

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



Edward Lander,

Complainant,

v.

Missouri-American Water Company,

Respondent

)
)
)
)
)
)
)
)
)
)

File No. WC-2018-0099

REPORT AND ORDER

Issue Date:

May 30, 2018

Effective Date:

June 29, 2018

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Edward Lander,	)	
	)	
Complainant,	)	
	)	File No. WC-2018-0099
v.	)	
	)	
Missouri-American Water Company,	)	
	)	
Respondent	)	

Appearances

Complainant: Edward Lander, appearing pro se, 185 Ladue Pines Dr., Creve Coeur, Missouri 63141.

Missouri American Water Company: Diana C. Carter, Brydon, Swearngen & England, P.C., 312 East Capitol Avenue, P.O. Box 456, Jefferson City, Missouri 65102-0456.

Staff of The Missouri Public Service Commission: Casi Aslin, Legal Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

Regulatory Law Judge: John T. Clark

REPORT AND ORDER

I. Procedural History

On October 18, 2017, Edward Lander filed a formal complaint against Missouri-American Water Company (“MAWC”). After notice was issued, MAWC filed its *Answer*, on November 20, 2017. The Staff of the Missouri Public Service Commission (Staff) was directed to investigate and respond, and on December 4, 2017, Staff filed a report noting it found no violations of law by MAWC. No responses to the *Staff Report* were received.

On February 22, 2018, the Commission issued an order setting a procedural schedule. Pursuant to the procedural schedule the parties filed a stipulation of undisputed facts on March 12, 2018. The parties agree that the following facts are not in dispute:

Undisputed Facts

1. Complainant resides at 185 Ladue Pines Dr., Creve Coeur, Missouri 63141.
2. The utility service complained of was received at Complainant's address listed in Paragraph 1.
3. Complainant is a customer of MAWC.
4. MAWC is a public utility under the jurisdiction of the Missouri Public Service Commission.
5. The amount at issue is \$800.
6. Complainant has contacted MAWC about his bills.

An evidentiary hearing was held on March 22, 2018, at the Commission's St. Louis office in Suite 105 of the Wainwright State Office Building, 111 N. 7th Street. During the evidentiary hearing the Commission admitted the testimony of three witnesses and received two exhibits into evidence. Edward Lander testified on his own behalf, Emily Vetter testified for MAWC, and Jim Busch testified for the Commission's Staff. MAWC filed a post-hearing brief on April 13, 2018, and Complainant filed a reply on April 23, 2018; the case was deemed submitted for the Commission's decision on that date.¹

Background

Edward Lander filed a complaint against MAWC alleging that Missouri American wrongfully billed him for approximately 200,000 gallons of water for the third quarter of 2017.² MAWC answered the complaint stating that during the same quarter for the preceding two years Mr. Lander's water usage was similar. The Commission's Staff

¹ Commission Rule 4 CSR 240-2.150(1).

submitted a report declaring the Company had not violated any applicable statutes, Commission Rules, or Commission-approved Company tariffs related to the complaint. Staff concluded the bills rendered to Mr. Lander were correct. The amount in controversy is \$800.

II. Findings of Fact

The parties' undisputed facts above are incorporated into the Commission's findings of fact.

1. Missouri American Water Company is a utility regulated by this Commission.
2. Complainant is disputing his bill from 2017,³ where he was billed for approximately 200,000 gallons of water usage.⁴
3. Complainant has a 10,000 gallon swimming pool,⁵ a sprinkler system,⁶ and seven toilets⁷ at his residence.
4. Complainant made an informal complaint to the Commission about MAWC (MPSC Complaint #: C201700703) on October 7, 2016. MAWC sent a field service representative to Complainant's house on September 15, 2016; September 17, 2016; and September 23, 2016. No leaks were found at the meter or service line. Each visit showed activity on the water meter.⁸
5. Complainant turned off all water usage within the house and the meter showed no activity.⁹

² The actual time period the complaint concerned was unclear and was clarified during the evidentiary hearing.

³ Transcript Vol. 3, page 33.

⁴ EFIS No. 1 (October 18, 2017), Complaint

⁵ Transcript Vol. 3, page 30.

⁶ Transcript Vol 3, page 25.

⁷ Transcript Vol. 3, page 34.

⁸ Staff Ex. 100, Appendix A.

⁹ Transcript Vol. 3, page 30.

6. MAWC tested Complainant's meter on October 31, 2016 and found it to be within its specifications for the meter.¹⁰ The meter tested 98.8% accurate at high flow rates, and 100% accurate at low flow rates.¹¹

7. MAWC's policy is to offer a one-time leak adjustment as a courtesy to customers.¹²

8. Complainant received a leak adjustment on January 16, 2016, for water usage from August 25, 2015, to November 19, 2015.¹³

9. Complainant received a second leak adjustment on November 7, 2016, for water usage from May 27, 2016, to August 24, 2016.¹⁴

10. Complainant testified that he had no recollection of receiving a second leak adjustment.¹⁵

11. Complainant fixed a running toilet himself in 2016.¹⁶

12. Complainant questioned MAWC's witness as to whether the meter system is, "100% foolproof?" MAWC's witness testified that a meter can go wrong, can stop, but typically slows down which is to the customer's advantage.¹⁷

13. Between 2004 and 2018 Complainant's water usage has exceeded 100,000 gallons per quarter ten times, and has exceeded 150,000 gallons per quarter seven times.

¹⁰ Staff Ex. 100, Appendix A.

¹¹ Staff Ex. 100, Appendix B.

¹² Transcript Vol. 3, page 37.

¹³ Transcript Vol. 3, pages 37-38

¹⁴ Transcript Vol. 3, page 38.

¹⁵ Transcript Vol. 3, page 30.

¹⁶ Transcript Vol. 3, pages 30, and 33-34.

¹⁷ Transcript Vol. 3, page 46

Eight of those times exceeding 100,000 gallons per quarter have been in the third quarter.¹⁸

The alleged high water usage is consistent with Complainant's prior usage.

14. Complainant's water usage is not continuous and varies with the month and time of day.¹⁹

15. Staff's investigation concluded that MAWC did not violate its tariff. The company made efforts to work with Complainant, looked for leaks, checked the meter for accuracy, and offered a bill credit. Staff determined Complainant's water bills are correct.²⁰

III. Conclusions of Law

MAWC is a public utility as defined by Section 386.020(42), RSMo. Furthermore, MAWC is a water corporation as defined by Section 386.020(58), RSMo. Therefore, MAWC is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

Section 386.390 states that a person may file a complaint against a utility, regulated by this Commission, setting forth violation(s) of any law, rule or order of the Commission. Therefore, the Commission has jurisdiction over this complaint.

MAWC's tariff Rule 16E states, "[I]f the meter, when inspected and tested using the test streams prescribed by the Commission shall be found to be more than five 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[.]"

MAWC's tariff Rule 17C allows for bill credits based on over-recording of water use but is not required to give a bill credit when the meter test shows the meter to be accurate.

¹⁸ MAWC Ex. 200, page 1.

¹⁹ MAWC Ex. 200, pages 2-11

²⁰ Staff Ex. 100, Appendix A.

The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with the Complainant.²¹

IV. Decision

After applying the facts to its conclusions of law, the Commission has reached the following decision.

The complaint against MAWC is based on the assumption that the high water bill for the third quarter of 2017 could only be the result of a defective water meter. Complainant did not, however, present any evidence to establish that the water meter was in fact defective. Testing of the water meter by MAWC revealed that it was not defective at the time it was tested. MAWC inspected the system and the area around the meter for leaks and found none. Additionally, MAWC presented evidence that Complainant's water use for prior years was reasonably consistent with current water usage.

Leaks and properly functioning meters are objectively determinable. A leak on Complainant's side of the meter will register on the meter. Here Complainant testified that when he turned all the items using water in the house off, there was no movement on the meter. Also, if the meter is not properly functioning, MAWC's testing would have revealed this fact.

Complainant testified that he could not have used that much water as he only fills his pool as is necessary, and does not have his sprinkler set to water automatically. Complainant did not present any evidence on the amount of water his sprinkler uses. It is

²¹ In cases where a "complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions," "...the burden of proof at hearing rests with the complainant." *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

Complainant's burden to show that the company has violated the law. Because he has not done so, his complaint fails and the Commission must rule in favor of the company.

THE COMMISSION ORDERS THAT:

1. Edward Lander's complaint is denied.
2. This order shall become effective on June 29, 2018.
3. This case shall be closed on July 2, 2018.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and
Silvey, CC., concur.

Clark, Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 30th day of May 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

May 30, 2018

File/Case No. WC-2018-0099

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

Hampton Williams
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opc@psc.mo.gov

Edward Lander

Edward Lander
185 Ladue Pines Dr.
Creve Coeur, MO 63141

**Missouri Public Service
Commission**

Casi Aslin
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
casi.aslin@psc.mo.gov

**Missouri-American Water
Company**

Diana C Carter
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
DCarter@brydonlaw.com

**Missouri-American Water
Company**

Timothy W Luft
727 Craig Road
St. Louis, MO 63141
Timothy.Luft@amwater.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.