

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS  
Prehearing Conference  
March 8, 2012  
Jefferson City, Missouri  
Volume 1

Andrew G. Smith, )  
Complainant, )  
File No. WC-2012-0189  
vs. )  
Missouri-American Water Company, )  
Respondent. )

MICHAEL BUSHMANN, Presiding,  
REGULATORY LAW JUDGE

KEVIN D. GUNN, Chairman,  
TERRY M. JARRETT,  
ROBERT S. KENNEY,  
COMMISSIONERS

REPORTED BY:  
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## A P P E A R A N C E S

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

JUDGE BUSHMANN: We're on the record. It's Thursday, March 8, 2012, at ten o'clock a.m. The Commission has set this time for a prehearing conference in File No. WC-2012-0189, which is captioned as Andrew G. Smith, Complainant, versus Missouri-American Water Company, Respondent.

My name's Michael Bushmann; I'm the regulatory law judge that's been assigned to this case. Why don't we start by taking entries of appearance.

And for the record, Mr. Smith, you're appearing by telephone. Am I correct that you're going to be representing yourself in this case?

MR. SMITH: Well, at this present time I am.

JUDGE BUSHMANN: All right.

MR. SMITH: I reserve the right to hire counsel at some later date.

JUDGE BUSHMANN: Certainly. And for Missouri-American Water Company?

MS. ELZEMEYER: Hi. This Tracy Elzemeyer on behalf of Missouri-American Water Company.

JUDGE BUSHMANN: And no appearance by Public Counsel.

The Staff of the Missouri Public Service Commission.

1 MS. LEWIS: Thank you, Judge. Rachel Lewis  
2 and Goldie Tompkins on behalf of Staff of the Missouri  
3 Public Service Commission.

4 JUDGE BUSHMANN: Are there any preliminary  
5 matters that any of the parties have that we need to talk  
6 about first?

7 MS. ELZEMEYER: The only thing I wanted to  
8 say was I couldn't hear Staff at all. I don't know if  
9 they're near a microphone.

10 JUDGE BUSHMANN: They can --

11 MS. LEWIS: Sorry, Tracy. Can you hear me  
12 now?

13 MS. ELZEMEYER: That's okay.

14 MS. LEWIS: Can you hear me better now if  
15 I --

16 MS. ELZEMEYER: A little bit, but at least I  
17 can hear you.

18 MS. LEWIS: Okay.

19 MR. SMITH: I'm sorry. Who is the Staff  
20 counsel?

21 MS. LEWIS: This is Rachel Lewis, and Goldie  
22 Tompkins is also for Staff counsel's office.

23 MR. SMITH: Rachel Lewis and Goldie  
24 Tompkins?

25 MS. LEWIS: Yes.

1                   MR. SMITH: Thank you.

2                   JUDGE BUSHMANN: Anything else that needs to  
3 be discussed?

4                   MR. SMITH: This is new to me, your Honor.  
5 I don't deal in these matters regularly, so this is your  
6 ball game, your show. I don't know what I would want to  
7 discuss at this point. I'd be happy to answer questions  
8 though.

9                   JUDGE BUSHMANN: Well, the purpose of this  
10 conference is primarily to bring the parties together and  
11 give them an opportunity to talk about the issues, and to  
12 discuss possible settlement, once we go off the record.

13                   And what I would like would be for you to  
14 strongly consider serious discussions about settlement  
15 later on. This room will be available for an hour or two  
16 if you need to have any further conversations about that,  
17 and the phone bridge is available until noon.

18                   What I would like to have happen would be a  
19 filing -- a joint filing by the parties, no later than  
20 Monday, March 19th. Now, that filing can -- the form of  
21 that filing depends upon what you decide and what you're  
22 able to discuss today.

23                   If you're in negotiations and it seems like  
24 settlement is a possibility and you just need more time,  
25 then that filing on March 19th can just be a status report,

1 and just need to put in there that you just need more time  
2 to talk.

3 If it looks like settlement is not a  
4 possibility, then what I would like to have happen on  
5 March 19th would be the filing be a joint proposed  
6 procedural schedule. And the things that need to be in  
7 that motion would be dates that you would agree to where  
8 discovery can be concluded, where there would be a joint  
9 stipulation of material noncontested facts, that there be a  
10 date proposed for a joint motion of a list of witnesses and  
11 issues that might be required at the hearing, and then a  
12 proposed date for the hearing.

13 MR. SMITH: Hello? Hello?

14 JUDGE BUSHMANN: Mr. Smith, are you here?

15 MR. SMITH: I lost you there.

16 JUDGE BUSHMANN: Okay.

17 MR. SMITH: Better start over.

18 JUDGE BUSHMANN: Did you hear what I wanted  
19 to have in the proposed schedule?

20 MR. SMITH: I got through when you want the  
21 discovery concluded and --

22 JUDGE BUSHMANN: Right. A stipulation of  
23 material noncontested facts, and then a date where you  
24 would propose to file a joint list of witnesses and issues,  
25 and then a proposed hearing date.

1           Now, this is a small formal complaint, so  
2     the usual formalities are not required. There's not going  
3     to be any requirement that there be prefiled testimony.  
4     But it's very important, in my mind, that you do have  
5     serious talks about what facts are in dispute. Because it  
6     seems to me that, barring a settlement, this case might  
7     very well be able to be concluded without the requirement  
8     of an evidentiary hearing, if you can agree to what facts  
9     are in dispute and what issues are in dispute.

10           Because if you can agree on facts, if you  
11    can agree on things like what tariff controlled during the  
12    time period that's at issue, and what are the basic facts  
13    of what occurred, then it might very well be that the case  
14    could be decided through summary determination, without the  
15    requirement of having an actual evidentiary hearing. So  
16    that's something that you should explore if you get beyond  
17    the settlement issues.

18           MS. LEWIS: Judge, is it acceptable for us  
19    to begin the mediation process as well at this point?

20           MR. SMITH: I'm sorry. I can't hear her.

21           MS. LEWIS: I'm sorry, Judge.

22           JUDGE BUSHMANN: She asked about --

23           MR. SMITH: Who is "she"?

24           JUDGE BUSHMANN: Ms. Lewis asked if it would  
25    be possible to discuss the mediation process. Now, that

1 has not worked out in the past, but if the parties are  
2 willing to discuss mediation, that's something that will be  
3 acceptable to me. So that would be something that you  
4 could talk about.

5 And the Staff at this point -- my  
6 understanding in these cases is the Staff is not advocating  
7 any position at this point. They've submitted their  
8 report, and the purpose of Staff is mainly to facilitate,  
9 as opposed to advocate at this point.

10 MS. LEWIS: Yes. That's correct, Judge and  
11 Mr. Smith.

12 MS. ELZEMEYER: Sorry, Rachel. We can't  
13 hear you.

14 MS. LEWIS: I apologize. I am congested.  
15 I'm standing as close to the phone as I can. Is that  
16 better?

17 MS. ELZEMEYER: Now we can hear you.

18 MS. LEWIS: I said that's correct to the  
19 Judge. We are not advocating at this point. We filed our  
20 recommendation and we are here to facilitate and assist  
21 this matter along the process.

22 MS. ELZEMEYER: Okay. Thanks.

23 JUDGE BUSHMANN: Mr. Smith and  
24 Ms. Elzemeyer, do you have any questions at this point  
25 about what we're doing, as far as the procedure and



1 process?

2 MR. SMITH: Well, I guess I only have a  
3 comment, and that is, you know, with the lack of  
4 cooperation from the water company, I don't see how we're  
5 going to have much of an agreement on the 19th.

6 JUDGE BUSHMANN: Well, that's the purpose of  
7 today's conference, was to give you an opportunity to talk  
8 about that once we go off the record. So is there any  
9 confusion about what I want to see on March 19th as far as  
10 a filing?

11 MR. SMITH: Not much confusion, but I don't  
12 think it's much of a possibility either.

13 MS. ELZEMEYER: Well, I just want to  
14 mention, I'm not sure how -- I don't see that there would  
15 be any problem in us being able to agree on some dates.

16 JUDGE BUSHMANN: If you can't agree on  
17 settlement, then I need you to agree on dates.

18 MR. SMITH: Well, again, on the dates, it's  
19 a question of how much they -- how much cooperation I get  
20 from them on the various discovery items. Their record  
21 hasn't been good in the past.

22 MS. ELZEMEYER: I think we're just agreeing  
23 on a discovery cutoff.

24 MR. SMITH: Well, I'm not sure I can agree  
25 to that.

1 MS. ELZEMEYER: Okay. Okay.

2 MR. SMITH: You know, the track record so  
3 far has not been good. And for me to say that we're going  
4 to cut it off on May the 1st, or whatever it is, you know,  
5 when I haven't gotten the kinds of answers and cooperation  
6 that I need, is going to be very difficult.

7 MS. ELZEMEYER: Judge, do you have any  
8 guidance on when you'd like to see a hearing date?

9 JUDGE BUSHMANN: Well, under the rule we're  
10 supposed to be having a hearing -- we're supposed to be  
11 resolving this matter within 100 days of the date of filing  
12 the complaint, but it doesn't seem to me that that's going  
13 to happen.

14 Obviously, sooner would be preferable, but  
15 if the parties agree that they need more time to complete  
16 discovery or to agree to stipulated facts, that's fine.  
17 And I would be willing to do whatever the parties want to  
18 do as far as timing on that. Whatever works into your  
19 schedule, as long as there's agreement among the parties.

20 MS. LEWIS: And I brought with me a copy of  
21 the Commission's calendar so that we can discuss and look  
22 at actual dates that are available among the parties to see  
23 which would work best.

24 MS. ELZEMEYER: Okay.

25 JUDGE BUSHMANN: And I'm assuming if we

1 do --

2 MR. SMITH: Who said that?

3 MS. LEWIS: This is Rachel Lewis for Staff.

4 MR. SMITH: Oh, okay.

5 JUDGE BUSHMANN: And if we do have a  
6 hearing, because it's a small formal complaint case, the  
7 hearing's going to have to be held in the county where the  
8 service was rendered, so I'm thinking that if we have to go  
9 that far to have an evidentiary hearing, it's probably  
10 going to be at, I'm thinking, Warrenton would be the  
11 appropriate place for that. But I don't want to --

12 MR. SMITH: St. Louis County would be the  
13 appropriate place.

14 JUDGE BUSHMANN: I'm sorry, sir.

15 MR. SMITH: St. Louis County would be the  
16 appropriate place. That's where the service was rendered.

17 JUDGE BUSHMANN: So you live in Innsbrook,  
18 but the apartment building is located in St. Louis County?

19 MR. SMITH: It is.

20 JUDGE BUSHMANN: Okay. All right. I'll  
21 have to try and find somewhere that would be appropriate.

22 MR. SMITH: Well, we can meet at my office.  
23 I don't even care; we can meet at their office. It doesn't  
24 matter to me.

25 MS. LEWIS: Mr. Smith, would you be able to

1 drive to the Commission's downtown office in St. Louis?

2 MR. SMITH: No. It would be more convenient  
3 to be at your office, frankly, or at my office.

4 MS. ELZEMEYER: That was Staff.

5 MR. SMITH: Or the apartment building, for  
6 that matter.

7 MS. LEWIS: That was Staff, yes. Staff  
8 would be --

9 MR. SMITH: I'm sorry. Who is that?

10 MS. LEWIS: That was Staff, Rachel Lewis for  
11 Staff. If we had it at our office, it would be in  
12 Jefferson City.

13 MR. SMITH: I thought you said you had an  
14 office in St. Louis.

15 MS. LEWIS: Well, we do also have access to  
16 a building in St. Louis, but our main office is in  
17 Jefferson City.

18 MR. SMITH: Okay. Well, it would be much  
19 more convenient for me to have the hearing here at my  
20 office, at the office of the water company, or at the  
21 apartment building, for that matter, if there's an empty  
22 apartment there which we could use.

23 JUDGE BUSHMANN: Well, we can talk about a  
24 location later on if we have to get to that point. Again,  
25 I want to emphasize that I think this case could be

1 resolved on paper through a motion of summary  
2 determination. It seems like that the facts, such as they  
3 are, are not that complex, and parties ought to be able to  
4 come up with some agreement on what the noncontested facts  
5 are. So I would like you to consider that today, or in  
6 future talks if we need to go forward with that.

7 Anybody else have anything that they need to  
8 bring up at this point?

9 MS. LEWIS: Staff does not.

10 JUDGE BUSHMANN: Ms. Elzemeyer, anything  
11 else that you needed to bring up?

12 MS. ELZEMEYER: No. Thank you, Judge.

13 JUDGE BUSHMANN: And Mr. Smith?

14 MR. SMITH: No. This is your show.

15 JUDGE BUSHMANN: All right. Then in that  
16 case I don't think there's any further matters that need to  
17 be discussed on the record. We're going to adjourn and go  
18 off the record.

19 (Off the record.)  
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## 1 CERTIFICATE OF REPORTER

2  
3 I, Kristy Bradshaw, CCR No. 1269, within the State  
4 of Missouri, do hereby certify that the testimony  
5 appearing in the foregoing matter was taken by me to the  
6 best of my ability and thereafter reduced to typewriting  
7 under my direction; that I am neither counsel for, related  
8 to, nor employed by any of the parties to the action in  
9 which this hearing was taken, and further, that I am not a  
10 relative or employee of any attorney or counsel employed  
11 by the parties thereto, nor financially or otherwise  
12 interested in the outcome of the action.

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16 Kristy Bradshaw, CCR  
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