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5 Pro se.

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10 On behalf of the Respondent

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Thursday Morning Session

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May 12, 2011.

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THE ATTORNEY EXAMINER: The Public Utilities Commission of Ohio has set for hearing at this time and place Case No. 10-2463-EL-CSS, In the Matter of Sherry A. Wiley versus Duke Energy Ohio.

My name is Kerry Sheets, I am the attorney examiner for the Commission.

We will now have the appearances of the parties, please, starting with the Complainant.

Your name and address, ma'am.

MS. WILEY: Good morning. I am Sherry A. Wiley. My address is 5370 Aster Park Drive, Apartment 909, Hamilton, Ohio, 45011.

THE ATTORNEY EXAMINER: Thank you.
For the company.

MR. McMAHON: Good morning, your Honor. Bob McMahon on behalf of Duke Energy Ohio, Inc. With me is Cindy Givens with Duke Energy.

THE ATTORNEY EXAMINER: Very good. Do we have any preliminary matters to take care of this morning?

MR. McMAHON: I do, your Honor. A couple things. One, with respect to the potential testimony by the representative of the Ohio Department of

1 Development, by entry dated -- let me make sure I
2 have the date right -- March 23, 2011, the Commission
3 denied Ms. Wiley's requested subpoena to the
4 Department of Development. It would appear that she
5 issued the subpoena nonetheless, in contradiction to
6 the terms of the entry dated March 23, 2011. So we
7 would object to any testimony from a witness by the
8 Department of Development pursuant to a subpoena that
9 was apparently issued improperly by Ms. Wiley.

10 We can do one at a time.

11 MS. WILEY: May I make a comment, please?

12 THE ATTORNEY EXAMINER: Why don't we
13 address them separately. Give her a chance to
14 respond. I will interject I think she resubmitted
15 the subpoenas, and they were issued on that basis.

16 MR. McMAHON: If that's the case, then
17 that's fine.

18 THE ATTORNEY EXAMINER: Were you going to
19 add anything more?

20 MS. WILEY: No. That's basically what I
21 was going to say.

22 THE ATTORNEY EXAMINER: What was your
23 second issue?

24 MR. McMAHON: The more important issue is
25 that on February 17, 2011 Duke Energy served

1 Ms. Wiley with Requests for Admissions and
2 Interrogatories and Request for Production of
3 Documents. As the Court is aware, Ms. Wiley moved
4 for what we have all deemed to be a protective order.
5 She objected to responding to the discovery requests.

6 By that same entry dated March 23, 2011
7 in finding 16, the Court said that Complainant's
8 motion for protective order regarding Duke Energy's
9 discovery request should be denied. Duke Energy,
10 therefore, would move for the admission of all 46
11 requests for admissions which Ms. Wiley failed to
12 answer after the Court denied her motion for
13 protective order on March 23. Ms. Wiley did not
14 answer these discovery requests, so all of the 46
15 requests or admissions should be deemed admitted
16 under applicable PUCO rules.

17 MS. WILEY: Of course not. I totally
18 object to that.

19 THE ATTORNEY EXAMINER: Go ahead and
20 stand up and respond. There is background noise.
21 You have to speak up.

22 MS. WILEY: Mr. McMahon did in fact do
23 the motion for the 46 statements or whatever, but I
24 also did a motion to object to those statements
25 because at the hearing on the 14th, we had already --

1 in the first hearing gone over 99 percent of the 46,
2 and I had also admitted into the hearing a letter
3 from Casey James from the Veterans Service
4 Commission, as well as a letter from Heather Benton
5 from Meadow Ridge Apartments, and the letter from
6 J. R. Raineer, Customer Service Department of Duke
7 Energy.

8 In his interrogatories, like I said, they
9 were all admissions to false accusations, so in my
10 motion I put -- dated March 5, so I am within that
11 window of time to respond -- I, Sherry A. Wiley,
12 object to Respondent's 46 statements entitled Request
13 for Admissions and the eight interrogatory statements
14 and the request for production of documents.

15 But I did actually resubmit it, the
16 documentation that I had at that time which is what
17 he requested in his motion at that time, and those
18 are the letters that I just stated that I forwarded
19 to him. He received a copy of this, and it's
20 docketed.

21 It said, Every single one of the 46
22 statements Robert McMahon, attorney for Duke Energy,
23 the Respondent, is leading me to admit to lies and
24 falsehoods. These statements are not questions but
25 statements which are totally contradictory to every

1 statement I made in the hearing February 14, 2011.

2 Mr. McMahon was hoping I would not
3 receive this false request for admissions in time to
4 respond to his actions. This is a malicious gross
5 act of deception and the ethics that the PUCO and the
6 Ohio State federal court systems stands for.

7 Robert A. McMahon is intentionally being
8 deceptive and knowingly trying every falsehood to
9 prevent me from obtaining information from Duke
10 Energy by requesting that I try the case for him by
11 falsely admitting to these 46 statements he has
12 conjured up when I made it clear in the hearing the
13 total opposite.

14 On March 3 I asked for the full name
15 address, telephone number, and all contact
16 information of the Duke Energy representative that
17 accompanied him at the hearing February 14 in which
18 he only gave me Cindy Givens with no other contact
19 information. I needed that information so I could
20 serve her a subpoena because my intention at that
21 time was to serve a subpoena so I could get the
22 information I had been requesting since October 2011
23 since I made so many other verbal requests and never
24 received it, all of them.

25 So I put, I really doubt that this is her

1 real name. He then told me to serve the subpoena to
2 him. It's evident that Duke Energy and Robert A.
3 McMahon are intentionally trying to give me a hard
4 time because I am not an attorney, yet they know I
5 have a very strong case against them.

6 These tactics are a desperate and pitiful
7 attempt to again derail this case and a terrible
8 reflection of attorneys everywhere and the courts and
9 the PUCO court hearing system.

10 THE ATTORNEY EXAMINER: Let me stop you
11 right there. Now, your motion for protective order
12 was denied.

13 MS. WILEY: I didn't request a motion for
14 protective order.

15 THE ATTORNEY EXAMINER: That has been
16 sustained by the Commission and been denied. What
17 did you say about you resubmitted? I didn't catch
18 that part. There was some document you have ahold
19 of?

20 MS. WILEY: It's the Butler County
21 Veterans Service Commission, Casey James' business
22 card. Should I bring it up there so you can see?

23 THE ATTORNEY EXAMINER: You can.

24 MR. McMAHON: Your Honor, if it helps, we
25 don't take issue with her resubmission of several

1 documents. My point is simply she never responded to
2 the 46 requests for admission. As we sit here today,
3 she has never answered them.

4 MS. WILEY: I did. I objected to those.

5 THE ATTORNEY EXAMINER: What you are
6 showing me is a stamp that says Butler County Service
7 Commission.

8 MS. WILEY: It's a business card.

9 THE ATTORNEY EXAMINER: And there's a
10 letter on the back.

11 MS. WILEY: Yes. And we will go into
12 more detail with the letter because this is so
13 pertinent and relevant to the whole case.

14 And this is the letter from the Meadow
15 Run Apartments.

16 THE ATTORNEY EXAMINER: Meadow Run
17 Apartments and a further letter from Duke Energy. I
18 think all this was filed in the file.

19 MS. WILEY: Right.

20 THE ATTORNEY EXAMINER: What I'll do now
21 is take Mr. McMahon's motion under advisement at this
22 point.

23 MS. WILEY: You will take it under
24 advisement. What does that mean?

25 THE ATTORNEY EXAMINER: That means I'll

1 rule on it just a bit later. What we will do is go
2 ahead with the hearing at this point.

3 We will have your testimony now.

4 - - -

5 SHERRY A. WILEY

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

8 DIRECT TESTIMONY

9 THE ATTORNEY EXAMINER: You have
10 previously given your name and address, Ms. Wiley. I
11 want you to give your testimony in a narrative
12 fashion. Just state your complaint. Okay?

13 Please speak up.

14 MS. WILEY: The reason I filed a
15 complaint against Duke Energy with the PUCO is
16 because back in September, around the 13th, I
17 submitted to Duke Energy by fax a letter that the
18 HEAP organization forwarded to me by mail, and this
19 is the envelope stamp dated September 16 stating that
20 \$271 is going to be forwarded to Duke Energy on my
21 behalf to offset the total balance of my account.

22 They were verifying that this is the
23 correct utility company, and if I object on anything
24 or feel it was the wrong address, please give them a
25 call back.

1 Lenore Conrad, who was temporary with the
2 HEAP organization, who is no longer with them, called
3 my daughter, Diamond --

4 MR. McMAHON: Objection, hearsay.

5 THE ATTORNEY EXAMINER: You have to
6 testify what you know from your own personal
7 knowledge.

8 MS. WILEY: Okay. But it's in their
9 record. That's the HEAP organization's record, that
10 Lenore Conrad did call my daughter Diamond on the
11 11th.

12 MR. McMAHON: Objection, hearsay.

13 THE ATTORNEY EXAMINER: You have to
14 testify to your personal knowledge what you heard
15 from the Department of Development or Duke.

16 MS. WILEY: Okay. Upon receiving the
17 letter from the HEAP organization, I called Duke
18 Energy Customer Service Department and asked for the
19 fax number, which they gave me and I faxed the letter
20 over to them.

21 And then after I got the confirmation, I
22 went back to the phone and called them back, and I
23 got the representative, and this is what started the
24 whole nine yards of why we're here.

25 I let her know that payment is

1 forthcoming because I received this letter, it's
2 going to be in the mail, \$271.

3 THE ATTORNEY EXAMINER: You are talking
4 about Duke's representative?

5 MS. WILEY: Yes, Duke's customer service
6 payment arrangement department. And she said, yes,
7 she can see it's in the system. It was deposited
8 into the system on August 2. It got to them on
9 August 2, but it has not been deposited into my
10 account yet. Where it is in the system, in about two
11 more weeks it should drop. That was her experience,
12 you know, by being a CSR at Duke customer service in
13 that department.

14 So she said that as long as she received
15 it before October 19, I would not be in jeopardy of
16 my services being disconnected. But she said, she
17 reconfirmed where it is in the system, it should drop
18 within two weeks. Again, this was around
19 September 16, around, and that's the postmark for the
20 envelope that the letter came in.

21 THE ATTORNEY EXAMINER: You are referring
22 to, you are holding up an envelope.

23 MS. WILEY: This is the envelope that the
24 actual letter came in. This is the postdate. I just
25 need to show you one more thing.

1 THE ATTORNEY EXAMINER: Do you want that
2 marked as an exhibit?

3 MS. WILEY: Yes, please.

4 THE ATTORNEY EXAMINER: Have you seen it,
5 counsel?

6 MR. McMAHON: I have not, your Honor.

7 THE ATTORNEY EXAMINER: Do you want to
8 look at it?

9 MR. McMAHON: Yes, please.

10 THE ATTORNEY EXAMINER: We will mark this
11 Plaintiff's Exhibit 1. You won't get it back for a
12 while.

13 MS. WILEY: May I make a copy of it?

14 THE ATTORNEY EXAMINER: Yes, you can make
15 a copy of it.

16 Go ahead, please.

17 MS. WILEY: She said this is how it
18 worked from this point. At the end of the month --
19 we are still in September -- I'm going to get my bill
20 for the following month, and she said just disregard
21 it. I'm going to get three statements. She said I'm
22 going to get another bill in two weeks. Two weeks
23 after that, I'm going to get a reminder notice. Two
24 weeks after that I'm going to get a disconnection
25 notice; and then 10 to 14 days after that, I'll get

1 the final disconnection to my service, and that would
2 take us up close to Thanksgiving, close to
3 Thanksgiving.

4 I said, okay, great, that would give me
5 enough time to take care of the balance of the bill.

6 But that didn't happen. Someone in Duke
7 Energy went into my account and totally erased all of
8 the payment arrangements that I had made. She put me
9 on hold while she made the arrangements, and
10 according to all the documentation that I requested
11 from Duke Energy -- which is not everything that I
12 requested. That information isn't in there. So
13 since it's in their system, of course, I'm not
14 privileged to. I can only attest to what actually
15 happened.

16 That's what started everything. On
17 October 19 my services was disconnected.

18 THE ATTORNEY EXAMINER: 19th of?

19 MS. WILEY: October 19, 2010. My kids
20 and I got home around 6:00 o'clock. We had no power.
21 I immediately called Duke Energy customer service. I
22 spoke to Tony the first time, and Tony said that,
23 yes, my services are disconnected. My account had
24 been closed. I need to pay the full amount, which at
25 that time was \$730 around, paraphrasing, around \$730

1 to have my services restored.

2 I asked Tony is there an alternative. Is
3 there anything I could do about that. He said, No,
4 pay the bill, real nasty. I asked for a supervisor.
5 He said there was no supervisor around and that he
6 was the only person in charge that I'm going to speak
7 to. He was the customer service that answered the
8 phone.

9 I told him of course that's not right. I
10 worked in a call center before. I hung up.

11 I called right back. I got Lonnie.
12 Lonnie told me -- that's the only name he told me. I
13 can only give you the information they told me.
14 Lonnie told me the same thing. He initially told me
15 there were no supervisors on staff in the evenings,
16 and then later in our conversation he said, Well, let
17 me put you on hold and get a supervisor. So I held
18 for about 20 minutes. He came back to the phone, and
19 then he hung up on me.

20 That night we went over to my parents'
21 house because we can't stay in that house that has no
22 electric, one; and, two, I have a minor. My son is
23 under 18, so things could be really difficult if the
24 police or child protective services or somebody else
25 was to come by and my son who is under 18 is in a

1 house with no electricity. I could be in a lot of
2 trouble. So we left and went over to my mom's house
3 and stayed there.

4 The next morning at 8:00 o'clock when the
5 Lynn Street office, that's the physical office where
6 you go in Duke Energy and pay your bill and get
7 service and everything restored, I went in there at
8 8:00 o'clock when they first opened. I was right
9 there.

10 I spoke to three women, three different
11 customer service persons. I asked each time for the
12 manager, if there's not a supervisor available, may I
13 please speak to the manager, the general manager,
14 somebody who had a little more authority than all the
15 customer service people that are here.

16 She told me there were none at this
17 location. I said, This is the only physical location
18 you have here. This is the main Duke Energy office,
19 and you're telling me there's no manager, no general
20 manager, no nothing. She said no, that was it.

21 All three women, all three women told me
22 I had to pay the \$730 in order to get my services
23 back on and that they couldn't turn my services back
24 on, that I need to call customer service to have that
25 on.

1 I said, Of course, you take payment
2 arrangements. You start service. You end service
3 here. You do all of that physically here in this
4 office, you know. She says, Well, go get \$730 and
5 come back, real nasty, real rude, much attitude.

6 So I have a cell phone and I called the
7 Customer Service Department, like she requested for
8 me to do. She told me to get out of her line because
9 I could not be on a cell phone while up there in her
10 window doing -- at the window paying my bill. And
11 there's a big sign right there saying "no cell
12 phones" when you're in line.

13 I said, You just told me to call customer
14 service in line, you know, to make arrangements or
15 something. She said, Yeah, but you can't do that
16 here. Then she called security immediately and told
17 them to make me leave.

18 So I went to the back of the building,
19 called the customer service person, and this customer
20 service person -- now, I've spoken to Lonnie, Tony,
21 and three women at the physical office, and all of
22 them told me there was nothing I could do.

23 I called this customer service person,
24 and she tells me that she can reinstate my service if
25 I paid \$175. And I asked her, I said, Did not Tony

1 and Lonnie, the three women I just finished talking
2 to, did they not know that? She said they should
3 have. She said they had the same training she had.
4 They should have known about the winter rule.

5 I asked her, What is the winter rule?
6 During certain months of the year you are able to
7 claim the winter rule, regardless of the amount of
8 your bill, and pay \$175.

9 I said, Well, can you reduce that from
10 \$175 to \$100? And she let me know that couldn't be
11 done, or whatever, so I said okay. So I left. And
12 this is still on the 20th. This is on the 20th.

13 THE ATTORNEY EXAMINER: October 20, 2010?

14 MS. WILEY: Yes, sir.

15 So I went around trying to pull all that
16 money, funds together and everything, and later on
17 that afternoon about 3:00 o'clock, after I picked up
18 my son from school I called back, and I got a
19 different payment arrangement customer service
20 person.

21 I asked her if I could pay \$125, because
22 at that time, that's how much I had got together.
23 All she did was mock me and told me, No, you cannot.
24 I don't know how else to explain this to you. Are
25 you stupid and can't understand?

1 I said, Oh, my goodness, are you calling
2 me stupid? I just spoke to five of your customer
3 service people that didn't even mention a winter
4 bill. I speak to a sixth one, and he tells me about
5 the 175, and you have the nerve to call me out, my
6 name, because I'm trying to find out is there
7 something else out there that I don't know within
8 your organization and your department. She said, I
9 don't know how else to explain this to you. You need
10 to pay the \$175 to get it restored.

11 So we went to the 20th without service
12 because I'm still trying to get the rest. On the
13 21st, on October 21st, 2010, about 9:00 o'clock in
14 the morning, I called again, and I spoke to another
15 representative who told me the same thing that the
16 other two, the sixth and seventh representative told
17 me, and she said, Are you ready to pay?

18 At that time I had all the funds together
19 on my credit card, and I gave her the information
20 over the phone, the payment information over the
21 phone so she could restore my services.

22 Now, when I requested the telephone
23 conversations and everything, of course, Tony and
24 Lonnie was not a part of the conversations that were
25 recorded. The notations that the three young ladies

1 at the physical office down on Lynn Street, even
2 though I was watching them type something into the
3 computer while they had my account up, there was no
4 notes from them either.

5 I have on this disk I think it's two or
6 three conversations out of all the conversations I
7 had. It's the young lady on the 20th who let me know
8 that if I paid the \$175 that I could have my services
9 turned back on.

10 And this is the comment that I made. I
11 said, I called to make payment arrangements about a
12 month ago to help me pay one bill, and now my service
13 is turned off, and I'm forced to pay not one, but two
14 bills. I'm forced to pay my current bill plus
15 \$95 for an agreement that was intact that should have
16 saved my services from being cut off.

17 She said, Well, if I don't know the name
18 of the young lady who did that, and she don't see any
19 notes in the system, there's nothing that she can do
20 about it.

21 And I said, How in the world can I --
22 everything is on your end. When your customer
23 service persons tell me that they're making
24 notations, I can't go through the phone and see if
25 they're actually making these notations. When I'm

1 physically there at the site, I can't go around the
2 counter to make sure that they're actually putting in
3 the information as they're telling me that they are.

4 She asked me, Did I want to go through
5 and have my services restored? I told her yes. I
6 told her to go ahead. I gave her my credit card
7 information. She said it would be on in a couple
8 hours. This was about 9:00 o'clock on the 21st of
9 October, and that's what these two are.

10 Since, October since this happened, I've
11 called Duke Energy and requested to them to have a
12 copy of my account, everything pertaining to my
13 account, every note, every telephone conversation,
14 every memo, every privileged and unprivileged piece
15 of paper that pertains to this account at this
16 address, can I have a copy of it, to request a copy
17 of it.

18 I requested that in October. I requested
19 that when I called the PUCO and started my initial
20 complaint with the PUCO and they accepted it. You
21 all accepted it as a formal complaint to go ahead and
22 process and get us to this point. And it's my
23 understanding that you don't accept all of the
24 complaints that come your way, but, evidently, this
25 had enough validity that you accepted this one.

1 I went to the VA Administration -- I'm
2 sorry. I need to back up. I called the utility
3 advocate, state office department, and spoke to a
4 Brian somebody as well.

5 THE ATTORNEY EXAMINER: Consumer Counsel,
6 is that who you spoke to?

7 MS. WILEY: It's the utility advocate.
8 It's the state department. They're parallel with
9 your department.

10 THE ATTORNEY EXAMINER: I assume
11 Consumers' Counsel. Okay. Go ahead.

12 MS. WILEY: Spoke with a Brian there, and
13 I explained my situation to him, as well as to the
14 PUCO, and he had requested documentation,
15 information.

16 MR. McMAHON: Objection, hearsay.

17 MS. WILEY: Oh, not at all. Actually,
18 some of my paper, I have one memo where Pamela Ball
19 has sent to Brian because Brian called either Pamela
20 Ball -- I have the memo.

21 THE ATTORNEY EXAMINER: You have to
22 testify of your own personal knowledge. You can
23 submit the memo as evidence in this case as an
24 exhibit if you want.

25 MS. WILEY: Okay.

1 THE ATTORNEY EXAMINER: But you can only
2 testify as to what you know, your personal knowledge.

3 MS. WILEY: Okay. Then I'll go back to
4 the VA. November the 8th I had a meeting with the
5 VA. I'm a veteran, so I went to the Veterans
6 Administration to see if they could assist me and pay
7 my utility bill. I had paid the 175 and got my
8 services restored, but I wanted help with the
9 remainder of the bill, as well as other assistance.

10 I met with Casey James, who is the
11 representative there, and there's a letter in here
12 from Casey that I showed you giving very much detail
13 on the hard times that Duke Energy and the false
14 information that Duke --

15 MR. McMAHON: Objection, hearsay.

16 MS. WILEY: It's the letter that he
17 wrote. I was physically right there when it
18 happened.

19 MR. McMAHON: The letter is hearsay as
20 well.

21 THE ATTORNEY EXAMINER: You say he wrote
22 a letter?

23 MS. WILEY: Yes.

24 THE ATTORNEY EXAMINER: Go ahead with
25 your testimony.

1 MS. WILEY: As I was meeting with Casey,
2 he needed a copy of my bill, and he called Duke
3 Energy. When he called Duke Energy -- now, my bill
4 states "Final Disconnection Notice" at the top of the
5 bill.

6 Could I get that out? We are going to go
7 over it a little later in more detail.

8 THE ATTORNEY EXAMINER: Is it in the
9 file, ma'am? Do you want to have it submitted as an
10 exhibit?

11 MS. WILEY: Yes, along with my notes and
12 everything, yes.

13 THE ATTORNEY EXAMINER: Well, we don't
14 have to submit the whole file. If you have specific
15 exhibits you want to offer in this case, we can mark
16 them. We have one here, the outside of the envelope
17 that came in. Do you have other exhibits, not
18 talking about the whole file? You mentioned a
19 memorandum or letter. You can submit them as
20 exhibits as you want.

21 MS. WILEY: Okay, I do.

22 THE ATTORNEY EXAMINER: Then you have to
23 get them out and have them marked.

24 MS. WILEY: Can we go over in order so I
25 don't lose my spot?

1 THE ATTORNEY EXAMINER: We can go off the
2 record at this point and get them out.

3 Off the record.

4 (Discussion off record.)

5 THE ATTORNEY EXAMINER: Back on the
6 record.

7 MR. McMAHON: Your Honor, Duke Energy
8 objects to the Complainant's Exhibit No. 2 as
9 hearsay. Clearly this is an out-of-court statement
10 offered to prove the truth of the matters asserted in
11 that. Ms. Wiley does not have any witness from the
12 veterans association. She does not have Mr. James,
13 who offered the letter, to come in and authenticate
14 it.

15 While she might be privy to certain
16 communications, she can testify to her personal
17 knowledge. That letter absolutely is hearsay and we
18 object to its admission into the record.

19 MS. WILEY: Sir, if I can, I totally
20 object to that. It's the same as if I do a subpoena
21 and request documentation, the person does not have
22 to physically be here in order for them to bring in
23 the requested documentation and to speak on that
24 documentation, and that's my understanding of the
25 subpoenas.

1 THE ATTORNEY EXAMINER: I think counsel
2 is right; this letter does represent hearsay. But
3 you can testify of your own personal knowledge what
4 you had heard on the speaker phone. So you can
5 proceed on that point.

6 MS. WILEY: On November 8, 2010, in Casey
7 James' office at the Veterans Administration, Casey
8 took my bill and called Duke Energy customer service.
9 He spoke to a young lady named Carrie. Carrie stated
10 that the last payment --

11 MR. McMAHON: I guess I would object to
12 the extent Ms. Wiley is reading from a letter. If
13 she has personal knowledge, her credibility and
14 memory is at issue for purposes of representation.

15 MS. WILEY: That's fine.

16 Carrie, the customer service
17 representative for Duke Energy, told Casey that my
18 bill was \$25. I was not in jeopardy of being
19 disconnected again, and I did not have to pay a
20 deposit or anything else.

21 Casey asked her -- again, she's on
22 speaker phone. We are there in his office. Casey
23 asked her again, is she --

24 THE ATTORNEY EXAMINER: Who is Casey?

25 MS. WILEY: The Veterans Administration

1 representative.

2 THE ATTORNEY EXAMINER: Okay. And he was
3 told by?

4 MS. WILEY: Carrie, who is the Duke
5 Energy representative.

6 THE ATTORNEY EXAMINER: That you owed?

7 MS. WILEY: \$25.

8 THE ATTORNEY EXAMINER: Proceed.

9 MS. WILEY: And Casey asked Carrie am I
10 in jeopardy of being disconnected? She told him no.
11 He asked what the \$25 was for. She said it was a
12 reconnection fee for the services that I had
13 reconnected on October 19.

14 So I asked her, is there an outstanding
15 bill. She told Casey no. I was totally blown away.
16 I said, So on this bill, it states that I have to --
17 I want to submit this, too.

18 On this bill, my November due date bill,
19 which is for services from September 20 to October 19
20 when I was cut off, it says that I owe \$739.61. Are
21 you saying I don't owe this? I'm not responsible for
22 this? She said in her records which she sees is the
23 only amount for the bill that I had was \$25.

24 So Casey says, Well, okay, ma'am, thank
25 you. And I asked her before she hung up, I said,

1 Carrie, can you please send me documentation on my
2 whole account? You know, I need that in writing. I
3 need something in writing stating that my past and
4 present bill is only \$25.

5 And she said sure, she can do that.

6 If you notice some of the documentation
7 that I asked Duke Energy for and they said what they
8 have, all of the information as printed out is time
9 stamped and dated for November 8, 2010. I received
10 this through counsel, Duke Energy's counsel, around
11 February 14 at the hearing.

12 THE ATTORNEY EXAMINER: At the settlement
13 conference?

14 MS. WILEY: I'm sorry, at the settlement
15 conference, February 14. And every single note that
16 he presented and gave me is dated for November 8,
17 2010. So Carrie did print out most of my account,
18 which she had privilege to, most of it, and then it
19 was siphoned through, because the only thing that
20 shows that they gave me are the connection times,
21 when the gentleman went out to disconnect my service
22 and when they went out to reconnect my service, and
23 this is all dated the same day, November 8, and I got
24 it way back then.

25 If we can go through further, I wanted to

1 wait towards the end to do that, but the bill is not
2 an accurate and true account of my bill. Starting
3 from my first bill in April when I initiated service,
4 it's not a true and accurate account. I noticed they
5 added \$93 from my first bill along with my current
6 usage and the deposit. This \$93 does not account for
7 anything on the bill. It's an extra amount. And I
8 would like to submit all of the bills that I have
9 just to show this, to prove this.

10 So they added on an extra \$93, plus the
11 \$140 deposit, which was fine. I knew I had to pay a
12 deposit when I got the services turned on. But this
13 amount does not account for anything, and it is added
14 from the first bill throughout my whole account.

15 When we get into July and August, in that
16 area, there's another \$47 that's not accounted for.
17 It's not a past due amount. It's not a late fee.
18 It's not a partial payment or anything. It's just
19 \$47 that's been added on. There's a few instances in
20 all my bills that shows, especially the last two
21 bills, April and May of this year, 2011, they both
22 show extra amounts and fees added on to the account,
23 and I can account for that. I went through each bill
24 and I can account for all of that.

25 Let's see, in the order that you gave --

1 I need for this to be part of the record, sir.

2 THE ATTORNEY EXAMINER: You want this
3 marked as an exhibit?

4 MS. WILEY: The whole packet.

5 THE ATTORNEY EXAMINER: Let counsel come
6 up and look at it.

7 Off the record.

8 (Discussion off the record.)

9 MR. McMAHON: Whatever Ms. Wiley is now
10 submitting I guess is proposed Claimant's 3.

11 THE ATTORNEY EXAMINER: It's 2, actually.

12 MR. McMAHON: Right, you sustained the
13 objection on the VA letter. This is proposed Exhibit
14 2, which is a series of documents, including
15 handwritten notes. Duke Energy would object to
16 everything that is handwritten. We wouldn't object
17 to any actual bills or copies of documents produced
18 by Duke.

19 But all these notes and information
20 Ms. Wiley has written on these various documents,
21 including a history of communication, is
22 inappropriate hearsay. If she wants to testify about
23 things, that's one thing, but unverified,
24 unauthenticated notes and things like "lies," things
25 like that, are not admissible.

1 MS. WILEY: Can I make a comment?

2 THE ATTORNEY EXAMINER: I will overrule
3 the objection, counselor. You can cross-examine her
4 on this information, this handwritten information.

5 What I will do is mark this as
6 Complainant's Exhibit 2.

7 MS. WILEY: Thank you.

8 MR. McMAHON: I guess, for the record, my
9 other objection would be Ms. Wiley failed to produce
10 that document in response to our request for
11 production of documents. Today is the first time
12 I've ever seen that first page with all of her
13 handwritten notes. It was not produced in discovery.

14 MS. WILEY: I totally object. This is
15 what they gave to me.

16 MR. McMAHON: The first page is what I
17 referred to.

18 MS. WILEY: These copies that's already
19 in here are the copies that they gave to me.

20 THE ATTORNEY EXAMINER: I think he is
21 objecting to the handwritten notes.

22 MS. WILEY: I wrote these last night in
23 preparation for the case.

24 MR. McMAHON: All the more reason the
25 first page should not be admitted. She just admitted

1 she wrote that last night.

2 MS. WILEY: I can verbally attest to it.

3 THE ATTORNEY EXAMINER: You can
4 cross-examine her on this if you wish.

5 MS. WILEY: We will jump to the first
6 bill.

7 THE ATTORNEY EXAMINER: Let me see if I
8 can summarize your complaint as received so far. You
9 object because your complaint is the representative
10 from the Veterans Administration was told the wrong
11 thing over the telephone and it caused --

12 MS. WILEY: Me not to get the benefit
13 from the Veterans Administration. I was denied.

14 THE ATTORNEY EXAMINER: Okay. Now, you
15 were also saying that certain charges on your bill
16 are incorrect.

17 MS. WILEY: Yes, sir.

18 THE ATTORNEY EXAMINER: Okay. What I'm
19 going to ask you to do is just to verbally state
20 which ones you object to, and we will see if we can
21 condense and make your testimony a little more
22 concise here.

23 MS. WILEY: Okay. I apologize.

24 My first bill is dated for May 14.
25 That's my first bill. It's for services from

1 April 3 to April 21.

2 THE ATTORNEY EXAMINER: May 14 --

3 MS. WILEY: April 3, 2010.

4 THE ATTORNEY EXAMINER: April 3, 2010,
5 okay. Go ahead.

6 MS. WILEY: To April 21st of 2010. This
7 is my first bill. On this bill that's only 17, 18
8 days for my first bill. And then it calculates --
9 really, I don't know what else it calculates.

10 THE ATTORNEY EXAMINER: Is that bill part
11 of what you submitted already?

12 MS. WILEY: No, sir. This is a brand-new
13 packet. This is my first bill at that location with
14 Duke Energy. A connection fee for the apartment is
15 charged for \$25 because it was my first time
16 receiving service there, but there's 47 that's not
17 accounted for.

18 Here it says that there was an agreement,
19 as Cindy Givens stated in her direct testimony of
20 Cindy Marie Givens in here. Cindy makes the comment,
21 if I may -- give me just a moment, please.

22 The direct question is, "Please explain
23 how you are familiar what the Aster Park Account."
24 And further down in the first paragraph she states --

25 THE ATTORNEY EXAMINER: What page are you

on?

MS. WILEY: I'm on page 8. Actually, let me go back to page 5 and read this whole paragraph.

"I have personally researched DE-Ohio records for Ms. Wiley's Aster Park account on more than one occasion, including when she filed the original Complaint leading to the settlement conference in February 2011 and again in preparation for my testimony for the hearing in these proceedings. DE-Ohio keeps and maintains customer account information in a comprehensive computer database called the Customer Management System (CMS). CMS is used by all call center, receivables and customer service personnel and used to keep track of service requests, customer calls, inquiries, turn on, and disconnection orders, billings, account status and histories. CMS has been the single customer management system used by DE-Ohio and its predecessor, CG&E, since 1993."

If this was accurate, if what she says is accurate, then all of my telephone calls that I had with the five representatives, Tony, Lonnie and the three young ladies that I physically went down to the Lynn Street office, all of that would be on my account. I saw them typing something, but out of the

1 information of the documents that I requested for
2 them, it wasn't among that. The information I got
3 from them is just the turn on and the reconnections
4 of the gentleman who came out to my apartment and
5 turned my service on and off and a few other things
6 I'll present shortly.

7 So if this is true, then they would have
8 a record of those telephone calls because this
9 comprehensive system shouldn't be able to
10 discriminate which calls are coming through and which
11 calls it is going to record and which calls it is not
12 going to record, or which customer service notes it's
13 going to accept and which customer service notes it's
14 not going to accept. I had a problem with that in
15 her narrative.

16 If we may, we may as well jump back.

17 THE ATTORNEY EXAMINER: You will have a
18 chance to cross-examine the company witness when she
19 gets on the stand. What I need you to do is state
20 your complaint in a concise fashion.

21 MS. WILEY: On my first bill, May 14,
22 there is an amount for \$47, and it says agreement
23 No. 305-9252 for \$47. But there's no agreement
24 stated anywhere on what that is. I have no idea what
25 that agreement is. It shows that there's an

1 agreement for my deposit, which I did make an
2 agreement for my deposit, and I have here on the bill
3 \$140 deposit amount due, and that right under it,
4 agreement for \$140. I have that.

5 But on the second page under agreement
6 information, it has \$93. This \$93 followed the
7 account all throughout the whole ordeal. Now, I
8 don't know what this \$47 is, that amount. I just
9 don't know what it is. But the \$47 is still there,
10 plus the \$93 that's still there.

11 THE ATTORNEY EXAMINER: What document is
12 this?

13 MS. WILEY: My first bill, the first bill
14 that Duke Energy sent out to me, this is my first
15 bill.

16 Again, the notes, that was from my
17 account that was taken -- can I show you this?

18 THE ATTORNEY EXAMINER: Okay.

19 MS. WILEY: It shows where the security
20 deposit was requested in the account. These are the
21 notes that they sent me dated November 8.

22 THE ATTORNEY EXAMINER: You are referring
23 to an untitled document from Duke Energy sent to you
24 as part of discovery.

25 MS. WILEY: Yes.

1 THE ATTORNEY EXAMINER: Go ahead.

2 MS. WILEY: That I did make an
3 arrangement for the \$140 that I paid in June on
4 June 3 for that amount. And this is the amount of my
5 bills, everything. As you see on the actual bill
6 itself, the agreement amount due is \$47, and this is
7 the agreement for the deposit. Down here it says
8 agreement balance \$93.

9 Now, Duke Energy, I don't know if this is
10 a payment made or whatnot. I really don't recall
11 that or anything. But the \$150, I did make that
12 payment in June, so if this is a payment that is not
13 included in their listing of payments received --

14 THE ATTORNEY EXAMINER: Which amounts?

15 MS. WILEY: The 47, but I was charged the
16 47 plus the 93. This 93 follows throughout, and here
17 are my notes. What is the 47 for? What is the
18 arrangement? What is the 93? I only have gas and
19 electric. What is the 47 for?

20 In her notation she mentioned that all
21 arrangements are documented in the system or
22 whatever, but this 47 and this 93 is not in there.
23 The \$140 is -- that's the deposit, and that's the
24 deposit I paid in June. I paid \$150. The \$10 went
25 towards the bill. This 47 and 93 is something that

1 they added, and it's not accounted for.

2 THE ATTORNEY EXAMINER: Okay. Now, did
3 you want this marked as an exhibit?

4 MS. WILEY: Yes, sir.

5 THE ATTORNEY EXAMINER: We will let
6 counsel look at it.

7 MR. McMAHON: Again Duke Energy objects
8 to this document and any other documents that have
9 handwritten notes.

10 MS. WILEY: These are my deposit
11 receipts.

12 THE ATTORNEY EXAMINER: You want this as
13 part of the deposit?

14 MS. WILEY: Yes, sir. These are my
15 receipts from Duke Energy showing that they received
16 my \$150.

17 THE ATTORNEY EXAMINER: Off the record.

18 (Discussion off record.)

19 THE ATTORNEY EXAMINER: Counsel objected
20 to what has been marked as Plaintiff's
21 Exhibit 3 because of the handwritten notes on the
22 front, and my ruling is the same as with Plaintiff's
23 Exhibit 2. You have an opportunity to cross-examine
24 plaintiff on this exhibit if you wish.

25 Complainant's Exhibit 4 has been marked.

1 These are entitled Security Deposit Receipt. There
2 are two receipts in the exhibit, and they will be
3 included in one exhibit. I shall not, however,
4 include the envelopes they came in.

5 Now let's proceed.

6 MS. WILEY: We are back at November 8,
7 2010, at the VA Administration with Casey. Casey
8 denied my application because on the application I
9 put that I had \$739.61 as an overdue balance for my
10 Duke Energy bill, and when he verified that, she told
11 him it was only \$25.

12 THE ATTORNEY EXAMINER: So that basically
13 is your complaint right there, is that correct, plus
14 these 47 and 93 dollars that you aren't sure on the
15 bill?

16 MS. WILEY: The foundation for the whole
17 complaint is wrongful disconnection because I had a
18 payment arrangement agreement in effect through a
19 Duke Energy representative -- I'm sorry -- back in
20 September, around September 13, 16, around that time,
21 2010.

22 When the young lady called my daughter on
23 September 11 -- I know you objected to that -- she
24 went ahead and forwarded a letter, and that's the
25 envelope that you have for September 16. When I got

1 that letter I immediately --

2 THE ATTORNEY EXAMINER: Complaint's
3 Exhibit 1.

4 MS. WILEY: Yes, sir. I immediately went
5 up to my management company's office to use their fax
6 machine and their phone. I called Duke Energy from
7 up there and got the fax number, had them fax it over
8 for me, and called Duke Energy back from their phone
9 to make sure they got the fax, and this is where we
10 went over the whole conversation where she -- where
11 we set up the payment arrangement and she told me it
12 would go up until just before Thanksgiving, around
13 Thanksgiving, which would have given me time to pay.

14 MR. McMAHON: Objection. Witness has
15 already testified to these events.

16 MS. WILEY: He asked me to restate.

17 THE ATTORNEY EXAMINER: No. I want to
18 make sure you have completed your testimony now. You
19 got in everything about what you say happened at the
20 Veterans Administration office.

21 MS. WILEY: Just about. I'm sorry.

22 THE ATTORNEY EXAMINER: And the charges
23 you weren't sure about on your bills.

24 MS. WILEY: Yes, sir.

25 THE ATTORNEY EXAMINER: Is there anything

1 else to add?

2 MS. WILEY: Yes, sir.

3 THE ATTORNEY EXAMINER: Okay.

4 MS. WILEY: When we finished up with
5 Casey and he denied my application because of what
6 the young lady told him, I went back to him in
7 December and asked him if he could write a letter
8 regarding our -- my visit there on November 8. He
9 said he would be more than happy to, and he did, and
10 that's the letter that you saw but won't get
11 admitted. But he wrote that letter.

12 He called her back and another
13 representative told him --

14 MR. McMAHON: Objection, hearsay.

15 THE ATTORNEY EXAMINER: You have to
16 testify to what you know.

17 MS. WILEY: Then I'm finished with that.
18 That's in the letter. She gave him wrong information
19 again, but that's hearsay.

20 MR. McMAHON: Objection, move to strike.

21 MS. WILEY: That's fine. I'll move
22 forward.

23 My bill -- the PUCO accepted my
24 complaint, and my bill for December 2010, because it
25 accounted for October 19 up until November 20 or so,

1 right up in there, that was the lowest bill I've ever
2 received from Duke Energy.

3 Now, during that period, I am a full-time
4 premedical student, and my daughter is now in college
5 as well, and my son is a full-time high school
6 student. During that time during the day I was at
7 home. My classes are on line. I was at home, you
8 know, during the day.

9 My daughter works at Macy's periodically.
10 She's not full time. She's part time, but for most
11 of part of the day she was at home. So there was
12 somebody home at the house running the heat, because
13 in October and November it was cold. There was snow
14 days where the schools had closed down and the kids
15 weren't in school, not that many, but there were a
16 few.

17 During that time we ran the heat. The
18 computer was used. The regular utilities, the
19 refrigerator, all that was used and everything. The
20 lights were on. TVs were on, and my bill was \$108,
21 and that's the lowest it has ever been.

22 From November 21st to December 19, around
23 that time, nobody was home that much. I worked -- I
24 was still a full-time student, but I worked part time
25 at the post office. My daughter was full-time

1 physically in school and still working at Macy's, and
2 my son was still a full-time high school student, so
3 for the most part of the day nobody was at home.

4 My bill between that period of time --
5 and the heat was running, you know, it was on, but it
6 was turned down. My bill for that month was \$180 and
7 some change, \$180. Now there's nobody home. The
8 heat is turned down low, and my bill is high when
9 there's nobody home. But when we're physically there
10 from October 21st to the 19th of November, when we're
11 physically there running everything, my bill is low.
12 It doesn't make sense.

13 I've put that in the motion in earlier
14 testimony in the first conference hearing back then.
15 So should I resubmit that as well?

16 THE ATTORNEY EXAMINER: I think we
17 already have that part.

18 Now, does that conclude your testimony
19 about the complaint?

20 MS. WILEY: Almost, sir. I know I'm
21 running slow. I'm just trying to cover everything.

22 In the order that you gave, I did a
23 motion to please stay the disconnection of my
24 services in January, for my service for Duke Energy
25 not to turn off my services until we had our decision

1 made in all of the hearings, in all of the conference
2 hearing and this trial as well.

3 And what you granted on the 24th of
4 February, you made an order that Duke Energy not cut
5 off my services for the bills that are in question,
6 the bills that are in question.

7 So I made a motion also and even in
8 Mr. McMahon's motion that you made on February 16,
9 the second paragraph, he puts Respondent -- the name
10 of the motion is Duke Energy Ohio, Inc., Memorandum
11 in Opposition to Complainant's Request to Stop
12 Disconnection of Services.

13 In the second paragraph Mr. McMahon
14 writes, "Respondent tentatively waived the prior
15 disconnection notices due to the pending hearing
16 because Respondent wanted to address the issue at the
17 settlement conference on February 14, 2011 in the
18 hopes of avoiding a conflict with the Complainant."

19 So he also admitted to my services not
20 being disconnected pending --

21 MR. McMAHON: Objection to that
22 characterization. There was no admission by Duke
23 Energy as to anything.

24 MS. WILEY: This is his words. This is
25 his motion.

1 THE ATTORNEY EXAMINER: That's sustained.
2 You have to avoid characterizing other people's words
3 here. I want you to state your complaint. We are
4 almost done with that.

5 MS. WILEY: Okay. All of the bills from
6 October to present, all the bills Duke Energy has
7 incorporated into the current bill, my old bill and
8 my new bill. So in the motions where I requested a
9 stay of my electricity not to be turned off pending
10 the decision from these hearings, that would be
11 inclusive of all the bills.

12 My proof of that, the bills that you
13 already have, but starting from October -- I will
14 give you all of them. I will fast-forward a little
15 bit. For October 2010 in the Current Billing area,
16 it shows the total amount for the bill.

17 Now, when they reconnected my service,
18 they forced me into an agreement. They forced me,
19 and this is the letter from Duke Energy
20 representative J. R. Rainear, Customer Service
21 Department.

22 THE ATTORNEY EXAMINER: What are you
23 referring to now, ma'am?

24 MS. WILEY: This letter from the Duke
25 Energy representative. When my services were turned

1 off on October 19 in order to have them restored --

2 THE ATTORNEY EXAMINER: Are you offering
3 this as evidence?

4 MS. WILEY: Yes, sir.

5 THE ATTORNEY EXAMINER: I'm assuming it's
6 a letter from Duke Energy.

7 MS. WILEY: Yes, sir, their reconnection
8 person.

9 MR. McMAHON: This is proposed Exhibit 5?

10 THE ATTORNEY EXAMINER: Yes.

11 MR. McMAHON: Again, just for the record,
12 Duke's only objection is to any handwritten notes.
13 The actual documents from Duke Energy there's no
14 objection.

15 THE ATTORNEY EXAMINER: Okay. What I
16 will do is mark it as Complainant's Exhibit 5, and,
17 once again, you may cross-examine her about any
18 handwritten notes. She's the one who actually wrote
19 them.

20 MS. WILEY: I did.

21 In the letter I was forced, and I told
22 you this before, that I had to pay my old bill, which
23 was \$739.61, plus my current.

24 THE ATTORNEY EXAMINER: The letter states
25 you had to do that?

1 MS. WILEY: Yes, sir. They said I had to
2 pay my old bill, and we broke that up into
3 \$95 installments, \$95 installments.

4 And I told the customer service person,
5 because they weren't going to reconnect it unless I
6 agreed to it, and I told her -- and that's one of the
7 messages that was deleted from our -- never put on
8 the CD. I told her, I called, and that's when I made
9 the comment, I called in September to make
10 arrangements for one bill, and now since my service
11 is being reconnected, I am forced to pay not one bill
12 but two bills. That's not fair to me because your
13 customer service person said she was putting this in
14 the account. So when she told me that, I took her at
15 her word. I can't go through the phone to make sure
16 she's doing what she's doing.

17 MR. McMAHON: Objection. This has
18 already been testified to.

19 MS. WILEY: I was just going over the
20 letter. He said -- she said that I had to agree to
21 this, and this is what the letter attests to, that I
22 had to pay both bills.

23 THE ATTORNEY EXAMINER: Okay. Now we
24 will move on to the next point.

25 MS. WILEY: Okay. The reason I needed to

1 emphasize that because only on -- for my bill for
2 October, due date of October, the \$95 -- actually,
3 that was before. I think you have it already. The
4 November bill, its due date is November 11. It's
5 still under -- this should be a brand new bill. This
6 should start brand new services and everything so the
7 total shouldn't be \$739.

8 THE ATTORNEY EXAMINER: You are referring
9 to Complainant's Exhibit 2.

10 MS. WILEY: Yes, sir. My December bill,
11 the December bill is the only bill that shows the
12 separation of my past due bill and my current usage.
13 My current usage here is showing \$228, and it's not
14 counting the \$100 payment that I had made, plus it
15 does account for the \$175 payment that I made, but
16 this should be for one bill, and it's not.

17 But it's showing two separate accounts.
18 It is showing my old account and new account.

19 THE ATTORNEY EXAMINER: You are referring
20 to this other bill. Do you need to mark this, too?

21 MS. WILEY: Yes, sir. It offsets all the
22 rest. It proves my point.

23 THE ATTORNEY EXAMINER: This is kind
24 of -- I see the bill has been split and stapled here
25 on the bottom.

1 MS. WILEY: I accidentally did that.

2 THE ATTORNEY EXAMINER: We are up to
3 No. 6.

4 MS. WILEY: On my January bill when I
5 paid the \$100 --

6 THE ATTORNEY EXAMINER: Wait a second.
7 We are up to No. 6 now.

8 MR. McMAHON: Same objection as
9 previously to any handwritten notes.

10 THE ATTORNEY EXAMINER: I'm going to mark
11 this as Complainant's Exhibit 6, and it will be for
12 the December billing.

13 MS. WILEY: Yes, sir.

14 THE ATTORNEY EXAMINER: Again, the
15 objection has been sustained.

16 MS. WILEY: For my January bill, they
17 revert back to incorporating the old bill into my new
18 account because it's saying current amount due. It
19 doesn't say past amount due or agreement amount;
20 current amount due, \$780.11. So they incorporated
21 the old bill with the new bill.

22 THE ATTORNEY EXAMINER: We are referring
23 to the January billing, and we're up to No. 7. You
24 want this?

25 MS. WILEY: Yes, sir.

1 THE ATTORNEY EXAMINER: Complainant's
2 Exhibit 7. I assume you have the same objection,
3 counsel.

4 MR. McMAHON: Yes, your Honor.

5 THE ATTORNEY EXAMINER: Once again, I'll
6 overrule that. Plaintiff's Exhibit 7 will be the
7 January billing.

8 MS. WILEY: And this, the February bill,
9 pretty much put everything in motion. In February,
10 in the month of February on the 25th, you, sir,
11 Mr. Sheets, ordered a stay of disconnection on bills
12 not in dispute. But from what I showed you, they
13 incorporated the old bill into the new bill so they
14 put all the bills together. It's not separated
15 anymore. The only time they separated the bill was
16 in December when they said, okay, this is the amount
17 you had to pay. This is the amount for current. The
18 December bill is the only one they did that for.

19 For all the other bills prior and all the
20 other bills from January to present they incorporated
21 it into the bill, and I can justify that in March.
22 But let me stick with February for right now. In
23 February you made this order to stay disconnection
24 based on bills in dispute. Mr. McMahon, attorney for
25 Duke Energy, stated that --

1 MR. McMAHON: Objection.

2 MS. WILEY: It's in his motion. Can I
3 just read his motion? Would that be the same?

4 THE ATTORNEY EXAMINER: I think you can
5 state what he filed in the motion.

6 MS. WILEY: Okay. In his motion, what I
7 read before, he put that it was a courtesy. Those
8 were his words, a courtesy that Duke Energy did not
9 disconnect my services pending the decision from the
10 settlement hearing. That's in his motion, wrote that
11 in his motion.

12 So but everything changed in March. I'll
13 stick to February. So then later on, February 25,
14 you gave the order not to disconnect, and in February
15 I made a payment as well, so I need that. I need
16 that entered in as well.

17 THE ATTORNEY EXAMINER: This will be
18 Complainant's Exhibit 8. And same procedure, I'm
19 assuming that counsel will object.

20 MR. McMAHON: Yes, your Honor. Thank
21 you.

22 THE ATTORNEY EXAMINER: The handwritten
23 notes, I will overrule that.

24 Now, this Complainant's Exhibit 8 refers
25 to the February billing, correct?

1 MS. WILEY: Yes, sir.

2 THE ATTORNEY EXAMINER: Now we are up to
3 March, is that correct?

4 MS. WILEY: Yes, sir.

5 THE ATTORNEY EXAMINER: Is this the last
6 one?

7 MS. WILEY: This is the most important
8 one.

9 THE ATTORNEY EXAMINER: Okay, proceed.

10 MS. WILEY: In March I submitted a motion
11 for good faith payment because I already made motions
12 that my bills were not a true and accurate account of
13 all my payment histories.

14 On the bill -- and I did a separate
15 motion for a good faith payment of \$50 a month
16 because I felt, and in previous motions I felt, that
17 I was being overcharged in my billing as well.

18 On my March bill it states that I have to
19 pay -- if my services are connected, I have to pay a
20 \$40 deposit to have my services turned on. I would
21 have to pay the \$730.11 to have it restored if my
22 services were discontinued.

23 But with Mr. McMahon's motion and your
24 order, I felt I was safe, not that I wasn't going to
25 pay my bill or anything like that, no, that's not

1 what I'm saying, but I was safe as far as being
2 disconnected because you gave the order and his
3 statement in the motion.

4 You approved my subpoenas to serve Duke
5 Energy on the 22nd of March. On the 23rd of March I
6 was disconnected. My services were disconnected. I
7 was totally blindsided. Again, the order was not to
8 disconnect my services for the monies or the bills
9 that were pertinent to the case, and I had already
10 filed a motion stating that all the bills were
11 inclusive to the original amount. They weren't
12 separated. Both of those were included. I already
13 did a motion for that.

14 Nevertheless, they put me off, and we
15 were out of our home for five days. It took me five
16 days to pull everything together so we could have our
17 services turned back on because I had to pay the
18 \$730.11, plus a \$50 deposit, plus a \$25 reconnection
19 fee. So that totaled \$805 I had to come up with.

20 Actually, within four days, because as my
21 lease specifies, and as the letter I need to submit
22 from my management company from Heather Benton, it
23 states that if our services are disconnected, we have
24 72 hours to get them reinstated before our eviction,
25 before we go through the eviction process and it

1 becomes permanent.

2 Can I get that letter?

3 THE ATTORNEY EXAMINER: Yes, you can get
4 the letter.

5 MS. WILEY: I'm winding it up. I know
6 it's been a long time, but I am winding this up. But
7 I will get that letter so you see that.

8 We were displaced. We didn't have
9 anyplace to go. I couldn't afford a hotel or
10 anything like that. My parents were painting the
11 house, the inside of the house, so they didn't want
12 us over there. I had to pretty much beg my parents
13 to let us stay there until I got service back on. So
14 we were displaced these five days because you granted
15 me the subpoenas and which I served on them.

16 MR. McMAHON: Objection.

17 MS. WILEY: That's not hearsay. That's
18 what you did, you granted the subpoena.

19 MR. McMAHON: Foundation.

20 THE ATTORNEY EXAMINER: You have to
21 explain a little bit more about that as why. You
22 said there was granting here of an order and you were
23 displaced.

24 MS. WILEY: Okay. On February 25 you
25 gave the order for my services not to be disconnected

1 for the amounts that were in question, which was my
2 whole bill because they incorporated the old and new
3 bill together. And I made a motion on the 5th in
4 regard to that, plus I went a step further. I made a
5 good faith motion I would pay \$50 an month because
6 that is a more accurate account of what my billing
7 should be for the apartment, the little apartment
8 that we have, until the decision is made at the
9 hearing, until we can come up with something at the
10 hearing.

11 So I did those motions as well, but on
12 the 22nd when the subpoenas were approved, on the
13 23rd my services were cut off and my kids and I were
14 displaced. I finally convinced my parents to let me
15 stay. We had to inhale paint fumes for those days,
16 but nevertheless I got the money together.

17 I went over to the SELF organization. I
18 went to that organization.

19 THE ATTORNEY EXAMINER: What does SELF
20 stand for?

21 MS. WILEY: It's Support to Encourage Low
22 Income Families.

23 THE ATTORNEY EXAMINER: Okay. Now
24 proceed.

25 MS. WILEY: I spoke with Athena Malley,

1 who is a HEAP coordinator.

2 THE ATTORNEY EXAMINER: What is HEAP?

3 MS. WILEY: Department of Development,
4 I'm sorry. What does HEAP stand for?

5 MR. FIRICH: Home Energy Assistance
6 Program.

7 MS. WILEY: Thank you, Home Energy
8 Assistance Program. She's their representative. And
9 I asked them for assistance.

10 Now, what they did for me, they assisted
11 me from different entities within their department.
12 They assisted me with \$175 from one account, 250 from
13 another account, and 157 from another account. And
14 then I paid \$380 to include with that. I had made a
15 payment on March 13 for \$50, as I stated in my good
16 faith motion that I would do until we came to an
17 agreement or an accurate monthly account. All
18 together that totaled \$1,012, which is more than
19 \$850.11.

20 So when I went to finalize this through
21 the SELF organization on the 28th, we initially met
22 on that Friday, from Friday the 26th, the 25th, on
23 that Friday they agreed they would help but I needed
24 to pay my part, which was the 380. So I got the \$380
25 and paid that on the 26th, which was that Saturday.

1 And when I went in on Monday on March 28, they paid
2 the remainder, so all together from all the payments
3 it totaled up to be \$1,012, which was more than what
4 they --

5 THE ATTORNEY EXAMINER: You stated that
6 before. When we went to go finish up the
7 transaction, the young lady called Duke Energy
8 service department to make the payment, let them know
9 they were forwarding this money electronically toward
10 my account. I showed proof I paid 380. The young
11 lady in the customer service department said the
12 amount had changed.

13 MR. McMAHON: Objection, hearsay.

14 MS. WILEY: I was on speaker. She was on
15 speaker.

16 THE ATTORNEY EXAMINER: Proceed.

17 MS. WILEY: She said I had to pay an
18 extra \$142 plus the 805.11. I said why? Where did
19 this come from? We agreed on this on Friday, and now
20 here we were Monday morning finishing up the
21 transaction, which they let you know we would finish
22 up on Monday, and now you're telling me I have to
23 come up with an extra 142.

24 The SELF organization said, We can't give
25 you any more so we're going to have to cancel the

1 agreement. I said Oh, no, we are not going to cancel
2 the agreement. Give me ten minutes.

3 Athena Malley, when I initially met with
4 her, I asked her, does she know Cindy Givens? And
5 she let me know yes.

6 THE ATTORNEY EXAMINER: Who is Athena
7 Malley?

8 MS. WILEY: She is the representative for
9 the HEAP department. Yes, she knows Cindy Givens,
10 and she gave me her contact information. Now, I had
11 requested this contact information for Cindy Givens
12 since the last conference hearing we had on
13 February 14 from Mr. McMahon.

14 THE ATTORNEY EXAMINER: Settlement
15 conference you're talking about?

16 MS. WILEY: Yes, sir, settlement
17 conference on February 14, in which he just gave me
18 her contact information on this direct testimony
19 May 5. That's when I got it in the mail, May 5. I
20 requested it in February; got it May 5, a week prior.

21 MR. McMAHON: Objection, your Honor. The
22 Court might recall you ordered that we were not
23 required to provide any further contact information
24 regarding Ms. Givens and that Ms. Wiley would contact
25 Ms. Givens through counsel. That was the Court's

1 order back in I believe March of 2011.

2 THE ATTORNEY EXAMINER: I will sustain
3 that objection.

4 Now I need you to proceed to the end of
5 your testimony, ma'am, in a concise fashion.

6 MS. WILEY: Okay. I called Cindy Givens
7 and left a message on her voice mail saying that
8 Athena had called you on last Friday and spoken to
9 you in regards to this agreement, and this is what is
10 on my bill. And now we're finishing up the
11 agreement, and we're told an extra \$142 is being
12 added on to there. You have changed your agreement
13 today. I need for you to call Athena immediately.
14 This is Sherry Wiley. I gave her my contact
15 information.

16 And then I called James Lynn, who is the
17 attorney-examiner here at the PUCO. I called him,
18 and I told Mr. Lynn, I said, They changed the
19 agreement again. We had an agreement on this past
20 Friday, on the 25th of March, that \$805.11 needed to
21 be paid to my account. Here we are finalizing our
22 agreement Monday morning, we just went over the
23 weekend, and they added --

24 THE ATTORNEY EXAMINER: You stated that
25 before.

1 MS. WILEY: Okay. And when I went back
2 into Athena's office, she said -- okay, I don't know
3 if I can say this. She had spoken to Ms. Givens and
4 she said we are proceeding. So I went back to the
5 young lady who was doing my paperwork, and we called
6 Duke Energy again, and the customer person said that
7 we could go ahead and finish the transaction. So we
8 finished the transaction. \$1,012 was paid on my
9 account.

10 At that time my bill was a ridiculous --
11 for March, due date March 16, it said my bill was
12 \$1,076.72. So if I paid \$1,012, and my total bill
13 was 1,076.72 that leaves what? About \$64 roughly
14 that should have been on my account. Here's the
15 receipts for the payment and the letter from the SELF
16 organization on where the monies came from and
17 everything.

18 On my April bill --

19 THE ATTORNEY EXAMINER: That's the March
20 we just spoke about.

21 MS. WILEY: Yes.

22 THE ATTORNEY EXAMINER: Let's mark this
23 Complainant's Exhibit 9. We were on the April; is
24 that correct?

25 MS. WILEY: Yes, sir.

1 THE ATTORNEY EXAMINER: I want you to see
2 if you can get through this in a very concise
3 fashion.

4 MS. WILEY: Yes, sir.

5 The \$1,012 for the April bill for 2011
6 this year was not on my April bill. It showed that I
7 owed \$1,247.75. And this bill, as well as my March
8 bill, is inclusive. It's showing the old bill as
9 well as the new bill. They've been incorporated
10 together, and it's showing that I owe \$1,247.75.

11 And this is a disconnection notice. From
12 January to present that's all I've received,
13 disconnection notices. They had wiped out the
14 reminder notices which allows a person to have two
15 extra weeks, because first you get your bill; two
16 weeks later you get a reminder notice; two weeks
17 later you get a disconnection notice.

18 MR. McMAHON: Objection, foundation.

19 MS. WILEY: That's what the customer
20 service person told me back in September 2010.

21 THE ATTORNEY EXAMINER: I'll overrule
22 that.

23 MS. WILEY: They took away two weeks.
24 They wiped out the reminder notices.

25 The \$50 payment I had made on February 16

1 is not showing on my April bill. The \$50 payment
2 that I made in March, on March 13, isn't showing on
3 my April bill, and then, of course, the \$1,012 is not
4 showing on my April bill, and, again, we jumped from
5 about \$64 for what my bill should be from the
6 payments that I've made to \$247.75.

7 To bring it home, and I will be finished,
8 I would like to include the April bill, please.

9 THE ATTORNEY EXAMINER: Complainant's
10 Exhibit 10 will be the April billing. I will assume
11 counsel has the same objection to the April billing.

12 MR. McMAHON: Same objections, your
13 Honor.

14 THE ATTORNEY EXAMINER: That will be
15 overruled also with respect to that.

16 MS. WILEY: My May bill for 2011 is a
17 bogus bill. I say it's a bogus bill because it
18 shows -- we were totally disconnected on March 23.
19 From March 23 to March 28 we were totally
20 disconnected. There was no partial anything. On
21 this bill for gas it says from March 22 to April 20.
22 My gas wasn't on. I was disconnected.

23 It has for electric March 28 to April 20.
24 My services were turned back on on the 28th, and
25 that's about the time that my meter is read so I'm

1 assuming that's okay. But down here it says another
2 electric from March 22 to March 24. I was totally
3 disconnected. This is another occasion of where
4 they've incorporated usage and dollar amounts and
5 usage amount for services that we didn't receive
6 because I was disconnected.

7 Here my current amount due is \$423.08.
8 400. Now in the \$805.11 that I had to pay to have my
9 services restored, and on the March bill they stated
10 I had to pay \$40 for deposit on the bill, but in the
11 notation that Cindy Givens had given to the customer
12 service person because he read it back to me on
13 March 26 when I paid the \$380, her notation in the
14 account it was a \$50 deposit.

15 So I paid a \$50 deposit, plus a
16 \$25 reconnection fee, plus \$730 for the bill totaling
17 \$805 to have my services turned back on. But the
18 HEAP organization blessed me with a little bit more
19 to where everything totaled up to be \$1,012.

20 So here on this bill it says security
21 deposit amount due.

22 THE ATTORNEY EXAMINER: You are referring
23 to the May 16 bill?

24 MS. WILEY: Yes. Security deposit amount
25 due, \$45. I paid \$50. Reconnection charge, that was

1 included in that money as well. They're charging me
2 another \$25. And this, this is just an account of
3 all the other untrue, not truthful accounts of my
4 bill. This is just more evidence.

5 THE ATTORNEY EXAMINER: Okay. Mark this
6 as Complainant's Exhibit 11.

7 MS. WILEY: I'm sorry. This is going
8 with that. This letter says I paid a \$45 deposit,
9 but I paid \$50, but the bill says I didn't pay any
10 deposit. This is for May 4 this year. Those were
11 for June of last year.

12 THE ATTORNEY EXAMINER: I'll let counsel
13 take a look at this.

14 MR. McMAHON: No objection, your Honor.

15 THE ATTORNEY EXAMINER: We will mark this
16 as Complainant's Exhibit 12. That document was
17 entitled Security Deposit Receipt, Duke Energy,
18 Plaintiff's Exhibit 12.

19 MS. WILEY: This is what Duke Energy had
20 given me for the payment history. Again, this is
21 dated for November 8, 2010, but I received this at
22 the conference hearing on February 14, and they're
23 not showing the \$100 payment I made in December, the
24 \$50 payment I made in February, and all the other
25 payments that I've made. But they're showing a

1 \$10 payment.

2 THE ATTORNEY EXAMINER: You got this
3 document from Duke Energy during discovery?

4 MS. WILEY: Yes, sir.

5 THE ATTORNEY EXAMINER: An untitled
6 document, one page. It appears to be a history of
7 transactions, which I will mark as Complainant's
8 Exhibit 13.

9 MS. WILEY: Just to finish up.

10 THE ATTORNEY EXAMINER: I'm assuming
11 counsel has seen this already.

12 MR. McMAHON: That's fine, your Honor --
13 actually, I didn't realize there was handwritten
14 language on it.

15 THE ATTORNEY EXAMINER: Looks like there
16 are notations on the documents, Plaintiff's
17 Exhibit 13.

18 MR. McMAHON: Objection. Same objection
19 to the handwritten language.

20 THE ATTORNEY EXAMINER: I'll overrule
21 that objection.

22 It's time to wrap it up, Ms. Wiley.

23 MS. WILEY: I'm done. On April 20, 2011,
24 this year, Mr. McMahon sent me a letter saying that
25 they didn't have to send me anything else.

1 THE ATTORNEY EXAMINER: Who sent you that
2 letter?

3 MS. WILEY: Mr. McMahon. He initially
4 did a motion to the Court to suppress the subpoena.

5 THE ATTORNEY EXAMINER: A motion -- to
6 the Commission?

7 MS. WILEY: Yes, sir. It says Duke
8 Energy Ohio, Incorporated, Memorandum in
9 Opposition --

10 THE ATTORNEY EXAMINER: Okay, we have
11 that.

12 MS. WILEY: In here he states that me
13 serving Diane Kuhnell was not a valid person to serve
14 the subpoena to.

15 THE ATTORNEY EXAMINER: You're reading
16 from that letter Mr. McMahon sent to you?

17 MS. WILEY: I was paraphrasing.

18 MR. McMAHON: Your Honor, Duke Energy
19 objects to this whole line of testimony. This is
20 about prehearing discovery issues that the Commission
21 has already addressed. It has nothing to do with
22 merits of Ms. Wiley's claim.

23 MS. WILEY: Oh, it does, if I may.

24 THE ATTORNEY EXAMINER: Okay.

25 MS. WILEY: In this letter here he states

1 that she's not the right person I should have served
2 the subpoena to, and whatnot, but since the beginning
3 I'm requesting Cindy Givens information so I can
4 serve her a subpoena.

5 THE ATTORNEY EXAMINER: I think counsel
6 is right, all the subpoenas, that's been taken care
7 of before the hearing, ma'am. What we want to
8 concentrate on is your complaint, and we proceeded
9 through 13 exhibits now. Do you have any more to add
10 at this point?

11 MS. WILEY: The cross-examination for
12 Ms. Givens on her testimony here, I would like to
13 have the opportunity to make comments. I don't know
14 if I could do that here.

15 THE ATTORNEY EXAMINER: You would have to
16 wait until the proper time to do that.

17 MS. WILEY: Just request that I'm able to
18 do that.

19 To address this, Mr. McMahon in discovery
20 forwarded me another disk.

21 THE ATTORNEY EXAMINER: What now?

22 MS. WILEY: Mr. McMahon during discovery
23 forwarded me another disk of a telephone conversation
24 pertaining to this account. He said that it's from
25 my daughter from August 27, 2010, and it's dated for

1 February 24 of this year, 2011.

2 THE ATTORNEY EXAMINER: He sent you a
3 letter with it?

4 MS. WILEY: This disk of a conversation.

5 THE ATTORNEY EXAMINER: A CD.

6 MS. WILEY: Of a conversation of my
7 daughter calling Duke Energy in regards to, you know,
8 our bill or whatever. And it's unintelligible. I
9 don't know what's on this disk. I can't hear what's
10 on it.

11 MR. McMAHON: Your Honor, we object to
12 this testimony. It has nothing to do with
13 Ms. Wiley's case. This is a prehearing discovery
14 issue. And, by the way, this is the first time that
15 we had heard the disk is unintelligible. She has had
16 it since February and never once called me to say she
17 couldn't understand the disk. It has no bearing on
18 today's case.

19 MS. WILEY: It has everything to do with
20 today's case because it is part of the discovery
21 process.

22 THE ATTORNEY EXAMINER: As I said before,
23 we wound up the discovery. I'll let you make one
24 statement. Are you done?

25 MS. WILEY: Yes, sir, I've addressed all

1 the bills and proven they're not true and accurate
2 accounts of my bills. I've proven that my old bill
3 is incorporated into my current bill, which should
4 have been adhered to when they disconnected me on
5 March 22.

6 THE ATTORNEY EXAMINER: You stated all
7 that before. Are you finished?

8 MS. WILEY: Yes, sir, with the request
9 for the opportunity to cross-examine Ms. Givens.

10 THE ATTORNEY EXAMINER: Okay.

11 Let's go off the record at this point.

12 (Recess taken.)

13 THE ATTORNEY EXAMINER: We will proceed
14 with Mr. Firich.

15 (Witness sworn.)

16 THE ATTORNEY EXAMINER: State your name
17 and address.

18 THE WITNESS: Lee Firich, 569 Price Road,
19 Newark, Ohio, 43055.

20 THE ATTORNEY EXAMINER: Could you spell
21 the last name, please.

22 THE WITNESS: F-I-R-I-C-H.

23 THE ATTORNEY EXAMINER: Okay. Now your
24 questions, Ms. Wiley.

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LEE A. FIRICH

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

DIRECT EXAMINATION

By Ms. Wiley:

Q. Thank you, Mr. Firich, for coming, I
appreciate it.

Can you please describe, tell us your
title at the Department of Development, please?

A. Yes. I work for the Ohio Department of
Development. I'm the operations manager for the Home
Energy Assistance Program, which is under the Office
of Community Services.

Q. And what do you do for the HEAP
organization exactly?

A. My duties are to make sure that the
applications for the Home Energy Assistance Program
are processed for eligibility. That is the main
purpose of my job.

Q. So you pretty much oversee the
application process and make sure that all the
requirements are met and the applicant is --

A. That all eligibility criteria is met and
entered into the computer system for the
determination of eligibility for the program.

1 Q. Once a person is accepted into the HEAP
2 program and you all have determined the amount of
3 benefits that you're going to apply to them, what is
4 the normal and regular process?

5 A. The normal process, once eligibility is
6 determined, depending on the type of payment to be
7 made, if it is a direct credit, which is to one of
8 the main utility companies, including Duke Energy, as
9 long as there is an account there that we have
10 determined meets the criteria, then we would make a
11 data file accessible to Duke Energy, in this case,
12 and once they have their staff match the files to
13 their records, once they match the files to their
14 records, they, in turn, respond to us with a data
15 file stating that they are accepted.

16 We then wait until we receive a
17 reconciliation letter signed by the representative
18 which allows us then to make this actual payment to
19 the utility company for all the records that are on
20 that file.

21 Q. Okay. You said that the utility company,
22 or in this case, Duke Energy, once you set them up
23 for a direct credit, they send you back a data file.

24 A. It's a file where they've accepted
25 everything that was matching on the file that we sent

1 them or we gave them access to in our computer
2 system.

3 Q. Pertaining to this case, what date was
4 Duke Energy's acceptance of the data file?

5 A. We are talking about a payment, a HEAP
6 payment, that was for a credit for Sherry Wiley of
7 \$271. I have a time line here. We actually
8 determined eligibility July 28, 2010. We had
9 notified -- there was on our website, there was a
10 payment for a \$271 credit for Sherry Wiley.

11 On August 20, 2010 is the date the file
12 was returned from Duke Energy with acceptance notice
13 of the \$271 credit for Sherry Wiley. The letter,
14 acceptance letter or remittance letter form that was
15 signed by the Duke Energy representative, did not get
16 faxed to us until -- and did not arrive until
17 November 12, 2010.

18 Q. November 12?

19 A. November 12, 2010. And payment from us
20 to Duke Energy was made November 26th, 2010.

21 Q. Thank you, sir.

22 A. That's according to our records.

23 Q. So the actual payment for the \$271 to
24 Duke Energy was made right after Thanksgiving,
25 November 26?

1 A. Somewhere around there. These are
2 according to the computer records as to when. Now
3 the physical check might not have -- or whatever, I'm
4 not sure if it's a check or an electronic fund
5 transfer, if that actually went -- what specific date
6 that actually went to Duke Energy.

7 Q. And once the company sends you back that
8 information stating that the payment was actually
9 made on November 26, 2010, do you close the file or
10 what happens then?

11 A. We add in our records that there was a
12 reconciliation, and on our computer records it shows
13 that -- that the payment was received, and we
14 designate that it's complete.

15 MS. WILEY: Can I ask you a question or
16 make a statement?

17 THE ATTORNEY EXAMINER: You have to speak
18 up.

19 MS. WILEY: Can I make a statement to
20 you?

21 THE ATTORNEY EXAMINER: No. You have to
22 ask questions.

23 MS. WILEY: Just totally ask questions?

24 THE ATTORNEY EXAMINER: Ask questions.

25 Q. Lenore Conrad, are you familiar with the

1 HEAP organization employee Lenore Conrad?

2 A. Lenore Conrad worked as a temporary staff
3 member through the Diversity Search Group that was on
4 a temporary assignment with our office.

5 Q. I actually subpoenaed her as well to come
6 but Ms. Christiane Schmenk --

7 A. Christiane Schmenk is our chief legal
8 counsel for the Department of Development.

9 Q. She contacted me and let me know that
10 Lenore was no longer with them, that she was a
11 temporary with them, and April 8 was her last day.

12 Do you have any documentation in regard
13 to all of that, the date that Duke Energy sent you
14 back anything?

15 A. I have a time line that I typed up with
16 what I just spoke about, and I have a copy of the
17 reconciliation letter that was faxed to us and when
18 we received it.

19 MS. WILEY: May I see that, please? Is
20 it okay?

21 THE ATTORNEY EXAMINER: Let's let counsel
22 look at these, too.

23 MS. WILEY: Can we please admit these,
24 too?

25 THE ATTORNEY EXAMINER: You want those

1 marked, too?

2 MS. WILEY: As evidence, yes, sir.

3 THE ATTORNEY EXAMINER: Okay, bring them
4 over. What are we up to, 14?

5 MR. McMAHON: Yes, your Honor.

6 THE ATTORNEY EXAMINER: This will be
7 Exhibit 14. What I will do is mark the document
8 entitled Ohio Department of Development, Office of
9 Community Services, Vendor Notification
10 Authorization, Complainant's Exhibit 14.

11 And then I'll mark on letterhead for the
12 Department of Development, I believe this is the time
13 line that you typed up.

14 THE WITNESS: Yes, sir.

15 THE ATTORNEY EXAMINER: I'm mark this as
16 Complainant's Exhibit 15.

17 Do you want to ask questions about these?

18 MS. WILEY: I'm good.

19 Thank you so much, Mr. Firich, for coming
20 out in regard to the subpoena and the paper
21 documents.

22 THE ATTORNEY EXAMINER: Does that
23 conclude your examination of this witness?

24 MS. WILEY: Yes, sir.

25 THE ATTORNEY EXAMINER: We will now let

1 the company have cross-examination.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. McMahon:

5 Q. Mr. Firich, I just have a couple
6 questions.

7 A. Okay.

8 Q. I guess, first of all, are you aware when
9 Duke Energy credited Ms. Wiley's account for the \$271
10 HEAP credit?

11 A. No.

12 Q. If I told you that they credited it in
13 early August of 2010, would that surprise you?

14 A. No.

15 MS. WILEY: Object, because he already
16 stated that the actual acceptance by Duke Energy did
17 not come in until November. I think it was the 16th,
18 November 16, so the acceptance from Duke Energy,
19 Mr. Firich already stated didn't come until November.

20 THE ATTORNEY EXAMINER: Maybe we are
21 talking about two different things here. I'll let
22 counsel clear that up.

23 Q. Let me ask you this. Was Ms. Wiley
24 entitled or did she qualify for more than one HEAP
25 credit of \$271?

1 MS. WILEY: I object.

2 A. For which payment year?

3 Q. Good qualifier. The \$271 you testified
4 to, what year was that for?

5 A. That was for HEAP fiscal year 2009 to
6 2010.

7 Q. Which runs from when?

8 A. Normal payment runs from July 1 --
9 June 1 through the end of May of 2010. In this case
10 because there was some missing information in her
11 file, we collected that later, so then because the
12 application was made before the deadline, we actually
13 determined eligibility even though it was past the
14 normal due date.

15 MS. WILEY: Can I object to this because
16 it has no relevance to this whatsoever.

17 THE ATTORNEY EXAMINER: Start again.
18 Speak up.

19 MS. WILEY: Can I object to this line of
20 questioning because it has no relevance to it? The
21 payment was -- the 271 payment was accepted --

22 THE ATTORNEY EXAMINER: I believe it does
23 have relevance, ma'am, so you are overruled.

24 Q. Let me hand you what has been marked as
25 Exhibit E to the testimony of Cynthia Marie Givens

1 previously filed before the Commission. This is the
2 Duke Energy bill for Ms. Wiley's account, No.
3 5840-2090-14-4, with a due date of September 13,
4 2010.

5 A. Okay.

6 Q. Do you see a HEAP direct credit of \$271
7 reflected on that bill?

8 A. Yes, I do.

9 Q. Okay. So it would appear from the Duke
10 bill that -- do you also see this bill was prepared
11 by Duke on August 20, 2010?

12 A. Yes.

13 MS. WILEY: Sir, I totally object. I
14 state this objection because he works for the HEAP
15 organization. He doesn't work for Duke Energy. He
16 has no control over what Duke Energy, what dates they
17 put down.

18 THE ATTORNEY EXAMINER: We will accept
19 his testimony for what it is, ma'am. Your objection
20 is overruled.

21 MS. WILEY: Okay.

22 Q. Now, you said that you notified Duke
23 Energy of Ms. Wiley's eligibility for 271 after you
24 determined the eligibility on July 28, 2010.

25 A. That's correct.

1 Q. And according to Duke Energy, Ms. Wiley
2 received that credit within several weeks of your
3 notification.

4 A. Yes.

5 Q. Okay. Is there any other \$271 HEAP
6 credit that Ms. Wiley was eligible for in calendar
7 year 2009-2010?

8 A. Not to my knowledge, not in our computer
9 system.

10 Q. Even for the year 2010-2011?

11 A. I don't believe there was a \$271
12 eligibility payment, no.

13 Q. I want to make sure we are all talking
14 about the same dollar figure.

15 A. Right.

16 Q. I understand in the spring of 2011
17 Ms. Wiley received another HEAP credit that has
18 nothing to do with the 271.

19 A. That's correct.

20 Q. The 271 Ms. Wiley asked you about and you
21 testified to was approved by HEAP and credited to
22 Ms. Wiley's bill, correct?

23 A. From a copy of the bill, it looks like it
24 was credited.

25 Q. Okay. Whether Duke sent a letter back to

1 the Ohio Department of Development in November
2 doesn't mean that they had not already credited
3 Ms. Wiley's account, correct?

4 A. That's correct. Most companies, as soon
5 as they receive the notifications from us, most
6 companies prepare -- we usually tell them, clients,
7 to look for the payment on their bill between 30 to
8 60 days of the receipt of their notification letter,
9 which would have been sent to Ms. Wiley on -- around
10 July 28.

11 Q. Okay.

12 MS. WILEY: Object. I didn't get that
13 letter until September, September 13, that you have
14 the envelope up there. That's when I got that
15 letter.

16 THE ATTORNEY EXAMINER: That's overruled,
17 ma'am. It's not a valid objection.

18 THE WITNESS: That's on the time line
19 July 28.

20 Q. Do you need to see your time line?

21 A. Yes. Make sure that's what was in the
22 computer file.

23 Q. One last question about
24 Exhibit 14 because you didn't say this during your
25 direct testimony, but just how do we know that

1 Exhibit 14 has anything to do with Sherry Wiley?

2 THE ATTORNEY EXAMINER: This is
3 Complainant's Exhibit 14?

4 MR. McMAHON: Yes, sir.

5 A. Based on our computer information.
6 There's no actual list that goes along with this.
7 It's all inside our computer, and the computer list
8 would have the names of the people and the clients
9 and the respective dollar amounts that they would
10 have.

11 Q. Okay. So just to sum up, it's accurate
12 that the HEAP credit that was provided to Ms. Wiley
13 of \$271 and approved by the Ohio Department of
14 Development appears to be provided her by Duke
15 Energy, right?

16 A. Based on that bill there, yes.

17 Q. And you have no reason to believe
18 otherwise.

19 A. No.

20 Q. And no one, neither Ms. Wiley or Duke
21 Energy, have ever indicated to you that she didn't
22 get that credit, have they?

23 A. No.

24 Q. And you looked at the Ohio Department of
25 Development's records before coming here today,

1 right?

2 A. Yes.

3 Q. And there's nothing in the Ohio
4 Department of Development's records that Ms. Wiley
5 ever contacted your organization to complain she
6 never received the 271 credit, correct?

7 A. That's correct.

8 MS. WILEY: Can I object? Can I make a
9 statement?

10 THE ATTORNEY EXAMINER: You can't make
11 that statement. You can make an objection.

12 MS. WILEY: I make an objection because
13 Mr. Firich had already --

14 THE ATTORNEY EXAMINER: It has to be
15 specific grounds for an objection. Is it not
16 relevant? Is it asked and answered? You have to --

17 MS. WILEY: He's twisting terms and words
18 around. Now Mr.--

19 THE ATTORNEY EXAMINER: That's not a
20 valid objection. You have an opportunity on redirect
21 if you want to ask him a question, okay, clear up
22 what he has said on cross; understand?

23 MS. WILEY: Okay.

24 THE ATTORNEY EXAMINER: Any further
25 questions, counsel?

1 MR. McMAHON: No. Sorry. Nothing
2 further.

3 THE ATTORNEY EXAMINER: Now it's
4 redirect. You can ask him, but only what you talked
5 about on cross.

6 - - -

7 REDIRECT EXAMINATION

8 By Ms. Wiley:

9 Q. You mentioned that in August that there
10 was a payment made on the account for \$271. But you
11 had made a statement that on August 20 that Duke
12 Energy had either accepted the initial contact
13 information from you, whatever, and that the
14 acceptance didn't happen until after the 20th.

15 A. That's correct.

16 Q. So if they had accepted it after the
17 20th, in their records and on the bills they're
18 saying they applied this credit on August 12.

19 THE ATTORNEY EXAMINER: You have to ask a
20 question. You can't make a statement and testify.

21 Q. So is it possible for Duke Energy to
22 apply a credit for \$271 to my account on August 12,
23 as they stated, when you earlier stated that on
24 July 28 I was accepted into the program and then on
25 August 20 that you all had sent them however you do

1 it, electronically or by letter, sent them a data
2 file, and they accepted the data file on August 20,
3 are they capable of accepting payment before you send
4 them the data file?

5 A. Yes. As soon as we make the payment file
6 available to Duke Energy, which -- what did I say,
7 was August --

8 Q. 20th.

9 A. No, that's when they returned the
10 acceptance file to us.

11 THE ATTORNEY EXAMINER: Do you have the
12 time line you want to show him here?

13 MR. McMAHON: I believe it was August 9.

14 A. We made available to Duke Energy the file
15 on August 9. Once we make the file available, they
16 can start making payments to the account as soon as
17 they verify that the account is theirs.

18 Q. Okay.

19 A. So when they send the information back to
20 us, that's just verifying that they've accepted those
21 payments as valid accounts that they will credit.
22 When they actually make the credit on the bill, they
23 do not tell us.

24 Q. In your experience with the Duke Energy
25 Company, once a company accepts the data file and

1 then sends it back to you, or whatever, you mentioned
2 60 days, within that 60 days is when the payment
3 actually falls into the account or a payment is
4 actually made into the account, and then they send
5 the data file back to you. Is that normally how it
6 goes?

7 A. The payments are put on bills depending
8 on when the billing cycles fall, and that's why we
9 normally tell people to allow 30 to 60 days for it
10 actually to show up on your bill, because depending
11 on when it actually comes, when the billing cycle is,
12 when your bill and which cycle it's on, when it's
13 going out, it could be that period of time. We have
14 no control over that.

15 Q. The thing I'm trying to make clear or to
16 state is that they could have actually applied the
17 credit anytime between August 9 and November 26,
18 anytime between that, in your opinion.

19 MR. McMAHON: Objection. Is that a
20 question?

21 THE ATTORNEY EXAMINER: You have to ask a
22 question, ma'am.

23 Q. November 12, what did you say transpired
24 November 12?

25 A. November 12 is when they sent us a letter

1 authorizing payment stating that they've accepted
2 every single file, every single account on the file
3 that we sent them, and before we can actually send a
4 check to Duke Energy, we have to have a signed
5 authorization from the company stating they've
6 accepted that. They did send us that. It wasn't
7 faxed until November 12, but that could have no
8 bearing on when they actually make a payment on a
9 bill.

10 Q. So when the representative told me in
11 September that she can see the credit in the system
12 but it hasn't been applied to my account yet, that,
13 in your opinion -- I know you're not a Duke Energy
14 customer service -- but in your opinion and with your
15 experience on how the other accounts normally work,
16 the normal flow of all the other batch accounts you
17 work with, would you say that they would have that
18 60-day window where they would apply --

19 MR. McMAHON: Objection.

20 A. Again, we don't know when they apply the
21 account.

22 THE ATTORNEY EXAMINER: He's answered the
23 question, ma'am.

24 A. And our records could state that we have
25 not received the reconciliation, but that does not

1 necessarily mean it was not credited because we don't
2 know when they credit the accounts. That is not
3 something we collect in our files.

4 Q. I received a letter from the HEAP
5 organization saying --

6 MR. McMAHON: Objection, this is beyond
7 the scope of cross.

8 MS. WILEY: You have to ask a question
9 now.

10 Q. When you send a letter out to the
11 recipients of the funds, do you send the letter after
12 you've already forwarded the account, because the
13 letter is verifying that they are the right utility
14 company and that this is the amount that you will be
15 sending out? Do you normally send that letter of
16 verification to the recipient, not to the utility
17 company, after you send the funds to the utility
18 company?

19 MR. McMAHON: Objection, beyond the scope
20 of cross.

21 MS. WILEY: No, it's not. It's a
22 question that he can answer.

23 THE ATTORNEY EXAMINER: You got to stick
24 to what he said on cross-examination. Now, I heard a
25 couple of three questions in there. What is your

1 question to this witness?

2 Q. To the account, do you normally do that
3 after the utility company has already accepted the
4 file?

5 A. Letters are normally sent when
6 determinations are made. Now, it says July 28. The
7 actual date that might have been on the letter might
8 be a few days after that, depending when they are
9 actually mailed through the computer system, but
10 they're normally about the same time.

11 Q. So in your system does it document when
12 letters are sent out according to that file?

13 A. July 28.

14 Q. That a letter was sent out?

15 A. To you, yes.

16 Q. A letter was sent out to me on July 28?

17 A. That's what it has in our file.

18 Q. No. And that's this envelope up there.

19 The envelope is postmarked --

20 MR. McMAHON: Objection. Is Ms. Wiley
21 testifying or asking a question?

22 THE ATTORNEY EXAMINER: What's the
23 question? You can't testify. What's the question?

24 Q. In your file is there any documentation
25 from Lenore Conrad, because when I asked you to come

1 to the hearing --

2 MR. McMAHON: Objection, beyond the scope
3 of cross.

4 THE ATTORNEY EXAMINER: Yes. He didn't
5 ask about that on cross. So you have to stick to
6 what he said, ma'am.

7 Q. Do you have the documentation that Duke
8 Energy sent back to you stating the acceptance of the
9 file for August 20?

10 A. Yes, I showed it to you.

11 Q. That's what that was?

12 A. Yes.

13 THE ATTORNEY EXAMINER: What are you
14 referring to?

15 MR. McMAHON: Exhibit 15.

16 THE WITNESS: Exhibit 15.

17 MS. WILEY: Let me look at that again. I
18 thought that was something else.

19 Q. Here it says -- what authorization date
20 are we referring to when it says August 2?

21 THE ATTORNEY EXAMINER: You are referring
22 to 15, Complainant's Exhibit 15.

23 MS. WILEY: Exhibit No. 14.

24 A. That is the actual date that comes up in
25 our computer that we've run the eligibility

1 information through the computer. That's August 2.

2 When we actually made the file available to Duke

3 Energy with this information was August 9.

4 Q. So the eligibility wasn't ran on the 28th
5 of July. It was ran on August 2.

6 A. The eligibility determination was
7 July 28.

8 MS. WILEY: Can I just comment on this?

9 THE ATTORNEY EXAMINER: No. You have to
10 ask questions at this point.

11 MS. WILEY: Okay, I'm done.

12 THE ATTORNEY EXAMINER: Do you have any
13 on recross?

14 - - -

15 RECROSS-EXAMINATION

16 By Mr. McMahon:

17 Q. One question. Let me see if this fairly
18 summarizes what appeared to have happened here.
19 July 28 your office determined that Ms. Wiley was
20 eligible for a \$271 HEAP credit. You notified Duke
21 Energy on August 9 of her eligibility. She received
22 a credit for \$271 during August of 2010, which showed
23 up on Exhibit E, her bill, and your organization did
24 not pay Duke for that credit, among other credits,
25 until sometime in November 2010.

1 A. That's correct.

2 THE ATTORNEY EXAMINER: You're excused.

3 Ms. Wiley, take the stand again please.

4 You are still under oath. I want you to
5 answer in concise answers to counsel's questions.

6 MS. WILEY: Sure.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. McMahon:

10 Q. Ms. Wiley, you went through a lot of
11 information. I will try to be concise but might be
12 jumping around a little bit, so bear with me here.

13 Let me start off with these various
14 exhibits that you have marked. To the extent these
15 exhibits have handwriting on them in blue ink, when
16 did you make those handwritten notes?

17 A. Last evening. That would be May 11.

18 Q. Okay.

19 A. 2011.

20 Q. Okay. So last night on May 11, 2011 you
21 went through all of these exhibits and made the notes
22 that are reflected in blue ink, correct?

23 A. Highlighted in green, yes.

24 Q. And that's also when you highlighted
25 information there.

1 A. Some of it, yes.

2 Q. Okay.

3 A. Some of it I did this morning.

4 Q. And those notes would have been made last
5 night, which was well after you received each of
6 those various documents from Duke Energy or whomever
7 else sent them to you, correct?

8 A. I made motions from October --

9 THE ATTORNEY EXAMINER: Talking about the
10 notes.

11 Q. That's not my question, just the notes.
12 You made these handwritten notes long after you
13 received the actual documents.

14 A. And after I had telephone conversations
15 and motions --

16 THE ATTORNEY EXAMINER: Just yes or no.

17 Q. Just yes or no.

18 A. Yes, I did all those last night.

19 Q. Which was long after you have received
20 the documents, correct?

21 A. Uh-huh.

22 Q. You need to answer out loud.

23 A. Yes.

24 MR. McMAHON: On that basis, your Honor,
25 I would move to strike and object to again to the

1 introduction of any handwritten notes. I believe the
2 Court is capable of taking into consideration the
3 actual documents and disregarding the handwritten
4 notes. None of those notes were contemporaneously
5 made. As Ms. Wiley admitted, those are out-of-court
6 statements offered for the truth of the accuracy of
7 the information, so they're inadmissible information.

8 MS. WILEY: I object to that. Can I put
9 in my two cents, please?

10 THE ATTORNEY EXAMINER: Just answer the
11 questions, please.

12 I'll overrule the objections. You can
13 cross-examine her at this time on any of those notes.

14 MR. McMAHON: Okay.

15 Q. Ma'am, I will start with your first bill,
16 with Duke Energy.

17 A. Do you mind if I get --

18 Q. I'll show it to you.

19 A. I'd rather have my own.

20 MR. McMAHON: I prefer since I'm
21 conducting the cross-examination that the witness
22 look at the exhibits that are marked so there is no
23 question about her testimony.

24 THE ATTORNEY EXAMINER: I think that that
25 is the best way to handle it, ma'am.

1 MR. McMAHON: Thank you.

2 Q. I will start with Exhibit A, the
3 attachment to the testimony of Cynthia Marie Givens.
4 You made some comments about you don't understand the
5 \$47, the \$93, and you think Duke was charging you
6 twice for those things. I'm just going to ask a
7 simple couple questions. You were told you had a
8 deposit of \$140, correct?

9 A. Yes.

10 Q. Do you agree with me that 47 plus 93 is
11 140? Here, I'll give you a piece of paper.

12 A. Yes.

13 Q. Okay.

14 A. And that was paid on June 3.

15 Q. I have no questions, ma'am.

16 A. Then why is it on my July bill, too?

17 THE ATTORNEY EXAMINER: Ma'am, just
18 answer the question yes or no.

19 MS. WILEY: Okay.

20 Q. And you didn't make that deposit of \$140
21 all at once, did you?

22 A. Yes, I did.

23 Q. You wrote a check for \$140?

24 A. I don't think I wrote a check. You sent
25 me the deposit letter, and they're up there as

1 exhibits. If that's the case, why --

2 THE ATTORNEY EXAMINER: No, ma'am.

3 MS. WILEY: I'm sorry.

4 Q. Let me ask you this. Exhibit A, isn't it
5 true, shows you were charged the deposit of \$140, and
6 then you were credited that so that you could pay it
7 over time, correct?

8 A. Uh-huh.

9 Q. You have to say that out loud.

10 A. Yes. And that's the May bill, right?

11 Q. Right. And then you paid that later.

12 A. June 3 I paid \$150, which covered the 140
13 deposit, so the \$47 should not be on that July bill
14 because it was paid June 3.

15 THE ATTORNEY EXAMINER: Yes or no, ma'am.

16 A. What was the question again?

17 Q. Actually, I believe you answered my
18 question. The \$150 payment that you made is
19 reflected on Exhibit C to Cindy Givens' testimony,
20 which is the bill generated June 22, 2010, with a due
21 date of July 14, correct?

22 A. Can I please see --

23 Q. Ma'am, if you can just answer my
24 question.

25 A. I can't answer that intelligently because

1 this shows a full credit of \$150, and I recall
 2 looking at my bills, the copies of my bills that says
 3 \$140 with \$10 going to the bill. So, yes, in total
 4 it was \$150, but it satisfied, and it showed that it
 5 satisfied, the \$140 for the deposit, plus the
 6 \$10 that went towards the bill, and that is on my
 7 bill. So I don't want to say yes to this.

8 THE ATTORNEY EXAMINER: That would be the
 9 same bill, ma'am? Is that a Duke Energy bill?

10 THE WITNESS: I would need to compare it
 11 to ensure.

12 THE ATTORNEY EXAMINER: What month are
 13 you referring to, ma'am?

14 MS. WILEY: I made the payment June 3,
 15 probably the June or July bill.

16 MR. McMAHON: I'm not so sure she marked
 17 that one.

18 MS. WILEY: It's up there.

19 THE ATTORNEY EXAMINER: We stopped at May
 20 or June?

21 MS. WILEY: We stopped at May of this
 22 year.

23 THE ATTORNEY EXAMINER: I'm talking about
 24 the marking of the exhibits.

25 MS. WILEY: That should be up there.

1 MR. McMAHON: I don't believe that
2 Ms. Wiley introduced any bill with a due date of
3 July 14, 2010 into the record.

4 MS. WILEY: Okay. Without doing that,
5 then look at the deposits because I know we entered
6 the deposit receipts for the \$150.

7 Q. I'll be happy to show you the deposits,
8 ma'am. This is what you introduced as Exhibit 4, the
9 first page of which shows a \$10 payment, correct?

10 A. Yes.

11 Q. And the second page shows a payment of
12 \$130.

13 A. The \$10 went towards the bill.

14 Q. The two of these add up to \$140, and that
15 takes care of your deposit, right?

16 A. Yes.

17 Q. And the other \$10 from your deposit you
18 made otherwise went toward your bill.

19 A. Yes.

20 Q. Okay. I don't think we are arguing about
21 any of that.

22 A. The 47 is still on the July bill.

23 Q. No, it's not, ma'am. You are totally
24 wrong, ma'am, and don't understand your bills.

25 A. I object to that comment.

1 Q. You are talking about the bill due in
2 July or generated in July?

3 A. May I see, because I don't memorize my
4 bills.

5 Q. I hand you Cindy Givens' testimony with
6 all the bills attached. Show me where the \$47 comes
7 up again on your bills.

8 A. In the stack you have here I don't see
9 it.

10 Q. Okay.

11 A. In the stack I have, it's there.

12 Q. Now, you established service in April of
13 2010 and were already getting disconnect notices on
14 bills generated May 21, 2010, right?

15 A. Can I see the bill?

16 Q. Sure. I'm showing you what has been
17 marked as Exhibit B attached to the testimony of
18 Cynthia Marie Givens. It's the bill generated
19 May 21, 2010, to your account with a disconnect
20 notice, correct? Do you agree with me?

21 A. That's what this says.

22 Q. Now you're looking at Exhibit A. I'm
23 looking at Exhibit B. Do you agree with me that
24 within just over a month and a half of you starting
25 service, you're already getting disconnect notices on

1 your account, correct?

2 A. I see that this bill that you have
3 dated June 14 --

4 THE ATTORNEY EXAMINER: Yes or no, ma'am.
5 I need you to answer the question.

6 MS. WILEY: But it doesn't rightfully
7 answer the question.

8 THE ATTORNEY EXAMINER: Yes, it does, yes
9 or no.

10 A. What I have in front of me, yes.

11 MS. WILEY: Now I still can't answer?

12 MR. McMAHON: I have no pending question,
13 ma'am.

14 MS. WILEY: Can I ask a question?

15 THE ATTORNEY EXAMINER: No, you can't ask
16 a question.

17 Q. And the response to that disconnect
18 notice is when you made this payment of \$150 that we
19 just talked about, correct?

20 A. No, that's not correct. That's dated
21 June 14. The payment was made June 3.

22 Q. Ma'am, Exhibit B was generated by Duke on
23 May 21, 2010, correct, with a due date of June 14,
24 correct?

25 A. Uh-huh.

1 Q. You have to answer out loud.

2 A. Yes.

3 Q. And the payment that you made of \$150 is
4 then reflected on Exhibit C, which is generated
5 June 22 with a due date of July 14, correct?

6 A. That's what that says.

7 MS. WILEY: Now can I make a statement?

8 THE ATTORNEY EXAMINER: Just answer the
9 questions.

10 Q. After making that payment of \$150 in June
11 of 2010, you didn't make any payments in July of
12 2010, did you?

13 A. No.

14 Q. You didn't make any payments in August of
15 2010, did you?

16 A. Well, you all received a payment, yes,
17 from the HEAP organization.

18 Q. I'm not talking about the HEAP payment,
19 but thank you for clarifying that. Did you make any
20 payments of money to Duke Energy in August of 2010?

21 A. No, I didn't because I received a credit
22 from the HEAP organization towards my account.

23 THE ATTORNEY EXAMINER: The answer is no,
24 you did not make any payments.

25 Q. We will get to that HEAP credit in a

1 second. In fact, at the end of July 2010 you called
2 Duke Energy to discuss your outstanding account,
3 correct?

4 A. The end of July?

5 Q. Correct.

6 A. Possibly, yes.

7 Q. And you were told you had a due date of
8 August 13.

9 A. I don't know.

10 Q. Okay. Now, let me show you what has been
11 marked as Exhibit E, which is attached to the
12 testimony of Cynthia Marie Givens. Exhibit E is a
13 copy of your bill from Duke Energy prepared on
14 August 20, 2010 with a due date of September 13,
15 correct?

16 A. Uh-huh. Correct.

17 Q. And Exhibit E reflects that you got the
18 HEAP credit of \$271, correct?

19 A. Yes.

20 Q. So this bill goes out in the mail
21 August 20 and you got it in the mail, right?

22 A. In October, yes.

23 Q. You got the bill mailed on August 20 in
24 October?

25 A. Yes.

1 Q. Yet isn't it true that your daughter
2 called Duke on August 27, 2010 to talk about your
3 late bills?

4 A. Yes, she did call about the bill.

5 MS. WILEY: Can I make a comment about
6 that?

7 THE ATTORNEY EXAMINER: No, you may not.
8 This is cross-examination.

9 Q. So you're saying and it's your testimony
10 that Exhibit E is not what prompted your daughter to
11 call about the past due bill, that she just called on
12 her own?

13 A. No. I instructed her to call.

14 Q. Because you received Exhibit E.

15 A. What is Exhibit E?

16 Q. The bill.

17 A. For September, no. Remember, I didn't
18 get that until October 1.

19 Q. Well, that's what you said.

20 A. You didn't mail it out until --

21 Q. So just out of the blue on about
22 August 27, 2010, for no apparent reason you told your
23 daughter to call and talk to Duke about your late
24 bills.

25 MS. WILEY: Now can I give an answer?

1 He's saying "out of the blue." It wasn't out of the
2 blue.

3 THE ATTORNEY EXAMINER: No, ma'am. Yes
4 or no answers to the questions on cross.

5 Q. On August 27, 2010 you told your daughter
6 to call Duke, and you're saying it had nothing to do
7 with Exhibit E.

8 A. Yes. I told my daughter to call, yes.

9 Q. Now, when you started testifying today,
10 in your complaint as well, you have said -- you said
11 it both today and you said it all along, you called
12 Duke on September 13 or 14, 2010.

13 A. I did. Yes, I did.

14 Q. Perfect. I'm glad you confirmed that
15 again. Yet before you claimed this Exhibit 1, this
16 letter from the Ohio Department of Development --

17 THE ATTORNEY EXAMINER: That's the
18 envelope?

19 THE WITNESS: The envelope.

20 A. Look at the postmark.

21 Q. It's postmarked September 16, 2010.

22 A. Yes.

23 Q. Now you're saying you got something
24 postmarked September 16, 2010 and you called Duke on
25 September 13, 2010.

1 A. On or about September 13. That's on all
2 the memos I did. That's in all statements I made, on
3 or about the 13th.

4 Q. So 30 seconds ago when you reconfirmed
5 again you called on September 13, 2010, you're saying
6 it might have been September 16?

7 A. Well, you're twisting it.

8 Q. Just answer my question.

9 A. Restate it.

10 Q. Earlier when you said you called on
11 September 13, now you're saying it might have been
12 September 16?

13 A. The letter was dated September 13. Okay?
14 It's postmarked on the 16th. So on or about, as it's
15 stated in my complaint on both of them, on or about
16 the 13th, which was the date of the letter, which the
17 postmark says the 16th, because most companies,
18 especially the large ones, send it through their mail
19 system and it gets stamped out, as it's going out, so
20 yes.

21 Q. Let me ask you this. As we sit here
22 today, we have no idea what was in this envelope
23 marked as Complainant's Exhibit 1?

24 A. Well, yes, we do. I asked Mr. Firich
25 what's the normal process, and he said that I'm

1 notified by letter that a payment is going to be made
2 or deposited into my account. That's the envelope it
3 came in. The organization didn't send me anything
4 else for any other reason, nothing else.

5 Q. Mr. Firich, to the extent Mr. Firich
6 testified that letter went out to you on or about
7 July 28, you're saying he's wrong, he doesn't know
8 what he's talking about, and the letter to you came
9 in this envelope postmarked September 16. Is that
10 what you are saying?

11 A. My question was to Mr. Firich --

12 Q. I'm not asking what your question was;
13 I'm asking what your testimony is.

14 A. Restate.

15 Q. You're saying that he doesn't know what
16 he's talking about. You didn't get a letter dated
17 July 28. The only letter you received supposedly
18 came in this envelope September 16.

19 A. Yes.

20 Q. Yet we don't have the letter here today,
21 correct?

22 A. You don't have a letter from him either,
23 and in the subpoena I requested --

24 Q. Just answer my questions. You haven't
25 produced any letter either in discovery or during the

1 course of this hearing.

2 A. It was stolen, no.

3 Q. Someone stole your letter.

4 A. Yes.

5 Q. You also claimed you faxed a letter to
6 Duke, yet you don't have any fax confirmation page or
7 information to confirm you did that.

8 A. I faxed it from the management office.

9 Q. Just answer my question, ma'am.

10 A. No, I don't.

11 Q. Now, you testified that supposedly when
12 you called Duke on or about September 13th, 14th, or
13 16th, whatever day it was, someone from Duke told you
14 that the \$271 had not been applied to your account.

15 A. Yes, she did.

16 Q. Yet as we now know, looking at Exhibit E,
17 your bill, that \$271 is reflected on a bill mailed to
18 you August 20.

19 A. I think I made it clear when I said I
20 can't go through the phone or speak for the Duke
21 customer service representative. When they tell me
22 it hasn't gone through the system yet and it should
23 be applied to my account in the next two weeks, all I
24 can do is take what she says as being true.

25 Q. You also said you had some type of

1 payment arrangement with Duke.

2 A. Yes.

3 Q. You don't know how much per week or month
4 you are supposed to pay?

5 A. I never even made the comment of how much
6 I was going to pay for those periods.

7 Q. I'm trying to understand --

8 A. I'm answering your question. I'm
9 answering your question. The time line that she and
10 I went over was two weeks, two weeks, two weeks. Two
11 weeks I get the bill. Two weeks after that I get a
12 reminder notice. Two weeks after that I get a final
13 disconnection notice. Then I have 14 days after that
14 before the actual disconnection will happen, which
15 will take me up to about -- I never said that this
16 amount was going to be paid on this date or two weeks
17 later this amount. I didn't say that. And I
18 agreed --

19 THE ATTORNEY EXAMINER: Ma'am, I will
20 stop you right there. Please try and remember this
21 is cross-examination. Yes or no answers. You will
22 have an opportunity, I'll let you make a restatement
23 here in response to what he just said on cross on
24 redirect.

25 Q. So I guess my question to you,

1 essentially you're telling us that Duke agreed to a
2 payment plan without confirming with you how much was
3 due at any given point in time; you just had until
4 Thanksgiving to pay your bill.

5 A. The entire bill. That was our agreement,
6 yes.

7 Q. You never agreed to -- no one ever told
8 you \$100 a week, \$50 a week, nothing like that.

9 A. No. We were counting on the 271 from the
10 HEAP organization to hit my account, to hit my
11 account, not that it had already hit my account, but
12 to hit my account in two weeks, as she stated, and
13 that payment of 271 would take me over until and
14 allow me to get the bill, the reminder notice, and
15 then the disconnection, and then two weeks after that
16 the final disconnection.

17 Q. Okay. So isn't it true that during the
18 month of September 2010 you didn't make any money
19 payments to Duke Energy?

20 A. I didn't have to because the benefit --

21 Q. Just answer my question.

22 A. No, I didn't.

23 Q. You did not?

24 A. Un-uh.

25 Q. And you also did not make any payments to

1 Duke Energy during October, at least through
2 October 20, 2010.

3 A. False -- wait a minute. The 20th, no,
4 because I was anticipating the 271 would be made.

5 Q. That's not my question. I'm not asking
6 what you were anticipating. I'm asking what you
7 paid.

8 A. No. I made the payment on October 21.

9 Q. Okay. When we look at Exhibit F to the
10 testimony of Cynthia Marie Givens, which is the bill
11 generated September 21, 2010, there are no payments
12 reflected on that bill, correct?

13 A. No.

14 Q. And that has a disconnect notice, right?

15 A. Again --

16 Q. Just answer my question. That has a
17 disconnect notice, doesn't it?

18 A. I'm going by -- yes. Yes, it does.

19 THE ATTORNEY EXAMINER: You need to
20 answer the questions, ma'am, yes or no.

21 Q. Do you deny getting this bill in the
22 mail, Exhibit F?

23 A. Oh, yes, I got that.

24 Q. When did you get that?

25 A. I don't know.

1 Q. Okay. Let's look at Exhibit G, Exhibit G
2 to Cynthia Marie Givens' testimony, the bill prepared
3 October 20, 2010, with a due date of October 11,
4 2010, correct?

5 A. Yes.

6 Q. And that also has a disconnect notice.

7 A. Yes.

8 Q. Did you get this bill in the mail?

9 A. Yes.

10 Q. When?

11 A. I don't know.

12 Q. You're not sure when you got Exhibit F
13 and G, but you know you didn't get Exhibit E until
14 sometime two months after it was mailed by Duke.

15 A. Excuse me.

16 Q. That's what you said. Exhibit E you
17 denied getting in August. You said it came much
18 later.

19 A. I got this bill on October 1.

20 Q. Okay. How do you remember that?

21 A. Because that's where it showed the
22 credit. That's when it showed the credit.

23 Q. 271, ma'am?

24 A. Yes.

25 Q. This bill generated October 20, 2010,

1 credit, 271?

2 A. I got this bill -- you asked me when did
3 I get it. I'm telling you when I got it. I got it
4 the first week of October because it showed the
5 credit of 271.

6 Q. Did you get it before or after Exhibit F?

7 A. I got the September bill before I got the
8 October bill.

9 Q. So you were disconnected for nonpayment,
10 correct?

11 A. Yes; wrongfully disconnected.

12 Q. I know you say it's wrongful. And you
13 went down to Duke Energy's office and the person that
14 you spoke to, one of the people, was a person named
15 Clara Huggins, correct?

16 A. Oh, I don't know. They turned their
17 badges around and I couldn't tell what their names
18 were.

19 Q. You were told you were eligible for the
20 winter rule.

21 A. She didn't mention the winter rule.

22 Q. How do you know? You don't even know who
23 Clara Huggins is.

24 A. If you're talking about the three
25 representatives -- and that's what you said, I went

1 downtown to Duke Energy -- I spoke to three
2 representatives down there physically in the thing.
3 Neither three of those woman told me anything about
4 the winter rule.

5 When I got on my cell phone and called
6 the customer service person, that's when she told me
7 about the winter rule. I said the five other people,
8 Lonnie and Tony and these women that I just spoke to,
9 they didn't know about the winter rule. She said
10 they should have. They have the same training she
11 had.

12 Q. Okay. But the bottom line is you were
13 told by Duke Energy about the winter rule, and you
14 actually exercised your rights under the winter rule.

15 A. Customer service person No. 6, yes.

16 Q. Okay. So you paid the \$175 down, even
17 though you tried to negotiate it down to 100 or 125,
18 correct?

19 A. Yes.

20 Q. Are you aware that the \$175 is the amount
21 set by the Public Utilities Commission of Ohio?

22 A. No, I didn't.

23 Q. Okay.

24 A. I didn't. They just told me that's what
25 I had to pay and go from there. And I figured since

1 I spoke to five other representatives who told me I
2 had to pay \$730.11 in order to get it turned back on,
3 then maybe speaking to the right one might give me
4 some more pertinent information on Duke Energy's
5 bylaws, or whatever, or other winter rules or
6 whatever going on because I am not a Duke Energy
7 representative.

8 THE ATTORNEY EXAMINER: Okay, ma'am. You
9 responded to the question. Now we will go on to
10 another question.

11 Q. I'm going to show you what has been
12 marked as H to Ms. Givens' testimony. This is a copy
13 of your bill prepared by Duke November 18, 2010, with
14 a due date of December 8, 2010.

15 A. Okay.

16 Q. And this bill reflects your payment of
17 \$175 on the December bill.

18 A. The December bill, yes.

19 Q. Okay. You call it the December bill
20 because that's the due date.

21 A. Yes.

22 Q. Okay. This bill reflects the \$175 you
23 just talked about under the winter rule to get your
24 service restored, correct?

25 A. Yes.

1 Q. It also reflects they were going -- Duke
2 was going to take the balance of 739.61 over time,
3 correct?

4 A. The forced agreement, yes.

5 Q. I understand you say it's forced, but
6 Duke agreed to, just like the winter rule requires,
7 \$175 down and the balance over time, correct?

8 A. Yes.

9 Q. And then Exhibit I to Ms. Givens'
10 testimony, this is your bill generated by Duke
11 December 21, 2010 with a due date of January 11,
12 2011, correct?

13 A. Yes.

14 Q. And this bill now has a disconnect
15 notice, correct?

16 A. Yes.

17 Q. And this bill reflects your one payment
18 of \$100 you talked about earlier, right?

19 A. Yes. On December 3.

20 Q. No other payments, correct?

21 A. \$175 in October; December, 100, yes.

22 Q. Okay. And in November, which was going
23 to be my next question, in November 2010 you did not
24 make any payments to Duke Energy, did you?

25 A. We already clarified that.

1 Q. No, we didn't. November 2010 you didn't
2 make any payments to Duke Energy, did you?

3 A. No.

4 Q. Okay. So the payments that you made in
5 2010, calendar year 2010, were the \$150 in June.

6 A. Uh-huh.

7 Q. The \$175 in October and the \$100 in
8 December, correct? Payments that you made, not
9 credits.

10 A. Yes.

11 Q. Okay. And then the one credit you
12 received was \$271, and that was back in August 2010.

13 A. Argumentatively you say in August because
14 I was told it would be September, yes.

15 Q. Just want to try to figure this out.

16 A. Uh-huh. There is a payment every
17 other --

18 Q. Ma'am, there's no question.

19 THE ATTORNEY EXAMINER: There's no
20 question.

21 Q. And you did not make any payment to Duke
22 in January of 2011, did you?

23 A. No.

24 Q. And I'm going to show what has been
25 marked as Exhibit G, which is a copy of your bill

1 generated by Duke on January 26, 2011, with a due
2 date of February 17, 2011; is that correct?

3 A. Exhibit J.

4 Q. I'm sorry, I said G. J is correct.

5 A. Uh-huh. For February, my February bill
6 is showing that I didn't pay anything in January,
7 yes.

8 Q. Okay. Fair enough.

9 A. Now, I'm not --

10 Q. The next bill is Exhibit K, which was
11 prepared by Duke on February 22, 2011, with a due
12 date of March 16, 2011, correct?

13 A. That's my March bill, yes.

14 Q. And then your March bill has a disconnect
15 notice on it, right?

16 A. It does.

17 Q. The March bill, as you refer to it,
18 reflects your one payment of \$50 that you made in
19 February, correct?

20 A. Yes.

21 Q. And that's all you paid in February of
22 2011, correct?

23 A. Along with the motion I put, yes. Yes.

24 Q. Let's go on to your next bill, Exhibit L.
25 This is your bill prepared by Duke on March 23, 2011

1 with a due date of April 14, 2011, correct?

2 A. Yes.

3 Q. Okay. And this bill also has a
4 disconnect notice, correct?

5 A. Yes.

6 Q. Since this bill was generated on
7 March 23, it accurately reflects that you did not
8 make any payments to Duke Energy from March 1 through
9 March 23, 2011, correct?

10 A. False. I made a \$50 payment on March 13.
11 And it's actually -- if you go to the end of
12 Ms. Givens' packet, it is actually documented back
13 there as being received.

14 Q. Are you sure it wasn't made April 13,
15 2011?

16 A. 3/13.

17 Q. Do you have proof of the payment?

18 A. You're holding it. Go to the last page.

19 Q. Just for the record, you're looking at
20 the financial history attached as Exhibit N to the
21 testimony of Cynthia Marie Givens.

22 A. \$50 payment on March -- February 21,
23 because in my packet it has something different.
24 Even in this packet it doesn't have the \$1,012.

25 Q. We're not there yet, ma'am. You are

1 trying to show me where you supposedly made a \$50
2 payment on March 13, 2011.

3 A. I did.

4 Q. You said it's reflected here in Exhibit
5 N, correct?

6 A. It is reflected on my packet.

7 Q. Would you like to get your copy and show
8 us?

9 A. Yes, I would.

10 Q. To make the record clear, you have now
11 gone and picked up your copy of the direct testimony
12 of Cynthia Marie Givens that Duke served on you last
13 week, correct?

14 A. Yes.

15 Q. Okay. Show me in your copy where there's
16 the payment of \$50 made in March 2011.

17 A. It's on April 14.

18 Q. Okay, fair enough.

19 A. Actually, showing both \$50 payments that
20 I made, but you put them both in April.

21 Q. But you're now saying you made them in
22 March, even though you have no proof you made them in
23 March.

24 A. You are showing two \$50 payments in the
25 month of April on the same day.

1 Q. Okay.

2 A. I made a \$50 payment in April and a \$50
3 payment in March, but you're showing them both in
4 April.

5 Q. But as you sit here today, you have no
6 proof you made a \$50 payment in March, other than you
7 testified to it.

8 A. Yes, I do. It's on my card statement.

9 Q. But you don't have that here.

10 A. No, because I was going by this. Yes, I
11 do. I do have it.

12 Q. I'm asking the questions. You can
13 testify later.

14 MS. WILEY: Can I get it?

15 THE ATTORNEY EXAMINER: Sit down, ma'am.

16 Q. Let's go to Exhibit M. Exhibit M is a
17 copy of your bill generated by Duke on April 21,
18 2011, with a due date of May 16, 2011.

19 A. Yes, the bogus bill.

20 Q. You say "the bogus bill." Let's go
21 through it. Exhibit M reflects the credits that you
22 testified to, 175, 250, 157, and 430, correct?

23 A. There it is, the \$50 payment.

24 THE ATTORNEY EXAMINER: Yes or no, ma'am.

25 A. Yes. But that \$50 payment is included in

1 the 430.

2 Q. I agree. That's my point exactly. You
3 testified to a payment of \$380, which we'll get to.

4 A. Uh-huh.

5 Q. Then you made the \$50 payment.

6 A. No. I made the \$50 payment first on the
7 13th. Then I made the \$380 payment on the 26th.
8 See, you have that. \$380 payment on the 26th of
9 March. You have that. But the \$50 payment was made
10 on March 13 before this.

11 Q. So you're telling me you made another \$50
12 payment in April?

13 A. You're mixing up my words.

14 Q. I'm asking.

15 A. On March 13 I made a \$50 payment. On
16 March 26, I made a \$380 payment. You have the
17 \$380 payment for March 26 stated right here, but on
18 the bill included in everything you have a \$430, I
19 think it is, \$430 inclusive on that bill. So the \$50
20 was paid, but it was paid on the 13th. It wasn't
21 paid on the -- otherwise, this would say 430 instead
22 of 380. I do have the receipt for this, and it's --

23 Q. You agree 380 plus 50 is 430?

24 A. Yes.

25 Q. So if you made a payment of \$380 after

1 March 23, 2011 and a \$50 payment --

2 A. Before.

3 Q. No, after. That would correctly reflect
4 as a \$430 payment on your bill generated April 21,
5 2011.

6 THE WITNESS: How do I answer that? He's
7 twisting it.

8 THE ATTORNEY EXAMINER: Answer yes or no.

9 Q. What's your answer?

10 A. Say it again.

11 Q. Let me ask it this way. Have you been
12 given -- isn't it true, I should say, that you've
13 been given credit from Duke for all payments that
14 you've made?

15 A. Of course not.

16 Q. Wait. Hold on. You're telling us you
17 made payments to Duke you have never been given
18 credit for?

19 A. Oh, wait a minute. Wait a minute. Let
20 me rescind that. According to what we are going
21 through right now with the \$50 payment thing, to
22 answer that question, yes, because you're trying to
23 say that I didn't --

24 THE ATTORNEY EXAMINER: It's a simple
25 question. All you have to do is answer yes or no.

1 You can respond to his question.

2 Q. Okay. Let's maybe set aside the issue of
3 time. I don't want to argue with you any longer
4 whether it was March 13 or April 14. As you sit here
5 today, isn't it true you have been given credit by
6 Duke Energy for all payments you've made to Duke
7 Energy? It's a yes or no question.

8 A. And I'm solely going on this page here.

9 Q. I'm not asking you to go on any paper.
10 I'm asking you, as you sit here -- and you're the
11 Complainant. I'm trying to find out what your case
12 is about and trying to get to the facts. As you sit
13 here today, isn't it true that Duke Energy has given
14 you credit for every payment you made to the company?

15 A. Yes. But not on the correct dates.

16 Q. Fair enough. You can argue that later.
17 Isn't it also true that Duke has given you credit for
18 every HEAP credit you were eligible for?

19 A. Yeah. It's in here.

20 Q. Yes, you said?

21 A. Yes.

22 Q. And Duke Energy has also given you credit
23 for every other credit that you were otherwise
24 eligible for from SELF, or whatever the organization
25 is called.

1 A. No, I don't know because I don't know all
2 the credits that I qualified for, for SELF or any
3 other agency for Duke.

4 Q. You testified earlier, ma'am, about the
5 credits you were entitled to by SELF, correct, at the
6 end of March 2011?

7 A. Yes.

8 Q. You went and met with whatever her name
9 was.

10 A. Yes.

11 Q. And aren't all of those credits reflected
12 by Exhibit M to Cynthia Marie Givens' testimony?

13 A. Plus my payments?

14 Q. I'm not asking about your payments. I'm
15 asking about credits.

16 A. Yes, the credits they gave me.

17 Q. Are there any credits you claim you
18 should have gotten that are not reflected on your
19 Duke Energy bills?

20 A. I don't -- I don't know what other
21 credits I would qualify for.

22 Q. Okay. So the answer is no?

23 A. Okay. Say it one more time.

24 Q. Let me see if I can ask it this way.
25 You're not claiming that Duke failed to give you

1 credit for something that you were entitled to,
2 whether it was from HEAP, SELF, the Ohio Department
3 of Development or somewhere else.

4 A. No, the payments are there.

5 Q. Fair enough. Thank you. Now, you have
6 made some passing references to believing that your
7 bills from Duke Energy are incorrect and that you
8 thought it was more appropriate that you pay \$50 a
9 month.

10 A. Yes.

11 Q. Okay. Yet do you have any basis, any
12 facts to support that testimony about your actual
13 kilowatt usage of electricity or your actual cubic
14 feet of gas usage at your residence?

15 A. No.

16 Q. So you've never measured your usage of
17 electricity or gas, correct?

18 A. I don't know how to.

19 Q. Okay. And just to be clear, you've never
20 done it. You have no evidence to present today that
21 would show that any of your bills incorrectly read
22 your meters with respect to electricity or gas.

23 A. Yes. I have shown that in the March
24 bill.

25 Q. The March bill. How much in

1 electricity -- you're talking about because you think
2 you were billed during the time you were
3 disconnected.

4 A. I don't have to think that. It's stated
5 on the bill. I was billed for usage when it was
6 disconnected.

7 Q. Actually, isn't it true you were
8 disconnected on March 24, 2011?

9 A. No.

10 MR. McMAHON: I'd like the witness to
11 answer without looking at some -- I don't know what
12 she's looking at.

13 THE ATTORNEY EXAMINER: Can you provide
14 an answer to that, ma'am?

15 A. The subpoenas went out on the 22nd. I
16 was disconnected on the 23rd, the day after the
17 subpoenas came out.

18 Q. How do you know that?

19 A. Because I looked at the -- I knew
20 something had happened because you all came and
21 turned it off.

22 Q. Let me see if I can break this down. You
23 agree you were not disconnected on March 22, correct?

24 A. No, I wasn't.

25 Q. So you agree with me you were not

1 disconnected that day. You said no and then stated,
2 so I was a little confused.

3 A. The 23rd is when we had no power.

4 Q. Now, when they turned it off on the
5 22nd --

6 A. No, they didn't turn it off until the
7 23rd, the day after the subpoenas. The subpoenas
8 were issued the 22nd. The next day I was off.

9 Q. Other than the issue about that you think
10 you were improperly billed for a couple days of
11 electric in March 2011 --

12 A. I don't have to state that, that's on the
13 bill.

14 Q. You have no other evidence to support
15 your claim that you have been overbilled with respect
16 to your usage, either gas or electric, correct?

17 A. I have made numerous requests for
18 information from Duke Energy.

19 Q. If you would just answer my question. As
20 you sit here today, you have no evidence to support
21 that claim, do you?

22 A. No; because you all didn't give it to me.

23 Q. You've never independently checked your
24 meter.

25 A. I don't know how, no.

1 Q. The answer to my question, you haven't
2 done it.

3 A. No.

4 Q. During some of your testimony it appeared
5 when you were talking about the \$25 reconnection fee
6 and \$45 deposit you were told about in March 2011 --
7 do you remember those numbers?

8 A. Yes.

9 Q. It appeared that you claim that Duke
10 billed you twice for those items. Is that what you
11 are saying?

12 A. Yes.

13 Q. Okay. I will go back through a couple of
14 these bills. Let me show you what you've already
15 acknowledged, Exhibit M. That's your bill, what you
16 refer to as your May bill, a due date of May 16,
17 2011, right?

18 A. Hold on.

19 Q. I'm showing it here. You see the
20 reconnect charge of \$25 and a security deposit of
21 \$45. Do you see those two?

22 A. I do.

23 Q. Do those items appear on any other bills
24 in the April, May, March 2011 time frame?

25 A. Yes.

1 Q. Where?

2 A. This is where I get slammed because, you
3 see, this is in your all system. On the March
4 bill --

5 Q. So you're looking at Exhibit K to Cindy
6 Givens' testimony.

7 A. On the March bill it says a deposit of
8 \$40 and a payment of \$730 is required to reconnect
9 services.

10 Q. Let me -- just to make the record clear,
11 you're not looking at the amount due at the bottom of
12 the bill. You're looking at the boxed area in the
13 middle of the bill.

14 A. Yes.

15 Q. My question, what other bill were you
16 charged \$25 and \$45 more than once as you now claim?

17 A. When did we make it? When I called on
18 the 26th and spoke to the customer service person,
19 the customer service person said that I had to pay
20 \$730.11, plus \$50, not \$40, a \$50 deposit, plus a
21 \$25 reconnection fee, which totaled 805.11 per Cindy
22 Givens. That was her notation in the record, and
23 they can't change it or anything else. So in the
24 record that you all never gave to me, even through
25 subpoenas and everything else I requested, and I

1 still --

2 THE ATTORNEY EXAMINER: Ma'am, you are
3 not being responsive to the question. He's asking
4 about charges on the bill.

5 Q. You claim you were charged the \$25 and
6 \$45 twice. I see it on Exhibit M, which you've
7 already confirmed. I'm asking you to show me another
8 bill from Duke that shows that you were charged those
9 items again.

10 A. It was included in the final bill. Now,
11 with the \$1,012 --

12 Q. What final bill?

13 A. Where the \$1,012 were paid, that
14 reconnection fee and deposit was inclusive into that
15 amount.

16 THE ATTORNEY EXAMINER: He asked what was
17 the final bill, ma'am.

18 THE WITNESS: That would be the May 16,
19 2011 bill.

20 Q. That's the one we are looking at.

21 A. All of these amounts.

22 Q. I'm not talking about payments that you
23 made. I'm asking where you were charged by Duke. Do
24 you understand the difference between a credit and a
25 charge, right?

1 A. Yes, I do.

2 Q. The credits are the payments and the
3 numbers down here are charges by Duke.

4 A. See, this is where I get hung at.

5 THE ATTORNEY EXAMINER: Answer the
6 question. We are talking about charges.

7 A. Yes. Yes, I was charged when I made the
8 phone call in March, on March 26 when I made the
9 phone call. On March 26 --

10 THE ATTORNEY EXAMINER: You are referring
11 to Exhibit N?

12 THE WITNESS: No, I'm not. March, March.

13 THE ATTORNEY EXAMINER: I want you to
14 answer the question about the charges.

15 Q. The bill was prepared April 21. This
16 would be the next bill that comes out after the
17 telephone call you are talking about.

18 A. Yes.

19 Q. The next bill that comes out, Exhibit M,
20 shows the \$25 reconnection charge and the \$45
21 security deposit, correct?

22 A. Yes.

23 Q. And then you were never charged those
24 items again, were you?

25 A. Yes.

1 Q. Where?

2 A. In your system on the customer service
3 screen that Ms. Cindy Givens put on there that was
4 read to me on March 26. So, yes, it was in that
5 system and in your system --

6 THE ATTORNEY EXAMINER: I think he's
7 talking about a bill, ma'am.

8 A. On paper, no.

9 Q. So there are no bills from Duke Energy
10 that show that you were charged more than once for
11 the \$25 reconnection fee and \$45 deposit in March,
12 April, or May 2011.

13 A. Yes, there is, but I'm not privileged to
14 that other information, even though you requested it.
15 So yes, in your system it's documented there, but
16 here on this paper or any other papers, bills, when I
17 say papers, no.

18 Q. Okay.

19 A. Except for in the box in March.

20 Q. So we have nothing here today that shows,
21 you have no documentary evidence that shows you were
22 charged twice for those items.

23 A. Yes.

24 Q. You do? Where is the piece of paper that
25 shows it?

1 A. In your system.

2 Q. That's not my question. Do you have
3 something here today that shows you were charged
4 twice for those items?

5 A. No.

6 Q. Okay. And today is May, what is it,
7 12th, and we have all the bills up until the one due
8 May 16, 2011, correct?

9 A. Say that again, please.

10 Q. We have all of your bills through the one
11 that is due May 16, 2011, right?

12 A. With inaccurate amounts, right.

13 Q. I know you keep saying that. Out of all
14 these bills, Exhibits A through M attached to Cindy
15 Givens' testimony, you can't point to any double
16 charges for those \$25 and \$45 charges.

17 A. Yes, I can because they are inclusive.
18 But here on paper, no.

19 Q. I think we made the point.

20 MS. WILEY: He twisted just everything --

21 THE ATTORNEY EXAMINER: No, ma'am, you
22 can't.

23 Q. Now, Exhibit 13, ma'am, right here, your
24 Exhibit 13, you appear to take issue with the fact
25 that the document does not reflect all of your

1 payments. Do you recall your testimony?

2 A. Yeah, I do.

3 Q. Let me just be clear here. This is a
4 document that was printed in November of 2010, right?

5 A. November 8 to be exact.

6 Q. November 8, 2010.

7 A. Which I didn't get it till February 14.

8 Q. Okay. That's because it was in the
9 course of discovery in this case.

10 A. Uh-huh.

11 Q. Would you agree with me that it's
12 impossible for the document from November 8, 2010 to
13 reflect payments you made in December 2011,
14 February 2011, March 2011? Would you agree with
15 that?

16 A. Yes.

17 MS. WILEY: Excuse me. Will I have the
18 opportunity to readdress?

19 THE ATTORNEY EXAMINER: Redirect will
20 come when he's done with cross.

21 MR. McMAHON: That's all I have at this
22 time.

23 THE ATTORNEY EXAMINER: Now is redirect.
24 You may respond to what he said on cross, but only
25 what he said on cross. Go ahead please.

1 MS. WILEY: Ask him the questions?

2 THE ATTORNEY EXAMINER: No, you don't ask
3 him. You respond. You can make a narrative response
4 as your testimony on direct was a narrative. You can
5 now present a narrative on redirect. I want you to
6 focus that on what he said in cross-examination and
7 not add anything extra.

8 MS. WILEY: Okay. Can I get my papers?

9 THE ATTORNEY EXAMINER: Yes, you can come
10 up and refer to the papers.

11 - - -

12 REDIRECT TESTIMONY

13 MS. WILEY: In regards to the payment
14 history that Mr. McMahon is mentioning throughout all
15 of this, it is inaccurate and deceitful.

16 THE ATTORNEY EXAMINER: Let's leave the
17 characterizations out, ma'am. You can say it's not
18 accurate. And you are referring to what now?

19 MS. WILEY: I am referring to the
20 untitled document that this is supposed to be.

21 THE ATTORNEY EXAMINER: What is it marked
22 as?

23 MS. WILEY: Complainant Exhibit 13.

24 THE ATTORNEY EXAMINER: Now go ahead.

25 MS. WILEY: This request for all

1 documentation was made from October all the way up to
2 the subpoena date. When we went to the hearing,
3 Mr. McMahon stated in the hearing --

4 MR. McMAHON: Objection, she's talking
5 about the settlement conference.

6 MS. WILEY: The settlement conference.

7 THE ATTORNEY EXAMINER: You can't bring
8 up statements from the settlement conference.

9 MS. WILEY: Which is what was presented
10 then as far as a payment history, and, of course,
11 it's not reflective of the current payment history.
12 It started on November 8, 2010, and I was trying to
13 portray --

14 MR. McMAHON: Objection.

15 MS. WILEY: He was not giving an accurate
16 description of my payment for the time period of what
17 we were in. So, of course, if this is dated for
18 November 8 and we're in February 2011, of course it's
19 not going to include my February or December payment
20 on there to actually show that the payment was made
21 instead of trying to make me look like a bad person
22 that don't pay their bills.

23 Exhibit 12, this is the deposit for --

24 THE ATTORNEY EXAMINER: Complainant's
25 Exhibit 12, correct?

1 MS. WILEY: Yes. It's dated May 4. That
2 would be the \$50 deposit --

3 MR. McMAHON: Objection, beyond the scope
4 of cross.

5 MS. WILEY: No, it's not, because in
6 March.

7 THE ATTORNEY EXAMINER: Limit it to what
8 you were talking about, what you were cross-examined
9 on.

10 MS. WILEY: Right. Right, he examined me
11 to make a comment on the March bill. And in the box
12 it said I had to pay a \$40 deposit plus \$730. I'm
13 looking at their exhibit in her direct statement,
14 Exhibit No. K, which in here is Exhibit 9, your
15 Exhibit 9 here.

16 THE ATTORNEY EXAMINER: Complainant's
17 Exhibit 9?

18 MS. WILEY: In the direct.

19 THE ATTORNEY EXAMINER: Exhibit K
20 attached to Ms. Givens' testimony; is that correct?

21 MS. WILEY: Yes. And this is the March
22 bill or the payment. In the box, in the middle of
23 the March bill, which he had me read out loud, which
24 I did, it said the deposit in the amount of \$40, plus
25 the required \$730.11 in order to have my services

1 restored.

2 Now, this is what this says on paper in
3 the March bill, which is the same as what is stated
4 here. He said that nowhere else.

5 THE ATTORNEY EXAMINER: Here is Exhibit
6 K.

7 MS. WILEY: Exhibit K, I'm sorry. He
8 said that nowhere that a deposit is stated, and
9 that's not true. It is stated right here. It is
10 also stated in their system. When I called to make
11 the payment -- and I'm not privileged to what they
12 have in their database -- but this is what the
13 customer service person told me I had to pay, a \$50
14 deposit inclusive with the \$730.11, plus the 25
15 reconnection fee.

16 That wasn't billed later like the May
17 bill is showing. That was inclusive and made up the
18 original agreement of \$805.11 that I had to pay to
19 restore my services, but that is in their system.

20 Now, the subpoena that I served on Diane
21 Kuhnell, who is not here, nor is any of the
22 information that I requested from her, which isn't
23 here, should have been forwarded to me so that I
24 could examine that, but she totally ignored the
25 subpoena, even if she was the right or wrong person.

1 MR. McMAHON: Objection, beyond the
2 scope. She is now arguing prehearing discovery
3 issues.

4 THE ATTORNEY EXAMINER: Yes. He didn't
5 cover that on cross. You have to go through the
6 redirect and limit it to what he said on cross.

7 MS. WILEY: Okay. What I had to work
8 with and what this March bill said is that it's
9 stated I have to pay \$40.

10 THE ATTORNEY EXAMINER: I think we
11 covered that, ma'am. You already stated that.

12 MS. WILEY: Okay. So he twisted the
13 words for the March bill and asked is it stated
14 anywhere else, this \$45 security deposit.

15 THE ATTORNEY EXAMINER: What are you
16 looking at now, ma'am? That's Exhibit M?

17 MS. WILEY: Exhibit M.

18 THE ATTORNEY EXAMINER: Attached to
19 Ms. Givens' testimony.

20 MS. WILEY: And Complainant's Exhibit 11.

21 THE ATTORNEY EXAMINER: They are the same
22 thing, correct?

23 MS. WILEY: They're the same thing, yes.

24 THE ATTORNEY EXAMINER: Just make your
25 statement.

1 MS. WILEY: Yes, but it's a different
2 amount. It's saying a security deposit of \$45 and a
3 reconnection fee of \$25 needs to be paid, along with
4 my current bill that was already paid. That was
5 inclusive in the \$805.11 mandatory payment that I had
6 to pay in order to restore the services.

7 Now, because I paid the \$1,012 extra, I
8 mean, the HEAP organization helped me pay that, but
9 together we paid that, that was extra. That was to
10 put me over, to help bring me over the amount that
11 was required that they had said. They set that
12 amount in their system for me to pay. And it states
13 right here on the March bill going back to the bill
14 that was talking about before my Exhibit No. 9, that
15 the \$40 --

16 MR. McMAHON: Objection, repetitive.

17 MS. WILEY: But what was actually paid
18 was the \$50 deposit, which here they only applied --

19 THE ATTORNEY EXAMINER: What are you
20 holding up now, Ma'am?

21 MS. WILEY: This is Complainant
22 Exhibit No. 12, and this is in regard to the \$45
23 payment that was made for the deposit for the March
24 bill that was made in March, or whatever, but it was
25 \$50, not \$45, even though -- yeah, it was \$50 and not

1 \$45, so in regard to that, that's wrong.

2 And going back to Mr. Firich, he
3 mentioned Mr. Firich's statement, no, that's not --

4 THE ATTORNEY EXAMINER: What he covered
5 on cross now, you got to stick to that. I don't
6 think he was talking to Mr. Firich when he was --

7 MS. WILEY: My question about the
8 customer service person on or about the 13th of
9 September -- because that's when the letter was
10 dated, even though the postmark says September 16,
11 that's when the letter was dated -- I called the
12 customer service person --

13 MR. McMAHON: Objection. This is
14 repetitive and beyond the scope of cross.

15 MS. WILEY: You said anything we talked
16 about on cross. He brought that up. He brought up
17 the September bill and asked me if the September
18 bill, was those amounts true when I got the bill and
19 stuff. That's relevant.

20 THE ATTORNEY EXAMINER: I'm talking about
21 what you covered on cross, if you have something to
22 say about the specific question he asked on cross
23 about that bill.

24 MS. WILEY: Yes. On Exhibit E for
25 Ms. Givens' direct testimony, and --

1 THE ATTORNEY EXAMINER: I think he was
2 asking about it, Exhibit E. I know that you have
3 duplicates in there marked on your own exhibits, but
4 why don't we just save time. Just direct your
5 testimony towards the one he was using to
6 cross-examine you.

7 MS. WILEY: Can I ask you this? All the
8 memos we already --

9 THE ATTORNEY EXAMINER: You have to
10 present your testimony now.

11 MS. WILEY: Mr. McMahon stated that on
12 August the 9th, I believe it was August the 9th, that
13 the \$271 was applied to the account, that on August 9
14 that was applied to the account, even though August
15 the 20th I believe is when Mr. Firich stated the
16 monies was applied to the account.

17 MR. McMAHON: Objection, mischaracterizes
18 Mr. Firich's testimony.

19 MS. WILEY: Isn't that on the time line?

20 MR. McMAHON: And it is beyond the scope
21 of cross.

22 MS. WILEY: I'm trying to determine --

23 THE ATTORNEY EXAMINER: Do you have the
24 time line?

25 MR. McMAHON: I guess the other thing,

1 your Honor, there is just simply no dispute
2 whatsoever that Ms. Wiley got the \$271 HEAP credit.
3 I don't understand why this is even --

4 MS. WILEY: The dispute that I --

5 MR. McMAHON: She admitted under oath
6 that she got the credit. The timing, whether it was
7 August 9, 10, 11, 12, it's irrelevant. It does not
8 have any bearing to her complaint against Duke
9 Energy. I don't know why we are spending an hour
10 going through her testimony and Mr. Firich's
11 testimony on the subject.

12 THE ATTORNEY EXAMINER: I'll allow you to
13 take a bit more time to make a statement on redirect.
14 Did you find the time line? Do you have it?

15 MS. WILEY: I do.

16 THE ATTORNEY EXAMINER: Go ahead and
17 testify.

18 MS. WILEY: Here Mr. Firich on the
19 Complainant's Exhibit 15 states it was on the 9th
20 that Duke Energy made the \$271 payment in their
21 account in your documentation, and even on that
22 August bill, it says that the amount was -- and
23 through my conversations with them -- that it was
24 applied on the 12th of August, so we have
25 discrepancies on dates.

1 MR. McMAHON: Objection. It
2 mischaracterized both the exhibit and Ms. Firich's
3 testimony. He testified that on August 9 they
4 advised Duke Energy she had been accepted. He did
5 not know the exact date that Duke credited her bill.

6 MS. WILEY: What I was trying to say,
7 since we're playing with dates, as far as when the
8 amount was applied for, it would be most relevant
9 that when I spoke to the representative on or about
10 September 13 when she said she saw it in the system
11 but it had not been applied to my account, that that
12 was an accurate statement that she made. At that
13 point it had not been applied to my account.

14 THE ATTORNEY EXAMINER: We are going to
15 go on to another point, ma'am, because we have your
16 testimony that it was applied to the account, and
17 you've read into the record what Mr. Firich's time
18 line was.

19 MS. WILEY: Okay. Going back to all the
20 bills that Mr. McMahon has stated, disconnection
21 notices at the top of the bills and everything, yes,
22 because they stopped sending me reminder fees. They
23 stopped sending the reminder fees, which cut out two
24 weeks of time all their other customer service
25 persons get. We went from bill to disconnection

1 notice, from bill to disconnection notice to
2 disconnection notice.

3 If you see from January all the way up
4 until the month of May, all the way up to the month
5 of April, actually, it's just the bill, the regular
6 bill with no notation at the top, and then a
7 disconnection notice at the top. But for the month
8 of May of this year 2011 is the first one this year
9 that actually says reminder notice. So they cut out
10 that extra two weeks. It could have been
11 retaliatory, discriminatory, or whatever.

12 MR. McMAHON: Objection, move to strike.

13 THE ATTORNEY EXAMINER: Let's not
14 characterize.

15 MS. WILEY: Okay. But they did cut out
16 the reminder fee, the reminder notice which would
17 allow me --

18 MR. McMAHON: Objection, your Honor.
19 There's no two week reminder notice under any tariff
20 or rule enacted by the Commission. Ms. Wiley is
21 guessing at the billing practices and applicable
22 rules.

23 MS. WILEY: Ms. Givens, in her
24 statement --

25 THE ATTORNEY EXAMINER: You will have an

1 opportunity to cross-examine her on her statement.
 2 What we are talking about now is redirect, which has
 3 to be focused on what he said on cross-examination.

4 MS. WILEY: Okay. Well, the May 2011
 5 bill, which did not reflect the usage of my service
 6 for March 22 to March 24, my service was
 7 disconnected, but yet it's showing usage for two days
 8 which it was disconnected.

9 You can see there is a discrepancy
 10 because there's two entries for electric and only one
 11 entry for gas, and since I don't turn off or on my
 12 power, somebody did, so it's evident that my service
 13 was turned off, yet they have me down for usage for
 14 the days that my service was turned off.

15 As far as the gas for March 22nd to
 16 April 20, it is not an accurate account of my bill
 17 because from March 23 to March 28 I was disconnected.
 18 I did not have services, and we did not live -- we
 19 weren't staying at the apartment. We were staying
 20 with my parents at that time, so there was nothing on
 21 except for the refrigerator, yet that's showing usage
 22 for that time as well. So, no, that's not an
 23 accurate depiction of my usage nor my record.

24 All my bills except for the December
 25 bill, all my bills from October to present and which

1 we went over shows an inclusive bill of my old bill
2 as well as my new bill, which it's the current amount
3 due, which is the whole bill inclusive, not
4 differentiating the old bill from the new bill but
5 everything inclusive, which should have been grounds
6 for me not to be disconnected.

7 MR. McMAHON: Objection, beyond the scope
8 of cross.

9 THE ATTORNEY EXAMINER: Yes, it is beyond
10 the scope of cross now. You have to address what he
11 said on cross.

12 MS. WILEY: August 28 he did give me --
13 my daughter did call Duke Energy. I asked her to in
14 regard to the bill, and, yes, he did give me an
15 unintelligible tape that I can't even play. And the
16 library has several different devices you can play a
17 CD on, and none of them worked for this CD. So I
18 have no idea what that recording was supposed to have
19 been about.

20 If you actually go through, which I did,
21 all of my bills starting from April to the
22 disconnection in October, if you actually go through
23 and do the math for all the bills, you will still see
24 that I was still being charged that \$93 that was
25 carried over for each month in the total amount due,

1 the current amount due, that \$93 was still
2 incorporated into that amount.

3 My notations on each one of my bills has
4 the total bill column and an actual bill column, the
5 actual bill starting from the first month of service
6 in April.

7 THE ATTORNEY EXAMINER: April what year,
8 ma'am?

9 MS. WILEY: 2010, 2010, that was the
10 first month -- I'm sorry, my first bill was in May
11 of 2010. That first bill shows that there was \$93,
12 you know, hanging on there as well as the \$47. But
13 when you look at the usage, the current usage, the
14 back usage and all that stuff and add that up in
15 there, you will have an amount that is -- the total
16 bill is inclusive of the 93 and the actual bill is
17 not inclusive of the \$93. That's not stated on the
18 bill. That's what the bill should be.

19 But if you look through the bills, and
20 that's why I did the math on each one of the monthly
21 payments starting with the first, you can clearly see
22 that the \$93 was incorporated into each of the bills.

23 THE ATTORNEY EXAMINER: We covered that
24 point, ma'am. I see your handwritten notes there.
25 Do you have any other questions you would like to

1 explain he asked on cross?

2 MS. WILEY: That's basically it. That's
3 basically it. You said I can't talk about it.

4 THE ATTORNEY EXAMINER: What are you
5 saying? You have to speak up.

6 MS. WILEY: No, that's it.

7 THE ATTORNEY EXAMINER: Do you have any
8 on recross?

9 MR. McMAHON: No, thank you, your Honor.

10 THE ATTORNEY EXAMINER: Okay. You're
11 excused as a witness, but with this proviso. I am
12 going to make a ruling. There's a motion pending
13 about admissions that were not answered, and what I'm
14 going to do is grant that motion and admit those
15 admissions into evidence in the proceeding. Now, if
16 you have any response now you would like to make
17 about that, then now is the time to do it.

18 MS. WILEY: So I can talk about
19 everything?

20 THE ATTORNEY EXAMINER: No, just the
21 admissions here. That is the questions to you you
22 did not answer that are being admitted in the
23 proceeding, in the record of this proceeding. Now,
24 if you have any response to make about that, now is
25 the time to do it.

1 MS. WILEY: It's my understanding that
2 all of the questions that he has asked me since I've
3 been up here --

4 THE ATTORNEY EXAMINER: No, his written
5 request for admissions. Do you have a copy?

6 MS. WILEY: The interrogatories?

7 MR. McMAHON: The Request for Admissions.
8 Would you like me to mark it as an exhibit?

9 THE ATTORNEY EXAMINER: I hate to
10 interfere with your numbering. What are we up to?

11 MR. McMAHON: Ms. Givens has A through N.

12 THE ATTORNEY EXAMINER: We can mark it as
13 the next.

14 MR. McMAHON: Exhibit O.

15 Would you like me to hand it to
16 Ms. Wiley?

17 THE ATTORNEY EXAMINER: Yes. This is
18 what was sent to you you didn't respond to. It will
19 be admitted into this proceeding. I'm giving you a
20 chance to say something about that.

21 MS. WILEY: Then we have time to go
22 through each and every single one of those questions?
23 Because all of these questions is an admittance to a
24 false statement, and I totally object to every single
25 one of them, as I mentioned before, except for the

1 providing the documents, which I did forward to
2 Mr. McMahon. I did forward those documents to him
3 and to the hearing that we had on February 14, so
4 yes.

5 THE ATTORNEY EXAMINER: Does that
6 conclude your response?

7 MS. WILEY: Oh, no, no, sir. Am I able
8 to go through each one of them?

9 THE ATTORNEY EXAMINER: I would like you
10 to make a response to the entire. You had an
11 opportunity to respond to them to counsel, and as
12 counsel has said, you did not do that. So what we
13 are going to do is admit that document into evidence
14 now. You made a statement. You said all of those
15 were false statements according to you.

16 MS. WILEY: They are leading and false
17 statements, yes. The first one says, Do I admit --

18 THE ATTORNEY EXAMINER: I don't want to
19 go through each and every one of them, ma'am.

20 MS. WILEY: Okay. For the first one,
21 yes, I have service.

22 THE ATTORNEY EXAMINER: There are some 46
23 there. Okay, and you're saying that they're all
24 false statements.

25 MS. WILEY: Except for relevant ones such

1 as the first one that asked me do I live at 5370
2 Aster Park Drive, Apartment 909, Hamilton, Ohio,
3 45011, yes. I established service there on April 3;
4 and, yes, Duke Energy is the supplier for that. But
5 here --

6 MR. McMAHON: Excuse me, your Honor, I
7 thought you indicated you had granted the motion to
8 have those admissions deemed admitted because
9 Ms. Wiley failed to respond. If that is the case, I
10 think it is inappropriate for her now to respond.
11 The time has come and gone, and you already granted
12 the motion.

13 THE ATTORNEY EXAMINER: I agree.

14 MS. WILEY: You are saying they're in the
15 record?

16 THE ATTORNEY EXAMINER: You made a
17 response in the record. That is what will be
18 admitted in the record at this time.

19 MS. WILEY: That all the records are true
20 and accurate when I made it clear that the billing
21 amounts are not true and accurate?

22 THE ATTORNEY EXAMINER: No, ma'am. What
23 I need from you, and I obtained your response, you
24 had an opportunity beforehand during discovery to
25 respond to each of those questions.

1 MS. WILEY: No, not directly.

2 THE ATTORNEY EXAMINER: That will be
3 admitted into evidence, that document, at this time.

4 MS. WILEY: So this is saying that I
5 admit that each bill is a true and accurate account
6 of my billing history for where I am at when I made
7 this clear in my motion and statements here that they
8 are not.

9 THE ATTORNEY EXAMINER: What I'm saying
10 to you, that document will now be admitted under the
11 rules of the Commission 4901-1-22, I believe, of the
12 Ohio Administrative Code. You didn't answer when you
13 were supposed to during discovery, and now he has
14 moved for the admission of that, and now that motion
15 has been granted.

16 MS. WILEY: When did I have the
17 opportunity to address this? You --

18 THE ATTORNEY EXAMINER: That was sent to
19 you during discovery, ma'am.

20 MS. WILEY: And I responded by a motion
21 in regards to this. I just didn't do anything. I
22 responded with a motion objecting to all 46 of these.
23 I responded to that in a motion.

24 THE ATTORNEY EXAMINER: I believe that
25 was covered in a motion.

1 MR. McMAHON: That was covered by the
2 Commission's entry dated March 23, 2011. I have a
3 copy, finding 16.

4 THE ATTORNEY EXAMINER: Go ahead. You
5 can read it into the record.

6 MR. McMAHON: 16 starts off, With regard
7 to Complainant's motion for protective order, and the
8 last sentence reads, "Accordingly, Complainant's
9 motion for protective order should be denied."

10 THE ATTORNEY EXAMINER: That's what I
11 remember.

12 MS. WILEY: So when you were speaking of
13 a protective order, you were speaking about those
14 interrogatories?

15 THE ATTORNEY EXAMINER: You had asked for
16 a protective order covering those interrogatories,
17 that you should not be required to respond, I
18 believe.

19 MS. WILEY: Requested for an objection.

20 THE ATTORNEY EXAMINER: The ruling was
21 that that was denied.

22 MS. WILEY: I requested an objection to
23 those interrogatories because they had already been
24 addressed and they were false and misleading
25 statements to that. So when you said a protective

1 order, which Mr. McMahon had requested a protective
2 or against me and pertaining to Ms. Givens'
3 information --

4 THE ATTORNEY EXAMINER: We are talking
5 about these requests for admissions now.

6 MS. WILEY: I know.

7 THE ATTORNEY EXAMINER: So what I told
8 you, that they were already admitted. They're being
9 admitted now into evidence. I gave you an
10 opportunity to make a response.

11 MS. WILEY: The response that I'm making
12 again --

13 THE ATTORNEY EXAMINER: That you made.

14 MS. WILEY: -- is that they're not true.

15 THE ATTORNEY EXAMINER: All right. That
16 finishes that.

17 MS. WILEY: So this is saying I admit to
18 everything he put in here.

19 THE ATTORNEY EXAMINER: Those questions,
20 those requests for admissions are now being admitted
21 into evidence, that document.

22 MS. WILEY: As an affirmative?

23 THE ATTORNEY EXAMINER: Well, you did not
24 answer them, so under the Commission's rules, the
25 admissions are now admitted and the record is

1 received.

2 MS. WILEY: My goodness.

3 THE ATTORNEY EXAMINER: We will proceed
4 to the company's side of the case. Let's start with
5 the company's side of the case.

6 MR. McMAHON: To be clear, the
7 Complainant has rested her case?

8 MS. WILEY: Have I rested my case? No.

9 THE ATTORNEY EXAMINER: I think we are
10 done, ma'am.

11 MR. McMAHON: Thank you, your Honor.
12 Before proceeding with the Company's case, I move for
13 a directed verdict in light of both the Court's
14 ruling deeming all 46 of the requests for admissions
15 to have been deemed admitted and the admissions by
16 Ms. Wiley on the stand regarding the accuracy of her
17 bills and the information provided by Mr. Firich.
18 There is no dispute here that Ms. Wiley did not pay
19 her bills in a timely manner; that Duke properly
20 disconnected her for nonpayment both in October of
21 2010 and in March 2011; and Ms. Wiley has not
22 sustained her burden of proof that Duke has violated
23 any tariff or any rule or regulation of the
24 Commission, so I would ask to dismiss her case
25 without even having to put on a defense.

1 MS. WILEY: I object to that only because
2 I did make it very clear that the March bill was not
3 a true and accurate account. None of my bills are
4 true and accurate, and we went over the May bill as
5 well showing for service that's reflecting March
6 services that I'm being charged from March 22 to
7 April 20, and we were disconnected from the 23rd of
8 March to the 28th, but on the bill it's showing that
9 I received service during that time, which is a false
10 account. I made that clear.

11 THE ATTORNEY EXAMINER: Okay. Ma'am,
12 I'll take that as your response.

13 What we are going to do is go ahead with
14 the company's side of the case and let the Commission
15 rule ultimately in this matter.

16 MR. McMAHON: Thank you. In that case
17 Duke calls Cynthia Givens to the stand.

18 - - -

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

22 DIRECT EXAMINATION

23 By Mr. McMahon:

24 Q. Could you please give your name and
25 business address.

1 A. My name is Cynthia Givens. My address is
2 139 East Fourth Street, Cincinnati, Ohio 45202.

3 Q. And, Ms. Givens, I've handed what has
4 been marked as Duke Exhibit 1. That's a copy of your
5 direct testimony for these proceedings, correct?

6 A. That's correct.

7 Q. And did you review that testimony before
8 it was filed with the Commission on May 5, 2011?

9 A. Yes, I did.

10 Q. And does that Exhibit 1, is your
11 testimony there true and accurate?

12 A. Yes, it is.

13 Q. And in connection with the preparation
14 and filing of your testimony, did you review
15 Ms. Wiley's account records that are contained within
16 Duke's Case Management System?

17 A. Yes, I did.

18 Q. Okay.

19 MR. McMAHON: At this time we would move
20 for the submission of Duke Energy Ohio Exhibit 1,
21 which is the Direct Testimony of Cynthia Givens and
22 the attachments marked as Exhibits A through N.

23 THE ATTORNEY EXAMINER: Very good. I
24 will reserve ruling on that until after the
25 cross-examination.

1 Now is it time for cross-examination?

2 MR. McMAHON: Your Honor, real quick, I
3 guess since I didn't know exactly what Ms. Wiley
4 would put on in her case, I do have some supplemental
5 questions I think might help facilitate what happened
6 here.

7 THE ATTORNEY EXAMINER: You're not
8 through with direct?

9 MR. McMAHON: I was just filing that. I
10 had some follow-up.

11 THE ATTORNEY EXAMINER: Okay. I thought
12 you were done.

13 MR. McMAHON: Thank you. I apologize. I
14 should have explained that.

15 Q. (Mr. McMahan) Ms. Givens, there's been
16 some questions as to whether Duke properly
17 disconnected Ms. Wiley's electricity and the issue of
18 reminder notices, and I forget the phrase that she
19 used. Not repeating what is already in your
20 testimony, can you explain the disconnection
21 practices and rules that Duke follows?

22 A. The disconnection practices are that a
23 customer must receive a 14-day disconnection notice
24 on their bill, and that is to be followed in the
25 wintertime by a hand-delivered, ten-day disconnection

1 notice.

2 Q. With respect to Ms. Wiley, did Duke
3 ultimately disconnect her services for nonpayment of
4 bills that were more than 60 days past due, 30 days,
5 or what?

6 A. Well, the first disconnection notice was
7 for an unpaid security deposit. That was the first
8 one. The subsequent disconnection notices were for
9 60-day arrears on the regular utility charges.

10 Q. Okay. And when you look at the bills,
11 because I think there's been some confusion here,
12 just any bill, you can start with A, Exhibit A, if
13 you would like, to your testimony, the information in
14 the lower right-hand portion of those bills, that's
15 basically what a customer is charged every month and
16 then reflects any payments or credit, correct?

17 A. That's correct.

18 Q. Okay. What does the information that
19 might appear in any of the bills that have
20 disconnection notices or reminder notices in the
21 middle of the bill, like in the box, what is that
22 information?

23 A. What the information is, like, for
24 instance, on Exhibit A it just told her that a
25 security deposit has been charged to her account, and

1 that's reflected on the bill. That one doesn't
2 include the disconnection notices. That just simply
3 is providing information. That's the area of the
4 bill that we provide specific information that we
5 want to draw the customer's attention to.

6 Q. And that information, the middle of the
7 bill is not always the same information that is
8 reflected at the bottom.

9 A. No, absolutely. That's correct.

10 Q. So when you look at Exhibit B in the
11 middle of the bill, there's a box that talks about
12 you're going to be disconnected if you don't pay the
13 \$140 deposit. That deposit is not reflected down
14 below because it's already been billed on the prior
15 month's bill, correct?

16 A. That's correct.

17 Q. So essentially sometimes you have to go
18 back and forth between the bills to kind of follow
19 the time line.

20 A. Well, the deposit is reflected on the
21 second page of the bill.

22 Q. You're looking at Exhibit B.

23 A. Yes.

24 Q. And what do you mean by that?

25 A. Well, after receiving the first bill,

1 Ms. Wiley called in and set up a payment arrangement
2 on the security deposit. First payment was supposed
3 to be \$47. When that payment was not received, the
4 second bill, Exhibit B, came out and the agreement
5 for the deposit was in default, and that's why there
6 was a disconnection notice on it.

7 Q. Okay. And that's the \$93 balance?

8 A. Well, what it is, the \$140 was the
9 deposit. \$47 was supposed to be paid, which that was
10 the first payment, so then 93 would go into the
11 bucket for the remaining two payments.

12 Once that deposit, an installment of \$47
13 was not paid, the \$93 was applied back to the regular
14 bill and taken out of the agreement, off the payment
15 plan. So then the entire 93 and the 47 adds up to
16 \$140, which is why that is the amount of the
17 disconnection.

18 Q. And that became due immediately.

19 A. Yes.

20 MS. WILEY: Do I object, or wait until
21 they're finished?

22 THE ATTORNEY EXAMINER: What is your
23 objection, ma'am?

24 MS. WILEY: Well, because she said that
25 the \$93 and the \$47, because it wasn't paid --

1 THE ATTORNEY EXAMINER: It has to be an
2 objection. If you have something you want to cover
3 on cross, you can do that. If you have an objection
4 about it is irrelevant or asked and answered, you
5 have to make a specific objection. If you disagree
6 with what she said, then you have to wait and cover
7 it on cross-examination.

8 MS. WILEY: So I don't object, I just
9 wait until she's finished if I disagree with what
10 she's saying?

11 THE ATTORNEY EXAMINER: Okay.

12 Q. Let me ask you this. Ms. Wiley claims
13 that the \$93 that you were just talking about
14 appeared throughout the bills, she was charged maybe
15 more than once. Can you explain that to the Court?

16 A. Well, on the first bill, the \$93 is noted
17 because again the amount -- the deposit was billed on
18 the first bill. It also shows on the first bill,
19 which is Exhibit A, that the \$140 was applied -- was
20 placed on an agreement. The bill is asking for a \$47
21 installment amount and also showing the agreement
22 balance as \$93, because it is anticipating her paying
23 that 47 as agreed upon. So that's why it's on the
24 first bill.

25 On the second bill it's on there because

1 when that \$47 payment or any other payment came
2 toward the bill that was due on May 14, the agreement
3 was removed. So at that point the \$93 that was set
4 aside on the agreement for the deposit was placed
5 back on the total bill.

6 That's why it is reflected, as well as
7 the \$47 that she was supposed to pay, it is all added
8 back together, and that's why it is asked for the
9 total, the 140. After that month, it's not reflected
10 on any other bills.

11 Q. Because it's already been taken care of.

12 A. Well, yeah. It's not on an agreement
13 anymore. Now it's \$140 again.

14 Q. Okay. Ms. Wiley, when she was
15 testifying, she referred to some old bills, some new
16 bills, and some old accounts and new accounts. Has
17 Duke ever finalized an account in her name and set up
18 a new account in her name?

19 A. No. The service was simply disconnected
20 for nonpayment. It didn't become a new account when
21 the service was restored. It was, in essence, the
22 same account. It was just turned back on, and
23 because the winter reconnect order was used, the
24 \$175 set up a payment plan, and then the charges
25 remained on the bill but she was only supposed to pay

1 \$95 a month in addition to the current monthly
2 charges. The 95 goes toward back balance, and then
3 the current charges are to be paid.

4 Just let me say too, when you use the
5 winter rule, you don't have an option. You either
6 have to go on an agreement or on the Percentage of
7 Income Program. You can't not do either. You have
8 to do one or the other.

9 Q. Thank you. Now, Ms. Wiley filed her
10 complaint in this matter I believe in early
11 November 2010; is that right? Does that sound right?

12 A. It does. I believe so.

13 Q. Let me ask you this. When Duke Energy --
14 you testified in your testimony that's been submitted
15 about the disconnection in March 2011. Was that
16 disconnection in any way tied to amounts that
17 Ms. Wiley owed to Duke Energy before November 1,
18 2010?

19 A. No.

20 Q. Could you explain that?

21 A. Well, it was -- it was disconnected
22 because the current charges were not being paid.

23 Q. When you say "current," what are you
24 referring to?

25 A. The charges after the complaint was

1 filed.

2 Q. Okay. For December 2010 and all through
3 January, February, March of 2011?

4 A. Right. Partial payments were made, but
5 the current total charges for each month were not
6 paid.

7 Q. I want to be clear because there's been
8 the suggestion or testimony that Duke disconnected
9 her for nonpayment of the disputed charges. Is that
10 accurate?

11 A. No.

12 Q. Since there was some testimony from
13 Mr. Firich from the Ohio Department of Development --
14 we didn't get into this in your filed testimony --
15 can you explain the HEAP process and how it works
16 within Duke, as far as giving credits to customers'
17 bills, such as Ms. Wiley?

18 A. Well, as I mentioned, once the Ohio
19 Department of Development notifies us that a customer
20 is eligible for HEAP credits, that's when our system
21 goes in and looks to make sure that the account
22 number that is provided is one of our account
23 numbers.

24 And typically when we get the information
25 saying that the customer is eligible and they will

1 make a payment, we -- we apply the credit to the
2 account at that point. We don't wait until they
3 actually physically send money, which could be months
4 down the road. Because they are authorizing, they're
5 eligible for the credit, and we apply the credit at
6 that time.

7 Q. Why does Duke handle the accounts in that
8 manner?

9 A. Simply to allow the customer to have the
10 credit on their account and not have to wait until we
11 actually physically get the money from the Ohio
12 Department of Development. It's done for the
13 customer's benefit.

14 Q. In this case if Duke had waited until, as
15 Mr. Firich said, the Ohio Department of Development
16 sent the money to Duke in November 2010, if Duke
17 waited until then to apply the credit to Ms. Wiley's
18 account, isn't it true she would have been
19 disconnected sooner?

20 A. Yes.

21 MS. WILEY: I object.

22 THE ATTORNEY EXAMINER: What's the
23 objection?

24 MS. WILEY: I object because Ms. Givens
25 isn't acknowledging the agreement that was made in

1 September. So in regard to his questions --

2 THE ATTORNEY EXAMINER: No, that's
3 something you want to cover on cross.

4 Q. Can you explain the bill that's attached
5 as Exhibit M to your testimony, the circumstances
6 surrounding the dates of termination of Ms. Wiley's
7 service and her claim that she was charged two days
8 of electric when she didn't have service? Can you
9 explain that to the Court?

10 A. Yes. The electric service at Ms. Wiley's
11 address was disconnected on March 24, at 2:01 p.m.
12 The gas service was never disconnected, only the
13 electric service, which is why the bill reflects
14 usage between March 22 and March 24. The day of
15 disconnection was March 24 at 2:01 p.m.

16 MS. WILEY: I object.

17 Q. Okay. So then she didn't have electric
18 service from March 24 until March 28, correct?

19 A. That's correct.

20 Q. And Duke didn't charge her for electric
21 service during that time period; is that correct?

22 A. That's correct.

23 MS. WILEY: I object. It's stated on the
24 bill itself that I was charged for two days, which
25 is --

1 THE ATTORNEY EXAMINER: You want to make
2 a note of that, ma'am, and cover it on cross.

3 MS. WILEY: But he's still making this
4 statement, so if it is covered on cross, he shouldn't
5 be making the same statements because you corrected
6 me when I did it.

7 THE ATTORNEY EXAMINER: No, ma'am. Make
8 a note and you will have an opportunity to ask this
9 witness on cross.

10 THE WITNESS: I can clarify that if you
11 like.

12 Q. Sure. Go ahead.

13 A. The bill that went out on March 23 was a
14 bill cycle of February 18 to March 22.

15 MS. WILEY: I was referencing the May
16 bill.

17 A. I'm getting to that. To try to answer
18 your question, February 18 to March 22, the next bill
19 that went out was billing dates March 22, and then
20 for the electric, two days, because it was
21 disconnected March 24.

22 That's why there's a two-day period,
23 because the previous bill went up to March 22. So
24 that's why there's a two-day window and then service.
25 The electric service starts up again when it was

1 reconnected on March 28.

2 MS. WILEY: So you're accounting for two
3 days --

4 THE ATTORNEY EXAMINER: No, ma'am, you
5 have to wait until your turn comes.

6 MS. WILEY: I'm sorry.

7 MR. McMAHON: I think that's all. Thank
8 you.

9 THE ATTORNEY EXAMINER: Off the record.
10 (Discussion off record.)

11 THE ATTORNEY EXAMINER: Ms. Wiley.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Wiley:

15 Q. Ms. Givens, in your testimony on
16 page 5 and page 6, for the question asked, "How are
17 you familiar with the account, the Aster Park
18 account," as I emphasized before, you made the
19 mention DE-Ohio keeps and maintains customer account
20 information in a comprehensive computer database
21 called the Customers Management System, CMS. Can you
22 please read for me the rest of that paragraph?

23 THE ATTORNEY EXAMINER: You have to speak
24 up, ma'am.

25 MR. McMAHON: I'd object. She's asking

1 the witness to read the rest of the paragraph in her
2 offered testimony. That's not a cross-examination
3 question.

4 MS. WILEY: Actually, it is, because here
5 on page 6, Ms. Givens' statement, it says that this
6 system they've had since '93 --

7 THE ATTORNEY EXAMINER: You have to ask a
8 question on cross, ma'am.

9 Q. Does this system keep records, as you
10 stated here, of all incoming calls to any account?
11 Does it keep track of, as you stated here, all the
12 service calls, the customers' calls, the inquiries,
13 the turn on/turn off, disconnection notices,
14 billings, account status, history and payment
15 arrangements? Does the new system you all had since
16 '93, does it account for all of those?

17 THE ATTORNEY EXAMINER: Okay. We have
18 the question.

19 Can you answer that?

20 THE WITNESS: Yes.

21 A. The calls aren't recorded in this
22 Customer Management System. That's a totally
23 different system. But, yes, every other activity
24 that takes place on an account is handled in this
25 system, yes.

1 Q. Okay. And in the subpoena that I served
2 to Ms. Kuhnell, I requested all information from the
3 system pertaining to my account from this system --

4 A. Uh-huh.

5 Q. -- with emphasis on the calls and the
6 recorded calls and everything of that nature. Now,
7 with all the interaction that I've had with Duke
8 Energy and everything, all of this documentation
9 wasn't forwarded to me as requested in the system.

10 So my question is, yes, did this system
11 record all of that information and that documentation
12 was just not forwarded to me; or no, this system does
13 not actually cover all of everything that you stated
14 that it does?

15 A. The system --

16 MR. McMAHON: I'm going to object to the
17 question to the extent Ms. Wiley's arguing prehearing
18 discovery issues.

19 But if the witness can answer that's
20 fine.

21 A. Again, this Customer Management System
22 does not record phone calls.

23 Q. I know that.

24 A. It does capture everything that's done on
25 an account, and it captures the account history and

1 all of that stuff. It captures everything on the
2 account. To my knowledge, everything was provided to
3 you, so the only thing I can tell you is what the
4 system does, and that's what -- if you asked for
5 something, it was provided to you.

6 Q. So when counsel back in December,
7 December 2010, when he forwarded the motion to me
8 saying that this is all the information provided from
9 the system from that time, then I should have
10 received everything that's included here. All the
11 inquiries, all of the customer calls --

12 MR. McMAHON: Objection.

13 Q. -- even if they're not recorded, there
14 should be some notes stated somewhere, according to
15 your own testimony here, in the CMS system?

16 THE ATTORNEY EXAMINER: I think she
17 provided an answer to your question and I think the
18 answer was --

19 MS. WILEY: Was what?

20 THE ATTORNEY EXAMINER: -- duke provided
21 everything, to her knowledge.

22 THE WITNESS: To my knowledge, yes.

23 THE ATTORNEY EXAMINER: That has to stand
24 as the answer to the question.

25 MS. WILEY: No. It actually doesn't --

1 THE ATTORNEY EXAMINER: No, ma'am, we are
2 going to move on to another question now.

3 Q. For the bill that you have for Exhibit A
4 and Exhibit B --

5 THE ATTORNEY EXAMINER: Did you say
6 Exhibits A and B?

7 MS. WILEY: Yes.

8 THE ATTORNEY EXAMINER: These are
9 attached to Ms. Givens' testimony. Is that what you
10 are referring to, ma'am?

11 MS. WILEY: Hold on for just a second.

12 Q. Yes. Attached to your testimony for
13 Exhibit A, it states that I received a credit for
14 \$140 for my deposit, correct?

15 A. No, it does not.

16 Q. On May 14, 2010, Exhibit A?

17 A. That's not what it says. It says
18 transferred to agreement. It does not say you
19 received a credit.

20 Q. Transferred to agreement, okay. That
21 \$140 was transferred to the agreement.

22 A. The 140.

23 Q. So when you add up -- if I can ask this
24 question -- when you add up the current usage for
25 that month, which is \$35.73 and the 41, the usage for

1 my first bill, the usage for that month, according to
2 you guys, is \$76.80.

3 A. Correct.

4 Q. Okay. Can you go over to the second
5 bill, which is Exhibit B, and you add up the current
6 charges for gas and electric, \$52.27 and \$50.75, that
7 together is \$179.72 for the usage. We are just
8 looking at the usage. Would you say that would be
9 accurate?

10 A. I'll have to rely on your math.

11 Q. Okay. Plus the \$1.15.

12 MR. McMAHON: Are you adding \$52.27 and
13 the \$50.75?

14 MS. WILEY: Plus the late fee of \$1.15,
15 so the total was \$180.87. So for my current usage,
16 that's plus the late fee, that's what the amount is.

17 Q. Now, the \$140 was applied for those two
18 months' usage -- well, \$50, actually. That should
19 have left a balance of \$30.87.

20 A. You also owed \$140 security deposit,
21 which you never paid. That's why the balance was
22 \$320.97.

23 Q. So where did the \$150 go to?

24 A. It's not on either one of these bills
25 because you hadn't paid it yet.

1 Q. For July, Exhibit C, same packet, Exhibit
2 C, current gas and electric usage, \$132.49, \$48.56,
3 and a late fee of \$2.56. So we're going for all
4 three months. We are going for the bill in May, the
5 bill in June, the bill that's dated July 14,
6 inclusive of the late fees for June and July, total
7 \$363.50 and the payment of \$150 has been made.

8 So if the payment of \$150 has been made,
9 my true and accurate bill should be \$213.50?

10 A. No, that's not correct at all. That's
11 not correct at all. You're not including --

12 MR. McMAHON: I object to Ms. Wiley's
13 math.

14 A. That's not correct at all. If you look
15 at Exhibit C, it clearly shows -- that bill clearly
16 shows you the breakdown. The amount that was due on
17 your previous bill was \$320.97, which includes the
18 deposit and current charges for those two bills. We
19 received your payment of \$150. We charged the \$2.56
20 late charge, which left you with a balance forward of
21 \$173.53, which I'm looking at Exhibit C.

22 In essence, all you paid toward your
23 current charge to that point was \$10 because you had
24 a deposit of \$140, and you paid \$150. So \$10 of your
25 payment went toward your current charges, that's all

1 since you lived there. You still owed us \$173.53 in
2 current charges.

3 Your deposit, at that point we gave you
4 credit for the deposit, so you can see from the
5 receipt you got, but you weren't paying anything but
6 \$10 toward your actual utility charges from the time
7 you moved in.

8 Q. But by your own admission, you said the
9 previous bill was 320.97. And then it says payment
10 received, \$150 CR, for credit I'm assuming. And then
11 under that it says late payment of \$2.56, with a
12 total of \$173.53.

13 A. As a balance forward, which means you
14 still owe that.

15 Q. So that meant the \$150 was inclusive.

16 A. The \$320 included the \$140 deposit, so
17 after you paid the \$150, we applied \$140 of it to the
18 deposit and \$10 toward your remaining balance, and
19 then we added in your current charges. So at that
20 point in time, as of the day this bill went out on
21 June 22, you owed \$354.58, all in current usage,
22 utility usage.

23 Q. But that's where my argument stands
24 because, as I stated before, if you take the current
25 charges for the three months and add the \$140 fee in

1 there, you get the \$360.94. That's not on the bill.
2 You subtract the \$150 payment from that, and that's
3 where you get 213.

4 A. No.

5 MR. McMAHON: Objection, asked and
6 answered.

7 THE ATTORNEY EXAMINER: Yes. We have
8 been through this before. Now we have to move on to
9 another question.

10 MS. WILEY: But it is wrong. But it's
11 wrong.

12 THE WITNESS: It's not wrong. It's
13 clearly itemized on the bill.

14 THE ATTORNEY EXAMINER: We need to go on
15 to another question.

16 MS. WILEY: Okay. It's wrong.

17 Q. Here in your testimony on page 7, you
18 put, "By the time Ms. Wiley," I'm reading on
19 line 21 on page 7, "By the time Ms. Wiley had applied
20 for and been approved for a HEAP credit in the amount
21 of \$271, this is not a payment but simply a credit,
22 which once a customer is approved by the HEAP
23 program, the credit appears on the account."

24 Whether you call it a credit or whatever,
25 did you lower the amount of my bill when you applied

1 it to my account?

2 A. Absolutely. That's why you received a
3 credit of 271. That's why your bill went from
4 \$568.79 to \$292.11. It's clearly reflected on the
5 bill in Exhibit 8, so it did lower the bill, yes.

6 Q. So whether it is a credit or a benefit or
7 payment, or whatever, it is relevant because it
8 lowered the amount of the bill, correct?

9 A. It's relevant because it's not a payment
10 that you made. It's a credit, and that's what we
11 called it.

12 Q. So if, let's say, a church or somebody
13 like that made a payment of \$150 toward my account
14 for the SELF organization or another organization
15 paid, a third party paid, you still would not
16 consider that to be a payment but a benefit towards
17 that? Yes or no?

18 MR. McMAHON: Objection.

19 A. It still deducts from your total balance,
20 whether it be made by a church or you get a credit
21 from HEAP. It still deducts from your total balance,
22 but we're to specify what kind of benefit or credit
23 it is. There's payments and then there's credits and
24 then there's vouchers. I mean, we are specifying
25 what kind of payment it was or what kind of credit it

1 was.

2 Q. Okay. But it lowers the bill.

3 A. Absolutely.

4 Q. So if it lowers the bill, it's accepted
5 as payment.

6 A. Yes. And it was.

7 Q. Whether you received the money at that
8 time or on November 26 when you actually received it.

9 MR. McMAHON: Objection, move to strike.

10 THE ATTORNEY EXAMINER: She's answered
11 the question.

12 MS. WILEY: But that was a relevant
13 question for him not to object to because Mr. Firich
14 stated that the payment was made on November 26 to
15 the company.

16 MR. McMAHON: Ms. Wiley is testifying
17 now. If she has a question, she should move on.

18 THE ATTORNEY EXAMINER: This is
19 cross-examination. You have to ask a question, and
20 if you get an answer, then we move on to another
21 question.

22 MS. WILEY: Okay.

23 Q. What was the information or telephone
24 call that my daughter made on August 27, 2010?

25 A. What did she say? What did she want?

1 Q. Uh-huh.

2 A. I listened to the call. But she asked --
3 she said you would be making a payment the following
4 Monday by money order, and the representative gave
5 her the locations of our pay stations. She also
6 offered to take a payment by phone at that point, and
7 your daughter said that her mom would be making the
8 payment the following Monday. That was the extent of
9 the call.

10 Q. So there should be a notation in the
11 account as to as far as that because that was pretty
12 much a payment arrangement.

13 A. No, it wasn't at all. It was just -- it
14 wasn't a payment arrangement at all. Your daughter
15 called to say you would be making a payment. That's
16 not a payment arrangement. We made no arrangements
17 whatsoever.

18 Q. Was the account notated?

19 A. No. That was not an arrangement. If a
20 customer calls and tells us something, we don't
21 make --

22 Q. But you have the recording?

23 A. Yes, we have a recording.

24 MR. McMAHON: And we produced it to you.

25 MS. WILEY: It's unintelligible. I have

1 no idea what is on that disk.

2 THE WITNESS: You may not have the right
3 kind of system to listen to it. I don't know. I
4 listened to the call, and, again, your daughter was
5 simply calling to provide information.

6 Q. So was she informed at that time that the
7 HEAP payment of \$271 had been applied to the account?

8 A. No. Your daughter didn't ask that
9 question. She wasn't a party to that account. Your
10 daughter simply called to say you would be making a
11 payment. We are not going to provide any information
12 to her because she is not a party to the account.

13 Q. But you discussed the concept of the
14 account.

15 MR. McMAHON: Objection.

16 A. We did not discuss it. She called to say
17 you would be making a payment. We offered to give
18 pay station locations.

19 Q. When a person calls in regards to an
20 account, does your customer service person go through
21 the list of asking their name, their date of birth,
22 their last three of the social before they can
23 discuss any part of the account?

24 A. It depends on what information they have.
25 If they have the account number, they will -- it

1 depends on what the person asks. They would not have
2 been provided information, but they would have
3 listened to what she had to say. They would not have
4 set up a payment arrangement with your daughter
5 because she is not a party to the account.

6 Q. You just said -- you're saying a person
7 can call and ask questions in regards to the account
8 and say a payment is going to be made on such and
9 such date, which is an agreement --

10 A. No, it's not, not at all, not whatsoever.
11 It is not an agreement.

12 Q. You would discuss that with that person
13 without providing contact information?

14 A. We didn't discuss anything. She simply
15 called to say, My mom is going to make a payment on
16 the account on Monday, and we offered pay station
17 locations. That's all.

18 Q. But you --

19 A. She didn't even say how much she was
20 going to pay.

21 THE ATTORNEY EXAMINER: She answered that
22 question.

23 MS. WILEY: Oh, my gosh.

24 Q. Here on page 8 it gives a complete
25 preview of how the cycles are done. It says, "with

1 the required 10-day notice." And it's referring to
2 disconnection of service.

3 A. Disconnection notices, correct.

4 Q. That with the required 14 and 10 days,
5 which is 14 days when you get the final notice and
6 then 10 days after the notice --

7 A. The 14-day notice is on the bill. That's
8 followed by the final 10-day notice.

9 Q. And it's titled Final Disconnection?

10 A. Yes, it is.

11 Q. So when you received the bill, that says
12 Final Disconnection. There's 14 days after that?

13 A. No. If you look at your bills where you
14 see disconnection notices on them, that's the 14-day
15 notice. That's followed by a final 10-day notice.
16 That says Final 10-Day Notice.

17 Q. I'm glad you brought that up. Can we go
18 back to your Exhibit A, please? In your Exhibit A
19 for May 14, 2010, at the top of the bill right above
20 the due date, what do you see there?

21 A. Right above the due date?

22 Q. Yes.

23 A. I don't see anything there.

24 Q. That's fine.

25 A. I don't know what you mean.

1 Q. You answered. Above the due date for
2 June 14, this is my second bill, is it customary to
3 send a reminder notice at that point?

4 A. You didn't have a disconnection notice on
5 your first bill. The reminder notice is simply
6 saying that -- wait a minute. Which bill are we
7 talking about?

8 Q. You're right.

9 A. There is a disconnection notice. This
10 isn't a reminder notice. We are not required to send
11 a reminder notice, not at all. This is a
12 disconnection for the security deposit. The security
13 deposit must be paid.

14 Q. What is the regular process and the
15 requirement for receiving a bill, receiving a
16 reminder notice, receiving a disconnection notice,
17 and then receiving a final disconnection notice
18 there?

19 A. There is no requirement in our tariff
20 that requires that we send out a reminder notice. If
21 you notice when you got reminder notices, you didn't
22 have a disconnection notice.

23 Q. I know. That's what I'm emphasizing
24 here.

25 A. Exactly. Your previous bill --

1 MS. WILEY: She answered. She answered.

2 Q. So from my first bill, there's nothing
3 there. This is my first bill. My second bill I get
4 a disconnection notice.

5 A. That's correct.

6 Q. Not a reminder notice.

7 A. That's correct.

8 Q. On my third bill, I get a reminder
9 notice.

10 A. Uh-huh. Would you like me to tell you
11 why?

12 Q. Yes.

13 A. Because the disconnection notice on your
14 second bill is strictly due to your unpaid security
15 deposit. That's why. We don't send out
16 disconnection notices for utility charges until
17 65 days in arrears, but if a security deposit is past
18 due, you get a disconnection notice the next month.

19 Q. Okay. Thank you for saying that. Let's
20 go to August, because we are keeping in mind the bill
21 dated for July 14, at the top, Exhibit C, has a
22 reminder notice.

23 A. Uh-huh. Plus you had made a payment as
24 well.

25 Q. Right. Now, the August 13 bill, what do

1 you see above the due date, Exhibit D?

2 A. There's no disconnection notice because
3 you made a payment of \$150, so your deposit was paid
4 so you weren't in disconnect status at that time.
5 Again, we disconnect for utility charges at 60 days
6 in arrears.

7 Q. So in September, September 13 at the top
8 where it says Reminder Notice, it was because you had
9 received the 271?

10 A. That's correct.

11 Q. And then October the disconnection
12 notice, and that would be the normal --

13 A. That was the bill that went out in
14 September, not October. That was the following
15 month. It was the bill that went out in September.
16 You had had a disconnection notice for your 60-day
17 arrears of \$287.79, and you needed to pay that by
18 October 15. That was clearly marked on the bill.

19 Q. When services were disconnected in
20 October and reconnected in October, the November due
21 date bill, November 11, 2010, it was starting a
22 brand-new bill, but yet this bill is a disconnection
23 notice.

24 A. No. The reason is because this bill was
25 prepared before you ever used the 175 and paid. You

1 didn't pay the 175 when the bill was prepared. You
 2 had not yet done that. This bill says, "If your
 3 service has not yet been disconnected, please pay
 4 \$478.50." You didn't pay the 175 on the winter
 5 reconnection rule until the next day, so none of that
 6 is reflected on this bill.

7 Q. Due date December 10, 2010, what do you
 8 see up there?

9 A. This is a bill showing your \$175 payment,
 10 and you're also on a payment plan at this point,
 11 which is why we are only asking you to pay \$228.34,
 12 which is \$95, your current charges, and the \$25
 13 reconnection fee. This bill is on an agreement, so
 14 there is no disconnection.

15 Q. This is the only bill like this.

16 A. That's correct, because you didn't pay
 17 it, so the next bill that came out, you were no
 18 longer on an agreement.

19 Q. This bill is inclusive of the
 20 \$175 payment that was done in --

21 A. October.

22 Q. As well as -- let's flip it to the next
 23 one, January bill. January would have reflected the
 24 \$100 payment that was made in December.

25 A. Uh-huh.

1 Q. What do you see above the due date on
2 January 12?

3 A. Again, you had a bill that was due on
4 December 10 for \$228.34. You did not pay that, so
5 when your account billed again on December 21, your
6 agreement was in default. It was gone. You made a
7 payment of \$100 after, but the agreement was already
8 gone. Once your agreement was removed, you were once
9 again in danger of being disconnected.

10 Q. Are you aware of any of the motions
11 that --

12 MR. McMAHON: Objection. Any motions
13 filed by Ms. Wiley are irrelevant.

14 MS. WILEY: I didn't file them. He filed
15 it.

16 THE ATTORNEY EXAMINER: What are you
17 talking about?

18 MS. WILEY: Mr. McMahon on February --

19 MR. McMAHON: Objection. Any questions
20 about motions filed before the hearing are outside
21 the scope of direct and are irrelevant to these
22 proceedings.

23 MS. WILEY: Yes, they are. They are
24 relevant.

25 THE ATTORNEY EXAMINER: I will give you

1 an opportunity to explain how this question is
2 relevant.

3 MS. WILEY: Mr. McMahon's motion, I think
4 it was in January or February, he mentioned that the
5 reason why I was not being disconnected -- because I
6 had defaulted in November on the agreement, I didn't
7 pay the \$95 payment in November. I didn't pay it in
8 December. I didn't pay it in January. So he made a
9 motion in regards to the reason why I was not being
10 disconnected is because in respect to us being in a
11 hearing setting. And that was admitted -- here it is
12 right here.

13 On February 16, Motion, Duke Energy Ohio,
14 Incorporated, Memorandum in Opposition to
15 Complainant's Request to Stop Disconnection of
16 Services, in the second paragraph, Mr. McMahon's
17 second sentence, "Respondent tentatively waives the
18 prior disconnection notices due to the pending
19 hearing because Respondent wanted to address the
20 issues at the settlement conference February 14."

21 So that's why I asked Ms. Givens was she
22 aware of this motion, because I had already defaulted
23 on paying the \$95 because I objected to it at the
24 beginning. I was forced into this agreement.

25 THE ATTORNEY EXAMINER: I'm going to have

1 to agree with him. It's beyond the scope of the
2 hearing. These are prehearing motions. Now you need
3 to address your questions to her about her prefiled
4 testimony here.

5 Q. Are you aware of any of the motions --

6 MS. WILEY: I'm redirecting the question.

7 THE ATTORNEY EXAMINER: No. You ask a
8 question on cross-examination, and you have to base
9 it on her prefiled testimony here or the additional
10 direct Mr. McMahon made before you started cross.

11 MS. WILEY: Okay. I can ask her is she
12 aware of any of the documents pertaining to this
13 account, motions.

14 THE ATTORNEY EXAMINER: Not the motions.
15 We are talking about this here, the prefiled
16 testimony, you have a copy of that, and what he said
17 in addition to this, his direct examination in
18 addition to this. You must base your
19 cross-examination on that.

20 MS. WILEY: Yes.

21 THE ATTORNEY EXAMINER: Yes, you have to
22 do that.

23 MS. WILEY: That's why I asked her was
24 she aware of this motion.

25 THE ATTORNEY EXAMINER: That motion, the

1 prehearing motion, doesn't have anything to do with
2 her direct testimony.

3 MS. WILEY: Actually, it does because in
4 her testimony --

5 THE ATTORNEY EXAMINER: My ruling is it
6 doesn't, so you must move on to another question.

7 MS. WILEY: Okay.

8 Q. Can you explain to me on page 9 of your
9 statement, can you explain to me what you think
10 happened when your customer service person spoke to
11 Casey at the Veterans Administration?

12 A. I have no knowledge of that whatsoever.

13 Q. But aren't all calls documented and
14 recorded?

15 A. I can tell you what -- just from reading
16 the letter, I can tell you what --

17 Q. What letter?

18 A. The letter you presented from the
19 gentleman from the Veterans Administration.

20 Q. So there's no notation in the account, no
21 notation or call history on that date and time.

22 A. I mean, honestly, no, we have no record
23 of that phone call at all.

24 Q. So when you made this statement on page 6
25 that the system records or documents, and it's

1 inclusive from all the call centers, receivables,
2 customer service personnel --

3 THE ATTORNEY EXAMINER: I think we've
4 covered this.

5 A. Let me explain. In order for us to
6 locate a call, we either have to have the name of
7 this representative, the full name of the
8 representative, the approximate time. If you --

9 Q. I'm speaking of the notation when a
10 customer service person opens up the account, is it
11 true -- you answer this. Is it true their employee
12 ID, date, and time and all that is time stamped,
13 whether visible by the customer service person or
14 not? Isn't that time stamped in the system somewhere
15 saying that that person accessed that account?

16 A. No, not at all. If a notation is entered
17 on the account, yes. I mean, no, that's not time
18 stamped in any way. The system doesn't work this
19 way.

20 Q. So what is your recollection of the
21 customer service conversation with Casey on
22 November 8?

23 A. I don't have a recollection of that. I
24 wasn't a party to it.

25 Q. So what do you think happened?

1 MR. McMAHON: Objection, asked and
2 answered.

3 THE ATTORNEY EXAMINER: That's the
4 answer. You have to move on.

5 Q. When I spoke to the five customer service
6 persons on October 19 and October 20 and none of them
7 mentioned the winter rule, except for the sixth young
8 lady, the customer service person I had spoken to on
9 the phone --

10 THE ATTORNEY EXAMINER: Has to be a
11 question.

12 Q. Here on page 9 of your direct testimony,
13 you put that those notes reflect that a customer
14 service representative explained to me my options to
15 have my services reconnected using the winter rule.
16 Is it customary and common practice for your customer
17 service persons not to tell a person who has been
18 disconnected during that time that they actually
19 qualify for that?

20 A. Yes, I'm showing that they did.

21 Q. Who did?

22 A. The representatives that you spoke with
23 noted on the account they told you about the winter
24 rule. They also told you about the option for a
25 medical certificate, and they also answered the

1 questions about your HEAP payment credited in August,
2 all of that was noted on the account.

3 Q. So that was noted on the account.

4 A. Uh-huh. Because that's what happened,
5 yes.

6 Q. So when I asked for all the documentation
7 pertaining to the account, was that just forgotten?

8 A. That was provided to you.

9 MR. McMAHON: It was produced.

10 THE WITNESS: Yes, it was.

11 MS. WILEY: No, it wasn't.

12 THE ATTORNEY EXAMINER: You can't testify
13 on the record. Ask a question now to this witness.

14 Do you have any more questions on cross-examination?

15 MS. WILEY: Yes, I do.

16 Q. Did you make the notation in the account
17 pertaining to in March, in March of this year, for my
18 services to be restored? What was the monetary
19 amount that you stated needed to be paid as well as
20 the deposit and reconnection fees?

21 A. Well, I stated you needed \$730.11 because
22 that was the amount reflected on your bill that went
23 out on February 22nd. The disconnection amount at
24 that time was \$730.11.

25 Q. That bill was inclusive of my entire

1 bill, not just the current?

2 A. No. That was your 60-day arrears. At
3 the time, your total balance at that time was
4 \$1,076.72. That was just your 60-day arrears.

5 Q. Hold on, because I'm looking at the March
6 bill.

7 A. The March bill is even higher.

8 Q. I'm looking at the March bill, Exhibit K,
9 and it says current amount due is \$1,076.72. So this
10 amount here you're saying it's not inclusive of the
11 730 from --

12 A. Of course it is, yes.

13 Q. So it is inclusive?

14 A. Yes. The 730 is the 60-day arrears, and
15 the total is \$1,076.72.

16 Q. For January, February, and March to
17 present, my bill is inclusive of the old bill as well
18 as the new bill?

19 A. Absolutely. You owed the entire amount.

20 Q. So when the order was made by Mr. Sheets
21 on February 25 not to disconnect services for billing
22 amounts that were in dispute, were you aware of that?

23 A. The order also said you were to pay
24 current charges because they were not in dispute, and
25 you paid nothing. I mean, you didn't pay the current

1 charges.

2 Q. But didn't you just say that the bill was
3 inclusive of the old, so where it says Current Amount
4 Due on the bill because it's not separated like the
5 December bill, in here it says Current Amount Due
6 where it has the grand total amount, that's the
7 amount that you were expecting because that's the
8 current amount due?

9 A. That's the amount that you owed. What
10 you were --

11 Q. If Mr. Sheets said -- were you aware --

12 A. You weren't disconnected -- you weren't
13 disputing charges -- you weren't paying your current
14 charges. When a person files a complaint at the
15 Commission, they're required to pay the undisputed
16 charges, which in your case were the current charges.
17 You weren't paying those.

18 Q. Were you aware of the order Mr. Sheets
19 made on February 25?

20 A. I did not --

21 THE ATTORNEY EXAMINER: I think she
22 answered the question.

23 MS. WILEY: Which was what? What was the
24 answer?

25 THE ATTORNEY EXAMINER: She was aware you

1 were not paying the current charges, which is why you
2 were disconnected.

3 THE WITNESS: It did not simply say we
4 couldn't disconnect. There was a condition attached
5 to that, if you weren't paying the current charges,
6 and you were not.

7 Q. The bill, as you stated before, was
8 inclusive of the old bill and the new bill.

9 A. There was no old bill. It was the entire
10 account balance.

11 Q. So that's what I was disconnected for?

12 A. For nonpayment.

13 Q. Were you aware of the motion that was
14 made in regard to I think March 5, including all the
15 bills into --

16 MR. McMAHON: Objection to any question
17 about prehearing motions.

18 THE ATTORNEY EXAMINER: Yes. You need to
19 confine your questions, once again, to the direct
20 testimony.

21 Q. Can you please clarify where you got the
22 730 amount from, please?

23 A. I just pointed that out to you on the
24 bill. That is your 60-day arrears.

25 Q. For what date? Where should I see this,

1 on what bills?

2 A. It's on Exhibit K.

3 Q. So the bill marked March 16, 2011?

4 A. It's the due date.

5 MR. McMAHON: Explain to her on Exhibit K
6 where you're talking about.

7 THE WITNESS: In the block where it says,
8 "Important, your service may be disconnected if the
9 past due amount of \$730.11 is not paid before
10 March 18," that's where it came from.

11 Q. In the system for March, in the system
12 where services are disconnected, you made a notation
13 specifically how much everything had to be paid in
14 order to restore services. What was that notation?

15 A. 730, plus the 50 deposit, plus the 25
16 reconnection fee.

17 Q. And that was all-inclusive in order for
18 service to be restored.

19 A. That's correct. That's a total of
20 \$805.11.

21 Q. Even though this note says \$40 for
22 deposit.

23 A. If you look at Exhibit L, which is the
24 bill that was issued prior to your service being
25 disconnected, to be quite honest with you, we could

1 have required you to pay \$929.70, because that was
2 the past due, plus the \$50 deposit, plus \$25
3 reconnection fee.

4 Q. You were aware of the agreement at that
5 time with SELF, because when I went to SELF and you
6 stipulated everything that you just made, SELF, the
7 organization, HEAP was ready to help me pay these
8 bills. When you made that notation in the account
9 for reconnection, you didn't say \$40, you did not say
10 \$45, you said \$50 deposit.

11 A. I said \$50 because a new bill had issued
12 and the deposit increased to \$50 once a new bill
13 issued.

14 Q. And then a whole new balance with the \$50
15 deposit, \$25 reconnection fee had to be paid prior,
16 and the 730 totaled up to 805.11.

17 A. That's correct.

18 Q. So then when we paid the 805 -- no, let
19 me back up a little bit. On that Friday on the 25th,
20 March 25th, on that Friday when the agreement was
21 paid for everything you just stated, and a payment
22 was made on Saturday the 26th for \$380, that Monday
23 when we came in, the agreement had been broken, and
24 there was an extra \$142 that was going to be applied
25 to the account until Ms. Athena called you,

1 Ms. Athena Malley.

2 MR. McMAHON: Objection to form.

3 Ms. Wiley is testifying.

4 MS. WILEY: No. No, not -- we called
5 you --

6 THE ATTORNEY EXAMINER: You have to ask a
7 question. You are testifying.

8 Q. Did you receive a phone call from
9 Ms. Athena Malley?

10 A. Yes, I did.

11 Q. What was the conversation?

12 A. She asked me what you needed to restore
13 service. And I said exactly what I had on the
14 account, which was the \$730.11, a \$25 reconnection
15 fee, and a \$50 deposit. I was not aware of any -- I
16 am not aware of any higher amount being quoted to
17 you. I clearly noted that amount on the account.

18 Q. You did?

19 A. Prior to even talking to her.

20 Q. Then on Monday, that Monday, I left you a
21 voice mail message. What was that voice mail message
22 stating?

23 A. I don't really recall, to be honest with
24 you. I believe you said --

25 Q. Athena called you that day, and I did as

1 well. We both called you that day and left a voice
2 mail message. Later on that day you gave me a call
3 back.

4 A. Uh-huh.

5 Q. Do you remember that? Can you tell me
6 what our conversation was about?

7 A. To be honest with you, I don't remember
8 exactly what the conversation was. I remember I
9 stated the amount that you needed to restore the
10 service. That's what it was.

11 Q. Did you have any knowledge whatsoever
12 that the customer service person under your directive
13 had added another \$142 to the \$805.11?

14 MR. McMAHON: Objection, assumes facts
15 not in evidence.

16 MS. WILEY: Excuse me? It is.

17 THE WITNESS: I can answer that.

18 THE ATTORNEY EXAMINER: I'll let her
19 answer.

20 A. It's not noted anywhere. There was no
21 record anywhere that anyone told you a higher amount
22 because, indeed, like I said, I noted the account and
23 I told Athena the amount that you needed. I told you
24 the amount that you needed. So there was no record
25 that anyone had told you anything other than that,

1 so, no, I'm not aware of that, and there was no
2 record of that.

3 THE ATTORNEY EXAMINER: We will have to
4 let that stand as an answer. We will move on to
5 another question.

6 Q. You stated -- I'm sorry. I'm on page 13
7 of your directive. I'm on line 5. The question
8 is -- we will come back to the events in March 2011.

9 "Please explain DE-Ohio's response to
10 Ms. Wiley's claim that she contacted DE-Ohio in
11 September 2010 and was told she had until
12 Thanksgiving to pay the balance due."

13 On line No. 5 you made this comment,
14 "which the company records" -- I'm sorry. Let me go
15 up to line 4. It says, "We searched DE-Ohio's
16 records of customer telephone calls, which the
17 company records and maintains for a period of 90
18 days."

19 If the company maintains and holds on to
20 records for 90 days and I was just provided my
21 daughter's unintelligible recording for August the
22 20th, how is that possible?

23 MR. McMAHON: Objection to the form, "How
24 is what possible?"

25 THE ATTORNEY EXAMINER: See if she has an

1 answer.

2 A. I don't understand the question.

3 Q. Your system stated you keep things for 90
4 days. 90 days from August would be September,
5 October, November that would be on file. So when you
6 requested documentation or whatever and I didn't
7 receive it in the first batch Mr. McMahon had given
8 me in January, how are you able to obtain that record
9 when it should have been wiped off your records
10 because that's not 90 days but five months?

11 A. That call was received along with all the
12 other ones. We just neglected to provide it to you.
13 It was retrieved with all the other ones. The only
14 ones that weren't received were in September because
15 there was no such call.

16 Q. So you just neglected to forward that
17 telephone conversation. Are there any other
18 telephone conversations or notes or things like that
19 Duke Energy has neglected to forward to me?

20 A. We provided everything that we have on
21 the account. We could not provide you the calls in
22 September because the calls do not exist.

23 Q. Okay. When you said you provided me
24 everything, you kind of contradicted yourself
25 because --

1 THE ATTORNEY EXAMINER: No, you can't
2 testify. You have to come up with another question.

3 Q. So just to reconfirm what you stated,
4 that you neglected to give me that conversation that
5 was recorded in August --

6 A. With your daughter, yes. We had it but
7 we didn't give it to you.

8 Q. You didn't give it to me.

9 A. It was an oversight.

10 MR. McMAHON: For the record, we provided
11 it to her within two weeks of producing the other
12 conversations. We produced one disk of certain calls
13 at the February 14 settlement conference, and by the
14 end of February, we produced the other call relating
15 to her daughter.

16 THE ATTORNEY EXAMINER: Thank you.

17 Do you have another question?

18 MS. WILEY: Just as he objected and made
19 that statement, I need to make this statement.

20 THE ATTORNEY EXAMINER: You can't do
21 that. You have to ask a question at this point.

22 MS. WILEY: So to reconfirm.

23 Q. So to reconfirm, you just neglected --

24 MR. McMAHON: Objection, asked and
25 answered.

1 MS. WILEY: We had an answer to that
2 question already.

3 Q. Do you know Diane Kuhnell?

4 A. Yes.

5 Q. Who is she?

6 A. She works in our legal department.

7 Q. So she's a Duke Energy employee?

8 A. Absolutely.

9 Q. Are you aware I served her a subpoena?

10 MR. McMAHON: Objection.

11 THE ATTORNEY EXAMINER: I didn't hear the
12 question.

13 MR. McMAHON: She asked if she was aware
14 she served a subpoena on Diane Kuhnell. Again, it is
15 prehearing issues.

16 THE ATTORNEY EXAMINER: Right. You have
17 to confine yourself to the direct examination.

18 Q. On page 14 of your direct, on line 8, and
19 this is still in consideration to the comment she
20 made earlier which she said that they neglected --

21 THE ATTORNEY EXAMINER: Ma'am, what are
22 you referring to?

23 MS. WILEY: Page 14, line 8.

24 Q. It says "Ms. Wiley has no evidence to
25 support her claims and has never been able to

1 identify with any respect how much she was supposed
2 to pay to DE-Ohio under the nonextension payment
3 plan."

4 Would you say that Duke Energy has all
5 the information it needed or 90 percent of the
6 information it needed to pursue this case?

7 A. We provided all the information
8 requested.

9 Q. No. My question was --

10 THE ATTORNEY EXAMINER: I think she
11 answered the question, ma'am.

12 MS. WILEY: No. I didn't ask her if she
13 provided it.

14 THE ATTORNEY EXAMINER: I disagree. My
15 ruling will stand.

16 MS. WILEY: Okay.

17 Q. In the conversations -- let me rephrase
18 that. Are you aware that your customer service
19 representatives in October through the 21st let me
20 know that the \$271 payment was applied to my account
21 on August 12? Are you aware of that?

22 A. I was not a party to that conversation
23 but I'm not --

24 Q. Would that be a part of the notation in
25 my account, because they read from that? I'm just

1 wondering if that date is notated in my account
2 because five separate customer service
3 representatives quoted August 12.

4 A. They can look at the history of the
5 account and see when the credit was applied. That is
6 part of the account record, yes.

7 Q. Earlier in Mr. Firich's testimony, as
8 well as the time line right there, he -- are you
9 aware that on the information that Duke Energy sent
10 back to the HEAP organization it stated that the
11 payment was applied on the 9th of August?

12 MR. McMAHON: Objection, mischaracterizes
13 Mr. Firich's testimony.

14 MS. WILEY: No. I'm asking her is she
15 aware of that.

16 THE ATTORNEY EXAMINER: I'll let her
17 answer that question.

18 A. What it actually says is that the payment
19 was accepted, not entered on the account. It says
20 "accepted." That is not being entered on the
21 account. That's accepted.

22 Q. As payment, that's what he said, accepted
23 as payment.

24 A. Accepted. That is not stating when it
25 was applied to the account. He would have no

1 knowledge of that, which is what he said.

2 Q. No, that's not what he said.

3 A. Yes, that is what he said.

4 THE ATTORNEY EXAMINER: Okay. I think we
5 have an answer. Next question.

6 Q. On the documentation you send back to the
7 HEAP organization, do you give the date that it was
8 applied to the account?

9 A. No, we do not. And they have no access
10 to our records to know when it was applied to the
11 account.

12 Q. So you do not -- Duke Energy does not
13 give a date that the funds were applied to the
14 account.

15 MR. McMAHON: Objection, asked and
16 answered.

17 THE ATTORNEY EXAMINER: It's asked and
18 answered.

19 Q. Where do we get the August 12 from?

20 A. It's in our system on when the credit was
21 applied to the account. All credits are shown,
22 payments, credits, vouchers, anything are shown the
23 date they are actually, physically applied to the
24 account. That's what our reps would see. Our reps
25 would have no way of knowing when any transmittal to

1 the ODOD took place. They wouldn't have any way of
2 knowing that. What they can see is what date the
3 credit was posted to the account, which is August 12.
4 That's what they can see.

5 Q. Okay. Earlier in your testimony you said
6 the credit was applied on August 9.

7 A. No, I did not. We said it was accepted
8 on August 9. Again, it was accepted. That is not
9 applying it to the account. The August 9 date is
10 what Mr. Firich mentioned. We didn't say that. He
11 did.

12 Q. No. He mentioned the August 20 as the
13 date of acceptance.

14 A. No.

15 THE ATTORNEY EXAMINER: You can't argue
16 with the witness. You have to ask another question.

17 Q. Do you recall -- this is on the time line
18 entered as an exhibit for me. Would you like to look
19 at that? Can you read back that date that --

20 MR. McMAHON: Objection, beyond the scope
21 of direct.

22 THE ATTORNEY EXAMINER: I think he's
23 correct.

24 Q. On page 15, line 6, the question is,
25 "What about the claims that Ms. Wiley added to her

1 amended complaint concerning DE-Ohio's alleged
2 failure to bill her gas and electric usage in a
3 proper manner?"

4 On line 6 you made the comment,
5 "Ms. Wiley has never contacted DE-Ohio to dispute or
6 take issues with her past bills." I have never made
7 contact to DE-Ohio "to dispute or take issues with
8 the past bills, the gas and electric meters at the
9 residence, the reads on her gas and electric meters,
10 high or unusual usage of utility services or anything
11 of that nature."

12 The question is, according to this, have
13 I -- am I clear in understanding this to say I never
14 called to discuss a bill, to make payment
15 arrangements, to say that this bill isn't accurate or
16 complain about any bill in any way?

17 A. No, that's not what it says.

18 Q. How should I understand that?

19 A. What it says is that you've never called
20 to question the actual usage on the bill, on the
21 meters, the meter readings, anything of that nature.
22 Your calls have all been regarding payments,
23 disconnection notices, payment plans, deposits,
24 nothing regarding the actual usage on the meter or
25 meter readings or anything of that nature. That's

1 what it's talking about. That has never been
2 questioned.

3 Q. So when I called in November and when I
4 called in December and I was complaining about the
5 wrong amounts for the bill and I made the emphasis of
6 the October bill being \$108, and that's from usage
7 from October to November, and compared that \$108 to
8 when we, my family and I, were at home, to the
9 December 19 bill, which was, I think, \$199, \$180,
10 \$199, and I said we weren't home but the bill is
11 higher than the bill from October, are you saying I
12 didn't make --

13 MR. McMAHON: Objection, assuming facts
14 not in evidence and beyond the scope of direct.

15 MS. WILEY: Excuse me. Of course it is.
16 It is on the bill.

17 THE ATTORNEY EXAMINER: Let's have a
18 question about what she testified to, not your
19 testimony.

20 MS. WILEY: It's not my testimony.

21 THE ATTORNEY EXAMINER: But a question to
22 her. Now proceed.

23 Q. So you wouldn't take that by me calling
24 customer service and comparing those two bills and
25 the amounts of those bills as me never taking issues

1 with my bills?

2 A. There's no record that you ever did that.
3 First we heard of that was in the settlement
4 conference. It was the first time it was ever
5 mentioned. It was not mentioned in any of your
6 complaints, nothing. It was first time we heard of
7 it.

8 Q. It was never mentioned in my complaints?

9 A. Un-uh. Never. Never.

10 MS. WILEY: So I address this because my
11 April complaint it's addressed. In my
12 November 1 complaint in the first complaint, I not
13 only disputed wrongful --

14 THE ATTORNEY EXAMINER: Okay, now you're
15 lapsing into your own testimony. She's provided an
16 answer to the question. Now what we need from you at
17 this point is another question on cross.

18 Q. So November 8 when I spoke to Carrie,
19 when I spoke to Carrie, customer service
20 representative, on November 8, I asked her to send me
21 a copy of my bills and all the account information,
22 which --

23 MR. McMAHON: Objection, beyond the scope
24 of direct.

25 MS. WILEY: I haven't asked my question

1 yet. Can I ask my question?

2 THE ATTORNEY EXAMINER: You have to come
3 up with a question and ask it.

4 Q. Would you consider that being taking up
5 issues with my bill?

6 A. I'm not aware of that conversation. I
7 can't answer that. There's no indication that you
8 ever complained about the amount of the bill, only
9 that you constantly questioned the \$271 HEAP credit
10 and the fact that your service should not be
11 disconnected because of the payment plan --

12 Q. Isn't that a dispute?

13 A. No, it's not disputing the usage; no, it
14 isn't.

15 Q. I didn't say usage and you don't say
16 usage here.

17 MR. McMAHON: Objection, argumentative
18 now.

19 THE ATTORNEY EXAMINER: Now you're
20 arguing again. She provided an answer to the
21 question. Now you have to move on to another
22 question.

23 MS. WILEY: She's caught herself in a
24 lie.

25 MR. McMAHON: Objection, move to strike.

1 MS. WILEY: Okay. I'm moving on, but
2 Ms. Givens has made a statement --

3 THE ATTORNEY EXAMINER: No, you can't
4 argue here. You have to keep on with the questions
5 as long as you're doing cross-examination.

6 Q. So, Ms. Givens, you're going to stick
7 with I never questioned --

8 MR. McMAHON: Objection, asked and
9 answered.

10 THE ATTORNEY EXAMINER: We have to move
11 on to another one.

12 Q. Who, to your knowledge, since you stated
13 that you've worked with the PUCO for quite a long
14 time and you're the person who does the research and
15 everything pertaining to the case and claims, do they
16 accept all complaints, the PUCO?

17 A. I have no way of knowing that.

18 MR. McMAHON: Objection, asking for a
19 legal conclusion as whether the PUCO accepts
20 complaints.

21 THE ATTORNEY EXAMINER: I agree. That's
22 sustained.

23 (Discussion off record.)

24 (Recess taken.)

25 THE ATTORNEY EXAMINER: Back on the

1 record.

2 You were conducting cross-examination,
3 Ms. Wiley. Do you have more questions?

4 MS. WILEY: I'm done.

5 THE ATTORNEY EXAMINER: Do you have any
6 on redirect?

7 MR. McMAHON: No questions, your Honor.

8 THE ATTORNEY EXAMINER: You're excused.

9 MR. McMAHON: Just to clarify, make sure
10 that Duke Energy has moved for the submission of
11 Exhibits A through N that are attached to Ms. Givens'
12 testimony and Exhibit O, which was the discovery
13 request that was addressed during Ms. Wiley's
14 testimony.

15 THE ATTORNEY EXAMINER: I will admit all
16 exhibits in the case into evidence at this time.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 MR. McMAHON: Duke Energy rests, your
19 Honor.

20 THE ATTORNEY EXAMINER: Very good. Let's
21 go off the record briefly.

22 (Discussion off record.)

23 THE ATTORNEY EXAMINER: We will go back
24 on the record. We have discussed a briefing schedule
25 and agreed to submit simultaneous briefs on July 15.

1 I consider the case submitted on the
2 record. Thank you for coming.

3 (The hearing adjourned at 3:53 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, May 12, 2011, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson,
Professional Reporter and
Notary Public in and for
the State of Ohio.

My commission expires April 5, 2014.
(RFA-8626)

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Summary: Transcript Transcript of Sherry Wiley vs. Duke Energy Ohio hearing held on 05/12/11 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.