

In the Matter of:

GREG STIENS

v.

THE EMPIRE DISTRICT GAS Co. d/b/a LIBERTY

GC-2021-0395, VOL. I

August 23, 2021



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Procedural Conference

August 23, 2021

Via WebEx

Volume 1

Greg Stiens,)	
Complainant,)	
)	File No. GC-2021-0395
)	
v.)	
)	
The Empire District Gas)	
Company d/b/a Liberty,)	
Respondent.)	

JOHN T. CLARK, Presiding
SENIOR REGULATORY LAW JUDGE

REPORTED BY:
Tracy Taylor, CCR No. 939
TIGER COURT REPORTING, LLC

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A P P E A R A N C E S

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1 JUDGE CLARK: Today's date is August
2 23rd, 2021 and the current time is 10:00 a.m. The
3 Commission has set aside time for a pre-hearing
4 conference in this case captioned as Greg Stiens,
5 Complainant, versus the Empire District Gas and
6 Electric Company, doing business as Liberty,
7 Respondent. And this is case -- or File Number
8 GC-2021-0395.

9 And at this time I'm going to ask that
10 the parties enter their appearance for the record,
11 starting with Liberty.

12 MS. CARTER: Diana Carter for Liberty
13 Utilities. And we have been out of the office for so
14 long with Covid, I do not recall my address. I can
15 look that up. Sorry.

16 JUDGE CLARK: It's okay. Take a moment.
17 And I'll just say while Ms. Carter is doing that, for
18 the record, that this pre-hearing conference is being
19 conducted via WebEx. None of the parties is actually
20 present at the Governor Office Building.

21 MS. CARTER: My address is 428 East
22 Capitol Avenue, Jefferson City, Missouri 65101. And
23 it's Suite 303.

24 JUDGE CLARK: Thank you, Ms. Carter. And
25 for the Commission Staff.

1 MS. PAYNE: Whitney Payne on behalf of
2 the Staff of the Missouri Public Service Commission.
3 200 Madison Street, Jefferson City, Missouri 65102.

4 JUDGE CLARK: Thank you, Ms. Payne. And
5 Mr. Stokes?

6 MR. STOKES: Yes. My name is Curt
7 Stokes, C-u-r-t S-t-o-k-e-s. And same contact
8 information as Ms. Payne.

9 JUDGE CLARK: And Mr. Stiens, you're
10 appearing on your own behalf today; is that correct?

11 MR. STIENS: Yes.

12 JUDGE CLARK: And just so everybody
13 knows, Mr. Stiens informed me that he is not feeling
14 well, that he has contracted COVID-19, and that he is
15 feeling somewhat fatigued at the moment. We're going
16 to go ahead and push forward and see what we can get
17 done today, but Mr. Stiens, you'll let me know if
18 you're having difficulty. Okay?

19 MR. STIENS: Okay. Thank you.

20 JUDGE CLARK: Now, Staff filed the
21 request for this procedural conference to cancel the
22 requirement that a procedural schedule be done and
23 instead, hold this conference to discuss a procedural
24 schedule. And can Staff explain to me why that became
25 necessary?

1 MS. PAYNE: Your Honor, what it was, the
2 parties had not had a chance to converse yet. And
3 Staff was concerned that in the amount of time that
4 was ordered for the procedural schedule, that it might
5 be difficult to get everyone together. So we asked
6 for this ordered procedural conference instead so that
7 we could have a chance to have all of the parties
8 together at the same time on the phone line and better
9 discuss what might work.

10 Also, we're concerned that -- perhaps if
11 you could explain the necessity for a procedural
12 schedule to the Complainant, that might help.

13 JUDGE CLARK: Okay. I would be happy to
14 do so.

15 Mr. Stiens, do you understand what a
16 procedural schedule is?

17 MR. STIENS: Maybe you should go over
18 that with me.

19 JUDGE CLARK: I would be more than happy
20 to. Basically when a party files a complaint with the
21 Commission, at that point there's a contested case.
22 And a contested case usually requires a hearing to
23 determine the case -- I think the technical language
24 is determine the rights of the parties before the
25 Commission, but actually to decide the case.

1 Now, in order to get to that evidentiary
2 hearing, in the spirit of fair play, everybody gets an
3 opportunity to elicit information from each other so
4 that nobody shows up to the evidentiary hearing and
5 does some kind of Perry Mason "gotcha" with
6 information that nobody has ever seen before.

7 So basically what a procedural schedule
8 does is it decides the order that things are going to
9 occur before the hearing in regard to this exchange of
10 information. There are usually dates on the
11 procedural schedule such as -- the Commission
12 frequently does pre-filed testimony, although
13 generally it's my preference in complaint cases not to
14 do them -- pre-filed testimony because I think it puts
15 pro se -- and pro se just why means self-represented
16 people --

17 MR. STIENS: Right.

18 JUDGE CLARK: -- like yourself at a
19 disadvantage. You didn't file a complaint because you
20 wanted to practice typing up your own testimony and
21 filing it with the Commission.

22 MR. STIENS: Yeah.

23 JUDGE CLARK: So generally what it does
24 is in that case, where testimony is going to occur
25 live at the evidentiary hearing, then the pre-hearing

1 conference is -- basically sets the amount of time for
2 the parties to exchange information and let the
3 Commission and each other know who's going to be
4 testifying and what exhibits are going to be presented
5 on those parties' behalf. Does that make sense?

6 MR. STIENS: Yeah. I got that. So
7 actually mine's actually -- I don't know -- fairly
8 simple. So it's not going to be decided today?

9 JUDGE CLARK: No. This is not an
10 evidentiary hearing.

11 MR. STIENS: Okay. So --

12 JUDGE CLARK: We're going to pick an
13 evidentiary -- you and the parties will pick an
14 evidentiary hearing date that works with the
15 Commission. And then, as I indicated, there will be
16 an exchange of information. You may receive from the
17 other parties a list of questions that they ask you to
18 answer. You may not.

19 MR. STIENS: Oh, okay. Yeah.

20 JUDGE CLARK: You also have an
21 opportunity to send a list of questions to the
22 parties.

23 MR. STIENS: Okay. Okay. Yeah, that
24 would be fine. So is that the way we want to proceed
25 then?

1 JUDGE CLARK: Well --

2 MR. STIENS: That's okay with me.

3 JUDGE CLARK: Yeah. Since the parties
4 appear to be at an impasse, that's the appropriate way
5 to proceed.

6 MR. STIENS: Okay. Yeah, that's --
7 that's fine.

8 JUDGE CLARK: Ms. Payne, did I cover all
9 the bases to your satisfaction or is there anything
10 else you wanted me to cover?

11 MS. PAYNE: No. I appreciate your
12 explanation. I just wanted to verify -- obviously
13 we're setting a date for an evidentiary hearing. I
14 imagine we'll also do some testimony or, for the
15 complainant's benefit, a statement of his position on
16 the matter. Do we want to do direct testimony and
17 rebuttal? And would the Commission be expecting
18 anything beyond the two rounds of testimony and the
19 evidentiary hearing date?

20 JUDGE CLARK: I wouldn't be anticipating
21 any pre-filed testimony for a case like this.

22 MS. PAYNE: Okay. I apologize. Usually
23 we -- it's been a while since I've done a complainant
24 case. In the past, we had done a statement of the
25 matters.

1 JUDGE CLARK: I certainly would like the
2 parties to file a statement of position and a
3 statement of issues. I think that that's important.
4 But I think in my personal opinion -- unless everybody
5 wants pre-filed testimony, my personal opinion is that
6 it puts too much onus on the pro se litigant to have
7 to prepare and file testimony in compliance with the
8 Commission's rule, having never done so before.

9 MR. STIENS: Right.

10 MS. PAYNE: Okay. I apologize. I --
11 that's what I wanted to verify is exactly what the
12 Commission would expect in this.

13 JUDGE CLARK: Well, I would --

14 MR. STIENS: So -- well, so then you'll
15 let us know what we need to do by letter? Then we
16 need to get -- like submit to you what you ask for?

17 JUDGE CLARK: Well, there's a number of
18 ways we can do this. I mean if you want me to
19 participate in helping the parties establish a
20 procedural schedule, I'm more than happy to. If the
21 parties want to try and get together without me
22 present and attempt to assemble a procedural schedule,
23 I'm more than happy to do that.

24 I think given what Ms. Payne had
25 indicated, I would like to go through some of the

1 usual events that occur in a procedural schedule. And
2 if you'll bear with me just a second, I'll pull one
3 up. We can decide what ought to be included within
4 that.

5 All right. Here is what I offhand would
6 expect kind of as a minimal procedural schedule.
7 Include a last day for any discovery; a joint
8 stipulation of any non-disputed facts; a joint list of
9 issues; order of opening statements; statements,
10 witness and cross-examination; a statement of
11 positions from all the parties laying out what their
12 positions are.

13 Prior to the hearing, I would like all
14 the parties to arrange a time to exchange exhibit
15 lists so that nobody is surprised by any exhibits that
16 are going to be used at the hearing. An evidentiary
17 hearing date. I don't see any reason this should be
18 more than a one-day hearing.

19 And while it's my preference generally to
20 do away with testimony in single-party customer
21 complaint cases, I generally do allow one round of
22 briefing for the parties. That is where I generally
23 require Staff to file a brief, Liberty may file a
24 brief and Mr. Stiens may file a brief.

25 MR. STIENS: Yeah. Yeah.

1 JUDGE CLARK: So that would be my
2 expectation at a minimum.

3 MR. STIENS: I think that sounds good and
4 fair.

5 JUDGE CLARK: Now, this -- can somebody
6 answer this question for me? This was originally
7 Judge Jacobs' case. Right?

8 MR. STIENS: That I don't --

9 JUDGE CLARK: I'm sorry?

10 MS. PAYNE: I believe that's correct,
11 yes.

12 JUDGE CLARK: Okay. Well, it appears
13 it's been transferred to me and it appears that
14 there's been some ongoing back and forth. Technically
15 we're at 119 days now, but what I'm going to go ahead
16 and do at this procedural conference is find good
17 cause for this case to go on beyond 100 days to issue
18 a recommended report and order, partially because
19 we're past that already so -- and we have yet to set a
20 hearing date. Is there anybody opposed to that?

21 MR. STIENS: No, I'm not.

22 MS. PAYNE: Staff is not.

23 JUDGE CLARK: I hear no opposition.
24 Okay. Do the parties want me present to help put
25 together a procedural schedule or do you want to do it

1 on your own?

2 MS. CARTER: Judge, I --

3 MS. PAYNE: I'd like --

4 JUDGE CLARK: One at a time. How about I
5 start with Staff. Staff?

6 MS. PAYNE: I'm perfectly fine with
7 working out dates, so long as the Commission doesn't
8 have any dates that we want -- that they want us to
9 avoid. I'll certainly look at the calendar and try to
10 verify that we don't overlap anything else.

11 JUDGE CLARK: So you're fine doing it by
12 yourselves. Is that what you're saying?

13 MS. PAYNE: Correct.

14 JUDGE CLARK: Okay/ Empire? Sorry,
15 Liberty?

16 MS. CARTER: Either. Judge, I just had a
17 question on hearing location or the way we will do the
18 hearing, if there is a preference from you on that?

19 JUDGE CLARK: That's actually up to
20 Mr. Stiens to a large degree and I'll explain that.
21 The Commission's rule says that the hearing must be
22 held within 30 miles of where service was rendered. I
23 believe that's what it says. And so Mr. Stiens, what
24 county do you reside in?

25 MR. STIENS: Nodaway.

1 JUDGE CLARK: Okay. So we'd have to do
2 it somewhere down in Nodaway County unless Mr. Stiens
3 would prefer to do it like this, via WebEx.

4 MR. STIENS: WebEx? What's the
5 difference? We'd have a hearing in-person --

6 JUDGE CLARK: That's correct.

7 MR. STIENS: -- or a WebEx?

8 JUDGE CLARK: Yes. If we had it in
9 person, I'd choose a location within 30 miles of where
10 service was received that's at issue. Most likely
11 that's your house. So I'd choose a location within
12 30 miles of there, get a court reporter, and everybody
13 would come down there. The alternative position, and
14 probably the one that would be a little easier for
15 everybody, is to have it via WebEx. But ultimately,
16 Mr. Stiens, you're the one who gets to determine.

17 MR. STIENS: Oh, I see. Well, under the
18 circumstances, there's not a real town that's close
19 other than St. Joe and it's 45 miles away. And with
20 this Covid thing going around, I think it's best
21 interest of everybody just to have it on a web --
22 web -- like we're doing.

23 JUDGE CLARK: Okay. So is your
24 preference to do it as a WebEx?

25 MR. STIENS: Yes.

1 JUDGE CLARK: Okay. Well, if that
2 answers everybody's question, if there are no
3 objections, we will have the hearing virtually via
4 WebEx.

5 MR. STIENS: Yes, that's fine.

6 JUDGE CLARK: I hear no objections from
7 any party so set a WebEx hearing date.

8 MS. PAYNE: That would be great, Judge.

9 JUDGE CLARK: Okay. How do the parties
10 want to proceed given that -- Mr. Stines, do you
11 feel -- is it Stines? Am I saying it right?

12 MR. STIENS: Yeah, it's Stiens.

13 JUDGE CLARK: Stiens. I'm sorry, I said
14 Stines. Mr. Stiens, are you going to be able to get
15 together either on a conference call -- I don't know
16 what happens to this room if I disconnect.

17 MS. PAYNE: In the past, we've been able
18 to leave the phone line open for the parties to talk.
19 I know that that was --

20 JUDGE CLARK: I think -- I'm sorry,
21 Ms. Payne. Go ahead.

22 MS. PAYNE: No, that's okay. I know it
23 was a bit of a different establishment then. We
24 weren't using WebEx. We were using the State line.

25 JUDGE CLARK: I might be able to

1 designate somebody as a co-host and then I could exit.

2 MS. PAYNE: Okay.

3 JUDGE CLARK: I don't know if I can. Let
4 me --

5 MS. PAYNE: Or I don't know, Diana, if
6 you're able to set up a conference line for us to call
7 into instead?

8 MS. CARTER: I certainly can set
9 something else up. We'd have to hop off of here and
10 hop onto somebody else, but I can do that in --

11 MS. PAYNE: Right.

12 MS. CARTER: -- through a WebEx link.
13 Mr. Stiens, I could send that to you by e-mail.

14 And otherwise, Judge, another time we did
15 this where I was on with you here, you just took your
16 headset off and walked away and we kept going.

17 JUDGE CLARK: I am happy to do that. I'm
18 happy to take off my headset and go for a walk. So if
19 it's not going to take more than half an hour and the
20 parties want to do that, they trust me to do so, I
21 would be more than happy to do that.

22 MR. STIENS: I'm fine with it.

23 MS. PAYNE: Yeah. I think we can sort
24 this out in 30 minutes and let Mr. Stiens get some
25 rest.

1 JUDGE CLARK: Okay. That sounds like a
2 good plan then. Let me see if there's anything else I
3 wanted to cover. I don't see anything else.

4 MR. STIENS: Now, question. Now you're
5 going to go take a walk and then we're going to talk
6 between us; is that right?

7 JUDGE CLARK: Yeah. Here's what usually
8 happens is the parties get together without the
9 regulatory judge present. They figure out the dates
10 for a procedural schedule and evidentiary hearing and
11 then the Commission Staff will file those jointly on
12 behalf of all the parties. Basically the Commission
13 Staff will file a pleading indicating a full timeline
14 for the case through to briefs.

15 MR. STIENS: Right. I've got one
16 question. Of course, we don't know what the future
17 brings, but since I just got this, I've been pretty
18 sick and weak and I don't know how long this lasts.
19 If we set some dates and I'm not able or have to
20 reschedule, is that going to be a problem?

21 JUDGE CLARK: I mean technically I'm not
22 supposed to pre-rule on anything, but it's your
23 complaint. So I'm going to accommodate you in terms
24 of carrying it forward. So if we get close to the
25 hearing date -- preferably not the night before, but

1 if we get close to the hearing date and you're not
2 feeling well and you've got a good reason why you
3 can't, you can either file with the Commission a
4 request for a continuance of the hearing date or you
5 can ask the parties if they will file -- you can ask
6 the parties and usually sometimes Staff will file a
7 request for a continuance.

8 MS. PAYNE: And I'm happy to serve as the
9 liaison if there's any problems. Mr. Stiens, I wasn't
10 intending on setting the hearing too close. I was
11 going to give some time so that everyone could
12 determine what they want to file beforehand and that.
13 And you're also more than welcome to send me things
14 for filing. You have my e-mail address now so -- but
15 certainly I can let the Commission know if there's any
16 problems with the dates that we select.

17 JUDGE CLARK: Technically we're out from
18 under the requirement to issue a recommended report
19 and order in 100 days. There's really no timetable on
20 this at this point that the Commission is required to
21 hit.

22 MR. STIENS: Oh, could I get your name
23 again and the e-mail just to make sure I know -- you
24 said I had your e-mail and all that.

25 JUDGE CLARK: My name and e-mail?

1 MR. STIENS: The lady. No, the lady.

2 MS. PAYNE: Right. You have my e-mail.

3 I will absolutely make sure that you have that. If we
4 want to let the judge go, I can -- I can give it to
5 you again to write down.

6 MR. STIENS: Oh, that's fine. Okay.

7 JUDGE CLARK: Okay. Are there any other
8 matters that need to be addressed by the Commission at
9 this time? Hearing none --

10 MR. STIENS: I don't believe so.

11 JUDGE CLARK: -- I'll go off the record.

12 (WHEREUPON, the procedural conference was
13 adjourned.)

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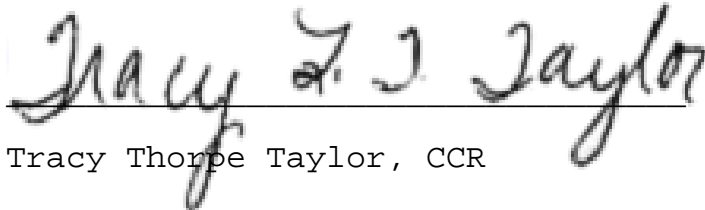
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CERTIFICATE OF REPORTER

I, Tracy Thorpe Taylor, CCR No. 939, within the State of Missouri, do hereby certify that the testimony appearing in the foregoing matter was duly sworn by me; that the testimony of said witnesses was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.


Tracy Thorpe Taylor, CCR

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