

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

KATHERINE VEILLEUX, :
JENNIFER CHON, and ROCK :
COAST FAMILY ACUPUNCTURE, :
PA, individually and on :
behalf of all others :
similarly situated, :
:
Plaintiffs :
:
vs. : Civil Action No.
:
1:16-cv-571-NT
:
ELECTRICITY MAINE, LLC, :
PROVIDER POWER, LLC, :
SPARK HOLDCO, LLC, :
KEVIN DEAN, and :
EMILE CLAVET, :
:
Defendants :

TRANSCRIPT OF DEPOSITION OF EMILE L. CLAVET,

DESIGNATED REPRESENTATIVE OF PROVIDER POWER, LLC

Taken pursuant to Plaintiffs' Amended Notice of
Deposition of Electricity Maine, LLC and Provider Power
LLC Pursuant to Fed. R. Civ. P. 30(b)(6) dated April 4,
2018, at the offices of Hallett Whipple Weyrens, 6 City
Center, Portland, Maine on April 30, 2018, commencing at
9:42 A.M. before Christina J. Duvernay, a Court Reporter
and Notary Public commissioned by the State of Maine.

APPEARANCES:

For the Plaintiffs: BENJAMIN N. DONAHUE, ESQ.
ROBERT P. CUMMINS, ESQ.
THOMAS F. HALLETT, ESQ.

For the Defendants: MELISSA A. HEWEY, ESQ.
JOHN J. AROMANDO, ESQ.
KATHERINE KAYATTA, ESQ.

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OF PROVIDER POWER, LLC

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(Exhibits 2, 3, 7, 8, 14 - 24, and 36 - 41 were
provided to the reporter in electronic format
only. Counsel were each provided with a thumb drive
containing these exhibits.)

1 STIPULATION

2 It is hereby agreed by and between the parties that
3 signature is not waived.

4 * * * * *

5 EMILE L. CLAVET, having been duly sworn by the
6 Notary Public, was examined and deposed as follows:

7 EXAMINATION

8 BY MR. DONAHUE:

9 Q. Mr. Clavet, is it Kla-VET [phonetic] or KLA-vet
10 [phonetic]?

11 A. Kla-VET [phonetic].

12 Q. You're here today to testify on behalf of Provider
13 Power; is that correct?

14 A. Yes.

15 Q. Are you currently employed by Provider Power?

16 A. It's an open empty shell, not employing anybody,
17 including me, at this point.

18 Q. Are you an equity owner in Provider Power?

19 A. Yes.

20 Q. You said it's an open empty shell.

21 A. Yes.

22 Q. What does that mean?

23 A. It doesn't have any assets or business or activity.

24 Q. When was the last time that Provider Power had some
25 sort of business activity?

1 A. With Electricity Maine.

2 Q. And after it sold Electricity Maine in 2012, is
3 that when it ceased operating?

4 A. Well, it's still open and active with no activity.

5 Q. Okay. Does Provider Power have knowledge of
6 Electricity Maine's operations as they happen
7 today?

8 A. No.

9 Q. To what point in time does Provider Power have
10 knowledge of Electricity Maine's business
11 operations?

12 A. When we were operating Electricity Maine, we had
13 Provider Power as a holding company shell, but the
14 activity was really all Electricity Maine. In that
15 I owned half of Electricity Maine and owned half of
16 Provider Power, I would know generally what's going
17 on until after the sale.

18 Q. Okay. But is Provider Power aware of, for example,
19 what Electricity Maine is doing right now or what
20 it did last week?

21 A. No.

22 Q. Okay. You said that even when it owned Electricity
23 Maine it was a shell; is that correct?

24 A. Right.

25 Q. Did it have any employees at that time?

1 A. I don't think so. It wasn't originated to have
2 employees. It was just the way to own Electricity
3 Maine.

4 Q. Did it own any other companies?

5 A. It owned ENH Power in New Hampshire and the entity
6 in Massachusetts.

7 Q. What was the name of that entity?

8 A. Provider Power Massachusetts.

9 Q. And that was the extent of Provider Power's assets?

10 A. Yes.

11 (Exhibit 1 marked for identification.)

12 Q. I'm showing you what has been marked as Exhibit
13 Number 1.

14 MR. DONAHUE: I only have four copies.

15 (Discussion off the record.)

16 Q. Have you seen Deposition Exhibit Number 1 before?

17 A. Yes.

18 Q. Can you tell me what it is?

19 A. It's telling us to have depositions for Electricity
20 Maine and Provider Power, where and when.

21 Q. Have you reviewed this document prior to today?

22 A. Yes. Yes.

23 Q. Have you reviewed what's labeled Exhibit A?

24 (The deponent looked at the exhibit.)

25 A. I read through the questions, yes.

1 Q. The deposition subject matters?

2 A. Yes.

3 Q. Are you prepared to discuss these 21 topics --

4 A. Yes.

5 Q. -- with me today?

6 A. Yes.

7 Q. All of them?

8 A. To the best of my ability, yes.

9 Q. What have you done to prepare to discuss these
10 topics with me today?

11 A. I read this, I took a look at the old terms and
12 conditions so that I could reacquaint myself with
13 them. It had been a while. Not much else, but
14 just a few basic documents that I was able to find
15 on line.

16 Q. Okay. And terms and conditions was one of those
17 documents?

18 A. Yes.

19 Q. What else?

20 A. The website. I took a look at the website to
21 re-familiarize myself with that.

22 Q. Okay. Is that it?

23 A. That's pretty much it.

24 Q. Did you talk to anyone?

25 A. My attorney.

1 Q. Anyone besides your attorney?

2 A. No.

3 Q. When you were -- when Provider Power owned
4 Electricity Maine, were you, Mr. Clavet,
5 compensated by Electricity Maine?

6 A. I don't remember which entity we drew our paychecks
7 through, but I would say it was by Electricity
8 Maine.

9 Q. Not Provider Power?

10 A. My recollection is that everything originated with
11 Electricity Maine, so that's where I would have
12 gotten my first paychecks.

13 Q. When did Provider Power -- what date did it -- was
14 it formed?

15 A. I don't remember, but it was sometime after
16 Electricity Maine got going.

17 Q. Sometime in 2012?

18 A. I don't recall the date.

19 Q. Is Provider Power familiar with Electricity Maine's
20 business operations before Provider Power was
21 formed?

22 A. I don't understand the question.

23 Q. Are you prepared to discuss Electricity Maine's
24 business operations before Provider Power was
25 formed?

1 A. Yes.

2 Q. After you sold -- after Provider Power sold
3 Electricity Maine to Spark Holdco, were you
4 compensated by Spark?

5 A. Yes.

6 Q. In what form?

7 A. It was a consulting agreement.

8 Q. Tell me about that.

9 A. They paid me for a year. It was about 10 or 11
10 thousand dollars a month for a year.

11 Q. Anything else?

12 A. No.

13 Q. When did Provider Power become aware of this
14 lawsuit?

15 A. I would suppose at the same time that Electricity
16 Maine became aware of it.

17 Q. Is it when you received a copy of the complaint?

18 A. Yes.

19 Q. Okay. Do you recall when that was?

20 A. No.

21 Q. When did you do to preserve documents after
22 learning about this lawsuit?

23 A. Well, we learned about the lawsuit and Spark would
24 have been preserving documents, because they had
25 taken control.

1 Q. So what did Provider Power do?

2 A. Nothing in particular.

3 Q. You didn't do anything to preserve documents that
4 might be relevant to this lawsuit?

5 A. Well, everything was preserved in that everything
6 we had was preserved. I'm not sure I understand
7 the question of what did I do.

8 Q. Okay. So does Provider Power have a web page?

9 A. It may have.

10 Q. Did Provider Power make changes to that web page
11 after this lawsuit was initiated?

12 A. No. No.

13 Q. Did Provider Power employees have e-mail addresses?

14 A. I don't recall who would have been an employee of
15 Provider Power versus Electricity Maine.

16 Q. So if an employee has an e-mail address that's
17 atProviderPower.com or something similar, those --
18 that website domain is actually Electricity Maine's
19 and not Provider Power's even though it says
20 "Provider Power?"

21 MS. HEWEY: Object to the form.

22 A. I'm not sure what you're asking. And I -- I
23 wouldn't know who owns a website other than my
24 routine operation would be that Electricity Maine
25 was the operating company and Provider Power was

1 just a holding company. So there may have been
2 some duplicate stuff, but Electricity Maine and ENH
3 Power were the real companies.

4 Q. Okay. So if employees had e-mail addresses that
5 were -- that said "Provider Power" or
6 atProviderPower.com, that person, whether it's you
7 or another person with that e-mail address, you're
8 saying that those are Electricity Maine employees
9 and not Provider Power employees?

10 MS. HEWEY: Object to the form of the
11 question.

12 Go ahead.

13 A. I'm not saying they're employees. I'm just saying
14 I don't recall if a Provider Power e-mail address
15 was unique to anything that would have just been
16 Provider Power; more that it would reflect what
17 Electricity Maine was doing.

18 Q. So let's assume that Provider Power had some
19 e-mails -- it had employees and those employees
20 sent e-mails. Did you do anything to preserve
21 those e-mails?

22 A. They would have been preserved.

23 Q. What steps did you take to preserve them?

24 A. We would have given access to all of that to an
25 inquiry. If it was requested, we wouldn't have

1 taken anything down or away or -- except in the
2 normal course of business of selling the asset and
3 not continuing a particular piece that wasn't
4 serving them. "Them" being Spark.

5 Q. Did Provider Power have a Facebook page?

6 A. I don't know. I would mostly focus on the fact
7 that Electricity Maine would have had a Facebook
8 page.

9 Q. Did it have a youtube page?

10 A. I don't recall a youtube page, but I wouldn't be
11 surprised if it had one.

12 Q. Provider Power had one?

13 A. I don't know that they did or didn't, but those
14 types of social media were common to have. So if
15 there was one, then I wouldn't be surprised by it,
16 but I don't recall if there was one still
17 available.

18 Q. So you said that all of the -- at least a lot of
19 Provider Power's information was transferred to
20 Spark; is that correct?

21 A. They bought all of the assets and intellectual
22 property and rights and all of the things that you
23 would assume they would have wanted to do their
24 business, and we sold it to them.

25 Q. Okay. So would that include past communications

1 between Provider Power employees?

2 A. I would assume that if you asked for it, we gave it
3 to you. And if you asked for that, you got it.

4 Q. I'm not asking what you gave us just yet.

5 If there were communications between Provider
6 Power employees, Spark has those now? Is that what
7 you're saying?

8 A. I would assume so. I would believe so.

9 Q. Okay. And do you know what Spark has done to
10 preserve evidence in this case?

11 A. Not specifically all of the pieces that they
12 control; but from what I understand and what I have
13 been told, they compiled everything per the request
14 and delivered it.

15 Q. Okay. Do you have a personal e-mail address?

16 A. Yes.

17 Q. What is it?

18 A. I have one I set up just a few months ago.
19 Eclavet6@gmail.com.

20 Q. Did you have a personal address before then?

21 A. No.

22 Q. No personal e-mail address?

23 A. No.

24 Q. Back to 2011, you never had --

25 A. Never.

1 Q. -- a personal e-mail address?

2 A. No.

3 MR. DONAHUE: I have an exhibit here, guys,
4 that's a spreadsheet and rather than printing it
5 out for everyone I figured I'd just put it up here
6 and we'll identify it by Bates stamp number and it
7 can be put in the record.

8 MS. HEWEY: Sounds like -- makes sense to me.

9 MR. DONAHUE: Can people see that at all?

10 MR. HALLETT: The numbers are missing over on
11 --

12 MR. DONAHUE: Yeah, it's a little bit
13 smaller.

14 MS. HEWEY: I think the witness -- can you
15 see that?

16 THE DEPONENT: Yeah, I can see it. There's
17 just a little glare, but I can lean forward.

18 MR. AROMANDO: What's the Bates reference?

19 MR. DONAHUE: This is Defendant's 271. The 1
20 is funky. It doesn't appear when you look at the
21 document in the file, but then when you open it up,
22 there's a 1 on it. So it looks like it's 27, but
23 when you open it up, it says 271.

24 This will be Deposition Exhibit Number
25 2.

1 (Exhibit 2 identified.)

2 MR. CUMMINS: So the deposition exhibit will
3 be XL-271?

4 MR. DONAHUE: Defendant's 271.

5 Q. So Mr. Clavet, I'm going to represent to you that
6 this was produced to us in discovery and this
7 appears to be -- I'm hoping you can tell me what
8 this is. It appears to be account information for
9 the named plaintiffs in this case.

10 Can you tell me a little bit about what we're
11 looking at here?

12 A. If you're telling me it's the named plaintiffs,
13 then I would assume that there are three of them?

14 Q. Yes.

15 A. So there are three lines.

16 Q. Okay.

17 A. I'm reading the way that it was formatted across
18 the top, where it gives you customer numbers and
19 service location numbers, meter numbers, account
20 numbers.

21 Q. So let's look at this Column I. It says "meter
22 service start date."

23 Can you tell us what that is?

24 A. A meter service start date, I would assume is when
25 the customer started service with Electricity

1 Maine.

2 Q. Okay.

3 A. And those would be dates: months and year.

4 Q. Okay. So for this customer, they started March 10,
5 2012 and ended September 12, 2017?

6 A. That's what this report would indicate.

7 Q. Now, what about the ... actually, hold on.

8 Can you tell us -- I'm going to the next page
9 of the spreadsheet here. Can you tell us what the
10 contract effective date is?

11 A. The contract effective date would be the date that
12 the contract with the customer would have started,
13 which would, per normal course of business, be
14 sometime after they enrolled and the utility would
15 have made Electricity Maine the supply company.

16 Q. Okay. So it's not the date that they sign up.

17 A. Correct.

18 Q. It's the date when their service switches from
19 utility to Electricity Maine.

20 A. I believe that's what that it.

21 Q. And when they are re-enrolled or renewed, there's a
22 new contract date? Is that correct?

23 A. Yes.

24 Q. So I'm going to the next page here --

25 MS. HEWEY: Could you just -- for the record

1 just say which tab it is?

2 MR. DONAHUE: Sure. This is -- the one we
3 were just looking at was called "contract history"
4 and this is titled "invoices post CIS conversion."

5 Q. I'm looking at Column N. It says "item service
6 start." Can you tell us what that is?

7 A. I'm not sure what that item is unless it refers to
8 a particular invoice on that tab. Item service
9 start, item service end. I believe that's a
10 particular month invoice start and end date. I'm
11 judging that from the start and end dates looking
12 like they're a month and that being an invoice tab.

13 Q. Let's go back to "contract history" for a second
14 here.

15 I'm back on the "customer info" tab and I'm
16 looking at Column X, where it says "salesperson
17 code."

18 Can you tell us what that column represents?

19 A. That would be a -- my belief is that that's a tab
20 that the customer, when enrolled, would have chosen
21 as to how they came to hear about Electricity
22 Maine.

23 Q. So this person -- this is like a referral or a
24 reference code?

25 A. Yes.

1 Q. So Electricity Maine asks customers, when they sign
2 up, how they came to hear about Electricity Maine?

3 A. Yes.

4 Q. Okay. I'm going to close Defendant's 271.

5 I'm now looking at another spreadsheet, which
6 is not something that was produced in discovery,
7 but it's been excerpted from two different
8 documents that you provided us in discovery. This
9 document is titled "extracts defendant's 5171 and
10 51752."

11 MS. KAYATTA: Should that be 5172? We don't
12 have a Bates range that goes as --

13 MR. DONAHUE: I think some of your Bates
14 numbers had an extra digit. Like that last one we
15 looked at. We can discuss that off the record.

16 Q. Okay. So --

17 MR. HALLETT: Is this an exhibit?

18 MR. DONAHUE: Yes, this is an exhibit. This
19 is Exhibit Number 3.

20 (Exhibit 3 identified.)

21 MS. HEWEY: Are you going to provide us with
22 a copy of Exhibit Number 3?

23 MR. DONAHUE: I guess you can have one.

24 Q. Okay. So let's look at where it says "contract
25 effective date." That's something we looked at in

1 the Defendant's -- Exhibit Number 2 and you said
2 that was when service switched from utility to
3 Electricity Maine; is that correct?

4 A. Or another supplier perhaps.

5 Q. Okay.

6 A. That would be my belief.

7 Q. Okay. Now, how does that relate to the column that
8 -- in the other spreadsheet that said "meter
9 service start date?"

10 MS. HEWEY: Object to the form of the
11 question.

12 If you understand it, you can answer it.

13 Q. What does "meter service start date" stand for?

14 (The deponent looked at a document.)

15 A. I would expect that the meter service start date is
16 the date on which you would start measuring
17 electricity for that --

18 Q. Should that line up with the contract effective
19 date?

20 MS. HEWEY: Wouldn't it be easier to show him
21 his own exhibit rather than your extract?

22 MR. DONAHUE: Yeah, except it's really hard
23 to compare the two. We can try, but ...

24 Q. I'm going to represent to you, Mr. Clavet, that in
25 the information you provided us, sometimes the

1 contract effective date varies drastically -
2 perhaps by a couple years - from the meter service
3 start date. I'm just trying to figure out why
4 there would be like a two-year delay between those
5 two things when it seems that they should be
6 occurring, you know, around the same time period.

7 A. I would suspect that it could be times where
8 customers' contracts are -- are changed per their
9 request or at a renewal or at gap times when the
10 terms changed. I can't tell you specifically
11 because I had IT folks who specialized in matching
12 those. We hired people to do that. So I'm not
13 sure how those got tied together. I understand
14 your question, but I'm not sure what some of the
15 reasons might be why they wouldn't exactly match
16 up.

17 Q. Okay. But what you're saying is that typically
18 they should be relatively close in time to each
19 other.

20 A. I would think that when you get a new customer and
21 you have a start date and a contract date, they
22 would have a correlation. I don't know what other
23 things might have happened along the way where
24 customers' contract periods might vary and how
25 that's carried to relate to the meter start date.

1 Q. Okay. You just talked about some IT people. Who
2 would those people be?

3 A. Primarily ESCO Advisors and EC Infosystems would be
4 the two primary companies that we hired to manage
5 the data.

6 Q. Where are they based? Here in Maine?

7 A. No. I'm not sure where they're based. Not in
8 Maine. I would assume Texas-ish. I don't recall
9 where their home base is. I know one of them had
10 even moved. We could find it on their websites
11 quickly.

12 Q. So when did Electricity Maine start its business
13 operations?

14 A. Well, we started the business concept somewhere
15 around 2010.

16 Q. Okay. And the purpose of Electricity Maine was to
17 sell power to residential consumers?

18 A. And small business and medium-size business as
19 well.

20 Q. What's the technical term for a small business
21 customer? Is it small commercial or ... I know
22 there's a special term; an industry term that small
23 business is kind of classified as.

24 A. All the utilities have their own names and their
25 own terms. Picking CMP for one would be SBS:

1 Small Business Service. NGS would be a medium. I
2 forget the acronym for large.

3 Q. And what about Bangor Hydro.

4 MS. HEWEY: What do you mean, what about
5 them?

6 Q. What's their term for a small business customer?

7 A. I think they use the same. I'm not positive. I
8 think we use the same. And you mean Emera.

9 Q. Yeah, Emera.

10 So when did Electricity Maine actually go
11 live? When did it start providing power to
12 consumers?

13 A. Probably in the middle or the end of 2010. We had
14 a very few accounts at the beginning to kind of do
15 a beta, to see how the data would flow.

16 Q. At that time who provided power to residential
17 customers in Maine besides you were providing a
18 small amount to beta customers?

19 A. There was standard offer service and there were a
20 few other CEPs.

21 Q. Do you know what percent of customers were enrolled
22 in standard offer service at that time?

23 A. A large percentage, but I don't know exactly.

24 Q. When did Electricity Maine start advertising?

25 A. Not long after we started the business in 2010. It

1 could have been into '11 where we started spending
2 money, but it could have been towards the end of
3 2010.

4 Q. What type of advertising did you do at first?

5 A. Probably newspaper. I think radio came later;
6 television even later than that.

7 Q. Was there any radio advertising in 2011?

8 A. I don't recall when it started. I wouldn't be
9 surprised if there was, but I don't remember when
10 it started; when we tried radio.

11 Q. How did Electricity Maine create its promotional
12 material? Was it done in house or did you use a
13 third party marketing firm?

14 A. Some of it was done in house, some of it was done
15 with the help of the individual places that we
16 would advertise. They would lend help.

17 Q. And that was at first?

18 A. Throughout our time, a typical newspaper would say
19 here's some samples of ads; something at this size
20 would cost this much and we can make it in
21 this-many colors or we can, you know, sell you this
22 many if you buy this many at this price. They
23 would give you help in trying to come up with
24 advertising.

25 Q. Okay. And who created the content that was

1 ultimately distributed?

2 A. We would do it in house or we would hire people who
3 were good at design to help make them attractive.
4 We would -- once we got to television ads, the
5 television station would add creative elements to
6 it.

7 Q. And who were -- who was part of your in-house
8 marketing team?

9 A. It changed over time. We had a few people in the
10 department that had -- that took care of different
11 pieces of the business. Candace Sanborn was the
12 head of our marketing department and she would
13 generally have three, six, people working with her;
14 some in house and some out.

15 Q. What are the names of those people?

16 MS. HEWEY: You're asking throughout the
17 entire time?

18 MR. DONAHUE: Yes.

19 A. I won't be able to come up with all of them, but
20 some of them would --

21 Q. -- start back in 2011. Who was part of the
22 marketing team at that point?

23 A. It would have been perhaps Danielle Beckwith,
24 Ashley Rand. Then we brought in Candace Sanborn
25 and Will Fessenden.

1 Q. When did they join Electricity Maine?

2 A. Probably in the '12/'13 area. 2012/2013 time
3 frame.

4 Danielle Beckwith was the first employee of
5 Electricity Maine.

6 (Exhibit 4 marked for identification.)

7 Q. I'm showing you what has been marked as Exhibit 4.

8 Are you familiar with this document?

9 (The deponent looked at Exhibit 4.)

10 A. Yes.

11 Q. Can you tell us what it is?

12 A. It looks like a request from Mitch Tannenbaum at
13 the Maine PUC to Electricity Maine asking us a
14 series of questions about advertising.

15 Q. And it's complete with your responses; is that --

16 A. Yes.

17 Q. Okay. So the PUC inquired with these questions and
18 then, in this document, you responded.

19 A. Yes.

20 Q. And what was the date of your response?

21 (The deponent looked at Exhibit 4.)

22 MS. HEWEY: You're asking what the date --

23 MR. DONAHUE: When did he send this
24 correspondence to the MPUC.

25 A. I don't see a date on this particular letter. I'm

1 looking for a clue as to when that might have been
2 sent.

3 (The deponent looked at the exhibit.)

4 A. I don't know that I can tell from this.

5 Q. In the first paragraph it says on [reading] On
6 behalf of Electricity Maine I'm writing to respond
7 to your letter of May 8, 2013 requesting --

8 A. Oh. Yes.

9 Q. Okay. So let's assume it's sometime after May 8th.

10 A. Yes.

11 MS. HEWEY: And probably before May 24th,
12 when it was received by the PUC.

13 MR. DONAHUE: Perfect.

14 MS. HEWEY: Not that I want to help or
15 anything, but we can move on.

16 Q. So let's go down -- in question 1, let's go down to
17 the third paragraph in response to question 1. It
18 says [reading] Electricity Maine radio promotions
19 take several forms. Occasionally Electricity Maine
20 will produce its own ads of 30 to 60 seconds that
21 it provides to radio stations to run. Electricity
22 Maine has also provided scripts of 15, 30, or 60
23 seconds in length for the radio stations to produce
24 with their own local talent. A third category of
25 radio spots are 5-second blinks that are previously

1 recorded and air as scheduled. More frequently
2 Electricity Maine provides radio stations with
3 talking points that are read live on the air or
4 recorded to sound live and played at other times of
5 the day. These live or sound-live spots may then
6 be put into the automated system as part of the mix
7 of commercials.

8 Is that an accurate description of how
9 Electricity Maine promotes on the radio?

10 A. That would have been -- yes, at that time, it would
11 have been.

12 Q. Is that similar to how Electricity Maine promoted
13 on the radio in 2011?

14 A. I don't know what we did in 2011 per se, but this
15 would have been responding to Mitch's question in
16 2013. So I'm sure it was relevant to his question.
17 I don't remember what we did in '11 exactly.

18 Q. Well, you -- you testified that you created
19 material in house.

20 A. Yes.

21 Q. And then it was distributed to various media
22 outlets including radio stations; is that correct?

23 A. Correct.

24 Q. Some of those distributions came in the form of
25 talking points?

1 A. Yes.

2 Q. Some of them came in the form of scripts that would
3 be read by DJs or radio personalities?

4 A. Yes.

5 Q. And that's what Electricity Maine was doing in
6 2013?

7 A. Yes.

8 Q. And in 2011?

9 A. I'm speculating that we may have done some in '11.

10 Q. What about in 2012.

11 A. I don't recall the timing of when those were run,
12 but I know from this --

13 (The deponent pointed at Exhibit 4.)

14 A. -- that that's what we were doing at the time.

15 Q. I'm not asking if you did the promotions that are
16 attached to this exhibit. I'm just asking is that
17 how your advertising process worked in 2012.

18 A. That would have been one of our advertising
19 systems.

20 Q. So let's flip down the exhibit to ... it's not --
21 the pages aren't numbered, but after your response
22 there is -- let's go to the second e-mail that you
23 provided to the MPUC. It's dated February 13,
24 2013.

25 (The deponent looked at the exhibit.)

1 A. Yes. From Will Fessenden?

2 Q. That's correct, yes.

3 Can you tell me about this e-mail?

4 A. Let me take a second to read it.

5 (The deponent looked at Exhibit 4.)

6 MS. HEWEY: Your question was tell me about
7 this e-mail. Do you think you could hone in a
8 little more on that?

9 MR. DONAHUE: Sure.

10 Q. So this e-mail is from Will Fessenden; is that
11 correct?

12 A. Yes.

13 Q. Who is Will Fessenden e-mailing?

14 A. I can't ... that was my question as well.

15 Q. Is Will Fessenden e-mailing various radio stations
16 providing them with talking points?

17 A. I'm supposing he is, but I don't see who he sent it
18 to in here. It says from Will, sent; and the
19 subject and the attachments, I can't tell who it
20 went to.

21 Q. Let's flip to the next e-mail that's contained in
22 this exhibit. It's from Will Fessenden again.

23 MS. HEWEY: March 8th?

24 MR. DONAHUE: Yes.

25 Q. So we have another e-mail from Will Fessenden.

1 A. Yes.

2 Q. This is dated March 8, 2013.

3 Who are the recipients of this e-mail?

4 (The deponent looked at the exhibit.)

5 A. Many of them seem to be radio -- radio people or
6 radio companies or radio sales-type people. That's
7 my speculation.

8 Q. So this e-mail is Will Fessenden distributing
9 talking points?

10 A. Yes.

11 Q. Let's go back to that other e-mail real quick.

12 Is this e-mail that we were trying to figure
13 out who it was sent to before, is this e-mail also
14 Will Fessenden distributing talking points to
15 various radio stations?

16 A. I can't tell. It's not the same day. It is Will
17 Fessenden speaking to somebody.

18 Q. Let's go to the next page. It says Electricity
19 Maine endorsement talking points.

20 MS. HEWEY: The next page after the first
21 e-mail or the second --

22 MR. DONAHUE: The first e-mail.

23 Q. Are these -- is this an example of talking points
24 that were distributed to radio stations?

25 (The deponent looked at the exhibit.)

1 A. It looks like they are.

2 Q. And then the next page, it has "Electricity Maine"
3 at the top?

4 (The deponent looked at the exhibit.)

5 A. Yes.

6 Q. Are these also talking points that were distributed
7 to radio stations?

8 A. I can't tell from this, but they look like they
9 would be.

10 Q. What about the page after that.

11 (The deponent looked at Exhibit 4.)

12 A. They look like they would be as well.

13 Q. And the next page?

14 (The deponent looked at Exhibit 4.)

15 A. I would speculate that it's a talking point. It
16 doesn't give me much information about it.

17 Q. So all of those were examples of talking points
18 that were distributed by radio -- by Electricity
19 Maine to radio stations?

20 A. Some of them look to be.

21 Q. Okay. And this entire exhibit, Exhibit Number 4,
22 this was -- with the information we just looked at,
23 this whole thing was a response to the PUC; a
24 response to their May 8, 2013 inquiry?

25 A. If it's the complete response that I sent, it would

1 be. I got this from you. I assume you have it all
2 there.

3 Q. So your written response is -- is this signed by
4 you?

5 A. The letter is, yes.

6 Q. So attached to that letter are these exhibits; and
7 that's what we were just looking at?

8 A. Correct.

9 Q. And so this entire Exhibit 4 is your written
10 response, with exhibits, to the PUC.

11 A. I would speculate that it might be, having gotten
12 it from you. I know that's my signature --

13 Q. -- sent it to the PUC in 2013.

14 A. I sent a -- I did answer the PUC in 2013.

15 Q. Did you attach all of those exhibits - the talking
16 points and e-mails - along with your response to
17 the PUC?

18 A. I think I did.

19 Q. Did Electricity Maine have any standards or
20 internal guidelines for creating marketing
21 materials, promotional materials?

22 A. I don't know if I understand what you're asking.

23 Q. Well, did anyone -- did you, for example, review
24 Electricity Maine's ads before they were aired?

25 A. We would have gotten legal advice or advice from

1 the PUC.

2 Q. Would you agree that a competitive electricity
3 provider should advertise using accurate and true
4 information?

5 A. Yes.

6 Q. Would you agree that a competitive electricity
7 provider should not omit material information from
8 its advertising?

9 A. Yes.

10 Q. You agree that if a competitive electricity
11 provider omits or misrepresents important
12 information it has a duty to later provide that
13 information to the consumer?

14 A. I think that they have a duty to follow the rules
15 and follow their contracts, yes.

16 Q. Would you agree that a competitive electricity
17 provider that promises savings should in fact
18 deliver on that promise?

19 MS. HEWEY: Objection, form.

20 MR. AROMANDO: Objection.

21 Q. You can answer.

22 A. Could you ask the question again?

23 Q. Would you agree that a competitive electricity
24 provider that enrolls customers on a promise of
25 savings should save those customers money?

1 MS. HEWEY: Same objection.

2 MR. AROMANDO: Same objection.

3 Q. You can answer.

4 THE DEPONENT: I apologize. I'm just not
5 sure what I'm supposed to say when you say some of
6 these things.

7 MS. HEWEY: You get to ignore us.

8 MR. CUMMINS: You just answer the question.

9 A. I think that we should stand by our contracts and
10 if we quote a price, it should be that price. And
11 if there's a savings there, there would be a
12 savings there.

13 Q. Would you agree that if a competitive electricity
14 provider makes statements about price that are
15 misleading it should later correct those
16 statements?

17 A. I can't speak for all electricity providers, but I
18 think that the pricing should be quoted clearly and
19 people should know what price they are paying.

20 (Exhibit 5 marked for identification.)

21 Q. I'm showing you what has been marked as Deposition
22 Exhibit Number 5.

23 (The deponent looked at Exhibit 5.)

24 Q. Can you tell us what Deposition Exhibit Number 5
25 is?

1 A. It looks like a message for a media dated April of
2 2012 in which we were giving away power to a
3 hundred customers and it looks like it was a
4 campaign that was being explained to some media.

5 Q. These are talking points that you distributed to
6 various media outlets?

7 A. They look more like an explanation of what the
8 program was. I don't know that they're talking
9 points. It says it's a message.

10 Q. Can you look at the bottom, where it says "see Page
11 2 for standard media messaging?"

12 A. Yes, I see it.

13 Q. What does standard media messaging mean?

14 A. I don't know what standard means, but in this case
15 it's telling me to go to Page 2 to see what we were
16 announcing so that the media would have a basic
17 understanding of it.

18 Q. And these are not -- you're saying these are not
19 talking points but something you distributed to the
20 media so they would know what your advertising
21 message is going to be?

22 A. Talking points would be different generally than a
23 message to media.

24 Q. Talking points are what we were looking at in
25 Exhibit Number 4.

1 A. Some of those were talking points.

2 Q. Let's look at Page 2 of this exhibit.

3 (The deponent looked at the exhibit.)

4 A. Yes.

5 Q. The second bullet point says [reading] save up to 5
6 percent on your monthly power bill by switching to
7 Electricity Maine.

8 Is that correct?

9 A. I read it, yes.

10 Q. Okay. Now if you go to the fourth bullet point, it
11 says [reading] these 100,000 customers of
12 Electricity Maine will save more than 13 million on
13 their utility bills this year versus what they
14 spent in 2011.

15 Is that correct?

16 A. That's what it says.

17 Q. How did you come to that number; that 13 million?

18 A. I don't recall where that comes from per this
19 letter.

20 Q. You don't recall how you got to the number 13
21 million?

22 A. No.

23 Q. In here you're promising that the 100,000 customers
24 of Electricity Maine will save more than 13 million
25 versus what they spent in 2011.

1 MS. HEWEY: Object to the form of the
2 question.

3 Q. You can answer.

4 A. Could you ask the question again?

5 Q. In this message you're promising that 100,000
6 customers of Electricity Maine who are already
7 enrolled will save more than 13 million on their
8 utility bills versus what they spent in 2011.

9 MS. HEWEY: Objection, form.

10 A. I see the statement. I don't know that it's a
11 promise.

12 Q. Well, whatever you want to call it --

13 A. I call it a statement on a page.

14 Q. So you don't know how you got to 13 million?

15 A. I don't recall.

16 Q. Did you use math to get to that number or did you
17 just write "13 million?"

18 MS. HEWEY: Objection, form.

19 A. I didn't write this.

20 Q. Well, Electricity Maine wrote this; right?

21 A. I suppose they did. I don't recall the math.

22 Q. Do you know what math Electricity Maine used to get
23 to 13 million?

24 A. I don't.

25 Q. Let's go back to that for a second. You said you

1 don't -- your testimony is you don't recall what
2 the math was to get to 13 million. Do you know if
3 that 13 million was in comparison to the standard
4 offer?

5 A. I don't recall what the basis was for it in 2012.
6 This was written in 2012. I don't recall.

7 Q. Okay. But what is that 13 million in comparison
8 to?

9 A. I don't know.

10 Q. Well, what would Electricity Maine be comparing its
11 savings to?

12 A. I would suppose they were comparing their savings
13 to the competitive market, the standard offer, or
14 what they would have spent previously.

15 Q. If they were enrolled --

16 A. I don't know -- I don't know the variables and the
17 math that were put into any -- into this
18 calculation. I don't recall how it was calculated.

19 Q. You prepared today to testify as to all the
20 deposition subject matters that were designated in
21 Exhibit 1.

22 A. Yes.

23 Q. But you don't know how you got to the number 13
24 million.

25 A. I don't recall a formula for that line.

1 Q. Did you just guess?

2 MS. HEWEY: Objection, form.

3 MR. AROMANDO: Objection.

4 Q. Who would know what math was used to get to 13
5 million?

6 A. We have a lot of people who know math. I don't
7 know who would have calculated that at that time.
8 I don't know what went into calculating that
9 number.

10 Q. Well, obviously someone did it.

11 A. Yes.

12 Q. Can you tell me who that would have been?

13 A. I can speculate.

14 Q. Who created this document?

15 (The deponent looked at Exhibit 5.)

16 A. I don't know if the last page tells me who created
17 it, if that's a printout of that, because I'm not
18 familiar with how these documents record, but
19 there's an author name on it.

20 Q. Who was that?

21 A. ML Gosselin, which would have been an assistant.

22 Q. And who did she work for?

23 A. She worked for myself.

24 Q. Okay. She worked for Provider Power?

25 A. She worked for -- I don't know which she drew her

1 payroll from. I would think it would have been
2 Electricity Maine.

3 Q. Okay. So Electricity Maine would know how -- if
4 she's an employee of Electricity Maine, Electricity
5 Maine would know how she got to 13 million?

6 A. Somebody would have.

7 Q. So Electricity Maine would know.

8 A. Yes.

9 Q. I'm showing you what has been marked as Deposition
10 Exhibit 6.

11 (Exhibit 6 marked for identification.)

12 (The deponent looked at Exhibit 6.)

13 Q. Can you tell me what this is?

14 A. This looks like a television commercial.

15 Q. Now, are these talking points for a TV personality
16 or is this a script that someone reads to create a
17 television commercial?

18 A. I'm not sure. It looks like it's how you write up
19 to try to create a commercial.

20 Q. And this was created by Provider Power?

21 A. It would probably have been created by Electricity
22 Maine and I'm guessing Channel 13 because they were
23 the ones who did most of the creative on
24 commercials.

25 Q. You're saying that Channel 13 did the creative?

1 A. Some.

2 Q. Who prepared this document?

3 A. This looks like it would be a Channel 13 document.

4 MR. AROMANDO: Ben, before your next
5 question, I'm just curious where this came from.
6 Does this have a Bates number? I don't see a Bates
7 number on my copy. I'm just wondering where it
8 came from.

9 MR. DONAHUE: I believe we received this in
10 response to a subpoena.

11 MR. AROMANDO: From --

12 MR. DONAHUE: I think it was -- I can't tell
13 you right now. Perhaps Emile can help us. It was
14 produced to you with a Bates stamp, but that's not
15 this version.

16 MR. AROMANDO: Okay. If you can give us a
17 Bates reference later, that would be helpful.

18 Q. So is it your testimony that Channel 13 prepared
19 these talking points?

20 A. I don't know who produced it. It looks like the
21 way they would have made a sales pitch to us to
22 sell what looks like a 30-second commercial. It's
23 sent to Electricity Maine, per this, in 2013. And
24 the way the boxes are set up, it looks like it's
25 talking about how they would make a commercial. I

1 think, if they didn't produce it by themselves,
2 they would have formatted something like this so
3 someone could understand what the discussion was.

4 Q. I want to go back over the process of creating
5 media content. You testified that some of it was
6 created in house.

7 Was it created by Provider Power or
8 Electricity Maine?

9 A. I would say this was created --

10 Q. Not this document, but in general.

11 A. In general it would have been Electricity Maine.

12 Q. So Electricity Maine would know exactly who and how
13 that content was created?

14 A. They would have all the records of that.

15 Q. Okay. Now, you said your first -- Electricity
16 Maine's first radio advertisements ran in 2011; is
17 that correct?

18 A. I don't know the start dates, but I wouldn't be --

19 Q. Would someone at Electricity Maine know the start
20 dates?

21 A. I suspect they would. I don't -- you know, I don't
22 recall the exact start of radio, if that's your
23 question.

24 Q. Okay. Let me -- I'm going to a radio advertisement
25 here.

1 MR. DONAHUE: Are we on 7?

2 MR. CUMMINS: Yes, 7.

3 Q. So this has been produced to us as Defendant's
4 2761. It has a document date of October 17, 2011.
5 I'll play it for you and you can tell me if that
6 was the roughly the time frame that this
7 advertisement aired.

8 (Exhibit 7 identified.)

9 (An audio recording was played.)

10 MR. CUMMINS: So the record should reflect
11 that the advertisement was broadcast for the
12 witness.

13 Q. That file was produced to us with a document date
14 of October 17, 2011.

15 Is that roughly when that advertisement ran?

16 A. I would assume so.

17 Q. Okay. Now, that advertisement offered a way for
18 consumers to save money on their electricity bill
19 --

20 A. Yes.

21 Q. -- that they'd save 3 to 5 dollars a month in
22 comparison to the standard offer?

23 A. Yes.

24 Q. Electricity Maine ran a fair number of ads in the
25 fall of 2013. They all had the same message.

1 Would you agree?

2 MS. HEWEY: Weren't you talking about 2011?

3 MR. DONAHUE: Excuse me.

4 Q. The fall of 2011.

5 A. They would have had multiple messages.

6 Q. Would you agree with me that the primary message
7 was saving consumers money at least at that time?

8 A. No, that was one of the messages.

9 Q. But you agree that the ad we just listened to was
10 about saving consumers money.

11 A. That was one of the points.

12 Q. So this recording is Bates stamp -- produced to us
13 as Bates stamp 2736.

14 MS. HEWEY: This is a different one?

15 MR. DONAHUE: This is a different one;
16 Exhibit Number 8.

17 (Exhibit 8 identified.)

18 (Discussion off the record.)

19 (An audio recording was played.)

20 Q. The date of that document was October 27, 2011.

21 Would you agree or -- is that roughly the
22 time frame that that advertisement aired on radio
23 stations?

24 A. I would assume so.

25 Q. Do you have any reason to believe that it was not

1 that time period?

2 A. Not by just listening to it, no.

3 Q. Well, if the document was produced to us and it's
4 date stamped October of 2011, do you have any
5 reason to believe why it would have aired during a
6 different time?

7 A. I can't tell when it aired. If the document is
8 stamped that date, that -- does it say it was aired
9 that date or does the document --

10 Q. I'm saying it was created at that date.

11 A. It may have been created that date. They may have
12 run it another date.

13 Q. What date would that be?

14 A. Whenever the radio station wants to.

15 Q. Do you have any reason to believe that that was
16 aired after 2011?

17 A. Sometimes they would run radio ads at different
18 times from when they recorded them. So yes, I
19 would have reason to believe that it could have
20 been run at different times.

21 Q. Do you think that was run in 2012?

22 A. I'm just saying categorically they run their ads
23 when they have slots. It doesn't mean that they
24 were recorded then.

25 Q. Okay. Would Electricity Maine be able to tell us

1 exactly when this ad ran?

2 A. I don't know.

3 Q. Well, who would be able to tell us when the ad ran?

4 A. The radio station might be able to tell you when
5 they ran certain ads.

6 Q. Do you think this ad ran in 2012?

7 MR. AROMANDO: Objection.

8 A. I would speculate of when it ran.

9 Q. Do you think it ran in 2013?

10 MR. AROMANDO: Objection.

11 A. I don't know when it ran.

12 Q. So you're not prepared to answer the question of
13 when it ran?

14 A. I will answer the question by saying I heard the
15 ad, I know it was recorded, I don't know when it
16 ran.

17 MR. DONAHUE: Let's take a break here.

18 (A brief recess was taken.)

19 * * * * *

20 (Discussion off the record.)

21 MR. DONAHUE: So do you want put our
22 stipulation on the record?

23 MS. HEWEY: I don't know that we have a
24 stipulation. I said if you ask him -- I mean if
25 you ask him was it the intention that the

1 advertisement would be played near the time that
2 they were produced, the answer would be yes.

3 Correct?

4 THE DEPONENT: Usually.

5 MS. HEWEY: Does that answer work for you?
6 It was generally the intention -- and you have to
7 tell me if it works for you, too, John. You have
8 some -- well, I don't know what role you have.

9 It was generally the intention of the
10 companies to -- that an advertisement would be run
11 near the time that it was produced. Is that clear
12 for everybody?

13 THE DEPONENT: Understanding there could be
14 errors or different radio stations could --

15 MS. HEWEY: -- just talking --

16 THE DEPONENT: -- blocks of time.

17 MS. HEWEY: We're just talking about the
18 intention.

19 THE DEPONENT: Yes.

20 MS. HEWEY: Does that work for you?

21 MR. DONAHUE: I don't know how far it's going
22 to get us.

23 MR. HALLETT: -- we need subject matter.

24 MS. HEWEY: Well, the subject matter -- I
25 mean we're talking about advertisements.

1 THE DEPONENT: -- talking about timing.

2 CONTINUED EXAMINATION

3 BY MR. DONAHUE:

4 Q. So Mr. Clavet, we looked at some correspondence
5 with the PUC earlier this morning.

6 A. Yes.

7 Q. There was a letter that you wrote to the PUC at
8 some point in 2013; is that correct?

9 A. Correct.

10 Q. That, I think, was labeled as Deposition Exhibit
11 Number 4.

12 MS. HEWEY: Yes.

13 Q. And that -- Defendant's Number 4 is the complete
14 package that you sent to the PUC; is that correct?

15 A. I don't know that, but it looks to be a package
16 that went to the PUC.

17 Q. Well, you sent it to the PUC.

18 MS. HEWEY: You've given him a document that
19 is not Bates stamped. Whatever it is, we're going
20 to agree to it, but he can't, as he sits here
21 today, looking at a document that's not Bates
22 stamped, know that that is complete. That's the
23 only issue we have.

24 MR. DONAHUE: It has his signature on it.

25 MS. HEWEY: Well, it's a letter. Fine. But

1 what he's saying is I can't tell, as you sit here
2 today, without Bates stamps, not knowing where that
3 came from, whether those are the actual
4 attachments. That's reasonable, but it's also not
5 something that we need to fight about --

6 MR. DONAHUE: -- that the record -- the
7 exhibit is complete.

8 MS. HEWEY: Unless we go back and look at our
9 own records - which we produced that to you as well
10 - and see if that's -- and compare it to what we
11 produced, he can't answer that.

12 MR. DONAHUE: Well, perhaps that's a
13 discussion for another day.

14 Q. So you received some sort of correspondence on May
15 -- I believe it was May 8, 2013; is that correct?

16 MS. HEWEY: From the PUC?

17 MR. DONAHUE: From the PUC.

18 (The deponent looked at a document.)

19 A. Yes.

20 Q. And the PUC contacted you because it was concerned
21 about the representations on price that you were
22 making in advertisements; is that correct?

23 MS. HEWEY: Objection, foundation.

24 A. My recollection is that they heard some radio ads
25 that were playing that weren't reflective of what

1 was happening at the time. The radio ads were --
2 were run by one of the DJs at the wrong time and
3 weren't accurate.

4 Q. So at some point you -- you had a transition in
5 your advertising strategy? That's what you're --

6 A. We had to update the ads to make them --

7 Q. So you changed your ads from one subject matter to
8 another.

9 MS. HEWEY: Objection.

10 A. I don't recall what we did, but we stopped those
11 ads that were running --

12 Q. And the --

13 A. -- corrections.

14 Q. And the ads that you stopped from running were
15 advertisements on price; ads that promised price
16 savings.

17 A. Price would have been one of the considerations.

18 Q. And then at some point Electricity Maine
19 transitioned to not advertising on price; is that
20 correct?

21 A. Electricity Maine had a lot of advertising
22 campaigns that advertised a lot of different
23 features and benefits.

24 Q. That wasn't my question.

25 A. Can you repeat your question?

1 Q. Let me try it a different way.

2 At some point Electricity Maine stopped
3 advertising on price; is that correct?

4 A. I don't think that's correct.

5 (Discussion off the record.)

6 (Exhibit 9 marked for identification.)

7 (The deponent looked at Exhibit 9.)

8 Q. So this document is Bates stamp Blueberry 20 and
9 21. It's been labeled Exhibit Number 9. This is
10 an e-mail from Will Fessenden, who was a Provider
11 Power employee; is that correct?

12 A. Yes.

13 Q. Will Fessenden is e-mailing a bunch of radio groups
14 it looks like.

15 Is that correct?

16 A. Yes.

17 Q. The date of this e-mail cannot be correct.

18 MR. AROMANDO: I agree with that.

19 (Discussion off the record.)

20 Q. The date of the e-mail is incorrect, however, let's
21 look at the second paragraph. It says [reading]
22 Attached are the latest talking points for jock
23 endorsements. Please note we are shifting away
24 from focusing on savings. Instead talking about
25 doing business with a Maine owned company.

1 A. I see that.

2 Q. When was the shift away from offering savings?

3 A. It was a shift towards other talking points. We
4 had many. I can't tell when this is dated and I
5 don't see the talking points.

6 Q. I'm asking you when was the shift away from
7 focusing on savings.

8 A. We never shifted totally away from savings. We
9 added more talking points to the DJs, to give them
10 more to talk about, and other things that were
11 relevant at the time.

12 Q. So are you saying that Electricity Maine continues
13 to advertise that it will save people money?

14 A. No, I'm saying that we are not abandoning the fact
15 that price is part of the product.

16 (Exhibit 10 marked for identification.)

17 (The deponent looked at Exhibit 10.)

18 Q. This is another e-mail from Will Fessenden to ...
19 it doesn't say who, but it's Bates stamped
20 Blueberry 263. In the e-mail Mr. Fessenden says
21 [reading] It is very important we stay away from
22 talk mentions of the standard offer and/or of
23 savings.

24 Why would Mr. Fessenden put that in an
25 e-mail?

1 A. I would have to speculate as to why he would. This
2 isn't dated, so I can't tell exactly when it was
3 produced, but we had other salient points that we
4 wanted to advertise, price being one of them. And
5 mentions of standard offer are something that we
6 were moving away from as we had a lot of other
7 things to compete against.

8 Q. What about savings. He says in his e-mail "stay
9 away from savings."

10 A. I'm sure that he had a reason to say that, but I
11 can't tell what was happening at the time because I
12 don't have a date on this.

13 Q. Now, Mr. Fessenden was a Provider Power employee?

14 A. Yes.

15 Q. And you're here today, prepared to testify about
16 Provider Power's advertising?

17 A. Yes.

18 Q. But you don't know when this e-mail was sent?

19 A. Not from this document.

20 Q. And you don't know why Mr. Fessenden would tell
21 radio stations that they should not mention
22 savings?

23 A. I can't tell from this document, but there was a
24 time when standard offer changed in the way they do
25 business.

1 Q. Who is they?

2 A. The Maine Public Utilities Commission.

3 Q. Is that the point in time when you stopped
4 advertising on price?

5 A. We never stopped advertising on price. We added
6 other salient features and benefits to our product
7 mix --

8 Q. Is that --

9 A. -- that were important at the time.

10 Q. Is that the point where you stopped promising
11 savings in comparison to the standard offer?

12 A. We stopped comparing ourselves to standard offer as
13 the market became more competitive and discussions
14 with the Maine Public Utilities Commission asked
15 people not to compare so much to standard offer.

16 Q. Or promise savings in comparison to the standard
17 offer?

18 A. I don't believe that this letter was promising
19 anything to anybody.

20 Q. Well, at some point you were told by the PUC to
21 stop promising savings in comparison to the
22 standard offer; is that correct?

23 MR. AROMANDO: Objection.

24 A. I don't recall that they said to stop promising
25 savings. I do remember them wanting CEPs to stop

1 comparing themselves to standard offer because
2 standard offer changed. The way that they procure
3 standard offer changed so we were competing with a
4 different product.

5 Q. How did you normally compare your product to the
6 standard offer?

7 MS. HEWEY: Objection to "normally." Can you
8 give a time?

9 Q. At any point in time.

10 A. We would compare ourselves to standard offer for
11 different reasons at different times because
12 standard offer was evolving and changing
13 continuously.

14 Q. Did you ever say "we're going to charge you more
15 than the standard offer."?

16 A. Yes.

17 Q. You said that in an advertisement?

18 A. In letters of renewal, yes.

19 Q. Have you produced those letters of renewal to us?

20 A. I would assume you got our renewal letters.

21 Q. But have you ever advertised in any of your
22 advertisements and said "we're going to charge you
23 more than the standard offer."?

24 A. I don't know that an advertisement would have said
25 "we're going to charge you more than the standard

1 offer," but the fact is we were offering more than
2 just price and would have highlighted those other
3 features and benefits.

4 Q. I can ask my question again. Did you ever
5 advertise and in that advertisement say "we're
6 going to charge you more than the standard offer."?

7 A. I would think we would have if we were selling a
8 product that was of a different term carrying
9 different risk.

10 Q. So your testimony is that your ads said "we will
11 charge you more than the standard offer."?

12 MR. AROMANDO: Objection.

13 MS. HEWEY: Objection, form.

14 A. I don't know that an ad would say "we will charge
15 you more," but, by example, I might have said "I
16 have a two-year product at 10 cents" and standard
17 offer might have been 8 cents, and therefore we
18 were offering more, more time covering more risk,
19 and advertising our 10-cent product.

20 Q. The ad itself did not say "we will charge you more
21 than the standard offer," did it.

22 A. I don't know that I would have just run an ad that
23 says "I will charge you more than" any competitor's
24 product.

25 Q. So the answer is no.

1 A. The answer may be no, it may be yes. I'd have to
2 see the ad.

3 MR. DONAHUE: We'll do that later.

4 (Exhibit 11 marked for identification.)

5 (The deponent looked at Exhibit 11.)

6 Q. Exhibit Number 11 is a letter from the Portland
7 Radio Group to the PUC dated May 13, 2013. I mean
8 May 15, 2013.

9 The second sentence says [reading] In
10 February and March we received instructions from
11 Electricity Maine via e-mail asking us to refrain
12 from references to saving money in commercials we
13 produce.

14 Is that a correct reading of this letter?

15 A. Yes.

16 Q. Okay. When in February/March did you tell Portland
17 Radio Group to stop referring to saving money?

18 A. When we realized that they were running old ads
19 that were advertising something incorrectly that
20 spoke to saving money when the price might have
21 been above standard offer at the time they were
22 running it.

23 Q. So at some point in the spring of 2013 you asked
24 Portland Radio Group ... let me rephrase that
25 question.

1 You stopped advertising that you were going
2 to save money.

3 MR. AROMANDO: Objection to form.

4 MS. HEWEY: Join.

5 A. We asked this radio station to stop running the ads
6 that said "save money" that they were running in
7 error.

8 Q. Okay. To your knowledge were there other
9 advertisements running after that time saying you
10 were going to save money?

11 A. I would think that there may have been, if in fact
12 we were saving money, with different radio
13 stations.

14 Q. So you would advertise savings on one radio station
15 but advertise on some other basis on another radio
16 station?

17 A. We may have been advertising a different product.

18 The point of this letter, it was an error and
19 the price was wrong or the timing of the commercial
20 was wrong relative to the price. So we needed to
21 stop it and make the correction.

22 Q. So if the PUC told you to stop running ads
23 promising you were going to save people money, you
24 would have done that; correct?

25 A. Yes.

1 (Exhibit 12 marked for identification.)

2 (The deponent looked at Exhibit 12.)

3 Q. Are you familiar with this letter?

4 A. Yes.

5 Q. This is a letter from the PUC to your lawyer; is
6 that correct?

7 A. Yes.

8 Q. And the PUC has instructed you to send a letter to
9 your customers that enrolled between January 1,
10 2013 to April 30, 2013?

11 A. Yes.

12 MR. AROMANDO: Objection. That's not what it
13 says, Ben.

14 Q. The PUC -- [reading] based on these discussions
15 Electricity Maine will send a letter to its
16 customers that enrolled or renewed service between
17 January 1, 2013 and April 30, 2013 --

18 MS. HEWEY: There's no instruction.

19 MR. AROMANDO: They reached an agreement to
20 do something. They weren't instructed to do it.

21 Q. -- have a higher rate than the standard offer; is
22 that correct?

23 (The deponent looked at the document.)

24 A. Where are you reading that?

25 Q. That's the second sentence.

1 A. [Reading] Based on these discussions ... will send
2 a letter ... that enrolled ... its service between
3 January 1st and April ... and have a rate that is
4 higher than the current standard offer.

5 Correct.

6 Q. And the reason you -- Electricity Maine was going
7 to send that letter is because its advertisements
8 on price during that time were inaccurate.

9 MS. HEWEY: Objection.

10 A. The ads that were run were accurate when they were
11 designed to be run and the ads were run at the
12 wrong time. So we had to contact customers who may
13 have heard that ad and may have made a purchase
14 decision having listened to that radio station at
15 that time. So we sent a letter to all of those
16 customers with corrected information.

17 Q. And those were customers that enrolled between
18 January 1, 2013 and April 30, 2013?

19 A. Yes.

20 Q. And that's because at that time Electricity Maine's
21 prices were not lower than the standard offer?

22 A. I can't tell from this. They were asking me to
23 send a letter to those who had a rate higher than
24 standard offer. It doesn't mean that they did.

25 Q. Is the reason that you had to send a letter to the

1 PUC was because customers were enrolled -- who were
2 enrolled during that time period had a rate that
3 was higher than the standard offer?

4 A. I can't tell from this letter. The reason they
5 wanted us to send a letter is because of the radio
6 ad that was run at the wrong time. If it was
7 misleading, they wanted the public to know -- if
8 they heard this radio station, that they get the
9 proper, correct information about price and what
10 the standard offer was at the time.

11 Q. Do you know what the standard offer was in the
12 spring of 2013?

13 A. Not off hand.

14 Q. Was Electricity Maine's offered rate lower than the
15 standard offer during that time period?

16 A. I don't recall. I'd have to look at a chart and
17 see what we were offering at that time.

18 Q. Let's assume that Electricity Maine's rate was
19 higher than the standard offer. Would you have run
20 advertisements that said it was lower than the
21 standard offer?

22 A. I don't know what I would have run. It would have
23 depended on how long the standard offer had left in
24 it and the term at which I would be offering. It's
25 possible to run an ad in which your price is higher

1 than standard offer if it has a better value or is
2 selling something different, like term or price
3 certainty or freedom of choice.

4 Q. Let's go to the second paragraph. Can you read
5 that for me?

6 A. [Reading] Additionally Electricity Maine has agreed
7 to notify customers of both its new rate and the
8 existing rate when it provides contract renewal
9 information. This agreement extends until the
10 commission revises its consumer protection rules as
11 contemplated in the current docket number 2013-200
12 proceeding.

13 Q. Did Electricity Maine follow through on that
14 agreement?

15 A. Yes.

16 Q. So in renewal notices after the date of this letter
17 it provided the customer's old rate and the new
18 rate?

19 A. Could you repeat that?

20 Q. My question was did Electricity Maine follow
21 through on its agreement with the PUC.

22 A. I would have followed the agreement that this
23 letter states.

24 Q. Okay. So this letter says Electricity Maine has
25 agreed to notify customers of both its new rate and

1 the existing rate when it provides contract renewal
2 information.

3 Did Electricity Maine do that?

4 A. I would assume it did.

5 Q. I'm not asking you to assume. I'm asking what --

6 A. I would expect that it did.

7 Q. Now, do you know when the PUC implemented its new
8 consumer protection rules?

9 A. From reading this, I would think it was after
10 August. I think it was towards the end of that
11 year. September/October-ish. I'm not positive,
12 but there is a docket with a date and a number that
13 I've seen and I spoke at those meetings.

14 (Exhibit 13 marked for identification.)

15 Q. I'm showing you what has been marked as Exhibit 13.

16 (The deponent looked at the exhibit.)

17 Q. Who is Kevin Dean?

18 A. Kevin Dean is one of the owners of Electricity
19 Maine and Provider Power.

20 Q. This is an e-mail from Kevin Dean to the PUC?

21 A. To Mitch Tannenbaum and our attorneys, yes.

22 Q. Who is Candace Sanborn?

23 A. She's one of our marketing people, in house.

24 Q. Okay. Did she create marketing content for you?

25 A. Sometimes.

1 Q. And this e-mail is an accurate description of
2 Electricity Maine's marketing process?

3 (The deponent looked at the exhibit.)

4 A. It looks to include some radio talking points,
5 speaking to the radio station needing to swap out
6 old recordings, a list of radio stations that we
7 have worked with, a mention of television, and the
8 fact that time slots can be sometimes bumped and
9 traded out, but those are the companies we've
10 worked with.

11 Q. Candace Sanborn's description of how Electricity
12 Maine distributes radio talking points is accurate?

13 A. I would assume it's accurate.

14 Q. Okay. She's a Provider Power employee; right?

15 A. Provider Power or Electricity Maine, yes.

16 Q. And again, you're here to testify on behalf of
17 Provider Power?

18 A. Yes.

19 Q. And one of the deposition topics is advertising
20 that Provider Power has done.

21 A. Yes.

22 Q. And you can't tell me whether or not this is
23 accurate?

24 A. I would assume it's accurate.

25 Q. Do you have any reason to believe it's not

1 accurate?

2 A. No.

3 (Discussion off the record.)

4 Q. To your knowledge when was the last time Provider
5 Power advertised that it would save customers money
6 or consumers money?

7 A. I don't know the date of the last ad.

8 Q. Did Provider Power advertise in 2018 that it would
9 save consumers money?

10 A. It may have advertised that it would save people
11 money or businesses money or money --

12 MS. HEWEY: -- on the date. He's asking
13 about 2018.

14 A. Oh, gosh, I wouldn't know.

15 Q. Well, you testified earlier that Provider Power is
16 a shell and doesn't operate; right?

17 A. Yes.

18 Q. Since 2016, you testified that Provider Power is a
19 shell.

20 A. The intent of Provider Power was to be a shell.

21 Q. I'm just asking about your testimony.

22 A. What is your question?

23 Q. Did you testify that Provider Power is a shell and
24 that since 2016, when Electricity Maine was
25 acquired by Spark, it doesn't do anything?

1 A. Spark didn't buy Provider Power. They bought the
2 --

3 Q. -- Electricity Maine --

4 A. -- under it. So if I need -- I'm trying to explain
5 the relationship between Provider Power and the
6 operating companies that did all of the work.

7 My belief is that Provider Power isn't
8 necessarily the company doing any particular
9 business but a way for us to have organized our
10 supply agreements when we were operating
11 Electricity Maine and New Hampshire Power. So the
12 way I'm trying to answer this is when you say
13 "Provider Power," it may have had some authorities
14 or some ownerships that I'm not necessarily
15 focusing on. The intent of Provider Power was so
16 that when we had Electricity Maine set up and we
17 had our supply agreements set up with Electricity
18 Maine we would not violate those when we went to
19 New Hampshire and tried to do business in New
20 Hampshire. Otherwise we would have had to redo all
21 of our operating agreements to be able to access
22 and purchase electricity for and through
23 Electricity Maine.

24 So it was decided that if we had Provider
25 Power we could get supply agreements for

Electricity Maine and for Electricity New Hampshire separate and distinct and update our supply agreements instead of starting over with a new one. So I'm not trying to answer whether Provider Power did or didn't and Electricity Maine did or didn't. I can speak for both because I owned half of both, and the intent of doing advertising is to advertise. But sometimes I'm not sure from your questions if you care whether it was Provider Power or Electricity Maine, and I don't want to confuse my answer.

Q. I was just asking you about your testimony earlier today. You testified that Provider Power doesn't do anything right now; is that correct?

A. To my knowledge. I mean it may have an e-mail account, it may have something, but the business is Electricity Maine.

MS. HEWEY: He's just asking you today Provider Power isn't doing anything.

A. Correct.

Q. So it would be impossible for Provider Power to advertise in 2018 that it's going to save consumers money.

A. It would not have a product to offer.

Q. Did Electricity Maine distribute any sort of

1 advertisements in 2018 to radio stations?

2 A. I don't know. I didn't own it then.

3 Q. Electricity Maine would know?

4 A. Electricity Maine would know.

5 Q. What about in 2017. Did Electricity Maine
6 distribute any talking points, other
7 advertisements, to radio stations for airing?

8 A. I'm not sure, but my suspicion would be, if they
9 did, it would have been focused more in New
10 Hampshire.

11 Q. Okay. So nothing in Maine?

12 A. I don't know that they didn't at all. I was out of
13 the picture sometime in '17, so I don't know
14 exactly what happened after that. Not in a
15 concerted effort that I'm aware of.

16 Q. But you were in the picture in 2016.

17 A. Yes, partly.

18 Q. Did Electricity Maine or Provider Power air any
19 radio advertisements in 2016?

20 A. I don't recall the dates. I don't recall the dates
21 when the radio station ads would have exactly
22 stopped running. I don't recall there being much
23 of a concerted effort in '16. If we did any, it
24 would have been minimal.

25 Q. Did Electricity Maine advertise that it would save

1 consumers money in 2016?

2 A. I don't recall ads in Maine in 2016. Perhaps on
3 the commercial side.

4 Q. But nothing with regard to residential or small
5 business?

6 A. My recollection is that most of the focus was in
7 New Hampshire in '16. So I don't think there was
8 much, if anything, in Maine.

9 Q. Did Electricity Maine advertise in 2016 that it
10 would save residential consumers, customers, money?

11 A. I don't recall ads -- I don't recall much
12 advertising in 2016.

13 Q. So there was no advertising that they would save
14 consumers money in 2016?

15 A. Well, if there was advertising, price is one of the
16 components, but I don't recall much of an
17 advertising campaign in '16.

18 Q. What about in 2015. Did Electricity Maine run any
19 advertisements in 2015 that it would save customers
20 money?

21 A. I'd have to look at the ad and the charts of when
22 things ran.

23 Q. So you're not prepared to talk about that today?

24 A. I'm not prepared to talk about date specific. If
25 something was late '14 into '15 or late '15 into

1 '16 -- I'm not familiar with the exact dates, but
2 if you showed me an ad with a date on it and told
3 me when it ran, I would probably agree that that's
4 when it ran.

5 Q. Did Electricity Maine advertise in 2014 that it
6 would save customers money?

7 A. I would have to look at the dates and the ad and
8 see what we were advertising at that time. 2014
9 was a time of polar vortex, I believe, and there
10 was a lot of dynamics and a lot of change and it
11 was very turbulent. The standard offer had
12 changed. They had -- they had bought a ten-month
13 strip, a two-month strip. They were coming off a
14 three-year blended average. Competition was all
15 over the place. We had been advertising different
16 things all along that continuum and I'm sure that
17 price certainty in some of those slots would have
18 been important.

19 Q. So let me ask the question again. In 2014 did
20 Electricity Maine run advertisements that said it
21 would save customers money?

22 A. That would have looked at advertising about saving
23 money relative to the risks and time of the
24 contracts in that market, but I'd have to look at a
25 particular campaign and see what we were

1 advertising against --

2 Q. So you can't answer my question?

3 A. Not without looking at a particular ad and script.

4 Q. Did you look at those ads and scripts before you
5 came here today?

6 A. No.

7 Q. Let's go back to Exhibit Number 4.

8 THE DEPONENT: I also needed to make a
9 correction before I forget. Earlier I said that
10 when we did meet, I had my attorney there, which
11 would have been Melissa, but when we met to talk
12 about this deposition, John was also there and some
13 of the staff came in and out.

14 MS. HEWEY: You want to go back to 4?

15 MR. DONAHUE: Yes.

16 (The deponent looked at Exhibit 4.)

17 MS. HEWEY: Mitchell Tannenbaum?

18 MR. DONAHUE: Yes.

19 Q. If you flip to Page 2, the response to the question
20 Number 3.

21 MR. HALLETT: This is Exhibit 4?

22 MR. DONAHUE: Yes, Exhibit 4.

23 Q. This is a letter that you wrote to the PUC - you
24 signed it - to Mitch Tannenbaum; is that correct?

25 (The deponent looked at the document.)

1 A. I see the signature, yes.

2 Q. The last sentence in answer Number 3, the first
3 paragraph says [reading] the talking points
4 provided on March 8, 2013 and thereafter do not
5 reference --

6 A. Where are you?

7 Q. Number 3, the last sentence of the first paragraph.

8 (Ms. Hewey pointed at the exhibit.)

9 Q. [Reading] The Talking points provided on March 8,
10 2013 and thereafter do not reference standard offer
11 or price comparisons to the standard offer.

12 A. I'm still not with you. Hold on.

13 (Ms. Hewey pointed to the document.)

14 MS. HEWEY: Here.

15 (The deponent looked at the exhibit.)

16 MS. HEWEY: We're there.

17 Q. That's something that you wrote to the PUC; is that
18 correct?

19 A. I signed this letter, yes.

20 Q. So everything in it is accurate?

21 A. I would believe they are.

22 Q. You didn't misrepresent things to the PUC?

23 A. I would not intentionally misrepresent anything to
24 the PUC.

25 Q. And when you say "the talking points provided on

1 March 8, 2013," you're talking about talking points
2 provided to radio stations?

3 A. I would assume that the talking points would have
4 been provided to radio stations.

5 Q. Those are the talking points we're talking about?

6 A. I would assume so, yeah.

7 Q. It's your letter. Can you tell me?

8 A. What's the question?

9 Q. I'm asking you when you say "the talking points
10 provided on March 8, 2013," you're referring to
11 talking points provided to radio stations or
12 television stations.

13 A. I'm talking to talking points provided on March 8th
14 and thereafter do not reference standard offer or
15 price comparisons.

16 I'm reading it.

17 Q. Okay. The talking points provided on March 8. I'm
18 asking about those talking points. Those are
19 taking points that you provided to radio stations
20 or other media outlets; is that correct?

21 A. I would assume they are.

22 Q. And the full sentence is [reading] the talking
23 points provided on March 8, 2013 and thereafter do
24 not reference standard offer or price comparisons
25 to the standard offer.

1 So you're telling the PUC in that sentence
2 that your advertisements after March 8 do not
3 reference the standard offer or compare your price
4 to the standard offer; is that a correct statement?

5 A. I would have -- let me read this for a minute.

6 Q. Yeah, read the whole thing.

7 (The deponent looked at the exhibit.)

8 A. Okay.

9 Q. So in this letter you're telling the PUC that after
10 March 8th your talking points that you distributed
11 to radio stations did not reference the standard
12 offer or price comparisons to the standard offer;
13 is that correct?

14 A. I'm saying that talking point provided on March 8
15 and after do not reference standard offer or price
16 comparisons, and they must be the talking points
17 provided on March 8th and after in this document
18 that we were --

19 Q. So you'd agree that these attachments to this
20 document are talking points that Electricity Maine
21 distributed to radio stations?

22 MS. HEWEY: Objection.

23 A. Well, we've answered that before. I don't know
24 that this is a complete document, but I know --

25 Q. -- not necessarily talking --

1 MR. AROMANDO: Ben, you've got to let him
2 finish his answer. You keep cutting him off.

3 A. What I'm saying is it looks like the intent of this
4 letter was to show the PUC what we were using and
5 that they didn't include certain things that they
6 asked us not to use. So they must have been
7 provided to the PUC.

8 Q. Okay. Regardless of what's attached to this
9 exhibit - we'll figure that out later - what I'm
10 asking you here is that after March 8, 2013 did you
11 distribute advertising talking points that compared
12 Electricity Maine's price to the standard offer.

13 A. Well, I'm not sure. All I'm saying is that in this
14 document it says that -- there must have been a
15 chart or a list of talking points that we were
16 referencing that did not. We must have been
17 showing them to Mitch for some reason; probably his
18 request.

19 Q. So are you saying that after March 8, 2013 you did
20 distribute talking points comparing Electricity
21 Maine's price to the standard offer?

22 MS. HEWEY: Objection, form.

23 MR. AROMANDO: Objection.

24 A. I don't recall if I handed out any talking points
25 after, but I am acknowledging that this says that

1 there were talking points that were provided on
2 March 8 and after that don't have reference to
3 that.

4 Q. Let's not even look at the talking points that are
5 attached to this document.

6 A. Well, I think we have to.

7 Q. I'm talking globally. All the talking points that
8 Electricity Maine sends out.

9 After March 8 did you send out talking points
10 to radio stations comparing Electricity Maine's
11 price to the standard offer?

12 A. I don't recall specifically. I'm just saying that
13 this letter says that included in here must have
14 been things that were dated March 8 and after.

15 Q. If you had gone back through your documents,
16 Provider Power's documents, could you tell me
17 whether or not you distributed talking points
18 comparing Electricity Maine's price to the standard
19 offer?

20 A. I'd have to have -- I don't know, from the
21 information, if I could --

22 MR. DONAHUE: Let's go off the record for a
23 second.

24 (Discussion off the record.)

25 MR. CUMMINS: Let's go on the record, please.

1 The point has been made that there's a
2 concern about whether or not this witness is
3 properly prepared. I have counted, and I keep
4 pretty good track of this, 28 times that he's said
5 "I assume." This witness has not articulated a
6 concrete answer to most of Ben's questions. Now,
7 I'm not arguing about anything. I'm making an
8 observation with respect to whether he's been
9 adequately prepared or is adequately prepared to
10 testify. We know what the mandates of Rule 30 are.
11 I've been doing this a while. So maybe we can all
12 reflect on that over lunch. I think that's a great
13 idea, but it's pretty clear from his testimony that
14 he hasn't been adequately prepared.

15 One other thing; just a housekeeping
16 matter. I served you with a notice of deposition
17 of Mr. Wyatt ... whatever his name is. The date
18 was incorrect. Do you want me to serve you with a
19 corrected one or do you just want to write in "May"
20 instead of March?

21 MR. AROMANDO: I think you should serve us
22 with a corrected one.

23 MR. CUMMINS: Okay.

24 MR. AROMANDO: Since you had a chance to
25 state on the record, I want to make our position

1 clear. I agree with Melissa that some of the
2 questioning is asking for answers that simply don't
3 exist. You're asking a witness to recall specific
4 events and dates that happened multiple years ago.
5 And if there aren't records or -- no one may
6 remember. Now, if there are records -- this is a
7 two-way street. Yeah, you can prepare a witness.
8 Having him have encyclopedic knowledge of all the
9 documents and information that was produced in this
10 case, the preparation bit is a two-edged sword. If
11 you've got the records, you need to provide them to
12 the witness. How about things with Bates stamps on
13 them so we can actually reference and understand
14 and ask the witness specific questions that could
15 be answered based on the information available.
16 Some things a witness isn't -- just isn't going to
17 remember.

18 MR. DONAHUE: When we started this deposition
19 off, he testified that he hadn't reviewed any
20 documents except for terms of service. That was
21 his testimony. I'm asking him about a letter that
22 he wrote. Now, it doesn't have Bates stamps, but
23 I'm going to get you those. I don't know -- if
24 that's going to change his answer, that's great.
25 But it's not like I'm asking him about some e-mail

1 that some person, some assistant, wrote in 2011.
2 I'm asking him about a document he drafted to the
3 PUC.

4 MS. HEWEY: Okay. This is pointless to
5 argue. How much time do we need for lunch? 30
6 minutes?

7 MR. DONAHUE: Sure.

8 (The lunch break was taken.)

9 * * * * *

10 MR. DONAHUE: So we are going to suspend the
11 deposition at this time and we'll reconvene at a
12 mutually-agreeable time. In the interim per John's
13 suggestion, we will provide to you all of the
14 documents that we believe, on a good-faith basis,
15 are relevant to the questions and the subject
16 matters that we have designated for this
17 deposition.

18 MS. HEWEY: So I don't agree with your
19 suspending it. We scheduled the deposition for
20 today. You have 7 hours.

21 You say that the witness isn't prepared.
22 I think that the only questions that the witness
23 has not been able to answer are questions that are
24 date- and document-specific, which, under Rule
25 30(b)(6) I think you have the obligation to show

1 the witness and ask questions. To the extent that
2 you're asking questions about the matters that you
3 have designated during the time period that
4 Provider Power was involved in this business, this
5 witness is prepared, knows more than any other
6 person about those topics, and would be happy to go
7 forward with the deposition.

8 So to the extent that you are suspending
9 it now, I take the position that we've made the
10 witness available, you've chosen voluntarily not to
11 proceed.

12 MR. AROMANDO: As -- I agree with what
13 Melissa said. I mean this witness was one of the
14 two principals of the company. He lived it. I
15 have a point to make about the upcoming Electricity
16 Maine deposition, which I'll get to in a second,
17 but for the relevant period of time I don't know
18 how you could possibly find a better witness in
19 terms of preparation. I mean he was there and
20 lived it. How much more preparation could you
21 have.

22 On the timing of it, my schedule over
23 the next two months is an absolute nightmare, so I
24 just want to put people on notice to the extent we
25 don't move ahead today it's going to be hard. I

1 think we should at least go through the rest of
2 your examination and see if it goes any better as
3 opposed to just cutting it off. People have set
4 the time aside.

5 What I'd like to say about the
6 Electricity Maine deposition, to hopefully avoid a
7 repeat of today's experience, are you going to do
8 the same thing, Ben, and send us documents that you
9 want the witnesses --

10 MR. CUMMINS: I'm going to be --

11 MR. AROMANDO: Oh, you are, yeah. The sooner
12 -- I agree, that's a great idea, and it will help.
13 The sooner you can do that --

14 MR. CUMMINS: Who are the designees?

15 MR. AROMANDO: So the two designees, it's an
16 individual named Dan Kuehl, K-U-E-H-L, and Sandra
17 Nadeau.

18 MR. CUMMINS: He's an information guy?

19 MR. AROMANDO: Yeah, finance information,
20 yeah. They're going to be the two folks that will
21 be coming to testify.

22 MR. CUMMINS: And the other person --

23 MR. AROMANDO: Sandra Nadeau.

24 So yeah, if you can get us the documents
25 you're going to go through, it will help

1 tremendously in making sure these folks are ready.

2 So I would like to make a strong pitch,
3 given everybody's schedules, that we push ahead
4 today and see if it gets any better this afternoon.

5 MR. DONAHUE: If we could have some sort of
6 agreement that we're not waiving our right, we'd be
7 okay with that, but I'm not going to ask this guy
8 questions for 8 hours, have him say "I don't know"
9 like he has all day, and not be able to take
10 another deposition.

11 MS. HEWEY: I don't think you're in any worse
12 of a position if you go forward than if you don't,
13 because either you're right and he is not
14 adequately able to comply with the company's
15 requirements under 30(b)(6), in which case you
16 would be -- the Court would permit you to go
17 forward notwithstanding that you've done what you
18 did today, or you're wrong, in which case you're
19 better off talking to him now.

20 MR. AROMANDO: Yeah, I mean if it helps, Ben,
21 I'll agree that by agreeing to proceed you are not
22 weakening whatever your position is. It is what it
23 is.

24 MR. CUMMINS: Can I just ask one clarifying
25 question? His answers "I assume" can we now

1 clarify that those are affirmative responses, that
2 those are actually "yes"es and not "I assume"?
3 Because an "I assume" for the 30(b)(6) witness is
4 the quintessential example of poor preparation. So
5 we've got a host of "I assume"s. I understand why
6 witnesses do that, but if the "I assume" means
7 "yes," that may help a lot.

8 MS. HEWEY: So if you're asking whether the
9 record can change all "I assume"s to "yes"es, the
10 answer to that is no. Is the witness is prepared
11 to be as declarative as he can, yes.

12 MR. HALLETT: Moving forward you're saying?

13 MS. HEWEY: Yes.

14 MR. HALLETT: Let's take 2 minutes.

15 (A brief recess was taken.)

16 * * * * *

17 MR. DONAHUE: Just with regard to the
18 stipulation -- back on the record here.

19 We're not going to suspend the
20 deposition.

21 MR. CUMMINS: We're not suspending it on the
22 premise that by proceeding we're not waiving the
23 position that this witness not been properly
24 prepared pursuant to the mandates of Rule 30(b)(6).

25 MR. DONAHUE: What Bob said.

1 CONTINUED EXAMINATION

2 BY MR. DONAHUE:

3 Q. So Emile, earlier you testified about how radio
4 stations played ads at inappropriate times; is that
5 correct?

6 A. Yes.

7 Q. At times that Electricity Maine and Provider Power
8 didn't want them to play advertisements.

9 A. Yes.

10 Q. Was that with respect to radio and TV or just
11 radio?

12 A. I think it was just radio.

13 Q. How many times did that happen?

14 A. I don't think it happened often. I know it
15 happened in the case that Mitch Tannenbaum talks
16 about, but I don't know that it happened other
17 times.

18 Q. So the only time that it happened was sometime in
19 2013?

20 A. Yes.

21 Q. Okay. Let's go back to that sentence that we spent
22 so much time on before in Exhibit 4, Page 2,
23 question 3 --

24 (The deponent looked at the exhibit.)

25 A. Yes.

1 Q. -- that last sentence. I'll read it to you again.
2 [Reading] The talking points provided on March 8,
3 2013 and thereafter do not reference standard offer
4 or price comparisons to the standard offer.

5 A. Yes.

6 Q. That's what the sentence says?

7 A. Yes.

8 Q. It was Electricity Maine and Provider Power's
9 intention not to advertise a comparison to the
10 standard offer after that date?

11 A. I understand what you're saying and let me just
12 clear up where I got tripped up on this. The
13 reason I was confused about this is because it says
14 "the written communications provided" is the first
15 sentence. I was thinking that this meant that of
16 all of the communications that were provided, it
17 was being explained to Mitch that when he looked at
18 those, some of them were for March 8th and some of
19 them were for after versus a global statement.
20 That was why I was confused.

21 Q. But back to that -- the statement that you make to
22 the PUC here, after March 8, 2013 it was
23 Electricity Maine's intention not to run any
24 advertisements comparing their prices to the
25 standard offer?

1 A. I don't think that's what it says, Ben, because it
2 -- this paragraph says that the written
3 communications provided in this document are broken
4 up into two categories. One of them is talking
5 points provided for March 8 and the other ones are
6 after that.

7 Q. Okay. So the talking points before March 8 compare
8 Electricity Maine's price to the standard offer; is
9 that correct?

10 A. The talking points provided on January 8th and
11 February 13th reference the standard offer.

12 Q. Those are before March 8th.

13 A. And then the talking points provided on March 8th
14 and after do not, that were provided in this
15 document.

16 Q. Now globally, are there other talking points after
17 March 8, 2013 that Electricity Maine sent to radio
18 stations that compare Electricity Maine's price to
19 the standard offer?

20 A. I don't think so.

21 Q. Thank you.

22 Let's go back to ...

23 MR. DONAHUE: Well, do you have your list of
24 exhibits?

25 (Discussion off the record.)

1 Q. So we listened to one radio advertisement.

2 Do you remember that?

3 A. Today, yes.

4 Q. I think that was Exhibit ... it was Exhibit 7. You
5 agreed that that advertisement advertised on price.

6 A. That was one of the points.

7 There were two ads, correct?

8 Q. Yes.

9 And you agreed that one of them advertised on
10 price?

11 A. It had price included in the discussion, yes.

12 Q. Was price included in the discussion for all ads
13 during that time period?

14 A. I don't believe they would have been. There would
15 have been other points that we would have wanted to
16 advertise during that time period.

17 Q. So there were ads that ran that didn't include
18 reference to price?

19 A. I would expect that we ran ads, for example, that
20 talked about the Power To Help, which is the
21 charitable effort we put forth, that would have
22 focused on that. Or ads that would have run --

23 Q. I'm talking about 2011 right now.

24 Was there any ad that ran during that time
25 period that didn't include price?

1 A. That did not?

2 Q. Yes.

3 A. Boy, we ran a lot of stuff. I don't know if there
4 was one that would or wouldn't have.

5 Q. Okay.

6 A. There would have been a lot that included price. I
7 don't know if there would have been one that was
8 just something else. I would expect there would
9 have been. We had a lot of campaigns that said buy
10 local, we had campaigns that were just an awareness
11 of the market existing, that you had the power to
12 choose. So there would have been other topics.

13 Q. But most of those ads, at least during 2011, also
14 mentioned price.

15 A. A lot of them would, yes.

16 Q. I'm going to play another advertisement; a radio ad
17 here. It's Bates stamp 2762. It's got a date of
18 October 21, 2011.

19 (Exhibit 14 marked for identification.)

20 (An audio recording was played.)

21 Q. So that advertisement references choosing between
22 electricity providers, but it also references price
23 savings in comparison to the standard offer; is
24 that correct?

25 A. Yes.

1 Q. Is that advertisement representative of the
2 advertising that was going on in the fall of 2011?

3 A. Yes.

4 Q. So the purpose of this advertising was to acquire
5 customers from standard offer?

6 A. Or other competitors, for what little there were of
7 them.

8 Q. But at that point in time there weren't really any
9 other competitors.

10 A. Well, they were showing up, but not that had a big
11 book of business.

12 Q. So most of the people you were advertising to were
13 probably standard offer provided customers?

14 A. Yes.

15 Q. And your goal was to acquire as many customers as
16 possible?

17 A. Yes.

18 Q. And these were residential customers and
19 small-business customers?

20 A. And medium as well.

21 Q. You talked earlier about the process in which these
22 advertisements were created and you said that many
23 times they were created in house and then talking
24 points were distributed to the radio stations.

25 A. Yes.

1 Q. Now, that resulted in a lot of advertisements being
2 almost the same or very similar; is that correct?

3 A. The talking points would change sometimes; but
4 during the same periods of time, they would have
5 been similar.

6 Q. So if you ran an ad, you know, one week in the fall
7 of 2011 on a bunch of different radio stations, it
8 would be pretty much the same thing, just in
9 different disc jockeys' voices?

10 A. Well, the way those ads were done is that you give
11 them the talking points and then the DJs kind of
12 pick the salient points that they think resonate
13 with them more. Some of them liked "buy local"
14 more than just price. Some of them wanted to be
15 more educators about the right to choose. So that
16 type of advertising is different than just running
17 a regular ad because they give the DJ more freedom
18 to talk about it the way they want to talk about
19 it.

20 Q. So let me just -- we'll play some more.

21 (Discussion off the record.)

22 Q. So I'm going to play here what's Bates numbered
23 2730. Defendant's 2730. The file is dated
24 November 3, 2011.

25 (Exhibit 15 identified.)

1 (An audio recording was played.)

2 Q. So would you agree that that ad, at least in part,
3 is offering to save people money?

4 A. Yes.

5 Q. There may be more, but at least part of it offered
6 savings.

7 A. Yes.

8 Q. Do you know if that was -- that particular ad is a
9 talking point or a pre-prepared ad?

10 A. I can't tell. It sounds like a talking point
11 because the DJ seems to be free-speaking.

12 Q. So I'm going to play 2738 here. This will be
13 Exhibit 16. This is dated November 2nd, 2011.

14 (Exhibit 16 identified.)

15 (An audio recording was played.)

16 Q. So you agree that was an advertisement played by
17 Electricity Maine in 2011?

18 A. That snippet, yes.

19 Q. I can play more --

20 A. I think it is.

21 Q. And that ad starts the exact same as the other one?

22 A. Yes, there -- I can't tell which station. Is it
23 the same station? It might be. I'm sorry, I don't
24 know the --

25 Q. It's hard to distinguish from one disk jockey to

1 the other.

2 A. Many of them had multiple disk jockeys in the same
3 station.

4 Q. All right. So -- but you'd agree that the initial
5 message there was almost exactly the same as the
6 earlier message?

7 A. It sounded the same.

8 Q. The same 3 to 5 dollars monthly compared to the
9 standard offer?

10 A. Yes.

11 Q. I'm going to play Defendants 2722, and that has a
12 date of December 8, 2011.

13 (Exhibit 17 identified.)

14 (An audio recording was played.)

15 Q. So you would agree that was an advertisement for
16 Electricity Maine?

17 A. Yes.

18 Q. Played during December of 2011?

19 A. I'd agree.

20 Q. And it has roughly the same message as the previous
21 two --

22 A. Roughly, yes.

23 Q. Did Electricity Maine do any video advertising in
24 2011?

25 A. What's a video advertising?

1 Q. Did it play any television -- did it buy any
2 television commercials, produce any television
3 commercials?

4 A. During -- your question is did they in 2011?

5 Q. Yeah.

6 A. I expect we started that in 2012.

7 Q. Okay. So in early 2012 was the advertising
8 campaign roughly the same as late 2011?

9 A. It was very dynamic and changing in that we used
10 different mediums. With advertising, you know,
11 sometimes you use radio, sometimes you use
12 television, sometimes you use print. I don't
13 recall what was going on in those times, but like
14 when it's an election time, you can't afford one or
15 the other so you switch. So there would have been
16 different -- whether we could afford to get print
17 or afford to get radio or use television, it would
18 have been also what was happening around us.

19 Q. At that time your rates were lower than the
20 standard offer, though?

21 A. My recollection is that they were then.

22 Q. In 2012 -- so you were advertising on that basis in
23 2012; right?

24 A. Yes, that was part of our message.

25 Q. Okay. Let me just play some audios from 2012 here.

1 I've got Defendants 2827 and this has got a date
2 January 1, 2012.

3 (Exhibit 18 identified.)

4 (An audio recording was played.)

5 Q. So you would agree in early 2012 you were
6 advertising on price?

7 A. Yes, on this ad for sure.

8 Q. Let me play Defendants 2792. This is dated April
9 12, 2012.

10 (Exhibit 19 identified.)

11 (An audio recording was played.)

12 Q. So in April 2012, you started the free power
13 campaign?

14 A. Yes.

15 Q. But you were also advertising on the premise of
16 saving people money in comparison to the standard
17 offer?

18 A. Yes.

19 Q. Would you agree that pricing was the primary focus
20 of your advertising campaign at that point in time?

21 A. In that ad, it may have been, but we started
22 talking more about term as we went on. It became
23 more and more important. But I would think that
24 price was one of the primaries.

25 Q. Did you ever do any marketing research to determine

1 why consumers want to switch or what would make
2 consumers switch from standard offer to Electricity
3 Maine or back the other way?

4 A. Primarily what we did is we would try some
5 advertising and see if it had any response; and if
6 it did, we would do more of it. If it didn't, we
7 would stop it. But we were not using a, you know,
8 a research -- we learned from what we advertized,
9 but we didn't do any particular research without
10 just doing the advertising primarily.

11 Q. Did you find that --

12 A. -- best way to learn.

13 Q. Did you find that price was the most important
14 factor to consumers?

15 A. In the early market, yes.

16 Q. I'm going to play Defendants 2845. This is dated
17 October 10 - excuse me - October 23, 2012.

18 (Exhibit 20 identified.)

19 (An audio recording was played.)

20 Q. Would you agree that in October of 2012 that
21 Electricity Maine was still advertising on price?

22 A. Yes.

23 Q. And that was the primary focus of your marketing
24 campaign at that point in time?

25 A. It would have been the primary focus of the radio

1 campaign for sure.

2 MR. CUMMINS: And just for the record,
3 Exhibits 14, 15, 16, 17, 18, 19, and 20 were all
4 played for the witness.

5 Q. So you started doing video advertising in 2012?

6 A. Television?

7 Q. Television.

8 A. Yes.

9 Q. The focus of those advertisements, at least in
10 2012, was the price savings in comparison to the
11 standard offer?

12 A. When we started in television, we talked about
13 price, we introduced choice, we wanted people to
14 buy local. We entered a few more concepts. And
15 also term. I believe we might have started to
16 experiment with different terms. 18 months, two
17 years, nine months versus a year as well.

18 Q. But all these also included a reference to price or
19 price savings?

20 A. They would have included some reference --

21 Q. At least in 2012.

22 A. Yes.

23 Q. So let me play what is Bates Defendants 2713.

24 MR. DONAHUE: What exhibit number is this?

25 MS. HEWEY: It's 21.

1 Q. And it's got a date of October 10, 2012.

2 (Exhibit 21 identified.)

3 (A video recording was played.)

4 Q. Who is the person in the advertisement here?

5 A. That is Kiley Bennett, who was a for-hire actress.

6 Q. Was she employed by Electricity Maine?

7 A. She had a contract. She got paid when she did a
8 commercial. She used to work, I believe, for
9 Channel 13 and she puts herself out as an actress.

10 Q. Is she -- did you produce the ad we're looking at
11 in house at Electricity Maine?

12 A. No. Channel 13 would have done all of the creative
13 and the timing and the things that look like, you
14 know, written descriptions of how a commercial
15 could be built.

16 Q. Electricity Maine obviously reviewed that content
17 before it was produced or --

18 A. Yes.

19 Q. -- or distributed?

20 A. Yes.

21 Q. So let me play this.

22 (A video recording was played.)

23 Q. Did you hear that?

24 A. I heard it.

25 Q. So would you agree that this advertisement for

1 Electricity Maine promises price savings in
2 comparison to the standard offer?

3 A. Yes.

4 Q. Is that representative of your video advertising in
5 2012 generally?

6 A. I mean it's a good sample of an ad, yes.

7 Q. Would you agree that most of your video advertising
8 in 2012 focused on price savings?

9 A. Some of it focused on price savings, but again, we
10 did start to introduce other features.

11 Q. Would you agree that the primary focus of your
12 video advertising was price savings --

13 A. Yes.

14 Q. So at some point, and we talked about this before
15 lunch, you stopped advertising or at least
16 promising price savings in comparison to the
17 standard offer and we were trying to figure out
18 exactly when what was. I'm just summarizing our
19 discussion generally. You don't have to agree with
20 me.

21 But in early 2013 you did run some
22 advertising on price; is that correct?

23 A. I believe we did, yes.

24 Q. So I'll play Defendants 2878; it's dated January
25 10, 2013.

1 (Exhibit 22 identified.)

2 (A video recording was played.)

3 Q. So when the advertisement says -- and that's not
4 part of this video. That's just left over from the
5 thing we looked at last.

6 When it says you're going to save 6.8 million
7 dollars, that's in comparison to the standard
8 offer.

9 MR. AROMANDO: Objection to form.

10 A. I think it's compared to several standard offers.

11 Q. Okay.

12 A. As opposed to the standard offer.

13 Q. So some --

14 A. Commercial, residential, customers.

15 Q. So that calculation, 6.8 million dollars, is
16 calculated by comparing Electricity Maine's rate to
17 commercial large-scale standard offer, medium-scale
18 standard offer, and residential standard offer?

19 A. I think it was made comparing the price ... I don't
20 want to confuse a calculation of savings between
21 what they were paying one year at Electricity Maine
22 versus what they might have been paying the next.
23 If it was a comparison to standard offer, which our
24 team would have done the math, they would have
25 looked at all of our customers, not just

1 residential. And since they're looking at other --
2 like business -- large business and small business,
3 they would have also different standard offer
4 prices and volumes of power.

5 Q. But nonetheless you would agree this ad promises
6 savings in comparison with the standard offer.

7 A. Yes.

8 Q. Okay. And this was an ad run in early 2013?

9 A. I believe, yes.

10 Q. Were -- was the promotional or the marketing
11 campaign of Electricity Maine run the same in 2012
12 and early 2013 as it was in 2011?

13 That was probably a bad question. Let me
14 clarify.

15 Was it the same team - the same marketing
16 team - in 2012 and '13 as it was in 2011?

17 A. No. People were added because we grew.

18 Q. Did they produce ads in the same way?

19 A. Not necessarily. When we added people, sometimes
20 we added a few people who knew more than people we
21 had before. When we started Electricity Maine, we
22 used the people that we already had on our team.
23 We were just a few people. We grew.

24 Q. Gotcha.

25 But Electricity Maine was still producing

1 talking points in 2013 like it did back in 2011.
2 It had a different message, but the advertising
3 procedure was similar?

4 A. We most likely used the same radio stations and
5 gave them talking points.

6 Q. And did you do that in 2011, 2012, and early 2013?

7 A. I believe we did.

8 Q. Would you agree that all of the marketing during
9 that time period was direct marketing to consumers?

10 MS. HEWEY: Objection. I don't understand
11 what you're asking.

12 Q. Was Electricity Maine's marketing campaign from
13 2011 to early 2013 focused on switching consumers
14 from the standard offer to Electricity Maine's
15 electricity supply service?

16 A. Well, we started off mostly by talking to
17 businesses, to get their employees to sign up as we
18 wanted to get the business. So as we got a little
19 bit more mature and we started using mass media, we
20 would use ads for different groups, but we did not
21 only advertise to residential and we did not only
22 advertise to business. We were advertising to all
23 the groups using different campaigns or techniques
24 or messages.

25 Q. Okay. But for example, that advertisement is

1 directed at residential consumers.

2 MS. HEWEY: When you say "that
3 advertisement," you're referring to --

4 MR. DONAHUE: The video that we --

5 MS. HEWEY: -- Exhibit 21?

6 MR. CUMMINS: 22 was the last exhibit.

7 MS. HEWEY: Yeah. He's showing -- he's
8 looking at the TV ad, which was 21, just for the
9 record.

10 A. A lot of the television ads were dual purpose in
11 that we would go after business and residential,
12 but primarily the respondent was residential.

13 Q. And do you agree that all of your advertising is --
14 the advertising that you did on the television and
15 on the radio from 2011 to 2013 was directed, at
16 least in part, at residential?

17 A. At least in part, yes.

18 Q. Okay. And the purpose of that advertising was to
19 convert customers from standard offer service to
20 Electricity Maine service?

21 A. Or competitors.

22 Q. Now, you did some radio and television appearances
23 yourself; is that correct?

24 A. Yes.

25 Q. What were your talking points during those

1 appearances?

2 MS. HEWEY: Objection.

3 A. I wouldn't have gone in with talking points. They
4 were free-form and they weren't ads as much as they
5 were visits.

6 Q. Did you -- did you promise to save consumers money
7 in comparison to the standard offer?

8 A. I may have referenced some of our ads or what we
9 were -- what type of a business we were building
10 and why. And I'm only saying this because a lot of
11 the advertising we may have paid for and some of
12 those visits, we didn't. So I don't know that
13 they're ads.

14 Q. Okay. Let's just play a couple of them here. I've
15 got Defendants 2666 and that's dated November 9,
16 2011.

17 MR. DONAHUE: What exhibit number are we on,
18 Bob?

19 MS. HEWEY: 23.

20 (Exhibit 23 identified.)

21 (An audio recording was played.)

22 Q. This is November 2011. Is that a -- roughly around
23 when you think that you appeared on radio?

24 A. I might have appeared on -- like three or four
25 times, so I don't know the dates. So I don't know

1 if was an early ad or a late ad.

2 (An audio recording was played.)

3 Q. So would you agree that that was you talking there?

4 A. Yes.

5 Q. And you're talking about residential homeowners?

6 Is that what you just said?

7 A. I don't -- I believe --

8 (An audio recording was played.)

9 Q. So that was you talking?

10 A. That was Kevin Dean.

11 Q. Oh, okay. And he's the other owner of Provider
12 Power?

13 A. Yes.

14 Q. Now, your appearance, would you agree, is -- and
15 the points you made are consistent with your
16 marketing campaign at that point in time?

17 A. Yes.

18 Q. Your advertising on price savings in comparison to
19 the standard offer, to residential customers and --
20 well, you agree with those two points?

21 A. Yeah. What I got out of that, we were advertising
22 some savings, buy local, and it would have been
23 business and residential.

24 Q. And by "business," you mean small business?

25 A. Or medium.

1 Q. All right. I'm going to play Defendants 2665; the
2 date is November 9, 2011, the same as the other
3 one.

4 (Exhibit 24 identified.)

5 (An audio recording was played.)

6 Q. Okay. So again, this is you and Kevin Dean on the
7 radio?

8 A. Yes.

9 Q. Do you agree that the statements that you're making
10 on the radio are consistent with your marketing
11 campaign at that time?

12 A. Yes.

13 Q. Save money, no catch, no gimmicks?

14 A. Yes.

15 Q. You heard a statement to that effect in that -- is
16 that correct?

17 A. That's what he said.

18 Q. Okay. And again, you're targeting residential and
19 small-business customers?

20 A. Yes.

21 Q. All right. So you said that at times you would do
22 either direct mailing or advertisements in
23 newspapers; is that correct?

24 A. Yes.

25 Q. I'll show you Exhibit 25.

1 (Exhibit 25 marked for identification.)

2 Q. This has been labeled as Exhibit Number 25. It's
3 Defendants 1124.

4 (The deponent looked at the exhibit.)

5 Q. So Mr. Clavet, can you tell us where this
6 advertisement appeared?

7 (The deponent looked at Exhibit 25.)

8 A. I'm trying to tell from looking at this.

9 I don't know if you're asking me if I can
10 tell by looking --

11 Q. Did this appear in a newspaper or a magazine?

12 A. I'm not sure. The logo is one that I've seen on
13 our website, but I don't know if that is an ad or
14 if it was on this enrollment form.

15 Q. Did Electricity Maine advertise in newspapers?

16 A. Yes.

17 Q. Okay. What sort of advertisements would appear in
18 newspapers between 2011 and 2013?

19 A. We would use a flier sometimes that might go in a
20 newspaper or we would use a two-sided sticker.

21 Q. Okay. Would that sticker or flier have an
22 enrollment form on it?

23 A. No. No, the sticker would not. The flier ...

24 (The deponent looked at the exhibit.)

25 A. I don't recall seeing this one, but I recognize the

1 logo in print.

2 Q. How do you think this flier or whatever this is was
3 published?

4 A. I think it was published in our shop, because it's
5 our name and our markings. I'm just not sure how
6 it was used from looking at this.

7 Q. Do you think that this was placed in a newspaper?

8 A. I don't know. It could be a newspaper or a
9 magazine or a handout.

10 Q. Do you think that Electricity Maine tried to use
11 this form to enroll customers at some point in
12 time?

13 A. I would believe they would have.

14 Q. I'm showing you what has been marked as Exhibit 26.

15 (Exhibit 26 marked for identification.)

16 Q. This is a similar form to Exhibit 25.

17 MS. HEWEY: 1137 etcetera.

18 Q. Actually let's go back to 25 real quick.

19 When do you think that was distributed to --
20 for the purpose of acquiring customers?

21 MR. AROMANDO: Objection.

22 A. When do I think somebody would have used this?

23 Q. Yeah. You testified that it was used for the
24 purpose of acquiring customers.

25 A. It looks like something we would have used for a

1 trade show.

2 Q. Do you think it was used at a trade show before the
3 spring of 2013?

4 A. I know that the logo with the little girl jumping
5 was something that came in around then.

6 Q. Around 2011?

7 A. '12 or '13 I would guess. It was later than the
8 original drawing, is why I'm saying that.

9 Q. So it's your testimony that this was used as a
10 flier?

11 A. It looks like a flier for a trade show.

12 Q. And it was handed out at a trade show or some sort
13 of in-person event?

14 A. Yes. Maybe a business-to-business trade show or
15 something like that.

16 Q. But you don't know.

17 A. I don't know for sure.

18 Q. And Exhibit Number 26 is the same thing? Another
19 flier?

20 (The deponent looked at the exhibit.)

21 A. Yes.

22 Q. Can you tell where this was used or when it was
23 used?

24 A. Not by looking at it. It's not dated.

25 MR. CUMMINS: Is that 27?

1 MR. DONAHUE: That's 26.

2 Q. If you spoke to former employees of Electricity
3 Maine would you be able to tell when this was used?

4 A. If it's not dated, probably not. We did a lot of
5 trade shows or booths at fairs and that type of
6 thing. It looks like it might be one of those, so
7 I couldn't tell you what year it might have been
8 used.

9 Q. But you think it was before the spring of 2013?

10 A. I can't be sure, but I would think it was in 2012,
11 2013.

12 Q. Let's look at Page 2 of 26.

13 (The deponent looked at the exhibit.)

14 Q. The last paragraph. This is a Q and A. Question:
15 Will Electricity Maine rates always be lower than
16 the standard offer? Answer: Electricity Maine
17 rates will always be lower than the standard offer
18 rates. We guarantee this by purchasing this power
19 on your behalf in advance of your consumption. As
20 a result, there is no market risk to the customer
21 and Electricity Maine will always be able to beat
22 the standard offer rate.

23 Is that an accurate reading of --

24 A. Yeah. We were always trying to beat the current
25 standard offer rate, and this would have directed

1 them to Electricity Maine.com, where they could
2 learn more.

3 Q. Let me ask you this. Were you guaranteeing to beat
4 the standard offer after the spring of 2013?

5 A. If we were going to beat the standard offer, it
6 would have been the standard offer that was in
7 effect.

8 I see rates in a box here. So that would
9 tell me when it was if I was looking at a schedule
10 somewhere and it would tell me which standard offer
11 I was talking about.

12 Q. So you think it's possible that Electricity Maine
13 was offering to always beat the standard offer
14 after the spring of 2013?

15 MS. HEWEY: Objection, form.

16 A. I think Electricity Maine was saying it was going
17 to beat this standard offer in making that
18 guarantee.

19 Q. Was Electricity Maine beating the standard offer in
20 the spring of 2013?

21 A. Is that related to this brochure? Is that the date
22 of this brochure?

23 Q. I don't know the date of the brochure. I'm just
24 asking was Electricity Maine beating the standard
25 offer in the spring of 2013.

1 A. I think we were. I would have to look back.

2 Q. So you can't tell me whether this was used before
3 or after the spring of 2013?

4 A. I can't, but the prices that are printed here would
5 easily deduce that.

6 Q. It says [reading] Our rates compared. Central
7 Maine Power's standard offer --

8 A. [Reading] Rate of 8.49.

9 So if we look to see when standard offer was
10 8.49 we'd know when this was printed.

11 Q. And that would tell us conclusively when this was
12 used to acquire customers?

13 A. It would be -- I believe it would.

14 (Exhibit 27 marked for identification.)

15 (Discussion off the record.)

16 Q. This is Defendants 1120 through 1121.

17 (The deponent looked at the exhibit.)

18 Q. So again, this is another what looks to be a flier.

19 Would you agree?

20 A. It's an enrollment form.

21 Q. Is this something that appeared in -- as a flier at
22 a trade show like the other prior forms?

23 A. Yeah, it looks like a flier. I can't say it was or
24 wasn't used without seeing some of them filled out,
25 but it looks like someone's attempt at a flier.

1 Q. And would you agree with me that this is similar to
2 the previous two fliers that we looked at?

3 A. Yes, it is similar.

4 (Exhibit 28 marked for identification.)

5 Q. I'm showing you what has been marked as Exhibit 28,
6 Mr. Clavet.

7 MR. CUMMINS: 1127 to 1129 are the Bates
8 numbers.

9 (The deponent looked at the exhibit.)

10 Q. Can you tell me what this form appears or -- can
11 you describe to me what 28 is?

12 A. It looks like the building of a form. It just
13 looks kind of sloppy, so I don't know that it's
14 finished.

15 Q. Okay. Was it maybe the form that ended up in the
16 previous three exhibits that we looked at?

17 A. It looks like a working document that someone was
18 trying to create something. I can't tell how it
19 was used.

20 Q. What sort of non-TV and radio advertising was
21 Electricity Maine doing between 2011 and the spring
22 of 2013?

23 A. Non-TV?

24 Q. Or non-radio. What paper advertising, for lack of
25 a better term, was Electricity Maine doing during

1 that time period?

2 A. We would have had newspaper, we might have had some
3 magazine. Less, but some. We would have done
4 mailers. Direct mailers. We might have done some
5 internet ads. Like Google search words and things
6 like that.

7 Q. Did that advertising -- was it consistent with your
8 general marketing campaign during that time period?

9 A. It would have varied greatly because early on we
10 might have done mailers just to businesses or just
11 to residential customers. We did a mailer once
12 only to churches, we did a mailer once only to
13 towns.

14 Q. Have you produced those documents in discovery?

15 A. If we had documents, then we would have produced
16 them, yes, I'm sure.

17 Q. Was the advertising to residential customers during
18 that time period that you just described, was that
19 -- let me rephrase.

20 Were your direct mailers focused on price
21 savings compared to the standard offer?

22 A. Partly. A lot of our direct mail stuff would have
23 been to have them come look at our website and
24 check us out. Go to Electricity Maine, take a
25 look.

1 Q. And at that time your website advertised price
2 savings in comparison to the standard offer?

3 A. It would have quoted our price and it would have
4 quoted the standard offer.

5 (Discussion off the record.)

6 (A brief recess was taken.)

7 * * * * *

8 (Exhibit 29 marked for identification.)

9 CONTINUED EXAMINATION

10 BY MR. DONAHUE:

11 Q. I'm going to show you, Mr. Clavet, Exhibit 29.

12 (The deponent looked at Exhibit 29.)

13 Q. Do you recognize this document?

14 A. Yes.

15 Q. This is a newspaper article that ran in August of
16 2011 about Electricity Maine?

17 A. Yes.

18 Q. You're quoted in this article on Page 6 of 9?

19 (The deponent looked at the exhibit.)

20 Q. On the bottom after the break, you're quoted as
21 saying [reading] Our commitment is to everybody.
22 We will always beat the standard offer. You'll
23 never, ever pay more than the standard offer or we
24 won't be back.

25 Is that an accurate quote?

1 A. That's part of what I would have said.

2 Q. Let's talk just briefly about the last couple
3 exhibits we looked at, which were those forms.

4 Who at Electricity Maine or Provider Power
5 was in charge of these forms?

6 A. Depending on when they were made, it could be a few
7 different people. If they were made later, meaning
8 2013, it might have been Candace Sanborn. If they
9 were made earlier, it might have been work papers
10 somewhere between myself or Kevin Dean that would
11 have worked on them.

12 Q. Let's talk about the renewal process.

13 So Electricity Maine automatically renews
14 customers after they receive an e-mail or a letter;
15 is that correct?

16 A. Yes.

17 Q. Sometimes it renews customers at rates higher than
18 their previous rate; is that correct?

19 A. Correct.

20 Q. And sometimes it renews customers at rates higher
21 than the standard offer?

22 A. Yes.

23 Q. Does Electricity Maine or Provider Power have any
24 internal procedures or standards about automatic
25 renewal?

1 A. Well, the --

2 MR. AROMANDO: Objection. Time frame, Ben?

3 MR. DONAHUE: At any point in time.

4 A. Well, the whole thing is a procedure that is set up
5 by the PUC in how it should be done.

6 Q. So you'd agree that Electricity Maine and Provider
7 Power should comply with PUC regulations?

8 A. Yes.

9 Q. They should comply with PUC instructions?

10 A. Yes.

11 Q. They should comply with any agreement that they
12 have with the PUC?

13 A. Yes.

14 Q. You would agree that Electricity Maine and Provider
15 Power should not use confusing practices when
16 dealing with customers?

17 A. Yes.

18 Q. Would you agree that Electricity Maine and Provider
19 Power should disclose the risk that a re-enrollment
20 rate might be significantly higher than a
21 historical rate?

22 MR. AROMANDO: Objection.

23 A. I don't understand that question.

24 Q. Do you agree that Electricity Maine and Provider
25 Power should include the historical rate - the rate

1 the customer is being re-enrolled from - in the
2 re-enrollment notice?

3 A. Well, I think that we should follow the rules that
4 the PUC set forth. I'm not sure if that's what
5 you're asking me or if you're asking me for
6 something more than what's in the rules.

7 Q. Do you agree that prior to January 2015 any
8 competitive electricity provider should have
9 included a re-enrollment notice with the customer's
10 electricity bill?

11 MR. AROMANDO: Objection.

12 A. That was too much. Could you just break that down
13 for me?

14 Q. Sure.

15 Prior to January of 2015, Electricity Maine
16 and Provider Power sent out re-enrollment notices;
17 correct?

18 A. Correct.

19 Q. Those notices came by e-mail?

20 A. Some, yes.

21 Q. Or letter?

22 A. Yes.

23 Q. Did any of those notices accompany the customer's
24 power bill that they received from CMP or Bangor
25 Hydro?

1 A. No.

2 Q. I'm showing you what has been marked as Exhibit 30.

3 (Exhibit 30 marked for identification.)

4 Q. This is a letter from Electricity Maine to
5 Katherine Veilleux.

6 Would you agree with that description?

7 (The deponent looked at the exhibit.)

8 A. Yes.

9 Q. And it's dated October 1st, 2014?

10 A. Yes.

11 Q. Is this a letter or was this sent as an e-mail?

12 (The deponent looked at Exhibit 30.)

13 A. I don't know. It looks like a letter, but I'm
14 hesitating because I don't know if it couldn't have
15 been sent as an e-mail as well.

16 Q. Well, assuming it was sent as a letter, did -- this
17 is a re-enrollment notice sent to Katherine
18 Veilleux informing her that she's going to be
19 re-enrolled or renewed in Electricity Maine's
20 service; is that correct?

21 A. I believe it is.

22 Q. And you are re-enrolling her at a rate of 11 cents,
23 approximately, per kilowatt hour if she takes no
24 action.

25 A. Correct.

1 Q. How many other re-enrollment notices did
2 Electricity Maine send out during October of 2014?

3 A. I don't know how many we sent out in October.
4 October, November, December would have been when
5 most re-enrollments happen. So a lot.

6 Q. How many re-enrollment notices were sent out?

7 Let's start with letters. Who sends the
8 letter?

9 A. Our office does. Our employees.

10 Q. Do they stuff the letters themselves?

11 A. We have a machine that stuffs the letters.

12 Q. So it's an automated process?

13 A. Yes.

14 Q. Are all those -- there's only two ways for a
15 customer to be re-enrolled; right? Letter or
16 e-mail?

17 A. They could call and give us instructions.

18 Q. The notices only would arrive by letter and e-mail?

19 A. Yes.

20 Q. Is this an example of -- well, do the notices sent
21 to other Electricity Maine customers, are they
22 similar to this notice?

23 A. I believe they are.

24 Q. Are they identical to this notice minus the address
25 and account number; the personal information?

1 A. I would say that when they go out in a batch, if
2 she was in this batch, those would all be the same,
3 but there could be different prices or times or
4 groups.

5 Q. Besides the price, there would be no other,
6 different language in any other letter that went
7 out during that time period?

8 A. I don't believe so.

9 Q. Let's look at this a little more closely.

10 There's no comparison to the standard offer
11 in this letter, is there.

12 A. No.

13 Q. You were informing Ms. Veilleux that you have
14 secured a competitive rate for her.

15 A. I believe that's what this is.

16 Q. There's nothing to inform her that she's no longer
17 saving money?

18 A. Not -- we don't speak about savings in this letter.

19 Q. There's no reference to the old rate that she was
20 getting prior to her renewal?

21 A. Not in this letter; however, I don't know that this
22 letter wasn't sent to her because she asked for it
23 or if this was her -- her renewal letter.

24 Q. But in this letter there's no comparison to the old
25 rate that she had previously received?

1 A. I don't see one in this letter.

2 (Exhibit 31 marked for identification.)

3 (The deponent looked at Exhibit 31.)

4 Q. I'm showing you -- ignore the top part of the
5 message, but the substantive e-mail below is from
6 Electricity Maine to Jennifer Chon on October 1,
7 2014; is that correct?

8 A. Yes.

9 Q. And this is an e-mail informing Ms. Chon that she
10 will be renewed in Electricity Maine's services if
11 she takes no action.

12 A. Yes.

13 Q. If you compare the language in this e-mail to Ms.
14 Veilleux's letter, would you agree that it's
15 essentially identical?

16 (The deponent looked at documents.)

17 A. Yes.

18 Q. So Ms. Chon was renewed by e-mail; Ms. Veilleux, by
19 letter; is that correct?

20 A. Yes.

21 Q. Were all of the other e-mails - renewal e-mails -
22 sent out during the fall of 2014 similar to this
23 e-mail to Ms. Chon?

24 A. I don't know if they were all the same, but it
25 looks like a basic letter.

1 Q. Okay. By "basic letter" is that your standard form
2 --

3 A. It looks like a standard form letter.

4 Q. Again, you'd agree that this e-mail does not
5 mention standard offer?

6 A. It's -- it does not.

7 Q. It doesn't mention Ms. Chon's old rate.

8 A. It does not.

9 (The deponent looked at the exhibit.)

10 A. It looks like ... I just don't know why there's a
11 couple e-mail addresses there.

12 Q. The e-mail at the top was just her forwarding that
13 e-mail to me.

14 A. Oh, okay.

15 Q. Do you have any reason to believe why e-mails --
16 strike that.

17 Were there any e-mails sent during this time
18 period that include a reference to the standard
19 offer? Any renewal e-mails sent during this time
20 period that included a reference to the standard
21 offer?

22 A. I would have to look at them individually to know
23 that.

24 Q. But these e-mails are sent out using a systemized
25 process?

1 A. I believe so, unless they were specifically
2 requested by the customer. They look like they
3 would have been part of a process.

4 Q. But this is an automatic renewal. This is not
5 something that was specifically requested by Ms.
6 Chon?

7 A. It looks like a standard letter that was sent out
8 to her. I don't think that she made any request.

9 Q. It's a standard e-mail.

10 A. It looks like a standard e-mail.

11 Q. Did Electricity Maine or Provider Power include
12 reference to the standard offer in any
13 automatic-renewal e-mail during this time period?

14 A. I don't recall. I'd have to look at them
15 individually to see.

16 Q. And you keep a record of each individual e-mail?

17 A. Yes.

18 Q. Did any automatic e-mail during this time period
19 include reference to a prior rate that a customer
20 was receiving before automatic renewal?

21 A. I know that some mailers do. I don't know when
22 that started. I know that some of them include a
23 reference to a price. I'm not sure of the timing
24 of that. I've seen letters include reference to
25 different prices.

1 Q. What letters when?

2 A. Well, we had some that Mitch Tannenbaum asked us to
3 send that I would believe would have quoted a
4 standard offer.

5 Q. But those were the letters sent in response to the
6 August 7 letter from the PUC?

7 A. Yeah.

8 Q. So those weren't automatic-renewal e-mails.

9 A. Correct.

10 Q. Those were corrective letters or e-mails if you
11 will.

12 A. Yes.

13 Q. Are you aware of any automatic-renewal e-mail that
14 includes a reference to a customer's prior rate
15 that was sent during this time period; the fall of
16 -- October --

17 A. Not any individual letters specifically. I would
18 just want to look at them and see what they
19 referenced. But we would have record of them.

20 Q. What sort of e-mail programming did you use to
21 track your -- send your automatic-renewal e-mails?

22 Let me break that down a little bit.

23 So there wasn't someone at Provider Power or
24 Electricity Maine clicking "send" to each one of
25 these thousands or tens of thousands of e-mails

1 that went out --

2 A. Yeah, they would go out in some batch form.

3 Q. And that was a computer program facilitated the
4 "send" -- someone would create the content, but
5 ultimately the process of sending thousands of
6 e-mails was a computer --

7 A. Yes.

8 Q. -- acting in -- it was an automated process.

9 A. Yes.

10 Q. So if there was an e-mail that referenced a prior
11 rate, you would be able tell by looking at one
12 e-mail in each batch?

13 A. I would say so.

14 Q. Because every e-mail in the batch is the same;
15 right?

16 A. I would say it would be.

17 Q. Now, Electricity Maine and Provider Power are
18 generally aware of what the standard offer rate is;
19 right?

20 A. Yes.

21 Q. That's part of your business, is to be aware of the
22 standard offer.

23 A. Yes.

24 Q. When you sent this e-mail to Ms. Chon, you knew
25 that you weren't going to be saving her money -

1 right? - in comparison to the standard offer?

2 A. No, this would -- it looks like it was sent in
3 October. Standard offer probably wasn't announced
4 until December or January. If this was late 2014,
5 you would have had the PUC announcing that standard
6 offer rates were expected to double. You're
7 dealing with a polar vortex time right there.

8 Q. Well, it wasn't a polar vortex in October, was it?

9 A. It was a polar vortex earlier -- like in January of
10 2014. We had a severe winter event. So they were
11 predicting that the next winter would carry over
12 because we had constraints in our gas lines.

13 Q. Are you saying you can predict what a winter is
14 going to be like in October --

15 A. They price every day, every hour, every month going
16 forward based on their current experience. And
17 yes, you had Chairman Welch, you had Patrick
18 Woodcock, you had the PUC announcing that the next
19 standard offer was going to be dramatically up.
20 And if you looked at New Hampshire and
21 Massachusetts for the same period, you would see
22 evidence of that.

23 Q. But when you sent this out, what was the standard
24 offer in October of 2014?

25 A. I'm going to guess that it was 6 or 7 cents.

1 Q. And you renewed Ms. Veilleux at 11 cents.

2 A. Rates were predicted be around 14.

3 Q. I'm just asking you --

4 A. Yes, we did.

5 Q. So at the time you sent this, you were aware that
6 you were going to be charging her a rate above the
7 standard offer?

8 A. We didn't know what standard offer was going to be
9 yet at that point going forward.

10 Q. When does the standard offer kick in every year?

11 A. March 1st. It's usually announced
12 December/January. Sometimes they announce in
13 November. They've been a little inconsistent on
14 that.

15 Q. So the standard offer that was in place in October
16 of 2014 was the same standard offer that Ms. Chon
17 would be receiving once she was automatically
18 re-enrolled; right?

19 A. I don't understand.

20 Q. This says [reading] if you do nothing, you'll be
21 re-enrolled in December of 2016; right?

22 A. Yes. 2014.

23 Q. You're right. December of 2014. You're right.

24 So -- and that's when she would --

25 Electricity Maine would start charging her 11 cents

1 per kilowatt hour; right?

2 A. Yes.

3 Q. Okay. So the standard offer -- you knew what the
4 standard offer would be in December of 2014.

5 A. We knew what was in December, but they were
6 announcing --

7 Q. -- not asking what it was going to be.

8 MS. HEWEY: Let him finish the answer.

9 A. This was a 24-month contract. So we're dealing
10 with a lot of hours across this term. We didn't
11 know what it would be over the next couple of
12 years.

13 Q. My question was did you know what it was going to
14 be in December of 2014.

15 A. We knew what was in December,

16 Q. So the answer is yes.

17 A. Yes, we knew what it was in December.

18 Q. Okay. And you knew that that was going to be
19 significantly lower than 11 cents per kilowatt
20 hour.

21 A. We knew what it was at that time.

22 Q. In December of 2014.

23 A. Yes.

24 (Exhibit 32 marked for identification.)

25 (The deponent looked at Exhibit 32.)

1 Q. Mr. Clavet, are you familiar with this report from
2 the Public Utilities Commission?

3 A. I just looked at it. Yeah. It's not very old.
4 February, yes.

5 Q. Are you aware that the Public Utilities Commission
6 concluded that between 2014 and 2015 competitive
7 electricity providers charged Maine ratepayers 77.7
8 million more than they would have paid for standard
9 offer service?

10 A. I'm familiar with what their chart says here, yes.

11 Q. Do you think their chart is incorrect?

12 A. I think it served their purpose. I don't think
13 it's a very valuable report. I think it's an
14 incomplete picture.

15 Q. What do you think is incomplete about it?

16 A. I think that the time period should have been
17 expanded to take a much wider view of what's going
18 to happen in a market that's very volatile. I
19 think a three-year snapshot is too narrow and I
20 think it ignores a lot of other variables that
21 should have been included.

22 Q. Well, do you think it's accurate during those three
23 years?

24 A. No.

25 Q. Let's start with 2014, which is on Page 5.

1 (The deponent looked at the exhibit.)

2 Q. Have you reviewed the spreadsheet here that breaks
3 down the pricing that different competitive
4 providers charged Maine ratepayers?

5 A. Yes, I see it.

6 Q. So this says Electricity Maine had an average price
7 per kilowatt hour of roughly 8 cents; is that
8 correct?

9 A. I see it.

10 Q. Do you have any reason to disagree with that data?

11 A. I didn't compile the data, so I wouldn't challenge
12 it unless I did my own report.

13 Q. Okay. Well, is that an accurate --

14 A. It says 8 cents.

15 Q. Okay. But you, during that time period, were
16 running Electricity Maine; right?

17 A. Yes.

18 Q. And you were familiar with the prices that
19 Electricity Maine was charging customers; correct?

20 A. Yes.

21 Q. Is 8 cents a kilowatt hour on average the price
22 that Electricity Maine was charging residential
23 customers during that time period?

24 A. I don't know. I haven't done the calculation.

25 Q. So Electricity Maine was not aware on average of

1 what it was charging consumers?

2 A. I didn't do a report to calculate the average over
3 those three years because if I would have, I would
4 have added other variables that would make it more
5 reliable, like trying to determine whether or not
6 extra winters were picked up in this or not or if
7 some of these were straddled years or whether or
8 not some of these other companies were offering
9 variable or introductory offers. I would want to
10 know if the standard offer was -- was reconstructed
11 so that I would adjust it for risk where this
12 report doesn't do that for me.

13 Q. Isn't it true that you basically off-loaded your
14 risk on to residential customers?

15 MR. AROMANDO: Objection.

16 A. I don't understand the statement.

17 Q. You were just telling me that you increased the
18 price you charged Ms. Veilleux in October of 2014
19 because you thought that prices were going to go
20 up.

21 A. The State of Maine Public Utilities Commission told
22 us that prices were expected to double. So we
23 bought longer strips because they were the cheapest
24 thing going. The PUC, going out to standard offer,
25 bought a ten-year strip and took huge risks with

1 the state of Maine's power load, a
2 roulette-wheel-type risk. We would not take that
3 risk. We covered it.

4 Q. Okay. So you charged a higher price.

5 A. We charged a fully-hedged covered price to
6 eliminate the risk.

7 Q. And then your customers ended up paying for that
8 risk; isn't --

9 A. They pay for electric, which includes a price that
10 calculates risk.

11 Q. If you had picked a lower price, say 8 cents a
12 kilowatt hour, that would have been a risky move
13 for you; right? In 2014 --

14 A. We don't pick the prices. We buy them on the open
15 market based on what is quoted.

16 Q. Okay. But if you took a riskier position, a
17 different hedge and offered a lower price, that
18 would have been very risky for you; right?

19 A. It would have been imprudent and risky for the
20 customers.

21 Q. Why is that?

22 A. Because if you don't buy the winter and you go into
23 the winter naked, without that power, you're taking
24 a risk that prices could double on you. Budget
25 certainty is very important.

1 Q. Well, you would just go out of business at that
2 point; right?

3 MS. HEWEY: Objection.

4 A. Customers would go out of business.

5 Q. Customers would get re-enrolled in the standard
6 offer; right?

7 MS. HEWEY: Objection.

8 A. The standard offer might have been expected to
9 double.

10 Q. Let's go back to the chart.

11 Is it really your position that you don't
12 know what Electricity Maine charged its customers
13 in 2014?

14 A. I would know what Electricity Maine charged in 2014
15 if I looked at our rates individually.

16 Q. But you're not prepared to answer that question
17 right now?

18 A. There were a lot of different customers paying a
19 lot of different rates. Some of them were
20 business, some of them were residential. Some of
21 these dates would -- would have staggered periods
22 of electricity. You can't take a twelve-month
23 contract or a 24-month contract and only put a year
24 of it in here and have it be relative to others
25 that you're comparing that might have been built

1 with six-month and then twelve-month or one-month
2 variable contracts.

3 Q. I'm not asking you to compare to anyone else. I'm
4 just asking you in 2014 if you took all of your
5 customers' prices, added them up, and averaged
6 them, would that be 8 cents per kilowatt hour.

7 A. For what?

8 Q. The kilowatt -- the price you charged your
9 customers.

10 A. If I was pricing this three-year in this chart, the
11 price would not be 8 cents.

12 Q. I'm not asking if you were coming up with pricing.
13 I'm asking historically, is that the price you
14 charged customers on average in 2014. Very simple
15 question.

16 A. I don't know. I haven't -- I didn't put the chart
17 together.

18 Q. What's that?

19 A. I didn't put the chart together. I don't know if
20 that's exactly what it would be.

21 Q. So you're not aware of whether you saved consumers
22 money or cost them money in 2014 in comparison to
23 the standard offer.

24 A. I think we did a heck of a good job in 2014
25 covering the risk compared to what the prices were

1 on the open market, what other states were
2 experiencing, and the type of risk that the State
3 of Maine left Mainers exposed to.

4 Q. Let's go to 2015. This report lists your average
5 rate at 10 cents -- almost 11 cents per kilowatt
6 hour.

7 Is this report accurate --

8 MS. HEWEY: Would that part be, by any
9 chance, on the previous page?

10 MR. DONAHUE: It's on Page 4.

11 MS. HEWEY: Okay.

12 (The deponent looked at the exhibit.)

13 Q. Does Provider Power know what, on average, it
14 charged its customers in 2015?

15 (The deponent looked at the exhibit.)

16 A. Where are the dates?

17 Q. The bottom one is 2015.

18 A. Where does it say that?

19 (Ms. Hewey pointed to the exhibit.)

20 A. Okay. So the top one is 2016, the bottom one is
21 2015?

22 Q. Yes.

23 A. I would believe that that would be accurate.

24 Q. What was the standard offer during that time
25 period?

1 A. I don't know, but I would believe that this would
2 be possibly part of the two-year rate. So I
3 wouldn't know what I was pricing against. I don't
4 know how they staggered their ten-months -- there
5 was a ten-month piece, a two-month piece, then a
6 renewal of another year as they were coming off a
7 three-year blended average.

8 Q. Well, is the data that the PUC got from the ... I
9 guess it's the Federal --

10 A. FERC.

11 Q. No, it's not FERC. The EIA. The Energy
12 Administration ... what's it called? Federal
13 Energy ... it's not FERC.

14 MR. AROMANDO: Energy Information
15 Administration.

16 Q. Are the prices that the PUC got from the EIA
17 regarding the standard offer correct?

18 A. I don't know. I would agree that they wouldn't
19 make a mistake quoting prices wrong.

20 Q. So is it accurate that Electricity Maine on average
21 and in the aggregate charged Maine customers 30
22 million dollars more than the standard offer in
23 2015?

24 A. It's hard for me to tell because that price might
25 not have been for a full year. I don't know how

1 they did it.

2 Q. But you agree that the average for your rate on
3 this chart is correct?

4 A. I believe it's correct because the numbers look to
5 be in the range of what I believe to be true.

6 Q. Let's go to 2016, which is at the top of this page.
7 If you look at the average price they have for
8 Electricity Maine in 2016, it's 1043; correct?

9 A. I see it, yes.

10 Q. That's a correct number?

11 A. It looks to be around the right number.

12 (Exhibit 33 was marked for
13 identification and was passed to the
14 deponent.)

15 Q. So Mr. Clavet, I'm going to represent to you that
16 this is data about, on the first page here, Kathy
17 Veilleux that we've collected from the information
18 that you have provided to us in discovery. We've
19 calculated the rates that you charged her in
20 comparison to the standard offer on a monthly
21 basis.

22 So if you look at the category that says EM
23 Rate ... do you see that category?

24 (The deponent looked at the exhibit.)

25 A. EM Bill?

1 Q. Just before that.

2 A. Okay, yeah.

3 Q. If you look down that column, would you agree that
4 that information accurately reflects the prices
5 that Electricity Maine charged Kathy Veilleux?

6 A. Where are the -- which way do the dates go from the
7 top to the bottom?

8 Q. They start in ... it looks like 2013.

9 (Ms. Hewey pointed to the document.)

10 (The deponent looked at the exhibit.)

11 A. Okay. They look like -- do they jump all over?

12 MS. HEWEY: What's the question going to be?

13 Q. My question is going to be are the prices that we
14 have listed on this spreadsheet, do those prices
15 accurately reflect the prices that Electricity
16 Maine charged Katherine Veilleux.

17 MR. AROMANDO: Objection.

18 MS. HEWEY: And how is he going to know that?

19 MR. DONAHUE: Because this is one of our
20 deposition topics.

21 MS. HEWEY: And he's supposed to have every
22 date of every rate memorized? There's no possible
23 way. If you show us a document that we produced
24 we'll tell you that those accurate. If you tell me
25 that you took these numbers directly off the

1 document that we produced, we will agree they're
2 accurate. But you can't give a man a page with
3 really tiny numbers - thousands of them - and ask
4 him to testify whether they're accurate or not.
5 That's just not fair.

6 MR. DONAHUE: I don't have any further
7 questions on this. Let's take a quick break. You
8 can show me those answers --

9 (Discussion off the record.)

10 (A brief recess was taken.)

11 * * * * *

12 (Exhibit 34 marked for identification.)

13 CONTINUED EXAMINATION

14 BY MR. DONAHUE:

15 Q. Mr. Clavet, I'm handing you Exhibit Number 34.
16 These are your -- this is styled your Second
17 Amended Answers to Plaintiffs' Interrogatories.
18 These are for Electricity Maine and Provider Power.
19 So you're answering for both Electricity Maine and
20 Provider Power?

21 A. Yes.

22 MR. AROMANDO: Wait. Hold on --

23 MS. KAYATTA: Electricity Maine also has a
24 signature page. It's just not included here.

25 Q. So you haven't signed this yet, but you intend to

1 sign it?

2 MS. HEWEY: He has signed it. I didn't send
3 that one to you.

4 MR. DONAHUE: Do you want to just look
5 through it real quick and see if it's -- if
6 everything here is accurate and your statement
7 under oath and that this is what you intend to
8 sign?

9 THE DEPONENT: I have signed it. Do you want
10 me sign it again?

11 MR. DONAHUE: No, no. I want to make sure
12 this is the same as what you signed.

13 MS. HEWEY: All right. So this is the
14 document that you signed. This is the document
15 that we looked at last week.

16 And then, rather than have him read it
17 and try to remember --

18 THE DEPONENT: Yes, it's the -- we believe it
19 is the same.

20 This one is supposed to be signed by
21 Danny Kuehl.

22 MS. HEWEY: This is your page. This is the
23 one you signed on behalf of Provider Power.

24 (Ms. Hewey pointed at the document.)

25 THE DEPONENT: Oh, okay, I see. There's a

1 page for both of us.

2 So you have that one. I don't -- yes, I
3 do have it.

4 Q. This is the same document that you signed under
5 oath though?

6 A. Yes.

7 Q. So up front you asserted a bunch of general
8 objections and objected on the basis of the
9 attorney-client privilege, work product, and some
10 other privilege, you have asserted that our
11 definitions and instructions are vague and
12 ambiguous, and you assert that these objections
13 should apply to all of the answers. To all of your
14 interrogatory responses.

15 Is that correct?

16 A. Yes.

17 Q. So let's look at Number 9. The question asks
18 [reading] please identify the amount Electricity
19 Maine spent on marketing each month to all
20 customers from formation through December 31, 2017.

21 A. Yes.

22 Q. Are you asserting the attorney-client privilege
23 with respect to your answer to that interrogatory?

24 MR. AROMANDO: I'm going to object here. The
25 lawyers signed for the objections. If there's a

1 hang-up about the objections, counsel would deal
2 with that.

3 MR. DONAHUE: If he's asserting an objection
4 I'm entitled to know if he has an answer.

5 MS. HEWEY: That's why the lawyers sign the
6 objections.

7 MR. AROMANDO: -- a legal issue.

8 MS. HEWEY: If you think that we have not
9 fully responded, then your remedy is to ask us what
10 --

11 (Simultaneous speaking.)

12 MS. HEWEY: If there's an issue with
13 objections, that's something you go -- you would
14 discuss with the lawyers.

15 MR. DONAHUE: Thank you for --

16 MS. HEWEY: -- an issue with the facts, just
17 go ahead and talk to him about them.

18 MR. DONAHUE: I want to make sure -- one of
19 the reasons that he hasn't answered this fully for
20 three months is not because of the attorney-client
21 privilege.

22 MS. HEWEY: It's not.

23 MR. DONAHUE: Thank you.

24 Q. Initially, in your first interrogatories, you
25 designated Defendants 5176 to this interrogatory

1 Number 9. I'm going to mark that.

2 (Exhibit 35 was marked for
3 identification and was passed to the
4 deponent.)

5 Q. This was produced to us - Exhibit 35 - as
6 Defendants 5176.

7 Going back to Interrogatory Number 9, which
8 asks you to identify on a month-to-month basis how
9 much Electricity Maine and Provider Power spent on
10 marketing, you designated this document. You
11 originally designated this document. Is that
12 correct?

13 A. Yes.

14 Q. Would you agree that this document does not provide
15 a month-to-month analysis of how much Electricity
16 Maine and Provider Power spent on marketing?

17 A. Yes. Yes, I agree.

18 Q. Can you tell me what the document is?

19 A. This document talks about customer acquisition
20 costs for three years in Maine, New Hampshire, and
21 Massachusetts.

22 Q. So it says in 2011 Provider Power spent 55,000
23 dollars approximately on marketing for customer
24 acquisition?

25 A. Yes, that's what it says.

1 Q. In 2011 Provider Power was only Electricity Maine?

2 A. Yes.

3 Q. Okay. In 2012/2013 Provider Power included
4 Electricity New Hampshire?

5 A. Yes.

6 Q. So is there something somewhere that shows a
7 breakdown between what was spent on Electricity
8 Maine acquisition versus ENH acquisition?

9 A. I think we'd have something.

10 Q. But you would agree that this doesn't show --
11 distinguish between those two entities:
12 Electricity Maine and ENH Power --

13 A. Correct.

14 Q. -- for the years 2012 and 2013?

15 A. Yes.

16 Q. So if you look at 34 now, you have amended your
17 response to designate 4988; is that correct?
18 Defendants 4988?

19 A. I don't know what that means.

20 Q. It's a spreadsheet that you produced in discovery.

21 A. Oh. Yes.

22 MR. DONAHUE: I'm going to bring that
23 document up now. We don't have it here in paper
24 form, but we'll provide it to Chris.

25 (Exhibit 36 identified.)

1 (The exhibit was displayed on a TV
2 screen.)

3 MR. DONAHUE: If you look at the TV here,
4 this is 4988. Now, there's that 3 on the end
5 there. I don't want to get things confused --

6 MR. CUMMINS: So you have on the screen now
7 the documents corresponding to 4988 and 4989?

8 Q. Okay. So tell us what this document -- tell us
9 about the data contained in this document.

10 A. It looks like you have captured advertising,
11 events, meetings, membership, Power to Help,
12 printing, sponsorship, and other for sections or
13 years for either Electricity Maine, ENH Power ... I
14 don't -- well, you have Provider Power up there,
15 which might be Provider Power Massachusetts.

16 Q. Okay. So is this actual costs or are these
17 projected costs?

18 THE DEPONENT: Is this a document that we
19 sent you?

20 MR. DONAHUE: Yes.

21 THE DEPONENT: I'm looking for a title in the
22 spreadsheet. Is it just called accounting?

23 MR. DONAHUE: I don't know. This is why I
24 need your help figuring it out.

25 A. Ask me the question again, please.

1 Q. Are these -- is this spreadsheet a -- does this
2 capture actual costs or projected costs?

3 A. I can't tell from there, but seeing that they're
4 carried out a few decimals, I'm going to think it's
5 more actual than projection.

6 MR. AROMANDO: Katherine points out that the
7 title would be in the load file.

8 MS. KAYATTA: Yeah, it just doesn't show up
9 when you open the native, but the original file
10 name would be in our production.

11 Q. But someone that was familiar with -- like
12 yourself, with Provider Power's business operations
13 would be able to tell what this spreadsheet was all
14 about?

15 A. Yes.

16 Q. Okay. So I'm going to look at the next document
17 you designated. That's 4989.

18 (Discussion off the record.)

19 (Exhibit 37 identified.)

20 (The exhibit was displayed on a TV
21 screen.)

22 Q. So this is another document that you have produced
23 in discovery. It shows on a monthly basis
24 beginning in January of 2014 numbers that appear
25 for advertising and other promotional costs.

1 A. Yes, I agree.

2 Q. It looks like -- can you tell me whether these are
3 actual costs or projected costs?

4 A. I can't. I think they're actuals because of the
5 decimals.

6 Q. Who was in charge of marketing budgets at
7 Electricity Maine and Provider Power?

8 A. It was something that we -- that myself and Kevin
9 Dean and Noble, our supply company, would talk
10 about and we would have to get approved by them.

11 Q. And who would handle the actual -- the budgeting
12 process. Who would put together projections?

13 A. We would have some projections put together by
14 Candace Sanborn later on. Early on, it was myself
15 and our supply company, because they would only let
16 us use a certain amount of money per year to do
17 marketing and advertising.

18 Q. Okay. And then what about later on.

19 A. Later on, it would have been -- what do you --

20 Q. -- early on, first of all.

21 A. '11. 2011, early 2012.

22 Q. So after that time period who was in charge of
23 creating budgets?

24 A. Kevin and I would create the budget and get it
25 approved by Noble, which is also like a bank. Our

1 supply company.

2 Q. Just you and Kevin?

3 A. Yeah.

4 Q. So you believe that these are the actual moneys
5 spent versus projections?

6 A. Yes.

7 This is 2014?

8 Q. This document goes through October. Is there
9 another document that would complete 2014?

10 (The deponent looked at the exhibit.)

11 A. I think that is all of 2014.

12 Q. Well, there's -- the year doesn't end in October,
13 does it?

14 A. No, but the marketing might have.

15 Q. So there was no money spent --

16 A. We might have spent what we had for the year.

17 Q. Okay. So there was just no marketing --

18 A. Right.

19 Q. Okay. So for November --

20 A. There was a time that that happened. We would
21 spend what we had, we would do our campaign for the
22 year, we would be done, and maybe wait until next
23 year to see what we'd get for another allocation to
24 spend.

25 Q. So after October of 2014, did Provider Power or

1 Electricity Maine spend any more money on
2 marketing?

3 A. It looks like we didn't here.

4 Q. What about in 2015. Were there marketing campaigns
5 then?

6 A. I think there was some more in '15, but it would
7 have been less.

8 Q. Can you tell me what -- approximately how much
9 money Provider Power and Electricity Maine spent in
10 2015 on marketing?

11 A. I can't tell you how much, but I would say if it
12 was a hundred thousand dollars that would be a lot.

13 Q. And it was less than what you spent in 2014?

14 A. Yes.

15 Q. What about 2016.

16 A. We would not have been spending much of anything,
17 if anything, in 2016 as we were preparing to sell
18 the business.

19 Q. So less than 2015 --

20 A. Yes. I would say yes.

21 Q. All right. So let's look ...

22 (Exhibit 38 identified.)

23 MR. DONAHUE: This is Exhibit 38. This is
24 Defendants 5014 with some extra stuff on the end.

25 (The exhibit was displayed on a TV

1 screen.)

2 Q. This is another document, Mr. Clavet, that you have
3 designated in response to Interrogatory Number 9.

4 Can you tell me whether this is -- it looks
5 to be a budget, but can you confirm to me whether
6 this is a -- reflects money actually spent or
7 whether this is projections?

8 A. The title to this was what?

9 Q. It -- Provider Power advertising 2013.

10 (The deponent looked at the exhibit.)

11 A. It looks like what we spent in '13 by radio
12 station. I would think it was actual.

13 Could you scroll down so I can see if there's
14 more than just radio on there?

15 (The deponent looked at the exhibit.)

16 MR. DONAHUE: Want me to keep scrolling?

17 THE DEPONENT: Please.

18 (The deponent looked at the exhibit.)

19 A. I just want to see the conclusion of this document
20 so I can see if it's ... total Maine radio.

21 I think it's actual. It says "2013
22 campaigns" on there. I don't know why it doesn't
23 say actuals or budget, but I believe campaign would
24 have been actual. There could be some in there
25 that was optional, but that looks like what I was

1 used to seeing in how you would buy radio slots
2 over a certain number of days and you'd buy the
3 frequency and they would decide where to put them
4 in.

5 Q. So you think this was an actual -- these are actual
6 costs --

7 A. I believe -- it looks like an actual.

8 Q. We talked earlier about how Electricity Maine and
9 Provider Power's marketing strategy changed in 2013
10 -- spring of 2013 or thereabouts.

11 A. Yes.

12 Q. How did that impact how much money you spent on
13 marketing?

14 MS. HEWEY: Objection, form.

15 A. We would determine what different venues we wanted
16 to use partly by what was available and partly what
17 we had for a message. And when I say "partly
18 available," somewheres in there there was an
19 election year, somewheres in there there was some
20 major events, and you couldn't afford television.
21 You couldn't even afford radio. So those were
22 holes that would have hit somewheres in this.
23 That's what drove what we could afford to do.
24 Because if you look at what it costs per customer,
25 you've got to then compare it to what they're

1 charging. There's times of the year - for example,
2 the holidays - where you can't really afford a lot
3 of the easy advertising because all of the
4 retailers are eating it up.

5 So it's a blend of what's available, what's
6 affordable, and what the message is. But as the
7 PUC was changing standard offer and it became very
8 uncertain as to what was going to happen, we would
9 have slowed down.

10 Q. So once the PUC and you agreed to stop advertising
11 on price, you did less advertising?

12 MR. AROMANDO: Objection.

13 A. No. When the PUC changed the standard offer to be
14 a system that we couldn't have any certainty of
15 anymore, us and our supplier got nervous. They are
16 the ones that control a lot of purse strings on
17 what we could spend.

18 Q. So when you could not compete with the standard
19 offer you did less advertising?

20 A. Yes.

21 MR. AROMANDO: Objection.

22 Q. Who else would be familiar with this document?

23 A. Kevin Dean would be familiar with it, because he
24 would have been sensitive to the budget and what we
25 were able to get from Noble and the changes in the

1 standard offer and what we wanted to spend money
2 on.

3 Q. All right. Can you tell us a little bit about ...
4 let's see.

5 (Exhibit 39 marked for identification.)

6 (The exhibit was displayed on a TV
7 screen.)

8 Q. This is Defendants 5022.

9 Do you recognize this document?

10 (The deponent looked at the exhibit.)

11 A. That's an Electricity New Hampshire marketing
12 program.

13 Q. This looks like a budget.

14 A. That looks more like a budget because Katie Hebert
15 is the gal at Channel 13 that would have proposed
16 things to us.

17 Q. So this document is not going to tell us how much
18 you actually -- Provider Power actually spent on a
19 monthly basis?

20 A. Probably more what they wanted to sell us.

21 Q. And the same with this print budget?

22 A. Yes.

23 Q. It's a budget, not --

24 A. That looks like a budget because of the contact
25 names in there. It looks like we were putting

1 together some estimates.

2 MR. DONAHUE: Okay. Let's go off the record
3 for a second.

4 (Discussion off the record.)

5 Q. This is what you have designated in your
6 interrogatory response as indicative of how much
7 you spent on marketing.

8 (A document was displayed on a TV
9 screen.)

10 Q. Can you explain that response?

11 MR. CUMMINS: You haven't identified --

12 MR. DONAHUE: Sorry. What is it?

13 MR. CUMMINS: Exhibit 40.

14 MR. DONAHUE: Exhibit 40. That's Defendants
15 5451.

16 (Exhibit 40 identified.)

17 A. I'm trying to see what the titles are. What was
18 the title of this besides "general?"

19 MS. HEWEY: Can you find out what time it
20 goes from and to? It looks to me like this is
21 after he was gone.

22 MR. DONAHUE: He's designated --

23 MS. HEWEY: He's already testified that he
24 can't testify about anything after he sold the
25 company. How could he possibly talk about --

1 MR. DONAHUE: Then why did he designate it in
2 his interrogatory response?

3 MS. HEWEY: The interrogatory responses are
4 on behalf of both of them. So the ones that were
5 relevant to Provider Power, he's signing on behalf
6 of. The ones that were relevant to Electricity
7 Maine that Mr. Kuehl signed --

8 Q. Do you know what this is?

9 A. I would just say it looks like a sub-accounting of
10 expenses and accounts payable in the general ledger
11 for items. But I can't tell what the project ID
12 number might reference. But it's not ...

13 Q. Does it have anything to do with advertising or
14 marketing?

15 A. Without seeing more of a description on the top, I
16 can't quite tell. It might be a general ledger.
17 And some of those dates are late into '16, where I
18 would have lost my authority over them.

19 Q. So would you agree with me there's no way that
20 someone who's not familiar with Electricity Maine's
21 accounting or Provider Power's accounting could
22 figure this thing out?

23 A. I think you need some more designations as to what
24 the columns and rows are.

25 Q. Someone from Provider Power or Electricity Maine

1 would be --

2 A. Yes.

3 Q. -- could figure that out?

4 A. I think so.

5 Q. But if I were just looking at this, there's no way
6 I could figure it out?

7 MS. HEWEY: I have ultimate faith in you, Mr.
8 Donahue.

9 A. If you're familiar with these type of accounting
10 systems, you might; but otherwise I wouldn't think
11 you would.

12 Q. And it would be helpful to be familiar with
13 Electricity Maine and Provider Power accounting
14 systems?

15 A. What was the title?

16 Q. It doesn't have a title, I don't believe. Its
17 title is Defendants' 5451.

18 A. I'm curious as to whether or not there was more of
19 a descriptive title as to what this information was
20 and it's just not showing on this page. If that's
21 -- if there is no more information, then yes, it's
22 difficult to read.

23 THE DEPONENT: Could you go across for more
24 columns?

25 MR. DONAHUE: Over here?

1 THE DEPONENT: Yeah. Commissions. There you
2 go.

3 A. Those are commissions.

4 Q. So what does that mean?

5 A. That means that there are ... there's some ...
6 there you go. Those are expenses in a ledger and
7 some of them are commissions. I am going to say,
8 because of the size of those dollars, that those
9 are commercial accounts.

10 Q. Okay. And that would be commissions paid to the
11 sales agents --

12 A. -- commercial sales guys specializing in the
13 commercial business.

14 Q. So let's look at Defendants 5452. It's Exhibit 41.
15 (Exhibit 41 identified.)

16 (The exhibit was displayed on a TV
17 screen.)

18 A. 2017 and '18. So I wouldn't be familiar with some
19 of that stuff.

20 THE DEPONENT: Can you go over to the end
21 here again and see if we get more?

22 (The deponent looked at the exhibit.)

23 A. These are ...

24 Q. So if anything, this document is relevant to what
25 happened in the past couple years and not anything

1 that happened in --

2 A. I would say so, Ben, because of the dates. They
3 don't look like very large balances. It looks like
4 some internal sub-accounting of things like rents
5 and electricity payments for the building,
6 cleaning, things like that. If you're running it
7 alongside the commissions, these are really small.
8 I'm just saying they're small balances for a large
9 business.

10 Q. So there's no document here that you designated
11 that covers marketing in 2012 and 2011; is that
12 correct?

13 A. Just the acquisition costs and the total that you
14 showed me on Number 35.

15 Q. Right, with the exception of Exhibit 35, you
16 haven't produced any documents to indicate how much
17 Electricity Maine and Provider Power spent in 2012?

18 A. Except for the -- oh. '12. I'm sorry. That was
19 '14 perhaps.

20 Q. And '13.

21 A. But you don't have anything for '12.

22 Q. Are you aware -- let's look at Exhibit 35 real
23 quick if you guys have it.

24 (The deponent looked at a document.)

25 MS. HEWEY: We do. We're ready.

1 Q. You have total marketing costs at -- for 2012 at
2 2,685,000. Is there any document available that
3 would break down marketing spent in New Hampshire
4 versus marketing spent in Maine?

5 A. This breaks down New Hampshire and Maine.

6 Q. But only by enrollments.

7 A. Well, there would have been our total costs divided
8 by enrollments to get the customer acquisition
9 cost.

10 Q. Okay. So if I could do some algebra, you could get
11 to the total amount spent in 2012 in Maine --

12 MS. HEWEY: -- don't think you need to go all
13 the way to algebra. I think it's pretty basic
14 arithmetic, right?

15 A. I would say that if you took the Maine costs and
16 subtracted the New Hampshire costs, you'd get it
17 because it's not showing -- we didn't do anything
18 in Massachusetts at that point.

19 Q. Did Electricity Maine or Provider Power, for its
20 operations in Maine, create any documents that
21 reflect what it spent on marketing in 2012 besides
22 Defendants --

23 A. I think we would have. We would have accounting.

24 Q. You'd have accounting, perhaps a profit and loss?

25 A. Yes.

1 Q. That would have a breakdown for marketing?

2 A. Yes.

3 Q. You'd also have invoices from various media
4 outlets?

5 A. Yes.

6 Q. And those would be in Provider Power's and
7 Electricity Maine's possession?

8 A. Yes.

9 MS. HEWEY: Well --

10 A. Spark's possession, yes.

11 Q. But those haven't been designated in response to
12 Interrogatory Number 9.

13 A. No, this is how we've shown it.

14 Q. You're familiar with Electricity Maine's marketing
15 in 2012; right?

16 A. Yes.

17 Q. Were you keeping track of what you spent on a
18 spreadsheet?

19 A. Yes. That's how this was produced, I'm sure. It
20 was -- this is a total.

21 Q. But there's something that would break that down
22 further?

23 A. It would -- probably would have been broken down by
24 month spent.

25 Q. And the same for 2011?

1 A. Yes, I think so.

2 MR. DONAHUE: Let's take a quick break.

3 (A brief recess was taken.)

4 * * * * *

5 CONTINUED EXAMINATION

6 BY MR. DONAHUE:

7 Q. Mr. Clavet, you testified earlier that there was a
8 point at which Provider Power has no further
9 knowledge of Electricity Maine's operations as they
10 exist today.

11 Can you tell me when that date is?

12 A. Well, when we sold the business we -- both Kevin
13 Dean and I stayed on as consultants, but in more of
14 a limited capacity. We didn't have access to all
15 the same stuff that we did, obviously, when we were
16 owners. And some of the functions were moved to
17 Houston. Like some of the accounting and a lot of
18 the purchase decisions. We didn't get to see the
19 cost of power anymore and the purchasing decisions.
20 So a lot of the authority and the control and
21 folks, and the jobs actually, left and went to
22 Houston. So that's why I say some of that stuff I
23 wouldn't have had access to and wouldn't have
24 really needed it.

25 Q. And when you say "you," you mean Provider Power?

1 A. I'm speaking myself and Kevin Dean because we were
2 management that would have had access to it before,
3 not to be confused with the fact that Provider
4 Power is an entity itself. I just wouldn't have
5 seen some of the documents after we sold the
6 business.

7 Q. So when you speak for Provider Power, when was
8 Provider Power's last day of involvement in
9 Electricity Maine's business operations?

10 A. When we sold it. When we sold Electricity Maine
11 and ENH Power, Provider Power didn't do anything
12 more.

13 Q. So Provider Power -- Electricity Maine alone is
14 going to have knowledge as to what happened after
15 Spark's acquisition?

16 A. They'll have everything.

17 Q. Who is Muriel LeClerc?

18 A. Muriel LeClerc - it's a French name - is the lady
19 who is in charge of things like licenses and
20 recording certificates with FERC on a regular
21 basis; the disclosure documents and keeping the
22 license and application with each utility in each
23 state. So it's more of a recording, filing, and
24 following to make sure everything is in its proper
25 place regulatory and -- regulatory-wise. She still

1 works for Spark.

2 MR. DONAHUE: What are we at, Bob?

3 MR. CUMMINS: This will be 42.

4 (Exhibit 42 was marked for
5 identification and was passed to the
6 deponent.)

7 (The deponent looked at the exhibit.)

8 Q. Mr. Clavet, this is an e-mail from Muriel LeClerc
9 to a variety of people. Now, her e-mail address
10 says she's working for Provider Power; is that
11 correct?

12 A. I think that she's got an old e-mail address.

13 Q. So Provider Power is not involved in any way in the
14 business operations of Electricity Maine today?

15 A. No.

16 Q. Have you seen this e-mail before?

17 A. No.

18 Q. So you're not familiar with any of the contents?

19 A. No.

20 Q. Electricity Maine will have knowledge of this
21 e-mail?

22 A. I would assume so, because Muriel still works
23 there.

24 Q. Okay. So the reason it says "Provider Power" is
25 just because she hasn't changed her --

1 A. She may not have changed it. She -- you'd think
2 she would have.

3 MR. CUMMINS: What's the Bates number on
4 that?

5 MS. HEWEY: It doesn't have one.

6 Q. Mr. Clavet, can you tell me about any other
7 litigation that Provider Power has been involved
8 in?

9 A. Provider Power has been involved in ... I'm not
10 sure when Provider Power was established, but when
11 I say "Provider Power" I'm thinking about the
12 energy companies themselves. So Provider Power may
13 have been involved in a contract dispute with
14 Freedom Energy. That was pretty early on; right
15 out of the gate. Like 2011-ish shall. Then we
16 were -- Provider Power was involved in a dispute
17 about an ex-employee of Freedom named Frank Dumont.

18 Q. What were the outcomes of those litigations?

19 A. The outcome of the contract dispute was -- we were
20 trying to cancel the contract and we weren't
21 allowed to cancel the contract with Freedom Energy.
22 So we paid them for services over a two- or
23 three-year period. We were into the first year,
24 and I think it was a three-year contract.

25 Q. Was there a judgment entered against Provider Power

1 in that case?

2 A. I'm not sure how it works.

3 Q. You lost the case.

4 A. We lost the ability to cancel the contract. We had
5 to pay in full.

6 Q. And that case was here in Maine?

7 A. That case would have been here in Maine, yes.

8 Q. What about -- what was the outcome of the case in
9 New Hampshire?

10 A. That case was in New Hampshire and we lost that
11 case.

12 Q. Was there a verdict or a judgment that --

13 A. Yeah, there was a verdict for something less than a
14 million bucks.

15 Q. Was Provider Power accused of destroying documents
16 in that case?

17 A. I don't recall if there was any destruction of
18 documents in that case.

19 Q. Was the jury in that case instructed that you had
20 destroyed evidence?

21 A. I don't recall if they were instructed. I
22 certainly have copies of it, but I don't recall.
23 It's been a couple years since I dealt with that.

24 Q. Did you destroy any documents in this case?

25 A. No.

1 MR. DONAHUE: I think I'm all set for now,
2 reserving our right to open the deposition on the
3 topics for which the witness was not prepared.

4 MS. HEWEY: Which topics are those?

5 MR. CUMMINS: While Ben's doing that, we need
6 the documents that support the calculation of
7 Exhibit 35.

8 MS. HEWEY: I can't help you with that
9 because we don't have any documents.

10 MR. CUMMINS: Well, the witness has testified
11 that there are documents that provide the basis for
12 these numbers. He testified to that about 17
13 minutes ago.

14 MS. HEWEY: All I'm telling you --

15 MR. AROMANDO: We've agreed to go back and
16 look to see if there's anything else.

17 MR. CUMMINS: I'm sure you will, but this
18 witness is the Provider Power person and is a
19 separate defendant in this case. It's, quite
20 frankly, inconceivable that there are not documents
21 that provide the catalyst for these numbers, but
22 that's just my pitch.

23 MS. HEWEY: Are you looking for --

24 MR. DONAHUE: -- my amended notice of
25 deposition.

1 MR. AROMANDO: It was Exhibit 1.

2 MR. CUMMINS: Why don't we take a look at
3 that and provide a letter after you've had a chance
4 to reflect. Then they'll know exactly the subject
5 matters.

6 MR. AROMANDO: You must have something in
7 mind.

8 MS. HEWEY: What I'm going to say is if there
9 are areas that you don't believe were fully
10 explored, I'm going to give you the opportunity to
11 explore them now. If you don't explore them now,
12 then I'm going to take the position that you have
13 no right to go further. I'm just telling you that.

14 MR. CUMMINS: The problem is -- the issue is
15 not whether or not they can be explored. The
16 issue, and the reason that we were going to
17 adjourn, was that the witness clearly manifested
18 that he had not been properly prepared for this
19 deposition pursuant to Rule 30(b)(6). Now, what
20 I'm suggesting is we've covered a lot of turf,
21 which we've pursued in response to John's
22 suggestion, which was a good one, without waiving
23 the opportunity to raise those issues. So what I'm
24 suggesting is let's adjourn the deposition now and
25 we will then provide you with a delineation of

1 those matters that we believe he was not prepared
2 properly to deal with. It's not a matter -- the
3 Holy Spirit hasn't descended on him since we took
4 the break at lunchtime, so I don't think he's going
5 to be any better prepared now than he was at that
6 time.

7 So we will give you a delineation of
8 that within the next day or so.

9 MS. HEWEY: I'm not going to --

10 MR. DONAHUE: Let me state my objection on
11 the record and then we can --

12 MS. HEWEY: I don't agree that he was not
13 properly prepared and I'm not agreeing to the
14 adjournment of the deposition. So if there are
15 additional areas that you want to talk to him
16 about, you should do that now.

17 MR. DONAHUE: -- go over everything we did
18 this morning where he had no idea when certain
19 documents were created or what time certain
20 advertisements ran --

21 MS. HEWEY: I want you to do whatever you
22 feel that you need to do to finish this deposition.

23 MR. DONAHUE: He testified, when we started
24 this deposition, that he had done almost nothing to
25 prepare. He had talked to no one and he had

1 reviewed only the terms of service.

2 MS. HEWEY: He did not say he reviewed only
3 the terms of service but --

4 MR. DONAHUE: We can go back --

5 MS. HEWEY: -- also point out -- sorry.
6 Didn't mean to interrupt you.

7 MR. DONAHUE: I feel that he was unprepared
8 to answer deposition subject matter 7. He had no
9 idea --

10 (Simultaneous speaking.)

11 MR. DONAHUE: -- I will identify to you that
12 there were numerous exhibits, examples of
13 Electricity Maine marketing materials, that Mr.
14 Clavet had no idea what they were, when they were
15 produced, when they were provided, how they were
16 distributed. I think that's clearly within the
17 subject matter of Number 7. He had no idea on a
18 lot of things that were laid out in Number 7.

19 MR. CUMMINS: You may not agree, but we're
20 going to adjourn it. You can object to it. We'll
21 send you a letter and then at some point it will
22 get resolved. Let's not perpetuate this. Nobody's
23 going to win this war of words. I suggest we
24 adjourn, you'll object to the adjournment, and we
25 will give you a letter delineating those areas on

1 which we think he was not properly prepared.

2 MR. DONAHUE: I'm just going to put a little
3 more on the record.

4 MR. CUMMINS: Ben, you're spinning your
5 wheels, but go ahead.

6 MR. DONAHUE: So if you feel that that is
7 inaccurate, Melissa, you -- if he doesn't know what
8 this is, and this is clearly Electricity Maine
9 marketing materials, please explain why you think
10 he was properly prepared.

11 MS. HEWEY: I feel he is properly prepared
12 because he is the person who ran the company, he
13 knows most about the company. What the rule
14 requires that we do is identify the person who
15 knows the most and have that person prepare as much
16 as he can. Putting that out there with no date and
17 asking him where it was published, how would he
18 know? There's no preparation that this man could
19 do now that he doesn't have those documents
20 anymore. That's my position.

21 MR. CUMMINS: Melissa, let me explain
22 something to you. What you just said about your
23 obligation is not correct. You can produce the
24 janitor and he could be required to prepare himself
25 for the deposition. That's the obligation. He's

1 designated to testify on behalf of the entity. And
2 in my 50-whatever years, I've seen a lot of people
3 who are basically brain dead but who got tuned up
4 for a 30(b)(6) deposition. This witness was not
5 tuned up for a 30(b)(6) deposition on certain
6 subjects. We'll delineate those in particular for
7 you. Let's adjourn now and end the debate.

8 MR. AROMANDO: Well, we join Provider Power's
9 position. We think there's been a full and fair
10 opportunity. The witness was one of the two
11 principals of the company. These topics are very
12 general. To throw out specific documents and ask
13 chapter and verse when you didn't provide them
14 ahead of time or reference --

15 MR. DONAHUE: You also had the opportunity to
16 object and you didn't object --

17 MR. CUMMINS: John, you don't represent
18 Provider Power, so your observation is helpful, but
19 it's not instructive.

20 So why don't we adjourn.

21 MR. DONAHUE: Before we adjourn, I'd like to
22 just go through a couple other subject matters that
23 I think the witness was not prepared to answer.

24 In addition to Number 7, the witness had
25 limited knowledge of re-enrollment procedures;

1 specifically topic Numbers 11 and 13. That's
2 pretty specific. He couldn't distinguish between
3 -- tell me whether the notice that I presented him
4 and designated as an exhibit was similar to other
5 re-enrollment notices.

6 MS. HEWEY: I disagree with that
7 characterization of his testimony.

8 MR. DONAHUE: Well, the record will reflect
9 what he said, but clearly if he was not prepared to
10 tell me which renewal notices were sent at what
11 times and whether or not the renewal notices were
12 the same as other ones, he was not properly
13 prepared.

14 MS. HEWEY: I disagree that that's what he
15 said.

16 MR. DONAHUE: Well, would you agree with me
17 that that is -- if he's not prepared to tell me
18 those things, then he --

19 MS. HEWEY: No. I disagree that your
20 questions -- I think what he said was if renewal
21 notices were sent out in advance they were all the
22 same except for the names and other stuff like
23 that.

24 MR. DONAHUE: Well, that's what I think he
25 was unprepared to testify to in addition to the

1 stuff that we're going to notify you about by
2 e-mail.

3 That's all I have.

4 MS. HEWEY: Okay.

5 (The record was closed at 4:27 P.M.)

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CERTIFICATE OF REPORTER

I, Christina J. Duvernay, a court reporter and Notary Public commissioned by the State of Maine, hereby certify that the within-named deponent was sworn to testify the truth, the whole truth, and nothing but the truth in the aforementioned cause of action.

I further certify that this deposition was stenographically reported by me and later reduced to print through Computer-Aided Transcription, and the foregoing is a full and true record of the testimony given by the deponent to the best of my ability.

I further certify that I am a disinterested person in the event or outcome of the above-named cause of action.

IN WITNESS WHEREOF, I subscribe my hand and affix my seal this 15th day of May, 2018.

Dated at South Portland, Maine.


Christina J. Duvernay
Notary Public

My commission expires
December 7, 2020

DEPONENT SIGNATURE PAGE

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DEPONENT: EMILE L. CLAVET

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to the questions recorded therein.

OR

_____ except for the changes noted on the
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EMILE L. CLAVET

Subscribed and sworn to before me

this _____ day of _____, 2018.

Notary Public

My commission expires: _____

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