

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)	

STIPULATION

The parties to the within case hereby stipulate as follows:

1. On January 13, 2005, the Pennsylvania Public Utility Commission held a public meeting at which various pending matters were openly deliberated and adjudicated. The agenda for the meeting is appended hereto as Plaintiff's Exhibit 1 and incorporated by reference.

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. A page from the PUC's web site stating this policy is appended hereto as Plaintiff's Exhibit 2 and incorporated by reference.

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 Company, 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 Company 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.*

Said document, "Additional Terms and Conditions", is appended hereto as Plaintiff's Exhibit 3 and incorporated by reference.

11. The Special Contract Terms and Conditions (Contract No. 9985-07) 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. The contract reflects a revision date of November 19, 2002. It is appended hereto as Plaintiff's Exhibit 4 and incorporated by reference.

Said contract prohibits Commonwealth agencies from supplying transcript copies to litigants or any other person unless ordered to do so by a court, with limited exceptions, to-wit:

a. When a reporting agency cannot fulfill a copy order from an interested person, or cannot timely fulfill an urgent copy order from another state or federal agency, the Commonwealth agency may provide the copy at the "amount per page rate fixed by the Commonwealth agency." (Pages 7-8.)

b. With respect to transcripts more than five years old, the contract provides:

In any event, however, after 5 years, transcripts will be deemed to have entered the public domain. As such, the Commonwealth shall have the right to provide copies of any transcripts 5 years old or older to any interested person for the amount per page rate as fixed by the Commonwealth. [Page 7.]

12. Said contract also states, at page 8:

The Commonwealth and the Suppliers believe that the provisions of the contract comply with the provisions of the Right to Know Act, 65 P.S. §§ 66.1-66.9 and the Commonwealth Court's November 12, 1997 decision in Sierra Club et al. v. Pa. P.U.C., No. 702 A. 2d 1131 1997. In the event that the Right to Know Act is modified by the General Assembly or the Commonwealth Court's decision is Sierra Club et al. v. Pa. P.U.C. is modified or overruled by a subsequent decision of the Commonwealth Court or Pennsylvania Supreme Court so as to require the Commonwealth to provide copies of hearing transcripts pursuant to the Right to Know Act, the parties will attempt to amend the contract to comply with the requirements of the Right to Know Act as interpreted by the courts.

13. 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.

14. 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. A copy of the directive is appended hereto as Plaintiff's Exhibit 5 and incorporated by reference.

15. The PUC is not subject to directives of the

