

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Prehearing Conference
April 18, 2012
Jefferson City, Missouri
Volume 2

Eric C. Larson,)
)
Complainant,) File No. WC-2011-0409
)
vs.)
)
Woodland Manor Water)
Company, LLC,)
)
Respondent.)

DANIEL JORDAN, Presiding,
SENIOR REGULATORY LAW JUDGE

REPORTED BY:
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P R O C E E D I N G S

JUDGE JORDAN: Let's go on the record. The Commission is calling File No. WC-2011-0409. That is the complaint of Eric C. Larson versus Woodland Manor Water Company, LLC.

The first thing I'd like to do is clarify on the record that Woodland Manor is the only LLC involved in this action. I understand that to be the case from Staff's earlier filing in January.

MS. MOORE: Uh-huh.

JUDGE JORDAN: I'm Daniel Jordan; I am the regulatory law judge assigned to this action. And I will begin by taking entries of appearance. So I'll start with the complainants. Eric C. Larson, will you state and spell your name for the court reporter please, and give us the address where the service at issue is.

MR. LARSON: It's Eric Larson, E-r-i-c L-a-r-s-o-n. Service address is 31 Holiday Drive, Kimberling City, Missouri 65686.

JUDGE JORDAN: Thank you. Let's go next to the -- let's see. You have someone also with you at counsel table. Will you introduce that person, please?

MR. LARSON: This is my wife, Debbie Larson, also of the same address, 31 Holiday Drive.

JUDGE JORDAN: Very good. Let's go next to

1 the water company. Will counsel enter an appearance,
2 please?

3 MR. GIBSON: Yes, Judge. It's Gregory
4 Gibson, G-i-b-s-o-n, appearing on behalf of Woodland Manor
5 Water Company, LLC, the respondent.

6 JUDGE JORDAN: Thank you, Mr. Gibson. And
7 you're the only one on the line today; is that correct?

8 MR. GIBSON: That's correct.

9 JUDGE JORDAN: All right. Thank you very
10 much. And for Staff?

11 MS. MOORE: Counsel is Amy Moore and Rachel
12 Lewis, Missouri Public Service Commission, P.O. Box 360,
13 Jefferson City, Missouri 65102.

14 JUDGE JORDAN: And I see you have someone at
15 counsel table with you also.

16 MS. MOORE: Yes. I have Dave Spratt.

17 JUDGE JORDAN: And is that a representative
18 of Staff?

19 MS. MOORE: Yes.

20 JUDGE JORDAN: Very good. Thank you very
21 much. And I'm looking around. I'm not seeing anyone from
22 the Office of the Public Counsel here. By regulation the
23 Office of Public Counsel is party to all actions, but they
24 elect not to participate in all of them.

25 Here's what we're going to do. We've been

1 through one of these already, so the procedure may be
2 familiar, but I want to make sure that everyone remembers
3 what we do here. The first part of this conference is on
4 the record. We can discuss procedure. We can even get
5 into some substantive discussion, and my hope is that we
6 can lead to, if not a settlement on the merits, then at
7 least some arrangements as far as procedure goes.

8 The rest of the time of conference will be
9 off the record and out of my presence so that the parties
10 can speak candidly without worrying about me hearing
11 something I shouldn't hear on the record. I also want to
12 remind the parties that the Commission offers mediation
13 services to help iron out problems if the parties can't
14 quite get where they would like to be. Any questions so
15 far? I'm not hearing any.

16 I'll go ahead -- I want to make sure that
17 I've reminded all parties that if we go to an evidentiary
18 hearing, it looks a lot like circuit court. The law of
19 evidence will decide what comes into the record and what
20 does not. And I'm going to give everyone a citation that
21 describes how the law of evidence will be --

22 (Telephone interruption.)

23 JUDGE JORDAN: Hello. Is there someone else
24 on our line? Still there Mr. Gibson?

25 MR. GIBSON: Yes, Judge. Now, where I was,

1 was talking about Section 536.070 in the Revised Statutes
2 of Missouri. That statute relaxes the law of evidence for
3 an evidentiary procedure, if we go to one.

4 I also want to remind everyone that if this
5 action is tried before me, that in matters of engineering,
6 accountancy, and other matters, I'll ask everyone to speak
7 in words of one syllable, because I'm an administrative
8 lawyer, but I'm not an engineer, I'm not an accountant, I'm
9 not an economist, or anything like that. Any questions so
10 far?

11 MR. LARSON: No.

12 MR. GIBSON: No, Judge.

13 JUDGE JORDAN: Okay. Now, I want to give
14 everyone a little explanation here as to where we're at and
15 where we might go. As far as I know, right now, we're
16 headed towards an evidentiary hearing. We have one
17 scheduled for the end of May.

18 The purpose of an evidentiary hearing is to
19 make a record. That is to offer evidence that the
20 Commission can consider when it decides what the operative
21 facts are. We call them material facts. It's the facts
22 that determine how this complaint goes, one way or another,
23 under the applicable law. The purpose of the hearing is to
24 get the stuff together to make those findings of fact.

25 We don't need to do that if the facts -- not

1 the law, but the facts -- are not in dispute. That is, if
2 everyone agrees in this instance as to where the
3 infrastructure is, when it was laid, when it was changed,
4 that's not something we necessarily need evidence on.

5 We could avoid the time and expense of
6 presenting evidence on something that is not in dispute in
7 a number of ways. One of those ways is to stipulate to
8 facts. That's where the parties get together and decide on
9 the phrasing that they want to give the Commission.

10 An entire case can be submitted on
11 stipulated facts. The parties can still argue about how
12 the law applies, what the tariff says, what it means, the
13 regulations, the statutes, all that business. In other
14 words, how the law operates on those facts. But if the
15 facts are not really in dispute, then the law encourages
16 the parties to stipulate to them. Okay?

17 Another way to make that happen, another way
18 to avoid the time and expense of an evidentiary hearing, is
19 to file a dispositive motion. That is a motion that says,
20 Commission, decide this without an evidentiary hearing.
21 This can be done by the agreement of the parties or it can
22 be done over a party's protest, and here's how that works:

23 The motion is called a motion for summary
24 determination. What a party does in that is, they get
25 together some stuff that will establish the facts. It's

1 got to be pretty much admissible in evidence anyway, like
2 something from the other party's pleadings, if they admit
3 to something, or if there's discovery, like depositions out
4 there where they say something, or -- and this is a little
5 different from evidentiary hearing -- an affidavit. You
6 put in an affidavit that says, Here are the facts.

7 If a party establishes, as I have described,
8 the facts material to the relief they want -- that is they
9 want a certain type of relief; to get it they have to show
10 certain facts, establish that by affidavits or other
11 evidence such as I've described -- then they win, unless
12 the other party -- another party can put into evidence
13 something that raises a real dispute as to those facts.

14 We don't weigh the evidence on a motion for
15 summary determination. We don't compare affidavits and see
16 which one we like best. We just look at them and say,
17 Here's what's been established. Does this countervailing
18 evidence, does it raise a genuine dispute as to anything
19 important here? If it does, well, then we go to
20 evidentiary hearing. The motion fails and we go to
21 evidentiary hearing. That's fine. Or someone can try
22 another motion.

23 But if the responding party can't raise at
24 least a genuine dispute -- that is a real dispute, not
25 imaginary, not speculative, but come up with some evidence

1 countering that evidence -- if they can't do that, the
2 moving party wins.

3 Parties will sometimes file competing
4 motions for summary determination. They'll often agree on
5 what the facts are. Often there is no dispute as to what
6 the facts really are. What the law does with those facts,
7 they can argue as much as they want. And they can do that
8 by motion; you can do that on paper.

9 So I wanted to raise those possibilities as
10 far as procedural matters for the resolution of this. And
11 if that doesn't happen, if the case is not disposed of on
12 some type of dispositive motion, like summary
13 determination, then we simply go to evidentiary hearing.
14 Any questions on that so far?

15 MR. LARSON: It would appear I wouldn't be
16 the disposer of such motion since it's my motion
17 originally. Correct? So if that were to come up, in order
18 to dispose of this, it would come up from Woodland Manor,
19 and I would then respond to that with what we already have.
20 Everything that's there we already have, I think.

21 JUDGE JORDAN: Good question. What you have
22 to show on a motion for summary determination depends on
23 who you are. Are you the complainant with the burden of
24 proof or are you the respondent with no burden of proof?

25 If you're the complainant, your motion

1 needs, basically, to establish everything that you would
2 otherwise do at evidentiary hearing. That is, all the
3 elements of your action. In a complaint the issue is, did
4 the utility violate something: Tariff, regulation, order,
5 statute? So in your motion you would present facts showing
6 that.

7 If the Utility files a motion, its job's a
8 little different. All it has to do is knock out one of
9 your elements, and then it wins.

10 Staff doesn't have a dog in the fight.
11 They're a party, but they have no interest. We make them a
12 party, basically, so you know what their position is. So
13 everything that they're saying and telling the Commission
14 is clear to you. Any further questions on that?

15 MR. GIBSON: No, sir.

16 MR. LARSON: No.

17 JUDGE JORDAN: Nothing from Mr. Gibson,
18 nothing from the Larsons. Okay. Well, what else can I do
19 for the parties while you have me in the same room with you
20 and everybody's together?

21 MR. GIBSON: Well, your Honor, I'll just say
22 briefly while we're on the record, it looks like,
23 obviously, one concern that we had raised at the previous
24 hearing we had with you was that there had been an LLC that
25 the Larsons were previously associated with in some way.

1 And we had, you know, just brought that, I think, to the
2 Commission's attention, that we wanted to make sure that
3 there was no, you know, problem or any kind of conflicting
4 results or something of that nature.

5 And it is my understanding now that the
6 Larsons have closed -- terminated that LLC, and it is --
7 all parties have made clear that the LLC that the Larsons
8 were previously associated with is not a party to this
9 matter or, you know, should not be involved.

10 JUDGE JORDAN: Very good. Thank you for
11 that clarification. That's helpful to have on the record.

12 You know, while I'm thinking about it, I'm
13 going to cite everyone to the regulation that governs the
14 dispositive motion that I described so that he may follow
15 up for that on your own. You'll also find online recent
16 decisions of the Commission that discuss this procedure.

17 I'm going to cite you first to a regulation
18 governing stipulations of fact, and that is 4 CSR
19 240-2.115. Then, I'm also going to cite you to the
20 regulation on summary disposition, which is 4 CSR
21 240-2.117. And those regulations describe the methods for
22 resolving this complaint, basically, on paper.

23 What else can I do for the parties while I'm
24 here?

25 MR. GIBSON: Judge, the only other thing I

1 would -- I believe you had previously entered an order
2 setting a schedule with, of course, today's prehearing
3 conference. But also the discovery responses to be
4 completed by May 2nd, if I'm correct, which, there again, I
5 think as we discussed last time, I believe, there's not a
6 whole lot of documentation or anything here. And I believe
7 everyone's probably at least informally pretty much been
8 provided with everything everyone has.

9 And then, that the Commission would like to
10 see a Joint Stipulation of Undisputed Facts, if one is to
11 be done, by May 23rd. Those are the dates that I have
12 currently.

13 JUDGE JORDAN: Okay. And if the parties
14 want to come up with something else, like cross motions for
15 summary disposition, that schedule does not forbid such
16 things.

17 MR. GIBSON: I understand.

18 JUDGE JORDAN: Right. Do you have that
19 Order before you?

20 MR. GIBSON: Yes. Well, I have at least a
21 portion of it, Judge.

22 JUDGE JORDAN: Okay. I was just going to go
23 through my file and see if I can find it.

24 MR. GIBSON: It looks like February 21 is
25 what I have.

1 JUDGE JORDAN: Okay. I have the
2 February 23rd, and that's just about prehearing conference.
3 And by the way, I want to apologize to everyone for our
4 technical difficulties this morning, and I'm grateful for
5 everyone's patience.

6 I have the Order setting schedule. It
7 mentions prehearing conference, which we're doing right
8 now; a deadline for discovery; and a Joint Stipulation of
9 Undisputed Facts.

10 Okay. Now, let me mention this also while
11 we're talking about dispositive motions, a regulation
12 requires that they be filed within a certain time frame,
13 and the deadline is set according to how far away the
14 evidentiary hearing is. If the parties want, or if the
15 Commission wants, it can postpone that hearing in order to
16 resolve the complaint on those dispositive motions. I just
17 want to mention that as well.

18 What else can I do for the parties while I'm
19 with you?

20 MR. GIBSON: I believe that's all we have,
21 Judge, other than to thank Ms. Moore for -- she has been
22 very helpful in trying to coordinate there, so I appreciate
23 that.

24 MS. MOORE: You're very welcome.

25 JUDGE JORDAN: That's good to know.

1 MS. MOORE: Nothing else from Staff at this
2 time. Thank you.

3 JUDGE JORDAN: All right. Anything else
4 from the Larsons?

5 MR. LARSON: No.

6 JUDGE JORDAN: All right then. Since I'm
7 not hearing anything else that I can help the parties with,
8 we'll adjourn this prehearing conference as to the
9 on-the-record portion. I'll leave the phone line on so
10 that everyone can speak with one another. I'll ask Staff
11 to hang up when everyone's done. And with that, we will go
12 off the record.

13 (Off the record.)

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1 CERTIFICATE OF REPORTER

2
3 I, Kristy Bradshaw, CCR No. 1269, within the State
4 of Missouri, do hereby certify that the testimony
5 appearing in the foregoing matter was taken by me to the
6 best of my ability and thereafter reduced to typewriting
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9 which this hearing was taken, and further, that I am not a
10 relative or employee of any attorney or counsel employed
11 by the parties thereto, nor financially or otherwise
12 interested in the outcome of the action.

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15 _____
16 Kristy Bradshaw, CCR
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