

**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.)	

APPLICATION FOR REHEARING

COMES NOW the Respondent Missouri-American Water Company (“MAWC”), by and through the undersigned counsel, and pursuant to Section 386.500 RSMo. and Commission Rule 20 CSR 4240-2.160, respectfully submits its *Application for Rehearing* of the *Report and Order* issued by the Commission in the above-captioned matter on January 13, 2021. In support hereof, MAWC states as follows:

Introduction

The Commission’s findings of fact, while not explicit, suggest that the decision is based on its findings of meter reading errors and a faulty meter. During the agenda discussion regarding this *Report and Order*, there seemed to be a suggestion that MAWC did not test Ms. Beecham’s meter. The *Report and Order* also states that MAWC did not test Ms. Beecham’s meter.¹ However, MAWC did test Ms. Beecham’s meter as part of this case, and the meter tested within the Commission’s permitted accuracy ranges at high, minimum and low test flows.² The Neptune 5/8-inch water meter, Serial No. 84255800, was bench tested for accuracy in accordance with the industry standard water meter practice and at rates of flow over the meter’s

¹ *Report and Order*, p. 15.

² *Affidavit of Tracie Figueroa*, p. 2, para. 6 to p. 3, para. 11.

range of minimum to maximum flow.³ At high flow of 10 gallons per minute, Ms. Beecham's water meter **tested 100.4 percent accurate**;⁴ at minimum flow of two (2) gallons per minute, Ms. Beecham's meter **tested 101.0 percent accurate**;⁵ and at low flow of 1/8 gallon per minute, Ms. Beecham's water meter **tested 100.0 percent accurate**:⁶

REMOVED METER#	DATE	TESTED BY
84255800	9/23/20	3056
END READ	ADJ START READ	SIZE: 5/8"
2516	2516.5709	%FLOW
[REDACTED]		SHOP / SAP
CF @ 5 10 GPM	2516.6211	100.4,
CF @ 2 2 GPM	2516.6413	101.0,
CF @ 0.1 1/8 GPM	2516.6423	100.0,

For the reasons stated herein, the Commission should grant the requested *Application for Rehearing*.

The Report and Order is Unlawful

The Commission's *Report and Order* is unlawful because the Commission's regulation does not allow the Commission to order billing adjustments if the meter tests within accuracy standards. 20 CSR 4240-13.025(1)(E) states that "No billing adjustment shall be made if, upon test, an error in measurement is found to be within the limits prescribed by the commission rules...." Further, MAWC's Commission-approved tariff similarly would indicate that no billing adjustment is appropriate under the circumstances.

³ *Affidavit of Tracie Figueroa*, p. 2, para. 5-6.

⁴ *Id.* at p. 2, para. 7.

⁵ *Id.* at p. 2, para. 8.

⁶ *Id.* at p. 2, para. 9; See also meter test confidential.pdf. attached to the *Affidavit of Tracie Figueroa*.

An evidentiary hearing was held on June 25, 2020, and the record was later reopened by the Commission to take additional evidence on MAWC's compliance with 20 CSR 4240-10.030(38).⁷ Section 38 of the Commission's Rule requires meters to be "...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...."⁸ Section 37 of the Commission's Rule contains the accuracy parameters for meters placed in service:

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.⁹

MAWC removed Ms. Beecham's meter on September 21, 2020, for meter testing pursuant to the Commission's Order to provide additional evidence.¹⁰

On September 23, 2020, MAWC tested the meter and it tested within the Commission's accuracy parameters of 20 CSR 4240-10.030 (37) at high, minimum, and low test flows.¹¹ Staff did not object to the admission of this evidence into the record.¹² Ms. Beecham filed a response that stated "...since the meter they took out of the hole was in good condition, I am requesting the old meter be put back in it's (*sic*) original location until the time it is scheduled to be replaced."¹³ While the Commission's *Report and Order* does not address the meter test results, the meter test results are part of the record, unimpeached and uncontroverted.¹⁴

⁷ *Order Directing Filing*, issued September 16, 2020.

⁸ 20 CSR 4240-10.030(38).

⁹ 20 CSR 4240-10.030(37).

¹⁰ *Affidavit of Tracie Figueroa*, p. 2, para. 5.

¹¹ *Affidavit of Tracie Figueroa*, p. 2, para. 6 to p. 3, para. 11.

¹² *Order Directing Filing*, p. 2, para. 4, issued September 29, 2020 ("Objections to the receipt of MAWC's Affidavit and subsequent clarification, as well as Staff's report, into evidence shall be filed no later than October 26, 2020."); *Staff's Report Regarding Meter Testing*, p. 4, para. 13.

¹³ *Rebuttal to the Procedures of the Testing of my Meter*, p. 2.

¹⁴ Section 386.420, RSMo provides that "[i]n case of an action to review any order or decision of the commission, a transcript of such testimony, together with all exhibits or copies thereof introduced and all information secured by

The Commission's *Report and Order* relies on Rule 20 CSR 4240-13.025(1)(A) to order a billing adjustment for an overcharge for the five-year period immediately preceding the quarterly billing ending October 17, 2018.¹⁵ The *Report and Order* requires MAWC to use 27 units per quarter as a base line of actual usage to determine and make billing adjustments for an overage for the five-year period immediately preceding October 17, 2018.¹⁶ As stated above, 20 CSR 4240-13.025(1)(E) states that "No billing adjustment shall be made if, upon test, an error in measurement is found to be within the limits prescribed by the commission rules...." Ms. Beecham's meter tested within the Commission's accuracy parameters in 20 CSR 4240-10.030 (37) at high, minimum, and low test flows, so no billing adjustment can be lawfully ordered.

Further, MAWC provided service to Ms. Beecham pursuant to its approved tariffs on file with the Commission, as well as the Commission's statutes and rules.¹⁷ "A tariff is a document which lists public utility services and the rates for those services."¹⁸ The Commission has the power to approve utility tariffs, and once the Commission approves a tariff, it becomes Missouri law.¹⁹ Tariffs have the same force and effect as a statute directly prescribed from the legislature.²⁰ Every customer upon completing an application for any service rendered by MAWC, or upon taking of water service, shall be considered to have expressed consent to be bound by the rates, rules and regulations contained in MAWC's Commission-approved tariffs.²¹

MAWC's Tariff Sheet No. R 36, Rule 17 A. provides "[i]f the meter, when inspected and tested using the test streams prescribed by the Commission shall be found to be more than five

the commission on its own initiative and considered by it in rendering its order or decision, and of the pleadings, record and proceedings in the cause, shall constitute the record of the commission...."

¹⁵ *Report and Order*, p. 16.

¹⁶ *Id.*

¹⁷ Ex. 200, p. 2, ll. 16-20.

¹⁸ *State ex rel. Missouri Gas Energy v. Public Service Com'n*, 210 S.W.3d 330, 337 (Mo. App. 2006).

¹⁹ Sections 393.130, 393.140(11) and 393.150, RSMo.

²⁰ *Id.*

²¹ PSC MO No. 13, 1st Revised Sheet No. R 9, Rule 2A.

percent (5%) defective or incorrect to the prejudice of the Customer or the Company, the Company shall adjust the Customer's bill according to these tariff rules." But in this case, Ms. Beecham's meter was not defective or incorrect.²² Additionally, the Commission made no finding in the *Report and Order* that Ms. Beecham's meter was more than 5% defective during the five-year billing period immediately preceding October 17, 2018. For these reasons, the Commission's *Report and Order* requiring MAWC to issue Ms. Beecham a billing adjustment is unlawful and rehearing should be granted.

The Report and Order is Unreasonable

The Commission's *Report and Order* is unreasonable because the Commission's finding that Ms. Beecham's baseline of usage for the five-year period immediately preceding October 17, 2018, should be set at 27 units of water per quarter is not supported by substantial, competent evidence on the whole record and is arbitrary and capricious.

Ms. Beecham disputed the recorded amount of water usage at her service address between October 27, 2014, through July 27, 2018.²³ The Commission's determination of the usage of 27 units per quarter is based on Staff's review of usage data from the April 18, 2019 billing through the water bill issued prior to March 6, 2020.²⁴ The 27 units average calculated by Staff is based **on a period of usage after October 17, 2018**. In contrast to the 27 units ordered by the Commission, Ms. Beecham's meter registered an average of 44.5 units of water from the July 2012 billing to the July 2014 billing.²⁵ Ms. Beecham did not dispute usage prior to July 2014. There is no evidence in the record that supports a Commission finding that an average usage of 27 units is applicable to the five-year billing period immediately preceding

²² *Affidavit of Tracie Figueroa*, p. 2, para. 6 to p. 3, para. 11.

²³ Ex. 200, p. 3, ll. 10-15.

²⁴ *Report and Order*, p. 16.

²⁵ *Report and Order*, p. 5, para. 6.

October 17, 2018, or that the 27 units as ordered by the Commission is more applicable than the average 44.5 units of water prior to July 2014.

There is no evidence in the record that the meter was malfunctioning between October 27, 2014, through July 27, 2018. Even assuming *arguendo* that the meter was malfunctioning during this time, no witness testified with any degree of certainty on how much the meter was malfunctioning. In general, a meter with accuracy issues is prone to under register water usage verses over register actual usage.²⁶ In other words, MAWC is more likely to underbill a customer, verses overbill a customer, when a meter starts to fail.²⁷ Further, results of meter studies conducted since at least 1960 conclude that Neptune meters, like Ms. Beecham's, meet or exceed meter accuracy standards for at least 15 years.²⁸ In summary, while no party objected to the accuracy, relevance, or receipt into evidence of Staff's 27 units per quarter between the April 18, 2019 and March 6, 2020 billings, there certainly was no agreement on the accuracy or relevance of 27 units to the October 27, 2014 through July 27, 2018, to meet the standard of due process required for this case.

WHEREFORE, for the reasons stated herein, MAWC respectfully requests that the Commission grant its *Application for Rehearing*, and upon rehearing, issue an order that finds MAWC did not violate any Commission statute, rule, order, or Commission approved Company specific tariff.

²⁶ Tr. p. 86, ll. 1-8.

²⁷ Tr. p. 86, ll. 9-13.

²⁸ *Affidavit of Tracie Figueroa*, p. 3, para. 12 to p. 4, para. 18; *See also* neptune warranty.pdf. attached to the *Affidavit of Tracie Figueroa*.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

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**ATTORNEYS FOR MISSOURI-AMERICAN
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been transmitted by electronic mail and United States Postal Mail, postage prepaid, to the Complainant, and by electronic mail to all counsel of record, this 11th day of February 2021.

/s/ Jennifer L. Hernandez