

APPENDIX 1

[Transcript, Thursday, August 29, 2002]

19

JUDGE ALBERS: Any other preliminary matters?

20 MS. DALE: Yes, Your Honor. A matter
21 concerning discovery.

22 Yesterday we received from counsel for

20

1 Santanna in response to our motion to compel in
2 response to your ruling on Monday a CD-ROM disk
3 containing a customer report log. This CD-ROM
4 contains over 2,000 pages. We received it yesterday
5 afternoon at about somewhere between 1:30 and 2:00.

6 Needless to say, we have not had a chance
7 to review this log. It's massive. And it was, you
8 know, produced in the 24 hours between when you
9 ordered it and when we picked it up. We just
10 haven't had a chance to look at it.

11 We would like to ask -- the People would
12 like to ask that we be given permission to review
13 this log and file a summary of it and enter it as a
14 late-filed exhibit. Barring that, in the
15 alternative we would ask to be able to bring Mr.
16 Gatlin back and cross-examine him on it because, as
17 I say, it really is quite massive.

18 JUDGE ALBERS: I know I have some concerns just
19 from a practical perspective about that. There may

20 be some other objections from others.

21 MR. MARKOFF: Santanna certainly objects. It
22 was produced when it was ordered, and we had stated

21

1 that this information was massive. The
2 cross-examination of Mr. Gatlin on it would be
3 worthless because he had nothing to do with the
4 creation of it. Since it's a customer-service log,
5 it's obviously created by the customer-service
6 people.

7 So I'm not sure what that purpose would
8 serve. I don't know if the People have reviewed it
9 at all and -- or whether they have shown any
10 relevance of it whatsoever to this proceeding.

11 MS. DALE: Well, Your Honor, in response to
12 that I would say that the Company is offering only
13 one witness, Mr. Gatlin. And I believe that any
14 responses to discovery that the Company is offering
15 in this case, it has to be assumed that Mr. Gatlin
16 has knowledge of them because the Company isn't
17 offering anyone else. They're saying he's the
18 expert on anything and everything you may ask him
19 about. And I reiterate my original request.

20 MS. NORINGTON-REAVES: Your Honor, if I might
21 weigh in.

22 We had an opportunity to briefly review the

1 document at about somewhere between midnight and
2 ten o'clock this morning. As Miss Dale said, the
3 document contains approximately, well, it's over
4 2,000 pages. One document within the disk is
5 essentially a log from NICOR's customer calls,
6 essentially. There's approximately two entries per
7 page. Most of these are notices from customers that
8 they wish to cancel service.

9 And to the extent that the complaints or
10 the reasons offered for canceling the service are
11 completely consistent with the complaints that have
12 been received in this case, we would ask for
13 permission to at least file a survey or a summary --
14 excuse me -- that at least states, for example, that
15 50 percent of them pertain to slamming or 60 percent
16 of the complaints received pertain to terms not
17 having been disclosed prior to assuming service with
18 Santanna.

19 Also that the dates that are covered in
20 those documents predate the complaints that anyone
21 has received in the organization represented here
22 today. The information is very relevant. It's

1 extremely important and to have had such a little
2 amount of time to review it, we respectfully request
3 that we be able to either at least keep the record
4 open and submit some type of summary or in the

5 alternative have the disk --

6 JUDGE ALBERS: Let me back up for a minute.
7 Just so I'm clear, this is the disk that represents
8 the customers who have terminated service from July
9 1st to July 31st. Is that the DR that triggered
10 that response?

11 MR. MARKOFF: Correct.

12 MS. NORINGTON-REAVES: What's reflected on
13 there even predates July. There are complaints back
14 to March.

15 MR. MARKOFF: There are two aspects on the
16 CD-ROM. One of them -- I haven't viewed it, to be
17 perfectly honest. But my understanding is it
18 discloses the accounts that terminated service
19 between July 1st and 31st. In addition, there is
20 correspondence received from customers scanned to
21 another file. That is not date limited.

22 JUDGE ALBERS: Okay.

24

1 MR. MARKOFF: Is that -- Karin, you've reviewed
2 it.

3 MS. NORINGTON-REAVES: Right. My understanding
4 is the correspondence and the various customer
5 complaints, if you will, date back as far as March.
6 And they're very relevant to the issue of compliance
7 with Section 19-115.

8 JUDGE ALBERS: Well, do you foresee --
9 hypothetically would you foresee Santanna having an

10 opportunity to respond to any late-filed exhibit
11 that you submit? Is this a joint request from CUB
12 and AG?

13 MS. NORINGTON-REAVES: Yes. We just decided to
14 let the AG do the talking.

15 MS. DALE: I don't see any problem with the
16 response, but if Mr. Gatlin is the only witness who
17 the Company is presenting, then it has to be Mr.
18 Gatlin who responds.

19 And I would add, Your Honor, that I think
20 it would be unfair to prejudice the Attorney General
21 as well as the Citizens Utility Board for having to
22 make this request because counsel for Santanna has

25

1 insisted all along that producing any such lists or
2 compilations would be too time consuming and too
3 burdensome and just too horrific to ask but when it
4 was ordered, it was done in 24 hours.

5 And I don't believe that we should be
6 prejudiced or kept from making a record that the
7 Commission can rely upon because Santanna delayed in
8 producing something that it's obvious now was well
9 within their capability of producing in a very short
10 time.

11 MR. MARKOFF: Can I respond briefly to that?

12 JUDGE ALBERS: Very briefly.

13 MR. MARKOFF: Number one, this was -- to go

14 through what we said was it would be very difficult
15 and time consuming to go through and call all of the
16 complaints that came -- what we gave them was
17 everything uncalled, whether it's complaints or not.
18 So that's different than going through individual
19 files. It was also a much narrower set than every
20 file.

21 Secondly, Mr. Gatlin is indeed the only
22 witness presented with this stuff was just produced

26

1 on customer service things which is after Mr. Gatlin
2 submitted testimony. And Mr. Gatlin hasn't even
3 seen the production, so.

4 JUDGE ALBERS: Well, before I rule on this, I
5 want to get a better idea how you envision this
6 working.

7 What type of response -- the idea you want
8 to submit something after we have the hearing today,
9 to me, I think that Santanna should have the
10 opportunity to respond to that in some form. I'm
11 not really sure, given what you said so far, if
12 you're envisioning -- I assume you're envisioning a
13 written summary.

14 MS. NORINGTON-REAVES: A chart, if you will.

15 JUDGE ALBERS: Not testimony, but just a
16 separate exhibit of some sort, not testimony.

17 MS. DALE: Well, you know, again, I think we
18 know better what the summary would say, although we

19 try to keep it in summary form. But until we have a
20 chance to really look at it -- and I did look at it,
21 you know. I hesitate to say whether there would be
22 no testimony associated with it. Our witness

27

1 hasn't had a chance to see it.

2 So you're right, it would be in written
3 form. I certainly would have no problem with giving
4 Santanna an opportunity to respond also in written
5 form if you decide that Mr. Gatlin won't be
6 cross-examined on this. But he's the witness. He's
7 testifying about marketing and about consumer
8 complaints and how the Company handled them. And I
9 think he's the appropriate party to cross-examine.

10 MR. HUCKMAN: Judge, if I may.

11 JUDGE ALBERS: When would you envision this
12 document being submitted? 'Cause I'm concerned
13 about the time line here.

14 MS. NORINGTON-REAVES: We recognize and
15 appreciate the concerns. Our concern is we've not
16 had a chance to look at it. I mean, well, we've had
17 a chance to look at it but not thoroughly review it.

18 I hesitate to make a commitment today as
19 to how much time we would need. I can assure you
20 that we would put all of our energy into it, as I
21 think all of us have done, to try and produce things
22 in a timely fashion. But I just, I can't make you

1 an assurance, I mean, in the next week.

2 JUDGE ALBERS: Are you talking about a couple
3 days, next week?

4 MR. KAMINSKI: Say a week.

5 MS. NORINGTON-REAVES: At least a week.

6 MR. MARKOFF: I don't know if this would help,
7 Judge, but we would stipulate that the complaints
8 are similar to the complaints that have been
9 received by the Attorney General and CUB. What it
10 doesn't show is the volume. But if it's just a
11 matter to show that similar complaints have been
12 received, Santanna would stipulate to that.

13 MS. NORINGTON-REAVES: Well, we think the
14 volume is relevant. And I don't want to make a
15 representation today that the volume is something
16 other than what it is.

17 I can tell you that one injury is a lot
18 from NICOR. That alone is 2,193 pages with
19 approximately two injuries per page. Now, without
20 going through each one of those pages and verifying
21 whether it's a log of a customer having called in or
22 whether it's a log that actually contains the

1 content of a complaint, I can't tell you that it's
2 2,000 or 3,000 or 4,000.

3 MR. MARKOFF: What's the NICOR entry?

4 MS. DALE: Those were Customer Select.

5 MR. MARKOFF: Oh, they were customers in the
6 NICOR program?

7 MS. NORINGTON-REAVES: Right. I apologize for
8 the confusion.

9 JUDGE ALBERS: If they just want to tally up
10 the -- I'm not sure how to phrase it -- tally up
11 what type of complaints were registered, is that
12 still objectionable to you if you're willing to
13 stipulate to the nature of the complaints?

14 MR. MARKOFF: I mean, that's -- I have no
15 problem with that subject to we may want to check
16 what they come up with, I mean, 'cause I don't know.
17 Maybe we can do it at the same time, but that would
18 be my only concern about that.

19 JUDGE ALBERS: Okay.

20 MR. HUCKMAN: I don't know if this assists or
21 confuses matters, but if these items were admitted
22 as exhibits today, then if any party were to tally

30

1 up the complaints and provide a summary, essentially
2 that would be taking evidence that's in the record
3 and just commenting on it. So if the disk were
4 admitted, CUB could do a summary instead of being an
5 exhibit. It would be a discussion of information in
6 the record in their brief.

7 MR. MARKOFF: To the extent that it is used for
8 simply that purpose and not as the truth of the

9 complaints themselves, we would be agreeable to
10 that.

11 JUDGE ALBERS: Well, I think that particular
12 comment is, from what I can tell, part of your case.
13 And that's a big part of your case, so.

14 MR. MARKOFF: But I don't think they're
15 admissible for the truth of what they say because
16 they are, you know, they're just taking complaints.
17 That is hearsay, so.

18 JUDGE ALBERS: I understand your position. I
19 don't know if I have any opinion yet, but I'm sure
20 you'll all try to persuade me.

21 Let me think about this. Does this last
22 suggestion from Staff have any --

31

1 MS. NORINGTON-REAVES: I think it's a good
2 suggestion. I personally would be open to it.

3 MS. DALE: We haven't discussed it, but I would
4 say that's certainly a possibility.

5 JUDGE ALBERS: Okay. Let me think about it.
6 We'll take this up again a little bit later today,
7 then.

8 MS. NORINGTON-REAVES: Another preliminary
9 matter.

10 JUDGE ALBERS: Okay.

11 MS. NORINGTON-REAVES: We've just received
12 responses to CUB's -- actually, let me back up. We

13 received the written responses and objections to
14 CUB's second and third data requests.

15 Just now, prior to this proceeding
16 beginning, we received responsive documents, several
17 envelopes. One that says Contracts. I think -- am
18 I right? -- I feel cassette tapes in one. Okay.
19 And a stack of documents. Clearly we've not had an
20 opportunity to go through this.

21 And at some point if we are to be able to
22 provide full comment on this in this matter, we're

32

1 going to need to have an opportunity to review this
2 and be able to question Mr. Gatlin if necessary on
3 some of this material.

4 JUDGE ALBERS: When did you submit the DRs and
5 when did you ask for responses?

6 MS. NORINGTON-REAVES: The DRs I believe were
7 submitted --

8 MR. MARKOFF: I think it was, like, Thursday
9 and Friday.

10 MS. NORINGTON-REAVES: -- I want to say
11 Thursday afternoon and Friday morning. We asked for
12 production on Monday. We submitted DRs -- I'm
13 sorry. This is Attorney General's. Let's see. For
14 the third set, we submitted two DRs. One asked for
15 seven contracts, actually, for the production of
16 the original contracts for seven customers. The
17 second asked for -- I can't tell from their

18 response.

19 The first asked for the original contracts
20 and copies, I believe. And then with our second set
21 we had seven requests. The first one had
22 approximately 13 or 14 requests for original

33

1 contracts. The second asked for materials that were
2 identified in e-mails, Santanna e-mails. And this
3 just says that, subject to objection, Santanna will
4 produce the responsive documents.

5 I have no way of identifying right now
6 which of these is responsive to which. I know a
7 couple of these are contracts and I guess would be
8 responsive to either 2.0 or 3.0.

9 JUDGE ALBERS: When did you ask for responses?

10 MS. NORINGTON-REAVES: We asked for responses
11 by Monday for both of these.

12 MR. MARKOFF: Judge, there was significant
13 motion practice on Monday.

14 MS. NORINGTON-REAVES: That's an
15 understatement.

16 MR. MARKOFF: And I think the deadline they
17 asked for was 1:00 p.m. and 1:30 p.m. And I think
18 given the very short time line that was given for
19 these DRs, responses were made pretty quickly.

20 And there was actually nobody up here.
21 Everybody was in transit, and they didn't get them

22 in our office. The original contracts and the tape

34

1 verifications were not in our office until about
2 three o'clock, I think. Everybody was already in
3 transit. So that's why they were just given this
4 morning.

5 If I may, the original contracts that are
6 inside the envelopes are specified by DR, and they
7 are not really that voluminous or I don't know what
8 -- I think they just want to verify the signature.
9 And that should be fairly simple. The contracts,
10 the stack that Ms. Norington is holding now are
11 contracts between Santanna and the telemarketers.

12 And they're actually about half that
13 volume because I believe there's one for NICOR and
14 one for People's with each marketer. So they're
15 really the same. So that would be a little more
16 burdensome would be the verification tapes, but we
17 got those together as soon as we could. You put
18 them together and you record them and you produce
19 them.

20 MS. NORINGTON-REAVES: Well, let me add,
21 there's also this binder that we received as well as
22 two other sets of documents. One we received and

35

1 one we didn't.

2 MR. MARKOFF: They were all conveyed yesterday.

3 That other binder that you're looking at are
4 transcripts to the verification tapes to actually
5 make it easier to --

6 MS. NORINGTON-REAVES: We certainly didn't
7 receive this one yesterday. I know we received this
8 'cause I printed it out before we left, but we did
9 not receive this one until this morning.

10 JUDGE ALBERS: Well, I'm concerned about when
11 we would come back and hear any cross on this.

12 MR. MARKOFF: Additionally, Mr. Gatlin is from
13 Texas and it's obviously burdensome for him to come
14 here. And again, it was a very short time line to
15 turn this stuff around. I think we did, in light of
16 preparing for everything, we did it pretty quickly.

17 MS. DALE: I would agree, Your Honor, that it's
18 burdensome. But we are here today because of an
19 application from Santanna. It is their request to
20 obtain the certification. And in light of that, I
21 think the burden that they've taken on is voluntary.

22 JUDGE ALBERS: Well, at this point in time I'm

36

1 going to suggest that perhaps CUB will want to cross
2 Mr. Gatlin last and give you at least a couple hours
3 to start looking through stuff --

4 MS. NORINGTON-REAVES: Just a point of
5 clarification. I guess I'm unclear on how that
6 would give me a couple of hours when I need to be

7 sitting here at this table listening to what's being
8 said with the witnesses.

9 I guess my suggestion would be that maybe
10 at some point we break for, you know, two hours, an
11 hour and a half. I mean, I can sit here and eat
12 lunch and try not to stain the documents. But we're
13 going to need some time to look through this.

14 And with respect to the way that cross has
15 been prepared, I don't know that it -- it would most
16 likely would be problematic for CUB to go last in
17 terms of the order in which it's already been
18 prepared.

19 JUDGE ALBERS: Well, I think this day's going
20 to be long enough as it is.

21 MS. NORINGTON-REAVES: I'm not trying to
22 prolong it, Your Honor. I'm trying to have an ample

37

1 opportunity to adequately review the documents and
2 be able to put on my case.

3 JUDGE ALBERS: I'll at least give you lunch.
4 You can look through it during the hour for lunch.
5 I think in large part this is going to depend on how
6 this day is going as far as the time is being
7 consumed through whatever.

8 MS. NORINGTON-REAVES: Is it possible that if
9 we go forward with our cross this morning, go
10 through these documents during lunch, that we could
11 re-call him to respond to any new information we

12 found? I mean, we may not even be finished by noon.

13 JUDGE ALBERS: That's what I'm thinking.

14 MS. NORINGTON-REAVES: But I'm saying, is it
15 possible to do it in that way so as not to throw out
16 of kilter the order that we've already worked out
17 with respect to our cross-examination?

18 JUDGE ALBERS: We would give Mr. Markoff the
19 opportunity to redirect?

20 MS. NORINGTON-REAVES: Yes. Yes.

21 JUDGE ALBERS: We can try that.

22 MS. NORINGTON-REAVES: All right. Thank you,

38

1 Your Honor. Appreciate it.

[Transcript, Thursday, August 29, 2002]

526

19 JUDGE ALBERS: Before we discuss the briefing
20 schedule which you've already agreed to, I'll remind
21 you that yesterday you raised an issue of a CD-ROM.

22 MS. NORINGTON-REAVES: Yes. We would still

527

1 support the option that was suggested by
2 Mr. Huckman.

3 JUDGE ALBERS: If I recall this correctly, I
4 was to have the CD-ROM admitted as an exhibit.

5 MS. NORINGTON-REAVES: Yes, sir.

6 JUDGE ALBERS: The parties would stipulate as
7 to the nature, the general nature of any complaints
8 that might be on that, and then CUB would just, in
9 its briefs, tally up the number of alleged slamming
10 incidents by the company?

11 MS. NORINGTON-REAVES: Right; something
12 analogous to I guess what Ms. Howard and I guess
13 essentially Mr. Hurley have done in their testimony,
14 and it was a joint motion. I guess it would be more
15 than likely a joint filing with the AG, some type of
16 summary, if you will, of the information contained
17 within the CD-ROM.

18 JUDGE ALBERS: That would be in your briefs
19 though or a separate filing?

20 MS. NORINGTON-REAVES: We I think had
21 originally contemplated a late filed exhibit.

22 MR. KAMINSKI: If you'd rather have it in

528

1 briefs, but with a late filed exhibit, then people
2 can comment on it.

3 MS. NORINGTON-REAVES: And reference it.

4 JUDGE ALBERS: Well, I guess first of all, how
5 does Mr. Markoff feel about that?

6 MR. MARKOFF: I have no problem with it being
7 admitted as an exhibit, the CD-ROM.

8 I don't think it would be appropriate

9 to submit the tally as an exhibit. There's not
10 really a good answer to this because we don't have a
11 chance to cross anybody on the tally itself, you
12 know, to determine the accuracy of it; whether there
13 are perhaps multiple allegations on a single account
14 or something like that or whether they're
15 categorized twice, so I don't think that would be
16 appropriate.

17 JUDGE ALBERS: To the extent that the CD-ROM
18 information is contained within the record, I don't
19 see any problem with the parties in their briefs
20 commenting on what that evidence is.

21 If that means tallying it up for
22 their own arguments, that's fine. Anybody can come

529

1 to their own tally.

2 Does anybody have any questions or
3 concerns about that method I'm proposing?

4 MS. NORINGTON-REAVES: So when you're saying
5 commenting in the briefs, if, for example, we were
6 to reference, you know, Appendix 1 and attach that
7 tally as an appendix, is that something that you
8 would be opposed to or are you contemplating
9 specifically written commentary within the brief?

10 JUDGE ALBERS: That seems like a back door
11 means to get an exhibit in, so I was thinking more
12 of an in brief commentary.

13 MS. NORINGTON-REAVES: Okay. No. I'm just
14 asking for clarification.

530

16 JUDGE ALBERS: Back on the record.

17 A copy of the CD has been provided.
18 While off the record, we agreed to identify it as AG
19 Stipulated Exhibit 1.

20 I've been told all the files on this
21 are in media format, and Mr. Markoff has indicated
22 he'll provide a copy to Mr. Kaminski who gave me his

531

1 and I'll get a copy myself.

2 For the record then, can someone
3 describe the general nature of what information is
4 on this?

5 MS. NORINGTON-REAVES: If we could permit
6 Mr. Clarke to do that, he's the one who's got the
7 most intimate knowledge of it. He's here. He's
8 from the AG's office.

9 MR. CLARKE: I could make an appearance and
10 then give that description if you like.

11 JUDGE ALBERS: Any objection?

12 Okay. For the purposes of
13 identifying this information, it appears that the
14 only one who actually looked at the information is
15 Mr. Clarke from the Attorney General's office.

16 So, Mr. Clarke, would you please
17 enter your appearance?

18 MR. CLARKE: Sure. My name is Randy Clarke
19 (R-a-n-d-y C-l-a-r-k-e) appearing on behalf of the
20 People of Illinois, a law graduate licensed under
21 Supreme Court Rule 711. My business address is 100
22 West Randolph Street, Chicago, Illinois, and my

532

1 telephone number is (312)814-8496.

2 I had the opportunity to examine the
3 CD-ROM a few nights ago, and it contains a number of
4 PDF files. Two of them are customer service logs;
5 one from People's Gas and one from NICOR Gas
6 customers.

7 One of the customer service logs
8 contains 2,193 pages of information. The other
9 contains 85 pages of information.

10 The CD-ROM also contains seven
11 folders that correspond with the months of 2002 from
12 February through August, subject to check. That
13 might not be enough months.

14 And each of those folders contains
15 several PDF files that are scanned original customer
16 complaints. Some of the folders contain none. Some
17 of them contain two. One of them contains 53.

18 JUDGE ALBERS: Okay. And is it agreed to by
19 the parties that any complaints that exist in the CD

20 are of the same general nature as those previously
21 admitted and discussed in the record?

22 MR. MARKOFF: Having not reviewed it, I have no

533

1 idea. I suspect that's probably the case, but I
2 have not looked at it.

3 JUDGE ALBERS: But you agree there are
4 complaints that may have been -- there are
5 allegations of bad behavior on the disk?

6 MR. MARKOFF: Honestly, I haven't so much as
7 opened it.

8 I mean, I would guess that if
9 somebody is calling Santanna, they're not probably
10 not happy but...

11 JUDGE ALBERS: Do you have any objection though
12 to the description he gave of the CD, its contents?

13 MR. MARKOFF: No.

14 JUDGE ALBERS: Everyone agrees, everyone will
15 stipulate to the admission of the CD?

16 MS. NORINGTON-REAVES: Yes.

17 MR. KAMINSKI: Yes.

18 JUDGE ALBERS: All right. AG Stipulated
19 Exhibit 1 is admitted.

20 (Whereupon AG Stipulated Exhibit 1
21 was admitted into evidence at this
22 time.)

1 JUDGE ALBERS: I don't recall if I said this on
2 the record or not, but to the extent that anybody
3 wants to use information on that, I would trust that
4 they would use it in their briefs as far as a tally
5 and not try to present a new argument -- argument is
6 not the right word I want to use -- not try to
7 present additional testimony, additional comment of
8 a testimonial nature regarding the contents of it.
9 With that, in terms of the briefing
10 schedule...