

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Rob Lee,	)	
	)	
Complainant,	)	
	)	
v.	)	<b>Case No. WC-2009-0277</b>
	)	
Missouri American Water Company,	)	
	)	
Respondent.	)	

**MOTION FOR DECISION ON THE MERITS**

COMES NOW Staff of the Public Service Commission of Missouri ("Staff"), and respectfully states the following in support of its motion for a decision on the merits:

1. On June 9 and 10, 2009, the Missouri Public Service Commission ("Commission") convened an evidentiary hearing on Rob Lee's several complaints regarding leaking Missouri American Water Company ("MAWC" or "The Company") pipes in and around his neighborhood as evidenced by the appearance of surface water.

2. Mr. Lee, the Company, and Staff ("the parties") each presented their case in chief over the course of the two day hearing. The second full day of on-the-record hearing ended prior to the conclusion of Mr. Lee's cross-examination of Staff's witness. The parties agreed to await the filing of transcripts from the evidentiary hearing until scheduling a time to resume the hearing.

3. On June 17, 2009, Mr. Lee sent the following statement to the parties and the Commission: "I have decided not to return to Jefferson City to continue the hearing."

4. On June 26, 2009, the Commission issued an order treating Mr. Lee's statement as a motion to participate in the final day of hearing without a personal appearance in Jefferson

City. The Commission sought input from the parties on scheduling a date to resume the evidentiary hearing.

5. On June 30, 2009, Mr. Lee filed a clarifying statement with the Commission stating: “I apologize I believe I was not clear. I have no intention of participating in this argument any longer. . .” Mr. Lee also stated, “I believe I have provided all I can provide to the Commission and I trust everyone will make the best decision.”

6. On July 2, 2009, the Commission suspended its procedural schedule set by order dated June 26, 2009, and ordered the parties to respond. The Commission noted that it intends to treat Mr. Lee’s statements as a motion for voluntary dismissal without prejudice. Mr. Lee was ordered to respond by July 14, 2009. Staff and the Company were ordered to respond by July 21, 2009.

7. On July 14, 2009, Mr. Lee filed “Final Letter to PSC 7 14 2009” in response to the July 2, 2009 Commission Order.

8. Staff has spent many hours investigating Mr. Lee’s complaints through on-site visits, follow up investigations and in the preparation of Staff’s report. As detailed in the Staff Report and evidentiary hearing, Staff has visited Mr. Lee’s home and neighborhood on numerous occasions. Staff has regularly communicated with MAWC to pass along potential leaks in Mr. Lee’s neighborhood and has reviewed the outcomes of MAWC’s findings. This includes Staff’s review of test results of MAWC’s infrastructure in and around Mr. Lee’s home and chemical test results of the water found in Mr. Lee’s basement and nearby areas.

9. The Commission should not interpret Mr. Lee’s communications as a motion for voluntary dismissal without prejudice. In Mr. Lee’s June 30, 2009, filing he says, “I believe I have provided all I can provide to the Commission and I trust everyone will make the best decision.” Mr. Lee clearly believes the Commission should make a decision on the merits. Each

of the parties, including Mr. Lee, has had a full and fair opportunity on the record to present evidence supporting its case through a formal evidentiary hearing. Mr. Lee voluntarily chose not to conclude his cross-examination of Staff's witness or to resume the evidentiary hearing. Furthermore, the Commission has expended resources overseeing the litigation of these issues.

10. The Commission has the necessary evidence to issue a decision on the merits of Mr. Lee's complaint. Furthermore, a decision on the merits is a reasonable request as a practical matter. All parties involved in this case have spent a tremendous amount of time supporting their respective positions. To interpret Mr. Lee's letters as a motion for dismissal without prejudice would leave the door open to re-litigating the very same issues that the parties have been dealing with throughout the complaint process. Such a result would be a burden on the parties and Commission resources.

11. Because of the doctrine of collateral estoppel, if a decision made on the merits concluded that Mr. Lee had not carried his burden of proof, such decision would prevent Mr. Lee from ever again raising matters in this complaint. When an issue of ultimate fact has been determined by a valid judgment, it may not again be litigated between the same parties.<sup>1</sup>

12. "In reviewing whether collateral estoppel is appropriate, a court should consider: (1) Whether the issue decided in the prior adjudication was identical to the issue presented in the present action; (2) Whether the prior adjudication resulted in a judgment on the merits; and (3) Whether the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication."<sup>2</sup> Therefore, a different party alleging water leaks in the

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<sup>1</sup> *Missouri Bd. Of Pharmacy v. Tadrus*, 926 S.W.2d 132, 136 (citing *King Gen. Contractors, Inc. v. Reorganized Church of Jesus Chris of Latter Day Saints*, 821 S.W.2d 495, 500 (Mo. Banc 1991)).

<sup>2</sup> *Id.*

neighborhood would not be bound by this judgment so long as they were not in privity with Mr. Lee.

WHEREFORE, the Staff submits its Motion for Decision on the Merits.

Respectfully submitted,

/s/ Samuel D. Ritchie

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mail to all counsel of record this 17<sup>th</sup> day of July, 2009.

/s/ Samuel D. Ritchie