

PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

ROB LEE,	)	
	)	
Complainant,	)	
vs.	)	Case No. WC-2009-0277
	)	
MISSOURI-AMERICAN WATER CO.,	)	
	)	
Respondent.	)	

**RESPONDENT’S RESPONSE TO COMPLAINANT’S “FINAL LETTER” AND MOTION FOR DECISION ON THE MERITS**

COMES NOW, Respondent, Missouri-American Water Company (hereinafter “MAWC”), by and through its counsel, HeplerBroom LLC, and for its Response to Complainant’s “Final Letter” and Motion for Decision on the Merits, states as follows:

1. In this action, Complainant filed numerous Complaints and Amendments thereto in which he alleged current, on-going leaks at various points throughout MAWC’s infrastructure in both Complainant’s neighborhood and the surrounding areas. In addition to this action, Complainant has also brought a civil action which has been pending in St. Louis County Circuit Court for over a year.
2. Complainant was afforded ample time to conduct written discovery both in this action and the civil action.
3. In response to the numerous complaints filed in this action, MAWC and the Public Service Commission Staff conducted extensive investigations in and around Complainant’s neighborhood to determine if current leaks exist at the various locations listed in the complaints.
4. At Complainant’s suggestion and request, a formal evidentiary hearing was held before the Commission on June 9 and 10, 2009 at which Complainant was

afforded the opportunity to present his case on the issues raised in his numerous Complaints and Amendments.

5. A substantial portion of those two (2) days were spent in recess to allow Complainant every opportunity to present his case to the Commission. Then on June 10, 2009, Complainant rested his case-in-chief, with the exception that he would be permitted to submit a written summary of the repairs made by MAWC to its infrastructure in his neighborhood in accordance with a scheduling order entered by the Commission. The Commission continued the evidentiary hearing to a later date which was to be scheduled pursuant to the availability of the parties.

6. On June 17, 2009, Complainant filed an email in which he stated that he had “decided not to return to Jefferson City to continue the hearing.”

7. On June 26, 2009, the Commission entered an Order in which it offered Complainant the option of continuing the hearing at an alternative location that was more convenient for him. Additionally, the Commission’s Order still afforded Complainant the opportunity to file his summary of MAWC’s repairs and set a deadline of July 10, 2009 to do so.

8. Instead of submitting the summary, Complainant filed an email on June 30, 2009 in an effort to clarify his previous email in which he stated he had “no intention of participating in this argument any longer” but planned to “follow up with a letter in the next couple weeks...”

9. On July 2, 2009, the Commission issued an Order in response to Complainant’s June 30, 2009 email, stating that it intended to treat Complainant’s first and second statements as a motion for voluntary dismissal without prejudice. However,

the Commission also noted that it “could issue a decision on the merits,” and ordered Complainant to file any “follow-up letter” by July 14, 2009. In that same Order, the Commission explained that “[o]nce evidence has been offered...a complainant may dismiss an action only by leave of the commission, or by written consent of the adverse party.” Citing *Missouri Bd. of Pharmacy v. Tadrus*, 926 S.W.2d 132, 135-136 (Mo. App. W.D. 1996).

10. On July 14, 2009, Complainant filed a document entitled “Final Letter.” He did not seek leave to voluntarily dismiss the action, but continued to attempt to re-argue his case, clearly implying that he desired a decision on the merits. In his “Final Letter” he cites and argues documents from the internet which the commission previously determined to be inadmissible hearsay,<sup>1</sup> attacks the credibility of officers of the Commission Staff, attempts to discuss his alleged health issues which are clearly irrelevant and inadmissible in this action and attempts to somehow change or correct his responses to questions posed to him during cross-examination.

11. In response to Complainant’s discussion regarding the fluoride results in MAWC’s water quality analyses in his “Final Letter,” Respondent briefly directs the Commission to Tom Simmons’ testimony on the subject. At the Evidentiary Hearing, Mr. Simmons testified groundwater in Complainant’s neighborhood typically contains a fluoride content of approximately 0.3 parts per million which is consistent with each of Respondent’s test results for the water samples collected from Complainant’s basement. See Transcript of Proceedings, p. 286-287 and Respondent’s Exhibits C7, C8, C9 and C10. Therefore, the fluoride levels found in each of the water samples collected from

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<sup>1</sup> See Order Denying Evidentiary Motions Without Prejudiced issued May 19, 2009.

Complainant's basement support the conclusion that groundwater is the source of the water and not water treated by MAWC.

12. Because Complainant's "Final Letter" contains inadmissible material and is in violation of Missouri Rules of Evidence, Respondent moves that it be stricken from the record.

13. Additionally, Respondent requests that the Commission render a decision in favor of Respondent based on the evidence presented at the Evidentiary Hearing as Complainant clearly failed to meet his burden of proof.<sup>2</sup> As stated above, Complainant has failed to seek leave to voluntarily dismiss the action and in fact implies that he desires a decision on the merits, and Respondent does not consent to a voluntary dismissal.

14. Finally, at this time, Respondent requests leave to file a brief in lieu of its closing argument to summarize the evidence presented at the Evidentiary Hearing if the Commission believes that such brief would be helpful to it in rendering its decision.

WHEREFORE, Respondent prays this Commission issue an Order striking Complainant's "Final Letter" from the record and issue a decision based on the evidence presented before it at the Evidentiary Hearing on June 9 and 10, 2009 and for any other relief it deems just and proper at this time.

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<sup>2</sup> In fact, Complainant admitted on two separate occasions during the Evidentiary Hearing that he had no way of establishing that current leaks exists in MAWC's infrastructure. See Transcript of Proceedings pp. 532 and 565.

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**PROOF OF SERVICE**

I hereby certify that I electronically filed on this 21<sup>st</sup> day of July, 2009, the foregoing with the Missouri Public Service Commission using the ESIF system which will send notification of such filing to the following:

- Missouri Public Service Commission General Counsel Office  
(GenCounsel@psc.mo.gov)
- Office of the Public Counsel Mills Lewis ([opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov))
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