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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
Prehearing Conference  
December 17, 2004  
Jefferson City, Missouri  
Volume 1

Gerald and Joanne Reiersen, )  
18571 Alma Court, )  
Hartsburg, Missouri, )  
Complainants, )  
V. ) Case No. SC-2005-0083  
Blue Lagoon Sewer Corp., )  
Respondent. )

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Robert M. Hellebusch, )  
Complainant, )  
V. ) Case No. SC-2005-0099  
Blue Lagoon Sewer Corp., )  
Respondent. )

NANCY M. DIPPELL, Presiding,  
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:  
KELLEN K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

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FOR: Staff of the Missouri Public  
9 Service Commission.

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

2 JUDGE DIPPELL: This is Case Nos.

3 SC-2005-0083 and SC-2005-0099, in the matter of Gerald and  
4 Joanne Reierson, 18571 Alma Court, Hartsburg, Missouri,  
5 Complainants vs. Blue Lagoon Sewer Corp, and in the matter  
6 of Robert M. Hellebusch vs. Blue Lagoon Sewer Corp.

7 We've come here today for a prehearing  
8 conference to try to get some procedural details worked  
9 out. My name is Nancy Dippell. I'm the Regulatory Law  
10 Judge assigned to this matter. And we'll begin by making  
11 entries of appearance. I assume the attorneys have given  
12 written entries to the court reporter. If you haven't,  
13 please fill those out. So I'll let you -- I'll let you go  
14 ahead and I'll start with Staff counsel.

15 MS. WESTON: Mary Weston, attorney for  
16 Staff here at the Missouri Public Service Commission. My  
17 address is P.O. Box 360, Jefferson City, Missouri 65102.

18 JUDGE DIPPELL: Mr. Krueger, are you going  
19 to enter your appearance?

20 MR. KRUEGER: No. Actually, I'm not  
21 attorney of record on this case. I'm just accompanying  
22 Ms. Weston.

23 MR. LEMON: James Lemon appearing for Ken  
24 Jaeger and Blue Lagoon Sewer Corporation.

25 JUDGE DIPPELL: And are either of the

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1 Complainants present? Would you like to go ahead and  
2 state your name and your address?

3 MR. REIERSON: Gerald Reierson, 18571 Alma  
4 Court, Hartsburg, Missouri 65039, and Joanne.

5 JUDGE DIPPELL: All right.

6 MR. HELLEBUSCH: I'm Robert Hellebusch,  
7 450 New Bridge Pass, St. Charles, Missouri, and my wife  
8 Linda.

9 JUDGE DIPPELL: Thank you.

10 All right. The first thing I want to get  
11 straightened out if we can is how the company is owned.

12 MR. LEMON: Yeah. And I thought I  
13 explained that in my answer, but it appeared from the  
14 report of Staff that they couldn't determine that. Blue  
15 Lagoon Sewer Corporation did not own any portion of that.  
16 That was the entity that we formed at the instruction of  
17 DNR in order to attempt to form a continuing authority to  
18 transfer into. That was created in, I believe, May of  
19 this year. The property's completely owned by Ken Jaeger,  
20 an individual.

21 JUDGE DIPPELL: And Mr. Jaeger is also  
22 running the system?

23 MR. LEMON: He is the one that is running  
24 the system, yes.

25 JUDGE DIPPELL: And so explain -- just to

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1 make it clear to me, Mr. Lemon, the Blue Lagoon Sewer  
2 Corp, what was their purpose?

3 MR. LEMON: They did not come into  
4 existence until May of this year. And, Judge, maybe just  
5 to give you a brief factual background of what's going on  
6 with this lagoon, because the factual background that was  
7 provided by the Staff is in error. This lagoon was built  
8 in 1990 by a man by the name of Bob Vanderbeck. Ken  
9 Jaeger had no part in that business at that point in time.

10 In 1993 Mr. Vanderbeck took out an SBA  
11 loan, and he gave this lagoon and various property as  
12 security for that SBA loan. Also in 1993, that's when Ken  
13 Jaeger first became affiliated with the property at all in  
14 that he went into the construction business with  
15 Mr. Vanderbeck, but he did not have any ownership interest  
16 in this property at that time.

17 In 1996, because of debts that  
18 Mr. Vanderbeck owed to Mr. Jaeger, he sold to him the  
19 motel that is part of this whole complex, actually sold  
20 him a one-half interest. He then defaulted on all of his  
21 loans and sold out the remaining portion of it.  
22 Mr. Jaeger did not acquire title to this lagoon until 1999  
23 when SBA foreclosed on this property and sold it on the  
24 courthouse steps.

25 Mr. Jaeger acquired this lagoon in order to

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1 protect his sewer rights to the subdivision which he  
2 owned, which was hooked on to it, and also the hotel which  
3 he had. Prior to that, all the sewer agreements had been  
4 pursuant to things that Mr. Vanderbeck had done and  
5 Mr. Jaeger was taking advantage of via the agreements that  
6 he had with Vanderbeck to provide sewer service for him.

7           There had never been any maintenance on  
8 this system in the whole time that Vanderbeck owned it.  
9 Apparently Vanderbeck had applied on two separate  
10 occasions with DNR in order to attempt to get this  
11 permitted as a non-discharge lagoon. It does not appear a  
12 permit was ever issued on any of those times.

13           My client also attempted to get it  
14 permitted as a non-discharge lagoon. That was rejected.  
15 He has an application with DNR in order to make upgrades  
16 to this system and add on to this system in order to  
17 comply with DNR regs. That began either at the end of  
18 2003 or the beginning of 2004.

19           DNR issued to my client various things  
20 which they wanted him to do in order to obtain a permit  
21 and be allowed to make the upgrades that the system  
22 requires. One of those things was to create a continuing  
23 authority. My client formed this Blue Lagoon Sewer  
24 Corporation in an attempt to comply with what DNR was  
25 asking him to do. That was submitted to DNR in

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1 approximately June of this year, and we've now been  
2 waiting seven months to hear from them whether they  
3 consider that an appropriate continuing authority or not.

4 So as a result, Blue Lagoon Sewer  
5 Corporation has no interest in this in that it's just an  
6 entity we formed in order to try to comply with DNR regs.

7 JUDGE DIPPELL: Okay. Staff have anything  
8 they wanted to reply?

9 MR. HELLEBUSCH: Pardon me?

10 JUDGE DIPPELL: I'm sorry. I was asking if  
11 Staff had anything they wanted to --

12 MS. WESTON: No, I have no response to his  
13 statement.

14 JUDGE DIPPELL: And do either of the  
15 Complainants?

16 MR. HELLEBUSCH: Yes, I have a question.  
17 Why did they -- if you formed Blue Lagoon Sewer  
18 Corporation, what good is that when the thing never met  
19 the criteria for the DNR in the first place? Forming Blue  
20 Lagoon had nothing to do with meeting the requirements of  
21 having too small of pipes, having a system that was never  
22 hooked up, meant to be hooked up to the housing in the  
23 first place. I don't understand anything about the Blue  
24 Lagoon.

25 MR. LEMON: And I'm sorry. You're

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1 Mr. Reiersen?

2 MR. HELLEBUSCH: Hellebusch.

3 MR. LEMON: Mr. Hellebusch. I'm sorry,  
4 Mr. Hellebusch.

5 Mr. Hellebusch, the only reason why the  
6 corporation was created was DNR provided my client with a  
7 list of things they wanted him to do before they would  
8 ever allow him to begin making any kind of improvements or  
9 upgrades. One of the things they told him he had to do  
10 was transfer ownership from himself to a not-for-profit  
11 corporation.

12 So he formed this not-for-profit  
13 corporation, sent in all the paperwork, sent in a proposed  
14 set of easements, things that would govern as far as  
15 bylaws that would govern it, et cetera, et cetera. Sent  
16 these all in to DNR, and we sent those in in June of this  
17 year and said, okay, is this going to comply with your  
18 requirements? They've never responded since then.

19 But that's the only reason that Blue Lagoon  
20 was formed was in order to comply with what DNR told my  
21 client they wanted him to do.

22 MR. HELLEBUSCH: That's a different set of  
23 circumstances than I hear from DNR.

24 MR. LEMON: Well, and I don't know what  
25 DNR's telling you, but as we got into it, I'm sure my



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1 client would be happy to let me provide to you all my  
2 letters that I have given to DNR and the application  
3 process and every letter I've gotten back from DNR. But I  
4 can assure you that it's been on hold with DNR since June  
5 of this year, and the only response I've gotten in regard  
6 to my inquiries is a letter that says, well, we're in  
7 process and we're considering the things that you've  
8 submitted.

9 MR. HELLEBUSCH: I'd be very interested in  
10 seeing all that.

11 MR. LEMON: And I'd need to verify with my  
12 client that it's okay to give it to you, but I'm sure he'd  
13 be willing to let you see it. It's not really  
14 confidential.

15 JUDGE DIPPELL: Okay. We'll let you-all  
16 discuss that --

17 MR. LEMON: And I apologize, Judge.

18 JUDGE DIPPELL: No. That's fine. We'll  
19 let you-all discuss that after we have a few questions  
20 here from me. I'm going to go ahead and we'll go off the  
21 record and then you-all can discuss how you think that  
22 this needs to all get worked out, and maybe you can come  
23 up with a procedural schedule or an agreement as to how  
24 these complaints should be worked out.

25 It appears from Staff's recommendation that

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1 Staff believes the company, whether its Mr. Jaeger or Blue  
2 Lagoon Sewer, should be regulated by the Public Service  
3 Commission, and that's the basic -- the basic request for  
4 relief, as I understand it, from the complaints.

5 And maybe I'll just ask Mr. and Mrs.  
6 Reiersen and Mr. and Mrs. Hellebusch if that is indeed the  
7 relief that you're seeking here. Maybe you can clarify  
8 just a little bit exactly what relief you're seeking from  
9 the Public Service Commission. I'll let you start,  
10 Mr. Hellebusch.

11 MR. HELLEBUSCH: Someone needs to take this  
12 lagoon over. Okay? Through this whole process, the thing  
13 has -- it's never been approved. He has lines that are  
14 too small in it. He's aware of that. He's never done  
15 anything about it. This system needs to be taken over by  
16 somebody competent to run it. He has nobody licensed to  
17 monitor the system. So that's what we're looking for.

18 Besides that, he's charging us for sewer  
19 service, supposedly in a letter that Mr. Lemon has sent,  
20 through a contract. There's no contract. I've never seen  
21 a contract. He is trying to collect, he is collecting  
22 sewer service from us for an illegitimate corporation to a  
23 system that's not even approved. So that's what we're  
24 looking for.

25 JUDGE DIPPELL: Mr. and Mrs. Reiersen, do

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1 you have anything?

2 MR. REIERSON: Basically what we're looking  
3 for is regulation from the Public Service Commission,  
4 because somebody has to oversee this because obviously  
5 Mr. Jaeger is not going to comply with any regulations  
6 unless somebody is forcing him to do so.

7 JUDGE DIPPELL: Mr. Lemon, in your answer  
8 to one of the complaints, and I believe it was the  
9 Hellebusch complaint, you stated that the company intended  
10 to discontinue the service.

11 MR. REIERSON: That's for Reiersons.

12 JUDGE DIPPELL: I'm sorry. In the Reierson  
13 complaint. Do you know the status of that?

14 MR. LEMON: It has not been done, Judge.  
15 My client's position is basically that, in regard to that  
16 issue, is that they have an agreement to provide sewer  
17 service to these folks. They have not paid anything for  
18 that sewer service. They believe that they are entitled  
19 to that sewer service for free, and it was his intent to  
20 probably terminate them.

21 However, he has not done that when the PSC  
22 took jurisdiction. My client has no problem with the PSC  
23 taking jurisdiction of this case and regulating this  
24 sewer, quite frankly. We believe that if PSC takes  
25 jurisdiction, that they will promulgate rates and that

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1 rates will be paid and things will be taken care of.

2 In regard to that issue as to why they were  
3 going to shut off service is they're not paying for sewer  
4 service although they are getting that service. And we're  
5 not talking about a system that is a profitable system.  
6 We're not talking about a system that he's running for  
7 profit. In fact, we're talking about a system that it's  
8 going to take upwards of \$50,000 in order to make the  
9 upgrades that DNR wants him to do.

10 There is no party that's willing to take  
11 the system over. The county is not willing to take it  
12 over. There is no one that's willing to advance those  
13 funds. My client is willing to expend those funds.  
14 However, he believes that if he's going to take on this  
15 responsibility, that he should be reimbursed for the money  
16 that he puts out of pocket because he doesn't believe that  
17 he owes a responsibility to a majority of the people that  
18 are hooked up.

19 He acquired this thing at foreclosure. Any  
20 rights they had in the sewer system were probably  
21 foreclosed out because the rights they obtained accrued  
22 after the deed of trust had originally been entered into.  
23 However, he doesn't want to do that. He wants to keep  
24 this thing as a continuing sewer system.

25 He's willing to spend the money to do it.

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1 He would like to figure out a way in which rates could be  
2 promulgated which will appropriately service the debt,  
3 because he doesn't have \$50,000 to spend and he's going to  
4 have to go out of pocket and take out a loan to do this.  
5 But he's willing to do that as long as there's a method to  
6 service the debt.

7 MR. REIERSON: I'd like to make a comment  
8 on that. I sent Mr. Jaeger a letter stating that I was  
9 going to put my sewer bill payments into an escrow  
10 account, which I have done, and I have photocopies of that  
11 account if you're interested in seeing that, until such  
12 time --

13 JUDGE DIPPELL: I don't think that's  
14 necessary at this time.

15 MR. REIERSON: -- that he can prove that  
16 he's legally entitled to collect these fees.

17 JUDGE DIPPELL: I'm not sure how the rate  
18 dispute and the collection dispute is all going to work  
19 out, whether or not this Commission will have jurisdiction  
20 over that dispute as it is right now. That's one of the  
21 things I would like some guidance from Staff and the rest  
22 of you on after this as to exactly what parts of these  
23 complaint cases the Commission has jurisdiction over.

24 Obviously whether or not the company should  
25 be regulated is an item that comes under our jurisdiction.

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1 Since they haven't been regulated up to this point, the  
2 rates being paid or not being paid, I'm not sure at this  
3 point how that is going to fall into our jurisdiction.  
4 But that's one of the things I'd like you-all to talk  
5 about, and if Staff would give some guidance to the  
6 Commission on that issue.

7 I think that's all the issues that I wanted  
8 to get clarified on the on-the-record part of this  
9 prehearing conference. Like I say, I'm glad that you-all  
10 came here today so that you could meet face-to-face and  
11 maybe discuss some of these issues and get some of this  
12 worked out.

13 I will be gone from the Commission for a  
14 few months in the near future, and so this case will  
15 probably be reassigned to another judge. So if you see  
16 another face along the way or another name, that's why.

17 Are there any other questions or any other  
18 issues that you-all would like to bring up while we're on  
19 the record?

20 MR. LEMON: Judge, I had one question, and  
21 maybe on the record's not the appropriate time to bring it  
22 up, but in regard to the schedule for future hearings, the  
23 reason why my client's not here is he also -- as a  
24 contractor, he's one of these goes where it's warm to work  
25 so that he can work year round. He's currently working in

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1 Texas, and he will be working in Texas until it warms up a  
2 little bit here. So we're probably looking at March when  
3 he would be in the state of Missouri.

4 Now, if we have to move forward in a more  
5 timely fashion, I'd probably want to be able to give him a  
6 little bit more notice than we had for this hearing. And  
7 I'm not trying to be critical of the notice we had. I  
8 understand it was pursuant to statute. However, there was  
9 just no way that he could get loose from the project that  
10 he's got going on in Texas in order to make it to this  
11 hearing, and he would like to be able to here.

12 JUDGE DIPPELL: That's --

13 MR. KNEPPER: Your Honor, my name is Mike  
14 Knepper. I own Salt River Resort. I'm also hooked into  
15 the lagoon.

16 JUDGE DIPPELL: I'm sorry. I can't allow  
17 you to speak while we're on the record.

18 MR. KNEPPER: I seen Mr. Jaeger yesterday  
19 in his subdivision. So he is not out of state.

20 JUDGE DIPPELL: Whether or not Mr. Jaeger  
21 is present here today doesn't matter because he's  
22 represented by his attorney, so his presence is the same  
23 as if he were here.

24 And as far as any evidentiary hearings that  
25 would be scheduled, they would be scheduled pursuant, like

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1 you say, to statute, Mr. Lemon, which requires that we  
2 give ten days notice. Prehearing conference, since it's  
3 not a forum to take evidence, this was scheduled, I think,  
4 on nine days instead of ten days notice. Usually we allow  
5 parties to kind of try to agree to those dates, and if  
6 there are extenuating circumstances why someone can't  
7 appear on a certain date or something, that's usually  
8 worked out.

9 Yes, Mr. Hellebusch?

10 MR. HELLEBUSCH: Yes. A couple comments.  
11 You were talking about notice of hearings. I don't know  
12 what happens to the mail between Jeff City and  
13 St. Charles, Missouri, but I got this notice on Monday,  
14 the 13th, and it said that if you wanted to do it by phone  
15 you had to notify by the 15th. I could never accomplish  
16 that. So if a little more leeway could be given, that  
17 would be good.

18 I have another question. Mr. Lemon brought  
19 up the fact that they formed this corporation, this  
20 not-for-profit corporation. Are the people that are  
21 serviced by this lagoon supposed to be members of the  
22 corporation?

23 JUDGE DIPPELL: I can't really explain the  
24 legalities of it to you, but -- I mean, as an attorney,  
25 Mr. Hellebusch, but how the corporation is formed is a



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1 legal matter and the way -- who owns it and so forth is  
2 set out in the documents forming that corporation. The  
3 statutes that the Staff has cited specify how a  
4 not-for-profit sewer company should be set out. And I'll  
5 refer you to the Missouri statutes to look at that. I  
6 can't really act as your attorney and explain all that to  
7 you. But perhaps in your discussions off the record you  
8 can figure that out.

9 MR. HELLEBUSCH: Okay.

10 JUDGE DIPPELL: Are there any other  
11 comments or questions?

12 Okay. Well, again, I apologize for the  
13 short notice of this prehearing conference. It was kind  
14 of necessitated by the holidays and my personal schedule  
15 coming up, and so we wanted to get something moving on  
16 this. And we'll see how things fall out after your  
17 discussions as to when, if a hearing is necessary, when  
18 that might be scheduled.

19 I appreciate you-all coming today, and if  
20 you need anything else, I will be upstairs in my office  
21 until noon today. Yes, ma'am?

22 MRS. HELLEBUSCH: Judge, I would just like  
23 to ask, if we had a contract and it stated that we would  
24 be provided with sewer in the original contract, and if  
25 indeed it does not meet the standards that it needs to be

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1 meeting, then I believe Mr. Lemon was talking about  
2 Mr. Jaeger not feeling like he was supposed to be out of  
3 pocket. However, if we were given a piece of paper that  
4 stated that that was included in the property, in the  
5 purchase, then why would it be not his out-of-pocket  
6 expense to have that be provided and up to the details and  
7 specifics that it would need to be so?

8 JUDGE DIPPELL: That's something again  
9 that's sounding awfully close to a private contractual  
10 matter which this Commission wouldn't have jurisdiction  
11 over.

12 MRS. HELLEBUSCH: I'm sorry. It's a  
13 private contractual matter what?

14 JUDGE DIPPELL: To which this Commission  
15 might not have jurisdiction over. So I'm going to have to  
16 defer any response to your question. I mean, I can't make  
17 a judgment on that at this point. I'm not even certain  
18 that the Public Service Commission can give you any relief  
19 or grant you any relief on that particular matter.

20 I think I'd like it if Staff could file a  
21 brief on that issue or a memo on that issue about the  
22 rates and whether or not this contractual agreement would  
23 even fall under our jurisdiction. That may be something  
24 that you'd have to take to a civil court.

25 MRS. HELLEBUSCH: All right. Thank you.

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1 JUDGE DIPPELL: Anything further before we  
2 go off the record?

3 All right. Then if you need anything  
4 further, I'll be upstairs. Thank you. We can go off the  
5 record.

6 WHEREUPON, the recorded portion of the  
7 prehearing conference was concluded.

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