

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Office of the Public Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. WC-2007-0038</u>
	)	
Central Jefferson County Utilities, Inc.,	)	
	)	
Respondent.	)	

ORDER DENYING MOTION IN LIMINE

Issue Date: February 15, 2007

Effective Date: February 15, 2007

On July 26, 2006, the Office of the Public Counsel filed an “overearnings” complaint against Central Jefferson County Utilities, Inc (CJCU).¹ Central Jefferson answered on August 30, denying OPC’s allegations.

On January 31, 2007, CJCU filed an Objection to and Motion in Limine Concerning the Direct Testimony of Ted Robertson. CJCU complains that Mr. Robertson’s testimony contains hearsay, that he lacks personal knowledge of the information in his testimony, and that he does not provide proper foundation for the testimony. OPC responded on February 2, arguing that Mr. Robertson’s testimony is admissible pursuant to Section 490.065 RSMo.²

¹ By separate order, the Commission consolidated a similar complaint that OPC had against Central Jefferson’s sewer operations into this case.

² All statutory references are to Revised Statutes of Missouri (2000) unless otherwise indicated.

The Missouri Supreme Court has recently explained that the standard for the admission of expert testimony in administrative proceedings, as in civil cases, is that set forth in Section 490.065, which provides:³

1. In any civil action, if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

* * *

3. The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable.

Mr. Robertson's prefiled testimony shows that he holds a baccalaureate degree in accounting, has been a Certified Public Accountant in Missouri since 1989, and has participated in dozens of cases while employed at the Commission.⁴ Mr. Robertson's education and experience are sufficient to meet the minimum standard set in Section 490.065.1. Any flaws in Mr. Robertson's credentials or testimony go to the weight to be accorded the testimony, not to its admissibility.⁵ "If the witness has some qualifications, the testimony may be permitted."⁶ Mr. Robertson's prefiled testimony shows that the facts and data upon which his testimony and opinions are based are "of a type reasonably relied

³ *St. Bd. of Reg. for the Healing Arts v. McDonagh*, 123 S.W.3d 146, 149 (Mo. banc 2003).

⁴ See Direct Testimony of Ted Robertson, p. 1; Sch. TJR-1 (filed October 2, 2006).

⁵ *Hord v. Morgan*, 769 S.W.2d 443, 448 (Mo. App., E.D. 1989)

⁶ *Whitnell v. State*, 129 S.W.3d 409, 413 (Mo. App., E.D. 2004).

upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable.”⁷

For these reasons, the Commission will deny CJCJ’s motion.

IT IS ORDERED THAT:

1. The Objection to and Motion in Limine Concerning the Direct Testimony of Ted Robertson is denied.
2. This order shall become effective on February 15, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Ronald D. Pridgin, Senior Regulatory Law
Judge, by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 15th day of February, 2007.

⁷ Section 490.065.3; see *McDonagh*, *supra*, 123 S.W.3d at 157.