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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
METROPOLITAN ST. LOUIS SEWER DISTRICT  
VS.  
MISSOURI-AMERICAN WATER COMPANY  
  
Case No. WC-2007-0040  
  
PREHEARING CONFERENCE  
  
VOLUME I  
  
OCTOBER 11, 2006

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

October 11, 2006

Jefferson City, Missouri

Volume 1

Metropolitan St. Louis Sewer District, )  
Complainant, ) Case No.  
v. ) WC-2007-0040  
Missouri-American Water Company, )  
Respondent. )

BENJAMIN H. LANE, Presiding,  
REGULATORY LAW JUDGE

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

2 JUDGE LANE: Good morning.

3 This is Case No. WC-2007-0040. That's  
4 Metropolitan St. Louis Sewer District versus Missouri  
5 American Water Company.

6 My name is Judge Lane. I'm sitting in for  
7 Judge Jones, whose wife is delivering a baby today. So  
8 I'm pretty new at this. I started at the PSC last week.  
9 So if you'll indulge my inexperience, we'll go on.

10 At this time I realize that you have filed  
11 written entries of appearance. At this time I'd like to  
12 take your oral entry, beginning with MSD.

13 MR. LOWRY: My name is Kent Lowry, the firm  
14 of Armstrong Teasdale, L.L.P. And not here today but  
15 co-counsel is Byron Francis of the St. Louis office.

16 JUDGE LANE: Thank you very much.  
17 Missouri American.

18 MR. JONES: I'm Kenneth Jones, in-house at  
19 Missouri American Water Company.

20 JUDGE LANE: The Staff of the Commission?

21 MR. KRUEGER: Keith R. Krueger for the Staff  
22 of the Missouri Public Service Commission. My address is  
23 P. O. Box 360, Jefferson City, Missouri 65102.

24 JUDGE LANE: And it does not appear there is  
25 anyone present from the Office of Public Counsel.

1 All right. Very well.

2 The purpose of this prehearing conference is  
3 to bring the parties together. We have a couple of  
4 objectives. One is to facilitate settlement, if that's  
5 going to be a possibility in this case.

6 If the parties are unable to work toward a  
7 settlement, then the purpose of this hearing is to afford  
8 the parties an opportunity to agree on a suggested  
9 procedural schedule for events which are to take place  
10 later.

11 So I just wanted to let you know that if you  
12 don't think settlement is going to be possibly an option  
13 in this case, I would like to require a proposed  
14 procedural schedule within ten days of the date of this  
15 hearing. So ten days as far as procedural matters.

16 I have read the Complaint and the Answer,  
17 and it seems that the issues in this case are fairly  
18 straightforward. What I'd like to do, if it's okay with  
19 the parties, I wanted to allow each of you to -- both of  
20 the parties to summarize what they think the key  
21 contested issues in the case are going to be, both  
22 factual and legal, so that you're both on the same page  
23 with regard to what the issues -- what you anticipate the  
24 issues are going to be.

25 It appears from my review of the pleadings

1     that there are minimal fact issues in this case. I can  
2     think of one, and I'll probably ask you during your  
3     presentation to clarify as to the issues that I've  
4     identified.

5                     So basically I'd just like to get on the  
6     record what you think the issues are going to be in the  
7     case as a whole and to narrow it down and to make sure  
8     that I've got a handle on the issues and I've got my mind  
9     around what the issues are going to be.

10                    So the Complainant in this matter is MSD.

11                    Mr. Lowry, would you like to just, you know,  
12     provide a brief summary of what you believe the factual  
13     legal issues in this matter are going to be.

14                    MR. LOWRY: Thank you, Your Honor.

15                    And I would echo your observation that --  
16     and we had conversation, Byron and I did, with Mr. Jones  
17     yesterday on the telephone, just to try to make sure that  
18     we're all pretty much on the same page at least insofar  
19     as what the dispute is.

20                    It basically summarizes to this: We get  
21     from Missouri American certain data -- water usage data,  
22     is what it's called in the Complaint, and that is used to  
23     prepare the billing information for the Metropolitan  
24     St. Louis Sewer District, which is our client, and we  
25     have to have that data in order to properly do it.

1                   The issue simply stated is whether or not  
2     the statutes require them to give us that data free of  
3     charge or whether we have to pay a fee.

4                   There has been in the past an agreement  
5     between the two which provided for the payment of the  
6     Fee -- of a fee to them for that information. And that's  
7     really the issue we think that is in the Complaint.

8                   Some procedural background for the  
9     Commission to be aware of is that we really think is this  
10    is, in essence, a declaratory judgment on that issue.

11                  We think that it's a matter which Missouri  
12    American will want to have resolved also, because  
13    whichever way it comes out, it's a factor in their  
14    ratemaking issues, in all likelihood.

15                  So we filed a lawsuit in St. Louis County.  
16    There were interventions on behalf of the Staff on the  
17    basis of the notion that this is exclusively within the  
18    jurisdiction of the Public Service Commission.

19                  And that's the way the ruling was -- that's  
20    the way the ruling came down and that is what brought  
21    forward our Complaint here.

22                  So we don't think there are significant  
23    factual issues to be resolved. It may be possible that  
24    there will be a stipulation. We certainly will work with  
25    Mr. Jones and Mr. Krueger to get that done.

1                   We do have some data requests already in  
2     hand from Mr. Jones which we will respond to, and we've  
3     discussed not in any great depth with him but at least  
4     just the fact that we have them and we will make the  
5     response.

6                   And we have probably some issues with those  
7     in the sense that they may go broader than what is  
8     necessary for the resolution of this Complaint.

9                   But it's really a -- it's a simple factual  
10    presentation and a simple legal issue, we think, for the  
11    Commission to decide.

12                  JUDGE LANE: Thank you. Thank you very  
13    much.

14                  If you don't mind, as to the factual issue,  
15    I saw a reference in the pleading that there was an  
16    allegation that Missouri American was charging you for  
17    customers that are outside the MSD area of service and  
18    that charge for reading the meters of those folks were  
19    being included in the amount of money that you folks are  
20    paying them.

21                  Is that --

22                  MR. LOWRY: We believe that to be true and  
23    understand that they dispute that.

24                  JUDGE LANE: Okay. So that is a disputed  
25    factual issue?



1 MR. LOWRY: We think so.

2 JUDGE LANE: So your position would be,  
3 assuming arguendo, that Missouri American has the  
4 authority after the enactment of Section 249.645.1 to  
5 charge you a reasonable fee for this information, there  
6 would still be a factual dispute as to the amount of the  
7 fee being charged.

8 You're arguing that people that are not  
9 included within the terms of the tariff or within the  
10 terms of your service area are being included illegally  
11 by Missouri American?

12 MR. LOWRY: Yes, clearly, we shouldn't be  
13 charged for people that aren't ours.

14 JUDGE LANE: All right.

15 MR. LOWRY: We don't think after the passage  
16 of the statute that you referred that there is a right on  
17 the part of Missouri American to charge us at all, and  
18 that's the basic issue.

19 JUDGE LANE: Understood. Understood.

20 Okay. Very good. Thank you very much for  
21 that.

22 Mr. Jones.

23 MR. JONES: Yes, Your Honor. Thank you.

24 And I'll give a quick factual and legal  
25 summary, and also we'll -- from what I understand from

1 the order, there is also a desire that there be a written  
2 statement of the issues. So this is really, you know, a  
3 precursor to that.

4 But basically Missouri American has a  
5 contract, Missouri American and its predecessor,  
6 St. Louis County Water, since 1993 to provide usage data  
7 to MSD, and that has always been for a fee. It's been  
8 paid by MSD.

9 And even in 1999 when the statute came to  
10 apply to MSD, MSD has agreed to pay a fee to Missouri  
11 American Water, showing the reasonableness of the  
12 charging of the fee.

13 So I think there are -- in addition to what  
14 Mr. Lowry says, there are a number of other legal and  
15 factual issues that need to be resolved in connection  
16 with this Complaint.

17 Number one, you know, why did MSD agree to  
18 pay this fee, in fact, enter into a second agreement in  
19 2002 subsequent to the application of this statute to  
20 MSD? Why was it not until 2004 that MSD decided that  
21 they didn't have to pay for the usage data according to  
22 the statute?

23 And as you can tell where I'm going, there  
24 is issues involving waiver and estoppel there.

25 There is also an issue -- the way I read

1     their Complaint, it says that it's unreasonable that  
2     Missouri American charge for the fee at all.

3                     The way I read and interpret the  
4     Agreement -- I'm sorry -- the Complaint, it doesn't ask  
5     for the Commission to decide what a reasonable fee is.  
6     It just asks for the Commission to decide whether a fee  
7     should be charged or not.

8                     So I think that's something that needs to be  
9     resolved also, whether the Commission, you know, has been  
10    asked to determine a reasonable fee and, if so, what that  
11    is.

12                    And there are also a number of factual  
13    issues about what Missouri American's costs are, both the  
14    capital cost and operational expense cost, in collecting  
15    all of this data that MSD desires to obtain for free.

16                    So I think those are some more of the legal  
17    and factual issues that need to be resolved in this  
18    complaint.

19                    JUDGE LANE:   Okay.   Very good.

20                    Thank you very much for that summary.

21                    And that's clear and concise and tracks the  
22    submissions in the Complaint and the Answer.

23                    Has the Staff -- I would take it at this  
24    point the Staff has not conducted any investigation of  
25    any kind?

1                   MR. KRUEGER: No, we haven't. Basically  
2 I've read the pleadings. My belief is that this -- the  
3 far predominant issue is the legal issue regarding the  
4 interpretation of 249.645.1, which requires that Missouri  
5 American shall upon reasonable request make available the  
6 information on the meter readings.

7                   The statute is completely silent as to  
8 whether this requires or permits them to charge a fee for  
9 it. I can't find any case law on the subject.

10                  The parties have by the course of their  
11 conduct seemingly acknowledged that the payment of a fee  
12 is appropriate or has been appropriate over the past  
13 several years.

14                  And I would also echo what Mr. Jones said  
15 about the relief sought, which seems to be just a  
16 determination of whether it is proper to charge a fee  
17 rather than what is the proper amount of the fee.

18                  JUDGE LANE: Well, in fact, there is -- is  
19 there not a tariff in place right now?

20                  As I understand it, the Circuit Court  
21 declined to assume jurisdiction on essentially two  
22 grounds: one, the primary jurisdiction doctrine, and I  
23 believe an argument was also made under the filed rate  
24 doctrine.

25                  MR. JONES: Correct.

1 JUDGE LANE: The jurisdiction of this matter  
2 would be in this court.

3 So with regard -- so in addition -- even  
4 though the contract between the two parties is no --  
5 well, was suspended, I guess, at the end of 2003, is that  
6 right, or, you know, the parties agreed to abrogate the  
7 agreement and attempted to work out a new contract.

8 That tariff is still in place. Is that  
9 understanding correct? I just wanted to just make sure  
10 that my understanding of that was correct.

11 MR. KRUEGER: My understanding is that the  
12 tariff is in place.

13 MR. JONES: Mine also.

14 JUDGE LANE: Also. Very good. Thank you.

15 I would say at this point I have noticed  
16 that the parties have attempted to -- have had rather  
17 lengthy negotiations both in terms of trying to  
18 renegotiate the contractual agreement, which I guess  
19 expired at the end of 2003, and there was no progress  
20 made, and then I guess they -- the parties actually  
21 became even further separated in subsequent negotiations,  
22 you know, once this issue of whether the statute  
23 authorized the -- required the provision of the data in  
24 question for free.

25 Mr. Krueger, I agree with you that the

1 primary issues in this case that seem to predominate is  
2 the legal issue, and, namely, interpretation of that  
3 statute.

4                   An interesting statute, because it states --  
5 obviously the key phrase to the statute in my view at  
6 this point, and I think in the view of the parties as  
7 well, is what does the phrase "upon reasonable request"  
8 mean.

9                   I think it seems to me that the key issue is  
10 going to be whether a request for provision of this  
11 information that is not accompanied by an offer to pay  
12 anything for it constitutes a reasonable request, you  
13 know, under the terms of the statute.

14                   That seems to me that will be the crux --  
15 the crux of the issue.

16                   Well, I think -- I think we're all pretty  
17 clear on what the legal issues are, what the limited  
18 factual issues are. I think everyone has stated on the  
19 record what their position is.

20                   I don't know that there is a whole lot of  
21 room for settlement here given that the primary issue is  
22 legal, and I'm sure the parties are desirous of a  
23 resolution, at a minimum, the threshold issue of whether  
24 Missouri American is authorized or is prohibited under  
25 the terms of the statute from seeking reimbursement or

1 seeking any payment for provision of those services.

2 I think that's all I've got to say.

3 As I mentioned before, if the parties are  
4 going to be unable to work towards settlement, the  
5 purpose of this was just to get you folks together to  
6 work on some procedural scheduling issues.

7 I'd like to have a proposed schedule, a  
8 joint schedule -- a joint schedule from you folks in ten  
9 days, and I think at this point I might just leave you-  
10 all to discuss the matter.

11 And we'll go off the record unless there is  
12 anything else.

13 Sir, I notice that you came in a little  
14 late. I'm sorry. I did not ask you to introduce  
15 yourself. Are you --

16 MR. LOWRY: He needs no introduction.

17 MR. JOHANSEN: I'm Dale Johansen. I'm the  
18 manager of the Water and Sewer Department here at the  
19 Commission.

20 JUDGE LANE: Thank you very much. And I  
21 should know that, but I've been here a week.

22 MR. JOHANSEN: Well, this is the first time  
23 I've seen you too.

24 JUDGE LANE: Thank you very much.

25 So I think we're pretty much all done. You

1 can just work on some of those procedural issues. Unless  
2 you have anything further of me.

3 MR. LOWRY: I don't think so, Your Honor.  
4 We did discuss with Mr. Jones some broad parameters of  
5 what we thought we might be able to get done, and I don't  
6 think we had a big issue in terms of what our scheduling  
7 idea may be.

8 I suppose it would be appropriate, and I  
9 really think both -- and I can't speak for Mr. Krueger --  
10 but from our perspective, the desire to have this  
11 expeditiously resolved on the threshold issue, if that's  
12 necessary, is going to drive some of our scheduling  
13 issues.

14 Because I do think whichever way it comes  
15 out, it does become a factor in Missouri American's rate  
16 issues.

17 MR. KRUEGER: I'm pretty sure I won't be  
18 standing in the way of anything that you two can agree  
19 on.

20 MR. JONES: And just on the schedule, ten  
21 days from today, that will be the 20th of October?

22 JUDGE LANE: Today is the 10th. Yes, so  
23 that would be the 20th.

24 Is it the 11th?

25 THE COURT REPORTER: Yes.



1 JUDGE LANE: Well, then it would be the  
2 21st.

3 MR. JONES: That's a Saturday.

4 JUDGE LANE: Let's say, then, the following  
5 Monday.

6 MR. JONES: Okay.

7 MR. LOWRY: The 21st is a Saturday.

8 JUDGE LANE: So it would be Monday the 23rd  
9 then.

10 And I certainly agree with you, Mr. Lowry,  
11 that once this threshold issue is resolved, that's not  
12 going to require probably any discovery, being a purely  
13 legal issue, or very limited discovery as to the  
14 threshold issue.

15 Depending on how that issue is resolved,  
16 that legal issue is resolved, then there may need to be  
17 discovery depending on how that issue comes out.

18 JUDGE LANE: All right.

19 MR. JONES: Thank you, Your Honor.

20 JUDGE LANE: Thank you very much.

21 We're off the record then.

22 WHEREUPON, the on-the-record portion of the  
23 Prehearing Conference was concluded.

24

25