

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

ROMAN DZURINSKIY,

Complainant,

v.

MISSOURI AMERICAN WATER COMPANY

Respondent.

)
)
)
)
)
)
)
)
)
)

File No. WC-2010-0215

ORDER REGARDING SUBPOENAED DOCUMENTS, STAFF'S RECOMMENDATION, AND MOTION FOR SUMMARY DETERMINATION

Issue Date: September 14, 2010

Effective Date: September 14, 2010

The Commission is:

- Denying Roman Dzurinskiy's motion to strike Staff's recommendation,
- Ordering Missouri American Water Company to make a further response to Mr. Dzurinskiy's subpoena, and
- Setting forth the filing deadline for Mr. Dzurinskiy to file any response to the motion for summary determination.

Mr. Dzurinskiy's complaint alleges billing errors due to a faulty meter.

A. Motion to Strike

Mr. Dzurinskiy filed a *Motion to Have the Case Reinvestigate[d] or Strike Down the Evidence and Recommendations by the Staff Investigator* ("motion to strike").¹ Staff filed a response to the motion to strike.² MAWC filed no response to the motion to strike.

¹ On September 2, 2010.

² On September 10, 2010.

In the motion to strike, Mr. Dzurinskiy asks the Commission to disregard the *Staff Investigation and Recommendation*.³ Mr. Dzurinskiy alleges that the Staff investigator, whose affidavit supports such pleading, carries a pro-MAWC bias. As evidence of such bias, Mr. Dzurinskiy describes the Staff investigator's entry upon the grounds of MAWC customers to examine water meters.

Staff cites its continual duty—regardless of any pending complaint—to inspect utility property:

The commission shall:

(1) Have general supervision of all . . . water corporations[.]

(2) Investigate and ascertain, from time to time, the quality of . . . water supplied . . . by persons and corporations, examine or investigate the methods employed by such persons and corporations . . . in supplying and distributing water for any purpose whatsoever, . . . and have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such . . . water, . . . and have power to order reasonable improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus and property of . . . water corporations[.]

(3) Have power, by order, . . . to fix from time to time standards for the measurement of the purity or pressure of water to be distributed or sold by persons or corporations for any purpose whatsoever, and . . . for the purpose of determining whether the water furnished or sold conforms to the standard of purity and pressure, and for the purpose of determining whether the sewer system conforms to the standards for designing, constructing, operating and maintaining sewer systems, and conforms to the orders issued by the commission, the commission shall have power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering and supplying . . . water, . . . and shall have access, through

³ Filed on March 12, 2010.

its members or persons employed and authorized by it, to make such examinations and investigations to . . . all parts of the systems owned, used or operated for the supplying and distribution of water . . . by any such person or corporation [.]

* * *

(5) [W]henever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaints, that the property, equipment or appliances of any such person or corporation are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

* * *

(7) Have power, either through its members or inspectors or employees duly authorized by it, to enter in or upon and to inspect the property, buildings, plants, factories, powerhouses, ducts, conduits and offices of any such corporations or persons. [⁴]

Staff also cites MAWC tariffs to show that the water meter is MAWC property,⁵ and conditioning Mr. Dzurinskiy's water service on him allowing access to inspect it.⁶

In describing the Commission's continuous duties, Staff also states that "a 'case' is never closed and is always before the Commission unless a court has removed jurisdiction."⁷ In support, Staff cites the Commission's authority to change one order by simply issuing another.⁸ But, unlike other orders, an order that decides the issues and claims in a contested case—like this action—is not subject to change. That is because,

⁴ *Id.*

⁵ MAWC tariff *P.S.C. MO. No. 6*, First Revised Sheet No. DF1.5.

⁶ MAWC tariff *P.S.C. MO. No. 6*, Second revised Sheet No. R9.0.

⁷ *Staff Response*, page 2.

⁸ Section 386.490.3, RSMo 2000.

among other things, such order precludes the parties from re-litigating those issues and claims.⁹

In any event, for Staff's investigator to execute the Commission's continuing duties shows no bias, and the Commission's regulations provide striking allegations only if they are irrelevant,¹⁰ so the Commission will deny the motion to strike.

B. Subpoena

Mr. Dzurinskiy filed a copy of a subpoena requesting certain documents from MAWC.¹¹ MAWC filed *Objections to Complainant's Request for a Subpoena*.¹² Mr. Dzurinskiy filed *Objections to MAWC Request for Rejecting Documents Requested by Subpoena*,¹³ which the Commission will treat as a motion to compel compliance with discovery ("motion to compel"). MAWC filed *Objections and Answers to Complainant's Request for a Subpoena*.¹⁴ As of that filing, only one matter in the motion to compel remains at issue.

At issue is the following:

Request 3: Graphic recording water pressure in the main pipes of 24 hours duration on December 4, 2009 at various points on the system. (It will reveal the water pressure fluctuations which trigger water backflow from my pipes into the main system).

MAWC raises the same two related objections in both its *Objections to Complainant's Request for a Subpoena* and its *Objections and Answers to Complainant's Request for a Subpoena*:

⁹ *State ex rel. Missouri Gas Energy v. Public Service Com'n of Missouri*, 224 S.W.3d 20, 26 (Mo. App. W.D., 2007) (citing *Bresnahan v. May Department Stores Co.*, 726 S.W.2d 327 (Mo. banc 1987)).

¹⁰ 4 CSR 240-2.070(6).

¹¹ On August 19, 2010.

¹² On August 26, 2010.

¹³ On September 2, 2010.

¹⁴ On September 3, 2010.

MAWC objects that Request 3 is irrelevant, immaterial, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, in that it seeks information about MAWC's entire St. Louis County distribution system, which includes approximately 4,200 miles of main, and not areas near Complainant's residence. Without waiving said objection, MAWC states that it does not measure or record pressure in its water mains.

But Mr. Dzurinskiy clarified his request in the motion to compel.

In the motion to compel, Mr. Dzurinskiy refers to Commission regulation 4 CSR 240-10.030(36). That regulation requires certain water utilities to use "graphic recording pressure gauges" to record "water pressure at various points on the system" and "in the mains at [certain] points" and maintain such records for two years.¹⁵ As of the date of this order, MAWC has not addressed that regulation, as to why producing records as required by law is unduly burdensome, why MAWC need not keep such records, or why the request is overbroad and unduly burdensome if MAWC has no such records.

Also, the request itself shows that the records are not irrelevant or immaterial. Mr. Dzurinskiy's theory is that fluctuations in MAWC's water pressure caused his billing errors, and water pressure readings are reasonably calculated to lead to the discovery of evidence admissible on that theory. Such matters are within the scope of discovery.¹⁶

Therefore, the Commission will order MAWC to either:

- No later than September 23, 2010, file a response to this order stating why MAWC does not maintain the records that 4 CSR 240-10.030(36) requires; or
- No later than September 24, 2010, deliver or make available to Mr. Dzurinskiy the records requested for December 4, 2009.

¹⁵ 4 CSR 240-10.030(36).

¹⁶ Missouri Supreme Court Rule 56.01(b), 4 CSR 240-2.090(1).

C. Summary Determination

On September 10, 2010, MAWC filed a *Motion for Summary Determination*. The Commission's regulations set the time for filing a response to such motion at 30 days. Therefore, any response from Mr. Dzurinskiy must arrive at this Commission, either by physical delivery or through the Commission's electronic filing and information system, no later than October 11, 2010.

THE COMMISSION ORDERS THAT:

1. Roman Dzurinskiy's *Motion to Have the Case Reinvestigate[d] or Strike Down the Evidence and Recommendations by the Staff Investigator* is denied.
2. Missouri American Water Company shall respond, as set forth in the body of this order, to the subpoena of Roman Dzurinskiy.
3. Roman Dzurinskiy shall file any response to the *Motion for Summary Determination* no later than October 11, 2010.
4. This order is effective when issued.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Dated at Jefferson City, Missouri,
on this 14th day of September 2010.

Jordan, Regulatory Law Judge