

CASE

NUMBER:

99-513

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

COPY

1
2
3 IN THE MATTER OF:

4 DIMITRI VAUGHN TAYLOR

COMPLAINANT

5 VS.

6
7 CLARK ENERGY COOPERATIVE, INC.

DEFENDANT

8 CASE NO. 99-513

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1 HEARING OFFICER BRADY:

2 Good morning. My name is Howell Brady, and I'm the
3 Hearing Examiner for the Commission and call for
4 hearing today Case No. 99-513 in the matter of Dimitri
5 Vaughn Taylor versus Clark Energy Cooperative, Inc.
6 Would counsels please introduce themselves starting
7 with the complainant?

8 MR. NASH:

9 Your Honor, Patrick Nash on behalf of Dimitri Vaughn
10 Taylor.

11 HEARING OFFICER BRADY:

12 Thank you. Welcome. And for the respondent/defendant?

13 MR. THOMAS:

14 Your Honor, Brian Thomas on behalf of Clark Energy and
15 this is Shannon Messer, the Clark Energy repre-
16 sentative.

17 HEARING OFFICER BRADY:

18 Welcome.

19 MR. THOMAS:

20 Thank you. Your Honor, before we begin, . . .

21 HEARING OFFICER BRADY:

22 Just one minute. I'll be back.

23 MR. THOMAS:

24 Okay. Thank you.

25

1 HEARING OFFICER BRADY:

2 And for the Commission?

3 MR. PINNEY:

4 Your Honor, I'm Jeb Pinney on behalf of the Commission,
5 and I'm accompanied by Marvin Goff and Martha Morton.

6 HEARING OFFICER BRADY:

7 Thank you. Now, Mr. Thomas, that brings me to the time
8 when I would have asked for any pretrial motions,
9 comments, or whatever. So what's your pleasure?

10 MR. THOMAS:

11 Thank you, Your Honor. I do have one motion that I
12 would like to file, and I've tendered a copy to Mr.
13 Nash, if I may approach.

14 HEARING OFFICER BRADY:

15 Yes, sir. Thank you. You've given the others copies?

16 MR. THOMAS:

17 No, sir, I have not. I do have copies for the rest of
18 the Commission staff. Your Honor, in response to Mr.
19 Taylor's rebuttal testimony, which was filed on July 5,
20 at that point was the first time that mention was ever
21 made of any road that traversed along the property
22 which Mr. Taylor would allege would provide access from
23 Clark Energy. In response to that, Clark Energy
24 attempted to contact a couple of the neighbors and was
25 able to do so, and, because of the late date, they were

1 unable to be here, but they wished to file these
2 affidavits with the Commission, and it's our motion
3 that you allow the sworn testimony of these individuals
4 to be admitted into the record.

5 HEARING OFFICER BRADY:

6 Have you had a chance to review this?

7 MR. NASH:

8 Briefly, Your Honor. These were handed to be about 20
9 minutes ago, and I've, in that period of time, looked
10 them over. We would object for a couple of reasons.
11 If the purpose of these is to rebut our contention that
12 there is an old roadbed there, they don't appear to
13 serve that purpose. For one, the affidavit of Mitchell
14 Sidwell, he's a landowner upon whose land that old
15 roadbed does not exist, and the questions - or, at
16 least, there's no questions but the statements that he
17 makes in his affidavit don't relate to that but relate
18 to issues that were defined in a record as early as the
19 initial Complaint and Response. In regards to Mr.
20 Hanley, whose property upon which that old roadbed does
21 exist, he was not asked about it nor was he apparently
22 shown the photographs that we have taken and filed of
23 record that show that old roadbed, and, again, his
24 statements are merely duplicative, really, in toto of
25 witnesses that they have already presented and issues

1 that have already been of record. So we object to the
2 fact that it doesn't really rebut our rebuttal, and
3 then, of course, we object to the timing and the fact
4 that neither of these witnesses are here and available
5 for cross examination, and we've had no time to prepare
6 for these.

7 HEARING OFFICER BRADY:

8 All right. Thank you. Mr. Pinney, have you had an
9 opportunity to review the motion? Any comments?

10 MR. PINNEY:

11 I just received it and . . .

12 HEARING OFFICER BRADY:

13 At the same time I did this morning?

14 MR. PINNEY:

15 Yes, Your Honor.

16 HEARING OFFICER BRADY:

17 I will accept the motion for purposes of review, defer
18 a decision at this time, and will either let you know
19 orally today or serve it or let the Commission itself
20 review whatever decision I may make with it. So I will
21 receive it for purposes of my review and defer a
22 decision until later. Any other motions before I make
23 a couple of comments about logistics?

24 MR. NASH:

25 No, Judge.

1 MR. THOMAS:

2 No, Your Honor.

3 HEARING OFFICER BRADY:

4 Anything else?

5 MR. THOMAS:

6 No, Your Honor.

7 HEARING OFFICER BRADY:

8 Mr. Nash, anything else?

9 MR. NASH:

10 No, Your Honor.

11 HEARING OFFICER BRADY:

12 Mr. Pinney?

13 MR. PINNEY:

14 No, Your Honor.

15 HEARING OFFICER BRADY:

16 The only logistical comment I will make is that my
17 suggestion will be that we go to approximately noon.
18 If somebody is, as they probably will be, in the middle
19 of testifying, you know, we can slide that over to
20 12:15 or so. I do not take long lunch breaks or long
21 breaks. I would propose probably stopping at noon for
22 approximately 30 minutes, 45 minutes at the most, and
23 then we'll get back and keep on our business. I'm not
24 a big fan of extended breaks, in any event. However,
25 if someone has problems of any sort, needs a break

1 quicker than I might normally stop, by all means just
2 raise your hand, get that information to me, and, you
3 know, I'll honor those, you know, with no problem. All
4 right. Last call around. Mr. Nash, anything else?

5 MR. NASH:

6 The only other thing, Your Honor, I guess I would ask
7 for separation of witnesses if that's your normal
8 practice in these situations.

9 HEARING OFFICER BRADY:

10 All right. Mr. Thomas?

11 MR. THOMAS:

12 We would have no objection, Your Honor.

13 HEARING OFFICER BRADY:

14 Mr. Pinney? All right. Ladies and gentlemen, the
15 motion has been made and, not having any objections
16 thereto, I'll sustain to ask that the witnesses be
17 separated. What that means is, is that, in just a few
18 seconds, I will ask anyone who is present who
19 anticipates being called as a witness to step outside
20 and wait in the lobby or thereabouts. There's a coffee
21 room right off the lobby. There's a lunchroom in the
22 basement that has a better selection of vending
23 machines. The reason for that is that whatever you're
24 going to tell me represents your view of a particular
25 event or occurrence. I approve of separation of

1 witnesses, because I want very much to hear what your
2 view is, and I want that view to be as pristine as
3 possible without having, you know, heard other matters
4 - we're all human - that might affect us or affect that
5 perception in any way. So I'm very much interested in
6 hearing whatever you, as a witness, might have to say,
7 and I want it as pure or pristine as possible because
8 that will help me the most, is to hear it that way. So
9 I will ask anyone present who anticipates being called
10 as a witness, and I'll ask counsels to oversee this,
11 would you please step out at this time, and we'll call
12 you as you're needed. Does everybody have water or
13 coffee or something wet, in any event? All right.
14 Okay. Anything else, Mr. Nash?

15 MR. NASH:

16 No, Your Honor.

17 HEARING OFFICER BRADY:

18 And I did have it right; Brian Thomas?

19 MR. THOMAS:

20 That's correct.

21 HEARING OFFICER BRADY:

22 Good. Mr. Pinney, anything else?

23 MR. PINNEY:

24 No, Your Honor.

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HEARING OFFICER BRADY:

All right. I reckon we're ready to begin, Mr. Nash.

MR. NASH:

It's my understanding that there's to be no opening statement.

HEARING OFFICER BRADY:

Right.

MR. NASH:

Just to proceed directly with witnesses?

HEARING OFFICER BRADY:

Right.

MR. NASH:

Okay. I would put on Dimitri Vaughn Taylor.

HEARING OFFICER BRADY:

All right, sir, if you'll go over to the witness area.

WITNESS SWORN

HEARING OFFICER BRADY:

Thank you. Have a seat, please. You may ask, Mr. Nash.

MR. NASH:

Again, Your Honor, trying to comport with the pretrial Orders, I would simply ask . . .

1 HEARING OFFICER BRADY:

2 All right. Mr. Nash, you're exactly right.

3 That's the way we do it and, at this time, Mr.

4 Thomas, you may cross our witness.

5 MR. THOMAS:

6 Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. THOMAS:

9 Q. Mr. Taylor, we have met.

10 MR. THOMAS:

11 And, Your Honor, is it procedurally okay if I were

12 to stand or is it preferable . . .

13 HEARING OFFICER BRADY:

14 Whichever you're more comfortable.

15 MR. THOMAS:

16 Thank you.

17 Q. Mr. Taylor, we met just briefly the other day. That
18 would be the first time that we've met. I am Brian
19 Thomas, and I'm representing Clark Energy, who is the
20 defendant in this case. In this matter, you filed a
21 Complaint with the Public Service Commission; didn't
22 you?

23 A. Yes, sir.

24 Q. And, in that Complaint, you stated that you had
25 contacted Clark Energy about obtaining electrical

1 service to a piece of property commonly referred to as
2 the Point?

3 A. Yes, sir.

4 Q. And, in your Complaint, you indicate that the only
5 access to that property was by river?

6 A. My access, yes.

7 Q. Okay.

8 A. I had stated to them prior to buying the property that
9 it was landlocked, as far as I knew at that time, and
10 my only access was by boat.

11 Q. Okay. And then subsequently you indicated, in a
12 statement and memorandum that was filed by Mr. Nash,
13 that the only access to the property was by foot or by
14 river?

15 A. You can walk in down the creek or you can walk in
16 through Mitchell Sidwell's property. You can also walk
17 in by Michael Hanley's property, or you can come by
18 boat.

19 Q. Okay. But, in that particular memo which you had
20 adopted as part of your testimony, I think, in your
21 direct, you indicated that there was no road access to
22 the property; is that correct?

23 A. My access, no. At this point in time, no, there's not.
24 Now, that's - further down the road, there may be some.
25 I've got to do it all in a . . .

1 Q. The statement that you actually adopted as part of your
2 verified statement, Mr. Taylor, says there was no road
3 access to the property. It doesn't say anything about
4 your access. It just says no road access, period, to
5 the property and that the only access was by foot or
6 access via the Kentucky River.

7 A. Well, I mean, that's the way you're interpreting it,
8 but that's - right. You can't drive a car there right
9 now.

10 Q. Okay.

11 A. At least, I can't.

12 Q. Okay. In your original statement, you observed that
13 the poles were in good condition?

14 A. The pools on the bottom, in the bottom, . . .

15 Q. Okay. And then . . .

16 A. . . . which is the Ambrose Bush Bottom.

17 Q. Okay. And then the bottom you're referring to, would
18 that be the flat area where the old cabin stood?

19 A. Well, you have the top of the mountain, and then you
20 have the bottom along the river.

21 Q. Okay. What was the condition of the poles leading from
22 the top of the hill to the bottom?

23 A. Actually, the way we found the poles, as far as after I
24 had been up there - it's a piece of property that a lot
25 of people have been on for a long time, but the fellow

1 that owned it since, I assume - I'm not sure exactly -
2 I think it was in the seventies when he bought it . . .
3 Q. That would have been the person you bought it from?
4 A. Yes, sir.
5 Q. Is his name Murrell? Let's see.
6 A. It would be William Stir.
7 Q. Stir. Stir. That's right. I'm sorry.
8 A. We had seen the poles. The two poles that are on my
9 property were standing with wires. There are also two
10 more poles down the river bottom that were standing
11 with wires, and you could see the next pole on the top.
12 That's how we knew where - because it is thick down
13 there, but you could see where the wires went up to the
14 next pole or else it would just be a - it would be hard
15 to see a telephone pole in the woods unless you saw the
16 wires going to it. Is that your question?
17 Q. Yeah.
18 A. Okay.
19 Q. So all the poles were in good condition?
20 A. The five poles that I saw, or four poles.
21 Q. And you also stated that they were complete with
22 electrical wires?
23 A. There was wires on the poles; yes.
24 Q. Were they properly strung from one pole to the other?
25 A. Well, that's how we followed the - there were wires on

1 the poles. Now, I don't know if all of the wires were
2 on the poles, but there were wires on the poles.
3 Q. Was there a transformer located on the property?
4 A. Yes, sir.
5 Q. What was the condition of that transformer?
6 A. It was old, but . . .
7 Q. In good shape?
8 A. Well, it probably needed to be replaced.
9 Q. What was the condition of the growth around those
10 telephone poles?
11 A. Which ones?
12 Q. Well, let's start at the two down in the Bush Bottom.
13 A. On my property?
14 Q. On your property.
15 A. The condition of them as far as?
16 Q. Well, did the lines go from one pole to the next?
17 A. Yeah. Yeah.
18 Q. And were there any trees growing up through those
19 lines?
20 A. On my property, no.
21 Q. What about the two poles that you mentioned down the
22 river?
23 A. Between my property and the next pole, there was, you
24 know, I mean, there was some saplings and trees grown
25 up.

1 Q. Now, was . . .

2 A. I guess some the trees may have had the wires pushed up
3 in the air, but . . .

4 Q. Now, were all of these observations made before you
5 purchased the property?

6 A. Yes, sir.

7 Q. And, based upon that, when did you go visit Clark
8 Energy?

9 A. Prior to me purchasing the property.

10 Q. Approximately what time of year was it?

11 A. Before I went and bought the property. I'm going to
12 say early January, February maybe. We had been up
13 there a lot before I purchased the property. So I
14 don't - it could have been December. It could have
15 been in November. I don't . . .

16 Q. So you're saying four or five months before you bought
17 the property you went there?

18 A. Possibly, yes.

19 Q. What did they tell you when - well, first, . . .

20 A. Oh, when I went to Clark RECC?

21 Q. When you went to Clark RECC.

22 A. Oh, that was just briefly prior to me purchasing the
23 property. That's when I was getting ready to buy it.

24 Q. All right. When approximately was that?

25 A. What?

1 Q. What time of year did you go to Clark Energy?
2 A. I assume I bought it in, what, May, and so I'll just
3 say the first of the year.
4 Q. So you would say January or February?
5 A. Something along that line.
6 Q. If your prior statement said March of '97, would that
7 be an accurate statement?
8 A. No. No. That would be after I bought it. Did I buy
9 it in May? I don't have any of that in front of me,
10 but I'm . . .
11 Q. Well, you bought the property May 28 of '97, or it was
12 recorded in the Clerk's Office May 28. I think you
13 actually bought it May 22.
14 A. Okay. Well, when I went to Clark, it was prior to
15 that.
16 Q. Okay. And would that have been around March of '97?
17 A. Okay.
18 Q. Well, I mean, . . .
19 A. Yeah.
20 Q. Okay.
21 A. Okay.
22 Q. Who did you speak with at Clark Energy?
23 A. One of their guys at the front desk there in
24 Operations.
25 Q. And what did this Operations individual tell you?

1 A. I informed him of the property I was getting ready to
2 purchase or was looking at purchasing and what was the
3 chances of getting the electrical service hooked back
4 up, and he said, if - I told him about the tags and
5 everything on the poles and the transformers and the
6 wires, and he said it would be no problem to get it
7 hooked back up. I just needed to get a Deed in my
8 name, to get the property in my name, and they would
9 get it hooked up.

10 Q. So did you describe the condition of the poles and the
11 wires and the transformer?

12 A. I told him that I was landlocked and then I had no
13 access and that was a big factor on whether or not I
14 purchased the property or not.

15 Q. In fact, you told him it was landlocked with no road
16 access; didn't you?

17 A. Probably so, yeah, that I was aware of. I mean, as far
18 as me having a road to my house, yeah, I'm sure I told
19 him that.

20 Q. Okay.

21 A. At that point, they said that they didn't have a
22 problem because they had access. Their poles and wires
23 and transformers was there, and they could hook it back
24 up.

25 Q. How many men were working in this department, this

1 Operations Department?

2 A. I don't know. I was in the front. There was a counter
3 with a lady, a couple of ladies maybe, that were doing
4 people's payments, and he had actually come from the
5 back, down the hall somewhere.

6 Q. At that point, did you go ahead and get you a
7 membership application?

8 A. No.

9 Q. Why didn't you get one at that time?

10 A. Because he said I needed to get a Deed. He said, "You
11 buy the property. You get a Deed. We'll hook it up."

12 Q. Do you remember subsequently filling out an application
13 for membership?

14 A. Just as soon as I got a Deed in my hand I went back
15 there.

16 MR. THOMAS:

17 Your Honor, these have already been introduced as
18 attached Exhibits to Mr. Taylor's statement. May
19 I ask from those and just make reference to that
20 application?

21 HEARING OFFICER BRADY:

22 Yes.

23 MR. NASH:

24 No objection.

25 Q. I'm going to show you a document . . .

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MR. THOMAS:

If I may approach the witness, Your Honor.

HEARING OFFICER BRADY:

You may.

Q. . . . that is attached to your statement in this.

A. Uh-huh.

Q. Does this look familiar to you?

A. Yeah, that's my application.

Q. All right. I want to ask you to take special note to Paragraph 5.

A. Right.

Q. There's a sentence here that says, "I hereby certify to the cooperative that I am or am not the owner of the land . . ."

A. Right.

Q. If there was a requirement for Clark Energy that you be the owner, why would that provision be contained in their application?

MR. NASH:

I object.

A. Well, I think that refers to renters.

MR. NASH:

Well, I object to that question.

HEARING OFFICER BRADY:

Hold just a minute. Mr. Nash?

1 MR. NASH:

2 He's asking him to interpret why Clark would put
3 that phrase in one of their own contracts, and I
4 just don't think he's the proper person to ask
5 that question of.

6 HEARING OFFICER BRADY:

7 Mr. Thomas?

8 MR. THOMAS:

9 Your Honor, it's very relevant because he's
10 attempting to make allegations that Clark Energy
11 behaved in a certain manner when he went and had
12 preliminary discussions with them. I think it
13 clearly shows by this application that he had the
14 option to select whether he owned or did not own
15 the property. I think it's very important,
16 because we deny making that statement.

17 MR. NASH:

18 I think that question is appropriate, you know,
19 "Did the form have that there when you signed it?"
20 but then to turn and say, "Okay, now, why would
21 Clark put this in their form?" that's the question
22 I object to.

23 A. Well, I think that - I mean, it . . .

24 MR. NASH:

25 Hold on.

1 HEARING OFFICER BRADY:

2 Hold on, Mr. Taylor.

3 A. Oh, okay.

4 HEARING OFFICER BRADY:

5 I'm going to let you ask the question, but I agree
6 with Mr. Nash that the way you framed the question
7 is you're essentially asking the witness to
8 interpret or speculate on why Clark Energy would
9 have put the question there, and basically I agree
10 with Mr. Nash that that's objectionable, but, on a
11 very narrow turn, I'm going to let you go ahead
12 and do it and give you some opportunity to tie it
13 in later. So basically what I'm going to do is
14 defer ruling on the motion, let you ask the
15 question, and see if you can tie it in, and, if
16 you can't, then I'm going to sustain Mr. Nash's
17 motion.

18 MR. THOMAS:

19 Your Honor, I would be more than happy to rephrase
20 the question . . .

21 HEARING OFFICER BRADY:

22 That will be fine.

23 MR. THOMAS:

24 . . . just to make sure that it complies so we
25 don't have to fall into that.

1 HEARING OFFICER BRADY:

2 All right. All right.

3 Q. Mr. Taylor, on this document, is there a place that
4 indicates a space to check whether you are or are not
5 the owner of the property?

6 A. Yeah.

7 Q. Okay. And, underneath that, is there not also a place
8 to indicate the name and address of the property owner
9 if you are not the owner?

10 A. Well, of course.

11 Q. Okay. Did anyone at Clark Energy, on that first visit,
12 tell you that it was a requirement that you actually
13 bring the Deed in to show them proof of ownership?

14 A. I don't think he said "Bring the Deed in," but, yeah,
15 that was pretty much a requirement, to get it in my
16 name. I think that was just like to stop me from
17 putting electric on your property. I mean, I don't
18 know why.

19 Q. Did you read that application before you signed it?

20 A. No. I mean, I have since then.

21 Q. Okay.

22 MR. THOMAS:

23 If I may approach again.

24 Q. In Paragraph 3, there's a statement that says, "The
25 Applicant will cause his or her premises to be wired in

1 accordance with wiring specifications required by the
2 State of Kentucky and/or local codes."
3 A. Right.
4 Q. Do you remember reading that?
5 A. Well, I have since then; yeah.
6 Q. And this is your signature here at the bottom?
7 A. Yes, sir.
8 Q. Okay. Have you had your property wired in accordance
9 with that paragraph, with that provision?
10 A. At this point in time, no. I mean, I think that refers
11 to the temporary service that was getting ready to be
12 installed.
13 Q. Additionally, Mr. Taylor, you also submitted to the
14 Commission an Exhibit which is a picture of what
15 appears to be some type of drawing showing electrical
16 service, a temporary service?
17 A. Yes, sir.
18 MR. THOMAS:
19 If I may approach again.
20 Q. This particular, and I don't - all I have is the copy
21 that was provided by your counsel. I think he has the
22 original.
23 A. Yes, sir.
24 Q. What is this drawing on the bottom right corner?
25 A. What they had done was they gave me just a sheet of

1 paper they had on the table, or whatever, and he drew
2 out what it was going to take for me to get - how I was
3 going to put my electric because I've never done that
4 before, what I needed to do to get electric service, I
5 mean, as far as putting the temporary service in.

6 Q. What is this drawing right here?

7 A. That's a picture of the Point with my property bounding
8 with the existing telephone poles and where my property
9 stopped and with the creek and the river.

10 Q. And who drew that picture?

11 A. I drew that.

12 Q. So you drew this picture, and then someone from Clark
13 Energy, you stated, . . .

14 A. After I drew this picture, he drew this and said, "You
15 need to stick it right there," and then that's what I
16 needed to do. He put down all the pieces that I needed
17 to do it with.

18 Q. And then did you just take this document with you when
19 you left?

20 A. He gave it to me; yeah.

21 Q. Do you know who the individual was that . . .

22 A. No, I don't.

23 Q. . . . told you about the electrical service?

24 A. The temporary service?

25 Q. Yeah.

1 A. It was just one of the fellows I talked to down there.
2 Q. Have you had any of that temporary service done?
3 A. I've got a lot of the parts. It's just that you
4 can't - you know, if you take \$500, which is about what
5 that is, and set it down there on that property, you
6 need to get it on because, if not, they'll get in there
7 and get it. Somebody will get in there and get it.
8 Q. When you went back in to sign up, Mr. Taylor, in May of
9 1997, in addition to filling out the application, what
10 other forms did you fill out?
11 A. I believe that's all I filled out. Now, I also had
12 service at the house - I had Clark RECC at another
13 location that was in my name, and, at that point, they
14 wanted me to terminate that service and sign up on
15 this. The day I signed on that my name was taken out
16 of that other service.
17 Q. Was that other service for your primary residence?
18 A. No.
19 Q. What was the other service for?
20 A. Ex-wife's house.
21 Q. All right. And what paperwork did you fill out to
22 complete that termination?
23 A. I don't know. You know, I assume I signed something.
24 I had to have. You just can't - but, I mean, maybe I
25 didn't.

1 Q. Well, you state in your testimony that you signed some
2 termination papers?
3 A. I'm sure I signed something. It may have been - the
4 day I signed that up was the day that my termination of
5 3604 Athens-Boonesborough Road was terminated.
6 Q. And you have testified previously that . . .
7 A. Did this have anything to do with it?
8 Q. . . . you signed a termination document.
9 A. Okay. Well, . . .
10 Q. So the question is did you sign the termination
11 document or did you not?
12 A. I signed some papers that day. I don't know . . .
13 Q. But you don't know what they were for?
14 A. Like I said, I didn't even read this until a year ago.
15 Q. After you signed or after you made your application,
16 did Clark Energy go ahead and turn on the service?
17 A. They said they would get on it.
18 Q. And what happened next? Didn't you meet with an
19 individual named Todd Peyton?
20 A. Yes, sir.
21 Q. Did you make arrangements with Clark Energy to meet at
22 a boat dock, initially?
23 A. We were going to go by river; yeah.
24 Q. And that was subsequently - why would you have gone by
25 river?

1 A. Because that was my - from what I said from day one, I
2 didn't have any access other than river. So they said,
3 "Okay. We'll meet you at the boat dock."
4 Q. And then was that meeting place subsequently changed?
5 A. Yes, sir.
6 Q. And you ended up meeting at a country store in the
7 vicinity; didn't you?
8 A. Yeah.
9 Q. Why didn't you try to make arrangements to meet at the
10 home site or to talk to someone about allowing you
11 access?
12 A. Meet at whose home site?
13 Q. At the old cabin site, your property.
14 A. Well, that's where we were going.
15 Q. But why didn't you go ahead and just tell Mr. Peyton
16 that you would meet him down there or you would meet
17 him?
18 A. Because he didn't have a clue where it was.
19 Q. So where did you end up going when you met with Mr.
20 Peyton?
21 A. We went down - see, I wasn't - once those lines hit the
22 top of the hill, I didn't know where they went. I
23 mean, they were at the top of the hill, which I assumed
24 you could get a truck to, which apparently you can, but
25 I wasn't even aware where they went after they went to

1 the top of the hill. Alls I knew is there was wires
2 that came down the hill with poles and transformer and
3 they were - I mean, . . .

4 Q. How was it, then, that you . . .

5 A. Well, we drove around the end of Grimes Mill Road,
6 Sidwell Lane. Munches Corner is where we actually went
7 to, which is where we went to the driveway of Mike
8 Hanley, and he's got a big gate, and it was locked.

9 Q. And who determined, I guess, that that would be where
10 the . . .

11 A. He did.

12 Q. Mr. Peyton?

13 A. Yes, sir.

14 Q. And where did you subsequently go after that, after
15 leaving Mr. Hanley's property?

16 A. Now, after we left Hanley, he took me back to my truck
17 at Judy Ray's. It was the country store we met at.

18 Q. Did you ever go to Mitchell Sidwell's house?

19 A. No. Me and Mike Peyton did not go to or . . .

20 Q. Todd Peyton.

21 A. Todd Peyton.

22 Q. Had you ever been to Mr. Sidwell's house?

23 A. Oh, many times.

24 Q. Did you ever go to his house before you purchased the
25 property?

1 A. Negative. You know, I think maybe I had gone to where
2 he used to live, which was like three houses up Sidwell
3 Lane, to discuss buying the Point because, I mean, it's
4 a small town, I mean, a small area, Ford.

5 Q. Did it ever come to your thought - did you ever think
6 about, well, if Mr. Hanley's property is unavailable
7 and we can't get through, that we would drive around
8 and try to go down Sidwell Lane, since you had been
9 there previously to talk about purchasing the property?

10 A. Well, you really can't get to it from Sidwell Lane.
11 You have to go actually through the farm at the end of
12 Sidwell Lane and drive to the back of that farm, and
13 then it's an easier walk in, as far as walking in, to
14 drive almost within a quarter of a mile of the Point.

15 Q. And that would be as if you went across the Hanley
16 property?

17 A. No.

18 Q. Okay. If you went across Sidwell's property, you could
19 get within a quarter of a mile of the site?

20 A. Yeah, but you still have to cross Hanley's to get to
21 the Point. Mitchell Sidwell's property doesn't even
22 border my property.

23 Q. Okay. How is the access from the Hanley property to
24 your property, if you were to go and start it where the
25 Hanley residence is?

1 A. Well, we've never seen really eye-to-eye since day one,
2 and, up until here several weeks ago, I had never
3 walked from the Point to Hanley's house, but I knew
4 there was a road. I know people that have seen cars on
5 the Point. I knew there was access, but it wasn't my
6 access or, at least, my access at this time.

7 Q. Was there ever any discussion that you build a road?

8 A. With anybody? Not until this is all taken care of; no.

9 Q. From Mr. Hanley's gate, were you all able to see where
10 the electric line went to the Point?

11 A. You can see the - I mean, according to Mr. Peyton, I
12 mean, he was like, "Well, it looks like there it is,"
13 and, at that point, he was all good with it. He didn't
14 have a problem with it or, at least, it appeared that
15 he didn't have a problem with it.

16 Q. I'm going to show you another document which is the
17 Member Data sheet.

18 MR. THOMAS:

19 If I may approach again, Your Honor. Thank you.

20 HEARING OFFICER BRADY:

21 I appreciate the question, but all counsels, if
22 you have Exhibits, may approach the witness.

23 MR. THOMAS:

24 Thank you, Your Honor.

25 Q. I'm going to ask you to take a look at that sheet right

1 there.

2 A. Uh-huh.

3 Q. It indicates, as best as I can understand it, it's a -

4 I call it a Member Data sheet . . .

5 A. Uh-huh.

6 Q. . . . because that's the first topic that's centered

7 there. Is any of that in your handwriting?

8 A. No.

9 Q. Did you fill out any of that?

10 A. No.

11 Q. So that we don't have any speculation, any of the words

12 that are there with blank spaces to fill in, you don't

13 know what they're for or why they were put there?

14 A. Well, I mean, . . .

15 Q. There may be some obvious names.

16 A. Yeah, it's obvious why they were put there; location

17 between Clays Ferry and Boonesborough on the river or,

18 you know, okay.

19 Q. Since you say some of it's obvious, do you know why

20 that right-of-way easement line is there?

21 A. It says right-of-way easement, okay.

22 Q. Do you know what that means?

23 A. I assume it means it's okay.

24 Q. But you don't know? You don't know why Clark Energy

25 would have put that particular provision . . .

1 A. Well, I do now. I mean, I didn't know at the time.
2 Q. Okay.
3 A. I mean, after reading this and seeing this, I assumed
4 that, when you put your little initials here where it
5 says you can maintain, replace, move, hookup,
6 discontinue, da, da, da, da, da, ". . . privilege to
7 cut down and/or treat with herbicides ... trees and
8 bushes . . ." I mean, it's a big paragraph.
9 Q. Basically giving them a right-of-way on your property
10 as the applicant?
11 A. Well, I think it probably gives them the right-of-way
12 to run wires across my property.
13 Q. But here on the membership data, where it says
14 membership data, membership number, and whether you're
15 an old, new, or joint member, there's nothing marked
16 there; is there? There's no marks made on this
17 document?
18 A. No. No, not on that. I paid service, though, for
19 almost ten years. So, I mean, I was - that was just
20 neglected, though.
21 Q. You state that, in June of 1997, in your Verified
22 Testimony, that you were first told about permits that
23 were required before service could be attached or
24 before service could be connected at your site?
25 A. Right.

1 Q. Have you gotten - what permits did they tell you that
2 were required?
3 A. Well, I had to get the septic before you could get a
4 building permit.
5 Q. And have you gotten that septic permit?
6 A. Yeah, I've got that taken care of.
7 Q. Okay.
8 A. I don't have the permit, but I've got it resolved to
9 where that could be accomplished in a matter of days.
10 Actually, I could do it while I'm here in Frankfort. I
11 mean, that's not a . . .
12 Q. And have you talked to the - who have you talked to
13 about getting your septic system installed . . .
14 A. Well, it wouldn't be a septic.
15 Q. . . . or to get it approved?
16 A. Approved? EPA.
17 Q. Okay. Have you talked to the Clark County Health
18 Department?
19 A. Yes, I have.
20 Q. And what is . . .
21 A. He just needed to see some literature on it, and he
22 said it would probably be all good.
23 Q. Okay. So it hasn't been approved at this point?
24 A. I haven't spent \$5,000 on a composting toilet yet . . .
25 Q. Okay.

1 A. . . . but, yes, it will be approved.

2 Q. And so I would say it's safe to assume you haven't got
3 a building permit yet either?

4 A. Well, you can't get that until you get their . . .

5 Q. Since you haven't got the septic?

6 A. Well, you know, before I spend \$5,000 on a toilet and
7 \$5,000 on a water treatment, I need to know if I'm
8 going to get electric, and you can't just leave this
9 stuff in the woods. You know, there's more than just
10 racoons out there.

11 Q. And I think you've told me previously that you still
12 haven't gotten electrical service or, at least,
13 installed the temporary electrical base.

14 A. Well, there again, I mean, it's all contingent on this
15 right here, but, as far as getting the permits,
16 everybody says it's not a problem. All I have to do
17 is . . .

18 Q. Who did you talk to when you alleged that Clark - you
19 stated that you called Clark Energy and said you were
20 ready to build . . .

21 A. Right.

22 Q. . . . and were informed that the poles were cut down;
23 is that a fair statement?

24 A. No. No. No. That happened after I told them I was
25 ready to build. After I said, "Let's get it on," that

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was . . .

Q. That's right. You called and said, "I'm ready to build," . . .

A. "Let's get it on."

Q. . . . and you state that someone told you that the poles had been cut down?

A. No. No.

Q. Okay.

MR. NASH:

For the record, I would object because that's out of order in the way that his testimony has been filed of record.

HEARING OFFICER BRADY:

Overruled.

A. Two days after I called them and told them I was ready to build, the poles got cut down.

Q. Okay. Did you subsequently contact Clark Energy again to find out why the poles were cut down?

A. Yeah.

Q. Who did you talk with?

A. It was a female in Operations.

Q. And you didn't get her name?

A. No, I didn't.

Q. What did this female tell you?

A. She wasn't aware of anybody even being there and denied

1 it point-blank; that they didn't have anything to do
2 with it.

3 Q. Were you, at some subsequent point, told that the line
4 was retired?

5 A. I called them back, I don't know, it may have been a
6 day, it may have been two days, later. I wanted to
7 know what was going on. I just assumed what they were
8 doing was taking the old poles out and putting new
9 poles in.

10 Q. Did you talk to anybody in Operations to see if that
11 was the case?

12 A. Yes, I did. Several days later, I talked to her again,
13 and, at that point, she said, yes, that they were in
14 there and they did cut them down, but they were going
15 to run them from a different direction. They were
16 going to put the line in from - which was fine with me.
17 I didn't . . .

18 Q. You state that - after you've told Clark Energy that
19 all the stuff was there and they told you all you had
20 to do was get the property in your name, why was it
21 then necessary for you to go to the property with Mr.
22 Peyton in June of '97?

23 A. The property of who?

24 Q. Your property with Mr. Peyton in June of '97, if they
25 told you service was up there.

1 A. They were trying to find out where the wires went,
2 because I didn't - all I knew they was running down the
3 river and then up the cliff.

4 Q. You now state that there is an old roadbed that exists?

5 A. There's a road to the Point; yes.

6 Q. And where does that road originate?

7 A. Michael Hanley's property.

8 Q. Have you been to where that road originates? Have you
9 been along the entire course of that road?

10 A. I've been almost all the way to the top of it.

11 Q. And where does it come out in relationship to Mr.
12 Hanley's house?

13 A. Right behind his house.

14 Q. Do you have permission to travel along Mr. Hanley's
15 property to get to the Point?

16 A. Yeah, he has pretty much said I could go up there and
17 get anything that was down and burn it, that was on the
18 ground and burn it, and, as a matter of fact, the last
19 time I saw Mike Hanley, he was sitting on the Point
20 with his dogs and his bicycles. He rides a bike down
21 there daily. So, I mean, yeah.

22 Q. And what about - do you have any agreements or
23 arrangements with Mr. Sidwell about crossing his
24 property to get to the Point?

25 A. No. He has let me walk in there on numerous occasions.

1 Q. But he has not let you walk in there recently; has he?

2 A. He has actually never told me that he didn't want me
3 walking down there, but he has told several of my
4 friends. So I just assumed that I had better - he has
5 actually let - since then, he has let several people
6 walk in there, yes, that know me.

7 Q. That know you?

8 A. Yes, sir, and one of them is sitting out in the hall
9 right now.

10 Q. Please describe the terrain where the existing poles
11 were as they headed up the hill. You had indicated
12 there was a bottom where there were two poles. Please
13 describe the terrain as it goes from the bottom up to
14 the top of the hill.

15 A. It's a palisade.

16 Q. It's a palisade, but could you be a little more
17 specific? Is it a cliff? Is it a hillside? Is it a
18 bank?

19 A. Well, it's a cliff. I mean, it's a palisades, one
20 straight up. You know, you go from - actually, the
21 Deed on that Ambrose Bush Bottom says along the edge of
22 a cliff. I mean, it's a straight - it's a Kentucky
23 River - I mean, everybody knows what a palisade is;
24 right? It's a river palisade.

25 Q. And the lines went from your property up this palisade

1 to the . . .

2 A. No. The lines went down the river bottom and then,
3 from one pole, went straight up to the top of the hill
4 up the palisade to the next pole.

5 Q. Have you done any improvements to the property at all?
6 Have you had a backhoe in there or anything to do
7 any . . .

8 A. I don't have a way to get a backhoe in there, but, yes,
9 actually I've dug probably three-quarters of a footer.

10 Q. By hand?

11 A. Yeah. Yeah. A lot of the existing foundation of one
12 of the three houses that have been there was they
13 actually used the limestone itself as the building
14 foundation of it. Some of it they poured. Some of it
15 they laid up.

16 Q. But, when you say that you can't get a backhoe down
17 there, is that because you just don't have an easement?

18 A. I don't have access at this point; right.

19 Q. But, if Mr. Hanley gave you access, you say you could
20 get a backhoe down there?

21 A. Oh, yeah. There's a road that goes down the palisade.

22 Q. In your Verified Testimony, you stated that, once you
23 got the property in your name, then they would just
24 hook the electricity back up? Is that . . .

25 A. Yeah. They said they would run it 1,000 feet from the

1 last pole where the transformer was, which wasn't a
2 problem for me because 1,000 feet from the last pole
3 would be off of my property. So . . .

4 Q. Why is it that you stated that you had to meet with the
5 field personnel in order to find out where they were
6 going to run the electric if the service was already to
7 your site?

8 A. Once it went up the palisade to the top, I didn't know
9 where it terminated or where it went to or where it
10 ended up or whose property or what. I mean, that was
11 the initial - Todd Peyton was to go find out where it
12 went, and we were going to get on the boat, get on the
13 Point, and walk it. Instead he suggested what we do is
14 drive to the top of it and do it from there, but we
15 couldn't get anywhere because the gates were locked at
16 Mike Hanley's.

17 Q. But you indicated that all the lines and stuff were in
18 good shape and that you had talked with them and
19 explained to them this . . .

20 A. Well, there were wires on the poles.

21 Q. Okay. Were they . . .

22 A. Now, whether or not that they were 100 percent, you
23 know, I'm not an electrician. I know the poles are
24 standing. I know there were wires. That's how we
25 followed it was because of the wires going from pole to

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pole.

Q. I guess . . .

A. I can show you pictures that, if I don't point the telephone pole out, you can't tell it's a telephone pole, because, I mean, it looks like a tree.

Q. I guess I'm just curious as to why Clark Energy tells you, on your first day, when you describe what's there and how it's set up, that they said, "We'll hook you right back up," but then there's a requirement that you actually have to go out to find out where they're going to run the electricity.

A. I don't follow your . . .

HEARING OFFICER BRADY:

Mr. Thomas, it may help the witness focus if you'll frame them as questions rather than statements.

MR. THOMAS:

All right.

Q. Went you went to the Operations Department in May of 1997, what did they tell you needed to be done to hook up your electricity?

A. After I had bought the property and went?

Q. After you had bought the property.

A. At that point, there wasn't any requirement. At least, they didn't make me be aware of any requirement.

1 Q. But didn't they subsequently have you meet with a Clark
2 Energy representative after the May application?
3 A. Yeah. Yes, sir.
4 Q. Then why was it necessary for you to meet with Clark
5 Energy personnel to determine where to run the
6 electric?
7 A. It wasn't to determine where to run it. It was to
8 determine where it ran to.
9 Q. Well, I'm referring to your Verified Testimony, Mr.
10 Taylor, and maybe that's why I'm getting confused. The
11 statement that you made in your sworn testimony was
12 that you were to meet with the field people to find out
13 where they were going to run the electric, and I was
14 curious as to why, if all they had to do was hook you
15 up, why was it necessary for you to meet with their
16 personnel.
17 A. Well, I think you're just misinterpreting it. Well, I
18 mean, that's - I mean, it wasn't to find out where they
19 were going to run it. It was going to find out where
20 it ran to, and I don't . . .
21 Q. Mr. Taylor, I'm going to show you a copy.
22 A. Okay.
23 Q. This is the deposition that you gave . . .
24 A. Uh-huh.
25 Q. . . . in this matter . . .

1 A. Uh-huh.

2 Q. . . . and, on Page 16, beginning with the Question 8 or
3 beginning with Line 8, answer, "Okay. I had - they had
4 made an appointment that day - I think it was that
5 day - for one of their field people to meet with me and
6 look at where they were going to run the electric."

7 A. Okay.

8 Q. So now you're saying that's not the purpose of that
9 meeting?

10 A. Well, I mean, yeah, that was the purpose of that
11 meeting, to find out where they were going to run the
12 electric.

13 Q. What was the condition of the transformer? Did it have
14 any bullet holes in it?

15 A. I think it had a couple of them; yes.

16 MR. THOMAS:

17 Okay. I don't have anything further at this time,
18 Your Honor.

19 HEARING OFFICER BRADY:

20 Mr. Pinney?

21 MR. PINNEY:

22 Yes, Your Honor.

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CROSS EXAMINATION

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BY MR. PINNEY:

Q. Mr. Taylor, I have a small number of questions, mainly relating to the former house located on the property. The first is, how far away is the burned down house from the Kentucky River, distance-wise?

A. I mean, it's ten feet, fifteen feet, over is straight down to the river.

Q. Okay.

A. It's just like right out of the floodplain.

Q. All right.

A. So really close, but, I mean, it's not 15 feet or you're in the water. It's 15 feet and there's a . . .

Q. A bank and . . .

A. . . . cliff, another palisade . . .

Q. Well, okay.

A. . . . that goes, I mean, right into the water. You could - well, I'm not going to go there. Yeah, it's really close to the water.

Q. And how about the distance of the house from Jouett Creek?

A. I think the width of my property - the creek goes around the Point. So I'm bordered by water on three sides, the creek on two sides. It's a peninsula. So the width of our property between creek and river is

1 maybe 150 feet.

2 Q. Okay. Did you also describe in that the rear property

3 line? I mean, how far does the property go back from

4 the river, or is that essentially the Jouett Creek

5 formed the river, part of the property line?

6 A. Well, do you have my application or the stuff, which

7 would be maybe, this, yeah, the one with the electrical

8 service on it? That's not really to scale, but, I

9 mean, the creek comes out and goes into the river, and

10 then the river is across the front.

11 Q. Okay.

12 A. Well, I go back to right about where that . . .

13 Q. All right. Well, I guess . . .

14 A. What is your question?

15 Q. Disregard it, please.

16 A. Okay.

17 Q. I think I can find the answer.

18 A. An acre and seven-tenths, something like that.

19 Q. Okay. And where exactly are you planning to construct

20 this new house? Is it on the foundation of the old

21 house?

22 A. Yeah. Yeah.

23 MR. PINNEY:

24 Okay. No further questions, Your Honor.

25

1 HEARING OFFICER BRADY:

2 Mr. Nash, redirect?

3 MR. NASH:

4 Yes.

5 REDIRECT EXAMINATION

6 BY MR. NASH:

7 Q. Vaughn, opposing counsel was asking you about the terms
8 "hook up the electric" versus the terms "run the
9 electric." Do those terms have any different meanings
10 to you?

11 A. No, they don't.

12 Q. As you use those terms, "hook up the electric," "run
13 the electric," does that mean the same thing?

14 A. Yes.

15 Q. Did you mean to imply, when you used those terms, that
16 you know that Clark had to actually run new power
17 lines?

18 A. Well, I was kind of actually under the impression that
19 they weren't going to have to run new power lines,
20 because, I mean, they might have had to - I don't know.
21 There again, I'm not an electrician. I knew there were
22 wires there, and there were poles there.

23 Q. Okay. So, when you said, under questioning here, that
24 it was your idea that you were going to go find out
25 where they were going to run the electric, . . .

1 A. Right.

2 Q. . . . did you mean that you thought you were going to
3 go see where they would have to put new power lines?

4 A. No.

5 Q. Okay.

6 A. I mean, I . . .

7 Q. And, in fact, did Mr. Peyton or anyone at Clark RECC
8 let you in on why they wanted to go there that day?

9 A. Because they wanted to find out where it went or where
10 it, I mean, . . .

11 Q. That's all . . .

12 A. Yeah. I mean, they wanted to find out where they were
13 going to run it, I mean . . .

14 Q. That's all they told you?

15 A. Right.

16 Q. So, if they had any ideas that they would have to run
17 new electric lines, they didn't let you in on that on
18 that day?

19 A. No. No. I mean, I think it was obvious that they were
20 going to have to do some work on it.

21 Q. Okay. You know, no one else here except maybe you and
22 I have seen this land, so let's describe it a little
23 bit better so that everybody can get sort of a picture
24 of it. The Point where your house is is all at about
25 the same level; correct?

1 A. Correct.

2 Q. And how many poles are down on that level?

3 A. On my property or all the way down that bottom?

4 Q. All the way down the bottom there.

5 A. Two on my property and, I guess, two more down at the
6 bottom.

7 Q. Okay. Now, that whole level is also quite a bit above
8 the level of the river; correct?

9 A. Yeah, correct.

10 Q. So you've got the river at one level, and the creek is
11 obviously at the same level as the river?

12 A. Right.

13 Q. Then the level of the Point where your property is and
14 then there's a third level; correct?

15 A. Which is the top of the palisade.

16 Q. And whose property is that up there?

17 A. My borders are Mike Hanley, Mitchell Sidwell, and which
18 Mitchell Sidwell's property really doesn't actually
19 even touch my property. It's just basically Hanley and
20 then the creek, which on the other side of the creek is
21 Pat Sheely.

22 Q. So, when you're telling the Commission that you don't
23 have road access to your property, is that because you
24 don't own any of the property up at that level;
25 correct?

1 A. Right. I don't have any at - I mean - right. At this
2 point in time, I have no road access to my property and
3 that was all up front from day one.

4 Q. Okay. Then up top on the third, the highest, level is
5 that where you have observed one pole? You talked
6 about it going up the palisades?

7 A. Yeah, that's the last pole I ever saw was, from the
8 bottom, I followed the wire up to the top of the
9 palisade and saw the pole at the top and that's as far
10 as I had ever - I didn't know where it went past there
11 and . . .

12 Q. Okay.

13 A. . . . that was part of Todd Peyton coming down, was
14 because they needed to find out where it went.

15 Q. All right. Let's talk about the condition now of the
16 road or the right-of-way down to the Point. Okay? You
17 talked about it starting at Mike Hanley's house up on
18 the highest level; correct?

19 A. Right. Correct.

20 Q. What is the condition, based on your observation of it,
21 of the road from there down to the second level which
22 is the level that the Point is on? What is the
23 condition?

24 A. It's cleared. I mean, there's pictures. It's cleared
25 and you can drive a vehicle to the bottom right now.

1 Q. You've submitted pictures of that with your rebuttal
2 testimony; correct?
3 A. Yeah.
4 Q. Okay. Now, after that cleared section, once you get
5 down to the level of the Point, . . .
6 A. Right.
7 Q. . . . what is the condition of the road or the right-
8 of-way as it leads out to the Point?
9 A. Well, it's growed up, but, I mean, it's just saplings.
10 I mean, it's not anything that couldn't be . . .
11 Q. Is there a . . .
12 A. There's a really nice trail going down there.
13 Q. Okay. That's a foot trail?
14 A. Foot trail.
15 Q. Is that part cleared?
16 A. Oh, yeah.
17 Q. Okay. But, as far as a road, something the width of a
18 road, is there a recognizable roadbed?
19 A. Yes, sir.
20 Q. And have you also submitted pictures of that?
21 A. Yes, sir.
22 Q. And what would it take to drive a vehicle over that
23 roadbed?
24 A. Well, short of one little ditch that a culvert could be
25 laid in, you could have a vehicle down there within a

1 matter of hours.

2 Q. Would you have to clear some saplings?

3 A. Yeah, a chainsaw would be good and a weed eater.

4 Q. And, to fill in this one ditch?

5 A. Right.

6 Q. And then, after that, you could drive it?

7 A. Yeah. People drove to the Point. I mean, there has
8 been three houses there that's been there for - I've
9 got it Deeded back to 1866. There's been a separate
10 house.

11 Q. Okay. But, other than the last - well, let me ask it
12 this way. How much of that roadbed is actually on your
13 property?

14 A. Well, the last 50 feet, I guess.

15 Q. Okay. All right.

16 A. I mean, once you get to my property, you can't go much
17 further.

18 Q. Okay. Let me ask you a little bit about the obtaining
19 of these permits because you've been questioned on
20 that. When you initially inquired about electrical
21 service, and I'm talking about before you bought the
22 property, was there any talk of the permits?

23 A. No, sir.

24 Q. When did the talk of the permits arise?

25 A. After they went down there and saw what they had gotten

1 themselves into.

2 Q. After the Todd Peyton visit?

3 A. Yeah.

4 Q. And you were then informed that you needed these

5 permits?

6 A. Yes, sir.

7 Q. And did you take some steps towards getting those?

8 A. I got my exemption for having a permit to build in the

9 floodplain because I wasn't in the floodplain. I went

10 and got my composting toilet all but approved from the

11 EPA. Septic systems don't work on the river. They

12 won't - so they thought that was all good. I went and

13 had my - you have a problem with the gray water

14 discharge, which is sink, shower, gray water, and that

15 was all taken care of through water treatment and my

16 biggest problem there was the discharge of it, and I

17 had to purchase a water discharge permit from right

18 here in Frankfort, and I ended up - I could have gone

19 two ways, buy the water discharge permit or irrigate it

20 and keep it on my own property, which I ended up going

21 with keeping it on my own property, which was cheaper,

22 which, having those done, the building permit would

23 have fell in right behind that because that was the

24 prerequisite to getting a building permit, . . .

25 Q. Okay.

1 A. . . . but, there again, I wasn't going to spend \$2,000
2 on a water discharge permit that I couldn't use.

3 MR. NASH:

4 Your Honor, anything else I would ask Mr. Taylor
5 he has already testified to in his direct and
6 rebuttal testimonies, and I don't see any need to
7 go back over it again. I mean, certainly there's
8 a lot of these issues that have been raised on
9 cross that he has already addressed, but I don't
10 see any need in rehashing that. So that's all I
11 would have.

12 HEARING OFFICER BRADY:

13 Good call. Mr. Thomas?

14 MR. THOMAS:

15 I just have a couple of questions that were
16 brought up by Mr. Pinney's cross.

17 RE-CROSS EXAMINATION

18 BY MR. THOMAS:

19 Q. I'm going to show you a document that is a
20 topographical map . . .

21 A. Uh-huh.

22 Q. . . . which was attached. Mr. Pinney asked you some
23 questions about where your house sits. Does that - as
24 an aerial view . . .

25 A. Uh-huh.

1 Q. . . . to the extent you can, can you identify where
2 your property is?
3 A. Right where the X is.
4 Q. Okay. Right where Clark Energy has marked it, so
5 that's an accurate description?
6 A. Pretty much, yeah.
7 Q. And can you show me how you would access your property
8 along this roadbed that you say exists?
9 A. Well, now, I can't - it's right in through here
10 somewhere and right there is that little gully, I would
11 say.
12 Q. Okay. So you're pointing to what appears to be . . .
13 A. Well, I mean, I'm just saying that the first branch
14 that's coming in there is probably that gully that I
15 said where you would have to get over that. Now, if
16 you had a four-wheel drive, you could get over it right
17 now.
18 Q. Okay.
19 A. And then that . . .
20 Q. And that would be coming in. This would be . . .
21 A. I would say this is Hanley's house, . . .
22 Q. Okay.
23 A. . . . and you would have to come down here and drive
24 down that road. It curves once and then twice back
25 around like that and here's the bottom of the hill. It

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curves back around and, bang, you're there.

Q. Okay.

A. And, there again, I'm . . .

Q. Guesstimating?

A. Yeah.

Q. I understand.

MR. THOMAS:

For the record, the witness has pointed to a spot which I will mark with a pen so that we can identify it.

Q. And if I could just have you draw on that document where you think . . .

A. Where I think?

Q. Where you think, to the best of your knowledge . . .

A. Okay. You drive right down through here and then back up this hill.

Q. Okay. And then it would continue on up to . . .

A. Wherever, yeah.

Q. Okay. Okay.

A. Now, what are you - we're getting at the elevations here? Is that . . .

Q. Yes, that's the next question I've got.

A. Okay. All of this elevation down through here, which would be - let me move over here.

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HEARING OFFICER BRADY:

That's good.

A. This elevation right along this river is probably in the floodplain. It's probably actually below what they call the 100-year flood, and, when you actually get to the Point, it rises up gradually but not to the - actually where I'm only 30 feet out of the floodplain, but I'm out of the floodplain. So it takes a gradual slope. All of this is all real level through here, but then right there, right toward the end of the Point, it goes up onto the Point.

Q. So, before you get to this rise, your property, the property that you've described, from here over would be considered . . .

A. The same level.

Q. That's the same level as your residence?

A. From here to there flat road.

Q. Okay. And is that . . .

A. Except for this. I think that's that gully right there.

Q. Okay.

A. You would have to either throw a culvert in or . . .

Q. Now, how much of your property is in the floodplain or is out of the floodplain rather? Is all of your property out of the floodplain?

1 A. Pretty much.
2 MR. NASH:
3 Counsel, could I take a look at that?
4 MR. THOMAS:
5 Yeah.
6 MR. NASH:
7 When you're done, I may want to use it to ask him
8 some questions.
9 A. There was something that was filed that tells you where
10 I'm legally able to build a house on the Point.
11 Q. And that's what I'm getting ready to refer to here.
12 A. There you go.
13 Q. You've anticipated my question.
14 A. I think it says 100 by 100.
15 Q. Okay. So a 100 by 100 section of your house is out of
16 the floodplain?
17 A. Well, is where I can build the house.
18 HEARING OFFICER BRADY:
19 Mr. Nash, pass that over to counsel.
20 MR. NASH:
21 Oh, I'm sorry.
22 A. Yeah. Actually that topo map you've got right there
23 really doesn't do justice as far as elevations.
24 Q. Let me show you another document, then, that may help
25 you with the elevations.

1 A. Okay.

2 Q. Here is a close-up of that same area, . . .

3 A. Uh-huh.

4 Q. . . . the X still indicating where the creek comes
5 around indicating your property.

6 A. Uh-huh. Right. Uh-huh.

7 Q. Does that better reflect the elevations?

8 A. I can't read them, but, I mean, that's the Point right
9 there; yeah.

10 Q. Okay. This says 700.

11 A. I think I'm 562. I think it tells you right here; 592.

12 Q. Okay.

13 A. Anything below 592, and that's what 700?

14 Q. That's 700 at this point.

15 A. Okay.

16 Q. And then your property - my next question would be this
17 document is a letter that you submitted with your
18 testimony and that is a letter from the Natural
19 Resources and Environmental Protection Cabinet; isn't
20 it?

21 A. Yes, sir.

22 Q. And that indicates that a portion of your property,
23 which is 100 by 100 feet, appears to be above the 100-
24 year floodplain?

25 A. Okay.

1 Q. So, based upon this letter, it would appear that the
2 rest of your property would be below the floodplain.

3 A. Okay. I mean, you haven't been there. So, I mean,
4 it's kind of hard to - I guess the other sides of the
5 cliff are in the floodplain, I guess, . . .

6 Q. Okay.

7 A. . . . but the top is not.

8 Q. Okay. Okay.

9 A. But I don't . . .

10 Q. Go ahead and hand that to her so she'll have a copy of
11 that.

12 A. I mean, based on that map, it's all 700 feet, which all
13 of it is out of the floodplain, which that's not
14 correct.

15 MR. THOMAS:

16 I don't have anything else, Your Honor. Thank
17 you.

18 HEARING OFFICER BRADY:

19 Mr. Pinney, do you have questions? Do you want
20 these back? Do you need them?

21 MR. PINNEY:

22 No.

23 HEARING OFFICER BRADY:

24 Mr. Nash, do you want them back? Thank you.

25 Sorry to interrupt the flow. Mr. Pinney, do you

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have questions?

MR. PINNEY:

Yes.

RE CROSS EXAMINATION

BY MR. PINNEY:

Q. Mr. Taylor, we're sitting over here trying to figure out and clarify once again. You probably have answered this question. I'm going to ask it again. Through whose property does that road run that you just drew on there?

A. That would be Michael Hanley.

Q. Okay.

A. Yeah, Michael Hanley's.

Q. And so his property leads all the way up to the river there as well? His property fronts the river?

A. Yeah.

Q. And does Mr. Sidwell's property front the river?

A. No.

Q. Okay. Thank you.

A. He's at the top of the palisade.

MR. PINNEY:

All right. No further questions, Your Honor.

HEARING OFFICER BRADY:

Mr. Nash?

1 MR. NASH:

2 Just very briefly.

3 REDIRECT EXAMINATION

4 BY MR. NASH:

5 Q. Vaughn, you've drawn in pen on this one topographic
6 map . . .

7 MR. NASH:

8 And I assume - are you going to make this an
9 Exhibit?

10 MR. THOMAS:

11 Yeah, we'll make that an Exhibit. We'll move to
12 make that an Exhibit, if there's no objections.

13 MR. NASH:

14 No objection.

15 Q. But I want the record to be clear about this. This is
16 your best guess at where that road runs?

17 A. Yeah. Yeah, and that's a pretty good guess, too.

18 Q. But, I mean, you've not had, obviously, that surveyed
19 or anything.

20 A. Right.

21 MR. NASH:

22 Okay. That's all, Your Honor.

23 HEARING OFFICER BRADY:

24 Mr. Thomas?

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MR. THOMAS:

I don't have anything else of Mr. Taylor.

HEARING OFFICER BRADY:

Nothing else. Mr. Pinney?

MR. PINNEY:

No further questions, Your Honor.

HEARING OFFICER BRADY:

Are we finished with Mr. Taylor?

MR. NASH:

I am, Judge. Who wants these?

HEARING OFFICER BRADY:

The Clerk or the Reporter. Mr. Taylor, they have indicated you may step down, sir.

MR. THOMAS:

There were no objections, were there, Mr. Pinney, of making this an Exhibit?

CLARK EXHIBIT 1

HEARING OFFICER BRADY:

All right, Mr. Nash. I guess we're back to you.

MR. NASH:

My next witness is outside. Should I go bring him in?

HEARING OFFICER BRADY:

Please, if you would.

1 CROSS EXAMINATION

2 BY MR. THOMAS:

3 Q. Mr. Taylor, we haven't met. My name is Brian Thomas,
4 and I represent Clark Energy in this matter. Do you
5 remember giving a verified - well, actually, you gave a
6 deposition, I believe, in this matter in front of a
7 Court Reporter. Do you remember giving that
8 deposition?

9 A. Yes.

10 Q. And, in part of that deposition, you indicated that you
11 had some conversations with Vaughn regarding
12 electricity; is that a correct statement?

13 A. Correct.

14 Q. What was Vaughn's concern with respect to electric
15 service?

16 A. There wasn't any concern. This was just a matter of,
17 when we first started talking about the property, that
18 was one of the questions that I had had.

19 Q. Now, would you classify this property as being remote,
20 in a remote location?

21 A. Yes.

22 Q. Have you ever been able to access the property other
23 than by boat?

24 A. Yeah, you can walk into it.

25 Q. Have you ever walked into it?

1 A. No, sir.

2 Q. Where would you park or where would you stop before you
3 began your walk to that property?

4 A. I wouldn't have any idea.

5 Q. Okay. Have you had an opportunity to view the site?

6 A. Yes.

7 Q. And, while out there, did you have an opportunity to
8 look at any of the poles, electric poles, or the wiring
9 that was attached to those poles?

10 A. Yes, I did.

11 Q. What was the condition of the telephone poles or the
12 electric poles?

13 A. The wiring was down. It looked like it had been maybe
14 a storm or something had knocked it down, but the poles
15 appeared to be in good condition.

16 Q. Did you notice any trees lying on any of the lines?

17 A. No, there was none.

18 Q. Were there any trees growing up into any of the wires?

19 A. Yes, there were.

20 Q. Did you ever have any conversations with anyone at
21 Clark Energy regarding this matter?

22 A. Yes.

23 Q. Do you know who you spoke with?

24 A. I don't remember; no, sir.

25 Q. Can you describe for us the nature of that

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conversation?

A. This was after Vaughn had bought the property a good while, and there was a conversation about that he was telling me that they did not want to put service in, and I called out to talk to someone about that, why and what was the problem.

Q. What was their response?

A. Well, at that point in time, I don't remember the conversation exactly, but they had simply said that they - the comment was made that he had talked to Vaughn about this and that the service was not going to be available or something to that effect.

Q. Did they give you a reason why service would not be available?

A. I don't remember for sure about that. It was access or something of that nature.

Q. During your conversations with Clark Energy, did you ever indicate an intention to possibly airlift materials to the site to allow Vaughn to construct a residence there?

A. Yeah. Certainly.

Q. Why would you have to airlift the materials in?

A. Well, at that time, it was an alternative if the road was not going to be big enough to bring in anything of that nature. Vaughn was talking about a fairly good

1 size trailer and a trailer you couldn't get down any
2 kind of a road unless it was pretty wide.

3 Q. What about - did you also indicate that any building
4 materials would have to be airlifted in?

5 A. I don't remember talking about that. All I talked
6 about, as I remember, was the fact that a trailer - we
7 had talked about airlifting a trailer into it.

8 Q. And how would you achieve that? How would you have it
9 brought in?

10 A. With a helicopter.

11 Q. And could you have gotten it there by boat?

12 A. No.

13 Q. Why not?

14 A. It sits on top of a cliff. So, once you got it - you
15 could get it next to it, but you couldn't get it up the
16 cliff.

17 Q. How far from the water's edge or the top of the river
18 level is this cliff? Where does the . . .

19 A. I'm not a good judge of distances, necessarily, but
20 it's probably at least 50 foot above the water level.

21 MR. THOMAS:
22 I don't have anything further, Your Honor.

23 HEARING OFFICER BRADY:
24 Thank you, Mr. Thomas. Mr. Pinney?
25

1 MR. PINNEY:

2 I have no questions at this time, Your Honor.

3 HEARING OFFICER BRADY:

4 Mr. Nash, any redirect?

5 MR. NASH:

6 Just a couple, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. NASH:

9 Q. So, Mr. Taylor, when you observed the electrical poles
10 on the property and the wires, some of the wires were
11 strung and hanging in the trees or, at least, the trees
12 had grown up to the level of the wires? Is that the
13 way I understand it?

14 A. Correct.

15 Q. And then there were other wires that were down?

16 A. Correct.

17 Q. Certainly, the wires at the end of the pole that used
18 to go to the house were down?

19 A. Yes, they were, very definitely.

20 Q. Were the poles rotten?

21 A. No. It was my observation, when I looked at them, that
22 I just had to assume that the electric company would
23 simply run new wires and bring them in. I looked at a
24 metal tag on the post, and the date on that was recent
25 enough that I didn't figure there would be any problem.

1 The poles appeared to be solid, though.
2 Q. I mean, did they have any green rot growing on them,
3 the poles, to your observation?
4 A. No. They were just a standard power line pole or
5 telephone pole.
6 Q. Were they standing up straight?
7 A. Oh, yeah, yeah, yeah, they certainly were.
8 MR. NASH:
9 That's all I have, Judge.
10 HEARING OFFICER BRADY:
11 Mr. Thomas?
12 RE CROSS EXAMINATION
13 BY MR. THOMAS:
14 Q. Did you see all the poles on the site? How many poles
15 did you observe when you went to the property?
16 A. Oh, I think there's three or four of them that I saw.
17 I'm not sure how many. That part of the property I
18 didn't follow it back through to where it went to.
19 MR. THOMAS:
20 Nothing further, Your Honor. Thank you.
21 HEARING OFFICER BRADY:
22 Mr. Pinney?
23 MR. PINNEY:
24 Nothing further.
25

1 HEARING OFFICER BRADY:

2 Mr. Nash?

3 MR. NASH:

4 No. Nothing further.

5 HEARING OFFICER BRADY:

6 Thank you, sir. They've indicated you may step
7 down.

8 A. Thank you.

9 MR. NASH:

10 Should I go get my next witness?

11 HEARING OFFICER BRADY:

12 Please.

13 MR. NASH:

14 Your Honor, this is Steve Slonaker.

15 HEARING OFFICER BRADY:

16 Raise your right hand for me, please.

17 WITNESS SWORN

18 HEARING OFFICER BRADY:

19 Thank you. Have a seat. You may ask, Mr. Nash.

20 The witness, STEVE SLONAKER, after having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. NASH:

24 Q. Sir, will you state your name and spell the last name
25 for the Clerk, please?

1 A. Steve Slonaker. That last name is spelled S-l-o-n-a-k-
2 e-r.

3 Q. Mr. Slonaker, have you previously given your testimony
4 in front of a Court Reporter?

5 A. Yes, I have.

6 Q. And, to your knowledge, has that testimony been
7 transcribed?

8 A. Yes.

9 Q. And do you adopt that testimony today as your direct
10 testimony?

11 A. Yes, I do.

12 Q. Do you have any additions or changes that you wish to
13 make to that testimony?

14 A. No, I don't.

15 MR. NASH:

16 That's all I have, Judge.

17 HEARING OFFICER BRADY:

18 All right. Mr. Thomas?

19 CROSS EXAMINATION

20 BY MR. THOMAS:

21 Q. Is it Mr. Slonaker?

22 A. That's correct.

23 Q. All right. And, if I mispronounce your name, please
24 correct me.

25 A. You did just fine.

1 Q. And, if you don't mind, I'll probably call you Steven,
2 if that's okay.

3 A. That's just fine as well.

4 Q. In the deposition that you gave, you talked about being
5 on the property. How many times would you say you've
6 been on this property commonly referred to as the
7 Point?

8 A. I've been going down there for the past 18-19 years, in
9 that range. It would be hard to give you an exact
10 number. I've gone many, many, many times, sometimes as
11 many as probably 20-30 times a year. So you multiply
12 that by the number of years and, as I'm living on that
13 part of the river now, much more often even now in the
14 last few years.

15 Q. And you've had occasion to actually be on the property
16 that's owned by Mr. Taylor?

17 A. Yes, I have.

18 Q. And, at one time, there were some electric poles that
19 existed or that were on that property?

20 A. Yes, there were.

21 Q. How many poles would you say were there that you
22 observed on a regular basis?

23 A. The poles that I saw, there was approximately four or
24 five poles.

25 Q. And where were those poles located?

1 A. They ran along the property line leading to where the
2 home had been.

3 Q. Would you say that those poles were parallel to the
4 river or were they perpendicular to the river? Did
5 they . . .

6 A. They were parallel to the river.

7 Q. Did you ever see where those poles went to or where was
8 the point of electrical service?

9 A. As far as I saw them, they went to a point where, when
10 I walked into the property, they started, but I never
11 followed the entire line of poles.

12 Q. And over how long a distance would you say those four
13 to five poles ran?

14 A. An eighth of a mile or a quarter of a mile, something
15 like that.

16 Q. What were the condition of those poles?

17 A. Excellent condition.

18 Q. How would you describe or how would you define
19 "excellent condition"?

20 A. They basically looked to me completely unharmed. They
21 were solid. They were in place like the day they had
22 been put in.

23 Q. Was there any growth, brush, plant life, that was
24 growing up around the poles?

25 A. Yes, there was new trees, and that type of thing, that

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had grown up along the lines of the poles, and that type of thing.

Q. Were there any trees that had grown up into the wires that were spanning between the poles?

A. There was trees that had grown up and, you know, I didn't look at it that closely, but there are trees, I assume, that probably were touching some of the lines.

Q. Do you have any experience in either construction of electrical lines or construction of electrical service, setting poles and attaching electric wire to those poles?

A. No, I don't.

Q. In your deposition, you state, from what you know of wires and lines, they looked in perfect condition. What is your knowledge of wires and lines?

A. Well, just what I have seen from service that runs to property like my own and property everywhere else that you would commonly walk by. The poles, if you were going to somebody's house, looked just like they would look if you were going to your neighbor's.

Q. And that was for the four or five poles that you were able to see from the Point or along the Point?

A. That's correct.

MR. THOMAS:

I don't have anything further, Your Honor.

1 HEARING OFFICER BRADY:

2 Thank you. Mr. Pinney?

3 MR. PINNEY:

4 No questions, Your Honor.

5 HEARING OFFICER BRADY:

6 Redirect, Mr. Nash?

7 REDIRECT EXAMINATION

8 BY MR. NASH:

9 Q. The condition of the poles, did you see any rot on the
10 poles?

11 A. None whatsoever.

12 Q. Any green rot growing on the poles?

13 A. No, not at all.

14 Q. When you've gained access to the property over these
15 many years, I assume sometimes you come in by boat.

16 A. Yeah, sometimes and walk in other times.

17 Q. You walk in sometimes?

18 A. Yes.

19 Q. Where do you walk in from?

20 A. The adjacent farm. There's a large farm that a friend
21 of mine owns that's abutting to the property, and we
22 just walk over the hill down to the place where the
23 house had been and where there had been a dock and a
24 stair leading to the dock and all of that.

25 Q. Whose land is that?

1 A. Pat Sheely owns the adjacent farm. It's Cattle Spring
2 Farm.

3 Q. Cattle Spring Farm?

4 A. That's correct.

5 Q. When you walk in through the Sheely property, is it
6 tough to get to the Point?

7 A. Not at all. We always carried our tent and our gear
8 and walked down. Never had a problem one.

9 Q. Do you have to scale up and down cliffs coming in that
10 way?

11 A. No. Nothing but just walking down a path.

12 MR. NASH:

13 That's all, Judge.

14 HEARING OFFICER BRADY:

15 Mr. Thomas?

16 MR. THOMAS:

17 Thank you, Your Honor.

18 RE CROSS EXAMINATION

19 BY MR. THOMAS:

20 Q. What is the condition of the docks or the stairs that
21 are down there on the property that you say you walked
22 up?

23 A. The stairs that are leading to the dock are metal, and
24 they've rusted, and right now you can still walk down
25 them, but, at this point in time, they should be

1 replaced, or whatever. If they were going to be used
2 frequently, they would have to either be upgraded or
3 changed.

4 Q. Does it extend all the way to the water's edge?

5 A. It goes down and there's probably a 20 foot area that
6 it does not reach completely to the water.

7 Q. When you come in from the Sheely property, what
8 direction are you going in order to get to the Point?

9 A. I'm heading towards the river.

10 MR. THOMAS:

11 Your Honor, if I may, if I - you have those
12 drawings, don't you, ma'am?

13 REPORTER:

14 Yes.

15 Q. I'm going to show you a topographical map. Let me turn
16 it around here so everybody can see it. This X marks
17 the location of Mr. Taylor's property. Where is Ms.
18 Sheely's property in relationship to that? The river
19 is running here.

20 A. Ms. Sheely's property is all this around through here.

21 Q. Okay. So, in order to get from Ms. Sheely's property
22 to Mr. Taylor's property, you actually have to cross
23 Jouett Creek?

24 A. That's correct.

25 Q. How wide is that creek?

1 A. It varies in points. That particular way we went, I
2 would say it's ten feet or fifteen feet.

3 Q. Have you ever driven down from Ms. Sheely's property to
4 the Point?

5 A. We would drive to the back of her farm and just walk
6 down from there.

7 Q. Could you have gotten a vehicle from the back of the
8 farm where you parked to Mr. Taylor's property?

9 A. From her farm, no, you couldn't.

10 MR. THOMAS:
11 I don't have anything further.

12 HEARING OFFICER BRADY:
13 Mr. Pinney?

14 MR. PINNEY:
15 No questions, Your Honor.

16 HEARING OFFICER BRADY:
17 Mr. Nash?

18 MR. NASH:
19 Just one follow-up or maybe two.

20 REDIRECT EXAMINATION

21 BY MR. NASH:
22 Q. The Jouett Creek there, the part that you cross, does
23 it always have water in it?

24 A. No. During the summer, that creek stays primarily dry.
25 Only in the winter months and spring do you have water

1 flowing out of that creek.
2 Q. And it's deep there at the mouth where it goes into the
3 river; correct?
4 A. Right.
5 Q. But very quickly it gets very shallow; does it not?
6 A. Yes, shortly thereafter, it becomes more of a rock bed
7 than anything else.
8 MR. NASH:
9 Right. Okay. That's all, Judge.
10 HEARING OFFICER BRADY:
11 Mr. Thomas?
12 MR. THOMAS:
13 Nothing further, Your Honor.
14 HEARING OFFICER BRADY:
15 Mr. Pinney?
16 MR. PINNEY:
17 Nothing further.
18 HEARING OFFICER BRADY:
19 Thank you, sir. You may step down.
20 A. Thank you.
21 WITNESS SWORN
22 HEARING OFFICER BRADY:
23 Thank you. Have a seat, please. Mr. Nash?
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The witness, DONALD BRENT MYERS, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NASH:

Q. Will you state your name, please?

A. Donald Brent Myers.

Q. You go by the name of Brent?

A. Yes, sir.

Q. Okay, Brent. Brent, you've given your testimony in front of a Court Reporter in this case?

A. Yes, sir.

Q. And, to your knowledge, that testimony has been transcribed?

A. Yes, sir.

Q. And do you adopt that testimony as your testimony on direct today?

A. Yes, sir.

Q. Do you wish to make any changes or alterations to your testimony?

A. No, sir.

MR. NASH:

Okay. Pass the witness.

HEARING OFFICER BRADY:

Mr. Thomas?

CROSS EXAMINATION

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BY MR. THOMAS:

Q. Mr. Myers, my name is Brian Thomas, and I'm representing Clark Energy. I've got a few questions of you. How would you describe this piece of property that Mr. Taylor bought?

A. Just a piece of ground on the Kentucky River.

Q. Would you describe it as remote?

A. Somewhat.

Q. Are there any other houses built around this property that you can see?

A. From the riverbank, there is.

Q. But not from standing on his property?

A. No. No.

Q. Have you had occasion to be on his property?

A. Yes.

Q. Did you have an opportunity to observe some electrical poles and wires that were located on that property?

A. Yes.

Q. What is the condition of the poles?

A. Fine. There wasn't nothing wrong that I could see with them.

Q. Did you do any close examination of the poles?

A. Well, to be honest with you, I did because they were in better shape than the ones I've got on my farm.

1 Q. What about the wires that were connected that were
2 spanning between the poles? What was their condition?
3 A. Trees had grown up around them a little bit.
4 Q. Did they look in good shape?
5 A. I couldn't tell, really. I didn't, you know, pay that
6 much attention to that detail.
7 Q. Was there a transformer that you observed on Mr.
8 Taylor's property?
9 A. Yes.
10 Q. What was its condition?
11 A. It was pretty bad. There had been some people using it
12 for target practice.
13 Q. There were bullet holes in it?
14 A. Yes, sir.
15 Q. What kind of undergrowth had grown up into the wires?
16 A. Small saplings.
17 Q. How entrenched were they in the wires?
18 A. Pretty good.
19 Q. Were any of the wires down?
20 A. There were some I remember seeing in the treetops, and
21 I do remember seeing some that were laying on the
22 ground.
23 Q. How many poles would you say you observed on or around
24 Mr. Taylor's property?
25 A. Probably right at half a dozen or so.

1 Q. At some point, did you have an opportunity to observe
2 the property after these poles were cut down?
3 A. Yes.
4 Q. What was the condition of the wire? What did you
5 observe with respect to the wire that had once been
6 hanging in the . . .
7 A. After they had cut them down?
8 Q. After they had cut them down.
9 A. It was laying there in a pile on the ground.
10 Q. Was there also some wires that were still hanging in
11 the trees?
12 A. Not that I noticed after they cut the poles down; no.
13 Q. I want to show you a document that was your deposition,
14 Mr. Myers.
15 MR. THOMAS:
16 Page 11. Page 11, Mr. Pinney.
17 Q. This is a copy that was provided to us by Mr. Taylor's
18 counsel, and this is the deposition of Donald Brent
19 Myers. Do you remember taking that deposition?
20 A. Yeah.
21 Q. On Page 11, Line 9, Mr. Nash asked you the question,
22 "What about any of the wires? Did you observe any of
23 that after they were down?" This answer is, "It seems
24 like I remember there were some coiled up, you know;
25 some still hanging in the trees." Is that an accurate

1 statement, the testimony that you gave in your
2 deposition?

3 A. Yeah, I believe so.

4 Q. So, when you told me that you don't remember any wires
5 in the trees today, you would say that your deposition
6 is a better recollection of those events than your
7 testimony today?

8 A. I don't understand what you mean.

9 Q. Well, you testified just a few minutes ago, after the
10 poles were cut down, there were no wires in the trees.

11 A. I don't remember seeing any.

12 Q. Okay. But, in your deposition, you indicate that there
13 were wires hanging in the trees.

14 A. Because we had been up there recently looking at it.

15 Q. Pardon?

16 A. We had been up there recently looking at it.

17 Q. Okay.

18 A. That's been awhile back.

19 Q. Okay. So, if you said it in your deposition, then
20 that's a true statement?

21 A. Yeah, we had just been down there a day or two before
22 that.

23 MR. NASH:

24 Your Honor, this brings up an objection. I've not
25 made this objection to this point, but let me make

1 it now, if I may. You know, opposing counsel is
2 going through and basically reasking the same
3 questions that have already been asked in sworn
4 testimony I guess in the hopes that a witness, you
5 know, in the courtroom today will say something
6 just a little bit different. You know, I'm not
7 going back on my questioning and asking the same
8 questions over again. It's my understanding that
9 the Order prohibits that. We're to delve into new
10 areas. So I would object to reasking the precise
11 same questions that have been asked in deposition
12 testimony.

13 MR. THOMAS:

14 Your Honor, if I may, in a civil proceeding, both
15 parties would have the opportunity to both direct
16 examine as well as cross examine, and your cross
17 examination would include pointing out items that
18 were addressed on the direct examination and
19 that's all that I've done. I'm not trying to
20 belabor the point, and I'm not trying to go
21 through line by line. I'm just picking out points
22 that I would normally cross had I been given the
23 opportunity at the time of the deposition.

24 HEARING OFFICER BRADY:

25 I'm going to overrule the objection. I sense that

1 there is perhaps an impeachment base to the cross
2 examination, and impeachment is always appro-
3 priate. Whether there is or not, I'm going to let
4 him handle it that way, and I'll allow you the
5 same latitude should you need it, Mr. Nash. You
6 may ask.

7 MR. THOMAS:

8 I have nothing further, Your Honor. Thank you.

9 HEARING OFFICER BRADY:

10 Mr. Pinney?

11 MR. PINNEY:

12 No questions, Your Honor.

13 HEARING OFFICER BRADY:

14 Mr. Nash?

15 MR. NASH:

16 Yes, Your Honor, just a few here. Do we have the
17 original of his testimony? It was . . .

18 HEARING OFFICER BRADY:

19 It's in the record, because I read it.

20 MR. NASH:

21 Is the record here in the courtroom?

22 HEARING OFFICER BRADY:

23 I don't think so. I didn't bring it.

24 MR. NASH:

25 Is there a way that we could get it in the

1 courtroom? The reason I ask, Your Honor, is
2 there's one photograph that this witness took, the
3 only original of which is filed in with the
4 original testimony. I want to ask him questions,
5 but I'm also going to need that for later on
6 cross. So I can go ahead now, but, at some point
7 today, could we get that brought into the
8 courtroom?

9 HEARING OFFICER BRADY:

10 Sure. Sure.

11 MR. NASH:

12 Okay.

13 HEARING OFFICER BRADY:

14 Absolutely.

15 REDIRECT EXAMINATION

16 BY MR. NASH:

17 Q. Brent, do you remember this photograph I'm talking
18 about that you attached as an Exhibit to your sworn
19 statement?

20 A. Yes, sir.

21 Q. This is a photograph you took; correct?

22 A. Yes, sir.

23 Q. And it shows one of the electric poles in the
24 photograph. Just for clarification purposes, when you
25 took this photograph, the pole, obviously, is still

1 standing.

2 A. Uh-huh.

3 Q. Were you aware of any dispute at the time that you took
4 this photograph between Vaughn and Clark RECC?

5 A. No, sir.

6 Q. Was the purpose of taking this photograph to show the
7 electric pole in some way?

8 A. No. I just thought it made a good picture of him and
9 his boy standing with the river for a background.

10 Q. And it was just fortuitous that the pole was in the
11 picture?

12 A. Yeah. Yeah.

13 Q. It was just by chance?

14 A. Yeah.

15 Q. Okay. Prior to the poles being cut down, had you
16 helped Vaughn in any sort of site preparations? Had
17 you done any work around where the house was going to
18 be built?

19 A. Yeah, we cleared some undergrowth out and was trying to
20 find a place where it would be most suitable for a
21 foundation. Like I say, it's on top of bedrock, and,
22 you know, we was just trying to locate where the most
23 feasible spot for a house would be.

24 Q. Okay. And did you ever observe any metal tags on these
25 poles?

1 A. Seems like, you know, there was like a little - when
2 they come out and do their inspections, they usually
3 nail one to it. That's what they do down where I live
4 and I remember seeing the little shiny - like I say, I
5 didn't pay that much attention to detail, but there was
6 a sticker on there of some sort or a round keyhole
7 shape type sticker.

8 Q. And that's when the poles were still standing?

9 A. Yeah.

10 MR. NASH:

11 Okay. That's all I have, Judge.

12 HEARING OFFICER BRADY:

13 Thank you. Mr. Thomas?

14 MR. THOMAS:

15 I don't have anything further.

16 HEARING OFFICER BRADY:

17 Mr. Pinney?

18 MR. PINNEY:

19 Nothing further, Your Honor.

20 HEARING OFFICER BRADY:

21 All right, sir. You may step down, sir.

22 A. Okay.

23 MR. NASH:

24 Your Honor, I have one more witness, and I will
25 get her in before noon here. So I may be able to

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quit . . .

HEARING OFFICER BRADY:

All right, sir.

WITNESS SWORN

HEARING OFFICER BRADY:

Thank you. Have a seat, please. You may ask, Mr. Nash.

MR. NASH:

Thank you, Judge.

The witness, CHERI KIRKWOOD, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NASH:

Q. Will you state your name and spell it, please, for the Clerk?

A. Cheri, C-h-e-r-i, Kirkwood, K-i-r-k-w-o-o-d.

Q. And, Ms. Kirkwood, you have previously testified before a Court Reporter; correct?

A. Yes.

Q. And, to your knowledge, that testimony has been transcribed?

A. Yes.

Q. And do you adopt today that testimony as your direct testimony?

A. Yes.

1 Q. Do you wish to make any changes or additions to that
2 testimony?
3 A. No, I don't.
4 MR. NASH:
5 Pass the witness, Your Honor.
6 HEARING OFFICER BRADY:
7 Thank you. Mr. Thomas?
8 MR. THOMAS:
9 I don't have any questions of this witness, Your
10 Honor.
11 HEARING OFFICER BRADY:
12 Mr. Pinney?
13 MR. PINNEY:
14 No questions, Your Honor.
15 MR. NASH:
16 That was easy.
17 HEARING OFFICER BRADY:
18 I believe that does it. You're free to step down.
19 A. Thank you.
20 HEARING OFFICER BRADY:
21 Thank you. Do you have more?
22 MR. NASH:
23 Your Honor, we submitted the direct testimony of a
24 Roger Tuttle and that would be the last of our
25 witnesses. He is working today, and, frankly, his

1 testimony is duplicative of the others, and I
2 didn't see any real need in bringing him today.
3 If need be, I will actually even withdraw his
4 testimony as being duplicative or submit it
5 without cross examination for what it's worth,
6 Judge.

7 MR. THOMAS:

8 And, Your Honor, we would have had no cross
9 examination of Mr. Tuttle anyway. So we would
10 have no objection to his testimony being admitted
11 as part of this proceeding.

12 MR. NASH:

13 But let me state for the record, Judge, that we've
14 got the situation of the two witnesses that they
15 submitted the testimonies of today who I assume
16 are not here for cross examination today. I think
17 that those witnesses should be subjected to cross
18 examination, and I don't want to, by offering Mr.
19 Tuttle into the record, waive my objection to
20 their witnesses, and, if, by doing that, it would,
21 I would not offer Mr. Tuttle's testimony and would
22 withdraw it because of the lack of counsel to have
23 cross examination of Mr. Tuttle.

24 HEARING OFFICER BRADY:

25 Any change in what you told me?

1 MR. THOMAS:
2 No, Your Honor.
3 HEARING OFFICER BRADY:
4 Okay. Then Mr. Tuttle stays in, but you have not
5 waived any objection to the two that are mentioned
6 by motion this morning?
7 MR. NASH:
8 Correct.
9 HEARING OFFICER BRADY:
10 Fair enough. Does that, then, complete your case,
11 Mr. Nash?
12 MR. NASH:
13 Those are all the witnesses whose testimony we
14 submitted on direct, Judge, and, yes, it does.
15 HEARING OFFICER BRADY:
16 All right. Complainant rests. Beautifully timed,
17 six minutes till noon.
18 MR. NASH:
19 I planned it that way all along, Judge.
20 MR. THOMAS:
21 We had to work out some things beforehand so I
22 didn't run over, Judge.
23 HEARING OFFICER BRADY:
24 I was going to say, you know, being one, I love
25 lawyers, but the only thing they can't do is

1 estimate the length of time it takes to put on a
2 hearing. Let me ask this, Mr. Thomas. How many
3 witnesses do you plan to put on?

4 MR. THOMAS:

5 Four, Your Honor, and those will be the three
6 direct testimonies that we originally filed,
7 Shannon Messer, James Maynard, and Todd Peyton,
8 and also Scott Sidwell who was one of the rebuttal
9 witnesses.

10 HEARING OFFICER BRADY:

11 Now, I'll ask you what I just said lawyers
12 couldn't do. What's your guess of how long it'll
13 take you to present those four witnesses?

14 MR. THOMAS:

15 Well, Your Honor, I . . .

16 HEARING OFFICER BRADY:

17 Of course, and I know that doesn't depend on you
18 but . . .

19 MR. THOMAS:

20 I think it's all going to depend on Mr. Nash.

21 MR. NASH:

22 Yeah.

23 MR. THOMAS:

24 It depends on what kind of cross examination he
25 has prepared for them. Of course, we will follow

1 the same procedures in just having them confirm
2 their testimony, but I would say a couple of
3 hours.

4 HEARING OFFICER BRADY:

5 Mr. Nash, this in no way limits you, but, inasmuch
6 as you're familiar with their direct, have you got
7 any gut feelings as to how long it would take you
8 to get through with their witnesses?

9 MR. NASH:

10 I think we did mine here in about an hour and
11 forty-five minutes. We think we can get theirs
12 in, in that same amount of time, if not less.

13 HEARING OFFICER BRADY:

14 What I'm thinking is, then, if we come back at
15 1:00 then that, given two hours, is 3:00, even two
16 hours and a half is 3:30. Is that within
17 reasonable expectation of everybody as to how long
18 it might take to finish this?

19 MR. THOMAS:

20 Yes, Your Honor, I believe so.

21 MR. NASH:

22 It is, and one thing I did want to ask you about
23 is, and it wasn't, I don't think, addressed in the
24 pretrial Order, I have prepared a brief five or
25 ten minute closing statement. Do you entertain

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those, or do we just finish with the witnesses and quit?

HEARING OFFICER BRADY:

Traditionally, I do not. I might permit them if you all requested them but traditionally not. I frequently - and I can't remember the procedural Order in this case, Mr. Pinney, - I frequently require simultaneous posthearing memos which are essentially in the nature of a written closing argument.

MR. NASH:

And you have in this case, I'll tell you. The Order reflects that.

HEARING OFFICER BRADY:

The Order does that?

MR. PINNEY:

It gives them the opportunity to file a brief 15 days after the filing of the transcript.

MR. THOMAS:

Yes, Your Honor.

HEARING OFFICER BRADY:

And I probably will, then, request those in writing. So I would be inclined not to do oral closings.

1 MR. NASH:

2 Okay. Well, if I had to choose between an oral or
3 a written closing, I would prefer a written
4 closing, Judge.

5 HEARING OFFICER BRADY:

6 That doesn't surprise me. I would have, too, and
7 the only question about timing was not to say that
8 you would be limited but to decide whether we had
9 30 minutes for lunch or an hour. Now, that's what
10 that was all about.

11 MR. NASH:

12 You know, frankly, I could do 30 minutes or an
13 hour. I probably won't go to lunch anyway.

14 HEARING OFFICER BRADY:

15 Well, why don't we take an hour?

16 MR. PINNEY:

17 I have no objection to that whatsoever, Your
18 Honor.

19 HEARING OFFICER BRADY:

20 Then it's about four minutes until noon. Let's
21 recess and reconvene at one o'clock.

22 MR. NASH:

23 Thank you, Your Honor.

24 HEARING OFFICER BRADY:

25 Thank you.

OFF THE RECORD

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HEARING OFFICER BRADY:

Let the record show that all parties and all counsels have returned and, Mr. Thomas, I believe we are to Clark Energy Cooperative's response, if you care to make one.

MR. THOMAS:

Your Honor, first, before we bring on any witnesses, I would like - in the normal practice, this would be the point where a motion for a directed verdict would be made. I do not know if it's the position of the Commission to do so, but, in response to two Orders that were entered, I would like to, if the Court would entertain, make that argument. I don't know if the Court wants to do that or . . .

HEARING OFFICER BRADY:

About a directed verdict?

MR. THOMAS:

About a directed verdict.

HEARING OFFICER BRADY:

A man after my own heart, you do know how to practice, and what I will tell you is it's timely made, and I will take it under consideration. In the meantime, present your case.

1 MR. THOMAS:

2 Thank you. We would call Scott Sidwell.

3 HEARING OFFICER BRADY:

4 All right, sir. Raise your right hand for me,
5 please, sir.

6 WITNESS SWORN

7 HEARING OFFICER BRADY:

8 Thank you, sir. Have a seat, please. You may
9 ask, Mr. Thomas.

10 MR. THOMAS:

11 Thank you, Your Honor.

12 The witness, SCOTT SIDWELL, after having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. THOMAS:

16 Q. Could you please state your name for the record, sir?

17 A. Scott Sidwell.

18 Q. And are you an employee of Clark Energy Cooperative?

19 A. Yes, I am.

20 Q. On July 5 of this year, 2001, did you sign a Verified
21 Rebuttal Testimony that was presented to the Public
22 Service Commission with respect to this case?

23 A. Yes, I did.

24 Q. Did you remember having an opportunity to review the
25 questions and answers that were provided in that

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document?

A. Yes, I did.

Q. Do you hereby wish to adopt that Verified Testimony as your testimony here today?

A. Yes, I do.

Q. Do you have any additions, corrections, or deletions that you wish to make to that testimony?

A. No, I don't.

MR. THOMAS:

Judge, with that, I would ask that it be admitted and pass the witness to Mr. Nash.

HEARING OFFICER BRADY:

Thank you. Mr. Nash, you may cross.

MR. NASH:

Thank you, Judge.

CROSS EXAMINATION

BY MR. NASH:

Q. Mr. Sidwell, my name is Patrick Nash, and I represent Vaughn Taylor in this case. Are you any relation to Mitchell Sidwell?

A. Yes, cousins.

Q. You're cousins?

A. Yeah.

Q. And is that the same Mitchell Sidwell whose affidavit was submitted this morning?

1 A. That's correct.
2 Q. Did you obtain that affidavit from him?
3 A. No, sir.
4 Q. Okay. Mr. Sidwell, I've just got a very few questions
5 for you. You've met Vaughn Taylor before; correct?
6 A. No, sir.
7 Q. You've spoken with him?
8 A. Yes, sir, on the phone.
9 Q. When you spoke with him on the phone, did you tell him
10 that electrical service should be available to his
11 property?
12 A. Mr. Taylor told me that there was an old power line
13 there, and I told him that probably would not be a
14 problem if there was existing service there.
15 Q. Okay. And you told him that so long as he complied
16 with your normal prerequisites for service?
17 A. To come in and sign up.
18 Q. Right.
19 A. That would be correct.
20 MR. NASH:
21 That's all I have, Judge.
22 HEARING OFFICER BRADY:
23 Mr. Pinney?
24 MR. PINNEY:
25 No questions at this time.

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HEARING OFFICER BRADY:

Redirect, Mr. Thomas?

MR. THOMAS:

Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. Mr. Sidwell, did you know what area Mr. Taylor was talking about when he asked you if service would be available?

A. Yes, I knew what area it was; yeah.

Q. Did you know the exact location of the piece of property?

A. No.

Q. How was it, then, that you were able to tell him that it would be no problem getting service?

A. I only told him that I knew we served the area. I knew there were power lines in the area, and he had told me there was an existing line there and, from that, that was what I said.

Q. So the reason you said that you could provide service is because that was in Clark Energy's service area?

A. That's correct.

MR. THOMAS:

I don't have anything further, Judge.

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HEARING OFFICER BRADY:

Mr. Nash?

MR. NASH:

Nothing further.

HEARING OFFICER BRADY:

Mr. Pinney?

MR. PINNEY:

No questions, Your Honor.

HEARING OFFICER BRADY:

I believe that means you may step down, sir.

A. Thank you.

HEARING OFFICER BRADY:

Thank you.

MR. THOMAS:

Next, Your Honor, I would call Shannon Messer.

HEARING OFFICER BRADY:

All right, sir. Raise your right hand.

WITNESS SWORN

HEARING OFFICER BRADY:

Thank you. Have a seat, please. Mr. Thomas?

MR. THOMAS:

Thank you, Your Honor.

1 Q. Before you executed that document, did you have an
2 opportunity to read the questions and review the
3 answers that you provided with respect to that
4 document?
5 A. Yes, I did.
6 Q. And that document was executed by you?
7 A. Yes.
8 Q. And it has also been tendered to the Public Service
9 Commission?
10 A. Yes, it has.
11 Q. Do you wish to adopt that testimony as your own here
12 today?
13 A. Yes.
14 Q. Are there any additions, corrections, or deletions that
15 you wish to add to either of those testimonies?
16 A. The only thing that I would add is that, after hearing
17 the discussion and some of the filed matters regarding
18 the floodplain, to me, that just underscores some of
19 the inaccessibility issues regarding this whole matter.
20 HEARING OFFICER BRADY:
21 Mr. Thomas, I'm going to take that as a statement
22 that he might make on cross or redirect, . . .
23 MR. THOMAS:
24 Understood, Your Honor.
25

1 HEARING OFFICER BRADY:

2 . . . but I don't see that it would necessarily
3 change.

4 MR. THOMAS:

5 I understand, Your Honor. I would pass the
6 witness to Mr. Nash.

7 HEARING OFFICER BRADY:

8 Thank you. Mr. Nash?

9 MR. NASH:

10 Yes. Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. NASH:

13 Q. Mr. Messer, we met the other day. You know I represent
14 Vaughn Taylor.

15 A. Right.

16 Q. You yourself have never actually been out to the Point
17 or have you?

18 A. Not to the Point; no.

19 Q. How much of this power line have you personally had a
20 look at?

21 A. I've seen the portion on the Hanley and I only went a
22 very short distance across the fence, you know, from
23 the Hanley property there at the edge of his field.
24 Todd Peyton, who had accompanied me, he's the one on
25 whose report he provided since he looked at the entire

1 site. I did not go down to the Point myself.

2 Q. Todd Peyton is here, and I assume he's going to

3 testify; correct?

4 A. That's correct.

5 Q. Okay.

6 A. I wasn't dressed for the occasion.

7 Q. Okay. In the Interrogatories, I recall that, according

8 to Clark's account, there were eight poles in this

9 power line; is that accurate?

10 A. I believe that's the case all together; yes.

11 Q. Okay. And would that be from the Point all the way up

12 to where?

13 A. That would be all the poles that are retired as part of

14 the old abandoned power line.

15 Q. Okay. Now, you say you've seen the first couple of

16 poles in the line?

17 A. I think the first two or three. I remember the poles

18 that were in Hanley's field, . . .

19 Q. Right.

20 A. . . . and I only went a short distance beyond that.

21 Q. Okay. How many poles are in Hanley's field?

22 A. I can't remember how many. I think there was one or

23 two that was part of the overall retirement. I

24 remember one distinctly.

25 Q. Now, is one of the poles the pole that carries the

1 electricity to Mr. Hanley's house?
2 A. No.
3 Q. Is there a pole that carries electricity to Mr.
4 Hanley's house?
5 A. Yes, there is there. The old abandoned power line was
6 disconnected at the point where Mr. Hanley receives his
7 electric service.
8 Q. Uh-huh.
9 A. The old abandoned power line ran approximately 850 feet
10 past Mr. Hanley's house through an open field.
11 Q. To a pole?
12 A. To the last pole in the field, and just past the pole
13 was the fence, and across the fence was the woods, and
14 then shortly beyond that distance is where you started
15 down the cliffs and the bluffs leading down to the
16 river.
17 Q. Okay. So the first pole in the line at the edge of the
18 field, is that a cleared field? I mean, can you drive
19 up to that pole?
20 A. Yes. Yes, you can there.
21 Q. Okay.
22 A. I think there's a gate you had to go through, but, yes,
23 it's . . .
24 Q. Right.
25 A. . . . a grassy field.

1 Q. Right. Yeah. We've heard about the gate. So the pole
2 before that, the one that supplies the electricity to
3 Mr. Hanley's, is it of the same vintage as the other
4 poles in the line?

5 A. No, I would say not. Based on my recollection, that
6 pole probably had been changed out just during the
7 normal course of service through the years, . . .

8 Q. Okay.

9 A. . . . however long electric service has been available
10 at that house.

11 Q. All right. So the first pole in the, I'll call it, the
12 Vaughn Taylor line or the retired line . . .

13 A. Uh-huh.

14 Q. . . . is accessible by a vehicle?

15 A. Yes.

16 Q. Okay. And then, after that, it's the poles after that
17 that it's your all's contention that are not accessible
18 by a vehicle; correct?

19 A. That is correct.

20 Q. Okay. All right.

21 MR. NASH:

22 Let me, just for verification sake, because I
23 don't think this has ever been done for the
24 record, but, Your Honor, if I may show the
25 witness.

1 Q. We've already talked about this application for
2 membership of electric service that's been filed of
3 record . . .
4 A. Uh-huh.
5 Q. Just to verify for the record, is that Clark RECC's
6 application?
7 A. Membership application, yes, it is.
8 Q. Okay. Thank you. All right. Now, Clark's position,
9 as I understand it, is that you all need better access
10 than currently exists in order to have a power line;
11 correct?
12 A. Correct.
13 Q. A road access is what you want; right?
14 A. That would be preferable; yes. That is reasonable
15 access; yes.
16 Q. Do you have to have a road?
17 A. What the administrative regulation requires is that you
18 need to have reasonable access in order to be able to
19 install, operate, maintain a power line, plus be able
20 to read the meter. Any electric utility, any utility,
21 if you're not able to use your equipment in order to
22 transport materials, be able to operate the facilities,
23 and maintain the facilities, and you certainly don't
24 have any access to use your equipment, AKA trucks, in
25 order to read the meter, then, if you're barred from

1 that, we would not regard that as reasonable access;
2 no.

3 Q. Okay. But my question is, do you need a road?

4 A. To use those implements, yes, we would need some access
5 to . . .

6 Q. Okay. On a power line, and let's talk about the Vaughn
7 Taylor power line, where does the road have to run?
8 Does it have to be right next to every single pole?

9 A. What we would want to do in order to be able to use
10 those poles and equipment, when our folks first met
11 with Mr. Taylor, when Mr. Peyton first met with Mr.
12 Taylor, it was widely understood that the old power
13 line had been abandoned and had been in a state of
14 disrepair for many years. We didn't even know that it
15 was even there, and it was everyone's common knowledge
16 that, before we could extend electric service for his
17 proposed residence, that we needed some means of access
18 in order to even get to the residence. By virtue of
19 the fact that we needed access to the residence and we
20 had to build a power line, it stood to good reason that
21 we were going to be using the road to provide us the
22 access that we needed to construct a new power line
23 adjacent to the road leading to his residence.

24 Q. Okay. I understand that's your position, but my
25 question is this; do you have to have a road beside

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every pole in a power line?

A. We're going to seek to put it on the road wherever we can; yes.

Q. But is that a requirement?

A. It is a requirement if you need access.

Q. So do you have to have a road next to every pole to get access to it?

A. We're going to try to be adjacent to the road wherever we can.

Q. I know that's your preference, okay, but my question is not what's your preference. My question is what is the necessity. Do you need to have every pole in a power line next to a road?

A. Specifically, to answer your - I think the gist of your question is, can you get your equipment to a pole other than by a roadside? Certainly, if there's a pole adjacent to your house, behind your home, someplace where, through the vast course of day-to-day operations, you can reasonably expect to get your equipment to a pole, you would not need a road. The issue is can you reasonably expect to put your equipment to maintain and operate a power line when you can't get the equipment to it.

Q. Okay. So your answer is you don't need a road as long as it's clear enough to drive to the pole?

1 A. I need permanent access to get to those facilities. I
2 need a reasonable access to get to those facilities,
3 and, going down over the cliffs or bluffs, there's no
4 way that I have access either for our meter readers,
5 our equipment, our line construction, nothing that we
6 have.

7 Q. Now, that's to the poles; correct? You're talking
8 about access to the poles?

9 A. To the poles and the line and the service and the
10 meter.

11 Q. So does the road have to run directly underneath the
12 line as it goes from pole to pole? Do you have to have
13 that?

14 A. What we would want to do is have the poles adjacent to
15 where we can easily access it with our equipment. We
16 would certainly love to have the line accessible to our
17 bucket equipment so that, if there's any repairs that
18 had to be made in the conductor itself, we would have
19 access to that, because obviously you wouldn't be able
20 to climb in order to repair the conductor in midspan
21 without having your equipment there.

22 Q. Okay. So, again, is it a requirement to have a road
23 running underneath all spans of power line?

24 A. It is a requirement that we have some means of access.
25 If it's a flat, dry field, if it's a road, if we have a

1 reasonable prospect of being able to get our equipment
2 there to construct and maintain it, we'll take it.

3 Q. So, again, what you need is a cleared area?

4 A. What I need is a permanent cleared, well-maintained
5 area.

6 Q. Okay. And, of course, you need access to the meter,
7 you said?

8 A. Uh-huh.

9 Q. The meter, I assume, is usually at the actual
10 termination point of the service.

11 A. The meter would be on the side of the premises.

12 Q. Okay. So you need to be able to get to the house?

13 A. You have to read the meter.

14 Q. At the house?

15 A. Uh-huh.

16 HEARING OFFICER BRADY:

17 The meter would be where?

18 A. The meter would be on the side of the house.

19 HEARING OFFICER BRADY:

20 On the side of the house. All right.

21 A. That's where the customers typically install their
22 meter base; yes.

23 HEARING OFFICER BRADY:

24 By the way, I've been meaning to tell you all, and
25 I noticed Mr. Messer look at me a minute ago, most

1 of the time I'm not looking directly at the
2 witness, and I don't want anybody to think I'm not
3 paying attention. I'm watching on these monitors.

4 A. So have I.

5 HEARING OFFICER BRADY:

6 So I'm paying attention. I'm just looking at a
7 monitor. All right. Thank you, Mr. Nash.

8 Q. How often does Clark check those meters?

9 A. Once a month.

10 Q. Once every . . .

11 A. We're reading them once a month; yes.

12 Q. They're read once a month?

13 A. Uh-huh.

14 Q. Okay.

15 A. And, beyond that, there's the two year system
16 inspection that we're required to do as well.

17 Q. Okay. Now, how long have you been with Clark?

18 A. Since March, 1987.

19 Q. When did it become a prerequisite for service at Clark
20 to have either a road or a cleared area around every
21 pole and underneath every line?

22 A. All that we are doing - I think the way the question is
23 framed, what we're asking for is reasonable access to
24 the facilities, and there's no way into this particular
25 location. In order to get the equipment that we need

1 to build and operate and maintain a power line plus
2 read that meter, you have to have vehicles. You have
3 to have bucket trucks. You have to have line trucks,
4 all the equipment that we need. In order to get to
5 this particular locale, you're going to have to have a
6 road in order to traverse that terrain and reach that
7 site.

8 Q. Okay. My question is, when did that become a
9 requirement?

10 A. I don't understand your question.

11 Q. Well, these power lines were there; were they
12 not, . . .

13 A. Uh-huh.

14 Q. . . . and poles?

15 A. Uh-huh.

16 Q. They were Clark's power lines and poles?

17 A. Uh-huh.

18 Q. They went down over a cliff, as you all have said?

19 A. Uh-huh.

20 Q. So, obviously, when they were put there, there was not
21 a road or a cleared area where a truck could drive
22 underneath the lines.

23 A. Right.

24 Q. So, at some point, Clark did it without that. When did
25 it become a prerequisite? When did Clark start

1 requiring that?

2 A. Well, it's obvious that this line was probably built in
3 the 1960s, so I can't vouch for whatever was, you know,
4 done in the 1960s. There's no one at Clark there today
5 who was working in the 1960s. All that I can tell you
6 is that, during my working career and my tenure at
7 Clark, is that anything that we build in order to gain
8 access to that customer's premises it's got to be
9 accessible to our trucks and our equipment.

10 Q. So the answer is you don't when it became a
11 prerequisite?

12 A. No. It's just common knowledge, I think, among any
13 utility within the purview of their existing line
14 extension tariffs and within the purview of the
15 administrative regulation for which we all operate
16 under, you have to have a means by which to take your
17 vehicles and your equipment and your people in order to
18 operate and maintain a power line. We don't do it with
19 mules any more, and we certainly can't float them down
20 on the river to do that.

21 Q. You can't or you don't any more? I mean, at some - do
22 you know how these poles were put in?

23 A. You're asking me to speculate how they were put in.

24 Q. No, I don't want you to speculate. I'm asking do you
25 know.

1 A. No.

2 Q. Okay. So a person in Clark's area - you all have
3 areas; right? Areas of Kentucky that you service?

4 A. Right. Each utility under Commission regulation has a
5 specific territorial area that they're required to
6 serve.

7 Q. Right. So, in Clark's territory, if a person does not
8 have a road into their home or if they just go in by a
9 foot path through the woods, they can't get electric?

10 A. We have to have a means by which to access that meter;
11 that's correct.

12 Q. So that person, if it's just a foot path into their
13 house, they can't have electric?

14 A. No. We're not going to provide something that we just
15 don't have access to read the meter with . . .

16 Q. Okay.

17 A. . . . or to use our facilities with.

18 Q. And, if a person had electric, like the person who
19 lived at the Point at a time before this was required,
20 is their electric then cut off at some point in time?

21 A. The way the Commission regulation reads it is any time
22 a customer neglects or refuses to provide reasonable
23 access for a utility, they can not only refuse initial
24 service but they could terminate existing service. In
25 this particular matter, that was a moot point because

1 the old cabin, by anyone that I've talked to, burned
2 down over 30 years, and the line was apparently
3 abandoned and forgotten in place. Our folks, to the
4 best of our knowledge, had no knowledge that it was
5 even there. So, you know, it was already, you know,
6 gone at that point. There wasn't any existing service
7 to terminate under that prerequisite that you're trying
8 to draw an inference to. There wasn't any existing
9 service available.

10 Q. Persons who live in remote locations like this, . . .

11 A. Uh-huh.

12 Q. . . . is it Clark's policy to require that person to
13 bear the expense of creating a road, building a road,
14 and paying for the poles and wires?

15 A. What they're required to do, under tariff and under
16 regulation, is there's a prescribed line extension
17 cost, which, you know, I think that's well defined.
18 We're not going to build a road in order to build a
19 power line to a customer under that tariff. Our
20 business is constructing and maintaining power lines;
21 not building and maintaining roads to provide access to
22 property.

23 Q. And I know you've estimated the cost in this case . . .

24 A. Uh-huh.

25 Q. . . . of just the power line as somewhere between

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\$17,000 and \$22,000; correct?

MR. THOMAS:

Your Honor, I would like to object to any line of questioning along those lines. Our firm received a telephone call from Mr. Nash inquiring about charges in discussion of possible settlement. Those figures were provided to Mr. Messer and to Mr. Rose in response to his request with respect to what it would cost if Mr. Taylor would provide that service. I think that it goes outside the scope of - it tends to taint the issue as to whether or not there's access. Mr. Taylor has made some inferences that the reason that we refused service is because we wanted to get this high charge. The manner in which this was provided was merely for settlement purposes and not for anything of any substance or issues that are before this Court.

HEARING OFFICER BRADY:

Mr. Nash?

MR. NASH:

A couple responses, number one, I'm kind of glad to hear him say that because that was our position, that we asked for a settlement and this is what we got back. However, Mr. Messer's

1 subsequent testimony has been that that wasn't a
2 settlement proposal, that it was merely them
3 quoting the cost, their normal tariffed cost.
4 That's response number one. Response number two
5 is they filed it of record.

6 MR. THOMAS:

7 Actually, . . .

8 MR. NASH:

9 It was in Mr. Messer's rebuttal testimony.

10 MR. THOMAS:

11 Actually, Your Honor, it was first attached to
12 testimony that Mr. Taylor gave and he only gave
13 one of the two memos that Mr. Messer had prepared
14 for his counsel which we forwarded to Mr. Nash
15 merely for the purposes of settlement discussion.

16 HEARING OFFICER BRADY:

17 Is it a tariffed cost?

18 MR. THOMAS:

19 Yes, it is. It's a line extension charge.

20 MR. NASH:

21 According to Clark.

22 HEARING OFFICER BRADY:

23 Mr. Pinney, is it a tariffed cost?

24 MR. THOMAS:

25 Your Honor, it is actually, if I may - Mr. Pinney,

1 I don't know how, but it actually came out of the
2 document that's filed with the Public Service
3 Commission under Clark's tariff rates and line
4 extension costs.

5 HEARING OFFICER BRADY:

6 Those figures?

7 MR. THOMAS:

8 Yes.

9 HEARING OFFICER BRADY:

10 Then, to the extent that it's a tariffed cost, I'm
11 going to let it in. The question is what use is
12 then made of it.

13 MR. NASH:

14 And it's already in the record.

15 HEARING OFFICER BRADY:

16 So, I suppose, technically, Mr. Thomas, I have
17 denied your motion.

18 MR. THOMAS:

19 Thank you, Your Honor.

20 HEARING OFFICER BRADY:

21 Mr. Nash?

22 Q. The cost per your all's estimate, just for the lines
23 and the poles, is between \$17,000 and \$22,000; correct?

24 A. Under tariff, in order to extend service to Mr.
25 Taylor's residence, that would be our cost under that

1 tariff to provide service to him.

2 Q. And that doesn't include any cost to buy an easement?

3 A. No, it does not.

4 Q. Or build a road?

5 A. No, it does not.

6 Q. Or clear the land?

7 A. Clear the land?

8 Q. Clear the land, clear it.

9 A. We would only be cutting what trees would be incidental
10 for the power line construction itself; not including
11 any clearing that would be required just to provide us
12 access to the property.

13 Q. Right. So all of those are additional costs on top of
14 the \$17,000 to \$22,000?

15 A. Yes, they would be.

16 Q. If a customer can't pay those up front, a poor
17 customer, they can't get electric; is that right?

18 A. We're required in order to receive those monies up
19 front under regulation and under our tariff.

20 Q. Your counsel brought up this point, and I need to
21 clarify this for the record. You attached some maps
22 and some longer memos relating to the tariff to your
23 rebuttal testimony; correct?

24 A. I did file that adjacent to my rebuttal testimony.

25 Q. And, in your rebuttal testimony, you indicated that you

1 thought that that had been provided to me previous to
2 that?

3 A. I provided it because Bob Rose, the firm who represents
4 Clark Energy, . . .

5 Q. Right.

6 A. . . . who is an associate of our counsel here today, he
7 called me to state a request that you made to him
8 asking him what would be the cost under our normal line
9 extension cost to extend service to Mr. Taylor should
10 he prevail in these proceedings. I supplied the first
11 memo, which you included as part of . . .

12 Q. Right.

13 A. . . . the complainant's testimony.

14 Q. Uh-huh.

15 A. What was not included as part of the complainant's
16 testimony, which I filed as part of the rebuttal, was
17 the follow-up memo, because Mr. Rose informed me that
18 you had a follow-up call to him that said, "I would
19 like some additional information about the proposed
20 routing," you know, just speculating on a route that we
21 might go . . .

22 Q. Uh-huh.

23 A. . . . to help clarify how the line extension cost was
24 computed, and I did so, and, in order to do that, I
25 provided the topographical maps illustrating the

1 location of Mr. Taylor's property basically from the
2 nearest neighbor over one half a mile away to Taylor in
3 order to accomplish your request, provide your request.
4 Q. And I'll tell that all that's correct as far as it
5 goes, but my question is this; what makes you think
6 that Mr. Rose ever got that to me? You provided it to
7 Mr. Rose, not to me; correct?
8 A. Yeah, I provided it to Mr. Rose at his request.
9 Q. Okay. All right. All right. So you don't have any
10 evidence that ever got to me?
11 A. No. I have no knowledge of what occurred between
12 counsel.
13 Q. Okay. Okay. In your all's contract, the application,
14 you give yourself or, at least, you require the person
15 signing the contract to give you the right to go on
16 their land and clear away trees and bushes; correct,
17 with herbicides or however you want to do it?
18 A. Well, what it's providing us permission to do is to
19 certainly access their property so that we're not a
20 trespassing party, and it provides us an opportunity
21 to, once we've established what a route for the new
22 power line to be, it's giving us what permission we
23 need to clear trees to build the power line and to
24 operate the power line that is specifically incidental
25 to the operation and maintenance of that line. It is

1 not a document that gives us carte blanche permission
2 to do whatever clearing that we need in order to use
3 our vehicles in order to access a piece of property.
4 Q. But you're allowed, under your agreement, to give a -
5 it gives you a perpetual easement; correct?
6 A. Well, it's providing us . . .
7 Q. Perpetual easement?
8 A. . . . permission to do what we need to do, install and
9 operate and maintain that line.
10 Q. It gives you a perpetual easement; doesn't it?
11 A. It gives us permission to be there.
12 Q. It gives you a perpetual easement to build or repair or
13 maintain power lines?
14 A. That's right.
15 Q. And that's for the landowner themselves and also for
16 any extension to any other member of the cooperative?
17 A. It does say that in the application.
18 Q. And it also gives you a perpetual easement to cut down,
19 treat with herbicides all trees and bushes located in
20 the proximity of the power lines?
21 A. And that's what I'm underscoring, incidental to the
22 operation and maintenance of the power line, not to
23 provide access to the property, just what's incidental
24 to the operation and maintenance of the line.
25 Q. And it's normal, certainly, isn't it, for trees and

1 bushes and vegetation to grow up in the power lines
2 sometimes?

3 A. If it is left unmaintained.

4 Q. And you all - Clark has to go out and trim them back,
5 trim back trees from power lines?

6 A. We maintain the lines regularly.

7 Q. That's a regular and normal thing; right?

8 A. Yes, it is.

9 Q. And, in this document, this same application that
10 Vaughn signed, he's called an applicant here at the
11 bottom, "Applicant's Signature." It's an application;
12 right?

13 A. Yeah, it's a membership application.

14 Q. And there's a \$10 fee that you have to pay with it. Do
15 you remember if you collected \$10 from Vaughn?

16 A. No. That has been waived a long time ago. I'm very
17 certain that Mr. Taylor probably did not pay the \$10
18 membership application. We don't collect that any
19 more.

20 Q. Okay. And then another form that your counsel has made
21 reference to is this Member Data form. Do you know
22 what I'm talking about?

23 A. Yes, it's a job order form.

24 Q. This one you call a job order form?

25 A. Yes, it is.

1 Q. And, in this form, Mr. Taylor is actually referred to
2 as a member; is that not correct?
3 A. Yeah.
4 Q. He's got a membership number?
5 A. Right, but that is somewhat of a ubiquitous form that
6 we use for all variety of customer requests. It could
7 be for new service. It could be, "My security light is
8 out." So that's a somewhat ubiquitous form for any
9 request that a customer may have of us. At the time
10 that that form was filled out, Mr. Taylor had, indeed,
11 called by telephone to inquire about service, the same
12 date which is on that job order. Mr. Sidwell took the
13 initial request and only informed Mr. Taylor that
14 certainly he was available to have electric service
15 extended to him provided, you know, once we do our
16 investigation to see what's going to be necessary to
17 provide him service, and he knew that it was certainly
18 within our territorial boundaries. So it was our
19 service area. That call was forwarded to Engineering
20 and that form was taken just based on a brief telephone
21 interview about what Mr. Taylor was requesting, and, at
22 that time, he was told that he would need to enter our
23 office in order to take out that membership or the
24 formal application for service, which he did on that
25 same day

1 HEARING OFFICER BRADY:

2 Mr. Messer, I'm going to suggest to you that you
3 listen to the question and answer it, and I think
4 it will go a little quicker if perhaps you do not
5 try to anticipate the direction he may go next
6 with his questioning.

7 A. Okay.

8 HEARING OFFICER BRADY:

9 Mr. Nash, you may continue.

10 MR. NASH:

11 Thank you, Judge.

12 Q. I misspoke. I didn't mean to imply a membership number
13 when I was looking here. There's a job order number on
14 this form.

15 A. Yes.

16 Q. So this job of, according to the form, providing
17 temporary service to Mr. Taylor's house has already got
18 a job order number by this point?

19 A. It was probably added later on that day or the next
20 day.

21 Q. Okay. Okay. Now, the next document I want to talk
22 about is this hand-drawn diagram that we've already
23 heard testimony about, . . .

24 A. Uh-huh.

25 Q. . . . and, indeed, as counsel has indicated, I have the

1 original here.

2 A. Uh-huh.

3 Q. A copy has been placed in the record.

4 A. Uh-huh.

5 Q. I don't know if you've seen this original or not. Let
6 me show you this.

7 A. Not the original. Thank you.

8 Q. It's a blue in color form. Do you recognize it?

9 A. Yes.

10 Q. What is it?

11 A. All that is, is very similar to the job order form that
12 you have. Any time a customer would have a specific
13 request, maybe about a security light being out or, you
14 know, whatever, you know, routine matter that we might
15 want to look at, it's just something that we use.

16 Q. My point is, this is a Clark form?

17 A. Yes, it is.

18 Q. This blue sheet is a Clark form?

19 A. Yes, it is.

20 Q. Okay. And do you recall Vaughn Taylor drawing this
21 diagram of the Point?

22 A. I was not present when that was done.

23 Q. Okay. So you don't recall that?

24 A. I was not present.

25 Q. The name that's on this diagram, William Perry, I know

1 you've noted that on there before, William Perry.

2 A. Uh-huh.

3 Q. Do you know William Perry?

4 A. Not personally. He is one of the Electrical Inspectors

5 licensed in Clark County.

6 Q. So he's an inspector that's known to you?

7 A. Yes.

8 Q. And to people at Clark?

9 A. Yes, and all utilities in Clark County.

10 Q. So you all work in conjunction with this man?

11 A. Well, not directly and in concert. He just has to

12 provide the electrical inspection of all new services

13 before we can hook them up.

14 Q. Okay. You've said in your testimony that the poles on

15 Mr. Taylor's land are 35 feet in length but that's not

16 the length that Clark uses any more. Am I stating that

17 accurately?

18 A. That's correct. Uh-huh.

19 Q. You use 40 foot poles now?

20 A. Forty foot poles are the standard for all new primary

21 construction; have been for many years.

22 Q. Okay. So, whenever you build some new lines, you use

23 40 foot poles; not 35 foot poles?

24 A. That's correct.

25 Q. Do you know when that change took place?

1 A. Oh, gee! At Clark, specifically, I couldn't say. I've
2 been there since '87. I know we were doing it in '87.
3 Q. Okay. Are you aware that 35 foot poles are still in
4 use anywhere in Clark's area?
5 A. Older poles prior to us making that change on new
6 poles, but any time a new pole is set or an older pole
7 replaced it's going to be a minimum of 40 feet.
8 Q. But there are still 35 foot poles in use?
9 A. Yeah, there's going to be some still in service out
10 there.
11 Q. And the wires - I call them wires. I think you all
12 call them conductors.
13 A. Uh-huh.
14 Q. Is that the correct term; conductors?
15 A. Wires or conductors, fine.
16 Q. Okay. The wires that were on the 35 foot poles on the
17 Taylor line or the retired line, I think your testimony
18 has been that those wires can actually handle the
19 amount of electricity that is used nowadays, but their
20 insulation is not adequate; is that correct?
21 A. That would be correct; yeah.
22 Q. Okay. So you don't use those wires in new construction
23 any more?
24 A. We don't use those insulators which support the wire in
25 that construction any more nor do we use the poles that

1 were there. We don't use those any more nor do we use
2 the transformer that was there any more.

3 Q. Right. But the wires themselves are okay? It's just
4 the insulators that were . . .

5 A. I didn't see the wires themselves. I know that the
6 wire was very old. I did not see it personally, but,
7 based on the reports from the contractor and from Mr.
8 Peyton, I know that the wires were old, but I did not
9 see them personally.

10 Q. Okay.

11 A. The issue would not have been the conductor firsthand
12 anyway. It would have been the rest of the line.

13 Q. The issue would not have been the conductor?

14 A. No. I said our first concern would be the poles, the
15 insulators, the transformer, and certainly the
16 conductor; what was the status of the conductor; was it
17 in the trees, on the ground; was it broken.

18 Q. And, of course, the transformer we've already heard has
19 bullet holes in it. You can't use a transformer with
20 bullet holes; can you?

21 A. No.

22 Q. All that whole line was Clark RECC's property; correct?

23 A. The materials of the line?

24 Q. Right.

25 A. Yes.

1 Q. And Clark RECC had metal tags on those poles; right?

2 A. I don't know. I didn't see them.

3 Q. Okay. Is that Mr. Peyton's department?

4 A. Yeah, well, he works in my group. It would not have

5 been unusual for there to have been a Clark RECC

6 identification tag.

7 Q. Yeah. Right.

8 A. It just says, you know, "Clark RECC." That way anyone

9 would know that it was a Clark Energy pole.

10 Q. Did you instruct Mr. Peyton to dispose of those tags or

11 is that something he did on his own?

12 A. Now, that would just be normal routine. Anytime we

13 inspect a job, any kind of construction, any kind of

14 retirement, we make sure that all of our hardware was

15 taken out.

16 Q. All right. Let's talk about the timing of these poles

17 getting removed or cut down. I think we've heard that

18 Mr. Peyton - or you had Mr. Peyton go out there back in

19 '97; right?

20 A. Mr. Peyton first met Mr. Taylor in June, '97. That was

21 the first appointment that was scheduled subsequent to

22 Mr. Taylor's application for service.

23 Q. And Mr. Peyton went out there in '97?

24 A. Yes. Not to the site. He couldn't reach the site.

25 They met at Judy Ray's store, and then Mr. Taylor took

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him to Mitchell Sidwell's residence.

Q. All right. Well, let me clarify that. He went out to part of the line? He saw part of the line?

A. No, I don't believe they did. They never even - did not get to that point. They just went to Mr. Sidwell's residence.

Q. Okay. In '99, September of '99, you received a call from Mr. Taylor; correct?

A. Uh-huh.

Q. And he told you that he had his permits ready to go or nearly ready to go, and he wanted the electric hooked up; correct?

A. We discussed the permits that would be required of him before he can receive electric service; yes.

Q. On September 27, '99, did you get a call from Mr. Taylor where he told you that he was building on an existing foundation; the poles are still there; he should have his building permit in a couple of weeks?

A. What I would recall, that conversation was no discussion of a foundation but a series of running discussions that we had beginning in September of '97 about what his requisites for electric service were to be and what we needed to have in terms of access in order to satisfy his request.

1 MR. NASH:

2 Madam Clerk, could he be handed the Member Data
3 sheet, or should I just give him mine?

4 REPORTER:

5 Here, I've got it.

6 MR. NASH:

7 Okay.

8 A. Yeah, that's fine.

9 Q. Do you see, in the "Service Requested" block there in
10 the middle of the page, there is a note, a handwritten
11 note, there at the very bottom of that block . . .

12 A. Uh-huh.

13 Q. . . . talking about a 9-27-99 phone call. Was that not
14 a phone call that Vaughn had with you?

15 A. I may have talked with him at one point. That was just
16 a follow-up call that he had with the person that was
17 maintaining this particular job order. I do recall
18 talking with him, again, a running set of phone calls,
19 about what was going to be required in order to provide
20 service there. So . . .

21 Q. Well, I tell you what I'm specifically interested here
22 in is that Vaughn apparently told someone at RECC that
23 he should have his building permit in a couple of
24 weeks. Did he tell you that or not?

25 A. We discussed that he was in the process of trying to

1 procure permits, and he was interested in procuring
2 permits but, to date, no permits have been provided.
3 So, no, we have no permits.

4 Q. Did he tell you that he should have his building
5 permits in a couple of weeks?

6 A. I don't recall specifically that. All that I know is
7 that we never received any, but we discussed the
8 necessity of he needing to have permits.

9 Q. By the fact that this is noted on this form, does that
10 indicate at Clark that someone at Clark was told that?

11 A. No. Well, all this asserts is just what the customer
12 asserted.

13 Q. Right. Someone at Clark was told that.

14 A. Yeah. I would . . .

15 Q. Thank you. How many days after that, 9-27-99, did you
16 cut the poles down?

17 A. The line was retired in October, '99. So it would
18 be . . .

19 Q. How many days? What day?

20 A. I would have to go back and look at a specific day. I
21 do not recall the specific day, but I do remember it
22 was October, '99.

23 Q. Do you have those records with you?

24 A. Not of the specific date. I don't know if I do or not,
25 not on a specific date.

1 Q. The fellow from Davis Elliot that's here is the one
2 that did that; right?

3 A. That was his crew; yes, it was.

4 Q. All right. So, if it was in October, we can say it's
5 less than a month after you got this phone call you cut
6 the poles down; is that fair?

7 A. It was in October. It was, you know, within a month.
8 Yes, I would say that.

9 Q. Okay. I'm sorry to jump around. Let me just jump
10 around one more time, back to the application form.
11 The idea that there's a blank there to check whether
12 you are or are not the owner of the property . . .

13 A. Uh-huh.

14 Q. Do you know the blank I'm talking about?

15 A. Yes, I do.

16 Q. Let me ask you this. If a customer comes to Clark and
17 wants to hook up electric to a piece of property or a
18 house on a piece of property, must they have some
19 connection to that property, in other words, either a
20 Deed, a lease, permission from the owner, or can they
21 just walk in and say, "Hey, I want to hook up electric
22 over here; please do it"?

23 A. Ownership is not a requirement for service on a piece
24 of property. All that we would want to obtain is
25 permission from the owner of that property, the

1 permission to do so.

2 Q. Okay. So you've got to have, at least, permission from
3 the owner . . .

4 A. Uh-huh.

5 Q. . . . to hook up electric. A lease, would that be good
6 enough to hook up electric?

7 A. No, we wouldn't even require the lease. We would just
8 want just the current permission of the owner to do so.

9 Q. Okay. Well, but, if a customer walks in with a lease,
10 is that good enough to hook up electric, a lease in
11 their name?

12 A. No. We still want to talk with the owner.

13 Q. You've still got to get the owner's permission?

14 A. Right.

15 Q. All right. Now, if a person is not the owner of the
16 property - well, let me back up. If a person comes in
17 with a Deed, is that good enough?

18 A. We don't require a Deed.

19 Q. No. I know, but, if they come in not with the owner's
20 permission slip but a Deed, they come in and say, "I am
21 the owner," is that good enough to hook up electric?

22 A. Well, I . . .

23 Q. Won't you agree with me on that question?

24 A. I guess I'm having trouble following what your question
25 is.

1 Q. It's a very easy question. If I come in with a Deed,
2 will you hook up electric to my property?
3 A. Yeah, if . . .
4 Q. Okay. Thank you. Now, if I don't have a Deed, you
5 need some sort of paper; correct?
6 A. No.
7 Q. You need a permission from an owner. You just said
8 that.
9 A. We need the permission of the owner in order to set any
10 poles, . . .
11 Q. You need . . .
12 A. . . . but we don't require any Deed or documentation to
13 prove that John Doe is the owner of the property.
14 Q. But, if I am not the owner of the property that I want
15 to hook electric to, you must have something from me to
16 indicate that I have permission to do that; correct?
17 A. All that we would ask of you, if you're not the owner
18 of the property and you want electric service, we would
19 merely ask who is the owner of the property and that
20 customer and us together will approach the owner and
21 inform them of the request and ask of their consent;
22 "Can we do what is provided here under our tariffs to
23 extend electric service?"
24 Q. Certainly. Exactly. So there is a requirement of some
25 sort of permission, whether it be owner's permission in

1 writing or verbal or a Deed, there is some sort of
2 requirement to get electric service to every piece of
3 property?

4 A. There is only a requirement to procure permission in
5 order to give us permission to access the property.
6 There is no implicit or direct requirement to present a
7 Deed.

8 Q. Unless you don't have the owner's permission?

9 A. In no case is anyone required to present a Deed.

10 MR. NASH:

11 That's all I have, Judge.

12 HEARING OFFICER BRADY:

13 Mr. Pinney?

14 CROSS EXAMINATION

15 BY MR. PINNEY:

16 Q. Mr. Messer, does Clark Energy have any records of the
17 previous electric service that was provided at this
18 location?

19 A. No.

20 Q. And I know we've gone over this a little bit, but to
21 what degree does the condition of the line matter when
22 determining whether to apply the 1,000 foot extension
23 rule, I mean, namely the line from which the extension
24 will be going?

25 A. Well, I think the basis of that is because, at our

1 first meeting in the field, it was accepted common
2 knowledge that there was "an old abandoned power line"
3 there and that there was no portion of it that was
4 going to be possible for us to rehabilitate, reuse, or
5 use in any way, form, or fashion in order to satisfy
6 this current customer request. That was common
7 knowledge at the first meeting between Mr. Peyton, Mr.
8 Taylor, and I think even Mr. Sidwell even asserted that
9 it was, you know, common knowledge. So we were
10 operating on the premise that, regardless of what may
11 have been there in the 1960s, we were starting from a
12 fresh slate and that we needed to see, first, how we
13 were going to gain access to the property, and then,
14 once that was secured, there was a means into the
15 property, then we would come and revisit Mr. Taylor at
16 a later date and then see how best to extend service
17 along that road to him.

18 Q. Is there criteria for retiring a line specified in any
19 of Clark Energy's policies, documents, or is it like a
20 subjective decision made by an individual employee or
21 management?

22 A. No. That would be, you know, people in Engineering and
23 Operations would make a determination that, once any
24 facility is no longer required for service at any
25 location and certainly if we know that it's there,

1 A. No, they do not.

2 Q. What service has been done on these poles since you
3 arrived in 1987?

4 A. You mean these poles that were later retired?

5 Q. Uh-huh.

6 A. None.

7 Q. To your knowledge, has there ever been any service
8 performed on these particular lines?

9 A. No.

10 Q. If there's a requirement that you inspect your
11 facilities every two years, how is it that this
12 particular line was not discovered during that
13 inspection?

14 A. What has evidently occurred is that, after the original
15 cabin burned, over 30 years ago, that there was no
16 service there. No one had any electric service there.
17 The right-of-way had basically reclaimed the original
18 power line route, and the line had subsequently fallen
19 into such disrepair, some of the poles broken, some of
20 the lines being down, and, at the point when you are at
21 Mr. Hanley's property and you look at the last pole in
22 his field, okay, there is no line that you can see from
23 where that pole was on his property that crossed the
24 fence, and directly across the fence is where the woods
25 begin, and shortly beyond that is when you start down

1 over the cliffs or the slope or the bluff, and there
2 was no evidence of any line that was there. So, during
3 the two year system inspection, it didn't exist on the
4 maps, and, when our folks, during the course of the two
5 year system inspection, when they were out in the field
6 and they can see that the last pole is there and see
7 that there is no line continuing past that pole across
8 the fence into the line of trees leading down over the
9 cliffs, then there was no evidence to any of our people
10 that there was any line for us to either inspect or
11 maintain or, in this case, retire.

12 Q. What considerations are made in determining whether or
13 not to retire a line?

14 A. Well, one is, is it serviceable; is there a need for
15 electric service. In this case, the line was not
16 servicable. As I indicated, much of the equipment that
17 comprised the old power line are materials that have
18 not been in use at Clark for many, many, many years.
19 It was quite obvious that the right-of-way had
20 completely reclaimed the original power line route that
21 was cleared back in the sixties when it was apparently
22 built. Obviously, the trees had overtaken the right-
23 of-way. Parts of the line were on the ground, and some
24 of the poles were broken. I did not think, based on
25 Mr. Peyton's report that, given the apparent age of the

1 line and the condition of the poles that were still
2 left standing and, according to the contractor, many of
3 the trees were holding those up, we do not believe that
4 there's any part of the line that is going to be any
5 longer capable of supporting the mechanical loads of,
6 you know, supporting, you know - running new conductor
7 and hanging a new service there, plus we did not have
8 the access.

9 Q. Well, what was the capacity of the transformer that was
10 there?

11 A. The capacity of the transformer was a 1.5 kVA or a
12 1,500 volt amp or 1,500 watt, basically, transformer.

13 Q. And what is the capacity of the transformers that are
14 currently used by Clark for providing service?

15 A. They're typically going to be 15 kVA to 25 kVA for
16 typical residential use.

17 Q. What would the existing transformer, had it been in
18 operational condition, been able to sustain as far as
19 electric use?

20 A. At full nameplate rating, full load, that would be
21 equivalent to about a 1,500 watt hair dryer that you
22 would hold.

23 Q. What was the capacity of the insulators that were
24 attached to the electric poles?

25 A. The insulation level on the old line were for the 7.2

1 kV to ground insulation level.

2 Q. And what is currently being used by Clark?

3 A. It's 14.4 kV or 14,400 volts to ground.

4 MR. THOMAS:

5 I don't have anything further, Your Honor.

6 HEARING OFFICER BRADY:

7 Mr. Nash?

8 RE CROSS EXAMINATION

9 BY MR. NASH:

10 Q. In response to Mr. Pinney's question, you testified
11 that, in '97, when Mr. Peyton went out there, it was
12 accepted by all and common knowledge of all that this
13 power line was old and abandoned?

14 A. Based on what he learned at that meeting, that is
15 correct.

16 Q. In '97?

17 A. That's correct.

18 Q. Why then did you wait until just days after Vaughn's
19 phone call, in '99, when he said, "I've got my building
20 permits, and I'm ready to go," why did you wait until
21 then to retire the line?

22 A. Two parts to that. First of all, we still were
23 operating under an assumption that Mr. Taylor was going
24 to provide some kind of road access into the property
25 and that we very, very soon were going to be engaged in

1 new power line construction. At that time, we would
2 have certainly taken out what was left of the old power
3 line once we had a chance to inspect and see how bad it
4 actually was and just get rid of it. What prompted the
5 visit in October was Mr. Taylor's father calling me.
6 Do you want me to go on and describe that?
7 Q. If you need to, to answer my question.
8 A. Okay. And Mr. Taylor's father called me to inquire,
9 having apparently heard it from Vaughn, you know, "Tell
10 me about the difficulties involved in extending service
11 to Mr. Taylor," and I described everything that has
12 been provided in the record about our need for the
13 reasonable access, about the permits, which is what he
14 needed to provide, and I asked Mr. Taylor, the father,
15 if he was aware of all this, and he seemed rather
16 surprised to learn about all these issues, and I, just
17 during the conversation, just asked him directly, if
18 he's going to be building a house or a cabin as a
19 residence, how in the world is he planning on, you
20 know, getting in and out of this place on a day-to-day
21 basis, how is he planning on building a house, and he
22 said, well, the plans were that he was either going to
23 airlift materials or airlift a mobile home in. Well,
24 that certainly was of interest to me to learn that,
25 and, since there had been a running series of phone

1 calls about the access issue, I took it upon myself to
2 actually go see it for myself.

3 Q. Okay. But my question is not what triggered your
4 visit. My question is, is why was there a two year
5 delay in your decision to retire the line when you knew
6 in '97, according to you, you knew, that it was old and
7 abandoned at that point and that you didn't have any
8 access and you had to send people in there with chain-
9 saws?

10 A. We knew in '97 that we had an old abandoned power line
11 there. We had not, at that point, engaged in any kind
12 of inspection of it, because we always believed that it
13 was going to be a short-term issue soon to be taken
14 care of, that Mr. Taylor was going to go ahead and
15 provide road access into the property, and then we
16 would go from there. So we were always operating on
17 the assumption that Mr. Taylor was going to have road
18 access into the property, and he was very interested in
19 building his residence that he proposed, and we had
20 just been waiting for him to return the call to say,
21 "I've got a road in here per the meeting at Sidwell's
22 house." So we had been awaiting that time just to come
23 back and do what we needed to do to see best to extend
24 him service.

25

1 MR. NASH

2 That's all, Judge.

3 HEARING OFFICER BRADY:

4 Mr. Pinney?

5 RE CROSS EXAMINATION

6 BY MR. PINNEY:

7 Q. Mr. Messer, we had an informal conference on Monday, at
8 which point I inquired what service area or what area
9 Clark Energy served, and, when looking on the service
10 area map, I noticed that Clark Energy, and I may have
11 been mistaken, but they serve part of Fayette County?

12 A. Yes, that's correct.

13 Q. And the Kentucky River forms the border between Fayette
14 and Clark County?

15 A. No.

16 Q. It does not?

17 A. No.

18 Q. Okay.

19 A. No. The Kentucky River forms the border between Clark
20 and Madison County.

21 Q. All right.

22 A. Clark and Fayette have a pretty much contiguous border.
23 I think there's one creek in the area north of there
24 that's part of the border, but, no, the Kentucky River
25 is not a border between Clark and Fayette.

1 Q. Okay. That was . . .

2 A. Yeah.

3 Q. . . . my mistake, but it leads me to the question,
4 though, does Clark Energy provide any power on the
5 other side of the Kentucky River from Clark County into
6 Fayette County? I mean, do Clark County's lines cross
7 the Kentucky River?

8 A. We have no lines that cross - no. You mean at this
9 location?

10 Q. At any location.

11 A. Yeah, we do have lines that cross the Kentucky River.

12 Q. Now, how are those lines serviced?

13 A. Well, the poles are on either end.

14 Q. Well, I know, but, I mean, . . .

15 A. Yeah.

16 Q. . . . the Kentucky River is not a small river, and, I
17 mean, I'm sure there might be narrow points, but how is
18 the line between those two poles serviced in the event
19 of some sort of disruption?

20 A. Well, first of all, we have redundant service from
21 Madison County and those poles are not, you know, the
22 only means to provide service to the area, plus there's
23 no one, to my recollection, right there at the Kentucky
24 River that we don't have, you know, access to.

25 Q. Okay.

1 A. Okay.

2 Q. And then I have one more question. Is Clark County
3 engaging in any sort of automatic meter reading trial?
4 There are some other co-ops and electricity companies
5 that are engaging in that.

6 A. Yes, we are. We're very interested in them; yes.

7 Q. Okay. Are you starting to participate in it or are you
8 just showing some interest?

9 A. Yes, we're starting to participate in it; that's right.

10 MR. PINNEY:

11 Okay. No further questions, Your Honor.

12 HEARING OFFICER BRADY:

13 Mr. Thomas?

14 MR. THOMAS:

15 No further, Your Honor.

16 HEARING OFFICER BRADY:

17 Mr. Nash?

18 MR. NASH:

19 I do.

20 RE CROSS EXAMINATION

21 BY MR. NASH:

22 Q. So you can read meters automatically now?

23 A. Not now, but we're installing a system where we can.

24 Q. So you don't have to go to the meter?

25 A. Yes, we still do.

1 Q. What's the point of the automatic meter reading, then?
2 A. The automatic meter reading is not to supplant or
3 replace Commission regulations. We're still required,
4 on a very periodic basis, to visit those facilities in
5 order to inspect them and make sure that they're safe.
6 Q. A follow-up to Mr. Pinney's question, the span of the
7 line that goes across - does the line go across the
8 river or is it under water?
9 A. No. There's probably a span across the river; yes.
10 Q. How do you service it if it breaks in the middle or if
11 you have a problem in the middle?
12 A. Well, how would we . . .
13 Q. How do you service the line if you have a problem right
14 in the middle of the river?
15 A. What one would have to do, first of all, there's a
16 redundant service there. The service at the river is
17 not required for service. We have access to the poles
18 on either side of the river.
19 Q. I know but I'm not talking about that. I'm talking
20 about in the middle of the river.
21 A. Okay.
22 Q. How do you service that?
23 A. If that was to go down, how would we replace that?
24 Q. When you get a break in it or, you know, a fray in the
25 middle of the river.

1 A. The span would have to be replaced.
2 Q. From either side?
3 A. From either side.
4 Q. So you don't actually have to have a vehicle access
5 below every power line in your system?
6 A. Only if we were to replace an existing - put something
7 like a repair splice or something like that.
8 Q. But you don't have that kind of access to this power
9 line that crosses the river?
10 A. No, not that one; no.
11 Q. You have to pull it from one side or the other?
12 A. We would replace it.
13 Q. Right. Okay.
14 MR. NASH:
15 That's all, Judge.
16 A. But that's assuming, of course, we had access for our
17 equipment on either side of the river.
18 Q. I understand. Access at the pole?
19 A. Uh-huh.
20 MR. NASH:
21 Right. Okay. That's all, Judge.
22 HEARING OFFICER BRADY:
23 Mr. Pinney?
24 MR. PINNEY:
25 No further questions, Your Honor.

1 HEARING OFFICER BRADY:

2 Mr. Thomas?

3 MR. THOMAS:

4 That does raise one question, Judge.

5 REDIRECT EXAMINATION

6 BY MR. THOMAS:

7 Q. Mr. Messer, in order if a line were to split in the
8 middle, you would not send someone out into the middle
9 of the river to splice that line; would you?

10 A. No, we would not.

11 Q. How would you go about the process of removing that
12 span and replacing it with a new span?

13 A. What one would have to do is, first, you would have to
14 get bucket trucks and digger trucks to each of the
15 poles on either side of the river and replace - pull
16 out the old span and, as you're pulling out the old
17 span, pull in a new span in behind it.

18 Q. And, when you replace the old span, that would be done
19 through the use of trucks and hydraulics to roll up the
20 now damaged span?

21 A. It would be done exclusively through the use of trucks
22 and hydraulics and other equipment, powered equipment.

23 MR. THOMAS:

24 I don't have anything further, Your Honor.

25

1 would set up that equipment, one of the ways that we
2 would do that is - the line is deenergized - we would
3 basically tie ropes to one side of the pole and have a
4 winch powered trailer that we could then disconnect the
5 line on the other side and start taking up that wire,
6 and then it's going to pull the rope across at the end
7 of the section of line that we are retiring, and then
8 we're going to use that same rope to pull the new span
9 across, and then lift it up with the power equipment on
10 either side of the river at the poles where we can get
11 vehicles to them, and then reattach them back to the
12 poles.

13 HEARING OFFICER BRADY:

14 Thank you. I had often wondered how you did that.

15 Now, any other questions as a result of mine?

16 RE CROSS EXAMINATION

17 BY MR. NASH:

18 Q. The same system would work, I guess, if there was a
19 pole at the bottom of the cliff and a pole at the top
20 of the cliff and you had truck access on both ends.
21 You could do the same thing. You wouldn't have to
22 actually get up on the cliff. You can pull it that
23 way.

24 A. If you had truck access at both ends.

25 Q. Okay. All right.

1 A. That is digger derricks, buckets, winch powered
2 trailers, service trucks.

3 MR. NASH:

4 I understand. That's all, Judge.

5 MR. PINNEY:

6 No further questions, Your Honor.

7 MR. THOMAS:

8 Nothing further, Your Honor.

9 HEARING OFFICER BRADY:

10 I think this means you get to step down, Mr.
11 Messer.

12 A. Thank you.

13 HEARING OFFICER BRADY:

14 You have another witness?

15 MR. THOMAS:

16 Yes, Your Honor, I have two.

17 HEARING OFFICER BRADY:

18 Okay.

19 MR. THOMAS:

20 The next witness is Todd Peyton.

21 HEARING OFFICER BRADY:

22 All right.

23 WITNESS SWORN

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The witness, TODD PEYTON, after having been first
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Can you please state your name for the record?

A. Todd Peyton.

Q. And can you spell your last name, Mr. Peyton?

A. P-e-y-t-o-n.

Q. And are you employed by Clark Energy Cooperative?

A. Yes, sir.

Q. On June 12 of this year, did you sign and execute a
Verified Direct Testimony document in front of a
Notary?

A. Yes, sir.

Q. And did that Verified Direct Testimony contain your
answers to questions that were asked of you?

A. Yes, sir.

Q. And were those answers true and correct responses made
by you in response to those questions?

A. Yes, sir.

Q. Do you wish, at this time, to adopt that testimony and
make it part of your testimony here today?

A. Yes, sir.

MR. THOMAS:

Judge, with that, I would once again ask that it

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be introduced.

HEARING OFFICER BRADY:

All right. Mr. Nash?

MR. NASH:

Okay.

CROSS EXAMINATION

BY MR. NASH:

Q. Mr. Peyton, a pole count. It looks like, according to your testimony, you were out there with Mr. Messer in October of '99. Do you remember the day?

A. The date?

Q. The date.

A. I'm not sure of the exact date.

Q. Do you have any notes or anything that show that, records?

A. For the exact date, no.

Q. All right. Well, anyway, you remember going out there with Mr. Messer; correct?

A. Yes, sir.

Q. You went to Mr. Hanley's house?

A. Yes.

Q. And you saw that there was a pole which was the last pole that provided electricity to Mr. Hanley?

A. Yes, sir.

Q. And then, beyond that, there was another pole at the

1 edge of Mr. Hanley's field; is that correct?

2 A. Yes, sir.

3 Q. Okay. But there was no line running between those two
4 poles, or was there?

5 A. There was no line that went beyond the pole at the edge
6 of the field.

7 Q. So there was line from Mr. Hanley's house to the pole
8 at the edge of the field but no line beyond that that
9 you saw?

10 A. That's correct.

11 Q. Okay. Now, the pole at the edge of the field, was it
12 of the same vintage as the pole at Mr. Hanley's house,
13 the same kind of pole?

14 A. In appearance.

15 Q. Okay. And, for both of those poles, you could drive a
16 vehicle to both of those poles; correct?

17 A. Yes, sir.

18 Q. All right. And then, from there, I think, according to
19 your testimony, is where there was no line, and it sort
20 of went down into the forest?

21 A. That's correct.

22 Q. And you found three poles up there, two broken and a
23 third that was leaning?

24 A. That's correct.

25 Q. Okay. So that's two broken, one leaning, that's three,

1 one at the edge of the field that you can drive to,
2 that's four, one at Mr. Hanley's house, that's five.
3 Is that accurate?
4 A. From what you said, that would be five poles.
5 Q. Well, I'm asking you from what your memory is. Is that
6 the way you remember it?
7 A. That would have been five poles; yes.
8 Q. Okay. Were those the only five poles up on the higher
9 level before you got down to the level of the Point, or
10 were there more poles than that on the higher level?
11 A. There were, from memory, approximately maybe two other
12 structures on the high level, as you call it.
13 Q. Okay. And then, down on the level of the Point - are
14 you with me when I'm saying "the same level as the
15 Point"?
16 A. Yes, sir.
17 Q. Do you remember how many poles were down here by your
18 observation?
19 A. From memory, I'll say there were two additional poles
20 on the lower level, as you call it.
21 Q. Okay. And those poles were standing up straight?
22 A. I believe the poles on the lower level were standing.
23 Q. Okay. Did you remove those metal tags from the poles?
24 A. The metal tags that were removed were simply the
25 identification tags that say "Clark RECC."

1 Q. You removed them?
2 A. Yes, sir,
3 Q. And disposed of them?
4 A. Yes, sir.
5 Q. And there's no record of them any more?
6 A. No.
7 Q. And you did that in '99?
8 A. That was done in . . .
9 Q. 2000?
10 A. As part of the inspection of that line after the
11 contractors had accomplished their work.
12 Q. That was done after they cut down the poles?
13 A. Yes, sir.
14 Q. Were you aware, at that time, that there was some
15 dispute or that Vaughn was expressing displeasure about
16 this whole situation?
17 A. At that point, it was simply a retirement of an
18 abandoned line.
19 Q. You weren't aware of any dispute at that point in time?
20 A. No.
21 MR. NASH:
22 Okay. That's all I have, Judge.
23 HEARING OFFICER BRADY:
24 Thank you. Mr. Pinney?
25

CROSS EXAMINATION

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BY MR. PINNEY:

Q. Mr. Peyton, did you recommend the retirement of that line or did somebody else tell you to retire that line?

A. It was a recommendation of Mr. Messer that that line be completely retired.

MR. PINNEY:

Okay. No further questions, Your Honor.

HEARING OFFICER BRADY:

Mr. Thomas?

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. What were your observations, Mr. Peyton, with respect to the condition of that line?

A. That line was in very poor condition as well as the poles that were broken, as I had stated. A conductor was missing. It was grown into the trees, suspended by the trees. There was no obvious right-of-way at all. You could not tell that there was even a line there just from observation.

MR. THOMAS:

I don't have anything further, Your Honor.

HEARING OFFICER BRADY:

Mr. Nash?

1 RE CROSS EXAMINATION

2 BY MR. NASH:

3 Q. When you made this inspection, you followed the path of
4 the poles and the lines; correct?

5 A. I followed the path of least resistance to be able to
6 basically walk through the area, because there was no
7 way to actually tell where the line was. It was least
8 resistance.

9 Q. Did you ever walk down this road leading from Dr.
10 Hanley's property down to the bottom of the level of
11 the Point?

12 A. I'm not aware of any road whatsoever.

13 MR. NASH:

14 Okay. All right. That's all.

15 HEARING OFFICER BRADY:

16 Mr. Pinney?

17 MR. PINNEY:

18 No further questions, Your Honor.

19 HEARING OFFICER BRADY:

20 Mr. Thomas?

21 MR. THOMAS:

22 Nothing further, Your Honor.

23 HEARING OFFICER BRADY:

24 I believe that means you can step down, sir.

25 A. Okay. Thank you.

1 MR. THOMAS:

2 I have one other witness, Your Honor.

3 HEARING OFFICER BRADY:

4 All right, sir.

5 MR. THOMAS:

6 I'll go get Mr. Maynard.

7 WITNESS SWORN

8 HEARING OFFICER BRADY:

9 Thank you. Have a seat, please, sir. Mr. Thomas?

10 MR. THOMAS:

11 Thank you, Your Honor.

12 The witness, JAMES MAYNARD, after having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. THOMAS:

16 Q. Can you please state your name for the record, sir?

17 A. James Maynard.

18 Q. And, if you would, spell your last name.

19 A. M-a-y-n-a-r-d.

20 Q. Mr. Maynard, on June 12, do you remember signing a
21 Verified Direct Testimony document?

22 A. Yes.

23 Q. Did you have a chance to review the answers to the
24 questions that were contained in that document?

25 A. Yes.

1 Q. And are they true and accurate?
2 A. Yes.
3 Q. At this time, do you wish to adopt those as your
4 testimony in this matter today?
5 A. Yes.
6 Q. Are there any additions, corrections, or deletions that
7 you would like to make with respect to that testimony?
8 A. No, other than, you know, commenting on the unsafe
9 condition of, you know, working any of the line.
10 Q. Okay. And I think that's contained in your statement.
11 A. Is it? Okay.
12 MR. THOMAS:
13 Thank you, Your Honor.
14 HEARING OFFICER BRADY:
15 Mr. Nash?
16 CROSS EXAMINATION
17 BY MR. NASH:
18 Q. Mr. Maynard, my name is Patrick Nash. I represent
19 Vaughn Taylor, . . .
20 A. Yes, sir.
21 Q. . . . the complainant in this case. We've not met.
22 You work for Davis Elliot?
23 A. Yes.
24 Q. Tell me what Davis Elliot does.
25 A. It's an electrical contractor that does work for power

1 companies.

2 Q. Okay. Is Clark one of David Elliot's big customers?

3 A. Yes.

4 Q. Do you have any idea what percentage of Davis Elliot's
5 business Clark represents?

6 A. Oh, percentage-wise, it probably wouldn't be maybe one
7 percent.

8 Q. Only one percent of Davis Elliot's business?

9 A. Yeah, because they're working, you know, several
10 states.

11 Q. Oh, I see. Okay. And what's your position?

12 A. A foreman.

13 Q. How long have you been doing that job?

14 A. Well, foreman, I've been doing about eight years.

15 Q. And then how long before that have you worked in this
16 industry?

17 A. About 20-22 years, since '78, I believe it is.

18 Q. Okay. In those years, I take it, you're out in the
19 field quite a bit working on power lines and poles?

20 A. Yes.

21 Q. Is there always a road running underneath every power
22 line?

23 A. Oh, pretty much.

24 Q. I'm talking about underneath the spans now.

25 A. Oh, no, not underneath. Along beside of or . . .

1 Q. Nearby?

2 A. Nearby, yes.

3 Q. Okay. Have you ever seen any 35 foot poles in use?

4 A. Yes.

5 Q. The wire that was removed from - I guess it's better
6 called conductor that was removed from this property,
7 have you ever seen any conductor like that in use?

8 A. The type of wire, you're talking about?

9 Q. Yeah.

10 A. Yes.

11 Q. Did you walk this whole route? Did you observe this
12 whole power line route before it was cut down?

13 A. I just walked it as we were taking it down.

14 Q. Okay. So you've seen it all?

15 A. Yes.

16 Q. Okay. We've just heard testimony that the first pole
17 was actually still providing electricity to somebody's
18 house, and then there was a pole beyond it at the edge
19 of a field that didn't have any electricity to it. Is
20 that your memory?

21 A. Yes.

22 Q. Now, beyond that pole that was at the edge of the
23 field, do you remember how many poles there were on the
24 higher level?

25 A. It seemed like it started over hill from that point.