

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5

6 Pre-Hearing Conference
7 June 6, 2014
8 St. Louis, Missouri
9 Volume 1
10

11 Karen Smith,)
)
12 Complainant,)
)
13 Vs.) File No. WC-2014-0161
)
14 Missouri American)
 Water Company,)
15)
16 Respondent.)
17

18 PRE-HEARING CONFERENCE
19 JUNE 6, 2014
20
21

22 KENNARD L. JONES, Presiding
23 SENIOR REGULATORY LAW JUDGE
24
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25

1 PROCEEDINGS

2 * * * *

3 JUDGE JONES: On the record with Case
4 No. WC-2014-0161, Karen Smith versus Missouri
5 American Water Company. My name is Kennard Jones.
6 I'm the Regulatory Law Judge assigned to this
7 matter. At this time, let's take entries of
8 appearances. Are you representing Ms. Smith?

9 MR. BORGMANN: Yes, Your Honor. Ronald
10 Borgmann, attorney for Karen Smith, who is also
11 present.

12 JUDGE JONES: And for Missouri American
13 Water?

14 MR. LUFT: Tim Luft, 727 Craig Road,
15 St. Louis, Missouri 63141 and I also have with me,
16 Derek Cortez. Derek just finished his first year at
17 St. Louis University Law School and he's a summer
18 clerk with us.

19 JUDGE JONES: And for the staff for the
20 Commission.

21 MR. OPITZ: Tim Opitz, P.O. Box 360,
22 Jefferson City, Missouri 65102 for the staff of the
23 Missouri Public Service Commission.

24 JUDGE JONES: Okay. Well, it looks
25 like there is damage to property; and I don't -- I

1 mean are there factual disputes?

2 MR. BORGMANN: If we may, before we
3 start. I guess, I have a dumb question.

4 JUDGE JONES: No.

5 MR. BORGMANN: In your staff's
6 recommendations, they indicate that there is, that
7 you can't order them to do anything about the
8 property damage. And, I guess, my question is, why
9 are we here?

10 JUDGE JONES: Good question.

11 MR. OPITZ: Judge Jones, if I may
12 respond to that.

13 JUDGE JONES: Yes, Mr. Opitz.

14 MR. OPITZ: Well, we've got case law
15 from the Missouri Supreme Court and Appeals Court
16 that say that PSD has primary and exclusive
17 jurisdiction over matters relating to in-metro(ph
18 sp) in utilities which we sort of mentioned in our
19 pleading for our staff direct, and, I guess, that's
20 the reason that we are here. And then the
21 Commission will then look at whether there's been a
22 violation of the statute, commission rule, or any
23 provision in the tariff as I understand it. Now,
24 the staff has recommended that because of what you
25 had been seeking, either restoration of the property

1 or money damages, which the Commission cannot order,
2 although, you must come to the Commission first,
3 staff recommends that the complaint be dismissed or
4 that, Mr. Borgmann, that you recommend the complaint
5 be dismissed so if you do want to pursue the matter
6 further, you would be able to in Circuit Court.

7 MR. BORGMANN: Yeah, that's basically
8 what I want. I want to make sure that I have
9 exhausted my administrative remedies so nobody can
10 yell at me for not doing that; and then I can sue
11 them, yes. That's what I would like.

12 JUDGE JONES: Crash course in admin.
13 law. Mr. Luft, it seems like you want to respond to
14 that.

15 MR. LUFT: We're here in good faith.
16 That may be the law, and we're here, if we can
17 resolve this, we would love to do it. Whether it's
18 administrative or civil, whatever, we are here in
19 good faith.

20 JUDGE JONES: That's what this is for
21 actually. It's an opportunity for you to resolve
22 the matter. At some point, we'll go off the record
23 and I'll leave you all in this room to discuss any
24 possible resolution that you come to. And if you
25 don't, what I would like, if there aren't any

1 factual disputes, I would just like a Statement of
2 Facts. I don't know that the Commission will just
3 flat out dismiss the matter. Rather, they may just
4 issue an order finding those facts that all of you
5 agree on and then making conclusions of law, made
6 perhaps consistent with staff's recommendation, I
7 don't know. The Commission's conclusions are
8 sometimes independent of staff's recommendation.
9 But this will be an opportunity for you all to
10 discuss the matter, perhaps resolve it. If not,
11 what I'll do is gather a Statement of Facts from
12 everyone if there aren't any factual disputes. If
13 there are factual disputes, then we'll make a
14 record, go on the record, rather, and resolve that
15 factual dispute if there are any.

16 MS. SMITH: Regarding the factual
17 disputes, I'm not a lawyer, but in the
18 correspondence that I've seen that the water company
19 has produced, you are denying that you have any
20 knowledge of any of this. And so, I guess, I'm
21 understanding that, I guess, up front, that's a fact
22 that needs to be determined.

23 JUDGE JONES: Well, it is.

24 MS. SMITH: I think there's enough
25 evidence to show that something happened and your

1 people are the people that had the shovel in the
2 ground that day. So I don't know how you can say
3 that you have no knowledge about it.

4 MR. LUFT: I think the factual disputes
5 would be if there was foreign material that came
6 through her faucets and her tub and her sink and her
7 appliances, where did that come from? How did it
8 get there? Was it from a service line? Was it from
9 our main? Whose responsibility is that? And the
10 other issue would be the nature and extent of the
11 actual damages versus is this is a situation where
12 we are repairing or is this a situation where we're
13 getting beyond that and may be an impediment to the
14 property.

15
16 JUDGE JONES: That's something for you
17 to discuss. If you don't agree, then we'll go to a
18 hearing and make those findings. Okay. Are there
19 any questions? Because I want to give you all as
20 much time as possible to resolve this to work
21 towards a resolution. When you are done, can
22 somebody just hit this off button on the telephone
23 and I'll leave you to discuss that. Mr. Opitz, do
24 you have any concerns?

25 MR. OPITZ: Judge Jones, I guess, my

1 question to you would be, are you asking that we
2 submit a Statement of Facts, a Joint Statement of
3 Facts or Individual Statements of Fact?

4 JUDGE JONES: A Joint Statement of
5 Facts is what you all should work on; and if you can
6 facilitate that filing, Mr. Opitz, I would
7 appreciate it.

8 MR. OPITZ: Yes, Judge.

9 JUDGE JONES: Did you understand his
10 concerns?

11 MR. BORGMANN: I understand his
12 concerns. I guess, my question is, we have two
13 diametrically opposed Statements of Fact, I believe;
14 and I don't know how we're going to get a Joint
15 Statement of Facts.

16 JUDGE JONES: There's some things you
17 do agree on. There's got to be something you agree
18 on.

19 MR. BORGMANN: Yes.

20 MR. LUFT: We agree something came
21 through your lines. There's no doubt of that.

22 MR. BORGMANN: Yes.

23 JUDGE JONES: Well, and everything
24 relevant to that issue of whether something and what
25 and how those things that you agree on, submit that.

1 And what you don't agree on, make that clear so that
2 we'll have some direction for a hearing to make
3 those findings. Okay. All right. I'll leave you
4 all to talk. Have a good weekend. We're off
5 record.

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1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)

3) ss.

4 COUNTY OF ST. LOUIS)

5 I, S. Denise Ballard, a Certified Court
6 Reporter (MO), Certified Shorthand Reporter (IL),
7 Registered Professional Reporter, do hereby certify
8 that the testimony that appears in the foregoing
9 prehearing conference was taken by me to the best of
10 my ability and thereafter reduced to typewriting
11 under my direction; that I am neither counsel for,
12 related to, nor employed by any of the parties to
13 the action in which this proceeding was taken, and
14 further that I am not a relative or employee of any
15 attorney or counsel employed by the parties thereto,
16 nor financially or otherwise interested in the
17 outcome of the action.

18

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Denise Ballard

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