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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Procedural Conference
April 20, 2018
Jefferson City, Missouri
Volume 1

In the Matter of the Application)
of Rate Increase Request for)File No. WR-2018-0170
Liberty Utilities (Missouri)
Water),LLC d/b/a Liberty)
Utilities)

JOHN T. CLARK, Presiding
REGULATORY LAW JUDGE

REPORTED BY:
Beverly Jean Bentch, CCR No. 640
TIGER COURT REPORTING, LLC

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A P P E A R A N C E S

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1 (April 20, 2018)

2 JUDGE CLARK: We'll go on the record now. The
3 date is April 20, 2018. It is 10:00 a.m. We're in Room
4 305 of the Governor's Office Building. The Commission
5 has set aside this time for a Procedural Conference in
6 the case captioned as In the Matter of the Application
7 of Rate Increase Request for Liberty Utilities (Missouri
8 Water), LLC, d/b/a Liberty Utilities, File No.
9 WR-2018-0170.

10 My name is John Clark. I'm the Regulatory Law
11 Judge in this matter. We'll begin with the attorneys
12 entering their appearances starting with Liberty
13 Utilities.

14 MR. BOUDREAU: Appearing on behalf of the
15 Applicant Liberty Utilities (Missouri Water) LLC, let
16 the record reflect the appearance of Paul Boudreau with
17 the law firm of Brydon, Swearngen & England. My
18 contact information I've given to the court reporter.

19 JUDGE CLARK: Thank you, Mr. Boudreau. And
20 for the Commission Staff.

21 MS. ASLIN: Casi Aslin for Commission Staff,
22 and my information has been provided to the court
23 reporter.

24 JUDGE CLARK: Thank you, Ms. Aslin. The
25 Office of Public Counsel.

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1 MS. SHEMWELL: Good morning, Judge, and thank
2 you. Lera Shemwell representing the Office of the
3 Public Counsel and the public, and I've given my
4 information to the court reporter. Thank you.

5 JUDGE CLARK: Thank you, Ms. Shemwell. Orange
6 Lake and Silver Leaf.

7 MR. HARDEN: Thank you, Your Honor. Joshua
8 Harden on behalf of Silver Lake Resorts, Inc. and Orange
9 Lake County Club, Inc., and I have given my information
10 to the court reporter.

11 JUDGE CLARK: Thank you, Mr. Harden. And
12 Ozark Mountain Condominium.

13 MS. GIBONEY: For Ozark Mountain Condominium
14 Association, I'm Sarah Giboney, and I've given my
15 contact information to the court reporter.

16 JUDGE CLARK: Is there anybody I've missed?

17 Not hearing anything, I'm going to go on.
18 This is going to be a little bit more informal maybe
19 than most of these we've seen. Since I set this, I've
20 received some additional motions and requests. So I'm
21 going to ask at this time are there any preliminary
22 matters that I need to take up at this time?

23 MS. SHEMWELL: I have filed a motion for two
24 local public hearings, and I'm sure that we will discuss
25 that today and possibly try to find some locations.

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1 JUDGE CLARK: Okay. It sounds like if this
2 moves to a contested case, which it looks like it may
3 very well, then that's going to be very appropriate.
4 And I'll note that a 10-day extension was filed by staff
5 and that extends the deadline so far for the 120 as well
6 as the 150; is that correct?

7 MS. ASLIN: That's correct.

8 JUDGE CLARK: That kind of gets to one of the
9 reasons that I called a procedural conference today. At
10 the agenda that denied Orange Lake's motion to dismiss,
11 the Chairman indicated at that time that if Orange Lake
12 wanted a hearing that they would get a hearing. I'm
13 going to just refer to Orange Lake as both Orange Lake
14 and Silver Leaf.

15 MR. HARDEN: Absolutely.

16 JUDGE CLARK: My concern with him doing that
17 at the time given that Orange Lake had just filed the
18 previous day to agenda for the evidentiary hearing and
19 there was a suggestion in the order denying indicating
20 that essentially the small utility rate case rule
21 doesn't really contemplate intervenors at all. So
22 certainly that kind of jumped the gun on that motion in
23 that there's nothing prohibiting obviously intervenors
24 from requesting a hearing.

25 There was a motion filed by Mr. Boudreau,
Page

1 Suggestions in Response, that was filed the same day
2 that I -- shortly after I had set this procedural
3 conference. My concern with the Chairman saying that is
4 that everybody might just say okay, well, this is going
5 to move to a contested case immediately, let's drop what
6 we're doing on the small utility rate case timeline.
7 And that's something that I'm not really anxious to do
8 is see that go away prematurely.

9 Normally, Mr. Harden, in what you had e-mailed
10 out in the way of a procedural schedule, did you
11 indicate a desire to do away with the other parties --
12 with the other party trying to reach a preliminary
13 disposition with staff?

14 MR. HARDEN: Yes.

15 JUDGE CLARK: In regards to both the motion
16 for an evidentiary hearing, as well as the suggestions
17 in opposition of and in those suggestions there are some
18 things I agree with and there are some things I don't.
19 We can get to those. Those are things I'd like to talk
20 about today. So Why don't I start out with, Orange
21 Lake, why don't you give me your position in regards to
22 -- You had sent a procedural schedule. What is it
23 you're contemplating?

24 MR. HARDEN: Sure. Thank you, Your Honor.
25 Let me put it this way. I drafted this proposed
Page

1 procedural schedule with the idea of essentially
2 grafting onto the timeline which was initially filed
3 pursuant to the regulation at the commencement of the
4 small utility rate procedure essentially grafting on an
5 evidentiary hearing onto the back of it, set aside three
6 days in late July based upon actually I believe it was
7 staff's recommendation, or at least just looking at the
8 calendar on dates where the Commission would be
9 available in the last -- the last time we met, I can't
10 even remember exactly when that is, and just work
11 backwards from there culminating, you know, basically
12 our idea right now and I guess I would like to state our
13 legal position is that we believe that Liberty Utilities
14 would maintain and have the burden of proof throughout
15 this entire process, but for the purpose of this
16 procedural schedule I guess we would treat the 150-day
17 disposition agreement as the case in chief of Liberty.

18 So that would essentially be the commencement
19 of, at least in terms of an evidentiary hearing, would
20 sort of be the commencement of the case, if you will.
21 And the rest I just basically tried to fill in the
22 various procedural elements that go into the typical
23 rate case procedure and that's it.

24 JUDGE CLARK: Okay. Thank you.

25 MR. HARDEN: I mean I think that you bring up
Page

1 a very good question, quite honestly, so does Paul, I
2 guess when we talk about when does this become a
3 contested case.

4 I don't know if Your Honor or Paul or, quite
5 honestly, I haven't even formulated a hard legal
6 position on that other than I think that by virtue of
7 the fact that my client has been granted intervention in
8 this case, okay, and if you look at the definition of a
9 contested case under Chapter 536 as one which requires
10 an evidentiary hearing I think we are currently a
11 contested case.

12 That's our position. Certainly other folks
13 can have different positions on that. But that's our
14 position right now is that we're not waiting to become
15 anything. This is a contested case.

16 JUDGE CLARK: What issue are you contesting?

17 MR. HARDEN: That was an excellent question.
18 No one has filed testimony. So if there has been any
19 evidentiary filing, okay, I would be able to sit here
20 today and I would be able to tell Your Honor, and in
21 fact all of the parties, what specific issue that we're
22 contesting. I don't know.

23 JUDGE CLARK: That I guess gets kind of
24 directly to my concern which is it's not a contested
25 case just because you say it's a contested case. You

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1 have to have something to contest. What you've done so
2 far that I'm having a hard time getting over the hurdle
3 for is essentially until a disposition agreement is
4 filed at which time usually OPC if they have objections
5 they will request a contested hearing -- or request an
6 evidentiary hearing at that point. But usually they do
7 it based upon something with which they're disagreeing
8 with. I know you're disagreeing with a rate increase
9 because I assume that's why you filed the motion to
10 dismiss.

11 MR. HARDEN: Right. If I might respectfully,
12 I'm not sure I would entirely buy into that in order for
13 it to be a contested case that we have to have something
14 to contest. I actually don't think that that's the
15 statutory definition of a contested case. I think it's
16 one where the rights, privileges of the parties have to
17 be determined after an evidentiary hearing and, in fact,
18 it's not once I have something that, you know, I can't
19 agree to with Liberty and whenever then at that point it
20 becomes contested. Respectfully I don't believe that
21 that's the definition of a contested case.

22 JUDGE CLARK: I'll agree with you in regard to
23 the statutory definitional angle of it. I guess what
24 I'm saying here is at least from the way you've
25 requested your hearing it sounds like what you're saying

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1 is there's nothing that could be proposed with which you
2 or your clients would agree with.

3 MR. HARDEN: Actually I explicitly within the
4 proposed schedule say the exact opposite of that which
5 is there's nothing in this proposed schedule which would
6 foreclose a settlement by ourselves and, in fact, all of
7 the parties and potentially that's unanimous, et cetera.
8 So absolutely not, Your Honor.

9 Silver Leaf, in fact, does not like spending a
10 whole bunch of money for no apparent purpose. And we
11 would stand ready and do stand ready today to find some
12 type of settlement. That's a tad bit difficult from our
13 part from our side since there is nothing -- there's no
14 evidence in the record whatsoever. So I can't -- I have
15 nothing to negotiate against.

16 JUDGE CLARK: Okay. Mr. Boudreau.

17 MR. BOUDREAU: So which question would you
18 like me to address?

19 JUDGE CLARK: Wherever you would like to
20 start.

21 MR. BOUDREAU: We've covered a lot of ground
22 here.

23 JUDGE CLARK: Like I said, this is kind of
24 informal in nature.

25 MR. BOUDREAU: Well, there's a lot of things

1 we're kind of getting ahead of ourselves on. At some
2 point it may be appropriate to brief what's a contested
3 case and what isn't.

4 My vague memory of when I studied Chapter 536
5 is a contested case is one where a hearing is required
6 by law. That's my recollection of it. And if that's
7 the case, if I'm right on that, then this is not a
8 contested case.

9 The Commission can apply contested case type
10 procedures in their discretion, but it seems to me, I'll
11 circle back to what I've already stated -- that event,
12 that probability hasn't come about yet. My assumption
13 is we're still operating pursuant to the small utility
14 rate procedure and that that doesn't contemplate anybody
15 requesting either an evidentiary hearing or a local
16 public hearing until much later in the process. And I
17 think that that's early July, maybe a few days earlier
18 than July 2 according to staff's rate case timeline.

19 So you know, for what it's worth, I don't
20 think -- We don't have a contested case now unless the
21 Commission decides that the small utility rate
22 proceeding isn't applicable any longer and it's going to
23 be superceded by a rate case -- typical sort of rate
24 case procedure that would be contemplated under file and
25 suspend which I think it's already ruled isn't

1 applicable

2 It just seems to me that we've gotten ahead of
3 ourselves; that these questions may be legitimate
4 questions later down the road but they're not legitimate
5 questions now.

6 JUDGE CLARK: Staff, in regard to your
7 extension thing, this May 24, is that the 150-day
8 deadline?

9 MS. ASLIN: Yes.

10 MR. BOUDREAU: And the point I'm referring to
11 just for your convenience is that it's target day 187 on
12 one of the options that staff has filed where it says
13 OPC files request for local hearing. I think the rule
14 also indicates that at that time OPC can request an
15 evidentiary hearing. That event is scheduled for -- it
16 says calendar due date July 2. That's what I'm looking
17 at.

18 JUDGE CLARK: Just a second.

19 MR. BOUDREAU: I think it's page 5 of 5 on
20 staff's rate case timeline.

21 JUDGE CLARK: I'm not looking at that. I
22 wanted to look at staff's filing in regards to -- or not
23 staff, I wanted to look at when the Office of Public
24 Counsel files for a hearing.

25 MR. BOUDREAU: Are we looking at the rule?

1 JUDGE CLARK: Yes.

2 MR. BOUDREAU: I think it's subsection 17 of
3 the rule, I believe. If you look at the rate case
4 timeline that staff has filed, that's, I think -- I may
5 be wrong about that. Excuse me.

6 JUDGE CLARK: I'm going to have to look into
7 this a little further because, as you indicated, you
8 just filed this today, your request for a public
9 hearing. So I haven't had a chance to look into that
10 yet.

11 MR. BOUDREAU: Those two things I think
12 procedurally are tied together, both the request for
13 local public hearing and request for evidentiary
14 hearing, I believe. That's my understanding of the
15 rule.

16 JUDGE CLARK: Okay. I'm going to have to look
17 at that later. All right. Anybody else have anything
18 they want to say on that?

19 MS. ASLIN: About the rule or about further
20 issues?

21 JUDGE CLARK: Well, before we move on to other
22 issues, Ms. Giboney, I have not heard from you. I've
23 heard from Mr. Harden who represents some of the
24 customers in the area, but I haven't heard from the
25 condominium association which is the only other

1 intervenor on behalf of some of the customers. Do you
2 have a position in regard to this?

3 MS. GIBONEY: I'll state the obvious that you
4 said, we haven't filed anything. We would be happy to
5 sign on to a proposed procedural schedule that's been
6 offered by Orange Lake, although I've heard everyone --
7 or certain parties say they think it's premature. We'd
8 be happy to agree to that. We also agree with the
9 statement that proposing this schedule wouldn't
10 foreclose settlement of some or all of the issues. I
11 think my client has fewer issues, and they're mainly
12 service related, but that's about the only position we
13 would take in this case.

14 We'd like an evidentiary hearing to be able to
15 address those or short of that to be able to reach some
16 other type of settlement which would address those
17 problems.

18 JUDGE CLARK: Okay. All right. Any other
19 issues?

20 MS. ASLIN: I would just say that staff would
21 agree with Mr. Boudreau that this is a little premature
22 and we will -- day 120 is next Tuesday, and I think
23 staff would prefer to focus on that and day 150 right
24 now and what we could get settled before focusing on a
25 hearing, and I would also just like to note that staff

1 would want direct testimony included in the proposed
2 procedural schedule. We wouldn't want our day 150 to
3 just stand --

4 JUDGE CLARK: Say that again, please.

5 MS. ASLIN: We would want direct testimony
6 added to a procedural schedule if we were to go to
7 hearing. At this point it is not included.

8 JUDGE CLARK: Okay.

9 MR. HARDEN: It would make a lot of sense.

10 JUDGE CLARK: Here's what I'm going to say,
11 because I've given this some thought. I've had an
12 opportunity now to listen to some of the parties weigh
13 in. I do think the filing for an evidentiary hearing at
14 this time is a little premature.

15 I do think since the Commission decided that
16 we were not going to move it out of the small utility
17 rate case procedure I want to give that an opportunity
18 to do ideally what it's supposed to do which is somewhat
19 streamline the process and that's mainly by giving an
20 opportunity for the utility and staff to see if there's
21 any sort of agreement they can reach regardless of
22 whether or not other parties are going to oppose that.
23 I'm going to assume right now that they are.

24 After that -- So my tendency right now would
25 be not to deny the motion but just to kind of sit on it

1 and grant it after that 150 disposition agreement is
2 filed.

3 MR. BOUDREAU: Grant it or rule on it?

4 JUDGE CLARK: Let's say rule.

5 MR. BOUDREAU: Because there are some other
6 things I'd like to address, one of which is standing.
7 You've already brought that up.

8 JUDGE CLARK: Okay. You'll have an
9 opportunity to do that. Let's say rule on it. However,
10 like I said, I believe the Chairman was quite clear when
11 he said that the intervenors could have an evidentiary
12 hearing if they wanted one and if it is, in fact,
13 necessary. Both of those need to be addressed. So
14 that's my tendency to do. I didn't want anybody to be
15 out there with bated breath waiting for me to rule on a
16 motion that I'm telling you right now I'm going to sit
17 on.

18 Ms. Shemwell.

19 MS. SHEM WELL: Public counsel, and I don't
20 know the case, was denied local public hearings in a
21 small water case and was interested in getting our
22 interest and actually having local public hearings on
23 the record. This utility has two very different areas
24 and we wanted to bring that to the Commission's
25 attention. And looking at the procedural schedule as it

1 might work out, June was kind of open. We were looking
2 at getting something out there to say to the Commission
3 we are interested in local public hearings if they
4 become necessary and just to alert the Commission
5 because, again, Noel, Missouri is about as far southwest
6 as you can get and not be in Arkansas. It's like you
7 can walk from there to Arkansas. So it's a long ways.

8 JUDGE CLARK: I have family down there. I'm
9 more than happy to go down there to a public hearing and
10 that side of the state. So I don't have a problem with
11 that whatsoever.

12 Certainly regardless of standing for -- I keep
13 wanting to say Orange Leaf but that's the yogurt place
14 -- Orange Lake, regardless of standing for Orange Lake,
15 certainly the rule gives the Office of the Public
16 Counsel standing. So I'm going to assume given that
17 they're taking an interest that they may also have an
18 interest in evidentiary hearing clearly if they're
19 having interest in local public hearings. It appears
20 that they may be thinking that direction.

21 I'm certainly -- I'm not going to pre-rule on
22 anything because I haven't had a chance to read, fully
23 read through your request for local public hearings but
24 you might want to discuss with the other parties to see
25 if you can reach some sort of agreement as to when those

1 might occur.

2 MS. SHEMWELL: Yes, sir. Thank you.

3 JUDGE CLARK: Are there any other issues or
4 matters that need to be addressed by the Commission?

5 MR. BOUDREAU: I don't know that they need to
6 be addressed by the Commission, Judge. But without in
7 any way waiving any argument I may make later on as to
8 standing or any other issue necessity for an evidentiary
9 hearing, if you were to go up and mark off those three
10 days for an evidentiary hearing at the end of July as
11 had been proposed by Mr. Harden and I didn't know about
12 it, I wouldn't be squealing about it. And I can
13 understand your interest in future planning if this
14 thing goes -- in fact goes to an evidentiary hearing.

15 JUDGE CLARK: I haven't even tried to plan a
16 vacation for myself this summer.

17 MR. BOUDREAU: I don't want to waive any
18 argument I might make that it would be inappropriate to
19 have a hearing, but I can understand why you might just
20 go up and cross off a few days.

21 JUDGE CLARK: Without tying you to anything,
22 it sounds like in regards to at least, if it gets to a
23 point where there is a necessity for a procedural
24 schedule, it sounds like this may at least be in the
25 range of what you're looking at. Don't answer that

1 question.

2 MR. BOUDREAU: We can certainly talk about
3 dates when that time comes. I'm just saying just to --
4 given the tight time frames that we have to work with
5 this in a small company rate case proceeding, it may
6 make some sense just to lock in a few days, like I said,
7 without waiving any arguments, without having this used
8 against me in the future.

9 JUDGE CLARK: Understood.

10 MR. BOUDREAU: Okay. Does that make any sense
11 to everybody else here?

12 MR. HARDEN: Mr. Boudreau, I very much
13 appreciate the shadow scheduling of the evidentiary
14 hearing.

15 MR. BOUDREAU: That's a nice term.

16 MR. HARDEN: I would say this though, and
17 again if Your Honor wants to do that to make sure that
18 we have three days blocked at some point in time, that's
19 great. This schedule was based upon an actual litigated
20 process in which it's not just the evidentiary hearing
21 which affords due process as I think OPC will point to
22 multiple examples within case law.

23 If I get an evidentiary hearing within 48
24 hours of my notice of it, that's going to fall short as
25 far as we're concerned. That being said, again, I

1 appreciate what Mr. Boudreau suggests there and I guess
2 just as a final note I want to make sure that I
3 understand the intention here. So the motion by my
4 client on the evidentiary hearing we should not
5 anticipate a ruling either positive or negative,
6 granting, dismissing, whatever it is, we should not
7 anticipate that until May 24?

8 JUDGE CLARK: If that's -- Yeah, that is what
9 is contemplated as the 150-day disposition agreement.
10 That's where I see myself addressing it. I think I
11 understand and I think I've been quite open to your
12 client's desires in that this is kind of a new thing,
13 having a very active intervenor in a small company rate
14 case so early. I understand that you want to
15 participate as early in the process as possible, and
16 I've tried to facilitate that.

17 So given the other option which is to deny
18 your motion and possibly wait for you to refile it, I
19 think it would just be easier to make a ruling then.

20 MS. SHEMWELL: On the 24th?

21 JUDGE CLARK: Yes. Or let's say around the
22 24th --

23 MS. SHEMWELL: Sure.

24 JUDGE CLARK: -- give or take a day or so.

25 MR. BOUDREAU: So that's a de facto --

1 JUDGE CLARK: The main reason is that I don't
2 know -- the 24th, I don't know when that relates to the
3 next coming agenda.

4 MR. BOUDREAU: So that would represent a de
5 facto modification of the procedural rule, right?

6 JUDGE CLARK: What?

7 MR. BOUDREAU: That's the clarification I
8 need. You're talking about ruling after the 150-day
9 mark which is not what the rule provides for. I mean it
10 doesn't even provide for the filing of a request until
11 sometime later. That's my point.

12 JUDGE CLARK: I understand what you're saying
13 but you're talking about -- When you're talking about
14 the contemplating of a filing, I assume that you're
15 talking about the rule in regard to when OPC can file
16 for an evidentiary hearing; is that correct?

17 MR. BOUDREAU: It's correct. I'm assuming --

18 JUDGE CLARK: And again, the intervenor did
19 not mention it.

20 MR. BOUDREAU: I'm assuming that the
21 intervenor doesn't have any greater rights than OPC
22 would have, assuming if they have any rights at all.

23 JUDGE CLARK: Well, I'm not saying greater or
24 lesser, maybe just different. I'm not going to speak to
25 that. Obviously at the end of the day this is not my

1 say-so. The Commission will have to rule on whether or
2 not they get an evidentiary hearing. That's why I'm not
3 tying myself to the 24th because this is going to have
4 to go before an agenda.

5 MR. BOUDREAU: And to respond to Mr. Harden in
6 terms of the hearing dates that we've talked about, I
7 wasn't suggesting that that would be the only thing, you
8 know. There will obviously be some discussions about
9 other events leading up to that. I didn't want to
10 suggest that that was the only thing I was recommending
11 happen.

12 JUDGE CLARK: Okay. That's noted.

13 MR. BOUDREAU: Oh, I do have one other thing.
14 Public counsel has filed a motion for local public
15 hearing. Should I contemplate responding to that in the
16 normal time that I respond to motions or is that going
17 to be held in abeyance as well?

18 JUDGE CLARK: If you want to go ahead and
19 respond to that, you may. I haven't had an opportunity
20 to take more than a cursory look at it because it was
21 handed to me as I came into this procedural conference
22 and I haven't had an opportunity --

23 MS. SHEMWELL: We're certainly comfortable
24 with you holding it in abeyance.

25 JUDGE CLARK: Like I said, I'm not going to

1 make a decision in regards to that. Go ahead. If you
2 want to go ahead and make any arguments, you're
3 certainly welcome to do so.

4 MR. BOUDREAU: Very good. Thank you.

5 JUDGE CLARK: Are there any other matters or
6 other issues that need to be addressed by the Commission
7 at this time?

8 MR. BOUDREAU: I don't believe so.

9 JUDGE CLARK: Okay. Hearing none, we will go
10 off the record and this will be adjourned.

11 MR. BOUDREAU: Thank you.

12 MS. SHEMWELL: Thank you, Judge.

13 (Off the record.)

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