

In the Matter of:
EDWARD LANDER
v.
MISSOURI-AMERICAN WATER COMPANY

WC-2018-0099 VOL 2

January 31, 2018



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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Prehearing Conference
January 31, 2018
Jefferson City, Missouri
Volume 2

Edward Lander,	)	
	)	
Complainant,	)	
	)	
vs.	)	File No. WC-2018-0099
	)	
Missouri-American Water	)	
Company,	)	
	)	
Respondent.	)	

JOHN T. CLARK, Presiding
REGULATORY LAW JUDGE

REPORTED BY:
Beverly Jean Bentch, CCR No. 640
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EDWARD LANDER, Complainant

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P R O C E E D I N G S

JUDGE CLARK: We'll go on the record now.

Today's date is January 31, 2018. The current time is 10:04 a.m. We're in Room 305 of the Governor's Office Building. The Commission has set this time aside for a procedural conference in the case captioned as Edward Lander, Complainant, vs. Missouri-American Water Company in File No. WC-2018-0099.

My name is John Clark. I'm the Regulatory Law Judge in this matter. I'm going to begin by asking the attorneys to enter their appearance starting with staff counsel.

MS. ASLIN: Casi Aslin for staff of the Public Service Commission, and with me today is Dave Spratt who prepared staff's memorandum in this case.

JUDGE CLARK: And for Missouri-American?

MR. LUFT: Tim Luft, Missouri-American Water, and the court reporter has my information.

JUDGE CLARK: Thank you, Mr. Luft. And Mr. Lander, you're appearing on your own?

MR. LANDER: I am pro se.

JUDGE CLARK: But you are also an attorney barred in Missouri; is that correct?

MR. LANDER: Yes, I am, Bar No. 17648.

JUDGE CLARK: Okay. This was originally
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1 scheduled -- There was a prehearing conference set back
2 on January 4 at which Mr. Lander did not appear.
3 Following that, I issued an order to show cause why his
4 case should not be dismissed. I received in response to
5 that on January 12 an explanation for nonappearance
6 which laid out multiple reasons why Mr. Lander believed
7 that his case should not be dismissed for his failure to
8 appear.

9 Mr. Lander, I'm going to say that I hold
10 members of the Bar to a much higher standard than I do
11 the general public, and I was a little disappointed that
12 it appears that you either did not access the order
13 scheduling the procedural conference or did not take the
14 time to fully read it in which it clearly explained that
15 you could appear by phone.

16 MR. LANDER: I plead guilty.

17 JUDGE CLARK: Well, that taken --

18 MR. LANDER: I apparently was not aware that I
19 could appear by phone, and I can't drive from here to
20 Jeff City without falling asleep. So it's out of the
21 question for me to appear in person. I thought I had to
22 appear in person. And I told the other attorney that.
23 And I was waiting for Tim Luft to call me back. I sent
24 a check for \$300 payment in full and they cashed it.

25 JUDGE CLARK: I don't want to get into the
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1 facts of your case right now.

2 MR. LANDER: What?

3 JUDGE CLARK: I don't want to get into the
4 facts of your case right now. This is purely procedural
5 today.

6 MR. LANDER: I understand that, and I plead
7 guilty to not knowing that I could have called in at the
8 first setting and I apologize for that. That's all I
9 can say.

10 JUDGE CLARK: Okay. Well, I'm going to accept
11 your explanation for nonappearance. I'm going to find
12 that that was good cause and that is the reason why we
13 scheduled today's procedural conference. I'm also going
14 to find because of the delay it generated that there is
15 good cause to exceed the 100-day barrier which passed
16 back I believe on the 26th.

17 I'm going to find that that has been waived
18 for good cause, and I'm going to allow this matter to be
19 resolved in a period beyond the 100 days that's usually
20 required by the Code of State Regulations.

21 MR. LANDER: Uh-huh.

22 JUDGE CLARK: Now, are there any preliminary
23 matters that need to be taken up at this time? Staff?

24 MS. ASLIN: No, Judge.

25 JUDGE CLARK: Missouri-American?
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1 MR. LUFT: I don't believe so.

2 JUDGE CLARK: Mr. Lander?

3 MR. LANDER: I don't know of any preliminary
4 matters. Thank you.

5 JUDGE CLARK: Mr. Lander, I'm going to go
6 ahead and state right now I believe it said in my
7 motion, my most recent motion for today's procedural
8 conference not only that you can appear by telephone for
9 this, that you will need to appear in person for any
10 actual hearing barring any special arrangements that
11 need to be made. However, that hearing would occur at
12 our St. Louis office to accommodate you.

13 MR. LANDER: Okay. I will appear in the St.
14 Louis office if need be.

15 JUDGE CLARK: Okay. Now, we received -- or I
16 have received the complaint, the answer, staff report,
17 all of those have been filed. Unless there's anything
18 else of a procedural nature to take up, I'm going to ask
19 the parties to come up with a proposed procedural
20 schedule.

21 I'm going to ask staff to file that schedule.
22 The proposed procedural schedule should include a
23 proposed date for the usual case events and also should
24 include any stipulations of nondisputed material facts.
25 I've given a copy of the adjudication calendar to staff

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1 counsel covering the next several months.

2 I'm going to ask, Mr. Lander, that you and
3 Mr. Luft talk to staff and see if you can work out a
4 procedural schedule that would work for all of you.

5 MR. LANDER: Okay. Do you want to do that
6 now?

7 JUDGE CLARK: You're going to do that after I
8 leave. That's something that occurs after the hearing.
9 The phone lines will remain open and you can talk to
10 staff. And they'll either try and hash it out with you
11 here today or they'll get your number and try and find a
12 time to call you to work it out. Okay?

13 MR. LANDER: Do I need my calendar now?

14 JUDGE CLARK: You may after the hearing, like
15 I said, to talk to staff counsel and Mr. Luft. They may
16 work out an alternative time to contact you. I don't
17 know about that. That's something that occurs after the
18 hearing. Okay?

19 MR. LANDER: Yes.

20 JUDGE CLARK: I'm going to ask staff counsel
21 can that procedural schedule be completed by Friday,
22 February 16?

23 MS. ASLIN: Yes.

24 JUDGE CLARK: I'm going to make that due then.
25 As I said before, any evidentiary hearing on this matter
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1 will occur at the Wainwright Building in St. Louis.
2 Now, in regard to prefiled testimony, because this is a
3 small complaint case, it's my discretion as to whether
4 to dispense with prefiled testimony. Do the parties
5 have any preference? Staff?

6 MS. ASLIN: Staff has no preference.

7 JUDGE CLARK: Mr. Luft?

8 MR. LUFT: No preference.

9 JUDGE CLARK: Mr. Lander, do you have any
10 preference in regard to filing prefiled testimony?

11 MR. LANDER: No, I have no preference.

12 JUDGE CLARK: Okay. Let me explain briefly
13 what prefiled testimony is and that may make a
14 difference. Prefiled testimony, what occurs here at the
15 Public Service Commission is the parties generally in
16 these cases prefile their testimony that they're going
17 to be giving and then that testimony on the day of the
18 hearing is offered and then the witness is available for
19 cross-examination. That's generally how that occurs.

20 You can do your prefiled testimony by either
21 entering additional prefiled testimony, writing out the
22 questions you would ask yourself and the answers you
23 would give essentially for your direct testimony since
24 you're the one who has to essentially make your case in
25 this matter or you can let your complaint as written

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1 serve as your prefiled testimony. I'm not adverse to
2 that. Or we can dispense with prefiled testimony
3 entirely and given the light number of witnesses I'm
4 happy to let the witnesses just show up that day and
5 testify to what they're going to be testifying to.

6 MR. LANDER: That's fine with me.

7 JUDGE CLARK: Okay. If there's no objections,
8 then I will probably just dispense with prefiled
9 testimony in this case. I think it will be a little bit
10 easier for everybody.

11 MR. LANDER: No objection from here.

12 MR. LUFT: Fine with us.

13 MS. ASLIN: No objection from staff.

14 JUDGE CLARK: Thank you. That's really
15 everything I have for this procedural conference. Are
16 there any other matters or any other issues that need to
17 be addressed by the Commission at this time? Staff?

18 MS. ASLIN: No, Judge.

19 MR. LANDER: No. Mr. Luft --

20 MR. LUFT: Yes, sir.

21 MR. LANDER: -- would you please call me? And
22 this is really getting to be out of hand over a \$600
23 dispute, and I was anticipating that you would either
24 accept my proposal or refuse it and you haven't done
25 either.

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1 MR. LUFT: I did follow up with a phone call
2 after I talked to our president about it.

3 JUDGE CLARK: I'd rather not get into
4 settlement negotiations on the record because that's not
5 really something I should be privy to. Like I said, I'm
6 going to be leaving the room shortly once we go off the
7 record. At that time if you want to ask Mr. Luft to
8 contact you or you want to have any sort of discussion
9 in regard to that or setting the procedural schedule, I
10 think that would be appropriate at that time.

11 MR. LANDER: That's fine. Thank you, sir.

12 JUDGE CLARK: Are there any other matters that
13 need to be addressed by the Commission at this time?
14 Staff?

15 MS. ASLIN: No.

16 JUDGE CLARK: Mr. Luft?

17 MR. LUFT: No.

18 JUDGE CLARK: Mr. Lander?

19 MR. LANDER: Yes.

20 JUDGE CLARK: Okay. What needs to be
21 addressed by the Commission?

22 MR. LANDER: I would like to have a record of
23 my prior consumption. They've raised my consumption of
24 2015, '16 and '17. They neglected the fact that they
25 reduced my consumption because of a leak in the toilet

1 that I couldn't hear because of a hearing disability.

2 JUDGE CLARK: Okay. Mr. --

3 MR. LANDER: And I don't have the records
4 going back far enough to know what my consumption was
5 for those periods before 2015, and I would ask that by
6 way of discovery that they furnish those figures to me.

7 JUDGE CLARK: And I was getting ready to say,
8 Mr. Lander, that sounds like a discovery issue.
9 Discovery is something that is made part of the
10 procedural schedule. It's something you'll be
11 discussing with staff. Probably the easiest way for you
12 to handle that in this matter is what's called a data
13 request. You can find out information regarding data
14 requests. It's in 2 of the Code of State Regulations in
15 the 2 240 chapter of Rule 4.

16 MR. LANDER: Thank you, sir.

17 JUDGE CLARK: So are there any other matters
18 that need to be taken up at this time? Mr. Lander, as I
19 indicated, you can talk about discovery issues with
20 staff and Mr. Luft after the procedural conference has
21 ended.

22 MR. LANDER: Fine.

23 JUDGE CLARK: Do you have any other issues?

24 MR. LANDER: No, sir.

25 JUDGE CLARK: Okay. Then I'm going to

1 conclude the prehearing conference at this time. We'll
2 go off the record now.

3 I believe that the phone bridge will be
4 available for the next hour so if you wish to discuss
5 with Mr. Lander and Mr. Luft any issues. Thank you all
6 for attending today. Thank you for your time.

7 MR. LANDER: Thank you, sir.

8 (Off the record.)
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