

No. 143, Original

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF MISSISSIPPI,
Plaintiff,

v.

STATE OF TENNESSEE, CITY OF MEMPHIS, TENNESSEE,
AND MEMPHIS LIGHT, GAS & WATER DIVISION,
Defendants.

CORRECTED PRE-HEARING SCHEDULING ORDER
Revised April 12, 2018

After reviewing the parties' joint proposed pre-hearing scheduling order (Dkt. No. 65) and their respective letter briefs (Dkt. Nos. 66-68), the undersigned adopts the following plan in preparation for a January 2019 evidentiary hearing "on the limited issue of whether the Aquifer and the water constitutes an interstate resource." (Dkt. No. 55)

I. Final Pre-Hearing Proceedings

Final pre-hearing proceedings will commence and be completed in accordance with the schedule stated herein.

A. Exchange of Witness and Exhibit Information

1. The parties have already exchanged witness lists. The parties will provide the Special Master with the credentials of their expert witnesses on or before September 14, 2018.
2. The parties will exchange exhibit lists and deposition designations for their cases in chief by September 14, 2018.
3. Deposition cross-designations for their cases-in-chief shall be exchanged by October 5, 2018.
4. Objections to exhibits and deposition designations will be exchanged by October 19, 2018.
5. Amendments to the parties' witness lists, exhibit lists, and deposition designations shall be allowed only by leave of the Special Master.

B. Dispositive Motions

Defendants' request (Dkt. No. 66) to jointly file a dispositive motion in advance of the evidentiary hearing is hereby granted.

1. If Defendants desire to file such a motion, they should do so by June 1, 2018. The motion is limited to 15 pages.
2. Plaintiff's Response will be due on July 6, 2018 and is also limited to 15 pages.
3. Defendants' Reply will be due on July 24, 2018 and should not exceed 8 pages.

C. Motions *in Limine* and Motions Challenging the Credentials of Expert Witnesses or the Admissibility of Expert Testimony

1. All motions *in limine* and motions challenging the credentials of expert witnesses or the admissibility of expert testimony, if any, shall be filed by November 1, 2018.
2. Responses to motions *in limine* and motions challenging the credentials of expert witnesses or the admissibility of expert testimony motions shall be filed by November 20, 2018.
3. Any replies shall be filed by December 7, 2018.
4. Each motion *in limine* shall be no more than 20 pages (excluding exhibits). Each response in opposition shall be no more than 20 pages (excluding exhibits). Reply memoranda shall be no more than 15 pages (excluding exhibits).

D. Pre-Hearing Briefs

Pre-hearing briefs, if any, shall be filed by the parties on or before December 20, 2018. Pre-hearing briefs shall not exceed 40 pages.

E. Amicus Briefs

The United States may, without further leave of the Special Master, file an *amicus curiae* pre-hearing brief on or before December 20, 2018.

F. Exhibits

1. The parties shall file four copies of all exhibits by January 7, 2019, and all exhibits shall be pre-marked. Plaintiff's exhibits shall be numbered with an "MS" sequence (starting with MS-0001), and Defendants' exhibits shall be numbered with a "TN" sequence (starting with TN-3000) and "ME" sequence (starting with ME-6000). Any joint exhibits shall be numbered with a "J" sequence (starting with J-9000).
2. On January 7, 2019, the parties shall file a Joint Exhibit List ("Exhibit List") in spreadsheet form, in either Excel or Word format. The Exhibit List shall contain columns for "Offered," "Objection," and "Admitted." On the Exhibit List, the parties shall mark exhibits to which objection has been made, and the basis for the objection.

II. Hearing Proceedings

A. Schedule

1. The hearing shall commence on January 15, 2019, at 9:30 a.m. (Central Standard Time) at the United States District Court for the Middle District of Tennessee, at Nashville, in a courtroom to be designated later. Unless otherwise specified by the Special Master, the proceeding shall be in session from 9:30 a.m. to 4:30 p.m. each weekday, excepting January 21, 2019, with breaks for lunch and as necessary.
2. As a general matter, the hearing will proceed as follows:

- a. Plaintiff's and Defendants' opening statements.
- b. Plaintiff's witnesses and exhibits.
- c. Cross-examination of Plaintiff's witnesses.
- d. Redirect examination of Plaintiff's witnesses.
- e. Defendants' witnesses and exhibits.
- f. Cross-examination of Defendants' witnesses.
- g. Redirect examination of Defendants' witnesses.
- h. Plaintiff's rebuttal testimony and exhibits, cross-examination and redirect.
- i. Parties' closing statements.

3. Rebuttal testimony will be allowed in the discretion of the Special Master.

B. Sequestration of Witnesses

Expert witnesses will only be sequestered if good cause is shown.

C. Miscellaneous.

As the pre-hearing schedule proceeds, the parties will work together and submit to the Special Master any procedural matters that they believe might make the hearing more efficient. These matters could include, but are not limited to, provisions to handle confidential documents (if any) and time limits for direct, cross and re-direct examinations of witnesses.

D Evidentiary Hearing Subpoenas

The parties shall bring to the attention of the Special Master any need for subpoenas for attendance at the hearing as soon as reasonably practicable.

E. Audio/Visual Equipment

Counsel should contact information technology staff as directed by the Clerk of the District Court for the Middle District of Tennessee, with any issues relating to audio/visual equipment. Counsel should also inform the Special Master of their planned use of audio/visual equipment at or before the pre-hearing conference.

III. Pre-hearing Conference

A pre-hearing conference will be held will be held on January 8, 2019, at a time to be determined, in the United States District Court for the Middle District of Tennessee at Nashville.

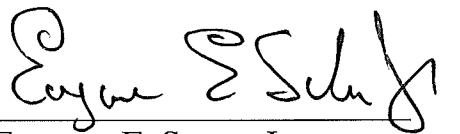
IV. Post-hearing Filings

- A. No later than 90 days after the end of the hearing, the parties shall file:
 - 1. Proposed findings of fact and conclusions of law (with citations to the record); and
 - 2. Post-hearing briefs that summarize each party's argument. Post-hearing briefs shall be limited to 40 pages.
- B. Responses to post-hearing briefs (Section IV(A)(2)) shall be filed 30 days after service of the post-hearing briefs and shall be limited to 30 pages.

V. Motion to Strike

Mississippi's request (Doc. No. 68), made in its March 22, 2018 letter to strike Defendants' March 20 Letter Brief (Dkt. No. 67) on the basis that it exceeded five pages is hereby denied.

IT IS SO ORDERED, THIS 12th DAY OF APRIL, 2018



HON. EUGENE E. SILER, JR.
Special Master
United States Court of Appeals for
the Sixth Circuit
310 South Main Street, Suite 333
London, Kentucky 40741
(606) 877-7930