

ROB LEE,  
  
Complainant,  
  
v.  
  
MISSOURI AMERICAN  
WATER COMPANY,  
  
Respondent.

On January 27, 2009, Mr. Lee initiated this proceeding by filing a complaint. The complaint alleges that that MAWC's system is leaking as evidenced by surface water at several places in Mr. Lee's neighborhood. Mr. Lee has supplemented the complaint several times with further allegations of leakage. On April 21, 2009, Mr. Lee filed the motion. On May 1, 2009, the Commission's staff ("Staff") and MAWC filed responses to the motion.

## **B. The Motion**

Mr. Lee asks the Commission to order MAWC to hire an expert to test MAWC's system. In support, Mr. Lee states that neither MAWC nor Staff has ever identified the source of the surface water that, he alleges, demonstrates leaking in MAWC's system. He also states that an expert's investigation of MAWC's system will disclose such system's true condition, which will save ratepayer money.

MAWC objects to the motion, stating that it has no obligation to hire a witness other than of its choosing. Staff reserves any objection to an expert's testimony until the proffer of such testimony. But Staff agrees that the cost of hiring a witness is on the party calling such witness.

Because the Commission is a legislative creation, the Commission has only such jurisdiction as the legislature has given us.<sup>1</sup> The legislature has not given us jurisdiction to make MAWC hire anyone under any law known to us, and Mr. Lee cites no such law. Without such jurisdiction, any order is void,<sup>2</sup> so the Commission will deny the motion.

## **C. Oral Argument**

MAWC's response to the motion includes a request for oral argument. Oral argument is within the Commission's discretion to grant or deny.<sup>3</sup> The material before the Commission is sufficient to support its ruling. Such ruling does not disfavor MAWC, so the Commission denies MAWC's requests for oral argument.

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<sup>1</sup> *State Bd. of Regis'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974).

<sup>2</sup> *New Madrid County Health Center v. Poore*, 801 S.W.2d 739, 741 (Mo. App., S.D. 1990).

<sup>3</sup> 4 CSR 240-2.140(1) and 4 CSR 240-2.120(1).

**THE COMMISSION ORDERS THAT:**

1. The Motion to Appoint Independent Third Party to Perform Water Loss Survey is denied.
2. The request for oral argument is denied.
3. This order shall become effective immediately upon issuance.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Daniel Jordan, Regulatory Law Judge,  
by delegation of authority under  
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 5<sup>th</sup> day of May 2009.

Respectfully submitted,



Daniel Jordan,  
Regulatory Law Judge