

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5

6 Procedural Conference
7 May 25, 2017
8 St. Louis, Missouri
9 Volume 1
10
11

12 Robert Spicer,)
)
13 Complainant,)
)
14 vs.) File No. WC-2017-0234
)
15 Missouri-American Water)
 Company,)
16)
 Respondent.)
17
18
19

20 DANIEL JORDAN, Presiding
21 SENIOR REGULATORY LAW JUDGE

22 REPORTED BY:
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1 P R O C E E D I N G S

2 (The conference commenced at 9:00 a.m.)

3 JUDGE JORDAN: And we are on the record.

4 Good morning, everyone. The Commission
5 is calling the case in File No. WC-2017-0234, and
6 that is the case of Robert Spicer, Complainant, vs.
7 Missouri-American Water Company, Respondent.

8 I'm Daniel Jordan. I'm the regulatory
9 law judge assigned to this action.

10 I'm going to ask everyone first to
11 silence your cell phones. I won't require you to
12 turn them off because occasionally they're helpful,
13 but if everyone would take a minute to silence their
14 cell phones, that may prevent some disruptions.

15 To remind everybody, what we're doing
16 here is a prehearing conference in this case. We'll
17 discuss procedural matters. We won't get into the
18 substance, but it would be helpful if we could
19 narrow the issues somewhat, and we could even
20 discuss the possibilities for settlement.

21 We're on the record now, meaning a court
22 reporter is recording everything we say, but we have
23 this room available until noon. So, the parties may
24 use this space and this telephone line to discuss
25 the matters. That part will be off the record.

1 Once I've done my part, we'll go off the record, the
2 reporter will leave, and that way the parties can
3 discuss sensitive information without worrying about
4 me hearing something that they don't want me to.

5 Now, let's begin with entries of
6 appearance and I'd also like introductions of client
7 representatives. Let's begin with the complainant.

8 Mr. Spicer, will you introduce yourself.

9 MR. SPICER: Robert Spicer.

10 JUDGE JORDAN: And you're just here by
11 yourself as complainant; is that correct?

12 MR. SPICER: Yes.

13 JUDGE JORDAN: Very good.

14 For Missouri-American Water Company.

15 MR. LUFT: Tim Luft, representative of
16 the company. I'm corporate counsel for
17 Missouri-American, and my address is with the court
18 reporter.

19 JUDGE JORDAN: Very good.

20 And Ms. Carter is also on the line?

21 MS. CARTER: Yes. Diana Carter for
22 Missouri-American, P.O. Box 456, Jefferson City,
23 Missouri 65102.

24 JUDGE JORDAN: Very good.

25 And for the staff of the Commission?

1 MR. WESTEN: Yes, Judge. This is Jacob
2 Westen. I am deputy counsel with Staff Counsel's
3 Office, Missouri Public Service Commission. My
4 address is Governor's Office Building, 200 Madison
5 Street, P.O. Box 360, Jefferson City, Missouri
6 65102-036. And I have with me Mr. Justin Edwards
7 from the consumer services department.

8 JUDGE JORDAN: Thank you very much,
9 counselor.

10 Now, the Office of the Public Counsel is
11 a party to every action before the Commission, but
12 they tend to exercise their option to not file an
13 appearance in cases like this.

14 Is there anyone from the Office of
15 Public Counsel on the line?

16 I'm not hearing anyone, and there's no
17 one present in the room from the Office of Public
18 Counsel.

19 Now, I've discussed what we're going to
20 do today. I am going to ask -- I will have -- I
21 will leave the line open and doors open for the
22 parties to talk. I will have someone from staff
23 here within the St. Louis office lock up when we're
24 done.

25 I want to remind the parties also that

1 mediation is possible. If you start talking,
2 negotiating, trying to work something out and you
3 just can't get past a certain point and you think
4 someone with expertise in this area would be
5 helpful, all the judges at the Commission are
6 trained in civil mediation and that is a facilitated
7 discussion and you can share things with them that
8 you might not want to share with me. So, keep that
9 in mind. We have pretty good success with
10 mediation --

11 MR. SPICER: Okay.

12 JUDGE JORDAN: -- to reach settlements.

13 One of the things that I'd like to come
14 out of this discussion, in case the parties do not
15 settle today, would be a proposed procedural
16 schedule, and I would ask the staff to coordinate
17 that and staff counsel to file that proposed
18 schedule, if we need one, a week from today.

19 Staff counsel, do you see any obstacle
20 to doing so?

21 MR. WESTEN: I don't perceive one. I
22 will state for the parties present that I am
23 actually going to be out of the office until
24 Wednesday next week, but seeing as this is Thursday,
25 I will just work with the parties this afternoon and

1 tomorrow to get those dates to get that filed.

2 JUDGE JORDAN: Well, that -- and
3 certainly, nothing bars you from filing anything
4 early. I just try to be sensitive to the demands on
5 staff counsel because I know at times the pending
6 rate cases may become onerous for staff counsel as
7 well as for counsel for Missouri-American Water.

8 MR. WESTEN: I appreciate that, Judge.
9 Thank you.

10 JUDGE JORDAN: Before we get into an
11 explanation for my benefit and for the parties'
12 benefit of what the issues really are here, I want
13 to make sure everyone understands what kind of
14 proceeding we're in.

15 A complaint of this nature alleges a
16 violation of a statute or a Commission regulation or
17 tariff or order that says that a utility has not
18 followed the law that governs it and it provides for
19 the setting of a hearing. Now, when a statute tells
20 us that we have to set a hearing, that means we have
21 what is called a contested case and that is a formal
22 administrative procedure. It's not quite as formal
23 as circuit court, okay, but the law of evidence will
24 apply if we go to hearing. And I'm going to give
25 you a citation that tells you how evidence goes and

1 that citation is Revised Statutes of Missouri and
2 that is Section 536.070.

3 MR. SPICER: I don't have a pen with me.

4 JUDGE JORDAN: You can use mine.

5 MR. SPICER: What is that again, now?

6 JUDGE JORDAN: That is Section 536.070.

7 And that has some shortcuts really is what it does
8 for the law of evidence. It helps the parties get
9 their evidence -- because there's no jury here.

10 MR. SPICER: Understand.

11 JUDGE JORDAN: We just don't have that
12 concern.

13 Always remember I'm an administrative
14 lawyer. Okay? That's where I come from. I deal
15 with the law of the executive branch, which is the
16 law governing how we do stuff like this. But I'm
17 not an engineer and I'm not an economist and I am
18 definitely not an accountant. So, when you present
19 your case to me, you're going to want to make it
20 simple.

21 In that regard, I have found that
22 there's a certain device that helps present the case
23 to the Commission for decision, and that is a
24 summary of documents under the statute that I cited
25 to you earlier. It provides that someone who

1 personally reviews certain documents can provide a
2 summary and testify about it. They have to be there
3 to testify, though. And that kind of summary is
4 very helpful. It shows us exactly where we are as
5 of the date of the hearing with regard to billing,
6 and I will probably put out an order requiring such
7 a document, if we go to hearing. I've done that in
8 hearings in the past. It was very helpful.

9 Any questions so far about what we're
10 doing?

11 MR. SPICER: No.

12 MR. LUFT: No.

13 JUDGE JORDAN: Very good.

14 Well, then, let's try to figure out what
15 this case is really about. Mr. Spicer's complaint
16 talked about a disconnection notice and he mentioned
17 a bill of about \$500 that's been disputed for a few
18 years.

19 MR. SPICER: Yes.

20 JUDGE JORDAN: Mr. Spicer, do you happen
21 to know what -- can you tell me what your latest
22 bill is? Staff's report has some bills and billing
23 history and stuff like that.

24 MR. SPICER: Well, they've froze the
25 account. So, I've not made any payment on it.

1 Whatever balance we can pay on the 5th of June and
2 be done.

3 MR. LUFT: I think it's approximately
4 \$1,100. We've got a hold on it, so we're not going
5 to shut it off, obviously, while this proceeding.

6 MR. SPICER: Right.

7 MR. LUFT: But is the amount in dispute,
8 is that fair to say --

9 MR. SPICER: Yeah.

10 MR. LUFT: -- it's 500?

11 MR. SPICER: Correct, correct. And, you
12 know --

13 MR. LUFT: 500, okay.

14 MR. SPICER: And the whole thing,
15 basically, is the usage. And as I've mentioned,
16 I've been there 16 years, and I had a problem
17 through the summer where the bill was usually high,
18 but in the process of them changing the meters and I
19 went over, you know, here check the meter. Well,
20 then I've been in Florida and I come back and then
21 my final bill I get for final time shows usage of --
22 and I don't know what these mean. I'm not an
23 engineer. You know, 1,500.63, which every year I
24 used 291, 120. It's just -- when I'm talking to the
25 person on the phone with the water company, I'm like

1 I can't use that much water, how would you do that.

2 JUDGE JORDAN: Right.

3 MR. SPICER: That's impossible. I mean,
4 the only time I use water would be in May when I
5 fill my pool. That was still numerous times more
6 than it would be to fill a pool. I have no leaks in
7 the home. The water's going nowhere. And I
8 questioned about the meter and they said it wasn't
9 available to be checked. I just really think
10 there's an error somewhere with them changing the
11 meters and this and that that I get some bill that
12 is ridiculous.

13 JUDGE JORDAN: Let me figure out where
14 the parties are at. Now, \$500 you're disputing.
15 Does that mean that the rest of it you do not
16 dispute?

17 MR. SPICER: No, do not dispute it, and
18 I would be glad to pay it.

19 JUDGE JORDAN: Okay. That's helpful.

20 What I'd like to do, if we go so far as
21 hearing, is to figure out the disputed amount and
22 also whether there are any related charges to that.
23 That's the part I can't quite figure out by looking
24 at the documents in staff's report, what their
25 position is. When I put out an order asking for a

1 summary, I would want the related charges set forth,
2 too, just so that we have as good a number as we can
3 have.

4 MR. LUFT: Do you mean like --
5 Missouri-American doesn't charge late fees. So,
6 there's no late fees, interest. The number is what
7 the number is, unlike your other utilities. So,
8 we're not --

9 MR. SPICER: I did not know that.

10 MR. LUFT: Yeah. That may change, but
11 we're unusual in that respect.

12 JUDGE JORDAN: So, we're not talking
13 about late charges or delinquencies. Are we
14 talking -- are there any disconnection, reconnection
15 charges as far as you know?

16 MR. SPICER: That's never been.

17 MR. LUFT: No, no.

18 JUDGE JORDAN: Well, that makes --

19 MR. LUFT: Just, you know, we checked it
20 for leaks. We couldn't find any. Because we work
21 with the customer when they have a leak. It happens
22 from time to time. It happened to me a few years
23 ago that, who knows, did I have a toilet leaking for
24 weeks and I didn't know about it. It could be any
25 matter of things. But if we can't find a leak, it's

1 hard for us to say, yeah, we'll just credit.

2 JUDGE JORDAN: But according to, if I
3 understand your position correctly -- and we're not
4 taking evidence or arguments.

5 MR. SPICER: Right, understand.

6 JUDGE JORDAN: The sequence of events is
7 this: Mr. Spicer has bills for a number of years.
8 He then has this bill that he claims is aberrant,
9 statistically it's an outlier.

10 MR. SPICER: Uh-huh.

11 JUDGE JORDAN: Missouri-American changes
12 the meter because the meter is old. They find the
13 meter is aged. I remember seeing in the file that
14 the meter was switched out due to age.

15 MR. LUFT: In the normal course under
16 the Commission rules, we have to change these out
17 and that's what we did.

18 JUDGE JORDAN: As is appropriate
19 practice. And then he has no more of these
20 bills; is that correct?

21 MR. LUFT: As far as I know, that's
22 correct.

23 JUDGE JORDAN: And as far as testing the
24 meter, are we able to do that?

25 MR. LUFT: I don't believe we tested

1 this particular meter because I don't know if there
2 was any allegation that there was a problem with the
3 particular meter.

4 JUDGE JORDAN: So, just to summarize, we
5 have an aberrant bill, we switch out the meter, and
6 then the bills go back to normal?

7 MR. LUFT: Yeah.

8 JUDGE JORDAN: Okay. I think I
9 understand Missouri-American's position on that.

10 Now, I want to get to -- anything, any
11 questions or comments before we get into what the
12 pleadings actually say, more into -- I want to get
13 into Missouri-American's pleading a little bit. Any
14 questions so far?

15 MR. SPICER: No.

16 MR. LUFT: No.

17 JUDGE JORDAN: Okay. I'm not hearing
18 any on the line either.

19 I want to talk about Missouri-American's
20 answer, and I see that it requests relief in a
21 couple of forms, including dismissal and summary
22 determination. Does Missouri-American anticipate
23 filing a motion under that in accordance with the
24 Commission's regulations?

25 MS. CARTER: Yes, Judge.

1 JUDGE JORDAN: Okay, okay. That's
2 not -- so, you're going to be filing something
3 further on that you anticipate. Is that correct,
4 Ms. Carter?

5 MS. CARTER: Yes. At this time we will
6 be making a motion for summary determination.

7 JUDGE JORDAN: Okay.

8 MR. SPICER: And what does that
9 basically mean?

10 JUDGE JORDAN: I'll explain that.
11 Summary determination is a way to decide your
12 complaint without going to a hearing.

13 MR. SPICER: Okay.

14 JUDGE JORDAN: And the way it happens is
15 with documents.

16 MR. SPICER: Okay.

17 JUDGE JORDAN: The movant files some
18 document, but they have to be -- they have to be
19 admissible. It's generally done on affidavit.
20 Okay? The stuff in the affidavit would have to be
21 admissible if a witness testified to it at hearing.
22 Okay? It's almost a substitute for hearing. The
23 burden is very high. That is, they have to
24 establish the facts that show that you lose, and
25 then you get a chance to respond and if your

1 response puts one of those material facts, the
2 elements of the defense, in dispute, you just raise
3 a real dispute, a serious dispute, not just a, oh, I
4 don't think, just raise a genuine dispute then they
5 lose on the motion, we go to hearing.

6 MR. SPICER: I understand.

7 JUDGE JORDAN: That's summary
8 determination.

9 Anything more on that point before we go
10 on?

11 MR. LUFT: No.

12 JUDGE JORDAN: I wanted to point out
13 something about the answer, and I'm going to refer
14 to our regulations, particularly the regulation on
15 complaints, which is 4 CSR 240-2.070 and that's
16 subsection -- well, that's section 9. It's a
17 section, not a subsection. I'm going to -- I'm
18 looking at the second sentence which says that, "All
19 grounds of defense, both law and of fact, shall be
20 raised in the answer." Okay. There's some law in
21 staff's report, but that's not the answer. The
22 answer doesn't cite any law. Does Missouri-American
23 anticipate filing an amended answer?

24 MS. CARTER: I'm sorry, Judge. I'll
25 have to take another look at it and if it appears

1 that is necessary, then we would need to do so, yes.

2 JUDGE JORDAN: And there's really only
3 one allegation of fact in there that's helpful as to
4 Mr. Spicer's complaint and that is the allegation
5 that Mr. Spicer's meter was replaced and he still
6 hasn't paid his bill. That's the first sentence of
7 the second paragraph. If the parties file a
8 procedural schedule, a deadline for an amended
9 answer should be in there. I want -- I would like
10 to see that in there.

11 So, anything more on that answer or
12 amended answer?

13 Let me explain my reading of the
14 regulations in that regard. It is true that
15 Mr. Spicer is the complainant and he would have the
16 burden of proof if we went to hearing to show that
17 Missouri-American has violated a regulation or its
18 tariff or anything like that, but the knowledge of
19 the case is with Missouri-American. That is to say,
20 it's one of those cases where Mr. Spicer starts the
21 complaint, but the events, knowledge of the events
22 is in control of Missouri-American. So, that's why
23 the regulations ask Missouri-American to walk
24 Mr. Spicer and the Commission and OPC, if they
25 participated, through the process of issuing the

1 disconnect notice to Mr. Spicer, and that helps him
2 prepare his case and it also helps the Commission
3 determine the case. Basically, the answer shows
4 compliance with the governing law. This is a
5 situation -- this is kind of like when someone
6 appeals the decision of a licensing agency. They
7 know they've got an action that they don't like and
8 they want to talk to someone about it, but the
9 reasons for the action are not with that person.
10 They're with the other person. They're with the
11 respondent. So, that's what I'm thinking about
12 that.

13 Any questions on the state of your
14 pleadings so far, Mr. Spicer?

15 MR. SPICER: No, sir.

16 JUDGE JORDAN: Missouri-American, any
17 questions?

18 MR. LUFT: No.

19 JUDGE JORDAN: Well, I think that's all
20 I had for the parties this morning.

21 We are now at 18 minutes past 9:00, and
22 this room is available until noon. I can stay for a
23 while also. I mean, I'm done with everything I have
24 to say. Do the parties have anything they'd like to
25 discuss with me procedurally speaking, of course.

1 We won't get into evidence or argument or anything
2 like that. Is there anything else that I can help
3 the parties with this morning as long as we're all
4 here together?

5 MR. SPICER: Well, I guess my question
6 is in regards to showing the use and what was used
7 and, you know, their background of where they stand.
8 You know, they're in control of the meters. They're
9 in control of the readings. You know, it leaves me
10 out, you know. And I, obviously, know being there
11 16 years I've never had this issue, and 16 years of
12 being a customer I've never had this issue and, you
13 know, the amount of water that was apparently used
14 in a short period of time, it just never happened.

15 JUDGE JORDAN: Well, I'm looking at
16 staff's report. And, of course, all I know is that
17 this is what staff is saying happened.

18 MR. SPICER: Right.

19 JUDGE JORDAN: And I see the abnormal
20 bill, the bill that you say is abnormal for 2014. I
21 don't see similar amounts listed for '15 or for '16,
22 but then I also don't see anything for the earlier
23 dates either.

24 MR. SPICER: I understand. I
25 understand.

1 JUDGE JORDAN: So, that's not before me
2 now. Staff will probably want to offer its report
3 into evidence at the hearing. This is as far as it
4 goes, so...

5 MR. SPICER: Okay. That's
6 understandable.

7 JUDGE JORDAN: Right. Anything else
8 that the parties would like to discuss with me while
9 we're all here together in the same room, including
10 by telephone?

11 MR. WESTEN: Yes.

12 MS. CARTER: Yes.

13 MR. WESTEN: Ms. Carter, please, go
14 ahead.

15 MS. CARTER: Oh, I just had one
16 question, Judge. If we do need a hearing, is there
17 a certain time period you'd like us to shoot for
18 procedural schedule?

19 JUDGE JORDAN: I do not have time
20 constraints that are meaningful for the parties.
21 I'll put it that way. I don't have a general rate
22 action on my desk right now, which by statute I have
23 to give precedence.

24 Mr. Spicer, if there were one of those
25 actions, that comes first.

1 MR. SPICER: Yeah.

2 JUDGE JORDAN: But I don't have anything
3 like that. So, my time frames are pretty open and
4 if there's a problem, you'll find out about it when
5 you file the proposed procedural schedule. And, of
6 course, I will take into account as to what else is
7 happening with the Commission because they sometimes
8 want to look in on these things. And if they have a
9 general rate action scheduled for hearing at the
10 same time that the parties want a hearing, well,
11 that could be a problem. That's about it.

12 MS. CARTER: Okay. Thanks, Judge.

13 JUDGE JORDAN: No problem at all.
14 What else can I do for the parties while
15 we're here all together?

16 MR. WESTEN: Judge, staff has just a
17 quick question. I would anticipate that any hearing
18 in this case would likely be live testimony rather
19 than prefiled testimony. So, I just want to double
20 check with you and all of the parties present the
21 items that would be involved on a proposed
22 procedural schedule. Time for an amended answer.

23 JUDGE JORDAN: Uh-huh.

24 MR. WESTEN: The filing -- a hearing
25 date. You want an issues list or a witnesses list

1 prefiled before such a hearing date?

2 JUDGE JORDAN: Those are good questions.

3 These, Mr. Spicer, are all devices that
4 are available for us to use to narrow the issue to
5 prepare for the case, and a lot of what he's talking
6 about comes from -- but is useful in other cases --
7 comes from the general rate action. That's where we
8 decide we take a look at the whole tariff book of
9 someone like Missouri-American or Laclede or Ameren
10 and we go through everything and may rewrite the
11 entire book. In that context we have to get -- we
12 can't do pleadings. So, after the parties have
13 talked, they come up with a thing they call an issue
14 list, this is the stuff that we want decided, right,
15 and position statements where they say here's the
16 way we think that should go. You know, the parties
17 can do that in a complaint, if they want. I'm not
18 anticipating requiring anything like that. So, I
19 mean, if the parties wanted to do that, certainly
20 they could. I don't know how useful it is.
21 Prefiled testimony, these giant tariff books are so
22 huge you can't put a witness on the stand. So, they
23 write everything down. And the parties can do that,
24 if they want.

25 MR. LUFT: The only issue -- the only

1 issue in this case is did Missouri-American
2 improperly overbill Mr. Spicer \$500.

3 MR. SPICER: And I'm willing to work
4 with them to try to resolve this. Everybody's time
5 is valuable and my work is valuable. You know, I'm
6 not at work because I had to come here. I just say
7 work it out, keep doing business as I am. I'm not
8 going anywhere for another 20 years. So, it's that
9 simple.

10 MR. LUFT: And we can talk about that
11 after.

12 MR. SPICER: That would be fine.

13 JUDGE JORDAN: So, to summarize,
14 certainly the parties can do that, if they want.
15 I'm not anticipating ordering such. Does that
16 answer your inquiry, counsel?

17 MR. WESTEN: Yes, Judge. That is
18 helpful, very much.

19 JUDGE JORDAN: Very good. Very good.

20 What else can I do for the parties while
21 we're all together and on the record? Because I
22 will not say anything other than good-bye off the
23 record, so...

24 MR. SPICER: That's fine.

25 JUDGE JORDAN: What else can I do for

1 the parties while we are all together?

2 Mr. Spicer, anything?

3 MR. SPICER: I'm fine, sir.

4 MR. LUFT: No. I have nothing for
5 Missouri-American.

6 JUDGE JORDAN: Nothing from the company.
7 Okay.

8 Anything from staff?

9 MR. WESTEN: Nothing from staff, Judge.
10 Thank you.

11 JUDGE JORDAN: Very good.

12 And just to clarify, Mr. Spicer. Staff
13 is not really taking a position for or against your
14 complaint in this case. They kind of help me with
15 objective investigation.

16 MR. SPICER: Understand.

17 JUDGE JORDAN: Okay. I think -- I think
18 I've rung out everything that I can out of the
19 parties at this point as far as the things that I
20 might help them with. So, with that I think I will
21 conclude this prehearing conference, and we will go
22 off the record. Thank you very much, everyone.

23 (The conference concluded at 9:24 a.m.)

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CERTIFICATE OF REPORTER

I, Amanda N. Farrar, a Certified Court Reporter for the State of Missouri, do hereby certify that the foregoing transcript was taken by me to the best of my ability and thereafter reduced to typewriting by me; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this transcript was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Amanda Farrar

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