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February 23, 2009

Ms. Reneé Jenkins, Secretary
Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, OH 43215

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PUCO

Re: Case No. 08-709-EL-AIR, et al
December 15, 2008 Deposition of Teresa Brierly

Dear Ms. Jenkins:

Please find attached a copy of the December 15, 2008 Deposition of Teresa Brierly in Case No. 08-709-EL-AIR, et al.

Sincerely yours,

Stephen M. Howard

Stephen M. Howard
Attorneys for The Ohio Cable Telecommunication
Association

SMH/mjm

Enclosure

cc: All Parties of Record (w/enclosure via U.S. Mail)

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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke) Case No.
Energy Ohio, Inc. for an Increase in) 08-709-EL-AIR
Electric Distribution Rates.)

In the Matter of the Application of Duke) Case No.
Energy Ohio, Inc. for a Tariff Approval.) 08-710-EL-ATA

In the Matter of the Application of Duke) Case No.
Energy Ohio, Inc. for Approval to Change) 08-711-EL-AAM
Accounting Methods.)

In the Matter of the Application of) Case No.
Cincinnati Gas & Electric Company for) 06-718-EL-ATA
Approval of its Rider BDP, Backup)
Delivery Point.)

DEPOSITION OF: TERESA BRIERLY

December 15, 2008

3:05 p.m.

REPORTED BY:

Renee Rogers, Registered Professional Reporter

1 _____
2
3 Deposition of TERESA BRIERLY, a witness
4 herein, taken by the Intervenor as upon
5 cross-examination pursuant to the Ohio Rules of
6 Civil Procedure and notice and stipulations
7 hereinafter set forth, at the offices of Vorys,
8 Sater, Seymour and Pease, LLP, 221 East Fourth
9 Street, Suite 2000, Cincinnati, Ohio at 3:05 p.m. on
10 Monday, December 15, 2008, before Renee Rogers,
11 Registered Professional Reporter and notary public
12 within and for the state of Ohio.

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Cin-Tel Corporation
813 Broadway
Cincinnati, Ohio 45202
(513) 621-7723

1 APPEARANCES:

2 On behalf of Duke Energy:

3 AMY B. SPILLER, ESQ.
ELIZABETH H. WATTS, ESQ.
4 Duke Energy
139 East Fourth Street
5 Cincinnati, Ohio 45201

6 On behalf of Intervenor The Ohio Cable Telecommunications
Association:

7
GARDNER F. GILLESPIE, ESQ.
8 Hogan & Hartson, LLP
Columbia Square
9 555 Thirteenth Street, NW
Washington, DC 20004

10 On behalf of the Ohio Attorney General (by telephone):

11
STEPHEN REILLY, ESQ.
12 Office of the Attorney General
Public Utilities Commission of Ohio
13 180 East Broad Street, Sixth Floor
Columbus, Ohio 43215

14

15 Also present (by telephone):

16 Louis Brown
Victor Gallina

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S T I P U L A T I O N S

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2 It is stipulated by and among counsel for the
3 respective parties that the deposition of Teresa
4 Brierly may be taken at this time by the Intervenor
5 as upon cross-examination pursuant to the Ohio Rules
6 of Civil Procedure and pursuant to Notice and
7 agreement of counsel as to the time and place; that
8 the deposition may be taken in stenotype by the
9 notary public-court reporter and transcribed by her
10 out of the presence of the witness; that the
11 deposition is to be submitted to the deponent for
12 her examination and signature, and that the
13 signature may be affixed outside the presence of the
14 notary public-court reporter.

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1 I N D E X

2 Witness Page

3 TERESA BRIERLY

4 Cross by Mr. Gillespie 6

5

6 E X H I B I T S

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8 (No exhibits were marked.)

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1 TERESA BRIERLY,
2 of lawful age, as having been duly sworn, was
3 examined and testified as follows:

4 CROSS-EXAMINATION

5 BY MR. GILLESPIE:

6 Q Ms. Brierly, I'm Gardner Gillespie. I
7 represent the Ohio Cable Telecommunications
8 Association.

9 Would you state your name and address
10 for the record, please.

11 A Teresa Brierly, 560 Quail Hollow Lane,
12 Falmouth, Kentucky 41040.

13 Q Are you on any medication?

14 A Yes.

15 Q Is there any reason why the medication
16 or anything else would prevent you from being
17 complete, accurate, and truthful?

18 A No.

19 Q So we can rely on your testimony
20 today?

21 A Yes.

22 Q Have you had your deposition taken
23 before?

24 A No.

1 Q I'm sure your counsel has explained a
2 little bit about this, but the procedure is I will
3 ask you questions, and I need a verbal response. I
4 need a "yes" or a "no" or explanation. "Uh-huh" or
5 "huh-uh" or nodding of your head won't do, okay?

6 A Yes.

7 Q And wait until I have finished my
8 question before you give an answer so your counsel
9 can object, if she wants to, and also so we'll have
10 a clear record.

11 If you answer the question, we will
12 assume that you have understood it. If you don't
13 understand a question, please ask me to rephrase it
14 or explain what it is I'm after, okay?

15 A Yes.

16 MR. GILLESPIE: And we will proceed
17 under -- well, I'm suggesting that any
18 objections other than form or privilege
19 would be preserved. Is that all right?
20 We'll go forward.

21 Q I'm going to refer to Duke Energy Ohio
22 and predecessors such as CG&E as Duke, all right --

23 A Yes.

24 Q -- unless I explain otherwise.

1 Now, what did you do to prepare for
2 your deposition?

3 A Spoke to Duke Energy legal counsel.

4 Q Is that all?

5 A Yes, it is.

6 Q You didn't speak to anyone else?

7 A No, I did not.

8 Q You might want to speak up a little
9 bit. We have people on the speaker phone, all
10 right?

11 A Yes.

12 Q Have you ever testified in any
13 proceeding?

14 A Yes.

15 Q What kind of proceedings have you
16 testified in?

17 A It was personal.

18 Q But you have not testified on behalf
19 of Duke Energy?

20 A No, I have not.

21 Q What's your current position?

22 A I'm a joint use specialist.

23 Q How long have you held that position?

24 A Since 1996.

1 Q Okay. So you have been employed by
2 Duke since at least that time, right?

3 A Yes.

4 Q And what did you do prior to you being
5 a joint use specialist in 1996?

6 A I was a T&D.

7 Q What does that mean?

8 A Senior -- I was a technician,
9 distribution transmission technician.

10 Q For Duke?

11 A Yes.

12 Q Since when?

13 A How long was I a T&D tech? Is that --

14 Q Yes.

15 A -- what you're asking me? Since 1987.

16 Q Did you work for Duke prior to 1987?

17 A I have been with Duke since 1973.

18 Q What are your responsibilities as
19 joint use specialist?

20 A Some of our responsibilities are
21 interpreting our current agreements, assisting
22 people in our processes and procedures that we have
23 with regard to those agreements.

24 Q Are you responsible for billing under

1 the agreements?

2 A Yes.

3 Q Anything else?

4 A No.

5 Q By agreements, you're talking about
6 pole attachment agreements and joint use agreements?

7 A Yes.

8 Q Are those the only types of agreements
9 that you deal with on a regular basis?

10 A Yes, they are.

11 Q Okay. And who do you report to?

12 A My manager is Jeff Riggins.

13 Q Does anyone report to you?

14 A No, sir.

15 Q Now, are you responsible for tracking
16 the number of attachments by third parties?

17 A No, I'm not.

18 Q Are you responsible for compliance by
19 attachers with the National Electrical Safety Code?

20 A I'm not sure that I understand the
21 question.

22 Q Do you know what the National
23 Electrical Safety Code is?

24 A Yes.

1 Q Do you deal with that on a regular
2 basis?

3 A Yes, I do.

4 Q Are you responsible for seeing that
5 attaching parties to Duke's poles are in compliance
6 with the NESC?

7 A I'm responsible -- I'm not sure that I
8 know how to answer that. All of our attachers are
9 supposed to know the NESC and attach accordingly.
10 If asked, I will tell them what the NESC attachments
11 are, but other -- that is my only responsibility.

12 Q Okay. Now, in your job are you
13 generally knowledgeable about the condition of
14 Duke's plant, aerial plant, with respect to NESC
15 compliance?

16 A Would you ask me that question again,
17 please?

18 Q Sure. As part of your job, do you
19 have occasion to ride out the system?

20 A No.

21 Q You don't?

22 A Not generally.

23 Q Only with respect to particular
24 requests, for example?

1 A Yes.

2 Q Okay. So as a general matter, you
3 don't know about the extent of compliance with the
4 NESC by Duke and the attaching parties?

5 A That's an accurate statement.

6 Q Okay. Now, are you familiar with
7 audits or surveys or inventories conducted on behalf
8 of Duke regarding attachments to Duke's poles?

9 A What do you mean by familiar?

10 Q Are you aware of audits or surveys or
11 inventories?

12 A I don't do audits. I'm aware that
13 they take place on occasion.

14 Q Are you responsible for billing for
15 audits?

16 A No.

17 Q Are you aware that there was an audit
18 conducted by Duke of Time Warner Cable's attachments
19 in 2000-2001 period?

20 A Yes, I am.

21 Q What's the extent of your knowledge
22 about that audit?

23 A I just know that the audit occurred.

24 Q Do you know how broad based it was?

1 A No, I do not.

2 Q Do you know whether there were any
3 findings of unauthorized attachments as a result of
4 that audit?

5 A I don't know any results of the audit.

6 Q So you don't know whether there was
7 any billing for unauthorized attachments as a result
8 of that audit?

9 A I do not know.

10 Q So you don't know whether they counted
11 drop poles?

12 A I don't know.

13 Q Are there any other audits or
14 inventories or surveys of attachments that you're
15 aware of?

16 A I'm aware of the 2005 audit.

17 Q Of Time Warner Cable, or Adelphia?

18 A Both.

19 Q What's the extent of your knowledge of
20 that audit?

21 MS. SPILLER: I'm going to object to
22 the form, as there are two audits
23 referenced there.

24 Q What's the extent of your knowledge of

1 the audit of Adelphia?

2 A Just that there was an audit.

3 Q You don't know any particulars?

4 A No sir.

5 Q What's the extent of your knowledge of
6 the audit of Time Warner Cable?

7 A I'm aware that there was a 20 percent
8 sampling audit performed; that there were violations
9 that were identified.

10 Q Okay. Are you aware that in that
11 audit there were allegations of unauthorized
12 attachments?

13 A Yes, I am.

14 Q Are you aware of any other audits or
15 inventories?

16 A There were some done with respect to a
17 phone company.

18 Q And what -- tell me about those
19 audits, would you, or inventories.

20 A I just know that there was an
21 inventory performed for a telephone company, and we
22 shared the information with them that we found.

23 Q What phone company?

24 A At the time it was GTE, now Verizon.

1 Q How many poles did that cover?

2 A I don't know.

3 Q Do you know about how many attachments

4 Verizon currently has on Duke's poles?

5 A No, I do not.

6 Q Do you know whether there's an

7 agreement between Duke and Verizon?

8 A Not to my knowledge.

9 Q Does Verizon have attachments on

10 Duke's poles?

11 A Yes, they do.

12 Q They do?

13 A Yes.

14 Q Can you give me any idea of the

15 magnitude of the number of attachments that they

16 have?

17 A No, I cannot.

18 Q You don't know whether it's ten or --

19 A I -- I just --

20 Q -- a thousand?

21 A I just know they're one of our smaller

22 phone companies, but I have no knowledge of numbers.

23 Q Okay. Now, when was this audit or

24 inventory? When did that take place?

1 A Best of my recollection, it was either
2 late nineties, early 2000.

3 Q What was the purpose of the audit?

4 A We were trying to get a
5 cross-reference of pole numbers to build a database.

6 Q And by pole numbers you mean numbers
7 that Verizon would have on poles that they own?

8 A We wanted their pole number to
9 cross-reference in the database with our pole number
10 for identification purposes.

11 Q Did you have at the time a joint use
12 arrangement with Verizon?

13 A Hmm.

14 Q Do you understand what I mean by that?

15 A I understand what you're asking me.
16 I'm just not sure how to define it. We have an
17 agreement with Verizon for a pricing table, and we
18 would actually use the terms of an agreement with
19 someone else that we have to render joint use with
20 that company.

21 Q So Verizon owns poles that Duke is
22 attached to, and Duke owns poles that Verizon is
23 attached to; is that right?

24 A Yes.

1 Q And so the purpose of this audit was
2 to obtain pole numbers of the Verizon poles to add
3 to Duke's records; is that right?

4 A We were trying to get them our numbers
5 for our poles that they were on that they didn't
6 have, capture their numbers on all the poles of
7 theirs that we were on.

8 Q Okay. Any other audits or inventories
9 that you're aware of?

10 A Not that I can remember.

11 Q Okay. Do you have any knowledge of
12 the number of poles that Duke bills other parties
13 for?

14 A No, I don't.

15 Q So what is your role, if any, in
16 connection with billing for pole attachments?

17 A I do not bill for pole attachments in
18 the state of Ohio.

19 Q Okay. So you don't have any role with
20 respect to that; is that right?

21 A No, I do not.

22 Q Do you know whether Duke or any of its
23 affiliates offer any kind of video or communication
24 services?

1 A I do not.

2 Q You do not?

3 A I do not know.

4 Q Do you know whether Duke has an
5 ownership interest with Current Communications for
6 the provision of a broadband over power line
7 service?

8 A I do not know if they have ownership.

9 Q You're aware of the joint use
10 arrangements between Cincinnati Bell and Duke?

11 A Yes, I am aware of that contract.

12 Q Do you bear some responsibility for
13 enforcing that contract?

14 A I do.

15 MS. SPILLER: Continuing objection to
16 this agreement as being irrelevant.

17 Q Okay. You can still answer.

18 MS. SPILLER: She answered yes.

19 Q Do you know whether Cincinnati Bell
20 has maintained the percentage of ownership that it's
21 required to under the agreement?

22 A I don't know.

23 Q Do you know what the percentage is of
24 ownership that Cincinnati Bell is required to

1 maintain under the agreement?

2 A Yes, I do.

3 Q What is it?

4 A 58-42 is the ratio. They're supposed
5 to own 42 percent.

6 Q How long has that ratio been in
7 effect?

8 A To the best of my recollection, that
9 was amended two or three years ago.

10 Q Okay. And is there an effort by Duke
11 to see that that ratio is maintained?

12 A Yes.

13 Q To the extent that Cincinnati Bell
14 does not maintain 42 percent ownership, or ownership
15 of 42 percent of the poles that are used, is there a
16 rental rate that is charged for attachment to those
17 poles?

18 A If we believe that the ratio is
19 outside of the three percent allowable, we bring it
20 back in to conformity.

21 Q So there's a three percent cushion?

22 A Yes.

23 Q How do you bring it back in to
24 conformity?

1 A We purchase and sell poles to one
2 another.

3 Q How do you determine what the price is
4 of those poles that you purchase and sell?

5 A We utilize negotiated pricing tables.

6 Q And the purpose of these pricing
7 tables is to determine what a reasonable cost is of
8 the poles?

9 A Yes.

10 Q Are these pricing tables based on the
11 cost of new poles, or older poles?

12 A Well, we negotiate the prices based on
13 new poles, and then we have a deterioration factor.

14 Q And does the negotiated price of the
15 new poles represent the loaded cost of the poles
16 installed?

17 A Yes, it does.

18 Q Is it different for different size
19 poles?

20 A Yes, it is.

21 Q Are there any other factors that are
22 listed in the negotiating pricing tables other than
23 the cost of the installed pole?

24 A Yes.

1 Q What else?

2 A We have cost of removal of poles, we
3 have additional height prices in there for poles, we
4 have anchor costs, we have costs from the Cincinnati
5 Bell perspective for different tables. They have
6 different costs associated with their doing business
7 versus our cost to do business for different things.

8 Q So there would be a different cost for
9 a Cincinnati Bell pole of a certain size than for a
10 new pole of a certain size?

11 A No. We use the same cost for those.

12 Q I didn't understand then. What's the
13 difference for the Cincinnati Bell cost of doing
14 business?

15 A They might have to splice a terminal
16 box. We don't have terminal boxes. We may have a
17 charge of another kind that they don't have in their
18 business, so we have tables.

19 Q Okay. So anchors are separately
20 listed?

21 A Yes.

22 Q Does that include the guying cost as
23 well with the anchor?

24 A No. It's just the cost of an anchor.

1 Q So the cost of the pole installed
2 would generally cover guying costs, but the anchor
3 would be separate; is that right?

4 A The cost of the pole is just the cost
5 of the pole. There's no -- each company does their
6 own guying and they pay for their own guying, and
7 then if there's an anchor, whoever owns the anchor
8 has the cost of the anchor.

9 Q Well, we're talking about poles that
10 are already in the field, right?

11 A Yes.

12 Q So the purpose here is so that if, for
13 example, Cincinnati Bell falls below the three
14 percent cushion and only owns 38 percent of the
15 poles that are jointly used, then Cincinnati Bell
16 would be required to purchase some poles from Duke,
17 right?

18 A Yes.

19 Q To bring that percentage back in line,
20 right?

21 A Yes.

22 Q And so those are poles that are
23 already standing in the field, correct?

24 A Yes.

1 Q So to determine what that cost is, you
2 use a table, right?

3 A Yes.

4 Q And what if there are three guys on
5 that pole and three anchors?

6 A The guys bear no weight. It's just
7 the poles and the anchors.

8 Q Okay. And do you know how those poles
9 that are purchased from Cincinnati Bell -- most of
10 those poles would be purchased by Cincinnati Bell
11 from Duke, I assume; is that right? Or are they
12 sometimes purchased the other way?

13 A It would be Bell purchasing poles.

14 Q And do you know how Duke treats that
15 sale in its pole records?

16 A Could you be a little more specific?

17 Q Do you know how Duke accounts in its
18 accounting records for the sale of that pole?

19 A I've never been a part of that
20 process.

21 Q Now, Duke also has joint use
22 arrangements with AT&T and Embarq, right?

23 A Yes.

24 Q And those arrangements are also based

1 on some expected proportional ownership?

2 MS. SPILLER: Again, note a continuing
3 objection to these public utility
4 contracts.

5 But go ahead, Teri.

6 A Would you repeat the question? I'm
7 sorry.

8 THE COURT REPORTER: Question: And
9 those arrangements are also based on some
10 expected proportional ownership?

11 A Yes. I believe so.

12 Q To the extent that AT&T and Embarq
13 have fallen behind the appropriate percentage of
14 ownership, they pay a rental fee; is that right? Or
15 do you not know that?

16 A I don't know.

17 Q So do you work with the joint use
18 agreements?

19 A Yes.

20 Q Have you been asked by anyone to
21 produce copies of the joint use agreements?

22 A No.

23 MR. GILLESPIE: I'm trying to avoid
24 having to make a copy of all of these

1 agreements for exhibits.

2 I guess what I'll do is just try to be
3 sure through interrogatories that we have
4 them all.

5 Q Do you know whether Time Warner Cable
6 or Adelphia historically applied for attachments to
7 drop poles?

8 A Yes.

9 Q Did they?

10 A My answer is yes. But did they
11 identify them specifically as drop poles? Any pole
12 they were to get on, it was owned by Duke Energy
13 regardless of whether it was a drop pole or not.

14 Q That's your understanding?

15 A That's my understanding.

16 Q Do you know whether Adelphia and Time
17 Warner, as a general practice, applied for drop
18 poles?

19 MS. SPILLER: I'm going to object to
20 the form of those two companies
21 referenced.

22 Go ahead, Teri.

23 A I know from my experience when I was a
24 technician and I processed those requests, they did

1 on those requests ask permission if a drop pole was
2 in the field to make attachment.

3 Q Do you know whether they did so before
4 or after the attachment?

5 A Did they ask before --

6 Q Yeah.

7 A -- or after? My experience would have
8 been before.

9 Q So in your experience Time Warner
10 Cable applied before the fact to attach to drop
11 poles?

12 A I feel like you're asking me did they
13 do it on every pole, and my answer to that is I
14 don't know.

15 Q I'm not asking you about every pole.
16 I'm asking you did they, on a significant number of
17 poles, apply before the fact?

18 A I can only tell you that Time Warner
19 Cable did ask permission to attach to drop poles.

20 Q How far back?

21 A I started as a tech in 1987.

22 Q Do you know whether Time Warner or
23 other cable companies are aware whether there is a
24 drop pole that needs to be attached to before they

1 go out to sign up a customer?

2 A I don't know.

3 Q Do you know whether the phone
4 companies, if they are not already attached to a
5 drop pole of Duke's, applied to Duke for permission
6 to attach to that drop pole before they attach?

7 A Are you asking me if I know of what
8 they're supposed to know?

9 Q No. I'm not asking you what they're
10 supposed to do. I'm asking you what they do, okay?
11 I mean, you -- I understand that you may have a view
12 as to what you think they're supposed to do. That's
13 not what I'm asking you. I'm asking you about what
14 actually happens in the field.

15 MS. SPILLER: Based upon what you
16 know.

17 Q Yeah. Based on your knowledge.
18 That's all I'm asking.

19 A My knowledge is that they're supposed
20 to apply to me before attaching any attachment to
21 any of our poles.

22 Q And that's your interpretation of what
23 the cable companies are supposed to do also, right?

24 A My understanding is that if a

1 telephone company is on an existing pole and they
2 want to get another attachment on that pole, they
3 may do so within the space allowed them within the
4 agreement.

5 So, no, Cincinnati Bell would not
6 notify me every time they want to put an attachment
7 on the pole. Yes, Time Warner should.

8 Q Okay. Now, I'm not asking you what
9 you believe should be done. I'm just trying to get
10 an understanding of what the parties actually do,
11 okay?

12 Let me define what I mean by a drop
13 pole. By drop pole I mean a pole that is off the
14 distribution line that is used to help carry a
15 service drop to the home, okay?

16 A Yes.

17 Q Now, my question has to do with if
18 there is a Duke drop pole that, let's say,
19 Cincinnati Bell is not already attached to, if
20 Cincinnati Bell wants to attach to that drop pole to
21 provide service to the customer, do you know whether
22 Cincinnati Bell requests permission, files an
23 application with Duke before doing so?

24 A I don't know.

1 Q Do you know whether the cable
2 companies do?

3 A I don't know.

4 Q Okay. I think you indicated that you
5 were generally aware that there was an audit of Time
6 Warner Cable's attachments in 2000-2001?

7 A Yes.

8 Q Do you know whether there are records
9 with respect to that audit?

10 A No.

11 Q Who would have those? Do you know?

12 A No, I don't.

13 Q So am I right that you don't know who
14 performed the audit or what the purpose was
15 generally?

16 A I know who performed the audit.

17 Q Who performed it?

18 A Bob Wilson.

19 Q Who's that?

20 A He was my supervisor at the time.

21 Q So it was performed by Duke, or was it
22 -- was there a contractor that performed the audit?

23 A The people that were used to do the
24 audit were employees whose positions had been

1 terminated, and they were placed in a Duke Energy
2 job pool.

3 Q Do you know what the purpose of the
4 audit was?

5 A The purpose was to identify Time
6 Warner's attachments on Duke-owned poles.

7 Q Do you know what the scope of the
8 audit was? Did it cover most, or almost most of the
9 Time Warner Cable area?

10 A I believe it was most.

11 Q Do you know whether in the audit the
12 auditors found a larger number of poles than Time
13 Warner Cable was paying for at the time?

14 A I don't know.

15 Q You don't know what the result was?

16 A No, I don't.

17 Q Do you know whether the -- as a result
18 of the audit there were any charges for unauthorized
19 attachments?

20 A I don't know.

21 Q Mr. Wilson is no longer with the
22 company?

23 A No, he is not.

24 Q He has now been replaced by

1 Mr. Riggins?

2 A No. He was not replaced.

3 Q Do you know whether there's been a
4 recent agreement among the field engineering people
5 between Time Warner Cable and Duke that Time Warner
6 Cable will apply for drop poles after the fact?

7 MS. SPILLER: I'm going to object to
8 the extent this has to do with a dispute
9 unrelated to this distribution case.

10 Q You can answer it.

11 A I don't know.

12 Q Do you know whether Duke has an
13 obligation to conduct inspection of its own plant to
14 be sure it's kept safe?

15 A Yes.

16 Q Does it?

17 A Yes.

18 Q And who conducts such inspections? Do
19 you know?

20 A Our line inspection folks.

21 Q Line inspection folks?

22 A Yes.

23 Q Do you know whether those inspections
24 are supposed to cover the NESC requirements for

1 conductors?

2 A I don't know.

3 Q So you don't know how those
4 inspections are carried out, if they are?

5 A No, I don't.

6 Q Does Duke keep an inventory of the
7 equipment that's attached to its poles?

8 A It would be speculation. I don't
9 know.

10 Q Okay. I don't want you to speculate.

11 A Okay.

12 Q Just tell us what you know. Do you
13 know whether Duke has records of multiple
14 attachments on poles?

15 A Yes.

16 Q Does it? Does it have those records?

17 A Yes.

18 Q Are those records the result of the
19 2005 audit of Time Warner and Adelphia?

20 A I don't know if those have been put in
21 yet. I don't know.

22 Q But you believe that Duke had such
23 records prior to those audits being conducted?

24 A Yes.

1 Q Does it have those records with
2 respect to telephone company attachments?

3 A Yes.

4 Q So Duke has records showing the number
5 of attachments by all companies to its poles?

6 A No. It just simply has records
7 stating that the telephone company is on the pole.

8 Q But not how many attachments the phone
9 company may have, correct?

10 A Exactly.

11 Q Does Duke have records of the number
12 of attachments that a cable company may have on the
13 pole?

14 A I don't know. I'm sorry. That last
15 question, I believe we do keep records of how many
16 attachments the cable companies have on the pole for
17 rental purposes.

18 Q Does Duke charge cable companies more
19 than one attachment charge per pole?

20 A Yes.

21 Q Do you know whether the tariff
22 provides for a per-pole attachment charge?

23 A I don't know. I don't know if the
24 tariff provides that or not.

1 Q Pardon me?

2 A I don't know if the tariff provides
3 that or not.

4 Q Does Duke charge Time Warner Cable for
5 multiple attachments on its poles?

6 A Yes.

7 Q Okay. Has Time Warner paid for
8 multiple attachments on the poles? Do you know?

9 A I don't know.

10 Q Do you know whether that's a subject
11 of dispute?

12 A I don't know.

13 MS. SPILLER: That they haven't paid?

14 MR. GILLESPIE: That they're being
15 charged more than they're entitled to.

16 MS. SPILLER: I don't think there's a
17 dispute as to the other.

18 Q Are you familiar with Duke's GIS
19 system?

20 A No.

21 Q You don't work with that?

22 THE WITNESS: Are we talking about
23 Small World?

24 MS. SPILLER: Well, get him to explain

1 what --

2 A Are we talking about Small World?

3 Q I don't know what Small World is.

4 What's Small World?

5 A It's our job design tool. And I know

6 that they have stuff in there by -- I think

7 longitude and latitude. I use it as a reference

8 tool only. I don't use it for GIS purposes, I

9 guess.

10 Q Okay. But you use Duke's records
11 showing what the longitude and latitude of different
12 poles is? Is that what you're saying?

13 A No. I don't personally.

14 Q Okay. Did you have any involvement
15 with the 2005 audit, inspection, or inventory of the
16 Adelphia system at the time it was being conducted?

17 A No, I did not.

18 Q Did you have any involvement with the
19 audit or inventory or inspection of Time Warner's
20 facilities at the time it was being conducted?

21 A No, I did not.

22 Q Who was responsible for that at Duke?
23 Do you know?

24 A Who was responsible for the audit at

1 the time?

2 Q Yes.

3 A Dick Hoff.

4 Q He's no longer with the company; is
5 that right?

6 A That is correct.

7 Q Has he been replaced by anybody?

8 A No.

9 Q Are you aware that when the first part
10 of that audit with respect to Time Warner was
11 conducted in Milford that Time Warner had a number
12 of complaints about its accuracy?

13 A I have no knowledge of that.

14 Q Are you aware that when Duke conducted
15 phases one through nine of that audit that Time
16 Warner had complaints about its accuracy?

17 A At that time?

18 Q Yes.

19 A I had no knowledge.

20 Q At any time do you have knowledge of
21 their complaints about its accuracy?

22 A No.

23 Q So I gather that you wouldn't know
24 whether Duke has made any effort to determine

1 whether or not the complaints that Time Warner had
2 were justified; is that right?

3 A I don't have any knowledge of what
4 transpired.

5 Q Okay. Do you know whether
6 unauthorized attachments have any higher percentage
7 of safety violations than authorized attachments?

8 A I don't know.

9 Q Do you know whether the 2005 audit has
10 identified safety violations that were created by
11 Duke?

12 MS. SPILLER: Objection to the
13 relevance.

14 Go ahead.

15 A I don't know.

16 Q Didn't you review certain alleged
17 safety violations in connection with that audit?

18 A I reviewed violations, none that I'm
19 aware of that were specifically identified as
20 safety.

21 Q Well, you're aware that that audit
22 contained identification of some situations that
23 were purported to be violations of the code or of
24 Duke's technical requirements?

1 A Yes.

2 Q And didn't you review a series of them
3 and determine that some were not violations at all?

4 A Yes. Yes.

5 Q And didn't you also determine that
6 there were a number that had been created by Duke?

7 MS. SPILLER: Object to the relevance.

8 Go ahead.

9 A I identified some at the time that I
10 was looking at them that Duke had added additional
11 equipment or certain things to the pole at the time,
12 and there were a few that I determined that, yes, we
13 added equipment.

14 Q That had created a safety violation,
15 right?

16 A That had created a violation on the
17 pole, yes.

18 Q And isn't it true that of the 26 you
19 looked at, you determined that Duke had been
20 responsible for creating 22?

21 MS. SPILLER: Objection.

22 Go ahead.

23 A Those numbers are not correct.

24 Q What are the correct numbers?

1 A I can tell you that I looked at 80. I
2 cannot tell you of those 80 precisely how many I
3 identified as a situation where Duke added
4 additional equipment.

5 Q Isn't it true that Duke added
6 additional equipment on about 22 of those?

7 A I don't know.

8 Q You don't?

9 A I don't recall the number.

10 Q Do you know whether Duke has corrected
11 any of the violations that you determined that it
12 had created?

13 MS. SPILLER: Again, objection;
14 relevancy.

15 A I know that Duke has corrected some
16 violations, and some of those were not caused by
17 Duke.

18 Q How many has Duke corrected?

19 A I don't have an exact number.

20 Q Give me an approximate number.

21 MS. SPILLER: No. She's not required
22 to guess.

23 MR. GILLESPIE: I'm not asking her to
24 guess. I'm asking for an approximate

1 number. That's a fair question.

2 MS. SPILLER: I'm going to note my
3 objection. Teri, if you --

4 MR. GILLESPIE: That's fine.

5 MS. SPILLER: -- don't know, you don't
6 know.

7 MR. GILLESPIE: Well, you're telling
8 her how to answer, and I really do object
9 to that.

10 MS. SPILLER: She's not -- in this
11 deposition she is to be deposed based upon
12 her personal knowledge.

13 MR. GILLESPIE: That's right. And
14 I've asked her for an approximate number.
15 If she can't give one, she can't give
16 one. But I find it very offensive for you
17 to be telling her how to answer.

18 MS. SPILLER: Well, I find it somewhat
19 offensive that you're pressing her for
20 speculative information in the form of an
21 approximate number.

22 MR. GILLESPIE: That's not
23 speculation.

24 MS. SPILLER: An approximate number is

1 a speculative number --

2 MR. GILLESPIE: It is not.

3 MS. SPILLER: -- because she doesn't
4 know the accurate number.

5 Q Can you give me an approximate
6 number?

7 A I don't know.

8 MS. SPILLER: Note my objection.

9 Q Can you tell me how many of the
10 violations that you found that Duke was responsible
11 for creating that Duke has now corrected?

12 MS. SPILLER: Objection; asked and
13 answered.

14 Go ahead.

15 A I don't have a number.

16 Q Do you know whether Duke has corrected
17 any of those particular situations?

18 MS. SPILLER: Objection; asked and
19 answered.

20 Go ahead.

21 A I know some violations have been
22 corrected.

23 Q Those violations?

24 A Some violations have been corrected.

1 Q Do you know some of those violations
2 that you identified?

3 A Yes.

4 Q They have been corrected?

5 A Some.

6 Q But you can't tell me how many?

7 A No, sir.

8 Q Do you have a record of those
9 corrections?

10 A Yes, sir.

11 Q When were they corrected?

12 MS. SPILLER: Note my objection to the
13 relevance.

14 Go ahead.

15 A I believe it was in the spring of
16 '08. My best recollection was in the spring of '08.

17 Q And Duke would have a record of action
18 that it's taken on those poles; is that right?

19 A Yes.

20 Q Has Time Warner notified Duke of
21 safety violations that Time Warner has found in the
22 field?

23 A I don't know.

24 Q Do you know whether as part of this

1 inspection in 2005 Duke was accused of -- excuse me
2 -- Duke accused Time Warner of being attached to
3 Duke's anchors?

4 A I don't know.

5 Q You don't know?

6 A (Shakes head.)

7 Q Do you know whether the National
8 Electrical Safety Code requires that a cable
9 operator has an anchor every place that a utility
10 has an anchor?

11 A I don't know.

12 Q Do you know whether the inspection
13 from 2005 originally identified violations with
14 respect to Time Warner Cable's drop wires?

15 MS. SPILLER: I'm going to object to
16 the relevance.

17 Go ahead.

18 A I don't recall.

19 Q Do you recall any informal agreement
20 reached between engineering personnel of the
21 companies as to how those would be treated?

22 MS. SPILLER: Again, I'm going to note
23 an objection to the relevance.

24 Go ahead.

1 A I don't know.

2 Q Do you know whether the 2005 audit
3 identified bundles of Time Warner's that were
4 greater than two inches, at least as determined by
5 the people driving by?

6 A Yes.

7 Q Do you know how long those bundles of
8 two inches or greater had been in existence?

9 A I do not know.

10 Q Had you seen them in the field for a
11 long time?

12 A I didn't.

13 Q You didn't?

14 A I don't inspect for those, so I have
15 no knowledge of them.

16 Q Okay. Do you know whether Duke has
17 done any wind-loading analysis on those poles, on
18 poles with two-inch bundles?

19 A I don't know.

20 Q Do you know whether Time Warner Cable
21 has worked with Duke to correct violations that were
22 identified in connection with the 2005 audit?

23 MS. SPILLER: Note my objection to
24 relevance of this dispute.

1 Go ahead. You can answer.

2 A Yes.

3 Q They have?

4 A Yes.

5 Q Other than the poles that you
6 personally reviewed, do you know whether Duke has
7 made any other efforts to determine which party
8 created violations that were identified in the 2005
9 audit?

10 A I don't know.

11 Q Do you know what plans Duke has to
12 correct other violations that it created that were
13 identified in the 2005 audit?

14 MS. SPILLER: Object to the
15 relevance.

16 Go ahead.

17 A I don't know.

18 Q Are you aware of an agreement between
19 Duke and Adelphia regarding violations identified in
20 the 2005 audit of Adelphia?

21 MS. SPILLER: Again, I'm going to
22 object. Completely beyond the scope of
23 this case.

24 Go ahead, Teri.

1 A I'm not sure that I understood the
2 question.

3 MS. SPILLER: Do you need the reporter
4 to read it back?

5 THE WITNESS: Yes.

6 THE COURT REPORTER: Question: Are
7 you aware of an agreement between Duke and
8 Adelphia regarding violations identified
9 in the 2005 audit of Adelphia?

10 A Yes.

11 Q Do you know whether Duke has plans to
12 correct those violations?

13 MS. SPILLER: Objection; relevance.
14 Go ahead.

15 A Yes.

16 Q They do?

17 A Yes.

18 Q What are those plans?

19 MS. SPILLER: Objection; relevance.
20 Go ahead.

21 A My understanding is Duke is supposed
22 to fix those violations --

23 Q Right.

24 A -- on behalf of Adelphia.

1 Q As part of the agreement?

2 A Yes.

3 Q Do you know what plans Duke has to
4 actually fix them?

5 A No, I don't.

6 Q Do you know what time frame?

7 A No, I don't.

8 MR. GILLESPIE: Okay. Well, thank
9 you.

10 Does anybody on the phone have any
11 questions?

12 MR. REILLY: Thank you for offering.

13 No, we don't.

14 (Deposition concluded at 4:10 p.m.)

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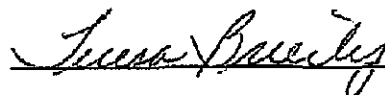
A C K N O W L E D G E M E N T

STATE OF OHIO :

COUNTY OF HAMILTON :

I, Teresa Brierly, have read the transcript of
my testimony given under oath on December 15, 2008.

Having had the opportunity to note any
necessary corrections of my testimony on the errata
page, I hereby certify that the above-mentioned
transcript is a true and complete record of my
testimony.


TERESA BRIERLY

CIN-TEL CORPORATION
813 Broadway, Suite 200
Cincinnati, Ohio 45202
(513) 621-7723

Deponent: TERESA BRIERLY Date: 01/05/2009

29 7 Delete "Yes." Replace with "I am aware of an audit of Time Warner Cable attachments in the late 1990's or early 2000's. I do not know of the exact time frame during which the audit occurred."

[illegible]

C E R T I F I C A T E

2 STATE OF OHIO :

3 :SS

4 COUNTY OF HAMILTON :

5 I, Renee Rogers, the undersigned, a duly
6 qualified and commissioned notary public within and
7 for the State of Ohio, do hereby certify that before
8 the giving of her aforesaid deposition, the said
9 Teresa Brierly was by me first duly sworn to depose
10 the truth, the whole truth, and nothing but the
11 truth; that the foregoing is a deposition given at
12 said time and place by Teresa Brierly; that said
13 deposition was taken in all respects pursuant to
14 Notice and agreement of counsel as to the time and
15 place; that said deposition was taken by me in
16 stenotypy and transcribed by computer-aided
17 transcription under my supervision, and that the
18 transcribed deposition is to be submitted to the
19 witness for her examination and signature.

20 I further certify that I am neither a relative
21 of nor attorney for any of the parties to this
22 cause, nor relative of nor employee of any of their
23 counsel, and have no interest whatsoever in the
24 result of the action.

1 In witness whereof, I hereunto set my hand and
2 official seal of office at Cincinnati, Ohio, this
3 20th day of December, 2008.

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8 My commission expires: Renee Rogers
9 April 13, 2011 Notary Public State of Ohio

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