

Roman Dzurinscay,
Complainant

Missouri Public
Service Commission
Case No. WC 2010-0215

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Missouri American Water Company

Memorandum of Law

Comes now, the Complainant, by the MPSC order in accordance with the discussion on the record at November 15, 2010, evidentiary hearing, respectfully stating the following:

As Mr. Loethen (Staff) was appointed by the MPSC to investigate the case and later testified, was cross examined and presented the Exhibit (Staff 1), data request to me, he failed to provide, describe, present true material facts as a matter of the investigation. Most of his assertions including clear, undoubtful and undeniable facts were based just on his beliefs, including countless mistakes, misrepresentations, and intentionally omitting material facts. He simply ignored to verify obvious facts and some testimony under the oath was falsified. All his information provided is inconclusive, evasive, inconsistent and mostly based on someone's opinion who is not familiar in details with the case and never been on premises.

By Mr. Loethen statement, he had never had a case (unique one) like this (Tr. P152, L12) "So it's the first time" working as an investigator for many years for the MPSC. Moreover, he is not a licensed plumber in St. Louis County and not familiar with the local plumbing codes and regulations (Tr. P158, L11-13, P159, L25, P. 164, L2) Even at this point he is not considered to be as an expert in plumbing matters. By his statement, he just observed and didn't investigate facts (Tr. P152, L21) "I can't investigate all your plumbing in your home" (who didn't allow him to do this?). He just presented assumption from the MAWE, hepture how a wjmeter might work not how it must work (Tr. P. 158, L1-24) "they gave an assumption they thought might be happening, but they didn't produce any kind of documents". It means, Mr. Loethen doesn't know for sure how it performs. He also confirmed (Tr. P157, L25, P158 L1-4) "nothing, but mechanical device only can push the water backward" "not without a mechanical device, nothing". It confirms mine, other plumbers, Mr. Linat (MAWE witness) statement that it can't go backward by gravity. He doesn't know if he even observed when the flow indicator rotated the main hand deducted water (Tr. P. 166 L2-11). "I don't know if I did or not... it could be drips of water, so it could be dripping forward and backward and never turn the hand back". Since a very stage of investigation Mr. Loethen was informed by me the wjmeter didn't reset overnight,

but he refused to explain why and didn't check or verify it. (Tr. p. 167, 18) "I didn't need look at it when it was happening not when it wasn't". Even the Exhibit "F", which was given to me 2 months later, shows an even line overnight, confirming my statement. He also doesn't guarantee the backflow device will work (Tr. p. 167, 116) "That is my opinion on the inspection. I can't guarantee 100% that a backflow preventer will solve problem, but that is my opinion, and again (Tr. 181, 15). He still doesn't know what a plumbing problem is (Tr. p. 168, 14) "No, I don't know what the problem is". He also presented a false information (Tr. p. 168, 15) "Because when I turned the valve off in your home", and later he stays after my question who did it (Tr. p. 169, 18), "I (Roman) turned the valve off" and later (Tr. p. 183, 116) "I don't make it a practice to turn off valves because they start leaking". Indeed, I stated, no one turned it off during the investigation, but the HAWC employees (during their investigation on December 4, 2009 and supplied me with a document attached). He couldn't even identify after I showed him 2 valves (main and inlet one to the w/meter) (Tr. p. 169, 140) "It was my understanding it was the main one". He didn't complete any test to find a problem, beside of installing just a graphic recorder (Tr. p. 175, 13-5) "But no other test completed - no". He can't explain why it ratcheting and what kind of a problem it is (Tr. p. 175, 113, 17, 19) and says "I didn't investigate that, but no". He also confirms that ratcheting has no pattern (Tr. p. 179, 131) "It doesn't have a pattern, (Tr. 181, 13, 5) "I don't know, I have no idea", and again confirms it (Tr. p. 180, 6-10). He suggests to install another, more precise w/meter, if available, just only to see correct numbers deducted, or reverse the w/meter (Tr. p. 181, 117). He couldn't even confirm if all Romes' w/meters he investigated were on the same line (Tr. p. 148, 12).

As it just remains Mr. Leeffen's opinion that I have a plumbing problem causing ratcheting without identifying one as a physical evidence, and not even trying to do it, in controversy with his other opinions, in disregard of two St. Louis County Plumbing inspections, codes and regulations, the DNR rules (10 CSR 60-11.010 (1B) not applied to the residential homes, even the HAWC tariffs, not mentioning, the device needs to be inspected annually by a certified special technician and to be paid for by a customer (DNR 10CSR 60-11.030) and even not aware that our area is prone to the underground light water and can damage the w/meter in the wintertime if it's installed on riser (a special insulated w/meter needs to be installed or specially insulated) which will lead to the very negative consequences, without knowing that alterations need to be done and they are very expensive. He still suggests to install a backflow device not guaranteeing it will work. But it has nothing to do with the w/meter performance under present conditions. As a result of the investigation (it was not conducted professionally) even Mr. Leeffen is entitled to express his opinions, as a matter of fact, I don't find almost all of them convincing enough in any way to qualify him as an expert in this particular unique case, and his suggestions (without merit) and recommendations not to be considered by the MPSC in its decision.

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"Who is responsible for a backflow?" the MAWC asks on their website. The answer is - "Both". A customer and the company. Customer, for maintaining his appliances and complying with the local plumbing code, inspected by the local authorities. Water company for maintaining a proper water pressure. It appears that both sides comply. But while the MAWC insists me to install a backflow device only to stop reeking, without identifying its cause, I have no obligation to install one under the DNR rule 10 CSR 60-11.010(3) ("Doesn't apply to customers' facilities used solely for residential purposes unless cross-connection is specifically identified or the rule indicates otherwise"), St. Louis County Plumbing code and even outdated the MAWC rules. Even the DNR gave authority under the rule 60-11.010.2.4(c) (The supplier of water may develop for use within his/her service area; written procedure to implement the provision of this rule) the DNR didn't give authority to mispell, omit and misidentify its words' definition. Exhibit 7 (MAWC) Form 13-22.0 contradicts definition of DNR rules and doesn't even apply to the residential areas. (DNR 10 CSR 60-2.015 - "Definition") This rule defines terms as "Cross connection any actual or potential connection or structural arrangement between public water system through which it's possible to introduce into any part of the public water system any used water, industrial gas or substance other the intended potable water." Definitely, not in my case. The MAWC has no or can't provide such evidence, so their Exhibit 7 (cross connection) is obsolete. All other requirements about plumbing as a customer are met by me. So, no other provisions of DNR rules 10 CSR 60-11.010 apply to me.

The DNR is more than aware of the case. I voluntarily informed St. Louis and Jefferson City DNR Clean water Department, particularly Mrs. Cash, D, who is an expert in installing of backflow devices. After learning the situation, she assured me, she has never heard of installing the device in residential homes (so didn't Mr. Linar in his testimony Tr. p.141, 14) and I am not required to install one regarding the DNR and other rules. She also raised the same issues which I mentioned previously, such as: property elevation, commercial property nearby and the water demand-supply. All of these factors, by her account, may contribute to a backflow. But she couldn't explain how water from my home can enter the MAWC main by gravity. She also called the MAWC (Mr. Johns, K) and explained him that I have no obligation to install the device under the DNR rules, unless the MAWC can prove my water can contaminate public system and how, by the DNR rules. And Mr. Johns in our October 2010 meeting agreed, the company has no such proof.

As I stated before, the water from my home can't by gravity flow into the main. It was confirmed by the MAWC engineer Mr. Linar "that a mechanical device is needed to push water backward under present conditions or have a very massive plumbing system (like irrigation one) to overcome present pressure (Tr. p.140, 127). None exists in my home. He also raised an issue about "equalization" (Tr. p.130, 110, (p.135, 123). meaning water pressure in my plumbing system can only rise from the main pressure and can't exceed it, not vice versa. He also confirmed my previous statements that

water in the mains can fluctuate and drop pressure because of the different factors, including elevation (Tr. A127, L15-24) (P128), so several houses on both sides of mine can't even be visibly affected by this. They try to maintain w/pressure of about 30psi (Tr. p129, L10) in their mains. And more over, he has no knowledge of installing a backflow devices in residential areas (Tr. A141, L4).

Exhibit G (Last page - Connection pipes) clearly shows how the main pipe connected to the service line (on the top) and when the water pressure in main drops, it can trigger a backflow (or sucking effect), what I believe happens. Exhibit G, P.7(12) indicates how much, if I had a leak could add to my quarterly bill (\$100.00) so, there is no issue about leakage at all. It doesn't exist: the water is always under pressure, so Mr. Loetjen needs to think out of box at this point (All water leaks somewhere and there no meter left to use for my needs).

The main issue is a water meter, which by the MAWC account, registers water properly in both direction. It appears the MAWC disregarded or didn't want to confirm a usual real observation by Mr. Loetjen (his information from the manufacturer), me, and even their own employees. On my request regarding rule 4 CSR 240-2.050 (Discovery) to supply me with the data about w/meter, particularly with a backflow graphics and description, ranges of flow and other information, the company just sent to me general information, pointing out later I can obtain this information either from their website or Neptune (Tr. A110, L13-25) which of course doesn't exist. It's violation. On my request to obtain this information from Neptune was denied and referred to the MAWC as am not their customer, pointing out future legal litigations may arise, when I explained why I needed the information.

As I told to the MAWC and Staff before, the Neptune, in 2009 was sued by the City of Honolulu of having their installed w/meters (40,000-50%) failed because of countless defects (public information from Internet)

I also state, the MAWC violated rule 4 CSR 240-10.030(3). "Systems of meter and test records already in use will meet with the approval of the commission, provided they conform substantially with the rule. Application shall be made to the commission for the approval." It appears, the MAWC couldn't produce the document.

Also, in Exhibit 5, Form 3, 27.0 MAWC rules of "measurements of test" says "tested using company's intermediate and maximum flow" violates the MPSC rule 4 CSR 240-10.030(37). "Tests for accuracy shall be made with a suitable testing device in accordance with the best modern w/meter practices and rates of flow which will properly reflect the accuracy of meter over each meter's range of minimum to maximum flow under average service pressure". By Mr. Linar's statement "we want to have it about 30psi in St. Louis County (Tr. p120, L10).

the MAWC couldn't clearly verify who was a company to certify their modern equipment (Tr. P112, L24), how it was calibrated and more important how could they replicate "present flow conditions" test if they didn't know the actual (or average) pressure. Exhibit "H" and Exhibit "F" shows what w/meter should be tested at.

In Mr. Matschner testimony he as an expert couldn't answer about gear ratio, "I don't know" (Tr. P. 112, L. 24-25), about a sweep hand if it can deduct water, "I am not sure exactly." (Tr. P. 114, L. 1-3, L. 5), about facility where the test of the w/meter was taken (Tr. P. 113, L. 24), in violation of rule 4 CSR 240-10.030(6).

And regarding the w/meter tests, Exhibit 4, required by 4 CSR 240-10.030(3)⁽¹⁵⁾, 4 CSR-240-10.030(37) there are countless violations, such as.

Page 1 (upper) 1. no name who performed test
2. no showing average w/pressure.

Page 1 (Lower) 1. no name who performed test
2. no date when it was performed
3. no showing average w/pressure
4. no reason for the test, 1/8-shows "0"-indicating it failed or wasn't performed.

Page 2 (upper) 1. doesn't show the test was in backflow (Tr. P. 88, L. 19-21).
2. no reason for the test
3. no name who performed test
4. average w/pressure 60 psi - is wrong, it should be between 30-40 psi.

Page 2 (lower) 1. doesn't show the test was in backflow (Tr. P. 88, L. 19-21).
2. no reason for the test
3. no name who performed test
4. average pressure 100 psi - is wrong, it should be between 30-40 psi.
1/8-shows accuracy only 10%, indicating it failed.

All of the above confirms that the w/meter can't perform as accurate in backflow as it was stated by Mr. Matschner, and there is no law prohibiting testing it or performing it in backflow accurate. This difference by my estimate of just of 1 gal. per hour (7.5 times less of 1/8 test performed) costs me about 2 M3 a quarter. It's outrageous, when the MAWC tries to use a loophole in the law to justify this.

In Exhibit 1 (staff), Mr. Loethen mentioned about an additional w/meter test taken on his request, revealing some differences in forth and backflow. The test never surfaced neither from Mr. Loethen nor from the MAWC.

The MAWC witness Mr. Matschner presented just a broad information about w/meter, how it works or (should work) registering water. With all respect to him as a long time employee for the MAWC, and who was on my property and saw with his own eyes how the w/meter didn't register water in backflow - his information (general one) available from the Neptune website (but no specifics). Anyone without special knowledge can understand it. But Mr. Matschner didn't show that his background, education, experience as an engineer in w/meters' systems, as required by the AWWA, so his qualification to be as an expert can't be justified.

I would also raise again an issue of the billing by the MAWC. It appears to be innocent first, but it also could be deceptive. The MASC rule 4 CSR-10.040(2) says: "...show the reading of the meter at the beginning and end of the period for which the bill is

rendered. and shall give the dates of reading, the number of units of service supplied," It doesn't specify which units (whole or decimals) and that is why the HAWC uses uncommon practice to round it to the lowest down digit. It appears the company making a favor to customers deferring the payment for the next reading cycle. Eventually, it will be paid later. But this practice triggers a deceptive chain reaction. For example, how it works. A customer with the real w/meter reading of 10,95m³ will get last bill reading of 10,0m³. Another customer with a 10,05m³ also will get the last bill reading of 10,0m³. The average of two is 0,5m³ not accountable for this period. Having about of 400,000 only residential customers in St. Louis County it's about of 200,000m³ not taken into account. What happens if the MPSC approved new rates and they will be in effect in 30 days (example) after the last actual reading? It means 1/3-33% of all 90 days cycle days will go with the old rates - the rest 2/3-67% with the new one. The current water rate is \$2.3925, the previous is \$2.0835 (increase of about 11% and the tendency continuous) shows the difference of \$.0309 increase. And the formula shows how it works: 400,000 customers x 0,5 (average m³ not accounted from the previous period) x 0,67 (67%) - 60 days of the new rates in effect x \$.039 (difference in new rates) = \$52,000 of a doubtful profit made just in one day (when rates change) only in St. Louis County and just residential customers. Taking into account all other customers in MO serviced by the HAWC, including commercial, it will generate a huge profit to which the HAWC is not entitled, and possibly illegal, using a loophole in the law or interpreting it of its own way. And this trend is going on and on.

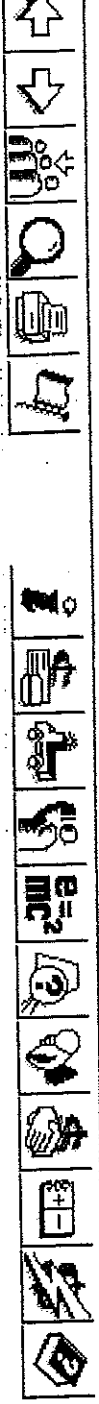
The rule 4 CSR 240-13(025)-Billing Adjustments doesn't apply to me because no standards are developed in backflow and the HAWC w/meters can't be tested properly.

After all above mentioned facts, information and testimony, I believe the HAWC failed to prove that I have plumbing problems, they cause rechecking and I am required to install a backflow device (in respect to any law), and that their w/meter can't properly register in low backflow (tests did prove it) and their billing practices are not beneficial to the customers. Beside this, they violated the consumer law charging me twice for the service I didn't utilize. No laws, rules were intended to do this. The company had a choice to settle the case (and I insisted for this many times) but instead decided to waste the taxpayers money and misrepresent and hide the true facts.

I urge the MPSC to look at this case as unique, (and even the HAWC possibly might not substantially violated some provisions of laws, rules and regulations using loopholes, misrepresentations and outdated tariffs), and waive its rules and regulations in my favor, ordering the HAWC to make adjustments to my previous, current and future bills of 2,0m³ (deductions) of water per quarter.

Respectfully : Roman Dzhrinskiy

12.21.2010



Misc Chrg List | Fixed Chrg List | Contract Entry | Billed Svc List |
 Work with S/O | New/Edit S/O | S/O Acct Info | Premises Addtl | S/O Predef Cmt | S/O Comments | S/O Services |
 Service Order Type HILOW ReRead and/or Inspect for Leak Service Order Number 5061110

Comment Lines		Type
Re-read/inspect meter and check for leaks; customer has high bill. Customer wishes to be present for inspection.	S	
Customer had used kit online, believes that something is wrong with the meter because it is always moving. Advised that that would show a leak. Wants meter checked. Issued a HILOW.	S	
W001 Meter reading: 93.	S	
timed mtr 15 min mtr shows 7 tenths of a cubic ft loss can not detect leak at mtr and yoke i am sending two man crew to pump out box to the bottom to check for service line leak customers stop and waste will not shut off completely to test between mtr and shut off valve and	S	
Verified read OK	S	

Fold/Unfold

Jennifer, this paper was supplied to me by the HVAC as a part of my subpoena earlier. It clearly indicates what I stated that I didn't start off a water breaker it didn't completely break when the HVAC engineer in December 2009 tried to do this. So it wasn't a reason for me to do a stupid thing. I only indicated to Steve what the first employees did and what what is correct (what by the first) and. Neither I nor Steve touched anything. Steve wasn't involved in this testimony and report. (The valve is still in the same condition as it was a year ago)