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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
Prehearing Conference  
AUGUST 24, 2012  
Jefferson City, Missouri  
Volume 1

IN THE MATTER OF THE JOINT )  
APPLICATION OF MOORE BEND WATER )  
COMPANY, INC., AND MOORE BEND )  
WATER UTILITY, LLC, FOR AUTHORITY ) Case No. WM-2012-0335  
OF MOORE BEND WATER COMPANY, INC., )  
TO SELL CERTAIN ASSETS TO MOORE )  
BEND WATER UTILITY, LLC )

KENNARD L. JONES, Presiding  
SENIOR REGULATORY LAW JUDGE

1 A P P E A R A N C E S

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

2 JUDGE JONES: This is a prehearing conference in  
3 Case No. WM-2012-0335. My name is Kennard Jones. I'm the  
4 Judge presiding over this matter. At this time, let's  
5 take entries of appearances, beginning with Moore Bend.

6 MR. WIELAND: David Wieland, lawyer for Moore  
7 Bend Water Utility, LLC. I do not think anybody will be  
8 here for Moore Bend Water Company, Inc.

9 JUDGE JONES: Okay. And from the Office of the  
10 Public Counsel?

11 MS. BAKER: Thank you. Christina Baker  
12 appearing on behalf of the Office of the Public Counsel.

13 JUDGE JONES: And the Staff of the Commission?

14 MS. LEWIS: Rachel Lewis and Meghan McClowry on  
15 behalf of Staff. We have submitted our address sheets to  
16 the court reporter, Judge.

17 JUDGE JONES: Okay. Thanks. Well, just to try  
18 to get right to the point, it seems like this argument is  
19 just over the property issue of the wells being located on  
20 properties that belong to the company; is that right?

21 MS. BAKER: Yes. That's right.

22 JUDGE JONES: Okay. Are there any facts in  
23 dispute?

24 MS. BAKER: I think that's on Staff's. Yes.

25 JUDGE JONES: That's on Staff. Staff?

1 MS. LEWIS: We are unaware of any, and we were  
2 unaware of any that existed prior to this hearing and the  
3 evidentiary hearing being requested. We would like some  
4 guidance from Public Counsel and the companies if they  
5 have any undisputed facts that need to be decided by a  
6 Judge or the Commission because we are unaware of any.

7 MR. WIELAND: Company does not believe there are  
8 any undisputed facts. I'm sorry. Disputed facts.

9 JUDGE JONES: Okay. And OPC?

10 MS. BAKER: Our -- our issue has been whether  
11 there is legal access to the well sites through either  
12 easements or through ownership. And as long as the other  
13 parties agree that there is none, then I don't believe  
14 there is undisputed facts on that.

15 JUDGE JONES: So this is just a legal issue?

16 MS. BAKER. Yes. I believe so.

17 JUDGE JONES: Now, from my reading of the  
18 pleadings, it seems like the owner of the property owned  
19 -- he was it -- which is it? The water company or the  
20 utility? Moore Bend Water or Moore Bend --

21 MR. WIELAND: The owner right now is Moore Bend  
22 Water Company, Inc.

23 JUDGE JONES: Okay. And the owner of the  
24 property, though -- so -- so the water company?

25 MR. WIELAND: Right. The owner of the property

1 is Mr. Plummer. Mickey Plummer. And he has no connection  
2 to Moore Bend Water Company, Inc.

3 JUDGE JONES: Okay.

4 MS. BAKER: I think -- I think what he means is  
5 the -- the owner of the well sites is Mickey Plummer.

6 MR. WIELAND: That's correct.

7 JUDGE JONES: Right. And at some point, he  
8 owned the water company, right?

9 MR. WIELAND: He was the originator of that  
10 subdivision.

11 JUDGE JONES: Oh, I see. I see. So he owned it  
12 kind of -- well, for lack of a better word, finding fault.  
13 He was the property developer.

14 MR. WIELAND: Yes.

15 JUDGE JONES: And then he sold the company, but  
16 kept the property?

17 MR. WIELAND: That's correct.

18 JUDGE JONES: And that was ten years ago or so?

19 MR. WIELAND: 10 to 15 years ago because it's  
20 had more than one offer -- more than one owner between --  
21 between Plummer and Tyre who owns it now.

22 JUDGE JONES: Okay. And over this time period,  
23 the water company has had access to those wells?

24 MR. WIELAND: Yes.

25 JUDGE JONES: Have -- and I'm speaking to the

1 lawyers. Have you all talked -- I mean, I hear the word  
2 easement. But isn't there an easement by necessity in  
3 common law property here?

4 MS. LEWIS: Yeah, Judge. I think that there are  
5 legal avenues that -- and theories that apply to this  
6 case. That's why Staff agreed that it would be better to  
7 just let this sale go through and then in order to address  
8 any concerns and prevent any future concerns that the new  
9 -- the current purchaser could then buy the -- the well  
10 sites and bring it into maybe more easy to follow and easy  
11 to -- easier to determine legal avenues.

12 JUDGE JONES: Now, Ms. Baker, is your concern  
13 that someone at some point might own the property and  
14 interrupt the source of water?

15 MS. BAKER: Well, certainly. They have no legal  
16 access to it. Common law easements are something that you  
17 have to fight for in court. It's not fair to water -- to  
18 Moore Bend Water Utility to say, You can have a  
19 certificate and we all know that you don't have legal  
20 access to it and you may face a fight that you're going to  
21 have to pay for or you -- you may have to move the wells  
22 later. It's not fair.

23 We're in front of the Commission right now. We  
24 need to get it taken care of right now.

25 JUDGE JONES: Well, I mean, what if -- what if

1 the Commission -- I mean, do we have jurisdiction of water  
2 to purchase to get any legal access to the property when  
3 you have a party that's not subject to our jurisdiction, a  
4 party to the sale?

5 MS. BAKER: I mean, what -- what you have in  
6 front of you is it a detriment to the public. And our  
7 position is not having legal access to the well sites is a  
8 detriment to the public.

9 MS. LEWIS: But, Judge, to your point and to  
10 your question, no, the Commission doesn't have  
11 jurisdiction over Mr. Plummer. This is a transfer of  
12 assets case. Moore Bend Water is trying to sell it to  
13 Moore Bend Utility. That's what's before you.

14 MS. BAKER: That's right.

15 MS. LEWIS: It's not Mr. Plummer and his  
16 behavior and whether that's in the public interest.

17 MS. BAKER: That's correct.

18 MS. LEWIS: I think we're losing focus.

19 MS. BAKER: No, we're not losing focus. The  
20 focus is the transaction in front of the Commission in the  
21 public interest. And when the transaction does not  
22 include legal access to the two well sites and the -- and  
23 the customers face having to either pay for a legal battle  
24 ahead of time or pay for moving well sites, and, also, the  
25 -- you know, Moore Bend Water Utility is facing the exact

1 same thing.

2 JUDGE JONES: Ms. Baker, what I have to ask you  
3 is I hear -- I'm thinking in present tense. At this  
4 moment, I mean, from a legal standpoint, we agree they do  
5 have an easement right to the property?

6 MS. BAKER: No, we do not agree with that.

7 JUDGE JONES: We don't.

8 MS. BAKER: No.

9 JUDGE JONES: I mean, they have been traversing  
10 it and using it for some time. Isn't that an easement?

11 MS. BAKER: No. No. Moore Bend Water Utility  
12 has not been using it. This is a new utility. There was  
13 nothing in the past.

14 JUDGE JONES: Doesn't the easement come with the  
15 land?

16 MS. BAKER: He can fight for it in Court if he  
17 wants. But while he's in front of the Commission, he has  
18 nothing in his hand that says that he has legal access.  
19 And we all went around the table saying, Have we seen the  
20 easement? No, we have not seen it. And so, no, I cannot  
21 say that.

22 JUDGE JONES: But we do see an easement. We  
23 just don't see it on paper.

24 MS. BAKER: No.

25 JUDGE JONES: There is an easement.



1 MS. BAKER: No. I do not agree with that.

2 JUDGE JONES: Well, let me ask you, you don't  
3 agree -- so you're saying that the easement has to be in  
4 writing?

5 MS. BAKER: No. I'm saying that it needs to be  
6 -- it needs to be put into a legal aspect. If the  
7 Commission wants to say --

8 JUDGE JONES: I don't understand what that  
9 means.

10 MS. BAKER: If the Commission wants to say that  
11 it sees a common law easement, the Commission has the  
12 ability do that. I do not have the ability to do that.

13 JUDGE JONES: Well, of course -- I mean, of  
14 course, the Commission is who is going to make the  
15 determination. But you have the ability to say whether or  
16 not you see a common law easement.

17 MS. BAKER: I do not see a common law easement.

18 JUDGE JONES: You don't. Okay.

19 MS. BAKER: I see -- I see a new purchaser, and  
20 I see -- I see nothing -- it all comes down to the fact  
21 that, in this case, the burden of proof is on the company.  
22 The company has made no statement that it has a common law  
23 easement. You brought that up today. So if -- if the  
24 company -- if the company --

25 MS. LEWIS: But --

1 JUDGE JONES: Before you all start arguing the  
2 -- the existence of a legal conclusion is not necessitated  
3 by a party raising the issue. It's -- even if the  
4 Commission didn't raise it, it's still a reality that we  
5 just are able to take advantage of if no one mentions it,  
6 so I don't --

7 MS. BAKER: I mean, if the company wants to  
8 stand up in front of the Commission and file something and  
9 claim that they have a common law easement, that's fine.  
10 But they have not. We've gone through meetings and things  
11 like that. They have not.

12 MS. LEWIS: But, Judge, Public Counsel is asking  
13 the current potential purchaser to do these things. That  
14 person has not been approved to get the certificate that  
15 would enable him do these things. We're not -- they're  
16 not asking the current owner of the system to do anything.  
17 They're just holding this process up.

18 This man wants to get out of the business and  
19 give it to somebody who is already in the regulated  
20 business and who wants to establish a new entity and has  
21 expressed a willingness to work to get a written legal  
22 easement or to purchase the well sites. But Public  
23 Counsel, as it's proposed, would have them do that before  
24 this is approved, and that just seems unnecessary --

25 MS. BAKER: I mean, the protection --

1 MS. LEWIS: -- overly burdensome. And it's  
2 going to cause the ratepayers to have to cause money to be  
3 spent on a hearing when there's just a legal issue and all  
4 of the parties have agreed to a way to address that legal  
5 issue in the future.

6 MS. BAKER: The protection is that we have a case  
7 in front of the Commission right now where we can go into  
8 a whatever avenue the purchaser is proposing, and we can  
9 look at that -- at that transaction and see if it is in  
10 the public interest.

11 If this waits and then this is all done, then  
12 Moore Bend Water Utility is stuck. And they have to come  
13 back in, and then they -- then -- then what are they going  
14 to do?

15 MS. LEWIS: And if this doesn't go through --

16 JUDGE JONES: Wait, wait. Wait, Ms. Lewis. I  
17 didn't follow you at all on -- I mean, I heard you saying  
18 things, but I don't understand what you were saying.

19 MS. BAKER: What I'm saying is that if it turns  
20 out later that they cannot get an easement or a  
21 purchase --

22 JUDGE JONES: What you're -- what you're saying  
23 is that they do not have an easement now?

24 MS. BAKER: I mean, I -- we've gone --

25 JUDGE JONES: This is a property -- Property 1

1 and Property 2 issue.

2 MS. BAKER: If they want to bring that up in  
3 front of the Commission, they certainly can.

4 JUDGE JONES: What I'm saying is I've brought it  
5 up. It's irrelevant whether they bring it up or not.

6 MS. BAKER: Well, but --

7 MS. LEWIS: And Staff has also brought up other  
8 legal theories, Judge, so it's not like this is a new  
9 issue that was brought up today.

10 MS. BAKER: In all due respect, that's why we  
11 asked for the evidentiary hearing. If we want to bring  
12 this up in front of the Commission, that's what we've  
13 asked for.

14 JUDGE JONES: When you say evidentiary hearing,  
15 to me, that means there's evidence that you all disagree  
16 on. There is -- there is evidence you all disagree on.

17 MS. BAKER: That is --

18 JUDGE JONES: That's a legal conclusion, right?

19 MS. BAKER: That -- that is my step forward in  
20 this administrative position. If -- if we want to  
21 have a situation where the -- the company has the burden  
22 of proof of whether this is in the public interest, this  
23 is -- that's what I asked for.

24 If the Commission would prefer to have an oral  
25 argument or to take evidence from the -- from the -- the

1 purchaser, then I am fine with that. But my avenue in  
2 this procedure is to ask for an evidentiary hearing.

3 JUDGE JONES: I still can't figure out why you  
4 want an evidentiary hearing.

5 MS. BAKER: What else do I have in front of me?

6 JUDGE JONES: You mean what options do you have?

7 MS. BAKER: That's right. What other options do  
8 I have to bring this in front of the Commission?

9 JUDGE JONES: The legal issue we're dealing with  
10 is -- okay. If -- if the company -- if we -- it's a  
11 transfer of assets. We transfer the assets.

12 The question is now, do they have access to the  
13 well? That's the first thing I asked. Do they -- does  
14 the company have access to the wells if that's -- transfer  
15 it or the day after when the transferee have access to  
16 those wells.

17 MS. BAKER: And my statement is that -- that the  
18 common law issues aside, they do not have easements or  
19 they do not own it. So if they walk across it, they are  
20 trespassing.

21 JUDGE JONES: Why -- why do you say common law  
22 issues aside?

23 MS. BAKER: Because that was just really brought  
24 up today.

25 JUDGE JONES: Well, right. Because we're

1 considering it today. I mean --

2 MS. BAKER: And, I mean, but -- but -- I mean,  
3 are you going to make a ruling on this case?

4 JUDGE JONES: You mean me personally?

5 MS. BAKER: Yeah. Yeah. Or is this going to go  
6 to the Commission? I guess I'm confused now.

7 JUDGE JONES: Everything I do is authorized by  
8 the Commission, whether they're --

9 MS. BAKER: Okay. Okay.

10 JUDGE JONES: -- going to do something with it,  
11 whether it's direct or by delegation, however.

12 MS. BAKER: Right. Right. I guess I'm a little  
13 bit concerned because it seems like you've already  
14 decided. And so --

15 JUDGE JONES: Well, I haven't decided. I'm  
16 asking a question. Is there common law issue because it's  
17 something that can resolve this case, not because I want  
18 you all to continue to fight over this because I get a  
19 feeling there's something underlying the hostility going  
20 on between Staff and OPC, like you all have disagreed and  
21 everyone's dug in. And I don't want to have you all  
22 digging into your positions and be unable to seek a  
23 resolution. It's my job to move the case.

24 MS. BAKER: My -- our disagreement is Staff  
25 would rather punt it until later. Public Counsel wants it

1 now in this case.

2 MS. LEWIS: Judge, after Public Counsel brought  
3 this up, Staff did approach them, and we believed we had a  
4 resolution to this and that the Public Counsel would not  
5 oppose that resolution and would withdraw their objections  
6 at that point.

7 And then they filed the -- their motion that  
8 added the contingency to make it void.

9 MS. BAKER: Right.

10 MS. LEWIS: Therefore, Staff doesn't know where  
11 to go with the settlement on this. They're certainly open  
12 to it, but we put a settlement out there to address it,  
13 believe it to be an effective --

14 Judge JONES: I hear what you're saying. You're  
15 saying they're trying get along, and they're not.

16 MS. BAKER: That is not true. That is not true  
17 at all.

18 JUDGE JONES: Who is saying it's not true?

19 MS. BAKER: I'm saying it's not. I'm saying  
20 what happened was, and this is all settlement negotiations  
21 which honestly should not be talked about.

22 MS. LEWIS: Well, but they were filed --

23 JUDGE JONES: Well, can you all stop for a  
24 second? I don't really care about the settlement  
25 negotiations. I mean, that's -- by telling me what went on

1 in settlement is trying to place blame on someone. I'm  
2 not concerned with that. What I'm concerned with is the  
3 issue of -- today, this issue of common law easement is  
4 brought up. Is it relevant? That's the question I want  
5 you all to think about because the Commission is going to  
6 be faced with this. I'm going to see to it. Because I  
7 think there's a solution to this case.

8 If there's not, then I'm asking someone to show  
9 me that it's not or show me that it is. I'm looking for  
10 legal analysis on that issue. If the company has -- has  
11 the -- if the transfer goes through, they have to access  
12 the wells.

13 And if common law easement allows it access by  
14 necessity or some other easement term of some sort that  
15 doesn't matter who owns that property, they're able to get  
16 to -- to this look into the future and say, Well, somebody  
17 may come along and not want them to get to the property,  
18 and now they have to fight to get to it is to assume that  
19 that's going to happen. That's not something that's a  
20 fact today, though.

21 MS. BAKER: And -- and as far as Public  
22 Counsel's concerned, if the Commission will come out and  
23 say that it has found a common law easement, then that --  
24 that fits with exactly what we've asked for in this case.

25 JUDGE JONES: So that would -- that would



1 appease you then, right?

2 MS. BAKER: Yes.

3 JUDGE JONES: That satisfies your concerns.

4 Okay.

5 MS. BAKER: But I -- I can't just say that it  
6 exists.

7 JUDGE JONES: But, I mean, you can -- you can  
8 point to the legal opinion on it, can't you?

9 MS. BAKER: Yes. And I can -- I can argue and I  
10 can research and all that. But when it comes down to it  
11 and -- and at the end of the day, it will be the  
12 Commission who has to say that it exists or not.

13 JUDGE JONES: Well, yeah. I mean --

14 MS. BAKER: And are we sure that the Commission  
15 is going to be willing do that?

16 JUDGE JONES: Well, I don't know.

17 MS. BAKER: So --

18 JUDGE JONES: I'm pretty convincing.

19 MS. BAKER: Okay.

20 JUDGE JONES: I want to know if the company has  
21 anything else -- I feel like I've been hearing,  
22 Mr. Wieland, you trying to jump in at points.

23 MR. WIELAND: I have every so often as has Burt  
24 Brower. We -- we -- it seems to me that after 10 or 15  
25 years of letting somebody use your well that there would

1 be either an easement by prescription or --

2 JUDGE JONES: Prescription. That's what I was  
3 trying to think of.

4 MR. WIELAND: One of those two, especially with  
5 the former -- the original owner was the owner of the  
6 utility company in the -- when they first developed the  
7 property.

8 We -- we would like to have control of that well  
9 for a couple reasons. No. 1, then we don't have to get  
10 into the vagaries of scrapping in Court possibly about  
11 whether there is an easement by prescription or an  
12 easement by necessity.

13 But, secondly, Mr. Brower just pointed out to me  
14 that if -- if we had control of the property, we could  
15 keep somebody from developing something right over the  
16 well or doing something that might harm the -- the  
17 integrity of the water supply.

18 And I'll let Burt, who has been in the water  
19 business for years and years, address that.

20 MR. BROWER: Yes. We don't want somebody  
21 putting in a house, a dwelling, septic and lateral system  
22 close to the well. That would not be desirable. But all  
23 -- but I'd like to point out that the owner of the  
24 property has offered to sell the property.

25 So -- and I think it would be desirable so that

1 we have dual control of ownership of that. I think that  
2 would solve a lot of the issues that you've been talking  
3 about.

4           However, I want to -- if -- if I proceed to buy  
5 it, you know, that would need to be considered in the rate  
6 base, at least some of the purchase price would. Mr.  
7 Plummer owns more property right there than just the well.

8           MR. WIELAND: Burt owns the property that the  
9 two wells sit on. Then he's got a little dwelling which  
10 is a third property which he has used as a field office  
11 for -- for the water system, which I think would be  
12 desirable to have as part of the water system because this  
13 place is very remote.

14           MR. BROWER: The closest sanitary facilities are  
15 20 miles away at a convenience store. So whether it's  
16 having, you know, people down there servicing the well,  
17 reading meters and that, it would be nice to have access  
18 to rest room facilities or a place to wash -- wash up or  
19 whatever as we do with the system. If he was to close the  
20 purchase of the water system, if we could say that the  
21 ground that the wells sit on, plus the trailer that they  
22 use for a field office can be purchased in addition as  
23 part of the water company --

24           MR. WIELAND: Well, let me jump in. We --  
25 Burt's been negotiating with this Mr. Plummer, and he

1 knows about the -- the issue relating to access to the  
2 water. And he's kind of holding us hostage, and he is  
3 asking for more than what our understanding is a fair  
4 market value of that property.

5 And let me go back to the issue at hand about  
6 whether or not the Commission approves this. Right now,  
7 the -- the seller does not have any particular legal  
8 access other than this easement by prescription or  
9 easement by necessity.

10 And Moore Bend Water Utility, LLC, the  
11 purchaser, would simply be stepping right into flight that  
12 -- those exact same shoes. And if the purchase went  
13 through, Mr. Plummer, the owner of the real estate, would  
14 not be able to hold the transaction over our heads and  
15 extract a higher than fair market value for this property  
16 that the well is on.

17 And I -- I -- I would be very surprised if  
18 Mr. Plummer could find a way to address getting the water  
19 that he's been providing the utility for 10 or 15 years.  
20 Out purchase of the assets and the well would be tacked  
21 onto the current operator's use and -- and that use would  
22 be tacked onto the prior operator's use.

23 So it seems to me that we -- we've pretty well  
24 got an easement by prescription or by necessity to access  
25 the water to the well.

1 JUDGE JONES: Okay. So you're saying he's using  
2 this proceeding to jack the price of the property up,  
3 knowing this is a --

4 MR. WIELAND: We believe so. He's -- he's --  
5 we've got a realtor that's telling us what -- what they  
6 think the fair market value of the property is, and Mr.  
7 Plummer's not very close to that. He's, what, 35 40  
8 percent higher.

9 MR. BROWER: \$20,000 higher. That -- it's more  
10 than one property, but he -- he is usually -- he's --  
11 since it's drawn out for a length of time, he's got -- my  
12 last conversation with him is that he is taking the offer  
13 off the table, which I'm okay with because I can come at a  
14 later time and put a new offer on the table.

15 MR. WIELAND: Our -- our belief is the property  
16 is worth in the \$50,000 range. He want 70.

17 MR. BROWER: Yeah.

18 MS. BAKER: Okay. And --

19 MR. BROWER: But, again, I don't --

20 JUDGE JONES: Those issues, the value of the  
21 property and if you purchased it, assuming the LLC gets  
22 this favorable transfer is an issue for a rate case,  
23 whether or not to purchase, but I guess negotiate a  
24 prudent purchase. But to -- the issue that we need to get  
25 resolved -- I -- and I'm just recalling this. I know some

1 of our statutes require due hearing. Some of them don't.

2 I don't think there -- this statute requires a hearing.

3 Of course, there are facts in -- in dispute, and  
4 we have to resolve those facts in order to come to the  
5 conclusions that are necessitated by statute. Since there  
6 are, I don't hear anywhere facts in dispute.

7 The only issue hear is whether or not -- like I  
8 said, this is new. You know, Ms. Baker, is there a common  
9 law issue you're just hearing today? Well, I know you  
10 were aware of it in the back of your mind somewhere, but  
11 it's just been brought to the forefront today; is that  
12 correct?

13 MS. BAKER: It has been brought to the forefront  
14 today as a possible resolution, yes.

15 JUDGE JONES: Okay. Well, I'm going to  
16 encourage you all just to talk about that. And -- and I  
17 --

18 MS. BAKER: I mean, we -- we --

19 JUDGE JONES: I don't want to keep getting --  
20 we've got enough filings in this case already. And I -- I  
21 don't think the issue is so complicated that it  
22 necessitates oral argument.

23 MS. BAKER: Well, we can talk about it all we  
24 like, but no one at this table can make that decision of  
25 whether a common law easement exists or not. That would

1 have to be from the Commission.

2 JUDGE JONES: You're correct that any decision  
3 is going to have to come from the Commission. But that  
4 doesn't mean that no one at that table can have a legal  
5 opinion.

6 MS. BAKER: Oh, sure. We can have all the  
7 opinions that we want, but --

8 JUDGE JONES: That's what I'm wanting. Are  
9 you --

10 MS. BAKER: I guess, what are you offering  
11 instead of oral arguments? Are you wanting paper  
12 arguments?

13 JUDGE JONES: Just file something. Just file  
14 something that gives your opinion on whether or not common  
15 law easement exists. If a common law easements exists and  
16 I'm -- I'm speaking -- the Commissioners have four  
17 different heads right now, and I have my own.

18 I've always given my opinion on every case. And  
19 I have -- I come to a legal conclusion. And I'm going to  
20 talk to each Commissioner one by one at some point to see  
21 what they think about it, and then I'm going to issue an  
22 order consistent with their wishes.

23 I've done this since I've been here, and I've  
24 been pretty successful of convincing the Commissioners to  
25 hear where I'm coming from from a legal standpoint.

1           And the issue of common law easement just  
2 occurred to me. I did just very little research. But  
3 then, you know, I thought today I would extend an  
4 opportunity for -- for the parties, to the extent that  
5 they want to, to -- to argue that on paper.

6           I don't think we need to go on the record in  
7 oral argument to argue something that's just as easily  
8 written down because, I mean, I don't see it as a  
9 complicated issue, that issue in particular, whether a  
10 common law easement exists.

11           It's -- I don't know. It just seems -- it's  
12 just something that could be resolved in a 50-minute  
13 class, I'm sure, in law school. So -- so what I'm  
14 proposing as a resolution is that you all file your  
15 opinions on whether that exists.

16           I'm not -- and this is more particularly between  
17 Staff and OPC because I know that if Moore Bend's attorney  
18 has to be filing something else, it's just going to cost  
19 the ratepayers more. And I'd like to avoid that if -- if  
20 possible.

21           But, of course, Mr. Wieland and -- and Moore  
22 Bend, if you -- if you do that, feel free to do so. I  
23 mean, it may help. So, I mean, do you -- I mean, that's  
24 the issue we're dealing with, right?

25           MS. BAKER: I mean, I think it comes down to the



1 fact that the issue on the table is whether the company  
2 has shown that this is in the public interest. And if the  
3 company doesn't file anything about common law easement,  
4 all the Commission has in front of it is OPC's opinion and  
5 the neutral's opinion.

6 JUDGE JONES: Oh, I see.

7 MS. BAKER: Because the burden is on the  
8 company.

9 JUDGE JONES: Does that -- is that what the  
10 statute says? Does it say the company has to show it's in  
11 the public interest, or does it simply say it's in the  
12 public interest?

13 MS. LEWIS: It says in the public interest, I  
14 believe. I don't have it right in front of me, Judge, but  
15 I don't believe --

16 MR. WIELAND: I would think it certainly  
17 wouldn't hurt the public interest because, as we sit right  
18 now, Moore Bend Water Company, Inc., doesn't have any more  
19 access than -- than we -- the purchaser would have had if  
20 the transaction went through as it is right now without  
21 any purchase of the real estate.

22 JUDGE JONES: Oh, I see what you're saying. So  
23 if nothing happens, this property issue is as much of an  
24 issue as it was the last week or a year ago.

25 MS. BAKER: Right.

1 MR. WIELAND: Is that right?

2 MR. BROWER: Well --

3 THE COURT REPORTER: I can't hear him.

4 Ms. LEWIS: Could you speak up, Mr. Brower?

5 MR. BROWER: -- a contingency that the  
6 property can be purchased after the utility at a later  
7 time and that be considered favorably as far as the rate  
8 base is concerned.

9 JUDGE JONES: Yeah. That's -- that's something  
10 that I believe Staff proposed in one of its earlier  
11 pleading. But here's the thing about that contingency  
12 that I saw as a problem.

13 So we say, Here's a transfer, but it's then  
14 contingent on a future occurrence. Well, if that future  
15 occurrence doesn't occur, then what? Is the transfer  
16 void? Because if -- what if the guy doesn't want to sell  
17 the property for whatever reason?

18 MR. WIELAND: Yeah. I don't know that.

19 JUDGE JONES: Right. I mean, I'm speaking to  
20 all the parties, too, not just you, sir, because I realize  
21 by offering that, you were -- you were kind of talking up  
22 about it. But that's a -- that's a problem.

23 I don't -- I don't know if that is even a good  
24 contingency. Even though it was proposed by a party in  
25 the case, I can't see how the Commission can police that

1 to say, Yeah, here's your -- here's the transfer, but  
2 you've got to do this later.

3 MS. LEWIS: Well, Judge, in the past, we have  
4 done things like this where the companies have to act on  
5 things within a certain number of days or achieve  
6 something within a certain time period, three years, five  
7 years, and then they come in for a Commission review or  
8 it's part of the rate case, which is why -- and I want to  
9 clear the record here.

10 When I was talking earlier about what we filed,  
11 I was not discussing settlement negotiations that are  
12 private. I was simply -- what my intention was was to  
13 show that what I filed and what I portrayed as having been  
14 discussed in my pleading to the Commission was, in fact,  
15 actual when I filed and something changed after that.

16 JUDGE JONES: Oh, yeah. I can see that from  
17 your point.

18 MS. LEWIS: That's the point I was making. I  
19 don't want an ethical violation against me. That wasn't  
20 my intent. But, also, to highlight those conditions that  
21 they do address the concerns raised by Public Counsel, and  
22 while we agree that there is currently lawful access and  
23 we were -- we are agreeing to allow this to go through.

24 And as you heard from Mr. Brower and  
25 Mr. Wieland, they're willing to purchase this later. And

1 this -- this dispute in this case is potentially affecting  
2 that sale, and they're holding the price up for it. And  
3 that doesn't seem in the public interest at all, nor does  
4 Public Counsel's proposal resolve the issue at hand that  
5 the current system doesn't have a written easement and  
6 they're operating fine without incident.

7 The new one will have the same kind of incident  
8 -- or access. So I just kind of feel like we're spinning  
9 our wheels. We're happy to file something, but Public  
10 Counsel keep bringing up the burden. And --

11 MS. BAKER: We're not --

12 MS. LEWIS: -- we think that it's been shown,  
13 Judge -- even if the burden is on the company, they've  
14 shown that they have access, that owner has granted  
15 access. They've had permission. The system has access to  
16 those wells at all times. There's nothing to the contrary  
17 about that.

18 MS. BAKER: There's -- there's a lot to the  
19 contrary that -- that -- Mr. Wieland and Mr. Brower said  
20 today. They are worried about access. They are worried  
21 about development around it. They're worried that now  
22 their relationship with the property owner has somehow  
23 gone south.

24 All of these things happen in a moment. And so  
25 that's what we're saying. We are in front of the

1 Commission right now. We can get this taken care of right  
2 now. Two wrongs don't make a right. The fact that the --  
3 the customers are -- are in a very precarious position at  
4 the moment doesn't mean that, Oh, well, we'll get it off  
5 our table and we'll keep them in that position. We have  
6 the opportunity to fix it.

7 JUDGE JONES: Well, Ms. Baker, let me ask you --  
8 let me ask you this. What if -- what if the property  
9 owner somehow got a messenger to go to the office where  
10 Moore Bend is right now and said, Screw you, you're never  
11 getting this property, I don't know why I feel this way --  
12 it's because it's Friday and I'm going to drink a  
13 six-pack, there will never be a sale?

14 MS. BAKER: Well, at least today, then Mr.  
15 Brower can walk away, and he will be protected.  
16 Afterwards when he owns the certificate, he cannot walk  
17 away.

18 MS. LEWIS: And if he walks away today, we're  
19 left with an owner who doesn't want to be in the utility  
20 business anymore and may --

21 MS. BAKER: And that has nothing do with  
22 Mr. Brower, and that has nothing do with the case before  
23 us.

24 MS. LEWIS: Right. It only has to do with the  
25 customers who are getting water from the current owner

1 that --

2 MS. BAKER: I think that --

3 JUDGE JONES: Hey, you all are going to have to  
4 not do that. Ms. Baker, the point I'm making is -- is,  
5 well, similar to what Ms. Lewis is saying.

6 We have an owner who does want to be in the  
7 business. And we know -- and we know from past Commission  
8 experience that an owner who doesn't want to be in the  
9 business will eventually walk away.

10 MS. BAKER: But that's not what's in front of  
11 the Commission today.

12 JUDGE JONES: That's not what I'm talking about.  
13 We're talking about --

14 MS. BAKER: Right.

15 JUDGE JONES: -- a practical solution to this  
16 real world problem.

17 MS. BAKER: I understand that.

18 JUDGE JONES: We're not going to be bickering  
19 about these little minutiae when we know particularly with  
20 our history at the Commission, if you have an owner who  
21 doesn't want to play, they're not going to.

22 And then we have an owner who wants to play, but  
23 -- but -- but there's a hang-up on access to wells that  
24 isn't even a real problem right now. It may be later. I  
25 don't disagree with you. We don't know what's going to

1 happen in the future.

2 My point and my question to you, Ms. Baker, is  
3 what if -- what if right now we know for a fact that that  
4 property will not ever be sold to the water company?

5 MS. BAKER: Then -- then Mr. Brower will not be  
6 held responsible for it.

7 JUDGE JONES: Wait. Mr. Brower is the owner of  
8 the LLC?

9 MS. LEWIS: He's the potential purchaser.

10 JUDGE JONES: He's the purchaser?

11 MS. BAKER: Yes.

12 JUDGE JONES: Responsible for that?

13 MS. BAKER: For anything in this. He doesn't  
14 own it. He doesn't have a certificate for it. His  
15 request for approval to purchase, he can walk away from  
16 it.

17 JUDGE JONES: Well, what if he doesn't want to  
18 walk away from it? What if he still wants to purchase and  
19 he thinks, I can -- Look, if this guy wants to fight about  
20 getting to the well or anybody else wants to fight about  
21 it, that's fine, we'll deal with that.

22 I mean, if the transfer goes through -- okay.  
23 What if the Commission approves the transfer and there is  
24 never a sale of that property --

25 MS. BAKER: I mean --

1 JUDGE JONES: -- to the water company?

2 MS. BAKER: I mean --

3 JUDGE JONES: What happens from a practical  
4 standpoint?

5 Ms. BAKER: I mean, from a practical standpoint,  
6 he owns it. He has the certificate for it. If he loses  
7 access to it, he has to build wells somewhere else. And  
8 the customers are going to be on the line for that. And  
9 if he has --

10 JUDGE JONES: But the customer is on the line  
11 now.

12 MS. BAKER: Right. Exactly. And that's my  
13 point. We have the opportunity to fix it.

14 MS. LEWIS: And --

15 JUDGE JONES: Do you know that we can force a  
16 sale of that property?

17 MS. BAKER: I think we can say, does he have  
18 legal access? If you want to argue the common law  
19 easement, I said I was fine with that. And if the  
20 Commission comes back and says they have found it and  
21 we're A-OK, then I'm fine with that.

22 JUDGE JONES: That makes it fine. What if --  
23 what if -- what if a Circuit Court Judge disagrees?

24 MS. BAKER: I don't know. That's my problem.

25 JUDGE JONES: Well, The point I'm making is the



1 Commission's statement of laws is, as we know, not  
2 necessarily conclusary. It just -- it just gives us peace  
3 here.

4 MS. BAKER: And that was my concern earlier in  
5 this conversation. I can't say that there's legal access.  
6 Staff can't say there's legal access.

7 JUDGE JONES: Well, what do you think? I  
8 mean --

9 MS. BAKER: I think that we can -- we can give  
10 it a good go.

11 JUDGE JONES: I mean, what do you think about  
12 that issue of common law easement?

13 MS. BAKER: I think we can give it a good go.  
14 That's all can I say.

15 JUDGE JONES: I'm asking, do you have a legal  
16 opinion on this?

17 MS. BAKER: I think we can try it. Yes. I can  
18 stand up there, and I can argue it and not giggle. Is  
19 that what you want to know?

20 JUDGE JONES: No. I don't know what you're  
21 talking about. Stand up where and not giggle?

22 MS. BAKER: I don't know. Where? Where am I  
23 going to argue this?

24 JUDGE JONES: I'm asking you right now, I mean,  
25 off the cuff --

1 MS. BAKER: Yes.

2 JUDGE JONES: -- do you believe there's a common  
3 law easement?

4 MS. BAKER: I don't know. One, I just found  
5 about it today. I have not pulled the cases.

6 JUDGE JONES: Okay.

7 MS. BAKER: Do I think I can make a good  
8 argument without a giggle? Yeah. I probably could.

9 JUDGE JONES: That's not what I'm asking you.  
10 When you say without a giggle, it's almost like you don't  
11 believe that the argument is sound.

12 MS. BAKER: I don't know.

13 JUDGE JONES: I don't want you to just make an  
14 argument.

15 MS. BAKER: I don't know.

16 JUDGE JONES: All right. So it sounds like we  
17 need time to research that issue. Does that sound  
18 reasonable? Does it sound good?

19 MS. BAKER: That's fine with me. And I said a  
20 while back, if -- if this is what we want to try in front  
21 of the Commission and the Commission wants to make that  
22 determination, then that fits with what I've asked for.

23 JUDGE JONES: And, Ms. Lewis, how does that  
24 sound to you?

25 MS. LEWIS: That sounds just fine, Judge.

1 JUDGE JONES: Okay. Well, then you all file  
2 something separately or you could file a joint pleading.

3 MS. LEWIS: I think a separate pleading is  
4 probably a better idea, Judge.

5 JUDGE JONES: Just trying to get you to work  
6 together. And, Mr. Wieland, if you want to file  
7 something, you're welcome to, but, you know, it's --  
8 it's --

9 MS. BAKER: I would -- I would highly recommend  
10 that he does because it's his burden.

11 MR. WIELAND: I can file something, Judge.

12 JUDGE JONES: Okay.

13 MS. BAKER: If We want this to pass an Appeals  
14 Court, then it's highly recommended that the person who  
15 has the burden has the argument.

16 JUDGE JONES: See, I don't -- I don't -- I don't  
17 -- that's something I'm not -- well, why don't you file  
18 something on who has the burden, too, then? Let's make  
19 that an issue, also.

20 MS. BAKER: All right.

21 JUDGE JONES: Because I'm -- I don't have the  
22 statue in front of me. But I -- I don't -- for some  
23 reason, I just remember that it being in the public  
24 interest, not that the applicant --

25 MS. BAKER: No. When an application -- what my

1 -- what I'm saying is that when an application comes in  
2 front of the Commission, it is the Applicant's burden to  
3 prove that what they have asked for is lawful and is, in  
4 this case, to be lawful is in the public interest.

5 JUDGE JONES: Okay. Now, let me ask you this,  
6 then. If -- if it's one party's burden to do something,  
7 can't another party carry that burden? If the -- if the  
8 -- if one party --

9 MS. BAKER: Well, I'm not going to --

10 JUDGE JONES: -- has the burden to put something  
11 into the case, but it's put into the case by someone else,  
12 then that burden is carried?

13 MS. BAKER: No, no. I'm not carrying the burden  
14 for it, and Staff is neutral, so they can't carry a  
15 burden.

16 JUDGE JONES: That's not my point. It's not the  
17 party's position. You've had -- you've had in court cases  
18 millions of times, I'm sure, in American history where an  
19 opponent of a party has, in some crazy way, by accident,  
20 carried the burden of the party who opposes him.

21 MS. BAKER: I mean, he can adopt it, yes. But,  
22 you know --

23 JUDGE JONES: Just -- just an argument or facts  
24 or put into the record as the party's burden to put  
25 something in or to argue something. if it's argued by

1 someone else, then that burden is alleviated.

2 MS. BAKER: No.

3 JUDGE JONES: Well, in that case, I think we  
4 should -- we should do some research on that, too.

5 MS. BAKER: That's fine.

6 MS. LEWIS: Judge, just to be clear, you wanted  
7 a memo from --

8 JUDGE JONES: Yeah. Just memos from anybody who  
9 wants to file something.

10 MS. LEWIS: On the burden of proof in a transfer  
11 case and on whether or not there was a common law  
12 easement?

13 JUDGE JONES: That's correct.

14 MS. LEWIS: Okay. When do those need to be  
15 filed?

16 JUDGE JONES: How much time do you need? And  
17 I'm going to ask Moore Bend, what kind of time frame are  
18 we looking -- this case has gone on for a lot longer than  
19 I anticipated.

20 MR. WIELAND: Our seller is still motivated.  
21 I'm not going to need more than five days to get what I  
22 have on that issue.

23 JUDGE JONES: Okay. And Staff and OPC, you know  
24 I value things going on, but I'd like to get this in front  
25 of the Commissioners and --

1 MS. BAKER: I can do whenever Staff is ready.

2 MS. LEWIS: Well, we can do it whenever you're  
3 ready, Christina. Ten days?

4 MS. BAKER: Ten days, two weeks, whatever.

5 JUDGE JONES: Okay.

6 MS. LEWIS: So --

7 JUDGE JONES: What's up?

8 MS. LEWIS: September 3rd is Labor Day.

9 JUDGE JONES: Well, how about the day after  
10 Labor Day? That way, anybody who hasn't finished it has  
11 to work on Labor Day.

12 MS. BAKER: September 4th?

13 JUDGE JONES: Is that going to -- is that going  
14 to hurt you guys, Moore Bend, putting it out that far,  
15 September 4th?

16 MR. WIELAND: I don't think so.

17 JUDGE JONES: Okay. All right. And is there  
18 anything else -- I mean, you all should probably talk  
19 about this a little bit more, if you want, off the record.  
20 But I'm going to -- is there anything you all need from  
21 me?

22 MS. LEWIS: No, Judge. Not from Staff. Thank  
23 you.

24 JUDGE JONES: All right. And I'm not going to  
25 -- I'm not going to issue an Order. We'll just consider

1 this discussion as being on the record as me telling you  
2 all to file something no later than September 4th, a memo  
3 discussing the common law easement issue and the burdens  
4 of proof in this transfer case. Burdens of -- I don't  
5 even know if this production is a -- production a burden  
6 of proof. Probably a burden of proof. But on this  
7 transfer case. Okay?

8 MS. MCCLOWRY: Okay.

9 MR. WIELAND: All right.

10 JUDGE JONES: Well, with that, then, I am off,  
11 and we're off the record. You all have a good week.

12 MS. LEWIS: Judge?

13 JUDGE JONES: Yes.

14 MS. LEWIS: While you're on the record still,  
15 Jim Mercile is also in here, and he just wanted to point  
16 out that we don't think it's necessary to go into all of  
17 them, but, to his recollection, Mr. Plummer was not the  
18 developer. It was another man.

19 JUDGE JONES: Oh, that's fine. That's -- okay.  
20 That clears it up for the record.

21 MS. LEWIS: Exactly.

22 JUDGE JONES: Okay.

23 MR. WIELAND: This is Dave Wieland. We will  
24 find that out. We've probably got access to that fact.

25 JUDGE JONES: That's -- I mean, I don't know

1 that I need to know that. But it's --

2 MS. LEWIS: No. I just wanted to make the  
3 record clear.

4 JUDGE JONES: Yeah. I don't think it's  
5 something you all have to go back and look for,  
6 Mr. Wieland.

7 MR. WIELAND: All right. Thank you.

8 JUDGE JONES: Okay. You all have a good  
9 weekend.

10 MS. MCCLOWRY: You, too.

11 MS. BAKER: Thank you.

12 MR. WIELAND: Thank you.

13 (The proceedings were concluded at 10:45 a.m. on  
14 August 24, 2012.)

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REPORTER'S CERTIFICATE

STATE OF MISSOURI )

) ss.

COUNTY OF OSAGE )

I, Monnie S. Mealy, Certified Shorthand Reporter,  
Certified Court Reporter #0538, and Registered  
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\_\_\_\_\_

Monnie S. Mealy, CSR, CCR #0539  
Registered Professional Reporter

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