

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

September 20, 2010

Jefferson City, Missouri

Volume 1

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Mike and Carol Medlin, )

Complainant, )

vs. ) File No.

Raytown Water Company, ) WC-2010-0357

Respondent. )

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DANIEL JORDAN, Presiding  
REGULATORY LAW JUDGE

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REPORTED BY:  
NANCY L. SILVA, CCR  
TIGER COURT REPORTING, LLC

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A P P E A R A N C E S

RONALD C. SPRADLEY  
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FOR: Raytown Water Company

MIKE MEDLIN (via telephone)  
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FOR: Pro Se

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FOR: Staff of the Missouri Public Service  
Commission

1 JUDGE JORDAN: We will go on the  
2 record.

3 The Missouri Public Service  
4 Commission is calling File No. WC-2010-0357.  
5 I'm Daniel Jordan. I'm the Regulatory Law Judge  
6 assigned to this case, and we are conducting a  
7 prehearing conference this morning.

8 We will not be taking evidence, but  
9 we will be discussing procedure for this case.  
10 We'll begin with entries of appearance. I'll  
11 ask counsel for each of the parties, and the  
12 unrepresented parties also, to give their name  
13 and address for the court reporter. We are on  
14 the record this morning, and there will be a  
15 transcript available. So let's begin with the  
16 Complainants, Mr. and Mrs. Medlin.

17 MS. MEDLIN: You want our names and  
18 addresses?

19 JUDGE JORDAN: Please, and spell them  
20 for the reporter just in case she doesn't have  
21 that handy.

22 MS. MEDLIN: Okay. Mike and Carol  
23 Medlin, M-e-d-l-i-n. Address is 1905 Southwest  
24 Sampson Road, Lee's Summit, Missouri 64082.

25 JUDGE JORDAN: Okay. Thank you.

1 And for the Utility, will counsel  
2 enter his appearance and also introduce your  
3 client representatives, if you please.

4 MR. SPRADLEY: Yes, Ronald C.  
5 Spradley of the firm of Spradley and Leasmeyer,  
6 4700 Bellevue, Suite 210, Kansas City, Missouri,  
7 64112, representing the Raytown Water Company.

8 Participating in this prehearing  
9 conference for the company are also Neal  
10 Clevenger, president and general manager of the  
11 Raytown Water Company, and Leslie Smart, who is  
12 in charge of their billing operations.

13 JUDGE JORDAN: Okay. Thank you.

14 And for the Staff of the Missouri  
15 Public Service Commission?

16 MS. LEWIS: Rachael Lewis, Staff  
17 Counsel's Office, Box 360, Jefferson City,  
18 Missouri 65102. Also with me is Jim Merciel  
19 from the staff's water and sewer department.

20 MR. SPRADLEY: I could hardly hear  
21 Ms. Lewis. I don't know whether she's on a  
22 different connection or was maybe a little too  
23 far away from the speaker but --

24 JUDGE JORDAN: She's in the room here  
25 in the Commission's offices and she's moving

1 closer to the telephone.

2 MR. SPRADLEY: Thank you.

3 MS. LEWIS: Does that help a little  
4 bit?

5 MR. SPRADLEY: Yes, a great deal.  
6 Thanks.

7 JUDGE JORDAN: Thank you for  
8 mentioning that.

9 For the Office of Public Counsel I  
10 don't see a representative here this morning.  
11 Is there anyone on the line from the Office of  
12 Public Counsel?

13 (No response.)

14 JUDGE JORDAN: I'm not hearing  
15 anyone, so I think we'll just go ahead and  
16 proceed.

17 The main thing that I want everyone  
18 to understand today is that this is a formal --  
19 very formal proceeding, I mean the hearing  
20 procedure itself.

21 It's very close to what you would  
22 find in circuit court if you were trying a case,  
23 so I want everyone to understand that what the  
24 Commission will do will be make a decision based  
25 on a record that will have evidence in it, so

1 it's very important to understand that there are  
2 a few basic principles of evidence involved with  
3 this.

4 In that connection, I'm going to  
5 give you a citation that I want everyone to look  
6 at. Counsel may be familiar with it, but I want  
7 to make sure everyone else is. I'm going to  
8 point you to a section of the statutes, of the  
9 Missouri Statutes.

10 I want you to look at Section  
11 536.070, and that will tell you how the law of  
12 evidence is altered for this proceeding. That's  
13 536.070.

14 And then there are some other things  
15 that you may want to be interested in. For  
16 example, there are some things that someone like  
17 me who is not an accountant, not an engineer,  
18 would not understand, you might want to have an  
19 expert speak to such things, someone who can  
20 give an opinion, someone who doesn't have  
21 firsthand knowledge of the events but can  
22 evaluate them and give an expert opinion.

23 For that you'll want to take a look  
24 at Section 490.065. Now, those are important  
25 because, like I say, this is an evidentiary

1 matter, and if we need to, we will have a  
2 hearing and it will be much like a trial.

3 The burden of proof will be on the  
4 Complainants, and that's the Medlins, and what  
5 they are required to show under the statutory  
6 procedure that they've begun is that the  
7 Utility, Raytown, has done some action that is  
8 contrary to a statute or a regulation or  
9 Raytown's tariff, that set of special rules  
10 that's on file with the Commission and governs  
11 Raytown's actions.

12 Now, in developing your case -- any  
13 questions so far? I don't want to do all the  
14 talking here. Any questions so far from the  
15 Medlins?

16 MS. MEDLIN: Well, I don't know that  
17 we have the statutes that you are speaking of.

18 JUDGE JORDAN: Those are pretty easy  
19 to find if you can get online. They're all set  
20 out in their current form so --

21 MS. MEDLIN: Okay.

22 JUDGE JORDAN: -- not hard to find.  
23 Also the regulations of the  
24 Commission are also online --

25 MS. MEDLIN: Okay.

1 JUDGE JORDAN: -- and you can find  
2 them at our site. And if you want to go even  
3 further, you can get into Raytown's tariff.  
4 That's on file with the Commission also. The  
5 best way to do that, I think, is to call the  
6 Data Center, because they keep all that stuff  
7 electronically and they can guide you through  
8 that.

9 MS. MEDLIN: Okay.

10 JUDGE JORDAN: Okay. Anything else  
11 from the Medlins before we go on?

12 MS. MEDLIN: No.

13 JUDGE JORDAN: Very good.

14 Anything from the company?

15 MR. SPRADLEY: Nothing from counsel.

16 MR. CLEVENGER: I am -- if people  
17 could speak up just a bit, we're all leaning  
18 down to the phone because we can just barely  
19 hear.

20 JUDGE JORDAN: Okay. Well, I'll move  
21 a little closer to the speaker myself, okay?

22 MR. CLEVENGER: Okay.

23 MR. SPRADLEY: Neal, did you have  
24 anything to add or any other questions for the  
25 administrative law judge?



1 MR. CLEVENGER: I don't know at what  
2 point in time you want the Company's position.  
3 I think that's further on through the case, is  
4 it or --

5 JUDGE JORDAN: Yeah, that's something  
6 that we'll -- I'll tell you what, what I'm going  
7 to do is, after I've ended my discussion of  
8 procedure with everyone, what I'm going to do is  
9 I'm going to leave this phone line open, and I  
10 hope that the parties can talk this through a  
11 little bit further.

12 MR. MEDLIN: Sir, I missed what  
13 Mr. Clevenger said. Could you -- have either --  
14 let me -- fill me in on -- I couldn't quite hear  
15 him very well.

16 JUDGE JORDAN: He was asking about  
17 when to give the parties' positions.

18 MR. MEDLIN: Asking about what?

19 JUDGE JORDAN: When the Commission  
20 would want to hear the position of the parties,  
21 what their argument is.

22 MR. MEDLIN: Okay.

23 JUDGE JORDAN: And what I'm -- what I  
24 was telling him was that after I'm done  
25 discussing procedure, I'm going to leave the

1 phone line open but will go off the record so  
2 that the parties can discuss the issues, and  
3 staff will be here to facilitate that as well.

4 Let's see. Okay. So, you know, in  
5 developing your case, you're going to have  
6 available to you certain devices which we call  
7 discovery, and that's things like, if you want  
8 to use them, to take depositions, you can send  
9 written questions that are called  
10 interrogatories, you can do requests for  
11 admissions.

12 All that stuff is set out in the  
13 Rules of Civil Procedure that the Missouri  
14 Supreme Court publishes, and those are also  
15 available online. Those are ways to get  
16 information from the other side, from the other  
17 party, to clarify what they're arguing, what  
18 they're not arguing, and those things can go a  
19 long way to not only developing your case for  
20 argument to the Commission, but maybe in  
21 settling the case between the parties, because  
22 the law favors settlement, the Commission  
23 encourages it, and experience shows that the  
24 parties can often come up with a resolution  
25 that's better than what the Commission could

1 impose, because if we do go to hearing, if we do  
2 go to a decision, I will recommend -- I will  
3 draft a recommended decision to the Commission  
4 and that will be it, and the Commission will  
5 decide it rather than the parties.

6 And you're certainly entitled to  
7 have the Commission do that, but I want to make  
8 sure that the parties all explore the  
9 possibilities for settlement before they go to  
10 hearing.

11 Any questions so far from anyone on  
12 that bit?

13 MR. SPRADLEY: None on behalf of the  
14 Company.

15 MS. MEDLIN: No. None.

16 JUDGE JORDAN: Okay.

17 Now, if we do go to hearing,  
18 Complainants will have the burden of proof, as I  
19 discussed. They will present their case first.  
20 The Utility will go second, and that will be  
21 followed by Staff.

22 Yes, Staff is a party to this case,  
23 but Staff doesn't really have a stake in it,  
24 doesn't stand to win or lose money, but we find  
25 it very helpful to get Staff's perspective

1 because they have the expertise. They have the  
2 accountants and the engineers and all the people  
3 that can help us understand the technical  
4 aspects of this case.

5 And if we do go to hearing, that,  
6 too, will be on the record. A reporter will  
7 make a transcript, and using the transcript the  
8 parties will have the right to file written  
9 argument, sometimes called briefs, and when  
10 that's all done, then I will draft my  
11 recommended decision and it will go to the  
12 Commission.

13 The Commission itself will make the  
14 final decision in this case, if we go that far.  
15 And I think that's about all I have that I  
16 wanted to mention.

17 Did Staff have anything that it  
18 wanted to bring up?

19 MS. LEWIS: No.

20 JUDGE JORDAN: Okay. And are there  
21 any questions from the parties? The Medlins?  
22 Any questions?

23 MS. MEDLIN: No.

24 JUDGE JORDAN: Okay.

25 And from the Utility?

1 MR. SPRADLEY: No questions.

2 JUDGE JORDAN: Okay. All right.

3 Well, what I'll do, then, is I will go off the  
4 record. I'll leave this line open. I'll leave  
5 the room. I hope the parties will continue  
6 talking. I'll ask Staff when all the  
7 conversation is done to close the telephone line  
8 to make sure it's all hung up.

9 And I'd like also to ask the Staff  
10 to file a brief report tomorrow, if possible,  
11 just letting me know their take on the status of  
12 this case as to whether it looks like the  
13 parties may be settling or whether I should go  
14 ahead and schedule a hearing.

15 And that being said, I'll call for  
16 questions one more time. Anything from the  
17 Medlins? Anything I can do for you while we're  
18 on the line?

19 MR. MEDLIN: No sir. Thank you for  
20 your time.

21 Oh, you're entirely welcome.

22 And for the Utility, anything else I  
23 can do for you?

24 MR. SPRADLEY: Well, I don't think  
25 so. I don't know whether as the regulatory law

1 judge that would be handling this if it goes  
2 further you're interested in being made aware of  
3 this, but I think in view of the Company's  
4 actions that they've taken after receiving the  
5 information and then the complaint and based  
6 upon the investigation by both the Company and  
7 the Staff, I just wanted to make everyone aware  
8 that the Company will likely be filing a Motion  
9 for Summary disposition of this case, similar to  
10 under the Rules of Civil Procedure for Summary  
11 Judgment.

12 JUDGE JORDAN: Okay. Well, we'll --  
13 I appreciate that heads-up. And just a swift  
14 translation for the Medlins: Summary  
15 disposition or summary determination, in circuit  
16 court called summary judgment, is a way to get a  
17 decision without a hearing, but it requires that  
18 the burden of proof is correspondingly higher  
19 and --

20 MR. MEDLIN: Burden of proof what?

21 JUDGE JORDAN: Well, if someone wants  
22 to take away your rights to a hearing, it's not  
23 easy. Basically, a Motion for Summary  
24 Disposition will say, look. Here's all these  
25 facts. We prove them by these affidavits we

1 attach to our motion. We establish on these  
2 facts that we win the case, okay? That's the  
3 idea. It's not easy to do.

4 MR. MEDLIN: Oh.

5 JUDGE JORDAN: It's a high burden.  
6 The Respondents, the Utilities, can do it. The  
7 Complainants, yourselves, can try it also.  
8 You'll get the chance to respond.

9 MR. MEDLIN: Uh-huh.

10 JUDGE JORDAN: And like I say, it's  
11 not easy.

12 MR. MEDLIN: It sounds like trickery  
13 to me, because since the Commission has already  
14 gone over all the evidence and found that -- and  
15 recommended what they think should be done, it  
16 seems like they've already gone over said  
17 evidence, and it's not that cut and dry.

18 MS. LEWIS: Mr. Medlin, this is  
19 Rachael for Staff Counsel's office, and the  
20 Staff has filed. The Commission has not made  
21 any ruling on this at all in the case. It's  
22 just Staff has filed its recommendation.

23 You filed your information and the  
24 Company has filed their information. This today  
25 is for us to see if we can come to some sort of

1 common ground off the record without a true  
2 hearing. Right now we're on the record with the  
3 judge in the room, but when we talk about the  
4 details, it will just be the parties involved  
5 trying to resolve the issue without a hearing.

6 MR. MEDLIN: I only got about half,  
7 of that, but -- I don't know how important you  
8 think it is for me to understand every word she  
9 just said, but I only heard every other word.

10 JUDGE JORDAN: Okay. Then we'll have  
11 her repeat it. Will you come a little closer to  
12 the receiver, counselor.

13 MS. LEWIS: Mr. Medlin, this is Staff  
14 Counsel's office, and Staff Counsel -- Staff has  
15 filed Staff's position. The Commission itself  
16 has not made any rulings or judgment on the --

17 MR. MEDLIN: Oh, I understand that.

18 MS. LEWIS: -- on the evidence, so  
19 this today, once the judge leaves, gives the  
20 parties an opportunity to communicate and try to  
21 resolve this without having a hearing.

22 The judge is simply explaining the  
23 process and describing what will happen if it  
24 does go to hearing and we're not successful  
25 today, and he has asked us, our office, to file



1 something tomorrow kind of summarizing the  
2 discussion today and whether we -- what way we  
3 think it will go.

4 MR. MEDLIN: Well, the attorney's  
5 comment didn't seem as though it was something  
6 trying to resolve anything. It seemed like it  
7 was trying to take our right to a trial away.

8 JUDGE JORDAN: Yeah, he's trying to  
9 win.

10 MR. MEDLIN: If you're trying to  
11 resolve something, I think we're getting off on  
12 the wrong foot.

13 MR. SPRADLEY: Well, I guess I don't  
14 want to get into any legal arguments, because  
15 it's my understanding this is not the place or  
16 time to do it.

17 Just as a procedural matter, as the  
18 regulatory law judge explained, summary  
19 disposition essentially means that there aren't  
20 any material facts that are truly in dispute,  
21 and that's what we believe on behalf of the  
22 company is that there really aren't any material  
23 facts that can be shown to be genuinely in  
24 dispute, so that would be the basis for our  
25 motion.

1 In other words, we're saying that  
2 there isn't anything to be established at a  
3 hearing because everybody knows what the facts  
4 are and the Commission.

5 MR. MEDLIN: Well, I hope you  
6 understand that the Commission reported that  
7 there would have had to have been a 1/2-inch  
8 water line broken wide open inside the building  
9 for this to even be a possibility, and I have  
10 proof that there were no half-an-inch water  
11 lines broken inside the building.

12 MR. SPRADLEY: Okay. I've read the  
13 Staff report.

14 MR. MEDLIN: Okay. Great. Well,  
15 there's a dispute then.

16 MS. LEWIS: Mr. Medlin, you would  
17 have an opportunity to respond to the summary  
18 judgement -- or the summary motion that anyone  
19 files in this case and, again, it's the Staff --  
20 the Commission hasn't made any rulings or  
21 filings in this case.

22 JUDGE JORDAN: Yeah, and we're  
23 getting a little ahead of ourselves. I  
24 appreciate counsel's heads-up on that, but  
25 there's no motion filed yet, and I hope that

1 there won't have to be one, but that's -- I  
2 appreciate counsel giving us a heads-up on what  
3 may be coming down the pipe.

4 And the matter of the procedure and  
5 the standards for summary disposition are all  
6 set forth in your regulations as well.

7 So is there anything else that  
8 anyone wants to tell me or ask me before I go  
9 off the record and leave the room to the parties  
10 to discuss sensitive information outside my  
11 presence?

12 MS. LEWIS:

13 Staff has nothing.

14 JUDGE JORDAN: Okay.

15 Anything from the Medlins?

16 MR. MEDLIN: No, sir.

17 JUDGE JORDAN: Okay.

18 And anything from the Company?

19 MR. SPRADLEY: Not on behalf of the  
20 Company from counsel, at least.

21 Neal, anything else for the Company  
22 that you wanted to say?

23 (No response.)

24 JUDGE JORDAN: Okay. I'm not hearing  
25 anything from the Company's representative.

1 MR. CLEVENGER: None from the  
2 Company. Sorry.

3 JUDGE JORDAN: All right. That's  
4 quite all right.

5 Okay then. With that I will end my  
6 portion of the prehearing conference, and thanks  
7 very much to the parties for being here, and I  
8 hope that you can work something out.

9 I'm going to leave the room so they  
10 can discuss the issues freely outside my  
11 presence, and with that we will go off the  
12 record. Thank you very much.

13 MR. SPRADLEY: Thank you.

14 MR. MEDLIN: Thank you.

15 MS. LEWIS: Thank you.

16 (The hearing concluded.)  
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CERTIFICATE

I, Nancy L. Silva, a Certified Court Reporter, CCR No. 890, the officer before whom the foregoing hearing was taken, do hereby certify that the witness whose testimony appears in the foregoing hearing was duly sworn by me; that the testimony of said witness 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 hearing 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.

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Nancy L. Silva, CCR

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