

THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

October 7, 2015

Jefferson Ci ty, Mi ssouri

Volume 1

Michel e Westmoreland,

Compl ai nant,

VS.

Missouri -American Water
Company,

Respondent.

File No. WC-2015-0171

DANIEL JORDAN, Presiding
SENIOR REGULATORY LAW JUDGE

REPORTED BY:
Angie D. Threlkeld, CCR
TIGER COURT REPORTING, LLC

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1 JUDGE JORDAN: Commission is calling the
2 action in File Number WC-2015-0171. That case is styled
3 Westmoreland versus Missouri-American Water Company.
4 We're here for a prehearing conference.

5 My name is Daniel Jordan. I'm the regulatory
6 law judge assigned to this action. And I will begin with
7 entries of appearance. And I'll ask counsel to introduce
8 any representatives of their client as well.

9 We'll begin with the Complainant, Michele
10 Westmoreland.

11 MR. SELTZER: Good morning, all. My name is
12 Garry Seltzer. I am the attorney for Michele
13 Westmoreland. Michele Westmoreland is sitting across
14 from me.

15 JUDGE JORDAN: Thank you, Counselor.

16 And for the Respondent, Missouri-American.

17 MR. LUFT: Yes, Judge. This is Tim Luft,
18 727 Craig Road, St. Louis, Missouri 63141. And I am by
19 myself here.

20 JUDGE JORDAN: Very good.

21 For Staff.

22 MR. THOMPSON: Kevin Thompson for the Staff
23 of the Missouri Public Service Commission, Post Office
24 Box 360, Jefferson City, Missouri 65102. With me is Dave
25 Spratt from the Commission's water & sewer unit.

1 JUDGE JORDAN: Thank you, Counselor.

2 Also party to this action under Commission
3 regulation is the Office of Public Counsel, but I'm not
4 seeing any representative in the room. And I believe
5 that Office of Public Counsel is not on the telephone
6 line. I'm not hearing anyone from Office of Public
7 Counsel.

8 We'll get into a discussion of the procedure
9 for this conference. What we're here for is mostly a
10 discussion of scheduling, which -- most of which will
11 probably happen off the record. We have a portion on the
12 record here so that everyone may be introduced and we
13 know who's present.

14 When this conference is over, I'm going to
15 ask Staff to do a couple of things; hang up the phone,
16 turn off the lights, let us know up on the ninth floor
17 when you're done with the room so that we can lock it up.

18 Of course, the parties can also discuss
19 substantive matters and certainly are invited to discuss
20 settlement of this action. Right now as we're on the
21 record and I am in the room, you can do that if you want;
22 but you'll probably want to wait to reserve sensitive
23 matters that you don't want me to hear until we go off
24 the record and I leave the room.

25 And I will also mention that the Commission

1 offers trained mediators to mediate this action, if the
2 parties think that would be helpful, to explore further
3 possibilities for settlement.

4 Any questions on our procedure so far from
5 the Complainant?

6 MR. SELTZER: Garry Seltzer. No, sir.

7 JUDGE JORDAN: From Missouri-American?

8 MR. LUFT: No, sir.

9 JUDGE JORDAN: Staff, any questions?

10 MR. THOMPSON: None, Judge. Thank you.

11 JUDGE JORDAN: Very good. I just had one
12 matter that I wanted to probe and get into, because I
13 don't want anyone to be disappointed or misled.

14 My question is for the Complainant, Michele
15 Westmoreland. Counselor, I read a lot in the pleadings
16 about damages, monetary damages, and there have been
17 allegations of various amounts. Is Michele Westmoreland
18 seeking an award of damages from the Commission?

19 MR. SELTZER: No, she knows the Commission
20 can't award her damages. She's aware that what we can --
21 what your office can determine is whether or not
22 Missouri-American Water violated its tariff. And if you
23 find that, in fact, Missouri-American Water did violate
24 its tariff, then she knows she has to go to circuit court
25 to get money damages.

1 JUDGE JORDAN: Okay. Very good. That's
2 pretty much the only question I had for Complainant.

3 Let's see now. The utility,
4 Missouri-American Water, is still maintaining that
5 there's been no violation of the tariff; is that correct?

6 MR. LUFT: That's correct, Your Honor.

7 JUDGE JORDAN: Okay. Very good.

8 Staff's position was that there -- well, I'm
9 going to let Staff explain its position on the complaint,
10 if it will.

11 MR. THOMPSON: There's a Staff recommendation
12 to grant partial relief, based on the opinion of Former
13 Senior Attorney Mayfield that they had violated their
14 tariff. I'm not so convinced that there's a tariff
15 violation. I think it's straightforward civil
16 negligence.

17 There's a line of cases beginning with
18 Laundry, Inc. that I know that you're aware of, Judge,
19 where persons who are seeking monetary damages from
20 utility companies come here first. And after the
21 Commission has ruled on whatever the case may present the
22 Commission can rule on, they then go on to circuit court
23 seeking damages under a negligence or tort claim. I
24 think that's the kind of case we have here. I don't --
25 I'm planning to file an amended Staff recommendation,

1 removing the opinion that there has been a tariff
2 violation. I personally don't see one.

3 JUDGE JORDAN: Okay. Your explanation of the
4 procedure -- and I'm addressing all parties -- pretty
5 much comports with mine. So I just wanted to make sure
6 we were all on the same page, and I think that we are.

7 That's all I had. Is there anything that I
8 can do for the parties before we go off the record and
9 the parties have their off-record discussion?

10 Complainant, Michele Westmoreland?

11 MR. SELTZER: Yes, sir. My understanding is
12 you are going to set a hearing date for this issue, and I
13 would like a hearing date set far enough into the future
14 that I would -- I want to file a motion for summary
15 judgment on the issue of whether or not the tariff was
16 violated. And I know under the rules I've got to do it
17 60 days before a trial date, and they've got 30 days to
18 file a response.

19 So with all of those parameters, it looks to
20 me like we would be looking for a trial date in, well,
21 2016, January or February.

22 JUDGE JORDAN: Okay. And I had just been
23 looking at my calendar in January of 2016, and it's
24 pretty open. So whatever the parties want to come up
25 with around then would be fine by me. And let me also

1 mention, in my experience, a motion for summary
2 determination can save a lot of client time and money.

3 MR. THOMPSON: Judge, we could build a date
4 for a dispositive motion right into the procedural
5 schedule.

6 MR. SELTZER: That's sort of what I was
7 thinking too.

8 JUDGE JORDAN: That's very helpful, a last
9 day for dispositive motions and responses. I had a
10 schedule filed this morning that left the possibility for
11 a counter-motion of a dispositive nature. So that's a
12 good technique. That's good practice.

13 Anything -- anything else from Mr. Seltzer?

14 MR. SELTZER: Yes. I'm sort of intrigued
15 with the thought of mediation. And if the other parties
16 are agreeable to it, I think we could mediate that issue,
17 violating the tariff. But I'm wondering if, assuming we
18 were to mediate that, I'd also like to be able to mediate
19 damages. Even though you can't make an award of damages,
20 I'd like to do everything in one big comprehensive bang
21 mediation; that is, address both liability and damages,
22 if the other parties are agreeable to that.

23 MR. THOMPSON: That's certainly not unheard
24 of, Mr. Seltzer. The Company -- while the Commission
25 cannot require the Company to pay damages, the Company

1 can always enter into a settlement agreement that would
2 include monetary compensation, if it felt that its
3 interests lay in that direction.

4 MR. LUFT: Yeah. This is Tim Luft,
5 Missouri-American. We would certainly be in favor of
6 that. I mean, I think we're just -- we're apart on the
7 number. That's the issue. And if we can get -- close
8 that gap, we can resolve this case.

9 JUDGE JORDAN: Well, that's very
10 constructive. I appreciate the parties' attitude on
11 that.

12 Mr. Seltzer, I didn't mean to cut you off, if
13 you had something further.

14 MR. SELTZER: Yeah, thank you, sir. Although
15 the trial date I think should be in 2016, early 2016, I
16 think it would be helpful if we had the mediation
17 sometime between now and -- well, between now and
18 December 4th and that the mediation take place in
19 St. Louis. Mr. Luft is here, I'm here, Michele is here,
20 and there's plenty of guys who want to mediate in
21 St. Louis. So my suggestion would be we do these things:
22 We establish a mediation date sometime between now and
23 December 4th, we set a dispositive motion date sometime
24 in late January or early February and a trial date after,
25 like mid February. The reason I'm saying that is I've

1 got a whole bunch of trials and I'm out of town through
2 January 20th. I don't want to have trials on top of
3 trials. I'm going to need a little bit of breathing
4 room. But I think the mediation could take place right
5 away.

6 JUDGE JORDAN: Well, I think that's a very
7 construct -- these are all constructive suggestions. The
8 Commission not only has offices in St. Louis in the Wayne
9 Wright Building, it also has a regulatory law judge
10 stationed in the Wayne Wright Building who has been
11 through the University of Missouri's civil mediation
12 training, and we're all pretty active in mediation. I
13 think that's -- I think that's a good idea.

14 Anything else, Mr. Seltzer?

15 MR. SELTZER: No, not at this point.

16 MR. LUFT: Judge, and the benefit to that is
17 there's no cost to Mrs. Westmoreland or us with regard to
18 the mediator?

19 JUDGE JORDAN: Oh, no, the Commission offers
20 its mediation service --

21 MR. SELTZER: That's great.

22 JUDGE JORDAN: -- to the parties. Yeah.

23 MR. LUFT: So that's a no-brainer then.

24 JUDGE JORDAN: Yeah.

25 MR. SELTZER: Yeah.

1 JUDGE JORDAN: The Commission has sent all of
2 its regulatory law judges to the University of Missouri
3 Law School's civil mediation training, which is a two or
4 three-day program, and pretty much covers the basis.
5 And, of course, the benefit of having one of our
6 regulatory law judges in this is that they have
7 background in Commission procedure and the substantive
8 law there. So very helpful in bouncing ideas off of --
9 off the regulatory law judges as mediator. And, of
10 course, anything that doesn't settle in mediation, can --
11 you can still go to hearing.

12 MR. SELTZER: Right. It would be --
13 mediation would be without prejudice too, our right --

14 JUDGE JORDAN: Sure.

15 MR. SELTZER: -- to file a dispositive motion
16 or to have a full hearing.

17 JUDGE JORDAN: Yeah, I can tell you that my
18 practice is not to get terribly deep into the drafting of
19 a settlement document. But Judge Jones in St. Louis, he
20 may have a different practice, so -- that much I can tell
21 you.

22 All right. Mr. Luft, what else can we do for
23 you while I'm on the line?

24 MR. LUFT: I have nothing further, Your
25 Honor.

1 JUDGE JORDAN: Very good.

2 Chief Staff Counsel?

3 MR. THOMPSON: Nothing, Judge. Thank you.

4 JUDGE JORDAN: Very good. Well, I appreciate
5 the parties' appearance and very helpful constructive
6 suggestions in moving this case along.

7 And there being nothing else, I will --

8 MR. SELTZER: Your Honor --

9 JUDGE JORDAN: Yes.

10 MR. SELTZER: -- I do have something else. I
11 would like, if we can, to schedule the mediation now, if
12 possible. If that's not possible, I would at least like
13 to present my exclusionary dates to the Court so I don't
14 accidentally get double-booked.

15 JUDGE JORDAN: Yeah, I don't have a problem
16 with that. Here's what I'd like to happen: I'm going to
17 instruct chief -- I'm going to instruct Chief Staff
18 Counsel to make a filing when this conference is over;
19 and if it doesn't happen till tomorrow morning, that's
20 okay too. I hope that you'll be able to set forth an
21 agreed schedule. And let's include with that, if all
22 parties are agreeable, some dates, or at least
23 exclusionary dates, for mediation. The reason I say that
24 is because my calendar is pretty handy on the computer
25 here in the hearing room, but I don't know what Judge

1 Jones's dates would be. And I'm contemplating assigning
2 him to be the mediator, if there's no objection to that.

3 MR. SELTZER: Well, actually, that -- Garry
4 Seltzer. I don't have any objection to that, but that
5 was going to be my follow-up question. Assuming we're
6 agreeable on mediation, who takes the lead in contacting
7 the mediator and making sure that, you know, that -- the
8 time convenience of all the parties? Is that what Your
9 Honor does?

10 JUDGE JORDAN: Yeah, once the parties have --
11 I made the mistake once of requiring someone to show up
12 at mediation -- this is a little embarrassing -- and they
13 made it clear, when they showed up for the session, they
14 were there because they had been ordered to be there. It
15 worked out okay. But I won't assign it to a mediator,
16 unless everyone agrees to mediate. And once that
17 happens, I will issue an order assigning someone,
18 probably Judge Jones, as mediator. That's how -- that's
19 how I roll.

20 MR. THOMPSON: Judge, if I could, it looks
21 like this proposed procedural schedule will be a little
22 bit different because, even though we're going to do
23 mediation, we're still going to have a date for filing
24 dispositive motions, we're still going to have a trial
25 date. So, in other words, the main case is not going to

1 go into abeyance pending the outcome of the mediation.
2 So what I would anticipate would be to have, prior to
3 that date for dispositive motions, probably before
4 Christmas in fact, a date when the mediator will report
5 to you as to the progress, success or lack thereof, of
6 the mediation, so that the chief schedule will continue
7 to go, despite the mediation. Does that sound acceptable
8 to you?

9 MR. SELTZER: Yes, it does. This is Garry
10 Seltzer speaking again. If it's agreeable -- I will be
11 out of the office after December 4th. What I was
12 intending to do was to file a memo with three sets of
13 dates on it; my exclusionary dates for mediation, my
14 recommended date for dispositive motion, and my
15 recommended date for a hearing on the merits. So I would
16 do it in one memo with three main entries on it.

17 MR. THOMPSON: Why don't you just email those
18 dates to myself and to Mr. Luft?

19 MR. SELTZER: Okay.

20 MR. THOMPSON: Generally Staff takes the lead
21 in putting the proposed procedural schedule together, and
22 the three of us will just email back and forth today
23 until we get all of those dates nailed down, and I will
24 plug it into the document and get that filed late today
25 or tomorrow. Of course, I'll let you guys see the

1 document before I file it. Is that acceptable?

2 MR. SELTZER: I think -- Garry Seltzer
3 speaking again. I think so. But if you're saying email
4 these dates that I'm talking about --

5 MR. THOMPSON: Yeah.

6 MR. SELTZER: -- you're saying I should not
7 file something with EFIS, I should send it to you by
8 email, which is fine with me, but I just don't have an
9 email address for you. It's not on anything I've seen or
10 that jumps out at me.

11 MR. THOMPSON: I'll be happy to give it to
12 you right here and now.

13 MR. SELTZER: Okay.

14 MR. THOMPSON: It's K-E-V-I-N, dot,
15 T-H-O-M-P-S-O-N, at, P-S-C, dot, M-O, dot, G-O-V.

16 MR. SELTZER: You went too fast for me,
17 everything before the at.

18 MR. THOMPSON: Okay.

19 kevin.thompson@psc.mo.gov.

20 MR. SELTZER: Okay. kevin.thompson all
21 lowercase?

22 MR. THOMPSON: Yes, all lowercase.

23 MR. SELTZER: @psc.mo.gov?

24 MR. THOMPSON: That's it.

25 MR. SELTZER: Okay. That's fine. I'll send

1 you --

2 MR. THOMPSON: And what's yours, Mr. Seltzer?

3 MR. SELTZER: Mine is in the file. But it's
4 at mechliens@prodigy.net. That's M-E-C-H-L-E-I-N-S at
5 prodigy, P-R-O-D-I-G-Y, dot net. But there's a lot of
6 pleadings from me throughout the file, and it's on all of
7 my pleadings.

8 MR. THOMPSON: Very good.

9 MR. LUFT: And, Mr. Seltzer, you would be
10 looking for a mediation date in November, I take it?

11 MR. SELTZER: Yes. If you can do it
12 sooner -- but yes, I'd like to do it --

13 MR. LUFT: I think November would make sense.

14 MR. SELTZER: Okay. Well, November is a
15 short month, because of all the holidays. But I will get
16 you -- an email today to everybody with my proposed dates
17 for everything.

18 MR. THOMPSON: That would be great.

19 MR. SELTZER: Okay.

20 JUDGE JORDAN: And then what I'll -- what
21 I'll do is I'll have Staff, through Chief Staff Counsel,
22 file on behalf of all the parties a proposed procedural
23 schedule that will --

24 MR. SELTZER: Okay.

25 JUDGE JORDAN: -- incorporate the parties'

1 agreement.

2 Okay. What else can I do for the parties
3 while I'm here, other than -- Mr. Seltzer, are you left
4 with any issues?

5 MR. SELTZER: No, sir.

6 JUDGE JORDAN: Mr. Luft?

7 MR. LUFT: No, thank you, Your Honor.

8 JUDGE JORDAN: Mr. Thompson?

9 MR. THOMPSON: None. Thank you, Judge.

10 JUDGE JORDAN: Very good.

11 Then, with that, we will adjourn this -- the
12 on-the-record portion of this prehearing conference.
13 I'll leave the line open, of course, and we will go off
14 the record.

15 Thank you, everyone.

16 (Off the record.)
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CERTIFICATE OF REPORTER

I, Angie D. Threlkeld, a Certified Court Reporter, CCR No. 1382, the officer before whom the foregoing hearing was taken, do hereby certify that the foregoing hearing 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.

Angie D. Threlkeld

Angie D. Threlkeld, CCR



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