

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:

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APPEARANCES:

FOR THE COMPLAINANT:

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

FOR MISSOURI-AMERICAN WATER COMPANY:

MR. DEAN L. COOPER,  
Brydon, Swearingen & England, P.C.  
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573.635.7166

and

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

FOR THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

MR. HAMPTON WILLIAMS  
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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. HARTER: 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. HARTER: The offer was to provide some  
10 relief if a leak was detected and determined.

11 JUDGE BURTON: Okay.

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

14 JUDGE BURTON: Okay.

15 MR. HARTER: 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.)

C E R T I F I C A T E

STATE OF MISSOURI                    )  
COUNTY OF COLE    ) ss.

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



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