

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Prehearing Conference
8 January 22, 2008
9 Jefferson City, Missouri
Volume 1

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11

12 The Staff of the Missouri Public)
Service Commission,)
13)
Complainant,)
14)
v.) Case No. WC-2008-0030
15)
Suburban Water and Sewer Company,)
16 Inc. and Gordon Burnam,)
)
17 Respondents.)

18 BENJAMIN H. LANE, Presiding,
19 REGULATORY LAW JUDGE

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24 REPORTED BY:

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

2 JUDGE LANE: Good morning, everyone. As I
3 mentioned, my name is Benjamin Lane. I'm the Regulatory
4 Law Judge on this case, which is captioned the Staff of
5 the Missouri Public Service Commission vs. Suburban
6 Water & Sewer Company, Incorporated and Gordon Burnam.
7 That's Case No. WC-2008-0030.

8 We're here today pursuant to a Commission
9 Order of January the 8th which set this matter for a
10 prehearing conference and directed the parties to file a
11 proposed procedural schedule.

12 As you know, the purposes of a prehearing
13 conference were set forth in the Order scheduling this
14 conference, but just for the benefit of anyone who doesn't
15 know, there's basically two reasons for a prehearing
16 conference. One is to ensure the parties have a chance to
17 get together and talk about what issues remain live in the
18 case, to identify those, to kind of narrow down the issues
19 for a hearing should a hearing ultimately be required.

20 And No. 2 is to give the parties one last
21 opportunity to pursue settlement negotiations. And I know
22 in this particular case, due to the pleadings that we've
23 had so far, I want to commend the parties for their work
24 in working together and moving forward on this case.
25 There's been some good work done there in my opinion.

1 Nothing, of course, that's said on the
2 off-the-record portion of this conference is going to be
3 admissible in evidence for -- that's again pursuant to
4 Commission rule, and it's designed to encourage a full and
5 fair exchange of information off the record so the parties
6 can have maximum flexibility in terms of negotiating, just
7 to encourage a free flow of information.

8 So those are the two main purposes of this
9 hearing. I do have a couple of other matters that I want
10 to discuss. Before I do that, could we go ahead and have
11 everyone enter -- I know you filled out the forms, but
12 would you please enter your oral entries of appearance,
13 and let's start with Staff.

14 MS. BRUEGGEMANN: Thank you, your Honor.
15 This is Shelley Syler Brueggemann representing Staff in
16 this matter, at 200 Madison Street, P.O. Box 360,
17 Jefferson City, Missouri 65102.

18 JUDGE LANE: Ms. Brueggemann, is there
19 anyone else here from Staff you'd like to introduce?

20 MS. BRUEGGEMANN: Well, the actual Staff of
21 the Commission, we have Martin Hummel from the water and
22 sewer department, we have Jim Merciel from the water and
23 sewer department, we have Dana Eaves from accounting,
24 auditing, the auditing department, and we have Debbie
25 Bernsen from management services.

1 JUDGE LANE: Thank you very much.

2 And again, I always like to see this kind of turnout at
3 these prehearings because we've got a lot of the people
4 who are familiar with the issues in this case, and should
5 questions arise in the off-the-record portion when I
6 leave, they'll be here to answer questions, ask questions,
7 that free exchange of information. That's really
8 important.

9 Mr. Burnam, I know you're here. You are
10 represented -- for the purposes of this, you're
11 represented by counsel, though, right?

12 MR. BURNAM: That's correct, Tom Harrison,
13 plus my executive vice president of Suburban Water & Sewer
14 is also present.

15 JUDGE LANE: Very well. Mr. Harrison,
16 would you like to --

17 MR. HARRISON: Yes, sir. Tom Harrison for
18 the Respondents, 1103 East Broadway, Columbia, Missouri.
19 Mr. Burnam is here by phone. Paula Belcher is here on
20 behalf of Suburban, representing Suburban.

21 JUDGE LANE: Thank you very much. Office
22 of Public Counsel?

23 MS. BAKER: Thank you. Christina Baker,
24 Senior Public Counsel, P.O. Box 2230, Jefferson City,
25 Missouri 65102, appearing on behalf of the Office of the

1 Public Counsel and the ratepayers.

2 JUDGE LANE: Thank you, Ms. Baker. Is
3 there anyone else here that I've missed? I think I've hit
4 all the parties to this matter, and they're all here
5 either in person, by phone or by counsel. So I'm glad to
6 see that.

7 Normally at this point, of course, I would
8 just go ahead and take it off the record, and these
9 parties are experienced. They know what work they can do
10 and what can be done today.

11 But before I do that, I want to take up one
12 matter, and that is the issue of a pleading that was filed
13 by Suburban and Mr. Burnam on January the 14th, and that
14 is titled the Combined Response to Staff's Updated Report
15 and Motion for Evidentiary Hearing and Motion to Strike.
16 Without expressing any opinion on the merits of the
17 motion, I do want -- and the motion requests, quote, that
18 all references to quotations from and exhibits from the
19 deposition of Clyde Zelch which are included in Staff's
20 motion be stricken entirely and not considered by the
21 Commission at this time.

22 I just want to state for the record that
23 the Commission has not considered any of those materials
24 for their truth or for their falsity at this point. The
25 only reason they were mentioned at all in the Order

7 So I just want to make it clear to
8 everybody here that the Commission has not considered any
9 of those materials for the actual truth of the matters
10 that are asserted therein. And I don't know if that
11 affects the motion and the alternative relief that's
12 requested or not, but I just wanted to state that the only
13 reason that that -- that Mr. Zelch and the things that --
14 and his deposition were mentioned is that it indicated
15 that this -- that the discovery in this case was
16 sufficiently mature that we could move to a prehearing
17 conference and then to an evidentiary hearing should one
18 take place.

19 MS. BRUEGGEMANN: Your Honor, if I could
20 add to that. Since a response to the report -- response
21 to the report and motion to strike would be due two days
22 from now on January 24th, but if there was a way to go
23 ahead and just address the merits of the filing by
24 Mr. Harrison now.

25 JUDGE LANE: You know what, does anybody

1 have an objection to that, to just discussing the merits
2 of this motion here instead of Staff filing another
3 pleading in a couple of days and kind of hashing through
4 that? We've got everyone here.

5 MR. HARRISON: That's fine.

6 JUDGE LANE: All right. Let's go ahead and
7 do that. Let's go ahead and take a look. And as everyone
8 knows, the motion actually requests two forms of relief,
9 one in the alternative. One is to strike those
10 evidentiary materials completely from the motion, and the
11 other one is saying that if the Commission decides not to
12 strike those materials, then the Respondents have offered
13 some responses to the allegations or to the observations
14 in the motion. So that's kind of where we are as far
15 as -- as far as what the pending motion is.

16 I guess as the -- as the proponent of the
17 motion, Mr. Harrison, would you like to say a few words to
18 further elucidate, or does it pretty much speak for
19 itself?

20 MR. HARRISON: It pretty much speaks for
21 itself. My point simply was, I didn't want the deposition
22 or any parts of it to be entered in the record at this
23 point. I thought that doing so was improper because, you
24 know, procedurally the procedural aspects attendant to
25 offering testimony don't exist; i.e. specifically, for

1 example, cross-examination. So I think the motion more or
2 less speaks for itself.

3 The alternative part was offered in case,
4 you know, the motion to strike was denied, I wanted to get
5 my -- I wanted to have my say. That's obviously the
6 thinking behind why I framed it in the alternative the way
7 I did. So I don't have anything to add beyond that.
8 I think the motion pretty much speaks for itself.

9 JUDGE LANE: Ms. Brueggemann or Ms. Baker?

10 MS. BRUEGGEMANN: Well, the purpose of the
11 motion at issue was to go ahead and, as your Honor pointed
12 out, to go ahead and trigger that there was enough
13 information at issue to go ahead and pursue a prehearing
14 in this case and to go ahead and set up a time frame to
15 pursue an evidentiary hearing.

16 We have no problem with Mr. Harrison going
17 ahead and responding to what he felt the motion brought
18 up, but we do have a problem with and would object to the
19 motion being stricken just for the -- on the basis that
20 the information would at an evidentiary hearing have to be
21 taken in under oath and entered into evidence according to
22 all procedural rules. It was to go ahead and move forward
23 this case that had stalled out for a period of time.

24 So we would ask that the motion to strike
25 portion of Mr. Harrison's filing be denied and the

1 response just taken as a response.

2 JUDGE LANE: All right. Ms. Baker, do you
3 have any argument on this?

4 MS. BAKER: I would also back Staff. The
5 information that came from the deposition was basically to
6 trigger movement in this case because the ratepayers have
7 been sitting there waiting for a resolution in this case
8 for quite some time. And so the information that came
9 from the deposition indicated that it needed to move
10 rather quickly.

11 JUDGE LANE: All right. And
12 Ms. Brueggemann, I just want to make sure, you're arguing
13 that the motion to strike should not be granted because
14 the sole purpose for that information was to indicate to
15 the Commission that the case was ripe to move forward to a
16 prehearing?

17 MS. BRUEGGEMANN: Yes, your Honor.

18 JUDGE LANE: All right. Okay.

19 Mr. Harrison, any response to that?

20 MR. HARRISON: I don't think so, sir.

21 JUDGE LANE: All right. Well, I think I've
22 got sufficient information here to rule. Does Staff plan
23 on filing a response or has this exchange here been
24 sufficient for that in your mind?

25 MS. BRUEGGEMANN: I believe this is

1 sufficient at this point.

2 JUDGE LANE: All right. Well, I've got
3 enough information to rule, and you can expect a ruling on
4 the motion to strike and the alternative response shortly.
5 All right. Well, that disposes of that matter.

6 As I mentioned in the Order setting this
7 prehearing conference, you -- a proposed procedural
8 schedule is due on the 29th, which means you've got a
9 week. That's something, of course, you might want to
10 discuss or that I expect you to discuss here today.
11 Mr. Burnam's motion to strike remains pending, and the
12 Commission is aware of that.

13 And I believe that pretty much takes care
14 of all the live issues before the Commission at this
15 moment. Before I go -- before I take us off the record
16 and we go into your private discussions, does anyone have
17 any questions of me or need anything from me before I --
18 before I leave the scene? No?

19 MS. BRUEGGEMANN: No, your Honor.

20 JUDGE LANE: In that case, thank you very
21 much for coming, and I hope you have a productive meeting.
22 I just wanted to remind everyone that we only have this
23 number for one hour. Unfortunately, we weren't able to
24 get a larger block. So if you're still going at about ten
25 o'clock, as I indicated in the Order, if you'll just call

1 Mr. Burnam from the speaker phone here and then hook up
2 with him that way, that would be fine.

3 All right. Thank you again very much.

4 We're off the record.

5 WHEREUPON, the recorded portion of the
6 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, and Notary Public within and for the State of
8 Missouri, do hereby certify that I was personally present
9 at the proceedings had in the above-entitled cause at the
10 time and place set forth in the caption sheet thereof;
11 that I then and there took down in Stenotype the
12 proceedings had; and that the foregoing is a full, true
13 and correct transcript of such Stenotype notes so made at
14 such time and place.

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

17 Kellene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
19 My commission expires March 28, 2009.
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