

State of South Carolina

County of Greenville

In the Court of Common Pleas

Blue Ridge Electrical Coop,

Plaintiff,

-vs-

Kathleen Gresham,

Defendant.

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2008-CP-23-5245

April 29, 2013

Reconstruction Hearing

Transcript of Record

B E F O R E:

The Honorable R. L. McIntosh, Judge

A P P E A R A N C E S:

Larry Brandt, Esquire
Steve Hamm, Esquire
Attorneys for the Plaintiff

Kathleen Jennings, Pro se Defendant

Renee H. Tollison
Circuit Court Reporter

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1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 9:33 a.m.)

4 THE COURT: All right. This is a hearing to
5 reconstruct the record in the matter of Blue Ridge
6 Electrical Coop versus Kathleen Gresham and Steve
7 Gresham.

8 It's my understanding, Mr. Brandt, that Blue Ridge
9 is abandoning any claims it has on appeal; is that
10 correct?

11 MR. BRANDT: Excuse me?

12 THE COURT: It's my understanding that Blue
13 Ridge is abandoning any claims for payment that it has on
14 appeal?

15 MR. BRANDT: Yes, we've already waived on
16 record, and the only thing we're after is the trespass
17 issue.

18 THE COURT: All right. According to the
19 submissions I have, it appears that most of the record is
20 intact from the beginning of the trial to Ms. Gresham's
21 testimony; is that correct?

22 Ms. Gresham, is that what you feel is correct?

23 MS. JENNINGS: Yes, sir. It seems to have
24 stopped after Mr. Austin's testimony and before mine and
25 -- everything else after that.

1 THE COURT: Before you got on the stand, it
2 stopped until the end of the trial?

3 MS. JENNINGS: Correct.

4 THE COURT: Okay. So as far as the proposed
5 submissions of the other witnesses' testimony, do you
6 have any objection to those witnesses as proposed?

7 MR. BRANDT: Excuse me. Do I have any have any
8 testimony? The only thing would be Ronnie Alexander is
9 the witness that we need. And I have made my submission
10 to the Court for his testimony, and he's here to affirm
11 that that's what he testified to.

12 THE COURT: Okay.

13 MR. BRANDT: Ms. Jennings, of course,
14 testified. I have some notes that I submitted also with
15 what I thought she testified to.

16 THE COURT: Well, there is a dispute as to what
17 her testimony was.

18 MR. BRANDT: Yes, sir.

19 THE COURT: I've been advised from other judges
20 that the way to do that when you have disputed testimony
21 is to retake the testimony, seek to recreate the record.
22 That's my understanding of the procedure.

23 MR. BRANDT: Well, that's fine. But I guess --
24 you know, to take the testimony if there's a dispute as
25 to what they said. However, you know, we're talking

1 about four years ago now.

2 THE COURT: Yeah.

3 MR. BRANDT: And Ms. Jennings, I put forth what
4 I thought she testified to on this issue. And obviously
5 if she testifies different to that, I'm not going to
6 agree with it. I'm going to object to it. So that's not
7 -- you can't reconstruct the record based on that.

8 THE COURT: Well ---

9 MR. BRANDT: And obviously she could do the
10 same, I guess, with my witness too. So ...

11 THE COURT: Listen, this is not an easy
12 position for anybody to be in. I've never been faced
13 with it. I don't know. That's why I checked around with
14 other judges who've been around longer than me and who
15 also have had to reconstruct the record. And what they
16 say is that you reconstruct the aspects of the record
17 that's missing by taking testimony. Okay? And we'll
18 just cross that other bridge, I guess, if we can't agree
19 that this is essentially -- obviously, it well never be a
20 hundred percent of the other testimony because that's
21 virtually impossible to do.

22 Ms. Jennings?

23 MS. JENNINGS: Thank you. I do not have what
24 Mr. Brandt says was my testimony nor Mr. Alexander. And
25 I've got mine to put in. And then when you're ready for

1 -- I'll address that, and then I'd like to say one other
2 thing too.

3 THE COURT: Sure.

4 MR. BRANDT: She says she doesn't have this?

5 THE COURT: What is it that you contend that

6 ---

7 MR. BRANDT: It was sent to her last November.

8 MS. JENNINGS: If there's anything you said
9 that I said, I'd like to see what that is.

10 MR. BRANDT: Well, here's -- I mean, I don't
11 have a problem with making -- if they can make a copy and
12 give her a copy ---

13 MS. JENNINGS: And I've got whatever ---

14 MR. BRANDT: --- Judge. But it was sent to her
15 by mail.

16 THE COURT: So we're clear for the record
17 though, for this record, that the trial transcript is
18 intact up until the time that -- right immediately before
19 Ms. Jennings takes the stand and anything thereafter; is
20 that correct?

21 MR. BRANDT: That's correct from my
22 understanding.

23 THE COURT: Is that correct, Ms. Jennings?

24 MR. BRANDT: That's what I believe.

25 MS. JENNINGS: That's my understanding, which

1 would then be not only my testimony, but it would be ---

2 THE COURT: Some reply witnesses?

3 MS. JENNINGS: Yes, sir. Yes, sir. In reply
4 to what ---

5 THE COURT: Okay. And closing argument and
6 charge.

7 MS. JENNINGS: And there's one thing that I
8 think could save time. I know that your secretary said
9 for us just to bring back the witnesses that we had
10 brought to the trial. That was a verbal -- and I've
11 tried my best to comply with that. I brought my husband
12 and Mr. Austin who had testified in reply. They had
13 brought as a witness that I -- that his testimony isn't
14 on there. They had subpoenaed a Fred Smith who was the
15 manager of Freeman Gas in Landrum. He testified. His
16 testimony is not in the transcription, so I anticipated
17 they would bring Mr. Smith today since that was their
18 witness that they had subpoenaed. I have done a summary
19 of what I believed his testimony was. I am willing to
20 stipulate that as I don't see Mr. Smith here. And I'll
21 pause and see if Mr. Brandt's bringing him.

22 MR. BRANDT: No. Fred Smith testified on the
23 issue of the debt. He didn't testify as to the issue
24 that's on appeal.

25 THE COURT: Of what, please?

1 MR. BRANDT: On appeal. Mr. Smith testified as
2 to gas reading as far as where we were alleging that she
3 was there and we were making comparative usage when she
4 was occupying the home and whatever. We tried to use
5 other utility comparables to show that she had, in fact,
6 inhabited the home during the period she said that she
7 was absent. I didn't bring Mr. Smith because his
8 testimony doesn't bear at all on the placement of the
9 pole on the trespass issue. The only witness testimony
10 that we need on a trespass issue that is missing is Ms.
11 Jennings and Mr. Alexander.

12 THE COURT: All right.

13 MS. JENNINGS: Well, that is a nice thought.
14 But of course, the whole matter is on appeal. We have a
15 cross-appeal. And the cross-appeal goes to also the
16 wisdom and the fact that this was brought, in our
17 estimation, erroneously because the bill had been paid in
18 full every month without failing. So consequently, that
19 testimony is missing from trial. In order to have an
20 accurate record that is preserved for the trial court to
21 consider all the issues because we've not abandoned any
22 issues since it's going forward, his testimony would be
23 essential.

24 And when we received the order from you to have all
25 the witnesses here, I took that very seriously and said

1 to your secretary that I understand that Mr. Brandt would
2 be bringing those witnesses that he had under subpoena.
3 And she said, well, she guessed so, that that was what,
4 you know, your order anticipated. So of course, I
5 anticipated he would be here.

6 But after our hearing on September 25th when we were
7 here with Your Honor in this very courtroom, we had a
8 tentative settlement proposal. And as a result of that
9 when the record was then constructed, I constructed his
10 testimony from what I believed him to have testified in
11 court. I am willing, as I indicated, to put that in in
12 lieu of his testimony. Otherwise, to have the record
13 complete, he must be here to present the testimony that
14 is missing from the transcript, though I understand Mr.
15 Brandt has abandoned that issue as of September 25th
16 which he notified us and put that on the record at that
17 time. It still is an issue for us that must be seen and
18 the Court must have that testimony in order to make a
19 proper disposition of the entire case and all the issues
20 that are pending.

21 THE COURT: All right. Let me make sure first,
22 the testimony, Ms. Jennings, you contend is missing from
23 the record is your testimony, correct?

24 MS. JENNINGS: Yes, sir.

25 THE COURT: And whom else?

1 MS. JENNINGS: My testimony, Mr. Smith's
2 testimony.

3 THE COURT: What's his ---

4 MS. JENNINGS: His name is Fred. I'd have to
5 go back and look it up. Fred Smith, the manager of
6 Freeman Gas in Landrum, subpoenaed by the plaintiffs.

7 THE COURT: Did he testify in the trial?

8 MS. JENNINGS: He testified. I called him, but
9 he was here under their subpoena and waited throughout
10 the trial. And then they rested without calling him. I
11 put him up.

12 THE COURT: Okay. So would his testimony not
13 be in the record?

14 MS. JENNINGS: No, sir, it's not.

15 THE COURT: Okay. And it was your witness?

16 MS. JENNINGS: It was my witness called by
17 them.

18 THE COURT: Oh, okay.

19 MS. JENNINGS: He was subpoenaed by them.

20 MR. BRANDT: I had subpoenaed him, but we chose
21 not to put him up ---

22 MS. JENNINGS: Right.

23 MR. BRANDT: --- is what she's saying.

24 THE COURT: All right. So that would have been
25 your witness?

1 MR. BRANDT: And then she put him up. But
2 again, it goes to that issue. I didn't interpret your
3 instruction to be except bring the missing witnesses
4 whose testimony you feel are necessary to this issue.
5 And obviously, what we wanted to put in was Ronnie
6 Alexander. And the other issue, she got a -- it was a
7 defense verdict on that issue of the money. And my
8 interpretation was that's unnecessary to this ---

9 MS. JENNINGS: Well, that's why I specifically
10 asked the question of your secretary because I knew I had
11 not subpoenaed this gentleman, that they had in fact.
12 And that I understood we were under an obligation to
13 bring back. Obviously, Mr. Gresham had been dismissed as
14 a party defendant. But since we were reconstructing the
15 record and the order was directed to both of us, I told
16 him I thought it was imperative that he come and that he
17 take off work and be here, which he did. I had to find
18 Mr. Austin who was a reply witness. But like I say, I am
19 willing to put in what I have testified, what I have
20 stated.

21 THE COURT: Well, let me get first -- I want to
22 get it in my mind first because we have Ms. Jennings,
23 allegedly Mr. Smith. And whom else, if anyone, is
24 missing from the record that needs to be put on the stand
25 to testify? In other words, both of you have told me

1 that the record is intact from the beginning until
2 immediately before Ms. Jennings testimony, correct?

3 MS. JENNINGS: That's right.

4 THE COURT: Okay. So subsequent to that, we
5 would obviously have your testimony. Whom else would
6 there be besides that that is missing from the
7 transcript?

8 MS. JENNINGS: Mr. Austin.

9 THE COURT: Okay. What's his last name --
10 first name?

11 MS. JENNINGS: Steve Austin.

12 THE COURT: Keith?

13 MS. JENNINGS: Steve.

14 THE COURT: Steve.

15 MR. BRANDT: He's not missing.

16 MS. JENNINGS: Yes, he is. His is in reply.

17 MR. BRANDT: His testimony is in the record.

18 MS. JENNINGS: For direct. But on reply as to
19 the right-of-way issue, his testimony is missing.

20 MR. BRANDT: It's in there.

21 MS. JENNINGS: No, it's not. There's no reply
22 testimony in there because my testimony's not in there.
23 It can't be reply testimony before I testified in the
24 defense case-in-chief because reply comes after -- after
25 everything is done. And that's when -- I'm sorry.

1 Is it Mr. Alexander?

2 MR. GRESHAM: Roman (phonic).

3 MS. JENNINGS: Yeah, Mr. Alexander.

4 I think that's when Mr. Alexander testified was in
5 reply.

6 MR. BRANDT: Mr. Austin -- page 259 of the part
7 of the transcript that we have, he was testifying. She
8 put him up. I crossed him. They started back with
9 reply. I objected to basically matters that she was
10 asking him that was not in reply and not proper. We came
11 back and went through a discussion on page 258. And what
12 does that have to do with propane when I'm asking about
13 propane usage? Jennings was talking about that. It got
14 down and said, The Court, is there any reason why this
15 gentleman cannot be excused? Mr. Austin, is that right?
16 Yes, sir. Ms. Jennings, he can be excused if he wants.
17 The Court, Mr. Brandt, any reason he couldn't be excused?
18 No, no. He can be excused.

19 MS. JENNINGS: That's right. As to the case-
20 in-chief for the Defendant. But Your Honor was asking
21 who hasn't testified in the whole totality of the case.
22 Mr. Austin then came back and gave reply testimony when
23 Mr. Brandt brought up issues about the right-of-way which
24 was not heavily litigated in all honesty.

25 THE COURT: Well, I mean, I understand -- hold

1 on. I understand Mr. Austin being somebody that you put
2 back up.

3 MS. JENNINGS: Right.

4 THE COURT: And it came after your testimony?

5 MS. JENNINGS: That's right.

6 THE COURT: Mr. Smith appears to have been
7 excused from the proceedings and was not placed on -- and
8 his testimony was not put up anywhere after the time he
9 was excused.

10 MS. JENNINGS: Your question was who's missing.

11 THE COURT: No. What I'm looking for is actual
12 testimony, not somebody who may have testified that could
13 have testified but didn't.

14 MS. JENNINGS: Oh, it's definitely missing ---

15 THE COURT: But I'm talking about actual people
16 who did testify ---

17 MS. JENNINGS: Right.

18 THE COURT: --- whose testimony is not included
19 in the record. That's what I'm looking for.

20 MS. JENNINGS: Mr. Smith. Just what I said. I
21 stand by actually what I said.

22 THE COURT: And you called him in your case?
23 He was under subpoena by Larry Brandt, but you called him
24 in your case and Mr. Brandt did not call him in his?

25 MS. JENNINGS: Right. I was surprised Mr.

1 Brandt hadn't called him, and I called him in my ---

2 THE COURT: Is that the question?

3 MS. JENNINGS: Yes.

4 THE COURT: Okay. And it would seem to me then
5 it would have been up to you to bring him here since he
6 ---

7 MS. JENNINGS: Well, that's why I asked your
8 secretary. She said whoever brought the original ones
9 would bring because I said I don't have subpoena power to
10 bring. And we had this little discussion, she and I.
11 And I said, I don't have subpoena power to bring. It's
12 short notice. But I have presented a -- I did ---

13 THE COURT: Mr. Brandt, this is the third time
14 she's brought this up about this proposed testimony from
15 Mr. Smith. Have you looked at that?

16 MR. BRANDT: No, I haven't looked at it.

17 THE COURT: Would you show it to him, please?

18 MR. BRANDT: I want to add as far as Mr. Austin
19 goes, if you go to page 251 through 254, I crossed him on
20 the right-of-way measurements. What happened was, I put
21 up testimony as to the debt.

22 THE COURT: Well, hold on. I don't want to ask
23 that. I want to know who the parties are contending had
24 actually testified.

25 MR. BRANDT: Actually testified.

1 THE COURT: And whose testimony is excluded or
2 is missing from the record. That's what I'm looking for.
3 Just one minute.

4 MR. BRANDT: I don't have any problem with the
5 testimony.

6 THE COURT: That's fine. Okay. Let's make
7 that a Court Exhibit Number 1 of this hearing, and that's
8 stipulated that is the substance of Mr. Smith's
9 testimony; is that correct?

10 MR. BRANDT: Mr. Smith's testimony.

11 MS. JENNINGS: And it would in case of an
12 appeal match one of the exhibits that Your Honor has.

13 MR. BRANDT: Yeah. It's in the record.

14 THE COURT: All right. Well, go ahead and
15 let's make that Court Exhibit Number 1, please.

16 MR. BRANDT: I think that was 13 and 14 that he
17 -- the exhibits I think that he testified to. Yeah,
18 they're in the record.

19 (WHEREUPON, Court's Exhibit Number 1 was marked for
20 identification.)

21 MR. BRANDT: I don't think she lost the
22 exhibits. The exhibits are in the record.

23 THE COURT: So that leaves us with Ms.
24 Jennings' and Mr. Austin's testimony that's missing from
25 the record; is that correct?

1 MR. BRANDT: Mr. Alexander.

2 THE COURT: Mr. Alexander?

3 MR. BRANDT: Mr. Alexander.

4 THE COURT: Okay.

5 MR. BRANDT: But Mr. Austin's testimony is not
6 missing. That's what I'm telling you.

7 THE COURT: Okay. Show Ms. Jennings that
8 testimony in the transcript.

9 MS. JENNINGS: I've seen it. Where we're
10 different is that after he put Mr. Alexander up or some
11 -- in some kind of order, I put Mr. Austin back up as to
12 the issue of the right-of-way issue. That's ---

13 MR. BRANDT: He was excused.

14 MS. JENNINGS: He was excused, but he didn't
15 leave. Just because he's excused doesn't mean anything.
16 He was excused, but he chose to stay. I just happened to
17 see him in there the rest of the day, and I put him back
18 up. And Your Honor's direction was anybody that's not in
19 the transcript. We can't leave him out because he
20 testified regarding the right-of-way issue.

21 THE COURT: Here's what we're going to do as
22 far as the testimony of Mr. Austin or Ms. Jennings. I'm
23 going to go ahead and we're going to attempt to recreate
24 it under oath. And to the extent, Mr. Brandt, that you
25 feel like Mr. Austin was excused and you object to his

1 testimony or object to portions of Ms. Jennings'
2 testimony that is not consistent with the record, that's
3 the only way I know to do it. And then we'll just have
4 to deal with that. We can try to recreate. I don't
5 really know what else to do, quite frankly. Okay?

6 MR. BRANDT: I object to him testifying at all
7 today.

8 THE COURT: I understand. I understand.

9 MR. BRANDT: Because his entire testimony is
10 part of this record, even on the right-of-way issue.

11 THE COURT: Okay.

12 MR. BRANDT: And I do not recall -- it's been
13 four years, but I'm certain, almost certain as I stand
14 here today, he was not recalled on the right-of-way issue
15 because he'd already testified to it. And what I'm
16 saying is she had the burden on the right-of-way. I
17 didn't put up anything on the right-of-way, maybe talked
18 about it briefly. But we didn't really go into it
19 because it was her claim and it was her counterclaim.
20 The burden's over there. So I put up mine on the debt.
21 She put up her case on the right-of-way, everything, her
22 counterclaim, and then -- and I crossed him. Then I
23 called my reply witnesses. On that counterclaim she
24 would not have a right to call him back in reply.

25 THE COURT: I would appear to agree with you.

1 But I'm going to go ahead and take it and just see what
2 happens. All right. Ms. Jennings, I'm going to let you
3 testify first.

4 MS. JENNINGS: Okay. Can I do one other
5 housekeeping matter?

6 THE COURT: Yes, ma'am.

7 MS. JENNINGS: Your Honor, I have to submit to
8 the Court in a sealed envelope a settlement proposal that
9 this -- the Defendant went over with the Plaintiffs on
10 September 25th, 2012, that was indicated to me was
11 accepted. I didn't hear for a period of time. So I,
12 October 9th, reduced it to writing and sent it to them so
13 as to move this case forward as expeditiously as
14 possible. This is a copy of that. And I'm not asking
15 you to read it, but I would like to put it into the court
16 record sealed.

17 THE COURT: I'm not going to allow that, no,
18 ma'am. It's not proper before me. It's not proper
19 before this Court as far as a transcript of the trial
20 proceedings. All of that came after the fact, besides
21 being settlement negotiations. But it certainly would
22 not be part of any transcript of the trial. So I'm ---

23 MS. JENNINGS: And Your Honor, I know you'll
24 note my objection to that, but I'll restate it to you in
25 that this entire matter has been subject to running

1 objections that I don't want to waive by not saying the
2 right magic words.

3 THE COURT: Sure. You have objected on
4 multiple occasions.

5 All right. Ms. Jennings, would you come around and
6 be sworn, please?

7 (WHEREUPON, the witness was duly sworn.)

8 THE COURT: Okay.

9 MS. JENNINGS: The way we're to go with this is
10 just for me to recreate what I said as best we could?
11 I've never had experience in this kind of ---

12 THE COURT: I haven't either. And my
13 understanding the way we do this, as best you can, try to
14 recreate your testimony at the trial.

15 **KATHLEEN JENNINGS,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. JENNINGS:

19 And then in regard then, Your Honor, I had put
20 together with a lot of time going over my trial notes
21 what my testimony was on -- let's see. It would have
22 been August 27th, I believe, of 2009. I'm pretty sure
23 that was the date that I testified. I think the trial
24 was August 26, 27, and 28 of 2009. I believe I was on
25 the second day which would have been the 27th. So I

1 would then offer this as a summary of what I will say
2 here on the stand, and I will read this into record
3 because it's crafted with great care.

4 THE COURT: All right.

5 MR. BRANDT: And I have not had an opportunity
6 to see it.

7 THE COURT: Okay. Go right ahead and look at
8 it, please, sir.

9 MR. BRANDT: They haven't shown it to me. I've
10 sent her mine back in November.

11 MS. JENNINGS: I sent a copy.

12 THE COURT: No, uh-uh (negative).

13 MS. JENNINGS: I think I have another one. May
14 I get down for a minute and see if I have another one?

15 THE COURT: (Nodded head up and down in the
16 affirmative.)

17 MR. BRANDT: I stand corrected. I do have a
18 copy of it, Your Honor. Here, I've got it.

19 THE COURT: Okay.

20 MR. BRANDT: I didn't know what she was putting
21 up, whether it was something new or something that she
22 had crafted.

23 THE COURT: Now that you're ---

24 MR. BRANDT: There are a lot of matters in
25 there I would object obviously because I think that she

1 said ---

2 THE COURT: Just hang on for a second. When we
3 come across those matters, object as being not part of
4 the record during the trial in the case-in-chief. And
5 that's the only way I know to do it, Mr. Brandt.

6 MR. BRANDT: But it has a lot of stuff in there
7 that doesn't even pertain to testimony.

8 THE COURT: Mr. Brandt, just object to it as it
9 happens, please. I don't know how else to do it.

10 And you are under oath ---

11 MS. JENNINGS: Yes, sir.

12 THE COURT: --- and so will the other witnesses
13 be. So go ahead.

14 MS. JENNINGS: And I might note, Your Honor,
15 I'm going to do my very best to testify as I did back in
16 2009. If there's other information that's come up since
17 ---

18 THE COURT: Listen, let me just remind Mr.
19 Brandt and you, Ms. Jennings, information that's occurred
20 since, not at trial, would not be part of this hearing.

21 MS. JENNINGS: Right. I just wanted that to be
22 clear.

23 THE COURT: So go ahead and give your
24 testimony, please.

25 MS. JENNINGS: I testified that my name is

1 Kathleen Jennings, that I was married to Steve Gresham.
2 We'd been married since September of 1990. At the time
3 of the trial, I was fifty-six years old, resided where I
4 reside now 1524 Highway 11, Landrum, South Carolina,
5 which is Greenville County. I've had that location and
6 that property in my name alone since the early 1980s.
7 It's part of northern Greenville County.

8 I testified that I was a life-long Greenville
9 resident, that I was educated in the public schools of
10 Greenville County and a graduate from the University of
11 South Carolina. I testified I was active in community
12 affairs my entire life, that I was one of the first
13 founders of the Glassy Mountain Fire Department which was
14 the last district in South Carolina to have fire
15 protection. That testimony I gave about founding the
16 fire department, composing the by-laws, helping secure
17 the land for the main station and the two substations.

18 Was very familiar with the community, with
19 resources, with rights-of-way, with highways, utility
20 lines and water resources as a result of two years of
21 active research before the fire department commenced. I
22 testified I was one of the first Glassy Mountain Fire
23 Commissioners and was secretary of the Commission,
24 raising the money to build the fire department.

25 I testified we lived in a rural location which I had

1 purchased as a single woman before my marriage. I
2 testified to various threats made to my property and torn
3 down. And when I moved to that property, I immediately
4 started securing the fencing along my property line
5 including approximately one mile of road frontage on
6 Highway 11 where my farm was situated. I built fencing
7 around the Highway 11 for my personal protection as well
8 as for enclosure of animals.

9 And in that regard had met with individuals from the
10 department of highway and others to ascertain the correct
11 right-of-way in order to erect my fencing the proper
12 locations. The fencing had been there since the early
13 1980s and continues there today with some add-ons that
14 occurred some years after, but primarily since the early
15 '80s.

16 And that was when I said I spent considerable time
17 with the highway department officials, county road
18 experts, side road experts, Blue Ridge Power workers,
19 other fire departments in the area, particularly learning
20 right-of-ways not only for Highway 11, but for others
21 because of fire department work that we were doing.

22 I testified that a lot of the fencing was done by a
23 professional fencing company used in the area with some
24 personal assistance from my father and me and a few
25 helpers who put in various fencing.

1 When I got power from Blue Ridge, which was in the
2 early 1980s, I'd been a coop member for, at that time,
3 for in excess of twenty-five years when we -- when I
4 presented testimony. I got a coop membership myself. I
5 signed the documents becoming a coop member.

6 And I testified that Mr. Gresham, my husband, had
7 never been a member of the Blue Ridge Electrical Coop at
8 no time whatsoever and was not a member at the time the
9 pleading was initiated nor was a member at any time
10 thereafter. I testified that we had tried to have him
11 dismissed as a party before the matter commenced to trial
12 because he had never been an electrical coop member.
13 That had been stringently opposed by Plaintiff who said
14 that he was a Blue Ridge Coop member.

15 I testified that I worked with Blue Ridge Electrical
16 Coop and that I had an aversion to power poles and
17 thought that they upset the landscape. It was a big deal
18 for me. So I paid Blue Ridge Coop an extra sizable
19 amount of money to bury my power up the driveway. I
20 lived in a trailer on the corner of my property for a
21 period of years so as I could save the money to bury the
22 power up the right-of-way of what was to become and now
23 is and establishes my driveway to the main house.

24 And that we entered in a separate contract that
25 included burying the power and also for rock removal to

1 put my power underground. And that I did not execute the
2 same right-of-way agreements as a lot of customers did in
3 that area, after extensive discussion with Blue Ridge,
4 because I did not want access on my property at any time
5 without my permission mainly because of experiences I'd
6 had in that area heretofore.

7 I was the only one up there in any -- for miles
8 around that lived, actually lived, in that location. It
9 was very rural. It was called the dark corner, so it was
10 very unusual to have somebody come out there and then
11 also put power. And I testified that Blue Ridge had
12 indicated that they called it the Jennings Clause because
13 of the considerable digging that they had to do in
14 burying the power up part of Glassy Mountain. Of course,
15 I paid for each foot of digging with a separate clause
16 that went in for that.

17 So the agreement that I had with Blue Ridge was that
18 they would have a right-of-way to repair the big meter
19 boxes that they put strategically up my driveway and
20 numbered, but they were to communicate with me about when
21 they wanted entrance to and from. And that was the
22 agreement for twenty-five or so years with Blue Ridge.

23 In fact, Blue Ridge typically had not done power in
24 our particular area. I was one of the few customers at
25 that point. They're based mostly around Pickens. And I

1 testified that there was a period of time where, even at
2 the trailer, which I call the little house -- it sounded
3 better -- I had an agreement for years to call somebody
4 with Blue Ridge and I gave them my power meter reading so
5 they didn't have to come up there. That continued for
6 many, many years. And I testified that the lady's name,
7 to the best of my recollection, was Anne, and I thought
8 her last name was Garren. But I wasn't positive about
9 the last name, but I was positive about the first name
10 because I called her so many times. And I would call to
11 say, this is Kathleen, here's the power meter reading for
12 this month. And it was a short conversation, very
13 pleasant, and I gave it.

14 Then there was a period of time when she notified me
15 that I needed to just send it in writing with the bill.
16 So for some years or several years, I would send what the
17 power meter reading was on the bill. Then there came a
18 time when they had just -- they meaning Blue Ridge -- had
19 problems with the reading and were coming up with some
20 different kind of meters or something that I recollect.
21 And they told me that they had a state-of-the-art meter
22 that they would put on my property that they could read
23 off-site, that they didn't have to access my property nor
24 -- the good news to me, they said, was that I didn't have
25 to worry about calling in the meter reading. I had at

1 all times kept them appraised of my address and contact
2 information.

3 There was a period of time that we left the home
4 which I testified to because our son developed, in the
5 summer of 1992, in July of 1992, A.L.L. leukemia. And as
6 a result of that dire, life-threatening condition, we
7 wanted to be and were advised to be closer to hospital
8 facilities. And in 1992, that area of South Carolina was
9 very rural indeed. Nobody was there. No hospital
10 facilities were there. It was not at all like it is in
11 2009 when we were in trial.

12 So we proceeded to secure a residence at 48
13 Ridgeland Drive in Greenville City. I notified Blue
14 Ridge of this. No mail that we could stop came to the
15 Highway 11 address. We lived at the Ridgeland Drive
16 address for approximately thirteen years. We virtually
17 shut down the Highway 11 home. We'd drained the water
18 pipe. When you went up there to cut the grass -- we
19 could check on it -- you actually couldn't even use the
20 bathroom because there was no running water. We did that
21 because we were worried about freezing and something
22 would happen and the property would flood or there would
23 be damage while we were away.

24 There were many times we didn't go up there for long
25 periods of time. Our son suffered with leukemia for

1 eight years, and he passed away on June 21st, of 2000.

2 And Blue Ridge was aware of that, in fact. I know they
3 were aware of that fact.

4 There was a period of time, also, that I testified
5 that I continued to have contact with Blue Ridge because
6 I selected them to do my security system. That a cottage
7 we had in Flat Rock, North Carolina, we used Blue Ridge
8 Security. They had -- continue to have my information.
9 All the billings were made to wherever I was.

10 There was a question from Mr. Brandt about paying --
11 what taxes did I pay. I -- not meaning to characterize
12 his, but he seemed to me that he was claiming that I was
13 paying four percent. We paid six percent on the mountain
14 house during the time that I was there, living there.
15 And we paid four percent on the Ridgeland house when I
16 live there before. You can only take one primary
17 residence as a four percent, and we complied with those
18 laws fully. That was a question that I distinctly
19 remember.

20 I testified that we heated with propane at the
21 Highway 11 home. That when I built that home, I built it
22 myself. I supervised every stick of it, every day. In
23 fact, I carried some of the workers up there every day
24 because their cars wouldn't negotiate the hill.

25 That I met with Blue Ridge and had them come out and

1 look at my house and they told me it was one of the most
2 energy efficient homes they'd ever seen. I insulated
3 around every room with R-23 -- I forgot the number -- or
4 30, one of those high insulation numbers, but around
5 every room. Not in-between each floor, but around every
6 room. And they told me, as a result of that, I got the
7 lowest power rateage or whatever that word would be
8 because of the incredibly well-built home. And the house
9 has twelve foot ceilings, purposefully done which I
10 testified, in order allow a lot of cross-ventilation
11 since we were up on a mountain.

12 So the heat and the water heater was done by propane
13 which I buried. And I had the propane brought up. And
14 that's where the issue of Freeman Gas came into question,
15 why he was there. The agreement I had with Freeman Gas
16 -- and is also indicated in the testimony that's now been
17 submitted and marked, I think they said 13, whatever
18 exhibit number that was -- was that I would call them
19 when I needed propane, and they would -- we would
20 coordinate delivery. I would make the gate look locked
21 or come there and meet them and let them in and there
22 never was any difficulty in that regard. And that we
23 currently -- not only had we paid the bill monthly on
24 time, we were excellent customers there as we were with
25 Blue Ridge. And I even had a credit of some seven

1 hundred sixty dollars with Freeman Gas because we hadn't
2 used what they anticipated that we would use.

3 As to Blue Ridge, I testified not only was I
4 accessible and readily available, but there were times
5 when several Blue Ridge workers called me and would ask
6 me if they could come see my horses. I have Clydesdales
7 which was unusual. And that I let them and one had asked
8 me to fish which, unfortunately, I could not do. But
9 that I had an excellent relationship with Blue Ridge and
10 was thusly greatly surprised when we received twenty-
11 eight or so termination notices that our power was going
12 to be cut off. And that it occurred every month and
13 they, they being Blue Ridge, indicated to us that the
14 power was to be cut off and that we had not paid our
15 bill.

16 We went -- as I testified, I had talked to the
17 commissioner prior to Mr. Sutherland, a gentleman's name,
18 I'm sorry, I could not remember then and I don't remember
19 now. But a gentleman who has since passed away that was
20 a Blue Ridge commissioner. And I found out he was our --
21 the commissioner for my particular area.

22 Had communicated with him about it because I had
23 come home several times and found that my lock that
24 chained my gate shut -- I have two wrought iron gates at
25 the entrance that are approximately twelve feet wide

1 total. And I found that those locks had been cut and
2 that I, in fact, was chained out of my own property.
3 Because one time I hurried thirty miles home from
4 Greenville and found that my gate had been locked because
5 my burglar alarm was activated and I was receiving calls
6 from law enforcement. And the sheriff was waiting for me
7 at the gate. And my lock had been cut. I could not gain
8 access to my property and found that it had been cut by
9 Blue Ridge, and they had put their own security lock on
10 the property which prohibited me from accessing my
11 property. It was evening. It was embarrassing.

12 And that happened on several occasions such that I
13 finally called Mr. Charles Dalton who was the C.E.O. or
14 president, the highest up at Blue Ridge, and spoke with
15 him. He was always a gentleman on the telephone. He
16 promised that that would -- he was astounded to hear that
17 it had happened. And then he was further astounded to
18 hear it happened on several occasions. And he was the
19 one who came up with the idea to put the remote control,
20 if that's the right terminology, where it could be read
21 off-site. And he said he would personally assure us that
22 he would put a meter or some kind of reading that would
23 be remote controlled, that there would be no access
24 problems and nothing would come up about that again. And
25 I remember saying to him, one less thing to worry about

1 because at that point we had a child with cancer, and
2 that was one less thing to worry about.

3 And that was exactly how it proceeded and that we
4 paid our bill in full every month without fail, often
5 within forty-eight hours of receiving it, even during the
6 period we weren't there. And that we objected very much
7 to being classified as debtors and having not paid our
8 bill.

9 I testified also that I had never executed any
10 written documents to Blue Ridge to allow them unlimited
11 access to my property. That I had never executed any
12 documents allowing them to place any pole or wires on my
13 property. Most of my testimony was concerning the bill
14 and the circumstances of the bill because that was the
15 main thrust, the thrust of the Blue Ridge case suing me,
16 was for -- they said it was for a debt collection.

17 I was proceeding to give more information about
18 that, in all candidness, when Your Honor interrupted me
19 on the stand and told me that you remembered me from
20 domestic cases that I had done in Anderson County and
21 that there had been some problems with me talking too
22 much or something you were going into, quite frankly --
23 and with all respect here today, that you were very
24 aggravated. You stood up at the bench and you dressed me
25 down very vehemently which almost made me cry. And it

1 was in front of the jury.

2 I turned to you -- the witness stand was on the
3 other side of the courtroom in that proceeding. I turned
4 to you at that point and said, Your Honor, I don't
5 appreciate those comments to me, particularly in front of
6 the jury. And I said, you're -- I think you're showing
7 your bias against me. And at that point you said, okay,
8 ladies and gentlemen, I'm going to send you out. You
9 abruptly stopped. You sent the jury out of the room with
10 the bailiffs. They were secured off-site out of the
11 courtroom. Then you turned to me and let me have it
12 pretty hard about what I needed to do.

13 The reason I was going into that testimony -- which
14 I'm not going to anymore because I didn't say any more
15 than that -- was to establish that I had an excellent
16 relationship with Blue Ridge, that they had always known
17 how to contact me because their case-in-chief had accused
18 me of being unable to be reached. And they made it look
19 like I was a phantom, some person that lived totally
20 somewhere else and they couldn't get in touch with me
21 which couldn't have been further from the case.

22 I was very vested in -- I knew those people. They
23 would toot at me when they went by and wave their hands
24 at me. So they knew me that well. If either one of them
25 had a child that was sick, I sent things to them. That's

1 what I was -- but I was cut short from doing that. And I
2 thought it severely prejudiced me in front of the jury,
3 and it hurt my feelings a great deal. And it took a
4 little bit for me to compose myself to go forward because
5 I was tearful. Not in front of the jury. They had been
6 removed. But I was tearful from myself that that had
7 occurred.

8 The reason that struck me as particularly harmful
9 and the reason I had made it part of my appeal, that
10 issue, was at the beginning of the case before the case
11 commenced, you, Your Honor, called me up to the bench and
12 told me -- and I'm going to give you the quote that I
13 remember that has lived with me daily since that first
14 hearing on August 26th of 2009. You told me as you
15 leaned over the bench and pulled me close here and said,
16 just pay your damn bill. And that's when I said, Your
17 Honor, if you believe that, you might not be the one to
18 hear this because you obviously haven't read these
19 proceedings.

20 I had paid my bill every month diligently without
21 fail and never failed to pay my bill, as was indicated in
22 the testimony of Ms. McCormack when she testified and Mr.
23 Dalton when he testified. So the reason I was indignant
24 in this and wanted to bring the circumstances out was
25 this action was brought as a debt collection against

1 someone that never owed the debt, that had paid it fully
2 all along and that I felt very strongly. It was a
3 principle in proceeding with this action. And that
4 because this action was brought to court, I then filed a
5 counterclaim for what was truthful, and that was that the
6 pole and the guy wire erected by Blue Ridge, without any
7 written permission or permission from me, was on my
8 property and was consequently in trespass on my property.
9 Would I have brought that up had this not been initiated
10 against me? Likely not, though I had advised Blue Ridge
11 immediately when it was established that it was on my
12 property and needed to be removed.

13 I testified that this was not a power pole, per say,
14 power pole being in quotations, that this was a support
15 pole that was used to carry power, were it to ever occur,
16 to some unknown in the distant perhaps to-be-built
17 houses, not any that were currently in existence. That
18 this was projection poles, in other words, for power that
19 was to be run past at some date in the future. And with
20 the economy having been as we know, obviously that didn't
21 occur. But that this pole put on my property, called a
22 power pole for the sake of terminology, did not serve
23 anyone, nor did it serve me. For remember, I had paid
24 multi thousands of dollars to have my power buried and to
25 see no power utility poles.

1 And that the right-of-way from the center of the
2 property line, center of Highway 11, to -- for the right-
3 of-way was twenty feet in my testimony and that I was
4 totally convinced of it, absolutely certain of it, not
5 only because of my vast experience working with right-a-
6 ways and Highway 11 and Blue Ridge when I was
7 establishing my fencing and the highway department, that
8 this was without a doubt a twenty-foot right-of-way, and
9 the pole was over on my right-of-way.

10 Let's see. I think it was some thirty -- it was
11 thirty-something feet, thirty-four or something like that
12 feet. The guy wire especially was. And it was in a
13 position, as I testified, that I could no longer clean
14 there. That I had kept that area clean. We were fairly
15 picky at that age, because I'd had the property for a
16 long time, back in my younger years. And that we kept it
17 clean. I could no longer keep it clean because of the
18 pole that served no power purposes and the guy wire that
19 was located down further on my property that we could not
20 get to anymore. And it frankly looked like a mess.

21 Let's see. We had -- I testified that we had had a
22 lot of power outages in those early days but not due to
23 my buried power. It was due for the above-ground power
24 poles that serviced property further down Highway 11.

25 Let's see. I noted that the power pole located on

1 my property now was without my permission which was
2 trespassing, along with the guy wires. As I said, never
3 served my property, never has.

4 Excuse me. I'm looking at my summary of my
5 testimony which I've given you. The pole went up about
6 the same time Blue Ridge sued me. It had just not been
7 erected too much further before then.

8 I testified about power to my barn. When I went to
9 get power to my barn, I went to a trailer that Blue Ridge
10 had as a substation up at 11 and 25. I paid my fees for
11 power service there to the lady who was -- makes you fill
12 out the application for whatever it was that you wanted,
13 and I paid that to her there. She had my membership down
14 as Kathleen Jennings. In fact, I remember testifying as
15 to my husband by Blue Ridge assertion had been a member
16 of Blue Ridge.

17 When we had power outages, which were very frequent
18 in those early years, they would not give my husband any
19 information about the account because they said he was
20 not a member of the Blue Ridge Electrical Coop. So
21 anytime we had a power outage and had to talk to anyone,
22 I had to physically do it myself, for they would not talk
23 to my husband as he was not a member except when the
24 lawsuit came about.

25 Let's see. I go by Jennings as my last name. I've

1 never changed that. This suit was brought in Gresham. I
2 had started presenting testimony, as I recall, about the
3 service of process that occurred from Mr. Brandt using a
4 gentleman whose name I can't remember -- but I have it in
5 the file. But the judge stopped me and wouldn't let me
6 give information about that particular process, so I
7 won't give it now.

8 I testified that when Blue Ridge was writing me
9 power turn-off letters and telling me they were going to
10 terminate my power, that I was in a tither about what to
11 do about it. That I contacted -- I happened to see
12 Kenneth Sutherland who took the place of the gentleman
13 that passed away that had been the board trustee from my
14 district.

15 I had tried to get Mr. Sullivan on many occasions by
16 telephone, but I could not find his number. I called
17 Blue Ridge to get his number, and they wouldn't give it
18 to me. And I saw him by chance at the Traveler's Rest
19 Feed and Seed, and I told him that this matter was
20 ongoing. In fact, I think the lawsuit had commenced at
21 that point. And I told him I thought that was a
22 travesty, that I, in fact, was suing myself since I was a
23 member of Blue Ridge, and I was suing me for a bill that
24 had been paid every month. He said that he would look
25 into it and that he remembered them talking about me at a

1 board meeting on several occasions and that he did not
2 realize that that was me that they were talking about and
3 seemed rather upset about that, but I never heard back
4 from him. He did testify as I subpoenaed him to the
5 court hearing, and the reason why I did that was to
6 further support what I am testifying to then as I am now.

7 I have known him as principal of a Blue Ridge school
8 where I was active in P.T.A. because my stepdaughter was
9 active in that school and graduated from Blue Ridge and
10 been in multiple plays. And I have done the child safety
11 program at that school. So he had known me since the
12 1970s.

13 I testified that I had worked with Blue Ridge over a
14 year when they threatened to sue me that if I didn't pay
15 them some amount nearing ten thousand dollars for what
16 they said was a bill that I had not paid. I testified --
17 Mr. Brandt asked me if I knew the bills were estimated.
18 I said absolutely not. I never heard that the bills were
19 estimated, that Mr. Dalton had told me the state of the
20 art equipment, et cetera, that I didn't have to call it
21 in as I had for a number of years, particularly in the
22 '80s and a good bit of the '90s when I called in the
23 power meter reading.

24 I testified that there had been approximately to my
25 best recollection four meters on my property which was a

1 puzzlement to us. That there was one day when we were
2 working on some fencing that had been taken down in a
3 storm, and we were adding a few other fencing because of
4 horses. That I had been out working early that morning
5 and I was inside taking a shower, and I heard my dogs
6 just going crazy barking. And then I went to the front
7 door wet because I'd been in the shower. And there were
8 two gentlemen in an unmarked truck out front. And that
9 was a gentleman taking the Blue Ridge meter off, they
10 indicated when I asked them who they were and what they
11 were doing. And I asked them why. And they said they
12 were instructed to get that meter. And that would have
13 been sometime in, I think, 2006 the best I recall.

14 I told them, please don't take the meter off because
15 my burglar alarm would immediately activate if the
16 power's cut. They gave me some time to go call the
17 burglar alarm monitoring company and then they removed
18 the power. And then I had never seen the meter from that
19 time forth which is why I continually asked for it in the
20 course of discovery. I was told the meter was missing or
21 stolen.

22 Because of my concern over the bill after I talked
23 to Mr. Dalton about it on multi occasions and with Mr.
24 Sutherland, I then contacted David Thomas who was a long-
25 time somebody that I had known. And I knew that he was

1 involved and was close with, because of his work in the
2 State Senate, with Blue Ridge Electrical Coop and other
3 agencies. I contacted him as he was an attorney, not to
4 represent me, as he testified and as I testified, but as
5 someone to talk to Blue Ridge to see if a lawsuit could
6 be avoided for all of our sake because I was firm that I
7 had paid my bill and they were -- for whatever reason,
8 this Ms. McCormack whom I had talked to was confused in
9 that regard.

10 Mr. Thomas grilled me. My husband was in on some of
11 the meetings. And I met with him a couple of times at
12 his office. I believe it was on Wade Hampton Boulevard.
13 He had me bring all of my power bills that I could find.
14 I brought hundreds of them. There were a lot. They were
15 introduced into evidence, but I had more of them at that
16 time. He kept a lot of them.

17 And I showed him my meter readings. We showed
18 bills. He saw where they had been paid. After he'd
19 quizzed me about the understanding of it, he confirmed
20 that I heated, in fact, with propane. Not with
21 electrical power, but with propane. He then kind of got
22 the gist of it, spending multi hours on it. And then he
23 called Mr. Dalton, set up a meeting and I understand went
24 to the Blue Ridge office over in Pickens County and met
25 with the Blue Ridge people.

1 After that meeting, he seemed to indicate that he
2 thought that there wouldn't be a lawsuit, that it would
3 not go to that stage, that he thought that it would all
4 be worked out which I was glad to hear. Once again, one
5 less thing to worry about.

6 We moved back to that house. I believe it was in
7 2006. After we sold the house in Ridgeland; we voted
8 where we wanted to live. There were only three of us at
9 that time. My husband, my younger son and myself. And
10 my husband wanted to stay in the city and we wanted to
11 move to the country and so he lost. We moved back to the
12 country and lived in the Highway 11 house and resulted in
13 commuting back and forth.

14 The lawsuit was commenced against me despite my
15 attempts to stop it. Let's see. I testified that Blue
16 Ridge had had an occasion similar to this one when our
17 son was desperately ill and in the hospital and that they
18 had told me they were going to cut off my power because
19 of the meter.

20 And that during that time, I gave them -- they
21 wanted a thousand dollars, and my best recollection is I
22 paid them somewhere around a thousand dollars -- it was
23 nine hundred to a thousand dollars -- and then they just
24 dropped it. It was after that I had another meeting with
25 -- I think that's when the meeting was with Mr. Dalton

1 about I couldn't keep going through this. And that's
2 when he assured me it was a state-of-the-art meter, that
3 we would never have to worry about that issue again. And
4 that I felt this was a retaliatory-type action. When he
5 assured me it was a state-of-the-art meter, his words was
6 the meter on my house was something I would never have to
7 worry about again as it could be read from the road with
8 no trouble. I said, great. We installed a time to --
9 picked a time to install that meter, and I considered it
10 was done.

11 I never heard anything about an estimated bill until
12 after this lawsuit commenced. It was my testimony that
13 that was their invention. I think I paid before -- in
14 fact, I think that Blue Ridge owed me money back because
15 I frankly had written several times during the course of
16 the bill, especially when we weren't there, because I
17 thought the bill was high considering the only thing we
18 left on, as I testified, was the refrigerator -- and that
19 was a minimal power rating -- and the burglar alarm.
20 Nothing else. There were no lights left on. The air
21 wasn't on. The heat was cut down to minuscule, but
22 remember that was propane. So the house was virtually
23 freezing if you went up there during that time.

24 And like I say, you couldn't even flush the toilets
25 or have any water. I had my own water source. I had my

1 own well, so there's nothing except, of course, the power
2 to move it up. But remember, that was turned off.

3 Let's see. On the times when Blue Ridge cut my lock
4 and activated my burglar alarm, I had to pay a fee to the
5 sheriff's department for false alarms.

6 I testified I'd never received any coop checks from
7 Blue Ridge.

8 Let's see. I testified when I found Mr.
9 Sutherland's house, I left the telephone number through
10 other means. I left several messages for him to call me
11 back. He did not. I told you about the Traveler's Rest
12 Feed in-person meeting.

13 I subpoenaed Mr. Sutherland and Mr. Dalton. I knew
14 Mr. Dalton knew more about it than anybody from Blue
15 Ridge because he was really the only one I'd basically
16 communicated with besides Ms. McCormack limitedly.
17 Mostly Mr. Dalton. He had not planned to be at the
18 hearing where they sued me, but I served him to make sure
19 that he was which took a great deal of time.

20 I testified that my phone number had been in the
21 telephone book without fail for twenty-five years. It's
22 in there now. It had never changed. My telephone number
23 hadn't changed. It was always accessible. Not only do
24 they have my cell phone number, but if they per chance
25 had lost that, then all they had to do was look in the

1 telephone book.

2 I think my testimony was that we didn't live at the
3 house for approximately thirteen years. Nobody lived
4 there. It wasn't rented. It was not lived there. We
5 would come do yard upkeep and check on it.

6 I testified that my husband worked at -- is the
7 administrator at Greenville Memorial Hospital. I
8 testified that I was -- that this case had taken time
9 from my life, that I was supposed to have knees replaced
10 in a right-away fashion, but I'd put off doing all of
11 that surgery because this trial was pending.

12 I testified that we couldn't afford to spend monies
13 on a lawyer, so we proceeded pro se.

14 I was asked by Mr. Brandt if I had been disbarred.
15 I testified that I had. Since then I have additional
16 information, but as it was not asked and that I did not
17 have in the course of the 2009 testimony, I won't give it
18 now.

19 I testified that I'd started the Missing Children's
20 Center in South Carolina and was the -- after he asked me
21 about that and asked me what all work I had done when he
22 was questioning me, I testified that I had been an
23 assistant solicitor and was one of the first women in the
24 state to be that. Very active in child abuse
25 prosecutions and had won the Jefferson Award and Career

1 Woman of the Year Award. Not much testimony was given
2 about credentials.

3 Let's see. I testified about the mediation, that
4 we'd been called into mediation. Not much was given
5 about that either. In fact, I think just that was said.

6 If I could have just a minute and look over, Judge,
7 to see if I left anything out?

8 THE COURT: Yes, ma'am.

9 MS. JENNINGS: Most of the testimony that I
10 gave was in response to the bill. I know I testified
11 well over an hour. It was a long period of time. It
12 might have even been two hours. It was long. But most
13 of it was about the bill and identifying exhibits that
14 were put in that I'm not going into now because I don't
15 really remember what all they were, Judge, but you've got
16 them all. They were -- so I understand. They were
17 checks and identifications of bills and things of that
18 nature. The other documents had been put in through
19 witnesses like the Blue Ridge manual that talked about
20 membership and how you secured membership.

21 I testified that this case had been fully pled for
22 some period of time, years before it commenced to court,
23 well over a year. And I think -- and pardon me if I've
24 left anything out. I think that's pretty much the
25 summary of what I testified to.

1 THE COURT: All right.

2 Cross-examination?

3 CROSS-EXAMINATION

4 BY MR. BRANDT:

5 Q. Ms. Jennings, you bought this property from Champion
6 Paper Company. That's what you testified that you said?

7 A. Part of it was from Champion and part of it was from
8 those five guys.

9 Q. And you, I believe, have testified today that you
10 testified to that back at the time of trial? You
11 testified that you bought it from Champion Paper?

12 A. I don't think that was asked. I don't remember
13 that, but it was -- I don't recall that, no, sir. It was
14 Champion maybe not Campion (phonic).

15 Q. Champion Paper Company?

16 A. Champion. I mean, just now.

17 Q. And you didn't testify, as you submitted to the
18 Court, at the time of trial that you walked your lines
19 from Champion Paper and went over every right-of-way that
20 was on that property, did you?

21 A. No, I didn't testify I walked with Champion Paper
22 because I never walked it with Champion Paper. In fact,
23 they didn't even know they owned it. It took me writing
24 up to Connecticut to find out from Champion Paper that
25 they -- they owned so much property. When I tried to buy

1 it from them, it wasn't for sale. They didn't even know.

2 But we didn't testify about this at all that ---

3 Q. At trial?

4 A. About this part.

5 Q. And you didn't testify at trial that you went over
6 the right-of-ways on the property with Champion Paper,
7 did you?

8 A. No, not with Champion Paper. I went over it with
9 the department of highway people, with Blue Ridge and
10 then with the fencing man who did his own research. It
11 was Monty somebody from J & R Fencing in Marietta who was
12 a long-time fencer up there. And we went over it. But
13 Champion Paper didn't even know they owned the property,
14 Mr. Brandt.

15 Q. And you -- the person that gave -- or the party that
16 gave the right-of-way to the highway department, who was
17 that?

18 A. (No verbal response)

19 Q. When Highway 11 came up there, did you testify at
20 the time of trial as to who the party was that owned the
21 property at that time ---

22 A. You mean the twenty-foot right-of-way? No, I don't
23 know about who gave it to -- I know that I testified that
24 even part of my property was on the other side of Highway
25 11, a little part, because my husband used to tease me

1 and tell me he was going to make me do a fruit stand when
2 I retire on that part of Highway 11.

3 Q. Now, you testified at trial, did you not, and
4 acknowledge that highway right-of-ways are usually
5 anywhere from twenty-five to fifty feet each side of
6 center line?

7 A. Oh, absolutely not. I didn't testify about that.
8 In fact, you didn't even ask me that. In one of your
9 positions to the Court, you said something about Highway
10 183 or some number. And you said it was a thirty-foot
11 right-of-way, that that's what you believed the right-of-
12 way was. And it's in the transcript.

13 Q. And in your testimony, you didn't testify that you
14 knew that it was a twenty-foot right-of-way there, and
15 you merely said, I think it's a twenty-foot there, didn't
16 you?

17 A. That's probably what I said. I think it's a twenty-
18 foot right-of-way.

19 Q. It probably was a twenty-foot right-of-way? And
20 that's what your testimony was at trial?

21 A. Yeah. That's what -- well, in fact, you told me you
22 didn't have any notes. But I told you that I said I
23 think it's a twenty-foot right-of-way. And I still think
24 it's a twenty-foot right-of-way. I haven't varied.

25 Q. And at trial you never went back and offered any

1 kind of documentation, call any highway person in there
2 to refute Plaintiff's Exhibit Number 12, did you?

3 A. I don't know what exhibit number 12 is at this
4 point.

5 Q. Twelve was that application for the permit and the
6 staking sheet. Do you remember those? You were given
7 those at trial to look over. And I asked you if you
8 disagreed with it, and you didn't.

9 A. Well, as I remember, you didn't furnish them to me
10 in the pre-trial discovery part. You provided this later
11 at trial, so I saw it for the first time at trial. I
12 told you I had a running objection to this because -- you
13 know, I don't know. It is what it is. It was done -- I
14 see it's prepared on September '07 and signed by Ronnie
15 Alexander. You put it in. It's in the evidence.

16 Q. But I'd asked you about that.

17 A. That don't necessarily mean I agree with it just
18 because you put it in.

19 Q. But I asked you that day of the trial if you agreed
20 or disagreed with it, and you didn't disagree with it,
21 did you?

22 A. Well, no, of course, I disagree with it. I think
23 the right-of-way is twenty feet. That was one of the
24 questions the jury decided. I don't agree with it.

25 Q. Do you -- other than you saying, I think it's

1 probably twenty feet, did you offer any other evidence
2 from the highway department or any kind of authority that
3 said that that highway permit was wrong?

4 A. Did I put up anybody from the highway department?
5 No.

6 Q. Did you put up anything that said that staking sheet
7 -- the pole wasn't where the staking sheet had it?

8 A I put up my testimony about what I knew my right-of-
9 way was that I've had since the '80s as a property owner.
10 And Mr. Austin testified about their right-of-way. Did I
11 put up anybody from the highway department? I don't
12 think it's anybody in the highway department's business.
13 It was my testimony of what the right-of-way was.

14 Q. The essence of your testimony was that pole is on my
15 property. I didn't give Blue Ridge permission to put it
16 there. But you didn't put anything in about any kind of
17 specifics of right-of-way. Your testimony at best was, I
18 think it's twenty feet.

19 A. Well, are we beating me to death now for ---

20 Q. Well ---

21 A. Should I have jumped up and down and objected more?
22 Is that what you're asking me? Maybe.

23 Q. No.

24 A. But I said all along, it's twenty feet. And I say
25 here five years later it's twenty feet.

1 Q. I disagree with a lot of things you accused me of
2 doing as I sat there ---

3 A. Well, I know you do.

4 Q. --- at the time of trial.

5 A. But you can't say that I sure didn't try my best to
6 keep you from bringing this action. I wrote you, met
7 you. You wouldn't talk to me. I called Mr. Dalton. I
8 sent David Thomas over. I did multi things to keep you
9 from bringing an action that you later withdrew and
10 admitted in your case-in-chief that we had paid in full
11 every month without fail and we were excellent customers.

12 So, yes, I object to you spending two hundred and
13 fifty to three hundred thousand dollars and counting to
14 come after an old person for a bill that was paid in
15 full. Yes, I object to that. I object to that as a
16 matter of policy. I think you harassed me. I think
17 you're doing it still.

18 Q. And I never, ever agreed that you were a, quote,
19 good customer of Blue Ridge, did I?

20 A. You didn't testify. Your witnesses, the witnesses
21 testified I was a good customer.

22 Q. I want you ---

23 A. You didn't testify.

24 Q. You keep saying Larry Brandt, Mr. Brandt did this
25 and did that. I never ever conceded that you were a good

1 -- Larry Brandt never conceded you were a good customer?

2 A. No. In fact, when I called you the one time you
3 talked to me, you told me in no uncertain terms how
4 despicable you thought I was and that I should pay my
5 damn bill, quote, unquote.

6 Q. I said that to you?

7 A. Yes, sir.

8 Q. Wow. When?

9 A. Before this lawsuit was commenced when you sent me
10 letters telling me my power was going to be turned off.

11 Q. We haven't talked much at all ---

12 A. One time.

13 Q. --- outside the formal pleadings and at mediation.

14 A. No, sir. One time on the phone and at mediation.

15 Q. And you have even came in here to court under oath
16 testifying that mediation was brought up during the
17 course of the trial?

18 A. No. I think I said I don't think that much was said
19 about that.

20 Q. But you said it?

21 A. And none of this was during the testimony. I mean,
22 all of this is irrelevant as far as establishing a record
23 because none of this that we're having, this repartee
24 back and forth, occurred in the courtroom. The jury saw
25 no animosity from me towards you or I say from the Court

1 during that time. I think I was as kind and professional
2 and polite as I am now. I did get a little loud just a
3 minute ago but that was not heard by the jury. That
4 conversation did not occur at all. I would have liked
5 for it to have occurred, but it didn't.

6 Q. But you were there and heard Mr. Alexander's
7 testimony at trial?

8 A. This Mr. Ronnie right here?

9 Q. Yes, ma'am. Ron Alexander?

10 A. Yeah. I vaguely remember he was at trial. I've got
11 some notes about what he said.

12 Q. And I sent you this Plaintiff's Admission, Missing
13 Testimony and Evidence and Reconstruction of the Record,
14 back, way back in November, didn't I?

15 A. I don't remember that, Mr. Brandt.

16 Q. And we came down here even after that had been done
17 and we wanted to try to resolve it. Let me ask you. Is
18 there anything in what I submitted that Mr. Alexander
19 testified about or testified to that you disagree with?

20 A. Is this something that you asked me when I testified
21 the last time?

22 MS. JENNINGS: I understand from the Judge
23 we're supposed to only give information about what
24 testimony occurred on August 27th, 2009. What you're
25 asking now is from August 27th, 2009, so I object to it.

1 Q. Well, we're trying to reconstruct the record.

2 THE COURT: Well, I'm going to rule on the
3 objection made by the witness. The purpose of this
4 hearing is to reconstruct actual testimony elicited
5 during the trial.

6 MR. BRANDT: I understand. And my question is
7 with my witness, does she admit that what I said about
8 Mr. Alexander's testimony is true? That's helping
9 reconstruct the record, what the witness said.

10 MS. JENNINGS: Well, one, it wasn't asked. And
11 I don't think you can use a witness to give credibility
12 to a reply witness which is what Mr. Brandt's trying to
13 do. He's trying to bolster his witness who has not
14 testified in reconstruction and using me to try to
15 bolster him. I think that's not only proper ---

16 THE COURT: All right. Let's do this. I want
17 you to limit your cross-examination to matters that you
18 can recall that were asked of this witness during the
19 trial of this matter.

20 MR. BRANDT: And therein is our problem. That
21 was four years ago. I remember asking her some things.
22 She had said today I asked her things and did things that
23 I did not -- do not recall doing. And therein is my
24 problem.

25 THE COURT: All right. And we will deal that

1 subsequent to the proposed testimony ---

2 MR. BRANDT: And if I may put something else on
3 the record at this point.

4 THE COURT: No, sir. We're going to deal with
5 that after we get through with Ms. Jennings testimony.
6 Okay, sir?

7 MS. JENNINGS: Were there things I wish I had
8 said? Yes.

9 THE COURT: No, no.

10 MS. JENNINGS: But I'm not testifying to ---

11 THE COURT: No, you can't do it either.

12 MS. JENNINGS: Well, I'm not.

13 THE COURT: We're going to go back to the
14 cross-examination at the trial to the extend you're able.
15 And it would seem to me from both parties, since the
16 matter of the bill from Blue Ridge is no longer at issue,
17 then your real germane that you're looking at is the
18 right-of-way and questions with that regard. But I'll
19 leave that in your discretion if you want to get into the
20 billing aspect as well.

21 MR. BRANDT: Well, Your Honor. I'm -- you
22 know, it's the same problem that I had at trial. It's
23 not a question and answer with a chance to object. A lot
24 of stuff came in that I would have objected to. The
25 cat's out of the box because all of a sudden it was just

1 there. I think I objected, and that's when you did tell
2 her to stay on point. And I remember that.

3 THE COURT: We're going to deal with that.

4 MR. BRANDT: And she has testified ---

5 THE COURT: Mr. Brandt ---

6 MR. BRANDT: --- that things happened.

7 THE COURT: Mr. Brandt, Mr. Brandt, please.

8 I'm asking you again, your questions need to do with the
9 questions that you asked during this trial. If you can't
10 do it, that's okay. I just want you to do your best.

11 I'm going to give both parties an opportunity to state
12 their opinion as to what's been elicited. Okay? And I'm
13 going to put something on the record too. But as far as
14 this part of this hearing, ask questions that were asked
15 during the trial to the extent you can. Okay? I know
16 that's a tough, tall order. I mean, it's just an unusual
17 proceeding.

18 MR. BRANDT: I mean, she's done a lot of
19 things. And I think anything goes to credibility today
20 to whether or not she's telling the truth. But, okay. I
21 take it that I can't ask her whether or not she agrees
22 with Mr. Alexander's testimony. It's difficult. She's
23 the attorney, she's the party, she's the witness. And
24 you're restricting me to merely what she testified to at
25 this point?

1 THE COURT: Yes, sir, I am.

2 MR. BRANDT: Okay.

3 THE COURT: And I'm going to give you an
4 opportunity and I'm going to give Ms. Jennings an
5 opportunity after we get through with the testimonial
6 aspect of this hearing to place whatever they feel like
7 would be appropriate on the record.

8 MR. BRANDT: She's intimated that she testified
9 to certain things that I do not recall. And I can't
10 exactly remember everything. That's why we need a
11 record. But as far as what she didn't do at trial, can I
12 ask her that?

13 THE COURT: (No verbal response)

14 MR. BRANDT: You're just saying that I've got
15 to ask her what she testified to at trial. Can I ask her
16 what she didn't testify to at trial?

17 THE COURT: Ask the question and we'll broach
18 it. I can't -- again, I don't have a crystal ball over
19 here to anticipate what you're going to ask. But the
20 purpose again is to try to recreate the testimony as best
21 we can.

22 Q. Did you put up any documentary evidence or refer to
23 any specific documents upon which your testimony was
24 based as to the right-of-way at time of trial?

25 A. I don't recall any.

1 Q. It's your testimony ---

2 MR. BRANDT: I don't have anything else to ask
3 her.

4 THE COURT: All right. Thank you, ma'am. You
5 can step down.

6 Let's take a five-minute break and we'll come back
7 with -- you have Mr. Alexander you want to put that on
8 the record, and then she has Mr. Austin; is that correct?

9 MR. BRANDT: Well, yes, I'll put Mr. Alexander
10 up. He's going to say this is a fair representation of
11 his testimony. And Mr. Austin, again, I'm objecting to
12 him at all because his testimony is already there.

13 THE COURT: Okay. And I note your objection.
14 And we will still cross the objections and any other
15 exceptions that you have to these proceedings at the end
16 of the testimony. Okay? That's what I'm trying to be
17 clear.

18 All right. A five-minute break and we'll come back
19 with Mr. Austin and then we'll come back with Mr.
20 Alexander.

21 (WHEREUPON, court stood at recess for a short
22 break.)

23 MS. JENNINGS: Call Steve Austin.

24 **STEVEN AUSTIN,**

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION

2 BY MS. JENNINGS:

3 Q. Mr. Austin, you're the Steve Austin that testified
4 back in August of 2009?

5 A. Yes, ma'am, I am.

6 Q. And have you had a chance to look at, for some
7 period of time, the transcript that was done when you
8 testified? I think you were the last witness that's
9 captured in the transcript before the Court.

10 A. I'm not sure in which order I was, but I have a
11 transcript of some of it here before me.

12 Q. And was there a time when you testified again, when
13 you went back on the stand again at that trial and in a
14 reply-like situation?

15 A. Is it all right if I look?

16 Q. No, it won't be in there. Was there a time that you
17 testified not only what was here but part of -- some of
18 your testimony is missing?

19 A. Yes, ma'am.

20 Q. Okay. That's what the Court -- do you understand
21 that's what the Court wants recreated today?

22 A. Okay.

23 Q. They don't want what has already been captured on
24 the transcription.

25 A. Right.

1 Q. They want what has -- anything that's missing.

2 Like, for example, my testimony wasn't there at all.

3 A. Yes, ma'am.

4 Q. So I had to give it. You were present in court when
5 I testified; is that right?

6 THE COURT: No, ma'am. You want to ask him
7 questions about his testimony that you propose is missing
8 from the transcript, please.

9 MS. JENNINGS: Okay.

10 Q. That's what the Court wants, testimony that's
11 missing. So I'm just going to let you say what's
12 missing.

13 (Pause)

14 Q. Mr. Austin, to help along, your testimony you
15 presented regarding measurements when you took the stand
16 that's missing from the record.

17 A. That's what I'm trying to find where the measurement
18 is here. I don't think there's anything missing that I
19 testified to.

20 THE COURT: I'm sorry. What did you say,
21 please? Did you say you do not think there's anything
22 missing?

23 THE WITNESS: That I testified to.

24 THE COURT: So you think it's all included in
25 what you're reading there; is that what you're saying?

1 And I'm not trying to put words in your mouth. I just
2 want to understand what you're saying.

3 THE WITNESS: Everything that I testified to --
4 and then for some reason they excused me. And then after
5 that, everything went blank.

6 Q. We know the transcription is missing. What I'm
7 asking you is that you indicated to me, Mr. Austin, that
8 there were questions asked to you by Mr. Brandt regarding
9 right-of-way and footage and that you indicated the
10 testimony was missing which is why I asked you to come
11 today because of missing testimony not contained in the
12 record.

13 Now, my question is to you, what testimony, if any,
14 is missing from the record regarding when you testified
15 about the right-of-way? I know you were testifying about
16 other things. But right-of-way issues. What's missing?

17 A. I think it was a measurement, wasn't it?

18 Q. Well, that's what I'm asking. That's my
19 recollection, but the Court wants your testimony.

20 A. That would have been the measurement.

21 Q. So was there questions asked of you by Mr. Brandt
22 regarding measurements?

23 A. Yes, there was.

24 Q. Okay. And what -- just tell what you remember the
25 questions were by either me or him and what that -- that

1 you recollect. Not here, but from your memory what you
2 recollect is not contained. That's what the Court wants,
3 and your remembered answers.

4 A. The best I recall, we were speaking of right-of-way
5 issues from center line of Highway 11 to the edge of the
6 road and in, I guess, direct correlation to a pole that
7 had been set.

8 Q. Okay. What was that testimony?

9 A. To the best of my recollection, I testified that the
10 pole was about forty-something feet from center line to
11 the -- over past the guard rail and onto your property.

12 Q. Okay. And did you give an opinion to Mr. Brandt or
13 me or anybody about what the right-of-way was?

14 A. I did. I think I testified that it was twenty feet.

15 Q. From?

16 A. Center line. The other utilities I observed, as of
17 AT&T, they're twenty-one feet from the center line. And
18 that's -- they're regulated by F.C.C., so ...

19 Q. And I think just -- you're a -- you're retired, I
20 understand now ---

21 A. Yes, ma'am.

22 Q. An electrician?

23 A. Yes, ma'am.

24 Q. A licensed electrician. You gave all of your
25 credentials in the other testimony?

1 A. Yes, ma'am.

2 MS. JENNINGS: Let me just look at my notes and
3 be ...

4 Q. I'm not asking you to give this testimony. But you
5 were in court the entire proceeding; is that right? Even
6 though you were excused ---

7 A. I believe I was.

8 Q. --- you stayed the whole time?

9 A. Yes, ma'am.

10 Q. And did you -- don't tell what it was. But did you
11 hear my testimony?

12 THE COURT: We're not going to do that. We're
13 not going to have him bolster your testimony.

14 All right. Anything further of this witness, Ms.
15 Jennings?

16 Q. Is there anything that you -- just anything that you
17 can recollect that's left out? The Court obviously wants
18 to have an intact record with everything that anybody
19 said. Is there anything -- this is the opportunity that
20 whatever's missing to set it straight.

21 A. The right-of-way, I guess, would be the issue here.

22 Q. Go ahead and testify to whatever that you recall
23 your testimony was.

24 A. I recall Mr. Brandt saying the right-of-way was
25 thirty-three feet on 183 where he lived. Where I live,

1 it's about twenty, twenty-five feet, but I'm on a county
2 road, not a state road.

3 THE COURT: Was this during your testimony that
4 you said this?

5 THE WITNESS: Mr. Brandt said it.

6 MR. BRANDT: Your Honor, I can direct him to
7 the pages 251. Evidently, he got a copy of the
8 transcript. And through -- up to 54. And that's exactly
9 the issues that I questioned him on, and he gave those
10 answers. And they are recorded.

11 THE COURT: Did you have a chance to read your
12 testimony that is in the transcript?

13 THE WITNESS: I looked over it, yes, sir. It's
14 been since 2009.

15 THE COURT: Would you look over it right now
16 for us, please, sir?

17 And what page does it begin?

18 THE WITNESS: What page, sir? Ma'am?

19 MS. JENNINGS: 240.

20 MR. BRANDT: 251, your ---

21 MS. JENNINGS: 240.

22 THE COURT: Okay. Take a look ---

23 MR. BRANDT: Well, he started -- my cross-
24 examination ---

25 THE COURT: I want him to look at the entire

1 testimony right quick and let's see if there's anything

2 ---

3 MR. BRANDT: Okay. His entire testimony starts

4 at ---

5 THE WITNESS: Page 240.

6 MR. BRANDT: 240.

7 THE WITNESS: I was sworn in.

8 THE COURT: If you would just take a minute and
9 read through that for me, please, sir.

10 THE WITNESS: Yes, sir.

11 (Pause)

12 THE WITNESS: All right.

13 THE COURT: Have you read the entire ---

14 THE WITNESS: I've skimmed over it, yes, sir.

15 THE COURT: Okay. Do you contend there's any
16 parts of your testimony that are missing from that
17 transcript?

18 THE WITNESS: I don't think so.

19 THE COURT: Okay. Very good.

20 Q. Let me ask you then about ---

21 THE COURT: No. No, ma'am. Uh-uh (negative),
22 no. He's testified twice today he doesn't think there's
23 anything missing from his transcript.

24 MS. JENNINGS: Well, there might be ---

25 THE COURT: Can you -- no, ma'am. Just one

1 second, please.

2 Is there any obvious break in his testimony from the
3 proceedings in the transcript -- I mean, of the
4 proceedings in the transcript you have?

5 MS. JENNINGS: There doesn't appear to be an
6 obvious break.

7 THE COURT: Okay. And if I understand
8 correctly, Mr. Austin would have been called by you in
9 your defense of this case; is that correct?

10 MS. JENNINGS: Right. I showed him the
11 transcript.

12 THE COURT: No, ma'am. I'm not talking about
13 at trial. Did you call Mr. Austin as your witness in the
14 case?

15 MS. JENNINGS: Yes, sir.

16 THE COURT: Okay. And again, Mr. Austin,
17 you've looked through the transcript of your testimony?

18 THE WITNESS: Yes, sir.

19 THE COURT: And it's your belief that your
20 entire testimony's contained within that transcript; is
21 that correct?

22 MR. BRANDT: I didn't hear the question.

23 THE COURT: I asked him is it, in fact, his
24 belief that his entire testimony is contained in the
25 transcript.

1 MR. BRANDT: Thank you.

2 THE WITNESS: Yes, sir, my testimony is. And I
3 did have an opportunity to -- where I'd said the center
4 line was twenty feet of the road. That that was, you
5 know, at my house.

6 THE COURT: Sir?

7 THE WITNESS: That was at my house.

8 THE COURT: Well, now, hold on. The question I
9 have for you -- and I want you to address this only, if
10 you would, please, sir -- is there any aspect of your
11 sworn testimony at that trial that you believe has been
12 omitted from the transcript, or is your entire testimony
13 contained within that transcript?

14 THE WITNESS: I think my entire testimony is
15 contained. But there's some things that I don't
16 understand about transcripts.

17 THE COURT: Okay. All right.

18 I'm -- he has told me for the third time now that he
19 believes his entire testimony is contained in the
20 transcript.

21 With that being said, Mr. Austin, thank you for
22 being here. I'm going to excuse you from any further
23 participation in this hearing unless there's a reason I
24 should not.

25 Ms. Jennings?

1 MS. JENNINGS: Just one thing. We've never had
2 a Governor Easley. On page 241, it's an answer to him,
3 said something about line 21, page 241, it just jumped
4 out at me. Talking about appointed by Governor Easley
5 appointed you. I think that must be ---

6 THE WITNESS: It was Governor Edwards.

7 THE COURT: Okay.

8 THE WITNESS: Governor Edwards.

9 THE COURT: Well, I mean, that's -- the issue
10 again is whether or not his entire testimony is contained
11 in the transcript. Whether it contains misprints or not
12 is one thing. All right. Other than that, Ms. Jennings,
13 anything, any other reason why he should not be excused?

14 MS. JENNINGS: Well, he -- I had -- I picked
15 him up, so he -- but no, there isn't.

16 THE COURT: Okay.

17 Mr. Brandt?

18 MR. BRANDT: It's in the record.

19 THE COURT: Thank you, sir. You may step down.
20 I understand you might be riding with Ms. Jennings, but
21 ---

22 THE WITNESS: Yes, sir.

23 THE COURT: --- you're excused from any further
24 participation.

25 THE WITNESS: These glasses will fool you with

1 these steps.

2 THE COURT: They will, won't they.

3 All right. Mr. Brandt, I -- just one second.

4 Ms. Jennings, my understanding that is all the other
5 testimony you would have to submit into the record; is
6 that correct?

7 MS. JENNINGS: Yes, sir, I think so.

8 THE COURT: Okay. Would you call your witness,
9 Mr. Brandt?

10 MR. BRANDT: Ronnie Alexander.

11 **RONNIE ALEXANDER,**

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. BRANDT:

15 Q. Mr. Alexander, you work for Blue Ridge Electric?

16 A. Yes.

17 Q. And at the time of trial, you testified -- did you
18 testify that you worked for Blue Ridge Electric?

19 A. Yes, I did.

20 Q. And at the time of trial did you testify how long
21 you'd worked for Blue Ridge Electric?

22 A. I believe I did.

23 Q. And how long had you worked for them at the time of
24 trial in '09?

25 A. At that time probably thirty-five years.

1 Q. And did you testify that your job was the right-of-
2 way technician at Blue Ridge Electric?

3 A. That was part of my job, yes.

4 Q. Did you testify as to Plaintiff's Exhibit Number 12
5 that I showed you?

6 A. Yes. This is highway right-of-way permit, yes.

7 Q. And does that contain the pole in question on Ms.
8 Jennings property?

9 A. It does, yes.

10 Q. And did you -- were you the technician -- did you
11 testify at trial that you were the technician which
12 worked with the highway department to obtain that permit?

13 A. Yes.

14 Q. And the drawings attached to it was part of that; is
15 that correct?

16 A. Yes, it is correct.

17 Q. And you testified that it was -- that was part of
18 the permit, the drawings together with the actual page
19 where they granted the permit, did you not?

20 A. It is, yes.

21 Q. And did you testify that those drawings were to
22 scale?

23 A. They are to scale, yes.

24 Q. And did you testify that per scale it showed the
25 right-of-way, highway right-of-way, along Ms. Jennings'

1 property where the pole is was fifty feet from center
2 line of Highway 11?

3 A. Yes.

4 Q. And that those staking sheets and permit would be
5 part and parcel the same document?

6 A. The same document, yes. Go together, yes.

7 Q. And you coordinated -- did you testify at trial that
8 you coordinated the construction of the poles and the guy
9 wire and the power lines with the highway department on
10 behalf of Blue Ridge at the time it was placed?

11 A. That is correct, yes.

12 Q. And did you testify that that pole as well as the
13 guy wires ---

14 MS. JENNINGS: Your Honor, he is leading. I am
15 tolerant of some of it. But could he just ask him what
16 he testified to like I did, and let's just go from there
17 instead of trying to bolster his side by putting words in
18 his mouth?

19 THE COURT: Rephrase your question, please,
20 sir.

21 Q. At the time of trial, what did you testify to as to
22 the location of that power pole and guy wire in relation
23 to the highway right-of-way?

24 MS. JENNINGS: Now I object because it's been
25 asked and answered twice.

1 THE COURT: Overruled. Go ahead.

2 Q. What did you testify to as far as the placement of
3 that pole and the highway right-of-away at the time of
4 trial?

5 A. I testified that to get the permit to set this pole
6 on the highway right-of-way that I worked with the
7 highway department establishing the right-of-way by their
8 drawings and making sure I was on the highway right-of-
9 way when this pole and guy wire was set.

10 Q. And what did you testify in regards to the actual
11 measurements from the center line of the highway right-
12 of-way?

13 A. The center line highway to the edge of the right-of-
14 way is fifty foot. I testified to that.

15 Q. And where was the pole from the center line of the
16 highway?

17 A. I would have to find this pole. It's been so long
18 since I've looked at these drawings, I don't remember
19 which pole it was right off.

20 Q. Did you testify it was twenty-seven feet?

21 A. I believe that is what it is.

22 MS. JENNINGS: He's leading again, Your Honor.
23 Obviously he didn't remember, and Mr. Brandt suggested an
24 answer to him. I object to that and ask that it be
25 stricken.

1 THE COURT: Sustained.

2 MR. BRANDT: I don't know how to ask the
3 question. I'm trying to refresh the witness' memory from
4 four years ago other than ask what he -- if he testified
5 thus and so.

6 MR. HAMM: Your Honor, may I approach Counsel?

7 THE COURT: Yes, sir.

8 Q. Notwithstanding any measurements that you may have
9 testified to, do you recall what you testified to in
10 regards to whether or not the pole and the guy wires were
11 within that fifty-foot right-of-way?

12 A. I did testify that the pole and guy wire was inside
13 highway right-of-way and not on private property.

14 Q. Okay.

15 A. I do remember that.

16 Q. That it's not outside the right-of-way?

17 A. Not outside the highway right-of-way.

18 Q. And do you recall now from looking at what your
19 actual measurements were -- you went out and measured it,
20 didn't you?

21 A. Yes.

22 Q. And from your actual measurements -- not necessarily
23 recalling exactly what they were, from actually what was
24 on the ground, was that inside or outside the fifty-foot
25 right-of-way?

1 MS. JENNINGS: Your Honor, I would ---

2 A. Inside.

3 THE COURT: Just one second.

4 MS. JENNINGS: --- because it's been asked and
5 answered multi times and he's continuing to try to
6 bolster his testimony and obviously more than refresh,
7 testify for him.

8 THE COURT: Overruled. Go ahead.

9 Q. Was it inside or outside, where they're actually
10 placed on the ground now -- at the time of trial?

11 A. It was inside highway right-of-way.

12 Q. The guy wires too?

13 A. And the guy wire.

14 MR. BRANDT: I don't have anything else to ask.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MS. JENNINGS:

18 Q. I think at the trial when I got to stand up and
19 question you after Mr. Brandt had questioned you with
20 reply, do you remember -- do you remember back to that?

21 A. I remember you.

22 Q. You remember that I disagreed with and I asked could
23 be mistaken in that. We had nobody here from the highway
24 department that provided testimony about what the right-
25 of-way is or wasn't or could have been or thought it was,

1 did we? It was just you?

2 A. I believe I remember telling you that I got my
3 information from the highway department.

4 Q. Right. Nobody from the highway department came, in
5 other words?

6 A. (Shook head side to side in the negative)

7 Q. You're shaking your head no. We have to hear you
8 say ---

9 A. No, no, no one. I seen no one from the highway
10 department.

11 Q. Okay.

12 MS. JENNINGS: Thank you very much.

13 THE COURT: All right. Was there any ...

14 MR. BRANDT: (Nodded head side to side in the
15 negative.)

16 THE COURT: Okay. Thank you, sir. You may
17 step down.

18 All right. Is there any other proposed testimony
19 from the Plaintiff's side that had been excluded or
20 omitted from this record?

21 MR. BRANDT: Not on this issue of the right-of-
22 way. Trespass and that other stuff is irrelevant to us.

23 THE COURT: All right. And Ms. Jennings, any
24 other testimony you propose that has been omitted from
25 the record?

1 MS. JENNINGS: I don't think there's any other
2 testimony. I did present my -- I could add -- when Your
3 Honor asked us to put together everything in a packet, I
4 gave you my written closing argument ---

5 THE COURT: I'm going to let y'all address
6 that. I just wanted to make sure that we conclude the
7 testimonial aspect of this hearing. Okay?

8 Now, first, I want to address a couple of matters
9 from the Court's perspective. And I'm going to let both
10 Mr. Brandt and Ms. Jennings do the same.

11 My understanding -- and I've asked it several times
12 -- is that this record is entirely complete until Ms.
13 Jennings takes the stand; is that correct, Mr. Brandt?

14 MR. BRANDT: Yes, sir. My recollection is
15 that's correct.

16 THE COURT: Okay. And Ms. Jennings, you
17 indicated earlier you would agree with that?

18 MS. JENNINGS: Yes, sir.

19 THE COURT: Okay. Well, the reason I want to
20 bring that up is that there's been an allegation by Ms.
21 Jennings that the Court made a comment to her at the
22 beginning of the trial to the effect of why don't you pay
23 your damn bill. Number one, it's patently untrue. But
24 there's been -- there was no motion in the record for the
25 Court to recuse itself from these proceedings. If that,

1 in fact, would have occurred, I would think it would have
2 been incumbent upon Counsel to make a motion for the
3 Court to recuse itself based on some perceived bias.
4 It's not in the record.

5 Further, the allegations on the cross-examination or
6 during Ms. Jennings examination. I can recall multiple
7 occasions when Ms. Jennings was not being responsive, I
8 had to admonish her that the responses had to be to the
9 question asked. You answer the question. If you want to
10 explain it, you could as long as it was responsive to the
11 question being asked. After four or five times of that
12 occurring, I did send the jury out and I did chastise Ms.
13 Jennings, not in front of the jury. I never made a
14 comment about her practice in Anderson. I did say that
15 you were a lawyer and you understand what the process is.

16 With that being said, is there any writings that the
17 Plaintiff wishes to proffer for the Court of Appeals
18 consideration in this matter?

19 MR. BRANDT: Yes, sir. There's a lot that she
20 testified to today ---

21 THE COURT: No, no, no. Let me make sure my
22 question's clear. I'm going to give you a chance to
23 state your exceptions to these proceedings and to any
24 characterizations in the record. But the question is
25 only as to writings. Any writings that you wish to

1 proffer on behalf of the Plaintiff in this matter?

2 MR. BRANDT: The writings that I would proffer
3 is what you asked me to submit to you back in November.

4 THE COURT: Okay. And that is?

5 MR. BRANDT: Mr. Alexander's testimony.

6 THE COURT: All right. I'm going to let you
7 make that Court Exhibit ...

8 What's that, number 2, Renee?

9 MADAM COURT REPORTER: Yes, sir.

10 (WHEREUPON, Court's Exhibit Number 2 was marked for
11 identification only.)

12 MR. BRANDT: And I would put that in as ---

13 THE COURT: Okay. Anything further from the
14 Plaintiff as to writings? And again, I'm going to let
15 you have any exceptions or objections later.

16 MR. BRANDT: That Plaintiff's Exhibit 12 is at
17 least listed in the transcript. She hasn't furnished it
18 to me, but I'm assuming she listed it. So it's in the
19 court record, Your Honor. Other than that, it would be
20 Plaintiff's Exhibit 12.

21 THE COURT: Okay. Well, the exhibits --
22 there's been no indication that any exhibits are missing
23 in this case.

24 MR. HAMM: No, sir. That's correct.

25 MR. BRANDT: That's correct.

1 THE COURT: That's correct?

2 MS. JENNINGS: I have no knowledge of that.

3 But you indicated, I think, to us that they were together
4 in September. Or somebody ---

5 THE COURT: I never indicated any such thing
6 because I don't have control of those exhibits.

7 Now, Ms. Jennings ---

8 MS. JENNINGS: I don't either.

9 THE COURT: Ms. Jennings, is there any writing
10 that you wish to proffer for the Court of Appeals
11 consideration?

12 MS. JENNINGS: Since he's putting in that, I
13 would then put in -- let's see -- what I indicated was my
14 missing testimony. Have you already sent what we sent to
15 you? I sent something like eighty-one pages.

16 THE COURT: I have not sent anything to the
17 Court of Appeals ...

18 MS. JENNINGS: Okay.

19 THE COURT: ... other than the scheduling
20 matters.

21 MS. JENNINGS: Then I am going to put in my
22 testimony, pretty much what I gave today. I also put a
23 caption for the record, Reconstruction Offered by
24 Defendant, a paper I filed with the Court. I think
25 there's a letter to you. I made a motion following the

1 jury trial following the Court's jury verdict for the
2 Defendant.

3 THE COURT: We're going to deal with the post-
4 trial motions in just a second.

5 MS. JENNINGS: So don't put that in?

6 THE COURT: Not yet. I'm going to keep this in
7 order. But any writings. And I'm thinking probably
8 along the line of proposed testimony for whatever purpose
9 it may be in there. I don't ---

10 MS. JENNINGS: Then do I hold these jury
11 instructions that you made? I mean, just a moment later
12 or I'll put this collectively if you already have this.

13 THE COURT: Well, go ahead and do your proposed
14 jury instructions. And I know your objection was I would
15 not allow you to go to the jury on the punitive damages.

16 MR. HAMM: Your Honor, that document would be
17 Court Exhibit Number 3?

18 THE COURT: Yes, sir.

19 (WHEREUPON, Court's Exhibit Number 3 was marked for
20 identification only.)

21 MS. JENNINGS: Then I would put in the jury
22 charge that Judge McIntosh gave to us, that is to Mr.
23 Brandt and myself. I received it on 8/28/09 a.m. And
24 there's a -- I've got them numbered B-1 through B- -- it
25 looks like B-8. So I'd add that to it. I may have to

1 get a copy of this back since I didn't make copies. And
2 then you also did a handwritten charge that this
3 obviously is your handwriting. Can I approach?

4 THE COURT: Yes, ma'am. That is my
5 handwriting.

6 MS. JENNINGS: This is your handwriting.

7 This is Judge McIntosh's handwriting that he gave us
8 in court on 8/28/2009. No one has mentioned this or
9 seems to have it. And I don't know if you were going to
10 make it part of the record or you even -- do you have it,
11 Your Honor?

12 THE COURT: It's not my job to make a record.
13 I'm allowing you the opportunity to do so and Mr. Brandt
14 the opportunity to do so.

15 MS. JENNINGS: But this is your handwriting and
16 you acknowledge this? This is an additional instruction
17 that he gave on the issue of trespass, which I would
18 offer this.

19 MR. HAMM: Your Honor, could we look at it
20 before it's tendered?

21 MS. JENNINGS: Yeah.

22 MR. HAMM: (Reviewed proposed exhibit)

23 MS. JENNINGS: These are jury instructions that
24 you read and gave copies. I want to make sure they're
25 all in there. And then the extra one you did in your own

1 handwriting, but I'm going to put it in all together.
2 You gave it to Mr. Brandt as well, but I'm giving you my
3 only copy. And then I think that's everything if you'd
4 allow me to ...

5 (WHEREUPON, Court's Exhibit Numbers 4, 5 and 6 were
6 marked for identification only.)

7 THE COURT: All right. Let me ask this. Ms.
8 Jennings, you referenced the fact that you filed some
9 post-trial motions. In checking with my office, I don't
10 recall and I don't have any notes that they were served
11 on me. Did you serve those post-trial motions on me?

12 MS. JENNINGS: I mailed them.

13 THE COURT: You mailed them?

14 MS. JENNINGS: Yes, sir.

15 THE COURT: Was there an affidavit of mail with
16 those?

17 MS. JENNINGS: I'm sure there is one if I can
18 dig it out. I put in what was sent.

19 MR. BRANDT: She sent them to me.

20 MS. JENNINGS: Yeah.

21 THE COURT: Well, I mean, I'm not saying she
22 didn't. I'm not even suggesting she didn't. I'm just
23 saying I don't have a record of having received those.
24 And it's certainly -- I don't believe there's been any
25 ruling on the post-trial motions.

1 MR. BRANDT: I don't recall you making one on
2 hers. I remember you making one on mine.

3 THE COURT: Do you have any indication of that?

4 MR. BRANDT: I made a motion ---

5 THE COURT: Do you have a copy of what you
6 received from her on her motions?

7 Or Ms. Jennings, you either. I just want to see
8 whether or not that was served on the Court.

9 MS. JENNINGS: I have the copy I just gave to
10 the court reporter.

11 MR. BRANDT: I'll have to go through my case
12 file. I'm limited to what I have in my notebook.

13 MS. JENNINGS: And I'll do them as well, Your
14 Honor. I've kind of gotten discombobulated.

15 MR. BRANDT: I don't -- I can't locate them
16 right now, Your Honor. I can certainly go through my
17 stuff, but I've seen some at some point in time.

18 MS. JENNINGS: In the transcript, Your Honor,
19 it said that -- I'm looking too. In the transcript, Your
20 Honor, you said you would reserve the issue as to Mr.
21 Gresham's dismissal for a later time.

22 THE COURT: Here's a Form 4. It says that the
23 parties have ten days, that Mr. Gresham was dismissed,
24 Form 4. It says Plaintiff dismissed it's claim against
25 Steven Gresham and that Steven Gresham dismissed his

1 counterclaim. Plaintiff and remaining Defendant,
2 Kathleen Gresham, given ten days to file post-trial
3 motions. And that was attached to the verdict form of
4 one cent.

5 MR. BRANDT: I don't -- I can't put my hands on
6 what I was thinking of.

7 MS. JENNINGS: Let's see, the trial was 2008.
8 I have a certificate of mailing from October 2nd, 2008.
9 Does that cover the time period?

10 THE COURT: Well, the Form 4 that attaches to
11 the jury verdict is filed August 31st, 2009, and has a
12 handwritten date of that same date.

13 MR. HAMM: Would you state the date again, Your
14 Honor?

15 THE COURT: August 31st, 2009.

16 MS. JENNINGS: Yeah, I have what you just read.
17 It took me a second to find it. You're talking about you
18 read the one where you wrote it in the courtroom or you
19 wrote it somewhere there? And then I've got a copy of
20 the jury verdict.

21 THE COURT: What I'm asking is ---

22 MS. JENNINGS: Right, I know.

23 THE COURT: --- did you file and serve on me
24 any post-trial motions? If so, I need to see when those
25 were served on the Court.

1 MS. JENNINGS: I have got a stack of documents
2 two feet high. I would have to go through it, Your
3 Honor, and see if I see a certificate.

4 THE COURT: Well, I'm going to ask that you do
5 that before we leave.

6 MS. JENNINGS: Okay.

7 THE COURT: The first things I have in my file
8 after that verdict is a letter from Ms. Gresham, and it's
9 dated -- it looks to be November 15th, 2012.

10 MS. JENNINGS: I'm going to ask Mr. Brandt
11 something.

12 (Off record discussion)

13 MR. BRANDT: I can't find them. I thought I
14 made my motions on the record at trial. I made a motion
15 for directed verdict before the jury went. You denied
16 it. When they came back, I asked for judgement
17 notwithstanding the verdict on the trespass issue.

18 THE COURT: All right. Just for the record,
19 just so there's not something out there floating, to the
20 extent they were properly and timely served and filed --
21 and I'm speaking to Ms. Jennings' post-trial motions -- I
22 am denying those motions. That way the record should be
23 complete as far as post-trial motions. I'm not making
24 any finding as to whether or not they were, in fact,
25 timely filed or properly served because I have no

1 evidence of it in my file here.

2 Now, with that being said, I told both of you I'd
3 give you an opportunity -- let me say this, too, before I
4 go to your opportunity. Mr. Steven Austin's testimony is
5 contained in the record of this matter. He testified to
6 the same on several occasions here today. He was given a
7 chance to look at the testimony in the record. He said
8 he felt like that was all the things he testified to. In
9 fact, he had been called by Ms. Jennings as her witness,
10 and so there would not have been an opportunity to her to
11 call him in any type of reply because the reply would
12 have belonged to the Plaintiff in this matter. So either
13 he was, you know, put up and excused.

14 Both parties indicated there was nothing about the
15 record that shows an obvious break in his testimony. So
16 according to what Mr. Austin says and what the record
17 apparently shows, his record is entirely contained within
18 the transcript of this matter.

19 That being said, Mr. Brandt, I'm going to allow you
20 an opportunity to object or list any exceptions or
21 objections to the proceedings here today or any of the
22 proposed testimony other than Mr. Austin's that you put
23 on the record before he testified to.

24 Ms. Jennings, I'm going to give you the same
25 opportunity.

1 MR. BRANDT: Okay, Your Honor. Again, my
2 problem with this is it has been four years. And
3 certainly as far as what she says, she now says, it's
4 hard for me to remember everything. I did keep notes on
5 the right-of-way, and I think we covered that okay. But
6 at the same time, what she said today and what she said
7 then are exact -- her words, I'm certain, do not match.
8 None of us did. And I think that's the difficulty here
9 in basically trying to reconstruct the record and go
10 forward on appeal.

11 Some things, of course, that she says I disagree
12 with that she testified to. Some of them were major, I
13 thought important; others weren't so important. So we
14 have them in the record now and won't be any real
15 problem.

16 But as far as her claim, I think it would be
17 necessary for me to be able to know exactly what she
18 testified to at the time of trial. And I understand the
19 Court's problem. I sympathize with the Court's problem
20 here in trying to reconstruct the record, but we're
21 having the same problem. And it's very difficult to do
22 that. And I think that basically that the -- she
23 testified today something about somebody saying something
24 about thirty feet and thirty-four feet off the right-of-
25 way. And I don't remember those numbers ever being

1 mentioned at trial, thirty-four feet. The thirty-three
2 feet about a right-of-way that Mr. Austin alluded to,
3 that's in his testimony. It's clearly what I said, and
4 it's clearly what he answered. I have no problem with
5 what Mr. Austin testified at trial. It's in the record.

6 Certainly, my questions -- and it was hard for me to
7 go back to my questions to Ms. Jennings at the time of
8 trail concerning Plaintiff's Exhibit Number 12. The
9 permitting and the staking sheets was very important, and
10 we can't reconstruct that. It's impossible. And Ms.
11 Jennings, I'm sure, doesn't have an exact memory of what
12 she said. But I think what we're getting as far as proof
13 on the right-of-way and all of that stuff as to whether
14 or not she sustained her case, there's no doubt that the
15 pole is on property that she owns, the field. But it's a
16 question of the right-of-way.

17 And I remember at trial, you know, we discussed
18 that. And I brought the case in one evening at the end
19 of trial. I brought it in. And you were inclined to
20 kind of go in a different direction. I brought a case in
21 and gave it to you. I've cited that in that submission
22 along with that proposed testimony, what I say was the
23 missing testimony. And then you said, yeah, you're
24 correct. And that's why then you charged them they
25 couldn't find trespass unless they found it was outside

1 the right-of-way. Notwithstanding that, I had made a
2 motion for directed verdict on a reliable probative
3 credible witness, sought testimony about right-of-way,
4 that we had sustained our defense and that there was
5 nothing for the jury to decide on. But you did submit it
6 to the jury and they came back with a penny. And then
7 afterward I made a motion for notwithstanding the verdict
8 based on the same thing, basically for the directed
9 verdict. And there in the courtroom, of course, you
10 denied that.

11 I can't tell you that -- I thought I'd seen
12 something in Ms. Jennings' file at some point in time
13 concerning the motions or whatever. I can't locate them
14 now. I've got this one. And I left another file, to be
15 honest with you, with these documents. You know, when we
16 first start to try a case with a file like this, and you
17 end up with files -- but certainly, I'll go back through.
18 And if I find anything concerning Ms. Jennings' motions
19 that I've got, I'll certainly advise her that I have
20 them. And I usually -- if I get something, I stamp a
21 receipt on it so I'll know date it was that I got it. And
22 I'll certainly let her know.

23 There was -- again, it's irrelevant to us and I
24 don't think it matters so much about all that she
25 testified to concerning Blue Ridge's relationship with

1 her, the sequence of things and the efforts to call her
2 and how accessible she was to us. She testified to that,
3 but I think we have that covered from our end on the
4 record that has been produced.

5 There's nothing that Blue Ridge would submit to you
6 on those issues even though contrary to what she says
7 now, I don't remember that she testified exactly -- she
8 didn't testify at trial exactly like she did today. But
9 again, four years. And therein is my problem with trying
10 to reconstruct the record and go forward with the appeal.
11 And I honestly believe that the time has passed and the
12 disputes that we've had that -- you know, we've given up
13 the claim on the -- have given up the claim on the
14 account; and therefore, we're only seeking a new trial on
15 the -- because I don't think that it can be accurately
16 reconstructed and give everybody a fair chance to argue
17 their case on appeal. And therefore, there ought to be a
18 new trial granted. But I understand that's up to the
19 Court of Appeals.

20 THE COURT: I was about to say, the only issue
21 before me is reconstruction. I have no other
22 jurisdiction in this matter.

23 MR. HAMM: We understand that, Your Honor.

24 MR. BRANDT: We understand that.

25 THE COURT: Okay.

1 MR. BRANDT: But this is my concern.

2 THE COURT: Okay. Any other exceptions or
3 objections to these proceedings other than as stated from
4 the Plaintiff's perspective?

5 MR. BRANDT: No.

6 THE COURT: Okay. Ms. Jennings? Any
7 objections or exceptions to these proceedings from the
8 defense?

9 MS. JENNINGS: There are some things to make
10 sure I put it on the record, Your Honor. This matter
11 was, of course, initiated, I think, in 2008. So Mr.
12 Brandt and the Plaintiffs have been on notice since 2008
13 that I claimed trespass and that I claimed that Mr.
14 Gresham was not a member of the Blue Ridge and had never
15 been a member of the Blue Ridge.

16 There is -- contained in the court file, there was a
17 hearing set by me on my motion that was heard in front of
18 Judge Patterson in November of 2008, the best I remember
19 -- sometime in that time period -- where we moved -- Mr.
20 Gresham moved and I moved as well with him -- to have him
21 dismissed as a party, indicating that he was not a member
22 of Blue Ridge. No -- disputing that I needed to be there
23 at all for the claim, but that I was a member of Blue
24 Ridge and that he was not. Mr. Brandt didn't appear at
25 that hearing. We waited some two to three hours for him

1 to come, and Mr. Todd Simmons came on behalf of his
2 office for that motion hearing that had been duly set and
3 all the parties noticed.

4 Judge Patterson sent for them, and the
5 representation was made in court to Judge Patterson that
6 Mr. Gresham was a member and that they were proceeding
7 and that they were adamant about it. And so we were
8 forced to litigate for multiple years, including taking
9 time off from work and the mediation because Blue Ridge
10 contended he was a member. But yet, when their first
11 witness testified on August 26th, 2009, they readily
12 admitted he was not a member. That was what -- then that
13 testimony continued because I specifically asked that of
14 every witness, and Mr. Gresham had testified he wasn't a
15 witness [sic]. And then Your Honor granted that motion.
16 So I wanted that to be clear.

17 Also, I had pled since 2008 a request for punitive
18 damages, so they had been on notice for well over a year
19 that I was seeking punitive damages as to this case
20 because of the nature of the allegation, that it wasn't a
21 justly brought initiated complaint in the first place,
22 that it shouldn't have been brought in the first place.

23 And then secondly, they compounded insult to injury
24 by adding a party who had never been a member of the Blue
25 Ridge Electrical Coop. We proceeded. That had not been

1 challenged by Mr. Brandt until Your Honor, on his own
2 motion, I suppose, notified us the day of the closing
3 argument, which would have been Friday, August 28th,
4 2009, that we were precluded from -- that I was precluded
5 from mentioning anything or -- as to punitive damages,
6 and you indicated in open court that you had changed your
7 mind overnight. But on the day before you had admonished
8 us that we were not to go over forty-five minutes, I
9 believe, was the time that you gave us on closing
10 argument, and that if we did that we were going to be
11 held in contempt of court. So that is why I ---

12 THE COURT: Let me stop you. That is not true,
13 Ms. -- I've never threatened anybody with contempt of
14 court. I've threatened or admonished people, if you
15 over-go the time, then I will stop you. But I've never
16 threatened anybody with contempt of court, nor that I did
17 you. But go ahead.

18 MS. JENNINGS: Well, with all due respect, Your
19 Honor, I object to that. And I think Mr. Gresham and Mr.
20 Austin can also indicate that's exactly what you said.

21 THE COURT: Okay.

22 MS. JENNINGS: If you need me to put them up.
23 And I don't want to ---

24 THE COURT: We're not taking any other
25 testimony. I note your -- you're noted for the record.

1 MS. JENNINGS: That is exactly what happened.
2 And that I had also required -- filed requests for
3 admissions which are clocked-in in the court record where
4 Blue Ridge indicated that Mr. Gresham was a part of this
5 proceeding and that I was given five minutes prior to
6 closing argument on the Friday, August 28th, to modify my
7 closing remarks which I had written because of the
8 admonishment to keep it within forty-five minutes. That
9 I deleted anything about punitive damages because Your
10 Honor directed me not to say anything about them with my
11 running objection made on that point.

12 The jury consequently was unable to hear the issue
13 of punitive damages. They became, of course, the triers
14 of fact and of law. They took all the evidence, and they
15 saw us extensively. And they came back, even eating
16 lunch, in a relatively short period with a unanimous
17 verdict in favor of the Defendant on all particulars.

18 Nobody wishes the transcript existed more than I
19 because I think that my testimony was much better then
20 than it was four something years ago. Nobody wishes more
21 than I because it very clearly captured everything that I
22 testified to without a doubt and I stand by unequivocally
23 here today.

24 If I had -- I know that Mr. Brandt, with all respect
25 to him, sought to embarrass me that day. I would like to

1 proffer and state for the record that since that trial I
2 have been made aware ---

3 THE COURT: I'm not going to allow you to
4 proffer anything occurring past the trial because the
5 purpose of this record is to -- of this hearing is to
6 recreate what happened at the hearing.

7 MS. JENNINGS: And that's probably the wrong
8 word. But I have a court transcript from the Federal
9 Court, Fourth Circuit, United States of America versus
10 Curtis Beasley, that pertains to me, Your Honor, about
11 the disbarment. Which I was disbarred because of
12 testimony of a Robin Boykin Sin Savage (phonic) that I
13 claimed was telling a lie, known to the State, Your
14 Honor.

15 Now I find out after I testify in trial that she has
16 testified in court that she was a known cocaine crack
17 addict and was during the time she made testimony about
18 me, and that that was known to the State of South
19 Carolina because they used her as an undercover
20 informant. I think that that is pertinent as it goes to
21 my credibility because what I have always said is the
22 truth and that the disbarment as to me was based upon the
23 testimony of a known crack addict who then testified in
24 Federal Court that I was made aware of through testimony
25 given to me by an attorney in Greenville, an official

1 transcript that I hold in my hand, that she was a known
2 crack addict and a liar and was used by the court on
3 multiple -- by the Attorney General's Office on multiple
4 occasions making crack buys and undercover crack buys and
5 that she was that during that time. And if I had known
6 that at the time I testified, you'd better believe I
7 would have brought it to the Court's attention
8 immediately and we would have had a sidebar or whatever
9 conference on that. And I want that to be known, and I'm
10 happy to put this in the record.

11 THE COURT: Thank you. Anything further? Ms.
12 Jennings?

13 MS. JENNINGS: I'm just -- just give me a
14 minute. I think that's it.

15 THE COURT: Okay.

16 All right. Ladies and gentlemen, I'm going to
17 report back to the Court of Appeals that a hearing was
18 had. The transcript will speak for itself. As to
19 whether or not that should constitute a sufficient record
20 that's filling in the missing aspects of the record will
21 be up to the Court of Appeals to make that determination.

22 Quite frankly, when we had both parties, from what -
23 - you know, from Ms. Jennings saying this occurred and
24 Mr. Brandt saying, no, this occurred, I don't know how
25 that can happen. But with that being said, I would

1 assume that both parties are going to order the
2 transcript of this hearing. I'm going to report back
3 that the hearing was made, the parties could not
4 necessarily disagree -- I mean, agree as to what
5 occurred. And therefore, it's being submitted for their
6 consideration for what it's worth. I don't know what
7 else to do. This is an unusual circumstance I've never
8 been faced with before. I've asked a number of judges,
9 and most of them have not been faced with it before. But
10 those who have said you really need to reconstruct the
11 record by taking testimony.

12 That being said, if there's nothing further from the
13 Plaintiff, we'll conclude.

14 MR. HAMM: Just for purposes of clarification,
15 you're going to provide the Court of Appeals with a
16 transcript of today's proceeding, correct?

17 THE COURT: No. I would assume that that would
18 be part of the parties' burden in recreating the record
19 for appeal. Now, if -- and I guess maybe the best thing
20 to do is for me to report back in writing to the Court --
21 of which both sides will receive a copy -- and say, you
22 know, giving them what I -- basically what I just said,
23 that we had a hearing, we took testimony, both sides
24 disagree as to what really occurred at trial. And
25 therefore, what may be in the record and what happened at

1 trial may not be one in the same, but it's been done.

2 And if they think that's sufficient for the case to go
3 forward with the appeal, then I'd assume they'd give a
4 briefing schedule.

5 MR. HAMM: Just for purposes of protecting the
6 record, we'd like the record to reflect that we made a
7 motion to ask the Court, Your Honor, to submit the
8 transcript of today's proceeding to support whatever you
9 -- whatever letter or statement. Obviously, we've seen
10 what you have done in your correspondence with the Court,
11 but we think in order to move this matter along, given
12 the delay -- and of course, that last order of the Court
13 of Appeals was pretty strong expressing concerns about
14 the delay. So it seems to me it may be beneficial, and
15 we would simply make a motion, subject to your rulings,
16 that you include the transcript from today in your
17 submission to the Court of Appeals.

18 THE COURT: All right. Any reason ---

19 MS. JENNINGS: I have no objection to that.

20 THE COURT: Okay. I'll be glad to do that.

21 MR. HAMM: Thank you, Your Honor.

22 THE COURT: Go ahead.

23 MS. JENNINGS: Okay. Thank you. And I would
24 note that I've written the Court of Appeals and Court
25 Administration five times, at least, asking about the

1 transcript concern. But Your Honor, I guess I see it a
2 little different. I didn't see a lot of disagreement
3 about today. We agree with the testimony of Fred Smith
4 to be submitted. We agreed that after Mr. Austin got up
5 and seemed to be clear, we seemed to not be at cross
6 purposes on that.

7 We seem to not be at cross purposes on the
8 instructions that Your Honor clearly gave us because I
9 have them, and there's no objection about that. There
10 doesn't seem to be any disagreement. We seem to agree
11 that the exhibits are all intact and together. The only
12 thing we seem to disagree on is the wording of my
13 testimony and what was in or not. Other than that, it
14 seems to be agreed, as I see it.

15 Now, I would like to -- what I had mentioned about
16 the federal transcript. I would like to put this in in
17 that it bears on my credibility that I would have
18 testified had I known at the period of time that this was
19 in existence.

20 THE COURT: Obviously, it's something post. It
21 wasn't submitted at trial. This is a -- the purpose is
22 to recreate a trial transcript. If it's appropriate to
23 put in your appellate brief if it goes forward, then that
24 will be before the Court.

25 MS. JENNINGS: I just don't want to get my feet

1 shot out from under me that I didn't put it in the
2 record.

3 THE COURT: Well, you certainly have tried, for
4 the record, to do so.

5 MS. JENNINGS: Okay.

6 THE COURT: And I would note that.

7 MR. HAMM: And for purposes of the record, just
8 so it's complete, we would object to placing post-trial
9 hearings or other in the matter where we're trying to
10 reconstruct a record of a hearing that took place a
11 number of years ago. Subsequent information had no
12 bearing on the jury or the Court or anyone else.

13 MS. JENNINGS: Well, I'm sorry. It didn't --
14 it occurred before the trial. It's just that I didn't
15 know about it. It occurred in 2004.

16 THE COURT: All right.

17 MS. JENNINGS: It's just I didn't know. I
18 didn't have the federal transcript.

19 THE COURT: I understand that. And the bottom
20 line, I think, what Mr. Hamm is saying is it wasn't
21 submitted at the hearing in the trial of this matter, so
22 therefore, it should be excluded when we reconstruct the
23 trial now -- testimony now. Okay. Anything further from
24 the Plaintiff?

25 MR. BRANDT: No, sir, Your Honor. I don't

1 suppose so. Again, I ...

2 THE COURT: Anything further, Ms. Jennings?

3 MS. JENNINGS: I don't think so.

4 THE COURT: All right. This hearing will be
5 concluded.

6 MR. BRANDT: Thank you, Your Honor.

7 THE COURT: I will get a copy of the transcript
8 of record submitted to the Court of Appeals along with my
9 report and then give it to them.

10 MR. HAMM: We'll wait for the Court of Appeals
11 ruling.

12 THE COURT: All right. Thank you for being
13 here.

14 (WHEREUPON, the hearing ended at approximately 11:58
15 a.m. and then reconvened a few moments later.)

16 THE COURT: Just one second, ladies and
17 gentlemen, if I may. Let's go back on the record. My
18 court reporter post-hearing asked me who she should bill
19 for the transcript in this matter. The current appellant
20 is whom in this case?

21 MR. BRANDT: Me.

22 THE COURT: You?

23 MR. BRANDT: Blue Ridge will pay for it.

24 THE COURT: Okay.

25 Would you bill Blue Ridge Electric?

1 MR. BRANDT: Send the bill to me.

2 THE COURT: Okay.

3 MR. HAMM: We'll take care of that, Your Honor.

4 THE COURT: Thank you, guys. All right. The
5 hearing is concluded.

6 (WHEREUPON, the hearing ended at approximately 12:00
7 p.m.)

8 (END OF REQUESTED TRANSCRIPT OF RECORD)

1

CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Thirteenth Judicial Circuit of the State
4 of South Carolina, do hereby certify that the foregoing
5 is a true, accurate, and complete transcript of record of
6 all the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Greenville County, South
9 Carolina, on the 29th day of April 2013.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14

May 30, 2013

15

16

Renee H. Tollison

17

Circuit Court Reporter