

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
3  
4 TRANSCRIPT OF PROCEEDINGS  
5  
6 Prehearing Conference  
7 April 12, 2010  
8 Jefferson City, Missouri  
9 Volume 1  
10 Charles A. Harter, )  
11 Complainant, )  
12 v. ) Case No. GC-2010-0217  
13 Laclede Gas Company, )  
14 Respondent. )  
15  
16 NANCY DIPPELL, Presiding  
17 DEPUTY REGULATORY LAW JUDGE.  
18  
19 REPORTED BY:  
20 Pamela Fick, RMR, RPR, CCR# 447:  
21 Midwest Litigation Services  
22  
23  
24  
25

1 APPEARANCES:

2

3 CHARLES A. HARTER, Attorney at Law  
4 626 Gravois Road  
5 Fenton, MO 63026  
6 (636) 326-4800

7 FOR: Complainant.

8

9 RICK ZUCKER, Attorney at Law  
10 Laclede Gas Company  
11 720 Olive Street  
12 St. Louis, MO 63101  
13 (314) 342-0532

14

15 FOR: Laclede Gas Company.

16

17 JENNIFER HERNANDEZ, Legal Counsel  
18 P.O. Box 360  
19 200 Madison Street  
20 Jefferson City, MO 65102

21

22 FOR: Staff of the Missouri Public  
23 Service Commission.

24

25

26

27

28

29

30

31

32

33

1 P R O C E E D I N G S

2 JUDGE DIPPELL: All right. This is Case  
3 No. GC-2010-0217, Charles A. Harter, Complainant,  
4 versus Laclede Gas Company, Respondent. My name is  
5 Nancy Dippell. I'm the regulatory law judge assigned  
6 to this case. And we've come here today for a  
7 prehearing conference, and the first thing I'm going  
8 to do is allow everyone to make their entries of  
9 appearance. And I'm just going to begin with Staff.

10 MS. HERNANDEZ: Good morning. This is  
11 Jennifer Hernandez and I'm appearing for the Staff of  
12 the Missouri Public Service Commission. Our address  
13 is P.O. Box 360, Jefferson City, Missouri 65102. I  
14 would also like the record to reflect that we have  
15 Staff member Mary Schierman-Duncan -- excuse me,  
16 still learning how to pronounce that -- here with us  
17 this morning to help answer technical questions  
18 during the off-the-record portion. Thank you.

19 JUDGE DIPPELL: And Mr. Harter?

20 MR. HARTER: Yes, my name is Charles  
21 Harter. I am an attorney and my bar number is 28059,  
22 and I am the Complainant. And I believe -- would you  
23 like the address or is that information in the file?

24 JUDGE DIPPELL: I believe that  
25 information's in the file. Thank you. Mr. Zucker?

1                   MR. ZUCKER: Rick Zucker, Z-u-c-k-e-r,  
2 here on behalf of Laclede Gas Company, 720 Olive  
3 Street, St. Louis, Missouri 63101.

4                   JUDGE DIPPELL: All right. Like I said,  
5 we're basically here for a prehearing conference.  
6 The purpose of the prehearing conference is to allow  
7 you-all to have an opportunity to discuss settlement  
8 as well as get together any proposed procedural  
9 schedule to present to the Commission.

10                  I do realize that there is a pending  
11 motion, and I don't know if the Commission will have  
12 an opportunity to rule on that this week at their  
13 regular agenda or if it will be next week. What I  
14 would ask you to do today is to go forward with a  
15 proposed procedural schedule on the assumption that  
16 that -- that motion was not granted and -- and that  
17 the case is going to proceed.

18                  So the other thing I wanted to actually  
19 talk to you all about in a little more detail was to  
20 see if there was any chance that this case could --  
21 could benefit from mediation. Our -- each of the  
22 judges here at the Public Service Commission has been  
23 trained in mediation at the law school, and we found  
24 that successful in several other cases of this  
25 nature. And I didn't know if that would be

1 something, Mr. Harter, that you would be interested  
2 in, in seeking?

3 MR. HARTER: What I'm interested in  
4 seeking is to induce the Respondent to conform to the  
5 law. And if they do not wish to do so, the most  
6 effective might be through the Commission. And then  
7 there's the further question that has now been raised  
8 by the Staff investigation and report which raises a  
9 question of law as far as I can see, and I'm not sure  
10 of the efficacy of responding to a question of law  
11 through mediation.

12 In other words, if we are able to  
13 mediate this case, does that mean Laclede Gas is then  
14 allowed to continue a practice or that if this  
15 interpretation is allowed to stand, that the  
16 Commission could allow a tariff to violate a rule?  
17 So I -- I guess my question would be for you -- and  
18 you asked me a question, return a question, whether  
19 mediation would prove beneficial or not, is -- does  
20 the Commission have a stance on whether or not a  
21 tariff may violate a rule?

22 And I guess what I'm referring to is  
23 page 6 of the Staff investigation and report where it  
24 gives the rule definition that a bill is a mailing.  
25 And then it says that the tariff takes a lot of other

1 amendments to that which basically runs in my -- in  
2 my understanding contrary to that rule; not  
3 interpreting it but clearly contrary is that -- that  
4 you can send an electronic bill and the rule does not  
5 say you can send an electronic bill --

6 JUDGE DIPPELL: Uh-huh.

7 MR. HARTER: -- it's a mailing. And I  
8 don't think mailing can be interpreted broadly to  
9 include e-mailing. So if -- my position would be  
10 that unless that rule is amended through the  
11 necessary structure and process set out by the  
12 statute and the legislature for making a rule, that a  
13 utility cannot revert to e-bills and that the  
14 Commission needs to make a new rule or amend this  
15 rule rather than case by case, utility by utility  
16 writing opposite or opposing tariffs.

17 So I don't see -- unless the Commission  
18 were also in part of the mediation, I don't see how  
19 it would be capable of mediation as long as the  
20 tariff is going to oppose the rule in my  
21 understanding of it. And I could be wrong, and I'd  
22 welcome any further comments on that. Thank you.

23 JUDGE DIPPELL: I do see your point  
24 there, Mr. Harter, with regards to the question of  
25 law, and that would be a -- as a result of mediation,

1 I could imagine what might come out of that would be  
2 that the -- the two parties or something agreed to  
3 seek a rule change from the Commission or some such  
4 as that to clarify it.

5 But at this point, you're right, the  
6 Commission has not ruled before on this particular  
7 question of law, and certainly that has not, as far  
8 as I'm aware, gone to, you know, the courts to -- to  
9 decide if the Commission's interpretation would be  
10 correct.

11 So -- but I didn't know if the -- the  
12 factual parts of your particular complaint aside from  
13 the law might -- the question of law could be  
14 presented to the Commission in several different ways  
15 and not necessarily just as the result of your  
16 particular complaint. And I guess that was the part  
17 of the proceeding that I was thinking of might  
18 benefit from mediation. But perhaps that would just  
19 make it even more involved and more complicated.

20 MR. HARTER: In answer to that, I  
21 believe that the key factual issue is in full -- in  
22 full context here, and that is who -- and whose idea  
23 is it to send e-bills. And that is the contested  
24 issue, that is the one on which everything turns.  
25 And that is the one that Respondent told me that it

1 was their idea not to send the bill, yet in their  
2 pleadings they denied this. I have pled that it was  
3 their idea not to send the bill and in their  
4 pleadings they denied that.

5               So this is a factual dispute that I  
6 think requires a hearing. And if you think mediation  
7 would help settle this factual dispute, I would be  
8 happy to participate in that. I think that the  
9 record could show that. Either they sent me written  
10 notice and -- or either there's some written waiver  
11 that I sign that could be produced and we could  
12 produce an evidentiary settlement of this factual  
13 dispute or we need to have a hearing and determine it  
14 that way.

15              So I see one main factual dispute. I  
16 don't know if it is amenable to mediation or not.  
17 And I see a dispute regarding the law which I for one  
18 would not be conducive to waiving or seeking a  
19 further rule. I think the rule is fine the way it  
20 is. So I'm not -- I wouldn't want to pursue a  
21 mediation that's goal was to have me agree that we  
22 should amend the rule because I don't think we  
23 should.

24              JUDGE DIPPELL: Okay. Mr. Zucker, do  
25 you see any benefit at this point to mediation on the



1 factual issue or...

2 MR. ZUCKER: Yeah, let me try to address  
3 everything I've heard so far, and that -- and just to  
4 give you a little history, obviously in the -- the  
5 pre-Internet days, all -- it was just assumed that  
6 all bills would be delivered by mail, and in fact,  
7 they were.

8 Once people started to use the Internet  
9 for -- for billing and bill payment, utilities  
10 started to offer that as an option to their  
11 customers. And we were not the first -- in fact, we  
12 were sort of toward the end of the line. In 2002 we  
13 came in to the Commission and we said we'd like to  
14 offer our customers an option to receive electronic  
15 bills also.

16 And as I put in my -- in my response to  
17 Mr. Harter's two pleadings, in 2002 the Commission  
18 approved a variance to the rule to allow us to -- to  
19 offer electronic billing. So Mr. Harter's exactly  
20 right. The rule as it stood talking about mailing  
21 wasn't clear that it -- it allowed e-mailing. So  
22 utilities came in and asked for a specific authority  
23 to allow e-mailing.

24 Now, could that be handled through a  
25 rulemaking? Absolutely. That would have resulted in

1 one -- one docket instead of several. And now I  
2 think probably every utility offers e-mailing --  
3 e-billing, and so there's probably less reason to  
4 have the rulemaking. But it could certainly clean up  
5 the rule for people like Mr. Harter who are reading  
6 it and -- and, you know, they could see what the rule  
7 is. Nevertheless, the legal issue is really -- in my  
8 view has been taken care of by the case I cited, the  
9 2002 case in which Laclede got a variance.

10 With regard to the factual matter, you  
11 know, I think that the parties have not yet had a  
12 chance -- and by "the parties," I mean me for Laclede  
13 and Jennifer Hernandez for the Staff and Mary --  
14 along with Mary Schierman-Duncan and Mr. Harter to  
15 sit down and discuss the -- the factual issues and  
16 see if we could get to the bottom of it. And if we  
17 can't, it's possible that mediation could be useful.

18 So I guess my position -- in summary, my  
19 position would be that I wouldn't jump into mediation  
20 right now, but I certainly wouldn't rule it out, and  
21 based on how things develop, it may be helpful.

22 JUDGE DIPPELL: Okay. Ms. Hernandez,  
23 did you have anything to add?

24 MS. HERNANDEZ: In terms of mediation,  
25 that's something the Staff usually doesn't oppose,

1 and so I would just state that we're not opposed to  
2 the parties talking about it or resolving their issue  
3 through mediation, but it may be helpful as  
4 Mr. Zucker said for us to discuss today and see  
5 whether we come to some agreement today or -- and  
6 then keep the mediation sort of in our pocket as an  
7 option that the parties may use or ask for.

8 JUDGE DIPPELL: Okay. Well, with that,  
9 then, I think I will encourage you all to discuss the  
10 facts once we conclude the on-the-record portion.  
11 And in discussing what -- what -- how you might go  
12 forward, you might consider doing some kind of  
13 factual stipulation if you can -- can reach the --  
14 the -- an agreement on -- on what has occurred and  
15 when and so forth. Is -- is there anything else that  
16 any -- Mr. Harter, that you would like to put on the  
17 record this morning?

18 MR. HARTER: Yes. I would like to  
19 respond to what was raised by the attorney for the  
20 utility.

21 JUDGE DIPPELL: All right.

22 MR. HARTER: He said that he agreed with  
23 Mr. Harter that Rule 4 CSR 240.13015 wasn't clear.  
24 He can't agree with me on that because that's not my  
25 position. My position is that it is clear and it

1 does not include e-bills. It says mailing or -- and  
2 delivery.

3               So my position is that it is what it  
4 says and it says -- and it is what it is and that I  
5 think that the proper way on something monumental as  
6 this -- this has future implications of billions of  
7 dollars, not even just millions, that there should at  
8 least be the process required of amending a rule  
9 instead of having it done under the table and behind  
10 the public's back.

11              When it's done by the Public Service  
12 Commission, it should be done through rulemaking  
13 whatever happens in terms of whether or not a utility  
14 when and how can send e-bills. And I think  
15 absolutely vital to an examination of this would be  
16 evidence extraneous to my facts in this case such  
17 as -- and it has not been addressed and it has not  
18 been provided.

19              And I don't know if you want me to file  
20 discovery requests or if we could in this telephone  
21 proceeding set some guidelines. I would like to know  
22 the dollars involved. How much money does it cost  
23 Laclede Gas to send bills out each month and how much  
24 money does it cost Laclede Gas to send out e-bills?  
25 I think you're going to find a significant

1 difference. I think it's the postage alone, not to  
2 mention all the printing, human cost, everything else  
3 to just -- you don't even have to push a button  
4 anymore to send an e-bill. You can have the computer  
5 route it through a stored list.

6 I think the advantages to the utilities  
7 and money are bad. The disadvantages to the consumer  
8 who can find without any notice at all, if he -- if  
9 he doesn't get his e-mail or doesn't look at it or  
10 something that all of a sudden he loses his service.  
11 It's life or death with gas, the house will not be  
12 heated, children could die. To have this happen with  
13 no notice whatsoever to me is outrageous for the --  
14 when it's done solely for the benefit -- financial  
15 benefit of the utility.

16 And at least if we're going to discuss  
17 doing it, we should know what that financial benefit  
18 is. So I would ask that Laclede Gas provide  
19 financial information as to their costs for e-bills  
20 vis-à-vis -- and how many they send out. I don't  
21 even know. I'm sure the PSC might. I mean, do they  
22 send out 100 of them, 50,000 of them, 500,000 of  
23 them? 42 cents just for postage, three million  
24 people in a service area, you can do the math.  
25 That's a lot of money. If they convert it to

1 e-bills, that's a lot of people having their -- their  
2 heat turned off without any idea that it's even  
3 happening.

4                   So I think this is an important issue  
5 and I would hope that we would develop at least  
6 enough of the facts to make a record for the  
7 appellate court to determine it. And if we can  
8 achieve that through mediation, I'd look forward to  
9 it.

10                   And my other question is, the key to all  
11 of that will be if we're going to use the tariff  
12 language, the tariff language states if agreed to, if  
13 agreed to by the customer. Now, right now, I say I  
14 absolutely did not as a Complainant ever agree to  
15 anything and a utility is the polar opposite of that.  
16 So we would have to come to some definition of  
17 "agreed to."

18                   If the utility says you will do it and I  
19 don't say anything, did I agree to it? Do I have to  
20 have a written agreement? Is there any consumer  
21 protection whatsoever in there? What does "if agreed  
22 to" mean? If the utility says you will agree to it  
23 and I'm silent, did I just agree to it? Shouldn't  
24 there be some written confirmation in the file  
25 somewhere when it involves something as important as

1 a -- as the heat for a home in the winter that could  
2 be disconnected based on no further mailing notice?  
3 Shouldn't there be some simple protection in there  
4 like a signature on a waiver that says I no longer  
5 require bills and that would be -- that would  
6 constitute "if agreed to"?

7                   There needs to be some protective  
8 language put in there about what a consumer must do  
9 to agree to it and -- and -- and what the utility now  
10 denies that this is the case. And if we could work  
11 through the mediation process to develop the actual  
12 fact -- because if they add a signature from me  
13 waiving billing, I think they would have produced it,  
14 and yet they deny and they assert that I obviously  
15 have waived it. And I'm going, when did I waive it?  
16 How did I waive it?

17                   So if you want to make an attempt  
18 through mediation to develop that fact as what agreed  
19 to means or how it -- I'd be happy to participate in  
20 that. And it might be more efficient to do it  
21 informally than -- than through a hearing, but that's  
22 what I see is the key issue.

23                   JUDGE DIPPELL: Okay. Well -- and you  
24 asked some questions about discovery and so forth,  
25 and that would -- would be -- I would say that

1 those -- those questions that you have of Laclede  
2 would be proper discovery requests. The Commission  
3 does have a special discovery rule. I mean, you can  
4 use regular discovery tools as well, but we also have  
5 what we call data requests which are sort of  
6 informal -- more -- less formal interrogatories is  
7 how it ends up, at least my understanding.

8                   And in your procedural discussions, you  
9 might think about setting deadlines for discovery,  
10 well, like when you might have your discovery  
11 finished and that kind of thing.

12                   And again, try -- see how you can -- how  
13 far you can get on the factual issues today just  
14 discussing them. If it looks like it might be  
15 helpful to have a mediator help you with that, we can  
16 get one of the other judges here assigned to that and  
17 you can try to work on those factual issues with --  
18 with help if -- if that would be beneficial.

19                   Otherwise, we can just proceed forward  
20 and the Commission can make those factual  
21 determinations -- determinations based on the  
22 evidence.

23                   Did -- Mr. Zucker, did you have anything  
24 further that needed to be brought up on the record  
25 today?



1                   MR. ZUCKER: I do not believe I have  
2 anything that needs to be brought up on the record.  
3 Obviously I have a plethora of responses to  
4 Mr. Harter's statement that he just made, but we can  
5 do that off the record and I'm glad to answer his  
6 questions.

7                   JUDGE DIPPELL: All right.  
8 Ms. Hernandez, is there anything else that you have  
9 that needed to be on the record today?

10                  MS. HERNANDEZ: We have nothing else for  
11 the record portion. Thank you.

12                  JUDGE DIPPELL: All right. Well, with  
13 that, if there's nothing further that needs to be on  
14 the record, I will leave you all to your settlement  
15 and procedural discussions. If you need any answers  
16 about calendar dates and so forth at the Commission,  
17 please -- please feel free to contact me. And  
18 otherwise, I appreciate your participation and I hope  
19 your suggestions are productive. So we can go off  
20 the record.

21                  (DISCUSSION HELD OFF THE RECORD.)

22                  JUDGE DIPPELL: Okay. I'm sorry,  
23 Mr. Harter. Why don't you say that again now that  
24 we're back on the record.

25                  MR. HARTER: I just wanted to address

1 the -- the motion to strike of the Complainant.

2 JUDGE DIPPELL: Yes.

3 MR. HARTER: I didn't know if that was  
4 included in the matters taken up today.

5 JUDGE DIPPELL: Well, I -- those motions  
6 I will be taking -- I will be taking to the  
7 Commission for their decision, and they make their --  
8 those kinds of decisions at their regularly scheduled  
9 agenda meetings which are currently being held on  
10 Wednesdays. So you can watch for an order coming out  
11 of their agenda. And I'm not sure that it will get  
12 on this week's agenda, an order dealing with either  
13 of those motions, the motion to strike or...

14 MR. HARTER: My request on -- regarding  
15 that is that I guess I would term it a corporate  
16 chill that the Public Service Commission should  
17 not -- should either grant the motion to strike or  
18 suitable sanctions to prevent it in the answer.  
19 Paragraph 7 accuses me of violating 43.1 of the  
20 ethical rules regarding meritorious claims, that a  
21 lawyer shall not bring a proceeding unless there is a  
22 basis for doing so that is not frivolous.

23 And I think that the language used, "It  
24 is fairly transparent that Mr. Harter is concocting  
25 these bizarre and false complaints as a means to

1 force all this action while continuing to not pay his  
2 bill." To me, that's an allegation that as an  
3 attorney I'm violating that. And I would say that  
4 that paragraph violates itself for 3.3 (a)(2) in  
5 failing to disclose the material fact that at least  
6 two payments have been made to Laclede Gas by poverty  
7 assistance organizations which clearly Laclede Gas  
8 knows would qualify us as in need.

9 And so the other allegations that we're  
10 somehow manipulating property taxes are -- are  
11 scandalous and -- and not relevant in 4-3.4 (e). And  
12 that brings up again the discovery because it -- that  
13 prohibition is that at a trial an attorney shall not  
14 state a personal opinion as to the culpability of a  
15 civil litigant or the justice of a cause or shall not  
16 allude to any matters that a lawyer -- a reasonable  
17 belief can be relevant.

18 So I would hope that these matters would  
19 be considered in the motion. And if there's a  
20 hearing on the motion or if it's submitted, if you  
21 want me to submit something further along those  
22 lines, but that is my objection. And that -- I  
23 believe that when they say it's fairly transparent  
24 that I'm concocting, that that's an allegation of a  
25 frivolous complaint. And that if you look at page 4

1 of the Staff investigation, it proposes an alternate  
2 recommendation that the Commission continue towards  
3 an evidentiary hearing.

4 I would submit to you that that is a  
5 determination by the Commission that the complaint is  
6 not frivolous because if it were frivolous, it could  
7 not proceed to an evidentiary hearing and the Staff  
8 would not recommend it; it would say this is  
9 frivolous.

10 And so I think putting those three  
11 together that it's not frivolous, that the claim is  
12 that it is frivolous, that the pleading should be  
13 stricken based on the report of the Staff. Thank  
14 you.

15 JUDGE DIPPELL: Well, I did just want to  
16 clarify one thing with you, Mr. Harter, that the  
17 Staff of the Commission is actually a separate --  
18 basically a separate entity from the Commission  
19 itself. So their recommendation is not a decision by  
20 the Commission. In this type of a case, they are  
21 sort of a neutral party in the middle that conducts  
22 investigations on behalf of the Commission, but  
23 their -- anything in their recommendation is not a  
24 determination of the Commission itself.

25 MR. HARTER: You wouldn't concede that

1    when the Staff recommends a hearing that it's  
2    concluding it's not frivolous and that they're  
3    representing the State in some fashion, so the State  
4    has made a determination it's not a frivolous  
5    complaint?

6                   JUDGE DIPPELL:  I would dispute that it  
7    is any kind of a determination at this point.  It is  
8    merely their recommendation and the Commission has in  
9    the past and most likely will in the future disagree  
10   with the recommendations of its Staff.  So -- but  
11   that's not to say that I am making any determination  
12   at this point either.  I will take it to the  
13   Commission for their deliberation and they will make  
14   a decision on your motion in this -- in this  
15   situation.

16                  MR. HARTER:  Thank you.

17                  JUDGE DIPPELL:  Okay.  Thank you.  
18   Mr. Zucker, I'm sure that you have responses to --  
19   again to Mr. Harter.  Is there anything that you want  
20   to put on the record at this point?

21                  MR. ZUCKER:  Well, I guess I would just  
22   like to make sure that -- I filed a response to the  
23   motion to strike and to some of the comments  
24   Mr. Harter made about the Staff investigation, and I  
25   just want to make sure that that got filed and served

1 to all the parties because from some of the comments  
2 I hear, it doesn't seem like it -- it's been taken  
3 into account.

4 MR. HARTER: I did receive it on the --  
5 the Staff recommendation determining that the  
6 complaint was not frivolous was made on March 22nd.  
7 And on April 1st, I believe that's, what, eight or  
8 nine days later, you filed your paragraph 12 where  
9 you repeated it's fairly transparent that Complainant  
10 is concocting the complaints.

11 MR. ZUCKER: Okay.

12 MR. HARTER: It's fairly transparent  
13 that I'm concocting complaints is an allegation of a  
14 frivolous complaint. Concocting?

15 MR. ZUCKER: Okay. So --

16 MR. HARTER: Concocting is a very strong  
17 word to apply to a lawyer, and I -- and I take great  
18 umbrage and resentment towards its use. I've  
19 never -- I've been practicing law for 30 years. I  
20 was a chief income tax attorney for the State of  
21 Missouri for three years, I was an assistant  
22 prosecuting attorney in Missouri and I was an  
23 assistant State's attorney in Illinois, and no one  
24 has ever filed a pleading accusing me of  
25 concocting -- transparent, that I'm concocting.

1     So -- and the fact that you repeat that on April 1st  
2     to me means that the matter is still alive. It is  
3     not a frivolous complaint or the -- or the Staff  
4     would not have made recommendations regarding it.

5                     MR. ZUCKER: I -- I appreciate that and  
6     that's --

7                     MR. HARTER: And I think it should be  
8     stricken that I'm concocting something --

9                     MR. ZUCKER: Okay.

10                    JUDGE DIPPELL: All right. Mr. Harter,  
11     I --

12                    MR. HARTER: That's an ethical --

13                    JUDGE DIPPELL: Okay. Mr. Harter, I  
14     believe your point is made.

15                    MR. HARTER: Thank you.

16                    MR. ZUCKER: And -- and that also  
17     answers my question as to whether my pleading was  
18     received.

19                    JUDGE DIPPELL: Yes. And it was, in  
20     fact, received at the Commission as well.

21                    MR. ZUCKER: Okay. Thank you.

22                    JUDGE DIPPELL: All right. Then with  
23     that, is there anything else that anyone would like  
24     to present this morning?

25                    MS. HERNANDEZ: If I -- if I may?

1 JUDGE DIPPELL: Yes, Ms. Hernandez?

2 MS. HERNANDEZ: I'd just like to clarify  
3 where Mr. Harter was citing in the Staff  
4 recommendation the language of continuing towards an  
5 evidentiary hearing. That also has a qualifier in  
6 that same sentence, "In order to afford Mr. Harter  
7 the opportunity to present evidence which may shed  
8 further light on his allegations."

9 So I would just like to state that we  
10 weren't necessarily making a recommendation as to  
11 whether this was a frivolous claim, we were just  
12 stating that we found as the neutral party that the  
13 company did not violate any Commission statutes,  
14 rules or approved tariff, but further, if the  
15 Commission would decide they would like to go to an  
16 evidentiary hearing, Mr. Harter could present further  
17 evidence that may lead one to believe that there was  
18 a violation of a rule or statute or the company's  
19 tariff.

20 JUDGE DIPPELL: And that was under the  
21 Staff's interpretation of the legal question; is that  
22 correct, that the tariff basically trumped the rule?

23 MS. HERNANDEZ: That there was a tariff  
24 on file that the Commission approved that allowed  
25 e-billing, that's correct.



1 JUDGE DIPPELL: All right.

2 MR. HARTER: I would just say that if  
3 they determined that it was frivolous, they would not  
4 have said that it's a good thing for me to submit  
5 evidence regarding it. The fact that they're  
6 welcoming the opportunity to supply evidence in  
7 pursuit of this claim to me is a determination that  
8 it's not frivolous. It's -- I'm just using logic  
9 here. But I mean, yes, it's not said in black and  
10 white that way, but that's the clear import of it as  
11 far as I can tell.

12 JUDGE DIPPELL: All right. Is there  
13 anything else that anyone feels needs to be discussed  
14 about these motions or -- or any -- anything we  
15 haven't talked about?

16 MR. ZUCKER: None from me, your Honor.  
17 It's Rick Zucker.

18 JUDGE DIPPELL: Okay.

19 MR. HARTER: No, your Honor. Thank you.

20 JUDGE DIPPELL: Thank you.

21 MS. HERNANDEZ: Nothing further.

22 JUDGE DIPPELL: Okay. Well, with that,  
23 again, I will ask you to forge ahead as if the case  
24 is going forward so that, you know, we can get a  
25 decision one way or another as quickly as we can and

1 not drag this out any -- any further. So if -- if  
2 you need any further assistance from me, please  
3 contact me. And with that, we can go off the record.

4 (WHEREUPON, the prehearing conference  
5 was adjourned.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## 1 C E R T I F I C A T E

2

3 STATE OF MISSOURI )  
4 ) ss.  
5 COUNTY OF COLE )

6

7 I, Pamela Fick, Registered Merit Reporter  
8 and Certified Shorthand Reporter do hereby certify  
9 that I was personally present at the proceedings had  
10 in the above-entitled cause at the time and place set  
11 forth in the caption sheet thereof; that I then and  
12 there took down in Stenotype the proceedings had; and  
13 that the foregoing is a full, true and correct  
14 transcript of such Stenotype notes so made at such  
15 time and place.

16 Given at my office in the City of  
17 Jefferson, County of Cole, State of Missouri.

18

19

---

PAMELA FICK, RMR, CCR #447, CSR

20

21

22

23

24

25