

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

November 20, 2009
Jefferson City, Missouri
Volume 1

In the Matter of the Application)
of Timber Creek Sewer Company)Case No. SA-2010-0063
for a Certificate of Convenience)
and Necessity)

DANIEL R.E. JORDAN, Presiding
REGULATORY LAW JUDGE

REPORTED BY: Monnie S. Mealy, CCR, CSR, RPR
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1 A P P E A R A N C E S

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14 For Timber Creek Sewer Company:

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1 P R O C E E D I N G S

2 JUDGE JORDAN: So I will go ahead and call the
3 case of -- we'll go on the record. I'm calling the case
4 styled in the matter of the application of Timber Creek
5 Sewer Company for a Certificate of Convenience and
6 Necessity. That is our File No. SA-2010-0063.

7 I am Daniel Jordan. I'm the Regulatory Law
8 Judge assigned to this case. I will start by taking
9 entries of appearances, and I'll also counsel to introduce
10 any representatives from their client. We'll begin with
11 the Applicant, please. Okay.

12 MR. FINNEGAN: On behalf of the Applicant,
13 Jeremiah D. Finnegan, Finnegan, Conrad & Peterson, 3100
14 Broadway, Suite 1209, Kansas City, Missouri, 64111. And
15 representing the company is Derek Scherry, President.

16 JUDGE JORDAN: Thank you very much. Let's go
17 now to Staff.

18 MS. OTT: Judge, please let the record reflect
19 Jaime Ott, P.O. Box 360, Jefferson City, Missouri, 65102,
20 appearing on behalf of Staff. And I have with me Martin
21 Hummell and Bill Harris.

22 JUDGE JORDAN: Thank you. I note that the
23 Office of Public Counsel is not present and they have
24 informed -- they've notified me that they will not be
25 present. They are not participating in this case.

1 Intervenor, please enter an appearance.

2 (Interruption in proceedings.)

3 MR. DORITY: Thank you, Judge. Representing the
4 Intervenor, Platte County Regional Sewer District, let the
5 record reflect Larry W. DORITY with Fischer & DORITY, PC.
6 Our address is 101 Madison, Suite 400, Jefferson City,
7 Missouri, 65101. Also, participating as co-counsel on the
8 line with us today is Robert H. Shaw with McGinnis & Shaw,
9 LLC, 303 Marshall Road, Platte City, Missouri, 64079.

10 And participating by telephone is Chuck Reineke,
11 Executive Director of the Platte County Regional Sewer
12 District. Thank you.

13 JUDGE JORDAN: Thank you very much. Here's how
14 we're going to proceed in this conference. This first
15 part is on the record.

16 We have experienced counsel representing all
17 parties, so I don't think I need to go into a whole lot of
18 detail about how a hearing works before the Public Service
19 Commission.

20 After I have said what I have to say, then we
21 will go off the record. I'll leave the line open so that
22 all the parties and counsel can discuss the issues before
23 them. And I hope that the parties can at least begin the
24 process of working out some kind of settlement for this
25 case.

1 The reason I say that is because my experience
2 tells me that the parties can fashion a resolution in most
3 cases that is better than a third party tribunal can
4 fashion for them.

5 And I will also, in that context, mention that
6 the Commission does offer mediation services if the
7 parties find themselves at a sticking point. Someone from
8 the Commission will mediate your dispute. It won't be me.
9 It won't be the person assigned to the -- the Regulatory
10 Law Judge assigned to the case. But we do have -- all the
11 other Regulatory Law Judges are trained in mediation and
12 -- and can help you in resolving your dispute.

13 Well, I think that is most of what I have to
14 say. I think everyone here understands what is going on
15 now is preparation for an evidentiary hearing, which is
16 like a trial. It's like litigation. It's not just
17 discussion.

18 You know that the law of evidence will apply.
19 And that includes the statute applying to expert
20 testimony. Just to mention, because people sometimes ask
21 me how the order of proof would proceed, if we go to
22 hearing, I would start with the Applicants. I would go to
23 Intervenors and then Staff, I think would be the
24 appropriate way to go in this case.

25 And when the hearing is done, of course, we'll

1 prepare a transcript. I will call for written arguments.
2 And then I will prepare a recommended decision for the --
3 for the Commission.

4 Now, looking at the filings in this case so far,
5 I think I've got a grasp of what the issues are, that is,
6 I have an application pending from Applicant. Intervenors
7 say, no, this land is on our turf. Intervenors, have I
8 pretty much got the issue here?

9 MR. DORITY: Yes, your Honor, you have. You've
10 encapsulated it very well.

11 JUDGE JORDAN: All right. Well, do Intervenors
12 have any other issues, in regards to this application?

13 MR. DORITY: At this point, Judge, we are going
14 to be conducting discovery. The Applicant has already
15 initiated discovery to which we've -- we've responded.

16 JUDGE JORDAN: Okay.

17 MR. DORITY: The -- in terms of procedure, I
18 suppose it would be appropriate to ask, is there a
19 particular deadline by which you would like the parties to
20 file a recommended procedural schedule?

21 JUDGE JORDAN: Well, for this case, I haven't
22 considered it, but I'd certainly welcome it. I haven't
23 set a hearing yet, so it's kind of hard to -- I haven't
24 set a hearing date yet, so it would be hard to set up a
25 procedural schedule.

1 I'll tell you what. At the end of this
2 conference, when all parties are done, I will ask Staff to
3 file a memorandum telling me whether I should go ahead and
4 schedule a hearing. I'll do that. And --

5 MR. DORITY: I Was just thinking in terms of
6 pre-filed testimony.

7 JUDGE JORDAN: Uh-huh. Huh-uh.

8 MR. DORITY: The staff, at this point, from our
9 perspective, has, of course, issued its recommendation.
10 It was somewhat qualified in terms of the information
11 known to them at this time. That leads us to believe
12 that, you know, perhaps it would be helpful to Staff to --
13 to be able to hear the Intervenor's side of the story, if
14 you will.

15 JUDGE JORDAN: Sure.

16 MR. DORITY: They have all of the -- the
17 application and what the Applicant has provided today. My
18 thought was that rather than having rebuttal testimony
19 that would be filed simultaneously by Intervenors, Staff,
20 and I believe at this point Public Counsel is not going to
21 be participating, perhaps after the Applicant has filed
22 their testimony that Intervenors would file rebuttal, and
23 then Staff do file subsequent to that after they've had a
24 chance to see both the Applicant's testimony and
25 Intervenor's testimony.

1 JUDGE JORDAN: Well --

2 MR. DORITY: And after Staff, then perhaps both
3 Company and Intervenors could file surrebuttal with the
4 Company filing surrebuttal to both the Intervenors and
5 Staff and the Intervenors filing rebuttal to Staff only.

6 MR. DORITY: Well, I tell you what. When I get
7 Staff's -- here's what I want to do with that. After I
8 get Staff's memo on this, then I will call for a
9 procedural schedule. And I hope the parties will use this
10 time to discuss those issues.

11 MR. DORITY: Okay.

12 JUDGE JORDAN: And I don't think you need me
13 around for that at this point. Intervenor, I think we
14 have -- we understand the issue with the application; is
15 that correct?

16 MR. DORITY: Yes, sir.

17 JUDGE JORDAN: And Applicant, I -- I understand
18 you want your Certificate of Convenience & Necessity. I
19 -- I -- I will turn to Staff and ask if they have anything
20 to add to their recommendation?

21 MS. OTT: Not at this point.

22 MR. HUMMELL: Not at this point.

23 JUDGE JORDAN: Okay. Well, does anyone have any
24 questions for me so far as far as how I envision this
25 proceeding going forward? Any questions for me?

1 MS. OTT: I just want to be clear. You want
2 Staff to file a memo saying we want an evidentiary
3 hearing, and then later file a procedural schedule? Or do
4 you want that to be the same filing?

5 JUDGE JORDAN: Here's what I want. At the
6 conclusion of this, I'd like Staff to file a memo, say,
7 Monday morning if that would be okay, if that fits in with
8 your schedule. I know everyone in your office is very
9 busy.

10 MS. OTT: Maybe by Monday afternoon. I have an
11 appointment that I'm out of office Monday morning.

12 JUDGE JORDAN: That will be fine. What I'm
13 envisioning in that is telling me whether -- reporting
14 whether the parties feel that a hearing is still
15 necessary.

16 Once I get that, then I'll call for a procedural
17 schedule and tell the parties when I want that to be
18 filed. And I'll set forth in my order how I want that to
19 proceed. I can tell you what I have in my mind, that the
20 parties can file one all together. And if they can't
21 agree, file proposal separately. And I will tell you in
22 my order what that is, too. That's what I have in mind
23 okay.

24 MS. OTT: Okay. Thank you.

25 JUDGE JORDAN: All right. Sure. Any other

1 questions for me? Well, I sure don't hear any, so I must
2 have been extremely clear and concise.

3 MR. FINNEGAN: I think so. There's probably one
4 step we can skip because I don't think this is going to
5 settle like it did the last time.

6 JUDGE JORDAN: Okay. All right. Well, I hope
7 you'll at least begin discussions on how to proceed in
8 this hearing once I'm off the line.

9 MR. FINNEGAN: Okay.

10 JUDGE JORDAN: Okay. Well, I'm going to go
11 ahead and leave the room there -- then, and I will leave
12 this line open. And, Counsel, will you hang up when
13 everybody has left?

14 MS. OTT: Yes, I will.

15 JUDGE JORDAN: Okay.

16 MR. DORITY: Thank you, Judge.

17 MR. SHAW: Thanks.

18 MS. OTT: Thank you.

19 JUDGE JORDAN: And I thank the parties very
20 much, and I'm very sorry for the confusion over the
21 number. I experienced it as well as you did, and hope we
22 can do better that next time. I'll work on that. Thank
23 you very much. We're off the record.

24 MR. FINNEGAN: Thank you, Judge.

25 MR. SHAW: Thank you, Judge.

1 (The proceedings were concluded at 9:50 a.m. on
2 November 23, 2009.)

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1 REPORTER'S CERTIFICATE

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3 STATE OF MISSOURI)
)ss.
4 COUNTY OF OSAGE)

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6 I, Monnie S. Mealy, Certified Shorthand Reporter,
7 Certified Court Reporter #0538, and Registered
8 Professional Reporter, and Notary Public, within and for
9 the State of Missouri, do hereby certify that I was
10 personally present at the proceedings as set forth in the
11 caption sheet hereof; that I then and there took down in
12 stenotype the proceedings had at said time and was
13 thereafter transcribed by me, and is fully and accurately
14 set forth in the preceding pages.

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20 Monnie S. Mealy, CSR, CCR #0539

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Registered Professional Reporter

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