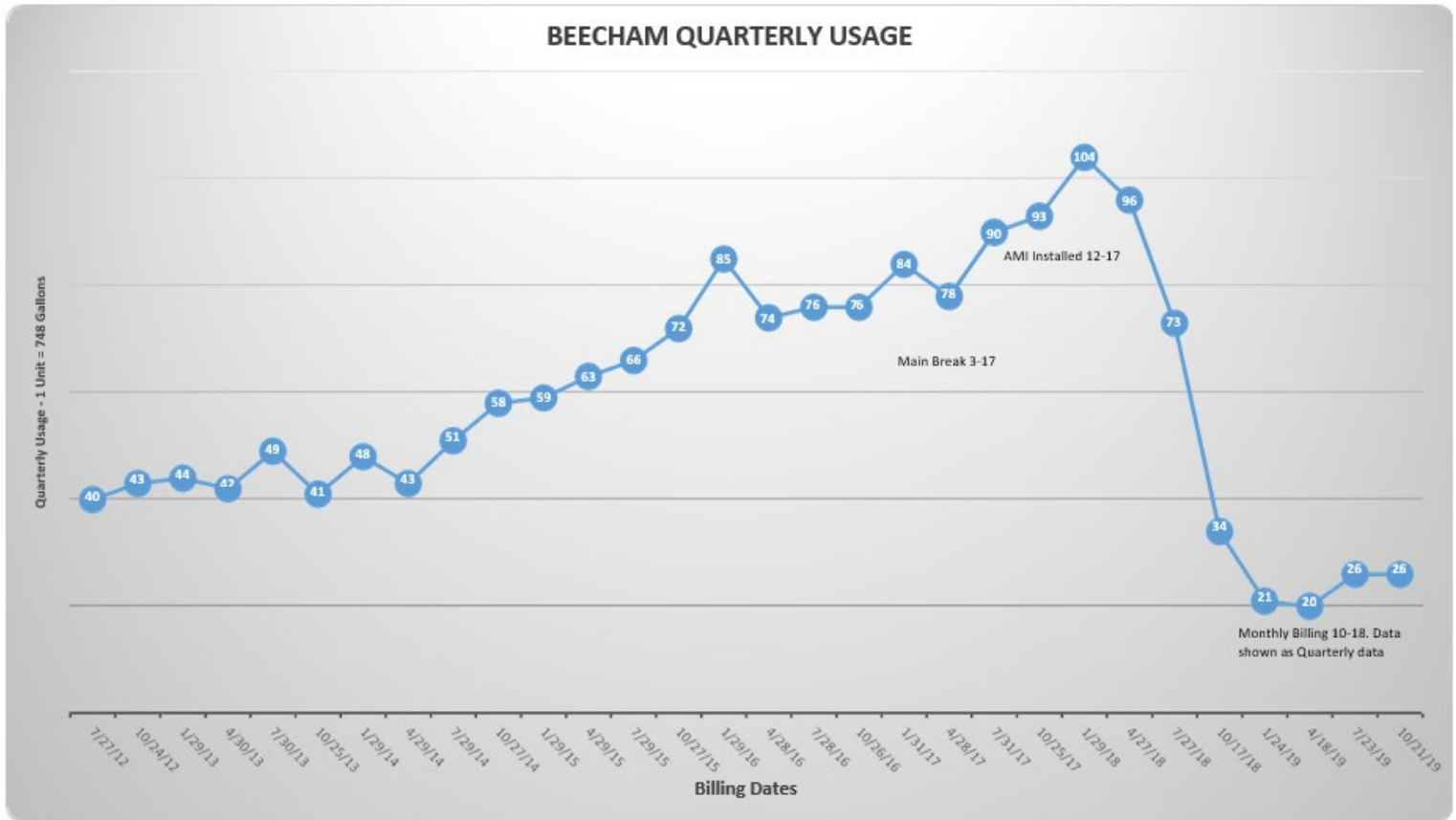
¹⁸ Transcript pp. 40-41.

¹⁹ Transcript pp. 20-21.

²⁰ Transcript, pp. 45-46; 52.

6. As part of its investigation, Staff examined Ms. Beecham's usage history.²¹

The Commission finds that this graph, prepared by Staff, accurately represents MAWC's reports of Ms. Beecham's water usage throughout the relevant time:²²



7. As reflected on the graph, the following events occurred:

- A break in MAWC's water main in front of Ms. Beecham's home occurred in March 2017.²³

²¹ Exhibit 100, Staff Report, Official Case file Memorandum.

²² Exhibit 100, Staff Report, Official Case File Memorandum.

²³ Transcript, p. 87.

- MAWC implemented Advanced Metering Infrastructure (AMI) meter reading and installed a meter transmission unit (MTU) device on the existing meter serving Ms. Beecham's home in December 2017.²⁴
- MAWC began billing Ms. Beecham monthly for water usage after the October 17, 2018 bill.²⁵ Prior to then she was billed quarterly.²⁶

8. MAWC's water meters register usage in units. A unit of water is equal to 100 cubic feet, which is equivalent to 748 gallons.²⁷

9. Ms. Beecham's quarterly bills from July 27, 2012, through July 31, 2017, show a gradual upward usage trend, increasing from 40 to 90 units.²⁸ Reported water usage after the March 2017 main break continued to increase each quarter, reaching a peak of 104 units, reflected on the January 29, 2018 bill.²⁹

10. Overall, from 2014 into the first half of 2018, Ms. Beecham's reported usage steadily increased. The April 27, 2018 bill for the first full quarter after AMI was installed in December of 2017 showed a usage decrease. The July 27, 2018, and October 17, 2018, bills then showed a drastic decrease. Per Staff's calculations, which no party challenged, bills from April 2019 to March 6, 2020 averaged approximately 27 units per quarter.³⁰

²⁴ Transcript, pp. 61-62; 100; Every six hours, the AMI reading device transmits the previous twelve hours of recorded hourly meter readings. Exhibit 200, Figueroa Rebuttal, p. 5. AMI is the name of the technology. It is implemented with a MTU, which is a device installed on the meter. Transcript, p. 76. It sits on the meter itself and transmits to a DCU [not defined], which is located elsewhere in the neighborhood. The DCU then transmits the data into MAWC's system. Transcript, p. 99.

²⁵ Exhibit 100, Staff Report, Official Case File Memorandum, p. 2, FN 3

²⁶ Exhibit 100, Staff Report, Official Case File Memorandum, p. 2, FN 3.

²⁷ Exhibit 100, Staff Report, Official Case File Memorandum, p. 1.

²⁸ Exhibit 100, Staff Report, Official Case File Memorandum, p. 1.

²⁹ Exhibit 100, Staff Report, Official Case File Memorandum.

³⁰ Exhibit 100, Staff Report, Official Case File Memorandum, p. 2.

11. Staff's calculations also show that during the five-year period from 2014 through the first half of 2018, the reported usage increased, with the quarterly averages by year being 50, 65, 77.75, 86.25, and 91 units respectively.³¹ The usage over that five-year period equaled nearly 1,000 additional units of water above Ms. Beecham's current usage level.³²

Ms. Beecham's Reported Water Usage Habits

12. Ms. Beecham's home has two full bathrooms.³³ Both have tubs and showers.³⁴ She has a dishwasher.³⁵ Ms. Beecham could not say how many times the children were flushing toilets per day, and noted that some of the children are infants and do not use the toilets.³⁶

13. Although everyone uses water differently, the average person uses between 80 and 100 gallons per day.³⁷ Based on the average daily consumption per person, Ms. Beecham's reported usage of 104 units from the January 29, 2018 quarterly bill³⁸ is equivalent of 8.1 to 10.1 people living in the house consuming 80 to 100 gallons per person per day respectively. Ms. Beecham's billed usage of 26 units from the

³¹ Exhibit 100, Staff Report, Official Case File Memorandum, p. 2.

³² Exhibit 100, Staff Report, Official Case File Memorandum, p. 2.

³³ Transcript, pp. 34-35.

³⁴ Transcript p. 35.

³⁵ Transcript p. 35.

³⁶ Transcript, p. 44.

³⁷ Transcript, pp. 120 - 121. Testimony of MAWC witness, Tracie Figueroa. Her testimony was based upon Google. She testified that "[w]hen I talk to customers in my capacity, that's kind of what I relay is what the Google standard is what I call it." Transcript, p. 121.

³⁸ 104 units = 77,792 gallons over 96 days consumption between the October 25, 2017 and January 29, 2018 bills and a conversion rate of 1 unit = 748 gallons.

October 21, 2019 bill is equivalent to 2.1 to 2.7 people living in the house consuming 80 to 100 gallons per person per day respectively.³⁹

14. The Commission finds that MAWC was notified of the billing issue no later than October 17, 2018, when its field representative met with Ms. Beecham to discuss water usage issues.⁴⁰

15. MAWC sends out a high bill letter to customers when usage is two times higher than the usage for that period during the prior year.⁴¹

16. MAWC did not send out a high bill letter to Ms. Beecham in the 2014 to 2018 period because the continuous increases in usage did not ever equal two times the usage amount for any period in the prior year.⁴²

A Leak

17. Ms. Beecham stated she had never heard nor seen water running in her home, had never called anyone to make repairs, and had never had leak repair work done.⁴³ If there was a leak, it is unlikely it would have been resolved without repair work's being conducted.⁴⁴ The main break reported on March 6, 2017, was not on Ms. Beecham's side of her water meter, and her meter did not record water lost in that break.⁴⁵

³⁹ Calculation based on consumption over 90 days between the July 23, 2019 and October 21, 2019 bills and conversion of 1 unit = 748 gallons.

⁴⁰ Transcript, p. 93.

⁴¹ Transcript, pgs. 116 and 123.

⁴² Transcript, pgs. 116 and 123 - 124.

⁴³ Exhibit 100, Staff Report, Official Case File Memorandum, p. 2; Transcript, p. 30. Without objection, Ms. Beecham filed "Additional Response to Complaint," Exhibit 2, with attached photographs which the exhibit states she believes show a leak in progress in front of her driveway basically where it was repaired in 2017. The exhibit states: "it does not seem to be affecting my water usage."

⁴⁴ Exhibit 100, Staff Report, Official Case File Memorandum, p. 3.

⁴⁵ Exhibit 200, Figueroa Rebuttal, p. 4.

18. Staff determined that Ms. Beecham's high reported usage could not be explained by running a daycare business⁴⁶ and as part of its investigation inspected her residence for signs of a water leak.⁴⁷ Staff found no evidence of a leak on Ms. Beecham's side of the meter during its investigations.⁴⁸

Meter Reading

19. MAWC provides customer usage data to the Metropolitan St. Louis Sewer District (MSD), which provides Ms. Beecham her sewer service, and the sewer authority uses that data to bill the customer.⁴⁹

20. In or around October of 2018, MSD informed Ms. Beecham that she was being billed for an extreme usage of water.⁵⁰ Using this information, Ms. Beecham contacted MAWC to dispute the billing.⁵¹ MAWC then sent an employee, Jennifer, to Ms. Beecham's home, who advised her that she did not have a leak, there was no water running, and that MAWC had not been able to read meters for about a year.⁵²

21. MAWC confirmed that its field representative, Jennifer, had met with Ms. Beecham on October 17, 2018.⁵³ Based on its records, MAWC could not answer whether Jennifer had told Ms. Beecham that her meter had not been read for a year.⁵⁴

⁴⁶ Transcript, p. 72.

⁴⁷ Exhibit 100, Staff Report, Official Case File Memorandum, p. 2.

⁴⁸ Exhibit 100, Staff Report, Official Case File Memorandum, p. 2.

⁴⁹ Transcript, pp. 107-108.

⁵⁰ Transcript, p. 28 and 49.

⁵¹ Transcript, p. 94.

⁵² Transcript, pp. 48-49; and Exhibit 1, Complaint, paragraph 7.

⁵³ Transcript, p. 93.

⁵⁴ Transcript, pp. 105 and 106. However, MAWC witness Ms. Figueroa testified that based upon company records there was no period of a year when MAWC's meters were not read.

22. MAWC's evidence was that each bill for Ms. Beecham's water usage from October 27, 2014, through July 27, 2018, was based on an actual reading at the meter by a field service representative using a touchpad.⁵⁵

23. The water meter is similar to a car's odometer.⁵⁶ To calculate a customer's usage for a period of time, the prior period's recorded meter reading is subtracted from the current recorded meter reading. If an error occurs at the end of one meter-reading period because of a mistaken reading, the usage will be trued-up and the error corrected when the meter is next correctly read.⁵⁷

14. When the AMI technology was installed on December 8, 2017,⁵⁸ the physical meter and the AMI's MTU were calibrated together to ensure they reflected the same initial reading, but the accuracy of the underlying meter or meter reading was not tested.⁵⁹

A Faulty Meter

24. Ms. Beecham's water meter was installed in 2007.⁶⁰ It is not scheduled for replacement until 2022.⁶¹

25. MAWC's policy was to inspect a meter only if MAWC's billing department detected a possible error⁶² or a customer contacted MAWC about a high reading, a leak or something else that concerned the customer.⁶³

⁵⁵ Exhibit 200, Figueroa Rebuttal, p. 5.

⁵⁶ Transcript, p. 89.

⁵⁷ Transcript, p. 89.

⁵⁸ Transcript, p. 95.

⁵⁹ Transcript, pp. 118-119.

⁶⁰ Transcript, p. 93.

⁶¹ Transcript, p. 93.

⁶² Transcript, p. 112.

⁶³ Transcript, pp. 113-114.

26. When MAWC's field representative met with Ms. Beecham about her high billing in October 2018, the field representative noted the water usage was decreasing and told Ms. Beecham that if she was still unhappy with her next bill that she could request a meter test.⁶⁴ MAWC did not test Ms. Beecham's meter at or near the time of this customer contact.⁶⁵

27. MAWC has no record of work or repair on Ms. Beecham's water meter, either before or after the installation of the AMI technology in December of 2017.⁶⁶

28. Staff did not request MAWC test Ms. Beecham's meter as part of its investigation of Ms. Beecham's complaint because as of December 2019, the filing of this complaint, Ms. Beecham's billing had returned to normal.⁶⁷

Post Hearing Meter Test

29. In response to the Commission's September 16, 2020, Order Directing Filing, MAWC filed the Affidavit of Tracie Figueroa with attachments on September 25, 2020, stating that MAWC personnel bench tested the water meter at its facility on September 23, 2020.⁶⁸ The Affidavit stated the test was conducted in accordance with the industry standard water meter practice. The meter was tested at rates of flow over the meter's range of minimum to maximum flow. On the day of the bench test, the meter did not show an error in measurement in excess of five percent when registering water at stream flow equivalent to approximately one tenth and full

⁶⁴ Transcript, p. 133-134.

⁶⁵ Transcript, pp. 94, 74 and 80.

⁶⁶ Transcript, p. 75, 120.

⁶⁷ Staff's Initial Post-Hearing Brief, p. 9.

⁶⁸ Affidavit of Tracie Figueroa.

normal rating under the average service pressure. Other attachments to the Affidavit showed the general reliability of that type of meter.

Conclusions of Law

A. As a company owning, operating, controlling, or managing a plant or water supply for selling or supplying water for gain, MAWC is a public utility subject to the jurisdiction, control and regulation of the Commission.⁶⁹

B. Section 386.390.1, RSMo, permits any person to make a complaint setting forth 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, or of any rule or order or decision of the commission. . . .”Section 386.390, RSMo provides a complainant with an opportunity for a hearing. MAWC is a “water corporation” as defined by section 386.020(59), RSMo. The Commission exercises general supervision over water corporations pursuant to section 393.140(1), RSMo. Ms. Beecham has filed a complaint alleging that MAWC has committed acts or omitted to do acts in violation of the “safe and adequate” and “just and reasonable” service requirements of Section 393.130, RSMo. The Commission has jurisdiction in this case.

C. Commission Rule 20 CSR 4240-2.070 provides that a formal complaint shall set “forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission.” The rule requires the complaint to state the relief requested.

⁶⁹ Section 386.020 (43) and (59), RSMo.

D. Missouri law provides that every water corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. It provides that all charges made or demanded by any such water corporation shall be just and reasonable and not more than allowed by law or by order or decision of the commission. It prohibits any unjust or unreasonable charge or one in excess of that allowed by law or by order or decision of the commission.⁷⁰

E. Rule 20 CSR 4240.10.030 (37) states:

No water service meter shall be allowed in service which has an incorrect gear ratio or dial train or is mechanically defective or shows an error in measurement in excess of five percent (5%) when registering water at stream flow equivalent to approximately one-tenth (1/10) and full normal rating under the average service pressure. . . . [.] Tests for accuracy shall be made with a suitable testing device in accordance with the best modern water meter practice and at rates of flow which will properly reflect the accuracy of meters over each meter's range of minimum and maximum flow.

F. MAWC provides service to Ms. Beecham pursuant to its approved tariff, Tracking No. JW-2012-0085.⁷¹ That tariff contains no specific provisions for leak adjustments.⁷²

G. Ms. Beecham has the burden of proving that MAWC violated a law under the Commission's authority, a Commission rule, an order of the Commission or its tariff.⁷³

⁷⁰ Section 393.130.1, RSMo.

⁷¹ Exhibit 200, Figueroa Rebuttal, p. 2.

⁷² Exhibit 200, Figueroa Rebuttal, p. 2. Exhibit 200 states that "[a]s a customer courtesy, Missouri American's billing department uses the following leak adjustment guideline: 'One time per account. High bill must be two times higher than average. Adjust 50% of the overage on the maximum of two high bills.' The customer must provide documentation of the leak repair." Exhibit 200, p. 3. See also, Exhibit 100, Staff's Report, Official Case File Memorandum, page 3: "The Company stated it has not given the Complainant a leak adjustment in this instance, because she denies having a leak and because the Company does not consider Complainant's continued high usage over 26 billing periods unexplained."

⁷³ *State ex rel. GS Technologies Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 693 (Mo. App. 2003).

H. The determination of witness credibility is left to the Commission, “which is free to believe none, part or all of the testimony.”⁷⁴

I. The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto. Thus, it has no authority to enter a money judgment. But it may order adjustments for an overcharge.⁷⁵

J. Rule 20 CSR 4240-13.025 (1) provides, in part:

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 as follows: (A) In the event of an overcharge, an adjustment shall be made for the entire period that the overcharge can be shown to have existed not to exceed sixty (60) consecutive monthly billing periods, or twenty (20) consecutive quarterly billing periods, calculated from the date of discovery, inquiry, or actual notification of the utility, whichever comes first.

Rule 20 CSR 4240-13.025(1) (E) states that “[n]o billing adjustment shall be made if, upon test, an error in measurement is found to be within the limits prescribed by the commission rules. . . .”

Decision

The determination of witness credibility is left to the Commission, “which is free to believe none, part or all of the testimony.”⁷⁶ The Commission is free to believe Ms. Beecham, and based upon the entire record, the Commission finds her testimony

⁷⁴ *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).

⁷⁵ See, e.g., *State ex. rel. City of St. Louis v. Missouri Public Service Comm’n*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm’n*, 406 S.W.2d 5, 8 (Mo. 1966); *State ex. Rel. GS Technologies Operating Co.*, supra, at 696. Staff notes that “20 CSR 4240-13.024(1)(A) and MAWC’s sheet number R36 address overcharges.”

⁷⁶ *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).

convincing and credible that her actual water usage did not substantially change throughout the period in question and that she never had a leak on her side of the water meter. Ms. Beecham's testimony was based upon her own personal knowledge of the facts, and as a witness, she made a convincing impression. She testified in detail concerning her daycare business, the number and ages of the children she cared for, the meals and laundry she did for these children, the family members living with her at various times, her home and bathroom circumstances, her lack of a pool or lawn sprinkler system, and her laundry, cooking, and dish washing habits. She testified that nothing about these circumstances or activities ever changed.

The evidence presented in this case did not provide a definitive reason as to why Ms. Beecham's usage steadily increased from early 2012 through her January 2019 bill and then abruptly decreased following the installation of the AMI. MAWC's claim that its recorded usage at Ms. Beecham's residence was accurate is unconvincing. From April 29, 2014, through July 31, 2017, Ms. Beecham's reported usage increased incrementally from 43 to 90 units per quarter, reaching a peak of 104 units as reflected on her January 29, 2018 bill. Then her April 27, 2018 bill for the first full quarter after AMI was installed in December of 2017 showed a usage decrease. Thereafter, reported usage quickly and drastically decreased, rapidly settling down at its present average of about 27 units per quarter.

Although MAWC asserts Ms. Beecham's daycare business would account for the periods of high water usage, that argument is unpersuasive. It ignores the fact that Ms. Beecham's daycare business has continuously operated in the same fashion with approximately the same number of attendees since 2000. While Ms. Beecham's daycare

business averaged around six to eight children, she testified it never went above ten children. And even if it is assumed Ms. Beecham watched two or three additional children between the end of 2014 and 2018, this would not explain such a drastic increase in water usage. Ms. Beecham's quarterly bill of July 29, 2014, showed water usage of 43 units. That amounts to an average monthly usage of approximately 10,723 gallons. This usage level was consistent with quarterly bills prior to that date. In contrast, Ms. Beecham's highest quarterly bill in January 29, 2018, reported a usage of 104 units. That amounts to an average monthly usage of 25,930 gallons of water, which is almost two and a half times higher than the 2014 bill. Evidence showed an average person could use between 80 and 100 gallons of water a day. Even assuming that between 2014 and 2018, Ms. Beecham had four additional children in her daycare, watched them every day of the month, and they each used 100 gallons per day during the limited time they were at her home, water usage would still not reach the level billed for on January 29, 2018.

Further, while MAWC argued that the daycare business explained the increased water usage, the company failed to provide actual evidence showing what a reasonable level of water usage should be for a customer like Ms. Beecham. Even disregarding the company's want of evidence, the argument itself fails to explain how the daycare business caused a water usage high of 104 units a quarter in January 2018, but then a low water usage of 21 units per quarter a year later—when Ms. Beecham was operating the same daycare business in a consistent manner throughout the entire time period. Finally, Staff's expert witness, Mr. Spratt, testified that Ms. Beecham's high reported water usage could not be explained by her daycare business. In summary, MAWC's daycare argument, which rested on no evidence and failed to explain how Ms. Beecham's usage doubled

while her daycare business did not change, simply does not discredit Ms. Beecham's testimony about the facts.

Furthermore, MAWC's general position that the bills at issue show an accurate and reasonable level of usage is completely inconsistent with what MSD perceived as reasonable and reported as unreasonable to Ms. Beecham. MAWC's opinion on that score was not persuasive. That an employee with MSD was alarmed enough about the high water usage levels to advise Ms. Beecham that her water usage was extremely high and that she needed to contact MAWC, further supports the Commission's finding that Ms. Beecham's testimony regarding her usage history was more persuasive than MAWC's argument that the reported high usage was caused by the operation of the daycare. Finally, the Commission does not find Ms. Beecham less credible or persuasive due to the timing of her complaint, as different reasonable and credible people may react to the same bills differently and any relief granted to Ms. Beecham would be subject to the Commission's rules regarding the timing of her complaint.

Turning now to MAWC's September 23, 2020, water meter test: again, the Commission cannot find that this test discredits Ms. Beecham's testimony as to her actual water usage. The Commission notes that MAWC's September 23, 2020 water meter test was neither offered nor admitted as evidence during the hearing, and the Commission did not direct such a test be submitted after the hearing. The Commission's September 16, 2020, Order Directing Filing did not reopen the record to allow a new meter test to be conducted and introduced. The order's only purpose was to have MAWC "file

its records showing it either complied with or had a waiver from the requirements of Commission Rule 20 CSR 4240-10.030(3) with respect to Ms. Beecham's water meter."⁷⁷

MAWC's Affidavit provided information purporting to justify MAWC's 15 year inspection meter testing program as being sufficient to satisfy the technical requirements of Commission Rule 20 CSR 4240-10.030(37). It did not, however, address the September 16 order's express requirement that MAWC show compliance with the 10-year inspection and testing requirements of 20 CSR 4240-10.030(38), nor did it indicate whether the Commission has granted MAWC a waiver from those requirements.⁷⁸ Taken together, the Commission's two orders, repeatedly directed at the question of MAWC's compliance with the ten-year rule and not to the allegations of Ms. Beecham's complaint, clearly did not invite MAWC to conduct a meter test and submit further evidence of that test as proof that could rebut Ms. Beecham's testimony about the events of 2014-2018 as reflected in Staff's graph.

Further, there are procedural problems associated with considering MAWC's September 23, 2020, meter test: Ms. Beecham submitted a timely response to the Affidavit, essentially objecting to the meter test because after she had asked to be present and to see and photograph the serial number on the meter when removed from the ground so as to ensure it was her actual meter (she had photographed the meter in the ground showing the identifying tag and the meter itself), the company did not comply with her request.⁷⁹

⁷⁷ Order Directing Filing, September 16, 2020.

⁷⁸ Affidavit of Tracie Figueroa.

⁷⁹ Ms. Beecham's Rebuttal to the Procedures of the Testing of the Meter.

Turning to the weight to be accorded the September 23, 2020, meter test itself with respect to the allegations of Ms. Beecham's complaint: the test results simply do not discredit Ms. Beecham's testimony. The time period in question in this case was from 2014 into part of 2018. But MAWC did not test the meter in October 2018, when its investigator looked at the meter and talked with Ms. Beecham. Instead, its investigator told Ms. Beecham at that time that MAWC would test the meter after the next bill (October 2018) if she requested the test. By the time MAWC did test the meter in September 2020, after the hearing, the billing had been normal for over one year and 9 months. MAWC did not test this meter in preparation for the evidentiary hearing in this complaint or offer it as evidence to rebut Ms. Beecham's testimony at hearing. Finally, Staff also noted that it did not request testing of this meter due to the fact the billing had returned to normal when conducting its investigation. That neither MAWC nor Staff had the meter tested makes the point: a meter test occurring well after the reported problem disappeared would carry little weight over and against Ms. Beecham's testimony. The meter test merely goes to MAWC's compliance with the Commission Rule requiring periodic meter tests regardless of consumer complaints.

The timing of the meter test, long after Ms. Beecham's reported usage had returned to normal, does not persuade the Commission that Ms. Beecham's evidence of her consistent usage history was inaccurate. Finally, the changes that occurred in December of 2017 tended to weaken the nexus between a September 2020 test and Ms. Beecham's reported water usages between 2014 and the beginning of 2018. The meter was manually read by MAWC's meter reader with a touchpad until December 2017 when MAWC installed Advanced Metering Infrastructure (AMI) meter reading with an

MTU—a physical device—placed on the existing meter serving Ms. Beecham’s home. Manual reading stopped in December 2017. The accuracy of the meter was not tested in December 2017, nor at any time during the period that high usage was being reported by the meter.

The limitation provided under Rule 20 CSR 4240-13.025(1)(E) states that “[n]o billing adjustment shall be made if, upon test, an error in measurement is found to be within the limits prescribed by the commission rules.” However, this limit contemplates that a faulty meter be the probable sole cause of a billing error and, in any event, that there be a reasonable nexus between the “probable period during which the condition causing the errors existed”⁸⁰ and the meter test. The meter was not tested at or near the time of the alleged high usage. Neither MAWC nor Staff attempted to offer such a test as evidence to rebut Ms. Beecham’s testimony of her actual water usage practices at the hearing. At the least, it would be disingenuous for MAWC to now argue that a meter test in September of 2020 is somehow so persuasive as to the accuracy of the meter readings and usage data from 2014 through 2018, as to undermine Ms. Beecham’s credibility. The Commission has fully considered MAWC’s September 23, 2020 meter test in reaching its decision. The Commission finds that the September 23, 2020 bench test of the meter is not probative evidence of whether or not a billing error occurred during “the probable period during which the condition causing the errors existed”-- the time period relevant to the complaint.

⁸⁰ 20 CSR 4240-13.025 (1): “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 as follows. . . .” (emphasis added).

It is the Commission's decision, accordingly, that Ms. Beecham met her burden to show that she was overcharged beginning in mid-2012 through her October 2018 quarterly bill. However, 20 CSR 4240-13.025 (1) limits any overcharge adjustments to the five-year period immediately preceding October 17, 2018, when the evidence indisputably shows all parties were on notice of the issue.

The record before the Commission contains the data necessary to calculate the difference between Ms. Beecham's average usage and her billed usage. From the quarterly billing ended April 18, 2019, to the Staff's review of the water bill issued prior to March 6, 2020, the date of Staff's report, Staff calculated her usage averaged 27 units per quarter. No party objected to the accuracy, relevance, or receipt in evidence of Staff's calculations. Per Rule 20 CSR 4240-13.025(1), the Commission will order MAWC, using 27 units per quarter as a base line of actual usage, to determine and make billing adjustments for an overcharge for the five-year period immediately preceding October 17, 2018.

Any party wishing to request a rehearing or reconsideration shall file applications for the requested relief prior to the effective date of this Amended Report and Order.

THE COMMISSION ORDERS THAT:

1. Linda Beecham's Complaint is sustained.
2. Using 27 units of water per quarter as a base line of Ms. Beecham's water usage, MAWC shall determine and make billing adjustments for an overcharge for the five-year period immediately preceding the quarterly billing ended October 17, 2018.

3. No later than May 28, 2021, MAWC shall file a statement of the amount to be credited to Ms. Beecham's account together with the supporting calculations.⁸¹

4. No later than May 28, 2021, or as soon thereafter as the credit has occurred, MAWC shall file notice of the date the credit has been made to Ms. Beecham's account.

5. Only information contained in the record that identifies Ms. Beecham's address, the name and address of her daycare business and the identity of her employees shall be considered confidential.

6. This Amended Report and Order shall become effective on May 28, 2021.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and Holsman CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Graham, Regulatory Law Judge

⁸¹ MAWC filed a Statement of Adjustment and Notice on February 26, 2021 with respect to the Report and Order of January 13, 2021. As that Report and Order, ordering those actions, has been withdrawn and there must be an existing executory order creating the obligations, this order restates them. MAWC may file an amended notice to comply with this Amended Report and Order.