

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**
At a session of the Public Service
Commission held at its office in
Jefferson City on the 24th day of
July, 2009.

ROB LEE,)
)
Complainant,)
)
v.)
)
MISSOURI AMERICAN)
WATER COMPANY,)
)
Respondent.)

File No. WC-2009-0277

**ORDER GRANTING LEAVE TO DISMISS WITHOUT PREJUDICE
AND DENYING MOTIONS FOR A DECISION ON THE MERITS**

Issue Date: July 24, 2009

Effective Date: August 3, 2009

The Missouri Public Service Commission is:

- granting Rob Lee leave to dismiss his complaint,
- denying the motions for a decision on the merits filed by Missouri American Water Company ("MAWC") and the Commission's staff ("Staff"), and
- making no ruling on MAWC's motion to strike because dismissal moots it.

The basis for those rulings is that the record is incomplete, so a decision on the merits would be unfair, while dismissal prejudices no party.

I. Procedural Background

On January 27, 2009, Rob Lee filed his complaint, which he has supplemented many times since. The Commission convened an evidentiary hearing on the complaint at the Commission's offices in Jefferson City on June 9 and 10, 2009. The hearing adjourned

during Mr. Lee's cross-examination of the witness for the Commission's staff ("Staff"), and the court reporter filed transcripts on June 25, 2009.

II. The Pending Motions

Mr. Lee filed post-hearing statements ("statements") on June 17, 2009 ("first statement") and June 30, 2009 ("second statement"). In response, the Commission issued orders dated June 26, 2009 ("scheduling order"), and July 2, 2009 ("suspension order"). On July 14, 2009, Mr. Lee filed another statement ("third statement"). On July 17, 2009, Staff filed the motion for a decision on the merits. On July 21, 2009, MAWC filed its response to the third statement, also seeking a decision on the merits and moving to strike the third statement. On July 23, 2009, Mr. Lee filed another statement (fourth statement").

III. Analysis

Mr. Lee's complaint suggests a violation of the following standard:

[E]very water corporation . . . shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.[¹]

That standard is enforceable by a complaint:

Complaint may be made by [any] person, . . . in writing, setting forth any act or thing done or omitted to be done . . . claimed to be in violation, of any provision of law[.²]

The complaint procedure is subject to the following standard:

The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities.[³]

Those principles guide the Commission's consideration in ruling on the pending motions.

¹ Section 386.130.1, RSMo 2000.

² Section 386.390.1, RSMo 2000.

³ Section 386.610, RSMo 2000.

A. Mr. Lee's Statements

Ruling on the pending motions requires the Commission to construe Mr. Lee's statements. Those statements are the product of a pro se litigant, so the Commission reads the statements generously, without the exactitude due from licensed counsel. Such a reading leads the Commission to conclude that Mr. Lee seeks a dismissal, rather than a decision on the merits, as follows.

The first statement reads in its entirety:

I have decided not to return to Jefferson City to continue the hearing.

The scheduling order assumed—as do MAWC and Staff—that Mr. Lee intended to pursue a decision on the merits. But Mr. Lee corrected that assumption in the second statement, which reads, in its entirety:

I apologize I believe I was not clear. I have no intention of participating in this argument any longer. I am not able to compete with two legal defense teams with my health problems.

I would like to thank you for your kindness [and] fairness in the face of my lack of knowledge and trouble understanding.

I believe I have provided all I can provide to the commission and I trust everyone will make the best decision.

I would be glad to be of assistance in any way to work at solving the water problem in my neighborhood. Please contact me if I can help. I plan to follow up with a letter in the next couple weeks health problems permitting.

That language seeks no findings as to specific locations, but addresses systemic concerns underlying the complaint. That reading was the basis for the suspension order.

The suspension order construes the first and second statements as a motion for leave to dismiss without prejudice. Such construction finds support in the third statement:

* * *

Allowing this information to lay dormant here will do no good, please get this information to the people that need it so we can [raise] the bar for safe and adequate service in our state.

* * *

I would like to thank the commission for their time and for putting up with my attitude and my lack of cognitive function resulting from my health problems.

The third statement also addresses several general policy considerations, especially the operations of Staff. The third and fourth statements also address matters raised in hearing. But, in significant contrast to the second statement, neither the third statement nor the fourth statement contains anything to contradict the Commission's reading.

Nevertheless, Staff and MAWC argue that Mr. Lee wants a formal adjudicative document under sections 386.150 and 536.090, RSMo 2000, with written and separately stated findings of facts and conclusions of law, limited to the locations he cites. In support, Staff cites the following language from the second statement:

. . . I trust everyone will make the best decision.

But, in the context we have quoted, the “decision” that Mr. Lee seeks is for “everyone”—Mr. Lee, MAWC, Staff, and the Commission—to address MAWC’s aging infrastructure without restriction to the locations cited in the complaint. MAWC cites the third statement’s averments as to Mr. Lee’s health conditions and other matters raised at hearing. But those averments represent no more than the human desire—evident even among the most experienced lawyers despite its questionable value in litigation—to have the last word.

The Commission concludes that the suspension order correctly characterizes the first and second statements as a motion for leave to dismiss without prejudice.

B. Leave to Dismiss versus Motions for Decision

The Commission's regulations provide:

Once evidence has been offered . . . , [a] complainant may dismiss an action only by leave of the commission, or by written consent of the adverse parties.^[4]

Written consent of the adverse parties is not forthcoming, because MAWC and Staff object, so the Commission must determine whether to grant leave for dismissal.

Staff argues that a dismissal will waste Staff's considerable effort in investigating Mr. Lee's allegations. Effort expended in investigation of a citizen's complaint for the purpose of enforcing the law is not wasted; it carries out the Commission's duty to enforce the standard of safe and effective service.⁵ Staff has done its duty patiently, and Mr. Lee's intemperate allegations of Staff bias, corruption and incompetence have no reasonable grounds.

Staff and MAWC argue that Mr. Lee has had plenty of time to prepare and present his case, but that argument does not account for Mr. Lee's pro se status and the "cognitive difficulties" he cites in the third statement. Moreover, MAWC's argument does not account for the above-quoted standard of public welfare, efficient facilities, and substantial justice between patrons and public utilities. That standard finds no application in a decision on a record that is incomplete as to every party.

Staff's case in chief was incomplete because the cross-examination of its witness was unfinished. The cases in chief of MAWC and Mr. Lee were incomplete because the record remained open for them to present specified exhibits. As to Mr. Lee, such exhibits included the information that he deemed most crucial to his theory. All those matters were

⁴ 4 CSR 240-2.116(1).

⁵ Sections 386.330.2, and 393.140(2) and (3), RSMo 2000.

the subject of the Commission's scheduling order. The Commission suspended the scheduling order in response to Mr. Lee's second statement.

To decide the merits of the complaint without Mr. Lee's most important evidence is manifestly advantageous to MAWC. It is also equally manifestly unfair to Mr. Lee. Further, Staff and MAWC do not argue that dismissal will prejudice anyone. Therefore, the Commission will deny MAWC's and Staff's motions for a decision on the merits. The Commission will grant Mr. Lee leave to dismiss the complaint without prejudice.

C. MAWC's Motion to Strike

MAWC asks the Commission to strike the third statement, but our ruling on dismissal renders such motion moot, so we do not rule on that motion.

THE COMMISSION ORDERS THAT:

1. The motions for a decision on the merits are denied.
2. The complaint is dismissed without prejudice.
3. The motion to strike is moot.
4. This order shall become effective on August 3, 2009.
5. This file shall close on August 4, 2009.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

Clayton, Chm., Davis, Jarrett,
And Gunn, CC., concur.

Jordan, Regulatory Law Judge