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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing
October 18, 2013
St. Louis, Missouri
VOLUME 2 @ PAGE 14

Charles Harter,)
)
Complainant,)
)
vs.) File No. WC-2013-0468
)
Missouri- American Water Company,)
)
Respondent.)

PRESIDING:
KENNARD L. JONES, Senior Regulatory Law Judge
ROBERT S. KENNEY, Chairman

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A P P E A R A N C E S

FOR THE COMPLAINANT:

CHARLES HARTER, PRO SE
827 South Sappington
St. Louis, MO 63126

FOR THE RESPONDENT:

TIMOTHY LUFT, ESQ.
MISSOURI AMERICAN WATER
727 Craig Road
St. Louis, MO 63141
(314) 996-2279

VIA TELECONFERENCE:

JENNIFER HERNANDEZ, Staff Counsel
AMY MOORE, PSC Staff
KAYLA JONES, Staff Counsel
GAY FRED, Consumer Service Department

ALSO PRESENT:

CHELSIE HARMON, Performance Specialist

COURT REPORTER:

ASHLEY C. HIGH, CCR(MO), CSR(IL), RPR
MIDWEST LITIGATION SERVICES
711 North Eleventh Street
St. Louis, MO 63101
(314) 644-2191
(800) 280-3376

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

2 (HEARING COMMENCED AT 10:01 A.M.)

3 (STAFF EXHIBIT 1 WAS MARKED FOR IDENTIFICATION.)

4 JUDGE JONES: Let's go ahead and go on
5 the record. This is Case Number WC-2013-0468.

6 Charles Harter, Complainant, versus Missouri
7 American Water Company, Respondent.

8 My name is Kennard Jones. I'm the Regulatory
9 Law Judge presiding over this case. To my left is
10 Chairman Robert Kenney.

11 And at this time, let's take entries of
12 appearances beginning with Mr. Harter.

13 MR. HARTER: I'm Charles Harter. I'm
14 the Complainant.

15 JUDGE JONES: And Missouri American
16 Water Company?

17 MR. LUFT: I'm Tim Luft, Counsel for
18 Missouri American Water, 727 Craig Road, St. Louis,
19 Missouri 63141. And with me is Chelsie Harmon.

20 JUDGE JONES: For the Staff of the
21 Commission.

22 MS. HERNANDEZ: Good morning. Jennifer
23 Hernandez and Amy Moore appearing on behalf of the
24 Staff of the Missouri Public Service Commission.

25 Our address is P.O. Box 360, Jefferson City,

1 Missouri 65102. And also here in the room with me
2 is Kayla Jones. She's one of the staff attorneys in
3 our Staff Counsel's Office, and Ms. Gay Fred, who is
4 Staff's expert witness.

5 JUDGE JONES: Okay. And I'll note for
6 record that although the Office of the Public
7 Counsel is a party to this matter they are not
8 present for the hearing.

9 There is a motion to discontinue service that
10 has been filed. And in a recent order, I stated
11 that we would deal with that motion first, separate
12 from the complaint at large. So let's go ahead and
13 start with that motion.

14 Mr. Luft?

15 MR. LUFT: Yes.

16 JUDGE JONES: Go ahead, and present
17 your argument.

18 MR. LUFT: Last time we were here for
19 the prehearing conference, we had an opportunity to
20 sit down with Mr. Harter, and we discussed this
21 matter for, I think, almost two hours.

22 We went over the bills and his issues, and it
23 became clear that the amount in dispute in this
24 small formal complaint is \$50.

25 Mr. Harter had not made a payment for almost

1 six months up until last night. He just informed us
2 before this hearing that he made a payment last
3 night at 4:45 for \$175. So his outstanding bill
4 was -- is \$624, if you subtract the \$50 at dispute,
5 he owes \$574, and after last night you subtract that
6 \$175 he paid, there's \$399 still owed.

7 The concern is that if you stop paying and
8 have no intention of paying that the bills just
9 getting higher and higher, and it's a cycle that you
10 would never get out of.

11 So once it became clear at that prehearing, I
12 filed a motion, because until last night there was
13 no payment for six months, and even that was a
14 partial payment, and there's no payment plan in
15 place.

16 JUDGE JONES: And I take it the payment
17 last night doesn't change your position?

18 MR. LUFT: It does not.

19 JUDGE JONES: Mr. Harter, first, let me
20 ask you, do you agree with the recitation of the
21 facts that Mr. Luft has set out?

22 MR. HARTER: Absolutely not. Almost
23 none of it.

24 JUDGE JONES: Did you --

25 MR. HARTER: Really the major ones.

1 JUDGE JONES: Did you make a payment
2 last night of 175?

3 MR. HARTER: No, I made a payment last
4 night of \$175.73 as they requested.

5 Off the record.

6 (THERE WAS AN OFF-THE RECORD DISCUSSION.)

7 JUDGE JONES: Well, total past amount
8 due, according to the document you've just handed
9 me, which I assume you want marked as an exhibit --

10 MR. HARTER: Yes.

11 JUDGE JONES: -- is \$423.65.

12 MR. HARTER: Yes. The requirement is
13 to pay the current amount, not the amounts in
14 dispute --

15 JUDGE JONES: Well, slow down, slow
16 down. The requirement -- so what requirement are
17 you referring to?

18 MR. HARTER: The rules of the
19 Commission.

20 JUDGE JONES: You mean Chapter 13?

21 MR. HARTER: Yes, 4 CSR.

22 JUDGE JONES: Here's a copy of Chapter
23 13, can you show me the rule to which you're
24 referring?

25 Have you seen this, Mr. Luft?

1 MR. LUFT: Before the hearing today,
2 and he just provided a copy.

3 Our response would be that there's still a
4 \$423 ambulance due in owing, even if you subtract
5 the \$50 that's in dispute --

6 MR. HARTER: Well --

7 JUDGE JONES: You look, and let him
8 speak.

9 MR. LUFT: You still have a past due of
10 almost \$400.

11 JUDGE JONES: Let the record reflect
12 that Mr. Harter has made reference to 4 CSR
13 240-13.070(6): A utility shall not discontinue
14 residential service relative to a matter in dispute
15 during the pendency of an informal complaint and
16 until at least 31 days after the date of the letter
17 issued pursuant to Section (4), and shall in no case
18 discontinue the service without leaving a notice for
19 disconnection -- of discontinuance after the date of
20 the letter issued pursuant to Section (4).

21 Section (4): If the staff is unable to
22 resolve the complaint to the satisfaction of the
23 parties, the staff should send a dated letter to
24 that effect to the complainant and to the utility.

25 I take it you received that letter?

1 MR. HARTER: No. If I may respond
2 to -- he had a record of summation, and I would like
3 to --

4 JUDGE JONES: Right.

5 MR. HARTER: And you asked me if I
6 agreed, and I said no. The amount in dispute is not
7 \$50. The amount in dispute is the entire bill.

8 And in addition, I included in my complaint,
9 by reference, previous complaints, which permeate
10 this case like background radiation.

11 They were nice enough to provide this at my
12 request, it's a usage. This is my only copy, I'd be
13 happy to submit it, but what it shows is that my
14 standard usage is less than 30 cubic feet, and it
15 goes up at times into the 60s and 70s, and then it
16 goes back down to 29

17 And I would submit since my family has lived
18 unchanged in that house this entire time, that the
19 change in usage is probably due to a leak, and I
20 should be -- according to their own information,
21 given a break on that for a leak -- a leak is not
22 usage.

23 JUDGE JONES: Well, let me stop you
24 right there --

25 MR. HARTER: So --

1 JUDGE JONES: -- let me stop you right
2 there --

3 MR. HARTER: -- well, I don't want to
4 argue that.

5 JUDGE JONES: When I say: Let me stop
6 you, that means stop.

7 MR. HARTER: Yes.

8 JUDGE JONES: In your original
9 complaint there's no mention of a leak.

10 MR. HARTER: Yes, there is. On the
11 second page: This complaint incorporates prior
12 informal complaints, see 04281, 914, 6237, 1648.

13 And those complaints concerned the
14 non-allowance of leaks. So in that sense the rule
15 speaks relative to, and I'm certain that under any
16 definition -- we haven't decided it, we decide it at
17 the hearing, you'll decide it at some point, but it
18 is certainly at issue. My entire bill is at issue.

19 And the fact that they're continuing to bill
20 me at a rate of 68 cubic feet when what my family
21 uses is less than 30, that's more than double,
22 that's a leak.

23 I live in a 1927 farmhouse, it has leaks. And
24 I would submit that that is a matter that needs be
25 determined since I have complained about it. And

1 regardless of what the ultimate decision is on that
2 issue, and I don't know what that will be, there's
3 no doubt that it is in dispute, and that they can't
4 disconnect me for failure to, pay because everything
5 is not \$50. They wish it was \$50. It's not \$50.
6 Everything is in dispute. Everything -- my bill for
7 the last ten years is in dispute.

8 JUDGE JONES: Well, I'm not going to
9 agree or disagree on the leak issue.

10 Let me ask Staff. Ms. Hernandez, in Staff's
11 investigation, was there any concern about a leak at
12 Complainant's residence?

13 MS. HERNANDEZ: Not in this formal
14 complaint, but there was an allegation of a leak
15 issue in a prior formal complaint dating back to
16 October of 2011.

17 And our records show that --

18 MR. HARTER: That was an informal
19 complaint --

20 MS. HERNANDEZ: -- Staff's note in
21 the -- our tracking system, we have documented as
22 far as a leakage estimate, Mr. Harter has been
23 advised to mail in receipts showing that he has
24 fixed the problem, and we sent the closure letter to
25 him on November 2nd, 2011, and we did not hear back

1 from Mr. Harter.

2 JUDGE JONES: And I believe
3 you referred to the complaint as formal, but that
4 was an informal complaint?

5 MS. HERNANDEZ: Yes, those were the
6 informal complaints that Mr. Harter read off, that
7 are cited on the second page of his formal complaint
8 now pending.

9 JUDGE JONES: So Staff determined that
10 there was no leak, sent a closure letter to
11 Mr. Harter, and you didn't get a response?

12 MS. HERNANDEZ: We didn't make a
13 determination, we said: Please send us some
14 documents that you have fixed a leak, and then we
15 could go forward from that point in looking into if
16 there was a need for the company to make an
17 adjustment. But we never received anything back
18 from Mr. Harter on that point.

19 JUDGE JONES: And is that your
20 recollection, Mr. Harter?

21 MR. HARTER: I don't have a specific
22 recollection of that. I don't remember anything
23 except them sending me a letter. I don't remember
24 any discussion, contact, or anything else. They
25 sent me a letter, that's all.

1 I do know that when -- in -- what was it in
2 April -- yeah, in April 22nd when I filed this, that
3 I did call them, and I did talk to someone at the
4 Commission and I asked them if there was a time
5 limit, and -- that would prohibit making an informal
6 complaint into a formal complaint, if they expired,
7 you know, after 30 days, and they said no, that
8 there is no statute of limitations on that.

9 And that is when -- on the second page I added
10 the reference and said I'm just -- as long as I'm
11 going to make this formal, I'm going to include all
12 the past informals.

13 JUDGE JONES: Okay. You said you
14 recall getting a letter in regards to the informal
15 complaint concerning -- regarding your concerns of a
16 leak?

17 THE WITNESS: No, I didn't say I
18 recalled receiving it. I said: I don't have any
19 recall of it. They say they sent me a letter, I
20 don't know. I don't have any reference to it. I
21 don't have any opinion or thoughts or anything about
22 it. It's possible. I'm not disputing it.

23 But what I am saying is that it was not
24 resolved. I didn't consent to anything. There was
25 no resolution of the informal complaint, it's still

1 available to be a written complaint, and they
2 said -- they advised me of that. I thought maybe,
3 you know, after a year if you didn't pursue the
4 complaint that it ended or something, and they said
5 no, and so that's why I did that for shorthand
6 purposes.

7 I just referenced them, assuming that you, the
8 PSC, would have records and rely on their own
9 records of the previous informal complaints as a
10 summary of -- rather than regurgitating them and
11 putting them back out in the form of a written
12 formal complaint, so that was a shorthand courtesy
13 to the Commission, that was why I referenced them.

14 At any rate, all I'm arguing at this point, is
15 that any amounts are in dispute, you can't say
16 they're not in dispute. You can say that I'm wrong,
17 or that I'm stupid, or you can say a lot of things
18 about me, but the one thing you cannot say is that
19 these are not in dispute. They are in dispute.

20 I complained about them in a formal written
21 complaint. The Commission accepted, therefore
22 they're in dispute. Therefore, the amounts -- any
23 amount of my bill, all amounts of my bill are in
24 dispute, and I can't be disconnected for the bill
25 until it's resolved. And they may owe me money.

1 When we're done with the hearing today, they may owe
2 me 5200 bucks, I don't know how much they're going
3 to owe me, because I've overpaid because of these
4 leaks.

5 JUDGE JONES: Now, you do realize that
6 in your response to the motion to dismiss, the
7 argument you're presenting now is not presented in
8 this plea.

9 MR. HARTER: No, right here, the first
10 thing I said, the total amount is \$50, that's
11 exactly the argument I'm presenting.

12 JUDGE JONES: Well --

13 MR. HARTER: The amount in dispute is
14 not \$50.

15 JUDGE JONES: Yeah, but now you're
16 saying that the total amount -- your argument
17 supporting -- the premise supporting this \$50 is
18 because the amount in dispute is whether or not
19 Respondent can refuse to allow Complainant a payment
20 plan, and whether or not once Respondent agrees to
21 allow Complainant a payment plan, and after
22 Complainant has made a payment pursuant to -- and to
23 the agreement of Respondent's activated payment plan
24 it can then renege and unilaterally cancel the
25 payment plan upon which the Complainant now relies

1 to avoid termination.

2 Reliance upon a payment plan seems to me to
3 assume that you think the amounts that you owe are
4 valid, but that you just need to have a payment plan
5 to pay them.

6 MR. HARTER: I'll put the argument in
7 writing --

8 JUDGE JONES: You already have your
9 argument in writing.

10 MR. HARTER: I can -- whether it's oral
11 or in writing, whether it's been argued or not,
12 whether you stumble upon on it on your own, or
13 whether I jump up and down about it, the truth is
14 the truth, the facts are the facts, the amount is in
15 dispute.

16 JUDGE JONES: Mr. Luft?

17 MR. LUFT: When we met on
18 September 20th here on the prehearing conference we
19 had a discussion on this very issue --

20 JUDGE JONES: The leak issue?

21 MR. LUFT: On the amount in dispute.

22 JUDGE JONES: Okay.

23 MR. LUFT: And --

24 MR. HARTER: I would object --

25 JUDGE JONES: Mr. Harter --

1 MR. HARTER: -- I would object to
2 anything in settlement being offered, that's
3 privileged, you can't introduce into evidence --

4 JUDGE JONES: Are you getting ready to
5 talk about a settlement offer that you made?

6 MR. LUFT: Nope.

7 JUDGE JONES: Okay. Go ahead.

8 MR. HARTER: He just said at the
9 settlement conference.

10 MR. LUFT: The prehearing conference.

11 MR. HARTER: That was the settlement
12 conference, there wasn't a prehearing conference.

13 MR. LUFT: Okay. On page --

14 JUDGE JONES: Let him continue.

15 MR. LUFT: -- page 9 of the transcript,
16 Line 2, Judge Jones asks the question: So you don't
17 agree that you owe 600 some odd dollars. Answer,
18 Mr. Harter: I don't dispute it. I haven't
19 investigated it.

20 JUDGE JONES: I'm not going to rule on
21 the motion today. I'm going to present this to the
22 Commission.

23 CHAIRMAN KENNEY: Can I ask a question?

24 JUDGE JONES: Sure.

25 CHAIRMAN KENNEY: Can I ask just a

1 background question? Are you a lawyer?

2 MR. HARTER: Yes.

3 CHAIRMAN KENNEY: Okay. Because I just
4 noticed your NBA number on there, so I just wanted
5 to confirm that fact. Okay. That's the only
6 question I had.

7 JUDGE JONES: I will tell you this, we
8 will rule on the motion before we rule on the case
9 at large.

10 And Mr. Luft, has the company issued a 10-day
11 notice?

12 MR. LUFT: Not recently.

13 JUDGE JONES: Okay. All right.

14 MR. HARTER: I would like --

15 JUDGE JONES: Do you have anymore
16 argument --

17 MR. HARTER: Yes, I would like to mark
18 that and introduce it.

19 JUDGE JONES: Do you have copies?

20 MR. HARTER: Yes.

21 JUDGE JONES: That will be marked as
22 Complainant's 1.

23 (COMPLAINANT'S EXHIBIT 1 WAS MARKED FOR
24 IDENTIFICATION.)

25 JUDGE JONES: And Mr. Luft, do you

1 have any objection -- do you want to offer it --

2 MR. HARTER: Yes.

3 JUDGE JONES: -- or do you just want to
4 mark it?

5 MR. HARTER: I want to offer it.

6 JUDGE JONES: Do you have any objection
7 to Complainant's Exhibit 1?

8 MR. LUFT: No, I don't.

9 JUDGE JONES: Does Staff have any
10 objection? Have you seen this exhibit,
11 Ms. Hernandez?

12 MS. HERNANDEZ: No, if you can just
13 give me a summary of what it is, I can probably tell
14 you whether we object or not.

15 MR. HARTER: It's a record --

16 MS. HERNANDEZ: Is it a copy of the --

17 JUDGE JONES: Let me explain this to
18 them.

19 MR. HARTER: It's a --

20 JUDGE JONES: Let me explain this to
21 them. It's a billing summary for his account
22 showing a total past amount due of 423.65, showing
23 current water services amounting to 175.73. It's
24 essentially a bill and an attached receipt --

25 MS. HERNANDEZ: I'm sorry to interrupt

1 you. No, we wouldn't object if it's a bill from the
2 company.

3 MR. HARTER: It's a receipt of a
4 payment is what it is at Schnuck's --

5 JUDGE JONES: I'm going to explain this
6 right now, Mr. Harter, you have to follow my
7 instructions during the hearing, okay? Do you
8 understand what I'm saying?

9 MR. HARTER: Yes.

10 JUDGE JONES: Okay.

11 MR. HARTER: Is there a way to send
12 this to them?

13 JUDGE JONES: They don't need to get it
14 right now.

15 MR. HARTER: Okay. And you have a copy
16 --

17 JUDGE JONES: And it appears you wanted
18 to mark something else?

19 MR. HARTER: Well, it's -- I wanted
20 to -- the original --

21 JUDGE JONES: What do you want us to do
22 with the original?

23 MR. HARTER: I wanted that to be
24 introduced and taken into evidence.

25 JUDGE JONES: Let's see. I assume you

1 want the original taken because there's information
2 under the receipt that you want to be considered?

3 MR. HARTER: Well, just that it -- in
4 its structure and form it shows that it's a receipt
5 attached to the bill.

6 JUDGE JONES: That's what that shows --
7 that's what the copy shows. My question is do you
8 want the information that the receipt covers --

9 MR. HARTER: Okay.

10 JUDGE JONES: -- to be seen or not, is
11 that something you want to be considered?

12 MR. HARTER: No, I'll do it as the
13 Court directs.

14 JUDGE JONES: Okay. Now you had a
15 second document that you wanted marked.

16 MR. HARTER: Yes, but it was just
17 handed to me by the utility at the beginning, and
18 they've got additional copies and I don't, so I
19 would like, if I could, to mark one of theirs. It's
20 actually their exhibit, but. That, or I have to go
21 out to the copy machine.

22 JUDGE JONES: I'm handing you a
23 document, is this the document you want marked?

24 MR. HARTER: It appears to be.

25 JUDGE JONES: I've been handed a usage

1 transaction report. It looks like it goes back to
2 2004 through March of 2013. I'm not understanding
3 the two pages, because the dates seem to almost
4 overlap, because one page shows something different
5 than the second page.

6 MS. HARMON: The first page, the front
7 page, just shows the usage. And then starting at
8 the bottom of the front page you see the read
9 information, and the type of read, and then the
10 usage.

11 So it is a duplication of the information, it
12 just prints it out in a different way on the second
13 page. It's the same dates, it just provides you
14 with more information on the second page, and at the
15 bottom, about the consumption.

16 MR. LUFT: We're not offering this as
17 an exhibit, he just requested it, so we brought it.

18 JUDGE JONES: Okay. But you want to
19 offer it as an exhibit?

20 MR. HARTER: Yes.

21 JUDGE JONES: Can you pass that around
22 to the court reporter?

23 (COMPLAINANT'S EXHIBIT 2 WAS MARKED FOR
24 IDENTIFICATION.)

25 JUDGE JONES: And do you have any

1 objection, Mr. Luft, to Complainant's Exhibit 2?

2 MR. LUFT: I do not.

3 JUDGE JONES: Ms. Hernandez, do you
4 have any objection to Complainant's Exhibit 2?

5 MR. LUFT: No, I believe Mr. Luft
6 e-mailed a copy to Staff last evening for review, so
7 I have no objection.

8 JUDGE JONES: Complainant's Exhibit 2
9 is admitted into the record.

10 And Mr. Harter, with regard to your motion, do
11 you have any other exhibits you'd like to mark?

12 MR. HARTER: It's their motion, and no,
13 I don't.

14 JUDGE JONES: Well, with regard to your
15 response, I should say.

16 MR. HARTER: Yes, and no.

17 JUDGE JONES: Mr. Luft, would you like
18 to make any further argument on your motion?

19 MR. LUFT: That's all. Thank you.

20 JUDGE JONES: Mr. Harter, would you
21 like to make any further argument?

22 MR. HARTER: No.

23 JUDGE JONES: Okay. All right. Well,
24 let's move on to the case at large. The Staff has
25 filed on behalf of the parties a list of witnesses,

1 and the order for those witnesses, and the order for
2 Cross, and we'll start with Complainant.

3 Mr. Harter, will you can raise your right hand
4 please?

5 CHARLES HARTER,
6 of lawful age, having been produced, sworn and
7 examined, testified as follows:

8 MR. HARTER: Yes, I do.

9 JUDGE JONES: Okay. I'm going to let
10 you make a statement, and then we'll go into Cross,
11 but first I want to ask you a question.

12 In your complaint, what statute, Commission
13 rule, or tariff provision do you allege Missouri
14 American has violated?

15 MR. HARTER: 4 CSR 240-13.050 and 4 CSR
16 240-13.055, and 4 CSR 240-13.045. And of course, as
17 we've already discussed, but in the bifurcated
18 hearing, but 4 CSR 240-13.070 and 4 CSR 240-13.060.

19 JUDGE JONES: You may want to keep that
20 for reference. We'll start with 050. Can you
21 testify to the facts that show a violation of
22 13.050?

23 MR. HARTER: Yes.

24 JUDGE JONES: Please proceed with that.

25 MR. HARTER: 4 CSR 240-13 -- did you

1 say 050?

2 JUDGE JONES: Yes, sir.

3 MR. HARTER: Subsection (5), two-thirds
4 of the way through: Discontinuance of service nor
5 shall such a notice be issued as to any bill or a
6 portion of bill which is the subject of a settlement
7 agreement, except after breach of a settlement
8 agreement.

9 JUDGE JONES: What you've done is read
10 the rule, right?

11 MR. HARTER: That is -- yeah.

12 JUDGE JONES: Can you give us facts to
13 support --

14 MR. HARTER: Yes, I can.

15 JUDGE JONES: -- your conclusion that
16 they've violated that Commission rule?

17 MR. HARTER: Yes. Would you like me to
18 give a statement?

19 JUDGE JONES: Yes, please.

20 MR. HARTER: Okay. In the first week
21 of December we were threatened with disconnection.
22 We had no funds. I am disabled. My wife is
23 disabled. We're raising a family and four children
24 on disability benefits is not easy.

25 And that was right before Christmas, at the

1 end of the year when everything comes due. And I
2 went to an organization called CAASTL, and I applied
3 through their very stringent application, and I
4 qualified for their assistance.

5 And it will be easier, I think -- I don't want
6 to misspeak, I'm under oath -- to supplement details
7 with the company records, but I don't want to go out
8 of order.

9 JUDGE JONES: Just give your -- you're
10 testifying, so --

11 MR. HARTER: Right. As I say, I don't
12 want to misspeak, but CAASTL agreed to pledge the
13 payment as long as we made a payment that was beyond
14 their ability to pledge.

15 And do you have that -- does utility have the
16 amounts? It was a -- I made a payment, I believe,
17 on December 5th.

18 These are the payments? Oh. Appears to be
19 \$12 on December 4th, which I -- so they said if you
20 make this payment, which I did, I don't remember
21 whatever store was closest, it wasn't my
22 neighborhood, I was at CAASTL, then they would make
23 a pledge, which they did.

24 And again, this is beyond my ability to see or
25 know, but it's my understanding that the utility

1 accepted that pledge, and together with my payment,
2 paid my bill in full.

3 And then in January -- once again, I'm -- I
4 have a memory of what happened, and I'm relying on
5 the company to supply the dates, if they're
6 incorrect, please don't say that I misspoke. I'm
7 saying I remember things that this happened in
8 January --

9 JUDGE JONES: Just talk about what you
10 remember.

11 MR. HARTER: Okay. I called them up.
12 And I asked for an agreement -- a payment agreement,
13 and they said: Yes, you can. And they set out what
14 it would be, and they said in order to initiate this
15 agreement you had to pay \$50, and you had to pay it
16 by -- I'm not held to the details --

17 JUDGE JONES: A certain date?

18 MR. HARTER: Yeah, a certain date. I
19 think it was February 5th, but by a certain date,
20 then I could have the agreement, and that is what
21 they said.

22 So I went and as soon as I had the funds, the
23 money, it's difficult in January, but I was able to
24 find the \$50 and I made the payment. And so, in the
25 past, not in something that's complained of, and so

1 I'm just -- there --

2 JUDGE JONES: So what you're telling me
3 is what you're about to say is irrelevant?

4 MR. HARTER: No, it's relevant to what
5 their records say and what I did.

6 JUDGE JONES: All right. Go ahead.

7 MR. HARTER: There had been a confusion
8 in a time in which I had made a payment at Schnucks,
9 or Dierbergs, or whatever, and still been
10 disconnected. And they said the reason was because
11 I didn't call in and report it, similar to
12 Exhibit 1, the reference number -- I don't know,
13 there's an REC number that apparently you have to
14 call that number in the utility.

15 Although, I don't understand why the burden is
16 on the poor people to do this when the utility has
17 digital records supplied by the grocery stores
18 confirming that the payment had been made.

19 Like I said, that happened before, that was an
20 old experience, and that is why I stressed when I
21 called them that I would be calling them when I made
22 the payment.

23 That was not the substance of our phone
24 conversation, the substance of the phone
25 conversation was: Can I get a payment agreement.

1 And they said: Yes, if you pay \$50. And I said: I
2 will do that, and I will call you, and report it
3 when I've made the \$50. And what that came out from
4 the company's records, which I suppose they do, is
5 that I called to report that I was going to call
6 them when I made the payment, which is true, and not
7 true.

8 Yeah, I said that, but that wasn't why I
9 called them. I didn't call them to say -- because
10 that doesn't make sense, why would I make a payment
11 agreement -- why would I make a payment unless it
12 was pursuant to an agreement, would I just -- when I
13 owed 100 something -- \$176, whatever I owed, why
14 would pay 50, and the answer is I wouldn't.

15 CHAIRMAN KENNEY: Is the existence of
16 the agreement in dispute?

17 MR. HARTER: It's not written down
18 until you make the payment. You call them, they
19 tell you, here's the agreement, you're going to get
20 bomb, bomb, bomb, you're going to make three
21 payments of this much.

22 But in order to initiate the agreement, you
23 have to pay \$50, and then you call us up, tell us
24 you paid the \$50, we confirm it, and then we mail
25 you the payment agreement.

1 So until they mail you the payment agreement
2 there is no -- it's just errors, it's just a thing.
3 And then I asked them: Can you tell me the
4 recordings of what happened. And they gave me
5 transcripts from November, which is irrelevant, and
6 they gave me transcripts from April, which is
7 irrelevant. But the key time, which I requested, is
8 January and February, that's when the important
9 discussions and agreements and payment arrangements
10 are going on, that's when they were being made, and
11 those aren't provided.

12 So all I can tell you is I know what happened,
13 and I called them, and they said that's what I was
14 to do. And I did what they said to do, and so I
15 relaxed, I said: Oh, good.

16 Then I called them up, I said: I made that
17 payment. And they said: We're going to send you
18 the agreement in May. I said: Great. So all I got
19 to do is sit and wait. And this has happened before
20 you look at the previous complaints.

21 JUDGE JONES: Let me ask you this. So
22 you spoke to someone -- you had a certain amount
23 due; is that correct?

24 MR. HARTER: Yes.

25 JUDGE JONES: You spoke with someone on

1 the phone?

2 MR. HARTER: Yes.

3 JUDGE JONES: And you all talked about
4 you making a payment and then subsequent payments.
5 Did you talk about that at all in that phone
6 conversation?

7 MR. HARTER: Yes.

8 JUDGE JONES: And you're saying the
9 first payment you're supposed to make was \$50?

10 MR. HARTER: Yes.

11 JUDGE JONES: And what was the next
12 payment that you were supposed to make?

13 MR. HARTER: That was going to be
14 mailed to me.

15 JUDGE JONES: The amount of the payment
16 was going to be mailed to you?

17 MR. HARTER: Yes. Okay. The way they
18 do it --

19 JUDGE JONES: Just so -- the answer is
20 yes, correct?

21 MR. HARTER: Yes.

22 JUDGE JONES: So when you got off of
23 the phone after the first conversation, you didn't
24 know what the second payment amount was supposed to
25 be?

1 MR. HARTER: No, I -- it was going to
2 be in three payments.

3 JUDGE JONES: 50, and then something
4 else, did you know how much that was supposed to be?

5 MR. HARTER: I --

6 JUDGE JONES: The second payment, did
7 you know how much that was going to be?

8 MR. HARTER: I had an idea of it, but I
9 didn't know it.

10 JUDGE JONES: I don't understand the
11 distinction.

12 MR. HARTER: They don't -- they're not
13 explicit in the details, but they are firm on the
14 agreement. In other words, if you pay the \$50, my
15 understanding of it, then they will mail you the
16 details of the plan, because they don't know what
17 date you're going to pay the \$50, what the situation
18 will be, so they can't tell you to the penny what
19 everything is going to be, because it changes, I
20 guess there's entries and stuff.

21 So in order to -- as I understand it, to
22 initiate, and to confirm, and to set into effect the
23 payment agreement it's done on the phone, you call
24 up, they tell you to make the payment, make the
25 payment, and then call them up and say: I made the

1 payment, and then they say: Okay, we're going to
2 give you the agreement.

3 And that's where we apparently have a
4 disagreement on the facts, because they say that
5 didn't happen, I say that did happen. And they said
6 they would send it, so I'm sitting there at this
7 point, going: Okay, shew, not going to
8 disconnected, everything is good. And I'm waiting
9 for the thing, and when they send me the thing then
10 I have to pay according to the plan, but I can't
11 initiate the plan.

12 JUDGE JONES: Did they send you
13 anything in the mail?

14 MR. HARTER: No.

15 JUDGE JONES: Okay. So according to
16 you, you didn't have an agreement?

17 MR. HARTER: That was on February 2nd.

18 JUDGE JONES: There was no agreement
19 then?

20 MR. HARTER: No, there was.

21 JUDGE JONES: But you've just testified
22 that the receipt of whatever it is they mail you,
23 creates the agreement.

24 MR. HARTER: It was, as far as I knew,
25 in the mail. I agreed with them on February 2nd.

1 And on February 5th is when they -- 6th -- 5th, I
2 think, they disconnected me.

3 So as far as I knew I was not -- they told me
4 you will not be disconnected. On the phone, I said:
5 Will I be disconnected, and they said: No, you're
6 not going to be disconnected. This agreement's in
7 effect. We're going to mail you the details. All
8 you have to do is make the payments pursuant to this
9 thing.

10 And then instead of receiving that in the
11 mail, I get the guy at the door disconnecting me.
12 And I say: Why are you disconnecting me. I made
13 the payment. I got the thing all set up.

14 And that -- and after that, that is when
15 this -- I believe the 6th, that is when they said
16 you weren't eligible. They never said that before,
17 that was something they said after they disconnected
18 me for the first time. They didn't say it in
19 January. They didn't say it in December. They
20 didn't say on February 2nd. They didn't say it when
21 they came to disconnect me. They never said --

22 JUDGE JONES: Mr. Harter, let me slow
23 you down.

24 MR. HARTER: Sure.

25 JUDGE JONES: When you got off the

1 phone, with the understanding that you were to make
2 a certain of payment of \$50, did you think you had
3 an agreement with the company?

4 MR. HARTER: Yes.

5 JUDGE JONES: Okay. When you did not
6 receive something in the mail from them, did you
7 think you had an agreement with the company?

8 MR. HARTER: Yes. There's two
9 different phone calls. There's one in January, I
10 think it's the 24th, it might have been the 21st,
11 I'm not disputing the date, but it's in the middle
12 of the January, whatever the records show, they do
13 show that I called them.

14 And then that is when they said: You need to
15 pay \$50, and then call us when you pay the \$50, and
16 we'll tell you what your agreement is. So I paid
17 the \$50, and now we're talking February 2nd, I
18 believe -- once again, I don't dispute the date with
19 record.

20 I called them, I said: I made my \$50 payment.
21 And they said: I see it here. We acknowledge that
22 you've made this payment. We're going to start your
23 payment plan now. Your payment plan is going to be,
24 and I wasn't taking notes, I was just sitting there
25 listening. I don't want to testify wrongly, but it

1 might have been \$3.28, but whatever it was, they
2 said: You're going to make three payments of the
3 balance that's left. We're going to send you a
4 letter, it's going to set out the thing. I've
5 gotten previous letters. This has happened before.
6 This is procedure. This is way they do it.

7 JUDGE JONES: From your testimony what
8 I'm gathering is that you had an agreement on the
9 phone and that they were going to simply mail you
10 something that puts that agreement in paper, in
11 writing; is that what you're saying?

12 Mr. Harter?

13 MR. HARTER: I'm trying to -- here.

14 JUDGE JONES: Well, just hold onto that
15 for a moment, if you have something to talk about,
16 but I need you to answer my question.

17 MR. HARTER: Uh-huh. Yes and no. Yes,
18 that there was an actual enforceable viable --

19 CHAIRMAN KENNEY: Mr. Harter, I'm
20 sorry, did you understand the question?

21 MR. HARTER: Yes.

22 JUDGE JONES: When you got off the
23 phone --

24 MR. HARTER: Which, in January or in
25 February?

1 JUDGE JONES: The first time you spoke
2 to them.

3 MR. HARTER: Okay.

4 JUDGE JONES: You agreed to pay a
5 certain amount?

6 MR. HARTER: In January it was just an
7 offer, it wasn't an agreement. The offer was if you
8 pay \$50, then we will extend you a payment plan,
9 that was it.

10 JUDGE JONES: And did they do that?

11 MR. HARTER: Yes and no. Orally they
12 did, but they didn't actually do what they promised
13 to do.

14 JUDGE JONES: Did you do what you
15 promised to do?

16 MR. HARTER: Yes.

17 JUDGE JONES: Which is go pay the \$50?

18 MR. HARTER: Yes, and called them.

19 JUDGE JONES: And did you call them?

20 MR. HARTER: Yes.

21 JUDGE JONES: And then what was that
22 conversation about?

23 MR. HARTER: That was on February 2nd,
24 I called them, I said: I paid the \$50. And they
25 said: Great. And they checked, and they said:

1 Yes, we have a record of it. We've received your
2 payment. We've going set you up on a payment plan.

3 JUDGE JONES: And did that happen?

4 MR. HARTER: It didn't happen until
5 after they disconnected me. It was supposed to
6 prevent disconnection on the 5th, but it didn't.
7 They came out and they disconnected me on the 5th,
8 and I said: Why are you disconnecting me when I
9 made the payment.

10 CHAIRMAN KENNEY: The 5th of what,
11 February?

12 MR. HARTER: Yes.

13 CHAIRMAN KENNEY: And the conversation
14 that you had, informing them that you paid the 50
15 bucks happened on the 2nd of February or
16 thereabouts?

17 MR. HARTER: As I said --

18 CHAIRMAN KENNEY: Early February? I'm
19 not asking you for the specific date --

20 MR. HARTER: You just asked me if it
21 was on the 2nd.

22 CHAIRMAN KENNEY: I said or
23 thereabouts.

24 MR. HARTER: Or thereabouts, yes.

25 CHAIRMAN KENNEY: All right. Whatever

1 the records show.

2 MR. HARTER: Let me --

3 CHAIRMAN KENNEY: Just follow this.

4 MR. HARTER: Okay.

5 CHAIRMAN KENNEY: You got to pay
6 attention, Mr. Harter.

7 MR. HARTER: According to their records
8 --

9 JUDGE JONES: Mr. Harter?

10 CHAIRMAN KENNEY: Mr. Harter, pay
11 attention.

12 MR. HARTER: Yeah.

13 CHAIRMAN KENNEY: So you paid the \$50,
14 called them and informed them that you paid the \$50,
15 and in your mind that initiated payment plan,
16 correct?

17 MR. HARTER: No, it wasn't in my mind,
18 it was in their mouth, they said it. It's not --

19 CHAIRMAN KENNEY: Just follow this.
20 You understood that the payment plan was to begin
21 upon payment of the \$50, that was your
22 understanding?

23 MR. HARTER: No, that is not correct.

24 CHAIRMAN KENNEY: Correct me, where am
25 I wrong?

1 MR. HARTER: The payment plan -- the
2 \$50 payment made me eligible to receive it, but they
3 initiated -- you have to call them, and you have to
4 say -- this is my understanding of it, you call
5 them, and you say I made the \$50 --

6 CHAIRMAN KENNEY: Yes.

7 MR. HARTER: -- if you pay \$50, and
8 then you don't do anything, maybe yes, maybe no, but
9 that \$50 payment does not initiate the plan, you
10 have to call them back and that initiates the plan.

11 CHAIRMAN KENNEY: So your understanding
12 was after that second conversation in which you
13 informed them that you had made the \$50 payment,
14 that initiated a payment plan?

15 MR. HARTER: Yes, because that's what
16 they told me.

17 CHAIRMAN KENNEY: And then they -- I'm
18 not -- I'm just trying to gather your understanding,
19 that's all you can testify to.

20 MR. HARTER: No, I can't. I can
21 testify to what I heard.

22 CHAIRMAN KENNEY: All right. That's
23 fine. That was then to be memorialized and then
24 mailed to you?

25 MR. HARTER: Yes.

1 CHAIRMAN KENNEY: And it was supposed
2 to document the three payments that you were to
3 make, correct?

4 MR. HARTER: Can you mark this as an
5 exhibit?

6 CHAIRMAN KENNEY: Mr. Harter, you've
7 got to pay attention and answer the questions --

8 MR. HARTER: I am.

9 CHAIRMAN KENNEY: -- that are being
10 asked. Put the paper down and just listen to me.

11 MR. HARTER: Okay.

12 CHAIRMAN KENNEY: So then that was to
13 be memorialized and mailed to you, correct?

14 MR. HARTER: In something just like
15 this. (Indicated.)

16 CHAIRMAN KENNEY: But that's an example
17 of a previous arrangement, right?

18 MR. HARTER: It's the same thing that
19 they --

20 CHAIRMAN KENNEY: Isn't it an example
21 of a prior arrangement? Is that what you're --
22 you're not answering my question, you're trying to
23 give the court reporter a piece of paper.

24 MR. HARTER: I'm sorry, what was the
25 question?

1 CHAIRMAN KENNEY: You're not paying
2 attention --

3 MR. HARTER: I am.

4 CHAIRMAN KENNEY: -- because you're
5 looking at that piece of paper. Is that an example
6 of a prior payment arrangement?

7 MR. HARTER: Yes, it is.

8 CHAIRMAN KENNEY: Okay. I'm not asking
9 about an example of a prior payment arrangement.

10 MR. HARTER: I understand that.

11 CHAIRMAN KENNEY: So what I'm asking --

12 MR. HARTER: You're asking me what I
13 expected --

14 CHAIRMAN KENNEY: So when you're
15 looking at the paper, I don't think you're not
16 paying attention --

17 MR. HARTER: I am paying attention,
18 that's why the questions are not being answered.

19 CHAIRMAN KENNEY: So then it was your
20 understanding that they were to memorialize that and
21 mail that to you, correct?

22 MR. HARTER: Yes.

23 CHAIRMAN KENNEY: And you did not
24 receive it, correct?

25 MR. HARTER: No, I did.

1 CHAIRMAN KENNEY: You did receive the
2 memorialization of the payment plan?

3 MR. HARTER: Yes.

4 CHAIRMAN KENNEY: Oh, okay. That
5 wasn't my understanding. You said you didn't
6 receive anything from them. So do you have a copy
7 of it?

8 MR. HARTER: They did not send it until
9 the 6th.

10 CHAIRMAN KENNEY: Of February?

11 MR. HARTER: Yes.

12 CHAIRMAN KENNEY: Okay.

13 MR. HARTER: After I was disconnected.

14 CHAIRMAN KENNEY: So you do have a copy
15 of it, though?

16 MR. HARTER: Everyone does.

17 CHAIRMAN KENNEY: Okay. Has it been
18 introduced into evidence?

19 JUDGE JONES: Do you have a copy of it,
20 Mr. Harter.

21 CHAIRMAN KENNEY: Forgive me, I'm just
22 trying to verify that --

23 JUDGE JONES: It's fine.

24 CHAIRMAN KENNEY: Do you have a copy of
25 it?

1 MR. HARTER: They did not -- okay. I
2 am disabled. I'm trying to answer you.

3 CHAIRMAN KENNEY: I understand.

4 MR. HARTER: You're asking me very
5 specific questions, and I am under oath, and you are
6 not.

7 JUDGE JONES: Let me ask you this --

8 CHAIRMAN KENNEY: Do you have a copy of
9 the memorialization that you said was mailed to you?

10 MR. HARTER: Can I go back? Can I go
11 back?

12 JUDGE JONES: Mr. Harter, does your
13 disability affect your ability to answer specific
14 questions?

15 MR. HARTER: Yes, it does.

16 JUDGE JONES: How so?

17 MR. HARTER: Asperger's.

18 JUDGE JONES: So if I ask you: Is
19 today Friday, that's a specific question.

20 MR. HARTER: Uh-huh.

21 JUDGE JONES: Does your disability keep
22 you from answering that question?

23 MR. HARTER: It could.

24 JUDGE JONES: So are you saying that
25 your testimony could be wholly unreliable?

1 MR. HARTER: No, I'm not saying that
2 whatsoever.

3 CHAIRMAN KENNEY: Let me just -- I
4 understand you have a disability. Do have a copy of
5 memorialization of the payment plan?

6 MR. HARTER: I don't know. May I
7 answer your question? Because you said: Did you
8 ever receive it. And the thing is, yes, after I
9 complained to the PSC, okay, but did I receive it
10 prior to the disconnection, which is what is
11 relevant, the answer is no.

12 CHAIRMAN KENNEY: Well --

13 MR. HARTER: Did I receive something
14 that I thought was coming pursuant to the
15 February 2nd call, the answer to that I think would
16 be no, I did not.

17 CHAIRMAN KENNEY: You didn't receive it
18 until after you were disconnected, I understand
19 that.

20 MR. HARTER: I didn't receive something
21 generated -- see, once again, you're asking me under
22 oath to say what they did --

23 CHAIRMAN KENNEY: No, I'm not, no,
24 I'm not --

25 MR. HARTER: -- I don't know what they

1 did.

2 CHAIRMAN KENNEY: -- I'm not asking you
3 that.

4 MR. HARTER: I don't know the source of
5 it. I suspect --

6 CHAIRMAN KENNEY: Can I see what it is
7 that you're referring to?

8 MR. HARTER: -- that I never received
9 anything. What I was referring to when?

10 CHAIRMAN KENNEY: That you received.
11 Whatever it is that you said you received, whenever
12 you received it.

13 MR. HARTER: Okay. Can I mark this?

14 CHAIRMAN KENNEY: Can I see it before
15 you mark it?

16 MR. HARTER: Well --

17 CHAIRMAN KENNEY: Just let me see it.
18 Thank you.

19 MR. HARTER: I'm really not the expert
20 on their procedures.

21 CHAIRMAN KENNEY: Now, this is
22 referring to events from July of 2011.

23 MR. HARTER: Exactly. It's the kind --
24 it's an example of what --

25 CHAIRMAN KENNEY: I understand that --

1 MR. HARTER: -- it says auto generated.

2 And that's the kind of thing --

3 JUDGE JONES: Mr. Harter, it may help
4 if you slow down --

5 MR. HARTER: Okay.

6 JUDGE JONES: -- and just --

7 CHAIRMAN KENNEY: Can I just say
8 something? I'm not trying to trick you.

9 MR. HARTER: Seems like it.

10 CHAIRMAN KENNEY: I know it does. And
11 I want to clarify that, I'm not trying to trick you.
12 I'm trying to get clear in my mind the progression
13 of events --

14 MR. HARTER: All right.

15 CHAIRMAN KENNEY: -- so I'm just asking
16 you to help me to understand. I'm not trying to
17 trick you, and these are not -- I promise you. This
18 is an example. What I'm asking you --

19 MR. HARTER: Well, I mean --

20 CHAIRMAN KENNEY: -- is if you have the
21 document that was -- go ahead and have it marked as
22 an exhibit, that's fine.

23 MR. HARTER: That needs to be marked,
24 we're on the record, and I'm under oath.

25 CHAIRMAN KENNEY: Fine. But what are

1 you -- that's marked for what purpose, to show an
2 example of the type of document that you're
3 referring to, fine.

4 What I'm asking for is the February 6th
5 document -- I think you referred to it as
6 February 6th, if you have it.

7 MR. HARTER: Do you have it?

8 CHAIRMAN KENNEY: Mr. Harter, I'm
9 asking you, if you have it.

10 MR. HARTER: I'm asking them if they
11 have it.

12 JUDGE JONES: Mr. Harter --

13 CHAIRMAN KENNEY: But you have to
14 answer my question.

15 MR. HARTER: I don't know. I've
16 already answered your question --

17 CHAIRMAN KENNEY: You don't know if you
18 have it?

19 MR. HARTER: -- I don't know if I have
20 it or not.

21 CHAIRMAN KENNEY: What do you think --
22 you said you've seen it at some point.

23 MR. HARTER: I do not know. I cannot
24 answer you. I will call a time out and I'll look
25 through this. I'd like to ask --

1 CHAIRMAN KENNEY: Take a time out.

2 MR. HARTER: Take a recess. Do they
3 have a record? I don't really want to testify --

4 JUDGE JONES: Rather than speaking --

5 MR. HARTER: -- about things that are
6 --

7 JUDGE JONES: -- Mr. Harter --

8 MR. HARTER: -- that are written
9 record.

10 JUDGE JONES: -- rather than speaking,
11 just focus on the task.

12 CHAIRMAN KENNEY: Just look.

13 MR. HARTER: Because this --

14 JUDGE JONES: Mr. Harter, rather than
15 speaking --

16 MR. HARTER: I can't --

17 JUDGE JONES: You have to figure out a
18 way to be quiet and look --

19 MR. HARTER: This is --

20 JUDGE JONES: -- Mr. Harter?

21 CHAIRMAN KENNEY: This is another
22 example of what you're talking about, Mr. Harter?

23 MR. HARTER: Yes, it is.

24 CHAIRMAN KENNEY: Can I see it before
25 you mark it?

1 (COMPLAINANT'S EXHIBIT 3 WAS MARKED FOR
2 IDENTIFICATION.)

3 JUDGE JONES: We have an exhibit
4 marked --

5 MR. HARTER: Two exhibits.

6 JUDGE JONES: Well, you know, we can
7 mark this. I assume you want to offer it, right?
8 Both of these are going to be offered? The one she
9 has marked and the one that you are offering be
10 marked; is that correct?

11 MR. HARTER: Well, here's a more recent
12 one. Can't I ask them a question since you're
13 asking about their records and their procedure,
14 which I can't --

15 JUDGE JONES: Mr. Harter, when their
16 witnesses testifying, then you'll be asking them
17 questions.

18 MR. HARTER: Okay.

19 CHAIRMAN KENNEY: I think you've
20 answered my question.

21 MR. HARTER: Okay. What is your
22 question?

23 CHAIRMAN KENNEY: You answered it. You
24 did, you're fine.

25 MR. HARTER: That is what I was

1 anticipating to receive, something like that.

2 CHAIRMAN KENNEY: Something like that,
3 right. And you're not sure if you actually did or
4 not?

5 MR. HARTER: No, I did not. I never
6 did, no, I am sure of that. The question you asked
7 was: Did I ever receive anything, and that I'm not
8 sure, because I complained to the PSC and some
9 arrangement was made so that I was not disconnected
10 pursuant to an agreement that was brokered by the
11 PSC. And as of that, that would be records that
12 everyone here, other than me, would have greater
13 access to.

14 But the question you asked was: Did I receive
15 anything, and I'm under oath, but did I receive
16 something like Exhibit 3, which I was anticipating
17 to receive based on what I considered to be our
18 agreement on the phone on February 2nd, no, I never
19 did, instead I got a knock on the door on the 5th or
20 the 6th, which is it -- once again, I'll refer to
21 the records, and I got disconnected, and I called
22 the company and then --

23 CHAIRMAN KENNEY: Very well.

24 JUDGE JONES: Okay. Go ahead with your
25 recitation of --

1 MR. HARTER: I think we are pretty much
2 through with it.

3 JUDGE JONES: Okay. Is there any
4 Cross-Examination from Staff?

5 MS. HERNANDEZ: No, thank you.

6 JUDGE JONES: Is there any
7 Cross-Examination from Missouri American.

8 MR. LUFT: No.

9 MR. HARTER: I would like to add --

10 JUDGE JONES: You want to add
11 something?

12 MR. HARTER: Yes.

13 JUDGE JONES: Go ahead.

14 MR. HARTER: After that I was told that
15 I could not -- now, this is different once again --
16 in January, and on February 2nd, they said: You
17 can't have the payment agreement.

18 Then after I was disconnected and made the
19 complaints and all that, that's when they said: You
20 cannot have a payment agreement, because you're not
21 a candidate because you were late paying. And
22 that's when I said: When was I late paying. And
23 that's when they considered the payment from CAASTL
24 to be a late payment.

25 Now, the actual payment of funds from CAASTL

1 didn't arrive until January 4th, I think, whatever
2 the records, but I consider it to have been made
3 under the circumstances when the pledge was made,
4 which I believe was December 4th or thereabouts,
5 whenever I was at CAASTL.

6 See, CAASTL makes a pledge. And once again, I
7 wanted someone from CAASTL here, but they're not,
8 but I may rely on judicial notice of the activities
9 of CAASTL, or do I have to provide -- produce
10 evidence?

11 JUDGE JONES: There is something that
12 CAASTL does that you would like to prove, is that
13 what you're saying?

14 Judicial notice is not -- no, you can't make
15 judicial notice of what CAASTL does, but if there's
16 something that you're wanting to prove about
17 CAASTL's process, is that what you're saying?

18 MR. HARTER: Okay. I'll prove it
19 through Cross-Examination.

20 JUDGE JONES: Just listen to what I'm
21 saying. Is there something about CAASTL that you
22 were wanting to prove today?

23 MR. HARTER: Yes.

24 JUDGE JONES: Would you like to make an
25 offer to prove? In other words, would you like to

1 testify to what you know, or to what you would
2 otherwise have shown through CAASTL?

3 MR. HARTER: Okay.

4 JUDGE JONES: Go ahead and testify to
5 that.

6 MR. HARTER: If -- and I assume that it
7 can also be obtained by the testimony of the -- but
8 it's my understanding that they make a pledge, and
9 then later as their funds are available -- they're a
10 poverty assistance organization, Community -- can
11 someone help me?

12 JUDGE JONES: You don't have to -- the
13 acronym will suffice. CAASTL.

14 MR. HARTER: All right. And they
15 are -- they assist people in avoiding
16 disconnections, and they assisted me.

17 But the problem is, is that the utility held
18 against me as a late payment the difference between
19 CAASTL's pledge in the first week of December and
20 CAASTL's actual payment when their funds come
21 through or whatever to get the funds that are in
22 January.

23 And I don't think that they should be allowed
24 to do that, because that's not on me, I didn't make
25 the late payment. If that's the way they do them,

1 they should not accept the pledge from CAASTL. Once
2 they accept the pledge from CAASTL that should be
3 considered paid.

4 And it would be the same, in my mind, as a
5 check, if someone gives you a check, that's not a
6 payment, but if you agree to accept a check as
7 payment, then it's irrelevant under Chapter 7 of the
8 UCC when the banks transfer funds and all this
9 ridiculous stuff. It's even changed now from what I
10 learned in law school.

11 So actually receiving the money is irrelevant
12 to the payment if you have an agreement, and the
13 agreement is that they will accept the pledge. And
14 the pledge in this instance should be the equivalent
15 of the payment as far as my keeping my word and
16 making the payments in a timely fashion, because I
17 did all I could do, I made the payment by obtaining
18 the pledge.

19 JUDGE JONES: Now, let me interrupt you
20 for a moment.

21 MR. HARTER: Yes.

22 JUDGE JONES: What I'm understanding
23 you to say is there was a date that CAASTL made a
24 pledge to pay?

25 MR. HARTER: Yes.

1 JUDGE JONES: And there was a date that
2 payment was actually made by CAASTL?

3 MR. HARTER: Yes.

4 JUDGE JONES: And in the interim, you
5 were disconnected?

6 MR. HARTER: No.

7 CHAIRMAN KENNEY: So as I understand
8 your testimony at CAASTL, you're saying that there
9 was a difference between the pledge and the actual
10 payment, and that that's being held against you as a
11 late payment --

12 MR. HARTER: Yes.

13 CHAIRMAN KENNEY: -- making you
14 ineligible for the payment plan? That's your
15 belief.

16 MR. HARTER: Yes, that's what they told
17 me.

18 CHAIRMAN KENNEY: Okay.

19 MR. HARTER: The water company said:
20 You're not eligible. The reason -- I don't if it's
21 true or not, it was said after the disconnection,
22 but what they told me was the reason that you were
23 disconnected, instead of mailed the plan was because
24 you weren't eligible for the plan, and the reason
25 you weren't eligible for the plan was because your

1 last payment was late, and my last payment was the
2 one that CAASTL made.

3 CHAIRMAN KENNEY: Gotcha.

4 MR. HARTER: So I'm saying --

5 CHAIRMAN KENNEY: Understood.

6 MR. HARTER: -- that's not on me. I
7 should have been offered the plan. And after filing
8 the informal complaint, I was offered it, and so --
9 because I proceeded at this point, and we're all
10 sitting here, that that was resolved in restoration
11 in the service, but if I hadn't been lying, and had
12 my hearing, if you all hadn't be hearing all these
13 things, I don't know what the situation would have
14 been.

15 JUDGE JONES: Okay.

16 MR. HARTER: So theoretically, my
17 complaint is that they should have not refused me
18 the payment plan based on, as I understand it,
19 CAASTL's --

20 JUDGE JONES: Late payment?

21 MR. HARTER: Difference -- well --

22 CHAIRMAN KENNEY: What they call a late
23 payment?

24 MR. HARTER: Difference when the actual
25 money came in and when they made the pledge --

1 CHAIRMAN KENNEY: Okay.

2 MR. HARTER: -- I don't think that's a
3 late payment. I don't think it's my late payment.
4 I don't think it should disqualify me from a payment
5 plan. And I don't think I was disqualified from the
6 payment plan, I think I had a payment plan, and I
7 think that's all -- I don't understand it.

8 But I'm complaining about it and that is the
9 two things in my complaint that tie together. One,
10 I shouldn't have been disconnected after they
11 promised me I would not be, because they told me I'd
12 have a payment plan. And two, they shouldn't have
13 denied me the payment plan because of CAASTL paying
14 late.

15 And the background radiation of the complaint
16 is that if you look at this usage there's something
17 not right here. I shouldn't go from 30 consecutive
18 months using 20 to four months using 60, 50,
19 that's -- nobody's water usage varies that much.
20 There's something wrong there, and I should get an
21 adjustment. Work it out. I don't know if you
22 needed this.

23 JUDGE JONES: No. Actually,
24 Mr. Harter, you're rambling, so we're going to stop.

25 MR. HARTER: Okay.

1 JUDGE JONES: Staff, do you have a
2 witness you'd like to present?

3 MS. HERNANDEZ: Yes, Ms. Gay Fred. I'd
4 like to call Ms. Gay Fred.

5 JUDGE JONES: Ms. Fred, would you raise
6 your right hand?

7 GAY FRED,
8 of lawful age, having been produced, sworn and
9 examined, testified as follows:

10 MS. FRED: Yes, I do.

11 JUDGE JONES: Thank you. You may
12 proceed.

13 DIRECT EXAMINATION

14 BY MS. HERNANDEZ:

15 Q. Please state and spell your name for
16 the record.

17 A. Gay Fred. G-A-Y. F-R-E-D.

18 Q. And by whom are you employed?

19 A. I'm employed by the Missouri Public
20 Service Commission. My title is Consumer Services
21 Manager for the Consumer Services Unit.

22 Q. And what are your duties as part of
23 your position with the Commission?

24 A. I am the manager that oversees the
25 Staff that handles both inquiries and informal

1 complaints filed by complainants regarding their
2 utility services.

3 I also handle myself or oversee Staff that
4 handles formal pro se complaints regarding billing
5 and service issues that maybe related to Chapter 13.

6 **Q. And are you the same Gay Fred that**
7 **prepared the document entitled: Report of the Staff**
8 **filed with the Commission on August 2nd, 2013, and**
9 **marked as Staff Exhibit 1, highly confidential?**

10 A. Yes, I am.

11 **Q. And what did Staff conclude in that**
12 **report?**

13 A. Staff basically concluded after looking
14 at all the evidence presented by the company and
15 Mr. Harter that the company was not in violation of
16 any statute, rule or Commission-approved tariff.

17 **Q. Is that report still true and correct**
18 **to the best of your knowledge and information and**
19 **belief?**

20 A. Yes, it is.

21 **Q. And has any of the testimony presented**
22 **today changed your opinion or recommendation as**
23 **filed in Staff's report?**

24 A. No, it does not.

25 MS. HERNANDEZ: At this time, I'd like

1 to offer Staff's report into the record?

2 JUDGE JONES: I believe's Staff report
3 has been previously been marked as Staff's
4 Exhibit 1.

5 Mr. Harter, do you have any objection to Staff
6 Exhibit 1?

7 MR. HARTER: No.

8 JUDGE JONES: Missouri American?

9 MR. LUFT: No.

10 JUDGE JONES: Seeing no objections,
11 Staff Exhibit 1 is admitted into evidence.

12 MS. HERNANDEZ: Thank you. And I'll
13 tender Ms. Fred for Cross-Examination.

14 JUDGE JONES: Any Cross-Examination for
15 Missouri American?

16 MR. LUFT: No.

17 JUDGE JONES: Mr. Harter, do you have
18 any questions?

19 MR. HARTER: Yes, I do. This will be
20 difficult, because they don't have it.

21 CHAIRMAN KENNEY: They don't have what?

22 MR. LUFT: I believe it's been marked
23 as Exhibit 2 -- or I'm sorry, you do have it, you
24 received it in an e-mail, the usage?

25 MS. HERNANDEZ: Correct.

1 MR. HARTER: It's been marked as
2 Complainant's 2.

3 MS. HERNANDEZ: Yes, go ahead, please.

4 CROSS-EXAMINATION

5 BY MR. HARTER:

6 Q. Have you had an opportunity to purview
7 this?

8 A. Yes, I have.

9 Q. And turn your attention to the middle
10 column, billed usage, it appears to be quarterly
11 figures.

12 A. Yes.

13 Q. First, what is that number, is that --
14 what is CF?

15 A. Cubic feet.

16 Q. And how many gallons is that? A cubic
17 foot, is it 7.5?

18 A. I don't know.

19 Q. Just make it easy, when it says there's
20 30 billed usage, and it's 100 CF, so that means it's
21 3,000 cubic feet?

22 A. That would be a question, Mr. Harter,
23 you would have to ask the company.

24 Q. Okay. I will. I'm sorry. But --

25 A. That's fine. That's not a problem.

1 **Q. Just in terms of the numbers, are you**
2 **familiar with the water usage and whether or not**
3 **they would show a leak in your expertise?**

4 A. In reviewing various complaints dealing
5 with water services we do on occasion see situations
6 where there has been a leak. It will generally show
7 or demonstrate spikes in usage, but spikes in usage
8 cannot always be attributed to a leak, it could be
9 just excessive use within the household itself.

10 So we can't make that assumption, unless the
11 complainant has gone and obtained a plumber to,
12 perhaps, check for a possible leak within in their
13 home.

14 **Q. Okay. Now, is there anything here that**
15 **would make you suspect a leak?**

16 A. I really can't say that, because when I
17 look at this, I see sporadic use or billed usage
18 amounts throughout the history of this, so I'm not
19 sure I could attribute that to a leak since it seems
20 to have ebb and flows within it.

21 MR. HARTER: And for everyone, these
22 questions are just as much for knowledge, as for
23 advancing the case.

24 BY MR. HARTER:

25 **Q. These -- the children, of course, are**

1 growing, and is it possible that that would account
2 -- is that within reason that the increased usage
3 would be attributable to the teenagers that the
4 children now are? I'm looking at --

5 MS. HERNANDEZ: I have an objection.
6 Objection based on relevance and speculation.

7 JUDGE JONES: Objection, sustained.

8 MR. HARTER: Okay.

9 BY MR. HARTER:

10 Q. I of course, am unfamiliar, can you
11 tell me if the usage, say, from '10 to the last inch
12 or so from 2010 on up, which is going into the 50s
13 and 60s, if that's reasonable for a family of mom
14 and dad and four teenagers; is that a reasonable --

15 MS. HERNANDEZ: Again, I'll object on
16 --

17 Q. -- amount of usage?

18 MS. HERNANDEZ: Sorry to interrupt your
19 question. I'll object based on speculation.

20 JUDGE JONES: Objection, sustained.

21 BY MR. HARTER:

22 Q. Did you hear earlier the questions that
23 were asked of me, particularly concerning
24 February 2nd of this year?

25 A. Yes, I heard the questions.

1 **Q. Okay. Are you aware of procedure of**
2 **the -- of a water utility concerning a payment**
3 **arrangement, if so, could you explain what those**
4 **are?**

5 A. Generally the procedures are once a
6 customer contacts the company and says they have an
7 inability to pay, or they can't pay in the full
8 amount, at the point in time they can ask to be put
9 -- enter into a payment arrangement with that
10 company based on customer's history, pay history,
11 abilities to pay, whatever the situation may be.

12 The company will then proceed with, perhaps,
13 entering into that agreement for a payment
14 arrangement to circumvent a disconnect of service or
15 a threat of a disconnect.

16 In doing so, the company generally lays out
17 what the first initial payment must be and the date
18 and time in which it must be paid. Once the
19 customer has met that obligation, they receive in
20 writing a letter listing out the agreement and the
21 payments that are due and the dates that those
22 payments are due in order to meet the agreement of
23 that payment arrangement.

24 **Q. And was my testimony earlier consistent**
25 **with your understanding that you just said?**

1 A. Your testimony was somewhat
2 consistent --

3 MR. HARTER: I have no other questions.

4 A. -- but my Staff report would reflect
5 something different than that.

6 JUDGE JONES: Do you have anymore
7 questions?

8 MR. HARTER: Well, I would move to
9 strike the end as not responsive. As she said
10 somewhat, and I said thank you and --

11 JUDGE JONES: Motion granted.

12 MR. HARTER: No further questions.
13 Does Missouri American have any questions of Staff?

14 MR. LUFT: No.

15 JUDGE JONES: Okay. Let's move on.

16 CHAIRMAN KENNEY: I've got some
17 questions.

18 JUDGE JONES: Oh, you've got some
19 questions.

20 CROSS-EXAMINATION

21 BY CHAIRMAN KENNEY:

22 Q. **Ms. Fred, thank you. I just had a**
23 **couple of questions --**

24 A. Okay.

25 Q. **-- so I can understand the progression**

1 of events. You're familiar with the facts
2 specifically of Mr. Harter's current formal
3 complaint?

4 A. Yes.

5 Q. Staff investigated his allegations?

6 A. Yes.

7 Q. And generated a report?

8 A. Yes.

9 Q. I'm going to ask a couple of questions
10 that may or may not be contained in the report, just
11 for clarification.

12 Did Staff investigate Mr. Harter's assertion
13 that CAASTL had pledged a certain amount of money in
14 December of 2012?

15 A. Yes, we did.

16 Q. And what did Staff's investigation
17 reveal?

18 A. We did find that CAASTL did make a
19 pledge on behalf of Mr. Harter, but the payment was
20 not received by the company until January 14th of
21 2013.

22 Q. Did Staff also investigate whether --
23 well, let me back up. Did Staff investigate whether
24 Mr. Harter make a \$50 payment at the end of
25 January 2013?

1 A. We investigated it, however we did not
2 find that he made a \$50 payment in January of 2013.
3 We did find that he made a \$50 payment around
4 February 6th, 2013.

5 **Q. That February 6th \$50 payment was**
6 **before or after he was disconnected?**

7 A. He was disconnected, and the technician
8 at that time prior -- at the time he was there to
9 disconnect, Mr. Harter confronted him and indicated
10 that he had made the payment, the technician
11 verified with the cashier whether a payment had been
12 made, they verified that it had been made, however
13 he was disconnected for an unpaid balance 145.82,
14 which is what resulted in the actual turn off.

15 **Q. So should the \$50 payment that he made,**
16 **that the technician confirmed, was that intended to**
17 **prevent disconnection?**

18 A. No. Not to my investigation, no, that
19 would not have prevented disconnection.

20 **Q. Why not?**

21 A. Because he had actually not -- he
22 believes that he had entered into a payment
23 agreement with the company back in January.
24 However, in January when he called to set up a
25 payment arrangement the company actually denied that

1 request, because he had already defaulted on a prior
2 arrangement made with the company in October of
3 2012 --

4 Q. Okay.

5 A. -- so he was never actually established
6 on a payment arrangement in January as he has
7 indicated, therefore --

8 Q. And let me stop you one second. And
9 the basis upon which he would have been ineligible
10 for a payment plan was because of a default on a
11 prior payment plan from October, not because CAASTL
12 was not -- not anything to do with CAASTL's payment?

13 A. Nothing to do CAASTL. It was simply
14 because he defaulted on his prior payment agreement.

15 Q. Okay. So when he made that \$50 payment
16 that was not in furtherance of some newly arranged
17 payment plan?

18 A. Correct.

19 CHAIRMAN KENNEY: Okay. Thank you.
20 That's all the questions I have.

21 JUDGE JONES: Mr. Harter, based on the
22 questions from Chairman Kenney, do you have any
23 Recross you'd like to present -- or ask rather.

24 MR. HARTER: Yes, I do.
25

1 RECROSS EXAMINATION

2 BY MR. HARTER:

3 **Q. You had just testified that the \$50**
4 **payment was made on the 6th, but your report of the**
5 **Staff indicates that it was made on the 2nd?**

6 A. Where are you referring, Mr. Harter?

7 **Q. Page 5.**

8 A. Page 5?

9 **Q. Yes.**

10 A. It says February 6th.

11 **Q. That's when I complained, but the**
12 **payment was made on the 2nd.**

13 CHAIRMAN KENNEY: Where does it say
14 that?

15 MR. HARTER: That I called and made a
16 payment on the th.

17 CHAIRMAN KENNEY: Where does it say
18 that in the report?

19 BY MR. HARTER:

20 **Q. Do you have within the records there --**
21 **payment records of the water company?**

22 A. Payment records of water company -- you
23 mean, the --

24 **Q. Records of payments --**

25 A. I'm not sure understand.

1 Q. Do you have --

2 A. Excuse me?

3 Q. Do you have in your records proof of
4 payments that I made to the water company? And I'm
5 assuming that the water company sitting next to me
6 does, if you don't.

7 A. Just a moment. Yes, I do have what we
8 call -- what is referred to by the company as the
9 Ledger Information Report that shows payments made
10 on the accounts, as well as bills rendered. And it
11 shows actually on February 4th a credit for \$50 made
12 on the account.

13 Q. Do you know what day of the week that
14 is?

15 A. No, I do not.

16 Q. But it is not the 6th, correct?

17 A. That would be true.

18 Q. And it's before the disconnection, is
19 that not correct? According to your records --

20 A. That would be true. I mean, yes.

21 Q. And so would that influence your answer
22 into the question of was the payment made prior to
23 the disconnection in an attempt to avoid the
24 disconnection?

25 CHAIRMAN KENNEY: That's two different

1 questions.

2 BY MR. HARTER:

3 Q. But the payment was made prior to the
4 disconnection not after, correct?

5 A. That's correct.

6 MR. HARTER: I have no other questions.

7 JUDGE JONES: Okay.

8 CHAIRMAN KENNEY: Can we go off the
9 record for a second?

10 (THERE WAS A BREAK.)

11 JUDGE JONES: Missouri American, did
12 you have questions?

13 MR. LUFT: I did have one question.

14 RE CROSS EXAMINATION

15 BY MR. LUFT:

16 Q. Ms. Fred, is a water utility under any
17 obligation to enter into a payment agreement with a
18 customer of -- which is overdue on their water
19 bills?

20 A. No, they're not under any obligation to
21 have to enter into that agreement.

22 MR. LUFT: That's all I have.

23 JUDGE JONES: Okay. Let's move on --
24 did you want to ask Ms. Fred a question?

25 MR. HARTER: Yes.

1 JUDGE JONES: Okay. With relevance to
2 the question --

3 MR. HARTER: Yes.

4 JUDGE JONES: -- that was just asked?

5 MR. HARTER: Yes.

6 JUDGE JONES: Please go ahead.

7 MR. HARTER: Thank you.

8 FURTHER RECROSS EXAMINATION

9 BY MR. HARTER:

10 Q. If however the company does choose to
11 enter into a payment agreement, and if the customer
12 makes a payment in reliance on that agreement, can
13 the company thereafter drop the payment plan?

14 A. Not if the initial payment is paid on
15 time, and subsequent payments are also paid on time,
16 and in the amounts instructed.

17 Q. Going back to -- again, I'm hoping I'm
18 remembering it correctly, but the procedure that you
19 described earlier, where the customer requests a
20 payment plan, the company says you have to make an
21 initial payment, and the customer makes that initial
22 payment, then at that point if they've agreed to
23 offer the plan, can they at that point refuse to
24 offer the payment plan?

25 A. I've never seen that.

1 **Q. As a technical matter of their**
2 **authority?**

3 A. Again, the company is not under any
4 obligation to have to enter a plan with the
5 customer, but if they do, they generally would stick
6 to that plan. I have not seen them, say, remove a
7 plan for any reason if customer and company are
8 meeting the obligations laid out.

9 MR. HARTER: Thank you.

10 JUDGE JONES: Missouri American?

11 MR. LUFT: We prepared a timeline of
12 events that hopefully will bring some clarity to the
13 event rising up to this formal complaint, but I'd
14 like to call Ms. Chelsie Harmon.

15 JUDGE JONES: Ms. Harmon, will you
16 raise your right hand?

17 CHELSIE HARMON,
18 of lawful age, having been produced, sworn and
19 examined, testified as follows:

20 MS. HARMON: I do.

21 JUDGE JONES: Thank you. You may
22 proceed, Mr. Luft.

23 DIRECT EXAMINATION

24 BY MR. LUFT:

25 **Q. Please state your name and title for**

1 **the record.**

2 A. Chelsie Harmon. C-H-E-L-S-I-E.
3 H-A-R-M-O-N. Performance Specialist for Missouri
4 American Water.

5 **Q. And what do you in your current role at**
6 **Missouri American Water?**

7 A. I investigate informal and formal
8 complaints, handle customer disputes, communicate
9 and work with the Public Service Commission Staff
10 and participate in community outreach events.

11 **Q. Okay. And are you involved in this**
12 **small formal complaint of Mr. Harter?**

13 A. Yes.

14 **Q. And have you had an opportunity to**
15 **review the report of the Staff that was prepared in**
16 **this matter?**

17 A. Yes.

18 **Q. Do you have any -- do you take any**
19 **issues with what is found in that report?**

20 A. No.

21 **Q. Can you walk us through Mr. Harter's**
22 **account, and just going back to the first overdue**
23 **notice that we saw back in October of 2012?**

24 A. Sure. October 3rd of 2012, we sent an
25 overdue notice of 176.50. And then on October 10th,

1 we sent a service discontinuance notice showing that
2 the service would be discontinued on October 24th if
3 payment was not received. On October 17th, we sent
4 a final discontinuance notice --

5 MR. HARTER: Could I at this point
6 object that this is hearsay, and it's not been
7 marked as an exhibit, and it's not a record? So
8 that she can testify, and she can use this to aid
9 her in her testimony, but I don't think it should be
10 handed out to the trier of fact without being marked
11 as an exhibit.

12 MR. LUFT: I would say she's using this
13 as a demonstrative exhibit, just as if we would have
14 created a poster in this room and she walked through
15 it. It's just to help the proceeding.

16 MR. HARTER: You would have to qualify
17 it as an exhibit -- as a poster.

18 JUDGE JONES: Do you want to mark it as
19 an exhibit?

20 MR. LUFT: Sure, we can mark it as a
21 demonstrative exhibit.

22 MR. HARTER: It's hearsay.

23 MR. LUFT: And Staff has been provided
24 a copy of this.

25 (COMPANY'S EXHIBIT 1 WAS MARKED FOR IDENTIFICATION.)

1 MR. HARTER: It's just hearsay.

2 JUDGE JONES: You may proceed. She is
3 using it to refresh her recollection, right?

4 MR. HARTER: I don't object to that,
5 but I do object to you reading it -- and I would
6 request the opportunity to voir dire concerning
7 whether or not it should be admitted into evidence.
8 It seems to me it's just hearsay, and it's
9 incorrect, because I'm noticing --

10 CHAIRMAN KENNEY: You can get to that
11 part of ti later.

12 MR. HARTER: -- they --

13 JUDGE JONES: You'll have an
14 opportunity to cross-examine the witnesses.

15 MR. HARTER: After you've read the
16 indirect hearsay that is presented in this
17 unofficial --

18 JUDGE JONES: If I were a jury of 12
19 people, who didn't have the wherewithal to
20 understand what hearsay was, then maybe I could
21 understand your argument, but at this point she's
22 using it to refer, we're using it to follow along.
23 Your objection is overruled.

24 You may proceed, Mr. Luft.

25 MS. HARMON: On October the 18th, we

1 entered into a payment agreement with Mr. Harter for
2 a total of -- for three payments totalling 176.50,
3 payment beginning with the first payment on
4 October 22nd. Mr. Harter did make a payment of \$45,
5 which left an outstanding balance of 131.50.

6 On November 27th, we sent a discontinuance
7 notice with a disconnect date scheduled for
8 December 4th.

9 On November 30th, Mr. Harter contacted us, and
10 on December 3rd he requested assistance from the
11 Community Action Agency of St. Louis

12 On December 4th, Mr. Harter made a \$12
13 payment. And December 17th, we received -- we sent
14 a bill for 196.32, with a total balance due of
15 315.82.

16 On December 31st, we did have a conversation
17 with Mr. Harter about an outage in his area.

18 January 9th, Mr. Harter requested a payment
19 arrangement, but was denied because of the defaulted
20 agreement we made on October the 18th.

21 On January the 14th we received the dollars
22 pledge from Mr. -- from CAASTL of \$120 for his bill,
23 which left a total balance due of 195.82. This
24 balance stems from the current charges billed on
25 December 6th, 2012.

1 January 22nd, we sent a discontinuance notice
2 for a disconnect date of February 4th. On
3 January 24th, Mr. Harter requested a payment
4 arrangement, but was denied because of the default
5 on the October 18th payment agreement.

6 January 30th, we sent a final discontinuance
7 notice. February 4th the water service was
8 disconnected. We received a payment of \$50, which
9 still left the outstanding balance of 145.82.

10 He filed the informal complaint. His service
11 was reconnected for the \$50 payment. And on
12 February 7th we entered into a payment agreement
13 with him for that 145.82.

14 On February 14th, he paid the entire balance
15 of 145.82, which left his account with a zero
16 balance.

17 March 21st we sent him a bill for 267.51. We
18 spoke with Mr. Harter on April 23rd and 24th
19 regarding his account. And on April 25th he filed a
20 complaint alleging that we breached a budget payment
21 agreement.

22 We spoke with Mr. Harter again on April 30th.
23 We had those recorded calls transcribed. On
24 May 1st, we entered into a payment agreement for
25 five payments totalling the 267.51 with the payment

1 beginning May 5th. He did make a \$67 payment, which
2 left a balance due of \$200.51.

3 August 12th, we issued a bill for a total
4 balance of 423.65, \$200.51 of that was past due,
5 with 201.49 being the current.

6 September 5th, we sent a bill for \$624.56,
7 with \$423.65 being past due, and \$175.73 being the
8 current.

9 Q. The date in which Mr. Harter was shut
10 off was February 4th, 2013, was there a payment
11 agreement in place at this time?

12 A. No.

13 Q. When is the last time Mr. Harter's been
14 current on his bill?

15 A. February 14th of 2013.

16 Q. And how much does he currently owe on
17 his water bill?

18 A. The balance prior to yesterday was
19 \$624.

20 Q. And then we learned just before this
21 hearing that he made a payment last night?

22 A. Yes, of \$175.73.

23 Q. And just briefly explain, we've heard
24 about CAASTL, The Community Action Agency of St.
25 Louis County, can you describe who they are and how

1 **we work with them?**

2 A. CAASTL provides services to low income
3 and seniors and disabled customers. They do
4 administer our H2O Help to Others Program. And they
5 take applications, and based on a customer's
6 qualifications they can receive funds, which we
7 provide to CAASTL, as well as donations provided by
8 our customers.

9 **Q. What is Heat Up St. Louis?**

10 A. Heat Up St. Louis is another
11 organization that provides assistance to low income
12 and disabled customers, and provides them with
13 assistance as far as utility.

14 We recently participated in an event along
15 with CAASTL helping those customers and
16 troubleshooting some of those issues.

17 MR. LUFT: That's all I have.

18 JUDGE JONES: Any questions from Staff?

19 MS. HERNANDEZ: No questions. Thank
20 you.

21 JUDGE JONES: And Mr. Harter, do you
22 have any questions?

23 CROSS-EXAMINATION

24 BY MR. HARTER:

25 **Q. Do you have, in addition to what's been**

1 marked as Company 1, any actual records?

2 A. Yes.

3 Q. This is -- this is not a record,
4 correct? Not done in the ordinary course of
5 business?

6 A. Correct.

7 Q. Now, I noticed that Staff report says
8 that the disconnection occurred on February 6th.
9 Are they incorrect?

10 Because you did not challenge them when they
11 testified to that, and yet you're contending, and
12 you testified that the disconnection was on
13 February 4th. I hate to quibble, but it's a
14 difference of before and after.

15 I guess my question is do you have actual
16 records of the water company that show the
17 disconnection date.

18 A. Not with me. I don't have the
19 document -- the service order showing the disconnect
20 date.

21 Q. To your knowledge, did the water
22 company provide to the Staff in its investigation
23 the actual records of the water company regarding
24 the February disconnection?

25 A. Yes.

1 Q. And were those records that were
2 provided accurate and correct?

3 A. Yes.

4 Q. And are you now disputing the Staff's
5 report and recommendation that the disconnection
6 occurred on February 6th based on your records?

7 A. We show a discontinuance date of
8 February 4th, the notice was for February 4th, and
9 we do show that your payment was made on
10 February 4th.

11 Q. You say "we show", what does that mean,
12 what records are you consulting?

13 A. The ledger information, the
14 discontinuance notice show your payment and the
15 discontinuance date.

16 Q. I want to call your attention then to
17 page 2 of the Staff report and recommendation, and
18 page 5 of the report of the Staff report, which are
19 both consistent stating that on February 6th. Staff
20 found that on February 6th Mr. Harter's water was
21 disconnected. Are you disputing that?

22 A. No.

23 Q. You just said your records said that
24 the disconnection is on the 4th?

25 A. Yes.

1 **Q. They can't both be true? If you're**
2 **alleging that the disconnection was on the 4th, then**
3 **you're disputing the Staff's finding that it was on**
4 **the 6th.**

5 MR. LUFT: Do you have a question?

6 MR. HARTER: Yes. That her current
7 position is not possible.

8 MR. LUFT: Objection, that's not a
9 question.

10 JUDGE JONES: Objection, sustained.

11 BY MR. HARTER:

12 **Q. When did this disconnection occur?**

13 MR. LUFT: Objection, asked and
14 answered.

15 JUDGE JONES: Objection, sustained.

16 MR. HARTER: All right.

17 BY MR. HARTER:

18 **Q. Is the Staff correct in its finding as**
19 **reported of the report of the Staff, based on your**
20 **records that you said you correctly provided in**
21 **which they say, quote, on page 5, Staff found that**
22 **on February 6th Mr. Harter's water was disconnected?**

23 A. No objection to that.

24 **Q. Is that a correct statement; is that**
25 **true?**

1 A. I don't know.

2 Q. Do your records reflect the date that
3 you have scheduled the disconnection?

4 A. Yes.

5 Q. And the disconnection in this case was
6 scheduled for February 4th or after; is that
7 correct?

8 A. Yes.

9 Q. And is it possible, in fact, common
10 place that disconnections occur after that date?

11 A. That could happen.

12 Q. In fact, if pursuant to the rules and
13 regulations a disconnection were to occur on the
14 4th, it would be in violation, because your notice
15 says that I'm subject to disconnection after the
16 4th; isn't that correct?

17 A. No.

18 Q. You do have the actual notice?

19 A. Yes.

20 Q. Can I see it?

21 MR. LUFT: (Attorney complied.)

22 BY MR. HARTER:

23 Q. Do you have a report from the person
24 performing the disconnection within your records?

25 A. We do not have it here.

1 Q. Does the company have such a record?

2 A. Yes.

3 Q. And did the company provide that record
4 to the Commission Staff when they requested to
5 review the records concerning this disconnection?

6 A. I'm not sure.

7 Q. And there are actually -- so two
8 disconnections subject to this complaint, one on
9 February 6th and the other on April --

10 MR. LUFT: Do you have a question.

11 MR. HARTER: In April, that was my
12 question.

13 MR. LUFT: I would object to the extent
14 beyond the scope of the complaint.

15 JUDGE JONES: Mr. Harter, your question
16 has to do with a disconnection in April.

17 MR. HARTER: That was my question.

18 JUDGE JONES: April of this year?

19 MR. HARTER: The complaint -- the --
20 yeah, it was April 22nd.

21 JUDGE JONES: Of this year? And would
22 you repeat your question?

23 MR. HARTER: That there are two
24 disconnections complained of in this case, one in
25 February, and one in April.

1 JUDGE JONES: Objection, overruled.

2 THE WITNESS: What was the question?

3 MR. LUFT: What's the question? Could
4 you please restate the question.

5 BY MR. HARTER:

6 Q. Are there two disconnections complained
7 of in this case, one in February -- one February 6th
8 and one in April -- 22nd?

9 A. We discontinued his service once in
10 February.

11 Q. And you were engaged in a disconnection
12 procedure in April at the time of the complaint,
13 correct? Threatening disconnection?

14 A. I don't know.

15 MR. HARTER: Would you mark this?

16 (COMPLAINANT'S EXHIBIT 4 WAS MARKED FOR
17 IDENTIFICATION.)

18 BY MR. HARTER:

19 Q. I apologize if I had this earlier, I
20 wouldn't have done it. Show you what's been marked
21 as Complainant's Exhibit 4, and it's dated May 2nd.
22 Can you tell us what that is?

23 A. It is an agreement to divide your
24 balance of 267.51 over five installments.

25 Q. And wasn't that sent out to resolve

1 threatened disconnection in April?

2 A. I'm not sure.

3 Q. What person/employee of the water
4 company spoke on the phone on January 24th to me?

5 A. I'm not sure.

6 Q. But we know that I did make a phone
7 call, and requested a payment plan that day?

8 A. I'm not sure.

9 Q. Well, you've already testified to that.
10 It's right here. Harter requested a payment
11 agreement, January 24th? (Indicated.)

12 A. (Nodded head.)

13 Q. So did I, in fact, call and request a
14 payment agreement on January 24th?

15 A. Yes.

16 Q. You don't know who I talked to?

17 A. No.

18 Q. Even though you have these detailed
19 records of things that happened in November and
20 October, and things that happened in April, this one
21 phone call that's important you have no records of
22 it?

23 A. I do have records of it.

24 Q. Oh, you do have records of it. What do
25 the records show as to who I talked to?

1 A. I'm not sure of who.

2 Q. Do you have a record of what occurred
3 in the conversation as a recording?

4 A. Yes, and the details of that were you
5 requested a payment arrangement and you were denied
6 based on default of the October 18th --

7 MR. HARTER: I'll object and ask to
8 strike, that exceeds my question. My question
9 simply was do you have a record concerning that, do
10 you have a recording of it.

11 JUDGE JONES: Objection is sustained.

12 THE WITNESS: Yeah, we don't have a
13 regarding.

14 MR. HARTER: Okay.

15 CHAIRMAN KENNEY: You don't have a
16 recording of it?

17 MS. HARMON: Not a recording -- audible
18 recording. I don't know what he means by recording.

19 BY MR. HARTER:

20 Q. I mean, was it recorded, can you listen
21 to it now?

22 JUDGE JONES: Do you have a record of
23 the conversation?

24 MS. HARMON: We have notes, yes.

25

1 BY MR. HARTER:

2 Q. And do you have a record of a phone
3 call February 2nd?

4 A. I don't show anything.

5 Q. This is -- this is what you prepared
6 for your testimony, within the actual records of the
7 company, do you actually have within the phone
8 records of the company, not your recollection and
9 your aid, but the actual records, do you have a
10 record of the phone call from me on February 2nd?

11 A. No.

12 Q. Are you sure?

13 A. I don't show anything on February 2nd.

14 Q. Once again, turning your attention to
15 the -- I'll call it the Staff Report and
16 Recommendations, this is the earlier one that was
17 made on August 2nd, turning to page 3 -- I'm sorry,
18 that's page 2 -- I'm sorry -- on page 2 the Staff
19 concludes that on February 2nd the customer called
20 to report a \$50 payment.

21 MR. LUFT: Is there a question?

22 MR. HARTER: Yes.

23 BY MR. HARTER:

24 Q. Are you familiar with that?

25 A. With the document, yes.

1 Q. And the Staff, again, used the records
2 provided by the utility to complete this report?

3 A. I'm not sure.

4 Q. Did the company provide its records to
5 the Staff?

6 A. Yes, we provided records to Staff.

7 Q. And not Complainant's 1, which didn't
8 exist then, but the actual records of the company?

9 MR. LUFT: Objection, asked and
10 answered.

11 JUDGE JONES: Objection, sustained.

12 BY MR. HARTER:

13 Q. So are you saying that that is false,
14 or is that true that on February 2nd the customer
15 called to report a \$50 payment?

16 MR. LUFT: Objection, asked and
17 answered.

18 JUDGE JONES: Objection is overruled.

19 MS. HARMON: No, I'm not saying it's
20 not true.

21 BY MR. HARTER:

22 Q. Okay. Under that, on February 7th at
23 approximately 8:23 Staff received a response from
24 Missouri American, in the company's reply it
25 provided the following explanation, 2/6 customer

1 **turned off for non-payment?**

2 JUDGE JONES: Is that a question?

3 MR. HARTER: Yes.

4 JUDGE JONES: Repeat your question.

5 BY MR. HARTER:

6 **Q. Now, which is correct, you have told**
7 **the Staff that you disconnected on 2/6, and now**
8 **you're coming and testifying under oath today that**
9 **you turned it off on 2/4, which is it? They can't**
10 **both be correct.**

11 **Is the utility telling the truth to the**
12 **Commission when they advised them that they**
13 **disconnected on February 6th?**

14 MR. LUFT: Objection, asked and
15 answered.

16 JUDGE JONES: Just let's -- this is a
17 sticking point. On what day was there a
18 disconnection? Everybody here, let's just put our
19 heads together and answer that question, including
20 yourself, Mr. Harter. What day was the -- what day
21 do you remember being disconnected?

22 MR. HARTER: February 6th.

23 JUDGE JONES: What day does Staff
24 remember? What day does Missouri American remember?

25 MR. HARTER: Everyone agrees with

1 February 6th until the testimony today, that's the
2 first time that anything was said anything
3 different.

4 MR. LUFT: We'll go with the 6th. It
5 doesn't matter. We'll go with the 6th.

6 JUDGE JONES: And does Staff recall
7 during their investigation they determined that
8 February 6th was the disconnection date?

9 MS. HERNANDEZ: That's correct,
10 February 6th.

11 JUDGE JONES: February 6th has been
12 established, that will be a fact in the Findings of
13 Fact, that the disconnection was on February 6th.

14 MR. HARTER: Then I would move at this
15 time to strike Complainant's [sic] 1 as inaccurate.

16 JUDGE JONES: It hasn't been admitted
17 into the record. It's not in evidence.

18 MR. HARTER: I understand that, but I
19 would strike it from consideration. Number 1, it's
20 hearsay. And Number 2, it's inaccurate hearsay --
21 admitted inaccurate by its maker.

22 JUDGE JONES: I just ruled on your
23 objection. It can't be stricken it's not a part of
24 the record.

25 MR. HARTER: I would hope it would not

1 be considered just because it's written.

2 BY MR. HARTER:

3 Q. Further coming down on that page 2,
4 it's apparently admissions or statements from
5 Missouri American Water Company. On 2/2 the
6 customer called to report a \$50 payment. You
7 understand this is not my assertion, this is not the
8 Staff's assertion, this is the assertion of American
9 Water Company?

10 MR. LUFT: Do you have a question?

11 MR. HARTER: Yes.

12 BY MR. HARTER:

13 Q. Is that correct?

14 A. Yes.

15 Q. Is still a position and the testimony
16 of the Missouri American Water Company that on
17 February 2nd the customer called to report a \$50
18 payment?

19 A. Yes.

20 Q. And so -- this is also inaccurate, on
21 your Complainant's [sic] 1 when you say that you've
22 got it as 2/4, a \$50 payment, that's not correct, is
23 it?

24 A. That is correct, that's when the
25 payment posted to the account.

1 Q. That's not when I made the payment,
2 correct?

3 A. That's when we received the payment.

4 Q. You -- by "you", Missouri American
5 Water Company under oath provided and told the
6 Commission in its investigation -- I hope you aren't
7 trying to mislead their investigation -- that the
8 payment was made on 2 2 1?

9 CHAIRMAN KENNEY: It actually says that
10 you called to report the payment made --

11 MR. HARTER: Yes.

12 CHAIRMAN KENNEY: -- not that the
13 payment was made, that you called to report it.

14 MR. HARTER: Uh-huh.

15 CHAIRMAN KENNEY: I'm just clarifying
16 that's what the report actually says. I don't think
17 there's an inconsistency in that and what's on this
18 document, Mr. Harter, that's what I'm trying to get
19 to.

20 BY MR. HARTER:

21 Q. And in April, in the discussions of
22 whether or not a complainant would be eligible for a
23 payment plan, did the payment to CAASTL -- or the
24 payment from CAASTL come up then?

25 A. I'm not sure.

1 Q. In fact, didn't the company say that
2 complainant, meaning me, was not eligible for a
3 payment plan because the last payment, which was the
4 one that CAASTL made was late?

5 A. That is not true.

6 Q. Is there a company record of a phone
7 conversation on February 2nd between me and the
8 water company?

9 A. I don't know.

10 Q. Are all your calls recorded?

11 A. No.

12 Q. Are all your calls notated that they're
13 made?

14 A. That's our practice, yes.

15 Q. And so if the water company accurately
16 and truthfully reported to the Staff that I made a
17 phone call on February 2nd, wouldn't -- doesn't the
18 water company have a record of that call?

19 A. That would be correct, we would have
20 had something.

21 Q. Because the Staff indicates that the
22 information that I had called on February 2nd was
23 provided on February 7th. So my question is wasn't
24 there some record on which the company relied to
25 make that response?

1 A. Yes.

2 Q. And isn't there in existence within the
3 company a record of a phone call from me on
4 February 2nd?

5 A. Yes.

6 Q. And why does it not appear on your
7 timeline?

8 A. I'm not sure.

9 Q. Does that seem in any way deceptive to
10 you?

11 MR. LUFT: Objection --

12 JUDGE JONES: What basis.

13 MR. LUFT: He's trying to
14 mischaracterize the witness's testimony.

15 JUDGE JONES: That's pretty much what
16 Cross-Examination does. Objection, overruled.

17 MS. HARMON: What was the question?

18 (WHEREIN THE REQUESTED PORTION OF THE RECORD WAS
19 READ BACK.)

20 MS. HARMON: No.

21 BY MR. HARTER:

22 Q. Is there anything else in this timeline
23 that you've omitted?

24 A. Not --

25 Q. Or misstated?

1 A. -- not to my knowledge.

2 Q. And so in summary, the key dates for
3 the consideration of the Commission about the
4 disconnection would be February 2nd, February 6th,
5 and on both of those dates your timeline of events
6 is either inaccurate or in omission; is that
7 correct?

8 A. The February 2nd is not on the
9 timeline, no.

10 Q. And February 6th is also not on the
11 timeline?

12 A. That is correct.

13 MR. HARTER: I have no other questions.

14 JUDGE JONES: Mr. Chairman, do you have
15 any questions.

16 CHAIRMAN KENNEY: No, thank you. Thank
17 you for your time.

18 JUDGE JONES: All right. Okay. That's
19 all the witnesses we have. Do you have any, I
20 should say, Redirect?

21 MR. LUFT: Very quickly.

22 REDIRECT EXAMINATION

23 BY MR. LUFT:

24 Q. On February 2nd, 2013, did Charles
25 Harter have a payment agreement with Missouri

1 American Water that would prevent any disconnection
2 for an outstanding balance that was owed?

3 A. No.

4 Q. I'll ask the same question for
5 February 4th, 2013. Did he have any payment
6 agreement with Missouri American Water that would
7 prevent him from being disconnected to his
8 outstanding balance?

9 A. No.

10 Q. On February 6th, did he have any
11 payment agreement with the company that would
12 prevent him from being disconnected due to his
13 outstanding balance?

14 A. No.

15 MR. LUFT: That's all I have.

16 JUDGE JONES: Okay. All right. With
17 that --

18 MR. HARTER: I have a follow-up based
19 on that. Recross.

20 JUDGE JONES: We don't -- that would
21 never stop, if you asked a Recross, then he asked to
22 do a Redirect, and your Recross. So Redirect is
23 intended to rehabilitate the witness, that's when we
24 end, examination stops.

25 MR. HARTER: (Nodded head.)

1 JUDGE JONES: Okay. Mr. Harter, would
2 you like to file a post-hearing brief?

3 THE WITNESS: Well, I would, briefly --

4 JUDGE JONES: No, would you like to
5 file a post-hearing brief?

6 MR. HARTER: Yes. And I would also
7 appreciate the opportunity for a question to the
8 Staff concerning the -- this testimony.

9 JUDGE JONES: We're done with
10 questioning.

11 With regard to the -- the motion is not going
12 to be relevant to the post-hearing briefs, that
13 motion will be decided probably before any
14 post-hearing briefs are filed.

15 How much time do you think you need to file a
16 post-hearing brief?

17 MR. HARTER: Whatever time is
18 convenient to the Court.

19 JUDGE JONES: Well, our interest is we
20 have no interest in the matter. So how much time do
21 you think you need?

22 And Mr. Luft, would you like to file a
23 post-hearing brief?

24 MR. LUFT: Very briefly, just to
25 straighten out any --

1 JUDGE JONES: How much time does the
2 company need?

3 MR. LUFT: Two weeks.

4 JUDGE JONES: Is that good with you?

5 MR. HARTER: (Nodded head.)

6 JUDGE JONES: Okay. I'll order the
7 parties then to file post-hearing briefs
8 simultaneously, there won't be any reply briefs,
9 within two weeks.

10 Can we expedite the transcript?

11 COURT REPORTER: Yes.

12 MR. HARTER: I don't think I have, I'd
13 like to offer Complainant's Exhibits -- actually --

14 JUDGE JONES: That exhibit right here?
15 This Exhibit 4?

16 MR. HARTER: Yeah, instead of -- is
17 that 3?

18 JUDGE JONES: 2 and 3?

19 MR. HARTER: 1, 2 and 4. That's the
20 one that I don't need to offer. That one.
21 (Indicated.)

22 JUDGE JONES: We'll take Complainant's
23 Exhibit 3 out of the record and replace it with
24 Complainant's Exhibit 4.

25 MR. HARTER: Well, we can leave it, it

1 won't hurt anything. I've offered 1, 2, 3 and 4.

2 JUDGE JONES: Any objection to
3 Complainant's Exhibit 4?

4 MR. LUFT: Nope.

5 JUDGE JONES: Any from Staff?

6 MS. HERNANDEZ: No, thank you.

7 JUDGE JONES: Complainant's Exhibit 4
8 is admitted into the record.

9 So in two weeks post-hearing briefs. I'm
10 ordering you now to do that, and I'll issue an order
11 to memorialize it in the docket, if that's what's
12 going to happen.

13 The transcript will be in Tuesday, use the
14 resources you have to start on your brief. Tuesday
15 get the transcript, and you can use that to solidify
16 whatever arguments and references to the record you
17 would need.

18 MR. HARTER: In addition to the
19 convenience of the Court, I have no time limit, if
20 you need more time.

21 JUDGE JONES: Well, you do have a time
22 limit, you've got two weeks.

23 MR. HARTER: Right, and other that, to
24 accommodate her.

25 JUDGE JONES: We already got that taken

1 care of. We'll go off the record.

2 (THE HEARING WAS CONCLUDED AT 12:10 P.M.)

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) ss.
CITY OF ST. LOUIS)

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