

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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5 TRANSCRIPT OF PROCEEDINGS
6 Evidentiary Hearing
7 July 8, 2010
8 Jefferson City, Missouri
9 Volume 2

10 Charles A. Harter,)
11)
12 Complainant,)
13)
14 V.) File No. GC-2010-0217
15)
16)
17 Laclede Gas Company,)
18)
19 Respondent.)

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22 KENNARD L. JONES, Presiding,
23 SENIOR REGULATORY LAW JUDGE.

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

2 JUDGE JONES: This is a hearing for Case
3 No. GC-2010-0217, Charles Harter, Complainant versus
4 Laclede Gas Company, Respondent. My name is Kennard
5 Jones. I'm the Regulatory Law Judge presiding over the
6 matter. And at this time we will take entries of
7 appearances, beginning with Mr. Harter.

8 MR. HARTER: Thank you, your Honor. My
9 name is Charles Harter, and the information concerning my
10 address and phone is correct. My Bar number is 28059, and
11 I am representing myself.

12 JUDGE JONES: And from Laclede Gas Company?

13 MR. ZUCKER: Your Honor, Rick Zucker here
14 on behalf of Laclede Gas Company, 720 Olive Street,
15 St. Louis Missouri 63101.

16 JUDGE JONES: And from the Staff of the
17 Commission?

18 MS. HERNANDEZ: Good morning. My name is
19 Jennifer Hernandez, and I'm appearing on behalf of the
20 Staff of the Commission. I've provided a card to the
21 court reporter that has our contact information on it.

22 JUDGE JONES: Thank you. And Mr. Harter, I
23 might -- I'm not sure your microphone is on or not. There
24 should be a green light that --

25 MR. HARTER: There is no green light. Now

1 there. I'll repeat that.

2 JUDGE JONES: You can.

3 MR. HARTER: My name is Charles Harter.
4 I'm the Complainant. I reside at 827 South Sappington,
5 St. Louis, Missouri 63126. I'm an attorney. My Bar
6 number is 28059. I'm representing myself in this matter.

7 JUDGE JONES: Okay. Prior to going on
8 record, we began a discussion about a specific issue in
9 this case, and rather than continue off the record, we've
10 gone on the record to reiterate concerns of Mr. Harter.
11 Apparently there was a subpoena that's been issued to Bank
12 of America.

13 MR. HARTER: Yes, your Honor.

14 JUDGE JONES: And they have not produced
15 the information Mr. Harter seeks.

16 Now, again, Mr. Harter, what -- through
17 those records, what do you intend to prove?

18 MR. HARTER: It's at the heart of the case.
19 The question concerns the automatic Bill Pay that -- the
20 initiation of it, the cessation of it, and the
21 communication of it, and the records of the bank to me
22 would be essential.

23 And I was also seeking testimony from the
24 witness concerning various aspects of the Bill Pay program
25 which the bank officer could testify to and I could not.

1 It's not my program. I can't say at which date who was
2 informed of what. I have, of course, a personal
3 recollection of what happened to me, but I was hoping for
4 evidentiary reasons to have the bank state through its
5 witness what procedures it initiates in a Bill Pay
6 situation, what notice is given to which party, what would
7 constitute an agreement.

8 Key, and the only reason that I am
9 emphasizing it and is key to the case, I believe, is the
10 Respondent's suggestion in previously filed documents that
11 there is some agreement about e-mail documents and it's
12 keyed on some transmission from Bank of America or to Bank
13 of America, and the Complainant's contention is that we
14 did not participate in this and did not initiate it and
15 did not agree to it. So the records of the bank in that
16 sense would be helpful, if not key.

17 And they were issued a subpoena. They
18 responded apparently with a letter, which I didn't see
19 until this morning, 'til about five minutes ago, and it
20 was sent to the judge but it was not sent a copy to me,
21 and the Commission did not send me a copy of it, and no
22 one informed me of this letter.

23 Regardless of that, no action was taken
24 regarding this letter, and I would ask, you point out
25 there is no bailiff, but someone call the halls for the

1 witness to establish for the record that the witness
2 indeed is not here, and after that everyone has indicated
3 that there is apparently no witness here.

4 My next request would be that an order
5 issued to, under the rules and the law pursuant to section
6 Chapter 536, to require their attendance and to bring the
7 records, and I believe it has been proven by the
8 stipulation of facts that there are records indicating
9 that some activity occurred between the bank account and
10 the Respondent, Laclede Gas, and they said in their letter
11 ,if you're interested in receiving records, please let us
12 know.

13 So, I mean, that's what a subpoena is,
14 letting them know. I'm interested in receiving records.
15 So I don't understand this letter even though I just got
16 it five minutes ago. So I would request that the halls be
17 called and that if the witness is not here, that pursuant
18 to the regulations and laws that the subpoena be enforced
19 and the witness be commanded to appear.

20 JUDGE JONES: Well, one thing, we -- there
21 is no witness here. That's a fact. No one needs to go
22 looking for them. If they aren't here, they aren't here.
23 Secondly, if additional action is to be taken to get this
24 information, it's not going to happen today. You do
25 realize that, right?

1 MR. HARTER: I don't know what
2 possibilities are. In theory, the sheriff could be sent
3 out and they could be dragged in in five minutes.

4 JUDGE JONES: I suppose that's true. What
5 I'm trying to understand is, okay, you have the Bill Pay
6 that you were on that was -- I'm not sure what that was.
7 We'll get to that. But then there's also the electronic
8 billing. That's what I thought the core of this case.
9 Those are two different things, right?

10 MR. HARTER: They're connected, they are
11 two different things, but they are also connected.

12 JUDGE JONES: How are they connected?

13 MR. HARTER: I don't want to present their
14 case. It's my understanding that Respondent contends that
15 some way through the initiation of Bill Pay process, the
16 Complainant consented to a receipt of E-bills, and I would
17 say that we did not, that whatever happened with that was
18 part of the bank's communication.

19 JUDGE JONES: Not yours. I understand what
20 you're saying. Mr. Zucker?

21 MR. ZUCKER: Yes. Mr. Harter is correct,
22 they are two separate processes. So through his bank he
23 was and did -- he was able to make payments, electronic
24 payments to us without registering for E-billing. At some
25 point our evidence will show that we received a request to

1 register Mr. Harter's account for electronic billing. We
2 received that request from our billing, online billing
3 service provider, whose name is Checkfree, and we're
4 prepared to show that today. Checkfree, we checked with
5 them, and they said they got their request from Bank of
6 America. So there's that link.

7 Now, what Mr. Harter is saying is there's
8 some mistake. He wants Bank of America to finish the
9 loop. Whereas, he's saying he did not sign up for
10 E-billing but somehow these requests got -- took place.

11 And I think that what we can say is, is
12 that it's not really relevant as to whether Mr. Harter
13 made a mistake and signed up for E-billing when he didn't
14 know it or if Bank of America made a mistake and sent in
15 the registration for E-billing. The question is whether
16 Laclede violated its tariff, and we're prepared to show
17 that we received the -- the normal order that we get to
18 register someone for E-billing.

19 JUDGE JONES: Okay. Because we're all here
20 and I know both of you-all came at least two hours away,
21 probably three in your case, Mr. Harter, I'm not sure how
22 far out you live, but we've got to do something today.
23 We're not going to let this -- I'm not going to say
24 whether this information is relevant or not. I'm not
25 going to say even whether it's probative, but -- it may

1 be. It may be something that he wants to have.

2 So what we're going to do today is the
3 information you were seeking, Mr. Harter, is something
4 that is tangible evidence, but that you can testify to.

5 MR. HARTER: Yes.

6 JUDGE JONES: Just follow my lead. I'm not
7 going -- I'm not going to leave you hanging without
8 something you think you need before this case is resolved.
9 I just want to be able to make the point that you can
10 present some evidence as to what it is you wanted to show
11 through the records that we don't have now. Those
12 records, this record can then be supplemented by that
13 information later if we're able to get it. That may
14 create a whole different issue, but I don't want that
15 issue to hinder these proceedings today.

16 And after the hearing, we can put our heads
17 together and figure out how to get this information and
18 put it in, and then it can have whatever weight it has, or
19 if through our discussions we find out it's not going to
20 help or hurt the case, then we don't go through that
21 effort. Apparently you think it would help your case. So
22 I'm not going to keep something out or not want to
23 consider it regardless of whether you're right or wrong.

24 MR. HARTER: I guess the question that
25 would be answered by the witness who's not available

1 ,although under subpoena, to my thinking, and this is just
2 again, it's my understanding, I can't testify to this, but
3 my understanding is, is that with Bank of America's Bill
4 Pay program, the request that they apparently sent to,
5 what's it called, Checkfree is automatic for the bank.
6 That's how the bank's system does it, and I don't know if
7 that constitutes a formal request by me, which is required
8 under the tariff to suspend direct mail of bills.

9 The customer, that's the Complainant,
10 that's me, has to request it, and -- and that's what I
11 wanted the live testimony from the witness, which if they
12 would agree to it could be submitted as supplemented in a
13 future telephone hearing. That would be fine with me, but
14 to something as to what generated the document that they
15 have.

16 JUDGE JONES: You're saying the bank
17 generated that document?

18 MR. HARTER: That's my contention, but I
19 would need to ask them, did you do this. And I'm sure
20 that, as you agree, we -- as you stated, we can supplement
21 this. That's fine with me. I'm prepared.

22 JUDGE JONES: We don't really have a choice
23 at this point. I suppose I could get on the phone and
24 call Bank of America. I just don't know whether that
25 would be -- I don't know if my effort would be futile.

1 MS. HERNANDEZ: Was there contact
2 information on there, a phone number or -- I'm looking at
3 the document that was filed in the case from Bank of
4 America, and there is a -- someone by the name of George
5 Sallas, if I'm pronouncing that right, in order
6 processing, and they do have a phone number there. I
7 don't know if it's worth the time to call them.

8 MR. HARTER: Is it in Jeff City?

9 MR. ZUCKER: 954?

10 MS. HERNANDEZ: I don't know what the area
11 code 954 is. Here it is, up on the address. Fort
12 Lauderdale, Florida.

13 MR. HARTER: At any rate, that would not
14 impede us progressing on everything else we would need to
15 do today.

16 JUDGE JONES: Let's do what we need to do
17 today. It's quite possible that when we finish doing
18 this, we can get on the phone, call down to Florida and
19 see. At least it may be that they don't understand what
20 we're looking for, that's possible, or maybe they don't
21 have it. I don't know. But we can get some more light on
22 it after we get what we get done here today.

23 MR. HARTER: Thank you.

24 JUDGE JONES: All right. So with that,
25 then, let's go ahead and start. Mr. Harter, did you want

1 to make an opening statement?

2 MR. HARTER: This --

3 JUDGE JONES: Any opening statement you
4 make would probably serve as testimony since you're
5 representing yourself, but if you want to just go
6 generally over what your case is.

7 MR. HARTER: Would I be allowed to make a
8 closing statement?

9 JUDGE JONES: Yes.

10 MR. HARTER: Then I think I would just
11 defer an opening statement to a closing statement.

12 MR. ZUCKER: That's fine.

13 MR. HARTER: Which, with my testimony,
14 otherwise I'm just talking three times.

15 JUDGE JONES: No. Again, I want to
16 reiterate for you to speak into the microphone because
17 these hearings are recorded and your voice won't come out,
18 and some people may be listening over the Internet and
19 they won't be able to hear you.

20 MR. HARTER: If I may, I would like to make
21 a very, very brief opening statement.

22 JUDGE JONES: Of course you can. Go right
23 ahead.

24 MR. HARTER: Thank you. I am the
25 Complainant, and the case concerns E-bills, and there are

1 some legal questions, very few factual questions. We've
2 been talking on the record about, I guess, the major
3 factual question, but the legal questions are, as I
4 understand it, and what I would propose is, can the tariff
5 which has been submitted as an exhibit connected with the
6 stipulation of facts, can that basically overrule a rule
7 which has been promulgated through the rules and published
8 in the Code of State Regulations with the Secretary of
9 State in which any consumer can -- can process it, can
10 receive it, can read it, can discover.

11 And that rule which is subsection T of the
12 definition section, even though there's a formal quote
13 which has been referenced many times, requires to our -- a
14 mailing of bills, and then the tariff basically allows for
15 ,at the customer's request, E-bills substituting mailing
16 of bills.

17 And then quickly through the stipulation of
18 facts is that in August of '09 the Complainant began
19 paying electronically, received only E-bills, until
20 February when the Complainant stopped paying
21 electronically, and then from February through July there
22 were no -- there were only E-bills. There was no regular
23 bill, and I'll testify to that. And then the question is,
24 was the Respondent obligated to provide mailed bills
25 during this period. Thank you.

1 JUDGE JONES: Okay. Mr. Zucker, did you
2 want to make an opening statement also?

3 MR. ZUCKER: Certainly, your Honor. The
4 customer's complaint in this case is that Laclede
5 unilaterally placed him on E-bill in August of 2008, that
6 we refused to send him a paper bill after February 2009,
7 and that we attempted to disconnect him in August 2009
8 without proper notice. None of these claims has any basis
9 in fact.

10 The facts will show that Laclede received
11 an order from its online billing service provider to place
12 Mr. Harter on E-billing in August 2008. Our service
13 provider had in turn received a similar order from Bank of
14 America, the customer's bank. The order had all of
15 Mr. Harter's billing information, including his e-mail
16 address. There is no doubt that Mr. Harter or someone
17 close to him registered for E-billing, unless Bank of
18 America made an error, which is his -- which he contends
19 is possible.

20 Mr. Harter did pay electronically for a
21 couple of years before he signed up for E-billing. So
22 there is no truth to the allegation that when you make an
23 electronic payment, that automatically enrolls you in an
24 electronic billing. Mr. Harter was on E-billing for about
25 11 months. Although he may claim that he was not aware of

1 the E-bills, the records show that nearly all of these
2 electronic bills were viewed. That means opened and
3 looked at.

4 Mr. Harter stopped -- Mr. Harter was making
5 payments through his bank electronically, and the
6 stipulation provides that, through January 2009. He then
7 stopped that program and didn't make a payment in
8 February, paid \$50 in March, and then didn't make a
9 payment again after that until -- until August. On July
10 31st, 2009, we sent Mr. Harter an E-bill that threatened
11 disconnection, for a disconnection date of August 21st.
12 We followed that up with a mailed, paper mailed notice on
13 August 18th, and Mr. Harter -- and we -- in addition, we
14 did an automated phone call on August 19th. Mr. Harter
15 called us on the 18th and began the complaint process. So
16 obviously we did send the proper disconnect notices in
17 August of 2009.

18 The Staff agreed with us in its report that
19 Mr. Harter's claims are without merit, and we -- when we
20 complete the hearing today, I hope the Commission will
21 agree with us. Thank you.

22 JUDGE JONES: Ms. Hernandez, did you want
23 to make a statement?

24 MS. HERNANDEZ: Just a short statement.
25 I'll just state that the Staff in this case did conduct an

1 it open for a closing statement through a brief.

2 JUDGE JONES: That's fine.

3 MR. ZUCKER: That's fine.

4 JUDGE JONES: All right.

5 MR. HARTER: That would save us some time
6 here.

7 JUDGE JONES: I didn't hear you.

8 MR. HARTER: That would save us the time of
9 everyone speaking.

10 JUDGE JONES: Why don't you go ahead then
11 and present your case. You can do it from there, if you
12 like, or you can stand at the podium. There's no
13 microphone at the podium, so you can do it from there, or
14 wherever you're comfortable.

15 MR. ZUCKER: The witness usually sits up
16 there, if you like.

17 MR. HARTER: That would be fine.

18 JUDGE JONES: Go ahead and have a seat.

19 (Witness sworn.)

20 JUDGE JONES: Thank you, sir. You may be
21 seated. You may proceed.

22 CHARLES A. HARTER testified as follows:

23 MR. HARTER: Thank you. My name is Charles
24 Harter. I live at 827 South Sappington, St. Louis,
25 Missouri 63126. I am an attorney. My Bar number is

1 28059.

2 I have stipulated to a stipulation of facts
3 which has been presented along with attachments and
4 exhibits, and I did participate in the formation of the
5 list of issues, and the only thing not present on these
6 two documents is the question of the witness, which didn't
7 arise until this morning and we've already discussed.

8 I guess I also should say that I am married
9 and have been throughout the relevant time period, and
10 that the time frame as I understand it basically begins in
11 August of '08, and that is when my wife took over the
12 family chore of paying bills, not just Laclede, but all
13 the bills. And she is the one that was very enthusiastic
14 about the Bank of America Bill Pay system, and that
15 continued from August until February when there was a
16 problem, you could call it a dispute, between our family
17 and Bank of America concerning the Bill Pay system and we
18 discontinued it, not just with Laclede, but with all of
19 our bill paying.

20 I might state parenthetically that there
21 are other issues that arise with Bill Pay and, for
22 instance, the Post Dispatch newspaper is billed quarterly,
23 but our Bill Pay was paying it monthly for quite some
24 time, to the point where we became equivalent of a
25 stockholder, and, of course, they won't refund any money,

1 so we've been getting our newspaper for a long time.

2 I state that because it can cause some
3 disruptions or confusion regarding the billing process.
4 We were unaware of this problem with the Post Dispatch.
5 And that type of situation came up again in the summer of
6 '09 in that after we stopped the Bill Pay system in
7 February and then I resumed the family chore of paying
8 bills from my wife, who retired from that, and then -- so
9 for March, April, May, June and July, we did not receive a
10 paper mailed bill from Laclede.

11 And my system of paying the bills beginning
12 in March of '09 was that I would get the bills, put them
13 in the bill drawer, which is the subject of many cartoons,
14 and pay those, and so I was not receiving a bill. Well, I
15 was also not receiving a bill from the St. Louis Post
16 Dispatch because we had, through our error, prepaid it for
17 the next three years. So my system of paying was to
18 respond to the mailed bill, which is why we did not make a
19 payment to Laclede in March, April, May, June and July
20 because we were not receiving bills.

21 If I can backtrack now, in August when --

22 JUDGE JONES: August of '08?

23 MR. HARTER: August of '08 when the Bill
24 Pay program is instituted through the -- initiated through
25 Bank of America, apparently, and this is what we

1 discussed, Bank of America initiated some sort of
2 communication, which I guess we'll receive at a later
3 time, that went to a check -- some company on behalf of
4 Laclede Gas, which indicated to them to begin sending us
5 E-bills, but I would submit that that is not signed as I
6 understand it, and, to my knowledge, neither my wife nor I
7 initiated that.

8 I can't say we would have been averse to it
9 because, to my knowledge, it was never presented. It was
10 some sort of automatic feature of the bank's program or
11 perhaps an automatic feature of Laclede's or some --
12 automated somewhere, but we were not requested or
13 discussed and did not initiate a request to receive
14 E-bills.

15 That being stated, there was no problem
16 because the automatic payment took care of the automatic
17 E-bills. The problem arose in February when the automatic
18 payments, which were not done through an agreement, if I
19 may -- there -- this was not an agreement, there was not a
20 communication with Laclede. There was not a stipulation
21 agreement or consent or anything to Laclede. This was a
22 totally unilateral choice of the complainants, of my wife
23 and I, to have our bank pay the bill in this fashion, and
24 as far as I know, Laclede got the money through the
25 process.

1 But it was not a -- an E-payment system
2 negotiated with Laclede, and whatever nuances developed
3 through that, that's what I was hoping the witness from
4 the Bank of America could provide. I cannot speak to
5 their system or how it works. All I can say is that we
6 did not request, I did not, my wife did not, that's the
7 we, request Laclede, the Respondent, to stop sending us
8 bills through the mail.

9 So in February we discontinued the
10 automatic Bill Pay system. We did not get bills. I did
11 not pay the bills. Next thing I knew is when in August we
12 received a disconnection. I'm not sure. Some threat of a
13 disconnection caused me to file a complaint with the
14 Public Service Commission, and that date is in the
15 stipulation of facts, which I don't have in front of me
16 because I didn't have any ink for my printer to print it,
17 and it was on a short time frame to get up here in time
18 for the hearing.

19 So I don't want to misspeak, but whatever
20 it says I agreed to, or the Commission records will say.
21 And that was an informal complaint, which was made over
22 the phone, and again, I'll go by the stipulation of facts
23 as to the dates, but it's my understanding that --

24 JUDGE JONES: August of '09.

25 MR. HARTER: August of '09, that about a

1 week later --

2 MR. ZUCKER: Your Honor, I am sorry to
3 interrupt, but I have extra copies of the stipulation, and
4 perhaps we should mark it and, since everyone agrees to
5 it, enter it into evidence, and I'll give Mr. Harter a
6 copy that he can work from.

7 JUDGE JONES: That's fine.

8 MR. HARTER: That would be great.

9 JUDGE JONES: Would that be helpful?

10 MR. ZUCKER: Does anyone else need a copy?

11 JUDGE JONES: I'll give you an opportunity
12 to look at this exhibit, Mr. Harter, and I realize that it
13 was something you-all worked on together. There are
14 attachments to it also that I'm assuming are included in
15 this exhibit.

16 MR. HARTER: I'm sorry.

17 JUDGE JONES: We're speaking specifically
18 of the stipulation of facts as being an exhibit. There
19 are other things attached to it that --

20 MR. HARTER: I believe they're exhibits
21 that were part of the stipulation.

22 JUDGE JONES: Okay.

23 MR. HARTER: We stipulated to the exhibits.

24 JUDGE JONES: Okay.

25 MR. ZUCKER: So is this entered into

1 evidence?

2 JUDGE JONES: Do you have any objection,
3 Mr. Harter?

4 MR. HARTER: No. I'm not sure of the
5 procedural effect of a stipulation. It's been approved by
6 the Commission. So, no, I have no objection.

7 JUDGE JONES: I'll admit it as Exhibit 1.

8 (EXHIBIT NO. 1 WAS MARKED AND RECEIVED INTO
9 EVIDENCE.)

10 JUDGE JONES: You can proceed.

11 MR. HARTER: On August 21st is when I
12 telephoned my complaint, and the complaint was that we
13 were being disconnected and hadn't been sent a bill
14 through the mail, and on August 28th Laclede sent a paper
15 bill through the mail, this was of '09, which threatened
16 disconnection.

17 And we proceeded through some informal
18 attempts to resolve it, but the formal complaint, the
19 written complaint which was initiated, I have January
20 19th, is basically the same issues, and there -- to my
21 knowledge, although it's not in the stipulation of facts,
22 no further factual issues or disputes concerning
23 September, October, November, December or January, that
24 the essence of the dispute is March, April, May, June and
25 July of '09 when an arrearage built up, which Complainant

1 admits that it is a valid arrearage and it is a debt, but
2 the Complainant's position is that it would not have built
3 up had we been receiving regular mailed bills which we
4 could have paid, and that once it got as large as it did,
5 which was 800 and some dollars, then it was beyond our
6 capacity to pay, and that's where we fell into the danger
7 and the threat of disconnection, which when you're talking
8 heat, this is gas, that can be a life or death situation.

9 We've got some medical issues and limited
10 income due to health reasons, and we don't have the
11 financial resources to overcome the hole that we were put
12 in, and so the problem is in the create -- to prob -- the
13 reason for the complaint, the problem of it is, you can
14 say, well, just pay it, if you'll admit -- it was caused
15 to build up because the utility didn't obey the rules, and
16 the rules were printed in the Public Service -- in the
17 Code of State Regulations under 4 CSR 240-13.015
18 subparagraph 1, subparagraph T, which requires bills to be
19 sent in the mail.

20 After the payment -- after the formal
21 complaint and in the process that brought us here today,
22 and attached as a -- in evidence to the stipulation of
23 facts is an order approving a tariff in which the
24 Commission attempts to allow Laclede to not send mailed
25 bills if the customer requests it, I believe. I'll let

1 the tariff speak for itself.

2 And so as far as the Complainant goes, as
3 far as our contention is, one, that doesn't fit us because
4 we didn't request it and agree to the cessation of
5 mailing. And two, even if that does not comply, the fact
6 that when the automatic payments stopped in February, the
7 mailed bills should have resumed, and -- and had that
8 happened, there would not be an arrearage and there
9 wouldn't have been the threat of disconnection hanging
10 over our heads as we try and repay the arrearage that did
11 build up, which we concede is not in dispute, that we owe
12 the money.

13 And I would state that as I've said in
14 other places, but would like to put on the record here,
15 along with my assumption that other people are a lot like
16 us, that when you get into financial difficulties, one of
17 the first disruptions is going to be in your Internet
18 service. Certainly it would be there rather than
19 something that's life or death situation such as heat for
20 the house, gas service.

21 And if, as happened to us at times, your
22 Internet service is disrupted, what good is an e-mail
23 warning or an e-mail bill? You're not going to get it.
24 It seems to me to make no sense to require -- to allow an
25 e-mail disconnection threat because for gas, which is

1 heat, which is life, because a person that is in a
2 position of being threatened with disconnection with their
3 heat is going to be in severe financial situation, and
4 odds are fairly good that they will have already had
5 suffered a disruption in their Internet service.

6 And if their Internet service, which is not
7 the mail -- the postman delivers the letters every day.
8 They don't care if you have money or not. As long as
9 you've got a mailbox up there, they're going to deliver
10 the mail. And that is the best, safest, most democratic
11 way to deliver the news to people that they are threatened
12 with loss of their heat.

13 But to allow the utility to get out of that
14 because that costs money, you've got to spend postage and
15 you've got to pay the people to prepare it and lick the
16 stamps and whatever machine, and judging -- I don't know
17 their records. I don't know how many customers they have,
18 but if they were allowed to use E-bills in lieu of the
19 mail as a general philosophy, it will save them an awful
20 lot of money.

21 That's the same issue again with the Post
22 Dispatch. We're entering a new age. The Post Dispatch is
23 on the rocks. The Post Dispatch can't refund our measly
24 money we accidentally prepaid them because they can't
25 compete in the electronic world.

1 So the times are changing, and I understand
2 that. And my request as the Complainant in this is not to
3 stop the future and to say that utilities can't
4 communicate through E-bills. I would suggest and my
5 request in the complaint is that if the world is going to
6 change, this Commission should consider this change and
7 should have hearings and take evidence and think about it
8 and make a considered ruling that would protect consumers
9 and would not leave them with the possibility of losing
10 heat, which could be a death sentence. People die from --
11 all the time in the winter in this part of the country
12 from not having heat, that to prevent that, to not move
13 away from the requirement as evidenced in 13.051(t) that
14 the United States postman deliver the notice and the bills
15 for a utility.

16 I think that to do it in a tariff
17 proceeding does not afford the consumers any protection
18 and, as I will argue in the brief, doesn't constitute a
19 legal action since I don't think a tariff can overrule a
20 rule that has been instituted properly and has become the
21 law of the land. I don't think a tariff is the law of the
22 land in the same sense that a rule is. But that will be
23 in the brief.

24 I guess I'm finished with my direct
25 examination.

1 JUDGE JONES: Okay. We'll have cross from
2 the Staff.

3 CROSS-EXAMINATION BY MS. HERNANDEZ:

4 Q. Good morning, Mr. Harter.

5 A. Good morning.

6 Q. Do you have the complaint you filed with
7 the Commission before you?

8 A. Yes, I do.

9 Q. And then if I can just direct you to your
10 complaint where you state that -- well, first, you're the
11 named Complainant; is that correct?

12 A. Yes.

13 Q. Charles A. Harter?

14 A. Yes.

15 Q. Now, in your testimony you stated that your
16 wife was the one who went to sign up for Bill Pay; is that
17 correct?

18 A. In October -- I mean in August of '08, yes,
19 she took over the family chore of paying bills, not just
20 for Laclede but all of them from me.

21 Q. And you did not go to the bank with her at
22 that time when she started these?

23 A. I don't think anyone went to the bank. We
24 sat at our desk and clicked on a mouse on our computer.
25 That's how you sign up for Bill Pay with Bank of America.

1 You go online and you click Bill Pay, click, click, click,
2 click, click. No one --

3 Q. So you were sitting down next to her when
4 she signed up for this program?

5 A. I couldn't say. I don't think I was, but I
6 wouldn't swear. I've been sworn in. I don't know. I
7 have no memory of this.

8 Q. So you can't say whether with any certainty
9 that she might have signed or clicked on a box for a
10 waiver? You don't know what steps she had to go through
11 to sign up for E-payment?

12 A. She has told me that she did not do that,
13 so yes, I can state that she did not sign that.

14 MR. ZUCKER: Objection. That's hearsay.

15 JUDGE JONES: Yeah, it's hearsay. But
16 his -- he makes a good point, though. She elicited that
17 information, and I realize that because of the
18 configuration of interests here, her interest is not
19 necessarily aligned with yours, so it's quite possible she
20 may elicit information that you will otherwise object to.

21 I'll tell you what, I'm going to sustain
22 the objection simply because it is -- he is testifying to
23 something she's told him. His direct testimony was that
24 he doesn't recall whether he was sitting there and we'll
25 have to stick with that.

1 MR. HARTER: In light of that ruling, if I
2 may put on my lawyer hat and object to the question, then.

3 JUDGE JONES: Well, there should have been
4 a motion to strike because the answer was already made,
5 but is that where you were going, Mr. Harter?

6 MR. HARTER: No, I wasn't moving to strike
7 my own testimony. I was just going to object to the
8 question.

9 JUDGE JONES: Object to the question. You
10 can certainly do that. I mean, I know it might be a
11 strange response for you to object when someone asks you a
12 question, but if someone asks you an objectionable
13 question, because you are representing yourself and you
14 are an attorney, you can object. Okay?

15 MR. HARTER: Then even though I answered
16 it, since my answer's been sustained and objected, and I
17 would object to the question that -- and if not, then ask
18 a new question or reread me the question if it's not
19 allowed.

20 JUDGE JONES: The question isn't allowed.
21 It's the way your wife said it. You can move to your next
22 question.

23 BY MS. HERNANDEZ:

24 Q. Okay. So you testified that you were not
25 sitting with your wife?

1 A. No, I did not. That is not true. That is
2 not my testimony.

3 Q. So you were sitting next to your wife when
4 she signed up?

5 A. That's not my testimony either. My
6 testimony is I don't recall. I have no memory of this. I
7 may have walked in the room. I may have looked over her
8 shoulder. I may have sat there at the computer with her.
9 We may have had a formal discussion. I have -- it was not
10 the biggest thing in the world to me. We were doing many
11 things. She was paying many bills. She was doing many
12 things on the computer. Sometimes I was in the room.
13 Sometimes I wasn't. Sometimes I was watching. Sometimes
14 I wasn't.

15 So for me to testify under oath what she
16 did, what I did, what I saw her do, what I didn't see her
17 do, I can't -- I can't. I can tell you that I did not
18 and, to my knowledge, she did not, and if you'd like she
19 can submit an affidavit, we can have a telephone hearing,
20 you can ask her what she did. But it is my firm belief,
21 understanding that she did not do any of those things, but
22 do not say that I -- what I said because I'm not -- I
23 don't know.

24 Q. Okay.

25 A. I'm not testifying about that.

1 your testimony, Mr. Harter, that --

2 JUDGE JONES: No. Is that what you're
3 asking him? Is that what you've asked? Are you
4 rephrasing the question?

5 MS. HERNANDEZ: I'm asking whether
6 Mr. Harter's complaint is based on facts of actions that
7 he took or whether he's basing his complaint on actions
8 that someone else took because he is the named Complainant
9 in the complaint filed before the Commission.

10 JUDGE JONES: You can answer that question,
11 Mr. Harter.

12 THE WITNESS: I'm basing my complaint as
13 the complaint states on my actions as stated therein.

14 BY MS. HERNANDEZ:

15 Q. Do you remember the date that you signed up
16 for service with Laclede on the account that's subject to
17 the complaint?

18 A. 1951, I think.

19 Q. Do you have the stipulation of facts in
20 front of you that Mr. Zucker gave you a copy of earlier?
21 Do you have one in front of you still?

22 A. This is my boyhood home. I've lived in
23 this house since 1951. The bill was in the name of my
24 father, who's deceased. So when he died, the bill was
25 transferred into my name. I don't see what effect that

1 would have ten years ago as to the complaint which began
2 in August of '08.

3 Q. Well --

4 JUDGE JONES: Do you have a copy of the
5 stipulation of facts in front of you?

6 THE WITNESS: Yes.

7 JUDGE JONES: Okay.

8 BY MS. HERNANDEZ:

9 Q. I just have a few questions based on the
10 stipulation. This shouldn't be too argumentative since we
11 agreed to these facts. We agreed that, paragraph 4,
12 November of 2002 you became a named party on the Laclede
13 Gas account, your account number is stated there, and the
14 address which is in the stipulation of facts; is that
15 correct? That's what that paragraph states?

16 A. You're reading a stipulation of facts and
17 asking me if that's the stipulation of facts. The
18 stipulation of facts is a stipulation of facts. It's been
19 admitted into evidence. If you want to ask me something
20 different about it, I'll be glad to answer it. But yes,
21 it's paragraph 4. I see paragraph 4.

22 Q. That's how it reads, that's correct?

23 A. It reads what it reads. It is what it is.
24 It's in evidence.

25 Q. If you can look at paragraph 2, which has a

1 date of July 25th, 2002, that's the fact in Case No.
2 GE-2002-159, Laclede filed for a variance from the
3 Commission rules which would then allow it to E-bill. Do
4 you agree with that statement?

5 A. I have stipulated to the facts.

6 Q. Okay.

7 A. I don't know what more I can do. I don't
8 understand the question.

9 Q. Okay. But in -- okay. The question is, in
10 the time frame, the variance granted to Laclede occurred
11 before you became a named customer with Laclede; is that
12 correct?

13 A. No, it's not correct. I've been a named
14 customer of Laclede since 1963. You're talking about at
15 this location?

16 Q. At this -- at this location that is subject
17 of your complaint.

18 A. That wasn't your question.

19 Q. Okay. Well, I apologize if there was some
20 confusion, but that is my question.

21 A. Okay. I have been a named customer from
22 Laclede on and off for the last 35 years at least.

23 Q. But for the address in the stipulation of
24 facts, you became a named customer on that account -- I
25 don't want to state the account since we are broadcasting

1 on the Internet, that's confidential information -- but
2 since November of 2002, you were -- your name was placed
3 on that account subject to the complaint before the
4 Commission?

5 A. I agree to the stipulation of facts. I'm
6 not going to -- I assume that we stipulated to the
7 relevant facts, and so if you're asking me to draw some
8 conclusion, then I would object as to a conclusion. If
9 you're asking me to go outside of this time frame, I'm not
10 going to testify because I would assume that we've
11 stipulated it's not relevant, and if it were relevant, we
12 would have stipulated to those facts. So it's either a
13 conclusion or it's not relevant. So I can't answer your
14 question and I would object to it.

15 Q. Let me ask you another question, then. The
16 tariff as it exists today regarding E-billing, that was
17 available to you to view prior to you becoming a named
18 account holder at the current -- at the address subject to
19 the complaint?

20 A. No, that's not true.

21 Q. But that's what we stipulated to; is that
22 correct?

23 A. No. I don't remember stipulating that it
24 was available for view. I don't see anything about being
25 available for view.

1 Q. Was the tariff --

2 A. I would defy you to go to the Secretary of
3 State's website, call up the Code of State Regulations and
4 find that tariff. So I would submit that it is not
5 available for view.

6 Q. At any time did you indicate to Laclede
7 that you had a disability or had some health problems
8 that -- that would lead to you requiring gas service?

9 A. Yes.

10 Q. And when did you notify them of this?

11 A. I don't know.

12 Q. You can't recall?

13 A. Can't recall.

14 Q. Roughly recall?

15 A. I have a claim pending on disability.

16 Q. And what date would that have been?

17 A. I don't know. In regards to what? And I
18 object to the relevance of it.

19 JUDGE JONES: Sustained.

20 While we have this pause, I should point
21 out, I don't know why you guys agreed to have Staff
22 cross-examine first. That doesn't make any sense.

23 MS. HERNANDEZ: Well, it was --

24 JUDGE JONES: The Respondent should have
25 gone first. It's their case. It's not Staff's case.

1 It's not OPC's case. But you-all have Staff and OPC going
2 and then finally Respondent.

3 MS. HERNANDEZ: Right. I understand that,
4 but that was ordered by the Commission. That order was
5 ordered by the Commission. So that --

6 JUDGE JONES: I didn't order that, did I?
7 I guess I need to take that up with Judge Dippell.

8 MS. HERNANDEZ: That is why. But I only
9 have a few questions.

10 JUDGE JONES: If I had known that, I would
11 have changed the order.

12 MR. ZUCKER: I think we usually go by the
13 least to most controversial, do we not?

14 MS. HERNANDEZ: And that's my understanding
15 as well. That's why I took it as being a correct order.

16 JUDGE JONES: I think maybe that should
17 change. Maybe that's a change in cases like this. You
18 have a consumer complaint against the company. They're
19 the parties. Staff and OPC are advisory for the most part
20 in their -- in their role and effect is the way I view it.
21 So it's not relevant now, but it will come up in another
22 complaint case and I'll be the judge and expect something
23 different.

24 MR. ZUCKER: Fair enough.

25 JUDGE JONES: Did you have more questions,

1 Ms. Hernandez?

2 MS. HERNANDEZ: No. I believe that's all
3 my questions. Thank you.

4 JUDGE JONES: Okay. Cross-examination from
5 Laclede.

6 MR. ZUCKER: May I inquire from here, your
7 Honor?

8 JUDGE JONES: Yes, you may.

9 CROSS-EXAMINATION BY MR. ZUCKER:

10 Q. Good morning, Mr. Harter. I'll move right
11 on.

12 A. That wasn't a question.

13 JUDGE JONES: It wasn't. Go ahead.

14 BY MR. ZUCKER:

15 Q. Are you still a Bank of America customer?

16 A. No.

17 Q. Okay. When did you first become a Bank of
18 America customer?

19 A. I don't know. Many years ago.

20 Q. Many years like ten years?

21 A. Approximately. I don't know. At least
22 it's something along those lines, yeah.

23 Q. More than five years?

24 A. I don't want to testify to that. I don't
25 know. I don't know why it's -- I'd object to its

1 relevance.

2 Q. Give me an idea.

3 JUDGE JONES: There's an objection. Why is
4 that relevant?

5 MR. ZUCKER: Because -- well, I guess I'll
6 get to that, but what I want to show is, is that he was
7 already on a Bill Pay program through Bank of America.

8 JUDGE JONES: So the first question of
9 whether or not he's still a Bank of America customer was
10 irrelevant, too?

11 MR. ZUCKER: You never know what comes of
12 it.

13 JUDGE JONES: Okay. All right. Well, go
14 right along and get to the --

15 BY MR. ZUCKER:

16 Q. Okay. So how long have you been a Bank of
17 America customer? Give me an approximation.

18 A. I don't know. If you have records, why
19 don't you present them to me and then I can comment on
20 them?

21 Q. I don't have your bank records. I'm asking
22 you how long you've been with this bank?

23 A. You said you had evidence of a prior Bill
24 Pay. So why don't you present me that and then I can
25 comment on it.

1 Q. Okay. In 2006, when you were paying
2 electronically, was that through Bank of America?

3 A. At various times I have used various
4 methods of payment. I cannot dispute that at times in the
5 past I may have used a Bill Pay system from some bank,
6 perhaps Bank of America, to pay Laclede. I don't know.
7 But I have no specific memory of it, and I have no records
8 with me today, and I am testifying under oath. So if you
9 have -- and I would object to it as irrelevant.

10 Q. Okay. Did you make electronic payments to
11 Laclede in 2006?

12 A. I don't know. It's possible.

13 Q. Why don't you --

14 A. If you have some payments, I would be glad
15 to review them, and otherwise I would object to the
16 question as irrelevant.

17 JUDGE JONES: I know where you're going,
18 Mr. Zucker. Let's make this easier. Mr. Harter, if you
19 don't know, just say you don't know.

20 THE WITNESS: I don't know.

21 BY MR. ZUCKER:

22 Q. Would you please review paragraph 5 of the
23 stipulation.

24 A. All right.

25 Q. So does that refresh your memory?

1 A. No, but I've stipulated to it.

2 Q. You've also stipulated that you began
3 making electronic payments through your bank, Bank of
4 America, in March 2008, correct?

5 A. I've what?

6 Q. You have stipulated that you began making
7 payments through your bank, Bank of America, in March
8 2008, began making electronic payments?

9 A. I agree to paragraph 8 of the stipulation.

10 Q. Okay. Good.

11 A. I don't understand. I've stipulated to the
12 facts. So if your question is did I stipulate, yes, I
13 did.

14 Q. Yes. Very good. So if you were on Bank of
15 America's electronic payments in 2006 and you'd been on
16 them since March 2008, what is significant about the
17 August 2008 Bill Pay? In other words, you said your wife
18 was excited about it. Why would she be excited about a
19 program you'd been on for two years?

20 A. Well, I'll object to that as a multiple
21 question. I can't answer.

22 Q. Okay. Why would she be excited to be on a
23 program you'd been on for two years?

24 A. I'd object to that as calling for a
25 conclusion.

1 JUDGE JONES: Objection overruled.

2 THE WITNESS: Okay. The essence of
3 paragraph 9, and I assume since you are the one that
4 composed this, that you included it for reasons of your
5 choosing. So I can't really answer a question as to why
6 you included that as some irrelevant fact.

7 But I can read it, and it says that Laclede
8 receives a registration for E-billing on the account. So
9 you're the one that included August of '08. So I assume
10 the significance of August of '08 is that you included it.
11 Other than that, it had no significance to me.

12 JUDGE JONES: Let me interrupt just for a
13 moment. I realize that some of these facts were facts
14 that were proposed by Laclede, perhaps even by Staff and
15 some perhaps by yourself. I don't look at them as who
16 proposed them, though. They're facts that are established
17 that all the parties have agreed to and are facts
18 regardless of the intent of the party who proposed that
19 fact. Do you understand what I'm saying?

20 THE WITNESS: Yes, your Honor, but he --

21 JUDGE JONES: I think the question
22 Mr. Zucker is asking you is something about your wife
23 being excited. I don't know.

24 THE WITNESS: I don't know about my wife
25 being excited. In terms of my testimony I'm not going to

1 testify to my wife's excitement, bar none, but his earlier
2 question, his earlier question was, what is the
3 significance of August of '08, and I can't answer that
4 because --

5 JUDGE JONES: You don't know.

6 THE WITNESS: -- I have no -- I don't have
7 a significance to it. He included the date, not me.

8 JUDGE JONES: Then your answer is I don't
9 know.

10 THE WITNESS: I don't know. The
11 significance was generated from you, not from me.

12 BY MR. ZUCKER:

13 Q. If you had been -- if you had been paying
14 electronically through Bank of America for two years,
15 could it have been that your wife was excited about
16 being -- about having registered for the E-bill program?

17 A. I would object as it calls for conjecture.
18 Could it be why my wife was excited? I don't know why it
19 could have been that my wife was excited, and I object to
20 the question.

21 JUDGE JONES: Sustained.

22 BY MR. ZUCKER:

23 Q. Is it possible that your wife signed up for
24 E-billing?

25 A. Object to the question again as conjecture.

1 JUDGE JONES: That's not -- he's not asking
2 you to -- to --

3 THE WITNESS: I don't know.

4 JUDGE JONES: -- conject. He's asking is
5 it possible that she signed up for E-billing?

6 THE WITNESS: I don't know.

7 BY MR. ZUCKER:

8 Q. Is it possible?

9 A. I don't know.

10 Q. Pursuant to the stipulation, you made
11 regular payments in September, October, November, December
12 of 2008 and January 2009. Why did you stop making
13 payments after January 2009?

14 A. I don't believe that's accurate. I believe
15 we stipulated that I made a payment in February.

16 Q. Take a moment to review the stipulation.

17 A. Okay. What's your question?

18 Q. Why did -- why did you not make a payment
19 in February 2009?

20 A. Because I discontinued my automatic Bill
21 Pay system for all bills, not just for Laclede, and
22 because Laclede didn't send me a bill through the mail.
23 The telephone company did send me a bill through the mail
24 and I paid it. The electric company sent me a bill
25 through the mail and I paid it. The sewer company,

1 everyone else sent me a bill through the mail and I paid
2 it. Laclede's the only one that didn't send me a bill
3 through the mail. So the reason I didn't pay the bill is
4 because they didn't send me a bill.

5 Q. Okay. Then how was it that we received a
6 \$50 payment in March electronically through your
7 electronic pay program?

8 A. I don't know.

9 Q. I don't blame you. I don't understand how
10 you would terminate a program in February and make a
11 payment through it in March.

12 A. I can't answer that. I don't know. I'm
13 not disputing it. I don't know anything about it. If you
14 have records that payments were made, I would think that
15 would be to the good.

16 Q. Okay. Why did you pay \$50 in March?

17 A. I don't have a memory of paying \$50, so I
18 can't answer that. If I did make a payment, it was
19 because I can only assume that there was an amount owed,
20 but I don't know as to why a payment was made.

21 Q. You admitted that you owe, first, Laclede
22 services, the balance is now approximately \$910. How
23 would you propose to pay that?

24 A. You mean from where will I devolve the
25 resources to pay for it? I don't know.

1 Q. No. How do you propose to pay? In what
2 increments? All at once? Do you have any proposal?

3 A. As minimal as possible, the longest time to
4 afford us the greatest capacity to make the payment. I
5 assume that there's some sort of program for that where
6 it's stretched out over a period of time, and I would ask
7 that it be stretched out for the longest period of time
8 available so that the payments are the smallest amount
9 because they're on top of the current bill.

10 Q. You became aware of -- your testimony is
11 you became aware of the problem in August of 2009; is that
12 correct?

13 A. Yes.

14 Q. And you called Laclede on August 18th,
15 2009?

16 A. I don't know the dates, but if that's what
17 you say, I won't dispute it.

18 Q. And you called Laclede to forestall a
19 disconnection; is that correct?

20 A. If that's what you say. I don't recall.

21 Q. Do you recall telephoning Laclede in August
22 2009?

23 A. In August, yes, I do recall telephoning
24 them in August of 2009.

25 Q. Why did you make that call?

1 A. I assume because they were disconnecting
2 me.

3 Q. And how did you know you were being
4 disconnected?

5 A. I do not know. I do know that I was
6 able -- because it was during the -- it was the last day
7 or the last week before the Cole Weather Rule hit, and so
8 Laclede was going around and threatening everyone with
9 disconnection it could so that they could do it before the
10 Cole Weather Rule took effect, and that's why we were
11 getting threatened in August by whatever fashion we were
12 threatened.

13 And I called and complained and I got no
14 satisfaction, and that's when I called the PSC and
15 complained, and then eventually I was able to secure
16 financing from a relief organization and they made a
17 payment.

18 Q. You're aware that the Cole Weather Rule
19 period doesn't start until November, aren't you?

20 A. No, I'm not.

21 Q. Okay. So is it your testimony that you
22 were calling because you'd gotten a disconnect notice or
23 not?

24 A. No, it's not my testimony. I don't know
25 what I got. All I know is that somehow it was made known

1 to me.

2 Q. Okay. I think you've answered the
3 question. You don't know. I asked you why did you call
4 Laclede, you said you don't know?

5 A. No, I was threatened with disconnection.

6 Q. How were you threatened with disconnection?

7 A. I don't recall at this time. I know I was
8 threatened with disconnection, so I called. The source of
9 it, I don't -- I don't recall how it arose. All's I know
10 is that I was told I was being disconnected. Now, you're
11 the one with the records. I assume if you have a record
12 you can point it out to me. All I know is that at some
13 point in August of '09 I became very concerned that we
14 were being disconnected and threatened with it, and I was
15 scrambling, I was calling a lot of agencies trying to get
16 some help, and none of them would help us because we were
17 outside the Cole Weather Rule and they said we don't help
18 with gas in the summer, sorry, and I did -- I was able to
19 obtain one community agency that was -- that posted a
20 small payment.

21 Q. Okay.

22 A. And that payment was enough to forestall
23 the disconnection.

24 Q. Okay. Do you remember getting a notice
25 from Laclede in 2009 that canceled your budget billing

1 plan?

2 A. It's entirely possible. I don't have a
3 specific recollection of it, but I'm not disputing it
4 either.

5 Q. Okay. Do you recall calling Laclede in the
6 spring of 2009 to get your budget billing plan restored?

7 A. That's also quite possible. I don't have a
8 specific memory of it. Many utilities, many problems.

9 Q. I understand.

10 A. Many situations, many threats. I deal with
11 them as they come up, and when the threat passes, it drops
12 from the forefront.

13 MR. ZUCKER: Your Honor, could he stop
14 testifying? I haven't asked a question.

15 THE WITNESS: I was finishing my answer.

16 JUDGE JONES: Go ahead, Mr. Zucker.

17 MR. ZUCKER: I think that's all I have. No
18 further questions.

19 JUDGE JONES: I'll note for the record that
20 the Office of Public Counsel is not present. I just have
21 a -- not specific questions, just broad sweeping question.

22 QUESTIONS BY JUDGE JONES:

23 Q. You said Bank of America was paying your
24 bills automatically, you apparently had an account with
25 them?

1 A. Yes.

2 Q. And from that account they would, I don't
3 know if it be electronic or through mail, they were paying
4 your bills, your utility bills?

5 A. Well, they were paying it with our funds.

6 Q. Right, with your funds.

7 A. It's an option, it's called Bill Pay, and
8 you can go electronically to your bank, get on the online
9 banking, and by clicking your mouse around you can find a
10 section that's Bill Pay, and then you just -- you enter
11 the information as to who to pay, and then you select the
12 Bill Pay option, and then each month the Bank of America
13 debits your account. Say you're going to pay \$59 to the
14 gas company. They'll debit your account \$59, but they
15 don't send a check from you. They send a Bank of America
16 check to Laclede Gas.

17 Q. Would it be electronically or would it be a
18 check, or do you know?

19 A. I don't know. I was hoping the bank would,
20 and perhaps Laclede knows, but as far as I know they send
21 them a regular check, a draft on the Bank of America --

22 Q. Okay.

23 A. -- and payable to this account, but it's --
24 the money is already out of our account, and my
25 supposition is that the banks make their money on the

1 float.

2 Q. Perhaps that's true. You say your wife set
3 that up, right?

4 A. In August of '08.

5 Q. Right. And then in February of '09 you
6 took over paying the bills?

7 A. Yes.

8 Q. Did you-all have a fight about that?

9 A. No.

10 Q. Why did you take over?

11 A. Because the method of paying the bills
12 through Bank of America, there was a problem with it.

13 Q. How did you discover that problem?

14 A. Not through Laclede. Through other
15 situations, and she wanted to continue -- that was her
16 preferred method.

17 Q. Her meaning your wife?

18 A. Her meaning my wife.

19 Q. And she wanted to continue doing it through
20 that, and what was the problem? What happened?

21 A. I'm not saying she wanted to continue. If
22 we weren't going to continue through Bill Pay, then she
23 didn't want to do it.

24 Q. She didn't want to pay the bills?

25 A. If it were not done through Bill Pay.

1 Q. Okay. You didn't want to do what if it
2 wasn't done through Bill Pay?

3 A. I -- I just wanted to pay the bills.

4 Q. I mean, you said she didn't want to do it
5 if it wasn't -- oh, she didn't want to be -- if she
6 didn't want to --

7 A. She didn't want the job of bill payer --

8 Q. -- manage the situation?

9 A. -- if we couldn't do it through Bill Pay.

10 Q. Okay.

11 A. And I didn't want to do it through Bill
12 Pay. It's not that she didn't want to pay the bills.

13 Q. I understand. I just didn't know --

14 A. I guess I'm parsing it too thin.

15 Q. Okay. So she started the Bill Pay and
16 there was a problem. Is that something you'd rather not
17 discuss, what that problem was?

18 A. It's just not relevant. It had nothing to
19 do with Laclede.

20 Q. Did it have anything to do with the method
21 of pay to other utilities?

22 A. Not specifically. It was more a dispute
23 with Bank of America than something specific.

24 Q. And that dispute then is what led you not
25 to want to deal with them anymore?

1 A. Right.

2 Q. And because she didn't want to be
3 responsible for paying the bills if it wasn't through Bill
4 Pay, you then took over that responsibility in February --

5 A. Yes.

6 Q. -- of '09?

7 A. Yes.

8 Q. Okay. Did you make a request to Laclede to
9 pay electronically, wholly separate from Bill Pay?

10 A. No.

11 Q. You did not -- do you know if your wife
12 did?

13 A. No. I know.

14 Q. You know she did not?

15 A. The only -- the only payment we ever did
16 was Bill Pay. We never set up anything through Laclede.

17 Q. Now, when you discontinued Bill Pay, how
18 then did you expect the bill to be paid?

19 A. Same as everyone else, they'd mail us a
20 bill and we'd pay it.

21 Q. How would your utilities come to know that
22 Bill Pay was discontinued? You didn't consider that at
23 the time or what?

24 A. No other utility had a problem.

25 Q. Well, I mean, how did the other utilities

1 know?

2 A. I guess you'd have to ask them. They would
3 mail us bills and we'd pay the bills.

4 Q. So are you saying then that the
5 communication was between the bank and the utility? Is
6 that what you're assuming?

7 A. I'm not making assumptions. I don't know.
8 I don't know why Laclede didn't send us a bill.

9 Q. I'm not -- I'm not asking about Laclede.
10 I'm trying -- I'm trying to figure out if you stopped Bill
11 Pay, then you still have this account at Bank of America,
12 not unless of course you closed it out?

13 A. No, we didn't close it out. We still had
14 the account.

15 Q. So now, you told Bank of America, don't pay
16 our bills anymore, forget about it, just don't do that?

17 A. We didn't -- we just clicked on the
18 Internet.

19 Q. That's how you told them?

20 A. No more Bill Pay. Just end it.

21 Q. And when you stopped Bill Pay, what was
22 your understanding of how your bills were to then be paid?

23 A. The various people that we had been paying
24 through Bill Pay would now send us bills and we would pay
25 them through some other fashion. We could pay it most

1 likely through checks.

2 Q. Through checks. So you didn't -- you
3 didn't -- you didn't have to talk to -- who's your
4 electric, Ameren? Was your electricity Ameren?

5 A. Yes.

6 Q. You didn't have to talk to AmerenUE at all?

7 A. No.

8 Q. They just automatically started sending you
9 paper bills?

10 A. I don't have specific memory whether they
11 stopped sending us bills while we were doing Bill Pay or
12 whether they continued to send us bills. I would have to
13 go look. I don't know. All's I know is that when we got
14 the bill, we paid it.

15 Q. Were you receiving paper bills during the
16 time that you were doing the Bill Pay through the bank?

17 A. From Laclede?

18 Q. Yeah.

19 A. No.

20 Q. Okay. So you stopped Bill Pay in February
21 of '09?

22 A. Yes.

23 Q. I'm assuming that all the bills up to that
24 point were paid, and then for the next billing cycle you
25 got paper bills from everyone except Laclede?

1 A. I'm under oath. You're not. So that
2 sounds reasonable to me, but I can't testify that that's
3 what happened. I'm under oath. I don't know. I don't
4 know.

5 Q. You just don't remember? Do you remember
6 writing checks in February? Because ---

7 A. Yes.

8 Q. -- from the time of '08, August '08 to
9 February '09, like me, you weren't getting paper bills,
10 have a process for getting them, writing a check, sending
11 them off, you weren't doing that for eight months or so, I
12 guess it is, six months?

13 A. I wasn't participating at all.

14 Q. Okay. And then in February you started
15 writing checks again, or in March probably?

16 A. Yes.

17 Q. You do recall doing that with other bills,
18 at least some bills, but not Laclede?

19 A. Apparently not. I wasn't making payments,
20 but I wasn't getting bills either. I had no -- I would
21 pick up the bill jar, the bill box, the thing with the
22 papers in it.

23 Q. It's the thing that moves you to act, like
24 an in box?

25 A. And I would pay the bills that were in

1 there.

2 Q. And I know Mr. Zucker asked you this, and
3 you said that you weren't sure how, but you at some point
4 contacted Laclede because you were concerned about
5 disconnection?

6 A. They've indicated I made a -- not I, but a
7 \$50 payment was made on my account in --

8 Q. Well, no.

9 A. Whatever the stipulation is.

10 Q. I don't mean that. I just wondered, did
11 you contact them in concern about being disconnected?

12 A. I -- I don't know. I don't know if they
13 threatened disconnection in --

14 Q. I mean, at any time did you contact them
15 with concerns about disconnection?

16 A. In August.

17 Q. In August you did --

18 A. Yes.

19 Q. -- of '09? And you called I presume?

20 A. Yes, and somehow I was threatened with
21 disconnection.

22 Q. Now, we all realize that there's only
23 several ways you could have been notified of
24 disconnection. Either somebody called you, somebody sent
25 you an e-mail, somebody knocked on your door or sent a

1 letter, and you just don't know which way, which of those
2 methods of communication Laclede used to tell you about
3 disconnection?

4 A. Correct. I mean, I -- no, I don't know at
5 this time. I don't have a specific memory of what
6 happened. I just know that sometime in August I became
7 aware that I was threatened with disruption of the
8 service, and I contacted them. Then I tried to get
9 funding, and then I called the PSC, and the dates are in
10 the stipulation of fact. I'll stipulate to those. Not
11 disputing any records they want to produce. I'm not
12 saying anything else. And as far as the payment, if they
13 say I -- oh, there it is. As far as item 12, this \$50
14 payment, I've stipulated to that.

15 Q. Well, that \$50 sounds like an amount that
16 was paid to keep the utilities on. It doesn't -- I mean,
17 that is a nice round figure, and it sounds like something
18 a consumer services rep might say, give us 50 bucks, we
19 won't turn you off. I don't know.

20 A. That's very possible. I can't explain it,
21 I don't know. I'm -- I -- I'm not denying anything or
22 testifying. I don't know. I don't have a memory of it.
23 That sounds plausible to me.

24 Q. Now, you contended at some point that under
25 Commission rules Laclede should be sending you bills by

1 mail?

2 A. Yes.

3 Q. They weren't sending you bills by mail back

4 back in August of '08, were they?

5 A. I'm not sure. I think --

6 Q. During the period the Bank of America paid

7 your bills --

8 A. No.

9 Q. -- they were not?

10 A. But as far as August, I'm not sure.

11 September, I think not. August, I don't know. You'd have

12 to ask them.

13 Q. You're being more specific with the time

14 period when the program started, right?

15 A. Right.

16 Q. Okay.

17 A. So I don't -- as far as what happened in

18 July and August of '08, I'm not sure. I wouldn't dispute

19 their records --

20 Q. Well --

21 A. -- whatever they --

22 Q. Well, I don't know what the records say

23 either. What I'm asking you though is, during the time

24 period that Bank of America was making payments, you were

25 on the Bill Pay program with the bank, you did not receive

1 paper bills?

2 A. Correct.

3 Q. But that wasn't a problem for you then,
4 right?

5 A. Because the payments were being made, so --

6 Q. But do you think during that time period
7 they were in violation of Commission rules?

8 A. Yes, I do, but their argument is that they
9 were proceeding under their tariff.

10 Q. Well, yeah, but I mean all utilities then
11 would have been under -- in violation of Commission rules.
12 Every utility that we regulate I should say. Ameren, I
13 don't know what water company you have, they all would
14 have been in violation under your interpretation of the
15 rules and tariffs and laws as they are, right?

16 A. I don't know if it's that sweeping, but if
17 that's the sweep of my argument, I'll try and present it
18 in the brief, but I think, yes, my argument is that a
19 tariff can't relieve you from a printed rule in the CSR.

20 Q. So your argument is then, and I'm not
21 trying to -- without the benefit of any research, I'm not
22 trying to lock you in on your conclusion, but it sounds
23 like you're saying if you -- if you take a tariff and the
24 Commission rule and put them side by side, the Commission
25 rule preempts the tariff?

1 A. Yes. I believe it's law.

2 Q. What is? The Commission rule or the
3 tariff?

4 A. The rule is law, and there's case law that
5 states that it is law of the land.

6 Q. Would your whole argument then change if
7 you were to discover with clarity, blinding light clarity
8 that a tariff is law --

9 A. No.

10 Q. -- as a statute?

11 A. No.

12 Q. It wouldn't change your position then?

13 A. No.

14 Q. Let me ask you this. Do you think that the
15 statute preempts Commission rule, a Missouri statute?

16 A. If they are in direct conflict.

17 Q. Yes.

18 A. I'd say that seeks a conclusion, but I
19 don't know if I can object. If I may reserve that for my
20 brief?

21 Q. You would be able to object if you were a
22 layperson.

23 A. Right. But I would -- I would say I'd like
24 to present that in my brief. I'm not sure that I can
25 answer that at this time --

1 Q. I don't want to force you.

2 A. -- under oath.

3 Q. Don't think you have to answer a question
4 just because I'm asking. You can still not know.

5 A. No, I'm sure I know, but I'm -- I'm
6 testifying under oath as opposed to writing a brief and
7 giving a legal conclusion.

8 Q. What does that mean?

9 A. I don't know, but I'm -- I'm really
10 reluctant to --

11 Q. Why is it relevant? The oath only means
12 that you're not lying.

13 A. I'm not lying, but I would like to do some
14 research on it before I offer my opinion.

15 Q. So you want the benefit of research is what
16 you're saying? You would like the benefit of research?

17 A. I don't want to testify under oath to my
18 conclusion of law, being a lawyer, to something I haven't
19 researched.

20 Q. So you would like the benefit of research,
21 is what I'm asking?

22 A. Yes, and present that in a brief.

23 JUDGE JONES: All right. I don't have any
24 other questions. Is there any recross based on questions
25 I've asked?

1 MS. HERNANDEZ: I have one question about
2 the E-pay.

3 RECROSS-EXAMINATION BY MS. HERNANDEZ:

4 Q. I believe your testimony was that you ended
5 your E-payments around August of 2008; is that correct?

6 A. I thought we initiated them then.

7 JUDGE JONES: When you say E-pay, try to
8 be -- because we've got the Bill Pay and we've got the
9 electronic, let's try to keep those two concepts separate
10 so it's clear in the record.

11 MR. ZUCKER: Your Honor, perhaps we should
12 refer to them as E-bill and E-pay because Bill Pay has
13 both terms in it.

14 JUDGE JONES: As long as we -- E-pay would
15 be -- I don't even know which is which. The E-pay would
16 be him going through the electronic payment.

17 MR. ZUCKER: Right, making electronic
18 payments.

19 JUDGE JONES: What would the bank's payment
20 be called then?

21 THE WITNESS: It's called Bill Pay.

22 MR. ZUCKER: It's all part of the E-pay
23 system.

24 THE WITNESS: No. It's called Bill Pay,
25 and it's a service of the bank. It has nothing to do with

1 Laclede Gas. I could pay anyone, I could pay anyone in
2 the universe.

3 JUDGE JONES: We're just trying to get the
4 nomenclature down. We can call it fiddle this and fiddle
5 that, as long as we know which is which when we're
6 referring to it in the record is all I'm trying to get to.

7 THE WITNESS: It's Bank of America's
8 program, and they call it Bill Pay.

9 JUDGE JONES: Let's call that Bill Pay and
10 we'll call the concept of him paying electronically or not
11 electronic payment then.

12 Ms. Hernandez, did you get that date
13 together?

14 MS. HERNANDEZ: Yes.

15 BY MS. HERNANDEZ:

16 Q. August 2008 through January 2009, as in
17 this paragraph 11 of the stipulation, it says, Complainant
18 continues to make electronic payments through Bank of
19 America's Bill Pay system. If that is the case, do you
20 know why there were late payments on your account for
21 September of '08, October of '08, November of '08,
22 December of '08 and January of '09, I guess, and even
23 February of '09?

24 A. I do not know, but I could theorize that
25 somehow it wasn't linked up properly, the due date, that

1 the automatic Bill Pay date with Bank of America was
2 perhaps not the date it was supposed to be, or perhaps
3 Laclede didn't accept it as being generated and was
4 considering that the September payment was for August and
5 the October payment was for September, like that. Those
6 would both be plausible explanations as to why your
7 records reflect everything would be late and why the
8 payments would be automated and regular.

9 But as far as can I explain it, no. Offer
10 you some theories, but I wasn't doing that. It was
11 between Laclede and Bank of America. And once again, I
12 was not receiving any communications, so I would be
13 completely unaware that there was a designation of a late
14 payment, and until you just mentioned it, I don't think --
15 well, I don't know.

16 I have no knowledge that I know of about it.

17 Q. So you weren't aware of what date each
18 month your bill was due?

19 A. No. I think I've testified that I was not
20 involved in paying the family bills from August of '08
21 through February of '09, and I was not in the process as
22 far as I know. I may have -- I can't account for
23 everything I did. There may have been an odd circumstance
24 where I did something, I don't know. But in general, that
25 was not a family chore of mine.

1 Q. Do you know if you authorized Bank of
2 America to pay your bill before the due date of the gas
3 utility bill?

4 A. Is there a time reference?

5 Q. For all the months I stated previously,
6 September, October, November, December of '08 and then
7 January, February of '09.

8 A. Once again, for that period of time, I
9 don't know. I wasn't directly involved in it. So I
10 can't -- I don't know.

11 MS. HERNANDEZ: Okay. Thank you.

12 JUDGE JONES: Any recross from Laclede?

13 MR. ZUCKER: Yes, your Honor.

14 RE-CROSS-EXAMINATION BY MR. ZUCKER:

15 Q. According to -- well, let me ask you this.
16 Was Bank of America in their -- in the Bill Pay program in
17 2008? Were they paying the bills automatically each month
18 or did you or your wife go on the Internet each month and
19 set up a payment, an individual payment of an individual
20 bill?

21 A. What was the time frame?

22 Q. 2008.

23 A. Well, we've got stipulation of facts is
24 different, different processes of payment during 2008.
25 Can you be specific as to what time and what type of

1 payment?

2 Q. The payments made to Laclede Gas Company
3 through Bank of America beginning in March 2008 and ending
4 in January 2009.

5 A. And how was that done in March, was that
6 through Bill Pay?

7 Q. Yes, sir.

8 A. And what's your question?

9 Q. My question is, did you set it up so that
10 Bank of America would make the payment each month or did
11 you go on the website each month yourself and pay each
12 bill individually by setting up the payment for that bill?

13 A. Well, I don't know. I don't have a memory
14 of it, but I can say in general the way the Bill Pay works
15 and the benefit that it offers is that you go in and set
16 it up and you don't think about it because it just pays it
17 each month.

18 Q. So are you saying that you didn't go in
19 each month to pay it, you just set it up once and it paid
20 it regularly each month by itself?

21 A. I am saying I have no specific memory of
22 what I may or may not have done, but the advertising and
23 the intent of the Bill Pay program is to free you from
24 those things, and I can -- I don't know. It'd certainly
25 be plausible to do it that way, but I don't have a

1 specific memory of what I did. You've got records. I
2 don't know. Maybe you can tell me what happened. I don't
3 know that it's relevant anyway.

4 MR. ZUCKER: Okay. Thank you. No further
5 questions.

6 JUDGE JONES: Mr. Harter, from all this, my
7 questions and from the recross from Staff and Laclede, you
8 can respond with any statements that you'd like to address
9 whatever issues that have arisen.

10 MR. HARTER: Thank you, your Honor.
11 Regarding rebuttal testimony, I would like to address a
12 question that you had, and that was was my -- what my
13 complaint involved, and I think that what I would add to
14 my answer that I didn't give you at the time was that the
15 essence of the complaint that I have is not the dates that
16 you suggest, but after them, March, April, May and June
17 when I was not receiving a mailed bill, and that is the
18 months that generated the complaint. That is the time at
19 which I feel, regardless of everything else, that the
20 Respondent, Laclede, was obligated to provide a written
21 bill.

22 Even under its own tariff, even if you
23 assume all the facts against the Complainant -- and these
24 are all disputed -- even if you assume that we requested a
25 cessation of bills, even if you assume that the tariff

1 allowed them to give E-bills and not mailed bills, even if
2 -- and those are all contested, the fact still remains
3 that after the end of the Bill Pay program, that from
4 March, April, May and June under the tariff, under the
5 rules, under the law, under everything, the utility is
6 then required to send us a bill, and that would be my
7 rebuttal testimony.

8 QUESTIONS BY JUDGE JONES:

9 Q. Well, I have to ask you this. Would they
10 be required to send you a bill if you specifically
11 requested that they bill you electronically?

12 A. Well, I would have to object as requesting
13 conjecture because that's not the facts, and I don't have
14 an opinion as to what would have happened if something
15 that didn't happen happened.

16 Q. So you're saying you did not request it, is
17 what you're saying? You're saying you did not request
18 that they send an electronic bill?

19 A. Correct, and if I -- I'm sorry. What was
20 the question?

21 Q. You didn't ask for -- you didn't ask for
22 electronic billing?

23 A. I did not ask for electronic billing, but
24 even if I had, I think they would need to continue after
25 the electronic billing is done in February, they had to

1 resume mailed bills in March.

2 Q. When you say electronic billing was done in
3 February, you mean the Bill Pay through Bank of America,
4 right?

5 A. They, as I understand it, have records that
6 they were sending E-bills September, October, November,
7 December, January, but they were not sending mailed bills.

8 Q. Okay. Now, I hate to keep beating this to
9 death, but what I'm hearing from you is that you did not
10 request electronic billing, and even if you did, they
11 still should be mailing bills to you?

12 A. In March, yes.

13 Q. In March. Okay.

14 A. And I would concede there's an argument for
15 the other dates, which I don't see as being productive
16 because it doesn't answer the question for March, April,
17 May, June. Even if you answer it, even if we spend the
18 time to answer it for November and December and give a
19 definitive answer as to whether or not they're required to
20 give us mailed bills, it doesn't solve the problem which
21 happened in March, April, May and June. So the question
22 is should they have been sending us mailed bills in March,
23 April, May and June.

24 Q. Right. That's the period I'm talking
25 about, and your answer is yes, they should have been

1 sending you bills by mail even if you requested that they
2 send them electronically?

3 A. Right. The only thing that could have been
4 interpreted as a request occurred in August of '08, a
5 request for E-bills.

6 Q. But that was through your bank, though?
7 That's when you set up the deal with the bank, right?

8 A. Correct.

9 JUDGE JONES: All right. Let's take a
10 five-minute break. We're going to -- I thought we'd be
11 done by noon, but we're going to take a five-minute break
12 and get back on and go through the rest of these cases.
13 Hope no one had lunch plans, or I hope no one's so hungry
14 that they need to eat anything. If you are, low blood
15 sugar, something like that, let me know. I don't want to
16 do CPR. So, are you okay? Do you need to go to lunch or
17 anything like that?

18 MR. HARTER: No. You said other cases.
19 Are we done with this case?

20 JUDGE JONES: No. No. No. Did I say
21 other cases? I meant other witnesses. Yeah. So let's
22 take a quick five-minute break and then go on with the
23 rest of our witnesses.

24 (A BREAK WAS TAKEN.)

25 JUDGE JONES: We are on the record with

1 Case No. GC-2010-0217, and now I believe Laclede is
2 supposed to present their witness.

3 MR. ZUCKER: Laclede calls Kevin Kellar to
4 the stand.

5 JUDGE JONES: Mr. Kellar, can you come over
6 here and raise your right hand?

7 (Witness sworn.)

8 JUDGE JONES: Thank you, sir. You may be
9 seated.

10 KEVIN KELLAR testified as follows:

11 DIRECT EXAMINATION BY MR. ZUCKER:

12 Q. Good afternoon, Mr. Kellar.

13 A. Good afternoon.

14 Q. Can you please state and spell your name
15 for the record.

16 A. My name is Kevin Kellar, K-e-v-i-n,
17 K-e-l-l-a-r.

18 Q. And who are you employed by?

19 A. I'm employed by Laclede Gas Company.

20 Q. And what is your title there?

21 A. My title is manager of cashiers and mailing
22 services.

23 Q. And what are your responsibilities in this
24 role?

25 A. I am responsible for the remittance

1 process, which is payments, and that also includes
2 administration of the E-billing program.

3 Q. So you're very familiar with that program?

4 A. Yes, I am.

5 Q. Are you also familiar with the mailing of
6 disconnect notices?

7 A. Yes, I am.

8 Q. How long have you been at Laclede?

9 A. I have been at Laclede Gas Company for 17
10 years.

11 Q. Have you held other positions other than in
12 cashiers and mailing?

13 A. I've held a couple positions in the
14 internal audit department at Laclede Gas Company, the
15 assistant manager's position of cashiers and mailing
16 services, and currently the manager of cashiers and
17 mailing services.

18 Q. And what is your educational background?

19 A. I have a bachelor's of science in business
20 administration with an emphasis in accounting.

21 Q. From what school?

22 A. The University of Missouri - St. Louis.

23 Q. What is the purpose of your testimony
24 today?

25 A. Purpose of my testimony is to --

1 JUDGE JONES: I'll object to that as --
2 strike that. I'm sorry. Go ahead. Withdraw the
3 objection.

4 BY MR. ZUCKER:

5 Q. Okay. What is the purpose of your
6 testimony here?

7 A. I'm here to provide testimony in the case
8 of Mr. Harter versus Laclede Gas Company.

9 Q. Okay. And are you here regarding E-billing
10 and mailing of disconnection notices?

11 A. Yes.

12 Q. When we use the term E-billing, what are we
13 referring to?

14 A. E-billing refers to, it's short for
15 electronic billing, which means you get your bill
16 electronically versus a paper bill.

17 Q. Okay. And how would a customer register
18 with Laclede to be E-billed?

19 A. A customer can register for electronic
20 billing with Laclede Gas Company and -- with a company
21 that provides electronic billing services.

22 Q. Can they register by calling Laclede?

23 A. No, they cannot.

24 Q. Do you know why not?

25 A. Well, the Laclede Gas Company employees

1 cannot initiate electronic billing for any customer. They
2 have to either go through Laclede Gas Company's vendor,
3 which is Checkfree, or through their own bank.

4 Q. Do you know which one customers tend to use
5 more, their bank versus Checkfree directly?

6 A. It's about half and half.

7 Q. So if a customer calls us and asks to be
8 placed on E-billing, what do we do?

9 A. We will refer them to either Checkfree or
10 back to their own bank.

11 Q. Are you a Laclede customer?

12 A. Yes, I am.

13 Q. How do you get billed?

14 MR. HARTER: Object as to relevance.

15 JUDGE JONES: Sustained.

16 BY MR. ZUCKER:

17 Q. Can you tell us what happens after a
18 customer registers to have their Laclede account E-billed?

19 A. Well, a -- Laclede will receive an
20 electronic file from Checkfree indicating that there is a
21 customer's interest in registering for electronic billing,
22 and we will process that electronic file and change that
23 account from paper billing to electronic billing.

24 Q. And what if the customer goes through their
25 bank to register for electronic billing?

1 A. If the customer goes through their bank,
2 that bank will send a notice or a file to Checkfree, who
3 then forwards that same information on to Laclede.

4 Q. So Laclede always gets the information
5 through Checkfree?

6 A. That is correct.

7 Q. And why is that?

8 A. Checkfree is the vendor that provides the
9 electronic billing services for Laclede.

10 Q. Okay. So if Laclede registers for
11 E-billing, we get a notice from Checkfree, what happens
12 then?

13 A. There is a -- on the customer's next
14 bill -- first his account status will be changed to
15 electronic billing. On his next bill, which is a paper
16 bill, there will be a notification that this will be his
17 last paper bill and he is going to receive future bills
18 electronically.

19 Q. How many customers does Laclede have
20 registered for E-billing?

21 A. Currently we have over 71,000 customers
22 registered for electronic billing.

23 Q. Have you ever heard a complaint that
24 Laclede placed a customer on E-bill without their
25 permission?

1 A. No, I have not.

2 Q. Just Mr. Harter?

3 A. Mr. Harter is the first.

4 Q. If that had happened, would you be likely
5 to have heard of it?

6 A. Yes.

7 MR. HARTER: Objection. Calls for
8 speculation.

9 MR. ZUCKER: Well, I don't think it does,
10 your Honor. He's basically -- well, I assume he's
11 answering based on his position in the company.

12 JUDGE JONES: Objection overruled.

13 BY MR. ZUCKER:

14 Q. Can a customer who registers for E-billing
15 change back to a paper bill?

16 A. Yes, they can.

17 Q. How would they do that?

18 A. They can do that by contacting Laclede, and
19 a Laclede customer service rep can remove that electronic
20 billing indicator.

21 Q. Do they have to call their online service
22 provider they signed up with also?

23 A. No, they do not.

24 Q. Does Laclede have a record of signing up
25 Mr. Harter for E-billing --

1 A. Yes.

2 Q. -- in its own customer information system?

3 A. Yes, we do.

4 Q. Okay. And do you know what date that
5 record shows?

6 A. That record shows August 8th, 2008.

7 Q. And what -- where did you find that? What
8 record is that?

9 A. It's a -- there's a transaction history in
10 our account that indicates the status was changed to
11 electronic billing.

12 Q. And are these records kept in the ordinary
13 course of Laclede's business?

14 A. Yes, they are.

15 Q. So we registered Mr. Harter for E-billing
16 on August 8th, 2008?

17 A. That is correct.

18 Q. Okay. And did -- and why did Laclede do
19 that? Did we receive a file?

20 A. We received a data file from Checkfree,
21 which is our vendor that provides the electronic billing
22 services, to change Mr. Harter's account to the electronic
23 billing.

24 Q. I'm going to hand you what's been marked as
25 an exhibit, but we'll probably remark it. I marked it

1 Respondent's Exhibit 1. Do you want to just call it 2?

2 JUDGE JONES: Yeah, let's call it 2.

3 (EXHIBIT NO. 2 WAS MARKED FOR

4 IDENTIFICATION BY THE REPORTER.)

5 BY MR. ZUCKER:

6 Q. Mr. Kellar, do you recognize this document?

7 A. Yes, I do.

8 Q. And what is it?

9 A. This is the notification from Checkfree
10 that the customer has registered for electronic billing,
11 and it provides the customer's account information, the
12 address and the e-mail address that was registered for
13 electronic billing.

14 MR. ZUCKER: I offer this Exhibit 2 into
15 evidence.

16 JUDGE JONES: Any objections to Exhibit 2
17 being admitted into the record?

18 MR. HARTER: No objection.

19 JUDGE JONES: Exhibit 2 is admitted into
20 the record.

21 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

22 BY MR. ZUCKER:

23 Q. Okay. And can you tell me what this --
24 this record purports to show?

25 A. This record indicates that Mr. Harter or

1 somebody registered this account for electronic billing.

2 Q. Okay. And does it show the date of

3 registration?

4 A. Yes, it does.

5 Q. What is that date?

6 A. August 6th, 2008.

7 Q. How did you find that?

8 A. Checkfree provided documentation.

9 Q. I mean, how did you know that it's

10 August 6, 2008?

11 A. Date's on this registration form.

12 Q. Okay.

13 JUDGE JONES: Where?

14 BY MR. ZUCKER:

15 Q. Yeah. Where?

16 A. It's on the bottom right quadrant.

17 Q. Where it says 2008?

18 A. 2008.

19 Q. For the year?

20 A. And the month is 08 for August, and the

21 date is 06 for August 6th.

22 Q. And then does it actually have the hours,

23 minutes and seconds, is that what comes next?

24 A. That would appear to be the case, yes.

25 Q. And you indicated that Laclede entered that

1 on its system on August 8th, two days later; is that
2 correct?

3 A. That is correct.

4 Q. Okay. So after Laclede registered
5 Mr. Harter for E-billing, did Laclede send Mr. Harter the
6 paper bill indicating that the paper -- that there would
7 no more paper bills?

8 A. Yes, that is correct. His next bill was
9 issued by Laclede Gas Company on August 28th, 2008, and on
10 that bill there was a notice that Mr. Harter's account had
11 been registered for electronic billing and that this would
12 be his last paper bill and that future bills from Laclede
13 Gas Company would be received electronically.

14 Q. And Laclede proceeded to send E-bills to
15 Mr. Harter starting in September of 2008 through July of
16 2009?

17 A. That is correct.

18 Q. Okay. And did Mr. Harter see these
19 E-bills?

20 MR. HARTER: Objection. Calls for beyond
21 his concern -- beyond his knowledge.

22 JUDGE JONES: Objection sustained.

23 BY MR. ZUCKER:

24 Q. Okay. Were the bills viewed?

25 A. The bills were viewed by somebody who had

1 access to Mr. Harter's electronic billing.

2 Q. You don't know who looked at them?

3 A. No, I do not.

4 Q. But you know they were opened?

5 A. They were opened, and the bills were
6 viewed.

7 Q. You've testified that you're familiar with
8 Laclede's customer information system?

9 A. That is correct.

10 Q. And are you familiar with the remarks
11 screens in that system?

12 A. Yes, I am.

13 Q. And how are remark entries made?

14 A. Remark entries are made by Laclede's
15 customer service representatives when there's some sort of
16 activity on the account, customer calls Laclede or some
17 sort of transaction is entered.

18 Q. Okay. Would a customer service
19 representative normally enter a remark if the customer
20 called to cancel E-billing?

21 A. Yes.

22 JUDGE JONES: I was writing and I'm not
23 sure I caught that. Are you asking about someone
24 cancelling E-billing?

25 MR. ZUCKER: Yes.

1 JUDGE JONES: And whether that cancellation
2 can be made by telephone?

3 MR. ZUCKER: No. I'm asking, would a
4 customer service representative enter a remark on -- on
5 the customer's -- on the remark screen of the customer's
6 account if that customer called in to cancel E-billing?

7 JUDGE JONES: Okay. Regardless of whether
8 or not they can cancel, just whether if they called or
9 not, that remark would be there?

10 MR. ZUCKER: Right. I think he testified
11 that they can cancel by telephone.

12 JUDGE JONES: Okay. That's what I missed.
13 Okay.

14 MR. ZUCKER: They can't sign up by
15 telephone.

16 JUDGE JONES: Okay.

17 BY MR. ZUCKER:

18 Q. Have you reviewed Mr. Harter's remarks and
19 transactions in Laclede's customer information system?

20 A. Yes, I have.

21 Q. Okay. So after E-billing started for
22 Mr. Harter, do Laclede's records show that Laclede was
23 contacted by the Complainant about this billing change?

24 A. No, there was no contact in the following
25 months.

1 Q. Okay. Was there any record of a call from
2 the Complainant in February of 2009?

3 A. No, there was not.

4 Q. Is there any indication that Complainant
5 contacted Laclede in February of 2009 and sought to
6 discontinue E-billing?

7 A. No, there is no record of any contact.

8 Q. When do Laclede's records indicate the
9 Complainant first contacted Laclede?

10 A. The Complainant contacted Laclede Gas
11 Company on April 3rd of 2009.

12 Q. And what do Laclede's records show was the
13 purpose of that call?

14 A. Our records indicate that Mr. Harter was
15 requesting to get his budget billing restored.

16 Q. Okay. And had budget billing been
17 canceled?

18 A. There was a notification on his electronic
19 bill that we sent out on April 1st that his electronic
20 billing had been canceled due to irregular payments.

21 Q. Is there any other notice Laclede gives
22 when it cancels budget billing?

23 A. No, there is not.

24 Q. So if Mr. Harter was not seeing his
25 E-bills, then how would he know that budget billing had

1 been canceled?

2 MR. HARTER: Objection. Calls for
3 speculation.

4 MR. ZUCKER: I'm asking him if. It's a
5 hypothetical.

6 JUDGE JONES: What's the difference between
7 the hypothetical and the speculative?

8 MR. ZUCKER: A hypothetical says if
9 something happened, what would happen, as opposed to guess
10 what he was -- what he did.

11 JUDGE JONES: What's your question again,
12 Mr. Zucker?

13 MR. ZUCKER: If Mr. Harter was not seeing
14 his E-bills, how would he know that budget billing had
15 been canceled?

16 JUDGE JONES: I'll sustain the objection,
17 but I encourage you to just rephrase the question.

18 MR. ZUCKER: Okay. I will rephrase the
19 question.

20 BY MR. ZUCKER:

21 Q. Is there any way that Mr. Harter could have
22 known that budget billing was canceled from Laclede other
23 than seeing that E-bill on April 1st?

24 MR. HARTER: Objection again. Calls for
25 speculation. I think he can ask what they did or what

1 they didn't do, but he can't ask what I may or may not
2 have done.

3 JUDGE JONES: No, that's not -- the
4 question is independent of your action. It's wholly
5 within his knowledge of how you -- how that information is
6 communicated.

7 MR. HARTER: Then I withdraw the objection.

8 JUDGE JONES: You can answer.

9 THE WITNESS: The only notification that
10 Laclede Gas Company provides if a budget billing is
11 canceled is through a notice on their bill. Whether it's
12 paper or electronic, that's the only notification given.

13 BY MR. ZUCKER:

14 Q. And that notice came by E-bill on April
15 1st?

16 A. That's correct.

17 Q. When do Laclede records show that
18 Mr. Harter called to cancel E-billing?

19 A. He called Laclede Gas Company on
20 August 21st of 2009.

21 Q. And when did Laclede actually cancel the
22 E-billing?

23 A. That transaction request was entered and
24 was effective on August 24th, 2009, which was the next
25 business day.

1 Q. Okay. So August 21st was a Friday?

2 A. Correct.

3 Q. When was the next bill issued to Mr. Harter
4 after August 24?

5 A. That bill was issued on August 28th, 2009.

6 Q. Okay. And was it sent by electronic mail
7 or U.S. Mail?

8 A. It was sent by U.S. Mail.

9 Q. Okay. And Mr. Harter was still on
10 E-billing then on July 31st, 2009; is that right?

11 A. That is correct.

12 Q. And did the July 31st bill threaten
13 disconnection?

14 A. Yes. There was a notice on the July 31st
15 electronic bill that service would be disconnected on
16 August 21st, 2009.

17 Q. Was this disconnect notice sent by regular
18 mail or electronically?

19 A. That notice was sent by electronic mail.

20 Q. Did it accompany the E-bill?

21 A. Right.

22 Q. And is this the only disconnect notice we
23 send to a customer?

24 A. No. There is an additional notice that we
25 send two to four days prior to disconnection that is sent

1 by U.S. Mail.

2 Q. Do you know why Laclede sends the first
3 disconnect notice electronically?

4 A. Well, customers who are registered for
5 electronic billing are accustomed to looking at all their
6 bill information online, so we send all of our notices
7 initially electronically because that's what customers are
8 accustomed to viewing.

9 Q. Does Laclede's tariff permit the company to
10 issue this notice electronically?

11 A. Yes, it does.

12 Q. Did Laclede send a notice to Mr. Harter two
13 to four days before the August 21st, 2009 disconnection
14 date?

15 A. Yes, Laclede did send that notice.

16 Q. Okay. And what do you call that notice?

17 A. We call that notice a -- refer to it as a
18 96-hour notice.

19 Q. Okay. And does Laclede keep a copy of that
20 notice?

21 A. No, we do not keep copies of those notices.

22 Q. How many -- how many of those kind of
23 notices do we send each month?

24 A. Laclede sends out approximately 30,000 of
25 these notices monthly. I'm sorry. It's not practical or

1 make economic sense to keep copies of all those letters.

2 Q. And are they all on the same form, the
3 96-hour form?

4 A. Yes, it's a standard form.

5 Q. So how does Laclede know that it sent
6 Mr. Harter a 96-hour notice?

7 A. Well, we know that because Mr. Harter
8 included a copy of it with his complaint.

9 MR. ZUCKER: Permission to approach the
10 witness?

11 JUDGE JONES: Yes.

12 THE WITNESS: May I add an additional
13 comment?

14 JUDGE JONES: No.

15 (EXHIBIT NO. 3HC WAS MARKED FOR
16 IDENTIFICATION BY THE REPORTER.)

17 BY MR. ZUCKER:

18 Q. Do you have anything to add from my last
19 question?

20 A. Well, in addition to a copy of the 96-hour
21 notice that was included with Mr. Harter's complaint was
22 also a copy of the July 31st bill that he received
23 electronically that included a notice of disconnection on
24 August 21st.

25 Q. Okay. Thank you.

1 Do you recognize the document I've handed
2 you? Did I hand you one?

3 A. You didn't, but I am familiar with the
4 document, yes.

5 Q. I didn't give you one?

6 A. No.

7 Q. I didn't realize I hadn't given it to him.
8 When he said he didn't recognize it, I knew he didn't have
9 it.

10 Okay. Now do you recognize what's been
11 marked as Exhibit 3?

12 A. Yes, I do recognize this document.

13 Q. Okay. And is this a copy of the 96-hour
14 notice that Laclede sent to Mr. Harder before the
15 August 21 disconnection date?

16 A. Yes, it is.

17 Q. And how do you know this is a 96-hour
18 notice?

19 A. Well, I know this is a 96-hour notice, if
20 you look on the bill, just below the bar code and above
21 his address and name, there is a long series of numbers,
22 which are codes used by our printer that mails our bills,
23 and to the far right, LEC 96, that 96 is the code used for
24 96-hour notices.

25 Q. And you referred to this as a bill. This

1 isn't a bill, is it?

2 A. Well, they print all of our bills and they
3 also print our 96-hour notices.

4 Q. Okay. And when did Laclede send this
5 notice to Mr. Harter?

6 A. Laclede's records indicate that we produced
7 it on August 17th, 2009, and mailed it on August 18th,
8 2009.

9 Q. And how do you know that?

10 A. Well, Laclede's got a report that's
11 produced daily, report No. CA2111, I believe, that lists
12 all customers who are receiving the 96-hour notice.

13 MR. ZUCKER: Permission to approach the
14 witness one more time?

15 JUDGE JONES: Yes.

16 (EXHIBIT NO. 4HC WAS MARKED FOR
17 IDENTIFICATION BY THE REPORTER.)

18 BY MR. ZUCKER:

19 Q. Mr. Kellar, do you recognize this document?

20 A. Yes, I do recognize this document.

21 Q. And is this the report you were referring
22 to a moment ago?

23 A. Yes, it is. Yes, it is.

24 Q. And does it show Mr. Harter's name on the
25 report?

1 A. Yes, it does.

2 Q. And can you explain to us how you know that
3 report was produced on August 17th and mailed on
4 August 18th?

5 A. There's dates on this report that show when
6 the report was produced and when the letters were mailed.

7 Q. Now, is this the entire report?

8 A. No. This is one page out of 74, I think.

9 Q. Okay. And has it been redacted?

10 A. Yes, it is.

11 Q. Why?

12 A. To -- so we do not disclose any
13 confidential customer information.

14 Q. And is this document prepared in the
15 ordinary course of Laclede's business?

16 A. Yes, it is.

17 MR. ZUCKER: I move to offer -- well, I
18 don't think I offered the other one either -- Exhibit 3
19 and 4 into evidence.

20 JUDGE JONES: Any objections, Mr. Harter?

21 MR. HARTER: I don't object to 4. I do
22 object to 3 and would ask to be allowed to voir dire on
23 that document.

24 JUDGE JONES: Okay. 4 is admitted into the
25 record.

1 (EXHIBIT NO. 4HC WAS RECEIVED INTO
2 EVIDENCE.)

3 JUDGE JONES: And you may inquire.

4 MR. HARTER: Thank you, your Honor. If I
5 may inquire as to the -- do you have the court file that
6 would contain the original complaint?

7 JUDGE JONES: Yeah, I have the original
8 complaint here.

9 MR. HARTER: Is it an attachment on the
10 original complaint?

11 JUDGE JONES: It is an attachment to the
12 original complaint.

13 MR. HARTER: (Inaudible)

14 THE REPORTER: I'm sorry. I can't hear
15 you.

16 MR. HARTER: I asked him if there's writing
17 on it.

18 JUDGE JONES: No, there isn't.

19 MR. ZUCKER: Your Honor, I took this
20 exhibit, I actually copied this out of Staff's report. I
21 assume Staff copied it out of the complaint.

22 MR. HARTER: Okay. I withdraw the
23 objection and the request.

24 JUDGE JONES: Okay. Exhibit 3 is also
25 admitted into the record.

1 (EXHIBIT NO. 3HC WAS RECEIVED INTO
2 EVIDENCE.)

3 BY MR. ZUCKER:

4 Q. Just to confirm, is Exhibit 3, the final
5 disconnection notice, was that mailed by regular mail or
6 e-mail?

7 A. That was mailed through U.S. Mail.

8 Q. Okay. Did Laclede provide any other
9 methods of notice to Mr. Harter of the impending
10 August 21st, 2009 disconnection?

11 A. We have an outbound calling service that
12 called Mr. Harter on August 19th to remind him that there
13 was a balance due.

14 MR. HARTER: I'm sorry. I didn't hear what
15 date.

16 THE WITNESS: August 19th.

17 BY MR. ZUCKER:

18 Q. And Laclede's E-bill program is separate
19 from any electronic payment the company receives, is it
20 not?

21 A. That's correct. Any customer can register
22 for electronic billing. All that means is you receive
23 your bill electronically. Customer still has the option
24 to pay however he chooses, whether it's -- he can pay us
25 electronically, which is what most people do, or he can

1 mail his payments in through U.S. Mail or any of the other
2 number of payment methods.

3 Q. Do you have Mr. Harter's payment record in
4 front of you?

5 A. Yes, I do.

6 Q. Can you tell me whether Mr. Harter made a
7 payment in February 2009?

8 A. No. Laclede Gas Company did not receive a
9 payment in February of 2009.

10 Q. Very good. And did Laclede Gas Company
11 receive a payment in March 2009?

12 A. Yes. We received a \$50 payment
13 electronically on March 10th, 2009.

14 Q. And that payment was electronic?

15 A. Yes, it was.

16 MR. ZUCKER: I have no further questions,
17 your Honor.

18 JUDGE JONES: Cross-examination,
19 Mr. Harter?

20 MR. HARTER: Yes, thank you. Is that what
21 the order --

22 JUDGE JONES: Right. You're going now.

23 MR. HARTER: Okay.

24 CROSS-EXAMINATION BY MR. HARTER:

25 Q. Now, you said there was a robotic phone

1 call threatening disconnect on August 19th?

2 A. It wasn't -- I don't know the exact wording
3 of the call. I'm not responsible for the outbound
4 calling, but there was a -- an automatic call made by our
5 outbound calling service to remind you that there was an
6 account balance due.

7 Q. So that would be yes?

8 A. Well, again, I don't know the exact wording
9 of that telephone call, but the purpose was to remind you
10 that there's a balance due. There may have been a
11 reference about a disconnection date, but I don't know the
12 exact words of the call.

13 Q. Do you initiate robotic phone calls that
14 don't involve disconnection?

15 A. Sure.

16 Q. And there's nothing within your records or
17 within your knowledge or in -- is there anything from
18 reviewing those records that indicates to you, if you
19 could look at that, what the purpose of this August 19th
20 phone call was?

21 A. Well, again the purpose of the call was to
22 remind you that there was an account balance that was due.

23 Q. And it would be the account balance
24 mentioned on 4HC of \$842?

25 A. I'm sure that is correct, but I don't know

1 100 percent that that's -- was the case.

2 Q. And there had not been a payment since
3 March?

4 A. There had not been a payment since March.

5 Q. And you're not willing to say that that
6 phone call threatened disconnection?

7 A. Well, it may have.

8 Q. How would I find out whether that phone
9 call threatened disconnection?

10 MR. ZUCKER: I'm going to object to the
11 relevance of this.

12 JUDGE JONES: I'm going to --

13 MR. HARTER: If I may? I was questioned on
14 direct how I came to file the complaint and everything,
15 and I said I couldn't remember, and I asked them if they
16 had records. They could have provided those records at
17 some point and that would have refreshed my memory, which
18 it has now done. I don't know if I need to retake the
19 stand, but yes, it was, it was this robot phone call that
20 started it all.

21 JUDGE JONES: You remember. Is that what
22 you're saying?

23 MR. HARTER: Yes. So I would like to -- I
24 mean --

25 JUDGE JONES: You can ask the question.

1 MR. HARTER: It could have been more
2 efficient to fill me in when I was up there, but --

3 JUDGE JONES: Objection is overruled. So
4 how would you find out? How would he find out, not you,
5 the content of that call?

6 THE WITNESS: I guess we'd have to talk to
7 somebody who administers that outbound calling program.

8 BY MR. HARTER:

9 Q. And which records, I wasn't sure, were you
10 referring to regarding this robotic phone call?

11 A. Well, there is a remark in Laclede Gas'
12 system that this call was --

13 Q. In these exhibits?

14 A. No, it is not in those exhibits.

15 Q. Something that was not --

16 A. It's in the remarks system that documents
17 activity on the account.

18 Q. It's not been produced here today?

19 A. No.

20 Q. Do you have it with you?

21 A. I have a copy of the remarks, yes.

22 Q. Could I see that? Did you testify
23 regarding that on direct?

24 A. Am I testifying that there is a remark in
25 their system?

1 Q. Did you refer to those documents during
2 your direct testimony?

3 A. Yes.

4 MR. HARTER: May we mark that as an
5 exhibit?

6 JUDGE JONES: Yes. Will be Exhibit 5.

7 MR. ZUCKER: Do we have copies?

8 THE WITNESS: No, I do not.

9 JUDGE JONES: You look at it. She can look
10 at it. I can look at it. Do you need that copy?

11 THE WITNESS: Yes.

12 JUDGE JONES: Then we'll make copies so
13 that the court reporter can have a copy.

14 MR. HARTER: I could ask him something else
15 if someone's available to make copies. That would save
16 all this. I can pursue a different line of questioning
17 while copies are made.

18 JUDGE JONES: That's fine. We have
19 somebody to make copies.

20 MS. HERNANDEZ: How many would you like?

21 MR. ZUCKER: I do have one of those, so I
22 don't need one. Maybe four.

23 JUDGE JONES: One, two, three, four.

24 BY MR. HARTER:

25 Q. I'll return to that later. You said that

1 half -- regarding some type of electronic payment, and I
2 believe I was following your testimony, half of them do it
3 through Laclede's program, which we're calling E-pay, I
4 think, and the other half do it through what you called an
5 independent vendor, which I assume would include Bill Pay
6 through Bank of America?

7 A. About half of them use Laclede Gas' vendor,
8 which is Checkfree, they use them directly, and the
9 other --

10 Q. And we're calling that E-pay, just for our
11 purposes?

12 A. No, we're not. It is electronic billing.
13 Has nothing to do with payments.

14 Q. The we, I meant the Commission, but if I'm
15 wrong, correct me.

16 JUDGE JONES: I think what he said, he
17 talked about half people doing one thing and half of the
18 people doing something else. My impression was that
19 everything ended up going through Checkfree regardless of
20 what the customer did. Is that right?

21 THE WITNESS: That's correct.

22 JUDGE JONES: Now, you were trying to draw
23 a distinction between how the customers choose, one being
24 I guess you can go online, the other one would be through
25 your bank?

1 THE WITNESS: Right.

2 JUDGE JONES: Both of them are going
3 through Checkfree. Is that where you were going with
4 that, Mr. Harter?

5 MR. HARTER: No, it was not.

6 JUDGE JONES: Well, at least we have that
7 cleared up. E-billing is one thing. Don't give it a
8 nickname. Call it exactly what you want to call it.

9 MR. HARTER: Okay.

10 BY MR. HARTER:

11 Q. Approximately half of your electronic
12 payments are initiated by the customer with Laclede Gas,
13 correct?

14 A. We can't initiate E-payment directly with
15 Laclede Gas Company.

16 Q. Well, it's requested, and Laclede Gas then
17 refers them to Check Pay, is that --

18 A. Well, again, there's a distinction between
19 electronic billing and electronic payments.

20 Q. I'm looking -- correct. And what are the
21 distinct ways that Laclede handles those two different
22 systems?

23 A. For the billing or the payments?

24 Q. Take them in the order you prefer.

25 A. Well, for the -- we'll start with the

1 billing. Any customer of Laclede Gas Company can register
2 directly with our vendor, who is Checkfree, or you can
3 register through any number of banks that also provide
4 that service.

5 Q. And that's who you referred to as a
6 different vendor?

7 A. Right. It's your own --

8 Q. So Bank of America, whom I used, would be
9 what you would call a different vendor?

10 A. Well, it's a different provider, yes.

11 Q. And it would be included in the
12 approximately half of the people who exercise a different
13 vendor?

14 A. Well, again, the vendor that Laclede Gas
15 Company uses is the same. It's Checkfree. How you
16 register is different. You can register through Checkfree
17 or you can register through your own bank.

18 Q. Yes. Now, someone just calls Laclede and
19 says, I want to electronically pay, you refer them to your
20 vendor?

21 A. Or back to their bank. We refer them to
22 Checkfree --

23 MR. ZUCKER: I'm sorry. He said
24 electronically pay. Are we talking about paying or
25 billing?

1 THE WITNESS: Billing. I'll let you ask
2 the question.

3 BY MR. HARTER:

4 Q. Okay. Let's start with a question about
5 electronic payment. If a customer calls Laclede and
6 expresses a wish to electronically pay their bill, my
7 understanding is that Laclede then refers them to its
8 vendor, which is Check Pay; is that correct?

9 A. Checkfree.

10 Q. Checkfree. I'm sorry. Checkfree.

11 A. No. Let me --

12 Q. And that constitutes basically, if I
13 understand you, half of --

14 A. No.

15 Q. -- your electronic payment?

16 A. No, that is incorrect.

17 Q. Okay.

18 A. If you want to make payments
19 electronically, if you want to do it directly with Laclede
20 Gas Company's vendor, you must register for electronic
21 billing. You asked about payments. Payments is entirely
22 different. You can make payments however you choose.

23 Q. If you call and say, I want to make
24 electronic payments, Laclede has a prerequisite, requires
25 you, requires one person to accept electronic billing,

1 right?

2 A. That is incorrect.

3 Q. Okay.

4 A. If you want to make an electronic payment,
5 you can go back to your bank and make that electronic
6 payment.

7 Q. If you want to make an electronic payment
8 through your vendor, which is Checkfree?

9 A. If you want to register directly with
10 Checkfree, that does require you to register for
11 electronic billing. You asked about payment, though. If
12 you want to ask about a payment, we're going to refer you
13 back to your bank. Now, if you were to ask us about
14 electronic billing, then we would refer you to Checkfree
15 or again back to your own bank. So if your question was
16 about payments, if it's payments only, we're going to
17 refer you back to your bank.

18 MR. ZUCKER: The Exhibit 5s have arrived.

19 Thank you.

20 BY MR. HARTER:

21 Q. Are you familiar with the Bill Pay system
22 of Bank of America?

23 A. No, I am not.

24 Q. Do you have any idea how many electronic
25 payments Laclede receives from the Bill Pay program of

1 Bank of America?

2 A. I cannot give you an exact number, but it
3 is several thousand. Bank of America is one of the
4 largest banks in the St. Louis area, and Checkfree has a
5 working relationship to provide the electronic billing
6 through Bank of America. It's several thousand. I can't
7 give you an exact number.

8 Q. The only thing that you have is Exhibit 2
9 which you've testified, and there's nothing on Exhibit 2
10 to indicate that Charles Harter's requesting E-bills, is
11 there?

12 A. Yes. This is the E-bill registration.

13 Q. Where does it say --

14 A. The very top line.

15 Q. Where does it say, I hereby request
16 E-bills, signed Charles Harter?

17 A. That information would be on the Bank of
18 America system, which I do not have access to.

19 Q. If it existed?

20 A. Well, again, I'm not familiar with the Bank
21 of America system.

22 Q. Nor do you know what's on their records?

23 A. I know what records Laclede Gas Company
24 receives.

25 Q. And what are they? Did you receive

1 something other than this?

2 A. Well, no. This is part of the E-bill
3 registration form.

4 Q. Did you receive something other than this,
5 or is this all you received?

6 A. That is the information that initiates
7 electronic billing.

8 Q. You said you're familiar with the
9 information received from Bank of America's Bill Pay
10 system?

11 A. No, that is incorrect. I said I'm familiar
12 with the information received from Checkfree.

13 Q. Is there information other than Exhibit 2
14 which Laclede Gas received concerning Charles Harter's
15 electronic payments?

16 A. Payments or billing?

17 Q. Billing. Billing.

18 A. Well, this is the only documentation that
19 Laclede Gas would receive. This is --

20 Q. And it receives it from Checkfree --

21 A. That's correct.

22 Q. -- not from Bank of America?

23 A. Bank of America sends that information to
24 Checkfree, who then forwards that information to Laclede.

25 Q. But you don't receive it from Bank of

1 America?

2 A. No.

3 Q. And you have no way to know looking at this
4 where its origin is, do you?

5 A. No, this is -- this document does not
6 indicate where it was originated.

7 Q. Does it indicate anything concerning Bank
8 of America?

9 A. No, it does not. As far as Laclede Gas
10 Company is concerned, it's irrelevant where it was
11 initiated. Checkfree is the vendor that provides the
12 service and sends us the documentation to initiate the
13 electronic billing service.

14 Q. Well, does, to your knowledge, Checkfree
15 have any what I might call raw data that would indicate
16 that Charles Harter's requested E-bills?

17 MR. ZUCKER: Objection. Calls for
18 speculation.

19 JUDGE JONES: Sustained.

20 MR. HARTER: If you know.

21 BY MR. HARTER:

22 Q. You stated on direct that the E-bills had
23 been viewed, but you didn't put down any time frame. Is
24 there any way to know when the E-bills were viewed?

25 A. No.

1 Q. So E-bills could have been viewed say in
2 September of '09 by me after I discovered that they
3 existed and I could have viewed an entire year's worth of
4 E-bills in September of '09 after the fact and you would
5 not have any knowledge of that, right?

6 A. I would not know that.

7 Q. You would just know whether, yes, opened or
8 not opened, right?

9 A. That's correct.

10 Q. Not when?

11 A. Right.

12 Q. So you can't state whether or not the
13 E-bills were seen in the fashion in which they were sent,
14 in other words, as a bill?

15 A. Well, if you were on electronic billing and
16 you hadn't canceled it and you still had your Internet
17 access --

18 Q. Let me stop you there. It's a yes or no.
19 I guess I mangled it too much. I was trying to ask a yes
20 or no question. There's no way going back now to your
21 open or not open records that you can tell me whether or
22 not these E-bills served any function by the records that
23 you have?

24 A. What do you mean by function?

25 Q. That they served as bills, that someone

1 opened the e-mail and saw it was a bill in a timely manner
2 in order to pay the bill?

3 A. Well, again --

4 Q. The question is, can you make that
5 determination looking back on the records that you have,
6 yes or no?

7 A. Can you rephrase that, please?

8 JUDGE JONES: Let me try to help you here.
9 A bill is sent each month?

10 THE WITNESS: Yes.

11 JUDGE JONES: Do you have anything that
12 shows the bill was viewed each month?

13 THE WITNESS: I do not have records that
14 indicate a date of -- a bill was viewed.

15 JUDGE JONES: Is that where you were going?

16 MR. HARTER: Thank you. Yes.

17 (EXHIBIT NO. 5 WAS MARKED FOR
18 IDENTIFICATION BY THE REPORTER.)

19 BY MR. HARTER:

20 Q. This is Exhibit 5. Show you what's been
21 marked just for -- I assume you have one, identification
22 purposes Exhibit 5, and can you point out to me on what
23 page the reference to the robotic call on August 19th
24 occurs?

25 A. First page or top page. There's no page

1 numbers.

2 Q. And what is this culled from?

3 A. It's our remarks system which documents
4 activity on a customer's account, in this case yours.

5 Q. Now, are there any other records perhaps in
6 your automated call system that would give more
7 information about this call?

8 A. Well, I'm not the expert in that area, so I
9 can't answer that question.

10 Q. What does Par 3 mean?

11 A. Par 3 is the outbound calling service.

12 Q. How does it -- how does it come to be
13 called Par 3? What does that mean?

14 A. That's the name of the company.

15 Q. What is the name of the company?

16 A. Par 3 is the name of the company.

17 JUDGE JONES: This is like who's on first.

18 BY MR. HARTER:

19 Q. That's the full name. Could I look it up
20 in the Secretary of State? Wouldn't it have something
21 more to it?

22 A. I don't know what state they're registered
23 in, but Par 3 is the name of the company. I can tell you
24 that they changed the name of that company to Varolli. So
25 if you're going to look it up, Varolli is the name of the

1 company. Our remarks system is automated, so it's
2 programmed to put Par 3 in the remark system. So that's
3 done automatically.

4 JUDGE JONES: Can you spell the current
5 name of the company, please?

6 THE WITNESS: I believe it's V-a-r-o-l-l-i.

7 MR. ZUCKER: If it would be helpful, we
8 would be willing to stipulate that a Par 3 call on
9 August 19th reminded the customer of the balance due and
10 also that the disconnection date was approaching.

11 JUDGE JONES: I don't think he wants to
12 stipulate to that.

13 MR. HARTER: That would save time.

14 JUDGE JONES: It would save time?

15 MR. HARTER: Yes, if that -- if what he
16 meant is that they threatened disconnection.

17 JUDGE JONES: Okay.

18 MR. HARTER: He didn't say that, but --

19 MR. ZUCKER: I think they remind you that a
20 disconnection date's coming.

21 MR. HARTER: Reminding you that a
22 disconnection date is coming is threatening disconnection.

23 JUDGE JONES: That's what you want to
24 stipulate to, is that what you're trying to get to,
25 Mr. Harter?

1 MR. HARTER: I don't know if the language
2 makes a difference.

3 JUDGE JONES: The point I'm trying to
4 understand, we know you got a call. Are you trying to
5 determine the substance of that call?

6 MR. HARTER: Just that it threatened
7 disconnection.

8 JUDGE JONES: And Laclede is saying that it
9 did.

10 MR. HARTER: If that's what they're saying.

11 MR. ZUCKER: It definitely --

12 JUDGE JONES: You don't like to use the
13 word threatened, is that what you're saying?

14 MR. ZUCKER: Maybe, it wasn't that --
15 well, yeah.

16 JUDGE JONES: We're going to cut you off on
17 this date if you don't pay this amount of money is a
18 threat.

19 MR. ZUCKER: Okay.

20 JUDGE JONES: It's different than me seeing
21 you in an alley and threatening to punch you in the face
22 if you don't give me your wallet. It's threatening to cut
23 the service off.

24 MR. HARTER: It's not essentially an
25 illegal threat.

1 JUDGE JONES: Right. Right.

2 MR. ZUCKER: Okay. That's fine.

3 JUDGE JONES: We'll say that the call
4 resulted in a disconnection notice or threat to disconnect
5 and reminder of the amount due.

6 BY MR. HARTER:

7 Q. Okay. Now, we're talking about the Bank of
8 America Bill Pay account which the Complainant used,
9 that's me, Charles Harter used in this instance, and so my
10 questions deal with that. I believe your testimony was
11 that -- that it could be initiated without the consent of
12 Laclede?

13 A. Well, the customer has to initiate a
14 payment. Laclede can't initiate a payment for anybody.

15 Q. Correct. So this Bill Pay system from Bank
16 of America is initiated without the consent of Laclede?

17 A. How is that relevant?

18 Q. Well, it's just a question, and it requires
19 an answer unless it's objected to.

20 A. Laclede receives payments from all sorts of
21 manner. We don't know the sources of these payments.
22 They can be mailed in, electronically. We don't know the
23 source. We just receive the payments.

24 Q. I understand. But if a customer initiates
25 electronic payment through a system such as Bill Pay

1 system of Bank of America, does not require the consent of
2 Laclede; is that correct?

3 A. That is correct.

4 Q. And it's not negotiated with Laclede?

5 A. No. It's initiated entirely by the
6 customer.

7 Q. Right. And I referred to that as a
8 unilateral choice.

9 A. You're referring to payments, though.

10 Q. Yes.

11 A. That's your choice, how to pay us.

12 Q. Correct. And then you said -- and then my
13 question is, can that type of payment system be
14 discontinued without the consent of Laclede?

15 A. Again, that's entirely initiated by the
16 customer.

17 Q. What is the -- in the case where a customer
18 has, as we've just discussed, independently without
19 consent of Laclede initiated the electronic payment system
20 such as Bill Pay Bank of America and thereafter
21 independently discontinued such payment system, what does
22 Laclede do regarding the bills?

23 A. The bills are independent of your payments.
24 The bills are going to be continued to be sent
25 electronically. We receive the registration for the

1 account to be electronically billed. So those bills will
2 continue to be sent electronically.

3 Q. Now, there's nothing in this request I
4 assume, that's that registration, I'm sorry, registration,
5 Exhibit 2, that indicates that they want the direct mail
6 to cease, is there?

7 A. Well, not in that data file, no.

8 Q. And there's nothing that you can produce as
9 a record from Laclede that shows the consumer in this
10 case, the Complainant, Charles Harter, is requesting that
11 his directly mailed bills cease, is there?

12 A. Well, in this case, this account was
13 registered through Bank of America, and I don't have
14 access to those records, so I don't know what is on their
15 website.

16 Q. Okay. If you listen to the question.

17 MR. HARTER: Can you read my last question
18 back?

19 (THE REQUESTED TESTIMONY WAS READ BY THE
20 REPORTER.)

21 THE WITNESS: No, but again, I don't know
22 what's on the Bank of America website. I'm sure there is
23 an indication on there that --

24 MR. HARTER: I'll object to anything
25 further. He's answered the question.

1 JUDGE JONES: The answer is no?

2 MR. ZUCKER: I think he should be allowed
3 to finish his answer if he's got a qualification.

4 JUDGE JONES: He can finish it on redirect.

5 THE WITNESS: I'm sure when you register
6 for electronic billing, there's a notification that --

7 JUDGE JONES: Are you -- are you -- just
8 no, stop there. Let him ask another question.

9 THE WITNESS: Okay.

10 JUDGE JONES: You can glean that
11 information on redirect.

12 MR. ZUCKER: Yes, sir.

13 BY MR. HARTER:

14 Q. And in this situation in which a customer
15 through his bank has unilaterally initiated electronic
16 payment system and then discontinued it also unilaterally
17 through his bank, what does Laclede do regarding the
18 billing after the discontinuance of the electronic billing
19 system?

20 A. Are you referring to the payments? You
21 referred to payments initially and then you referred to
22 billing.

23 Q. Right. This is -- question concerns
24 billing. What does Laclede do?

25 A. Well, you referred to payments first. Can

1 you clarify?

2 Q. Yes, but I'm done with that question, and
3 I'm done with that line of questioning.

4 JUDGE JONES: I don't want to just go on
5 and on. You asked if a person's paying and then they
6 discontinued it, what would Laclede do with regard to
7 billing?

8 MR. HARTER: Yes. That is the question.

9 THE WITNESS: Well, again, billing is
10 entirely separate from your payments.

11 BY MR. HARTER:

12 Q. I understand that.

13 A. So if you've registered for electronic
14 billing, you're going to continue to receive your bills
15 electronically. Payments themselves are independent of
16 your billing.

17 Q. So Laclede will never once -- strike that.

18 Once an account has been registered for
19 electronic billing, what would have to happen to cause
20 Laclede to send a bill through the mail?

21 A. Just a regular bill or a disconnection
22 notice?

23 Q. Just a regular bill.

24 A. You would have to either contact Laclede or
25 you can contact Laclede to cancel that bill, electronic

1 bill, or you can cancel it through your bank.

2 Q. Okay. In this case, it was canceled
3 through the bank.

4 A. Was it?

5 Q. Yes.

6 MR. ZUCKER: Objection. The attorney's
7 testifying.

8 JUDGE JONES: I understand that. I'll let
9 him set his question up.

10 BY MR. HARTER:

11 Q. In a case such as this when the evidence
12 shows that the Bank of America Bill Pay system was
13 discontinued, why wouldn't that produce a mailed bill from
14 Laclede?

15 A. Well, I have no record of it being
16 discontinued until August 21st, 2009, which is when you
17 made the request over the telephone to Laclede Gas
18 Company.

19 Q. Wouldn't the end of the payments indicate
20 that it was discontinued?

21 A. Again, the payments are independent of your
22 billing.

23 Q. And at whose direction is that --

24 A. Yours.

25 Q. -- that the payments are separate from the

1 billing?

2 MR. ZUCKER: Objection. This is
3 irrelevant.

4 JUDGE JONES: That's what we've been
5 talking about for 20 minutes. It can't be irrelevant.

6 MR. ZUCKER: Well, whose direction it is.
7 Are we going to go into the corporate structure?

8 MR. HARTER: That's --

9 JUDGE JONES: If he knows. If you know the
10 answer, go ahead and answer.

11 MR. ZUCKER: I withdraw the objection.

12 THE WITNESS: Well, it's the -- the
13 customer registers for the electronic billing. All you're
14 doing when you do that is requesting to receive your bills
15 electronically. It has nothing to do with your payments.
16 you can still send payments to us however you choose. So
17 the fact that no payments were received is not going to
18 stop your bill from being produced electronically.

19 Q. It's possible, is it not, that Exhibit 2,
20 however it was done, was generated completely without the
21 knowledge, consent or initiation of the customer, the
22 ultimate consumer?

23 A. Well, I can tell you that somebody who had
24 access to your records initiated that.

25 Q. If I could, that was a yes or no. Is it

1 possible that, as far as you know, this Exhibit 2 could be
2 generated without any active initiation, participation,
3 desire or wish at all of the consumer but merely through
4 protocols among banks or Checkfree?

5 A. No. It has to be initiated by the
6 customer.

7 Q. What --

8 A. Your registration.

9 Q. I thought you said it came from Checkfree.

10 A. The initiating with Bank of America.

11 Q. And you said you didn't know anything about
12 Bank of America?

13 A. I don't.

14 Q. So then you have no idea of how Bank of
15 America generates the information it gives to Checkfree
16 who then passes it on to you, do you?

17 A. Can you -- are you asking me do I --

18 Q. I'm asking you if you have any knowledge of
19 what Bank of America requires from its customers before it
20 initiates a Bill Pay system which it sends to Checkfree?

21 A. I think you originally asked if --

22 Q. No. I dropped those questions and I moved
23 on to this --

24 JUDGE JONES: Just answer that one.

25 THE WITNESS: Well, again, I'm not familiar

1 with Bank of America's system.

2 BY MR. HARTER:

3 Q. So the answer is no, I don't know anything
4 about what Bank of America requires of its customers?

5 A. That's correct.

6 Q. So as far as you know, not as far as you
7 think or conjecture or might think up, but as far as you
8 know sitting there, that you can testify to the truth of,
9 there's no way for you to know whether or not an ultimate
10 consumer, your customer, initiated, generated, requested
11 electronic bills in creating Exhibit 2, is there?

12 A. Well, somebody did, .whether it's the
13 Complainant, I don't know.

14 MR. HARTER: No further questions.

15 JUDGE JONES: Is there any cross from
16 Staff?

17 MS. HERNANDEZ: I have one question.

18 CROSS-EXAMINATION BY MS. HERNANDEZ:

19 Q. Could you -- you've talked a lot about
20 electronic billing. Can you describe the process one has
21 to go through to sign up for electronic billing?

22 A. Sure. If you were to call Laclede, we
23 would refer you either to, directly to our vendor or back
24 to your bank. Since I'm not familiar with Bank of
25 America's website, I'll describe Checkfree's process.

1 There is a signup process that you will go through to
2 register your account information, name, address, the
3 utility account number and e-mail address, and you have to
4 accept the terms, of course, and once you do that, then
5 you are registered for the electronic billing.

6 At that point, Checkfree will send us a
7 data file indicating that the consumer has registered for
8 the electronic billing. We will then switch that account
9 over to the electronic billing. On the next billing
10 cycle, we'll issue a paper bill notifying the consumer of
11 this change and that this will be their last paper bill
12 and that future bills would be received electronically.

13 Q. So at least through Checkfree, if you don't
14 know the account information or the address, your specific
15 information, one cannot register for electronic billing;
16 is that correct?

17 A. Correct.

18 MS. HERNANDEZ: Thank you. I have nothing
19 else.

20 JUDGE JONES: I just had a couple things.

21 QUESTIONS BY JUDGE JONES:

22 Q. You mentioned something earlier, if someone
23 wants to pay online, which I'm assuming probably happens a
24 lot if they are in arrears, they want to hurry up and get
25 a payment to you guys, they could pay online, maybe a

1 credit card over the phone. If they decide to pay
2 electronically online, you refer them to Checkfree; is
3 that what you said?

4 A. Well, no. You can pay us electronically
5 however you choose. If it's just a payment, you're going
6 to initiate that through your bank. You can -- if you're
7 registering for the electronic billing part, you can make
8 a payment through Checkfree.

9 Q. Okay. So it's not necessary to register
10 for electronic bill to make an electronic payment?

11 A. No, it is not.

12 Q. The \$50 payment, though, was made in, I
13 believe in February of '09?

14 A. March 10th, 2009.

15 Q. How was that made, do you know?

16 A. It was made electronically.

17 JUDGE JONES: Okay. Those are all the
18 questions I have. Any recross based on those few
19 questions, Mr. Harter?

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

21 JUDGE JONES: Ms. Hernandez?

22 MS. HERNANDEZ: No. No, thank you.

23 JUDGE JONES: Redirect?

24 MR. ZUCKER: Yes, your Honor.

25 REDIRECT EXAMINATION BY MR. ZUCKER:

1 Q. Good afternoon again, Mr. Kellar.

2 Mr. Harter talked to you about the -- on Exhibit 5, the
3 remark sheet?

4 A. Yes.

5 Q. He talked to you about the August 19th
6 remark that a -- a call was made to the customer
7 threatening disconnection?

8 A. Yes.

9 Q. What date did the customer first contact us
10 according to our remarks?

11 A. Well, according to our remarks, customer
12 contacted Laclede Gas Company on August 18th, 2009.

13 Q. When a customer signs up for electronic
14 billing and Laclede accepts that and registers them in
15 electronic billing, is there any notice that Laclede gives
16 the customer that electronic billing is coming?

17 A. Yes. Their next bill that's produced,
18 which is a paper bill and mailed through U.S. Mail will
19 indicate that the account has been switched to electronic
20 billing and that future bills would be received
21 electronically.

22 Q. Okay. Exhibit 2 is -- are you familiar
23 with Exhibit 2? It says Harter E-bill registration.text
24 at the top?

25 A. Yes.

1 Q. Mr. Harter asked you, is this the only
2 thing that you received. Do you recall that question?

3 A. Yes.

4 Q. And this -- this is the file you receive
5 when someone registers for E-bill; is that correct?

6 A. That is correct.

7 Q. How many of these files have -- has Laclede
8 received?

9 A. We receive one daily.

10 Q. Well, I mean, how many people have
11 registered for E-billing resulting in this file being sent
12 to Laclede?

13 A. Over 71,000.

14 Q. And in your experience, have any of them
15 said that they did not originate the E-bill?

16 A. No, none.

17 MR. ZUCKER: No further questions.

18 JUDGE JONES: Okay. You may step down,
19 sir. Staff, call your witness.

20 MS. HERNANDEZ: I'll call Mary
21 Schierman-Duncan, please.

22 (Witness sworn.)

23 MARY SCHIERMAN-DUNCAN testified as follows:

24 DIRECT EXAMINATION BY MS. HERNANDEZ:

25 Q. Could you please state and spell your name

1 for the record.

2 A. Mary Schierman-Duncan, S-c-h-i-e-r-m-a-n
3 dash D-u-n-c-a-n.

4 Q. And where are you employed?

5 A. Missouri Public Service Commission.

6 Q. And in what capacity?

7 A. Consumer services coordinator.

8 Q. And what are your duties in that capacity?

9 A. My primary duties are to supervise a team
10 of consumer service specialists who are basically our
11 investigative staff, and when complaints are escalated,
12 generally I handle the escalated complaints, and I also
13 prepare the Staff report for formal complaints.

14 Q. And did you prepare the Staff
15 recommendation filed in this case and premarked, I guess
16 Exhibit 6 now?

17 A. I did.

18 Q. And do you have any changes to make to that
19 report?

20 A. I do not.

21 Q. And is your recommendation true and
22 accurate to the best of your knowledge, information and
23 belief?

24 A. It is.

25 MS. HERNANDEZ: I'd like to offer Exhibit 6

1 for the record.

2 JUDGE JONES: Any objection?

3 MR. HARTER: No objection.

4 MR. ZUCKER: No objection, your Honor.

5 JUDGE JONES: Hearing none, Exhibit 6 is
6 admitted into the record.

7 (EXHIBIT NO. 6 WAS MARKED AND RECEIVED INTO
8 EVIDENCE.)

9 MS. HERNANDEZ: And I'd also like to ask
10 for the Commission to take judicial notice of Laclede's
11 tariff as on file currently and also the waiver case,
12 which was the -- mentioned in the stipulation of facts.

13 JUDGE JONES: That's -- isn't that attached
14 to a prior exhibit?

15 MR. ZUCKER: Yeah, Exhibit 1.

16 JUDGE JONES: Yeah, it's attached to
17 Exhibit 1.

18 MS. HERNANDEZ: Okay. Just Laclede's
19 tariff then.

20 JUDGE JONES: We'll take official notice of
21 Laclede's tariff. Did you have a concern, Mr. Harter?

22 MR. ZUCKER: Can we go off the record a
23 moment?

24 JUDGE JONES: Yes, let's go off the record.

25 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

1 JUDGE JONES: Is there any cross from
2 Mr. Zucker?

3 MR. ZUCKER: Just a little, your Honor.

4 CROSS-EXAMINATION BY MR. ZUCKER:

5 Q. In your report, you said that the tariff
6 provides that the customer owes the bill even if he
7 doesn't receive it; is that correct?

8 A. Where are you looking at?

9 Q. I'm sorry. I'm not going to be able to
10 find that again. Let's skip that question. It says what
11 it says.

12 Let me ask a different question. Going --
13 you see complaints; is that correct?

14 A. Yes.

15 Q. Customer complaints?

16 A. Yes.

17 Q. And how long have you been with the PSC
18 Staff doing this job?

19 A. Since the first of November 2009.

20 Q. November 1, 2009?

21 A. No. November 2nd actually. It was the
22 Monday.

23 Q. Okay. So a little less than a year?

24 A. Yes.

25 Q. Okay. And in that time, have you seen any

1 customer complaints in which the customer claims they were
2 registered for E-billing without their knowledge or
3 consent?

4 A. No.

5 Q. Any complaints that they had not received a
6 paper bill or a disconnect notice because the utility
7 insisted on sending the bill or notice electronically?

8 A. No.

9 Q. Any complaints that a person, a customer
10 had been disconnected after not receiving a disconnect
11 notice in the mail?

12 A. Could you repeat that one?

13 Q. Well, any complaints, have there been any
14 complaints since you've been there that the customer had
15 been disconnected after not receiving a disconnect notice
16 in the mail even though the disconnect notice had been
17 sent electronically?

18 In other words, customer saying you sent my
19 disconnect notice by -- electronically and not by mail?

20 A. No, I have not.

21 MR. ZUCKER: No further questions.

22 JUDGE JONES: I don't have any questions.

23 Mr. Harter, do you have cross?

24 MR. HARTER: Yes, thank you.

25 CROSS-EXAMINATION BY MR. HARTER:

1 Q. Witness for Laclede had stated that they
2 send out 30,000 96-hour notices a month?

3 A. Yes.

4 Q. And I didn't write down. Do you know how
5 many customers Laclede has?

6 A. I believe it's over 600,000.

7 Q. And the cost of postage is 42 cents. Do
8 you know --

9 MR. HARTER: I have no other questions,
10 thank you.

11 JUDGE JONES: I don't have any questions.
12 You may step down.

13 Okay. That's all the witnesses we have.
14 As far as briefs are concerned, you-all filed a list of
15 issues. Now, during the course of our discussions today,
16 I don't know if additional issues have arisen or if these
17 issues have become -- have changed or morphed in any kind
18 of way. If not, then whatever, your brief should
19 certainly follow the list of issues that you filed. Off
20 the top of your heads, can anyone say that the issues have
21 changed in any way?

22 MR. HARTER: Yes, I can.

23 JUDGE JONES: How so?

24 MR. HARTER: We're back to where we started
25 in that none of these witnesses, including myself, know

1 what Bank of America records show in terms of whether it's
2 a request of the consumer to receive electronic bills or
3 whether it's some operation of their corporate things or
4 whether it's something that perhaps -- I forget their
5 service, Checkfree initiated. All we know is that when
6 Laclede gets it, they call it a registration.

7 And when I sent it, I testified that I
8 didn't request it, so somewhere in that process, we don't
9 know, and that's why I'd subpoenaed a witness. And I'm
10 still willing to supplement that at a later date as anyone
11 else requested perhaps as -- as the court requests in
12 order to supplement that information. Perhaps you'll
13 decide or the Commission will decide that that's not
14 important information.

15 It's my understanding that the tariff, and
16 I'm not an expert in it, is keyed on the request of the
17 customer, and that keys everything that happens within the
18 tariff. So the question is what is the request of the
19 customer, and I've testified that the request of the
20 customer was not to receive electronic bills, to receive
21 normal things, and somehow their records say that the
22 request of the customer is to receive electronic bills.

23 So there is quite a disconnect there, if I
24 can use that word, on a key matter that initiates the
25 operation of the tariff. So I would like to hear what

1 Bank of America at some time, perhaps written
2 interrogatories, I don't know how to get to it but --

3 JUDGE JONES: I understand.

4 MR. HARTER: -- find out is there a record
5 where I requested it, because I'm telling you there isn't.
6 And -- and other than that, I do have rebuttal testimony
7 on a minor issue that was raised here that I have a --
8 that I've been refreshed on on that \$50 payment. I don't
9 know if you just want me to tell you.

10 JUDGE JONES: Just say what it is you have
11 to say. You're still under oath.

12 MR. HARTER: Okay. I do recall that we,
13 and I don't recall the source of the money. It might have
14 been a tax return. That's plausible in time sequence, and
15 I remember my wife saying that she was giving a little bit
16 to everybody, and so that may have been the source of the
17 \$50 payment, that everybody got a little bit of whatever
18 money we got. So now that my memory is refreshed, that is
19 what my understanding of it was. I wasn't prepared for
20 the examination on that.

21 MR. ZUCKER: Okay. We accept that answer,
22 your Honor.

23 MR. HARTER: I don't remember it being
24 initiated by anything. It was external to this case.

25 JUDGE JONES: I see.

1 MR. HARTER: I'm thinking a tax return.

2 MR. ZUCKER: Your Honor, it's clear that
3 Mr. Harter wants to make an argument that the record that
4 we received he did not initiate. That does not change
5 issue No. 2AI. I think the issue still works. He can
6 obviously make whatever arguments he wants to make in his
7 brief.

8 JUDGE JONES: I'll tell you what we're
9 going to do. Because this issue of Bank of America has
10 come up, let's go ahead and get off the record and see if
11 we can get somebody on the phone. Yes, Mr. Harter?

12 MR. HARTER: I'm not saying I didn't
13 initiate it. I'm saying I didn't request it.

14 MR. ZUCKER: Okay. I meant the same thing.
15 My point is that the Bank of America really isn't --

16 JUDGE JONES: You're saying it's not
17 relevant.

18 MR. ZUCKER: It's not relevant, because the
19 issue is, did we do anything wrong.

20 JUDGE JONES: Mr. Harter, do you
21 understand?

22 MR. HARTER: In order -- they are saying we
23 didn't do anything wrong because we followed our tariff,
24 but they're only allowed to follow their tariff if the
25 customer requested electronic billing. So the question is

1 whether or not they are operating legally is did the
2 customer request the electronic billing. They've admitted
3 that, their own witness, that they can't tell from their
4 records whether or not I requested electronic billing, and
5 I said I did not request electronic billing, and there's
6 been no evidence introduced that I did. So.

7 JUDGE JONES: We're going into briefs I can
8 see now. You guys are going to start going back and
9 forth. Did you want to say something?

10 MR. ZUCKER: No. I still don't -- I accept
11 what he said, and I still don't -- I don't agree with it,
12 but I still don't think the Bank of America is relevant.
13 He can make his arguments without the Bank of America.

14 JUDGE JONES: We'll still make an attempt
15 to see if we can do something off the record with that.

16 MR. HARTER: I'll be happy to submit that
17 record with the case and let the decision be made as to
18 what to do.

19 JUDGE JONES: How much time do you all need
20 to brief this? And I'm suspecting it could depend, for
21 Mr. Harter at least, on when he can get information from
22 Bank of America. So we may not be able to make that
23 determination until after we get on the phone and talk to
24 someone and figure out why we didn't get this stuff in the
25 first place, and if we can get it, when, which I can't

1 imagine being too far out. I mean, 30 days is a normal
2 time for briefing, and I would want simultaneous briefs.
3 Do you want to reply to one another?

4 MR. ZUCKER: I really don't.

5 JUDGE JONES: Don't have a preference. You
6 don't want a reply, is that what you're saying?

7 MR. ZUCKER: I don't think we need to.

8 JUDGE JONES: What about you, Mr. Harter?

9 MR. HARTER: I'll just submit all this
10 procedure with the case and everything you've said I agree
11 with. Whatever decision you make I can comply with.

12 JUDGE JONES: All right. We'll have
13 simultaneous briefs. Can't think of anything else we need
14 to talk about on the record. So --

15 MS. HERNANDEZ: Just in terms of the
16 transcript, I guess it depends on what we can get from
17 Bank of America today, but 30 days from the receipt of the
18 transcripts or 30 days from --

19 JUDGE JONES: Yeah, from receipt of the
20 transcript. How long will that take?

21 COURT REPORTER: About a week.

22 JUDGE JONES: After the transcript is filed
23 and in consideration of the information that we may or may
24 not get from Bank of America, I'll issue an Order setting
25 a briefing schedule so that it's clear for the record that

1 is supposed to happen. Okay.

2 MS. HERNANDEZ: That's fine. Thank you.

3 JUDGE JONES: All right. With that, then
4 we will go off of the record.

5 WHEREUPON, the hearing of this case was
6 concluded.

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STATE OF MISSOURI

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COUNTY OF COLE

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) ss.

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I, Kellene K. Feddersen, Certified

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Shorthand Reporter with the firm of Midwest Litigation

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