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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Pre-hearing Conference

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June 11, 2007

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Jefferson City, Missouri

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Volume 1

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13

Greater Jefferson City)

Construction Company, L.L.C.,)

14

and Edward P. Storey,)

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Complainants,)

V.) Case No.

16

) WC-2007-0303

Aqua Missouri, Inc.,)

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Respondent.)

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KENNARD L. JONES Presiding,

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SENIOR REGULATORY LAW JUDGE

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REPORTED BY:

24

MINDY VISLAY, CCR

25

MIDWEST LITIGATION SERVICES

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A P P E A R A N C E S

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FOR: Staff of the Missouri Public
Service Commission.

ALSO PRESENT: Mr. Edward P. Storey

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

2 JUDGE JONES: We're going on the record
3 with Case No. WC-2007-0303, Greater Jefferson City
4 Construction Company, Inc. and Edward P. Story, the
5 Plaintiffs, versus Aqua Missouri, Inc.

6 My name is Kennard Jones, I'm the Regulatory Law
7 Judge presiding over this matter. At this time, we'll
8 take entries of appearances starting with the
9 Complainants.

10 MR. LUDWIG: Mark Ludwig for the
11 Complainants.

12 JUDGE JONES: And for the Respondents?

13 MS. SMITH: Jane Smith for the Respondents.

14 JUDGE JONES: And the Staff of the Public
15 Service Commission?

16 MR. FRANSON: Robert Franson representing
17 the Staff of the Public Service Commission.

18 JUDGE JONES: And you are --

19 MS. HALE-RUSH: Tena Hale-Rush, Aqua
20 Missouri.

21 JUDGE JONES: And I'll note, for the
22 record, there is no one here from the Office of Public
23 Counsel. I don't think they'll participate. I don't
24 see them having any interest.

25 Normally, these pre-hearing conferences are for

1 the purposes of getting the parties together to talk,
2 to try to resolve the issues that you all have.
3 You've met with one another several times already, so
4 this effort might be in vain, but I don't know if you
5 met with the help of Staff?

6 MR. LUDWIG: No.

7 JUDGE JONES: It doesn't look like it's
8 going to settle. I don't know, maybe Staff's input
9 may have some effect on how you all see these issues.
10 One thing that concerns me, does anyone have any
11 concerns about subject-matter jurisdiction?

12 MR. LUDWIG: No, I don't think so.

13 JUDGE JONES: Well --

14 MR. FRANSON: Actually, Judge, that might
15 not be a bad idea for us to address in -- whether it's
16 a pre-hearing brief or even in earlier pleadings. If
17 that's a concern for you, that would certainly be
18 something we can address early on.

19 JUDGE JONES: I don't want you to have to
20 file briefs on that note, it costs you all money and
21 time. If no one has concerns about it, then it's a
22 non-issue as far as I'm concerned. Of course, if the
23 Commission issues an order over which it has no
24 subject-matter jurisdiction, it really has no effect.
25 Someone has to bring that up. I'll worry about the

1 subject-matter jurisdiction when writing a final
2 order.

3 MS. SMITH: Your Honor, I'm just sitting in
4 for Marc Ellinger because he had to attend a funeral
5 in St. Louis.

6 I'm not sure, this may be an issue of concern for
7 us.

8 JUDGE JONES: It didn't seem to be raised
9 in the pleadings, it just crossed my mind. If it is,
10 I suppose, raise it at hearing. Don't worry about
11 raising it in the pre-hearing briefs or anything like
12 that. Normally -- I don't know, have you tried --

13 MR. LUDWIG: No, not really.

14 JUDGE JONES: Normally, we have --
15 proceeding towards the hearing -- we'll have
16 pre-hearing testimony filed in advance. I don't think
17 this will be necessary in this case.

18 Mr. Franson, do you have any opinion?

19 MR. FRANSON: Judge, I guess at this point,
20 two things have crossed my mind. Number one; looking
21 back at the pleadings, Staff was initially ordered and
22 then released of the obligation. In fact, we were
23 told not to file a Staff report on this. After
24 talking to Mr. Johansson, Staff suggests that might be
25 beneficial. If nothing else, it will lay out some

1 concerns that Staff has. Either that, or we could
2 actually put it in some testimony. I would suggest
3 testimony might not be a bad idea here, in that, what
4 we're dealing with -- especially looking at this
5 Complaint -- is a lot of history. They could be put
6 in there, and it wouldn't have to be gone into much at
7 hearing, in that it would already be there. So
8 actually, it might -- pre-file testimony, Staff would
9 suggest, might be a good idea in this particular case.

10 JUDGE JONES: In lieu of the Staff report?

11 MR. FRANSON: We can do it either way. We
12 can file a Staff report, or we can -- as part of our
13 case -- we could cover it there. So, we may not need
14 to do both.

15 JUDGE JONES: Well, I guess my thing with
16 pre-file testimony is; it's usually filed because the
17 issues are complicated -- the facts are complicated.
18 This may have history, but the facts don't seem to be
19 complicated. There may be some facts that are
20 contrary but not complicated.

21 MR. FRANSON: If we're not going to do
22 pre-trial testimony, Staff would be more than happy to
23 file a report, and we could do that by June 22nd.
24 Otherwise then, we could just set a hearing date that
25 was allowing for all discovery that may need to be

1 done because we haven't talked about it. I don't know
2 what either party wants to do on that.

3 JUDGE JONES: Mr. Ludwig, let me ask you;
4 is time of an essence?

5 MR. LUDWIG: Yeah, to some extent. Ed's
6 not in his thirties anymore and has missed several
7 opportunities to sell property out there, because he
8 can't tell people that they can hook up.

9 JUDGE JONES: So, you want a hearing date?

10 MR. LUDWIG: Yeah, pretty much. I don't
11 expect a lot of discovery. We've laid it out in the
12 reports, what our studies have shown, and I have yet
13 to hear anything back from Aqua Missouri saying you're
14 wrong. They questioned some things, and the questions
15 were not very well directed, but I have yet to hear
16 anybody say: Well, this is what our expert says, or
17 this is our report, or anything else. So, I think
18 it's pretty simple. And yes, we would like to move it
19 forward.

20 JUDGE JONES: You are going to have expert
21 testimony?

22 MR. LUDWIG: Yes, and our expert's report
23 was attached to the original complaint. It lays it
24 out pretty good. I might also suggest, our position
25 on this all along has been; the reason they are not

1 granting these additional hook-ups is, they want us to
2 build a modification -- or addition to the sewage
3 treatment plant at our cost.

4 My understanding is that there was a case heard --
5 dealing with Lake Carmel, about a month ago -- that a
6 decision is expected at any time, that will -- if the
7 tariff in that case is construed -- and it's the same
8 tariff as far as I know -- that Aqua Missouri has the
9 obligation to do any modifications or expansions of
10 the treatment plant. That takes away the reason for
11 these people to be arguing with us.

12 Even if we do get beyond what this plant capacity
13 is -- and we are far from it -- they would have the
14 obligation to expand it anyway and so, why fight with
15 us over additional hook-up? I mean, that is the way I
16 see it.

17 JUDGE JONES: That's what you see as the
18 central issue is who has to bear the cost?

19 MR. LUDWIG: Well, that's certainly the
20 only explanation I can figure as to why they won't
21 give us hook-ups when we showed this plant is only at
22 two-thirds capacity. There can't be any other logical
23 issues, because economically every hook-up is pure
24 profit, and they want us to commit to, you know,
25 building onto the plant or something.

1 MR. FRANSON: Judge, if I may? If
2 Mr. Ludwig is right and it's a tariff interpretation,
3 certainly there is no question of subject-matter
4 jurisdiction; however, if it is interpretation of some
5 other documents that go beyond the tariffs, then there
6 might be a question -- whether that's subdivision
7 documents or Homeowner's Association -- then that
8 might get out into another question.

9 JUDGE JONES: Ms. Smith, I realize you're
10 sitting in for Mr. Ellinger. Are you intimately
11 familiar with this case?

12 MS. SMITH: Well, I'm familiar.

13 JUDGE JONES: I don't want to put you at a
14 disadvantage.

15 MS. SMITH: I think the issue we see is our
16 capacity to provide services, and we have offered to
17 hook-up ten houses. We've offered to do mediation.
18 Both of our offers have been rejected.

19 And we believe there is going to be discovery. We
20 have submitted -- we're going to submit a data request
21 of the Complainant, and their expert is going to be
22 deposed.

23 MS. HALE-RUSH: We have up to five
24 witnesses.

25 JUDGE JONES: You do realize, you're saying

1 the issue is capacity and that is not in conflict with
2 his statement of the issue of who has to bear the cost
3 of whatever modifications are necessary to handle that
4 additional capacity?

5 MS. SMITH: Well --

6 JUDGE JONES: I don't know, you're
7 saying --

8 MR. LUDWIG: The issue is that our studies
9 show that this treatment plant can handle 40 more --
10 120 homes. We've got 78 built with two lots already
11 sold. They're saying: No, you can't hook-up any
12 more.

13 Because the original permits that -- based on DNR
14 census figures, which were basically one person per
15 household below those census figures -- and we're way
16 under capacity. That's the first issue.

17 I think the underlying issue -- the underlying
18 rationale is that, if the plant can't handle those
19 additional homes; who has the obligation to expand the
20 plant? And strategically, I can't think of any reason
21 they wouldn't let us hook more homes up right now --
22 particularly, based on our numbers -- but for the idea
23 that they want us to expand that plant at our cost to
24 their benefit. So, that's our complaint.

25 The alternative? Give us the right to hook-up

1 more. And if not, tell them they have to expand the
2 plant. That's the alternative prayer-for-relief in
3 our complaint.

4 MR. FRANSON: Listening to this, I think,
5 certainly the parties need to talk, but perhaps -- at
6 least as this point -- a Staff recommendation would --

7 JUDGE JONES: I'll direct you now to file a
8 resolution by June 22nd.

9 MR. FRANSON: If you think it would be of
10 any benefit, we can do this.

11 JUDGE JONES: I realize the reason you
12 didn't want to do it first is because there was an
13 issue of mediation on the table.

14 MR. FRANSON: And also a specific
15 Commission order that says we shall not do it unless
16 later directed to.

17 MR. LUDWIG: And frankly, I'm never opposed
18 to mediation, but I didn't want to delay their answer
19 time and getting this thing at issue, because we've
20 been beating this around for two years.

21 MR. FRANSON: Our report will be just that;
22 a report, it's not mediation.

23 MR. LUDWIG: I mean, the request for
24 mediation -- I didn't want anybody to think that we're
25 recalcitrant, because we'd be more than happy, but we

1 haven't gotten anywhere.

2 JUDGE JONES: That doesn't matter to me
3 what you did. If you don't want to mediate just
4 because her suit is black, that's fine with me. You
5 don't have to mediate. It's called voluntary
6 mediation. That's not really --

7 MR. LUDWIG: As far as time being of the
8 essence, they have offered us ten, with only ten and
9 no more ever. Which would be the dumbest business
10 decision Ed's ever made.

11 If they say: You can hook up ten for the time
12 being while we fight this out, that takes away a lot
13 of the immediacy or time is of the essence idea, and
14 we could get this on a reasonable schedule.

15 MR. FRANSON: Some of these things, maybe
16 the parties should talk about?

17 JUDGE JONES: I understand that. And
18 you've said, it seems in your pleadings, that you
19 could do ten more; right?

20 MS. HALE-RUSH: They come to us -- which we
21 can prove -- originally asking for only up to ten
22 homes. We did agree.

23 And they do have the main in front of them, but
24 the additional homes would also require many
25 extensions, more than they're asking for.

1 We also plan to show in the exhibits -- and are
2 prepared to say -- that he is a developer. And under
3 the tariff, he only developed the first phase. And we
4 do have his original preliminary documentation for
5 that -- that was originally submitted to DNR. So, we
6 do have a lot of exhibits and demonstrations to, you
7 know, prove this.

8 First of all, there are no mains for the homes
9 he's wanting. And under the tariff, the mains have to
10 be paid for by the developer.

11 JUDGE JONES: The ten homes?

12 MS. HALE-RUSH: The first ten do, but the
13 other 32 do not.

14 MR. LUDWIG: Which is what he just --

15 JUDGE JONES: Don't talk to each other.
16 You have to talk to each other when I'm gone.

17 I'm asking about the ten homes. Whether they
18 originally asked for it or not, I'm not concerned
19 with. Can you do an additional ten homes? That's
20 something I want you all to iron out today. If you
21 can do that; do it. To no-cost anyone, if you can do
22 ten more homes, then do it.

23 MS. HALE-RUSH: We agreed up to ten.

24 JUDGE JONES: Then do that, and then let's
25 continue on with what's in conflict. That way we

1 lessen any potential damage.

2 MS. HALE-RUSH: And those ten are
3 identified.

4 JUDGE JONES: Okay.

5 MR. STOREY: May I say something?

6 JUDGE JONES: Well, no. I'm sorry. You
7 may be able to say something when we have the hearing.

8 Now, let's get back to the procedure. You said
9 you had five witnesses?

10 MS. HALE-RUSH: Yes.

11 JUDGE JONES: How many witnesses do you
12 anticipate?

13 MR. LUDWIG: Depending on what they come up
14 with, I'm thinking anywhere from three to five.

15 JUDGE JONES: And Staff?

16 MR. FRANSON: Most likely one, but I will
17 not rule out as many as two.

18 JUDGE JONES: Is DNR going to have any
19 witnesses?

20 MR. LUDWIG: I think we would probably call
21 someone from DNR.

22 JUDGE JONES: So, we're looking at about
23 twelve witnesses. And you said you have a number of
24 exhibits you'd like to present, too?

25 MS. SMITH: Yes.

1 JUDGE JONES: This may be a two-day
2 hearing.

3 MS. SMITH: Mr. Ludwig intends on filing a
4 first amendment complaint today, so we're going to
5 need time to answer that.

6 JUDGE JONES: Are you planning on filing a
7 complaint?

8 MR. LUDWIG: Yes. It just changes the
9 number of request of homes from 22 to 32. And that
10 was a misunderstanding on my part.

11 JUDGE JONES: Do you need a full 30 days to
12 respond to that?

13 MS. SMITH: We would like it.

14 JUDGE JONES: Just because you can have it
15 or because you need 30 days? I'm just trying to move
16 it along.

17 MS. SMITH: One of our people was -- we're
18 a small office, and one of our people has been
19 deployed.

20 JUDGE JONES: So, you want to give yourself
21 as much time as you can?

22 MS. SMITH: Yes.

23 JUDGE JONES: Okay. Well, that's going to
24 put any hearing out 30 days, at least.

25 MR. LUDWIG: I don't know why they need 30

1 days when all we did was change the number from 22 to
2 32. It doesn't change the underlying facts or
3 anything. But if that's what they need.

4 JUDGE JONES: What do you feel about that?

5 MS. SMITH: Well, we'd like the 30 days,
6 Your Honor.

7 JUDGE JONES: Okay. What we'll do then --
8 and Mr. Franson, will you work with them on this?

9 MR. FRANSON: Judge, I would imagine that,
10 before too much longer, we will come up to the 9th
11 floor -- or I will -- with some ideas, and I'll look
12 at the calendar, and we may ask you at that time to
13 put in some dates that we'll come up with. I didn't
14 bring my calendar with me, but I can certainly do
15 that.

16 JUDGE JONES: I want to reserve two days
17 immediately after their answer is filed -- as soon as
18 possible after their answer is filed. We'll have the
19 two-day hearing if necessary. Two days.

20 MR. FRANSON: Okay.

21 JUDGE JONES: Does anybody else have
22 anything else?

23 Well, I'll leave you all to talk with our Staff.
24 Maybe they can -- who knows -- resolve this without
25 the necessity of a hearing.

1 MR. LUDWIG: Always in favor of that,
2 Judge.

3 JUDGE JONES: With that, we'll go off the
4 record.

5 (WHEREIN, the recorded portion of the pre-hearing
6 conference was concluded.)

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1 CERTIFICATE OF REPORTER

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4 I, Mindy Vislay, Certified Court Reporter with the
5 firm of Midwest Litigation Services, and Notary Public
6 within and for the State of Missouri, do hereby
7 certify that I was personally present at the
8 proceedings had in the above-entitled cause at the
9 time and place previously described; that I then and
10 there took down in Stenotype the proceedings had; and
11 that the foregoing is a full, true and correct
12 transcript of such Stenotype notes so made at such
13 time and place.

14

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Mindy Vislay, CCR

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Notary Public (County of Cole)

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My commission expires March 19, 2011

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