

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

Michele Westmoreland,)	
)	
Complainant,)	
)	
v.)	Case No. WC-2015-0171
)	
Missouri-American Water Company,)	
)	
Respondent.)	

MAWC RESPONSE TO STAFF RECOMMENDATION

COMES NOW Missouri-American Water Company (MAWC) and, in response to the Staff Recommendation, states the following to the Missouri Public Service Commission (Commission):

1. On March 27, 2015, the Staff of the Commission (Staff) filed a Staff Recommendation To Grant Partial Relief (Staff Recommendation).
2. MAWC has reviewed Staff's Recommendation and has the following response to the Staff Recommendation.
3. Staff concludes in its recommendation that MAWC "violated its tariff provision Sheet R11, Rule 3(E) entitled "Liability of the Company" by contributing to the property damage sustained by Complainant."
4. MAWC's tariff sheet PSC MO No. 13, Sheet No. R 11, Rule 3(E) states in relevant part as follows:

The Company shall not be liable for damages resulting to Customer or third persons, unless due to contributory negligence on the part of the Company and without any contributory negligence on the part of the Customer or such third party.
5. Staff further states as follows:

A tariff is both a schedule of charges for services and a set of terms and conditions that apply to the delivery of those services. Like a duly promulgated administrative rule, a tariff has the force and effect of law and is binding on the utility, the public, and the PSC.

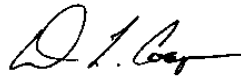
6. While MAWC generally agrees with this statement, it does not agree that Sheet No. R 11, Rule 3(E) contains the sort of term or condition that may be “violated.” This provision purports to establish a standard for liability, based on an analysis of preexisting conduct. It does not prescribe a prospective level of conduct and cannot be “violated.”

7. As stated by the Staff, the “Commission is without authority to award monetary damages.”¹ This task belongs to the civil courts. Likewise, the existence or non-existence of “contributory negligence” is a question for the civil courts.

8. Accordingly, without taking a position as to the underlying facts relied upon by Staff, MAWC objects to the Staff Recommendation.

WHEREFORE, MAWC respectfully requests that the Commission consider this response and, thereafter, dismiss this complaint.

Respectfully submitted,



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¹ Staff Recommendation, fn. 2.

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ATTORNEYS FOR MISSOURI-AMERICAN
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, or U.S. Mail, postage prepaid, on April 6, 2015, to the following:

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