

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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SBG Management Services Inc. v. Philadelphia : C-2012-2304215
Gas Works. : C-2012-2304167
 Fairmount Manor Realty Co., LP, Elrea Garden : C-2012-2304303
 Realty Co., LP, Marshall Square Realty Co., LP, : C-2012-2304183
 Colonial Garden Realty Co., LP, Simon Garden : C-2012-2304324
 Realty Co., LP, Colonial Garden Realty Co., LP, : C-2012-2334253
 Marshwood Realty Co., LP, Oak Lane Realty Co., : C-2012-2308454
 LP and Fernwood Realty Co., LP. : C-2012-2308462
 : C-2012-2308465
 Further Pre-Hearing Conference :
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Pages 98 through 150 Fourth Floor
 State Office Building
 801 Market Street
 Philadelphia, Pennsylvania

Monday, November 24, 2014

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

ERANDA VERO, Administrative Law Judge

APPEARANCES:

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WITNESS INDEX

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WITNESS INDEX

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EXHIBIT INDEX

NUMBER

FOR IDENTIFICATION

IN EVIDENCE

(None)

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PROCEEDINGS

1
2 ADMINISTRATIVE LAW JUDGE ERANDA VERO: Good morning. This is the
3 time and place for the fourth pre-hearing conference in the consolidated cases of
4 SBG Management Services Inc./ Fairmount Manor Realty Company LP versus
5 Philadelphia Gas Works, Docket No. C-2012-2304215 and SBG Management Services
6 Inc./Elrea Garden Realty Company LP versus Philadelphia Gas Works at Docket No.
7 C-2012-2304167, and SBG Management Services Inc./Marshall Square Realty
8 Company LP, versus Philadelphia Gas Works, Docket No. C-2012-2304303 and the
9 consolidated cases of SBG Management Services Inc./Colonial Garden Realty
10 Company LP, versus Philadelphia Gas Works at Docket No. C-2012-2304183 and SBG
11 Management Services Inc./Simon Garden Realty Company LP, versus Philadelphia
12 Gas Works at Docket No. C-2012-2304324 and SBG Management Services
13 Inc./Colonial Garden Realty Company versus Philadelphia Gas Works at Docket
14 No. C-2012-2334253 and the consolidated cases of SBG Management Services
15 Inc./Marshwood Realty versus Philadelphia Gas Works at Docket No. C-2012-
16 2308454 and SBG Management Services Inc./Oak Lane Realty Company LP, versus
17 Philadelphia Gas Works at Docket No. C-2012-2308462 and SBG Management
18 Services Inc./Fernwood Realty versus Philadelphia Gas Works at Docket No.
19 C-2012-2308465. During this pre-hearing conference, I may refer to these cases as
20 Groups 1, 2 and 3 respectively and Counsel is welcome to do the same.

21 My name is Eranda Vero and I am presiding as Administrative Law Judge
22 assigned to preside over this proceedings and I will issue an initial decision on this
23 complaint. Present here this morning, I have Ms. Donna S. Ross, Esquire, Counsel
24 for the Complainants and for the Respondent I have Mr. Laureto Farinas, Esquire.
25 Both Counsels are accompanied by representatives of their clients.

1 Now, just a brief summary. On August 6, 2012, Francine Thornton Boone,
2 Esquire, entered her appearance on behalf of Colonial Garden Realty LP, Fairmount
3 Realty Company LP, Simon Gardens, Elrea Garden Realty Company and Marshall
4 Square Realty Company, LP. On September 17, 2012, David H. Denengberg,
5 Esquire, entered his appearance in the above five cases on behalf of SBG
6 Management Services. Those were the original five complaints and they concerned
7 Fairmount, Elrea, Marshall, Colonial and Simon.

8 On November 9, 2012, Scott H. DeBroff, Esquire and Alicia R. Duke,
9 Esquire, entered their appearances on behalf of SBG Management Services Inc.,
10 replacing David H. Denengberg, Esquire, who withdrew his appearance on
11 November 26, 2012. Scott DeBroff, Esquire and Alicia Duke, Esquire, from Rosen
12 Simon, LLP, withdrew their appearance on behalf of SBG Management Services Inc.,
13 on August 6, 2013.

14 On August 14, 2013, Ms. Francine Thornton Boone entered her appearance
15 on behalf of SBG Management Services Inc. On September 2, 2014, Donna S. Ross,
16 Esquire, entered her appearance on behalf of SBG Management Services Inc., on all
17 of the above complaints – all nine of them. On October 16, 2014, Ms. Boone filed a
18 withdrawal of appearance on all of the complaints mentioned earlier. All nine of
19 them. This makes Ms. Ross the fourth attorney of record for the Complainant and
20 we are very happy to have her here.

21 Now, as you are probably aware, I was out of the office for an extended
22 period of eight weeks from mid-August to mid-October of this year. Nevertheless,
23 while I was away from the office, Ms. Ross and I was able to have telephone
24 conversations regarding these cases. The conversation took place on September 29,
25 2014 and Mr. Farinas was c.c on the summary of that conversation. In particular,

1 Ms. Ross understood that she was getting the record as she found it, to inform me
2 of her efforts to adhere to the established discovery schedule. In turn, I informed
3 her that she could contact me with any procedural or scheduling questions or
4 concerns that she may have. Is that correct, Ms. Ross?

5 MS. ROSS: As you have recited, that's basically what I understood. I
6 mean, yes. I have not had to, at this point, contact you on an ex-parte matter.

7 JUDGE VERO: All right. I have received a couple of questions or new
8 requests concerning the scheduling of this pre-hearing conference but nothing else
9 from the parties in terms of questions, concerns, etcetera – procedural questions
10 and concerns. The parties have been kind enough to keep me updated with various
11 developments of discovery proceedings and I understand from Ms. Ross's e-mail to
12 Mr. Farinas dated November 4, 2014, that the parties were trying to arrange for a
13 visit to the PGW office to review and inspect the F-Ames screens for the properties
14 involved in the nine complaints. Did this visit occur?

15 MR. FARINAS: Yes, it did, Your Honor.

16 JUDGE VERO: When?

17 MR. FARINAS: In addition to some inspection of the F-Ames screens, the
18 parties also had informal discovery for clarifying other issues and things of that
19 nature.

20 JUDGE VERO: But has anything been clarified? Yes or no?

21 MS. ROSS: Your Honor, if I may speak, I thought we had a very productive
22 meeting last Thursday. We did have some clarifications on some outstanding
23 discovery. SBG has identified exactly what it needs from PGW. It's very, very little
24 in terms of documentations – some additional, which PGW has consented to provide.
25 We are in the process of putting that in the form of an e-mail which we expect to

1 get out today just to make sure that everyone is on the same page but we did
2 identify it and people took notes as to what was outstanding and what could be
3 accommodated. PGW did say that they could accommodate our request for the
4 additional information such as statements of account that were not complete; such
5 as some additional information on lien periods that we were not able to ascertain
6 from the dockets but were mentioned in contact screens, so we have identified that.
7 Those are the questions that will be forwarded to Mr. Savage who was not at our
8 meeting but we were assured that he would get that information.

9 JUDGE VERO: Okay.

10 MS. ROSS: Let me see what else. We had some explanation on certain
11 transactions that were explained and we are confirming all of that. There is also
12 going to be some additional screens that will be provided to us. The HBDIS screens
13 that will show the date and the amounts of when certain disputed and undisputed
14 transactions were assigned to a different SA.

15 JUDGE VERO: You mean the letters S and A?

16 MS. ROSS: Yes. The SA for the accounts in question that we requested the
17 information on. I understand Mr. Farinas is in the process of completing his
18 outstanding information that he has to provide pursuant to your Orders and we
19 expect to get that in a timely manner and he agreed that he is in the process of
20 working on that. I think that's kind of where we are, so we are moving along.

21 JUDGE VERO: All right, I heard you say that you received that explanation
22 on certain transactions. Has these discussions with PGW and the visit at their
23 offices, the review of their systems and screens, etcetera, has it resolved any issues,
24 minor or major there may be?

25 MS. ROSS: I think we have established some protocols going forward on

1 certain accounts. We were able to take certain accounts and limit some of the
2 issues as it pertains to –

3 MR. FARINAS: And Your Honor, PGW stands ready to discuss whatever
4 maybe taken out and lessen the burden for both parties.

5 MS. ROSS: Right. We are trying to narrow our issues.

6 MR. FARINAS: So not yet but potentially still there.

7 JUDGE VERO: The reason why I ask is that in previous pre-hearing
8 conference that I have had with Ms. Boone and I believe that Ms. Treadwell was also
9 present in the – no, in the one pre-hearing conference that I am referring to,
10 Ms. Treadwell was not present. Ms. Boone came here by herself and there was
11 some discussions concerning the percentage rate – the monthly percentage rate of
12 late payment charges. As you probably know by now, it's one of the major issues
13 raised in the complaints. I have a listing of about fourteen hundred separate
14 transactions, majority of which concerns this particular percentage rate that the
15 Complainants are disputing as to whether or not it amounts to 1.5 percent per
16 month and 18 percent per year. Has that been resolved?

17 MS. ROSS: No, Your Honor. It has not been resolved but that is the crux
18 of our case.

19 JUDGE VERO: Okay, let me clarify a step further. I am not talking in terms
20 of late payment charges, whether or not they should have been applied to the
21 amount that became a lien. I am talking late payment charges period.

22 MS. ROSS: Yes, Your Honor.

23 JUDGE VERO: In terms of the 1.5 percent, there are fourteen hundred
24 transactions, majority of which SBG and the Complainants have – they have disputed
25 the 1.5 percent pursuant to the calculations that they submitted at the initial

1 hearings that we had last year. The Complainants were coming up with different
2 percentage rate or just talking different, so we are not talking whether or not it is
3 correct to be applied at all. We are talking the amount of the percentage rate. Has
4 that been resolved?

5 MS. TREADWELL: Can I speak?

6 JUDGE VERO: Yes, Ms. Treadwell.

7 MS. TREADWELL: Yes, we did receive the explanation of the late payment
8 charges as part of the Order and yes, we do see how PGW applied the one and a
9 half percent going to each particular billing period. However, that does not mean
10 that we don't dispute particular late payment charges because at any given period,
11 there was an amount that was in dispute, so the late payments charge that they
12 applied may not have been correct based on that.

13 JUDGE VERO: I understand. I am not talking about late payment charge
14 amount as in dollar sign.

15 MS. TREADWELL: We do understand how the application of the one and a
16 half percent was applied based on the calculations that was provided, so thank you.

17 JUDGE VERO: All right, so this was just an example of the minor issues
18 that could have been resolved either through the discovery process or through the
19 informal conversations that the parties are having before the hearing. This is what I
20 would like to know so that I don't expect to hear it at the hearing. If an issue, even
21 a minor one, if it has been resolved, I can take it away. I can take it off my list of
22 things to be covered for the hearing. It is very helpful so we are not fighting over
23 one point three versus one point five percent of late payment charges per month.
24 I understand we are still disputing the amounts as in dollar sign but percentage-rate
25 wise, I think the parties have agreed as to like method of accounting, etcetera?

1 MS. ROSS: I believe what has been gleaned from the transcript along with
2 the request for admissions, along with the response to the interrogatories and
3 production of documents, that we have an understanding as to how PGW and their
4 methods of applying the late payment charges. We have an understanding of that.
5 We may not agree with it but we do have an understanding of it. Does that make
6 sense?

7 JUDGE VERO: It does make sense.

8 MR. FARINAS: Your Honor, knowing what I know, there is a split-hair to be
9 added here and that is you have asked if they agree that PGW calculates the late
10 payment charges on a general basis according to one point five percent. I know
11 that there are some individual disputed transactions where the late payment charges
12 for whatever reason, may not have been correctly asserted, whether there was a
13 pending dispute or whether it was a mathematical error or there was a payment
14 made or whether there was something asserted too early or something but that's
15 the issue that's preserved as oppose to the one issue of general correctness of the
16 one point five per month being applied as oppose to one point two-three or one
17 point three as Ms. Treadwell's testimony was last year.

18 JUDGE VERO: All right, it would be helpful if the parties could identify
19 those transactions that are still in dispute.

20 MR. FARINAS: Actually, that was my next question because if there is
21 volumes and binders of discovery that my witness is going to have to show up for,
22 so if you could assist us in having a sit-down for what are the issues left to be
23 litigated as oppose to just showing up one day with every piece of discovery that
24 we ever had.

25 MS. ROSS: And I think we can streamline it. I really have a line of where

1 we feel the major issues lie.

2 MR. FARINAS: We don't know what they are.

3 MS. ROSS: I have it.

4 JUDGE VERO: All right, so apparently there is still work that needs to be
5 done at least in terms of boiling down the issues that were made after the discovery
6 process. Keep in mind that the original complaint came with an attached list of
7 fourteen hundred plus transactions that were in dispute and that is a very large
8 number. Anything that can be done in order to reduce that number of dispute so
9 that it boils down to the actual transactions that are an issue or were an issue before
10 the Complainants, it really helps because I fear that the sheer volume of transactions
11 that are being disputed will take the focus away from the handful or several dozen
12 transactions that may actually be the ones that raise an issue I can resolve – I can
13 issue a decision on. Okay?

14 MR. FARINAS: Understood.

15 JUDGE VERO: So I would like the parties to work from today to the day of
16 the hearing towards that end to boil down the issues as distinctly as possible to
17 maybe – well, I don't want to limit you as to the number of issues but getting rid of
18 as many issues that can either be resolved through admission. Well, we had several
19 requests for admission but the time for admissions has come and gone, so through
20 stipulations. There is still time to stipulate to certain facts and that will reduce the
21 number of issues that we have to address – factual issues at least and any other
22 means that you think you may employ in order to reduce the volume of these cases.
23 We have only had five hearing days and we have already produced close to a
24 thousand pages of transcript. It's been over a year. Memory retention is not
25 working in anyone's favor. The sheer number of pages is not working in anyone's

1 favor, so the more work all of us put in in focusing to the matters that are really
2 important, the more productive we can become. If something has been resolved or
3 if any party is clear on any issue and is ready to let go so to speak, please do so.

4 All right, let's see. I understand from Ms. Ross and Mr. Farinas statement
5 here this morning that information is still being exchanged on a voluntary basis and
6 pursuant to my Orders on discovery motion, supplemental information is still being
7 exchanged between the parties. Now, that's fine. However, we do have an
8 outstanding motion in limine from the Complainants to prevent the Respondents
9 from bringing any information requested and not produced during discovery into the
10 hearing. For me to make that determination, I need to know ultimately everything
11 that PGW produced in discovery and some of it – well maybe all of it is coming my
12 way. I have received copies of supplemental responses that the Respondent, PGW,
13 has submitted to the Complainants. However, I am constantly suspicious that more
14 could be sent the Complainant's way and that I don't get a copy of. Either the
15 parties forget to give me a copy or it's standing formally, etcetera, etcetera, so it's
16 very important, especially with the outstanding motion in limine, that I have
17 everything that PGW is sending or has sent the Complainant's way in terms of
18 responses to discovery request. Not only that but I need it all to be in one place.

19 The Complainant's effort to place everything that they have received to a
20 certain point on CD was very helpful. It wasn't that great to go from one CD to the
21 other, putting it in and out of the computer as I was trying to figure out what was
22 going on with the discovery process and the motions and objections and so on but it
23 was very helpful to have everything in one place. I didn't have a question, did I
24 receive it, where is it, did they send it, maybe they didn't. It was very helpful. For
25 better or worse, that was the party's position. This is what we have, this is what we

1 don't and I remember that occasion when I received the CD, I asked Mr. Farinas
2 representing PGW to make sure that that CD contains everything that PGW has
3 submitted to the Complainant as of that date, didn't receive any information that
4 anything was missing and I ruled based on that assumption. If we can do that
5 before the hearing, that would be helpful so that I have everything and I won't be
6 sitting here on the day of the hearings with a motion to rule when I am not sure
7 whether or not I have received everything.

8 Bear in mind that the information exchanged during discovery is not part of
9 the record. What I am talking about is strictly for the purpose of ruling on the
10 motion in limine. Okay? It is not for the purpose of the record. You need to bring
11 any piece of information that was exchanged between the parties during the
12 discovery proceedings. You need to take the proper steps at the hearing. I was not
13 suppose to be this involved in the discovery process. It has been very unfortunate
14 and it has been an uphill battle so to speak, just trying to make the discovery
15 process come to an end but it has been done and I am very grateful to both parties
16 for working within the limites that I placed on the discovery process. All I need now
17 is for everything to be in one place. I understand PGW and the Complainant has
18 agreed that more information is coming the Complainant's way, is going to be
19 submitted. I need to know what that information is so that come the day of the
20 hearing I will be well informed so that my ruling will be an educated decision.

21 MS. ROSS: Your Honor, to the extent that we are preparing exactly that
22 remaining list that is going to be forwarded, would you like to be Cc on what is going
23 out to PGW? I mean, we all took notes the other day but we are all just getting it
24 together because we had to go back to our office just to make sure that we go
25 through everything that's been received. We have a room full of binders as

1 Well.

2 JUDGE VERO: I don't mind being Cc to tell you the truth. I glanced at the
3 e-mails that I have been Cc on from this case because there are so many and there
4 is a lot of issues, etcetera. Unless they involve me directly and they ask for me to
5 do something, I don't really view them in detail but I have it and if something comes
6 up at a later date, I can say it was raised.

7 MS. ROSS: Is that a yes?

8 JUDGE VERO: It is a yes. Anything you want to send my way, feel free but
9 what I am saying is that unless it becomes an issue later on, I won't respond to you
10 or participate in the conversation that you are having. It's just more for record
11 keeping, yes, it was raised; yes, they told each other they agreed to do this,
12 etcetera. What I need to have ultimately before the hearing is one CD or several
13 CD's – preferably not paper copies of everything because I am already swamped
14 with building a Chinese wall. No, not the legal terminology of a Chinese wall but
15 figuratively speaking, a Chinese wall in my office with boxes concerning this case, so
16 electronic versions of it are very helpful. I don't care which party submits it, as long
17 as both parties agree that is the entire response or materials and I need it before
18 the hearings of course.

19 MS. ROSS: Yes, Your Honor.

20 JUDGE VERO: Preferably a week before the hearings when the parties will
21 be requested to exchange proposed exhibits is my custom. Ms. Ross requested the
22 parties exchange proposed exhibits a week before the hearings and that would be a
23 good date to submit this information and if you want to do it beforehand, that's fine
24 as well. Since I mentioned the proposed exhibits and the date and it needs to be
25 submitted one week prior to the hearing, a lot of – boxes of exhibits were submitted

1 by the parties for the initial hearing, then it turned out that more excruciating
2 amount of discovery still needed to be done, so whether or not those exhibits are to
3 be moved into the record, it's up to the parties. Would you like to submit new
4 exhibits? Would you like to supplement those exhibits? Let me know because I do
5 have them and they have not been moved into the record as of yet. My practice is
6 to move everything towards the end of the hearing.

7 MS. ROSS: To the extent that I am reviewing the transcripts, would you
8 like for us to have everything marked because I don't think they have actually been
9 marked. They may have been referred to in testimony, so to the extent that we
10 mark them so the record is very clear as to what and who moved what into
11 evidence?

12 JUDGE VERO: They haven't been moved.

13 MS. ROSS: No, as to what needs to be moved. So can we at least identify
14 them as to what needs to be marked and we will have maybe a legend or a
15 cumulative outline of what's been identified and referred to and then we can move
16 each one into admission because I think from the prior hearings, clearly all that's
17 been referred to should be marked and moved into evidence at some point.

18 JUDGE VERO: Barring objections because we are talking about binders.
19 Not all the information in those binders has been referenced to, so there is still the
20 opportunity to strike part of them either voluntarily to remove part of those exhibits
21 or there is a chance that there might be objections. I am just –

22 MS. ROSS: To the extent that –

23 JUDGE VERO: No. I am talking about the information that has not be
24 referenced and objected to and ruled over; okay? I am just talking about the
25 information that has not been referenced at the hearing. It has been submitted

1 with the idea that it would be or might be but it is still up to the parties.

2 MR. FARINAS: Could we put that on the list of things to discuss prior to the
3 hearing? Most of the exhibits were part of the Complainant's case in chief anyway,
4 except for the binders that PGW exchanged in advance which may have been
5 discussed but most of the cases in chief that were put on were the Complainant's.

6 JUDGE VERO: PGW has submitted binders of their own, not as thick as the
7 Complainant's but you have submitted binders of your own.

8 MR. FARINAS: Yes.

9 JUDGE VERO: The Respondent hasn't had an opportunity to make their
10 case yet.

11 MS. ROSS: Right.

12 JUDGE VERO: There has been cross examination but not so much in the
13 way of PGW's case on direct testimony, so what's included in those binders is still
14 unidentified. You can withdraw it completely and submit a new binder. It's up to
15 you what you want to do. When I was speaking, I was talking to both parties. I
16 wasn't referring strictly to SBG'S proposed exhibits. I was talking to both parties, so
17 depending on how the case goes, you can make changes to those binders and if you
18 have objection to the information included in let's say in PGW's binders, that
19 information may be stricken off the record, may not be included eventually and so
20 on and so forth. This is what I am talking about, so it's up to you.

21 There has been a lot of discovery going on and my undying hope is that the
22 parties will attempt to at least resolve as many issues as they can. Once they have
23 done extensive discovery and they understand each other's procedure more,
24 hopefully certain things may be taken off the table in terms of issues and if that is
25 the case, that might affect the proposed exhibits. I am just raising the flag here.

1 This is what I have. I have binders and binders of proposed exhibits not moved into
2 the record. Some of them were referenced to but that was before the Complainant's
3 attorney came to me with the issue that they need more discovery. One year's
4 worth of more discovery; okay? So I am assuming the Complainant at least would
5 have an issue with those proposed exhibits. If not, let me know. I have them.

6 All right, so you need to think how you want to proceed with those
7 proposed exhibits with those binders, whether or not you are going to keep them
8 and just amend them or supplement them or you want to submit brand new binders
9 with proposed exhibits, of course based on the existing ones. I know that the pages
10 are numbered and I don't expect the parties to – rather, I am instructing the parties
11 not to mess with numbers. You can add to them or let me know whether certain
12 pages will be removed but don't start renumbering them; okay?

13 MS. ROSS: Okay, so for clarification, I guess I see it as two issues. One,
14 we could make it very easy and say whatever has already been referred to in the
15 transcripts, we mark those binders as Complainant's Exhibits 1, 2, 3 because it is a
16 lot pertaining to correspondence and stuff like that.

17 JUDGE VERO: Uh-huh.

18 MS. ROSS: Maybe what has already been referenced, we can go through
19 that and say, okay, this is going in.

20 JUDGE VERO: Yes.

21 MS. ROSS: If there is any supplemental information that needs to be
22 identified and which obviously will be exhibits that we will be submitting prior to,
23 then we will say we will mark them as we go along in the hearing process. So I
24 don't know. Does that streamline it? What's already there is there and we just say
25 look, PGW's binder x, y, z; SBG's binder, a, b, c?

1 MR. FARINAS: In terms of being marked but what Your Honor was
2 referring to was what was not discussed at all that might need to be pulled out.

3 MS. ROSS: I see.

4 JUDGE VERO: PGW's binders were PGW's proposed exhibits.

5 MS. ROSS: Right.

6 JUDGE VERO: Ms. Boone was using them to certain extent to conduct her
7 cross examination, so some of that information is in by default because it was
8 referred to but there is still potentially more information and I am giving PGW the
9 option of withdrawing it, changing it, supplementing it.

10 MS. ROSS: Even though it was referred to?

11 JUDGE VERO: Not the one that was referred to. The rest of the binder.

12 MS. ROSS: Okay.

13 JUDGE VERO: It's their proposed exhibit. It hasn't been moved into the
14 record. If it doesn't work, then just leave it as it is. I am just throwing it out there
15 in the hope that certain things can be resolved and if they are resolved, they can be
16 removed from those exhibits because we can say we have stipulated to this and at
17 least I will know that certain pages will not be considered when I write my decision.

18 MS. ROSS: Okay.

19 JUDGE VERO: Also, I would like to mention for you Ms. Ross, that to the
20 best of my recollection, some of the transcripts from the first hearings on the first
21 set of cases, especially the testimony concerning Fairmount Manor Realty Company,
22 we had agreed to make that testimony part of an exhibit into the other two sets of
23 cases, so that that testimony will not be repeated and we would not be calling the
24 same witnesses all over again to make the same statements all over again and
25 waste time, resources and paper; all right?

1 MS. ROSS: So that part of the transcript as it pertains to all of the
2 testimony?

3 JUDGE VERO: Yes. The hearing transcript specifically says which part of
4 the transcript was going to become an exhibit eventually; okay? So when I directed
5 the parties to refresh their memory on what occurred at the initial hearings, this is
6 one of the issues I want you to look out for, bearing in mind that that particular
7 testimony is not going to be repeated. To the best of my recollection, the testimony
8 concerns the estoppel issue, so when you read those transcripts, keep an eye out for
9 that particular issue, those witnesses and the page numbers of the transcript so we
10 know what is going to become an exhibit for the other two sets.

11 MS. ROSS: Are you suggesting that because you had a ruling within the
12 context of that transcript on the estoppel issue? Is that what you are suggesting?

13 JUDGE VERO: No, I did not have a ruling.

14 MS. ROSS: But you had a very strong opinion about it?

15 JUDGE VERO: No, hold on. I did not have a ruling on that particular issue.
16 Actually, Ms. Boone convinced me that she was going to file – to prepare a brief
17 where I was going to be informed of the case law that I wasn't aware of that
18 actually established estoppel.

19 MS. ROSS: For the statute of limitations?

20 JUDGE VERO: Yes. Estoppel goes to the statute of limitation issue that we
21 had and that's why we had those testimonies to establish whether or not there was
22 promissory estoppel in place and that is one of the two issues that the parties have
23 requested and I instructed them to eventually brief after we are done with the
24 hearing.

25 MS. ROSS: Just so I am clarifying, you are asking for and you are still

1 willing to consider the statute of limitations/as you say, estoppel issue, pursuant to
2 the brief?

3 JUDGE VERO: If I weren't, the Complainant wouldn't have much of a point
4 in asking for all those documents etcetera, in discovery. If I am correct, the
5 Complainant went all the way back to the opening of the accounts; okay? Not only
6 that but they have tried to make the issues come all the way up to the present, at
7 least for discovery purposes. Just so that you know, at the hearing I am not going
8 to allow it. The dates of the filing of the complaints is the dates when the issues so
9 to speak matures.

10 MS. ROSS: So you are making a ruling to that effect?

11 JUDGE VERO: Yes. I can do it again at the hearing if you want me to do it.

12 MS. ROSS: So it's pointless to have the brief?

13 JUDGE VERO: Yes. Hold on. Let me finish. You didn't understand me.

14 MS. ROSS: No, I didn't. I am sorry.

15 JUDGE VERO: What I am saying is that part of the – in the discovery
16 request that came my way only because there were disputes between the parties, I
17 noticed that some of the information requested went from the day when the
18 accounts were opened all the way to the present. If the Complainant is thinking of
19 bringing those disputes included in the complaints all the way to the present, I am
20 not going to allow it. Not for the complaints. In the discovery, I allowed it but for
21 the record, any disputes that were raised after the date the complaints were filed
22 are not going to be let in.

23 MS. ROSS: And your basis for that is what?

24 JUDGE VERO: It will make these cases unmanageable. The date of the
25 filing of the complaints is the date of the filing of the complaint. Any other issues

1 raised, you will need to file a new complaint. As I said, I am willing to make that
2 statement and that ruling again if the case comes up at the hearings. I am just
3 letting you know so that you don't spend time and resources on that particular issue.

4 MS. ROSS: But Your Honor, to the extent that the way in which the
5 application of payments and interest applied to these accounts has an overall
6 cascading effect on my client's overall accounts, it is germane to the very part of the
7 issue that we go back and have an opportunity to look at how the underlying –

8 JUDGE VERO: Hold on. You can go back if you can prove estoppel to toll
9 the statute of limitation and I have allowed it so that I collect the information to
10 make the determination whether or not the statute of limitation is tolled and I have
11 allowed it going back. I am not allowing it going forward. From the day of the filing
12 of the complaint forward, any issues that come up, new liens filed on those
13 properties – new liens filed from May of 2012 are not going to be part of the
14 hearings. They are not going to be raised. Not an issue that concerns me. If you
15 wish to dispute them, go ahead and file new complaints.

16 The cases are becoming unmanageable. Neither parties does not want me
17 to make the wrong decision. If I have a hard time navigating through these
18 documents, then what good was all the discovery and all the litigation to this date?
19 So I am saying that the date of the filing of the complaint is the date when new
20 issues can be brought and new transactions can be disputed; okay? Any new
21 transactions or late payment charges, etcetera, whatever you want to dispute after
22 the date the complaint was filed, you need to file a new complaint. I know
23 sometimes we do it in simpler cases where there is one or two issues in dispute but
24 just the sheer numbers of issues raised and transactions disputed makes it
25 unmanageable. I am telling you, don't waste your resources on disputing new

1 issues.

2 MS. ROSS: If we file new complaints, will you consolidate them?

3 JUDGE VERO: No, it will not be consolidated with this because it will open
4 the opportunity for more discovery. It is not going to happen, unless you want to go
5 ahead without discovery.

6 MS. ROSS: Quite frankly – may I speak?

7 JUDGE VERO: Yes.

8 MS. ROSS: With what we streamlined on Thursday and we have
9 statements of account up to the present, what we have considered and what is the
10 heart of our case is that this is basically maths. It is a math problem.

11 JUDGE VERO: It is maths and knowing the date when the complaints are
12 filed, you can look at the statements of account to see what the balance outstanding
13 is. That's the balance outstanding that is going to be discussed, changed, amended
14 or left as correct once I make the decision. That particular balance as of the day of
15 the filing of the amended complaint.

16 MS. ROSS: You have to understand the whole crux of it and you don't even
17 have that before you because we haven't even been allowed to put that part of our
18 case.

19 JUDGE VERO: I understand but what I am saying –

20 MS. ROSS: I would ask that you reserve the opportunity for us to raise it
21 once you see the evidence presented. Is that fair?

22 JUDGE VERO: That is fair. I will consider that but I am just letting you
23 know that if it is something that is not essential to your case, it will be a waste of
24 your time and resources to bring it up.

25 MS. ROSS: It is essential to our case.

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JUDGE VERO: I am just saying. All right?

MS. ROSS: That is fair, but you will keep it open?

MR. FARINAS: Your Honor, may I have equal time?

JUDGE VERO: Yes, you may.

MR. FARINAS: Your Honor, this may never end because as she says, it's maths. However, as you said, then the balance becomes corrected as of the date that it was filed and whatever the result is – whatever has occurred since then will just be amended going forward with a new complaint or a new problem. Otherwise, it never, never ends.

JUDGE VERO: Yes.

MS. ROSS: It can end once you see the maths.

JUDGE VERO: And I think you can do the maths going backwards from the day when the complaints were filed. I am willing to go back to the dates when the amended complaints were filed because it does give a better shape to the complaints if they clarify the original complaints a little bit, so I am willing to go as far back as the date when the amended complaints were filed by Mr. DeBroff but not further than that.

MS. ROSS: So to the extent that you just said that once you see the evidence presented, that you would possibly reconsider the ruling going forward to show what is owed as of today's date; okay?

JUDGE VERO: This is how it will play out more likely than not. You or your witness will reference a transaction that comes after the date of the filing of the complaints and either Mr. Farinas or myself will stop you at that and you have to argue why that is essential to the issues raised in the amended complaints and once I make that determination, that's how we will proceed. If I deem it to be essential,

1 it will come in. If I don't, it won't come in. You make the judgment call if you want
2 to be prepared for that but I am telling you that I am not willing to let additional
3 transactions be disputed. Right now it's over fourteen hundred and you have not as
4 of today limited it or taken some of those transactions off the table, so fourteen
5 hundred transactions, nine complaints is plenty.

6 MS. ROSS: But –

7 JUDGE VERO: It is plenty for me to navigate so unless it is essential –
8 essential as in I cannot make a decision whatsoever, then it will come in. Otherwise,
9 if it is something that I think you can successfully raise through another complaint,
10 then don't raise your resources. All right, this is where I stand.

11 MR. FARINAS: Your Honor, I have several representatives of my client in
12 the room, so just for clarification, even though you will hear testimony about
13 transactions that occurred prior to four years to the filing of the complaints, these
14 may become moot depending on your ultimate ruling on estoppel; is that correct?

15 JUDGE VERO: Yes. It's on the record and to be frank, I had an issue with
16 the tolling of the statutes of limitations but I was informed by the Complainant's
17 attorney that the key to my decision on the statute of limitations in case law that I
18 was not familiar with. I was not instructed – there was no hint or direction as to
19 what those cases were. I was told that I would be briefed and once I was briefed I
20 would see the Complainant's point in terms of statute of limitations. I agreed to
21 that.

22 MS. ROSS: Okay.

23 JUDGE VERO: In order for me to agree to that, I would have to let all this
24 testimony come into the record. Testimony concerning communications in
25 particular, between PGW and the Complainant pre-dating the period of the statute of

1 limitations. The record as it stands right now, a large part of it consists of that
2 testimony alone. That is partly the reason why for the third set of cases, we are
3 going to proceed through direct testimony. That testimony on the record, the
4 statute of limitations was so voluminous and unyielding. It is also the reason why
5 we have agreed to make part of the transcripts from the first set of hearings an
6 exhibit to the other two sets of cases. Just so you understand how much the
7 procedure has been changed just so we could accommodate the Complainant's
8 position in terms of statute of limitations, I have already expressed my willingness to
9 extend the case as far back as possible if the Complainant's prove that there was
10 estoppel on the tolls of the statute of limitations, we are going to toll the statute of
11 limitations. However, I am not willing to do that coming forward, so I am putting
12 this in the limit in terms of the transactions that can be disputed and issues that can
13 be raised. It won't be allowed if they are after the date the amended complaints
14 have been filed, unless you can really, really show me that it is essential and no, I
15 won't allow you to brief it.

16 MS. ROSS: You will or won't?

17 JUDGE VERO: I will not allow you to brief the issue whether or not
18 transactions that come after the filing of the amended complaints can be part of
19 these hearing. All right? Unless it comes up and I see it immediately that it is
20 essential, that is the only circumstance that I will allow it in. Can I be any clearer
21 than that? You want me to go over it?

22 MS. ROSS: No. Let's be clear. I guess my question is -

23 JUDGE VERO: No, no, no. Okay, since it is so confusing, I can be clear. I
24 can say no. It will be an absolute no. I will not have protracted arguments. No,
25 this is just ridiculous.

1 MS. ROSS: Here is the thing. The brief goes to the statute of limitations
2 prior to the filing of the amended complaint; correct?

3 JUDGE VERO: Yes. The statute of limitations to bring the complaint before
4 the Commission is three years. You have three years before the filings of the
5 original complaint, let's say. Anything before than can come in. The Complainants
6 is trying to fight the statute of limitations – trying to toll it by saying that there was
7 estoppel that was established, what came in in the record, so I allowed it to be
8 briefed; okay? That part will be briefed. That statute of limitations looks backwards.
9 We are talking forward from the day of the filing of the amended complaints. Those
10 are the transactions, the issues, the amounts, etcetera, that I will not have as part of
11 the record. You are saying that could be crucial but it really needs to be crucial. If
12 it is not, it will be stricken out immediately. So I am telling you, if you think it is
13 disputable, don't waste your resources or mine and I will not allow protracted
14 arguments on that particular issue at the hearing because we have been sidetracked
15 before. So the tolling of the statute of limitations is one of the issues that the
16 parties have agreed. I have instructed them and I have agreed to receive briefs on
17 that issue.

18 The other issue is the – we call it the liens but it is not the liens. You
19 cannot just brief the liens but that particular topic will need to be refined. The
20 parties can take it upon themselves to refine the specific question that needs to be
21 briefed. Ultimately, I will either agree with a question that you put forth as the
22 question to be briefed or I will formulate the question myself. Are we in agreement?

23 MS. ROSS: Yes.

24 JUDGE VERO: That particular questions that needs to be briefed needs to
25 be submitted to me before the close of the hearings; okay?

1 MS. ROSS: On both?

2 JUDGE VERO: On both. All right, moving along. Let's discuss hearing
3 dates. As you probably know, there were seven hearing dates scheduled for these
4 three sets of consolidated complaints. Two of these hearing dates were cancelled
5 because I instructed the parties that we are going to proceed through direct and
6 rebuttal testimony – recent testimony. However, I allowed for hearing dates on the
7 third set of consolidated cases in order for the parties to conduct any cross
8 examination that they may have. All right, then I asked the parties to inform me
9 how many additional days of hearings they needed in order to complete these
10 hearings and they came to me with proposed dates.

11 For the first set of hearings, the parties proposed six additional days of
12 hearings. For the second set of hearings, the parties proposed two additional days
13 and for the third set of hearings, the ones that we are going to proceed through
14 direct written testimony and rebuttal testimony, the parties requested five additional
15 days of hearings just so that they could conduct cross examination. Bear in mind we
16 already had five hearing dates. The parties requested an additional 13 for a total of
17 18 days, breaking any record that I am aware of for this Commission. However,
18 making allowances for the fact that there are nine separate complaints, that the
19 amended complaints disputed is fourteen hundred separate transactions, I accepted
20 their request. Any changes to the number of days that were proposed for these
21 hearings –

22 MR. FARINAS: My only change at this point, even before we have a
23 discussion Your Honor, is that it is really too much but until we sit down and discuss
24 what can be eliminated, I really can't tell but I believe it is too much.

25 MS. ROSS: We are talking ten days at this point because we already had

1 three, so three additional –

2 JUDGE VERO: No, we already had five and they requested an additional 13
3 for a total of 18.

4 MS. ROSS: Oh, I think that's too much.

5 JUDGE VERO: I am glad to see that both Counsel thinks that it is too much
6 but this is so we do not have a repeat of what happen the last time. We had five
7 days of hearings and we barely covered one issue. We couldn't get to PGW's case in
8 chief at all. That's how bad it was.

9 MS. ROSS: I think it gleaned a lot of information.

10 JUDGE VERO: I think the Complainants conducted discovery during the
11 hearing and that is unacceptable. That's what I think and that's what the history
12 has shown.

13 MS. ROSS: And I think it's not all on SBG.

14 JUDGE VERO: No. What is on the Complainant and I will not take back, is
15 the fact that I was told the Complainant was ready to go to a hearing. We had a
16 pre-hearing conference just like this and I asked the attorney for the Complainant,
17 are you ready and she said yes and we go to a hearing and we accomplished very
18 little. This is what I have an issue with.

19 MS. ROSS: I don't know if disparaging my predecessor is productive.

20 JUDGE VERO: No, it's not the predecessor. The attorney represents the
21 client and ultimately the four attorneys are interchangeable is what the client
22 represents in front of me, and this is what happened and this is what made me very
23 frustrated and not happy with this proceeding and this is what I am ultimately trying
24 to avoid. I do agree it is a lot but it is easier to cancel once we are done than to
25 schedule further hearings if we are unable to complete the hearings.

1 MS. ROSS: Fair enough.

2 JUDGE VERO: And just so you know, one set of cases will not continue on
3 to the other days of hearing. If one set of cases is not completed within the allotted
4 number of days, that will be the end of it. The issues with that particular property
5 will not be discussed once we start the hearings on the other set of consolidated
6 complaints. All right, any ideas when we are going to have the hearings on the first
7 two sets? Any preference?

8 MS. ROSS: My client is unavailable December 19th through January 11th
9 and I will be unavailable January 31st through February 7th. I will be available
10 February 9th.

11 MR. FARINAS: And Your Honor, my absence is only from the 20th through
12 the 3rd of January. I can officially tell you that Ms. Ferrier will be retiring as of
13 December 31st, but we do have a replacement witness who will need to come up to
14 speed and I have every confidence.

15 MS. ROSS: And maybe we are going to need subsequent verification if
16 Ms. Ferrier is not going to be – that comes down to the subpoenas, whether or not
17 we are going to subpoena her or we can have substitute verifications for everything
18 that Ms. Ferrier verified and she verified the majority of information received in
19 discovery from sets two and three, so how do you want to handle that?

20 MR. FARINAS: So given all the, we would recommend staying on the topic
21 of hearing dates towards the latter end of January and if we are accommodating
22 Ms. Ross, picking up in the second week of February if that works.

23 MS. ROSS: And we have one witness that is out the third week of
24 February.

25 JUDGE VERO: Okay, let me see. There are fourteen hearing days from the

1 12th to the 30th of January. I think that is sufficient to cover the first two sets.

2 Mr. Farinas, Ms. Ross is requiring that if it is necessary, you will need to submit
3 subsequent verification of the responses that Ms. Ferrier prepared.

4 MR. FARINAS: Ms. Vacca who is here, she will be replacing Ms. Ferrier.
5 They are requesting verification of both the information that she submitted and we
6 will have Ms. Vacca review and verify everything.

7 JUDGE VERO: Is that enough time for you?

8 MR. FARINAS: I am not sure if beginning on the 12th would be enough
9 time, given that there are holidays coming up, I don't know if you want Ms. Vacca
10 working over snowy nights in front of the fire verifying documents.

11 JUDGE VERO: All right, it has been a concern of the Complainant, the
12 verification of responses.

13 MS. ROSS: I have no problem with her substituting for Linda. Obviously,
14 she is going to be taking her place.

15 JUDGE VERO: It is a matter of her reviewing everything that Ms. Ferrier
16 has prepared in terms of responses to discovery request, submit the verification and
17 prepare for the hearings. We need to bring her up to speed, so it looks like
18 February. Any issues with February, other than Ms. Ross saying that she won't be
19 available until the 9th?

20 MR. FARINAS: I was going to say Your Honor, that I have several hearings
21 in January, so February would do better for us.

22 MS. ROSS: Mr. Lambert from our office is out the week of February 16th
23 through the 21st.

24 JUDGE VERO: And you Ms. Ross, you said you would be available on the
25 9th?

1 MS. ROSS: Yes, I will be available on the 9th.

2 JUDGE VERO: In order to give Ms. Vacca as much time as possible, we can
3 use the 29th and 30th just for the two hearing days concerning the second set of
4 hearings covering Colonial Garden Realty and the Simon Garden cases. We were
5 almost done with the Complainant's case in chief and we were about to go ahead
6 with the Respondent's case in chief. That's why there were only two hearing days
7 requested by the parties.

8 MR. FARINAS: That's correct.

9 JUDGE VERO: So can we go ahead and schedule those two for the 29th and
10 30th of January? That gives Ms. Vacca also the entire month of January to prepare
11 and then we will break off for the first week of February and return the second week
12 of February from February 9th to 13th? It's still five days. We need six. Let's see.
13 We will proceed on the 17th as well because the 16th is the Holy day but if we need
14 we can proceed on the 17th. I understand that Mr. Lambert will not be available the
15 entire week of the 16th of February. However, I believe that the parties can arrange
16 their testimony and cross examination in such a way that we would not need Mr.
17 Lambert's presence on the last day of the hearing. Okay, so does that work? I do
18 realize that we might have a problem with Mr. Lambert's testimony or presence if
19 there is a need for redirect, Recross, etcetera, and I am asking the parties to factor
20 that in and do their best to complete everything that relates to Mr. Lambert during
21 those five hearing dates where he is available. Does it work?

22 MS. ROSS: Yes.

23 MR. FARINAS: Yes.

24 JUDGE VERO: Now, the third set, because there have been problems with
25 the first two sets, we haven't done much in terms of scheduling the third set of

1 cases. I have instructed the parties and they have agreed to proceed through filing
2 direct and rebuttal testimony. Now, we need to set up dates for when that is to be
3 done, so any ideas? If you so wish and if you are prepared, you can agree to file
4 direct testimony on the third set of cases before January 29th when we have the first
5 day of the further hearings. I am just putting it on the table but if you have other
6 ideas, that's fine.

7 MR. FARINAS: Your Honor, our feeling at this time is since we are
8 preparing Ms. Vacca for something new, our preference would be to file the pre-file
9 testimony after the hearing.

10 JUDGE VERO: Very well. Also I will note that PGW has submitted your
11 direct testimony but that was a premature filing due to misunderstanding, so it's up
12 to you whether or not you want to --

13 MR. FARINAS: We are ready but again I have the initial task of making
14 sure Ms. Vacca understands everything.

15 JUDGE VERO: So you are going to withdraw it and refile during testimony?

16 MR. FARINAS: Yes. I thought it was officially truly never filed.

17 JUDGE VERO: I understand but I don't have to consider it.

18 MS. ROSS: Now, when you say prior to the hearings, are you saying prior
19 to January?

20 JUDGE VERO: Prior to January 29th, yes. Once we start the hearing dates.

21 MS. ROSS: Okay.

22 JUDGE VERO: So if you want to do that and you feel ready to do that, by
23 all means but if not, we will have to come up with dates. We are looking at the last
24 week of February or March.

25 MS. ROSS: So we are saying file the direct testimony and rebuttal

1 testimony say the last week of February for a March hearing date? Is that what you
2 are saying?

3 JUDGE VERO: You need to file direct testimony, the parties will exchange it
4 and then there will be a certain number of days set aside so the parties can prepare
5 and file rebuttal testimony and then we will have the hearing date.

6 MS. ROSS: Okay.

7 JUDGE VERO: So keeping that in mind, let's work on some dates.

8 MR. FARINAS: Your Honor, since the hearings would have ended on
9 February 16th, those hearings give us a comfortable amount of time to pull it
10 together and submit our direct testimony on the 27th or during that week. That
11 would be Friday or anytime during that week.

12 MS. ROSS: That works for me.

13 MR. FARINAS: Rebuttal testimony ten days later or fifteen days later.
14 Whatever.

15 JUDGE VERO: All right, so February 27th. Does it work for both Counsels
16 for direct testimony?

17 MS. ROSS: Yes.

18 MR. FARINAS: Yes.

19 JUDGE VERO: And March 13th which is fifteen days later, does it work for
20 both counsels for the submittal of rebuttal testimony?

21 MS. ROSS: Yes.

22 MR. FARINAS: Yes, that's fine with me.

23 JUDGE VERO: Bear in mind that these are dates strictly set aside for cross
24 examination.

25 MR. FARINAS: Since the rebuttal testimony is Friday the 13th, I don't know

1 if we would want to just jump right into it or just have a little time. The Monday –
2 the five days would be March 16th or March 23rd?

3 JUDGE VERO: I do believe you need some time to review the rebuttal
4 testimony and prepare for cross examination , so the 16th would be too soon for
5 both of you but if you insist –

6 MS. ROSS: I can do the 23rd. That's fine with me.

7 JUDGE VERO: The 23rd works for me. The week of the 23rd is five days, so
8 we can set them aside for the entire week of March 23rd.

9 MS. ROSS: That's good. Now, to the extent we are going to have
10 subpoenas – application for subpoenas now that we have the dates, do we put the
11 dates?

12 JUDGE VERO: Yes. I had no problem with the actual date information
13 being left blank because there was no hearing date set aside, so that was not a
14 problem with the application for subpoenas. There are 11 applications for
15 subpoenas and there have been 11 objections to those applications and there have
16 been a response submitted by the Complainants.

17 MS. ROSS: We could narrow that down and we could revise that, Your
18 Honor. I believe we can take some of those people off the list.

19 JUDGE VERO: Which people would you take off the list?

20 MS. ROSS: I will review it.

21 JUDGE VERO: Technically you will be filing application for subpoenas after
22 the deadline for filing applications for subpoenas and I am firm on that deadline, so
23 if you want to strike a few people, let me know.

24 MS. ROSS: May I have time to go back and review those? I did not bring
25 those with me today, so I can go back and we can narrow those down and I can let

1 you know by e-mail as to who we would like to remove because also, we are going
2 to have to issue a new one for Ms. Vacca since she is now replacing Ms. Ferrier and
3 we need to be clear on that as well.

4 JUDGE VERO: I am assuming that the information that Ms. Ferrier is
5 retiring is new information to you, Ms. Ross?

6 MS. ROSS: Yes. We found out Thursday.

7 JUDGE VERO: All right, I will allow it because it is new development and
8 there was no way for the Complainants to factor that event in the application for
9 subpoenas and I will allow the Complainants to file an application for subpoena for
10 Ms. Vacca. However, on September 29, 2014 when the Complainants submitted
11 their second sets of subpoenas, you do realize Ms. Ross, that this is the second set
12 of subpoenas. A previous set was filed by your predecessor on August 27, 2013.

13 MS. ROSS: Right but that was subsequent to us receiving all of the
14 information.

15 JUDGE VERO: All right, I am just saying that this is the second set of
16 subpoenas. There was a first set of subpoenas filed in August of 2013. Actually,
17 those subpoenas were served while we were having the hearing on August 27th.
18 The Respondent filed objections and although the subpoenas were ultimately
19 deemed to be moot, I issued four orders addressing each and everyone of those
20 subpoenas. Those Orders were issued in January of 2014. The reason why I issued
21 those Orders was for instruction purposes and I mentioned that at the pre-hearing
22 conference that we had. I said yes, I agree with the parties position that the
23 applications for subpoenas are moot but because there had been some concerns
24 with regards to the Commission's practices and procedures governing filing of
25 subpoenas, I took it upon myself to prepare detailed Orders on what I wanted the

1 parties to do in order to file and serve application for subpoenas themselves. Four
2 Orders and thirteen months later we had the second set of subpoenas which is
3 identical to the first set of subpoenas. It's eleven of them. Four of them are a
4 repeat for the same individuals and identical to the subpoenas that were first
5 submitted and I ruled on. My instructions were not followed; the Commission's
6 regulations governing subpoenas were not followed.

7 I am not aware that there has been service on Mr. Dunn, Ms. Cromley and
8 the Honorable D. McCafferty. At least I haven't received anything to that effect.
9 With that in mind and after careful consideration, I have decided to deny all eleven
10 subpoenas and an Order to that effect will be issued today. The only reason why I
11 didn't bring a copy of it to you today is because there wasn't enough time to format
12 it but the Order is ready and that is my ruling.

13 MS. ROSS: I am going to file an objection on the record to the extent that
14 Your Honor, we had no dates and times for the hearings. I asked in my motion or
15 applications for the subpoenas that you would allow for the appropriate information
16 as it pertains to and as far as service, it is my understanding that we can't serve
17 them until we have the proper dates and time and the approval of the Court, so
18 therefore –

19 JUDGE VERO: We are not talking service, Ms. Ross.

20 MS. ROSS: You said that was the purpose of it. There was no service.

21 JUDGE VERO: We are not talking about service. We are specifically talking
22 about the application and you are saying you cannot serve Mr. Dunn, the Honorable
23 D. McCafferty and Ms. Cromley with the application but you did serve PGW with that
24 application and I have no problem with the dates not being part of the application
25 itself. I understand why the dates are not there and during our telephonic

1 conversation on September 29th, I specifically said since the dates have not been
2 scheduled, I understand if you do not file applications for subpoenas and it's
3 reasonable for those particulars dates to be extended. You said they are ready, I
4 want to file them and you went ahead and file them. They were actually filed even
5 before the August 6th deadline.

6 MS. ROSS: It was October 6th.

7 JUDGE VERO: October 6th. I am sorry. On September 29th, I specifically
8 said if you have any concerns or issues with regards to the procedures or scheduling
9 let me know. Other than that conversation where I said I will understand if you – if
10 there is anything that you can't file because you don't have something, let me know,
11 you said they are ready, you filed them, you served them. There was eleven
12 objections filed by PGW and so because those subpoenas are identical to the
13 subpoenas that I had an issue with and I issued Orders on with detailed instructions
14 on how an application for subpoena needs to – the information it needs to include
15 and how it is to be served and when and by whom, etcetera. It is detailed and my
16 Order is detailed. I am not making this decision lightly but my decision is that those
17 subpoenas are denied.

18 MS. ROSS: For all eleven?

19 JUDGE VERO: For all eleven. Ms. Vacca's subpoena, you can file the
20 application for subpoena and I will issue a subpoena if it is in compliance with my
21 Order.

22 MS. ROSS: So you are highly prejudicing our case and allowing PGW's
23 employees to testify in our case. This is highly prejudicial and it is showing a bias to
24 the extent that Your Honor, you – we had no information and I specifically requested
25 an opportunity to revise what needed to be done once we received those deadlines

1 and in fact, we were very specific about –

2 JUDGE VERO: All right. The only revision that you would make to those
3 applications would be the insertion of dates. That's the only revision you would be
4 allowed even if I were to allow it and it still wouldn't comply with my Order.

5 MS. ROSS: But it was not exactly like my predecessor's application.

6 JUDGE VERO: It is exactly. The only difference is in the second paragraph
7 and that –

8 MS. ROSS: So it is different.

9 JUDGE VERO: Hold on. The second paragraph is shorter but more general
10 than what it was before. The rest of the shortcomings is still there and the ones
11 that I addressed in detail in my Order, it's – the parties have a long history in this
12 case of actually not complying with my orders and I take offense to that. This is
13 another example of it and considering that I was willing to make allowances, you still
14 went ahead and filed, making more work for me. This is my ruling. I do not make it
15 easily. I have considered it for quite a few days, going back on forth on what the
16 right ruling would be and this is where I stand. I understand what you are saying
17 but procedure is procedure and a ruling is a ruling for a reason.

18 The other thing is, what you are saying is that you cannot obtain those
19 individuals to testify on your case in chief. There are other ways of convincing a
20 person to testify.

21 MS. ROSS: What would you suggest?

22 JUDGE VERO: I am not keeping them away from the hearing or prohibiting
23 them from testifying. I am just saying I will not issue those subpoenas. I am
24 denying the application for subpoenas. I will issue an Order to that effect today or
25 tomorrow morning at the latest. If you feel that I have made an error in my

1 decision, by all means avail yourself of the procedures in place.

2 MS. ROSS: Thank you. We will.

3 JUDGE VERO: However, this is where I stand and the only reason why I
4 am doing this is because I am loathe of doing the same work over and over again
5 and the parties have forced me many times to do the same work over and over and
6 over and over again. It has to be a reasonable limit to it. It just can't go on like
7 this. It's becoming unyielding.

8 MS. ROSS: So we basically have no ability to call any PGW employees other
9 than Ms. Vacca?

10 JUDGE VERO: Not through subpoenas. You are free to use any other
11 methods but the subpoenas will be denied.

12 MS. ROSS: Now, to the extent that PGW never submitted any subpoenas to
13 anyone, they are going to bring their witnesses; correct?

14 JUDGE VERO: Yes. I am assuming?

15 MR. FARINAS: Yes. I have already informed Counsel of the witnesses that
16 I intend to bring.

17 MS. ROSS: I am sorry. Can you tell me now on the record?

18 MR. FARINAS: Mr. Cummings, Mr. Savage and Ms. Vacca replacing
19 Ms. Ferrier. I think that was one of my responses to my objections to the
20 subpoenas.

21 MS. ROSS: Your Honor, one last issue, just so you know – well, two things.
22 What date do you want our briefs to be handed in?

23 JUDGE VERO: Usually we will allow for thirty days after the close of the
24 hearing date for the briefs to come in but if you need more time than those thirty
25 days, I am flexible, within reason of course, so let me know how many days you

1 need for filing briefs. There might be different facts to support or refute the issue of
2 statute of limitations in each set, so unfortunate as it may be, we will need a
3 separate brief for each set. I am not the one who is going to prepare the briefs, so
4 it is up to you how you want to do it. I think three sets is better.

5 MS. ROSS: That's fine. Last question.

6 JUDGE VERO: We still haven't decided the dates when the briefs are due.
7 The first set will be March 1st?

8 JUDGE VERO: March 1st is a Sunday, so March 2nd for the second set;
9 right?

10 MS. ROSS: The first set.

11 JUDGE VERO: It's the second set but we are going to have the further
12 hearings for the second set first because they only requested two days. February 9
13 through 17th is set aside for the first set. Six days set aside for the first set of
14 hearings. Fairmount, Elrea and Marshall.

15 MS. ROSS: What happened to the 29th and 30th?

16 JUDGE VERO: The 29th and 30th are the two days set aside for the second
17 set which is Colonial, Simon and Simon.

18 MS. ROSS: So that would be March 13th?

19 MR. FARINAS: Does that fall on something that is already happening?

20 MS. ROSS: We are scheduled for rebuttal testimony and everything to be
21 due.

22 MR. FARINAS: Right. This is the brief where additional time would be
23 welcome.

24 JUDGE VERO: Would you rather we clear everything and then do the briefs
25 after March 27th?

1 MR. FARINAS: Yes.

2 MS. ROSS: Yes.

3 JUDGE VERO: It will keep our schedules clean.

4 MS. ROSS: So all briefs due April 27th after the last set? Thirty days after
5 the last set of hearings?

6 MR. FARINAS: The 27th is a Monday.

7 JUDGE VERO: Are you suggesting that all three main briefs for all three
8 sets of cases be submitted on the 27th?

9 MS. ROSS: In April, after everything, yes.

10 JUDGE VERO: It would be further apart from the last hearing on the
11 second set but -- Mr. Farinas.

12 MR. FARINAS: I believe it is workable. There will be a period where we
13 will be writing three briefs at one time.

14 JUDGE VERO: But you will have thirty days and whatever days in between.
15 All right, so the 27th would be the date for the main briefs and all the cases and
16 fifteen days from that for further reply briefs.

17 MR. FARINAS: That would be May 11th.

18 JUDGE VERO: May 11th?

19 MS. ROSS: Yes. It's two weeks following.

20 JUDGE VERO: It just leaves the record open for so long for the second set.
21 It keeps the record open for three months and a half almost.

22 MS. ROSS: In the interest of judicial economy, we are really talking about
23 basically the same issue. It's just unfortunately the way the cases evolve.

24 JUDGE VERO: All right, it will work. So we are talking May 11, 2015. All
25 right, anything else?

1 MS. ROSS: To the extent that I would like to disclose that we expect to be
2 calling a forensic accountant and so if there is any issues with that, I would like
3 Counsel to at least know because it is maths that we are really going after here and
4 I can give you whatever you need ahead of time but I would like to disclose that.

5 MR. FARINAS: I believe that I need to look at the Commission's procedures
6 to see what you need to do and what are my rights.

7 JUDGE VERO: All right. At the previous pre-hearing conference – the third
8 one, I believe we discussed the issue of maths as you said, that ultimately the
9 burden is for me to come up – I will ultimately need to come up with a number and I
10 will issue a decision saying it is the correct number or the correct amount that is
11 due. I understand that it is maths and I do appreciate the Complainants obtaining a
12 witness in this matter. However, I am going to put on the table again for your
13 consideration but it's not a ruling or instruction or anything of that matter. It's just
14 that it is possible for us to collect the information and for me to make a ruling on the
15 legal issues as to whether or not the correct percentage rate was applied and what
16 should have happened once the liens were filed, etcetera and once I make that
17 decision, for us to sit down, either you separately and submit me a calculation of a
18 number and me on the otherhand, I can obtain the services of Accountants that
19 work for the Commission to come up with a number but the numbers themselves –
20 the ultimate numbers that the parties will propose can come after I make my
21 decision on the legal issue.

22 I am just putting this on the table as one scenario in case for whatever
23 reason you are not able to obtain expert witness in terms of accounting but it's up to
24 you. You obtain the expertise and the witness comes in and testify, that's all right
25 but if that scenario comes up, you will have to abide by the rules and regulations of

1 the Commission that governs the testimony of expert witnesses since you are
2 proposing an expert witness. That is a scenario that we discussed before with
3 Ms. Boone and Mr. Farinas in terms of what needs to be done and it is numbers but
4 first of all we need to address the legal issues of what should happen after a lien is
5 filed, if anything. That's a legal issue and then the crunching of numbers will come
6 into play but if you want to have it on the record, that is perfectly fine. All right,
7 anything else?

8 MS. ROSS: In your Order, I wasn't very clear on the examples that you
9 were asking PGW to provide. It was one of the most recent discovery Orders where
10 you were limiting them to providing certain sets of -

11 JUDGE VERO: This is the third set or the second set?

12 MR. FARINAS: The information due on the third set.

13 JUDGE VERO: All right

14 MR. FARINAS: It's set 3, number 5, page 9 of your Order. It is a couple of
15 instances where Your Honor said she wanted PGW to give five examples of the
16 things that was complained about. The first one was set 3, Number 6-e.

17 JUDGE VERO: So what is the question, Ms. Ross?

18 MS. ROSS: I didn't quite understand what you were asking PGW to
19 provide. I wasn't clear on that.

20 (Judge perusing document.)

21 MS. ROSS: Maybe I can clarify. This can be clarified because we are going
22 to get an updated statement of accounts all the way through based on our
23 conversation last Thursday and also those HBDS screens?

24 MR. FARINAS: No, this cannot. What the Judge orders us to do is give you
25 five examples of the way it is applied so you can understand the methodology.

1 What you may receive as the customer give updated information on the account.

2 MS. ROSS: But see, that's not – I thought what we agreed to on Thursday
3 was –

4 MR. FARINAS: We agreed to it but that what you are going to get does not
5 resolve this. This is to give you an example of how it is applied.

6 MS. ROSS: Okay, I see but we are going to get that other information?

7 MR. FARINAS: Yes. Whatever we agreed to.

8 MS. ROSS: Okay. It maybe one and the same. It's just exactly going to
9 show us how it is applied and you are going to give us the information as it pertains
10 to our statements of account and all that; right?

11 MR. FARINAS: Yes.

12 MS. ROSS: Maybe it is not an issue.

13 JUDGE VERO: All right but if it is an issue later on, the only time that you
14 can raise it is at the hearing.

15 MS. ROSS: Mr. Farinas is pretty clear on it, so I just wanted to make sure
16 that you and I are clear.

17 JUDGE VERO: I had an issue with the fact that the definition for disputed
18 and undisputed transactions changed from the second set of interrogatories to the
19 third set of interrogatories. It's not that it's not allowed. It just changed. What was
20 considered a disputed transaction in the second set of discovery request was
21 different from the more detailed definition that was provided. Additional definition
22 was provided in the third set of discovery request.

23 MS. ROSS: Okay.

24 JUDGE VERO: PGW was saying we have already submitted the statement
25 of accounts, etcetera, so to ask them again to resubmit the statement of account

1 for every single transaction, to start dividing the amounts in dispute and undisputed
2 would become extremely burdensome and very, very voluminous, so I made the
3 ruling that they can provide the explanation by using five examples. They can
4 identify five instances of when the amount was in dispute, five instances that there
5 was a payment and how that payment was applied pursuant to the discovery
6 request.

7 MS. ROSS: And to the extent that we went to PGW and found that they
8 had that screen, which is not really voluminous because they are very set amounts
9 as to when things were disputed or not disputed, that they can provide that
10 information pretty easily and they admitted that on Thursday and we agreed that's
11 what they were going to give us.

12 MR. FARINAS: We agreed to provide you with some additional information
13 that we felt was not voluminous and we will provide them but if you are asking Her
14 Honor to reinterpret her decision –

15 JUDGE VERO: I am just clarifying it. I am not going to go over and
16 overrule myself at this point. I believe five examples will be sufficient to explain a
17 procedure to me and to explain it to the Complainant and once the procedure is
18 clear, I believe it's not extremely burdensome to just apply it.

19 MS. ROSS: Well they have to show us in the screen. They can show us
20 exactly the amount of what was applied on each SA. That's what the screen show
21 and that's what we were under the impression that we were going to be receiving
22 from PGW as of our conversation on Thursday.

23 JUDGE VERO: Didn't they offer to make that information available to you
24 for review?

25 MS. ROSS: We did and they are going to provide that to us.

1 JUDGE VERO: Wonderful. This information they cannot deny you.
2 Whatever else you have agreed between yourselves to divulge, I am not part of it
3 but this I made the ruling on and they cannot deny you this.

4 MS. ROSS: But to the extent that it explains the accounting of each SA. So
5 for example, we had an issue recently that we were able to resolve when we were
6 going through payments that had been applied to the account; okay?

7 JUDGE VERO: Yes.

8 MS. ROSS: We had to break down and we were able to call PGW and say,
9 "okay, we paid you X dollars on this date. How much was applied to this SA of that
10 total payment," and they were able to very expeditiously give us that information.
11 Okay, Fifteen thousand went to this one and five thousand went to this SA and so
12 on, and that enabled us to have an accurate accounting per each SA, per how we
13 are computing it – the application of payments.

14 JUDGE VERO: Yes.

15 MS. ROSS: So what we are saying is that PGW has agreed to show us
16 those specific assignments of monies for each SA pursuant to the disputed and
17 undisputed charges and that is very helpful to our underlying accounting and making
18 sure everything ties out to the statement of accounts.

19 JUDGE VERO: What you are just describing is something that goes beyond
20 the scope of Complainant's at 3 Number 6. What you are saying is that –

21 MS. ROSS: It is a further explanation of the statement of account.

22 JUDGE VERO: What you just described is a one lump sum payment. I am
23 assuming here that the Complainant did one lump sum payment either through
24 refinancing or they just issued a large check through settlement or whatever but it
25 was one large lump sum payment that PGW took and applied to different SA's and

1 maybe different accounts.

2 MS. ROSS: Right.

3 JUDGE VERO: And you didn't know how much was applied, etcetera,
4 etcetera and you saw that division; right?

5 MS. ROSS: We now –

6 JUDGE VERO: You now saw whatever, through conversation or by
7 physically visiting the facility and seeing their screens, you now have that
8 information. What Complainant said 3, number 6, the way I read it, it goes beyond
9 that. It says there was this payment. Now we have a payment in the statement of
10 account. It shows up as a payment. Now, within this payment, you showed me
11 how it is divided. What goes towards the disputed amount and the undisputed
12 amount, so this is different from what one lump sum payment, what SA goes to. We
13 are looking within the SA now and we are looking within the chunk of payment. We
14 are looking at the application of the payment within the transaction or monthly bill.
15 Am I correct, Ms. Treadwell?

16 MS. ROSS: But we are saying the same thing.

17 MS. TREADWELL: She is – you are talking – Your Honor, I think what you
18 are saying is that our request asked them to segregate the disputed versus the none
19 disputed amounts at each given period and I understand that you are asking them
20 to give us five examples of that information.

21 JUDGE VERO: Huh-huh.

22 MS. TREADWELL: My question is, is that suppose to state that – is PGW to
23 certify this is the way they do it in every instance? I mean, I don't – there is some
24 times where we have disputed items that are not documented in PGW's system.
25 However, we reached out to PGW to –

1 MR. FARINAS: That's a completely different factual issue as to whether or
2 not something is there.

3 MS. TREADWELL: I mean, people treat disputes differently. My
4 understanding based on looking at the contact screens is that some people
5 document the screens and some people don't but we have correspondence going
6 back and forth telling you that there is an amount in dispute and I would like to
7 know if PGW usually follow examples. Are they going to say this is our general
8 practice and this is how we do it generally and certify that this is how they do it
9 everytime?

10 JUDGE VERO: Then we will both have to wait for PGW's response. My
11 assumption would be that it is one practice and it is applied throughout the account
12 but we will both wait for PGW's response. We are talking disputed versus
13 undisputed amounts. That's all we are talking about and technically, I was
14 expecting the Complainant to highlight the instances of the disputes. We disputed
15 this to you on such and such a date, this is the amount in dispute, show us how you
16 did it. However, it has just been straight across the board and left it out to PGW to
17 determine what was disputed and not disputed pursuant to Commission's regulations
18 or their interpretation of Commission's regulations, or their understanding whether it
19 was a dispute or not a dispute. You left it to PGW to do it and I wasn't going to get
20 involved into that, so I said give me five examples of disputed and undisputed and
21 how you dealt with it. You could have said we sent them an e-mail and we disputed
22 \$500.00 and what did they do with that or we sent them 35 e-mails disputing this
23 and this and this and that and what did they do with it? You just left it open to
24 PGW. Leaving it that open without a frame or boundary, this is the best that I could
25 do. Otherwise, it just could produce tremendous amount of documents and

1 information and at this point in the discovery, I wasn't willing to allow that and I just
2 request five and they did object to this particular request and that is why I said I
3 would like to see five examples and it would be beneficial to you to see it too.

4 MS. TREADWELL: To be honest Your Honor, our problem is that we have
5 not been able to identify exactly where they took our disputes. We have reached
6 out to PGW over years and years and we are asking for them. Where is your
7 documentation and --

8 MR. FARINAS: Your Honor, that is another issue that --

9 JUDGE VERO: Yes, yes. It is another issue but it is an integral issue to this
10 whole problem. It's your case. I can't emphasize it enough. It is your case and you
11 need to pinpoint.

12 MS. ROSS: We did identify that. We identified it on Thursday and we have
13 asked for that information.

14 JUDGE VERO: All right, it is very good that you identified it for yourself. It
15 needs to be identified for the record. If it is there, good. If it is not there, it needs
16 to be there for me to make a decision. It is not part of the discovery request that
17 was submitted. We have had hearings and we are now talking about discovery
18 request. So the discovery request itself did not limited the disputed transactions,
19 when they came, etcetera, left it open and as open that I wasn't willing at this point
20 in the discovery proceedings. However, I do need information to be either
21 reasonably calculated or lead to admissible information or relevant to this case and I
22 requested that PGW submitted five examples of they doing what you requested or
23 asked them about.

24 MS. ROSS: Okay. To the extent that I think Dee really spoke to that and
25 asked for that and again, I think that if you look at it in total, I think the question

1 itself did ask for that and we did identify on Thursday that they have the ability to
2 give it to us and they have agreed to it and I would like that noted on the record
3 that's what we have agreed to and I think that will solve some of the problems.

4 JUDGE VERO: If you solve it, let me know that it's solved. That's the
5 bottomline I am interested in. If you guys resolve it, let me know. You will make
6 me very happy to know that it is resolved and the parties know what is going on and
7 they are both on the same page and it is no longer a dispute; okay? I know it is
8 extra work to put it down on paper and let me know but if you don't do the extra
9 work then you leave it up to me and you will have to live with the decision that I
10 make, of course after exceptions.

11 All right, any other issue? Just this one request for five examples? I have
12 pretty much ruled the same thing on Complainants at 3 Number 7-C and I
13 understand on another occasion maybe, so if that's the only concern you have, that's
14 my answer to it.

15 MS. ROSS: Your Honor, to the extent that we have made an agreement
16 regarding a noted – the additional information that we need for discovery, could we
17 have an Order to that effect today that they will provide those things that we have
18 asked for?

19 MR. FARINAS: Your Honor, we have agreed to provide it.

20 MS. ROSS: If you are saying that – if that is your assurance on the record –

21 JUDGE VERO: It is your agreement. Without a motion or objection or
22 petition, I am sorry. I am not involved in it. I don't know what you see. I don't
23 know what they have agreed to provide you. It is your agreement. If you had an
24 issue with it, then you could have filed a petition, a motion or whatever is available
25 but –

1 MS. ROSS: We did raise it.

2 JUDGE VERO: You did raise it, telling me you had an agreement with them.

3 MS. ROSS: We raised it in our various motions to compel and so we are
4 asking that to the extent that we have been able to narrow it down –

5 JUDGE VERO: I have ruled on those motions over and over and over and
6 over again and I am not willing to do anymore discovery or rulings. The discovery
7 period is over as far as I am concerned. Whatever you are doing is informal now
8 and you can make agreements and you can be cooperative, which I very highly
9 encourage the parties to do, to cooperate with each other and make witnesses
10 available. The first time around there were no subpoenas and Ms. Boone was able
11 to bring in whoever she wanted to bring in through PGW's cooperation. She was
12 able to get even Mr. Dunn who had retired, so that is available as well. There are
13 many ways to achieve what needs to be achieved. It's just that I made a ruling on
14 what's in front of me and based on the argument that is in front of me and I have
15 done it over and over and over and over again, particular with regard to the second
16 set. All right, so anything else?

17 All right, since there is nothing else being raised by the parties, this
18 concludes this morning's pre-hearing conference. As I mentioned earlier, you will
19 receive an Order on the outstanding subpoenas and objections to the same
20 subpoenas and also the Commission will issue hearing notices with the dates that we
21 have agreed on for the hearings. I will also do my best to issue as soon as possible
22 an Order with continuing litigation schedule and the time for filing direct testimony,
23 rebuttal testimony, briefs, etcetera. All right, are we clear?

24 MR. FARINAS: Yes.

25 JUDGE VERO: We could wait a little bit more until we have a more refined

1 version on the topic of liens but I will give my best and make an effort to put out a
2 question for your briefing so that the parties can work from there and we will finalize
3 further or refine further if there is need as we go ahead with the hearings and
4 towards the end of the hearing, we will just have one question for the topic – one
5 question for each topic in terms of briefing; okay? That will throw it out there, what
6 needs to be briefed in terms of the percentage rate of interest if there is such.

7 MS. ROSS: Well, to the extent that –

8 JUDGE VERO: Maybe I am not phrasing it properly because I am doing it
9 on the spot and it needs more time. I want both parties to think about it. I will
10 think about it myself. I just need to refine it exactly what needs to be briefed.
11 Okay, so we all have like a general idea of the brief on the topic of the liens but we
12 need to refine it. Ms. Ross, you were saying something?

13 MS. ROSS: No.

14 JUDGE VERO: All right then, with that, this pre-hearing conference is
15 concluded. Have a pleasant day everybody.

16 MS. ROSS: Thank you, Your Honor.

17 MR. FARINAS: Thank you, Your Honor.

18 (Whereupon, at 12:22 p.m., the hearing was concluded.)
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CERTIFICATE

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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