

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 Prehearing Conference  
8 June 18, 2009  
9 Jefferson City, Missouri  
Volume 1

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12 Kim Sullens, )  
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13 Complainant, )  
 )  
14 v. ) Case No. SC-2009-0342  
 )  
15 )  
16 Aqua Missouri, Inc., )  
 )  
17 Respondent. )

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19 KENNARD L. JONES, Presiding,  
20 SENIOR REGULATORY LAW JUDGE.

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24 REPORTED BY:

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MIDWEST LITIGATION SERVICES

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15 Service Commission.

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

2 JUDGE JONES: We're on the record in Case  
3 No. SC-2009-0342, Kim Sullens vs. Aqua Missouri,  
4 Incorporated. My name is Kennard Jones. I'm the judge  
5 assigned to this matter.

6 At this time we'll take entries of  
7 appearances, and by that just state your name.

8 MS. SULLENS: Kim Sullens.

9 JUDGE JONES: You're the Complainant?

10 MS. SULLENS: Correct.

11 MR. ELLINGER: Marc Ellinger, Blitz,  
12 Bardgett & Deutsch, 308 East High, Suite 301, Jefferson  
13 City, Missouri 65109, representing Aqua Missouri.

14 MS. HERNANDEZ: Jennifer Hernandez  
15 representing the Staff. With me I have Ms. Gay Fred.

16 JUDGE JONES: Okay. Ms. Sullens' complaint  
17 has to do with a reconnection fee, and it looks like  
18 you-all have had some type of discussions prior. Have  
19 there been any settlements at all? In Staff's report  
20 you-all say there's been some payments made or credits or  
21 something.

22 MS. FRED: Right.

23 MS. HERNANDEZ: Right. There have been  
24 credits made for the period of disconnection.

25 JUDGE JONES: But that's not relevant to

1 the reconnection fee?

2 MS. HERNANDEZ: Correct. There's still  
3 that issue.

4 JUDGE JONES: Ms. Sullens, so you know, the  
5 purpose of this is to try to narrow the issues and make  
6 sure we're all on the same page on exactly what we  
7 disagree about. And my first question is, now, I don't  
8 want to get into an evidentiary hearing at this point, but  
9 I do want to try to tee this up so that there's some  
10 productive discussion. Maybe an evidentiary hearing can  
11 be avoided. At some point I'm going to leave you-all to  
12 discuss the substance of the matter and see what you can  
13 come up with.

14 But I do have to ask, though, is it true  
15 that she was charged \$714.39 for a reconnection fee?  
16 That's what she alleges. I just want to know if that's  
17 true.

18 MR. ELLINGER: The 714 is a combination of  
19 the disconnection fee and the reconnection fee, two  
20 different fees.

21 MS. HERNANDEZ: And from Staff's review of  
22 her statement of account, that is correct.

23 JUDGE JONES: And do you agree with that?

24 MS. SULLENS: Yes.

25 JUDGE JONES: So you agree on that part.

1 Now, does Aqua Missouri contend that that's allowed by the  
2 tariff?

3 MR. ELLINGER: Yes.

4 JUDGE JONES: Are you familiar with what a  
5 tariff is?

6 MS. SULLENS: I've received a copy of it.

7 JUDGE JONES: Have you looked at it?

8 MS. SULLENS: Yes, I have.

9 JUDGE JONES: And do you still disagree  
10 that they should have --- they should not have charged  
11 this?

12 MS. SULLENS: Based on their correspondence  
13 to me, yes, I do.

14 JUDGE JONES: Okay. Now, I'll tell you  
15 this. You're at a slight disadvantage because you're not  
16 an attorney. You're in a position to have to interpret  
17 the law, and the law in this case is their tariff and  
18 Missouri statutes as they apply, but primarily their  
19 tariff, which has the same effect as the law.

20 And in reading the tariff, do you still  
21 think that you should not have been charged 714.39?

22 MS. SULLENS: Yes.

23 JUDGE JONES: Okay. Well, that's something  
24 you-all are going to have to work on because that seems to  
25 be the issue. But I do have another concern. I noticed

1     that Staff has filed two recommendations, one highly  
2     confidential and the other public. Why is that?

3                   MS. HERNANDEZ: That is part of our rules.  
4     I didn't bring my rule book with me, but it's -- any time  
5     there's a Staff investigation, the report is to be filed,  
6     Staff's findings are to be filed as highly confidential.  
7     So we filed one highly confidential copy and then a public  
8     copy with much of the information redacted.

9                   JUDGE JONES: So the information that's  
10    redacted is redacted by rule?

11                   MS. HERNANDEZ: Correct.

12                   JUDGE JONES: Now, you do understand the  
13    role that everyone's playing here, Ms. Sullens, or do you  
14    know?

15                   MS. SULLENS: I'm not sure what you mean.

16                   JUDGE JONES: Well, Staff is objective, or  
17    they're supposed to be. I'll put it that way. I'm not  
18    saying that they are or they aren't. They're supposed to  
19    be objective. They look at the case and they give the  
20    Commission their recommendation. Mr. Ellinger is your  
21    opposition.

22                   Anything you-all discuss here today,  
23    because it's an attempt to settle the matter, will not be  
24    brought out if there's an evidentiary hearing. Do you  
25    understand that? So you can speak freely. You don't have

1 to hold your cards close, as I'm sure Mr. Ellinger  
2 understands also. You can speak freely and see if you can  
3 come to an agreement.

4 If you can't, Ms. Hernandez, will you just  
5 send me an e-mail saying what happened today, not the  
6 substance of what happened, but whether or not you were  
7 able to come to some agreement. If not, we'll have to  
8 schedule an evidentiary hearing, at which point,  
9 Ms. Sullens, you will be required to give evidence that  
10 supports your claim that they have wrongly charged you  
11 this fee. Mr. Ellinger's job then is to give evidence to  
12 show that they have charged it and it should have been  
13 charged.

14 Okay? Do you have any questions about the  
15 whole process?

16 MS. SULLENS: I have one question.

17 JUDGE JONES: Sure.

18 MS. SULLENS: Are you saying to me that  
19 regardless of communications that Aqua Missouri sends to  
20 customers, the tariff overrides any of that?

21 JUDGE JONES: Well, that's certainly true.  
22 Now, I will say this, that if -- I say this hesitantly  
23 because I don't want to give any judgment, but that  
24 doesn't mean you can't provide that as evidence, and that  
25 I say is probably more a reflection of customer service

1    than anything because, as you know, you can -- you work at  
2    Lincoln University. I can call Lincoln University for  
3    information and get someone on the phone and they give me  
4    completely wrong information. Then I go look in some  
5    student handbook and find it was completely wrong.

6                   MS. SULLENS: The information I'm talking  
7    about is printed information that came from them, written  
8    correspondence that came from them.

9                   JUDGE JONES: That's fine. I understand  
10   that. And I don't know how big of an organization Aqua  
11   Missouri is, but it is possible, as I'm sure you're aware,  
12   that employees within an organization may communicate  
13   incorrect information, even by letter, as well as over the  
14   phone.

15                   So that's something you may want to keep in  
16   mind. It's unfortunate if you've been misled, but it's a  
17   common occurrence. A lot of times I'll call a company and  
18   want information and have someone on the phone, and maybe  
19   it's because of what I do as a living that I'm in a better  
20   position to scrutinize, but I can hear when someone  
21   doesn't know what they're talking about, and I'll question  
22   them even more to find out. And if they're insistent on  
23   giving me information that I'm not sure about, then I'll  
24   check with someone else.

25                   But that's an unfortunate occurrence if you



1 have been misled, but there are certain laws that do  
2 apply. The law in this case is their tariff, and if they  
3 are allowed to do what they did by their tariff, then  
4 they'll prevail in the case because that is the law we  
5 have to look at.

6 And if they are having customer service  
7 problems, then that's something that may be addressed if  
8 there's an evidentiary hearing or something that can be  
9 corrected internally with them just from your  
10 communicating with them now.

11 Do you have any other questions?

12 MS. SULLENS: No.

13 JUDGE JONES: Did I answer your question?

14 MS. SULLENS: Yes.

15 JUDGE JONES: Any questions, Mr. Ellinger?

16 MR. ELLINGER: No, sir.

17 MS. HERNANDEZ: Would you like me to send  
18 proposed dates if it comes to that, proposed dates for  
19 list of issues and dates of hearing?

20 JUDGE JONES: We're not going to do list of  
21 issues and pre -- Ms. Sullens, what she's talking about is  
22 many times in hearings there's a lot of filings that go on  
23 as we approach the hearing date. In some cases we have  
24 prefiled testimony. We'll have the parties file a list of  
25 issues that basically tells the Commission what the issues

1 are in this case. I don't think that's necessary in this  
2 case because it seems simple to me, whether or not the  
3 \$714.39 should have been charged. So it's not necessary  
4 to file a list of issues. Do you agree with that,  
5 Mr. Ellinger?

6 MR. ELLINGER: I agree there's really only  
7 one issue, does the tariff allow for the charges or not.

8 JUDGE JONES: Ms. Sullens, do you agree  
9 with that, that that is the issue?

10 MS. SULLENS: The 714.39, yes.

11 JUDGE JONES: Right. Whether or not it  
12 should have been charged.

13 MS. SULLENS: Actually, the other issue is  
14 should I have been disconnected on the date I was  
15 disconnected.

16 JUDGE JONES: Okay.

17 MS. SULLENS: Just based on letters they  
18 sent.

19 JUDGE JONES: So you have a problem with  
20 whether or not you should have been disconnected also?

21 MS. SULLENS: Right. That's why I had  
22 asked a person to return a call to me on January 20th,  
23 which it was January 28th after many phone calls, three by  
24 a gentleman from the local office helped me finally get  
25 somebody from the main office to call me, a week after, a

1 week and a day after I was disconnected before I got a  
2 return phone call.

3 JUDGE JONES: Now, I will say this. That  
4 specific issue isn't in your complaint, but it should be  
5 considered, do you agree with that, if she shouldn't have  
6 been disconnected or not?

7 MR. ELLINGER: It's not part of the  
8 complaint, your Honor. I mean, the complaint only  
9 addresses the dollar amounts. I don't think Staff even  
10 did an investigation from the -- and I don't mean to speak  
11 for you-all, but I don't think you did an investigation  
12 from the perspective of should she have been disconnected  
13 or not. The only investigation was the authority to  
14 charge the amount and all the correspondence that went  
15 into -- up to and after that point. I'm not trying to  
16 speak for you-all.

17 MS. HERNANDEZ: I think that's a fair  
18 statement. If that is an issue, I suppose there could be  
19 an amended complaint.

20 JUDGE JONES: There could be an amended  
21 complaint. That's what I'm trying to avoid. If there  
22 is an amended complaint, then Aqua Missouri would then  
23 have to have time to respond to that, as they did -- as  
24 they had time to respond to the initial complaint.

25 What I will say, to try to avoid that

1     because that will just prolong the process, why don't  
2     you-all just talk about that also as part of your  
3     discussions? I don't think Aqua needs 30 days to be able  
4     to decide whether she should have been disconnected or not  
5     when she was, which is what I think you're saying,  
6     Ms. Sullens. It's not whether you should have been  
7     disconnected but when you were disconnected.

8                     MS. SULLENS: Correct.

9                     JUDGE JONES: You-all might discuss that  
10    just so the air is clear when you-all leave today. Do you  
11    have any other questions or concerns?

12                    MS. SULLENS: No. I think we can talk.  
13    We've not had that opportunity yet.

14                    JUDGE JONES: All right. With that, then  
15    we'll go off the record.

16                    WHEREUPON, the recorded portion of the  
17    prehearing conference was concluded.

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## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
3 ) ss.  
4 COUNTY OF COLE )

5 I, Kellene K. Feddersen, Certified  
6 Shorthand Reporter with the firm of Midwest Litigation  
7 Services, do hereby certify that I was personally present  
8 at the proceedings had in the above-entitled cause at the  
9 time and place set forth in the caption sheet thereof;  
10 that I then and there took down in Stenotype the  
11 proceedings had; and that the foregoing is a full, true  
12 and correct transcript of such Stenotype notes so made at  
13 such time and place.

14 Given at my office in the City of  
15 Jefferson, County of Cole, State of Missouri.

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17 Kellene K. Feddersen, RPR, CSR, CCR  
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