

0001

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS
Prehearing Conference
January 10, 2006
Jefferson City, Missouri
Volume 1

Forrest L. Hatfield,)
)
Complainant,)
)
v.) Case No. WC-2006-0128
)
Melody Lake Water & Sewer, LLC,)
)
Respondent.)

KENNARD L. JONES, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

0002

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

JUDY FREIBERG, Attorney at Law
10820 Sunset Office Drive #141
St. Louis, MO 63127
(314)822-9330

FOR: Forrest Hatfield.

JONATHAN L. DOWNARD, Attorney at Law
80 North Oak Street
Union, MO 63084
(636)383-3118

FOR: Melody Lake Water & Sewer, LLC.

MARK D. WHEATLEY, Senior Public Counsel
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, MO 65102-2230
(573)751-4857

FOR: Office of the Public Counsel
and the Public.

KEITH R. KRUEGER, Deputy General Counsel
P.O. Box 360
200 Madison Street
Jefferson City, MO 65102
(573)751-3234

FOR: Staff of the Missouri Public
Service Commission.

0003

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

2 JUDGE JONES: This is a prehearing
3 conference for Case No. WC-2006-0128. This case has been
4 consolidated with Case Nos. WC-2006-0130 and WC-2006-0152.
5 The case is now captioned Forrest L. Hatfield, Complainant
6 vs. Melody Lake Water & Sewer, LLC. And my name is
7 Kennard Jones. I am the presiding judge over this matter.
8 It's quarter after ten.

9 At this time we'll take entries of
10 appearance, beginning with Mr. Hatfield. Is Mr. Hatfield
11 here? Would you state your name and address for the
12 record.

13 MR. HATFIELD: Forrest Lee Hatfield.

14 JUDGE JONES: And your address?

15 MR. HATFIELD: 34 North Melody Drive,
16 Lester, Missouri.

17 JUDGE JONES: Thank you. Next we'll
18 have -- I should note for the record that Mr. Hatfield
19 isn't an attorney. Are you represented by an attorney?

20 MR. HATFIELD: Yes.

21 MS. FREIBERG: Yes.

22 JUDGE JONES: I'm sorry. And your name is?

23 MS. FREIBERG: Judy Freiberg.

24 JUDGE JONES: Judy Freiberg?

25 MS. FREIBERG: Yes.

0004

1 JUDGE JONES: And, Ms. Freiberg, do you
2 represent all the Complainants?

3 MS. FREIBERG: No. Just Mr. Hatfield.

4 JUDGE JONES: Just Mr. Hatfield. Let's
5 see. Mr. Reitz, are you represented, sir?

6 MR. REITZ: No.

7 JUDGE JONES: Would you please state your
8 name and address.

9 MR. REITZ: It's Harold J. Reitz, 56 North
10 Lake Drive, Leslie, Missouri.

11 JUDGE JONES: Thank you, sir. And
12 Mr. Bodine?

13 MR. BODINE: It's Robert Bodine, 49 North
14 Lake Drive, Leslie, Missouri.

15 JUDGE JONES: And from Staff of the
16 Commission?

17 MR. KRUEGER: Thank you. Keith R. Krueger
18 for the Staff of the Missouri Public Service Commission.
19 My address is P.O. Box 360, Jefferson City, Missouri
20 65102.

21 JUDGE JONES: Melody Lake Water & Sewer?

22 MR. DOWNARD: Your Honor, my name is
23 Jonathan Downard. My bar number is 34585. My address is
24 80 North Oak, Union, Missouri. I represent Melody Lake
25 Water & Sewer. Jerry Johnson is here as the president and

0005

1 chairman of that organization.

2 JUDGE JONES: Did you say your last name
3 was Downard?

4 MR. DOWNARD: Downard, D-o-w-n-a-r-d.

5 JUDGE JONES: And from the Office of the
6 Public Counsel?

7 MR. WHEATLEY: Good morning. My name is
8 Mark Wheatley. I'm Senior Public Counsel for the Office
9 of the Public Counsel. Our address is Post Office
10 Box 2230, Jefferson City, Missouri 65102.

11 JUDGE JONES: Okay. It looks like we have
12 an unregulated water and sewer company, is that correct,
13 Mr. Downard?

14 MR. DOWNARD: Yes, sir.

15 JUDGE JONES: And I know Staff had
16 suggested at some point that perhaps an application be
17 filed in this case. I don't think that's a good idea. It
18 should be a whole separate case for a certificate case.
19 This is a complaint case. Those things should be handled
20 separately, just so it's easier to follow that way, I
21 suppose I can say. I would suggest you-all do that.

22 MR. DOWNARD: Well, that's -- in fact, I
23 talked to Keith, Mr. Krueger back on October 23rd and
24 indicated that's what the -- what Melody Lake Water &
25 Sewer Company wished to do was to file an application to

0006

1 approve a sale case, and requested documents in order to
2 file that application. I have not received the same.

3 JUDGE JONES: You have filed?

4 MR. DOWNARD: No. I requested the
5 application to do that, but I have not received an
6 application.

7 JUDGE JONES: From the Commission?

8 MR. DOWNARD: That's correct. It's the
9 desire of Melody Lake Water & Sewer to file for approval
10 of the sale case, at which point, after I discuss this
11 with Mr. Krueger, it is the desire of Melody Lake Water &
12 Sewer to become a nonregulated entity under the homeowners
13 association.

14 JUDGE JONES: Mr. Krueger, you may be able
15 to help me out with this. Is there an application for
16 that? I thought there was just a pleading.

17 MR. KRUEGER: There's not an application
18 form. It has to be done by a pleading that complies with
19 the rules.

20 JUDGE JONES: Were you aware of that?

21 MR. DOWNARD: No. My understanding was an
22 application for a decommission is what we had talked about
23 or some sort of application, is what my notes are from the
24 conversation we had on the 23rd.

25 MR. KRUEGER: I'm sure I didn't say that

0007

1 there was an application form, because there isn't and I
2 never thought that there was.

3 JUDGE JONES: Well, don't worry about it
4 now.

5 MR. DOWNARD: Whatever needs to be filed,
6 we certainly want to comply and seek approval.

7 JUDGE JONES: Are you familiar with the
8 Commission's rules?

9 MR. DOWNARD: Yes, I am.

10 JUDGE JONES: You might want to check those
11 out and go ahead and file a pleading to start that
12 process.

13 Now, as far as the complaints are
14 concerned, Ms. Freiberg, can you state as simply as
15 possible what Mr. Hatfield's complaints are? First I want
16 to say this: Have you-all spoken? Mr. Reitz, Hatfield
17 and Bodine, have you-all talked together?

18 MR. BODINE: Yes.

19 JUDGE JONES: Are your concerns pretty much
20 the same?

21 MR. BODINE: Yes.

22 JUDGE JONES: Okay. Ms. Freiberg?

23 MS. FREIBERG: The Staff report is pretty
24 good. It's a good report in the way that it outlines some
25 of the problems. The problems I think that my client has

0008

1 with this is that, No. 1, the corporation was not decided
2 on in a way that comported with the bylaws. In other
3 words, there was no board vote to set up the corporation,
4 which caused some problems as far as the homeowners
5 association is concerned that are significant.

6 First of all, there was -- there is, as I
7 understand it, some sort of debt owed to the DNR by the
8 original water company, which is now a little over \$12,000
9 per fees paid that should have been paid to the DNR that
10 weren't. And somehow the DNR, as I understand it, and you
11 can correct me if I'm wrong, or someone back there can,
12 still wants to pursue those debts as against the current
13 LLC. And there was a forgiving of the debts by the people
14 that, as I understand it, took over the board, established
15 the LLC.

16 JUDGE JONES: Let me interrupt you. What
17 do you mean, a forgiving? This is a debt owed to DNR?

18 MS. FREIBERG: That's correct. In the
19 paperwork there's some sort of forgiveness of whatever
20 debts there are with -- as between the homeowners
21 association and Mr. Horsely's operation.

22 JUDGE JONES: The LLC?

23 MS. FREIBERG: Yes.

24 JUDGE JONES: That forgiveness doesn't
25 refer to DNR debts.

0009

1 MS. FREIBERG: I'm not certain. I don't
2 think anyone knows that of my group.

3 Okay. And secondly, decisions were made by
4 the LLC to establish some water lines and sewer lines. It
5 is not clear to my side whether or not there were any
6 plans that were created to establish those. It's clear
7 that there were no permits that were -- that were
8 requested to establish the lines as far as you're
9 concerned, as far as this agency's concerned. And there
10 were problems with the way that the lines were installed,
11 incurring even more debt as far as replacing the lines.

12 In addition, my client believes that
13 there's a discrepancy in decision-making as to what the
14 homeowner has to pay for in terms of setting up the lines
15 and the service between various lines. So in other words,
16 some owners have to pay for part of the trunk line and
17 some owners do not, homeowners do not.

18 Trunk lines were put in. One of them is
19 the subject, as I understand it, of one of the DNR's
20 complaints. One trunk line was put in without a permit,
21 paid for by the LLC or the homeowners association,
22 depending on how you look at it, and as I understand it,
23 the homeowner paid for their own line to hook into the
24 trunk, could have just hooked into a different trunk.
25 That trunk never needed to be established, as I understand

0010

1 it.

2 So I think, in other words, there are a lot
3 of decisions that were made by the water company that --
4 where there's inadequate information as to why those
5 decisions were made, how the decisions were made, whether
6 they were made pursuant to any procedure that's legal.
7 You can argue those decisions, but the issue is whether or
8 not the water company itself was set up pursuant --
9 correctly pursuant to the homeowners association
10 guidelines.

11 And therefore, the decisions that have all
12 been made, who's going to be responsible for paying for
13 all that, all the problems, which are probably about
14 \$20,000 worth of problems.

15 JUDGE JONES: Let me make sure.

16 MS. FREIBERG: Now, I have to say, I'm not
17 speaking for these two gentlemen.

18 JUDGE JONES: I understand. Let me make
19 sure that I understand this. There was a -- the
20 homeowners association was first; is that correct?

21 MR. DOWNARD: May I intercede here?

22 JUDGE JONES: Go right ahead.

23 MR. DOWNARD: Judge, the situation was that
24 the subdivision was formed back in the early 60's, called
25 Melody Lake Ranch. Melody Lake Ranch had a homeowners

0011

1 association. Separate from that homeowners association
2 there was a stock company formed, which was called
3 Franklin County Service Company. That was a stock company
4 that issued stock, sold stock, and they owned and
5 controlled the sewer and water within that subdivision.
6 That --

7 JUDGE JONES: Under the same name?

8 MR. DOWNARD: Under Franklin County Service
9 Company, yes. That was completely independent from the
10 homeowners association or any homeowners, other than those
11 homeowners that would have purchased stock. The Franklin
12 County Service Company was ill managed and ill run. In
13 fact, the last few years prior to the only stockholder --
14 the majority stockholder's debt, there was no work done by
15 Franklin County Service Company on the water and sewer
16 lines within the subdivision. The homeowners association
17 had to take it upon themselves in order to keep the water
18 and sewer system running and operable and in condition.

19 The company was -- the majority stock was
20 owned by an attorney in St. Louis named Harold Horsely.
21 Mr. Horsely was the president, secretary, treasurer of the
22 corporation and was nonresponsive. Mr. Horsely died in, I
23 believe, 2004. Prior to that, the homeowners association
24 had negotiated, attempted to negotiate with Mr. Horsely to
25 get him to respond to the needs of the subdivision and the

0012

1 homeowners and/or to sell the corporation so that the
2 homeowners could finally take control within the
3 subdivision.

4 Upon his death, on behalf of the homeowners
5 association, I contacted his spouse and the attorney
6 handling his estate and negotiated that the transfer of
7 the majority share of the stock in the Franklin County
8 Service Company would be transferred to Melody Lake Ranch
9 Homeowners Association, after which point the homeowners
10 association, because of liability issues -- there were no
11 corporate records maintained by Mr. Horsely.

12 There was no indication of what compliance
13 he had with the Public Service Commission. In fact, my
14 clients weren't even aware that it was an entity regulated
15 by the Public Service Commission. There was no
16 information on what he had filed with the Secretary of
17 State, on what outstanding debts that the Franklin County
18 Service Company were liable for.

19 It was my recommendation to the homeowners
20 association, rather than running and continuing to run
21 Franklin County Service Company, because of the potential
22 liability and problems, to form a completely separate
23 limited liability corporation solely owned by the
24 homeowners association that would assume the
25 responsibilities of maintaining the water and sewer lines

0013

1 within the subdivision. That's what brings us here today.

2 JUDGE JONES: Okay. So that sale of stock
3 then was void. You-all agree with that? The sale from,
4 was it Franklin County Service Company to the homeowners
5 association?

6 MR. DOWNARD: Yes.

7 JUDGE JONES: You said they created an LLC?

8 MR. DOWNARD: What originally happened was,
9 the stock was transferred to Melody Lake, the Pat --

10 JUDGE JONES: An individual?

11 MR. DOWNARD: Yes. Mr. Horsely's wife
12 signed her interest in the stock over to Melody Lake Ranch
13 Homeowners Association, LLC. They owned the stock. They
14 then transferred to the new LLC that they formed, Melody
15 Lake Water & Sewer, LLC.

16 JUDGE JONES: Okay. So that initial, the
17 first water company having been regulated by the Public
18 Service Commission would have had to have sought approval
19 from us in order to --

20 MS. FREIBERG: I can't hear you. I'm
21 sorry.

22 JUDGE JONES: I'm sorry. I was saying that
23 the initial transfer of stock from the Franklin County
24 Water Company to the homeowners association should have
25 been approved by the Commission. Does everybody in this

0014

1 room agree with that statement?

2 MS. FREIBERG: Yes.

3 MR. KRUEGER: No. The transfer of stock
4 wouldn't have to be approved.

5 MR. DOWNARD: No. It was a privately owned
6 company. They could sell stock or transfer stock from one
7 owner to another.

8 JUDGE JONES: Okay. So at what point
9 should a transfer have been approved by the Commission?

10 MR. DOWNARD: I believe the transfer, if
11 I'm not mistaken, and please correct me, Keith, is when
12 the Franklin County -- excuse me -- when the stock was
13 transferred to the newly formed Melody Lake Water & Sewer,
14 as well as the assets, i.e., the sewer lines, the water
15 lines. At that point the Franklin County Service Company
16 should have -- the old company should have requested
17 that -- filed a petition requesting that to be transferred
18 to the new entity, Melody Lake Water & Sewer, LLC.

19 MR. KRUEGER: The thing that needs
20 Commission approval is the transfer of assets. Transfer
21 of stock doesn't need Commission approval.

22 MR. DOWNARD: The water lines, sewer lines,
23 the water tower.

24 JUDGE JONES: And that transfer, I mean,
25 that transfer involves essentially the same people?

0015

1 MR. DOWNARD: That is correct.

2 JUDGE JONES: It's just a different name?

3 MR. DOWNARD: That is correct. When the --
4 when the stock was transferred, the Franklin County
5 Service Company had not called a meeting for a decade, at
6 which time a meeting was called of Franklin County Service
7 Company notifying all stockholders. New officers were
8 elected. A meeting was called basically to breathe some
9 life into the Franklin County Service Company.

10 The majority shareholder of Franklin County
11 Service Company is Melody Lake Ranch Board of Governors,
12 the homeowners association. So it was transferred from
13 Franklin County Service Company to the homeowners
14 association.

15 JUDGE JONES: And then when the homeowners
16 association formed a new LLC and transferred the assets,
17 that's what should have gotten approval?

18 MR. DOWNARD: Yes, sir.

19 JUDGE JONES: So because it didn't get
20 approval, that transfer is void?

21 MR. KRUEGER: Correct.

22 JUDGE JONES: Which then means the
23 homeowners association is still the provider of the water
24 and sewer?

25 MR. KRUEGER: Actually, it's the --

0016

1 JUDGE JONES: Not from a practical
2 standpoint, but legally?

3 MR. KRUEGER: Well, maybe de facto they
4 are. The Franklin County Service Company is really the
5 one that has the right to provide service and the
6 obligation to provide service, and it's my understanding
7 that all of the stock of that is owned by the homeowners
8 association.

9 MR. DOWNARD: That's correct.

10 MS. FREIBERG: And from our point of view,
11 the problem is that was never properly voted on to do
12 that.

13 MR. DOWNARD: I don't believe that is an
14 issue for the Public Service Commission.

15 JUDGE JONES: Do you disagree with that?

16 MS. FREIBERG: I don't know how it can be
17 an issue with the Public Service Commission, but on the
18 other hand I think it can be because how can you regulate
19 something that we would consider to be void, the transfer
20 of stock to the homeowners association and, therefore, the
21 assets? I mean, I don't understand, if it's a void -- if
22 it's void, if it wasn't done correctly according to the
23 bylaws.

24 MR. DOWNARD: That's a circuit court issue,
25 Judge. If they believe that the homeowners association

0017

1 acted ultra vires, this is not the time to get into that.
2 What the issue today is, aside from the complaints that
3 were filed concerning the rate increase, the issue
4 concerning the sale is whether the transfer from Franklin
5 County Service Company to the homeowners association of
6 the water lines and sewer lines is void without filing
7 that application. And I think that obviously my client is
8 agreeing that it is void and wants to file the --

9 JUDGE JONES: It sounds look it was an
10 honest mistake that happened. How do we fix it?

11 MR. DOWNARD: That's all it was. The issue
12 was there was no records.

13 JUDGE JONES: Let me hear something over
14 here first.

15 MR. HATFIELD: I would like to know why the
16 board of governors of Melody Lake Ranch has no say-so
17 whatsoever in purchasing this water company from Franklin
18 County Water & Sewer.

19 JUDGE JONES: I certainly can't answer that
20 question. That may be something you-all can discuss here
21 after I leave you to yourselves to discuss this further.

22 MS. FREIBERG: I think the bottom line --
23 and I have a question for you, is the bottom line is we
24 don't want to happen what happened with Mr. Horsely, that
25 one individual is just -- or a couple of individuals are

0018

1 running it without any regulation from either this
2 organization or the homeowners board of directors
3 basically.

4 JUDGE JONES: Because the same thing could
5 happen that happened.

6 MS. FREIBERG: And that's the issue. The
7 issue isn't that it was needed. We all agree it was
8 needed, and we all -- and so hence my question to you is,
9 as I read this meeting, I thought it might be some way to
10 negotiate or some sort of settlement so we're all happy
11 with how this is going to go forward. Am I wrong on that?
12 I thought it was a mediation.

13 JUDGE JONES: Well, it is. This is an
14 opportunity for you-all to come together and try to settle
15 the matter, but I don't like to just come in here and
16 announce that's what it is and then leave you to discuss
17 those things. I would rather use this as an opportunity
18 for me to get a better understanding of what the real
19 issues are, and also to put it on the record, what your
20 concerns are, what your arguments might be so that the
21 case can progress a little faster and smoother, this being
22 the rough part.

23 You wanted to say something?

24 MR. DOWNARD: Yes, Judge. It's not --
25 Mr. Hatfield sat on the board. The board, in fact, voted

0019

1 and I have board minutes where the board approved the
2 purchase of the stock. There has been board meetings.
3 Homeowners have approved that. The association is set up
4 that the homeowners themselves vote for the
5 representatives on the board. The board is therefore the
6 sole owner of the water and sewer. So the board -- the
7 water and sewer company, if it's approved, will be the
8 sole owner of the water and sewer company.

9 The board is made up of representatives
10 that are elected by the homeowners, the homeowners
11 association. In other words, the homeowners
12 association --

13 MS. FREIBERG: Is it possible to get a copy
14 of the minutes where you say --

15 MR. DOWNARD: You could have had all those,
16 Judy. All you had to do was contact me. We've had
17 correspondence back and forth. I sent you documents. I
18 sent you -- I sent you the bylaws showing -- so I'm not
19 here today to argue with Judy on --

20 JUDGE JONES: Well, the thing is whether --
21 not what could have happened. You-all could have filed an
22 application to transfer the stock.

23 MR. DOWNARD: That's correct.

24 JUDGE JONES: So we can't do anything about
25 the fact that it rained yesterday, but can she get that

0020

1 information from you now?

2 MR. DOWNARD: I will certainly be glad to
3 provide that information. All she has to do is request
4 that, Judge.

5 MS. FREIBERG: I am requesting it right
6 now. But the issue really to me is, again, we have a copy
7 of other minutes through '05 -- or '04, excuse me, when
8 Mr. Hatfield got off the board, and as far as we
9 understand, there was no vote on that. So we don't -- and
10 every time I've raised it, nobody's come up with any
11 information saying, yes, there was a vote by the board of
12 directors to actually do this. So that's really -- I just
13 would like to see it. You don't have it with you, I guess
14 today.

15 MR. DOWNARD: That's not an issue. My
16 understanding of the issue today was concerning the
17 regulatory issues with the Public Service Commission.

18 JUDGE JONES: That is the issue, but if
19 there's an underlying issue whether it's in our
20 jurisdiction or not that's going to affect the outcome of
21 this case, I think you ought to be compliant.

22 MR. DOWNARD: I don't believe that's an
23 issue of whether it's -- it is under your jurisdiction,
24 the issue with the Franklin County Service Company
25 transfer of the real property and personal property to the

0021

1 board of governors.

2 JUDGE JONES: Well, it's obvious to me,
3 then, there's a problem with what happened at some meeting
4 that may or may not be under our jurisdiction, but if it's
5 going to be an underlying vibe in this whole complaint
6 case, then it's going to be relevant factually, isn't it?

7 MR. DOWNARD: I don't believe it's within
8 your jurisdiction to determine whether the board of
9 governors acted the ultra vires in accepting the stock.
10 The stock is not a regulatory issue for the Public Service
11 Commission, and the transfer of stock is not a regulatory
12 issue.

13 Franklin County Service Company can issue
14 stock and sell stock to whoever it wants whenever it
15 wants, provided it complies with the Secretary of State's
16 requirements. That's not part of the Public Service
17 Commission's jurisdiction.

18 JUDGE JONES: Ms. Johnson, do you agree
19 with that?

20 MS. FREIBERG: Freiberg, but that's okay.
21 I wish my last name was Johnson.

22 JUDGE JONES: I'm sorry. What did I call
23 you? Freiberg.

24 MS. FREIBERG: It's easier to pronounce.

25 JUDGE JONES: I'm sorry. Forgive me.

1 MS. FREIBERG: I think it -- I think it's
2 relevant to the jurisdiction of what you-all are doing,
3 that's my opinion, because --

4 JUDGE JONES: I don't understand that.
5 Either it's under our jurisdiction or not.

6 MS. FREIBERG: Well, I think it's more the
7 issue of if, for example, no permit was taken out as far
8 as -- and that's my understanding of the findings of the
9 Staff. The ultimate decision on -- the ultimate question
10 of who makes those decisions and how those decisions are
11 made and then who's liable for the cost becomes relevant.

12 If the homeowners association did not ever
13 properly participate in a vote to acquire the company,
14 essentially, and the assets and property and the debts, if
15 that's what happened, and in addition to acquire the
16 liability of subsequent decisions that were made, without
17 authority in our opinion, to establish lines that now are
18 not done correctly, nor were permits taken out, in other
19 words, the homeowners association did not vote to acquire
20 this, and then all the decisions made -- properly vote,
21 and then all the decisions that were subsequently made in
22 our opinion were not made with any authority.

23 So why would we have to pay, in other
24 words, \$12,000 in past fees? Why would the homeowners
25 association have to pay to establish lines that were

0023

1 established incorrectly when they didn't make those
2 decisions?

3 So I do, yeah, I think it's very relevant.
4 And it's relevant in resolving the underlying conflict,
5 which I think we would really like to resolve.

6 MR. DOWNARD: First of all, Judge, it's not
7 relevant. Again, what she has -- by her own statements,
8 that is an issue concerning the homeowners association.
9 That is not subject to Public Service Commission approval.
10 The homeowners association is a complete separate entity.
11 It does not run water or sewer lines in the state. That's
12 Franklin County Service Company.

13 And if the transfer of property was void,
14 then that means that the homeowners association does not
15 own that property. Franklin County Service Company owns
16 that property. The homeowners association may have stock.
17 Again, stock is not regulated by the Public Service
18 Company. That is issue, if they believe that the board
19 acted ultra vires, they can file an action in circuit
20 court and they can say the board acted ultra vires.

21 As far as this \$20,000, there's no \$20,000.
22 In the original purchase of the stock, what happened is
23 Franklin County Service Company would not pay to make
24 repairs. For years the homeowners association had to pump
25 into the water and sewer company in order to keep it

1 running.

2 Franklin County Service Company owed the
3 board of governors money for the -- basically for unjust
4 enrichment that the homeowners association had to pump
5 money into to keep it running. Upon the death of
6 Mr. Horsely, the company had no assets other than the
7 stock. So in exchange for forgiving the debt to Franklin
8 County Service Company, which was uncollectible in the
9 first place, the stock was transferred to Melody Lake
10 Ranch Board of Governors, which then became majority owner
11 of Franklin County Service Company. So there is no debt.

12 As far as the Department of Natural
13 Resources, that is already -- my understanding is that the
14 monies owed have been discussed, negotiated. There's no
15 monies owed. So it's not factual.

16 MS. FREIBERG: Okay.

17 MR. DOWNARD: All this debt, and what we
18 believe this really comes down to, there was an error, an
19 honest error that a request -- a petition was not filed
20 requesting transfer. But quite frankly, there was
21 absolutely no corporate records. My clients nor myself
22 had any idea that this was a publicly regulated as opposed
23 to a non-regulated water and sewer company, Franklin
24 County Service Company, and they want to make that
25 correction.

1 However, what this has really come down to
2 is a group of minority homeowners wanting to have a
3 different agenda and place that before the Public Service
4 Company to come to a resolution on a completely different
5 issue.

6 Now, we're here today concerning the
7 jurisdiction of the Public Service Company, and we want to
8 make whatever correction is necessary to have a transfer
9 of property approved, submit the application and have this
10 as a non-regulated entity. But as far as their issues
11 concerning the homeowners association, Public Service
12 Commission does not have jurisdiction over the homeowners
13 association.

14 JUDGE JONES: Mr. --

15 MR. BODINE: May I make a comment?

16 MR. JONES: Mr. Bodine?

17 MR. BODINE: Yes. Since day one that this
18 has all started, and I don't know the exact date, there's
19 been no communication between our head of the board, be it
20 Jerry Johnson or Bob White, whoever it was at the time, I
21 believe it was Bob White, been no communication to the
22 general association members, in other words, 165 members
23 of this association which owns the rights to all this --
24 legal rights to all this Melody Lake. There's been no
25 communication whatsoever.

1 And when we ask for communication, it's
2 something learned about this, we were completely turned
3 away. One example, I asked for the membership list,
4 mailing list of all the lot owners so I might notify them
5 of what's going on because we're all concerned, those that
6 live there and have lots there. I was told by Mr. Johnson
7 that Mr. Downard told him not to give me the list.

8 Well, that's what you told me, Jerry.

9 MR. DOWNARD: Judge, this isn't relevant,
10 and it's --

11 THE REPORTER: Wait. You're all talking at
12 one time and I can't take that down.

13 MR. BODINE: Let me go a little further.
14 Anyway, I never received a list. So, consequently, the
15 only people that are aware really what's going on is a few
16 of us that really dug into things. It's created a real
17 problem here by what you hear here trying to find out
18 exactly what we're being put into.

19 Now, it's like me being put into something
20 that I'm going to owe money for, and there's been no
21 explanation how this is going to happen. Have I got a
22 say-so? No. And so this is all connected, because how
23 are you going to collect the PSC fees, the permits and all
24 that from DNR unless you have a legal entity that's going
25 to take care of all that?

1 And you don't have a legal entity here
2 that's legitimate simply because I've been put in
3 something I never even knew about until they said, well,
4 you're in the LLC. Now, how in the world can this happen?
5 I ask all of you here, how can this take place? It would
6 be like me paying property tax for my next-door neighbors
7 because they said I had to do it.

8 MR. DOWNARD: The property owners of the
9 subdivision have been paying for over a decade water and
10 sewer fees to Franklin County Service Company, a company
11 which has no representation by the property owners, has
12 been not -- has not been responsive to the property
13 owners, has not maintained the water and sewer lines. So
14 for almost a decade every property owner has been pumping
15 out money to the water and sewer ownership of Franklin
16 County Service Company with absolutely no control, no
17 response. They don't have the right to vote the board.
18 They don't have a right to elect the officers.

19 This is the first time that for once the
20 property owners will control the water and sewer company.
21 The property owners elect the representatives, the
22 president, the chairman to the board of governors, and it
23 is the board of governors that controls what we propose to
24 be the new water and sewer. The first time in the history
25 of this entire subdivision, to the '60s, that they have

0028

1 control. Previously they didn't.

2 Now, the alternative is they own the stock
3 and they do nothing, there is nobody to run the water and
4 sewer, there is no controlling agents, the water and sewer
5 company is defunct, and the water and sewer lines can
6 basically be taken under control by whatever regulatory
7 authority would take control of a company that is no
8 longer in existence.

9 JUDGE JONES: Mr. Reitz, would you like to
10 add anything to our discussion?

11 MR. REITZ: No.

12 JUDGE JONES: Staff, anything?

13 MR. KRUEGER: Well, I think I agree for the
14 most part with what Mr. Downard has said. The Commission
15 does not have jurisdiction over the management and
16 operation of the homeowners association. What the
17 Commission regulates at the present time is Franklin
18 County Service Company, and then has the right to make the
19 decision, has jurisdiction over whether the assets of that
20 company should be transferred to some other entity and
21 then, depending upon the nature of the entity, may
22 continue to regulate it.

23 If it's an entity that is set up properly,
24 as I think Mr. Downard wants it to be set up so that is,
25 in fact, controlled by the homeowners, then it would be a

0029

1 non-regulated entity. But the exact nature of how that's
2 accomplished is yet to be decided, and I think that's
3 something we can work on here in our meeting after the
4 formal part of the proceeding.

5 JUDGE JONES: Is it possible that an entity
6 can be set up where the homeowners own the majority of the
7 shares but the water and sewer is not provided by the
8 homeowners association? Do you follow where I'm going
9 with that? Is that a possible scenario?

10 MR. KRUEGER: Say it again.

11 JUDGE JONES: Where it would still be
12 regulated, but the homeowners association owns a majority
13 of the shares in whatever entity provides the service.

14 MR. KRUEGER: Yes.

15 JUDGE JONES: Is there anything from Office
16 of the Public Counsel?

17 MR. WHEATLEY: No, Judge.

18 JUDGE JONES: Well, you-all have a fine
19 mess to clean up, and the Public Service Commission will
20 certainly try to do its best to help you with that
21 situation. I will leave you-all to discuss whatever you
22 can.

23 What I would like, though, is something
24 from all the parties that specifically gives the question
25 you want the Commission to answer, just that simple, what

0030

1 is it, what remedy do the complainants in particular want,
2 that's within our power to do, I should add.

3 And there's nothing else scheduled for this
4 room. So you're welcome to stay here probably for the
5 rest of the day, if you need to. I hope that's not
6 necessary, but if it is, then it is.

7 Okay. Is there anything else from anyone?
8 With that, then, we will go off the record.

9 WHEREUPON, the recorded portion of the
10 prehearing conference was concluded.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25