

In the Circuit Court of Kanawha County, West Virginia

MOUNTAINEER GAS COMPANY,
Plaintiff,

v.

Case No. CC-20-2023-C-1067
Judge David Hammer

**WEST VIRGINIA-AMERICAN WATER
COMPANY,**
Defendant

SCHEDULING ORDER

Pursuant to the July 29, 2024, scheduling conference, the following schedule is **ORDERED** by the Court:

1. TRIAL DATE: October 6, 2025 at 9 a.m.

Continuance motions must be heard prior to the pre-trial conference or they will not be considered.

2. PRE-TRIAL CONFERENCE DATE: September 19, 2025, at 9 a.m.

Lead counsel must appear. All parties are directed to exchange, e-file, and deliver their respective **PRE-TRIAL CONFERENCE MEMORANDA** to the Judge's Chambers (via email attachment in **MS Word** to administrative assistant Christina Wills: christina.wills@courtsww.gov) **NO LATER THAN ELEVEN (11) DAYS BEFORE** the conference (**September 8, 2025**). **FAILURE TO COMPLY MAY RESULT IN DISMISSAL OR DEFAULT.** Said memoranda are to contain as a minimum, the following:

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|--|-------------------------------------|
| 1. Statement of the Case | 7. Pending Motions |
| 2. Issues of Fact | 8. Motions <i>in Limine</i> |
| 3. Issues of Law | 9. All Proposed Instructions of Law |
| 4. Proposed Stipulations | 10. Proposed Voir Dire |
| 5. List of Exhibits (See additional directives under Schedule of Exhibits) | |
| 6. List of Witnesses | |

SCHEDULE OF EXHIBITS

The parties shall exchange a list of all proposed exhibits (including demonstrative) and shall make the exhibits available for viewing by counsel at least 21 days prior to the pretrial conference (**August 29, 2025**). Exhibits shall be individually identified and given a unique identifying number. The identification of an exhibit in the fashion directed, unless objected to in writing stating factual and legal grounds therefore at least 11 days prior to the pretrial, shall be deemed admissible by the Court subject only to relevance. The Court intends to address the admissibility of any contested exhibits at the pretrial.

The parties shall mark all exhibits by use of standard exhibit stickers and provide a list, along with copies of the exhibits, in an indexed binder to the Court by **September 8, 2025**. Failure to properly identify, mark or provide an exhibit is grounds for exclusion of the exhibit at trial.

VIDEO DEPOSITION TO BE USED AT TRIAL

If a video deposition is to be used, the party shall designate those witnesses whose testimony it expects to present by deposition and a transcript of the pertinent parts of the deposition by **August 15, 2025**. All parties must be prepared to argue objections at the pretrial conference. Thereafter, the proponent of the video deposition shall have the video edited to reflect the Court's rulings. In addition, the proponent of the video deposition must have a videographer at trial.

JURY INSTRUCTIONS

The Court desires that all counsel read all parties' proposed jury instructions prior to the pretrial conference and be prepared to discuss them at the conference. The Court will only consider instructions offered after the pretrial if there is just cause for late submission.

3. EXPERTS DISCLOSED: Party With the Burden: March 7, 2025

Party Without the Burden: April 21, 2025

a) Any party desiring to use an expert witness must furnish opposing counsel with the specialty of such expert and copies of all reports submitted by such witness, or, if no reports have been submitted, a summary of the substance of such expert's contemplated testimony, on the date of Expert Disclosure per WVRCP 26(b)(4).

b) The admissibility of expert testimony is subject to Rule 104(a) of the Rules of Evidence. Objection to the admissibility of expert testimony will be deemed waived if not objected to by a motion *in limine* filed at least 11 days prior to the pre-trial and a hearing thereon set with the Court prior to first day of trial.

c) Co-designation or co-reliance upon experts must also specifically be made in writing on date of Expert Disclosure.

d) Any rebuttal experts shall be disclosed by **May 21, 2025**.

4. EXPERT EVIDENTIARY INSPECTIONS: The Court encourages the parties to work in good faith to complete all necessary evidentiary inspections in a timely manner consistent with the deadlines set forth herein.

5. DISPOSITIVE MOTIONS: WVRCP 12(b) and 56 motions, if any, shall be filed by **July 21, 2025**.

6. AMENDMENTS, THIRD PARTY PLEADINGS, AND OTHER MATTERS NO LATER THAN: September 12, 2024.

7. FACT WITNESS DISCLOSURES:

A. INITIAL FACT WITNESS DISCLOSURES EXCHANGED: December 6, 2024. This shall consist of the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment

B. FINAL WITNESS DISCLOSURES EXCHANGED: July 28, 2025. This is to be a *bona fide* list of intended trial witnesses, including those whose testimony the party expects to present by deposition, separately identifying those the party expects to present and those it may call if the need arises. Listing the witness means the party identifying the witness has subpoenaed the witness for trial or has obtained the witnesses' agreement in writing to appear without the necessity of a subpoena. Parties must identify their witnesses by name and business or home address. Any witness not identified by name (such as "representative of the ABC Corporation"), fails to meet the requirements of this order and will be excluded. The Court will not consider a motion for continuance for any properly identified witness where the party has failed to subpoena the witness or secure his or her agreement in writing before the above-referenced date.

8. DISCOVERY COMPLETION DATE: June 30, 2025

All requests must be served and evidence of service filed at least 35 days in advance of this date so that all responses may be completed by this date. All trial depositions must be completed at least 14 days before the pretrial. These discovery deadlines may be altered by agreement of the parties.

9. MOTIONS *IN LIMINE* MUST BE FILED AT LEAST 11 DAYS BEFORE PRETRIAL AND WILL BE RULED UPON AT THE PRETRIAL CONFERENCE (September 8, 2025).

Any responses to motions in limine shall be filed no later than two days prior to the pretrial conference (**September 17, 2025**).

10. TCR 22 PROCEDURE.

Unless otherwise specified herein, any motions must be e-filed along with a proposed order for the relief requested in .rtf. Non-moving parties shall file written responses and proposed orders in .rtf **within 21 days of service**. Reply memoranda, if desired, are due **within 7 days**. After these time periods pass, the Court will regard the matter as submitted and will rule or set for hearing as the Court deems appropriate.

11. MEDIATION/ALTERNATIVE DISPUTE RESOLUTION

The Court finds this an appropriate case for mediation or alternative dispute resolution. Therefore, pursuant to Rule 25 of the West Virginia Trial Court Rules, this case is referred to mediation or other form of dispute resolution agreed to by the parties, including mediation before a private mediator at the parties' expense. By Order of this Court, mediation or other form of dispute resolution shall be conducted by the Honorable Maryclaire Akers, as Resolution Judge, and shall be scheduled and concluded on or before **September 12, 2025**, unless such deadline is otherwise extended by the

Presiding Judge for good cause shown. The parties shall contact the office of the Resolution Judge for the purpose of scheduling mediation/alternative dispute resolution.

12. SANCTIONS: In accordance with WVRCP 16(f), the Court may impose the full spectrum of sanctions authorized by the WVRCP if a party or party's counsel fails to obey this order or other orders of this Court including exclusion of evidence and granting of default for failure to comply.

13. No party has **OBJECTIONS** to the above schedule, but each party reserves the right to seek to amend the schedule upon a showing of good cause.

14. The Court may conduct interim status conferences as may be reasonably necessary. If either party desires the Court to conduct an interim status conference it shall file a request with Court and the other party shall respond within ten (10) days.

15. The dates set out above do not relieve counsel or parties from timely compliance with discovery requests propounded pursuant to the West Virginia Rules of Civil Procedure.

The Clerk is directed to send a true and correct copy hereof to all counsel and self-represented parties of record.

/s/ David M. Hammer
Circuit Court Judge
13th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.

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