

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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7 TRANSCRIPT OF PROCEEDINGS  
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9 PREHEARING CONFERENCE

10  
11 May 20, 2004  
12 Jefferson City, Missouri  
13 Volume 1  
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16 In the Matter of the )  
17 Application of Joe D. Carter )  
18 for a Change of Electric )  
19 Supplier from White River ) Case No. EO-2004-0352  
20 Valley Electric Cooperative to )  
21 City of Nixa Electric )

22 KENNARD L. JONES, Presiding,  
23 REGULATORY LAW JUDGE.

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

2 JUDGE JONES: Let's go ahead and go on the record.  
3 This is a prehearing conference for Case No. EO-2004-0352, In  
4 the Matter of the Application of Joe D. Carter for a Change of  
5 Electric Supplier from White River Valley Electric Cooperative  
6 to City of Nixa Electric.

7 My name is Kennard Jones. I am the Regulatory Law  
8 Judge presiding over this matter. At this time I'll take  
9 entries of appearance, beginning to my left with Staff.

10 MR. FRANSON: Thank you, Your Honor.

11 Robert Franson, appearing on behalf of the Staff of  
12 the Missouri Public Service Commission, P. O. Box 360,  
13 Jefferson City, Missouri 65102.

14 MR. JOHNSON: Thank you, Your Honor.

15 Craig Johnson, Andereck, Evans, Milne, Peace &  
16 Johnson, 700 East Capitol, Post Office Box 1438, Jefferson  
17 City, Missouri 65102, appearing today on behalf of White River  
18 Valley Electric.

19 And so the record is clear, it's -- it's -- my  
20 partner, Rodric Widger, had already entered an appearance, but  
21 he's another attorney in my firm officed in Springfield. So  
22 I'm appearing today.

23 JUDGE JONES: Mr. Coffman?

24 MR. COFFMAN: John B. Coffman, appearing on behalf  
25 of the Office of the Public Counsel, P. O. Box 2230, Jefferson

1 City, Missouri 65102.

2 JUDGE JONES: Okay. Thank you.

3 I will note for the record that Mr. Carter is not  
4 here. This matter was set for a prehearing conference at  
5 ten o'clock today. It is now 10:10.

6 The parties have an election of participating in  
7 the prehearing conference by telephone, and Mr. Carter has not  
8 called in.

9 Are there any matters, Mr. Franson, that you want  
10 to --

11 MR. FRANSON: I -- Yes, Your Honor. First of all,  
12 in regard to City of Nixa,. I believe the City of Nixa has  
13 been made a party to this case. And also they have not shown  
14 up here in person, nor has the City of Nixa called in to the  
15 number. Correct me if I'm wrong, on that, but I believe the  
16 City of Nixa is also a party.

17 Your Honor, I believe on -- in our order of  
18 February 9 that White River and the City of Nixa Electric  
19 were -- were made parties to this case.

20 JUDGE JONES: Okay. Do you all agree, Mr. Johnson  
21 and Mr. Coffman, that City of Nixa is a necessary party to  
22 this matter?

23 MR. JOHNSON: Your Honor, on behalf of White River,  
24 I would say that they are. I don't know how you can order a  
25 change of suppliers if the receiving supplier isn't going to

1 accept the customer.

2           And we don't know if they're willing to accept. We  
3 don't know if they're entitled or authorized to serve.  
4 Assuming the predicate can be made under the statute for  
5 authorizing the change, it appears to me that the City needs  
6 to be a partner -- party, excuse me.

7           And they were given the option in that same order  
8 you were just discussing to file a response or a verified  
9 statement saying whether or not they supported or opposed the  
10 Applicant's request, and they failed to do that as well.

11           JUDGE JONES: Mr. Coffman, do you have any opinion?

12           MR. COFFMAN: Yeah. It would appear that they are  
13 a necessary party.

14           MR. FRANSON: And in --

15           MR. COFFMAN: I certainly don't -- I certainly  
16 don't know why they haven't responded.

17           MR. FRANSON: Your Honor, Staff believes the City  
18 of Nixa is a necessary party, as Mr. Johnson pointed out.  
19 They would be on the receiving end of a new customer, and what  
20 their thoughts are and -- and so forth would be crucial.

21           But it -- it may be kind of a moot point right now  
22 since Mr. Carter hasn't made an appearance here today.

23           JUDGE JONES: That's certainly true.

24           Well, what I will do is issue an order,  
25 particularly with regard to Mr. Carter, directing that he give

1 an explanation for his absence from today's proceeding.

2 The consequences of his non-response, I'll have to  
3 wait and see At that time. As far as -- even though it is a  
4 moot point, it -- we might as well discuss it since we're here  
5 together now.

6 What would your all's position be if Mr. Carter's  
7 were here today and the City of Nixa was not participating?  
8 How would the case be disposed of?

9 MR. FRANSON: Well, if I may, Your Honor, I think  
10 even before we get there, the first thing that would be  
11 required under the statute, Mr. Carter has to be in the City  
12 of Nixa. And based on what little information we have, he's  
13 not.

14 So I think Staff would be -- probably at that point  
15 be suggesting what we need to do is dismiss this case for that  
16 reason alone. And also if the City of Nixa does not appear,  
17 it would -- it still seems they're a necessary party, and --  
18 and really we can't proceed without them.

19 And it would seem that Mr. Carter would really have  
20 the burden of getting them in there if that's what he's  
21 wanting to do. How you would ordinarily deal with that, I  
22 don't know. But it would seem that probably an order with --  
23 contrary to their interest might be the nor-- normal course.

24 But here it maybe somewhat different, because they  
25 would be on the receiving end, and that may cause a problem

1 down the line. So I -- I might suggest that the City of Nixa  
2 is a necessary party. If they're not here, it will create  
3 practical problems, but there are several hurdles before we  
4 even get there. And that's Mr. Carter even getting into the  
5 City of Nixa so he's even eligible at all for their utility  
6 service.

7 JUDGE JONES: Okay. In my order setting this  
8 prehearing conference it was a requirement that the parties  
9 would work on a proposed procedural schedule for this matter.  
10 Because Mr. Carter isn't present, I take it, efforts in that  
11 regard would be futile.

12 So you all can disregard the necessity to work on  
13 the pre-- proposed procedural schedule.

14 MR. FRANSON: Your Honor, if I may inquire, Staff  
15 would suggest that from what you've said you're going to issue  
16 an order directing him to explain why he wasn't here.

17 If he does that, Staff would suggest the -- after  
18 that would be another prehearing conference with everyone  
19 present to discuss the matter, because there's several aspects  
20 of this only Mr. Carter would be able to tell us, whether it  
21 was to you or whether it was discussions among the parties  
22 after a prehearing conference right after we went off the  
23 record.

24 JUDGE JONES: Do you think it's necessary to have a  
25 prehearing conference for you all to discuss it?

1           MR. FRANSON: Yes, I do, for the simple reason  
2 getting everybody together would -- and we'd need everyone  
3 here together to discuss a procedural schedule so, yes, I do  
4 believe it's necessary.

5           If Mr. Carter successfully explains his absence to  
6 your satisfaction, I -- that would be my suggestion.

7           JUDGE JONES: Well, couldn't you all call each  
8 other on the telephone and have a phone conference to talk  
9 about that? I guess my -- my point is that in order to have a  
10 procedural schedule, we have to have a court reporter come in.  
11 Is it necessary that what you all talk about be on the record?

12          MR. FRANSON: In this particular case some  
13 preliminary aspects, yes, I believe it is.

14          JUDGE JONES: Okay.

15          Mr. Johnson?

16          MR. JOHNSON: If -- if I might be so bold as to  
17 make a suggestion, is I would suggest that in your order  
18 directing him to explain his failure to appear maybe his  
19 continued interest in the proceeding -- that if he fails to do  
20 that by a certain date, you tell him that the case might be  
21 dismissed without prejudice. That way the thing is removed.  
22 And if he wants to reinstitute the proceeding, he can do that.

23          If he does make an adequate showing of why he  
24 wasn't here and this thing goes forward, I personally don't  
25 know why we can't all get together on a telephone conference



1 and just talk about what's going on, what his interest is, if  
2 he's willing to go forward, and -- and make -- with Public  
3 Counsel's assistance, I presume, make a case as to why the --  
4 and we could work on a procedural schedule that's agreeable to  
5 the parties and submit it to you without the necessity of  
6 having to come back here and go on the record, I would think.

7 JUDGE JONES: Mr. Coffman?

8 MR. COFFMAN: Well, first of all, let me point out  
9 that I have not talked to Mr. Carter. I don't -- and I'd be  
10 happy to talk with him and -- and -- as I often do with  
11 individual complainants or petitioners and -- and explain to  
12 them the process and provide the understanding that I'm not  
13 going to be their lawyer and that we don't represent customers  
14 customers individually in -- in matters like this.

15 And -- but I -- but I do agree that I don't know  
16 why we couldn't just discuss this thing informally amongst the  
17 parties without a prehearing. It seems as if there's a lot of  
18 information that we could yet find out, and I don't know,  
19 perhaps we'll find out that this is something that Mr. Carter  
20 is not interested in pursuing anymore, so -- or maybe he just  
21 simply doesn't understand the processes well enough.

22 But I -- I just don't know. I -- all I know is  
23 what's been filed in the case. But I -- I would -- I don't  
24 think we really need a formal prehearing after this,  
25 personally.

1           MR. FRANSON: I guess, Judge, the only thought in  
2 that regard, after hearing Mr. Johnson and Mr. Coffman, would  
3 be the fact that it often involves a lot of calls back and  
4 forth to set up a conference call.

5           If he does, in fact, respond, if you could give us  
6 either -- I don't know that you necessarily need to set a date  
7 for it, but maybe you could give us a time to have it done and  
8 advise you of our status at that point.

9           That would tell you what the parties have learned  
10 and it will give us a clear deadline, rather than just kind of  
11 leaving it open. But that may -- that's obviously after  
12 Mr. Carter explains some things to your satisfaction.

13          JUDGE JONES: Okay.

14          MR. FRANSON: And that would do away with the need  
15 at that point with a subsequent prehearing conference. And I  
16 guess my other question would be, what is the status of the  
17 order to provide a procedural schedule? Is that suspended or  
18 quashed for now?

19          JUDGE JONES: It's suspended. Well, I guess to  
20 quash it or suspend it, it doesn't matter. You don't have to  
21 do it now. If I ordered it to be done later, then do it  
22 later.

23          MR. JOHNSON: You should suspend it. That sounds a  
24 lot less drastic than quashing it.

25          JUDGE JONES: It does.

1                   MR. FRANSON: I don't know. Quash is -- that word  
2 isn't --

3                   JUDGE JONES: I'm not sure you can quash a  
4 proceeding.

5                   But, in any event, is there anything else?

6                   MR. FRANSON: No, Your Honor.

7                   JUDGE JONES: Okay. With that, then, we will go  
8 off the record at 10:20.

9                   WHEREUPON, the on-the-record portion of the  
10 prehearing conference was concluded.

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