

ROB LEE,

Complainant,

v.

MISSOURI AMERICAN
WATER COMPANY,

Respondent.

ORDER SUSPENDING SCHEDULE AND SETTING DEADLINES FOR FILINGS

Issue Date: July 2, 2009

Effective Date: July 2, 2009

The Missouri Public Service Commission is suspending the procedural schedule it issued on June 26, 2009, (“schedule”) and setting deadlines for filings from Rob Lee, the Commission’s staff (“Staff”), and Missouri American Water Company (“MAWC”).

A. Background

On June 17, 2009, Mr. Lee filed the following statement (“first statement”):

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

The Commission treated that statement as a motion to participate in the final day of hearing without a personal appearance in Jefferson City. On that assumption, the Commission issued the schedule for the filing and service of exhibits, objections, conflict dates, and suggestions as to the location and appearances at the final day of hearing. By statement filed on June 30, 2009, Mr. Lee clarified his first statement by filing another statement (“second statement”).

B. Procedural Schedule

The Commission will suspend the schedule because the assumption underlying the schedule was incorrect, as shown in Mr. Lee's second statement. Mr. Lee's second statement says:

I apologize I believe I was not clear. I have no intention of participating in this argument any longer.

Mr. Lee also says in his second statement:

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

A "decision" in this context appears not to mean the Commission's formal adjudicative document under §§ 386.150 and 536.090, RSMo 2000.

Rather, Mr. Lee refers to the more comprehensive issue of how "everyone"—the Commission, Staff, and MAWC—will address the aging water system infrastructure in his neighborhood. That intent is clear elsewhere in the second statement:

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.

That is a matter that the Commission can—and will—monitor even without this formal adjudicative proceeding.¹

Pursuant to the second statement, the Commission intends to treat the first and second statements as a motion for voluntary dismissal without prejudice. Dismissal means bringing halt to the proceedings without issuing a formal decision on the merits of the complaint for or against any party. Without prejudice means that Mr. Lee can bring the complaint again.

¹ See, e.g., §§ 386.250(3), and 393.140(1) and (2) and (5), RSMo 2000; and § 393.130.1, RSMo Supp. 2008.

As an alternative, the Commission could issue a decision on the merits of Mr. Lee's complaint. But, if such decision concluded that Mr. Lee had not carried his burden of proof, such decision could prevent anyone from ever again raising matters in the complaint. That is because of the legal doctrines of res judicata and collateral estoppel. Those doctrines prevent the re-litigation of allegations and arguments that were—or could have been—raised in agency litigation.²

Because Mr. Lee appears to seek a halt to this formal adjudicative proceeding, the Commission will suspend the schedule.

C. Filing Deadlines

In Mr. Lee's second statement, he further says:

I plan to follow up with a letter in the next couple weeks health problems permitting.

In addition, 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.^{3]}

The Commission will set a deadline for such filings and responses from Mr. Lee, MAWC, and Staff.

THE COMMISSION ORDERS THAT:

1. The procedural schedule that the Commission set by order dated June 26, 2009, is suspended.

2. No later than July 14, 2009, Mr. Lee shall file any follow-up letter to which he referred in his filing of June 30, 2009.

² *Missouri Bd. of Pharmacy v. Tadrus*, 926 S.W.2d 132, 135-36 (Mo. App., W.D. 1996).

³ 4 CSR 240-2.116(1).

3. Any response to the filing described in ordered paragraph 2, and to Mr. Lee's filings of June 17 and 30, 2009, from the Commission's staff and Missouri American Water Company is due no later than July 21, 2009.

4. This order shall become effective immediately upon issuance.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is positioned above the printed name and title.

Colleen M. Dale
Secretary

(S E A L)

Daniel Jordan, Regulatory Law Judge,
by delegation of authority under
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 2nd day of July 2009.