

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ORIGINAL

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SBG Management Services, : Docket No.
Inc./Colonial Garden Realty : C-2012-2304183
Co., LP v. Philadelphia Gas :
Works :

----- X
SBG Management Services, : Docket No.
Inc./Simon Garden Realty : C-2012-2304324
Co., LP v. Philadelphia Gas :
Works :

----- X
SBG Management Services, : Docket No.
Inc./Colonial Garden Realty : C-2012-2334253
Co., LP v. Philadelphia Gas :
Works :

Further Hearing :

----- X

Pages 460 through 685 Hearing Room
801 Market Street
Philadelphia, Pennsylvania

Thursday, January 29, 2015

Met pursuant to notice, at 10:05 a.m.

BEFORE:

ERANDA VERO, Administrative Law Judge

APPEARANCES:

DONNA S. ROSS, Esquire
P.O. BOX 549
Abington, Pennsylvania 19001...
(SBG Management Services)

LAURETO FARINAS, Esquire
800 West Montgomery Avenue
Philadelphia, Pennsylvania 19122
(For PGW)

Commonwealth Reporting Company, Inc.
700 Lisburn Road
Camp Hill, Pennsylvania 17011

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C O N T E N T S

| | <u>WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|---|------------------|---------------|--------------|-----------------|----------------|
| 3 | Kathy Treadwell | | | | |
| | (By Ms. Ross) | 490 | -- | 573 | -- |
| 4 | (By Mr. Farinas) | -- | 562 | -- | -- |
| 5 | Jeremy Gabell | | | | |
| | (By Ms. Ross) | 575 | -- | 608 | -- |
| 6 | (By Mr. Farinas) | -- | 600 | -- | -- |
| 7 | Roger Colton | | | | |
| | (By Ms. Ross) | 610 | -- | 669 | -- |
| 8 | (By Mr. Farinas) | -- | 662 | -- | -- |

E X H I B I T S

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|----|---------------------------|---------------------------|--------------------|
| 12 | <u>SBG CG/SG</u> | | |
| 13 | 1 (Simon Garden Bill) | 492 | 497/684 |
| 14 | 2 (Statement of Accounts) | 498 | 684 |
| 15 | 3 (Calculations) | 516 | -- |
| 16 | 4 (Lien Sheet) | 547 | 684 |
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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE ERANDA VERO:

1
2
3 Good morning. This is the time and place for the
4 further hearings in the consolidated matters of SBG
5 Management Services, Inc./Colonial Garden Realty
6 Company, LP versus Philadelphia Gas Works, Docket No.
7 C-2012-2304183 and SBG Management Services,
8 Inc./Simon Garden Realty Company LP versus
9 Philadelphia Gas Works, Docket No. C-2012-2304324 and
10 SBG Management Services, Inc./Colonial Garden Realty
11 Company LP versus Philadelphia Gas Works, Docket No.
12 C-2012-2334253.

13 My name is Eranda Vero for those of you
14 who have not attended the initial hearings we've had
15 on these cases. I'm the presiding officer in this
16 matter, the administrative law judge assigned to
17 these cases. As you probably know, as I said
18 earlier, these are further hearings. We've already
19 had two days of initial hearings on August 29th and
20 30th of 2013. We are going by all accounts. We will
21 be here for the next two days; I mean, for today and
22 tomorrow. Now this is a further hearing. I've
23 already gone over the rules and regulations that
24 govern the hearing before this Commission. They are
25 a part of the transcripts in this case. Does anyone

1 want me to go over them once again?

2 MS. ROSS: No, Your Honor.

3 MR. FARINAS: No, Your Honor.

4 JUDGE VERO: Very well. The parties
5 know what they're doing, right?

6 MR. FARINAS: Yes.

7 MS. ROSS: Yes.

8 JUDGE VERO: All right. I'd also like
9 to comment, that in the initial hearings, we had
10 Ms. Kathy Treadwell, Mr. Eric Lampert and
11 Mr. Phil Pulley provide direct testimony on the
12 record. Those witnesses were sworn in; although,
13 it's almost a year and a half later, they are still
14 under oath. Does anybody need me to refresh their
15 memory in terms of the oath?

16 MR. FARINAS: No.

17 MS. ROSS: No.

18 JUDGE VERO: So, those three
19 individuals, Ms. Treadwell, Mr. Lampert and
20 Mr. Pulley have been already sworn in a year and a
21 half ago. They are still under oath. So, any
22 testimony they present will be under oath.

23 Also, if you recall or maybe you don't,
24 but if you've read the transcript, I know that
25 Ms. Boone, who was the attorney for the complainants

1 at the initial hearing, requested that there be no
2 side bar discussion between the presiding officer and
3 counsel. She wanted everything to be on the record.
4 Are we still operating under that request?

5 MS. ROSS: Yes, Your Honor.

6 JUDGE VERO: Very well. We did have a
7 conference call yesterday between myself, Mr. Farinas
8 and --

9 MS. ROSS: Ms. Ross.

10 JUDGE VERO: I can summarize the
11 contents of that conference call for the record and
12 counsel is free to correct me or when I'm wrong or to
13 add any topics that I leave out. Everybody with me?

14 MR. FARINAS: Yes.

15 JUDGE VERO: There was a conference call
16 approximately at 3:00 p.m. yesterday, January 28,
17 2015 that I had arranged previously to take place
18 between counsel and myself. It was a rather
19 uninformal conference call to discuss what we were
20 going to expect in today and tomorrow's hearings in
21 terms of strategy, what witnesses were coming in
22 because I had asked for a witness matrix. The
23 parties said they submitted it. I did not receive
24 it; so, it was a good opportunity for me to receive
25 it, review it and discuss it with the parties.

1 I had some questions in terms of the
2 testimony that was going to be presented by the two
3 new expert witnesses that the complainants have
4 included in the witness matrix, and we talked about
5 the extent of that testimony and the time
6 limitations. One of the main reasons for the
7 conference call yesterday was my concern that we
8 might not be able to complete these cases by the end
9 of the business day tomorrow. I informed the
10 parties, rather I informed the counsel for the
11 parties of my extreme unwillingness to schedule
12 further hearings in this matter; so, I told them no
13 matter what, rain or shine, exigent circumstances,
14 yes or no, we will finish tomorrow at 5:00 p.m. So,
15 it's up to them to strategize, arrange their
16 questions and examination in such a way that they
17 feel comfortable they have completed the presentation
18 of their cases. Everybody with me?

19 MR. FARINAS: Yes.

20 MS. ROSS: Yes.

21 JUDGE VERO: That was one of the main
22 issues that we discussed back and forth. However, I
23 believe we reached a somewhat satisfactory agreement
24 on how the hearing today was going to go on. I
25 addressed the outstanding motion limine. I was

1 informed by Ms. Ross that she doesn't expect
2 addressing of the motion limine for these three cases
3 to be extensive or for too long. She said there's
4 only the two instances she might address in terms of
5 motion limine and one is on Colonial, but she said
6 it's a very small SA. Everybody with me?

7 MS. ROSS: Excuse me. May I interject
8 that the liens were on the Simon Garden case.

9 JUDGE VERO: But the Simon Garden is for
10 this hearing?

11 MS. ROSS: Yes, Your Honor, just to
12 clarify.

13 JUDGE VERO: I said the SA, the small SA
14 on Colonial. I didn't say what the two liens were
15 about.

16 MS. ROSS: Yes, ma'am.

17 JUDGE VERO: There was a request by
18 Ms. Ross to have Mr. Pulley's testimony or cross-
19 examination that be presented today for Mr. Pulley to
20 be covered today because he will be unavailable
21 tomorrow. The parties and myself were all right with
22 this request; so, I think we can take care of it
23 today. We were all sort of reminded where the
24 initial hearings ended and that was with Ms. Kathy
25 Treadwell's testimony on ...

1 MS. ROSS: Direct, Your Honor.

2 JUDGE VERO: I understand it was direct,
3 but I'm trying to figure out what case it was. It
4 was SBG Simon I understand?

5 MS. ROSS: Yes, Your Honor.

6 JUDGE VERO: And she covered one of the
7 SAs for Simon and she said she still had testimony to
8 present on the remaining two SAs. That's where we
9 left off. I emphasized the need for efficiency and
10 productivity, encourage the counsel to strategize
11 their case to the best of their ability. I again
12 emphasized we will be done by tomorrow no matter
13 what.

14 Ms. Ross brought up something that I
15 think deserves consideration, which is whether or not
16 we can make Jeremy Gabell's and Roger Colton's
17 testimony when and if it's necessary, but I think
18 that testimony would be brought forth today from her
19 expert witness, Jeremy Gabell and Roger Colton in
20 terms of if it's general in nature or whether or not
21 that exhibit could be part of the record for
22 Marshall, Fairmount and Elrae cases. I am resisting
23 that idea, but I do see that it may be the best way
24 and the more efficient way we can deal with these
25 cases. I'm still open to suggestions, but we did

1 discuss this yesterday.

2 We discussed that Mr. Pulley,
3 Mr. Lampert and Mr. Dunn's testimony at the Fairmount
4 Marshall, Elrae will become an exhibit for these
5 cases and that counsel was going to inform me which
6 portions of the transcripts from those cases will
7 become an exhibit in these cases, and we discussed
8 how counsel was going to identify all the documents
9 that those witnesses referenced during those
10 testimonies. I will pull them aside from the
11 binders, and after I get a chance to review them,
12 they will become an exhibit here as well because it
13 goes with the testimony that's becoming an exhibit.
14 Did I leave anything out?

15 MS. ROSS: No, Your Honor. I have
16 marked the portions of the transcript for Mr. Pulley,
17 Mr. Lampert and Mr. Dunn's testimonies from the five
18 days of hearing if you would like for me to cite them
19 for your review and for the record.

20 MR. FARINAS: I thought I was supposed
21 to get a chance to agree.

22 MS. ROSS: I mean, at least you can
23 know. I'm informing you where they are. It was
24 basically all inclusive.

25 JUDGE VERO: Can we do that informally

1 right now so he can review them. Once we have a
2 consent between at least the two counsel, let me know
3 on the record if you have an objection. I will
4 review it and rule on it.

5 MS. ROSS: We do have copies of the
6 transcript if Mr. Farinas would like to look at it
7 over lunch once we've done this. That way, we can
8 deal with that.

9 JUDGE VERO: We have until tomorrow.
10 Basically, you have tomorrow as well on this one
11 particular issue, but I agree he needs to have it to
12 review it, but I'm just saying for moving them into
13 the record, we have until the close of business day
14 tomorrow.

15 MS. ROSS: Yes, Your Honor, and we have
16 transcripts available. That's what I'm just trying
17 to say to you. Would you like for me to recite that
18 very quickly?

19 JUDGE VERO: Just go over the pages?

20 MS. ROSS: Yes, just the pages; so, he's
21 aware if he wants to take a look at it during
22 lunchtime.

23 JUDGE VERO: Sure.

24 MS. ROSS: On August 26, 2013,
25 Mr. Pulley testified on pages 52 through 176. On

1 that same day, Mr. Lampert, Eric Lampert testified on
2 August 26, 2013 from pages 221 to 268. On August 27,
3 2013, Mr. John Dunn, III testified on pages 277
4 through 428. On August 28, 2013, Mr. Pulley
5 testified from pages 628 to 668. On August 29th,
6 Mr. Pulley, Phil Pulley testified on pages 37 through
7 133.

8 JUDGE VERO: Hold on. Pages?

9 MS. ROSS: Pages 37 through 133.

10 JUDGE VERO: Why would it start at page
11 37?

12 MS. ROSS: I believe there was somebody
13 else testifying before that on August 29th and there
14 may have been some --

15 JUDGE VERO: No. August 29th were these
16 cases. You cannot make his testimony on these cases
17 an exhibit on these cases. We stop at August 28th.

18 MS. ROSS: I'm sorry. Can you explain?

19 JUDGE VERO: Can you try to understand.

20 MS. ROSS: Is that when we started with
21 the Simon cases; is that what you're saying?

22 JUDGE VERO: That's exactly what I'm
23 saying. We are on Simon cases. This is further
24 hearings on Simon cases. His testimony is on the
25 record for Simon cases. Why would you want to make

1 it an exhibit?

2 MS. ROSS: I'm sorry. I apologize.

3 JUDGE VERO: So, we have 26th, 27th,
4 28th. Those were the days for the initial hearings
5 on Fairmount, Marshall and Elrae. So, any exhibit
6 for those days is what we're discussing of making any
7 -- -- sorry. Any testimony from those three days is
8 what we're discussing making into an exhibit for
9 these cases.

10 Now, quick question to you, Ms. Ross:
11 Is this the entirety of their testimony that you're
12 proposing to make into an exhibit?

13 MS. ROSS: For those three days, yes,
14 ma'am.

15 MR. FARINAS: Your Honor, I'm not trying
16 to read your mind, but I was of the understanding
17 that only the testimony that spoke to the general
18 issue of statute of limitations or any other issue
19 that reaches across all of the nine dockets, not
20 anything in particular.

21 JUDGE VERO: I'm saying, Mr. Farinas,
22 take a look at those pages and you let me know if you
23 have any objection, and I will do the same. I will
24 look at those pages specifically and see whether or
25 not there is anything that doesn't need to be there.

1 Everybody with me?

2 MR. FARINAS: Yes.

3 JUDGE VERO: As I informed counsel
4 yesterday, I believe we'll be hard-pressed for time;
5 so, I'm timing people's, the witness' testimony; bear
6 that in mind. We also agreed; I informed counsel and
7 if you have anything to say on it, your redirect and
8 recross will be limited to one redirect, one recross
9 per party and will be no longer than four substantial
10 questions each. Questions of the nature: Can you
11 please turn to such and such a page or do you have
12 this binder will not be considered substantial, will
13 not be counted, but anything else needs to be within
14 the four question limit. I don't recall anything
15 else from yesterday's conference, but if I misspoke
16 or if there's something that I would have covered but
17 I left out, by all means, let me know right now;
18 otherwise, we will proceed with just that summary on
19 the record.

20 MR. FARINAS: I don't recall any other
21 issues, Your Honor.

22 JUDGE VERO: All right. One additional
23 housekeeping matter is that the Commission's
24 regulations allow a judge to take judicial notice of
25 facts that are not necessarily put forth by either

1 party on the record. I have to give notice of me
2 taking such an action and this is my intention of
3 doing. The specifics will come later on today. The
4 specifics is what facts I will take judicial notice
5 of will come in later today. All right.

6 MS. ROSS: To clarify, you're not
7 specifying specifically right now, but you will let
8 us know.

9 JUDGE VERO: Yes, today, of what facts
10 I'm taking judicial notice of. Would you like to
11 address the motion limine or would you leave it out
12 all together or would you address it if related
13 issues come up during this hearing? What's your
14 strategy. ins terms of that motion, Ms. Ross?

15 MS. ROSS: Yes, Your Honor, if I may, I
16 just would like to as it pertains to the motion
17 limine, obviously, this was written pursuant to your
18 order that all motions had to be presented to you by
19 October 6, 2014. Discovery was obviously scheduled
20 to be closed September 15, 2014, and as of that date,
21 there were still some outstanding motions to compel
22 on interrogatories and requests for production of
23 documents and admissions and the like that had been
24 propounded and were still under consideration and,
25 therefore, not all of the documentation that had been

1 requested prior to the end of discovery were
2 received.

3 To that end, what I am asking is, that
4 as of today, we have received supplemental
5 information that came as recently as this week and --

6 JUDGE VERO: If it's not relevant to my
7 deciding a ruling on the motion limine, you leave it
8 out, because as I said, we're pressed for time; so,
9 go directly to what is outstanding, what needs to be
10 addressed. Go to the point.

11 MS. ROSS: I would like if there are any
12 other writings, correspondence, documents anything
13 that has not been presented and is not in the
14 discovery library that we have provided to the court,
15 anything that's not there, unless it is to only
16 supplement what we have on our recent outstanding
17 requests on the lien that we've never gotten a
18 response to on the Simon property, the complete
19 statement of accounts and information on the
20 outstanding SA of Colonial and then there is another
21 SA that is outstanding on the Elrae account. I
22 understand that's not part of it.

23 JUDGE VERO: If you understand it, why
24 do you bring it up. When we discuss Elrae the second
25 week of February, bring it up.

1 MS. ROSS: Do I have to renew the
2 motion?

3 JUDGE VERO: Yes. It is an outstanding
4 motion for all nine cases.

5 MS. ROSS: It's hard to kind of keep
6 track.

7 JUDGE VERO: No, it's not that hard.
8 Again, the cases were consolidated as far as
9 discovery went, but they were separated in three sets
10 of three for hearing and decision-making purposes. I
11 don't understand why that's so hard to grasp.
12 Discovery across the board, it didn't make sense to
13 ask PGW to submit the same documents three times
14 because some of the discovery requested for training
15 materials, policies, et cetera, et cetera. I figured
16 it was voluminous. There was no point in asking them
17 to do that work and produce the documents three times
18 in a row; so that's why for discovery purposes, all
19 nine cases are together, but for hearing purposes so
20 I can follow the witness' testimony, I can navigate
21 the SAs, the accounts, et cetera, the cases are
22 consolidated in strict three sets of three. So, this
23 discovery motion, ruling in terms of discovery across
24 the board on all nine of them.

25 MS. ROSS: Let's be clear, the discovery

1 was supposed to be closed September 15th. We are
2 still getting documents. Are we going to be getting
3 additional documents for Elrae? I'm asking you are
4 you allowing that.

5 JUDGE VERO: Talk to me about
6 Simon/Colonial and the other Colonial which had to do
7 with all conversion. That's what we are here for
8 today. Anything in terms of discovery as it affects
9 these three cases, it's the subject of your motion
10 limine today.

11 The second week of February, we come
12 back for Marshall, Elrae and Fairmount. You have the
13 outstanding motion limine. Any issues you have with
14 discovery for those, whether it was produced in terms
15 of those three properties, you can discuss it then.
16 The same for the last three sets will be in writing.
17 The testimony will be submitted in writing, but the
18 motion is still outstanding and will be addressed
19 when we have those five or six days of additional
20 hearings on those three last cases.

21 MS. ROSS: To the extent that is highly
22 prejudicial, that there might be additional
23 information that all of a sudden PGW produces after
24 the testimony, I would say nothing else should be
25 admitted in any of the three cases.

1 JUDGE VERO: Yes. If you recall every
2 single one of my discovery rulings, language to the
3 effect that borrowing exigent circumstances, PGW will
4 not be allowed to bring into the record any
5 information that was specifically requested in SBG's
6 discovery requests, but was not produced. It's in
7 almost every single order and I've issued numerous
8 orders, numerous, and that language is there over and
9 over and over again. Of course, I'm aware of your
10 issue with discovery, not SBG's, but the parties'
11 issues with discovery. I'm aware of what's been
12 going on thanks to the motions and answers and
13 objections that have been filed. I'm very well
14 aware.

15 What I need from you right now is where
16 do you stand in terms of the motion limine for one
17 Simon, two colonial; any issues outstanding I need to
18 address right now, that you want me to address right
19 now? What do you want me to do?

20 MS. ROSS: Let me put this to you, to
21 the extent that they will be able to only provide the
22 information requested regarding the liens that are
23 outstanding that we requested of them and the
24 information related to only the completeness of the
25 statement of accounts --

1 JUDGE VERO: What about that?

2 MS. ROSS: Because it does affect our
3 numbers; so, that's all they should be able to
4 produce, period.

5 JUDGE VERO: Okay. And I am charging
6 you with being vigilant because you know what those
7 things are. I don't.

8 MS. ROSS: No, I don't. That's the
9 problem. They won't tell us.

10 JUDGE VERO: You know that there are two
11 liens. I don't know that. You just told me
12 yesterday; so, I'm assuming you have some information
13 about what those liens are. I don't know how much
14 you know, but I'm assuming you have a docket number
15 or something.

16 MS. ROSS: A docket number --

17 JUDGE VERO: Hold on. So, you pretty
18 much know for what property. I don't. So, when PGW
19 puts on its case in chief, you have to be vigilant
20 and tell me, this is something we asked for and they
21 did not give it to us. I'm charging you with that.
22 Don't expect me to do that. I've been doing it more
23 than necessary in these cases, trying to figure out
24 what was produced, when it was produced, who produced
25 it, if they produced it, if it was requested it; so,

1 I'm charging you. If you don't object to something,
2 it's in.

3 So, the motion is outstanding, but I
4 will rely on your objections as they present the
5 testimony. If anything else needs to be addressed
6 later on before we conclude the hearings, I mean
7 today and tomorrow in terms of that motion limine as
8 it applies to these three cases, you let me know. I
9 will look into it.

10 MS. ROSS: So, to the extent they would
11 bring it up in their case in chief and it's a
12 document we have not seen, not received, I will
13 object and that motion limine will be continued. It
14 will not considered moot because that's the whole
15 purpose of a motion limine is precluding evidence
16 that they would then try to get in that we are not
17 aware of during the course of the trial.

18 JUDGE VERO: That's exactly what that
19 language says, borrowing exigent circumstances, PGW
20 will not be allowed to produce or enter into the
21 record information that was asked for and not
22 produced during discovery. Can it be anymore
23 obvious?

24 MS. ROSS: Let's just make sure it's
25 clear. Thank you.

1 JUDGE VERO: It is crystal clear as far
2 as I'm concerned because I issued that order.

3 So, can we actually start with
4 testimony; what witness is going first? Will we pick
5 up with Ms. Treadwell and her testimony on her last
6 colonial case, remaining two SAs; is this where we're
7 picking up or is there a different order of witnesses
8 that you would like to explore?

9 MS. ROSS: Yes, Your Honor. Actually,
10 we will be picking up with Ms. Treadwell. Mr. Pulley
11 will not be attending today. Unfortunately, he is
12 unavailable; so, his testimony as far as Simon and
13 Colonial is concluded and is in the current records.

14 JUDGE VERO: All right. Mr. Farinas,
15 are you all right with that? Did you know Mr. Pulley
16 was not going to be in today and are you waiting to
17 cross-examine him?

18 MR. FARINAS: No, I did understand he
19 was to be present today and as to the conversion
20 matter of Colonial, I did have several questions. I
21 don't believe we were actually finished with that.

22 MS. ROSS: To that extent, may I say
23 that we are withdrawing that matter.

24 JUDGE VERO: Yes, that's another thing.
25 That's very close to my heart. I understand you have

1 some good news for me and probably will make my day.
2 So, please, I understand from our discussion
3 yesterday that you might be changing or amending the
4 complaints a little bit in terms of claims or what
5 the content of those complaints were. So, please.

6 MS. ROSS: We are not amending our
7 complaints. We are not changing our complaints. If
8 you will recall, at the time that we filed these
9 complaints, we were quite concerned and maybe did not
10 artfully --

11 JUDGE VERO: Give me straight what you
12 are changing.

13 MS. ROSS: We had certain explanations
14 since the filing of these complaints; so, to the
15 extent that there are transfers under dispute code C
16 --

17 JUDGE VERO: For which property?

18 MS. ROSS: For all properties. I'll
19 make it easy for you.

20 JUDGE VERO: Okay. Dispute C, which is
21 transfers?

22 MS. ROSS: Yes, unexplained transfers of
23 funds, we've now had an explanation for that; so, we
24 can remove those. As it pertains to unexplained
25 transactions.

1 JUDGE VERO: You're referring to code
2 I?

3 MS. ROSS: Code I, yes. Code H, we have
4 an explanation of what cancelled payments mean.

5 JUDGE VERO: What happened to I?

6 MS. ROSS: I said I is unexplained
7 transactions.

8 JUDGE VERO: What steps are you taking
9 with regard to I?

10 MS. ROSS: I believe we understand.

11 JUDGE VERO: So, you're not addressing
12 anything that's marked I?

13 MS. ROSS: Correct.

14 JUDGE VERO: So, we're moving to H,
15 cancelled payments?

16 MS. ROSS: Yes.

17 JUDGE VERO: What were we doing to
18 cancelled payments again?

19 MS. ROSS: I mean, to the extent we have
20 an explanation, we're not challenging cancelled
21 payments.

22 JUDGE VERO: How would I know to what
23 extent you have an explanation and what transactions
24 are still up for dispute that are marked H?

25 MS. ROSS: To the extent -- excuse me,

1 Your Honor. For example, with H as it pertains --

2 JUDGE VERO: If we are at an example
3 stage, it's not an all-inclusive statement with
4 regard to any disputed transactions marked or coded
5 by the complainants with an H. Can I ask you that
6 today or tomorrow -- well, today would be best, but
7 have someone on your team go through the tab number 6
8 in SBG's Simon binder, the original one, and mark the
9 disputed transactions under H that are still on. Can
10 you do that?

11 MS. ROSS: Let me explain what we're
12 going to do because we have a better understanding.

13 JUDGE VERO: What you're proposing to
14 do.

15 MS. ROSS: Well, because we have a
16 better understanding of what this case truly is
17 about, and so to the extent that it would go to
18 specifics on saying we're just saying what cancelled
19 payments are, but all payments are disputed, and it's
20 disputed based on their billing practices and their
21 late payment charges and that is across the board.

22 JUDGE VERO: I understand that, but when
23 they are being disputed as cancelled payments under
24 H, cancelled payments, they're being disputed as to
25 why are they cancelled. They shouldn't have been

1 cancelled. Do you understand as to the nature of the
2 dispute. I understand the overall all encompassing
3 disputes that the complainants are bringing or
4 dispute the complainants are bringing, but to the
5 specific transactions, I would need for you to get
6 someone on your team to tell me this is still on.

7 MS. ROSS: They're out.

8 JUDGE ROSS: All of them are out?

9 MS. ROSS: On Simon, yes, they are.

10 JUDGE VERO: On Simon. How about
11 Colonial?

12 MS. ROSS: They only apply to Simon.

13 JUDGE VERO: So, the disputed
14 transactions marked C and H, they are removed from
15 all three dockets?

16 MS. ROSS: Yes, Your Honor.

17 JUDGE VERO: All right. I like that.
18 Anything else?

19 MS. ROSS: D, all estimated billings.

20 JUDGE VERO: All three docket numbers?

21 MS. ROSS: Yes.

22 JUDGE VERO: Anything else?

23 MS. ROSS: No, Your Honor.

24 MR. FARINAS: Your Honor, I just wanted
25 to get to the end here confirming that the Colonial

1 Garden conversion matter, is that not on the table
2 anymore?

3 MS. ROSS: We are withdrawing that
4 complaint.

5 MR. FARINAS: Thank you.

6 MS. ROSS: You're welcome.

7 JUDGE VERO: That would be docket number
8 C-2012-234 -- I'm sorry, 2334253, right?

9 MS. ROSS: Yes.

10 JUDGE VERO: Ms. Ross, I will need
11 something from you in writing in terms of a petition
12 to withdraw a complaint. I still have to make an
13 initial decision on that. They make us do it.
14 Although, it's a done deal pretty much, they still
15 make us do it.

16 MR. FARINAS: I can state for the record
17 now that PGW will not object to their request to
18 withdraw that. You still need that in writing?

19 JUDGE VERO: Unfortunately, they make us
20 do an initial decision. It doesn't violate public
21 needs; so, I still have to have it in writing, just a
22 brief statement that you're withdrawing it, why
23 you're withdrawing it, the explanation you are no
24 longer interested in prosecuting it, something very
25 short. I need to have it, and I will issue a very

1 brief decision and that will be the end of that one.

2 MS. ROSS: Fine. Are you demanding that
3 in a certain period of time or can it be by the next
4 round of hearings?

5 JUDGE VERO: Let me say this: You can
6 file that one any time before you file the main
7 brief.

8 MS. ROSS: That's fine.

9 JUDGE VERO: I'm giving you all the time
10 in the world and it shouldn't take you more than a
11 paragraph. So, as long as when I get to the
12 decision-writing process on these three cases, I
13 don't have that one on the table anymore. Does that
14 make sense?

15 MS. ROSS: Yes.

16 JUDGE VERO: All right.

17 MS. ROSS: Your Honor, would you allow
18 me, since I was not counsel of record in these
19 initial hearings and since we have had subsequent
20 information provided through discovery, would you
21 allow me to frame where SBG is at this point in the
22 litigation by giving a brief opening?

23 JUDGE VERO: Bear in mind, we are
24 pressed for time. You are pressed for time. You
25 need to complete your case today allowing time for

1 SBG to complete its cross-examination of your
2 witnesses, allowing time for me to ask your witnesses
3 any questions I might have; so, if you deem it
4 necessary, if you think you'll be brief. By all
5 means, if you think it's something you can do
6 without, act accordingly. I'm leaving it up to you.
7 Do you want to make it? Do you think you can make it
8 brief?

9 MS. ROSS: As long as you can follow
10 along with what we believe to be our theory of the
11 case, I don't have a problem.

12 JUDGE VERO: You're stating there's a
13 change? You're stating there's a change in the
14 theory of the case?

15 MS. ROSS: I would say we have refined
16 the theory of the case, yes.

17 JUDGE VERO: All right. I recall I
18 asked at the prehearing conference on November 14th
19 of 2014 whether there had been a change in the theory
20 of the case. I did not get any sign from either
21 party that there had been such a change, but, yes, by
22 all means, let me know. Be brief.

23 MS. ROSS: This case is not about a
24 dead-beat customer who doesn't want to pay their gas
25 bill; let's just be clear about that. This case is

1 about subterfuge, concealment, consumer fraud and
2 theft by deception comitted by a public utility, a
3 company that is statutorily obligated to deal
4 honestly, fairly and in good faith with the half
5 million customers that it serves.

6 Good morning, Your Honor. My name is
7 Donna Ross and I am counsel for the complainant, and
8 pursuant to 52 PA Code Section 69.120C, in matters
9 involving the public utility code and Commission
10 regulations, the Commission will consider violation
11 of willful fraud, misrepresentation, intentional or
12 negligent conduct, violations of a serious nature.

13 The Commission will also consider the
14 number of customers that are affected and the
15 duration of the violation and whether the company has
16 taken corrective action. The Commission may impose
17 higher civil penalties where utilities have comitted
18 these violations showing bad faith or engaged in
19 active concealment.

20 In these consolidated matters, PGW
21 intentionally and systematically maintains an
22 accounting and billing practice that is designed to
23 perpetually punish customers.

24 JUDGE VERO: This is so far exactly what
25 the complainant's theory of the case has been. Go

1 straight to what's different so I'm updated now and
2 we can go on with the witnesses. So far, whatever
3 you've said is identical to what Ms. Boone said and
4 she had a chance to present it.

5 MS. ROSS: Okay. We will go there.

6 JUDGE VERO: Please. What has changed?

7 MS. ROSS: I would like to call my first
8 witness, Ms. Kathy Treadwell please.

9 JUDGE VERO: So, nothing has changed.
10 All right. Ms. Treadwell, please take the stand.

11 MS. ROSS: Your Honor, would it be
12 possible for her to testify from here since she has
13 the laptop?

14 JUDGE VERO: Mr. Farinas, do you have an
15 issue if Ms. Treadwell remains seated at the
16 complainant's desk?

17 MR. FARINAS: No, and normally, when the
18 judges permit that in other cases, PGW's witnesses
19 are also given the same opportunity of not having the
20 pressure of being on the stand.

21 JUDGE VERO: That's fine. The parties
22 taking a look at each other's witnesses, confronting
23 them, looking in their eyes and so on. I get to see
24 the witnesses as they testify and it's easier for me
25 to connect. So, you can remain seated,

1 Ms. Treadwell. Please remember you are still under
2 oath from way back in August of 2013. Do you want me
3 to swear you in again?

4 MS. TREADWELL: No, you don't have to.

5 JUDGE VERO: Okay, good. Just a brief
6 reminder. Let's be vigilant in that no testimony is
7 being repeated so we don't burden the record. Okay.
8 Mr. Farinas and myself and, of course, Ms. Ross,
9 that's also your job.

10 . You may proceed please.

11 Whereupon,

12 KATHY TREADWELL

13 having been previously duly sworn, testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MS. ROSS:

17 Q. Good morning. Ms. Treadwell, please just if
18 you could, refresh the court's recollection, what is
19 your occupation?

20 A. I'm an accountant.

21 Q. You work for?

22 A. SBG Management.

23 Q. What is your relationship to this case?

24 A. I've been a witness in this case. I'm also an
25 accountant for SBG.

1 Q. Have you had an opportunity to investigate
2 PGW's bills?

3 A. Yes. We have copies of bills in our office
4 and we also have several statements of accounts that
5 were sent to us in layers through discovery.

6 Q. How often do you review PGW bills?

7 A. On a monthly basis.

8 Q. What information do you glean from those
9 bills?

10 A. Typical bills show you what's outstanding and
11 what's due. They have a line called adjustments
12 which could be assumed, but it's no detailed
13 information in terms of what those adjustments are.
14 Sometimes those adjustments are internal adjustments
15 or their late payment charges.

16 Q. Do you have a copy of the bills that we could
17 mark?

18 A. I do.

19 Q. I'm showing you what's been marked as SBG
20 CG/SG Exhibit 1, which stands for SBG Colonial
21 Garden/Simon Garden?

22 A. What we put in evidence is an example copy of
23 a Simon Garden Realty bill. The bill is dated 7/8
24 2004. It shows that a payment was received on 6/14
25 2004. Now, Simon Garden Realty has three SAs on its

1 account; so, there's one account number, three
2 distinct SAs, and one thing I noticed is that that
3 payment on 6/14/04, I can't tell how much went to
4 each respective SA. That information is not provided
5 on a bill.

6 It also has a past due amount of 178,180.38,
7 which again is representative of how much is past due
8 on the account as full, but it doesn't have a
9 cumulative amount, again, by SA. The adjustment of
10 2,589.20 does tie to the adjustments on page 3 of the
11 bill which show the late charges by SA; so, PGW shows
12 you late payment charges by SA -- I'm sorry. This
13 one had 4 SAs on it at that time.

14 (Whereupon, the document was marked SBG
15 CG/SG Exhibit No. 1 for identification.)

16 JUDGE VERO: Where are you looking right
17 now?

18 THE WITNESS: I'm on page 3 of 4 on the
19 bill.

20 JUDGE VERO: I thought you were
21 referring to a binder?

22 THE WITNESS: No, just the bill.

23 JUDGE VERO: Okay. Go ahead.

24 THE WITNESS: Page 3 of 4 of the bill.
25 It does tell you the breakdown by SA number for late

1 payment charge, but, again, it doesn't tell you
2 accumulative amount by SA. It doesn't tell you the
3 payment that was applied, how it was applied by SA,
4 and this kind of information is important because
5 PGW accounts for these statements independently, but
6 does not provide that to the consumer.

7 BY MS. ROSS:

8 Q. So, how can you check the bill for accuracy?

9 A. It's like concealed. The information that you
10 need is not there. A lot of times we have called the
11 1-800 number or the 215-235-1000 number, which is the
12 billing and general information telephone number.
13 We've called them recently to get an understanding of
14 how they apply the payment amongst different SAs and
15 we were told by a PGW representative, specifically
16 Ms. Berry on this account and it was for Simon, that
17 the payment we had made in September of 2014 was
18 applied to the account in full and it wasn't
19 distinguished by SA.

20 However, we later received three distinct
21 statements of account by SA showing the payment was
22 broken up and split amongst the different SAs.

23 Q. Do you know how you can determine the late
24 charges or the late payment charges on the bills and
25 how they are applied?

1 A. Well, PGW says they apply one and a half
2 percent to the unpaid balance that is accrued on the
3 account and they apply that consistently as long as a
4 payment has not been received. I see dollar amounts
5 of the adjustments. That's what's on page 3 of 4 as
6 I've indicated. It does not show the rate and it
7 does not specifically show the principal basis for
8 how they determine the dollar amount.

9 Q. So, if you were to receive a bill, if you have
10 subsequent bills and you make a payment on this
11 account, the following month, would your payments be
12 reflected on each individual SA?

13 A. No. That information is also not
14 distinguished on the bill.

15 Q. Who determines how much money is split amongst
16 the accounts and the multiple SAs?

17 A. I believe PGW, the person receiving the
18 payment decides how it's allocated.

19 Q. Do you know that for sure?

20 A. I don't know that. It has not been confirmed
21 for me as of today.

22 Q. Have you asked how each of those payments are
23 applied?

24 A. We recently asked a customer service
25 representative and she misinformed us. We finally

1 received a statement of account and got an accounting
2 for the statement.

3 Q. Have you asked other PGW personnel in prior
4 meetings with them how these payments are applied and
5 what's the determining factor of how the payments are
6 allocated amongst all the SAs?

7 A. My understanding is, as payments come in --

8 Q. Let me just ask, have you asked other PGW
9 personnel?

10 A. Yes.

11 Q. Who have you asked and spoken to about this?

12 A. We've had discussions with Linda Preery in her
13 office in our informal meetings, and she said -- if I
14 can say what she said. I'm not sure.

15 JUDGE VERO: Yes, you can. It will be a
16 statement by the opposing party.

17 THE WITNESS: My understanding from
18 Linda is, that it depends on who receives the
19 payment. So, when a payment is received, the system
20 automatically spreads that payment amongst the three
21 SAs.

22 JUDGE VERO: I'm sorry. Can you repeat
23 that?

24 THE WITNESS: When I met with Linda --

25 JUDGE VERO: You said it depends who

1 receives it?

2 THE WITNESS: The person who actually
3 records the payment. When the person records the
4 payment, they have a way to allocate that payment
5 amongst the three SAs. It could be system generated
6 or it could be a manual adjustment, and that's the
7 reason why the transfers have occurred on our
8 account.

9 For example, a payment came in and it
10 was spread amongst three SAs. One SA went into a
11 negative; so, what they did is, they transferred
12 money from one SA to another SA just to balance the
13 payment out.

14 JUDGE VERO: Can you be specific or is
15 it pertaining to other cases?

16 THE WITNESS: It pertains to all --

17 JUDGE VERO: No. The instance when it
18 was a manual adjustment, because one account went to
19 a negative and you said that money was moved just to
20 balance things out?

21 THE WITNESS: I can give you a clear
22 example when it comes to the Fern Rock.

23 JUDGE VERO: No, not Fern Rock.

24 THE WITNESS: You're talking about Simon
25 specifically?

1 JUDGE VERO: Yes. Could we just stick
2 to the instance where it happened in these two
3 cases.

4 THE WITNESS: Give me a moment.

5 BY MS. ROSS:

6 Q. We're showing you what has been marked as SBG
7 CG/SG Exhibit 2 and, Ms. Treadwell, if you can talk
8 and work at the same time, may I ask you to identify
9 this document?

10 MS. ROSS: Housekeeping, Your Honor.
11 Since she has testified to SBG Exhibit 1 and she's
12 identified it, I'd like to move that into evidence.

13 MR. FARINAS: I have no objection.

14 JUDGE VERO: Then SBG Exhibit 1 is
15 hereby admitted into the record in these consolidated
16 matters.

17 MS. ROSS: Thank you.

18 (Whereupon, the document marked as
19 SBG CG/SG Exhibit No. 1 was received in
20 evidence.)

21 BY MS. ROSS:

22 Q. As I said can you identify these documents
23 that have been marked as SBG Exhibit 2?

24 A. Yes, this is a statement of account provided
25 by PGW for this particular SA.

1 (Whereupon, the document was marked as
2 SBG CG/SG Exhibit No. 2 for
3 identification.)

4 BY MS. ROSS:

5 Q. Which SA is that?

6 A. Account number 539547187, SA number
7 1162325601.

8 MS. ROSS: Your Honor, since she has
9 identified this document, I would like to move this
10 into evidence, have this admitted.

11 MR. FARINAS: Your Honor, actually, it's
12 not just a statement of accounts. There's additional
13 materials toward the latter end. It's documents
14 we've seen before, but these other ones have not been
15 introduced into evidence.

16 BY MS. ROSS:

17 Q. Is there anything else that it includes that
18 you will be referring to in giving testimony
19 throughout the rest of this hearing today?

20 A. Yes. The document also includes the late
21 payment analysis that PGW also provided and that's
22 what's behind the statement of account.

23 JUDGE VERO: What I have is SBG Simon
24 from page 88, 86 -- I'm not sure what I have. Give
25 me a moment to review the packet or I can propose,

1 Ms. Ross, that you have Ms. Treadwell testify, refer
2 to this document. Mr. Farinas will have a chance to
3 review them and I will have a chance to review them
4 as she testifies, and then he can state any objection
5 he might have. I will make a ruling on your motion
6 to admit it.

7 MS. ROSS: That's fine, because I just
8 want to make sure. The record in the previous
9 hearings, we did not have those exhibits marked and
10 I'm trying to keep track of them a little bit better
11 this time.

12 JUDGE VERO: That may be because of the
13 way they came in.

14 MS. ROSS: That's why I'm trying to do
15 this now.

16 JUDGE VERO: That's fine. I really
17 appreciate it, but still, you have to admit this
18 particular exhibit is a little bit voluminous and I
19 want to make sure I know what you're moving into the
20 record.

21 MS. ROSS: I understand.

22 BY MS. ROSS:

23 Q. This document, as you said, it contains what?

24 A. This is a statement of account provided by
25 PGW. This is several statement of accounts actually

1 provided by PGW. The first three pages are from a
2 period from November 2000 to 12/31 2003, but the
3 transaction I wanted to specifically --

4 Q. What else is behind it?

5 A. Behind the statement of account is also the
6 late payment analysis that PGW provided through
7 discovery regarding how to calculate, at each given
8 point how they calculated the one and a half percent
9 and that starts in the later half. It's divided by a
10 color tab or a blank sheet.

11 Q. Just so we're clear, did you receive the
12 complete statement of accounts in one packet or how
13 did you acquire this statement of accounts?

14 A. This particular statement of account was
15 received January 25, '13. That's because we stamped
16 it that way. However, there are three SAs on this
17 one account. We did not receive a full complete
18 statement of account for all three SAs until our
19 motion to compel was filed and received in full in
20 December 2014.

21 Q. As it pertains to this particular account
22 ending in SA number 5601, when did you receive a
23 complete statement of accounts for that?

24 A. One portion was submitted payment in 2013 and
25 I think the previous portion was provided in 2012.

1 JUDGE VERO: Where is this line of
2 questioning going? Is this going toward bad faith in
3 discovery; where is it going?

4 MS. ROSS: It basically will develop
5 because as a result of that --

6 BY MS. ROSS:

7 Q. When were you able to ascertain or were you
8 ever able to ascertain how PGW applied payments to
9 this particular SA?

10 A. No.

11 JUDGE VERO: Not at all?

12 THE WITNESS: I'm sorry. Can I please
13 finish my statement?

14 JUDGE VERO: Yes.

15 THE WITNESS: Originally, PGW sent us
16 these statements of accounts in layers. Some came in
17 2012, another came in 2013, and we were able to see
18 payments on the accounts. Were we able to trace all
19 the payments that were paid off through most of our
20 refinances and payoffs, we still had difficulty tying
21 those out and that's because we didn't have complete
22 records for all the SAs until recently, and that has
23 been the struggle with being able to reconcile our
24 account in full.

25 First, we got them from starting 1/1

1 2004, then additional layers came on and then we were
2 missing pages. It's been a nightmare to just get
3 this information.

4 MR. FARINAS: Your Honor, we're not
5 arguing motion limine.

6 JUDGE VERO: Is that an objection?

7 MR. FARINAS: Your Honor, I object.
8 We're not arguing the motion limine. This question
9 is not relevant. I believe the question was going to
10 be about a particular transaction, to explain the
11 transaction, now how they got it.

12 MS. ROSS: I'm getting to that, Your
13 Honor. Quite frankly, it is very relevant because it
14 does speak to the fact that the information coming in
15 dribbles and drabs, SBG was not able to reconcile
16 their account in full with the bills, the billing
17 statements and everything until we had all the pieces
18 of the puzzle and that's where she's going, and she's
19 going to speak to how she was able to reconcile this
20 particular SA based on receiving the information.

21 JUDGE VERO: If it's reconciled, it
22 means, at least the way I understand it, that it
23 matches her records now or it makes sense to her; it
24 makes sense to Ms. Treadwell now and to the
25 complainant; it's reconciled because she can pretty

1 much say where everything goes.

2 THE WITNESS: I'm saying it's been
3 difficult to reconcile; that's what I'm saying.

4 JUDGE VERO: So, go to the problem as it
5 is now. I'm aware of what the difficulties have
6 been. I am aware. That's why we had a period of a
7 year and a half between the first hearing and the
8 further hearings. I'm not saying that the
9 difficulties have not been there for SBG. I'm with
10 you there. I know what's been going on. I pretty
11 much have received what you've received and when you
12 received it and I've seen what has been submitted.
13 I've seen what has been requested; so, I am aware of
14 that.

15 Now tell me what you have now, where you
16 are now, what you know now, what the problem is now,
17 why that discovery went to, that year and a half of
18 discovery, what did it give the complainants; where
19 are we now.

20 MS. ROSS: That was my next question,
21 Your Honor.

22 BY MS. ROSS:

23 Q. Is there any other information that you
24 received --

25 JUDGE VERO: Sorry. It's overruled. Go

1 ahead.

2 BY MS. ROSS:

3 Q. Is there any other information you received
4 from PGW that gave you more clarity on these accounts
5 and how the SBG, complainants' accounts were billed
6 and the payments were applied?

7 A. Yes. First, let me just take a step back and
8 answer the first question regarding the transfers,
9 okay. The reason why SBG has difficulty and
10 continues to have difficulty reconciling the accounts
11 is because PGW does intel transfers that are unknown
12 to the consumer.

13 So, for example, on 11/2 2003, that's page 3
14 of 3 of the statement you're looking at for SA ending
15 in 5601, if you look at page 3 of 3 and look at the
16 November 2, 2003 transaction, if you look at that
17 date, there was a bill that was issued for \$1071.97
18 and the consumer was in a credit position of \$887.25,
19 a credit position on that date, and the reason they
20 were in that credit position was because there was an
21 overpayment on the account according to the transfer,
22 dated, 9/30 2003 and the payment on 10/3 2003.

23 PGW then on 11/3 2003 transferred \$887 which
24 is the exact amount of the credit position they were
25 in on that particular SA. We did not understand

1 where that transfer came in. We now understand that
2 they switched it from another SA to this particular
3 SA, but that information is not revealed on the bill;
4 so that kind of difficulty reconciling the account is
5 very difficult.

6 Q. Let me stop you here.

7 MR. FARINAS: Your Honor, I have an
8 objection to the question. I believe earlier this
9 morning, weren't all category C disputed transactions
10 --

11 THE WITNESS: I'm not disputing it. I'm
12 saying it is difficult to understand.

13 JUDGE VERO: Let me see if I understand
14 this correctly. Ms. Ross, I understand your line of
15 questioning and it's been progressive up till this
16 point. Correct me if I'm wrong, that PGW's billing
17 information is not informative, is not clear or
18 informative when it comes to commercial, residential
19 clients; is this where we're going?

20 MS. ROSS: Any client.

21 JUDGE VERO: Your client is commercial
22 residential.

23 MS. ROSS: As it pertains to my client,
24 yes --

25 JUDGE VERO: Your client is commercial

1 residential. Your client has several SAs. We're
2 here about your client, basically; so, is this where
3 you're going with this, because if it's not, then we
4 need to stop here because as Mr. Farinas said, this
5 is no longer an issue. It's been removed from the
6 table in terms of transfer. Yes, it was difficult,
7 but now it is resolved.

8 MS. ROSS: But it goes to the underlying
9 accounting in terms of explaining. We're not saying
10 we're disputing it. We're trying to say how it
11 affects the underlying accounting.

12 JUDGE VERO: Hold on. Again, my
13 question was, is this where you're going? Are you
14 saying that the information included in PGW's bills
15 to commercial residents, your client, is not very
16 helpful for the clients to maintain their accounting;
17 is this where you're going?

18 MS. ROSS: Yes, Your Honor.

19 JUDGE VERO: All right. We're on the
20 same page, and your objection is overruled.

21 BY MS. ROSS:

22 Q. And because it's not contained on the bill,
23 are you aware of that particular transfer?

24 A. No, I was not and we would not able to
25 determine that by the basis of the bill itself.

1 Q. So, is there any other information that you
2 were able to get some clarity in determining on this
3 particular SA what happened on the accounting, the
4 underlying accounting of this SA?

5 A. Yes. Another issue that we had was trying to
6 determine the interest rate that PGW was applying.
7 PGW provided us with what they call a late payment
8 charge analysis.

9 JUDGE VERO: Be brief on this topic,
10 okay. Go ahead and cover it, Ms.. Ross, but let's be
11 brief.

12 MS. ROSS: This is germane.

13 JUDGE VERO: I said let's be brief. I
14 didn't say don't go there.

15 THE WITNESS: The late payment charge
16 analysis provided by PGW, to the extent they provided
17 it, they didn't come provide it incomplete on every
18 account, every SA, but to the extent it was received,
19 it did reveal, because I believe this information was
20 not included on the bill, how they calculated the
21 unpaid balance and the one and a half percent and
22 what was their basis for using the one and a half
23 percent.

24 They also revealed to us for the first
25 time that they were taking our payments and applying

1 them to cumulative late payment charges, which in my
2 understanding is not the appropriate method in which
3 they should be applying them, and that was a shock to
4 us.

5 BY MS. ROSS:

6 Q. What do you mean by that, because they are
7 allowed to apply payments to late payment charges?
8 I'm not sure what you mean by that. Please explain.

9 A. Well, according to PA State Code 62.74, there
10 is a hierarchy. Do I need to get it out for you?

11 MS. ROSS: I would ask Your Honor to
12 take judicial notice of 52 PA Code 62.74 which is the
13 regulation related to the bill format for residential
14 and small business customers. You are familiar with
15 that?

16 MR. FARINAS: Yes.

17 JUDGE VERO: Yes.

18 MS. ROSS: So, I don't need to provide
19 you with a copy. Okay.

20 BY MS. ROSS:

21 Q. So, what did that tell you?

22 A. It showed me their hierarchy in making
23 payments.

24 JUDGE VERO: In applying payments?

25 THE WITNESS: In applying payments,

1 correct. They should apply first to commodity
2 charges. Second, to distribution charges. Third,
3 customer. Fourth, gas cost adjustments. Fifth, to
4 interstate transition cost surcharges. Sixth, to
5 taxes and Seventh to late payment charges.

6 BY MS. ROSS:

7 Q. How does PGW apply its payments received by
8 its customers?

9 A. According to page -- if you look at the late
10 payment analysis that PGW provided, that's behind the
11 blank tab.

12 JUDGE VERO: I have a blank tab
13 somewhere?

14 THE WITNESS: I'm sorry, a blank page in
15 there.

16 JUDGE VERO: The gray one?

17 THE WITNESS: Yes. It got duplicated.
18 It's a color copy in mine.

19 JUDGE VERO: This one?

20 THE WITNESS: Yes, behind that. If you
21 look behind that, you'll see if you go to the fifth
22 page. It had a page number, but it looks like a hole
23 punch got right through it. If you look at the
24 transaction dated 7/11 2012, you'll see a payment was
25 made. Is everyone there?

1 MR. FARINAS: Not yet.

2 JUDGE VERO: I'm there. Mr. Farinas,
3 are you there?

4 MR. FARINAS: Yes.

5 THE WITNESS: If you look for the
6 transaction dated 7/11 2012, you'll see a payment
7 came in for \$271,519.09. It was applied to this
8 account. Prior to that, you see on PGW schedule,
9 which was provided with the late payment analysis, on
10 the line dated 4/5 2012, they had unpaid. That's
11 cumulative unpaid late payment charges of
12 \$109,797.93.

13 When they applied our payment, they took
14 the cumulative late payment charges first and then
15 applied the rest of it to unpaid principal. I guess
16 that's the way they determined it.

17 BY MS. ROSS:

18 Q. When you say unpaid principal, what do you
19 mean by that, gas charges?

20 A. That's correct, principal gas charges.

21 JUDGE VERO: Just a second. Can I stop
22 you for one moment?

23 MS. ROSS: Yes.

24 JUDGE VERO: I need to see if
25 Ms. Treadwell can explain. Let me see if I get this

1 correctly. You're saying that there was a payment of
2 \$271,519.09 and it was applied to the entire
3 outstanding balance, correct, leaving the complainant
4 a credit?

5 THE WITNESS: It wasn't applied to the
6 outstanding balance.

7 JUDGE VERO: Let me finish, then you
8 will tell me where I'm wrong. Gave the complainant a
9 credit and you're saying that it should have been
10 done differently, that this is not correct, a correct
11 application of that payment?

12 THE WITNESS: We believe PGW, and they
13 have stated in their response to discovery, they take
14 all of our payment and they apply it to cumulative
15 late payment charges first, wiping out cumulative
16 late payment charges, then retiring it to principal;
17 where we believe, our position is it shouldn't go
18 just to cumulative late payment charges first.
19 There's a hierarchy in the statute, that it should be
20 followed and that's how they should be applying those
21 payments.

22 JUDGE VERO: These particular exhibits
23 and this particular transaction that you are
24 referring to during your testimony, does it reflect
25 what you understand to be PGW's method as you

1 understand it from discovery?

2 THE WITNESS: This is just the example
3 for Colonial. We have other examples for other
4 properties.

5 JUDGE VERO: But does it do that?

6 THE WITNESS: It's hard to tell in this
7 one particularly because it does get wiped out to
8 zero.

9 JUDGE VERO: Give me a better example.

10 MS. ROSS: Are you asking her whether or
11 not this is PGW's practice and methodology of
12 applying payments to outstanding balances?

13 THE WITNESS: Why don't you just ask
14 them directly how they apply their late payment
15 charges.

16 JUDGE VERO: That's for your attorney to
17 do. You conducted discovery. You got an answer from
18 PGW in terms of --

19 THE WITNESS: They did.

20 JUDGE VERO: Hold on. You conducted
21 discovery. You got an answer from PGW with an
22 explanation of how they apply, I understand, payments
23 like a partial payment, not a full payment. A
24 partial payment would be a better -- will give you a
25 better scenario on how the portions are applied.

1 This is a full payment plus; so, it's not a good
2 example.

3 THE WITNESS: I understand.

4 JUDGE VERO: I cannot see what you claim
5 they've done or that they usually do from this
6 example.

7 THE WITNESS: You can see the late
8 payment charges are wiped to zero, but the balance in
9 full was wiped to zero, but they have already
10 disclosed that they get late payment charges first.

11 JUDGE VERO: Is that your testimony,
12 that that's what they do?

13 THE WITNESS: That's our understanding.
14 That's what they responded to.

15 JUDGE VERO: Okay.

16 BY MS. ROSS:

17 Q. With this information, were you able to
18 develop a methodology and analysis on this SA as to
19 how payments were applied by PGW and then reconcile
20 that with the regulation if they were to be applied
21 in order of the hierarchy of applying it to commodity
22 charges first and/or then distribution charges or
23 customer charges in this case if they have that
24 option, gas cost adjustment charges, interstate
25 transition costs surcharges, taxes, then late

1 payments; is there a difference if they applied the
2 late payments in the order of --

3 JUDGE VERO: It's such a compounded
4 question. Try to rephrase it. It's such a
5 compounded question.

6 BY MS. ROSS:

7 Q. Is there a difference in the principal balance
8 charges or principal balances if you apply payments
9 in accordance with the regulations under 62.74?

10 A. We believe that PGW violated the State
11 tariff.

12 MR. FARINAS: Objection, Your Honor.
13 It's a legal conclusion.

14 BY MS. ROSS:

15 Q. Do you come out with a different amount?

16 A. And we did. We believe they violated the
17 State tariff.

18 JUDGE VERO: It's her testimony. It's
19 not my conclusion. It's her testimony.

20 THE WITNESS: We believe they violated
21 the State tariff.

22 JUDGE VERO: And you have stated it over
23 and over again.

24 THE WITNESS: I just want to make sure
25 I'm not interrupted. And we did a re-calculation on

1 this particular SA using the State hierarchy of how a
2 payment should be applied, and when we did that for
3 this account number ending in 7187 and SA ending in
4 8077, we came up with the fact that PGW charged us,
5 overcharged us \$24,728.79 in late payment charges and
6 we overpaid an excess of 147,185.20.

7 JUDGE VERO: As of what day?

8 THE WITNESS: That is going through
9 November 2014 and I have those calculations for you
10 to review.

11 JUDGE VERO: In November 2014; didn't we
12 go over this at the prehearing conference?

13 MS. ROSS: Your Honor, I think you need
14 to see how it flows from the beginning based on the
15 information; so, do you have an illustration?

16 JUDGE VERO: Just so we're on the same
17 page and we're reminded of what I said in terms of
18 how far we're going, up until what date I'm going to
19 consider calculations and information. What you do
20 with my instructions, it's up to you, but I've
21 already explained myself. Next question.

22 BY MS. ROSS:

23 Q. I'm showing you what's been marked as SBG CG

24 --

25 JUDGE VERO: Are we done with SBG

1 Exhibit 2?

2 MS. ROSS: Will you be cross-referencing
3 this to show for your illustration?

4 THE WITNESS: Yes.

5 BY MS. ROSS:

6 Q. Can you illustrate what you're talking about,
7 the impact of the statement of accounts the late
8 payment analysis has on the overall balance of an
9 application of payments on this SA? I'm showing you
10 what's been marked as SBG CG/SG Exhibit 3.

11 (Whereupon, the document was marked as
12 SBG CG/SG Exhibit No. 3 for
13 identification.)

14 JUDGE VERO: What you're submitting,
15 it's not bound together. It's three sheets. They
16 are not bound together. They are not page numbered,
17 and you need to get someone to do that before you
18 submit it because I am pulling this apart. I cannot
19 put it back together.

20 MS. ROSS: This is for your reference
21 right now so she can illustrate it, but we will do
22 that.

23 JUDGE VERO: I know, but I cannot go
24 back and forth, and if there is an objection, I need
25 to pull it up and say specifically what pages are in

1 or out; so, it needs to contain page numbers or it
2 needs to be bound before you submit it to me because
3 what I do, I look through it and I think this is a
4 duplicate and I pull it aside and I can't put it back
5 right now. This is the problem I'm having.

6 MS. ROSS: Your Honor, just so you're
7 aware, this illustration contains --

8 JUDGE VERO: This illustration being
9 which?

10 MS. ROSS: The one I just gave you,
11 Exhibit 3, represents a calculation for each of the
12 three SAs.

13 JUDGE VERO: What's the page number?

14 MS. ROSS: Each one is paged. The page
15 is on each SA, 1 of 4 for the SA ending in 5601.

16 JUDGE VERO: I don't have a copy of it
17 because I gave it back to you so you could supply me
18 with page numbers.

19 MS. ROSS: Would you like a copy of it?

20 JUDGE VERO: Does it have page numbers
21 in consecutive order from the beginning to end?

22 MS. ROSS: No, because there's three
23 different SAs, Your Honor.

24 JUDGE VERO: As an exhibit, it needs to
25 be page numbered.

1 MS. ROSS: Do you want me to separate it
2 for each one?

3 JUDGE VERO: You can keep it together.
4 You can say SA number 1 goes from page 1 to 13. SA
5 number 2 goes from page 14 to page 16. SA 3 goes
6 from page 16 to page 20 of this exhibit.

7 MS. ROSS: Of this exhibit, they are
8 separated by SA so it is easier to read so, you get a
9 history of the account.

10 JUDGE VERO: All right.

11 MS. ROSS: That's what I'm trying to
12 illustrate.

13 JUDGE VERO: Is it so hard to follow my
14 instructions as I like to have it?

15 MS. ROSS: We will bind this for you,
16 but if you don't want us to give you the information,
17 that's fine. You can follow along up here if you'd
18 like.

19 JUDGE VERO: I want it, but I'd like
20 page numbered.

21 MS. ROSS: For your copy, Your Honor,
22 there's submitted page numbers. Okay. Go on.

23 THE WITNESS: Right now we are looking
24 at a document. If you look at the bottom in your
25 page number, Your Honor, page 5 or you can look up at

1 the screen, we have it here electronically. This is
2 for SA ending in 8077, and it shows this side of our
3 calculation for every bill that was issued and this
4 correlates to the statement of accounts. If you look
5 at these dates, 4/9 2001, 5/7, they are bills that
6 were issued by PGW and they reflect on the statement
7 of accounts.

8 So, this side of the calculation is what
9 PGW says. This was what the previous balance was.
10 This was the bills issued. Were there any payments
11 and were there any late payment charges on the bill
12 are reflected on this side. We hard-coded this
13 information in and we tied it to the statement of
14 accounts. What we did on this side of the
15 calculation, we said, as payments were coming in, if
16 PGW would have applied it to the principal first, not
17 the cumulative late payment charges, what would the
18 difference be in the late payment charge itself and
19 also in the principal balance on the account.

20 So, what we did is, we copied the
21 cumulative principal because this is the cumulative
22 principal here. This was the total due, \$96.45.
23 Here it is, \$96.45. A new bill was issued on that
24 billing period of 394.04. It comes from the same
25 side here, PGW. It's the same bill.

1 There is really very little difference
2 in terms of the calculation where there was no
3 payment being applied; so, that's why you don't see a
4 difference on those first few lines. Here was a
5 small rounding difference on this particular account,
6 but as we get down into later days --

7 BY MS. ROSS:

8 Q. Go through each one so she can get an idea.

9 A. So, for example, I calculate that our
10 cumulative unpaid principal before the bill was
11 issued was \$521.67. PGW, you have to look at their
12 late payment analysis to determine what it would have
13 been when. You apply the \$18.80 payment that came
14 through, the total bill should have been \$526.78 as
15 opposed to what PGW's calculation was. Here's the
16 PGW side. This ties out to the bill. There's no
17 difference.

18 So, these numbers here on this left side ties
19 out exactly to PGW side. So, here are the
20 differences. Here's the \$534.48 what they say was
21 total due versus \$526.78 which I say was due.
22 There's a difference of 381.17 versus 365. 396.76
23 versus 381, and those differences continue to accrue
24 based on the payments that are received and are being
25 applied the right way versus the way they have been

1 applying the payments.

2 Q. In each of these calculations, are you
3 accounting for and applying a late payment charge to
4 the outstanding balance in the amount of one and a
5 half percent?

6 A. Yes. After the payment was applied, to the
7 extent that there was an unpaid principal, we applied
8 a one and a half percent interest.

9 Q. So, you are accounting for the fact there are
10 late payment charges?

11 A. Correct. This column Q represents cumulative,
12 the late payment charges just as column PGW's
13 calculation here in my column, column G would.

14 Q. Why are their charges so much higher than
15 ours?

16 A. Because they're applying the payment directly
17 to cumulative unpaid balances first; therefore,
18 leaving the principal exaggerated and high as
19 possible, and that information is concealed and not
20 revealed in any of the bills. It would never have
21 been revealed to us had they not provided the late
22 payment calculation, late payment charge calculation.

23 Q. When did you get that; was it the late payment
24 analysis?

25 A. The late payment charge analysis. We received

1 a sample in response to our discovery and it has
2 trickled in. I think the most recent information was
3 received in December of 2014.

4 Q. When did you first receive it?

5 A. I would say summer of 2014.

6 JUDGE VERO: May I interject just for a
7 moment. Is this an SA in that it has more than one
8 SA?

9 THE WITNESS: It is. That's why you see
10 three different tabs.

11 JUDGE VERO: It has three different SAs?

12 THE WITNESS: That's correct. Simon has
13 three different SAs. That's the other difficulty
14 that we've had. The information was provided to us
15 by statement in our service agreement is what the SA
16 stands for. We had to take this information
17 separately and look at each specific SA and do an
18 analysis on each SA, which we did.

19 BY MS. ROSS:

20 Q. Who prepared this late payment analysis at
21 PGW; do you know?

22 A. This here; this schedule here was prepared by
23 myself. This is in comparison or in contrast to the
24 late payment charge analysis that I believe was
25 provided by Linda Preery.

1 MR. FARINAS: Actually, it was prepared
2 by Diane Rizzo.

3 THE WITNESS: Okay, Diane Rizzo. I
4 apologize.

5 MS. ROSS: But Ms. Preery did sign off
6 on that verification as well?

7 MR. FARINAS: Yes.

8 BY MS. ROSS:

9 Q. This starts in 2001, correct?

10 A. Correct.

11 Q. Tell me what is the accumulative effect?

12 A. For each calculation that was done, SBG
13 prepared, we went back as far as we could with the
14 information we had. For this particular SA, we had
15 statements that go back to 4/9 2001 and we went all
16 the way through November of 2014. The cumulative
17 effect of this type of accounting is really big. We
18 were actually surprised as we were doing our
19 analysis.

20 We show that PGW on this one SA overcharged us
21 24,728 in late payment charges, we believe.

22 MR. FARINAS: Your Honor, I object to
23 the testimony that shows the cumulative information
24 of money. That is beyond the scope of this
25 proceeding as you have established it. That is the

1 May 2012.

2 JUDGE VERO: December 2012, December 10,
3 2012.

4 MS. ROSS: What is the basis of the
5 objection?

6 MR. FARINAS: That the grand total at
7 the bottom is irrelevant to this. We sat patiently
8 while you've gotten through all of that.

9 MS. ROSS: To the extent that there's an
10 ongoing violation in each account is the fact that
11 each account would be disputed --

12 JUDGE VERO: It will stop on December
13 10, 2012.

14 MS. ROSS: Your Honor, that is highly
15 prejudicial.

16 JUDGE VERO: It's not prejudicial
17 because you can file another complaint. I am not
18 making a ruling on that portion.

19 MS. ROSS: It shows the accounting.

20 THE WITNESS: For the record, if we were
21 to look through December 10, 2012, it would be an
22 overcharge of \$19,048.12.

23 JUDGE VERO: Okay. I can work with it.

24 THE WITNESS: And that's just on the
25 late payment charge aspect of it.

1 BY MS. ROSS:

2 Q. Are there other elements of this calculation
3 and the methodology that shows?

4 A. Yes, at that time, we would have been -- if
5 they applied our payment correctly, we would have
6 been in a credit position of 143,644.44.

7 Q. And what did PGW represent as the balance on
8 that date?

9 A. As of December, I'm looking at -- no.
10 December, they have us owing 7,446.95.

11 Q. And that would be a difference of a negative?

12 A. 135,165.72.

13 Q. That SBG had overpaid on its account as of
14 that date?

15 A. Correct.

16 JUDGE VERO: 135,000, but if you state
17 they overcharged you approximately \$19,000 in late
18 payment charges, how are you --

19 THE WITNESS: I'm sorry. I didn't
20 include that number. I apologize, Your Honor.

21 JUDGE VERO: What number you didn't
22 include?

23 THE WITNESS: I didn't include the
24 19,000. That's in a separate column here. I'm
25 sorry. So, we were in a credit position of 142,612

1 --

2 JUDGE VERO: You were or you should have
3 been?

4 THE WITNESS: We should have been in a
5 credit --

6 JUDGE VERO: So, how does the number
7 charge of \$19,000 that you claim result in you being
8 in a credit position of 142,000?

9 THE WITNESS: You need to see that; for
10 example, if PGW would have applied our payments the
11 right way, you would see that on August 12, 2012, PGW
12 said we owed them 358,671.85. I show we owe them
13 211,389 and a payment came in of 358,671 which
14 brought us into a credit position.

15 JUDGE VERO: But still, shouldn't have
16 the difference have been \$19,000? Well, less than
17 that by that time?

18 THE WITNESS: No.

19 JUDGE VERO: Okay. I will read your
20 testimony.

21 BY MS. ROSS:

22 Q. So, if PGW had charged you late payment
23 charges that were on the \$358,671.85, is that what
24 you're saying and that amount of late payment
25 charges, what were the late payment charges on that

1 amount that PGW applied to that amount?

2 A. Say that again.

3 Q. So, the 358,000, what percentage of that was
4 late payment charges at that point from PGW's side?

5 A. The percentage of it?

6 Q. How much of that was late payment charges?

7 A. When we made a payment of 358,671, the
8 cumulative unpaid late payment charges to the extent
9 they had not been paid off was 146,000 of it; so, out
10 of the 358,671, 146,000 of it was in cumulative late
11 payment charges.

12 Q. So, can you tell me what the percentage is on
13 that of the principal balance?

14 A. Roughly 40 percent.

15 Q. 40 percent of that was late payment charges.
16 What was the actual principal usage?

17 JUDGE VERO: Hold on. You're saying
18 that that payment was made on August 7, 2012.
19 Complainant's calculations, you had \$211,389.12 in
20 principal, right; 1,068.21 in new charges. What was
21 your late payment charges?

22 THE WITNESS: According to PGW, the
23 cumulative was 146,214.

24 JUDGE VERO: You have about three months
25 of no late payment charges in that column; do you see

1 that?

2 THE WITNESS: You're talking about here,
3 here and here?

4 JUDGE VERO: I'm talking about your
5 portion, not PGW.

6 THE WITNESS: Right. To the extent we
7 weren't charged a late payment charge, we didn't
8 apply it.

9 JUDGE VERO: What was the total of late
10 payment charges by then?

11 THE WITNESS: For who?

12 JUDGE VERO: For the complainant. If
13 you go and you do that total sum under the LPC column
14 for the portions calculated by SBG, what was the
15 total of late payment charges as you calculated them
16 right before the payment was applied?

17 THE WITNESS: Cumulative late payment
18 charges, 127,225.57.

19 BY MS. ROSS:

20 Q. Which is a difference between what?

21 A. You want me to do it again?

22 Q. Yes.

23 A. 146,214.02.

24 Q. And the difference between that and the 127
25 would be?

1 JUDGE VERO: Let's put it this way.
2 Right before the payment was made, you had as per
3 complainant's calculations a \$211,457.83 in
4 principal, right; am I correct?

5 THE WITNESS: Before the payment,
6 211,457.83, correct -- 212,457.83.

7 JUDGE VERO: 212. There was new charges
8 of \$805.10. That's where we are, and that gives you
9 a total outstanding balance per your calculations of
10 approximately 213,260 rounded up or down, right?

11 THE WITNESS: Yes.

12 JUDGE VERO: You have an outstanding
13 balance?

14 THE WITNESS: Of 212 plus new charges of
15 805.

16 JUDGE VERO: Plus new charges takes you
17 to 213,000?

18 THE WITNESS: 262,93, correct.

19 JUDGE VERO: Okay. We're together, and
20 then you would have added the 127,225.57. That's
21 your calculation of late payment charges accumulated
22 by that time, right; you add those two numbers
23 together, the \$213,260, plus \$127,225.56. Add those
24 two numbers together and you will get an outstanding
25 balance overall of I'd say approximately 240,000

1 plus, right?

2 THE WITNESS: No.

3 JUDGE VERO: 213 plus 127?

4 THE WITNESS: You're including the late
5 payment charges?

6 JUDGE VERO: As the total outstanding
7 balance at that time of the payment.

8 THE WITNESS: In this case particularly,
9 the 212,457 is inclusive of the late payment charges.

10 JUDGE VERO: But it's under principal.
11 I'm not understanding. I thought that was the first
12 column under the heading, cumulative principal,
13 right, and that's separated from late payment
14 charges?

15 THE WITNESS: No. This column here, the
16 column R is the total bill.

17 JUDGE VERO: No. This first column,
18 that's just principal. It's the head title
19 cumulative principal if you read the heading all the
20 way up in the top.

21 THE WITNESS: It's not a layer of
22 another 146. This amount, these are per billing.
23 The 146 that you're referring to is a cumulative
24 amount. You can't take the cumulative amount and put
25 it to -- these are per bills.

1 JUDGE VERO: The first column, is it
2 just gas charges? The first column, that's your
3 principal gas charges, not late payment charges?

4 THE WITNESS: Correct.

5 JUDGE VERO: Your fifth column has late
6 payment charges?

7 THE WITNESS: Correct, but it's only per
8 billing.

9 JUDGE VERO: Are they included in any
10 other column?

11 THE WITNESS: Yes, they're in the total
12 bill.

13 JUDGE VERO: Besides the total bill, are
14 they included in any other column besides the total
15 bill?

16 THE WITNESS: Repeat your question, Your
17 Honor.

18 JUDGE VERO: I'm trying to understand
19 your calculation. Before I can follow your testimony
20 on what you believe they've done wrong, I need to
21 understand your layout and you're saying that there
22 should have been a credit of \$145,000 when you also
23 claim that they overcharged you late payment charges
24 of 19,000 by this time; so, I'm not understanding why
25 if they overcharged that \$19,000, why would you be in

1 credit of 145,000. It sounds like I'm off. So, I'm
2 not a number person. That's why I'm an attorney.

3 THE WITNESS: Your Honor, I think the
4 schedule is as clear as it can be. Again, we have to
5 take this information from what was provided us, and
6 what we did, this the first column, column L
7 represents the cumulative principal before the gas
8 usage, before any new charges are issued. This
9 column Q is the calculation of what the late payment
10 charge should have been, and where I'm designating
11 the difference in terms of the late payment charge is
12 in the column S where I'm looking at what did PGW
13 charge as a late payment charge versus what we
14 calculate as a late payment charge. This amount
15 cumulative turns out to what was overcharged on this
16 particular account, which is 24,728. This column
17 represents what was due to PGW; so, if here I'm
18 having that we're at 212,457.83 and that equals out
19 to the amount of the total bill. When they wiped
20 that particular bill out, they owed us 145,408.92.

21 JUDGE VERO: All right. Next question,
22 Ms. Ross.

23 BY MS. ROSS:

24 Q. So, how much was the actual gas usage charge,
25 principal gas usage?

1 A. Over?

2 Q. Let's just go to the period of time she's
3 talking about, through 2012.

4 A. Summing up the full total of the bills through
5 December of 2012, there was \$291,118.73 of principal
6 gas charges.

7 Q. SBG paid?

8 A. During that same time frame, we made payments
9 of 429,996.70.

10 Q. So, PGW got its principal gas usage charges,
11 correct, in full?

12 A. In full and then some.

13 Q. Did you do this on the other SAs as well?

14 A. I did. I did it for SA ending in 1065 and SA
15 ending in 5601. Those have been admitted as evidence
16 as well.

17 Q. They have been offered. Would you go
18 through? Can you go through the calculation on
19 Exhibit 3, starting at page 1 for the SA ending in
20 5601?

21 A. You want me to give you the same amounts?

22 Q. If you could just run through it so that
23 counsel and Judge Vero could understand those
24 calculations?

25 JUDGE VERO: Let's take it a step back

1 because I think I found my way. Can we go back to
2 where we were?

3 MS. ROSS: We're going back to the SA
4 ending in 8077 which would be page --

5 JUDGE VERO: Page 7.

6 MS. ROSS: Page 7.

7 JUDGE VERO: I'm looking at the SBG side
8 of the analysis and looking at the transactions that
9 are dated February 4, 2012 and I see that the
10 cumulative principal as of that date was 194,134.21
11 New charges of 6457.04. You with me?

12 THE WITNESS: Yes.

13 JUDGE VERO: And in your calculations,
14 Ms. Treadwell, well you took those two numbers, added
15 it up together and that's how you got the cumulative
16 principal for the following month of 200,591.25?

17 THE WITNESS: Correct.

18 JUDGE VERO: This is how it works,
19 right?

20 THE WITNESS: Yes, ma'am.

21 JUDGE VERO: This is what you've done
22 all the way down?

23 THE WITNESS: Correct.

24 JUDGE VERO: You took what the principal
25 was, add new charges and that's how you got the

1 number, the next number down, right, for the
2 cumulative principal?

3 THE WITNESS: To the extent that a
4 payment was received.

5 JUDGE VERO: No. I'm talking about the
6 period when there was no payments made.

7 THE WITNESS: Okay. If there was a
8 payment made, it was taken care of.

9 JUDGE VERO: No. I was talking about
10 February 2012. No payments were made in that time
11 period.

12 THE WITNESS: Correct.

13 JUDGE VERO: So, this is the calculation
14 I'm referring to.

15 THE WITNESS: Yes.

16 JUDGE VERO: That's how you got that
17 number?

18 THE WITNESS: Yes.

19 JUDGE VERO: It makes sense to me now;
20 so, I know what the cumulative principal column, what
21 information is included in that or how you got that
22 information, and then the LPC column is your
23 calculation of what the LPC should have been based on
24 the cumulative principal at that time, correct?

25 THE WITNESS: Correct.

1 JUDGE VERO: And you applied the 1.5
2 percent monthly, right?

3 THE WITNESS: Correct.

4 JUDGE VERO: I'm with you now. You may
5 proceed with the next question, Ms. Ross.

6 BY MS. ROSS:

7 Q. So, now you did this. You've explained your
8 methodology and your math. Is this an accounting
9 principal? Explain other than we used the hierarchy
10 of payment, is this a valid way to account for gas
11 usage and late payment charges?

12 A. I'm not a utility expert, but I read the
13 statute and we did our best to estimate what the
14 amount would be due if the payments had been applied
15 in the correct hierarchy and it's a valid accounting
16 method.

17 JUDGE VERO: All right, Ms. Ross. We
18 are over the one hour limit, but I have already
19 submitted my questions; so, I'll give you another 20
20 minutes, but no more.

21 BY MS. ROSS:

22 Q. So, for the remainder of the SAs on, you have
23 5601?

24 A. Yes.

25 Q. What is your conclusion on 5601?

1 A. Through December of 2012, I have a cumulative
2 overage of late payment charges of 28,274.34 and at
3 that time frame, I also have a credit position of
4 133,890.19.

5 JUDGE VERO: So, if you have a credit
6 position in your principal, shouldn't that have been
7 applied to whatever you had as a total of late
8 payment charges?

9 THE WITNESS: What we tried to show.
10 That's why I said our calculation is in two-fold. It
11 shows a difference in just a late payment charge; so,
12 you have to take both of those items into
13 consideration, but the schedule was originally
14 supposed to show how much we were overcharged in late
15 payment charges. That's the reason why it's that
16 way; so, it is a combination.

17 JUDGE VERO: Is that the only thing it
18 shows now, which is why you're presenting it now to
19 show overpayment of late payment charges?

20 THE WITNESS: We're showing not only did
21 we overpay in late payment charges, but we also made
22 overpayment on our principal of gas usage. It's a
23 combination.

24 JUDGE VERO: How does that work, because
25 I see you have a credit on your principal. You have

1 an outstanding balance on your late payment charges.

2 Shouldn't it have been paid off?

3 THE WITNESS: The late payment charges?

4 JUDGE VERO: Yes.

5 THE WITNESS: Yes, but they overcharged
6 us. That's the point.

7 JUDGE VERO: No. What you have. Forget
8 the overcharges. You have an outstanding balance as
9 per your calculation of the late payment charges and
10 you don't have it there, but you have it in the
11 previous SA; so, that would have also been taken into
12 account, and you put those two numbers together. You
13 figure out what the difference was, the total
14 overcharges were; so in my previous example, I came
15 up with a difference of about 20,000 -- no, not
16 20,000. A difference of \$18,000 plus or minus a
17 couple hundred, but it was just me. I want to make
18 sure you're with me there.

19 THE WITNESS: No. We still see we were
20 in a credit position and they overcharged us in late
21 payment charges.

22 JUDGE VERO: You were, yes, per your
23 presentation, you were in a credit position, but you
24 don't take into account late payment charges that
25 were outstanding, the total of them that were

1 outstanding at that time when you were in a credit
2 position. What was it? And if you take it in into
3 account, what was the overcharge amount you're
4 claiming, the total overcharge amount you're
5 claiming?

6 MS. ROSS: Do you understand the
7 question?

8 THE WITNESS: Yes, I understand the
9 question. It's just not presented in the schedule
10 you're looking at, and I don't have the numbers to be
11 honest with you.

12 JUDGE VERO: Yes. Thank you. It helps
13 me to understand the information in here and what
14 you're claiming through this information you included
15 in SBG CG/SG Exhibit 3. All right.

16 BY MS. ROSS:

17 Q. One question, if you are in a credit position,
18 would you be assessed late payment charges?

19 A. No.

20 Q. In fact, PGW owes you money?

21 A. Correct.

22 JUDGE VERO: Were you charged late
23 payment charges?

24 THE WITNESS: I think the reason why in
25 this time frame you don't see any late payment

1 charges because we had already filed a complaint, a
2 formal complaint.

3 JUDGE VERO: All right.

4 BY MS. ROSS:

5 Q. Is that reflected on the PGW side where they
6 took off disputed amounts?

7 A. The disputed amounts were not taken off until
8 it looks like, I believe, April of 2014 is when they
9 made adjustments for disputed amounts.

10 Q. How much did they adjust in disputed amounts?

11 A. On this case for Simon, they didn't do any
12 adjustments, but they did it for Colonial. There are
13 no adjustments for Simon.

14 Q. So, they never took off disputed amounts?

15 A. Not on this particular account.

16 Q. Did they charge late payments even though
17 amounts on this SA and on all these SAs were
18 disputed?

19 A. They started charging us late payment charges
20 in October of 2012 and prior to that in previous
21 years and, yes, during those time frames, there were
22 disputes, valid disputes and we were continued to be
23 charged late payment charges.

24 Q. Do you continue to dispute all the amounts in
25 the manner in which PGW has applied payments and/or

1 late payment charges to your account?

2 A. Yes. At this point, we're disputing all of
3 the bills in the manner which PGW applied our
4 payments to our respective bills.

5 JUDGE VERO: At this point, being what
6 point?

7 THE WITNESS: Right now.

8 JUDGE VERO: Okay.

9 BY MS. ROSS:

10 Q. So, just for the sake of argument and I
11 understand that you're not going to consider this,
12 but if we were going to look at the account, what
13 would the position of SBG be?

14 JUDGE VERO: If I'm not considering it,
15 why are you wasting your time?

16 MS. ROSS: I just think for the record,
17 it should be clear. What would be the position --

18 MR. FARINAS: Objection, Your Honor.

19 JUDGE VERO: Sustained. Moving along.

20 BY MS. ROSS:

21 Q. What other accounts have we not -- let's go
22 back to utilizing the same analysis, and this is on
23 the SA ending in 1065 as of December 2012.

24 JUDGE VERO: What page should I be on?

25 MS. ROSS: If you take it through to its

1 logical conclusion, PGW just for the sake of --

2 JUDGE VERO: I just want the page
3 number.

4 MS. ROSS: Starting at page 8.

5 THE WITNESS: SA ending in 1065.

6 JUDGE VERO: I'm there.

7 BY MS. ROSS:

8 Q. So, if we were to look at a transaction such
9 as starting at 1/14 2004, PGW for this account had a
10 bill issued for \$3,980.55 and it shows the current
11 balance due was \$87,628.93?

12 A. Right. This was regarding a dispute that came
13 in that was transferred back into this SA on this
14 account. This was something that Eric Lampert can
15 testify to.

16 MR. FARINAS: Excuse me. I did receive
17 a copy of what I believe they're looking at, but I'm
18 looking for the one with page 8.

19 MS. ROSS: It's actually 1 of 4, if you
20 would go to the last set of calculations, it's the
21 first page, SA 1065.

22 JUDGE VERO: We're on page 1 of 4.

23 BY MS. ROSS:

24 Q. So they transferred how much back into that
25 account?

1 A. 87,628.93, which if you look above, it was
2 transferred off on 9/30 2003 and it came back into
3 the SA on 1/14 2004.

4 Q. So, that gave you a balance of 91,609.48?

5 A. Correct.

6 Q. On that date, what did you project the SBG to
7 be?

8 A. Assuming all payments had been applied on 1/14
9 2014, my total bill was at the same amount because it
10 came back in, but prior to that, it was at 1,884.84.

11 Q. And that was because of the transfer?

12 A. Correct.

13 Q. So, accumulated late payment charges -- did
14 they assess late payment charges?

15 A. No. That was just a transfer didn't come in.
16 There was no late payment charge assessed?

17 Q. But prior to that, they had been charging late
18 payment charges, PGW had been charging late payment?

19 A. Yes, correct. It looks like they were
20 charging late payment charges in September of 2003,
21 August of 2003, July of 2003 and prior months.

22 Q. So, let me ask you, how did you get to the
23 balance of \$74,712.49?

24 A. That's because of all these respective
25 transactions when the money was transferred off,

1 payments came in. So, when the money was transferred
2 off on 9/30 or prior to 9/30, it put our SA into a
3 negative, assuming, all payments were applied
4 properly, then as new transactions came on and off,
5 there's a lot of transfers on and off of this
6 particular SAs. This is the 887 that went to another
7 SA. I was trying to tell you they go back and forth
8 to different SAs and it put us into sort of a credit
9 position until the money came back in; so, we were in
10 a credit position according to my numbers had all the
11 payments been applied of 12,966.44, then it added the
12 principal; so, it transferred back in. That got us
13 to 74,412.49

14 Q. The 887.25, that was transferred off of a
15 different SA, correct?

16 A. Yes, that was transferred to a different SA.

17 MR. FARINAS: Objection, Your Honor.

18 JUDGE VERO: It's your witness,

19 Ms. Ross. Please rephrase it.

20 THE WITNESS: I already said it.

21 MS. ROSS: She had testified earlier
22 from another SA.

23 BY MS. ROSS:

24 Q. Did your bills reflect any of the those
25 transfers?

1 A. No. When you look at the bills, the internal
2 transfers are not recorded.

3 Q. When did you discover this information?

4 A. Only when we received the full statement of
5 accounts.

6 JUDGE VERO: Do you have a bill that
7 shows that the adjustments or transfers that should
8 have been shown or not shown?

9 THE WITNESS: We don't have a copy of
10 all of the bills.

11 BY MS.

12 Q. Just so we can reflect on that. So, based on,
13 let's just say, from 2/9 2004, PGW's balance shows
14 what number?

15 A. 93,000.

16 Q. What is stated, the total?

17 A. Roughly, 93,005.20.

18 Q. Based on your calculation, the total balance
19 should be what?

20 A. 75,855.23.

21 Q. The reordering of payments, when you apply
22 your principal charges to the late payments first, it
23 makes a difference, doesn't it?

24 A. It absolutely does.

25 Q. How does that affect the account going

1 forward?

2 A. It affects the account in two ways. To the
3 extent that we were -- it exaggerates the principal
4 we've been overcharged in late payment charges, then
5 also if we overpaid, we were due money back for our
6 overpayment on principals that should have been paid
7 off instead of late payment charges.

8 Q. What does that really do to the simple
9 interest rate on being applied to overdue balances of
10 1.5 percent; what does that do to it?

11 A. It compounds it on a monthly basis; so, it
12 could be a high number of where it exaggerates in
13 principal every month.

14 JUDGE VERO: Again, Ms. Ross, you're on
15 the last five minutes.

16 BY MS. ROSS:

17 Q. Were there any other issues you noticed in the
18 statement of accounts when it comes to late payment
19 charges?

20 A. Another thing we were trying to distinguish is
21 when amounts are liened, it's my understanding that
22 the statutory rate that should be applied in late
23 payment charges was reduced to a .5 percent, .05
24 percent and I never saw that throughout PGW's
25 analysis.

1 JUDGE VERO: I think they stipulated to
2 that. They pretty much have testimony on the record
3 saying, this is what we do.

4 BY MS. ROSS:

5 Q. What effect would that have on an account if
6 the lien is put on, made a judgement, would you do an
7 analysis on that?

8 A. We would have been overcharged in late payment
9 charges.

10 Q. Did you do an analysis that reflects that?

11 A. Yes.

12 Q. Where would that be?

13 MS. ROSS: I'm going to mark this as SBG
14 CG/SG Exhibit 4.

15 (Whereupon, the document was marked as
16 SBG CG/SG Exhibit No. 4 for
17 identification.)

18 BY MS. ROSS:

19 Q. While we're doing this, Ms. Treadwell, did you
20 do these numbers for Colonial as well?

21 A. Yes.

22 Q. Can you explain to the judge what your
23 findings were for that as well for the analysis and
24 late payment charge analysis and the reordering of
25 payments?

1 A. Through December 12, 2012, I calculate that we
2 were in a credit position of 27,910.26 and we would
3 have been overcharged \$9,630.43 on SA ending in 9567,
4 and for SA ending in 694, we would have been in a
5 credit position of 48,241.74 and overcharged late
6 payment charges of 13,778.67.

7 Q. I think I had you identify these.

8 MS. ROSS: Your Honor, these are the
9 lien schedules.

10 JUDGE VERO: Right off the bat, anything
11 included in here that does not relate to an
12 outstanding balance for service up until December
13 2012 goes beyond my instructions. All right. You
14 may proceed. So, any lien that was imposed for
15 service period after December 12, 2000 and -- I'm
16 sorry, December 10, 2012 should not be in. Moving
17 along.

18 THE WITNESS: Well, we have been asking
19 PGW for information on the liens that were assessed
20 on our various properties and accounts for some time
21 since we began this case. One of the things we
22 noticed was that, when a lien is filed, it's filed in
23 the Court of Common Pleas, but there is no
24 information.

25 JUDGE VERO: It wasn't a question. It

1 was an instruction. I want you to abide by it; more
2 specifically, Ms. Ross and Mr. Farinas need to abide
3 by my instruction. Moving along.

4 BY MS. ROSS:

5 Q. So, if you could at least show on the
6 schedule, because at least these liens are currently
7 up on the screen, correct?

8 A. Correct.

9 Q. They are within the time period we're talking
10 about; so, going down to?

11 A. December of 2012.

12 Q. This is for Simon Garden?

13 A. Correct. This schedule is to show the
14 difference in the one and a half percent versus the
15 .5 percent.

16 JUDGE VERO: What page are we on?

17 THE WITNESS: We're on Simon, page --
18 we're on the schedule that's labeled at the very
19 bottom, SBG prepared interest calculation for Simon,
20 page 1 of 1. At the very bottom, it says, SBG
21 prepared lien interest calculation.

22 JUDGE VERO: One of 1 or page 1 of 2?

23 THE WITNESS: One of 2. I'm sorry.

24 JUDGE VERO: I'm there, page 1 of 2.

25 Let's move on because we are way after the time set

1 for Ms. Treadwell's direct.

2 THE WITNESS: Simply stated, this
3 schedule is a schedule that shows all the liens
4 imposed on Simon Garden Realty that we are aware of.
5 This information was compiled through PGW,
6 information that they responded through our discovery
7 request. This schedule is to show if PGW would have
8 changed the interest rate to .5 percent when a lien
9 was imposed, what the difference in the interest
10 would have been.

11 The schedule is not by account specific,
12 but it's about property specific because we do not
13 have lien information by account and SA. That
14 information was not retrieved through the discovery
15 process. This is the best way we could impose an
16 estimate of what the interest rate would be, the
17 difference would be; so, for example, what I'm saying
18 is, when PGW liened our property in Docket Number
19 ending in 0873 on 1/22 2010, they liened it for
20 \$38,493.85 and that lien was not vacated until
21 October of 2011.

22 JUDGE VERO: Hold on. Until 2011 or
23 2010?

24 THE WITNESS: 2011. It's on the docket.

25 JUDGE VERO: Where is it?

1 THE WITNESS: Right here. It was
2 vacated. It's in column F. It says lien status. It
3 was vacated in 10/7 2011.

4 JUDGE VERO: What's the date of the
5 lien?

6 THE WITNESS: October 2011.

7 MR. FARINAS: The lien date is January
8 22, 2010.

9 JUDGE VERO: Okay. I'm with you.

10 THE WITNESS: So, that was 22 periods
11 that the interest rate because they're compounding
12 the interest on a monthly basis. It was applied at
13 one and a half, it would have been 14,918.82. If
14 interest was charged at .5 when the lien was imposed,
15 it would have been 4,464.21, which shows we were
16 overcharged interest of 10,454.50.

17 JUDGE VERO: Do you know why it was
18 vacated?

19 THE WITNESS: That information was not
20 provided to us.

21 JUDGE VERO: But it is your position
22 that it shouldn't have been placed at all in January
23 22, 2010; so, the number of 22 periods, you're saying
24 it's improper?

25 THE WITNESS: We're saying that PGW has

1 stated that they do not change their interest rate
2 from one and a half percent. We're saying the
3 statute requires us -- it requires PGW, sorry, to
4 change the interest rate when they get a default
5 judgment or a lien against us and it should be
6 reduced to .5 percent.

7 This is just an example of when the lien
8 was imposed, how they continued to charge us one and
9 a half percent interest and what that differential
10 would be.

11 JUDGE VERO: I'm with you.

12 BY MS. ROSS:

13 Q. Just so we're clear, that lien interest rate
14 was charged and reflected in your account, the
15 statement of accounts and the account balance,
16 correct?

17 MR. FARINAS: Leading again, Your
18 Honor. Objection.

19 JUDGE VERO: It is leading.

20 THE WITNESS: To the extent we have
21 information --

22 JUDGE VERO: You cannot answer because
23 then you will say I answered it so that objection
24 doesn't stand anymore. No, you cannot answer.
25 Rephrase your question, Ms. Ross.

1 BY MS. ROSS:

2 Q. How did that affect the overall account
3 balance?

4 A. We were overcharged in interest.

5 Q. What is the cumulative effect of these liens
6 on the balance of the account?

7 A. We estimate that this effect could be very
8 significant to the extent that PGW's lien process is
9 accurate. It could be a sum of over \$300,000 in
10 overcharging on interest.

11 Q. That's only through which period?

12 A. That's through December of 2012 on Simon as a
13 whole.

14 Q. Did the practice continue?

15 A. The practice continues today.

16 Q. What about Colonial, do you have that
17 information?

18 A. I do. We estimate through December of 2012,
19 that amount to be roughly fifty-two thousand five
20 hundred eighty-three thousand.

21 Q. Would you say that again?

22 A. 52,583.15.

23 Q. I would ask you again, does the practice
24 continue today?

25 A. It continues today.

1 Q. So, that amount could be even more?

2 A. Correct.

3 Q. Were there any other inaccuracies that you
4 noticed on the actual statement of accounts as it
5 applied to the dates imposed that late payment
6 charges were imposed on these accounts?

7 A. Can you re-ask the question?

8 Q. Did you notice any other -- were there any
9 other inaccuracies regarding the dates that a late
10 payment charge might be imposed on the account?

11 A. When we looked through the statement of
12 accounts, we did see, and I'm talking general, on
13 some of the accounts, there was late payment charges
14 being applied before the bill was actually due, and I
15 will give you an example of that in the later case.

16 Q. Was it done in the Simon Colonial cases? Were
17 there late payments? If you look at the statement of
18 accounts, is it reflected in the statement of
19 accounts, the imposition of late payment charges
20 before the actual bill was due?

21 A. I'll give you an example. On 2/7 2005, the
22 bill was due on 2/2.

23 JUDGE VERO: You need to tell me what
24 page I'm looking at.

25 THE WITNESS: I'm sorry. I'm looking

1 electronically at SA ending in 1065 and on 2/7 2005.

2 JUDGE VERO: We're back on Exhibit 3?

3 THE WITNESS: Yes.

4 JUDGE VERO: Exhibit 3, and we are under
5 what SA?

6 THE WITNESS: Ending in 1065.

7 JUDGE VERO: What's the date?

8 THE WITNESS: We show that on 2/7 2005,
9 on that bill, the 2/7 2005 bill, there was a late
10 payment charge applied on 2/1, but the bill wasn't
11 due until 2/2, and we saw a trend where P G W was
12 applying late payment charges before the bills were
13 actually due.

14 MS. ROSS: Just a few more questions.

15 BY MS. ROSS:

16 Q. Have you ever received anything in writing in
17 terms of an explanation on any of your increases
18 regarding these billings from PGW?

19 A. We've asked for an explanation of charges that
20 were due. We actually asked for an explanation when
21 we met with PGW, I want to say, in November why a
22 late payment charge was issued before a bill was
23 generated or before a bill was due and they said they
24 didn't know.

25 Q. Have you ever received anything in writing on

1 any of your inquiries from PGW? Is there anything
2 that has been received in writing on any of these to
3 your knowledge?

4 A. Specific to bill charges?

5 Q. Specific to the application of payments.

6 A. Just for responses through discovery.

7 JUDGE VERO: This is the only occurrence
8 where you identified this?

9 THE WITNESS: It's a lot. We have them
10 marked.

11 JUDGE VERO: What's the most recent one,
12 because it's not marked in the exhibit on the hard
13 copy.

14 MS. ROSS: Is this information reflected
15 on the statement of accounts though?

16 THE WITNESS: It is.

17 JUDGE VERO: Statement of accounts?

18 MS. ROSS: It's very evident.

19 JUDGE VERO: Where would the statement
20 of accounts be?

21 MS. ROSS: The first exhibit.

22 JUDGE VERO: Exhibit 1?

23 MS. ROSS: Exhibit 1.

24 JUDGE VERO: But just still, give me a
25 date and possibly before December of 2012?

1 THE WITNESS: For example, January 31,
2 2012 on the statement of accounts ending in 1065, the
3 SA ending in 1065.

4 JUDGE VERO: Hold on.

5 MS. ROSS: Page 8 of 8 on that statement
6 of accounts.

7 THE WITNESS: Here's just an example of
8 one where it's done on the same day. So, on 1/31
9 2012 --

10 JUDGE VERO: Off the record for a
11 second.

12 (Whereupon, a discussion was held off
13 the record.)

14 JUDGE VERO: We're back on the record..
15 During our time off the record, Ms. Ross and
16 Ms. Treadwell helped assist me in finding my way
17 through SBG's proposed Exhibit 2; so, I think, now I
18 am with the complainant. So, you may continue,
19 Ms. Treadwell.

20 THE WITNESS: All I was simply stating
21 was that we did see a trend where the LPC was
22 assessed either on the day of the bill or prior to
23 the bill being issued, and the example on January 31,
24 2012, what you have in front of you is just an
25 example of the bill that the late payment charge was

1 assessed the same day the bill was issued.

2 BY MS. ROSS:

3 Q. Is that reflected on the billing statement
4 itself as the date that the LPCs are assessed?

5 A. It's usually the date of the bill that I see
6 the late payment charge as being assessed. It's
7 usually that date of the bill. It doesn't say how
8 many days it's past due. It just says late payment
9 charge being assessed.

10 Q. And the rule as far as you know, isn't it a
11 five day grace period?

12 A. It's my understanding that there's a five day
13 grace period that should be applied when late payment
14 charges are applied.

15 JUDGE VERO: Why do you have that
16 understanding?

17 THE WITNESS: It's in the tariff.

18 JUDGE VERO: Can you point out as an
19 example where there was a payment that fell within
20 that five day grace period, but a late payment charge
21 was already calculated?

22 THE WITNESS: I can find it and get back
23 to you.

24 BY MS. ROSS:

25 Q. Is it reflected in the statement of accounts?

1 A. No.

2 Q. Were there any public utility reports ever
3 forwarded to you by PGW?

4 A. Not that I'm aware.

5 Q. Was there anything in writing, any
6 explanations telling you, file a PUC complaint on any
7 of these disputes?

8 A. Yes.

9 JUDGE VERO: I think we covered this.

10 THE WITNESS: We did.

11 BY MS. ROSS:

12 Q. Are you still receiving bills in this manner?

13 A. Yes.

14 Q. Are you able to glean or ascertain what the
15 calculations are or the late payment charges are from
16 the bills just as you receive them today?

17 A. The bills have current period late payment
18 charges. They don't say how they're calculated.
19 They don't say what basis they're calculated on. It
20 just has a dollar amount that is being charged by SA.

21 JUDGE VERO: They do have the
22 percentage, right?

23 THE WITNESS: The percentage is on the
24 face of the bill.

25 JUDGE VERO: Next question.

1 BY MS. ROSS:

2 Q. Have you ever received anything in writing
3 within five days of any inquiries that you've made of
4 PGW or any responses?

5 A. Not within five days, no.

6 Q. Have you ever received a written explanation
7 of any inquiry or dispute within 30 days of your
8 initial contact with PGW?

9 A. Yes. We sent letters to PGW in May of 2014
10 when they made adjustments on our accounts that were
11 unexplained. There was a big difference in our
12 account. We issued letters to PGW. They then wrote
13 back to us within a 30 day period explaining.

14 MR. FARINAS: Is this about Simon Garden
15 or Colonial?

16 JUDGE VERO: I don't know and it also
17 falls outside the cut date, but on the other hand --

18 THE WITNESS: It was a consolidated
19 letter. It was not account specific; meaning, the
20 letter applied to all the properties.

21 JUDGE VERO: And it was posed to them on
22 2014. It falls outside the cut date, but since it
23 goes in their favor and you are the one presenting
24 it, I'm letting it in.

25 BY MS. ROSS:

1 Q. To the extent they gave you an explanation,
2 when had the transaction actually taken place?

3 A. May of 2014.

4 MR. FARINAS: Objection, Your Honor.

5 JUDGE VERO: There's an objection.

6 MR. FARINAS: Objection. This testimony
7 that is being offered now is still outside the
8 occurrence of events happening in May of 2014.

9 THE WITNESS: I think they're related to
10 the extent the transfers that were made were done as
11 a result of a complaint filed in May of 2012. PGW
12 did not transfer those, quote, quote, disputed
13 amounts off of our statements until May.

14 JUDGE VERO: You had a pending
15 complaint?

16 THE WITNESS: Correct, in May of 2012.

17 JUDGE VERO: You had a pending complaint
18 in 2014; you submitted an inquiry in writing?

19 THE WITNESS: Yes.

20 JUDGE VERO: About information that was
21 part of those complaints?

22 THE WITNESS: We didn't know what it
23 was. PGW sent us a bill in May of 2014. It had
24 adjustments on it. We did not understand the
25 adjustments. We wrote them a letter. They said we

1 are removing the, quote, quote, disputed amounts that
2 were disputed in May of 2012. Two years later in
3 2014, they were making adjustments on the account.

4 JUDGE VERO: Okay. Next question. Your
5 objection is overruled, Mr. Farinas. Next question,
6 Ms. Ross, and, please, it's quarter to 1:00.

7 MS. ROSS: And I don't think I have
8 anything else at this point for Ms. Treadwell.

9 JUDGE VERO: Mr. Farinas, any cross?

10 MR. FARINAS: Yes. It's going to be
11 brief.

12 CROSS-EXAMINATION

13 BY MR. FARINAS:

14 Q. First, if I can start where you left off, if I
15 can refer you now to SBG CG/SG Exhibit 2, the
16 instances where you're referring to where the late
17 payment charge was assessed on the due date?

18 A. Yes.

19 Q. Referring now to the bills starting in January
20 5, 2012, and I believe it's page 8 of 8 that we were
21 just discussing a while ago?

22 A. January 5, 2012?

23 Q. Yes.

24 A. Which account are you on; which account
25 number?

1 JUDGE VERO: It's on this page you lent
2 to me. Ms. Ross, this is a page from your copy of
3 exhibits.

4 BY MR. FARINAS:

5 Q. It's a Simon Garden account. Do you need the
6 account number still or are you comfortable that you
7 have the page?

8 A. I have it. Thank you.

9 Q. Just briefly. As of those dates or those
10 instances where late payment charges were assessed on
11 the due date of the bill, did SBG pay the bill?

12 A. No.

13 MS. ROSS: Objection, irrelevant.

14 MR. FARINAS: It's very relevant as it
15 goes to whether or not this is an actual injury in
16 terms of a cash injury on the part of SBG.

17 MS. ROSS: Objection. It actually goes
18 to whether or not there was a violation of the tariff
19 and whether or not it was monetary injury, it does go
20 to whether or not PGW violated the tariff in and of
21 itself by applying a late payment charge on a date
22 that it was not due. It was not entitled to.

23 JUDGE VERO: I am going allow it. I'm
24 going to allow the question; so, Ms. Treadwell, you
25 were asked a question. Do you still remember it?

1 THE WITNESS: I'm sorry. You asked if
2 there was a payment received on the day the bill was
3 assessed a late payment charge?

4 MR. FARINAS: That's correct.

5 THE WITNESS: On 1/31 2012?

6 BY MR. FARINAS:

7 Q. Or in February or in March, were any payments
8 made on the bills on which the late payment charge
9 was assessed on the due date of the bill?

10 A. No.

11 Q. Going to SBG CG/SG Exhibit 4, I'm going to
12 refer to the lien analysis.

13 JUDGE VERO: For what property?

14 MR. FARINAS: Page 1 of 1 or, actually,
15 I think in this exhibit, it's page 3 of the exhibit
16 and this refers to the Colonial liens or just the
17 liens in general, the testimony regarding difference
18 in interest applied.

19 BY MR. FARINAS:

20 Q. When you did this analysis, you're relying
21 upon?

22 JUDGE VERO: Are you on Simon or
23 Colonial? My page 3 of the exhibit is interest
24 calculation for Simon. That's my page 3.

25 MR. FARINAS: I'm referring to the page,

1 it's actually marked Colonial. Actually, my question
2 can be any page.

3 THE WITNESS: I'm with you on Colonial.
4 Go ahead.

5 JUDGE VERO: SBG prepared lien interest
6 calculation, Colonial page 1 of 1?

7 MR. FARINAS: Yes, Page 1 of 1.

8 JUDGE VERO: I'm with you.

9 MR. FARINAS: Thank you.

10 BY MR. FARINAS:

11 Q. The analysis you performed was based upon SBGs
12 position that the post judgment interest rate of .5
13 percent a month should be assessed on the lien filed
14 amount; is that correct?

15 A. Correct, yes.

16 Q. That is a legal position, correct?

17 A. Yes.

18 Q. And that is the position, the question that
19 will be briefed in this matter, correct?

20 A. I think the judge required a briefing, yes.

21 Q. Do you have any legal opinion that provides
22 verification that the section of post judgment liens
23 apply in this situation as opposed to the Municipal
24 Lien Act?

25 MS. ROSS: Objection to the extent that

1 she's not an attorney and qualified to do that, but
2 to the extent she knows.

3 JUDGE VERO: To the extent she knows.

4 BY MR. FARINAS:

5 Q. Did SBG have a legal opinion that this section
6 applied as opposed to the interest section of the
7 Municipal Lien Act?

8 A. It's my understanding that there is a case,
9 Equitable Gas versus Wade that deals with that.

10 JUDGE VERO: I'm sorry, Ms. Treadwell, I
11 I'm trying to help you here. There will be a legal
12 brief; so, they will state their opinion and it's
13 pretty much stated already, but they will state it in
14 more detail in an easy to digest form, et cetera; so,
15 move on.

16 BY MR. FARINAS:

17 Q. With respect to your analysis regarding the
18 order of payment and you did cite. What is the
19 section is that you rely upon to show the order of
20 payment?

21 A. It is PA Code 52 Section 62.74.

22 Q. Do you have a legal opinion --

23 MS. ROSS: Objection. She is not an
24 attorney.

25 MR. FARINAS: I'm asking did --

1 JUDGE VERO: But she read from that very
2 section; so, give me your understanding. You
3 understood it. You applied it. Give me what you
4 understood.

5 THE WITNESS: I understand that all the
6 payments should be applied in accordance to the
7 statute and that late payment charges is not first on
8 the hierarchy of payments. That's my understanding.

9 BY MR. FARINAS:

10 Q. Does that apply to your understanding of all
11 public utilities or just certain entities that are
12 regulated by the Public Utility Commission?

13 A. I have no idea what you're saying.

14 MR. FARINAS: Your Honor, in the
15 interest of time and your questions regarding the
16 late payment charge analysis, I don't believe I have
17 any further questions in this area. I just have a
18 few questions that I need to clear about some
19 statements made regarding disputed bills.

20 BY MR. FARINAS:

21 Q. Ms. Treadwell, do all billing notices and
22 bills come to SBG at their corporate Abington Post
23 Office Box?

24 A. The majority of them do as of today, yes.

25 Q. When did that first happen?

1 MS. ROSS: Objection, irrelevant.

2 MR. FARINAS: Your Honor, this goes to
3 the knowledge that SBG would have had in order to
4 have notice that they complained about not getting
5 for all the disputed bills. There was testimony
6 earlier about did SBG get notice for this; did they
7 get an explanation.

8 JUDGE VERO: You're talking notice as in
9 lien notices, explanation, discovery, bills?

10 MR. FARINAS: Explanations as in bills.

11 THE WITNESS: We can only talk to
12 bills.

13 JUDGE VERO: She's answering, but do you
14 have an objection? Which one is it going to be?

15 MS. ROSS: There is an objection that is
16 pending. I'd like a ruling.

17 JUDGE VERO: What was the question
18 again?

19 MR. FARINAS: The question was when did
20 it occur that SBG had centralized for the most part
21 billing?

22 MS. ROSS: Objection. That's not the
23 question.

24 JUDGE VERO: It's the question now. The
25 first one is going to be, the objection is going to

1 be sustained. You just restated the question or
2 posed another question; so, this is the question now
3 that Ms. Treadwell has to answer.

4 THE WITNESS: What was the question?

5 BY MR. FARINAS:

6 Q. When did it occur that SBG started to receive
7 most of its billing information at its headquarters
8 at the Abington Post Office Box?

9 A. When we met with PGW in November of 2012, PGW
10 agreed to make a change to all of the accounts and
11 change the address to PO Box 549 in Abington, PA.
12 Since that time frame, we received the billing.

13 Q. All of the bills prior to that, to your
14 understanding, do you know where they went?

15 A. I wasn't with SBG forever.

16 Q. So, the disputed transactions that you were
17 quoting in 2004 and 2006, were you even in a position
18 to know what inquiries were made regarding those
19 transactions?

20 A. To the extent we had correspondence, I
21 reviewed the correspondence that was sent to PGW and
22 I reviewed the voluminous Emails and letters
23 requested to PGW. We reviewed the contact screens
24 for those dates.

25 Q. You're referring to testimony that had gone

1 before and correspondence that will eventually will
2 be in?

3 A. Correct.

4 Q. The dispute that you have with the interest
5 rates or I'm sorry, the application of late payment
6 charges, when was the first time that SBG brought
7 that issue to PGW?

8 A. It was part of the original complaint. If you
9 look at the original complaint that was filed, it
10 talks about SBG stating there was misapplied
11 payments.

12 Q. So, in 2004, there was no specific allegation
13 about late payment charges?

14 MS. ROSS: Objection. Calls for a
15 conclusion and assumes facts not in evidence.

16 JUDGE VERO: It's a relevant question.
17 Your objection is overruled.

18 THE WITNESS: I can't speak to what
19 happened in 2004, but I can tell you that SBG has
20 been reaching out to PGW for numerous times stating
21 there was complaints with accounts, those accounts,
22 various accounting issues, trying to understand the
23 bills. That correspondence goes back to 2001.

24 BY MR. FARINAS:

25 Q. You agree SBG never bothered to file a

1 complaint until 2012?

2 A. SBG was told to file a complaint in March of
3 2012 through Ted Savage, and we did file that
4 complaint.

5 JUDGE VERO: We have that in the record
6 on the topic as to when and why and how the informal
7 and the formal complaints were filed by SBG, but are
8 you done, Mr. Farinas.

9 MR. FARINAS: Yes, no further questions.

10 JUDGE VERO: Let me see if I understand
11 you cross-examination. You were asking Ms. Treadwell
12 whether she knew the transaction disputed -- rather
13 that the transactions are included in the list of
14 disputed transactions and they are coded were
15 disputed before the time that the original complaints
16 were filed in May of 2012. We have a limitation,
17 limitation which allow disputed bills until May of
18 2009. We have a three year statute of limitations.
19 So, were your questions to Ms. Treadwell, the last
20 question to Ms. Treadwell, I understand you were
21 asking when the transaction that predates May of
22 2009, when they were disputed, if she knew. Was that
23 the nature of the question?

24 MR. FARINAS: Yes, and whether or not
25 the specific dispute was brought to PGW's attention.

1 JUDGE VERO: The specific dispute, all
2 of them or?

3 MR. FARINAS: The ones she was referring
4 to occurring in 2004 and 2005.

5 JUDGE VERO: All right. This is what I
6 wasn't clear on. Ms. Treadwell, I would like to know
7 the answer to that. Did I understand you correctly
8 that although you used those specific transactions in
9 your testimony, you don't know whether or when those
10 exact transactions were raised as a dispute with PGW
11 because you weren't with SBG back then?

12 THE WITNESS: Correct.

13 JUDGE VERO: So, you are not the person
14 to give me an answer on those specific transactions?

15 THE WITNESS: I can only say that
16 reviewing the correspondence and the voluminous
17 Emails that have gone back and forth between SBG
18 personnel and PGW, there were definitely disputes
19 being arised(ph) and not being addressed by PGW.
20 That's what I can tell you.

21 JUDGE VERO: All right. Let me see if I
22 have any further questions.

23 MS. ROSS: May I have one redirect?

24 JUDGE VERO: Yes. Remember it's four
25 questions long.

1 MS. ROSS: If you have other questions,
2 I'll wait.

3 JUDGE VERO: Not right now.

4 REDIRECT EXAMINATION

5 BY MS. ROSS:

6 Q. Ms. Treadwell, the correspondence and the
7 Emails and things that you reviewed at SBG, were they
8 business records that were kept in the course of your
9 review of the PGW matters?

10 A. Yes. The Emails were provided to me so we
11 could review, and we put it together along with the
12 correspondence that we already submitted and will be
13 submitting in this particular case.

14 Q. Did you have these conversations with PGW
15 personnel regarding the length of time that these
16 disputes, over the course of time that these disputes
17 have taken place?

18 A. I know that SBG has been reaching out to PGW
19 since 2001 on many of these accounts and they were
20 reaching out to higher-ups at PGW.

21 JUDGE VERO: You're talking about
22 Colonial and Simon when you say these accounts?

23 THE WITNESS: Yes. It's documentation
24 included in the correspondence that goes back as far
25 as 2001, 2003. John Dunn is definitely one that was

1 written to. Ted Savage was written to. Various
2 other personnel at PGW received a copy of the dispute
3 or requests for understanding of the accounting.

4 MR. FARINAS: No recross.

5 JUDGE VERO: I have no further questions
6 for you, Ms. Treadwell; so, I understand your
7 testimony is complete. Okay. I need a personal
8 break; so, I'm going to call for a 15 minute recess.
9 I have now 1:04; so, we'll be back at 20 after 1:00.

10 MS. ROSS: Your Honor, can we get your
11 exhibits in order and would it be helpful --

12 JUDGE VERO: I have a problem with only
13 one of them, SBG Exhibit 2 is the only one I have out
14 of order because I messed up the copy.

15 MS. ROSS: Okay.

16 JUDGE VERO: Okay.

17 (Whereupon, a recess was taken.)

18 JUDGE VERO: We are back on the record
19 after approximately a 20 minute recess. I understand
20 from Ms. Ross, she is ready to call her next witness
21 who will be Mr. Jeremy Gabell. Before we proceed, I
22 need to swear you in, Mr. Gabell; so, please raise
23 your right hand.

24 Whereupon,

25 JEREMY GABELL

1 having been duly sworn, testified as follows:

2 JUDGE VERO: Please state your name and
3 spell your last name for the record.

4 THE WITNESS: My name is Jeremy Gabell,
5 G-A-B-E-L-L.

6 JUDGE VERO: Thank you. What's your
7 current address?

8 THE WITNESS: My office address is 175
9 Strafford, S-T-R-A-F-F-O-R-D Avenue in Wayne,
10 Pennsylvania.

11 JUDGE VERO: Thank you. You may
12 proceed, Ms. Ross.

13 DIRECT EXAMINATION

14 BY MS. ROSS:

15 Q. What is your occupation, sir.

16 A. Certified public accountant, certified
17 evaluation analyst and certified forensic accountant.

18 Q. Where did you graduate from school?

19 A. Drexel University.

20 Q. What was your degree in?

21 A. Bachelor of science in business
22 administration.

23 Q. Did you have any accounting experience in the
24 accounting classes?

25 A. Beg your pardon?

1 Q. Any accounting classes?

2 A. Yes.

3 Q. With whom have you held previous positions as
4 an accountant?

5 A. I started out with Price Waterhouse in New
6 York in their audit department. Transferred to
7 Philadelphia after graduation to be auditor then
8 transferred back to the tax department. From Price
9 Waterhouse, I left and went to Berwyn Corporation as
10 an internal auditor. I was there for a year, then
11 went down to West Virginia in Charleston, West
12 Virginia to open my practice.

13 Q. What year was that, sir?

14 A. 1972.

15 Q. Sir, how long have you been a forensic
16 accounting?

17 A. Took my certification in forensic accounting
18 in 2003.

19 Q. Is there any specific designation at this time
20 of financial forensics that you may hold?

21 A. Can you rephrase that please?

22 Q. You said you were certified as a forensic
23 financial analyst?

24 A. That's correct.

25 Q. Is there any other special designation that

1 goes along with that?

2 A. Certified evaluation analyst, basic CPA.

3 Q. Are you a member of any educational
4 associations, professional associations?

5 A. Yes, American Institute of Certified Public
6 Accountants, Pennsylvania Institute of Certified
7 Public Accountants. We're required to take 40 hours
8 a year certified continuing professional education in
9 areas of tax accounting and ethics.

10 Q. Is your certification up to date?

11 A. Yes.

12 Q. Who else have you testified for or have you
13 ever testified before in any trials or given any
14 expert testimony in any other venues?

15 A. Yes. I've testified in two other trials. One
16 was a divorce matter in which I had to reconstruct
17 income on a marital dispute and the other one was on
18 a shareholder dispute as to missing money and that
19 was in Montgomery County Court.

20 Q. Have you ever worked in any kind of banking
21 forum or in any kind of banking cases.

22 A. I used to be an internal auditor for
23 Continental Bank and Trust before it was merged or
24 before it went out of business. That was back in the
25 1960s.

1 Q. Do you have any other educational experiences
2 or teaching experiences under your belt?

3 A. No.

4 MS. ROSS: Let me just ask, at this
5 time, I would ask that Mr. Gabell be qualified as an
6 expert witness in the field of general accounting and
7 forensic accounting.

8 JUDGE VERO: All right.

9 MR. FARINAS: Your Honor, may I ask a
10 question?

11 JUDGE VERO: Yes, please.

12 MR. FARINAS: Does the witness,
13 Mr. Gabell, have any experience or knowledge in the
14 public utility finance area?

15 MS. ROSS: Your Honor, he will be just
16 testifying as to just basic general accounting
17 principals.

18 JUDGE VERO: Mr. Gabell can answer that
19 question whether or not he has experience in public
20 utilities accounting?

21 MR. FARINAS: Public utility finance.

22 JUDGE VERO: Finance.

23 THE WITNESS: No.

24 JUDGE VERO: And your comeback,
25 Ms. Ross, was that he's going to testify ...

1 MS. ROSS: He's testifying to basic
2 general accounting principals and forensic analysis,
3 which is the field of his expertise.

4 JUDGE VERO: All right. You may
5 proceed.

6 MS. ROSS: Thank you.

7 BY MS. ROSS:

8 Q. Who are you testifying for today, on whose
9 behalf?

10 A. On behalf of SBG with Colonial, one of their
11 operations, Colonial and Simon, I believe.

12 Q. With respect to your testimony today, what
13 information have you received from the complainants
14 to help to assist you today when you were preparing
15 for your testimony?

16 A. I received a number of Excel spreadsheets
17 prepared by Ms. Treadwell.

18 Q. Can you identify them for the record?

19 A. Yes. They're identified as SBG CG/SC Exhibit
20 No. 3.

21 Q. Did you also have an opportunity to review the
22 SBG Exhibit 4 which is the lien sheet, the lien
23 calculation?

24 A. Yes, I did.

25 Q. At this time, I'm going to show you, and I

1 think I've distributed it to counsel, and Your Honor,
2 I've also prepared for you what's been marked as
3 Exhibit 5 and 6. Did you have an opportunity to
4 review these and can you tell the court what they
5 are?

6 A. These are bills for SBG CG/SG Exhibit No. 5,
7 which is a monthly statement for January '06 for
8 Colonial Garden, and Exhibit No. 6 which is SBG CG/SG
9 is the May bill for Simon Garden Realty, May of '04.

10 (Whereupon, the documents were marked as
11 SBG CG/SG Exhibits Nos. 5 and 6 for
12 identification.)

13 BY MS. ROSS:

14 Q. Did you have an opportunity to review these
15 along with these spread sheets that Ms. Treadwell
16 prepared?

17 A. I did.

18 Q. You were in the courtroom when you heard her
19 testimony today?

20 A. Yes.

21 Q. Can you actually give us some information or
22 can you tell us based on your experience as a
23 certified public accountant and forensic accountant,
24 what these represented to you?

25 A. Well, you know they're utility bills, but

1 unfortunately they're consolidated and there's a
2 number of, I guess, locations that they supply and
3 they're consolidated. However, in the detail, they
4 don't track the accounting on each meter; in other
5 words, they don't have a beginning balance, current
6 usage payments, charges and an ending balance. What
7 they do is, they have the current month's usage and
8 they total that up with any charges and then they add
9 it all together and put it on the front of the bill.

10 For example, Exhibit No. 5, I've got a bill
11 that has an ending balance of 35,890.38. They have a
12 past due amount of 31,290.90 on it. They have
13 adjustments, which essentially are the late charges
14 or the interest charges, then they have the current
15 usage. You can trace the current usage, but you
16 don't know exactly what meter it relates to.

17 Q. When you say meter, are you referring to the
18 SA?

19 A. Yes.

20 Q. I'm sorry. For clarification so that we're
21 staying consistent.

22 A. I'm not familiar with utility accounting.

23 Q. I'm sure. So, what does that tell you?

24 A. Well, if you have a partial payment, how are
25 you going to apply it, which meter are you going to

1 apply it to, and that means, to do proper accounting,
2 you reconcile for a number of reasons, for control
3 purposes and just tracking to make sure the charges
4 are correct, you should have a beginning balance for
5 each SA, the current charges, plus any other charges
6 that are related, a total, and if then if there are
7 any other payments, you subtract that to the total.
8 So, if I send in \$30,000, for example, on Exhibit No.
9 5, I would know how they allocated it. I would know
10 whether all the meters were taken care of, if the
11 sequences were correct.

12 I understand there's an issue about hierarchy.
13 It should go to the service and customer charges
14 first and interest is at the bottom of the pile, and
15 that's not clearly shown on these bills, and it would
16 be almost impossible for anybody without internal
17 information from PGG to sort it out and reconcile it.

18 Q. Okay. So, given that, you heard Ms. Treadwell
19 testify as to how she ultimately reconciled the bill
20 based on her information gleaned from the PGW
21 information on the late payment analysis.

22 Based on her explanation and the application
23 of payments where late payments are applied or paid
24 first in the order of payments, how does that square
25 with general accounting principal?

1 A. Well, if you're taking the late payment
2 charges and adding them to the late payment or past
3 due amount and then you charge one and a half percent
4 on the past due amount in effect you're compounding
5 the interest rate; so, in other words, it'd no longer
6 an 18 percent simple rate, but it becomes somewhat
7 higher. I calculated it out be 19.562 percent, which
8 is almost an additional month of interest they
9 collect for past due amounts.

10 Q. Is that on a monthly basis or an annual basis?

11 A. That would be on an annual basis. It would be
12 a 19.562 APR for an annual percentage rate, simple
13 interest rate.

14 JUDGE VERO: What was that again. I'm
15 sorry. Can you repeat your explanation, why the
16 difference?

17 THE WITNESS: When you take interest and
18 add it on to principal and then you charge again, the
19 same interest rate on that principal, plus the added
20 interest, you wind up compounding it and it's no
21 longer an arithmetic progression. It's is a
22 geometric progression.

23 JUDGE VERO: All right.

24 BY MS. ROSS:

25 Q. What is that methodology based on? I mean,

1 how did you come to that conclusion?

2 A. Basically, there's a formula from, actually,
3 my college textbook, Mathematics and Finance, which
4 shows you how a simple interest rate can be
5 compounded to a higher rate.

6 Q. How does this square with, say, are you
7 amortizing it? Does it become like a mortgage
8 interest payment? What does that do in effect?

9 A. Mortgages are slightly difference, because in
10 a mortgage, under the terms of a contract of a
11 mortgage, you pay the interest first, then principal.
12 This tends to reverse that; in other words, they add
13 it on.

14 Actually, you can find it on these easy loans
15 where they have deferred interest. What they do
16 there is, they take the principal and then they defer
17 interest and then they add it on to the loan at the
18 end, then they wind up with a much higher yield. I
19 call them sucker loans, but that's obviously been
20 marketed during 2008.

21 Q. Is PGW, the kind of construct that they're
22 doing in the context of applying these late payments
23 first, is that creating some sort of impact on the
24 account?

25 A. Yes, it's compounding. It's no longer a

1 simple interest rate of 18 percent. It goes to a
2 simple interest rate of 19.562 percent.

3 Q. Does that actually increase -- if the tariff
4 allows for a certain rate, does that ultimately
5 increase the rate they're entitled to under the
6 tariff? Let me strike that last question because
7 that was compound.

8 How does that ultimately affect collection on
9 these accounts?

10 A. It would increase the yield on the account.

11 Q. What does that mean?

12 A. It would increase the revenue from it. It
13 wouldn't be a service revenue, but it would be
14 finance revenue.

15 Q. Basically, they're making money off of these
16 late fees?

17 A. That's correct.

18 JUDGE VERO: The number that you
19 provided, 16. --

20 THE WITNESS: 19.562, yes.

21 JUDGE VERO: 19.562, is it across the
22 board?

23 THE WITNESS: It's a simple interest
24 rate. It's equivalent of 18 percent compounded
25 monthly.

1 JUDGE VERO: Okay.

2 BY MS. ROSS:

3 Q. Does that increase if your balance is higher
4 or lower; does it make an effect?

5 A. It would increase, yes. It would increase
6 because you're applying the 19.562 percent to a
7 higher number; in other words, if the statute says
8 you cannot charge interest on interest and if you
9 take a payment and apply it to the interest first and
10 then to the service, what you wind up doing is
11 increasing the amount that's not beneficial to the
12 customer but to the company, because you're not
13 reducing the amount you can collect interest on.
14 You're increasing the amount you can collect interest
15 on.

16 Q. I'm going to ask you. So, the PGW basically
17 says that they can do this as a function of being
18 able to charge one and a half percent on the unpaid
19 balance or the balance due?

20 A. Right.

21 Q. So, how can you -- is it a function if you
22 were to --

23 MR. FARINAS: Objection. I'm feeling
24 led. It's leading.

25 BY MS. ROSS:

1 Q. Let's go back to Ms. Treadwell's schedule
2 because that's basically what you're here to talk
3 about. When she looked at the PGW numbers, and you
4 have that schedule in front of you. Let's look at
5 it.

6 JUDGE VERO: Which exhibit?

7 MS. ROSS: Exhibit No. 3.

8 BY MS. ROSS:

9 Q. You can pick from any account, whatever one
10 you feel more comfortable with, and the SA is at the
11 bottom?

12 A. Yes, it's 25601.

13 Q. Okay, 5601. So, looking at her methodology,
14 and let's go to the beginning. Understanding what
15 she did, looking at what PGW did, their calculations
16 on the left and hers on the right, is her methodology
17 in accordance with general accounting principals?

18 A. Yes.

19 Q. And is her explanation of what PGW did, is
20 that apparent in that schedule; in other words, the
21 way they calculated the interest and applied it to
22 the balance?

23 A. Yes. The way they calculate is obvious.

24 Q. How do you say it's obvious?

25 A. In other words, the way they're doing it,

1 they're applying one and a half percent to the past
2 due bill, which would include any previous finance
3 charges or late payment charges.

4 JUDGE VERO: May I interrupt for a
5 moment. Mr. Gabell, did you have a chance to review
6 any public utility statutes, regulations or even
7 PGW's tariff in preparation for these hearings?

8 THE WITNESS: I reviewed the statute,
9 Section 5622.

10 JUDGE VERO: What does it say if you
11 recall the language?

12 THE WITNESS: As I recall the language
13 and, again, I didn't study it, Your Honor, if they
14 allow 18 percent simple interest per year and then
15 there was one section that listed a hierarchy or what
16 appeared to be a hierarchy of how you apply payments.

17 JUDGE VERO: They have the words, simple
18 interest, in that?

19 THE WITNESS: Yes, I believe so.

20 JUDGE VERO: The word simple is in
21 there?

22 THE WITNESS: Yes.

23 JUDGE VERO: And I understand it to be a
24 term of art in accounting, similar interest as
25 opposed to compound interest?

1 THE WITNESS: Yes.

2 JUDGE VERO: So, simple interest is a
3 term of art, like specific term in accounting; so, it
4 carries a specific meaning?

5 THE WITNESS: Yes, in finance and
6 accounting.

7 JUDGE VERO: Do you recall the statute
8 you have just referred to or any statute that you
9 have seen from the public utility, whether or not it
10 says what is supposed to apply? Does it say be
11 whether or not it applies to outstanding bills or
12 whether or not it should apply on principal or
13 anything like that is the language what it applies
14 to?

15 THE WITNESS: I do not.

16 MS. ROSS: Your Honor, May I actually
17 approach, and to the extent you had an opportunity to
18 read this, Your Honor, this is a copy of the statute
19 or the regulations, and I would like to present that
20 to Mr. Gabell so if that refreshes his recollection.

21 JUDGE VERO: Okay.

22 BY MS. ROSS:

23 Q. So, to the extent you were speaking about the
24 simple interest in, I guess, you said it was 52 PA
25 code 56.22; is that what you were referring to?

1 A. That's what I was referring to, yes.

2 Q. You also had mentioned earlier something about
3 application of partial payments. Did you have an
4 opportunity to read 56.23 as well?

5 A. Yes, I did.

6 Q. If you could maybe just explain to the court
7 and you can read it, what it says, the applicable
8 part?

9 A. Section 5622A and 5621: Relating to every
10 public utility subject to this chapter is prohibited
11 from levying or assessing a late charge or penalty on
12 any overdue public utility bill as defined in 5621
13 that is relating to payment in an amount that exceeds
14 1.5 percent interest per month on the overdue balance
15 of the bill. These charges are to be calculated on
16 the overdue portions of the bill only. The interest
17 rate when annualized may not exceed 18 percent simple
18 interest.

19 Q. Also, while we're at it, you mentioned
20 partial payment?

21 A. Yes.

22 Q. What does it say to that?

23 A. 5621, that I do not have.

24 Q. I'm sorry, it was 23.

25 JUDGE VERO: Didn't Ms. Treadwell

1 already put it on the record, the actual language?

2 MS. ROSS: That was 62.74.

3 JUDGE VERO: Okay.

4 THE WITNESS: Application of partial
5 payments between public utility and other service.
6 Payments received by a public utility without written
7 instruction that they be applied to merchandise,
8 appliances, special services, meter testing fees or
9 other nonbasic charges in which are insufficient to
10 pay the balance due for the items, plus amounts
11 billed for basic utility service shall first be
12 applied to the basic charges for residential public
13 utility service.

14 BY MS. ROSS:

15 Q. Thank you. In reading this, and I'm going to
16 also show Your Honor. This is the statute -- I mean,
17 the tariff in 4.2 of the tariff, does that also
18 conform --

19 JUDGE VERO: What tariff?

20 MS. ROSS: The PGW tariff.

21 JUDGE VERO: Is that the most recent
22 tariff?

23 MS. ROSS: It is not changed from the
24 tariff.

25 JUDGE VERO: What do you mean it's not

1 changed from the tariff?

2 MS. ROSS: That section that I am having
3 him read is still applicable to the current tariff.

4 JUDGE VERO: All right.

5 BY MS. ROSS:

6 Q. Does that also conform to what you have just
7 articulated is in the statute 56.22 about the simple
8 interest?

9 A. Yes, it does.

10 Q. So, in utilizing those regulations, the
11 tariff, along with you read the regulation on the
12 hierarchy of bills and using Ms. Treadwell's
13 schedule, what conclusion did you come to?

14 A. I came to the conclusion that what PGW was
15 doing was applying the payment, partial payments to
16 the finance charge, the late payment charges first
17 and then to any basic service charges.

18 Q. Does that conform with general accounting
19 principals?

20 A. No. In effect what it does. It takes
21 noninterest bearing charges, pays off noninterest
22 bearing charges and reduces the amount that should be
23 applied to interest bearing charges.

24 Q. What's the cumulative effect on that on a
25 bill?

1 A. It increases a bill. Depending on, obviously,
2 the basic charge, it increases it substantially,
3 equivalent to about a month, a month and half, 1.5
4 percentage an additional month's worth of interest.

5 Q. In doing that, let's get back to where we
6 were. Since you're saying it's not evident in the
7 billing, the bill itself, at what point, how would a
8 customer, any customer know that that was being done
9 to their bill?

10 A. The only possible way to do it would be to
11 apply, to put 1.5 percent to the outstanding balance
12 and see -- not really, no. There would be no way I
13 could do that.

14 Q. Because if you actually look at what PGW does,
15 what does that do to the escalated balance? So, they
16 actually do do that. In other words -- maybe I
17 wasn't very artful with my question.

18 PGW, you don't know that that's what they're
19 doing to the late payment charges --

20 MR. FARINAS: Objection. Leading.

21 She's telling him what --

22 JUDGE VERO: Rephrase.

23 MS. ROSS: I guess I'm trying to
24 articulate.

25 JUDGE VERO: Take some time to phrase

1 the question the way you want it phrased.

2 BY MS. ROSS:

3 Q. Where Ms. Treadwell reordered the payments in
4 accordance with 62.74, what in essence did that do?
5 What effect did that have on the account?

6 A. It reduced the amount of interest that was
7 charged on subsequent late payments.

8 Q. Is that the accurate way to do it?

9 A. Based on my understanding, yes.

10 JUDGE VERO: Is that the only way to do
11 it?

12 THE WITNESS: In view of my reading of
13 the statute, yes.

14 BY MS. ROSS:

15 Q. Are you familiar with any adverse effects that
16 in other industries where these types of reordering
17 of payments, late fees first against principal
18 balance have had an effect on a consumer?

19 A. Particularly in the credit card industry and
20 also in the mortgage industry.

21 Q. Why do you say that? Can you give an example?

22 A. Because it really increases the yield; in
23 other words, in the credit card interest industry,
24 they can take interest and add it on to the balance,
25 and then charge one and a half percent or whatever

1 the rate is on the unpaid balance. They don't have
2 the same restrictions that a utility has; so, in
3 other words, their yield can get pretty high;
4 particularly, if you don't pay the interest. In
5 essence, the principal, when you add the interest or
6 late payment charges, the principal keeps building up
7 and they continue to charge whatever the interest is
8 on that increased interest balance.

9 Q. But is there a disclosure with that? Are
10 consumers aware of that fact?

11 A. Yes.

12 Q. In this instance, would a consumer be aware of
13 that?

14 A. Not on the surface of the bill, no.

15 Q. And in industries, are you aware of any
16 instances or cases where that kind of reordering was
17 not permissible by law?

18 JUDGE VERO: That was done?

19 MS. ROSS: Reordering the payments --

20 JUDGE VERO: Ms. Ross, is your question,
21 it wasn't permissible by law, but was done?

22 MS. ROSS: But was done, yes.

23 THE WITNESS: Yes. There was one
24 mortgage case I did work on where I analyzed the
25 amount to escrow and, in fact, I just submitted a

1 report on that where the mortgage servicing company,
2 I still don't understand their logic behind it, but
3 they would not -- they applied different amounts to
4 different areas. It was just totally discretionary
5 on their part where they put the money.

6 They did sue the mortgagor for an escrow
7 balance, but he had already paid money for escrow,
8 but they had applied it to the mortgage and not the
9 escrow balance. So, what in essence they did is,
10 they penalized him and sent him a huge bill to make
11 up the deficiency in the escrow when, in fact, the
12 moneys that he had paid had been applied to the
13 interest and principal on the mortgage.

14 BY MS. ROSS:

15 Q. Is this a similar type situation?

16 A. Yes.

17 Q. So, the cumulative effect as you said is?

18 A. It increases. Basically, it increases the
19 interest rate.

20 MS. ROSS: I have nothing further.

21 JUDGE VERO: Mr. Farinas. Do you have
22 any questions on cross?

23 MR. FARINAS: Yes.

24 MS. ROSS: I'm apologize. We talked
25 about so many things.

1 JUDGE VERO: It's okay. It happens.

2 BY MS. ROSS:

3 Q. Did you have an opportunity to look at Exhibit
4 4 as it pertains to the lien interest?

5 A. I did look at it. One of the problems,
6 there's no indication of -- they have a lien amount,
7 but that's usually what is filed when they file the
8 lien. It does not show what was actually paid on the
9 lien when they had it released or vacated; so, in
10 other words, they have \$38,493 lien which accrued
11 interest, but what did they pay to get the lien
12 released, and that's not indicated. For that, you
13 need a cancelled check or something like that to show
14 the actual amount that it was paid.

15 Q. If it wasn't paid, let's say, what effect
16 would it have; I mean, it's accruing what rate of
17 interest?

18 A. One and a half percent per month or 18 percent
19 a year.

20 Q. If the law says, if the law, assuming; this is
21 a hypothetical. If the law were to say it should
22 accrue at half a percent, what would be the effect on
23 the account?

24 A. It needs to be reduced substantially. I mean,
25 you're charging a 12 percent more interest than

1 you should on the account.

2 Q. If, in fact, someone had to borrow money to
3 pay off a debt, a large balance owed to a utility
4 company, for example, if a lien is filed and they had
5 to foreclose or whatever, is there any other damaging
6 effect on an account that one might suffer?

7 JUDGE VERO: Ms. Ross, the Commission
8 does not have authority to issue monetary damages.
9 So, how they got the money, any damages from
10 borrowing the money.

11 MS. ROSS: I would like for him to opine
12 whether or not there would be damages, just a yes or
13 no.

14 MR. FARINAS: Objection, because it's
15 even further asking for a legal opinion about a
16 subject that's not even under the Commission's
17 jurisdiction.

18 JUDGE VERO: We have jurisdiction. We
19 don't have authority.

20 MR. FARINAS: Authority, I'm sorry.

21 JUDGE VERO: So, if you at any point in
22 time feel the urge to give a number, do that. The
23 damage that you're claiming, you cannot do it here
24 before the commission.

25 MS. ROSS: I understand, but would that

1 have an effect on the underlying accounting of the
2 account?

3 JUDGE VERO: Your objection is
4 overruled, Mr. Farinas.

5 THE WITNESS: Would you repeat the
6 question please.

7 BY MS. ROSS:

8 Q. If someone had to borrow money, would that
9 have an effect on the underlying accounting?

10 A. It would have two effects. One, you've got a
11 lien filed against you which would increase the
12 interest rate on any money you had to borrow, and
13 then, of course, the increased rate would affect how
14 much money you took out of the company to pay off the
15 interest on the loan.

16 Q. And in your professional opinion and to a
17 reasonable degree of certainty as a forensic
18 accountant and in the field of general accounting
19 principals, would you agree with Ms. Treadwell's
20 conclusions in that these schedules are accurate and
21 correct?

22 A. Yes.

23 Q. And can you say that that is an opinion that
24 you can give unequivocally?

25 A. That's a professional opinion.

1 Q. Within the confines of the construction of the
2 standards of the industry?

3 A. Yes.

4 MS. ROSS: Thank you. Nothing further.

5 JUDGE VERO: Mr. Farinas, any cross?

6 MR. FARINAS: Yes. Thank you, Your
7 Honor.

8 CROSS-EXAMINATION

9 BY MR. FARINAS:

10 Q. Mr. Gabell, hoping you can help clarify
11 something. With your testimony just now that stated
12 that Ms. Treadwell said two things. One, that due to
13 the order of payment, it is her view, PGW assess too
14 much late payment charges?

15 A. Yes, correct.

16 Q. But did you also say that it's your
17 understanding that it's Ms. Treadwell's position or
18 it's your position that PGW charges late payment
19 charges on late payment charges?

20 A. Yes, that's correct.

21 Q. Now, I'll ask you, when you reviewed
22 information for this, and I believe Ms. Ross asked
23 you if you reviewed, and I'm referring to SBG CG/SG
24 Exhibit 3, I believe that's the exhibit that you were
25 looking at just now. You reviewed this?

1 A. Yes.

2 Q. And you understood this to be prepared by
3 Ms. Treadwell, correct?

4 A. Yes.

5 Q. Now I'm going to show you another exhibit.
6 This would be SBG CG/SG Exhibit 2.

7 MR. FARINAS: Your Honor, may I approach
8 the witness?

9 JUDGE VERO: Yes, you may.

10 BY MR. FARINAS:

11 Q. In this packet of documents, there is a
12 document prepared by PGW and SBG. I'll ask you, did
13 you review the document which breaks down the
14 interest or the late payment charges and shows how
15 they're computed as of each bill prior to or without
16 regard to how a payment is made, but just the raw
17 application; did you review that document?

18 A. No. I've never seen this document.

19 JUDGE VERO: What document is that?

20 MR. FARINAS: It's included in
21 complainant's Exhibit 2 for today. However, it was
22 included as PGW's late payment charge analysis, which
23 is basically statements of account with an additional
24 column showing the calculation of late payment
25 charges.

1 JUDGE VERO: SBG proposed Exhibit 2.
2 Where I am looking?

3 MR. FARINAS: It's right there, Your
4 Honor, that analysis.

5 JUDGE VERO: All right.

6 BY MR. FARINAS:

7 Q. You did not review that in your review of this
8 matter?

9 A. No, I don't recall seeing it.

10 Q. So, it's still your contention that PGW
11 charges late payment charges, adds them to the
12 balance and then in the following month, adds
13 additional late payment charges; is that your
14 understanding?

15 A. In effect, yes, by the sequencing of payments.

16 Q. In effect or in actuality.

17 A. In effect is actual.

18 Q. That's the point of my confusion.

19 Ms. Treadwell, I understood her testimony to say that
20 due to the order of payments that PGW is overcharging
21 the late payment charges because it's not retiring
22 the principal amount first and, therefore, it's
23 reserving the principal amount in order to charge
24 late payment charges; that's one method, but your
25 testimony was, at least 50 percent of it at the

1 beginning was concerning compounding late payment
2 charges, and I believe that was your word,
3 compounding; meaning, they assess late payment
4 charges and threw it onto the next month, and when
5 the next month rolled around, whatever was unpaid,
6 including late payment charges was also charged late
7 payment charges. Is that your understanding what PGW
8 does?

9 A. That's my understanding, yes, and that's
10 called compounding.

11 Q. Yes, but you did not review this document that
12 I just showed you?

13 JUDGE VERO: Is it possible for
14 Mr. Gabell to review it right now and to see if
15 that's what actually occurred?

16 BY MR. FARINAS:

17 Q. Would you like to do that?

18 A. I'll look at it and see.

19 MS. ROSS: Which page are you actually
20 looking at, because I think it's certain areas that
21 are more evident.

22 THE WITNESS: 8.

23 JUDGE VERO: You can address that
24 Ms. Ross.

25 MS. ROSS: How about if we go to

1 transaction -- this is for PGW SOA 14411.

2 JUDGE VERO: SOA?

3 MS. TREADWELL: That's the bate stamp
4 number.

5 MR. FARINAS: I want to stick with
6 Exhibit 2 from today.

7 MS. ROSS: It is.

8 JUDGE VERO: PGW SOA? What's the
9 number?

10 MS. TREADWELL: PGW SOA 1411.

11 MR. FARINAS: What's the transaction?

12 MS. ROSS: So, the transaction would be
13 starting where there was a payment on 9/4 2002 of
14 2,638.97 and the late payment charges of
15 \$867.14 were paid and you can see that on the
16 subsequent lines of 9/4 2002.

17 THE WITNESS: That's correct.

18 MS. ROSS: And it shows that they're
19 zeroed?

20 THE WITNESS: That's correct.

21 MS. ROSS: And so the late payment
22 charges were wiped out first, leaving a balance.

23 MR. FARINAS: That was not my question.

24 Can I take over from here?

25 MS. ROSS: Sure.

1 BY MR. FARINAS:

2 Q. What the judge has suggested is that you
3 review this for the purpose of seeing whether or not
4 late payment charges are compounded, not whether or
5 not what's retired first. All right?

6 A. Okay. Let's back up a little bit. In effect,
7 when you take a noninterest bearing late payment
8 charge, which is my understanding according to the
9 statute, you pay that first, and then you take any
10 difference and apply that to the interest bearing
11 portion or the late payment portion, in effect, you
12 are compounding, because at least based on my reading
13 of what the statute says, you should have first
14 applied the payment to the service and then any
15 excess to the late payment charge; so, in other
16 words, you're not applying the payment in a method
17 most beneficial to the customer.

18 Q. But the very next month, though, that which is
19 assessed late payment charges does not include the
20 previous month's accumulated late payment charges;
21 although by your, Ms. Treadwell's, SBG's position,
22 the principal amount should have been reduced more.

23 A. Right.

24 Q. But will you agree with me, that according to
25 that, that the amount that's assessed late payment

1 charges on the following month does not include the
2 previous month's late payment charges?

3 A. I disagree with you. You're talking about
4 left pocket, right pocket. All you're doing is
5 transferring from one account to another section,
6 another tranche, if you will if you want to use Wall
7 Street terminology, from one tranche to another
8 tranche.

9 Q. The compounding you're referring to is not
10 both methods. It's simply what you refer to by
11 virtue of a order of payment, that's the compounding?

12 A. That's exactly right.

13 Q. So, the compounding in terms charging late
14 payment charges on top of late payment charges is not
15 what's going on?

16 A. I disagree. I think in effect that is exactly
17 --

18 Q. In effect, but that's solely due to the
19 allegation of the order of payments; is that
20 correct?

21 A. Yes, sophistry.

22 Q. For Ms. Treadwell, can you tell her what that
23 is?

24 A. Semantics.

25 Q. You made comments about the way the

1 information is presented in the bill and you refer to
2 SBG CG/SG Exhibit 5, which is this bill?

3 A. Yes.

4 Q. And you made comments about it. I believe the
5 first comment you made you refer to, I guess, the
6 third page of the actual document because mine
7 contains a blank page, but at the bottom, you refer
8 to there's several SAs in this account?

9 A. Yes.

10 Q. And then you're saying there's not an
11 association with the particular meter. Do you know
12 how many meters are at this property under this
13 account?

14 A. Looks like two.

15 Q. And the second meter is found further down on
16 the page?

17 A. Yes. That would be SA 9567 versus 9564 at the
18 top or 9694 at the top.

19 Q. Are you familiar with the regulations that
20 dictate how the bill is formatted?

21 A. Not in detail.

22 Q. Of the Public Utility Commission?

23 A. Not in detail, no.

24 Q. So, it's your view as an accountant, this
25 might be confusing. However, you're not sure if it's

1 in violation of any Commission regulation regarding
2 bill formatting; is that correct?

3 A. No. I never alleged that.

4 MR. FARINAS: Your Honor, I have no
5 further questions of this witness.

6 JUDGE VERO: I have no further questions
7 either. Any redirect?

8 REDIRECT EXAMINATION

9 BY MS. ROSS:

10 Q. Just so we're clear, when you see the late
11 payment charges are zeroed out, does that affect any
12 kind of accounting principals that's standard
13 accounting such as I equal PRT?

14 A. It would affect the principal, then the
15 subsequent the calculation would affect the rate.

16 Q. What does that mean in the scheme of things as
17 it pertains to these accounts overall?

18 A. It would increase the amount of money, the
19 interest that's assessed on the account.

20 MS. ROSS: I have nothing further.

21 Thank you.

22 JUDGE VERO: Thank you, Mr. Gabell. You
23 may step down.

24 MS. ROSS: Thank you. That concludes
25 your testimony for today.

1 JUDGE VERO: Does anybody need a
2 lunch break?

3 MR. FARINAS: I appreciate that, Your
4 Honor. My people are concerned about sugar levels.

5 JUDGE VERO: Is a half an hour enough?

6 MR. FARINAS: Yes.

7 MS. ROSS: Sure.

8 JUDGE VERO: Let's be back in the
9 courtroom by 2:45.

10 (Whereupon, a recess was taken.)

11 JUDGE VERO: Good afternoon. We are
12 back on the record after a brief lunch break. I
13 understand we have completed the testimony Mr. Jeremy
14 Gabell, expert witness for the complainant and we are
15 moving along with the direct testimony of Mr. Roger
16 Colton. Before we begin, I need to swear you in.
17 Please raise your right hand.

18 Whereupon,

19 ROGER COLTON
20 having been duly sworn, testified as follows:

21 JUDGE VERO: Can you, please, state your
22 name and spell your last name for the record.

23 THE WITNESS: My name is Roger
24 D. Colton, C-O-L-T-O-N.

25 JUDGE VERO: What is your current

1 address, Mr. Colton?

2 THE WITNESS: My business address is
3 Fisher Sheehan & Colton Public Finance and General
4 Economics, 34 Warwick, W-A-R-W-I-C-K Road in Belmont
5 Massachusetts.

6 JUDGE VERO: Thank you. You may begin
7 the direct examination of Mr. Colton, Ms. Ross.

8 DIRECT EXAMINATION

9 BY MS. ROSS:

10 Q. For whom are you testifying today?

11 A. I'm testifying on behalf of the complainants
12 today.

13 Q. Thank you. Can you give me a description of
14 your professional background please?

15 A. I work primarily in the public utility
16 industry. I serve as a technical consultant to
17 nonprofit organizations, to government agencies at
18 the Federal, State and local level and to public
19 utilities themselves involving natural gas,
20 electricity, water and telecommunications. I work in
21 regulatory arenas throughout the United States and
22 Canada.

23 Q. What is your educational background?

24 A. I have a Bachelor's degree from Iowa State
25 University in 1975. My studies to the extent that

1 they're relevant anymore were primarily in
2 journalism. I then obtained a law degree from the
3 University of Florida and I obtained a Master's
4 degree in regulatory economics from the McGregor
5 School at the Antioch University in Ohio.

6 Q. Have you testified and do you have any
7 experience regarding PGW?

8 A. Yes, I do have experience with PGW. I began
9 working with PGW or on issues relating to PGW,
10 probably back in the mid 1980s when PGW was not yet
11 regulated by the Public Utilities Commission. It was
12 still regulated by the Philadelphia Gas Commission
13 and we worked on collection issues. I worked --
14 rather I should say I worked on collection issues on
15 behalf of the City of Philadelphia Public Advocate's
16 Office. I worked on issues that eventually led to
17 the design of what's called the customer
18 responsibility program addressing nonpayment by low
19 income households.

20 When PGW became regulated by the PUC, my
21 primary client became the State Office of Consumer
22 Advocate in Harrisburg, a state agency. I worked on
23 PGWs -- for example, I worked on PGW's proposals in
24 the mid 19 or late 1990s relating to their customer
25 service tariffs. I worked with OCA and for OCA

1 reviewing PGW's collections performance in light of
2 what's called Chapter 14 relating to collections and
3 have continued my work with PGW. I'm actually
4 currently working with the OCA in a PGW collaborative
5 process this current week.

6 Q. And you have an expertise in public finance
7 and regulatory affairs; are you stating that in
8 economics?

9 A. My expertise is in regulatory economics. I
10 would not hold myself out as an expert in public
11 finance; although, other people in the firm do that.
12 My expertise is in public utility regulation
13 regarding, again, natural gas -- well, including, but
14 not limited to natural gas utilities.

15 Q. Okay. Have you testified before the
16 Pennsylvania PUC before?

17 A. I have. I first testified before the
18 Pennsylvania PUC in the late 1980s. I haven't really
19 encountered them recently, but over the last 25
20 years, I would estimate that I've appeared before or
21 testified before the PUC on more than 80 and fewer
22 than 100 occasions.

23 Q. Do you have any publications -- have you
24 published anything on the regulatory industry of
25 public utilities.

1 A. I have. I've authored two different books.
2 The first book is called, Access to Utilities or
3 Access to Utility Service, which looks at customer
4 protections and payment troubled customers to a great
5 degree. My second book is the regulation of real
6 electric cooperatives and the thrust of that book was
7 to determine the ways in which in other ways
8 unregulated public utility might be regulated through
9 noncommission mechanisms.

10 In addition, I've authored more than 80 and
11 fewer than 100 articles in referee journals in
12 journals, academic journals and industry journals.

13 Q. Thank you. I would offer Mr. Colton as an
14 expert in the field of public utility regulatory
15 matters at this time.

16 MR. FARINAS: I have nothing, Your
17 Honor.

18 JUDGE VERO: Okay.

19 BY MS. ROSS:

20 Q. Mr. Colton, there's been a lot of discussion
21 here and talk about reordering of payments, and
22 you've been in the courtroom this morning. Do you
23 understand that term and if so, can you explain it?

24 A. Yes. The reordering of payment is actually a
25 term of art. The reordering of payments is a process

1 which is sometimes referred to as the resequencing of
2 payments, and when you hear those two terms, those
3 two terms mean the same thing. If I happen to use
4 one term or the other, I mean them to mean the same
5 thing.

6 JUDGE VERO: What was the second term?

7 THE WITNESS: Resequencing of payments.

8 The reordering of payments in the public utility
9 industry in Pennsylvania would refer to this
10 process: Bills are comprised of two components.
11 You have the principal component, principal, P-A-L
12 on which a utility may charge a late payment charge
13 and you have the late payment charge component on
14 which no additional late payment charge can be
15 imposed.

16 When a customer or should a customer not
17 pay their bill for a number of months in a row, you
18 have a growing balance of principal and you have a
19 growing balance of late payment charges. The
20 reordering of payments says that when a customer then
21 makes a payment, that the company, PGW, in the
22 instance that we're talking about today, will apply
23 or post those payments out of time.

24 So, for example, if somebody didn't pay
25 their April, May, June, July bills, they'll have

1 their four months of principal that's been growing,
2 and they will have four months of late payment
3 charges that have been growing, and the reordering of
4 payment states that the utility will pay the most
5 recent noninterest bearing late payment charge before
6 they pay the older, but interest bearing principal.

7 So, the customer makes a payment and the
8 utility will pay the July late payment charge before
9 it pays the April bill, the April principal, and it's
10 that reordering, that resequencing of payment where
11 the utility again pays the more recent noninterest
12 bearing late payment charge before paying the older
13 interest bearing principal balance.

14 BY MS. ROSS:

15 Q. Now, in doing that, does that conform to the
16 regulations and the rules as set by the code and the
17 regulations of the Commission?

18 A. It does not.

19 Q. Why is that?

20 A. Well, there are a variety of reasons why that
21 would not comply with the regulations and the
22 statute, and I'm going to distinguish between
23 statutory obligations and regulatory obligations.
24 When I talk about the regulations, I'll be talking
25 about what most of us refer to as Chapter 56.

1 So, let me take the statute first.

2 Q. When you refer to the statute, you mean.

3 A. The public utility code.

4 Q. Under title 56?

5 A. Yes.

6 Q. Thank you.

7 A. So, under the public utility code, the primary
8 obligation, of course, is that rates and services be
9 just and reasonable. That's Section 1301; so, the
10 empirical question for someone like me is what
11 constitutes a rate and what constitutes a rate which
12 is just and reasonable. The inquiry is governed by
13 the statute. The statute says that a rate consists
14 of any rule or regulation or practice of the public
15 utility that might affect the compensation paid to
16 the public utility.

17 Clearly, the ordering of payments is a
18 practice that affects the compensation paid to PGW;
19 so, it is a rate, and as a rate, it needs to be just
20 and reasonable. The payment ordering process, and
21 I've looked at late payment charges in utilities, not
22 only for PGW, but throughout Pennsylvania and
23 throughout the United States, and to determine
24 whether they are cost-based, the primary issue of
25 just and reasonableness is whether a practice is

1 dictated by costs or reflect costs, and the
2 reordering of payments by PGW and PGW does reorder
3 payments is not cost-based. There is no difference
4 in the staff people that they use for collection
5 processes based upon the composition of an unpaid
6 bill. There's no difference in the cost of money.
7 There's no difference in the time that's expended.
8 There's no cost basis for reordering the payments.

9 Q. Now, and I'm going to just stop you right
10 there. You are stating a lot of facts here. Did you
11 have anything; did you review anything to come to
12 this kind of conclusion, to make this determination
13 in your testimony today? I mean, did you have an
14 opportunity to review the exhibits that have been
15 testified to earlier in today's case?

16 A. I have not reviewed the exhibits as they were
17 packaged today; however, I have reviewed the
18 spreadsheets that compared the impact of PGW's
19 posting process with a posting process that did not
20 involve the reordering of payments. I reviewed PGW's
21 most recent tariff, its current tariff, of course. I
22 reviewed Chapter 56, all the regulations of Chapter
23 56. I reviewed the discovery responses that have
24 been provided by PGW to the complainants. I think
25 that's reasonably comprehensive. I tried to review

1 all the material that was relevantly available.

2 Q. To the extent that --

3 MS. ROSS: May I approach the witness at
4 least with these document the?

5 JUDGE VERO: Yes, you may.

6 BY MS. ROSS:

7 Q. I am showing you what's been marked as SBG
8 Exhibit 3 and SBG Exhibit 4, 5 and 6 just in the
9 event we start talking about them.

10 A. Did you want me to complete my answer?

11 Q. Yes. I apologize. If I interrupted, I'm
12 sorry.

13 A. The other statutory constraint that I looked
14 at with respect to PGW's posting process, of course,
15 is Section 1303 of the public utility code. Section
16 1303 states that a utility may not directly or
17 indirectly by any means whatsoever or by any device
18 whatsoever charge a customer more than what their
19 tariff provides.

20 PGW's tariff provides that they will charge a
21 late payment charge of 1.5 percent, not to exceed 18
22 percent simple interest, and the prior witness
23 defined simple interest.

24 So, my job was to determine whether PGW either
25 directly, and I don't think there's any allegation or

1 any charge that they have directly charged more than
2 18 percent, but the statute says, or indirectly by
3 any device whatsoever charge more than 18 percent.
4 It is my opinion based upon my experience in the
5 utility industry and looking at other industries that
6 are regulated, that the reordering of payments to
7 retire more recent noninterest bearing late payment
8 charges before retiring older interest bearing
9 principal balances is an indirect means of charging
10 more than 18 percent simple interest. In effect or
11 indirectly, whatever you want, however you want to
12 look at it, the reordering of payments by PGW
13 indirectly by some device whatsoever is charging more
14 than 18 percent simple interest.

15 Q. So, the schedule that Ms. Treadwell put on
16 showed and displayed today and we've had people
17 testify to, what is your opinion of those? Would you
18 agree or disagree with them?

19 A. I agree with the schedules that
20 Ms. Treadwell -- with the methodology that she
21 presented. I don't have a basis to determine whether
22 her precise numbers, whether a number of 137.16 is
23 correct or not, but the methodology that she laid out
24 this morning in her spreadsheets is the appropriate
25 way to do it. In preparing for my testimony today, I

1 went through. I actually didn't see your exhibits,
2 but the company provided the exhibits that it intends
3 to offer and identified time after time after time
4 where they reordered payments, and it's clear that
5 they reordered payments by retiring more recent
6 noninterest bearing late payment charges before they
7 posted a payment against an older interest bearing
8 principal balance.

9 Q. And the cumulative effect of this is what?

10 A. The cumulative effect is a couple of things,
11 all of which are adverse to the customer. The real
12 cumulative effect is that the reordering process,
13 just like the banks got into trouble when they were
14 reordering the posting of checks, and the credit card
15 industry got into trouble when they were reordering
16 customer payments against balances that had different
17 interest rates. The bottom line is that the
18 reordering process is designed to maximize billed
19 revenue to the utility.

20 By designing the process to maximize billed
21 revenue to the utility, the impact on the consumer is
22 that the consumers pay more money. The consumers
23 lose the ability to make a payment and expect it to
24 minimize their arrears and that, of course, is a
25 regulatory requirement in Pennsylvania. PUC rules

1 say that bills are to be managed to minimize arrears
2 and the reordering process actually maximizes arrears
3 rather than minimize it and the customer loses their
4 dominion interest, if you will, their right to
5 exercise control over their payments. So, when they
6 know that they have an April, May, June, July bill
7 unpaid and they make a payment, they lose -- they
8 have taken from them the right to have their oldest
9 bills that contributed to an increase in their
10 overall financial obligation reduced. So, they are
11 harmed in a variety of ways.

12 Q. Who has taken that dominion away, the
13 company?

14 A. PGW has taken that dominion away from the
15 customer.

16 Q. Is this a pricing decision that PGW knowingly
17 imparts on its customers?

18 A. Yes. There are two ways to decide or that
19 lead to the conclusion that this is a pricing
20 decision. First, under the statute and under Chapter
21 56. Primarily, under the statute. A rate includes
22 not simply what many of us think of when we think of
23 rates per MCF or per therm by charge, but a rate is
24 defined as any practice that affects the compensation
25 do be paid. Clearly, under that definition, the

1 reordering of payments to pay the more recent
2 noninterest bearing part of the bill before paying
3 the older interest is paying part of the bill affects
4 the amount of compensation. It drives the bill up.
5 It increases the financial obligation of the customer
6 and it increases billed revenues to the customer.

7 Aside from that, however, the issue of whether
8 the ordering process of payments is a pricing
9 practice was directly addressed by the Office of the
10 Controller of Currency FDIC in the banking industry,
11 and the banking regulators have said, that the
12 payment posting process of checks is a pricing
13 decision of the bank's, and the reasoning that the
14 Federal banking regulators use is identical to the
15 reasoning that it would be considered a rate or a
16 price for a public utility such as PGW. It is
17 unquestionably a pricing decision.

18 JUDGE VERO: Hold on a second. The
19 judicial notice that I was going to take might need
20 to wait until tomorrow. My assistant just told me
21 our printer is not working. Sorry to interrupt your
22 testimony. You may continue, Ms. Ross.

23 BY MS. ROSS:

24 Q. Let me just ask you, you are familiar with PGW
25 bills, correct?

1 A. Yes, I am.

2 Q. Where on the bill would a consumer know that
3 this is happening to their account?

4 A. May I pull a bill out?

5 Q. Sure. Actually, it's one in front of you.
6 It's marked 5 or is it 6?

7 A. Yes. I'm looking at Exhibit 5, SBG Exhibit 5.

8 Q. Is that the Simon or Colonial bill; can you
9 specify?

10 A. Colonial Garden.

11 Q. Thank you.

12 A. This bill is similar. This bill is from
13 February 6, 2006 and I've looked at bills both that
14 are rendered before the date of this bill and after
15 the date of this bill, and this bill is the same,
16 both before and after this February 6, 2006. When I
17 looked at this bill, I concluded that not only is
18 there no way to determine that this reordering of
19 payments is occurring, but this bill actually
20 affirmatively misleads people into forming an opinion
21 on how payments are to be applied, and I reached that
22 conclusion on page 1 of 3 and I look, I see this
23 language: To avoid finance charges, please pay total
24 amount due by the due date. Finance charges
25 calculated at 1.5 percent monthly pairing(ph) 18

1 percent per year.

2 So, what that tells me is in order to avoid
3 the finance charge of 1.5 percent a month, then I
4 would need to pay the total amount due. Well, the
5 total amount due is a defined term. The total amount
6 due is above that by about two inches, and in this
7 bill, it says, total amount due by March 2, 2006,
8 \$35,890.38 and that includes both the past due amount
9 and the adjustments and the current charges.

10 So, I'm being told that my payment is to be
11 applied against the consolidated total amount due.
12 Not only am I not told that this total amount due is
13 divided between some of which is interest bearing and
14 some of which is not interest bearing and that my
15 total amount due is going to be applied against the
16 most recent noninterest bearing part of the bill; so,
17 PGW can keep the interest bearing parts of the bill
18 to earn more money, but this bill is telling me that
19 it's a consolidated number.

20 I conclude that a reasonable, not even just a
21 reasonable customer, but even a sophisticated
22 customer, I do this for a living and I looked at this
23 and I could not tell from this bill that reordering
24 of payments is occurring.

25 Q. What if you had multiple SAs, and how does

1 that affect your analysis here; I mean, in terms of
2 how payments are applied? Is there any indication on
3 there on a bill that's obvious and/or in plain
4 language articulated how your payments will be
5 applied if you have multiple SAs?

6 A. No, but there is no way to look at this and
7 determine the payment ordering process. The payment
8 ordering process, again, as I talk about it is the
9 sequencing of payments. The reordering of payments
10 is paying the July late payment charge to retire the
11 July late payment charge before paying the March
12 principal because the March principal is going to
13 generate interest revenue. So, I didn't look at the
14 allocation between SAs. I looked at the allocation
15 in time between interest bearing, the interest
16 bearing component of the bill and the noninterest
17 bearing component of the bill.

18 Q. You heard some testimony today where PGW, they
19 transfer if one SA on an account is retired, say,
20 down to a zero balance, then they will take a part of
21 the payment that's posted to another SA and apply
22 it. Does that impact the analysis, and how would the
23 consumer know how their bill is -- how their account
24 is being affected?

25 A. Well, the consumer would not know that, but

1 having that happen wouldn't affect the reordering
2 process, the reordering of payments. It doesn't
3 depend upon transferring of payments between one SA
4 and another. Reordering of payments is the
5 resequencing of payments so that the older interest
6 bearing balance can be maintained and PGW can make
7 more money, and in effect, it will charge more than
8 the 18 percent simple interest, and when I say in
9 effect, I'm referring back to that section 1303 that
10 says, and it's something that we in the law know
11 well, that you can't do indirectly what you are
12 banned from doing directly and that principal has
13 been incorporated into Pennsylvania utility statute,
14 that you may not indirectly or by any device
15 whatsoever charge more than 18 percent simple
16 interest and PGW does in my opinion.

17 Q. So, if you are a customer and you are asking
18 for the public utility to explain the bill and they
19 provide you with a statement of accounts and tell you
20 the charges are correct, what is the recourse --

21 MR. FARINAS: Objection.

22 JUDGE VERO: Rephrase it.

23 BY MS. ROSS:

24 Q. How would the customer know that their bill --
25 how would they be able to determine if their bill is

1 accurate if that's all they're being provided?

2 A. If a customer inquired as to the payment
3 ordering process, they wouldn't even have to be so
4 sophisticated that they were asking about the payment
5 ordering process. If they were simply inquiring
6 about how my payment is applied, if they were
7 provided the bill and told rather this is how your
8 payment was applied, that would not inform them about
9 the payment ordering process. That would not inform
10 them about the reordering of resequencing of their
11 payment and it would be impossible for them to derive
12 or to determine the fact of that resequencing from
13 being provided the bill.

14 Q. So, to the extent that the reordering and the
15 application of payment is not concealed from the
16 consumer, is it only the company that knows how these
17 payments are being applied?

18 A. As between the consumer and the company, it
19 would only be the company that would know the payment
20 ordering process, the sequence in which payments are
21 applied to the bill.

22 Q. And if a consumer is asking repeatedly for
23 that information and is not getting that answer for
24 years, how would that affect the consumer's account?

25 A. It could affect the consumer's account in a

1 couple of ways. Number one, under Pennsylvania
2 regulations, this is a common, though not universal
3 regulatory principal, a utility is obligated to
4 provide the most advantageous rate to the customer.
5 In Pennsylvania, common regulatory principal has
6 actually been incorporated into the PUC regulations.
7 So, Pennsylvania utilities are required to provide
8 the most advantageous rate.

9 If the customer looks at his or her bill or
10 its bill and can't determine what the charges are or
11 how the charges are calculated, it would be
12 impossible to determine whether the charges are being
13 calculated correctly let alone whether the charges
14 represent the most advantageous rate that could be
15 charged to the customer. As a result, the customer's
16 bill will be higher than it would otherwise be than
17 if they could look at the bill and determine what the
18 calculations are, how the bill is determined and
19 whether there is a more advantageous rate.

20 Q. If the company doesn't inform them and tell
21 them this, can you surmise whether or not there's an
22 intention on the company to not dispose this
23 information?

24 MR. FARINAS: Objection, Your Honor.

25 JUDGE VERO: There's an objection.

1 Grounds?

2 MR. FARINAS: The grounds for the
3 objection is, she just asked him to surmise whether
4 the utility intends to do something, to mean
5 something.

6 JUDGE VERO: Ms. Ross, any response to
7 that objection?

8 MS. ROSS: I'm asking his opinion, and
9 based on the facts that have been presented, the
10 earlier question posed was if the customer inquired
11 routinely on a regular basis and was not provided
12 that information --

13 MR. FARINAS: That's not the question I
14 objected to.

15 MS. ROSS: But it was a follow-up to
16 that. What would you surmise from that if they were
17 not getting the answers from the public utility
18 company that was doing this practice. It's his
19 opinion.

20 JUDGE VERO: I will sustain the
21 objection. Next question.

22 BY MS. ROSS:

23 Q. If I asked you to tell me how my payments are
24 applied and you don't tell me and you never disclose
25 that information, what does that mean? Are you

1 concealing it?

2 A. Not necessarily.

3 MR. FARINAS: Objection.

4 JUDGE VERO: Are we going to work with
5 hypotheticals?

6 THE WITNESS: Conceal is not a word that
7 I would use.

8 JUDGE VERO: Doesn't that fall a little
9 bit under the realm of legal fact or legal issue
10 whether or not it's negligent, that determination and
11 you haven't presented Mr. Colton as an expert
12 attorney; although, you could have with his
13 background, but you haven't presented him as that.
14 You presented him as an accountant, an expert
15 accountant, an expert in public utility regulations
16 and that particular determination, I don't think it
17 would be within his field of expertise.

18 MS. ROSS: He's well acquainted with the
19 rules and regulations, especially as it pertains to
20 1301. I'll move on.

21 JUDGE VERO: Yes, but that determination
22 between a willful, negligent conduct, this is where
23 you're going, and there's nothing in the regulation
24 that specifically defined; so, I will have to go back
25 and rely on other legal principals for that

1 determination and you haven't presented Mr. Colton as
2 a legal expert. Our regs, our statute does not have
3 anything that defines what is considered a willful as
4 opposed to intentional conduct or violation. That is
5 something that is left up to the judge to collect all
6 of the evidence so on and so forth.

7 MS. ROSS: Okay.

8 BY MS. ROSS:

9 Q. Do you believe -- well, the practice of
10 resequencing, is this a just and reasonable choice in
11 terms of --

12 MR. FARINAS: Your Honor, I object.
13 She's asking for a just and reasonable choice as a
14 legal conclusion, which is the Commission's job.

15 BY MS. ROSS:

16 Q. In your experience as in working with --

17 JUDGE VERO: Your objection is
18 overruled. I want to hear this.

19 BY MS. ROSS:

20 Q. In your experience, and you've worked in this
21 industry and done collections. Is this a just and
22 reasonable practice?

23 A. No. The practice of resequencing payments or
24 reordering payments would not be a just and
25 reasonable utility practice, and I would reach that

1 conclusion on a variety of basis. One, I've already
2 talked about. One, it's not cost based. Number two
3 is that Pennsylvania utilities are required to manage
4 their accounts so as to minimize customer arrears,
5 the reordering required by the PUC regulations. The
6 reordering process manages the account so as to
7 maximize revenues to the utility rather than to
8 minimizing arrears. Number three is that it's
9 contrary. The reordering process is contrary to a
10 number of other practices in Pennsylvania that would
11 be exercised by Pennsylvania utility, including PGW,
12 and they are incorporated into PUC regulations. So,
13 for example, when a customer makes a payment by mail,
14 the payment is deemed to have been made as of the
15 date of the postmark as opposed to as of the date of
16 the receipt.

17 When a customer makes a payment at a
18 third-party pay station or a third-party agent, the
19 payment is deemed to be received on the date and at
20 the time the payment is actually made to the payment
21 agent and not on the day or time that the payment is
22 processed and passed on to PGW. A utility in
23 Pennsylvania may not set a time on a day after which
24 payments made on that day will be moved to the next
25 day; so, if a customer makes a payment at 3 o'clock,

1 the utility, Pennsylvania utility, including PGW may
2 not say, well, any payment made after noon or any
3 payment made after 2 o'clock is deemed to be made on
4 the next day. Each of those is consistent with the
5 practice in Pennsylvania of minimizing arrears and
6 minimizing customer bills.

7 To take a payment and to reorder that payment
8 so that it is posted months out of time is completely
9 inconsistent and that in my opinion is unjust and
10 unreasonable in light of the stated practice where
11 the concern is about the hours of payments and a day
12 of payments; so, in light of that philosophy by
13 utility regulators here in Pennsylvania, to allow a
14 utility to pay a July late payment charge before it
15 pays the March principal balance is completely
16 inconsistent; so, it's not just or reasonable.

17 Q. So, if the public utility received -- say the
18 customer had large arrearages, massively large
19 arrearages and they had large payments, lump sum
20 payments and those payments were held for a length of
21 time, how would that affect or how would that affect
22 the customer account if it was not posted on the date
23 or near the date it was received and say posted
24 months later?

25 A. If the utility were allowed to do that, that

1 of course would drive the bill up because it would
2 impose late payment charges that would not have been
3 imposed if the payment had been posted or applied to
4 the account immediately. That, of course, is not
5 permissible in Pennsylvania. That is why -- that's
6 not permissible in Pennsylvania, and in Pennsylvania,
7 payment is deemed to be received and applied against
8 the customer's accounts on the day that it is
9 received by the utility in Pennsylvania, not when
10 it's processed, not when the check clears, but on the
11 day that it's received.

12 Q. Are they supposed to also use the postmarked
13 date of receipt?

14 A. Yes, other than if it's paid by mail. If a
15 payment is made by mail, it is deemed to be paid on
16 the day of the postmark.

17 Q. So, let me just ask you, in terms of
18 Ms. Treadwell's utilizing the statute in terms of the
19 hierarchy of payments, do you have an opinion on how,
20 and I think we've covered that where 62.74, and I
21 think that's where we are; is her theory consistent
22 with what you were saying in terms of reordering that
23 in the hierarchy of payments pursuant to that
24 statute, late payments are number 7; how does that
25 impact application of payments?

1 A. There are a couple different places where the
2 presentation of a bill is discussed in the PUC's
3 regulations. 62.74 is only one of those places.

4 The regulatory practice in Pennsylvania,
5 however, is that the bill is to be presented in a
6 fashion that fully informs the customer and allows
7 the customer to understand the bill and to make
8 choices, and the presentation of the bill is to be in
9 furtherance of that purpose or that objective. As
10 the payments are reordered, the question wouldn't be
11 whether it should be posted number 7 or number 6 or
12 number 5. The question is whether the payment
13 posting is sufficiently in line with the way the bill
14 is presented that a customer will be able to look at
15 the bill and determine what's going on.

16 So, when you look at the regulation, it talks
17 about the need for the customer to know and to
18 understand together with 6274, which talks about the
19 elements of the bill together with 5615, perhaps it
20 is. I'd have to look to be honest that talks about
21 the composition of the bill. The conclusion I draw
22 is as an empirical matter, not a legal matters, but
23 as an empirical matter is that the customer, if the
24 bill fails the objective of fully informing the
25 customer and allowing the customer to make choices.

1 Q. How do you square all of your testimony with
2 the obligation of the public utility to deal honestly
3 and fairly and in good faith when they have these
4 practices?

5 A. I have not formed the opinion that PGW has
6 been dishonest in its dealings. I have formed the
7 opinion that PGW's practice of reordering payments of
8 resequencing payment is not in compliance with good
9 faith and fair dealing, and the reason I reach that
10 conclusion is because, again, the empirical inquiry
11 underlying good faith and good dealing is what
12 constitutes reasonable commercial practices, and the
13 fact is, that reordering customer payments in order
14 to maximize revenue or in order to maximize bills to
15 the consumer has been determined not to be a
16 reasonable commercial practice. It's happened in the
17 banking industry.

18 In the banking industry, the question was
19 banks were posting their checks with the highest
20 check first, and so people would bounce their checks
21 more quickly and more frequently and that was
22 determined by the FDC, by the banking regulators, the
23 OCC that control the currency, the FDIC, the national
24 credit union regulators to be an unreasonable
25 commercial practice.

1 In the credit cards industry, a customer can
2 have one balance that is 22 percent interest and
3 another balance that's 14 percent interest, and the
4 credit card companies were receiving customer
5 payments and applying those customer payments to the
6 14 percent interest balance so as to maintain the 22
7 percent interest balance, and that was determined to
8 be an unreasonable commercial practice. That's
9 unlawful at this point.

10 In the mortgage industry, when somebody made
11 their principal payment that didn't make their
12 interest payment or didn't make their late payment,
13 in the bank or the finance industry -- I don't know
14 the cover term to use -- but the financiers were
15 applying the payments against the interest and the
16 late payment charges and leaving the interest bearing
17 principal. That was determined to be an unreasonable
18 commercial practice.

19 The resequencing of payments by a public
20 utility to retire the noninterest bearing late
21 payment charges to leave the interest bearing
22 principal is exactly the same type of commercial
23 practice, and it has been determined to not be a
24 reasonable commercial practice. If it's not a
25 reasonable commercial practice, then that is the

1 definition of not acting in good faith and fair
2 dealing, leaving honesty out of it. The issue is not
3 one of honesty.

4 JUDGE VERO: I believe the standard from
5 the Public Utility Commission is to provide
6 reasonable, adequate and safe service.

7 BY MS. ROSS:

8 Q. Would you consider this to be adequate and
9 reasonable service?

10 A. No. Under the PUC regulations, Pennsylvania
11 utilities specifically are charged with anything they
12 do has to meet the good faith and fair dealing. So,
13 one aspect of just and reasonable rates and services
14 is acting in good faith and fair dealing. That
15 obligation is specifically imposed on Pennsylvania
16 utilities by regulation.

17 Q. Gas services are services that are also
18 subject to the Universal -- the UCC?

19 A. The uniform commercial code.

20 Q. Thank you. Uniform commercial code. I
21 apologize. Is that true?

22 A. You say gas service, which is a --

23 Q. It's a good, correct?

24 A. That's not a term I would use. The delivery
25 of natural gas is a good under the UCC, yes, in my

1 opinion, and that is generally accepted, but in my
2 opinion, natural gas delivered to the end user is a
3 good for purposes of the UCC.

4 Q. So, to the extent, and I think that it is
5 something that the delivery of gas service is
6 something that's subject to the universal commercial
7 code, can you opine whether or not the Federal Trade
8 Commission has made any kind of -- do you have any
9 information regarding the Federal Trade Commission's
10 position on good faith and fair dealing?

11 A. The question, the empirical question when you
12 look at good faith and fair dealing from the
13 perspective of the Federal Trade Commission is three-
14 fold. There are three prongs to the unfair.

15 MR. FARINAS: Your Honor, I didn't
16 object thus far because I wasn't sure where it was
17 going. I object because, one, the substance of this
18 talking about what's fair dealing and the universal
19 commercial code and the Pennsylvania Commercial code
20 section, this is not a statute that the Commission
21 has jurisdiction over to decide. To go into any
22 further detail of what's considered fair or unfair
23 under it is of no use to us here. It's irrelevant.

24 MS. ROSS: I can move on to something
25 else.

1 JUDGE VERO: Yes. I can make due with
2 what standards the Commission can apply and follow.

3 BY MS. ROSS:

4 Q. Did you have an opportunity to review any of
5 the correspondence and communications between PGW and
6 the complainant? Did you have an opportunity to
7 review any of that?

8 A. I have looked at the discovery responses that
9 have been provided, and then just this past week, I
10 received -- I brought it with me, what, set 2 request
11 for production of documents, number 27, which my
12 impression is that this is the most recent, most
13 comprehensive collection of correspondence between
14 the complainant and the company and I have gone
15 through that in some detail.

16 Q. Were you able to determine whether or not the
17 complainants disputed their bill?

18 MR. FARINAS: Your Honor, I object.
19 That's already been discussed and this is a question
20 of fact for the fact finder.

21 MS. ROSS: I think he's an expert in
22 regulatory issues and he can talk about what
23 constitutes the dispute and he is an expert in those
24 issues.

25 JUDGE VERO: What was the question

1 again?

2 MR. FARINAS: She asked could you tell
3 from reading that whether the customer had disputed
4 the bill.

5 JUDGE VERO: From reading what?

6 MR. FARINAS: The correspondence.

7 JUDGE VERO: Correspondence?

8 MR. FARINAS: The correspondence speaks
9 for itself. The response to set 2, number 27, of the
10 complainant's discovery.

11 JUDGE VERO: Do I have a copy of it?

12 MR. FARINAS: It's her question.

13 JUDGE VERO: You're referring to
14 correspondence. Do I have a copy of the
15 correspondence?

16 MS. ROSS: There's correspondence that
17 was referred to, obviously, in the previous
18 transcripts and it's information that's been referred
19 to in prior hearings.

20 JUDGE VERO: Can you refer to what
21 binder, what page so that I can follow.

22 MS. ROSS: You did have an electronic
23 copy of that, but to the extent that --

24 JUDGE VERO: Just hold on a second.
25 There is an outstanding objection. Apparently, I

1 have access and you are not willing to direct me to
2 the binder; so, I will pull up the CD Rom that you
3 sent me and have electronic access. Is that what
4 you're suggesting I do?

5 MS. ROSS: We're getting it for you.

6 JUDGE VERO: All right.

7 BY MS. ROSS:

8 Q. Sir, do you have a date you were referring to
9 in particular?

10 A. A date?

11 Q. On the correspondence?

12 A. No, there's not a specific date that I was
13 referring to.

14 JUDGE VERO: What was your objection
15 again, Mr. Farinas?

16 MR. FARINAS: My objection was she was
17 asking him or he was volunteering testimony that
18 would include whether or not there was a dispute
19 based on the correspondence whichever date he was
20 referring to. If he wants to stipulate to the fact
21 that it's SBG's position that all of the
22 correspondence points to the dispute; that's why
23 we're here, I don't have a problem with that. I just
24 don't want him to make a legal conclusion in place of
25 Your Honor that there was, in fact, a dispute which

1 addresses solely the issues we're here for.

2 JUDGE VERO: Ms. Ross.

3 MS. ROSS: Let me rephrase.

4 JUDGE VERO: We are talking Colonial and
5 Simon?

6 MS. ROSS: This is general.

7 BY MS. ROSS:

8 Q. To the extent that -- let's go back. Without
9 regard to what you just said, sir, what can you tell
10 me about a dispute. When a customer is disputing a
11 matter, what is constitutes a dispute?

12 JUDGE VERO: As per Commission
13 regulations and statutes; is that your question?

14 MS. ROSS: Yes.

15 BY MS. ROSS:

16 Q. As per the regulations, how does the
17 regulations define a dispute?

18 A. How does the PUC; how does Chapter 56 define a
19 dispute?

20 Q. Yes.

21 A. I couldn't tell you that.

22 JUDGE VERO: How about title 56, the
23 Commission statute; do you know if there's a
24 definition?

25 THE WITNESS: I can tell you generally.

1 This flows from Chapter 56, as well as from the PGW
2 tariff, Section 4.2 and this is from my experience
3 with disputes in Pennsylvania over the last 25 or 30
4 years. There is a grievance and grievance is broadly
5 construed; so, there is a grievance. A customer
6 contacts a utility and identifies the grievance.
7 After the utility and the customer have a
8 conversation, and there's a required conversation,
9 but after the utility and the customer have a
10 conversation, one of two things has to occur.

11 One is if the customer expresses
12 satisfaction with the status of the utility's
13 addressing or resolution of the grievance or two is
14 that the customer does not express satisfaction; so,
15 there's a toggle, satisfaction or not. The way my
16 experience has played in Pennsylvania is that the
17 Bureau of Consumer Services has required a utility to
18 affirmatively ask if the customer is satisfied,
19 because what the utility does depends upon whether
20 the customer expresses satisfaction or not, and
21 there's no middle ground. It's a toggle. It's an
22 either or. So, the BCS has imposed an obligation to
23 inquire, are you satisfied with the resolution.

24 If there's anything other than the
25 customer expressing satisfaction with the resolution,

1 it is deemed a dispute that should proceed. So, the
2 dispute -- I don't think it's in directly the
3 regulation, but the practice.

4 JUDGE VERO: It's in the regulations.

5 THE WITNESS: Is it?

6 JUDGE VERO: Yes.

7 THE WITNESS: The practice, I know
8 there's an obligation on the company to ask, are you
9 satisfied, and if the customer says anything other
10 than, yes, I'm satisfied, then it's to be deemed a
11 dispute.

12 BY MS. ROSS:

13 Q. Okay. With respect to that, when it is deemed
14 a dispute, what is the obligation of the public
15 utility to inform the customer of their rights
16 regarding the dispute; are you aware of that? I
17 mean, how does the company have to handle that to
18 your knowledge?

19 A. If there is a dispute, if the customer says
20 anything other -- if the customer says nothing or if
21 the customer says anything other than, yes, I am
22 satisfied, then the utility is to provide a written
23 report to the customer laying out the utility's
24 proposed resolution and the basis for that proposed
25 resolution.

1 Q. And that report is to be in writing, correct?

2 A. Yes. I meant to say a written report if I
3 didn't.

4 Q. I think you did say a written report.

5 A. Yes. If there's a dispute, there has to be a
6 written report to the customer.

7 Q. If the customer does not accept, does the
8 company then have to provide the customer with that
9 report; are you aware?

10 A. Yes. That written report is to go -- if the
11 customer says anything other than I am satisfied, the
12 written report is to go from the utility to the
13 customer.

14 Q. And what if and I'm going to -- I'm showing a
15 him a copy of the regulation codified under Section
16 56.152 and it is regarding a content of a public
17 utility report. Could you please tell us what the
18 significance is of a public utility report and in
19 particular paragraph 4?

20 A. Again, the public utility report is to inform
21 the customer of the utility's proposed resolution and
22 the basis for the utility's proposed resolution, and
23 let me not use the word dispute, to the grievance
24 that the customer has expressed, and the public
25 utility's report is also to inform the customer that

1 now is the time to seek further redress through the
2 filing of an informal complaint. So. If I might
3 draw an analogy, it's sort of a kin to a shut-off
4 notice. The public utility report is the indicator
5 that the grievance process has come to an end and now
6 is the time to proceed to the commission if the
7 customer is anything but satisfied.

8 Q. What about paragraph in 4 of that regulation,
9 is there any doubt in your mind that the company has
10 an obligation to the customer regarding filing a
11 public utility report?

12 A. My answer to that question wouldn't be based
13 simply upon paragraph 4. I couldn't have told you
14 that it was paragraph 4, but based upon my experience
15 with grievances in Pennsylvania utilities, there is
16 no doubt in my mind that a utility is obligated to
17 provide a written report, and the written report is
18 to inform the customer that now is the time to
19 proceed with an informal complaint should you choose
20 to do that.

21 JUDGE VERO: Just a moment. Do you have
22 a document in front of you, the public utility
23 report?

24 MS. ROSS: This is just to refer to.
25 It's Chapter 56.152, which is the regulation, which I

1 assume you're very familiar with.

2 BY MS. ROSS:

3 Q. As in paragraph 4, isn't the onus also on the
4 public utility to file that report with the
5 Commission as a means to preserve the customer's
6 right to grieve.

7 A. Yes.

8 Q. Is there anything to your knowledge of
9 anything considered to be an ongoing inquiry; have
10 you ever heard of that term, ongoing inquiry?

11 A. Not as a term of art.

12 Q. How long should an inquiry last when a
13 customer has an issue with their account?

14 JUDGE VERO: As per Commission's statute
15 of regulations or orders of PGW's own tariff will be
16 the end of your question.

17 MS. ROSS: Yes.

18 BY MS. ROSS:

19 Q. I mean, to the extent -- pursuant to the
20 inquiry stage, is there a time limit pursuant to the
21 regulations, 5 days, 30 days, 10 days, 12 years?

22 A. I think I would need to review the
23 regulation. As I remember the regulation, it's 30
24 days, but I think the practical experience that I can
25 bring to you that it would be a reasonable time, that

1 there are factors that go into defining
2 reasonableness and the regulation, I believe, says 30
3 days, but I think the practice is squashier, if
4 that's a term of art.

5 Q. Is 14 years a reasonable time to have an
6 ongoing inquiry?

7 A. In general or within the context of this
8 case?

9 Q. Within the context of the pub public utility
10 code --

11 JUDGE VERO: Shouldn't that be a
12 decision for me whether or not something is
13 reasonable.

14 BY MS. ROSS:

15 Q. In your experience dealing with public
16 utilities?

17 A. In my experience, the correspondence between
18 PGW and the complainant, has long since transgressed
19 or not transgressed, gone across the line from being
20 a grievance to the customer saying I am not happy; I
21 am not satisfied with the resolution of this
22 grievance. That express of dissatisfaction occurred
23 long ago.

24 JUDGE VERO: And you're still testifying
25 generally, not specifically to any transaction

1 concerning Colonial or Simon. You're just testifying
2 generally what you think of the communications
3 between PGW and SBG on all nine complaints, rather
4 eight complaints now; am I correct?

5 THE WITNESS: Yes. The correspondence I
6 looked at did not disaggregate the bills and the
7 inquiries as a general rule by property or by SA or
8 by account.

9 MR. FARINAS: And, therefore, Your
10 Honor, I object because this places us outside again
11 of your instruction. I wasn't quite sure where we
12 were going.

13 JUDGE VERO: I'm going to let it in, but
14 I'm uncomfortable with this line of questioning.

15 MS. ROSS: I'm done with it.

16 JUDGE VERO: It's proceeding in this
17 gray area where I constantly have to determine
18 whether or not he's testifying within his realm
19 expertise. You're asking him to make a determination
20 that is for me to make, whether it's specific,
21 whether it's general. He's just giving general
22 testimony from what I've seen. It's not going to
23 anything specific, nothing that's specific to these
24 two complaints, but specific in terms of what
25 communications.

1 MS. ROSS: I'll done with that line.

2 JUDGE VERO: All right.

3 BY MS. ROSS:

4 Q. Moving on. Did you have an opportunity to
5 review Ms. Treadwell's calculations regarding the
6 liens and the lien interest and the interest imposed
7 on the accounts at one and a half percent, that Excel
8 spreadsheet regarding these properties?

9 A. I did.

10 Q. Did you understand her schedule in terms of
11 calculating and the difference and the basis when it
12 comes to how much a lien would affect the account if
13 it was charged at the one and half percent versus the
14 half percent under the statute?

15 A. I understood her methodology.

16 Q. Do you have an opinion; do you agree with that
17 methodology?

18 A. I do. Again, I can't testify as to the
19 specific numbers, but the methodology, I believe, is
20 appropriate.

21 Q. Okay, and is there anything in the statute or
22 any case law you are aware of as an attorney, along
23 with as a regulatory expert and familiarity with the
24 regulation that would lead you to support that the
25 lien interest imposed --

1 MR. FARINAS: Your Honor, I object. As
2 an attorney; are we having legal argument now.

3 JUDGE VERO: You did not bring him as an
4 attorney.

5 MS. ROSS: I don't think we can deny
6 that he is an attorney and he that has the ability to
7 read case law and interpret case law.

8 MR. FARINAS: But you're asking him to
9 testify --

10 MS. ROSS: It goes to what's in the
11 regulations and the case is specifically cited there.

12 JUDGE VERO: It goes to the
13 regulations. Let's keep it within the regulations.
14 He's an expert of public utility regulations; I
15 understood his expertise. Mr. Colton said he
16 graduated from law school as an attorney, but this is
17 not how you presented him when you submitted, I
18 understand, the summary of what he was going to
19 testify on in his area of expertise, et cetera.

20 You will brief; so, it's not like I'm
21 preventing you from stating your argument, making
22 your point. You are going to brief the issue of
23 interest rates on these. Any other case law, just
24 leave it out. We're talking Commission case law and
25 Commission order or opinion comes in. Statute,

1 regulations, they all come in, then you as the
2 attorney will have the opportunity to present all you
3 need to present or want to present in that legal
4 brief you're going to submit.

5 MS. ROSS: With all due respect, Your
6 Honor, and I do think that I have an obligation to
7 develop the record and Mr. Colton does have the
8 ability to speak to the regulation. The regulation
9 is plain language.

10 JUDGE VERO: I'm saying he will testify.

11 MS. ROSS: I want him to be able to just
12 answer that question.

13 JUDGE VERO: I said he can do that in
14 terms of Commission regulations, Commission statute,
15 Commission orders, PGW tariff, he can do that.
16 Anything outside, that is for you to brief.

17 Just a brief reminder, I have now 20
18 minutes after 4:00 and we still have cross-
19 examination, my questions, if any, and we still have
20 an additional witness before we go to 5 o'clock.

21 BY MS. ROSS:

22 Q. I'm showing you what is Chapter 56.22. When
23 it speaks to Chapter 56.22 in reference to interest
24 being assessed at a rate of 15 percent under
25 Pennsylvania statute --

1 MR. FARINAS: Your Honor, I object.
2 She's asking him two-fold to interpret the
3 Pennsylvania --

4 MS. ROSS: No. I'm actually referencing
5 it so he can answer the question.

6 JUDGE VERO: What is the question?

7 BY MS. ROSS:

8 Q. 42 PA CS Section 8101 relating to interest on
9 judgments, do you an opinion on that?

10 JUDGE VERO: Hold on. Can you repeat
11 your question?

12 MS. ROSS: I'll rephrase.

13 BY MS. ROSS:

14 Q. Given the regulation and given Ms. Treadwell's
15 calculations, is it reasonable to conclude that the
16 interest rate imposed on judgments such as a lien
17 should be at the half percent rather than the 18
18 percent simple interest that has been charged?

19 MR. FARINAS: Objection.

20 JUDGE VERO: On what grounds?

21 MR. FARINAS: On the grounds that she
22 is, without quoting the section of the Common Pleas
23 code that's not the public utility code, but
24 according to him, the asserted interest rate that's
25 applicable, she's asking him to formulate a legal

1 opinion on which is appropriate, which is why we're
2 doing the brief.

3 JUDGE VERO: The objection is sustained
4 and I will explain myself. The commission has rather
5 recently clarified that while it cannot look at the
6 lien per se or have any power in terms of enforcing
7 it or changing the amount of the lien, et cetera,
8 they said that we can look at the bill, that we still
9 have jurisdiction over the bill, the billing, et
10 cetera.

11 This is, I believe, the first case or
12 rather this is the first set of cases that has taken
13 that particular ruling from the Commission to what I
14 deem to be the next logical step; that is, okay, if
15 we can look at the bill and the bill eventually
16 resulted in a lien, I can see whether or not the
17 amount that eventually resulted in the lien was
18 correct, okay.

19 I think that the Commission went only so
20 far as to state we still maintain jurisdiction. We
21 still have jurisdiction over the bill, okay. That
22 where's they end it.

23 MS. ROSS: And that's what we're
24 speaking to.

25 JUDGE VERO: Okay. Hold on. In this

1 case, we're taking it to the logical writing to be
2 the logical next step, which is, yes, it turned into
3 a lien and we cannot do anything about the lien that
4 was placed, but we can look at the amount that became
5 the lien, make sure that it was correct, okay.
6 That's what we are here for, and I'm saying this
7 because as you have said yourself -- well, I believe
8 it was off the record, but these are cases of first
9 impression. There isn't a lot of case law out there,
10 case law in terms of Commission case law that would
11 put the two together in terms of regulations or
12 anything like that. This is a first-impression kind
13 of case and there isn't any case law, Commission case
14 law that would put the lien as opposed to the
15 regulation at Chapter 56.22, you know, put them two
16 together, the interest rate on the lien, the interest
17 rate on the late payment charges. There is nothing,
18 case law from the Commission that puts those two
19 together.

20 Since he's going to testify on
21 Commission regulations, statutes, orders, PGW tariff,
22 then I don't think your question keeps within his
23 area of expertise. That's why I sustained the
24 objection. If you want to rephrase it, feel free.

25 MS. ROSS: Let me regroup on that one.

1 BY MS. ROSS:

2 Q. In your expertise and you've written papers
3 and books and things of that nature, and when you
4 have written about public utility law, are you
5 limited to only Commission opinions? Do you cite
6 other case, statutes to support your theory?

7 A. I do.

8 Q. So, if there is something out there that is
9 actually case law that speaks to -- and let me just
10 ask you, are there statutes that trump Commission
11 regulations?

12 MR. FARINAS: Objection, Your Honor. As
13 to this matter, there's no other statute that trumps
14 the decision that's being made because it is being
15 made based upon the Commission's regulation and
16 public utility code. I still think as earlier today,
17 counsel is trying to circumvent and do something they
18 cannot do by simply not mentioning the fact that
19 there's another statute she's trying to introduce,
20 and that is the interest statute.

21 JUDGE VERO: All right. Ms. Ross, is
22 this really necessary to pursue this line of
23 questioning, because as I said, you will have a legal
24 brief to prepare where you as the attorney within
25 your area of expertise as an attorney will make a

1 legal statement that will tell me whether or not the
2 Commission regulations and statutes are trumped by
3 another or are at least in conflict of another
4 statute somewhere else.

5 I understand that from Ms. Boone's
6 argument at the initial hearings. I understand this
7 will be part of the brief, and unless you have
8 changed your legal theory and you do not want to
9 brief this anymore, let me know and then I will see
10 if we can make allowances..

11 MS. ROSS: I'm sure Ms. Boone will be so
12 thrilled that you are still thinking about her and
13 I'll be sure to pass that along to her.

14 JUDGE VERO: I thought about her very
15 early this morning in preparation for this case.

16 MS. ROSS: You miss her.

17 JUDGE VERO: I do not miss her per se.

18 MS. ROSS: Yes, you do.

19 JUDGE VERO: I have close to 1100 pages
20 of transcripts, not including today, but maybe 1200
21 pages of transcripts from hearings where she was the
22 attorney for SBG; so, she is quite prominent in my
23 memory.

24 MS. ROSS: I'll make sure I tell her
25 that.

1 JUDGE VERO: Please do. Once these
2 cases are over, we can have coffee.

3 MS. ROSS: I'm sure.

4 JUDGE VERO: All right.

5 BY MS. ROSS:

6 Q. Do you have anything else that you could --
7 let me just say, you agree with the schedule as
8 presented; is that correct?

9 A. I do with the methodology presented in this
10 schedule. Again, when I look up there and see 224.35
11 halfway down, I don't know if that number is correct
12 or not, but the methodology presented, I agree with.

13 Q. Is there any other independent information you
14 have that would allow you to come to that conclusion
15 as well?

16 A. No.

17 Q. Let me just reiterate, based on your
18 experience and your expertise in this matter and the
19 testimony that you heard today, do you have certain
20 conclusions that you could recite or that you have
21 come to pertaining to the matters that you've
22 testified to today, and in making these
23 determinations, can you say they are to a reasonable
24 degree of certainty given your level of expertise in
25 the public utility industry, and what would those

1 conclusions be?

2 A. My conclusions would be, number one, that PGW
3 reorders customer payments or resequences customer
4 payments in order to apply those customer payments to
5 reduce more recent or newer noninterest bearing
6 balances while leaving older interest bearing
7 balances.

8 My conclusion is that that does not manage
9 bills so as to minimize arrears, but rather maximizes
10 arrears. My conclusion is that the payment ordering
11 process is a rate and that it is a practice that
12 affects compensation to be paid to PGW, and that rate
13 has not been presented to the Commission for review
14 and approval. My conclusion is that that rate is not
15 the practice. That rate is not cost-based. It is
16 not mandated by any costs viewed by or incurred by
17 PGW. My conclusion is that the reordering process of
18 payments has been found to be not a reasonable
19 commercial practice in analogous circumstances. All
20 of those conclusions certainly don't summarize the
21 totality of my testimony, but all of the conclusions
22 that I've reached today, including those that I've
23 just said, I would say to a reasonable degree of
24 certainty given my education, my training and my
25 experience within my expertise.

1 Q. Are these practices, are they disclosed to the
2 consumer?

3 A. No.

4 Q. Also, to the extent that you may know --

5 JUDGE VERO: Some of these questions,
6 the last two questions, they are a replication. You
7 requested a quick summary and I appreciate that, but
8 you are going over the time you estimated for
9 Mr. Colton's testimony.

10 MS. ROSS: One question.

11 JUDGE VERO: All right.

12 BY MS. ROSS:

13 Q. To the best of your knowledge, can you tell
14 how many customers may potentially be affected by
15 this practice with PGW that PGW does; do you have a
16 reasonable estimate?

17 MR. FARINAS: Your Honor, objection.
18 Today is about Simon Garden and Colonial.

19 JUDGE VERO: No. This goes to Voss(ph)
20 standards. I'm allowing it. Your objection is
21 overruled. Make it brief, though, because we're
22 running out of time.

23 BY MS. ROSS:

24 Q. How many people do you think this would
25 ultimately affect?

1 A. Within the residential, it affects anyone who
2 is in arrears and makes a payment within the
3 residential population, setting aside commercial
4 industrial. Within the residential, I would say it
5 would affect about 80,000 customers, 80,000 PGW
6 customers per month, and I base that conclusion
7 because I routinely, for the Office of Consumer
8 Advocate, look at the BCS, the Bureau of Consumer
9 Service's reports on collections performance, their
10 annual reports, and I believe that PGW has roughly
11 80,000, not quite, 80,000 residential customers in
12 arrears in any given month.

13 MS. ROSS: Thank you.

14 JUDGE VERO: Anything, Mr. Farinas?

15 MR. FARINAS: Yes.

16 JUDGE VERO: I have now 4:35. Your
17 watch on the wall says 4:31. I don't know which one
18 is correct, but I'll go by mine as 4:35 because
19 that's the one I used when we started.

20 You may proceed.

21 MR. FARINAS: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. FARINAS:

24 Q. Good afternoon, Mr. Colton. In hearing your
25 testimony about the conversions of the several PUC

1 regulations that you have put forward to make the
2 argument that the reordering contravenes Commission
3 policy; is that correct, what your testimony has been
4 so far?

5 A. That's one aspect of my testimony, sure, not
6 the totality.

7 Q. Of course. Have you asserted this argument
8 with respect to any other utility and their
9 practices, public utility?

10 A. No.

11 Q. So, this would be first time you're asking the
12 Commission now to explicitly forbid the reordering as
13 you've described it?

14 A. This will be the first case, and I'm not
15 asking the Commission to do it, but this is the first
16 case in which the reordering of payments so that
17 customer payments are applied out of time to bills
18 will be presented to the Commission to my knowledge.
19 I have not been involved with any case.

20 Q. Have you looked at any other utilities to see
21 if their practices are consistent with PGW's as
22 described or as you propose them to be?

23 A. No, but I will.

24 Q. You haven't looked at them. That includes you
25 have not looked at PECO; is that correct?

1 A. That's right, but I will.

2 Q. I noticed in your testimony you clarified for
3 Ms. Ross that you would not describe PGW's behavior
4 as dishonest as this would be, again, to your
5 knowledge the first time this argument about payments
6 has been asserted. Would you in your opinion, in
7 your experience at the PUC, would this be a matter
8 that a behavior now corrected should be fined rather
9 than comitted in the first place?

10 A. I don't have an opinion on that. Section 56.1
11 imposes an obligation on Pennsylvania utilities for
12 everything they do to do within good faith, honesty
13 and fair dealing, and my experience is that I've
14 never had to address the honesty question and I
15 simply haven't looked at it. I don't have an
16 opinion.

17 Q. Just to be clear, unlike Mr. Gabell today, you
18 understand that the argument about late payment
19 charges is not that PGW overtly charges late payment
20 charges on late payment charges.

21 MS. ROSS: Objection.

22 BY MR. FARINAS:

23 Q. Your reference to the unfair practice is
24 simply the reordering?

25 JUDGE VERO: What's the objection?

1 What's the grounds of the objection?

2 MS. ROSS: I think he is -- withdrawn.

3 JUDGE VERO: All right. Please answer
4 the question if you remember it.

5 THE WITNESS: The reordering process is
6 one aspect, but another aspect is the notion that
7 public utilities in Pennsylvania are statutorily
8 banned from doing indirectly what they are banned
9 from doing directly and that's explicit in the
10 statute. So, to the extent that those two issues
11 come together, perhaps they're one in the same.

12 BY MR. FARINAS:

13 Q. I want to switch gears to your testimony
14 regarding your knowledge of Chapter 56, the regs
15 regarding disputes. Can you tell me what an inquiry
16 is?

17 A. What an inquiry is?

18 Q. Yes. With respect to your knowledge under the
19 public utility code.

20 A. Can I recite the definition?

21 Q. No. What your definition of an inquiry is as
22 opposed to a dispute?

23 JUDGE VERO: You can recite; you have it
24 memorized, the section, by all means. There's a
25 definition of inquiry in our regulations, by all

1 means.

2 THE WITNESS: I have not memorized
3 Chapter 56.

4 JUDGE VERO: But you said recite.

5 THE WITNESS: My point was that I have
6 not memorized Chapter 56; so, I can't recite a
7 definition, but an inquiry is the presentation of a
8 grievance by a customer.

9 JUDGE VERO: An inquiry is the
10 presentation of a grievance?

11 THE WITNESS: Yes.

12 BY MR. FARINAS:

13 Q. So, how is that different from a dispute?

14 A. A dispute -- the presentation of a grievance
15 ripens into a dispute if at the end of the initial
16 conversation, which is required between the utility,
17 and the customer expresses anything but satisfaction
18 with the resolution.

19 Q. But first you said a grievance ripens into a
20 dispute. Did you mean to say inquiry ripens into a
21 dispute?

22 A. Well, I defined an inquiry as the presentation
23 of a grievance; so, those two terms come together.

24 Q. Would you agree with me that there are some
25 instances where Chapter 56 applies strictly to

1 residential customers and does not apply to
2 commercial customers?

3 A. I believe that to be the case, but I couldn't
4 tell you off the top of my head which ones apply one
5 way and which ones apply the other way.

6 JUDGE VERO: If I may interrupt a
7 moment. How would you characterize the complainant
8 in this matter, commercial customers or residential
9 customers?

10 THE WITNESS: No, small commercial.

11 JUDGE VERO: Not residential?

12 THE WITNESS: No.

13 JUDGE VERO: Okay. Move along,

14 Mr. Farinas.

15 BY MR. FARINAS:

16 Q. Just before we leave this area, I just wanted
17 to touch upon your discussion about where you were
18 asked reasonableness and the length of time that the
19 dialogue presented by the correspondence went. Given
20 a commercial, small commercial customer, a
21 businessman, at some point should a commercial
22 customer realize that I'm not getting anywhere and
23 file a complaint with the PUC?

24 MS. ROSS: Objection. Calls for a
25 conclusion and assumes facts not in evidence.

1 JUDGE VERO: I think we've had several
2 of those already.

3 MS. ROSS: I don't know.

4 JUDGE VERO: I know. I allowed it. Can
5 you repeat the question? What was the question?

6 BY MR. FARINAS:

7 Q. This refers to your discussion regarding
8 reasonableness --

9 JUDGE VERO: Yes. I believe the
10 question was whether or not commercial customers
11 would have concluded that once it was dissatisfied,
12 right?

13 BY MR. FARINAS:

14 Q. After the period of time sited in your
15 previous testimony, should they have known better to
16 file a complaint with the Commission?

17 JUDGE VERO: I will allow it. Your
18 objection is overruled, Ms. Ross.

19 THE WITNESS: Yes.

20 JUDGE VERO: Next question,
21 Mr. Farinas.

22 MR. FARINAS: I have no further
23 questions, Your Honor.

24 JUDGE VERO: Off the record.

25 (Whereupon, a discussion was held off

1 the record.)

2 JUDGE VERO: Back on the record.

3 Ms. Ross.

4 REDIRECT EXAMINATION

5 BY MS. ROSS:

6 Q. With respect to whether or not PGW has been
7 dishonest, to the extent you have not been involved
8 in this case other than for the limited basis of
9 evaluating the schedules and you have reviewed some
10 of the documentation, are you aware of all of the
11 facts and dealings that the complainants have had
12 with PGW for the last 14 years, the intimate
13 dealings; are you aware of all of that?

14 A. No.

15 Q. So, to the extent that you are not privy to
16 all of the one-on-one conversations, can you actually
17 form an opinion as it pertains to the complainants
18 that PGW has been fully forthright or not forthright
19 with them?

20 A. Forming that opinion is simply beyond the
21 charge that I was given. I haven't formed an opinion
22 as to whether PGW has, in your words, been
23 forthright. I don't have an opinion whether PGW has
24 been honest or dishonest. That question is simply
25 beyond the purview of what I was asked to examine.

1 Q. But you did testify that you thought they had
2 been honest?

3 A. No. I testified that I couldn't say that
4 there was a lack of honesty and in my roily(ph) mind,
5 there's difference. I simply don't have an opinion
6 because I wasn't asked to look and I wasn't asked to
7 form an opinion about honesty. I don't have an
8 opinion.

9 JUDGE VERO: Didn't we already say that
10 in terms of honesty, it's not the Commission's
11 standards. It's were the services adequate,
12 reasonable, safe.

13 BY MS. ROSS:

14 Q. As it pertains to the complainants being a
15 commercial customer, small commercial customer
16 residential, does that mean that the premise of
17 dealing in food faith and fair dealing is less of
18 duty owed today them by PGW?

19 A. No. And in deed with all due respect, the
20 obligation to deal in good faith, honesty and fair
21 dealing is, in fact, explicitly Section 56.1 of the
22 PUC regulations. The PUC regulations impose that
23 obligation and state that the utilities are to
24 fulfill that obligation of good faith, honesty and
25 fair dealing in everything they do in Pennsylvania;

1 so that is, in fact, a PUC imposed obligation.

2 Q. Regardless of your customer status?

3 A. Regardless of your customer status.

4 JUDGE VERO: All right. This redirect
5 by the way.

6 MS. ROSS: Yes, last question.

7 JUDGE VERO: I think you reached your
8 four question limit.

9 MS. ROSS: Last question.

10 JUDGE VERO: Last question, okay.

11 BY MS. ROSS:

12 Q. I think you had testified, even a
13 sophisticated customer, would they be able to discern
14 what their rates were and/or how their payments were
15 applied on this bill, on a PGW bill?

16 MR. FARINAS: Your Honor, I didn't ask
17 any questions about application.

18 MS. ROSS: You went to whether or not it
19 implied that the complainants are more of a
20 sophisticated customer and therefore --

21 JUDGE VERO: I will allow it. Objection
22 overruled.

23 THE WITNESS: No.

24 JUDGE VERO: That's the end of your
25 redirect.

1 MS. ROSS: Thank you.

2 MR. FARINAS: No recross.

3 JUDGE VERO: I have one question. It's
4 still 11 minutes to 5:00. I'll make it brief. I
5 understood your testimony to say although you haven't
6 rounded down the numbers, you agree with
7 Ms. Treadwell's methodology in terms of her
8 calculations presented in SBG CG/SG Exhibit 6.
9 Ms. Ross, can you provide a copy of that exhibit to
10 Mr. Colton if he doesn't have one already?

11 MR. FARINAS: Exhibit 6 is a bill.

12 JUDGE VERO: I'm sorry, Exhibit 3. It's
13 because the number of this exhibit has been scribbled
14 over and I looked at it and thought it was Exhibit 6,
15 but it's Exhibit 3.

16 THE WITNESS: Exhibit 3, yes.

17 JUDGE VERO: If you could please turn
18 to, I have it as page 13 and it's the one before the
19 last orange divider.

20 MS. ROSS: Can you referring to the SA
21 ending?

22 JUDGE VERO: It is SA 6994.

23 MR. FARINAS: 694 -- 9694?

24 JUDGE VERO: 9694, yes. It's page 203
25 at the bottom.

1 THE WITNESS: Yes.

2 JUDGE VERO: Please turn your attention
3 to the transactions that occurred or presented as
4 occurring around December of 2011, one month ahead,
5 one month after, but we're talking December of 2011.
6 You see there is a substantial payment made into this
7 account of \$140,742.55?

8 THE WITNESS: Yes.

9 JUDGE VERO: Looking on the right side
10 of the spreadsheet where SBG has presented its
11 calculations, is there a way we can see this
12 reordering of payment or sequence, can we see if
13 something was applied towards principal as opposed to
14 late payment charges, whether this payment was
15 applied to late payment charges as opposed to a
16 principal or what portions? I mean, can you see this
17 reordering of payment or sequencing of payment in
18 terms of this transaction, just this one
19 transaction?

20 THE WITNESS: Let me look at this.

21 JUDGE VERO: Yes. I understand it's not
22 easy just to pick on one specific transaction.

23 THE WITNESS: I am going to perhaps make
24 the same mistake you did and take this apart.

25 JUDGE VERO: I made the mistake with a

1 different exhibit. This one I'm keeping together,
2 but feel free to take it apart.

3 THE WITNESS: I'm not sure I can do that
4 without looking at the underlying spreadsheet.

5 JUDGE VERO: Can we do that --

6 MS. ROSS: The statement of accounts?

7 JUDGE VERO: Yes, statement of accounts.

8 You can also pull 5684, because Exhibit 3 has
9 Colonial calculations 5684 or 9694. I don't know why
10 that is, but I'm looking at December 2011.

11 MS. ROSS: This is on statement of
12 accounts for that SA.

13 THE WITNESS: The way to tell this, the
14 way to tell when there's a reordering is there's
15 partial payment. The reordering only makes a
16 difference if there's a partial payment, and you can
17 tell there's a reordering if there is after the
18 partial payment a zero dollar late payment charge
19 balance, but a positive balance in the principal
20 balance, and you can tell that here if you go over to
21 start on the far left, there is a previous balance of
22 145460.01. You add to that a current bill --
23 actually, strike. You don't need to add the current
24 bill. You start with the previous balance of
25 145460.01. You then apply a payment of 140742.25;

1 so, it's a partial payment. We know that. We can
2 see that. We go over to the next column and you see
3 that the total due is 5683.74, but then if you go
4 over a few more columns to the late payment charge,
5 then you can see that there's a zero dollar balance.

6 So, if there's a zero dollar late
7 payment balance, that mean all the late payment
8 charges have been paid before the principal balance
9 has been paid.

10 JUDGE VERO: I don't have a zero balance
11 in terms of late payment charges, do I? What column
12 would that be? I have a 7076 in terms of late
13 payment charges. I mean, 70.76 in terms of late
14 payment charges around that time, but I do not have a
15 zero. Where would I see the zero?

16 MS. ROSS: Looking at the statement of
17 accounts. Well, actually, it's the late payment
18 analysis attached to it.

19 JUDGE VERO: You need to direct me to
20 that.

21 MS. ROSS: It would be on the statement
22 of accounts attached to that in the back.

23 JUDGE VERO: I will peer over rather
24 than deal with that messed up exhibit.

25 THE WITNESS: May I stand up just so I

1 can talk to you?

2 JUDGE VERO: Yes, you may.

3 THE WITNESS: The unpaid late payment
4 charges accumulated -- no. It's just with the unpaid
5 payment charges. You come down and you end up with a
6 positive current balance.

7 JUDGE VERO: So, this would be unpaid
8 balance and the second one after it -- this is unpaid
9 balance.

10 THE WITNESS: But this is the
11 combination.

12 JUDGE VERO: And this is unpaid late
13 payment charges, the column right here?

14 THE WITNESS: Right, because see this
15 number?

16 JUDGE VERO: Yes, the actual balance.

17 THE WITNESS: Then that's pulled down
18 here.

19 JUDGE VERO: So, this is the outstanding
20 total balance?

21 THE WITNESS: Yes.

22 JUDGE VERO: I'm with you there.

23 THE WITNESS: But you come down here.

24 Here's the payment and you have a positive balance
25 here, but a zero balance in the unpaid late payment

1 charges. Now, that that's significant because if you
2 look at these, these are sufficiently small that that
3 can only be zero if all of these have been paid
4 first, which means --

5 JUDGE VERO: I understand. You've
6 answered my question. I have no further questions
7 for you. Recross; anything?

8 MR. FARINAS: No, Your Honor.

9 JUDGE VERO: So, we are done at 5
10 o'clock sharp. We are done completely with
11 Mr. Colton as far as these cases are concerned.
12 There is Eric Lampert?

13 MS. ROSS: Mr. Lampert is not going to
14 testify today.

15 JUDGE VERO: So, we're done. We are off
16 the record. I am thrilled. We can have it on the
17 record how thrilled I am. Off the record.

18 Let's go back on the record so we can
19 address the complainant's motion to move the exhibits
20 that the complainant's witnesses today, Ms. Kathy
21 Treadwell, Mr. Jeremy Gabell and Mr. Roger Colton
22 referenced in their testimony today. Counsel knows
23 the drill. I will address any objections as to these
24 exhibits, and then I'll make a ruling on their
25 admission into the record.

1 I was suggesting that we could possibly
2 wait until tomorrow because I have a little bit of
3 concern with SBG's Exhibit 2. My copy is out of
4 order and I noticed that there was an issue with
5 duplicate pages. That's why I pulled them out and I
6 don't know how to sort of insert them. I pulled out
7 the pages that were duplicate and I don't know how to
8 insert them back in for my copy of exhibits. Yes,
9 Ms. Ross.

10 MS. ROSS: I would move to admit SBG
11 CG/SG Exhibits 1 through 6 into the record, into
12 evidence.

13 JUDGE VERO: Mr. Farinas, any objection
14 to that?

15 MR. FARINAS: Your Honor, I have no
16 objection to 1, 2, 3 -- I'm sorry 1, 4, 5 and 6. I
17 do have an objection to 3 to the extent that as we
18 discussed earlier, there's information that
19 leads to a bottom line, information that lies
20 outside Your Honor's instruction with regard to
21 amounts and I guess potentially disputed amounts
22 that are beyond December of 2012.

23 MS. ROSS: Your Honor, to that extent,
24 you can give them the proper weight that you need to
25 give them, and if you decide the cutoff date was

1 2012, then I would --

2 JUDGE VERO: December 10, 2012.

3 MS. ROSS: December 10, 2012, then you
4 have the numbers in front of you and you can utilize
5 the exhibits accordingly.

6 JUDGE VERO: Okay. In our hearing
7 conference, the last prehearing conference, I
8 specifically said that would be the cutoff date
9 unless the complainants showed that the information
10 that's included, any information that was included in
11 these exhibits and that postdated December 10, 2012
12 was crucial, I think that was the word I used, to
13 their case.

14 I haven't heard any argument as to how
15 essential the rest of the information is. I mean,
16 any information that postdates December 10, 2012.

17 MS. ROSS: To the extent that I would
18 either file an interlocutory appeal and/or file
19 a new complaint and/or amend these complaints
20 and to show that these are ongoing violations as
21 we would say, because they continue to affect
22 the balance of the SBG accounts because of the manner
23 of the underlying accounting.

24 It's not as if it just cut off in
25 December of 2012. I mean, you can give it the proper

1 weight you need to give it, but to the extent, it
2 doesn't erase the fact that it still affects the
3 account.

4 JUDGE VERO: It's not erasing anything.
5 I understand your argument it's still affecting the
6 account, but by the time I get to making a decision,
7 it will be more transactions, which is how PGW
8 operates. This is what they've stated; this is the
9 way calculate late payment charges. They even
10 stipulated to that. I think you have it from
11 Mr. Savage's testimony in Fairmount. We have it over
12 and over and they even are willing to stipulate this
13 is how we calculate it; so, it's not a question of
14 how they do it unless they've changed something from
15 May 5th of this year when it's the last date for
16 filing reply briefs, then you would have to submit
17 updated. You know what I'm saying?

18 MS. ROSS: We wouldn't do that.

19 JUDGE VERO: Yes, but it would be
20 ongoing. You would have an open door to come back to
21 me with, oh, I have this. Can you do this, no.
22 December 10, 2012 is the cutoff date. That's the
23 date the amended complaints were filed. As you said
24 it's ongoing. It's never ending. You will have a
25 decision, a final opinion and order from the

1 Commission, and once you get it, you can see what you
2 can do, but file new complaints. Ask that they just
3 go ahead and amend it without filing a complaint and
4 they can do that. They can say this is the
5 Commission's new ruling. Let's see if we can amend
6 it, then we can amend it, but I'm sticking.

7 MS. ROSS: Would you entertain a motion
8 for us to amend our complaints to include up to and
9 including the present day, because I do believe
10 that's part of the nature of our complaints that we
11 say it is ongoing.

12 JUDGE VERO: But then you will update it
13 until today, then you will update it until March when
14 all the hearings are over, then you will update to
15 the briefs. You will be opening the door to
16 continuously update until the Commission issues the
17 final opinion and order. That's just not economical;
18 whereas, we get a final opinion and order, what the
19 Commission believes is the correct procedure,
20 the correct amounts, the correct everything --

21 MS. ROSS: But it wouldn't be the
22 correct amount.

23 JUDGE VERO: No. I'm saying the correct
24 amount in terms of percentage, late payment charges,
25 what the percentage should be, liens, et cetera, et

1 cetera. You will get the idea where the Commission
2 stands. With that decision, you can go to PGW. At
3 that point, they would have to adjust the account if
4 that is the outcome of the case, without filing
5 additional complaints, without amending this one.
6 Nothing you will need to do. Just go with that order
7 and demand they do it, and if they don't, that's
8 another issue, but you will have a ruling by the
9 Commission.

10 MS. ROSS: Are you going to limit your
11 review of this to the date, because the date at least
12 is on the exhibit; so, it shouldn't not be admitted.

13 JUDGE VERO: Well, I can admit it, but I
14 will strike it off the record later -- no. I
15 misspoke. I'm sorry. I will not consider it. I can
16 admit this as this is, but I will make the
17 qualification on the record, anything in this exhibit
18 that post-dates December 10, 2012 will be ignored.

19 If you want to submit an updated
20 exhibit, let me know, okay, this is the cutoff date,
21 fine. If not, I understand you submitted it to me in
22 an electronic version. I hope I have the capability
23 of doing in the spreadsheet what Ms. Treadwell did.
24 If not, I'll make due, and Ms. Treadwell pretty much
25 gave me the numbers adjusted to that date, the

1 December 10, 2012 date.

2 MS. ROSS: Would you prefer we do that?

3 JUDGE VERO: I can do it myself.

4 MS. ROSS: Or we can do it as a late
5 file exhibit; I mean, if that's your ruling.

6 JUDGE VERO: This is my ruling. Just
7 file the late file exhibit to substitute the proposed
8 Exhibit No. 3.

9 MS. ROSS: Thank you.

10 JUDGE VERO: You left out Exhibit 2:

11 MR. FARINAS: I did that because I
12 thought you were having reservations about Exhibit 2.

13 JUDGE VERO: My reservations were in
14 terms of having duplicate pages. That's not a huge
15 issue with the exhibit itself; so, as far as I'm
16 concerned, it's a good exhibit.

17 MR. FARINAS: I have no objection to
18 Exhibit 2.

19 JUDGE VERO: All right. SBG CG/SG
20 Exhibits 1 through 5

21 MS. ROSS: 1 through 6.

22 JUDGE VERO: No. 1 through 6 are hereby
23 admitted into the record in this case. SBG CG/SG
24 Exhibit 6 is going to be submitted later, you said,
25 as a late file exhibit.

1 MR. FARINAS: 6 is a bill.

2 MS. ROSS: 6 is a bill; 3 is a late
3 file.

4 JUDGE VERO: I'm sorry. Again, from the
5 beginning, SBG CG/SG Exhibit 1, 2, 4, 5 and 6 are
6 admitted with the understanding that the complainants
7 are going to submit an updated CG/SG Exhibit 3 with a
8 cutoff date of December 10, 2012. Okay, and any
9 liens that cover service period until December 10,
10 2012 can be included.

11 (Whereupon, the documents marked as SBG
12 CG/SG Exhibits Nos. 1, 2, 4, 5 and 6
13 were received in evidence.)

14 MS. ROSS: I'd also like to just say for
15 the record, I do object, and it's an objection stated
16 for the record for the not admitting SBG Exhibit 3,
17 just for the record.

18 JUDGE VERO: In its current form.

19 MS. ROSS: In its current form.

20 JUDGE VERO: You requested that you be
21 allowed to file it as a late file exhibit with a new
22 cutoff date on which Ms. Treadwell testified on.

23 MS. ROSS: Yes, ma'am.

24 JUDGE VERO: All right. The objection
25 is duly noted. I believe I discussed it in

1 sufficient detail for the record. There is nothing
2 else. This concludes today's hearing. I will see
3 you back in this hearing room tomorrow at 10:00.
4 We're off the record.

5 (Whereupon, at 5:13 a.m., the hearing
6 was adjourned.)

7 * * *

8 C E R T I F I C A T E

9
10 I hereby certify, as the stenographic
11 reporter, that the foregoing proceedings were taken
12 stenographically by me, and thereafter reduced to
13 typewriting by me or under my direction; and that
14 this transcript is a true and accurate record to the
15 best of my ability.

16
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20 Winnette Austin

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