

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Pre-Hearing Conference
August 5, 2015
Jefferson City, Missouri

Volume 1

CHARLES HARTER,)
Complainant,)
vs.) File No. WC-2015-0311
MISSOURI -AMERICAN WATER COMPANY,)
Respondent.)

KIM S. BURTON, Presiding,
REGULATORY LAW JUDGE

REPORTED BY:

Pamela S. Gentry, CCR NO. 426
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APPEARANCES:

FOR THE COMPLAINANT:

MR. CHARLES HARTER (Pro Se)
827 South Sappington
St. Louis, Missouri 63126

FOR MISSOURI-AMERICAN WATER COMPANY:

MR. DEAN L. COOPER,
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and

MR. TIMOTHY W. LUFT (via telephone)
Missouri-American Water Company
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St. Louis, Missouri 63141
314.996.2279

FOR THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

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P R O C E E D I N G S

JUDGE BURTON: If everyone's ready, let's go ahead and go on the record in File No. WC-2015-0311, Charles Harter versus Missouri-American Water Company, the respondent. My name is Kim Burton. I'm a Regulatory Law Judge for the Public Service Commission.

At this time, I will ask the parties to enter their appearance for the record. I'll begin with you, Mr. Harter.

MR. HARTER: Yes. Charles Harter.

JUDGE BURTON: And can you please provide your address for the Court Reporter?

MR. HARTER: 827 South Sappington, St. Louis, Missouri, 63126.

JUDGE BURTON: Okay. Thank you.

On behalf of respondent Missouri-American Water Company?

MR. COOPER: Dean Cooper on behalf of Missouri-American Water Company, and the Court Reporter has the address. And then Tim Luft.

Tim, do you want to give your address?

MR. LUFT: Yes. Tim Luft, 727 Craig Road, St. Louis, Missouri, 63141.

JUDGE BURTON: Okay. Thank you.

And on behalf of the Staff of the Public

1 Service Commission?

2 MR. WILLIAMS: Thank you, Judge.

3 Appearing on behalf of the Staff of the
4 Missouri Public Service Commission is Hampton Williams, P.O.
5 Box 360, Jefferson City, Missouri, 65102.

6 JUDGE BURTON: All right. Thank you.

7 Now, the reason that the Commission has
8 scheduled a prehearing conference for today is, obviously,
9 Mr. Harter, you have filed a complaint against
10 Missouri-American Water Company, and Missouri-American Water
11 Company has filed an Answer and a Motion for Summary
12 Determination. Staff has submitted their report in this as
13 well.

14 So, I would like to just begin by asking you
15 briefly, Mr. Harter, can you clarify what differences are
16 there between this case and your prior complaint case in
17 2013? And I can cite the file number for that if you need
18 it. I believe WC-2013-0468.

19 MR. HARTER: Yes. Well, there -- oh, the
20 question is what differences are there?

21 JUDGE BURTON: Yeah. Are there any factual
22 differences?

23 MR. HARTER: There are no factual similarities
24 except that the parties are the same. That would be the only
25 similarity. So, I would say everything is different.

1 JUDGE BURTON: Okay. Can you identify what
2 statutes, rules, or tariffs you believe Missouri-American has
3 violated?

4 MR. HARTEER: I believe that they violated the
5 one that says that once they offer something that they have
6 to follow through on it. They can't make false or deceptive
7 offers.

8 JUDGE BURTON: And what was the offer?

9 MR. HARTEER: The offer was to provide some
10 relief if a leak was detected and determined.

11 JUDGE BURTON: Okay.

12 MR. HARTEER: They sent numerous fliers,
13 paperwork, advertisements, communications, memos of the sort.

14 JUDGE BURTON: Okay.

15 MR. HARTEER: Those were their offers. They
16 offered relief, I believe. Perhaps Mr. Luft could better
17 characterize what their assertions were in regard to their
18 offer. But they definitely made an offer that if you
19 participated in their program, which they offered to detect
20 and determine leaks, that there would be some type of relief.
21 I believe that's what their offer was.

22 And their relief is, Well, there you go. Good
23 luck with that. I don't see where that is any relief at all.
24 I don't see where that's an offer. I don't see where that is
25 helpful. I don't see where that would be anything except

1 actually sort of an actionable false advertising under the
2 Fair Debt Collection Practice -- I mean, under the Missouri
3 Consumer Protection Act Chapter 408.

4 However, now we're in Public Service, so an
5 analogous reference, not a legal one obviously.

6 JUDGE BURTON: Okay.

7 MR. HARTER: Merchandising -- Merchandising
8 Practices Act, I would say. If they're making a -- a -- a
9 false offer.

10 JUDGE BURTON: And you realize the Public
11 Service Commission has no authority to enforce the
12 Merchandising Practices Act?

13 MR. HARTER: Yeah. That's why I said it was
14 analogous. I did not say it was a legal claim. I said it
15 was an analogous. I said, if they are making a false offer,
16 it would be analogous to someone who is not regulated by the
17 Public Service Commission making a similar offer, they would
18 be actionable under the Merchandising Practices Act. The
19 fact that they are not actionable under the Merchandising
20 Practices Act would inescapably lead to the conclusion that
21 they are actionable under the Public Service Commission
22 rules, procedures, tariffs, et cetera.

23 If not, then what you -- the theory can only
24 be that, because they are a regulated utility, they get to
25 engage in completely what would otherwise be illegal and

1 actionable behavior? That they escape, that they're allowed,
2 that they get some sort of free conduct for this behavior
3 because they're a utility? That makes no sense.

4 JUDGE BURTON: Okay. This is what I'm going
5 to do. Mr. Harter?

6 MR. HARTER: Yes.

7 JUDGE BURTON: I'm going to go ahead and set
8 this for a hearing. We can have that either here in
9 Jefferson City or we can have that in our office in St.
10 Louis.

11 So, I would ask that everyone look at their
12 schedule. And I will say that, you know, I'm sure that
13 you're aware, Mr. Harter, that case law's clear that the
14 burden of proof is on the complainant. So, I would ask that,
15 when we have the hearing, you present all of your facts,
16 evidence, and any arguments you have with specificity as to
17 any statutes that fall under the Public Service Commission's
18 jurisdiction, the Commission's rules, or Missouri-American
19 Water Company's tariffs.

20 Okay?

21 MR. HARTER: Well, may I ask a question?

22 JUDGE BARTON: Certainly.

23 MR. HARTER: As I understand it, the
24 prehearing conference -- once again, I was merely answering
25 your question in asserting the claim, but that is not the

1 only avenue I think that's available to us to resolve the
2 issue. And everyone on this phone right now -- and I can't
3 see them because all I can see is my phone -- but I'm fairly
4 certain that every single other person on this phone is more
5 knowledgeable and experienced than I in Public Service
6 utility regulations and, in particular, this subject.

7 And I don't see any purpose in dragging
8 everyone through some sort of exercise to prove that point.

9 JUDGE BURTON: Are you saying you don't want a
10 hearing?

11 MR. HARTER: No. What I'm saying is, I would
12 have appreciated this opportunity at the prehearing
13 conference, before we step further to ask the following
14 questions: What, if anything, is the utility prepared to
15 offer me in this particular case or in general any consumer
16 of their services or in a theoretical sense --

17 JUDGE BURTON: All right. Mr. Harter, I'm
18 stopping --

19 MR. HARTER: -- as to a remedy --

20 JUDGE BURTON: Mr. Harter?

21 MR. COOPER: Mr. Harter?

22 MR. HARTER: -- as to a remedy.

23 JUDGE BURTON: Mr. Harter --

24 MR. HARTER: Yes.

25 JUDGE BURTON: -- please silence for one

1 moment. It makes it difficult for the Court Reporter to
2 transcribe what we're saying.

3 After we schedule a hearing, I'm going to be
4 leaving the room, and off the record the parties will have an
5 opportunity to discuss potential resolutions of any conflict.

6 Okay?

7 MR. HARTER: Oh, okay. I didn't see -- just
8 prove my point. I'm the only one that doesn't understand the
9 procedure.

10 JUDGE BURTON: Well, if you give me a minute
11 I'll be happy to explain it to you.

12 MR. HARTER: No, you just did.

13 JUDGE BURTON: Okay. Then I will ask if
14 everyone would please pull up there calendars.

15 Now, how -- how much time do the parties feel
16 they need to have to prepare for this? I don't know if I'm
17 unrealistic if I'm suggesting sometime in September?

18 MR. COOPER: Let me ask this, Judge, and I
19 think I know the answer, but I think I better ask anyway. I
20 assume, by the way you're proceeding, the Court is not
21 willing to rule on our motion for summary determination
22 before a hearing?

23 JUDGE BURTON: That's right.

24 MR. COOPER: Mr. Luft, my reaction is we could
25 probably try this sometime in September. Is that --

1 MR. LUFT: Yes. Yeah. I was just waiting to
2 hear from the complainant, but yes, that would be correct.

3 MR. COOPER: I mean, it would depend on the
4 date, but I don't know that September is too soon.

5 JUDGE BURTON: All right.

6 Now, Mr. Harter, would you prefer to have a
7 hearing in Jefferson City or at the Public Service
8 Commission's office in St. Louis?

9 MR. HARTER: St. Louis.

10 JUDGE BURTON: Okay. Let's take a look --

11 MR. COOPER: I think all the parties are here,
12 but yeah.

13 JUDGE BURTON: Let's take a look then at --
14 how does the 14th or the 15th work for everyone?

15 MR. LUFT: It's good with me.

16 MR. HARTER: Those are both good, but you
17 would have to understand I will be on crutches and
18 painkillers.

19 MR. WILLIAMS: Your Honor, I would have a
20 conflict on the 14th.

21 JUDGE BURTON: Okay.

22 MR. WILLIAMS: But the --

23 MR. HARTER: I would be recovering from
24 surgery, and I assume capable of attending, but --

25 JUDGE BURTON: When is your surgery,

1 Mr. Harter? You don't have to get into the specifics. I
2 just want to make sure that we're not impeding your ability
3 to represent yourself.

4 MR. HARTER: It's on the 5th. Wait. It's on
5 the 4th.

6 JUDGE BURTON: Okay. Do you think that you'll
7 be capable then of participating in a hearing on the 14th?

8 MR. HARTER: I never had surgery of this
9 nature before. He says I'll be partial weight-bearing then.
10 So, it will just be a matter of -- I'm -- I'm positive I will
11 be on a boot and crutches.

12 JUDGE BURTON: Well, how about this then?

13 MR. HARTER: I might -- I -- I -- I don't know
14 the level of pain I'd be in. I might be completely normal
15 except for the fact that I'll be -- won't be able to carry my
16 material because I'll have a boot.

17 JUDGE BURTON: Well, then, how about this? Is
18 it asking too much for the parties to think about the last
19 week of August?

20 Mr. Harter or Mr. Cooper, Mr. Luft?

21 MR. LUFT: Yeah. 27th or 28th would work.

22 MR. WILLIAMS: Is that Thursday and Friday?

23 JUDGE BURTON: Yes.

24 MR. WILLIAMS: This did work for Staff.

25 JUDGE BURTON: Okay.

1 Mr. Cooper?

2 MR. COOPER: Yeah. Mr. Luft, I'll have to
3 talk about how he wants to -- to staff that, but if he wants
4 me to do it, I am available those days. Or I don't have any
5 problems with those days.

6 JUDGE BURTON: Mr. Harter?

7 MR. HARTER: Yeah, I guess. I don't know. It
8 would be certainly, in my mind, since again I would assert
9 that I am the least experienced person on the phone, I don't
10 know what would be entailed in getting it ready by then, and
11 it would depend on what we discuss, I assume, after you
12 leave.

13 And my -- it would just, to my thinking, be
14 whether some materials that I would want could be produced.
15 I would think that it could certainly be possible, but I
16 guess it depends on what we talk about in whatever we're
17 going to talk about, I assume. If there's a suitable
18 arrangement made to present things and then, yeah, that would
19 be fine. If there's not, I -- I don't want to be in a
20 position to be coming back here and, Well, you agree Mr. --
21 Well, I had no idea I was going to have to do this and that
22 and this and that and subpoena stuff.

23 JUDGE BURTON: Well, how about this. Let's go
24 ahead right now while we're on the record set a deadline for
25 any discovery that you're going to submit to Missouri -

1 American, Mr. Harter, or to Staff, and I'll give them a
2 deadline to respond to ensure that you have enough time to
3 review it before a hearing.

4 MR. HARTER: Well, there's just a few things I
5 would like them to bring to the hearing, and if they would be
6 willing to bring it, I assume we'd talk about that. So,
7 that's a difficulty with setting a date and then talking
8 about whether we're able to get the case ready for the date,
9 especially when we're talking two weeks from now.

10 JUDGE BURTON: Then I'm going to say this.
11 I'm going to issue an order later today -- or notice of this,
12 that the deadline for any discovery request will be the 14th,
13 any responses to discovery will be the 21st. So, that that
14 way, you will have all the material that you have subpoenaed
15 or submit a data request to by the 21st at the latest.

16 MR. HARTER: Well, I don't really have the
17 ability to subpoena since I'm in St. Louis. I would have to
18 arrange -- I would have to serve them, and the whole point of
19 this is that I am in rather desperate financial
20 circumstances. So --

21 MR. COOPER: He can use data request.

22 MR. HARTER: -- I don't see that I can
23 financially bear this in a speed-up hurry-up thing.

24 JUDGE BURTON: You can actually do a data
25 request.

1 MR. HARTER: All I want them to do is bring
2 the notices that they send out saying, Here's the help we
3 offer for leaks. They've got the material. They could push
4 one button on the computer and bring it with them, and then
5 we're done.

6 JUDGE BURTON: Well, that does kind of entails
7 you informing them what kind of information you would like.
8 And can you do that through a data request, and that will not
9 cost anything to you. That's through the Commission's
10 electronic system, and I am sure that Counsel for Staff, once
11 we go off the record here, will be willing to discuss with
12 you the particulars, or you can contact the Staff's help
13 desk.

14 MR. HARTER: Okay. It's just some of the
15 things I would want to have, I don't have. They have it
16 there at the repository.

17 JUDGE BURTON: Yeah. And that's -- and that's
18 what a data request is there for, to help you get that
19 information.

20 So, with that issue being hopefully disposed
21 of, let's go back to a hearing on the 27th in St. Louis?
22 Does that work with your schedule, Mr. Harter?

23 MR. HARTER: Having no experience with the
24 data request, I -- I don't know if it works in two weeks.

25 MR. WILLIAMS: Judge, if I may?

1 JUDGE BURTON: Here, could you please step
2 over here, because I believe that Mr. Harter's having
3 difficulties hearing you over there.

4 This is -- Mr. Harter, this is Mr. Williams,
5 the Counsel for Staff speaking.

6 MR. WILLIAMS: Mr. Harter, when we go off the
7 record, I will get your phone and email address. There is a
8 packet of information which our Consumer Services Staff has
9 prepared which will inform you as to how to place a data
10 request.

11 If you are unable to do so, if you don't have
12 access to the Internet, we can discuss that circumstance, but
13 we will assist you in whatever way possible --

14 MR. HARTER: Okay.

15 MR. WILLIAMS: -- to file your request for
16 you. But we can discuss that issue once we're off the
17 record. Okay?

18 MR. HARTER: Here's the -- here's the scenario
19 that I see, and I may be completely off base. But this is
20 what I see.

21 I see you're setting the thing for two weeks.
22 I make a data request. Everything that I have to present my
23 case, they've got. Then there's something's not provided.
24 This is not -- Oh, we got to check our thing. Oh, we can't
25 run it that fast. Oh, we need more time.

1 It's not my first time dealing with the
2 utility. Nothing personal to this one, but just in general,
3 and they're going to say, Oh, we can't search our database
4 that fast. We don't know -- we don't know exactly what you
5 want, and blah, blah, blah, blah, blah. And I'm going to
6 say, Well, what about this? Refine your search, and that's
7 not going to happen in two weeks.

8 I'm going to try --

9 JUDGE BURTON: Mr. Harter?

10 MR. HARTER: Yes. Yes.

11 JUDGE BURTON: If that's what happens, this is
12 what I want you to do.

13 MR. HARTER: Uh-huh.

14 JUDGE BURTON: I want you to file something in
15 the system in which I can look at continuing this case out to
16 the 14th or 15th as we've discussed previously.

17 MR. HARTER: Okay. Yeah.

18 JUDGE BURTON: So, if Missouri-American
19 attempts to stall in providing any of the information that
20 you have requested or is unable to provide that information
21 by Friday, the 21st of August, we can look at pushing it out.

22 MR. HARTER: Yeah. I'm not accusing them of
23 trying to stall or anything. I think they're a big company;
24 this is a little bitty thing. It's reasonable that it's
25 going to be hard to pull stuff up on a short thing of time.

1 I'd rather try it on one leg on crutches than have everybody
2 inconvenienced. But, you know, that's -- that's just what I
3 feel. Like I said, I'm the least experienced one here.

4 JUDGE BURTON: Okay. Well, then, if that's
5 what you would prefer, we can move it back to the 15th, and
6 if there's a problem with that, we can address you having a
7 phone conference where you can call in at least for the
8 hearing.

9 So, it's your choice, Mr. Harter. We're
10 trying to accommodate your schedule and your preference to
11 the surgery, the last week of September.

12 MR. HARTER: Yeah, the 15th is good. You'll
13 just have to bear with me. But I'll be there.

14 JUDGE BURTON: I'll make sure that we bear
15 with you on this.

16 MR. HARTER: Okay. I'll be there on the 15th.

17 JUDGE BURTON: Okay. And to make it easier
18 and to avoid traffic, I don't imagine it's going to take more
19 than five hours, let's say, so let's -- let's plan on an
20 afternoon, around 11:00 start time?

21 MR. HARTER: I think we'd be done by lunch.
22 Of course, I could be -- once again, I'm the least
23 experienced, but I would say we'd be done by lunch.

24 JUDGE BURTON: And that's fine. If we are, we
25 can obviously eat after the hearing.

1 So, let's plan on September 15th, 2015, at
2 11:00. The hearing will be held at the Commission's St.
3 Louis office which is in the Wainwright State Office
4 Building, at 111 North 7th Street in Suite 105, and I'll be
5 sending out a notice later today that states this and orders
6 the times so that you will have a copy of that in writing,
7 Mr. Harter.

8 MR. HARTER: Okay.

9 MR. LUFT: Mr. Harter, it's the exact same
10 room where we had the last one.

11 MR. HARTER: All right.

12 JUDGE BURTON: Okay. That being said, at this
13 point, I'm going to conclude the prehearing conference and
14 allow the parties to discuss the issues, and hopefully there
15 will be some resolution where you can kind of clarify the
16 documentation you were searching for. And, again,
17 Mr. Williams from Staff's office will help you if you need to
18 submit a data request.

19 That being said, we are going to go off the
20 record, and I will be leaving the room. And I know that,
21 Mr. Luft and Mr. Harter, you can't see me, but just give me a
22 minute and I'm sure the other parties will let you know once
23 I have actually departed.

24 Thank you, everyone.

25 (Off the record.)

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C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Pamela S. Gentry, Certified Shorthand Reporter with the firm of Tiger Court Reporting, LLC, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.


Pamela S. Gentry, CSR, CCR



A	<p>ability 11:2 13:17</p> <p>able 11:15 13:8</p> <p>above-entitled 19:7</p> <p>access 15:12</p> <p>accommodate 17:10</p> <p>accusing 16:22</p> <p>Act 6:3,8,12,18 6:20</p> <p>actionable 6:1 6:18,19,21 7:1</p> <p>address 3:12,20 3:21 15:7 17:6</p> <p>advertisements 5:13</p> <p>advertising 6:1</p> <p>afternoon 17:20</p> <p>agree 12:20</p> <p>ahead 3:3 7:7 12:24</p> <p>allow 18:14</p> <p>allowed 7:1</p> <p>American 13:1</p> <p>analogous 6:5 6:14,15,16</p> <p>answer 4:11 9:19</p> <p>answering 7:24</p> <p>anyway 9:19</p> <p>appearance 3:8</p> <p>APPEARAN... 2:1</p> <p>Appearing 4:3</p> <p>appreciated 8:12</p> <p>arguments 7:16</p> <p>arrange 13:18</p> <p>arrangement 12:18</p> <p>asking 4:14 11:18</p>	<p>assert 12:8</p> <p>asserting 7:25</p> <p>assertions 5:17</p> <p>assist 15:13</p> <p>assume 9:20 10:24 12:11,17 13:6</p> <p>attempts 16:19</p> <p>attending 10:24</p> <p>August 1:7 11:19 16:21</p> <p>authority 6:11</p> <p>available 8:1 12:4</p> <p>avenue 8:1</p> <p>avoid 17:18</p> <p>aware 7:13</p>	<p>4:6,21 5:1,8,11 5:14 6:6,10 7:4 7:7 8:9,17,20 8:23,25 9:10 9:13,23 10:5 10:10,13,21,25 11:6,12,17,23 11:25 12:6,23 13:10,24 14:6 14:17 15:1 16:9,11,14,18 17:4,14,17,24 18:12</p> <p>button 14:4</p>	C	<p>C 3:1 19:1,1</p> <p>calendars 9:14</p> <p>call 17:7</p> <p>capable 10:24 11:7</p> <p>Capitol 2:9</p> <p>caption 19:8</p> <p>carry 11:15</p> <p>case 4:16,16 7:13 8:15 13:8 15:23 16:15</p> <p>cause 19:7</p> <p>CCR 1:24 19:15</p> <p>certain 8:4</p> <p>certainly 7:22 12:8,15</p> <p>Certified 19:4</p> <p>certify 19:6</p> <p>cetera 6:22</p> <p>Chapter 6:3</p> <p>characterize 5:17</p> <p>Charles 1:12 2:3 3:3,10</p> <p>check 15:24</p> <p>choice 17:9</p> <p>circumstance 15:12</p>	<p>circumstances 13:20</p> <p>cite 4:17</p> <p>City 1:8 2:11,22 4:5 7:9 10:7</p> <p>claim 6:14 7:25</p> <p>clarify 4:15 18:15</p> <p>clear 7:13</p> <p>COLE 19:3</p> <p>Collection 6:2</p> <p>coming 12:20</p> <p>Commission 1:2 2:19 3:6 4:1,4 4:7 6:11,17,21</p> <p>Commission's 7:17,18 10:8 14:9 18:2</p> <p>communicatio... 5:13</p> <p>company 1:15 2:6,15 3:4,17 3:19 4:10,11 16:23</p> <p>Company's 7:19</p> <p>complainant 1:13 2:2 7:14 10:2</p> <p>complaint 4:9 4:16</p> <p>completely 6:25 11:14 15:19</p> <p>computer 14:4</p> <p>conclude 18:13</p> <p>conclusion 6:20</p> <p>conduct 7:2</p> <p>conference 1:6 4:8 7:24 8:13 17:7 18:13</p> <p>conflict 9:5 10:20</p> <p>consumer 6:3 8:15 15:8</p> <p>contact 14:12</p>	<p>continuing 16:15</p> <p>Cooper 2:7 3:18 3:18 8:21 9:18 9:24 10:3,11 11:20 12:1,2 13:21</p> <p>copy 18:6</p> <p>correct 10:2 19:10</p> <p>cost 14:9</p> <p>Counsel 14:10 15:5</p> <p>COUNTY 19:3</p> <p>course 17:22</p> <p>Court 1:24 3:12 3:19 9:1,20 19:5</p> <p>Craig 2:16 3:22</p> <p>crutches 10:17 11:11 17:1</p> <p>CSR 19:15</p>	D	<p>D 3:1</p> <p>data 13:15,21,24 14:8,18,24 15:9,22 18:18</p> <p>database 16:3</p> <p>date 10:4 13:7,8</p> <p>days 12:4,5</p> <p>deadline 12:24 13:2,12</p> <p>dealing 16:1</p> <p>Dean 2:7 3:18</p> <p>Debt 6:2</p> <p>deceptive 5:6</p> <p>definitely 5:18</p> <p>departed 18:23</p> <p>depend 10:3 12:11</p> <p>depends 12:16</p> <p>desk 14:13</p> <p>desperate 13:19</p>
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