

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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 SBG Management Services Inc. v. : Docket Nos.  
 Philadelphia Gas Works. : C-2012-2304167  
 : C-2012-2304183  
 SBG Management Services Inc./ : C-2012-2304215  
 Colonial Garden Realty Co., L.P. v. : C-2012-2304303  
 Philadelphia Gas Works. : C-2012-2304324  
 : C-2012-2308454  
 Further Pre-Hearing Conference : C-2012-2308462  
 -----X C-2012-2308465  
 C-2012-2334253

Pages 52 through 97

Fourth Floor  
State Office Building  
801 Market Street  
Philadelphia, Pennsylvania

Thursday, November 7, 2013

Met, pursuant to notice, at 2:00 p.m.

BEFORE:

ERANDA VERO, Administrative Law Judge

APPEARANCES:

FRANCINE THORNTON BOONE, Esquire  
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(For SBG Management Services Inc.)

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EXHIBIT INDEX

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FOR IDENTIFICATION

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(None)

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PROCEEDINGS

1  
2 ADMINISTRATIVE LAW JUDGE ERANDA VERO: Good afternoon. This is the  
3 time and place for the third pre-hearing conference in the consolidated matters of  
4 SBG Management Services Inc./Marshall Square Realty Company L.P., versus  
5 Philadelphia Gas Works at Docket No. C-2012-2304303, SBG Management Services  
6 Inc./Fairmount Manor Realty Company L.P., versus Philadelphia Gas Works at Docket  
7 No. C-2012-2304215 and SBG Management Services Inc./Elrea Garden Realty  
8 Company L.P., versus Philadelphia Gas Works at Docket No. C-2012-2304167, and  
9 the consolidated cases of SBG Management Services Inc./Simon Garden Realty  
10 Company L.P., versus Philadelphia Gas Works at Docket No. C-2012-2304324 and  
11 SBG Management Services Inc./Colonial Garden Realty Company L.P, versus  
12 Philadelphia Gas Works at Docket No. C-2012-2304183 and C-2012-2324253, and  
13 the consolidated matters of SBG Management Services Inc./Oak Lane Court Realty  
14 Company L.P., versus Philadelphia Gas Works at Docket No. C-2012-2308462 and  
15 SBG Management Services Inc./Fern Rock Realty Company L.P., versus Philadelphia  
16 Gas Works at Docket No. C-2012-2308465 and the final one, SBG Management  
17 Services Inc./Marswood Realty Company L.P., versus Philadelphia Gas Works at  
18 Docket No. C-2012-2308454.

19 All right, during this pre-hearing conference, I may refer to these cases as  
20 Groups 1, 2 and 3. I hope you all know what I am referring to by now and Counsel  
21 is welcome to do the same. This as you recall, is the order of the initial hearing on  
22 these cases as scheduled before.

23 Now, my name is Eranda Vero and I am the Administrative Law Judge  
24 assigned to preside over these proceedings and issue an initial decision on these  
25 complaints. Present here this afternoon, I have Francine Thornton Boone, Esquire,

1 Counsel for the Complainant and Mr. Laureto Farinas, Esquire, Counsel for PGW. I  
2 understand that Mr. Farinas is here accompanied by Anne Marie Cromley and –

3 MR. FARINAS: Linda Pereira.

4 JUDGE VERO: Okay, Linda Pereira. I am sorry. I should have remembered  
5 your name but I don't. All right, as you are aware, we already had initial hearings  
6 on the first and second set of consolidated cases, meaning Marshall, Fairmount and  
7 Elrea on August 26<sup>th</sup> through 28<sup>th</sup> of 2013 and Simon and two Colonial Garden  
8 complaints on August 29<sup>th</sup> through 30<sup>th</sup>. Following these hearings, it was determined  
9 that it would be more efficient for the parties to proceed with a third set of cases by  
10 submitting direct and rebuttal testimony.

11 The initial hearing for the third set of cases originally scheduled for  
12 September 11<sup>th</sup> and 12<sup>th</sup> of 2013 were cancelled. On October 1, 2013, I issued a  
13 pre-hearing order setting the litigation schedule for the third set of consolidated  
14 cases, Marshwood, Oak Lane and Fern Rock. Pursuant to that pre-hearing order,  
15 the parties shall submit direct testimony by November 8, 2013 and rebuttal  
16 testimony by November 22, 2013. The documents must be served by no later than  
17 4:30 p.m. on the due date.

18 I have not received any questions from the parties with regard to the  
19 process of preparing what is called pre-file direct and rebuttal testimony, so I am  
20 assuming that the process is going ahead smoothly but you have to understand I  
21 prepared this before all hell broke loose.

22 MS. BOONE: I understand.

23 JUDGE VERO: Pursuant to the parties request, we are scheduled to have  
24 five days of evidentiary hearings on these consolidated matters from December 2<sup>nd</sup>  
25 through 6<sup>th</sup> of 2013. The main purpose of these hearings is to conduct cross

1 examination and move for the admission of exhibits into the record in this matter.  
2 Speaking of exhibits, I would like to remind Counsel that the transcript for the initial  
3 hearing on the first set of consolidated cases, Marshall, Fairmount and Elrea is now  
4 available. I have already informed you that you may make that transcript into an  
5 exhibit for other consolidated sets. However, I expect Counsel to familiarize  
6 themselves with the contents of that transcript so that only the relevant portions of  
7 it are made into an exhibit. If there is a way of making an exhibit only of the  
8 relevant pages of the transcript, I would really appreciate it but that requires reading  
9 the transcript, digesting it so that only the relevant portions are made into an  
10 exhibit.

11 With regard to the other two sets of hearings, further hearings are  
12 scheduled for December 10<sup>th</sup> through 11<sup>th</sup> for Simon Garden and the two Colonial  
13 Garden complaints and December 13<sup>th</sup> through 20<sup>th</sup> for the first set of cases,  
14 meaning Marshall, Fairmount and Elrea. If you are curious regarding the order of  
15 the hearing dates, I must explain that we were forced to take the consolidated  
16 matters out of the original order where we had Marshall, Fairmount and Elrea as the  
17 first set, Simon and the two Colonial complaints as the second set and Oak Lane,  
18 Fern Rock and Marshwood as the third set, in order to accommodate the number of  
19 hearing dates required by the parties for each set while ensuring that each set of  
20 hearing dates was continuous and uninterrupted. Okay?

21 All right, we are here today to address some of the procedural issues that  
22 have emerged in these cases. All right, first off, the most pressing matter is SBG's  
23 second set of interrogatories. As we are all aware, I hope that eight of the nine  
24 complaints filed by SBG against PGW contains similar questions of law and fact. We  
25 are also aware that we have had five days of initial hearings on the first and second

1 set of cases. These hearings concluded as you may well aware, on August 30, 2013.  
2 On October 9, 2013, SBG served upon PGW a second set of interrogatories and by  
3 then more than five weeks had past since the hearings were concluded.

4 I would also like to note that the first set of interrogatories were submitted  
5 by SBG to PGW in November of 2012. The first – I understand the first responses  
6 submitted January of 2013. All right?

7 MR. FARINAS: That is correct.

8 JUDGE VERO: So there is a gap of – I want to say eleven to twelve months  
9 between the first set and the second set and Ms. Boone, do you care to explain why  
10 you are conducting discovery – 44 interrogatories worth of it so late in the  
11 proceeding?

12 MS. BOONE: Actually, I don't believe we are so late in the proceedings.  
13 Prior Counsel specifically requested information related to the gas usage bills, how  
14 they were calculated and how they were done. He received some information in  
15 January, which is more than two months after the discovery request, which is  
16 certainly more than twenty days has required by the statute.

17 MR. FARINAS: By agreement.

18 MS. BOONE: Thank you for that, but the documents that we are seeking in  
19 the second set of discovery really are tailored to documents that we didn't even  
20 know PGW had until they presented exhibits in those first proceedings in late  
21 August, so that the second set of discovery request really followed the information  
22 that was finally provided by PGW. This is information clearly within their control,  
23 solely within their power and information that they could have provided sooner.

24 One of the problems with the objection to the interrogatories is that PGW  
25 somehow believes that providing exhibits at hearings is the same as complying with

1 discovery requests and that is –

2 JUDGE VERO: Okay, answer my question.

3 MS. BOONE: My question is –

4 JUDGE VERO: Your answer.

5 MS. BOONE: My answer is that we did not know about the kind of  
6 information that was in the control of PGW until the first set of hearings and as we  
7 digested them, we realized that this isn't the information that we needed to respond  
8 to. We have also had a change in counsel in late July, so that the period that  
9 expanded has a lot to do with the fact that there is different counsel at the matter  
10 but if you look at the discovery rules, it clearly says that the party should respond to  
11 discovery request within twenty days. Therefore, PGW had twenty days to respond  
12 to these documents and –

13 JUDGE VERO: Are you referring to the first set or the second set?

14 MS. BOONE: The second set.

15 JUDGE VERO: Okay.

16 MS. BOONE: The second set could have been responded to by October  
17 29<sup>th</sup>, which would have given us information that are needed for the third set. Also,  
18 the information that were requested is germane to the final set of hearings on all the  
19 other six cases because the exhibits that were presented in August were exhibits  
20 prepared for PGW's favor – PGW's benefits and everyone – pardon me. I won't say  
21 everyone but it is clear that discovery is not just giving the opposing party the  
22 documents that you deem helpful to your case. You are to provide discoverable  
23 materials. That means materials that are relevant and have bearing on the case, so  
24 we can't assume –

25 JUDGE VERO: You are addressing their objection to your –

1 MS. BOONE: No, I am explaining why it is so late.

2 JUDGE VERO: Just now you just went into PGW's argument and its  
3 objection to your second set of interrogatories.

4 MS. BOONE: I am just saying that we weren't aware of these documents  
5 and in all honesty, we didn't know they existed and when we looked at them, we are  
6 like this is the kind of information that gets to the heart of the case. We also  
7 realized that as we went through the hearing, that some of the methodologies by  
8 PGW are not very clear when you look at the Statement of Account. For example,  
9 during the testimony there was the issue of how late payments were applied and  
10 how interest were applied and so as a result of going through the hearings and as a  
11 result of seeing the exhibits finally which gives pertinent information – relevant  
12 information on the cases, we now knew what we needed to look for and we  
13 proceeded to do that.

14 JUDGE VERO: All right, let me see if I get this straight. The parties  
15 exchanged exhibits before the hearing. I am aware that PGW's exhibits were  
16 submitted a little later than SBG's and are you saying that when you got that  
17 information – the proposed exhibits, you found information you did not have from  
18 the interrogatories?

19 MS. BOONE: Exactly. So the information that we saw presented at the first  
20 set of hearing was not the information that was provided to Mr. Debroff.

21 JUDGE VERO: All right, let me see if I get this straight. Was it asked for?

22 MS. BOONE: Well as you know, discovery is continuing and as you begin to  
23 go through the process you may discover that you need more information. How can  
24 we ask for things that we didn't know existed?

25 MR. FARINAS: Your Honor, may I respond?

1 JUDGE VERO: Yes.

2 MR. FARINAS: SBG did not make clear or specific what it was complaining  
3 about until the submission of the filing of its snapshots. We knew what the  
4 snapshots were and we did provide the information that – the information that  
5 would directly respond to the specifics of their complaint was submitted when it was  
6 asked for.

7 MS. BOONE: I would disagree with that. If you look at –

8 MR. FARINAS: Yes, it was submitted.

9 JUDGE VERO: All right, the Court Reporter can only take one person at a  
10 time and I can only follow one person at a time. I understand that this is a very  
11 heated issue but I have all the time that – not all the time in the world but I have  
12 plenty of time I think, to hear the both of you. So Mr. Farinas, let him finish and  
13 then I will hear you Ms. Boone but keep it relevant to her answer to my question.

14 MR. FARINAS: The question that you asked her was why did it take so  
15 much time in between?

16 JUDGE VERO: Yes.

17 MR. FARINAS: PGW responded by agreement to the extension of time in  
18 getting responses to set one. We provided what was asked for. We provided  
19 metering information, we provided some communications, we provided some billing  
20 information and there is no reason that SBG could not have reviewed this material  
21 and said please give us more. They did not. They waited until preparation for this  
22 new set of hearing began, I believe, to annoy.

23 MS. BOONE: Objection. He can't tell us why we are doing something. You  
24 can't speak for me.

25 MR. FARINAS: I can argue that –

1 MS. BOONE: No, you need to argue why you did what you did, which was  
2 to delay giving information.

3 JUDGE VERO: All right. Okay, Mr. Farinas.

4 MR. FARINAS: As far as the argument of change of Counsel, Ms. Boone  
5 has been Counsel since the beginning. She is deemed to have known what is going  
6 on; she is deemed to have received these and since January and February, we have  
7 provided extensive information about –

8 MS. BOONE: Objection. Once again you can't speak for me. I was not first  
9 chair of the case during that period and I would really appreciate you letting me  
10 speak for myself.

11 MR. FARINAS: Excuse me. I am not speaking for you.

12 MS. BOONE: If you want to make an argument about something –

13 MR. FARINAS: I am not speaking for you.

14 JUDGE VERO: All right, Counsel, I am sure you have had plenty of time to  
15 hash these disagreements out between yourselves so let's keep it professional  
16 because we are on the record.

17 MS. BOONE: Absolutely.

18 JUDGE VERO: What you do outside of the record, I am not involved and  
19 honestly I don't care. So Mr. Farinas, continue.

20 MR. FARINAS: Ms. Boone knew or should have known that there was  
21 sufficient information to continue discovery even while there was previous Counsel  
22 and immediately after there was a change of counsel, no new discovery information  
23 was requested until very close to the hearing. I think that shows a lack of diligence  
24 on SBG's part, only to demand more information when it is crucial that people have  
25 time to prepare for the upcoming hearing.

1 MS. BOONE: And with all due respect --

2 MR. FARINAS: I am not finish.

3 MS. BOONE: Okay.

4 MR. FARINAS: In addition to the fact, the questions that have been  
5 objected to that are contained in set two, the answers of which if they were written  
6 clearly and specifically, could be obtained by reviewing some of the information  
7 already provided.

8 JUDGE VERO: Just a moment. I will get to your claim of the  
9 interrogatories being overbroad in due course. Anything else from you?

10 MR. FARINAS: Just overall, a lack of diligence.

11 MS. BOONE: With all due respect, it is not a lack of diligence since he said  
12 in his response -- he didn't say he couldn't provide it because of time. He said he  
13 couldn't provide it because they were overbroad and they were previously provided.  
14 He never argued diligence before and the discovery request clearly said that you  
15 have twenty days; okay? So you had twenty days and you didn't provide it.

16 MR. FARINAS: The objection was filed.

17 MS. BOONE: But the objection was not timely and there was --

18 MR. FARINAS: The objection was filed on time.

19 MS. BOONE: But the objection was not that it was not enough time. You  
20 didn't ask for additional time to answer this. You said that you were not going to  
21 answer.

22 MR. FARINAS: I did ask for additional time.

23 MS. BOONE: You said you didn't need it.

24 MR. FARINAS: Well I asked directly why you neglected to --

25 JUDGE VERO: All right. Who raised the issue of lack of time to answer the

1 interrogatories? Show me where it is.

2 MS. BOONE: I don't see it.

3 JUDGE VERO: Okay, you are the first one to mention it. I am not aware of  
4 it.

5 MS. BOONE: I never mentioned a lack of time. You asked me why we filed  
6 at this point.

7 JUDGE VERO: Yes, and I was referring to SBG. Why SBG filed the second  
8 set of interrogatories eleven to twelve months following the first set?

9 MS. BOONE: Because we only found out about these kinds of documents in  
10 late August.

11 JUDGE VERO: Couldn't you keep your answer limited to that?

12 MS. BOONE: Yes, Your Honor. I apologize for being long-winded.

13 JUDGE VERO: It's okay. I understand you received these documents and  
14 you are claiming they weren't included in the response to interrogatories but couldn't  
15 we have dealt with this issue before we started the hearings or at least spare  
16 ourselves five days of hearings where you obviously didn't even know what was  
17 going on?

18 MS. BOONE: Well, I can answer that.

19 JUDGE VERO: Okay.

20 MS. BOONE: First of all, we didn't even know about these documents until  
21 the end of August, that there were such a thing as Maliter notes, that there were  
22 correspondence, that they did have information on point and when we saw this  
23 information we were like my goodness, this actually explains some of what goes on.  
24 The specific interrogatories asked for the methodology. To have PGW say you can  
25 read the tariff, the tariff says what you should do. It doesn't say what you did, and

1 so we are asking what is the methodology. During the testimony it was clear that  
2 our Accountants thought the late payment charges should be dealt with in one way  
3 and PGW's accountants thought that it was another, so PGW were to simply say –

4 JUDGE VERO: Was that the first time this disagreement on methodology  
5 surfaced?

6 MR. FARINAS: No, it was not.

7 MS. BOONE: If I could answer –

8 MR. FARINAS: If I may answer.

9 JUDGE VERO: Hold on. One person at a time.

10 MS. BOONE: When the original complaints were filed with the amended  
11 complaints, everytime we said we had questions on how the payments were done,  
12 everytime we had that question, they sent information –

13 JUDGE VERO: Okay, when you say everytime, give me specifics.

14 MS. BOONE: I am sorry. When the original complaints were filed, it  
15 mentioned that there were questions about how the payments were applied and  
16 how the bills were calculated and interest. In the amended complaint, those claims  
17 were also included. In the testimony, questions were asked of PGW.

18 JUDGE VERO: Testimony?

19 THE WITNESS: I mean in the hearings.

20 JUDGE VERO: Again, let me see if I get you straight. These issues were  
21 raised in the original complaints and the amended complaints and then again the  
22 next time around was at the hearings?

23 MS. BOONE: Yes.

24 JUDGE VERO: Okay.

25 MS. BOONE: And what happens is that the next time the question is posed,

1 we get a little more information. If you look at the original complaint you will see  
2 that there maybe less than ten accounts that are listed.

3 MR. FARINAS: Excuse me. Your Honor, I need to respond because this --

4 JUDGE VERO: No, give me a chance to get this straight.

5 MR. FARINAS: Sure.

6 JUDGE VERO: Are you saying Ms. Boone, that between the amended  
7 complaints and the hearings, there were no questions directed to PGW in the form of  
8 discovery request, production of documents raised in settlement discussions which I  
9 was led to believe that were extensive and --

10 MS. BOONE: Yes. They --

11 JUDGE VERO: Let me finish. Do you have a problem? Did the middle of  
12 my sentence indicate that you could start yours? Okay, so are you saying that these  
13 issues with calculations were raised for the first time at the hearings with the  
14 calculation of interest rates and late payment charges?

15 MS. BOONE: No, I did not say that.

16 JUDGE VERO: Okay, what did you say?

17 MS. BOONE: I did say that we had requested this information through the  
18 process. Even with the settlement conference that we had last spring in 2012, we  
19 asked for the information as well and we still -- I am sorry. It was in the spring of  
20 2013. What happens is that we are given bits and pieces of information but when  
21 we saw the Maliter notes and the correspondence, all of a sudden some of our  
22 questions about the calculations and the payments and the meter reads began to  
23 make sense. We were repeatedly told that all we had to do was look at the  
24 Statement of Account. The Statement of Account would explain how payments were  
25 applied, it would explain how late payment charges are done, it would explain high

1 meter reads but what we found when we looked at the Maliter notes is that actually  
2 PGW in some cases had gone back and done it's own internal investigations and  
3 even though we had correspondence where our employees did ask for information,  
4 PGW did not provide it and without the Maliter notes we wouldn't know.

5 JUDGE VERO: I got the picture and I got your position. Mr. Farinas.

6 MR. FARINAS: There is such misinformation just having been put out. At  
7 the extensive discovery and informal discovery and settlement discussions, PGW  
8 attempted to explain and there was no explanation that was satisfactory to SBG.  
9 Nothing was acceptable. They don't want it. It became a ply to not accept  
10 information just to move the controversy forward. PGW has always tried to explain  
11 what is going on with the calculation of late payment charges and the calculation of  
12 bills but because it would have resolved an issue and it would have not let the  
13 controversy move forward, then this was unacceptable. I can't believe anything;  
14 you are not providing enough proof; I don't have this; I don't need this; it is not  
15 acceptable.

16 JUDGE VERO: Okay, okay.

17 MR. FARINAS: Very uncooperative and very divisive, particularly in light of  
18 what has been communicated here today about being the victim and not being able  
19 to obtain information.

20 JUDGE VERO: All right, just a moment. When it comes to the  
21 characterization of the opposing party's behavior, I would appreciate Counsel not to  
22 delve too much into it. Show it by example rather than by –

23 MS. BOONE: May I speak?

24 JUDGE VERO: Just a moment. So SBG's position is that they didn't get it  
25 and PGW's position is that they have submitted it repeatedly. No mystery. I was

1 hoping for something more but you are sticking to your previously stated positions  
2 and I cannot – this is your previously stated positions.

3 MS. BOONE: Well it is a little different. We are saying that we did not even  
4 know about the Maliter notes which explains the methodology of how they actually  
5 investigated the high meter reads, how they addressed some of our concerns and  
6 we did not know about these documents until late August. If PGW wants to resolve  
7 this – this is what I really believe. If you want to resolve this, then give us the  
8 information. Explain it. We have asked for this information from the beginning --

9 MR. FARINAS: And we have attempted to explain it both informally and –

10 MS. BOONE: --but you told us to go to the Statement of Account and at  
11 that settlement conference, the word that we kept hearing over and over was give  
12 us a number, give us a number, give us a number.

13 JUDGE VERO: All right –

14 MS. BOONE: Also –

15 JUDGE VERO: The next issue that I have – I deem your answer to be  
16 sufficient and to satisfy my curiosity and also enable me to make a decision with  
17 what I have in front of me. My next issue is that these interrogatories deals with  
18 issues that were identified and covered in Complainant's testimony during the initial  
19 hearing, which means that SBG was aware of these issues before the initial hearing  
20 even started but you waited more than five weeks before they were concluded to  
21 conduct discovery on those issues?

22 MS. BOONE: I would disagree with that. First of all, we have not  
23 concluded all of the hearings. There are additional hearings that are coming up  
24 where PGW will put on it's case in chief as well, so there is more than sufficient time  
25 for us to go through these documents to help us prepare. The whole point of

1 discovery is not to waste the Tribunal's time. For example, there is information in  
2 the discovery documents that we requested that will get rid of certain issues or that  
3 will make the final set of six hearings as well as these three next hearings move  
4 forward more efficiently because we know for example how they use the late  
5 payment charges, whether they –

6 JUDGE VERO: Okay, stick to my question.

7 MS. BOONE: No, I would respectfully disagree that we knew about this.  
8 We didn't know about the Maliter notes until that started and so we are looking for  
9 this kind of documentation to explain if he had twenty days from when the  
10 interrogatories were filed on October 19<sup>th</sup> –

11 JUDGE VERO: Okay, do not repeat yourself especially in terms with the  
12 interrogatories. He filed objections in a timely manner and the law allows him to file  
13 objections in a timely manner to the ones that he objects to and to respond to the  
14 ones that he doesn't object to. I think he has done both and I will review his  
15 objections and I will review your motion to compel and I have fifteen days by  
16 Commission's regulations to make a ruling on your motion to compel and his  
17 objection. Okay, so you should expect my order on this issue to be issued on the  
18 parties no later than November 14<sup>th</sup>, because I saw that the motion to compel was  
19 received by the Secretary's Bureau on October 30<sup>th</sup> and I received my copy via e-  
20 mail at 4:59 p.m. on October 29<sup>th</sup>, close of business for Commission's proceedings or  
21 purposes, so it is the following day, the 30<sup>th</sup>.

22 MS. BOONE: Sure.

23 JUDGE VERO: I still haven't received the hard copy of this. Also, while we  
24 are there, let me cover this. I saw that you have filed with the Secretary's Bureau  
25 the Certificate of Service for the motion to compel. The motion is not there. I don't

1 see it.

2 MS. BOONE: It's there. I called them and physically they looked through  
3 the pouch and said it was there. They said sometimes it takes two weeks to put it  
4 on there.

5 JUDGE VERO: All right, I was just curious because I saw the Certificate of  
6 Service for the motion but not the motion itself. Good, so that is clarified.

7 MR. FARINAS: May I ask a question, Your Honor?

8 JUDGE VERO: Yes.

9 MR. FARINAS: The electronic filing will not accept certain identifications of  
10 filing and I was told that the objection is not among the listed acceptance. That's  
11 why it was mailed to you or you just put it under something generic.

12 JUDGE VERO: No, I was talking about the motion to compel.

13 MR. FARINAS: Okay.

14 JUDGE VERO: All right, where were we?

15 MS. BOONE: So what was the date that the objections were received at the  
16 Secretary?

17 MR. FARINAS: They were put into the overnight mail, so it was deemed to  
18 be the overnight mail, which was the appropriate date.

19 JUDGE VERO: I was talking about my order on the motion to compel and  
20 that the Commission's statute gives me fifteen days and you should be expecting it.  
21 I am working on it and I have a very good idea of what my ruling will be on this  
22 issue. I was just trying to finesse a few points.

23 MS. BOONE: May I ask a question?

24 JUDGE VERO: Sure.

25 MS. BOONE: In light of the fact that we have a motion to compel pending

1 and we may have additional information if the motion is granted, which would be  
2 helpful to the direct testimony, we plan on filing a direct testimony with the  
3 reservation to supplement it based on the outcome of the motion to compel.

4 JUDGE VERO: Mr. Farinas.

5 MR. FARINAS: No objection.

6 JUDGE VERO: Okay, here is my take on that. I would love to have  
7 something to work on when it comes to the third set of hearings and the pre-file  
8 direct testimony is due tomorrow at 4:30. What I don't want is to make the record  
9 in these proceedings even more confusing than I think it is going to be. With that in  
10 mind, I thank you for your offer but we are going to reconsider the litigation  
11 schedule for the third set and new dates for the submittal of pre-file direct and  
12 rebuttal testimony because I don't want to have two sets for each party.

13 By what you propose, you are going to have the original direct testimony  
14 for both parties and then both parties I am assuming, are going to come back with  
15 supplemental direct testimony and it is going to be confusing. Okay, so I don't like  
16 that but let's be honest, that is the outcome of you filing the second set of  
17 interrogatories five weeks late – not late, I am sorry. Five weeks after the initial  
18 hearings were concluded and what's more important, on the date when you filed it.  
19 It doesn't matter when the hearings were. It is on the date when you filed it and  
20 this is the outcome. We are actually having to reschedule.

21 MS. BOONE: With all due respect, my apologies as Counsel. I certainly  
22 don't want to make the Commission's job more difficult or complex but –

23 JUDGE VERO: But you are.

24 MS. BOONE: With all due respect, we even turned over exhibits on those  
25 last few cases in August. We haven't even received their exhibits, so I understand

1 your concern but I also hope you can see that my client has really tried to give a lot  
2 of information.

3 JUDGE VERO: I am sorry. Didn't my order with regards to the proposed  
4 exhibits for the initial hearing was that I expected them a week before the initial  
5 hearing for those specific set of hearings were to start? So for the third set of  
6 hearings – the third set of cases, the initial hearings wouldn't start until September  
7 11<sup>th</sup>, and by then we had already determined that we weren't going to have those  
8 hearings. The outcome is that PGW is not late. The fact that you submitted them  
9 doesn't mean that they are at fault, so --

10 MS. BOONE: I am just saying how we were trying to be diligent.

11 JUDGE VERO: I never said you weren't diligent with regard to submitting  
12 the proposed exhibits in a timely fashion. I have never said it; okay? My issue is  
13 with the interrogatories – the discovery. That is my issue with SBG. Not proposed  
14 exhibits. Never mentioned it, so let's just stick to the issue at hand.

15 MS. BOONE: I just really think that the interrogatories, if they answer  
16 them, that we may get rid of a lot of these case. I really do.

17 MR. FARINAS: And I don't believe that anymore.

18 JUDGE VERO: That is a rose-colored picture and I would so love for it to be  
19 true.

20 MS. BOONE: I will buy Mr. Farinas a bottle of good wine.

21 JUDGE VERO: Okay, Christmas is coming.

22 MR. FARINAS: I will be away.

23 JUDGE VERO: My take on that is, there is no chance on that happening by  
24 what I have seen from these pre-hearing conferences and initial hearings of Counsel  
25 dealing with each other. That's not going to happen and also PGW's position and

1 SBG's position in this case, so it is what it is and I am no longer holding out any  
2 hope that this will settled but I have hope that with the parties knowing more about  
3 each other, it will make my job easier. I could throw it out there, a possibility of  
4 involving the Commission's Litigation Unit. Do you think you would benefit from it?  
5 I know that I have offered this before when Mr. DeBroth was still involved with this  
6 case and that idea was rejected in terms of the involvement of the Litigation Unit but  
7 I am throwing it again. Do you think it would be beneficial?

8 MR. FARINAS: My opposing Counsel should be aware that the Mediation  
9 Unit does not make any recommended decisions and does not make any proposed  
10 settlements. It is simply a Referee and so there is nothing for both of us to grapple  
11 on to declare – to put into someone else's hands that they came up with. It is a  
12 Referee that we are doing which hasn't worked when it's just you and I, so I don't  
13 know.

14 MS. BOONE: Personally, my client is not here, so I would have to check  
15 with my client but I am open to it. I really am. I really would like to see this thing  
16 finished and who knows, maybe if you want to try me, I am open to it. I just would  
17 have to qualify by checking with my client but I think I wouldn't be opposed to it at  
18 all, especially after discovery.

19 JUDGE VERO: Hold on. Hold on. Mr. Farinas.

20 MR. FARINAS: I will take that back. I am familiar with the mediation  
21 program and that is why I mentioned that caveat that many people expect that  
22 there are some recommendations at the end and there is not. Basically, it is a  
23 Referee that will try to assist us in working out a settlement, assuming that there are  
24 any grounds to mutually stand upon.

25 MS. BOONE: I would say that after discovery, that would be a great

1 avenue but again, I have to check with my client.

2 JUDGE VERO: Mr. Farinas, you can accept or refuse that particular –

3 MR. FARINAS: I will check with PGW.

4 MS. BOONE: I can call my client now if you want.

5 JUDGE VERO: I can wait for you both to check with your respective clients  
6 and get back to me on that issue, okay?

7 MR. FARINAS: Yes, Your Honor.

8 JUDGE VERO: It is baffling to me how an experienced accountant cannot  
9 grasp late payment charges. If I can grasp them and I am not a normal person by  
10 any extent of imagination and I have been able to work with them and a lot of other  
11 cases and I see it and to me it is obvious and very clearly so, I am baffled to see  
12 how an accountant cannot see it and this is what I was thinking with regard to the  
13 further hearing. I was going to bring the easel into the hearing room and have a  
14 witness go and show, if you take this number and multiply it by this number, this is  
15 what you get and if you take that number and multiply it or divide it or what you  
16 need to do and go like this because this is what I do when I get testimony exhibits  
17 from PGW and PECO and other utilities and it is doable. I can follow and I am  
18 baffled that SBG's accountant cannot do that but would it be helpful? Do you think  
19 we can get someone to explain to SBG's Accountant how it is done?

20 MR. FARINAS: We have attempted to do that.

21 JUDGE VERO: You have attempted to do that. It's done, so there is no  
22 hope in doing it again in achieving a different result doing the same thing. It would  
23 be idiotic, so if it has been done and hasn't achieved a result, I don't want to waste  
24 time.

25 MS. BOONE: Your Honor, I would say the way it was done, it wasn't done

1 fully or as well as it should be and I am not placing blame on either side, but there is  
2 a question about the late payment charge and why it wasn't at the 1.5 percent  
3 interest rate and then on cross-examination of Kathy Treadwell, you said what about  
4 if you have the current late payment charges put here and then you applied the  
5 interest rate later, so these were two accountants that had taken two different  
6 approaches. Just in that conversation, you could see the difference between the two  
7 accountants and once she understood the methodology, she said okay, this is the  
8 explanation.

9 MR. FARINAS: She did not agree. She refused to accept that as an  
10 appropriate methodology.

11 MS. BOONE: But at least she saw – she thought she couldn't understand  
12 why.

13 MR. FARINAS: She may have told you afterwards but she didn't put that on  
14 the record.

15 MS. BOONE: I didn't say she agreed but she could at least understand.  
16 What she feels like now is this tunnel where she has to guess certain things out.

17 JUDGE VERO: Hold on. If she understood how it works because as I said,  
18 if I can understand it –

19 MS. BOONE: She understood their perspective.

20 JUDGE VERO: Okay. If she understood how they do it and how they come  
21 up with the numbers they come up with for late payment charges, are you saying  
22 that the late payment charges, not as they apply on the lien and don't take me  
23 wrong because I am not going to stretch it that far but as they apply on just regular  
24 outstanding balance, are you willing to say that those issues are resolved? I want to  
25 see some movements in this case.

1 MS. BOONE: What I would say is the late payment charges part of the  
2 issue, because I even talked to her about this today, is knowing the date, how they  
3 are compounded and some other issues but in terms of understanding how they did  
4 it, I think she did understand that but there are other pieces that she doesn't  
5 understand in all fairness.

6 JUDGE VERO: What pieces? It is in their tariff when a bill becomes  
7 overdue and late. It is in their tariff and it is common knowledge. Come on, let's be  
8 honest about it, when a bill becomes due and fair and it is also in their tariff and  
9 available to you, the number of days when it becomes overdue, I think. Right,  
10 Mr. Farinas?

11 MR. FARINAS: That's correct.

12 JUDGE VERO: So couldn't she take that date and that number and figure it  
13 out?

14 MS. BOONE: I don't want to speak for her but in talking with her and I will  
15 tell you what seems to me to be a problem. For example, you will see that you have  
16 liens that cover –

17 JUDGE VERO: I didn't stretch it to the liens. I specifically said – I didn't  
18 cover the liens but I have pages and pages of highlighted transactions where just  
19 the 1.5 to, you know, variations on the 1.5 that PGW has claimed is it's monthly late  
20 payment or the interest rate on the outstanding balance per month. They are  
21 highlighted as disputes. Can we resolve that? What if she understands how it is  
22 done?

23 MS. BOONE: As I was saying before that the application of the tariff is only  
24 one piece of it. The other piece is that Mr. Farinas said that there is something  
25 called a placeholder; that some of the debt is a placeholder.

1 MR. FARINAS: That has nothing to do with the application.

2 MS. BOONE: Yes, it does because if it is post-judgment, it shouldn't be  
3 accruing at the rate of one and a half percent.

4 MR. FARINAS: You are bringing up the other issues.

5 JUDGE VERO: Again, what part of my qualifications don't you understand?  
6 I said I am not stretching my expectations to cover liens. I mean, it is a question of  
7 law. At this point it is a case of first impression; a question of law. We have  
8 discussed it and I am not going to touch it now. I am not going to tell you, oh, you  
9 tell me you have resolved the issue on the liens – the percentage rate on the liens or  
10 whatever but I am just talking about the 1.5 percent, how it fluctuated and she  
11 highlighted it, you know. The 1.5 percent.

12 MS. BOONE: Yes. This is what happened. I talked to her and that is one  
13 piece of the late payment charges. I don't want you to think that the entire issue is  
14 closed because she understood how that one current payment was attached. It has  
15 a lot of different pieces of information that goes into it, so one of the issues is  
16 whether something remains an open amount or whether it's closed and whether it  
17 goes to 6 percent or one and a half percent.

18 MR. FARINAS: Again, it's the lien issue.

19 MS. BOONE: No, it's not because you said that some of the things –

20 JUDGE VERO: All right, can we just –

21 MS. BOONE: I don't want to speak for her because she is not here.

22 JUDGE VERO: Okay, I understand.

23 MS. BOONE: And I am not an accountant.

24 JUDGE VERO: Okay, I understand. Can't we do something like that in  
25 terms of stipulation? Can we stipulate that at least the late payment charge is

1 applied – only outstanding balance is of the correct one percent to the tariff? I am  
2 not saying – I understand what you were saying that the outstanding balance –

3 MS. BOONE: The balance includes things like the liens, so I don't know  
4 what the outstanding balance is, so as an accountant, she is concerned.

5 JUDGE VERO: Okay, I am not saying that you are disputing the  
6 outstanding balance as it drops down. I am referring to your dispute of the 1.5  
7 percent – the fluctuations on the 1.5 percent.

8 MS. BOONE: Again, my client is not here. She says that it involves other  
9 things but I can go back and ask her.

10 JUDGE VERO: I am just throwing it on the table so that the parties can  
11 consider it as a possible topic of stipulation so we don't have all this record and I  
12 don't spend pages on decisions on an issue that is a none-issue, so consider it for  
13 stipulation and you can stipulate as much as you want or as little as you want. Of  
14 course, I don't expect the stipulation to cover the outstanding balance. I understand  
15 your issue with the outstanding balance now that it includes the lien. I am not  
16 saying that you should give up your challenge to the outstanding balance numbers  
17 but as it comes to the late payment charge – that 1.5 percent because I had  
18 Ms. Treadwell on that witness chair for hours saying, "oh, and this is 1.1, oh, and  
19 this is 1.2, oh, and this is 1.3," and Mr. Farinas spent an hour or more cross-  
20 examining her about that 1.5. If we agree that the 1.5. is 1.5 per the method that  
21 they use, then we can move on to more.

22 MS. BOONE: And again, I just have to check with her because I am not an  
23 accountant.

24 JUDGE VERO: I don't expect you to make a commitment right now. I am  
25 only throwing it on the table as a topic or an area where the parties can stipulate

1 something.

2 Now, I have looked at PGW's objection to the second set of interrogatories  
3 submitted by SBG and my question to you Mr. Farinas is, what do you mean by  
4 overbroad? It sounds like a simple question but since these interrogatories you  
5 claim are not specific enough, your objection to them also is not specific enough, so  
6 I am throwing it out there hoping you can shed some light on it but as I said, I can  
7 work with what I have.

8 MR. FARINAS: Many of them ask for more information that would seem to  
9 be a new fishing expedition. There is the example of give me every piece of paper;  
10 identify every person that had anything to do with the preparation of the answer;  
11 give me everyone's home phone number and home address; create lists of  
12 documents for me that you are going to provide.

13 JUDGE VERO: Okay, your objection in terms of the list is specific but you  
14 also began your objection to a lot of this interrogatories stating that they are  
15 overbroad and that they seek information which seems to have been submitted  
16 before but overbroad?

17 MR. FARINAS: Overbroad in that – well, I guess it has two meanings for  
18 me. It is not specific enough and it would require unreasonable investigation as to  
19 give me every piece of paper that you have ever looked at.

20 JUDGE VERO: Okay.

21 MS. BOONE: Can I respond to that?

22 JUDGE VERO: No, it's okay.

23 MS. BOONE: Because he can respond in part under the rules.

24 JUDGE VERO: It's okay. I will hold him to the rules. Don't worry about it.  
25 I was just asking him what he meant by that. You cannot shed more light than he

1 can by what he means by that. You Ms. Boone however, can shed some light on  
2 what you mean when you say in a lot of these interrogatories, "including but not  
3 limited to disputed transactions attached hereto as exhibits A-1 to A-8." I  
4 understood the Exhibits A-1 through A-8 that you attached to your interrogatories to  
5 include the disputed transactions included in your complaints. Am I correct in my  
6 understanding?

7 MS. BOONE: Yes. What I did is, I thought it was limited because for  
8 example, the Statement of Account lists all the transactions that transpired going all  
9 the way back to 2004, so what I did is, the Exhibit A and this is an example of it  
10 here, I just included the objections but the Exhibit A is essentially – I took the  
11 Statement of Account and pulled out just the things that are disputed, so instead of  
12 it being the statement of – see, if we said everything in the Statement of Account,  
13 that would be overbroad because not every transaction in the Statement of Account  
14 is disputed but it's only the disputed. We really tried to limit this to just what was a  
15 part of these hearings and we included them so that if there is any confusion he  
16 could see and these are the same numbers in the statement.

17 JUDGE VERO: Oh, I understand. In your interrogatories you asked for  
18 information included but not limited to disputed transactions. I would be happy to  
19 only limit it to the disputed transactions

20 JUDGE VERO: Can we do that?

21 MS. BOONE: Sure.

22 JUDGE VERO: So that's one agreement that we reached today.

23 MR. FARINAS: What numbers are we talking about?

24 JUDGE VERO: Oh, you want the specific numbers?

25 MR. FARINAS: The general use of that phrase is okay.

1 JUDGE VERO: Okay. Also, PGW seems to have an issue with your request  
2 for home addresses versus business addresses. I know you have addressed that.

3 MS. BOONE: I have given them addresses.

4 JUDGE VERO: I just said that you have addressed it. I just said they have  
5 an issue; not I have an issue. All right, you have offered to sort of collect this  
6 information under a protective order; am I correct?

7 MS. BOONE: Yes, we would agree to confidentiality. We are just  
8 concerned that PGW is in the process of being sold and so people who are here  
9 today may not be here even a month from now, so how do we get in touch with  
10 them because we had a problem with John Dunn that PGW didn't want to accept a  
11 subpoena for him, so if he wasn't at the meeting and his name wasn't given, how  
12 would we know –

13 JUDGE VERO: How would you know if you needed another person? Let's  
14 say if Mr. Dunn had changed home addresses, how would you go about doing that?

15 MS. BOONE: At least we could go to his last known address. We could  
16 provide that to an investigator or something.

17 JUDGE VERO: You could start with a Google search rather than hire an  
18 investigator.

19 MS. BOONE: That's true.

20 JUDGE VERO: Also, is your intention in asking for a home address in any  
21 way related to the possibility of you subpoenaing these individuals?

22 MS. BOONE: Exactly.

23 JUDGE VERO: And Mr. Farinas, you have to be aware that in order to have  
24 a subpoena, you need to submit a witness and the witness fee is calculated based  
25 on the mileage from the home of the witness to the hearing room. It is not

1 calculated from the place of business to the hearing room, so I sort of figured out  
2 why it was there. For the PGW employees, can we agree that the calculation for the  
3 mileage for the subpoena would be from the business to the hearing room rather  
4 than from the home to the hearing room because if we stick to the requirements for  
5 the subpoena, she needs the home address, bottomline.

6 MR. FARINAS: For current PGW employees, we always thought that the  
7 business address was appropriate not only for the privacy of the person themselves  
8 but this is not a personal matter. It is a business matter and so the place of  
9 business would be the appropriate address. As far as measuring mileage, if the  
10 person is required to be present because of work, then I am sure that would be  
11 appropriate.

12 JUDGE VERO: All right. Ms. Boone, would just the business address be  
13 sufficient for the people that are current employees of PGW?

14 MR. FARINAS: I believe she already mentioned that she gave that one up.

15 MS. BOONE: Yes. In settlement I said I agreed to that.

16 JUDGE VERO: Okay, I am sorry. So we will go for business addresses for  
17 current employees. With regard to home addresses for individuals that are no  
18 longer under PGW's employ, there might be issues of confidentiality and  
19 overstepping the boundaries of privacy. Ms. Boone has offered to keep the  
20 information confidential. Is that good enough for PGW?

21 MR. FARINAS: Actually, the privacy right that we are talking about belongs  
22 to the employee, so if we wanted to keep it confidential, it's between us and it  
23 wouldn't do anything for the employee.

24 JUDGE VERO: Ms. Boone.

25 MS. BOONE: Because this is a matter before a Tribunal and this is not

1 asking for somebody's home address for a party or some other reason and we are  
2 only asking for the home address so that the person can be contacted for the  
3 hearing – I mean, to be subject to a subpoena is not voluntary. The subpoena says  
4 you must appear and getting their address is so that you can facilitate the subpoena.  
5 These are extraordinary circumstances and the request for the home address is to  
6 make sure that you can provide an opportunity for the person to be there. If you  
7 don't have the home address you can't subpoena them.

8 JUDGE VERO: Why are these extraordinary circumstances?

9 MS. BOONE: A subpoena is an order from the Commission and it's  
10 empowered by state law, so that's what makes it extraordinary. We can't serve a  
11 subpoena unless we have a good address, so that is what makes it extraordinary.

12 JUDGE VERO: Okay, so I understand the party's respective positions and  
13 how far they are willing to meet in the middle. I will deal with the rest of it myself.  
14 Now, you have also requested to receive the age of these individuals. Okay, I know,  
15 I know, I know. Let me finish. I have also offered to allow PGW just to indicate  
16 whether or not this individual is an adult. Is there any suspicion that PGW has been  
17 employing minors?

18 MS. BOONE: No, I don't think so but just protocol, so that's fine.

19 JUDGE VERO: Since it's protocol, Mr. Farinas?

20 MR. FARINAS: PGW does not hire anyone under the age of 18.

21 MS. BOONE: I didn't know that.

22 JUDGE VERO: Okay, let's keep this as little controversial as we can, so can  
23 we drop the age requirement?

24 MS. BOONE: Yes.

25 JUDGE VERO: Okay, so we have covered the fact that the third set of

1 cases is going to receive a new litigation schedule and of course I will ask for both  
2 parties input in terms of when it will be scheduled. Do we need to reschedule the  
3 other dates? The first set, Marshall, Fairmount and Elrea are scheduled to begin on  
4 December 13<sup>th</sup> through 20<sup>th</sup> and Simon Garden and Colonial Garden begins on  
5 December 10<sup>th</sup> through 11<sup>th</sup>. Do we need to reschedule this?

6 MS. BOONE: If PGW needs more time to collect the information, we would  
7 much rather have the good information that's requested in the interrogatories. I am  
8 just throwing that out there.

9 JUDGE VERO: Mr. Farinas.

10 MR. FARINAS: I guess it would depend on when the order comes out and  
11 what is left of the set to be responded to and how difficult or easy they are.

12 JUDGE VERO: Okay. My order will be issued by November 14<sup>th</sup> and I  
13 expect the parties to inform me as soon as possible whether or not we need to  
14 reschedule the other hearings and whether there is need for more time. I believe by  
15 regulations, PGW would have fifteen days to file any responses to the interrogatories  
16 if my order instructs them to do so. If more time is needed, I expect to be informed  
17 in a timely manner. Of course SBG will be allowed to object to a request for  
18 extension of time and then I will make a ruling on that if there is a request. I don't  
19 want to chase you two and I have been chasing you two for a very long time. I am  
20 a firm believer that the initial hearings that we had five days worth of it could have  
21 been avoided. It was an exaggerated waste of Commission's resources. It could  
22 have been avoided.

23 As of today, I think one of two scenarios occurred. Either the Complainants  
24 were not prepared to present the case at the initial hearings and instead of asking  
25 for a continuance to conduct more discovery, SBG wasted five days worth of

1 Commission's resources without accomplishing much or the Complainant already has  
2 the information that it is requesting in the second set of interrogatories but is using  
3 discovery as a delay tactic to avoid collection of outstanding balances. Neither one  
4 of these two scenarios is something that I am comfortable with.

5 MS. BOONE: With all due respect, since a record is here, I would object to  
6 both characterizations because neither one occurred.

7 JUDGE VERO: Were you prepared to present your case at the initial  
8 hearings?

9 MS. BOONE: You mean in August?

10 JUDGE VERO: Yes.

11 MS. BOONE: We thought we were because we thought we had all the  
12 information but once the exhibits were given, we saw that actually there was more  
13 information that needed to be obtained from PGW that had bearing on the outcome  
14 of the case.

15 JUDGE VERO: But the exhibits were received before.

16 MS. BOONE: The exhibits were received the Friday before the hearings  
17 started, the Saturday before the hearings started, the Sunday before the hearings  
18 started and during the hearings and the exhibits were given to us for PGW's benefit.  
19 They don't necessarily cover all the relevant information that would be provided. So  
20 for example, there maybe Maliter notes that are responsive to our interrogatories  
21 that PGW simply decided not to give us.

22 MR. FARINAS: You have seen those before.

23 MS. BOONE: I don't know that I have seen all the Maliter notes for all  
24 those disputed transactions.

25 MR. FARINAS: They were all provided to you.

1 JUDGE VERO: But you have to concede this point that these interrogatories  
2 deals with issues that were identified and covered in Complainant's testimony during  
3 the initial hearings?

4 MS. BOONE: I would not agree with that with all due respect, Your Honor.  
5 Under the rules of evidence, it says that in discovery, you are allowed to seek  
6 information in discovery that may lead to admissible evidence and I think that in this  
7 case, when we first saw the exhibits, we realized that there were more documents.

8 JUDGE VERO: When did you come to that realization?

9 MS. BOONE: As we went through it and since we have concluded and we  
10 looked at it again, we realized that there is a wealth of information that would bear  
11 on the outcome of this case that has never been provided and that is why we filed a  
12 second set of discovery request because that information was not given. With all  
13 due respect, PGW, you know, if the Maliter notes, the correspondence, the internal  
14 investigations that they did, all those things would help explain the high meter  
15 reads.

16 JUDGE VERO: Only if SBG had requested that information in the first set of  
17 interrogatories –

18 MS BOONE: But we didn't know about the Maliter notes and we didn't  
19 know that they would give us internal investigations.

20 JUDGE VERO: Again, you might not have requested for Maliter notes  
21 specifically but I am sure it would have been worded in such a way that it would  
22 have covered Maliter notes. Anyway, if you have asked for it and you weren't  
23 provided with it, that's one issue and you haven't asked for it and you are asking for  
24 it now, it is another issue.

25 MR. FARINAS: Your Honor, Maliter refers to the automatic dialing system

1 whereby calls are routed around to Customer Service Representatives and that is  
2 why one of your requests were confusing. I think you are now referring to when  
3 you say Maliter notes, meaning customer contact screen where information where  
4 some of it is generated by Maliter calls but not all of it is placed on it. You have  
5 seen these in advance. They were provided in informal discovery and they were  
6 shared –

7 MS. BOONE: No, they were not. They were not provided to Mr. Debroff.

8 JUDGE VERO: We are not going to have that particular discussion here as  
9 to what was provided and what was not provided. PGW is going to be more specific  
10 as to what it was provided or not and you have to indicate in your answers where  
11 that particular information was provided. Anything that wasn't provided is to be  
12 provided and if you fail to provide it in a timely manner everything that she requests,  
13 then you will be precluded from making it part of your exhibit at a later date.

14 MS. BOONE: We are asking for sanctions greater than that because the  
15 information that we have requested, they – with all due respect, I certainly don't  
16 want to make a personal attack so I will say not PGW but an hypothetical party  
17 could have information in their files which is not helpful to their case and so they  
18 weren't going to provide it as an exhibit anyway and so to not respond to our  
19 discovery request and to not be able to use it as an exhibit doesn't really move the  
20 discussion either way because they weren't going to provide that information. We  
21 think that there may be correspondence, internal documents, customer screens that  
22 PGW --

23 JUDGE VERO: Okay, let me see if I understand you correctly. If they say I  
24 have provided it, please look at first set of interrogatories, Response Number 53 and  
25 they say that this is something else that we have but we have nothing else and it

1 doesn't come later on, you are saying that you won't be satisfied with that?

2 MS. BOONE: I think you raised a very good point. If they add in that they  
3 have no other documents that responds to this request, then that's fine. If there is  
4 a verification that they have truly responded to the discovery request, then fine.

5 JUDGE VERO: All right. Going back to your first response to my question  
6 when I asked you whether or not these issues that are the topic of the second set  
7 of interrogatories were raised at the initial hearings or were discussed and were  
8 testified on, you said that they weren't. Are you saying that the testimony presented  
9 entirely by SBG didn't touch upon training?

10 MS. BOONE: With all due respect, the testimony talked about some  
11 training but for example if the witness on the stand forgot that there was a training  
12 manual or if there is a training manual that tells you how to apply late payment  
13 charges or how to respond to customers --

14 JUDGE VERO: Answer my question. I don't think it is difficult for an  
15 attorney --

16 MS. BOONE: But I think your question is broader than what I saw happen  
17 at the hearing.

18 JUDGE VERO: Okay, let me state it again. You have several -- lets see.  
19 You have four. 6, 7, 8 and 10, you know, interrogatories that are on the topic of  
20 different training and I am asking you whether or not you conducted direct  
21 testimony on the topic of training?

22 MS. BOONE: I would have to say no. They said they didn't have no  
23 training and that is why I had to put it in there.

24 JUDGE VERO: Okay, I got your answer, so my question goes to the issue  
25 of did you know of this issue before we went to the hearing? This is where my

1 question was going. You asked them this question and it might not have been the  
2 witnesses to give you those answers but those issues were identified by you before  
3 we went into that day's hearing.

4 MS BOONE: With all due respect, that's almost like saying that I knew  
5 there was an issue about payment before we went into the hearing and I did know  
6 that there was an issue about payment but I do know that we have not received all  
7 the information that they can provide about payment. Similarly, I have not received  
8 all the information they can provide about training.

9 JUDGE VERO: Okay. Did the first set of interrogatories include questions  
10 with regard to training?

11 MS. BOONE: In a case that is not so unusual, the first set of interrogatories  
12 often asks for general information and subsequent sets of interrogatories will ask for  
13 more specific issues that have not been received sufficient information on, so that  
14 each set of interrogatories actually builds on the next set and seeks more specific  
15 information that was provided in response to the first set and that is what happened  
16 here.

17 MR. FARINAS: The fact that they were asked so late, so far behind is a way  
18 of blowing up –

19 MS. BOONE: But that wasn't one of the objections –

20 MR. FARINAS: -- a way of expanding the scope.

21 JUDGE VERO: Okay, to me it was the most glaring objection. To you,  
22 obviously it wasn't and your objections aren't what they ought to be. Okay, moving  
23 along. We pretty much came to an agreement that both Counsels is going to let me  
24 know immediately whether or not they are going to schedule the other two sets of  
25 hearings. We know that for the third set of cases, the ones that we are going to

1 proceed through pre-file testimony, we are going to have new litigation schedule and  
2 new hearing dates but with regards to the two sets, since they are a little bit farther  
3 down the line and they start December 10<sup>th</sup>, we have a little bit more time and  
4 hopefully by then we can have what we need to have in order to proceed.

5 Also, this is what I would like to say in this matter and I will not say  
6 anymore. First, discovery needs to come to an end at some point. I know the  
7 Commission's regulations do not provide an end but it needs to come to an end so  
8 that we can have hearings. I understand the occasional need to finesse one or two  
9 points that may touch on evidence previously unknown to the parties but submitting  
10 44 interrogatories at this stage in the proceedings indicates lack of preparation. This  
11 is where I stand.

12 MS. BOONE: And with all due respect, for the record I would like to  
13 disagree with that. With all due respect to Your Honor and to the Commission, I  
14 apologize to have to object to it but I must for the record.

15 JUDGE VERO: What are you objecting to because my statement was a two-  
16 part statement. Are you objecting to the fact that the discovery needs to come to  
17 an end at one point or are you objecting to the fact that after having five day's  
18 worth of initial hearings, I wasn't expecting or I deemed unreasonable to have  
19 received 44 interrogatories or a second set of interrogatories worth 44  
20 interrogatories, or are you objecting or disagreeing with my statement that I  
21 deemed what has occurred to indicate that Complainant wasn't prepared to present  
22 it's case at the initial hearings and that Commission's resources were wasted?

23 MS. BOONE: With all due respect, I will start with the third point. I don't  
24 think the Commission's resources were wasted. Counsel for Complainant and the  
25 Complainants were told to appear, that the matter had been continued several times

1 and we should go forward. We scrambled and we put together the exhibits that  
2 were required and all the orders that were issued by the Judge we complied with  
3 and we were ready to go. We asked questions that were important and that got to  
4 the issues at hand and so there wasn't a lack of preparation. What there was, was a  
5 lack of disclosure on the part of PGW and so that is what caused it, so it wasn't a  
6 lack of preparation. In fact, it was the opposite. Complainant has tried to be  
7 diligent and tried to get to the bottom of these issues and so we are tailoring our  
8 questions to get to get to that information. With respect to the Commission  
9 receiving 44 interrogatories, we did not send the Commission 44 interrogatories. We  
10 sent them to PGW and we followed the rules as well which says that they have  
11 twenty days to respond. We sent them before and this is information that was  
12 totally –

13 JUDGE VERO: Hold on.

14 MS. BOONE: If I could have a little leeway here. If we sent them  
15 interrogatories that said, tell us what every Commission across the country does in  
16 terms of payment and calculation of bills, that could be a problem because having to  
17 contact every utility company in the country, that's problematic. These are  
18 documents in their own files, in their own records, within their control. If there is a  
19 training manual that tells people how they are to calculate bills, they should be able  
20 to pull that out.

21 JUDGE VERO: All right.

22 MS. BOONE: There was nothing in those interrogatories that were  
23 overbroad or burdensome because I specifically tried to tailor them.

24 JUDGE VERO: Okay, I am sorry. Again, you moved from my reference to  
25 SBG's preparation to the five days of initial hearings.

1 MS. BOONE: Okay.

2 JUDGE VERO: My take is that by looking at the testimony that you  
3 submitted during those five days, I believe that you had already identified these  
4 issues either because you knew about them beforehand, you identified them  
5 beforehand or because as you are claiming, PGW submitted those exhibits the Friday  
6 before the five days of hearing started and you identified these issues. If that is the  
7 case and something that I can accept but it would have come a point during the  
8 second, third, fourth hearing where you said, we think we need more discovery and  
9 at that point I would have stopped it.

10 MS. BOONE: Thank you. I didn't know that.

11 JUDGE VERO: Yes.

12 JUDGE VERO: This is what I am saying when I am saying that SBG wasn't  
13 prepared because you started – you identified the issues and you started conducting  
14 Directing Examination on those issues and now it looks like you are conducting  
15 discovery because you didn't get that information during direct.

16 MS. BOONE: I think they are two different issues.

17 JUDGE VERO: My take is that partially and I am not saying the entire direct  
18 testimony that you presented those days but a good part of it were these issues that  
19 you identified and you were collecting information on during discovery, they were  
20 addressed at the initial hearing and you are addressing them now. This is doing it  
21 backwards. That is what I mean by when I said you weren't prepared. You could  
22 have asked for an opportunity to conduct discovery fully prepared and then we could  
23 have continued with the hearing.

24 Also, when you stated that you were told to be prepared and come at the  
25 hearing – at the initial hearing at all cost, it wasn't like that. I specifically remember

1 and we have the transcript of the second pre-hearing conference – I specifically  
2 remember asking you either at the pre-hearing conference or maybe during the  
3 telephone conversation that we had – I am not sure, but it could have been during  
4 the pre-hearing conference and I asked you whether or not you felt comfortable  
5 going ahead and whether or not I would have had to continue this case. I did  
6 express my dislike of having to continue it because it had already been continued  
7 and it comes a point when it becomes ridiculous, let's be honest about it, but I  
8 would have been reasonable about it and faced with two – okay, not the right word  
9 and please don't quote me on it or jump on it but faced with two evils so to speak,  
10 continuing the hearings before they started or continuing the hearing when it was  
11 glaringly obvious that you received this information, didn't have it before, they  
12 should have submitted it, etcetera, I would have said no, go find more, be prepared,  
13 we will continue. Do you understand what the two evils are?

14 I have had at least by my calculations, a day or a day and a half of hearings  
15 on this issue that you are now collecting. This is why I am unhappy and I am not  
16 saying that you will be sanctioned. I am not saying that – all right, don't jump  
17 because I am not finished. I am not saying that you will be sanctioned. I am not  
18 saying that it was intentional. All I am saying is that it wasn't a good decision and I  
19 could have been made aware of the magnitude that you are now claiming was  
20 identified and I am sure you had these exhibits and you looked through them. I  
21 know you looked through them because you started conducting direct examination  
22 using their binder of contacts. That is unusual but allowable, so right there you  
23 identified it as an issue. Right there you could have told me and I wouldn't have  
24 wasted all that time. I have a thousand pages worth of transcript. Do you realize  
25 what a muddled and confusing record this will be?

1           Anyway, this is why I am unhappy about it but I understand what you are  
2 claiming and that is why I am so open to allow you to conduct the discovery. I am  
3 open to rescheduling the hearings. I don't want a repeat of the initial hearings.  
4 This is what I want and this is what I am saying. I don't like continuances but if  
5 there is a worse case scenario to having it continued, I will weigh the two options;  
6 okay? This is my take and that kind of direct examination, I hope that is not your  
7 style because it needs to be more organized but if you didn't have the information, it  
8 makes sense.

9           All right, so with that, please be familiar with all the transcripts that we  
10 have so far. When we are going for the second hearing, we have a lot, as in a lot,  
11 so please familiarize yourselves with it in details so we don't run the risk of repeating  
12 ourselves. It is already an unyielding transcript and I hope there is a reasonable  
13 request to both parties. These are a lot of cases – a lot of issues, so testimony –  
14 either pre-filed testimony in writing or direct examination needs to be organized as  
15 much as possible. Since we may need to reschedule everything, factor in time to  
16 prepare for those direct examination and cross-examination so that they are efficient  
17 and organized. Get to the point and give me what I need and the same goes for the  
18 exhibits. Don't give me everything. Give me what I need; okay? So we have a lot  
19 and hopefully we won't need much more to complete these cases.

20           I also have PGW's outstanding objections on SBG's subpoenas. The  
21 subpoenas themselves are moot. Both parties agreed that they were moot because  
22 we cancelled the hearing schedule. However, I intend to issue an order, which at  
23 this point will be more for instruction purposes on the application for subpoenas than  
24 anything else. Okay? We agree to that?

25           MS. BOONE: Yes.

1 JUDGE VERO: I have heard from the grapevine that Ms. Anne Marie  
2 Cromley is going to retire.

3 MS. CROMLEY: That is correct, Your Honor.

4 JUDGE VERO: And I have you in PGW's matrix and let's say that I will allow  
5 PGW to supplement that matrix as needed.

6 MR. FARINAS: Ms. Cromley is going to be providing testimony for the  
7 assignment on the Colonial matters, so if it occurs, that should be sufficient – those  
8 hearing dates should be sufficient.

9 JUDGE VERO: Yes, of course.

10 MR. FARINAS: Okay.

11 JUDGE VERO: This is all I have and it was a lot. Is there anything else that  
12 you have that I haven't addressed with regard to what we can do to make these  
13 cases run more smoothly? They need to run smoothly; they need to be efficient. I  
14 have supervisors above me and just as your work gets reviewed, so does mine and I  
15 am pressed to conduct these hearings in an orderly and efficient manner. Without  
16 interfering with your legal case, I am just saying let's cut waste; okay? All right,  
17 anything else? Okay, nothing.

18 Now, may I leave the parties with one little reminder? As I mentioned in  
19 my opening statement for the initial hearings, it's my job to have a complete and full  
20 record in this case and usually I am – as Mr. Farinas knows, when I have pro se  
21 parties I am very involved in the collection of evidence just so that I have a full  
22 record. However, both parties are represented by experienced and capable  
23 attorneys, so I would like for my involvement to be as little as possible but I want  
24 the parties to not lose sight or focus of the issues and those issues have elements  
25 and if you are proving or disproving those claims, you need to address those

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