

APPEARANCES

Appearing For Claude Scott:

Claude Scott, 3725 Geraldine Avenue, Saint Ann, Missouri 63074-2004.

Appearing for Missouri American Water Company:

Jennifer Hernandez, Brydon, Swearingen & England, PC, 312 East Capitol, Jefferson City MO 65102

Appearing for the Staff of the Missouri Public Service Commission:

Travis Pringle, Associate Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102-0360.

Regulatory Law Judge: John T. Clark

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

Claude Scott,)	
)	
Complainant,)	
)	
v.)	File No. WC-2020-0407
)	
Missouri-American Water Company,)	
)	
Respondent.)	

REPORT AND ORDER

I. Procedural History

Claude Scott filed a complaint with the Public Service Commission against Missouri-American Water Company (MAWC) on June 22, 2020. Mr Scott complains that MAWC overbilled him for water usage by estimating his bills, failed to post payments to his account, failed to apply credits to his account, and failed to replace his meter on request. Mr Scott states that the amount at issue is \$211.27. Accordingly, the Commission treats this complaint under the Commission’s small complaint 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. Scott’s complaint on June 23, 2020. The answer included a motion to dismiss the complaint for Mr. Scott’s failure to pay a portion of his bill that was not disputed, as required by Commission Rule 20 CSR 4240-2.070(7). MAWC additionally alleged that Mr. Scott was frivolously using the Commission’s complaint process to delay disconnection of his water service. The Commission determined that MAWC’s motion to

dismiss constituted a request for summary determination and, due to noncompliance with Commission Rule 20 CSR 4240-2.117, the Commission did not consider the request.

Staff filed a report detailing its investigation and analysis on August 20, 2020. There were no responses to Staff's report, so the Commission directed the parties to file a proposed procedural schedule, which Staff and MAWC did on August 10, 2020. Mr. Scott did not participate in preparing the proposed procedural schedule. The Commission scheduled an evidentiary hearing for November 19, 2020, and later suspended that evidentiary hearing due to changes in the Commission's calendar.

The Commission directed the parties to file another proposed procedural schedule. Staff and MAWC again filed a proposed procedural schedule, and Mr. Scott did not participate in preparing that proposed procedural schedule. The Commission scheduled an evidentiary hearing for January 15, 2021. On the eve of that hearing, January 14, 2021, Mr. Scott requested a continuance to have additional time to review documents received from MAWC.

The Commission again ordered the parties to file proposed dates for an evidentiary hearing. The Commission set an evidentiary hearing for February 19, 2021, based upon the parties proposed dates. On the eve of that hearing, February 18, 2021, Mr. Scott sent an email to Staff counsel stating that he would not be attending the evidentiary hearing. MAWC filed a response to Mr. Scott's email objecting to continuing the evidentiary hearing.

The Commission again suspended the evidentiary hearing and directed the parties to file proposed dates for the evidentiary hearing. The Commission set an evidentiary

hearing for May 21, 2021, based upon dates proposed and submitted by Staff and MAWC. Mr. Scott did not participate in preparing that proposed evidentiary hearing date.

Staff and MAWC filed a *List of Issues, Witnesses, and Exhibits*, which contained four issues for the Commission's determination. Mr. Scott did not participate in preparing that list, but at no point during these proceedings did he object to those issues. The issues put forth by the parties for the Commission to determine are:

1. Did MAWC overcharge Mr. Scott by billing him for more water than he actually used?
2. Did MAWC fail to provide evidence of usage through actual meter readings on bills issued to Mr. Scott?
3. Did MAWC fail to credit payments made by Mr. Scott to his account?
4. To the extent the answers to the issues above are yes, did MAWC violate any law, Commission rule, Commission order or decision?

On May 21, 2021, the Commission held an evidentiary hearing via telephone conference and WebEx. Mr. Scott failed to appear for the evidentiary hearing. At the hearing MAWC made an oral motion to dismiss Mr. Scott's complaint pursuant to Commission Rule 20 CSR 4240-2.116(3), which provides that a party may be dismissed from a case for failure to appear at any scheduled proceeding. The Commission will address that motion in this Report and Order.

Commission admitted the testimony of two witnesses and received ten exhibits onto the record at the evidentiary hearing. Tracie Figueroa, Business Service Specialist, testified for MAWC; and Scott Glasgow, Senior Data Analyst, Customer Experience Department, testified for Staff.

Staff and MAWC filed post-hearing briefs. Mr. Scott did not submit a post-hearing brief. On June 21, 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.”

The Commission issued a Recommended Report and Order on September 8, 2021. Pursuant to 20 CSR 4240-2.070(15)(H), the parties were given ten days to file comments supporting or opposing the recommended order. No comments were received.

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. Scott’s 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. Scott’s customer specific information. The confidential information disclosed in this Report and Order is the minimal amount necessary to support the decision.

II. Findings of Fact

1. MAWC is a utility regulated by this Commission.
2. Mr. Scott received water service from MAWC at his residence.¹
3. On January 6, 2020, Mr. Scott filed a similar complaint against MAWC in File No. WC-2020-0194. That complaint also alleged that MAWC estimated his water usage and that his bills were higher than his actual water usage. The Commission

¹ Exhibit 300, and exhibit 103.

dismissed that complaint for failure to show good cause for not appearing at a prehearing conference.²

Issue 1 - Did MAWC overcharge Mr. Scott by billing him for more water than he actually used?

4. Mr. Scott's average water usage was less than 50 gallons a day.³

5. Mr. Scott's water usage is below average residential water usage. Average water usage according to the Missouri Department of Natural Resources is 80 gallons per day per resident.⁴

6. A water customer's bill contains different kinds of charges. There are Water Service Charges, which include the water service charge (a fixed charge) and a Water Usage Charge (actual water used at customer rate). There are also other charges such as the ISRS charge (an Infrastructure replacement charge based upon water usage), a water primacy fee, and a Service Line Protection Charge (St. Louis County Public Works service line repair program charge). Additionally, there are taxes.⁵

7. Mr. Scott's average monthly bill is \$18.07 and his average monthly Water Charge is \$6.66.⁶

8. Mr. Scott's bills contain the previous actual reading, the current actual reading, the meter units for that bill, and the billing units. The billing units multiplied by 100 equals the total gallons of water used for that billing period.⁷

² Exhibit 200, and File No. WC-2020-0194, *Order Dismissing Complaint*, issued May 21, 2020.

³ Transcript, page 95, and exhibit 103.

⁴ Exhibit 200.

⁵ Transcript, page 68, and Exhibit 103.

⁶ Exhibit 200.

⁷ Exhibit 103, and exhibit 300.

9. The water usage charge on Mr. Scott's billing statements shows the water charge, multiplied by the water used to arrive at Mr. Scott's water usage charge. Mr. Scott's billing statements show that he was correctly billed for the amount of water he used.⁸

Issue 2 - Did MAWC fail to provide evidence of usage through actual meter readings on bills issued to Mr. Scott?

10. Advanced Meter Infrastructure (AMI) was installed at Mr. Scott's residence on January 22, 2019.⁹ AMI allows MAWC to get actual meter readings from a meter several times a day without sending an employee to physically read the meter.¹⁰

11. AMI readings are actual meter readings.¹¹

12. From January 22, 2019, forward Mr. Scott's meter was read by AMI.¹²

13. All of Mr. Scott's meter readings for the period in question, April 23, 2018 through December 16, 2020, were actual readings.¹³

14. Mr. Scott's billing statements show that his meter readings were actual readings and not estimates.¹⁴

15. There is no evidence that Mr. Scott's water usage was ever estimated at his current address.¹⁵

⁸ Exhibit 103.

⁹ Exhibit 200.

¹⁰ Transcript, page 60.

¹¹ Transcript, page 61.

¹² Transcript, page 60

¹³ Transcript, page 61

¹⁴ Transcript, page 92, exhibit 103, and exhibit 300 attached billing statements.

¹⁵ Exhibit 200.

Issue 3 - Did MAWC fail to credit payments made by Mr. Scott to his account?

16. Account ledgers provided by MAWC show all payments made by Mr. Scott from March 15, 2018, through December 24, 2020.¹⁶ The account ledgers match information that Mr. Scott attached to his complaint.¹⁷

17. Three transactions take place within MAWC's accounting system when a payment posts to a customer's account. There is a manual posting (soft posting), a payment lot (hard posting), and a reversal reversing the manual posting.¹⁸ Notations on an account ledger attached to Mr. Scott's complaint indicate that he may not have understood how payment postings were ledgered.¹⁹

18. MAWC's witness, Tracie Figueroa, credibly testified that she was not aware of any time that MAWC failed to credit Mr. Scott's payments to his account.²⁰

19. Staff's witness, Scott Glasgow, credibly testified that MAWC's account for Mr. Scott is accurate, that MAWC has billed Mr. Scott accurately, and that Mr. Scott's payments have posted to his account.²¹

Issue 4 - To the extent the answers to the issues above are yes, did MAWC violate any law, Commission rule, Commission order or decision?

20. On February 26, 2019, Mr. Scott contacted MAWC to tell them he does not believe he is using that much water and that he wants to be sure his meter was functioning correctly and was only being used for his side of the duplex.²²

¹⁶ Exhibit 102.

¹⁷ Transcript page 64, and Exhibit 300.

¹⁸ Transcript page 62.

¹⁹ Exhibit 300.

²⁰ Transcript page 64.

²¹ Transcript page 93.

²² Transcript pages 75-76

21. On March 7, 2019, MAWC performed a meter check. Meter checks involve a field service representative going to the meter location, looking at the meter, verify the reading is correct, and checking the leak indicator.²³ Mr. Scott was not present. The meter check did not reveal any leaks.²⁴

22. MAWC did not perform a meter test at that time because Mr. Scott did not ask for a meter test.²⁵

23. On July 30, 2019, Mr. Scott contacted MAWC to inform them that he thought his meter was defective and needed to be replaced.²⁶

24. MAWC removed Mr. Scott's meter for testing on August 26, 2020,²⁷ after Mr. Scott had filed his formal complaint with the Commission.²⁸

25. Mr. Scott's meter passed the meter test. The meter test showed that Mr. Scott's meter was 100 percent accurate for high flow, 101 percent accurate for medium flow, and 90 percent accurate for low flow.²⁹

26. The meter met the American Waterworks Association accuracy standards, which are higher than the Commission's standard.³⁰

27. The 90% accuracy on low flow water usage favored Mr. Scott.³¹

²³ Transcript, page 72.

²⁴ Transcript, page 76-77.

²⁵ Transcript, page 70-71.

²⁶ Transcript, page 94.

²⁷ Transcript, page 63, and Exhibit 100.

²⁸ Exhibit 300.

²⁹ Transcript, pages 59-60

³⁰ Transcript, page 60

³¹ Transcript, page 60

III. Conclusions of Law

A. MAWC is a public utility as defined by Section 386.020(43), RSMo. Furthermore, MAWC is a water corporation as defined by Section 386.020(59), RSMo. Therefore, MAWC is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

B. Section 386.390 provides that a person may file a complaint against a utility, regulated by this Commission, setting forth violation(s) of any law, rule or order of the Commission.

C. Commission Rule 20 CSR 4240-13.050(6) regarding disputed amounts and disconnection states:

(6) A utility shall maintain an accurate record of the date of mailing or delivery. A notice of discontinuance of service shall not be issued as to that portion of a bill which is determined to be an amount in dispute pursuant to sections 4 CSR 240-13.045(5) or (6) that is currently the subject of a dispute pending with the utility or complaint before the commission, nor shall such a notice be issued as to any bill or portion of a bill which is the subject of a settlement agreement except after breach of a settlement agreement, unless the utility inadvertently issues the notice, in which case the utility shall take necessary steps to withdraw or cancel this notice.

MAWC Relevant Tariff Sections

D. PSC No. 13, 1st Revised Sheet R35

Rule 16 – Meter Tests and Test Fees

C. The Company will make a test of the accuracy of any water meter, free of charge, upon request of a Customer, provided that the meter had not been tested within twelve (12) months previous to such request. If a Customer requests a test of a meter and the meter has been tested within twelve (12) months previous to such request, the cost of the most recent request shall be borne as specified by the Commission.

D. A meter test requested by the Customer will be witnessed by the Customer, Owner, or their duly authorized representative, except tests of meters larger than two inches (2") inside diameter will be conducted by either the meter manufacturer or qualified meter testing service and a certified copy of the test will be provided to the Customer, Owner or duly authorized representative.

E. PSC No. 13, 1st Revised Sheet R31

Rule 14 – Service Charges

C. Company personnel will conduct necessary investigation for unusually high usages, checking meter readings, reasonable enforcement of these Rules and Regulations, or to satisfy Customer inquiries upon either Company instigation or Customer request. However, after making one such special meter reading or investigation at the request and for the convenience of the Customer, any additional services of this nature performed for the Customer within thirty-one (31) days for monthly read Customers and ninety-two (92) days for quarterly read Customers shall constitute special services and the Company shall require a payment as shown on the applicable rate sheet.

F. The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with Mr. Scott.³²

IV. Decision

Staff's brief argues that the Commission should dismiss Mr. Scott's complaint pursuant to Commission Rules 20 CSR 4240-2.110(2)(B) and 20 CSR 4240-2.116(3), which together provide that the Commission may dismiss a party or a party's complaint for failure to appear at a hearing or any scheduled proceeding. Staff also asks that the dismissal be with prejudice pursuant to Missouri Rule of Civil Procedure 67.01, which states "[a] dismissal with prejudice bars the assertion of the same cause of action or claim against the same party." In support of its request, Staff states that Mr. Scott has failed to

³² In cases where a "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." *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

comply with five Commission orders. Staff's brief further argues "[d]espite the Commission's charity in giving Complainant every opportunity to prosecute his complaint, he ultimately failed to appear at his hearing without attempting to get what would have been a third continuance." Staff additionally points out that this complaint is merely a continuation of Mr. Scott's previous complaint, File No. WC-2020-0194, which was dismissed after Mr. Scott did not show good cause for failing to appear at a prehearing conference. Staff argues that to protect the Commission's resources from a third attempt to prosecute this claim the Commission should dismiss Mr. Scott's complaint with prejudice to bar him from asserting these identical claims for the billing period of March 2018 through July 2020. Staff's brief does not discuss any of the issues in the complaint presented for the Commission's determination.

The Commission is sympathetic to Staff's frustration and concern that Mr. Scott may be wasting the Commission's resources and abusing the Commission's rules and procedures in an effort avoid paying legitimate utility charges. However, Staff does not cite any authority that extends to the Commission the ability to dismiss a complaint with prejudice. Missouri Rule of Civil Procedure 67.01, which provides this option to Missouri courts, appears to be primarily definitional.

While there is some overlap with Mr. Scott's previous complaint, his previous complaint was dismissed without prejudice and was not determined on its merits. Therefore, Mr. Scott is not barred from bringing issues from his prior complaint in this one.³³ Mr. Scott is a pro se litigant, not an attorney or regulated utility. Additionally, this

³³ "[W]hen an action is dismissed without prejudice, a plaintiff may cure the dismissal by filing another suit in the same court and, therefore, a dismissal without prejudice is not a final judgment for the purpose of appeal." Snelling v. Masonic Home of Missouri, 904 S.W.2d 251, 252 (Mo.App.1995).

complaint was filed in June of 2020 during the COVID-19 pandemic, and because of the pandemic, the Commission made numerous accommodations in many cases for many parties, including Staff. In this case, the Commission afforded Mr. Scott every opportunity to be heard. Mr. Scott's participation in this complaint was minimal, but there is sufficient evidence of record for the Commission to decide this complaint on its merits. Therefore, both Staff and MAWC's request to dismiss Mr. Scott's complaint for failure to appear at proceedings or comply with Commission orders will be denied.

The Commission's statutory authority in complaint cases, pursuant to Section 386.390, RSMo, is limited to determining whether a public utility committed any act or failed to act in violation of any provision of law subject to the Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission. Mr. Scott alleges that MAWC has overbilled him for more water than he used, estimated his meter readings, and failed to replace a water meter for accurate readings. Accordingly, the Commission must first determine if any of Mr. Scott's allegations are correct, and then whether the allegations violate MAWC's tariff, a Commission order, a Commission rule, or a law subject to the Commission's authority.

It is Mr. Scott's burden to show that MAWC committed a violation. Mr. Scott did not participate in the evidentiary hearing, so he offered no testimony or evidence in support of his allegations. Nevertheless, the Commission admitted as evidence Mr. Scott's complaint and its attachments. The attachments to Mr. Scott's complaint ultimately bolster MAWC's assertion that MAWC did not use estimated meter readings, billed Mr. Scott for actual water usage, and properly posted payments to Mr. Scott's account. While the ledger and billing statements attached to Mr. Scott's complaint contain highlights and

notations made by Mr. Scott, without him to provide the necessary context, they are devoid of any support for his allegation. Additionally, none of the attachments to Mr. Scott's complaint concerned his request to have his meter changed.

Testimony from MAWC and Staff's witnesses, along with supporting documentary evidence demonstrated that MAWC did not estimate meter readings, did not overbill Mr. Scott for water usage, and did not fail to post payments to Mr. Scott's account. There is no evidence that any of those alleged actions occurred. Accordingly, there is insufficient evidence that MAWC violated any provision of law subject to the Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission.

Staff does not bear a burden of proof in this complaint, nor is this Staff's complaint. Nonetheless, in its report, Staff asserts that MAWC did not promptly test the water meter at Mr. Scott's request in violation of MAWC's tariff. MAWC's tariff states that MAWC "will make a test of the accuracy of any water meter, free of charge, upon request of a Customer." MAWC's asserts it complied with its tariff because Mr. Scott did not ask for a test, but stated that he thought his meter was defective and needed to be replaced. Rather than test the meter, MAWC sent an employee to perform a meter check, which verifies the meter reading and checks to see if there is a leak. MAWC is reading its tariff provision too narrowly. Mr. Scott said that his meter was defective and needed to be replaced. The request to replace a potentially defective meter implies a meter test. A meter check does not require removal or replacement of the meter as a meter test does. The Commission's perspective is that Mr. Scott's request was for a meter test and not a meter check. MAWC's interpretation of its tariff was not made in bad faith, but is nevertheless

inaccurate. MAWC should consider what a customer's request involves, and not whether a particular word was used in the request.

After applying the facts to its conclusions of law, the Commission has reached the following decision. Mr. Scott has the burden to show that MAWC has violated a law, rule, or order of the Commission that is within the Commission's statutory authority to determine. Mr. Scott has failed to meet his burden of proof and the Commission rules in favor of MAWC.

THE COMMISSION ORDERS THAT:

1. Claude Scott's complaint is denied.
2. Staff and MAWC's requests to dismiss the complaint are denied as moot.
3. MAWC may proceed, consistent with the law and the Commission's rules, with Mr. Scott's account as appropriate.
4. This order shall become effective on October 23, 2021.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

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 23rd day of September, 2021.





Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

September 23, 2021

File/Case No. WC-2020-0407

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

Claude Scott
Claude Scott
3725 Geraldine Ave.
Saint Ann, MO 63074-2004
claude17scott@gmail.com

Missouri Public Service Commission
Ron Irving
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Ron.Irving@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
Jesse W Craig
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
jcraig@brydonlaw.com

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

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.