

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Prehearing Conference
8 August 20, 2008
9 Jefferson City, Missouri
Volume 1
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12 Christy and Michael Scrivner,)
13 Complainants,)
14 v.) Case No. SC-2008-0409
15 House Springs Sewer Company, Inc.,)
16 Respondent.)
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18 KENNARD L. JONES, Presiding,
19 SENIOR REGULATORY LAW JUDGE.
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23 REPORTED BY:
24 KELLENE K. FEDDERSEN, CSR, RPR, CCR
25 MIDWEST LITIGATION SERVICES

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

2 JUDGE JONES: We are on the record with
3 Case No. SC-2008-0409, Christy and Michael Scrivner,
4 Complainants vs. House Springs Sewer Company, Respondent.
5 This is a prehearing conference. And Mr. Humphrey, I
6 don't know, have you ever -- have you ever had any cases
7 before the Missouri Public Service Commission?

8 MR. HUMPHREY: I have, but it's been some
9 time.

10 JUDGE JONES: Okay. Well, for your
11 benefit, but primarily for Ms. Scrivner's benefit,
12 Ms. Scrivner, the purpose of this prehearing conference is
13 to give you-all, the parties, and our Staff an opportunity
14 to discuss the complaint to see if a resolution can be
15 reached without the Commission having to rule on your
16 complaint.

17 In addition to that, if you-all are unable
18 to reach any resolution or if you -- rather, if you know
19 you can't reach a resolution, then the purpose of this
20 proceeding will also be to set a hearing date.

21 MS. SCRIVNER: Yes, I understand.

22 JUDGE JONES: Okay.

23 MR. HUMPHREY: I guess if I can make one
24 comment, it appears to me that -- and I spoke with Pat
25 Fribis yesterday -- that Christy and Mike Scrivner have

1 already advanced the funds. Was it \$10,000?

2 MS. SCRIVNER: \$10,880, yes.

3 MR. HUMPHREY: They've already advanced the
4 funds in accordance with Pat's request and her -- the only
5 other thing was whether or not there would be a grinder
6 added. That would be an additional 3,000, but only if
7 that occurred.

8 MS. SCRIVNER: No. We will not have a
9 grinder, but I did go ahead and release the funds but only
10 because I need to open next week, and I was told by the
11 County that I couldn't open without paying my sewer. So
12 that pretty much held a gun to my head and said pay it or
13 you'll lose money every day. So I didn't really have a
14 choice.

15 JUDGE JONES: All right. We'll get back to
16 that. Before I forget, though, I want to make sure we
17 take roll call. We all know that Christy Scrivner is here
18 on the record. Mr. Humphrey, could you enter your
19 appearance, please?

20 MR. HUMPHREY: Yes. I think we did, did we
21 not?

22 JUDGE JONES: No.

23 MR. HUMPHREY: I'm sorry. What was that?

24 JUDGE JONES: No, we haven't. You don't
25 have to give your address and everything. I believe we

1 have that information. Just who you are and who you
2 represent.

3 MR. HUMPHREY: Okay. This is Kyler L.
4 Humphrey. I'm a partner with the law firm of Polsinelli,
5 Shalton, Flanigan and Suelthaus.

6 JUDGE JONES: And from the Staff of the
7 Commission?

8 MR. HUMPHREY: And -- okay.

9 JUDGE JONES: I'm sorry. Go ahead.

10 MR. HUMPHREY: No. That's fine.

11 MR. HAAS: Good morning. William K. Haas
12 appearing on behalf of the Staff of the Public Service
13 Commission. My address is Post Office Box 360, Jefferson
14 City, Missouri 65102.

15 JUDGE JONES: Okay. So in light of what
16 I'm just now hearing, it sounds like it may be futile to
17 proceed with a complaint if you've already paid,
18 Ms. Scrivner.

19 MS. SCRIVNER: Well, actually what happened
20 was Ed Boyer, who's building the building, came and
21 said -- he's the one who told me, sign the voucher or else
22 you're not going to get to open. So, you know, I didn't
23 have a choice.

24 JUDGE JONES: Okay.

25 MS. SCRIVNER: You know, I filed the

1 complaint hoping that we could come to some, you know,
2 compromise on -- that's why we submitted the water bills
3 from the other two restaurants. My husband had built
4 another restaurant here in the area and knew what the, you
5 know, what the tariff was for what we were building, and
6 we were -- you know, we assumed it would be the same as
7 for Captain D's next door, and we were just -- we didn't
8 plan on it. We didn't budget it.

9 The man building the building had no clue
10 that it was going to be this high, and, you know, he said
11 all we can do is try to tell them, you know, the
12 Commission, to notify them that, you know, what kind of
13 business you do. You can prove it in writing what kind of
14 water that you use, but they don't have to accept it.

15 So, you know, I did -- I did that. I
16 submitted the records from the other two Potolino's, and I
17 was hoping that they would, you know, come lower and say,
18 okay, you know, let's take this and if in a few months
19 you're using much more than the other two do -- which
20 would be wonderful. I hope we're crazy busy and we use
21 all kinds of water, but I can't imagine. So I was hoping
22 it would be something that would be more reasonable.

23 JUDGE JONES: Are the other two restaurants
24 served by the same sewer company?

25 MS. SCRIVNER: No. One is in DeSoto and

1 one is in Festus.

2 JUDGE JONES: Okay. And Mr. Humphrey, I
3 take it you've had an opportunity to look at our Staff's
4 recommendation?

5 MR. HUMPHREY: Yes, I did, and so did the
6 client.

7 JUDGE JONES: How do you feel about that?

8 MR. HUMPHREY: You mean what do I feel
9 about the report?

10 JUDGE JONES: Right. How do you feel about
11 the suggestion that actual water usage be looked at after
12 a certain time and that a refund be made or, I guess, more
13 payment be made?

14 MR. HUMPHREY: Well, that really is
15 something I would have to defer to the client. I just
16 looked at it to -- when I first received it was to make
17 sure that what she was charging actually was compliant
18 with what she was allowed to charge and that's really it.
19 I mean, if we thought that it was something that violated
20 that, then that's where I was -- would be involved.

21 JUDGE JONES: I understand what you mean.
22 Well, I know in Staff's report they say that they don't
23 believe there is a violation of the tariff, but I'm not
24 even sure -- I don't know how we can make that
25 determination simply because a full-service restaurant

1 isn't defined, so we don't even know what that is. I
2 mean, the problem appears to start with the tariff itself,
3 but in light of that, you know, there's only two types of
4 restaurants described, a paper service restaurant and
5 full-service restaurant.

6 MR. HUMPHREY: And I think that they
7 acknowledge that this was not a paper restaurant.

8 JUDGE JONES: Right. But does that mean
9 it's necessarily a full-service restaurant?

10 MR. HUMPHREY: Well, no, but I think it
11 would say not just from the Public Service Commission use
12 but from the health department and the county's health and
13 safety, if you're serving with plates, then you know you
14 have to have certain dishwashers. The dishwashers have to
15 produce X number of water, temperature, all that. You
16 just can't say, well, I've got a --

17 MS. SCRIVNER: Which we have in both
18 restaurants. We do have dishwashers in both of the
19 restaurants.

20 MR. HUMPHREY: That would go to my argument
21 that it's going to be using water. It's full-service as
22 opposed to just paper plates, plastic forks, a restaurant
23 that would use less water.

24 JUDGE JONES: Okay. Now, how will -- I
25 realize that the payment that was made was a contribution

1 in aid of construction; is that correct?

2 MS. SCRIVNER: Yeah. The builder told me I
3 had to sign the voucher. I didn't understand that -- I
4 wouldn't have signed it if I wouldn't have understood that
5 we -- we still wasn't going to be able to come to some
6 compromise. It was a lower amount than what was
7 originally on my bill, what I paid them.

8 JUDGE JONES: Okay. And I'll ask Staff,
9 will the classification of the restaurant as a
10 full-service restaurant affect their monthly bill? It's
11 just this contribution in aid of construction?

12 MS. FRIBIS: This is Pat Fribis talking,
13 owner of House Springs Sewer Company, and I -- when I get
14 an application for sewer service, and what had occurred
15 with this building is we saw a building going up in House
16 Springs. We did not know what it was going to be. I had
17 one of our employees stop and ask and talk to the builder,
18 and he said it's going to be a restaurant.

19 And so then I had to get ahold of the
20 owners, and I did call them then, and we had not been
21 contacted by them in any way before this time. I said,
22 are you aware that there is a tap-on fee, an aid to
23 construction fee? And for a restaurant it is a lot
24 different than just a residence or like an office building
25 or something because of the use of the water.

1 And then I got the information of the
2 address and name of the owner, and I prepared a connection
3 agreement, which is legally -- will be recorded in the
4 Jefferson County Recorder's Office and it is a legal
5 document. When it was received by them, then they were
6 concerned with the amount of money. I just went from the
7 set of plans that my employee was given by the builder,
8 and it shows 128 seats inside the restaurant, and that's
9 how I determined what the aid to construction would be.

10 JUDGE JONES: Okay.

11 MS. FRIBIS: So I was just following the
12 rules of our tariff.

13 MR. HUMPHREY: And I think it would -- a
14 128 seat restaurant, I think that's probably what the
15 Staff report is suggesting, and I would agree, they do
16 have a 128 seat restaurant, and you know that they're
17 going to be using dishes, silverware, glasses, that it
18 would be hard pressed to say that that's not a
19 full-service restaurant. That's a very good size
20 restaurant.

21 MS. FRIBIS: And I did not even include in
22 determining the fee the seats that are outside on, like, a
23 patio area. I just excluded those.

24 MS. SCRIVNER: I don't have any outside. I
25 just have some concrete outside.

1 MS. FRIBIS: Okay. Well, on the plans that
2 I received from the developer, I think there were some
3 seats, some picnic tables or something outside. I can
4 pull that set of plans and look at it, but I excluded
5 those. I just took the seats inside and counted them
6 times \$85 to determine that rate.

7 JUDGE JONES: Where is the \$85 again?

8 MS. FRIBIS: The \$85 is what's listed in my
9 tariff, \$85 per seat for a full-service restaurant, and
10 that was included in the paperwork that I received.
11 That's what I -- when I answered -- let me see.

12 JUDGE JONES: I see it here now.

13 MS. FRIBIS: It's on page 3A, \$85 a seat,
14 and that's how I used it, 128 times 85, to determine the
15 rate for the aid to construction.

16 JUDGE JONES: And now on page -- on
17 Sheet 10, do you have that with you?

18 MR. HAAS: Your Honor, that is St. Louis
19 County Sewer's sheet.

20 JUDGE JONES: Oh, this is just an example.
21 Don't worry about that.

22 MS. FRIBIS: Yeah. This is something that
23 I'm following that is on record with the Public Service
24 Commission, and everyone else has complied. The
25 laundromat has complied, and they had to pay so much per

1 washing machine that was in the -- that was put in the
2 laundromat.

3 JUDGE JONES: Okay. Well, Ms. Scrivner?

4 MS. SCRIVNER: Yes.

5 JUDGE JONES: I certainly don't want to
6 discourage you from pursuing your complaint. I guess the
7 problem is simply going to be what is a full-service
8 restaurant. I don't know how we can make that
9 determination from the tariff, but --

10 MS. SCRIVNER: Well, we're only open two
11 meals through the day. We're not serving three meals a
12 day. We have a limited menu. We're just owned by a
13 family. 90 percent of our stuff is going to be a bottle
14 of beer and a pizza box.

15 JUDGE JONES: You mean for take out or eat
16 in or what?

17 MS. SCRIVNER: Well, for both. Most of
18 what we have is pizza. It's going to be a pizza place,
19 you know. I mean, it's not an Applebee's. I'm not
20 bringing you out ten different pieces of dishes. Most
21 people don't even get a piece of silverware.

22 MS. FRIBIS: But do you serve other Italian
23 foods in the restaurant?

24 MS. SCRIVNER: Yeah. Yeah. So does Pizza
25 Hut.

1 JUDGE JONES: What other things do you
2 serve?

3 MS. SCRIVNER: Hot wings, some -- a few
4 sandwiches. I mean, we have other things. I mean, I'm
5 not going to serve you a steak. I'm not going to serve
6 you an egg sandwich. I'm not going to -- I don't have no
7 breakfast stuff. I don't have no ten courses, you know.

8 JUDGE JONES: I understand what you're
9 saying.

10 MS. SCRIVNER: Pizza, a salad.

11 JUDGE JONES: What I'm going to allow
12 you-all to do, and we're going to go off the record here
13 soon and I'll let you-all talk, and if you can't come to a
14 resolution, whether it be to, I don't know, pay less or
15 pay what you've paid and pursue the matter further, then
16 we can set it for a hearing. I will tell you this -- or
17 let me ask -- let me ask you this, Ms. Fribis.

18 MS. FRIBIS: Yes.

19 JUDGE JONES: You-all do serve other
20 full-service restaurants that are -- there's not even a
21 question it's a full-service restaurant, right?

22 MS. FRIBIS: Well, in my mind a paper
23 restaurant would be like a McDonald's where there's
24 absolutely no china, no silverware, other than plastic and
25 paper. It's all disposable, a Sonic, a Kentucky Fried

1 Chicken. Those are all fast food, very limited amount of
2 seating space restaurants. This is totally different in
3 my eyes.

4 JUDGE JONES: Okay. Do you-all serve what
5 you know to be a full-service restaurant?

6 MS. FRIBIS: The only other one that I
7 could think of would be TJ's Diner in our watershed.
8 All the rest would be fast food.

9 JUDGE JONES: So you-all do serve what you
10 know to be paper restaurants, too?

11 MS. FRIBIS: Yes.

12 JUDGE JONES: All right. What if after --
13 I don't want --

14 MS. SCRIVNER: I'm sorry. Is the only
15 thing holding me up is a real piece of silverware?

16 JUDGE JONES: No. No. I don't know what's
17 holding you up, but that's not what I want to talk about.

18 MS. FRIBIS: No. The size of your
19 restaurant --

20 JUDGE JONES: Can you-all be quiet?

21 MS. SCRIVNER: The size of the building is
22 what's holding me up?

23 MR. HUMPHREY: No. I think --

24 JUDGE JONES: Pardon me. Pardon me. Can
25 you-all be quiet for a moment? I'm trying to leave you

1 something to talk about in trying to resolve the matter
2 one way or another, and I'm asking this question of
3 Ms. Fribis. Ms. Fribis, what if after a month's usage the
4 Potolino's restaurant's usage more resembles that of the
5 fast food restaurants that you serve rather than the
6 full-service restaurant that you serve?

7 MS. FRIBIS: Well, I think we're dealing
8 with two different issues here. The aid to construction
9 is really for the integrity of the sewer line. They're
10 having the honor of hooking into the sewer line that House
11 Springs Sewer Company has paid for years and years ago,
12 and it cost a lot of money, hundreds of thousands of
13 dollars to put in that area down there. That's what the
14 aid to construction is being applied to.

15 The amount of water will determine -- that
16 they use will be determined in their monthly bill. So
17 there's two different issues here.

18 JUDGE JONES: Okay. Again --

19 MS. FRIBIS: In answer to your question,
20 no, I would not be willing to do that.

21 JUDGE JONES: So it doesn't -- it seems to
22 me that the full-service restaurant -- and I'm just
23 hypothesizing here, that a full-service restaurant pays
24 more because they're going to dispose more water. So the
25 integrity of the sewer system has to be better than that

1 of a paper restaurant, or not better, but able to handle
2 more sewage.

3 MS. FRIBIS: Able to accommodate more.

4 JUDGE JONES: Okay. Now, if their sewage
5 resembles that of a paper restaurant rather than a
6 full-service restaurant, would not it be then a paper
7 restaurant per its usage of water? Now, don't answer that
8 question. I just want you-all to talk about that, and I'm
9 going to leave you with that thought, and Ms. Scrivner and
10 you and your attorney and the Commission Staff and
11 attorney here can discuss this off the record and then
12 we'll go from there.

13 And I will direct that my -- that Mr. Haas
14 inform me of how you-all resolve this issue or what
15 conclusion you came to after having your discussions. Is
16 that fair enough to everyone?

17 MS. SCRIVNER: Yes.

18 MR. HUMPHREY: Yes.

19 JUDGE JONES: With that, then, we will go
20 off the record and I will leave you-all to talk amongst
21 yourselves.

22 WHEREUPON, the recorded portion of the
23 prehearing conference was concluded.

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, and Notary Public within and for the State of
8 Missouri, do hereby certify that I was personally present
9 at the proceedings had in the above-entitled cause at the
10 time and place set forth in the caption sheet thereof;
11 that I then and there took down in Stenotype the
12 proceedings had; and that the foregoing is a full, true
13 and correct transcript of such Stenotype notes so made at
14 such time and place.

15 Given at my office in the City of
16 Jefferson, County of Cole, State of Missouri.

17 _____
18 Kellene K. Feddersen, RPR, CSR, CCR
19 Notary Public (County of Cole)
20 My commission expires March 28, 2009.
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