

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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Peter J. Wielicki, :
:
Complainant, :
vs. : Case No. 10-2329-EL-CSS
:
The Cleveland Electric :
Illuminating Company, :
:
Respondent. :
- - -

PROCEEDINGS

before Mr. Kerry K. Sheets, Hearing Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-C, Columbus, Ohio, called at 10:30
a.m. on Thursday, March 31, 2011.

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10 On behalf of The Cleveland Electric
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1 Thursday Morning Session,
2 March 31, 2011.

3 - - -

4 EXAMINER SHEETS: The Public Utilities
5 Commission of Ohio has set for hearing at this time
6 and place case number 10-2329-EL-CSS, in the matter
7 of Peter J. Wielicki. My name is Kerry Sheets, I'm
8 an attorney examiner with the Commission, and I've
9 been assigned to hear this case.

10 May I now have the appearances of the
11 parties, please, starting with the complainant. Give
12 your name and address, please.

13 MR. WIELICKI: My name is Pete Wielicki,
14 and the address is 3314 Fortune Avenue, Parma, Ohio,
15 44134.

16 EXAMINER SHEETS: Very good.

17 MR. GARBER: And on behalf of the
18 company, your Honor, Grant Garber from the law firm
19 of Jones Day, 325 John H. McConnell Boulevard,
20 Columbus, Ohio, 43215.

21 EXAMINER SHEETS: Okay. Are there any
22 preliminary matters to take care of this morning?

23 MR. WIELICKI: There is one, your Honor.

24 EXAMINER SHEETS: I'm going to ask
25 everybody in the room to speak up when they're --

1 MR. WIELICKI: Yes. It was brought to my
2 attention that one of the correspondence sheets that
3 I included in my complaint is not the same letter
4 that was sent directly to the company, so I would
5 like to make that correction here by entering the
6 same letter that they acknowledge that they received.

7 EXAMINER SHEETS: You can have that
8 marked as an exhibit if you'd like --

9 MR. WIELICKI: Yes, sir.

10 EXAMINER SHEETS: -- in the hearing.

11 MR. WIELICKI: Okay.

12 EXAMINER SHEETS: So we can mark that as
13 Complainant's Exhibit 1. If that's satisfactory.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 EXAMINER SHEETS: If you want to bring
16 that up here. Do you have any copies?

17 MR. WIELICKI: Yes. I've got, there's
18 four total here.

19 EXAMINER SHEETS: Give opposing counsel a
20 copy. I've got this one.

21 If there's nothing else, we will --

22 MR. GARBER: I guess, your Honor, we
23 have, as you are aware, submitted prefiled testimony
24 with marked exhibits and so we would just ask
25 formally that your Honor accept the exhibits that we

1 had premarked as CEI Exhibits A through E.

2 EXAMINER SHEETS: A through E. I just
3 used a number on his. That's fine. Why don't we
4 change Complainant's Exhibit 1 to Complainant's
5 Exhibit A just to make it consistent, and you can
6 introduce those if you want.

7 (EXHIBIT RE-MARKED FOR IDENTIFICATION.)

8 EXAMINER SHEETS: Mr. Wielicki, do you
9 care to present testimony?

10 MR. WIELICKI: Can I do it from here?

11 EXAMINER SHEETS: No. Come on the stand.

12 MR. WIELICKI: I'll testify in a
13 narrative. I'll have some documents and things too.

14 EXAMINER SHEETS: Well, bring your
15 material up here to the stand.

16 MR. WIELICKI: Okay.

17 EXAMINER SHEETS: Raise your right hand.

18 (Witness sworn.)

19 EXAMINER SHEETS: Now, go ahead and
20 present your testimony in a narrative style if you
21 would.

22 - - -

23 PETER J. WIELICKI

24 being first duly sworn, as prescribed by law, was
25 examined and testified as follows:

DIRECT TESTIMONY

MR. WIELICKI: I think that most of my testimony is included in the complaint itself, but I'd like to touch on a few points here. The basis of this complaint is derived from usage, which I have submissions here of a spreadsheet of usages, historical data concerning usages and temperatures, average temperatures derived from the National Weather Bureau concerning the disputed month, so I'd like to make this submission.

EXAMINER SHEETS: Has this already been submitted, or is this a new exhibit?

MR. WIELICKI: No. That's a new one.

EXAMINER SHEETS: Okay. We'll label this Complainant's Exhibit B.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. GARBER: Would your Honor entertain objections to this document at this time? I'm not sure if it would be appropriate to do so now or after Complainant has started to testify about the document. We do have some objections to this document.

EXAMINER SHEETS: Well, go ahead.

MR. GARBER: We do not object to the dates, the usage, and the billed amounts, but we

1 would object to the column that reads "Average
2 Temperature" because there's been no foundation laid
3 as to where that came from or any documents submitted
4 that reflect that, reflect those temperatures.

5 EXAMINER SHEETS: Very good.

6 Do you have any response?

7 MR. WIELICKI: Yeah. That
8 documentation was given to Mr. Garber during the
9 deposition that we had on Monday. It was derived
10 from the National Weather Service. He has that
11 documentation as part of exhibits in the deposition
12 packet.

13 MR. GARBER: And I guess I would just
14 respond, your Honor, first, that documentation has
15 not been entered into evidence in this hearing and,
16 as you know, the evidentiary record is the materials
17 that are submitted here today.

18 Secondly, to the extent Complainant would
19 cite to the National Weather Service data, that
20 additionally would be hearsay.

21 EXAMINER SHEETS: Okay. I'll allow you
22 to have a response.

23 MR. WIELICKI: Well, the source is
24 derived from the National Weather Service. To say
25 that that's hearsay -- it's a fact. It's the

1 National Weather Service is the accredited source for
2 most temperature-related disputes.

3 EXAMINER SHEETS: How did you get this
4 information?

5 MR. WIELICKI: From the National Weather
6 Service --

7 EXAMINER SHEETS: How exactly?

8 MR. WIELICKI: On the internet.

9 EXAMINER SHEETS: You got it off the
10 internet.

11 MR. WIELICKI: From their website.

12 EXAMINER SHEETS: Well, I'll let you go
13 ahead and testify. Just present your testimony.

14 MR. WIELICKI: Okay.

15 All right. This spreadsheet contains
16 seven years of historical data concerning usages and
17 billings and average temperatures broken down by
18 year. The dispute that we had with the company
19 occurred in August 1st of 2006, that is the row
20 here that is redlined.

21 In that month they recorded a usage of
22 2,750 kilowatt-hours for a charge of \$354.59. The
23 average temperature for that month was 81.4 degrees.
24 In comparison to other historical data here, that
25 2,750 kilowatt-hours amounts to about three times

1 what the average usage would have been -- or is over
2 that seven-year period.

3 At the end of the spreadsheet the average
4 temperature for those seven years, not including
5 August of 2006, is 80 degrees -- 80.9 degrees. The
6 average usage that we had over a six-year period,
7 which does not include August of 2006, was 1,515
8 kilowatt-hours. September's average in 2006 was
9 1,273, which is, according to the sheet here it's
10 1,257.

11 So the temperature variance in seven
12 years from 2004 to 2010 varied by 7.2 degrees, but
13 yet the variance in seven years of historical data
14 varied by 1,610 kilowatt-hours.

15 Just pointing out some other comparisons
16 here, the prior year the kilowatt usage was 2,098.
17 2007 it was 1,313. 2008 it was 1,140. The usages
18 even in the colder months have tended to be pretty
19 consistent for our lifestyle since we've been there.
20 We've had no major changes made to the house, no
21 equipment changes. Nothing out of the ordinary
22 happened in August of 2006 to warrant three times the
23 usage.

24 Even the average temperature for that
25 month is lower than it was in the prior year, but yet

1 the usage was more. The usage in that year was, in
2 2006, was even higher than it was in the subsequent
3 year of 2007 where the temperature was a degree
4 lower. So this usage sticks out like a sore thumb.
5 I have tried to justify it in every which way
6 possible that I can, and I can't do it.

7 I communicated it to the company in
8 September, late-September of 2006. The company's
9 response was basically a nonresponse. They were
10 unwilling to give me an explanation as to why this
11 unusual reading had occurred. They offered many
12 if-comes, maybes, things of that nature, but no
13 assistance whatsoever in regards to a firm
14 explanation.

15 Also, they offered to do nothing to go
16 any further than their reading off their meter to
17 justify it. And basically their comment to me was
18 "We are not required to go any further than to read
19 the meter."

20 From August of 2006 to roughly August of
21 2007 I continued to dispute that reading to no avail.
22 In August of 2007 I sent the company a restrictively
23 endorsed check which appears attached to the
24 complaint, it's my check number 3528, it's dated
25 August 19th of 2007, and it's in the amount of

1 \$172.86.

2 This check was accompanied by
3 correspondence which the company has acknowledged
4 receiving which basically identifies the check,
5 because the check was stapled to the correspondence,
6 and tells the company that the check is a
7 restrictively endorsed check and that it is meant
8 solely to -- as satisfaction on the account to that
9 point.

10 Prior to sending the check I called the
11 company and asked them for the address and the
12 company person who I were to send a check of that
13 type to. I was given the address that appeared on
14 the letter, which is attached to the complaint, and
15 the address was 76 South Main Street, A-RPC, Akron,
16 Ohio, 44308-1890 to the attention of the customer
17 service manager.

18 In the reference column I reference
19 "Payment in full." The letter reads basically "This
20 correspondence is to" -- wait. Excuse me. Excuse
21 me. Can I go back and get my other letter so I can
22 read it into the --

23 EXAMINER SHEETS: Yes.

24 MR. WIELICKI: This letter reads "This
25 correspondence concerns the statement dated August

1 17th, 2007. I have disputed the balance from
2 previous statements several times before pursuant to
3 the Federal Fair Credit Billing Act. I continue to
4 dispute this amount on the basis that your company
5 negotiated checks that contained 'paid in full'
6 restrictive endorsements.

7 "Kindly correct your records to reflect
8 this credit.

9 "Attached is my check 3528 in the amount
10 of 172.86 which is offered as complete accord and
11 satisfaction for this statement.

12 "Should you have any questions, feel free
13 to contact me in writing only at the address listed
14 below."

15 As evidence that the company did, in
16 essence, negotiate the check I have a copy of my
17 check statement which indicates on 8/24 the company
18 did negotiate the check.

19 EXAMINER SHEETS: You're offering this as
20 an exhibit.

21 MR. WIELICKI: Yes.

22 EXAMINER SHEETS: We'll mark that as
23 Complainant's Exhibit C.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. GARBER: Your Honor, I'm going to

1 have to object at this time to Exhibit C. Pursuant
2 to the Commission rules I asked Complainant prior to
3 the hearing if he had any additional correspondence
4 or other documents that he had not produced in
5 discovery or discussed at depositions, if he was
6 going to cite to those documents in the hearing, and
7 he said no.

8 This is the first time I've seen this
9 document after having, you know, gone through the
10 deposition and asking plaintiff this morning if there
11 was anything additional and so on, on that basis I'd
12 object to this document.

13 EXAMINER SHEETS: Perhaps he was
14 mistaken. I'll overrule your objection.

15 MR. WIELICKI: As I understand the
16 process for restrictively endorsed checks and accord
17 and satisfaction in the state of Ohio, if an amount
18 is offered which is less than the amount that is
19 claimed and it is sent to a specified address, a
20 specified individual who is to receive that
21 information, and is negotiated, accord and
22 satisfaction has taken place.

23 This check is a contract and the check --
24 on the back of the check the restrictive endorsement
25 reads -- and this is a copy. This is not a

1 submission, but this is a copy of what I used as the
2 restrictive endorsement on the back of the check.
3 It's in red letters. I'll read it into the record.

4 EXAMINER SHEETS: Okay. Go ahead.

5 MR. WIELICKI: It says "Restrictive
6 endorsement. Negotiation of this check voids all
7 previous agreements and contracts, constitutes full
8 accord and satisfaction without protest, and voids
9 all future claims on this account. Payee further
10 agrees to remove all derogatory credit bureau
11 information."

12 As I stated, the --

13 EXAMINER SHEETS: Excuse me. Did you
14 wish to offer that as an exhibit?

15 MR. WIELICKI: It really is part of the
16 exhibit already because it's on the back of the check
17 that's in the complaint.

18 EXAMINER SHEETS: That's fine.

19 MR. WIELICKI: Okay. A copy of that
20 check is in the complaint. The reason I brought this
21 to the attention is that the writing is in red and
22 when I made the copy of the check, it only came out
23 in black.

24 So not only was the check conspicuous in
25 nature, but it was attached to a letter which

1 identified the check's purpose and it was addressed
2 to the company and to the person who was to handle
3 matters of this type.

4 The company did not return the check, nor
5 did they return an amount equal to the check within
6 the 90-day time span prescribed by law should they
7 have found that there was an error, that they made an
8 error and cashed it incorrectly.

9 So after that 90-day period my account
10 should have been credited to zero status, and it was
11 not, and it hasn't been to this date. Nor have I
12 ever been given an explanation from the company to
13 this date as to what happened here.

14 The thing about historical data is that
15 the more of it you have the easier it is to hone in
16 on something that's either right or wrong. And based
17 on seven years worth of data with no lifestyle
18 changes there is something wrong here. And I think
19 as a customer I would have at least been given the
20 attention of somebody to come out and look at the
21 meter to make possible explanations as to what might
22 have happened, could have happened.

23 My discussions with the company did
24 include some things that may have happened that were
25 in error on their part such as an incorrect meter

1 read. There's a lot of ifs and ands, but no effort
2 was made on the part of the company to assist me in
3 feeling comfortable with getting billed three times
4 my usage.

5 And my opinion for the record is that
6 it's sad that when -- and it says a lot for
7 competition because if I had my option to buy power
8 from another company like I can buy cable power --
9 cable service, like I can buy automobiles, things
10 like that, we would not even be here today because
11 this issue should have been addressed in an
12 atmosphere where the company was looking out after my
13 best interests as a customer. But, unfortunately, as
14 the system stands today they don't have to do
15 anything. They don't care.

16 And, unfortunately, I don't have the
17 option to buy my power from another company like I
18 can my cable service until I do find a company who
19 cares. And I guess that's my testimony, your Honor.

20 EXAMINER SHEETS: Do you have any
21 questions?

22 MR. GARBER: Yes, your Honor.

23 - - -

24 CROSS-EXAMINATION

25 By Mr. Garber:

1 Q. Mr. Wielicki, you said that you began
2 disputing the -- and by the way, if I refer to the
3 bill dated August 16th, 2006, from CEI as the
4 "August 2006 bill," will you understand that that's
5 what I mean by the term?

6 A. Yes.

7 Q. You stated that you began disputing the
8 August 2006 bill in September of 2006, right?

9 A. That's correct.

10 Q. Did you and the company make an agreement
11 for partial payment of that bill?

12 A. At that time, yes, we did.

13 Q. And it's your testimony that the company
14 agreed to give you or allow you to have partial
15 payment of \$109 on the August 2006 bill, right?

16 A. That's correct.

17 Q. Now, the only monthly usage you're
18 disputing in this case was the usage associated with
19 the August 2006 bill, right?

20 A. That's correct.

21 Q. And the only bill amount that you're
22 disputing in this case is the amount associated with
23 the August '06 bill.

24 A. Correct.

25 Q. So you're not disputing the monthly

1 usages or amounts associated with any other bills.

2 A. No.

3 Q. Now, when you contacted -- the first time
4 you contacted CEI about this, I believe you said it
5 was in late-September '06?

6 A. Yes.

7 Q. You don't know who you spoke with at that
8 time, correct?

9 A. They wouldn't give a name.

10 Q. And I believe you spoke with -- your
11 testimony is you spoke with two different people
12 during that call?

13 A. That's correct.

14 Q. And it's your testimony that neither of
15 them gave you -- told you their names.

16 A. That's correct. Based on a security
17 policy that the company supposedly has.

18 Q. They told you that there was a security
19 policy that CEI has to not give names?

20 A. Yes.

21 Q. So you didn't even get a first name for
22 either of the two individuals.

23 A. No.

24 Q. And you said that during the September
25 call CEI agreed to allow you to pay \$109 on the

1 '06 bill and that would take care of the bill, right?

2 A. That's correct.

3 Q. And you said that that first conversation
4 lasted about a half hour?

5 A. Plus or minus.

6 Q. More or less a half hour, right?

7 A. It was a long conversation.

8 Q. And it's your testimony that the
9 agreement whereby CEI accepted partial payment was
10 made right there on that call, right?

11 A. That's correct.

12 Q. Right there on the spot. Correct?

13 A. Correct.

14 Q. So it wasn't necessary to make any
15 follow-up calls to discuss or to work out that
16 agreement?

17 A. I had made follow-up calls because they
18 informed me that it would take two billing cycles for
19 the credit to appear. After two billing cycles had
20 gone by and I hadn't noticed the credit, I called
21 back.

22 Q. But you say that CEI agreed to that
23 \$109 on the very first call, right?

24 A. That's correct.

25 Q. CEI didn't say "Well, hang on a second,

1 we need to investigate this first"?

2 A. At first they did. Basically they asked
3 me what they wanted me to have done [verbatim]. And
4 I said, "Well, I don't know. I want you to come up
5 with a valid reason for what I'm terming as
6 inordinate usage." And at that point we got -- I got
7 a lot of well it could be this, it could be that, it
8 could be this, inclusive of possibly a bad meter
9 read. I went over the historical data that I had at
10 that point inclusive of historical data that my
11 mother had when she owned the house, and we never
12 incurred a usage that was three times what it
13 normally is.

14 Q. Okay. Let me stop you there. But it's
15 your testimony that CEI agreed to give you that
16 \$109 credit in one phone call without them performing
17 any other investigation and calling you back,
18 anything like that, right?

19 A. That's correct.

20 Q. They didn't ask you about the types of
21 appliances that you used in your home during that
22 call, did they?

23 A. We talked about appliances, yes.

24 Q. They didn't ask you to provide a meter
25 read, did they?

1 A. No, they didn't.

2 Q. They didn't say that they needed to or
3 CEI didn't say that it needed to obtain a check read
4 on your meter, did they?

5 A. They asked me if I would like them to do
6 that and my comment to them basically was "Do
7 whatever you need to do." I don't know what you need
8 to do. I'm unfamiliar with the process.

9 Q. So they didn't say, "Well, before we give
10 you a credit, we want to take a check read on the
11 meter." They didn't say that, right?

12 A. It was discussed, but they didn't say
13 that they wanted to do that.

14 Q. They just gave you the credit right on
15 that call.

16 A. That's correct.

17 Q. And you said that you told them you were
18 sending a check with a restrictive endorsement?

19 A. Yes.

20 Q. And they didn't really seem to have a
21 reaction to that; that's your testimony?

22 A. That's correct.

23 Q. You stated on direct that the person you
24 spoke with at CEI told you to send it to a particular
25 address?

1 A. Yes.

2 Q. And that address I believe is the one at
3 76 South Main Street that you mentioned on direct?

4 A. Correct.

5 Q. And they told you to send it to an
6 individual with a particular title.

7 A. Yes.

8 Q. And that title was Customer Service
9 Manager?

10 A. Correct.

11 Q. Mr. Wielicki, you do not have a copy of
12 the \$109 check that you sent in August 2006, right?

13 A. No, I do not.

14 Q. You don't have a copy of the cover letter
15 that you sent in August 2006, right?

16 A. No, I do not.

17 Q. Now, you said that the reason why the
18 company agreed to \$109 was because it was -- it was
19 because your usage in August '06 was roughly three
20 times higher than normal, that's the basis of that
21 figure?

22 A. Correct.

23 Q. Now, after you had this first
24 conversation you contacted -- you called CEI again in
25 either October or November of 2006, right?

1 A. Yeah. Yes.

2 Q. And the purpose, you say, was to follow
3 up on that initial agreement that you made with the
4 company.

5 A. Right.

6 Q. You didn't get any names of any
7 individuals from CEI during that call either.

8 A. No.

9 Q. In fact, you didn't get the names from
10 CEI personnel during any call you made to CEI.

11 A. No, I didn't.

12 Q. And you say the reason for that is
13 because CEI wouldn't tell you the names because they
14 had a policy against doing that.

15 A. That's correct.

16 Q. Now, after October-November '06 you're
17 not sure when the next time was you called CEI about
18 this, right?

19 A. No, I don't have exact dates, but there
20 were a number of communications that were sent to --

21 Q. I'm talking about phone calls.

22 A. Yeah.

23 Q. I'm talking about phone calls. You don't
24 know the next time you called CEI about this, right?

25 A. Not the exact date, no.

1 Q. Well, you don't even know if you made any
2 phone calls in 2007, right?

3 A. No, I don't. I don't keep a phone log.

4 Q. Okay. You have no idea how many phone
5 calls you made in 2008.

6 A. No, I don't.

7 Q. And it's possible you didn't make any
8 calls in 2008.

9 A. It's possible I didn't. As far as I was
10 concerned the matter should have been closed and
11 there was nothing else I could discuss.

12 Q. You don't know how many phone calls you
13 made in 2009 to CEI about this?

14 A. No, I don't.

15 Q. It's possible you didn't make any calls.

16 A. It's possible.

17 Q. And you don't know the dates of -- other
18 than the letters attached to Miss Reinhart's
19 testimony and the letter you say you sent in August
20 of 2006, you don't know the dates of any other
21 letters you sent to CEI, right?

22 A. Yeah, there were other letters sent to
23 CEI.

24 Q. You don't know the dates of those
25 letters, do you?

1 A. They were on the letters that were given
2 to you at the deposition.

3 Q. But you don't know -- okay. We'll come
4 back to that. You don't have copies of the actual
5 letters you sent to CEI, right?

6 A. Here today?

7 Q. Yeah.

8 A. Yeah.

9 Q. Okay. I want you to give me the dates of
10 the letters that you say you sent to CEI.

11 A. There was a letter sent on January 1st
12 of 2007, there was a letter sent on January 28th of
13 2007, a letter sent on June 14th of 2007, and then
14 of course the one dated August 19th of 2007.

15 Q. Now, the letters you have in front of you
16 are not signed, are they?

17 A. No, they're not.

18 Q. And you can't say whether you sent any
19 particular one; isn't that right?

20 A. I did send them.

21 Q. It's your testimony you sent all of those
22 letters.

23 A. That's correct.

24 Q. Do you recall giving a deposition in this
25 case?

1 A. Yes.

2 MR. GARBER: May I approach, your Honor?

3 EXAMINER SHEETS: You may.

4 MR. WIELICKI: Your Honor, I have an
5 objection.

6 EXAMINER SHEETS: Okay.

7 MR. WIELICKI: This deposition was taken
8 on Monday. I have not been given a chance to review
9 this for any flaws that may have occurred, so I'm
10 going to object to the introduction of this on that
11 basis.

12 MR. GARBER: Your Honor, regardless of
13 the fact of whether Mr. Wielicki has had an
14 opportunity to review the deposition transcript for
15 typos and that sort of thing, I think my question is
16 going to go directly to a substance of an answer
17 which would either be kind the yes/no variety, and so
18 I think this is testimony that the complainant gave
19 under oath and, therefore, it's proper to use it to
20 impeach. Otherwise, this witness would be able to
21 say whatever he wants in his deposition and change
22 his story today.

23 EXAMINER SHEETS: When did you get this
24 deposition? Is this the first time you've seen it?

25 MR. WIELICKI: This was e-mailed to me I

1 believe yesterday.

2 EXAMINER SHEETS: Okay. And you want to
3 ask about a question?

4 MR. GARBER: Yes.

5 EXAMINER SHEETS: I'll overrule your
6 objection. I'll give you time to read the question
7 and answer and then you can respond.

8 Go ahead with your question.

9 Q. (By Mr. Garber) If I could direct your
10 attention to page 56 of the deposition. You see in
11 your deposition we discussed Exhibit F, right?

12 A. Yes.

13 Q. And Exhibit F contained the letters dated
14 January 1st, 2007, January 28th, 2007, June 14th,
15 2007, and August 19th, 2007, right?

16 A. Yes.

17 Q. And those are the same dates that you
18 just gave me, right?

19 A. Correct.

20 Q. And I want you to read silently -- in
21 this portion of the deposition we talked about those
22 same letters, right? The same letters you just read
23 from, correct?

24 A. Yes.

25 Q. Now I want you to read silently as I read

1 allowed on page 56 starting at line 24. "Did you
2 send all of them?

3 "Answer: I can't specifically address
4 that at this point. I'm not sure, because in some
5 cases there were different versions."

6 Did I read that correctly?

7 A. Yes.

8 Q. If you look down further on page 57, line
9 11, "Question: Can you say which ones you did send
10 in Deposition F?

11 "Answer: Not at this time."

12 Did I read that correctly?

13 A. Yes.

14 Q. Now, throughout 2007, 2008, 2009, you
15 were receiving monthly bills from CEI, right?

16 A. Correct.

17 EXAMINER SHEETS: Let me interrupt you
18 for a second.

19 Do you need any more time to look over
20 that?

21 MR. WIELICKI: Well, I mean, I'd like to
22 go back and answer that question that he originally
23 asked me in connection to this and clarify what I
24 meant here in the deposition. What I meant here in
25 the deposition --

1 MR. GARBER: Your Honor, if I --

2 EXAMINER SHEETS: Wait a second.

3 But you have had time to go through this
4 and read it, correct?

5 MR. WIELICKI: I haven't read it until it
6 was handed to me today.

7 EXAMINER SHEETS: Okay. Do you need any
8 more time to read over this is what I asked?

9 MR. WIELICKI: I don't know how much more
10 is going to be used out of this that I need to.

11 EXAMINER SHEETS: But you have read this
12 and you understand it, correct?

13 MR. WIELICKI: The part that he pointed
14 out.

15 EXAMINER SHEETS: That question.

16 MR. WIELICKI: Yes.

17 EXAMINER SHEETS: Pages 56 and 57.

18 MR. WIELICKI: Yes.

19 EXAMINER SHEETS: Okay. Go ahead. If
20 you have any questions about that, I'll allow you a
21 period on redirect that you can testify.

22 MR. WIELICKI: All right.

23 EXAMINER SHEETS: Go ahead.

24 Q. (By Mr. Garber) Mr. Wielicki, you're not
25 trying to change the answers I just read out of your

1 deposition, are you? You're not changing that
2 testimony today?

3 A. No. I'm trying to clarify.

4 Q. Now, throughout '07, '08, and '09 you
5 were receiving monthly bills from CEI, right?

6 A. Yes.

7 Q. And all of those monthly bills contained
8 a disconnection notice, right?

9 A. Correct.

10 Q. And you recall seeing the disconnection
11 notice on those bills.

12 A. Yes.

13 Q. Every month, correct?

14 A. Yes.

15 Q. Between 2007 and at least 2009, right?

16 A. Yes.

17 Q. Now, you didn't send any correspondence
18 to CEI about this until -- you didn't send any
19 correspondence to CEI after August '07, correct?

20 A. No.

21 Q. That's not correct?

22 A. No; I didn't. I didn't send it.

23 Q. So you were getting these disconnection
24 notices in '07, '08, '09, you weren't sending any
25 further correspondence to CEI, right?

1 A. No.

2 Q. You don't recall whether you responded
3 specifically to any of those disconnection notices,
4 right?

5 A. I may have called and inquired about
6 them. I don't know.

7 Q. You may not have, right?

8 A. I may not have.

9 Q. In fact, you can't actually name one
10 particular instance in which you contacted CEI about
11 those disconnection notices between September of 2007
12 and March of 2009, right?

13 A. No.

14 Q. You can't recall a particular date.

15 A. I can't recall a particular date, no.

16 Q. You stated that you sent a restrictively
17 endorsed check to CEI in August 2007?

18 A. Yes.

19 Q. You also sent a restrictively endorsed
20 check to CEI in August '06?

21 A. Correct.

22 Q. You believe you sent between six to eight
23 restrictively endorsed checks to CEI during that time
24 period.

25 A. I don't think it was quite that many, no.

1 Q. Was it less than six?

2 A. Yeah.

3 Q. Other than the two that I just mentioned
4 you don't recall the dates of any of those checks, do
5 you?

6 A. I believe they're itemized in these
7 letters. Check 3286 would have been January 1st of
8 2007, check 3314 would have been January 28th of
9 2007, check 3425 would have been June 14th of 2007,
10 and check 3528 would have been August 19th of 2007.

11 Q. And just to clarify, you're just reading
12 from a packet of letters that we -- a packet of four
13 letters that were unsigned, correct?

14 A. Yes.

15 Q. And actually can we, let's mark that as
16 an exhibit.

17 EXAMINER SHEETS: I'm going to ask here
18 at this point how many restrictively endorsed checks
19 were sent to CEI.

20 MR. WIELICKI: I have record of four.

21 EXAMINER SHEETS: You have a record of
22 four.

23 MR. WIELICKI: Right.

24 EXAMINER SHEETS: Does the company differ
25 with that that they know?

1 MR. GARBER: Well, your Honor, if I may
2 inquire.

3 EXAMINER SHEETS: I understood in the
4 beginning there was one check for a disputed month;
5 is that correct?

6 MR. WIELICKI: Yes.

7 EXAMINER SHEETS: Okay. Then there were
8 other restrictively endorsed checks that followed
9 that?

10 MR. WIELICKI: Yes. The reason I don't
11 have copies of the other checks is because our
12 financial institutions have started an electronic
13 transaction system whereby the check is not returned
14 to the check writer, and the reason that I made a
15 copy of the check that is attached to the complaint
16 is because that system was in place during that time.

17 EXAMINER SHEETS: Why did you send these
18 other checks, the three following the one that you
19 first sent?

20 MR. WIELICKI: Because I didn't have the
21 check returns. I was not able to get the return on
22 the check.

23 EXAMINER SHEETS: No. Why did you send
24 the checks, the restrictively endorsed checks, to CEI
25 in the first place? I know about the first one.

1 MR. WIELICKI: Right.

2 EXAMINER SHEETS: You disputed that. Why
3 did you send the other three?

4 MR. WIELICKI: I sent recurring checks
5 based on regular payments that were due. I sent the
6 regular payment based on a restrictively endorsed
7 check to that address.

8 EXAMINER SHEETS: Was it the --

9 MR. WIELICKI: As additional insurance on
10 my part.

11 EXAMINER SHEETS: Was it the payment for
12 that month?

13 MR. WIELICKI: Yes.

14 EXAMINER SHEETS: An amount in your bill.

15 MR. WIELICKI: Correct.

16 EXAMINER SHEETS: I'll let you continue.

17 Q. (By Mr. Garber) In those subsequent
18 checks you were actually paying the full current
19 charges for that month, right?

20 A. That's correct.

21 Q. Even though those checks had a
22 restrictive endorsement?

23 A. That's correct.

24 Q. Now, when you just gave us the dates of
25 the restrictive endorsements --

1 MR. GARBER: If I may, your Honor, mark
2 as CEI Exhibit F the unsigned letters that
3 Complainant was just reading from. And if I may
4 approach to retrieve so we can mark that.

5 EXAMINER SHEETS: You may.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 EXAMINER SHEETS: You're offering this
8 as?

9 MR. GARBER: Ohio Edison F [verbatim].

10 EXAMINER SHEETS: Okay.

11 MR. GARBER: The sticker refers to a
12 deposition exhibit number.

13 EXAMINER SHEETS: All right.

14 Q. (By Mr. Garber) So the dates that you
15 just gave us for the checks you took from the letters
16 in CEI Exhibit F, right?

17 A. Yes.

18 Q. And that's your only basis for giving us
19 dates for those particular checks, right?

20 A. That's correct, yes.

21 Q. If I could direct your attention to
22 what's been marked as Complainant's Exhibit A which
23 is the letter dated August 19th, 2007. By the way,
24 you don't have a copy of the letter that you say you
25 sent to CEI in August or September 2006, do you?

1 A. I --

2 Q. You said you sent a restrictively
3 endorsed check to CEI, the first one, in either
4 August or September of 2006, right?

5 A. Yes. Yes.

6 Q. You don't have -- and you sent that with
7 a cover letter. That's your testimony?

8 A. That's correct.

9 Q. You don't have a copy of that letter.

10 A. No. I was unable to find a copy of that.

11 Q. Looking back at Complainant's Exhibit A,
12 in this letter you never talk about the agreement
13 that you reached with CEI for partial payment of the
14 August '06 bill. You don't mention that, right?

15 A. Correct.

16 Q. You don't mention the conversation that
17 you had with CEI in August 2006 or September '06?

18 A. Correct.

19 Q. Let's talk about the documents that are
20 attached to your complaint. Looking first at the
21 copy of the check.

22 MR. GARBBER: Does your Honor have a copy
23 of the complaint?

24 EXAMINER SHEETS: What page is that on?
25 Yes, I have it. Is this it?

1 MR. GARBER: Yes, your Honor.

2 Q. Now, this is the check you say you sent
3 to CEI in August '07, right?

4 A. Yes.

5 Q. Now, this image of the check front and
6 back was taken before that check was deposited,
7 right?

8 A. Correct.

9 Q. So this check does not actually reflect
10 any endorsements or depositing of the check by CEI,
11 correct?

12 A. This check itself does not, no.

13 Q. You also attached a letter to your
14 complaint?

15 A. Yes.

16 Q. That's the letter dated August 19th,
17 2007, right?

18 A. Yes.

19 Q. In your complaint you represented that
20 this letter was actually sent to CEI, right?

21 A. Yes.

22 Q. That's what you told the Commission in
23 your complaint?

24 A. That's correct.

25 Q. But as it turns out you did not send that

1 letter to CEI, did you?

2 A. That's correct.

3 Q. CEI never received that letter.

4 A. Not that particular letter. No.

5 Q. Now, you said the reason why you attached
6 that letter to your complaint was because you were
7 confused because you maintain different versions of
8 letters with the same dates sometimes, right?

9 A. That's correct.

10 Q. And when you do that, you can't tell
11 which ones you sent and which ones you didn't send?

12 A. Yes.

13 Q. And you also say that sometimes you sign
14 letters that you don't end up sending and sometimes
15 you don't sign them, right?

16 A. Correct.

17 Q. And there's no particular reason in this
18 case why you chose to send the August '07 letter that
19 you did send as opposed to the one you attached to
20 your complaint, right?

21 A. I incorrectly attached the wrong version
22 of the letter.

23 Q. But in terms of choosing which one to
24 send at the time, there was no particular reason why
25 you sent one versus the other, right?

1 A. I thought it was the right one.

2 Q. And you can't actually say how many times
3 you drafted versions of letters, different versions
4 of letters to CEI with the same date, right?

5 A. No.

6 Q. You just don't know how many times you've
7 done that, right?

8 A. No.

9 Q. Mr. Wielicki, you've sent restrictively
10 endorsed checks to other entities, other businesses,
11 right?

12 A. Yes.

13 Q. Since 2000 you may have sent
14 restrictively endorsed checks, it's possible, to a
15 hundred other businesses or entities, right?

16 A. I don't know.

17 Q. It may have been a hundred, right?

18 A. I don't know.

19 Q. Could have been a hundred. It could have
20 been a hundred entities that you sent restrictively
21 endorsed checks to in the last ten years, right?

22 A. I don't have an exact amount that I have
23 sent in the last ten years. I don't know.

24 Q. I'm not asking you for an exact amount.
25 I'm just asking you, you sent so many of these checks

1 that you can have sent up to a hundred of these for
2 different businesses.

3 A. I'm not here to speculate.

4 Q. Take another look back at your
5 deposition, page 40. If you'll read silently as I
6 read aloud starting on line 1 of page 40, "Question:
7 Approximately how many different companies,
8 individuals, entities have you sent restrictively
9 endorsed checks to?

10 "Answer: In what, my lifetime?

11 "Question: In the last ten years.

12 "Answer: Probably --

13 "Question: We'll call it since 2000, to
14 make it even.

15 "Answer: Could be a hundred. I don't
16 know."

17 I did read that correctly?

18 A. Yes.

19 Q. And you've been involved in lots of
20 lawsuits; isn't that correct, Mr. Wielicki?

21 A. I don't know what you call a lot of
22 lawsuits.

23 Q. Well, during your deposition we walked
24 through at least nine lawsuits that you brought as a
25 plaintiff, correct?

1 A. We did walk through some lawsuits, yes.

2 Q. And there may be more lawsuits that
3 you've brought against companies, right?

4 A. I don't know.

5 Q. There may be more, right?

6 A. I think I answered your question.

7 Q. Okay. You don't know how many more,
8 right?

9 A. I think I answered your question.

10 Q. It could have, you know, you're not sure,
11 it could have been 20 more lawsuits that you've
12 brought, you're just not sure.

13 MR. WIELICKI: Your Honor, I'm objecting
14 to this.

15 EXAMINER SHEETS: Let's move on to
16 another question. He stated his answer.

17 Q. Mr. Wielicki, have you ever attempted to
18 re-create or manufacture correspondence to use during
19 a court proceeding?

20 A. Not intentionally, no.

21 Q. So unintentionally you have done that?

22 A. Yes.

23 Q. All right. Have you ever drafted or
24 signed a letter that you presented in court as an
25 exhibit or as evidence that you knew was wrong?

1 A. I found out that it was wrong, correct.

2 Q. You were involved in the case called

3 Wielicki versus The HMC Group, correct?

4 A. Correct.

5 Q. And you were the plaintiff in that case,
6 right?

7 A. Correct.

8 Q. In that case you sued the defendant for
9 violations of the Fair Debt Collection Practices Act
10 and the Fair Credit Reporting Act, right?

11 A. Correct.

12 Q. And as part of your allegations in that
13 case you allege that you had sent certain letters to
14 the defendant, right?

15 A. That's correct.

16 Q. And up to 11 different letters, right?

17 A. Correct.

18 Q. And in that case in those letters you
19 were disputing a particular debt that was at issue in
20 the case, right?

21 A. Correct.

22 Q. Case went to trial, correct?

23 A. Correct.

24 Q. You lost.

25 A. Correct.

1 Q. Defendants moved for attorney's fees,
2 right?

3 A. Correct.

4 Q. And the basis of their motion was because
5 they claim that you brought the lawsuit in bad faith,
6 right?

7 A. Correct.

8 Q. And the court granted that motion,
9 correct?

10 A. Correct.

11 Q. And you recall that the court --
12 actually, let's introduce as CEI Exhibit F -- I'm
13 sorry, G.

14 MR. GARBER: May I approach?

15 EXAMINER SHEETS: You may.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. I've just handed you CEI Exhibit G. This
18 is a copy of a court opinion from that HMC Group case
19 that you brought, right?

20 A. Yes.

21 Q. And if you could turn to page 2 in the
22 bottom paragraph, you see where it says "Further,
23 throughout the litigation, Plaintiff" -- and
24 Plaintiff is you, right, Mr. Wielicki?

25 A. Yes.

1 Q. It says, "Further, throughout the
2 litigation, Plaintiff made repeated implausible
3 claims as to why no record of any such letters was
4 available in discovery, misrepresented
5 'reconstructed' versions of the alleged letters as
6 copies of the original, and attempted to offer these
7 fabrications as evidence in support of his claims."
8 Did I read that correctly?

9 A. Yes.

10 Q. And in this opinion the court also said
11 that you were a frequent litigator with a long
12 history of bringing this type of action against a
13 multitude of companies. Correct?

14 A. Yes.

15 Q. And it found that the primary purpose for
16 why you brought this case was not to obtain relief
17 but to harass the defendant in the hope of getting a
18 quick settlement offer, right?

19 A. That's what it says.

20 Q. And the court found that you brought that
21 case in bad faith, right?

22 A. That's what the opinion said, yes.

23 Q. It ordered you to pay \$16,706.42 in
24 attorney's fees and costs?

25 A. Yes.

1 Q. And that was in November of 2009,
2 correct?

3 A. Yes.

4 Q. You haven't paid that amount?

5 A. No.

6 MR. GARBER: Nothing further, your Honor.
7 Nothing further, your Honor.

8 EXAMINER SHEETS: I'll allow you a period
9 of redirect testimony.

10 - - -

11 REDIRECT TESTIMONY

12 MR. WIELICKI: In regards to -- I guess I
13 would be more impressed if Mr. Garber came here and
14 said "Your Honor, Mr. Wielicki, the company in this
15 matter has done this, this, this, this, and this to
16 address Mr. Wielicki's concern in this matter. We
17 have done everything that we could possibly do to
18 either credit him or explain to him why this unusual
19 amount of power, this usage was used here."

20 But, unfortunately, Mr. Garber and the
21 company didn't come here to do that. They did
22 that -- they instead sought to try to discredit me in
23 some other fashion to try to parallel this, and in no
24 way, shape, or form are the two actions parallel.

25 As a pro se I have found that,

1 unfortunately, in our legal system now when you have
2 small disputes that require federal district court
3 attention, disputes that amount to several hundred
4 dollars, you're not able to go there yourself and
5 find resolution to the problems. That doesn't happen
6 anymore today.

7 I'm one who can stand here and tell you
8 that not only do other attorneys, but on a lot of
9 occasions I have found judges look down on pro ses.
10 We're not attorneys. I'm not sitting here today
11 telling you that I'm an attorney and that I know
12 exactly what I am doing, because I don't.

13 In each one of those cases that
14 Mr. Garber tries to discredit me on, probably half of
15 them I was unrepresented. I was pro se. They were
16 small amounts. They dealt with mega companies. And,
17 unfortunately, in our society I found that even
18 though you have a dispute, you can't, without the
19 assistance of an attorney, bring that for resolution.
20 There are just so many rules, regulations, and even
21 if you knew all the rules and the regulations,
22 pro ses are not -- pro ses are looked down on.

23 And this action here should reflect one
24 thing and one thing only, is the fact that there was
25 a good faith dispute, it was presented to the

1 company, they chose to do nothing about it because,
2 in their sense, they didn't have to. They didn't
3 have to satisfy their customers. They didn't have to
4 satisfy me.

5 I tend to be on the tenacious side more
6 so than probably the average person. I don't like to
7 be crushed by a big company. I like to do my
8 dealings in a fair, up-front manner, because that's
9 the way I've always done my dealings with customers
10 that I have dealt with. If they've had a problem,
11 I've done everything that I could possibly do to take
12 care of the problem.

13 Again, in this case the company did
14 nothing and they can't testify that they did
15 anything. They can't testify what they did except
16 ignore me. My recourse with this company, as it had
17 been with other companies, was with the use of a
18 restrictively endorsed check. This company, as some
19 other companies have, accepted that check. It was
20 offered in good faith and it was accepted. It
21 constitutes a contract.

22 I'm asking the company to step up and say
23 "Yes, we had a contract with you and we are going to
24 credit your account," and that's why I'm here.
25 Because it hasn't happened.

1 EXAMINER SHEETS: Does that conclude your
2 redirect?

3 MR. WIELICKI: Yes.

4 EXAMINER SHEETS: Do you have any
5 recross?

6 MR. GARBER: Very briefly.

7 - - -

8 RECROSS-EXAMINATION

9 By Mr. Garber:

10 Q. Did you ever request a test of the meter
11 serving your house at any point?

12 A. Yes, I did. I told the company to do
13 whatever they needed to do to be able to answer my
14 question in regards to why my usage was three times
15 what it should have been.

16 Q. So it's your testimony that you did ask
17 the company to test your meter.

18 A. My testimony is that --

19 Q. No. No. No. Let me get a "yes" or "no"
20 to that. Is it your testimony that you asked the
21 company to test your meter?

22 A. Yes.

23 Q. Look back at your deposition. On page
24 26, line 14, "Question: Did you request a test of
25 your meter?

1 "Answer: No, I didn't."

2 Did I read that correctly?

3 A. Yes, but I think you need to read the
4 rest, too.

5 Q. Okay. "No, I didn't. I basically said,
6 'Well, whatever you need to do to answer my question
7 as to why my usage is inordinately high, do.'
8 Whether it was done or not, I don't know."

9 And I read that correctly, right?

10 A. That's correct.

11 Q. So you didn't ask the company to test
12 your meter, right?

13 A. Yes, I did. I told them to do whatever's
14 necessary, which would be inclusive of that if that's
15 what they needed to do. I'm not an expert in the
16 electrical distribution of power. If that's what
17 they needed to do to explain to me why I'm getting
18 three -- billed three times for what I normally use,
19 then yes. I made it an all-inclusive: Do whatever
20 you have to do.

21 Q. Okay. You don't know if the meter
22 serving your house has ever been changed, correct?

23 A. I have no idea.

24 Q. And you believe the meter that's in place
25 at your property now is working correctly, right?

1 A. I don't have any disputes with it, right.

2 Q. Mr. Wielicki, you're not a lawyer, right?

3 A. No, I'm not.

4 Q. Never went to law school.

5 A. No.

6 Q. Have not received legal training?

7 A. No.

8 Q. And you have not worked for an electric
9 utility, correct?

10 A. No.

11 MR. GARBER: Nothing further.

12 EXAMINER SHEETS: Very well. You're
13 excused.

14 (Witness excused.)

15 EXAMINER SHEETS: Proceed now to the
16 company's side of the case.

17 MR. GARBER: First, your Honor, we would
18 move the admission of CEI Exhibit F and G which were
19 introduced during the cross-examination of
20 Complainant.

21 EXAMINER SHEETS: I'll admit all exhibits
22 into evidence at this time.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 MR. GARBER: At this point CEI calls
25 Deborah Reinhart.

1 EXAMINER SHEETS: Please take the stand.

2 MR. GARBER: May I approach?

3 EXAMINER SHEETS: You may.

4 Raise your right hand.

5 (Witness sworn.)

6 EXAMINER SHEETS: Be seated.

7 - - -

8 DEBORAH REINHART

9 being first duly sworn, as prescribed by law, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Garber:

13 Q. Please introduce yourself.

14 A. My name is Deborah Reinhart.

15 Q. What do you do for a living?

16 A. I work at FirstEnergy Service Company,
17 and I am a senior business analyst.

18 EXAMINER SHEETS: I'm going to ask you to
19 speak up, ma'am.

20 A. Okay. I work at FirstEnergy Service
21 Company, and I am a senior business analyst in the
22 Compliance department.

23 Q. Did you prepare or have prepared at your
24 direction prefiled testimony in this case?

25 A. Yes, I have.

1 Q. And is the document in front of you
2 titled CEI Exhibit A that prefiled testimony?

3 A. Yes, it is.

4 Q. Are the documents labeled CEI Exhibits B
5 through E the exhibits to that testimony?

6 A. Yes, they are.

7 Q. Do you have any additions, changes,
8 corrections to your testimony?

9 A. No, I don't.

10 Q. So if I asked you the same questions
11 appearing in CEI Exhibit A, would your answers be the
12 same?

13 A. Yes, they will.

14 MR. GARBER: We make the witness
15 available for cross.

16 EXAMINER SHEETS: Very good. Do you have
17 any questions?

18 MR. WIELICKI: Yes, I do.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Wielicki:

22 Q. My check number -- does the company
23 acknowledge receiving my check 3528 which is attached
24 to the complaint in the amount of 172.86?

25 A. I can say we received a check for 172.86.

1 I can't verify the check number.

2 Q. Okay. All right. Do you acknowledge
3 receiving the letter that was attached with the check
4 that's dated August 19th of 2007?

5 MR. GARBER: Objection, your Honor. I
6 think there are two different letters dated August
7 19th, 2007, one is attached to the complaint, one
8 is attached to the testimony and I just, I think the
9 question's misleading and would ask that it be
10 clarified as to which August 19 letter he's referring
11 to.

12 MR. WIELICKI: Okay. Sorry.

13 Q. The letter that's attached to your
14 testimony you acknowledge receiving.

15 A. Right. We received the letter, yes.

16 Q. Okay. The address that the letter was
17 mailed to indicates an A-RPC. What does that
18 indicate?

19 A. The RPC stands for Remittance Processing
20 Center.

21 Q. What is that?

22 A. That's the center that processes
23 payments.

24 Q. Okay. Explain to me what would have
25 happened when the letter with this check arrived at

1 this address to the attention of the customer service
2 manager.

3 A. First of all, I don't know whether the
4 check was attached, I don't have knowledge of that,
5 but I can speak to the letter which at that time
6 would have been scanned into a database and the
7 letter would have been sent to the customer
8 accounting group that reviews the letters that come
9 with, you know, come in the mail, come with
10 correspondence.

11 Q. Okay. Was that done?

12 A. Yes.

13 Q. How so?

14 A. Well, I believe in the contact notes
15 there was a note in here that the customer service
16 rep did acknowledge receipt of the letter and I
17 believe sent a billing statement is what the account
18 notes stated.

19 Q. Okay. Did the letter ask for a
20 billing -- what did you call it, statement?

21 A. Yes.

22 Q. Did the letter request a billing
23 statement?

24 A. I believe the billing statements as you
25 were disputing the amount due would have been the

1 appropriate correspondence to send.

2 Q. Okay. But the letter didn't request
3 that.

4 A. No.

5 Q. Okay. But you thought it was or they
6 thought it was the appropriate response. And why
7 would they have thought that it was the appropriate
8 response?

9 A. You had indicated there that you were
10 disputing a balance.

11 Q. Okay. All right. Would you agree also
12 that they -- did they read the whole letter? Would
13 they have read --

14 A. I would assume so. I don't have
15 knowledge of that.

16 Q. Okay. If it was addressed to a customer
17 service manager, would they have thought to get it to
18 a customer service manager if that's who it was
19 addressed to?

20 A. I'm not aware of that title.

21 Q. Okay. What title closely resembles
22 customer service manager in your company?

23 A. If you're referring to if you placed a
24 phone call into our contact center, then it would be
25 the contact center manager.

1 Q. Okay. But is that synonymous with
2 customer service manager?

3 A. That's not the title that's used, no.

4 Q. But is the application the same? Do they
5 serve customers?

6 A. Yes.

7 Q. Okay.

8 A. I would assume that's what they're
9 referring to.

10 Q. So if a letter arrived there and was
11 addressed to the customer service manager and didn't
12 specifically say "operations manager" or something
13 like that, would it have gone to a manager of some
14 sort?

15 A. No. Not necessarily.

16 Q. Okay. So then are you saying that all
17 they did was take the check and scan the letter?

18 A. Since I didn't, you know, I would assume
19 that since the letter was in the database that they
20 would have scanned the letter and it would have been
21 sent to our back office which our customer accounting
22 group reviews those and then responds to the letter.

23 Q. Okay. So what is inclusive in their
24 review?

25 A. I don't have knowledge of that. I mean,

1 I would say that they would still, based on the
2 information that's provided in -- the same
3 information that's provided to me is your billing
4 information, your usage, your payments, your account
5 balance.

6 Q. Would they have reviewed the check with
7 the restrictive endorsement on it?

8 A. I have no knowledge of that. I don't
9 know.

10 Q. Okay. What is their normal course? What
11 is the policy? What is the company's policy when it
12 receives a restrictively endorsed check in the mail?

13 A. I'm not aware of any policy. We don't,
14 you know, I'm not aware.

15 Q. So you have no policy is what you're
16 stating?

17 A. Right.

18 Q. Okay. Is it normal course for this
19 review process to take a restrictively endorsed check
20 which is accompanied by a cover letter and respond
21 with a billing statement?

22 A. First of all, I'm not -- the customer
23 accounting person that would review that at that
24 point would not have had that check. So, you know,
25 you're referring to the check being attached to the

1 letter. I can only speak to the letter being entered
2 into the database and that representative responding
3 to that.

4 Q. Okay. Do you think that the -- if there
5 was no check attached but the letter said there was a
6 check attached, do you think that would have set off
7 a bright light?

8 A. Well, I'm sure that they would have
9 probably checked the system to see that a check did
10 post for that amount.

11 Q. Okay. Why would the check have been
12 separated?

13 A. I'm not aware. I don't know. I don't
14 know. The only thing I could say is that if it was
15 correspondence, and I'm not -- you know, we're saying
16 it was attached, it was stapled, attached, you know,
17 I don't have knowledge of that, whether it was or
18 wasn't, but I can just tell you that, you know, it
19 looks like the -- and the check number that you're
20 referring to, I can't say that that is the check that
21 was processed. I know we processed a payment for
22 that amount.

23 Q. Okay. What level of personnel do the
24 review process? I mean, are they managers? Are they
25 clerical?

1 A. They're customer service representatives.

2 Q. Okay. But they're not managers.

3 A. No, they're not.

4 Q. The letter specifically was written to a,
5 manager, okay? Can you tell me why that did not get
6 forwarded to a manager?

7 A. Typically that type of correspondence
8 does not get escalated to a manager.

9 Q. Why is that?

10 A. Because it is the duties or the job
11 responsibilities of the persons reviewing the
12 database of the correspondence coming in to handle
13 the correspondence.

14 Q. Okay. Is it the duties and
15 responsibilities for those people to deal with
16 restrictively endorsed checks?

17 A. I can't answer that.

18 Q. Okay. Do you believe that those people
19 who reviewed this letter have more authority or less
20 authority than a manager would have to deal with the
21 restrictively endorsed check?

22 A. Actually, you were saying "authority." I
23 mean, they're above them.

24 Q. Okay. So had this gone to a manager as
25 it was intended to go, it may have been dealt with

1 differently?

2 A. I have no knowledge of that.

3 Q. Based on your company's policy and -- I'm
4 going to call it responsibilities of work, if a
5 manager would have received this letter with the
6 check, would it have been dealt with differently than
7 with the people who reviewed it?

8 A. I don't know.

9 Q. Okay. Okay. So are you saying possibly
10 that regardless if it went to a manager or a clerical
11 individual, that the check would have just been
12 cashed without reviewing it?

13 A. I don't know that either.

14 Q. Okay. How many checks do you get in the
15 mail every day?

16 A. Hundreds of thousands.

17 Q. Hundreds of thousands. Okay. If
18 hundreds of thousands of checks attached to cover
19 letters came through, would you handle them the same
20 way that you handled mine?

21 A. I can't answer to that.

22 Q. Okay. Do you feel that I as a customer
23 of your company addressed a letter to a manager, do
24 you feel that it should have gone to a manager out of
25 respect for my request as a customer?

1 A. I think it goes to the appropriate
2 department that would handle those and if they're
3 able to handle that, I mean, then they do take care
4 of those.

5 Q. Okay. So it's your testimony that they
6 handled it in the appropriate fashion.

7 A. They review the -- they reviewed the
8 letter and sent the correspondence as stated in the
9 contact note.

10 Q. Their actions were appropriate is your
11 testimony.

12 A. Yes.

13 Q. Okay. So, in essence, what they did was
14 they acknowledged receiving the letter, they
15 acknowledged posting a payment, and they saw no
16 problem with accepting that payment at that point
17 even though the letter forewarned them that there was
18 a restrictive endorsed check involved. So is it your
19 belief that they reviewed the check, they read the
20 check, they read the letter, and they dealt with it
21 appropriately --

22 MR. GARBER: Your Honor --

23 Q. -- by cashing it and scanning it into the
24 system?

25 MR. GARBER: Your Honor, in fairness I

1 think there were probably about ten different
2 questions in that question and just so the record is
3 clear in terms of what the witness is answering I --

4 EXAMINER SHEETS: I think he asked her
5 what her belief was, and she can answer that.

6 A. I'm just kind of reviewing the
7 documentation that the representative had noted on
8 the account, you know, when you had submitted the
9 letter, and it does state in here that, you know,
10 that we have received letters and, evidently, it
11 looks like they tried to call you to explain and ask
12 some additional questions about the letter, but they
13 were unable to get in touch with you.

14 Q. Where are you deriving that from?

15 A. Okay.

16 Q. Do I have copies of that?

17 A. It was in my -- attached to my testimony.

18 Q. Okay. Can you point --

19 A. Since I didn't actually review it myself
20 I'm reading the notes as far as the person, I mean,
21 who actually reviewed the correspondence.

22 Q. Okay. Do you know who the actual person
23 was who reviewed it?

24 A. It's noted in the contact note, yes.

25 Q. Can you point that out to me, please?

1 A. September 6th it looks like it would be
2 reflective of that letter that you're stating of
3 August the 19th of 2007.

4 EXAMINER SHEETS: What page are you on?

5 THE WITNESS: Okay. That would be page
6 5.

7 Q. Can you point it out to me on page 5?
8 I'm sorry I'm not --

9 A. September 6th of 2007, there's a note
10 in there, looks like they submitted a letter to you
11 in response to the letter that you sent in quoting --

12 Q. You said September 5th?

13 A. Sixth.

14 Q. Sixth. I'm sorry. Okay. So which entry
15 would that be, the first one or the second one?

16 A. It would be the second. I mean, both of
17 them relate to that same inquiry.

18 Q. And there's a name here that shows up
19 Marjory M. Dawson.

20 A. Yes. She is in our Customer Accounting
21 department and she would be one of the individuals
22 that reviewed correspondence, yes.

23 Q. And what is her title?

24 A. Customer Service Representative.

25 Q. But she's not a manager.

1 A. No, she's not.

2 Q. Okay. Is she -- so I guess she received
3 this letter and she reviewed it and it was addressed
4 to a manager. Why would she not have referenced it
5 to a manager and thought that she could handle a
6 manager's task on her own?

7 A. That, I mean, that is her responsibility
8 to review the correspondence and in this case that's
9 what she did.

10 Q. Okay. So she took it upon herself to
11 deal with this matter.

12 A. Yes.

13 Q. Okay. Rather than go to a customer
14 service -- to a manager.

15 A. Yes.

16 Q. Okay. All right. Isn't that rather odd?

17 A. No.

18 Q. So this is a normal course for a customer
19 service representative to make decisions about
20 letters and checks that are restrictively endorsed.

21 A. It's her responsibility to review and
22 respond to the correspondence.

23 Q. Okay. And her response to my sending
24 this letter with a restrictively endorsed check was
25 to send me a statement.

1 A. And to attempt to call you also.

2 Q. Okay. How many attempts did she make?

3 A. I have no knowledge of that.

4 Q. Okay. When did she try to call me?

5 A. Don't know. I have no knowledge of
6 the -- I don't have the exact dates and times. I
7 mean, I have the date that's on there, but I wouldn't
8 have the -- if she called more than once.

9 Q. How many times would they normally call?

10 A. I don't know.

11 Q. Okay. In a matter such as this with a
12 check that was clearly stated to zero out the
13 account, wouldn't you think that somebody would make
14 repeated calls to me until they got me before they
15 cashed the check?

16 A. At this point she would not have had
17 receipt of that check. It would have already been
18 processed. If you look at the posting date of that
19 check versus the letter. So you're --

20 Q. So at some point in time it's separated.

21 A. Yes.

22 Q. Okay. But she knew, she knew that there
23 was a check involved.

24 A. You had stated there was a check involved
25 in the letter, whether it was included or attached, I

1 don't know.

2 Q. Okay. But by reading the letter she
3 would know that there was a check involved.

4 A. Yes.

5 Q. And she would know that the check
6 involved had a restrictive endorsement.

7 A. That's what the letter stated.

8 Q. And by reading it she would know that.

9 A. That's what you stated in the letter, it
10 had that on there.

11 Q. Okay, but that's not what I'm asking.
12 She would have known that if she read it, correct?

13 A. She didn't have the copy of the check so
14 she would not have knowledge if that had the
15 restrictive endorsement on the back.

16 Q. Okay. But what I'm saying is, is if she
17 read the letter, she would know that there was a
18 restrictively endorsed check involved in this matter.

19 A. Right. As you stated in the letter, yes.

20 Q. Okay. And she felt that she didn't have
21 to go any further in getting a manager involved. She
22 felt she could handle this by accepting the check and
23 sending a statement.

24 A. She would not have had the check in her
25 hand. She did not accept the check. She had a copy

1 of the letter is what she was responding to.

2 Q. Okay. But she knew it was a
3 restrictively endorsed check that was involved.

4 A. Again, that's what you said in your
5 letter. She did not have knowledge if it actually
6 said "restrictively" on the back.

7 Q. All right. Well, let's say that the
8 check got separated. Would she have gone any further
9 to the department that may have separated the check
10 to bring the two together?

11 A. I don't know that.

12 Q. Okay. So, in essence, she took it upon
13 herself to accept what was written and send out a
14 statement.

15 A. She was responding to the correspondence.

16 Q. But she didn't send what was requested
17 because nothing was requested.

18 A. I think based on her contact note it's
19 because you had sent others disputing the balances
20 and late charges that she was sending you a billing
21 statement showing you how we were coming up to the
22 balances you were owing.

23 Q. Okay. But she -- okay. There was no
24 attempt to send the check back to me, was there?

25 A. There's no note that that took place, no.

1 Q. Okay. And based on your knowledge it was
2 negotiated.

3 A. A check for that amount was cashed and
4 posted to your account, yes.

5 Q. Okay. At any time did the company
6 attempt to send me an equivalent to that \$172 check
7 with a note or something that said "We're not
8 accepting this"?

9 A. I don't have any knowledge of that, no.

10 Q. Wouldn't it be in your notes? If it
11 doesn't appear in your notes, then it's safe to say
12 it didn't happen?

13 A. That's true.

14 Q. Okay. All right. So the company did not
15 respond to this letter by saying it was not going --
16 it was either returning my check or it was returning
17 an amount equal to my check because they didn't agree
18 with my letter. Yes or no?

19 A. Well, go ahead, would repeat the
20 question?

21 Q. The company at no time either returned my
22 check that I sent them or an amount equal to that
23 check with any correspondence that said they did not
24 agree with the intent of my check as I stated it in
25 my letter.

1 A. No, I did not see any.

2 Q. Okay. Okay. All right. It's possible
3 that phone calls and letters and things like that
4 that are called in don't get posted on your sheet?

5 A. Yes.

6 Q. Because it's a human system, right?

7 A. That's correct.

8 Q. Okay. So if somebody calls in and
9 says -- has something important, it's up to the
10 operator to record it, correct?

11 A. It's up to the customer service
12 representative, yes.

13 Q. Okay. And how is that monitored to make
14 sure that they do their job? Because I assume it's
15 required that they do that, right?

16 A. Yes, it is. And Quality monitors,
17 supervisors, would be the two groups that monitor
18 that.

19 Q. Okay. But you do find that it does fall
20 through the cracks and things aren't posted on the
21 call sheet?

22 A. I don't have knowledge of that.

23 Q. Does that mean that it never happens or
24 it does happen?

25 A. It could happen.

1 Q. Okay.

2 A. Like you said, it's human.

3 Q. Okay. So quite possibly if I called in
4 September, late-September of 2006, and discussed my
5 problem of being overbilled, it was up to whoever I
6 spoke with to make that recording in the notes,
7 correct?

8 A. Yes.

9 Q. Okay. But nothing was recorded; is that
10 your finding?

11 A. I saw nothing -- what date are you
12 referring to, first of all?

13 Q. In my testimony I stated that I called in
14 the latter part of September to complain about the
15 usage that I received in August.

16 A. So you're saying September of '06.

17 Q. Yes.

18 A. Okay. There is no contact note.

19 Q. Okay. But it was up to whoever I spoke
20 with to record that, correct?

21 A. Correct.

22 Q. And if they chose for whatever reason not
23 to do it, that was their decision to make, correct?

24 A. They need to make the entry for it to
25 appear.

1 Q. That's not my question. My question was
2 that was their choice to make whether they were going
3 to record that or not.

4 A. Assuming that you called. You're asking
5 me to answer an assumption here that you called.

6 Q. Yes. Let's go on that assumption, that I
7 did call. It was up to whoever I spoke with to
8 either record it in the notes or not record it. They
9 had a choice.

10 A. They did.

11 Q. But they were supposed to do it.

12 A. They need to make the entry, yes.

13 Q. Yes. Okay. Okay. So quite possibly I
14 may have called, but it never got recorded.

15 A. Yes.

16 Q. Okay. Quite possibly I may have called a
17 hundred times since 2006 and quite possibly only ten
18 of the calls may have gotten recorded.

19 A. No.

20 Q. Quite possibly.

21 A. No. Not with that number, no.

22 Q. Okay. What would the number be, then?

23 A. I mean --

24 Q. Based on your -- you say you monitor
25 this. What percentage of entries are not recorded?

1 A. I don't monitor them. I said that -- you
2 asked me if anyone does and we do have a department
3 that will monitor, not every call, though.

4 To your question, yes, it's possible that
5 an entry doesn't get made, but your reference to a
6 hundred I would say no.

7 Q. Okay. What's a good number?

8 A. I don't have that number, but it wouldn't
9 be a hundred.

10 Q. Okay. Does that department have a
11 results rate or something? I mean, how many calls on
12 a percentage basis don't get posted for whatever
13 reason, whether they're right or wrong?

14 A. I have no knowledge of that. I don't
15 know.

16 Q. But there are calls that don't get
17 posted.

18 A. It's possible.

19 Q. But I think you stated that there are
20 calls that don't get posted. Is that correct?

21 A. No. I said what you asked me is that the
22 assumption that you called and it did not get posted.

23 Q. Okay. Okay. And there are chances --
24 chances are that there are other people who called
25 that don't get posted either. It's a human factor,

1 correct?

2 A. It's a human factor, yes.

3 Q. Okay.

4 A. I don't have any knowledge about the
5 other calls.

6 Q. Okay. Okay.

7 MR. WIELICKI: I think I'm complete.

8 EXAMINER SHEETS: Proceed.

9 MR. WIELICKI: I believe I've completed.

10 EXAMINER SHEETS: Complete?

11 MR. WIELICKI: Yes.

12 EXAMINER SHEETS: Does the company have
13 any questions?

14 MR. GARBER: Thank you.

15 - - -

16 REDIRECT EXAMINATION

17 By Mr. Garber:

18 Q. Mr. Wielicki asked you if it's not in
19 your notes, it's safe to say it didn't happen. Do
20 you remember that question?

21 A. Yes, I do.

22 Q. And what was your answer to that? I
23 think you said "Yes."

24 A. Yes.

25 Q. Do the notes reflect a phone call from

1 Complainant in August or September of 2006?

2 A. No.

3 Q. Do the notes reflect a follow-up phone
4 call from Complainant in October or November of 2006?

5 A. No.

6 Q. Is it possible every once in a while for
7 one particular call to fall through the cracks and
8 not be included on a log?

9 A. Yes.

10 Q. How likely is it for multiple calls and
11 multiple communications from one person to fall
12 through the cracks and not be included on the log?

13 A. Highly unlikely.

14 Q. Mr. Wielicki pointed you to
15 correspondence that was addressed to a customer
16 service manager, I believe he indicated in his
17 testimony that that was his title that was given to
18 him by CEI. Do you remember that?

19 A. Yes.

20 Q. Does CEI have any such title, "customer
21 service manager"?

22 A. No.

23 Q. Mr. Wielicki indicated that CEI directed
24 him to send his letters to an address at 76 South
25 Main Street in Akron. Do you remember that?

1 A. Yes.

2 Q. Is that any sort of special, unique
3 address that would only be given out by the contact
4 center?

5 A. No.

6 Q. Where could that address be found?

7 A. It's actually found on page 2 of the bill
8 and if a customer has any correspondence or letters
9 to send, or questions, that that would be the address
10 that they would send their letter to.

11 Q. What is the process for handling incoming
12 dispute letters from customers?

13 A. Correspondence at that time would have
14 been scanned into a database and then we have a back
15 office group or Customer Accounting group that
16 reviews and responds to the correspondence.

17 Q. Now, is it necessary for correspondence,
18 dispute correspondence, addressed to a manager to be
19 forwarded to a manager?

20 A. No.

21 Q. Let me ask it this way: Was it necessary
22 for the correspondence that's attached to your
23 testimony from the complainant, was it necessary that
24 that be forwarded to a manager?

25 A. No.

1 Q. Why not?

2 A. In this case the individual did review
3 it, there was previous documentation called in he was
4 inquiring about the amount due, so in this case an
5 attempt was made to call, that's what the contact
6 note says, in addition to sending out another billing
7 statement which basically lists the payments, the
8 dates, the usage, and that would have been for the
9 past two years.

10 Q. And why was that billing statement sent?

11 A. Basically, to verify the amount that we
12 were showing that was due along with listing any
13 payments that would have been received from the
14 customer.

15 Q. How does CEI process the checks that it
16 receives from customers every day?

17 A. They're automatically opened and they go
18 through an automated process that basically reads the
19 check along with, you know, the stub that's included
20 and then they get posted on a file that's uploaded
21 and they get posted that day to the customer's
22 account.

23 Q. Does that system read the back or the
24 endorsement side of checks that are incoming?

25 A. No.

1 Q. Does CEI accept or -- strike that.

2 Was the meter at Complainant's residence
3 ever changed?

4 A. No.

5 Q. So to your knowledge is the meter that
6 was in place in August 2006 the same one that's in
7 place there today?

8 A. It is.

9 Q. Do you have a theory as to why
10 Complainant's August 2006 bill was higher than in
11 prior periods?

12 A. Based on a review of the historical
13 usage, the prior year, that would have been the 2005
14 bill, in just taking a look at the usage for July and
15 August and then reviewing the usage for July and
16 August in 2006, it would appear that it is possible
17 that the July '06 usage was under-read just going by
18 a comparison of that year bill that's in question to
19 the previous year.

20 MR. GARBER: May I approach?

21 EXAMINER SHEETS: You may.

22 MR. GARBER: Your Honor, I'd like to mark
23 as CEI Exhibit I, I'm sorry, CEI Exhibit H the July
24 '05 bill to Complainant and as CEI Exhibit I the
25 August '05 bill to Complainant.

1 (EXHIBITS MARKED FOR IDENTIFICATION.)

2 Q. Miss Reinhart, could you explain in a
3 little bit more detail why you believe that the July
4 2006 amount may have been under-read?

5 A. Yes. I'll get to that. In just
6 comparing the July of '06 versus -- or the July of
7 '05 versus July of '06, the July of '06 was a
8 thousand 41 kilowatt-hours. Excuse me. A thousand
9 86. And the July of '05 was 1,626. And then the
10 August of '05 was 2,098, and the August of '05 --
11 sorry.

12 EXAMINER SHEETS: What pages are you on?

13 THE WITNESS: First I'm going to
14 reference the two that he just handed out, those are
15 the '05 data. The '06 are actually in the bills that
16 were presented in the exhibit, I think it was B. I'm
17 just trying to get to that.

18 Okay. It's not marked a page, but I'm
19 looking at the historical data on the bill that was
20 issued on August the 16th of 2006. And I'm just
21 comparing the historical data July and August of
22 '06 to the July and August of '05. And the two July
23 and August total together are approximately about
24 3,700 kilowatt-hours, which is about the same number
25 of kilowatt-hours that was used in '06 for that same

1 time period. And just looking at, you know, the
2 usage, typically, you know, was going up during the
3 summer months and then somewhere in about September
4 it started to decrease again.

5 So looking at that usage, July, it's
6 possible that that could have been 2,068, and then in
7 August 1,750, and then in September it would be, you
8 know, a little -- would be more in line with a lower
9 amount than that.

10 Q. Has Complainant paid all of the current
11 charges associated with his monthly bills after
12 August 2006?

13 A. After August? No.

14 Q. And can you tell us what -- there was a
15 monthly bill that he did not pay since that time?

16 A. Yes. There was a bill from February the
17 11th to March 15th of 2010 in the amount of
18 132.02 that was not paid.

19 Q. So are you aware of whether Complainant
20 disputes amounts just a little over \$300 in this
21 case?

22 A. Yes.

23 Q. And would that \$300, then, include the
24 amount that you just read us from the bill from March
25 of 2010?

1 A. Yes.

2 MR. GARBER: Nothing further.

3 EXAMINER SHEETS: Do you have any
4 recross?

5 MR. WIELICKI: Yeah, just a couple of
6 follow-up questions here.

7 - - -

8 RECROSS-EXAMINATION

9 By Mr. Wielicki:

10 Q. Your title in the company, are you
11 considered management?

12 A. No.

13 Q. No. Okay. Do you feel that if the
14 company received a check with specific -- a letter
15 and a check with specific instructions and specific
16 implications, and they say cashed the check and later
17 on said they made a mistake, thought they made a
18 mistake, do you think that that's fair to come back
19 to a customer?

20 A. You're saying that --

21 Q. Or do you feel that based on the
22 restrictive endorsement that was on the check, that
23 it's fair for your company not to stand up to the
24 plate and say, "Yes, we agreed to that"?

25 A. As stated, you know, when we processed

1 the checks, you know, we do not -- the machines do
2 not read the back of the check. We process a check
3 and it just reads the front of the check and a stub
4 if it's submitted.

5 Q. Okay. But by doing that do you feel that
6 you agreed to the terms of the check?

7 A. No.

8 Q. Based on the way your setup -- do you
9 agree that restrictively endorsed checks exist in the
10 world?

11 A. I'm not really -- have too much knowledge
12 about that, no.

13 Q. Does anybody within your company -- do
14 you have meetings at any times to discuss
15 restrictively endorsed checks? Has it ever been
16 brought up?

17 A. I'm not aware of any.

18 Q. Do you know what a restrictively endorsed
19 check is?

20 A. Based on your testimony, I mean, I've
21 come to know what it is I guess.

22 Q. Okay. If you had cashed a check such as
23 that, do you believe that you would have relinquished
24 your rights to an alleged outstanding debt?

25 A. No.

1 Q. How so?

2 A. Like I said, we don't acknowledge the --

3 Q. No. No. I'm asking you. I'm asking
4 you.

5 A. You're asking me to go into -- I don't
6 have that much knowledge about restrictive and all
7 the legalities behind it. You're asking me to speak
8 to something that I have no knowledge of.

9 Q. Well, but I'm just saying based on the
10 terminology on that check and the terminology in the
11 letter, if you would have gotten one of those in your
12 hands, whether it had been the check or the letter,
13 and you did state that a review was done --

14 A. After the check had posted.

15 Q. Okay. A review was done. Do you think
16 that that would have signaled more attention, this
17 issue needs more attention?

18 A. No. I mean, at this point we tried to
19 contact you as, again, was stated, sent you the
20 information that you would have to review so if we
21 did reach you that we would have, at least you would
22 have some documentation in your hand that we would be
23 able to discuss your account.

24 Q. But you thought it was okay to go ahead
25 and negotiate the check anyway.

1 A. You're saying "you." I did not --

2 Q. I'm saying "you" as your company thought
3 it was okay to go ahead and negotiate the check
4 anyway.

5 A. The check was processed for the amount
6 that you're claiming that had the endorsement on the
7 back. I can just tell you that amount of that check
8 posted to the account.

9 Q. Okay. But you do acknowledge that -- do
10 you ever get restrictively endorsed checks that come
11 through?

12 A. I don't know.

13 Q. Was mine the only one in the history of
14 FirstEnergy?

15 A. I can't answer that.

16 Q. Okay. So, again, you have no policy
17 concerning --

18 A. No.

19 Q. -- restrictively endorsed checks. And if
20 someone reviews it, are you saying they don't know
21 what to do with it other than just pass it through?

22 A. At this point, again, I mean, it more
23 than likely just got read to the front of the check
24 and that, if it was marked on the back, would not
25 have brought it to anybody's attention.

1 Q. Okay. The letter itself wouldn't have
2 signaled that this matter needs more attention --

3 A. The letter --

4 Q. -- because we may be accepting something
5 that we don't agree to.

6 A. Well, it's obvious the payment posted
7 before the review of the letter.

8 Q. Okay. But is it normal practice that
9 checks are disattached from letters when they
10 pertain, when they're stapled?

11 A. I don't know.

12 Q. What does your policy indicate? What
13 does your policy say?

14 A. Well, first of all, in the cash
15 remittance area, which I do not work in so I don't
16 have any firsthand knowledge of that, but I can tell
17 you that the correspondence does get -- was getting
18 at that time copied into a database and that is what
19 was being worked to respond to your letter that was
20 sent.

21 Q. Okay. But during that review that you
22 say happened, nobody said that -- nobody thought
23 that, my gosh, he is including a check that has a
24 restrictive endorsement, we probably shouldn't cash
25 that check just yet.

1 A. First of all, as I stated before, the
2 review of the letter was done after the check was
3 already posted to the account.

4 Q. Okay. Are you aware of the things that
5 can be done after a check is cashed that you find
6 dispute with that has a restrictive endorsement on
7 it?

8 A. Other than getting ahold of the customer
9 and asking them, you know, asking for information,
10 no. I guess I would have to say no.

11 Q. Okay. So you yourself or your company is
12 unfamiliar with the Uniform Commercial Code in
13 regards to a restrictively endorsed check.

14 A. I am not aware of it.

15 MR. GARBER: Objection, your Honor. I
16 don't mean to object, obviously, to a lot of
17 Complainant's questions, but this one is getting into
18 legal analysis and legal opinion. This witness isn't
19 being offered as a lawyer or a legal expert and I
20 don't think it's appropriate to try to attribute
21 legal knowledge to her and then ask her questions
22 about the UCC.

23 EXAMINER SHEETS: I think I will agree
24 with you.

25 She stated she doesn't know.

1 MR. WIELICKI: Okay. What I'm trying to
2 determine, your Honor, is --

3 EXAMINER SHEETS: Let's move on to
4 another line of questioning, okay?

5 MR. WIELICKI: Pardon me? I didn't hear.

6 EXAMINER SHEETS: Move on to another line
7 of questioning.

8 MR. WIELICKI: Okay. Okay. I guess
9 that's -- I'm done questioning.

10 EXAMINER SHEETS: All right. Let's go
11 off the record here, or did you want to say
12 something?

13 MR. GARBER: Yes, I just wanted to
14 confirm that CEI's exhibits have been admitted. We
15 introduced two on redirect and I'm not sure those
16 have been covered yet.

17 EXAMINER SHEETS: I will admit those
18 exhibits into evidence at this time.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER SHEETS: Let's go off the record
21 and we'll discuss a briefing schedule.

22 (Discussion off the record.)

23 EXAMINER SHEETS: We'll go back on the
24 record. We've discussed a briefing schedule, and
25 initial briefs will be due May 6th and reply briefs

1 due May 20th. And with that said, I thank you all
2 for coming. I'll consider the case submitted on the
3 record.

4 (The hearing concluded at 12:24 p.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 Thursday, March 31, 2011, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.

(MDJ-3818)

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in

Case No(s). 10-2329-EL-CSS

Summary: Transcript Trasncript of Peter Wielicki vs. The Cleveland Electric Illuminating Co. hearing held on 03/31/11. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.