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 1                   STATE OF MISSOURI
 2              PUBLIC SERVICE COMMISSION
 3
 4                      VOLUME 2
 5              TRANSCRIPT OF PROCEEDINGS
 6                      Hearing
 7                 November 15, 2010
 8                   St. Louis, MO
 9
10   ROMAN DZURINSKY                    )
                                        )
11            Complainant               )
                                        )File No. WC-2010-0215
12                                      )
                                        )
13            Vs.                       )
                                        )
14   MISSOURI AMERICAN WATER COMPANY,   )
                                        )
15            Respondent.               )
16
                 Daniel Jordan, Regulatory Law Judge
17
                 Rachel Lewis, Staff Attorney
18
                 Jennifer Hernandez, Staff Attorney
19
                 Kenneth Jones, Counsel for Missouri
20               American Water
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22
23   Reported by:
24   Jeanne M. Pedrotty, CCR/CSR
25   Midwest Litigation Services
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 1   JUDGE JORDAN: The commission calls file

 2   WC-20100215, Roman Dzurinskiy versus Missouri American

 3   Water Company case. I am Daniel Jordan, senior

 4   regulatory law judge assigned to this case. And we

 5   are here for an evidentiary hearing this morning.

 6   I'll begin with entries of appearance. Mr.

 7   Dzurinskiy, will you state your name and spell it for

 8   the court reporter.

 9   MR. DZURINSKIY: My name is Roman;

10   R-o-m-a-n; D-z-u-r-i-n-s-k-i-y.

11   JUDGE JORDAN: Thank you. And for Missouri

12   American Water Company.

13   MR. JONES: Kenneth Jones, attorney for

14   Missouri American, 727 Craig Road, St. Louis, Missouri

15   63141.

16   JUDGE JORDAN: Thank you. I appreciate

17   everyone's patience today with our technical issues.

18   There is one other issue that I want to raise before

19   we go on. Since this case started, two new

20   regulations have gone into effect. One of which

21   you're almost certainly familiar with, I know, Mr.

22   Dzurinskiy. That has to do with ex parte contact and

23   things that I can and cannot say to the parties where

24   other parties aren't around. That limits our ability

25   to communicate even as to procedural issues

 1   unfortunately. The other one is an amendment to our

 2   complaints regulation. And a new subsection has gone

 3   into effect; subsection 14, which adds a little bit of

 4   procedure to a case when less than $3000 is at issue.

 5   And what that procedure is is not really going to

 6   affect anything we've done so far nor today. It does

 7   require me to inquire and develop facts a little more,

 8   but I would be doing that anyway to make sure we have

 9   a good record. And with that, I will -- my plan is to

10   begin with opening statements. Then Mr. Dzurinskiy

11   will present his case in chief. Then Missouri

12   American Water Company and then staff. And the order

13   of cross examination --

14   MS. HERNANDEZ: Your Honor, I'm sorry to

15   interrupt. I believe I need to enter our appearance

16   on behalf of staff.

17   JUDGE JORDAN: I'm sorry. Please.

18   MS. HERNANDEZ: Good morning. My name is

19   Jennifer Hernandez and also Rachel Lewis is appearing

20   on behalf of the staff of Missouri Public Service

21   Commission. Our address is P. O. Box 360, Jefferson

22   City, Missouri, 65102.

23   JUDGE JORDAN: Thank you. Staff is a party

24   to this and I look forward to their testimony, but

25   it's generally helpful to me. That doesn't mean I

 1 believe everything staff says. Sometimes I disagree

 2 with staff and sometimes the commission disagrees with

 3 staff. Our experience is they have technical

 4 expertise which helps resolve these issues. Will

 5 staff also want an opening statement.

 6   MS. HERNANDEZ: We have prepared a short

 7 statement so we will give one if the other parties are

 8 offering.

 9   JUDGE JORDAN: Any questions before we

10 begin. Any procedural --

11   MR. DZURINSKIY: How much time am I allowed

12 to present?

13   JUDGE JORDAN: For an opening statement

14 you're not going to need that much because you're just

15 going to give our listeners in Jefferson City who are

16 unfamiliar with the complaint a little background what

17 you want and why you want to have it. And that's what

18 your opening statement is going to be. As far as

19 presentation of evidence goes, I'm not going to put a

20 hard and fast time limit on your testimony and

21 documents and things like that. But it will be

22 helpful for your case if you stick to those things

23 that help you prove your case. That is everything you

24 do should go towards the relief that you are seeking.

25 And I may ask you, there may be objections. I'll rule

 1   on objections. I may ask you how this gets you where

 2   you're going. And that I way we'll stay on track

 3   because I don't want to use any more of anyone's time

 4   than I have to. I want to have respect for everyone's

 5   time today. Any other questions of procedural nature

 6   before we begin with our opening statement. Then we

 7   will begin with Mr. Dzurinskiy's opening statement.

 8   Mr. Dzurinskiy, will you tell us what it is you want

 9   and why you believe you should have it from the

10   Commission?

11   MR. DZURINSKIY: I will try to express

12   myself louder. Yes, at this point, I am complainant

13   and at the same time I'm a consumer like all of us.

14   We just enjoy American Water Company water. So, what

15   I expect I was asked what's happened actually

16   generally last year in November I just discovered that

17   my water meter began ratcheting forward and backward.

18   Actually, I didn't know what it exactly was because I

19   contacted the customer service as they could not

20   present me exactly the situation what has happened.

21   After a couple of days, I tried to reach somebody at

22   headquarters. I contacted the company each day for

23   about a week and they promised me somebody will call

24   me back. Since then I have never ever received a call

25   from the water company. So later on they just simply

1   said that I had a leak. And I tried to have somebody

2   on my property, the water company sent -- first it

3   seems in December on my property. They check

4   everything inside of my house, outside. They could

5   not find anything wrong with that. 20 minutes later

6   that person contacted a second crew to come on my

7   property. They checked everything and what exactly

8   happened. This is a very frustrating moment because

9   water company just. We had months ago we have a

10 meeting with these people.

11   JUDGE JORDAN: Hang on a second. I don't

12 like interrupting you, but I want to stay focused.

13 What would you like to happen when the commission

14 makes its decision. What do you want it to say?

15   MR. DZURINSKIY: My main complaint was

16 about why is water meter does is the register water in

17 back flow. If it's actually back flow water because

18 there is some question about is it water or air.

19 Because sometimes when I pointed to investigator at

20 that time at my home to explain to me why when I open

21 my faucet every time the air comes out of faucet.

22   JUDGE JORDAN: Okay. So there is an issue

23 with your meter?

24   MR. DZURINSKIY: Meter.

25   JUDGE JORDAN: The accuracy?

1   MR. DZURINSKIY: Accuracy; exactly.

2   JUDGE JORDAN: Possible back flow maybe

3   airflow.

4   MR. DZURINSKIY: Maybe air flow. I was

5   told it's possible that air can rotate or whatever

6   it's called inside of this.

7   JUDGE JORDAN: Now, do I understand that

8   there is an issue with your bill? Do you believe your

9   bill is inaccurate?

10   MR. DZURINSKIY: Right. I think my bill

11 exceeds what water I usually use the water, or if the

12 company cannot prove as it seems to me dropped

13 evidence that I have a leak in my home. So my

14 understanding is if any customer doesn't use the water

15 or have a leak, he or she is not supposed to pay his

16 bill what he or she doesn't use.

17   JUDGE JORDAN: Okay. In regard to your

18 bill, do you have a rough amount as to how much it

19 might be off?

20   MR. DZURINSKIY: My estimate in comparison

21 with the previous years plus what company employee

22 made a test on my property and show on the dial how

23 much, it's about two cubic feet per quarter. So this

24 is a small amount.

25   JUDGE JORDAN: But it's some amount of

 1   money.

 2   MR. DZURINSKIY: This is why the issue

 3   raises much more. It will cause me much more in the

 4   long term because the water company sends our data to

 5   the sewer company. And my estimate it will be in the

 6   next couple of years cost me $200 more per year. And

 7   I don't know I didn't need to pay for that if I try to

 8   prove that I have nothing to do with it.

 9   JUDGE JORDAN: So you think your bill --

10   let me clarify this. You mentioned the number $200,

11   is that your sewer or is that your water?

12   MR. DZURINSKIY: It's together with water,

13   at this time water could be costing me. I cannot be

14   sure exact. Not too much, but $20 or $40 per year,

15   but the rest could be sewer because sewer each year

16   they just raise now with St. Louis County or St.

17   Louis. Yeah, county, just 100 percent.

18   JUDGE JORDAN: So you think that your bill

19   is off, would you say $30 or $40?

20   MR. DZURINSKIY: $40 it could be.

21   JUDGE JORDAN: $40 per year?

22   MR. DZURINSKIY: Yes, not too much.

23   JUDGE JORDAN: But some?

24   MR. DZURINSKIY: It depends if the

25   commission approves higher rates. It could be

 1   different. I don't know exactly right now.

 2   JUDGE JORDAN: I understand. I appreciate

 3   that clarification. Okay. You have sited in your

 4   filings some tariff provision as well. Okay. Those

 5   have to do with metering and accuracy.

 6   MR. DZURINSKIY: Accuracy, right. And

 7   there is an issue about how the water meter just reads

 8   water coming forward and backward. And I try to

 9   resolve this issue with the water company. That is

10   why I try to bring this detail a little bit more clear

11   about the people who are on my property. The

12   employees they believe they represent the company,

13   they tell you you have no leak, you don't have any

14   problems, more over everything was installed legally.

15   It was inspected by St. Louis County inspector. The

16   water company web site clearly says who is responsible

17   for everything in the plumbing system. It seems to me

18   St. Louis County inspector is who just makes a law,

19   everything, licensed plumbers. They are responsible

20   for that and I believe this is government authority

21   and I need to comply with the law as they did not find

22   anything wrong. Plus, I brought my own plumbers just

23   not special people I want to represent me and just say

24   something on my behalf. I just simply called about 20

25   plumbers from the Yellow Pages. None of them could

1 compute exactly what's wrong with my plumbing. They

2 installed a hundred or thousand of water heaters,

3 everything. They couldn't find anything wrong. They

4 couldn't explain. Just some plumbers on my property

5 clearly said we cannot find anything wrong with your

6 plumbing, but it's our opinion it could be a lot of

7 cracks in the main pipe and they are sucking water in.

8   MR. JONES: I'll object. In a pro se

9 case --

10   JUDGE JORDAN: Hang on a second.

11   MR. JONES: This is an opening statement.

12 It's supposed to be setting forth fact and not

13 arguments. It's supposed to set forth admissible

14 facts and a lot of this he is talking about is not

15 admissible. I'd like to register that objection.

16   JUDGE JORDAN: Okay. I'm not going to --

17 I'll overrule the objection. But I'll ask you to go

18 back to our road map, our outline. And I'll try to

19 keep you on track also. You're going to show us that

20 you had some plumbers inspect your plumbing and they

21 found no leaks; is that what I'm getting?

22   MR. DZURINSKIY: Yes.

23   JUDGE JORDAN: Will you be able to show me

24 what the source of the ratcheting, whatever that is,

25 is, will you be able --

 1   MR. DZURINSKIY: The source of the

 2   ratcheting in my opinion what I have in my hands from

 3   the staff, it shows water flow fluctuation.

 4   JUDGE JORDAN: You believe it's water

 5   fluctuation that's causing back flow, and that's all

 6   your meter reading and thus causing overbilling; is

 7   that correct?

 8   MR. DZURINSKIY: Yes. It's my

 9   understanding because I had inspected that -- checked

10   my property, everything around who didn't find

11   anything wrong, never cited me for anything and it was

12   installed by the licensed plumber company everything.

13   JUDGE JORDAN: That will do for now. I

14   think I have an idea what your case is going to be.

15   Thank you. I'll get an opening statement from

16   Missouri American Water Company now.

17   MR. JONES: Thank you, Your Honor. Thank

18   you, Mr. Dzurinskiy. Just to start off, it's not

19   exactly clear what the claim is because it's evolving

20   over time, but it appears to be this, Mr. Dzurinskiy

21   claims he is being overbilled based on his belief that

22   when the flow indicator on his meter moves in a

23   clockwise direction, that is -- we'll see a

24   demonstration, it moves in a clockwise direction when

25   there is reverse movement of water back through this

 1   meter, he claims that his usage is not being removed

 2   from the meter register. And that is incorrect in the

 3   facts. The evidence will show whenever the flow

 4   indicator is moving in either direction, the sweep

 5   hand on the register -- the sweep hand is the larger

 6   hand that registers usage, the sweep hand is recording

 7   usage or removing usage as the case may be. So on the

 8   fact, Dr. Dzurinskiy's claim is erroneous. You'll

 9   hear testimony from Mr. Peter Matschiner who is

10   operation superintendent in the St. Louis district,

11   who himself was a meter reader and meter reading

12   manager for ten years. He will describe how the test

13   of Dr. Dzurinskiy's meter confirmed that the meter

14   performs properly within the accuracy requirement of

15   Missouri American tariff and commission regulations.

16   The tariff, which is Missouri American Water Tariff

17   R7.0 says that a meter is accurate when it is not more

18   than five percent defective or incorrect to the

19   prejudice of the customer or the company when

20   inspected and tested using the company's intermediate

21   and maximum flow rate testing procedure. You will see

22   the test results to say showing that the meter is

23   within a five percent intermediate and maximum flow

24   rates both with forward flow and reverse flow. And by

25   the way, I know of no rule or regulation that requires

 1   reverse flow at all to be registered accurately, but

 2   it is registered accurately according to tariff. Also

 3   commission regulation 4 CSR240-10(37) regarding

 4   testing requires accuracy within five percent when

 5   registering water at stream flow equivalent to

 6   approximately 1/10th and full normal testing, full

 7   normal rating under average service pressure. Again,

 8   the meter testing will show that it was within five

 9   percent, approximately 1/10th at full normal rate both

10   forward and reverse flow. As a result, the inquiry

11   must stop there. The meter tested accurately

12   according to tariff and according to commission

13   regulations. And, therefore, there is no overbilling

14   as a matter of fact and as a matter of law. And you

15   will also hear commission regulation 4

16   CSR240-13-02(1)(D) which says wherein test and error

17   in measurement is found within the limit prescribed by

18   commission rules no billing adjustment will be made.

19   So if the meter tests accurately there can be no

20   adjustment as a matter of law. You will also hear

21   testimony from Mr. Derek Linam, Missouri American

22   engineer, about pressure in American Missouri water

23   distribution. Mr. Linam is a licensed professional

24   engineer with 19 years experience in the water

25   industry at Missouri American Water and St. Louis

 1 County water. Mr. Linam is currently operations

 2 manager for distribution. He was operations manager

 3 for distribution in St. Louis County District. He

 4 will tell you there is only one rule or regulation

 5 regarding required pressure levels for water

 6 distribution systems in Missouri. That's DNR

 7 regulation that says pressure in the system must be at

 8 least 20 PSI. There are no rules or regulations about

 9 maximum pressure or rule or regulation saying pressure

10 can not fluctuate. In fact, Mr. Linam will tell you

11 in a water system, especially one the size of St.

12 Louis County which has 4200 miles of pipe, pressure

13 levels must necessarily fluctuate. And there are

14 differences in pressure and different geographic

15 locations of the system mainly due to changes in

16 elevation and there are also differences in pressure

17 at the same location at different times due to factors

18 such as system usage, filling and backing up of

19 storage tanks, fire department use of hydrants, main

20 breaks, that type of thing. Mr. Linam will testify

21 Missouri American monitors and maintains pressure

22 through its system, through its distribution load

23 control center of which Mr. Linam was senior

24 production engineer at one point in his career. He

25 will tell you that the DLCC has electronic and manual

 1   controls with the target of keeping the system at

 2   highest elevation at least at 30 PSI in order to

 3   ensure that the entire system stays above at least 20

 4   PSI per the DNR requirement. Mr. Linam will testify

 5   the pressure cannot be too low at the top of the

 6   system at higher elevation because then it would be

 7   extremely high at the bottom. Mr. Linam will tell you

 8   that the typical pressure inside a customer's home is

 9   generally between 30 and 80 PSI depending also on

10   whether the home has a pressure regulating valve and

11   what that pressure set to maintain. He will tell you

12   that pressure in a home is usually affected by whether

13   water is being used inside the house and whether a hot

14   water heater is on because water pressure rises as

15   temperature rises. He will discuss what can happen

16   with pressure inside the customer home rises above

17   the -- water can go back through the meter if the home

18   doesn't not have back flow preventer on the service

19   line and reverse flow, he will tell you, is not

20   necessarily caused by changes in the pressure in the

21   water main. It can be caused by changes in pressure in

22   the home because even if the pressure is a constant

23   level, it never fluctuated in the main, an increase in

24   pressure in the home can have an effect on the flow of

25   water from the home; to the home and from the home.

 1   You will also hear testimony that the responsibility to

 2   prevent back flow is on the customer. The DNR

 3   regulation concerning back flow prevention, if there

 4   is back flow hazard is 10 CSR 60-11.010. That

 5   regulation says in a number of spots that the customer

 6   or customer's authorized representative shall install

 7   back flow prevention assembly on the customer's

 8   service line. Similarly, Missouri American's tariff

 9   states if there is cross connection has order on

10   customer's plumbing, the customer has a duty to

11   install back flow prevention. And also if the

12   customer does not install back flow prevention,

13   Missouri American has a duty to shut off water at the

14   premises. Also Missouri American tariff R 19.1 says

15   that back flow preventers are the property of the

16   customer. And by the way, it's ironic that this is a

17   high bill complaint because the evidence will show Mr.

18   Dzurinskiy's average usage is about one quarter of the

19   average St. Louis County customer's usage and his

20   bills are in general one half the average bill of St.

21   Louis County customers. He does not in fact have high

22   usage. I understand that he is a conservationist, but

23   his usage is about one quarter of the average St.

24   Louis County customer.

25   So in summary, the evidence will show Mr.

1   Dzurinskiy tested within all regulatory and tariff

2   perameters both forward and back. And, therefore,

3   there was no overbilling and there cannot be any

4   adjustment. In addition, there are no rules or

5   regulations as to pressure in the water system other

6   than that it must be above 20 PSI. And since there is

7   no evidence that pressure ever dropped below 20 PSI at

8   Mr. Dzurinskiy's house, there is no basis for his

9   complaints. And finally, if Mr. Dzurinskiy wants a

10 back flow preventer at his residence, that is his

11 responsibility according to law to install.

12   JUDGE JORDAN: Thank you. I wanted to

13 clarify and summarize a few things for my

14 understanding. I heard a few things with regard to

15 the allegation that fluctuations in water pressure are

16 causing back flow and possibly airflow. First, do I

17 understand that your evidence will be that pressure

18 must always fluctuate to some degree in Missouri

19 American's pipe? Do I have that?

20   MR. JONES: Yes, Your Honor.

21   JUDGE JORDAN: Do I understand that such

22 pressure fluctuation does not necessarily cause

23 backflow?

24   MR. JONES: Yes, Your Honor.

25   JUDGE JORDAN: It can cause back flow; is

1   that in the evidence?

2   MR. JONES: Whether it causes it or not

3   there are differences in pressure and it depends what

4   that pressure is in comparison to the customer's

5   pressure.

6   JUDGE JORDAN: If there is back flow, I

7   understand you're prepared to -- you have authority

8   that Missouri American is not -- has no liability for

9   back flow; is that correct?

10   MR. JONES: When you say liability -- -

11   JUDGE JORDAN: When I say liability, I mean

12 if back flow occurs, would that violate any provision

13 of the statute or regulation or Missouri American

14 tariff?

15   MR. JONES: No. In fact, tariff requires

16 meter accuracy at full flow, full normal flow and

17 intermediate flow. And Mr. Dzurinskiy tested both

18 backwards and forwards within meter accuracy

19 requirements. That's even assuming there is legal

20 liability for reverse flow, which we reject.

21   JUDGE JORDAN: Now that gets me to the

22 meter issue. You will be showing me that the meter

23 reads accurately number one; is that correct?

24   MR. JONES: Reads accurately according to

25 tariff and regulation.

 1   JUDGE JORDAN: Accuracy is defined in

 2   tariff and regulation?

 3   MR. JONES: Right.

 4   JUDGE JORDAN: I thought I heard you say

 5   something else which was of interest to me. And that

 6   is even if there is back flow, that Mr. Dzurinskiy's

 7   meter reads the back flow. And it sounded like you

 8   said it undid the volume that he was using and then

 9   when it flowed back --

10   MR. JONES: Yes. If the flow indicator is

11   showing backwards movement, the register is removing

12   the usage.

13   JUDGE JORDAN: That's what I thought you

14   said. So, your evidence will be that if the water is

15   flowing backwards, the meter is running backwards and

16   the bill is running backwards.

17   MR. JONES: The evidence will be if the

18   water is flowing backwards and flow indicator is

19   moving, the meter is registering -- is taking off

20   usage, correct.

21   JUDGE JORDAN: That's what I thought you

22   said. And then finally -- and then finally, your

23   evidence and argument on back flow prevention will be

24   that is not Missouri American's responsibility. Do I

25   have that understood?

1   MR. JONES: Correct.

2   JUDGE JORDAN: Okay. Thank you. Mr.

3   Dzurinskiy, do you want to keep those points in mind

4   when you present evidence. And staff, opening

5   statement please.

6   MS. HERNANDEZ: Sure. Good morning. May

7   it please the Commission, in this matter the

8   Commission has before it several issues for its

9   decision. In summary, was the complainant overbilled,

10   was there backward movement on the flow indicator at

11   the company meter at the complainant's address and if

12   so what is the cause. Who has the responsibility to

13   install a device to prevent water from leaving the

14   customer's service line backward through the meter,

15   and did Missouri American violate any provision of its

16   tariff, law, or any commission rule in respect to the

17   allegations contained in the complaint.

18   Now, to prevail on the complaint, the

19   complainant has the burden to prove that each

20   allegation in the complaint is more likely true than

21   not true. On March 12th, 2010, the staff filed its

22   investigation and recommendation in this matter. A

23   few facts of that investigation; as part of the

24   investigation the staff visited the Plaintiff's

25   premise. The staff did observe the leak indicator

 1   moving in both directions as indicated in the

 2   complaint. But when the complainant shut off the

 3   water valve in the home, the staff observed

 4   no movement in the leak indicator. Mr. Steve Loethen

 5   is here to testify and present testimony as in his

 6   report and recommendation that was previously filed

 7   with the commission.

 8   As far conclusions, I'll leave that for

 9   closing arguments, but will state that while

10   sympathetic to the complainant's issue, the staff can

11   only recommend relief as appropriate as found in its

12   experts' investigation and that which the Commission

13   has the authority to grant. The staff will move for

14   its recommendation to be entered into the record today

15   and recommends that the Commission adopt its finding

16   in any report and order that's issued by the

17   Commission. Thank you.

18   JUDGE JORDAN: Thank you. Now, Mr.

19   Dzurinskiy, the time is coming for you to present your

20   evidence and I'll be administering an oath so the

21   Commission may consider what you have to stay. I

22   understand you will be presenting testimony from

23   yourself.

24   MR. DZURINSKIY: Yes.

25   JUDGE JORDAN: And you will also be

1   presenting testimony from Zena Dzurinskiy?

2   MR. DZURINSKIY: She is not here.

3   JUDGE JORDAN: So she won't be with us

4   today?

5   MR. DZURINSKIY: Yes.

6   JUDGE JORDAN: That's up to you. The new

7   regulation places an affirmative duty on me to help

8   develop the claims and defense here. So I'd like to

9   give you a few pointers to keep in mind as you present

10   your testimony so that you may be more clear to the

11   Commission because your $30 or $40 a year is important

12   to the Commission. Okay. So we want to get to your

13   claim. We want to understand your claim. With this

14   in mind, I'd like to you focus on what you want. It

15   seems to be an adjustment of your bill. Why you want

16   it is because you believe there is back flow. You want

17   to tell us the things that show that there is back flow

18   and that the meter is not doing what Counsel says

19   okay. So that's what you want to focus on.

20   MR. DZURINSKIY: Okay.

21   JUDGE JORDAN: All right then. I will

22   administer the oath. Please raise your hand. Very

23   good. Do you solemnly swear to the testimony that you

24   are about to give will be the truth --

25   MR. DZURINSKIY: Yes.

1   JUDGE JORDAN: -- the whole truth and

2   nothing but the truth.

3   MR. DZURINSKIY: Yes.

4   JUDGE JORDAN: All right then. Please tell

5   the Commission what you want the Commission to know

6   about your claim.

7   MR. DZURINSKIY: My claim -- actually

8   generally like I said I was overbilled and it shows

9   that water meter on my property, the flow indicator

10   runs in the opposite direction. It does not deduct

11   the water properly or not deduct it at all. It's --

12   matter of fact, you can just watch the water meter

13   under the precondition not in the condition what is in

14   the water company manufactures, in the shop how they

15   test it, it doesn't retain. It just not confirmed but

16   not just only me. It was confirmed by their employees

17   and confirm by their staff.

18   MR. JONES: I'll object.

19   JUDGE JORDAN: Hang on just a second.

20   Speak to your objection please.

21   MR. JONES: I object. It's hearsay about

22   what other people observed or where or might have

23   testified to.

24   JUDGE JORDAN: I understand. I'll sustain

25   that objection. What the Commission needs to hear is

 1 what, you know, remember than what someone else knows

 2 because when you tell me what someone else said it's

 3 like that witness is trying to testify, but they are

 4 not here for cross examination.

 5   MR. DZURINSKIY: I want the Commission --

 6   JUDGE JORDAN: Hang on. I'll also ask you

 7 to slow down and speak up for our court reporter and

 8 speak up.

 9   MR. DZURINSKIY: I ever never been in this

10 situation before.

11   JUDGE JORDAN: I understand. But we want

12 to make it possible for your claim to get to the

13 Commission as clearly as possible. So, speak slowly,

14 speak clearly as if you were giving a speech on stage,

15 for example, so that everyone can hear you. Okay.

16   MR. DZURINSKIY: Okay.

17   JUDGE JORDAN: Focus on your knowledge and

18 continue from there. Thank you.

19   MR. DZURINSKIY: May I continue?

20   JUDGE JORDAN: Please do.

21   MR. DZURINSKIY: Yes. Just the water

22 company made an objection about what I just said about

23 the water meter not performing directly is they are

24 going to make testimony about it's performed

25 correctly. I would not argue with the water company

 1 about yes, I look at the law. It's completely says

 2 how the water meter should be tested. I couldn't find

 3 anything wrong with that. But the water company still

 4 did not submit any kind of information what I request

 5 about how the water meter performed in the back flow

 6 in the low flow movement of water. And I decided to

 7 compare the Neptune Company which manufactured to

 8 clear out they told me --

 9   MR. JONES: I'll object. I stated

10 objection on hearsay.

11   MR. DZURINSKIY: They told me exactly what

12 happened.

13   JUDGE JORDAN: I have to sustain that

14 objection because Neptune Water Company is not here.

15   MR. DZURINSKIY: They are not here.

16   JUDGE JORDAN: Let me try this. Have you

17 seen the water meter registering backwards?

18   MR. DZURINSKIY: No.

19   JUDGE JORDAN: Have you seen the dial turn?

20   MR. DZURINSKIY: No. The water indicating

21 back flow I have never seen that it deducts the water

22 from the water meter.

23   JUDGE JORDAN: Okay. Now, I have in your

24 complaint you mention some that you observed the

25 meter.

1   MR. DZURINSKIY: Yes.

2   JUDGE JORDAN: And you saw some unusual

3   movement in one of the dials.

4   MR. DZURINSKIY: Right.

5   JUDGE JORDAN: This does not refer to the

6   dial going backwards.

7   MR. DZURINSKIY: No.

8   JUDGE JORDAN: Okay.

9   MR. DZURINKSKIY: It never happened for ten

10 months that they have been coming to that water meter

11 almost each day and I notice like I indicated in my

12 complaint, it just rotates different. Different days

13 it's like different times are different. For example,

14 like I stated company never answers my question, they

15 never answers my question. It still was in February I

16 asked both of them the question why it does not rotate

17 over the night. What is the cause? If I have just

18 only problem during the day. How my appliance or

19 whatever can have this problem. There is in my pump

20 or just -- I don't know what kind of device that can

21 push the water backward. That is issue and again

22 different times particularly like it was yesterday,

23 sun, I just again can present this information that

24 usually on Sunday, I spend much more water. Everybody

25 is home, laundry and everything, sometimes it happens

 1   it's same amount to be about the water. What is the

 2   usual working day when no one is home. That is why I

 3   can watch. I write down everything about the water

 4   when most it performs. I never seen water meter

 5   deduct, the big dial not deducting the water back.

 6   JUDGE JORDAN: Okay. That's addressing

 7   the issue, I appreciate that. I want to get to this

 8   movement that kind of started the whole complaint, the

 9   unusual movement. It's not backwards movement; am I

10   correct?

11   MR. DZURINSKIY: I would like to clarify

12   what exactly happens.

13   JUDGE JORDAN: Please.

14   MR. DZURINSKIY: See the water meter, I saw

15   his water meter over there. There is indicator that's

16   a small triangle. Usually if you use water it goes in

17   opposite direction with the big dial like around it.

18   JUDGE JORDAN: Is there a meter here that

19   will help you explain what you're talking about?

20   MR. DZURINSKIY: Yes.

21   JUDGE JORDAN: That would be a good place

22   to start. And who can tell me what that is.

23   MR. JONES: This is Neptune T10 meter,

24   which we actually have Mr. Dzurinskiy's meter here.

25   MR. DZURINSKIY: This is the same.

1   MR. JONES: With the name with the register

2   on the top.

3   JUDGE JORDAN: Okay. And will the parties

4   stipulate this is like Mr. Dzurinskiy's meter?

5   MR. DZURINSKIY: Yes.

6   MR. JONES: Yes.

7   MS. HERNANDEZ: That's fine.

8   JUDGE JORDAN: Thank you.

9   MR. DZURINSKIY: There is water inside. Is

10 that okay?

11   MR. JONES: It's an added bonus.

12   JUDGE JORDAN: It's mineral oil. Do you

13 agree with that, Counsel?

14   MR. JONES: Yes. And it wouldn't be in

15 there on active meter at the customer's premises or is

16 it. It's in the dial to keep the gears --

17   JUDGE JORDAN: So what we have in here is

18 mineral oil that helps the thing function. Will

19 everyone agree to that?

20   MR. DZURINSKIY: I don't know.

21   JUDGE JORDAN: We'll get some more

22 testimony on that later. For now, Mr. Dzurinskiy,

23 tell me what you want me to know about this.

24   MR. DZURINSKIY: Well, the water flows

25 backward. See this is the dial that shows how much

1 water I use. This is run both opposite direction if

2 you use water this small one is the opposite

3 direction. It shows when you use the water in reality

4 in your home.

5   JUDGE JORDAN: Okay. So you're telling me

6 a couple things. Number one, the red needle on the

7 dial, when it spins clockwise --

8   MR. DZURINSKIY: Clockwise.

9   JUDGE JORDAN: That shows the water.

10   MR. DZURINSKIY: The usage.

11   JUDGE JORDAN: Hang on. That shows water

12 coming into your house; is that correct?

13   MR. DZURINSKIY: Yes. Correct.

14   JUDGE JORDAN: Now tell me about this

15 little triangle. It doesn't look like it moves around

16 the numbers it stays in place.

17   MR. DZURINSKIY: It's simple like company

18 calls it leak indicator. It means water flow goes

19 through the water meter. It doesn't mean anything.

20 It doesn't make any calculation. It only shows flow.

21   JUDGE JORDAN: That something is happening

22 but not how much; is that accurate.

23   MR. DZURINSKIY: Right. It just rotates

24 some kind of strange, sometimes it shows me when it

25 goes in opposite direction backward it hit something,

 1   there is pressure.

 2   MR. JONES: Let me object. Mr. Dzurinskiy

 3   is not qualified to testify how a water meter works he

 4   is got no foundation to show that's familiar with or

 5   has technical expertise to describe how water meter

 6   works.

 7   JUDGE JORDAN: Okay. Let me hold on to

 8   that objection and ask Mr. Dzurinskiy a few questions.

 9   Where did you learn about water meters?

10   MR. DZURINSKIY: Generally, only from web

11   site from Neptune and from the water company -- not

12   too much.

13   JUDGE JORDAN: Okay. But you have done

14   some research on line --

15   MR. DZURINSKIY: Yes.

16   JUDGE JORDAN: -- to learn about water

17   meters?

18   MR. DZURINSKIY: Yes. Right.

19   JUDGE JORDAN: Okay. And that is more

20   knowledge than I have, so I'm going to go ahead.

21   MR. JONES: Continue my objection to that.

22   MR. DZURINSKIY: At least I have been

23   watching since I discovered this how it works. It's

24   just simple, if you use the water there is a big dial

25   goes to the right. This small one goes to the left.

1   JUDGE JORDAN: So the little red triangle

2   there?

3   MR. DZURINSKIY: Yes.

4   JUDGE JORDAN: Spins in place

5   counter-clockwise to show that there is some water

6   moving?

7   MR. DZURINSKIY: Moving, right.

8   JUDGE JORDAN: No. You saw something

9   unusual on this meter?

10   MR. DZURINSKIY: Yes.

11   JUDGE JORDAN: Tell me what that was?

12   MR. DZURINSKIY: This dial goes now in

13   opposite direction, to the right, clockwise.

14   JUDGE JORDAN: I see.

15   MR. DZURINSKIY: So this one is supposed to

16   go to the left.

17   JUDGE JORDAN: Okay.

18   MR. DZURINSKIY: It doesn't -- it stays

19   idle, but when it moves -- again, no one uses the

20   water, this dial moving to the right.

21   JUDGE JORDAN: I think I understand what

22   you're saying and I'm going to clarify it just for the

23   record. Ordinarily the triangle moves in a certain

24   direction. You observed it moving in the opposite

25   direction?

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 1   MR. DZURINSKIY: Yes.

 2   JUDGE JORDAN: But at that time you did not

 3 see the needle --

 4   MR. DZURINSKIY: In my understanding --

 5   JUDGE JORDAN: -- moving.

 6   MR. DZURINSKIY: How much it goes to the

 7 right, it's supposed to go to the left the same amount

 8 because it's the same water.

 9   JUDGE JORDAN: Okay.

10   MR. DZURINSKIY: It was not explanation

11 from the water company why it's happening. And that

12 is why I try to obtain information from the water

13 company. I sent them request about how the water

14 meter performs in back flow. I never received this

15 information. They never supplied information. I

16 cannot understand why. They are supposed to know

17 about. Because I receive information I will tell from

18 manufacturer they don't want to talk to me. They said

19 water company --

20   MR. JONES: Objection.

21   MR. DZURINSKIY: What?

22   JUDGE JORDAN: Sustained.

23   MR. DZURINSKIY: Water company is the

24 customer. I am not their direct customer. They

25 refuse to talk to me, but they provided information

 1   and I would like to present information that water

 2   company and company know about it, why the water meter

 3   doesn't show this.

 4   JUDGE JORDAN: Okay.

 5   MR. DZURINSKIY: It's indicated in the

 6   staff report about that; why it does not show data

 7   recording correctly.

 8   JUDGE JORDAN: Thank you. That's helpful

 9   for understanding your claim.

10   MR. DZURINSKIY: This is the company to

11   raise this objection about this. It's important. It

12   doesn't affect just only me, it affects thousands of

13   St. Louis County residents, believe me.

14   JUDGE JORDAN: Okay. I'm going to suggest

15   that we pause here, take a break for a little while.

16   There are some things that I need to check. Maybe

17   during this the parties can discuss this metering

18   issue and maybe get some clarification on that. And I

19   think we'll take a ten minutes break right now.

20   (Whereupon, a short break was taken.)

21   JUDGE JORDAN: We're back on the record.

22   We're in Mr. Dzurinskiy'S case in chief. Mr.

23   Dzurinskiy testified to his understanding how the

24   meter works. And to clarify my ruling, Missouri

25   American has a running objection as to that testimony.

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 1   My reading of the statute regarding expert testimony

 2   is that the threshold is pretty low.  I think his

 3   understanding will help me understand his claim so I'm

 4   admitting that testimony.  And of course, the other

 5   parties are free to introduce testimony on the same

 6   subject.  That's my ruling with regard to that.  We

 7   discussed the working of the meter and your

 8   observation of this meter, Mr. Dzurinskiy?

 9           MR. DZURINSKIY:  Right.

10           JUDGE JORDAN:  Now, you believe this meter

11   is inaccurate; is that correct?

12           MR. DZURINSKIY:  Yes.  To some point.

13           JUDGE JORDAN:  Okay.  Fair enough.  Please

14   tell us what you want the Commission to know about

15   that part of your claim?

16           MR. DZURINSKIY:  I would like the

17   Commission to know about the water meter, how it

18   performs, exactly why it doesn't read the water in

19   back flow.

20           JUDGE JORDAN:  Your belief is that it is

21   not recording back flow?

22           MR. DZURINSKIY:  Yes, and I know why.

23           JUDGE JORDAN:  Please tell us.

24           MR. DZURINSKIY:  I want to present

25   information.  I just expected from the water company
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1   submit information to me because I consulted, like I

2   said, I don't want water company objection using

3   Neptune in August. I provided this information to

4   Mrs. Hernandez about that; who I was talking to -- the

5   person who is responsible for performing on the water

6   meter for the company. Plus last week I was on the

7   phone all week long I was contacting them because I

8   couldn't obtain information from the water company and

9   I wanted the manufacturer to present this information

10 in writing what they told me in August. They

11 completely refused to do that because I mention the is

12 case under investigation by Public Service Commission.

13 That is why they have a lot of litigation right now.

14   MR. JONES: I'll object here. It is

15 hearsay, continuing objection to conversation.

16   JUDGE JORDAN: I'll sustain that. Let's

17 focus on what you know about the accuracy of the

18 meter.

19   MR. DZURINSKIY: In August I received

20 information from Neptune. It cannot register water up

21 to one gallon per minute.

22   MR. JONES: Objection; here again, it's

23 hearsay. And there is no documentary evidence that's

24 been presented for admission.

25   JUDGE JORDAN: I'll sustain that objection.

 1   Let's back up a little bit. You talked about getting

 2   information from the manufacturer. Am I correct they

 3   did not give you documents?

 4   MR. DZURINSKIY: Right.

 5   JUDGE JORDAN: Hang on. You sought

 6   documentation from them, but you're not going to have

 7   that today?

 8   MR. DZURINSKIY: Yes.

 9   JUDGE JORDAN: Hang on just a second now.

10   What we need to hear from you is what you have

11   personal knowledge of, not what someone else tells

12   you?

13   MR. DZURINSKIY: Personal knowledge is

14   everything was based on the staff recommendation and

15   his report that he contacted the manufacturer about

16   the same issue. And so I couldn't find anything of

17   information what exactly because his report says there

18   is a possibility the manufacturer told him that it

19   cannot catch the back flow small.

20   MR. JONES: Objection; again.

21   JUDGE JORDAN: I'll sustain that. Are you

22   telling me Mr. Loethen sitting at this table has

23   knowledge about the function of the meter?

24   MR. DZURINSKIY: Generally, yes.

25   JUDGE JORDAN: Okay.

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 1              MR. DZURINSKIY:  It was in his report.

 2              JUDGE JORDAN:  Okay.  Do you intend to

 3   call him as a witness?

 4              MR. DZURINSKIY:  Yes, later.

 5              JUDGE JORDAN:  Okay.  Is there anything

 6   else that you know about the functioning of this

 7   meter?

 8              MR. DZURINSKIY:  I'd like to finish because

 9   last week I called them again to receive this

10   paperwork about the water meter; how it reflects the

11   flow.

12              JUDGE JORDAN:  Who is them?

13              MR. DZURINSKIY:  I called Neptune and his

14   supervisor they refused to send me any e-mail

15   information.  And they told me --

16              MR. JONES:  Same objection.

17              MR. DZURINSKIY:  That's okay.  You are

18   supposed to know because the law in Missouri does not

19   testify anything, why it does not perform.  They told

20   me that you're supposed to know about that.  This is

21   American Waterworking Association does not require --

22   has not any requirement to test meter meter in back

23   flow under any pressure.  So that is why they said

24   this water meter is not tested at all in back flow.

25   This is information what I receive.  I'm not lying.
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1   JUDGE JORDAN: No one is accusing you of

2 lying.

3   MR. DZURINSKIY: Right.

4   JUDGE JORDAN: Just to clarify --

5   MR. DZURINSKIY: They refuse -- I asked

6 them to sent me e-mail, any kind of information and

7 they refused.

8   JUDGE JORDAN: I don't think that's

9 actually hearsay. I think that's a description. I'm

10 not going to use that for truth of --

11   MR. DZURINSKIY: The bottom point is the

12 water meter will not catch the water flow, low water

13 flow in the backward.

14   JUDGE JORDAN: Okay.

15   MR. DZURINSKIY: Because they are not

16 tested, they are not required to do that.

17   JUDGE JORDAN: You believe your water meter

18 which is similar to that one --

19   MR. DZURINSKIY: Exactly.

20   JUDGE JORDAN: -- does not do.

21   MR. DZURINSKIY: Yes.

22   JUDGE JORDAN: -- what Missouri American is

23 saying it will do which is back off the bill when the

24 water flow backs off?

25   MR. DZURINSKIY: The manufacturer told me.

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 1                JUDGE JORDAN:  Is that correct?

 2                MR. DZURINSKIY:  Yes.

 3                JUDGE JORDAN:  Good.  That's what I need to

 4   hear.  That's what I needed to know.  I appreciate

 5   that clarification, and I appreciate your patience and

 6   everyone.  Okay.  I think we've got everything from

 7   you that you can tell us personally about what you

 8   observed about your meter?

 9                MR. DZURINSKIY:  I don't think I can add

10   any more.

11                JUDGE JORDAN:  Okay.  Thank you.  I

12   appreciate that.  Let's move on to the next issue, as

13   I see it, which is amount.  You believe you're able to

14   quantify the inaccuracy of your meter at between $30

15   to $40 per year; is that correct?

16                MR. DZURINSKIY:  Yes.  The price is based

17   only on the rates of maybe future.

18                JUDGE JORDAN:  I understand.

19                MR. DZURINSKIY:  Just shows quantity.

20                JUDGE JORDAN:  Okay.  Do you have

21   something -- do you have a document or can you tell us

22   about how you arrived at that number?

23                MR. DZURINSKIY:  I have documents.  This is

24   what American Water Company employees made

25   measurements on my property.  I can give everybody.
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 1   It shows in 15 minutes how much the dial, what they

 2   performed.

 3   JUDGE JORDAN: All right. I see that this

 4   has a lot of -- okay. For the record, I'm looking at

 5   a document which is headed Missouri American Water

 6   high bill inspection. And I have a date of -- Number

 7   32 Crabapple Court; is that your address?

 8   MR. DZURINSKIY: Yes.

 9   JUDGE JORDAN: Date 12-4-09. Associate

10   number 2823. Would you like the Commission to

11   consider this?

12   MR. DZURINSKIY: Yes.

13   JUDGE JORDAN: Any objection? You can

14   review it? Please do.

15   MR. DZURINSKIY: This is all my presence in

16   my house. This is what company gave me.

17   JUDGE JORDAN: Hang on a second.

18   MR. JONES: Can I ask a question?

19   JUDGE JORDAN: Sure.

20   MR. JONES: Mr. Dzurinskiy, how much of the

21   handwriting is yours and how much is Missouri

22   American?

23   MR. DZURINSKIY: He made this, and this is

24   my handwriting. This is people who I was calling to

25   your company, just talking to me because I couldn't

1   even --

2   JUDGE JORDAN: For the record, you're

3   referring to the handwritten notation at the top of

4   the form?

5   MR. DZURINSKIY: Yes. That's my

6   handwriting, but everything down is yours.

7   JUDGE JORDAN: And everything, other than

8   little notes at the top everything else is as it

9   originally was?

10   MR. DZURINSKIY: Yes.

11   MR. JONES: I have no objection.

12   JUDGE JORDAN: Will you hand that to staff

13   also?

14   MS. HERNANDEZ: I believe this was attached

15   to the original complaint.

16   MR. DZURINSKIY: Yes.

17   MS. HERNANDEZ: We don't object.

18   JUDGE JORDAN: Okay. Thank you. Now let's

19   call this Exhibit A.

20   (Whereupon, Exhibit A was marked for

21   identification.)

22   JUDGE JORDAN: Thank you very much. That's

23   complainant's Exhibit A, Missouri American water high

24   bill inspection. Now, I have a copy of this, Mr.

25   Dzurinskiy, you have a copy. You wanted to tell me

 1 what this shows.

 2   MR. DZURINSKIY: It shows up in 15 minutes

 3 how dial moved. It shows the usage of the water at

 4 the same time no one was using the water.

 5   JUDGE JORDAN: Okay. Let me make sure. I

 6 know I'm repeating a lot of what you say, but I need

 7 to clarify so I understand. I'm going at some boxes,

 8 a few from bottom where it reads, "During our

 9 inspection we examined (timed meter for signs of

10 movement for handwritten 15 minutes.) The meter did

11 show registration." That is unscored. "This

12 indicates you may have a leak, although we cannot find

13 the cause of the registration. You may want to hire a

14 plumbing contractor and further investigate a possible

15 leak." And I see handwritten 7/100 of cubic feet.

16 And your understanding is that there is this means

17 some unaccounted for usage of 7/100th in 15 minutes.

18 That's your understanding?

19   MR. DZURINSKIY: Yes.

20   JUDGE JORDAN: Anything else you want to

21 tell me about this document?

22   MR. DZURINSKIY: No. It shows at the

23 bottom exactly. I cannot find leak. Sent crew to

24 pump out box.

25   JUDGE JORDAN: Okay. Anything else on this

 1   document?

 2   MR. DZURINSKIY: I don't think so.

 3   JUDGE JORDAN: Okay. Thank you. Now you

 4   also handed me another document which has case number

 5   handwritten at the top and says Exhibit 3. Let's have

 6   this marked as complainant's Exhibit B.

 7   (Whereupon, Exhibit B was marked for

 8   identification.)

 9   JUDGE JORDAN: This looks like a photo

10   copy.

11   MR. DZURINSKIY: Yes, it's a copy.

12   JUDGE JORDAN: And I see there is in

13   addition to the handwriting at the top, there is a

14   little bit of handwriting about the middle between the

15   last two columns.

16   MR. DZURINSKIY: Yes.

17   JUDGE JORDAN: Other than that, is this as

18   you received it?

19   MR. DZURINSKIY: Yes.

20   JUDGE JORDAN: Give me a brief description

21   of what this document is. What is this?

22   MR. DZURINSKIY: This document is a

23   document the water company sent to me to show that I

24   had spent water 10 cubic feet or 9 cubic feet; that is

25   why I don't have excessive water. Like in my

1 understanding, like I was punished for what I just

2 used five or six cubic feet, not 10 like it was many

3 years ago.

4   JUDGE JORDAN: This document says premises

5 usage transaction report.

6   MR. DZURINSKIY: Right.

7   JUDGE JORDAN: Does this show how much

8 water you use?

9   MR. DZURINSKIY: Yes. It's water from --

10 you can look at it. For many years.

11   JUDGE JORDAN: The earliest date I have is

12 8-14-2000.

13   MR. DZURINSKIY: Yes.

14   JUDGE JORDAN: And then the latest I have

15 is 8-17-2009.

16   MR. DZURINSKIY: Uh-huh.

17   JUDGE JORDAN: And you're giving us that to

18 show what your usage is over this course of time?

19   MR. DZURINSKIY: Yes. And I have one more

20 bill to show.

21   JUDGE JORDAN: That's fine. Let's take

22 care of this first.

23   MR. DZURINSKIY: Uh-huh.

24   JUDGE JORDAN: You'd like the Commission to

25 consider this document?

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 1              MR. DZURINSKIY:  I'd like you to look at it

 2   because it affects how I calculate how much I spend

 3   in water.

 4              JUDGE JORDAN:  I'm showing this to counsel

 5   for Missouri American Water Company.

 6              MR. DZURINSKIY:  Actually, it's their paper

 7   not mine.

 8              JUDGE JORDAN:  Of course, but they have a

 9   right to look at it just to make sure.  And to staff.

10              MS. HERNANDEZ:  May we review it?

11              JUDGE JORDAN:  Please.  Are there any

12   objections to complainant's Exhibit B?

13              MR. JONES:  No objection, Your Honor.

14              JUDGE JORDAN:  Staff?

15              MS. HERNANDEZ:  No objection, but we would

16   like a copy.

17              JUDGE JORDAN:  Is there anything else you

18   want to tell us about this complainant's Exhibit B

19   before we move?

20              MR. DZURINSKIY:  Maybe it's not important

21   but because of this complaint, if you saw my

22   handwriting you indicated over there.

23              JUDGE JORDAN:  Uh-huh.

24              MR. DZURINSKIY:  It seems to me 2006 about

25   that one the company just -- I still at that time I
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 1 still have old water meter, not this one. The water

 2 company overcharged me four times more. And I called

 3 water company and said how this happens because I just

 4 it was indication how much I sent and they argue with

 5 me. And said do you want to refund money, you file a

 6 complaint with Public Service Commission. After one

 7 month, they paid because I was right.

 8   JUDGE JORDAN: In 2006?

 9   MR. DZURINSKIY: Yes.

10   JUDGE JORDAN: You describe an action in

11 2006 where you claimed to be overcharged and they

12 fixed this?

13   MR. DZURINSKIY: Yes. It was human

14 mistake.

15   JUDGE JORDAN: Do you have something else

16 you'd like the Commission to consider?

17   MR. DZURINSKIY: Yes, the bill. It was

18 first one.

19   JUDGE JORDAN: This one also has

20 handwriting at top, file number for this case, and

21 it's marked as -- Mr. Dzurinskiy's mark it as Exhibit

22 2 in handwriting. This has notation of customer

23 account information. Do you have copies to show other

24 parties?

25   MR. DZURINSKIY: Yes.

1   JUDGE JORDAN: Please do that.

2   MS. HERNANDEZ: We have it.

3   JUDGE JORDAN: Good. Let's have the

4 reporter mark this as complainant's Exhibit C.

5   (Whereupon, Exhibit C was marked for

6 identification.)

7   JUDGE JORDAN: And Mr. Dzurinskiy, what is

8 this going to tell the Commission about your bill?

9   MR. DZURINSKIY: It will show the

10 difference how much I spent. It will indicate the

11 water company claims my water goes backward. It

12 easily can prove that my water pollutes their mains

13 and everything. It shows how much water I use at my

14 home. It appears all my water completely goes -- I

15 have usage at my home, it's only six cubic feet. How

16 much water can go in the main system in comparison

17 with previous years.

18   JUDGE JORDAN: Okay. Let's me make sure I

19 understand. This document will tell the Commission

20 that if there is back flow, that your bill ought to be

21 zero?

22   MR. DZURINSKIY: It appears by the company

23 account.

24   JUDGE JORDAN: Okay. All right.

25   MR. DZURINSKIY: It means at this point I'm

 1   supplier of the water.

 2   JUDGE JORDAN: All right. And you'd like

 3   the Commission to consider this document?

 4   MR. DZURINSKIY: Yeah, sure.

 5   JUDGE JORDAN: Any objection?

 6   MR. JONES: I have no objection to the

 7   admission of that document.

 8   JUDGE JORDAN: Staff?

 9   MS. HERNANDEZ: No objection.

10   JUDGE JORDAN: Then I'm going to enter into

11   the record Plaintiff's Exhibits A, B, and C. Is there

12   anything more that you'd like to tell us about this

13   Exhibit C?

14   MR. DZURINSKIY: Yes. It's same everything

15   what I give additional to this one. It's at the very

16   beginning water company claims I had a leak, so it

17   indicates if I have a leak they need to prove how much

18   leak I could have. If their papers indicate it should

19   be much more than six cubic feet. It should be ten or

20   15.

21   JUDGE JORDAN: And do you have some more

22   documents you'd like the Commission to consider?

23   MR. DZURINSKIY: Right. This is --

24   JUDGE JORDAN: Copies for the other

25   parties?

 1   MR. DZURINSKIY: Yes.

 2   JUDGE JORDAN: Very good. While you're

 3   doing that, I'll know we have -- Mr. Dzurinskiy, how

 4   would you describe this document that you just handed

 5   me?

 6   MR. DZURINSKIY: This is my Laclede gas for

 7   the summer use. Yeah. You're surprised why it was

 8   connection, but I'll try to explain exactly. It's

 9   much easier to estimate what kind of water -- if the

10   company claimed I had a leak during the summer time

11   how much I had my water heater replaced because they

12   just raised an issue about my water heater was the

13   problem. And then I had a leak, how much gas I used

14   at my home in the previous year before I replaced it.

15   JUDGE JORDAN: What is the difference in

16   the amount of gas used? Tell us about the water bill.

17   MR. DZURINSKIY: I'll show you why it's

18   less.

19   JUDGE JORDAN: What does it show?

20   MR. DZURINSKIY: Twice less before I had my

21   water heater leaking. Before September when I

22   replaced my water heater I had this for previous two

23   bills, my gas bill and I replaced it this year, 2009.

24   This is another one, so it indicates that I have no

25   problem with leak with my hot water because we will

1   see testimony about what because it's important.

2   JUDGE JORDAN: Let me note this for the

3   record. I have two documents in my hands. They are

4   Laclede Gas, and make sure everyone else has a copy of

5   that document. And these bills have dates on them of

6   2009.

7   MR. DZURINSKIY: And 2010.

8   JUDGE JORDAN: One of the documents is 2009

9   and the other is 2010?

10   MR. DZURINSKIY: Yes.

11   JUDGE JORDAN: I'll go ahead and have the

12 reporter mark these and see if I understand what your

13 theory is here. Your theory is because your gas bill

14 went down you must be using no more water; is that

15 correct?

16   MR. DZURINSKIY: Yes. Everything was based

17 the beginning the water company charged me that I had

18 a leak. They couldn't find which leak, cold or hot

19 water. I was suspicious maybe because their employee

20 checked everything and said I had not any leak, but I

21 was suspicious to check if I had hot water heater line

22 leak.

23   JUDGE JORDAN: If I understand it, if you

24 had a leak -- your theory is if you had a leak in your

25 hot water heater, then you would be spending more on

 1   gas?

 2   MR. DZURINSKIY: Yes.

 3   JUDGE JORDAN: Okay. I understand your

 4   theory. I understand your theory. I'll have the

 5   reporter mark those as complainant's Exhibits D and E.

 6   MS. HERNANDEZ: Can you identify which is D

 7   and which is E?

 8   JUDGE JORDAN: D is earlier one in 2009 and

 9   E will be 2010.

10   (Whereupon, Exhibits D and E were marked

11   for identification.)

12   JUDGE JORDAN: All right. I have before me

13   the exhibits marked complainant's D and E, which are

14   the bills from Laclede Gas Company for 2009 and 2010

15   respectively, a couple of each on those. Is there any

16   objection to the admission of these exhibits into

17   evidence?

18   MR. JONES: Yes. We object to the

19   admission on D and E on hearsay and lack of

20   foundation. There is no authentication of these

21   documents and also relevance. There is no relevance

22   between gas bills and Mr. Dzurinskiy's complaint about

23   his water bill.

24   JUDGE JORDAN: Anything from the staff?

25   MS. HERNANDEZ: Our objection would be on

 1   relevance, but if I could voir dire the Exhibit.

 2   JUDGE JORDAN: Please do.

 3   MS. HERNANDEZ: Is your account with

 4   Laclede -- do you only use gas for your water heater

 5   or do you have any other purposes in the home?

 6   MR. DZURINSKIY: Yes. Only natural gas.

 7   JUDGE JORDAN: Only for your water heater?

 8   MR. DZURINSKIY: Water heater.

 9   JUDGE JORDAN: You don't heat your home

10   with natural gas?

11   MR. DZURINSKIY: But I brought this in the

12   summer time when I don't use this.

13   MS. HERNANDEZ: Okay.

14   MR. DZURINSKIY: Especially in June and

15   July. That is why I want to show because you don't

16   use heat when it's 90 degree outside.

17   MS. HERNANDEZ: Is your service still on

18   during the summer?

19   MR. DZURINSKIY: I mean if I have my gas

20   disconnected?

21   MS. HERNANDEZ: Correct.

22   MR. DZURINSKIY: No. What is reason to be

23   disconnected? I pay my bills on time.

24   JUDGE JORDAN: When the answer is yes, just

25   say yes.

1   MR. DZURINSKIY: Yes.

2   MS. HERNANDEZ: Do you know the efficiency

3   of your old water heater to the water heater that you

4   installed in November 2009?

5   MR. DZURINSKIY: Well, I know the brand

6   water heater, but efficiency, I don't know.

7   JUDGE JORDAN: If you don't know, that's

8   okay. You can say you don't know. That's fine.

9   MR. DZURINSKIY: It seems to me I have some

10   manual from that if the company requested me I

11   submitted complete manuals. They didn't question me

12   about that.

13   JUDGE JORDAN: Okay. That's fine.

14   Anything further from staff.

15   MS. HERNANDEZ: I have no further

16   questions, but we would still like to object on

17   relevance.

18   JUDGE JORDAN: You have objected to

19   relevance and Missouri American has an objection based

20   on also hearsay. I'm going to overrule this objection

21   because it appears to me to be a document that's kept

22   in the ordinary course of business, and so I will

23   admit this as a record. What else would you like the

24   Commission to see, Mr. Dzurinskiy?

25   MR. DZURINSKIY: The last exhibit, this is

 1   about digital water.

 2   JUDGE JORDAN: Will you show some copies to

 3   the other parties please for the record? I have

 4   before us a document, it looks like a photo copy of a

 5   graphic reading. It's some sort of spiral

 6   configuration. There are handwritten notes at the

 7   top. Mr. Dzurinskiy, these notes are your

 8   handwriting, otherwise is this as you received it from

 9   somewhere?

10   MR. DZURINSKIY: It's my handwriting. So I

11   would like everybody to know when it was taken because

12   it did not indicate a date and time. So I just

13   obtained information from the staff.

14   JUDGE JORDAN: And I'm going to hand this

15   to the reporter to mark as complainant's Exhibit F.

16   Tell us a little bit of this Exhibit while that's

17   getting mark if you would please?

18   MR. DZURINSKIY: This indicates the water

19   fluctuates in the plumbing system. C.

20   JUDGE JORDAN: Okay.

21   MR. DZURINSKIY: And what is the worst part

22   of this is I just cannot understand it was not

23   presented to me why it was installed about four p.m.

24   and removed in the morning at about nine a.m.. Why it

25   was not stayed for 24 hours mostly during the day when

1   this indicator just rotates.

2   JUDGE JORDAN: Okay. There is a lot in

3   there you have just given us. First, you're saying

4   this is a graph of water pressure? C.

5   MR. DZURINSKIY: Water pressure in plumbing

6   system.

7   JUDGE JORDAN: Okay. And the notes at the

8   top tells us relevant date and time of that?

9   MR. DZURINSKIY: Correct.

10   JUDGE JORDAN: Okay. And the reporter has

11 my --

12   (Whereupon, Exhibit F was marked for

13 identification.)

14   JUDGE JORDAN: All right. Mr. Dzurinskiy,

15 I see your handwritten notes say taken March 9th

16 through 10th, 2010 between four p.m. and nine a.m. by

17 the staff MPSC. And what do you want the Commission

18 to gather from this document? What does this tell the

19 Commission?

20   MR. DZURINSKIY: It tells the water in the

21 system fluctuates. Water usually try to it causes

22 water meter ratchet.

23   JUDGE JORDAN: So this reflects

24 fluctuation --

25   MR. DZURINSKIY: -- in water.

1   JUDGE JORDAN: In pressure, water pressure

2   in the American system?

3   MR. DZURINSKIY: It was connected to my

4   system. That's why I try to request some document

5   from the water company what pressure they have before

6   enter my line system. And they said they are not

7   require to maintained this.

8   JUDGE JORDAN: I remember that discussion.

9   Which side of the meter is this pressure?

10   MR. DZURINSKIY: In my home.

11   JUDGE JORDAN: This is your water pressure

12   for your home?

13   MR. DZURINSKIY: Yes.

14   JUDGE JORDAN: Okay. And you would like

15   the Commission to consider this?

16   MR. DZURINSKIY: Yes. I would like the

17   Commission to consider this one more detail. I

18   received this document in May. We had some water

19   company presented it on my property before that I made

20   the claim. So I did not have this document claiming

21   during the night the water meter does not rotate. So

22   it means now it was confirmation. I cannot make

23   something like this and especially tell I relied on

24   this rapid recording to confirm the rotation.

25   JUDGE JORDAN: So this document --

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 1              MR. DZURINSKIY: Confirms --

 2              JUDGE JORDAN: Confirms?

 3              MR. DZURINSKIY:  -- my allegations.

 4              JUDGE JORDAN:  That there are fluctuations

 5   on this meter?

 6              MR. DZURINSKIY:  It's not good.

 7              JUDGE JORDAN:  So this shows the water

 8   pressure in your house fluctuates?

 9              MR. DZURINSKIY:  Yes.

10              JUDGE JORDAN:  And that is unreflected on

11   this meter -- not reflected on this meter?

12              MR. DZURINSKIY:  Correct.

13              JUDGE JORDAN:  On your meter?

14              MR. DZURINSKIY:  Yes.  It reflects that

15   during the night my confirmation that it does not

16   rotate because the line on recording is flat between

17   11 and six in the morning.

18              JUDGE JORDAN:  So this -- I'm going to try

19   to summarize to clarify to make sure I understand what

20   you want the Commission to get from this.  This shows

21   that there is fluctuation in the water pressure in

22   your pipes and this also shows that your meter is not

23   reflecting that?

24              MR. DZURINSKIY:  Well, it does not show the

25   water meter reflecting that.  It only shows water
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 1   fluctuation in the line.

 2   JUDGE JORDAN: Okay.

 3   MR. DZURINSKIY: In fact, you can see.

 4   When you look at that it doesn't reflect it.

 5   JUDGE JORDAN: So this just shows that

 6   water pressure in your pipe fluctuates?

 7   MR. DZURINSKIY: Fluctuates.

 8   JUDGE JORDAN: Okay.

 9   MR. DZURINSKIY: Some period of time and

10   some does not.

11   JUDGE JORDAN: Any objection to this

12   document from Missouri American?

13   MR. JONES: To the extent Mr. Loethen can

14   authenticate and confirm what it is, I have no

15   objection.

16   JUDGE JORDAN: Why don't you hold on to

17   your objection then until we get some testimony on it?

18   You may reserve that. Anything from staff?

19   MS. HERNANDEZ: We will just have same

20   objection. Once Mr. Loethen identifies the document

21   that he actually took the recording and that it is the

22   same as what's on the Exhibit, then we would have no

23   objection at that point.

24   JUDGE JORDAN: Then I'll reserve ruling on

25   that. I'll tell you what I will do. I will not

 1 reserve ruling on that. I will rule it admitted into

 2 the record subject to later objections based on

 3 foundation. Okay. Mr. Dzurinskiy, what else do you

 4 have?

 5   MR. DZURINSKIY: Unfortunately, I just

 6 found these papers a couple days ago, and I did not

 7 make copies. It just shows a connection between the

 8 main pipe and service pipe. This is from the water

 9 company. Everybody is getting this. It's the kind of

10 documentation. You can look at it where the usual

11 connection. It's on top of that. It tells me if the

12 fluctuation in the main pipes fall down it could be

13 air pockets.

14   JUDGE JORDAN: Okay. Let's begin at the

15 beginning. I am looking at a document of several

16 pages.

17   MR. DZURINSKIY: Right. It's completely

18 given to any customer who just opens the service with

19 the water company. It explains how much we can

20 expect.

21   JUDGE JORDAN: I have a cover page that

22 states information for residential customers.

23   MR. DZURINSKIY: It's not dated of course

24 because that could be for a long time at the house.

25   JUDGE JORDAN: I will ask our reporter to

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 1   mark this as complainant's Exhibit G please.  And we

 2   don't have copies of that; is that correct?

 3              MR. DZURINSKIY:  Yeah.  No copies.

 4              JUDGE JORDAN:  I'll have the other parties

 5   look through it for objections that we may have.

 6              (Whereupon, Exhibit G was marked for

 7   identification.)

 8              JUDGE JORDAN:  Please take a look at that.

 9   And Mr. Dzurinskiy, while counsel for Missouri

10   American is examining that document, do I understand

11   that this will show the Commission how air pockets may

12   form?

13              MR. DZURINSKIY:  Possibly.

14              JUDGE JORDAN:  Okay.

15              MR. JONES:  There is a loose paper inside.

16              MR. DZURINSKIY:  I don't know what that is.

17   It's probably from your company to explain how to

18   convert cubic feet into gallons of water.

19              JUDGE JORDAN:  Do you want that to be part

20   of this Exhibit?

21              MR. DZURINSKIY:  It's not important.

22              JUDGE JORDAN:  Okay.

23              MR. JONES:  If you'd like me to proceed,

24   Your Honor.  I have no objection to the admission of

25   this document with the date it appears of September 31
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1 (sic), 2000. I have no objection to the admission. I

2 do have objection to the characterization of it

3 obviously. But its mere admission, I'm fine.

4   JUDGE JORDAN: You may present testimony as

5 to that. Staff is now examining it.

6   MS. HERNANDEZ: We don't object to its

7 admission.

8   JUDGE JORDAN: Okay. Then I will enter

9 complainant's Exhibit G into the record. Is there

10 anything else you wanted to say about this document

11 before we move on?

12   MR. DZURINSKIY: No.

13   JUDGE JORDAN: Thank you. That's fine.

14 And you have another document for the Commission?

15   MR. DZURINSKIY: One document because I

16 couldn't reproduce more because it's a color printer.

17 I couldn't make. This is from water company.

18   JUDGE JORDAN: This is a two-page document.

19 Each page is headed DLCC Stratmann area pressures and

20 building temperature. And it's T-e-m-p-a-t-u-r-e.

21 And I will have the reporter mark this as

22 complainant's Exhibit H. And we have no copies of

23 this. Will staff be able to make copies of these

24 documents?

25   MR. JONES: I have copies of that document.

 1   MS. HERNANDEZ: I believe we have copies in

 2 our records here too if they are exact.

 3   JUDGE JORDAN: I will hand this to the

 4 reporter. And what would you like the Commission to

 5 know about that document while the reporter is marking

 6 it?

 7   MR. DZURINSKIY: It just shows water

 8 pressure at main station, how it fluctuates, but it

 9 does not reveal anything was going on in the main

10 pipes in our subdivision because it's not measuring,

11 was my understanding. My understanding is the company

12 was not require to keep.

13   JUDGE JORDAN: I recall that discussion.

14   MR. DZURINSKIY: It's obvious because it's

15 unclear what the pressure in main pipe before it

16 entered my service pipe and what it was measured on

17 the digital recording it could be quite different.

18 Because if the company is claiming it's their

19 responsibility that how much pressure could be there

20 main pipe. I need to add six or eight PSI to their

21 station where it's coming from, but it doesn't mention

22 on the graphic recording show.

23   JUDGE JORDAN: Let me have --

24   (Whereupon, Exhibit H was marked for

25 identification.)

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 1              MR. JONES:  I'd like to register an

 2  objection to relevance regarding pressure at these

 3  various locations on December 4th, 2009.

 4              JUDGE JORDAN:  Will you pass that to staff

 5  so they may set forth any objection as well also?

 6              MR. DZURINSKIY:  That's what the company

 7  indicated, but I have doubts about that.

 8              MS. HERNANDEZ:  Staff will object as well

 9  on relevance due to the documents being over a year

10  old when it showed what the pressure is at this point

11  in time during the complaint period.

12              JUDGE JORDAN:  Thank you.  Missouri

13  American objection was also as to relevance?

14              MR. JONES:  Correct, Your Honor.

15              JUDGE JORDAN:  Do you want to speak to that

16  a little bit?

17              MR. JONES:  Yes.  That document shows

18  pressure recording on various locations on December

19  4th, 2009.  There is no indication in the record why

20  that date of December 4, 2009 is relevant for which we

21  need a reading of pressure at the sites.

22              JUDGE JORDAN:  Mr. Dzurinskiy, do you want

23  to tell us?

24              MR. DZURINSKIY:  Well --

25              JUDGE JORDAN:  You can't answer my question
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1 until you have heard my question.

2   MR. DZURINSKIY: All right.

3   JUDGE JORDAN: What does this prove about

4 your claim or disprove about this defense?

5   MR. DZURINSKIY: It proves that I had

6 employees on my property from the water company and

7 they told me I have nothing to do with my plumbing

8 system as a leak. They couldn't indicate why the

9 water goes backward through the water meter so at the

10 same time company claims that my water goes backwards

11 in their pipes. So I wanted to see how much pressure

12 they required, like I said, to keep at least 20 PSI in

13 their pipes. I wanted to find out how much water can

14 go into the main system.

15   JUDGE JORDAN: What do these lines tell me

16 about that?

17   MR. DZURINSKIY: This indicates that my

18 water cannot enter the main pipe because the pressure

19 isn't enough.

20   JUDGE JORDAN: Does this show that it's

21 impossible for you to have back flow? Is that what

22 you're saying?

23   MR. DZURINSKIY: Yes.

24   JUDGE JORDAN: So this proves there is no

25 back flow.

 1   MR. JONES: Then I will withdraw my

 2 objection, Your Honor.

 3   JUDGE JORDAN: Staff?

 4   MS. HERNANDEZ: I'll withdraw the

 5 objection.

 6   JUDGE JORDAN: Then Exhibit H is admitted

 7 into the record. Mr. Dzurinskiy, what else would you

 8 like the Commission to know.

 9   MR. DZURINSKIY: I have no more at this

10 point. No more documentation.

11   JUDGE JORDAN: Okay. I see it is five

12 minutes until noon. I can go all day without eating

13 and drinking sleeping or anything else. But the

14 parties may want to break for a while and may want to

15 take a lunch break. Off the record.

16   (Whereupon, a short break was taken.)

17   JUDGE JORDAN: And we're back on the

18 record. We're going to take up with cross examination

19 of Mr. Dzurinskiy by Missouri American Water Company.

20   MR. JONES: Thank you, Your Honor, Mr.

21 Dzurinskiy, what's your occupation?

22   MR. DZURINSKIY: My occupation, I work as

23 support staff in a retirement community.

24   MR. JONES: What are your duties as support

25 staff?

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 1              MR. DZURINSKIY:  My duties is actually to

 2   perform some jobs after office is closed, everything

 3   including maintenance, service, any service, any

 4   claims that happens on the premises.

 5              MR. JONES:  You're not an engineer?

 6              MR. DZURINSKIY:  Well, I am engineer.  I'm

 7   construction engineer but I don't practice.

 8              MR. JONES:  Are you a licensed engineer?

 9              MR. DZURINSKIY:  I am not licensed in this

10   country.

11              MR. JONES:  And you're not a water industry

12   professional?

13              MR. DZURINSKIY:  No.  But I am --

14              MR. JONES:  You're not claiming that

15   Missouri American has to maintain constant pressure

16   throughout its system, are you?

17              MR. DZURINSKIY:  Yes.

18              MR. JONES:  And you realize that your bill

19   usage is about one quarter of the average St. Louis

20   County customer's usage?

21              MR. DZURINSKIY:  Yeah.  Yes.  I realize

22   about that.  It should be about that.  I'm not sure

23   because I never check everybody's bills.  Different

24   families -- everybody's usage is different.  It

25   depends.
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1   MR. JONES: And you realize you are able to

2   install a backfiller on your service line; is that

3   correct.

4   MR. DZURINSKIY: I am able by myself?

5   MR. JONES: Yes.

6   MR. DZURINSKIY: If you mean physically by

7   myself, I cannot do that. I need to hire a licensed

8   plumber.

9   MR. JONES: If you hired a license plumber,

10   it is physically possible to install a back flow

11   device on your premises?

12   MR. DZURINSKIY: It depends where I need to

13   install that device. That is a problem. Like I was

14   suggested even by your employees when we had

15   discussion in May and we hear from the report from the

16   staff, the best place to install in the water meter

17   pit on the side of the main.

18   MR. JONES: You're saying the back flow

19   device would be installed in the water main pit?

20   MR. DZURINSKIY: That's the best place.

21   MR. JONES: So you're not saying -- denying

22   it's possible to install a back flow prevention device

23   on your property? You're not denying that?

24   MR. DZURINSKIY: I don't deny that because

25   it's basic in your papers also. Like I say, it's

1   possible, but not practical.

2   MR. JONES: You're saying the water company

3   said that you have a leak on your premises?

4   MR. DZURINSKIY: At the beginning. I

5   received papers from the people who never been on my

6   property a position whose papers said --

7   MR. JONES: Let me show you your Exhibit A.

8   What is this exhibit again? In general what does it

9   describe? Is this exhibit a report from a water

10 company representative?

11   MR. DZURINSKIY: Yes.

12   MR. JONES: That was at your property.

13   MR. DZURINSKIY: I cannot find a leak and I

14 cannot find a leak, and I will send a crew to pump out

15 box.

16   MR. JONES: So the water company

17 representative when he actually went to your property

18 said there wasn't a leak?

19   MR. DZURINSKIY: Didn't find a leak.

20   MR. JONES: Are you claiming that Missouri

21 American is obligated to measure pressure at every

22 water main in its system?

23   MR. DZURINSKIY: It was my understanding

24 from the law what I understand, yes. In my

25 understanding it says you're supposed to because the

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 1  water company never presented me evidence how much

 2  pressure in their main pipe.

 3               MR. JONES:  My question is --

 4               MR. DZURINSKIY:  Yes.

 5               MR. JONES:  You're not saying, are you,

 6  that Missouri American has to measure pressure in

 7  every main in its over 4200 miles of main in its

 8  system?

 9               MR. DZURINSKIY:  Yes.  It's my

10  understanding it supposed to, yes.

11               MR. JONES:  And you filed a previous

12  complaint against Missouri American Water?

13               MR. DZURINSKIY:  Previous, four years ago

14  for a different reason.

15               MR. JONES:  Can I see, Your Honor, the one

16  Exhibit that we didn't have copies.  I believe it's G.

17  Can you tell me where in Exhibit G that you provided

18  -- it says that there are pressure differences.  Let

19  me back up.  Did you say that air pockets can cause

20  pressure difference --

21               MR. DZURINSKIY:  Right.

22               MR. JONES:  -- in your system?

23               MR. DZURINSKIY:  Yes.

24               MR. JONES:  Where does it say that?

25               MR. DZURINSKIY:  It doesn't say this.  It
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 1   says in the report of the staff. It's my

 2   understanding how the water connected to the main

 3   pipe, if it's precise -- because I just rely on your

 4   company's drawing.

 5   MR. JONES: You're just pointing at the

 6   drawing?

 7   MR. DZURINSKIY: Water drops in the main

 8   pipe.

 9   MR. JONES: Let me finish my question.

10   You're not talking about any of the text in that

11   exhibit, just the back.

12   MR. DZURINSKIY: Only what the drawing

13   shows me and just my opinion.

14   MR. JONES: Okay. Just your opinion.

15   MR. DZURINSKIY: My opinion.

16   MR. JONES: The drawing doesn't say

17   anything about pressure?

18   MR. DZURINSKIY: Not about pressure.

19   MR. JONES: Okay. And if I could show you

20   again your Exhibit C, and if you have that in front of

21   you, I'd like to keep mine so I can speak to it. It's

22   the water bill.

23   MR. DZURINSKIY: Yeah. I know. I'm

24   looking for it.

25   MR. JONES: And this is a copy of your

 1 water bill dated June 3rd, 2010.

 2   MR. DZURINSKIY: It's not June. It's

 3 between February 19 to May 19th.

 4   MR. JONES: Measuring usage between

 5 February 19th and May 19th, 2010.

 6   MR. DZURINSKIY: Yes.

 7   MR. JONES: And the due date typed on right

 8 hand is June 3rd, 2010?

 9   MR. DZURINSKIY: It says when I suppose to

10 pay, yes; when I supposed to pay.

11   MR. JONES: And if you look at customer

12 charge --

13   MR. DZURINSKIY: Uh-huh.

14   MR. JONES: -- on the right side the middle

15 of the page, and you see usage charge underneath there.

16 What is the total usage charge on the quarterly bill?

17   MR. DZURINSKIY: By itself for the water?

18   MR. JONES: For the water you used, what is

19 the price?

20   MR. DZURINSKIY: If you combine -- if

21 you're talking about only -- that's only for the

22 water.

23   MR. JONES: Just for water used; this

24 includes customer charge?

25   MR. DZURINSKIY: It seems to me $12.40 or

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 1   $.50.

 2   MR. JONES: So $12.50 was your quarterly

 3   bill due June 3, 2010.

 4   MR. DZURINSKIY: Yes. For water by itself.

 5   MR. JONES: The water by itself. That's

 6   the amount that you actually used?

 7   MR. DZURINSKIY: Yes.

 8   MR. JONES: And are you claiming that this

 9   June 3rd, 2010 bill is higher than an average bill?

10   MR. DZURINSKIY: Well, it could be, right.

11   MR. JONES: So the total usage charge for

12   that quarter, those three months is $12.50. If you

13   multiply that by four for a whole year, that is

14   $49.

15   MR. DZURINSKIY: Yes. That's about right.

16   MR. JONES: That's $50.

17   MR. DZURINSKIY: Yes. Something about

18   that.

19   MR. JONES: So an average bill for your

20   usage for the whole year is about $50. Yet you're

21   telling the Commission that your water bill this year

22   is overstated by as much as $40 because of --

23   MR. DZURINSKIY: $40 dollars, yes.

24   MR. JONES: So you're only using $10 worth

25   of water each year?

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 1            MR. DZURINSKIY: $10 of water.

 2            MR. JONES:  Is that correct?

 3            MR. DZURINSKIY:  Uh-huh.

 4            MR. JONES:  That's your testimony?

 5            MR. DZURINSKIY:  Yeah.

 6            MR. JONES:  I don't have any further

 7   questions at this time, Your Honor.

 8            JUDGE JORDAN:  Okay.  Cross examination

 9   from staff?

10            MS. HERNANDEZ:  I don't have any questions.

11            JUDGE JORDAN:  Okay.  I don't have any

12   questions.  So that concludes the cross examination of

13   Mr. Dzurinskiy.  Do the parties want to take a break?

14            MR. JONES:  That's fine with me.

15            JUDGE JORDAN:  Let's do that and we'll come

16   back and resume.

17            (Whereupon, a lunch break was taken.)

18            JUDGE JORDAN:  We're back on the record.

19   We have concluded the cross examination of Mr.

20   Dzurinskiy.  Mr. Dzurinskiy, you now have the chance

21   for redirect.  That is if some of this cross

22   examination brought up some issues that you want to

23   clarify you may do that now.  If there is anything.

24            MR. DZURINSKIY:  I will just discuss about

25   maybe how much it will cost and think about.  I said
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 1   it would cost $40 or $50. Well, I would like the

 2   company to understand my complaint originally was

 3   about not just about the price of the water, how many

 4   cubic feet it could be difference in the company

 5   disagrees with me what I make calculation about. They

 6   could make their comment about that how much I spent.

 7   As a price I was thinking about the future. I cannot

 8   exactly know. The prices change. The rates are

 9   changing. So my estimate of $40 or $50 could be not

10   exactly precise. I would like -- I mean I was asking

11   that I just exceeded the price or wanted to rip off

12   the company.

13   JUDGE JORDAN: Okay. I understand your

14   number is an estimate.

15   MR. DZURINSKIY: Right.

16   JUDGE JORDAN: But the issue that you would

17   like the commissioners to know about is cubic feet.

18   MR. DZURINSKIY: Right.

19   JUDGE JORDAN: Is there anything else?

20   MR. DZURINSKIY: No.

21   JUDGE JORDAN: Very good. Recross from

22   Missouri American?

23   MR. DZURINSKIY: No, Your Honor.

24   JUDGE JORDAN: Recross from staff?

25   MS. HERNANDEZ: No. Thank you.

 1   JUDGE JORDAN: Mr. Dzurinskiy, do you have

 2   anything else for your case in chief? Are you going

 3   to have any more witness or have any more documents?

 4   MR. DZURINSKIY: I don't have any more

 5   document, but I would like to question Steve Loethen

 6   about everything -- about the case. I have a lot of

 7   questions.

 8   JUDGE JORDAN: Okay. So you would like to

 9   call Steve Loethen; is that correct?

10   MR. DZURINSKIY: Is it my turn right now?

11   JUDGE JORDAN: Hang on a second.

12   MS. HERNANDEZ: I would just like to object

13   on the calling of Steve Loethen because the staff will

14   be calling him momentarily. I believe that any

15   question you might have can be addressed at that time

16   because the report will be offered. It's my

17   understanding any questioning that Mr. Dzurinskiy will

18   have will be based on that report or his working with

19   Steve in the investigation?

20   JUDGE JORDAN: I note too that Steve

21   Loethen does not appear on Mr. Dzurinskiy's witness

22   list.

23   MS. HERNANDEZ: That's correct. So we

24   didn't have any opportunity to prepare for more a

25   direct versus from another party versus staff's

 1 direct.

 2   JUDGE JORDAN: Okay, Mr. Dzurinskiy. They

 3 are proposing to call Steve Loethen then as their

 4 witness, and you can do cross examination.

 5   MR. DZURINSKIY: Okay. I didn't -- that's

 6 fine with me.

 7   JUDGE JORDAN: If that's okay by you,

 8 that's what we'll do. I recall that you said Zena

 9 Dzurinskiy would not be appearing today?

10   MR. DZURINSKIY: Right.

11   JUDGE JORDAN: Then that sounds like it

12 concludes your presentation of your case in chief?

13   MR. DZURINSKIY: Yes.

14   JUDGE JORDAN: All right. Then we will

15 move to the case in chief of Missouri American Water

16 Company.

17   MR. JONES: Yes, Your Honor. Before that,

18 I'd like to make a motion for directed judgment at the

19 close of the complainant's case. The complainant's

20 complaint is that he has a high bill based on a

21 alleged reverse flow through the meter he alleges is

22 not being recorded. In addition to his recent

23 admission during his testimony that there is no

24 reverse flow in his meter for a number of reasons. He

25 does not state a claim upon which his complaint can be

1   granted. The ultimate issue as the present hearing

2   order points out is that the Plaintiff bears the

3   burden of proving Missouri American has violated any

4   rule, regulation, or charge heretofore established or

5   fixed by or for Missouri American Water Company, any

6   provision of law, or any rule or order or decision of

7   the Commission. Mr. Dzurinskiy has failed to carry

8   his burden to do that. He has no evidence beyond his

9   speculation that there is reverse flow on his meter.

10   He has no evidence beyond his own speculation that

11   there is reverse flow that is not being recorded. He

12   has no evidence of relative pressures at the same time

13   regarding pressure in the water system of the company

14   as opposed to water pressure inside his house that

15   could lead to reverse pressure. His knowledge of what

16   his own water pressure has not been established in the

17   record. His lack of knowledge about his own water

18   system and billings is shown by the outrageous high

19   overstatement of at least $40 per year of overbilling

20   when his yearly usage bill is only $50 a year. He is

21   saying 80 percent of his water bill is due to reverse

22   flow. That's outrageous and shows lack of evidence on

23   his complaint. He has no evidence to support his

24   claim that there is any violation of any tariff,

25   regulation, statute, or any other rule as applies to

 1   Missouri American Water Company?

 2   JUDGE JORDAN: Okay. I'm going to save

 3   everyone a lot of time and not ask for responses to

 4   that argument for the simple reason I cannot give a

 5   directed verdict. One, we don't do verdicts, we do

 6   decisions. Number two, I don't really do the decision

 7   in a case like this. I make a recommendation which

 8   then is subject to review by the Commission. And

 9   third reason that occurs is everyone has the right to

10   submit written arguments which any decision maker must

11   read before making a decision. So procedurally, we

12   don't do that. So I will deny your motion.

13   MR. JONES: My first witness is Peter

14   Matschiner. It's my understanding you would like him

15   to sit here?

16   JUDGE JORDAN: Please raise your right

17   hand. Do you solemnly swear that the testimony that

18   you are about to give will be the truth, the whole

19   truth, and nothing but the truth?

20   MR. MATSCHINER: I do.

21   JUDGE JORDAN: You may proceed.

22   EXAMINATION

23   QUESTIONS BY MR. JONES:

24   **Q.   Mr. Matschiner, could you please spell your**

25   **name for the record?**

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 1        A.    M-a-t-s-c-h-i-n-e-r.

 2        Q.    And that's Peter Matschiner?

 3        A.    Correct.

 4        Q.    What is your present position and your

 5  present employer?

 6        A.    I'm the operations superintendent for

 7  field customer service.  I oversee length of meter

 8  change, length of service meter change department,

 9  locating department, and some system records

10  department?

11        Q.    And your employer is Missouri American

12  Water Company?

13        A.    That's correct.

14        Q.    Did you start at Missouri American Water

15  in 1996?

16        A.    I did.

17        Q.    What was your position then?

18        A.    At that time I started as substitute

19  operations operator and that would entail helping out

20  with mechanics on the equipment at the plants.  And

21  then when an operator would be needing time off, I

22  would fill in for that vacancy.

23        Q.    In 1997, did you become a meter reader?

24        A.    I did.  I read water meters for

25  approximately six and a half or seven years before
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1 moving into the field of customer service side of it?

2   Q.   So let me ask you as meter reader, about

3 how many meters would you read a month?

4   A.   A month, wow. A couple routes were right

5 around 400 and your route every day for the most part,

6 so maybe -- is that 2000 a week, 400 times five, about

7 2000 a week, so maybe 8000 a month.

8   Q.   And then in 2004, did you change your

9 position?

10   A.   I did. I went, as I eluded to a moment

11 ago, I moved into field customer service operations

12 and worked on what they called two-man crew.

13   Q.   And what does a two-man crew do?

14   A.   They typically work on meters, larger

15 meters in vaults. They assist FSR, which field

16 service representatives, on things they are having

17 difficulty with. If they need additional

18 investigation where you may, you know, somebody inside

19 a building or somebody outside to manipulate a shutoff

20 valve, that sort of thing. A lot of different things

21 related to customer water service.

22   Q.   And in 2007, did you become a meter reader

23 supervisor?

24   A.   I did.

25   Q.   Basically what was your position there?

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 1        A.     My responsibilities were to oversee the

 2   meter reading department.  Create meter reading

 3   schedules annually.  Help assure that the meter

 4   readers were doing their job directly and that they

 5   are being trained properly to perform their duties as

 6   a meter reader.

 7        Q.     In 2008 you assumed your present position

 8   as operations superintendent?

 9        A.     That is correct?

10        Q.     So you had a lot of experience with water

11   meters; correct?

12        A.     Correct.  Going back to around 2007.  I'm

13   sorry.  '97 to around 2007 when I was promoted from

14   meter reader to superintendent.

15        Q.     I want to walk through quickly if you can

16   explain to me how a water meter works.

17        A.     Sure.

18        Q.     And I'm setting before you a water meter

19   register that you brought with you to this hearing.

20        A.     Correct.

21        Q.     Can you identify what type of meter that

22   is?

23        A.     It's a Neptune meter.  It's solid.  It's

24   called rotating disk.

25        Q.     What's the product number that Neptune?
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 1          A.      T10 meter, residential T10 meter.

 2          Q.      Is this the same type of meter and

 3     register that Mr. Dzurinskiy has at his house?

 4          A.      That's the type of residential meter we are

 5     installing in all residences in the county.

 6          Q.      Is it a cut-away meter to show the

 7     operation of the meter?

 8          A.      It's cut away.  It has a disk that spins

 9     all the gears train inside the register.

10          Q.      Can you show us -- just point out quickly

11     where the water enters and how it registers water on

12     the register at the top?

13          A.      This would be on one end they stamp an

14     arrow to show the direction of water.  And actually

15     this has "in" for inlet side.  The water would enter

16     the meter through the inlet side, go through the

17     chamber, and move the disk in a fashion that spins a

18     magnet that is picked up.  There is a magnet inside

19     the register that picks up here.  And as that magnet

20     is picked up by the register, it spins the gear train

21     inside the register.  And as that gear train is

22     turned, in a forward motion, that what we called flow

23     indicator or sometimes it's called leak indicator will

24     also move.  That is the, I'll say, the smallest gear

25     on the train.  And if that's moving it moves all the
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 1   other wheels in succession.

 2   Q.   Which is the hand that registers usage?

 3   A.   Well --

 4   Q.   Actually records the usage of the

 5   customer?

 6   A.   Well, they all, I guess, they all record

 7   usage of the customer. The flow indicator is the

 8   first thing that moves indicating that water is being

 9   consumed through the meter. And it drives the next

10   gear that gets driven is the sweep hand. And that's

11   what looks like the second hand or minute hand on a

12   clock. And that will rotate around and then in turn

13   will cause the odometer to turn over.

14   Q.   Now, water is coming in from the water main

15   and into the customer's premises, which direction is

16   the leak indicator moving?

17   A.   That rotates counterclockwise as this disk

18   is moved by the water.

19   Q.   And if water is coming in from the main to

20   the customer's premises, which way is the sweep hand,

21   the larger hand rotating?

22   A.   That will rotate clockwise as the numbers

23   are stamped from zero, one through nine as it goes

24   this way.

25   Q.   Did you say the sweep hand is connected to

 1   the flow indicator by a gear?

 2   A.   Right.   It's like a clock.   It works

 3   similar.   The second hand drives the minute hand which

 4   drives the hour hand.   It's the same thing.   All these

 5   gears are, you know -- they are gear training.   And

 6   they drive each other as the water is consumed.

 7   Q.   So if the flow indicator is moving, is the

 8   sweep hand necessarily moving?

 9   A.   It is, but it would be hard to detect

10   depending on how fast it's going.   It's like trying to

11   watch the minute hand as the second hand is moving.

12   You can watch the second hand, it would be hard to see

13   whether it moved at all.

14   Q.   Now, can water move backwards through a

15   meter?

16   A.   Yes.

17   Q.   Now, if it does that, which way does the

18   flow indicator rotate?

19   A.   The flow indicator would then rotate

20   clockwise, the sweep hand would start to rotate

21   counterclockwise.

22   Q.   And if the flow indicator is moving

23   clockwise, is the sweep hand necessarily moving

24   counterclockwise?

25   A.   They are all connected.

1   Q.   So, can water go backwards through a meter

2   on the customer's premises?

3   A.   Yes. Without something to prevent it like

4   a back flow prevention device it can, yes.

5   Q.   So there is water that goes through a

6   meter and the reverse gets registered. In other

7   words, if it goes back through the meter is usage

8   being removed from the register?

9   A.   Right. When the water goes back through

10   the meter and it will then turn the register, it will

11   record.

12   Q.   Now, are you familiar with Mr.

13   Dzurinskiy's complaint in this case?

14   A.   Yes. He is claiming that the water meter

15   is not registering the usage of water going back

16   through his meter and thereby giving him a higher

17   bill.

18   Q.   Are you aware Mr. Dzurinskiy's meter,

19   actual meter, was tested?

20   A.   Yes.

21   Q.   It was tested at his request. Now, I'm

22   handing you a second meter. Can you identify that for

23   me?

24   A.   That is the meter that was at his

25   residence and was requested that it be tested.

1   Q.   And that meter was removed and tested and

2   was that in December 2004. I'm sorry. December 2009?

3   A.   Yes.

4   Q.   I'm going to show you what I have marked

5   Exhibit 4. Missouri American Water Exhibit 4. Can

6   you identify that exhibit for me?

7   A.   The yellowish copy is the card that the

8   field service representative would fill out when the

9   meter is changed. And on it it says we have them

10   write in red "test".

11   Q.   And how do you know this test result on

12   Exhibit 4 is a test of Mr. Dzurinskiy's meter?

13   A.   Well, of the information that's filled

14   out. It has his address, it has meter number that was

15   installed at his property. And that's how we tie

16   these two together.

17   Q.   Can you walk through for me very quickly

18   how a water meter test works?

19   A.   They have a calibrated test bench that's

20   at the meter shop and they put the meter on the test

21   bench. They have calibrated tanks that measure the

22   amount of water, a set amount of water that goes

23   through the meter. And as this meter is set up on the

24   bench, the placement of all of the sweep hand and all

25   the odometer readings are noted and the test begins.

 1   After a set amount of water goes through the meter,

 2   the meter is then read again. And based on how much

 3   water the meter registered versus how much water went

 4   through the calibrated tank is how they are tested;

 5   how they are graded.

 6   Q.   Did this test on the first page of Exhibit

 7   4 take place on December 27, 2009?

 8   A.   It did. That is meter shop employees

 9   employee number 2808 and then he noted the time and

10   date that he tested it.

11   Q.   And can you describe for me the result of

12   the test?

13   A.   The results are above and at high flow at

14   10 gpm, it tested at 99.7 percent. At mid range, at

15   two gallons per minute -- minimum flow it tested at --

16   I'm sorry. It tested 1.6 percent at two gpm. And on

17   the low flow, the sensitivity test is what they call

18   it. At 1/10th of a gallon per minute it tested at .9

19   percent.

20   Q.   If you look at the bottom of that sheet --

21   let me back up. This test at the top of the sheet

22   shows flow through the meter in forward direction from

23   the main to the house?

24   A.   Correct. He also noted that it passed.

25   Q.   And if you look at the bottom sheet, was

 1 **the meter also tested backwards.**

 2   A.   Yes. I believe that was requested at a

 3 later date and we tested the meter backwards.

 4   Q.   **And if you show -- if you look at the**

 5 **results at ten gallon per minute backwards. What was**

 6 **the registration?**

 7   A.   At ten gallons per minute it tested at 98

 8 percent. Subsequently at two gpm it tested at 69.7

 9 percent. And at 1/8th of a gallon per minute it

10 tested zero.

11   Q.   **At Page 2 -- if you look at Page 2?**

12   A.   Yes.

13   Q.   **Was the meter tested subsequently at**

14 **different test levels?**

15   A.   We did. We tested it at different flow

16 rates. This is obviously, you know, something we

17 normally wouldn't do, but given the nature of the case

18 we wanted to give us a rigorous of a testing that we

19 could. So we tested it again.

20   Q.   **Was the test conducted on November 10th,**

21 **2010?**

22   A.   November 10th, 2010.

23   Q.   **Both top and bottom were they reverse flow**

24 **test?**

25   A.   These were both tested in reverse.

1   Q.   So at high flow rate of 20 -- 20 gallons

2   per minute, what was the result of the test?

3   A.   It was 97.2 percent.

4   Q.   And at full normal flow at ten, what was

5   the test result?

6   A.   98.6.

7   Q.   And five gallons per minute, what's the

8   test result backward?

9   A.   99 percent.

10   Q.   And if you drop down at two gallons per

11   minute, what was the test result?

12   A.   99.5 percent.

13   Q.   And one gallon per minute, what was the

14   test result?

15   A.   98 percent.

16   Q.   And at 1/8th of a gallon per minute reverse

17   what was --

18   A.   It was ten percent.

19   Q.   And I'm going to show you -- and I move

20   Exhibit 4 be admitted into evidence.

21   JUDGE JORDAN: Objections?

22   MR. DZURINSKIY: I want to find out exactly

23   is American Water Work Association does not -- they

24   have no standards, why they tested this. I mean just

25   only one gallon per minute or two gallons per minute.

 1   Why you didn't give your test for one gallon per hour.

 2   JUDGE JORDAN: That sounds like something

 3   you want to bring up on cross examination. Anything

 4   as to this document.

 5   MR. DZURINSKIY: This document is fine. I

 6   agree with that.

 7   JUDGE JORDAN: Anything from the staff?

 8   MS. HERNANDEZ: No objection.

 9   JUDGE JORDAN: Then I will admit Missouri

10   American Water Exhibit 4.

11   Q.   (By Mr. Jones) And I'll show you, Mr.

12   Matschiner, Missouri American Exhibit 12. If I can

13   direct your attention to, first of all, can you

14   identify this format as Missouri Public Service

15   Commission regulation 4 CSR 240-N?

16   A.   Yes.

17   Q.   And if you look at the top right hand

18   corner, the subpart 37 --

19   A.   Yes.

20   Q.   -- is the Commission regulation saying that

21   no water service meter shall be allowed in service

22   which has incorrect gear ratio or dial train or is

23   mechanically defective or shows error in measurement

24   in excess of five in register water stream flow

25   equivalent to approximately 1/10th and full normal

1   rating for the average service pressure?

2   A.   That is correct.

3   Q.   Now, according to the Neptune

4   specifications, is full normal rating 20 gallons per

5   minute?

6   A.   That is full max flow.

7   Q.   And 1/10th of full max flow is 20 gallons?

8   A.   Two gallons.

9   Q.   1/10th is two gallons per minute?

10   A.   Yes.

11   Q.   And given the test results of the backwards

12   test, does the test show accuracy within five percent

13   at least at both full flow at 20 and also ten, and

14   plus two gallons per minute?

15   A.   Correct.

16   Q.   And two gallons per minute backwards was

17   99.7 accurate?

18   A.   Right.

19   Q.   And subsequent test was done each at one

20   gallon per minute backwards on second page of Exhibit

21   4, it showed accuracy?

22   A.   98 percent.

23   Q.   And does that come within the required

24   accuracy backwards each of the Commission regulation?

25   A.   It was well within the five percent.

1   Q.   I'll also show you what -- I move to admit

2   **Exhibit 12 into evidence.**

3   JUDGE JORDAN: Objections?

4   MR. DZURINSKIY: No.

5   JUDGE JORDAN: Same thing we're just talking

6   about this document.

7   MR. DZURINSKIY: I don't know what it's

8   talking about. It says accurately shows with suitable

9   device according to best practice and rate flow which

10   properly reflects operation of the meter. What kind

11   of device?

12   JUDGE JORDAN: Do you have an objection to

13   me looking at this?

14   MR. DZURINSKIY: No.

15   JUDGE JORDAN: Staff, any objection?

16   MS. HERNANDEZ: We have no objection, but I

17   would ask judicial notice be taken of the entire

18   statute, not just particular section that's being

19   cited.

20   JUDGE JORDAN: I will take official notice

21   of the regulation. This is the version dated March

22   31st, 2003. I take it your wanting me to make sure I

23   take official notice of the regulation in effect

24   during the disputed period. Is that what you're

25   saying?

1   MS. HERNANDEZ: Correct.

2   JUDGE JORDAN: Okay. And so I will admit

3   this into the record. That is Missouri American Water

4   Company's Exhibit 12.

5   **Q.   Thank you, Your Honor. I'm also showing**

6   **you, Mr. Matschiner, Missouri American Water Exhibit 5.**

7   **You identified that for me as tariff of Missouri**

8   **American Water Company?**

9   A.   It's a tariff sheet of Missouri American

10 water.

11   **Q.   Is that tariff R7.7?**

12   A.   Right. Rule 7.0.

13   **Q.   And does the tariff read, "customer shall**

14 **accept the meter installed by the company as standard**

15 **of measurement for water service if the meter when**

16 **inspected and tested using the company's intermediate**

17 **and maximum flow rate testing procedure shall be found**

18 **to be more than five percent defective or incorrect to**

19 **the prejudice of the customer or the company, the**

20 **company has basis for adjusting the billing to the**

21 **company to determine the quantity of water used by**

22 **either test of meter, by the amount of water used**

23 **during corresponding period of the proceeding year or**

24 **by an estimate based on the amount amount of water**

25 **used during the preceding 12 months. The portion for**

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1   the meter shall become defective or inaccurate at

2   company's option?

3   A.   Yes, it does.

4   Q.   And, again, did the meter test results

5   shown on Exhibit 4 showing test results backwards come

6   within five percent of the company's intermediate and

7   maximum flow rate testing procedures?

8   A.   It did test within five percent.

9   Q.   I move for the admission of Exhibit 5 into

10 evidence?

11   JUDGE JORDAN: Any objection to this

12 document?

13   MR. DZURINSKIY: No.

14   JUDGE JORDAN: Staff, any objection to that

15 document marked Missouri American Water Company

16 Exhibit 5.

17   MS. HERNANDEZ: No objection.

18   JUDGE JORDAN: Then I will admit Missouri

19 American Water Company Exhibit 5 into the record.

20   Q.   (By Mr. Jones) Thank you, Your Honor. Is

21 it true, Mr. Matschiner, that billing adjustments are

22 not required according to Commission rules for errors

23 in measurement found to be within the limit prescribed

24 by the Commission?

25   A.   That is correct.

1   Q.   I'm showing you what's been marked Missouri

2   American Water Exhibit 10. And if you look at 4 CSR

3   24013.025 subparagraph D, which is towards the top of

4   the middle column. Does that state, "Whereupon test

5   in error and measurement is found to be within the

6   limit prescribed by Commission rules, no billing

7   adjustment will be made."

8   A.   That is correct.

9   Q.   And as you testified before, there was no

10 error in measurement according to Commission rules?

11   A.   That is correct.

12   Q.   And just to make sure I finish my question

13 and the record is clear. No error found in the

14 reverse flow test done on Mr. Dzurinskiy's meter?

15   A.   Right. There was no error within the

16 prescribed rules on forward or reverse.

17   Q.   Thank you. I would like to move for

18 admission of Exhibit 10 into evidence.

19   JUDGE JORDAN: Any objection to this

20 document? Staff?

21   MS. HERNANDEZ: No objection. I would

22 state as previous to take judicial notice of current

23 rule.

24   JUDGE JORDAN: So noted.

25   MS. HERNANDEZ: This one states '04. I

1 don't know if it's changed.

2   JUDGE JORDAN: I know the date this is

3 effective September 30th '04, and I will admit this

4 document into the record?

5   **Q.   (By Mr. Jones) Mr. Matschiner, if a back**

6 **flow preventer were to be installed at Mr. Dzurinskiy's**

7 **home, it would is to be on Mr. Dzurinskiy service line;**

8 **is that correct?**

9   A.   That's correct.

10   **Q.   Either inside or outside his house?**

11   A.   It can be installed here inside or outside

12 his house.

13   **Q.   Since it would be on Mr. Dzurinskiy's**

14 **service line, would it be installed at his cost?**

15   A.   Correct. The customer, once the service

16 line in its entirety in St. Louis County.

17   **Q.   Mr. Matschiner, would you agree the back**

18 **flow prevention is the duty of the customer?**

19   A.   Since it's part of customer-owned service

20 line, it is incumbent upon the customer to be

21 responsible for it.

22   **Q.   I'm handing you what's been marked Missouri**

23 **American Water Company Exhibit 9. Are you able to**

24 **identify that for me as Department of Natural**

25 **Resources rule 10 CSR 60-11?**

1   A.   That is correct.

2   Q.   And if I could direct your attention to

3   paragraph 11.0103A1 towards the bottom left hand

4   corner, does that state that class one back flow

5   hazard prevention is an actual or potential health

6   hazard to customers of the public water system should

7   back flow occur. The customer or customer's

8   authorized representative shall construct a department

9   approved air gap separation or installed reduce

10   pressure principal back flow prevention assembly on

11   the customer's service line; is that correct?

12   A.   That's correct.

13   Q.   Similarly throughout this regulation if you

14   look at subpart B1 towards the bottom right hand

15   corner of the page. Does that read that class 2 back

16   flow hazard threaten to degrade the water quality of

17   the public water system should back flow occur? The

18   customer or customer's authorized representative shall

19   install as minimum protection for class 2 back flow

20   hazard department-approved double check valve assembly

21   or customer's service line in accordance with section

22   5?

23   A.   That's correct.

24   Q.   It puts the back flow prevention on the

25   customer?

1   A.   That's correct.

2   **Q.   I move for Exhibit 9 into evidence.**

3   JUDGE JORDAN: Any objection to this

4 document?

5   MR. DZURINSKIY: No.

6   JUDGE JORDAN: Staff, any objection.

7   MS. HERNANDEZ: No objection.

8   MR. JONES: I will enter Missouri American

9 water company Exhibit 9 into the record.

10   JUDGE JORDAN: Thank you.

11   **Q.   (By Mr. Jones) I'm also handing you, Mr.**

12 **Matschiner, Missouri American Water Exhibit 7. I**

13 **direct your attention to third sheet in that group**

14 **Exhibit. It says sheet R2.0 in the top right hand**

15 **corner. Can you identify that as Missouri American**

16 **Water Company tariff regarding discontinuance of**

17 **service for cross connection?**

18   A.   Rule 2.0.

19   **Q.   That tariff with which employs to Missouri**

20 **American Water states "When the company becomes aware**

21 **of the existence of cross connection, the company**

22 **shall attempt to notify the customer, but regardless**

23 **of the success of the attempt the company shall**

24 **discontinue service to such customer unless all**

25 **physical connection rating the cross connection are**

1 immediately severe." If you move down to the end that

2 have same paragraph, "Service will not be restored

3 until the appropriate back flow prevention control

4 assembly has been installed. Requirement for back flow

5 preventer control assembly hall in accordance with the

6 provision of DNR set forth in chapter 11, 10

7 CSR-60-11.010"?

8   A.   Yes.

9   Q.   So Missouri American tariff refers to DNR

10 regs said the customer has duty to prevent back flow

11 and install back flow?

12   A.   Yes, it does.

13   Q.   I'd like to move for admission of Exhibit

14 7.

15   JUDGE JORDAN: Objections to this document?

16   MR. DZURINSKIY: No.

17   JUDGE JORDAN: Staff, any objection to

18 this?

19   MS. HERNANDEZ: No objection.

20   JUDGE JORDAN: I just have one question to

21 clarify. For the record, I notice the St. Louis County

22 Water Company, can I get some clarification for the

23 record?

24   MR. JONES: Yes, Your Honor, St. Louis

25 County Water is a predecessor of Missouri American

 1 Water Company, St. Louis County District the tariff

 2 that employees to St. Louis County Water, rules and

 3 regular land after the acquisition by Missouri American

 4 Water Company continued to apply to Missouri American

 5 unless they were suspended or modified and this

 6 particular one has not been suspended or modified since

 7 the date of its issuance in 1984?

 8   JUDGE JORDAN: So if I take notice of the

 9 tariffs of Missouri American Water Company, I would

10 fine continuity of this?

11   MR. JONES: Yes.

12   JUDGE JORDAN: I will admit Missouri

13 American Water Company Exhibit 7 into the record.

14   Q.   (By Mr. Jones) Thank you. I have one area

15 just to conclude on Mr. Matschiner. That's regarding

16 the average customer using of St. Louis County

17 customers. I'm handing you what's been marked as

18 Missouri American water Exhibit 17. Can you identify

19 that for me as Missouri American Water Company

20 submission case number WR-2010-0131 proposed

21 residential rates by operating district?

22   A.   Yes, it is.

23   Q.   And if you look down towards the middle of

24 the page on the left hand side it says St. Louis

25 County?

 1   A.   Correct.

 2   Q.   Does this exhibit show the average usage of

 3 a customer based -- of St. Louis County customer if

 4 you're looking at column one?

 5   A.   Correct. It shows the average rate per

 6 residential customer is $225.

 7   Q.   And if you look per quarter. If you look

 8 at the second to last column, stipulated rate for is

 9 the average quarterly bill of the customer in St.

10 Louis County at Missouri American Water $85.92 per

11 quarter?

12   A.   Yes, it is.

13   Q.   I'd like to move for the admission of

14 Exhibit 17 into evidence.

15   JUDGE JORDAN: Mr. Dzurinskiy, any

16 objection to this document?

17   MR. DZURINSKI: No.

18   JUDGE JORDAN: Staff, any objection to that

19 document?

20   MS. HERNANDEZ: Yes. I'll object; a

21 limited objection to the use of anything on this chart

22 besides the first column present rate because all

23 these other columns are stipulated. There is many

24 factors that go into a stipulation and agreement.

25 There's been no foundation as to billing determinants

 1   or anything that went into determining what $85.92 per

 2   quarter means.

 3   JUDGE JORDAN: That was the stipulated rate

 4   per the agreement in Missouri American Water rate case

 5   and this document is filed to quantify and memorialize

 6   the amount of average bills in each district under the

 7   stipulation which is currently in effect and these

 8   rates are currently being charged to Missouri American

 9   Water customers.

10   MS. HERNANDEZ: I'll still keep the same

11   objection. There is negotiations. There is all kinds

12   of stipulations regarding billing determinants. I'll

13   just leave my objection at that.

14   JUDGE JORDAN: If I may, just stipulate it

15   was agreed stipulated rate, present rate that you are

16   referring to is the rate before the most recent rate

17   increase.

18   MS. HERNANDEZ: Correct.

19   JUDGE JORDAN: It's a matter of public

20   record that is the -- this type of final connection to

21   the rate case. The stipulated rate and also in

22   connection with tariff pricing period which was just

23   on the Commission last week. These are the numbers

24   that were submitted.

25   JUDGE JORDAN: Okay. These numbers are

1 representation of rates in time, recommended and

2 stipulated rate increases. Okay. Maybe I need a

3 little more clarification as to the column, I think it

4 is the second from the last Missouri American. This

5 is the increase or decrease that this column

6 represents the current rates?

7   MR. JONES: Correct.

8   JUDGE JORDAN: Okay. Does staff have any

9 objection to me taking this Exhibit to mean what it's

10 been represented to mean? In other words, second

11 column from the last, are you okay -- are you saying

12 this is not an accurate representation of the current

13 rates?

14   MS. HERNANDEZ: No. I'll remove my

15 objection on that point. That this is $85.92 is what

16 St. Louis County customers are being charged. I guess

17 my point is there is lots that go into stipulations

18 and agreement and this may not reflect -- while we

19 hope it does. It may not reflect the actual usage of

20 a customer.

21   JUDGE JORDAN: Well, I will overrule that

22 objection and I will admit Missouri American Water

23 Company Exhibit 17 into the record.

24   **Q.   (By Mr. Jones) Thank you, Your Honor. And**

25 **Mr. Matschiner, I am also showing you Missouri American**

1   **Water Exhibit 13. Are you able to identify that for me**

2   **as a print-out of the first sheet is usage of Mr.**

3   **Dzurinskiy's household from August 2004 to present?**

4   A.   Right.

5   Q.   **Second two sheets are a ledger print-out of**

6   **Mr. Dzurinskiy's water bill from February 2005 to**

7   **present?**

8   A.   Correct.

9   Q.   **And I'd like to move for admission of**

10 **Exhibit 13 into evidence.**

11   JUDGE JORDAN: Objection to this document,

12 Mr. Dzurinskiy?

13   MR. DZURINSKIY: Something is wrong. I'm

14 not sure.

15   JUDGE JORDAN: Do you want to take a minute

16 to review it if you'd like?

17   (Whereupon, a short break was taken.)

18   JUDGE JORDAN: We're back on the record.

19 Mr. Dzurinskiy, did you have any objection to Missouri

20 American Water Company's Exhibit 13?

21   MR. DZURINSKIY: No.

22   JUDGE JORDAN: Staff, any objection?

23   MS. HERNANDEZ: No objection.

24   JUDGE JORDAN: Then I will admit Missouri

25 American Water Company Exhibit 13 into evidence.

1   Q.   (By Mr. Jones) Mr. Matschiner, if you look

2   at the first page of Exhibit 13, you will see on the

3   right hand column figures for usage?

4   A.   Yes.

5   Q.   And for example the first one is 7.0,

6   second is 6.0, third is 4.0. What does usage mean on

7   this exhibit?

8   A.   It's the number of hundred cubic feet that

9   a customer -- feet that a customer uses a billing

10   quarter. When we read the meter on this, 6 indicates

11   odometer. We read first four from the left. So the

12   last two digits are basically ignored. So the reading

13   dial on the registers are first four from the left.

14   It's like the last two are like the tenth on the

15   odometer on your car. If you take it in some -- like

16   you say I have a hundred thousandth place, not one

17   hundredth point one. It would be regardless if it's,

18   you know, 99 or 01. The reading would still be the

19   first four from the left. We don't look at anything

20   other than those.

21   Q.   Now, how many gallons are represented by,

22   for example, a reading of 7.0?

23   A.   Of usage? One unit equal 100 cubic feet.

24   One unit equals 100 cubic feet. One cubic foot is

25   roughly seven and a half gallons. It's 7.48. Roughly

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1   seven and a half. So one unit is seven and a half

2   gallons.

3   Q.   One cubic --

4   A.   One cubic foot is seven and a half gallons.

5   One unit would be one hundred of those. So roughly

6   750 gallons of water.

7   Q.   Just so the record is clear, one unit of

8   usage equals 750 gallons.

9   A.   Correct. Roughly 750 gallons.

10   Q.   So, if you look at that and the 7.0 usage

11 amount is for Mr. Dzurinskiy's bill on read date of

12 August 17th, 2010. Seven years of usage and multiply

13 that by 750 gallons in order to get the number of

14 gallons used; correct?

15   A.   Correct. And that's usually spelled out on

16 the bill as well.

17   Q.   For example, I'll show you what's been

18 previously marked as Mr. Dzurinskiy's Exhibit C, which

19 is a copy of his bill dated June 3rd, 2010. Which if

20 you can help me out corresponds to the second row of

21 data on Exhibit 13; is that correct?

22   A.   That is correct.

23   Q.   Because the billing date is May 24th and

24 you look in farther up corner of Exhibit 13, that's

25 the 10th?

1   A.   That's correct.

2   Q.   If you look towards the middle of the left

3   page of Exhibit C, you will see it says 100 cubic feet

4   used, and to the right it says six, six units and you

5   see the six corresponds on Exhibit 13?

6   A.   That it correct.

7   Q.   And it shows you one cubic foot, this is

8   Exhibit C, Mr. Dzurinskiy's actual bill, one cubic

9   foot 7.5 gallons used in this usage period is 4500

10   gallons?

11   A.   That is correct.

12   Q.   Now you told me before, haven't you, that

13   the average quarterly usage of St. Louis County

14   customer is 22,500 gallons; is that correct?

15   A.   That's correct.

16   Q.   Mr. Dzurinskiy's bill for May 2010, is 4500

17   gallons of water?

18   A.   That is correct.

19   Q.   Which is about 20 percent of the St. Louis

20   County usage of water?

21   A.   Roughly, yes.

22   Q.   Thank you. I have no more questions for

23   Mr. Matschiner at this time.

24   JUDGE JORDAN: Thank you. Mr. Dzurinskiy,

25   any cross examination for Mr. Matschiner?

1   MR. DZURINSKIY: I know by myself and I

2   take --

3   JUDGE JORDAN: Do you have some questions?

4   MR. DZURINSKIY: Yes.

5   EXAMINATION

6   QUESTIONS BY MR. DZURINSKIY:

7   Q.   When you take water reader meter for

8   obstruction number 1001, you will indicate it was ten

9   cubic feet; right? What's the number it would be

10   under in the machine, whatever you use, the device, if

11   you see the reading of water meet is ten or one; is

12   that going to be ten; right?

13   A.   I'm not following -- if you're saying the

14   register reads 000 -- I'm sorry 000101.

15   Q.   Ten cubic and on one, 1/100th, what exactly

16   are you going to enter in the reader? You just said

17   you don't take the last two numbers; is that correct?

18   A.   That is correct.

19   Q.   So, if the device will show ten cubic and

20   on one, are you going to put just simple ten; right?

21   A.   Correct. 0010.

22   Q.   So it's going to be 10895, what number are

23   you going to put; ten?

24   A.   Ten.

25   Q.   So it means it's about one cubic feet

 1   almost difference, but it's still if the bill will show

 2   one cubic difference; right? It will show number ten;

 3   is that correct?

 4   A.   That's correct.

 5   Q.   If the next day from 1091 it is going to be

 6   11, it seems to be one cubic feet was not counted in

 7   this type of -- on the day of the reading.

 8   A.   On the day of the reading, but that's for

 9   the three months previous.

10   Q.   What I mean if the next day somebody will

11   go and at that time reading from its water meter, it's

12   going to be 1101, somebody can assume yesterday was 10

13   and the next day is going to be 11; is that right? I

14   have no -- if you look at the water meter and just

15   look it says today 11, yesterday was 10, how can it

16   happen in one cubic feet in one day was spent?

17   A.   Right.

18   Q.   I notice it a couple of times before your

19   people take reading sometimes I see if my water bill

20   it's difference of something during one day I have a

21   difference of one cubic. I know it's not right. I

22   just explained why it's happened, but it could be one

23   cubic; is that correct?

24   A.   I think I follow your question.

25   Q.   But you just understand what I mean; okay?

1   JUDGE JORDAN: Okay.

2   MR. JONES: If you understand.

3   THE WITNESS: I think I understand.

4   **Q.   (By Mr. Dzurinskiy) It means it can be**

5 **kind of confusion for anybody that just reads the water**

6 **meter next day and difference could appear as one cubic**

7 **feet?**

8   A.   Right.

9   **Q.   I have no more questions.**

10   JUDGE JORDAN: Any more questions? Does

11 staff have any questions for Mr. Dzurinskiy?

12   MS. HERNANDEZ: No.

13   FURTHER EXAMINATION

14 QUESTIONS BY MR. JONES:

15   **Q.   I have one. You stated the Neptune**

16 **standards, where were you pulling those from?**

17   A.   Neptune has standards for their meters that

18 they guarantee the meter accuracy between one half

19 gallon perameter to 20 gpm. I'm quoting the 5/8th

20 meter.

21   **Q.   Do they produce it in a manual or pamphlet**

22 **or that comes in the box of the meter? How is it**

23 **produced to --**

24   A.   That's on their web site. It's with all

25 the documentation of theirs. They meet AWWA

1 standards. It has all that information on line and

2 then in some of the documentation that's in some of

3 their brochures and flyers. It's public knowledge if

4 you want to get that.

5   **Q. And that's not based on the type of meter.**

6 **It's a global full normal rating regardless of the**

7 **meter or is it specific to meter?**

8   A. Well, flow rates that the meter is accurate

9 will depend upon its size. 5/8th meter that they

10 guarantee between one half gallon per minute and 95

11 percent to 20 gpm. As the meter sizes grow, they have

12 different flow rates where they are accurate. Larger

13 meters are not accurate at lower flows. But if your

14 house requires, you know -- or you know doesn't

15 require higher rates of flows, that's why a smaller

16 meter is put in there because typically you're using

17 smaller amounts of water. So everybody would be using

18 lower flows and these meters are more accurate at

19 those ranges. I'm not sure if I answered your

20 question.

21   **Q. You did. I have nothing further. Thank**

22 **you.**

23   JUDGE JORDAN: I have a few questions for

24 you. I want to clarify a few things and I think it

25 will be very helpful. Let's take a look -- there are

 1   two meters before you. Let's take a look at the one

 2   we've been using as an exemplar. The one that's

 3   clean. You stated that there are basically two hands

 4   -- we'll call them hands?

 5   A.   Okay.

 6   JUDGE JORDAN: One is the long needle and

 7   one is little triangle one. They both move?

 8   A.   That is correct.

 9   JUDGE JORDAN: The smaller one moves

10   visibly; is that correct?

11   A.   It's more visibly.

12   JUDGE JORDAN: More like --

13   A.   It's called flow indicator or leak

14   indicator. And that's because, you know, it shows

15   movements on very small amounts of water.

16   JUDGE JORDAN: Okay. I also recall that

17   the two hands, if I remember your testimony correctly

18   move in opposite directions; is that correct?

19   A.   That's correct. It's as a gear it meets up

20   with the next one that gear turns the opposite.

21   JUDGE JORDAN: So if one is moving

22   clockwise, the other one would have to be moving

23   counterclockwise.

24   A.   Yes. As the cogs meet up --

25   JUDGE JORDAN: Can you give me what the gear

 1 ratio is to that?

 2   A.   I don't know the specifics.

 3   JUDGE JORDAN: I got the impression from

 4 your testimony that while it might be possible to

 5 observe a triangle moving, that the pointer shaped

 6 one, the larger hand, while it moves, its movement may

 7 be undetectable?

 8   A.   To the naked eye.

 9   JUDGE JORDAN: Right?

10   A.   Correct.

11   JUDGE JORDAN: So that person watching it

12 could not see it move. Does it ever happen that you

13 can actually watching that day and you actually see it

14 move?

15   A.   The sweep hand?

16   JUDGE JORDAN: Yes.

17   A.   Oh, yes. Absolutely. Even at low rates,

18 if you look at hash marks on here you note where it's

19 at and wait for a full minute or maybe five minutes

20 you will see if it's moved from that hash or closer to

21 the next hash, or if it's in between and you can

22 measure the distance that way. If it's at a higher

23 rate, the flow indicator is going to be moving. So

24 that's all you see is little red blur and sweep hands

25 is going around like a second hand on a clock, pretty

1 quickly.

2   JUDGE JORDAN: And what kind of flow rate

3 would it take to reach that?

4   A.   To get the sweep hand to move that

5 noticeable, I would say -- I'm not sure exactly.

6   JUDGE JORDAN: It's theoretically possible.

7 I'm wondering if that actually happens.

8   A.   Oh, yes. Flushing a toilet you see that

9 move easily.

10   JUDGE JORDAN: All right. Okay. I wanted

11 to get a little bit about the units on Missouri

12 American Exhibit 13. And let's look at that last

13 column where it says at the top usage 7.00. Any 1.00

14 means 7.5 gallons. Do I have that correct?

15   A.   Yes. Any 1.0 means seven and a half -- I'm

16 sorry. 750.

17   JUDGE JORDAN: Okay. 750 gallons.

18   MR. JONES: It's one hundred cubic feet.

19   JUDGE JORDAN: Each one to the left of the

20 decimal is 100 cubic feet; is that correct?

21   A.   That's correct.

22   JUDGE JORDAN: And as to this way that you

23 read these meter -- can you hand me this one, the

24 clean one. I'm looking at these numbers here. I see

25 000001.

 1   A.   Yes.

 2   JUDGE JORDAN: When you take a reading, you

 3   look at the middle three numbers; is that correct?

 4   A.   The numbers from the far left reading left

 5   to right, so four numbers from the left to the ride.

 6   JUDGE JORDAN: Okay.

 7   A.   If you enter a read for that meter it would

 8   be 0000.

 9   JUDGE JORDAN: Mr. Dzurinskiy made the point

10   that, you know, the last two numbers might be 95?

11   A.   Correct.

12   JUDGE JORDAN: But basically what you're

13   doing is rounding it down, aren't you?

14   A.   I guess so in a sense.

15   JUDGE JORDAN: So he might have used another

16   95 on that day, but Missouri American would not be

17   billing him for it; is that correct?

18   A.   That's correct.

19   JUDGE JORDAN: That's what I thought.

20   Counsel, I see you have got these demonstrative

21   exhibits on the table. Did you intend to put those

22   into evidence or are we just going to have?

23   MR. JONES: My intent was just to have

24   testimony.

25   JUDGE JORDAN: I think that's all I have.

 1 Redirect?

 2   MR. JONES: No redirect, Your Honor.

 3   JUDGE JORDAN: Anything to recross for this

 4 witness, Mr. Dzurinskiy?

 5   FURTHER EXAMINATION

 6 QUESTIONS BY MR. DZURINSKIY:

 7   **Q.   I have some questions about the water meter**

 8 **standards. The question before that one you just said**

 9 **this information was available to anybody from the**

10 **Internet, from the water company. So how it happened**

11 **I could not obtain this information from your company**

12 **since I discovered everything about the water meter**

13 **how they perform, back flow. I'm interested in**

14 **because I couldn't find any information from any place**

15 **besides I contacted Neptune Company and they told me**

16 **what I just said about how they perform.**

17   A.   My understanding is if you go to Neptune's

18 web site they have information about their meters.

19   **Q.   And it was nothing specific how they**

20 **perform on back flow?**

21   MR. JONES: If I may, the information Mr.

22 Matschiner was just referring to was in effect sent to

23 you in response to your data request.

24   **Q.   Just made specifications about how the**

25 **water meter performs in the back flow. I couldn't get**

1   anything about that, about the test, whose standards,

2   who established standard, federal government, American

3   Water Association. I couldn't find any kind of

4   information about that. And what I was told it

5   appears my flow is 60 times less. 60 times less

6   because you made the test, something about one or two

7   gallons per minute. What I estimate about the cubic

8   feet in area of water is going to be one gallon of

9   water per hour, I would claim. It's still calculated

10   to be two cubic feet. So it means 60 times less. How

11   do you perform this test if Neptune told me it's

12   impossible to do the test in their facility? How

13   could you?

14   MR. JONES: I'll object to the form of the

15   question. It assumes facts for which there is no

16   foundation and it's generally confusing and

17   irrelevant.

18   JUDGE JORDAN: There is a lot of there.

19   Can you break down your question?

20   Q.   (By Mr. Dzurinskiy) I will break it down.

21   I was told the water company has not equipment to

22   measure about what I claim. The range of the water

23   meter. What kind of equipment do you use to determine

24   low flow which is 60 times less or at least for that I

25   show on the paper that you just show me?

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1   A.   We have a certified test bench that has --

2   you can set the flows on it at any rate that you

3   choose. And in 1/8th of a quarter per minutes is four

4   times the lower than their guarantee.

5   JUDGE JORDAN: Maybe I can clarify here.

6   You said you describe it as certified. Certified test

7   benches; is that correct.

8   A.   Yes.

9   JUDGE JORDAN: Where does the certification

10   come from?

11   A.   They typically were calibrated, maybe

12   that's the words I should have used. They are a

13   calibrated test bench is what I should have used.

14   JUDGE JORDAN: Okay.

15   A.   I apologize.

16   JUDGE JORDAN: Can you tell us who does

17   calibration?

18   A.   The city of St. Louis has their meter shop

19   department and had calibrated those test machines.

20   I'm hot sure what facility that they had those on.

21   But they were --

22   JUDGE JORDAN: You believe it's the

23   municipal entity of the city of St. Louis?

24   A.   Correct.

25   JUDGE JORDAN: Could it possibly be

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1   Department of Agriculture weights and measures

2   department?

3   A.   I honestly don't know.

4   JUDGE JORDAN: Fair enough. I think the

5   question that I'd like to get to is, this is done by

6   someone who is not Missouri American Water Company; is

7   that correct? In other words, some third person?

8   A.   Right.

9   JUDGE JORDAN: Thank you. You may resume

10 your questions if you wish.

11   **Q.   (By Mr. Dzurinskiy) My question is again**

12 **about back flow. This certificate indicates or some**

13 **statement shows how it applies the range how the water**

14 **meter can read correctly. What is the range. It's**

15 **most more part because like I receive information from**

16 **the Neptune. They told me they are not required to**

17 **test this water meter in back flow; is that correct?**

18   MR. JONES: Again, I object compound

19 question. It assumes facts not in evidence and have

20 not been admitted into evidence.

21   JUDGE JORDAN: I'm going to sustain that

22 objection. It sounds like you're asking him about

23 something that you heard, not that he heard.

24   **Q.   (By Mr. Dzurinskiy) I'm asking the**

25 **question if they can test in that certification from**

1   the city of St. Louis or whatever certifies this

2   machine, whatever if it just shows the range if it can

3   register water and back flow exactly, the range I came

4   to -- if it's possible.

5   MR. JONES: Objection to form.

6   JUDGE JORDAN: I don't understand the

7   question. You may answer if you understand the

8   question. But I did not understand the question.

9   A.   I don't understand the question. I'm

10 sorry.

11   Q.   If your test can register back flow one

12 gallon per hour, not per minute what I just showed in

13 back flow?

14   A.   So one gallon per hour would be to five

15 gpm. A gallon per minute would be 1/60th of a gallon

16 per minute is that what you're saying?

17   Q.   Yes.

18   A.   I don't know how much accuracy that they

19 can give. But what is guaranteed by the manufacturer

20 is one half of a gallon per minute accuracy, and this

21 meter tests within the our regulated testing range.

22 This meter tests fine.

23   Q.   But that's going forward, not backward?

24   A.   For the area we're required to test.

25   Q.   But it's when it goes forward, not

 1   **backward; is that right?**

 2   A.   These meters aren't intended to run

 3   backwards.

 4   **Q.   But can it prove accuracy if it goes 1/6th**

 5   **of one gallon?**

 6   A.   We're not required to.

 7   MR. JONES: If the answer is no, then you

 8   can say that.

 9   JUDGE JORDAN: Any more questions for

10   witness?

11   **Q.   No.**

12   JUDGE JORDAN: Does staff have any questions

13   for this witness on recross?

14   MS. HERNANDEZ: No. Thank you.

15   JUDGE JORDAN: I'm going to ask your

16   indulgence for a few more questions and I want to make

17   sure I read this correctly. I'm looking at Missouri

18   American Water Company Exhibit 4. This may sound like

19   a foolish question because I'm not an engineer so I

20   don't understand these matters. That's why I

21   appreciate the testimony I'm receiving today, but as I

22   look at the velocity test on the second page, I have

23   been taking these numbers at the bottom where it says

24   percent final as percentage of accuracy and I see

25   99.5, 98, and then I see 10. Does that mean this

1 meter and this test was 90 percent inaccurate?

2   A.   That is correct.

3   JUDGE JORDAN: Tell me what this test --

4 what happened that made it 90 percent inaccurate.

5 What were you measuring at that point?

6   A.   Low flow. 1/8th of a gallon per minutes.

7   JUDGE JORDAN: Forward or backward?

8   A.   Backward.

9   JUDGE JORDAN: I see that test date was

10 November 10th of 2010. Those are my questions for

11 you. And since I did a re-recross examination, I'll

12 allow some further direct if you like.

13   MR. JONES: No. Thank you, Your Honor.

14   JUDGE JORDAN: Anything from staff for this

15 witness?

16   MS. HERNANDEZ: No. Thank you.

17   JUDGE JORDAN: Thank you very much. You

18 may step down. Missouri American, would you like to

19 present your next witness?

20   MR. JONES: Yes. I'd like to ask Mr. Derek

21 Linam to come to the witness chair.

22   JUDGE JORDAN: Please raise your right

23 hand. Do you solemnly swear the testimony you're

24 about to give will be the truth, the whole truth, and

25 nothing but the truth?

1   MR. LINAM: Yes, I do.

2   JUDGE JORDAN: You may proceed.

3   EXAMINATION

4 QUESTIONS BY MR. JONES:

5   Q.   Thank you, Your Honor. Again, Mr. Linam,

6 would you state and spell your full name for the

7 record.

8   A.   Derek Linam; D-e-r-e-k; L-i-n-a-m.

9   Q.   And who is your present employer?

10   A.   Missouri American Water Company.

11   Q.   What is your present position with Missouri

12 American Water Company?

13   A.   Engineering manager.

14   Q.   And what is your educational background?

15 What is your college degree?

16   A.   I have a bachelor of science degree in

17 civil engineering from University of Arkansas.

18   Q.   Are you a licensed professional engineer in

19 the state of Missouri?

20   A.   Yes, I am.

21   Q.   Do you have 19 years experience in the

22 water industry?

23   A.   Yes, I do.

24   Q.   And how did your water company experience

25 began in 1991?

```
 1          A.    I started with the water company in 1991

 2   the in engineering department as system engineer.

 3          Q.    And was that St. Louis water company?

 4          A.    St. Louis County Water at the time?

 5          Q.    What were your duties?

 6          A.    My duties were to handle the construction,

 7   relocation of existing water mains or replacement of

 8   existing water mains whether or not it was in

 9   conjunction with highway construction, road

10   improvements, new development, that kind of thing.

11          Q.    And did you change positions in 1996?

12          A.    I did.  In 1996, I moved to our central

13   county water treatment plant as operations engineer.

14          Q.    And what did operations engineer do?

15          A.    Oversaw and ran operations of the plant,

16   water treatment operators, the coordination of the

17   maintenance projects and improvement that needed to go

18   on.

19          Q.    And is St. Louis County central plant the

20   largest water plant in actually American Water

21   Company's system?

22          A.    Yes, it is.

23          Q.    How many customers does St. Louis County

24   water have?

25          A.    A little over 350,000.
```

1   **Q.   And how many miles of main are in St. Louis**

2 **County's distribution system?**

3   A.   Approximately 4200 miles.

4   **Q.   How long would the water main stretch few**

5 **laid it out end to end; 4200 miles?**

6   A.   At least from New York to LA and back to

7 St. Louis.

8   **Q.   So in 1998, did you change positions at the**

9 **water company?**

10   A.   Yes, I did. In 1998, I was -- I became

11 senior production engineer in our DLCC department,

12 which is distribution load control center that handles

13 all the operations of the tank sites and pump stations

14 throughout the distribution system and we manage the

15 amount of flow into the water system from the plants.

16   **Q.   And in 1999 did you change positions?**

17   A.   Yes, I did. I became superintendent for

18 our South County and Meramec water treatment plants in

19 the southern portion of our distribution operations.

20   **Q.   And did you again change positions in 2000?**

21   A.   Yes, I did. In 2000 I was promoted to

22 engineering manager position in our main office in

23 charge of all of the engineering for St. Louis County

24 or Missouri American.

25   **Q.   And how did your position change in 2003?**

1   A.   In 2003, I took a position as operations

2   manager of our distribution system in St. Louis County

3   where I oversaw the construction and maintenance

4   activities within the distribution system.

5   **Q.   And then as you told us in 2008 you assumed**

6   **your present position as engineering manager?**

7   A.   Correct. I took engineering manager

8   position in 2008, which is where I'm currently at now.

9   **Q.   For your education and extensive work**

10   **history at Missouri American Water, are you quite**

11   **familiar with the water pressure throughout the**

12   **Missouri American St. Louis county system?**

13   A.   Yes, I am.

14   **Q.   Are there any regulations or rules**

15   **regarding what the pressure levels must be for the St.**

16   **Louis County system?**

17   A.   The DNR, Department of Natural Resources

18   has 20 PSI minimum requirement that we maintain in any

19   operation, the water system must maintain in the

20   distribution system.

21   **Q.   I'll show you what's been marked Missouri**

22   **American Water Exhibit 8. And can you identify that**

23   **for me as ten code state regulation 60-4.080 and then**

24   **flipping to the second page of the exhibit, does that**

25   **regulation state public water system must**

1   maintain minimum positive pressure of 20 pounds per

2   square inch, (20PSI) throughout the distribution

3   system under all normal operating conditions?

4   A.   Yes, it does.

5   Q.   Are you aware of any other regulation --

6   A.   No, I'm not.

7   Q.   -- in the state of Missouri regarding the

8   required pressures in St. Louis County for water

9   treatment systems?

10   A.   No. I'm not.

11   Q.   Are you aware of any rule saying that water

12   pressure cannot fluctuate in a water system?

13   A.   No, I'm not.

14   Q.   In fact, must water pressure necessarily

15   fluctuate throughout the water system?

16   A.   Yes. It does. It's going to vary for

17   geographic reasons as well as operational needs.

18   Q.   And so you telling me that there are

19   different pressures in a water system depending on

20   where the geographic area you're located?

21   A.   Yes. That's correct. Depending on what

22   elevation you are in reference to say the plants or

23   source, or the origin of water, the source of the

24   origin and where it's pumped into the distribution

25   system. The pressure would vary based on that

1 elevation difference.

2   Q.   Is there a rule of thumb for how a change

3 in elevation affects water pressure?

4   A.   Yes. I guess it's physics, not necessarily

5 rule of thumb but forever one PSI you will have a

6 change in -- let me say it differently. For every

7 2.31 feet difference in elevation, the water pressure

8 will change by one PSI.

9   Q.   So the difference in pressure in different

10 parts of the system occur and have to occur because of

11 change in geographic location?

12   A.   Right. Because of change in elevation.

13   Q.   What about differences in pressure in the

14 same location at different times? Can and do those

15 changes in pressure occur?

16   A.   They do. The other things that influence

17 that would be just operation of the system itself.

18 The changes in demand. As demand increases, load

19 increases, as flow increases pressures will drop or

20 reduce, as you have friction losses or pressure losses

21 throughout the pipe.

22   Q.   So when everybody gets up at half time

23 watching the Superbowl?

24   A.   Right. If you have a significant number of

25 people flushing their toilet at the same time it

 1   create high demand on the system. You notice pressure

 2   changes or high demand usage in the summer time due to

 3   hot weather or fire is going on in the area and there

 4   is a lot of flow due to a fire or water main break.

 5   Anything that's changing the flow in the system is

 6   going to have an effect on the pressure in the

 7   immediate area.

 8   Q.   Now, how does Missouri American water in

 9   St. Louis County system control water pressure?

10   A.   Well, we control it at our tank sites and

11   booster sites as well as at the plants. And we

12   maintain 30 PSI as a company minimum here in St. Louis

13   County. Essentially we want to keep 30 PSI at the

14   highest elevation in the system. That sort of sets

15   the pressure throughout the rest of the system just

16   due to the difference in elevation.

17   Q.   Let's talk about water pressure at a

18   customer's residence. Do you have any general

19   understanding what the typical pressure is inside a

20   residence? What factors contribute to that pressure?

21   A.   Yes. The pressure is going to be directly

22   related to what the pressure is in the water main at

23   the residence. Most residences in St. Louis County

24   have a pressure reducing -- I'm sorry pressure

25   regulating valve. Those will typically -- so,

 1   consequently if our pressure is 30 they are going to

 2   have 30 and their pressure may range anywhere from 30

 3   to 80 depending on where their elevation is in the

 4   county. Any pressure higher than, again I'm

 5   generalizing 75 to 80, their pressure regulating valve

 6   is probably going to maintain it below 80. They can

 7   adjust that setting. So it depends on person

 8   preference what they are setting that regulation

 9   number.

10   Q.   What can happen in the pressure if a

11   customer's how is higher than pressure in the main

12   service in the house?

13   A.   If there is no back flow preventer, they

14   are going to equalize. The pressure in the customer's

15   house, if it increased greater than the pressure in

16   the water main, it will equalize to the pressure in

17   the water main.

18   Q.   Now, are you in general familiar with Mr.

19   Dzurinskiy's complaints in this case?

20   A.   I am.

21   Q.   If Mr. Dzurinskiy is experiencing reverse

22   flow in his meter, how that be prevented?

23   A.   By the installation of a back flow

24   preventer.

25   Q.   Thank you. No more questions.

 1   JUDGE JORDAN: Mr. Dzurinskiy, any cross

 2   examination for this witness?

 3   EXAMINATION

 4   QUESTIONS BY Mr. DZURINSKIY:

 5   Q.   Yes. Could you please explain actually the

 6   engineer how the water from the station goes to the

 7   customer home. How it goes by forcefully or by

 8   gravity, how it usually creates a pressure?

 9   A.   Through pumps, through a series of water

10   mains and the water is pumped into the pipes.

11   Q.   Is that located somewhere in the station

12   when I received this water reading?

13   A.   They are located at water treatment plant.

14   Q.   But I'm talking about I received it from

15   Creve Coeur area where you have two big -- you have

16   pumps over there?

17   A.   They are located at water treatment plants

18   and a distribution storage tank sites.

19   Q.   So it means it works automatically. If

20   there's not enough water pressure in the pipes so it

21   just adds water or goes by gravity?

22   A.   No. The pump would be required to pump it

23   into the pipe. It doesn't happen by gravity at those

24   specific tanks we're talking about. There are a few

25   tanks in our system where it would be by gravity as

1   you say. They are elevated tanks, but the more of our

2   tanks are ground tanks, so there is going to be a pump

3   associated.

4   Q.   Such if I have some kind of capacity which

5   can carry, for example, 100 gallons per minutes. If

6   the usage is more, can the pipe carry more than its

7   capacity? I mean if the demand is more than supply

8   what happens in this case?

9   A.   The demand is more than supply. Well, the

10   pressure is going to drop.

11   Q.   Pressure going to drop?

12   A.   And then we turn on pumps.

13   Q.   So it cannot distribute as much as it

14   demands in the particular moment; is that correct?

15   A.   We would see that and you would turn on a

16   pump to maintain. Our numbers are normal operating

17   pressure ranges.

18   Q.   But it still can fluctuate. You cannot

19   exactly at a particular moment create enough pressure

20   to full these pipes?

21   A.   No. The pipes are full all the time.

22   Q.   Full all the time. You said it fluctuates

23   depending on geographic area. Is it possible if you

24   have two houses next to my house on flat surface and

25   mine is elevated, it could be different pressure in

```
 1   the main pipe to the service?

 2          A.   I'm sorry.  I didn't understand.

 3          Q.   If you have two house next to mine, for

 4   example, they're on the flat surface and mine is

 5   located on slope, how much difference could be between

 6   my house and different house because of geographic

 7   location like you said?

 8          A.   Are you saying if your house is here and

 9   neighbor's house is here?

10          Q.   Like here the pipes go and my neighbor's

11   house is like this one.  Could water pressure be

12   different in the main approaching his service line and

13   mine.  What is the difference between the water

14   pressure, is it same?

15          A.   It depends on difference in elevation.

16          Q.   Is it, for example, my neighbor's house

17   could not anything like that flow and my house

18   connection about 50 or 60 feet from the house, it

19   would just indicate location because difference in

20   elevation can create different water pressure?

21          A.   No.  The only -- you're talking about

22   rotation on the meter.

23          Q.   Yeah.

24          A.   The only time you see rotation on the meter

25   is open a faucet and call for demand.
```

1   Q.   Back flow.

2   A.   Back flow -- the only time you get back

3   flow on the meter is if the pressure is going on in

4   your house generated higher than pressure in water

5   mine then it can push backwards.

6   **Q.   Can you tell me what exactly could the**

7   **water pressure in the main when my pipe connected to**

8   **the main pipe correctly because I have reading from**

9   **digital recorder to show 45 PSI in my home. How much**

10 **is it in the connection between my main and main pipe?**

11   MR. JONES: I'll object. The question

12 assumes facts not in evidence.

13   JUDGE JORDAN: It was a lengthy question and

14 a little complicated.

15   **Q.   It's complicated because when company try**

16 **to prove my water goes back flow in the system, how it**

17 **happens is that if I have 45 PSI. I try to find out**

18 **how much PSI is in the main pipe, how it get overcome.**

19   JUDGE JORDAN: Let's see if he can answer

20 it on hypothetical basis. Let's sort out the

21 question. The question is if you have 45 PSI pressure

22 in your system, your asking him something about

23 Missouri American system. Are you asking him whether

24 that tells him how much pressure is in his system.

25   **Q.   Yes. I'm asking same point where is my**

 1   **pipe connection to the main pipe, my service line to**

 2   **main pipe on my property, what is the pressure. Can**

 3   **you measure how much pressure in the main pipe at that**

 4   **location?**

 5   A.   If we put a pressure gauge where it's

 6   connected, but there is not one installed there.

 7   Q.   **Could you answer -- well, you don't know**

 8   **what pressure, how it can happen, what kind of**

 9   **appliances or whatever I can have in my home?**

10   A.   The pressure in the main -- if you don't

11   have a pressure regulating valve, the pressure in your

12   main in your house wherever we measure relative to the

13   main in ground, it's going to be very similar. The

14   difference being that over 2.31 feet change you're

15   going to have PSI change plus a few pressure losses

16   due to the fact you have smaller diameter pipes. You

17   get some mine or pressure losses through that smaller

18   diameter pipe.

19   Q.   **So if the water not fluctuate in your pipe,**

20   **so it's supposed to be equal in your pipe and my pipe**

21   **is that correct? If it say idle water in the main**

22   **pipe and my pipe, if I don't use the water, so it's**

23   **supposed to stay equal?**

24   A.   If you don't have a pressure regulating

25   valve, yes.

1   Q.   It's supposed to stay equal. So my

2   question is, how this can happen. What is size of

3   your pipe usually going to subdivision next to the

4   house?

5   A.   I didn't look, but I would say it's 6 or 8

6   inch diameter.

7   Q.   At least 8 inches, at least 8 inches and my

8   pipe connection to my home is about an inch; is that

9   correct?

10   A.   I'm sorry.

11   Q.   About an inch?

12   A.   It's probably three quarters of an inch.

13   Q.   So what happens if that water pressure

14 falls in your pipe like this one a couple, how much

15 can fall in my water pressure?

16   A.   How much can it what?

17   Q.   How much pressure can fall in my pipes?

18 Because it's my understanding pressure in my home

19 creates from your pipes, from the big pipe to the

20 small pipe; is that correct?

21   MR. JONES: I'll object to the compound

22 nature of the question.

23   JUDGE JORDAN: That's a lot of question.

24 Here's the rule. When counsel talks about compound

25 questions -- I sustain your objection. You have to

 1   ask one question at a time?

 2   Q.   Okay.

 3   JUDGE JORDAN: You have to ask one question

 4   at a time. And you can do this on cross examination

 5   also, you can ask a yes or no question. That might

 6   narrow it down and so he can understand the question

 7   and be able to answer it?

 8   Q.   **My question is how does 45 PSI that was**

 9   **created from your pipes. It's law I can usually**

10   **say --**

11   A.   When you say it's created in the pipes,

12   it's a confusing question because it's created from

13   the plant end, the pump at tank site and it's all

14   related from there. And as you have difference in

15   elevation from those sites, along with the losses in

16   pressure that may occur due to flow, that's how your

17   corresponding pressure is what it is at the main

18   outside in front of your house.

19   Q.   **But does it mean I have something at my**

20   **home that can create this pressure? It just means**

21   **water goes from the main pipe and creates special in**

22   **my pipe; is that correct?**

23   A.   Correct.

24   Q.   **My question about what kind of equipment**

25   **usually by your experience people have in their home.**

1   **Usually residential area, what can push water from my**

2   **home, from one three-quarter inch to about 8 inch.**

3   **How it can happen that my water just only be gravity**

4   **because how it can create rotation, I mean --**

5   MR. JONES: Let me objection to the

6   compound question and assumes a lot of facts not in

7   evidence.

8   JUDGE JORDAN: I'll sustain that objection.

9   Remember, little questions. Little questions, one at

10   a time. I know there is a lot of issues, but in order

11   for us to understand; guys like me are not engineers.

12   You have to break it down in little bits for us.

13   **Q.   I'm sorry. By your experience how much --**

14   **what kind of treatment should they have in my home to**

15   **create gravity to push the water back in the main?**

16   MR. JONES: Do you understand the question?

17   A.   Yeah.

18   JUDGE JORDAN: Okay.

19   A.   But it doesn't work by gravity.

20   **Q.   It doesn't work by gravity?**

21   A.   You used the word gravity, and it doesn't

22   work by gravity.

23   **Q.   What kind of equipment? How it works,**

24   **explain this?**

25   A.   How does the pressure --

1   JUDGE JORDAN: I need to clarify so that I

2 can understand what question is being asked. You're

3 asking him what determines the water pressure in your

4 system? Is that what you're asking?

5   Q.   Yeah. The standard, and I received his

6 answer, but my last question is how it happens if you

7 said not by gravity. What can push the water from my

8 home to the main, what kind of system? Explain.

9   A.   When there is no use occur in your home,

10 there is no demand, no faucets opening, no anything,

11 and your hot water heater is heating you get expansion

12 effect, which will increase the pressure on your

13 service line.

14   Q.   I'm not talking about -- I just tried to

15 mention if my -- it's not about whether water heater

16 is on, but no usage of water, no appliances. I know

17 heat creates pressure and water will go in less

18 resistance; is that correct? It means I have

19 expansion. It goes from point of higher pressure to

20 lower pressure. Okay. So that means water pressure

21 in your main pipe can be less than in my home. How

22 can it happen?

23   A.   Through thermal expansion in a hot water

24 heater.

25   Q.   That means water heater is on; right?

```
 1        A.    Excuse me.

 2        Q.    The water heater is on or no appliance in

 3   use?

 4        A.    Did you say if it is on.

 5        Q.    Yes.  But if I don't use the water heater.

 6   My question is no one using any appliances, the heater

 7   is not on, can the water by itself from your

 8   residential -- I don't know how many feet of pipes I

 9   have at my home.  Can it push the water in the main?

10        A.    Typically, no.

11        Q.    Typically, that is why I want to find out

12   how it can happen.  I just could not understand the

13   reason because I consulted a lot of plumbers and

14   everybody just told me the same.  Department of

15   Natural Resource the same.  They told me it's

16   impossible.  Just only if I have a problem or I have

17   an irrigation system or I have something, a lot of

18   pipes.  I mean the pressure much more than main pipe

19   so it can push the water that's why I try to figure

20   how my water can overcome the pressure.  That's fine.

21             JUDGE JORDAN: There is no objection to this

22   question.  So just question and answer are fine.  Do

23   you have other questions for this witness?

24        Q.    One more question.  You do hear some kind

25   of experience that people in residential area install
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 1   **what kind of conditions they say on my property is**

 2   **back flow preventer?**

 3   A.   I didn't understand the question.

 4   **Q.   You do have experience and hear from**

 5   **somebody that what happened on my property is people**

 6   **installing back flow preventer?**

 7   A.   I don't have any knowledge of that.

 8   **Q.   You don't have knowledge, okay.**

 9   JUDGE JORDAN: Anything else for this

10   witness?

11   **Q.   No, that's it?**

12   JUDGE JORDAN: Cross examination from staff?

13   MS. HERNANDEZ: No. Thank you.

14   JUDGE JORDAN: I have a few questions. I

15   want to clarify some things. Again, not being an

16   expert or engineer, but I heard you mention the term

17   equalization. One of the issues we're trying to get

18   to is what could possibly cause -- if there is any

19   back flow, what causes back flow from a residence into

20   Missouri American's system. This does happen

21   occasionally I understand, does it not, in general

22   through out the system?

23   A.   Yeah.

24   JUDGE JORDAN: Throughout St. Louis County.

25   How does that happen?

 1   A.   Well, like I tried to explain earlier, it

 2   could typically happen from you not using any water in

 3   the home, but you have used, let's say, hot water

 4   enough that your hot water heater fills back up with

 5   cooler water.

 6   JUDGE JORDAN: Uh-huh.

 7   **Q.   Hot water heater then kicks on and is**

 8   **heating it up. Water is not compressible so as it's**

 9   **heating it's trying to expand. There is expansion**

10   **that's occurring. It's increasing the pressure on the**

11   **system. If you're using water it won't happen, but if**

12   **you don't have anything turned on it will continue to**

13   **increase and it will stay equal with -- actually if**

14   **you started out lower than on your main your pressure**

15   **in your service line will climb until it reaches the**

16   **pressure in your main. And then they will stay equal**

17   **until it finishes its heating process.**

18   JUDGE JORDAN: Now, other than a heater,

19   are you familiar with any factual scenario that causes

20   back flow?

21   **Q.   Not on residential.**

22   JUDGE JORDAN: Okay. That's all the

23   questions I have for this witness. And since I have

24   asked some questions on cross examination, Missouri

25   American, do you have any redirect?

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 1              MR. JONES: No, Your Honor, we don't.

 2              JUDGE JORDAN:  All right.  Mr. Dzurinskiy,

 3   do you have any other recross?

 4              MR. DZURINSKIY:  No.  I think it's enough.

 5              JUDGE JORDAN: Anything from staff.

 6              MS. HERNANDEZ:  No, thank you.

 7              MR. JONES:  I'm not sure if I moved to

 8   admit Exhibit 8.

 9              JUDGE JORDAN:  I'm not sure whether did you

10   either.  Would you like to?

11              MR. JONES:  I move to have Exhibit 8 into

12   evidence.

13              JUDGE JORDAN:  Any objection to this

14   document, Mr. Dzurinskiy?

15              MR. DZURINSKIY: No.

16              JUDGE JORDAN:  Staff, any objection.

17              MS. HERNANDEZ:  No objection.

18              MR. JONES:  Before I let this witness go,

19   I'd like to make sure I don't have any exhibits.

20              JUDGE JORDAN:  I'll go ahead and admit

21   Exhibit 8 into the record.

22              MR. DZURINSKIY:  That's fine.  Nothing else

23   for this witness.

24              JUDGE JORDAN:  And if I understand it that

25   concludes Missouri American Water's case in chief?
```

1   MR. JONES: Yes, Your Honor.

2   MS. HERNANDEZ: Would it be okay time to

3 take a quick rest room break?

4   JUDGE JORDAN: We'll take a short break and

5 we'll resume.

6   (Whereupon, a short break was taken.)

7   JUDGE JORDAN: We're back on the record.

8 We've concluded Missouri American Water Company's case

9 in chief.

10   MR. JONES: Yes, Your Honor.

11   JUDGE JORDAN: We're ready for staff's case

12 in chief.

13   MS. HERNANDEZ: Yes. The staff calls Mr.

14 Steve Loethen.

15   JUDGE JORDAN: Would you raise your right

16 hand? Do you solemnly swear that the testimony you

17 are about to give will be the truth, the whole truth

18 and nothing but the truth?

19   MR. LOETHEN: I do.

20   JUDGE JORDAN: You may proceed.

21   EXAMINATION

22 QUESTIONS BY MS. HERNANDEZ:

23   **Q.   Good aftenoon. Can you state and spell**

24 **your name for the record please?**

25   A.   Steve L-o-e-t-h-e-n.

 1   Q.   Where are you employed?

 2   A.   Missouri Public Service Commission.

 3   Q.   And in what capacity are you employed?

 4   A.   Utility operations technical specialist in

 5 the water and sewer department.

 6   Q.   And how long have you held that position?

 7   A.   Almost eleven years. It will be eleven in

 8 January.

 9   Q.   And what are the duties that are part of

10 that position?

11   A.   Mainly we do inspections, annual

12 inspections on water and sewer systems that we

13 regulate. We also work complaint investigations.

14 During rate cases we perform operational audits and

15 also help the audit team during the rate case when

16 they need help in deciding what things are useful out

17 in the field. We go verify it. And verify prudency.

18   Q.   And do you have any previous experience

19 that would be applicable to the complaint?

20   A.   Yes. I worked in water -- waste water

21 industry for eight years previous to this position.

22   Q.   And what type of duties did you complete

23 during those eight years?

24   A.   When I was -- whenever I left that position

25 I was manager of the new operations or new facility.

 1   I help work with the engineers to design waste water

 2   treatment plant and also to kind inform between the

 3   engineers and contractors and they go them get it

 4   built the way the engineers drew it up. And I also

 5   looked at new or new customers and tried to

 6   incorporate when a contractor came in and put in a new

 7   treatment plant, we tried to expand it out to any

 8   other municipalities, not municipalities, but any

 9   other customers and tried to expand the plant and get

10   it built bigger to handle more capacity later.

11   **Q.   Did you complete an investigation and file**

12   **a recommendation in this matter?**

13   A.   Yes, I did.

14   **Q.   And do you have any changes to make to that**

15   **recommendation today?**

16   A.   No, I don't.

17   **Q.   And is your investigation and**

18   **recommendation still correct to the best of your**

19   **knowledge, information, and belief?**

20   A.   Yes, it is.

21   **Q.   At this time I will move to admit staff**

22   **Exhibit 01, which I believe we've handed everyone a**

23   **copy.**

24   JUDGE JORDAN: All right. Earlier I asked

25   staff to I stated that staff's exhibits would be

1 marked with Roman numerals, but I'm going to change

2 that this is already marked as Staff-01, which is

3 sufficient at this date to keep it straight from

4 Missouri American Water Exhibits. And this is the

5 only exhibit you plan to introduce; is that correct,

6 counsel?

7   **Q.   Yes, Your Honor.**

8   JUDGE JORDAN: I think that will be okay.

9 The record will be clear this is staff's investigation

10 and recommendation. Is there any objection, you have

11 offered this into evidence?

12   **Q.   Yes. I move to have it admitted into**

13 **evidence?**

14   JUDGE JORDAN: Objections?

15   MR. JONES: No objection.

16   JUDGE JORDAN: Objections, Mr. Dzurinskiy.

17   MR. DZURINSKIY: No.

18   JUDGE JORDAN: I'll enter this into the

19 record.

20   **Q.   (By Ms. Hernandez) Thank you. I have a**

21 **few more questions. After the investigation was filed**

22 **on March 12th, 2010, did you complete any other**

23 **investigative tasks?**

24   A.   Yes. I went out and on site one more time

25 I went out. In some of Mr. Dzurinskiy's filings he

1   indicated that other customers in the area were having

2   similar problems that he was having. So I went out

3   and investigated two houses I'd say above and below

4   the street on the same side and houses on the opposite

5   side of the street. All those homes I believe to be

6   on the same main Mr. Dzurinskiy is on and I found no

7   one else was having ratcheting motion or having the

8   same issue that Mr. Dzurinskiy was having.

9   Q.   And what did you observe on the

10   complainant's meter that day?

11   A.   It was ratcheting like the original

12   complaint.

13   Q.   Now, earlier the complainant entered

14   Complainant's Exhibit F. May I hand that to the

15   witness, Your Honor?

16   JUDGE JORDAN: Please do.

17   Q.   Do you remember that Exhibit?

18   A.   Yes.

19   Q.   Now, I'm going to hand you the original.

20   Well, let me ask you, is that an original of the

21   pressure recorder?

22   A.   Yes.

23   Q.   And do you remember when you took that

24   reading?

25   A.   I installed it on 5-18 and took it off on

 1   5-19.

 2   Q.   And if you would, can you compare those two

 3   documents and make sure that that is an exact copy of

 4   the original?

 5   A.   Yes.

 6   Q.   And I'm sorry. Can you pass that around?

 7   A.   I wouldn't say it's exact copy. I have

 8   wrote some things on this one since we made the copy

 9   and sent it. In getting prepared for the hearing

10   today, I wrote some things on it.

11   Q.   Okay. Besides the words on the paper, can

12   you compare the pressure recorder line all the way

13   during the hours that you took it and see if it's an

14   exact copy?

15   A.   Yes. It appears to be.

16   Q.   Do you remember if a copy of the original

17   was sent to the complainant?

18   A.   Yeah, I believe we eventually sent a copy

19   of this.

20   Q.   And looking at the copy that the

21   complainant entered as an Exhibit, do you remember if

22   the copy that was sent to him had that writing?

23   A.   On his Exhibit or my writing?

24   Q.   Well, both?

25   A.   My exhibit did not have -- this pressure

1 recording did not have this writing. I just did that

2 in preparing for the hearing last week. And no, I did

3 not put any writing. It's my understanding this is

4 all we sent him was a copy of the pressure recording.

5   **Q.   What writing do you have? Can you just**

6 **explain or state what you wrote.**

7   A.   I just put the date or the address and then

8 date it was installed and date it was taken on.

9   **Q.   And that doesn't -- your writing does not**

10 **affect the reading of the pressure recorder?**

11   A.   No. No, it doesn't.

12   **Q.   I believe that's all the questions I have**

13 **for this witness. So I'll tender him for cross.**

14   JUDGE JORDAN: All right. Cross examination

15 from Mr. Dzurinskiy?

16   EXAMINATION

17 QUESTIONS BY Mr. Dzurinskiy:

18   **Q.   Yes. Maybe I'm mistaken. Is that the same**

19 **date what you I just wrote down, what is happening in**

20 **March? Because I may be mistaken and hear about that**

21 **you said it was taken in may. It seems it was taken**

22 **in March; is that right?**

23   A.   My records are it was in May.

24   **Q.   How did that happen. I was handed this**

25 **recording when we were all on my property in May, but**

 1   it was taken in March before the hearing. There is

 2   something wrong.

 3   A.   I can review my records. Whether it was

 4   March or May, it's really not --

 5   Q.   I know exactly. You gave me in May when

 6   everybody from St. Louis County was on our property.

 7   You handed it to me?

 8   A.   Okay.

 9   Q.   It seems it was taken in March. I'm

10   positive about that. I can check the calendar, but

11   that's when it says it was installed?

12   Q.   So was, is that March or is that May?

13   A.   As far as I know it was May. But March or

14   May.

15   Q.   Can you check your records?

16   A.   I have that May 18th is when I was -- I

17   went to Mr. Dzurinskiy's house.

18   Q.   It was St. Louis County.

19   A.   And I also have in March I was Missouri

20   American St. Louis, but it doesn't say Roman's

21   complaint. But regardless of the discrepancy, it's

22   not going to make a difference in the pressure or --

23   Q.   Okay. This is a graph of the pressure,

24   either in March or in May.

25   A.   Right.

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 1        Q.    Okay.

 2              JUDGE JORDAN:  Any more questions for this

 3   witness?

 4        Q.    I have a lot of questions.

 5              JUDGE JORDAN: Let's hear them.  Remember

 6   keep them short, bite size.

 7        Q.    Mr. Loethen, can you just tell me, any case

 8   is unique like mine when you go to investigate some

 9   complaints?

10        A.    Yes.  I see a lot of unique things.

11        Q.    Yeah.  What would be unique about that one

12   exactly?  I mean how many cases did you have like

13   mine?

14        A.    Have I seen ratcheting with the movement in

15   your meter; this is my first one.

16        Q.    So it's the first time.  So, it means you

17   can give opinion or just statement that you have

18   experienced about that one case completely a hundred

19   percent?

20        A.    Not a hundred percent.

21        Q.    You cannot be sure because it's your first

22   case?

23        A.    Not a hundred percent, no.

24        Q.    I asked you this question.

25        A.    Like I said, we can't investigate all your
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1 plumbing in your home. There is just too many

2 variables to say 100 percent.

3   Q.   **You are the only person who was inside and**

4 **outside of my home?**

5   A.   I don't know.

6   Q.   **Yes. I mean no one in this room from the**

7 **water company who was inside. You were the only one**

8 **person who was in my home a couple times?**

9   A.   I don't know what they did on their

10 investigation if they were in your home or not.

11   Q.   **You inspected some of my appliances in my**

12 **home?**

13   A.   I entered your home and observed your

14 turned off -- what I believe the main disconnect in

15 your home.

16   Q.   **Can I see -- I read your report very**

17 **carefully. You just gave it stopped ratcheting. Your**

18 **report did not indicate what exactly -- what and who**

19 **turned it off. Would you tell us?**

20   A.   You turned it off. You're asking who

21 turned off the water?

22   Q.   **When you came in the room.**

23   A.   You did.

24   Q.   **I did it.**

25   A.   Yes.

1   Q.   Are you sure exactly?

2   A.   Yes.

3   Q.   I under oath will tell you what exactly

4   happened. I told you --

5   MS. HERNANDEZ: I'll object. This witness

6   is now testifying, not the witness. He is testifying.

7   JUDGE JORDAN: You can only ask questions.

8   Q.   (By Mr. Dzurinskiy) Yes. So you just

9   confessed that I turned this off; right?

10   A.   Yes.

11   Q.   This is objectionable. I disagree about

12   that one. I never touched anything in your presence?

13   JUDGE JORDAN: This is not the time for you

14   to testify. And maybe later you can tell me why that

15   makes a difference?

16   Q.   It's a big difference. Did you check my

17   appliances at home?

18   A.   No.

19   Q.   You didn't check anything?

20   A.   I observed what I could from the entrance.

21   It was a small utility room. I saw that you pointed

22   out that you had a new hot water heater installed.

23   Q.   Uh-huh.

24   A.   I saw that or got the number name and

25   number off of it. And I notice that you have some

1   kind of boiler heating system, but you indicated it's

2   not in service. I did not go look and all your

3   toilets and sinks and stuff like that, no.

4   Q.   Did you find something wrong on my

5   property, not licensed plumber or just something

6   illegal by your opinion?

7   A.   I have not been informed of anything that's

8   illegally installed in your home, no.

9   Q.   Actually in your report you just indicated

10 that this issue -- it's a high technical issue, is

11 that right, you indicated it has a lot of

12 complications. It's a high technical issue. I am

13 wondering what kind of task everything you applied to

14 make your decision or opinion about something wrong

15 with my plumbing system?

16   A.   I'm not -- I don't think I said it was high

17 tech. I think I said I never saw it before. And what

18 I used to determine my conclusion was when you turn

19 the water off it stopped doing it, which my conclusion

20 is it's in your home that's causing the problem. When

21 you turn the water back on it started doing it again.

22   Q.   But just it says it's your opinion; right?

23   A.   Right.

24   Q.   It's not a statement. And did you state in

25 your report that there is possibility that when it's

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1   **low flow the water meter cannot register the water.**

2   **Did you get this information?**

3   A.   I asked Missouri American to do a flow test

4   on the water meter both forward and backwards. They

5   sent the results to the forward test and it passed.

6   And then when they did the backward test it showed on

7   the very, very lowest flow that it wouldn't pick up a

8   reading.

9   **Q.   You indicate in your report you contacted**

10   **American Water Work Association and Neptune, it's in**

11   **your report, you contacted them. Who did you contact**

12   **and what information did they provide you?**

13   MS. HERNANDEZ: Your Honor, if I may hand

14   the witness the copy of the report so he can --

15   **Q.   Why is -- it's in the March report?**

16   A.   From Neptune I talked to Patrick Brasifla.

17   And from AWWA I talked to Frank Kurtz. And neither

18   one of them could really help me without being on

19   site. The conversation I had with them didn't

20   necessarily influence my decision.

21   **Q.   I mean did you represent yourself that you**

22   **were an investigator from Public Service Commission**

23   **and explain to them what you were looking for?**

24   A.   Yes.

25   **Q.   And you could not obtain information from**

1   the Neptune exactly about the ratcheting and what is

2   causing the problem or just the water meter?

3   A.   They gave me an assumption they thought

4   might be happening.

5   Q.   But they did not produce any kind of

6   documents or anything?

7   A.   They couldn't without being on site to do

8   the investigation.

9   Q.   What is the reason? I mean, did you

10   request them to produce documents or not or manuals,

11   whatever they provide?

12   A.   I just asked them how if they have seen

13   this situation before and if so what they think would

14   be causing it, and if they thought a back flow

15   preventer would stop or fix the problem.

16   Q.   Can you tell me what exactly your opinion

17   what kind of device -- because I just replaced my

18   water heater, I explained, and expansion tank. What

19   cause water pressure push from my home to main pipe?

20   is that water or it could be air like you told me the

21   air?

22   A.   I don't remember telling you air, but yeah

23   when hot water heater expands, it can push water back

24   like Mr. Linam explained.

25   Q.   If I asked you I don't use water heater

1   under normal condition, we assume no one is using hot

2   water, what can cause, push the water backwards, what

3   did you find?

4   A.   Not without a mechanical device, nothing.

5   Q.   It means if I have no improper mechanical

6   device, it's generally impossible by gravity that my

7   water go in the main type to overcome 45 PSI?

8   A.   Yes.

9   Q.   Generally it is. We have not a lot of

10 time, if you can go through all your reports. There

11 is a lot of omissions, mistakes. One of them is the

12 last one I just pointed out to Mrs. Hernandez about

13 that. I just contacted St. Louis County plumbing

14 department with same issue. You describe it that St.

15 Louis County begin installing expansion tanks a couple

16 years ago because it was mandate from Missouri American

17 Water Company in Jefferson City to install. That's

18 why they decided to install expansion tanks; is that

19 right?

20   A.   That's what the St. Louis County inspector

21 indicated. And I also talked to numerous on our water

22 seal staff.

23   Q.   Is that right usually what happens install

24 first back flow preventer, and after that it just goes

25 together and install expansion tank? Can you explain

1 **why it's happened that they are supposed to install an**

2 **expansion tank and not back flow preventer?**

3   A.   If you install or have a back flow

4 preventer on a service line and you have a lot water

5 heaters heating up and it expands, something's got to

6 happen. So it's either going to cause -- if the

7 pressure increases enough over what the pipe can

8 withstand it's going to cause a leak, cause a pipe to

9 burst, or other problems. There is a pressure release

10 value on the hot water heater. If that doesn't

11 function properly, something's got to give. If it

12 does function properly, it purges water. That water

13 purge, if people's home or hot water heater isn't set

14 up properly or drain or something to catch the water,

15 I have had many instances when I say that -- I'm not

16 saying Missouri American, you have many instances in

17 the industry if somebody installed a hot water heater

18 without a drain under it and it purged, it can destroy

19 the floor and everything underneath it. This is why a

20 back flow preventer is mandated. That's why St.

21 Louis -- it was indicated to me -- I did not know this

22 for fact. That's why they went to expansion tanks as

23 part of any new hot water heater being install or any

24 new homes had to have expansion tank.

25   **Q.   You indicated in your last report that St.**

1 Louis County requires right now new construction to

2 install back flow preventer. Where did you get this

3 information?

4   A.   Again, that's what I was told from what I

5 remember. I can't say. I did not look.

6   Q.   To my knowledge what I just told them a

7 week ago was because they adopted new code. There is

8 not requirement for residential area in St. Louis

9 counsel to install --

10   MS. HERNANDEZ: I'll object, Your Honor.

11 Right now he is just testifying. If there is a

12 question in there he is welcome to ask it, but right

13 now he is stating what his phone conversation with

14 another agency was.

15   Q.   (By Mr. Dzurinskiy) Okay. When you were

16 in my home you just try to push me and told me that I

17 already had back water flow preventer and it was

18 malfunctioning. How did you get this information at

19 very beginning? You indicated I was responsible to fix

20 it. How did you make this assumption that I had this

21 back flow preventer already installed on my property?

22   A.   I don't understand the question.

23   Q.   You presented me tariffs from the water

24 company indicated what device I'm responsible to fix.

25 I indicated that I did not have back flow preventer

1   because if I had at that time I would probably had my

2   water heater explode or purge the water. So I

3   indicated I did not have a device to fix and you

4   insisted that I had and it did not work. Where did

5   you get this information?

6   A.   I don't know that I insisted anything.

7   Q.   You insisted about that.

8   JUDGE JORDAN: He is denying your premis.

9   Q.   (By Mr. Dzurinskiy) Well, I don't know if

10 it's important. You just indicated in your report that

11 company communicates to me everything that I asked you

12 about to employees who were in my home and tests they

13 perform. And you told me at that time that company

14 did not want to cooperate to you. What does it mean?

15 Did you ask them a question about that?

16   A.   Again, you're saying they told you the

17 company said they would not cooperate.

18   Q.   Something about this issue because they

19 stated about the test and you indicated you shut off

20 the valve. It was not me. It was water company

21 employees who came on my property and just did this

22 action. I asked you if you could find the report.

23   JUDGE JORDAN: You need to make your

24 question short.

25   Q.   (By Mr. Dzurinskiy) Well, I try to make.

1   I want to just point him in the right way. You talked

2   to the company about this?

3   A.   Yes.

4   Q.   Did you tell me that water company didn't

5   want to cooperate with you about this issue?

6   A.   I don't recall saying anything like that.

7   Q.   Why didn't you obtain this informational

8   report from the water company?

9   A.   I got information from their service orders

10 where they went out and performed their service.

11 Okay.

12   Q.   We had a hearing; you insisted to install

13 back flow preventer; is that right?

14   A.   I don't think it's something I insisted.

15   Q.   You recommended?

16   A.   It's my recommendation.

17   Q.   Did they tell you at that time that I also

18 consult some plumbers and it was improbable just

19 simply to install because it needed alteration; is

20 that correct?

21   A.   No, I didn't have alternation. It started

22 with the meter.

23   Q.   It's my understanding you said it would be

24 easy to install, only put back flow like this one; you

25 don't need to do anything?

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 1        A.   You pull the meter out and put a riser in

 2   and put the meter back in the riser.  It's four steps.

 3   I could do it in a half hour.

 4        Q.   Could you please tell me the company's

 5   response about what was possible, but not practical?

 6             MR. JONES:  Object to the form of the

 7   question.  He is asking for hearsay.

 8             JUDGE JORDAN:  Can you repeat the question

 9   please?

10        Q.   (By Mr. Dzurinskiy) The water company made

11   the report, you said you responded to that about the

12   workers and I asked a question.  Was -- in your opinion

13   was water company could install the back flow

14   preventer, but it was not practical in your opinion?

15        A.   We showed up on your premises.  We had

16   representatives, I was there along with

17   representatives from water company and St. Louis

18   County, Missouri.  And it's my understanding that St.

19   Louis County said that Missouri American -- or it has

20   to be licensed plumber to install back flow preventer

21   because it's a mechanical device and Missouri American

22   indicated they don't have.  One, they don't have -- I

23   don't know if they don't have licensed plumbers, but

24   they didn't want to set the precedence of installing

25   because of liability one -- set the precedence of
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 1   adding things or doing labor on what is your service

 2   line.

 3   **Q.   You didn't know about that, that by your**

 4   **experience that this kind of job is supposed to be**

 5   **like this one. Somebody that has a license?**

 6   A.   I'm not a licensed plumber.

 7   **Q.   So, I understand from your papers the water**

 8   **company on that day did not invite you to be present,**

 9   **what you indicated in your paper; is that right?**

10   A.   I believe it says --

11   **Q.   It says they did nothing. They invited St.**

12   **Louis County, not you?**

13   JUDGE JORDAN: Let him answer the question.

14   A.   In the mediation it was agreed we would all

15   be there. And what that statement meant --

16   MS. HERNANDEZ: I'm going to object.

17   That's settlement negotiations.

18   JUDGE JORDAN: You probably shouldn't get

19   into things that are said in mediation.

20   A.   Okay.

21   JUDGE JORDAN: But you can explain your

22   statement without -- if you can explain the statement

23   to which he refers without referring to settlement

24   negotiations, which include mediation, please do so.

25   A.   Can I see the statement?

 1   JUDGE JORDAN: What statement are you asking

 2   him about?

 3   **Q.   (By Mr. Dzurinskiy) It was in his last**

 4   **request. Data request that shows he just provided the**

 5   **name of St. Louis County director but it says he was**

 6   **not invited on the premises from the water company?**

 7   A.   It says Missouri American invited all

 8   individuals present exept the staff at Mr.

 9   Dzurinskiy's property. That's basically saying that

10   it was a scheduled meeting and they invited the other

11   people. Staff was already coming so they didn't have

12   to invite us. They didn't try to exclude me. I was

13   part of the reason we were going.

14   **Q.   Okay. My question now the company**

15   **presented a day that water meter is supposed to deduct**

16   **water. How many times did you observe my water meter**

17   **ratcheting?**

18   A.   Observe?

19   **Q.   Yes.**

20   A.   Three, four, five, something like that.

21   **Q.   Did you notice the flow indicator just when**

22   **it shows water going backward it did not deduct the**

23   **water? A?**

24   A.   I brought a cut away meter to your home.

25   **Q.   Uh-huh.**

1   A.   And showed you the gearing how it works.

2   It's actually a lot -- way more than there. You can

3   see all the gears. I showed you when the leak

4   indicator moves all those gears move, so if the leak

5   indicator is -- it's adding and subtracting.

6   **Q.   I must ask. You did observe on the**

7   **premises -- did you observe when the indicator goes**

8   **backward the dial didn't deduct the water, did not**

9   **register back flow water. Did you see that?**

10   A.   I don't know if it did or didn't. It's

11   just minute. As I testified or it was explained

12   earlier, when that triangle moves that could be drips

13   of water. So it could be dripping forward and

14   backward and never turn the hand back.

15   **Q.   But you could observe the indicator go in**

16   **different flow, quarter flow, it just moves still**

17   **enough to be visible for your eyes?**

18   A.   I saw the leak indicator turning both ways,

19   yes.

20   **Q.   Both ways. So indicated it's possible that**

21   **water fluctuated in the main pipe could create a**

22   **ratcheting effect?**

23   A.   No.

24   **Q.   Here in your report it is possible. Can**

25   **you read it?**

1   A.   What that -- it's possible that in the very

2   very low flows, the .125 gallons per minute, if the

3   meter does not read that coming back, if there is

4   actually that happening, then yes, that flow would not

5   be read. But then when it goes forward again it could

6   possibly be read. Because it is accurate on .125 the

7   other way. If you're talking minute amounts of water.

8   **Q.   Could you please explain? I just told you**

9   **still probably in March when I noticed water leak**

10   **indicator did not rotate during the night. You never**

11   **answered the question about that one. Why? Could you**

12   **explain?**

13   A.   It's irrelevant. I didn't need look at it

14   when it was happening not when it wasn't happening.

15   **Q.   Because you insisted that I have plumbing**

16   **problems and you did not indicate what exactly**

17   **plumbing problem, what exactly you don't know. It's**

18   **just your opinion that they based on what, what kind**

19   **of test?**

20   A.   That's what I told you. That's my opinion

21   on the inspection. I can't guarantee 100 percent that

22   a back flow preventer will solve your problems, but

23   that's my opinion.

24   **Q.   Do you agree with St. Louis County**

25   **inspector that inspected in your presence and came**

1 **outside and told you they found nothing wrong? I did**

2 **not receive any citation illegally installed water**

3 **involving --**

4   A.   As far as I know there's nothing illegal,

5 but yet there still is the problem.

6   **Q.   You just insist I have a problem, but you**

7 **cannot confirm what the problem is; is that right?**

8   A.   No, I don't know what the problem is.

9 Because when I turned the valve off in your home it

10 stops doing; when we turn the value on it does it.

11 That's my conclusion. It's in your home.

12   **Q.   I just want to repeat this question again.**

13 **Who told you it's important because you just swear**

14 **about that that you, me, who else told you the stop**

15 **the water --**

16   MS. HERNANDEZ: I'll object. It's asked

17 and answered.

18   **Q.   It's not objection. It's a lie.**

19   JUDGE JORDAN: Hang on. We're going to go

20 off the record.

21   (Whereupon, an off-the-record discussion

22 was had.)

23   JUDGE JORDAN: We'll go back on the record.

24 Now, as I recall your question was who turning off the

25 water in your house?

1   Q.   How the test --

2   JUDGE JORDAN: During this test?

3   Q.   And which wall, we have two valves, which

4   exactly valve did I or you whoever turn this off?

5   A.   We went into like a utility closet the

6   first time I came out to investigate your complaint.

7   First thing I did was walk up to your meter and I

8   observed it. It was ratcheting or moving back and

9   forth, whatever you want to call it. I then knocked

10 on your door. I entered your home. We walked in and

11 you showed me new hot water heater and this utility

12 closet. You turned off the valve. We went back

13 outside and the meter stopped ratcheting. We went

14 back in your home and we discussed things further and

15 you turned the valve back on. We discussed things

16 further, other issues. You showed me some of the

17 bills you have, things like that. We went back out

18 one more time before I asked it was ratcheting.

19   Q.   I'm asking which valve. I have two valves.

20   JUDGE JORDAN: Excuse me. Do you have two

21 valves in the same utility closet?

22   Q.   One is the main shutoff, completely water

23 and second is inlet to the water heater, which one?

24   A.   It's my understanding it was the main one.

25   Q.   Okay. See, I would like to present because

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 1   I just told this is not true completely because we had

 2   conversation in the water company about two months ago

 3   and they were -- and there was one more witness that

 4   they did not keep the water, so it was not a reason

 5   for me to shut off.  It's irrelevant.  It will not

 6   keep the water -- the washer was bad at that time.

 7   What was reason for me to shut it off.  The water

 8   meter would be ratcheting anyway.  So it's not true.

 9   It's not true?

10            MS. HERNANDEZ:  I'm going to object.  There

11   was no question.

12            JUDGE JORDAN: That's not a question.

13       Q.   The question is, if you say that I shut off

14   that main, it's supposed to stop, right, like you

15   said?

16       A.   It did stop.

17       Q.   It couldn't stop.  I couldn't do that

18   because the main did not work at that time.  It still

19   does not work.  It can not keep the water to have shut

20   off completely.  I can assure you Mr. Jones as witness

21   about this.  Because their employee just said the

22   same?

23            MS. HERNANDEZ:  I'm going to object to

24   that.

25       Q.   It's not the reason?
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1   MS. HERNANDEZ: Can I state an objection?

2   JUDGE JORDAN: Yes.

3   MS. HERNANDEZ: The complainant is just

4   testifying.

5   **Q.   I will insist it's not true.**

6   MR. JONES: I'll object. Mr. Dzurinskiy is

7   claiming there was some testimony by somebody from the

8   water company that supports what he is saying and

9   that's not the case.

10   JUDGE JORDAN: I think he is trying to give

11 you some background why he is asking the question and

12 its relevance. I can't say I really understand that.

13 But when it comes time for written arguments, perhaps

14 you can site testimony that we've already had that

15 this we make a difference. I think what you're trying

16 to tell me, there are a couple of valves and which one

17 was turned off.

18   **Q.   (By Mr. Dzurinskiy) Exactly. The main**

19 **valve did not work. It still does not shut off the**

20 **water completely so it means if I shut it off it will**

21 **not help anything. It still will ratchet. So it was**

22 **not reason for me to shut it off because it still not**

23 **stop water meter from ratcheting?**

24   JUDGE JORDAN: Now, when you're talking

25 about the main valve, you're talking about the line

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 1   that comes into your house?

 2           Q.   Yes.  From the ground, the main.

 3           JUDGE JORDAN: You turn that off and that

 4   cuts off the water to the house supposedly?

 5           Q.   Yes.  If it works it's supposed to stop

 6   ratcheting.  Water doesn't move in the water meter.

 7   Is that right?  Water stops moving between water meter

 8   and my home if you shut it off.

 9           A.   Maybe I can clarify.  You shut off a valve

10   in your home and we went out and looked and it

11   stopped.  I don't care which valve.  You shut

12   something off in your home and it stopped ratcheting.

13              JUDGE JORDAN: What's the other valve?

14           Q.   The second is inlet so the --

15              JUDGE JORDAN: So when you shut off the

16   water heater the ratcheting stopped?

17           Q.   That is exactly, but no one shut it off

18   because water company denied --

19              JUDGE JORDAN: Hang on.  Did you shut off

20   the main valve or did you shut off the water heater

21   valve?

22           Q.   I didn't shut any valve.  I didn't shut any

23   valve.

24              JUDGE JORDAN: Did you see him turn a valve?

25           A.   He turned a value and we went out and
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 1   looked.

 2   **Q.   That's why I'm asking which valve. There**

 3   **was not a reason for me to shut it off. It did not**

 4   **work. The washer is bad. The ratcheting will**

 5   **continue, so that is a lie, too.**

 6   JUDGE JORDAN: So, you're saying that you

 7   did not shut off any valve.

 8   **Q.   I didn't shut any valve. I just told Mr.**

 9   **Loethen about the water company employees were in my**

10   **home. They shut off the valve to the water heater**

11   **inlet. After that he said I believe you. And I never**

12   **performed anything in my home. That's exactly what**

13   **happened?**

14   JUDGE JORDAN: Okay. Without regard to

15   whether he saw you turn a valve on or off.

16   **Q.   This is important because all --**

17   MS. HERNANDEZ: I'll object as being

18   argumentative. Our witness has been sworn in.

19   JUDGE JORDAN: Stop. Let me hear -- it's

20   argumentative.

21   MS. HERNANDEZ: Mr. Loethen is presented as

22   an expert witness. He is under oath. He has not

23   contradicted himself. Mr. Dzurinskiy has had the

24   opportunity to testify and that time is up. He is now

25   just supposed to be asking questions and getting

1   answers.

2   JUDGE JORDAN: I understand. I'm in the

3   same state as far as voice goes. So that's not a

4   problem for me. I understand your objection. I have

5   a little bit of extra duty here to develop claims and

6   defense. So I have to inquire a little bit here

7   because it's very important. So I'm going to delve

8   into this a little bit more with your indulgence for

9   this. Well, I think you asked your question of this

10 witness. You don't like his answers, but those are

11 the answers. And you don't have to agree with him.

12   **Q.   Yes. I completely disagree.**

13   JUDGE JORDAN: That's fine.

14   **Q.   I'm not going to make an allegation against**

15 **myself.**

16   JUDGE JORDAN: I'd like you to finish your

17 cross examination of this witness before I start to

18 inquire. You won't be able to make him say what you

19 want him to say. That's a mistake people make all the

20 time.

21   **Q.   So it means my question is so like you**

22 **indicated in your report it was technical issue**

23 **besides what you said you shut off or I shut off the**

24 **valve. You didn't perform any kind of testing in my**

25 **home; is that right? Besides I remember you asked me**

1   to open the water inside my house and you went

2   outside?

3   A.   Yeah. You opened.

4   Q.   Besides that, you didn't perform any test;

5   is that right?

6   A.   The pressure recording.

7   Q.   The pressure recording, right, but no other

8   test completed?

9   A.   No.

10   Q.   So it means what you performed in my home

11   can it be considered high technical issue and some

12   kind of test to confirm about what's wrong with

13   something wrong with my system?

14   A.   I'm not aware of any test that can be done.

15   Q.   So you just cannot confirm what kind of

16   problem I have exactly; is that right?

17   A.   No.

18   Q.   Okay. I seem to be -- well, one last

19   question. So you cannot explain again why is it not

20   ratchet or not?

21   A.   No.

22   Q.   You cannot. You don't know why?

23   A.   I didn't investigate that, but no.

24   Q.   Well, you had opportunity because I told

25   you many times. Could you tell why you just removed

1   the digital recording not keeping it for 24 hours?

2   Why you removed it just in the morning because I told

3   you mostly it happens -- that it ratchets during

4   working hours?

5   A.   I guess you could say that's one thing that

6   we looked overnight because it is overnight and that's

7   one of the questions that's partly why I put it one.

8   The other thing is if I can see anything happening

9   this is on your home. It's on the back side of your

10   home which would pick up anything in your home that's

11   going on. I didn't see anything on this pressure

12   recording that gave me any indication of even the

13   fluctuating pressures or anything like that is going

14   on. It's normal. It's pretty stable actually for

15   most water systems. A lot of times you see a lot more

16   movement than that. You can see when the pumps kick

17   on or when you flush the toilet or something in the

18   home. Other than that, it didn't have anything to do

19   with my conclusions.

20   Q.   But did you make some observation when I

21   just asked you if no one using the water, no one is

22   home to perform any particular test and actually

23   compared what's going on with the fluctuation?

24   A.   When I saw this the meter was ratcheting,

25   and when I took it off the meter was ratcheting. So

1 this simply -- and you also indicated one time you

2 thought you had low pressure. That's another reason.

3 Your pressure is very good. Actually it's above 45

4 PSI.

5   Q.   **Is that in your opinion how much water can**

6 **back flow? Is that kind of dangerous?**

7   A.   It is dangerous, but I can't tell how much

8 by watching your meter, no.

9   Q.   **Well, I have no more questions about that.**

10   JUDGE JORDAN: Okay. Thank you. Cross

11 examination by Missouri American.

12   EXAMINATION

13 QUESTIONS BY MR. JONES:

14   Q.   **Just one quick question. When you say**

15 **ratchet, Mr. Loethen, do you mean you see the flow**

16 **indicator going both directions?**

17   A.   Yes. That seems to be term we picked up.

18 But I see the leak indicator move backwards and then

19 do a little spin forward, and there was no rhyme or

20 reason. It might go a turn and a half one way or turn

21 one way and vice versa. It wasn't -- that's why it's

22 kind of difficult to find out what exactly was causing

23 the problem. There was no pattern to it.

24   Q.   **Thank you. That's all.**

25   JUDGE JORDAN: I have a few questions and I

1 hope you will be patient with me as a non-expert in

2 this. If I understand your use of the term

3 ratcheting, is that simply referring to the meter's

4 backwards movement? Is that what you mean when you say

5 ratcheting?

6   A.   Yes.

7   JUDGE JORDAN: And you have seen this

8 meter --

9   A.   Yes.

10   JUDGE JORDAN: -- ratcheting going

11 backwards. That sounds like almost sounds fairly

12 mysterious.

13   A.   Yes.

14   JUDGE JORDAN: You heard the testimony that

15 says -- that told us the only thing that these experts

16 know that can cause that back flow is the heating up

17 of a water heater. It heats up the water and water

18 expands that pushes the water back through the meter;

19 is that an accurate description of that phenomenon?

20   A.   Yes.

21   JUDGE JORDAN: Can you think of anything

22 else, anything in your experience that causes back

23 flow?

24   A.   It would have to be another mechanical

25 device, just normal home toilets, sinks. You can see

 1 hammers, it could be a water hammer, but that wasn't

 2 the case in this because no one was using the water.

 3 What you see with a water hammer is if you have

 4 particularly in high pressure areas someone is using

 5 outside faucet and they shut it off real hard, you can

 6 actually have a small amount of time where the water

 7 will equalize.

 8   JUDGE JORDAN: It's like a bounce back.

 9   A.   It's like a shock. There is no indication

10 that was going on.

11   JUDGE JORDAN: But something has to be

12 mechnically happening in the house for that ratcheting

13 to happen; is that correct?

14   A.   Yes. It's got to be something mechanical

15 causing the pressure to overcome. One of the people I

16 talked to, again, they made a theory it could be the

17 bladder moving, but like I said it doesn't have -- it

18 doesn't have a pattern.

19   JUDGE JORDAN: What is bladder movement?

20   A.   The bladder tank that we discussed a few

21 times. It's a small tank that sets on top of the

22 water heater, and it's got a rubber membrane. And as

23 water heats at the expansion -- they are used in small

24 systems they are used to hold pressure in storage.

25 It's a little bladder tank like that and as it

1 expands, the rubber goes up in -- the top part's got

2 air in it and it absorbs the expansion is what it

3 does. But that's one guy made the theory possibly the

4 bladder is moving. But like I said the meter doesn't

5 have a pattern, so I wouldn't think.

6   JUDGE JORDAN: So that's unlikely?

7   A.   I don't know.

8   JUDGE JORDAN: Okay.

9   A.   I have no idea.

10   JUDGE JORDAN: You know, what I gather from

11 your testimony is that you have seen the ratcheting

12 occur. You have no information as to what's causing

13 it; what's happening?

14   A.   Yes.

15   JUDGE JORDAN: Let me ask you this. You

16 heard also the testimony about the measurements of a

17 meter, by which it was 90 percent inaccurate when

18 going backwards but only at very low amounts?

19   A.   Right.

20   JUDGE JORDAN: Is it possible for us to --

21 is it possible for us to quantify how much this would

22 affect Mr. Dzurinskiy's bill?

23   A.   Not without -- I guess possibly. If you

24 got it fixed then we can see and that's kind of what I

25 said in my conclusion was Missouri American indicated

 1   also that if he got the ratcheting fixed and it showed

 2   a significant difference in his bill that they would

 3   do the adjustment. I'm not sure if that's still the

 4   case.

 5   JUDGE JORDAN: Okay. One more small thing.

 6   I understand that this ratcheting movement that you

 7   observed would very likely be fixed by a back flow

 8   preventer; is that correct.

 9   A.   That's my opinion.

10   JUDGE JORDAN: And do you know of anything

11   that requires Missouri American to pay for that?

12   A.   No.

13   JUDGE JORDAN: That's all the questions I

14   have. Now, that may have generated some redirect from

15   staff.

16   FURTHER EXAMINATION

17   QUESTIONS BY MS. HERNANDEZ:

18   **Q.   A couple follow-up questions. What could**

19   **tell us exactly how much water, if any method, is**

20   **going backwards through the meter?**

21   A.   Other than installing a more accurate

22   meter, I don't know if they make one. I mean you have

23   to put another meter horn, install it backwards, let

24   them both run for a while and see what the numbers

25   are.

1   Q.   Can you say with the numbers you you would

2 install a back flow preventer and compare usage to

3 historical usage?

4   A.   Yes. In my conclusion, that's what I said

5 we'd do or what I said you could do, yes.

6   Q.   So you would compare increased usage if

7 that was what was found to historical usage to

8 determine what might be entering or, excuse me, going

9 backwards through the meter and not being recorded

10 properly?

11   A.   Yes. You compare the two usages and see

12 what -- It's possible it could even be a leak yet that

13 might be causes initial movement of the meter. There

14 is no way to tell. There could possibly still be a

15 leak and that might be causing. Mr. Dzurinskiy's

16 billing statements are not that -- we've got some

17 jumps here and there. So to say like he presented his

18 last bill was five units. My initial investigation

19 showed his average was around four to five units. It

20 then jumped up the next two months to around seven

21 units, but now he just said the last one was five.

22 And I think for the records had Missouri American

23 produce they are anywhere -- five, seven, there is

24 actually some three and four. To say we can come up

25 with a good number if a back flow preventer is

 1 installed, the usages are not necessarily something we

 2 can quantify because they jump quite a bit already.

 3   Q.   **Do you have any conclusions as to why there**

 4 **is months with five to six units versus seven to**

 5 **eight?**

 6   A.   No, I don't.

 7   Q.   **We talked about going into Mr. Dzurinskiy's**

 8 **home, were you invited into his home?**

 9   A.   Yes, I was.

10   Q.   **Did you follow his direction when you were**

11 **in his home?**

12   A.   Yes.

13   Q.   **Did you leave his side while you were in**

14 **the home?**

15   A.   No, I didn't.

16   Q.   **Did you turn off anything that he asked you**

17 **not to turn off?**

18   A.   No.

19   Q.   **Who turned off the valves?**

20   A.   I do not make it a practice to turn off

21 valves because they can start leaking. So I did not

22 turn it off. Mr. Dzurinskiy did.

23   Q.   **You testified earlier that you do not**

24 **complete an investigation during the night because you**

25 **thought it was irrelevant; is that a fair summary?**

1   A.   Yes, I think it's the best thing to do your

2 investigation when the problem is happening. And he

3 indicated it wasn't happening at night, so, I didn't

4 see a reason to walk around the neighborhood in the

5 middle of the night doing an investigation?

6   **Q.   Was it your opinion that going there in the**

7 **middle of the night, that you had enough information**

8 **from your investigation prior that that portion was**

9 **unnecessary?**

10   A.   Yes.

11   **Q.   I don't believe I have any other questions.**

12   JUDGE JORDAN: All right. Any recross from

13 Mr. Dzurinskiy?

14   MR. DZURINSKIY: Well, I just want to

15 disagree. I would like to throw out about allegations

16 that I shut off the valve. I cannot make it.

17   JUDGE JORDAN: I'm going to probe this a

18 little more here. During this test, who shut the

19 valves off?

20   A.   No one. I insist about that, and right by

21 my experience I tell you I'm an engineer. I

22 understand maybe not too much in plumbing. There is

23 difference if you shut off the main valve and inlet

24 valve. It will indicate exactly what happens so it

25 gives you an understanding why you need to shut off

1   that valve. That's why I didn't explain what I thought

2   about that involving.

3   MR. DZURINSKIY: I can explain in five

4   minutes what it usually means if you shut off the main

5   valve. If the valve work properly it shuts off the

6   water so it means when you open and the indicator is

7   just rotating in one direction, it indicates that I

8   have a leak. So, I did not shut it off because it was

9   not a reason because the employee from the water

10 company before that tried to shut it off and he

11 couldn't shut it off because the washer didn't keep the

12 water. See, what it means when the second group came

13 and shut off the inlet valve and it stopped moving. I

14 had cold water completely in my home. It stopped

15 moving so it means I did not have leak; is that right?

16 If I explain correctly. You are plumber, you

17 understand what I mean; right?

18   A.   I'm not a plumber.

19   MR. DZURINSKIY: You understand if you shut

20 off inlet valve, I still have cold water completely in

21 my home.

22   A.   That you just disconnect an apparatus.

23   MR. DZURINSKIY: I only disconnect hot

24 water.

25   A.   Then maybe you got it isolated to that

1 area, whatever it is, it stopped the ratcheting.

2   MR. DZURINSKIY: It stopped ratcheting

3 exactly.

4   A.   There we go.

5   MR. DZURINSKIY: I cannot testify against

6 myself because the water company employee refused to

7 come in my home as I did this.

8   JUDGE JORDAN: Someone refused what?

9   MR. DZURINSKIY: They performed the test in

10 my home, shut off the inlet valve. Months ago we had

11 conversation.

12   JUDGE JORDAN: So you're talking about a

13 different time when Mr. Loethen was not present?

14   MR. DZURINSKIY: No. It was before him. I

15 told him what the employees of the water did. I

16 explained him the process how it was determined.

17   JUDGE JORDAN: Let me probe into this a

18 little bit. Earlier when Mr. Loethen was not present,

19 someone from St. Louis County came to look at

20 plumbing, is that correct?

21   MR. DZURINSKIY: They came in May.

22   JUDGE JORDAN: And did they shut off some

23 valve?

24   MR. DZURINSKIY: No. They didn't shut off

25 anything. They just checked all my appliances at my

 1 home if I have no leak, but they check expansion tank,

 2 air pressure in the expansion tank.

 3   JUDGE JORDAN: Okay.

 4   MR. DZURINSKIY: Because it was indicated

 5 that it could create some kind of -- with the bladder

 6 side, so it was checked by St. Louis County inspector,

 7 he did not find anything wrong. He said pressure is

 8 just normal like it's supposed to be.

 9   JUDGE JORDAN: Has anyone ever -- I have

10 heard Mr. Loethen's testimony and I'm going to ask

11 you, has anyone examined your meter while either of

12 those valves were shut off?

13   MR. DZURINSKIY: Well, water company

14 employees.

15   JUDGE JORDAN: Okay. Missouri American

16 employees?

17   MR. DZURINSKIY: Yes.

18   JUDGE JORDAN: Okay. They turned off a

19 valve; is that correct?

20   MR. DZURINSKIY: Correct.

21   JUDGE JORDAN: Do you know which valve they

22 turned off?

23   MR. DZURINSKIY: I tried to explain. I have

24 one person from the water company in the morning about

25 nine o'clock who came and shut off the main valve, what

 1   Mr. Loethen insist that I do.

 2   JUDGE JORDAN: Okay.

 3   MR. DZURINSKIY: When he shut it off it

 4   water meter still rotating. It did not stop because

 5   the washer did not keep the water. It could not shut

 6   off completely.

 7   JUDGE JORDAN: You're talking about a leaky

 8   valve that needs a new washer?

 9   MR. DZURINSKIY: Yes. It was washer. He

10   told I need to replace washer inside. So it means what

11   he just said it didn't have any reason for me to shut

12   it off because it will rotate. I told him 20 minutes

13   later when first employee dispatched second crew, when

14   they arrived on my property. It indicated they are

15   supposed to pump up the water from the box. There is

16   not water in the box generally. The water meter was

17   up from the water about half a foot. They just asked

18   me a question if I recently replaced my appliance.

19   That is the question and I said yes, and one of them

20   followed me in my home and he performed this test. He

21   shut off the inlet involving in my water heater.

22   JUDGE JORDAN: What did that do?

23   MR. DZURINSKIY: He followed me come

24   outside, I will show you something and we look at that

25   and it stopped moving.

1   JUDGE JORDAN: So Missouri American water

2   employee shut off the inlet valve?

3   MR. DZURINSKIY: Second group.

4   JUDGE JORDAN: Okay. And that stopped the

5   ratcheting; is that correct?

6   MR. DZURINSKIY: Yes.

7   JUDGE JORDAN: Okay. Thank you.

8   MR. DZURINSKIY: But what exactly happened,

9   I tried to continue this months ago. I had meeting

10 with Mr. Jones and all his employees, their supervisor,

11 all of them. They refused to come in my home. This is

12 true. Can I ask him?

13   JUDGE JORDAN: Not really. No. Do you

14 have any more re-cross for Mr. Loethen?

15   MR. DZURINSKIY: No.

16   JUDGE JORDAN: Okay. Thank you very much.

17 Any more re-cross from the staff?

18   FURTHER EXAMINATION

19 QUESTIONS BY MS. HERNANDEZ:

20   **Q.   You were asked if you know of anything or**

21 **any regulation that requires Missouri American to**

22 **install a back flow preventer. Do you remember that**

23 **question?**

24   A.   Yes.

25   **Q.   Do you know of any -- I believe your answer**

 1   **was no?**

 2   A.   Yes.

 3   **Q.   Do you know of anything that would require**

 4   **the complainant to install a back flow preventer?**

 5   A.   Yes. Tariff and rules that if there is

 6   actually back flow happening, then the customer needs

 7   to install a back flow preventer.

 8   **Q.   That's all I have. Thank you.**

 9   JUDGE JORDAN: Okay. I'm going to require

10   briefing on this case. The parties may if they wish

11   make closing statement. But I'm going to require a

12   written brief on this. So you can make a statement if

13   you want or just write it down later. And here's what

14   I'm going to say about briefing. We have regulations

15   that -- you're excused. We have a regulation that

16   institutes simultaneous briefing, but I can change

17   that and I will because I don't find it most helpful.

18   I'm going to do alternate briefing. The first brief

19   will be from the complainant, and then I'll have

20   briefs from the respondent and also staff. And then

21   you will get the last word to reply and we'll set up a

22   schedule to do that. Once the transcript is filed,

23   the briefing schedule will start. How much time do

24   you want for a brief. Standards include 30 days, 30

25   days, 15 days. Do you want any -- do you need that to

1   be shortened? Do you want it to be quicker or would

2   you like for lengthier time to prepare?

3   MR. DZURINSKIY: I need time because I'm

4   not familiar about this procedure.

5   JUDGE JORDAN: And that's fine by me. The

6   better your argument would be the more helpful it will

7   be for me. Here's what a brief needs to be. I will

8   want it to be in proposed finding of facts and

9   conclusions of the law. Now, there is a lot of

10   misunderstanding about what that is. And I don't want

11   to hear about the evidence. I want to hear -- I want

12   to see where each person has established an element of

13   their claim or defense with a citation to the record,

14   which will mean a transcript and these exhibits. And

15   then in proposed conclusions of law. I will want to

16   see why you get what you want. From the respondent it

17   will be why you don't get what you want citing to

18   authority. That's where you cite authority. That's

19   where you put the facts and law together. And there

20   is plenty of resources to help you do that. But I

21   think you get the idea. The important thing is to

22   cite the record for finding of fact. The conclusions

23   of law you cite statutes, regulations, and tariffs

24   that you have been through. When the transcript is

25   filed, I'll go ahead and put out a briefing schedule

 1   if that is okay. Do you have problem with alternate?

 2   MR. JONES: That's fine.

 3   JUDGE JORDAN: Staff, does that sound okay

 4   to you?

 5   MS. HERNANDEZ: That's fine.

 6   JUDGE JORDAN: Now, I have heard a lot of

 7   testimony today. And there is a certain amount of

 8   history in this case, but I think there is from this

 9   case and also a certain amount of misunderstanding.

10   Staff has very generously offered to mediate this

11   case. And Mr. Dzurinskiy wants to do so also. All

12   the cards are now on the table. There are no

13   surprises left. Everyone has heard what the other

14   parties have to say. I hope that each party will take

15   up staff's invitation to discuss this further.

16   Because I think there is some room to come to a

17   further and better understanding than has happened so

18   far. I hope everyone will take that to heart. This

19   is probably not a good time to do it because it's

20   almost 4:30 and we need to get back to Jefferson City.

21   I need to get back to Columbia, but I hope staff will

22   be in contact with these parties to arrange some

23   further discussions on this issue. We've all learned

24   a lot today. And I thank everyone for their

25   attention, for difficult issues and for their

 1 explanation to me, a non-expert in engineering and

 2 plumbing. Is there anything else before we go off the

 3 record? Mr. Dzurinskiy, anything further?

 4   MR. DZURINSKIY: Well, I still would

 5 consider to make settlement about this case not to go

 6 further. It seems to me it would be beneficial for

 7 both parties.

 8   JUDGE JORDAN: I appreciate that and the

 9 law encourages settlement because generally the

10 parties can come up with something better than a

11 decision an outside decider may make. Anything from

12 the staff?

13   MS. HERNANDEZ: Just to make sure I

14 understand the briefing schedule. You will issue an

15 order once the transcript comes in. And then the

16 complainant will have 30 days or still to be decided?

17   JUDGE JORDAN: He's asked for 30 days.

18 Right now we're considering 30, 30, and 15.

19   MS. HERNANDEZ: Okay. I apologize if I

20 missed the 30 days on staff's behalf.

21   JUDGE JORDAN: That's okay. And if you

22 have a different idea, you can certainly file a motion

23 to alter that.

24   MS. HERNANDEZ: That's fine with me today.

25   JUDGE JORDAN: Okay. Anything from

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 1   Missouri American Water Company.

 2   MR. JONES: No, Your Honor. Thank you.

 3   JUDGE JORDAN: Then we'll go off the

 4   record. Thank you very much.

 5   (Whereupon, the hearing was closed at

 6   4:30.)

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21       the hearing as well as Staff's exhibit. All exhibits
22       were retained by the Judge.)
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