

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS
Prehearing Conference
April 5, 2011
Jefferson City, Missouri
Volume 1

The Staff of the Missouri)
Public Service Commission,)
Complainant,)
)
vs.)
)
Dennis Kallash, Individually)
And As Agent For Bennington,) File No. WC-2011-0253
Inc, and Bennington Water Inc.) and SC-2011-0254
Toni Kallash, Individually And)
As Agent For Bennington, Inc.,)
and Bennington Water, Inc.;)
Bennington, Inc., and)
Bennington Water, Inc.)
Respondents.)

KENNARD L. JONES, Presiding
SENIOR REGULATORY LAW JUDGE

REPORTED BY:

NANCY L. SILVA, RPR, CCR
TIGER COURT REPORTING, LLC

A P P E A R A N C E S

JAMES D. BURLISON

McIlroy and Millan

103A Community Bank Plaza

Troy, Missouri 63379

636.462.4505

FOR: Respondents

CHRISTINA BAKER

Office of the Public Counsel

200 Madison Street

P.O. Box 2230

Jefferson City, Missouri 65102

573.751.5565

FOR: Public Counsel and the Public

SAMUEL D. RITCHIE

RACHEL LEWIS

Missouri Public Service Commission

P.O. Box 360

Jefferson City, Missouri 65102

573.751.4140

FOR: Staff of the Missouri Public Service

Commission

1 JUDGE JONES: This is Case
2 No. WC-2011-0253 and Case No. SC-2011-0254. My
3 name is Kennard Jones. I'm the regulatory law
4 judge presiding over this matter. At this time
5 let's take entries of appearances, beginning
6 with Staff, and because you have all turned in
7 your information, just state your name and who
8 you represent. Start with Staff.

9 MR. RITCHIE: Good morning.
10 Representing Staff, Sam Ritchie and Rachael
11 Lewis.

12 JUDGE JONES: Respondents.

13 MR. BURLISON: James Burlison,
14 McIlroy and Millan, representing all
15 Respondents.

16 JUDGE JONES: And Office of Public
17 Counsel.

18 MS. BAKER: Thank you. Christina
19 Baker representing the Office of the Public
20 Counsel.

21 JUDGE JONES: Before we get started,
22 the first thing I want -- I don't know that this
23 will go to hearing or not, but does anyone
24 object to consolidating these cases? Is that a
25 problem?

1 MR. RITCHIE: That's fine with us.

2 MR. BURLISON: No objection to that.

3 JUDGE JONES: No one foresees any
4 problem with that? Okay. So I'll issue an
5 order consolidating when I leave this prehearing
6 conference.

7 And have you all had an opportunity
8 to talk before today?

9 MR. RITCHIE: Yes, we have.

10 JUDGE JONES: You have. Good.

11 It seems to me that factual issues
12 are at issue. I don't see any -- I don't see
13 any legal arguments, not based on just those
14 facts. Now, there's one concern I have, and I
15 know that one of the issues has to do with the
16 number of incorporators and whether or not this
17 is a not-for-profit corporation.

18 I went on the Secretary of State's
19 website. I pulled up the creation filing, and
20 it lists only three incorporators, but it's a
21 certificate for a nonprofit organization granted
22 from the Secretary of State. That could be an
23 issue.

24 Something else you-all might want to
25 think about, I may be adding more issues that

1 you-all had already skirted over -- I don't know --
2 but in this nonprofit -- I looked at the -- I'm
3 assuming that the water companies probably mirror
4 that language, but it says, Five or more persons may
5 organize a nonprofit sewer company pursuant to those
6 sections mentioned in 393.825.

7 Unless you-all can show different, the
8 word "may" is a problem in the statute, but then it
9 says "five or more," so it's -- I don't know what the
10 legislation intended by that. Could it be five or
11 more? Why did they cite five or more? Why did they
12 say "may?" Why didn't they say "shall be five or
13 more," but I don't know if you-all thought about that
14 and whether it's even an issue, but it may be at some
15 point. I might give you a heads-up on that.

16 MR. BURLISON: Your Honor, I might note
17 that one of the corporations had three
18 incorporators. The other one had just one
19 incorporator.

20 JUDGE JONES: Okay.

21 MR. BURLISON: They were done at different
22 times, and neither one of them, I think, follows the
23 statutes, at least, to the extent of five or more.

24 JUDGE JONES: Okay.

25 MR. BURLISON: But there were two

1 corporations established.

2 JUDGE JONES: All right. So the water had
3 three and the sewer had one?

4 MR. BURLISON: I believe that's correct.

5 JUDGE JONES: Well, I have the order for
6 the water, and it has three, so I'm assuming the
7 sewer has one.

8 This is probably -- if there were five
9 incorporators, then there might also be an issue with
10 the Commission statutes, which don't base whether a
11 company is under exclusion on whether or not they
12 have five or more incorporators, but rather they
13 operate for a gain, so the ministerial act of
14 incorporating, I don't think, is even considered in
15 our statute, but it would have to be written
16 consistent with 393, so that's something else you-all
17 may want to think about.

18 Do you-all believe this will have to go
19 to hearing?

20 MR. RITCHIE: I don't anticipate that it
21 will. We're working with the Company here to resolve
22 this before it would come to hearing, and I think
23 I'll let the Company comment a little more
24 specifically on that, if you would like.

25 MR. BURLISON: We're anticipating not

1 having a hearing. We're exploring our options right
2 now. We had a meeting about a week and a half ago
3 with counsel and several employees of the Commission
4 about options, following through in coming into
5 compliance with the not-for-profit corporation
6 requirements or, in the alternative, becoming a
7 regulated utility --

8 JUDGE JONES: Okay.

9 MR. BURLISON: -- for these activities.
10 We've had an opportunity to discuss that to some
11 degree in the last week and a half. I believe my
12 clients are interested in pursuing the regulated
13 industry option.

14 No final decisions have been made, and
15 we're moving to that end and, again, as Mr. Ritchie
16 indicated, I don't anticipate there will be a hearing
17 in this matter.

18 JUDGE JONES: It sounds like you-all may
19 be moving to a certificate case then, and -- well,
20 we'll deal with that when it happens.

21 MR. RITCHIE: I have prepared a proposed
22 procedural schedule just so we can go along here, and
23 this is just a draft, and I have discussed it with
24 counsel for Respondents, and I think we might tweak
25 the date that's set for the evidentiary hearing just

1 a little bit in the event that it does go, but just
2 for --

3 JUDGE JONES: If you want me to see it,
4 just file it.

5 MR. RITCHIE: Okay.

6 JUDGE JONES: I will -- you know, I know
7 you're doing that just to move things forward, but if
8 you want to file the procedural schedule, that's
9 fine.

10 And have you had an opportunity to review
11 the Commission's rules, procedural rules, Chapter 2?

12 MR. BURLISON: I have.

13 JUDGE JONES: Okay. So when he files that
14 motion, by our rules you'll have ten days to
15 respond. If you choose to -- if you don't respond,
16 then my inclination is we can grant anything that's
17 asked for if someone doesn't respond to it.

18 MR. BURLISON: I understand.

19 And also, as I understand, your previous
20 order indicated that we should attempt to provide a
21 joint request for an order, and I think that we
22 would. I've spoken with Mr. Richie in regard to
23 this. I don't have any problems with any of that, so
24 I would anticipate that it could be filed as a
25 joint --

1 JUDGE JONES: On behalf of all the
2 parties?

3 MR. BURLISON: I see no reason to do it
4 otherwise at this point.

5 JUDGE JONES: That's fine.

6 All right. I don't have anything
7 else. Is there anything else that you would
8 like to discuss on the record? Any other
9 concerns? Any questions?

10 MR. RITCHIE: I don't think from Staff
11 there is at this time.

12 JUDGE JONES: I'm seeing heads
13 shaking "no" for the record.

14 MR. BURLISON: I don't think so at
15 this point.

16 JUDGE JONES: Okay. Well, I'll leave
17 you-all to yourself, and good luck. Have a good
18 day.

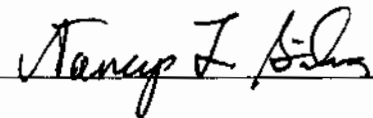
19 And we're off the record.

20 (The hearing concluded.)

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CERTIFICATE OF REPORTER

I, Nancy L. Silva, CCR, within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

A handwritten signature in cursive script, appearing to read "Nancy L. Silva", is written over a horizontal line.

Nancy L. Silva, CCR

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