

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Norma Chase,)	
)	
Plaintiff)	
)	CIVIL ACTION
vs.)	
)	No. 1:05-CV-2375
Public Utility Commission)	
of Pennsylvania, Wendell F.)	JUDGE KANE
Holland, James H. Cawley,)	
Bill Shane, Kim)	FILED ELECTRONICALLY
Pizzingrilli, and Terrance)	
J. Fitzpatrick,)	
)	
Defendants)	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. On January 13, 2005, the Pennsylvania Public Utility Commission held a public meeting at which various pending matters were openly deliberated and adjudicated. Said meeting was stenographically recorded by Commonwealth Reporting Company, which then transcribed the notes. The transcript is 42 pages in length. The services of Commonwealth Reporting Company were paid for by the PUC.

2. In September of 2005, the following e-mail exchange took place between plaintiff and Gwen Risser, the PUC employee responsible for responding to requests

for copies of documents:

Chase to Risser, 9/19/2005:

What would the cost be of a transcript of the 1/13/05 public meeting?

Thanks.

Risser to Chase, 9/19/2005:

Hi, Norma, we are not permitted to make copies of transcripts. You will have to contact the court reporter to obtain copies. The court reporter is: Commonwealth Reporting Company, 700 Lisburn Road, Camp Hill, PA 17011. Phone No. is 1-800-334-1063.

Chase to Risser, 9/20/2005:

Why would a transcript of a public hearing not be a public record?

Risser to Chase, 9/20/2005:

I am sorry but I can't answer your question. Maybe you should ask the reporter that question.

Chase to Risser, 9/29/2005:

I do get to Harrisburg now and then. If I wanted to read the transcript, where would I find it?

Risser to Chase, 9/30/2005:

Good morning Norma, you are permitted to view the transcript in our office and even take your own notes but we are not permitted to make you copies from the transcript.

We are located in the Keystone Building, 400 North St., Harrisburg. Our office is on the 2nd floor on the Forster St. side

of the building. You can call the front desk at 717-787-6982 to have the testimony folder pulled to read it but you have to inform them that you were advised about not being able to get copies without going through the court reporter.

3. Plaintiff did not visit the PUC office, and did not seek to obtain a copy of the transcript from Commonwealth Reporting Company. As of January 13, 2005, the page rate charged by Commonwealth Reporting Company for copies provided to the public was \$2.80 per page. 31 of the 42 pages in the transcript in question were billable (there were 11 "lay-ins"), and the total cost to plaintiff would have been \$86.80. This sum exceeds the cost of copying.

4. On October 31, 2005, plaintiff sent Ms. Risser a letter formally requesting an at-cost copy of the transcript. The letter stated:

I am writing to make a formal request for a photocopy of the transcript of the January 13, 2005 public meeting of the PUC. I will be happy to pay the cost of copying. If you tell me the cost, I will send a money order.

I previously e-mailed you about this transcript, and you advised me that I would have to get it from the court reporter. I happen to have some life experience with court proceedings and I have some idea what court reporters charge for copies of transcripts.

You have been very courteous and I appreciate that. However, I believe that, as a citizen, I have a right to a copy of this document.

Thank you for your consideration.

5. On November 2, 2005, Ms. Risser left a message on plaintiff's answering machine reiterating that the PUC would not provide her with a copy of the transcript and that plaintiff was required to obtain the copy from the reporting agency.

6. The foregoing actions reflected a longstanding PUC policy of referring requests for transcript copies to the appropriate court reporting agency.

7. In state-court litigation involving a prior challenge to the PUC's transcript policy, *Sierra Club v. Public Utility Commission*, 702 A. 2d 1131 (Pa. Cmwlth. 1997), *affirmed* 557 Pa. 11, 731 A. 2d 133 (1999), the PUC took the position that the high copy rates charged by court reporters are a legitimate form of supplemental compensation for the prior stenographic recording and transcription of the proceedings.

8. In that case, Commonwealth Reporting, which had intervened, took the position that transcripts are the work product of the court reporters preparing them and that reporters accordingly have a proprietary interest in them.

9. Commonwealth Reporting places the following notice on all of its transcripts:

Any reproduction of this transcript is prohibited without authorization by the certifying reporter.

10. The contract specifically governing the provision of court reporting services to the PUC by Commonwealth Reporting Company, a document formulated by the Reporting Contract Administrator of the PUC, includes the following provision:

[A title page] should also include the following disclaimer: *Any reproduction of this transcript is prohibited without authorization by the certifying agency.*

11. The Special Contract Terms and Conditions applicable to the provision of court reporting services to Commonwealth agencies, a document formulated by the Department of General Services, provides that Commonwealth agencies shall have the right to make copies of transcripts for internal use only, and to provide copies to other agencies. With limited exceptions, it prohibits Commonwealth agencies from providing copies to the general public.

12. The PUC has made no changes to its policies, procedures, or regulations relating to requests for copies of its public records subsequent to the 2002 amendments to Pennsylvania's Right-to-Know Law.

13. In Management Directive 205.36, issued by

Pennsylvania's Office of General Counsel on November 5, 2003, executive agencies were permitted to assess 15 cents per page for photocopies made on their own copiers, and "prevailing cost" if copies were made elsewhere.

14. The PUC is not subject to directives of the OGC.

15. The PUC presently charges 75 cents per page for public record documents other than transcripts.

Conclusions of Law

1. The record plaintiff seeks is a public record.

2. Plaintiff has a First Amendment right of access to a photocopy of the record at cost. Reasonable cost of said record is 15 cents per page for a total of \$6.30.

3. The PUC's refusal to grant plaintiff's request is based on a policy of treating transcripts as if they were subject to a copyright held by the reporter or reporting agency.

4. No such copyright exists under federal law, and federal preemption of copyright precludes the state from creating a right analogous to copyright.

5. Under federal copyright law, the prevailing

party in a copyright dispute may be awarded counsel fees in the discretion of the court.

6. The PUC's refusal was not based on reasonable reliance on state law in light of the 2002 amendments to the Right-to-Know Law, which effectively abrogated the decision in *Sierra Club* upholding past PUC policy.

7. The issue raised in this lawsuit is one that tends to elude review; most litigants who need transcripts do not have the luxury of challenging the costs they are quoted because of the delay such challenge would cause in the underlying litigation.

8. For that reason, this lawsuit served the public interest in access to information and ability to disseminate information.

9. Plaintiff is, accordingly, entitled to reasonable counsel fees under copyright law.