

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of: :
The Complaint of :
Brenda Fitzgerald :
and Gerard Fitzgerald, :
 :
Complainants, :Case No. 10-791-EL-CSS
 :
vs. :
 :
Duke Energy Ohio, Inc., :
 :
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 10:00 a.m. on Wednesday, April 27, 2011.

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1 Wednesday Morning Session,
2 April 27, 2011.

3 - - -

4 HEARING EXAMINER SHEETS: We'll call the
5 case. The Public Utilities Commission of Ohio has
6 set for hearing, at this time and place, Case No.
7 10-791-EL-CSS in the matter of Brenda Fitzgerald and
8 Gerald Fitzgerald versus Duke Energy. My name is
9 Kerry Sheets. I'm an Attorney Examiner for the
10 Commission and I've been assigned to hear this case.

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

14 MR. FITZGERALD: Yes, sir. Please note
15 for the record, my name is Gerard, G-E-R-A-R-D, not
16 Gerald. There's several conflicts several times I'm
17 referred to as Gerald and others I'm referred to as
18 Gerard. My correct name is Gerard. I want to ask --

19 HEARING EXAMINER SHEETS: What's your
20 address, sir?

21 MR. FITZGERALD: Pardon me?

22 HEARING EXAMINER SHEETS: Address?

23 MR. FITZGERALD: Oh, you want my address.
24 For the purposes -- 123 B Southern Trace and that's
25 in Cincinnati.

1 MRS. FITZGERALD: 45255.

2 MR. FITZGERALD: 45255.

3 HEARING EXAMINER SHEETS: Which address
4 did you give, Mr. Fitzgerald?

5 MR. FITZGERALD: Well, we just moved from
6 61 Hunters Court where this whole situation took
7 place.

8 HEARING EXAMINER SHEETS: Okay. And I
9 believe docketing has your new address.

10 MR. FITZGERALD: Yes, that's the address
11 I just gave you.

12 HEARING EXAMINER SHEETS: That's the
13 service, okay, that will be the service address which
14 you'll be served at now.

15 MR. FITZGERALD: Yes, the one I just
16 gave.

17 HEARING EXAMINER SHEETS: Okay. Now
18 let's have the Company's appearance.

19 MR. MCMAHON: Good morning, Your Honor.
20 Bob McMahon on behalf of Duke Energy Ohio, Inc.

21 HEARING EXAMINER SHEETS: Thank you.

22 MR. JONES: Your Honor, if I could just
23 make a limited appearance on behalf of Cindi Mack, as
24 a witness in this proceeding. John Jones with the
25 Ohio Attorney General's office, 180 East Broad Street

1 Columbus, Ohio 43215.

2 HEARING EXAMINER SHEETS: Thank you.

3 MR. JONES: You.

4 HEARING EXAMINER SHEETS: Now,
5 Mr. Fitzgerald, do you wish to present testimony?

6 MR. FITZGERALD: Yes, but before anything
7 gets started, I assume these are the four people that
8 we have subpoenaed from Duke; is that correct?

9 HEARING EXAMINER SHEETS: I don't know
10 that.

11 MR. FITZGERALD: Okay. Cindy Laycock.

12 MS. LAYCOCK: (Raises hand.)

13 MR. FITZGERALD: Cindy Givens.

14 MS. GIVENS: (Raises hand.)

15 MR. FITZGERALD: And Cindi Mack. Pam
16 Ball.

17 MS. BALL: (Raises hand.)

18 MR. FITZGERALD: And Vel Mitchell, I
19 assume, right?

20 MS. MITCHELL: (Raises hand.)

21 MR. FITZGERALD: It be possible for them
22 to be somewhere so they're not persuaded in one way
23 or the other by the previous testimony so that they
24 don't have to sit and listen and possibly be
25 persuaded by something they heard from somebody else?

1 HEARING EXAMINER SHEETS: No. We're not
2 going to segregate them. Everybody will present
3 their testimony. But right now we want you on the
4 stand, if you want to present testimony.

5 MR. FITZGERALD: If I want to present
6 testimony?

7 HEARING EXAMINER SHEETS: Excuse me.

8 MR. FITZGERALD: I don't want to present
9 testimony.

10 HEARING EXAMINER SHEETS: You don't want
11 to --

12 MR. FITZGERALD: Well, let me ask you
13 this, can we -- Mr. McMahon indicated that we were
14 not properly informed on April 15th. Can we just get
15 to the point of what do we agree on and what do we
16 disagree on? And what I mean by that is, the amount
17 of money that was served, what was told that was on
18 the 29th and all of that, which will come out in
19 testimony and which we have documents to support our
20 position, but there's -- concerning the amount of
21 money that was -- we were compelled to pay.

22 HEARING EXAMINER SHEETS: Okay. Let's
23 get this on the record. You, yourself do not want to
24 testify, correct?

25 MR. FITZGERALD: No. Is it compulsory

1 that I testify?

2 HEARING EXAMINER SHEETS: Your wife
3 doesn't want to testify?

4 MR. FITZGERALD: My wife is not going to
5 testify.

6 HEARING EXAMINER SHEETS: Okay. Now, we
7 could go off the record and we could get a
8 stipulation at this point, then we could go back on
9 and state the stipulation, if that's what you want to
10 do to start off. We can get an agreement of the
11 facts.

12 MR. FITZGERALD: I want to expedite it as
13 best we can.

14 HEARING EXAMINER SHEETS: Okay. Why
15 don't we do that then. Let's go off the record.

16 (Recess taken.)

17 HEARING EXAMINER SHEETS: Let's go on the
18 record now.

19 MR. MCMAHON: Just for the record, Your
20 Honor, as I stated beforehand, Duke Energy Ohio is
21 willing to stipulate that the company, during the
22 course of the April 15th, 2010 telephone conversation
23 with Mr. Fitzgerald, did not explain his and his
24 wife's options under the Winter Rule Program in order
25 to reconnect their service, which had been

1 disconnected.

2 HEARING EXAMINER SHEETS: Do you agree to
3 that, Mr. Fitzgerald?

4 MR. FITZGERALD: Yes, I do.

5 HEARING EXAMINER SHEETS: Okay. Now --

6 MR. FITZGERALD: Additionally, I would
7 like to get into the statement --

8 HEARING EXAMINER SHEETS: You can on the
9 stand. You can --

10 MR. FITZGERALD: I've got to take the
11 stand to make another statement to answer what he
12 just said?

13 HEARING EXAMINER SHEETS: Yeah. You'll
14 have to present your testimony. He presented the
15 stipulation that you've indicated you agreed to.
16 Okay. Now it's time for you to come up and testify.

17 MR. FITZGERALD: I can take the stand and
18 testify.

19 HEARING EXAMINER SHEETS: Right.

20 MR. FITZGERALD: That's where I'm headed
21 for.

22 HEARING EXAMINER SHEETS: Right up here.
23 Now raise your right hand.

24 - - -

25 GERARD FITZGERALD

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

- - -

HEARING EXAMINER SHEETS: Be seated.

Okay. State your name, give your address
again for the court reporter.

MR. FITZGERALD: Gerard Fitzgerald, 123 B
Southern Trace, Cincinnati, Ohio. What's the zip
code?

MS. FITZGERALD: 45255.

MR. FITZGERALD: 45255.

HEARING EXAMINER SHEETS: Okay. Go ahead
and present your testimony in the narrative fashion.

MR. FITZGERALD: Okay. This matter
starts prior to the 15th, which we'll have testimony
to later, and that is what was told to Brenda
Fitzgerald on March 29th.

HEARING EXAMINER SHEETS: Okay. What
year was this?

MR. FITZGERALD: 2010.

HEARING EXAMINER SHEETS: Okay.

MR. FITZGERALD: I assume his stipulation
is also referring to 2010. When he indicated April
15th, was it 2010?

MR. MCMAHON: That's correct. That's the

1 date I stated.

2 MR. FITZGERALD: It begins on March 29th
3 and it's -- that Brenda was aware and made aware by
4 people that will come up here and testify to that
5 effect that they spoke to her, whether or not it was
6 on March 29th is an academic exercise. I don't care
7 if it was March 29th. She knew prior to April 15th
8 of Winter Rules, but the Winter Rules did us no good
9 because if we knew about the Winter Rules and know
10 that all we had to pay was \$175 when the disconnect
11 came and Duke refused to honor that and Duke says,
12 no, we had to pay 7 -- I spoke to -- in Mr. McMahon's
13 stipulation and in the papers that will come into
14 play later with Ms. Mack, Duke constantly refers to
15 what was said to me on April 15th. They ignore that
16 the first phone call on April 15th was made by Brenda
17 Fitzgerald. And they have a situation here where
18 they say Brenda has got standing in the matter and
19 they've constantly say we don't -- I don't have
20 standing in the matter. That's not so, I do have
21 standing in the matter. I -- Ms. Ball wrote right on
22 the very top line of one of her memos that I'm listed
23 as the spouse, so they knew who I was and where I
24 was. That doesn't give me standing in the matter?

25 MR. MCMAHON: Excuse me, Your Honor. I

1 guess I would object to the testimony. I have no
2 problem with Mr. Gerard providing us with facts, but
3 he appears to go arguing the case. So if he wants to
4 provide us with admissible evidence, lay a foundation
5 and tell the story as to what he personally knows,
6 I'm fine with that, but he is going way beyond what
7 he personally knows. He's now just arguing his case.

8 HEARING EXAMINER SHEETS: Okay. Let's
9 stick to the facts, the facts of the case.

10 MR. FITZGERALD: The facts of the case,
11 April 15th, the very first phone call -- and by the
12 way, both in the PUCO's records and in Duke's records
13 they -- several references are made to all this
14 happening on April 14 and there was several other
15 things that are erroneous in the record and if I have
16 to go get the whole list and go over them, I will.
17 But do we all agree that this was April 15th and not
18 April 14th? Okay. Then I'll give it in a narrative
19 fashion.

20 The Public Utilities Commission says this
21 happened on April 14th. The Duke several times
22 mentions this happened on April 14th. To the best of
23 my knowledge, nothing happened on April 14th. It all
24 happened on April 15th. Immediately upon our power
25 being disconnected upon April 15th, Brenda called,

1 the first one to the company and the company told her
2 she had to pay 7 -- a thousand --

3 MR. MCMAHON: Objection.

4 MR. FITZGERALD: Pardon me?

5 HEARING EXAMINER SHEETS: Excuse me?

6 MR. FITZGERALD: I thought he said
7 something. The first phone call was from Brenda
8 Fitzgerald, who there can be no question is the
9 person on the account. Nobody is questioning that.
10 They say that they may or may not have told me.
11 Ms. Mack in her -- not Ms. Mack, but Ms. Givens
12 indicates that she only addresses whether or not I
13 should have been told of the Winter Rules or I should
14 have been charged \$175 and ignores the first phone
15 call was from Brenda Fitzgerald, which we'll put on
16 proof that the first phone call was absolutely from
17 Brenda Fitzgerald.

18 Then they -- additionally we made a
19 complaint on the 16th. I called the company to
20 complain on the 16th and I spoke to a gentleman, who
21 identified himself, I believe, as Ronnie. I think it
22 subsequently come out to be Ronnie Hanson, but he --
23 it was the first time I heard of Winter Rules. Now,
24 my wife was in no way being deceitful or deceptive
25 toward me with the Winter Rules. She had been told

1 for medical reasons that I should avoid all stress.
 2 Now, she felt it would be stressful for me to know
 3 that we owed this much money to Duke. I was unaware
 4 of it at that point, but when I became aware of it,
 5 the first thing was to say, pay them. She called and
 6 attempted to pay them and they indicated she had to
 7 pay 1,700 and some dollars. She called -- they say
 8 they called the bank and the bank declined it. My
 9 bank denies that they ever called the first bank --

10 MR. MCMAHON: Objection. Hearsay.

11 HEARING EXAMINER SHEETS: Okay. You have
 12 to present testimony from your personal knowledge

13 MR. FITZGERALD: Well, my personal
 14 knowledge is I went to the bank and asked the bank if
 15 they had declined a Duke Energy request to pay a
 16 1,000, the first -- the way they do it is \$1,000 at a
 17 time, in increments of a 1,000.

18 HEARING EXAMINER SHEETS: Okay. Let's
 19 proceed to another point.

20 MR. FITZGERALD: Key Bank says that that
 21 phone call never took place.

22 MR. MCMAHON: Objection.

23 MR. FITZGERALD: That's first-hand
 24 knowledge of mine.

25 HEARING EXAMINER SHEETS: Okay. We'll

1 let that stand. Proceed.

2 MR. FITZGERALD: Now, I call. The bank
3 -- a female that I spoke to first at Duke Energy says
4 that I was to pay \$1,400 and she wasn't very clear on
5 it and I said, look, I'm not hear to argue what we're
6 going to pay. I'm going to pay whatever it is. She
7 attempted to -- she called a second bank and the
8 second bank declined the payment. I called them. I
9 hung up. I call the bank. The bank indicated that
10 they had had a call, but there was a freeze on my
11 account because some person in Hawaii saw a debit to
12 Kroger Foods or Kroger the day before and thought it
13 was a suspicious entry so they had frozen my
14 accounts, but the person at the bank knew me and knew
15 my voice so she called up the supervisor and said
16 they would approve the payment. So I called back to
17 Duke and they approved the payment, but that was when
18 we talked to Jonathan Green and Jonathan Green was
19 1,712 initially and then additional 50 for the
20 reconnect and whatever it came out to be, 1700 and
21 something dollars.

22 I called on the 16th and I say on the
23 16th, I wish to make a complaint about this. At this
24 point, I'm thinking one phone call, a couple of mea
25 culpas and the whole thing is over with. Well, then

1 Mr. Hanson explains Winter Rules. And I say, what
2 are the Winter Rules? My understanding now is that
3 Winter Rules are that \$175 was the maximum that they
4 could have charged us in this circumstances --
5 circumstance. So I said, who knew about this? And
6 he said, well -- I said the people we spoke to
7 between my wife, myself, we spoke to six people at
8 Duke and not one of them mentioned the Winter Rules
9 to us the day before. He said the day before they
10 should have, everyone should have told us about
11 Winter Rules. None of them did.

12 I subsequently called PUCO and spoke with
13 Ms. Mack. Now, on the 19th, Ms. Mack called me. Let
14 me move ahead now to April 19th. I get another
15 notice. I called on the 19th to make sure something
16 -- that they weren't going to disconnect us again, I
17 called Duke. Duke told me at approximately 9 o'clock
18 in the morning I owe \$250 still to be kept from being
19 turned off again. I said okay, hold it. So I said
20 I'll call back. Hung up. Meaning to call back to
21 pay the \$250, I call back approximately two hours
22 later after I got the mail and in the mail was a bill
23 for 1,600 and some dollars, disconnect notice.

24 I called back to Duke. I spoke to a
25 young lady named Crystal. The second person that got

1 on the phone was Crystal when I called back. Crystal
 2 informed me I had to pay \$478 to keep from being
 3 disconnected again. I paid the \$478. Once again,
 4 this was outside the Winter Rules, but we have to
 5 move forward to September 7th when I spoke with
 6 Mr. McMahon and his associate or the young lady --
 7 the woman that accompanied him up here and asked even
 8 as late of September 7th, what was I paying the \$478
 9 for on the 19th? And they looked at all their
 10 records and indicated they couldn't give me an
 11 answer.

12 MR. MCMAHON: Objection. The witness is
 13 now testifying as to conversations during the course
 14 of the settlement conference, which are all
 15 inadmissible.

16 HEARING EXAMINER SHEETS: When did you
 17 get this information?

18 MR. FITZGERALD: When did I get this
 19 information?

20 HEARING EXAMINER SHEETS: Uh-huh. Was
 21 that during the settlement conference?

22 MR. FITZGERALD: At the settlement
 23 conference, that's correct.

24 HEARING EXAMINER SHEETS: Okay. We won't
 25 allow that in the testimony.

1 MR. FITZGERALD: Okay. Then let me say
2 this, they charged me this money the 19th of April.
3 This is now the 27th of April, a year later, a year
4 and three days later or a year and six days later,
5 what was the \$478 for? Is that punitive because I
6 had called PUCO? I have no idea what it's for. They
7 have speculated that it might be some money that
8 Stephanie Carson owed on either a current account or
9 a previous account, an additional \$250 for a security
10 deposit.

11 HEARING EXAMINER SHEETS: Excuse me. Now
12 who is Stephanie Carson?

13 MR. FITZGERALD: Stephanie Carson is a
14 young lady that they had variously identified as
15 Brenda's daughter, Brenda's daughter-in-law, say that
16 she may have possibly called and identified herself
17 as Brenda. Stephanie Carson is a young lady that has
18 dated and still dates Brenda's son, who is my
19 stepson. And she called and they say, she's Brenda's
20 daughter, so they told her information, which they
21 shouldn't have told her, for instance, that she had
22 to pay -- she had to wait two days because there was
23 a disconnect.

24 MR. MCMAHON: Objection. Hearsay.
25 Foundation.

1 HEARING EXAMINER SHEETS: I think that's
2 correct. That's sustained. Let's move onto another
3 point. We were at \$478.

4 MR. FITZGERALD: Right. So we're talking
5 about in excess of \$2,100 that we paid. When
6 Ms. Mack first called, and I'll bring this out in
7 testimony, when she first called to Duke and said
8 what was the situation, why -- I don't know what
9 prompted it, but I got a call on the 19th from
10 Ms. Mack and Ms. Mack indicates to me that we never
11 made the payment. We didn't make a \$300 payment on
12 April 5th. Now why that's important is, if we made a
13 \$300 payment on April 5th of 2010, that would have
14 qualified as the in excess of \$175. You had to pay
15 at least \$175 under the Winter Rules. So on that one
16 that had barred a disconnect notice of April 6th, on
17 the 5th it was made, the payment of \$300 was made and
18 that negated any disconnect notice. So, your rules
19 called for disconnect notices in Winter Rules, not
20 one but two. One two weeks before and one ten days
21 before. And if I can, I'll put in evidence your own
22 -- can I go back over and get the papers? Is there
23 going to be evidence submitted to you?

24 HEARING EXAMINER SHEETS: This whole
25 hearing is about this matter.

1 MR. FITZGERALD: Well, over there -- I
2 just want to go over and get my papers, if I might,
3 bring back the Winter Rules and read them into the
4 record, so if there's any mistake with the Winter
5 Rules, we can correct it.

6 (Witness getting papers at table.)

7 MR. FITZGERALD: This says Winter --

8 HEARING EXAMINER SHEETS: What do you got
9 there, sir?

10 MR. FITZGERALD: This is something that I
11 think I took off the website. Do you want a copy of
12 it?

13 MR. MCMAHON: Yes, please.

14 Your Honor, if it helps, I'm happy to
15 stipulate that, you know, the Court can take judicial
16 notice of, administrative notice, whatever you want
17 to call it, of what their Winter Rule applies. I
18 don't think there's any need for Mr. Fitzgerald to
19 read the Winter Rule into the record while the
20 Commission is well aware of what the Winter Rule
21 applies.

22 HEARING EXAMINER SHEETS: Mr. Jones, did
23 you want to take a look at this?

24 MR. JONES: Yes, Your Honor, briefly.
25 Thank you, Your Honor.

1 MR. FITZGERALD: I would just like to say
2 there's a slight difference between what I handed Mr.
3 McMahon and what that is. That's a copy so that one
4 has just not got the red and blue on it. Do you
5 understand?

6 MR. MCMAHON: Yes.

7 (Mr. Jones reading document.)

8 MR. JONES: Yes, Your Honor. We are
9 satisfied this is the Winter Rule. Thank you.

10 HEARING EXAMINER SHEETS: Okay. I will
11 give that back to you. Now we'll let you proceed. I
12 understand what Duke's counsel has said about the --
13 they'll recognize that as being the Winter Rule.
14 I'll let you -- if you want to read something from
15 it, go ahead.

16 MR. FITZGERALD: Yes. I want to read on
17 the top of the second page. It says, "there is no
18 sign up required." We all understand that. So, it's
19 very clear having read this, that \$175 had to be paid
20 in that billing cycle. We paid 300 in that billing
21 cycle on the 5th. Ms. Mack called me and informed me
22 that Duke informed her that we hadn't made a payment
23 on April 5th. It happened to be when Ms. Mack called
24 me I was reviewing the file and sitting directly next
25 to me was a receipt for the April 5th payment and I

1 asked her if she had a fax number because I'd fax her
2 the receipt and she said no and discontinued the
3 conversation.

4 Subsequently, Duke changed their mind and
5 said, well, we found the records and there was a \$300
6 payment. So any disconnect notice that could have
7 sent to us dated April 6th was negated by that \$300
8 payment on April 5th, according to the Winter Rules.
9 Does anybody -- that's what's written here.

10 Now, as far as Duke, I don't know what --
11 the disconnect thing, I have here a Duke, I don't
12 know what you would call this thing, but you -- it's
13 sitting on the counter.

14 HEARING EXAMINER SHEETS: What are you
15 pointing to now?

16 MR. FITZGERALD: I'm going to point to a
17 paragraph on the fourth page of that concerning the
18 disconnects and what can happen and what can't
19 happen.

20 HEARING EXAMINER SHEETS: This is -- it
21 has at the top Duke Energy and it says Customer
22 Rights and Responsibilities. If we -- does anyone
23 want to look at this?

24 MR. MCMAHON: I would, Your Honor. Thank
25 you. Can I just show it to Ms. Givens?

1 HEARING EXAMINER SHEETS: Yes.

2 MR. MCMAHON: Thank you.

3 HEARING EXAMINER SHEETS: Mr. Jones.

4 MR. JONES: I believe that's a Duke
5 document, Your Honor. It wouldn't be for the
6 Commission. It's a Duke document.

7 HEARING EXAMINER SHEETS: Go ahead.
8 You're on what page of the document, sir?

9 MR. FITZGERALD: Page 4 of this document
10 states, "Disconnection for Nonpayment. If your
11 service is disconnected due to nonpayment of a
12 delinquent bill, a reconnection fee and full payment
13 of the amount in arrears is required for restoration.
14 In certain instances, a security deposit may also be
15 necessary." And here comes why I'm reading it.
16 "Duke Energy is required by PUCO to provide notice 14
17 days prior to disconnection and an additional notice
18 ten days prior to disconnection during the winter
19 season, the winter heating season." That's what it
20 says in their own thing. Repeatedly we have asked
21 through this process to show us the disconnect notice
22 that was in force on April 15th. Mr. McMahon has
23 responded that a disconnect notice is -- let me get
24 his exact words. Excuse me a second.

25 We asked for a copy of a disconnect

1 notice. This -- a copy of the disconnect notice that
 2 was in force on April 15th, 2010. This is sent to
 3 docketing on March 11th, 2011. Mr. -- Duke Energy,
 4 Mr. McMahon's response to this; "A copy of the
 5 disconnect -- his answer is, "Respondent objects to
 6 this request because it seeks documents that are
 7 neither relevant nor likely to lead discovery of
 8 admissible evidence." What is not relevant about a
 9 disconnect notice? So in essence, what he's saying
 10 in this is that it's not relevant that a disconnect
 11 notice and --

12 MR. MCMAHON: Your Honor, I object to
 13 this testimony. He's arguing prehearing discovery
 14 issues. If he has facts, he can testify to them, but
 15 this isn't the time or the place for a discovery
 16 dispute.

17 HEARING EXAMINER SHEETS: Okay. I think
 18 he's correct. I have to sustain that objection.
 19 What we need now is the facts of the complaint.
 20 Okay. Nothing from the settlement conference or
 21 discovery. You've got to stick to the facts of the
 22 complaint.

23 Now, before you proceed, though, I need
 24 to know, did you want any of those other documents
 25 marked as exhibits? You had the, what you said was

1 the disconnect notice -- excuse me, the Winter Rule
2 and then Duke's document. Did you want those marked
3 as exhibits?

4 MR. FITZGERALD: I'd like the one that --
5 what I'd like for an exhibit would be Winter
6 Reconnect Order: Maintain Electric and Natural Gas
7 Service-PUCO. I've given Mr. McMahon a copy. That's
8 the one you have a copy of. I'd like to be in
9 evidence.

10 HEARING EXAMINER SHEETS: You'd like that
11 marked?

12 MR. FITZGERALD: Yes. Now can I see that
13 copy and the other copy --

14 HEARING EXAMINER SHEETS: Let's go onto
15 the other document that you had.

16 MR. FITZGERALD: Okay. Well, Duke says
17 --

18 HEARING EXAMINER SHEETS: Do you want
19 that marked?

20 MR. FITZGERALD: Yes, I do.

21 HEARING EXAMINER SHEETS: Okay.

22 MR. FITZGERALD: And do you want me to
23 mark the whole thing or page 4?

24 HEARING EXAMINER SHEETS: No. I'll mark
25 them -- we'll mark them Complainant's Exhibit 1,

1 which would be your copy of the Winter Reconnect
2 Order: Maintain Electric and Natural Gas
3 Service-PUCO.

4 MR. FITZGERALD: Yes.

5 HEARING EXAMINER SHEETS: Okay. That
6 would be Complainant's Exhibit 1.

7 (EXHIBIT 1 MARKED FOR IDENTIFICATION.)

8 HEARING EXAMINER SHEETS: And we'll mark
9 as Complainant's Exhibit 2, the document titled Duke
10 Energy Customer Rights and Responsibilities.

11 (EXHIBIT 2 MARKED FOR IDENTIFICATION.)

12 HEARING EXAMINER SHEETS: Okay. Now,
13 these will have to go to the court reporter and you
14 won't get these back.

15 MR. FITZGERALD: But they will be in the
16 file?

17 HEARING EXAMINER SHEETS: Yes. They're
18 part of the case.

19 MR. FITZGERALD: Can I get copies of them
20 before I leave here?

21 HEARING EXAMINER SHEETS: Yes, we can
22 make copies.

23 MR. FITZGERALD: I'd like copies of both
24 of those so that I could show what my Exhibits 1 and
25 2 were, even after they're marked.

1 HEARING EXAMINER SHEETS: Okay. Now,
2 let's continue with your testimony. Stick to the
3 facts.

4 MR. FITZGERALD: We were given no warning
5 that this was to happen. We were taken completely by
6 surprise on April 15th when that power was turned off
7 because we had not been given -- the PUCO says we
8 should have been given by that point two warnings.
9 We had not received the disconnect notice. The
10 disconnect notice, the most recent one we had
11 received at that point had a -- bore a date of
12 April 6th, but since the \$300 payment was made on
13 April 5th, that negated that, so we had no warning,
14 and not the ten-day warning because it is a winter
15 disconnect. So they, in fact, gave us no warning,
16 turned off our power and charged us ten times the
17 amount of money that we should have paid. Then four
18 days later charged us an additional \$478 to keep the
19 power on.

20 These matters are all going to be brought
21 forth as we can speak with people because it does no
22 good for Duke to say a person knows about the Winter
23 Rules if they're not going to follow them. They
24 chose not to follow the rules. We were following the
25 rules.

1 HEARING EXAMINER SHEETS: Does that
2 conclude your testimony?

3 MR. FITZGERALD: Can I come back up later
4 if something else comes up? So can I sit down and
5 then stop and then come back to contradict or what
6 happens now?

7 HEARING EXAMINER SHEETS: I would rather
8 you complete your testimony at this point, but we
9 could recall you as a witness, if necessary.

10 MR. FITZGERALD: Okay. The standard
11 points are, we received no notice that we were going
12 to be disconnected. We had no idea of what was going
13 to happen. Okay. That they charged us an absorbent
14 amount of money that they shouldn't have. That's
15 been stipulated to. But the notice is of concern to
16 us, too.

17 And then, additionally, we had no warning
18 that we were speaking to anybody outside the State of
19 Ohio. We called the local number and that number was
20 either answered out of state or transferred out of
21 state by the first person. I do not know which but
22 I'll find out hopefully from the Duke people that
23 will take the stand. Then when we attempt to
24 subpoena people to come to this hearing, they tell
25 you, by "you" I mean PUCO, Public Utilities

1 Commission, that you don't have the authority to
2 subpoena anybody from out of state.

3 MR. MCMAHON: Objection. We're going
4 beyond the scope of the complaint, Your Honor.

5 HEARING EXAMINER SHEETS: I think we have
6 the subpoenas on the record, so we'll go with what's
7 on the record regarding the subpoenas. Now, is there
8 any more you want to add to your testimony?

9 MR. FITZGERALD: Can you think of
10 anything?

11 MRS. FITZGERALD: No. (Shakes head back
12 and forth.)

13 MR. FITZGERALD: No, that's it.

14 HEARING EXAMINER SHEETS: Okay. Now
15 we'll let the Company cross-examine.

16 MR. MCMAHON: Okay. Thank you, Your
17 Honor. Should I just stay here?

18 HEARING EXAMINER SHEETS: Excuse me?

19 MR. MCMAHON: May I just stay here
20 sitting down or would you like me to --

21 HEARING EXAMINER SHEETS: You can --

22 MR. MCMAHON: Approach as necessary?

23 HEARING EXAMINER SHEETS: I'd like
24 everybody to speak up, if you could.

25 MR. MCMAHON: Okay. Will do.

1 MR. FITZGERALD: I can hear him quite
2 well.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. McMahon:

6 Q. I just have a few questions, Mr.
7 Fitzgerald, just to clarify some things for the
8 record. First of all, I realize you're
9 Mrs. Fitzgerald's husband, but you're not the
10 customer with Duke Energy, correct?

11 A. I am on the account as the spouse.
12 That's my answer. I don't know what that qualifies
13 me to be.

14 Q. Okay. Fair enough. And I believe you
15 said earlier, I'm not so sure if it was before we
16 were on the record or after you took the stand so I
17 just want to clarify, you agree and you're testifying
18 today that your wife knew of the Winter Rule before
19 April 15th, 2010?

20 A. She had a vague -- she knew there was a
21 Winter Rule. I didn't.

22 Q. Okay. And isn't it accurate that your
23 wife invoked the Winter Rule at your account at 1923
24 John Gray Road back in 2008? Are you aware of that?

25 A. I am not aware of that.

1 Q. Okay.

2 A. And this has on a bearing on 20 --

3 Q. I'm just following up on some questions.
4 And your wife has advised you, has she not, that she
5 was told during the conversation with Duke on
6 March 29th, 2010 that she discussed the Winter Rule
7 and her options at that time?

8 A. No, that is not accurate.

9 Q. Okay. So is it your understanding that
10 your wife ever discussed the Winter Rule with any
11 representative of Duke on March 29th, 2010?

12 A. My wife's position is this, she thinks
13 she discussed it. We were of the opinion it was on
14 March 23rd; however, she was aware vaguely of the
15 Winter Rule. She thought that somebody told her she
16 had to go down to Duke and sign up for something.
17 She didn't know what the Winter Rule was exactly.

18 Q. Okay.

19 A. That's what she conveyed to me.

20 Q. Okay. And isn't it true that before you
21 made the \$300 payment to Duke on April 5th, 2010,
22 neither you nor your wife ever called Duke and said
23 we want to pursue the Winter Rule?

24 A. That's absolutely true.

25 Q. Okay. And I can show you some bills, but

1 let me ask you this way. Isn't it true that you
2 received bills on a monthly basis concerning your
3 account at 61 Hunters Court, Amelia, Ohio, and just
4 for the record it's Account No. 88200701555, and that
5 those bills in early of 2010 all included disconnect
6 notices?

7 A. I've seen several of them. I don't know
8 how many there are. I would -- probably all of them.

9 Q. So would you agree with me that the bills
10 that you and your wife received that were generated
11 in January, February and March of 2010 all contained
12 written disconnect notices to you?

13 A. May I see them?

14 Q. Absolutely. And just for the record, I'm
15 showing Mr. Fitzgerald the bills as are attached to
16 the testimony of Cynthia Marie Givens, that's already
17 been prefiled in this case. Let me just show you
18 here, sir. I'm directing your attention first, I'm
19 looking at Exhibit CMG-2, to Ms. Givens' testimony
20 and I'm showing you the bills. Here is the bill
21 prepared date and the due date so they're different.

22 A. Okay.

23 Q. So the bills prepared on January 19th,
24 2010, February 12th, 2010, and March 15th, 2010 all
25 contain the disconnect notice, correct?

1 A. That's correct.

2 Q. Thank you. And isn't it also true, sir,
3 that on -- on or about April 2nd, 2010, you and your
4 wife received a separate written disconnect notice
5 that was delivered to your house?

6 A. No. Which house? 61 Hunters Court?

7 Q. Yes, sir.

8 A. I would have to check. I'm unaware of
9 that April 2nd. I know there's an entry, a Duke
10 entry for it, but I don't know that we ever received
11 anything April 2nd.

12 Q. Okay. So that might be something to ask
13 your wife?

14 A. I've already asked her. I know she said
15 --

16 Q. But you're not sure of it?

17 A. I'm sure I didn't get it and I'm sure she
18 didn't get it. That's how it stands right there.

19 Q. Okay. I thought you just said you're not
20 sure, you don't recall getting one. Are you saying
21 you did or you didn't or you don't remember, which is
22 it?

23 A. I saw somebody -- in the paperwork we had
24 that somebody prepared something on April 2nd. I am
25 unaware that we received it.

1 Q. Okay. Now, before moving to 61 Hunters
2 Court -- and this is important because I think
3 there's been some confusion in the paperwork. Before
4 moving to 61 Hunters Court you lived at 1923 John
5 Gray Road, correct?

6 A. That's correct.

7 Q. And you moved to 61 Hunters Court when?

8 A. I believe late November of 2009.

9 Q. And by that time you were past due on
10 your account at John Gray Road, correct?

11 A. That's correct.

12 Q. Okay. And the account -- the utility
13 account, which was gas and electric at John Gray
14 Road, was in the name of your wife, correct?

15 A. That's correct.

16 Q. And it stayed in your wife's name even
17 after you had moved and it remained in your wife's
18 name up until it was disconnected somewhere, I think,
19 in March of 2010, correct?

20 A. Either late March or early April,
21 correct.

22 Q. Okay. And who was living there from
23 December of '09 through March of 10?

24 A. December of '09 through March of '10, I
25 believe Craig Stanton from time to time. I don't

1 know who was there because I hadn't been out there
2 since November. I was pretty much housebound for
3 medical reasons, so I rarely went out, in fact, I may
4 have never gone back out there.

5 Q. Who is Mr. Stanton, I apologize?

6 A. Brenda's son, my stepson.

7 Q. And that's the gentleman who is dating
8 Stephanie Carson?

9 A. Yes.

10 Q. Okay. Thank you. So in the first
11 several months of 2010, isn't it true that your wife
12 was getting disconnect notices at both 61 Hunters
13 Court and 1923 John Gray Road addresses?

14 A. I know -- we just witnessed what was
15 going on at 61 Hunters Court. I don't know what was
16 being mailed to 1923 John Gray Road.

17 Q. Okay.

18 A. I assume if they were disconnect notices
19 in her name, that she was getting them.

20 Q. And --

21 A. Or they were being mailed, whether we got
22 them or not, it's academic.

23 Q. And we can establish this later, but
24 isn't it true that your wife had different account
25 numbers at the separate addresses, correct?

1 A. Absolutely.

2 Q. Okay. And do you recall ever calling
3 Duke Energy and giving them the account number for
4 the John Gray Road address when you, in fact, had
5 intended to discuss the 61 Hunters Court address?

6 A. Well, I'll answer you this way, we have
7 disconnect notices that are mailed to 61 Hunters
8 Court that have one account number on the top and
9 then a disconnect notice for 1923 John Gray that has
10 a separate account number at John Gray. So I have
11 notices over there that you've supplied us that have
12 both of those account numbers on it. So if somebody
13 asks me a question, I can only tell you -- I'd have
14 to hear the question specifically.

15 Q. Okay. Fair enough. Let me ask you this
16 way.

17 MR. MCMAHON: If I may approach?

18 HEARING EXAMINER SHEETS: Sure.

19 Q. I'm handing you, again, sir, the prefiled
20 testimony of Cynthia Marie Givens and attached as
21 Exhibits CMG-1 are the bills from your address at the
22 1923 John Gray Road.

23 A. Uh-huh.

24 Q. I guess for the record, would you agree
25 with me that the documents attached as Exhibits CMG-1

1 are your bills relating to the John Gray Road
2 address?

3 A. Well, they're mailed to Brenda at 1923
4 John Gray. I don't know that she received them
5 because, you know, Duke knows and we know that we
6 were at 61 Hunters Court from November.

7 Q. Fair enough. Let me see if I can clarify
8 that. When you answered my question, you were
9 looking at a bill from back in February of 2009,
10 correct?

11 A. That's what you're showing me.

12 Q. Right. But if you, in fact, go forward
13 to the 2010 bills, for instance, let's look at the
14 bill that was prepared on February 1st, 2010 with a
15 due date of February 23rd, 2010.

16 A. Okay.

17 Q. Do you see that this bill was mailed to
18 Brenda at 61 Hunters Court but it relates to the John
19 Gray Road account?

20 A. Yes, I do. So is this a disconnect
21 notice for John Gray or a disconnect for Hunters
22 Court?

23 Q. Well, as it says here -- let's see if we
24 can answer that because you're the witness not me.
25 The disconnect notice and it says the name and

1 service address; it's identified as John Gray Road,
2 correct?

3 A. That's correct.

4 Q. And it's just being mailed to Brenda
5 because you all had changed your address with Duke,
6 correct?

7 A. That's correct.

8 Q. Okay.

9 A. So the disconnect notice that you just
10 showed me is for 1923 John Gray Road?

11 Q. Correct.

12 A. Okay.

13 Q. So you and your wife were receiving
14 disconnect notices for both addresses, 1923 John Gray
15 Road and 61 Hunters Court, at your then current
16 residence of 61 Hunters Court as of the first several
17 months of 2010?

18 A. I know we were receiving stuff at 61
19 Hunters Court. I don't know that we were receiving
20 anything from 1923 John Gray.

21 Q. Okay. Even though I just showed you the
22 bills and you acknowledged those were your bills, you
23 just don't recall whether you were receiving them or
24 not?

25 A. I don't know that we got forwarded from

1 1923 John Gray.

2 Q. Okay.

3 A. See you asked me a question about the
4 disconnect notice and I'm asking you, that disconnect
5 notice is for 1923 John Gray Road, you'll agree with
6 that, because I don't know how to answer you?

7 HEARING EXAMINER SHEETS: He asks the
8 questions at this point.

9 Q. The bill that I just showed you and you
10 identified as having a service address of 1923 John
11 Gray Road, in fact, relates to 1923 John Gray Road,
12 correct?

13 A. Correct.

14 Q. And those are the bills dated in February
15 of 2010, March 2010, that are attached as CMG-1 to
16 Cynthia Givens' testimony, correct?

17 A. Correct.

18 Q. Okay. You testified previously that Duke
19 had divulged some confidential information or
20 something to Stephanie Carson. Is the basis of that
21 testimony just what you have read in documents
22 produced by Duke during the course of discovery in
23 this case?

24 A. Yes.

25 Q. Okay. I mean, isn't it --

1 A. Or conversations possibly with PUCO.

2 Q. Okay. Isn't it accurate that, as you've
3 said, your stepson, Brenda's son, he was living there
4 at times along with Stephanie Carson, correct?

5 A. I can only answer you this way. I had
6 not seen Stephanie Carson, to the best of my memory,
7 and I have a pretty good one, since Thanksgiving the
8 year before, Thanksgiving when we moved. I had not
9 seen Stephanie Carson from roughly November maybe
10 December of 2009 through April when all this happened
11 2010. Where she was living, I don't know.

12 Q. Okay. And just to be clear, you don't
13 have any personal knowledge of Stephanie Carson's
14 telephone communications with Duke Energy, correct?

15 A. You mean other than what I read in --

16 Q. You don't have any direct first-hand
17 knowledge, you weren't a witness to any of her
18 conversations with Duke Energy?

19 A. No, I have no first-hand knowledge of
20 that, other than what I've read.

21 Q. Okay.

22 MR. MCMAHON: May I approach again?

23 HEARING EXAMINER SHEETS: You may.

24 Q. Sir, I'm showing you what is part of
25 Exhibit CMG-2 to Cynthia Givens' testimony. It's the

1 bill for 61 Hunters Court that was prepared by Duke
2 on April 14th, 2010 with a due date of May 6th, 2010.

3 A. That's correct.

4 Q. And would you agree with me that that
5 bill was generated as it reflects here on April 14th,
6 2010?

7 A. That's what it says, yes.

8 Q. Okay. And this is the bill that you
9 received somewhere -- it precipitated your call on
10 April 19th, correct?

11 A. That's correct.

12 Q. Okay.

13 A. I believe I received this on the 19th if
14 this is -- I'd have to go check.

15 Q. Okay. And this is the bill that you were
16 referring to when you got a bill saying, wait, we
17 still owe 1600 and something dollars?

18 A. Yes.

19 Q. Okay. And isn't it true, sir, that this
20 bills reflects that you got a credit of \$300, which
21 was the payment that you made in early April of 2010?

22 A. That's correct.

23 Q. Okay. And since you hadn't paid the full
24 balance before this bill had generated, you still had
25 an outstanding balance of \$1,679.86 as of April 14th,

1 2010?

2 A. Of 1,600 and something?

3 Q. Right.

4 A. I believe that's not accurate. I believe
5 that they even -- if we'll get into the recordings,
6 that you were only telling me I owe 1,300 or
7 something on the 15th.

8 Q. Well, let's just keep looking at this
9 bill you were just talking about. Again, it's the
10 bill prepared on --

11 A. April 14th.

12 Q. Let me make sure I'm looking at the right
13 one. There we go. We'll look at the bill prepared
14 that April 14th, 2010 for Account No. 88200701555 at
15 61 Hunters Court, correct?

16 A. Yes.

17 Q. Is there any inaccurate information on
18 that bill?

19 A. I don't know. I can't tell from looking
20 at it without going back over every month.

21 Q. Okay.

22 A. I'm -- it doesn't state when this \$300
23 payment was made. Do you have some way on here of
24 telling when that was?

25 Q. No. Let me ask you this. Between

1 mid-March of 2010 and April 14th of 2010, isn't it
2 true that you only made one \$300 payment?

3 A. From mid March, which we're basically
4 talking the 15th, on the previous bill. Why don't we
5 just go back and look at it, if it's here.

6 Q. Feel free. It's the page right before
7 that.

8 A. This one that says April 6th.

9 Q. With the due date of April 6th, generated
10 on March 15th, 2010, correct.

11 A. That's correct. Yes, I believe that's
12 the last bill that -- between them. There's no other
13 bill involved between those two.

14 Q. Correct.

15 A. Okay. So the \$300 payment was what I
16 said she made on April 6th. Brenda made it on
17 April 5th because it had to be made by April 6th, is
18 what I believe the facts are.

19 Q. And the amounts that you ultimately paid
20 to Duke, isn't it true, that you owed all of those
21 monies?

22 A. Absolutely not.

23 Q. Which amounts did you not owe?

24 A. Several different amounts that Duke has
25 indicated are deposits.

1 Q. Okay. You take issue with the \$50
2 after-hours fee?

3 A. I certainly shouldn't have been charged
4 that. I'm not bringing that. What I'm saying to you
5 is on the 15th, Jonathan put in a 250 or a 200
6 something dollar deposit, as well as what we owe.
7 Also -- who is this gentleman coming in over here?

8 Crystal, on the morning of the 19th, when
9 the bill went from 250 to 478 in a matter of hours,
10 there was an additional deposit charged to us, so at
11 least \$500, I believe, we did not owe.

12 Q. Okay. If I show you these bills, can you
13 identify those charges and where they went on your
14 account?

15 A. Well, show me them. It's not on there,
16 the deposit money.

17 Q. Okay. So you're saying --

18 A. I'm saying that Jonathan Green charged us
19 a -- some part of it was the security deposit, some
20 part of that \$1,712 was. The initial \$50 was for the
21 reconnect.

22 Q. Let's look at your bill that was prepared
23 on May 13th, 2010 with a due date of June 4th, 2010.
24 This is also included in Exhibit CMG-2, correct?

25 A. That's correct.

1 Q. And do you see a security deposit amount
2 due of \$205 there?

3 A. Yeah.

4 Q. And do you see an after-hour service
5 charge of \$50 there?

6 A. Yes.

7 Q. Now, isn't it true that you and your wife
8 were months behind on your bill at 61 Hunters Court,
9 correct?

10 A. No, that's absolutely not true.

11 Q. Okay. What about with the unpaid
12 electric from 1923 Johns Gray Road?

13 A. That might be -- that is a different
14 question than what you've just asked.

15 Q. Okay. Fair enough. Would you agree with
16 me that your wife was months behind in the electric
17 charges for the address at 1923 John Gray Road?

18 A. Yes, my wife -- I will agree with this,
19 my wife was current as of April 15th, 2011. She was
20 current.

21 Q. 2011 or '10?

22 A. 2010, pardon me. Thank you for
23 correcting me.

24 Q. She was current at which address?

25 A. At 61 Hunters Court. And the other one

1 was no longer in our name.

2 Q. Okay. You're talking about April 15th,
3 once you made the credit card payment?

4 A. That's correct.

5 Q. Okay. But before that --

6 A. We had the one address in your name.

7 Q. But before that, as we just went over the
8 bills, 1923 John Gray Court and 61 Hunters Court were
9 your wife's name, correct?

10 A. That's correct.

11 Q. And your wife was months late on the John
12 Gray Road address, correct?

13 A. On the John Gray Road address? I can
14 only answer this way, we were current. That's how
15 I'm going to answer you. You can say what you want
16 about what we owed. With Winter Rules, we were
17 current.

18 Q. I'm talking about the 1923 John Gray Road
19 address. Would you like to go back over the bills
20 because I thought --

21 A. Let's go.

22 Q. Look at CMG-1. And I'm going to point
23 you to the bill that was prepared on April 6th, 2010
24 with the due date of April 28th, 2010 relating to the
25 service address of 1923 John Gray Road, Account No,

1 82000642254.

2 A. So this bill is prepared on April 6th and
3 you're asking me what question about it?

4 Q. I'm asking you, isn't it true that as of
5 April 6th, 2010, your wife owed \$1,376.22 at 1923
6 John Gray Road?

7 A. I don't think so.

8 Q. Okay. Do you have -- what information do
9 you have to refute that?

10 A. Well, the very fact that the \$300 that
11 was paid on April 5th isn't reflected on this.

12 Q. Sir, this invoice that we're looking at,
13 isn't it true, relates to 1923 John Gray Road
14 account, not your 61 Hunters Court account?

15 A. Okay. On April 28th --

16 Q. Would you agree with me on that?

17 A. No. I want to say this.

18 Q. You don't.

19 A. You're showing me on bill that's
20 addressed to her -- we didn't live there at that
21 point. Do you understand that bill was then -- I
22 very honestly know what bill was Stephanie Carson's.
23 I think at that point you had transferred Stephanie
24 Carson to 61 Hunters Court and to John Gray.

25 Q. I thought you testified earlier that the

1 account remained in your wife's name at 1923 John
2 Gray Road after you moved out of the property and
3 until it was disconnected in March of 2010?

4 A. That's correct.

5 Q. Okay.

6 A. This is April of 2010 you're showing me.

7 Q. Right, but that was still a bill in your
8 wife's name relating to John Gray Road concerning
9 unpaid gas and utility bills, correct?

10 MR. FITZGERALD: I'd like to object
11 because I have to wear two hats here. I am both
12 counsel for our team and the witness in this spot.
13 So here's what I'm objecting to. I'm objecting to
14 him or anybody else bringing up gas. Is gas the
15 subject of this hearing?

16 HEARING EXAMINER SHEETS: No. I think
17 you have to answer the question that he asked.

18 A. Which is again?

19 Q. Isn't it true that your wife had unpaid
20 gas and electric bills at 1923 John Gray Road as of
21 April 6th, 2010?

22 A. I think she had electric bills unpaid as
23 of April 6th, 2010. I don't think she had gas bills.
24 I'm not aware she had gas bills.

25 Q. Okay. So you're not aware of that?

1 A. That's correct.

2 Q. Are you aware actually, as we sit here
3 today, there are still unpaid gas bills?

4 A. No.

5 MR. FITZGERALD: I want to object to that
6 question again, but I'm wearing the other hat. Gas
7 has no bearing on this. The complaint that we
8 brought has only electric and they're attempting to
9 paint us in a bad light to bring up something that
10 they can adjudicate in a different form.

11 HEARING EXAMINER SHEETS: Please answer
12 the question.

13 A. Now, what was the question?

14 Q. Isn't it true that your wife had unpaid
15 gas bills from 1923 John Gray Road as of April 6th,
16 2010?

17 A. I don't know.

18 Q. That would be something I would need to
19 ask your wife?

20 A. (Shrugs shoulders.)

21 Q. Would you agree with me?

22 A. No.

23 Q. Okay.

24 MR. MCMAHON: Let me just see if I have
25 anything further. That's all I have, Your Honor.

1 Thank you.

2 HEARING EXAMINER SHEETS: Mr. Jones, do
3 you have any questions?

4 MR. JONES: No questions, Your Honor.

5 HEARING EXAMINER SHEETS: Do you want to
6 make a statement in response to his
7 cross-examination?

8 MR. FITZGERALD: Yes, I would. I'd like
9 to know --

10 HEARING EXAMINER SHEETS: Stick to the
11 facts now of the case of what he said.

12 MR. FITZGERALD: I'm sticking to the
13 facts of what he said --

14 HEARING EXAMINER SHEETS: Okay.

15 MR. FITZGERALD: -- concerning the gas
16 bill. It's inappropriate. It has no bearing and it
17 shouldn't be brought up in this hearing. This is
18 about the complaint we filled, which is dealing with
19 electric.

20 HEARING EXAMINER SHEETS: You've had that
21 objection and I ruled on that.

22 MR. FITZGERALD: What's your ruling, that
23 it wasn't acceptable?

24 HEARING EXAMINER SHEETS: He got to ask
25 the question. You supplied an answer. Now, do you

1 have any more in response to his cross-examination?

2 MR. FITZGERALD: No.

3 HEARING EXAMINER SHEETS: Huh?

4 MR. FITZGERALD: No, I don't.

5 HEARING EXAMINER SHEETS: Okay. Any on
6 recross?

7 MR. MCMAHON: No, Your Honor.

8 HEARING EXAMINER SHEETS: Okay. You're
9 excused as a witness.

10 MR. FITZGERALD: Okay. Then I assume
11 we're going to call a witness now and we've agreed
12 that Ms. Mack will be the first witness.

13 HEARING EXAMINER SHEETS: I think that's
14 the way we agreed to proceed. Do you want to take
15 the stand. Okay. At this point, we'll proceed with
16 the subpoenaed witnesses. Calling first Cindi Mack.
17 Raise your right hand.

18 - - -

19 CINDI MACK

20 being first duly sworn, as prescribed by law, was
21 examined and testified as follows:

22 - - -

23 HEARING EXAMINER SHEETS: Be seated.

24 Now, you Mr. --

25 MR. FITZGERALD: Just give me one second,

1 please.

2 HEARING EXAMINER SHEETS: Now, excuse me,
3 you may ask questions as on cross-examination since
4 she will -- the subpoenaed witnesses will presume to
5 be hostile witnesses in the case, so you may go ahead
6 with your questioning.

7 MR. FITZGERALD: I just want to get out
8 --

9 HEARING EXAMINER SHEETS: And please
10 speak up, sir.

11 MR. FITZGERALD: Yes.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Fitzgerald:

15 Q. Your position as an investigator for the
16 Public Utilities Commission is to be impartial, you
17 just want to get the facts and wherever the facts
18 lead you is where you'll go; is that correct? Is
19 that what your job is?

20 A. Correct. Correct.

21 Q. Okay. Would it surprise you to find out
22 that Pamela Ball wrote a memo to Cynthia Givens and
23 said that Cindi, referring to you, was trying to talk
24 us out?

25 MR. JONES: I'd have to object, Your

1 Honor. That's not an appropriate question for this
2 witness. I mean, obviously, we're offering --

3 HEARING EXAMINER SHEETS: You'll have to
4 speak up.

5 MR. JONES: I object, Your Honor, to the
6 question. It's not an appropriate question for this
7 witness as to her being surprised by some information
8 he's providing for the record. You know, we're
9 offering Ms. Mack here under subpoena to testify as
10 to what involvement she had and how she fits into
11 answering the complaint that's the crux of this case.

12 HEARING EXAMINER SHEETS: I'll caution
13 you. You have to limit your questioning to her
14 involvement in the case. Okay. If you're going to
15 question her, you can ask a leading question, but it
16 has to be connected with what her investigation of
17 the case was.

18 MR. FITZGERALD: Okay.

19 Q. (By Mr. Fitzgerald) Do you recall ever
20 calling me and telling me I didn't -- that we had not
21 made a \$300 payment on April 5th?

22 A. I can't say that I definitely recall
23 that, no.

24 Q. You don't deny it, do you? If I might, I
25 have here, which I guess we'll offer into evidence,

1 you already have it, I'll give you the whole file as
2 we received it from the Attorney General's office,
3 but I'll have to use it. Can we make a copy of it
4 now so we can provide Ms. Mack --

5 HEARING EXAMINER SHEETS: Okay. Let's go
6 off the record here.

7 (Recess taken.)

8 (EXHIBIT 3 MARKED FOR IDENTIFICATION.)

9 HEARING EXAMINER SHEETS: Let's go back
10 on the record.

11 MR. FITZGERALD: Back on the record.
12 We're talking about what's going to be entered as
13 Complainant's Exhibit 3.

14 HEARING EXAMINER SHEETS: You might want
15 to step up closer to the witness. You can take a
16 seat there, if you want.

17 MR. FITZGERALD: Okay.

18 Q. (By Mr. Fitzgerald) In the course of the
19 situation, there came a time where you were
20 listening -- you tried to listen to phone calls and
21 you couldn't -- you couldn't -- I don't know how to
22 put it. What Duke had provided you, you couldn't
23 disseminate up here, do you recall that? Or should I
24 give you your testimony on that?

25 A. I'm not sure what you're asking me.

1 Q. Okay. I'm asking you -- read this very
2 last --

3 A. It wouldn't do me any good to look at
4 that without my reading glasses.

5 Q. I'll read it. It says -- this is the
6 notes and the date on them is 5/5 -- this says the
7 date is 5/5/2010.

8 HEARING EXAMINER SHEETS: What page are
9 you reading from, sir?

10 MR. FITZGERALD: Pardon me?

11 HEARING EXAMINER SHEETS: What page of
12 that document are you reading from?

13 MR. FITZGERALD: Page 6.

14 HEARING EXAMINER SHEETS: And that's been
15 marked as Complainant's Exhibit 3.

16 MR. FITZGERALD: That's page 6 of
17 Complainant's Exhibit 3.

18 HEARING EXAMINER SHEETS: Okay.

19 Q. "Per phone conversation with customer --
20 and I'm -- this is written in some sort of semi
21 shorthand. I'm making the best sense of what's
22 written here as I can. For instance, it says, "Per
23 ph conv." I'm translating that to be per phone
24 conversation and that's what I'm trying to allude to.
25 It's not exactly verbatim what's written here, but

1 I'll make the best of it I can to expedite this.

2 MR. JONES: Excuse me, Mr. Fitzgerald.

3 But Your Honor, wouldn't it be better for the witness
4 to read the shorthand of what she's provided for her
5 own notes? That's her notes. I mean, can she read?

6 MR. FITZGERALD: I have no problem with
7 that, but she can't read it without her glasses.

8 MR. JONES: Oh, I'll take that back.
9 I'll withdraw that. (Laughter.)

10 HEARING EXAMINER SHEETS: Let's proceed.

11 Q. Per phone conversation with customer,
12 advised customer was -- advised company was in the
13 wrong and had misinformed him of what he needed to
14 reconn. What he needed to reconnect, I assume what
15 reconn means. Adv as a possible resolution they are
16 offering \$50 and \$25 -- it states it wasn't only
17 Jonathan that misinformed him, but at least two other
18 reps, reps, R-E-P-S. As that may and we'll point
19 this out to the company that it was confirmed in the
20 first call with Jonathan it was confirmed that he was
21 misinfo, misinformed; therefore, I was not going to
22 review the other calls. However, we bring this to
23 the attention of the company.

24 Now, my problem is, you didn't listen to
25 those other two calls.

1 HEARING EXAMINER SHEETS: Now you have to
2 ask a question now.

3 Q. Okay. So to get it. The other two
4 calls, do you recall who those other two calls were?
5 You have a reference in your notes that there are two
6 calls, you can't read it, but the case that we were
7 bringing we were indicating that Brenda called first,
8 I called second and I called third. So what you're
9 identifying as the first call that you listened to
10 was with Jonathan, even though that was the third
11 call.

12 HEARING EXAMINER SHEETS: You can't
13 testify at this point.

14 MR. FITZGERALD: I'm not testifying. I'm
15 trying to clarify.

16 HEARING EXAMINER SHEETS: You have to ask
17 a question of her.

18 Q. Okay. Is that accurate that you did not
19 listen to all the calls?

20 A. That's correct.

21 Q. Okay. Why not? Do you think in
22 hindsight you should have?

23 A. No.

24 Q. Why not?

25 A. I was determined in the first call that I

1 listened to that the company was in the wrong. There
2 was no reason for me to listen to those other calls.

3 Q. Well, it doesn't change the groundwork
4 any if the first call was Brenda?

5 A. Not at all because your complaint to me
6 was the company lied to you and misinformed you. The
7 first call that I listened to confirmed that.

8 Q. Do you have -- did you have those calls
9 here in Columbus, copies of those calls?

10 A. No.

11 Q. Where were they?

12 A. I -- the company -- they're in the
13 company's possession. I don't have those calls.
14 Never did I.

15 Q. So this day that you listened to the
16 Jonathan call, you were here in Columbus?

17 A. Correct.

18 Q. Speaking with, I assume, Pam Ball?

19 A. I do believe so.

20 Q. And Pam Ball was in Cincinnati or
21 Indianapolis or do you know where Pam Ball was?

22 A. I would -- I definitely don't know for
23 sure where she was at that time I was speaking to
24 her.

25 Q. But she was not in your office or you --

1 this was done through a computer or a telephone, you
2 were listening on a phone to this recording?

3 A. To the recorded call.

4 Q. And you don't think it would have been --
5 you didn't listen to the call with Brenda. Did
6 anybody deny that Brenda had called first?

7 A. No. Nobody denied that, huh-uh.

8 Q. So in the course of your investigation,
9 you do believe Brenda did call first?

10 A. It's my understanding that Brenda called
11 the company on March the 29th and spoke to them about
12 the John Gray address.

13 Q. Okay. And I'm talking about April 15th,
14 2010, the day that we were cut off, there were three
15 phone calls on that day.

16 A. I don't believe that I have knowledge of
17 that. You were my customer not Brenda. There was
18 nothing that I had to show that Brenda called.

19 Q. In your -- you're saying certainly this
20 phone call with Jonathan was on the 15th of April,
21 the day I was referring to that it was cut off,
22 right, not March 29th?

23 A. I don't know. I don't know.

24 MR. JONES: Your Honor, if I may
25 interject here. I'm sorry, I do have the glasses for

1 Ms. Mack, her reading glasses, if that would be
2 helpful.

3 HEARING EXAMINER SHEETS: That would be
4 helpful.

5 MR. JONES: Thank you, Your Honor.

6 HEARING EXAMINER SHEETS: Okay.

7 Q. There's the paragraph I was reading from.

8 A. Okay. There's nothing on this that
9 identifies that that phone call was from April the
10 15th. Was that your question?

11 Q. Yes.

12 A. Okay. There's nothing on here that
13 identifies that that call was from April the 15th.

14 Q. So you don't know when that phone call
15 was?

16 A. The recorded phone conversation between
17 you and Jonathan?

18 Q. The three phone calls you're referring
19 to. You do see you refer to three phone calls?

20 A. Okay. This is you referring to two other
21 representatives. I don't see where it's referring at
22 all to three other phone calls specifically. I said
23 at this point, it was confirmed in the first call
24 with Jonathan, it was confirmed that he did misinform
25 you; therefore, I was not going to listen to the

1 other calls.

2 Q. Okay. Give me one second.

3 HEARING EXAMINER SHEETS: Okay. We've
4 had a question about the April 15th phone call and I
5 believe your answer was you don't know; is that
6 correct?

7 A. The phone call that I listened to, I
8 cannot confirm that that was from April the 15th.

9 HEARING EXAMINER SHEETS: Okay. That's
10 -- now we need another question.

11 Q. Okay. To further elicit, this is page 3
12 of that same document and it starts out the complaint
13 and it says, "States yesterday," would you refresh
14 your memory with that.

15 A. It looks like that this is a continuance
16 from page 2.

17 Q. Okay. Do you want it -- page 2 is just a
18 heading on it.

19 A. Okay. So --

20 MR. MCMAHON: Just, if you don't mind,
21 could you read the date of the entry that you're
22 reading, please?

23 A. Looking at this, it appears to be April
24 the 16th and this is an e-mail that was sent over to
25 Duke regarding your phone conversation with me on the

1 16th of April. And basically, it's typewritten notes
2 of our conversation.

3 Q. That's correct. Well, here's my question
4 to you. If you read this, the typewritten notes on
5 the 16th, "States yesterday," start there and you'll
6 see that it pretty well narrows down to when I spoke
7 to Jonathan. If we're talking about yesterday on
8 April 16th, we're necessarily then talking about the
9 15th of April; is that correct?

10 A. But you asked --

11 MR. JONES: Is there a question, Your
12 Honor?

13 MR. FITZGERALD: I was just asking if
14 that's correct.

15 MR. MCMAHON: If this helps, Your Honor,
16 we're willing to stipulate that Mr. Fitzgerald spoke
17 to Jonathan Green on April 15th of 2010, if that
18 helps in this process.

19 HEARING EXAMINER SHEETS: That's very
20 good. Let's move on to another question.

21 Q. (By Mr. Fitzgerald) Did it ever come to a
22 point where you asked if they spoke to Brenda
23 Fitzgerald?

24 A. What was the question again?

25 Q. Do you know from reading -- I'll let you

1 read your whole report. Do you think that they ever
2 spoke to Brenda Fitzgerald on April 15th?

3 A. Well, I know that they did because in the
4 beginning of this investigation it was confused
5 because you gave the wrong account number, so the
6 account number that you gave was for the John Gray
7 address, as I understand it, so the information that
8 I had was where Mrs. Fitzgerald's service was
9 disconnected on March the 29th, and I believe that's
10 indicated in the notes as well.

11 Q. Right. That at March 29th --

12 A. That's my own knowledge of
13 Mrs. Fitzgerald's service.

14 Q. In other words, you went through this
15 whole investigation and you're saying the only
16 knowledge you have of Mrs. Fitzgerald making a call
17 to Duke was on March 29th?

18 A. That's correct.

19 Q. Did you ever communicate to Duke that you
20 were trying to talk me out of this, that you didn't
21 want me to proceed?

22 A. No.

23 Q. I'm going to read to you page 3, the
24 final paragraph of the -- the second paragraph at the
25 top. It says, "Advised will send it over to the

1 company to look into, and if this case is the case --
 2 and if this is the case, the internal customer
 3 service issue for the company to handle internally
 4 and retrain if necessary. States that's all he's
 5 asking for. Advise will follow up with him." So
 6 you're saying at the conclusion of your
 7 investigation, and we're talking about here on the
 8 16th, you were saying it was only an internal
 9 situation?

10 A. That wasn't the conclusion of my
 11 investigation. That was my first phone conversation
 12 with you and at that time I told you that if it turns
 13 out that you were correct and that the company did
 14 misinform you, at best that this was a retraining
 15 issue for the company to handle internally.

16 Q. Okay. And how often is it your
 17 experience that something like this happens where
 18 people are misinformed and they call your office to
 19 complain?

20 MR. MCMAHON: Objection. Relevance.

21 MR. FITZGERALD: Well, may I speak to
 22 that, the relevance?

23 HEARING EXAMINER SHEETS: I'll let her
 24 supply an answer, if she can.

25 A. What was the question again?

1 Q. How often does this happen? Is it a very
2 frequent occurrence that people are misinformed?

3 A. If you're wanting a definite answer, we
4 would have to pull the reports and -- I mean, I -- I
5 can't give you an a definite answer on that.

6 MR. FITZGERALD: Can I put Pam Ball up
7 and then bring Ms. Mack back?

8 HEARING EXAMINER SHEETS: Excuse me?

9 MR. FITZGERALD: I would like to excuse
10 Ms. Mack and bring up Pam Ball and then put Ms. Mack
11 back up so I can get in evidence other issues.

12 MR. JONES: Well, I'm going to object
13 having Ms. Mack recalled. We'd like to conclude her
14 testimony at this point, so if there's any more
15 questions.

16 MR. MCMAHON: I would join in that
17 objection.

18 HEARING EXAMINER SHEETS: I think we need
19 to complete Ms. Mack's questioning at this point and
20 we'll ask if there's any other questions of either
21 counsel for her.

22 MR. FITZGERALD: If I can find the page.
23 No more questions right now.

24 HEARING EXAMINER SHEETS: Does counsel
25 have any questions?

1 MR. MCMAHON: Just a couple, Ms. Mack.

2 - - -

3 DIRECT EXAMINATION

4 By Mr. McMahon:

5 Q. As a result of -- well, strike that. Let
6 me start off this way. I believe you said when
7 Mr. Fitzgerald first filed the informal complaint,
8 that he had mistakenly referred to the account at
9 John Gray Road instead of Hunters Court; is that
10 correct?

11 A. Correct.

12 Q. So that initially presented some
13 confusion on your part or at the Commission?

14 A. Absolutely.

15 Q. Okay. And when you were communicating
16 with Duke in response to the informal complaint since
17 the Fitzgeralds had mistakenly identified the John
18 Gray Road account, that's the account that you were
19 discussing with Duke at that time?

20 A. Correct.

21 Q. Which is we now know the John Gray Road
22 account isn't the subject of this complaint
23 proceeding per se, it's the 61 Hunters Court account?

24 A. That was the one that I believed that he
25 intended to call me about.

1 Q. Okay. So to the extent you're asking
2 communications with Duke around April 16th, 2010
3 concerning the John Gray account, it was your
4 understanding that Duke was looking at the John Gray
5 account records and discussing those with you?

6 A. That's correct.

7 Q. Okay. So when you asked was there a \$300
8 payment -- strike that.

9 When you asked of Duke as to whether the
10 Fitzgeralds had made a \$300 payment, you were asking
11 had they made a \$300 payment on the John Gray Road
12 account?

13 A. Correct.

14 Q. Not the 61 Hunters Court account?

15 A. Correct.

16 Q. Okay.

17 A. I would like to also just point out that
18 to clarify this confusion, at one point, Pam and I
19 were having communications and that's when it was
20 discovered that something was not right about what
21 was going on.

22 Q. Right.

23 A. Pam made the discovery of the confused --

24 Q. So --

25 A. -- account numbers.

1 Q. I'm sorry. So during the course of your
2 investigation, which I guess we should call it, with
3 Duke, Pam Ball realized that there was some
4 miscommunication that would appear to be complaints
5 about Hunters Court were incorrectly being referred
6 to at the John Gray Road account?

7 A. Correct.

8 Q. Okay. So to the extent Duke told you
9 that there was no payment of \$300 on the John Gray
10 Road account, that's accurate information?

11 A. Correct.

12 Q. Okay. And the result of your
13 investigation here is simply that the company
14 misinformed the Fitzgeralds when it came to their
15 obligation to pay the full amount due instead of
16 exercising the Winter Rule, correct?

17 A. That was the basis of mine and
18 Mr. Fitzgerald's conversation. He was upset because
19 he was misinformed.

20 Q. Right, and your conclusion is not and you
21 have no reason to believe that the company tried to
22 defraud the Fitzgeralds, do you?

23 A. There's no reason for me to believe that.

24 Q. Okay. Or intentionally lied to him to
25 get more money out of them for some reason?

1 A. No.

2 Q. Okay. And did Mr. Fitzgerald, during his
3 communications with you, ever dispute the underlying
4 charges on the bills?

5 A. Um, no. I mean, the basis of his
6 conversation and his complaint with me was that the
7 Company lied to him and misinformed him.

8 Q. About the Winter Rule and what amount
9 should have been paid at what point in time?

10 A. Right, what he did pay versus what he
11 should have paid.

12 Q. Okay. And just to be clear, under the
13 Winter Rule, isn't it true that all that would have
14 happened had the Company acted correctly in
15 April 2010, would be that the Fitzgeralds would have
16 paid \$175 down in order to get their service
17 reconnected and then they would have had to pay the
18 unpaid balance over the course of six months while
19 also paying all current obligations?

20 A. That's correct. And if he was
21 disconnected, he would have paid up to \$36 in a
22 reconnection fee.

23 Q. Fair enough. And so had the Winter Rule
24 been explained and invoked in April of 2010, the
25 Fitzgeralds, instead of paying what they owed in the

1 lump sum, would have paid 100 percent of it by
2 mid-October 2010 had they timely complied with the
3 payment obligations?

4 A. Correct.

5 Q. Which obviously is more than six months
6 ago by now, correct?

7 A. Right. Correct.

8 Q. So as we sit here today, this issue would
9 have come and gone and been resolved on its own terms
10 per the Winter Rule?

11 A. That's right.

12 Q. Okay.

13 MR. MCMAHON: That's all I have. Thank
14 you.

15 HEARING EXAMINER SHEETS: Mr. Jones.

16 MR. JONES: I have no questions, Your
17 Honor. Thank you.

18 HEARING EXAMINER SHEETS: Thank you.

19 MR. FITZGERALD: I'd like to redirect
20 something.

21 HEARING EXAMINER SHEETS: It would be
22 recross, but go ahead and ask the question. Why
23 don't you come up here.

24 MR. FITZGERALD: Okay, recross. Do you
25 want me to come up there? I can speak louder than

1 him. I can't go up there. I have a bad leg. I'm
2 hurting myself.

3 - - -

4 RECROSS-EXAMINATION

5 By Mr. Fitzgerald:

6 Q. Did you ever see a disconnect notice
7 involved in this matter; do you recall?

8 A. I don't recall.

9 Q. You make no mention of it that I know of.

10 A. I don't recall, no.

11 Q. So to the best of your knowledge, no
12 disconnect notice was provided to us?

13 MR. MCMAHON: Objection. She just said
14 "I don't recall." Asked and answered.

15 HEARING EXAMINER SHEETS: That's
16 sustained. She's already answered the question.

17 MR. FITZGERALD: I asked if she ever saw
18 one. Now I'm asking if she thinks one ever existed.

19 HEARING EXAMINER SHEETS: All right.
20 I'll let you provide an answer on that basis.

21 A. Um, at the time of the investigation,
22 yes, I did believe that the disconnection notice
23 existed.

24 Q. Do you think so today, as we sit here?

25 A. Yes.

1 Q. Yet, you don't recall ever having seen
2 one?

3 A. That wasn't a part of my investigation.
4 Your complaint to me was that the company misinformed
5 you.

6 Q. And it wouldn't necessarily be part of it
7 that they disconnected us without a notice, you
8 wouldn't fall upon that information?

9 A. That wasn't your complaint. That wasn't
10 your complaint to me.

11 MR. FITZGERALD: I have no more
12 questions. Oh, I do have one more question.

13 Q. Do you have an application for employment
14 in with Duke Energy?

15 MR. JONES: Objection, Your Honor.

16 MR. MCMAHON: Objection.

17 MR. JONES: No relevance to that.

18 MR. FITZGERALD: There's no relevance for
19 it, pardon me. What's going on in Indiana --

20 HEARING EXAMINER SHEETS: I can't hear
21 you. Speak up.

22 MR. FITZGERALD: I'm going to say to you
23 that Duke Energy is under some scrutiny from the
24 Federal Bureau of Investigation and other
25 organizations because of conduct up in Indiana where

1 there seems --

2 MR. MCMAHON: Objection. Objection.

3 Move to strike.

4 HEARING EXAMINER SHEETS: That doesn't
5 have anything to do with this complaint. It's
6 overruled -- I sustain it. Excuse me.

7 MR. FITZGERALD: What are you sustaining,
8 that I can't what?

9 HEARING EXAMINER SHEETS: I'm sustaining
10 his objection.

11 MR. FITZGERALD: What's his objection?

12 HEARING EXAMINER SHEETS: I'm assuming
13 relevancy.

14 MR. MCMAHON: Relevance and foundation.

15 MR. FITZGERALD: Okay. The foundation is
16 simply everything here was in Ohio until such time on
17 October 5th that Ms. Givens wrote a letter indicating
18 that she was Ohio, Kentucky, Indiana and it caused us
19 to go look at what was going on in Indiana and it
20 caused a great many questions to come forward about
21 people from the Indiana Utilities Commission applying
22 for jobs at Duke Energy and accepting and getting the
23 jobs and I just want to know who has applied for a
24 job.

25 MR. JONES: Objection, Your Honor, as to

1 what's going on in Indiana. This is the State of
2 Ohio. Again, it's not even relevant to this
3 proceeding.

4 HEARING EXAMINER SHEETS: That's not --

5 MR. FITZGERALD: They brought it in. I
6 didn't.

7 HEARING EXAMINER SHEETS: Okay. Your
8 objection -- his objection is sustained. You need to
9 move onto another question. That doesn't have
10 anything to do with your complaint today.

11 MR. FITZGERALD: Okay. I have no more
12 questions, Your Honor.

13 HEARING EXAMINER SHEETS: Did you have
14 any more?

15 MR. MCMAHON: Just one quick follow-up
16 because I just want to make sure I didn't misspeak.

17 - - -

18 REDIRECT EXAMINATION

19 By Mr. McMahon:

20 Q. Everything that the Fitzgeralds would
21 have paid under the Winter Rule, would have been the
22 past due balances, correct, not the current amounts
23 due?

24 A. It's regardless of the dollar amount that
25 the customer owes the company, they can pay \$175 to

1 keep their services on or if they're disconnected,
2 they can pay 175 and up to a \$36 reconnection fee.

3 Q. Okay. And then they pay -- the monthly
4 payment plan relates to the past due balance that was
5 necessary to reconnect not current charges, correct?

6 A. The payment plan would be for what is
7 past due and then also it would include current
8 charges.

9 Q. That they would then have to then
10 separately pay on a monthly basis just to remain
11 current?

12 A. Correct.

13 Q. Okay. Thank you.

14 MR. FITZGERALD: I do have another
15 question arising from that then.

16 - - -

17 FURTHER CROSS-EXAMINATION

18 By Mr. Fitzgerald:

19 Q. What is the maximum amount of money that
20 we should have been charged on April 15th -- no, I
21 want to strike that and start over.

22 Should our power have been disconnected
23 on April 15th?

24 MR. MCMAHON: Objection.

25 HEARING EXAMINER SHEETS: Yeah, I'd have

1 to sustain that. She doesn't have any --

2 Q. Once the power was disconnected on
3 April 15th, what is the maximum dollar amount that we
4 should have paid on April 15th?

5 A. That's already been established, and that
6 was 175.

7 Q. Okay.

8 MR. FITZGERALD: I have no more
9 questions.

10 HEARING EXAMINER SHEETS: Okay. I'm
11 assuming you don't have any more questions.

12 MR. JONES: No questions, Your Honor.
13 Thank you.

14 HEARING EXAMINER SHEETS: Okay. You're
15 excused.

16 Call your next witness, Mr. Fitzgerald.

17 MR. FITZGERALD: Let me call Vel
18 Mitchell.

19 HEARING EXAMINER SHEETS: I'd like you to
20 come up here and question her, Mr. Fitzgerald.

21 MR. FITZGERALD: Certainly.

22 HEARING EXAMINER SHEETS: Raise your
23 right hand.

24 - - -

25 VAL MITCHELL

1 being first duly sworn, as prescribed by law, was
2 examined and testified as follows:

3 - - -

4 HEARING EXAMINER SHEETS: Be seated.
5 State your name and give your address, please.

6 MS. MITCHELL: Okay. My name is Vel
7 Mitchell and my address is 1567 Section Road,
8 Cincinnati, Ohio 45207.

9 HEARING EXAMINER SHEETS: Very good.
10 Proceed.

11 MR. FITZGERALD: Okay. I'd like to
12 submit these two documents as our exhibits.

13 HEARING EXAMINER SHEETS: Okay. What are
14 these?

15 MR. FITZGERALD: 4 and 5. These are
16 notes that have been provided to us by Duke for -- I
17 don't know what the proper terminology is. You
18 might.

19 HEARING EXAMINER SHEETS: There are two
20 pages here, both labeled page 1 document. I'll let
21 you have a look at them.

22 MR. MCMAHON: Thank you.

23 HEARING EXAMINER SHEETS: By the way, I
24 need Complainant's Exhibit 3 up here.

25 MR. FITZGERALD: Yes.

1 MR. MCMAHON: Thank you. Just, if I can
2 help just clarify.

3 MR. FITZGERALD: Please.

4 MR. MCMAHON: The documents that
5 Mr. Fitzgerald is going to hand to Ms. Mitchell are
6 notes from Duke's case management or billing system,
7 I should say, concerning the account at 1923 John
8 Gray Road.

9 HEARING EXAMINER SHEETS: All right.
10 There appears to be two page 1's there.

11 MR. MCMAHON: These are continued notes
12 from a conversation, the witness can identify it, but
13 from March 29th, 2010. It starts on one page and
14 goes onto the next.

15 HEARING EXAMINER SHEETS: Okay. Are we
16 marking that as an exhibit, Mr. Fitzgerald?

17 MR. FITZGERALD: Yes, we are. I believe
18 4.

19 HEARING EXAMINER SHEETS: Okay. That
20 will be Complainant's Exhibit 4.

21 (EXHIBIT 4 MARKED FOR IDENTIFICATION.)

22 HEARING EXAMINER SHEETS: Now I'll hand
23 back to you what's been marked as Complainant's
24 Exhibit 4.

25 MR. FITZGERALD: I don't have a copy to

1 read off so I don't mean to be offensive.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Fitzgerald:

5 Q. This one here I will read from above it,
6 it says, I'm reading the text of it, "Was left empty.
7 Stephanie was informed to fax a copy of her lease and
8 picture to EP for review."

9 A. Yes.

10 Q. So you're apparently speaking to
11 Stephanie?

12 A. Yes.

13 Q. In this particular thing?

14 A. Yes.

15 Q. And on this one it says, "His mom is
16 Brenda Fitzgerald." Now, who are speaking to here?

17 A. This is still Stephanie.

18 Q. So you're referring to Stephanie?

19 HEARING EXAMINER SHEETS: That's the
20 second page of the document?

21 Q. Second page or -- actually, it's the one
22 you have the thing on, it's page 1. They're both
23 marked page 1 and they both say untitled, so it's one
24 of the two pages that we have here.

25 HEARING EXAMINER SHEETS: Okay. Now what

1 was your question again?

2 Q. I don't know who "His mom is Brenda
3 Fitzgerald and she is said to have left the house
4 five months ago per Stephanie." So you're discussing
5 this matter with Stephanie Carson; is that correct?

6 A. What I'm discussing with Stephanie Carson
7 is she wants service in her name at 1923 John Gray
8 Road and I'm making known to her what she needs to do
9 so that we can review if we can bring her service or
10 not.

11 Q. Okay. So this is just probably a
12 typographical error here, "his mom," if you're
13 talking to Stephanie, you're talking -- I don't --

14 A. Okay. Well, here where it says
15 "Stephanie was informed to fax a copy of her lease
16 and picture ID to EP," which is Energy Protection per
17 review. And this would be her cell phone number.
18 This would be her work phone number. "His mom" is
19 Brenda Fitzgerald.

20 HEARING EXAMINER SHEETS: Okay. I'm
21 going to have to ask you to speak up for the court
22 reporter. You were pointing to the first page of the
23 document.

24 A. Yes.

25 HEARING EXAMINER SHEETS: And now you're

1 pointing to the second page and you said "his mom is
2 Brenda Fitzgerald," is that what you just said?

3 A. Yes. I'm just reading from the document.

4 HEARING EXAMINER SHEETS: Go ahead.

5 Okay.

6 A. "She is said to have left the house five
7 months ago per Stephanie," and then it says
8 "Stephanie said the house," and it stops there.

9 Q. Okay. Since these are the only papers
10 that we can find that were provided to us, you have
11 no knowledge that you broke to Brenda Fitzgerald on
12 29th?

13 A. Correct.

14 Q. Just Stephanie Carson?

15 A. Correct.

16 Q. So somebody on the 29th was talking to
17 Brenda, it was not you?

18 A. I have no recollection of having spoken
19 to Ms. Fitzgerald.

20 Q. Okay. These certainly --

21 A. Those make a note that I spoke to
22 Stephanie.

23 Q. Okay. Thank you.

24 MR. FITZGERALD: I don't want to take
25 your exhibits again. Just one second while I confer

1 with Brenda.

2 MR. MCMAHON: Your Honor, if I may.

3 HEARING EXAMINER SHEETS: Excuse me, you
4 have no more questions?

5 MR. FITZGERALD: No, I just want to
6 confer with Brenda a second.

7 MR. MCMAHON: I'll follow up. I'm sorry,
8 I'll withdraw that.

9 HEARING EXAMINER SHEETS: Okay.

10 MR. FITZGERALD: We have no more
11 questions.

12 HEARING EXAMINER SHEETS: Okay.

13 MR. MCMAHON: I think I need to clean a
14 couple things up because there actually appears to
15 have been -- now I realize there was a missing page
16 from what the witness was just being shown.

17 HEARING EXAMINER SHEETS: Okay.

18 MR. MCMAHON: So I'm going to hand
19 Mr. Fitzgerald a copy and then we are going to want
20 to mark this. How would you like us to mark this?
21 We have attached to Cindy Givens it's CMG-1 and
22 CMG-2. I'm happy to mark this as Exhibit --

23 HEARING EXAMINER SHEETS: Why don't we
24 mark this as Company Exhibit 1, which that be
25 sufficient?

1 MR. MCMAHON: Okay. That's fine. Or
2 should we do it as 3, since Cindy Givens already uses
3 1 and 2? I just don't want to confuse the issue.

4 HEARING EXAMINER SHEETS: Yeah. We'll
5 mark the Company exhibits as, the ones submitted
6 already in the case by Cindy Givens, as Company
7 Exhibit 1 and Company Exhibit 2, and so what's just
8 been handed me will be Company Exhibit 3.

9 (EXHIBITS 1-3 MARKED FOR IDENTIFICATION.)

10 MR. MCMAHON: Okay. Thank you, Your
11 Honor.

12 - - -

13 DIRECT EXAMINATION

14 By Mr. McMahon:

15 Q. Ms. Mitchell, I'm handing you now what's
16 been marked as Company Exhibit 3, just to confirm for
17 the record, first of all, is Company Exhibit 3 a
18 series of the account note history concerning Brenda
19 Fitzgerald's Account No. 8200064225 for the property
20 at 1923 John Gray Road?

21 A. Yes.

22 Q. Okay. And as you look into the middle of
23 this Company Exhibit 3 for the notes, some of which
24 were just discussing with Mr. Fitzgerald, isn't it
25 true that the notes from your communications with

1 Mrs. Fitzgerald on March 29th, 2010 are actually
2 reflected on one, two and three pages?

3 A. Yes.

4 Q. Okay. And as you look at these notes --
5 as you just said, Stephanie Carson had called Duke to
6 have service set up in her name?

7 A. Correct.

8 Q. And is that because the service that was
9 in Mrs. Fitzgerald's name had already been
10 disconnected for non-payment?

11 A. Well, to the best of my recollection with
12 the Department I was with, to speak with me you would
13 have recently been disconnected or you would soon be
14 disconnected because of arrearage.

15 Q. And if you could, maybe explain for
16 everyone here when you say with respect to the
17 Department that you were with.

18 A. Yes.

19 Q. What do you mean by that?

20 A. Well, I was with Energy Protection.

21 Q. Which means what?

22 A. And what that means is if a new applicant
23 wants service at a place that is soon to be
24 disconnected or recently has been disconnected, we're
25 looking to see that it's fine to grant that new party

1 service. That they're not committing fraud or
2 anything of the sort.

3 HEARING EXAMINER SHEETS: Okay. Now,
4 this document I see there are four pages that reflect
5 the two pages that were handed to me as Complainant's
6 Exhibit 4.

7 MR. MCMAHON: That's correct.

8 Q. In fact, I just realized it, too.
9 Ms. Mitchell identified three pages, but there's
10 actually a fourth, isn't there? So one page, and
11 these all from your March 29th, 2010 conversation
12 with Ms. Carson, one page, two page, three page and
13 four pages, correct?

14 A. Yes.

15 Q. Okay. Thank you. So basically, you're
16 trying to make sure that nothing fraudulent is going
17 on?

18 A. Correct.

19 Q. On the account?

20 A. Correct.

21 Q. Okay. So did you at anytime reveal any
22 confidential information to Stephanie Carson
23 concerning the Fitzgeralds?

24 A. No.

25 Q. And in fact, when she called, she had

1 their account number, didn't she?

2 A. I can't recall.

3 Q. And Stephanie Carson was the person who
4 told you that Brenda Fitzgerald had moved out of the
5 house and she identified herself as dating Brenda
6 Fitzgerald's son?

7 A. Correct.

8 Q. Okay. And essentially, all you told her
9 was, hey, for you to get service at this address,
10 1923 John Gray Road --

11 A. Yes.

12 Q. -- in your name, Stephanie Carson, you
13 have to prove that you live there, send us a copy of
14 the lease and send us a copy of your picture ID,
15 that's it?

16 A. Correct.

17 Q. Okay. And you didn't otherwise talk
18 about the Fitzgeralds, reveal confidential
19 information, no Social Security number, past due
20 balances or anything of the kind?

21 A. No. Correct.

22 Q. Okay. Thank you.

23 MR. MCMAHON: That's all I have. Sorry.

24 MR. FITZGERALD: I'd like to ask another
25 question.

1 HEARING EXAMINER SHEETS: Do you have any
2 follow-up questions?

3 - - -

4 RECROSS-EXAMINATION

5 By Mr. Fitzgerald:

6 Q. But you did tell Stephanie Carson that
7 she had to come up with this because the power was
8 disconnected because it was not paid; is that
9 correct?

10 A. I have no recall of having said that to
11 her. No recollection of telling her that.

12 Q. You said she had to send in the lease and
13 the picture because to get it restarted to get it
14 reconnected in her name. What was the reason why she
15 had to do that?

16 A. It would be for anyone that wanted
17 service at this address. If an address is soon to be
18 disconnected because of non-payment or has recently
19 been, it doesn't matter who requests service, that
20 was the procedure for them to send that information.

21 Q. So you would have told her that it was
22 either disconnected or getting ready to be
23 disconnected?

24 A. No, that would not have been necessary.

25 Q. She would have known that?

1 A. She would have needed to know what she
2 needs to do as far as how she can be granted service.

3 MR. FITZGERALD: Thank you very much,
4 Ms. Mitchell.

5 MS. MITCHELL: You're welcome.

6 HEARING EXAMINER SHEETS: Any other
7 questions?

8 MR. MCMAHON: Nothing further.

9 HEARING EXAMINER SHEETS: You're excused.
10 Please call your next witness.

11 MR. FITZGERALD: Cindy Laycock, please.

12 - - -

13 CINDY LAYCOCK

14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 - - -

17 HEARING EXAMINER SHEETS: Be seated.
18 Give your name and address.

19 MS. LAYCOCK: My name is Cindy Laycock at
20 6897 East County Road 300 South, Plainfield, Indiana,
21 46168.

22 HEARING EXAMINER SHEETS: If you could,
23 come up here, Mr. Fitzgerald, please.

24 MR. FITZGERALD: Yes, sir, as soon as I
25 get the documents I'm looking for.

1 HEARING EXAMINER SHEETS: I need you to
2 ask the questions from up here.

3 MR. FITZGERALD: Pardon me?

4 HEARING EXAMINER SHEETS: Please come up
5 and take a seat.

6 MR. FITZGERALD: I shall.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Fitzgerald:

10 Q. Ms. Laycock, do you recall when you
11 became involved in this matter.

12 HEARING EXAMINER SHEETS: Mr. Fitzgerald,
13 I need you to question from up here in this seat.

14 Q. Do you recall when you became involved in
15 this matter?

16 A. I spoke with you on April 16th, 2010.

17 Q. And what was the purpose of the call?

18 A. You called in wanting to advise of the --
19 gave me an account number, requesting information on
20 a payment you had made.

21 Q. Uh-huh.

22 A. I requested the account number a couple
23 times because the address you were referring to was
24 not the account number you were giving me.

25 Q. Okay. And when we got it sorted out,

1 where was the address?

2 MR. FITZGERALD: Pardon me, are these my
3 papers or are these yours?

4 HEARING EXAMINER SHEETS: Excuse me?

5 MR. FITZGERALD: Are these papers here
6 mine?

7 HEARING EXAMINER SHEETS: I have no idea.

8 MR. MCMAHON: No. I think that's the
9 witness's copy of the Company Exhibit 3 that
10 Ms. Mitchell was looking at before.

11 MR. FITZGERALD: So it should go up to
12 where or did you want it to stay here?

13 MR. MCMAHON: I can take it back, if
14 you'd like.

15 MR. FITZGERALD: I don't know if it's an
16 exhibit.

17 HEARING EXAMINER SHEETS: I have a copy
18 of Company Exhibit 3.

19 MR. MCMAHON: The Court already has it.

20 MR. FITZGERALD: I just didn't want to
21 get confused.

22 MR. MCMAHON: Thank you.

23 Q. (By Mr. Fitzgerald) So once again, we are
24 on the 16th and I gave you the wrong thing. Was it
25 permissible for you to talk to me at that point about

1 the accounts that I was talking to?

2 A. I could verify information since you were
3 listed as the spouse.

4 Q. Now, when a person is listed as a spouse
5 on an account, that gives them total access to the
6 account?

7 A. We can verify information. We cannot set
8 up any agreements.

9 Q. In other words, I can't materially change
10 -- like can a spouse call and disconnect service?

11 A. I believe so, as long as they are listed
12 on the account as spouse.

13 Q. So even though the bill came to Brenda
14 Fitzgerald, in essence says Brenda Fitzgerald and
15 Gerard Fitzgerald?

16 A. No, sir, it does not. The bill does not
17 say Gerard Fitzgerald.

18 Q. It just says Brenda, but my rights as a
19 spouse are what?

20 A. You are listed on the account as a
21 spouse, we can discuss the account with you. We
22 cannot set any arrangements.

23 Q. Could Winter Rules be discussed with me?

24 A. That you would have been transferred to
25 the credit department.

1 Q. And do you know if the rules allow for
2 the credit department to discuss Winter Rules with
3 me?

4 A. I do not know what the credit department
5 rules are.

6 Q. Okay. Now, when I spoke to you on the
7 16th, were you located in Indiana?

8 A. Yes, sir.

9 Q. So when I call the local 513 number, it
10 rings in Indiana or is it transferred or do you know?

11 A. I'm not sure how it operates, but we
12 handle calls in Ohio, Indiana and Kentucky.

13 Q. And --

14 A. And they're all called from the same -- I
15 mean, whatever number you call from, it depends on
16 how they're routed.

17 Q. All right. So you don't know -- is it
18 all times when a person calls you, it's their first
19 contact with Duke. And what I'm trying so you can
20 more clearly understand the question, I call a
21 number, you answer the phone, is it that I have been
22 transferred to you or are you answering the phone for
23 the first time?

24 A. If it's a transfer, we're notified that
25 the call has been transferred.

1 Q. Is this caller notified that the call has
2 been transferred?

3 A. I would hope that the previous
4 representative would advise you that your call was
5 being transferred to another representative.

6 Q. Right. But I'm talking about transferred
7 from one state to another or would the phone that day
8 have been answered in Indiana?

9 A. I don't know.

10 MR. MCMAHON: Objection. Relevance.

11 HEARING EXAMINER SHEETS: I think she
12 answered the question she didn't know.

13 MR. MCMAHON: Okay.

14 Q. So you worked in Indiana?

15 A. Yes, sir. My office -- the office I am
16 located at is in Plainfield, Indiana.

17 Q. Okay. Is there a similar office to yours
18 in Ohio, to your knowledge?

19 A. There's an office in Cincinnati, yes,
20 sir.

21 Q. And because of the workload, I would have
22 been transferred to Plainfield, Indiana?

23 A. Not necessarily. You could have also
24 gotten a representative in the Carolinas possibly.

25 Q. And what determines that?

1 MR. MCMAHON: Objection. Relevance.

2 A. I do not know how the phone system works.

3 HEARING EXAMINER SHEETS: I think she
4 answered again she doesn't know how the phone system
5 works.

6 MR. FITZGERALD: Okay. She can step down
7 or you can question her, as you see fit.

8 HEARING EXAMINER SHEETS: Do you have any
9 questions?

10 MR. MCMAHON: No questions.

11 HEARING EXAMINER SHEETS: You're excused.
12 You need to call your next witness.

13 MR. FITZGERALD: Pam Ball.

14 HEARING EXAMINER SHEETS: Raise your
15 right hand.

16 - - -

17 PAM BALL

18 being first duly sworn, as prescribed by law, was
19 examined and testified as follows:

20 - - -

21 HEARING EXAMINER SHEETS: Be seated.
22 State your name and address.

23 MS. BALL: Pamela Ball, 2524 Governor's
24 Point Avenue, Indianapolis, Indiana.

25 HEARING EXAMINER SHEETS: Thank you.

1 When you're ready, Mr. Fitzgerald, you need to come
2 back up here.

3 MR. FITZGERALD: I'm coming up. Would
4 you like to look at these? These are our exhibits in
5 proper order.

6 HEARING EXAMINER SHEETS: What are you
7 handing me?

8 MR. FITZGERALD: I'm handing you
9 documents headlined Pam Ball and they are -- I am not
10 sure if they're e-mails or --

11 HEARING EXAMINER SHEETS: Let counsel see
12 these documents.

13 MR. MCMAHON: There's a series of four
14 different documents, Your Honor.

15 HEARING EXAMINER SHEETS: Four documents.

16 MR. FITZGERALD: They're notes, e-mails,
17 apparently all generated by Pam Ball?

18 MR. MCMAHON: I'm sorry, I didn't look
19 over them that specifically.

20 MR. FITZGERALD: I don't know how to
21 refer to them.

22 MR. MCMAHON: They're four separate
23 documents that contain various e-mail communications
24 involving Pam Ball and then one or more people, so he
25 would have to go through them separately. They're

1 internal Duke e-mails and what appears to be
2 communications with Cindi Mack at the Commission.

3 HEARING EXAMINER SHEETS: Do you want
4 those marked?

5 MR. FITZGERALD: Yes, sir, 4, 5, 6 or 7
6 or whatever the consequential order would be.

7 HEARING EXAMINER SHEETS: That would be 5
8 through 8, I believe. I'll just mark them as they've
9 been handed to me. This will be Complainant's
10 Exhibit 5, Complainant's Exhibit 6.

11 MR. MCMAHON: Can I just see them so I
12 can make sure I keep track of what's being marked?

13 MR. FITZGERALD: Sure.

14 HEARING EXAMINER SHEETS: Complainant's
15 Exhibit 7, and Complainant's Exhibit 8.

16 (EXHIBIT 5-8 MARKED FOR IDENTIFICATION.)

17 MR. MCMAHON: Thank you.

18 HEARING EXAMINER SHEETS: Now, when you
19 question on those documents, please refer to the
20 exhibit number that you're -- and the page number
21 that you're questioning on.

22 MR. FITZGERALD: Okay.

23 - - -

24 CROSS-EXAMINATION

25 By Mr. Fitzgerald:

1 Q. The first one we're talking about is
2 Complainant's Exhibit 5. It says, "Brenda Fitzgerald
3 established electric service at 61 Hunters Court on
4 11/25." Just so I'm not misreading anything, would
5 you mind reading along with me, if you wouldn't mind.

6 HEARING EXAMINER SHEETS: Okay. That's
7 an e-mail from who to who?

8 MR. FITZGERALD: This apparently from Pam
9 Ball to Cindy Givens.

10 Q. That's correct?

11 A. Yes.

12 Q. "Established electric service at 11/25.
13 On 3/29 Brenda was advised she could use the Winter
14 Rule or a med cert, medical certificate, to cancel
15 the disconnection." Now, where are we talking about
16 because we're here at 61 Hunters Court? Well, since
17 the power wasn't turned off the 61 Hunters Court,
18 where are we talking about the power being turned off
19 to use a medical certificate?

20 A. Well, as I recall, you know, the power
21 was not off. It was just a question that Brenda had,
22 you know, what are some options, because our records
23 showed on March 29th that we had advised her of some
24 options at that date.

25 Q. Okay.

1 A. And the Winter Rule was one and the
2 medical certificate was another one.

3 Q. Okay. So just -- since nobody is
4 alleging that anybody ever put any medical
5 information into play here, we're only dealing with
6 money and the Winter Rules, what would you have told
7 her about Winter Rules?

8 A. What would I have told her?

9 Q. Yeah, you spoke to her on --

10 A. No, I did not.

11 Q. Okay. Then you make a reference to
12 somebody speaking to her on the 29th.

13 A. Right.

14 Q. What would that person have told her
15 about Winter Rules on the 29th?

16 MR. MCMAHON: Objection. I mean, what
17 would that person, I mean, I don't know what personal
18 knowledge Ms. Ball has.

19 HEARING EXAMINER SHEETS: You'll have to
20 be more specific what person you are referring to.

21 MR. FITZGERALD: Okay. I'll be a
22 specific as I can. On this document, which I'll
23 share with you as --

24 MR. MCMAHON: I know which one you're
25 talking about. Thank you.

1 Q. Okay. "3/29/10 Brenda was advised she
2 could use Winter rules." Who advised her?

3 A. That would have been the representative
4 she was speaking with. Because our notes indicated
5 as such that she was offered those options, not by
6 me, but by another person at Duke Energy.

7 MR. FITZGERALD: Okay. I'm going to come
8 back to that in a second, but now I'm going to make a
9 reference to Exhibit No. 8. Do you have that?

10 MR. MCMAHON: Yes, sir.

11 HEARING EXAMINER SHEETS: It's
12 Complainant's Exhibit 8.

13 Q. Complaint's Exhibit 8. The very bottom
14 entry and this is once again, this is from you to
15 PUCO.

16 A. Right.

17 Q. It says, "I wonder if Stephanie Carson
18 was supposed to establish service in her name at 1920
19 John Gray address, but had left it in
20 Mrs. Fitzgerald's name. I also wonder if Stephanie
21 called in pretending to be Mrs. Fitzgerald when the
22 service was disconnected." What led you to think
23 that?

24 A. That was really just speculation on my
25 part because I didn't know for sure, so you know, I

1 was actually just guessing. I've got in parenthesis,
2 you know, it's not --

3 Q. I see it's a parenthetical.

4 A. Right.

5 Q. So your speculation is somebody could
6 have called on the 29th and identified herself as
7 Brenda Fitzgerald and not having been Brenda -- well,
8 that could happen on any day. Now, let me jump over
9 -- you know -- Complainant's Exhibit 7, you're
10 speaking here and you're saying, "Service was
11 disconnected for non-payment on 3/29 in the name of
12 Brenda --

13 HEARING EXAMINER SHEETS: This from who
14 to who?

15 Q. This is from Pam Ball to PUCO; is that
16 correct?

17 A. Uh-huh.

18 Q. Okay. "Service was disconnected for
19 non-payment on 3/29." We could only be talking about
20 1923 John Gray, right, because it was not
21 disconnected at 61 Hunters Court?

22 A. That's correct.

23 Q. Okay. "Stephanie called on 4/2 and said
24 her boyfriend owned the home and that Brenda
25 Fitzgerald is her mother." Was Stephanie telling

1 this to you?

2 A. No. I did not talk to any of the
3 customers. I didn't talk to Brenda, you or
4 Stephanie.

5 Q. Okay. So whose -- you don't know where
6 you're going with that information?

7 A. Well, when we get a request from the
8 Commission to review the account or the complaint, we
9 go to the notes and then that means that the
10 representative that talked to that person would have
11 noted the account, so you know, I don't have to talk
12 to the customer to know what transpired.

13 Q. You're reading off the notes, the script
14 thing?

15 A. Exactly. Uh-huh.

16 Q. Okay. Then let's go to number -- going
17 back to Complainant Exhibit 5, this line right here.
18 It's about sixth or the seventh bullet point down.
19 It says, "Cindi Mack tried to talk him out of a
20 formal complaint but he seems to want to have our
21 hands slapped." How do you know Cindi Mack was
22 trying to talk us out of our formal complaint, is
23 that something Cindi Mack told you?

24 A. You know, I -- Cindi said no. I remember
25 her saying she doesn't remember doing that, so you

1 know, maybe I was incorrect about that. I don't
2 know. I -- you know, it was a year ago so I'm not
3 positive about it, but I know that she doesn't recall
4 saying that and that was just my own editorial
5 comment. She didn't say anything about the hand
6 slap, I'm sure of that.

7 Q. Oh, I ain't saying she said hand slap.
8 I'm saying you're absolutely accurate, Cindi Mack was
9 trying to talk us out of it, that was accurate, but I
10 want to know how you knew that.

11 A. I didn't know that -- you know, I didn't
12 hear the conversation between you and her, so I don't
13 know that for sure.

14 Q. But you wrote it.

15 A. I wrote it, I did.

16 Q. And it's not a question, it's a
17 statement. That Cindi Mack was trying to talk us out
18 of it and you were dead on, she was definitely trying
19 to talk us out of it.

20 MR. MCMAHON: Objection.

21 HEARING EXAMINER SHEETS: Okay. We've
22 got an answer to the question. Let's move on.

23 MR. FITZGERALD: What's the answer, she
24 doesn't know?

25 HEARING EXAMINER SHEETS: She said she

1 didn't, yeah, she wasn't sure it was accurate or --
2 that was her note.

3 Q. Okay. You've examined this case pretty
4 thoroughly? You've looked at it several times?

5 A. I have.

6 Q. Have you ever seen a disconnect notice
7 that was said to be in force on April 15th?

8 A. That would what? Pardon me?

9 Q. That was in force on April 15th. I'm
10 saying, to your knowledge, were we identified that we
11 were in jeopardy of having the power turned off on
12 April 15th?

13 A. Yes, because I saw your disconnect
14 notices. There were at least three in a row. Every
15 month you got a disconnect notice, so yes, I looked
16 at them and I knew you were in jeopardy.

17 Q. Okay. And in each of those months, did
18 we make a payment sufficient to comply with Winter
19 Rules?

20 A. You made a \$300 payment, but you have to
21 tell us it's the Winter Rule and it's typically 175
22 so we don't know that it's to be used for Winter Rule
23 unless you ask us for that.

24 MR. FITZGERALD: May I have a copy of one
25 of the other exhibits where it says that we don't

1 have to?

2 HEARING EXAMINER SHEETS: What are you
3 looking for now?

4 MR. FITZGERALD: Exhibit No. --

5 HEARING EXAMINER SHEETS: 1

6 MR. FITZGERALD: No. 1.

7 Q. On the top of page 2 on Exhibit No. 1.
8 Once she reads it, I'll ask the question.

9 What did we have to do now? It says
10 there's no sign up or nothing required.

11 A. Right.

12 MR. MCMAHON: Objection, mischaracterizes
13 the document.

14 Q. May I see the document. I don't mean to
15 take it out from in front of you. "There is no sign
16 up required. If a residential customer's service has
17 been disconnected for non-payment or being threatened
18 to be disconnected, he or she may be required to pay
19 175." We do not have to -- 300 is certainly 175.
20 The rules -- are these the Winter Rules as you
21 understand them to be?

22 A. Yes.

23 MR. MCMAHON: Objection.

24 MR. FITZGERALD: What's the objection?

25 HEARING EXAMINER SHEETS: I sustain the

1 objection.

2 MR. MCMAHON: The witness was testifying
3 about whether 175 was required or more. If his
4 question is, are those the Winter Rules, that's fine,
5 but leading up to that question were some prefatory
6 statements by Mr. Fitzgerald.

7 HEARING EXAMINER SHEETS: Okay. Now
8 let's have a question about the Winter Rules.

9 Q. Does 300 -- I don't want to be moronic,
10 but --

11 HEARING EXAMINER SHEETS: I think she
12 already supplied it, but I'll let you ask it again

13 Q. Okay. We made a \$300 payment on
14 April 5th, Brenda did, it's your statement now that
15 we would have had to have identified that as a Winter
16 Rules payment?

17 A. Correct.

18 Q. Where is that in the rules?

19 A. The -- my understanding is typically a
20 customer pays the 175 and that identifies it as a
21 Winter Rule -- that they want to set up the Winter
22 Rule. You made the payment in April 5th, I believe
23 it was.

24 Q. That's correct.

25 A. You were not disconnected at that time.

1 So that would have not automatically said that this
2 is -- Mr. Fitzgerald wants to use the Winter Rule.
3 Our system would not identify that payment saying
4 this is a Winter Rule payment and we want to set up
5 the agreement.

6 Q. Even though it does qualify?

7 A. If you had told us -- if you had asked us
8 to do that, yes, it would have.

9 Q. Can you show me or tell me where I might
10 find this written down in either PUCO or Duke Energy?

11 A. It probably isn't because our system is
12 not sophisticated enough to know that every customer
13 wants the Winter Rule when he makes a \$300 payment
14 because some people do not want to use a Winter Rule.
15 They just want to make a payment. And unless they
16 ask us for that, we want to set it up, we have no way
17 of knowing that.

18 Q. Okay. So you're saying that the
19 April 6th disconnect notice is the one that was in
20 effect on April 15th, in force?

21 A. You had -- you owed more than the \$300 at
22 that time, so it would not have cancelled the
23 disconnection because you only paid 300 and as I
24 recall you owed 1,300 or something like that.

25 Q. I believe 17.

1 A. 17.

2 Q. My question is, 300 doesn't qualify as
3 175 because of some --

4 MR. MCMAHON: Objection.

5 HEARING EXAMINER SHEETS: I think she
6 supplied an answer.

7 Q. What rule then does that come? It's
8 absolutely contradictory to what's written on your
9 situation.

10 MR. MCMAHON: Objection. Argumentative.
11 Asked and answered.

12 HEARING EXAMINER SHEETS: She's answered
13 the question. Now we need to move onto another one.

14 MR. FITZGERALD: Okay. Let me go onto
15 Duke Energy's --

16 HEARING EXAMINER SHEETS: I need that
17 back up here, Exhibit 1.

18 MR. FITZGERALD: Is that right? Now I'm
19 taking Complainant's Exhibit No. 2.

20 HEARING EXAMINER SHEETS: Okay.

21 Q. Complainant's Exhibit No. 2, page 4,
22 would you read that. I'll read it. I don't mean to
23 make you read it. It say, "Duke Energy is required
24 by the PUCO to provide 14 days notice prior to the
25 disconnection and an additional notice ten days prior

1 to disconnection."

2 HEARING EXAMINER SHEETS: Okay. We're
3 reading from page 4?

4 MR. FITZGERALD: Page 4, of Duke's own
5 document.

6 HEARING EXAMINER SHEETS: Complainant's
7 Exhibit 2. Okay. Proceed.

8 Q. So we have here 14 days and ten days. So
9 ten days prior to you would have had to send us
10 another notice; is that correct?

11 A. That's correct.

12 Q. Have you ever seen that notice?

13 A. I have not. I haven't looked for it so I
14 haven't seen it.

15 Q. So you have no idea if it exists or not?

16 A. Again, I didn't look for it. I'm not
17 saying it didn't exist. I just didn't look for it.

18 Q. Were you aware prior to today that in
19 Winter Rules you must provide two disconnects?

20 A. Yes, we do. We do provide two.

21 Q. And when you're looking for through this
22 case, you never went to look for that second
23 disconnect notice, you just assumed it was there?

24 A. As Cindi Mack indicated, the conversation
25 that she and I had was about the Winter Rule and not

1 offering that to you on April 15th, so that was the
2 crux of what we were trying to determine; did we or
3 did we not offer that to you. So Cindi is saying,
4 let me hear the call. I want to know if you offered
5 it. I didn't investigate further into whether you
6 had that second notice because that was not part of
7 the complaint.

8 Q. In other words, the complaint had to be
9 stipulated that it was -- that we hadn't been
10 notified for you to look into that?

11 A. It would have had to be -- you know, a
12 another section of that said in addition he is saying
13 he was not properly notified before I would have
14 actually gone into the account to double check to
15 make sure that you did get that. In addition to the
16 bill with the disconnect notice you also got the
17 ten-day disconnect notice.

18 Q. Okay.

19 MR. MCMAHON: Your Honor, for the record,
20 I guess I'd object to this whole line of questioning
21 because the complaint has been, as been filed by the
22 Fitzgeralds, makes no allegation about not having
23 been notified of disconnect notices. This is all
24 about whether they were told about the Winter Rule
25 and there's been no allegation in the complaint that

1 there were complaining about a lack of notice prior
2 to disconnection.

3 MR. FITZGERALD: Before ruling, may I
4 indicated to you that part of the Winter Rule is a
5 ten-day notice. That is part of the Winter Rule.
6 It's on your thing.

7 HEARING EXAMINER SHEETS: We've mentioned
8 disconnection before --

9 MR. MCMAHON: Actually, I believe
10 Mr. Fitzgerald is misstating the Winter Rule about
11 the ten-day notice requirement.

12 HEARING EXAMINER SHEETS: I'll let him
13 finish this line of questioning.

14 Q. As you sit here today, do you think we
15 were properly notified of a disconnect?

16 A. Yes, I do.

17 Q. That means two of them. That means on
18 April 6th, which you claim was not nullified by the
19 \$300 payment, that's the first notice. Where's the
20 second notice?

21 A. Our system is set up to notify customers
22 on the bill, their regular bill, it has a disconnect
23 notice. I did verify that you had those disconnect
24 notices. I've seen those. I did not go the next
25 step to look for the ten-day notice. But our system

1 is set up to notify the customers with the bill and
2 an additional ten-day notice. I have seen those
3 repeatedly, you know, hundreds of them.

4 Q. Have you seen one with our name on it?

5 A. I didn't look for it.

6 HEARING EXAMINER SHEETS: Okay. That's
7 the answer to that question.

8 MR. FITZGERALD: So as she sits here
9 today, the answer to that question is she has not
10 seen that second notice?

11 HEARING EXAMINER SHEETS: She didn't look
12 for. That was her answer. Okay. You need to move
13 onto another question.

14 Q. What did Duke Energy do right on
15 April 15th?

16 A. You called in. You asked what it took to
17 get your service back on. So the representative told
18 you what was -- what you owed and what you needed to
19 do to get the service back on and he helped you with
20 getting your payments made. I think he stayed with
21 you while there was that little issue with the bank.
22 He help you to get your service back on and told you
23 what was required.

24 Q. That would be Jonathan Green we're
25 talking about?

1 A. That's correct.

2 Q. Okay. And you're saying Jonathan Green's
3 conduct was correct, that Duke did that right?

4 A. You're saying what did he do right?
5 That's what you're saying?

6 Q. What did Duke Energy do right on April
7 15th concerning the Fitzgerald family?

8 A. He told you what you owed. You asked
9 what you owed and he told you.

10 Q. Well, I asked what it was going to
11 require to get our power back on.

12 A. Okay.

13 MR. MCMAHON: Objection. Is he
14 testifying or asking a question?

15 MR. FITZGERALD: No, I'm just saying to
16 you, I will ask a question of it.

17 HEARING EXAMINER SHEETS: Okay.

18 Q. I called to get our power back on, would
19 you agree with that?

20 A. Yes.

21 Q. I was told I had to pay 1,712 and then it
22 became \$1,762. You're saying Duke Energy did that
23 right?

24 A. Not everybody wants to use the Winter
25 Rule, so Jonathan, you know, he should have said, you

1 know, this is another -- you can either pay your
2 1,762.50 that you owe us or you can pay 175 for the
3 Winter Rule, so he did -- he just didn't go that
4 second step.

5 Q. Okay.

6 A. But he looked at what you owed. He
7 didn't see any discrepancy, so he said this is what
8 you need to pay us.

9 Q. Are you familiar -- did you -- you went
10 back and listened to telephone calls concerning this
11 account, right?

12 A. I did.

13 Q. Are you aware that Brenda called on
14 April 15th?

15 A. I did not look for a call from Brenda on
16 April 15th, no.

17 Q. Why not? She's on the account.

18 A. Excuse me, again, you were the customer
19 that Cindi and I were working with, Cindi Mack.

20 Q. Subsequent to that date, have you become
21 aware that Brenda did call on April 15th?

22 A. No, not really.

23 Q. As we sit here today, you don't know that
24 Brenda called on April 15th?

25 A. I didn't look for her call.

1 Q. But you were managing the account for
2 Duke?

3 A. I was managing the complaint that you
4 filed with PUCO.

5 Q. Okay. So there comes a point on some day
6 where you are on the phone with Cindi Mack in
7 Columbus and you're going to listen to phone calls.
8 There were three phone calls. The one you listened
9 to that Cindi Mack testified to was Jonathan; is that
10 correct?

11 A. That's correct.

12 Q. What were the other two?

13 A. We didn't look for others.

14 Q. You had the other two.

15 MR. MCMAHON: Objection. Asked and
16 answered.

17 HEARING EXAMINER SHEETS: Okay. She's
18 answered the question. She didn't look for others.
19 We need another question.

20 Q. Were there three phone calls on
21 April 15th or one?

22 A. I do not know.

23 Q. Okay. You didn't have three phones for
24 Cindi Mack to listen to?

25 MR. MCMAHON: Objection. Asked and

1 answered.

2 Q. Did you tell Cindi Mack there were three
3 phone calls?

4 A. I couldn't have told Cindi Mack there
5 were three because I didn't know.

6 Q. You did not know there were three phone
7 calls?

8 MR. MCMAHON: Objection. Asked and
9 answered.

10 HEARING EXAMINER SHEETS: She's answered
11 the question.

12 MR. FITZGERALD: Well, sir --

13 Q. As we sit here today, you still don't
14 know that there were three phone calls?

15 MR. MCMAHON: Objection.

16 HEARING EXAMINER SHEETS: She's answered
17 the question. You need another question.

18 MR. FITZGERALD: I have no more
19 questions.

20 HEARING EXAMINER SHEETS: Do you have
21 any?

22 MR. MCMAHON: Yes, sir.

23 This is a new one.

24 HEARING EXAMINER SHEETS: Company Exhibit
25 4?

1 MR. MCMAHON: Yes, Company Exhibit 4.

2 (EXHIBIT 4 MARKED FOR IDENTIFICATION.)

3 - - -

4 DIRECT EXAMINATION

5 By Ms. Ball:

6 Q. Ms. Ball, I'm just putting in front of
7 you two different exhibits; one that's been marked as
8 Company Exhibit 3 and one as Company Exhibit 4. Just
9 to clarify for the record, Ms. Mitchell looked at No.
10 3 already. But Company Exhibit 3 consists of the
11 accountant notes for Brenda Fitzgerald's account from
12 61 Hunters Court, Account No. 8820070155 as
13 maintained in Duke's system, correct?

14 A. That's correct.

15 Q. And this is a true and accurate copy of
16 those notes?

17 A. Yes.

18 Q. And with respect to Company Exhibit 4,
19 same questions, those are the account notes from
20 Duke's system concerning Brenda Fitzgerald's account
21 -- sorry, I wrote down something wrong. Sorry, I
22 wrote down the wrong document. Sorry. I apologize.

23 MR. FITZGERALD: I wanted to give you
24 back your document.

25 HEARING EXAMINER SHEETS: Thank you.

1 MR. MCMAHON: Sorry, I've got to go back
2 because I accidentally wrote down the wrong number
3 when you were being asked questions.

4 Q. Exhibit 3, which has been previously
5 marked Company Exhibit 3 consists of account notes
6 for Brenda Fitzgerald's account at 1923 John Gray
7 Road as maintained in Duke's system, correct?

8 A. That's correct.

9 Q. And Exhibit 4 consists of the account
10 notes for Brenda Fitzgerald's account at 61 Hunters
11 Court as maintained in Duke Energy's system, correct?

12 A. That's correct.

13 Q. And both of these exhibits, Company
14 Exhibits 3 and 4, are maintained by the company in
15 its ordinary course of business?

16 A. Yes.

17 Q. And these are true and accurate copies of
18 those Company notes?

19 A. Yes.

20 Q. Okay. So can you take a look at the
21 March -- let's start first with Exhibit 3, March 29,
22 2010.

23 A. Do you want me to start at the beginning
24 of March 29th?

25 Q. Actually, I'm sorry, I meant to say

1 March 29th was Ms. Mitchell's conversations on
2 April 2nd, 2010.

3 HEARING EXAMINER SHEETS: About what page
4 are you on?

5 MR. MCMAHON: 7.

6 MR. FITZGERALD: And this has a date of
7 April 2nd?

8 MR. MCMAHON: Correct.

9 Q. Do you see that?

10 A. Uh-huh. Right, Sandy Nicely. It would
11 be your date entered here, April 2nd.

12 MR. FITZGERALD: Okay. Am I looking at
13 --

14 MR. MCMAHON: Company Exhibit 3. That's
15 4.

16 MR. FITZGERALD: Where is 3? Did you
17 give it to me?

18 MR. MCMAHON: Yes, before.

19 Q. Now, the page that you're looking at
20 there, ma'am, that relates to a telephone call by
21 Brenda Fitzgerald to the company concerning 1923 John
22 Gray Road?

23 A. It looks like a call from Stephanie
24 Carson. "Transferred Stephanie cars to Energy
25 Protection."

1 Q. Okay. I apologize. What is the
2 reference here to Brenda Fitzgerald?

3 A. It is -- yeah, it does mention Brenda
4 Fitzgerald as being the customer.

5 Q. Okay. But the page that you're looking
6 at concerns a call from Stephanie Carson concerning
7 John Gray Road?

8 A. That's correct.

9 Q. Okay. And as you take a look at Company
10 Exhibit 4, Company Exhibit 4, as you said, identifies
11 the notes for Brenda Fitzgerald's account at 61
12 Hunters Court, right?

13 A. Correct.

14 Q. Do you see anything in those notes
15 relating to a call by Brenda Fitzgerald on
16 April 15th, 2010?

17 A. Brenda is mentioned on April 15th,
18 Veronica Cage.

19 Q. Correct.

20 A. "Customer called in. Customer card
21 declined. Customer will call back to make that
22 payment."

23 Q. Right. So the company has a record of
24 Mrs. Fitzgerald's call on April 15th, 2010, correct?

25 A. Yes. It was noted here by Veronica Cage.

1 Q. And based on the Company's -- the notes
2 in the Company's records, Mrs. Fitzgerald called in
3 to discuss a payment of 1,762.50 and was trying to
4 make that payment by credit card, correct?

5 A. Correct.

6 MR. FITZGERALD: Hold on. That's not on
7 the document. I object. Show me on the document
8 where it says she was paying 1762.50.

9 HEARING EXAMINER SHEETS: What page are
10 you on?

11 MR. MCMAHON: That wasn't my question.

12 MR. FITZGERALD: Okay. Then proceed.

13 MR. MCMAHON: Okay.

14 Q. Mrs. Fitzgerald called -- based on the
15 company's records it reflects that Mrs. Fitzgerald
16 called Duke because her credit card has been
17 declined, correct?

18 A. Correct.

19 Q. And later on there was contact by
20 Mr. Fitzgerald with the company, which is what you
21 had previously discussed?

22 A. Right.

23 Q. Okay. Now, could you keep going back in
24 Plaintiff's -- the Company's Exhibit 4, I apologize,
25 to March 29th, 2010.

1 A. Okay.

2 Q. Do you see a reference there in the
3 Company's records concerning a telephone call with
4 Brenda Fitzgerald on March 29th, 2010 concerning the
5 account at 61 Hunters Court?

6 A. Yes.

7 Q. And is it not true that the Company's
8 records reflect that Mrs. Fitzgerald was advised of
9 the Winter Rule on March 29th, 2010 and told to pay
10 \$175 by April 8th, 2010 to cancel the disconnect
11 notice?

12 A. That's correct.

13 Q. And the disconnect notice that had been
14 out there, as you testified to in response to
15 Mr. Fitzgerald's questions, you had seen a series of
16 monthly bills generated in January, February and
17 March of 2010, all of which contained the disconnect
18 notice, correct?

19 A. That's correct.

20 Q. So those are the disconnect notices that
21 are referenced here in the Company's records in
22 Exhibit 4?

23 A. That's correct.

24 Q. Okay. And as you testified to on
25 cross-examination by Mr. Fitzgerald, unless a

1 customer tells the company that it wants to invoke
2 the Winter Rule, is there any other way that the
3 Company would know that the customer wants to do
4 that?

5 A. No, there's no way because some people
6 wouldn't want to use the Winter Rule.

7 Q. And I guess maybe there is one exception.
8 If someone pays -- is under you disconnect notice and
9 then pays 175, the flat even amount of \$175, I think
10 you said earlier, the Company's system would treat
11 that payment as a Winter Rule invocation of some
12 kind?

13 A. I'm not sure about that.

14 Q. Okay.

15 A. I'm not sure about that.

16 Q. Okay. So here we have records from the
17 Company's system that reflect that Mrs. Fitzgerald
18 was told about the Winter Rule on March 29th, 2010.
19 And are there any records in the Company's
20 possession, to your knowledge, that either Mr. or
21 Mrs. Fitzgerald called back and told the company we
22 want to invoke the Winter Rule?

23 A. No.

24 Q. Okay. So when they paid \$300 on
25 April 5th, 2010, that was a partial payment of the

1 then outstanding balance of in excess of 1,600,
2 correct?

3 A. That's correct.

4 Q. So the company gets \$300, applies that
5 partial payment and there still leaves a considerable
6 outstanding balance that is required to be paid in
7 order to avoid disconnection?

8 A. That's correct.

9 Q. Which the company never received prior to
10 April 15th, 2010?

11 A. That's correct.

12 Q. And as a result of their fairly to pay
13 the amount due to avoid disconnection before
14 April 15th, 2010, the Fitzgerald's account at 61
15 Hunters Court was disconnected for non-payment?

16 A. That's correct.

17 MR. MCMAHON: That's all I have. Thank
18 you.

19 HEARING EXAMINER SHEETS: Do you have
20 anything on recross?

21 MR. FITZGERALD: I'd like to ask a
22 question.

23 - --

24 RECROSS-EXAMINATION

25 By Mr. Fitzgerald:

1 Q. Okay. Right there in -- can I have
2 Exhibit 3, the one where we were talking about the
3 15th, go to that page.

4 A. The one for John Gray or --

5 HEARING EXAMINER SHEETS: And you're
6 referring to? Excuse me.

7 MR. FITZGERALD: I'm referring to, I
8 believe, Company's Exhibit No. 3 or wherever that on
9 the 15th of April the phone call with Brenda
10 Fitzgerald.

11 HEARING EXAMINER SHEETS: Okay. And what
12 page of the document are you referring to?

13 MR. MCMAHON: That's Exhibit 4, Your
14 Honor.

15 MR. FITZGERALD: Exhibit 4.

16 HEARING EXAMINER SHEETS: You're on page
17 number 4?

18 MR. FITZGERALD: Uh-huh. There it is.

19 Q. Can you read what that says, please?

20 A. "Customer called in. Customer card was
21 declined and customer will call back to make that
22 payment."

23 HEARING EXAMINER SHEETS: Okay. I still
24 didn't get an answer. What page are we on?

25 A. Let's see. I'm sorry. Page 11.

1 HEARING EXAMINER SHEETS: 11. Okay. Of
2 that document, okay.

3 Q. Okay. Let me go back here. That's
4 Customer's Exhibit 4 -- I mean, Company Exhibit 4?

5 A. Yes.

6 Q. And that's on which page of that?

7 A. 11.

8 Q. Okay. Let's go to page 12 of that same
9 one. It says Veronica Cage and we're talking about
10 4/15/10; do you see that?

11 A. Yes.

12 Q. And when it says, "Customer need to make
13 a payment of 1,712 to get service back on today." Is
14 that the \$50 added there?

15 HEARING EXAMINER SHEETS: You said
16 1762.50?

17 Q. Excuse me, 1762. So there is a statement
18 that Veronica Cage told Brenda Fitzgerald she had to
19 pay \$1,762 to get the service restored; is that
20 correct?

21 A. That's what the note says, yes.

22 Q. Well, how much did she, in fact, have to
23 pay?

24 A. To pay the bill or to use the Winter
25 Rule?

1 Q. To get the service restored.

2 A. You know, she had two options. This
3 amount was owed. Some people pay what they owe.
4 Some people use the Winter Rule.

5 Q. Should she have been told to pay 175?

6 A. I think we've admitted that.

7 Q. But you didn't admit is, was she told --
8 we're talking about what we're admitting is what you
9 told me. Now we have Brenda being told this on the
10 15th, this thing says -- it's definitely a call
11 between Veronica Cage and Brenda Fitzgerald; is that
12 right?

13 A. Yes, per our records.

14 Q. Okay.

15 A. She was told on March 29 about the Winter
16 Rule. She was not told on April 15th.

17 Q. She was not told on April 15th?

18 A. She was told on March 29th but not on
19 April 15th. See the next page.

20 Q. Should she have been told on April 15th?

21 A. Yes.

22 Q. Then why did this person say the customer
23 needs to make a payment of 1762? Is that
24 misinformation?

25 A. I think we have admitted and agreed that

1 we should have offered, even though we offered --

2 Q. That was to me. Was this told to Brenda?

3 MR. MCMAHON: Objection. The witness has
4 asked and answered that Mrs. Fitzgerald was told on
5 March 29th about the Winter Rule but not on
6 April 15th.

7 HEARING EXAMINER SHEETS: Sustained. Go
8 onto another question, please.

9 MR. FITZGERALD: Well, sir, I --

10 Q. Should this person have told her to pay
11 \$1,762.

12 MR. MCMAHON: Objection. Calls for a
13 legal conclusion.

14 HEARING EXAMINER SHEETS: I think we've
15 covered that. Now you need to go onto another
16 question.

17 MR. FITZGERALD: Well, what we were
18 talking about before was what was told me, not what
19 was told to Brenda. This thing says it was told to
20 Brenda.

21 HEARING EXAMINER SHEETS: I think we've
22 been through that.

23 MR. FITZGERALD: Okay.

24 Q. You saw a disconnect notice for 61
25 Hunters Court; is that correct?

1 A. Yes.

2 Q. Not 1923.

3 MR. FITZGERALD: May I see that, please?

4 MR. MCMAHON: May you see what?

5 MR. FITZGERALD: The disconnect notice
6 for 61 Hunters Court. We don't seem to have it.

7 MR. MCMAHON: Well, as I've stated in
8 prior filings, the Company, given the volume of
9 disconnect notices that go out, the Company doesn't
10 keep a copy of the actual sheet that is hand
11 delivered to each address. All they have are
12 computer-generated references to the notice having
13 been issued and delivered. I have that
14 computer-generated information. I don't have the
15 physical notice because the Company deals in
16 thousands of these notices at any given point in time
17 and doesn't keep images of every one. I do have the
18 computer-generated information concerning that
19 notice, which I'm happy to share with the
20 Fitzgeralds. This is my only copy.

21 MR. FITZGERALD: Excuse me, did I hear
22 him say that was hand delivered to us?

23 MR. MCMAHON: It was -- the notice is
24 handed and posted at the door, delivered to the
25 premises, correct.

1 MR. FITZGERALD: That's an outrage.

2 MR. MCMAHON: Well, for the record, I
3 would object to Mr. Fitzgerald's attempt to retestify
4 on the stand. He testified he has no idea whether a
5 notice was delivered and now he's trying to reargue
6 the case and accuse us of an outrage. It's improper.

7 HEARING EXAMINER SHEETS: Okay. Now, you
8 need to go onto another question, if you have one for
9 this witness.

10 Q. (By Mr. Fitzgerald) This disconnect
11 notice I'm going to bring up to you, which I guess
12 we'll have to enter as --

13 HEARING EXAMINER SHEETS: What are you
14 referring to?

15 MR. FITZGERALD: These are some
16 disconnect notices that go from January 2nd, 2010,
17 which I think are already in the record. I'm going
18 to go to the one that's on March 24th.

19 HEARING EXAMINER SHEETS: This has been
20 marked?

21 MR. FITZGERALD: It's not marked yet.

22 MR. MCMAHON: To the extent it helps,
23 Your Honor, I believe Mr. Fitzgerald is referring to
24 bills that are part of CMG-2, the Company Exhibit 2
25 attached to Cindy Givens' testimony.

1 MR. FITZGERALD: Okay. So they're
2 already in here.

3 HEARING EXAMINER SHEETS: Excuse me, what
4 page are you on?

5 MR. FITZGERALD: I'm on the one, two,
6 three, four, five, I'm on the sixth page. It says
7 Disconnect Notice Due Date is March 24th, 2010. It
8 said the amount due is 1355.88. Is everybody on that
9 page? I will provide you with a copy so you can be
10 on that page.

11 MR. MCMAHON: I apologize, I just want to
12 make sure I'm looking at the right document.

13 A. This is the John Gray address.

14 MR. MCMAHON: Yeah, that's what I
15 thought.

16 A. That is not the Hunters Court address.
17 This is John Gray.

18 Q. Where was it mailed to?

19 A. Mailed to Hunters Court.

20 Q. This is a disconnect notice for where,
21 for John Gray or Hunters Court?

22 A. John Gray.

23 Q. Okay. Do you have one that says we were
24 going to be disconnected at Hunters Court?

25 MR. MCMAHON: I'm happy to try assist,

1 Your Honor, if this helps. If you look at the
2 exhibits to Cynthia Marie Givens' testimony, CMG-1
3 are all the bills for John Gray Road. CMG-2 are all
4 the bills for 61 Hunters Court.

5 Q. (By Mr. Fitzgerald) And on March 24th,
6 there's one that says Hunters Court. You know, in
7 other words, I'm saying when we get this disconnect
8 notice, the address in this box on the disconnect
9 notice is where it's to be disconnected from; is that
10 correct?

11 A. That's correct.

12 Q. Okay. This is the January something
13 file. What am I referring to here? January 6th of
14 2010.

15 MR. MCMAHON: Those bills are attached as
16 Company Exhibit 2, CMG-2 to Cynthia Givens'
17 testimony. Those are the Hunters Court bills.

18 MR. FITZGERALD: So you understand
19 they're in evidence, they are the Hunters Court bills
20 under Cindy Givens.

21 HEARING EXAMINER SHEETS: Yeah. Just
22 identify the page you're on. Company Exhibit 2?

23 MR. FITZGERALD: The third page.

24 HEARING EXAMINER SHEETS: Third page of
25 Company Exhibit 2.

1 MR. MCMAHON: Well, actually, I think
2 it's important, he doesn't have the exact exhibit.
3 It would be easier if he identifies the bill by the
4 date of the bill.

5 MR. FITZGERALD: The due date --

6 MR. MCMAHON: Because they're not in the
7 same order.

8 MR. FITZGERALD: Excuse me, February 9th,
9 2010.

10 MR. MCMAHON: There you go.

11 HEARING EXAMINER SHEETS: You're going to
12 have to give me a minute here to get there.

13 MR. FITZGERALD: Okay.

14 HEARING EXAMINER SHEETS: Third page of
15 Company Exhibit 2. Okay.

16 Q. What does "held bill" mean?

17 A. When our billing department is working on
18 a bill, maybe they've had estimated reads or
19 something, they've got to do some work on it before
20 it goes out. They'll hold it and review it before
21 they mail it out the next day. And it looks like
22 that's what happened here. They held the bill while
23 they had a chance to review, and then the very next
24 day, this same bill, that bill was sent out. This
25 bill was not sent out. It was held so that it could

1 be reviewed and then the next day billing determined
2 that it was correct and they mailed it out and that
3 was your disconnect bill.

4 Q. Thank you. And once again, that's back
5 in February. So all these disconnect notices that
6 you have been asked about and answered, that went on
7 for months, January, February, March, April. Why
8 wasn't -- why wasn't the power turned off in January?

9 A. I don't know.

10 Q. Could it be we made a payment before --

11 A. I think that -- you know, let me look at
12 those bills again and maybe I can answer your
13 question.

14 MR. MCMAHON: You know, I guess for the
15 record, I'd object to the question because the
16 Company's reason as to why they were not disconnected
17 in January are immaterial to the allegations in the
18 complaint.

19 HEARING EXAMINER SHEETS: I agree with
20 him. It's not material to your complaint, but if she
21 can supply an answer, I'll let her go ahead and do
22 it.

23 A. Your first bill was 75.51, which you paid
24 it. Then we transferred the unpaid charges from John
25 Gray, the electric charges only, because this is

1 electric only.

2 Q. All right.

3 A. So that caused your account to be in
4 disconnect because of that large balance that was
5 transferred.

6 Q. Right.

7 A. You paid the 75.51 and then you were up
8 for disconnection there in March.

9 Q. And what did we pay?

10 A. You paid -- well, you didn't pay the 300
11 until -- it didn't post until the bill that was
12 actually due May 6th because it probably crossed in
13 the mail, so you could have been disconnected right
14 here.

15 Q. On March 8th?

16 A. So it says if your service has not yet
17 been disconnected, at that time you would have had to
18 pay 1,053 to avoid disconnection. And then it
19 mentions that you would be charged a security deposit
20 as well. I don't know why you weren't disconnected.
21 You were subject to disconnection.

22 Q. Let's go to the next payment then and
23 let's see what's credited then in the next situation.

24 A. Not until here, 300. So this month still
25 no payments. This would have been during the March

1 time frame, so then you're up to 1782.50. And here
2 it says your service may be disconnected if the past
3 due of 1326.41 is paid not paid by April 9th. You
4 pay 300, so you should have paid 1326.41.

5 Q. This is April 6th, right?

6 A. It's the due date of April 6th.

7 Q. What was explained on March 29th? Do you
8 think on March 29th when you're explaining a bill or
9 when someone is explaining a bill that they make it
10 clear it must be exactly \$175?

11 MR. MCMAHON: Objection.

12 MR. FITZGERALD: On what grounds?

13 MR. MCMAHON: I'm sorry, you're not the
14 Court. I don't need to explain to you, sir.

15 HEARING EXAMINER SHEETS: I'll let her
16 answer the question.

17 A. Our notes indicate that we told Brenda on
18 the 29th of March that she could use the Winter Rule
19 by paying 175.

20 Q. And your position is that 300 doesn't --
21 it must be exactly 175?

22 MR. MCMAHON: Objection. Asked and
23 answered.

24 HEARING EXAMINER SHEETS: We've covered
25 this before.

1 MR. FITZGERALD: Well, okay. Is this my
2 copy or yours of 3? I believe it's mine. It's got 3
3 written on it.

4 MR. MCMAHON: It's yours.

5 MR. FITZGERALD: We're done.

6 HEARING EXAMINER SHEETS: Do you have any
7 questions?

8 MR. MCMAHON: Just a couple follow-up,
9 Your Honor.

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. McMahon:

13 Q. Do you still have Exhibits 3 and 4 in
14 front of you?

15 A. No, I think Mr. Fitzgerald took them.

16 Q. If you look at page 14 of Company Exhibit
17 3, and again, these are the account notes for the
18 1923 John Gray Road account. Page 14, does that
19 reflect in the Company's records that Brenda
20 Fitzgerald had called into the company and was
21 advised by Duke Energy about her options under the
22 Winter Rule with respect to the account at 1923 John
23 Gray Road?

24 A. Yes.

25 Q. And then as you look at Company Exhibit

1 4, that page from the March 29th, 2010, as you've
2 already testified to, that page also shows that
3 Brenda Fitzgerald was told about the Winter Rule on
4 March 29th, 2010 -- or I'm sorry.

5 A. Same date.

6 Q. Yeah, March 29th, 2010 with respect to
7 her account at 61 Hunters Court, correct?

8 A. That's correct.

9 Q. And these were both communications with
10 La'Tasha Savage and that's the person who entered the
11 information into the system on behalf of Duke Energy,
12 correct?

13 A. Yes. She told Brenda about both accounts
14 and using the Winter Rule.

15 Q. Okay. And then isn't it true that the
16 Company offered the Fitzgeralds the refund of the \$50
17 after-hour fee as well as the \$25 reconnect fee in
18 connection with this matter?

19 A. That's correct.

20 Q. Okay. And can you explain why the
21 Company offered that?

22 A. Due to the fact that we did not offer the
23 175 Winter Rule on that day, I talked to Cindi Mack
24 about it and I said, you know, let's -- I agree that
25 we could have offered -- we should have offered that.

1 Let's refund the \$50 after hours and the \$25
2 reconnect to resolve the complaint if that would do
3 it and Mr. Fitzgerald declined that offer.

4 Q. Okay. And this was an offer that was
5 made back in April of 2010?

6 A. That's correct.

7 MR. MCMAHON: That's all I have. Thank
8 you.

9 HEARING EXAMINER SHEETS: Do you have any
10 other questions, Mr. Fitzgerald?

11 MR. FITZGERALD: Nope.

12 HEARING EXAMINER SHEETS: You're excused.

13 MR. FITZGERALD: I call Cynthia Marie
14 Givens.

15 - - -

16 CYNTHIA MARIE GIVENS

17 being first duly sworn, as prescribed by law, was
18 examined and testified as follows:

19 - - -

20 HEARING EXAMINER SHEETS: Now, since
21 she's your chief witness, do you want to do direct on
22 her now or do you want to ask that, we can take care
23 of that right now or do you want to recall her?

24 MR. MCMAHON: I'm happy to, if that's
25 easier.

1 HEARING EXAMINER SHEETS: I'll leave it
2 up to you. Do you want to do that?

3 MR. MCMAHON: I can.

4 HEARING EXAMINER SHEETS: Okay.

5 MR. MCMAHON: Okay.

6 - - -

7 DIRECT EXAMINATION

8 By Mr. McMahon:

9 Q. Ms. Givens, I'm handing you what's been
10 marked as, up in the upper right-hand corner,
11 DE-Ohio, Duke Energy Ohio Exhibit A.

12 MR. MCMAHON: This is a copy that would
13 have been previously mailed to you.

14 MR. FITZGERALD: I have it.

15 Q. Duke Energy Ohio Exhibit A consists of
16 your direct testimony in this matter, correct?

17 A. That's correct.

18 Q. And did you review this testimony before
19 October 25th, 2010?

20 A. Yes.

21 Q. And was it true and accurate as of the
22 time of its filing with the Commission?

23 A. Yes, it was.

24 Q. And have you gone back over this
25 testimony in preparation for today's hearing?

1 A. Yes, I did.

2 Q. And does the information set forth in
3 Duke Energy Ohio Exhibit A remain true and accurate?

4 A. Yes, it is.

5 Q. Okay.

6 MR. MCMAHON: I guess at this point, I
7 would offer in Duke Energy Ohio Exhibit A as the
8 direct testimony of Cynthia Marie Givens, Your Honor.

9 HEARING EXAMINER SHEETS: Very good. I

10 MR. MCMAHON: I have a few things to
11 supplement.

12 MR. FITZGERALD: Go ahead.

13 MR. MCMAHON: Oh, I'm sorry.

14 MR. FITZGERALD: Go ahead.

15 MR. MCMAHON: I'll go back and sit down
16 and just speak up.

17 Q. There's been, I guess, what I would
18 describe some confusion on this billing issues
19 possibly due in part to the different addresses,
20 different accounts, but I think it might also be due
21 in part to some of the timing of when bills are
22 generated and things of that nature. So if you could
23 take a look at the bills that are attached to CMG-2
24 to your testimony, that's the Company Exhibit 2. You
25 have those in front of you, correct?

1 A. Yes.

2 Q. Again, to be clear, we're looking at the
3 bills for the account at 61 Hunters Court, correct?
4 They're toward the end of your testimony.

5 A. Yes.

6 Q. Okay. You heard Mr. Fitzgerald testify
7 earlier about the \$300 payment and then getting a
8 bill about \$1,600 or more due and then being told
9 various amounts as to what was due and owing by Duke
10 Energy. As you look at the bills for 61 Hunters
11 Court, can you maybe explain to the Court exactly
12 what transpired here?

13 A. Starting?

14 Q. Let's say mid-March.

15 A. Okay.

16 Q. Since that really leads up to the
17 relevant time period.

18 A. Okay. On the March 15th, there is a bill
19 that was issued in the amount -- total amount of
20 1782.50 and the due date on that bill was April 6th.
21 And on that bill, there was a disconnection notice
22 and that is the 14-day notice there's referenced in
23 the Commission Winter Rule Guidelines, or the
24 Commission Guidelines period because of the tariffs.
25 That's the 14-day notice and that notice states that

1 "Your service may be disconnected if a past due
2 amount of 1326.41 is not paid before 4/9/2010."

3 Q. So you're looking at the middle of this
4 bill that as you said was prepared on March 15th,
5 2010, the information that's in that box?

6 A. Yes.

7 Q. Or boxed area, I should say?

8 A. That's correct.

9 Q. Okay. Now, the 1326.41 was the past due
10 amount that had to be paid to avoid disconnection,
11 correct?

12 A. That is the 60 days arrears on the
13 account.

14 Q. Fair enough. The actual past due amount
15 was higher, but that's because you don't -- the
16 Company does not disconnect for amounts that are past
17 due only 30 to 60 days?

18 A. Correct.

19 Q. Okay.

20 A. The --

21 Q. Go ahead. Sorry.

22 A. Where it mentions down at the bottom
23 where it says current billing and the amount due
24 previous bill, that total is 1556.03, which
25 represents a total amount that's past due.

1 Q. So that 1556.03 is the total amount that
2 had accrued over the prior months?

3 A. That's correct.

4 Q. And also, that includes some of the
5 unpaid electric charges from the 1923 John Gray Road
6 address?

7 A. That's correct.

8 Q. Okay. But just to be clear, none of the
9 unpaid gas charges were transferred from that account
10 to 61 Hunters Court?

11 A. Our system will not allow us to transfer
12 gas charges to an all electric account.

13 Q. Okay. It's sets up that way and that's
14 how the Commission requires it as well, correct?

15 A. That's correct.

16 Q. So what happens next?

17 A. Okay. As far as just looking at the
18 bills?

19 Q. If you'd like to look at Company Exhibits
20 3 or 4, if that would help tell the story, feel free.

21 A. No. That bill went out on March the
22 15th. On March the 29th, Ms. Fitzgerald called and
23 she was advised that she could use the Winter Rule,
24 pay \$175, or her other option was, if applicable, she
25 could use a medical certificate to stop the

1 disconnection.

2 Q. And as Mr. Fitzgerald confirmed earlier,
3 the medical certificate is not an issue at all in
4 this case, correct?

5 A. That's correct.

6 Q. Okay.

7 A. It also -- the notation on the account
8 said that the 175 must be paid before close of
9 business on April the 8th because the disconnection
10 could have happened on April 9th.

11 Q. And so that ties -- what you're referring
12 to is the notes, just to be clear, that's Company
13 Exhibit 4 what you're talking about just from memory?

14 A. Yes.

15 Q. And you're referring back to the bill
16 that you were just testifying to?

17 A. That's correct.

18 Q. Okay. So as long as the payment was made
19 by the end of business on the 8th, the Fitzgeralds
20 could have avoided disconnection on the 9th?

21 A. Right.

22 Q. Okay. Go ahead.

23 A. Well --

24 Q. Let me ask you this way. To your
25 knowledge and to the Company's knowledge, did the

1 Fitzgeralds, either Mr. or Mrs., ever call the
2 company, notify in writing or any form of
3 communication, that they wanted to invoke the Winter
4 Rule at any time before April 15th, 2010?

5 A. They did not.

6 Q. Okay. So what happened?

7 A. Well, a payment was made on April the
8 5th, but let me just clarify that no one was watching
9 the account. So if a payment is made on an account
10 and the company isn't notified that the customer is
11 invoking the Winter Rule, that payment will just be
12 credited to the account. No one is watching the
13 account looking for a payment. If a payment is made
14 and the customer contacts us, then we will look at
15 the account and we have to speak to the customer
16 because we have to set up payment arrangements.

17 Q. Could you explain that in more detail,
18 please?

19 A. Well, if a customer contacts us and says
20 I'm using the Winter Rule -- and actually, more than
21 \$175 could be used as the Winter Rule, but they have
22 to let us know they're doing that because the
23 condition of the Winter Rule is that you go on a
24 payment plan along with that. You can't just make
25 the payment of \$175 and be on the -- and utilize the

1 Winter Rule. The rule states that you have to enter
2 into either the Percentage of Income Program or a
3 payment plan, so there is a condition attached to
4 using the Winter Rule. You can't just make a payment
5 and be done with it.

6 Q. So are you telling me it's impossible for
7 a customer to invoke the Winter Rule simply by paying
8 \$175 and doing nothing else?

9 A. That is correct. There is conditions
10 attached to it.

11 Q. And those conditions would be --

12 A. You have to enter into a payment plan.

13 Q. I'm sorry, I didn't mean to interrupt
14 you. And those are the conditions that are more
15 fully explained in the Complainant's Exhibit 1
16 concerning the Winter Rule?

17 A. That's correct.

18 Q. And how long have you been dealing with
19 these issues during your employment at Duke Energy?

20 A. Oh, Winter Rule has been in effect for
21 the last 23 years and I've been in customer service
22 for the last -- over 20 years.

23 Q. Okay. So it's fair to say you're pretty
24 well-versed in the Winter Rule?

25 A. Right. And I also manage the complaint

1 resolution team, so yes, I'm very -- and I handle
2 regulatory matters so I'm very well-versed, yes.

3 Q. Okay. So when this \$300 payment came in,
4 as I think Ms. Ball already testified to, the system
5 recognized that as a partial payment, correct?

6 A. Right. However, it was not enough to
7 stop the disconnection because the disconnection
8 amount, as shown on the March 15th bill, was \$1,356
9 so that \$300 payment would not have stopped any
10 disconnection activity whatever, unless customer
11 contacted us and said I'm using the Winter Rule and
12 set up a payment plan.

13 Q. And if the customer had done that, that
14 information would be reflected in Duke's internal
15 system, correct?

16 A. It would be reflected in the internal
17 system. The customer would have also received a
18 letter showing the terms of agreement and the
19 disconnection activity would have stopped.

20 Q. Okay. And someone anticipated my
21 question. The system generates a letter signed by an
22 authorized representative, I believe, Jim Rinere; is
23 that true?

24 A. Yeah.

25 Q. And that goes out to the customer and

1 indicates what the payment arrangements are with
2 respect to that customer's invocation of the Winter
3 Rule, correct?

4 A. That's correct.

5 Q. And that never happened in this case?

6 A. There was no payment plan set and the
7 disconnection was not stopped.

8 Q. And obviously we know the Fitzgeralds'
9 services were disconnect on April 15th, 2010,
10 correct?

11 A. Can I also address the ten-day notice?

12 Q. Yes.

13 A. Okay. Since the disconnection notice was
14 not stopped when the payment of \$300 was made, as
15 required by the Commission, not only during the -- if
16 a person uses the Winter Rule, but during the period
17 of time, November through April, we must provide the
18 customer a 14-day notice on the bill and a ten-day
19 notice. Up until November of 2010, that ten-day
20 notice had to be hand delivered to the residence -- I
21 mean, to the premises. After November 2010, it could
22 be mailed, but during April of 2010, that notice had
23 to be delivered and it was delivered on April 2nd.

24 Q. Okay. And how do you know that?

25 A. We have the computer-generated -- what

1 happens is we have a contractor who goes out and
2 delivers those notices. Once the notice is
3 delivered, they send back electronic communication
4 stating that the notice was indeed delivered.

5 Q. But the Company does not maintain a copy
6 of the actual physical notice?

7 A. No.

8 Q. Correct?

9 A. That is correct.

10 Q. And correct me if I'm wrong, but the
11 Company deals with thousands of these during a weekly
12 time period?

13 A. That's correct.

14 Q. And I think the Company has somewhere in
15 nearly 700,000 customers in Southwest, Ohio or
16 something like that, correct?

17 A. Correct. And that final ten-day notice
18 also includes information regarding the Winter Rule.

19 MR. MCMAHON: If I may approach.

20 HEARING EXAMINER SHEETS: You may.

21 MR. MCMAHON: I'll hand the Fitzgeralds a
22 copy. This is my only copy of this. It's the
23 computer reference that Ms. Givens was just referring
24 to.

25 MR. FITZGERALD: We're not going to get a

1 copy of this?

2 MR. MCMAHON: Afterwards.

3 MR. FITZGERALD: Okay. That's good.

4 HEARING EXAMINER SHEETS: Is this going
5 to be marked?

6 MR. MCMAHON: Company Exhibit 5, please.

7 HEARING EXAMINER SHEETS: All right.

8 (EXHIBIT 5 MARKED FOR IDENTIFICATION.)

9 Q. (By Mr. McMahon) Ms. Givens, I've handed
10 you what's been marked Company Exhibit 5. Could you
11 identify what that record is?

12 A. That is the computer-generated record
13 saying that the ten-day notice has been delivered on
14 April 2nd, 2010.

15 Q. And how -- and you're referring here to
16 the middle of the document, just to be clear, it
17 appears to indicate that the notice was issued on
18 April 1st but delivered on April 2nd, correct?

19 A. That's correct. Uh-huh.

20 Q. And does it identify who did this?

21 A. No. It's just the contractor number.
22 That's the employee number of the contract.

23 Q. Okay. And this information --

24 A. It was entered -- what happens is, it's
25 computer-generated. It comes back to us and then

1 it's entered into our system. Marie is the person
2 who did the data entry.

3 Q. Okay. So when a contract is out there
4 delivering a notice, they enter something into a
5 hand-held device of some kind?

6 A. They actually send in documents that are
7 done, then entered into our system electronically.
8 Turn-around documents is what they're called.

9 Q. I'm sorry, you said turn-around
10 documents?

11 A. Turn-around documents.

12 Q. And what does that mean?

13 A. That means that they're showing the work
14 they provided that day has been turned around and it
15 comes back and it's been completed.

16 Q. Okay. So as we sit here today, is it
17 your testimony that Duke fully complied with both the
18 14-day and ten-day notice requirements?

19 A. Absolutely.

20 Q. And there's already been extensive
21 testimony about what we've acknowledged as an
22 omission by not telling them about the Winter Rule on
23 April 15th. Let me, though, ask you just about the
24 billing of the account.

25 As you look at all the bills that are

1 attached to this Company Exhibit 2, CMG-2 attached to
2 your testimony, is it fair and accurate to say that
3 all of the Company's billing with respect to the
4 Fitzgeralds account at 61 Hunters Court are correct?

5 A. Absolutely. Yes.

6 Q. Did the Company ever charge them for
7 anything that they should not have been charged?

8 A. No.

9 Q. Okay. I guess we could possibly argue
10 about the \$50 after-hour fee or the \$25 reconnect
11 fee, correct?

12 A. Because they were not provided the --
13 well, the \$25 reconnect fee would have been charged
14 even if they used the Winter Rule and the \$50
15 after-hour fee as well if the payment is made after
16 12:30 and they want service on the same day. So yes,
17 I mean, those charges would still have been in
18 effect, but --

19 Q. And that's what I was trying to get to.

20 A. Right.

21 Q. Even though \$75 in charges are accurate
22 regardless of what happened with respect to the
23 Winter Rule, correct?

24 A. That's correct.

25 Q. And certainly there's been no allegations

1 or evidence of any kind about the meters being
2 incorrect or anything of that nature, right?

3 A. That's correct.

4 Q. So this all comes down to a failure on
5 the part of the Company to advise about the Winter
6 Rule during conversations on April 15th, 2010?

7 A. That's correct.

8 Q. Even though, as we all know, notice and
9 knowledge of the Winter Rule had already gone out and
10 been discussed with Mrs. Fitzgerald, right?

11 A. Yes.

12 Q. Okay. Now, as Pam Ball testified, the
13 company offered to waive that \$50 and \$25 fee, even
14 though, as you said, those were true and accurate
15 fees?

16 A. Correct.

17 Q. And why did the company make that offer?

18 A. Really as a gesture of acknowledging that
19 they were not provided with all of the options
20 available to them on April 15th and it was an effort,
21 I think, to settle the complaint.

22 Q. Okay. And the Fitzgeralds declined that
23 offer?

24 A. That's correct.

25 Q. And didn't the company make another offer

1 to try to resolve this issue?

2 A. Yes.

3 Q. And what was that?

4 A. That offer was that we would refund the
5 money that they had paid and set them up on a payment
6 plan, refund the money and then put it back on the
7 account and then set their balance up on a payment
8 plan, as it would have been set up in the first
9 place.

10 Q. And this was an offer made in the fall of
11 2010?

12 A. Yes, it was.

13 Q. So essentially, the Company was willing
14 to refund everything that the Fitzgeralds had paid on
15 April 15th, 2010 and then just basically start over
16 and do the 175 down and then the six monthly payments
17 that would have happened had they invoked the Winter
18 Rule?

19 A. That's correct.

20 Q. And the Fitzgeralds rejected that offer
21 as well, correct?

22 A. That's correct.

23 Q. And had they accepted that offer, by now
24 everything would have been taken care of, correct?

25 A. Uh-huh.

1 Q. Right?

2 A. Provided that all the payments were made,
3 yes.

4 Q. Right. And also if they had invoked the
5 Winter Rule on April 5th, 2010, they would have fully
6 paid the past due account balance by October of 2010
7 had they timely made all their payments?

8 A. Right. That's correct.

9 Q. So as we sit here today, is there
10 anything more that the Company can do?

11 A. Well, I mean, we could still offer the
12 same \$75, if you'd like. I mean, that offer could
13 still stand, even though the service at that address
14 has been terminated.

15 Q. Other than offering again the things that
16 have already been rejected, is there some other form
17 of relief here?

18 A. No, there's not.

19 MR. MCMAHON: I guess I would offer into
20 evidence Company Exhibits 1 through 5. And then I
21 have no further questions.

22 HEARING EXAMINER SHEETS: Very good. Do
23 you have any questions, Mr. Fitzgerald?

24 MR. FITZGERALD: Yes, I do.

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CROSS-EXAMINATION

By Mr. Fitzgerald:

Q. You're familiar with the whole overall operation of Duke for the most part; is that correct?

A. For the most part.

Q. Okay. WCC stands for Western Coal Center.

HEARING EXAMINER SHEETS: Okay. I'm going to go ahead and ask you to come up here and sit so we can hear you.

HEARING EXAMINER SHEETS: The court reporter needs to change her paper.

(Recess taken.)

HEARING EXAMINER SHEETS: Okay. Go ahead.

Q. (By Mr. Fitzgerald) Okay. WCC stands for Western Coal Center -- West Coal Center?

A. Right. That's how Pam identified it.

Q. ERS, what's that stand for?

A. ER Solutions, which is our credit call center.

Q. Your credit call center in Alabama?

A. There's one in Atlanta and one in Montgomery, Alabama, yes.

Q. Okay. Now, I will show --

1 MR. FITZGERALD: Do I have to put them in
2 as exhibits to show them to her?

3 HEARING EXAMINER SHEETS: Yeah. We
4 should have them marked if you're going to offer them
5 as exhibits.

6 MR. FITZGERALD: Well, I'm not going to
7 offer them as exhibits. I just want to ask a
8 question about them and then if they have to be
9 exhibits, I'll put them in. I'll show you the
10 question I'm going to ask.

11 (Showing documents to Mr. McMahon.)

12 MR. MCMAHON: Go ahead.

13 HEARING EXAMINER SHEETS: Okay. Now, I
14 need a decision about what you want to do with the
15 exhibits.

16 MR. FITZGERALD: I don't want to put them
17 in as exhibits. I'm just going to question about
18 them. Is that acceptable?

19 HEARING EXAMINER SHEETS: Well, that's up
20 to you now. You've got to identify them for the
21 record and they won't be exhibits then.

22 MR. FITZGERALD: Okay. I'll use two of
23 them, which is to not clutter up the record. I'm
24 going to use one that was generated on 3/29/10 by a
25 La'Tasha Savage and another one that was generated by

1 Veronica Cage, I believe they're already in there, on
2 4/15/10.

3 HEARING EXAMINER SHEETS: What are you
4 referring to when you say "one".

5 MR. FITZGERALD: I don't know what you
6 call these things, history --

7 MR. MCMAHON: This might help, Your
8 Honor. He has pulled two pages from Company Exhibit
9 3 -- one page from Company Exhibit 3 and one page
10 from Company Exhibit 4, which have already been
11 entered into evidence.

12 HEARING EXAMINER SHEETS: All right.

13 MR. FITZGERALD: Okay.

14 HEARING EXAMINER SHEETS: Just identify
15 what you're talking about.

16 Q. (By Mr. Fitzgerald) All right. On the
17 bottom of the page on the one that is Veronica Cage,
18 4/15/10 is the date of it, it says, "No longer
19 employed at ERS."

20 A. That's correct.

21 Q. Does that mean she's transferred
22 somewhere else, she's just not in that center?

23 A. No. It means that she is no longer
24 employed at ERS and working on behalf of Duke Energy.

25 Q. Okay. Does Duke Energy have a contract

1 still with ERS?

2 A. Yes, we do.

3 Q. Okay. This one says "no longer an
4 employee," but you're saying you read those the same?

5 A. Uh-huh.

6 Q. Because these people we spoke to, I --
7 I'll give you some names, Veronica Cage, Jonathan
8 Green, La'Tasha Savage and Veronica Cage, I guess I
9 said it twice, all these people we spoke to on the
10 15th, do you happen to know the circumstances under
11 which they left the company?

12 A. No. They're like any call center,
13 there's turnovers in the call center. We're not
14 privy to any reason why they would have --

15 Q. Are you privy to the contract that Duke
16 has with ERS?

17 A. No.

18 Q. Okay. Does anybody in Ohio in a
19 supervisory capacity have a supervisory position over
20 these people at ERS? Who do they answer to in Ohio?

21 A. They have a supervisor at ERS.

22 Q. They have one?

23 A. Yes.

24 Q. But nobody at Duke Energy Ohio doesn't
25 supervise these people?

1 A. They're -- Duke Energy Ohio manages the
2 contract with ERS. They don't directly supervise the
3 individual employees. They have supervisors at that
4 location.

5 Q. Okay. How many people would work in the
6 West Call Center or ERS or what is there, a room full
7 of 20, 30, 50 people?

8 MR. MCMAHON: Objection. Relevance.

9 MR. FITZGERALD: Well, I'm just trying to
10 --

11 HEARING EXAMINER SHEETS: Do you know the
12 answer to the question?

13 A. I don't know the exact number, no. I've
14 been to all of them, but I don't know the number, no.

15 MR. FITZGERALD: Okay. Here's the
16 relevance. Our power was disconnected on April 15th.
17 And I'm trying to -- I'm going to try to establish --
18 Mr. McMahon used a number 700,000 customers in
19 Southwest, Ohio, is that what you indicated that Duke
20 has?

21 MR. MCMAHON: It wasn't an exact number.

22 MR. FITZGERALD: Well, we're just using a
23 ballpark number. We can all use that, that's
24 acceptable, that's close, approximately 700,000.

25 MR. MCMAHON: Go ahead. I'm not sure

1 what point you're trying to make.

2 MR. FITZGERALD: Okay. How many of them,
3 what I want to get at is, how many of them were
4 contacted on April 15th by this ERS?

5 MR. MCMAHON: Objection.

6 HEARING EXAMINER SHEETS: You can ask her
7 that question and if she knows, she can supply an
8 answer. I don't think it's relevant to the case --
9 to your case.

10 MR. FITZGERALD: Sir, let me direct this
11 to you then instead of the witness.

12 HEARING EXAMINER SHEETS: No, you can't
13 question me. You can question her now.

14 MR. FITZGERALD: Well, I want to direct a
15 comment to you.

16 HEARING EXAMINER SHEETS: Do you have a
17 question for her?

18 MR. FITZGERALD: Yes, I do.

19 Q. (By Mr. Fitzgerald) Do you know how many
20 people, approximately, would be in an ERS phone room
21 receiving these calls?

22 A. I don't know an approximate number, no.
23 Out of the exact number, no.

24 Q. You don't know an exact number, I said
25 approximately.

1 MR. MCMAHON: Whatever you know. Go
2 ahead.

3 A. Approximately, 60, 70, maybe more.

4 Q. Okay. And do you know, approximately, in
5 this phone room with WCC, one of the phone rooms
6 you're aware of, how many people per hour would each
7 one speak to?

8 MR. MCMAHON: Objection.

9 HEARING EXAMINER SHEETS: Yeah, it's --
10 it will be irrelevant.

11 Q. Okay. I just want to bring up another
12 rule of yours, and that rule would be, we can't be
13 singled out and treated differently.

14 HEARING EXAMINER SHEETS: You have to ask
15 a question of her.

16 Q. Were we treated the same as any other
17 Duke customer?

18 A. Personally were you?

19 Q. Yes, on April 15th, were we the only ones
20 to your knowledge that got disconnected without being
21 offered Winter Rules?

22 MR. MCMAHON: Objection.

23 HEARING EXAMINER SHEETS: Go ahead. Can
24 you answer the question?

25 A. I would have no way of knowing that.

1 Q. And you don't know how many people per
2 power each person in the call room speaks to?

3 A. I would have no way of knowing that, sir.

4 Q. Do you believe Jonathan Green offered
5 everybody else the Winter Rules on the 15th and not
6 us?

7 MR. MCMAHON: Objection.

8 HEARING EXAMINER SHEETS: See, I don't
9 think she has knowledge of that. I'll go ahead -- go
10 ahead and answer the question.

11 A. I would have no way of knowing that.

12 MR. FITZGERALD: One second, please.

13 HEARING EXAMINER SHEETS: Does that
14 conclude your examination of this witness?

15 MR. FITZGERALD: No, I haven't. I wanted
16 to ask another question.

17 Q. (By Mr. Fitzgerald) You expressed in the
18 paper that you wrote an opinion, which appears to be
19 a legal opinion. You said you didn't believe this
20 had anything -- this was not extortion. Do you
21 recall writing that?

22 HEARING EXAMINER SHEETS: What are you
23 referring to?

24 MR. FITZGERALD: I'm referring to, we're
25 calling it Direct Testimony of Cynthia Marie Givens.

1 HEARING EXAMINER SHEETS: Okay. What
2 page are you on?

3 MR. FITZGERALD: I'll go to it and find
4 it. Okay. Page 12, line 12.

5 HEARING EXAMINER SHEETS: Page 12, line
6 12.

7 MR. FITZGERALD: Are we all there?

8 THE WITNESS: Uh-huh.

9 HEARING EXAMINER SHEETS: Okay. Go ahead
10 with your question.

11 Q. (By Mr. Fitzgerald) Do you see where you
12 say, "whatsoever that -- "there is no merit to the
13 complaint in this case nor are there any grounds
14 whatsoever for the Fitzgeralds unsubstantiated
15 accusation that DE-Ohio committed extortion or
16 otherwise lied to the Commission." Now, you have a
17 high school -- that's the extent of your formal
18 education? You have no legal training?

19 A. No, I do not.

20 Q. I agree you have a great deal of
21 practical experience, which is very valuable, but you
22 have no law thing. I mean, why is it that you're
23 commenting on extortion?

24 A. I think they made a mistake. I don't
25 think they -- there was no -- they weren't going to

1 benefit at all from not offering you the Winter --
2 there's no personal benefit, which I believe is the
3 definition of extortion. But I mean, there's no
4 personal benefit for them not to have provided you
5 with the Winter Rule. They made a mistake, that's
6 why.

7 Q. Okay. Well, I believe that extortion is
8 to get money from someone by use of a threat.

9 HEARING EXAMINER SHEETS: No, you've got
10 to ask a question.

11 MR. MCMAHON: Objection.

12 Q. Okay. What do you feel extortion is?

13 MR. MCMAHON: Objection.

14 HEARING EXAMINER SHEETS: I think he's
15 asking -- he's objecting on a relevancy basis now.

16 MR. FITZGERALD: She submitted a
17 statement that has that in it. I'd like to know if
18 she knows what extortion means. Let me say this,
19 sir, I can't bring up extortion, she can?

20 HEARING EXAMINER SHEETS: You have to ask
21 the question. Now we have a question before this
22 witness. I'll let you go ahead and answer it, if you
23 can.

24 A. There was no threat. The service was
25 already off.

1 Q. The threat was to not turn it on, unless
2 I gave them money.

3 MR. MCMAHON: Is that a question or a
4 statement?

5 Q. I'm asking then, was there a threat to
6 not turn the service on if I did not give them the
7 money?

8 A. The service -- the service would not have
9 been turned on had you not paid. Should they have
10 offered you the Winter Rule, yes. That's not --
11 that's not extortion.

12 Q. Is it a threat to say if you do not give
13 me this money, I'm not turning the service back on?

14 A. No, sir.

15 MR. MCMAHON: Objection. We're getting
16 beyond the scope of the complaint in this case.

17 HEARING EXAMINER SHEETS: Okay.

18 MR. FITZGERALD: She -- if I can -- this
19 lady is the one who said it's not extortion.
20 Extortion is outside the scope of your jurisdiction.
21 You have no jurisdiction if there is extortion. Why
22 are they bringing it up? And subsequently Mr.
23 McMahon has brought it up, too.

24 HEARING EXAMINER SHEETS: See, now you're
25 testifying again. I need a question of this witness.

1 I think she's already answered it. I'll give you one
2 more chance about this extortion thing. Go ahead and
3 ask a question.

4 Q. If they would not turn the lights on
5 unless we paid the money, that is not extortion?

6 A. Sir, the reason the word extortion was
7 used is because that's what you said in the
8 settlement conference. You used that word.

9 MR. FITZGERALD: Pardon me. You can't
10 bring up settlement. I object to that. If she can
11 bring up settlement conference, I can.

12 MR. MCMAHON: You've asked -- excuse me,
13 for the record. He's asked the question.

14 HEARING EXAMINER SHEETS: See, you asked
15 the question. I think she's answered it. Now we're
16 going to go onto another question.

17 MR. FITZGERALD: I have no more
18 questions.

19 HEARING EXAMINER SHEETS: Okay.

20 MR. MCMAHON: Nothing further.

21 HEARING EXAMINER SHEETS: Okay.

22 MR. FITZGERALD: I do have one more
23 question.

24 Q. (By Mr. Fitzgerald) This was hand
25 delivered, the receipt that we saw before was hand

1 delivered by a person who then subsequently -- but
2 nobody signed it or signs it, they just bring it to
3 the house and say I took and taped it to the door?

4 HEARING EXAMINER SHEETS: Now you're
5 referring to a disconnect notice?

6 Q. A disconnect notice of April 2nd. You
7 remember the computer-generated piece that Mr.
8 McMahon brought up to you?

9 A. There's no requirement for it to be
10 signed.

11 Q. Okay. And do you know of which
12 requirement in the -- in the Public Utilities
13 Commission of Ohio requires that a person make known
14 to the company that the payment is for Winter Rules?

15 A. Again, as I mentioned, in the Winter Rule
16 the condition attached to using the Winter Rule is
17 that you set up a payment plan. The only way for you
18 to set up a payment plan is for you to contact the
19 Company because you have to agree to the payment
20 plan, or you have initiate the payment plan. And
21 Mrs. Fitzgerald would have been the one to set up the
22 payment plan because she is the customer of record.
23 And as Cindy Laycock mentioned, you can get
24 information on the account, but you can't set up
25 payment arrangements, so she would have had to so

1 that's why. No one was looking at your account, sir,
2 to know you even made a payment if you don't tell us.
3 No one was watching your account.

4 Q. Okay. Once again, and I'm talking about
5 not Duke's rules, regulations or how do you business,
6 I'm talking about the Public Utilities Commission.
7 They say we have to do none of that.

8 A. It's in the Winter Rule --

9 MR. MCMAHON: Objection. Asked and
10 answered.

11 MR. FITZGERALD: She did not answer that.
12 She answered something else.

13 A. It's in the Winter Reconnect Order that
14 you have to set a payment plan as a condition of
15 utilizing the Winter Rule.

16 MR. FITZGERALD: May I see the Winter
17 Rule, please?

18 THE WITNESS: You don't have the actual
19 order. You have the questions and answers. You
20 don't have the actual order.

21 MR. FITZGERALD: May I see the Winter
22 Rules, please?

23 HEARING EXAMINER SHEETS: Which one was
24 that?

25 MR. FITZGERALD: This one right here.

1 HEARING EXAMINER SHEETS: This one.

2 MR. FITZGERALD: This one.

3 Q. It's in there?

4 A. This isn't the actual order. This is
5 questions and answers. This is not the actual order.

6 Q. So this is questions and answers?

7 A. Yes. It says questions and answers.

8 Q. Let me just take this a second and read
9 the --

10 A. That is not the actual order that is
11 issued by the Commission every year.

12 Q. But do you think that within the actual
13 order that you're so familiar with, that it would say
14 that, that there is no sign up required?

15 A. What it says is -- no. And actually,
16 those words are not in the actual order. But the
17 order does state that you have to enter into a
18 payment plan.

19 Q. That's from PUCO?

20 A. Yes.

21 MR. FITZGERALD: Can you think of
22 anything else, Brenda?

23 MRS. FITZGERALD: (Shakes head back and
24 forth.) No.

25 MR. FITZGERALD: That's it.

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

3 MR. MCMAHON: Nothing further.

4 HEARING EXAMINER SHEETS: You're excused.

5 THE WITNESS: Okay.

6 HEARING EXAMINER SHEETS: Do we have
7 anything else today?

8 MR. MCMAHON: I just have a couple quick
9 questions. I call Brenda Fitzgerald to the stand.

10 MR. FITZGERALD: I don't want her to
11 testify. She has medical problems.

12 MR. MCMAHON: Brenda Fitzgerald is the
13 Complainant. We have an absolute right to
14 cross-examine the Complainant in these proceedings,
15 Your Honor.

16 HEARING EXAMINER SHEETS: Let's go off
17 the record.

18 MR. MCMAHON: Perhaps I can do it by
19 stipulation, then we can go off the record and
20 discuss it.

21 HEARING EXAMINER SHEETS: Let's go off
22 the record.

23 (Recess taken.)

24 HEARING EXAMINER SHEETS: We'll go on the
25 record. Did you set up a payment plan with Duke

1 Energy for the Winter Rule?

2 MR. FITZGERALD: No.

3 MR. MCMAHON: That's good enough for me.

4 MR. FITZGERALD: However, before the
5 record stops --

6 HEARING EXAMINER SHEETS: Wait a second
7 now. Do you want to qualify that?

8 MR. FITZGERALD: Yes.

9 HEARING EXAMINER SHEETS: Okay. Go
10 ahead.

11 MR. FITZGERALD: Because according to
12 Duke, I am not able to set up a payment. I can't
13 change the foundation of the rules. I had no right
14 to do it according to Duke, so you asked me --

15 HEARING EXAMINER SHEETS: Excuse me. To
16 your knowledge, did your wife set up a payment plan?

17 MR. FITZGERALD: To my knowledge, no.

18 HEARING EXAMINER SHEETS: Okay. Let that
19 be an answer to the question.

20 MR. MCMAHON: That's all I need, Your
21 Honor. Thank you.

22 HEARING EXAMINER SHEETS: Now, before we
23 adjourn, I'm going to set up a briefing schedule.

24 MR. FITZGERALD: Which schedule, sir?

25 HEARING EXAMINER SHEETS: Let's go off

1 the record and I'll discuss the briefing schedule.

2 (Recess taken.)

3 HEARING EXAMINER SHEETS: Back on the
4 record. We've been discussing a briefing schedule
5 and I would like briefs by June 3rd, simultaneous
6 briefs in the case, except that Mr. Fitzgerald may
7 file a statement of the case, if he so wishes. Is
8 that sufficient?

9 MR. MCMAHON: The only thing I'd like to
10 clarify for the record is that what the Fitzgeralds
11 will file is not an evidentiary statement. There's
12 no more new evidence to come before the Court. It's
13 just an argument about the evidence presented during
14 the hearing.

15 HEARING EXAMINER SHEETS: Correct.

16 MR. MCMAHON: Okay.

17 HEARING EXAMINER SHEETS: And with that
18 said, I'll consider this case submitted on the
19 record. I thank you all for coming.

20 MR. MCMAHON: Thank you.

21 MR. FITZGERALD: Thank you.

22 (Recess taken.)

23 HEARING EXAMINER SHEETS: Excuse me.
24 Let's go back on the record, and note that all
25 exhibits are admitted into evidence.

1 (Thereupon, the proceedings concluded at
2 1:23 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 Wednesday, April 27, 2011, and carefully compared with my original stenographic notes.

Sandra D. Kin, Registered
Professional Reporter and
Notary Public in and for the
State of Ohio.

My Commission Expires May 14, 2012.

(sdk-1312)

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Case No(s). 10-0791-EL-CSS

Summary: Transcript Transcript of Fitzgerald(s) vs. Duke Energy hearing held on 04/27/11.
electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Kin,
Sandra Ms.