

BEFORE THE
ILLINOIS COMMERCE COMMISSION

1
2 IN THE MATTER OF:)
3)
4 NATIONAL DISTRIBUTION)
5)
6 v.) 01-0306
7)
8 COMMONWEALTH EDISON COMPANY)
9)
10 Complaint as to overcharging and)
11 failure to honor previous)
12 settlement agreement in Chicago,)
13 Illinois)

Chicago, Illinois
October 16, 2002

Met, pursuant to notice.

BEFORE:

Mr. Sherwin Zaban, Administrative Law Judge.

APPEARANCES:

14 MR. ROBERT HABIB
15 77 West Washington, Suite 411
16 Chicago, Illinois, 60602
for the complainant;

17 MR. RICHARD BERNET
18 10 South Dearborn, Suite 3500
Chicago, Illinois 60603
for the respondent.

19 SULLIVAN REPORTING COMPANY, by
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<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>direct</u>	<u>cross</u>	<u>By</u>	<u>Examiner</u>
Brian Flisk	139	144	232	280, 293	141,	284

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1 JUDGE ZABAN: By the power vested in me in
2 the Illinois Commerce Commission, I call Docket No.
3 01-0306, National Distribution versus Commonwealth
4 Edison. This is a complaint as to overcharging and
5 failure to honor a previous settlement agreement in
6 Chicago, Illinois.

7 Will the parties please identify themselves and
8 enter their appearances for the record.

9 MR. HABIB: For the record, your Honor, this is
10 Robert Habib. I represent National Distribution.
11 I'm at 77 West Washington, Suite 411, Chicago,
12 Illinois, 60602.

13 My phone number is area code 312-201-1421.

14 MR. BERNET: Good morning, your Honor, Richard
15 Bernet, Exelon Business Services Company, 10 South
16 Dearborn, 35th Floor, Chicago, 60603, telephone
17 number 312-394-3623, representing Commonwealth
18 Edison Company.

19 I also have with me Robert Jacobs also of
20 Commonwealth Edison Company, Lynn Miller also of
21 Commonwealth Edison Company, and John Pfeiffer of
22 Commonwealth Edison Company.

1 JUDGE ZABAN: Okay. There is currently one
2 motion pending in the form of a motion in limine
3 regarding the testimony and the impeachment of the
4 witness Mr. Flisk.

5 Before I rule on that motion, are there any
6 other -- do the parties have any other motions?

7 MR. HABIB: Yes, I have a motion.

8 On reviewing the formal complaint that we
9 filed, the formal complaint that was filed with the
10 Illinois Commerce Commission specifically states
11 that the relief that we're requesting, please
12 clearly state what you want the Commission to do in
13 this case, and what we want the Commission to do
14 with this case is order the utility to comply with
15 the July 2000 agreement, it then reads, when it
16 agreed to deduct \$22,801 from our balance.

17 It should have actually read at this point,
18 "when it agreed to accept \$22,801 as settlement to
19 this point."

20 JUDGE ZABAN: Okay.

21 MR. HABIB: That was fully set out in the
22 explanation we provided in terms of that. It was

1 also set out in the agreement that was attached at
2 this point.

3 MR. BERNET: So that's a motion to correct the
4 formal complaint?

5 MR. HABIB: That is a motion to correct the
6 formal complaint.

7 JUDGE ZABAN: Okay. Do you have anything to
8 say about that, Mr. Bernet?

9 MR. BERNET: No, no objection.

10 JUDGE ZABAN: It will be so ordered that the --
11 in the paragraph state clearly what you want the
12 Commission to do, order the utility to comply with
13 the July 9, 2000 agreement when it agreed to accept
14 \$22,801 as the payment in full of the current -- of
15 the balance at that time.

16 MR. HABIB: Yes, your Honor.

17 JUDGE ZABAN: Is that correct?

18 MR. HABIB: Yes, your Honor.

19 JUDGE ZABAN: Okay. Do you have any other
20 further motions at this time, Mr. Habib?

21 MR. HABIB: Outside of the motion in limine,
22 no, your Honor.

1 I would have a motion, just for the record, I
2 would make a motion to exclude witnesses.

3 JUDGE ZABAN: Okay. I'm trying to think.

4 Under normal circumstances I'd grant the
5 motion. However, do you have any objection to the
6 motion, Mr. Bernet?

7 MR. HABIB: Yes, I object.

8 I think, you know, it's a case where these
9 witnesses have testified and the testimony of
10 Mr. Flisk is going to likely come in without him
11 orally testifying. It's going to come into the
12 record, there's not going to be much controversy.

13 The only thing is I'm going to have the
14 cross-examination.

15 JUDGE ZABAN: Well --

16 MR. HABIB: Your Honor, I would just -- motion
17 to exclude witnesses are made in every trial. They
18 are made for the purpose that once your trial
19 starts, testimony is going to be heard.

20 While the direct testimony has been issued at
21 this point, cross-examinations are still going to be
22 made at this point.

1 The idea that in a trial in terms of
2 cross-examination simply to allow the opposing
3 party's witnesses or any witnesses at this point to
4 hear what's brought out on cross-examination and
5 then the testify afterwards is never allowed.

6 So usually these are basically granted as a
7 matter of course on the grounds that you want a
8 witness to testify truthfully just of their account
9 and not to, in effect, pattern their testimony after
10 what they just heard in the courtroom.

11 And this is especially the case where the
12 direct testimony, I think, has already been filed
13 and the parties have basically made their position
14 clear at this point.

15 JUDGE ZABAN: Yeah, I think actually your point
16 is well taken, Mr. Habib.

17 Maybe not even so much for Mr. Flisk, but when
18 your witnesses testify, Mr. Bernet, I think it would
19 be improper to have -- to have the witnesses hear
20 what each one heard or has to say on
21 cross-examination.

22 MR. HABIB: No problem, your Honor. I'll

1 withdraw the objection.

2 JUDGE ZABAN: Okay. That will be granted.

3 Anything else?

4 MR. HABIB: No, not at this point.

5 JUDGE ZABAN: Okay.

6 MR. BERNET: Couple things.

7 Before we get to the motion, I do have another
8 motion, but we entered into a stipulation concerning
9 a couple of documents and it seems to me that we
10 should just offer that and have it so that we can
11 both use it.

12 MR. HABIB: I would agree.

13 I have brought with me the original or one of
14 the originals, I should say --

15 JUDGE ZABAN: I think that's premature.

16 At the time -- at the time we actually start
17 the hearing itself, I'll accept the stipulations
18 because I'll ask you if there's any stipulations and
19 we can proceed from there.

20 But I want to know what else do you have in the
21 form of --

22 MR. BERNET: The only other thing in terms of a

1 scheduling matter is obviously my witnesses are here
2 today and they'll have to excuse themselves, but
3 Mr. Koeniger, Koeniger is my other witness who is
4 not available today. He will be available tomorrow.

5 So if for some reason we end up getting through
6 the witnesses today, he just would not be available
7 until tomorrow.

8 JUDGE ZABAN: That's not a problem. Mr. Habib
9 has a witness who's not available.

10 Because of the fact this is a hearing in front
11 of me, we can -- I mean we can continue this for any
12 period of time. It doesn't really make any
13 difference. I just want to get it started, get it
14 underway. If we have to put over for a week, two
15 weeks, that's really not a problem.

16 MR. BERNET: Your Honor, we obviously are
17 concerned about further delay in this matter. I
18 mean --

19 JUDGE ZABAN: Once we start, we start.

20 The point is I have sat myself in many bench
21 trials that begin and just entered and continued.
22 That's not a problem.

1 MR. BERNET: So we have a motion in limine and
2 then we have a motion to strike the testimony or in
3 the alternative to allow some additional limited
4 direct testimony. That's what the second motion is.

5 JUDGE ZABAN: Okay. Now, what's the basis for
6 striking the testimony of Mr. Gordon?

7 MR. BERNET: Your Honor, we served data
8 requests on National Distribution back in October of
9 2001 requesting copies of all documents concerning
10 each communication between National Distribution and
11 ComEd during the relevant period including but not
12 limited to oral communications.

13 That was a document that was submitted to
14 National Distribution on October 26th, 2001.

15 National Distribution initially responded in
16 December of 2001 and in response to that data
17 request, which is Data Request No. 8, they said all
18 documents involved have been produced.

19 In May of 2002, Mr. Flisk certified under oath
20 that National Distribution had filed all of its --
21 had served all of the documents that were responsive
22 to the data request.

1 Mr. Gordon, if you look at Mr. Gordon's
2 testimony, Mr. Gordon indicates that the records
3 that are attached to his testimony are made as a
4 result of oral communications between him and ComEd
5 and those documents were never produced.

6 MR. HABIB: Just if I could --

7 MR. BERNET: So let me finish.

8 So the documents are clearly responsive to the
9 data request. There has been no supplement to the
10 data request pursuant to Rule 214 as required by
11 Rule 214.

12 Rule 219 on its face gives ComEd the right to
13 seek the relief that we're asking for and -- but I
14 would say that we are -- we would be willing to
15 agree to allow the admission of that testimony if
16 your Honor would allow us a limited number of
17 questions with Ms. Miller and Mr. Koeniger
18 concerning the documents that are attached to the
19 testimony.

20 We'd withdraw the motion to strike and allow --
21 and not object to the admission of the testimony.

22 MR. HABIB: If I could respond at this point,

1 your Honor.

2 Mr. Gordon's records at this point, I had
3 spoken with Mr. Flisk and later when I spoke to
4 Mr. Gordon, because the whole issue with Mr. Gordon
5 who basically, to put it frankly, was discovered
6 when we were reviewing Mr. Koeniger testimony at
7 this point and for the first time I basically
8 learned who Edward Gordon was, and I got his
9 testimony, and then as an afterthought, he told me
10 he had kept his own notes and records at this point
11 of these meetings and he provided them to me
12 immediately because I was kind of shocked that he
13 had these records, that he had been making his own
14 notes throughout of what had taken place and these
15 are the notes that are attached at this point to
16 that.

17 And as you can see, they're not even on
18 National Distribution's letterhead. They're
19 actually on Columbia Pipe & Supply, whatever that
20 company is, and these were records that he himself
21 was keeping of his --

22 JUDGE ZABAN: When did you discover these

1 records, Mr. Habib?

2 MR. HABIB: I discovered these records the day
3 before I think I filed the direct testimony of
4 Edward Gordon.

5 JUDGE ZABAN: Which is?

6 MR. HABIB: Which was --

7 JUDGE ZABAN: October the 7th?

8 MR. HABIB: October 7th -- would have been
9 October 6 or so.

10 I went out there and basically Mr. Gordon -- I
11 met with Gordon and these records became available
12 at this point because I had not known of their
13 existence and, quite frankly, they were -- I would
14 have put them in a long time ago if I had known
15 about them.

16 JUDGE ZABAN: Okay. Here's what I'm going to
17 do.

18 I believe Mr. Habib has made a concerted effort
19 and has discovered these records at the last minute.

20 However, I also believe that,
21 Mr. Bernet, you should be entitled to do some
22 surrebuttal, and I'm going to grant you the

1 opportunity to ask additional questions of your
2 witnesses as it relates to Mr. Gordon's testimony.

3 MR. HABIB: I have no objection.

4 JUDGE ZABAN: That's fine.

5 MR. BERNET: Thank you, your Honor.

6 JUDGE ZABAN: Now let's get down to the motion
7 in limine as it relates to Mr. Flisk.

8 I have had an opportunity to look at the briefs
9 for both parties and my understanding of the rule of
10 People versus Montgomery is that the ten-year period
11 that we're encompassing, normally if this were --
12 usually Montgomery is used in a criminal trial -- is
13 ten years back from the date of the offense not from
14 the date of the testimony. Okay.

15 The conviction apparently occurred within ten
16 years from the time that the -- that this alleged
17 incident occurred so I'm going to allow you, Mr.
18 Bernet, to question him regarding that.

19 However -- however -- let me finish.

20 However, I understand that we're dealing with
21 an approximately nine and a half years out of a
22 ten-year period and my ruling goes only as to

1 admissibility, but I understand that because of the
2 age that the weight to be given to it is
3 considerably less than if this were a fresh
4 conviction.

5 MR. HABIB: Your Honor, just so I can point
6 out, the Court is mistaken.

7 The conviction occurred in 1988 or 1989
8 actually I think it was the date Mr. Flisk was
9 actually sent to prison.

10 MR. BRIAN FLISK: May of 1989.

11 MR. HABIB: May of 1989. So, therefore, the
12 hearing is today 2002.

13 JUDGE ZABAN: I don't care -- well, okay.

14 MR. HABIB: So it's been way more than ten
15 years at this point in terms of the date of the
16 conviction.

17 MR. BERNET: Your Honor, my understanding --

18 JUDGE ZABAN: What is the date of the bill
19 itself?

20 MR. BRIAN FLISK: '88.

21 MR. BERNET: The key date, your Honor.

22 If you look at the rule in Montgomery the rule

1 is it's not ten years after the conviction, it's ten
2 years after the later of the conviction or the
3 release of the witness.

4 JUDGE ZABAN: Okay.

5 MR. HABIB: And if the witness is released in
6 1992 according to these records at this point --

7 JUDGE ZABAN: That's --

8 MR. HABIB: -- and this hearing is taking place
9 more than ten years after --

10 JUDGE ZABAN: It doesn't make any difference
11 when the hearing takes place itself.

12 It's when the incident takes place because he's
13 going to testify as to facts that occurred in 19 --
14 in 2000 and 1999 and 1998.

15 I'm going to allow the testimony. As I said to
16 you, Mr. Habib, I'm also going to consider the fact
17 that this is an old -- this is an old incident and I
18 think that my ruling has to go with admissibility,
19 not to weight I'm going to give to it. Okay.

20 MR. HABIB: Okay, your Honor.

21 MR. BERNET: Thank you, your Honor.

22 JUDGE ZABAN: Mr. Habib, you may proceed.

1 MR. HABIB: Well, I present at this point the
2 direct testimony of Brian Flisk --

3 JUDGE ZABAN: Before -- I'm sorry.

4 MR. HABIB: -- so I assume he crosses my
5 witness now.

6 JUDGE ZABAN: Well, before we begin, we have a
7 stipulation, that is correct, as to certain
8 documents?

9 MR. BERNET: Yes, your Honor.

10 JUDGE ZABAN: What documents are we talking
11 about now?

12 MR. BERNET: Your Honor, on June 13, pursuant
13 to your Honor's order, I sent a letter to Mr. Habib
14 agreeing to stipulate at his request to two
15 documents that -- and those documents are the
16 subject of, I believe, Mr. Flisk's testimony, also
17 the subject of his original complaint.

18 The first one which I identify as stipulation
19 Exhibit 1 is a document -- is a three-page document,
20 the first page of which is an August 19, 1999 letter
21 to Ms. McInerney of Commonwealth Edison Company,
22 attached to which is a spreadsheet which refers to

1 the National Distribution account that's in this --
2 involved in this case.

3 MR. HABIB: Could we --

4 MR. BERNET: And a transcript of a customer's
5 account which is also the National Distribution's
6 account.

7 That's Exhibit 1 to the stipulation.

8 MR. HABIB: Just for the record, counsel
9 misspoke a little bit. The letter was sent by
10 Ms. McInerney to Brian Flisk. It wasn't a letter
11 from Brian to Ms. McInerney.

12 MR. BERNET: I'm sorry if I misspoke, that's
13 correct.

14 MR. HABIB: To Brian Flisk at this point dated
15 August 19 in terms of this --

16 MR. BERNET: And the second document is a
17 document that appears to be a handwritten document,
18 Exhibit 2. It's a two-page document with figures on
19 it and various writings.

20 JUDGE ZABAN: I think that's the same
21 document --

22 MR. BERNET: It is -- I believe it's the same

1 document -- I believe it's -- no, it's the same
2 document, I think, that's attached to Mr. Flisk's
3 original direct testimony and it's also the same
4 document that was attached, I believe, to the formal
5 complaint.

6 JUDGE ZABAN: Yeah, you're right.

7 MR. HABIB: This is -- this is the July 9, 2002
8 document signed by -- it is the July 9, 2000
9 document signed by Mr. Crutcher on behalf of
10 Commonwealth Edison Company and Mr. Flisk on behalf
11 of National Distribution.

12 JUDGE ZABAN: Do you have a copy for --

13 MR. BERNET: We have extra copies.

14 JUDGE ZABAN: Has this been filed with the
15 clerk's office?

16 MR. BERNET: I don't believe it's been filed.

17 JUDGE ZABAN: Then we have to file it here.

18 MR. HABIB: It was filed with the direct
19 testimony.

20 MR. BERNET: No, no.

21 JUDGE ZABAN: I'm talking about the stipulation
22 separate. I need copies of that because we're going

1 to have the court reporter mark it as stipulated
2 exhibits. Yes, both.

3 MR. BERNET: Just so we're clear, Commonwealth
4 Edison Company is willing to stipulate to the
5 authenticity of the documents and is not going to
6 object to the admission of the documents.

7 JUDGE ZABAN: If it's stipulated I assume
8 that's what's going to happen.

9 MR. BERNET: So there's -- there's Exhibit 1
10 and -- it's marked for identification Exhibits 1 and
11 2 so I guess we could make them joint stipulated
12 exhibits.

13 JUDGE ZABAN: Stipulated 1 and 2.

14 Do you have extra copies?

15 MR. BERNET: So we don't need the cover letter?

16 JUDGE ZABAN: We just need three for the court
17 reporter and one for me.

18 MR. HABIB: Actually the document that was
19 attached to the complaint was the August 19, 1999
20 letter, and then the second sheet which was the
21 handwritten calculations on top of this thing here.
22 So what was actually attached to the formal

1 complaint was a two-page exhibit.

2 Now, attached to -- in terms of the request for
3 the stipulation --

4 MR. BERNET: Well, if your Honor looks at the
5 August 19 letter and if you look at the top of the
6 second paragraph, it says I have attached a detailed
7 transcript of your account covering the past two
8 years. Okay. Well --

9 JUDGE ZABAN: Hold on. On the August --

10 MR. BERNET: Yeah. Right here.

11 JUDGE ZABAN: In the second paragraph.

12 MR. BERNET: I have attached a detailed
13 transcript of your account covering the past two
14 years. Okay. Well, that's what this document is, a
15 transcript of the account.

16 So while it was -- what I believe is that the
17 document attached to Mr. Flisk's testimony was not a
18 complete document, and I was willing to agree to the
19 stipulation as long as the complete document was
20 there.

21 MR. HABIB: Excuse me. Excuse me, counsel.

22 The document we had sent Mr. Bernet, a request

1 for stipulation of documents in a fax that is marked
2 May 22, 2002, we specifically asked him to
3 stipulate, and this is the fax sheet, and the
4 request for stipulation of documents identified two
5 documents: One was the August 19, 1999 letter and
6 it was a two-page document that was identified at
7 this point which was that initial letter of August
8 19, 1999, sent by Joanne McInerney. And then this
9 is her calculations on the second page.

10 The other request in terms of the stipulation
11 was the August --

12 JUDGE ZABAN: Stop. Stop. I have got the
13 idea.

14 So you're requesting that this document be made
15 part of the stipulation?

16 MR. BERNET: That's correct, your Honor. I
17 have sent this to Mr. Habib two months ago.

18 JUDGE ZABAN: Do you have any objection to that
19 being made part of the stipulation?

20 MR. HABIB: Yes, I would.

21 JUDGE ZABAN: Okay. Then it doesn't go in as a
22 stipulation.

1 MR. BERNET: Yes.

2 JUDGE ZABAN: Mr. Habib, you may proceed.

3 MR. HABIB: I have already questioned him as
4 far as my direct testimony.

5 JUDGE ZABAN: No, you have got to introduce
6 your direct testimony.

7 MR. HABIB: For the record, your Honor, I would
8 introduce the direct testimony of Brian Flisk sent
9 down to the Commission previously filed, I believe
10 it was, back in November or October of the year
11 2001.

12 JUDGE ZABAN: Okay. The copy you gave me is
13 missing the first page, starts with a question ten.

14 MR. HABIB: This was the first page.

15 JUDGE ZABAN: You're going to mark this as
16 Petitioner's Exhibit 1?

17 MR. HABIB: Yes, your Honor.

18 (Whereupon, Petitioner's
19 Exhibit No. 1 was marked
20 for identification.)

21 JUDGE ZABAN: Do you want to lay a foundation
22 for its admission or you want me to do it for you?

1 MR. HABIB: I can do it.

2 BRIAN FLISK,

3 having been called as a witness herein, after having
4 been first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY

8 MR. HABIB:

9 Q. Mr. Flisk, showing you what's been marked as
10 Petitioner's Exhibit No. 1, are these your questions
11 and answers as far as your direct testimony?

12 A. Yes.

13 Q. All right. And is this your signature on the
14 back under verification dated October 5 of the year
15 2001?

16 A. It is.

17 Q. Okay. And you stand by these questions and
18 answers --

19 A. Yes.

20 Q. -- is that right, sir?

21 This will be Exhibit 1 as far as the petition.

22 Then also Mr. Flisk, you subsequently -- you

1 filed with the Commission additional direct
2 testimony?

3 A. I have.

4 MR. HABIB: And we'll mark this as Petitioner's
5 Exhibit 2.

6 (Whereupon, Petitioner's
7 Exhibit No. 2 was marked
8 for identification.)

9

10 BY MR. HABIB:

11 Q. This testimony is dated August 23rd of the year
12 2002, and this is your signature?

13 A. It is.

14 Q. Actually, for the record, this is my signature
15 which you authorized me to make because you were
16 leaving town?

17 A. Right.

18 Q. And you allowed me --

19 A. You had my power.

20 Q. -- to sign -- you had reviewed it prior to
21 this, I had faxed it over to you and you authorized
22 me to put your signature down?

1 A. That's correct. It's printed.

2 MR. HABIB: This is Petitioner's Exhibit 2.

3 At this point we would move to introduce it
4 into evidence.

5 EXAMINATION

6 BY

7 JUDGE ZABAN:

8 Q. Mr. Flisk, under oath your answers to these two
9 documents would be substantially the same if the
10 same questions were asked; is that correct?

11 A. That is correct.

12 Q. Are there any corrections to the documents?

13 A. None that I know right knew.

14 JUDGE ZABAN: At this time, Mr. Habib, you're
15 moving to have these documents put into evidence.

16 MR. HABIB: I would move to have --

17 JUDGE ZABAN: Any objections, Mr. Bernet?

18 MR. BERNET: Yeah, I do have an objection.

19 First of all, let me ask Mr. -- I'd like to
20 know if the name that Mr. Flisk is testifying under
21 is Flist with a T or Flisk with a K?

22 THE WITNESS: It's Flisk. It's always been

1 Flisk with a K.

2 MR. BERNET: Because I guess there is a
3 correction necessary in the first question in the
4 direct testimony, the answer says Brian Flist.

5 JUDGE ZABAN: That's just a typo.

6 MR. HABIB: Obviously a typo, your Honor.

7 MR. BERNET: Okay. And then in the
8 certification, at the end is the same thing, just so
9 the record is clear.

10 And then I believe it's in the answer to the
11 first question in the additional direct testimony
12 and the signature line of the additional direct
13 testimony also have the name Flist with a T.

14 The other thing that I have, your Honor, is
15 with respect to Petitioner's Exhibit
16 No. 1, I would object to the admissibility of the
17 Exhibit 1 that's attached to that document.

18 Other than that, I have no objection.

19 JUDGE ZABAN: Exhibit 1 which is --

20 MR. HABIB: The letter from Joanne McInerney.

21 JUDGE ZABAN: Okay.

22 MR. HABIB: Just for the record, this is the

1 document --

2 JUDGE ZABAN: I know what it is.

3 What I'm going to do is I'm going to allow you
4 to cross-examine Mr. Flisk regarding that document
5 or any document, and I'm going to withhold any
6 ruling on Exhibit 1 until after your
7 cross-examination.

8 MR. BERNET: Thank you, your Honor.

9 JUDGE ZABAN: Okay. Mr. Bernet, you may
10 proceed.

11 CROSS-EXAMINATION

12 BY

13 MR. BERNET:

14 Q. Good morning, Mr. Flisk.

15 A. Good morning.

16 Q. My name is Richard Bernet. I'm the attorney
17 for Commonwealth Edison in this case. I have a few
18 questions for you.

19 May I see a copy of Stipulation 2. So this is
20 stipulated Exhibit No. 2?

21 JUDGE ZABAN: By the way Stipulated Exhibit 2
22 will be admitted into evidence.

1 BY MR. BERNET:

2 Q. Showing you what's been marked as Stipulated
3 Exhibit No. 2, it's a two-page document -- I'm
4 sorry, your Honor.

5 It's a two-page document that you testified
6 about; is that correct, sir?

7 A. That is correct.

8 Q. Okay. And this is the document that
9 constitutes what you believe to be the second
10 agreement that you entered into with Commonwealth
11 Edison as reflected in your direct testimony; is
12 that correct, sir?

13 A. That is correct.

14 Q. And that -- that discussion of that document in
15 your direct testimony begins at Paragraph 18 in
16 your -- on Page 3 of your direct testimony and
17 continues through Paragraph 29; is that correct?

18 You take a minute to look at the testimony.

19 A. Thank you.

20 To which paragraph did you say?

21 Q. I'm sorry, I said --

22 A. 18 through which?

1 Q. 18 through 29.

2 A. Yes.

3 Q. Okay. And in your direct, I'm going to direct
4 your attention back to Paragraph 22 of your direct
5 testimony, sir, and the question there is what did
6 the agreement call for, and your answer is that the
7 amount of the bill was a final settlement and the
8 word "final" is underlined.

9 Is that correct?

10 A. Correct.

11 Q. Okay. Now, directing your attention to Exhibit
12 2, the words "final settlement" do not appear
13 anywhere on either page on that document; is that
14 correct?

15 A. No.

16 Q. Okay. Paragraph 23 of your direct testimony,
17 the question was, "National Distribution agreed to
18 pay Commonwealth Edison \$22,801 in settlement of the
19 outstanding bill of \$67,981 which National
20 Distribution claimed was absolutely incorrect."
21 Your answer to that question is "yes."

22 Is that right?

1 A. That is correct.

2 Q. Okay. Now, directing your attention back to
3 Stipulated Exhibit 2, the words "National
4 Distribution agrees" do not appear anywhere on that
5 document, do they?

6 A. Well, it's underneath my signature is "National
7 Distribution."

8 Q. Do the words "National Distribution agrees"
9 appear in that order in that document anywhere?

10 A. No.

11 Q. Okay. In fact the word doesn't contain -- the
12 document doesn't contain the word "agreement" at
13 all, does it?

14 A. No.

15 Q. Okay. The document also doesn't state that
16 Commonwealth Edison agrees to anything; isn't that
17 correct?

18 A. That is correct.

19 Q. Okay. As a matter of fact, the document
20 doesn't mention Commonwealth Edison at all, does it?

21 A. Well, it does in the context of the bills.

22 Q. Well, but I'm not asking you about the bills,

1 sir.

2 What I'm asking you about is the two-page
3 document that --

4 A. You asked me if it has any context to
5 Commonwealth Edison.

6 Q. No, that's not my question. That's not my
7 question.

8 My question is, does that document mention the
9 words "Commonwealth Edison"?

10 A. No.

11 Q. Thank you.

12 That document also doesn't state that National
13 Distribution -- strike that. Withdrawn.

14 Directing your attention to
15 Paragraphs 23 through 26 of your testimony, can you
16 take a moment to look at that.

17 A. Sure.

18 Q. So it's your testimony that National
19 Distribution agreed to pay \$22,801 in those
20 paragraphs of your direct testimony; is that
21 correct?

22 A. That is correct.

1 Q. Okay. And directing your attention back to
2 stipulation -- Stipulated Exhibit 2, the words
3 "National Distribution agrees" appear nowhere on
4 that document; isn't that correct?

5 A. I believe that's correct.

6 Q. Thank you.

7 A. That is correct.

8 Q. Okay. Then also directing your attention back
9 to the same paragraphs of your direct testimony,
10 Paragraphs 23 through 26, you testify that you, in
11 fact, or National Distribution paid these monies,
12 and I take it that means the 22,801; is that right?

13 A. Right. I believe we --

14 Q. Pay that within two months, right?

15 A. What is your question, sir?

16 Q. My question is, that's your testimony; is that
17 right?

18 A. That is our testimony.

19 Q. Our testimony; it's your testimony?

20 A. Excuse me, that is my testimony.

21 Q. Right. Thank you.

22 So it's your testimony, sir, that the agreement

1 was entered into on July 9, 2000?

2 A. Correct.

3 Q. So that means by September 9, 2000, you had
4 paid \$22,801 to Commonwealth Edison between those
5 two dates?

6 A. I believe that's close to the date but I'd have
7 to look at the record --

8 Q. Okay.

9 A. -- to refresh my memory.

10 Q. Okay. But within two months?

11 A. Within distance. Within a reasonable distance
12 of that date.

13 Q. Okay. Well, let me ask you this:

14 Do you need to change your testimony?

15 MR. HABIB: Objection.

16 JUDGE ZABAN: What's your objection, Mr. Habib?

17 MR. HABIB: He's arguing with the witness at
18 this point.

19 MR. BERNET: Asking the witness questions about
20 his testimony. His testimony says within two
21 months. He now appears to be backing off two
22 months.

1 THE WITNESS: No, it's within two months. To
2 the best of my recollection, it's within two months.

3 MR. BERNET: Thank you, Mr. Flisk.

4 Withdrawn?

5 MR. HABIB: Withdrawn.

6 MR. BERNET: Okay.

7 BY MR. BERNET:

8 Q. I'd like to direct your attention to
9 Commonwealth Edison company's first set of data
10 requests. And I guess we can mark this --

11 JUDGE ZABAN: This will be Respondent's 1.

12 MR. BERNET: How many copies do I need for you
13 and the court reporter?

14 JUDGE ZABAN: Three for the court reporter, one
15 for me.

16 MR. BERNET: So this is going to be Respondent
17 Exhibit 1.

18 (Whereupon, Respondent's
19 Exhibit No. 1 was marked
20 for identification.)

21

22

1 BY MR. BERNET:

2 Q. Okay. You recognize that as the original data
3 request that Commonwealth Edison sent to National
4 Distribution, sir?

5 A. Yes.

6 Q. Directing your attention to data request No. 9,
7 that document -- that data request says please
8 provide all documents concerning payments from
9 National Distribution or anyone on behalf of
10 National Distribution to ComEd pertaining to
11 electricity usage on the property during the
12 relevant period included -- including but not
13 limited to copies of both sides of all canceled
14 checks.

15 Do you see that?

16 A. I do.

17 Q. Okay. And in October of 2001, National
18 Distribution responded -- I'm sorry, in December of
19 2001?

20 A. Excuse me, what is the date of this document
21 that -- what is the date authored?

22 Q. Date of that document is October 26, 2001.

1 It's on the last page, Page 5.

2 A. October, what did you say?

3 Q. October 26th.

4 A. October 26. 2001?

5 Q. Yes.

6 A. Okay. Go ahead.

7 MR. BERNET: Okay. I'd now like to hand you a
8 copy that we'll mark as Respondent Exhibit 2.

9 (Whereupon, Respondent's
10 Exhibit No. 2 was marked
11 for identification.)

12 BY MR. BERNET:

13 Q. That document is entitled response to data
14 request. Do you recognize that document as National
15 Distribution's response to ComEd's data request?

16 A. I do.

17 Q. At the bottom of the document you can see
18 there's a fax number and a date of December 7, 2001,
19 so that document was sent to us December 7, 2001?

20 A. Right.

21 Q. Directing your attention to Paragraph 9 of that
22 document which is a response to the Data Request No.

1 9 that I just read; is that correct?

2 A. That is correct.

3 Q. And your response to that data request was all
4 documents are in respondent's possession, right?

5 A. That's correct.

6 Q. Okay.

7 MR. BERNET: Hand you what I'll mark as
8 Respondent -- should I be marking this or should the
9 court reporter?

10 JUDGE ZABAN: Just mark them so that he knows
11 what they are, just one copy.

12 MR. BERNET: Respondent's Exhibit 3.

13 (Whereupon, Respondent's
14 Exhibit No. 3 was marked
15 for identification.)

16 BY MR. BERNET:

17 Q. That's a document that was produced by National
18 Distribution in this case and it's been Bates
19 labeled by ComEd as Bates label ND0141 through 184.
20 That's -- the document starts with an April 9, 2002
21 cover letter from Mr. Habib to me, has the caption
22 of National Distribution versus Commonwealth Edison

1 Company and it states, "enclosed please find the
2 documents requested as to our canceled checks and
3 receipts."

4 Can you take a moment to look at that document,
5 sir.

6 A. Yes. I have looked at the document.

7 Q. So that document is the -- or the attachment to
8 that document constitute the canceled checks that
9 National Distribution produced in this case; is that
10 right?

11 A. That is correct.

12 (Whereupon, Respondent's
13 Exhibit No. 4 was marked
14 for identification.)

15 BY MR. BERNET:

16 Q. Okay. I hand you what's now been marked as
17 Respondent's Exhibit 4.

18 You recognize that document, sir?

19 A. I do.

20 Q. Can you tell us what that is?

21 A. It's a verification of the requested documents
22 produced for Commonwealth Edison under their

1 request -- their document request, my signature.

2 Q. So that's your statement under oath that
3 National Distribution has complied with ComEd's data
4 request?

5 A. Right.

6 Q. Okay. Okay. Directing your attention to the
7 document that's been marked as Respondent's Exhibit
8 3, can you tell me, sir, are there any checks in
9 there from the year 2000?

10 A. Yes.

11 Q. Can you tell us what those are, what check
12 numbers?

13 A. Well, you want me to go by your Bates number?

14 JUDGE ZABAN: Go by the Bates number.

15 MR. BERNET: That's fine. That's fine.

16 THE WITNESS: I'll start with the front. I'll
17 have to just go through them one by one.

18 Your Bates No. 145.

19 MR. BERNET: Hold on, hold on. 145. Go ahead.

20 THE WITNESS: Your Bates No. 146.

21 MR. BERNET: Uh-huh.

22 THE WITNESS: Your Bates No. 147.

1 Bates No. 152.

2 Bates No. 153.

3 That is it.

4 BY MR. BERNET:

5 Q. Okay. Okay. Now, directing your attention to
6 145 and 145, I'd like you to compare that to Bates
7 No. 147, please.

8 A. Yes.

9 Q. Those are --

10 MR. HABIB: Hold on a second, please, counsel.

11 MR. BERNET: Do you need a copy, Bob?

12 MR. HABIB: Yeah, I do, because I don't have a
13 Bates stamp.

14 BY MR. BERNET:

15 Q. Comparing 147 to 145, sir, those are duplicate
16 original -- those are duplicate copies, right?

17 A. Absolutely.

18 Q. So 145 and 147 are copies of -- constitute two
19 copies of Check Nos. 3323 and 3324, right?

20 A. Correct.

21 Q. All right. So we only need one of those?

22 A. So you want me to take one of those out?

1 Q. Yeah, please. So let's keep 147 out.

2 So we're looking at 147 right now. And then
3 I'd like you to compare 152 to 146 and tell me if
4 those are also duplicates.

5 A. 52?

6 Q. 52 -- 152 to 146.

7 A. 52 to 146 -- is it 46 to 52?

8 JUDGE ZABAN: Either way.

9 MR. BERNET: It doesn't matter. You can do it
10 146 and 152. I'd just like you to pull out those
11 two sheets, sir. That's all I'm asking.

12 THE WITNESS: I'm sorry. So I'll pull out 152.

13 BY MR. BERNET:

14 Q. Okay. So pull that out and pull 146 out and
15 put them side by side. I'd just like you to look at
16 them at the same time.

17 A. Okay.

18 Q. Okay. Are those -- that's a -- those are
19 duplicates of one set of checks; is that correct?

20 A. Absolutely.

21 Q. Okay. So it's Check Nos. 3320 through 3322
22 that are copied twice there, right?

1 A. Right.

2 Q. So let's take out 152, so we'll focus on 147
3 and 146.

4 So then out of the -- out of the checks that
5 you provided in response to ComEd's data request,
6 it's these --

7 A. I don't have 147 here.

8 Q. It's right here.

9 JUDGE ZABAN: You have already taken 147 out.

10 THE WITNESS: Okay.

11 BY MR. BERNET:

12 Q. So out of the checks that National Distribution
13 provided concerning payments it made to Commonwealth
14 Edison between 1998 and 2001, there are five checks;
15 is that correct?

16 A. That's correct. Five checks that we
17 produced --

18 Q. Right.

19 A. -- you're asking me?

20 Q. Right. Well, there are five checks that you
21 sent to Commonwealth Edison Company.

22 A. 146 and what was that other one, 50 --

1 Q. I'm sorry, 146 and 147. You have already
2 looked through there, I think.

3 A. Yeah.

4 Q. I think you have already testified that these
5 are the only checks in there for the year 2000?

6 A. Yeah. That's correct.

7 Q. These are checks for payment on the account
8 that's at issue in this case?

9 A. That is correct.

10 Q. Okay. And let's talk about the checks.

11 So it's Check Nos. 3320 through 3324, right?

12 A. Correct.

13 Q. And each one of those checks is in the amount
14 of \$2,500?

15 A. That is correct.

16 Q. Okay. And each one of those checks is dated
17 November 2nd, 2000?

18 A. That is correct.

19 Q. Okay. And none of those checks refer to a July
20 9, 2000 settlement agreement; is that correct?

21 A. That is correct.

22 Q. Okay.

1 A. On the face of the check, they do not.

2 Q. Right. And so there were no checks from July
3 of 2000 payable to Commonwealth Edison; is that
4 correct?

5 MR. HABIB: That we produced? As far as that
6 are included in this production outside of the
7 account activity statements we have already given
8 you?

9 MR. BERNET: I'm sorry, I asked Mr. Flisk a
10 question. Is that an objection?

11 MR. HABIB: I just want the question.

12 MR. BERNET: Here's my question. It's very
13 simple.

14 BY MR. BERNET:

15 Q. There are no checks that National Distribution
16 paid to Commonwealth Edison in July of 2000?

17 MR. HABIB: I'm going to object at this point
18 to this whole line of questioning for this reason,
19 your Honor:

20 Lynn Miller in her direct testimony filed with
21 the Commonwealth -- with the Commerce Commission on
22 behalf of Commonwealth Edison admitted in her direct

1 testimony that on July 17th, 2000, a payment for
2 \$10,216.12 was recorded by Commonwealth Edison. It
3 is shown on her account activity statements.

4 On November 3rd, a payment of \$12,500 was
5 credited by Commonwealth Edison as testified to by
6 Lynn Miller in her sworn testimony.

7 Therefore, if counsel at this point is
8 attempting to impeach my client, he has already
9 through his own client filed sworn documents with
10 the Court admitting the payments made in July of
11 2000 and admitting the other payments.

12 In fact, I am looking right now at Page 10 of
13 Lynn Miller's direct testimony filed in this case on
14 April of the year 2002.

15 I also have the account activity statement
16 attached by Lynn Miller to her direct testimony.

17 So therefore given the fact that Commonwealth
18 Edison has already admitted all of these payments
19 were made, that they did receive \$22,716.12 of our
20 money, at this point I would object and I move to
21 strike counsel's testimony.

22 MR. BERNET: Well, I'm asking --

1 MR. HABIB: Strike counsel's whole line of
2 questioning.

3 JUDGE ZABAN: First of all, Ms. Miller's
4 testimony hasn't been admitted into evidence, okay.

5 The fact that you filed something doesn't mean
6 it's admitted, number one.

7 Number two is I believe the testimony here is
8 that Mr. Flisk has testified that all payments were
9 made by -- within two months of the date of the
10 agreement which is September the 9th.

11 We now have payments that are outside the
12 two-month period and the issue remains is, and I
13 still don't know and obviously that's a point of
14 what were these payments for.

15 And I think Mr. Bernet is entitled to go into
16 with this witness in terms of the payments, when the
17 payments were made and what, if anything, was
18 designated as the payments.

19 I don't know at this point whether these were
20 payments for current bills, whether they were
21 payments for some alleged agreement between the
22 parties, Mr. Habib.

1 You'll have an opportunity to cross-examine
2 Ms. Miller regarding her testimony at the time that
3 it's introduced, and you can attempt to clarify
4 specifically what's going on.

5 But as to the amount that's been introduced at
6 this point, I think Mr. Bernet is entitled to -- is
7 entitled to proceed.

8 MR. BERNET: Thank you.

9 JUDGE ZABAN: So your objection will be
10 overruled.

11 MR. BERNET: Thank you, your Honor.

12 MR. HABIB: Thank you, your Honor.

13 BY MR. BERNET:

14 Q. Okay. So my question, Mr. Flisk, is that these
15 are the only checks that National Distribution sent
16 to Commonwealth Edison in the year 2000; is that
17 correct?

18 A. These are the only checks that we were able to
19 find in our records for Commonwealth Edison.

20 When I had our girls go through the check
21 statements, some of the statements were missing,
22 some of the checks may have been missing.

1 As we were under a -- doing an audit for our
2 books, some of these statements had not replaced all
3 the checks and they may not have gotten all the
4 checks that they should have gotten when they did
5 the original search.

6 JUDGE ZABAN: So your answer to the question,
7 Mr. Flisk, is there may have been others, but --

8 THE WITNESS: There may have been others.

9 JUDGE ZABAN: -- these are the only ones you
10 were able to produce; is that correct?

11 THE WITNESS: These are the only ones we were
12 able to produce.

13 BY MR. BERNET:

14 Q. Just so the record is clear in the document
15 marked Respondent's Exhibit 3, we have in there
16 checks that date back to September of '98, isn't
17 that correct, copies of checks dating back to
18 September of '98?

19 A. Yes.

20 Q. Okay. And going forward to as late as November
21 of -- I'm sorry, March of 2002, right?

22 A. Correct.

1 Q. Okay. So you just couldn't --

2 A. Where is 2000 -- there's one in the end, okay,
3 I see it.

4 Q. So is it your testimony then, sir, that there
5 were, in fact, payments other than the payments we
6 described which are on -- in canceled Check Nos.
7 146 -- Bates Nos. 146 and 147?

8 A. I believe there were.

9 Q. That's just based on your recollection?

10 A. That's -- your jogging -- this is three years
11 ago, but my best recollection I gave
12 Mr. Crutcher a check which I don't see here within
13 these documents for \$10,000.

14 Q. On what date?

15 A. I believe sometime in July.

16 Q. July of 2000?

17 A. 2000. The date I think is July the 9th, the
18 day I signed the agreement with him.

19 There it is right there, July 9th.

20 Q. Okay. Now, directing your attention to these
21 checks -- copies of these canceled checks. Check --
22 the Check No. 3320, you see that document?

1 A. Uh-huh.

2 Q. That refers -- there's a handwritten reference
3 on that document to June of 2000.

4 Do you see that?

5 A. Yes, I do.

6 Q. Is that your handwriting?

7 A. That is correct.

8 Q. Okay. And then if you look at 3321, you see at
9 the bottom a reference to July of 2000, right?

10 A. I believe.

11 Q. That's --

12 A. July of 2000, 3321, that's correct.

13 Q. Right. Okay. And then that's your
14 handwriting, too?

15 A. That is correct.

16 Q. Okay. Then we go to 3322 and you see what
17 looks like August of 2000, right?

18 A. That is correct.

19 Q. Okay. That's your handwriting, too, right,
20 sir?

21 A. That is correct.

22 Q. Then Check No. 3323 has a reference at the

1 bottom September 2000, right?

2 A. That is correct.

3 Q. And that's also your handwriting?

4 A. That is correct.

5 Q. And then we have 3324 dated October 2000 -- I
6 mean there's a reference to October 2000, correct?

7 A. That is correct. It's my handwriting.

8 Q. Right. Just so we're clear, none of those
9 checks reference July 9, 2000 settlement agreement;
10 is that right?

11 A. No, they do not.

12 Q. Okay. Okay. Now I'd like to direct your
13 attention, sir, to what's been marked, I think, for
14 identification purposes, the Exhibit 1 to your
15 direct testimony.

16 A. Is this it?

17 Q. Your original direct.

18 A. Did you give me a copy?

19 Q. I don't think so.

20 A. I know which one it is. Is it here? This is
21 in yours, here. I have it, sir.

22 Q. Okay. All right. Now, according to you, Mr.

1 Flisk, the letter that Ms. McInerney allegedly sent
2 you on August 19, that's what this is, right?

3 A. Well, it's not alleged. It's her work product.

4 Q. It's your claim that that's the letter she sent
5 you on August 19?

6 A. That's correct.

7 Q. And so is it your testimony, sir, that when she
8 sent this letter to you on August 19, the only
9 attachment to that document was the one page that
10 immediately follows which appears to be a
11 spreadsheet?

12 A. That is correct.

13 Q. Okay. That's your testimony?

14 A. That is my testimony.

15 Q. Okay. So is it your testimony, sir, that if
16 you -- can I direct your attention to the second
17 paragraph of the August 19th letter.

18 There's a couple of sentences there that I'd
19 like you to focus on.

20 Can you read the first two sentences of that
21 paragraph, please.

22 A. You want me to read them out loud?

1 Q. Just review them.

2 A. Second paragraph, you're talking about?

3 Q. Correct. So that says -- the second sentence
4 of the second paragraph says "I have attached a
5 detailed transcript of your account covering the
6 past two years," right?

7 That's what that says?

8 A. Yes.

9 Q. Okay. And so is it your testimony, sir, that
10 the page attached to that is a detailed transcript
11 of your account covering the past two years?

12 A. That's her attached document to her letter,
13 yes.

14 Q. No, that's not my question.

15 My question is, is it your understanding that
16 that is a detailed transcript of your account
17 covering the past two years?

18 A. I couldn't know that, sir.

19 Q. You don't know?

20 A. I don't know. This is her work product.

21 Q. Okay.

22 JUDGE ZABAN: Let me ask you a question,

1 Mr. Flisk, real simple.

2 In this letter that you allegedly received from
3 Ms. McInerney, you have attached here a document
4 that consists of five entries; is that correct?

5 THE WITNESS: That is correct.

6 JUDGE ZABAN: Is it your testimony that's the
7 only document you received with this letter?

8 THE WITNESS: That is correct. That's her fax
9 thing on the top of it, by the way. The other one
10 must have been cut off. From Edison.

11 JUDGE ZABAN: Okay.

12 You may proceed, Mr. Bernet.

13 THE WITNESS: Here's the original, your Honor,
14 with the --

15 MR. BERNET: Okay.

16 BY MR. BERNET:

17 Q. Okay. Now, this -- these two pages then, sir,
18 just so I'm clear, constitute the first agreement
19 that you claim to have entered into with ComEd?

20 A. Correct.

21 Q. Okay. And there's no signature by ComEd on
22 either page of that document; is that correct?

1 A. Correct.

2 Q. There's no signature by National Distribution
3 on either page of that document, right?

4 A. That is correct.

5 Q. As a matter of fact, the phrase "National
6 Distribution agrees" does not appear on that
7 document at all?

8 A. That is correct.

9 Q. The phrase "Commonwealth Edison agrees" does
10 not appear on that document at all?

11 A. That is correct.

12 Q. Okay. Directing your attention to your direct
13 testimony which is --

14 A. I got it here in my hands.

15 Q. So do I.

16 A. Go ahead.

17 Q. Okay. Directing your attention, sir, to
18 Paragraph 13 of that testimony, the question, do you
19 have that?

20 A. Yes.

21 Q. Okay. The question is you reached an agreement
22 with Ms. McInerney that you would pay \$19,365.08 in

1 settlement of the outstanding bills as Commonwealth
2 Edison would remove \$37,487.13 from your outstanding
3 bill.

4 You see that?

5 A. Yes.

6 Q. And then you answered "yes" to that question;
7 is that right?

8 A. Yes.

9 Q. Okay. No place on that document -- and when I
10 refer to the document, I'm referring to Exhibit 1 to
11 your direct testimony -- is there a phrase that says
12 "National Distribution agrees to pay \$19,365.08"; is
13 that right?

14 A. Correct.

15 Q. In fact, on the face of that document, does it
16 say anywhere that National Distribution agrees to do
17 anything, right?

18 A. Correct.

19 Q. Okay. Directing your attention to Paragraph 11
20 of your direct testimony, Paragraph 11, you have
21 that?

22 A. I do.

1 Q. Okay. Paragraph 11 says to test these billings
2 you filed a protest with the Illinois Commerce
3 Commission and received a Case No. 99-054676, and
4 you answered that question "yes"?

5 A. Correct.

6 Q. So the document that we're referring to as
7 Exhibit 1, nowhere on that document does -- do the
8 words "Illinois Commerce Commission" appear; is that
9 correct?

10 A. That is correct.

11 Q. Okay. And "ICC Case No. 99-054676" does not
12 appear on that document anywhere?

13 A. That is correct.

14 Q. Okay. And the word "protest" doesn't appear
15 anywhere on that document?

16 A. That is correct.

17 Q. The document also doesn't say that National
18 Distribution agrees to stop pursuing ICC Case No.
19 99-054676, right?

20 A. That is correct.

21 Q. In fact, the document has no stated purpose,
22 does it?

1 A. No. The stated purpose is, as in my testimony,
2 is it was an agreement that was made by
3 Ms. McInerney on behalf Commonwealth Edison in order
4 to enter an agreement and resolve the issues we had
5 for the bills.

6 MR. BERNET: Move to strike as nonresponsive.

7 MR. HABIB: I would object at this point.

8 The question says the document has no stated
9 purpose.

10 This is a document sent by Ms. McInerney at
11 Commonwealth Edison and Mr. Flisk has testified as
12 to what the purpose was.

13 MR. BERNET: The question is a stated purpose,
14 not his belief as to what the purpose is.

15 MR. HABIB: Well, your Honor, then the document
16 would speak for itself.

17 If you read the letter, it specifically states
18 what is being done at this point in terms of the
19 account.

20 JUDGE ZABAN: Well, the truth of the matter is,
21 Mr. Habib is correct, the document does speak for
22 itself.

1 What you're asking -- you're asking this
2 witness to do is to interpret the document.

3 MR. BERNET: Okay.

4 JUDGE ZABAN: And that probably would be
5 improper.

6 MR. BERNET: I'll withdraw that question, your
7 Honor.

8 BY MR. BERNET:

9 Q. Mr. Flisk let me ask you this:

10 Does the word "purpose" appear on that document
11 anywhere?

12 JUDGE ZABAN: Once again, Mr. Bernet, the
13 document speaks for itself.

14 MR. BERNET: Withdrawn. Withdrawn. Sorry,
15 your Honor.

16 BY MR. BERNET:

17 Q. I'd like to direct your attention, sir, back to
18 Respondent's Exhibit 1 which is ComEd's data request
19 in this case.

20 A. Okay.

21 Q. I'd like to direct your attention to Paragraph
22 3 of those requests and in particular 3E.

1 See that?

2 A. Wait a minute, you're talking about the October
3 1 you're speaking to?

4 Q. Yes. Yes.

5 A. You're talking about Paragraph 3 which is
6 Docket No. --

7 Q. No, I'm sorry. On the second page, the data
8 request --

9 A. Excuse me.

10 Q. -- Paragraph 3, and in particular 3E.

11 A. 3E?

12 Q. Correct.

13 A. Provide copies of -- yes.

14 Q. Okay. So 3E, we were asking for National
15 Distribution to provide -- please provide copies of
16 all leases in effect on the property at any time
17 during the relevant periods.

18 You see that?

19 A. Yes.

20 Q. Okay. And if we look back at the first page,
21 the relevant period in Paragraph 5 is defined to
22 mean January 1, 1998, through September 30th, 2001,

1 right?

2 A. That is correct.

3 Q. And then you -- I'd like to direct your
4 attention to your responses to the data request
5 which --

6 A. Yes, which --

7 Q. -- has been marked as --

8 JUDGE ZABAN: 2.

9 MR. BERNET: -- exhibit -- Respondent's
10 Exhibit 2. Okay.

11 BY MR. BERNET:

12 Q. And if you look at the -- at No. 3, numbered
13 Paragraph 3, that's your answer to our Data Request
14 No. 3; is that correct?

15 A. Yes.

16 Q. Okay. And in there you say that National
17 Distribution had seven tenants during the relevant
18 time period, right?

19 A. Yes.

20 Q. Okay. Now, I'd like to direct your attention
21 to your additional testimony, additional direct
22 testimony.

- 1 A. I'll need a copy of that.
- 2 Q. Okay. Pages aren't numbered in your additional
3 direct testimony, but I'd like --
- 4 A. I can just count.
- 5 Q. I'd like you to turn to Page 4, please.
6 I'd like you to review Pages 4, 5, and 6.
- 7 A. Okay.
- 8 Q. Okay. Company called Harold Johns was a
9 tenant?
- 10 A. Which page are you speaking?
- 11 Q. I'm sorry, on Page 4.
- 12 A. Okay.
- 13 Q. Harold Johns Company was a tenant during the
14 relevant period, right?
- 15 A. Correct.
- 16 Q. Okay. And a company called Airright was a
17 tenant during the relevant period?
- 18 A. That is correct.
- 19 Q. National Distribution was a tenant during the
20 relevant?
- 21 A. That's our office. We're not a --
- 22 Q. But National Distribution was a tenant, right?

1 MR. HABIB: Objection.

2 THE WITNESS: We're not a tenant. We just put
3 it down as occupying space.

4 BY MR. BERNET:

5 Q. Let me ask you this:

6 The sentence above says:

7 "In the year in the 1998 I have listed the
8 following tenants with the amounts of their square
9 feet that they had leased."

10 So is it your testimony, sir, that that's an
11 incorrect statement?

12 MR. HABIB: Objection. He's arguing with the
13 witness, counsel.

14 MR. BERNET: Not arguing.

15 MR. HABIB: Mr. Flisk has stated at this point
16 National Distribution would not be considering
17 itself a tenant, but when we're answering questions
18 that were asked in terms of space is what we were
19 putting forth here, we were putting forth the space
20 National Distribution occupied, so this is really a
21 play on words.

22 JUDGE ZABAN: Well --

1 THE WITNESS: It's a tenant.

2 MR. BERNET: If he has to amend his
3 testimony --

4 JUDGE ZABAN: Stop. Stop. Stop. You have
5 listed them as a tenant. I realize as the -- let me
6 ask you a question, Mr. Flisk.

7 Do you own the building?

8 THE WITNESS: I don't own the building. The
9 company owns the building. National Distribution,
10 1600 Western Venture.

11 JUDGE ZABAN: Does National Distribution have a
12 lease with the 1600 --

13 THE WITNESS: It's a master -- I believe master
14 lease.

15 JUDGE ZABAN: Okay. So you have a lease with
16 the building, right?

17 THE WITNESS: Okay.

18 JUDGE ZABAN: Okay. And do you pay rent to the
19 building?

20 THE WITNESS: No.

21 JUDGE ZABAN: Okay. So technically you are a
22 tenant but you're not paying rent?

1 THE WITNESS: Right. It's a pass through
2 company for 1600.

3 JUDGE ZABAN: Okay. But you have a lease so
4 that makes you a tenant.

5 THE WITNESS: Right.

6 JUDGE ZABAN: You're a lessee, all right.
7 You're a -- I mean, it's all semantics, okay.

8 Let Mr. Bernet go where he needs to go.

9 MR. BERNET: Thank you, your Honor.

10 BY MR. BERNET:

11 Q. So National Distribution is a tenant, right?

12 A. Fine.

13 Q. Was a tenant?

14 A. Fine. Still is.

15 Q. Okay. And a company called Uptown was a tenant
16 during the relevant period?

17 A. Correct.

18 Q. Okay. And if you turn to the next page, Page
19 5, a company called Economy was a tenant?

20 A. Correct.

21 Q. A company called Habitat for Humanity was a
22 tenant during the relevant period?

1 These are all questions about the relevant
2 period.

3 A. Okay, well, just let me just look at what
4 the -- okay.

5 Now, what you're referring here so we don't go
6 off the path, you're referring for the Paragraph 22
7 which is referring to the year of '99. The
8 following -- the prior paragraph is referring to the
9 year 1998.

10 Q. Yes.

11 A. There is a difference.

12 JUDGE ZABAN: We understand that.

13 BY MR. BERNET:

14 Q. All I'm asking is --

15 A. This is correct.

16 Q. I'm not asking about -- I'm just asking about
17 during the relevant period which is -- we understand
18 to be January 1998 to September of 2001, okay?

19 A. Correct.

20 Q. I'm just asking if these entities were tenants
21 during that period?

22 A. That is correct.

1 Q. Okay. Good. Harrison Marketing was a tenant
2 during the relevant period, correct?

3 A. Correct.

4 Q. Harold Johns, we have already talked about.
5 Airright, we have talked about. National
6 Distribution we have talked about.

7 CPR Storage was a tenant during that time; is
8 that correct?

9 A. Correct.

10 Q. And going back to Page 4, Worldwide
11 Transmission was a tenant during that time?

12 A. That is correct.

13 Q. Okay. And directing your attention to the
14 bottom of Page 5, company called or an entity called
15 Blackhaw Venture was a tenant during the relevant
16 period?

17 A. Blackhawk.

18 Q. Blackhaw?

19 A. Hawk.

20 Q. Hawk. Okay. Blackhawk Venture was a tenant
21 during the relevant period, right?

22 A. Vending.

1 Q. Vending?

2 A. Vending.

3 Q. Okay. So this should say Blackhawk Vending.

4 Okay.

5 So Blackhawk Vending was a tenant during the
6 relevant period?

7 A. Correct.

8 Q. If you turn to the next page, Kenny
9 Construction was a tenant during the relevant
10 period?

11 A. That's correct.

12 Q. And Starbucks Coffee was a tenant during the
13 relevant period?

14 A. Correct.

15 Q. And Queeter International was a tenant during
16 the relevant period?

17 A. Correct.

18 Q. Okay. And so as I add up the numbers, it looks
19 to me like during the relevant period you had 13
20 tenants, sir.

21 Take your time if you want to add them up.

22 A. There's the same tenants over and over and over

1 again.

2 Q. I know.

3 A. So let me just go -- Harold Johns -- let's see.

4 JUDGE ZABAN: Are you talking about 13

5 different tenants?

6 MR. BERNET: Yes.

7 JUDGE ZABAN: Okay.

8 THE WITNESS: There's probably, yeah, there's
9 probably been 13 different tenants. I agree with
10 that.

11 BY MR. BERNET:

12 Q. And so with respect to Data Request -- National
13 Distribution's response to Data Request
14 No. 3 where --

15 A. Where are you?

16 Q. Which is Petitioner -- Respondent's Exhibit 2.

17 A. This is yours.

18 Q. No. No. No. Exhibit 2, I'm sorry.

19 Respondent's Exhibit 2 --

20 A. This here?

21 Q. -- is your response.

22 A. Yes.

1 Q. So you never amended that to indicate there
2 were more than seven tenants; is that right?

3 A. When you say seven tenants, we mean over the
4 period of time, seven tenants.

5 Q. Right, but you just testified --

6 A. Seven names.

7 Q. Well, we just went through a list of 13
8 independent tenants, right?

9 A. What I understood this to be here is the
10 tenants that we had in -- had long moved out. We
11 disclosed everybody that had been in the building.

12 How many people are living -- how many are in
13 there now, what's the average occupancy of the
14 building is the seven that we -- I believe we
15 addressed whether National is included in or not,
16 I'm not sure.

17 MR. BERNET: My question is very simple --

18 JUDGE ZABAN: Mr. Bernet, can I ask you a
19 question?

20 Was the whole purpose of this to try and
21 impeach him over whether or not there was seven or
22 13?

1 MR. BERNET: Yes.

2 JUDGE ZABAN: Off the record.

3 (Whereupon, a discussion was
4 had off the record.)

5 JUDGE ZABAN: Back on the record.

6 MR. BERNET: Thank you, your Honor.

7 JUDGE ZABAN: Back on the record.

8 This seems like a good time for a break. We're
9 going to break until 1:15, okay.

10 Before we break, Mr. Bernet, you want to bring
11 your witnesses in so I can admonish them during the
12 break?

13 MR. BERNET: Actually, your Honor, they left
14 the building.

15 JUDGE ZABAN: So I'm going to trust you to
16 admonish them that they're not to discuss this among
17 themselves nor with you regarding any testimony.

18 Also, Mr. Flisk, you can't discuss your
19 testimony with your lawyer. However, you can talk
20 to your lawyer about other things, all right. Okay.
21 All right.

22 1:16 we'll continue to just in case you need an

1 extra minute. Okay.

2 (Whereupon, a luncheon recess
3 was taken.)

4 JUDGE ZABAN: Back on the record.

5 Before we took our break, I believe, Mr.
6 Bernet, you were cross-examining Mr. Flisk.

7 MR. BERNET: Yes, your Honor.

8 JUDGE ZABAN: Proceed.

9 MR. BERNET: Thank you.

10 BY MR. BERNET:

11 Q. Mr. Flisk, you claim that there are estimated
12 bills that were issued by Commonwealth Edison to
13 National Distribution between 1998 and 2001 that are
14 inaccurate; isn't that correct?

15 A. Correct.

16 Q. And is it every one of the estimated bills that
17 were issued to you?

18 A. From what year, sir?

19 Q. From January 1998 through March of 2001?

20 A. Well, the more specific to the answer to your
21 question is more towards 2000 now that they have got
22 out there every month.

1 Before they were estimating the bills more
2 incorrectly.

3 Q. Right. Let's be clear.

4 We know that in certain months estimated bills
5 were issued, okay, bills based upon estimated
6 readings, right?

7 A. Correct.

8 Q. Okay. And then we know other months there were
9 bills that were issued based upon actual readings,
10 right?

11 A. On readings, yes.

12 Q. And so my point is what you are claiming in
13 this case is that some or all of the bills that were
14 based upon estimated readings are inaccurate?

15 A. The vast majority of them are.

16 Q. Okay. It's not all of them. It's the vast
17 majority.

18 A. Well, I would say over 80 percent of the bills
19 were incorrect.

20 Q. Okay. But it's -- but you have not testified
21 that any bills based upon actual readings are
22 incorrect?

1 A. You didn't ask me that question.

2 Q. I'm asking you that question.

3 A. They are incorrect.

4 Q. So you're saying bills based upon actual
5 readings are also incorrect?

6 A. That is correct.

7 Q. Okay. So when you testify about the --
8 comparing two -- the estimated bills to the actual
9 bills -- well, strike that. Withdrawn.

10 Looking -- going to your direct testimony, sir,
11 which is Petitioner's Exhibit 1, attached to your
12 direct testimony are bills, Exhibit 3 in particular.

13 A. No such animal.

14 MR. HABIB: Not in the copy he has here right
15 now.

16 THE WITNESS: This part of the exhibit?

17 MR. HABIB: Yes, it is.

18 THE WITNESS: The electric bills themselves on
19 the back are part of your exhibit.

20 MR. BERNET: Yes. Yes. I think all the
21 exhibits -- it's exhibit --

22 THE WITNESS: You're just speaking Exhibit 3?

1 MR. BERNET: That's correct.

2 THE WITNESS: Okay. I have got it.

3 MR. BERNET: It's Exhibit 1 through 5.

4 THE WITNESS: I got it.

5 MR. BERNET: Exhibit 3.

6 THE WITNESS: That's correct.

7 BY MR. BERNET:

8 Q. Now, you prepared the document that is
9 identified as Exhibit 3 to your direct testimony; is
10 that right?

11 A. That's correct.

12 Q. Okay. And that document contains your
13 calculations for certain estimated bills and certain
14 actual bills; is that correct?

15 A. That's correct.

16 Q. Okay. So is it your testimony, sir, that the
17 bills that are identified under the -- under the
18 heading 1999 estimated are all inaccurate?

19 A. Correct.

20 Q. Okay. Then in 1998, you see --

21 A. '99 now, we're speaking.

22 Q. I understand. So now we're going to '98 below

1 the '99.

2 So in 199- -- there's another category called
3 1998 and there's a list of one, two, three, four,
4 five bills. Do you see that?

5 A. I do.

6 Q. And they span the period March 1998 through
7 October or, I'm sorry, September 8, '98, you see
8 that?

9 A. I believe that's correct, yes.

10 Q. So it's your testimony that all of those bills
11 were inaccurate?

12 A. That's correct.

13 Q. And just so we're clear, when we were talking
14 about 1999, we were talking about the period from
15 March 10th, 1999, through September 8, 1999, that
16 appears on this chart?

17 A. That is correct, sir.

18 Q. Okay. Then let's move to 2000.

19 Do you see the list of -- those are lists of
20 bills under 2000?

21 JUDGE ZABAN: Let's -- are you alleging,
22 Mr. Flisk, that all the readings that you have on

1 this page are inaccurate?

2 MR. HABIB: Yeah, I'm -- your Honor, could I
3 just say object quickly.

4 This document was prepared, especially the 2000
5 bills, in the beginning of 2001, this document was
6 prepared based upon the estimated bills given to us
7 by the fall of 2001.

8 In April of 2002, Commonwealth Edison issued
9 corrected bills and adjusted downwards all of the
10 2000 bills that you see here for the most part.

11 So, in effect, he's being questioned on a
12 document that was prepared prior to Commonwealth
13 Edison in effect admitting these documents -- these
14 bills were incorrect and issuing the adjusted bills
15 in the spring of 2002.

16 JUDGE ZABAN: Okay. And --

17 THE WITNESS: I'd have to see the particular
18 bill.

19 JUDGE ZABAN: And then you filed a corrected
20 exhibit, right, Mr. Habib?

21 MR. HABIB: I didn't think I had to if
22 Commonwealth Edison was, in effect, admitting that

1 the bills were incorrect.

2 JUDGE ZABAN: Mr. Bernet, once again, is the
3 point of this for the purposes of impeachment?

4 MR. BERNET: No. I believe it's more than
5 that.

6 I'm trying to understand, your Honor, which
7 bills are accurate in Mr. Flisk's testimony, and
8 I'll accept that the bills that were corrected by
9 ComEd in April of 2002 that were originally issued
10 to you were incorrect that were corrected. I'll
11 accept -- stipulate to that.

12 JUDGE ZABAN: So let's eliminate the 2000 bills
13 that were -- the estimated 2000.

14 MR. BERNET: Okay.

15 JUDGE ZABAN: On the 2001 bills, are you
16 alleging those are all inaccurate?

17 THE WITNESS: No. Excuse me, I believe most of
18 these bills are accurate -- are actual readings.

19 JUDGE ZABAN: Okay. So that -- I think --

20 MR. BERNET: That's all I'm --

21 THE WITNESS: I can admit to these bills being
22 actually read here.

1 MR. BERNET: That's all.

2 JUDGE ZABAN: The 2001 actuals you're saying --

3 THE WITNESS: There may be one here or two, but
4 for the most part --

5 JUDGE ZABAN: For the most part they're
6 accurate?

7 THE WITNESS: Yeah.

8 JUDGE ZABAN: We're talking about the '99
9 and '98 estimates?

10 THE WITNESS: That's fine.

11 BY MR. BERNET:

12 Q. All I'm trying to do is be clear that is it --
13 it's your testimony then as I understand it, that
14 when ComEd issued bills to you that were based upon
15 actual readings, for the most part they were
16 accurate?

17 A. No. Because they took readings -- I talked to
18 Mrs. McInerney and those readings were not being
19 transmitted back to the company from the date they
20 were read at the amount they were read.

21 She could not explain that.

22 Q. Okay. So just so we're clear --

1 A. In 2000. We're speaking about 2000 now. This
2 is why this bill got changed. I'm going back to --

3 JUDGE ZABAN: That's been corrected, okay.

4 I think what Mr. Bernet wants to know, okay,
5 we're talking -- I think this case involves the '98
6 and '99 readings; is that correct?

7 THE WITNESS: That's correct.

8 MR. HABIB: At this point.

9 JUDGE ZABAN: Were there any actual readings
10 done in '98 or '99?

11 THE WITNESS: I believe there may have been one
12 or two, yes.

13 JUDGE ZABAN: Do you contest whether those were
14 accurate for '98 or '99?

15 THE WITNESS: Yes, I believe they were totally
16 inaccurate.

17 JUDGE ZABAN: Do you know what years -- what
18 months they involved?

19 THE WITNESS: No. I'll tell you what it refers
20 to is because the meter was taken out of here in
21 March, I believe, of 2000. The bills immediately
22 dropped.

1 Even though they told me the meter was up to
2 snuff, the bills immediately changed in March after
3 the meter was changed.

4 JUDGE ZABAN: Answer my question. You don't
5 know what bills in '98 or '99 were actual readings?

6 THE WITNESS: No, but if I could see the
7 bills -- if I go through every bill, I could
8 probably tell you.

9 JUDGE ZABAN: But you didn't include that in
10 this exhibit; is that right?

11 THE WITNESS: No, I didn't.

12 JUDGE ZABAN: Okay, Mr. Bernet.

13 MR. BERNET: Okay. Thank you.

14 BY MR. BERNET:

15 Q. Mr. Flisk, you understand that Mr. Gordon has
16 filed prefiled testimony in this case; isn't that
17 right?

18 A. Correct.

19 Q. Did you review that testimony?

20 A. I wasn't in town.

21 Q. So you have never seen that?

22 A. Not to my knowledge, no.

1 Q. Okay. Are you familiar with the fact that Mr.
2 Gordon claims to have conducted meter readings at
3 National Distribution on ComEd's meters?

4 A. I believe that's accurate.

5 Q. Okay. Have you ever seen those meter readings?

6 A. Saw them for the first time when he brought
7 them up to our attention after we reviewed your
8 meter reader's statements in regards to readings.

9 Q. So you did see them?

10 A. That was the first time I saw them.

11 Q. I'm not trying to get to when you saw them. I
12 want to know whether or not you reviewed those
13 documents.

14 A. I looked at them, yes, I did, sir.

15 Q. Do you have any reason to believe those
16 readings on those documents are inaccurate?

17 A. No.

18 Q. Okay.

19 A. As far as inaccurate, when you say inaccurate,
20 are you talking about from the prior to 2000 or
21 2000?

22 Q. No, I'm talking about --

1 A. I don't remember all the dates on the bills so
2 I'd have to look at them and see.

3 Q. Okay. All right. Then let's pull it out.

4 JUDGE ZABAN: But Mr. Gordon's testimony is not
5 in evidence.

6 MR. BERNET: I understand, but I guess what I'm
7 getting at -- I'll withdraw this line of questioning
8 for now with respect to Mr. Gordon as long as I can
9 ask Mr. Flisk after Mr. Gordon testifies?

10 JUDGE ZABAN: Well --

11 MR. BERNET: I mean, we're going to come back
12 anyway.

13 JUDGE ZABAN: But the point is, Mr. Habib may
14 or may not produce Mr. Gordon as a witness, okay.
15 That's one of the reasons I'm not going to let you
16 testify because I don't know whether Mr. Gordon is
17 actually going to testify himself.

18 Number two, if Mr. Gordon testifies and it's
19 con -- and in conflict with Mr. Flisk, then you have
20 a conflict, okay. It's really not your problem.
21 That's Mr. Habib's problem, okay.

22 And I don't see any point in -- you know, if

1 Mr. Gordon says one thing, Mr. Flisk says another --

2 MR. BERNET: I'm not expecting that they'll say
3 something different, your Honor.

4 Just so I'm clear what I'm trying to understand
5 is Mr. Gordon has filed direct testimony indicating
6 that there are business records of National
7 Distribution including records of meter readings.

8 JUDGE ZABAN: Right.

9 MR. BERNET: Mr. Flisk is disputing estimated
10 bills from ComEd. I believe he has not -- he is
11 disputing only certain actual bills, and what I want
12 to know is if he believes these meter readings are
13 accurate. That's all I'm getting at.

14 JUDGE ZABAN: Mr. Flisk, let me ask you:

15 Do you have any reason to believe that the
16 meter readings of Mr. Gordon are inaccurate?

17 THE WITNESS: No.

18 JUDGE ZABAN: Okay.

19 MR. BERNET: Good. Thank you, your Honor.

20 MR. HABIB: Just for the record so it's
21 understood, the readings that were taken down we're
22 agreeing were accurate as to form, as far as taken

1 down.

2 We're not necessarily agreeing that that was an
3 actual correct reading of the amount of electricity
4 we used during this time.

5 MR. BERNET: Are you testifying or is he? I
6 mean, I'm not asking you.

7 JUDGE ZABAN: I understand. He's qualified --

8 MR. HABIB: I just want to make sure it's
9 qualified as to what actually has taken place here
10 as to what we're admitting on behalf of Mr. Gordon.

11 JUDGE ZABAN: You're not admitting on
12 Mr. Gordon?

13 All I asked the witness was does he have any
14 reason to believe that Mr. Gordon is inaccurate and
15 his answer is no.

16 Now, whether Mr. Gordon is accurate or not
17 accurate is a question of fact when Mr. Gordon
18 testifies.

19 MR. BERNET: Right. Thank you, your Honor.

20 BY MR. BERNET:

21 Q. Mr. Flisk, do you have any personal knowledge
22 that a meter at your facility at National

1 Distribution ever measured electricity inaccurately?

2 A. I'd have to believe it did because they removed
3 it the bills subsequently went down.

4 Q. Okay. That's the basis --

5 A. That's my basis.

6 Q. -- for your belief? Okay. Okay.

7 Do you have a degree in electrical engineering?

8 A. No.

9 Q. Did you ever perform any tests on any meter at
10 the National Distribution property?

11 A. It's not my property.

12 Q. Well, there's one meter at issue in this
13 case -- there's two meters at issue in this case?

14 A. But for me to test, I'd have to take it out.

15 Q. That's not my question.

16 There are two meters at issue in this case,
17 correct?

18 There was a meter that was installed and that
19 was removed in February of 2000, right?

20 A. February or March.

21 Q. Something like that?

22 A. Yeah.

1 Q. Then the meter that's been installed since then
2 is the meter that's currently there today?

3 A. I believe, yes, that is correct.

4 Q. Those are the meters that are serving on the
5 account that we're talking about today?

6 A. That is correct.

7 Q. So my question is, have you ever performed any
8 test on either one of those meters?

9 A. No, sir.

10 (Whereupon, Respondent's
11 Exhibit No. 5 was marked
12 for identification.)

13 BY MR. BERNET:

14 Q. I'm handing you now, Mr. Flisk, what's been
15 marked for identification purposes as ComEd or, I'm
16 sorry, as Respondent Exhibit No. 5.

17 A. Yes.

18 Q. Do you recognize that document, sir?

19 A. Sure do.

20 Q. Is that your signature that appears on that
21 document?

22 A. Yes, it is, sir.

1 Q. That's a letter that you sent to Kenneth Pange
2 at Commonwealth Edison Company on behalf of National
3 Distribution; is that right?

4 A. That is correct.

5 Q. Did you send that letter in the ordinary course
6 of your business?

7 A. I did.

8 Q. Okay. Directing your attention to the fax
9 number at the top of that page?

10 A. Yes.

11 Q. That was the fax number 312-737-3303, that was
12 your fax number back in September of '96?

13 A. That is correct.

14 Q. Okay. Was that your fax number in 1999?

15 A. No.

16 Q. When did your fax number change?

17 A. Sometime I want to say late '97, '98. First
18 part of '98 it's my best recollection.

19 Q. Okay.

20 A. When we moved.

21 Q. So it's your testimony that this fax number
22 312-737-3303 was not your fax number in the year

1 1999 at any time?

2 A. No. No.

3 Q. It was not?

4 A. No.

5 Q. Okay.

6 A. Not to my knowledge.

7 (Whereupon, Respondent's
8 Exhibit No. 6 was marked
9 for identification.)

10 BY MR. BERNET:

11 Q. Hand you what's now been marked for
12 identification purposes as Respondent's Exhibit
13 No. 6.

14 Do you recognize that document, sir, as the
15 final notice prior to disconnection that ComEd sent
16 to National Distribution in February of 2001?

17 A. Is this the date you're referring to here, sir?

18 Q. Yes.

19 A. Faxed to us or sent to us? Which is it?

20 Q. Sent to you?

21 A. By mail?

22 Q. Yes.

1 A. I recognize the document, yes, I do.

2 Q. I mean you received this on or about February
3 27, 2001?

4 A. Probably.

5 Q. Okay. You have no reason to believe you
6 didn't?

7 A. No.

8 Q. And this document is Bates numbered 91 National
9 Distribution. This is a document I will represent
10 to you was produced by National Distribution in this
11 case.

12 A. From our books and records, yes.

13 Q. And it states in that document, does it not,
14 that your electric service will be shut off on or
15 after March 13, 2001, because a \$63,000 balance is
16 past due, right?

17 A. That's what it says.

18 Q. Okay. Can I have 49, please.

19 (Whereupon, Respondent's
20 Exhibit No. 7 was marked
21 for identification.)

22

1 BY MR. BERNET:

2 Q. I'm handing you what's now been marked as
3 Respondent's Exhibit No. 7.

4 I will represent to you, Mr. Flisk, that that
5 document is Bates numbered ND49. It's also a
6 document that National Distribution produced to
7 Commonwealth Edison in this case.

8 Do you recognize that document, sir?

9 A. Yes.

10 Q. Okay. And so that's a document called payment
11 agreement confirmation between National Distribution
12 and Commonwealth Edison, right?

13 A. It's a document that Edison produced, but
14 that's what it says, yes.

15 Q. Okay. So on March 15, 2001, you had agreed
16 with Commonwealth Edison to pay Commonwealth Edison
17 the balance of \$65,190; is that correct?

18 A. No, sir.

19 Q. Okay.

20 A. No, sir.

21 Q. Okay. You did not do?

22 A. No, sir.

1 Q. So you also didn't agree to make a \$30,000 down
2 payment on March 15th, 2001; is that correct?

3 A. No.

4 Q. No, meaning you didn't agree to that?

5 A. No, I didn't agree to give them \$30,000 on
6 March 1st.

7 Q. March 15th, right?

8 A. Okay, well, there's a \$30,000 number up here --
9 okay, if that's your question, says the next payment
10 says 8795, doesn't -- 30 is up here.

11 Q. Correct.

12 A. Due immediately -- down payment due immediately
13 of \$30,000.

14 Q. Right.

15 A. Okay.

16 Q. So it's your testimony that you did not agree
17 to pay Commonwealth Edison --

18 A. No.

19 Q. -- \$30,000 on March 15th, 2001?

20 A. No.

21 Q. Okay. Did you agree to pay Commonwealth Edison
22 any amount of money on March 15th, 2001?

1 A. I agreed to pay the current bill I believe we
2 sent them.

3 Q. Current bill?

4 A. Yes. And three other checks which we
5 subsequently stopped.

6 Q. What were those checks for?

7 A. I believe this was the -- excuse the word --
8 extortion money they were trying to get out of us
9 for these bills after they had broken their two
10 agreements and they were going to disconnect the
11 service if we didn't produce the checks immediately,
12 which we did.

13 Q. Okay. So what I'm trying --

14 A. If that's relating to your question up here.

15 Q. Here's what I'm trying to understand. I'm just
16 trying to be clear.

17 You got a final disconnect notice in February
18 2001?

19 A. Correct.

20 Q. Then you produced a payment agreement between
21 ComEd and National Distribution?

22 A. They produced.

1 MR. HABIB: You produced. He didn't produce
2 anything.

3 MR. BERNET: I'll represent to you that this
4 document was produced by National Distribution in
5 this case, okay, so it was in your files.

6 THE WITNESS: When you say produced, sir --

7 MR. HABIB: Hold on -- objection. This is a
8 play on words.

9 What he has said is we turned over those
10 documents, all right. We did not produce an
11 agreement. We produced the document at this point.

12 MR. BERNET: Okay. I understand that.

13 JUDGE ZABAN: You know what, I don't want you
14 guys to forget me, okay.

15 If you have an objection, it's addressed to me.
16 Okay. All right.

17 Mr. Flisk, is it your testimony that you never
18 entered into an agreement with Commonwealth Edison
19 regarding this \$65,000; is that correct.

20 THE WITNESS: Absolutely.

21 JUDGE ZABAN: Okay. Is it also your testimony
22 that this was generated purely by Commonwealth

1 Edison without any participation on your part?

2 THE WITNESS: This was generated, so you
3 understand after a phone conversation that they
4 wanted \$30,000 from me.

5 That was what this was generated from.

6 JUDGE ZABAN: Did you agree to that?

7 THE WITNESS: I said I would give them \$30,000
8 in checks. I didn't agree to any kind of a -- I
9 just said I would pay \$30,000 that day to keep the
10 lights on.

11 JUDGE ZABAN: Okay. Mr. Bernet.

12 BY MR. BERNET:

13 Q. Let's go back to a prior document that I showed
14 you which was copies of canceled checks, that group
15 of documents.

16 JUDGE ZABAN: That was No. 2.

17 MR. BERNET: Your Honor, I think I might have
18 marked that whole document and then we only pulled
19 out a couple pages.

20 JUDGE ZABAN: It was No. 3, respondents.

21 MR. BERNET: We pulled out a couple pages. Did
22 we mark those as separate exhibit?

1 JUDGE ZABAN: We don't need to. You have got
2 them Bates stamped and we know what they are MR.

3 BERNET: So it's a -- it still remains as No. 2 --
4 No. 3, I'm sorry.

5 MR. BERNET: Is it No. 3?

6 JUDGE ZABAN: No. 3.

7 BY MR. BERNET:

8 Q. Directing your attention back to Exhibit No. 3,
9 Respondent's Exhibit No. 3, I'd like to direct your
10 attention, sir, to Bates numbered pages 154 through
11 159.

12 A. I have them.

13 Q. Okay. And those are copies of a series of
14 checks issued by National Distribution to
15 Commonwealth Edison; is that right, sir?

16 A. That is correct.

17 Q. Okay. And those check numbers are National
18 Distribution Check Nos. 3473, 3474, 3475, 3476, 3477
19 and 3478; is that correct?

20 A. That is correct.

21 Q. And those were checks issued by National
22 Distribution to Commonwealth Edison in the ordinary

1 course of its business, right?

2 A. Those were issued by me at Commonwealth
3 Edison's request.

4 Q. Okay. Total amount of those -- total amount of
5 those six checks, sir, is just over \$30,000, isn't
6 it?

7 You can take your time, add them up.

8 A. If you want me to.

9 Q. But subject to check --

10 A. Well, I mean, let's just take off the 85 times
11 three and you can add the rest back in.

12 Q. Okay.

13 MR. HABIB: Don't have to -- don't mark it. 85
14 times three is --

15 THE WITNESS: The rest is five thousand or
16 six --

17 BY MR. HABIB:

18 Q. You agree with me --

19 A. Give or take a dollar.

20 Q. -- the checks -- total of those checks?

21 A. 30 and change.

22 Q. Those checks that we just discussed are all

1 dated March 15, 2001; is that right?

2 A. That is correct.

3 (Whereupon, Respondent's
4 Exhibit No. 8 was marked
5 for identification.)

6 BY MR. BERNET:

7 Q. Just handed you what's been marked as
8 Respondent's Exhibit 8.

9 Do you recognize that document, sir?

10 A. Hold on a minute sir, yes, I do.

11 Q. That's a copy of check numbers -- National
12 Distribution Check Nos. 3475, 3476, 3477, right?

13 A. That is correct.

14 JUDGE ZABAN: I have got the wrong one.

15 MR. BERNET: Right here. I'm sorry. Do you
16 have 8.

17 JUDGE ZABAN: No. You marked that one 8.

18 MR. BERNET: I'm sorry.

19 BY MR. BERNET:

20 Q. So if we compare that to the checks we were
21 just discussing which are part of respondent's --

22 A. They are the same checks.

1 Q. They're the -- they're the same check numbers,
2 3475, 76 and 77, that we discussed previously?

3 A. They are the same checks, sir.

4 Q. And the payment had been stopped on those
5 checks?

6 A. That is absolutely correct.

7 Q. And you stopped payment on those checks --

8 A. Personally.

9 Q. -- on March 28?

10 A. Whatever date happens to be on there.

11 I don't know -- that's somebody stamping. I
12 don't know if that's the date it was.

13 Q. But how soon after you wrote the check did you
14 stop payment?

15 A. I believe the same day or the day thereafter.

16 Q. Okay. Thank you. Directing your attention
17 back to your direct testimony, if you could pull out
18 your direct testimony --

19 A. Sure.

20 Q. -- which is --

21 A. Which paragraph?

22 Q. First page.

1 National Distribution's responses to ComEd's
2 data request which is Exhibit 2, Respondent's
3 Exhibit 2.

4 A. Talking about this one here, right?

5 MR. HABIB: This is the direct testimony is
6 that --

7 MR. BERNET: That's the first one.

8 THE WITNESS: This one here, sir?

9 MR. HABIB: No, this is -- no, that's not it.
10 The data request, right.

11 MR. BERNET: Responses to our data requests.

12 JUDGE ZABAN: That's Respondent's Exhibit
13 No. 2.

14 MR. BERNET: Right.

15 JUDGE ZABAN: Okay.

16 THE WITNESS: I have it.

17 MR. BERNET: Then your additional testimony,
18 too, please.

19 THE WITNESS: This one here, sir?

20 MR. BERNET: Yes.

21 THE WITNESS: Okay I have it.

22 MR. HABIB: Four items, right?

1 MR. BERNET: Three items.

2 THE WITNESS: I have two.

3 JUDGE ZABAN: Petitioner's Exhibit 1 and 2,
4 Respondent's Exhibit No. 2.

5 THE WITNESS: Go ahead.

6 BY MR. BERNET:

7 Q. So just so the record is clear, on Page 1 of
8 your direct testimony, where it mentions the name
9 Brian Flist, that's a typo; is that right?

10 A. Yes.

11 Q. Okay. And on the verification page on Page 7
12 of that document where the word Brian Flist is typed
13 in the verification, that's also a typo?

14 JUDGE ZABAN: We have already been through --

15 MR. BERNET: Your Honor, with all due respect,
16 I think you said you believed that the first one was
17 a typo.

18 JUDGE ZABAN: We actually covered the rest of
19 them, too. We understand wherever it says Brian
20 Flist, it meant Brian Flisk.

21 The witness testified that in fact it's always
22 been Brian Flist so apparently it's just a typo.

1 BY MR. BERNET:

2 Q. So just so we're clear, in these three
3 documents, anywhere Brian Flist appears is a typo,
4 right?

5 A. Yes.

6 Q. Thank you.

7 MR. BERNET: I'm going to hand to the court
8 reporter what will be marked as 9, 10, 11.

9 THE WITNESS: Somebody got a lot of awards.

10 MR. BERNET: It is strange looking, isn't it?

11 I'm going to hand to the court reporter what
12 are documents that -- and we call this Respondent's
13 Exhibits 9, 10, 11 and 12.

14 Exhibit 9 is a certified copy of a minute order
15 dated June 29, 1989 in Case No. 88-CR297-1.

16 MR. HABIB: Is that -- just for the record, is
17 that the certified copy of the order of conviction?

18 MR. BERNET: This is the certified copy of the
19 minute order.

20 MR. HABIB: Well, is that the conviction?

21 MR. BERNET: It's the minute order entering the
22 conviction.

1 MR. HABIB: In that case, your Honor, I'm going
2 to object to -- first of all, I'm going to object to
3 these documents on the grounds as set forth in the
4 motion in limine that they are irrelevant at this
5 point and that actually under the Montgomery rule
6 they should not even be allowed in.

7 Second, if he does allow documents in, in terms
8 of a conviction, he's allowed to put only the
9 certified copy of the conviction in which --

10 MR. BERNET: I haven't moved for the admission
11 of anything.

12 MR. HABIB: Excuse me.

13 -- which is one document at this point.

14 JUDGE ZABAN: Right now he's just marking to
15 have them admitted for the purpose of
16 identification.

17 MR. BERNET: Thank you, your Honor.

18 JUDGE ZABAN: Until such time as he moves to
19 actually have them admitted, I'll consider your
20 request at that time.

21 MR. BERNET: Okay. So Respondent's Exhibit
22 No. 10 is a document entitled judgment in a criminal

1 case in Case No. 88-CR297-1, and it's a certified
2 copy.

3 Document -- Respondent's Exhibit 11 is a plea
4 agreement entered in and it's a certified copy also
5 in Case No. 88-CR297-1.

6 And Respondent's Exhibit 12 is an indictment
7 dated May 31, 1988, in Case No. -- Northern
8 District -- these are all Northern District of
9 Illinois case numbers -- 88-CR297.

10 I'm going to show you, Mr. Flisk --

11 MR. HABIB: I object at this point. I'm
12 going -- same objection as before. Especially
13 counsel should know better because he's attempting
14 at this point even bringing up an indictment.

15 Now, if you want to introduce a certified copy
16 of the conviction --

17 MR. BERNET: I haven't moved --

18 JUDGE ZABAN: Let me hear what he has to say
19 first, okay.

20 BY MR. BERNET:

21 Q. Mr. Flisk, I'm going to hand to you -- hand to
22 you what's been marked now for identification

1 purposes as Respondent's Exhibit 11.

2 You recognize that document, sir?

3 A. As soon as I get to read it.

4 JUDGE ZABAN: Let me see what 11 is.

5 THE WITNESS: Can I get a copy so I can read it
6 while he's --

7 MR. BERNET: I thought your lawyer would give
8 it to you.

9 JUDGE ZABAN: What's the relevance of the plea
10 agreement?

11 MR. BERNET: Your Honor, the plea agreement
12 describes the allegations in the indictment to which
13 Mr. -- in detail to which Mr. Flisk pleaded guilty.

14 MR. HABIB: Your Honor --

15 JUDGE ZABAN: Let me explain something to you.
16 I don't really care what the underlying
17 circumstances were. All right.

18 The bottom line is if you have a conviction --
19 and at this point I'm going to agree with Mr. Habib.

20 If you have a conviction that
21 Mr. Flisk has pleaded guilty to a crime that
22 involves moral turpitude, let me hear it, let's put

1 that in the record and let's get on.

2 MR. BERNET: Okay.

3 Hand you what's been marked as --

4 JUDGE ZABAN: Mr. Flisk doesn't need to -- is
5 it certified?

6 MR. BERNET: Yes.

7 JUDGE ZABAN: Well then you can have it
8 admitted under the certification.

9 MR. BERNET: Your Honor, I would then move for
10 admission of Respondent's Exhibit 10.

11 JUDGE ZABAN: You're going to have this marked
12 as the -- as Respondent's 10 for identification.

13 MR. BERNET: Right.

14 JUDGE ZABAN: Okay. Let's hold this in
15 abeyance, okay, and when we go to -- when you go to
16 seek to admit your documents --

17 MR. BERNET: I'm doing that right now.

18 JUDGE ZABAN: Are you done with cross-examining
19 Mr. Flisk?

20 MR. BERNET: Yes.

21 JUDGE ZABAN: You're moving for admission into
22 evidence of Exhibits 1 through 10, your Respondent's

1 Exhibit 1 through 10.

2 MR. BERNET: I will not move for admission of
3 Exhibit 9, your Honor. 1 through 8 and 10 .

4 JUDGE ZABAN: 1 through 8 and 10.

5 JUDGE ZABAN: Okay. Mr. Habib, do you have any
6 objection?

7 THE WITNESS: Do we get copies of what he's
8 admitting here?

9 JUDGE ZABAN: Well, you've got it already, and
10 you have an attorney, Mr. Flisk.

11 Do you have any objection to the admission of
12 Exhibit 1 through 8 and 10?

13 MR. HABIB: Starting with 1 which was the data
14 request, we have no objection.

15 Starting with 2 which is the data request we
16 have no objection.

17 Starting with 3 which is the documents we
18 produced -- wait. Exhibit 3.

19 JUDGE ZABAN: Checks.

20 MR. HABIB: Which is the documents we produced?

21 MR. BERNET: Right.

22 JUDGE ZABAN: Right.

1 MR. HABIB: Then 4 --

2 MR. BERNET: So there's no objection there?

3 MR. HABIB: No, I have no objection to that.

4 No. 4 is verification. That was part of our
5 response to the data request, wasn't it?

6 JUDGE ZABAN: Yes.

7 MR. BERNET: Yes.

8 MR. HABIB: So then I object because it's
9 already in as far as coming in under Respondent's
10 Exhibit 2.

11 MR. BERNET: No, it's not.

12 JUDGE ZABAN: It doesn't make any difference.
13 I'm going allow it in.

14 Go ahead. Next.

15 (Whereupon, Respondent's
16 Exhibits 3 and 4 were admitted
17 into evidence.)

18 MR. HABIB: As far as Respondent's Exhibit 5
19 which is a letter dated September 11, 1996, counsel
20 has showed no relevance whatsoever to what
21 relevance --

22 MR. BERNET: It's withdrawn.

1 JUDGE ZABAN: Okay.

2 MR. HABIB: Respondent's Exhibit 6 which is a
3 final notice received February 27, first off all,
4 I'd point out it was already in because since all of
5 our documents have been produced under Respondent's
6 Exhibit 3, it came in under that category.

7 MR. BERNET: That's not true.

8 JUDGE ZABAN: Actually the attached documents
9 for 3 weren't in. I'll admit 6 for what it's worth.

10 (Whereupon, Respondent's
11 Exhibit No. 6 was admitted
12 into evidence.)

13 JUDGE ZABAN: No. 7 is --

14 MR. HABIB: 7 is the alleged payment agreement.

15 I'll object to that on the grounds that I fail
16 to see the relevance because Commonwealth Edison has
17 not put forth any position that somehow or other we
18 have a payment agreement with them.

19 It has never been their position in this
20 litigation whatsoever that we have entered into an
21 agreement along those lines.

22 So that's my objection to 7.

1 MR. BERNET: We haven't taken a position on
2 anything.

3 JUDGE ZABAN: Stop. Stop. Stop.

4 Once again, if you have an argument, you argue
5 with me not with each other. Okay.

6 MR. HABIB: My objection is is Commonwealth
7 Edison actually contending that we're now under a
8 payment agreement with them? That there was a
9 payment agreement been entered into?

10 JUDGE ZABAN: Well, I'm going to admit 7 and 8
11 primarily because whether or not there was or wasn't
12 an agreement is a question of fact and that will
13 have to be determined after hearing all the
14 evidence.

15 But, once again, I have heard
16 Mr. Flisk's testimony that this was a one-sided
17 document but I also have some checks I have to
18 consider as well, so 7 and 8 will be admitted.

19 (Whereupon, Respondent's
20 Exhibit No. 7 and 8 were admitted
21 into evidence.)

22 JUDGE ZABAN: As to No. 10 which is the

1 certification of conviction.

2 MR. HABIB: For the reasons previously stated,
3 your Honor, in our motion in limine, we would move
4 to object to those documents.

5 JUDGE ZABAN: Okay. Your objections will be
6 duly noted but I will admit Exhibit 10 for -- based
7 on my previous ruling.

8 (Whereupon, Respondent's
9 Exhibit No. 10 was admitted
10 into evidence.)

11 JUDGE ZABAN: Do you have anything further of
12 Mr. Flisk?

13 MR. BERNET: Yeah. I'm not Mr. Flisk.

14 JUDGE ZABAN: I said do you have anything
15 further of Mr. Flisk?

16 MR. BERNET: The only other thing, your Honor,
17 is that we had objected to the admissibility of the
18 document that is Exhibit 1 attached to Mr. Flisk's
19 testimony on the grounds that --

20 JUDGE ZABAN: Well Mr. Habib hasn't moved to
21 admit his evidence yet.

22 MR. BERNET: No, he did move and you held that

1 one out.

2 JUDGE ZABAN: I'm going to deny your motion,
3 okay.

4 I think based on the testimony it appears that,
5 in fact, this was a letter received by Mr. Flisk. I
6 have heard nothing to the contrary.

7 So 1 and 2 from the petitioner will be
8 exhibited.

9 (Whereupon, Petitioner's
10 Exhibits 1 and 2 were admitted
11 into evidence.)

12 JUDGE ZABAN: I have a couple questions of you,
13 Mr. Flisk, but before I do -- okay.

14 MR. BERNET: I just have one point of
15 clarification. Excuse me, your Honor.

16 The objection that Commonwealth Edison has to
17 that document which is Flisk Exhibit 1, I believe,
18 is that it's not a complete document, just so the
19 record is clear.

20 JUDGE ZABAN: I understand that. Okay. You'll
21 get your chance with your people.

22 Mr. Habib, before I ask questions, I'm going to

1 give you a chance to -- do you have any recross of
2 Mr. Flisk?

3 MR. HABIB: Yes.

4 JUDGE ZABAN: Okay. Go ahead.

5 REDIRECT EXAMINATION

6 BY

7 MR. HABIB:

8 Q. Let's start with Exhibit No. 8.

9 Showing you what's marked as Respondent's
10 Exhibit No. 8, these are three checks which state
11 National Distribution, payable to Commonwealth
12 Edison?

13 A. They are.

14 Q. They were all dated March 15 of the year 2001?

15 A. They are.

16 Q. All of these checks marked that -- each memo of
17 these checks 3475, 3476, 3477, it states it's paid
18 under protest; is that right?

19 A. That's correct.

20 Q. Why did you put paid under protest?

21 A. Because we -- when we were called by the
22 gentleman from the credit department and told us if

1 we didn't produce the checks to his office at 76th
2 and Lawndale, the lights were going to go off, even
3 though they had a prior agreement with us and even
4 though there was an Illinois Commerce Commission
5 case had been instituted and been dismissed with the
6 prior agreements.

7 We produced these checks in order for us to
8 come down and get the case filed again and that was
9 the purpose of these checks.

10 Q. Okay. You had tenants in the building you had
11 to think of?

12 A. Yes. We had people in the building.

13 Q. You had a lot of workers?

14 A. We had people who were drawing a salary, yeah.

15 Q. Under the Account No. 1528394006, all of the
16 tenants' electricities from 2444 West 16th Street is
17 paid?

18 A. Yes.

19 Q. Okay. So you did that, in effect, to protect
20 your electricity and protect your tenants?

21 A. Yes. We did it the same way Edison did it to
22 us.

1 Q. Going back to Petitioner's Exhibit 2, okay.

2 This document has the signature of William
3 Crutcher; is that right?

4 A. That is correct.

5 Q. Did he sign it in your presence?

6 A. He did.

7 Q. Where was this document signed?

8 A. In Oak Brook, at the Oak Brook Commonwealth
9 Edison facilities, in their second floor offices.

10 Q. And Mr. Crutcher works for Commonwealth Edison?

11 A. Yes, he does.

12 Q. At I believe at the time he signed it his title
13 was regional business solutions manager?

14 A. I believe that was what his title was.

15 Q. All right. When you discussed it, how -- prior
16 to signing this agreement on July 9, 2000, had you
17 had discussions with Mr. Crutcher concerning your
18 account?

19 A. Yes, many discussions.

20 Q. All right. And did Mr. Crutcher represent
21 himself as an employee of Commonwealth Edison?

22 A. What do you mean did he represent himself?

1 Q. He said he was a Commonwealth Edison employee?

2 A. Yes. Yes.

3 Q. Did he ever represent that he did not have
4 authority to enter into any agreements with you?

5 A. No.

6 Q. All right. Did he ever tell you that before he
7 could sign an agreement he had to get the approval
8 of anyone else in the organization?

9 A. No.

10 Q. In this particular document his signature
11 appears on it; is that right?

12 A. That is his signature.

13 Q. Now, there is handwriting on this document; is
14 that right?

15 A. That is correct.

16 Q. All right. Whose handwriting is this?

17 A. I believe it's his.

18 Q. All right. Well, did he put this handwriting
19 down in your presence?

20 A. Yes. Yes. Yes. It's his handwriting.

21 Q. Okay. Now, does the date up here, it's dated
22 June 7, 2000, due \$67,981?

- 1 A. Yes.
- 2 Q. And then further down --
- 3 A. What's your question on the date?
- 4 Q. It says date. Just asking the way it reads.
- 5 It says date due, June 7, 2000, \$67,981; is
- 6 that right?
- 7 A. Correct.
- 8 Q. And further down it says payment, July 9,
- 9 \$10,214; is that right?
- 10 A. That is correct.
- 11 Q. Did you make a payment to Mr. Crutcher on the
- 12 spot of July 9 of 2000 for \$10,214?
- 13 A. That is correct.
- 14 Q. Then it has \$22,801; is that right?
- 15 A. That is correct.
- 16 Q. And further down is an arrow down and it says
- 17 to be paid over six months with current bill.
- 18 Is that the way it reads?
- 19 A. That is correct.
- 20 Q. Okay. And you signed this document, right?
- 21 A. We did.
- 22 Q. Refers to your account number?

1 A. I did.

2 Q. All right. Do you have any other account
3 number with any other company that reads 1528394006?

4 A. No.

5 Q. Okay. Did you have any other business in the
6 world with Mr. Crutcher outside of with Commonwealth
7 Edison in terms of your bill?

8 A. I have -- no, I had no other business with Mr.
9 Crutcher.

10 Q. So you and Mr. Crutcher were not making a
11 private business to pay off debts in some other
12 matter?

13 A. No.

14 Q. This called for the payment of \$22,801 within a
15 six-month period; is that right?

16 A. Yes.

17 Q. All right. Now, you already testified you gave
18 them \$10,214 on the spot on July 9; is that right?

19 A. Right. Right.

20 Q. Okay. Now, I'm going to show you something
21 which was previously sent to us as the direct
22 testimony of Lynn Miller, and attached to it --

1 MR. BERNET: I'm going to object to direct
2 examination of Mr. Flisk on the basis of Lynn
3 Miller's testimony.

4 It's not admitted into evidence.

5 He gets a rebuttal case if he wants to come
6 back and ask questions after it's admitted. It may
7 change.

8 MR. HABIB: I got the right to show him
9 documents.

10 JUDGE ZABAN: Well --

11 MR. HABIB: I'm just showing him documents that
12 were attached at this point.

13 JUDGE ZABAN: What documents are you showing
14 him?

15 MR. HABIB: The account activity statements
16 which actually were attached to my direct testimony,
17 too, showing the payments, but I'm going to show
18 that Lynn Miller put it down too.

19 JUDGE ZABAN: I think all you need to do is
20 establish that you have them in your testimony and
21 they've already been admitted in evidence, and at
22 the time Ms. Miller testifies you can question her

1 about whether hers match Mr. Flisk's would be the
2 proper way to do it. Okay.

3 I mean, I don't see how you can question Mr.
4 Flisk about what Lynn Miller did.

5 MR. HABIB: I think it's a judicial admission
6 at this point.

7 MR. BERNET: No, it's not.

8 JUDGE ZABAN: It's not an admission until she
9 testifies.

10 MR. BERNET: I didn't --

11 JUDGE ZABAN: Okay.

12 MR. HABIB: Just, your Honor.

13 JUDGE ZABAN: Let me finish.

14 Mr. Habib, if this were a trial and we didn't
15 have pre-offered testimony, even if you had an
16 inkling what Lynn Miller was going to testify to,
17 there would be no documents for you to testify -- to
18 cross-examine Mr. Flisk about as relates to
19 Ms. Miller, okay.

20 Just because we have allowed you to file
21 pretrial testimony it has -- nothing has been
22 admitted evidence. It's really a courtesy.

1 It only gets admitted into evidence when Mrs.
2 Miller appears and Mr. Bernet offers her testimony,
3 okay.

4 You already have the testimony of
5 Mr. Flisk as to what this account is. I have
6 admitted it as a document, okay. It's already --
7 and if and when Ms. Miller testifies, if you want to
8 ask her to compare this -- the testimony of
9 Mr. Flisk, I think you'll accomplish the same thing
10 within the rules.

11 MR. HABIB: Okay. Could I have the -- just to
12 go back onto this point, could I have the
13 respondent's -- the Petitioner's Exhibit 1 at this
14 point.

15 JUDGE ZABAN: Do you have a copy for Mr. --

16 MR. BERNET: It's the direct testimony.

17 JUDGE ZABAN: Of the direct testimony, okay.

18 BY MR. HABIB:

19 Q. Mr. Flisk, you gave -- you gave Mr. Crutcher a
20 check for \$10,214 on July 9, 2000; is that right?

21 A. That is correct.

22 Q. And that was part of your agreement with Mr.

1 Crutcher; is that right?

2 A. That is correct.

3 Q. All right. So at this point, you owed him the
4 balance in terms of the \$22,801; is that right?

5 A. That is correct.

6 Q. Okay. Now, do you recall when you made the
7 next payments, or is there a document that can
8 refresh your memory if you do not recall?

9 A. I believe it's from there.

10 Q. You have attached to your direct testimony what
11 we have marked as Exhibit 4, which is account
12 activities which actually had prior to this been
13 given to you by Commonwealth Edison; is that right?

14 A. That is correct.

15 Q. Looking at the document which is Exhibit 4
16 attached to the direct testimony of the complainant,
17 at this point, it shows a payment that was actually
18 recorded by Commonwealth Edison for \$10,216.12 on
19 July 17th of the year 2000; is that right?

20 A. Correct.

21 Q. All right. It also --

22 MR. BERNET: Excuse me, what page are you on,

1 counsel?

2 MR. HABIB: Exhibit 4.

3 MR. BERNET: First page?

4 MR. HABIB: Yes.

5 MR. BERNET: What line are you referring to?

6 MR. HABIB: July 17, 2000. 7/17, 2000,

7 counsel.

8 MR. BERNET: Okay. I have it. Thank you

9 BY MR. HABIB:

10 Q. Now, further down it shows a payment also
11 recorded by Commonwealth Edison on November 3, 2000,
12 for 12,500, is that --

13 A. November what did you say?

14 Q. November 3rd of 2000 for 12,500?

15 A. That is correct.

16 Q. And that payment was part of the \$22,801?

17 A. That is correct.

18 Q. All right. It also shows at this point that
19 you had, in effect, been credited for --

20 MR. BERNET: I'm going to object.

21 I mean, this isn't cross-examination. He's
22 leading the witness. If he's going to ask him to

1 explain figures, I think the witness needs to
2 testify about --

3 MR. HABIB: This is recross.

4 MR. BERNET: It's not cross. It's redirect.

5 JUDGE ZABAN: It's redirect.

6 MR. HABIB: Redirect.

7 I'll reword the question.

8 JUDGE ZABAN: But you have already introduced
9 the document in evidence.

10 Does he have anything to add other than what's
11 in the document?

12 MR. HABIB: Yeah -- okay. As far as on this
13 document, no.

14 JUDGE ZABAN: Okay.

15 BY MR. HABIB:

16 Q. Now, in terms of the bills, you continued to
17 receive monthly bills from the period from July of
18 2000 onward?

19 A. Correct.

20 Q. And from these bills that you received from
21 July of 2000 onward, were these bills accurate?

22 A. No.

1 Q. Were later -- did you pay these bills?

2 A. I have to refer to my --

3 MR. BERNET: Just so I'm clear, are you
4 referring to every bill issued by Commonwealth
5 Edison since July 2000 to now?

6 MR. HABIB: No, I'm referring to the bills that
7 were initially received --

8 THE WITNESS: I need a copy of that. You have
9 my only copy.

10 MR. HABIB: I apologize, your Honor, one
11 second.

12 BY MR. HABIB:

13 Q. Now, subsequently you were issued corrected
14 bills for the whole year of 2000; is that right?

15 A. That is correct.

16 Q. And when the corrected bills were issued, do
17 you recall the difference between the corrected
18 bills and the original bills you had received from
19 Commonwealth Edison?

20 A. Approximately \$13,000.

21 Q. Were given to you in adjustments at this point?

22 A. Correct.

1 Q. Okay. Was there a reason why -- did you --
2 strike that.

3 Did you make any payments under the regular
4 bills from June of 2000 onwards up and to March of
5 2001 as far as the monthly bills?

6 A. I'd have to see the checks. You know, this is
7 sometime since I have done this.

8 Q. Okay.

9 A. What are you looking for, Bob?

10 Q. The Bates stamp which is already in evidence at
11 this point.

12 In the year 2000 --

13 MR. BERNET: Which document are you referring
14 to, Mr. Habib?

15 MR. HABIB: I'm referring to Respondent's
16 Exhibit 3 at this point.

17 BY MR. HABIB:

18 Q. In the year 2000, you had produced in the Bates
19 stamps 145 and 146 checks, these five checks?

20 A. Yes.

21 Q. For -- already, and the five checks total
22 \$12,500. Just for the record we're looking at

1 Checks No. --

2 A. That would be 12,500.

3 Q. For the record we are looking at Checks No.
4 3320, 3321, 3322, 3323 and 3324.

5 A. Yes.

6 Q. All right. And that totals \$12,500?

7 A. That does.

8 Q. And what is the date on those checks?

9 A. November the 2nd.

10 Q. And is that in the payment that is shown was
11 previously shown to you to have been made in
12 November of 2000 on Exhibit 4 which is attached to
13 the direct testimony?

14 A. I believe that is correct.

15 Q. Okay. Now, were these payments -- were these
16 made as far as paying the regular monthly bills or
17 were these payments on behalf of the payment
18 agreement you had entered into with Crutcher?

19 A. This was in regards to Crutcher's additional
20 payments.

21 Q. That were required under the agreement?

22 A. Correct. We gave him 12,500 that day. He sat

1 down and wanted to split it up between the five
2 months. That's the way he wanted to do it. Six
3 months, whatever the heck it is here.

4 Q. When you presented these checks at this point,
5 did you mail these checks or did you meet -- have a
6 meeting with him directly?

7 A. My recollection is I gave the checks directly
8 to him in his possession, into his hand.

9 Q. Where would this have taken place?

10 A. At his office.

11 Q. At Oak Brook?

12 A. Correct.

13 Q. All right. So on that date, you came and met
14 with him?

15 A. Yes, I did.

16 Q. Was there anyone else present during this
17 meeting?

18 A. His supervisor came in. You know, to be honest
19 with you, I don't recall the gentleman's name.

20 Q. All right. Anyone else present?

21 A. No.

22 Q. All right. What was the purpose of you going

1 there?

2 A. Well, the purpose of me going there was Mr.
3 Crutcher had been subsequently chastated because of
4 his -- excuse me, chastised because of his agreement
5 that he had made with us.

6 MR. BERNET: Objection, your Honor, this is
7 hearsay.

8 JUDGE ZABAN: Sustained.

9 BY MR. HABIB:

10 Q. You can only testify -- you went to see Mr.
11 Crutcher?

12 A. I went to see Mr. Crutcher.

13 Q. All right. And that's when you made -- you
14 brought these checks with you?

15 A. I did.

16 Q. And that's when you made payment?

17 A. That is correct.

18 Q. Now, it says over here there's dates
19 handwritten on each of these payments at this point?

20 A. Yes.

21 Q. Whose handwriting is this?

22 A. Those are all mine.

1 Q. Why did you put the handwriting down?

2 A. Because Mr. Crutcher asked me to do that
3 because of his difficulty with the --

4 MR. BERNET: Objection, hearsay.

5 BY MR. HABIB:

6 Q. You did it at Crutcher's request?

7 JUDGE ZABAN: Sustained.

8 THE WITNESS: I did it at Mr. Crutcher's
9 request.

10 JUDGE ZABAN: We'll allow the answer to stand.

11 BY MR. HABIB:

12 Q. Now, in terms of -- now, in terms of Exhibit 1,
13 this letter which is dated August 19, 1999, it does
14 not state Commonwealth Edison, does it?

15 A. No, it does not.

16 Q. All right. Did you know who Joanne McInerney
17 was working for?

18 A. I did.

19 Q. Who was she working for?

20 A. Commonwealth Edison.

21 Q. She ever tell you -- did you have any other
22 dealings with her in any other capacity outside of

1 Commonwealth Edison?

2 A. None.

3 Q. Did you have any dealings with her in which you
4 were involved with any other capacity outside of
5 National Distribution?

6 A. None.

7 Q. This letter relates to the business between
8 Commonwealth Edison and National Distribution?

9 A. It does.

10 Q. Did -- outside of the account that you had for
11 electricity, did you have any other business with
12 Commonwealth Edison between -- was there any other
13 business between Commonwealth Edison and National
14 Distribution?

15 A. None.

16 Q. On the second page of this document --
17 incidentally, in terms of this document on the
18 second page of this document there appears to be
19 handwriting; is that right?

20 A. Correct.

21 Q. Who put the handwriting there?

22 A. I believe Mrs. McInerney, but I have no idea

1 who wrote it down. I never saw the person write it.

2 Q. Okay. How did you receive this document from
3 Ms. McInerney?

4 A. I believe by fax.

5 Q. All right. And it had what the balance would
6 be?

7 A. Correct.

8 Q. And the balance was to be \$19,365.08?

9 A. Correct.

10 Q. Okay. Prior to Ms. McInerney sending you --
11 after Ms. McInerney sent this document to you, did
12 you discuss it with anyone at Commonwealth Edison?

13 A. With Mrs. McInerney.

14 Q. All right. What did you say in response to
15 receiving that document?

16 A. I was pleased that she finally got the document
17 to us.

18 Q. All right. And were you prepared to pay the
19 amount set forth on that document?

20 A. Correct.

21 Q. All right. What happened afterwards?

22 A. Subsequently, the next few days,

1 Mrs. McInerney sent me a revised statement.

2 Q. Okay. And in the revised statement at this
3 point what took place?

4 A. She alluded to the fact that her addition or
5 her mathematics were incorrect.

6 JUDGE ZABAN: You have that document, Mr.
7 Habib, the revised statement?

8 MR. BERNET: I think this might be what you're
9 looking for.

10 MR. HABIB: Just for the record, your Honor, I
11 have pulled out what is stapled together and under
12 different box numbers at this point, I have a
13 customer service -- I have a fax mark from
14 approximately 1-630-684-3323 dated April 5th of the
15 year 2000.

16 MR. BERNET: What are we talking about?

17 JUDGE ZABAN: Wait a minute.

18 Your witness has testified that a couple days
19 later he received a document from Ms. McInerney.

20 I need to know from your witness if you have
21 that document.

22 MR. HABIB: This is the original document that

1 came in in terms of the fax, in terms of --

2 JUDGE ZABAN: That doesn't answer my question,
3 Mr. Habib.

4 Mr. Flisk, do you still have the document that
5 Ms. McInerney sent you sometime in August after the
6 19th when you received this first fax?

7 THE WITNESS: Whatever documents I have are --

8 JUDGE ZABAN: I'm asking if you have that
9 document?

10 THE WITNESS: Do I have it in my possession,
11 no. It's in Mr. Habib's possession. I turned over
12 all the documents I have.

13 JUDGE ZABAN: Do you have that document,
14 Mr. Habib?

15 MR. HABIB: I am looking for it right now.

16 MR. HABIB: Yes.

17 JUDGE ZABAN: Okay. Let me see that document.

18 MR. BERNET: Can I see a copy of that, too,
19 your Honor?

20 Do you have an extra, Bob?

21 JUDGE ZABAN: Do you have any more copies of
22 this?

1 MR. HABIB: Quite frankly, let me see, I don't
2 believe I do.

3 JUDGE ZABAN: Because I'm not going to let the
4 witness testify to something he received a couple
5 days later or make reference to a document if you
6 don't intend to introduce the document.

7 MR. BERNET: May I take a look at it?

8 JUDGE ZABAN: Well, it's up to Mr. Habib
9 whether he wants to introduce it or not.

10 MR. BERNET: Okay. Mr. Habib.

11 MR. HABIB: Just for the record, your Honor,
12 what I'm doing right now --

13 JUDGE ZABAN: Off the record.

14 (Whereupon, a discussion was
15 had off the record.)

16 JUDGE ZABAN: Back on the record.

17 MR. BERNET: Your Honor, Mr. Habib has just
18 shown me a document that has some handwritten
19 references on it, appears to be a spreadsheet.

20 If it is going to be Mr. Flisk's testimony that
21 this is the document he received from Ms. McInerney
22 shortly after he received a document that's attached

1 as Exhibit 1 to his testimony, I have no objection
2 to that being admitted into evidence.

3 JUDGE ZABAN: It's your call, Mr. Habib.

4 What do you want to do?

5 MR. HABIB: Let me show him the document. It's
6 already been brought out so I might as well show him
7 the document at this point.

8 MR. BERNET: Can we have copies, though,
9 please.

10 JUDGE ZABAN: We'll have copies. Okay.

11 MR. BERNET: Go ahead.

12 JUDGE ZABAN: Let's take a short break and
13 then -- let's take a short break now, give the court
14 reporter, let him put his fingers back on. All
15 right.

16 Then we'll make some copies. I'll have
17 somebody make copies.

18 MR. HABIB: Thanks.

19 (Whereupon, a brief recess
20 was taken.)

21 JUDGE ZABAN: We're back on the record.

22 Mr. Habib, you may proceed.

1 MR. HABIB: Yes.

2 BY MR. HABIB:

3 Q. Mr. Flisk, at this point, showing you what's
4 marked as Petitioner's Exhibit 3 for identification.

5 Do you recognize that document?

6 A. I do.

7 Q. What is that document?

8 A. That is the second document I received from
9 Mrs. McInerney.

10 Q. Was that after the August 19 documents?

11 A. I don't know.

12 MR. BERNET: I think you took my copy.

13 THE WITNESS: I don't remember seeing the
14 original date.

15 BY MR. HABIB:

16 Q. In terms of Petitioner's Exhibit No. 3, you
17 received that document from Ms. McInerney?

18 A. Yes.

19 Q. And that document -- do you recall when you
20 received that document?

21 A. After the original document.

22 Q. All right. The original document is

1 Petitioner's Exhibit No. 1?

2 A. Yes.

3 Q. Which is from August 19, 1999?

4 A. If that's the date. You know, for some reason,
5 my best recollection -- are you talking about this
6 is '99, August of '99?

7 Q. It's dated August 19, 1999?

8 A. I might not have received it on August the
9 19th. For some reason there's a different date up
10 at the top. I don't know whether it was refaxed or
11 not.

12 MR. BERNET: Date up at the top, I'm sorry?

13 THE WITNESS: On the second page -- you have
14 the original of this? I'm just trying to recollect
15 my memory here.

16 MR. BERNET: Can I just ask a question here,
17 your Honor. I'm not sure what documents counsel is
18 handling -- handling --

19 MR. HABIB: Just for the record --

20 JUDGE ZABAN: We're looking at this document
21 right here.

22 MR. BERNET: It's not what he's looking at.

1 JUDGE ZABAN: That's what he --

2 THE WITNESS: I'm looking at from the first
3 page.

4 JUDGE ZABAN: The letter from August 19?

5 THE WITNESS: Yes, I'm looking to see what the
6 fax dates are on it. That's what I'm trying to
7 refer to. I assume -- it appears to me to be 2000,
8 your Honor.

9 JUDGE ZABAN: That's what I'm looking at, too.

10 THE WITNESS: But it's not on this copy on the
11 top. It's on this original. It's been cut off.

12 JUDGE ZABAN: I've got what looks like April 4,
13 2000 for the fax.

14 THE WITNESS: April 5th.

15 JUDGE ZABAN: April 5th, 2000.

16 THE WITNESS: Yeah, that's the same one.

17 JUDGE ZABAN: For the fax, okay.

18 However, the letter from Ms. McInerney doesn't
19 have any fax.

20 THE WITNESS: This one does.

21 MR. HABIB: Just for the record, your Honor, I
22 have the original letter.

1 JUDGE ZABAN: That's what I'm looking at.

2 MR. HABIB: No, your Honor, I have the original
3 letter, your Honor, without a fax mark.

4 JUDGE ZABAN: This one has a fax.

5 THE WITNESS: How could you have the original
6 without a fax, buddy?

7 JUDGE ZABAN: This has a different fax date.

8 Appears that these letters have come at
9 different times. Looking at the originals of the --
10 on the record -- for customer services in Oak Brook,
11 this is to Brian Flisk and it says contact me ASAP
12 if you are in acceptance of the attached and it's
13 dated October -- April 5th, 2000.

14 And attached thereto is a -- is the statement
15 showing a balance of 19,365.08, okay.

16 Then the letter to Mr. Flisk is dated
17 March 28th of 2000 and that's the letter dated
18 August the 19th, 1999.

19 So apparently the underlying document and the
20 fax came to Mr. Flisk at different times.

21 MR. BERNET: I'm not sure I understand what
22 we're doing right now.

1 BY MR. HABIB:

2 Q. Mr. Flisk, just to go back,
3 Mr. Flisk, when he was previously shown a document
4 said he recalled it coming later than August 19 of
5 the year --

6 A. That's all I was saying.

7 Q. He asked to see another document at this point.

8 JUDGE ZABAN: He wanted to see if it was, okay.
9 I have indicated for the record that apparently that
10 Mr. Flisk may have received this letter in August,
11 but it appears that the underlying spreadsheet
12 didn't appear until April the following year.

13 THE WITNESS: Can I ask my counsel one
14 question? I think I can clear this up.

15 MR. HABIB: No.

16 JUDGE ZABAN: Okay. Mr. Habib, if you want to
17 go off the record to talk to your client.

18 THE WITNESS: Just hear the question. You
19 don't even need to get up out of the chair.

20 What's the date we filed the first Commerce
21 Commission case?

22 MR. HABIB: It was in 1999 prior to this.

1 THE WITNESS: Prior to this --

2 MR. HABIB: Prior to this.

3 THE WITNESS: -- April or something of that?

4 MR. HABIB: We do have the number at this point
5 as far as when it was actually came in.

6 Allow me to go back on the record, your Honor?

7 JUDGE ZABAN: Yeah, sure, absolutely. We're on
8 the record now anyway.

9 MR. HABIB: We're on the record at this point.

10 BY MR. HABIB:

11 Q. Mr. Flisk, you had indicated that it was your
12 recollection that the document came to you which is
13 dated August 19, 1999, came to you at a subsequent
14 date?

15 A. I believe that's correct.

16 Q. Okay. And that at that point you have looked
17 over other records?

18 A. I have.

19 Q. I'm going to mark this as Petitioner's Exhibit
20 4.

21 MR. BERNET: Your Honor, I think this is beyond
22 the scope of what the cross was.

1 JUDGE ZABAN: Let me see what he's got.

2 This is the same document.

3 MR. HABIB: Yes, but we put the fax marks as to
4 when he received it.

5 MR. BERNET: I didn't --

6 JUDGE ZABAN: I have read into the record what
7 the fax marks are, so it's already in the record.

8 MR. HABIB: It's already in the record.

9 JUDGE ZABAN: Okay.

10 BY MR. HABIB:

11 Q. Just to refresh your memory then at this point,
12 if you look at this document, which has already been
13 reviewed at this point, does this refresh your
14 memory as to when you actually received it from
15 Ms. McInerney?

16 A. I believe it was sometime after August.

17 Now, for some reason I believe it was in 2000,
18 I believe, that's my --

19 JUDGE ZABAN: All right. I'm going to
20 interrupt here. Even if this was in August, okay,
21 or September, or November or whenever it was, I'm
22 looking -- even taken in its best light, okay, it's

1 an offer from Commonwealth Edison.

2 Mr. Flisk, did you pay Commonwealth Edison
3 \$19,000 in 1999?

4 THE WITNESS: No.

5 JUDGE ZABAN: Okay. Did you pay them \$19,000
6 up until July of 2000?

7 THE WITNESS: I'd have to look at the records,
8 your Honor.

9 JUDGE ZABAN: Okay.

10 MR. HABIB: We'll stipulate he did not. He did
11 not.

12 JUDGE ZABAN: So it's an offer without
13 acceptance, so whatever she says here is really
14 irrelevant because it's not -- it's just -- it was a
15 proposal. It's a proposal and compromise that
16 wasn't accepted.

17 MR. HABIB: It is relevant just to show the
18 background what was going on.

19 JUDGE ZABAN: Fine. Okay. We have admitted it
20 for that purpose. Let's move on.

21 MR. HABIB: Okay.

22 BY MR. HABIB:

1 Q. Now, Mr. Flisk, at this point you have
2 testified that you believe the meter wasn't
3 accurate?

4 A. That is correct.

5 Q. Do you recall the meter being changed?

6 A. I do.

7 Q. Did you request -- or who requested the change
8 in the meter?

9 A. I think it was Mr. Crutcher and another
10 employee of Commonwealth Edison. Name escapes me.

11 Q. Was there a difference in the bills once the
12 meter was changed?

13 A. There was.

14 MR. BERNET: Your Honor, this is beyond the
15 scope of cross. I mean, it's all --

16 MR. HABIB: He was asked at this point under
17 cross, your Honor, as to --

18 JUDGE ZABAN: He's already testified that the
19 bills were lower and that's what led him to
20 believe --

21 MR. BERNET: This is direct.

22

1 JUDGE ZABAN: -- that, in fact -- I mean that's
2 merely his belief, Mr. Habib, and without
3 establishing any particular expertise other than the
4 fact that we have established his belief. That's
5 enough. That's all he's going to be able to testify
6 to.

7 MR. HABIB: Your Honor, I should be allowed at
8 this point to put in these bills as of the time when
9 the meter was changed at this point.

10 He received these bills. These are
11 Commonwealth Edison bills showing --

12 JUDGE ZABAN: You have already shown me -- you
13 have already given me this sheet of all the bills.

14 MR. HABIB: No, your Honor, but I think the
15 records -- those sheets do not show the number in
16 terms of the meter.

17 These records, which I'd like to do at this
18 point, will do so.

19 JUDGE ZABAN: You can put them in. You know, I
20 don't -- put them in.

21 MR. HABIB: Thank you, your Honor.

22 MR. BERNET: Do you have extra copies?

1 MR. HABIB: Mr. Flisk, I'm going to show you
2 what has been marked -- I'll mark as Petitioner's
3 Exhibit 4 which is the bill dated -- the issue date
4 of the bill is February 15, 2000, and it relates to
5 service from November 4, 1999, to December 8, 1999.

6 I'm going to mark this as Petitioner's Exhibit
7 No. 4 for identification.

8 (Whereupon, Petitioner's
9 Exhibit No. 4 was marked
10 for identification.)

11 JUDGE ZABAN: Do you have an extra copy for me,
12 I have given my copy to the court reporter, and
13 these are from what date to what date?

14 MR. HABIB: The issue date is --

15 THE WITNESS: Hold on, Bob.

16 JUDGE ZABAN: What was it?

17 MR. HABIB: February 15, 2001, the issue date,
18 and the dates of service were November 4, 1999, to
19 December 8, 1999.

20 JUDGE ZABAN: Okay. And the meter was changed
21 on what date.

22 THE WITNESS: I believe in March.

1 MR. HABIB: February 9th, 2000, your Honor.

2 THE WITNESS: February or march.

3 MR. HABIB: February 9th. Your Honor, here's
4 the issue date for this document.

5 BY MR. HABIB:

6 Q. Mr. Flisk, showing you what I have marked as
7 Petitioner's Exhibit No. 4 for identification, do
8 you recognize this as a bill received from
9 Commonwealth Edison?

10 A. I do.

11 Q. What is the issue date?

12 A. 2/15 --

13 Q. Is it addressed --

14 A. -- 2000.

15 Q. -- to National Distribution?

16 A. That is correct.

17 Q. It involves your address and your account
18 number?

19 A. That is correct.

20 Q. What is the meter number?

21 A. 1528394006.

22 Q. If you would look at the meter number where it

1 says underneath meter number --

2 A. I'm sorry, I was reading the account number. I
3 beg your pardon.

4 079162635.

5 Q. And what is the amount of the bill?

6 A. 3,845.99.

7 Q. And that is for the service from the period
8 from November 4, 1999, to December 8, 1999?

9 A. That is correct, 34 days.

10 MR. HABIB: Okay. Now I'm going to show you
11 what I'll mark as Petitioner's Exhibit No. 5.

12 Do you have that, your Honor?

13 JUDGE ZABAN: No.

14 MR. BERNET: Your Honor, just to move this
15 along, for the record, I'll stipulate that these are
16 ComEd bills and they say what they say.

17 JUDGE ZABAN: Okay. Just --

18 MR. HABIB: All right. For the record counsel
19 stipulates. I'd just as soon introduce into
20 evidence Petitioner's Exhibit 5 which would have
21 been the bill of the service from December 8, 1999,
22 to January 10, 2000.

1 I was also going to introduce into evidence
2 Petitioner's Exhibit No. 6 which would have been the
3 bill from January 7, 2000, to February 9, 2000.

4 JUDGE ZABAN: Let me see --

5 MR. BERNET: Wait a second.

6 I don't have that one.

7 JUDGE ZABAN: Okay.

8 MR. HABIB: That should be in the pile.

9 MR. BERNET: What's the -- the service dates
10 are what?

11 MR. HABIB: Service dates.

12 MR. BERNET: What are they?

13 THE WITNESS: Service dates or issue dates?

14 MR. HABIB: Service dates. Issue date is
15 March -- is the document that I just gave the Court
16 at this point.

17 JUDGE ZABAN: Okay. Are you going to introduce
18 one after the meter change? Is that the idea?

19 MR. HABIB: Yes.

20 JUDGE ZABAN: Let me see that.

21 MR. HABIB: Here's the next one after the meter
22 change. Here's the next one after the meter change.

1 JUDGE ZABAN: Okay. I'll introduce them,
2 Mr. Habib, but here's my problem with it.

3 It doesn't really show me that much because you
4 have handed me three bills from the -- from the dead
5 of winter as opposed to two bills coming into spring
6 and I would expect it to be substantially less just
7 going into spring, period.

8 I mean I'll admit it for what it's worth, but I
9 mean, I'm just -- but I don't necessarily know it's
10 conclusive of anything because I'm looking here and
11 I'm looking at the amount of usage, you got 2934,
12 3051 for the two bills you have handed me, one is
13 118, one is 120, one is 116.

14 Do you have a bill from '99? From April
15 of '99?

16 MR. HABIB: Yes, I have the account records.

17 JUDGE ZABAN: Let me see the April of '99 one.

18 MR. HABIB: Your Honor, I have the account --

19 MR. BERNET: I just like to know which bills
20 I'm talking about so I'm clear.

21 He's given you a bunch of documents.

22 MR. HABIB: The Court asked me for the

1 documents.

2 JUDGE ZABAN: I'm asking to see -- let me see
3 one from April of '99. Also if you got one from
4 March to April of '99.

5 MR. HABIB: Your Honor, I have with me the
6 supplemental direct testimony of Lynn Miller in
7 which she attached these charts listing the
8 difference in the bills.

9 MR. BERNET: Those aren't bills.

10 JUDGE ZABAN: I asked you if you had the bills.

11 MR. HABIB: I had -- what I have, your Honor,
12 is her chart listing each of the bills.

13 JUDGE ZABAN: I'm asking -- I asked you if you
14 had the bills.

15 MR. HABIB: Okay. Let me see if I have the
16 actual bills, your Honor.

17 MR. BERNET: Your Honor, I'm sorry, what date
18 were you looking for because I might have copies of
19 bills?

20 MR. HABIB: You're looking --

21 JUDGE ZABAN: March to April and April to May
22 of '99.

1 MR. HABIB: Yes, your Honor, I have -- first
2 bill is from January to February which was the first
3 relevant period. Second bill --

4 THE WITNESS: From '99.

5 MR. HABIB: Hold on.

6 From February to March is the next relevant
7 period.

8 MR. BERNET: I have two bills here.

9 MR. HABIB: Third bill is from -- is a two-week
10 bill from February to March of 1999, and then I have
11 the March to April bill which is only a half bill
12 for 14 days, your Honor.

13 JUDGE ZABAN: I'm looking for --

14 MR. HABIB: Then I have the April to May --

15 JUDGE ZABAN: I'm looking for March to April.
16 Hold on. Hold on. This is only a 14-day bill.

17 MR. HABIB: Look at the 14-day bill, your
18 Honor.

19 JUDGE ZABAN: This is estimated.

20 Why don't you introduce these two into
21 evidence, Mr. Habib.

22 MR. HABIB: Okay. Just for the record, the

1 Court has handed me back service bills from
2 March 25th, 1999, to April 8th, 1999, and from April
3 8th, 1999, to May 7, 1999.

4 JUDGE ZABAN: Okay. What number are you on?

5 MR. HABIB: I'm on --

6 MR. BERNET: I think he's on 7.

7 MR. HABIB: No, I started to introduce the
8 earlier bills and that's when the Court stated wait
9 a second.

10 JUDGE ZABAN: We're going to introduce them as
11 groups, okay. Let's neaten this up a little bit.
12 Okay.

13 The bills from the service from November the
14 4th, 1999, to December the 8th, 1999, from December
15 the 8th, 1999, to January 7th, 2000, and from
16 January 7th, 2000, to February 9, 2000, we're going
17 to mark those as Group Exhibit 4, okay, which
18 consists of the three documents A, B and C. All
19 right.

20 Then we're going to take service from 2/9 to
21 3/8 and from 3/8 to 4/6 and from 4/6 to 5/8 of 2000,
22 we're going to mark that as group -- Petitioner's

1 Group Exhibit 5.

2 MR. BERNET: I'm sorry, those dates, could you
3 read those back for me.

4 JUDGE ZABAN: I'll read them again.

5 They're February 9, 2000, to March 8, 2000;
6 March 8, 2000, to April 6, 2000; and April 6, 2000,
7 to May 8, 2000, will be Group 5.

8 Then the two exhibits that I gave you which
9 were the bills from March 25th to April the 8th,
10 from April the 8th to May the 7th and from April the
11 8th also to May -- well, it's the same bill, okay.

12 MR. HABIB: Of '99.

13 JUDGE ZABAN: Of '99, those are going to be
14 marked as Group Exhibit No. 6.

15 MR. ROBERT JACOBS: That was only two bills.

16 JUDGE ZABAN: There's only two bills in that.

17 Mr. Habib, you may proceed.

18 (Whereupon, Petitioner's
19 Group Exhibits 4 through 6 marked
20 for identification.)

21

22

1 BY MR. HABIB:

2 Q. In terms of Group Exhibit No. 4, Mr. Flisk?

3 MR. BERNET: I'm sorry, before we get back, we
4 were just a little confused about what constitutes
5 Group Exhibit 4, so we can just make sure we're on
6 the same page. I apologize.

7 MR. HABIB: Group Exhibit 4 are the bills from
8 November 4, 1999, for the service dates to
9 February 9, 2000. Is that right, your Honor?

10 JUDGE ZABAN: Right, that's three documents,
11 correct.

12 MR. HABIB: Group Exhibit 5 is the --

13 MR. BERNET: I have got 5 and 6.

14 JUDGE ZABAN: Basically it's the previous
15 meter, the new meter, and the bills on the old meter
16 from a year previous to the new meter, okay. That's
17 what we're looking at.

18 MR. BERNET: Okay.

19 MR. HABIB: And, your Honor, let me get the
20 bills back in order at this point. Just one last
21 question.

22 BY MR. HABIB:

1 Q. Mr. Flisk, you answered the data request and
2 you listed the seven leases, as far as seven
3 tenants?

4 A. Yes.

5 Q. Do you have knowledge that subsequently did Mr.
6 Bernet come out to your premises?

7 A. He did. I don't think I saw him.

8 Q. All right.

9 MR. BERNET: Objection. Move to strike. I
10 mean --

11 JUDGE ZABAN: Well, do you know of your own
12 knowledge that Mr. Bernet came out?

13 THE WITNESS: Yes, he came. I don't remember
14 if I saw him.

15 JUDGE ZABAN: If you didn't see him --

16 THE WITNESS: No, because Mr. Habib brought him
17 out there.

18 JUDGE ZABAN: You don't know of your own
19 knowledge?

20 THE WITNESS: Excuse me, you're correct.

21 BY MR. HABIB:

22 Q. You have knowledge though that Mr. Bernet did

1 come out to your premises; is that right?

2 A. From you, yes.

3 Q. And do you recall the purpose as to why he came
4 out?

5 A. To go through records.

6 JUDGE ZABAN: Sustained. Okay. How could he
7 testify as to why Mr. Bernet did something?

8 MR. HABIB: Because he has knowledge at this
9 point.

10 JUDGE ZABAN: Because you told him?

11 MR. HABIB: As to why he was coming out.

12 JUDGE ZABAN: Because you told him what
13 Mr. Bernet was doing out there? You know better.

14 MR. HABIB: I'll withdraw the question. I have
15 no further questions of Mr. Flisk.

16 MR. BERNET: I have some limited --

17 THE WITNESS: Good.

18 MR. BERNET: -- recross, your Honor.

19 Before we get to that, Commonwealth Edison will
20 withdraw from the record documents that were
21 previously marked for identification purposes as
22 Respondent's Exhibit Nos. 9, 11 and 12.

1 JUDGE ZABAN: Okay. Granted.

2 RECROSS-EXAMINATION

3 BY

4 MR. BERNET:

5 Q. Directing your attention, sir, to what was just
6 marked -- it's a very quick question, your Honor.

7 Directing your attention back to a document
8 that I had previously withdrawn which was a
9 September 11, 1996 letter that you wrote.

10 A. Yes.

11 Q. Okay.

12 A. Yes.

13 Q. You see that?

14 A. Yes.

15 MR. HABIB: Objection. This is beyond the
16 scope. I never asked him any questions in regards
17 to the September 11, 1996 letter.

18 JUDGE ZABAN: It doesn't make a difference.
19 Let me find out what he's got to say.

20 BY MR. BERNET:

21 Q. Then I want to show you what has been marked as
22 Group -- Petitioner's Group Exhibit 4. You see that

1 document, sir, the first page? It's a bill from
2 ComEd to you.

3 A. Yes.

4 Q. Okay. And do you see, sir, on that bill, it's
5 got a phone number for National Distribution. Do
6 you see that number?

7 A. Yes, sir.

8 Q. Okay. And so that phone number is
9 773-737-3000?

10 A. Yes.

11 Q. Okay. So that was your phone number in
12 December of '99?

13 A. Like I told you, we moved in -- no, in December
14 of '99, I don't believe it was.

15 Q. Okay. So this is not accurate?

16 A. It's not correct.

17 Q. Okay.

18 A. We moved, and that number is subsequently -- I
19 believe it's '98, '99, somewhere in there.

20 Q. So it's your testimony in December of '99,
21 737-3000 was not National Distribution's phone
22 number?

1 A. No, it was not.

2 Q. Okay. Now, directing your attention back to
3 the checks that Mr. Habib asked you about and I
4 believe Bates numbers -- bear with me here.

5 JUDGE ZABAN: You asked about 145.

6 MR. BERNET: 145 and 146.

7 THE WITNESS: I have it. They're not marked on
8 mine here, but I assume that you're checking --
9 you're talking about the four or five checks.

10 MR. BERNET: Right.

11 THE WITNESS: \$2500.

12 BY MR. BERNET:

13 Q. Thank you. Okay. So -- let me see the Bates
14 No. 145 and 146. Can I see Petitioner's Exhibit --

15 A. I have got it right here. Give me that one
16 back here.

17 Q. Thank you, Mr. Flisk. Okay. I apologize for
18 the confusion.

19 A. No, I just want to move it along.

20 Q. Me, too, sir. Okay. 45 and 146.

21 A. Yes.

22 Q. Those are the five checks dated

1 November 2nd, 2000, correct?

2 A. Correct.

3 Q. All five of those checks are dated November 2,
4 2000?

5 A. Correct.

6 Q. Now, was it your testimony on redirect that you
7 handed these five checks to Mr. Crutcher in July of
8 2000?

9 A. No.

10 Q. Okay.

11 A. November.

12 Q. November of 2000.

13 A. Is that what you're speaking, November not
14 July.

15 Q. I was confused. I just wanted to make sure you
16 handed these checks to Mr. Crutcher in November
17 of -- November, around November 2nd, 2000?

18 A. In that general area, but I also handed him, in
19 July, a check also.

20 Q. But that's not these checks?

21 A. No, no, no, so we're clear about that.

22 Q. Okay. And it's your testimony, sir, on

1 redirect, that the references to the dates that we
2 talked about earlier on cross, September 2000,
3 October 2000, June, July, August 2000, those were
4 all dates that you wrote on those checks because
5 Mr. Crutcher told you to?

6 A. He asked me -- requested me to do that.

7 Q. Okay.

8 A. Otherwise they'd be in the margin.

9 MR. BERNET: Nothing further, your Honor.

10 MR. HABIB: I have nothing further, your Honor.

11 JUDGE ZABAN: I have a couple questions,
12 please.

13 EXAMINATION

14 BY

15 JUDGE ZABAN:

16 Q. Let me talk to you a little bit about this
17 agreement that you signed with Mr. Crutcher; is that
18 correct?

19 Who was present when this agreement was signed?

20 A. Myself and Mr. Crutcher.

21 Q. Okay. This took place in the Oak Brook
22 offices?

1 A. Oak Brook office.

2 Q. Now, you also produced Exhibit No. 4; is that
3 correct --

4 A. That is correct.

5 Q. -- as part of your testimony?

6 And you had a chance to look at the figures in
7 Exhibit No. 4?

8 A. Yes. I have them right here.

9 Q. And without commenting on the accuracy or lack
10 of accuracy of the meter readings, do the figures in
11 Exhibit No. 4 represent correctly the amounts of
12 money that Commonwealth Edison attempted to charge
13 you?

14 A. I believe that's correct, yes.

15 Q. Do they accurately reflect the amounts of money
16 you paid Commonwealth Edison?

17 A. Yes, they are, too.

18 Q. And they also reflect the attempt to collect
19 late bills from you as well?

20 A. That is correct.

21 Q. Let's talk about this agreement that you made
22 with Mr. Crutcher in June of 2000.

1 You owed them \$67,981; is that correct?

2 A. That is correct.

3 Q. And then Mr. Crutcher was going to give you a
4 credit for late charges?

5 A. That is what he told me, yes.

6 Q. What was the \$10,000 payment that's listed
7 on --

8 A. Bear with me while I just look at the
9 agreement. Here it is.

10 MR. BERNET: Is that -- are you referring
11 now --

12 JUDGE ZABAN: I'm referring to the notes in the
13 left margin.

14 THE WITNESS: Which one? This here?

15 BY JUDGE ZABAN:

16 Q. In the left margin up here, it says \$10,000
17 payment.

18 A. Yes, to be honest, we -- did we have the
19 original of this? Was that in the original?

20 JUDGE ZABAN: Do you have the original,
21 Mr. Habib?

22 MR. HABIB: Yes, I do. It's on the original.

1 THE WITNESS: It's not my handwriting to begin
2 with.

3 BY THE JUDGE:

4 Q. Okay. Is all of this Mr. Crutcher's
5 handwriting?

6 A. Yes.

7 Q. And this agreement took place in July of 2000;
8 is that correct?

9 A. That is correct.

10 Q. Okay. This agreement says a payment of
11 December the 8th, 2000, is included in this
12 agreement; is that right?

13 A. December the 8th.

14 Q. Up on the top?

15 A. That's what it says, yes. That's what it says,
16 yes, that is correct.

17 Q. That's included in the 34,969; is that right?

18 A. It appears to be, yes.

19 Q. And in the margin, it shows 24,966, was that
20 the late charges?

21 A. It was -- the late charges, 34,966 was the late
22 charges.

1 Q. And a \$10,000 payment; is that right?

2 A. That's correct.

3 Q. In looking at your Exhibit 4, all right, do you
4 show anywhere a payment of -- in '99 or 2000 a
5 payment of \$10,000 to ComEdison?

6 A. '99? 12/7 of '99, sir.

7 Q. What is it?

8 A. That would be page -- 12/7 of '99, \$10,000,
9 sir, of '99.

10 Q. 12/7 --

11 A. Here.

12 MR. BERNET: It's on Page 5 of Exhibit --

13 JUDGE ZABAN: It doesn't show on mine.

14 MR. BERNET: It's on Page 5 of the --

15 BY THE JUDGE:

16 Q. So actually the 12/8 payment probably is
17 referenced to a 12/8 payment from 1999; is that
18 correct?

19 A. I would have to believe that's what was
20 referring to, sir.

21 Q. I got -- my exhibit is different.

22 A. Here.

1 Q. No, my exhibit isn't different. I may be
2 missing that page. Hold on a second. Okay.

3 A. Do you find it?

4 Q. Yeah, I have got it. Okay.
5 That explains the 10,000, correct?

6 A. Yes, sir.

7 Q. Okay. Now let's go to the line where it
8 says -- so that left a balance of \$33,015; is that
9 correct?

10 A. That is correct.

11 Q. All right. And you gave Mr. Crutcher a check
12 for \$10,214 on 7/9; is that right?

13 A. That is correct.

14 Q. Did you give him any other checks in July?

15 A. You mind if I refer to --

16 Q. Take a look.

17 A. No.

18 Q. Did you give him any checks in August?

19 A. No.

20 Q. How about September?

21 A. One minute. I have to read this estimated
22 bill.

1 Appears to be a credit or a check 1,231.48.

2 Q. Okay. And then you got deposit interest; is
3 that correct?

4 A. Right. That is correct. Which we get every
5 year.

6 Q. Okay. During that same period of time, you
7 were also incurring regular bills; is that correct?

8 A. They were correct -- yeah, that is correct.

9 Q. And approximately how much did you incur in
10 regular bills during that period of time?

11 A. From July through the end of the year.

12 Q. Through July through the payment in November?

13 A. Into July, okay, starting with July 7th, I
14 assume this here, the billing record here is where
15 I'm speaking to.

16 Q. Right. Let's not even talk about the late
17 charges.

18 A. I'm not speaking about that. I'm saying cancel
19 billing but I'm just going by what I'm seeing here.
20 The copy here is 1300 -- 1231 or something like
21 that. Then 7/7 to 8/8 there's 1234; 8/8 to 9/6 is
22 \$4,422; 9/6 to 10/5 is 4,054; 10/5 appears to be

1 2154; 11 through 12/6 is 4,029.

2 So that would be four, ten, about \$16,000.

3 Q. \$16,000?

4 A. Give or take a few bucks.

5 Q. Okay. Is there any payments of that \$16,000
6 reflected in your credit -- in the amounts you paid?

7 A. No. No.

8 Q. Okay.

9 A. No.

10 Q. Now, taken in its best light, if I look at the
11 figure that you -- that you gave or that you agreed
12 upon of \$33,015.

13 A. Right.

14 Q. Okay. Of which you paid \$10,214, correct?

15 A. Right.

16 Q. That's the money that you allegedly -- that
17 you -- not allegedly -- that you gave Mr. Crutcher
18 on the --

19 A. 14th -- or 9th or whatever it is, yeah.

20 Q. That left a balance -- the balance of \$22,801;
21 is that correct?

22 A. That is correct.

1 Q. Okay. And the next payment you made on that
2 amount other than the 1231.49, okay --

3 A. Where is 1231? The other one is an interest
4 payment. The other one is a credit.

5 Q. Okay. So the only payment you made on the
6 22,801 was the 12,500; is that correct?

7 A. That is correct.

8 Q. Okay.

9 A. That is what I see here.

10 Q. Okay.

11 A. I don't have -- do you have the record that
12 goes beyond 1/1?

13 Q. Okay. But that -- so you were incorrect when
14 you originally testified that the entire amount was
15 paid within two months; is that correct?

16 A. Yes.

17 Q. And in fact, even according to these figures,
18 you were still \$10,000 short; is that correct?

19 A. I believe that's correct.

20 JUDGE ZABAN: Okay. I have nothing further.

21 MR. BERNET: Your Honor, I do have a couple
22 other quick questions.

1 FURTHER RECROSS-EXAMINATION

2 BY

3 MR. BERNET:

4 Q. Directing your attention back to the document
5 that Mr. -- that your Honor was asking you about,
6 you see the second page there?

7 A. Uh-huh.

8 Q. That's the late charges, right?

9 A. Yes.

10 Q. So the late charges are actually
11 \$24,966, and isn't it true that when you met with
12 Mr. Crutcher in July, you told him that you had
13 never received credit for the \$10,000 payment you
14 made in December of '99?

15 A. I believe that's -- that -- my best
16 recollection, it sounds like -- I believe that is
17 correct.

18 Q. That's why he added the 10,000?

19 A. That's, I believe, what it is. I think he
20 looked in the record and ascertained that we didn't
21 make the \$10,000 payment.

22 Q. He later looked into the record. At the time

1 he wrote this he wrote it down --

2 JUDGE ZABAN: Okay. He's answered your
3 question.

4 MR. BERNET: All right. Thank you. Nothing
5 further.

6 JUDGE ZABAN: One other question, and that is
7 do you have the backs of the checks?

8 MR. HABIB: No. No. We do not. I don't have
9 the original of the checks.

10 JUDGE ZABAN: Okay.

11 MR. BERNET: I might. I mean he produced the
12 backs. Looks like he didn't.

13 JUDGE ZABAN: Okay.

14 MR. HABIB: We do not have the original of the
15 checks. We have the account activity showing the
16 payment.

17 THE WITNESS: I can probably get it off the
18 bank statement.

19 JUDGE ZABAN: I have nothing further.

20 Where are we at? It's 3:15. You're excused,
21 Mr. Flisk.

22 Mr. Gordon is gone for -- when is he going to

1 be back?

2 MR. HABIB: Next week.

3 JUDGE ZABAN: Okay. You're going to call
4 Mr. Gordon as rebuttal anyway, correct?

5 MR. HABIB: Yes, your Honor.

6 JUDGE ZABAN: All right. Go ahead.

7 MR. HABIB: I would call Ms. Miller now next.

8 JUDGE ZABAN: How long are we going to be with
9 Ms. Miller?

10 MR. BERNET: Your Honor, I would not be in a
11 position to offer any testimony from Commonwealth
12 Edison until such time as National Distribution
13 completes its direct case.

14 JUDGE ZABAN: He's calling Mr. Gordon as a
15 rebuttal testimony.

16 MR. BERNET: Well, his testimony is marked
17 direct testimony.

18 JUDGE ZABAN: He can still have direct
19 testimony in rebuttal. It's still direct and cross.

20 MR. BERNET: It's part of his burden of proof
21 to put his witnesses in, and I don't think it's fair
22 for me to have to put my case on and allow him to

1 decide whether or not he's going to put --

2 MR. HABIB: Your Honor --

3 JUDGE ZABAN: Stop. Stop. Okay.

4 First of all, in trial, he presents as much
5 evidence as he thinks is necessary.

6 If you don't think he's established a case, you
7 can make -- you can file a motion for a directed
8 verdict based on the evidence. Okay.

9 If he's put in a prima facie case, he is
10 entitled to rest at this point. You then have to
11 rebut his case with your own witnesses.

12 At a subsequent time after you produce your
13 case, he's entitled to put on a witness to rebut.
14 Okay.

15 But he doesn't -- or he may choose not to put
16 the witness on. This is standard procedure.

17 I'm not discriminating against you, Mr. Bernet,
18 but he's indicated to me that this is purely a
19 rebuttal witness and the witness is going to testify
20 in respect to something that your witness is going
21 to testify to.

22 So just like I said before, I'm not going to

1 allow Ms. Miller's evidence to come in until she is
2 actually testifying, I'm not going to compel him to
3 produce a witness to rebut her testimony until she
4 produces it.

5 MR. BERNET: Then if I understand, your Honor,
6 then what you're saying is you're assuming that
7 Mr. Habib is going to rest?

8 JUDGE ZABAN: That's my next question. At this
9 point do you rest?

10 MR. HABIB: No, I'm not.

11 The reason why I want to call Ms. Miller is, in
12 fact, as a hostile witness at this point.

13 JUDGE ZABAN: Which he's entitled to do.

14 MR. BERNET: You know, your Honor, I think the
15 normal procedure would be --

16 JUDGE ZABAN: However, however, okay, the
17 normal procedure is, in a hearing, is that he would
18 be entitled to do that.

19 However, because Ms. Miller has offered
20 testimony in this matter, okay, I think it's
21 probably better if he calls her as his witness and
22 I'll allow you to cross-examine.

1 In other words, I won't rule on any motion for
2 directed verdict until after such time as Ms. Miller
3 testifies.

4 If he chooses not to call Ms. Miller as a
5 witness, I will allow you to call her as an adverse
6 witness.

7 Let's go off the record now.

8 (Whereupon, a discussion
9 was had off the record.)

10 JUDGE ZABAN: Mr. Habib --

11 MR. HABIB: Yes.

12 JUDGE ZABAN: -- my understanding it's your
13 desire to call Ms. Miller as an adverse witness; is
14 that correct?

15 MR. HABIB: Yes, it is your Honor.

16 JUDGE ZABAN: Okay. In light of the fact that
17 Ms. Miller has previously offered her direct
18 testimony, what I'm going to do here is I'm going to
19 allow you to -- and other than calling Ms. Miller,
20 you'd rest your case; is that correct?

21 MR. HABIB: Most probably, yes.

22

1 JUDGE ZABAN: Okay. All right.

2 In order to allow you some flexibility under
3 the circumstances, I'm going to -- I'm not going to
4 allow you to call Ms. Miller at this time subject to
5 Mr. Bernet introducing her as a witness.

6 Should he not choose to call her as a witness I
7 will allow you to reopen your case and call her as
8 an adverse witness for the purposes of her
9 testimony.

10 MR. HABIB: Okay.

11 JUDGE ZABAN: Okay.

12 MR. HABIB: Yes.

13 JUDGE ZABAN: All right.

14 I understand that you have potentially a motion
15 in this matter; is that correct?

16 MR. BERNET: Yes, your Honor.

17 JUDGE ZABAN: Okay. What I'm going to do is
18 let's adjourn until tomorrow. We'll pick it up at
19 10:00 o'clock tomorrow.

20 MR. HABIB: In terms of the time --

21 JUDGE ZABAN: Yes.

22 MR. HABIB: Some flexibility at this point, is

1 it possible we can start later.

2 JUDGE ZABAN: Like what time?

3 MR. HABIB: Start at 12:00 o'clock.

4 JUDGE ZABAN: No, it's too late. I'm not going
5 to spend 15 days doing this.

6 And actually, Mr. Habib, when we talked about
7 this, I had told you that I was going to set aside
8 one, maybe two, maybe three days if necessary.

9 I will extend it to 10:30 if you desire, okay,
10 you'll just have to make other arrangements with
11 your other stuff so we can get it in.

12 The matter will be adjourned until tomorrow at
13 10:30. Okay.

14 MR. BERNET: Can we go off the record, please?

15 JUDGE ZABAN: Sure. Go off the record.

16 (Whereupon, a discussion
17 was had off the record.)

18 JUDGE ZABAN: We have had a little pretrial
19 discussion regarding procedure.

20 We're going to adjourn this hearing until
21 tomorrow at 10:30.

22

1 (Whereupon, further proceedings in
2 the above-entitled matter were
3 continued to October 17, 2002,
4 at 10:30 a.m.)

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