

ROMAN DZURINSKIY,
Complainant,
v.
MISSOURI AMERICAN WATER COMPANY
Respondent.

PRE-HEARING ORDER

Issue Date: November 10, 2010

Effective Date: November 10, 2010

The Commission is setting forth the following provisions to govern the evidentiary hearing in consideration of the parties' *Joint List of Issues, List of Witnesses and Order of Cross-Examination* ("joint list"), filed on November 1, 2010.

A. Issues for Proof

In a complaint action, the ultimate issue is whether Missouri-American Water Company (“MAWC”) has violated:

... any rule, regulation or charge heretofore established or fixed by or for [MAWC], any provision of law, or of any rule or order or decision of the commission [.¹]

More particularly, the joint list includes a list of issues on which the parties intend to present evidence. Paraphrasing the joint list, those issues include:

- 1) Overbilling.
 - a) Did MAWC bill Mr. Dzurinskiy in violation of statute, regulation, tariff, or decision of the Commission?
 - b) If so:

¹ Section 386.390.1, RSMo 2000.

- i) In what amount?
 - ii) What is the remedy?
- 2) Meter.
 - a) Does the meter that measures Mr. Dzurinskiy's water usage register backflow?
 - b) What is the degree of the meter's accuracy or inaccuracy?
- 3) Backflow.
 - a) Is there backflow from Mr. Dzurinskiy's plumbing?
 - b) If so:
 - i) Does such backflow affect Mr. Dzurinskiy's bill?
 - ii) What causes such backflow?
 - (1) Pressure fluctuations in MAWC's mains?
 - (2) A defect in Mr. Dzurinskiy's plumbing?
 - iii) How does MAWC customarily address backflow for other customers?
 - iv) Prevention.
 - (1) Can any device prevent backflow?
 - (2) Must MAWC pay for such device?

B. Burden of Proof

As to every charge in the complaint, Mr. Dzurinskiy has the burden of proving that such charge is more likely true than not true.² Proof means evidence entered into the record.³ If such evidence does not show an inexperienced person how to draw a fair and intelligent opinion, expert testimony⁴ is necessary.⁵

² *State Board of Nursing v. Berry*, 32 S.W.3d 638, 641 (Mo. App., W.D. 2000).

³ See Section 536.070, RSMo 2000.

⁴ See Section 490.065, RSMo 2000.

⁵ *Perez v. State Bd. of Regis'n for the Healing Arts*, 803 S.W.2d 160, 164 (Mo. App., W.D. 1991).

C. Order of Proof

The sequence of direct examination and cross examination shall be:

<i>Direct</i>	<i>Cross</i>
1. Mr. Dzurinskiy	1. MAWC 2. Staff
2. MAWC	1. Mr. Dzurinskiy 2. Staff
3. Staff	1. Mr. Dzurinskiy 2. MAWC

The regulatory law judge and any commissioner may also cross-examine any witness and inquire of any party.

THE COMMISSION ORDERS THAT:

1. The provisions set forth in the body of this order shall govern the evidentiary hearing.
2. The Commission encourages the parties to continue discussing the possibilities for settlement.
3. This order is effective when issued.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 10th day of November 2010.