

In the Matter of:
DEBBIE FEKEN
v.
EMPIRE DISTRICT ELECTRIC COMPANY, et al.

EC-2020-0183, VOL. II

July 08, 2020



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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

July 8, 2020

WebEx

Jefferson City, Missouri

Volume 2

Debbie Feken,)
)
Complainant,)
vs.) File No. EC-2020-0183
)
Empire District Electric Company,)
)
Respondent.)

PAUL GRAHAM, Presiding
REGULATORY LAW JUDGE

MAIDA J. COLEMAN,
SCOTT T. RUPP,
COMMISSIONERS

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P R O C E E D I N G S

JUDGE GRAHAM: Let's go on the record then and bring this proceeding to order. Good morning. Today is July 8, 2020. The Commission has set this time for an evidentiary hearing in this case. The case is Debbie Feken vs. Empire District Electric Company. The file number is EC-2020-0183.

Before I say anything else and forget, we are going to have to take a recess at around ten o'clock today, because the Commissioners at that time or at 10:15 will have their weekly agenda meeting and take up other orders and matters that are now before the Commission. I don't anticipate that that session will be long, but I don't want to presume. I cannot presume on its length either. So after reflection, what I'm going to suggest here, and if there's any input from anybody or if there is a problem, please speak up and let me know.

It's my intention to take a recess at ten o'clock and come back on the record and complete this hearing beginning at 1:00 this afternoon. That's probably more time than the Commissioners will need, but I don't want to presume on anybody's schedule or anybody's necessary lunch hour. Is there anyone here who wants to speak up and respond to that proposal? Is

1 there a problem?

2 MS. CARTER: Judge, I don't want to cause a
3 problem with it. If there's a way we could keep it
4 going in the morning, I'd appreciate it. I assumed with
5 only the three witnesses that we would not be going past
6 1:00 today, and so I scheduled myself a full afternoon
7 of meetings starting at 1:00. If we need to have it
8 that we pick up the hearing at 1:00, then certainly I
9 will rearrange things. I just was thinking we would
10 only be a couple hours.

11 JUDGE GRAHAM: That was very logical of you,
12 although I usually have a lot of questions. May I ask
13 who's speaking? Is this Diana?

14 MS. CARTER: Yes.

15 JUDGE GRAHAM: Okay. I think probably let me
16 say now if we're on Zoom, and I've done a few Zoom
17 hearings, when somebody speaks up their screen lights up
18 and I can tell who's talking. I can't do that with the
19 WebEx apparently. So let's just lay this little ground
20 rule down that if you speak you will identify yourself
21 at the beginning of whatever it is you have to say and
22 then we'll all know who's talking.

23 That is Commissioner Coleman coming on.

24 Thank you, Ms. Carter, for that observation.
25 Let's try this. Let's say that we're going to take a

1 recess at ten o'clock. The Commissioners' agenda will
2 begin at 10:15, if that's when Chairman Silvey begins
3 it, but he's very prompt usually. Then what I'll have
4 -- You see Jackie Keely. She's in charge of me on this
5 case. I'll ask her to bring us all back on or be
6 available let us say at 11:15. I think it would be
7 presumptuous of me in the extreme to say that the
8 Commissioners will be done with their agenda inside of
9 an hour, and they need to participate or be available to
10 participate in this hearing.

11 So we'll come back at 11:15. If at that time,
12 in fact, the agenda meeting is not complete, then we
13 will play -- I will be back because my matter on agenda
14 is at the beginning and will be done. But we will all
15 come back. And if the agenda meeting is continuing at
16 that time, then we'll play it by ear and figure out what
17 we're going to do next. Okay? Anything else?

18 MS. CARTER: This is Diana. No, I was going
19 to say that would be great. Thanks, Judge.

20 JUDGE GRAHAM: Okay. Let's try it that way.
21 All of this has been on the record. So let's continue
22 here. I think at this point in time we are ready for
23 the entry of appearances. I guess I need to tell you
24 for the record that I'm Paul Graham, the Regulatory Law
25 Judge presiding in this hearing.

1 And would the parties enter their appearance?
2 Ms. Feken, what I mean by that is would you simply state
3 your name on the phone and state that you are here for
4 your hearing? Would you go ahead and do that for me?

5 MS. FEKEN: Debbie Feken. I am here for the
6 hearing with Empire Electric.

7 JUDGE GRAHAM: Thank you. And would Empire
8 District Electric Company's attorney please enter her
9 appearance?

10 MS. CARTER: Diana Carter for the Empire
11 District Electric Company, 428 East Capitol Avenue,
12 Suite 303, Jefferson City, Missouri 65101.

13 JUDGE GRAHAM: Thank you. And would the
14 staff's attorney -- attorneys please enter their
15 appearance?

16 MS. ASLIN: Casi Aslin for staff, 200 Madison
17 Street, Jefferson City, Missouri 65101.

18 JUDGE GRAHAM: Thank you. And I think we now
19 have all the attorneys of record. They've entered their
20 appearance. Just so I've said it and I haven't heard
21 any feedback at this point so we should be fine, but a
22 couple of things. Please turn off your cell phones or
23 mute them. Many of you, if you're like me, might be
24 working on your computer during the course of the
25 hearing. If your phone is picking that up, then it's

1 going to be a problem for us all. So please mute your
2 cell phones and any electronic devices.

3 Let's talk about the exhibits for a few
4 minutes on the record. I'm showing that the complaint,
5 and I'm presumptuous here in terms of who's going to do
6 what with exhibits, but I want to call these out at this
7 point. The complaint is EFIS No. 1. When I refer to
8 "EFIS," of course, I'm referring to our electronic
9 filing system. The staff's report filed in this case
10 was EFIS 5. Ben Rankin's testimony prefiled for staff
11 was filed at EFIS 17. Empire's answer and motion to
12 dismiss is at EFIS 4.

13 Rebuttal testimony filed by Patsy Mulvaney was
14 at EFIS 14. The surrebuttal filed by Angie Simkin is at
15 EFIS 18. Now, my question is how do we want to proceed
16 with exhibits? Typically what I like to do and what
17 most of the judges like to do is this way. The
18 complainant, that would be Ms. Feken, is -- Let me just
19 look at something real quick here.

20 Yeah, I would typically have assigned to her
21 Exhibits 1 through 99. Of course she won't need 99
22 exhibits probably, but we would give her those spots.
23 Staff would then have 100 through 199, and we would give
24 Empire 200 through 299. Has anybody prenumbered their
25 exhibits so that I need to know that?

1 Okay. Ms. Feken, let me pause for a minute
2 here. Are you going to have exhibits that you're going
3 to want to put into the case today?

4 MS. FEKEN: I have a letter that I wrote up
5 that I would like to put in. I would like to read it.
6 It's about three minutes.

7 JUDGE GRAHAM: Okay. Is that in the nature of
8 -- I don't know how to put this to you. You say it's a
9 letter. Is it in the nature of an argument in favor of
10 your case?

11 MS. FEKEN: Yes.

12 JUDGE GRAHAM: Okay. I'm kind of thinking
13 without having heard it that it's more like a brief,
14 what we lawyers or judges would call a brief.

15 MS. FEKEN: Probably, yes.

16 JUDGE GRAHAM: I'm not going to -- Okay. I'm
17 going to show that that is -- may I call it a pre-trial
18 brief, Ms. Feken, does that make sense to you and would
19 you allow me to call it that?

20 MS. FEKEN: Well, I don't really know what a
21 pre-trial brief is. It's just -- It's a statement about
22 I have an investment in Empire and so a little bit about
23 the issues with the present case.

24 JUDGE GRAHAM: Okay. I'm just going to call
25 it your written argument. May I?

1 MS. FEKEN: Yes.

2 JUDGE GRAHAM: I'm going to assign that
3 number, the exhibit number to that as Exhibit No. 1.

4 MS. FEKEN: Okay.

5 JUDGE GRAHAM: Do you have anything else that
6 you'll be offering, Ms. Feken?

7 MS. FEKEN: No, I had I believe some letters
8 that I had sent to the Commission and I believe that
9 they are already in there and I think you've read them.

10 JUDGE GRAHAM: I'm not sure about that.

11 MS. FEKEN: Anyway, this will basically cover
12 what my issues are anyway.

13 JUDGE GRAHAM: Okay. Well, it may or may not
14 be the case that your written argument is what we would
15 call an actual evidentiary exhibit. But I'm going to go
16 ahead and let it into the case and call it Exhibit No. 1
17 and let the parties -- any other parties make objections
18 to it after they've seen it. But we'll let it in for
19 what it's worth. I don't mean by that statement to
20 imply that it's not worth anything or worth a million
21 dollars or anything. I'm just lauding to the fact that
22 you called it an argument and it may not have any
23 evidentiary value but it may be of value to the
24 Commission in terms of clarifying your position having
25 stated your argument.

1 Going to staff now, I'm going to deal with
2 them next on this preliminary matter. Staff, what
3 exhibits will you have?

4 MS. ASLIN: We have our Staff Report, public
5 and confidential versions, and also Ben Rankin's
6 surrebuttal testimony also both public and confidential
7 versions.

8 JUDGE GRAHAM: All right. And thank you for
9 calling out the issue of confidentiality here. I wish
10 that you would when you -- We need to deal with it right
11 now. Shall we call the Staff Report Exhibit 100 and the
12 surrebuttal of Ben Rankin, did you say you were going to
13 offer that?

14 MS. ASLIN: Yes.

15 JUDGE GRAHAM: Okay. Shall we call that 101;
16 is that acceptable?

17 MS. ASLIN: Yes.

18 JUDGE GRAHAM: Okay. I'm showing again that
19 those are EFIS 5 and 17.

20 You've indicated, returning to what I started
21 to say, that those are -- those both will be treated
22 confidentially, and why don't we let the record reflect
23 that when we receive them they will be dealt with by the
24 data center and otherwise as confidential exhibits with
25 all of the usual procedures to protect confidentiality

1 being applied. Okay? And we'll let the record reflect
2 that we made that ruling right now.

3 Now, turning to Empire. Empire, what exhibits
4 will you have?

5 MS. CARTER: Judge, we have Ms. Mulvaney's
6 rebuttal testimony, Ms. Simkin's surrebuttal testimony,
7 and those were both prefiled in EFIS and then the only
8 other exhibit that I plan on using at this time,
9 depending on what happens at the hearing, is the signed
10 guarantee agreement, those three items as well as three
11 recordings that I would intend to play. So those
12 recordings wouldn't be exhibits because they would just
13 be played during the hearing and then they would be part
14 of the transcript.

15 The three recordings and the three exhibits
16 were provided to Ms. Feken and counsel for staff in
17 advance.

18 JUDGE GRAHAM: You're telling me that the
19 recordings will be played but they will not be exhibits?

20 MS. CARTER: Because they're not paper.

21 JUDGE GRAHAM: They're not paper but they're
22 not testimonial either.

23 MS. CARTER: No, I just assumed they'd be
24 written into the transcript as if I was reading
25 something. It would then be in the transcript so it

1 wouldn't need a separate number. But either way I just
2 wasn't sure how to have them maintained by the
3 Commission as exhibits. I thought they would need to be
4 played so they could be typed into the transcript.

5 JUDGE GRAHAM: Well, you can certainly,
6 subject to there not being too lengthy, you can
7 certainly read the contents of an exhibit into the
8 record after it has been admitted as an exhibit into the
9 record, but this is not in the nature of a witness
10 testifying. So the exhibit itself is going to have to
11 be admitted in some way.

12 Are these recordings in a shape where they
13 could be somehow filed with the Commission?

14 MS. CARTER: I've never tried to file an audio
15 recording in EFIS. I do not know if that's possible.

16 JUDGE GRAHAM: Let's go at it this way. The
17 rest of you don't do what I just did. That's an order.
18 Don't talk over somebody else. We have a court reporter
19 here who we have to protect. So do not do what I just
20 did and talk over somebody. I hope I've made myself
21 clear on that.

22 Here's what we'll do. Ms. Feken, are you
23 aware of these recordings?

24 MS. FEKEN: Yes.

25 JUDGE GRAHAM: Do you have any objection to

1 the proposal here that these simply be played aloud into
2 the record and that the Commission receive the contents
3 of those recordings in that manner as evidence? Do you
4 have any objection to that?

5 MS. FEKEN: No, I don't.

6 JUDGE GRAHAM: Okay. Well, then I think I
7 made a mountain out of a molehill. I think we've got
8 her taken care of now. So you'll be probably playing
9 those recordings in. Ms. Carter, I would point out to
10 you that Staff's Report, as I understand it, has the
11 guarantee that is signed attached to it. And that is
12 going to be coming in as Exhibit 100. So I don't have
13 any problem with you putting it in again. I just did
14 want to call your attention to that. I think the copy
15 that was attached to Ms. Simkin's deposition was an
16 unsigned rendition of the guarantee.

17 All right. I think that concludes our
18 preliminary discussion on the -- well, not quite. I was
19 going to suggest that if there are no objections to the
20 exhibits, so that we've got our housekeeping under
21 control here, we go ahead and simply offer the exhibits
22 now and show that they have been received into the
23 record subject to further testimony as may be tendered
24 by any witness concerning those exhibits. Is that
25 procedure acceptable or does someone have a specific

1 objection to that?

2 MS. CARTER: Judge, I don't believe we
3 discussed exhibit numbers for Empire's testimony.

4 JUDGE GRAHAM: All right. You are correct.
5 Shall we call Ms. Mulvaney's No. 200?

6 MS. CARTER: That works for me. And then Ms.
7 Simkin would be 201.

8 JUDGE GRAHAM: That's fine. And I think --

9 MS. CARTER: I'm sorry, Judge. Sorry, delay
10 there. If there is a signed guarantee attached to
11 Staff's Report, then we would not need that in
12 separately.

13 JUDGE GRAHAM: I'm pretty sure that's there.
14 I'm going to assign it to you if you have EFIS available
15 to you to go and look and satisfy yourself that it's in.
16 Certainly it is an exhibit that I would assume that you
17 would think had to be in evidence. Now, I just want to
18 make sure. What I'm not hearing from anybody is that
19 the complaint that Ms. Feken has filed is not going to
20 be received as an exhibit and Empire's motion to dismiss
21 and answer are not going to be offered as exhibits.

22 Sometimes in some cases the pleadings are
23 offered as sort of prefiled testimony. Let me address
24 that specifically to Ms. Feken. Did you want your
25 complaint and the contents of the complaint to be

1 received as an exhibit in this case?

2 MS. FEKEN: Yes.

3 JUDGE GRAHAM: Okay. I believe that's EFIS
4 No. 1. And we're going to identify that then as your
5 Exhibit No. 2. A little backwards but since we've
6 already identified your written argument as No. 1, we'll
7 call this complaint Exhibit No. 2. Any objections to
8 that, Ms. Carter, or anyone, the receipt of the
9 complaint in the nature of pre-trial prefiled testimony
10 that's now being received in evidence? Any objections?

11 MS. CARTER: No objection.

12 JUDGE GRAHAM: Any objection from staff?

13 MS. ASLIN: No objection.

14 JUDGE GRAHAM: Okay. The complaint is going
15 to be received in evidence as Exhibit No. 2.

16 (COMPLAINANT'S EXHIBIT NO. 2 WAS RECEIVED INTO
17 EVIDENCE AND MADE A PART OF THIS RECORD.)

18 JUDGE GRAHAM: The written argument, I did not
19 ask if there were objections and we haven't seen this
20 yet. So it's going to be an exhibit that's filed after
21 the hearing is over. I guess where we will leave that
22 is that we will show that Ms. Feken is going to file
23 that and the parties at that point subject to an order
24 that I am going to issue after this hearing will make
25 any objections that they have.

1 Staff's report and their surrebuttal of Ben
2 Rankin are Exhibits 100 and 101. Any objections to the
3 receipt of those exhibits into the record at this time?
4 Hearing no objections, those exhibits are admitted.

5 (STAFF'S EXHIBITS 100 AND 101 WERE RECEIVED
6 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

7 JUDGE GRAHAM: Now, Empire, are you going to
8 offer -- Ms. Carter, are you going to offer your answer
9 and motion to dismiss as an exhibit now that the
10 complaint is in as an exhibit?

11 MS. CARTER: Yes, Judge. I apologize. I had
12 thought Ms. Mulvaney's testimony incorporated that by
13 reference, but it looks like it did not. So what I
14 would like to offer would be Ms. Mulvaney's testimony as
15 Exhibit 200, Ms. Simkin's testimony as Exhibit 201, the
16 answer as Exhibit 202, and Judge, I would like to go
17 ahead if it's all right and offer the signed guarantee
18 as Exhibit 203 just to make sure we do have the signed
19 copy in the record so we can refer to that during the
20 hearing.

21 JUDGE GRAHAM: Okay. The guarantee will be
22 No. 203. Do I hear any objections from anyone to the
23 receipt of 200, which is the rebuttal testimony of Ms.
24 Mulvaney, 201, which is the surrebuttal testimony of
25 Angie Simkin, 202, which in EFIS No. 4 is designated as

1 Empire's answer and motion to dismiss and then the
2 signed guarantee agreement which we're going to
3 designate as 203. Any objections to the receipt of
4 those exhibits? Hearing none, all of the exhibits that
5 I've identified are going to be shown of record now to
6 be admitted except for Exhibit No. 1 which is the
7 written argument of the complainant. Ms. Feken will
8 file that in EFIS after this hearing and at that point
9 any party with an objection may file that.

10 (COMPANY'S EXHIBITS 200, 201, 202 AND 203 WERE
11 RECEIVED INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

12 JUDGE GRAHAM: Let's talk about the order of
13 witnesses. It would appear to me in this case that the
14 order would be that Ms. Feken would testify first with
15 cross-examination then from Empire and the staff in that
16 order and that then I would expect to see Empire's
17 witnesses testifying second.

18 MS. ASLIN: Judge, this is Casi Aslin. I had
19 spoken to both Ms. Carter and Ms. Feken earlier this
20 week; and even though we didn't file an order of
21 witnesses in this case, we had discussed Ms. Feken
22 followed by Staff's witness and then Empire going last,
23 if that's all right with you.

24 JUDGE GRAHAM: That's fine with me. Does
25 Empire have any objection to that, going last?

1 MS. CARTER: No, that's fine, Judge.

2 JUDGE GRAHAM: Okay. Then we'll take up
3 Empire last and we'll take staff next after Ms. Feken.

4 Okay. One other matter and we can begin. How
5 are we doing on time here? We are at 9:20. Does anyone
6 want to give an opening statement before we start with
7 testimony? Ms. Feken, before I allow anybody else to
8 respond, let me tell you what an opening statement is by
9 starting out with what it isn't. It's not your argument
10 and it's not your testimony. It's neither one of those.
11 I like to think of it as a road map where you tell me,
12 number one, where you want this Commission to go, what
13 do you want the Commission to do, that's the destination
14 on the road map. And secondly, briefly outline for the
15 Commission what the evidence is, not the arguments, but
16 what the evidence is that will get us to that
17 destination.

18 So I hope I didn't mix you up there with that
19 complicated explanation. All I'm asking you to do is to
20 tell me what the evidence is going to be in the case if
21 you wish to do that before we put it on and do not argue
22 your case, just tell me what the facts are going to be
23 that you're going to prove that you believe supports
24 your position. Do you understand me when I explain to
25 you what an opening statement is?

1 MS. FEKEN: Kind of. I'm not really a lawyer.
2 Yeah, I'm not sure what my opening statement would be.

3 JUDGE GRAHAM: Do you wish to make one or do
4 you wish to just go ahead with your testimony under
5 oath?

6 MS. FEKEN: Yeah, just go with my testimony.

7 JUDGE GRAHAM: Okay. We'll do that. We'll do
8 it that way. Does staff or Empire wish to make any
9 opening statements in this case?

10 MS. ASLIN: Staff has a short opening.

11 JUDGE GRAHAM: Does Empire have an opening
12 statement then?

13 MS. CARTER: If staff would like to go first
14 and if that covers everything, Judge, then I may not
15 need to add anything, but I do think it would be helpful
16 just to have a quick run-down for you and any
17 Commissioners who may be listening on the background of
18 the case, the basic facts. Would that be all right,
19 Judge, if I just wait and see and if Casi covers
20 everything, then Empire may not need to give one.

21 JUDGE GRAHAM: Yes. You can reserve whether
22 or not you're going to make an opening statement. Let's
23 proceed then. I believe staff wants to make an opening
24 statement.

25 Ms. Aslin, do you wish to proceed?

1 MS. ASLIN: Yes. This complaint was filed on
2 December 23, 2019 by Ms. Debbie Feken. On December 26,
3 2019, it was ordered that this complaint will apply
4 small formal complaint procedures. In small formal
5 complaint cases such as these, staff completes an
6 investigation and files an investigative report with the
7 Commission and all parties to the complaint case.

8 Staff filed its report on February 10, 2020.
9 Having completed its investigation, staff concludes that
10 the company has not violated any applicable statutes,
11 Commission rules or Commission approved company tariffs
12 related to this complaint.

13 However, staff made two recommendations. One
14 that Empire clearly state on the guarantee agreement the
15 conditions upon which the guarantor will be released
16 from the liability and, two, that Empire provide
17 customers with the option of adding their guarantor as
18 an authorized user to their account.

19 Ben Rankin, who investigated the complaint and
20 filed testimony, will be available today as a witness to
21 answer any questions that you may have. Empire has
22 agreed to implement both of staff's recommendations with
23 slight modifications. The new classification of
24 guarantor contacts will allow guarantors to view account
25 information but will not allow them to make changes to

1 the account.

2 While staff's investigation concluded that no
3 statutes, Commission rules or Commission approved
4 tariffs were violated with regard to Ms. Feken's
5 complaint, there is always room for improvement. Staff
6 believes that the improvements brought about by this
7 complaint will prevent similar complaints and better
8 inform guarantors of their responsibility. Thank you.

9 JUDGE GRAHAM: All right. Thank you very
10 much, Ms. Aslin. Ms. Carter, do you wish to go ahead
11 now and make an opening statement?

12 MS. CARTER: No, Judge. Thank you.

13 JUDGE GRAHAM: Okay. In that event, let's
14 proceed with testimony. Ms. Feken, it is now time for
15 you to testify. What I need you to do and I'm just
16 going to take you at your word since we don't have you
17 up on the screen, but would you raise your right hand,
18 please, and take the following oath? Are you ready?

19 MS. FEKEN: Yes.

20 (Ms. Feken sworn.)

21 JUDGE GRAHAM: All right. Why don't you just
22 go ahead and tell me what the facts are in this case
23 that support -- well, just tell me what the facts are.

24 MS. FEKEN: Okay. Well, I kind of made a
25 little letter. Can I read that?

1 JUDGE GRAHAM: You may. It's just under oath.
2 This is going to be your testimony.

3 DEBBIE FEKEN,
4 being sworn, testified as follows:

5 I have New-Mac Electric and Empire Electric on
6 my property, which New-Mac is still in use on my garage.
7 Around 1997, because of New-Mac rates, I decided to
8 inquire with Empire Electric. After several meetings, I
9 decided to go with Empire Electric for my house leaving
10 my garage on New-Mac.

11 Empire Electric was to come approximately a
12 half a mile down the road and then 300 foot and two
13 meter loops and a light pole onto my property. My
14 contract with Empire Electric was five years at around
15 \$128 a month, a little over \$7,600 investment. The
16 contract was paid in full around 2002.

17 I have been a valued customer to Empire
18 Electric about 23 years with this service. However,
19 Empire Electric had to change hands to Liberty Utilities
20 at some point. September 2019, I found out that they
21 are not the great friendly company Empire Electric was
22 and they do not value their long-standing customers at
23 all.

24 It began simply because I wanted a copy of my
25 guarantor contract. I told them I wanted a copy so my

1 lawyer could review it. Customer service told me they
2 could no longer talk to me since I mentioned hiring a
3 lawyer.

4 I received a voicemail from Teresa on 9/4/19
5 asking where to send the guarantor contract if I wanted
6 it to sent to the email I had on file, which was
7 welderbabel101@aol.com. I received another email from
8 Teresa 9/5/19 before I had the opportunity to answer the
9 first call. Teresa asked where to send the guarantor
10 contract. I called that morning and left a voicemail
11 and told her to send it to debbiefecken@gmail.com and to
12 mail one to my address.

13 I also told her I wanted someone in the
14 company above customer service to contact me to resolve
15 the issues. I never received a copy of the guarantor
16 contract and no one from the company ever called me. I
17 do have the two voicemail recordings from Teresa.

18 I then wrote a letter to Liberty Utilities
19 about my complaints. I was ignored. I then filed a
20 Better Business Bureau complaint. Liberty Utilities'
21 answer was we are governed by the utility commission and
22 the customer has filed a complaint with the utility
23 commission. No resolution.

24 I then filed two more separate complaints all
25 of which had the same answer, we are governed by the

1 utility commission and this customer has filed a
2 complaint with the utility commission. No resolution
3 therefore forcing me to file this formal complaint with
4 the utility commission.

5 Liberty Utilities has not tried to resolve any
6 issues on a customer level. Liberty Utilities is not a
7 friendly customer-based company. Liberty Utilities has
8 to be forced to deal with customers, and that is why
9 we're here today. I have a substantial investment in
10 Liberty Utilities, a little over \$7,600, or I would shut
11 them off, cut ties and connect with New-Mac as stated in
12 my Better Business Bureau complaint as one of the
13 issues.

14 Rude customer service employees is another
15 issue, and the fact that I can't talk with anyone above
16 customer service to resolve any of these issues is
17 another issue. I find Liberty Utilities rude,
18 unfriendly and not a company I want to keep dealing with
19 if this is how they want to treat long-standing
20 customers. My problem is my \$7,600 investment for
21 electric to be utilized on my property. That's all.

22 JUDGE GRAHAM: Okay. Thank you, Ms. Feken.
23 Is that your direct testimony now?

24 MS. FEKEN: Yes.

25 JUDGE GRAHAM: All right. Is there -- Well,

1 let's do it this way since we're going to have staff
2 present its case second. Why don't we go ahead and lead
3 with staff on cross-examination. Ms. Aslin, are you
4 ready to do your cross, if you have any?

5 MS. ASLIN: I have no questions for Ms. Feken.

6 JUDGE GRAHAM: All right. Ms. Carter, do you
7 have cross-examination for Empire?

8 MS. CARTER: I do. Thanks, Judge.

9 JUDGE GRAHAM: Go ahead. You may proceed.

10 MS. CARTER: Thank you.

11 CROSS-EXAMINATION BY MS. CARTER:

12 Q. Ms. Feken, is it correct that you signed the
13 guarantee agreement dated June 30, 2017, that is the
14 subject of this complaint case?

15 A. I did.

16 Q. And on September 3, 2019, you spoke with an
17 Empire customer service representative; is that correct?

18 A. Yes.

19 MS. CARTER: And Judge, at this time I would
20 like to play the recording of that call pursuant to our
21 earlier discussion.

22 JUDGE GRAHAM: Any objections from staff on
23 that?

24 MS. ASLIN: No objection.

25 JUDGE GRAHAM: Ms. Feken, during

1 cross-examination at this point Empire wishes to go
2 ahead and play recordings or a recording of apparently
3 your voice in a conversation. Do you have any objection
4 to that procedure at this point?

5 MS. FEKEN: No.

6 JUDGE GRAHAM: Go ahead then. Ms. Carter, you
7 may proceed.

8 MS. CARTER: Thank you. I'm holding my phone
9 up to my computer where it is playing. So if someone
10 will let me know if that is not working for Ms. Bev
11 trying to copy everything down.

12 (The recording began to be played.)

13 JUDGE GRAHAM: The court reporter -- Excuse
14 me, Ms. Carter.

15 THE COURT REPORTER: That's pretty difficult
16 for me to do.

17 JUDGE GRAHAM: Yeah, I was wondering about
18 that. The court reporter is expressing a concern. She
19 says this is difficult for her to do.

20 MS. CARTER: Would you mind if I just turn up
21 the volume and if we try that one more time? It started
22 playing automatically before I was able to adjust my
23 volume.

24 JUDGE GRAHAM: Let's give it a shot. Bev,
25 wave at me if it's just not working.

1 THE COURT REPORTER: First of all, before she
2 starts, who exactly is on the phone call?

3 JUDGE GRAHAM: Yeah, let's have a little
4 foundation there, Ms. Carter. I'll just proceed in that
5 regard. Can you on behalf of the company represent on
6 the record here who the speakers are in this call?

7 MS. CARTER: Yes, Judge, it is the complainant
8 Ms. Feken speaking with the Empire District customer
9 service representative and her name is Teresa Lashmet,
10 L-a-s-h-m-e-t.

11 JUDGE GRAHAM: All right. Let me ask the
12 complainant do you stipulate to that, do you agree, Ms.
13 Feken, to the representations of what Ms. Carter has
14 said here about who the speakers are? Are you good to
15 go with that?

16 MS. FEKEN: I do not know who I was speaking
17 to.

18 JUDGE GRAHAM: All right. Do you believe that
19 you were speaking to a representative of the company?

20 MS. FEKEN: Yes, I was speaking to a customer
21 service representative, yes.

22 JUDGE GRAHAM: Okay. Then I don't know that
23 it's necessarily essential that we have a name as long
24 as we have a stipulation that the recording is between
25 you and a representative of the company. Is that

1 acceptable to all the attorneys in the case, that
2 stipulation?

3 MS. ASLIN: Yes. Judge Graham, this is Casi
4 Aslin. I have a question. In the short bit that we
5 heard I heard the last four digits of Ms. Feken's social
6 security number asked for. So I was wondering if this
7 portion of the transcript should be confidential.

8 JUDGE GRAHAM: Well, better than that, why
9 don't we just not have that in the transcript unless you
10 all think it's in because it got out. It's going to
11 have to be confidential at a minimum. Bev, if you would
12 so indicate, mark your record that way. Okay?

13 Let's try it again here and see if we can get
14 a recording that doesn't tax our court reporter too
15 much. Let's try it again, Ms. Carter.

16 MS. CARTER: Thank you, Judge.

17 (The recording was played.)

18 MS. CARTER: The recording stopped at that
19 point.

20 JUDGE GRAHAM: Is this Ms. Carter talking?

21 MS. CARTER: Yes, this is Ms. Carter.

22 JUDGE GRAHAM: Just a minute, Ms. Carter. The
23 court reporter is signaling to me that she has a
24 concern. Bev, what is the concern?

25 THE COURT REPORTER: That was extremely

1 difficult, and I don't feel comfortable about that
2 record at all. Could I make a suggestion?

3 JUDGE GRAHAM: Surely.

4 THE COURT REPORTER: I think it would be best
5 and what I've seen done in the past is for Ms. Carter to
6 have someone transcribe that phone call and then maybe
7 put the written -- submit the written copy in as an
8 exhibit and then see if the other parties have
9 objections. It's very difficult for me to do over the
10 telephone.

11 JUDGE GRAHAM: Let me see if I can summarize
12 what I think your suggestion is. Your suggestion is
13 that the company take it upon itself to transcribe the
14 conversation and then file it in some manner following
15 some procedure that allows the other parties to make any
16 objections that they may have to the testimony and if
17 there are no objections we'll just show that that has
18 been admitted into the record as a transcript of the
19 telephone call. Have I said it right?

20 THE COURT REPORTER: Yes.

21 JUDGE GRAHAM: Is there any objection from Ms.
22 Feken to that procedure? Are you okay with that, Ms.
23 Feken, if we do it that way?

24 MS. FEKEN: Yes.

25 JUDGE GRAHAM: Okay. Staff, are you okay with

1 that?

2 MS. ASLIN: That works for staff.

3 JUDGE GRAHAM: Okay. We'll follow that
4 procedure then.

5 MS. FEKEN: Just leave my four-digit social
6 security number out.

7 JUDGE GRAHAM: Yeah, let's keep that out. I
8 think let's do it this way. I'm going to entertain --
9 I'm going to show that what we've just done is stricken
10 from the record and that it's not going to be
11 transcribed. Any objection to that?

12 MS. FEKEN: No.

13 MS. CARTER: Yes, Judge. This is Diana Carter
14 for Empire.

15 JUDGE GRAHAM: Yes.

16 MS. CARTER: Yes, Judge. I have an objection
17 to not being allowed to play the recordings or have them
18 admitted into the record. Ms. Feken was allowed to give
19 testimony regarding how she was spoken to very rudely
20 and that no one was willing to speak with her, and I
21 believe it is important for the commissioners to be able
22 to hear the recorded conversation, as well as the two
23 messages that were left in follow up for Ms. Feken. So
24 perhaps we could then try another way for those
25 recordings to somehow be marked as exhibits and brought

1 into the record.

2 JUDGE GRAHAM: Here's where we're going to
3 leave it then, counsel. These are your exhibits. I
4 understand that they are being tendered to rebut a
5 contention for testimony that Ms. Feken has made, but
6 nevertheless they are your exhibits. I'm going to leave
7 it to the company to suggest to us after the hearing has
8 been concluded in the nature of filings how to receive
9 the audio recordings into the evidence so that the
10 Commissioners may listen to them. I'm going to leave
11 that to the company to do.

12 There are ways that I can surmise myself on
13 how to do that. That would not be appropriate for me to
14 make these suggestions. I think what we have stipulated
15 to, unless Ms. Carter is objecting to this, is that a
16 transcript of these recordings will be placed in the
17 record. Is that okay with you, Ms. Carter?

18 MS. CARTER: Judge, I would ask that we have
19 three recordings, April 3, 2019, April 4, 2019 and --
20 excuse me, that is September for each of those,
21 September 3, 2019, September 4, 2019, and September 5,
22 2019. If we could please have those recordings marked
23 as Exhibits 2004, 2005 and 2006 and then, yes, Judge, as
24 the court reporter and you had requested, I will then
25 have those three recordings also transcribed and then we

1 could have those -- I will submit those as exhibits
2 marked 2007, 2008 and 2009.

3 JUDGE GRAHAM: Do you mean 200?

4 MS. CARTER: Yes, I'm sorry. Those were all
5 200.

6 JUDGE GRAHAM: Okay. I didn't realize this
7 case went back that far in time. I was thrown there for
8 a minute. Okay. So you're going to present to us --
9 You're going to file in EFIS after the case and submit
10 as exhibits transcripts of those recordings with those
11 numbers and any party who has an objection to the
12 accuracy of those transcripts then can duly make those
13 objections and then in addition, Ms. Carter, as I
14 understand it we are going to leave it with the company
15 to come up with a way to present as evidence audio, the
16 audio recordings themselves as exhibits so that the
17 Commission can hear them and take them into
18 consideration as the Commission wishes in light of the
19 contentions and arguments in this case. Am I saying
20 that correct, Ms. Carter?

21 MS. CARTER: Yes, thanks, Judge, other than,
22 of course, my request was that we get to play them
23 during the hearing so that they would be in the recorded
24 record for the Commissioners when they listen to the
25 hearing either now if they're listening live or if they

1 choose to replay it later that they would, in fact, be
2 able to hear those recordings as part of the hearing.
3 That would be my request. I understand that that
4 request has been denied. So I will -- We'll find some
5 other way, I'm not sure what that would be, if EFIS will
6 not accept the recordings; but if I can't play them
7 during the hearing, I will do what I can to find another
8 way.

9 JUDGE GRAHAM: At this point, we're starting
10 to circle around the wagons for the second time. So I'm
11 going to let the record speak for itself at this point
12 and we'll move forward.

13 Is there any further cross-examination that
14 this was -- We stopped in the middle of the
15 cross-examination.

16 MS. CARTER: Yes, Judge, I have questions for
17 Ms. Feken.

18 JUDGE GRAHAM: You may proceed, Ms. Carter.
19 FURTHER CROSS-EXAMINATION BY MS. CARTER:

20 Q. So Ms. Feken, after that recorded discussion
21 on September 3, 2019, a customer service representative
22 for Empire then left a message for you on September 4 of
23 2019; is that correct?

24 A. Yes. I actually went in to Empire building
25 three different times to talk with customer service that

1 are not recorded messages.

2 Q. And then you also received a call with a
3 message left for you on September 5 of 2019; is that
4 correct?

5 A. Yes, yes.

6 Q. And then also on September 5 of 2019, you sent
7 an email to Empire customer service; is that correct?

8 A. I don't recall the email but I did call Teresa
9 back and leave a voicemail on her recording.

10 Q. Do you have the documents I sent to you in
11 advance that would be Empire's exhibits for this
12 hearing, including Ms. Simkin's surrebuttal testimony?

13 A. I am not sure. I don't have them in front of
14 me.

15 Q. Is there a way you can access those that were
16 provided to you in advance for the hearing?

17 A. No, because they weren't provided on paper.
18 They were just emailed as far as that's all I've got is
19 emails. So I don't have them in front of me.

20 Q. Ms. Feken, you don't recall sending an email
21 to Empire customer service on September 5, 2019?

22 A. I don't recall sending an email. I did send a
23 letter, but I don't recall sending an email.

24 MS. CARTER: Judge, may I read the email into
25 the record for Ms. Feken so I can then ask her a

1 question about that? It is Schedule 2.

2 JUDGE GRAHAM: Well, just a minute. I'm going
3 to ask you to lay your own foundation for that now.

4 MS. CARTER: Okay. Judge, it has already been
5 admitted into evidence.

6 JUDGE GRAHAM: The email -- so this email has
7 been admitted into evidence?

8 MS. CARTER: Yes, it is Schedule 2 to Ms.
9 Simkin's surrebuttal testimony which was marked and
10 admitted into evidence as Exhibit 201.

11 JUDGE GRAHAM: All right. Thank you. That's
12 fine. Go ahead. You may ask questions about the
13 content of that exhibit which is in evidence.
14 Specifically you may go ahead and read it and ask her
15 questions about what you have read.

16 BY MS. CARTER:

17 Q. Ms. Feken, I am reading from what I believe is
18 your email dated September 5, 2019 from email address
19 welderbabel101@aol.com to Joplin customer service, and it
20 states numerous things, and again that was attached as
21 Schedule 2 to Ms. Simkin's surrebuttal testimony that
22 was provided at the time it was filed and then also sent
23 to you in advance of this hearing as Empire's exhibit
24 and also provided in discovery in response to staff's --

25 JUDGE GRAHAM: Ms. Carter? Ms. Carter, may I

1 interrupt? Are you reading from the exhibit or are you
2 making representations about it?

3 MS. CARTER: I'm trying to refresh Ms. Feken's
4 recollection about the email.

5 JUDGE GRAHAM: Well, I think what you asked
6 me, counsel, is whether you could read from the email
7 and ask her questions about the contents of the email,
8 and I gave you leave to do so. So why don't you follow
9 that procedure, please.

10 MS. CARTER: I'm sorry, Judge. I was trying
11 to avoid reading the entire email in hopes that Ms.
12 Feken would remember having sent it. I will go ahead
13 and read the entire email.

14 BY MS. CARTER:

15 Q. Ms. Feken, it reads: I have had Empire
16 Electric at my property since around 1997. I paid
17 around \$7,000 to bring Empire to my property. I also
18 have New-Mac on my property. I have signed several
19 guarantor contracts in my time I have had Empire. I was
20 told each time I signed a guarantor contract by customer
21 service representatives that if the electric is paid on
22 time by said person for one year my contract drops off
23 cutting off my responsibility.

24 Ms. Feken, do you recall sending that email to
25 Empire?

1 A. I don't. I don't recall sending it to Empire.
2 I recall filing that to the Better Business Bureau.

3 Q. Okay. So you recall making the statement that
4 you had signed several guarantor contracts with Empire;
5 is that correct?

6 A. Yes. Yes, I have.

7 Q. And you recall making a statement that it was
8 explained to you each time you signed one of those
9 Empire guarantee agreements that the customer would need
10 to pay on time for one year before your responsibility
11 would be terminated?

12 A. And that's correct and that's where I'm asking
13 for proof.

14 Q. Okay. Thank you. And on September 6, 2019,
15 Empire emailed to you the guarantee agreement that you
16 signed; is that correct?

17 A. No. I never received a guarantor contract
18 from Empire Electric at all.

19 Q. Ms. Feken, were you using email address
20 welderbabel101@aol.com?

21 A. Yes. That is an old email that they have, and
22 I left Teresa as I said in my letter to email it to
23 DebbieFeken@gmail.com because welderbabe does not work
24 very well. And I also recall in the recording I had a
25 DebbieFeken@aim.com. And so why would they have sent it

1 to welderbabe.

2 Q. Ms. Feken, if you sent an email to Empire
3 customer service on September 5, 2019 from your
4 welderbabe email address, do you believe that was
5 reasonable then for Empire to reply to that email with
6 the signed guarantor agreement?

7 A. I don't recall sending them an email. I don't
8 recall sending them an email.

9 Q. So Ms. Feken, attached to Ms. Simkin's
10 surrebuttal testimony is Schedule 2 and then also
11 earlier in this matter provided in response to staff's
12 data request was what purports to be an email exchange
13 between you and Empire. Do you deny that that email
14 exchange occurred where email provided you with the
15 signed copy of the guarantor agreement?

16 A. I deny getting a guarantor agreement from
17 Empire Electric, and I also said that I wanted someone
18 from the company to call me, and nobody called me above
19 customer service.

20 Q. Ms. Feken, the email to you on September 6,
21 2019, what I believe to be the email to you from Empire,
22 states that Empire offered for there to be installment
23 payments if you were having trouble paying the amount
24 that was transferred to your account pursuant to the
25 guarantee agreement. Do you recall Empire making that

1 offer?

2 A. I did not get an email from Empire on
3 welderbabel01 at all.

4 JUDGE GRAHAM: Counsel, we've got a question
5 and we've got an answer on the record, and I'm afraid
6 we're going to have to take our recess now and allow you
7 to continue with your cross-examination after the agenda
8 meeting. I wanted to make sure that we had an answer to
9 a question and did not break between a question and an
10 answer. At this point we are going to recess this
11 hearing so that the Commissioners can participate in an
12 agenda meeting that they regularly have that is
13 scheduled for today at 10:15.

14 So with that, as we indicated before on this
15 matter, we'll come back at 11:15. Why don't we say
16 we'll come back at 11:15. If the agenda meeting is done
17 at that point, we will continue the hearing. Okay? We
18 are going off the record and this point and will be
19 recessed. Thank you very much.

20 (A recess was taken.)

21 JUDGE GRAHAM: Let's go back on the record
22 then. We'll show that we've gone on the record. It's
23 now I show 11:15. We went off the record for about an
24 hour and fifteen minutes in order to accommodate the
25 Commissioners' agenda. That agenda is complete. And so

1 we are back on in the case of Debbie Feken vs. The
2 Empire District Electric Company, File No. EC-2020-0183.
3 We paused for a recess or we recessed in the middle of
4 Empire's cross-exam. I don't know if it was in the
5 middle but we were not done with Ms. Feken's
6 cross-examination.

7 Ms. Carter, do you have further
8 cross-examination for Ms. Feken?

9 MS. CARTER: I do not. Thank you.

10 JUDGE GRAHAM: All right. In that event, do
11 any Commissioners have questions for the witness?
12 Hearing none, I have a few questions. Ms. Feken, are
13 you there?

14 MS. FEKEN: Yes.

15 QUESTIONS BY JUDGE GRAHAM:

16 Q. I'm going to ask you a few questions now.

17 A. Okay.

18 Q. Have you actually ever been provided, Ms.
19 Feken, with a copy of the guarantee agreement which you
20 signed?

21 A. The utility commission provided me with a
22 copy.

23 Q. So you have seen that?

24 A. Yes.

25 Q. Is there any dispute that you signed that

1 agreement?

2 A. No, I signed it.

3 Q. Let me ask you this, Ms. Feken. At the time
4 that you signed the agreement, did you understand that
5 the utility company would not provide you with copies of
6 the bills that you were going to be asked to pay?

7 A. No, that wasn't mentioned.

8 Q. Did you at the time that you signed the
9 agreement with the company agree that pursuant to the
10 guarantee you would pay those bills without proof that
11 you owed them?

12 A. No, that wasn't addressed either.

13 Q. Did you agree to that is my question. Did you
14 agree to pay the bills for Scott Feken without proof
15 that those bills were owed?

16 A. Not to my recollection.

17 Q. Well, Ms. Feken, I'm asking you a direct
18 question about what was in your mind at the time you
19 entered into the guarantee agreement, did you agree to
20 pay Scott Feken's bills without the company providing
21 you any proof that you owed them?

22 A. No. In my mind, I thought that they would
23 have to show me that he did not pay his bills on time
24 for 12 consecutive months.

25 Q. Do you believe that your belief in that

1 respect was a reasonable belief that you would --

2 A. I believe so.

3 Q. Okay. Ms. Feken, we're here today because
4 these bills, Mr. Scott Feken's bills have been added to
5 your bills. Is that a correct statement?

6 A. Yes, that's correct.

7 Q. Well, when you pay your own bills, do you
8 receive proof from the company that you owe them?

9 A. Yes.

10 JUDGE GRAHAM: No further questions from the
11 Judge. Having asked those questions, at this point I'm
12 going to ask whether staff has any recross of this
13 witness.

14 MS. ASLIN: No questions.

15 JUDGE GRAHAM: Does Empire have any recross of
16 this witness?

17 MS. CARTER: Yes, Judge. Thank you.

18 JUDGE GRAHAM: Go ahead and proceed.

19 RE CROSS-EXAMINATION BY MS. CARTER:

20 Q. Ms. Feken, who is Scott Feken? What is his
21 relationship to you?

22 A. He is my son.

23 Q. Did you ask your son to provide you with the
24 bills or authorize Empire to provide you access to the
25 bills?

1 A. I did not ask Scott for the bills, because
2 he's not the one wanting me to pay them. It's Empire.

3 Q. Yet did you ask Scott to contact Empire and
4 authorize Empire to provide you with his bills?

5 A. No, because I don't talk to Scott.

6 Q. So when Empire said they were prohibited from
7 providing you with another customer's bills but that
8 Scott could authorize them to provide those bills to
9 you, did you do anything in response to that?

10 A. I tried to get ahold of Scott, but it's not
11 Scott's responsibility. It's Empire's responsibility to
12 show me that I do owe them.

13 Q. Do you believe Scott paid his bills on time?

14 A. Yes, I do.

15 Q. So you believe Empire is lying that there was
16 an unpaid balance from Scott's account?

17 A. I don't know what they're doing. I believe he
18 paid his bills on time.

19 Q. So you dispute that any amount was owed by
20 Scott to Empire?

21 A. That's -- I have no idea. I'm in the dark.

22 Q. At this time it's my understanding Scott has
23 still not authorized you to have access to his bills; is
24 that correct?

25 A. I'm not aware that he has.

1 Q. Did your relationship with Scott change from
2 after when you signed the guarantee until when you were
3 asked to -- well, until sometime between then and when
4 the account balance was transferred to your account?

5 A. Yes.

6 Q. So when you signed the guarantee, were you
7 speaking with Scott at that time?

8 A. Yes, I was.

9 MS. CARTER: I have no further questions.
10 Thank you.

11 JUDGE GRAHAM: All right, Ms. Feken, we are at
12 the point in the proceeding where we conduct redirect
13 examination. That means that the parties have asked you
14 the questions they want to ask you, the Commission has
15 asked the questions it wants to ask you, then the
16 parties have recrossed you, asked all the further
17 questions they have.

18 At this point we are at redirect, Ms. Feken,
19 which means you can testify further if there's something
20 that you were asked and you feel that you need to
21 explain your testimony further. This is not a time
22 simply to repeat your testimony. It's a time to explain
23 anything that you feel at this point you have not
24 adequately explained. Do you have anything further to
25 add to your testimony, Ms. Feken?

1 MS. FEKEN: I just have a couple of questions.

2 JUDGE GRAHAM: Well, this is not the time to
3 ask questions, Ms. Feken. You will have an opportunity
4 to ask other witnesses questions. Of course, I'm not
5 going to allow you to ask me questions. But if you have
6 questions for the parties' witnesses later, you will be
7 allowed to do that. Okay?

8 MS. FEKEN: Okay. So no, I don't.

9 JUDGE GRAHAM: All right. So we are done with
10 this witness. And we're going to show that Ms. Feken
11 has rested her case at this point. I don't know if
12 anybody wants to make a motion at this point. Any
13 motions?

14 MS. CARTER: Just for preservation purposes I
15 guess, Empire would move for a decision in its favor
16 based on the fact that Ms. Feken has not demonstrated
17 any violation of a tariff or Commission rule or order.

18 JUDGE GRAHAM: I'll take that -- The
19 Commission will take that motion with the case.

20 I think we decided procedurally before we
21 began to receive evidence, and so forth, that staff
22 would proceed next. Staff, are you ready to proceed?

23 MS. ASLIN: Yes, Judge.

24 JUDGE GRAHAM: Okay. You may proceed.

25 MS. ASLIN: Staff calls Ben Rankin.

1 JUDGE GRAHAM: Mr. Rankin, are you there?

2 MR. RANKIN: Yes, I'm here, Judge.

3 JUDGE GRAHAM: Before I swear you in, would
4 you state your full name, please, for the record?

5 THE WITNESS: My name is Ben Rankin. That's
6 spelled B-e-n R-a-n-k-i-n.

7 JUDGE GRAHAM: Would you raise your right hand
8 to be sworn, please?

9 (Mr. Rankin sworn.)

10 JUDGE GRAHAM: All right. Ms. Aslin, it's
11 your witness. You may proceed.

12 BEN RANKIN,
13 called as a witness, being sworn, testified as follows:
14 DIRECT EXAMINATION BY MS. ASLIN:

15 Q. Mr. Rankin, by whom are you employed and in
16 what capacity?

17 A. I am employed by the Missouri Public Service
18 Commission as an associate research/data analyst in the
19 customer experience department.

20 Q. And did you contribute to the Staff Report and
21 the surrebuttal testimony in this matter that has been
22 marked as Exhibits 100 and 101?

23 A. Yes, I did.

24 Q. And do you have any changes to either of
25 those?

1 A. Yes, I have a correction to my surrebuttal
2 testimony on page 1, lines 12 to 13. At the time my
3 testimony was filed, my title was a utility management
4 analyst II. I have since been reclassified to an
5 associate research/data analyst.

6 Q. With that correction in mind, if I were to ask
7 you those same questions today, would your answers be
8 the same?

9 A. Yes, they would.

10 Q. And is the information contained in both the
11 report and your surrebuttal testimony true and correct
12 to the best of your knowledge and belief?

13 A. Yes, it is.

14 MS. ASLIN: And I believe those exhibits have
15 already been admitted. So I tender the witness for
16 cross.

17 JUDGE GRAHAM: All right. Thank you very
18 much. Do we have cross-examination for Mr. Rankin from
19 Empire?

20 MS. CARTER: Yes, Judge. Thank you.

21 JUDGE GRAHAM: You may proceed.

22 MS. CARTER: Thank you.

23 CROSS-EXAMINATION BY MS. CARTER:

24 Q. Mr. Rankin, in response to data requests that
25 were issued by staff in this matter, did Empire provide

1 staff with documentation showing that Scott Feken had a
2 balance due on his account?

3 A. Yes, we were able to independently confirm
4 that.

5 Q. Was staff also able to confirm that Mr. Feken
6 had never made 12 on-time payments?

7 A. Yes, that's correct.

8 Q. In fact, the records demonstrate that Mr.
9 Feken rarely paid on time; is that correct?

10 A. I believe that's a fair characterization.

11 Q. Does the Commission have a rule regarding a
12 utility's ability to provide a customer account
13 statements to people other than the customer?

14 A. Not that I'm aware of.

15 Q. You're not aware of a Commission rule that
16 provides that utilities cannot share a customer's
17 account information without the customer's consent?

18 A. There likely is one. I could not give you a
19 citation for it.

20 MS. CARTER: And Judge, I'm sorry I don't have
21 the rule citation in front of me. I will grab that if I
22 need the citation, but I would ask that you take
23 administrative notice of the Commission's Chapter 13
24 rules.

25 JUDGE GRAHAM: Yes, the Commission will take

1 judicial notice or official notice of Chapter 13.

2 BY MS. CARTER:

3 Q. In this case, staff suggested that Empire make
4 two changes; is that correct?

5 A. Yes, that's correct.

6 Q. And the first change was for Empire to
7 specifically provide on the face of the guarantee form
8 that the guarantor would not be released unless the
9 customer makes 12 consecutive on-time payments; is that
10 correct?

11 A. Yes, that's correct.

12 Q. And Empire has implemented that change as
13 suggested by staff, to your knowledge?

14 A. Yes, that appears to be correct.

15 Q. And then could you explain for us staff's
16 suggested second change?

17 A. The second recommendation was originally to
18 add or to give the customer the option to add an
19 authorized user to their account to cover their
20 guarantor that it was modified to the recommendation for
21 a billing contact which is a type of authorized user,
22 and I believe that Empire has implemented it as a
23 guarantor contact as a new type of authorized user.

24 Q. And just to make sure I'm clear, staff's
25 suggestion was for the customer to have the option of

1 making that authorization, correct?

2 A. Yes, at the time that the guarantor agreement
3 was initiated.

4 Q. And staff found no violations in this case by
5 Empire of any tariff or Commission order or rule; is
6 that correct?

7 A. Yes, that's correct.

8 MS. CARTER: Thank you. I have no further
9 questions.

10 JUDGE GRAHAM: All right. Thank you very
11 much. Ms. Feken, do you have cross-examination for Mr.
12 Rankin?

13 CROSS-EXAMINATION BY MS. FEKEN:

14 Q. I would just like to ask him the utility
15 commission gets proof that Scott didn't pay his bills on
16 time but I don't as the one who's paying the bill, and
17 so they're changing that so that if I sign one that I
18 will have that right?

19 A. Based on the Empire's surrebuttal testimony,
20 they've implemented new procedures for when new
21 guarantor contracts are signed that will allow the
22 option for the guarantor to be added to the account to
23 obtain that information.

24 MS. FEKEN: Okay. I have no other questions.

25 JUDGE GRAHAM: Okay. It's time for questions

1 from the Commissioners. Are there any questions from
2 the Commissioners? All right. Hearing none, I have
3 just a couple questions for Mr. Rankin.

4 QUESTIONS BY JUDGE GRAHAM:

5 Q. Are we to understand, Mr. Rankin, that the
6 staff did examine the bills, Scott Feken's bills,
7 directly and did verify that he owed money on this
8 account when he terminated it?

9 A. We verified Scott Feken's account records
10 including his billing and payment history and we were
11 able to independently verify that he had not met the 12
12 consecutive on-time payments requirement.

13 Q. Okay. Just so we're clear, when you made --
14 when you did that verification, did staff look directly
15 at the bills which the company Empire did not give to
16 Debbie Feken? Did you look at what the company did not
17 give to her?

18 A. Yes, we did verify the actual copies of Scott
19 Feken's bill statements.

20 Q. And you reviewed the guarantee in this case,
21 the signed guarantee?

22 A. Yes, we did review the signed guarantor form.

23 Q. Did you review any document or thing which
24 would establish that at the time that Ms. Feken entered
25 into the guarantee agreement at the time that she

1 entered into the guarantee agreement that she agreed to
2 pay a bill for someone without seeing that bill? Did
3 you see anything in the agreement, the guarantee
4 agreement or anything else that indicated she agreed to
5 that procedure?

6 A. No, to my knowledge it was a verbal agreement
7 and there's no documentation.

8 Q. To be clear on this, Mr. Rankin, is it your
9 understanding that she verbally agreed to pay a bill
10 without seeing the bill?

11 A. No, that is not my understanding.

12 JUDGE GRAHAM: No further questions from the
13 Judge on this. Is there recross from Empire?

14 MS. CARTER: Yes, Judge. Thank you.

15 RECROSS-EXAMINATION BY MS. CARTER:

16 Q. Mr. Rankin, I may have just misunderstood an
17 answer you gave to the Judge. But in this case there is
18 a written guarantee agreement that was signed by Ms.
19 Feken, correct?

20 A. Yes, that is correct.

21 Q. And nowhere on the face of that document does
22 it say that Ms. Feken will be provided with Scott
23 Feken's bill statements; is that correct?

24 A. That's correct, it does not state that.

25 Q. It's simply a guarantee agreement that she is

1 guaranteeing his payments; is that correct?

2 A. That's correct.

3 MS. CARTER: I have no other questions. Thank
4 you.

5 JUDGE GRAHAM: Ms. Feken, do you have any
6 recross-examination for this witness?

7 MS. FEKEN: Yes, I do.

8 JUDGE GRAHAM: Go ahead.

9 RE CROSS-EXAMINATION BY MS. FEKEN:

10 Q. Okay. So my question is, how would I know
11 that the last bill was not paid or 12 months consecutive
12 was not paid so that I still owe that by that agreement?

13 A. You would not have a way to obtain that
14 information directly.

15 Q. What?

16 A. No, you would not have a way to obtain that
17 information directly.

18 MS. FEKEN: Okay. Thank you. That's all.

19 JUDGE GRAHAM: Okay. Does staff have any
20 redirect for its witness?

21 MS. ASLIN: Yes, I have just a couple
22 questions.

23 REDIRECT EXAMINATION BY MS. ASLIN:

24 Q. Mr. Rankin, I believe in your conversation
25 with Judge Graham that you stated that it was a verbal

1 agreement between Ms. Feken and the company that she
2 would pay any balance of Scott Feken if he did not make
3 12 on-time payments; is that correct?

4 A. Qualifications that would release the
5 agreement with the 12 consecutive payments was a verbal
6 agreement.

7 Q. Okay. And is that included in a Commission
8 rule?

9 A. The Commission rules do state that they will
10 be released under those conditions, but it is not stated
11 on the contract.

12 Q. Is it included in Empire's tariffs?

13 A. Yes, the tariff language mirrors the Chapter
14 13 regulations.

15 MS. ASLIN: All right. Thank you. No further
16 questions.

17 JUDGE GRAHAM: Okay. That concludes the
18 testimony of this witness. I believe we are ready now
19 to proceed to Empire's witnesses. Are you ready to
20 proceed with your case, Ms. Carter?

21 MS. CARTER: Yes, thank you, Judge.

22 JUDGE GRAHAM: I don't know who you want to
23 put on first or who you want to put on. So you can go
24 ahead with your case.

25 MS. CARTER: Thank you. I would call Hayley

1 Sirmon who should be on the line.

2 THE WITNESS: I am.

3 MS. CARTER: There she is.

4 JUDGE GRAHAM: Who is this witness? I'm
5 sorry?

6 MS. CARTER: Hayley, H-a-y-l-e-y, last name
7 S-i-r-m-o-n.

8 JUDGE GRAHAM: Do we have prefiled testimony
9 from her?

10 MS. CARTER: We do not have prefiled
11 testimony. She will be responding to the testimony Ms.
12 Feken presented this morning.

13 JUDGE GRAHAM: Okay. Then help me and be
14 patient with me. Would you spell out her name again,
15 because I was looking at my outline of witnesses. Give
16 me the name again, please. First name?

17 MS. CARTER: Hayley.

18 JUDGE GRAHAM: Go ahead.

19 THE WITNESS: H-a-y-l-e-y.

20 JUDGE GRAHAM: Hayley. I'm sorry. I just
21 wasn't hearing well. The last name?

22 THE WITNESS: Sirmon, S-i-r-m-o-n.

23 JUDGE GRAHAM: Hayley Sirmon. Ms. Sirmon,
24 you've said your name enough times now I don't think I
25 have to ask you to say it again. Would you raise your

1 right hand to be sworn, please?

2 (Witness sworn.)

3 JUDGE GRAHAM: You may proceed, Ms. Carter.

4 MS. CARTER: Thank you.

5 HAYLEY SIRMON,

6 called as a witness, being sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. CARTER:

8 Q. You have stated your name for the record. If
9 you could please let us know your employer and your job
10 title?

11 A. I am employed with Liberty Utilities as a
12 manager of customer care.

13 Q. Is that for the Empire District Electric
14 Company?

15 A. Yes.

16 Q. And how long have you been working with
17 Empire?

18 A. Since about February of 2012.

19 Q. And Ms. Sirmon, if you could explain more
20 since you didn't have prefiled testimony what your role
21 is at the company, a brief description of your job
22 duties?

23 A. Yes. I'm currently the manager of customer
24 care and I oversee the contact centers for Empire
25 district, the location that we have in Joplin and in

1 Ozark that handles Empire customer calls.

2 Q. At some point did Empire customer service
3 department receive contacts from Ms. Feken?

4 A. Yes.

5 Q. And when was that?

6 A. That was on September 5 of 2019.

7 Q. And how did Empire receive that contact from
8 Ms. Feken?

9 A. We received a customer service email that
10 looks like it was submitted through the website on
11 September 5.

12 Q. And is that the email that is attached to
13 Angie Simkin's surrebuttal testimony?

14 A. Yes.

15 Q. And did anyone with Empire respond to that
16 email that you received from Ms. Feken?

17 A. Yes, I responded.

18 Q. You personally responded to her email?

19 A. Yes.

20 Q. And what was the date of that response?

21 A. September 6 of 2019.

22 Q. And is that response also part of Schedule 2
23 to Ms. Simkin's surrebuttal testimony?

24 A. Yes, it is.

25 Q. And could you just briefly summarize the

1 substance of your response to Ms. Feken?

2 A. Yes. I attached a copy of the signed
3 guarantor agreement and I offered to split the balance
4 that was owed up into an installment plan.

5 Q. When Ms. Feken signed the guarantee for her
6 son, and I'm sorry, I'll back that up, what is the
7 typical practice for Empire when a guarantee agreement
8 is signed?

9 A. We would explain the conditions for the
10 guarantee to expire for the guarantor to be released
11 from the account. We would explain what they were
12 signing for and what would happen if a balance was owed
13 at the end of service what would happen.

14 Q. It's my understanding that Ms. Feken has
15 signed multiple guarantee forms for Empire customers; is
16 that correct?

17 A. I believe so, yes.

18 Q. Is there a Commission rule that prohibits
19 Empire from providing customer account information
20 without the consent of the customer?

21 A. Yes, I believe there is. We would not be able
22 to discuss someone else's account without the permission
23 of the accounts holder due to privacy reasons.

24 Q. There was a letter originally notifying Ms.
25 Feken that there had been an amount transferred to her

1 account under this guarantor agreement. Are you
2 familiar with that letter?

3 A. I have not looked at that letter in awhile,
4 but yes, I do know that one was mailed to her to notify
5 her of the balance transfer.

6 Q. To your knowledge, did Empire follow its
7 customary practice when dealing with guarantor
8 agreements in dealing with this particular guarantor
9 agreement signed by Ms. Feken?

10 A. Yes, we did.

11 MS. CARTER: Thank you. That is all I have.

12 JUDGE GRAHAM: All right. I think the way we
13 are proceeding is that we'll have staff
14 cross-examination first.

15 MS. ASLIN: No questions from staff.

16 JUDGE GRAHAM: All right. Any questions from
17 the Commission? Hearing none. I have a question.

18 QUESTIONS BY JUDGE GRAHAM:

19 Q. Am I saying your name correct? Is it Sirmon?

20 A. Yes, it is, Sirmon.

21 Q. Ms. Sirmon, you were asked about the existence
22 of regulations. I have at least just one question
23 probably. Are you aware of any statute, rule or tariff
24 of the company's that allows Empire to require payment
25 of a guarantor on an account without proof being

1 provided to that guarantor that a bill is owed?

2 A. I'm not sure of anything in particular on
3 that, but I do know that we would not be able to provide
4 account information without permission.

5 JUDGE GRAHAM: All right. That's all the
6 questions that I have. Is there any recross from staff?

7 MS. ASLIN: No, Judge.

8 JUDGE GRAHAM: Any recross from you, Ms.
9 Feken?

10 MS. FEKEN: No.

11 JUDGE GRAHAM: Any redirect from Empire?

12 MS. CARTER: No, thank you, Judge.

13 JUDGE GRAHAM: All right. I believe unless
14 somebody says otherwise that this witness can be
15 excused.

16 (Witness excused.)

17 JUDGE GRAHAM: Any further testimony or
18 evidence on behalf of Empire?

19 MS. CARTER: Yes, could we have Angie Simkin
20 be sworn in.

21 JUDGE GRAHAM: All right. Ms. Simkin, are you
22 here?

23 MS. SIMKIN: Yes, I am.

24 JUDGE GRAHAM: Would you state your full name
25 for the record, please, and then I'll swear you in?

1 MS. SIMKIN: Angie, A-n-g-i-e, Simkin,
2 S-i-m-k-i-n.

3 JUDGE GRAHAM: Ms. Simkin, would you raise
4 your right hand and I'll swear you in.

5 (Ms. Simkin sworn.)

6 JUDGE GRAHAM: Counsel, you may proceed.

7 MS. CARTER: Thank you.

8 ANGIE SIMKIN,
9 called as a witness, being sworn, testified as follows:

10 DIRECT EXAMINATION BY MS. CARTER:

11 Q. Ms. Simkin, how are you employed and what is
12 your job title?

13 A. I'm employed by Empire District Electric
14 Utilities Company. I am the manager of customer
15 service.

16 Q. And you prepared written and prefiled
17 surrebuttal testimony in this case; is that correct?

18 A. Yes, ma'am.

19 Q. And your surrebuttal testimony incorporates
20 the previously submitted rebuttal testimony of Patsy
21 Mulvaney on behalf of Empire; is that correct?

22 A. Yes.

23 Q. If I asked you those same questions that are
24 in Ms. Mulvaney's prefiled testimony and your prefiled
25 testimony, would your answers be substantially the same?

1 A. Yes.

2 Q. Do you have any corrections for the prefiled
3 testimony?

4 A. No.

5 MS. CARTER: And Judge, those two pieces of
6 testimony have already been admitted. So I will not go
7 through that step.

8 BY MS. CARTER:

9 Q. Ms. Simkin, I would also ask you you're
10 familiar with the letter that was sent to Ms. Feken
11 regarding the amount being transferred from Scott
12 Feken's account; is that correct?

13 A. Yes.

14 Q. And does that initial letter contain an offer
15 from Empire for Ms. Feken to make installment payments?

16 A. On that initial letter, I believe -- Am I
17 allowed to look at that to double check?

18 Q. Yes, that would be fine.

19 A. Okay. It says the above amount will appear on
20 your next service statement. If the payment in full
21 prior to the due date will be a problem for you, please
22 contact our office regarding the monthly payment plan on
23 the transferred amount. I was pretty sure it did.

24 Q. Thank you. Is there a Commission rule that
25 prohibits Empire from sharing customer information with

1 other customers with other people without that original
2 customer's consent?

3 A. It's the privacy law is what we go by that we
4 don't give that information out on somebody else's
5 account.

6 Q. And in this case Scott Feken did not consent
7 to Debbie Feken receiving his account statements; is
8 that right?

9 A. Yes.

10 Q. Ms. Feken had signed other guarantee
11 agreements in the past; is that correct?

12 A. Yes.

13 Q. Including one that was signed January 20 of
14 2015?

15 A. Yes.

16 Q. For Mr. Epperson I believe it is; is that
17 right?

18 A. Yes. The contract -- The date of that
19 contract was March, I believe, of '14, March 7 of '14,
20 and then the letter to transfer was sent January 19 of
21 '15, because there was a balance owed on that account as
22 well.

23 Q. And an amount was transferred to Ms. Feken's
24 account?

25 A. Yes.

1 Q. And did Ms. Feken call Empire about that
2 matter as well?

3 A. Yes. She requested the printouts at that time
4 on the account which were not given to her as well.

5 Q. And that was in January of 2015 that it was
6 explained to her that she could not have the customer's
7 account information; is that correct?

8 A. Yes.

9 MS. CARTER: Those are all the questions I
10 have. Thank you.

11 JUDGE GRAHAM: All right. Does staff have any
12 cross-examination for Ms. Simkin?

13 MS. ASLIN: No questions.

14 JUDGE GRAHAM: Do the Commissioners have any
15 questions? Hearing none. I want to make sure I
16 understood some testimony here, Ms. Simkin.

17 QUESTIONS BY JUDGE GRAHAM:

18 Q. You state that it was explained to Ms. Feken
19 that she could not have the customer's or see Scott
20 Feken's bills. When was that information conveyed to
21 her? I wasn't clear on that.

22 A. For Scott Feken, that was on the phone call
23 that she had on September the 13th of '19 for Scott
24 Feken. She also asked that for Dustin Epperson who she
25 signed for, and that call was January 28 of '15 was when

1 she asked for that information.

2 JUDGE GRAHAM: All right. That's all the
3 questions that I have of this witness. Any
4 recross-examination from staff?

5 MS. ASLIN: No questions.

6 JUDGE GRAHAM: Ms. Feken, do you have any
7 further cross-examination for Ms. Simkin?

8 MS. FEKEN: Yes, I do.

9 CROSS-EXAMINATION BY MS. FEKEN:

10 Q. On supposedly January 20, 2015, I called on
11 the Epperson guarantor. Who did I talk to?

12 A. On January 28 of '15 is the date that you had
13 called in. It was a customer service rep that you had
14 spoken to at that time.

15 Q. And do you have the recording of that because
16 I never called.

17 A. No, we do not have a recording. We have logs
18 on the account.

19 MS. FEKEN: I never called on a Dustin
20 Epperson, because I knew he didn't pay his bill.

21 JUDGE GRAHAM: Are you done with your
22 cross-examination, Ms. Feken?

23 MS. FEKEN: Yes.

24 JUDGE GRAHAM: All right. Well, I am going to
25 ask a follow up question, Ms. Simkin.

1 QUESTIONS BY JUDGE GRAHAM:

2 Q. With respect to -- This is a 2015 call with
3 respect to a customer named Epperson; is that right?

4 A. Yes, sir.

5 Q. And with respect to your testimony, you are
6 reviewing the records of the company?

7 A. Yes, sir.

8 Q. Putting that differently, you were not
9 involved in that conversation; is that correct?

10 A. That is correct.

11 JUDGE GRAHAM: Okay. On the basis of the
12 follow up question that I asked, does staff have any
13 further cross-examination?

14 MS. ASLIN: No, Judge.

15 JUDGE GRAHAM: Okay. I'll give the witness
16 back then to Empire. Does Empire have any redirect for
17 this witness?

18 MS. CARTER: No, Judge. Thank you.

19 JUDGE GRAHAM: All right. Then I guess this
20 witness can be excused.

21 (Witness excused.)

22 JUDGE GRAHAM: Does Empire have further
23 evidence or testimony?

24 MS. CARTER: No, Judge. I would note though
25 during our recess EFIS at this time accepted my audio

1 recordings through the EFIS system. So the three audio
2 recordings have been uploaded to EFIS and I had marked
3 those as the exhibit numbers we discussed earlier.

4 JUDGE GRAHAM: Yeah, were those -- I have to
5 ask you, are those the ones that you indicated were in a
6 2000 sequence? Just joking aside, I think we really
7 actually need to have you state on the record here what
8 those exhibit numbers are, if you can.

9 MS. CARTER: Yes. What I submitted through
10 EFIS, Exhibit No. 204 is the recording from September 3,
11 2019, Exhibit 205 is the recorded message from September
12 4 of 2019, and Exhibit 206 is the recorded message from
13 September 5 of 2019.

14 JUDGE GRAHAM: All right. Thank you very
15 much. So does that conclude the evidence and testimony
16 for the company?

17 MS. CARTER: It does.

18 JUDGE GRAHAM: All right. Okay. At this
19 point then I'll entertain or the Commission will
20 entertain closing arguments. Ms. Feken -- I'm sorry.
21 Did someone wish to say something?

22 MS. FEKEN: I was wondering do I get to ask
23 questions to Empire?

24 JUDGE GRAHAM: Which witness did you -- You're
25 not going to be able to ask the company questions, Ms.

1 Feken.

2 MS. FEKEN: The attorney.

3 JUDGE GRAHAM: No, you can't do that. You can
4 make your argument, but we're not going to have -- no
5 party is going to be allowed to just ask the other party
6 questions like that. What you will be able to do and
7 what I was about to tell you is that you may make a
8 closing argument at this point. And I told you at the
9 beginning in your opening statement that you were
10 supposed to lay out the facts for me and you read your
11 statement into the record. This is the time when you
12 can argue your case. You can tell the Commission now
13 what you want the Commission to do and you can make your
14 arguments as to why you believe the Commission should do
15 that. Do you have a closing argument?

16 MS. FEKEN: Yes.

17 JUDGE GRAHAM: Why don't you go ahead and
18 proceed.

19 MS. FEKEN: I looked through my emails and I
20 didn't receive any emails from 5/15/19 to 10/2/19 on
21 welderbabel01.com. It's been almost a year since I
22 filed my first complaint, and Empire has not had anyone
23 above customer service call me as I have asked numerous
24 times to resolve the issues instead of carrying it on
25 this far.

1 I went into the Empire building several times
2 before calling customer service to get my guarantor
3 contract in person. And I was told that they could no
4 longer talk to me since I threatened to have a lawyer
5 look at my contract. And so I never received a copy of
6 the guarantor contract from Empire as asking for
7 numerous times. I paid the \$274.04. So that's not the
8 problem. It's the issue of I'm not being given proof
9 that it was not paid.

10 As to the Dustin Epperson one, I knew he
11 didn't pay it. I paid that. And I never called. This
12 one for Scott Feken I have not been given any proof that
13 he didn't pay his bills on time; that there is an amount
14 owing. I don't know if he paid it. That's my argument.

15 JUDGE GRAHAM: All right. Thank you very
16 much, Ms. Feken. At this point does staff have a
17 closing argument?

18 MS. ASLIN: No, Judge.

19 JUDGE GRAHAM: Empire, do you have a closing
20 argument?

21 MS. CARTER: Yes, thanks, Judge. Before I
22 make that statement, I would just say to Ms. Feken, you
23 are welcome to give me a call if you have questions.
24 The various emails I have sent you contain my cell phone
25 number and that is on the pleadings as well. If you

1 have questions for me outside of this proceeding, you're
2 certainly welcome to respond to any of those emails or
3 give me a call and I'd be happy to talk with you.

4 As far as the company's closing statement, the
5 company responded to Ms. Feken's concern to the best of
6 the company's ability given the fact that they are
7 prohibited from giving customer account information to
8 another party without that customer's consent. Here Ms.
9 Feken signed a guarantee agreement saying to be
10 responsible for any amount that was remaining due on her
11 son's account so long as that agreement was in effect.

12 That agreement remained in effect until the
13 account was closed because Mr. Feken had at no time made
14 12 consecutive on-time payments. When the letter was
15 first sent to Ms. Feken letting her know about the
16 balance transfer, she was given the option of making
17 payments over time if it was a problem for her to pay
18 that amount in total. When she called in to speak with
19 the customer service representative, that customer
20 service representative tried to explain that they could
21 not give another customer's account information without
22 that customer's consent.

23 So they explained that Ms. Feken could go to
24 her son and ask him to authorize her to have access.
25 That is the recorded phone call that has been admitted

1 as Exhibit 204. A customer service representative then
2 called Ms. Feken two more times, September 4 and
3 September 5, and those messages have been admitted as
4 Exhibits 205 and 206. As was testified to by Empire's
5 witness, Ms. Feken submitted an email likely through the
6 Empire website asking for a copy of the signed contract.
7 That email was responded to the very next day with a
8 copy of the signed contract and again with an offer for
9 there to be an installment plan entered into if Ms.
10 Feken was having trouble paying that balance.

11 This is a situation where Empire has done all
12 they could to help resolve the issue. It's certainly
13 unfortunate that Ms. Feken and her son had not
14 maintained contact with each other, and I recognize that
15 has caused an issue here so she can't simply talk to him
16 or doesn't feel comfortable simply talking to him about
17 the situation but within the confines of the
18 Commission's rules and other laws regarding privacy of
19 information, all of the information has been provided to
20 the Commission staff and entered into evidence here in
21 this case marked as confidential and is available for
22 whatever investigation may need to be done regarding the
23 accuracy of that account information of those bills and
24 of the balance remaining due staff investigated that and
25 determined that Empire violated no tariff or Commission

1 rule or order and I believe the evidence presented here
2 today has demonstrated that as well. Thank you.

3 JUDGE GRAHAM: All right. Thank you very
4 much. I'm not sure that I made a record that certain
5 exhibits have been actually received into evidence. You
6 mentioned 204 through 206 and maybe I said that they
7 were admitted. I think I just acknowledged your
8 statement that they had been filed in EFIS. In fact, I
9 saw that when it happened. But let's make sure before
10 we lose our court reporter, and so forth, that these
11 have been admitted into evidence. Are there any
12 objections to Empire's Exhibits 204, 205 and 206? Ms.
13 Feken?

14 MS. FEKEN: No.

15 JUDGE GRAHAM: Staff, is there any objection
16 to those exhibits?

17 MS. ASLIN: No objection.

18 (COMPANY'S EXHIBITS 204, 205 AND 206 WERE
19 RECEIVED INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

20 JUDGE GRAHAM: Now I'm showing that Exhibit
21 No. 1 is the written argument, that's how I've
22 characterized it, which Ms. Feken will file after this
23 hearing. I'll give by order issued after today the
24 parties time to examine that statement and make any
25 objections they want to. Otherwise, the complaint is

1 Exhibit No. 2, the Staff Report is Exhibit 100, the
2 surrebuttal of Ben Rankin is 101. Then the rebuttal
3 testimony of Patsy Mulvaney is 200. The surrebuttal of
4 Angie Simkin is 201. The answer and motion to dismiss
5 is 202. The guarantee agreement is 203. And then the
6 recordings are 204, 205 and 206. And I'm going -- the
7 Commission is going to admit all of those exhibits.

8 (COMPANY'S EXHIBITS 207, 208, 209 AND
9 COMPLAINANT'S EXHIBIT 1 WERE RECEIVED INTO EVIDENCE AND
10 MADE A PART OF THIS RECORD.)

11 JUDGE GRAHAM: Ms. Carter, where do we stand
12 now on a transcription of the recordings which have been
13 entered into evidence as 204 through 206? What I don't
14 want to do is presume on the court reporter. Is it
15 still your desire that those be transcribed into the
16 transcript?

17 MS. CARTER: No, Judge, that's all right.
18 While we were on recess, I asked someone at Empire to
19 start transcribing those. So once they are ready, I
20 will circulate them to staff counsel and Ms. Feken so
21 they have an opportunity to review them and then I will
22 submit those through EFIS as Exhibits 207, 208 and 209.

23 JUDGE GRAHAM: Okay. Good. I think we
24 misunderstood each other, but we landed in the right
25 place. I think your answer to my question was yes and

1 not no. You are going to tender those transcriptions in
2 as 207, 08 and 09, and I think that will take care of it
3 so I'm going to go ahead and show that 204 through 206
4 are admitted as exhibits into the record per agreement
5 of the parties and then we'll see about the other
6 exhibits.

7 I will be issuing -- I will be requesting some
8 briefs on this case and I will issue an order today or
9 tomorrow scheduling those in conformity with when the
10 transcript is filed taking that into consideration. Any
11 further matters at this point before we go off the
12 record?

13 (The court reporter asked a couple of
14 spellings.)

15 JUDGE GRAHAM: Okay. I think we've covered
16 all of the matters that we need to discuss at this
17 point. We're going to adjourn the hearing and go off
18 the record at this point. Thank you very much for
19 everybody's patience and work today. We got her done.
20 Thanks very much. We're going off the record.

21 (Off the record.)
22
23
24
25

CERTIFICATE OF REPORTER

I, Beverly Jean Bentch, RPR, CCR No. 640, Certified Court Reporter with the firm of Tiger Court Reporting, LLC, within the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

Beverly Jean Bentch

Beverly Jean Bentch, RPR, CCR No. 640

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