

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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Michael L. Nicholson, :
:
Complainant, :
:
v. : Case No. 09-78-GA-CSS
:
The East Ohio Gas Company :
d/b/a Dominion East Ohio, :
:
Respondent. :

- - -

PROCEEDINGS

before Kerry K. Sheets, Hearing Examiner, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-F, Columbus, Ohio, called at 10:03 a.m. on
Thursday, May 21, 2009.

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1 APPEARANCES:

2 Michael L. Nicholson
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4 Youngstown, Ohio 44502

5 Pro se.

6 Carpenter, Lipps & Leland, LLP
7 By Mark A. Whitt, Esq.
8 Joel E. Sechler, Esq.
9 280 North High Street, Suite 1300
10 Columbus, Ohio 43215

11 On behalf of the Respondent.

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1 Thursday Morning Session,
2 May 21, 2009.

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4 HEARING EXAMINER SHEETS: The Public
5 Utilities Commission of Ohio has set for hearing at
6 this time and place Case No. 08-78-GA-CSS in the matter
7 of Michael L. Nicholson versus Dominion Gas. My name
8 is Kerry Sheets. I'm an Attorney Examiner with the
9 Commission, and I've been assigned to hear this case.

10 May I have the appearances of the parties,
11 please, starting with the Complainant? Would you give
12 your name and address.

13 MR. NICHOLSON: Michael Nicholson, 715
14 East Midlothian, Youngstown, Ohio 44502.

15 HEARING EXAMINER SHEETS: Very good.

16 MR. WHITT: Your Honor, on behalf of
17 Dominion East Ohio, Mark Whitt and Joel Sechler from
18 the firm Carpenter, Lipps & Leland, 280 North High
19 Street, Suite 1300, Columbus, Ohio 43215.

20 HEARING EXAMINER SHEETS: Do we have
21 any -- go ahead.

22 MR. WHITT: This is our witness, Your
23 Honor, Margaret Callahan.

24 HEARING EXAMINER SHEETS: Do we have any
25 preliminary matters to take care of this morning?

1 MR. WHITT: Nothing on behalf of East
2 Ohio.

3 HEARING EXAMINER SHEETS: Okay. We'll
4 start with the Complainant and your testimony, Mr.
5 Nicholson. Would you like to come up here on the
6 witness stand and I'll swear you in?

7 MR. NICHOLSON: Do I bring this with me?

8 HEARING EXAMINER SHEETS: If you have
9 exhibits that you'd like to offer, we can mark them
10 during your testimony.

11 MICHAEL L. NICHOLSON,
12 being by the Hearing Examiner first duly sworn, as
13 hereinafter certified, testifies and says as follows:

14 HEARING EXAMINER SHEETS: Be seated.

15 THE WITNESS: Thank you.

16 HEARING EXAMINER SHEETS: Now go ahead and
17 you can give a narrative style testimony of your
18 complaint.

19 DIRECT TESTIMONY

20 THE WITNESS: My name is Michael
21 Nicholson. I tried to change my gas supplier to
22 MXenergy and was denied that by Dominion Gas in a
23 letter that was stated from MXenergy saying that they
24 would not let me enroll due to the fact that Dominion
25 East Ohio rejected the enrollment in two thousand -- or

1 2/22/05 because of my account was 60 days in arrears.
2 In talking to some of these gentlemen, they said that
3 Dominion Gas is not in the market of making any money,
4 and I think that they should have let me gone anyway,
5 but going by a report that was -- do I give this to
6 you?

7 HEARING EXAMINER SHEETS: Excuse me?

8 THE WITNESS: Do I give these documents to
9 who?

10 HEARING EXAMINER SHEETS: Do you wish it
11 to be marked as an exhibit?

12 THE WITNESS: Well, this was originally my
13 formal Complaint with the PUCO. I'd like to have it
14 marked.

15 HEARING EXAMINER SHEETS: I have that, I
16 believe. Does the Company have a copy of it?

17 MR. WHITT: We do, Your Honor.

18 HEARING EXAMINER SHEETS: Do you wish to
19 have that marked as an exhibit?

20 THE WITNESS: Yes, please.

21 HEARING EXAMINER SHEETS: How many pages
22 do you have there?

23 THE WITNESS: This one is four pages.

24 HEARING EXAMINER SHEETS: That was the
25 original Complaint?

1 THE WITNESS: Yes.

2 HEARING EXAMINER SHEETS: Let's mark that
3 as Complainant's Exhibit 1.

4 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION
5 PURPOSES.)

6 HEARING EXAMINER SHEETS: And this is a
7 copy? We can keep this; right?

8 THE WITNESS: Yes, Your Honor. On the
9 second page is a letter from MXenergy saying that I was
10 rejected by them on 2/22/05 because of my account being
11 60 days in arrears. On the second page is the actual
12 showing of the account of estimates that Dominion does,
13 and on the last page is where it shows that on February
14 22nd, 2005, my plan of balance due was zero. My
15 account balance due was zero and that the three
16 previous readings before that by the gas company was
17 estimate, estimate, estimate. One of my feelings is
18 the fact that they -- you know, they usually read it
19 every other month. They should have, one, gave me some
20 leeway because they always overestimate and I always
21 get credits, that their readings aren't perfect, and
22 estimates, like I said, three times in a row, and I
23 wasn't due anything on February 22nd. When it says in
24 the letter of MXenergy that said I was denied due to
25 being in arrears, and according to their own statement

1 which came out in February -- or in November of 2005,
2 showed that --

3 HEARING EXAMINER SHEETS: Is this the
4 fourth page?

5 THE WITNESS: The last page shows the
6 history which I have circled at the time that they
7 rejected me shows no arrearage. Dominion Gas has a
8 history, I know with me, of doing things to make it
9 difficult to deal with them, such as overestimating
10 dramatically.

11 Exhibit 2 (indicating) --

12 MR. WHITT: Thank you.

13 THE WITNESS: It shows a transfer --

14 HEARING EXAMINER SHEETS: What are we
15 speaking of about that one? The document is
16 entitled --

17 THE WITNESS: It's a copy of the Dominion
18 bill.

19 HEARING EXAMINER SHEETS: Okay. And what
20 period does this cover?

21 THE WITNESS: Actually, I gave you the
22 wrong one. I'll change.

23 MR. WHITT: Do you need this back?

24 THE WITNESS: Yes. It's still Exhibit 2.

25 HEARING EXAMINER SHEETS: This is --

1 you're changing the exhibit now?

2 THE WITNESS: Yes.

3 HEARING EXAMINER SHEETS: Okay.

4 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION
5 PURPOSES.)

6 THE WITNESS: Sorry. I'm new at this.
7 Exhibit 2 shows that on this same account, that they
8 gave me a transfer debit of \$1,400.

9 HEARING EXAMINER SHEETS: Okay. Now, we
10 have to identify everything before we go -- for the
11 reporter.

12 THE WITNESS: Okay.

13 HEARING EXAMINER SHEETS: So Exhibit 2 is
14 your bill again?

15 THE WITNESS: This is a statement of a
16 bill that was billed to me by Dominion Gas of --

17 HEARING EXAMINER SHEETS: It's for what
18 period, sir, so we're on --

19 THE WITNESS: It's for a period of
20 November 21st -- of the date prepared was November
21 21st, 2007. It shows a transfer debit of \$1,401, which
22 automatically puts me in arrears. Well, it turns out
23 the transfer debit is from a property I never owned in
24 Akron, Ohio, and I believe Margaret Callahan helped me
25 with that and finally got it off in the month or two

1 later, but it's things like this that makes my account
2 go into arrears, and I'm not going to come up with
3 \$1,400 on a -- on somebody else's account, on a condo
4 in Akron, Ohio.

5 No. 3, Exhibit 3 is a letter actually from
6 East Ohio Gas Company.

7 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION
8 PURPOSES.)

9 THE WITNESS: I don't know how old this
10 thing is, but it's got to be pretty old. They're not
11 allowed to, even if I did owe them, transfer a
12 delinquent balance --

13 HEARING EXAMINER SHEETS: You're giving me
14 what now?

15 THE WITNESS: This is a letter.

16 HEARING EXAMINER SHEETS: This is a
17 letter, sir?

18 THE WITNESS: Or it's part of a manual,
19 we'll call it, from Dominion Gas.

20 HEARING EXAMINER SHEETS: Okay. It has at
21 the top East Ohio Gas Company, Original Sheet No. K5,
22 and begins with Delinquent Balance Transfer.

23 THE WITNESS: Right. Even if I did owe
24 them some money, a delinquent account on another one,
25 they were not allowed to transfer to my account, so it

1 happened before. It happened even with accounts I
2 didn't even know. Obviously, it puts my account into
3 arrears, making me owe money that I don't really owe.
4 At the time of the application with MXenergy, I was not
5 in arrears.

6 The latest way to make me show the pattern
7 of Dominion Gas, is Exhibit 4 --

8 HEARING EXAMINER SHEETS: This would be
9 four.

10 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION
11 PURPOSES.)

12 THE WITNESS: It's a letter and bills from
13 Dominion Gas. Being a landlord, I have the reversion
14 accounts, which, if a tenant moves out, so the pipes
15 don't freeze and I get the gas left on, it reverts back
16 to my name.

17 HEARING EXAMINER SHEETS: Excuse me. How
18 many properties do you own, sir?

19 THE WITNESS: Probably about 90.

20 HEARING EXAMINER SHEETS: About 90 that
21 you rent out, and you're saying when they move out,
22 then it goes back to you?

23 THE WITNESS: Yes. But I only did this on
24 certain properties because I learned my lesson. I
25 tried to get them all off now because it's not working

1 out too well. Then I got this letter dated March 27th
2 that the gas would be turned into my name on 4/9/2009.
3 In my opinion, the gas company should go out on the
4 4/9/2009 and do a reading or an estimate. So what I
5 did was I faxed to them -- on reversion, you're not
6 allowed to call it in and say don't turn on the gas,
7 you actually have to fax them saying you don't want it
8 to turn into your name. So I faxed this on 4/8, do not
9 turn -- do not put the gas into my name.

10 The next piece of paper --

11 HEARING EXAMINER SHEETS: So what you did
12 was you wrote on the bottom of their letter and then
13 you sent it back to them?

14 THE WITNESS: Right. I do that on any
15 reversions that I do not want transferred into my
16 name. The only other way is to cancel the account
17 completely, and it takes it off reversion permanently.
18 On this property, it's -- as you can see, they did an
19 actual reading on March 28th, even though it wasn't
20 going to revert to my name until April 9th. The gas
21 shouldn't have been turned on in my name at all, and on
22 April 27th they did another estimate on an empty
23 property for \$247.83. I have to fight with them, look,
24 I'm not supposed to have it in my name, one, and No. 2,
25 you read it nine, ten days before it was actually

1 supposed to be, and, three, if it's -- you know, it's
2 an estimate again. So on a property that has no gas
3 usage whatsoever I get a bill for \$247, and that's the
4 problem I have with this other bill. It's estimate,
5 estimate, estimate, and I don't like paying something
6 that I don't owe, so I have to fight -- I haven't got
7 the response on this one yet. I used to deal with
8 Margaret Callahan. She's transferred to a different
9 department, I guess, and I have no one to deal with
10 anymore except whoever answers the phone when I call.

11 HEARING EXAMINER SHEETS: You're still
12 referring to Exhibit 4?

13 THE WITNESS: Exhibit 4.

14 And on Exhibit 5, this is a stack of gas
15 bills for 5263 South Avenue, and it's basically the
16 same thing. I call the gas company up. I want an
17 actual reading. They give me an estimate. I want an
18 actual final. They give me an estimate. So my bill
19 goes from \$220.72 for supposedly a final bill on
20 estimate, estimate, estimate, and when it ends up I
21 actually owe is a hundred -- or is \$140.

22 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION
23 PURPOSES.)

24 HEARING EXAMINER SHEETS: This is a
25 property you own; right?

1 THE WITNESS: Property I own.

2 MR. WHITT: Your Honor, at this point I'm
3 going to make an objection to Exhibit 5. The Complaint
4 is specifically limited to allegations that the Company
5 improperly denied an enrollment at 715 East Midlothian
6 in the late 2004, early 2005 time period. Exhibit --
7 in Exhibit 4 we started talking about a property at
8 Rush Boulevard in 2009. Now we're onto a different
9 property in 2009 at South Avenue. These issues are
10 beyond the scope of the claim.

11 THE WITNESS: What my Complaint is is the
12 estimates. They always do this. They billed me for
13 gas that I don't owe. They expect me to pay for gas I
14 don't owe, such as the transfer, such as this. When
15 they're off on the bill by 75 percent -- if I owe 400,
16 fine, I owe 400, but if it's only supposed to be a
17 hundred and they say I'm in arrears for something I
18 didn't pay because I didn't owe it and then when it
19 gets to the final thing on the statement -- I'm just
20 showing a pattern of what the gas company does all the
21 time, that they're off by 75 percent, 50 percent, 60
22 percent, but they want me or the average Joe walking
23 down the street to pay for a bill they don't owe. I
24 asked for an actual reading. They don't do it. They
25 know I'm trying to transfer my gas. They do three

1 estimates in a row. Was it coincidental? Because I
2 never had three estimates in a row before. It just
3 happened to be the same time when I was trying to
4 transfer to another gas usage company. The gentleman
5 that stood up -- I forgot his name, sorry -- he was the
6 one that said the gas company is not there to make any
7 money. So they should get rid of a pain in the butt
8 like me as soon as possible, palm me off on MXenergy or
9 whoever, because I'm not happy with them, they're not
10 happy with me. So I'm just showing a pattern, and I
11 could keep on going forever and ever, because they're
12 way off on their estimates, overcharge people. It
13 could be a million dollars. I can't afford it, so I'm
14 in arrears, and now they have the new one, but they're
15 going to charge 1.5 percent late charge on bills that
16 are not paid in full. Well, if I don't owe it, why
17 should I pay it, but I'm going to be charged a penalty
18 anyway of interest payment on gas that I don't owe.

19 HEARING EXAMINER SHEETS: All right. Now
20 I'll rule on the objection. I'll allow the exhibits at
21 this point in his testimony, if that's his Complaint
22 that we've -- about estimates, getting too many
23 estimates or -- is that a statement of your Complaint?

24 THE WITNESS: Yes. The statement is that
25 due to their estimates, they want more money now than

1 is actually owed to them, and then when we finally
2 complain or get an actual reading down the road, it
3 proves that I have credits coming back. At the time of
4 the supposed transfer to MXenergy, though their
5 statements says I'm not in arrears, they're under the
6 understanding that I should pay all the time what is
7 billed even though it's a hundred percent wrong. I
8 don't mind -- and my history shows if I get an actual
9 bill, I make an actual payment.

10 HEARING EXAMINER SHEETS: What are you
11 showing?

12 THE WITNESS: This is Exhibit 1, the last
13 page of Exhibit 1. It shows I make the payment when I
14 know what I'm supposed to pay. They don't know what
15 I'm supposed to pay, they give me an estimate. The
16 pattern is they overestimate, stick it to the guy. If
17 he doesn't pay, now they're going to charge a late
18 charge, plus they're going to deny them to go to
19 another energy company. If they're not in it for
20 making money, why are they denying anybody?

21 I have one more last exhibit about -- this
22 is all current stuff, too. It's not stuff -- I have
23 tons of stuff that happened in the past. This is
24 current.

25 HEARING EXAMINER SHEETS: What is it that

1 you have?

2 THE WITNESS: This is another one for an
3 example. The bill was \$333 estimate. The final bill
4 was only \$46. Using the 715 East Midlothian property,
5 if those things are that far off on estimates, I'd owe
6 them a ton of money and I'd never catch up. I'd always
7 be in arrears. But I always catch up, pay in full when
8 I get an actual reading.

9 HEARING EXAMINER SHEETS: Do you wish that
10 one --

11 THE WITNESS: The last ones were -- No. 5
12 again is a stack of bills.

13 HEARING EXAMINER SHEETS: This would be
14 No. 6.

15 THE WITNESS: No. 6?

16 HEARING EXAMINER SHEETS: Well, you've
17 done five already.

18 THE WITNESS: Okay, No. 6.

19 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION
20 PURPOSES.)

21 THE WITNESS: No. 6 is again for a
22 property where it was estimated, estimated, estimated.
23 The total bill owed was \$333, according to the gas
24 company. The actual final bill was \$86, again off by
25 75 percent. I don't think I should or anybody should

1 pay what is not owed. Their idea that I was behind, I
2 was in arrears, one, was false, and even if I was, they
3 actually owed me money.

4 HEARING EXAMINER SHEETS: What was false,
5 sir?

6 THE WITNESS: On -- when I tried to
7 transfer, in my Complaint, Exhibit No. 1, on the second
8 page it said rejected my enrollment, Dominion East Ohio
9 rejected my enrollment, not MXenergy, because my
10 account was 60 days in arrears.

11 HEARING EXAMINER SHEETS: Okay.

12 THE WITNESS: I wasn't.

13 HEARING EXAMINER SHEETS: Now, what else
14 did you have? Is there anything you wanted to -- you
15 had another part to your statement there before I
16 interrupted.

17 THE WITNESS: Right. First off, I wasn't
18 in arrears, and if anybody is out there has a credit
19 coming to them, because they estimated three times in a
20 row, they should have a little bit of leniency and say
21 you know what, let's go out there and do an actual
22 reading because we skipped one in there and give the
23 guy an opportunity or the person to go to a different
24 energy company if they so desire. Dominion Gas stopped
25 me from doing that. I wasn't in arrears, and the

1 estimates are wild, and I've always got -- I've always
2 got credits coming back to me, as the account shows.
3 From Dominion Gas it shows -- it's the statement --
4 their statement shows at that point in time I was not
5 in arrears. It also shows in the future they always
6 give me credits back for the money that they
7 overestimated.

8 HEARING EXAMINER SHEETS: Does that
9 conclude your testimony?

10 THE WITNESS: One last statement is that
11 they owe me money from stopping me from going to 899
12 and MCF way back when, and I don't know how accurate it
13 is, but again it's an estimate that -- this was a
14 three-year contract, that going by from what I used and
15 for what I didn't get on a discount, the total is close
16 to \$4,000.

17 HEARING EXAMINER SHEETS: Okay. Do you
18 have any questions?

19 MR. SECHLER: Yes, Your Honor, we do.

20 CROSS-EXAMINATION

21 By Mr. Sechler:

22 Q. Good morning, Mr. Nicholson.

23 A. Morning.

24 Q. I want to start out, just a little bit,
25 with a little bit of background on the 715 East

1 Midlothian property that's at issue in your Complaint.

2 Now, you operate an insurance agency at 715 East

3 Midlothian?

4 A. Yes.

5 Q. And you own the building at that address?

6 A. Yes.

7 Q. And the building has a ground floor and a
8 basement?

9 A. Yes.

10 Q. And your insurance agency is on the ground
11 floor?

12 A. Yes.

13 Q. And there have been several other
14 businesses that have rented space from you at that
15 address?

16 A. Yes.

17 Q. One of those business is a company called
18 Penn-Ohio Recovery?

19 A. Correct.

20 Q. And another is called Delgen?

21 A. Correct.

22 Q. And another is Doctors Medical
23 Transportation?

24 A. Right.

25 Q. It's probably self-evident, but Dominion

1 East Ohio does provide gas service at 715 East
2 Midlothian?

3 A. Yes.

4 Q. And your account with DEO at 715 East
5 Midlothian has been continually open for about 15
6 years?

7 A. Correct.

8 Q. And 715 East Midlothian is heated by a
9 gas-fired furnace?

10 A. Four of them.

11 Q. Excuse me?

12 A. Four furnaces.

13 Q. There are four furnaces?

14 A. One meter, one account, four furnaces. I
15 pay all the utilities.

16 Q. And does each furnace service a different
17 office space within the building?

18 A. Yes.

19 Q. So there's one furnace for your insurance
20 office?

21 A. One for Penn-Ohio and my office, one
22 furnace for DMS, one furnace for Delgen, and one
23 furnace for -- well, it's an empty spot, so --

24 Q. Is there more than one water heater at 715
25 East Midlothian?

1 A. Just one.

2 Q. And the water heater is also gas fired?

3 A. Yes.

4 Q. And there is only one gas meter, however,
5 at 715 East Midlothian?

6 A. Yes.

7 Q. And you personally pay the gas bills for
8 that unit?

9 A. Yes.

10 Q. And you don't dispute that gas was being
11 used on a daily basis at 715 East Midlothian between
12 December 1st, 2004, and March 1st, 2005?

13 A. Yes.

14 Q. That's yes, you don't dispute that?

15 A. Yes, gas was being used.

16 Q. I want to talk for a few minutes, Mr.
17 Nicholson, about DEO's bills and your payments on those
18 bills at 715 East Midlothian. Did you receive bills
19 each month between December 1st, 2004, and April 1st,
20 2005, from DEO for the East Midlothian account?

21 A. Yes.

22 MR. SECHLER: Your Honor, may I approach
23 the witness?

24 HEARING EXAMINER SHEETS: You may.

25 MR. SECHLER: These are marked as DEO

1 Exhibits 1.3 through 1.7.

2 By Mr. Sechler:

3 Q. You can go ahead and look through those,
4 Mr. Nicholson. Let me know when you've had enough time
5 to review them.

6 A. Okay.

7 Q. We'll start with Exhibit 1.3. Is Exhibit
8 1.3 a copy of the bill you received for December 2004?

9 A. Yes.

10 Q. Is Exhibit 1.4 a copy of the bill you
11 received for January 2005?

12 A. Yes.

13 Q. Is Exhibit 1.5 a copy of the bill you
14 received for February 2005?

15 A. Yes.

16 Q. Is Exhibit 1.6 a copy of a second bill you
17 received for February 2005?

18 A. Yes.

19 Q. And is Exhibit 1.7 a copy of the bill you
20 received from March 2005?

21 A. Yes.

22 Q. Now I'd ask you to take a look at DEO
23 Exhibit 1.4, Mr. Nicholson, and referring you to
24 that DEO Exhibit 1.4, your December 2004 bill was
25 \$367.17?

1 A. I don't know.

2 Q. Let's flip over to DEO Exhibit 1.3, Mr.
3 Nicholson.

4 A. Okay.

5 Q. I'm referring you to that. Do you see
6 that your December 2004 bill was \$367.17?

7 A. I don't know that.

8 Q. Do you see where it says, "Please pay
9 account balance of \$367.17 by January 5, 2005"?

10 A. I see that. That wasn't my bill, though.

11 Q. But that is what Exhibit -- DEO Exhibit
12 1.3 says?

13 A. That's what DEO billed on an estimate on
14 December 15, 2004. Also, on the form above it shows
15 278.37 paid in full because it was an actual reading.
16 So I do not know what my bill was and neither does
17 Dominion, because it was an estimate.

18 Q. Although the amount that's on DEO Exhibit
19 1.3 for account balance is \$367.17, you decided to pay
20 only \$200 on that bill; is that correct?

21 A. Yes. What I did was I estimated by the
22 previous month of 278 and -- you know.

23 Q. If you'll turn with me to DEO Exhibit 1.7,
24 Mr. Nicholson.

25 A. Everything was paid in full at that time.

1 Q. The March 2005 bill marked as DEO Exhibit
2 1.7 shows you made two payments totalling \$675.68 on
3 March 7, 2005; correct?

4 A. That's what it shows. I don't know why
5 there would have been two checks, though.

6 Q. And those payments that you made on March
7 7th, 2005, were made after your enrollment with
8 MXenergy had been denied?

9 A. That's what it says.

10 Q. Now, other than the \$200 payment on
11 December 29th, 2004, and the March 7th, 2005, payments,
12 you didn't send any other payments to DEO between
13 December 1st, 2004, and March 7th, 2005?

14 A. I didn't owe any.

15 Q. So the answer to that is no?

16 A. The answer is no. I actually had a credit
17 coming from DEO.

18 Q. But the answer to that is no? We can
19 agree on that?

20 A. Uh-huh.

21 Q. Is that a yes?

22 A. What?

23 Q. Is that a yes?

24 A. Yes what? That I didn't owe or that I did
25 pay?

1 Q. That you didn't make any additional
2 payments other than on December 29th, 2004, and March
3 7th, 2005.

4 A. Right. I didn't know how much was owed.

5 Q. Let's talk a little bit about your
6 attempted enrollment with MXenergy, Mr. Nicholson. My
7 understanding is you attempted to enroll with MX in
8 December 2004?

9 A. Yes.

10 Q. You don't have a piece of paper showing
11 what all the terms of the MX offer were?

12 A. No, just I got the ONG thing, but not the
13 MX thing.

14 Q. What is -- what do you mean by the "ONG
15 thing"?

16 A. Ohio Natural Gas.

17 Q. And what is that?

18 A. It's if you want to change suppliers, they
19 give you a list of rules which you got to apply to.

20 Q. Did you receive that in December 2004?

21 A. I don't remember.

22 Q. And you found out your enrollment with
23 MXenergy had been denied in February 2005?

24 A. Yes.

25 Q. And your enrollment was supposed to begin

1 approximately 60 days from the date you attempted to
2 enroll?

3 A. It was December of 2005. I found out that
4 wasn't part of the energy thing. That's when I called
5 Dominion and got the history from Dominion. I thought
6 I was on MXenergy the entire time.

7 Q. And how did you find out in December 2005
8 that your enrollment had been denied?

9 A. They mailed me the letter. It really
10 didn't matter, the gas prices were cheap during the
11 summer, so -- the usage was low in the summer, so I was
12 more worried about the winter than the summer.

13 Q. Back to my original question, your
14 enrollment was supposed to begin approximately 60 days
15 from the December 2004 date when you sent the
16 enrollment in?

17 A. Correct.

18 Q. So the enrollment was supposed to begin
19 sometime in February of 2005?

20 A. Right.

21 Q. And your enrollment was to last 36 months?

22 A. Correct.

23 Q. Which means your enrollment was to run
24 from February 2005 through February 2008?

25 A. Correct.

1 Q. And you don't know if MXenergy could have
2 canceled your enrollment at any time?

3 A. For turnoff.

4 MR. SECHLER: Your Honor, may I approach
5 the witness again?

6 HEARING EXAMINER SHEETS: You may.

7 MR. SECHLER: What I've handed the
8 witness, Mr. Nicholson, is a copy of DEO Exhibit 1.8.
9 By Mr. Sechler:

10 Q. Let me know when you've had a chance to
11 review it, Mr. Nicholson.

12 A. I have reviewed it.

13 HEARING EXAMINER SHEETS: This is the same
14 as Plaintiff's Exhibit 1?

15 MR. SECHLER: Yes, Your Honor, it should
16 be.

17 By Mr. Sechler:

18 Q. Mr. Nicholson, is DEO Exhibit 1.8 a copy
19 of the statement account that was attached to your
20 Complaint?

21 A. Yes.

22 Q. And the handwriting on DEO Exhibit 1.8 is
23 yours?

24 A. Correct.

25 Q. And you did not receive DEO Exhibit 1.8

1 until approximately November or December of 2005?

2 A. Correct.

3 Q. And you're not disputing the accuracy of
4 any information contained on the Statement of Account?

5 A. I dispute the interpretation, that's all.

6 Q. So the answer is no?

7 A. No.

8 Q. I want to talk briefly with you, Mr.
9 Nicholson, about estimated readings. You understand
10 DEO issues bills on estimated readings?

11 A. All the time.

12 Q. And you understand that DEO is allowed,
13 under the rules of this Commission, to bill you for gas
14 using estimated readings?

15 A. Yes.

16 Q. Would you agree with me that remote
17 readings by DEO are accurate and reliable?

18 A. Majority of the time.

19 Q. Do you agree that customer readings are
20 accurate and reliable?

21 A. Majority of the time.

22 Q. Between December 1st, 2004, and March 1st,
23 2005, you did not read the meter at 715 East
24 Midlothian?

25 A. Say that again.

1 Q. Sure. Between December 1st, 2004, and
2 March 1st, 2005, you did not read the meter at 715 East
3 Midlothian, did you?

4 A. I don't remember.

5 Q. And you received DEO bills for 715 East
6 Midlothian that were based on estimated readings;
7 that's correct?

8 A. Right.

9 Q. And it was your standard practice to
10 estimate what you believe you owed DEO on estimated
11 bills?

12 A. Sometimes.

13 Q. And you would only pay the amounts you
14 estimated you owed on estimated bills; is that correct?

15 A. Sometimes.

16 Q. And when you say "sometimes," one of those
17 times was with regard to your December 2004 bill for
18 715 East Midlothian; is that correct?

19 A. Right.

20 Q. If I could for a moment, Mr. Nicholson,
21 I want to talk about the last issue you raised in your
22 testimony this morning which was about damages. Now,
23 in your Complaint you allege damages of \$4,055.13?

24 A. Yes.

25 Q. And you arrived at that figure by

1 multiplying the commodity cost of 15.42 MCF from your
2 December 2005 bill and multiplied that by 36 months?

3 A. Yes.

4 Q. And you understand the cost of gas
5 fluctuates from month to month?

6 A. I estimated.

7 Q. So the answer to that is yes?

8 A. Yes.

9 Q. And you would agree the price of gas in
10 your December 2005 bill did not stay the same for the
11 next 36 months?

12 A. Yes.

13 Q. And it would be fair to say that certain
14 months between February 2005 and February 2008 the
15 price of gas was below 15.42 MCF?

16 A. Could have been. Could have been higher.

17 Q. And you've talked in your testimony about
18 conversations you've had with Miss Callahan and other
19 people at DEO over the years?

20 A. Yes.

21 Q. Now, when you spoke with representatives
22 from DEO, they were always -- they've always been
23 courteous to you?

24 A. Not always. I mean, she has (indicating).

25 Q. Are you referring to Miss Callahan when

1 you say "she" has been?

2 A. She's been very helpful.

3 Q. Did DEO representatives always do their
4 best to answer your questions?

5 A. Not really.

6 Q. When you left a message for someone with
7 DEO, have they always returned your calls?

8 A. Actually, I never left a message except
9 maybe her because most of -- you eventually get to
10 somebody.

11 Q. Through the call center?

12 A. Through the call center.

13 (Discussion off the record.)

14 MR. SECHLER: That's all, Mr. Nicholson.
15 Thank you.

16 HEARING EXAMINER SHEETS: Do you want to
17 make any further statement with regard to what he just
18 questioned you?

19 THE WITNESS: Yes. On the Statement of
20 Account that he -- his last exhibit, he made a
21 statement that Dominion East Ohio records are pretty
22 darn accurate, and I'm going to go with that statement,
23 saying that they are accurate, and that on February
24 18th, 2005, which I did circle on their exhibit, the
25 amount in arrears was zero. So whatever happened on

1 the 22nd, four days later when I was rejected by
2 MXenergy because -- they rejected me because of DEO's
3 statement, I'm going to say that I didn't come up with
4 any master plan nine months before, because I didn't
5 find out about this until, in my exhibit, December
6 28th, 2005, that eleven months earlier there was a zero
7 balance on that date. So it wasn't preplanned that I
8 knew exactly what was going to happen after the fact,
9 that I owed nothing at that date and should not have
10 been rejected. I agree with the accuracy of this
11 statement, and it also shows the balances due me all
12 the time. And that's it.

13 HEARING EXAMINER SHEETS: Do you have any
14 on recross?

15 MR. SECHLER: No. Nothing further, Your
16 Honor.

17 HEARING EXAMINER SHEETS: You are excused,
18 Mr. Nicholson.

19 (Witness excused.)

20 HEARING EXAMINER SHEETS: Does the Company
21 have any witnesses?

22 MR. WHITT: We do, Your Honor. The
23 Company would call Margaret Callahan. May I approach?

24 HEARING EXAMINER SHEETS: Yes.

25 Raise your right hand.

1 MARGARET CALLAHAN,
2 being by the Hearing Examiner first duly sworn, as
3 hereinafter certified, testifies and says as follows:

4 MR. WHITT: Mr. Nicholson, do you have
5 this (indicating)?

6 MR. NICHOLSON: I don't believe. Is this
7 what you gave me?

8 MR. SECHLER: No. No, it's not.

9 MR. NICHOLSON: I do now.

10 (Discussion off the record.)

11 DIRECT EXAMINATION

12 By Mr. Whitt:

13 Q. Miss Callahan, could you please introduce
14 yourself to the Commission?

15 A. I'm Margaret Callahan. I'm a supervisor
16 in the Akron Call Center. I've been doing that for
17 about a year. I've been with the company 19 years, and
18 I've always been involved in customer accounts,
19 customer service.

20 Q. Miss Callahan, do you have before you a
21 document marked as DEO Exhibit 1.0 with various
22 attachments that are marked DEO Exhibits 1.01 through
23 1.10?

24 A. Yes, I do.

25 Q. Can you identify DEO Exhibit 1.0 and their

1 attachments as your Direct Testimony?

2 A. Yes, I can.

3 Q. Do you have any corrections or changes to
4 make to your testimony?

5 A. No, I do not.

6 Q. If I were to ask you the questions
7 contained in DEO Exhibit 1.0 today, would your answers
8 be the same as stated in the exhibit?

9 A. Yes, they would.

10 MR. WHITT: Your Honor, at this time the
11 Company would move for the admission, subject to
12 cross-examination, of DEO Exhibit 1.0 and the
13 attachment 1.01 through 1.10.

14 HEARING EXAMINER SHEETS: Very good. Do
15 you have any questions, Mr. Nicholson?

16 MR. NICHOLSON: Are they in here?

17 HEARING EXAMINER SHEETS: Excuse me?

18 MR. NICHOLSON: The one point --

19 MR. WHITT: They're all attached to her
20 testimony.

21 MR. NICHOLSON: That's this?

22 MR. WHITT: Yes. These are the same
23 thing.

24 MR. NICHOLSON: You want me to ask
25 questions?

1 HEARING EXAMINER SHEETS: Yes. Do you
2 have any questions?

3 CROSS-EXAMINATION

4 By Mr. Nicholson:

5 Q. Okay. Do you attest to the report 1.8
6 that is part of that package?

7 A. Yes.

8 Q. And in one of your statements in here it
9 says you calculate the accuracy of the arrearage?

10 A. Repeat that.

11 Q. It says, on Question No. 2, "What is the
12 purpose of your testimony?" And Paragraph 2, it
13 states, "DEO accurately calculated the arrearage"?

14 A. Question 1.2?

15 Q. Yes. Question No. 2, "In my testimony, I
16 respond to Mr. Nicholson's allegations." It goes down
17 further in No. 2, "DEO accurately calculated the
18 arrearage"?

19 A. I agree.

20 Q. Okay. On the DEO Exhibit 1.8 dated
21 2/18/005 (sic.), this is their Statement of Account
22 that was printed by DEO?

23 A. Yes.

24 Q. What has the arrearage been?

25 A. There are two entries for 2/18/05. You'll

1 notice the first one is the bill, and to the right it
2 says the balance is 675. Current charge is 135. When
3 you read an account statement, that tells me the
4 difference is the arrearage. The second line for
5 2/18/05 is the cancellation, is not a billing;
6 therefore, there's no information to the right.

7 Q. On the very last column it has account
8 balance?

9 A. Uh-huh.

10 Q. What is the account balance on 2/18 on the
11 second entry?

12 A. There are actually three entries. The
13 first one is 860. The second entry -- I can't tell
14 if that's 605, 75, I don't have my glasses, and then
15 zero.

16 Q. Okay. This Statement of Account reads
17 from top to bottom?

18 A. Bottom to top.

19 Q. So as of February 18th, 2005, the last
20 reading for that particular date would be balance of
21 zero?

22 A. That's incorrect. That's not a billing.

23 Q. What's the account balance, then?

24 A. February 18th, after your call, 675.68.

25 Q. What is the balance on the very last

1 reading on 2/18?

2 A. That's not a reading, sir. That's the
3 cancellation.

4 Q. What's the account balance? You stated
5 it's zero before. Is it still zero?

6 A. It's not a balance of zero. There's no
7 figure in the field.

8 Q. If there's no figure in the deal, what's
9 that mean?

10 A. It means it's not a billing line.

11 Q. There is an account balance?

12 A. It's not a billing line.

13 Q. It might not be either because you stated
14 a little while ago on your response that -- what was --
15 the line that was circled, zero, the third one up from
16 the bottom on 2/18, the last column, account balance,
17 you stated zero?

18 A. There's nothing in that column, that's
19 correct.

20 Q. So the balance account balance is zero?

21 A. No.

22 Q. What is it?

23 A. It's 675.

24 Q. How could it be 675? What's the next one
25 above it?

1 A. It's not a billing row, sir. I think we
2 need to --

3 Q. What is the number right above that 675?

4 MR. WHITT: Your Honor, at this point I'm
5 going to object. Number one, the question has been
6 asked and answered at least three times. Number two,
7 it's argumentative.

8 MR. NICHOLSON: Actually, it was answered
9 two different ways. It was no balance, and now it is a
10 balance in 675. It shows in the column that there's
11 nothing there.

12 HEARING EXAMINER SHEETS: One more time,
13 what's the answer to the question? What's the balance
14 for the third entry up for 2/18?

15 MR. NICHOLSON: Where the blank space is.

16 HEARING EXAMINER SHEETS: It's not a
17 billing, you said.

18 THE WITNESS: The blank space indicates
19 nothing.

20 By Mr. Nicholson:

21 Q. Thank you very much.

22 A. It's not nothing as a balance, sir. It
23 does not indicate any account balance information.

24 Q. On all the account balances there's a
25 number. On one, two, three, four, five, six, seven,

1 eight of them it's blank. Why is it blank?

2 A. Because those are not billing rows.

3 Q. So, on 8/18/2005, where it has an
4 estimate, system estimate of minus \$96.33 (sic.) due to
5 the fact that they overcharge, you cancel off the bill
6 and it shows nothing?

7 MR. WHITT: Object to the characterization
8 in the question of there being a mischarge.

9 MR. NICHOLSON: Overcharge.

10 MR. WHITT: Or overcharge.

11 HEARING EXAMINER SHEETS: I think she
12 answered the question about the space for the third
13 entry up on February 18th, 2005. Let's move on to
14 another question.

15 MR. NICHOLSON: That's it.

16 HEARING EXAMINER SHEETS: You have no more
17 questions for her?

18 MR. NICHOLSON: No.

19 MR. WHITT: Very brief redirect.

20 REDIRECT EXAMINATION

21 By Mr. Whitt:

22 Q. Miss Callahan, with reference to DEO
23 Exhibit 1.8, are Statements of Accounts such as
24 represented in DEO Exhibit 1.8 mailed to customers for
25 purposes of informing them of the charges due on their

1 bill?

2 A. Only at their request.

3 Q. How does DEO, in the normal course of
4 business, inform customers about their balance and
5 payments due?

6 A. By the monthly billing.

7 Q. Thank you.

8 MR. NICHOLSON: May I redirect that one,
9 too?

10 HEARING EXAMINER SHEETS: You can have a
11 recross.

12 RECROSS-EXAMINATION

13 By Mr. Nicholson:

14 Q. On that same line we had before, on the
15 line above it is 2/25/05?

16 A. Uh-huh.

17 Q. It goes across to billed amount is zero.
18 What is the billed amount for the line below it?

19 MR. WHITT: I'll object, Your Honor.
20 That's beyond the scope of my redirect.

21 HEARING EXAMINER SHEETS: I'll allow the
22 question. I'll let him go ahead. I'll give you
23 another question to counter.

24 By Mr. Nicholson:

25 Q. What is the billing amount for the

1 line below the billed amount on 2/18/005, the third
2 one?

3 A. The one below customer read of 2/25?

4 Q. No. The system estimate.

5 A. 2/18/05, minus 29 system estimate? That
6 is the bill cancellation.

7 Q. Minus 321.04?

8 A. Yes. That's a bill cancellation.

9 Q. Thank you.

10 HEARING EXAMINER SHEETS: Do you have any
11 more questions?

12 MR. WHITT: None, Your Honor.

13 HEARING EXAMINER SHEETS: You're excused,
14 then, as a witness.

15 (Witness excused.)

16 MR. WHITT: Your Honor, the Company has
17 no further witnesses. We would move for the admission
18 of DEO Exhibit 1.0 and the attachments 1.01 through
19 1.10.

20 HEARING EXAMINER SHEETS: Very good. At
21 this time I'm going to admit all of the exhibits into
22 evidence, the Company's and the Complainant's, and
23 we'll go off the record here briefly and discuss a
24 briefing schedule.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 (Discussion off the record.)

2 HEARING EXAMINER SHEETS: We'll go back on
3 the record, and we've discussed a briefing.
4 Simultaneous briefs will be filed on July 1st, and if
5 there's nothing further, I'll consider this matter
6 submitted on the record. Thank you for coming.

7 MR. WHITT: Thank you.

8 MR. SECHLER: Thank you, Your Honor.

9 (Thereupon, the hearing was concluded at
10 10:55 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings taken
by me in this matter on Tuesday, May 21, 2009, and
carefully compared with my original stenographic notes.

____s/Valerie J. Sloas_____

Valerie J. Sloas, Registered
Professional Reporter and Notary
Public in and for the State of
Ohio.

My commission expires June 8, 2011.

(VJS-619)

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