

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

Janice Shands,)	
)	
COMPLAINANT,)	
)	
v.)	Case No. WC-2015-0030
)	
Missouri-American Water Company,)	
)	
RESPONDENT.)	

MAWC’S ANSWER AND RESPONSE TO MOTION

COMES NOW Missouri-American Water Company (MAWC or Company) and, pursuant to 4 CSR 240-2.070, and the Commission’s Notice of Filing, Order Directing Filing and Order Directing Staff Investigation and Filing of Recommendation, and in response to Complainant’s Motion, respectfully states the following to the Missouri Public Service Commission (Commission:

1. MAWC admits that it is a public utility subject to the jurisdiction of the Commission, as provided by law.
2. MAWC admits that a civil case related to this Complaint is currently pending in St. Louis County Circuit Court (Cause No. 14SL-CC02207). The Complainant, Janice Shands, is one of the plaintiffs in that civil case. That civil case includes numerous defendants. However, in relevant part, the plaintiffs’ claims in the civil litigation include a claim for injunctive relief and for an equitable accounting against MAWC and certain other defendants.
3. MAWC’s customer at the premises that is the subject of the civil case and this complaint (9953 Lewis & Clark) is the Lewis & Clark Tower Condo Association (Condo Association). The Condo Association’s arrearage on MAWC’s bill is more than \$14,000.

4. MAWC is a public utility and water corporation subject to the Commission's jurisdiction. MAWC's relationship with, and its services provided to, its customers is governed by the properly filed and effective Commission tariff sheets. "A tariff has the same force and effect as a statute, and it becomes state law." *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 337 (Mo. App. W.D. 2006).

5. The Commission has broad powers of supervision and regulation over electric, gas, water, and sewer utilities. The legislature has placed within the Commission's jurisdiction "generally all matters relating to rights, facilities, service, and other correlated matters of a public service company." *State ex rel. Cirese v. Ridge*, 138 S.W.2d 1012, 1014 (Mo. banc 1940).

6. "Missouri has long recognized the doctrine of primary jurisdiction." *MCI Metro Access Transmission Services, inc. v. City of St. Louis*, 941 S.W.2d 634, 644 (Mo.App. 1997). Pursuant to this doctrine, "courts generally will not decide a controversy involving a question within the jurisdiction of an administrative tribunal until after the tribunal has rendered its decision." *Id.*, citing *Killian v. J&J Installers*, 802 S.W.2d 158, 160 (Mo.banc 1991). The courts of this state "favor the regulation of public utilities by Public Service Commissions." *State ex rel. Cirese v. Ridge*, 138 S.W.2d 1012, 1014 (Mo. banc 1940).

7. The Commission's primary jurisdiction is based on the Legislature's power to declare public policy and to choose an administrative agency to enforce that policy. *Id.* It is the Commission's responsibility to make determinations concerning matters within the jurisdiction granted to it by the Legislature. *State ex rel. AG Processing, Inc. v. PSC*, 276 S.W.3d 303, 307 (Mo.App. W.D. 2008). Pursuant to the doctrine of primary jurisdiction, courts will not decide a controversy involving a question within the jurisdiction of an administrative tribunal, such as the Commission, until after the tribunal has rendered its decision where administrative knowledge

and expertise are demanded and uniformity is important to the regulatory scheme. *Killian v. J & J Installers, Inc.*, 802 S.W.2d 158, 160 (Mo. banc 1991).

8. Missouri Courts previously held that the doctrine of primary jurisdiction, or exhaustion of remedies, is a jurisdictional requirement, with a plaintiff's failure to exhaust administrative remedies stripping the circuit court of subject matter jurisdiction. *Green v. City of St. Louis*, 870 S.W.2d 794, 796 (Mo. banc 1994). Recently, however, Missouri Courts have held that the concept of primary jurisdiction "is really a question of whether the trial court has a statutory right to proceed." *Evans v. Empire District Electric Company*, 346 S.W.3d 313, 316 (Mo.App. W.D. 2011). The Commission "has been given the authority, per statute, over regulated entities in the first instance." *Id.* at 317.

9. The subject matter of this complaint concerns the identification of the customer; billing; what collection actions may be taken by MAWC; and, whether there may be discontinuation of service under existing circumstances, all in light of the terms of MAWC's tariff sheets and their application to 9953 Lewis & Clark. These are matters within the primary jurisdiction of this Commission and therefore should be addressed by the Commission.

AFFIRMATIVE DEFENSES

10. Further answering and, in the alternative, as an affirmative defense, MAWC states that it has acted in accordance with its tariffs and applicable statutes and regulations.

11. Except as expressly admitted in this answer, MAWC denies each and every allegation contained in the Complaint.

WHEREFORE, Missouri-American Water Company prays the Commission consider this Answer and Response and grant such relief as the Commission deems reasonable and just.

Respectfully submitted,

/s/ Timothy W. Luft

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Certificate of Service

I hereby certify that copies of the foregoing have been transmitted by electronic mail to the following on this 4th day of September, 2014:

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