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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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IN THE MATTER OF THE COMPLAINT
FILED BY ROSLYN BULLION, DELL RAPIDS,
SOUTH DAKOTA, AGAINST MIDAMERICAN
ENERGY COMPANY REGARDING A BILLING
DISPUTE

CN02-001

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Transcript of Proceedings
November 20, 2002

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
JIM BURG, CHAIRMAN
PAM NELSON, VICE CHAIRMAN
ROBERT SAHR, COMMISSIONER

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Karen Cremer
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Dave Jacobson
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Debra Elofson
Mary Giddings

Reported By Cheri McComsey Wittler, RPR

PRECISION REPORTING
L I M I T E D

1 CHAIRMAN BURG: CN02-001, In The
2 Matter of the Complaint Filed by Roslyn Bullion,
3 Dell Rapids, South Dakota --

4 Excuse me. Are you on, Roslyn? Rose Bullion,
5 are you on?

6 MR. FISHER: I haven't heard her
7 yet. Gale Fisher, her lawyer.

8 CHAIRMAN BURG: We had a must-call.

9 MR. FRAZIER: If it helps,
10 Commissioner, I did speak with her and tell her to
11 anticipate a call around this time. So she was
12 notified.

13 CHAIRMAN BURG: The first item is
14 CN02-001, In The Matter of the Complaint Filed by
15 Roslyn Bullion, Dell Rapids, South Dakota Against
16 MidAmerican Energy Company Regarding a Billing
17 Dispute. I imagine we will wait just a minute to
18 see if she was contacted.

19 MR. FRAZIER: If I may,
20 Commissioner, Gale Fisher has been retained by
21 Ms. Bullion so in the event she doesn't appear, she
22 does have her attorney on the bridge.

23 MR. FISHER: That's right. I'm
24 still on.

25 (Discussion off the record)

1 CHAIRMAN BURG: Rose Bullion, are
2 you on now?

3 MS. BULLION: Rose Bullion is on the
4 phone.

5 CHAIRMAN BURG: I will repeat again,
6 CN02-001, In The Matter of the Complaint Filed by
7 Rose Bullion, Dell Rapids, South Dakota Against
8 MidAmerican Energy Company Regarding a Billing
9 Dispute.

10 Today shall the Commission allow the admission
11 of the supplementary evidentiary submissions from
12 either or both of the parties and secondly how
13 shall the Commission rule on the issues presented
14 in the case?

15 The process we're going to use is to hear
16 arguments from the parties as to why this
17 supplemental evidence should come in because we did
18 hold the hearing, everybody had a chance to have an
19 attorney to present their evidence. We actually
20 traveled to Dell Rapids to do that.

21 So the first thing we want to do today is hear
22 any arguments that the parties may make as to why
23 or why not supplemental evidence should or should
24 not be admitted. I will first have either --

25 Mr. Fisher, are you or Ms. Bullion herself

1 going to offer their arguments?

2 MR. FISHER: I can offer arguments.
3 This is Gale Fisher, Mr. Chairman.

4 CHAIRMAN BURG: Okay.

5 MR. FISHER: I guess I know she had
6 the opportunity to have an attorney but she didn't
7 do that and I think it's because as a layperson she
8 didn't understand the full impact of the rules of
9 procedure. And because this is an administrative
10 procedure, I think that the Commission should
11 really try to look to the substance of these
12 Complaints rather than decide them on
13 technicalities.

14 And so I would ask that the Court consider the
15 supplemental submission made by Ms. Bullion, and in
16 that regard I'd like to ask Mrs. Bullion who didn't
17 file that supplemental filing in affidavit form
18 whether she could state under oath that all of the
19 information set forth therein is true of her own
20 knowledge and information and belief.

21 CHAIRMAN BURG: Well, let's wait to
22 see if we accept the additional evidence or not.
23 And if it is, then we could go to the step of the
24 swearing.

25 MR. FISHER: Okay.

1 CHAIRMAN BURG: Does anybody from
2 Mid-America have any comments pro or con either on
3 your own evidence or Mrs. Bullion's evidence?

4 MS. HOLM: This is Kristi Holm for
5 MidAmerican, and I was the attorney that appeared
6 at the hearing. I don't know if you want me to
7 address my comment on the evidence proposed by
8 Mrs. Bullion first or if you want me to address
9 what I believe has been at least characterized as
10 additional evidence on behalf of MidAmerican Energy
11 first.

12 CHAIRMAN BURG: It doesn't make any
13 difference. Whichever you want. What I would like
14 to hear is both arguments as to why you think we
15 should or should not allow her additional evidence
16 in and why we should allow yours in.

17 MS. HOLM: First I'll start with the
18 evidence that was attached to our brief, and the
19 first comment is I do not believe that this is
20 offered as additional evidence. I presume based on
21 the filings that you are referring to -- what has
22 been marked as Exhibits 1 and 2 to the brief.

23 Exhibit 1 is simply the Public Utilities
24 Commission's Decision in another case which was
25 attached simply for convenience. I think that's

1 probably a matter of public record or something
2 that the Commission take judicial notice of their
3 prior decisions. It's not substantive evidence in
4 this case. So, you know, while it is attached as
5 an exhibit, I do not believe that it is offered as
6 substantive evidence in this case.

7 Exhibit 2, following the hearing, I guess, or
8 just for the record Exhibit 2 is a couple of
9 examples of MidAmerican Energy bills reflecting
10 what is written on the billing statements that an
11 individual would receive documenting how the
12 transfers show up, that the account numbers are
13 listed, that the addresses are identified, simply
14 is a format. Again, I do not believe this is
15 substantive evidence.

16 The testimony at the hearing outlined exactly
17 what is essentially identified in this Exhibit 2 as
18 to how the billing statements would be viewed and
19 what would be on them. This is not a billing
20 statement directly related to Ms. Bullion. It is
21 simply an example of how that would appear so that
22 the testimony -- really demonstrative so that the
23 testimony that you heard at the hearing can be put
24 into perspective by viewing this document.

25 It is something that was specifically

1 requested following the hearing that we submit just
2 as an example and as such I don't think that it's
3 offered as substantive evidence, just as a matter
4 of reference so that the Commission can compare
5 that to the testimony that was offered at hearing
6 and perhaps better identify exactly how this
7 information appears to the extent there is any
8 question of whether MidAmerican Energy is complying
9 with the dictates of the Arnold Murray Construction
10 decision.

11 CHAIRMAN BURG: Let me ask you this.
12 Is what you submitted identical or similar to what
13 is part of your tariff in the PUC tariffs?

14 MS. HOLM: I guess I will defer to
15 Karen Huizenga on that with regard to the tariffs.

16 MS. HUIZENGA: This is a copy of
17 what they would receive as their bill. It is not a
18 copy of the tariff itself.

19 CHAIRMAN BURG: But she said it was
20 not specific to Ms. Bullion or to any other
21 individual; is that correct?

22 MS. HUIZENGA: It's an example of a
23 bill.

24 CHAIRMAN BURG: Kristi, do you have
25 any comments on the admission of the evidence --

1 the proposed hearing evidence that was submitted by
2 Ms. Bullion?

3 MS. HOLM: I believe most of my
4 arguments -- and I don't know that you want me to
5 restate it. We've submitted two separate filings,
6 a Motion to Strike and a Resistance to Motion to
7 Reopen the Record that essentially sets forth our
8 position.

9 While Ms. Bullion is a layperson, she did have
10 the right to have an attorney present. She had the
11 opportunity to present her additional evidence.
12 Much of what she is now wanting to present is based
13 on information that was provided to her long in
14 advance of the hearing. She could have documented
15 these records and obtained any other witnesses that
16 she wanted to come in and offer testimony at the
17 hearing.

18 If these new materials, the new evidence, the
19 new testimony are allowed, certainly MidAmerican
20 Energy should have the opportunity to request a new
21 hearing to cross-examine these witnesses and not
22 just accept what is submitted on the face of the
23 documents Ms. Bullion intends to offer as being the
24 truth or offered for their substantive value.

25 She had her chance at the hearing. She had

1 the information. She knew what the arguments were
2 and what each party's position was, and she failed
3 to present that at that time. She should not now
4 be permitted to come back and do what she didn't do
5 the first time around.

6 MS. BULLION: Can I make a comment,
7 please?

8 CHAIRMAN BURG: Ma'am, your lawyer
9 has indicated he's speaking for you today so I
10 would resist that.

11 Does staff have any comments?

12 MR. FRAZIER: Yes, Commissioner. At
13 the close of the hearing page 162 --

14 CHAIRMAN BURG: Can you hear him on
15 the phone?

16 MR. FISHER: Yes.

17 MR. FRAZIER: At the close of the
18 hearing the Commission did state -- I believe
19 John Smith indicated to the Commission that it was
20 the close of the evidentiary portion. To reopen
21 the record obviously a Complainant has to show good
22 cause to the Commission.

23 Historically I believe there's been a fair
24 degree of deference to unrepresented Complainants
25 in circumstances such as this, and I think a fair

1 balance would also take into consideration whether
2 this information provided by Ms. Bullion has
3 anything really prejudicial to MidAmerican and
4 given the fact that she was unrepresented and the
5 general unprejudicial nature of what she's offering
6 here, I have no objection to the Commission taking
7 receipt of this.

8 As far as the material that was provided by
9 MidAmerican, I'm not necessarily sure that it would
10 even qualify as something which would have required
11 reopening of the record for the Commission to
12 consider. That material was not offered for the
13 truth of the assertion that Ms. Bullion received a
14 bill like that.

15 It was offered in the context of the
16 discussion going on at the hearing, which was if
17 she received a bill, what would it have looked
18 like. And MidAmerican offered and said, well,
19 we'll show you an example. If you choose to assume
20 she got one, here's what it would look like. So I
21 don't believe they're offering it for the assertion
22 she did, in fact, receive it.

23 So on that basis I have no objection to either
24 of these being accepted by the Commission.

25 COMMISSIONER NELSON: One of the

1 more helpful things would have been if either party
2 would have submitted a bill, not an example of what
3 the bill might have looked like, but neither party
4 submitted to this Commission any actual bill. And
5 I think both parties could have produced one.

6 MR. FRAZIER: It would be impossible
7 to disagree with you there.

8 CHAIRMAN BURG: Mr. Fisher, do you
9 have any rebuttal?

10 MR. FISHER: No, your Honor.

11 CHAIRMAN BURG: Any other comments
12 from anyone?

13 Okay. I'm ready with a Motion. The first
14 issue is whether to admit additional filings
15 containing new factual testimony. I believe that
16 the additional factual evidence submitted by both
17 parties following the October 15 hearing of this
18 matter should not be admitted into evidence in the
19 case and that the evidentiary record in this case
20 be limited to the evidence presented and admitted
21 at the hearing.

22 This ruling would include from evidence
23 MidAmerican's Exhibit 2 to its posthearing brief
24 and those portions of the Complainant's posthearing
25 submittals that contain new factual written

1 testimony. Those portions of Complainant's
2 posthearing submittals that constitute argument as
3 to the evidence received at the hearing shall be
4 considered as closing arguments.

5 COMMISSIONER NELSON: I'd second.

6 COMMISSIONER SAHR: And I concur.

7 CHAIRMAN BURG: I would just add
8 that the argument that she was not adequately
9 represented, I know we make that very, very clear
10 from the beginning, and I'm aware that staff worked
11 to great lengths to help prepare this and that she
12 had the opportunity to get counsel. So I don't
13 believe she was deprived of anything in that case.

14 Secondly, then I would move that the
15 Commission find and conclude that the Complainant
16 had the burden of proving the issue raised by the
17 Complainant, that the evidence does not support
18 findings in favor of the Complainant, any of the
19 seven issues raised by the Complainant, and that a
20 preponderance of the evidence supports findings for
21 MidAmerican.

22 I, therefore, move the Commission decides in
23 favor of MidAmerican on all seven issues raised by
24 the Complainant's Complaint and we issue findings
25 of fact and conclusions of law and final decisions

1 so reflecting.

2 COMMISSIONER NELSON: Second.

3 COMMISSIONER SAHR: Concur.

4 CHAIRMAN BURG: The one thing I
5 would add, Mr. Fisher, is you do have the right to
6 ask for reconsidering or would have this
7 opportunity or, of course, any decision we make is
8 appealable.

9 MR. FISHER: Thank you.

10 CHAIRMAN BURG: Thank you for
11 joining us.

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1 STATE OF SOUTH DAKOTA)

2 :SS

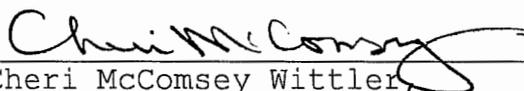
CERTIFICATE

3 COUNTY OF HUGHES)

4
5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter and Notary Public in and for the
7 State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 20th day of
11 November 2002, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 25th day
14 of November 2002.

15
16
17 
18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter

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