

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



Dione C. Joyner,

Complainant,

v.

Missouri-American Water Company,

Respondent

**Case No. WC-2006-0345**

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**REPORT AND ORDER**

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**Issue Date: November 7, 2006**

**Effective Date: November 17, 2006**

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

Dione C. Joyner,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. WC-2006-0345</u></b>
	)	
Missouri-American Water Company,	)	
	)	
Respondent.	)	

**APPEARANCES**

**Dione C. Joyner**, *appearing pro se*, 1422 Sheridan Drive, St. Louis, Missouri 63132.

**Mary G. Sullivan**, Corporate Counsel, 727 Craig Road, St. Louis, Missouri 63141.  
Attorney for Missouri-American Water Company.

**Jennifer Heintz**, Assistant General Counsel, Missouri Public Service Commission, Post  
Office Box 360, Jefferson City, Missouri 65102. Attorney for the Staff of the Commission.

**REGULATORY LAW JUDGE:**    **Harold Stearley**

## **REPORT AND ORDER**

### **Procedural History**

On March 3, 2006, Dione C. Joyner filed a formal complaint with the Missouri Public Service Commission against Missouri-American Water Company ("MAWC"). Ms. Joyner alleged that MAWC excavated her yard without her consent and inappropriately charged her for that excavation in order to gain access to the "stop cock" to discontinue her water service. Ms. Joyner claims that MAWC was responsible for breaking her stop cock, and that MAWC's actions caused her to go without water for a week, for which she incurred additional costs associated with staying in a hotel and for meals.

Ms. Joyner further asserts that MAWC did not spend four hours at her home in the process of shutting off the water and that she was over-billed for labor costs in association with the excavation. Finally, Ms. Joyner contends that on at least two occasions prior to the disconnection she attempted to pay her bill with a check but that MAWC refused to accept her payment.

On March 10, 2006, the Commission issued notice of the complaint to MAWC and MAWC filed its answer on April 6, 2006. MAWC contends that Ms. Joyner was delinquent in paying her bills for a full year, that adequate notice was sent advising her of the disconnection of service and expenses associated with disconnection, and that it did not violate any statute, rule, tariff or order of the Commission in the manner in which service was disconnected.

The Commission's Staff filed its report on its investigation into this complaint on August 11, 2006. The Staff concurred with MAWC's position.

An evidentiary hearing was conducted on October 13, 2006. During the hearing, the Commission requested that MAWC late file an exhibit to accurately document the labor time involved with the disconnection of Ms. Joyner's water service. On October 20, 2006, the exhibit was filed and marked as Exhibit 8. The parties were given ten days to respond to Exhibit 8. Ms. Joyner objected to the admission of Exhibit 8 and her objection was overruled by the Commission in a separate order. MAWC's late-filed exhibit, Exhibit 8, shall be admitted into evidence.

### **Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

1. Dione C. Joyner maintains her residence at 1422 Sheridan Drive, St. Louis, Missouri.<sup>1</sup>
2. MAWC is a Missouri corporation with its principal office and place of business located at 727 Craig Road, St. Louis, Missouri 63141.<sup>2</sup>
3. MAWC is a "water corporation" and a "public utility" as defined in Section 386.020, RSMo 2000, and is subject to the jurisdiction of the Commission.<sup>3</sup>

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<sup>1</sup> Complaint p. 1; Transcript p. 15, lines 12-13.

<sup>2</sup> Answer p. 1; Transcript p. 15, lines 16-18.

<sup>3</sup> Answer p. 1; Transcript p. 28, lines 6-18.

4. MAWC provides water and sanitary sewer service in multiple counties in Missouri, including the provision of service in St. Louis County, Missouri.<sup>4</sup>

5. Dione C. Joyner has an account for water service with MAWC for 1422 Sheridan Drive, St. Louis, Missouri, and held this account throughout the relevant time period of the billing dispute that is the subject of this complaint.<sup>5</sup>

6. Between the months of October 2004 and October 2005, MAWC mailed twelve letters to Ms. Joyner advising her that she was past due on her account and that service could be disconnected for non-payment of the bill.<sup>6</sup>

7. Eight of the letters mailed to Ms. Joyner by MAWC stated: "If service is discontinued for non-payment of this bill, the full amount due plus the restoration charge and excavation charge, if required, must be paid in our office before service will be restored."<sup>7</sup>

8. Eight of the letters mailed to Ms. Joyner by MAWC stated: "If discontinuance of service becomes necessary, operation of the customer-owned stop cock will be necessary. If the stop cock is found to be inoperable or breaks in the process of either discontinuing or restoring service, you will be required to repair or replace the stop cock prior to service being restored."<sup>8</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> Answer p. 1; Hearing Exhibit A, Staff's Report of Investigation p. 1; Transcript p. 29, lines 2-6.

<sup>6</sup> Answer Exhibit 5; Hearing Exhibit 5; Hearing Exhibit A, Staff's Report of Investigation p. 2; Transcript p. 40, lines 1-18.

<sup>7</sup> Answer Exhibit 5; Hearing Exhibit 5; Transcript p. 40, line 25, and p. 41, lines 1-8.

<sup>8</sup> *Id.*

9. All twelve of the letters mailed to Ms. Joyner list the office hours for MAWC, provide a phone number for customer service and an internet address.<sup>9</sup>

10. Dione C. Joyner does not dispute that she was delinquent in paying the balance of her account with MAWC during the months of October 2004 through October 2005.<sup>10</sup>

11. Dione C. Joyner does not dispute having received MAWC's twelve overdue and discontinuance notices.<sup>11</sup>

12. Dione C. Joyner stated at hearing that she read MAWC's twelve overdue and discontinuance notices.<sup>12</sup>

13. Prior to having her service disconnected, Dione C. Joyner made two attempts to make a payment towards her overdue bills by check, but those checks were refused by MAWC.<sup>13</sup>

14. Although Dione C. Joyner denied ever attempting to pay her bill with a dishonored check during the evidentiary hearing, during the Staff's investigation, Ms. Joyner admitted to attempting to pay MAWC with a dishonored check.<sup>14</sup>

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<sup>9</sup> Answer Exhibit 5; Hearing Exhibit 5.

<sup>10</sup> Complaint; Transcript p. 21, lines 19-20.

<sup>11</sup> Transcript p. 18, lines 19-25; p. 24, lines 7-25, and p. 25, lines 1-2.

<sup>12</sup> *Id.*

<sup>13</sup> Transcript p. 18, lines 21-25.

<sup>14</sup> Hearing Exhibit A, Staff's Report of Investigation p. 3; Transcript p. 52, lines 1-2.

15. It is MAWC's policy not to accept checks as a form of payment once a customer attempts to pay a bill with a dishonored check.<sup>15</sup>

16. The final service discontinuance notice sent to Ms. Joyner by MAWC was mailed on October 6, 2005, stating that the discontinuance date would be October 10, 2005.<sup>16</sup>

17. Dione C. Joyner's water service was disconnected on October 14, 2005, and the disconnection was assigned MAWC's Service Order Number 3328822.<sup>17</sup>

18. MAWC's Service Order Number 3328822, dated October 13, 2005, bears the notation "T-head feels broken."<sup>18</sup>

19. The reference to the "T-head" in MAWC's service order was to the stop cock controlling the flow of water from MAWC to Ms. Joyner.<sup>19</sup>

20. The Staff of the Missouri Public Service Commission concluded that the likely cause of the broken stop cock was age and repeated past operations of the stop cock.<sup>20</sup>

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<sup>15</sup> Transcript p. 46, lines 6-9, and p. 51, lines 18-25.

<sup>16</sup> Answer Exhibit 5; Hearing Exhibit 5; Transcript p. 56, lines 24-25, and p. 57, lines 1-4.

<sup>17</sup> Hearing Exhibit 8. Although MAWC's witness Dave Murphy testified that Ms. Joyner's service was disconnected on October 13, 2005 (Transcript p. 57, line 9), Exhibit 6 indicates that service could not be discontinued initially on October 13, 2005, because the stop cock was broken. Exhibit 8 confirms that the two-man excavation crew discontinued service on October 14, 2005.

<sup>18</sup> Answer Exhibit 6; Hearing Exhibit 6; Hearing Exhibit A, Staff's Report of Investigation p. 2; Transcript p. 42, lines 11-25.

<sup>19</sup> Hearing Exhibit A, Staff's Report of Investigation p. 2; Transcript p. 42, lines 11-25.

<sup>20</sup> Hearing Exhibit A, Staff's Report of Investigation p. 4; Transcript p. 61, lines 20-25, p. 62, lines 1-25 and p. 63, lines 1-16.

21. Because of the broken stop cock, MAWC had to excavate to disconnect service to Ms. Joyner.<sup>21</sup>

22. MAWC added a disconnection charge to Ms. Joyner's account for the excavation in the amount of \$311.16, which included four hours of labor time and a \$20.00 reconnection charge.<sup>22</sup>

23. Dione C. Joyner stated that her brother was present in her home on the day MAWC disconnected her service and that he reported that MAWC's employees did not spend four hours in her yard while disconnecting her water service.<sup>23</sup>

24. Dione C. Joyner stated that she returned to her home on the day of the disconnection and that MAWC had left her premises within thirty minutes.<sup>24</sup>

25. Prior to the admission of MAWC's late-filed exhibit, Exhibit 8, the Staff of the Missouri Public Service Commission was unable to verify the labor time involved with the excavation to discontinue service, but noted that shop time and transportation time involved with the disconnection would be appropriate in addition to any time actually spent on site for the disconnection.<sup>25</sup>

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<sup>21</sup> Answer p. 4; Hearing Exhibit A, Staff's Report of Investigation p. 2; Transcript p. 54, lines 10-25, and p. 55, lines 1-13.

<sup>22</sup> Answer p. 4; Answer Exhibit 7; Hearing Exhibit 7; Hearing Exhibit A, Staff's Report of Investigation p. 2, 4.

<sup>23</sup> Transcript p. 22, lines 2-8.

<sup>24</sup> *Id.*

<sup>25</sup> Hearing Exhibit A, Staff's Report of Investigation p. 4; Transcript p. 60, lines 2-10.



26. The two-man crew dispatched to excavate and discontinue Ms. Joyner's water service each logged four hours of labor time in association with Service Order Number 3328822.<sup>26</sup>

27. On October 17, 2005, MAWC attempted to reconnect Ms. Joyner's service after she made payment for service restoration; however, Ms. Joyner's stop cock had not yet been repaired.<sup>27</sup>

28. In St. Louis County, the entire length of the water service pipeline must be maintained by the customer, because County plumbing ordinances consider the service pipeline as part of the house plumbing.<sup>28</sup>

29. Only plumbers licensed by St. Louis County are permitted to construct and repair residential water service pipelines.<sup>29</sup>

30. Water service was restored to Ms. Joyner on October 20, 2005, after the stop cock was repaired utilizing the St. Louis County Public Works Service Line Repair program.<sup>30</sup>

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<sup>26</sup> Hearing Exhibit 8.

<sup>27</sup> Hearing Exhibit A, Staff's Report of Investigation p. 2.

<sup>28</sup> Hearing Exhibit A, Staff's Report of Investigation p. 4; Transcript p. 32, lines 2-24.

<sup>29</sup> Hearing Exhibit A, Staff's Report of Investigation p. 4; Transcript p. 32, lines 22-24. St. Louis County administers a service line maintenance program, whereby monthly charges included on the customer's water bills provides funding for repairs and replacement of customer owned service lines.

<sup>30</sup> Hearing Exhibit A, Staff's Report of Investigation p. 2; Transcript p.44, lines 17-25, and p. 45, lines 1-9.

31. On January 20, 2006, MAWC credited Ms. Joyner's account in the amount of \$51.10: \$20.00 for the reconnection fee; \$20.00 for the return trip fee associated with the reconnection; \$6.50 for labor; and \$4.50 for taxes.<sup>31</sup>

### **Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law.

MAWC is a public utility as defined by Section 386.020(42), RSMo Cum. Supp. 2005. Furthermore, MAWC is a water corporation as defined by Section 386.020(58), RSMo Cum. Supp. 2005. As such, MAWC is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo 2000.

MAWC has an approved tariff that is published by the Commission. "A tariff is a document which lists a public utility's services and the rates for those services."<sup>32</sup> "A tariff that has been approved by the Public Service Commission becomes Missouri law and has the same force and effect as a statute enacted by the legislature."<sup>33</sup> "The filed tariff, or filed rate, doctrine governs a utility's relationship with its customers and provides that any rate filed with the appropriate regulatory agency is sanctioned by the government and cannot be the subject of legal action."<sup>34</sup> "The filed tariff doctrine conclusively presumes that both a utility and its customers know the contents and effect of the published tariffs."<sup>35</sup>

MAWC's Tariff, P.S.C. Mo. No. 6, First Revised Sheet No. R19.1, Rule 19.1, effective June 8, 1988, provides in pertinent part:

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<sup>31</sup> Answer p. 4; Hearing Exhibit A, Staff's Report of Investigation p. 2; Transcript p. 45, lines 15-25, and p. 46, lines 1-2.

<sup>32</sup> *Bauer v. Southwestern Bell Tel. Co.*, 958 S.W.2d 568, 570 (Mo. App. 1997).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

All Water Service Line installations, including a 'Master Water Service Line,' meter yokes, gate valves, corporation cocks, stop cocks, stop and waste valves, stop boxes, meter boxes, check valves; pressure reducing valves, backflow preventors or other appurtenances, are not the property of the Company and must be kept operational, maintained and repaired by the owner or customer as a condition of service.<sup>36</sup>

MAWC's Tariff, P.S.C. Mo. No. 6, First Revised Sheet No. R19.1(a), Rule 19.1(B), effective July 3, 1987, provides in pertinent part:

If it is necessary to excavate to discontinue service at the corporation cock or the stop cock, to disconnect the Water Service Line, or replace any portion of a tap, a 'Discontinuance Charge' will be made equivalent to the actual costs of labor for an appropriately sized and supervised crew, material transportation, equipment and overheads. Overhead costs are based on the amount of time worked by the employees who are discontinuing service. At the option of the Company an 'installment payment schedule' may be arranged for the payment of the 'Discontinuance Charge.' The Company will excavate at the corporation cock or stop cock only to discontinue service. Any subsequent excavation and/or other steps required to restore service will then be the responsibility of the customer. Service may not be restored until payment of all charges described above has been made by the Customer and notice given to the Company.<sup>37</sup>

MAWC's Tariff, P.S.C. Mo. No. 6, Sheet Nos. R 2.3 and 2.3(a), effective June 8, 1988, provides in pertinent part:

In case of nonpayment of bills by residential customers within sixteen days after the billing date, the supply may be turned off and not turned on again in accordance with the provisions of 4 CSR-13.050, except upon payment at the Company office, during normal working hours, of the amount due, together with the appropriate additional charge for restoring service at the stop cock.<sup>38</sup>

Pursuant to Commission Rule 4 CSR 240-13.050(1)(A), water service to a residential customer may be discontinued for nonpayment of an undisputed delinquent charge. Additionally, Commission Rule 4 CSR 240-13.050(5) provides, in pertinent part:

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<sup>36</sup> Hearing Exhibit 1, MAWC's Tariff, P.S.C. Mo. No. 6, First Revised Sheet No. R19.1, Rule 19.1, effective June 8, 1988.

<sup>37</sup> Hearing Exhibit 1, MAWC's Tariff, P.S.C. Mo. No. 6, First Revised Sheet No. R19.1(a), Rule 19.1(B), effective July 3, 1987.

<sup>38</sup> Hearing Exhibit 3, MAWC's Tariff, P.S.C. Mo. No. 6, Sheet Nos. R 2.3 and 2.3(a), effective June 8, 1988.

A utility shall not discontinue residential service pursuant to section (1) unless written notice by first class mail is sent to the customer at least ten (10) days prior to the date of the proposed discontinuance. Service of notice by mail is complete upon mailing. As an alternative, a utility may deliver a written notice in hand to the customer at least ninety-six (96) hours prior to discontinuance. A utility shall maintain an accurate record of the date of mailing or delivery.

Section 386.390, RSMo 2000, authorizes a person, such as Ms. Joyner, to bring a complaint before the Commission regarding a public utility. "In cases where a complainant alleges that a regulated utility is violating a law, its own tariff, or is otherwise engaged in unjust or unreasonable actions, the complainant has the burden of proof."<sup>39</sup> As the complaining party, Ms. Joyner bears the burden of proving the allegations in her complaint.

### **Decision**

The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision. After applying the facts, as it has found them, to its conclusions of law, the Commission has reached the following decision.

During the hearing, Ms. Joyner was given the opportunity to provide direct testimony and the testimony of any other witnesses on her behalf. Ms. Joyner appeared by telephone, declined to present any witness testimony other than her own, and did not introduce any evidence beyond her own testimony.

At hearing, Ms. Joyner testified that she could not understand why MAWC would not accept her checks for payment, and she denied ever having attempting to pay MAWC with

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<sup>39</sup> *David A. Turner and Michele R. Turner, Complainants, v. Warren County Water and Sewer Company, Respondent*, 9 Mo. P.S.C. 3d 548 (Mo. PSC 2001), *citing to*, *Margolis v. Union Electric Company*, 30 Mo. P.S.C. (N.S.) 517, 523 (1991); *Michaelson v. Wolf*, 261 S.W.2d 918, 924 (Mo. 1953); *Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

a dishonored check. She claimed that she did not have adequate notice regarding the need to excavate her property and the consequences of the excavation, and she faulted MAWC for her broken stop cock. Ms. Joyner further testified that her brother was present in her home the day of the disconnection, and that he reported that MAWC did not spend four hours on her premises in association with the excavation and discontinuance of her water service. Ms. Joyner added that she returned to her home and that MAWC had already left, meaning that at most that MAWC's employees spent thirty minutes on her premises while disconnecting her service.

Having made prior inconsistent statements to the Staff regarding attempting to pay MAWC with a dishonored check, the Commission finds Ms. Joyner's testimony with respect to this issue lacking in credibility. MAWC's refusal to accept Ms Joyner's checks was justifiable given her admission of having attempted to pay MAWC with a dishonored check and MAWC's policy on payment. Ms. Joyner has failed to provide the Commission with any credible evidence that she attempted to fully pay her water bill during the months of October 2004 through October of 2005. Ms. Joyner acknowledged that she received the twelve notices from MAWC regarding her delinquency and the potential disconnection of her water service, and she specifically testified that she read the notices.

Ms. Joyner is presumed to know her obligations as a customer as outlined in MAWC's tariff. The tariff placed Ms. Joyner on notice of the consequences of failure to pay her bill. Moreover, the notices issued by MAWC fully appraised Ms. Joyner of her obligations and that excavation could be required to disconnect her water service.

MAWC did not technically comply with Commission Rule 4 CSR 240-13.050(5) in that it only provided Ms. Joyner eight days' notice in her final notice of disconnection prior

to disconnecting her service. However, because Ms. Joyner was given multiple notices regarding the potential disconnection of her water service and multiple opportunities to pay her bill, the Commission finds good cause, in this instance, to waive the ten-day notice requirement and finds that eight days' notice in MAWC's final disconnection notice was adequate.<sup>40</sup>

The fact that her stop cock was broken and that excavation was necessary to shut off Ms. Joyner's water was not the fault of MAWC. The stop cock breaking was the result of age and prior use, and Ms. Joyner was responsible for maintaining and repairing the entire service line on her property, including the stop cock. Ms. Joyner was a participant in the St. Louis County Public Works Service Line Repair program, and was able to utilize that program to repair her stop cock. There is no evidence that MAWC delayed in restoring Ms. Joyner's water service once she had the stop cock repaired.

Regarding labor charges associated with discontinuing Ms. Joyner's water service, MAWC late filed an exhibit per the Commission's request on October 20, 2006, in an attempt to definitively establish the labor time spent during the disconnection. This exhibit, admitted as Exhibit 8, was the verified time sheet for the work crew who disconnected Ms. Joyner's water service. The time sheet reflects that two MAWC employees logged four hours of labor each in association with disconnecting her service.

Prior to MAWC filing Exhibit 8, the Commission's Staff noted in its investigation that while it could not confirm the actual labor time spent during the disconnection, that shop time and transportation time involved with the disconnection would be appropriate in addition to any time actually spent on site for the disconnection. On November 1, 2006,

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<sup>40</sup> Commission Rule 4 CSR 240-2.015.

Staff filed a response to the submission of Exhibit 8 stating that the time sheet had no detail as to how much time was actually spent at Ms. Joyner's property or what equipment was used. However, this did not alter Staff's opinion regarding the apparent time spent by the company disconnecting service.

Ms. Joyner's testimony about what her brother is alleged to have witnessed with regard to MAWC's labor time is hearsay, and consequently lacks credibility. And even giving full weight to Ms. Joyner's report of MAWC having only spent thirty minutes at her home, this does not refute the evidence of the time that MAWC has claimed in labor charges. MAWC tariff states that the discontinuance charge will include actual costs of labor for an appropriately sized and supervised crew, material transportation, equipment and overheads. MAWC has provided verified time sheets of its employees recording four hours of labor time for each member of the two-man crew dispatched to discontinue Ms. Joyner's service. The Staff has determined that shop time and transportation time involved with the disconnection would be appropriate in addition to any time actually spent on site for the disconnection. Consequently, the Commission determines that MAWC's charges for labor were reasonable. Moreover, MAWC credited Ms. Joyner's account appropriately for what it identified as being excess charges.

While it is unfortunate that Ms. Joyner suffered the inconvenience of the excavation and having her water service disconnected for a week, the Commission determines that Ms. Joyner received adequate advance notice of her obligation to pay for water service and the consequences of failing to meet her obligations. MAWC did not violate any statute, rule, tariff, or order by the Commission regarding this situation, and Ms. Joyner failed to meet the burden of proving the allegations in her complaint.

**IT IS ORDERED THAT:**

1. Missouri-American Water Company's late-filed exhibit, marked as Exhibit 8, is admitted into evidence.
2. The Missouri Public Service Commission finds in favor Missouri-American Water Company and denies Dione C. Joyner's requested relief.
3. The complaint filed by Dione C. Joyner on March 3, 2006, against Missouri-American Water Company is dismissed with prejudice.
4. All objections not ruled on are overruled and all motions not granted are denied.
5. This order shall become effective on November 17, 2006.
6. This case may be closed on November 18, 2006.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton and Appling, CC., concur;  
Gaw, C., concurs, with concurring opinion to follow;  
all certify compliance with the provisions of  
Section 536.080, RSMo.

Dated at Jefferson City, Missouri,  
on this 7th day of November, 2006.