

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Discovery Conference
8 August 2, 2007
9 Jefferson City, Missouri
10 Volume 12

11 In the Matter of)
12 Missouri-American Water)
13 Company's Request for)
14 Authority to Implement) Case No. WR-2007-0216, et al.
15 a General Rate Increase)
16 for Water Service)
17 Provided in Missouri)
18 Service Areas)

19 HAROLD STEARLEY, Presiding,
20 REGULATORY LAW JUDGE
21
22

23 REPORTED BY:
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FOR: Staff of the Missouri Public
Service Commission.

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

2 JUDGE STEARLEY: Good morning. Today's
3 Thursday, August 2nd, 2007, and we have convened for
4 the on-the-record discovery conference in Case
5 No. WR-2007-0216, et al., In the Matter of Missouri
6 American Water Company's Request For Authority to
7 Implement a General Increase For Water Service
8 Provider in Missouri Service Areas.

9 We'll begin by taking entries of
10 appearance. It looks like they'll be thin this
11 morning. Starting with Staff.

12 MR. THOMPSON: Kevin Thompson for the
13 Staff of the Missouri Public Service Commission, Post
14 Office Box 360, Jefferson City, Missouri 65101.

15 JUDGE STEARLEY: Thank you,
16 Mr. Thompson. And we also made available the option
17 for parties to appear by counsel or by themselves by
18 phone, and we attempted connecting with our phone
19 bridge this morning a couple of times and we have no
20 other party in appearance. So we'll let the record
21 reflect that the only party making an appearance this
22 morning is Staff of the Missouri Public Service
23 Commission.

24 We'll particularly note that Ag
25 Processing, Incorporated who was involved in this

1 initial discovery dispute, has not made an
2 appearance. And what I'd like to do is, there was a
3 filing by Ag Processing late yesterday afternoon
4 regarding the discovery conference where three
5 objections were raised to having a discovery
6 conference. I am now going to rule on those
7 objections, and then I'll proceed by asking Staff's
8 counsel, General Counsel, to give me an update on the
9 status of the discovery reports.

10 First objection that was raised was
11 couched in various terms throughout what was entitled
12 a Notice Regarding Purported Order Scheduling
13 Expedited On-The-Record Discovery Conference. The
14 order was referred to as being a purported order that
15 purported to schedule and was -- also referred to it
16 as an alleged order, and a comment was made, "Since
17 this individual was not the presiding officer in this
18 matter, he has no authority to schedule a discovery
19 conference."

20 Let's just make clear for the record, I
21 have been assigned as the second judge to this case
22 for quite some time. It's reflect in our EFIS filing
23 system. I do have the authority to schedule this
24 conference.

25 Moreover, the chief regulatory law judge

1 has the authority to delegate such task to any of the
2 other law judges serving for the Commission.

3 Ag Processing's objection is both
4 legally incorrect and it is disrespectful to the
5 Commission and the regulatory law judges, and it will
6 be overruled.

7 The second objection was lack of proper
8 notice pursuant to Section 536.067, subsection 4.
9 This section requires ten days' notice for hearings
10 in contested cases except in the case where public
11 morals, health, safety or interest may make a shorter
12 time reasonable.

13 A discovery conference is not a hearing,
14 and Section 536.067, sub 4 is inapplicable to this
15 conference. At best, the discovery conference could
16 be classified as a prehearing conference. In fact,
17 Commissioners' rules on prehearings and discovery
18 are, in fact, encompassed in one rule, 4 CSR 240-2.090.

19 Subsection 3 provides that reasonable
20 notice must be given for any prehearing conference,
21 and in setting this conference, the Commission found
22 good cause for expediting it; namely, being the
23 evidentiary hearing in this matter is scheduled to
24 begin on Monday, August the 6th, which is just four
25 days from now.

1 It's also important that I note that
2 subsection 5 of this rule provides that failure to
3 appear to any prehearing conference set by the
4 Commission without first securing continuance can
5 constitute a grounds for dismissal of a party absent
6 a showing of good cause.

7 Ag Processing today does not demonstrate
8 good cause for failure to appear at this conference,
9 nor having another designated representative appear
10 in their behalf.

11 At this point there are no outstanding
12 motions regarding Ag Process's status as a party or
13 failing to appear, so there's nothing to rule on with
14 regard to that, but Ag Processing's objection on lack
15 of proper notice is hereby overruled.

16 There was another objection, final
17 one, that there was lack of compliance with
18 4 CSR 240-2.098, regarding the prerequisite
19 requirements for the setting of a discovery conference;
20 specifically, that there be personal or telephone
21 contact made between the parties' representatives
22 prior to seeking such a conference.

23 The order setting this conference
24 specifically deemed the e-mail correspondence between
25 the parties as satisfying that requirement. And I'd

1 like to point out that when this rule was first
2 adopted in 1975, electronic communications were
3 probably not widely used or available. But we do
4 live in a modern age. Electronic communications are
5 perhaps the most expedient and most efficient ways
6 for parties to have contact between themselves.

7 And, in fact, I'll point out that
8 Ag Processing promptly responded to those messages.
9 There was an interexchange between the parties, and
10 the Commission deemed that to satisfy the
11 prerequisites to setting this conference.

12 Also like to point out that
13 Ag Processing, in its responsive e-mails, stated
14 themselves they thought the discovery conference
15 might be a good idea, so it's curious to me that they
16 decided not to attend. That objection, likewise,
17 will be overruled.

18 I'd like to point out other -- one other
19 thing regarding this notice filed by Ag Processing.
20 It is replete with various references to the General
21 Counsel which I find inappropriate. And I would
22 point out that our Code of Conduct, 4 CSR 240-4.020,
23 states that the attorneys will comply with Civil Rule
24 4 of the Code of Professional Responsibility, and
25 Supreme Court Rules 4-3.9 and 4-3.5 particularly come

1 to mind which also requires that proper conduct be
2 followed in administrative agencies and tribunals.
3 Specifically I'd comment that Rule 4-3.5 finds
4 objectionable that a party or a party's advocate or a
5 lawyer practicing before an administrative body would
6 engage in any conduct that is abusive or obstreperous.
7 Big word which means noisy, stubbornly defiant or
8 aggressively boisterous.

9 I don't find this behavior to be
10 acceptable. If the parties or attorneys wish to
11 engage in this off the record in conversations,
12 e-mail, correspondence, et cetera, that's perfectly
13 acceptable. They can speak to each other in any
14 manner they wish. But I find it inappropriate for
15 official pleadings being filed before this
16 Commission, and I will caution all the parties that
17 they should not engage in such behavior.

18 Having made those rulings, I will now
19 turn to General Counsel and ask for an update
20 regarding status of the discovery dispute over Data
21 Request No. 285.

22 MR. THOMPSON: Thank you, your Honor. I
23 spoke to Mr. Russo this morning. He has been in
24 contact with Donald Johnstone who is the expert
25 witness that will appear in this case on behalf of Ag

1 Processing, and he has been assured by Mr. Johnstone
2 that he will provide a response to that DR as soon as
3 he can put one together. I think it was simply
4 overlooked.

5 We're happy with that. We request no
6 more relief from the Commission, and, in fact, I
7 personally feel that I owe an apology to the
8 Tribunal. I overlooked the responsive e-mail that
9 was sent to my initial inquiry to Mr. Conrad and
10 Mr. Woodsmall. Mr. Woodsmall responded and I
11 overlooked that response.

12 In that response Mr. Woodsmall pointed
13 out that Mr. Conrad was at that time traveling from
14 Jefferson City back to his office in Kansas City, and
15 that I should not expect a response from him until
16 probably the following day.

17 Had I read that as, in fact, I should
18 have, I would not have sought this conference
19 yesterday morning. Instead, I would have simply sent
20 another e-mail to Stu or called him at that time. So
21 I do apologize for overlooking that communication.

22 JUDGE STEARLEY: All right. Thank you,
23 Mr. Thompson. If you're not requesting any
24 additional relief at this time, I can certainly
25 understand how these correspondences can get

1 overlooked and we appreciate your apology on that.

2 At this time I don't believe we need any
3 rulings. There's no pending motion to compel. If
4 you're satisfied with their response that they will,
5 in fact, comply with the discovery request, that
6 matter can just remain open to see if, in fact, they
7 do comply.

8 My only concern is that compliance with
9 that will be timely in terms of when the matters that
10 are a subject matter of that Data Request are before
11 the Commission at hearing. And I'm not 100 percent
12 sure, having not seen the Data Request, the subject
13 matter involved, are you confident you're going to
14 get this response in time for that particular portion
15 of the hearing?

16 MR. THOMPSON: Mr. Russo is testifying
17 in the rate design portion of the case which I
18 believe is set for the second week; isn't that
19 correct?

20 MR. RUSSO: (Nodded head.)

21 MR. THOMPSON: So if we -- if we receive
22 the response today or tomorrow or early next week, I
23 think that would probably be adequate; is that --

24 MR. RUSSO: Yeah.

25 JUDGE STEARLEY: Okay.

1 MR. THOMPSON: In the event that we
2 don't get it in time, then we will -- we will raise
3 an objection of some sort during the hearing.

4 JUDGE STEARLEY: All right. Very good.
5 I also would like to note that in Ag Processing's
6 responsive e-mails, they made reference to a claim, a
7 Data Request of theirs, numbers 10 through 17,
8 transmitted to Staff on June 29th remained
9 unanswered.

10 I don't know what the status is on those
11 particular Data Requests --

12 MR. THOMPSON: I'm told by Mr. Russo,
13 your Honor, that he responded to those yesterday.

14 JUDGE STEARLEY: Okay. What I was gonna
15 say, though, is since this forum had been provided
16 for any discovery disputes and Ag Processing has
17 elected not to appear, that I'm going to consider any
18 such claims made to be abandoned.

19 Are there any other matters that we need
20 to address with regard to any other discovery?

21 MR. THOMPSON: Not from Staff, your
22 Honor.

23 JUDGE STEARLEY: All right. And since
24 we have no other parties in attendance, I'm assuming
25 we have no issues to address with them, and we will

1 adjourn and go off the record.

2 MR. THOMPSON: Thank you, sir.

3 JUDGE STEARLEY: Thank you.

4 (WHEREUPON, the recorded portion of the
5 discovery conference was concluded.)

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