

LARGE FILING SEPARATOR SHEET

CASE NUMBER 08-709-EL-AIR
 08-710-EL-ATA
 08-711-EL-AAM
 06-718-EL-ATA

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SECTION Part 1 of 2

NUMBER OF PAGES 181

DESCRIPTION OF DOCUMENT

Deposition of Donald Stork

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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

Re: Case No. 08-709-EL-AIR, et al
November 21, 2008 Deposition of Donald Storck and Deposition Exhibits

Dear Ms. Jenkins:

Please find attached a copy of the November 21, 2008 Deposition of Donald Storck along with OCTA Deposition Exhibit Nos. 1-9 in Case No. 08-709-EL-AIR, et al. No signature page or errata sheet was available from the court reporter.

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: DONALD STORCK

November 21, 2008

9:00 a.m.

REPORTED BY:

Renee Rogers, Registered Professional Reporter

1 _____
2
3 Deposition of DONALD STORCK, a witness herein,
4 taken by the Intervenor as upon cross-examination
5 pursuant to the Ohio Rules of Civil Procedure and notice
6 and stipulations hereinafter set forth, at the offices of
7 Vorys, Sater, Seymour and Pease, LLP, 221 East Fourth
8 Street, Suite 2000, Cincinnati, Ohio at 9:00 a.m. on
9 Friday, November 21, 2008, before Renee Rogers,
10 Registered Professional Reporter and notary public within
11 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 Charles Loutzenheiser
Victor Gallina
17 Ken Rogier

18

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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 Donald
4 Storck 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 his 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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I N D E X

1		
2	Witness	Page
3	DONALD STORCK	
4	Cross by Mr. Gillespie	7

E X H I B I T S

7		Marked
8	Deposition Exhibit Number OCTA 1 - 7	6
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10	Deposition Exhibit Number OCTA 9	67

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1 (Whereupon, Deposition Exhibit Numbers
2 OCTA 1 through 7 were marked for
3 identification.)

4 MR. GILLESPIE: I would suggest that
5 we preserve objections other than to form,
6 other than the objections that you want to
7 make to the categories for this witness as
8 we previously discussed.

9 In other words, you said you may have
10 objections to questions about
11 interpretation of the tariff and so on.
12 We'll just see how this goes.

13 Would you swear the witness, please.

14 MS. SPILLER: Before we do that, I
15 just want to be clear. Are you suggesting
16 that we not assert any objections, for
17 example, matters that are privileged under
18 Rule 408 --

19 MR. GILLESPIE: Oh, privilege, sure.

20 MS. SPILLER: -- and the like? I
21 mean, I don't want to disrupt your flow,
22 but I also just want to make sure all
23 objections are preserved.

24 MR. GILLESPIE: If you have an

1 objection to privilege, I think you can
2 make it so the witness doesn't answer.
3 But other than that, you have -- most
4 other objections could be dealt with at
5 some other time.

6 DONALD STORCK,
7 of lawful age, as having been duly sworn, was
8 examined and testified as follows:

9 CROSS-EXAMINATION

10 BY MR. GILLESPIE:

11 Q Mr. Storck, would you state your name
12 and address for the record.

13 A Donald Storck, 139 East Main Street,
14 Cincinnati, Ohio is my business address.

15 Q Did you bring any documents with you
16 today?

17 A No, I did not.

18 Q Are you on any medication today?

19 A Yes.

20 Q Without delving unnecessarily in to
21 the medication, let me just ask you whether there is
22 any reason why we can't rely on your testimony today
23 as being complete, accurate, and truthful?

24 A There's no reason why you cannot rely

1 on my testimony.

2 MR. GILLESPIE: Can people on the
3 phone hear everything all right?

4 UNIDENTIFIED SPEAKER: Yes, we can
5 hear fine. Thank you.

6 MR. GILLESPIE: Okay. We should
7 probably state on the record who's on the
8 phone.

9 MR. REILLY: This is Steve Reilly with
10 the Public Utilities Commission of Ohio
11 staff, and I'm accompanied by Vic Gallina
12 and Charles Loutzenheiser.

13 Q Just so it's clear on the record,
14 Mr. Storck, any medication that you're on would not
15 affect your ability to respond accurately and
16 truthfully to the questions today, correct?

17 A Correct.

18 Q You've had your deposition taken
19 before?

20 A Yes.

21 Q So you understand the procedure, that
22 I'm going to ask you oral questions, please wait
23 until I finish my question before you answer so that
24 we have a complete question and so your counsel can

1 interpose any objection if necessary.

2 If you don't understand a question,
3 ask me to rephrase it or explain it. If you answer
4 the question, we will assume that you have
5 understood it, all right?

6 A Correct.

7 Q I'm going to refer to Duke as
8 including Duke Energy Ohio and its predecessor
9 Cincinnati Gas & Electric unless stated otherwise,
10 all right?

11 A Okay.

12 Q What did you do to prepare for the
13 deposition today?

14 A I reread my testimony, I reviewed the
15 interrogatories, and reread the tariff.

16 Q When you say you reviewed the
17 interrogatories, you mean the company's
18 interrogatory responses?

19 A Yes. The ones that I was responsible
20 for.

21 Q Are you -- you have supplied prior
22 expert testimony; is that right?

23 A That is correct.

24 Q On behalf of Duke Energy?

1 A Yes.

2 Q On behalf of any other companies?

3 A Predecessor companies of Duke Energy.

4 Q Okay. Have you ever testified as an
5 expert on pole attachment issues?

6 A No, I have not.

7 Q Do you consider yourself an expert on
8 pole attachment issues?

9 A No.

10 Q Are you an expert on record keeping
11 and accounting issues?

12 A No.

13 Q Are you an expert on pole construction
14 or safety issues?

15 A No.

16 Q Are you an expert on pole attachment
17 rate issues?

18 A I'm knowledgeable. I don't know
19 exactly what you mean by the term "expert." I am
20 knowledgeable of attachment issues.

21 Q Okay. Well, we will have a chance to
22 get in to that. Are you an expert on issues related
23 to the continuing property records of Account 364?

24 A No.

1 Q Are you an expert on the accounting
2 for investment and depreciation for Account 364?

3 A No.

4 Q Are you knowledgeable about those
5 issues?

6 A Only at an extremely high level.

7 Q Are you an expert on the terms and
8 conditions of tariffs and agreements regarding pole
9 attachments?

10 A I am knowledgeable of the pole
11 attachment tariffs; the agreements, no.

12 Q Now, when you say you're knowledgeable
13 in pole attachment tariffs, what tariffs are you
14 referring to?

15 A The Duke Energy tariff.

16 Q Are you knowledgeable on other
17 companies' pole attachment tariffs?

18 A No, I am not.

19 Q What's your current title at Duke?

20 A Director, rate services.

21 Q What are your responsibilities?

22 A Tariff administration, cost and
23 service studies, and any special projects.

24 Q What type of special projects would be

1 included within your responsibilities?

2 A Rate-related matters that come up from
3 time to time, I'm asked to review or comment on,
4 take care of.

5 Q How long have you had those
6 responsibilities?

7 A Approximately two and a half years.

8 Q Okay. And prior to that, what was
9 your title?

10 A Regulated business unit accounting
11 manager.

12 Q What were your responsibilities?

13 A Primarily management reporting,
14 development of annual operating budgets, and liaison
15 between the regulated business unit and the
16 accounting department.

17 Q But in your responsibilities as
18 accounting manager and your current
19 responsibilities, you don't have any specific
20 responsibilities that deal with Account 364; is that
21 right?

22 A When I was RBU accounting manager, I
23 was temporarily put in charge of fixed asset
24 accounting for about three months due to an illness

1 of the current manager.

2 Q And at that time you had some
3 responsibility for Account 364?

4 A For the plant accounting system and
5 the -- I supervised the people who operated the
6 system.

7 Q When was that?

8 A Right at three years ago.

9 Q But there are other people at the
10 company who have more knowledge with respect to the
11 accounting for 364 than you have?

12 A Yes.

13 Q Let me go ahead and have a couple of
14 exhibits identified here. We have marked these as
15 OCTA 1 through 7 so they can be used at this
16 deposition and any successor depositions it looks
17 like we'll need.

18 MR. ROGIER: This is Ken Rogier.

19 MS. WATTS: Ken Rogier is on staff,
20 commission staff.

21 MR. GILLESPIE: Thank you, Ken. This
22 is Gardner Gillespie here.

23 MR. ROGIER: I'm just listening and
24 I'm going to take some notes here.

1 MR. GILLESPIE: Okay. We have some
2 compatriots from the staff that are also
3 on the phone.

4 MR. ROGIER: Okay.

5 MR. GILLESPIE: Amy Spiller is here,
6 and Elizabeth Watts on behalf of the
7 company, and the witness of course is
8 Donald Storck.

9 Q The first exhibit marked as OCTA 1 is
10 a notice of deposition to Duke Energy Ohio filed by
11 OCTA. Are you familiar with that document?

12 A I have seen it before.

13 Q Okay. The second exhibit, OCTA 2, is
14 a copy of the direct testimony of Donald L. Storck.
15 Are you familiar with that document?

16 A Yes, I am.

17 Q That represents your direct testimony
18 in this case?

19 A Yes, it does.

20 Q Next exhibit, OCTA 3, there's a cover
21 letter dated November 14, 2008 from Diane Kuhnell.

22 MR. GILLESPIE: Is that pronounced
23 right?

24 MS. SPILLER: Kuhnell.

1 Q Kuhnell, Duke Energy. This contains
2 the responses by Duke to OCTA's first set of
3 interrogatories. Are you familiar with that
4 document?

5 A Yes.

6 Q OCTA 4 is responses to OCTA's request
7 for production. Are you familiar with that
8 document?

9 A Yes.

10 Q OCTA 5 has a cover letter November 18,
11 2008, from Diane Kuhnell. It attaches responses by
12 Duke to OCTA interrogatories 1 and 09. Are you
13 familiar with that document?

14 A Yes.

15 Q OCTA 6 contains calculations made by
16 Duke regarding the pole attachment rate, and these
17 were included on a disk that was provided by Duke to
18 OCTA. Are you familiar with this document? It's a
19 three-page document.

20 A Yes.

21 Q And OCTA 7 is a copy of the proposed
22 pole attachment tariff in this matter. It's
23 numbered pages 32 through 40 from the rate filing I
24 think of Duke. Are you familiar with that document?

1 A I'm familiar with the tariff component
2 of this document.

3 Q You are familiar with the tariff
4 component --

5 A Yes.

6 Q -- of the document?

7 A I haven't seen it before, but the --

8 Q You haven't seen it in that format?

9 A Right. I have not seen it in this
10 format before.

11 Q Let me ask your counsel if there are
12 any issues with regard to that.

13 MR. GILLESPIE: That comes from one of
14 the Duke filings in this matter, but I
15 can't recall exactly which one.

16 MS. SPILLER: Are there any problems
17 in what regard?

18 MR. GILLESPIE: Do you recognize that
19 as the proposed tariff for this filing in
20 this matter?

21 MS. SPILLER: I would -- my comment is
22 certainly consistent with Mr. Storck's. I
23 have not seen it in this format, but I am
24 not suggesting that it's not a replica of

1 what was filed. I simply haven't seen it
2 in this format.

3 MR. GILLESPIE: Okay.

4 MS. SPILLER: The content of the
5 tariff language certainly does look
6 familiar with that which I have seen
7 before as part of our materials.

8 MR. GILLESPIE: Okay. Fine.

9 Q Mr. Storck, have you discussed the
10 questions in the deposition notice with anyone other
11 than your counsel?

12 A No.

13 Q Now, I think you said that you are
14 familiar with the proposed pole attachment tariff
15 which is Exhibit 7?

16 A Yes.

17 Q Are you familiar with the existing
18 pole attachment tariff?

19 A Yes.

20 Q And you've read that?

21 A Yes, I have.

22 Q When did you first review that?

23 A Relative to this case? First time I
24 ever saw it? I'm not sure I'm following you.

1 Q First time you ever saw it.

2 A I don't recall.

3 Q You had seen it prior to the filing --
4 prior to work in connection with filings in this
5 case?

6 A Yes.

7 Q So you were familiar with it prior to
8 any work by you in connection with preparing the new
9 tariff for this case; is that right?

10 A I knew of its existence and I had read
11 it before.

12 Q Okay. Are you familiar with pole
13 attachment agreements between Duke and cable
14 operators?

15 A I have seen an agreement with Time
16 Warner, and I think I've seen a couple others, but
17 Time Warner, I read it one time.

18 Q When did you read the Time Warner
19 agreement?

20 A Some time in the last couple weeks.

21 Q Okay. Have you read any pole
22 attachment tariffs of other utilities in Ohio?

23 A No.

24 Q Do you know whether the PUCO follows

1 the FCC formulation for determining rates for cable
2 attachments?

3 A That is my understanding.

4 Q What's that understanding based on?

5 A Conversation with some of the
6 commission staff.

7 Q Was that a single conversation, or
8 multiple conversations?

9 A Single conversation.

10 Q When was that?

11 A Maybe six months ago.

12 Q And who did you discuss this with the
13 staff? What staff member or members?

14 A Bob Fortney.

15 Q And this was in connection with
16 preparation of the new tariff filing of Duke?

17 A That's correct.

18 Q Have you reviewed any FCC orders
19 regarding how the rate formulations are made by the
20 FCC?

21 A No, I have not.

22 Q Did you participate in the calculation
23 of Duke's rate in this case, the pole attachment
24 rate?

1 A Yes.

2 Q Who else participated in that?

3 A Dana Patten.

4 Q Who is that?

5 A She's an employee of the rate

6 department.

7 Q Is there any way you can break down
8 the respective responsibilities between you and Dana
9 Patten with respect to the calculation of the rate?

10 A She calculated the rate; I reviewed it
11 and I approved it.

12 Q Did you or Dana Patten have any
13 template that you used to calculate the rates?

14 A Yes.

15 Q What was the template?

16 A It's the one you see in the filing.

17 Q Where did it come from?

18 A Someone at the Public Utility
19 Commission sent it to me.

20 Q Who sent it to you?

21 A I don't recall.

22 Q Did you ask someone at the Public
23 Utility Commission to send you a template?

24 A I asked Bob Fortney if he -- which

1 formula they used, to make sure I had the correct
2 one, and he said that he would have someone send me
3 one.

4 Q Do you have a document that includes
5 that template?

6 A I don't know if I still have the
7 document, but I was given a document at one point in
8 time.

9 Q Did you look for that document in
10 connection with responding to the interrogatories
11 and document production requests of OCTA in this
12 case?

13 A I looked through documents because
14 they asked for everything that we -- that gave rise
15 to the calculation, yes.

16 Q So you looked for that document?

17 A Yes. I looked for everything to be
18 responsive to the data request.

19 Q And do you not have that document any
20 more in your possession?

21 A Not that I'm aware of.

22 MR. GILLESPIE: Well, we will follow
23 up this deposition with some additional
24 requests based on responses here. And I'm

1 going to ask that he take another look for
2 that document.

3 MS. SPILLER: We'll be happy to do so.

4 Q Okay. Are you familiar with the FCC's
5 regulation of pole attachment terms and conditions?

6 A No, I am not.

7 MS. SPILLER: I'm just going to note
8 my objection to the application of the FCC
9 rules.

10 MR. GILLESPIE: I'm sorry. I don't
11 understand your objection.

12 MS. SPILLER: Well, I think those
13 rules are irrelevant to the Ohio statute
14 that concerns pole attachment tariffs.

15 MR. GILLESPIE: Well, let me make my
16 prior statement clear about objections.
17 That was intended to cover objections on
18 grounds of relevancy.

19 I certainly think it's relevant. You
20 may take another position, but it's
21 clearly, I think, sufficiently relevant
22 for purposes of this deposition for me to
23 ask questions about it.

24 So what I would say is that if you

1 have objections of that sort based on
2 relevancy, you can make them at some later
3 time.

4 MS. SPILLER: But if I may interject
5 -- and I appreciate that, that we can
6 reserve all objections for later debate,
7 but if I certainly feel it appropriate to
8 assert an objection within the course of
9 the deposition, I would also -- I mean, I
10 will do so.

11 MR. GILLESPIE: Well, I thought we had
12 an understanding, but we'll go forward.

13 Q Have you reviewed any FCC orders with
14 respect to terms and conditions of attachment?

15 A No.

16 Q Have you reviewed any orders of any
17 state commissions regarding terms and conditions of
18 attachment?

19 A I have a copy of a portion of a -- I'm
20 not sure if it's one or two orders -- that show
21 penalties imposed by other state commissions.

22 Q Okay. We'll get to that. Who
23 provided you with those copies?

24 A That was provided by legal counsel.

1 Q Okay. Other than those -- and are
2 those orders with respect to penalties, are they
3 referred to in the responses to interrogatories?

4 A No. I don't believe they were.

5 Q I think they were, but we'll get to
6 that. Other than those orders that were provided to
7 you regarding penalties, have you reviewed any other
8 orders of state commissions regarding terms and
9 conditions of attachment?

10 A No, I have not.

11 Q Approximately how many orders did
12 counsel provide you with respect to penalties?

13 A It was either one or two.

14 Q Okay. Are you familiar with the
15 tariff of Duke's affiliate in Kentucky?

16 A Generally, yes.

17 Q So you've seen that tariff?

18 A I have seen that tariff.

19 Q Do you know what the rate is of Duke's
20 affiliate in Kentucky?

21 MS. SPILLER: If I may interject, I
22 mean, our discussion about objections
23 notwithstanding, I think it's
24 inappropriate to proceed down a path where

1 we're contrasting and comparing what's
2 occurring with respect to affiliates that
3 would not be subject to this particular
4 tariff.

5 MR. GILLESPIE: Objection noted.

6 Q Answer the question.

7 A Could you please repeat the question.

8 MR. GILLESPIE: Could I have the
9 question read back, please.

10 THE COURT REPORTER: Question: Do you
11 know what the rate is of Duke's affiliate
12 in Kentucky?

13 A I do not recall.

14 Q When did you review the tariff of
15 Duke's affiliate in Kentucky?

16 A I do not recall.

17 Q Within the last year?

18 A I probably saw it some time in the
19 last year.

20 Q Did you see it in connection with your
21 work regarding the proposed tariff that is involved
22 in this case?

23 A No, I did not.

24 Q So was it prior to that?

1 A Yes.

2 Q So you looked at this tariff before
3 you started work on the -- well, let me rephrase
4 that.

5 You looked at the tariff of Duke's
6 affiliate in Kentucky prior to your beginning work
7 in connection with the proposed pole attachment
8 tariff that is the subject of this case?

9 A Yes.

10 Q Why did you look at the tariff in
11 Kentucky?

12 A I'm responsible for tariff
13 administration. Many times I have to look at
14 tariffs. I don't recall the specific instance.

15 Q Are you familiar with the pole
16 attachment -- any of the pole attachment agreements
17 of Duke's affiliate in North Carolina?

18 A No.

19 Q So you have not seen those?

20 A I have not.

21 Q Have you made any effort to have any
22 of those agreements provided to you so you could
23 look at them?

24 A No.

1 Q Do you know what the rate is that is
2 currently being charged by -- pole attachment rate
3 that's currently being charged by Duke's affiliate
4 in North Carolina?

5 A No.

6 Q Do you know how that rate is
7 calculated?

8 A No.

9 Q Are you familiar with the term "drop
10 pole"?

11 A I've heard the term before.

12 Q Do you know what it is?

13 A I'm not sure. I don't -- no.

14 Q Well, for purposes of this deposition,
15 let me define it for you as a utility pole that
16 carries a service wire or service wires from the
17 main distribution line to the home, okay?

18 A Okay.

19 Q And sometimes drop poles are referred
20 to as lift poles. Do you know what a lift pole is?

21 A Now that you've defined drop pole,
22 yes.

23 Q A lift pole would be the same as a
24 drop pole; is that right?

1 A That's how you defined it.

2 Q Are you familiar with the term
3 "appurtenances" as applied to investment in Account
4 364?

5 A No.

6 Q Well, if we use that term, I'll define
7 it as facilities in Account 364 other than poles,
8 such as guys anchors, crossarms, hardware, and so
9 on, okay?

10 A Okay.

11 Q Do you know what items of investment
12 are included in Account 364?

13 A I know some of them, but not the
14 comprehensive list.

15 Q Are you familiar with Duke's
16 continuing property records for Account 364?

17 A No.

18 Q Do you know how those records are
19 kept?

20 A No.

21 Q Do you know how items of investment
22 are added and retired from Account 364?

23 A No.

24 Q Can you answer questions about the

1 continuing property records for Account 364?

2 A No.

3 Q Do you know who would be the
4 appropriate person to put questions regarding the
5 continuing property records of Account 364 to?

6 A Yes.

7 Q Who would that be?

8 A Carl Council.

9 Q Who is Mr. Council?

10 A He's over the fixed asset accounting
11 group. I don't know his exact title.

12 Q Are you familiar with the requirements
13 of the National Electrical Safety Code?

14 A No.

15 Q Are you prepared to answer questions
16 about the application of the National Electrical
17 Safety Code?

18 A No.

19 Q Are you familiar with audits or
20 surveys conducted by or on behalf of Duke regarding
21 unauthorized or unreported attachments to Duke's
22 poles?

23 A No.

24 Q Do you know who would be the

1 appropriate person at Duke to question about audits
2 and surveys?

3 A No.

4 Q Are you familiar with any surveys or
5 inspections conducted by or on behalf of Duke
6 regarding compliance with the NESC?

7 A No.

8 Q Are you familiar with the incidence of
9 safety violations on Duke's poles caused by third
10 parties?

11 A No.

12 Q Are you familiar with the incidence of
13 safety violations on Duke's poles caused by Duke
14 itself?

15 A No.

16 Q Are you familiar with Duke's records
17 of attachments by third parties?

18 A No.

19 Q Do you know how they're kept?

20 A No.

21 Q Do you know whether they're kept the
22 same way for cable operators and telephone
23 companies?

24 A No.

1 Q Do you know how Duke tracks changes in
2 pole ownership?

3 A No.

4 Q Do you know how accurate Duke's
5 records are with respect to pole ownership?

6 A No.

7 Q Do you know what items of investment
8 or expense are placed in different accounts such as
9 Accounts 364 and 593?

10 A Not without looking at the uniform
11 system of accounts.

12 Q But in any event, you don't know how
13 Duke interprets those provisions and records items
14 of investment or expense in those accounts?

15 A No.

16 Q Well, we have sort of a negative
17 pregnant here.

18 A Oh, I'm sorry. I am not familiar with
19 how the account for those items --

20 Q Thank you. Okay. Looking at your
21 testimony, which is Exhibit 2 here, I believe you
22 indicated that the calculations that are shown in
23 the exhibit to that testimony were prepared by Dana
24 -- what was the name? -- Patten?

1 A Patten.

2 Q Patten?

3 A Yes.

4 Q And then were reviewed by you; is that
5 right?

6 A That is correct.

7 Q Did you personally prepare the
8 testimony here that addresses the pole attachment
9 issues with the assistance of counsel?

10 A Yes.

11 Q Did anyone else assist you in the
12 preparation of that testimony?

13 A Yes.

14 Q Who?

15 A Ulie Angleton.

16 Q Could you spell that for the reporter.

17 A U-L-I-E, A-N-G-L-E-T-O-N. And Jeff
18 Riggins.

19 Q And who is Ulie Angleton?

20 A Ulie Angleton works with the
21 administration of pole attachments.

22 Q Has he now retired from the company?

23 A I don't know if he is or isn't, but
24 it's very shortly -- if he's not, he will be

1 shortly.

2 Q Okay. What portions of your testimony
3 did Mr. Angleton assist you with?

4 A He spoke to me about the need for --
5 to address unauthorized attachments and the need to
6 address safety issues.

7 Q So to the extent that your testimony
8 addresses unauthorized attachments and safety
9 issues, these are the areas that Mr. Angleton
10 assisted you with?

11 A He and counsel, yes.

12 Q And you have no personal knowledge
13 with respect to those particular issues; is that
14 right?

15 A Other than what I've gained in
16 preparation of my testimony, yes.

17 Q What information have you gained in
18 preparation of your testimony other than from
19 Mr. Angleton on these issues?

20 A Basically just that such things exist,
21 and they're very problematic for the company and we
22 need to try to take steps to make sure that we
23 eliminate those going forward.

24 Q Who told you that other than -- well,

1 let me put it this way: Who have you discussed
2 those issues with other than your counsel and
3 Mr. Angleton?

4 A Jeff Riggins was also present.

5 Q Okay. Who is Mr. Riggins?

6 A I believe he's Mr. Angleton's
7 supervisor.

8 Q Did he assist you with the same
9 issues?

10 A Yes.

11 Q Did Mr. Angleton or Mr. Riggins
12 provide you with any documents?

13 A The only documents, there was a draft
14 of my testimony where they made comments.

15 Q Do you have a copy of that draft of
16 that testimony?

17 A No, I do not.

18 Q What happened to that draft?

19 A I get rid of all drafts.

20 Q Did you send a draft of your testimony
21 to Mr. Angleton or Mr. Riggins by e-mail?

22 A No, I did not.

23 Q How did you provide it to him?

24 A I believe counsel provided it to him.

1 Q Do you know whether Mr. Riggins or
2 Mr. Angleton preserved a copy of that draft?

3 A I don't know.

4 Q Did you make any effort to determine
5 whether there was such a copy in existence in
6 providing responses to the document production
7 requests?

8 A I just checked my files.

9 Q So you didn't check anybody else's
10 files?

11 A No, I did not.

12 Q You didn't request that anybody else
13 check their files; is that right?

14 A That is correct.

15 Q So Mr. Angleton and Mr. Riggins
16 assisted you only with respect to issues regarding
17 unauthorized attachments and safety issues; is that
18 right?

19 A That is correct.

20 Q And other than your counsel, you did
21 not receive the assistance of anyone else in
22 connection with your pole attachment testimony in
23 this case?

24 A That is correct.

1 Q Okay. Does Duke or any of its
2 affiliates offer any kind of video or communication
3 services?

4 A I know Duke has a broadband pilot in
5 the city of Cincinnati. That is the only thing I'm
6 aware of.

7 Q Can you tell us about the broadband
8 pilot in Cincinnati?

9 A My understanding is it's an offering
10 where you can get Internet access through the
11 electric lines.

12 Q Would this be broadband over power
13 line?

14 A Yes.

15 Q And do you know when the broadband
16 pilot in Cincinnati was begun?

17 A No, I do not.

18 Q Do you know whether it is offered in
19 conjunction with any other companies?

20 A I'm not sure I understand your
21 question.

22 Q Is Duke itself offering the broadband
23 pilot in Cincinnati?

24 A I don't know if it's Duke alone or if

1 there's some other company involved. I don't know.

2 Q Do you know whether it is Duke Energy
3 Ohio or an affiliate that's offering this?

4 A I do not know.

5 Q Do you know whether Duke or any of its
6 affiliates offer any services to other companies via
7 fiber optics?

8 A I don't know.

9 Q Take a look at OCTA Exhibit Number 5.
10 This is the responses by Duke dated November 18 to
11 interrogatories of OCTA. Look at the attachment on
12 pages one through 13.

13 A Yes.

14 Q Okay. Now, these are lists of
15 companies that use Duke's distribution poles; is
16 that right?

17 MS. SPILLER: If I could clarify, they
18 have used, or are using.

19 MR. GILLESPIE: Okay.

20 MS. SPILLER: This is not intended to
21 represent that all these entities are
22 currently using poles.

23 MR. GILLESPIE: Okay.

24 Q Do you know, Mr. Storck, who gathered

1 the information that is contained in this exhibit?

2 A No, I do not.

3 Q Okay. Look at page six of 13 of that
4 exhibit. About two-thirds of the way down the page,
5 do you see the reference to CG&E Fiber Optic, pole
6 and duct space rental?

7 A Yes, I do.

8 Q Do you know what that reference is to?

9 A No, I do not.

10 Q Do you know what CG&E Fiber Optic does
11 or did?

12 A No, I do not.

13 Q Do you see the reference two below
14 that to CG&E Fiber Optic, Westend, Charles Ashland,
15 Oakley?

16 A Yes.

17 Q Do you know what CG&E Fiber Optic does
18 or did there?

19 A No, I do not.

20 Q Look at page nine of 13. About
21 two-thirds of the way down, do you see the reference
22 to Cinergy Communication, Inc., KDL, Palmyra,
23 Indiana?

24 A Yes.

1 Q Do you know what Cinergy
2 Communication, Inc. does or did?

3 A No, I do not.

4 Q So you don't know what services these
5 companies provide?

6 A No.

7 Q Do you know whether they use the same
8 poles that cable operators used?

9 A I assume they do since they're on this
10 list.

11 Q Okay.

12 A Well, I don't know if the cable
13 operators are on the exact same poles as these. I
14 don't know.

15 Q Okay. But it's your understanding
16 that these companies will use Duke's poles -- do, or
17 did?

18 A If this is a list of licensees, then,
19 yes, they must be on Duke's poles.

20 Q Do you know whether these companies
21 pay or paid to make pole attachments to Duke?

22 A No, I do not.

23 Q Do you know whether they own the fiber
24 or whether they use capacity -- fiber capacity owned

1 by Duke?

2 A No.

3 Q Look at page 11 of 13. About a
4 quarter of the way down, do you see the reference to
5 Current Technologies?

6 A Yes, I do.

7 Q Do you know whether Duke has any
8 ownership relationship to Current Technologies or
9 any affiliate of Current Technologies?

10 A I don't know.

11 Q Do you know the current scope of the
12 broadband pilot in Cincinnati?

13 A No, I do not.

14 Q This is just something that you've
15 heard generally about?

16 A Yes.

17 Q Do you know whether a company exists
18 called Cinergy Broadband?

19 A I don't know.

20 Q Do you know whether it ever existed?

21 A I don't know.

22 Q Do you know of a company called CCB
23 Communications?

24 A No.

1 Q So you don't know what they do or did?

2 A No.

3 Q Are there any entities that use Duke's
4 poles that will not be subject to the tariff as you
5 understand the tariff?

6 A I don't know.

7 Q Do you know whether AT&T uses any of
8 Duke's poles?

9 A No.

10 Q Do you know whether Verizon uses any
11 of Duke's poles?

12 A No.

13 Q Do you know whether Embarras uses any of
14 Duke's poles?

15 A No.

16 Q Do you know whether Current uses any
17 of Duke's poles?

18 A No.

19 Q Do you know whether there are any
20 entities that are listed in OCTA Exhibit 5 that use
21 Duke's poles that would not be subject to the
22 tariff?

23 A No.

24 Q Do you know whether or not all of the

1 entities that are listed here would be subject to
2 the same rates, terms, and conditions of attachment
3 as cable operators that are subject to Duke's
4 tariffs -- Duke's tariff?

5 MS. SPILLER: I'll object to the
6 extent the question has been asked and
7 answered.

8 A No.

9 Q Look at OCTA Exhibit 3.

10 A Okay.

11 Q Look at your response to OCTA
12 interrogatory 01-002.

13 A Yes.

14 Q Okay. The response indicates that
15 OCTA should be able to access agreements for use of
16 distribution poles pertaining to their
17 telecommunication companies' members as readily as
18 the company. Do you see that?

19 A Yes.

20 Q Do you know what that means?

21 A I assume it means exactly what it
22 says.

23 Q Do you see that the request is to
24 identify all agreements that Duke has with other

1 parties for the use of Duke's distribution poles?

2 Do you see that?

3 A Yes, I do.

4 Q Do you know whether Duke has any
5 agreements with companies for the use of Duke's
6 distribution poles that are not filed with the
7 Public Utilities Commission?

8 A I don't know.

9 Q Do you know whether there are
10 agreements between Duke and the companies that are
11 listed on OCTA Exhibit 5?

12 A Could I see that again?

13 Q Yes.

14 A (Peruses document.) Is Cincinnati
15 Bell on this list?

16 Q Yes.

17 A I know there's an agreement between
18 Cincinnati Bell, and I know there's one from Time
19 Warner.

20 Q Okay. Are you aware of any other
21 agreements?

22 A I've heard there's other ones with
23 other companies, but I...

24 Q Did you make, personally, any effort

1 to determine what agreements there might be that
2 Duke has with other entities for the use of Duke's
3 poles?

4 A No.

5 Q Do you know whether Duke uses any
6 poles owned by other parties?

7 MS. SPILLER: Other parties being who,
8 please?

9 MR. GILLESPIE: Any entities.

10 A I believe I've heard that we've used
11 Cincinnati Bell poles.

12 Q Do you know whether Duke uses any
13 other company's poles?

14 A Not that I'm aware of.

15 Q Do you know whether there is a joint
16 or reciprocal use agreement between Duke and
17 Cincinnati Bell?

18 A I know there's an agreement between
19 Cincinnati Bell and Duke. I don't know the terms or
20 conditions. I've never seen it.

21 Q Okay. Do you know whether the terms
22 and conditions by which Cincinnati Bell attaches to
23 Duke's poles are the same as the terms and
24 conditions that are contained in the proposed Duke

1 tariff?

2 A I know the rates are different, but I
3 don't know any of the other terms or conditions.

4 Q You don't know whether they're the
5 same or whether they're different?

6 A I don't know.

7 Q Do you know who drafted the language
8 that's in the proposed tariff?

9 A It was a combination of counsel and
10 myself.

11 Q Was anybody else involved? Do you
12 know?

13 A I know Ulie Angleton and Jeff Riggins
14 had an opportunity to comment on it.

15 Q To comment on the draft?

16 A To comment on the tariff. I know
17 there was discussions.

18 Q Was a draft of the tariff given to
19 Ulie Angleton or Jeff Riggins?

20 A I don't know.

21 Q Do you know whether a draft of the
22 tariff was given to anybody else other than to
23 counsel?

24 A Just I know I had it and I know Duke

1 counsel did. I don't know who else had copies.

2 Q Do you have any copies of any earlier
3 drafts of the tariff?

4 A No, I do not.

5 Q So you eliminated all of them?

6 A Yes.

7 Q When did you do that?

8 A As a new draft came out, I eliminated
9 the old one.

10 Q Now, you knew there would be questions
11 about the tariff; is that right?

12 A I assumed there would be questions
13 about the tariff.

14 Q In this proceeding?

15 A Yes.

16 Q And it's your general practice in
17 preparing tariffs to eliminate any earlier drafts as
18 you go along?

19 A Yes, it is.

20 Q And it's also your practice to
21 eliminate any drafts or testimony as you go along;
22 is that right?

23 A Yes, it is.

24 Q And I gather from your prior response

1 that you don't know whether any drafts of the tariff
2 were provided to Mr. Angleton or Mr. Riggins, is
3 that right, by e-mail or any other method?

4 A That is correct.

5 MR. GILLESPIE: I just want to note
6 here that we have not been provided copies
7 of any of these other agreements,
8 including the agreement between Cincinnati
9 Bell and Duke that we had requested. And
10 I will ask again for those, and then we'll
11 need somebody that can testify about them,
12 but we'll deal with that.

13 MS. SPILLER: I think there are some
14 objections that -- in addition to what's
15 been asserted here, we have objections to
16 such a broad request.

17 MR. GILLESPIE: Okay. I don't
18 consider that request to be broad at all,
19 because it would consider the terms and
20 conditions that are applicable to parties
21 that are not covered by the tariff.

22 But of course we will go ahead and
23 make this request again in writing. You
24 can make whatever objections you think are

1 appropriate.

2 MS. SPILLER: That's fine.

3 Q Do you know whether Duke has
4 information on the number of poles that are attached
5 to by the entities that are listed in Deposition
6 Exhibit 5?

7 A I don't have that information. I
8 assume it exists somewhere.

9 Q Do you know what rates are charged to
10 the entities that are listed on Exhibit 5 to attach
11 to Duke's poles?

12 A Not individually, no, I do not.

13 Q Do you know whether they are the same
14 as the rates that are currently being charged to
15 cable operators?

16 A I know there are some municipalities
17 that are not charged.

18 Q Do you know anything else with respect
19 to this issue?

20 A No, I do not.

21 Q So you don't know what rates would be
22 charged to other entities; is that right?

23 A If it's applicable to the pole
24 attachment tariff, they're charged a pole attachment

1 rate that's in the current tariff, except some
2 municipalities are not charged.

3 Q But you don't know which of the
4 entities that are listed on Exhibit 5 are subject to
5 the pole attachment tariff; is that right?

6 A That is correct.

7 Q And you don't know which entities
8 would be subject to the new tariff; is that right?

9 A That is correct.

10 Q Do you know whether the new tariff
11 would supersede any agreements that Duke has with
12 companies listed on Exhibit 5?

13 A The new tariff would supersede the old
14 tariff, and those are terms and conditions that
15 would be applicable to whoever falls under that
16 tariff.

17 Q Okay. But you don't know which
18 companies those are, correct?

19 A That is correct.

20 Q Okay.

21 MR. GILLESPIE: Let me have marked as
22 Exhibit Number 8 a document that I believe
23 consists of a redacted agreement between
24 Duke and -- well, it's really not Duke. I

1 guess it's Cincinnati Gas & Electric or
2 Cinergy and Current Broadband 1, LLC.

3 (Whereupon, Deposition Exhibit Number
4 OCTA 8 was marked for identification.)

5 Q Are you familiar with this document?

6 A No, I am not.

7 MR. GILLESPIE: Okay. Well, I'm going
8 to ask for an unredacted version of that
9 document. We'll put that on our list.

10 Q Do you know whether that agreement is
11 still in effect?

12 A No, I do not.

13 Q Do you know whether it would be
14 superseded by the tariff?

15 A No. I would not.

16 Q Now, your testimony indicates that the
17 increase in pole attachment rates is proposed from
18 \$4.25 under the existing tariff to \$14.42 under the
19 proposed tariff, correct?

20 A Correct.

21 Q And I believe that your testimony
22 indicates that that increase would amount to
23 \$1,206,407 annually. Do you recall that?

24 A Yes, I do.

1 Q Who calculated that amount of the
2 increase, the million two increase annually?

3 A It was either myself or Dana Patten.

4 Q Do you have any backup for that
5 calculation?

6 A I don't know.

7 Q Do you know what companies attachments
8 are included in the number?

9 A No, I do not.

10 Q Does the number represent the
11 difference between 4.25 and 14.42 multiplied by a
12 number of attachments?

13 A It represents the difference between
14 what's in the rate case on the test period versus
15 the new revised rate.

16 Q Okay. Would you explain that.

17 A Rate cases in Ohio, you have a test
18 period, and we have an amount in there based on
19 current activity, then we came out and we updated
20 the rate.

21 And if you take the difference between
22 the new rate, the old rate, times the number of
23 poles, you got this number. That tells you what the
24 increase is.

1 Q Okay. So it's multiplied by a number
2 of poles?

3 A Yes.

4 Q And what number of poles did you use?
5 Do you recall?

6 A I do not recall.

7 Q Where did you get the number of poles
8 that were used?

9 A I don't recall.

10 Q Do you know who provided you that
11 number?

12 A Ultimately it would have come from
13 Carl Council's group, I assume.

14 Q Well, this is the number of
15 attachments, correct?

16 A Yes. It's the number of attachments.

17 Q Does Mr. Council's group track the
18 number of attachments?

19 A No, they do not.

20 Q What group tracks those?

21 A Ulie Angleton would be able to tell us
22 that.

23 Q And you don't recall whether any
24 document was provided to you with that number on it?

1 A I don't recall.

2 Q But you don't have any such document
3 in your possession now; is that right?

4 A Not here at this moment.

5 Q Do you have it in your records back --

6 A I don't know.

7 Q -- at the office?

8 A I don't know.

9 Q Is it your practice to destroy backup
10 material that you're provided in connection with a
11 rate case?

12 A No, it is not.

13 Q So when you receive backup material in
14 the form of documents or e-mails, you retain them?

15 A Yes, I do.

16 Q The million two increase annually that
17 has been calculated that's contained in your
18 testimony, is that to be used to offset the
19 company's revenue requirements?

20 A Yes, it is.

21 Q I believe that in response to OCTA
22 interrogatory 01-04, you've indicated that Duke has
23 not determined what the impact of the rate increase
24 would be on residential rate payers or the per

1 kilowatt hour charge for residential rates; is that
2 right?

3 A That is correct.

4 Q Do you have any idea what the impact
5 would be on a monthly electric bill of an average
6 utility rate payer?

7 A Not without doing the calculation.

8 Q No idea?

9 A No idea.

10 Q Do you know whether it would be more
11 than a few pennies a month?

12 A I don't know, without doing the
13 calculation.

14 Q Now, that calculation could be made,
15 correct?

16 A Yes. It can be made.

17 Q How would you do it?

18 A Basically I would look at the amount,
19 the one -- or the total amount -- or the difference,
20 the 1.2 million, I would find out how we allocated
21 that among the classes.

22 I would multiply times that allocator
23 for residential, then I would divide by the number
24 of kilowatt hours for residential on an annual basis

1 and divide by 12, and then we would determine what
2 the -- that would be the rate. We would have to
3 determine what a typical customer uses and apply it
4 to that rate.

5 Q And in connection with determining the
6 impact on an average residential customer, you could
7 do that without having to go through a per kilowatt
8 hour charge, couldn't you?

9 You could simply take the amount of
10 the difference and divide by the number of
11 residential users, for example?

12 A That wouldn't give you a very accurate
13 number. Different residential customers use
14 different quantities.

15 Q Right.

16 A So what I would want to do is get it
17 down to a typical customer.

18 Q How would you get it down to a typical
19 customer?

20 A Determine what the average usage is
21 for a typical customer.

22 Q What's a typical customer?

23 A Normally if we want to put out
24 information on a typical bill, we use 1,000 kilowatt

1 hours per month customer for residential.

2 Q So that would be a typical customer,
3 right?

4 A That is correct.

5 Q As opposed to an average customer?

6 A That is correct.

7 Q The average customer could be done
8 simply by dividing the allocated amount of that
9 increase by the number of residential customers?

10 A Yes.

11 MR. GILLESPIE: Let's take a
12 couple-minute break.

13 (A brief recess was taken.)

14 Q Mr. Storck, look at Deposition Exhibit
15 4, please. Look at attachment OCTA-POD-01-001, page
16 17 of 23.

17 A Yes.

18 Q Can you tell me what those different
19 columns mean, column headings?

20 A Sure. Line numbers,
21 self-explanatory. Rate code is just the various
22 rate codes we have for each class of customers, then
23 there's a class description. The next column is
24 customer bills.

1 Q Okay. In terms of the line number one
2 for residential, that stands for residential
3 service?

4 A That is correct.

5 Q And line number six would be the total
6 residential service?

7 A That is correct.

8 Q Is that number of customers?

9 A That's number of customer bills in
10 column C.

11 Q Is that different than number of
12 customers?

13 A Yes.

14 Q What does the number of customer bills
15 stand for?

16 A Number of customer bills that went
17 out.

18 Q I'm not sure I understand why that
19 would be different than the number of customers.

20 A Most customers get 12 bills during the
21 year. Sometimes customers can actually get 13 or
22 14.

23 Q So bills are usually sent out monthly?

24 A Typically, yes. Do you want me to

1 continue with the columns?

2 Q Yes.

3 A Column D is sales, just kilowatt hour
4 sales by each class. The next column is most
5 current rates. The next one is current revenue less
6 fuel cost revenue. Again, this is backing up the
7 cost of the fuel and purchase power.

8 Percent of revenue to total less fuel
9 cost revenue, revenue increase less fuel cost
10 revenue, percent increase revenue less fuel cost
11 revenue, fuel cost revenue, total current revenue,
12 total revenue percent increase.

13 Q What's the total current revenue?

14 A That would be the revenues we receive
15 from currents currently for the test period. This
16 is -- yes.

17 Q So this is an annualized test year?

18 A That is correct.

19 Q For the 12 months ended December 31,
20 2008?

21 A Yes.

22 Q All right. So it takes some hard
23 numbers from a test period and extends them for a
24 12-month period, right?

1 A Correct.

2 Q Is there any way to determine from
3 this sheet how many residential customers there are?

4 A No.

5 Q Does the company have -- know the
6 number of residential customers that it has?

7 A Yes, it does.

8 Q So it has that number?

9 A Yes, it does.

10 Q And in looking at the number of
11 residential customers, would it be appropriate to
12 look at the number that received residential service
13 in line one, or the total residential in line six?

14 A If I were preparing it, I would use
15 line six.

16 Q So what are the differences between --
17 let's go down the different lines. Residential
18 service. What's that?

19 A That's a normal person that has a
20 house that's occupied by a resident. That is
21 residential service.

22 Q And what is optional heating service?

23 A There's a tariff out there for
24 customers -- I'm drawing a blank on the exact terms

1 of it, but they have heating service. It's -- most
2 the customers in the residential line number one
3 have heat, but there's an optional heating service,
4 and I don't recall the terms.

5 Q Do you know whether the same people
6 that would be listed as receiving residential
7 service in line one may also be receiving optional
8 heating service in line two?

9 A They should not. It would be a rare
10 occurrence.

11 Q So it should be a separate group?

12 A Yes.

13 Q What about optional time of day
14 service. What is that?

15 A It's a time-of-day service. We have
16 on-peak/off-peak rates.

17 Q And would those people again be
18 different than those that are reflected as receiving
19 residential service or optional heating service?

20 A That is correct.

21 Q What's common use residential service?

22 A Typically I think of an apartment
23 building where you walk in, there's hallways,
24 there's a lobby, this is the electricity used there.

1 Q And would that be the number of
2 buildings, or would it be the number of apartments,
3 for example?

4 A It wouldn't be number of apartments.
5 Again, not knowing how each one is metered, I
6 couldn't tell you for sure.

7 Q So this would -- this could include
8 both the number of buildings in some cases, or the
9 number of apartments in other cases, depending on
10 how it's metered?

11 A It would be either number of
12 buildings, or it may be master metered for multiple
13 buildings. Again, not knowing the specific
14 situation.

15 Q And what's residential three-phase
16 service?

17 A These are customers that take
18 three-phase service. Typically residential
19 customers have single phase. This is three phase.

20 Q What does that mean, three phase?

21 A The best way for me to explain it,
22 usually large applications. Elevators use three
23 phase service. You would have three separate lines
24 coming in. If you look at your household wiring,

1 you have one. These have three of them coming in,
2 three of them that are bringing power into your
3 house.

4 Q What is the percent increase proposed
5 for pole attachment rates?

6 A I don't know. I haven't calculated
7 that percentage. It says on this schedule that it's
8 231 percent.

9 Q What is the percent increase proposed
10 for residential service?

11 A In total, 4.8 percent.

12 Q And less the fuel costs 5.4 percent?

13 A That is correct.

14 Q When were residential rates last
15 raised?

16 A Distribution rates were last raised in
17 -- it was a 2005 case, so either 2005 or 2006.

18 Q They were raised as a result of a case
19 that started in 2005 and ended in 2006; is that
20 right?

21 A It was a case -- it was a 2005 case.
22 I don't know -- I don't recall when it was settled.
23 So that means rates would have gone in either 2005
24 or 2006.

1 Q Whenever that rate case was settled?

2 A Whenever that case was settled.

3 Q When were pole attachment rates last
4 raised?

5 A 1993, I believe.

6 Q Was there anything prohibiting Duke
7 from raising pole rates in the 2005 case?

8 A Not that I'm aware of.

9 Q Do you know how many rate cases Duke
10 and its predecessors have had since 1993?

11 A There was the 2005 distribution case.
12 I don't believe there were any other distribution
13 cases in that time frame.

14 Q Only the 2005 case?

15 A Yes.

16 Q Okay. So are you knowledgeable about
17 the changes in Duke's pole investments since 1990?

18 A No, I am not.

19 Q Do you know who would be?

20 A Carl Council.

21 Q And if OCTA has questions about the
22 continuing property records in Account 364, they
23 should also be put to Mr. Council?

24 MS. SPILLER: I'm going to object to

1 the form, to the extent the notice
2 reflects a 30(b)(5)-type deposition. I
3 don't know that this individual is the
4 appropriate person to designate witnesses.

5 MR. GILLESPIE: I'm not asking him to
6 designate a witness. I'm just asking him
7 who has knowledge of something. I mean,
8 this --

9 MS. SPILLER: If you know.

10 MR. GILLESPIE: This is not a 30(b)(6)
11 deposition. I understand that. We
12 discussed that on the phone.

13 MS. SPILLER: Oh, I understand.

14 Q So do you know who is knowledgeable
15 about continuing property records?

16 A Carl Council would be knowledgeable.

17 Q Are you knowledgeable about Duke's
18 method of accounting for poles that are added and
19 retired?

20 A No, I am not.

21 Q Are you knowledgeable about the cost
22 of buying and installing new distribution poles?

23 A No.

24 Q Do you know who would be?

1 A Carl Council.

2 Q Look at OCTA Deposition Exhibit 4 --

3 I think you have that before you -- to the

4 attachment OCTA-POD-01-004, page one of one.

5 A I'm sorry. Where are you at again?

6 What page are you on?

7 Q Well, it's called page one of one.

8 It's about three-quarters of the way through that

9 exhibit.

10 A Okay.

11 Q It's called summary of CPR adds and

12 retires for Account 364 for the years 2000 through

13 2007.

14 A I have it.

15 Q Okay. Do you know who was responsible

16 for preparing this page?

17 A No, I do not.

18 Q Did you have any role in preparing it?

19 A No, I did not.

20 Q Am I correct that you are not prepared

21 to testify regarding this page?

22 A That is correct.

23 Q Do you know whether Duke tracks poles

24 by size and vintage?

1 A I know they track poles by vintage.

2 I'm not sure about size.

3 Q Do you know whether they track them by
4 class and vintage?

5 A I just know everything is tracked by
6 vintage, so.

7 Q Vintage being the year of
8 installation?

9 A Yes.

10 Q Are you able to testify about Duke's
11 GIS records for poles?

12 A No.

13 Q Do you know who would be?

14 A No.

15 Q Do you know whether Duke has GIS
16 records of its poles?

17 A No.

18 Q Do you know whether there was any
19 backup documentation for this page one of one of the
20 attachment of OCTA-POD-01-04 that's contained in
21 Exhibit Number 4?

22 A No.

23 MR. GILLESPIE: We'll mark as Exhibit
24 Number 9 an exhibit that contains various

1 pages from Cincinnati Gas & Electric's
2 FERC Form One for year-end 2005.

3 (Whereupon, Deposition Exhibit Number
4 OCTA 9 was marked for identification.)

5 Q Did you have any responsibilities in
6 connection with the reporting of information on the
7 FERC form?

8 A Yes.

9 Q Why don't you tell me what that
10 responsibility is -- those responsibilities are.

11 A There's important regulatory changes
12 each year. I forget which page it is. It has to be
13 updated. I do that each month -- or each quarter.

14 Q Do you have any responsibilities with
15 regard to the asset amounts that are contained in
16 the FERC form?

17 A No.

18 Q Do you have any responsibility with
19 regard to any of the accumulated deferred income
20 taxes that are reflected there?

21 A No.

22 Q Do you have any responsibilities with
23 regard to the accumulated depreciation that's
24 reported in the FERC form?

1 A No.

2 Q Do you know whether Duke had any
3 transfers of assets or depreciation associated with
4 the acquisition of CG&E?

5 A Could you please repeat the question.

6 MR. GILLESPIE: Would you read it
7 back, please.

8 THE COURT REPORTER: Question: Do you
9 know whether Duke had any transfers of
10 assets or depreciation associated with the
11 acquisition of CG&E?

12 MS. SPILLER: I'm going to note my
13 objection to the form. You've defined
14 Duke as being CG&E?

15 MR. GILLESPIE: Fair enough.

16 Q For purposes of this question I mean
17 Duke being Duke Energy Ohio. Can you --

18 A Duke Energy Ohio acquiring CG&E?

19 Q That's a fair clarification. There
20 was an acquisition of CG&E in 2006, correct?

21 A Yes.

22 Q Okay. And it was acquired by a parent
23 of -- well, what company acquired it?

24 A Duke Energy.

1 Q Okay. And Duke Energy Ohio, is that a
2 different entity than simply the successor of CG&E?

3 A Duke Energy of Ohio is a successor of
4 CG&E, yes.

5 Q Do you know whether there were any
6 assets or depreciation that was transferred from the
7 parent Duke or any affiliates of Duke Energy Ohio to
8 Duke Energy Ohio?

9 A From Duke Energy Ohio to Duke Energy?

10 Q No. From Duke Energy or from another
11 affiliate of Duke Energy to Duke Energy of Ohio.

12 A Yes.

13 Q What was transferred?

14 A There are I believe five power plants
15 that were transferred.

16 Q And who were they transferred from?

17 A I don't know which affiliate of Duke
18 Energy Corp it was.

19 Q And it was transferred from that
20 affiliate to Duke Energy Ohio?

21 A That is correct.

22 Q And both the assets and the
23 depreciation were transferred with respect to those
24 power plants?

1 A Yes.

2 Q Were there any other assets or
3 depreciation that were transferred?

4 A Not that I'm aware of.

5 Q So just so I'm clear -- I don't want
6 to miss an opportunity to ask you questions that are
7 within your area of responsibility -- to the extent
8 that OCTA has questions about assets recorded for
9 Account 364, they should be put to someone else; is
10 that right?

11 A Carl Council is knowledgeable of the
12 fixed asset accounting system.

13 Q And to the extent that OCTA has
14 questions about depreciation in Account 364, they
15 should be put to someone other than yourself, right?

16 A That's correct.

17 Q And to the extent that OCTA has
18 questions about the continuing property records and
19 retirements and additions and so on in Account 364,
20 they should be put to someone other than you?

21 A That is correct.

22 Q To the extent that OCTA has questions
23 about pole removals and salvage and disposal, those
24 should be put to someone other than you; is that

1 right?

2 A That is correct.

3 Q To the extent that OCTA has questions
4 about the number of poles and the asset values of
5 poles, those should be put to someone other than
6 you?

7 A Yes.

8 Q Okay. Look at OCTA Exhibit 6. Did
9 you prepare this spreadsheet?

10 A It was prepared under my supervision.

11 Q By whom?

12 A Dana Patten.

13 Q Okay. Is there any backup
14 documentation for the calculations that are
15 reflected here other than the documents -- the pages
16 that are included in this exhibit?

17 A I mean, unless you want to go back and
18 get the Form One page it would refer to, or
19 something like that, but this tells the source of
20 all data.

21 Q What about -- okay. And that includes
22 the deferred income tax -- deferred tax calculation
23 worksheet?

24 A Yes, it does.

1 Q How was the rate of return that is
2 used here calculated?

3 A It was the actual allowed rate of
4 return in case number 0559, the last distribution
5 case.

6 Q That was in 2005 or 2006?

7 A Yes. It was filed in 2005.

8 Q Is that an overall rate of return?

9 A Yes, it is.

10 Q Did the commission authorize an
11 overall rate of return, or is this calculated from
12 an authorized return on equity?

13 A This is from an overall rate of
14 return.

15 Q So if someone were to look at the
16 order from the commission in that case 0559, it
17 would find a particular reference to this overall
18 authorized return?

19 A Yes. They should.

20 Q Okay. Now, in determining the
21 accumulated deferred income tax amount used in this
22 rate calculation, you have used Account 190,
23 correct?

24 A Correct.

1 Q Can you tell me why you did not use
2 also Accounts 281 through 283?

3 A No, I cannot.

4 Q Do you know whether the FCC subtracts
5 Account 190 from the sum of Accounts 281 through
6 283?

7 A No. I do not know that.

8 Q Now, with respect to the accumulated
9 deferred taxes for Account 190, they have been
10 separated here between a total amount and
11 accumulated deferred income taxes related to gas and
12 accumulated deferred income taxes related to other.
13 Can you tell me why you did that?

14 A Because we wanted only to use the
15 accumulated deferred income tax that relate to
16 electric operations.

17 Q Do you know whether that's how the FCC
18 makes the calculations?

19 A No, I do not.

20 Q Can you explain to me why the
21 accumulated deferred income taxes for Account 190
22 overall was a positive number and the accumulated
23 deferred income taxes for electric is a negative
24 number --

1 A No.

2 Q -- other than the obvious math that's
3 reflected on this page?

4 A No, I cannot.

5 Q The accumulated provision for
6 depreciation or the depreciation reserve for pole
7 investment, can you tell me how that's determined?

8 A The accumulated depreciation for
9 poles?

10 Q Yes. Account 364.

11 A That would come from the fixed asset
12 accounting system.

13 Q Is the backup information reflected in
14 the fixed asset accounting system?

15 A I don't know.

16 Q Would you assume that there would be?

17 A I don't know if it goes down to
18 account level for depreciation, accumulated
19 depreciation.

20 Q Okay. So you're not sure whether the
21 number that's reflected on this calculation for
22 accumulated depreciation for Account 364 is a
23 calculated number, or a number that comes directly
24 from some books of the company?

1 A I believe it comes from the books of
2 the company --

3 Q Directly?

4 A -- but I would have to verify that.

5 Q Directly from the books?

6 A Directly from the fixed asset
7 accounting system.

8 Q Okay. So, in other words, you believe
9 that the depreciation reserve is a number that is
10 kept?

11 A Yes.

12 Q Okay. And not simply the result of a
13 calculation?

14 A That is correct.

15 Q Who would know about that?

16 A Carl Council.

17 Q Mr. Council's going to be very pleased
18 with you, I'm certain. You may have to take him out
19 to lunch and apologize.

20 Now, if OCTA has questions about the
21 maintenance component of the calculation -- or let's
22 be more specific -- has questions about Account 593,
23 who should those questions go to? Do you know?

24 A No, I don't.

1 Q But is it something you're
2 knowledgeable about?

3 A No, I am not.

4 Q Okay. On page one of this exhibit,
5 you see a reference to the depreciation rate of 2.44
6 percent?

7 A Yes.

8 Q Where does that come from?

9 A The fixed asset accounting system.

10 Q Any questions about the fixed asset
11 accounting system should go to Mr. Council?

12 A Yes.

13 Q Okay. Turn to the exhibit -- the
14 proposed tariff. That would be Exhibit Number 7.
15 Under the applicability paragraph on the first page
16 of that exhibit, does Duke intend that the tariff
17 apply to cable operators that use their attachments
18 for the supply of voice over Internet protocol
19 service?

20 A I don't know.

21 Q I think that your prior testimony is
22 this tariff was prepared by you and counsel, and
23 that it was provided to Mr. Angleton and Mr. Riggins
24 for their review; is that right?

1 A Yes.

2 Q Was it provided to anyone else for
3 review?

4 A Not that I'm aware of.

5 Q So who, other than yourself, could
6 tell OCTA and the commission how this tariff is
7 intended to apply?

8 MS. SPILLER: I'm just going to note
9 my objection to the extent that this
10 document speaks for itself, and it is a
11 tariff that's been issued pursuant to
12 statute, and I think indicates to whom it
13 does apply and to what types of
14 attachments it does apply.

15 Q Do you understand the question?

16 A Could you please reread it.

17 MR. GILLESPIE: Could I have it read
18 back.

19 THE COURT REPORTER: Question: So
20 who, other than yourself, could tell OCTA
21 and the commission how this tariff is
22 intended to apply?

23 MS. SPILLER: Just note my objection
24 again.

1 A I don't know.

2 Q Does Duke intend that the tariff apply
3 to cable operators that use attachments to provide
4 service to telecommunications companies?

5 MS. SPILLER: Again, I would like a
6 continuing line of objection to the tariff
7 and the language of the tariff which
8 speaks for itself.

9 MR. GILLESPIE: Understood.

10 A This tariff is for wireline
11 attachments and applicable equipment. If that's a
12 wireline attachment, then, yes, those would apply.

13 Q It's applicable to any person or
14 entity other than a public utility, correct, reading
15 from line one of the tariff?

16 A Yes.

17 Q But just so I understand your answer
18 to the last question, that if a cable operator is
19 using the attachment to provide service to a
20 telecommunications company, that attachment would be
21 covered by the tariff, correct?

22 A That's my understanding, yes.

23 Q Does Duke intend that a -- let me
24 preface it with this question: Do you know what a

1 power supply is?

2 A I'm not sure.

3 Q I use the term "power supply" to refer
4 to a device through which the utility, Duke,
5 provides power to a company such as a cable operator
6 that has facilities on the pole, okay?

7 A Um-hmm.

8 Q And power supplies are sometimes
9 placed on utility poles. Are you aware of that?

10 A I know they have other things other
11 than just wireline on the pole.

12 Q But you don't know anything about
13 power supplies?

14 A No, I do not.

15 Q Do you know where power supplies are
16 placed on the pole?

17 A No, I do not.

18 Q So you don't know whether they are
19 placed above the minimum grade clearance level or
20 below?

21 MS. SPILLER: I'm going to object.

22 He's asked and answered the question.

23 A No.

24 Q Do you know whether Duke intends that

1 a power supply be subject to a charge under this
2 tariff?

3 A If a power supply is attached to the
4 pole, there should be a fee for it.

5 Q Regardless of where it is on the pole;
6 is that right?

7 A Yes. I assume so.

8 Q Do you know how much space Duke would
9 propose -- let me put it this way: Do you know
10 whether a power supply would occupy more than one
11 foot of space on the pole?

12 A No, I do not.

13 Q Do you know whether Duke would intend
14 to apply more than one attachment charge for a power
15 supply?

16 A According to the tariff, if it takes
17 more than one foot, that it would be charged more
18 than one attachment.

19 Q So if a power supply occupied two and
20 a half feet -- well, let me use a phrase other than
21 occupy. If a power supply was two and a half feet
22 tall and was placed on a pole somewhere between the
23 ground and the 18-foot level, it's your
24 understanding that Duke would apply multiple charges

1 for that power supply?

2 A Yes.

3 Q And if it were two and a half feet
4 long on the pole, how many such charges would Duke
5 propose to apply?

6 A I believe it would be for each one
7 foot of vertical space it would charge one
8 attachment rate.

9 Q So two and a half feet would be how
10 much?

11 A That would be more than two, so it
12 would be three.

13 Q And that would be three times the
14 14.42 rate?

15 A That is correct.

16 Q Do you know whether the FCC would
17 allow a charge for a power supply or other material
18 that is placed on the unusable space of a pole?

19 A No. I don't know.

20 Q Do you know what a riser is?

21 A In terms of gas service, yes.

22 Q I'm talking about electric service.

23 A No, I do not.

24 Q Okay. Well, let me define the word

1 "riser" as a wire generally covered by conduit that
2 would take a conductor, a communications conductor
3 or electric conductor, from the ground to up the
4 pole so that it could then run aerially. So, in
5 other words, you would move from underground service
6 to aerial service.

7 A Right.

8 Q So you would understand that that wire
9 and/or conduit would run the entire length of the
10 pole from the ground up to the height of the aerial
11 attachment?

12 A That is correct.

13 Q Okay. Would Duke apply the charge
14 here to risers?

15 A I don't know. I'll have to -- I don't
16 know.

17 Q Who would know?

18 A Ulie Angleton or Jeff Riggins.

19 Q So Ulie Angleton or Jeff Riggins would
20 be the ones to interpret or to tell us how Duke
21 intends to interpret this tariff?

22 A They can explain detailed billing
23 issues which I don't work with.

24 Q But, in any event, you can't tell us;

1 is that right?

2 A No, I cannot.

3 Q Okay. Do you know whether in the
4 FCC's interpretation of its pole attachment charges
5 it would allow a charge for a riser?

6 A I don't know.

7 Q Do you know whether a riser would
8 prevent any use of useable space by any entity on
9 the pole?

10 A I don't know.

11 Q Do you know whether a power supply
12 would prevent any party on the pole from using the
13 useable space on the pole?

14 A I don't know.

15 Q Do you know what useable space is on
16 the pole?

17 A I don't know the exact definition, no.

18 Q Do you know where on a pole useable
19 space is found?

20 A I assume it's found towards the top
21 under the power zone.

22 Q In the power zone? Is that what you
23 said?

24 A No. Below the power zone. I don't

1 know.

2 Q In the applicability portion of the
3 tariff, the second sentence -- strike that.

4 The second paragraph has the phrase
5 including but not limited to wireless and WiFi
6 equipment, slash, attachments and overlashing of
7 existing attachments. Do you see that?

8 A Yes, I do.

9 Q The word "including" is a bit
10 ambiguous to me. Would you tell me whether this
11 means that wireless and WiFi equipment is included
12 in the tariff or is not included in the tariff?

13 A It is not included in the tariff. It
14 requires a separate agreement. It's included in the
15 tariff in that it tells you we must have a separate
16 agreement.

17 Q Okay. But the wireless and WiFi
18 attachments and overlashing would not be covered by
19 the tariff? Is that the meaning?

20 A No. It means they are covered by the
21 tariff, but we require a specific agreement for
22 those kinds of items.

23 Q Well, what provisions in the tariff
24 apply to wireless, WiFi equipment, and overlashing?

1 A There's attachment charge, there's
2 payments.

3 MS. SPILLER: (Indicating.)

4 A Rentals.

5 Q So it's your understanding that Duke
6 would apply the rental charge to wireless
7 attachments?

8 A Well, it will negotiate those. It
9 says will be negotiated separately.

10 Q So, in other words, the rental rate
11 that is provided in this tariff of 14.42, that would
12 not apply to wireless attachments, or it would?

13 A It depends. These are negotiated
14 separately.

15 Q So it wouldn't?

16 A It could or couldn't. It could be
17 that's the rates negotiated, it could be a different
18 rate. I don't know.

19 Q Okay. But somebody wanting to make a
20 wireless attachment -- a cable operator wanting to
21 make a wireless attachment would not be able to rely
22 on this tariff. The cable operator would have to
23 negotiate that with Duke; is that right?

24 A That is correct.

1 Q And would the cable operator wanting
2 to make a wireless attachment also have to negotiate
3 the terms and conditions of attachment with Duke
4 separately?

5 A Yes.

6 Q And the same would apply to WiFi?

7 A Yes.

8 Q What about a cable operator that
9 wanted to make -- wanted to attach a wireless
10 attachment to its strand, but not directly to the
11 pole; would that be covered under the tariff?

12 A Can you define strand for me?

13 Q Yeah. Cable companies and other
14 communications providers that attach to poles
15 typically use a steel strand, also called a
16 messenger, that runs from bolt to bolt on different
17 poles and attaches wires to that by lashing wire.
18 Do you understand that?

19 A Yes.

20 Q Okay. Now, let's say that a cable
21 company wanted to attach a wireless device to its
22 strand. Would that be covered by the tariff?

23 A I think it would, because that could
24 interfere with our equipment and all that, so we

1 definitely would want to be aware of it and we would
2 want to make sure it's appropriate. So, yes, it's
3 covered by this agreement, negotiated separately.

4 Q So it would have to be negotiated
5 separately --

6 A Yes.

7 Q -- as part of a separate agreement?

8 A Yes.

9 Q Now, when the tariff says that
10 overlashing will be subject to a separate agreement,
11 do you know what overlashing is?

12 A Yes, I do.

13 Q What is it?

14 A Where you may have an existing cable
15 and they will add maybe one or more cables, and then
16 they wrap with another cable around it so you could
17 -- where there was once one, there could be two,
18 three, or four.

19 Q And it is the position of Duke that
20 any overlashing would be subject to a separate
21 agreement?

22 A Yes.

23 Q Do you know what kind of permitting
24 process, if any, Duke would intend to apply to

1 overlashing?

2 A I'm not sure what you mean by that.

3 Q Would Duke require that a party
4 wanting to overlash a wire to its existing
5 attachment obtain a permit to do so specifically
6 pole by pole?

7 A A permit from Duke?

8 Q Yes.

9 A That would be negotiated separately.
10 I don't know if it would be that way or not.

11 Q Do you know what the FCC has said
12 about overlashing?

13 A No.

14 Q Do you know whether the FCC has said
15 that overlashing must be allowed without separate
16 permits by utilities?

17 A No.

18 Q You don't know?

19 A I do not know.

20 Q Do you know whether requiring that --
21 well, let me see. Just so I understand your
22 testimony, you're saying that these devices,
23 wireless and WiFi attachments and overlashing are
24 covered by the tariff, but that the terms and

1 conditions that are contained in the tariff would
2 not apply, nor the rates, they would have to be
3 separately negotiated by the parties? Is --

4 MS. SPILLER: Again, I'm --

5 MR. GILLESPIE: I'm just trying to
6 understand his testimony.

7 MS. SPILLER: Well, I understand. But
8 the document speaks for itself and clearly
9 says other than those to which this tariff
10 applies, including a litany of items shall
11 be negotiated separately.

12 A I'm sorry. Could you please repeat
13 the question.

14 MR. GILLESPIE: I'm confused, because
15 the witness first said the items were
16 covered by the tariff, and then he
17 indicated that they needed to be
18 separately negotiated. And I'm just
19 trying to be sure that I understand and
20 the record reflects what he really means
21 here.

22 Q So I'll repeat the question. In terms
23 of the rate that would be applicable to a wireless
24 attachment, I believe you testified that that would

1 be a rate different from the -- or could be a rate
2 different than is included in the tariff, it would
3 be separately negotiated, right?

4 A Right.

5 Q Would there be a rate applicable to
6 overloading?

7 A That would be negotiated separately.

8 Q Okay. Would the terms and conditions
9 of this tariff apply to overloading?

10 A Only to the extent that this tariff
11 says if you have overloading you must negotiate the
12 agreement with the utility.

13 Q Okay. And do you have a view as to
14 whether the -- whether requiring that these items be
15 separately negotiated and the parties not be able to
16 rely on the tariff for these items is consistent
17 with the statutory requirement for access to utility
18 poles?

19 MS. SPILLER: I'm going to object to
20 the extent you're asking for a legal
21 interpretation and/or conclusion.

22 A I don't know.

23 MR. GILLESPIE: Let's take another
24 five-minute break.

1 (A brief recess was taken.)

2 A Can I clarify an answer I made?

3 Q Yes.

4 A I want to explain how this applies to
5 the tariff.

6 Q Is this -- did you talk to your
7 counsel about this between -- or during the break?

8 A Yes, I did.

9 Q Okay. What is the clarification that
10 you would like to make?

11 A This tariff applies to wireline
12 attachments, as it says here, and associated
13 facilities or apparatus.

14 Then what we -- basically the second
15 paragraph is trying to explain that if it's not one
16 of those, then we need to negotiate a separate
17 agreement.

18 So this tariff applies in that it
19 tells you you must have a separate agreement. The
20 separate agreement will be negotiated separately.
21 So I just wanted to clarify that.

22 Q But the terms of attachment will be
23 subject to this separately negotiated agreement --

24 A Yes.

1 Q -- correct? And the rates for
2 attachments would be subject to this separately
3 negotiated agreement, correct?

4 A Correct.

5 Q So the tariff -- to that extent, the
6 tariff would not apply to these agreements, correct?

7 A That is correct.

8 Q Do you know what reasonable
9 alternatives cable operators have for adding cables
10 other than to use their existing attachments through
11 overloading?

12 A I do not.

13 Q Okay. Look at the paragraph headed
14 agreement. Can you tell me what the sentence means
15 that says that Duke reserves the right to establish
16 any terms and conditions not inconsistent with the
17 tariff?

18 A I think it speaks for itself. This is
19 the tariff. And in the separate agreement we may
20 have to have other terms, given the specific
21 situation.

22 Q Would Duke intend to rely on this
23 language to immunize any term and condition that was
24 established for wireless and WiFi attachments, for

1 example?

2 A Could you please rephrase that?

3 Q Yeah. As I understand your testimony,
4 if a cable operator wanted to make a wireless
5 attachment, it would have to negotiate a separate
6 agreement, right?

7 A Yes.

8 Q And would this sentence under the
9 agreement section mean that Duke would take the
10 position that any term and condition established in
11 such agreement, as long as it wasn't explicitly
12 inconsistent with the tariff, was somehow approved
13 by the tariff?

14 A I'm still not sure I follow your
15 question.

16 Q Okay. Well, this says that the
17 company reserves the right to have anything in a
18 term and condition that's not inconsistent with the
19 tariff, right?

20 A Yes.

21 Q Would the company take the position
22 that any term and condition which is not
23 inconsistent with the tariff is somehow authorized
24 by the tariff?

1 A No.

2 Q Okay. What limitations would there be
3 on what Duke could demand with respect to pole
4 attachments for any matter that is not explicitly
5 covered by the tariff?

6 A I don't believe there is a limitation.

7 Q Under the paragraph -- or the heading
8 attachment charges, do I understand this to mean
9 that Duke is proposing that any use of conduit be
10 subject to charges that would be negotiated between
11 the conduit user and Duke?

12 A Yes.

13 Q Do you know whether users of Duke's
14 conduit would have any other reasonable alternative
15 but to use Duke's conduit?

16 A I don't know.

17 Q Do you know whether any users of
18 conduit would have any reasonable alternative but to
19 accept a conduit charge that was unilaterally
20 determined by Duke outside of the tariff?

21 A I don't know.

22 Q Do you know whether the FCC has a
23 formula regarding conduit charges?

24 A I don't know.

1 Q Do you know what Duke now charges for
2 use of its conduit?

3 A No, I do not.

4 Q Who would know that?

5 A It would be whoever does the billing
6 for that. I don't know the name of the person.

7 Q Has Duke made any calculations
8 regarding conduit charges?

9 A No, it has not.

10 Q Do you know whether the conduit
11 charges that Duke currently charges have been
12 determined based on cost?

13 A I don't know.

14 Q Turning to the application section on
15 the next page. Do you know whether the tariff would
16 require cable operators and other attaching parties
17 to file a permit application before making an
18 attachment to a drop pole?

19 A It says they have to make a written
20 application.

21 Q Would that apply to drop poles?

22 A I assume so, yes.

23 Q Would the application have to be made
24 before attachment, or could it be made afterwards?

1 A The tariff says it's not presumed to
2 have permission to make any attachment until after
3 the 45-day period, by either notification or a
4 45-day period.

5 Q So in order to make an attachment to a
6 drop pole, the cable operator would have to make an
7 application and then wait for Duke to rule on that
8 application?

9 A Yes.

10 Q And that ruling could take less or
11 more than 45 days?

12 A It can't take more than 45 days.

13 Q What if Duke takes longer than 45 days
14 to respond; is there any sanction provided for in
15 this tariff?

16 A Sanction to Duke?

17 Q Yes.

18 A No. There is none.

19 Q So if a cable operator applied to make
20 an attachment and Duke did not respond within the 45
21 days, what could the cable operator do in order to
22 get a resolution from Duke? Do you know?

23 A It would obviously call Duke to
24 determine the status of the --

1 Q Yeah. And what if Duke just said,
2 sorry, it's been more than 45 days but we haven't
3 gotten to that?

4 MS. SPILLER: I'll object to the
5 nature of the hypothetical question.

6 To the extent you know, go ahead.

7 A I don't know.

8 Q Do you know whether the FCC has stated
9 that if a utility doesn't respond to a permit
10 application within a certain length of time that the
11 application is deemed granted?

12 A I'm not aware of that.

13 Q Do you know one way or the other?

14 A I'm not aware of that.

15 Q Okay. Do you know whether drop and
16 lift poles are typically covered by some notice
17 after the fact?

18 A I'm not aware of that.

19 Q Do you know whether the -- so you
20 don't know?

21 A I don't know.

22 Q Do you know whether phone companies --
23 well, let me preface it this way: You understand
24 that under this tariff, phone companies' attachments

1 for the provision of telecommunication services
2 would not be covered by the tariff?

3 A I do understand that.

4 Q Okay. Do you know whether phone
5 companies make prior application before they're
6 attached to Duke's drop poles?

7 A No. I don't know.

8 Q Do you know whether cable companies
9 historically have obtained prior approval from Duke
10 for attachment to drop poles?

11 A No, I don't.

12 Q Do you know whether there have been
13 any agreement or agreements reached between cable
14 operators and Duke personnel informally that would
15 allow cable operators to submit applications for
16 drop poles after the fact?

17 A No, I don't.

18 Q Do you know whether the FCC has stated
19 that drop poles may be authorized after the fact or
20 would be treated as covered by the primary
21 attachment --

22 A No.

23 Q -- to the distribution pole?

24 A I don't know.

1 Q Do you know what the voltage is of
2 electric service drops to residences?

3 A No.

4 Q Do you know what the period for Duke
5 to respond to permit applications is in the existing
6 tariff?

7 A Yes, I do.

8 Q What is it?

9 A 30 days.

10 Q What's the basis for increasing that
11 30 days to 45 days?

12 A Basically to give the company
13 additional time, when it needs it, to respond to
14 such applications.

15 Q Did somebody tell you that the company
16 needed that time?

17 A Yes.

18 Q Who?

19 A I don't recall who it was. I've had
20 several conversations about this.

21 Q Okay. Did they give you any
22 indication as to whether this is a problem, a major
23 problem for Duke?

24 MS. SPILLER: Object to the form.

1 Go ahead.

2 A No.

3 Q But you don't recall who it is that
4 you had these discussions with?

5 A No, I do not.

6 Q About two-thirds of the way through
7 the application paragraph, there's a sentence that
8 reads: The company shall have the sole right to
9 determine the availability of such pole or conduit
10 for joint use, and shall be under no obligation to
11 grant permission for its use by a licensee. Do you
12 see that?

13 A Yes, I do.

14 Q What limitations, if any, are there on
15 the discretion of the company to decide whether or
16 not to determine whether the pole is available for
17 attachment?

18 A I don't see any limitation in that.

19 Q So is it the company's position that
20 this sentence could be applied solely at the
21 company's discretion?

22 A That's what it says.

23 Q Without reference to any questions of
24 safety or reliability?

1 A It says the company shall have the
2 sole right to determine the availability of the
3 pole.

4 Q So it wouldn't be related to any
5 reasons of safety reliability, correct?

6 A It could be.

7 Q But it wouldn't have to be?

8 A It wouldn't have to be. Correct.

9 Q Does this mean that if Duke might want
10 to use space on a pole, although it had no plans at
11 the moment, it could deny the right to attach based
12 on that reason?

13 A I suppose it could.

14 Q Okay. And if Duke wanted to put
15 pressure on a cable operator to achieve some other
16 end, it could do so by denying the right to attach
17 to the pole?

18 MS. SPILLER: I'm going to object to
19 the form.

20 But go ahead.

21 A I don't think Duke does those kinds of
22 things so --

23 Q But there isn't anything --

24 A There's no prohibition.

1 Q So, in other words, it could do that
2 if it chose to?

3 A Yes.

4 Q Could, under this provision, Duke deny
5 the right to attach because of a use that a cable
6 operator wanted to make of the attachment?

7 A Again, it says the company shall have
8 the sole right to determine the availability of such
9 pole.

10 Q So it could, correct?

11 A In theory, yes.

12 Q Does the company, that is Duke, under
13 this tariff, have the total discretion as to where
14 on a pole an attachment is made?

15 A Yes.

16 Q Could the company use its discretion
17 under the tariff to disallow attachments by cable
18 operators that were below some arbitrary height on a
19 pole, like 22 feet eight inches?

20 A I suppose so.

21 Q Turn to the paragraph on technical
22 specifications.

23 A Okay.

24 Q The first sentence says that the

1 wireline attachments are to be placed, quote, so as
2 not to interfere with the present or any future use
3 that the company may desire to make of such poles.

4 Do you see that?

5 A Yes, I do.

6 Q Okay. Does that mean that if an
7 attachment is placed by a cable company and the
8 utility, that is Duke, later wanted to use that
9 space on the pole for its own purposes, that it
10 could require the cable company to remove its
11 attachment?

12 A Could you please repeat the question.

13 Q Yeah. I'll try to rephrase it.

14 A Okay.

15 Q If a cable operator has an existing
16 attachment on a pole and Duke wants additional space
17 on the pole, could Duke require that the cable
18 operator remove its attachment?

19 A In theory, yes.

20 Q What do you mean in theory?

21 A I don't know if that's done in
22 practice.

23 Q But the way that you interpret the
24 tariff, that would be permissible?

1 A Yes.

2 Q Several lines down under technical
3 specifications, the tariff says that all wireline
4 attachments have to be made to comply with, quote,
5 any requirements that may be established by the
6 company, close quote. Do you see that?

7 A Yes.

8 Q Are there any limitations on this
9 requirement?

10 A No.

11 Q Do such requirements to be established
12 by the company have to have anything to do with
13 safety?

14 A It could or could not.

15 Q It wouldn't have to, correct?

16 A It wouldn't have to.

17 Q Have you reviewed the current
18 standards that the company has with regard to
19 attachments?

20 A No, I have not.

21 Q Do you know whether such standards --
22 whether there are standards that exist in written
23 form?

24 A I don't know.

1 Q Under this provision, if there were
2 standards in written form, they could be revised at
3 any time by the company, correct?

4 A That is correct.

5 Q What if an attachment was made under
6 one set of standards and the standards were then
7 changed; would this require the cable operator to
8 modify its attachments to meet the new standards?

9 A It could be used to do something like
10 that.

11 Q Turn to the last sentence of technical
12 specifications. Do you see this says that the
13 company shall be the sole judge as to the
14 requirements for the present or future use of its
15 poles, conduits, and equipment, and of any
16 interference therewith? Do you see that?

17 A Yes, I do.

18 Q Are there any limits intended to the
19 discretion of the company under this sentence?

20 A No.

21 Q So under this sentence Duke would have
22 the unlimited discretion to deny an attachment
23 because it might at some future time want to use the
24 space, even though it had no current plans for that

1 use?

2 A In theory, yes.

3 Q In theory, Duke could decide that it
4 didn't want any cable company to attach to a pole
5 for any reason; isn't that right?

6 MS. SPILLER: I'm going to object to
7 the form.

8 MR. GILLESPIE: I'll withdraw the
9 question.

10 Q Under the paragraph of rearranging
11 costs, the last sentence says: The company shall
12 not be responsible for coordinating the relocation
13 of third-party attachments. Do you see that?

14 A Yes, I do.

15 Q Under this provision, could another
16 attacher, such as an ILEC, prevent attachment by a
17 cable operator by refusing to cooperate in making
18 space?

19 A Let me reread this paragraph, please.
20 (Peruses document.) Hypothetically, yes.

21 Q By hypothetically you mean it would be
22 permitted under the wording of this tariff?

23 A Yes.

24 Q If there were such a situation, do you

1 know what relief would be available to a cable
2 operator?

3 A I suppose it would go to the Public
4 Utility Commission.

5 Q Do you have any idea how long it might
6 take or what the processes would be for obtaining
7 relief from the Public Utilities Commission in such
8 an instance?

9 A No, I do not.

10 Q Under the inspections paragraph, do
11 you see the reference to the right to make
12 inspections based on the company's sole discretion?

13 A Are you talking about the first
14 sentence?

15 Q Yes.

16 A Yes. I do see that.

17 Q Is there any limitation on that
18 discretion?

19 A No.

20 Q Now, if such inspections that were
21 conducted at the sole discretion of Duke, would they
22 be at the attacher's expense?

23 A I don't know.

24 Q Do you see the second clause of the

1 first sentence -- or the third clause of the first
2 sentence: Licensee shall reimburse the company for
3 the expense of such inspections/inventories?

4 A Yes.

5 MS. SPILLER: You can read the whole
6 sentence, Don.

7 Q Sure. Does that indicate that any
8 such inspection would be at the attacher's expense?

9 A (Peruses document.) I'm sorry. Could
10 you please repeat the question.

11 MR. GILLESPIE: Could we have that
12 read back.

13 THE COURT REPORTER: Question: Does
14 that indicate that any such inspection
15 would be at the attacher's expense?

16 A Yes. It says licensee shall reimburse
17 the company for the expense of such
18 inspections/inventories.

19 Q Is there any obligation on the part of
20 Duke to have such inspections or inventories
21 conducted at a reasonable expense?

22 A It does not state that in the letter.

23 Q Do you think it would be appropriate
24 to have such a provision in the tariff?

1 MS. SPILLER: Objection to the extent
2 you are inclined to offer a lay opinion on
3 that. Go ahead.

4 MR. GILLESPIE: That is a speaking
5 objection to which I object. That is
6 exactly the kind of thing that is reserved
7 for you. And I just want to state on the
8 record I think that objection is
9 inappropriate.

10 Q Can you answer the question?

11 A Could you please read back the
12 question again.

13 MS. SPILLER: Well, I think the
14 question is inappropriate and I have a
15 right to make the objection.

16 MR. GILLESPIE: You do not have the
17 right to make speaking objections in a
18 deposition basically telling the witness
19 what to answer.

20 MS. SPILLER: I have the right to make
21 an objection and to assert the basis for
22 the objection. The basis for the
23 objection was so asserted.

24 MR. GILLESPIE: We disagree.

1 MS. SPILLER: Fine.

2 THE COURT REPORTER: Question: Do you
3 think it would be appropriate to have such
4 a provision in the tariff?

5 A I don't believe it's necessary.

6 THE WITNESS: Excuse me. If I could
7 interrupt. Are we -- is this going to go
8 on for a while where I want to get some
9 lunch, or are you pretty close to the end
10 or --

11 MR. GILLESPIE: Well, we are going to
12 meet your schedule of ending by 1:00,
13 which does not provide for lunch in
14 between, if that's all right.

15 MS. SPILLER: Well, I -- I don't think
16 that that's fair to a deponent to subject
17 them to a marathon. If he needs 15
18 minutes to get a sandwich or a candy bar,
19 I think we should accommodate that.

20 MR. GILLESPIE: I didn't understand
21 the witness to be asking for 15 minutes to
22 have a candy bar or whatever. Let's ask
23 the witness.

24 Let's go off the record for a minute.

1 (A brief recess was taken.)

2 Q Is it Duke's intention under the
3 inspection provision here that the cable operator
4 would pay for the inspection even if portions of the
5 inspection were useful to Duke?

6 A Yes.

7 Q Are you aware of FCC orders saying
8 that the pole owner must absorb inspection costs to
9 the extent that it benefits from the inspection?

10 A I'm not aware of that.

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

14 A I'm not familiar with what obligations
15 it has in that respect.

16 Q Okay. Do you know whether the FCC
17 orders state that a pole owner has the burden of
18 paying the entire cost of regular safety
19 inspections?

20 A I'm not aware of that.

21 Q You don't know one way or the other?

22 A I do not know.

23 Q Do you know whether Duke has been
24 conducting regular safety inspections of its

1 distribution plant?

2 A I don't know.

3 Q What's an unauthorized attachment?

4 A Basically an attachment someone's put
5 on our pole without going through the process and
6 telling us about it and applying to put it there.

7 Q What if an attachment was previously
8 authorized by Duke, but Duke has a problem with its
9 records, so the records don't reflect that
10 authorization?

11 MS. SPILLER: Object to the form.

12 Go ahead.

13 Q Is that an unauthorized attachment?

14 A If Duke has previously approved that
15 attachment, it's an authorized attachment.

16 Q It is authorized? Is that what you're
17 saying?

18 A If they previously approved the
19 attachment, it's an authorized attachment.

20 Q So it's not a matter of whether Duke
21 has a record of it, it's a matter of whether it was
22 authorized, right?

23 A Correct.

24 Q Do you know whether Duke's records of

1 authorization are perfect?

2 A I do not know.

3 Q Do you know whether Duke would
4 consider an attachment to a drop pole which was made
5 by a cable operator in an era when drop poles were
6 not permitted, would that be considered an
7 unauthorized attachment?

8 A I don't know.

9 Q Would you agree that if the practice
10 of the parties were not to permit that type of
11 attachment, that that attachment should not be
12 considered to be unauthorized?

13 MS. SPILLER: Object to the form.

14 Go ahead.

15 A If it's covered by this tariff, then
16 it needs to be an authorized attachment that the
17 company would pay for, the attacher would pay for.

18 MR. GILLESPIE: Could you reread that
19 answer.

20 (Whereupon, the answer was reread by
21 the court reporter.)

22 Q Let's try this again.

23 A Okay.

24 Q If there is an attachment to a pole,

1 to a drop pole, for example, which was made in an
2 era where drop poles were not subject to the
3 permitting process, would that attachment be
4 considered by Duke to be an unauthorized attachment?

5 MS. SPILLER: Object to the form.

6 A I know it should be subject to the fee
7 in here. I don't know about whether it would be
8 considered authorized or unauthorized.

9 Q But it would be subject to the
10 unauthorized attachment penalty; is that right?

11 A It could be, yes.

12 Q Could be under the meaning of the
13 tariff?

14 A Yes.

15 Q All right. So Duke would intend that
16 the tariff would apply that penalty in that
17 situation?

18 A It could apply it that way.

19 Q We discussed earlier that if an
20 attachment were to use more than one foot of space,
21 it would be considered to be the equivalent of
22 several different attachments for purposes of a fee,
23 right?

24 A That is correct.

1 Q If an attachment were to take more
2 than one foot of space, would any portion of that be
3 considered an unauthorized attachment if the
4 attacher had received approval for placing that
5 attachment on a pole?

6 MS. SPILLER: Object to the form.

7 Go ahead.

8 A Could I have that reread to me.

9 THE COURT REPORTER: Question: If an
10 attachment were to take more than one foot
11 of space, would any portion of that be
12 considered an unauthorized attachment if
13 the attacher had received approval for
14 placing that attachment on a pole?

15 A In my opinion -- are you talking -- in
16 my opinion, going forward they would have to pay
17 multiple attachment fees for that.

18 Q But would that be considered an
19 unauthorized attachment subject to the unauthorized
20 attachment penalty?

21 A In my opinion, no.

22 Q Would an attachment be considered
23 unauthorized where a cable company had obtained
24 approval from an ILEC to attach to a pole which was

1 previously owned by the ILEC but now owned by Duke,
2 or where Duke had replaced on ILEC pole with its own
3 pole?

4 MS. SPILLER: Object to the form.

5 Q Do you understand the question?

6 A Yeah. I understand it. I'm just
7 trying to think through it. So what you're saying
8 is that the ILEC -- if I could just clarify this.

9 The ILEC has a pole, there's an
10 authorized attachment on it, the pole is now
11 transferred to Duke Energy. The question is, is
12 that an unauthorized attachment? I'm not sure how
13 that should be handled.

14 Q Do you know whether Duke has good
15 records that would reflect the change of ownership
16 of that pole?

17 A I'm not familiar with pole records.

18 Q Would it be Duke's intention to apply
19 this provision of the tariff to attachments that
20 were made prior to the effectiveness of this
21 tariff?

22 A Apply this penalty?

23 Q Yes. Let's just take a step back. Do
24 you know whether the existing tariff has a provision

1 dealing with unauthorized attachments?

2 A I recall that it does, but I would
3 have to look to verify that. I thought there was --
4 whether it was in the tariff or -- somewhere I've
5 read there's a five year go back. I'm not sure
6 where I got that information.

7 Q Well, I don't know that we want to
8 take the time to have you read that tariff right
9 now. I will tell you that it does not.

10 A Okay.

11 Q And obviously you can read it at your
12 leisure, but for purposes of this question assume
13 that the existing tariff does not have a provision
14 that deals with unauthorized attachments.

15 A Okay.

16 Q And my question is, is it Duke's
17 intention to apply this unauthorized attachment
18 penalty to attachments that were made before this
19 tariff provision went in to effect or goes in to
20 effect?

21 A It would be my opinion they would
22 apply it to any attachment -- unauthorized
23 attachments detected subsequent to the approval of
24 this tariff.

1 Q So attachments detected after the
2 tariff was approved, but perhaps made prior -- after
3 the tariff is approved; is that right?

4 A That would be my opinion, yes.

5 Q So it would not be Duke's intention to
6 apply the unauthorized attachment penalty only after
7 there was a baseline established after the tariff
8 went in to effect as to what attachments existed on
9 the poles?

10 A What do you mean by baseline? I'm not
11 sure I'm following that part of the question.

12 Q Well, one way to apply an unauthorized
13 attachment penalty in the tariff would be to say,
14 well, let's -- we will apply it only to attachments
15 that are made after the tariff goes in to effect, so
16 we'll have an inspection and audit to be sure we
17 know what attachments are out there, and we will not
18 apply a penalty to those, but any new attachments
19 which are made after that would be subject to the
20 penalty. Do you understand? That's one way --

21 A Yes.

22 Q -- you could apply it?

23 A That's one way you could apply it.

24 Q But that's not the way Duke would

1 apply it; is that correct?

2 A In my opinion I think they would apply
3 it towards unauthorized attachments detected after
4 the approval of this.

5 Q So the detection would be after the
6 approval, but the attachment could have been made
7 prior to the approval, right?

8 A It could have.

9 Q Now, when you say your opinion, you
10 are the sponsoring witness for this tariff, correct?

11 A That's correct.

12 Q And is there any reason why we can't
13 rely on your interpretation of this?

14 A I don't administer the tariff on a
15 day-to-day basis. I'm not in contact with Time
16 Warner Cable, so. Sometimes they may negotiate
17 something that may not be -- that may not be the
18 exact literal interpretation of the tariff. It --
19 as this one isn't defined perfectly, it could be
20 interpreted more than one way as you pointed out.

21 Q So what you're saying is it could be
22 enforced differently, but what you're giving us is
23 the interpretation of how the tariff could be
24 interpreted, correct?

1 A Yes. I'm giving you my interpretation
2 of it.

3 Q Do you know whether there's been an
4 agreement between Adelphia and Duke regarding
5 unauthorized attachments that may have existed on
6 Adelphia's plant prior to the time it was acquired
7 by Time Warner?

8 MS. SPILLER: I'm going to object. I
9 think this is well beyond the scope of
10 this matter.

11 MR. GILLESPIE: If he doesn't know,
12 fine.

13 MS. SPILLER: I would just like my
14 objection noted.

15 MR. GILLESPIE: Okay. Fair enough.

16 A I do not -- I'm not aware of such an
17 agreement.

18 Q Do you know whether the tariff would
19 be applied to attachments on poles or attachments
20 previously made by Adelphia?

21 A That are now Time Warner's
22 attachments?

23 Q Yes.

24 A Yes. It would be applied.

1 Q Does whether an attachment is
2 authorized or not relate in any way to the use of
3 the attachment?

4 A I wouldn't think so.

5 Q So an attachment authorized for one
6 use would not be considered unauthorized if it was
7 used for something else?

8 A My understanding, it wouldn't change.

9 Q It would not?

10 A Right.

11 Q Under the inspection paragraph there
12 is a reference to two different penalties for
13 unauthorized attachments, the lesser penalty to
14 apply where the attaching party has participated in
15 the required audit. Do you see that?

16 A Yes, I do.

17 Q What does Duke mean by participation
18 in the audit?

19 A We hire someone -- or when someone
20 actually does the inspection, to have someone from a
21 licensee to go along. I assume that's what it
22 means.

23 Q So according to this, a cable company,
24 for example, would have to pay for the audit and

1 would also have to pay to have someone -- in other
2 words -- let me rephrase it.

3 The cable company would have to pay
4 for Duke's contractor to conduct the audit, correct?

5 A Um-hmm.

6 Q And would also have to pay to have
7 someone else representing the cable company
8 participate in the audit, go along with the audit;
9 is that right?

10 A Yes. Because it would save everyone
11 money by having someone there that could resolve
12 issues as they go along on the audit.

13 Q It would save the cable company money
14 by having to pay not only the contractor but its own
15 employee?

16 A I think it would be to their benefit
17 to be along so they could resolve issues as they go
18 along.

19 Q Well, it wouldn't save anybody money,
20 would it?

21 A Well, if you resolve issues you don't
22 have to wrestle with later, it may very well save
23 you money.

24 Q What issues?

1 A A disagreement on something, whether
2 something's authorized or unauthorized, proper or
3 improper, safety issue or not.

4 Q Well, we're not talking about safety
5 issues here, are we? Aren't we talking about audits
6 to count attachments?

7 A Right.

8 Q So what kind of dispute do you think
9 there would be that would require that the cable
10 operator send an employee along?

11 A I couldn't fathom all the
12 possibilities. I don't know.

13 Q But you recognize that where there is
14 an audit, there could be questions about pole
15 ownership, for example, correct?

16 A There could be.

17 Q Whether that pole is actually owned by
18 Bell or by Duke, right?

19 A That could happen.

20 Q Whether the attachment is actually the
21 attachment of one attaching party or another,
22 correct?

23 A Yes.

24 Q Whether an attachment has actually

1 been authorized or not, right?

2 A Yes.

3 Q What process is provided for in the
4 audit for resolution of disputes about whether an
5 attachment is unauthorized?

6 A There's not a specific process in
7 there. I think it would just be a normal working
8 relationship between the parties.

9 Q I would like you to look at OCTA
10 Deposition Exhibit 4, page three of 23 of the
11 attachment, which is Duke Energy's response to staff
12 data request 27-003.

13 A Is this STAFF-DR-27-003 page three of
14 23?

15 Q Yes.

16 A Okay.

17 Q Do you see the reference there to
18 various orders and rules?

19 A Yes.

20 Q Have you reviewed each of those orders
21 and rules in the Ohio Edison tariff that's referred
22 to there?

23 A No, I have not.

24 Q Okay. Have you read any of them?

1 A I've seen pieces of them, but I have
2 not reviewed the whole rule.

3 Q Did someone provide you with the
4 pieces of those orders?

5 A Yes.

6 Q Who?

7 A Counsel.

8 Q But you haven't read the entire order?

9 A No, I have not.

10 Q Have you read portions of each of the
11 orders that are cited there?

12 A I read portions talking about the
13 penalty for unauthorized attachment.

14 Q Okay. Do you know what the status is
15 of the matters that are cited there?

16 A No, I do not.

17 Q Do you know whether they've been
18 enforced?

19 A No, I do not.

20 Q Do you know whether they've been
21 challenged?

22 A No, I do not.

23 Q Have you made any effort to determine
24 whether or not the provisions that you've looked at

1 are typical?

2 A I'm not sure how you define typical.

3 Q Do you know whether there are other
4 orders that address this issue that would be
5 different from those that you cite?

6 A I assume there are.

7 Q Did you ask your counsel to provide
8 you with a representative set of orders that deal
9 with this subject?

10 MS. SPILLER: I'm going to object to
11 any questions concerning attorney-client
12 documents.

13 Q Have you asked anybody to provide you
14 with a representative sample of the way that these
15 issues are handled by other utility commissions?

16 MS. SPILLER: Other than your counsel.

17 A No, I have not.

18 Q You make a reference there to a
19 decision of the Public Service Commission in New
20 York. Do you see that?

21 A Yes.

22 Q And you've read a portion of that
23 decision?

24 A Yes, I have.

1 Q Do you know whether the penalty of
2 three times the pole attachment charge was applied
3 to attachments identified prior to a baseline of
4 attachments being established?

5 MS. SPILLER: Object to the extent
6 it's been asked and answered.

7 A I do not know.

8 Q Have you reviewed tariffs other than
9 Ohio Edison's in Ohio to determine how they handle
10 or if they address unauthorized attachments?

11 A I've looked at AEP's, DP&L's.

12 Q Any others?

13 A No. Just the major Ohio utilities.

14 Q How do they handle the unauthorized
15 attachment issue? Do you know?

16 A I don't recall.

17 Q Do you remember what the penalty
18 provided for in the Ohio Edison tariff case?

19 A No. I don't recall off the top of my
20 head.

21 Q Did you look to see what penalty or
22 the way that the Ohio -- or the Cincinnati Bell
23 tariff deals with the issue?

24 A No. I did not look at Cincinnati

1 Bell's tariff.

2 Q Have you reviewed any FCC decisions
3 regarding unauthorized attachments?

4 A No, I have not.

5 Q Are you familiar with any FCC limits
6 on unauthorized attachment fees?

7 A No, I am not.

8 Q Did you ask anyone whether the FCC had
9 established limits on unauthorized attachment fees?

10 A No, I did not.

11 Q Are you familiar with an audit or
12 inspection conducted by -- well, let me put it this
13 way: Are you familiar with any audits conducted by
14 Duke to determine the number of attachments?

15 A No, I'm not.

16 Q Do you know whether there is any
17 higher incidence of safety violations, safety issues
18 on unauthorized attachments than on other
19 attachments?

20 A No, I do not.

21 Q Do you know whether Duke has made any
22 analysis to that effect?

23 A No, I do not.

24 Q Let's look at the paragraph or the

1 section entitled safety violations. This is in
2 Exhibit Number 7. In the first sentence you see the
3 reference to attachments that, quote, interfere with
4 the operation of facilities of the company?

5 A Yes.

6 Q Do you see that?

7 A Yes, I do.

8 Q Can you tell me what Duke means by
9 attachments which interfere with the operation of
10 facilities of the company?

11 A It would be ones that are not placed
12 appropriately for the operation of our company.

13 Q Does that mean attachments which may
14 have been placed properly at the time but that now
15 are in violation of -- that now would inhibit the
16 company's ability to use a pole for a certain
17 purpose?

18 A I suppose it could be interpreted that
19 way.

20 Q So this could apply if the company
21 wanted to use space that was occupied by the
22 attacher now?

23 A It could.

24 Q It could apply where Duke has caused

1 the interference such as placing an additional
2 facility on the pole after the cable attachment was
3 made?

4 MS. SPILLER: I'm going to object. I
5 don't think that's a fair interpretation.

6 A I suppose it could.

7 Q So in a situation where the cable
8 attachment was properly made and Duke has added a
9 transformer on top of it, which has created an NESC
10 violation, that situation would be treated as a
11 safety violation by the cable operator which would
12 interfere with the operation of facilities of the
13 company; is that right?

14 MS. SPILLER: I'm going to object to
15 the form.

16 Go ahead.

17 A I'm not sure how that would be
18 handled.

19 Q But the language would be subject to
20 that interpretation, would it not?

21 A You could interpret the language that
22 way, yes.

23 Q Would the language apply to a new
24 requirement made by Duke imposed after the

1 attachment was made by the attacher?

2 A In my opinion I don't think they would
3 be applied that way.

4 Q All right. Well, let me try to make
5 it a little more specific. Let's say that a cable
6 company has constructed its facilities consistent
7 with the National Electrical Safety Code which
8 requires that poles be bonded to grounds every tenth
9 pole, and that Duke has -- after the cable operator
10 has attached, has imposed a requirement that there
11 be bonds on every pole.

12 Would the failure of the cable company
13 to have bonds on every pole be subject to this
14 provision?

15 A What are bonds? Could you define that
16 for me?

17 Q Yeah. A bond is a wire that would
18 connect to different facilities, generally in order
19 to prevent there being uneven loads where there's a
20 lightning storm or something like that

21 MS. SPILLER: Object to the form of
22 the hypothetical.

23 A I don't know.

24 Q Would it be Duke's intention to apply

1 this sanction of \$200 for each violation to
2 situations that were created prior to the new tariff
3 being adopted?

4 A In my opinion it could be applied that
5 way.

6 Q Okay. There is a reference here to a
7 ten-day requirement for the licensee to remove,
8 rearrange, or change its wireline attachments at the
9 direction of the company. Do you see that?

10 A Yes, I do.

11 Q Where does that ten days come from?

12 A The ten days is just meant to give an
13 appropriate amount of time for someone to correct a
14 safety situation. Because if it's a safety
15 situation, obviously you want to correct it sooner,
16 not later.

17 Q And did you come up with the ten days,
18 or did somebody else?

19 A I don't recall.

20 Q So it's your view that all safety
21 violations should be corrected in ten days?

22 A If it's a safety violation you should
23 correct it within ten days.

24 Q Do you know what the National

1 Electrical Safety Code provides for with respect to
2 safety violations?

3 A No, I do not.

4 Q Do you have any idea how long it takes
5 Duke to repair safety violations that it has caused
6 and become aware of?

7 A I don't know.

8 Q Do you know whether it does it within
9 ten days?

10 A I do not know.

11 Q Would these sanctions be applied to
12 Duke if Duke failed to correct safety violations
13 within ten days?

14 A Duke is responsible for correcting its
15 own safety violations, so we're not going to
16 initiate a sanction against our own company.

17 Q So the sanctions would not apply where
18 Duke didn't fix its own safety violations within ten
19 days; is that right?

20 MS. SPILLER: This tariff doesn't
21 concern Duke's attachments. I think
22 you're --

23 MR. GILLESPIE: Are we going to let
24 the witness answer the question, or would

1 you like to be deposed?

2 MS. SPILLER: Note my objection to the
3 form of your question.

4 MR. GILLESPIE: All right.

5 A This doesn't apply to Duke. This is a
6 tariff for the attachments of the licensees.

7 Q So the sanctions would not apply to
8 Duke?

9 A The sanctions would not apply.

10 Q So it would be Duke's intention that
11 the licensee fix all safety violations of which Duke
12 had noticed within ten days, no matter how many such
13 violations were noticed on a particular day?

14 A It is their intent to have licensees
15 fix these within ten days.

16 Q So if Duke conducted an inspection and
17 found a number of things that did not meet the
18 standards that Duke has proposed, and notified a
19 cable company of the situations on day one, under
20 the tariff a cable company would be required to fix
21 every one of them within ten days; is that right?

22 MS. SPILLER: Objection; asked and
23 answered.

24 A That's what the tariff states.

1 Q Would the sanction in this section
2 apply to telephone companies?

3 A The sanctions apply to people to which
4 this tariff applies.

5 Q And the tariff does not apply to
6 telephone companies, correct?

7 A That is correct.

8 Q Do you know whether there are similar
9 sanctions in the agreements between Duke and the
10 phone companies?

11 A No, I do not.

12 Q You've not made inquiry to determine
13 whether or not that's true; is that right?

14 A That is correct.

15 Q Do you know whether any inspections
16 conducted on behalf of Duke have turned up
17 violations of the National Electrical Safety Code
18 that had been created by Duke?

19 A I'm not familiar with any of the
20 audits or inspections.

21 Q And you don't know whether any of
22 those violations have been corrected; is that right?

23 A I would not know.

24 Q Would you turn to Duke's response to

1 staff data request 27-04. It's page four of 23 in
2 the exhibit that you just looked at. It's Exhibit
3 4.

4 A I'm sorry. Which one again?

5 Q It's page four of 23 of the
6 attachment.

7 A Okay.

8 Q Okay. You see the reference there to
9 an Oregon Administrative Rule?

10 A Yes, I do.

11 Q Have you read that rule?

12 A Yes.

13 Q And was that provided to you by your
14 counsel?

15 A Yes, it was.

16 Q Did you ask it from counsel? Never
17 mind. I won't ask that.

18 Do you know whether -- do you know how
19 this rule has been applied, if it has?

20 A No, I do not.

21 Q Do you know what a safety violation
22 would be under the rule?

23 A No, I do not.

24 Q Do you know whether it would cover

1 violations that have been caused by the utility?

2 A No, I do not.

3 Q Do you have any idea whether this

4 particular provision is typical of utility

5 commissions?

6 A No, I do not.

7 Q Do you know whether any other utility

8 commission has such a rule?

9 A No. I have not researched commission
10 rules. No.

11 Q So have you made any effort to
12 determine whether or not there are any kind of
13 penalty provisions for so-called safety violations
14 imposed by other utility commissions?

15 A No, I have not.

16 Q Do you know whether there are such
17 provisions in the tariff anywhere?

18 MS. SPILLER: Anywhere?

19 Q Other than this.

20 A Other than the ones we discussed
21 previously, no.

22 Q Do you see the indemnification
23 provision, paragraph eight, section eight?

24 A Yes, I do.

1 Q Is there any -- does the company
2 intend that there be any reciprocal indemnification
3 going between the company and the licensee?

4 A No.

5 Q Do you know whether the FCC has made
6 any statements with regard to reciprocal
7 indemnifications?

8 A No.

9 MR. GILLESPIE: Let's go off the
10 record for a minute. Just let me look at
11 something else here.

12 (A brief recess was taken.)

13 Q Your testimony, which is Exhibit
14 Number 2, on page 12 of that testimony, the second
15 question under pole attachments addresses
16 unauthorized attachments and safety violations.

17 Now, am I correct from your prior
18 testimony that questions with regard to this part of
19 your testimony should be put to someone else?

20 A I'm not sure what you mean. I think
21 I've addressed the issue here. Is there some -- I'm
22 not familiar with the audit, if that's your
23 question.

24 Q Okay. And in terms of any possible

1 increase, for example, of maintenance expense from
2 unauthorized attachments, is that information that
3 you have?

4 A As far as has it has increased?

5 Q Well, tell me this: What increase in
6 maintenance expense is caused by unauthorized
7 attachments?

8 A Well, any time we find an unauthorized
9 attachment, of course it would have to be reported.
10 So someone's got to, you know, take this down. If
11 they're out there working on that particular line
12 and they see this, it's additional work, someone's
13 got to sign this.

14 Q How do you find an unauthorized
15 attachment?

16 A Someone has to go out there and
17 identify it.

18 Q Well, when Duke's maintenance workers
19 are in the field, do they know whether an attachment
20 is authorized or not?

21 A I'm not sure what information they
22 have available to them when they're out there in
23 their truck with the computer they have on board.

24 Q So you don't know?

1 A I don't know.

2 Q And when audits are conducted to count
3 the number of attachments, the expectation is that
4 the attaching parties will pay for that audit,
5 correct?

6 A Yes, it is.

7 Q And I gather that you, yourself, do
8 not know how prevalent unauthorized attachments by
9 attaching parties are?

10 A That's correct.

11 Q Do you know whether phone companies
12 have unauthorized attachments?

13 A I don't know.

14 MR. GILLESPIE: Okay. I think I'm
15 through for the moment with questions.
16 It's been a little bit confusing here to
17 decide what to ask you and what to ask
18 other people, which we had hoped to have
19 resolved before today. But I think for
20 our present purposes I have no further
21 questions.

22 I would reserve the right, subject to
23 objection by your counsel, to recall you
24 if we believe it's necessary, but

1 hopefully it would not be.

2 I don't know if staff has any
3 questions.

4 UNIDENTIFIED SPEAKER: Thank you for
5 asking. We don't have any questions.

6 MR. GILLESPIE: Do you have any
7 redirect?

8 MS. SPILLER: No, I don't. We will
9 take signature

10 (Deposition concluded at 12:50 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, Donald Storck, have read the transcript of
my testimony given under oath on November 21, 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.

DONALD STORCK

1 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
8 before the giving of his aforesaid deposition, the
9 said Donald Storck was by me first duly sworn to
10 depose the truth, the whole truth, and nothing but
11 the truth; that the foregoing is a deposition given
12 at said time and place by Donald Storck; 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 his 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 24th day of November, 2008.

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

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

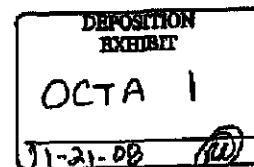
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In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.)	Case No. 08-709-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for a Tariff Approval.)	Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)	Case No. 08-711-EL-AAM
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.)	Case No. 06-718-EL-ATA

NOTICE OF DEPOSITION TO DUKE ENERGY OHIO

PLEASE TAKE NOTICE that pursuant to Rule 4901-1-21(F) of the Ohio Administrative Code, Intervenor The Ohio Cable Telecommunications Association ("the OCTA") will take the deposition of Donald L. Storck, and such other representatives of Duke Energy Ohio ("Duke") who are capable of responding fully to questions related to the subjects described in Attachment A before a person authorized to administer an oath at the offices of Vorys, Sater, Seymour and Pease LLP, 221 East Fourth Street, Suite 2000, Atrium Two, Conference Room II, Cincinnati, Ohio 45202, commencing at 9:00 a.m. on Friday, November 21, 2008. The deposition will be recorded stenographically and by video tape.

The subjects for examination are set forth below. To the extent that Mr. Storck is not prepared to answer questions fully concerning the matters in the listed subject areas, Duke shall designate and produce for deposition those people who are so prepared. If Mr. Storck is not prepared to answer questions in any subject area, Duke



should identify such person who is so prepared and set forth for each such person the matters on which that person will testify and shall provide such information to the OCTA at least five (5) business days before the deposition.

DEFINITIONS

1. The term "Duke" shall mean Duke Energy Ohio and all predecessors.
2. The term "Distribution Pole," when referring to a pole fully or partially owned by Duke, means a pole whose investment is contained within FERC Account 364, including drop and lift poles.

SUBJECTS FOR EXAMINATION AT DEPOSITION

1. All arrangements of any kind (including license agreements, joint use agreements, joint ownership agreements and any other kind of agreements or arrangements) that Duke has (and has had since 2000) regarding use of Duke's Distribution Poles for the attachment of facilities.
2. Duke's proposed pole attachment rate of \$14.42 per attachment, including all related calculations and backup calculations and records.
3. The number of Distribution Poles represented in Duke's Account 364 since 2000.
4. Duke's continuing property records for Account 364 since 2000, including all adjustments, if any, made to those records since 2000.
5. Any audits and/or safety inspections of Duke's Distribution Poles since 2000.
6. Duke's practices regarding retirement of Distribution Poles since 2000, including accounting for such retirements.

7. Duke's costs of removal of Distribution Poles and its salvage value for Distribution Poles since 2000.

8. The potential impact of Duke's proposed increase in pole attachment rates on the rates for residential electric service, including the impact on such rates on a per kilowatt hour basis.

9. The conduct of the "recent pole attachment audit" referred to at page 12 of Mr. Storck's direct testimony, including the accuracy of such audit, the basis for findings of "unauthorized attachments" in such audit, and the nature and basis for any findings of "safety violations" caused by Duke or members of the OCTA in such audit.

10. All prior pole attachment audits conducted by Duke since 1995.

11. The reason why Duke's existing Tariff does not address "unauthorized attachments."

12. The accuracy of Duke's records regarding permits for pole attachments applied for and obtained by parties that are attached to Duke's poles.

13. The conduct of all parties attached to Duke's Distribution Poles (including OCTA members and Duke) with response to the results of the recent pole attachment audit.

14. Duke's costs of maintaining, inspecting and inventorying the pole attachments on its Distribution Poles.

15. Duke's basis for and interpretation of the language in the "Applicability" section of Duke's proposed Tariff.

16. Duke's basis for and interpretation of the language in the "Agreement" section of Duke's proposed Tariff.

17. Duke's basis for and interpretation of the language in the "Attachment Charges" section of Duke's proposed Tariff.

18. Duke's basis for and interpretation of the language in the "Payment" section of Duke's proposed Tariff.

19. Duke's basis for and interpretation of the language in the "Application" section of Duke's proposed Tariff.

20. Duke's basis for and interpretation of the language in the "Technical Manuals" section of Duke's proposed Tariff.

21. Duke's basis for and interpretation of the language in the "Technical Specifications" section of Duke's proposed Tariff.

22. Duke's basis for and interpretation of the language in the "Replacement Costs" section of Duke's proposed Tariff.

23. Duke's basis for and interpretation of the language in the "Rearranging Costs" section of Duke's proposed Tariff.

24. Duke's basis for and interpretation of the language in the "Inspections" section of Duke's proposed Tariff.

25. Duke's basis for and interpretation of the language in the "Safety Violations" section of Duke's proposed Tariff.

26. Duke's basis for and interpretation of the language in the "Indemnification" section of Duke's proposed Tariff.

27. Duke's basis for and interpretation of the language in the "Supply of Electric Service" section of Duke's proposed Tariff.

28. Duke's basis for and interpretation of the language in the "Use by Third Parties" section of Duke's proposed Tariff.
29. Duke's basis for and interpretation of the language in the "Bond" section of Duke's proposed Tariff.
30. Duke's basis for and interpretation of the language in the "Default" section of Duke's proposed Tariff.
31. Duke's basis for and interpretation of the language in the "Expiration of Agreement" section of Duke's proposed Tariff.
32. The embedded and net costs of distribution poles owned by Duke affiliates in Kentucky and North Carolina.
33. The reasons for any differences in Duke's embedded and net pole costs when compared to the embedded and net pole costs of Duke's affiliates in Kentucky and North Carolina.
34. Any arrangements or plans by Duke for the provision of telecommunications, data or video or services, either alone or in conjunction with other entities.

Respectfully submitted,

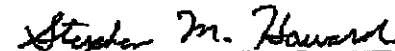
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon the following persons via email, this 13th day of November, 2008.


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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
Duke Energy Ohio for an)	Case No. 08-709-EL-AIR
Increase in Electric Distribution Rates)	
)	
In the Matter of the Application of)	
Duke Energy Ohio for Tariff)	Case No. 08-710-EL-ATA
Approval)	
)	
In the Matter of the Application of)	
Duke Energy Ohio for Approval)	Case No. 08-711-EL-AAM
to Change Accounting Methods)	

DIRECT TESTIMONY OF

DONALD L. STORCK

ON BEHALF OF

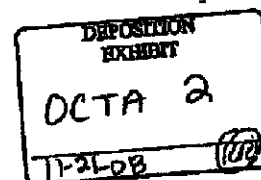
DUKE ENERGY OHIO

_____	Management policies, practices, and organization
_____	Operating income
_____	Rate Base
_____	Allocations
_____	Rate of return
_____	Rates and tariffs
<u>X</u> _____	Other: Cost-of-Service Study

August 8, 2008

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
Duke Energy Ohio for an)	Case No. 08-709-EL-AIR
Increase in Electric Distribution Rates)	
)	
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Duke Energy Ohio for Tariff)	Case No. 08-710-EL-ATA
Approval)	
)	
In the Matter of the Application of)	
Duke Energy Ohio for Approval)	Case No. 08-711-EL-AAM
to Change Accounting Methods)	

DIRECT TESTIMONY OF

DONALD L. STORCK

ON BEHALF OF

DUKE ENERGY OHIO

INDEX

Testimony supporting cost-of-service studies and changes in pole attachment conduit occupancy tariff.

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II. Schedules Sponsored By Witness.....	2
III. Distribution Of Proposed Revenue Increase.....	11
IV. Pole Attachments.....	12
V. Conclusion	15

Attachments:

DLS-1: Summary of Cost-of-Service Study

DLS-2: Pole Attachment Calculation

I. INTRODUCTION AND PURPOSE

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is Donald L. Storck, and my business address is 139 East Fourth Street,
3 Cincinnati, Ohio 45202.

4 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

5 A. I am employed by the Duke Energy Corporation (Duke Energy) affiliated companies
6 as Director, Rates Services.

7 Q. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL
8 QUALIFICATIONS.

9 A. I have a Bachelor of Science Degree in Accounting from Ball State University. I
10 completed an executive education program at the University of Michigan in 1999.

11 Q. PLEASE SUMMARIZE YOUR WORK EXPERIENCE.

12 A. I began my employment with Public Service Company of Indiana, Inc. (PSI), in
13 1976 as a Staff Accountant in the Corporate Accounting Department. From 1976
14 through 1994, I held several financial positions at PSI and at various times was
15 responsible for Corporate Accounting, Cash Management, Corporate Budgeting
16 and auditing of long-term fuel supply contracts. Following the 1994 merger
17 between PSI and The Cincinnati Gas & Electric Company to form Cinergy Corp.
18 (Cinergy), I held positions with the Cinergy-affiliated companies, supporting the
19 Gas Business Unit and Cinergy Resources, Inc., a non-regulated retail gas
20 marketing company.

1 I was the Financial Reporting Manager for Cinergy's Regulated Business
2 Unit from 1999 until April 2006. I was promoted to my current position in April
3 2006.

4 Q. PLEASE DESCRIBE YOUR DUTIES AS DIRECTOR, RATE SERVICES.

5 A. My responsibilities include developing cost-of-service studies, management policies
6 and practices, and organization documents. I am also responsible for tariff
7 administration.

8 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC
9 UTILITIES COMMISSION OF OHIO?

10 A. Yes. Most recently, I provided testimony in support of Duke Energy Ohio (DE-
11 Ohio or Company) gas rate case application in case number 07-589-GA-AIR.

12 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS
13 PROCEEDING?

14 A. I sponsor the cost-of-service studies, which are identified as Schedules E-3.2 and
15 E-3.2a through E-3.2h. I also support the changes to DE-Ohio's Pole Attachment
16 and Conduit Occupancy Tariff.

17 **II. SCHEDULES SPONSORED BY WITNESS**

18 Q. PLEASE DESCRIBE SCHEDULE E-3.2, INCLUDING E-3.2a THROUGH
19 E-3.2h, THE COST-OF-SERVICE STUDIES.

20 A. The cost-of-service study contained in Schedule E-3.2 is an embedded, fully
21 allocated cost-of-service study by rate class for the twelve-month test period
22 ending December 31, 2008, as adjusted. I prepared the cost-of-service study using
23 information provided by other DE-Ohio witnesses on Schedules B-1 through B-7,

1 C-1 through C-13 and D-1. The cost-of-service study allocates distribution-
2 related cost items such as plant investment, operating expenses, and taxes to the
3 various customer classes and calculates the revenue responsibility of each class.
4 These costs are then classified as customer- or demand-related. Finally, the cost-
5 of-service study calculates the revenue responsibility of each class required to
6 generate the recommended rate of return. Schedules E-3.2a through E-3.2h are
7 cost-of-service studies for each rate group that fully allocate costs by function.

8 **Q. PLEASE DESCRIBE HOW THE COST-OF-SERVICE STUDY IN**
9 **SCHEDULE E-3.2 IS ORGANIZED.**

10 **A.** Schedule E-3.2, page 1 of the cost-of-service study contains a summary of the cost
11 of service. Pages 2 through 20 show the complete detail of all of the elements of
12 the cost-of-service study. Pages 21 through 25 list the allocation factors, tax rates,
13 and rate of return data that were utilized in the cost-of-service study. The detailed
14 calculation and derivation of the allocation factors utilized in the cost-of-service
15 study are included in the work papers filed in this case.

16 **Q. WHAT JURISDICTIONAL CUSTOMER CLASSES WERE USED IN THE**
17 **COST-OF-SERVICE STUDY?**

18 **A.** The jurisdictional classes used in the cost-of-service study are as follows:

19 Residential - Rates RS, ORH, RS3P, TD, and CUR

20 Secondary Distribution Large - Rate DS

21 Secondary Distribution Large - Rate EH

22 Secondary Distribution Small - Rate DM

23 Secondary Distribution - Rates GS-FL and SFL-ADPL

1 Primary Distribution - Rate DP
2 Transmission - Rate TS
3 Lighting - Rates OL, UOLS, NSU, NSP, TL, SC, SE, and SL.

4 **Q. WHAT ARE THE ELEMENTS OF A COST-OF-SERVICE STUDY?**

5 A. The elements of a cost-of-service study consist of the following elements, which
6 are allocated to each rate class:

7 Operating and Maintenance (O&M) Expense
8 + Depreciation
9 + Other Taxes
10 + Federal and State Income Taxes
11 + Return (Rate Base x Rate of Return (ROR))
12 - Revenue Credits
13 = Class Revenue Requirement or Cost-of-Service.

14 **Q. WHAT GENERAL METHODOLOGY DID YOU USE FOR THE COST-**
15 **OF-SERVICE STUDIES?**

16 A. First, I functionalized costs into the specific utility functions, *i.e.*, production,
17 transmission, and distribution. I then classified the distribution and common
18 functional costs as customer- or demand-related, or a combination of each in some
19 instances. Transformer costs, for example, were split into customer and demand
20 components using the minimum size method, as explained in greater detail below.
21 Otherwise demand costs were allocated to customer class based on the maximum
22 non-coincident peak or average class group peak methodologies, as appropriate.
23 Customer-related costs are allocated to rate classes based upon the appropriate

1 customer-related allocator. Lastly, I allocated the demand and customer costs to
2 rate classes based on the cost causation guidelines published in the NARUC
3 "Electric Utility Cost Allocation Manual" and based upon my experience with
4 cost-of-service studies.

5 **Q. HOW DID YOU DERIVE THE CUSTOMER AND DEMAND**
6 **ALLOCATORS?**

7 **A.** The customer and demand allocators were developed by summarizing data
8 contained in work papers WPE-3.2a through WPE-3.2h. Specifically, the load
9 research data is contained in work paper WPE-3.2b.

10 **Q. HOW WERE THE MAXIMUM NON-COINCIDENT PEAK AND**
11 **AVERAGE CLASS GROUP PEAK kW DEMAND VALUES DEVELOPED**
12 **FROM DE-OHIO CUSTOMER LOAD RESEARCH DATA?**

13 **A.** Load research data and kWh sales levels for the twelve months ending December
14 31, 2006, were used to determine monthly peak day demand data. Load research
15 data and kWh sales information for the twelve months ending December 31, 2006,
16 were used because complete data for the twelve months ending December 31,
17 2007, was not available when I prepared the cost-of-service study. The monthly
18 demand information is included on pages 1 through 8 of work paper WPE-3.2b.
19 The following is an example of how the class group peak kW demand was
20 calculated for Rate RS for the month of January.

- 21 • Step 1 – Determine average demand by dividing the total kWh by the
22 number of hours in the month.

23 ○ $664,045,708 \text{ kWh} \div 744 \text{ hours} = 892,535 \text{ kW}$

- 1 • Step 2 – Determine the group peak demand by dividing average
2 demand from Step 1 by the class group peak load factor (from load
3 research data).
4 ○ $892,535 \div 64.290\% \text{ load factor} = 1,388,295 \text{ kW}$
5 • Step 3 – Add line losses by multiplying by the loss factor.
6 ○ $1,388,295 \text{ kW} \times 1.05887 \text{ loss factor} = 1,470,024 \text{ kW including}$
7 losses

8 This process was followed for each rate class for each month to determine each
9 rate class's monthly group peak. The average was calculated for the year to get
10 average class group peak by rate class. A similar procedure was used to develop
11 each class' maximum (single) non-coincident peak.

12 **Q. PLEASE DESCRIBE THE METHODOLOGY USED TO ALLOCATE**
13 **DISTRIBUTION PLANT TO THE VARIOUS CLASSES OF**
14 **CUSTOMERS.**

15 A. Several different allocation factors were used to allocate distribution plant to the
16 customer classes. First, distribution plant was grouped by the type of plant such
17 as substations, poles, conductors, etc., as shown on page 2 of Schedule E-3.2.
18 Then it was determined whether each type is customer- or demand- related factor.
19 Then each customer or demand related cost was allocated to rate class.

20 Substations are considered 100% demand-related and were allocated using
21 the average class group coincident peak demand ratios for the twelve months
22 ending December 31, 2006. This factor takes into consideration the load diversity
23 by rate group at the distribution substation level.

1 Poles and conductors are also 100% demand. They were first split into
2 primary and secondary voltages based on circuit-miles. The primary portion was
3 then allocated using the class group peak demand ratios for all distribution
4 customers and the secondary portion using the class group peak demand ratios for
5 only secondary distribution customers. The development of this allocator is
6 shown on Page 3 of work paper WPE-3.2a.

7 I allocated transformers between customer and demand using the
8 minimum size method, explained in further detail below. I allocated the demand-
9 portion of transformers among the customer classes using the maximum non-
10 coincident peak load ratios. The maximum non-coincident peak demand allocator
11 is appropriate because transformers are sized to meet the maximum demand and
12 are close to the customer so there is little or no load diversity. I then allocated the
13 customer-portion of transformers among the customer classes based on the total
14 number of customers.

15 Services are considered 100% customer-related and were allocated based
16 on a weighted-average number of customers. The weighting is based on an
17 engineering analysis that prices various service drop costs based on demands. For
18 example, it is twice as costly for a service drop at 100 kVA versus a service drop
19 at 25 kVA. Customers with an average demand of 100 kVA are weighted at twice
20 the cost of customers with an average demand of 25 kVA.

21 Meters, also 100% customer-related, were allocated based on a weighting
22 similar to services.

1 Q. PLEASE DESCRIBE THE MINIMUM SIZE METHOD USED TO
2 ALLOCATE TRANSFORMER COSTS BETWEEN CUSTOMER- AND
3 DEMAND-RELATED COSTS.

4 A. The minimum size study is shown on work paper WPE-3.2d, pages 7 and 8. The
5 minimum size method assumes that a minimum size distribution system can be
6 built to serve the minimum loading requirements of the customer. For
7 transformers, the study involved determining the minimum size transformer
8 currently installed by DE-Ohio. In this case, it is a 15 kVa transformer. DE-
9 Ohio's 2007 average cost of a 15 kVa transformer was \$1,027.

10 I used asset accounting records to determine the number of overhead and
11 pad-mounted transformers installed each year from 1910 to 2007. I then used the
12 Handy-Whitman Index for Utility Plant Materials (specifically line transformers)
13 to calculate the cost per transformer for each of the years 1910 to 2006, beginning
14 with a 2007 Handy-Whitman index of 401 and 2007 cost of \$1,027. For each
15 year, I multiplied the number of transformers by the cost per transformer to get the
16 minimum size cost per year. I summarized each of the years 1910 to 2007 to
17 arrive at the minimum size transformer cost of approximately \$89 million. This
18 was classified as customer-related costs. The difference between this customer-
19 related cost and the balance in FERC Line Transformer account 368 is the demand
20 component, resulting in allocation factors of 27.923% to customer, 72.077% to
21 demand. I allocated all transformer-related cost (plant, accumulated depreciation,
22 O&M, and depreciation expense) to customer and demand using these factors.

1 Q. PLEASE DESCRIBE THE METHODOLOGY USED TO ALLOCATE
2 COMMON AND GENERAL PLANT.

3 A. I functionalized common and general plant based on the functionalization of
4 salaries and wages presented on page 354 of DE-Ohio's 2007 FERC Form 1. The
5 allocation of Administrative and General Expense (A&G) is discussed below.
6 DE-Ohio used this method to unbundle electric rates in Case No. 99-1658-EL-
7 ETP, which was filed with, and accepted by, the Commission.

8 Q. PLEASE EXPLAIN HOW YOU ALLOCATED A&G EXPENSES USING
9 THIS METHODOLOGY.

10 A. I functionalized A&G expenses based on the same functionalization of salaries and
11 wages used for general and common plant. After I functionalized the expenses, I
12 allocated the expenses to rate classes based on the allocation of direct O&M for that
13 function. For example, A&G expenses functionalized as distribution were allocated
14 to rate classes based on each rate class's allocation of direct distribution O&M.

15 Q. DID YOU USE ANY OTHER ALLOCATION FACTORS IN THE COST OF
16 SERVICE STUDY?

17 A. Yes, there are many plant and expense ratios that were developed internally in the
18 cost-of-service study. The cost-of-service study lists each item's allocation factor
19 under the column identified as "ALLOC." These allocation ratios are presented on
20 Pages 23-25 of Schedule E-3.2 of the cost-of-service study.

1 Q. PLEASE INDICATE WHERE THE VARIOUS ELEMENTS OF COST OF
2 SERVICE CAN BE FOUND IN THE COMPANY'S COST OF SERVICE
3 STUDY IN SCHEDULE E-3.2.

4 A. A summary of each item is listed on page 1 of the cost-of-service study. Pages 2-9
5 contain detailed information on Rate Base; Pages 10-12, Operating and
6 Maintenance expenses; Page 13, Depreciation; Page 14, Other Taxes; Pages 15-19
7 and 22, Federal and State Income Tax; Page 20, the cost of service computation;
8 Page 21, ROR, tax rates and special factors; and Pages 23-25, Allocation Factors.

9 Q. AFTER YOU DETERMINED THE COST OF SERVICE BY RATE
10 CLASS, DID YOU PREPARE ANY OTHER ANALYSES FOR THIS
11 PROCEEDING?

12 A. Yes. Utilizing the results of the cost of service by rate class as described above, I
13 prepared a functionalized cost-of-service study for each rate class. The
14 functionalized study takes the allocated column by class and classifies it as either
15 distribution demand or distribution customer. I provided the results of the complete
16 functionalized cost-of-service studies to DE-Ohio witness Mr. James E. Ziolkowski
17 to use in the rate design process. The results of the functionalized cost of service
18 studies for each rate class are included in the filing as Schedules E-3.2a through E-
19 3.2h.

20 Q. WHAT DO THE RESULTS OF THE PROPOSED COST-OF-SERVICE
21 STUDIES SHOW?

22 A. Based on the allocation assumptions made and the equity rate of return of 11%
23 requested in this proceeding, the cost of service justifies a distribution revenue

1 increase of approximately \$86 million for the test period ending December 31,
2 2008, as adjusted for known and measurable charges. Attachment DLS-1 is a
3 summary of the cost-of-service study, which supports the proposed deficiency.

4 **Q. WHAT ARE THE PROPOSED REVENUES BY CUSTOMER CLASS?**

5 **A.** The proposed revenue levels utilized by Mr. Ziolkowski in this proceeding are
6 shown on Page 1 of Schedule E-3.2. The proposed revenues reflect a total increase
7 in distribution base revenues of approximately \$86 million.

8 **III. DISTRIBUTION OF PROPOSED REVENUE INCREASE**

9 **Q. WHAT METHODOLOGY DID YOU USE IN THIS PROCEEDING TO**
10 **DISTRIBUTE THE PROPOSED REVENUE INCREASE?**

11 **A.** I used a two-step process to distribute the proposed revenue increase. The first step
12 eliminated 100% of the subsidy/excess revenues between customer classes based on
13 present revenues. The second step allocated the rate increase to customer classes
14 based on distribution original cost depreciated (OCD) rate base.

15 **Q. PLEASE EXPLAIN IN GREATER DETAIL THE FIRST STEP THAT**
16 **ELIMINATES 100% OF THE SUBSIDY/EXCESS REVENUES.**

17 **A.** This step takes into consideration that the Company is not earning the same rate of
18 return on all customer classes. Although it is unlikely that equal rates of return
19 across all rate classes are achievable, nonetheless, large variances among the
20 customer classes should be eliminated. A comparison of revenues under present
21 rates and at the retail average rate of return is made and then 100% of that amount is
22 added to, or subtracted from, the rate increase to determine the proposed revenues in
23 this proceeding.

1 Q. WHY DID YOU PROPOSE A 100% REDUCTION IN THE
2 SUBSIDY/EXCESS IN THIS PROCEEDING?

3 A. In reviewing the present rate of returns by class shown on Page 1 of work paper
4 WPE-3.2g, there is a significant difference in those returns. A significant difference
5 requires a 100% reduction in order to move the classes to the average rate of return.
6 A 100% reduction means that each class pays the cost to serve that class, no more
7 and no less.

8 IV. POLE ATTACHMENTS

9 Q. PLEASE EXPLAIN DE-OHIO'S PROPOSED CHANGE TO ITS POLE
10 ATTACHMENT TARIFF.

11 A. DE-Ohio is proposing an increased pole attachment rate and adding provisions in
12 the tariff to clarify existing attachment and occupancy terms and address
13 unauthorized attachments and safety violations. The current pole attachment rate is
14 \$4.25 per pole attachment per year and the proposed rate is \$14.42 per pole
15 attachment per year.

16 Q. PLEASE EXPLAIN WHY THE COMPANY IS PROPOSING TO INCLUDE
17 PROVISIONS ADDRESSING UNAUTHORIZED ATTACHMENTS AND
18 SAFETY VIOLATIONS?

19 A. During a recent pole attachment audit, DE-Ohio found a number of unauthorized
20 attachments. These unauthorized attachments are problematic for a number of
21 reasons. First, unauthorized attachers are not paying their fair share and are in
22 violation of DE-Ohio's tariffs. Second, as the recent audit has shown, many
23 unauthorized attachments are in violation of the National Electric Safety Code

1 (NESC). Among other things, safety violations may compromise system reliability
2 for customers. Third, unauthorized attachments increase DE-Ohio's pole
3 maintenance expense. When DE-Ohio discovers an unauthorized attachment or
4 safety violation, it must incur time and expense in identifying the unauthorized
5 attacher or initiating efforts to have the safety violation corrected. The penalty
6 provisions are intended to deter unauthorized or improper attachments and, as a
7 result, protect the Company and other entities with authorized attachments.

8 **Q. WHAT ARE THE SAFETY CONCERNS WITH UNAUTHORIZED**
9 **ATTACHMENTS?**

10 A. Attachments need to be installed and maintained to comply with requirements of the
11 NESC, other governmental authorities, and the Company. Unauthorized attachments
12 or those that do not comply with applicable codes and regulations can interfere with
13 the operation of the Company's equipment. Furthermore, DE-Ohio maintains an
14 inventory of who has attached to its poles and what equipment is on the poles. This
15 information is very important to DE-Ohio's employees who may have to climb the
16 poles when responding to a trouble call. Unauthorized attachments, especially those
17 that are improperly installed, could impact DE-Ohio's ability to respond to outages
18 if there is a safety concern.

19 **Q. HOW MANY POLE ATTACHMENTS ARE CHARGED THE CURRENT**
20 **RATE?**

21 A. There are 118,624 documented pole attachments that are being charged \$4.25 per
22 pole attachment per year, which equals approximately \$504,151 annually. With the
23 proposed annual pole attachment charge of \$14.42, the annual collected amount is

1 \$1,710,558, an increase of \$1,206,407.

2 **Q. WHY IS A NEW POLE ATTACHMENT RATE NECESSARY?**

3 A. The current pole attachment rate was established in Case No. 92-1464-EL-AIR and,
4 consequently, has been in effect for 16 years. The current rate does not reflect DE-
5 Ohio's current costs of maintaining, inspecting, and inventorying the pole
6 attachments. The proposed rate reflects the current cost of pole attachments and
7 prevents electric utility ratepayers from subsidizing pole attachments.

8 **Q. PLEASE EXPLAIN HOW THE NEW POLE ATTACHMENT RATE WAS**
9 **DETERMINED?**

10 A. The current pole attachment rate is \$4.25. Section 224 of the Communications
11 Act (Pole Attachment Act) provides for the determination of maximum rates for
12 CATV by applying the Cable Formula based on FERC Form 1 numbers. Using
13 the current 2007 FERC Form 1 numbers, DE-Ohio has determined that the
14 maximum allowed rate for CATV pole attachments is \$14.42. The new
15 calculation is included as Attachment DLS-2.

16 **Q. WHAT IMPACT DOES THIS CHANGE HAVE ON DE-OHIO'S RETAIL**
17 **DISTRIBUTION REVENUE REQUIREMENT?**

18 A. Because the proposed change will generate \$1,206,407 additional revenue over
19 the current test year amount, it will reduce the revenue requirement for retail
20 distribution service by a like amount. As shown in the workpaper, WPC-3.1, for
21 Schedule C-3.1, Other Revenue for the Test Year is adjusted to reflect the
22 proposed change in pole attachment charges. Of course, to the extent the
23 Commission disallows the proposed change or approves a rate lower than the

1 \$14.42 annual charge I am proposing herein, the impact will be to increase the
2 revenue increase required from distribution service as shown in Schedule A-1.

3 V. CONCLUSION

4 Q. HOW WERE THE RESULTS OF YOUR COST-OF-SERVICE STUDIES
5 AND THE DISTRIBUTION OF THE RATE INCREASE UTILIZED IN
6 THIS PROCEEDING?

7 A. The results of the fully allocated and functionalized cost-of-service studies, which
8 include the proposed revenues discussed above, were supplied to Mr. Ziolkowski
9 for use in designing the proposed distribution rates for each rate class.

10 Q. WERE THE SCHEDULES AND ATTACHMENTS YOU SPONSOR
11 PREPARED BY YOU OR UNDER YOUR DIRECTION AND
12 SUPERVISION?

13 A. Yes.

14 Q. IS THE INFORMATION CONTAINED IN THOSE SCHEDULES AND
15 ATTACHMENTS TRUE AND ACCURATE TO THE BEST OF YOUR
16 KNOWLEDGE AND BELIEF?

17 A. Yes.

18 Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?

19 A. Yes.

LINE NO.	SUMMARY OF RESULTS	ITEM	REF	TOTAL DISTRIBUTION	2	3	4	5	6	7	8	9	10	TOTAL DISTRIBUTION
					RESIDENTIAL	SECONDARY DIST LARGEST	SECONDARY DIST LARGEST EN.	SECONDARY DIST SMALL DM.	SECONDARY DIST SMALL EN.	PRIMARY DISTRIBUTION	TRANSMISSION	LOCATIONS		
1	NET INCOME COMPUTATION													
2	GROSS ELECTRIC PLANT IN SERVICE	GP11	E-3.2, P. 2	\$1,763,313.48	5328,499,318	\$560,553.02	\$7,945,650	\$67,524,179	\$2,770,413	\$149,354,148	5316,903	544,440,389	31,763,263,408	
3	TOTAL DEPRECIATION RESERVE	DR11	E-3.2, P. 3	(977,842,999)	(324,369,876)	(105,281,638)	(2,420,134)	(22,151,852)	(198,597)	(17,905,755)	(20,086)	(22,782,085)	(717,962,085)	
4	TOTAL RATE BASE ADJUSTMENTS	RO11	E-3.2, P. 8	(165,873,869)	(62,354,029)	(165,167,530)	(77,670,000)	(6,284,164)	(16,478,358)	(16,478,358)	(28,823)	(3,171,880)	(616,879,588)	
5	TOTAL RATE BASE			509,450,549	612,236,586	378,471,552	4,428,881	37,737,470	1,586,931	16,170,294	129,254	16,149,169	979,499,536,563	
6	OPERATING EXPENSES													
7	TOTAL O&M EXPENSE	OP11	E-3.2, P. 12	165,845,194	98,455,450	41,244,226	377,271	7,303,549	224,141	12,638,522	71,982	2,359,380	166,945,724	
8	TOTAL DEPRECIATION EXPENSE	DE11	E-3.2, P. 13	48,891,014	26,264,715	16,853,512	222,841	1,942,904	78,543	4,378,798	11,045	542,956	48,891,014	
9	TOTAL O&M TAX INCL. EXPENSE	LBI1	E-3.2, P. 14	85,953,977	37,449,489	20,133,086	273,262	2,432,500	52,396,355	21,717	1,182,457	1,182,457	217,983,977	
10	TOTAL O&M TAX ALLOWABLE	OP11	E-3.2, P. 17	21,728,076	16,263,724	7,741,327	1,075,561	11,763,897	401,586	2,281,668	104,724	6,653,853	21,728,076	
11	TOTAL FEDERAL TAX ALLOWABLE	IT11	E-3.2, P. 17	21,728,076	16,263,724	7,741,327	1,075,561	11,763,897	401,586	2,281,668	104,724	6,653,853	21,728,076	
12	TOTAL STATE INCOME TAX ALLOWABLE	ST11	E-3.2, P. 18	31,594,394	21,262,484	11,254,768	168,845	1,244,168	54,291	3,074,016	8,820	559,316	31,594,394	
13	TOTAL REVENUE TAX	LO33	E-3.2, P. 20	358,674	309,666	131,313	1,163	15,477	640	33,956	0	7,264	358,674	
14	TOTAL OPERATING EXPENSE	OP11	E-3.2, P. 20	374,183,847	277,188,344	130,833,488	1,239,053	13,133,364	437,178	25,540,228	111,640	3,751,102	374,183,847	
15	RETURN ON RATE BASE	RT11	E-3.2, P. 20	85,133,844	46,513,528	28,377,523	405,038	4,534,110	141,599	7,864,063	17,238	1,882,148	85,133,844	
16	TOTAL OTHER OPERATING REVENUES	CS08	E-3.2, P. 29	396,532,745	218,674,634	117,878,524	1,674,422	16,289,156	648,789	32,888,752	128,345	1,206,620	396,532,745	
17	TOTAL ELECTRIC COST OF SERVICE													
18	ADJUSTMENT FOR INTERCLASS SUBSIDIZATION													
19	REQUESTED REVENUES	REQ1	E-3.2, P. 21	588,532,745	279,274,524	117,878,524	1,674,422	16,289,156	648,789	32,888,752	128,345	1,206,620	588,532,745	
20	PROMISED REVENUES	PRE1	E-3.2, P. 21	395,531,865	218,674,634	117,878,524	1,674,422	16,289,156	648,789	32,888,752	128,345	1,206,620	395,531,865	
21	DIFFERENCE (REQUIRED LESS PROMISED)													
22	TOTAL RETURN EARNED	RETE	E-3.2, P. 20 - Line 17	85,133,844	46,513,528	28,377,523	405,038	4,534,110	141,599	7,864,063	17,238	1,882,148	85,133,844	
23	RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
24	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
25	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
26	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
27	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
28	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
29	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
30	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
31	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
32	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
33	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
34	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
35	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
36	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
37	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
38	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
39	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
40	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
41	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
42	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
43	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
44	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
45	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
46	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
47	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
48	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
49	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
50	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
51	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
52	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
53	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
54	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
55	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
56	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
57	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
58	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
59	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
60	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
61	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
62	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
63	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
64	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
65	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.000007254	0.001008211	0.000035688	0.006060415	0.000000000	0.000000000	0.000000000	
66	TOTAL RATE OF RETURN EARNED	RORE		0.000535353	0.001080042	0.001000260	0.00							

Duke Energy Ohio

Pole Attachment Formula For
Electric Utility Owners Using FERC Part 191 Accounts (excluding telecommunication)
BASED UPON 2007 FERC FORM 1 DATA

A. Components

1 Rate of Return = 8.25%

2 Depreciation

Depreciation X Gross Pole Investment 2.45% = 1394,536,121 = 3.75%
Rate Net Pole Investment 5794,536,121 - 9400,036,916 - (3403,036)

3 Tax Expense

FERC Account 408.1+408.1(a)+408.1(b)+410.1+411.1+411.6
Gross Electric Plant Investment - Electric Plant Depreciation Reserve - ADIT (Acct. 192)
$$\frac{(79,892,692 + 124,566,232 + 14,281,177 + 44,371,772 - 38,632,146 - 1,310,357)}{7,110,498,368 - 2,490,695,365 - 12,076,398} = \frac{54,604,817}{4,609,803,003} = 6.87\%$$

4 Maintenance Expense

FERC Account 985
Investment in Accounts 364 + 365 + 369 - (Depreciation in 364 + 365 + 369) - (ADIT in 364 + 365 + 369)
$$\frac{26,170,919}{281,536,121 + 293,463,254 + 49,836,938 - 100,039,868 - 65,826,712 - 34,674,167 - 483,168 - 460,941 - 44,535} = \frac{26,170,919}{394,348,449} = 6.64\%$$

5 Administrative Expense

Total Administrative and General Expense = 240,386,696 = 5.22%
Gross Electric Plant Investment - Electric Plant Depreciation Reserve - ADIT (Acct. 192) 7,110,498,368 - 2,490,695,365 - 12,076,398

B. Distribute Pole Carrying Charge Rate % of Net Base Pole Cost Last Year

Rate of Return	8.25%
Depreciation Expense	3.75%
Federal, State, and Other Taxes	6.87%
Maintenance Expense	6.84%
Administrative Expense	5.22%
Total Annual Carrying Charge Rate	30.83%

C. Net Investment Per Base Pole

45.75% (Gross Pole Investment - Pole Depreciation Reserve) - ADIT for Poles
Number of Poles in Service
$$\frac{0.45 (284,536,121 - 800,036,916 - (403,036))}{246,901} = 953.21$$

D. Rate Calculation

1 Net Investment per Base Pole x Annual Carrying Charge = Annual Pole Cost
$$1691.71 \times 30.83\% = \$521.73$$

2 Annual Pole Cost x Attachment Percentage of Usable Pole Space = Attachment Rate for CAPM
$$521.73 \times 7.11\% = \$37.10$$



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dianne.kuhnell@duke-energy.com

Dianne B. Kuhnell,
Senior Paralegal

VIA OVERNIGHT MAIL AND ELECTRONIC MAIL

November 14, 2008

Stephen M. Howard, Esq.
Vorys, Sater, Seymour & Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008


Re: Case No. 08-709-EL-ATA

Dear Mr. Howard:

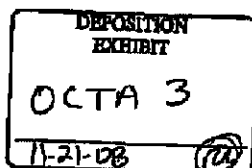
Enclosed please find the responses to Ohio Cable Telecommunication Association's First Set of Requests for Production of Documents and First Set of Interrogatories to Duke Energy Ohio with the exception of the response to Interrogatory No. 1 and Interrogatory No. 9.

Please note that the attachment to OCC-POD-01-009 is designated confidential and proprietary trade secret information and will be provided upon execution of a confidentiality agreement in the case.

Sincerely,


Dianne B. Kuhnell
Senior Paralegal

cc: Parties of Record



Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
First Set Interrogatories
Date Received: October 24, 2008

OCTA-INT-01-002

REQUEST:

Please identify all agreements that Duke has with other parties for the use of Duke's Distribution Poles. (Please include any such agreements entered into by Duke's predecessors which are still effective and any joint ownership agreements.)

RESPONSE:

Objection. This request is overly broad and burdensome to the Company as OCTA should be able to access agreements for use of distribution poles pertaining to their telecommunication companies' members as readily as the Company. See generally OAC 4901-1-16(7).

PERSON RESPONSIBLE: N/A

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
First Set Interrogatories
Date Received: October 24, 2008

OCTA-INT-01-003

REQUEST:

Does Duke share ownership of any Distribution Poles with any other entities? If the answer is affirmative, explain fully, to include the proportion of ownership held by Duke and percentages of ownership held by each such other party.

RESPONSE:

No.

PERSON RESPONSIBLE: Carl J. Council, Jr.

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
First Set Interrogatories
Date Received: October 24, 2008

OCTA-INT-01-004

REQUEST:

Please explain the impact of Duke's proposed increase in pole attachment rates on the average residential electric ratepayer.

- (a) How much would Duke's proposed increase in pole attachment rates impact the rate for a kilowatt hour of electricity for a residential ratepayer?
- (b) How much would Duke's proposed increase in pole attachment rates impact the monthly electric bill of an average residential utility ratepayer.

RESPONSE:

- a) This calculation has not been performed.
- b) This calculation has not been performed.

PERSON RESPONSIBLE: Donald L. Storck

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
First Set Interrogatories
Date Received: October 24, 2008

OCTA-INT-01-005

REQUEST:

Please explain fully Duke's accounting practices for retiring Distribution Poles.

RESPONSE:

Field personnel identify poles to be retired in Geographical Information System (GIS). Pole information is passed from GIS to the Capital Accounting system, Power Plant. Power Plant will use the characteristics of the pole record from GIS to match a continuing property record row. Power Plant will process a retirement for a pole at the average continuing property record row value.

PERSON RESPONSIBLE: Carl J. Council, Jr.

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
First Set Interrogatories
Date Received: October 24, 2008

OCTA-INT-01-006

REQUEST:

Please explain fully Duke's accounting practices for determining the cost of removal for Distribution Poles, and the costs of removal used for each size Distribution Pole since 2000.

RESPONSE:

Objection. This interrogatory is overly broad and unduly burdensome given the stated time parameter. As a further consequence thereof, this interrogatory seeks to elicit information that is either irrelevant or not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection and to the extent discoverable, the field charges all time and material associated with the removal to a project/activity combination that points to FERC Account 108. The labor component is recorded on time sheets and entered into our time keeping system. If there are any materials (extremely rare) these materials would be requisitioned through our materials system and charged to a project/activity combination that points to FERC Account 108. Projects charged with removal are captured in the Capital Accounting system, Power Plant. Cost of removal detail is not maintained in the accounting systems by property unit. The Power Plant system will allocate cost of removal charges on a project, to the various FERC utility accounts, based upon property units removed on the project. No change since 2000.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
First Set Interrogatories
Date Received: October 24, 2008

OCTA-INT-01-007

REQUEST:

Please explain fully Duke's accounting practices for determining the salvage value of Distribution Poles, and the salvage values used for each size and vintage Distribution Pole since 2000.

RESPONSE:

Objection. This interrogatory is overly broad and unduly burdensome given the stated time parameter. As a further consequence thereof, this interrogatory seeks to elicit information that is either irrelevant or not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection and to the extent discoverable, very few distribution poles are salvaged. Generally the only poles salvaged are those 1 -2 years old used as lighting poles. There are no records maintained of the number of poles salvaged. If a pole is salvaged, it will be returned to stock at the average unit price of the like kind poles held in stock. This will establish the salvage value recorded to the project. Projects charged with salvage are captured in the Capital Accounting system, Power Plant. Salvage detail is not maintained in the account systems by property unit. The Power Plant system will allocate salvage charges on a project, to the various FERC utility accounts, based upon property units removed on the project. No change since 2000.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
First Set Interrogatories
Date Received: October 24, 2008

OCTA-INT-01-008

REQUEST:

Please explain fully Duke's accounting practices related to any negative net salvage value for Distribution Poles. If those practices have changed in any way since 2000, including the costs assumed for pole removal or the amounts assumed for salvage value, please explain fully, provide the costs and salvage values used and provide a full justification of all costs and values used.

RESPONSE:

Objection. This interrogatory is overly broad and unduly burdensome given the stated time parameter. As a further consequence thereof, this interrogatory seeks to elicit information that is either irrelevant or not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection and to the extent discoverable, negative net salvage is a result of cost of removal expenditures exceeding salvage received. The accounting practices for cost of removal have been documented in OCTA-POD-01-006 and accounting practices for salvage have been documented in OCTA-POD-01-007. Providing justification of all costs and values used would be too time consuming and a voluminous amount of data. As stated above, the cost of removal and salvage is by project. Actual charges are specific to time and material and the average unit price of stock at the time the project is charged.

PERSON RESPONSIBLE: Carl J. Council, Jr.

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
First Set Interrogatories
Date Received: October 24, 2008

OCTA-INT-01-010

REQUEST:

Please explain whether any of the "safety violations" identified in the "recent pole attachment audit" were created by Duke, and explain, with respect to each such violation, what action Duke has taken to date to cure such violations.

RESPONSE:

Objection. This interrogatory is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Insofar as it concerns Duke Energy Ohio's proposed pole attachment tariff, the issue is whether the terms and conditions as set forth therein are reasonable and/or otherwise in compliance with R.C. 4905.71. This statutory provision refers to a third party's ability to attach to a public utility's distribution poles and pedestals.

PERSON RESPONSIBLE: N/A