

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

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| Jim Moriarty, |) | |
| Complainant, |) | |
| |) | |
| v. |) | <u>Case No. WC-2025-0204</u> |
| |) | |
| Missouri-American Water Company, |) | |
| Respondent. |) | |

STAFF’S POST-HEARING BRIEF

COMES NOW, the Staff of the Missouri Public Service Commission (“Staff”),
by and through counsel, and files its Post-Hearing Brief as follows:

BACKGROUND

On January 16, 2025, Complainant Jim Moriarty filed a Formal Complaint with the Missouri Public Service Commission (“PSC” or “Commission”) alleging violations of several sections of 20 CSR 4240-13 relating to Missouri American Water Company’s (“Missouri American” or “MAWC”) service and billing practices for residential customers. Specifically, he alleged Missouri American violated 20 CSR 4240-13.025(1)(A) dealing with Billing Adjustments, and 13.040(1), .040(2)(A), .040(3)(G), and .040(5) dealing with Inquiries.

Upon receiving his complaint, Staff spoke to Mr. Moriarty and issued several Data Requests to the Company. There were communications between Staff and the Company as well. Mr. Moriarty asks for several types of relief, none of which are actions that the Commission has the authority to mandate Missouri American to undertake. Upon completion of its investigation, Staff concluded that MAWC did not violate any statutes, rules, or regulations pertaining to those sections of the law or any of its filed and approved tariffs.

ISSUE

The issues in this case revolve around Missouri American's MyWater on-line portal and their customer service used by Mr. Moriarty and whether MAWC violated five specific regulations promulgated by the Commission, relating to MAWC's service and billing practices for residential customers. Those regulations are 20 CSR 4240-13.025(1)(A) dealing with Billing Adjustments, and 13.040(1), .040(2)(A), .040(3)(G), and .040(5) dealing with Inquiries.

Based on Staff's investigation and review of information and the evidence provided by the parties and presented at the hearing, the Complainant failed to show any violations by Missouri American Water of any applicable statutes, Commission rules or regulations, or Commission-approved tariffs.

BURDEN OF PROOF

Complainant alone bears the burden of sustaining the Complaint.^{1,2} This means that absent creating a record consisting of competent and substantial evidence that if true and believed by the Commission would sustain the Complaint, the Complaint fails as a matter of law. The Respondent need not disprove a single allegation. To the contrary, Complainant must prove them and must prove allegations that, if true and believed by the Commission, would constitute violations of the relevant regulations.

¹ See, e.g., *Report and Order, Beverly A. Johnson, Complainant, v. Missouri Gas Energy, Respondent*, 2008 WL 11310918 (Mo. P.S.C.) *Nov. 6, 2008), (citing *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) ("In cases where a complainant alleges a regulated utility is violating the law ..., the complainant bears the burden of proving the allegations in [its] complaint.")).

² See also Section 386.764, RSMo, which makes clear Complainants bear the burden in this case as all complainants do in complaint cases.

There are two components of the burden of proof – the burden of producing evidence and the burden of persuasion:³

The burden of production is “a party’s duty to introduce enough evidence on an issue to have the issue decided by the fact-finder[.]” BLACK’S LAW DICTIONARY 223 (9th ed.2009). The burden of persuasion is defined as “[a] party’s duty to convince the fact-finder to view the facts in a way that favors that party.” *Id.*⁴

The burden of producing evidence is “simply the burden of making or meeting a prima facie case.”⁵ The Complainant in this case failed to meet his burden.

DISCUSSION

Title 20 CSR 4240-13.025(1)(A) states:

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;

Mr. Moriarty’s expectation for the MyWater portal was for the readings on the portal to be in real time from his meter, similar to the readings he got from his meter when it was in the basement of his home. He claimed that when he reviewed the 30-day Report on his MyWater portal, he sometimes noted changes and failed to see corresponding billing adjustments. Exhibit 11, Memorandum pp. 10-11; Exhibit 4, pp. 3-4. However, his billing was correct. The reason the MyWater portal may have shown something different is

³ *Kinzenbaw v. Director of Revenue*, 62 S.W.3d 49, 54 (Mo. banc 2001).

⁴ *White v. Director of Revenue*, 321 S.W.3d 298, 304-305 (Mo. banc 2010).

⁵ *McCloskey v. Koplar*, 46 S.W.2d 557, 563 (Mo. banc 1932).

because there were several issues with the MyWater water usage display that resulted in incorrect and changing usage amounts. The ultimate source of how much water the customer actually used during the month is the bill itself, which Mr. Moriarty received each month. Mr. Moriarty could have also contacted customer service for that information. Tr. pg. 161, lines 2-8. As MAWC's Witness explained, billing is separate from the MyWater display. The meter readings ... match the amounts that he has been billed..." Ex. 2, pg. 15, lines 18-19.

There were not over- or under-charges, and therefore, no adjustments to Mr. Moriarty's bills were necessary. That portion of the regulation does not apply. MAWC accurately calculated the water bill based on Mr. Moriarty's water usage from the beginning of the month through the end of the month by looking at the water meter readings, as explained by the witnesses throughout the hearing. Therefore, no violation of the above-mentioned regulation was found to exist.

Title 20 CSR 4240-13.040(1) states:

A utility shall adopt procedures which shall ensure the prompt receipt, thorough investigation and, where possible, mutually acceptable resolution of customer inquiries. The utility shall submit the procedures to the commission for approval and the utility shall notify the commission and the public counsel of any substantive changes in these procedures prior to implementation.

Mr. Moriarty alleges that MAWC's "procedures" are deficient because they fail to "result in customers having access to real time meter reading like they do with a basement meter." Ex. 4, pg. 4. When MAWC moved Mr. Moriarty's meter from his basement to an outside meter pit, Mr. Moriarty argued he could no longer be guaranteed reliable daily water usage data because he could not always have access to his meter, and sometimes the data he obtained from the MyWater portal lacked information he claimed he needed

to calculate his water usage for the day, week, or month. Ex. 4, pg. 4. “[T]he water quantities reported in MyWater are not independent of the billing quantities and would contain the same upstream errors..., are at least two days old, and cannot be considered a reliable source for customers to use to verify water billings and manage water usage.” Ex. 1, pg. 2, lines 25-29.

However, that is not what the regulation requires. Mr. Moriarty informed MAWC of his complaints and problems with his meter reads and problems using the MyWater portal on several occasions. He filed an informal and a formal complaint with the Commission. Ex. 11, Memorandum pp. 4, 5. He even met with personnel from MAWC at their local office and had phone calls with them where discussions were held regarding changes to and upgrades to the MyWater portal and other customer-facing responses and applications to better serve those wanting an easier way to keep up with and follow their water usage from home. Ex. 7, pg. 7, lines 11-18. MAWC implemented several improvements based on those discussions with Mr. Moriarty. Ex. 7, pg. 7, lines 21-22. See also, Tr. pg. 82, lines 20-24.

The procedures referenced by the regulation have been filed with the Commission and are available to the Company’s customers. Tr. pg. 143, lines 18-25. Furthermore, MAWC is in the process of “transitioning” all of its meters from inside of its customers’ homes to outside locations “as part of their policy.” Tr. pg. 159, lines 6-11. And the Company has been found not to have violated any Commission rules when they moved the meter. Tr. pg. 159, lines 12-15. As such, no violation of this rule can be said to have occurred.

Title 20 CSR 4240-13.040(2)(A) states:

A utility shall establish personnel procedures which, at a minimum, ensure that—

(A) At all times during normal business hours qualified personnel shall be available and prepared to receive and respond to all customer inquiries, service requests, safety concerns, and complaints. A utility shall make necessary arrangements to ensure that customers unable to communicate in the English language receive assistance;

Mr. Moriarty's complaints regarding the way in which Missouri American handled its customer service response took many forms. His chief complaints were that "Respondent failed to make knowledgeable personnel available to answer customer inquiries about MyWater," that he was hung up on, that he should have received call backs upon requests to speak to Supervisors, and that MAWC should have personnel available within the State of Missouri to answer his questions. Ex. 4, pg. 5; Ex. 1, pg. 6. "On a related issue, item D of Section 6 of my Formal Complaint asked for the ability of a 'technical support function' to 'respond, both online and through a phone inquiry, in a timely manner, to customer inquiries regarding hourly and daily usage data for any day in the prior two years..." Ex. 1, pg. 6. In order to do so, Mr. Moriarty wanted MAWC to provide him access to personnel in a "local office" to address his concerns and questions. *Id.*

With regard to having customer service personnel being located within the State of Missouri, "there are no rules, regulations, or statutes under the Commission's jurisdiction that mandate call center representatives to be physically located within the state of the customer or in an adjacent state. Additionally, no other utility companies regulated by the Commission are subject to such a requirement." Ex. 11, Memorandum pg. 10. As explained by MAWC Witness Paul Ebbeler,

“We have Customer Service or Customer Care Agents throughout many of our Missouri American Water footprint areas.... [they] have all the information that they would need to handle, you know, speaking to our, you know, the rules and policies.” Tr. pg. 67, lines 7-9 and Tr. pg. 68, lines 2-4.

Although Mr. Moriarty notably had some troubles getting the answers he was looking for when he called the Missouri American Water’s Customer Service Center, he did get answers. They may not have been the answers he was looking for, however, Staff found the Customer Care Agents were trained about the MyWater portal and “were consistent in their efforts to respond to his questions.” Ex. 11, Memorandum pg. 9-10. Over all, the manner in which MAWC dealt with its customer inquiries, while not perfect, did not violate the law or regulation complained about by Mr. Moriarty.

Title 20 CSR 4240-13.040(3)(G) states:

A utility shall prepare, in written form, information in plain language, which summarizes the rights and responsibilities of the utility and its customers in accordance with this chapter. The form shall be submitted to the consumer services department of the commission, and to the Office of the Public Counsel. This written information shall be displayed prominently, and shall be available at all utility office locations open to the general public, and shall be mailed or otherwise delivered to each of the utility’s residential customers upon request. The information shall be delivered or mailed to each new customer of the utility upon the commencement of service and shall be available at all times upon request. The written information shall indicate conspicuously that it is being provided in accordance with the rules of the commission, and shall contain information concerning, but not limited to—

(G) Explanation of meter reading procedures which would enable a customer to read his/her own meter[.]

Mr. Moriarty’s argument presented in his Complaint is that Missouri American’s “procedures’ are deficient” because “they do not result in customers having access to real time meter readings like they do with a basement meter.” His “solution” is to give all customers access to “a wireless device in the customer’s home that will enable the

customer to read his own meter anytime day or night, summer or winter, clear or stormy.” Ex. 4, pg. 5. See also, Ex. 1, pg. 2, lines 30-37.

The purpose of a water meter is to “register water usage.” Tr. pg.142, lines 13-14. It can be used by the customer to confirm billing accuracy but only as one source of doing so. Tr. pg. 142, lines 18-21 and 143, lines 1-3. Other sources of confirming water usage for a customer is to contact MAWC’s customer service line, look on the MyWater portal, or to check their water bill. Tr. pg. 143, lines 4-7 and pg. 146, lines 5-10. Mr. Moriarty’s concern that MAWC moved his water meter from inside of his house to a meter outside does not change the fact that he is able to obtain water meter usage data from other reliable sources to manage and keep track of his water usage.

Furthermore, the regulation requires Missouri American Water to make available its “rights and responsibilities of the utility and its customers.” MAWC has done so. According to Staff’s investigation, those procedures were filed with the Commission and displayed for customers in the Company’s offices and on its website. Tr. pg. 143, lines 18-24; pg. 144, lines 3-6. Additionally, MAWC sends out that information to its new customers. Tr. pg. 145, lines 14-16. Therefore, the Company is not in violation of this regulation.

Title 20 CSR 4240.13.040(5) requires “a utility [to] maintain records on its customers for at least two (2) years which contain all information concerning...” customer payment and billing information, complaints, etc. Mr. Moriarty claims that because hourly consumption data was missing for 38 out of a possible 161 days in 2024, MAWC does not actually allow its “customers to track their up-to-the-hour water usage through MyWater.” Exhibit 4, pg. 6; Ex. 11, Memorandum, pg.12.

This missing information, however, is readily available to MAWC's customers upon request. In fact, Mr. Moriarty acknowledged it in his Direct testimony, when he stated, "I believe MAWC has acknowledged that it does main [sic] these records as required and the 'local office' in Creve Coeur has shared some historical water data on my account with me." Ex. 1, pg. 9. The fact remains, MAWC complied with the requirements of the regulation, in that the Company is capable of providing the requested information to him or Staff upon request. Exhibit 11, Memorandum pg.13. In fact, "in a recent meeting, MAWC provided Staff with some MyWater portal updates which includes a scheduled update for the end of June," among other data. *Id.*

WHEREFORE, Staff submits this Post-Hearing Brief for the Commission's consideration and information.

Respectfully submitted,

/s/ Carolyn H. Kerr

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 30th day of September, 2025, to all counsel of record.

/s/ Carolyn H. Kerr