

In the Matter of:

LOUIS DeFEO

v.

MISSOURI-AMERICAN WATER COMPANY

WC-2021-0075, VOL. II

November 19, 2021



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

November 19, 2021

Jefferson City, Missouri (WebEx)

Volume 2

Louis DeFeo,)	
)	
Complainant,)	
)	
vs.)	File No. WC-2021-0075
)	
Missouri-American)	
Water Company,)	
)	
Respondent.)	

ROSS KEELING, Presiding
REGULATORY LAW JUDGE

MAIDA J. COLEMAN,
GLEN KOLKMEYER,
COMMISSIONERS

REPORTED BY:
Beverly Jean Bentch, CCR No. 640
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A P P E A R A N C E S

KEVIN THOMPSON, Chief Staff Counsel
200 Madison Street, Suite 800
PO Box 360
Jefferson City, Missouri 65102-0360
573.751.6513
FOR: Staff of the Missouri Public Service Commission

DEAN L. COOPER, Attorney at Law
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, Missouri 65102
573.635.7166
FOR: Missouri-American Water Company

LOUIS DeFEO, Attorney at Law
LOUIS DeFEO LAW
1700 Green Berry Road
Jefferson City, Missouri 65101
FOR: Louis DeFeo

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P R O C E E D I N G S

1
2 JUDGE KEELING: Today is November 19, 2021.
3 The Commission set this time for an evidentiary hearing
4 in Case No. WC-2021-0075. My name is Ross Keeling, and
5 I'm the Regulatory Law Judge presiding over this
6 hearing.

7 Let's start with entries of appearance.
8 Mr. DeFeo, good morning. Could you please state your
9 full name and announce that you're here for the hearing?

10 MR. DeFEO: Judge, I've lost a little hearing
11 with age, but I think I heard what you said. My name is
12 Louis DeFeo. I'm the complainant in this case. And do
13 you need further information?

14 JUDGE KEELING: Just that you're here for the
15 hearing. And then how about entries of appearance for
16 the Commission Staff?

17 MR. THOMPSON: Thank you, Judge. Kevin
18 Thompson for the Staff of the Commission, PO Box 360,
19 Jefferson City, Missouri 65102.

20 JUDGE KEELING: Any other entries for Staff?
21 Okay. How about entries of appearance for
22 Missouri-American Water Company?

23 MR. COOPER: Yes, Judge. Dean Cooper from the
24 law firm of Brydon, Swearngen & England, PC, PO Box
25 456, Jefferson City, Missouri 65102, appearing for

1 Missouri-American.

2 JUDGE KEELING: Okay. Very good. Any other
3 entries of appearance?

4 MR. COOPER: No, sir.

5 JUDGE KEELING: Okay. Does anybody have any
6 -- Let me see. Before we get started, I'd like
7 everybody to mute their cell phones or other electronic
8 devices. Please remember that any time that you're not
9 speaking, we'd all appreciate it if you would mute your
10 device or mute your WebEx device here. I want you to
11 understand that the chats in this hearing are not -- in
12 this medium are not confidential. And if you mute that,
13 if you mute the WebEx device, we won't have to listen to
14 your keyboards tapping and stuff like that.

15 So do we have anything immediately before we
16 begin that we have to deal with? Any initial remarks?

17 Okay. Then let's move on to exhibits. Does
18 anybody have any exhibits that they'd like to get
19 entered before we start?

20 MR. DeFEO: Yes, Judge. I have sent out the
21 exhibits in advance and everyone should have them. And
22 I would like to offer them as a group and then we'll
23 deal with them individually as we get into the hearing.

24 JUDGE KEELING: Well, let's deal with them
25 individually now. Okay. We'll start with the first

1 one. Let's start with the Affidavit of Robert E. Criss
2 that was sent -- Does everybody have all these exhibits
3 that we started with that were sent out? Did anybody
4 not receive the exhibits that I sent out yesterday that
5 Mr. DeFeo sent to me?

6 Okay. We'll start with the Affidavit of
7 Robert E. Criss. Mr. DeFeo?

8 MR. DeFEO: Judge, if I may, I'd like to serve
9 as a witness for myself and as I come to different
10 exhibits I would take them up. The sequence they are
11 numbered are not necessarily the sequence that I would
12 like to talk about them.

13 JUDGE KEELING: Okay. Very good. We'll wait.
14 We'll deal with those one at a time as we come.

15 MR. DeFEO: The one I'd like to take up first
16 actually would be the last numbered exhibit, which is
17 Exhibit No. 8, and that is my written testimony that was
18 provided in connection with the procedural rules that
19 were set up. You will notice there in Exhibit 8 that I
20 have identified the questions that I believe are in
21 issue. I'm not going to read this to you, because it
22 was provided for detail but I will just try to highlight
23 some of the things.

24 JUDGE KEELING: We're not putting evidence on
25 the record yet, Mr. DeFeo. Right now we're just dealing

1 with some preliminary matters.

2 MR. DeFEO: Okay. Excuse me.

3 JUDGE KEELING: Okay. Is there any evidence
4 or any exhibits that the Staff would like to put on the
5 record at this time?

6 MR. THOMPSON: The Staff Report has been filed
7 in the case, and we would request that the Commission
8 take notice of that. We would also request that the
9 Commission take notice of a sheet from MAWC's tariff.
10 This is P.S.C. MO No. 13, 1st Revised Sheet No. R32
11 canceling original Sheet No. R32. We would request that
12 the Commission take official notice of that sheet.

13 JUDGE KEELING: Okay. Well, do you have a
14 copy of that sheet that you're going to send over?

15 MR. THOMPSON: I can have a copy of it sent
16 over, if you'll give me a moment to make that happen.

17 JUDGE KEELING: Okay. As for the Staff
18 Report, we will number that Exhibit No. 100. On the
19 EFIS, that is EFIS Item No. -- Document No. 11; is that
20 correct?

21 MR. THOMPSON: I believe that's correct, sir.

22 JUDGE KEELING: Okay. And that is marked
23 confidential, correct?

24 MR. THOMPSON: That is correct.

25 JUDGE KEELING: Okay. When we mark these

1 confidential, if you bring them into the hearing for
2 this purpose, then they're not going to be confidential
3 any more and we're going to have to be writing briefs
4 and report and order off of these documents. We will
5 have to work through what is confidential and what is
6 not for the purpose of public documents. So the Staff
7 Report Exhibit No. 100 is received into evidence.

8 (STAFF'S EXHIBIT 100 WAS RECEIVED INTO
9 EVIDENCE AND MADE A PART OF THIS RECORD.)

10 MR. THOMPSON: Thank you, Judge. Mr. Spratt
11 is scanning the tariff sheet. We'll be sending that out
12 momentarily. We're sending that tariff sheet directly
13 to your email address, Judge.

14 JUDGE KEELING: Okay.

15 MR. COOPER: Judge, when you're ready to do
16 so, could we get a copy sent to the parties?

17 JUDGE KEELING: I'll send that to the parties
18 immediately.

19 MR. THOMPSON: It has been sent, Judge.

20 JUDGE KEELING: I just received that and I'm
21 forwarding it to all the parties right now. Are there
22 any objections to that?

23 MR. COOPER: Sorry, I'm making comments while
24 I was muted. I have no objection.

25 JUDGE KEELING: You don't have any objection?

1 MR. COOPER: I do not.

2 JUDGE KEELING: Okay. Mr. DeFeo?

3 MR. DeFEO: This is coming by email?

4 JUDGE KEELING: Yes, it is.

5 MR. DeFEO: I haven't seen it yet. I have no
6 objection to it.

7 JUDGE KEELING: Okay. P.S.C. MO No. 13, 1st
8 Revised Sheet No. 32 canceling Original Sheet No. 32 is
9 received into evidence as Exhibit 101.

10 (STAFF'S EXHIBIT 101 WAS RECEIVED INTO
11 EVIDENCE AND MADE A PART OF THIS RECORD.)

12 MR. THOMPSON: Thank you, Judge.

13 JUDGE KEELING: Okay. Any other exhibits?
14 Then does Missouri-American Water Company have any
15 exhibits they want to enter?

16 MR. COOPER: We do, Judge. We have the
17 Rebuttal Testimony of Tracie Figueroa that was filed in
18 EFIS. I was looking for the EFIS item number here.
19 Item 25 in both what purports to be public and
20 confidential, although I'll tell you that the public
21 version is merely the cover sheet of the rebuttal
22 testimony with the notation that the other parts of the
23 testimony have been identified as confidential.

24 JUDGE KEELING: Okay. So we'll call that
25 Exhibit No. 200. So the Rebuttal Testimony of Tracie

1 Figueroa as Exhibit 200. Are there any objections to
2 that? Hearing no objections, Exhibit No. 200 is
3 received into evidence.

4 (COMPANY'S EXHIBIT 200 WAS RECEIVED INTO
5 EVIDENCE AND MADE A PART OF THIS RECORD.)

6 JUDGE KEELING: Okay. Let's start with the
7 witnesses. Will the parties be making any opening
8 statements? Mr. DeFeo?

9 MR. DeFEO: I would like to say look at
10 Exhibit 8.

11 JUDGE KEELING: Mr. DeFeo, excuse me, we're
12 not going to argue your case in your opening statement.
13 Instead you should give the Commission sort of a road
14 map that states what you want the Commission to do at
15 the end of the case and the tariff provisions,
16 regulations and statutes that you want to rely on in
17 order to do that and what factual evidence supports your
18 desired result. So right now we're not entering
19 evidence.

20 You may make an opening statement or you may
21 pass on that.

22 MR. DeFEO: I think there are three issues
23 that I wish to address. First of all is whether or not
24 the evidence in this matter shows an actual supply of
25 water to the premises in the amount of about 40,000

1 gallons. Secondly, as to what I would call a bias by
2 the Company staff and also by the Commission staff as to
3 whether or not a meter reading by itself is proof of
4 actual receipt of the water. And thirdly, as to the
5 failure of the Company staff and the Commission staff to
6 provide the complainant information about their rights
7 that are involved as far as making a complaint either
8 informal or formal.

9 JUDGE KEELING: Okay. Very good. So
10 Mr. DeFeo, you understand that it's not evidence,
11 correct?

12 MR. DeFEO: Correct.

13 JUDGE KEELING: Okay. Very good. Are you
14 finished with your opening statement?

15 MR. DeFEO: My opening statement, yes.

16 JUDGE KEELING: Okay. Mr. Thompson, would you
17 like to make an opening statement on behalf of the
18 Staff?

19 MR. THOMPSON: Staff has no opening. Thank
20 you, Judge.

21 JUDGE KEELING: Mr. Cooper, do you have an
22 opening on behalf of Missouri-American Water Company?

23 MR. COOPER: Just very briefly, Your Honor.
24 We would note that the original complaint indicated the
25 amount at issue is about \$250. As you're probably

1 aware, in July of this year, I believe July 13 of this
2 year, the Company filed a Notice of Satisfaction wherein
3 it indicated and did refund or provide a credit to Mr.
4 DeFeo of \$250. We certainly believe that we have
5 satisfied the complaint and, of course, in the brief
6 we'll brief that a little bit further. For the time
7 being, that's what we have for you.

8 JUDGE KEELING: Okay. Thank you. Well, that
9 motion is still under consideration. Let's put on some
10 evidence.

11 Mr. DeFeo, are you going to provide testimony
12 on your own behalf?

13 MR. DeFEO: Yes, I will.

14 JUDGE KEELING: Okay. Let's swear you in.
15 Could you raise your right hand, please?

16 MR. DeFEO: I'm sorry. I didn't hear.

17 JUDGE KEELING: You will go first, sir. Will
18 you raise your right hand, please?

19 MR. DeFEO: I have offered in evidence the
20 Exhibit 8 which is --

21 JUDGE KEELING: Mr. DeFeo, I need to swear you
22 in first.

23 MR. DeFEO: I'm sorry?

24 JUDGE KEELING: I need to swear you in before
25 you give any testimony.

1 MR. DeFEO: Okay. Please.

2 (Mr. DeFeo was sworn.)

3 JUDGE KEELING: Will you please proceed?

4 MR. DeFEO: Okay. Again, I have provided the
5 written statement of the evidence from my perspective in
6 the form of Exhibit 8, and again I would offer that as
7 evidence, that exhibit.

8 JUDGE KEELING: Are you offering that now?

9 MR. DeFEO: Yes.

10 JUDGE KEELING: Okay. Let's take a look at
11 it. That is No. 8 and it is titled Complaint Statement
12 of Direct Testimony; is that correct?

13 MR. DeFEO: That's correct.

14 JUDGE KEELING: Okay. Does everyone have
15 access to that document?

16 MR. THOMPSON: Yes, Judge.

17 JUDGE KEELING: Does anybody have any
18 objections to this exhibit? Hearing none, I want to --
19 It says No. 8 on it. We're going to go ahead and leave
20 that No. 8; and hearing no objections, Exhibit No. 8 is
21 received into evidence.

22 (COMPLAINANT'S EXHIBIT 8 WAS RECEIVED INTO
23 EVIDENCE AND MADE A PART OF THIS RECORD.)

24 JUDGE KEELING: Go ahead and proceed, Mr.
25 DeFeo.

1 MR. DeFEO: I received a bill back in April
2 that was twice the amount of previous bills that I had
3 received. The bill was for I think about \$130. My
4 normal bills were 60 to \$80. And I called the company
5 service to get some advice on why this increase and what
6 I might look for as to where a leak or something like
7 that had occurred.

8 The customer service person provided me some
9 information. At the time, understand the bills do not
10 show daily use but it shows a use for 30 days. So a
11 minor leak over 30 days might have increased, but I
12 learned later when I got the data log that this alleged
13 increase in water occurred over a 73-hour period over
14 about five days and not over a period of a month.

15 I then got a second bill for about \$250 for
16 the next month. And since these two bills overlapped,
17 the actual meter reading, the data log, part of that
18 surge in alleged delivery occurred at the end of one
19 month and at the beginning of the next month. And again
20 it was not evident as to what the source of that might
21 be.

22 The Company sent out a representative to check
23 things. And we met three times and basically it was a
24 conversation, not an inspection. According to his
25 report, which was provided at the request of the Staff,

1 I'm going to look here for a moment, it's No. 4 in the
2 exhibits. The only thing he inspected was the meter.
3 He did not go into the home, go around the home or
4 around the pool house or in the pool house.

5 And after three meetings with him on my front
6 porch and answering his questions like whether or not I
7 had an automatic irrigation system, which I don't, or
8 whether I had any automatic water mechanism on the pool,
9 which I don't, he advised me at the third session that
10 his supervisor said that he had spent enough time with
11 me and that he would not be meeting with me further.

12 I believe it was at the second meeting he
13 showed me the data log, which is Exhibit No. 2 of my
14 list of exhibits, and I asked him for a copy of it,
15 which he went back to the office and emailed it to me.
16 It was then by looking at that data log that I realized
17 that the alleged service of 40,000 gallons occurred over
18 this brief period and not over a month period.

19 I took that data log and put it into Excel
20 spreadsheet and from that spreadsheet developed a line
21 graph, which is Exhibit No. 3 on my list of exhibits.
22 And you can see there a very sudden spike going from
23 both 30 or 40 gallons to 500 to 600 gallons within a
24 one-hour period and all of this spike occurred in a time
25 of 73 hours consecutively.

1 I'd like to illustrate a little bit about what
2 40,000 gallons of water looks like. If I was -- There's
3 been a number of broken water lines by the Company over
4 the last few months and they will put a notice in the TV
5 and send an email don't drink the water until we've
6 corrected it, the break in the old lines.

7 If I was playing Boy Scout and wanted to be
8 prepared for that happening, let's just by illustration
9 say that I went out and bought a bunch of 55-gallon
10 barrels to fill up with water so I would have it in such
11 an event of not having drinkable water. To save 40,000
12 gallons of water, I would need over 700 55-gallon
13 barrels and stay up for 73 hours consecutively to fill
14 those.

15 The spike that alleged a large amount of
16 water, nothing was found by the Company's representative
17 who came out, and his last words to me after he told me
18 that he couldn't meet with me further was that I cannot
19 explain where that 40 some gallons of water went.

20 The other location that was raised in question
21 was a swimming pool that I have. It's an indoor
22 swimming pool. It is 36 feet long and 18 feet wide and
23 has an average depth of about 4 feet. The capacity of
24 that pool is 20,000 gallons. Again, there is no
25 automatic mechanism that adds water to the pool, and the

1 only way to fill it is with a garden hose which is a
2 two-inch -- excuse me, a half-inch garden hose that I
3 manually use if it needs water. Unlike a bathtub, the
4 pool does not have a drain in the bottom. There's no
5 stopper that you can open and close and drain the pool.
6 And the water in the pool is just consecutively recycled
7 through a filter in order to provide the water in the
8 pool.

9 There's a simple rule of physics that you
10 can't add more fluid to a container than it is created
11 to hold. So it was already full of 20,000 gallons of
12 water. And had there been 40 gallons of water added to
13 the pool, it would not be 4 feet deep, it would be 12
14 feet deep. And obviously it would exceed the capacity
15 of the pool itself.

16 The only place the water could have gone at
17 that point was out the doors, the patio doors that are
18 on the pool house into a lower level. I guess instead
19 of calling the PSC or the Company I would be calling the
20 Conservation Commission to come and fill my new pond
21 with fish. So basically it was impossible for that to
22 occur without being very conspicuous.

23 The representative for the Commission, Dave
24 Spratt, came out -- talked with me on the phone and came
25 out and physically examined the home, the property

1 around the home, and the inside of the pool, took
2 pictures, measured the flow from the hose as to how fast
3 it went in, et cetera, and was unable to find any
4 evidence of 40,000 gallons of water being received by
5 the premises.

6 Despite all that physical evidence, the
7 Company and the representative for the informal
8 complaint brought to the Commission refused to consider
9 any of that physical evidence and only would rely on
10 what the meter said. The rules that apply and the
11 statutes make no reference to what meters say. The
12 statute says that the charges must be just and
13 reasonable. The rule says it must be the actual use,
14 not what the meter says.

15 There is a case that I have referred to which
16 is provided as an exhibit, the Beecham case, that
17 rejected that as being the law. In that case the same
18 company actually here, Missouri Water, only relied on
19 the meter readings and failed to show any actual
20 physical evidence that supported the meter readings
21 whereas, the customer Beecham provided actual
22 information and history that contradicted the meter
23 readings. That decision there is provided to everybody
24 for their examination.

25 And also I prepared a little chart to try to

1 simplify that, which is Exhibit No. 6. It shows
2 basically the facts in this case are identical to the
3 facts in the Beecham case and that a decision of the
4 Commission should be the same that the water was not
5 provided to the customer as indicated by the meter.

6 I have indicated in the issues, one of them
7 being that both the Company staff and the staff that did
8 the report seemed to have a bias that only proof of a
9 delivery of water is the meter. There is information
10 from other states. There is no information that I'm
11 aware of from the Commission staff or the Company staff
12 that backs up the total reliability of the meters. And
13 as an example I have Exhibit No. 7, which is a video,
14 and I have provided the link to that which reports on an
15 event by the San Diego City Water Department, the city
16 was operating their department, and they went to these
17 new electronic meters and had so much problem with it
18 that they offered to the customers to give them back
19 their old meters. The full details of that report
20 you'll find at the link that is provided there in
21 Exhibit No. 7.

22 Furthermore, when I saw the data log and the
23 spike that occurred, I consulted with an expert,
24 Professor Robert Criss of Washington University, an
25 internationally recognized hydrologist. When I tried to

1 get a hold of him, it took me a week because he was in
2 China consulting. And his affidavit is there and he
3 analyzed the facts of the situation and the dialogue and
4 his experience with these meters and concluded that the
5 problem was in the meter and in the system, not
6 necessarily just the meter itself. I think you have to
7 recognize the meter does not print the bill and mail it
8 out, but it is part of a system where the meter
9 measures. It's sort of like an odometer on the car
10 measures miles.

11 The meter measures water flow. And then a
12 pickup truck with antenna on it drives by and receives a
13 transmission of that reading and then transmits that to
14 the computers of the company which in turn in due course
15 print out the bill, and so forth. The interesting fact
16 is that same computer system failed the Company twice in
17 this matter. Once -- According to the Company's
18 practices, if a reading exceeds twice the amount of
19 prior use, it sends a letter to the customer to alert
20 them that they have a possible leak. I never received
21 such a letter. It was never sent by the computer
22 system.

23 My conversation and all conversations that
24 come to the Company are recorded as part of their
25 computer system. Yet my conversation with the

1 representative for the supervisor of the field person
2 was not recorded. And the reply by the Company to the
3 request for information of all communications from the
4 Company by the staff admits that. So anywhere along
5 this change of computerized processes could have
6 accounted for the spike that the expert found to be as
7 indicating the problem was in the system, not in the
8 actual delivery of water.

9 I have asked the representative from the
10 Commission who came out and did an elaborate inspection
11 to be a witness. I don't know how you want to
12 procedurally handle that, Judge. If you'll give me some
13 guidance since I'm an amateur at this process. I'm not
14 hearing you, Judge. You're muted.

15 JUDGE KEELING: Thank you. Right now you're
16 giving your testimony. When you are done giving your
17 testimony, you will have the opportunity to put on
18 witnesses as you desire.

19 MR. DeFEO: Thank you. I think I have covered
20 -- I've tried to do it in somewhat a summary fashion
21 rather than to go through this whole written testimony.
22 But again I offer Exhibit 8 as part of my testimony, and
23 I believe it's already been admitted into evidence. So
24 I will conclude at this point.

25 JUDGE KEELING: You've also mentioned Exhibits

1 4, 2, 3, 6, 7, 1 and I believe 5.

2 MR. DeFEO: I intended to mention each one of
3 them as it related to the history that I was going
4 through. Let me ask just look for a moment if I have
5 overlooked that. I think I've mentioned all eight of
6 them, and I offer all eight of them and I don't believe
7 they're objectionable.

8 JUDGE KEELING: Let's go through in order.
9 Are there any objections to Exhibit No. 4? Hearing no
10 objections, Exhibit No. 4 is received into evidence.

11 (COMPLAINANT'S EXHIBIT 4 WAS RECEIVED INTO
12 EVIDENCE AND MADE A PART OF THIS RECORD.)

13 JUDGE KEELING: Then looking then at Exhibit
14 No. 2, are there any objections to Exhibit No. 2?
15 Hearing no objections, Exhibit 2 is received into
16 evidence.

17 (COMPLAINANT'S EXHIBIT 2 WAS RECEIVED INTO
18 EVIDENCE AND MADE A PART OF THIS RECORD.)

19 JUDGE KEELING: Exhibit No. 3, are there any
20 objections to Mr. DeFeo's Exhibit No. 3? Hearing no
21 objections, Exhibit 3 is received into evidence.

22 (COMPLAINANT'S EXHIBIT 3 WAS RECEIVED INTO
23 EVIDENCE AND MADE A PART OF THIS RECORD.)

24 JUDGE KEELING: Are there any objections to
25 Exhibit No. 6? Hearing no objections, Exhibit 6 is

1 received into evidence.

2 (COMPLAINANT'S EXHIBIT 6 WAS RECEIVED INTO
3 EVIDENCE AND MADE A PART OF THIS RECORD.)

4 JUDGE KEELING: Is there any objection to
5 Exhibit No. 5? Hearing no objections, Exhibit 5 is
6 received into evidence.

7 (COMPLAINANT'S EXHIBIT 5 WAS RECEIVED INTO
8 EVIDENCE AND MADE A PART OF THIS RECORD.)

9 JUDGE KEELING: Is there any objection to
10 Exhibit No. 7?

11 MR. THOMPSON: Staff is going to object to
12 Exhibit No. 7.

13 JUDGE KEELING: How so?

14 MR. THOMPSON: Well, this has to do with the
15 City of San Diego. I don't think it has any
16 demonstrated relevance to this case.

17 MR. COOPER: Judge, I would join in that
18 objection in that there's no evidence that Mr. DeFeo has
19 a smart meter as referred to in this report and, in
20 fact, he does not have a smart meter as is referred to
21 in this report.

22 JUDGE KEELING: Mr. DeFeo, do you have a
23 response to that?

24 MR. DeFEO: The main point is these new
25 electronic meters as opposed to the manual meters where

1 somebody had to come by and read it. And I don't think
2 the difference is unique in these computerized meters
3 and that it shows as an example that they are not
4 perfect, which is also substantiated by Professor
5 Criss's affidavit.

6 JUDGE KEELING: Objection sustained. Now, in
7 Mr. DeFeo's Exhibit No. 1, are there any objections to
8 Exhibit No. 1? I'm not hearing an objection. No. 1 is
9 received into evidence.

10 (COMPLAINANT'S EXHIBIT 1 WAS RECEIVED INTO
11 EVIDENCE AND MADE A PART OF THIS RECORD.)

12 JUDGE KEELING: Mr. DeFeo, do you have any
13 further testimony?

14 MR. DeFEO: I believe earlier 8 was admitted
15 in evidence; is that correct?

16 JUDGE KEELING: Yes, sir, it was.

17 MR. DeFEO: Okay. Thank you. If there's no
18 further testimony, then we'll open it up to
19 cross-examination. Mr. Thompson?

20 MR. THOMPSON: Thank you, Judge. Good
21 morning, Mr. DeFeo.

22 THE WITNESS: Good morning.

23 CROSS-EXAMINATION BY MR. THOMPSON:

24 Q. Mr. DeFeo, the Company filed a Notice of
25 Satisfaction. Have you seen that document?

1 A. I wasn't sure whether we're taking up the
2 issues regarding your motion to dismiss and their
3 satisfaction separately or as part of it so I did not
4 comment on that at all.

5 Q. Okay. You received \$250 as a credit; isn't
6 that correct?

7 A. The Company showed on my bill a credit, which
8 I did not accept. I paid the currently due bills each
9 time, but that is correct, they put it as a credit on
10 the statement when they mailed it to me.

11 Q. Okay. So what remedy are you seeking through
12 this hearing today?

13 A. The remedies that I am seeking are three fold
14 which are set forth in Exhibit No. 8. If you look at
15 Exhibit No. 8, basically we are -- the money is not owed
16 because the water was not received but also that the
17 Company failed to carry out their obligations to inform
18 me of the right to file an informal complaint with the
19 Commission if I didn't agree with them. And thirdly,
20 what I would call a bias on behalf of the Company Staff
21 in not applying the law and the regulations as to proof
22 of delivery of service but on a bias that meters never
23 fail.

24 Q. I understand those are the issues that you are
25 complaining of. What I want to understand is what are

1 the remedies that you want the Commission to give you if
2 you prevail on those issues?

3 A. The remedies would be I would assume the
4 Commission has authority to enforce its own rules,
5 regulations and the statute. These things are set forth
6 in the statute more generally and more specifically in
7 the regulations. And it is there that the Commission
8 could take action to require the Company to do something
9 to educate their staff that is supposed to be handling
10 these consumer complaints as to what the law is both
11 statutory, regulatory and the decisions, the prior
12 decisions of the Commission. And there are different
13 tools that could be used to provide that education to
14 provide that way of communicating with customers to
15 inform them of their rights and to inform Company staff
16 that there must be actual proof, not merely meter
17 readings. That is the remedy that I would look for.

18 Q. Okay. Thank you. Excuse me?

19 MR. DEFEO: Go ahead, Kevin.

20 BY MR. THOMPSON:

21 Q. Do you have more in terms of remedy or was
22 that it?

23 A. It would be in this nature would assume that
24 the people who are more knowledgeable than I am with the
25 Commission could come up with the content of this

1 education and the tools of communicating it, et cetera.

2 Q. Okay. I assume that you have available to you
3 a copy of the tariff sheet that Staff requested the
4 Commission to take notice of?

5 A. I'm not sure. Was that the earlier document
6 that you emailed?

7 Q. That's the one that was emailed.

8 A. Okay.

9 Q. 1st Revised Sheet R32. Okay?

10 A. That is one of the tools that the Commission
11 routinely uses with companies to spell out what their
12 practices ought to be. That's a type of tool that could
13 be used, yes.

14 Q. Well, it's actually more than a tool. You
15 mentioned that you're an amateur at this type of law,
16 and would you be surprised if I told you that, in fact,
17 a filed and approved tariff of a utility company is the
18 law of the land?

19 A. I understand that, and I understand that it
20 can be revised between the Company and the Commission.

21 Q. It certainly can be revised or amended or
22 rescinded, all of those things, but until that happens
23 it is the law of the land, and you understand that,
24 right?

25 A. Yes, but I understand that the statutes, the

1 regulations and prior decisions are not being followed.
2 So it's probably due for a revision by the Commission in
3 consultation with the Company.

4 Q. I'm going to read to you the second sentence
5 of paragraph A of Rule 15 that appears on that sheet.
6 It states the Company's installed meter shall be the
7 standard for measuring and/or billing water service. Do
8 you see that sentence, sir?

9 A. I don't have it before me, but I'll accept
10 your reading which reading appears to be in conflict
11 with the statute and with the regulation.

12 Q. Well, you stated yourself that neither the
13 statute nor the regulation have any reference to meters.

14 A. That's correct.

15 Q. So I don't understand how it could be in
16 conflict.

17 A. Yes. It says actual, not meter reading. It
18 says just and reasonable, not meter reading.

19 Q. I see. So is it your position that a meter
20 reading is not, in fact, a measure of the actual amount
21 of service?

22 A. Not at all.

23 Q. Okay.

24 A. It is evidence appropriate for the company to
25 provide, but it's nothing more than evidence. It is not

1 irrebuttable and it can be rebutted as it is in this
2 case and it was in the Beecham case by actual evidence.

3 Q. I wonder if you have in front of you the
4 rebuttal testimony of Tracie Figueroa that the Company
5 has provided?

6 A. I do have that document, yes.

7 Q. Okay. And if you take a look at the exhibits
8 attached to her testimony, one of them is Schedule TF-3.
9 Do you see that?

10 A. Give me a hint as to what page it's on.

11 Q. Well, the page is simply labeled TF-3 and it's
12 a copy of a yellow slip of paper reflecting a meter
13 test.

14 A. Which was done about two months after the
15 spike.

16 Q. Very good. But you're aware that the meter
17 did pass that test, are you not?

18 A. Well, I don't have personal knowledge, but
19 I'll accept the fact that they did test it.

20 Q. Okay. And your expert, Mr. Criss, did he test
21 that meter?

22 A. No, he didn't have access to it but has a
23 general knowledge of a lot of experience on a large
24 scale with these meters.

25 Q. I understand he's got a lot of knowledge and

1 I'm not denying that he's an expert. My question was
2 simply whether he tested the meter, and you agree he did
3 not?

4 A. That is correct.

5 Q. Okay. And you understand that you have the
6 burden of proof here; is that correct?

7 A. That is correct.

8 Q. So neither the Commission Staff nor the
9 Company has any obligation to show where that 40,000
10 gallons of water went; isn't that correct?

11 A. I disagree with that, and the Beecham case
12 disagrees with that.

13 MR. THOMPSON: I have no further questions,
14 Judge. Thank you, Mr. DeFeo.

15 JUDGE KEELING: Very good. Mr. Cooper, do you
16 have any cross-examination for Mr. DeFeo?

17 MR. COOPER: I do. Thank you, Judge.

18 CROSS-EXAMINATION BY MR. COOPER:

19 Q. Mr. DeFeo, this is Dean Cooper. Good morning.

20 A. Good morning to you.

21 Q. In your opening you referred to I think both
22 the Company and then the Commission staff's bias towards
23 the meter being the proof of receipt of water. If the
24 meter is not going to provide that information, what
25 should we use instead?

1 A. As I said earlier, I think the meter is
2 evidence relevant to the question but also physical
3 evidence is relevant. And the total absence of any
4 existence of 40,000 gallons of water on the premises
5 which could not be found by the Company's representative
6 nor by the Commission representative is contrary to the
7 meter. The meter is not irreversible. I can't think of
8 the right word now. It's not something that cannot be
9 disproved by actual physical evidence and that's set
10 forth by the Commission again in the Beecham case.

11 Q. So you would agree with the use of meters,
12 correct?

13 A. I'm not hearing you. Are you muted?

14 Q. I don't think so.

15 A. Okay. Now I'm hearing you.

16 Q. So would you agree then with the Company's use
17 of meters to measure water that is delivered to the
18 premises?

19 A. I think it's one of the ways of measuring
20 water on the premises, but the rules clearly say it's
21 actual, not meter readings.

22 Q. In the absence of a meter, is there any way
23 really to measure, truly measure water usage?

24 A. Let me start with using an analogy. A car has
25 an odometer on it. That odometer is designed based on

1 the diameter of the wheels, the tires on the car. If
2 you change the tires or if they're lower, the odometer
3 is not going to be accurate.

4 Q. But would you agree that a water meter works
5 differently than an odometer on a car?

6 A. No, not basically, and that's my explanation
7 that was given to me by other people including the
8 Company that it works basically like an odometer. The
9 water passes over something that turns which in turn
10 turns the meter, and in the old days someone went by and
11 wrote down the numbers.

12 Q. You mentioned previously that there was no
13 evidence of water found on your premises, correct?
14 There wasn't any spill, there wasn't any -- there wasn't
15 any evidence of water found I guess on the ground at
16 your premises, correct?

17 A. Well, basically I think it's impossible to
18 hide 40,000 gallons of water either on the ground or
19 inside in my pool house or any other physical place.

20 Q. Hypothetically if there is a leak in a fixture
21 within your house and the water goes down the drain,
22 will there be any evidence of that on the premises?

23 A. There was no leak within the house or any
24 other place, the pool house. So if you want to talk --
25 I don't think hypotheticals are evidence, but physical

1 proof is evidence.

2 Q. But you would agree with me, right, if I have
3 a toilet, for example, that's running at my house, the
4 water will go down the drain essentially, I will not see
5 evidence of that on my premises, correct?

6 A. I would not see it, that's correct. But there
7 is -- there was no leak in the house or in the pool
8 house. The only way to add water to the pool was to get
9 a hose and manually turn it on and add water to the
10 pool, which because of evaporation and things like that
11 occasionally has to be added.

12 Q. You've mentioned a couple times, actually
13 several times, the Beecham case, what you referred to as
14 the Beecham case and which is an exhibit now in this
15 matter, and I think you alleged that the facts in the
16 Beecham case are identical to the facts in this case; is
17 that correct?

18 A. The essence of the facts were, yes, that the
19 Company was relying solely on the meter readings; that
20 the Company offered no actual proof of the presence of
21 the water. On the other hand, the customer had evidence
22 of the water use which obviously the Commission found
23 more credible than the mere meter readings. The essence
24 of the facts in both situations are the same. Are every
25 detail the same, no.

1 Q. So you don't know whether you had the same
2 type of meter as Ms. Beecham; would that be correct?

3 A. No, I don't.

4 Q. And you don't know whether your meter was
5 installed in a similar time period as Ms. Beecham's; is
6 that correct?

7 A. Correct.

8 Q. And you don't have any idea of whether the
9 timing of the test of your meter was similar to the test
10 of Ms. Beecham's meter; is that correct?

11 A. That's correct.

12 Q. And in terms of the pattern of use, you don't
13 have any idea whether the pattern of use that's shown is
14 the same between your situation and Ms. Beecham's, do
15 you?

16 A. Those details, no, but the essence of how do
17 you prove actual water use was basically the same.

18 MR. COOPER: That's all the questions I have,
19 Your Honor.

20 JUDGE KEELING: Thank you very much,
21 Mr. Cooper. Now, Commissioner Coleman, do you have any
22 questions for Mr. DeFeo? Is Commissioner Coleman still
23 here? Okay. Not hearing from Commissioner Coleman,
24 I'll move on to Commissioner Kolkmeyer. Do you have any
25 questions for Mr. DeFeo?

1 COMMISSIONER KOLKMEYER: No, thank you, Judge,
2 I don't at this time. Thank you.

3 JUDGE KEELING: Thank you. I guess I have a
4 couple questions for Mr. DeFeo. Mr. DeFeo, can you hear
5 me?

6 THE WITNESS: Yes, I can.

7 QUESTIONS BY JUDGE KEELING:

8 Q. I want to talk about this pool that you have.
9 Can you hear the plumbing in your house when there's
10 water running in?

11 A. If there's water running in the pool, do I
12 hear it in the house?

13 Q. Yeah. If you're filling the pool with water,
14 can you hear it in the house?

15 A. Probably not normally. I can answer that
16 further, but go ahead with your questions.

17 Q. I just wondered does the plumbing for the pool
18 go through the house or is it a separate line from the
19 meter?

20 A. It's all on the same meter. The line to the
21 house, there's a Y in it, if you will, and goes down to
22 the pool house. And Mr. Spratt inspected that, opened
23 up the well where it is and would observe that. It's
24 all on the same meter.

25 Q. It's on the same meter, but can you actually,

1 I mean, that water that goes to the pool doesn't
2 actually go into your house before it goes to the pool,
3 does it?

4 A. It doesn't go inside the house. The
5 connection is made right next to the house where the
6 water goes into the house and the water goes to the pool
7 house is right next to the foundation of the house.

8 Q. Okay. What type of fixture do you have in the
9 pool house where you hook up the hose to fill the pool?

10 A. It's just an old-fashioned faucet where you
11 turn it on. You manually turn it on.

12 Q. Is it connected to the wall or is it in a deep
13 sink? What does it look like?

14 A. It's connected to the wall inside the pool
15 room.

16 Q. Is that an old garage or did you build the
17 pool house for the pool?

18 A. It is a building that was built new in the
19 year 2000 and a two-car garage is attached to it. It's
20 all one building. Part of it is the garage and part of
21 it is the pool house.

22 Q. Okay. Was the pool house built at the same
23 time the pool was built?

24 A. Yes, it was all built in 2000.

25 Q. Okay. Is there any sort of drain in that

1 building, a floor drain or something like that?

2 A. There is no drain in the pool itself, as I
3 mentioned earlier. The water is merely recycled through
4 a filtering system.

5 Q. But is there a drain in the floor of the pool
6 house somewhere say, for example, if the pool
7 overflowed?

8 A. No. There is -- The only way you can empty
9 the pool is with a pump and you can reverse the
10 filtering system. If you had to empty the pool, say
11 like you had to put a new liner in it, a vinyl liner,
12 you would have to pump the water out by reversing the
13 filtering system. There is no drain like a bathtub
14 where you could just let water run out of the pool.

15 Now, there is -- I'll volunteer this. There
16 is a drain for the deck of the pool so when people
17 splash water up on the deck it has somewhere to go and
18 not just fills up on the deck. It is a series of slots
19 in the deck floor that allows water to go down through
20 the deck like, say, if it gets splashed up there.

21 Unfortunately I discovered the first time I
22 tried to wash the deck that that drain system doesn't
23 work very well and the water backed up on me onto the
24 deck that I was using to wash. And what happened when
25 this slots are, oh, maybe 3 or 4 feet long and they are

1 butted up against each other and then when the deck was
2 poured the cement went down between those slots and
3 blocked most of them up I was able to take a screwdriver
4 or chisel and break through some of that so that there
5 is some drainage but it is very slow.

6 Q. Okay. So that concrete you're talking about,
7 that deck you're talking about is a concrete surface?

8 A. Yes. Concrete deck that was poured after the
9 pool was installed.

10 Q. Okay. And during the time that this occurred
11 during this excess water usage that we're talking about
12 or alleged excess water usage, had you had any
13 construction done to the house or any additions or
14 anything like that?

15 A. Say that last sentence again. I missed part
16 of it.

17 Q. I was wondering if you had any construction or
18 remodeling done to your house during the time that this
19 issue arose.

20 A. No.

21 Q. Okay. Now, I was wondering where did you
22 learn to make an informal complaint in this matter?

23 A. I did not learn it from the company in
24 connection with this matter. Over a year before I
25 received a bill that was estimated and I questioned it

1 at that time that they had picked, as I recall from the
2 rules, that you look at a year before when the company
3 wants to come up with an estimate because the meter
4 failed and that's what happened. They had to replace
5 the meter and they relied on a year before month, but
6 unfortunately for me I guess that month was a period
7 when we had a drought in Missouri, if you'll recall a
8 couple of years back, and it was also the year that we
9 sodded the front yard. So therefore we had to use a lot
10 of water at that time because of that situation. And I
11 was informed, learned of the informal appeal process at
12 that time. So I was aware of it, yes, but they failed
13 to comply with the regulations at the present time. And
14 my concern in part is this is not -- I would doubt that
15 this practice only applied to me. And for the last --
16 Since 2003, I volunteered to run the pro bono legal
17 program at the Samaritan Center and I see the poor
18 people who come in. And for me I can pay \$250 and still
19 have plenty of groceries for my family and medicine and
20 things like that, but these people don't. And if it
21 wasn't for something like the Samaritan Center, they
22 would be unable to pay a water bill like that and still
23 have food and medicine and things that they need. So
24 they come to the Samaritan Center.

25 So I am not only concerned about me but I'm

1 concerned about these people, and that's why I'm
2 concerned about the biases that are built into the
3 system and the not complying with the rules, and so
4 forth, about informing people of their rights. And I
5 would like to see the Company in collaboration with the
6 Commission of doing more in those two areas for the
7 benefit of the public.

8 You know, in this case recognize that utility
9 companies are monopolies and the only protection the
10 public has, the customer has, is the statutes, the
11 regulations and the actions of the Commission. And if
12 those are not done appropriately, then people lose their
13 rights and lose maybe food on the table and other things
14 like that, and I would like to see some relief for the
15 benefit of those people.

16 Now, I understand one of those problems is
17 with staff of the Commission is also involved with the
18 employees of the company. But I've raised it as the
19 staff of the Commission even though technically it's not
20 part of this lawsuit but it was an opportunity for me to
21 bring to the members of the Commission these problems in
22 people not being informed of their rights and being
23 charged for things that are contrary to the law or
24 regulations. So excuse my preaching but that's my
25 thinking.

1 Q. Okay. Are you aware that Missouri-American
2 Water Company has a website?

3 A. A website, yes.

4 Q. Have you visited that website?

5 A. Yes. Then they send out information usually
6 with their statements there will be, you know, how to
7 conserve water use just like the Ameren sends out with
8 their gas and electric bills how to conserve the use of
9 electricity and gas. With the price of gas going up,
10 natural gas, they sent out things recently and the
11 Company does that also on occasion with the statements.
12 It sends out that kind of literature. And I have
13 encouraged the representatives of the Company to do much
14 more of that. But the people that I'm talking about
15 don't have internet access. Most of them have a --
16 About the only connection they have with modern
17 communication is a cell phone that they get from Walmart
18 or Target that is a pay-as-you-go kind of cell phone.
19 And I know in dealing with them they can't always pay as
20 they go which means the phone goes dead. And if the
21 phone goes dead for I think it's a month, they not only
22 lose the phone connection but they lose that number and
23 cannot go and pay the bill and have that number
24 available. So we're dealing with access to information
25 that is a lot different than you and I.

1 JUDGE KEELING: Very good then. I have no
2 further questions. And so do you have any other
3 statements other than the ones you've given in response
4 to your cross-examination?

5 MR. DeFEO: In response to that, no, Judge.
6 I'm not clear though on the issues regarding the motion
7 to dismiss or the notice of compliance whether we're
8 taking that up separately. If we are, I'd like to
9 address those at that time or whenever we're going to be
10 taking that up.

11 JUDGE KEELING: Well, you'll be able to.
12 You'll be able to cross-examine witnesses in this
13 matter. So having completed your testimony and
14 cross-examination and redirect, do you have any
15 witnesses you wish to call at this time?

16 MR. DeFEO: Professor Criss's affidavit I
17 would offer as a witness but we've also provided as an
18 exhibit so I don't think I need to take that up further.

19 I would like to briefly examine David Spratt,
20 who is the Commission's field representative.

21 JUDGE KEELING: Is Mr. Spratt here?

22 MR. THOMPSON: Mr. Spratt is indeed here,
23 Judge.

24 JUDGE KEELING: Mr. Spratt, can you hear me?

25 THE WITNESS: Yes, I can.

1 JUDGE KEELING: Okay. Could you please raise
2 your right hand and stand for a second?

3 THE WITNESS: Yes.

4 (Mr. Spratt was sworn.)

5 JUDGE KEELING: Okay. Mr. DeFeo, you may
6 proceed with your direct.

7 DAVID SPRATT, being sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. DeFEO:

9 Q. Mr. Spratt, would you just briefly describe
10 your investigation of the premises relevant to the water
11 use?

12 A. Yeah. I came to your home on September 29 to
13 look for any indications of leaks. We checked all the
14 fixtures, checked for any evidence of water running,
15 looked around the pool house, any possible damage to
16 drywall if the pool had overflowed. Nothing appeared to
17 show any sort of leak.

18 Q. Okay. We have seen floods around the country
19 and you see the damage that water can do as you
20 mentioned to drywall. There's also in the pool house
21 some wooden cabinetry. Did you notice any damage, water
22 damage to it?

23 A. I did not.

24 Q. Overall, was there any physical evidence that
25 water had been inside of the pool house other than

1 inside the pool?

2 A. No, there was not.

3 Q. And I believe it is correct you performed some
4 tests like on the water flow by taking a 5-gallon bucket
5 and turning on the hose that I use and used that as part
6 of your information in making your report?

7 A. Yes, that's correct.

8 Q. And you also took photographs if anybody would
9 like to see that; is that correct?

10 A. I did, yes.

11 Q. And did any of that show the presence of water
12 outside the pool?

13 A. No, it did not.

14 MR. DeFEO: Okay. Unless you have something
15 further to add from your experience with this, I think
16 that's all the questions I have of you. Thank you.

17 THE WITNESS: Thank you.

18 JUDGE KEELING: Mr. Thompson, do you have any
19 cross-examination for Mr. Spratt?

20 MR. THOMPSON: I do. Thank you, Judge.

21 CROSS-EXAMINATION BY MR. THOMPSON:

22 Q. First of all, Mr. Spratt, you prepared a
23 report; is that not true?

24 A. That's correct.

25 Q. That report was submitted and is part of the

1 Commission's file in this matter?

2 A. Yes.

3 Q. And do you have a copy in front of you? I
4 think it's been marked as Staff's Exhibit 100; is that
5 correct?

6 A. Yes.

7 Q. Do you have any corrections or changes that
8 you need to make to that report?

9 A. No, I do not.

10 Q. And is that report true and correct to the
11 best of your knowledge and belief?

12 A. Yes, it is.

13 MR. THOMPSON: At this time I would move that
14 the Commission receive or take notice of Staff's Report
15 filed in this matter.

16 JUDGE KEELING: Are there any objections to
17 that?

18 MR. DeFEO: I have no objections, Your Honor.

19 JUDGE KEELING: Then hearing no objections,
20 Staff Report 100 is received in evidence.

21 MR. THOMPSON: Thank you, Judge.

22 BY MR. THOMPSON:

23 Q. Now, Mr. Spratt, in discussing this case, you
24 indicated to me, did you not, that you have a couple
25 hypotheses of what could have happened to that 40,000

1 gallons of water; isn't that correct?

2 A. Yes, I did.

3 Q. And I wonder if you could explain what those
4 are for us?

5 A. Well, as Mr. DeFeo mentioned, I took some
6 measurements out there with a 5-gallon bucket and timed
7 how long it would take to fill that bucket. Crude
8 measurements but a good indication. It took about 35
9 seconds according to the memo to fill that bucket. So I
10 estimated that was one gallon every seven seconds or
11 about 8.57 gallons per minute. Comes up to about 514
12 gallons per hour which is similar to what the numbers
13 were showing at the spike. One of my hypotheses was the
14 hose could have been left on filling the pool but it
15 would have to be draining at the same time. There is a
16 filter system that can be drained out to the sewer.
17 It's quite a stretch but it's something that could be
18 possible as a suggestion of where the water may have
19 gone.

20 Q. Now, is it possible that someone could have
21 surreptitiously attached a hose to an outdoor faucet at
22 Mr. DeFeo's premises and taken water?

23 A. That's also possible.

24 Q. And it's your job to conduct investigations
25 with respect to complaints of this type; is that not

1 true?

2 A. Yes, it is.

3 Q. And often these complaints involve customers
4 who do not believe that they used as much water as the
5 company has billed them for; isn't that correct?

6 A. That's correct.

7 Q. And so the accuracy of meters is often in
8 question; isn't that true?

9 A. Yes, it is.

10 Q. And have you heard anything in this case that
11 would lead you to doubt the accuracy of Mr. DeFeo's
12 meter?

13 A. No, I can't say that I have.

14 MR. THOMPSON: That's all the questions I have
15 for you, Mr. Spratt. Thank you.

16 MR. DeFEO: May I ask a couple of questions of
17 Mr. Spratt at this point?

18 JUDGE KEELING: Well, it's Mr. Cooper's turn
19 and when Mr. Cooper may be done you may conduct a
20 redirect after Mr. Cooper and the Commissioners have
21 their opportunity. Mr. Cooper, do you have any
22 cross-examination?

23 MR. COOPER: I do. Thank you, Judge.

24 CROSS-EXAMINATION BY MR. COOPER:

25 Q. Mr. Spratt, I notice in your report you note

1 that the Company offered an adjustment to Mr. DeFeo
2 during the course of the informal complaint; is that
3 correct?

4 A. Yes, it is.

5 Q. That would have been before the complaint that
6 initiated this matter was even filed, correct?

7 A. That's correct.

8 Q. The other thing I'd like to ask you in your
9 experience, will a leaking toilet cause or can it cause
10 a fairly substantial use of water?

11 A. It can, yes.

12 MR. COOPER: That's all I have. Thank you,
13 Your Honor.

14 JUDGE KEELING: Okay. Do we have any
15 questions by the Commissioners? Is Commissioner Coleman
16 on the line? I'm not hearing from Commissioner Coleman.
17 Is Commissioner Kolkmeyer here? Commissioner Kolkmeyer,
18 do you have any questions for the witness? Not hearing
19 from the Commissioners, then Mr. DeFeo, could you please
20 go ahead and conduct your redirect if you wish.

21 REDIRECT EXAMINATION BY MR. DeFEO:

22 Q. There was some hypotheticals. My house sits
23 on a four-way corner of Ellis and Green Berry. Anyone
24 taking a hose and connecting it to my house, three of
25 those houses would have to go across one of the busiest

1 intersections in Jefferson City at Ellis and Green Berry
2 and Seven Hills Road. The nearest house that doesn't
3 involve crossing a road is to the south of me and would
4 require probably at least 200 feet of hose. And since
5 this spike occurred over a 73-hour period uninterrupted
6 day and night, had the neighbors to the south done that,
7 it would have been easily discovered over a five-day
8 period.

9 The other thing is the people who live in that
10 house, one was a classmate of my son in high school and
11 the other thing when they first moved in there was a
12 pretty deep snowstorm and they came over voluntarily
13 with their snowplow and cleared my driveway since my
14 wife and I are elderly. So I don't think there's any
15 possibility, highly speculative they would have, if you
16 will, stolen water from my house. The other --

17 MR. THOMPSON: Judge, I'm going to interject
18 here. I think this is meant to be redirect of Mr.
19 Spratt and I don't think that's what's happening here.

20 JUDGE KEELING: Mr. DeFeo -- I agree with you,
21 Mr. Thompson -- Mr. DeFeo, could you please limit your
22 remarks to redirect questions to the witness at hand
23 which is --

24 MR. DeFEO: The hypothesis was made that
25 somebody could have hooked up a hose to my house and

1 obtained 40,000 gallons of water. That's what I was
2 responding to. The hypothesis is totally unrealistic.

3 JUDGE KEELING: Your redirect would be limited
4 to cross-examination of your witness who is David
5 Spratt.

6 MR. DeFEO: Okay.

7 JUDGE KEELING: Please limit your redirect.

8 MR. DeFEO: I will stand corrected. As
9 indicated, I'm the amateur in this game with the pros.
10 Let's see. There was one other thing that came --

11 Oh, Mr. Cooper's questioning about a toilet
12 leaking in the house, there was no evidence that any
13 plumbing inside the house was leaking. So it's pure
14 speculation as what might happen with a toilet. I'll
15 conclude at that point.

16 JUDGE KEELING: Okay. So having concluded Mr.
17 DeFeo's case, who agreed to go next? Is it Staff that
18 we've agreed to put on evidence at this time?

19 MR. COOPER: Yes, Your Honor.

20 JUDGE KEELING: Mr. Thompson, do you have any
21 witnesses?

22 MR. THOMPSON: I was going to call Dave
23 Spratt, but he's already testified and we got his report
24 in and so I do not have any witnesses at this time.
25 Thank you, Judge.

1 JUDGE KEELING: Thank you. And Mr. Cooper, do
2 you have any witnesses at this time?

3 MR. COOPER: I do. I would like to call Ms.
4 Tracie Figueroa.

5 JUDGE KEELING: Ms. Figueroa, are you here?

6 THE WITNESS: I am here, Judge.

7 JUDGE KEELING: Okay. Will you please raise
8 your right hand?

9 (Ms. Figueroa was sworn.)

10 JUDGE KEELING: You may please proceed.

11 MR. COOPER: Thank you, Judge.

12 TRACIE FIGUEROA, being sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. COOPER:

14 Q. Would you go ahead and state your name again
15 for the record?

16 A. Sure. It's Tracie, T-r-a-c-i-e, Figueroa,
17 F-i-g-u-e-r-o-a.

18 Q. And by whom are you employed and in what
19 capacity?

20 A. Missouri-American Water. I'm a business
21 service specialist.

22 Q. And have you caused to be prepared for this
23 proceeding certain rebuttal testimony in question and
24 answer form?

25 A. Yes, I have.

1 Q. And is it your understanding that that exhibit
2 was marked as Exhibit 200?

3 A. Yes.

4 MR. COOPER: Now, Judge, I think my
5 understanding was is that Exhibit 200 was admitted to
6 evidence earlier. Is that consistent with your
7 understanding?

8 JUDGE KEELING: That's correct.

9 BY MR. COOPER:

10 Q. Ms. Figueroa, let me ask you this. Does Mr.
11 DeFeo have an AMI meter or Advanced Metering
12 Infrastructure meter at his premises?

13 A. No, he does not. He has a five-eighths inch
14 water meter with an AMR reading device attached.

15 Q. Would you classify that meter and AMR device
16 as a smart meter?

17 A. No, I would not.

18 Q. Can the meter be read manually?

19 A. Yes, it can.

20 Q. So if there was an allegation that the reading
21 through the AMR device was different than what was shown
22 on the meter itself, that would be easy to check,
23 correct?

24 A. Yes, it would.

25 Q. And was that checked in this situation?

1 A. Yes, it was.

2 Q. Were you also familiar with the Beecham case
3 that was mentioned earlier?

4 A. Yes, I am.

5 Q. Would you -- Are the meters at Mr. DeFeo's
6 premises and Ms. Beecham's premises the same?

7 A. No, they are not. They have different
8 manufacturers and different reading devices. Ms.
9 Beecham's meter also had been installed I believe for 13
10 years at the time it was changed, and during the time
11 that she was disputing the charges it was a Neptune
12 meter. She had a touchpad which means that somebody
13 physically will have to go and touch like a wand or a
14 reading device to it. And then in April 2018, an AMI
15 device was installed. An AMI uses a fixed or cellular
16 network where no one has to go out to read the meter.
17 It uploads to a DCU and goes into the system that way,
18 whereas Mr. DeFeo has a Badger meter. It was installed
19 in 2019. He does have an AMR device which is radio
20 frequency. That is a Neptune radio frequency device.
21 Essentially it transmits but a very short range. So
22 somebody would have to drive down his street to pull the
23 reads in. So somebody still has to go out but not like
24 the touchpad where you have to go up to the actual
25 device itself.

1 Q. But as you stated earlier, you can go up to
2 the device itself, correct?

3 A. Oh, yes, yes, you can.

4 Q. If we were to compare the usage at issue in
5 the Beecham case versus the usage at issue in Mr.
6 DeFeo's case, how would those be the same or different?

7 A. So they're different in that Ms. Beecham, she
8 experienced higher usage where it slowly went up over
9 time over a number of years. Mr. DeFeo's was very
10 sudden over I believe like a four-day period of time
11 from April 1 to April 4 of 2020, and then it stopped.
12 So there's some differences in those two.

13 Q. How about the testing of the meter? I think
14 you addressed the meter test of Mr. DeFeo's meter in
15 your rebuttal testimony, correct?

16 A. I believe so, yes.

17 Q. Was that done relatively contemporaneous with
18 the leak issue?

19 A. Yes, it was done fairly quickly by our local
20 office and it was an in place test. So an in place test
21 means they time it there as the meter is in the ground,
22 and it passed with 99.1 percent accuracy.

23 Q. Was a test done in the Beecham case at a
24 similar point in time?

25 A. I believe for Beecham it was later after she

1 had initially filed her dispute. And hers actually we
2 did a bench test which means we pulled the existing
3 meter out of the ground and took it to a test bench at
4 the St. Louis Service Center. It also passed.

5 Q. But it was done much later in relation to the
6 complaint filing, correct?

7 A. Yes, it was.

8 Q. Do you have in front of you a record of Mr.
9 DeFeo's billings from 2018, '19 and 2020?

10 A. Yes.

11 Q. And does Mr. DeFeo over that time period, I
12 guess particularly 2018 to 2019, did he receive any
13 bills that would have been greater than \$100 in a month?

14 A. So there were some higher bills in 2018 and
15 '19 that were over \$100.

16 Q. What dates in 2018?

17 A. Yes, it would have been May 4, 2018. I
18 apologize. June 8, 2018, July 6, 2018, August 7, 2018
19 and September 7, 2018 and then --

20 Q. In 2019?

21 A. Yes, it would have been June 10, 2019, July
22 10, 2019, August 7, 2019 and September 5, 2019. I'm
23 sorry. Not September.

24 Q. Stopping with August, correct?

25 A. Correct. I apologize.

1 Q. And the highest of those bills in 2019 would
2 have been what?

3 A. \$165.01.

4 Q. And in 2018, what would be the highest of
5 those bills?

6 A. \$169.73.

7 MR. COOPER: That's all the questions I have,
8 Your Honor.

9 JUDGE KEELING: Cross-examination,
10 Mr. Thompson?

11 MR. THOMPSON: I have no questions. Thank
12 you, Judge.

13 JUDGE KEELING: Very good. Mr. DeFeo, do you
14 have any questions for the witness?

15 MR. DeFEO: Yes.

16 CROSS-EXAMINATION BY MR. DeFEO:

17 Q. The first conversation I had with the company
18 representative I made the mention that we had had a
19 plumber out to the house a couple of weeks before, and
20 in your rebuttal testimony here there was an implication
21 that a plumber was called because of a leakage. And you
22 have listened -- That was recorded. You've listened to
23 that?

24 A. Yes. We submitted that in one of the earlier
25 data requests, but there was an issue with the toilet

1 and a plumber came out.

2 Q. And I clarified that the reason the plumber
3 was called was because the toilet was stopped up, there
4 was no leakage, but it was stopped up and wouldn't flush
5 and it was so stopped up, maybe one of my grandchildren
6 did it, that he had to remove the stool from the floor
7 to unstop it, but there was no leakage involved in that.
8 I just wanted to -- If you listen to the recording, you
9 will hear what I'm just saying. I just wanted to
10 clarify that was the situation. There was no leakage
11 inside the house as far as toilets or other things like
12 that. It was a stopped up stool.

13 A. I'm not sure if there was a question that I
14 was supposed to answer there.

15 Q. I'm only trying to clarify that, and you have
16 recorded that particular conversation and it indicates
17 that there was no leakage --

18 JUDGE KEELING: Mr. DeFeo, I will give you the
19 opportunity to recall yourself as a witness if you have
20 any further comments, but right now could you please
21 restrict your activity to questions for the witness?

22 MR. DeFEO: Okay. What I've said is in the
23 exhibit and in the recording of it. I don't think I
24 need to pursue it further.

25 JUDGE KEELING: Do you have any other

1 questions for Ms. Figueroa?

2 MR. DeFEO: No.

3 JUDGE KEELING: Okay. Are there any questions
4 by the Commissioners? Commissioner Coleman, are you
5 there?

6 COMMISSIONER COLEMAN: Yes. No questions.
7 Thank you, Judge.

8 JUDGE KEELING: Commissioner Kolkmeier, are
9 you there? Do you have any questions, Commissioner
10 Kolkmeier? I have a question, Ms. Figueroa.

11 QUESTIONS BY JUDGE KEELING:

12 Q. Ms. Figueroa, can you explain why Mr. DeFeo
13 was not issued a notification when his high usage was
14 detected at the time of the leakage or the alleged
15 leakage or the high use?

16 A. We have investigated, Your Honor, and we
17 cannot -- there was no known issue of letters not
18 generating for high bill usage. There's nothing that
19 appears on the account that would stop the notification.
20 The only thing that this was a one off situation
21 unfortunately that it did not produce a high bill letter
22 to the customer.

23 Q. So there's no real explanation for that?

24 A. No, unfortunately. I've had our billing
25 analysts, which this is kind of what they do is find

1 those issues, look into the matter and they could not
2 find a reason why a letter did not generate.

3 Q. Do you have a policy to do that then; is that
4 part of your company's policy to send that letter?

5 A. Yes, Your Honor. If a customer's usage is two
6 times higher than the previous year, then they would
7 receive a letter letting them know that something is
8 going on. If it's six times higher, we will actually
9 initiate a service order to verify that the reading is
10 correct.

11 Q. Okay. So your failure to send that letter is
12 a violation of your policy then; is that correct?

13 A. That is correct, sir.

14 Q. Okay. Also there was a portion of this
15 evidence there was a recording taken of the telephone
16 calls between your company and Mr. DeFeo that was either
17 erased or lost somehow. Do you know what I'm talking
18 about?

19 A. I thought that we had sent in the recordings.
20 There should have been two recordings. Now, with the
21 customer service representatives, in customer service
22 100 percent of their calls are recorded. However, in
23 the local offices they do not have the equipment to
24 record calls. So their calls would not be recorded
25 which I think is what he was implying earlier that the

1 supervisor he spoke to at the local offices call was not
2 recorded. I could be wrong though.

3 Q. Okay. So you don't have any recollection of
4 any recordings that were made but were not available for
5 examination, do you?

6 A. Correct.

7 JUDGE KEELING: Okay. That is all of my
8 questions. Do you have any recross, Mr. DeFeo?

9 MR. DeFEO: No, Your Honor.

10 JUDGE KEELING: Mr. Thompson?

11 MR. THOMPSON: No, thank you, Judge.

12 JUDGE KEELING: Okay. Are there any other
13 witnesses that we need to bring in?

14 MR. COOPER: Judge, could I have just a real
15 brief redirect?

16 JUDGE KEELING: Sure.

17 REDIRECT EXAMINATION BY MR. COOPER:

18 Q. Ms. Figueroa, you answered that the failure to
19 send that leak notice was a violation of policy, I
20 believe. Do you remember that?

21 A. Yes.

22 Q. To your knowledge, is that policy reflected in
23 your tariff or Commission rule or a statute?

24 A. No, I do not believe it is. It's just an
25 internal billing policy.

1 Q. And then just to kind of expand on what you
2 said before about the recordings, there's a difference I
3 take it between recording capability and even intent
4 between when someone is talking to a customer service
5 representative versus when someone is talking to a
6 person in the local office; is that correct?

7 A. That is correct.

8 Q. And the difference is -- Tell me what the
9 difference is.

10 A. The customer service representatives have
11 equipment built into their phones, their computer phones
12 that will record 100 percent of their calls, whereas
13 with the field operations even myself we don't have that
14 equipment capability to record phone calls, and
15 especially within the local offices they may be on cell
16 phones opposed to desk phones. So there really isn't
17 the availability to record their calls.

18 Q. And then lastly, can a, quote, unquote,
19 stopped up toilet still leak water?

20 A. I'm not a plumber; but if the flapper was awry
21 in any way or it held it open where water could flow
22 through the meter, it is a possibility.

23 MR. COOPER: That's all the questions I have,
24 Your Honor.

25 JUDGE KEELING: Okay. Are there any other

1 witnesses?

2 MR. COOPER: I have no other witnesses.

3 JUDGE KEELING: Mr. Thompson?

4 MR. THOMPSON: None for Staff. Thank you.

5 JUDGE KEELING: Mr. DeFeo, you had some things
6 to say earlier, and I wanted to give you the opportunity
7 at this time to recall yourself for redirect
8 examination. Do you have any comments that you'd like
9 to make at this time in a redirect?

10 MR. DeFEO: No, Your Honor, not on the scope
11 of what we've been discussing, no.

12 JUDGE KEELING: Okay. So have all of our --
13 Do we have any final matters that we need to deal with
14 right now?

15 MR. DeFEO: I'm sorry. I didn't hear.

16 JUDGE KEELING: I'm speaking to all of us.
17 Are there any final issues that we need to address at
18 this time before we close out our hearing?

19 MR. DeFEO: I'm not sure where we are on the
20 motion to dismiss and the notice of satisfaction.

21 JUDGE KEELING: Like I said, that will be
22 taken with the case and we can brief on that. Great.
23 If there isn't going to be any -- Have we entered all
24 the exhibits at this time?

25 MR. COOPER: I believe so, Your Honor.

1 JUDGE KEELING: If there's going to be any
2 late-filed exhibits, I want them to be filed by November
3 26, 2021, by simultaneously providing a copy to all the
4 parties and submitting an original and five copies to
5 me. That is if they're paper copies. Otherwise, I'll
6 accept electronic copies. Exhibits provided to me
7 should go to Jackie Keely at the psc.mo.gov. Her email
8 address should be available on the emails that I sent
9 earlier. Objections to late-filed exhibits should be
10 filed no later than December 3.

11 We should have this transcript in about 10
12 working days. And although our procedural order didn't
13 provide for briefs, I'd like you to file briefs. Mr.
14 DeFeo does not need to file a brief, but you may file a
15 brief as you're pro se. If you do so, I'll need you to
16 follow the same deadlines as the other briefs.

17 Now, the initial briefs, I'll write an order
18 for this, but the initial briefs I'll want within 30
19 days of the availability of the transcript in this
20 matter and the reply briefs will be due 15 days after
21 that date. I will issue an order for that when those
22 matters come to date.

23 Are there any other matters that need to be
24 addressed before we adjourn?

25 MR. THOMPSON: Were you going to take up the

1 motion to dismiss or will we simply ignore that at this
2 point, Judge?

3 JUDGE KEELING: At this point, that motion to
4 dismiss will be taken up in the final report and order.

5 MR. THOMPSON: Very good. Thank you.

6 JUDGE KEELING: Thank you. Are there any
7 other issues? Excuse me. Did I talk over somebody?
8 Okay. In that case, the evidentiary hearing is
9 adjourned. We'll go off the record.

10 MR. COOPER: Thank you, Judge.

11 MR. THOMPSON: Thank you, Judge.

12 MR. DeFEO: Thank you.

13 (Off the record.)

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