

May 27, 2011

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Columbus, Ohio 43215

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PUCO

RE: Brenda and Gerard Fitzgerald v. Duke Energy Ohio Inc.
Case # 10-791-EL-CSS

Mr. Sheets,

At the conclusion of the hearing on April 27, 2011 you invited me to file a statement of the case. This is our statement.

Only one witness appeared in the hearing that had no affiliation with either side in the matter. That individual was Cindi Mack, the investigator for Public Utilities Commission of Ohio. The following testimony can be found in the transcript of the hearing beginning on line 15 of page 52 during Mr. Fitzgerald's cross-examination of Ms. Mack.

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

A. Correct. Correct.

The following testimony can be found on page 57, lines 25 through page 58, line 7.

A. I was determined in the first call that I listened to that the company was in the wrong. There was no reason for me to listen to those other calls.

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


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

While we could take this opportunity to restate and highlight many issues in this case, we think this testimony from Ms. Mack concisely summarized the case. While Duke has claimed this is all just a mistake, our position is that "lying" and "misinforming" are not characteristics of a mistake. If Ms. Mack had listened to more than one recorded phone conversation she would have the other examples of such lies and misinformation. But the one example she listened to was sufficient for her to draw this conclusion, which confirmed our complaint.

Paged 52, 57, and 58 are enclosed so you can read the testimony cited here in context.

Sincerely,


Brenda L. Fitzgerald


Gerard R. Fitzgerald
Enclosures (3)

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Technician MA Date Processed JUN 03 2011

1 please.

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

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

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

11 MR. FITZGERALD: Yes.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Fitzgerald:

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

20 A. Correct. Correct.

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

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

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

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

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

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

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

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

20 A. That's correct.

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

23 A. No.

24 Q. Why not?

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

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

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

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

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

10 A. No.

11 Q. Where were they?

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

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

17 A. Correct.

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

19 A. I do believe so.

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

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

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