

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

LOUIS DEFEO,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. WC-2021-0075</u>
	)	
	)	
_MISSOURI AMERICAN WATER,	)	
	)	
Respondent,	)	

**COMPLAINANT’S REPLY BRIEF**

**Burden of Proof:**

MAWC’s Initial Brief provides us the law on burden of proof (MAWC Brief P. 1). In short, at the beginning the burden of proof is on the Complainant. However, once the Complainant makes a prima facia case, the burden shifts to the Respondent.

Complainant presented in evidence the sworn testimony of a leading expert witness (Exh. 1) stating “It is not possible that more than 40,000 gallons of water could flow onto a property of modest size without providing any evidence of where that huge amount went. Modern data recording, transmission and processing systems are very good, but given their complexity can never be perfect. It is unreasonable for Missouri American Water to insist that the contrary is true and insist that remote measurements and computer processing are superior to first-hand knowledge, expert opinion, and obvious realities about the huge quantities of water alleged to have been used at 1700 Green Berry Road, but were nowhere seen.” (Ex. 1).

Complainant, the only witness with actual knowledgeable on the condition of the water system and the presence or not of over 40,000 gallons of water on the Complainant’s

property during the spike period of April 1 to April 5, 2020. Complainant testified that there were no leaks in the water system and no evidence of the alleged 40,000+ gallons on the property.

Complainant called as a witness David Spratt, PSC investigator, who testified that based on his onsite inspection there was no evidence of leaks in the system nor the presence of 40,000+ on the premises. (Tr. 56-57).

At this point, Complainant had established more than a prima facie case and the burden of proof shifted to the Respondent.

The only evidence offered by Respondence is the meter reading as recorded on the Data Log (Ex. 2).

### **Respondent's Notice of Satisfaction/Staff's Motion to Dismiss**

The Complaint was file September 18, 2020. Rule 20CSR4220-2070(15)(A) provides Respondent may “satisfy the complaint or file an answer **within 30 days** of the notice” (emphasis added). The spirit of this rule is to encourage the parties to resolve their differences early on. No action was taken within 30 days of the Complaint to satisfy the differences. Months later, on July 13, 2021, Respondent added a \$250 credit to Complainant's monthly statement but took no action to address Complainant's other two requests for relief namely the protection of customer's rights to seeking relief informally or formally and eliminating the bias acted upon by Respondents and PSC staff that meters were always right regardless of contrary evidence. The Rule does not contemplate piecemeal satisfaction and Complaint rejected the piecemeal attempt. Also, the Rule contemplates early satisfaction not dilatory action.

### **Is the MAWC's Tariff Agreement the Law?**

Respondent argues that their Tariff Agreement is the “Law of the Land” (Tr. 40:18). Specifically, they rely on the following sentence in the Tariff “The Company's installed meter shall be the standard for measuring and/or billing water service.” The exact same words were in the tariff agreement in the Beechem case (Ex. 5, Report and Order, page 11, Paragraph E. Also Footnote 62.)

Yes, a Tariff agreement is the “Law of the Land” --- as long as it is not contradicted by a superior law. For example, a rule is the “Law of the Land” as long as it is not in conflict with a statute. A statute is the “Law of the Land” as long as it is not in conflict with the Constitution. Here both statute and Rules which are superior to the Tariff provisions.

**The Statute:**

**Section 393.130. Safe and adequate service — charges — certain home rule cities, interest accrual, when.** — 1. Every gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. **All charges made or demanded by any such gas corporation, electrical corporation, water corporation or sewer corporation for gas, electricity, water, sewer or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.** (Emphasis added.)

**The Regulation:**

**4 CSR 240-13.020 Billing and Payment**

**Standards** (2) Each billing statement rendered by a utility shall be computed on **the actual usage** during the billing period. (Emphasis added.)

A billing which is “**unjust or unreasonable charge made or demanded for .... Water... in excess of that allowed by law or by order or decision of the commission is prohibited** (and) “**shall be computed on the actual usage** during the billing period. (paraphrased)

Respondent’s argument was rejected in the Beecham case and should be rejected here.

Note: one relief which could be granted herein is rewriting the tariff to be consistent with the statute and regulation.

**Hypothesis of a layman is not evidence:**

Despite the efforts of the company’s field representative and the PSC staff’s investigator neither have been able to find evidence of actual usage of 40,000+ gallons. Respondent and PSC staff rely solely on the meter reading as recorded on the Data Log which evidence is rebuttable. See: Beechem vs. MAWC (Ex. 6). Respondent’s and PSC staff’s counsel have attempted to offset this situation by asking questions which invite speculation. Here are examples:

- Respondent’s counsel interrogated PSC Staff’s investigator about “hypotheses.” He said, “\* the hose could be left on filling the pool, but it would have draining at the same time. There is a filter system that can be drained out to the sewer. It’s quite a stretch but it’s something that could be possible as a suggestion of where the water may have gone.” (Tr. 59:3-19).

Let’s look at this hypothesis. Respondent’s Data Log shows the spike creating the 40,000+ gallons reading lasted 73 hours over 5 days. The pool is 4 feet deep. The hose used to add water to the pool has a one-half inch diameter. Running the hose full flow it takes 45 minutes to add 1 inch to the pool. The pipe on the filter system is one and one-half inches in diameter. When set on “waste” in one minute the filter pump will lower the pool level one inch. In other words, in 48 minutes the filter pump will empty the pool. So how does Respondent account for the other 72 hours spike shown on the Data Log?

- Respondent’s Second hypothesis. “Q: Now, is it possible that someone could have surreptitiously attached a hose to an outdoor faucet at Mr. DeFeo’s premises and taken water? A: That’s also possible.” (Tr. 59:20-23).

Let’s look at this hypothesis. Complainant’s home is on the southwest corner of one of the busiest intersections in Jefferson City. You can hear the water running from outside faucets from inside the house. For example, when watering flower beds. A hose running from the house for 73 continuous hours would be very conspicuous. And in what kind of a container would Mr. Surreptitiously need to hold a quantity of water twice the size of my 36x18x4 foot pool? Maybe an 18-wheel tanker truck parked in front of Complainant’s house for 73 hours?

- Respondent’s Third hypothesis. “Q: \*can a quote, unquote, stopped up toilet still leak water?” A: “I’m no plumber but if the flapper was awry in any way or it is held open where water could flow through the meter, it is a possibility.” (Tr. 74:18-22)

Let’s look at this hypothesis. When a toilet stops up, some water may work its way around the blockage but water mainly starts over filling the toilet bowl which ends up on the floor unless action is taken. To prevent this from happening one turns off the water source by closing the valve on the bottom of the toilet tank. This was done within minutes. A plumber was called and removed the blockage on the next day. Whatever water made it around the blockage was minimal.

**WHEREFORE**, the Complainant submits his Reply Brief.

Respectfully submitted,  
s/ Louis DeFeo  
Louis DeFeo, Complainant

**CERTIFICATE**

I hereby certify that a true and accurate copy of the foregoing has been transmitted by electronic mail or to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, to all counsel of record, this 24th day of January 2022.

**s/ Louis DeFeo**