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2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Prehearing Conference
6

7 December 12, 2014
8 St. Louis, Missouri
9 Volume 1
10

11 In The Matter Of Janice Shands,)
)
12 Complainant,)
)
13 vs.) File No. WC-2015-0030
)
14 Missouri-American Water Company,)
)
15 Respondent.)
16

17 KENNARD L. JONES, Presiding
18 SENIOR REGULATORY LAW JUDGE
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1 P R O C E E D I N G S

2 JUDGE JONES: This is Case No. WC-2015-0030,
3 Janice Shands versus Missouri-American Water Company. My
4 name is Kennard Jones. I'm the judge presiding over this
5 matter. At this time let's take entries of appearances
6 beginning with Complainant.

7 MS. MELLO: Susan Mello.

8 JUDGE JONES: And for Missouri-American?

9 MR. LUFT: Timothy Luft, and I've given the
10 court reporter my card.

11 JUDGE JONES: And for the Staff of the
12 Commission?

13 MS. MAYFIELD: Cydney Mayfield for Staff
14 Counsel's Office.

15 JUDGE JONES: And I'll note for the record
16 that although the Office of Public Counsel is a party in
17 all our cases, they haven't been an active participant in
18 this case, so I don't expect them to be joining us.

19 MR. COOPER: Judge, this is Dean Cooper. I'm
20 with the staff counsel and also appearing on behalf of
21 Missouri-American.

22 JUDGE JONES: Oh, okay. Great. All right.
23 Well, as you all know, there are three cases that are
24 similar. One is Ameren. That one appears to be settling,
25 I don't know. And I don't know to what extent

1 Missouri-American and Ms. Mello have been talking. Have
2 you all been talking at all?

3 MS. MELLO: No. They have a lawyer that
4 doesn't like to talk. Not Mr. Luft. They've got a lawyer
5 in my other case.

6 JUDGE JONES: So that's a -- I take that to be
7 just a no, that you all haven't been --

8 MS. MELLO: That's a no, yes.

9 JUDGE JONES: Well, let's get this -- the way
10 I understand this case is that Complainant is saying
11 they've been improperly billed and have been, over a
12 number of years, paying the bills of other entities, I
13 guess that's in the strip mall adjacent to the residential
14 facility there. Is that true?

15 MS. MELLO: Well, that's true that that's
16 what's happening, but that's not what the complaint is.
17 The complaint is that we're just asking the Commission
18 find that we make a complaint to Circuit Court based on
19 equity and common law, that there is no Public Service
20 jurisdiction. Am I going too fast?

21 JUDGE JONES: No, you're not going too fast.

22 MS. MELLO: Okay. For the court reporter. I
23 thought I heard a sound from the court reporter.

24 JUDGE JONES: Someone else may have joined us.
25 Did someone else just join the line? Well, possibly not.

1 Aside from the jurisdictional issue, is --

2 MS. MELLO: That's the only issue we have, and
3 the issue isn't -- it was not about billing, but the
4 failure, once they were a condo, to have -- to then not
5 have broken out so that they complied with their
6 requirements of only having water for their property. My
7 understanding that if -- they cannot have water sent to
8 somebody to resell it to somebody else.

9 JUDGE JONES: Are you saying that
10 Missouri-American in some way has violated their tariff
11 with the Commission?

12 MS. MELLO: I'm saying that if the staff
13 counsel wants to assert that, they would probably find a
14 factual basis, but that's not the basis of our complaint.

15 JUDGE JONES: Well, staff's role is more
16 advisory in our complaint cases, not for them to assert
17 anything. What exactly are you --

18 MS. MELLO: I'm saying that if somebody looked
19 at that, that's factually what took place, but we're not
20 making that complaint, because our complaint is based on
21 common law, not on tariff. But I would hope the Public
22 Service Commission would be concerned that they're not
23 supposed to resell water to people. They're supposed to
24 have an actual meter for the people that have water, if
25 they know their water is being resold, but that's not our

1 complaint.

2 JUDGE JONES: Okay. Well, you do realize that
3 if the Public Service Commission is made aware of a
4 possible violation of its rules, statutes, orders,
5 regardless of what a complainant may want to do, the
6 Commission, as a regulatory body, has a statutory duty to
7 do something about that, right?

8 MS. MELLO: Well, then its staff should act,
9 not interfere with the complaint that we're making to the
10 circuit court which is based on common law and not having
11 to decide any kind of tariff, because I'm not even sure if
12 they complied, I'm not sure if that's residential, I'm not
13 sure if it's commercial. I saw it somewhere, but your
14 people should be the ones familiar with the tariffs and
15 not be asking me. I'm making a circuit court common law
16 equity claim that they've tried to evade their duties and
17 responsibilities to the circuit court on.

18 And no offense, I don't want to be in front of
19 the Public Service Commission, neither does my client, and
20 I hope you don't take that personally. We just want to
21 proceed with our case where we've named all the owners of
22 the property and everyone is there in circuit court based
23 on common law and real estate law and that's basically to
24 open up the account for a condominium association which
25 includes property outside its boundaries is ultra vires.

1 JUDGE JONES: Okay.

2 MS. MELLO: But whatever issues you have, you
3 know, if you want to fine, cite, whatever, it shouldn't
4 involve us.

5 JUDGE JONES: Let me ask you this. You do
6 realize -- well, here's the question, and I'm not making
7 any legal conclusion here, but I'm just posing the issue.
8 The Commission either has jurisdiction over this case or
9 it doesn't. You agree with me, right?

10 MS. MELLO: It has to have jurisdiction over
11 the complaint, not just -- because as I read it, the
12 complaint has to be based upon -- that we make has to be
13 based upon a tariff, a decision or a rule of the Public
14 Service Commission. We have not made such a complaint.
15 That's what the statute says.

16 JUDGE JONES: Okay. Ms. Mello, given the set
17 of facts that you allege, the Commission either has
18 jurisdiction or it doesn't. Do you agree with me?

19 MS. MELLO: We haven't alleged any facts about
20 any tariff. You asked me if -- informally here in the
21 settlement as opposed to what's in the complaint if they
22 violated any tariffs.

23 JUDGE JONES: No, you don't --

24 MS. MELLO: And I said we have not alleged
25 any, we have not complained any, but if you were probably

1 to look at it, I suspect you would find all kinds of
2 violations by the Missouri Water Company of all kinds of
3 rules and regulations from the way I've seen that they
4 act.

5 JUDGE JONES: So then you do agree with me
6 that -- when I say facts that you allege, I'm not speaking
7 about the law that you claim they violated. I mean just
8 given the set of facts that --

9 MS. MELLO: But it has to be limited to what
10 is in our complaint. We do not allege any violation of
11 any tariff, rule or decision.

12 JUDGE JONES: Okay. Well, let me give you a
13 scenario. I run a red light. The police officer says I
14 ran the red light, but the prosecutor comes back and says,
15 well, we're not talking about whether you violated the red
16 light laws in St. Louis, we're just saying that you ran a
17 red light. The city still has a duty to do something
18 about me running that light. The fact is what I'm talking
19 about, not the allegation of what law was violated, but
20 just the fact that you're talking -- the facts that you
21 lay out may give rise to the Commission's jurisdiction
22 and --

23 MS. MELLO: Well, actually if the city were to
24 cite me, they would have to tell me whether they cited me
25 under an ordinance or a state law and they would have to

1 refer to that.

2 JUDGE JONES: Yeah, maybe that was a --

3 MS. MELLO: You know, people can -- you know,
4 if there's an emergency, people can run a red light. It
5 has to be in violation of a law.

6 JUDGE JONES: Right, right.

7 MS. MELLO: But you have to cite the law and
8 it has to be based upon that. I don't know what this
9 issue is. If you want to have an open investigation, I
10 don't know whether that applies to commercial, as I said,
11 this is a commercial account. I know that there are no
12 real billing regs that I could see and I also know and
13 it's my position that these tariffs are -- do not meet the
14 requirement of a regulation, and therefore under that
15 Little Hill case and all the cases that talk about the
16 fact that if you're going to have something that's for
17 general applicability, it has to meet the regulations
18 that, you know, that there's no basis to then make a claim
19 based upon any kind of a tariff; that if you wanted it to
20 be something that applies across the board or Public
21 Service has adopted as a regulation.

22 JUDGE JONES: Okay. All right. Let me ask
23 you this then. Why did you file this case with the
24 Missouri Public Service Commission?

25 MS. MELLO: We filed it so we could get a

1 ruling that it didn't -- it wasn't jurisdiction because
2 they were running around saying we had to file something
3 with the Public Service Commission.

4 JUDGE JONES: All right. If the Commission
5 has no jurisdiction, then why did you file with the
6 Commission?

7 MS. MELLO: To have the Commission confirm
8 that it had no jurisdiction. That's exactly what we asked
9 for. That's what it says in the --

10 JUDGE JONES: Why didn't you just file
11 directly in circuit court?

12 MS. MELLO: I did file first directly in
13 circuit court.

14 JUDGE JONES: Then what happened?

15 MS. MELLO: Then the guy from Missouri
16 American Water is citing all these residential
17 requirements and regulations saying we had to go to the
18 Missouri Commission first.

19 JUDGE JONES: So you got legal counsel, is
20 that what you said?

21 MS. MELLO: No. The other side made an
22 argument, and then by the time I pulled out the statute,
23 because they're not on-line, and it's not just the
24 statute, but the case law and saw that there is no
25 jurisdiction over common law and equitable claims, and I

1 cited it to the Court and we're now disputing over that,
2 but I'm -- you know, what the complaint says, the only
3 thing we're asking for is to confirm that you don't have
4 jurisdiction so I can take that to the judge and say,
5 look, the Missouri Public Service Commission said, hey,
6 unless it's based upon their rules and regulations, right,
7 as it says in the statute, that, you know, they're
8 declining jurisdiction.

9 JUDGE JONES: Well, now we're back to square
10 one. If the set of facts that you've alleged give rise to
11 the Commission --

12 MS. MELLO: No, that's not -- I respectfully
13 say that that's not --

14 JUDGE JONES: It's not respectful when you
15 continue to interrupt me, I can tell you that. You can
16 say respectfully all you want, but it doesn't -- it's not
17 illustrated by you interrupting me. So like I said, if
18 the set of facts that you allege raise the question of
19 whether Missouri-American has violated a tariff,
20 commission rule, statute or one of the Commission's
21 orders, the Commission cannot then simply say we don't
22 have jurisdiction if it does. We can't just make a
23 statement saying we don't have jurisdiction when, in fact,
24 we may have jurisdiction.

25 MS. MELLO: And that's why I interrupted you,

1 because you were using the words if the set of facts
2 alleged may -- what did you say -- that some violation may
3 arise, that's not what's in the statute. And I think that
4 the Missouri Commission is directly required to follow its
5 own statute. It can't exceed its own jurisdiction. It
6 can't make up jurisdiction. It's not, as the case law
7 says, a mini administrative hearing commission.

8 It's primarily a regulatory body that issues
9 rates. It's rate making and the statute is very limited
10 to what its complaint jurisdiction is. The complaint
11 jurisdiction specifically says in the statute, as in the
12 regulation, that complaints may be -- exist only if they
13 are based on, not on if they have a roving commission to
14 see if there's some other set of facts that may arise, but
15 if the actual complaint is based on a regulation, a
16 tariff, or a decision of the Public Service Commission.

17 My complaint is not based on a regulation, a
18 tariff, or a decision of the Public Service Commission.
19 It is based in common law and equity, and in fact based on
20 the real estate statutes and the fact that a condominium
21 that is limited -- its only limited authority were its
22 duty towards its unit owners is that they can incur
23 expenses for debt only on that particular piece of
24 property. So to tell me that you think that the Public
25 Service Commission has complaint jurisdiction and

1 authority as some roving commission to review what any
2 kind of set of facts which allege which may arise to
3 something that is Public Service Commission, I
4 respectfully say that is not the jurisdiction that's in
5 the statute.

6 JUDGE JONES: Okay.

7 MS. MELLO: And that's why I ask the Public
8 Service Commission confirm it's going to stick to its
9 statutes and its regulations.

10 JUDGE JONES: Now, Mr. Luft, you've been
11 wanting to say something, or did you?

12 MR. LUFT: No.

13 JUDGE JONES: Is staff listening to this?

14 MS. MAYFIELD: Yes, sir.

15 JUDGE JONES: What's staff's position given
16 this set of facts on whether the Commission has
17 jurisdiction?

18 MS. MAYFIELD: Your Honor, the position of
19 staff remains as we filed in our response to this that Ms.
20 Shands, as an individual, is not the customer of record.
21 The customer of record in this case was the condominium
22 association. In this case, at some point, Ms. Mello
23 appeared to try to enter her appearance on behalf of the
24 condominium association, then it became clear that she
25 retracted or attempted to withdraw that motion, and so

1 Janice Shands, the individual, still remains and she is
2 not an account holder of record here, so therefore the
3 complaint should be dismissed.

4 JUDGE JONES: It's not dismissed on basis of
5 jurisdiction, it's --

6 MS. MELLO: And if I could be heard on my
7 position on that is the regulations that they cite is
8 questionable in three regards. One, on residential
9 accounts, this is a commercial account. Two, the
10 regulation itself says that persons who are not named on
11 the account but actually are the ones paying it are the
12 persons who have standing and can bring a complaint, and
13 three, you can't limit the complaint jurisdiction which
14 doesn't have any of that stuff in it which is what the
15 statute says by doing it by some kind of regulation.

16 JUDGE JONES: Yeah. Have you -- I take it
17 that you've read the complaint statute, 386?

18 MS. MELLO: Yeah, that's why I said --

19 JUDGE JONES: It's actually extremely broad.
20 I mean --

21 MS. MELLO: No. What it says is it has to be
22 based upon a complaint based upon a rule, regulation or
23 decision of the Public Service Commission, and I don't
24 know if you've looked at the cases I've cited --

25 JUDGE JONES: It actually says in the

1 statute -- it actually gives the Commission broader
2 discretion I think than the Commission has ever used.
3 It's --

4 MS. MELLO: The case law is pretty clear that
5 the Public Service Commission has no jurisdiction over
6 common law and equity.

7 JUDGE JONES: Well, yeah, that's true, but
8 that begs the question of whether this is simply common
9 law and equity. I mean you've come to a conclusion.

10 MS. MELLO: Well, I know what I based my claim
11 on. That would be like saying did I base my claim on the
12 fact that somebody was negligent because they violated a
13 statute under racism or were they negligent because they
14 just committed negligence.

15 JUDGE JONES: Okay. Let me ask you --

16 MS. MELLO: I know what the basis of my claim
17 is.

18 JUDGE JONES: Let me you ask this. If
19 Missouri-American were to overcharge a residential
20 customer, according to the rates and charges in its
21 tariff, it overcharges a residential customer and it did
22 that because of some computer flaw that they failed to
23 oversee, that would be negligent, right?

24 MS. MELLO: Well, and again --

25 JUDGE JONES: I mean can you --

1 MS. MELLO: If someone makes the claim based
2 on negligence as opposed to the fact that the tariff said
3 they're supposed to do certain things, then that's what
4 makes it negligent as opposed to a violation of the
5 statute, but I'm saying don't have a -- there's no similar
6 right of action for violating the Public Service
7 Commission, at least I didn't see one, violating any rules
8 and regulation, but people have all kinds of claims they
9 can make, you know.

10 Many of these people are African American.
11 They can make maybe race discrimination claims, and that
12 would be under the Missouri Human Rights Act, but because
13 it's a utility, would you be saying if they made a race
14 discrimination claim, that they can't go to the Missouri
15 Human Rights Commission?

16 JUDGE JONES: Well, what I'm saying is that a
17 company can be both negligent and in violation of its
18 tariff, and if it's in violation of its tariff, then the
19 Commission has jurisdiction.

20 MS. MELLO: I agree it could be both negligent
21 and violation of its tariff, but I -- my position would be
22 that if it's in violation of its tariff, then that goes to
23 the Public Service Commission. But if someone says
24 they're negligent and don't even talk about their tariff,
25 then that goes straight to circuit court. Would that be

1 agreed?

2 JUDGE JONES: That's only -- what you're
3 saying is that the complainant then has the ability to say
4 what law has been violated. What I'm saying --

5 MS. MELLO: No, they have the ability to
6 control their own case and their own claim if --

7 JUDGE JONES: Actually you don't. You have to
8 -- actually you don't. You have to exhaust your
9 administrative remedies. We know that, which is why we're
10 here.

11 MS. MELLO: If there is an administrative
12 remedy. There is no administrative remedy for negligence.
13 There's an administrative remedy for violation of the
14 tariff --

15 JUDGE JONES: Well, then that's what we have
16 to look into.

17 MS. MELLO: -- and for violation of a rule and
18 decision of the Public Service, but there is no
19 administrative remedy in that statute for any -- for
20 instance, if the Missouri Commission -- excuse me. If the
21 water company has an auto accident, they're a regulated
22 industry and they have an auto accident, they hit my car,
23 I don't have to go to the Public Service Commission,
24 right?

25 MR. LUFT: We have agreed to that.

1 JUDGE JONES: Mr. Luft is indicating --

2 MR. LUFT: Absolutely you could sue us in
3 civil court, but here you're claiming we billed you
4 improperly.

5 MS. MELLO: No. I'm claiming -- and if they
6 -- if they poisoned the water, would I have to go to the
7 Public Service Commission?

8 JUDGE JONES: Probably.

9 MS. MELLO: If I'm not -- if I'm complaining
10 that they violated the environmental laws, EPA, and they
11 put arsenic in the water and I'm not complaining that they
12 did anything under their tariff, but they put poison in
13 the water --

14 JUDGE JONES: Yeah, but the Commission has a
15 duty to insure that the company provides safe service.
16 That would be unsafe service.

17 MS. MELLO: Well, you know, I don't think so
18 because you see all these places with the super funds
19 where they put the -- where the water goes into the stream
20 and then they take the water out of the stream and the
21 water companies are sued in federal court under EPA.
22 They're not contested by going you have to go to the
23 Public Service Commission to sue them for killing you with
24 bad water.

25 JUDGE JONES: Okay.

1 MS. MELLO: If they had a fire -- you know, if
2 the water would stop and they didn't have water that came
3 through the hydrant and the house burned down, are you
4 saying they need to go to the Public Service Commission?

5 JUDGE JONES: If they violated some safety
6 rule or order or tariff provision, yes.

7 MS. MELLO: Instead of just -- but if the
8 claim was just based on negligence, if they said no,
9 there's no -- we're not talking about a tariff or anything
10 like that. We're saying, you know, there was water
11 supposed to be in these hydrants and you had a contract
12 with the city to make sure there was water in the
13 hydrants. I mean that would go straight to circuit court.

14 Our claim with them goes straight to circuit
15 court. We've mentioned no tariff, no decision and no rule
16 of the Public Service Commission.

17 JUDGE JONES: That you haven't mentioned a
18 rule, a tariff or order of the Commission doesn't mean --

19 MS. MELLO: But that's how we tell you how our
20 case is based, what our case is based on. Our case is not
21 based on rule or tariff, and under this very statute it
22 has to be based on that.

23 JUDGE JONES: Okay. Then, you know -- and I'm
24 not trying to give you any legal advice, but if this is
25 the way you feel, then dismiss your complaint, file in

1 circuit court, see what happens.

2 MR. LUFT: Well, and --

3 JUDGE JONES: Mr. Luft wants to say something.

4 MS. MELLO: Well, if I do that --

5 JUDGE JONES: Let Mr. Luft --

6 MS. MELLO: -- then I'm accused of not going
7 to the Missouri Commission.

8 JUDGE JONES: That's my point.

9 MS. MELLO: The Public Service Commission, and
10 instead I'm asking you to give me the declaratory
11 agreement that if it's based upon anything other than a
12 rule or regulation as in the statute, then it's supposed
13 to go to the circuit court. The Public Service Commission
14 cannot supplant the services -- the ability to file a
15 circuit court action. It has to be done not implicitly,
16 it has to be done explicitly.

17 JUDGE JONES: Okay. Mr. Luft, do you have
18 something --

19 MS. MELLO: I cited all this --

20 JUDGE JONES: Well, I --

21 MS. MELLO: Has that not been reviewed?

22 JUDGE JONES: Ms. Mello.

23 MS. MELLO: I mean I just want to know what
24 happens --

25 JUDGE JONES: Ms. Mello, Ms. Mello, Ms. Mello,

1 can you just take a deep breath for a moment. All right.

2 Mr. Luft.

3 MR. LUFT: Missouri-American was sued in St.
4 Louis County Circuit Court. Ms. Mello filed the lawsuit.
5 It was dismissed by Judge Jamison based on jurisdiction
6 lies with the PSC. We're not in a St. Louis County case
7 any longer.

8 MS. MELLO: Actually that's not true at all.
9 I don't know where -- he's misleading the Commission.
10 There was an order, and I not only filed to amend it, but
11 the Court did not find it to be a final order and they
12 remain in the lawsuit until there's a final judgment.

13 MR. LUFT: But we were dismissed.

14 MS. MELLO: There was an order in which I
15 filed a motion to amend on, which even if the judge had
16 put it was a final order, would mean it's not final. That
17 motion is going to be taken up in January, and it was on
18 the basis of misstatements that the residential rules
19 apply to the commercial account.

20 But more than that, under the rules of the
21 Court, it has to be specific provisions, and then if they
22 were, in fact, dismissed finally, I of course would take
23 it up on appeal so that it would not be -- it would be
24 fraudulent and false to tell the Commission that they're
25 somehow out of the claim if it's been filed in the circuit

1 court. But my question to you was I briefed all this, and
2 I'm just wondering what's the lay of the land there?

3 JUDGE JONES: Well, you know, I'm going to be
4 honest with you, Ms. Mello. I can't make hardly heads or
5 tails of most of the things that you briefed. I can't
6 figure out what you're talking about. I'm just going to
7 tell you that.

8 MS. MELLO: Well, I set out the -- I set out
9 the statute and I enclosed for you the regulation and the
10 fact that as in the Turner case, there's simple and direct
11 language and what's in the statute and regulations, and
12 then I cited the case law about the fact that the Public
13 Service Commission does not have common law or equity
14 jurisdiction. And I re-cited to you in complete verbatim
15 what was in the complaint and folded it out for you. So
16 I'm unsure how to approach it, make it understandable to
17 you.

18 JUDGE JONES: Editing.

19 MS. MELLO: Because it seems, you know,
20 anybody else that has looked at it seemed to be able to
21 read what I was trying to say. So I'm trying to -- you
22 know, if you want me to re-cite it, I'll pull it up and
23 answer your questions.

24 JUDGE JONES: No, no. No, no, no.

25 MS. MELLO: But if you're telling me you

1 didn't understand it, then it seems due process is being
2 denied to me to not tell me that, and I will be glad to
3 answer any questions or redo it, but -- I mean I've cited
4 the case law and the fact that there's -- it has to be
5 limited to the language in the statute.

6 JUDGE JONES: All right. Now, let me -- is
7 staff still there?

8 MS. MAYFIELD: Yes, Your Honor, we're still
9 here.

10 JUDGE JONES: Have you all reviewed the facts
11 of this case?

12 MS. MAYFIELD: Yes, sir. And summarizing what
13 staff's position is on the facts is that Ms. Shands is
14 claiming that her client -- or actually Ms. Mello claims
15 that her client, Janice Shands, was overcharged by the
16 condo association on collecting money to pay the
17 utilities, and she claims that the utility is not billing
18 the association correctly, because she claims that her
19 client is paying more than she would to the association.
20 So therefore, it does boil down to an essential billing
21 question which would, if investigated, possibly be within
22 the jurisdiction of the Public Service Commission.

23 MS. MELLO: I don't think that's the standard,
24 and that's not what the allegation is. The request for
25 the relief is only to find that there is no jurisdiction

1 and it isn't about a current billing, because they
2 separated these out in June.

3 MS. MAYFIELD: And again, Your Honor, just to
4 reiterate, what staff has repeated is that the person that
5 needs to be, or the entity that needs to be in front of
6 the Public Service Commission bringing this claim is the
7 condominium association, which, again, we as staff
8 understand is no longer a party to this complaint.

9 MS. MELLO: It is no longer a viable entity
10 because it doesn't have any board members. Although I was
11 appointed to represent it in the circuit court action, it
12 was limited to the circuit court action.

13 JUDGE JONES: So you're saying that the
14 homeowners association doesn't exist?

15 MS. MELLO: It doesn't -- all the board
16 members resigned and they have not been able to have any
17 meetings to elect any other board members. And in fact,
18 there are very few people that could probably vote at that
19 meeting because there's so few people that have paid their
20 condo fees.

21 JUDGE JONES: So is staff suggesting then the
22 Commission dismiss Janice Shands as a complainant?

23 MS. MAYFIELD: Yes, Your Honor. That is our
24 position is is that Janice Shands is not the customer of
25 record and she has no standing here, and that Janice

1 Shands as an individual should be dismissed.

2 MS. MELLO: And again, Your Honor, they've
3 done it on the basis of a residential based regulation.
4 This is not a residential account. There is no such
5 regulation for the commercial account.

6 MS. MAYFIELD: And we're going to reiterate
7 that Ms. Shands is not a member of the LLC.

8 MS. MELLO: There is no LLC. What LLC?

9 MS. MAYFIELD: The Lewis and Clark Tower Condo
10 Association.

11 MS. MELLO: It's not an LLC. Again, that's
12 failing to understand real estate law at all. She is a
13 member of the condo association.

14 JUDGE JONES: Well --

15 MS. MELLO: The condo -- I guess I don't
16 understand how people don't understand what a condo is.
17 The unit owners own this building as tenants in common.
18 There are ninety -- I think -- three units in this
19 building, and then this condo association owns nothing,
20 owes nothing, is merely a name so that they can get, you
21 know, kind of a governance over how the tenants in common
22 act so that there could be some majority decisions and
23 there can be an address where things are sent. But the
24 board members don't have any authority to do things like
25 borrow money or incur debt when they aren't and couldn't

1 even vote to incur debt for anything outside the property
2 limits. Does that help explain?

3 JUDGE JONES: No, no.

4 MS. MELLO: But it is not an LLC, and in fact
5 it's a condo association that's not even under the current
6 condo laws. There was a national uniform condo
7 association act that was passed after 1980 that is the
8 current condo law. This predates that under the Missouri
9 Condo Act.

10 JUDGE JONES: So Ms. Mayfield, if the
11 Commission -- let's say by some other means the Commission
12 finds out that Missouri-American may have overcharged
13 someone and it independently directed staff to file a
14 complaint.

15 MS. MAYFIELD: And yes, if that's determined
16 -- in the course of investigating this particular
17 complaint, we find a violation, then yes, staff would be
18 directed to file a complaint based on those facts.

19 JUDGE JONES: Okay.

20 MS. MELLO: And that would not involve us at
21 all, should not involve us. That should be the Public
22 Service Commission versus the Missouri Water Company, and,
23 you know, you would be free to do that. My understanding,
24 they've used all their energies and all their time on
25 these other issues and not looked into any of the

1 underlying issues and, you know, all we are here is asking
2 to confirm that we can proceed with our claim in circuit
3 court. And I also did file a Chapter 536 petition that
4 the regulations, even if it were to apply as to
5 residential, was not fair and didn't meet the statute,
6 because there isn't any such limit on having -- you know.

7 MS. MAYFIELD: Again, Ms. Mello, if we
8 understand it correctly, you have stated previously during
9 the course of this prehearing that this is a commercial
10 account, not a residential.

11 MS. MELLO: Right, and that's why I'm so
12 confused that you keep citing the only regulation that
13 says that the person that files a complaint has to be an
14 account holder is for residential accounts.

15 MS. MAYFIELD: I don't think we've ever stated
16 that it has to be a residential account, commercial
17 account. It's they are they account holder, and we have
18 certain confidentiality restrictions that do not permit
19 the disclosure of account holder information to someone
20 who is not an account holder. In this case the account
21 holder is the condo association and we cannot disclose
22 confidential information to anyone other than --

23 MS. MELLO: But that is nonsense, because as
24 -- the condo association, all the tenants -- tenants in
25 common own the condo association. You just -- you don't

1 even understand real estate law. And I provided the
2 declaration which says any condo owner can act on behalf
3 of the condo association with rights and liability that's
4 equivalent of a shareholder derivative rights, but it's
5 just a governing board. The condo association is just a
6 governing board, an internal governing board on how they
7 act internally. It's like we're going to do Robert's
8 rules of order, you know.

9 But anyway, there's the whole business that
10 you've been complaining about, an account holder falls
11 under the portion of the regulations that's only for
12 residential accounts. That's what was recited to me and
13 I've looked at the whole section under commercial accounts
14 under your regulations and there is no such provision
15 about account holders in the commercial section as there
16 is in the residential section, so it's not even
17 applicable.

18 You want to ask them, Your Honor, what -- if
19 they are, in fact, looking at a regulation under the
20 residential section, maybe that would help.

21 MS. MAYFIELD: Well, Ms. Mello, before we jump
22 off the --

23 MS. MELLO: Do you agree that that's -- you're
24 looking at a regulation under the residential section?

25 MS. MAYFIELD: Well, my question is you're

1 claiming this is a commercial account, and those are
2 generally contractual in nature. Do you have a contract?

3 MS. MELLO: I was informed it was a commercial
4 account. I was informed that by Ameren and both -- and
5 Missouri Water that this is a commercial account.

6 MS. MAYFIELD: Well, you are making factual
7 assertions here that this is a commercial account, and
8 that's what I'm asking for --

9 MS. MELLO: Well, you said it was a
10 residential account.

11 JUDGE JONES: Now, I have to remind you all
12 that we have a court reporter here that can't record --

13 MS. MELLO: I don't know where you would have
14 gotten that it was a residential account.

15 JUDGE JONES: Ms. Mello?

16 MS. MELLO: There are commercial properties in
17 that building. This is a mixed unit, and it's my
18 understanding to be a residential account, it has to be
19 wholly residential. But there are offices that are also
20 in this building. It used to have a revolving restaurant
21 -- I think it was revolving -- a restaurant on the top.
22 But it's a landmark in North St. Louis County.

23 It had a restaurant that covered the whole top
24 and about four floors they were -- there was a church in
25 there.

1 JUDGE JONES: It sounds like we're going way
2 off base here.

3 MS. MELLO: No. I mean, but she's telling me
4 why did I think -- I'm asking why she would think this is
5 a residential account, and including commercial
6 facilities. It had stores in it. And the pictures even
7 that they showed had -- shows non-residential -- you know,
8 pictures in the windows of people with their businesses,
9 insurance and everything.

10 JUDGE JONES: Okay. It sounds like you all
11 are saying that the Commission should dismiss this case
12 for two different reasons. Is that what I hear?

13 MS. MELLO: I'm saying that the Commission
14 should find it doesn't have jurisdiction, which may or may
15 not be a dismissal.

16 JUDGE JONES: And staff is saying the
17 Commission should dismiss the case why; because Ms. Shands
18 doesn't have an account with Missouri-American?

19 MS. MAYFIELD: Yes, that is correct, yes.

20 MS. MELLO: And I'm not sure you're familiar
21 with the regulations and those are only residential
22 regulations that they're citing, so --

23 JUDGE JONES: And Mr. Luft, what's
24 Missouri-American's --

25 MR. LUFT: To the extent we have not filed a

1 motion to dismiss based on jurisdiction, we have -- to the
2 extent that there's a claim that there is a billing
3 problem, we think there's nobody better qualified to
4 determine whether or not we did anything wrong with
5 billing than PSC and this should squarely fall within the
6 Missouri PSC's jurisdiction, not a civil court.

7 JUDGE JONES: Okay. And Ms. Mayfield, has
8 staff investigated whether or not there's a billing issue
9 beyond the issue of Ms. Shands not being the proper --

10 MS. MAYFIELD: Well, Your Honor, we -- I mean
11 it's going to be very difficult even if we were to do an
12 investigation, because Ms. Shands is not the account
13 holder. We would be prohibited from our confidentiality
14 due to it. If we found that I guess a problem existed at
15 the condo association, we certainly could not turn that
16 over to Ms. Shands.

17 MS. MELLO: That's bogus, because we've given
18 her this --

19 MS. MAYFIELD: Ms. Shands --

20 JUDGE JONES: Hey, hey. You all can't talk at
21 the same time.

22 MS. MAYFIELD: Thank you. And just to say --
23 I mean to answer your question, Judge, is no, we have not
24 done a full investigation on that aspect because the
25 proper party was not before the Commission, and that, in

1 our opinion, is the condo association.

2 MS. MELLO: And the condo association gave
3 them full consent to give them the information to Ms.
4 Shands.

5 JUDGE JONES: Well, is that true?

6 MS. MAYFIELD: Staff has never seen a consent
7 of that nature.

8 MS. MELLO: I filed it on behalf of the
9 association and concurred and said they could have the
10 consent, and if I was good enough to represent the condo
11 association in their eyes, and I gave them that consent
12 and I give them it now, in confirming. But they were
13 certainly given that consent and the concurrence that they
14 could provide any information to her. But again, there's
15 nobody to give the consent. The unit owners would be the
16 ones to give the consent to the condo association, and
17 there is no privacy with regard to commercial accounts.

18 MS. MAYFIELD: Well, I mean, Ms. Mello, we --

19 MS. MELLO: Right now under practice and
20 procedure, and only the business about the person whose
21 name it is is on residential accounts.

22 MS. MAYFIELD: Well, just to reiterate, staff
23 has never seen that consent.

24 MS. MELLO: So basically they sat since July
25 and have done nothing to look other than try to claim that

1 -- throw this out and say she wasn't a person that said a
2 -- let's see what it -- I wish they would give me that
3 cite so I could read the language to you. You know, the
4 rule isn't even that it has to be in the name of the
5 person, but if they pay for it, then -- on residential
6 accounts.

7 JUDGE JONES: So we have a complainant who
8 doesn't want to be a complainant and --

9 MS. MELLO: We filed only to get declaratory
10 order so we could, you know, nip this is the bud, and it
11 just grew. Then they told us -- they also told us if we
12 wanted to have the condo association be a party, we had to
13 name and include every member of the condo association.

14 JUDGE JONES: Well, yeah, that's --

15 MS. MELLO: Which takes us back to the fact
16 that now they're saying they need Ms. Shands in there.
17 And I said, well, everybody is a member in the circuit
18 court case in which we're still having problems serving
19 people, so again, flipped us back. I've never dealt with
20 such inconsistency.

21 But we're just trying to get a determination
22 that there isn't -- you know, if we're making something
23 that's not based upon a rule or regulation, and even the
24 section on the complaint says it has to be based on a rule
25 or regulation of the Public Service Commission.

1 JUDGE JONES: Well, it sounds to me like the
2 Commission just needs to order staff to investigate
3 independently or within this complaint.

4 MS. MELLO: Well, I'm saying it needs to be
5 independent so we can get out of here.

6 JUDGE JONES: Well, yeah, I understand that,
7 but the Commission is not going to say it doesn't have
8 jurisdiction when it does.

9 MS. MELLO: Well, this is what your complaint
10 regulation is. I mean the only people that can complain
11 are someone who feels they're aggrieved by a violation of
12 a tariff, statute, rule, order or decision within the
13 Commission's jurisdiction, and it says it has to be -- and
14 the statute says it has to be a rule or decision of the
15 Public Service Commission.

16 That's not what we're aggrieved by. It says a
17 complaint may be filed by the Commission on its own
18 motion, the Commission's staff through staff counsel. So
19 Your Honor, you could make the complaint on your own
20 motion, let us out and say we'll investigate whatever
21 tariff and let these people go to the circuit court, and
22 that's what we're asking, that -- you know, and now we
23 become aware maybe there's a violation of a tariff, maybe
24 there's not, you know. And these people don't want to be
25 here, they don't want to deal with the tariff, you know.

1 Direct counsel or file your own motion and say, you know,
2 that -- you know, and let them deal with it, equity and
3 common law claim in circuit court. It's my understanding,
4 you can't order a refund anyway.

5 JUDGE JONES: It sounds like the circuit court
6 is saying that the Commission has jurisdiction in this
7 case and needs to decide its facts.

8 MS. MELLO: Well, the circuit court was misled
9 in these claims about -- what is the -- primary
10 jurisdiction, and they felt that -- well, they were told
11 any time anything touches upon the Public Service
12 Commission on a regulated industry, that, you know, it has
13 to go first to the Commission to decide whether or not
14 they're going to address it or not.

15 JUDGE JONES: Well --

16 MS. MELLO: And there's the case law, and
17 especially that one case out of the gaming law where they
18 tried that with a casino and someone was suing them on one
19 of those rewards programs and they said, oh, no, it's a
20 regulated industry, is what the casino said, and then
21 eastern district said, no, that's not. You know, just
22 because you're a regulated industry doesn't mean that
23 people can't file complaints against you in circuit court.
24 So, you know, the court -- you know, the circuit court
25 bought into the fact that they felt there was primary

1 jurisdiction because they were a regulated industry.

2 MS. MAYFIELD: Your Honor, this is Ms.

3 Mayfield from the staff. If your order is going to be
4 that staff conduct an investigation into this, in your
5 order are you going to delineate who the staff is then
6 permitted to share that information with?

7 JUDGE JONES: I don't know what I'm going to
8 do, to be honest with you. I have no idea how this case
9 is going to go forward. I have a sense to believe that if
10 the circuit court -- regardless of whether the circuit
11 court was misled or not, the circuit court has sent this
12 to the Commission to decide.

13 MS. MELLO: No, it hasn't sent it to the
14 Commission, I don't think has the authority to do that --

15 JUDGE JONES: It dismissed its case, leaving
16 the Commission to decide the matter, which then can be
17 appealed, I don't think to the circuit court, probably
18 straight to appellate court, but --

19 MS. MELLO: Well, no. I mean they sent it to
20 you where you can also make the decision that it's not
21 yours to decide.

22 JUDGE JONES: Well, yeah, but like --

23 MS. MELLO: You know, that you can make the --
24 in the view of primary jurisdiction, you can say -- you
25 could say it's not ours to decide, or you can say we don't

1 need our special expertise, because if you remember, under
2 the rules of primary jurisdiction there has to be some
3 showing that you need an engineer or some special
4 expertise.

5 This doesn't -- this isn't engineering. This
6 isn't about pollution or pipes or anything, you know, and
7 then you could find it doesn't need the special expertise
8 of the Public Service Commission, and the court can make
9 such a determination, it's really a real estate issue
10 where they could have -- they could have or should have
11 put it in a separate account when they knew it was a condo
12 association.

13 JUDGE JONES: Yeah, I understand that you're
14 saying the Commission can just say it doesn't have
15 jurisdiction. And what I'm telling you is the Commission
16 is not going to say that if it does. And now then I hear
17 staff saying we should dismissed it because it's the wrong
18 complainant. I don't know. Do you have any thoughts, Mr.
19 Luft?

20 MR. LUFT: Dean, I'm going to defer to you at
21 this point. Do you have anything to add?

22 MR. COOPER: Well, Judge, I think you had it
23 -- as a part of what you're saying, I mean the circuit
24 court, on whatever basis it decided to issue this order,
25 has issued an order that says specifically the Public

1 Service Commission has the primary jurisdiction to hear
2 plaintiff's claim against Missouri-American Water Company.
3 So I mean I think given that circuit court order, unless
4 it changes in some fashion down the road, I think the
5 Commission needs to feel pretty strongly that at least the
6 subject matter of what's being alleged here falls within
7 its jurisdiction.

8 Now, if for some other reason the case gets
9 dismissed, I guess that's a different question. But I
10 think for the time being, the circuit court order ought to
11 be sufficient to make the Commission feel that it does
12 have jurisdiction over the factual --

13 MS. MELLO: Well, a court can't give the
14 Commission jurisdiction. It can only come from the
15 statute. A court cannot send a case to the Commission.

16 MR. COOPER: But it --

17 MS. MELLO: Is that what you're saying?

18 MR. COOPER: -- the court's order -- no, I'm
19 saying that the court ordered --

20 MS. MELLO: The court order I don't even
21 remember being filed. Are you saying that the court order
22 was filed here? I have never seen it. Are you taking
23 something outside the record? Because I don't remember
24 seeing it. Did you file it?

25 MR. COOPER: We will.

1 JUDGE JONES: Well, just --

2 MS. MELLO: Did you file my motion to amend?

3 JUDGE JONES: Ms. Mello, just as a point, the
4 Commission can just take notice of the court's order,
5 whether it's in the case or not. Being in the case makes
6 it a little more convenient, but it can just take notice
7 of the order.

8 MS. MELLO: Then I think the Commission would
9 have to take notice of the fact that there's been a motion
10 to amend and there's no judgment and there was no
11 direction. There's no direction to send it to you and the
12 court would have no jurisdiction to send it here.

13 JUDGE JONES: So you filed a motion to amend
14 the order of the circuit court?

15 MS. MELLO: I filed a motion to amend the
16 order, and this is what it actually says. It doesn't --
17 the dismissal is without prejudice, but -- yeah, I mean --
18 but you never find it was a final order, final judgment
19 that should be -- in a court only a final judgment, but
20 even if they did, they can't send anything to the Public
21 Service Commission. There's no downward jurisdiction.

22 JUDGE JONES: No downward jurisdiction.

23 MS. MELLO: There's not like an appointment of
24 a master or receiver or anything like that.

25 JUDGE JONES: Are you waiting for the circuit

1 court to rule on your motion?

2 MS. MELLO: We're set to go back in January,
3 the next time we see the judge. The motion is already
4 set.

5 JUDGE JONES: Okay.

6 MS. MELLO: I filed it in December.

7 JUDGE JONES: Well, okay --

8 MS. MELLO: We weren't having -- you know --

9 JUDGE JONES: Ms. Mello.

10 MS. MELLO: Yes.

11 JUDGE JONES: And Ms. Mayfield, Mr. Cooper,
12 Mr. Luft. I'm going to just issue an order directing
13 staff to investigate. Well, it seems like I've already
14 done that. Haven't I? Maybe not.

15 MS. MELLO: I thought you did. That's why I'm
16 kind of surprised.

17 MR. COOPER: My memory is, Judge, that it
18 might have been premised on the fact that there had been
19 an application to intervene on behalf of the association,
20 and that never really finished its process of getting the
21 association named as an intervenor. So I think that -- my
22 memory is that's where that process kind of broke off.

23 MS. MAYFIELD: That's correct.

24 MS. MELLO: I thought you did it in July.

25 JUDGE JONES: Yeah. Well, there's just the

1 notice of the complaint and the order directing staff to
2 investigate. That was in August.

3 MS. MELLO: So that was way before anything to
4 do with -- I wasn't appointed in the circuit court action
5 to represent the association until September, so what he
6 said was completely wrong.

7 JUDGE JONES: Well, it sounds like the circuit
8 court is going to do something in January. Is that what
9 I'm hearing? Is that your understanding, Mr. Luft?

10 MR. LUFT: We were dismissed. I don't know
11 that you can consider a motion for rehearing or whatever
12 it's styled, I don't know that -- I don't know if the
13 court is going to entertain it. I did see Susan faxed or
14 e-mailed us a bunch of pleadings, but I -- I mean it's
15 dismissed.

16 MS. MELLO: What do you mean entertain it?
17 Every time there is a judgment, people file a motion to
18 amend, there is no option on entertaining. It's a
19 standard motion.

20 JUDGE JONES: Does it fail after a certain
21 time if it hasn't been ruled on?

22 MS. MELLO: Right, and it hasn't even been
23 noticed up for a hearing and -- but I think everybody is
24 missing the point. Under the circuit court rules, because
25 we have other parties and other claims in this litigation,

1 the court would have to find special reason to separate
2 out the water company and Laclede Gas and issue a special
3 order finding that it was ripe for appeal at that time.
4 And A, it really can't do that, because we still have that
5 claim relating to them involving MSD who is not -- there
6 is no jurisdiction under the Public Service Commission,
7 but those are hard cases to make. But the fact is neither
8 the water company or Laclede Gas ever asked the court to
9 find that the judgment was final.

10 And if you want the rule of that, I think it's
11 Rule 73 that says no order, even seeking to terminate or
12 dismiss a party when there's multiple claims, is final and
13 can be -- and subject to revision at any time until a
14 decision is made with regard to all other parties. So we
15 don't even have a judgment. We have an interim order,
16 interlocutory order, but they've not -- and they remain
17 parties and it's a basic rule of civil procedure, but I
18 can -- you know, let me give you that one.

19 So where they keep saying they're out of the
20 lawsuit and that they've been dismissed, that's really not
21 true. They have not been dismissed. There's been an
22 order -- like a preliminary -- let me find it --

23 MR. LUFT: We have been dismissed.

24 MS. MELLO: Judgement of -- "When more than
25 one claim for relief is presented in an action or when

1 multiple parties are involved, the court may enter a
2 judgment as to one or more but fewer" -- and then it has,
3 "on an express determination that there is no just reason
4 for delay."

5 There was no express determination and there
6 is none of this -- "in the absence of such a
7 determination, any order or other form of decision,
8 however designated, that adjudicates fewer than all the
9 claims or the rights and liabilities of fewer than all the
10 parties shall not terminate the action as to any of the
11 claims or parties, and the order or other form of decision
12 is subject to revision at any time before the entry of
13 judgment adjudicating all the claims and the rights and
14 liabilities of all the parties."

15 That is 74.01(b), it's a basic civil procedure
16 rule. So we have nothing about there wasn't even asked
17 for an express determination, no facts, nothing, no claim,
18 no just reason for delay. So all we've got is just an
19 order sitting out there and it doesn't dismiss them.

20 JUDGE JONES: Okay.

21 MS. MELLO: Does that answer the question of
22 where we are? We just have some interim order.

23 JUDGE JONES: No, no, no. I don't know where
24 the matter is in circuit court. Now -- well, I don't
25 know. I feel like I need to think about this, figure out

1 how to dispose of it.

2 MS. MELLO: If it would help, I could just try
3 to redo the legal issues that I've raised.

4 JUDGE JONES: No, no, don't. Don't. Don't
5 file any --

6 MS. MELLO: Well, you know, I feel like the
7 process has not been granted to me if you say you didn't
8 understand it.

9 JUDGE JONES: It's --

10 MS. MELLO: I mean I could send you the same
11 as I sent the court. Would that -- I'll go ahead and
12 re-send that. Maybe that -- it seems to be in the same
13 framework, but --

14 JUDGE JONES: Well, Ms. Mayfield, does the
15 Commission need to -- is the homeowners association a
16 necessary party?

17 MS. MAYFIELD: In our opinion, yes, it is a
18 necessary party. It is the account holder of record, and
19 pursuant to our rules, it needs to be a necessary party,
20 otherwise we're going to be doing an investigation on and
21 cannot provide information to the complainant that's
22 before the Commission.

23 MS. MELLO: Again, I -- you know --

24 JUDGE JONES: So the Commission needs to
25 dismiss Janice Shands in this case and -- but there is no

1 homeowners association, is that what I'm to understand?

2 MS. MELLO: Correct. So that's a bogus claim.

3 JUDGE JONES: So how can -- I don't understand
4 how we can proceed if there's no homeowners association.
5 Somebody's being billed right now.

6 MS. MAYFIELD: Exactly.

7 MR. LUFT: Here's the final bill right here.
8 Water was shut off --

9 JUDGE JONES: I have a bill that Mr. Luft
10 handed me, the due date of December 16th, 2014, listing
11 Lewis and Clark Tower Condo Association, care of City and
12 Village Tax Office. What is that?

13 MR. LUFT: That was their outfit they had that
14 would collect the condo fees, and now it's under
15 receivership, but for many years I think they collected
16 the condo dues from all the residents that paid the bills
17 until everything collapsed earlier this year, and then
18 here we are.

19 MS. MELLO: That is --

20 JUDGE JONES: Is water still being -- there is
21 no water?

22 MR. LUFT: No water, no electric, no gas -- I
23 think all utilities were shut off about a week ago.

24 MS. MELLO: You know, this is all false. No,
25 not all water and all gas. The gas company shut off the

1 gas in April. City and Village was the former registered
2 agent. They resigned as registered agent. They started
3 in January of 2014 and they went out in June of 2014.
4 That the -- as regards there being no gas, the pipes broke
5 when it was cold and freezing, and the judge then
6 authorized for the water to be turned off.

7 They should be knowing not to send that bill
8 to City and Village who has nothing to do with Lewis and
9 Clark Tower Condo Association, so if they sent a bill,
10 again, that shows some sort of bizarre behavior on behalf
11 of the water company. And there is electric, because
12 there's cell phone towers that are still running on the
13 top which are powering many of the cell phones in North
14 County St. Louis.

15 JUDGE JONES: Okay. Ms. Mello, just a moment.
16 Mr. Luft, you wanted to say something?

17 MR. LUFT: Well, we have provided the bills to
18 the receiver, and yes, City and Village used to be where
19 we sent the bills to, but now I've given them directly to
20 Rob Jurotich, the receiver in this matter. And this is
21 our final bill. There will be no more bills. It's over.
22 Turned off the water, and as I understand it, nobody lives
23 there anymore.

24 JUDGE JONES: So nobody's even living in the
25 building anymore?

1 MS. MELLO: No. They were required -- the
2 city was going to condemn them because there was no heat.
3 And then in addition to the water -- the water pipes
4 breaking in the freeze, somebody came in in North County,
5 and while people were still living there, cut some of the
6 hot water pipes, just -- but there's no -- you know, there
7 may be some people still living there. They were asked to
8 all get out. The water was cut out and the city has filed
9 a notice of an intent to condemn and then didn't take any
10 action on it.

11 MS. MAYFIELD: Your Honor, it does appear that
12 there could be a proper party to name in this case if Ms.
13 Mello's assertion that the condominium association is no
14 longer a viable entity, it does appear that there is a
15 receiver, I just heard the --

16 MS. MELLO: Yes, but the receiver is appointed
17 only with regard to the circuit court action and to
18 collect the amount.

19 MS. MAYFIELD: But still the receiver should
20 be vested with certain duties that could include capturing
21 claims such as overbilling.

22 MS. MELLO: No, he's not. It's not in his
23 authority. That's why I was appointed to represent the
24 condo association in the lawsuit.

25 MS. MAYFIELD: Well, I'm just trying to

1 make --

2 MS. MELLO: His job is only to collect from
3 the unit owners and to pay the bills, not to challenge
4 them.

5 JUDGE JONES: Then Ms. Mayfield, you're just
6 trying to figure out a way to move forward with the
7 investigation?

8 MS. MAYFIELD: Yeah. Your Honor, if you
9 direct staff to investigate, and our position still is
10 that --

11 MS. MELLO: I guess since everybody --

12 JUDGE JONES: Ms. Mello, Ms. Mello, let her
13 finish.

14 MS. MAYFIELD: If Ms. Shands is going to be
15 dismissed, it's just trying to figure out who the proper
16 entity would be to investigate this, and it sounds as
17 though the receiver would be the correct person.

18 MS. MELLO: That's not his role. That's not
19 what he's appointed for. That's not what his bond covers.
20 So he doesn't have the authority. I sent everybody a
21 consent, you know, to share any information, if that's
22 what the concern is, but -- you know, you don't even have
23 to tell us. Investigate it on your own. Staff
24 investigates, you don't have to report to anybody.

25 You know, whatever you do with regard to the

1 Missouri Water Company, if you find that they violated
2 some tariff, put it in the news and we'll read it there,
3 but, you know, or you can send me just something with the
4 general news like I'm getting from everybody, anything to
5 do now with Missouri Water Company where I get all these
6 notices of any meeting or any kind of tariff or anything.
7 But we don't need to be a party. That's what I'm trying
8 to say, when you ask me do I believe there are violations,
9 they're not part of our claim, but go have at it. I'm
10 sure they've done something improper.

11 MS. MAYFIELD: Your Honor, staff would still
12 have to have some parameters on which to investigate,
13 so. . .

14 MS. MELLO: Well, the regulations say the
15 complaint can be by Commission on its own motion or by
16 staff or by a person, and it seems to me she's saying they
17 can't do those other two, they always have to have some
18 person as a complainant. The staff can be the
19 complainant.

20 JUDGE JONES: Mr. Luft, how do you think this
21 should proceed?

22 MR. LUFT: Well, I also think there's a
23 possibility that there's a situation where Ms. Mello can't
24 bring a civil case against a utility claiming they
25 improperly billed, and she also can't bring a case with

1 the PSC if she's not the client; that she has no standing
2 to bring either case at all.

3 MS. MELLO: So they get away with fraud? Is
4 that what you're saying; they could get away with it?

5 MR. LUFT: Well, if the receiver has an issue
6 with our billing, he can bring the complaint.

7 MS. MELLO: No, he doesn't have the authority
8 to bring complaints. He has the authority to collect, and
9 he doesn't have authority to go back and challenge the
10 existing bills and -- you know, that's not what he was
11 appointed for. And he was appointed in the lawsuit that
12 they're getting -- they wanted dismissed, so the receiver
13 is only appointed vis-à-vis that lawsuit, so the fact that
14 they're claiming they were dismissed from it would mean
15 that the receiver has no authority vis-à-vis them.

16 JUDGE JONES: Let me -- we've gone an hour
17 now, and I realize all the parties to this
18 Missouri-American case are present.

19 MS. MELLO: We don't have Laclede Gas.

20 MR. COOPER: I'm here for Laclede Gas, Judge.

21 MS. MELLO: Oh, okay.

22 JUDGE JONES: Sorry. So this is -- these
23 issues that we've been discussing for the last hour are
24 germane to both Missouri-American and Laclede; is that
25 true?

1 MS. MELLO: Yes.

2 MR. COOPER: That's true.

3 JUDGE JONES: Okay. Well, then what I'll
4 probably do then is just have the same -- the transcript
5 filed in the Laclede case, which is GC-2015-0045, that's
6 Janice Shands versus Laclede Gas Company and -- well, I'll
7 talk to the reporter.

8 MS. MELLO: I thought I asked --

9 JUDGE JONES: I'll talk to the reporter
10 afterwards and just have them styled differently, but the
11 same transcript filed in both dockets.

12 MS. MELLO: I thought I had asked that they be
13 consolidated, because it's the same issue. I thought I
14 had filed a motion to consolidate.

15 JUDGE JONES: I thought you did, too, but it
16 seems like you withdrew it or something. Now, you said
17 something earlier, Mr. Luft, now she can't -- the receiver
18 or Ms. Shands can't file in circuit court. I didn't
19 follow.

20 MR. LUFT: Well, our motion to dismiss in
21 circuit court was you're claiming a billing error and
22 therefore this is a PSC issue.

23 JUDGE JONES: Okay.

24 MR. LIFT: And then simultaneously she has
25 this PSC case, and as Ms. Mayfield is saying, she may not

1 have the proper standing to bring this because she's not
2 an account holder. I said there is a possibility that she
3 can't bring a claim against us either in circuit court or
4 the PSC, period. I know that's frustrating --

5 MS. MELLO: I'm sorry. I can't hear. He's
6 breaking up.

7 MR. LUFT: I just said -- I just explained
8 that there's a possibility you cannot bring a claim
9 against us in civil court or through the PSC because you
10 do not represent an account holder, and for the reason in
11 our motion to dismiss which was ruled and granted by Judge
12 Jamison.

13 MS. MELLO: Okay. But somebody has been
14 damaged, so he's saying the people that are damaged can't
15 bring a claim, and that seems to be defying what equity
16 provides. He's saying that they're free from -- that
17 because -- that they're somehow free to do this and --

18 MR. LUFT: Your claim is against the condo
19 association that mismanaged the Lewis and Clark Tower
20 and/or the --

21 MS. MELLO: No, the claim is against the water
22 company that -- in circuit court that fraudulently billed
23 -- fraudulently failed to set up separate accounts back in
24 1980, and then has made -- although it was a shopping
25 center, it wasn't part of the condo association. And if

1 you understand this, if the facts that I understand it is
2 that the shopping center actually had meters installed
3 from the water company so that the guy that was running
4 the shopping center could bill his tenants and yet not pay
5 for the water, and so there's hundreds of thousands of
6 dollars that the guy with the shopping center got worth of
7 water, and it shouldn't have been resold or whatever, but
8 the issue is what was -- is sorting it all out. And we've
9 got the guy in there, but if we can't have the water
10 company, who's refusing to turn over their records on what
11 was billed and what should have been billed, and we can
12 address it all and who was at fault with who in the
13 circuit court action, you know, there is some
14 responsibility on the part of this water company that they
15 knew that it was a condo association and yet -- and then
16 when someone says -- some stranger to the bill says, oh,
17 install these water meters for the shopping center, and
18 then even then didn't say, oh, yeah, why aren't you
19 getting a bill where you're getting meters.

20 JUDGE JONES: Well, you know, I'm inclined to
21 write something and take it to the Commission that
22 dismisses the complaint because Ms. Shands is not a
23 customer, and what happens after that, I don't know.

24 MS. MELLO: Well, except that's based on --
25 that's only for residential accounts and that ignores the

1 reality of the situation because the regulation actually
2 says the account holder or the person who pays the bill.

3 JUDGE JONES: Well, then if the Commission
4 were not to ignore the regulation, then it would be
5 asserting jurisdiction, which is what you don't want.

6 MS. MELLO: I don't think it has complaint
7 jurisdiction, so, you know -- so I guess I could dual file
8 and then we get to the point and I file an appeal both
9 places. I guess I could bring them both, do the same
10 thing. I mean it just -- because it seems the legal issue
11 is really clear that the Commission doesn't have common
12 law or equitable jurisdiction, I'm making a claim under
13 common law and equity and that's the cases that I've
14 cited.

15 JUDGE JONES: So -- well, now, the condo
16 association isn't here and Mr. Luft you're just saying
17 there's a receiver now?

18 MR. LUFT: Correct.

19 MS. MELLO: The receiver is limited in his
20 role.

21 JUDGE JONES: Yeah.

22 MS. MELLO: Plus it would be unfair to these
23 people. The receiver has to be paid by the hour. The
24 man, he gets in the midst of all this, he's not a
25 litigator, he's an accountant lawyer, you know, he's a tax

1 -- you know, to handle the money. So that's not his role.

2 JUDGE JONES: And staff's concern has to do
3 with confidential information between -- or of a customer?

4 MS. MAYFIELD: That's correct.

5 MS. MELLO: How can that be anything but
6 bogus? It would be like saying -- more than a
7 beneficiary. By statute, by the property and real estate
8 statutes, every condo owner is entitled to the information
9 on the account of the condo association. That's Missouri
10 statute, so how can she claim there's some confidentiality
11 when the statute and the declaration entitles her to all
12 the information, the recorded declaration. Again, it
13 sounds as if people didn't take property law.

14 MS. MAYFIELD: Pierson vs. Post. Pierson vs.
15 Post. That's all I have to say.

16 JUDGE JONES: I don't know what that means,
17 but I didn't do well in property law. I got like a 63, so
18 I don't know how --

19 MR. COOPER: Judge, this is Dean Cooper. I
20 think if you issue whatever order you think is
21 appropriate, I mean that will allow the parties to file
22 whatever they think is appropriate and we'll see how it
23 sorts out from there. I don't -- it just seems like
24 that's going to be a necessary next step to even pretend
25 to move this action forward one way or the other.

1 MS. MELLO: I'm looking up Pierson versus
2 Post, and it --

3 MS. MAYFIELD: It's the fox case, but it's the
4 basic for foundation for property law, that ownership does
5 not necessarily equate with possession.

6 JUDGE JONES: I don't want to -- I really --
7 I'm good with my 63 in property law.

8 MS. MELLO: That has nothing to do with this
9 at all, but I went ahead -- I will go ahead and send a
10 copy of the case law that I cited, so if that's a better
11 version, you know, the details both what we're asking and
12 the case law and the statute. I'm not sure what else I
13 can add, but what we put in our amended petition, amended
14 complaint here what we were asking and the only relief we
15 were asking and --

16 JUDGE JONES: Well, I -- okay. Just so I'm
17 clear, Ms. Shands, and you --

18 MS. MELLO: Mello. I'm Ms. Mello.

19 JUDGE JONES: And it's not even necessary for
20 you to retort. I'm going to tell you that the Commission
21 is not going to say it doesn't have jurisdiction when it
22 may have jurisdiction. And as far as dismissing the case
23 on the grounds that Ms. Shands isn't a customer, that
24 could happen, I don't know. I don't know where that
25 leaves you procedurally, though.

1 MS. MELLO: Well, why wouldn't the Commission
2 issue an order that it doesn't have jurisdiction if its
3 path doesn't meet the statute? That would be their duty.

4 JUDGE JONES: If Missouri American, and in
5 this case Laclede, has charged someone or billed someone
6 improperly contrary to their tariff, that is under the
7 Commission's specific jurisdiction. That can't be --

8 MS. MELLO: We didn't base our complaint on
9 the tariff.

10 JUDGE JONES: Just because you say -- just
11 because you don't say there's a violation of the tariff
12 doesn't mean it's not under Commission's jurisdiction. It
13 could be negligent -- there could be negligence and there
14 could be a violation of the tariff, the company's tariff.

15 MS. MELLO: I think the statute says the
16 complaint has to be based on -- and I will do --

17 JUDGE JONES: The complaint statute says that
18 anybody who feels any law that's been violated by a public
19 utility can be before the Commission. It's very broad.

20 MS. MELLO: No, that's not what it says.

21 JUDGE JONES: Well, go ahead, you can read it
22 into the record. I don't have a -- I'm going to -- let me
23 just get a copy of 386 and read it. I'll be right back.

24 MS. MELLO: That's not what it --

25 JUDGE JONES: You all can talk amongst

1 yourselves, but I'm not here, so I would rather you not.

2 MS. MELLO: Okay. Let me read it. I'm
3 pulling it up right now. What the statute says is -- and
4 it is 386.390.

5 (Ms. Mello Reading): "Complaint may be made by
6 the Commission of its own motion, by public counsel,
7 corporation, et cetera -- setting forth any act or thing
8 done or omitted to be done by any corporation -- including
9 any rule, regulation or charge heretofore established or
10 fixed by or for any corporation" -- this is the big
11 language -- "in violation, or claimed to be in violation
12 of any provision of law, rule or order or decision of the
13 Commission."

14 So the key thing is of the Commission. It's
15 not a general roving commission. It has to be based upon
16 violation of a provision of the law, rule, order or
17 decision of the Commission. And then when you look at the
18 cases, that's how they interpreted them. The cases I
19 cited are --

20 JUDGE JONES: I don't think it's in there.
21 Okay. I'm pretty sure -- Ms. Mello.

22 MS. MELLO: The cases that I cited go back to
23 the Union Electric --

24 JUDGE JONES: Ms. Mello. Ms. Mello. When
25 you're talking, do you hear me when I call your name?

1 MS. MELLO: There's a delay.

2 JUDGE JONES: Oh, okay. All right. All
3 right. This is from our rule, and I'm pretty sure it says
4 exactly what 386 says. I couldn't put my hands right on
5 it, but, "A formal complaint may be made by petitioner or
6 complainant in writing setting forth any act or thing done
7 or omitted to be done by any person, corporation or public
8 utility, including any rule or charge established or fixed
9 by or for any person, corporation or public utility in
10 violation, or claimed to be in violation of any provision
11 of law, or any rule or order or decision of the
12 Commission." That's pretty broad.

13 MS. MELLO: No. It then goes on to say within
14 the Commission's jurisdiction, which tells you you need to
15 go back and look at the statute I just read.

16 JUDGE JONES: Well, you know, like I said,
17 we're going in circles now.

18 MS. MELLO: Well, I have -- I cited to that
19 regulation in what I sent you.

20 JUDGE JONES: Well, what you just said -- I
21 told you I was going to go out of the room, so I didn't
22 hear what you just said. I had to go get the --

23 MS. MELLO: So you had me read the statute
24 into the record? No, I didn't hear that you were leaving.
25 The statute clearly says it has to be limited to something

1 of the Commission and that's how the cases have
2 interpreted it.

3 JUDGE JONES: So let me ask you this then, Ms.
4 Mello. Over what cases does the Commission have
5 jurisdiction?

6 MS. MELLO: If I came in and said this is a
7 violation of the tariff --

8 JUDGE JONES: What is --

9 MS. MELLO: This is a violation of the
10 regulation. For instance, like when they have -- one of
11 the cases was involving -- I think it was involving cost
12 of -- the cost after -- the energy cost. If there was a
13 rule that said there was a violation of that. If there
14 was a rule that said, you know, that the bill had to be
15 every month and they gave us bills every two months and we
16 said, hey, we're supposed to have bills every month, you
17 know, and on the basis of that, you know, we would
18 complain, or that the bill didn't have our name on it or
19 something specific and we weren't complaining that it was
20 an equitable issue, but just that they violated the
21 regulations, then --

22 JUDGE JONES: Now, Ms. Mello --

23 MS. MELLO: There's not many things that there
24 are in the regulations for commercial accounts anyway,
25 so --

1 JUDGE JONES: Ms. Mello, if you are alleging
2 facts that, if proven to be true, show a violation of the
3 company's tariff, despite whether there's been negligence
4 or fraud or whatever, if the facts that you allege show
5 that there was a violation of the company's tariff, do you
6 think the Commission has jurisdiction in that case?

7 MS. MELLO: If I didn't base my complaint on
8 it and you wanted to do some roving -- no, I don't think
9 it does.

10 JUDGE JONES: So what you're telling me --

11 MS. MELLO: Because that would be like saying
12 all you had to say is my name is Joe Blow, I'm an account
13 holder and so you go find any violation of the tariff or
14 the rule or the decision, and that's what you're saying
15 that any time anybody files a complaint, no matter how
16 they frame it, if there's some violation, that triggers
17 the right to have a roving commission for anybody on the
18 staff to say, okay, we're going to look at everything.

19 If I filed a complaint and said they didn't
20 send me a bill for one month and then they just sent me a
21 bill every month, you could then go in and find that they
22 were polluting the water, and I'm sure that the utilities
23 would argue and say, no, they're entitled to some better
24 notice than that, every time someone files a complaint, it
25 doesn't make everything wide open.

1 JUDGE JONES: Right.

2 MS. MELLO: And I'm saying that we, you know,
3 submitted a complaint that asked -- that was not based on
4 any tariff or anything and we asked for a certain kind of
5 relief. You're telling me you can't give me that relief,
6 then you can also say we're not going -- the Commission is
7 not in the business of determining declaratory judgment.
8 And, you know, that's what I asked for and -- but that's
9 different than saying you dismiss it because she's not the
10 proper party, which isn't what your regulations say.

11 JUDGE JONES: Okay. Well --

12 MS. MELLO: I will go ahead and re-send you,
13 so that maybe you can better understand what I was citing
14 for the court, and the legal issues, since you told me you
15 didn't understand them.

16 JUDGE JONES: No, no, don't re -- I just -- I
17 don't want you to --

18 MS. MELLO: You're telling me you're going to
19 rule and that you're not understanding my position, how is
20 that due process? My guess is if you're going to rule to
21 a dismissal, I have to ask for a hearing on the motion.

22 JUDGE JONES: I hear what you're saying and I
23 understand that you're saying because you have not stated
24 that the company has violated a Commission tariff, rule or
25 order, the Commission does not have jurisdiction. What

1 you're not understanding --

2 MS. MELLO: It's not just that I haven't
3 stated it, it's not the basis of the claim. I'm not going
4 to go into, you know, circuit court and bring any tariffs
5 in or make any other claims. It's not based upon that,
6 you know.

7 JUDGE JONES: Okay. Well --

8 MS. MELLO: It's like someone is fired and
9 they make a claim based upon violation of the workers'
10 compensation act, that they're retaliated for workers'
11 compensation, that would be like someone saying you have
12 to go to the Missouri Human Rights because you're also
13 African American and you might have been able to bring a
14 race discrimination case, but you took -- even though you
15 chose not to bring something, we can exclude your workers'
16 comp claim for retaliation because you didn't go to the
17 Missouri Commission on Human Rights, because you might
18 have also had a race discrimination claim that should have
19 gone to the Missouri Human Rights Commission.

20 JUDGE JONES: It sounds like you don't really
21 want -- it sounds like you don't understand the exhaustion
22 of administrative remedies. According to what you're
23 saying, there should be no exhaustion of administrative
24 remedies. Am I understanding you correctly?

25 MS. MELLO: There is no administrative claim,

1 nothing to -- exhaustive administrative remedies. Under
2 the statute, it has to be based upon a rule or a decision
3 of the Commission or a tariff. It's not based on that.
4 That's again, like I say, you don't understand my argument
5 which is there are administrative remedies for race
6 discrimination in Missouri. You have to go to the
7 Missouri Commission before you can go -- get your right to
8 sue letter. But that's only if you bring it based upon
9 their statutes.

10 I have a right -- I could bring other claims.
11 I could bring a claim for whistleblowing, but the very
12 fact that I might have other claims I could have brought
13 and bring them to the Public Service Commission simply
14 because they're also a regulated industry, if I don't
15 brings those claims based upon a regulation of the Public
16 Service Commission, then it shouldn't be something that
17 requires exhaustion of remedies. It begs the question,
18 because the statute says the only claims that can be filed
19 and need to be filed to go to court, that's primary
20 jurisdiction, but it says the only claims that can be
21 filed are ones based upon a tariff or whatever of the
22 Commission.

23 You know, maybe that's not the way you've done
24 things and maybe that's not the view that has been had by
25 staff or some expansion that's taken place, but I think if

1 you look at the cases such as Turner versus the Clayton
2 Schools which talked about what we're going to do with
3 statutes and statutory language, has to go back to a fresh
4 analysis, we have to look at the language of the statute
5 and start from there. And even if the regulations expand
6 that, we cannot proceed to use that expansion, we have to
7 be limited to what's in the statute and what the case law
8 says as the limit of the jurisdiction of the Public
9 Service Commission.

10 And again, those cases are very clear that the
11 role of the Public Service Commission is not like a mini
12 administrative hearing commission. There is no referral,
13 no -- you know, there's no supplanting of circuit court.
14 It's very limited and its primary role is rate making and
15 that its complaint jurisdiction is about its rates. It's
16 not some other, you know, review prior to civil
17 litigation, and those are the cases that I cited that I'm
18 concerned that you haven't looked at. I didn't make this
19 up about the limits of the Public Service Commission's
20 jurisdiction.

21 JUDGE JONES: Okay. Well, I have enough to, I
22 think, do something with the case and move it forward.
23 Does staff have anything else to add?

24 MS. MAYFIELD: No, Your Honor, we don't.

25 JUDGE JONES: Mr. Cooper?

1 MR. COOPER: No, Your Honor.

2 JUDGE JONES: Mr. Luft?

3 MR. LUFT: No, Your Honor.

4 JUDGE JONES: Ms. Shands, would you like to
5 add anything else?

6 MS. MELLO: Okay. My name is not Ms. Shands.
7 It's Ms. Mello.

8 JUDGE JONES: I mean Ms. Mello. I'm sorry.
9 Did you say no?

10 MS. MELLO: I said you keep calling me by the
11 wrong name.

12 JUDGE JONES: Actually I've been calling you
13 Ms. Mello for the last hour and a half, but --

14 MS. MELLO: You just called me Ms. Shands.

15 JUDGE JONES: I'm not going to argue with you
16 about that. You can read the record. Ms. Mello, do you
17 have anything else to add?

18 MS. MELLO: No. I will go ahead and send that
19 so it's in the record.

20 JUDGE JONES: Okay. Thank you. With that,
21 then we'll go off the record with both case numbers,
22 WC-2015-0030 and GC-2015-0045 and you all have a good
23 weekend.

24 (The proceedings were concluded at 10:55 A.M. on
25 December 12, 2014.)

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REPORTER'S CERTIFICATE

I, Beth O. Zink, Registered Professional
Reporter, Certified Shorthand Reporter and Certified Court
Reporter #0799, within and for the State of Missouri, do
hereby certify that I was personally present at the
proceedings as set forth in the caption sheet hereof; that
I then and there took down in stenotype the proceedings
had at said time and was thereafter transcribed by me, and
is fully and accurately set forth in the preceding pages.

Beth O. Zink, CSR, CCR #0799
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