

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Prehearing Conference

APRIL 20, 2009
Jefferson City, Missouri
Volume 1

Rob Lee,)
Complainant,) Case No. WC-2009-0277
vs.)
Missouri American)
Water Company,)
Respondent.)

DANIEL R.E. JORDAN, Presiding
Regulatory Law Judge

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

2 JUDGE JORDAN: Okay. So you would like
3 me to use those in making my decision; is that
4 correct?

5 MR. LEE: That is correct.

6 JUDGE JORDAN: Okay. Now, the thing
7 about that is that those didn't appear in your
8 initial complaint. And that's not necessarily a
9 problem, it's just that we have to address that.

10 So I will ask the company through
11 Mr. Noce and Staff whether they feel the need to
12 respond to those by way of responsive pleading,
13 either a recommendation report for Staff or an answer
14 from the company. We'll start with the company.

15 Mr. Noce, do you want to file an answer
16 to those?

17 MR. NOCE: Well, your Honor, I can
18 assure you that any answer we would file would be
19 similar to -- in nature on the one that we filed in
20 response to the original complaint. Every time we've
21 received notice of these, we've sent people out, and,
22 you know, every time we're out there, we pretty much
23 have searched the entire neighborhood, investigated
24 the neighborhood in full.

25 So I believe that these should all be

1 treated as the same -- the same cause of action, same
2 manner. I guess we can deal with each at the
3 hearing, but I believe that they're all related, and
4 I don't think -- unless we're ordered to, I don't
5 think an answer on each of these is necessary.

6 JUDGE JORDAN: Okay. That's fine by me.
7 I just didn't want there to be any surprises at
8 hearing. How does Staff feel about that?

9 MR. RITCHIE: Staff agrees. As we
10 outlined in a recently filed memorandum, the relief
11 requested is the same or substantially similar. The
12 complaints all come from the neighborhood or the area
13 in and around Mr. Lee's neighborhood, and we also,
14 because of those similar natures, we feel that
15 consolidating these complaints would facilitate
16 judicial efficiency.

17 JUDGE JORDAN: Okay. I appreciate that.
18 And I have read your responses on that issue, and I
19 understand that we'll just take all these allegations
20 as one big complaint. And my feeling is that that
21 will be far more efficient than separate complaints,
22 separate proceedings, separate prehearing
23 conferences, separate discovery, separate hearings.
24 Are you with us on that, Mr. Lee?

25 MR. LEE: Yes.

1 JUDGE JORDAN: Very good.

2 MR. LEE: The thing about it is, is that
3 none of them fall through the cracks. When I think
4 of evidence, the last time when I complained of water
5 running out of the ground, it ended up being a bad
6 valve in a residence. Then it seems like everything
7 else just got forgot about.

8 JUDGE JORDAN: Well, that brings us to
9 the next -- my next topic. And I wanted to discuss
10 what must happen at the hearing, and that is as
11 follows: What a complaint does is seek enforcement
12 of the law, and that includes the tariffs; that is,
13 the little set of rules and regulations specifically
14 for the company in this place that it must -- that
15 must follow.

16 The burden of proof -- and anyone here
17 can feel free to correct me -- the burden of proving
18 a violation of the law in tariffs is on Mr. Lee, does
19 it not?

20 MR. RITCHIE: Yes.

21 JUDGE JORDAN: Okay. That's my
22 understanding.

23 MR. LEE: That's where it really gets
24 ugly here. Now every inch of the water system, now
25 it says it's not our water. Where does that leave

1 me?

2 JUDGE JORDAN: The law puts the burden
3 of proof to show that it is their water, and daunting
4 though that be, as I say, I have seen pro se
5 litigants carry cases more difficult than this. So
6 that, I think, leads us next into a discussion of
7 what it is that I expect to hear at the hearing.

8 Now, as I've mentioned, the law of
9 evidence applies here. I'm going to make reference
10 to a couple of statutes that determine what gets into
11 the record, because this has to be done according to
12 law. Generally, the law of evidence applies, but
13 that is moderated somewhat in its strictness by
14 Section 536.070, and there's just all kinds of
15 helpful things in that statute that the parties
16 should be aware of and that I would expect them to
17 follow in laying a foundation for any evidence that
18 they present.

19 And here's another thing that I want you
20 to know. As you probably guessed by now, I'm not an
21 engineer and I don't know a whole lot about water
22 systems, you know, and the technicalities. I know
23 you turn on the faucet, the water comes out.
24 Sometimes they leak. We hope that they don't.

25 That means that I will not be able to

1 form a really good opinion about the leakage of a
2 water system without help. And in that regard, I
3 want to refer the parties to Section 490.065, which
4 will show the parties how they can present evidence
5 to me on a technical nature of this kind, who it is
6 that can bring that to me and what you have to show
7 about such person to do so. We call such a thing
8 foundation.

9 We have evidence. And to get evidence
10 in, we lay a foundation. And most of the time when
11 someone objects to evidence, it's on the basis of a
12 lack of foundation. So study those sections. Those
13 are the ones that I will anticipate being important
14 in this matter.

15 Now, earlier in one of our phone
16 conversations, Mr. Lee had asked me about how does
17 one get information from the other parties, and this
18 was -- this is pretty much the character of the
19 conversations we had strictly of a procedural nature
20 and not getting into substance. But I didn't want to
21 address that in any depth without the other parties
22 being present.

23 So here's another thing I want all
24 parties to hear. The process that Mr. Lee was asking
25 about is called discovery. While the lawyers in the

1 room are probably familiar with this process, Mr. Lee
2 may not be, so I'm going to refer him to some rules.
3 These are incorporated into the Commission's
4 procedure and they're Missouri Supreme Court Rules 56
5 through 61, and those rules set out the devices for
6 obtaining discovery.

7 MR. NOCE: Excuse me, Judge. This is
8 Matt Noce of Missouri American Water. I'm not sure
9 if you're aware, there is a civil lawsuit that
10 Mr. Lee has filed against Missouri American Water in
11 St. Louis County Circuit Court, and we are in the
12 process -- and you'll probably take from Missouri
13 American Water's responses to his initial data
14 request that we are in the process of conducting
15 discovery in that matter, and it's regarding, in our
16 opinion, this is very similar complaints, and I just
17 wanted to get the -- you know, to hear what the
18 Commission -- I mean, what you believe, how that
19 discovery will affect this case.

20 You know, there's some depositions
21 taken, Mr. Lee's deposition's been taken in that
22 case, a representative of Missouri American Water's
23 deposition's been taken. I just don't -- I wanted --
24 if I could, I'd like to avoid duplicating the
25 discovery process.

1 JUDGE JORDAN: Well, you know, I
2 appreciate your spirit of cooperation in this and
3 your desire to not protract this litigation unduly.

4 MR. NOCE: Sure.

5 JUDGE JORDAN: I have to think off the
6 top of my head that with reference to this pending
7 civil action in Circuit Court, if the issues are
8 similar, I'd have to think that the kind of material
9 that's produced in response to discovery would very
10 likely be useful in this action.

11 Also without getting into any ruling in
12 advance on any particular item before it's presented,
13 I would have to think that would be very helpful
14 indeed.

15 MR. LEE: Okay. The lawsuit, if I'm
16 correct, only goes through this time period of 2006
17 and has nothing to do with today. We're here about
18 two different time frames here, this complaint.

19 JUDGE JORDAN: Mr. Lee, we're having a
20 little trouble hearing you. Can you speak a little
21 more clearly, maybe move the receiver a little closer
22 to you?

23 MR. LEE: If I understand this
24 correctly, the lawsuit I filed is about an incident
25 in 2006, and it has nothing to do with today, the

1 issues that are going on today. This is two
2 different instances.

3 MR. NOCE: Well, Judge, if I could, I
4 think if you look at Mr. Lee's complaints, they do
5 reference the fact that his basement's been leaking
6 for 19 years, and he is incorporating into his
7 argument the history of what he claims are repairs
8 that he believes, you know, relieve the water.

9 And I just have a feeling if some of --
10 if you look at his data requests also, they go back
11 further than 2006. He's asking for information that
12 dates back 19 years for histories of leaks in the
13 area, and, you know, Judge I'm just trying to avoid
14 duplicating my discovery work on behalf of my client
15 between these two matters. And that's why I'm just
16 referencing Mr. Lee to the information that we've
17 already produced in the civil lawsuit.

18 If the Commission would like me to
19 produce that to it, that is fine, we have no problem
20 doing that.

21 JUDGE JORDAN: That is fine. I
22 appreciate that. Mr. Lee, we're not trying to cut
23 off your discovery. We're saying that some of the
24 information may be helpful in this action too, but
25 I'm not gonna say which is or which isn't because I

1 haven't seen and nobody's asked me to rule on it.

2 So if you're not getting what you want
3 from them, then you can follow rules for enforcing
4 discovery, and if you file a motion with me, I will
5 rule on it, okay? Is everyone clear on that?

6 MR. NOCE: Yes, your Honor.

7 MR. RITCHIE: Yes.

8 JUDGE JORDAN: All right. Well,
9 speaking of discovery and the pending civil action,
10 there are a few affirmative defenses that appear in
11 Missouri American's answer, and to the extent that
12 they -- they -- they look like -- they look like
13 motions, I want to rule on them.

14 The first one -- and I'm on page 3 of
15 the answer with the affirmative defenses. No. 11,
16 Complainant's claim should be barred that involves
17 identical issues/allegations that are subject...
18 Then the second one is, Complainant fails to state a
19 claim, the third one is statutory limitations, and
20 the fourth is laches.

21 I'm going to deny those -- treating them
22 as motions right now, I'm going to deny them because
23 I haven't heard -- I haven't seen any -- any -- any
24 facts alleged in support of them, nor any law cited
25 in support of them. If Missouri American wants a

1 different ruling on them, certainly Missouri American
2 can renew those motions, but for now I'm going to
3 deny them.

4 MR. NOCE: Okay. Judge, should we treat
5 those as motions to dismiss?

6 JUDGE JORDAN: Right, right, that's how
7 I'm reading those. And so I just wanted to address
8 those right now, and each one is denied.

9 MR. NOCE: Okay.

10 JUDGE JORDAN: Now, let me take a look
11 at my notes. And I think I addressed all that I
12 wanted to tell the parties. I appreciate your
13 attention because there are certain things I wanted
14 to say with everyone present, and so I appreciate
15 that.

16 Is there any issue that someone else
17 wants to bring up while I'm going through my notes?

18 MR. LEE: I have several issues.

19 JUDGE JORDAN: Okay, Mr. Lee, what can
20 we do for you?

21 MR. LEE: I have been doing some
22 research here, and I understand that many companies
23 around the country do water-loss surveys periodically
24 to test the integrity of their water system, and I
25 wondered, when's the last time a water-loss survey

1 has been done on this water system?

2 JUDGE JORDAN: Mr. Noce, do you want to
3 address that?

4 MR. NOCE: Well, Judge, I personally
5 don't have the knowledge in order to -- I don't have
6 knowledge in order to be able to respond to that.

7 JUDGE JORDAN: Uh-huh.

8 MR. NOCE: So I'd have to check with my
9 client.

10 JUDGE JORDAN: Okay. And, you know, I
11 have to say that that sounds like a topic that is apt
12 for discovery. And Mr. Lee can file a discovery
13 device as to that. But I would hope that -- and I
14 think Mr. Noce is volunteering to get that
15 information without that formality.

16 MR. NOCE: Yes, sir.

17 JUDGE JORDAN: I surely do appreciate
18 that. Mr. Lee, what's next? Do you have more
19 matters like that?

20 MR. LEE: Since I filed a lawsuit,
21 Missouri American has a reason to not find a leak or
22 repair the leaking water system near my home. It
23 will make their lawsuit look bad. My question is how
24 can we get a third party involved in this that has no
25 interest, that doesn't have a horse in the race?

1 MR. RITCHIE: I do think -- this is Sam
2 Ritchie for the Staff. We have done that to a
3 certain extent. That's outlined in the Staff's
4 report where the Missouri Department of Natural
5 Resources has looked into this and done testing on
6 the water.

7 MR. LEE: You used the same test that
8 Missouri American has used, and to have one more
9 entity show up and do the same test, that just seems
10 like insanity, especially to claim that's doing
11 something.

12 MR. RITCHIE: I just wanted to point out
13 that they would be a neutral party. They're someone
14 that wouldn't have a horse in this race necessarily.

15 MR. LEE: They don't have the tools to
16 properly diagnose this. They don't have the
17 ultrasonic test equipment.

18 JUDGE JORDAN: Mr. Noce, any thoughts to
19 that end?

20 MR. NOCE: I can assure the judge and
21 the Commission that if, in fact, Missouri American
22 Water has a leak reported and it goes out in response
23 to it and finds a leak, we're going to repair it.
24 Lawsuit or no lawsuit, we're going to make a repair
25 to our system. I can assure the court and the

1 Commission of that.

2 MR. LEE: I can see how your guys come
3 out here and test it. They hook the system over here
4 and then they hook over there and then they get in
5 their cars and leave and no. "We didn't find any
6 leaks." You know, they -- they have not done a
7 survey of this area.

8 JUDGE JORDAN: Mr. Noce, can you explain
9 what sort of incentives your client has to police
10 leaks?

11 MR. NOCE: Well, Judge, if, in fact,
12 there are leaks in the system, our customers are
13 going to -- they're not going to receive their water,
14 and if we find a leak, Judge, we will repair it. We
15 realize that leaks can't -- will come to the surface,
16 will cause surface water and lead to further property
17 damage.

18 So we have an incentive to avoid causing
19 additional damage to other homes in the area if, in
20 fact, there is a leak in our mains. And these mains
21 are high-pressure mains, Judge. If there is a leak,
22 it's going to show up. It's not going to show up in
23 the form of a puddle on the street, it's going to
24 come to the surface and it's going to be coming out,
25 and eventually you're going to be able to tell.

1 And we're gonna repair our leaks
2 because, one, we're losing water; and two, like I
3 said, it's going to cause future -- further damage,
4 which we need to -- we would like to avoid.

5 JUDGE JORDAN: Let me ask you a quick
6 question on that.

7 MR. NOCE: Sure.

8 JUDGE JORDAN: Like I say, I'm no expert
9 on this. My expertise is in administrative law and
10 hearings. But if water doesn't pass through the
11 meters, does Missouri American get paid for it?

12 MR. NOCE: No, your Honor.

13 JUDGE JORDAN: That brings me to another
14 question here. What is the nonrevenue water in the
15 system? What percentage is that?

16 MR. NOCE: Judge, I'm not qualified to
17 answer that.

18 JUDGE JORDAN: Yeah. And is that
19 another matter that you can get with Mr. Lee to
20 answer, to deal with?

21 MR. NOCE: Well, why with these water-
22 loss surveys and what Mr. Lee asking for here, it's
23 my understanding and no one quote me on this but I
24 don't believe we can make that determination in a
25 certain region. I think the only capability that

1 Missouri American has is to measure the water loss
2 throughout its entire system. We're not able to say
3 in Mr. Lee's neighborhood here's how much water has
4 left our system, here's how much water was billed.
5 We don't have the capability. There's no way to be
6 able to tell that.

7 So we will object to this because we
8 would think that, one, it's irrelevant, it's not
9 gonna have any bearing on this matter.

10 JUDGE JORDAN: Can you repeat that,
11 Mr. Lee?

12 MR. LEE: I'm curious what the numbers
13 are for the entire system in North County here.

14 MR. NOCE: Well, again, I don't think we
15 have the capability of saying even in North County
16 specifically, we're gonna -- our numbers are gonna
17 show for our entire system. That's my understanding,
18 is we're not -- I don't think we're able -- we have
19 the capability of breaking it down.

20 MR. BUSH: If I may, Judge, this is Jim
21 Bush. In a normal rate case, all water systems have
22 some level of lost and unaccounted for. In Missouri
23 American's case we don't break it down for the
24 St. Louis County area or the Joplin area or St.
25 Joseph area.

1 Missouri American has 11 distinct
2 districts for water service in the state of Missouri
3 on a company-wide basis. That percentage is anywhere
4 from 15 to 18 percent lost and unaccounted for, which
5 is generally an industrywide acceptable leakage
6 amount for water systems.

7 JUDGE JORDAN: Okay. Mr. Lee, sounds
8 like they don't keep track any further than that of
9 that information. You are free to make some
10 discovery on that if you want. I don't know how
11 productive it would be, but I'm not gonna tell you
12 not to do it.

13 I'd like to return to Mr. Lee's original
14 question, which is how do we get a third party in,
15 and my answer to that will be by reference to the
16 statutes that I cited earlier, the one on evidence
17 generally and the one on expert testimony.

18 MR. RITCHIE: Judge, if I could jump in
19 for just a second. I just wanted to supplement what
20 I was discussing earlier about a neutral party. We
21 are a third party in this case, and just for the
22 record, I wanted to point that out.

23 JUDGE JORDAN: Right. Maybe you can
24 expound upon that a little bit since we've heard
25 about this. It sounds to me like what Mr. Lee wants

1 to do is hire his own expert, and as far as I know,
2 he's perfectly free to do that, so long as the
3 evidence he offers complies with the law I've
4 discussed.

5 Can you tell us a little bit about what
6 Staff does, why it exists, what its job is?

7 MR. RITCHIE: Yeah. We receive a
8 complaint and the Staff will make their own
9 investigation with our own Staff experts in the water
10 and sewer department. And we look at that from a
11 completely neutral standpoint between the party and
12 the water company. And we also follow up on any
13 additional complaints or amendments that someone
14 would make to their complaint and make sure that
15 those matters are being looked into by the
16 department. And we do follow that, and we report our
17 findings as we've done in the earlier Staff report.

18 MR. LEE: And in the entire investigation,
19 how many feet of pipe were tested with the ultrasonic
20 test process to base your report on?

21 MR. RITCHIE: We don't have that sort of
22 equipment. That would --

23 MR. LEE: So how can you determine that
24 the pipes aren't leaking? Do you walk around and
25 look and you don't see -- see them leaking, then you

1 say they're not leaking.

2 MR. BUSH: This is Jim Bush again.

3 MR. LEE: So if you're 100 percent sure
4 that the water is not coming from those water pipes,
5 you would have to be 100 percent sure where it's
6 coming from.

7 MR. BUSH: We go out, we investigate the
8 leak with our experts. We also --

9 MR. LEE: I have heard experts, I have
10 heard investigation, I have heard we checked it, I
11 have heard we've looked at it, but I have not heard
12 how many feet of that pipe we have hooked the
13 equipment to and tested it.

14 If I walked into an emergency room and
15 told them I was having a heart attack and they didn't
16 hook the equipment to me, we could really say we have
17 a problem. We have that same problem going on right
18 now.

19 MR. BUSH: Then we verify with the
20 company.

21 MR. LEE: There's a diagnostic problem.
22 If you don't hook the equipment to the system, you
23 cannot test it.

24 JUDGE JORDAN: Okay. So it sounds like
25 you're not gonna get an answer to your question in

1 this format, right now in this prehearing conference.
2 Sounds like something you may want to do discovery
3 on.

4 MR. LEE: I believe I've already asked
5 for that in my discovery.

6 JUDGE JORDAN: Okay. If you're not
7 getting the answer, you file a motion to compel or a
8 motion to enforce discovery and I will rule on that.
9 Are there any more issues that the parties feel that
10 they need me to be present for and we need to do on
11 the record? Mr. Noce, anything?

12 MR. NOCE: None for us, Judge.

13 JUDGE JORDAN: Mr. Ritchie, anything
14 that you need me for?

15 MR. RITCHIE: Are we gonna have closing
16 statements at the evidentiary hearing?

17 JUDGE JORDAN: Yeah, I'll do opening
18 statements and closing statements if you like.
19 That's your option. You can do either a closing
20 statement or a brief, or you can do both. And I may
21 end up requiring briefs, written arguments, depending
22 on how it goes.

23 MR. NOCE: Judge, this is Matt Noce. Do
24 we have any idea when the evidentiary hearing will be
25 scheduled?

1 JUDGE JORDAN: I have not scheduled
2 anything yet.

3 MR. NOCE: Are we looking, do we think,
4 in six months, three months? How long -- how far out
5 do you anticipate?

6 JUDGE JORDAN: Well, as long as we're
7 here, let's get the parties' thoughts on that. I
8 understand that Mr. Lee wants relief as soon as he
9 can possibly get it.

10 MR. LEE: Absolutely. I would like to
11 have it next week.

12 JUDGE JORDAN: Yeah, I think I have to
13 give ten days' notice unless it's a -- unless there's
14 an imminent danger to health or safety.

15 MR. NOCE: Judge?

16 MR. LEE: My house is filled with toxic
17 mold, I have had health problems. There is an
18 imminent danger here which Staff is aware of, and we
19 treat this like nothing is going on. There is a very
20 imminent danger in this situation.

21 MR. RITCHIE: Mr. Lee, we'd also like to
22 do the evidentiary hearing as soon as possible.

23 MR. NOCE: Well, Judge, this is Matt
24 Noce. Missouri American doesn't have any objections
25 to scheduling the prehearing or the evidentiary

1 hearing in the near future. However, I know that we
2 anticipate filing a motion for summary judgment in
3 the civil lawsuit shortly, and I would expect that if
4 we were given the time, we would do the same in this.

5 Now, I know that requires a 60-day
6 period prior to the evidentiary hearing, but if it's
7 up to -- if the court doesn't have time, that's fine.
8 I know we anticipate going out to Mr. Lee's house
9 about the schedule shortly to allow experts to test
10 both the water in his house currently, as well as to
11 test some areas along his property.

12 MR. RITCHIE: Would it be possible for
13 Staff to be there for that?

14 MR. NOCE: Excuse me. I'm sorry.

15 MR. RITCHIE: This is Sam Ritchie for
16 the Staff. Would it be possible for Staff to be
17 there for that?

18 MR. NOCE: Oh, that's fine.

19 JUDGE JORDAN: Mr. Lee?

20 MR. LEE: I have something to say about
21 this. You have tested that water for years and have
22 never tested anything positive in it. The water,
23 once it seeps through a couple hundred feet or a
24 couple thousand feet of soil, leaches all of the
25 chemicals out of that water. I was reading on the

1 Internet here the other day about a ten-foot sand
2 septic filter where they filter the sewage through a
3 ten-foot sand filter and claim you can drink the
4 water after that has gone through ten feet of sand.

5 After this water seeps through hundreds
6 of feet of soil, there is nothing left to test. The
7 test does not work.

8 MR. NOCE: Mr. Lee, what we would like
9 to do -- and I was going to contact your attorney to
10 set this up -- we would like to examine, with your
11 permission, to take some samples within your yard
12 actually to do some tests on your actual property.

13 MR. LEE: That water may have run a
14 thousand feet before it gets to my property, Matt,
15 and there's nothing left in it. I found another
16 swamp up the road the other day, just a couple days
17 ago. I have video of the water main that was
18 repaired up on the bank, I have video of the water
19 running out of the ground I believe I played at the
20 rate increase hearing running out of that storm
21 drain, and then three or four days after the water
22 main is repaired up the road, that water stops
23 flowing.

24 JUDGE JORDAN: I think this format is a
25 good way for the parties to discuss additional tests

1 on Mr. Lee's property if he will agree to have that
2 done. I don't think you need me and the reporter
3 here for that.

4 So let me move on to another topic and
5 then certainly the parties may resume their
6 discussions after the reporter and I have gone. And
7 I want to raise this subject especially for Mr. Lee
8 since he has the burden of proof to show where this
9 water is coming from, and that is, we can schedule a
10 hearing for you in fairly short order. However, it
11 sounds like you are wanting more discovery from the
12 parties.

13 And discovery, while that will take
14 time, you send your discovery to your adversary, they
15 have time to pull the information and get back to
16 you, then you want time to go through it. So with
17 that in mind, do you want to do more discovery to
18 prepare your case so that you can carry your burden
19 of proof? Or do you want me to schedule a hearing
20 more quickly than that? Or do you want to think
21 about that some more?

22 MR. LEE: I probably need to think about
23 that. I'm not wanting to hire a third party. I
24 would like the Public Service Commission to hire a
25 third party to do a water loss survey on this system.

1 I have no money to hire a third party.

2 JUDGE JORDAN: Staff?

3 MR. RITCHIE: That's not something that
4 we can do, Mr. Lee. We're the neutral third party
5 and that's something you would have to do on your own
6 accord.

7 MR. LEE: Reading your report, you are
8 far from neutral. You've ignored every fact that has
9 been given to you that could have pointed to the
10 water running out of that water system. You refused
11 to look at the video, you have refused to get the
12 repair records. You are far from neutral.

13 MR. RITCHIE: The video has been viewed
14 and our Staff experts have taken and considered all
15 they've seen in front of them and based upon their
16 investigations, and this is what they found.

17 MR. LEE: You didn't even include the
18 basic facts of my original complaint about the swamp
19 in the neighbor's back yard or the water running out
20 of the ground. You say my complaint was a leaky
21 basement. How could you claim to be neutral? You
22 have omitted the facts.

23 JUDGE JORDAN: Well, it sounds like the
24 parties don't have anything more for me; am I correct
25 in this?

1 MR. RITCHIE: I have one additional
2 follow-up regarding the evidentiary hearing. Can you
3 discuss witnesses and the process -- possible
4 witnesses and the process for friendly witnesses or
5 subpoenaed witnesses, how we might address that in an
6 evidentiary hearing and for the benefit of all
7 parties here?

8 JUDGE JORDAN: Oh, sure. Are you
9 wanting a rundown of the subpoena process, is that
10 what you're asking?

11 MR. RITCHIE: Well, just for the benefit
12 of everyone, if anyone did want to have any witnesses
13 present.

14 JUDGE JORDAN: Well, I've referred to
15 Section 536.070, that that gives the parties the
16 right to present witnesses. There's also, for most
17 of the time if you have a friendly witness, you don't
18 have to compel their attendance, but if you feel that
19 you need to make sure and you can't rely on someone's
20 word that they will show up, the Commission does have
21 subpoena power and can make people show up and show
22 up with records. Is that what -- does that answer
23 your question?

24 MR. RITCHIE: Yes. Thank you, Judge.

25 JUDGE JORDAN: Sure. And anything else

1 for me, Mr. Ritchie, that you can think of?

2 MR. RITCHIE: What order would we go in
3 at an evidentiary hearing?

4 JUDGE JORDAN: Oh, good question. If I
5 recall correctly, the order is complainant, water
6 company and then Staff. Anything else, Mr. Ritchie?

7 MR. RITCHIE: No, thank you, Judge.

8 JUDGE JORDAN: Mr. Noce, any more
9 questions?

10 MR. NOCE: No, Judge.

11 JUDGE JORDAN: All right. And Mr. Lee,
12 is there anything else for me before I leave this
13 prehearing conference and we go off the record?

14 MR. LEE: One more thing, I think. I
15 have posted a response to the Staff's report on the
16 EFIS system. There were a lot of the facts that they
17 left out. My question is, how do I get that entered
18 into evidence or into this process?

19 JUDGE JORDAN: Well, I think the statute
20 I referred you to, Section 536.070, will show you how
21 to get a document into evidence. First, if it's just
22 you saying something, you may testify to that at the
23 hearing.

24 MR. LEE: Very good.

25 MR. NOCE: Judge, this is Matt Noce.

1 One thought I just had is if we intend to file
2 motions in limine, I'm not sure if -- are those
3 something we take up the morning of the evidentiary
4 hearing or is that something -- is that a type of
5 motion that the court will hear?

6 JUDGE JORDAN: You know, that's a good
7 question. Prehearing motions, I try to rule on them
8 before hearing, if possible. It may not be possible,
9 so, you know, there may be some, if you file them, I
10 will take up at the hearing. But I'll sure try to
11 address motions before the hearing.

12 MR. NOCE: Can we notice them up prior
13 to hearing? Is that what you're saying, you'll have
14 a special hearing for prehearing if we file them in
15 enough advance.

16 JUDGE JORDAN: Well, I will rule on what
17 you file and what the parties file in response, okay?
18 If you want to -- if you're asking for oral argument
19 on a motion, yeah, we can schedule that before the
20 hearing if you think it's necessary, but if you don't
21 ask for it, I won't call it; I'll just rule on what's
22 filed.

23 MR. NOCE: Okay.

24 JUDGE JORDAN: Anything else, Mr. Noce?

25 MR. NOCE: Nothing, Judge.

1 JUDGE JORDAN: Anything else from
2 Mr. Ritchie?

3 MR. RITCHIE: No.

4 JUDGE JORDAN: Anything else, Mr. Lee?

5 MR. LEE: I'm good.

6 JUDGE JORDAN: Well, I sure appreciate
7 your participation in this prehearing conference. I
8 think it's been constructive and helpful, and I hope
9 I've given the parties guidance in this format.

10 I will now leave this room. I'll leave
11 this connection open, and when the parties are done
12 with their conversations, Staff can hang up the
13 phone. But for now, the reporter and I will leave,
14 and we are off the record. Thank you.

15 (WHEREUPON, the recorded portion of the
16 prehearing conference was concluded.)

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