

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the Application :  
of Duke Energy Ohio, Inc., for : Case No  
an Increase in Gas Rates. : 12-1685-GA-AIR

In the Matter of the Application :  
of Duke Energy Ohio, Inc., for : Case No.  
Tariff Approval. : 12-1686-GA-ATA

In the Matter of the Application :  
of Duke Energy Ohio, Inc., for : Case No.  
Approval of an Alternative Rate : 12-1687-GA-ATA  
Plan for Gas Distribution :  
Service. :

In the Matter of the Application :  
of Duke Energy Ohio, Inc., for : Case No.  
Approval to Change Accounting : 12-1688-GA-AAM  
Methods. :

- - -

PROCEEDINGS

before Ms. Christine M. T. Pirik and Ms. Katie  
Stenman, Attorney Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-A,  
Columbus, Ohio, called at 9:00 a.m. on Tuesday, April  
30, 2013.

- - -

VOLUME II

- - -

ARMSTRONG & OKEY, INC.  
222 East Town Street, Second Floor  
Columbus, Ohio 43215-5201  
(614) 224-9481 - (800) 223-9481  
Fax - (614) 224-5724

- - -

APPEARANCES:

Frost, Brown, Todd, LLC  
By Mr. Kevin N. McMurray  
3300 Great American Tower  
301 East Fourth Street  
Cincinnati, Ohio 45202

Ice Miller LLP  
By Ms. Kay Pashos  
One American Square, Suite 2900  
Indianapolis, Indiana 46282

and

Duke Energy Business Services, LLC  
By Ms. Elizabeth Watts  
Ms. Amy B. Spiller  
139 East Fourth Street  
Cincinnati, Ohio 45202

On behalf of Applicant Duke Energy  
Ohio, Inc.

Carpenter, Lipps & Leland, LLP  
By Ms. Kimberly W. Bojko  
Ms. Mallory M. Mohler  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215

On behalf of the Kroger Company.

Ohio Partners for Affordable Energy  
By Ms. Colleen Mooney  
231 West Lima Street  
P.O. Box 1793  
Findlay, Ohio 45839-1793

On behalf of Ohio Partners for  
Affordable Energy.

Mr. Douglas E. Hart  
441 Vine Street, Suite 4192  
Cincinnati, Ohio 45202

On behalf of Greater Cincinnati Health  
Council and Cincinnati Bell Telephone.

APPEARANCES: (Continued)

Vorys, Sater, Seymour and Pease, LLP  
By Ms. Gretchen Petrucci  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

On behalf of Interstate Gas Supply.

Bricker & Eckler, LLP  
By Mr. Thomas J. O'Brien  
100 South Third Street  
Columbus, Ohio 43215-4291

On behalf of the City of Cincinnati.

Direct Energy  
By Mr. Joseph Mr. Clark  
21 East State Street, Suite 1900  
Columbus, Ohio 43215

On behalf of Direct Energy Services, LLC,  
and Direct Energy.

Bruce J. Weston, Ohio Consumers' Counsel  
By Mr. Joseph P. Serio  
Mr. Larry S. Sauer  
Mr. Edmund "Tad" Berger  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215

On behalf of the Residential  
Consumers of the State of Ohio.

Mike DeWine, Ohio Attorney General  
William L. Wright, Section Chief  
Public Utilities Section  
Mr. Devin D. Parram  
Mr. Thomas W. McNamee  
Mr. Stephen A. Reilly  
180 East Broad Street, 6th Floor  
Columbus, Ohio 43215-3793

On behalf of the Staff of the Public  
Utilities Commission.

- - -

1	INDEX		
2	- - -		
3	WITNESS		PAGE
4	JESSICA L. BEDNARCIK		
5	Continued Cross-Examination by Mr. Sauer		282
	Cross-Examination by Ms. Bojko		317
6	Cross-Examination by Mr. Hart		406
	Cross-Examination by Mr. Parram		443
7	Redirect Examination by Mr. McMurray		474
	Recross-Examination by Mr. Sauer		490
8	Recross-Examination by Ms. Bojko		507
	Recross-Examination by Mr. Hart		529
9	SHAWN S. FIORE		
10	Direct Examination by Mr. McMurray		540
	Cross-Examination by Mr. Serio		542
11			
12	- - -		
13	COMPANY EXHIBIT	IDFD	ADMTD
14	27 - Ohio MGP Sites PowerPoint	475	538
15	- - -		
16	OCC EXHIBITS	IDFD	ADMTD
17	5 - Interrogatory 03-056	283	539
18	6 - Remedial Action Plan (Redacted)	288	539
19	6.1- Remedial Action Plan (Confidential)	288	539
20	7 - Interrogatories 15-577 15-581, 15-582, 15-579, 15-580, and 15-590	302	539
21			
22	8 - Staff Interrogatory 127-001	305	539
23	9 - Beck Consulting Summary Appraisal Report	305	539
24	- - -		
25			

## INDEX (Continued)

- - -

## KROGER EXHIBITS

IDFD ADMTD

2 - OCC Interrogatory 17-667

398 539

- - -

## STAFF EXHIBITS

IDFD ADMTD

3 - Map of West End Site North of  
Mehring Way Parcel

451 539

4 - Map of South of Mehring Way Parcel

454 539

7 - 9/17/2012 Email with Staff  
Interrogatories Attached

449 539

- - -

1 Tuesday Morning Session,  
2 April 30, 2013.

3 - - -

4 EXAMINER PIRIK: We'll go back on the  
5 record.

6 Mr. Sauer.

7 MR. SAUER: Thank you, your Honor.

8 - - -

9 JESSICA L. BEDNARCIK  
10 being previously sworn, as prescribed by law, was  
11 examined and testified further as follows:

12 CROSS-EXAMINATION (Continued)

13 By Mr. Sauer:

14 Q. Good morning, Ms. Bednarcik.

15 A. Good morning.

16 Q. If I could clarify one matter from your  
17 testimony yesterday, we were talking, if you recall,  
18 about the number of MGP sites in Ohio, and I believe  
19 I asked you if there were any other sites, MPG sites,  
20 that Duke owned in their service territory in Ohio,  
21 and what was your response to that question?

22 A. Based upon information that I know of  
23 right now, we believe that there are only two MGP  
24 sites, the East End and West End sites, that are in  
25 the Duke Energy Ohio service territory. There are

1 other MGP sites that we have looked at that we gave  
2 notice to insurance carriers about, but based upon  
3 our research to date, we believe that only the East  
4 End and West End sites are the ones that we have  
5 liability for.

6 MR. SAUER: I have a document I would  
7 like to be marked as OCC Exhibit 5.

8 EXAMINER PIRIK: The document will be so  
9 marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 EXAMINER PIRIK: Mr. Sauer, can you move  
12 the microphone closer?

13 MR. SAUER: Yes.

14 Q. Ms. Bednarcik, you have been handed  
15 what's been marked as OCC Exhibit 5, which is the  
16 company's response to OCC interrogatory 03-56. Do  
17 you see that?

18 A. Yes, I do.

19 Q. And are you familiar with that?

20 A. Yes, I am.

21 Q. And you are the person responsible noted  
22 at the bottom of the response?

23 A. Yes.

24 Q. And if you look at the last paragraph,  
25 are there other MGP sites that are noted there?

1           A.     There are.

2           Q.     And there being Hamilton, Middletown,  
3     Avondale, Glendale, Lebanon, Longview, Ripley, and  
4     Wilmington?

5           A.     Yes.

6           Q.     And is it your testimony, as far as you  
7     can tell, Duke has no liability for these MGP sites?

8           A.     Based upon review that was done by legal  
9     counsel and that was shared with me based on the  
10    information we know right now, we do not believe we  
11    have any liability on those sites.

12          Q.     And what is the reason why you believe  
13    you have no liability for those sites?

14          A.     It's through an evaluation that was done  
15    by legal counsel. I don't know the details of that  
16    but that's what I have been told.

17          Q.     Does Duke still own the property where  
18    these MGP facilities were formerly located?

19          A.     I don't know the particularities of those  
20    specific MGP sites that are listed here other than  
21    East End and West End. It's my understanding we do  
22    not. But I have not reviewed anything about those  
23    sites, since legal counsel told me we don't have a  
24    liability right now.

25          Q.     Okay. Thank you.



1                   When we took a break yesterday, I think I  
2                   was asking you what your familiarity was with the  
3                   Public Utilities Commission ratemaking formula. Do  
4                   you recall that?

5                   A.    I remember talking about that yesterday,  
6                   yes.

7                   Q.    And have you participated in a rate case  
8                   at the Public Utilities Commission before?

9                   A.    No. This is my first one.

10                  Q.    And do you understand the Commission's  
11                  used and useful standards?

12                  A.    The amount of my knowledge on used and  
13                  useful is based upon what was written in the Staff  
14                  Report. That was the first time I had really heard  
15                  about the used and useful.

16                  Q.    And is it your understanding that the  
17                  facilities that caused -- by "facilities," I mean the  
18                  equipment and the -- the -- the equipment that was  
19                  used at those sites to manufacture natural gas, are  
20                  those facilities no longer used to provide public  
21                  utilities service for Duke customers?

22                  A.    At the East End site there is the  
23                  building that housed the purifiers and some of the  
24                  equipment used for the MGP site that's still on the  
25                  East End site and used as part of the locations for

1 the propane plant and construction and maintenance of  
2 the gas lines so that -- that facility was part of  
3 the MGP and is still being used on the East End site.

4 On the majority of the other equipment  
5 that was part of the MGP process, of course, was  
6 demolished both on the East End and West End site and  
7 there are no structures still on the West End site  
8 related to the historic MGP.

9 Q. The building that you're speaking to,  
10 however, that building didn't cause any of the  
11 impacts on the environment that is resulting in the  
12 remediation activities that are going on, did it?

13 A. Actually, we don't know yet. We are  
14 currently investigating that mill area of the site  
15 where the buildings are housed and doing  
16 investigations around it that -- the processes that  
17 were carried out in those buildings were one of the  
18 processes that helped to produce some of the  
19 residuals, so we are currently looking at that.

20 Q. But, again, the building structure itself  
21 didn't cause any contamination, did it?

22 A. Again, we're not quite sure. Processes  
23 inside may have. One of the ways contamination can  
24 move is along foundations of buildings, so it may be  
25 that the foundation, the tar-like material may have

1 followed that preferential pathway down. We just  
2 don't know that. We are doing that investigation  
3 now.

4 Q. The contamination of the sites as a  
5 result of trans -- transforming coal to natural gas,  
6 is that one of the processes that was used?

7 A. The residuals from the manufacturing of  
8 gas, yes, that's what we are cleaning up.

9 Q. And the equipment that was used to  
10 manufacture that gas is no longer at the site,  
11 correct?

12 A. I believe that all the equipment is down.  
13 I have heard that there may be a boiler that's still  
14 inside the building that was part of the MGP process  
15 use there that had been reconfigured, but I don't  
16 know that for a fact.

17 Q. But that boiler itself isn't being used  
18 to produce natural gas today, is it?

19 A. Not to produce natural gas.

20 MR. SAUER: Could we go off the record  
21 for a minute?

22 EXAMINER PIRIK: Yes.

23 (Discussion off the record.)

24 EXAMINER PIRIK: We'll go back on the  
25 record.

1           Mr. Sauer has handed the Bench and the  
2 parties documents that we marked as OCC Exhibit 6.  
3 There is confidential information in that document so  
4 the open version of the document that will be  
5 redacted will be labeled OCC 6 and the version that  
6 will be in the confidential side of the record will  
7 be labeled OCC 6.1.

8                   (EXHIBITS MARKED FOR IDENTIFICATION.)

9           EXAMINER PIRIK: At this point in time we  
10 will take a motion with regard to requesting  
11 confidentiality of this document from the company on  
12 the record. Your reasons why you are requesting  
13 confidentiality?

14           MR. McMURRAY: Duke Energy Ohio requests  
15 confidentiality treatment of the OCC Exhibit 6 on the  
16 basis that certain -- certain items in this document  
17 contain information that are sensitive to the company  
18 and covered under Department of Homeland Security  
19 requirements that are needed in order to ensure the  
20 protection of that information.

21           EXAMINER PIRIK: Are there any objections  
22 to the granting of this confidential treatment?

23           MR. SAUER: No objection, your Honor.

24           EXAMINER PIRIK: No objections? Hearing  
25 none, certain information in this document that has

1       been redacted will be treated as confidential, and  
2       the company will be responsible for providing the  
3       appropriately redacted versions to the court  
4       reporters by the end of the day on Wednesday.

5               Mr. Sauer.

6               MR. SAUER: Thank you, your Honor.

7               Q.     (By Mr. Sauer) Ms. Bednarcik, you have  
8       been handed what has now been marked as OCC Exhibit  
9       No. 6.

10              A.     Yes.

11              Q.     Are you familiar with that document?

12              A.     Yes, I am.

13              Q.     And is it the remedial action plan that  
14       was prepared by Burns & McDonnell in August of 2009?

15              A.     Specifically, yes, for the East End east  
16       and west parcels.

17              Q.     And if you look at what's attached --  
18       labeled page 1-1.

19              A.     Uh-huh, yes.

20              Q.     Under Section 1.1 "Site Description."

21              A.     Yes.

22              Q.     In the second line do you see where it  
23       indicates that "The east and west parcels are not  
24       used and are currently vacant land"?

25              A.     I see that. Like it says right after

1       that "portions of these parcels have been previously  
2       utilized," but at the time this document was written,  
3       we had stopped utilizing -- doing the clean hard fill  
4       of the east parcel.

5               Q.     Look at your supplemental testimony page  
6       3, lines 4 to 6.  If you could turn to your  
7       supplemental testimony page 3, lines 4 to 6.

8               A.     I'm there.

9               Q.     And you're discussing the actions taken  
10      were prudent and reasonable.  Do you see that?

11              A.     Yes.

12              Q.     Can you tell me what your definitions  
13      of -- what your definition of "prudent" is?

14              A.     Prudence is what -- knowing all the  
15      information that was known at the time when the  
16      decisions were made, what a person who is familiar  
17      with the information would make those decisions in  
18      order to make sure that the environmental liability  
19      and the risks to the company are being handled.

20              Q.     And do you understand that the company  
21      has filed previously a case for authority to defer  
22      the costs that are being spent remediating for the  
23      west and east sites?

24              A.     Yes, I am aware of the referral.

25              Q.     In this case the company is asking for

1 authority to collect those deferred costs from  
2 customers?

3 A. My understanding is that's -- these  
4 proceedings, that's what it covers.

5 Q. And is it your understanding the  
6 Commission will review Duke's actions in remediating  
7 these sites based upon what is prudent?

8 A. I do not know the basis of how the  
9 Commission will base their decisions.

10 Q. Would you agree that one of the decision  
11 points for the PUCO to review for the prudence of  
12 Duke's remediation costs would be the time that the  
13 remedial -- remediation action plan for the East End  
14 site and the basis of the design memorandum for the  
15 West End site were adopted?

16 A. I guess I'm a little confused by your  
17 question. Can you either state it again or restate  
18 it in a different way?

19 Q. Yes. If the Commission is reviewing the  
20 prudence of the company's remediation actions, would  
21 you agree that one of the points in time for the  
22 Commission to review Duke's actions would have been  
23 at the time they developed a remedial action plan for  
24 the East End site and the basis of the design  
25 memorandum for the West End site?

1 MR. McMURRAY: I am going to object to  
2 the extent that that question asks for a legal  
3 conclusion.

4 EXAMINER PIRIK: I'll deny the objection.  
5 You can answer if you know.

6 THE WITNESS: Okay.

7 A. As I am not a ratemaking lawyer of any  
8 dealings with direct -- the way the Utility  
9 Commission actually makes their decisions, my -- how  
10 I move forward was based upon prudence of doing  
11 environmental work, which is what I know is just  
12 environmental work.

13 Q. And the environmental work that you moved  
14 forward with was based on the criteria that was  
15 established in the remedial action plan for the East  
16 End site?

17 A. The criteria -- the remedial objectives  
18 for doing the remediation is described, of course, in  
19 the remedial action plan that based upon evaluation  
20 as per the criteria we discussed yesterday.

21 Q. And, similarly, the work going forward at  
22 the West End site was based upon the basis of the  
23 design memorandum that was adopted for the West End  
24 site.

25 A. That does include the majority of the



1 information that's used in making the decisions, but,  
2 again, we go through the same thought process in all  
3 of our MGP sites in determining what's the best  
4 course of action on the -- to handle the  
5 environmental liability and the whole protection of  
6 human health and the environment, all those criteria  
7 that need to be met for environmental.

8 Q. But the extent of the work, the scope of  
9 the work that was done, done under the determinations  
10 that exist within the remedial action plan for the  
11 East End site and the basis of the memorandum for the  
12 West End site?

13 A. The scope of the work for the actual  
14 remedial actions to remove the soil or stabilize the  
15 soil and the tar-like material and the oil-like  
16 material, based upon the information that we knew at  
17 the time of the writing of those remedial action  
18 point -- remedial action plan and basis of the design  
19 memorandum, yes, that was based upon the information  
20 that we knew at that time.

21 Of course, as we executed that work, we  
22 found additional information. We were able to change  
23 the actual implementation of some of the things at  
24 West End due to additional information, additional  
25 investigations that occurred, so it's a very dynamic

1 process, but based upon what we knew when the report  
2 was written, it had all the information in it that we  
3 knew at that time.

4 Q. And if you look at your supplemental  
5 testimony, page 26, lines 5 to 7.

6 A. I'm there.

7 Q. You say the "Capping was the least cost  
8 option looking at short-term liability, and the  
9 easiest to implement, however, it did not reduce the  
10 long-term liability on the site, as TLM and OLM would  
11 still be present." Do you see that?

12 A. Yes, I see that. This is specifically  
13 related to the East End site and it -- as it states  
14 in here, there would still be highly impacted  
15 material left in the ground that would not meet all  
16 applicable standards.

17 Q. But Duke's decision not to implement what  
18 you referred to as "the least cost option" is not  
19 documented within the remedial action plan at the  
20 East End site, is it?

21 A. It's not documented because it did not  
22 meet all the standards, applicable standards, and by  
23 capping it we would have had to address it later on  
24 because we still would have had the source material,  
25 the tar material in the ground, and that doesn't meet

1 the standards.

2 Q. Has it met the standards since it was --  
3 since the plants -- well, let me strike that.

4 At the time CERCLA was passed, did it  
5 meet the standards at that time?

6 MR. McMURRAY: Objection. What standards  
7 are you referring to?

8 EXAMINER PIRIK: Overruled. You can  
9 clarify.

10 Q. The standards that you just mentioned  
11 that wouldn't be achieved if you used the capping and  
12 for the least cost method.

13 MR. McMURRAY: The VAP was not enacted  
14 until 1994 so there weren't standards.

15 EXAMINER PIRIK: Objection overruled.

16 MR. SAUER: Thank you.

17 A. Can you repeat the question? Can you  
18 move the microphone a little closer? I'm having a  
19 hard time hearing.

20 EXAMINER PIRIK: Mr. Sauer, you need to  
21 move it closer because it is really hard to hear.  
22 No, a little closer. A little bit more. A little  
23 bit more. There you go.

24 Q. Your suggestion is that the standards  
25 wouldn't be met if you capped the site, correct?

1           A.     Based upon when that decision was made,  
2           and specifically for the East End site was 2009 on  
3           the understanding at that time of what the standards  
4           are, it would not have met the standards to leave it  
5           in the ground.

6           Q.     At the time that VAP was promulgated,  
7           would you have met the standards?

8           A.     Once we discovered that there was impacts  
9           in the ground, we were -- based upon discussions with  
10          legal counsel and my VAP CP at that time, once we  
11          discover that it is truly there, then we are  
12          obligated to address it. Before that time, of  
13          course, we had not started an investigation so we did  
14          not know for a fact at that time that it was truly  
15          there.

16          Q.     Once you knew it was there, you  
17          weren't -- were the standards met at that time?

18          A.     When we discovered that there was impacts  
19          in the ground that were above the threshold values  
20          for human health and the environment and meeting the  
21          standards, that is why we took the steps going  
22          forward to address those -- those exceedances.

23          Q.     So between the time the VAP rules were  
24          promulgated and you started investigating, the -- the  
25          extent of the -- strike that.

1                   Is it true that Duke is excavating in the  
2 MGP sites to depths to 20 to 40 feet in some places?

3                   A.     Yes.

4                   Q.     And when remediating in those depths, was  
5 Duke excavating the depths beyond where future  
6 construction activities would reasonably be expected  
7 to occur?

8                   A.     We did, because there was tar-like  
9 material, oil-like material below the depth of where  
10 a construction worker would be exposed.

11                  Q.     So you did go below the depths.

12                  A.     In order to remediate the tar-like  
13 material and oil-like material.

14                  Q.     Was the reason for excavating to depths  
15 from 20 to 40 feet to protect groundwater?

16                  A.     It was to stabilize or remove the  
17 tar-like material and oil-like material.

18                  Q.     And was that to protect groundwater?

19                  A.     It was to meet all applicable standards  
20 related to the presence of that tar-like material and  
21 oil-like material, which includes protection of  
22 groundwater but is not exclusive to protection of  
23 groundwater.

24                  Q.     Does Duke have any groundwater monitoring  
25 on those sites?

1           A.    Yes.

2           Q.    And what's the purpose of groundwater  
3 monitoring?

4           A.    Is to determine if there is tar, DNAPL is  
5 what it's called, dense non-aqueous phase liquids,  
6 that is migrating across the site and will accumulate  
7 in wells and to determine if anything has leached or  
8 chemicals have come out of the soil or the tar-like  
9 material, oil-like material, and has become part of  
10 the groundwater.

11          Q.    Does Duke have any groundwater monitoring  
12 results that demonstrate contaminants or leaching  
13 from either the East End or West End sites into the  
14 Ohio River?

15          A.    Duke Energy has a number of groundwater  
16 wells that are directly on the river bank at both  
17 sites that do show some impacts that are greater than  
18 the standards, and it's on the river bank. We have  
19 not, of course, gone into the river at this time yet.

20          Q.    So is the answer you don't know that  
21 the -- whether or not contaminants are leaching into  
22 the Ohio River?

23          A.    We don't know for a fact, but it's right  
24 on the property border right at the river bank and  
25 also on the sides of the properties.

1           Q.    Does Duke have any groundwater monitoring  
2 results at either MGP sites that demonstrates that  
3 the level of groundwater contamination has been  
4 getting worse over time?

5           A.    We have started groundwater monitoring at  
6 the East End site. I believe the first groundwater  
7 wells were put in in 2007. It has been -- during the  
8 time period during the years before we started the  
9 remediation, the groundwater has been -- remained  
10 relatively consistent, but thinking that that  
11 material, the source materials in the ground, has  
12 been in the ground for 50 years, we would not expect  
13 it to get worse over those couple of years if it's  
14 already been in the ground 50 years.

15                   Of course, once we remove the source  
16 material, we do expect it to -- groundwater results  
17 to improve significantly.

18           Q.    But you have no groundwater monitoring  
19 results prior to 2007.

20           A.    No.

21           Q.    And the groundwater contamination that  
22 you are finding on those sites in 2007 would have  
23 been there for 50 years.

24           A.    Yes.

25           Q.    And if you know, did all the groundwater

1 monitoring wells show contamination?

2 A. I believe that some of the upgradient  
3 wells did not show contamination; upgradient, of  
4 course, being we want to show if there is anything  
5 coming on to our property from a property that's off  
6 the site. Some of those, I don't believe, showed any  
7 contamination. Going off of memory, I believe all of  
8 the groundwater wells at least showed one chemical  
9 that was above any standard, if not more.

10 Q. Is it your recollection 4 of the 16  
11 monitoring wells at the East End site show the  
12 appearance of DNAPL or contaminants in the  
13 groundwater?

14 A. Based upon my recollection, there were a  
15 number of wells that showed the tar material actually  
16 present in the bottom of the well in addition to  
17 groundwater contamination, which would be those  
18 chemicals that are in the groundwater that you can't  
19 physically see like you can the tar when you take a  
20 sample, but we send off to a lab and they come back  
21 and show us we're above standards.

22 Q. In your testimony yesterday did you  
23 discuss a term "technical feasibility" with regards  
24 to what the VAP requirements are?

25 A. I don't remember if I used direct --



1 exactly those terms, but that is one of the criteria  
2 that is used in determining what can be done on the  
3 site is what's technically feasible or technically  
4 impractical to do on the site.

5 Q. Do the VAP rules include an economic  
6 feasibility attribute to the requirements to the  
7 rules?

8 A. I don't know if that's specifically in  
9 the VAP or not.

10 Q. If another company was faced with a  
11 \$65 million remediation liability and no captive  
12 customers to pass the costs on to, it could face  
13 bankruptcy or financial hardship. Do you know if  
14 there are any accommodations within the rules that  
15 would allow them any variances from the rules?

16 A. I don't know anything to that detail.  
17 All I know is how Duke Energy went forward based upon  
18 our discussions with legal counsel and the VAP CP. I  
19 don't know how another company would react with those  
20 specific requirements or those circumstances.

21 Q. Does Duke have employed within the  
22 company a certified professional that independently  
23 reviews remediation activities within Ohio?

24 A. Duke does not have a VAP CP on staff.

25 MR. SAUER: May I approach, your Honor?

1 EXAMINER PIRIK: Yes.

2 Q. Ms. Bednarcik, I believe you have been  
3 handed what's been marked as OCC Exhibit 7.

4 EXAMINER PIRIK: The document is so  
5 marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. It is a six-page document with responses  
8 to OCC interrogatories 15-577 15-581, 15-582, 15-579,  
9 15-580, and 15-590; is that correct?

10 A. That is correct.

11 Q. And I believe you were identified as the  
12 person responsible for all six of the responses?

13 A. Yes.

14 Q. And is it true that Duke has investigated  
15 and identified Columbia Gas of Ohio as a predecessor  
16 company?

17 A. Yes.

18 Q. Had ownership interest in Cincinnati Gas  
19 & Electric and the Union Gas & Electric Company  
20 between the years 1909 and 1946?

21 A. Yes.

22 Q. Is it true you've identified Columbia Gas  
23 of Ohio as a potential responsible party?

24 A. Yes.

25 Q. And has Duke at this time approached

1 Columbia Gas about responsibility for the remediation  
2 costs that are being expended at the East End and  
3 West End sites?

4 A. We have had conversations with Columbia  
5 Gas of Ohio representatives and their environmental  
6 department and have started that conversation back  
7 and forth, and there have been people from Columbia  
8 Gas who actually have visited the East End and West  
9 End site.

10 Q. Is there an anticipation that there will  
11 be a resolution of this determination as to whether  
12 or not Columbia Gas has actual responsibility for  
13 sharing in the remediation costs of the East End and  
14 West End sites?

15 A. Yes. We are continuing our research on  
16 it in discussions with Columbia Gas, and I do expect  
17 we will come to a resolution.

18 Q. And is there a timeframe in which you are  
19 looking at at which this resolution may take place?

20 A. I do not have a date certain.

21 Q. And I believe yesterday you testified you  
22 are involved in the insurance -- in pursuing  
23 insurance claims for the liability at the East End  
24 and West End sites?

25 A. There is a legal counsel within Duke

1 Energy who is the main responsible person for  
2 pursuing the insurance claims, but he is -- I'm part  
3 of the team.

4 Q. And how many claims has Duke made with  
5 insurance companies?

6 A. I don't know the specific number of  
7 claims.

8 Q. Do you know which insurance companies  
9 Duke has filed a claim with?

10 A. No. That's the legal counsel, who is  
11 handling the majority of that, would know that. I do  
12 not.

13 Q. And do you know when the first claim with  
14 an insurance company was filed?

15 A. I don't know the dates. I do believe in  
16 one of the staff requests or OCC requests we included  
17 a date of when the insurance companies were put on  
18 notice.

19 Q. And have any of the insurance companies  
20 that have been put on notice refused to cover the  
21 claims?

22 A. I don't know the communications that  
23 legal counsel has had with the insurance companies  
24 specific to that point.

25 Q. And has Duke filed claims in the amount

1 of the total remediation costs that has been expended  
2 to date?

3 A. Again, I don't know the -- those specific  
4 details on -- on the insurance part of the -- of one  
5 of the venues that we are looking at for costs.

6 MR. SAUER: Can we go off the record for  
7 a minute, your Honor?

8 EXAMINER PIRIK: Yes.

9 (Discussion off the record.)

10 EXAMINER PIRIK: All right. Mr. Sauer,  
11 we can go back on the record.

12 (EXHIBITS MARKED FOR IDENTIFICATION.)

13 MR. SAUER: Thank you.

14 Q. (By Mr. Sauer) Ms. Bednarcik, I have  
15 marked what is OCC Exhibit No. 8 and OCC Exhibit  
16 No. 9. OCC Exhibit No. 8 is a staff data request  
17 response from the company 127-001. Have you -- have  
18 you seen that response before?

19 A. Yes.

20 Q. And I've handed you OCC Exhibit No. 9  
21 which is a -- it's a summary appraisal report  
22 prepared for Robert Hall on October 28, 2011. Are  
23 you familiar with that?

24 A. Yes.

25 Q. Staff data requests, the response to

1 127-001 is a response pertaining to the adjacent  
2 property to the East End site that was sold by Duke  
3 in 2006; is that correct?

4 A. I'm sorry. I was reading through the  
5 requests. Can you repeat the question, please?

6 Q. Yes, yes. The company's response to  
7 Staff Data Request 127-001 is in regards to the  
8 purchased property that was adjacent to the East End  
9 site that was purchased by DCI in 2006; is that  
10 correct?

11 A. No. It is for all 9 acres that Duke  
12 Energy acquired in 2011 as part of the settlement  
13 negotiations with that property owner, but it  
14 includes many, many different parcels that Duke  
15 Energy never owned.

16 Q. And as part of that purchase back by Duke  
17 was included in that the parcel that was sold in  
18 2006?

19 A. Yes.

20 Q. And it was the sale in 2006 that became  
21 the change in use; is that correct?

22 A. No. The change in use was that the --  
23 that DCI had acquired a lot of properties next to the  
24 property that Duke Energy owned, and they were doing  
25 development of residential on that property.

1           Outside of the property that was acquired  
2           by them from Duke Energy -- or from Cinergy,  
3           actually, at that time prior to the merger, but he  
4           was planning the residential development with or  
5           without the pieces of properties -- the few parcels  
6           that they purchased from Cinergy.

7           Q.     So you're saying the property that was  
8           sold by Duke in 2006 to DCI was not necessary for DCI  
9           to develop the entire parcel?

10          A.     Based upon my understanding of the  
11          situation at that time and based upon looking at the  
12          property and what I know right now, he could have  
13          easily developed it without the properties that were  
14          purchased by Cinergy -- or from Cinergy, excuse me.

15          Q.     Well, do you know why Duke sold that  
16          property?

17          A.     That occurred in 2006 before Duke Energy  
18          merged with Cinergy, and I was not involved in the  
19          project at that time.

20          Q.     Do you know if Duke included any  
21          provisions in the sale agreement to limit its  
22          liability for potential environmental risk associated  
23          with that property?

24          MR. McMURRAY: I would just object. To  
25          clarify, she's testified several times it was Cinergy

1       that sold the property, not Duke.

2               EXAMINER PIRIK:   Okay.   Thank you.

3               A.     Can you repeat the question, please?

4               MR. SAUER:   Could you read the question  
5       back, please.

6               (Record read.)

7               THE WITNESS:   Thank you.

8               A.     I do not -- I wasn't involved in that  
9       sales agreement and I have not seen a copy of that  
10      sales agreement in many years.   I don't know if I  
11      have ever actually reviewed it.   I may have once.  
12      But I don't remember anything specifically related to  
13      that.

14              Q.     Do you know if at the time -- at the time  
15      Duke sold the property it knew the developer intended  
16      to use that property for residential development?

17              A.     I don't know what exactly Cinergy knew at  
18      the time that they sold that property.

19              Q.     Duke did know that property had been a  
20      former MGP site though, correct?

21              A.     Those few parcels that were sold by  
22      Cinergy to DCI were part of the overall East End gas  
23      works property, but based upon some drawings and  
24      Sanborns, one could look at it and think that there  
25      was no process equipment on those parcels.   I don't



1 know what went through their minds as they were  
2 selling it.

3 Q. Was it prudent for them to sell that  
4 property in 2006?

5 MR. McMURRAY: Objection. Calls for  
6 speculation.

7 EXAMINER PIRIK: Overruled.

8 A. As I don't know exactly what they knew at  
9 that time when they were selling it, I cannot expound  
10 as to whether it was -- prudence was part of that  
11 decision-making process or not. I wasn't there.

12 Q. And if you would look at the second page  
13 of OCC Exhibit No. 9, it discusses that the subject  
14 property was acquired on May 20 of 2011 for \$4.5  
15 million. Do you see that?

16 A. I do see that.

17 Q. Based upon an agreement that was dated  
18 May 13 of 2011?

19 A. Yes, I do see that.

20 Q. And Duke bought the larger parcel that  
21 included the smaller parcel that was sold in 2006 in  
22 2011, correct?

23 A. That is correct.

24 Q. And this sale was in -- as it states  
25 here, in exchange for the seller dropping all legal

1 claims against the buyer, Duke Energy Ohio; is that  
2 correct?

3 A. That is what the document states.

4 Q. And do you know why in October, 2000 --  
5 yes, in October, 2011, why Duke had asked for an  
6 appraisal report?

7 A. It is my understanding that after the  
8 confidential settlement agreement had been finalized,  
9 I was asked by real estate and by accounting how much  
10 really is the property worth, what's a fair market  
11 appraisal, and I believe that is why we asked our  
12 real estate department to prepare an appraisal for  
13 the site.

14 Q. And from this can you tell me what the  
15 property is worth?

16 A. At the date that this -- the appraisal  
17 was done based upon the pages that are part of this  
18 exhibit, it does not state what the property is worth  
19 at the time of the writing of this or on this one  
20 page. I assume it is in subsequent pages of the  
21 report.

22 Q. And it says here, does it not, that in  
23 the 2005-2006 timeframe the total cost of those  
24 properties assembled by DCI at the time was 1.9  
25 million?

1           A.     That is what it states.

2           Q.     And in this case Duke is trying to  
3 collect from customers the difference between what  
4 Duke paid for the property and what -- what -- let me  
5 rephrase this.

6                     What is Duke proposing to collect from  
7 customers in this case relative to what was paid for  
8 this property in 2011?

9           A.     My understanding is that what has been  
10 included in the schedule, specifically towards the  
11 property purchase, is the -- the differential or the  
12 delta between the fair market value that was put --  
13 that was created as part of this October 28, 2011,  
14 summary appraisal report and the fair market value  
15 and what the settlement agreement total price was.

16                     MR. SAUER: I'm sorry, could you read  
17 that answer back, please.

18                     (Record read.)

19           Q.     And the settlement is the 4.5 million  
20 you're talking about?

21           A.     Yes.

22           Q.     And what's the other value?

23           A.     The fair market value, that is what was  
24 generated as part of this report. Again, it was  
25 stated what the fair market value would be is on a

1 page that wasn't included in the exhibit.

2 Q. And the fair market value being something  
3 less than 4.5 million.

4 A. Yes.

5 Q. So Duke overpaid for this property in  
6 order to settle a lawsuit against Duke?

7 A. I don't know all the details of the  
8 confidential settlement agreement, but it was part of  
9 a settlement agreement.

10 Q. And the indication here is that this was  
11 not -- this transaction was not an arm's length  
12 transaction; is that correct?

13 A. I didn't catch that one word, what type  
14 of a transaction?

15 Q. An arm's length transaction.

16 A. That is what it states on Exhibit No. 9,  
17 but truthfully, I don't know what that term means,  
18 "arm's length transaction."

19 Q. Would you agree that it would be a  
20 transaction not between willing sellers and willing  
21 buyers?

22 A. All I know is that it was a settlement  
23 agreement. I don't know all the details of the -- of  
24 the settlement agreement.

25 Q. The indication here is that Duke, the

1 buyer, had no need for the land acquired and would  
2 not have been a buyer but for the duress to acquire  
3 the property to avoid the uncertainties of  
4 litigation; is that what it says?

5 A. I do know that we had tried for years to  
6 get access to the property and the property owner  
7 would not allow us and that he threatened litigation.  
8 So as part of that is why we had the settlement  
9 agreement.

10 Q. When you say you "tried to get access for  
11 years," what do you mean you tried to get access?

12 A. We approached the property owner. We  
13 told him we have access agreements to allow us to go  
14 on the property. If we find anything related to the  
15 manufactured gas plant site, any type of  
16 contaminants, that if you let us on the property,  
17 test for it, make sure it's not there, and if it is  
18 there, that we would take care of it. We tried for  
19 years to do it outside of buying the property or a  
20 lawsuit.

21 MS. BOJKO: Your Honor, I'm going to  
22 offer an objection here. The witness is speculating  
23 and adding hearsay into this record there's no  
24 documentation for. For two days we have gone on and  
25 we have just now learned all kind of additional

1 information and it's not -- there is no basis in her  
2 written prefiled testimony for it, and I am going to  
3 move to strike.

4 EXAMINER PIRIK: Motion denied.

5 Q. When you say you were trying to get  
6 access, you were trying to get access to remediate  
7 the -- to investigate first and potentially remediate  
8 the sites?

9 A. Yes. We were first asking for access to  
10 investigate the site, the location on his property.

11 Q. During that attempt to get access, were  
12 you also attempting to purchase it back?

13 A. No.

14 Q. There was a clarification that Cinergy  
15 sold the property in 2006; is that correct?

16 A. Yes.

17 Q. And was Cinergy in discussions with Duke  
18 at that time?

19 A. I believe during that time period there  
20 was merger discussions. I don't remember exactly  
21 when the merger discussions started, but I believe  
22 that we merged -- we did merge sometime in 2006.

23 Q. Was the sale of the parcel in 2006 a  
24 chance for Cinergy to extract value before the sale  
25 of the company to Duke?

1           A.    I don't know the answer to that.  I  
2    wasn't part of those discussions.

3           MR. SAUER:  Go off the record for a  
4    moment, your Honor.  I may be done.

5           EXAMINER PIRIK:  Okay.

6           (Discussion off the record.)

7           EXAMINER PIRIK:  Go back on the record.  
8    Ms. Bojko.

9           MS. BOJKO:  Yes, thank you, your Honor.

10                               - - -

11                               CROSS-EXAMINATION

12   By Ms. Bojko:

13           Q.    Ms. Bednarcik -- Bednarcik, I apologize.  
14    We've heard a lot of dates and different things from  
15    your testimony over the last two days, so I would  
16    like to try to clarify and maybe you can help me out  
17    with that.

18           A.    Okay.

19           Q.    If we turn to page 4 of your testimony,  
20    your direct testimony, on page 4 you state that you  
21    have been advised that Duke is liable.

22           A.    Can you --

23           Q.    When do you believe Duke became liable?

24           A.    Can you point the line now?

25           Q.    Are you now not admitting Duke is liable?

1 Is Duke liable?

2 EXAMINER PIRIK: Ms. Bojko.

3 MS. BOJKO: Yes.

4 EXAMINER PIRIK: The witness has asked  
5 you to point to --

6 MS. BOJKO: Throughout the whole  
7 testimony and for two days --

8 EXAMINER PIRIK: Ms. Bojko, you asked her  
9 to turn to page 4 and said that it was on that page  
10 and then you didn't give her a reference. Can you  
11 please clarify your question for the witness?

12 MS. BOJKO: Yes, your Honor. It begins  
13 on page 4 and it goes throughout the entire  
14 testimony. It starts on -- she says specifically  
15 that Duke advised her -- I apologize. Okay. I  
16 withdraw the question. I can't find the specific  
17 reference. I apologize.

18 Q. (By Ms. Bojko) It's in there though, you  
19 were advised that Duke is liable; is that correct?

20 A. Yes.

21 Q. Okay. So CERCLA became -- was passed in  
22 1980; is that correct?

23 A. Yes.

24 Q. Okay. When do you believe that Duke  
25 became liable?



1           A.    I don't know the date certain when the  
2           determination was made that -- that the company made  
3           the determination that there was -- that we were  
4           liable for these sites, that date certain. But based  
5           upon the rules of CERCLA and the past operations of  
6           the site, we do have liability.

7           Q.    Okay.

8           A.    According to what legal counsel told me.

9           Q.    And as you just stated, that law was  
10          passed in 1980.

11          A.    Yes.

12          Q.    And then I'll check the site before I go  
13          to it. On page 20 of your supplemental testimony,  
14          and it's also on page 16 of your supplemental  
15          testimony, it's throughout you reference the year  
16          1988.

17          A.    Yes.

18          Q.    Is that when you believe that the company  
19          became liable, or 1980 when CERCLA was passed?

20          A.    If you read specifically on page 20 of my  
21          supplemental testimony, 6 and 7, it says that "MGP  
22          related obligations have been anticipated at Duke  
23          Energy since 1988." That is when it came to Duke  
24          Energy in the Carolinas, at least, I know that date  
25          certain in the Carolinas, and we talked about that

1 yesterday, is when Duke Energy became aware that  
2 there were MGP sites and contamination.

3 So most of the utilities was in the late  
4 '80s that it came to the -- to the -- our attention  
5 that there were these MGP sites and there were  
6 impacts on them. I believe that's also when EPA  
7 created their first documentation related to MGP  
8 sites and their contamination on them.

9 Q. Let's go back to the discussion you  
10 referenced yesterday, and it's page 16 of your  
11 supplemental testimony and it begins on line 12 is  
12 the question. And are you telling me that your  
13 answer now only applies to Duke Energy North  
14 Carolina? Is that what you're saying? Yesterday and  
15 now today?

16 A. What I was saying in 1988 is that I know  
17 that in 1988 Duke Energy Carolinas started their  
18 work. I don't know the exact date certain of when --  
19 wherein Cincinnati Gas & Electric and Cinergy started  
20 theirs because Duke Energy didn't merge with Cinergy  
21 until 2006.

22 Q. Can you read the question out loud for  
23 the Court, please?

24 A. Which specific questions?

25 Q. On line 12.

1           A.    "Please explain why Duke Energy Ohio  
2           initiated environmental work in 2006 related to its  
3           MGP sites in Ohio."

4           Q.    So even though the question now says  
5           Ohio, Duke Energy Ohio in 2006, your testimony here  
6           yesterday and today is that it only applies to Duke  
7           Energy, the response to that question of the first  
8           line starting 15 and 16?

9           A.    If you look at the answer to 15 and 16,  
10          it does not reference Duke Energy Ohio and starts off  
11          by referencing Duke Energy as a corporation.

12          Q.    And that's what I am trying to figure  
13          out. That's the distinction you are making --

14          A.    Belongs to Duke Energy Ohio.

15          Q.    That's the distinction you are making in  
16          that first question.

17          A.    Yes.

18          Q.    So in the question you just read there is  
19          a reference to 2006.

20          A.    Yes.

21          Q.    And, again, yesterday you changed some of  
22          your testimony from 2006 to be 2007. So I'm just  
23          trying to clarify for the record. Does this 2006  
24          remain or does this now change to 2007?

25          A.    What I changed yesterday is when the

1 actual subsurface investigation when we actually put  
2 the first boring into the ground was 2007. But we  
3 started the discussions internally as to now that the  
4 area next to the East End site was being developed  
5 for residential was also in conjunction with the  
6 merger, we said -- we started those discussions  
7 internally as to we need to start looking at the East  
8 End site. That started in 2006.

9 Q. So the question that says "environmental  
10 work in 2006" doesn't mean actual physical work, it  
11 means discussions?

12 A. It depends on your definition of "work."  
13 To me "work" means anything related to the  
14 environmental actions that were taken at the site,  
15 and that does include putting together a strategy of  
16 how to do the subsurface investigations.

17 Q. Okay. Ms. Bednarcik, this is your  
18 testimony so I'm trying to ask you what you meant.  
19 So when you wrote that question, you meant just  
20 general discussions of remediation efforts; is that  
21 correct?

22 A. What I meant was we started putting  
23 together the plan for the investigation in 2006.  
24 That is when we decided, Duke Energy Ohio, that we  
25 needed to start working on these sites. The actual

1 first sample that was taken was 2007.

2 Q. Okay. So throughout your testimony when  
3 you reference 2006, it may still mean 2006. I have  
4 to look for whether it was the first bore sample or  
5 just general discussions and work that began; is that  
6 what you're saying?

7 A. Yes.

8 Q. Okay. Thank you.

9 And you mentioned yesterday, I believe,  
10 that it's your -- there were some different dates  
11 thrown around yesterday too and Mr. Margolis said  
12 some dates -- or Mr. Middleton, I'm sorry. I want to  
13 make sure your testimony is that the plant stopped  
14 operating in 1963 and 1928; is that correct?

15 A. I would have to -- and I don't have the  
16 changes on my copy that's in front of me, but it  
17 was -- if you give me a moment to look at my direct  
18 testimony, I know it was in there.

19 Q. I believe that's one of the dates you  
20 changed yesterday; is that right?

21 A. If you will give me one moment to find  
22 the exact page, I would appreciate it. Thank you.

23 On page 5 of my direct testimony, line  
24 22, that's where I changed the end date of the West  
25 End so, yes, East End stopping manufacturing gas via

1 the coal carbonization with the coal in 1963 based  
2 upon additional information that Dr. Middleton had  
3 discovered, that's why I changed the West End date  
4 when they stopped manufacturing gas to I believe it  
5 was 1928, but I'm going off memory because I don't  
6 have it changed here.

7 Q. I'm a little confused by your statement  
8 you just made. Based on the discovery by  
9 Mr. Middleton because Mr. Middleton -- because you  
10 were here for Mr. Middleton's testimony yesterday.

11 A. Yes.

12 Q. Mr. Middleton yesterday told us his  
13 discoveries were based on discussions with you.

14 A. Mr. -- once Mr. Middleton -- or  
15 Dr. Middleton, excuse me, started working on the  
16 sites, we dug through all the historical information  
17 that was in the Duke Energy archives a little -- a  
18 little bit more deeply, and he was able to determine  
19 that my initial evaluation of when these -- the site  
20 stopped manufacturing gas at West End was -- was not  
21 correct.

22 So based upon information in annual  
23 reports and documents that were provided to  
24 Dr. Middleton from Duke Energy, he was able, with his  
25 great knowledge of histories of MGP sites, to pick up

1 on the exact date of when West End stopped  
2 manufacturing gas.

3 Q. And help me with the timing of that. All  
4 of that occurred after you wrote your testimony?

5 A. Yes.

6 Q. Even though Mr. Middleton's testimony was  
7 filed on the same day as your testimony?

8 A. Mr. Middleton -- Dr. Middleton's initial  
9 testimony dealt with the history of manufactured gas  
10 plants as a whole. And was on the whole process.  
11 Specifically related to East End and West End, he  
12 addressed that, of course, in his supplemental  
13 testimony.

14 Q. So you're saying that Mr. Middleton did  
15 not even look at Duke plants until after your direct  
16 testimony was filed.

17 MR. McMURRAY: I object to that  
18 characterization of her testimony, which is  
19 incorrect.

20 EXAMINER PIRIK: Objection overruled.

21 A. Can you repeat the question, please, or  
22 have it read back, please.

23 MS. BOJKO: Could you please read it  
24 back.

25 (Record read.)

1           A.    Dr. Middleton, in preparing his initial  
2           testimony, was asked to prepare testimony related to  
3           the history of manufactured gas plants as general.  
4           It was after the submittal of the initial testimony  
5           that working together we looked through the  
6           historical files and he came upon that clarification  
7           on when exactly the West End site stopped  
8           manufacturing gas.

9           Q.    And was that new date then incorporated  
10          into your supplemental testimony that you would have  
11          filed simultaneously with Dr. Middleton's testimony?

12          A.    I don't believe I've referenced that date  
13          specifically in my supplemental testimony, but I  
14          would have to look.

15          Q.    Okay. So let's talk about the plans  
16          started -- stopped operating now in 1963 and 1928.  
17          And it's your testimony that some work began in 2006  
18          and 2009 but samples weren't actually taken or  
19          physical work was not done until 2007 and 2010; is  
20          that right?

21          A.    2007 and 2010 is when we mobilized  
22          sampling equipment to the site, yes.

23          Q.    So you believe that Duke began mediating  
24          this site -- remediating the site in 2007 and 2010;  
25          is that right?



1           A.     Duke Energy started taking samples in  
2     2007 -- 2007 and 2010. That is when we started the  
3     subsurface investigation in order to determine if  
4     there truly was contamination on the site or not.

5           Q.     And do you know when -- I think you  
6     referenced in response to Mr. Sauer that you were  
7     aware that Duke has sought accounting authority to  
8     defer costs related to the MGP sites; is that  
9     correct?

10          A.     In Ohio, yes.

11          Q.     And that was done when?

12          A.     I don't remember the exact date.

13          Q.     Subject to check, would you believe it  
14     would be in 2009?

15          A.     I would have to check the exact date.  
16     That sounds -- sounds right, but I don't know -- I  
17     don't remember the exact date.

18          Q.     So if -- if the request was given and  
19     approved in 2009, it's your understanding that those  
20     costs for the MGP cleanup of the sites as well as --  
21     not just cleanup, as you just pointed out, it's the  
22     investigation, the discussion, everything that you've  
23     been doing, that those costs are embedded in that  
24     deferral.

25          A.     I would have to reread the exact language

1 of the deferral, but I believe that the 2009, if that  
2 was the date, deferral did allow for deferring of the  
3 costs prior to 2009.

4 Q. And the budgets that you provided earlier  
5 to Mr. Sauer yesterday were inclusive of all those  
6 kinds of costs; is that correct?

7 A. Yes.

8 Q. And although in that response you stated  
9 yesterday, I believe, that 2008 was the earliest you  
10 had the data for that; is that right?

11 A. For the individual budgets that were  
12 created, but the actual dollars spent, I do have that  
13 information which is how -- and that was all reported  
14 as part of discovery requests.

15 Q. Beginning when?

16 A. Starting in 2006.

17 Q. Starting in 2006. So it's your opinion  
18 that the costs and the budgets and the actual numbers  
19 that you provided include costs beginning in 2006.

20 A. Yes.

21 Q. Okay. And one of your stated reasons to  
22 investigate or begin remediation was the contact by a  
23 developer in 2006; is that your testimony?

24 A. My testimony is that it was the change in  
25 use and that this was a developer who was planning

1 residential development right next to the property,  
2 and because of that change in use is what  
3 necessitated the beginning of investigations.

4 Q. And it was at that point that the company  
5 unilaterally decided at the time to begin  
6 environmental investigations; is that correct?

7 A. What do you mean by "unilaterally"?

8 Q. Did the company decide to do it or did  
9 the developer decide to do it or did the State of  
10 Ohio direct you to do it?

11 A. The company, based upon advice from legal  
12 counsel and through discussions with a VAP certified  
13 professional, decided it was the best and most  
14 prudent course of action to begin the investigations  
15 on those portions of the East End site.

16 Q. So the VAP consultant was hired before  
17 2006.

18 A. I -- no. In 2006, when we started  
19 discussing as to do we need to start looking at these  
20 sites, we did hire legal counsel and had discussions  
21 with legal counsel and that legal counsel, I believe,  
22 also involved a VAP CP in order to determine if  
23 that's the best way of looking at these sites and  
24 handling these sites. I don't know if we exactly  
25 hired that CP directly in 2006.

1           Q.    Were you involved in those discussions in  
2   2006?

3           A.    No.

4           Q.    Were you at the company in 2006?

5           A.    Yes.

6           Q.    In Duke North Carolina.

7           A.    Yes.

8           Q.    Do you know the date of the contract with  
9   the VAP CP?

10          A.    No.

11          Q.    Didn't you testify yesterday that you put  
12   together the RFPs for that VAP CP and that you worked  
13   on developing the RFP, you reviewed, you processed  
14   the RFP, and you had a part in selecting the VAP CP?

15          A.    Starting in 2007 when we went out for the  
16   competitive bid in 2007 to continue additional  
17   investigations on the East End site.

18          Q.    Continue.  So was the -- was the VAP CP  
19   hired in 2006 or before?

20          A.    There was an environmental firm,  
21   consulting firm, that was hired to do the initial  
22   investigation prior to my engagement on the site, and  
23   that environmental firm that was hired did have a CP  
24   that was working with them.

25          Q.    But the V -- the VAP CP that you talk

1 about in your testimony was not hired until 2006 --  
2 '7 after the RFP was conducted; is that correct?

3 A. That's a different CP. That's the CP  
4 that -- when I went out for bids to these  
5 environmental consulting firms, I always asked them I  
6 need a name of your CP who is going to be part of the  
7 team to look at the sites. The very first CP who  
8 worked on the site was part of an environmental  
9 consulting firm that was brought onboard by the  
10 project manager who had it before -- who was working  
11 on the site before I was working on the site.

12 Q. I'm sorry. I thought you just told me a  
13 couple of questions ago that you didn't know whether  
14 there was a VAP CP hired prior to 2006. Are you now  
15 saying there was? Or you don't know?

16 A. I don't know the exact date he was hired.  
17 But he was -- there was a VAP CP who was involved in  
18 the investigations that occurred prior to my time on  
19 the site. We've had multiple environmental  
20 consultants on-site.

21 Q. I understand the environmental  
22 consultants, I am actually trying to figure out about  
23 the CP and when the VAP CP was hired.

24 A. The VAP CP is a team member or a teammate  
25 part of the environmental consultants. We do not

1 hire them directly. They are part of the  
2 environmental consulting firm that we hire.

3 Q. Okay. And on page 10 of your testimony,  
4 line 2.

5 EXAMINER PIRIK: Is that the supplemental  
6 or?

7 MS. BOJKO: I'm sorry, direct.

8 EXAMINER PIRIK: The direct?

9 A. I am there.

10 Q. You stated that your investigations  
11 initiated because the developer had easements to the  
12 property; is that correct?

13 A. That is only one part of the sentence.  
14 It says "in light of the easements and the subsequent  
15 land disturbances that would come with the  
16 development of the easements and the adjacent  
17 residential project," that is why we decided. It  
18 wasn't just because of the easements.

19 Q. I just asked if one of the reasons were  
20 the easements.

21 A. One, but not exclusively.

22 Q. And Duke's, as we have kind of learned  
23 the last couple of days, the Duke's predecessor was  
24 the property owner at the time; is that correct?

25 A. Of which property? There's lots of

1 properties out there.

2 Q. Well, Duke's predecessors were the owners  
3 of the property that you have currently today; is  
4 that correct?

5 A. Not the entire property that we own  
6 today. There is the East Works facility which Duke  
7 Energy has owned since the 1800s. There is the small  
8 portion of the property that Duke Energy -- excuse  
9 me, Cinergy sold in 2006. And then there is the  
10 additional 8 plus acres that was owned by this  
11 residential developer that we do now own that we  
12 purchased as part of that confidential settlement  
13 agreement in 2011.

14 Q. At the time that you reference  
15 "easements," who owned the property?

16 MR. McMURRAY: Objection. What property?  
17 Objection. What property?

18 MS. BOJKO: The property the easements  
19 were on.

20 Q. Who owned the property where the  
21 easements that you reference in your testimony were?

22 A. Duke Energy and Cinergy as a predecessor  
23 company owned those easements.

24 Q. And so the developer would have had to  
25 have gone to Duke to get an easement on Duke's

1 property; is that correct?

2 A. The developer is, my understanding,  
3 again, it was before Duke Energy and Cinergy merged.  
4 My understanding is that the developer did approach  
5 somebody within Cinergy in order to look for those  
6 easements.

7 Q. So Duke owned the easements, Duke owned  
8 the property that the easements were over; is that  
9 correct?

10 A. Yes.

11 Q. So why would the easements cause Duke to  
12 investigate?

13 A. The easements, specifically I know on the  
14 west parcel there was a landscape easement and we  
15 knew that as part of that landscape easement that  
16 there was going to be work that was done to help to  
17 be part of that residential development that was  
18 further to the -- to the west and that the soil cap  
19 that was on the property at that time would be  
20 penetrated and, therefore, we said let's look at this  
21 before we have landscapers and whatnot on the  
22 property and determine.

23 Q. And Duke would have known that because  
24 Duke gave the easement to the developer, correct?

25 A. I don't know exactly what you're asking



1 what we would have known.

2 Q. Didn't Duke have to give the easement,  
3 give the licensing easement, the permit to the  
4 developer?

5 A. For that specific easement, Duke Energy  
6 had all -- we had to approve everything that was  
7 going on at that site, yes.

8 Q. Right. So Duke gave easement rights to  
9 the developer that they are now claiming caused the  
10 remediation efforts, correct?

11 A. It was not the only cause --

12 Q. Right, thank you.

13 A. -- of the remediation effort.

14 Q. But it was one cause.

15 A. It was one of many.

16 Q. Thank you.

17 And do you know how much Duke charged  
18 that developer to gain access to those easements?

19 A. I don't know.

20 EXAMINER PIRIK: Ms. Bojko, can we take a  
21 10-minute break right now?

22 MS. BOJKO: Sure.

23 (Recess taken.)

24 EXAMINER PIRIK: Go back on the record.

25 Ms. Bojko.

1 MS. BOJKO: Thank you, your Honor.

2 Q. (By Ms. Bojko) Ms. Bednarcik --

3 EXAMINER PIRIK: I just want to point out  
4 sometimes and I notice your microphone cuts out  
5 sometimes. These microphones are very strange and  
6 very sensitive. When we put our Ps into the  
7 microphone directly, it shuts off.

8 THE WITNESS: Okay.

9 EXAMINER PIRIK: So kind of put it to the  
10 side of your mouth when you're talking so you're not  
11 directly.

12 THE WITNESS: Move it a way a little  
13 further also.

14 EXAMINER PIRIK: They're very odd. I  
15 don't know but it's so you won't cut out.

16 THE WITNESS: Okay. Thank you.

17 Q. (By Ms. Bojko) Ms. Bednarcik, I think we  
18 got off on the wrong foot because I had the wrong  
19 page. I do apologize for that. It's a problem when  
20 you have supplemental and supplemental testimony.

21 What I was trying to ask was on page 4 of  
22 the supplemental and not your direct, and I apologize  
23 for directing you to the wrong place, and  
24 specifically now I have a line reference which is  
25 line 7 -- line 7 to 10. And in that statement you

1 state "...I understand that Duke Energy Ohio has  
2 liability for remediating contamination at the entire  
3 site from such operations under federal law,  
4 specifically the Comprehensive Environmental Response  
5 Compensation and Liability Act of 1980 (CERCLA)."

6 Q. Do you see that?

7 A. Yes.

8 Q. So that was my reference earlier, and  
9 it's your understanding that it's that law in 1980  
10 that gave Duke Energy Ohio the liability that you  
11 reference on those lines; is that correct?

12 A. Based upon the advice from counsel that  
13 it is that law, the reason why we do have a  
14 liability, not necessarily specifically on that date  
15 that the law was enacted.

16 Q. But it's because of that law that you  
17 have the liability.

18 A. Based upon advice from counsel, yes.

19 Q. Okay. Thanks.

20 And earlier today you were talking -- you  
21 talked a lot about pre-2007, before the remediation,  
22 you actually dug -- and you talked about having  
23 discussions with CPs and lawyers and things of that  
24 nature. Do you recall that before our break?

25 A. Yes.

1           Q.    And in those discussions to -- you said  
2           you weren't a part of those discussions, right, or  
3           were you part of those discussions?

4           A.    I did not start working on the East End  
5           site until 2007.

6           Q.    Okay.  So to your knowledge was your  
7           witness in this case, Kevin Margolis, was he part of  
8           those discussions?

9           A.    No.

10          Q.    Okay.  Now, let's go back to a discussion  
11          we were having about the developer and the land.  Do  
12          you remember that one where the developer got  
13          easements on the property of Duke?

14          A.    Yes.

15          Q.    Okay.  So you pointed out to me that  
16          that -- that the easements were only one reason.  Do  
17          you recall that?

18          A.    Yes.

19          Q.    Okay.  And it's your understanding that  
20          the other reason that you reference in your testimony  
21          was that this was going to be a residential  
22          development.  Do you recall that or is that your  
23          belief?

24          A.    Yes.

25          Q.    And the other -- it's on page 10 of your

1 direct testimony on line -- starting on line 2, you  
2 reference the easements and the subsequent land  
3 disturbances, and when you reference the "subsequent  
4 land disturbances," it's that reference that you're  
5 talking about the residential development; is that  
6 correct?

7 A. Can I read before and after that a  
8 moment?

9 The subsequential land references that's  
10 referenced on line 2 is related to the development of  
11 the residential property.

12 Q. And I'm not sure if this part is one set,  
13 I believe it's talking about both the West and East  
14 End. Is the other land disturbance that you might be  
15 referencing there the bridge that was constructed or  
16 was supposed to be constructed?

17 A. This question is specifically related to  
18 East End.

19 Q. Oh, okay. I'm sorry. Thank you.

20 So you have land disturbances, plural,  
21 but the only one you are referencing there is the  
22 residential development; is that right?

23 A. If you read later on in that paragraph,  
24 it states that there was also residential development  
25 on the east of the east parcel in addition to west of

1 the west parcel. So residential development, yes.

2 Q. But I guess that came out a little bit  
3 yesterday too. I'm not sure, was that one already  
4 developed?

5 A. When I first went on the site in 2007, I  
6 noticed that there was a sign for the Corbin Park  
7 residential development that in between the east  
8 parcel and the Corbin Park ball fields, there's an  
9 area of property there that was being developed and  
10 we knew we were going to have residents close by  
11 also.

12 Q. So is that a "yes" or a "no"? I don't  
13 know what you are saying the answer is. The  
14 development was already there?

15 A. I don't remember if specifically there  
16 was construction activities going on at that site in  
17 2007, but I do remember seeing the poster board that  
18 said residential was planned.

19 Q. Okay. Is that by the same developer that  
20 you said in 2006 that there was a developer who  
21 contacted Duke -- or Cincinnati Gas & Electric, I  
22 guess at the time, about the land located adjacent to  
23 the East End site on the prior page of your  
24 testimony, line 17 and 19?

25 A. Different developers.

1           Q.    Different developers.  So in the first  
2 paragraph you're only talking about the one  
3 developer -- we'll call it the new developer.

4           A.    In the first paragraph it was a developer  
5 who was planning on developing the area that was to  
6 the west of the west parcel.  Later on it was -- in  
7 2007 it was determined that the development was also  
8 going on east of the east parcel.  Two different  
9 developers.

10          Q.    Okay.  And that second development isn't  
11 in your testimony, or is it?  Is that the one that's  
12 talked about, the Corbin Park reference?

13          A.    Yes.

14          Q.    Okay.  So to your knowledge, were the  
15 residential developments developed?

16          A.    Not -- to my knowledge based upon my  
17 recollection sitting here right now is that  
18 development, in the light of actually building  
19 structures, had not started.  I don't know what type  
20 of earth moving had done prework on those properties.  
21 I don't remember.

22          Q.    Well, how about today, is there a  
23 residential development there?

24          A.    East of the east parcel there is two,  
25 maybe three.  Now specifically there are at least two

1 homes on that Corbin Park development.

2 Q. The Corbin Park. What about the other  
3 one that you are referencing on page 9, line 17 to  
4 19?

5 A. The development that's on page 9  
6 referenced in 17 and 19 was the development that's  
7 planned on the property that was -- ended up being  
8 purchased through that settlement negotiation in 2011  
9 by Duke Energy.

10 Q. So is the answer to my question "no"?

11 A. He had started doing some earth moving  
12 and taken down I believe some things, but he had not  
13 started actually building pieces of residents -- or  
14 homes.

15 Q. I am going to ask it again. Is this a  
16 residential development today?

17 A. If you're asking about development,  
18 development includes moving and getting the area  
19 ready, so I would say it -- some work had been done.  
20 Are there homes on it today? No.

21 Q. Thank you.

22 And throughout your testimony you state a  
23 decision was made, the decision to do X. Are you  
24 referencing the company's decision, and that meaning  
25 Duke or any of its predecessors?



1           A.     The decisions were made by Duke Energy  
2     based upon advice from internal Duke Energy and legal  
3     counsel and many others, but the decision was made by  
4     Duke.

5           Q.     Okay. I'm asking specific questions so I  
6     didn't mean to ask about how the decision was made.  
7     I am asking if the decision was made by Duke.

8           A.     The final decision was made by Duke.

9           Q.     And on page 14 of your direct this time,  
10    you talked -- you talk about the land Duke purchased.  
11    Do you see that down on -- it starts on line 20 with  
12    the question?

13          A.     Yes, I do see that.

14          Q.     So that land was purchased in 2011 and  
15    that was after the deferral authority was given; is  
16    that correct?

17          A.     Yes.

18          Q.     And I think we've discussed a little bit  
19    today that this -- now, I am only going to isolate to  
20    this land that's really the subject of the rest of  
21    your testimony; is that correct? You don't go back  
22    to that other parcel of land called Corbin Park, do  
23    you?

24          A.     I don't remember specifically if I  
25    reference that other part in other areas of my

1 testimony.

2 Q. Okay. But how about on page 14, are we  
3 talking about the residential development -- the  
4 non-Corbin Park? Maybe that's the best way to  
5 reference it.

6 A. We, of course, did not purchase the  
7 Corbin Park property, so it's only the property to  
8 the west of the western parcel.

9 Q. And it's that piece of property that you  
10 said was one of the reasons you need -- that Duke  
11 decided to start remediation efforts; is that right?

12 A. Yes.

13 Q. Okay. So I'm going to focus on that  
14 piece of property. Duke -- it's my understanding  
15 that Duke originally owned a part of that property  
16 and then they sold it off to the developer and then  
17 they purchased it back in 2011; is that your  
18 understanding?

19 A. A small portion of that entire 9 acres,  
20 yes, was sold by Cinergy.

21 Q. And that was -- that was part of the same  
22 property that would have had the easements on that  
23 that we discussed a little bit today.

24 A. What was sold was not considered an  
25 easement. Those are two, of course, totally

1 different things.

2 Q. Of course, but the property that was  
3 ultimately sold first, it's my understanding that the  
4 easements were obtained on the land that Duke owned  
5 and then Duke sold that portion of the land to the  
6 developer for his residential property; is that  
7 right?

8 A. No.

9 Q. Okay. So the property was in addition to  
10 the easements.

11 A. There were three -- my understanding,  
12 again, this was prior to -- this was Cinergy, prior  
13 to the merger of Duke Energy and Cinergy, before my  
14 involvement, is that there was a very small portion  
15 of property that was purchased by the gentleman who  
16 was developing all of that property, all 9 acres, a  
17 small portion was purchased and then there was an  
18 ingress/egress easement and then there was a  
19 landscape easement, both of which retained ownership  
20 by Duke or Cinergy.

21 Q. Okay. I was trying to talk about the  
22 piece that the developer purchased. He purchased it  
23 from Duke originally, correct?

24 A. Cinergy.

25 Q. Okay. Let's get that out of the way

1 here. I am going to say "Duke" and I mean CG&E,  
2 Cinergy, Duke's predecessors; is that fair? I mean  
3 that's how you reference a lot of your testimony,  
4 right?

5 A. I reference it based upon who owned that  
6 property when the transaction took place.

7 Q. Okay, so it's not a fair representation  
8 so I'll say "Duke's predecessors." Duke's  
9 predecessors owned that land; is that correct?

10 A. A small portion of the entire property  
11 that was being developed for residential, yes.

12 Q. And that was the same piece of property,  
13 small or otherwise, it was the same piece of property  
14 that initiated the environmental investigations; is  
15 that right?

16 A. Even if that developer had not purchased  
17 that property, there still would have been  
18 residential development that would have initiated the  
19 investigations.

20 Q. Okay. We'll talk about it in a second,  
21 but to answer my question is, was it the same piece  
22 of property?

23 A. I guess I'm confused. I don't -- it's  
24 residential development. I'm confused what you're  
25 trying to drive at. Residential development on that

1 property including the property that was sold by  
2 Cinergy but not exclusive to the property sold by  
3 Cinergy.

4 Q. I'm just trying to ask you if the same  
5 piece of property was owned by Duke predecessors,  
6 given to the land developer, and then bought back  
7 from the land developer. Is that accurate?

8 A. Yes.

9 Q. Okay. And that land that we just  
10 discussed that transferred hands a couple of times  
11 during real estate transactions, that land was part  
12 of the original MGP site owned by Duke's predecessors  
13 or maybe even Columbia Gas as we've discussed today?

14 A. It was -- yes.

15 Q. Okay. When Duke -- Duke's predecessor,  
16 sorry, when Duke's predecessors sold that piece of  
17 land to the developer, did Duke credit the MGP  
18 expenses for the sale of those proceeds of that land?

19 A. I was not part of that negotiations and  
20 how -- I am not an accountant. I don't know how that  
21 was done, if it was done. I don't know.

22 Q. And on page 20, let's go to your direct  
23 testimony, page 20, line 9, on this -- starting of  
24 this paragraph, you talk about internal costs. Do  
25 you see that?

1 A. Yes.

2 Q. And who was the -- in charge of the  
3 project when it began in 2006?

4 A. A gentleman who was based out of our  
5 Plainfield, Indiana office.

6 Q. It was a CG&E employee at the time?

7 A. I don't know exactly. He was -- he was  
8 with -- prior to the merger of Duke Energy and  
9 Cinergy in 2006, he was an employee of Cinergy.

10 Q. Okay. What about after the merger? Who  
11 was he an employee of?

12 A. Of Duke Energy.

13 Q. And was he located in Cincinnati?

14 A. He was located in Indiana.

15 Q. In Indiana, and how far away would you  
16 believe that that location is?

17 A. I believe it's two to three hours.

18 Q. So driving distance.

19 A. Yes.

20 Q. So when you talk about "air travel," it  
21 would not have been for him.

22 A. No.

23 Q. Okay. The expense of air travel is for  
24 yourself flying from North Carolina to the MGP site;  
25 is that accurate?

1           A.    For me and for other people who have been  
2 involved in the site in the years that we have been  
3 working on it.

4           Q.    So this expense -- these internal costs,  
5 expenses, air travel, rental cars, hotels, would have  
6 been from the point of your involvement in 2007, not  
7 for 2006; is that right?

8           A.    Yes.

9           Q.    Okay. And on pages 28 and 29 of your  
10 direct testimony, you discuss the collaborative MGP  
11 utility group that Duke is a member of and you  
12 participate directly in; is that correct?

13          A.    Yes.

14          Q.    And how long has Duke been a member of  
15 that utility consortium?

16          A.    I do not remember the exact date when the  
17 consortium was founded. It was founded before I  
18 started working with Duke Energy. But we have -- we  
19 were one of the founding members.

20          Q.    Do you have any timeline sense for me?  
21 Has it been in -- since 1980 when the CERCLA was  
22 passed or has it been since 19 -- you reference 1988  
23 a couple of times. Has it been since that period?

24          A.    Specifically related to the MGP  
25 consortium which is referenced in line 20, I believe

1       that that group was put together in the 2004-2005  
2       timeframe. Of course, there were other groups that  
3       discuss MGP utility groups including every and USWAG  
4       which I reference in areas of my testimony.

5             Q.    And is this -- well, is this MGP, I don't  
6       know the entity you just named, but is this MGP  
7       consortium the same one you talk about during the  
8       EPRI?

9             A.    No. They are two different  
10      organizations.

11            Q.    Okay. So this one has been in from 2004  
12      and '05. What about the other one you referenced? I  
13      think it's closer on the first couple pages of your  
14      testimony.

15            A.    EPRI, which is the Electric Power  
16      Research Institute, I don't know exactly when that  
17      organization was put together. I wouldn't be able to  
18      even expound. It was earlier than 2000, I believe.  
19      I don't know how much earlier than that. But that  
20      has a specific sector that's related to the cleanup  
21      of manufactured gas plants. I don't know exactly  
22      when that started.

23            Q.    Would that have dated back to the 1980s  
24      to the CERCLA law enactment?

25            A.    I don't know exactly when that was



1       started.

2               Q.     Do you -- do you know how long Duke has  
3       been a member or participated in those meetings?

4               A.     I believe that Duke -- Duke Power, which  
5       was a predecessor company in the Carolinas, was one  
6       of the founding members of EPRI. It was part of the  
7       group that helped create EPRI.

8               Q.     Do you remember whether Cincinnati Gas &  
9       Electric or any of the Cinergy, any of the  
10      predecessors that actually owned MGP sites, do you  
11      know whether they would have been a member of EPRI?

12              A.     Are you asking specifically about Cinergy  
13      and Public Service of Indiana?

14              Q.     Yes.

15              A.     I don't know. My involvement with  
16      Cinergy, Public Service of Indiana, and CG&E,  
17      Cincinnati Gas & Electric started upon the merger in  
18      2006.

19              Q.     Would you expect that they would be one  
20      of the utility members given that they have MGP  
21      sites?

22              A.     I don't know whether they were -- I  
23      couldn't expound as to what they did during that time  
24      period.

25              Q.     And so I guess I better ask you to go

1 back with your answer to the MG -- MGP consortium on  
2 page 28, were you answering me just with regard of  
3 Duke Energy as -- and not Cinergy or CG&E  
4 predecessors?

5 A. I do remember that there was one  
6 gentleman that was part of CG&E who attended the very  
7 first consortium meeting that I attended in 2006. I  
8 do not know when they started but there was one  
9 person now that I remember, reflecting upon it, who  
10 was there from Cinergy.

11 Q. And do you have the same recollection for  
12 any CG&E employees in your participation through the  
13 EPRI program?

14 A. I was -- only began involvement in EPRI  
15 in 2005 and 2006. I don't remember exactly who  
16 attends all of those meetings.

17 When we have the meetings, there are a  
18 number of utilities who do send people to attend and  
19 some just review things and participate by phone, so  
20 I don't know exactly. I don't remember exactly.

21 Q. Is there a membership list of such either  
22 the EPRI or the MGP consortium?

23 A. There is a member list of the consortium.  
24 It's based upon the date today for the EPRI, I assume  
25 that they have one because utilities pay to become a

1 member of EPRI.

2 Q. And as a part of your participation in  
3 those groups, when to your knowledge did the other  
4 MGP site or utility-owned MGP sites begin their  
5 remediation efforts?

6 A. I don't know the particularities of all  
7 the utilities across the country and when they  
8 started working on their MGP sites. I mean generally  
9 when EPA put out their document on MGPs in the late  
10 1980s, that's when utilities became aware of it, but  
11 since there are so many sites and utilities have a  
12 large portfolio, we all look at our sites and some  
13 start earlier and later than others.

14 Q. But it's fair to assume, given that the  
15 CERCLA was passed in 1980, that those utility  
16 companies would have began some remediation efforts  
17 after that date; is that fair?

18 A. To different degrees based upon what they  
19 knew at certain time periods they would have, as we  
20 did when you know something, that's when you start  
21 looking.

22 Q. Well, Duke, I believe your testimony  
23 states that Duke Energy did not start looking until  
24 1988; is that right?

25 A. That is -- yes, that's when we were made

1       aware that there are -- there were manufactured gas  
2       plants that were a part of our predecessor companies.

3               Q.     You keep saying when they became aware.  
4       Wouldn't the utility owners, not specifically Duke  
5       Energy, but wouldn't the utility owners be put on  
6       notice in 1980 if they owned an MGP site that they  
7       would be responsible for remediation efforts?

8               MR. McMURRAY:   Objection.   Calls for  
9       speculation.

10              EXAMINER PIRIK:   I'll allow her to answer  
11      if she knows.

12              A.     I don't know exactly the process that  
13      went through between the enactment of CERCLA and when  
14      utilities started looking at their sites.   I was not  
15      involved in the MGP sites or the utility business at  
16      that time so I wouldn't know what the exact process  
17      was.

18              Q.     And I'm not asking you for the exact  
19      process.   I'm stating if you're using that document,  
20      the CERCLA document, which I believe you said Duke  
21      does use that document, if that was -- if that law  
22      was enacted in 1980, it's fair to assume that you  
23      were put -- a utility that owns an MGP site would be  
24      put on notice in 1980 that there was going to be some  
25      kind of investigation at least that would occur to

1 determine if there were any contamination on the  
2 property to determine if there was any remediation  
3 that we would need to be done, correct?

4 A. That was a long question. Let me try and  
5 figure out what I heard out of it was that CERCLA was  
6 passed in 1980. We don't necessarily know when we  
7 have a liability under CERCLA until we are either --  
8 we find out information that we have contaminants in  
9 the ground or potential predecessor companies.

10 Even though Duke Energy and other  
11 utilities and other companies around the country  
12 are -- receive notices from EPA or from states that  
13 say they have a liability on a property that they not  
14 necessarily would have even dreamed they had a  
15 liability on a property beforehand.

16 Q. I understand. But in 1980 when the  
17 CERCLA was enacted, wouldn't the utility begin to do  
18 the investigation stage that you just said to  
19 determine whether there is liability or not?

20 A. Not necessarily.

21 Q. So you're saying that in 1980 did not put  
22 people on notice of MGP owners, they did not put them  
23 on notice that there may be a remediation effort  
24 required?

25 A. The law was passed in 1980 related --

1 CERCLA was passed in 1980. But the exact -- I don't  
2 know exactly what happened in that time period but it  
3 is the law that assigns the liability. It doesn't  
4 necessarily say CERCLA is not the -- it's through  
5 other venues, it's through the state regulatory  
6 agencies and the USEPA that uses CERCLA to associate  
7 liability for the actual cleanup of the sites.  
8 There's lots of laws that work hand in hand but  
9 CERCLA is the one that assigns the liability. You  
10 don't know until you know that you are part of a  
11 site.

12 Q. Right. Until you investigate, right?  
13 You don't know -- you don't know what the liability  
14 exists on the piece of the property until you  
15 actually investigate, right?

16 A. Right.

17 Q. Right. So when the CERCLA is passed,  
18 it -- utilities began to investigate to determine  
19 whether they were or were not liable, right?

20 MR. McMURRAY: Objection.

21 A. No.

22 MR. McMURRAY: That wasn't her testimony.

23 EXAMINER PIRIK: Objection overruled.

24 A. No. In 1980 when CERCLA was passed, that  
25 is what assigned, based upon what counsel has told

1 me, and I will admit I am not a CERCLA expert, that's  
2 why I hire attorneys, but based upon my understanding  
3 of CERCLA when it was passed in 1980, that was the  
4 statute that assigned liability for these type of  
5 properties.

6 We do not, just because laws pass, go out  
7 and voluntarily start looking everywhere to see if  
8 there is sites that we might have liability. There  
9 is a process through EPA, a process through  
10 determining what you have based upon past liability,  
11 based upon your history with the sites, you do your  
12 investigation, that doesn't -- that didn't  
13 necessarily start in 1980.

14 Q. But your remediation and your  
15 investigation is based on that statute; is that  
16 correct? Or are you trying to tell me it doesn't  
17 mean anything and that you just went on your  
18 investigation when you felt like you needed to  
19 investigate?

20 A. The liability is through the CERCLA law.  
21 The actual burden of investigating when you have to  
22 start upon that is based upon many different factors.

23 Q. On page 2 of your supplemental testimony,  
24 you discuss that Duke's remediation efforts are  
25 consistent with other utilities and with Ohio and

1 federal EPA guidelines; is that correct?

2 A. If you are talking specifically about  
3 lines 20 through 23; is that correct? Is that where  
4 you are referencing?

5 Q. Yes.

6 A. It says in there that the manner which we  
7 have looked at these MGP sites is consistent, yes.

8 Q. And isn't it true that Duke has not yet  
9 received a formal order from either of these agencies  
10 with regard to the MGP sites that we're discussing  
11 today?

12 A. We have not received an enforcement  
13 action.

14 Q. And am I correct that part of the West  
15 End facilities houses electrical facilities; is that  
16 accurate?

17 A. Currently today, yes.

18 Q. And those electrical facilities are --  
19 Duke is requesting recovery of the remediation when  
20 those facilities are -- and the relocation of those  
21 facilities in this case; is that correct?

22 A. No. We are requesting for recovery  
23 related to the environmental liability from the  
24 manufactured gas plant but not requesting as part of  
25 this proceeding replacement of the electric



1 facilities.

2 Q. Okay. How about the first part of my  
3 question, are you requesting the property where the  
4 electric facilities are housed as part of this case?

5 A. The remediation that's going on on the  
6 properties where there is electric equipment, yes.

7 Q. On page 35 of your supplemental  
8 testimony, line 2, you talk about customers  
9 benefiting from the remediation efforts. Do you see  
10 that?

11 A. Yes.

12 Q. And would those customers have benefited  
13 in 1988 for these efforts that the companies began?

14 A. The customers -- it specifically states  
15 customers benefit from the company resolving the  
16 liability and minimizing potential future risks.  
17 That's based upon the information that we know when  
18 we started the investigation that customers benefit  
19 because it allows for reduction of that future  
20 liability and also helps make sure that there's no  
21 worker claims or lawsuits to help stem that for  
22 future -- future costs.

23 Q. So you're stating that would not have  
24 been until 2006 when you began to look at the issue.

25 A. We don't know until we start the

1 investigation whether we truly have that liability or  
2 not.

3 Q. And you discuss how it's important to be  
4 proactive rather than reactive; is that correct?

5 A. Yes. That is what is stated in 6 through  
6 8.

7 Q. And would you consider waiting 18 years  
8 if you started looking at this in 1988, or if we even  
9 went back to 1980, would you -- would you consider  
10 that being proactive waiting until 2006?

11 A. The statement that was in this is based  
12 upon my understanding and my involvement with the  
13 sites starting in 2006, 2007 for East End and the  
14 investigation that is started in 2010. I don't know  
15 what -- I couldn't expound on what people thought  
16 prior to my involvement so I can -- it's based upon  
17 the decisions that were made as part of this -- the  
18 work that's happening at these sites.

19 Q. I'm asking whether you believe waiting 18  
20 years is proactive.

21 MR. McMURRAY: I am going to object in  
22 that the testimony on this is that that was Duke  
23 Energy, the 1988 date. Duke Energy didn't acquire  
24 Cinergy until 2006 and so we're talking about apples  
25 and oranges so I think there is really probably

1 several reasons to object to that question.

2 EXAMINER PIRIK: Well, thank you for the  
3 clarification. That's a good thing that the witness  
4 can clarify in her response.

5 MS. BOJKO: Your Honor, I will rephrase  
6 my question because that's not what I'm asking. I  
7 asked the question if she believed 18 years was  
8 proactive.

9 A. The statement in there about "proactive"  
10 is that once we had known the liability that there  
11 was contamination in the ground, it was better for us  
12 to respond to it instead of waiting for an  
13 enforcement action or lawsuits.

14 Q. I'm asking you your definition of  
15 "proactive." Is waiting 18 years proactive?

16 A. Waiting 18 years, if you had known you  
17 had contamination in the ground, would not have been  
18 proactive, but we did not know we had contamination  
19 in the ground until we started the investigation.

20 MS. BOJKO: Move to strike everything  
21 after the response to my question.

22 EXAMINER PIRIK: Motion denied.

23 Q. Would you consider waiting 26 years to be  
24 a proactive approach?

25 A. It's all based upon the knowledge when

1       you -- when you know it. If I had no knowledge that  
2       there was contamination, that proactive doesn't  
3       apply.

4               Q.    I'm asking if you believe 26 years is  
5       being proactive.

6               A.    If I knew I had contamination in the  
7       ground, confirmed knowledge, and I did nothing about  
8       it for 26 years, that would not be proactive, but we  
9       did not know until we knew.

10              Q.    Do you believe that 39 years is  
11       proactive?

12              A.    39 years, I would have to do the math.  
13       We didn't know that these sites were contaminated  
14       until we knew that they were contaminated.

15              Q.    Ms. Bednarcik, I am asking if you believe  
16       under your definition of "proactive" that 39 years  
17       is -- is being proactive.

18              A.    And I would say that I would have to  
19       qualify it by saying based upon the knowledge that I  
20       know, if I waited that long and I had reason to  
21       believe that we were causing harm to human health and  
22       environment, knowledge, and I waited that long, that  
23       would not be proactive.

24              Q.    Thank you.

25                    Let's go back to the purchased property

1 issue that we have discussed previously and you  
2 discussed with Mr. Sauer. Duke owned the land as  
3 part of the MGP site and then Duke sold off a portion  
4 of that property to the developer for easements for  
5 the residential developer -- development in 2006, and  
6 then in 2011 Duke bought the land back from the  
7 developer; is that right? So we are on the same  
8 page.

9 A. There was land that was sold and then  
10 there was easements. They are two different things.  
11 We didn't sell the easements. That's what you. I am  
12 just making that clarification.

13 Q. Thank you for that. There were easements  
14 but there was also property that Duke did sell, then  
15 Duke bought back; is that accurate?

16 A. Property that Cinergy sold and Duke  
17 brought back.

18 Q. I'm sorry, Duke purchased. Prior to the  
19 easements being given, permitted, licensed to the  
20 developer, did Duke test the land site at that time?  
21 Duke predecessors, sorry.

22 A. It is my understanding that soil samples  
23 were not conducted prior to 2007. Those easements  
24 were transacted prior to -- or in 2006.

25 Q. So the answer is "no."

1           A.    No.

2           Q.    And did Duke predecessors test the land  
3 prior to selling the property to the developer?

4           A.    It is my understanding that samples were  
5 not taken prior to the sale.

6           Q.    To your knowledge did Duke predecessors  
7 take samples of the land when it was in the  
8 possession of the developer?

9           A.    Duke Energy took samples of the land that  
10 is -- was owned by Duke Energy in 2007. We did not  
11 take samples of the property that Cinergy sold until  
12 we -- in the settlement agreements had purchased it  
13 back.

14          Q.    So the answer is "no," when it was in the  
15 hands of the developer prior to the repurchase of the  
16 property, Duke did not take soil samples.

17          A.    Because we didn't have access to that  
18 property.

19          Q.    Duke did not take soil samples, correct?

20          A.    On property we did not own, yes.

21          Q.    Do you know that it's -- do you know  
22 whether it's a common practice when you purchase  
23 property to do due diligence, Ms. Bednarcik?

24          A.    It is the -- based upon my understanding  
25 of the environment or, excuse me, the real estate due

1 diligence laws, it is the responsibility of the  
2 purchasing person to do their due diligence.

3 Q. So is that a "yes"?

4 A. The purchaser is required to do due  
5 diligence, yes.

6 Q. And did Duke do its due diligence prior  
7 to purchasing the land?

8 A. Prior to purchasing the property back in  
9 2011, it was part of a confidential settlement  
10 agreement in anticipation of litigation. We did not  
11 take any soil samples in that property prior to our  
12 purchase because of the settlement.

13 Q. Prior to the settlement did Duke take a  
14 soil sample or ask to take a soil sample, obtain a  
15 license from the developer prior to making its real  
16 estate transaction?

17 A. We had requested and approached the  
18 person who owned all those 9 acres multiple times to  
19 gain access to his property to take samples and we  
20 were never successful in obtaining access.

21 Q. Never successful, so Duke did not obtain  
22 soil samples prior to the purchase of the land.

23 A. That is correct.

24 Q. Isn't it true that Duke purchased the  
25 land at a cost higher than fair market value?

1           A.     Because of the settlement negotiations,  
2     yes.

3           Q.     And as you just stated, your belief is  
4     that Duke paid higher than fair market value due to  
5     settlement discussions -- due to the settlement or  
6     resolution of a lawsuit; is that correct?

7           A.     Due to the resolution of a threat of a  
8     lawsuit.

9           Q.     And is it your understanding except for  
10    maybe the moving of some dirt that you referenced  
11    previously, that the real estate -- the land that  
12    Duke repurchased laid idle from 2006 until they  
13    repurchased it 2011?

14          A.     That is my understanding.

15          Q.     And you looked at OCC Exhibit 9 with  
16    Mr. Sauer a little bit ago. Do you recall that?

17          A.     I have it in front of me.

18          Q.     That document appears to state that Duke  
19    did obtain an appraisal, or Duke predecessors, excuse  
20    me, did obtain an appraisal prior to the initial --  
21    prior to the purchase back in it looks to -- appears  
22    to be in 2005 or '6; is that correct?

23          A.     No. The -- if you are referring to the  
24    very last sentence on page 23, the second page of the  
25    exhibit.



1 Q. Yes.

2 A. That is not -- that \$1.95 million was not  
3 based upon an appraisal obtained by Duke Energy  
4 and/or its predecessor companies.

5 Q. So the reference to "prior owner" in that  
6 sentence I believe is the developer obtaining of a --  
7 appraisal of its -- of his own property?

8 A. That is based upon, in my understanding,  
9 is that that number was based upon looking up the  
10 actual purchase of each and every one of those  
11 parcels throughout all 9 acres and amassing what did  
12 the gentleman actually purchase those properties for  
13 had nothing to do with an appraisal.

14 Q. Okay. That's a good point. So 1.9 is  
15 the purchase price of the 9 acres prior to Duke --  
16 purchase price by the developer.

17 A. Of the multiple properties that he  
18 purchased.

19 Q. So, yes, it's a price that he paid for  
20 the land at various points in time.

21 A. When he amassed the land between 2005 and  
22 2006.

23 Q. So that's a "yes"?

24 A. I believe so.

25 Q. And so the reference in that sentence to

1 2005 and '6, your knowledge is that that's the time  
2 period that you're using the word "amass." That's the  
3 time period that he went out and purchased various  
4 parcels that are combining into the 9-acre plat that  
5 we have been discussing; is that correct?

6 A. Yes.

7 Q. When Duke's predecessor purchased the  
8 land back, is it your understanding that they merely  
9 did it for the lawsuit or was there a different  
10 agenda of Duke's predecessors?

11 MR. McMURRAY: Objection. It was Duke  
12 Energy that purchased the property back.

13 EXAMINER PIRIK: Thank you for that  
14 clarification.

15 MS. BOJKO: Excuse me.

16 THE WITNESS: Can you read the question  
17 back to me, please?

18 (Record read.)

19 Q. I'm sorry. There was a different agenda  
20 of Duke Energy?

21 I don't necessarily mean agenda. Was  
22 there a different rationale for purchasing the  
23 property?

24 A. It is my understanding that as part of  
25 the settlement negotiations that is why Duke Energy

1       acquired as part of those negotiations all 9 acres.

2               Q.     And that was the sole reason for  
3       acquiring the 9 acres.

4               A.     That's my understanding.

5               Q.     And you stated that the property was  
6       likely to have impacts from the MGP plants on it; is  
7       that correct?

8               A.     Based upon the remediation and the  
9       investigations that occurred on the west parcel and  
10      the fact that there was contamination right on the  
11      property border, that is how -- that's the reason  
12      that statement you just read it was likely to occur.  
13      We found it right on the property borders so that's  
14      how we came to that conclusion.

15              Q.     So the answer to my question is "yes" you  
16      believe likely at the time Duke -- now we are in Duke  
17      Energy, Duke Energy believed it to be contaminated;  
18      is that correct?

19              A.     In 2011 settlement negotiations at that  
20      time, yes.

21              Q.     And that was prior to Duke sampling that  
22      it had a likely belief that the property was  
23      contaminated; is that correct?

24              A.     In 2011, yes.

25              Q.     And is it your understanding that Duke

1 paid double for the possibly likely contaminated  
2 under-used vacant land at the time?

3 A. I don't know the exact math. We  
4 doubled -- we paid \$4.5 million for the land as part  
5 of the settlement negotiations and then we had  
6 subsequent appraisal for fair market value that was  
7 less than the \$4.5 million.

8 Q. And that fair market value that was less  
9 that you're speaking of is \$2.16 million; is that  
10 correct?

11 A. I don't know the exact dollar amount. I  
12 believe that that was referenced in one of the staff  
13 requests or OCC interrogatories.

14 Q. But you're not disagreeing that's the  
15 approximate. It's 2.1 -- it's \$2,159,000. Does that  
16 seem appropriate?

17 A. I would have to know exactly the amount.  
18 Again, it was in those documents, it seems, based on  
19 my recollection, close. Maybe exact. I would have  
20 to look at those -- those responses that have been  
21 previously provided to staff and OCC in discovery.

22 Q. And as we've just discussed, the initial  
23 sale price of the multiple parcels put together is  
24 approximately \$1.9 million; is that right?

25 A. Based upon the information in OCC Exhibit

1 No. 9, that's -- that's what the document states.

2 Q. Did you -- the other discovery responses  
3 or you're referring to staff documents, would you  
4 believe that it would be found in the Staff Report  
5 that was filed in this docket by the staff?

6 A. I don't remember if it was part of that  
7 docket or not. I don't remember specifically.

8 Q. Would you like to be refreshed?

9 A. If you have a copy of the Staff Report,  
10 that would be -- I would take a look at it.

11 Q. Could your counsel please provide a copy  
12 of the Staff Report?

13 A. I have a copy of the Staff Report in  
14 front of me now.

15 Q. Could you turn to page 34, please.

16 A. I am at page 34.

17 Q. And do you see the title of this  
18 paragraph is called "Land Purchase"?

19 A. Yes.

20 Q. And if you look down below, it's the  
21 last -- second-to-last sentence that states the  
22 company -- I'm paraphrasing this to not read the  
23 whole sentence into the record, but it references  
24 that the land was purchased at 4.5 million and that  
25 the 2. -- or 2,331,580 was included for recovery,

1       excuse me, so if you keep going if you look down at  
2       the formula, it might help us a little easier. Does  
3       it state that the purchase price was 4.5 million?

4             A.    Yes.

5             Q.    And does it state that the appraised  
6       value of the \$2,159,000 that I referenced?

7             A.    Yes.

8             Q.    And then does it say that there was a  
9       title service of fees I'm assuming of \$9,420?

10            A.    Yes.

11            Q.    And it ends up with the number that the  
12       staff just referenced what was included in the  
13       application in this case which is the \$2.3 million  
14       number; \$2,331,580, to be exact?

15            A.    Yes.

16            Q.    And you have no reason to believe that  
17       staff didn't accurately reflect those dollar figures,  
18       do you?

19            A.    I trust that the staff used information  
20       that was provided to them in their requests to  
21       reproduce this number.

22            Q.    Okay. So it's my understanding that Duke  
23       paid almost double for the property and it's that  
24       premium over fair market value minus the title  
25       services that they are asking this Commission to

1 recover through the MGP rider; is that correct?

2 A. As part of these proceedings, yes, that  
3 is what they are asking to recover.

4 Q. And just for some context, earlier today  
5 I believe you stated, or yesterday, that the -- that  
6 we have this CERCLA that was -- in 1980 was enacted;  
7 is that right?

8 A. Yes.

9 Q. And then the Ohio VAP that was  
10 promulgated was in 1994; is that correct?

11 A. I don't know the exact date but that's  
12 what was stated by Mr. Margolis in his testimony  
13 yesterday. I have no reason to doubt that.

14 Q. I thought you stated that in response to  
15 Mr. Sauer's questions yesterday.

16 A. I -- no. No, I don't know the exact date  
17 when the VAP was enacted.

18 Q. But in the 1990s is your recollection?

19 A. It would be based upon information that  
20 Mr. Margolis had in his testimony.

21 Q. And I'm -- going back to that piece of  
22 property yesterday you mentioned that a day care  
23 facility. Is it the intent of Duke to put -- to  
24 construct on the property a day care facility?

25 A. I don't remember exactly where I

1 referenced a day care facility. I think that was a  
2 general thing that one of the items that not  
3 specifically related to East End or West End as we  
4 are looking at what the risks are on the site with  
5 what's in the ground and what can be done on the  
6 property or what cannot be done on the property. I  
7 may have referenced -- there is a different way that  
8 you clean up a site whether it is going to be used  
9 for something like a residential or a day care versus  
10 an industrial.

11 Q. So is it Duke's intention to construct a  
12 day care facility on this site?

13 A. No.

14 Q. And is it your determination, has Duke  
15 determined -- determined, excuse me, that Columbia  
16 Gas does have legal responsibility?

17 A. We have not reached that determination  
18 yet.

19 Q. And to date you haven't reached that  
20 determination; is that correct?

21 A. To date we have not decided or determined  
22 whether they are truly a responsible party or right  
23 now they are just a potentially responsible party.

24 Q. But didn't you state yesterday that -- or  
25 today, that you are engaged in, I believe you used



1 the word "settlement discussions" with Columbia Gas?  
2 Is that right?

3 A. I did not use specifically "settlement  
4 discussions." We've had discussions with -- with  
5 Columbia Gas. I believe Mr. Sauer asked when those  
6 settlement discussions would be done and I said I  
7 don't know a date certain but we are talking to them  
8 but it's not necessarily settlement because we don't  
9 know whether they truly are a responsible party yet  
10 or not.

11 Q. So Duke is engaging in cost allocation  
12 discussions with another utility company prior to the  
13 determination by Duke of whether that utility company  
14 has any kind of responsibility for the cleanup?

15 MR. McMURRAY: Objection to the  
16 mischaracterization of her testimony.

17 EXAMINER PIRIK: I'll allow the witness  
18 to clarify.

19 A. We are not engaged in a cost allocation  
20 discussions. The nature of our discussions thus far  
21 have been in the exchange of documentation based upon  
22 what occurred and the nature of the relationship when  
23 Columbia Gas was involved in the history of CG&E and  
24 whether that is a true tie towards liability or not.  
25 Those are the type of discussions we've been having.

1           Q.    So Duke has reached out to Columbia  
2 without making a determination of whether they are  
3 liable; is that your testimony?

4           A.    Yes.

5           Q.    Has Duke reached out to any other  
6 utilities to engage in a discussion of liability with  
7 them?

8           A.    Specifically for the East End and West  
9 End sites, on our research, the only potential  
10 responsible party that we have determined right now  
11 is Columbia Gas, that they are the only ones we have  
12 reached out to.

13          Q.    Okay.  And throughout yesterday I heard a  
14 lot of responses and I want to make sure I understand  
15 what you do for the company.  You make probable and  
16 estimable determinations; is that correct?

17          A.    Based upon information that is provided  
18 to me by my environmental consultants and my history  
19 on the site specifically for my -- my projects and  
20 also working with my -- the people that are part of  
21 my staff, yes.

22          Q.    And that's an accountant determination;  
23 is that accurate?

24          A.    It is a dollar amount that goes towards  
25 the environmental reserve.

1           Q.    Is probable and estimable an accountant  
2           standard?

3           A.    It's based on accounting standards, yes.

4           Q.    Okay.  And it was my understanding from  
5           the testimony yesterday that you actually reviewed  
6           the -- you reviewed the VAP and you compare the VAP  
7           with the particular site information that you have,  
8           so you look at the VAP rules and you actually compare  
9           it to the information that you have; is that  
10          accurate?

11          A.    Not the rules specifically.  They are  
12          those publicly available lookup tables for generic  
13          chemicals and soil and groundwater, specifically just  
14          what's -- on those chemical lookup tables.  I don't  
15          look at the rules, just those tables and do a quick  
16          and dirty comparison.

17          Q.    And those tables for your quick and dirty  
18          comparison are actually based on the VAP rules,  
19          correct?

20          A.    They are part of -- they are based on --  
21          I mean, but people in Ohio EPA as part of the VAP,  
22          it's on that web page that it's out there.  I don't  
23          know if the rules specifically say benzene should be  
24          at this number or it is the evaluation of risk  
25          assessors that have come up with those numbers that

1 is applying -- I don't know it's applied specifically  
2 just to the VAP or other areas of Ohio.

3 Q. So it is a VAP table; is that right? Is  
4 that your understanding?

5 A. It is my understanding that it is a table  
6 that is found on the VAP websites.

7 Q. Okay. And from your testimony is it my  
8 understanding that you manage other employees of Duke  
9 Energy; is that right?

10 A. Since the reorganization in 2012, yes, I  
11 manage other employees.

12 Q. And it is my understanding that you  
13 prepare your own budgets; is that correct?

14 A. Yes, based upon the information that we  
15 know about the individual sites, yes.

16 Q. And I believe yesterday you also did a  
17 quick and dirty CP evaluation; is that -- was that  
18 your testimony?

19 A. The quick and dirty, the only place I  
20 referenced that was in getting the analytical results  
21 for soil and groundwater and comparing it to the  
22 table, not --

23 Q. Back to the VAP table, and that's what  
24 normally -- or also a VAP CP does for Duke; is that  
25 correct?

1           A.     The VAP CP would look at those tables in  
2 much more detail than my quick review, and they can  
3 do things with those analytical results that I would  
4 never even start down that the VAP allows you like  
5 multiple chemical adjustment or other -- other ways  
6 that the VAP allows you to evaluate those analytical  
7 results.

8           Q.     But it's the same evaluation -- you are  
9 doing the same evaluation just on a smaller scale  
10 than what the VAP CP does as well; is that right?

11          A.     At a much, much smaller, again, quick  
12 evaluation. They spend many more hours looking at  
13 much more detail, which is why I hire them.

14          Q.     And you stated earlier that you attend  
15 two -- you attend the EPRI manufactured gas plant  
16 management committees; is that correct?

17          A.     I am involved on the EPRI program 50  
18 manufactured gas plants in part of that group, yes.

19          Q.     And you are on the steering committee; is  
20 that right?

21          A.     I am on the steering committee for the  
22 2013 EPRI MGP symposium that's being held in May --  
23 in November.

24          Q.     And you also state in your testimony you  
25 are on the issues team; is that right?

1           A.    The issues team are related to the -- the  
2   USWAG group, the Utilities Solid Waste Action Group,  
3   related to the remediation and response committee,  
4   and I serve on multiple issue teams as issues arise.

5           Q.    And you are chair of the North Carolina  
6   MGP consortium; is that correct?

7           A.    The North Carolina MGP Group, yes.

8           Q.    And you're vice-chair of the 28 Group MGP  
9   Consortium; is that right?

10          A.    I am vice-president of the MGP  
11   Consortium, have been for the last two years, and  
12   this year I actually rotate to become chair of that  
13   for two years.

14          Q.    Congratulations.

15                And then you also stated that you prepare  
16   the RFPs for the remedial work, and then you actually  
17   do the selection based on those RFPs; is that  
18   correct?

19          A.    I create the RFPs in conjunction also  
20   with legal counsel and with our purchasing department  
21   and in the review of those RFPs, legal counsel also  
22   reviews them and purchasing reviews them and is a  
23   collaborative evaluation of those RFPs. But I am  
24   one -- as for my projects where I am project manager,  
25   I do a detailed review.

1           Q.    And you approve all plans and scope or  
2 design changes; is that correct?

3           A.    Yes.

4           Q.    And you're also the overall manager of  
5 the environmental consultants that Duke hires; is  
6 that correct?

7           A.    I am -- I oversee the work as a project  
8 manager. I manage the project for those sites that I  
9 have specific oversight over.

10          Q.    And that -- I believe you mentioned six.  
11 You do this for all six states, all of this activity  
12 you do for all six states?

13          A.    I -- I have a staff now that there are  
14 multiple project managers, but I have worked in all  
15 six states and I do have projects that I'm involved  
16 in in all six states, and I also, of course, work  
17 very closely with my staff members, my teammates, as  
18 they are working on their specific projects.

19          Q.    And you physically go to the sites in all  
20 those six states?

21          A.    I have visited sites in all six states,  
22 yes.

23          Q.    And it's my understanding you stated that  
24 you're not an accountant; is that correct?

25          A.    I am not an accountant.

1           Q.    And you are not an attorney; is that  
2 correct?

3           A.    That is correct.

4           Q.    And you're not a certified VAP CP; is  
5 that correct?

6           A.    That is correct.

7           Q.    And were you here when Mr. Margolis  
8 punted to you the insurance claim issues?

9           A.    Yes.

10          Q.    And it's my understanding from your  
11 testimony here this morning with Mr. Sauer that you  
12 believe that Duke does -- claims do actually, in  
13 fact, exist; is that correct?

14          A.    Based upon discussions with the en -- the  
15 attorney in-house counsel who is working directly on  
16 that, yes, we have found some insurance policies.

17          Q.    And you haven't -- you have placed  
18 insurance companies on notice of such claims.

19          A.    Yes.

20          Q.    But you don't know what any responses to  
21 date have been from those insurance companies of  
22 those claims.

23          A.    I do not know.

24          Q.    Do you know when the insurance companies  
25 were put on notice?



1           A.    That information was provided I do know  
2           as either a staff request or an OCC interrogatory. I  
3           don't know the exact dates off the top of my head.

4           Q.    Was it in the 1990s or in the 2000s?  
5           Was it after this case was filed? Do you have some  
6           sort of ballpark?

7           A.    It was -- the initial notice when they  
8           were put -- the insurance companies were put on  
9           notice was prior to the filing of this case.

10          Q.    Do you mean immediately prior like 2013,  
11          or does it go back to 2006 when some of the  
12          remediation efforts started?

13          A.    It was my understanding, again, the  
14          date -- exact days in a staff request are in an OCC  
15          interrogatory, but it was prior to 2006.

16          Q.    Prior to 2006?

17          A.    Yes.

18          Q.    And you're not aware of any responses  
19          received from the insurance companies since 2006?

20          A.    I am aware that the insurance companies  
21          have contacted the inside counsel because he has  
22          asked me questions between 2006 and now, but I don't  
23          know exactly where we're at with the process.

24          Q.    And you don't know if there has been any  
25          resolution of that process you just spoke of, do you?

1           A.    We have not received any funds from  
2 insurance carriers yet for Duke Energy Ohio.

3           Q.    And you're also not aware of if Duke  
4 requested all of the 65 million, approximately,  
5 dollars that they are seeking to recover in this  
6 case; is that correct?

7           A.    I don't know the details of what we have  
8 asked or talked to the insurance carriers about.

9           Q.    And just so we're clear, those insurance  
10 costs would cover the plant sites, the property that  
11 the sites were on; is that correct?

12          A.    I don't know the details of those  
13 insurance policies, but based upon my discussions  
14 with legal counsel, I am -- it's my understanding  
15 that they cover the environmental contamination that  
16 emanated from the properties when those insurance  
17 policies were held on those properties.

18          Q.    So you haven't actually read the  
19 insurance policies.

20          A.    No.

21          Q.    And did you read the notice that Duke  
22 provided to the insurance companies?

23          A.    Yes.

24          Q.    And it stated just what you stated, that  
25 they were responsible for the remediation efforts of

1 the groundwork?

2 A. I don't know the particular areas of that  
3 letter. It's been a while since I have read it. I  
4 don't remember exactly what was in that letter.

5 Q. I'm sorry. Did you say in your prior  
6 response that it included facilities that needed to  
7 be removed from the sites as well?

8 A. It's my understanding that the notice  
9 that -- to the insurance carriers listed a number of  
10 MGP sites that the company had found in their --  
11 potentially in their portfolio and that it talked  
12 about specifically those sites putting them on  
13 notice.

14 The details as to what is going on or how  
15 much, I don't believe that that has been discussed.  
16 It is my understanding that those general insurance  
17 policies that were held during the time period when  
18 the MGP was in operation talks about any type of  
19 liability related -- that came off of those sites  
20 because of those operations. And that's based upon  
21 discussions with legal counsel.

22 Q. Okay. I'm still not understanding your  
23 response. Does it actually include the -- maybe if  
24 we could do this by steps.

25 Would it, in your opinion from your

1 knowledge of the notice, would it actually include  
2 investigation-type costs?

3 A. I don't know particularly if it even goes  
4 down to that detail. I believe the notice just said  
5 we are putting you on notice that we have potential  
6 liability related to the MGP sites. I believe it did  
7 not go into specifics.

8 Q. So you don't know what -- exactly what  
9 the insurance policies would cover?

10 A. I don't know the specifics of those  
11 insurance policies, that's why we have legal counsel.

12 Q. Do you generally know -- and, I'm sorry,  
13 legal attorney in this issue punted the issues to  
14 you. That's why I'm asking you these questions.

15 MR. McMURRAY: Objection. I think we're  
16 misconstruing attorneys. She's referring to Margolis  
17 who testified yesterday. Ms. Bednarcik is referring  
18 to a Duke Energy in-house insurance attorney, so we  
19 should clear that up on the record.

20 EXAMINER PIRIK: Thank you. Go ahead.  
21 Was there a question?

22 MS. BOJKO: Well, your Honor, I  
23 appreciate the testimony of counsel, but Mr. Margolis  
24 was on the stand. He did testify to insurance  
25 policies and he said he couldn't answer the

1 questions, that Ms. Bednarcik could answer the  
2 questions, so that is now why I'm asking her these  
3 questions.

4 MR. McMURRAY: I would --

5 EXAMINER PIRIK: If the witness is able  
6 to answer, then she can do so. And she can only tell  
7 you what she's aware of, so, you know, I think you  
8 can ask her the questions.

9 MR. McMURRAY: And I would just enter for  
10 the record --

11 EXAMINER PIRIK: No, thank you, you did  
12 enter for the record, but we appreciate the  
13 clarification.

14 MS. BOJKO: Can you reread my question,  
15 please.

16 (Record read.)

17 A. No.

18 Q. Do you -- do you know whether it would  
19 cover soil samples?

20 A. I don't know the specifics of what the  
21 insurance policies would cover.

22 Q. Do you know whether it would include  
23 removal of facilities?

24 A. I don't know the specifics of what the  
25 insurance policies would cover.

1           Q.    In your -- did you state earlier today  
2           that Duke Energy has received proceeds from insurance  
3           claims?

4           A.    Other areas of Duke Energy in different  
5           states have received proceeds from insurance claims,  
6           yes.

7           Q.    And did those include -- do you know the  
8           costs associated with those claims and the proceeds  
9           received of what they included?

10          A.    Those insurance claims were conducted  
11          prior to my employment with Duke Energy, therefore, I  
12          do not know the particulars, the specifics associated  
13          with those insurance claims.

14          Q.    So I thought a few questions ago you  
15          actually told me what the insurance would -- would  
16          cover, but now, you're saying you don't know what the  
17          insurance would cover.

18          A.    Based upon my discussions with internal  
19          counsel to Duke Energy, who is specifically handling  
20          all the details related to the technical -- the  
21          insurance side of the insurance claims, that is how I  
22          answered the question, based upon my discussions with  
23          him.

24                My involvement on those insurance claims  
25                really resides with providing the environmental

1 background related to the work that is being  
2 conducted on the site.

3 Q. So the types of questions that you were  
4 asked to explore, provide information on, would those  
5 be the investigation phase or the actual work  
6 conducted phase?

7 A. It would be everything related to the  
8 environmental work that has been conducted on the  
9 sites.

10 Q. And just so we're clear, because I  
11 thought you said that earlier and then you told me  
12 you didn't know. "Everything" means the  
13 investigation phase that Duke would have engaged in  
14 in 2006, the soil samples of that investigation  
15 phase, and then actual remediation of digging down  
16 into the ground?

17 A. I provide to internal legal counsel, who  
18 is specifically related to all the details of the  
19 insurance policies, the information that he requests  
20 of me, which includes all the environmental work that  
21 occurs on that site.

22 I do not know specifically if the  
23 insurance carriers parcel out the investigation  
24 versus the remediation -- versus -- and parcels out  
25 into the additional phases.

1           Q.    But what you provide -- the answer to my  
2           question was, "yes," you provide the investigation  
3           phase, the remediation -- remediation phase, you do  
4           provide cost information for those phases; is that  
5           correct?

6           A.    I provide all information as requested of  
7           me related to the environmental work which does  
8           include everything that we have done on the site  
9           related to environmental work.

10          Q.    Okay. And so in that response it would  
11          also include, then, removal of facilities as well  
12          just not physical groundwork but removal of any  
13          facilities that are there.

14          A.    If you mean removal of facilities that  
15          are still on the property that are being removed in  
16          order to address the impacts in the ground, yes. If  
17          you're talking about removal of facilities when the  
18          MGP plants were taken out of service and demolished  
19          in the 1960s and 1920s or whatever year they were  
20          demolished, no.

21          Q.    And would those costs include the premium  
22          paid for the purchase of the property that you had to  
23          do those investigations on?

24          A.    I have not had discussions with legal  
25          counsel into that amount of detail as to whether that



1 specific amount would be included in the insurance  
2 proceedings or not so I don't know.

3 Q. Well, if you stated that it was for all  
4 environmental remediation and all the environmental  
5 work that you do, would that be a cost that would be  
6 included in that analysis that you just made?

7 A. My assumption is that it would but I  
8 don't know specifically -- I provide the information  
9 as to what exactly is going on with the negotiation  
10 with the insurance carriers. I'm not involved in  
11 that. I provide the information as requested related  
12 to the environmental work including the property  
13 purchase. I would provide that to my internal  
14 counsel who is handling it.

15 Q. You would provide -- you would provide as  
16 part of your environmental work the purchase of the  
17 property that Duke obtained through a lawsuit?

18 A. I would provide everything that has been  
19 provided as part of these proceedings for the cost  
20 recovery through the rate case. The same exact  
21 documentation would be provided to the insurance  
22 carriers.

23 Q. So would you also provide to the  
24 insurance carriers the offset of any proceeds  
25 received from the sale of that same property?

1           A.    I don't know those specifics.  You're  
2 asking me things that I am not involved in on  
3 specific things.

4           Q.    But you did provide to the insurance  
5 company the total cost of the property repurchased by  
6 Duke that you now believe you need to remediate?

7           MR. McMURRAY:  Objection.  
8 Mischaracterizes testimony.

9           EXAMINER PIRIK:  The witness can clarify.

10          A.    I do not know exactly what has been  
11 provided to those insurance carriers yet.

12          Q.    No, I asked what you provided.

13          A.    I provide to my in-house legal counsel  
14 who is dealing with the insurance information -- all  
15 the information that has been provided as part of  
16 this proceeding with the Utility Commission, same  
17 exact information.  As to what happens with that  
18 information with the insurance carriers, I don't know  
19 the specifics of that.

20          Q.    And just to be clear, part of the  
21 information that you just stated you provided  
22 includes the \$4.5 million purchase of the property  
23 that Duke bought back from -- in part from the  
24 developer.

25          A.    That information has been provided to my

1 legal counsel who is handling the insurance, yes.

2 MS. BOJKO: Thank you.

3 Can I have 5 minutes? I might be done.

4 EXAMINER PIRIK: Okay.

5 (Discussion off the record.)

6 EXAMINER PIRIK: Go ahead, we will go  
7 back on the record.

8 MS. BOJKO: Thank you.

9 Q. (By Ms. Bojko) Ms. Bednarcik, in your  
10 experience there are multiple ways, multiple methods  
11 of remediating a property under the VAP; is that  
12 correct?

13 A. The VAP is not specifically related to  
14 how you remediate the property. There are multiple  
15 ways that a party does go about addressing the -- the  
16 impacts that are on the site.

17 Q. And in your experience when -- when Duke,  
18 or Duke's predecessors, excuse me, sold the property  
19 to the developer, did they disclose such liability,  
20 or I think you used the word "likely contamination"  
21 from the MGP sites to the purchaser?

22 A. The reference to the "likely  
23 contamination" was referenced in the 2011  
24 settlement -- settlement, and that is what we knew at  
25 that time. In 2006 when the property was sold, that

1 was Cinergy. Prior to the merger of Duke Energy and  
2 Cinergy, I do not know what was disclosed in  
3 conversations with that property -- that purchaser at  
4 that time.

5 Q. In 2011, if Duke decided to purchase the  
6 land in 2011, would Duke disclose the likely  
7 contamination that you just referenced to the  
8 purchaser to the land?

9 A. I guess I am confused with "purchaser."  
10 Can you restate that or reask that, please?

11 Q. Sure, sure. Let's assume that instead of  
12 selling the land in 2006 that Duke was going to sell  
13 the land in 2011, and you just referenced that in  
14 2011 you knew that there was a likely contamination  
15 issue when you purchased the land, so in 2011, if you  
16 were conversely selling the land, would Duke notify  
17 the purchaser of that land of the possible  
18 contamination, or you use the word "likely," I would  
19 use "possible," of the land?

20 A. With the information that we knew at  
21 2011, of course, you can only disclose what you know.  
22 We knew a lot more. We discovered a lot of  
23 information between 2006 and 2011. If that  
24 transaction were to occur again, say we erase  
25 everything, we try -- that transaction was going to

1 occur in 2011, based upon the information we knew at  
2 2011, disclosures would have been made because we had  
3 true knowledge that there was contamination there.

4 Q. I think you finally got to the answer to  
5 my question, yes, Duke would be obligated to disclose  
6 the likely contamination if you were to sell the  
7 property in 2011; is that correct?

8 MR. McMURRAY: Objection.  
9 Mischaracterizes testimony.

10 EXAMINER PIRIK: The witness can clarify.

11 A. Of course, we can only disclose what we  
12 know. We knew in 2011 what was on our property. If  
13 we had known there was contamination on our  
14 property --

15 Q. Ms. Bednarcik, that's not what I am  
16 asking.

17 A. I don't understand what you're asking.

18 Q. In 2011, if you were to sell the  
19 property, would you disclose -- would Duke be  
20 obligated to disclose to the purchaser of the  
21 property the likely contamination from the MGP sites?

22 MR. McMURRAY: Objection to the extent --

23 EXAMINER PIRIK: Objection overruled.

24 MR. McMURRAY: -- asking for a legal  
25 conclusion.

1 EXAMINER PIRIK: Objection overruled.

2 A. Based upon the information that I know as  
3 of 2011, yes, we would have disclosed that, but  
4 that's because we knew more information.

5 Q. I asked you about 2011 whether you would  
6 disclose, and the answer was "yes," correct?

7 A. Based upon the information we knew in  
8 2011, yes.

9 Q. Yes. And then today, speaking of today  
10 in 2013, would Duke disclose?

11 A. If we were to sell property that we had  
12 known contamination on it, yes, we would disclose.

13 Q. If you were to sell property, we're  
14 talking about two parcels that you have already  
15 admitted that you have liability for; is that  
16 correct?

17 A. I guess I am confused, are you talking  
18 about -- I'm sorry. I'm just very confused what you  
19 are asking. I don't understand.

20 Q. If Duke was to sell the same piece of  
21 property today that I just asked you about selling in  
22 2011, would Duke disclose the contamination or the  
23 likely contamination from the MGP sites?

24 A. It is the obligation of the property  
25 purchaser to do their due diligence, so that's the

1 first phase. In the settlement negotiations if we  
2 have known or potential liability that we know at  
3 that time, yes, we would disclose it.

4 Q. And I'm not talking about through  
5 settlement negotiations, ma'am.

6 A. I'm not either.

7 Q. I'm asking if you were to sell the  
8 property today, would you make the disclosure? It's  
9 a "yes" or "no" answer. Would you make the  
10 disclosure?

11 A. And I believe I have answered that that  
12 disclosure -- if we -- I am not talking about  
13 settlement negotiations. If that same exact property  
14 that we sold in 2006 was going to be sold today,  
15 because I have more knowledge, yes, that disclosure  
16 would be made but it's all based upon what we know at  
17 that time.

18 Q. Thank you. And you know it at this time.  
19 I'm asking today, do you know the information today?

20 A. I do know that there is contamination on  
21 the property --

22 MR. McMURRAY: I need to interject.

23 EXAMINER PIRIK: I think the question has  
24 been answered. Can you move on, Ms. Bojko.

25 MR. McMURRAY: I have been further

1       advised the witness may have a medical condition that  
2       would require us to take a break.

3               EXAMINER PIRIK:   Ms. Bojko, do you have  
4       another question or are you finished?  I am just  
5       trying to --

6               MS. BOJKO:   I just had probably one more  
7       question, but we can take a break.

8               EXAMINER PIRIK:   Do you want to do one  
9       more question?  We can take a break.

10              THE WITNESS:   Could we take a quick  
11       bathroom break?

12              EXAMINER PIRIK:   Yes, for sure.

13              THE WITNESS:   Thank you.

14              EXAMINER PIRIK:   We will just take a  
15       couple of minutes, so anyone who needs to use the  
16       facilities.

17              (Discussion off the record.)

18              EXAMINER PIRIK:   We are going to take our  
19       lunch break until 1:35.

20              (Thereupon, at 12:20 p.m., a lunch recess  
21       was taken until 1:35 p.m.)

22                               - - -  
23  
24  
25



Tuesday Afternoon Session,  
April 30, 2013.

- - -

EXAMINER PIRIK: Go back on the record.

Ms. Bojko.

MS. BOJKO: Yes. Thank you.

- - -

JESSICA L. BEDNARCIK

being previously sworn, as prescribed by law, was  
examined and testified further as follows:

CROSS-EXAMINATION (Continued)

By Ms. Bojko:

Q. Good afternoon.

A. Good afternoon.

Q. Before the break you stated that if Duke  
knew of possible contamination, they had a duty to  
disclose it; is that correct?

A. If we know of it, yes.

Q. And we went through some questions about  
whether Duke or Duke's predecessors knew about the  
contamination. Do you recall those questions?

A. I believe some of that was addressed in  
the questions this morning. I don't remember  
specifically.

Q. Well, we -- I believe you stated that

1 Duke's predecessors didn't know in 2006 when the  
2 property was sold to the developer; is that correct?

3 A. We had not started the investigations  
4 until -- we hadn't taken our first examples until  
5 2007, therefore, we didn't know what the  
6 contamination was at all present until that time.

7 MS. BOJKO: Your Honor, at this time I  
8 would like to mark as Kroger Exhibit No. 2, it's an  
9 interrogatory entitled OCC-INT-17-667.

10 May I approach?

11 EXAMINER PIRIK: Yes. The document will  
12 be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Ms. Bednarcik, in front of you is  
15 previously what's been marked Kroger Exhibit 2. It  
16 is a discovery response provided by Duke Energy Ohio  
17 in this proceeding, 12-1685-GA-AIR.

18 A. It is the OCC Interrogatory 17-667 as  
19 part of this proceeding, yes.

20 Q. And the question asks "When did the  
21 Company give the insurance carriers notice of the MGP  
22 sites?" Do you see that question?

23 A. Yes.

24 Q. And could you read Duke's response out  
25 loud, please.

1           A.    The response replied by Keith Bone is  
2   that "Duke Energy Ohio states that notice of  
3   occurrence related to the MGP sites has been provided  
4   to insurance carriers beginning in August, 1996. As  
5   additional insurance policies that may provide  
6   coverage have been identified, the insurance carriers  
7   that sold the coverage have been sent notice. The  
8   most recent correspondence to insurance carriers was  
9   sent in early December, 2012."

10          Q.    So from this discovery response, it does  
11   appear that Duke's predecessors knew about possible  
12   contamination in 1996 when they notified the  
13   insurance carriers; is that correct?

14          A.    It states that there was MGP sites but --

15          Q.    It states "notice of occurrence related  
16   to MGP sites"; is that correct?

17          A.    It does state that. As to what that  
18   exactly means in terms of insurance, I do not know.

19          Q.    But -- but clearly from documentation  
20   provided by Duke, insurance carriers were noticed  
21   back in 1996; is that correct?

22          A.    Yes.

23          Q.    And the -- now that Duke owns all the  
24   property that we discussed a little bit ago, isn't it  
25   true that the residential use on that property has

1       been eliminated?

2               A.     There has been no residential right now.  
3       There may be a future use on some of that property  
4       related to residential of the additional 9 acres.  
5       That has not been determined yet.

6               Q.     But the 9 acres is now owned by Duke; is  
7       that correct?

8               A.     Yes.

9               Q.     And so Duke would make such a  
10      determination at that future time that you're  
11      discussing; is that correct?

12              A.     Based upon the analytical results will  
13      make that determination, yes.

14              Q.     And also given that Duke now owns that  
15      property, the easements that we talked about have  
16      been eliminated for the developer; is that correct?

17              A.     Yes.

18              Q.     So the two reasons that you stated in  
19      your testimony for the East End site for causes of  
20      the remediation have now today as we sit here today  
21      disappeared; is that correct?

22              A.     There is still the residential  
23      development east of the east parcel that has  
24      continued forward.

25              Q.     Okay. First, I was talking about the --

1 I think that you referred to that as Corbin Park  
2 earlier?

3 A. Yes.

4 Q. Is that correct?

5 So eliminate the Corbin Park because you  
6 told me this -- the sentence in your testimony only  
7 dealt with the piece that is -- let me make sure I'm  
8 saying this correctly, is west of the east parcel; is  
9 that correct?

10 A. I would have to go back to my testimony  
11 to see the exact verse or line item on there, but  
12 there was two different references in there; one was  
13 directly related to the residential development west  
14 of the west parcel, and then we talked also about the  
15 development east of the east parcel at East End.

16 Q. Okay. And the development west of the  
17 west parcel is the part that now Duke purchased back  
18 from the developer and Duke owns; is that correct?

19 A. We purchased the small portion we sold  
20 plus more, yes.

21 Q. And also the easements have disappeared  
22 and those were the two rationales that you had for  
23 beginning the investigation of the remediation in  
24 '06; is that correct?

25 A. They were part of the discussion as the

1 determination why we started, but the easements  
2 weren't the only rationale.

3 Q. It was also the developer owned that  
4 property and announced a development; is that  
5 correct?

6 A. Yes.

7 Q. Okay. So now that Duke owns -- has  
8 purchased the property, there is no reason to  
9 remediate because the residential use has disappeared  
10 with regard to the west of the east parcel.

11 A. No.

12 Q. Is that correct?

13 A. No, that is not correct. Now that we  
14 have known that we do know that there is impacts out  
15 there that don't meet the applicable standards and  
16 are not protective of human health and the  
17 environment, we are still obligated to address those  
18 impacts even though the residential development has  
19 not begun at this time.

20 Q. And your reliance for your statement is  
21 on the voluntary -- the VAP.

22 A. The basis of my statement is upon advice  
23 from legal counsel, advice from my VAP CP, and also  
24 based upon the liability that the company has to  
25 remediate environmental impacts, known environmental

1 impacts.

2 Q. And those were the same that we just  
3 referenced were notified to the insurance companies  
4 in 1996?

5 A. I guess I don't see the connection. Can  
6 you explain what you mean by that, please?

7 Q. The insurance companies were notified in  
8 1996. That's what I mean by the question. Is that  
9 correct?

10 A. The insurance carriers were -- notice of  
11 occurrence had been provided to the insurance  
12 carriers in 1996.

13 Q. Okay. So now, let's talk about the  
14 other -- the Corbin Park piece that you just talked  
15 about. Back in 2006, there was no residential  
16 development on Corbin Park; is that correct?

17 A. I don't know the exact date and year when  
18 Corbin Park started their residential development.  
19 All I know is that when I became involved in the  
20 property in 2007, I observed that there was going to  
21 be planned residential development on that property.

22 Q. And is it your understanding that --  
23 strike that, let me just ask.

24 Do you know whether insurance moneys will  
25 be credited against the costs that you're -- if

1 proceeds are received from the insurance companies,  
2 do you know whether they would be credited against  
3 the cost recovery sought here in this proceeding?

4 A. I'm not in accounting and I believe  
5 that -- if not that specific question or something  
6 very similar was asked in a discovery request or an  
7 OCC interrogatory is my understanding that it will be  
8 credited, anything received for manufactured gas  
9 plants from the insurance carriers will be credited  
10 towards the cleanup costs and remediation costs and  
11 investigation costs.

12 Q. And to your knowledge, from the 1996  
13 notice of occurrences that we just discussed to the  
14 most recent December, 2012, notifications that those  
15 insurance companies received, you have not -- Duke  
16 has not received any proceeds back from those  
17 insurance carrier policies; is that correct?

18 A. Duke Energy Ohio has not received any  
19 proceeds.

20 Q. And to your understanding Duke's  
21 predecessors did not receive any proceeds as well; is  
22 that correct?

23 A. That is for -- for the Ohio MGP sites,  
24 that is correct.

25 Q. And do you know whether any proceeds that



1       you may obtain from your discussions with Columbia  
2       Gas would also be credited back against the cost  
3       recovery sought in this proceeding?

4             A.     If it's determined that Columbia Gas is a  
5       responsible party, it is my understanding based upon  
6       discussions with accounting, again, this was another  
7       I believe question that was part of the discovery  
8       requests in the OCC interrogatories, but it's my  
9       understanding in discussions with accounting that it  
10      would be credited back or would be attributed to  
11      future costs. I am not exactly sure how that's going  
12      to be. That's going to be a better question for  
13      someone in accounting.

14            Q.     But it's your opinion that it will be  
15      reflected in the cost recovery mechanism that's being  
16      established in this proceeding as an offset.

17            A.     That is my understanding.

18            Q.     And, again, to date you have not received  
19      any such proceeds from Columbia Gas as a potential  
20      owner of the facilities or any other utility?

21            A.     Because they have not been -- has not  
22      been established that they are a responsible party,  
23      they are still just a potential responsible party we  
24      have not received any thoughts from them.

25            Q.     You have not; is that correct?

1           A.    No.

2                   MS. BOJKO:  That is all I have.  Thank  
3   you.

4                   Thank you, Ms. Bednarcik.

5                   THE WITNESS:  You're welcome.

6                   EXAMINER PIRIK:  Mr. Hart.

7                   MR. HART:  Thank you, your Honor.

8                               - - -

9                               CROSS-EXAMINATION

10   By Mr. Hart:

11               Q.    Ms. Bednarcik, I would like to go to the  
12   history you attached to your initial testimony.  It's  
13   Attachment JLB-1.

14               A.    Yes, I'm there.

15               Q.    Okay.  Obviously you weren't around  
16   during the time periods discussed here, so I'm  
17   curious what your source was for this information.

18               A.    I believe I discussed the source in my  
19   supplemental testimony.  There is a document that was  
20   put together by a predecessor company of Duke Energy,  
21   by Cincinnati Gas & Electric -- try that side -- and  
22   I believe it was 1955 that discusses the -- the  
23   history of the -- of Cincinnati Gas & Electric.  That  
24   is where I got the majority of the information on the  
25   history.  There are other documents within our

1 corporate library that were used to piece together  
2 the history.

3 Q. Okay. Is this -- these two pieces are --  
4 or two pages, is this a piece that you authored  
5 yourself?

6 A. It is a piece, yes, that I authored  
7 myself pulling together all the information I had  
8 found to date when I wrote this.

9 Q. So basically went to historical sources  
10 and summarized what was relevant to these sites.

11 A. Yes.

12 Q. Okay. We haven't talked much about the  
13 West End site so I would like to start there. From  
14 reviewing your summary it appears that that site  
15 operated for I guess about 70 years and then at some  
16 point around 1909 it stopped for a while; is that  
17 correct?

18 A. Yes.

19 Q. And the reason it was stopped was because  
20 a pipeline brought natural gas into the area, and you  
21 didn't have to manufacture gas anymore, correct?

22 A. Yes.

23 Q. In your view was the site contaminated in  
24 1909?

25 A. I don't know exactly when the site was

1 contaminated, but MGP residuals, of course, were  
2 produced as part of the operations prior to 1909, so  
3 it is probable that there was contamination in the  
4 ground prior to 1909.

5 Q. Okay. Let's kind of talk about that.  
6 You testified a bit about the VAP standards and you  
7 use the term "oil-like substance" and "tar-like  
8 substance." Are those the primary contaminants that  
9 you are concerned with, those two items?

10 A. There are a number of contaminants that  
11 we're concerned with and how we remediate the sites  
12 is that we look at many different ways. One is the  
13 dissolved contaminants, dissolved chemicals are in  
14 groundwater and soil and that is mainly for a worker  
15 contact, residential contact, industrial/commercial,  
16 ingestion, inhalation, contact with contaminated  
17 groundwater, so there is dissolved constituents or  
18 contaminants.

19 Q. Can I stop you one second?

20 A. Yes.

21 Q. The dissolved contaminants you talked  
22 about, did they likely get there through water  
23 contact with the OLM and the TLM?

24 A. That is one way that they could have  
25 gotten there is through water contact and the

1 percolation and leaching of ground -- water during  
2 rain and they also could have gotten there during the  
3 construction or demolition of some of these  
4 properties and as they demolished them and maybe  
5 buried some material. That's what they did in the  
6 1800s based upon our historical research. Many  
7 times it could have gotten in contact with soil  
8 during that time period.

9 Q. Okay. And I kind of interrupted you so I  
10 don't know if you had another piece you wanted to go  
11 to.

12 A. So we discussed the dissolved  
13 constituents in the soil and groundwater but there is  
14 also this like tar-like material and oil-like  
15 material which is another -- another item that is  
16 viewed in determining how to clean up this material.  
17 It's a black, thick oily material that is -- most of  
18 the time has a very noxious odor and is a continual  
19 source to groundwater and it's a source material.

20 Q. Okay. I am trying to get back to how  
21 that material got there. Am I correct that part of  
22 the operation of these MGP facilities involved what  
23 was called a tar pond?

24 A. Tar is one of the residuals and it is  
25 stored on-site in many different ways and it would be

1 sold off, of course, as a byproduct as much as it  
2 possibly could, but it was held on-site and at East  
3 End there was a tar pond. It's also referred to as a  
4 tar lagoon. There is also things called "tar wells."  
5 There were multiple tar wells and tar settling tanks  
6 at the East End site. At the West End site there  
7 were tar wells as well.

8 Q. Okay. When you say a "tar well," I take  
9 it that's a well into which this cooling water that  
10 has tar in it is discharged and the tar settled to  
11 the bottom.

12 A. In some case, yes. Sometimes it's the  
13 tar is directly pumped into and there are many times  
14 large circular vessels for the wells that go down a  
15 certain depth and it's basically a -- in today's  
16 terminology an underground storage tank, but many  
17 times was constructed out of brick or concrete.

18 Q. So it was porous and allowed material to  
19 flow through.

20 A. It could. Some are pretty tight and some  
21 have cracks and they are porous.

22 Q. Okay. Getting back to the West End site,  
23 these facilities that allowed tar to get into the  
24 ground, I take it they were in existence in 1909,  
25 correct?

1           A.    Yes.

2           Q.    And you testified later that gas  
3 production was reinstated in 1918 for I guess ten  
4 years, nine or ten years, correct?

5           A.    At the West End site?

6           Q.    Yes.

7           A.    Yes.

8           Q.    You talked about a new gas production  
9 plant or gas producer plant -- gas producer plant I  
10 should say, but I take it that's the apparatus that's  
11 actually used to separate the gas out of the oil,  
12 correct?

13          A.    Yes. And Dr. Middleton's testimony talks  
14 about all the different types of ways to manufacture  
15 gas, so he explains it more in depth there, but yes.

16          Q.    I'm trying not to get into all the  
17 details; I'm trying to go down a path here.

18          A.    Good.

19          Q.    So that producer gas plant would be kind  
20 of the equivalent of an oil or furnace or something  
21 like that, correct?

22          A.    I don't remember exactly all the  
23 equipment that would have been as part of that  
24 producer gas plant but it is my understanding it  
25 would have also generated these residuals and

1 byproducts.

2 Q. That's where I'm headed. The residual  
3 byproducts come out of that process primarily to the  
4 cooling water which is then circulated around the  
5 facility and some of it ends up in these ponds and  
6 wells, correct?

7 A. Generally, yes.

8 Q. Okay. So the pond and well aspect of  
9 that facility was already in place in 1909 and wasn't  
10 added when the plant was restarted in 1918; is that  
11 fair?

12 A. I would have to look at the Sanborn maps,  
13 Sanborn fire insurance maps to answer your question  
14 directly. I cannot remember if there were tar wells  
15 that were constructed as part of the producer plant  
16 or not. I believe that there were, but I would have  
17 to check back on the Sanborn maps.

18 Q. Have you done any investigation as to the  
19 volume of gas that was produced prior to 1909 and the  
20 volume that was produced between 1918 and 1927?

21 A. That analysis has been done. I don't  
22 have it in front of me. I wouldn't have be able to  
23 remember them off the top of my head.

24 Q. Do you have an estimate what it was?

25 A. I wouldn't be able to venture a guess; I



1 haven't looked at it in a very long time.

2 Q. Would it say the vast majority of the gas  
3 was produced prior to 1909?

4 A. Based upon the number of years of  
5 operation, that -- and what I know right now, I think  
6 that would be a fair estimation for the West End  
7 plant.

8 Q. Would it also be true in the period of  
9 1918 to 1927, the plant was really used for peak  
10 shaving as opposed to primary production?

11 A. Again, that I would have to look through  
12 the history a little bit more in detail, but that's  
13 my general understanding at the West End site.

14 Q. Your testimony talks about the reason it  
15 was restarted was you couldn't get enough natural gas  
16 delivered to the city during cold winters, correct?

17 A. Yes.

18 Q. And cold winter would be a peak usage  
19 period?

20 A. Yes.

21 Q. Just curious, you talked about the plant  
22 being used to supply gas to customers. I'm curious,  
23 was any of the gas from either of these plants  
24 supplied to Kentucky customers?

25 A. I don't know the answer to that.

1 Q. Is it possible that it was?

2 A. It's -- it's possible. I would have to  
3 look through the history and see how the company in  
4 its history -- where their customers were and how  
5 they added new customers in from different areas, but  
6 I am not entirely sure.

7 Q. Okay. I take it also that consistent  
8 with Dr. Middleton's testimony, there was sales of  
9 byproducts to third parties, such as ammonia and tar  
10 and so forth?

11 A. That's typically what happened on these  
12 sites, yes.

13 Q. Have you done any investigation as to the  
14 revenue attributable to those byproduct sales?

15 A. Specifically as to that revenue, I don't  
16 know how that was -- what the revenue was.

17 Q. Do you have any information as to whether  
18 that revenue was credited to ratepayers?

19 A. I do know that the -- it's my  
20 understanding that the Utilities Commission of Ohio  
21 did regulate during that time and all of that  
22 information related to revenues, cash flow, sale of  
23 products would have been reported and as part the  
24 balance sheet. I don't know the detail.

25 Q. Did the Public Utilities Commission of

1 Ohio regulate CG&E prior to 1911?

2 A. I don't know the date when the Public  
3 Utilities Commission came into existence, so I would  
4 not know.

5 Q. Okay. Let me ask you to assume, subject  
6 to check, that in 1911 is when the Commission was  
7 given jurisdiction over gas and electric utilities.

8 A. Okay.

9 Q. Do you have any information that the  
10 off-system sales byproducts and so forth were  
11 credited to ratepayers prior to that date?

12 A. Based upon the information I could bring  
13 to mind right now sitting here right now, I don't  
14 know if we have documentation as to how revenue,  
15 sales were handled in the late 1800s.

16 Q. Okay. Let's take a look at some of the  
17 attachments, I think it's actually your supplemental  
18 testimony you have got some drawings attached. I  
19 believe the first one is JLB SUP-2? Is that right?

20 A. My copies actually don't have the numbers  
21 on it.

22 Q. It's way up --

23 A. Yes, I see it.

24 Q. And you may have a paper copy that's not  
25 very easy to read, so if you would like, I can share

1 with you a digital version you can see better.

2 A. I think we actually have large copies  
3 available that the company put together and brought  
4 here, if that would --

5 Q. Would you like to use one of those?  
6 Would that help you?

7 A. Yes, it would help.

8 MR. HART: Could the company supply that  
9 to her.

10 A. They are hard to read.

11 Q. Not on an iPad.

12 MR. PARRAM: Did you need the easel?

13 MR. McMURRAY: Which one did you want to  
14 look at?

15 MR. HART: Either. I think that one is  
16 more legible than the paper one. Put the  
17 supplemental up.

18 THE WITNESS: We didn't blow up those?

19 A. I'm sorry, I was under -- mistaken. I  
20 thought we have aerial photographs blown up, but we  
21 can talk through these.

22 Q. Let's start with aerial photographs. If  
23 you don't mind putting up the aerial photograph,  
24 we'll work with that first.

25 Just for the record this is Attachment

1 JLB-4; is that correct?

2 A. This is the attachment from my initial  
3 testimony.

4 Q. Just for the record so we can identify.

5 A. JLB-4, yes.

6 Q. I take it this is an aerial photograph  
7 not today but in recent years; is that correct?

8 A. It is, yes. The image was taken in  
9 recent years and it has been superimposed on top of  
10 it some of the locations of historic manufactured gas  
11 plant equipment.

12 Q. And just so we're clear, this consists of  
13 two parcels, one that's northern of Mehring Way and  
14 one that's south of Mehring Way; is that correct?

15 A. Yes. In that division between north of  
16 Mehring Way and south of Mehring Way was very much  
17 put together for ease of discussion.

18 Q. And at one point that part of the Mehring  
19 Way was known as Front Street, so we will sometimes  
20 see references to Front Street?

21 A. Yes.

22 Q. And it is bounded on the west -- or the  
23 east by Rose Street which is kind of underneath I-75?

24 A. It's bounded by Rose Street north of  
25 Mehring Way. South of Mehring Way the site is --

1 actually extends underneath the current Brent Spence  
2 bridge.

3 Q. And on the north it's bound by Pete Rose  
4 Way, otherwise known as Second Street?

5 A. Yes.

6 Q. And west by the aptly named Gas Alley and  
7 on the south by the river?

8 A. Yes.

9 Q. And then Mehring Way kind of bisects the  
10 parcel east/west.

11 A. Yes.

12 Q. Now, on Attachment JLB-4 you have  
13 superimposed former facilities, correct?

14 A. Yes.

15 Q. And on the north parcel I see it looks  
16 like five gas holders?

17 A. Yes.

18 Q. And several tar wells? Something labeled  
19 "P." What is a "P"?

20 A. There's a key at the bottom of the  
21 drawing that was a helping aid in how things were --  
22 couldn't put the names on all of the aerial  
23 photographs so "P" is the purifiers.

24 Q. Okay.

25 A. Purifier house.

1           Q.    Now, today what exists on the surface of  
2           that lot is two electrical towers; is that correct?

3           A.    Yes.

4           Q.    And if we look at your supplemental  
5           testimony, that first drawing will show the location  
6           of those -- actually it's the second drawing, I  
7           apologize.

8           A.    Supplemental -- JLB Supplemental 1 shows  
9           locations of the transmission towers that are  
10          currently existing north of Mehring Way, yes.

11          Q.    And it also shows I believe a pipeline  
12          that enters the property about midway off of Mehring  
13          Way and then takes a right turn and exits the  
14          property on to Augusta Street?

15          A.    That is a pipe type cable for -- it's an  
16          electrical service for underground electrical  
17          service, and I am not in the electrical department so  
18          this is based upon my knowledge of what they have  
19          told me.

20          Q.    Oh, okay.

21          A.    But that is the location for the new pipe  
22          type cable that is going to go into the relocated  
23          substations. There is a current pipe type cable.  
24          I'm not sure if it's actually shown on this or not  
25          because my picture is very faint, but there is a

1 current pipe type cable that goes down Augusta Street  
2 and underneath the eastern most transmission tower  
3 and goes into the current substation that's located  
4 on the east side of the property south of Mehring  
5 Way.

6 Q. Okay. So I misinterpreted pipe type  
7 cable as being -- or pipe type cable as having a gas  
8 function, it's an electrical function.

9 A. Yes.

10 Q. And the two high towers are also  
11 electrical functions.

12 A. Yes.

13 Q. And then the rest of the property is just  
14 bare surface; is that right?

15 A. It was a parking lot for Duke Energy  
16 employees until we started the remediation work.

17 Q. Because you have some facilities north of  
18 Pete Rose Way that people work in?

19 A. North of Pete Rose Way is Longworth Hall  
20 and it's an office building but it's not Duke Energy  
21 owned.

22 Q. Are there Duke Energy offices in the  
23 area?

24 A. There are Duke Energy offices in downtown  
25 Cincinnati and a -- but our employees would park here



1 and then we had arranged with Cincinnati to have a  
2 bus drive by, pick them up, and drop them off at the  
3 office.

4 Q. So it's like a commuter lot.

5 A. Yes.

6 Q. Okay. Has the north parcel at the West  
7 End remediation work finished?

8 A. We have completed -- we have completed  
9 excavation solidification for the majority of the  
10 area north of Mehring Way. We are currently working  
11 on the remediation solidification excavation for the  
12 area that is relatively underneath the two most  
13 western gas holders, that area is being excavated and  
14 solidified right now. We expect that to be done in  
15 August.

16 And then we have addressed the soil  
17 contamination. Again, we'll have to do groundwater  
18 monitoring and there may be additional groundwater  
19 work that is still to be determined. But the only  
20 area that has not been addressed north of Mehring Way  
21 as part of soil excavation or solidification is the  
22 area underneath the eastern most transmission tower.

23 And really south of that transmission  
24 tower because of that pipe type cable it's very  
25 dangerous to work around it so we will be addressing

1 those areas once the transmission tower and the pipe  
2 type cable have been moved.

3 Q. Is the transmission tower on the west  
4 side going to remain in place?

5 A. Yes.

6 Q. You said you did excavation and  
7 solidification in place. How deep did you excavate?

8 A. We excavated roughly 20 feet and then  
9 solidified those areas where through investigations  
10 we determined there was the oil-like material and  
11 tar-like material. We solidified those locations to  
12 the depth of where we had indications there was  
13 oil-like material and tar-like material. It's  
14 generally 30, 50 feet. It is different all  
15 throughout the site based upon analytical results and  
16 results of investigations.

17 Q. But was the minimum depth 20 feet  
18 throughout the site?

19 A. Minimum excavation 20 feet, mainly  
20 because 15 feet is about a good construction worker  
21 zone that we use for clean material. We went 5 feet  
22 more because when you do the solidification, you  
23 create this fluff material because you are adding  
24 volume to the ground and into the soil, so in order  
25 to maintain that -- keep that fluff on the site and

1 not have to truck it out, we want -- we had that  
2 5-foot area to spread out that fluff so we would have  
3 15 feet of clean soil.

4           There were a few locations that we did go  
5 deeper and it was the area where the new pipe type  
6 cable is going, and that was because it has to be a  
7 certain depth in order to go up into the new  
8 substation and we wanted to make sure that area had  
9 no either impacted -- no impact solidified material  
10 in that area, so we went a little deeper in those  
11 areas for protection of our future workers as they  
12 installed that new pipe type cable.

13           Q.    Okay. I wanted to turn to the south  
14 parcel now. Before we go there, though, your  
15 testimony has been that the reason this site moved up  
16 the priority list was because of the plan to build a  
17 new bridge in this area, correct?

18           A.    Yes.

19           Q.    And if you look at JLB-4 which is on the  
20 easel next to you, that shows the current Brent  
21 Spence bridge along the right side of the picture; is  
22 that correct?

23           A.    That's correct.

24           Q.    And am I correct the new bridge will be  
25 located directly adjacent to that and parallel to it?

1           A.    It would -- yes, my understanding  
2           adjacent parallel in between the edge of the building  
3           that's south of Mehring Way that's right on the river  
4           bank, it's going to be directly to the east of that  
5           building and follow a path north/south right next to  
6           the current bridge.

7           Q.    And currently on that portion of the  
8           south parcel you have an electrical substation,  
9           correct?

10          A.    Yes.

11          Q.    And that's going to have to be moved to  
12          make way for the bridge.

13          A.    Yes.

14          Q.    And I believe your testimony indicated  
15          that the construction would disturb an existing cap  
16          on that portion of the site?

17          A.    Yes. Right now -- well, in -- prior to  
18          the start of the investigation there was a -- either  
19          asphalt or concrete or something over the entire  
20          property, but as our electrical workers would be  
21          constructing the new substations, they would, of  
22          course, have to break up that cap and come in contact  
23          with potentially impacted material, plus the  
24          construction workers as part of the bridge as they  
25          install their foundations and everything related to

1 brick construction, they would also have to disrupt  
2 that cap.

3 Q. Is the plan to relocate that substation  
4 to the center portion of the south parcel?

5 A. Yes.

6 Q. Where it is currently vacant land?

7 A. Yes.

8 Q. And that was also paved?

9 A. Yes.

10 Q. There's another substation on the  
11 western-most part of the south parcel. Is that going  
12 to remain there?

13 A. Yes.

14 Q. And the building to the south along the  
15 river, I take it that's the former generation  
16 station?

17 A. It is one bay of three bays. The  
18 generation station was three bays at one time, so  
19 it's the one remaining bay, yes.

20 Q. Okay. That building is going to remain  
21 in place?

22 A. Yes.

23 Q. And the bridge won't disrupt that  
24 building, correct?

25 A. We have been told that the bridge will

1 not encroach upon that building.

2 Q. Is that building being used for  
3 electrical service today?

4 A. Yes.

5 Q. Now, in this area, the south parcel, I  
6 take it you have done some excavation work in the  
7 center area?

8 A. We excavated and solidified the impacted  
9 material in between the two substations because  
10 that's where the new substation is going to go in  
11 order to make it protective of our workers plus to  
12 treat any of the impacts that were below that.

13 Q. And was that solidified in the site as  
14 well?

15 A. Yes.

16 Q. Same standards as used for the north  
17 parcel?

18 A. Yes.

19 Q. 20 feet?

20 A. Roughly 20 feet excavation and then  
21 solidification below that based upon where our  
22 analytical and our investigation showed us there was  
23 tar-like material and oil-like material.

24 Q. When will the substation be moved?

25 A. I believe that the -- our electric side

1 of Duke Energy is working on plans right now to move  
2 that substation. My understanding from them is that  
3 the construction of the substation will be completed  
4 in the 2016 timeframe. That's what I was given last  
5 time I talked to them.

6 Q. Okay. Do you have future plans to do  
7 remediation work underneath where that substation  
8 currently is?

9 A. Yes. Once the substation has been  
10 de-energized -- it's very, of course, dangerous  
11 working in a substation. Once it's de-energized and  
12 the superstructure is taken down to grade, we will  
13 start our investigation underneath that substation  
14 where the new bridge is going plus underneath the  
15 transmission tower that's north of Mehring Way and  
16 along that pipe type cable that's currently located  
17 north of Mehring Way.

18 Q. Okay. Let's go back to the East End for  
19 a while. And I would like you to look at the exhibit  
20 that you attached to the supplemental testimony which  
21 I believe is JLB SUP-3?

22 A. Yes. Would it be helpful to put the  
23 aerial photograph up?

24 Q. No, because what I want to show you or  
25 what I want to talk about is on this particular

1 drawing.

2 A. Okay.

3 Q. I don't know if it would help for you to  
4 see it expanded or if you can work from the one you  
5 have.

6 A. I will work from what I have.

7 Q. Okay. I see you've shaded --

8 EXAMINER PIRIK: Mr. Hart, I know you  
9 know what you're talking about, but unfortunately the  
10 copies that we have I have no idea which one of these  
11 is the one you are looking at.

12 MR. HART: It's the last one just before  
13 the electronic filing receipt.

14 EXAMINER PIRIK: Okay. Thank you.

15 MR. SERIO: Your Honor, if it helps, in  
16 the upper right-hand corner it says JLB-SuPP30, page  
17 1 of 1.

18 EXAMINER PIRIK: I know. It just, I  
19 can't read it.

20 MR. HART: I am happy to share with  
21 anybody who wants to watch.

22 EXAMINER PIRIK: No, we're good as long  
23 as we've got the right one. I think we do now.

24 THE WITNESS: Your Honor, would it help  
25 to put up the aerial photographs for you?



1 EXAMINER PIRIK: Oh, no, I think we are  
2 okay with this. I wanted to be sure we were looking  
3 at the same documents.

4 THE WITNESS: Okay.

5 EXAMINER PIRIK: Thank you.

6 THE WITNESS: You're welcome.

7 Q. (By Mr. Hart) Ms. Bednarcik, I am just  
8 trying to orient to the drawing here. There are two  
9 areas that are shaded and I believe those are labeled  
10 "identified area A" and "identified area B," correct?

11 A. Yes.

12 Q. And in the center which is not shaded is  
13 identified area C; is that right?

14 A. Yes.

15 Q. And identified area C has a building on  
16 it today, right?

17 A. Yes.

18 Q. And A and B are both vacant land right  
19 now?

20 A. Today?

21 Q. Yes.

22 A. Area B has -- yes, it's a -- there's no  
23 buildings on that property today, although there are  
24 some "about pits" related to gas operations and gas  
25 lines. On identified area A if you were to visit the

1 site today, you would see brand new vaporizers that  
2 have been constructed to help with the propane plant  
3 on the north side of the property as well as a flare  
4 to be used in the -- for the propane plant.

5 Q. All right. And the building that's on  
6 identified area C is where the propane mixing  
7 operation occurs?

8 A. Yes.

9 Q. And, again, that's a form of peak shaving  
10 using propane instead of MGP?

11 A. That's my understanding of witnesses  
12 coming on later. Mr. Hebbeler will be able to go  
13 more into detail on the gas side exactly what happens  
14 at the plant.

15 Q. Okay. What I wanted to talk to you about  
16 was actually to the left of what's labeled identified  
17 area A, and you see there is a heavy black line  
18 that's forming the border of identified area A?

19 A. Yes.

20 Q. And to the left of that there's a parcel  
21 which I believe extends from Eastern Avenue to the  
22 river, is 30 feet wide, and then there are a series  
23 of parcels that front on what's labeled Munson Street  
24 to the left. Do you see that?

25 A. Yes.

1           Q.    Is that the land that CG&E sold to DCI,  
2           the developer, in 2006?

3           A.    It is my understanding that, yes, that is  
4           the portion that had been sold.

5           Q.    Okay.  And also there's some parcels  
6           that -- it looks like there is three of them that  
7           extend from Eastern Avenue back to the stub of what I  
8           believe is Keck Street.  Do you see that?

9           A.    Yes.

10          Q.    Is that also part of the land that was  
11          sold to DCI?

12          A.    To my understanding, no, it was not owned  
13          by Cinergy.

14          Q.    Okay.  So what Cinergy owned was the  
15          30-foot strip from Eastern to the river and the lots  
16          to the west of that south of Keck Street?

17          A.    That is my understanding, yes.

18          Q.    And so that's the land we have been  
19          talking about abstractly all this time what was sold  
20          to a developer.

21          A.    Yes.

22          Q.    Okay, and then I take it that the  
23          developer then independently acquired the parcels  
24          north of Keck Street and further west along Eastern  
25          Avenue.

1           A.    The developer purchased on his own  
2           roughly the land from what's shown on this drawing  
3           all the way to what is called Gotham Street which is  
4           the next current street you can see on the aerial  
5           photograph. Except for I believe one parcel is owned  
6           by a third party. I think the Cincinnati Water Works  
7           also owns one parcel.

8           Q.    Okay. And so we have been talking about  
9           the 9 acres that Duke bought from DCI. Would that  
10          extend all the way to Gotham Street as well?

11          A.    Yes.

12          Q.    Was the 30-foot strip that's directly  
13          adjacent to identified area A a street?

14          A.    I do not believe it was a street. Based  
15          upon my understanding, it was not, but it may have  
16          been.

17          Q.    It was acquired by CG&E in 1928 from the  
18          Cincinnati Street Railway Company?

19          A.    I would have to look through the history.  
20          I don't know what -- when exactly that plot was  
21          purchased.

22          Q.    Okay. Now, could you describe or point  
23          out or identify in some fashion the location of the  
24          easements that you've been discussing in your  
25          testimony?

1           A.    It is my understanding that that 30-foot  
2 street north/south was -- I'm not sure if that was  
3 the easement or if it was right on top of that heavy  
4 dark line. I'm not -- that would have been the  
5 ingress/egress easements, so I'm not sure if it's  
6 that strip or on top of the line.

7           The landscape easement covered part of  
8 identified area A which is also referred to as the  
9 west parcel. I don't remember exactly where that  
10 line for the landscape, the revocable landscape  
11 easement was, but it did cover some of that portion  
12 that's labeled on this -- this document as identified  
13 area A.

14          Q.    Okay. Now, when the MGP facility was in  
15 operation, were there any components of that  
16 operation located on the land that was sold to DCI?

17          A.    Based upon the review of the documents we  
18 had available, I had Sanborn maps, we do not -- we  
19 did not believe there were any MGP equipment that  
20 were located on those -- those properties that were  
21 sold, at least that's based upon my understanding of  
22 what happened before the merger with Duke Energy and  
23 Cinergy.

24          Q.    Do you know Steven Ruhlman?

25          A.    No.

1           Q.    Now, the -- I am not sure how to describe  
2           this area other than the property that was sold to  
3           the developer. Is that the area that you wanted to  
4           go on to do sampling and they wouldn't let you?

5           A.    We had requested to go on to that area  
6           and even beyond into -- starting at the fence line  
7           moving west in order to determine if there were any  
8           MGP residuals that were on the property that had been  
9           sold or beyond.

10          Q.    Okay. And you've I believe testified  
11          that you did find residuals above acceptable  
12          standards at the margin of identified area A; is that  
13          correct?

14          A.    Prior to purchasing the property, yes.  
15          We had -- we have, since that time, done some  
16          investigations on the property across the entire 9  
17          acres and have found MGP residuals on both the  
18          property that we had -- that Cinergy sold in 2006 and  
19          based upon my memory, I believe that there are MGP  
20          residuals even beyond that. I would have to go back  
21          and look at the investigations.

22          Q.    Do you know the lineal distance from the  
23          property line, have you found those?

24          A.    No. I don't remember exactly. Those  
25          investigations are ongoing right now.

1           Q.    I believe you testified in your written  
2           testimony that you had to use a different form of  
3           bracing when you did the excavation because you  
4           didn't own the property west of that line; is that  
5           correct?

6           A.    Yes.

7           Q.    And was there an additional cost to do  
8           the internal bracing for that part of the excavation?

9           A.    I don't remember specifically if there  
10          was a -- a cost differential. I just know that we  
11          had to do two different types of bracing because the  
12          one would have extended onto property that we did not  
13          own.

14          Q.    And I take it you did the excavation  
15          before Duke owned or repurchased that property,  
16          correct?

17          A.    Yes.

18          Q.    And that -- the transaction we have been  
19          talking about in 2011 is when that property was  
20          reacquired plus the additional property totally --  
21          total 9 acres.

22          A.    Yes.

23          Q.    Am I correct that the property that Duke  
24          sold to DCI, the sales price for all of that property  
25          was \$200,000?

1           A.    I don't know the exact amount, but it's  
2           in public documents.

3           Q.    That's where I got it so that's why I'm  
4           asking.

5           A.    If you found it in public documents, I  
6           have no reason to doubt that.

7           Q.    Okay. And the reason that was  
8           repurchased was a much larger parcel and you paid  
9           \$4-1/2 million to get that parcel, correct?

10          A.    Yes.

11          Q.    Has any remediation work occurred on any  
12          of that property yet?

13          A.    As I previously stated, we are currently  
14          doing an investigation on that property, and based  
15          upon what we have seen, we do know that some  
16          remediation soil excavation and/or solidification  
17          and/or stabilization will have to be conducted on  
18          portions of that property. I do not know when  
19          exactly that work will be mobilized, when we will  
20          mobilize to actually do that. We are still in the  
21          planning investigation phase.

22          Q.    So the answer is you haven't done  
23          remedial work in that area?

24          A.    Just investigation, not yet remediation.

25          Q.    All right. Turning to the Corbin Park



1 end of the East End facility, have you determined  
2 that there's residual material leaving the sites on  
3 that end?

4 A. We have done investigations right up to  
5 the property border of our east -- eastern property  
6 border of that east parcel and we have not found any  
7 reason to believe that there is contamination that  
8 extends beyond that eastern property border.

9 Q. Am I correct that the groundwater flow  
10 would be consistent with the surface water flow and  
11 that's to the west along the river?

12 A. Groundwater flows generally south,  
13 southwest.

14 Q. Which actually this site is really not  
15 oriented east/west because it's on the curve of the  
16 river, correct?

17 A. Exactly.

18 Q. So the flow of the river would be towards  
19 the river and in the direction of the river flow.

20 A. Yes.

21 Q. Which is away from Corbin Park.

22 A. Yes.

23 Q. I apologize for beating a dead horse but  
24 let me go back a minute to the easement. Is it your  
25 understanding that the easement you have been talking

1 about was created at the same time as the sale of the  
2 land from CG&E to DCI?

3 A. It is my understanding that occurred  
4 around the same time.

5 Q. So it was part of the same overall  
6 transaction?

7 A. That's my understanding.

8 Q. Okay. In your direct testimony on page  
9 24, lines 19 through 22 -- well, actually line 22,  
10 let me start there, you said that the winning bidder,  
11 and I believe this is for the East End work, was the  
12 second lowest bidder, but won it based on proposed  
13 design and other issues. Do you see that?

14 A. Yes.

15 Q. What was the difference in price between  
16 the first and second bidder?

17 A. I don't remember the specifics on the  
18 differential between the price.

19 Q. And go over to page 25, line 18. Here's  
20 another contract you said was awarded to the second  
21 lowest bidder. Do you see that?

22 A. Yes.

23 Q. And can you tell us the difference in  
24 price between the first and second lowest bidder  
25 there?

1           A.    I do not have that information in front  
2           of me.

3           Q.    Just to go back, we don't have to look at  
4           that time, but you're recalling the history document  
5           you put together, am I correct, that the East End  
6           plant also shut down in 1909 for some period of time?

7           A.    Based upon my understanding, yes.

8           Q.    Until 1918 when there was additional need  
9           for gas.

10          A.    Yes.

11          Q.    Okay. Was the East End site contaminated  
12          in your opinion in 1909?

13          A.    Based on what I know of MGP sites and  
14          their operational history, I would -- if I were to  
15          guess, that yes, there were impacts to the soil  
16          and/or groundwater based upon operations prior to  
17          1909.

18          Q.    And part of the reason for that is  
19          because there was one of these tar lagoons on the  
20          eastern end -- East End site?

21          A.    I don't know exactly when the tar lagoon  
22          was installed on the property, if it was pre-1909 or  
23          after the MGP started up again. Without looking at  
24          the Sanborn maps and the documents specifically on  
25          the site, it is my recollection right now that that

1 tar lagoon was installed after the plants restarted.

2 Q. And the same question I had for the West  
3 End, do you have any knowledge as to the volume of  
4 gas produced pre-1909 versus post-1918?

5 A. We have that information. I would not be  
6 able to venture a guess as to the volume right now.

7 Q. But the purpose for running the plant was  
8 the same as for the West End, and that was to  
9 supplement natural gas when you had peak usage?

10 A. I believe so.

11 Q. And the primary supply of gas was still  
12 the natural gas pipeline.

13 A. That's my understanding based upon my  
14 recollection, but I know that the East End gas was --  
15 East End plant was a significant plant after it  
16 restarted in the late 1920s/early 1930s.

17 Q. Let me just ask a few more questions  
18 about this development issue. I believe we've  
19 established there actually wasn't a lawsuit, that the  
20 developer threatened a lawsuit; is that fair?

21 A. Yes.

22 Q. And I take it one of the reasons the  
23 developer threatened a lawsuit was he had been sold a  
24 piece of property that was contaminated without  
25 having been told that.

1           A.    I believe that there are multiple reasons  
2           why he was threatening a lawsuit and that may have  
3           been one of them, but I don't know if that was the  
4           only reason.

5           Q.    Okay.  And may another one have been that  
6           property that Duke or CG&E didn't sell to him that he  
7           got through other sources was also contaminated?

8           A.    I believe that may have been one of the  
9           additional reasons.

10          Q.    And if he couldn't use that portion of  
11          the property, it would impair the viability of his  
12          development on the whole, correct?

13          A.    Again, I am not sure exactly all the  
14          reasons he threatened the lawsuit, but I think that  
15          is -- would be a fair assumption, without talking to  
16          the gentleman directly now.

17          Q.    Okay.  And I think we saw on OCC Exhibit  
18          9, if you want to look at that, the second page of  
19          that indicates that the -- it says the prior owner,  
20          which I think it's DCI, had acquired these parcels at  
21          a cost of \$1,951,600.  Do you see that?

22          A.    I do see that.

23          Q.    And that's the same property that Duke  
24          paid 4-1/2 million for?

25          A.    That is my understanding, yes.

1           Q.    So the developer netted about \$2-1/2  
2 million over what they paid for the property as part  
3 of the settlement?

4           A.    Yeah, if going off of the information  
5 on -- on this sheet, yes.

6           Q.    And that's money that's been added to the  
7 proposed accrual in this case.

8           A.    The money that has been added to the  
9 proposed accrual is the difference between the fair  
10 market value that was taken in 2011 shortly after we  
11 settled the dispute and obtained ownership of those  
12 properties of the actual fair market value at that  
13 time and what we paid. Not -- it's not based upon  
14 what the gentleman purchased the properties for  
15 between 2005 and 2006.

16          Q.    Okay. Fair enough. And that fair market  
17 value was around \$2 million also.

18          A.    I would have to again go back to the  
19 documents. It's in the Staff Report, but roughly,  
20 yes.

21          Q.    I think you testified that that property  
22 might in the future be used for residential  
23 development, correct?

24          A.    It might be, yes.

25          Q.    And that wouldn't only happen if either

1 Duke does that or sells it to someone else who would  
2 develop it, correct?

3 A. Yes.

4 Q. If that were to occur, would the proceeds  
5 Duke received for that property be netted against the  
6 money that's being sought in this proceeding?

7 A. I am not in the accounting side. That  
8 may be a better question for Mr. Wathen when he comes  
9 up. It is my understanding that would be handled on  
10 the balance sheet in a certain way. I don't know  
11 exactly how.

12 MR. HART: I'm about finished. I am just  
13 trying to pick up loose ends here.

14 EXAMINER PIRIK: That's fine.

15 MR. HART: I think that's all I have.

16 Thank you.

17 EXAMINER PIRIK: Thank you.

18 Mr. Parram.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Parram:

22 Q. Good afternoon, Ms. Bednarcik.

23 A. Good afternoon.

24 Q. My name is Devin Parram. I am counsel on  
25 behalf of staff.

1           A.    Okay.

2           Q.    During staff's investigation of the MGP  
3 sites, you met with staff on numerous occasions,  
4 correct?

5           A.    Yes.

6           Q.    And you also provided staff with maps  
7 regarding the West End site and also the East End  
8 site, correct?

9           A.    Yes, and they are the same maps that were  
10 attached to my supplemental testimony.

11          Q.    Okay. And you also responded to a number  
12 of different data requests or discovery requests that  
13 were issued by staff during the investigation; is  
14 that correct?

15          A.    Yes.

16          Q.    And one of the -- or a few of the data  
17 requests specifically asked for you to provide the  
18 maps that you just indicated are attached to your  
19 supplemental testimony; is that correct?

20          A.    Yes.

21          Q.    And do you know who John Richie is?

22          A.    That name sounds familiar but I am not --  
23 I can't quite place that name right now.

24          Q.    Okay. Mr. Doug Vaught?

25          A.    Yes.



1 Q. Who is Mr. Vaught?

2 A. Mr. Vaught is a -- I am not going to get  
3 his title exactly right, but he is over the gas  
4 operations part of the gas business for the actual  
5 plants themselves, the gas plants.

6 Q. There was an occasion during staff's  
7 investigation in this case where you met with some  
8 staff members and Mr. Vaught and you went through  
9 some of the maps of the East End site and the West  
10 End site and indicated where the facilities are  
11 located. Do you recall that?

12 A. I believe Mr. Vaught was there when we  
13 went over all the of the maps for the East End site.  
14 I can't remember on the second visit by the staff  
15 where we met specifically at West End if we went  
16 over -- if Mr. Vaught was part of that discussion or  
17 not, but we did go over the maps with the staff.

18 Q. So there is a couple of different visits  
19 by staff regarding the East End site and the West End  
20 site, correct?

21 A. Yes.

22 Q. And during these meetings you also met  
23 with staff to sort of lay out where exactly  
24 remediation was performed on the West End site and  
25 the East End site; is that correct?

1           A.    Yes.

2           Q.    And you have indicated you had an  
3 opportunity to review the Staff Report of  
4 Investigation in this case specifically as it relates  
5 to the manufactured gas plants, correct?

6           A.    I have reviewed that section, yes.

7           Q.    Okay. Do you still have a copy of the  
8 Staff Report in front of you?

9           A.    I do.

10          Q.    And I am going to refer to that as Staff  
11 Exhibit 1 because it has already been marked as that,  
12 so it is clear for the record. If you could turn to  
13 page 61 of the Staff Report of Investigation.

14          A.    I'm there.

15          Q.    Are you there?

16          A.    Yes.

17          Q.    And that's "Attachment MGP-9 West End  
18 Site" on the top of the page. That's what that  
19 indicates there, and "West End site" is what we have  
20 been referring to throughout the hearing as the West  
21 End site, correct?

22          A.    Yes.

23          Q.    And this particular attachment is the  
24 parcel that -- the North Mehring Way parcel, correct?

25          A.    Yes.

1           Q.    And do you see a key at the bottom  
2           right-hand side of the page there that indicates the  
3           remediation work zone?

4           A.    Yes.

5           Q.    And the remediation work zone was  
6           provided by you to staff, correct?

7           A.    On the day that they were out at the  
8           facility, yes.

9           Q.    Okay.  So the information that staff  
10          included on Attachment MGP-9 was from you.

11          A.    Yes.

12          Q.    So this accurately reflects what the  
13          remediation work zone was.

14          A.    At the time when the staff visited the  
15          site, I can't remember the exact day that staff was  
16          out there, but we have, since that time when they  
17          visited, we have started work to the west of that  
18          dotted line.

19          Q.    So it's accurate when you gave it to us.

20          A.    Yes.

21          Q.    And there are, as with your conversation  
22          with Mr. Hart, some facilities that are indicated on  
23          Attachment MGP-9.  Do you see these?

24          A.    Yes.

25          Q.    Okay.  And the facilities that are laid

1 out on this document are electric facilities as it  
2 relates to the Mehring Way parcel; is that correct?

3 A. It is a combination of electric  
4 facilities that are currently on the property as well  
5 as location of some of the historic manufactured gas  
6 plant facilities.

7 Q. Okay. So let me clarify that. There are  
8 facilities -- are there any gas facilities on  
9 Attachment MGP-9 that are currently providing gas for  
10 Duke Energy Ohio gas customers?

11 A. Based upon the information on this  
12 diagram specifically within the dotted line, there  
13 are no gas-related facilities for current natural  
14 gas.

15 Q. And when this information was provided to  
16 staff as it relates to the current facilities that  
17 are providing gas for Duke Energy Ohio gas customers,  
18 this information was correct?

19 A. Actually can you repeat the question?

20 Q. Sure. When you provided this information  
21 to staff as it relates to the current facilities that  
22 are currently providing gas for Duke Energy Ohio  
23 customers, this information was correct.

24 A. When I provided this information to  
25 staff, I was asked to provide the location of other

1 remedial work. I don't remember specifically being  
2 asked what was on there for current gas customers  
3 specifically. But for what was going on and what was  
4 known at the time of the staff visit, that's what I  
5 provided.

6 Q. Okay.

7 MR. PARRAM: Your Honors, I would like to  
8 have marked for purposes of identification Staff  
9 Exhibit 7. This is a Duke response to Staff Data  
10 Request No. 68, 12-1685 rate case, as is relevant to  
11 the West End site.

12 EXAMINER PIRIK: That document will be so  
13 marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. PARRAM: I'm jumping ahead.

16 MR. HART: 7.

17 MR. PARRAM: Yes. May I approach, your  
18 Honor?

19 EXAMINER PIRIK: Yes.

20 Q. (By Mr. Parram) Do you have Staff Exhibit  
21 7 in front of you?

22 A. Yes.

23 Q. And this is a multi-page document which  
24 is a data request No. 68 in response to a request  
25 from staff and I would like to refer you to the first

1 two pages are the e-mail response from Ms. Diane  
2 Kuhnell. Do you know who Ms. Diane Kuhnell is?

3 A. Yes.

4 Q. Who is she?

5 A. I believe she is one of the, I believe,  
6 paralegals who has been helping with this matter.

7 Q. And in the email it indicates that  
8 "Attached please find Duke Energy Ohio's response to  
9 staff request 68." Do you see that?

10 A. Yes.

11 Q. And if you go to the actual data request  
12 for data -- the response to the data request, which  
13 should be on the third page, No. 1, the request  
14 indicates "For the West End -- West End former MGP  
15 site, please provide all the following:" The large  
16 uniformly scaled drawing, aerial photograph, a  
17 series of smaller interconnecting drawings, photos  
18 that can be compiled in a larger site drawing or  
19 photo.

20 And if you read through the response on  
21 the second page, it indicates the person responsible  
22 is Jessica L. Bednarcik. That's you, correct?

23 A. Yes.

24 Q. And you provided staff with a large map  
25 indicating where all the -- all the information

1       regarding the West End site was, correct?

2               A.     Yes.

3               MR. PARRAM: Your Honor, I would like to  
4       have marked for purposes of identification as Staff  
5       Exhibit 3 which is map of the West End site north of  
6       Mehring Way parcel which was provided in response to  
7       Staff Exhibit 7 which was the data -- the response to  
8       the DR68.

9               EXAMINER PIRIK: The document is so  
10      marked.

11              (EXHIBIT MARKED FOR IDENTIFICATION.)

12              MR. PARRAM: May I approach the witness?

13              EXAMINER PIRIK: Yes.

14              MS. WATTS: Devin, we didn't understand  
15      it being a response to Staff Exhibit 7.

16              MR. PARRAM: Staff Exhibit 7 which is the  
17      DR.

18              MS. WATTS: Okay. Thank you.

19              Q.     (By Mr. Parram) Ms. Bednarcik, do you  
20      have Staff Exhibit 3 in front of you?

21              A.     Yes, I do.

22              Q.     Do you recall this document?

23              A.     Yes, I do.

24              Q.     What is this?

25              A.     This is the map that was prepared in

1 response to the staff request. It is also the map  
2 that was brought to the staff visit at the West End  
3 site, and I believe it was -- has done a marcation on  
4 it as we were discussing what was going on at the  
5 site.

6 Q. And --

7 MR. PARRAM: Your Honor, it's a little  
8 bit hard to read Staff Exhibit 3 so I would like to  
9 have marked for -- for illustrative purposes Staff  
10 Exhibit 3A, a larger blown-up version of Staff  
11 Exhibit 3, just so it would be easier for you to see,  
12 for all the parties to see.

13 EXAMINER PIRIK: That's fine. I don't  
14 think we need to mark it as an exhibit necessarily,  
15 but if you would like to display it, that would be  
16 helpful.

17 MR. PARRAM: Okay. Great. Your Honor,  
18 with your permission may I stand up? It might be a  
19 little bit easier.

20 EXAMINER PIRIK: As long as the witness  
21 is okay.

22 THE WITNESS: I'm okay with that.

23 EXAMINER PIRIK: And the court reporter  
24 has to be able to hear, so turn the microphone in  
25 your direction.



1 MR. PARRAM: Okay.

2 Q. (By Mr. Parram) And so, Ms. Bednarcik, on  
3 Staff Exhibit 3, there is red pencil markings that  
4 indicate where the remediations are. You've marked  
5 that on Staff Exhibit 3; is that correct?

6 A. Yes. The handwritten notations on this  
7 map were made by me during that staff visit.

8 Q. Okay. And also there are green markings  
9 which -- a number of other markings that indicate  
10 where there are electric distribution -- electric  
11 towers. Do you see that on there?

12 A. The green markings, at least the two  
13 green markings that are in the middle of the map that  
14 are basically rectangular with Xs in them, at the  
15 time of the -- the staff visit, those are the  
16 anticipated locations where the relocation of the  
17 transmission tower that needs to be taken down  
18 because it will interfere with the new Brent Spence  
19 bridge, so those are not current but those are the  
20 anticipated locations.

21 Q. Okay. And what are the current gas  
22 facilities that are located with -- inside of the  
23 remediation zone? By "current" I mean currently  
24 providing gas distribution service for Duke Energy  
25 Ohio customers.

1           A.     Currently there are no pipelines or  
2 facilities north of Mehring Way within the property  
3 boundaries that are used for gas customers.

4           MR. PARRAM:   Okay.   And, now, I would  
5 like to -- I would like to mark for purposes of  
6 identification Staff Exhibit -- I'm sorry, Staff  
7 Exhibit 4.   It is a drawing of the south of Mehring  
8 Way parcel that was provided to staff in response to  
9 a data request.

10           EXAMINER PIRIK:   The document is so  
11 marked.

12           (EXHIBIT MARKED FOR IDENTIFICATION.)

13           MR. PARRAM:   May I approach the witness,  
14 your Honor?

15           EXAMINER PIRIK:   Yes.

16           Q.     Do you have Staff Exhibit 4 in front of  
17 you?

18           A.     I do.

19           Q.     Are you familiar with this document?

20           A.     Yes.

21           Q.     What is this?

22           A.     This is the document that was prepared in  
23 response to the staff request for a large scale  
24 drawing and it shows the area south of Mehring Way at  
25 West End.

1 MR. PARRAM: Your Honors, for Staff  
2 Exhibit 4 we also have a larger blown-up drawing of  
3 that I would like to put up.

4 EXAMINER PIRIK: Thank you. That's  
5 helpful, thank you.

6 Q. Now, I just put up a large blown-up  
7 version of Staff Exhibit 4. Does that look  
8 substantially the same as Staff Exhibit 4?

9 A. Yes.

10 Q. And could you -- you see the red pencil  
11 marking on Staff Exhibit 4 that is supposed to  
12 indicate the re -- the remediate zone?

13 A. Yes.

14 Q. And did you draw that?

15 A. Yes, I did.

16 Q. Is that accurate?

17 A. At the time that this was being -- was  
18 generated, yes, that's accurate.

19 Q. Okay. And there's also markings in pink  
20 highlighter on there on Staff Exhibit 4. What is  
21 that pink highlighter?

22 A. The pink highlighter, I would have to  
23 spend a little time looking at it. There are lots of  
24 pink highlighter markings all over the drawing. I  
25 don't know exactly what each and every pink

1 highlighter marking is for. Is there a specific one  
2 you would like to know about it?

3 Q. Maybe I can help you out. You have pink  
4 highlighter here, here, and here. Let's start in  
5 this area. What is this area on Staff Exhibit 4?

6 A. The pink highlighter that is  
7 substantially located in the area that's demarcated  
8 by a red line and also has a line -- the tagging of  
9 "Historic West End Generation Station," those are  
10 areas of -- where the current buildings are located.  
11 I don't know exactly why those are highlighted. I  
12 can't remember why I specifically highlighted those.

13 Q. Okay. It says "Historic West End  
14 Generating Station," the portion we just talked  
15 about, correct?

16 A. Yes.

17 Q. What is the historic West End generation  
18 station?

19 A. That is one of the three bays that was  
20 part of the electric generating station that was  
21 constructed I believe around 1914, '15, '16, I don't  
22 remember the exact date, on portions of this  
23 property.

24 Q. What is it currently used for?

25 EXAMINER PIRIK: Mr. Parram, if you are

1 not going to use the microphone, could you speak up?

2 MR. PARRAM: Oh, I apologize.

3 EXAMINER PIRIK: That's okay.

4 Q. What is this currently used for, the West  
5 End -- historic West End generating station?

6 A. The historic West End generating station  
7 is currently used, as far as I know, to house  
8 electric relays and other electrical equipment to  
9 provide service to Duke Energy customers.

10 Q. It's not currently used for rendering gas  
11 distribution service for Duke Energy Ohio customers.

12 A. Based upon my understanding, it currently  
13 is not used for gas -- the gas customers.

14 Q. And there's pink -- there's pink  
15 highlighter here and here, and I am indicating to  
16 the -- that would be to the west of the substations;  
17 is that correct? Am I --

18 A. Yes. There's pink highlighting located  
19 west of the west substation.

20 Q. Okay. And those two pink highlighter  
21 dots, what do those indicate?

22 A. I don't know exactly. It may be the  
23 location of where future transmission towers or --  
24 not transmission towers, excuse me, where future  
25 equipment transformer bays are going to be located

1 because of the Brent Spence bridge project. There  
2 are some that have to be relocated and I believe  
3 that's the location of where some of those new  
4 equipment are going to be relocated to.

5 Q. Okay. So, first, that's a proposed  
6 project? There is not currently transformer bays  
7 there?

8 A. There is currently no transformer bays  
9 but do I know our electric side of the company has  
10 started work on that area.

11 Q. Okay. And, again, the transformer bay,  
12 it's not being used for rendering gas distribution  
13 service?

14 A. That is correct.

15 Q. And within the area that you indicated  
16 was the remediated zone within the red pencil, what  
17 facilities are located that are currently used for --  
18 for rendering gas contribution service?

19 A. Currently in the area indicated by red  
20 pencil and between the currently standing  
21 transmission -- not transmission towers but  
22 substation, excuse me, there are no facilities that  
23 are used for gas.

24 Q. Now, on all of Staff Exhibit 4 -- well,  
25 do you see on the very far right-hand side of Staff

1 Exhibit 4 two green lines?

2 A. Yes. And the southeast corner of the  
3 property there are two green lines indicated.

4 Q. What are those green lines indicating?

5 A. Those are gas transmission lines that --  
6 where natural gas comes into Ohio.

7 Q. And if you go all the way up those green  
8 lines, you'll see a red box that says "metering reg  
9 city gate." Do you know what that is?

10 A. It is my understanding that that is used  
11 by the gas department as a metering station. Looking  
12 at the drawing right now, that most probably needs to  
13 be moved some to the west onto actually our property.  
14 But it is used in the gas department.

15 Q. Okay. So if you go back to Staff Exhibit  
16 1, which is the Staff Report of Investigation.

17 A. Yes. I have it in front of me.

18 Q. And you go to page 61.

19 A. I am there.

20 Q. Page 61 is essentially the same as Staff  
21 Exhibit 3; is that correct?

22 A. It is a portion of Staff Exhibit 3, yes.

23 Q. The information on Staff Exhibit -- on  
24 page 61 of Staff Report of Investigation accurately  
25 reflects the information that you provided in Staff

1 Exhibit 3; is that correct?

2 A. For the portions that are shown in the  
3 Attachment MGP-9 on page 61, yes.

4 Q. And if you turn to page 62.

5 A. Yes.

6 Q. The information on page 62 is the same as  
7 the information on Staff Exhibit 4; is that correct?

8 A. It appears to be substantially the same.  
9 Of course, it does not have the pencil marks I had  
10 made during the Staff Report -- or staff visits, but  
11 it looks like they transmitted the information  
12 accurately.

13 Q. Okay. So you beat me to it. Your  
14 understanding that Staff Exhibit -- I'm sorry, page  
15 62 of the Staff Report took the information that you  
16 provided on Staff Exhibit 4 and made it into this  
17 diagram here but it's the same information?

18 A. Let me look at it one more time.

19 Q. Sure. Take your time.

20 A. Thank you.

21 Based upon the information that is shown  
22 on the -- what was presented to staff during their  
23 staff visit is substantially the same, yes.

24 Q. If you could now turn to page 64 of the  
25 Staff Report.



1           A.    I'm on page 64, yes.

2           Q.    Are you familiar with this -- this map?

3           A.    It is the map of the East End site, looks  
4 like the base map was the one that was provided as  
5 part of a staff request.

6           Q.    And do you see how this is -- on page 64  
7 Attachment MGP-12 is divided into three separate  
8 sections?

9           A.    Yes.

10          Q.    And you understand when I say the eastern  
11 parcel, the central parcel, and western parcel on the  
12 East End site? Do you understand what I am saying  
13 when I say that?

14          A.    Yes.

15          Q.    For the eastern parcel on page 64, does  
16 this accurately -- or accurately reflect the  
17 remediation work zone?

18          A.    It is a good depiction, yes. There are  
19 certain areas where we went deeper than 20 feet or so  
20 generally, yes.

21          Q.    Okay. Just let me follow-up on that.  
22 And by the remediation work zone -- I don't want to  
23 talk about that.

24          A.    No.

25          Q.    Let's start by just saying the zone

1       itself which in the key on Attachment MGP-12 has a  
2       dotted line. Do you see that?

3             A.    Yes.

4             Q.    Is where that dotted line is indicated on  
5       Attachment MGP-12 -- MGP-12 accurate?

6             A.    Yes.

7             Q.    Okay. Let's jump over to the western  
8       parcel.

9             A.    Okay.

10            Q.    The remediation work zones for the  
11       western parcel are correct.

12            A.    Yes.

13            Q.    And for the western parcel, does this  
14       accurately reflect the facilities that were located  
15       at the western parcel when staff performed its  
16       investigation in this case?

17            A.    When staff visited the site, yes.

18            Q.    And for -- let's jump back to the East  
19       End parcel. For the East End parcel does this  
20       accurately reflect the gas facilities that were in  
21       use during staff's investigation?

22            A.    During staff's visit, yes.

23            Q.    Okay.

24                   THE WITNESS: Your Honors, could we take  
25       a restroom break?

1 EXAMINER PIRIK: It sounds like you are  
2 done. You are not done yet?

3 MR. PARRAM: I have a few more questions  
4 I was eliminating what everybody --

5 THE WITNESS: I can wait.

6 EXAMINER PIRIK: Because then I thought I  
7 would give you an opportunity to talk about redirect.

8 THE WITNESS: Okay. Great, thank you.

9 MR. PARRAM: I just crossed out stuff  
10 everybody went through.

11 EXAMINER PIRIK: Can you move your  
12 microphone back over --

13 MR. PARRAM: Oh, yes, your Honor.

14 EXAMINER PIRIK: -- now that you are in a  
15 seat. Thank you.

16 Q. (By Mr. Parram) Ms. Bednarcik, if I  
17 referred to the purchase of the property, will you  
18 understand what I am referring to?

19 A. Yes.

20 Q. And just so we're clear for the record,  
21 when I say "the purchased property," I am referring  
22 to Attachment MGP-8 which would be page 60 of the  
23 Staff Report, if you would like to refer to that.

24 A. I am on page 60, yes.

25 Q. And this purchased property is consistent

1 with your understanding of the purchased property,  
2 correct?

3 A. Yes, except I believe that if you see in  
4 the middle where it says the sewer lift section, that  
5 is owned by the Cincinnati Water Works and the parcel  
6 directly south of that is not owned by Duke but  
7 everything else, yes.

8 Q. And there are currently no facilities  
9 located on the purchased property that provide gas  
10 for customers; is that correct?

11 A. I do not know if there is any gas lines  
12 on that property, but based upon -- actually if you  
13 look at MGP-8, there appears to be a gas line that  
14 goes down Foster Street and makes a turn onto Keck  
15 Street. If you look at the key, there is a dashed  
16 line with a G on it that would mean gas, so based  
17 upon this there is at least a gas line that goes on  
18 the property but that's the only thing I see.

19 Q. And you don't know if that gas line is  
20 used by Duke in the provision of gas service for  
21 customers?

22 A. I do not know the details of that gas  
23 line.

24 Q. If you refer to page -- I want to go to  
25 your supplemental testimony.

1 A. Okay.

2 Q. Page 16, lines 9 through 11 --

3 A. 16, 9 through 11, I am there.

4 Q. You are referring to the purchased  
5 property at the section.

6 A. Yes.

7 Q. Right? And Duke hasn't determined what  
8 they are going to do with the purchased property in  
9 the future, are they?

10 A. We have not determined that yet.

11 Q. If you jump back to page 6 of your  
12 testimony --

13 A. Supplemental or direct?

14 Q. Supplemental, I am still on supplemental.

15 A. Okay. Thank you. So page 6?

16 Q. Yes.

17 A. Okay. I'm there.

18 Q. You indicate "for any cleanup required  
19 offsite that can be linked to operations conducted at  
20 the MGP site," in 10 and 11. Do you see where I read  
21 there?

22 A. Yes.

23 Q. What are you referring to "cleanup  
24 required offsite"?

25 A. Any impacts to soil and/or groundwater

1       that is a result of the operations of the  
2       manufactured gas plant during the tenure of Duke  
3       Energy or its predecessor companies, anything that  
4       actually can be attributed to the contamination,  
5       generated as part of that manufactured gas plant, we  
6       have the liability to clean up.

7               Q.     Duke isn't seeking recovery of any  
8       remediation costs that were performed beyond the East  
9       End site or West End site in this case, are they?

10              A.     Based on what was -- is part of these  
11       proceedings, it includes any type of investigations  
12       that were -- or remediations that were conducted in  
13       conjunction with the MGP sites. I believe it does  
14       include some of the investigations that were  
15       investigated on the property purchased into 2011  
16       because we were trying -- looking for impacts related  
17       to the MGP site.

18              Q.     Let me ask it this way: Duke isn't  
19       seeking any recovery of any remediation cost or  
20       investigation cost performed outside of the East End  
21       site, the West End site, or the purchased property,  
22       are they?

23              A.     No.

24              Q.     If you can jump to page 10 of your  
25       supplemental testimony, lines 22 and 23.

1           A.    I am there.

2           Q.    You talk about parking lot and indicate a  
3           number of different Duke Energy Ohio business units  
4           that use the park -- or used the parking lot before  
5           it was removed.

6                   Are there any other units that you are  
7           aware of that use the parking lot besides the one  
8           you -- the ones you have listed here in your  
9           testimony?

10          A.    What do you mean by "units"?

11          Q.    Well, you say "Duke Energy Ohio business  
12          units including but not limited to gas operation, gas  
13          distribution, power delivery, real estate, legal,  
14          finance, communication." I meant units by your use  
15          of the term "business units." Are there any other  
16          business units that you are referring to?

17          A.    Not that I am aware of.

18          Q.    Power delivery, what does that unit do?

19          A.    Power delivery is associated with  
20          providing electric service to our customers.

21          Q.    They -- power delivery is not -- their  
22          operations aren't related to the provision of gas  
23          distribution service for Duke Energy Ohio customers,  
24          is it?

25          A.    No.

1 Q. What does the real estate unit do?

2 A. Real estate handles the transactions  
3 related to the properties that are owned by Duke  
4 Energy.

5 Q. They're not strictly assigned to -- or  
6 they are not specifically assigned to providing or  
7 helping Duke provide gas distribution service for  
8 their customers?

9 A. It is my understanding that the real  
10 estate department does provide service across the  
11 company, including to the gas company.

12 Q. Provide services for electric costs.

13 A. They provide services across all of Duke  
14 Energy, gas, electric, everybody.

15 Q. More than just gas.

16 A. More than just gas, yes.

17 Q. Sort of the same thing for legal?

18 A. Same for legal.

19 Q. Same for finance?

20 A. Yes.

21 Q. Same for communications?

22 A. Yes.

23 Q. And there -- as of today there is no  
24 parking lot at this North Mehring Way site, is there?

25 A. Today the parking lot has been closed



1 down because of the remediation. It is my  
2 expectation once we are done with the remediation,  
3 people will start working there again.

4 Q. When will remediation be done?

5 A. The first phase of the soil remediation  
6 is expected to be completed in 2000 -- in August of  
7 2013. The power -- the electric side will be doing  
8 some work on the property. I am not exactly sure  
9 when they are mobilizing to the site to do work, and  
10 then additional remediation, of course, will occur  
11 after their work is done underneath the transmission  
12 towers.

13 Q. And on page 11, supplemental testimony,  
14 if you go down to line 18. It says "The pipeline  
15 supplies natural gas to Ohio information -- to Ohio  
16 gas distribution system." Do you see where I'm at?

17 A. Yes.

18 Q. This is the same pipeline you were  
19 referring to earlier that was on Staff Exhibit 4,  
20 correct?

21 A. Yes. It's the pipeline in the southeast  
22 corner of the property south of Mehring Way.

23 Q. Do you know if this is a transmission  
24 line or distribution line?

25 A. That's a better question for

1 Mr. Hebbeler.

2 Q. On page 15, lines 7 through 8 of your  
3 testimony, supplemental, still on the supplemental.

4 A. Yes.

5 Q. You referred to a clean -- clean hard  
6 fill site.

7 A. Yes.

8 Q. Where was this clean hard fill site  
9 located?

10 A. The clean hard fill was located  
11 substantially across the entire East End Gas Works,  
12 almost the entire area.

13 Q. And explain to me what a clean hard fill  
14 is.

15 A. Generally, and Mr. Hebbeler will be able  
16 to also explain this probably in more detail than I  
17 can, but it was my understanding that the clean hard  
18 fill was a permanent fill area by the City of  
19 Cincinnati and was used to place soil and asphalt and  
20 concrete, things that were considered to be clean and  
21 have no contaminants in it that otherwise that were  
22 again laid or created or gathered whenever Gas  
23 Works -- when repairs had to occur on gas lines  
24 throughout the service territory.

25 Instead of taking that material to a

1 landfill or disposing of it, through this permit they  
2 were allowed to place that material on the east  
3 parcel.

4 Q. I know I am oversimplifying. It's dirt?

5 A. It was generally dirt but also had some  
6 asphalt and concrete in it.

7 Q. And you had a permit from the City of  
8 Cincinnati that allowed you to put the fill on the  
9 east parcel, correct?

10 A. That is my understanding, yes.

11 Q. Do you know if you still have this permit  
12 or that permit is still valid?

13 A. I do not know if that permit was  
14 terminated when the remediation started or not. I  
15 don't know if it's still valid.

16 Q. And when -- and the physical site was  
17 removed once remediation started, correct?

18 A. The fill material, because it was clean  
19 and it would have been really a waste of money to  
20 send it to a landfill at that time because we did  
21 have areas that needed to be cleaned up underneath  
22 the clean hard fill. What we did in order to utilize  
23 that good material is that it was used as backfill  
24 material for the western parcel when we did the  
25 excavation and we were able to screen the concrete

1 and get down to a size that compacted and provided a  
2 good foundation and we used that as backfill.

3 So it didn't go to waste; we were able to  
4 use it as backfill in the deeper excavation on the  
5 west parcel.

6 Q. And when staff performed its  
7 investigation in this case, it was -- the eastern  
8 parcel was not being used for a clean hard fill site?

9 A. The use of the clean hard fill stopped  
10 when remediation started, so at the time that the  
11 staff visited it was not being used for clean hard  
12 fill.

13 MR. PARRAM: One second, your Honor. I  
14 think I may be done.

15 Q. Ms. Bednarcik, there are currently fences  
16 that separate the eastern parcel from the central  
17 parcel and the central parcel from the western  
18 parcel, correct?

19 A. The fence that was in between on the East  
20 End site between the east parcel and the middle  
21 parcel I believe has been taken down so that there is  
22 clear access in between. But the fence that was  
23 between the western and eastern parcel is still  
24 there.

25 Q. Were there fences there before

1 remediation?

2 A. The fence between the middle parcel and  
3 the west parcel, there was a fence in between there.  
4 There was not a fence between the middle parcel and  
5 the east parcel.

6 Q. If you can go back to page 60 of the  
7 Staff Report to the purchased property that's  
8 Attachment MGP-8.

9 A. I am on page 60, yes.

10 Q. The gas lines that you were pointing to  
11 on MGP-8, those are not part of -- those are not gas  
12 lines used by Duke for operating the propane  
13 facility, are they?

14 A. I do not believe they are used to -- in  
15 operation of the propane facility.

16 MR. PARRAM: That's all I have, your  
17 Honor. Thank you.

18 EXAMINER PIRIK: Thank you.

19 Let's take a 15-minute break and we will  
20 reconvene with redirect.

21 (Recess taken.)

22 EXAMINER PIRIK: We will go back on the  
23 record.

24 Redirect?

25 MR. McMURRAY: Thank you, your Honor.

1       Hopefully this will be short.

2                               - - -

3                               REDIRECT EXAMINATION

4       By Mr. McMurray:

5               Q.     Ms. Bednarcik, you have had a long day,  
6       we are going to try not to prolong it much longer,  
7       but there is one area I would like to follow-up on  
8       from all of the various questioning that you received  
9       over the last couple of days and that relates to  
10      tar-like material and oil-like material.  What is  
11      that?

12             A.     Tar-like material and oil-like material  
13      is one of the ways we describe some of the MGP  
14      impacts that are in the ground.  It's really hard to  
15      picture it and imagine it just by those words  
16      themselves.  That is why during the staff visits and  
17      also during the OCC visits I put together some  
18      pictures of what had worked on the site, the  
19      remediation work that was going on on the site in the  
20      PowerPoint presentation so that could be clearly  
21      depicted what we found in the ground and what we were  
22      taking out.

23             Q.     Okay.  And is Duke Energy Ohio addressing  
24      tar-like material and oil-like material in both the  
25      East End and West End sites?

1           A.    Yes.

2           Q.    Okay.

3                   MR. McMURRAY:  Your Honor, I would like  
4   to mark as Duke Exhibit 27 a handout, and can we  
5   approach the witness with that?

6                   EXAMINER PIRIK:  Yes.  The document will  
7   be so marked.

8                   (EXHIBIT MARKED FOR IDENTIFICATION.)

9           Q.    Ms. Bednarcik, can you identify -- can  
10   you identify the document that's been marked as Duke  
11   Energy Ohio Exhibit 27.

12          A.    This is the PowerPoint presentation that  
13   I put together based upon information that I had  
14   available to me prior to the PUCO staff visit in  
15   order to help show what had occurred on the site,  
16   especially since the staff visited the site after  
17   remediation had been completed, substantially in the  
18   areas that we were actually doing the excavation on  
19   the East End site and because some remedial work had  
20   also been completed on the West End site.

21          Q.    And so this is a document that you  
22   prepared.

23          A.    Yes.

24          Q.    And do you have personal knowledge of the  
25   pictures and other materials that are in this

1 document?

2 A. Yes.

3 Q. And to the best of your knowledge, the  
4 pictures and so on accurately reflect conditions at  
5 the East End and West End properties?

6 A. Yes.

7 Q. Okay. What I would like to do is just  
8 walk through certain aspects of this document to  
9 address the issue we talked about at the beginning  
10 and that is, you know, what is tar-like material and  
11 oil-like material and, you know, how can we really  
12 describe that? So I would ask if you could first  
13 turn to page 6.

14 A. I'm on page 6.

15 Q. Can you describe for me what this page  
16 reflects.

17 A. These are two soil samplings and core  
18 samples that were obtained at the East End site. The  
19 sample, the picture on the left is from the east  
20 parcel; the picture on the right is from the west  
21 parcel, and we'll start with the east parcel.

22 You can clearly see in this core sample  
23 the brown material, which is soil. It may or may not  
24 have those dissolved chemicals in it, but the black  
25 material which you can through observation, not



1 necessarily -- you don't have to really test it, send  
2 it out for analytical testing, but I can see that is  
3 saturated with oil-like material, tar-like material.

4 The right -- the picture on the right  
5 side is from the west parcel and, again, at the soil  
6 core from inside the area that we remediated, and you  
7 can see the black material oozing off of the soil  
8 core, so much so that even it is creating a sheen or  
9 has transmitted some of the oil-like material from  
10 the actual soil onto the bag that's around it.

11 Q. So was that actually oil that's oozing  
12 out of the soil?

13 A. It is oil that -- on the soil bag itself  
14 when it touched and pulled away, it was stuck to the  
15 side of the bag. There's also some areas it appears  
16 on the right-hand side that there may be some that's  
17 coming off of the core itself.

18 Q. Okay. Let's turn to the next page, page  
19 7. What does this page represent?

20 A. This page shows an area where we found a  
21 tar well in the northwest corner of the west parcel  
22 at East End. You can see the oil black material that  
23 is -- that was inside of that -- that tar well that  
24 we discovered and how liquid it is, and it really  
25 depends upon how hot the day is how viscous the

1 material is or not, but you can see it's black, it's  
2 shiny. It has a great odor to it also.

3 Q. So in order to work in an area like this,  
4 did it require any sort of protective equipment or  
5 other material?

6 A. In order to work on contaminated pieces  
7 of property, you have to have a special certification  
8 through OSHA. It's called the Hazardous Waste  
9 Operations Certification, or HAZWOPER, and in certain  
10 areas of the East End and West End sites both there  
11 were times where our workers -- our construction  
12 workers had to wear respirators because of the fumes  
13 that were coming off of the contaminated soil.

14 Q. So what did Duke Energy wind up doing  
15 with the -- this gooey tar-like material in this  
16 area?

17 A. In this area -- in some areas around here  
18 we excavated and were able to mix it with soil so it  
19 could go to a permitted landfill, an approved  
20 permitted landfill. This area -- this specifically  
21 is for east and west parcel, so it was all excavated.

22 Q. Thank you.

23 Can you turn to page 8.

24 A. Yes.

25 Q. What does this page represent?

1           A.    This is the excavation on the west parcel  
2           of the East End Gas Works.

3           Q.    Looking at the picture that is sort of  
4           the lower right-hand corner picture, I see various  
5           fluids and dark stain material in the bottom. What  
6           does that represent?

7           A.    This is about roughly 20 feet below grade  
8           in the excavation and you can see -- this is inside  
9           the tar lagoon itself, the tar that is seeping out  
10          and oozing out from the walls and from the excavation  
11          into the area that we are actually taking the soil  
12          out.

13          Q.    And do you recall at about what depth you  
14          were at when this picture was taken?

15          A.    It's around 20 feet. The big cylindrical  
16          pieces of steel are corner braces and that first  
17          level of corner braces is roughly 15 feet deep so you  
18          look at it. Below that 15 feet, my guess would be  
19          about 20 feet at this picture.

20          Q.    I notice that there's black staining on  
21          the wood walls that surround this pit area. What is  
22          that?

23          A.    Because this excavation on the west  
24          parcel was so large, we had to break the excavation  
25          into three different phases. So we are looking on

1 the bottom of the picture from south to north and we  
2 had not excavated the area to the north yet.

3 So what that is is the tar-like material,  
4 as we excavate down the tar-like material that's  
5 north -- on the north side of those boards is  
6 actually oozing through the boards.

7 Q. So this tar-like material was very mobile  
8 in terms of its ability to migrate in the subsurface?

9 A. Yes.

10 Q. I notice that there's white material on  
11 the ground both in the picture in the lower righthand  
12 as well as the upper lefthand. What is that white  
13 material?

14 A. It is an odor suppressant foam. It's a  
15 biodegradable foam that we use because, like I said,  
16 this material smells. It can smell really bad, so  
17 one of the ways that we help manage that odor so that  
18 we don't -- because we have people around us,  
19 properties and homeowners around us and people  
20 walking on the sidewalk, we use a lot of that odor  
21 protectant -- or odor suppressant foam to minimize  
22 and keep the odors down and onto the property.

23 Q. So that was an important part of the  
24 health and safety of the project?

25 A. Yes. It actually was one of the things

1 we detailed in our air monitoring plan that was  
2 submitted to the City of Cincinnati.

3 Q. In the picture that's in the upper  
4 left-hand corner right about in the middle on the  
5 bottom of the excavation, it appears to be dirt or  
6 some other material that's dark colored. What is  
7 that?

8 MS. BOJKO: I'm sorry, which slide are  
9 you referencing?

10 Q. Still on page 8, the picture that's in  
11 the upper left-hand corner.

12 A. In the middle of that picture, that is  
13 still some of the soil that was saturated with the  
14 tar-like material inside the tar lagoon.

15 Q. And what happened to that material as  
16 part of your remediation project?

17 A. That was removed from the property and  
18 went to a permitted line landfill.

19 Q. Can you turn to the next page, page 9.

20 A. Yes.

21 Q. What does this page represent?

22 A. This is the first phase of the excavation  
23 on the west parcel of the East End and it is full of  
24 water, and that is because during the time we were  
25 doing that excavation it was a very rainy time period

1 in Cincinnati. I believe they had some record rains,  
2 and the Ohio River is almost on the other side of the  
3 earth retention system that's on the right-hand side  
4 of the picture, and the level of water that's in the  
5 excavation is almost exactly the same as the level of  
6 the Ohio River at the time that this was taken.

7 Q. So how close is the excavation to the  
8 Ohio River?

9 A. Directly on the other side of the earth  
10 retention system in the black fabric on the right,  
11 that's the river bank. When the Ohio River is at a  
12 normal pool, it's some distance away. It's pretty  
13 steep. At this time if you walked on the other side  
14 of that black fence -- that black fabric fence, the  
15 Ohio River was within a couple of feet.

16 Q. I notice on the -- what would be to the  
17 right on the picture, which I think would be to the  
18 south, there appears to be blue staining on the wood  
19 wall material. What is that?

20 A. That is, again, some of the material --  
21 the MGP residuals that is leaching through from --  
22 from the area on the other side of that early  
23 retention system as it's being pulled through those  
24 boards.

25 Q. Do you know what that is specifically?

1           A.    It's ferricyanide which is a nontoxic  
2           form of cyanide. That's one of the byproducts that's  
3           typically seen on MGP sites.

4           Q.    So does this represent material that's  
5           leaching from the other side of a wall into this  
6           wood?

7           A.    Yes.

8           Q.    Let's flip a few pages ahead to what  
9           would be page 13, although I am not sure if it's  
10          marked as page 13. I noticed some pages were marked,  
11          some were not. So if we jump ahead four pages,  
12          what -- what does this picture represent?

13          A.    This is a close-up inside of the earth  
14          retention system on the west parcel of the West End,  
15          and I remember taking this picture. What it shows is  
16          the area first thing in the morning we come out to  
17          the site, if we look inside the excavation, you can  
18          see some of the oil-like material that had seeped out  
19          from the boards from the other side of the excavation  
20          that we had not excavated yet that seeped out during  
21          the night and had collected in the bottom of the  
22          excavation.

23          Q.    I just want to clarify, you indicated  
24          this was from the west parcel of West End. It's west  
25          parcel of East End?

1           A.    West parcel of East End.

2           Q.    Okay.  And so this is oil that is  
3           leaching out from where?

4           A.    From the area we had not excavated yet.  
5           We started with the area closest to the river was the  
6           first area we excavated at the big excavation.  Our  
7           environmental contractors who designed the earth  
8           retention system said we could not do one big dig at  
9           one time so we had to break it up, and so the area to  
10          the north which actually you could see the boards,  
11          how the tar-like material, oil-like material is  
12          seeping through those boards is an area that was  
13          subsequently remediated and excavated.

14          Q.    So is that the dark-stained material that  
15          is sort of the top of the picture?

16          A.    Yes.  And those are wood boards as part  
17          of the early retention system so they have come  
18          through the gaps in the wood boards and through the  
19          wood boards themselves.

20          Q.    Do you happen to know what depth you were  
21          at on the excavation when this picture was taken?

22          A.    Based on the fact that there are two  
23          levels of the corner braces of this picture, the  
24          first level corner braces was at roughly 15 feet  
25          deep:  The second level of corner braces was roughly



1 40 feet deep. So based upon this picture, I would  
2 expect we were below 40 feet, maybe 45.

3 Q. Do you recall, was this in the area of  
4 what's been referred to as the tar lagoon?

5 A. Yes.

6 Q. Okay. Let's flip a few pages ahead.  
7 Let's go to page 20. What does page 20 represent?

8 A. Page 20 has two different photographs on  
9 it, both from the West End site. The photograph in  
10 the upper left-hand corner is from an area south of  
11 Mehring Way and it is roughly probably about 15 feet  
12 deep and it is showing the excavation of some  
13 impacted material, soil.

14 The photograph in the lower right-hand  
15 corner of the -- of the slide is the northeast corner  
16 of the property north of Mehring Way. So directly on  
17 the other side of the green fabric is actually Rose  
18 Street, and you can see the -- the Brent Spence  
19 bridge in the background there and that concrete  
20 cylindrical -- or brick cylindrical thing that's in  
21 the picture is actually the outline of one of the gas  
22 holders and inside of that gas holder is some  
23 impacted material.

24 Q. And what was done with that impacted  
25 material?

1           A.    As this was in the first 15 feet, this  
2           was -- or 15-20 feet, it was excavated and sent to a  
3           permitted line landfill.

4           Q.    And would the material depicted in this  
5           picture, would this be tar-like material or oil-like  
6           material?

7           A.    It did have some tar-like material and  
8           oil-like material in it. Also on the West End a lot  
9           of the area in the top 15 feet contained some of  
10          those dissolved chemicals within the soil that were  
11          above the cleanup standards.

12          Q.    Let's turn to the next page, page 21.  
13          What does this page represent?

14          A.    This page looks over the entire first  
15          phase of the excavation on north of Mehring Way, so  
16          we are looking towards, of course, the overpass of  
17          the Brent Spence bridge on the photographs or on the  
18          drawings. I referenced in the past that this is a  
19          transmission tower that needs to be removed as part  
20          of the bridge project. That transmission tower is  
21          the one shown here.

22                And what you can see are really two  
23          cylinders or round circles, those are gas holders No.  
24          4 and 5, and lots of black material which that is  
25          either impacted material with dissolved chemicals or

1 the oil-like, tar-like material. You can also see  
2 the odor suppressant foam.

3 Q. Now, when this work was being done, were  
4 there any type of special health and safety  
5 precautions that needed to be followed for the work?

6 A. During this specific picture, as it is  
7 being taken, the workers did, of course, have to wear  
8 personal protection equipment, hard hats, safety  
9 boots. You actually have to wash off your boots  
10 whenever you leave this area so you are not tracking  
11 any soil outside of this area, and even the trucks  
12 have to be washed down, so.

13 But the workers themselves in this first  
14 15 feet did not have to wear any type of respirators  
15 but they did have -- they had that certification.

16 Q. So if I were recall from prior testimony,  
17 the conditions vary from one spot to the other at the  
18 site such that in some areas they needed different  
19 levels of protective equipment than they needed in,  
20 say, areas like this?

21 A. Yes. As we do the remediation, we have  
22 an on-site health and safety officer who constantly  
23 is monitoring what the workers are being exposed to.  
24 At both the East End and West End site there were  
25 times when the workers had to wear respirators as

1 they were removing or solidifying the material.

2 Q. Let's turn to the next page, page 22.  
3 What does this page represent?

4 A. This picture is looking from the  
5 southeast corner of North Mehring Way at West End to  
6 the northwest corner, and in the foreground you can  
7 see a cylindrical -- somewhat of a cylindrical area  
8 full of the tar-like material. This is one of the  
9 three tar wells that we discovered in this general  
10 vicinity. It's about a 50-foot diameter tar well,  
11 and we are probably about 10 feet deep at this time.

12 Q. The material that is sort of darker  
13 colored right inside of what appears to be the wall  
14 of a well, what is that?

15 A. That is -- that's the tar-like material.

16 Q. Okay. And was this material removed?

17 A. It was in this area excavated and removed  
18 and placed in a permanent line landfill.

19 Q. Let's turn to page 23. What does this  
20 page represent?

21 A. This is a photograph of an area south of  
22 Mehring Way and a depth -- we found this in multiple  
23 locations south of Mehring Way from approximate  
24 depths 30 feet below grade to about 50 feet below  
25 grade, and what we believe is that it is the

1 foundations of the very first MGP plant on the site.

2 That's based upon what we saw out there.  
3 We don't know that for a fact. We don't have  
4 drawings of the very first MGP site out there, but  
5 based upon the depth and where they generally are,  
6 that's our belief. But it is saturated with tar-like  
7 material and oil-like material.

8 You can see a nice swath of land or of  
9 soil where it is coming out, the tar-like material is  
10 basically oozing out as we did our excavation.

11 Q. Do you know where that tar-like or  
12 oil-like material is coming from?

13 A. It is one of the residuals from the  
14 manufactured gas plant process. We cannot pinpoint  
15 exactly when that material got there.

16 Q. But based upon your site observation,  
17 it's migrating in the subsurface?

18 A. Based upon what we saw here, we do  
19 believe that the tar is -- is migrating.

20 Q. And do you recall where this area, the  
21 picture taken in this area, where that is relative to  
22 the electrical substation that is going to be  
23 constructed, the new one that is going to be  
24 constructed to the west of the current one?

25 A. It is my understanding that this picture

1 and where we found most of these impacts just like  
2 this were south of gas holder No. 1, south of Mehring  
3 Way, that's really in between Mehring Way and the  
4 building, almost in that area in the middle in  
5 between the two substations where the new substation  
6 is going.

7 MR. McMURRAY: I don't have anything  
8 further from this exhibit and I don't have any  
9 further redirect.

10 EXAMINER PIRIK: Thank you.

11 Mr. Sauer?

12 MR. SAUER: Your Honor, I would move to  
13 strike DEO Exhibit 27.

14 EXAMINER PIRIK: Well, actually at this  
15 time I am asking if you have any recross and then  
16 we'll get to the actual exhibits in a little while.

17 MR. SAUER: Okay.

18 - - -

19 RECROSS-EXAMINATION

20 By Mr. Sauer:

21 Q. Ms. Bednarcik, do you recall you were  
22 asked some questions about tar-like material and  
23 oil-like material?

24 A. I have been asked many questions about  
25 tar-like material and oil-like material.

1           Q.    I'm referring to questions from your  
2           counsel just recently in your redirect.

3           A.    Yes.

4           Q.    Did you find at the site petroleum?

5           A.    The tar-like material and oil-like  
6           material contains the same constituents as petroleum.

7           Q.    Was there ever on the East End site, West  
8           End site, or the purchased property that we have been  
9           talking about, a gasoline service station on  
10          either -- on any of those properties in the past?

11          A.    I do not know if there was a gasoline  
12          service station on the property that was purchased.  
13          I do not believe there was a gasoline service station  
14          on any of the historic manufactured gas plant sites.

15          Q.    Was there a gasoline station in the near  
16          vicinity of the East End site, West End site, or  
17          purchased property?

18          A.    I do not know that for a fact. I would  
19          have to look through the surrounding properties and  
20          look at the history, but I cannot recall one right  
21          now.

22          Q.    Did any of the purchased property in the  
23          past for the MGP operations at the east or west site  
24          have previous industrial activity such as a foundry  
25          located there?

1           A.    You asked about the properties purchased  
2           so I guess I am -- you asked two different things  
3           there.

4           Q.    Any of the properties, the purchased  
5           properties, the East End site, the West End site, any  
6           of the sites that have been remediated or the  
7           purchased property, was there ever previously any  
8           industrial activity such as a foundry located there?

9           A.    Thank you for the clarification.

10                Yes, there were other industrial  
11           properties or industrial things that occurred on  
12           different portions of the East End site of -- the  
13           east of the west parcel of the East End site.  
14           Additional to that I would have to look at the Phase  
15           I reports and that would show what were the historic  
16           or industrial things that happened at the site.

17           Q.    And would industrial activity such as a  
18           foundry have left oil-like materials or tar-like  
19           materials on the property?

20           A.    I do not know specifically about  
21           foundries. I've not ever worked on a cleanup of a  
22           foundry. But if they were to leave any type of  
23           material, it would be hard to distinguish them from  
24           the MGP residuals that were on the property.

25           Q.    In any of the -- if you turn to page 6 of



1 the DEO Exhibit 27.

2 A. Yes, I am there.

3 Q. Where you see the two core samples that  
4 you've got you're showing there?

5 A. Yes.

6 Q. Were all the core samples that were taken  
7 at the sites similarly -- similarly oil-like material  
8 or tar-like material as these are?

9 A. There was a wide number -- a lot of soil  
10 samples that were taken on the east parcel and the  
11 west parcel. The ones in the area that we ended up  
12 actually removing the material did exhibit  
13 characteristics similar to these. Of course, if the  
14 area did not show oil-like material or tar-like  
15 material or the dissolved constituents, we did not  
16 excavate or remediate those areas.

17 Q. I think my question is were the core  
18 samples uniformly containing tar-like material or  
19 oil-like material throughout the site of remediation  
20 on both East and West End sites?

21 A. We did find tar-like material and  
22 oil-like material throughout in most of the core  
23 samples.

24 Q. When you say "most," can you give me some  
25 percentage as to what you're talking about?

1           A.    I would have to look specifically at the  
2           Phase II reports.  That's what we used in order to  
3           determine the area that we were remediating.

4           Q.    Do you know what depths these core  
5           samples were taken?

6           A.    I believe that these core samples are  
7           about a 10-foot depth where the top of the -- the  
8           soil sample is in the background coming towards us is  
9           deeper.  So if you look at this and say they are  
10          roughly about 10 feet deep for these core samples on  
11          the one on the left, which is from the east parcel,  
12          you can see it was, based on visual only, not, of  
13          course, on analytical samples and how those  
14          analytical samples came back from the dissolved  
15          chemical, the oil material, tar material, is roughly  
16          7 or 8 feet below grade.

17                On the picture on the right which is from  
18          the west parcel, again, 10 feet, it's kind of hard to  
19          see in the foreground mainly because there is a  
20          shadow across it, but we found impacted material and  
21          tar-like material and oil-like material especially in  
22          the tar lagoon area within a couple of inches below  
23          grade.

24          Q.    And were the core samples consistent in  
25          thickness where you saw the oil-like material and

1 tar-like throughout the site?

2 A. We -- I guess I don't quite understand  
3 what you mean by "thickness." We found different  
4 depths, impacted material at different depths,  
5 different thicknesses through the numerous soil  
6 samples that we took.

7 Q. Well, for example, the core sample on the  
8 left looks like clean dirt till you get to the very  
9 bottom of the core sample where it looks like it's a  
10 darker material.

11 A. That's what is depicted here, yes.

12 Q. Did the core samples have similar  
13 thickness of oil-like material or were there core  
14 samples where there was just trace amounts of  
15 oil-like material?

16 A. There was -- the reason we take samples  
17 across the whole area is because some look like this  
18 one. Some are worse where we have impacted material  
19 closer to the surface. And some you are -- you are  
20 right, just have what we call stringers and blebs  
21 that still a source material that may not show up, if  
22 you break open they may just be a small little area.

23 Q. And you haven't included any picture of  
24 those core samples, have you?

25 A. The reason that these core samples were

1 shown in this presentation which were given to the  
2 PUCO and the OCC when they visited was to show an  
3 example of what was found on the site and also to  
4 show why we were -- we did the cleanup, because of  
5 the presence of the oil-like material and tar-like  
6 material.

7 Q. But some core samples had trace amounts  
8 and you aren't showing those in pictures here.

9 A. That is correct.

10 Q. Would it be safe to say these pictures of  
11 core samples reflect some of the worst core samples  
12 that you took?

13 A. They would be some of the more impacted  
14 material, yes.

15 Q. Were there any core samples taken where  
16 there was no oil-like material or tar-like materials  
17 that were shown?

18 A. Yes.

19 Q. And there are no pictures of those?

20 A. That is correct.

21 Q. If you could turn to page 8 of the DEO  
22 Exhibit 27.

23 A. Yes.

24 Q. The right-hand picture or the box in the  
25 lower right there is what you described as -- as

1 seepage on the retaining wall that was darker near  
2 the corner. Do you see that?

3 A. Yes.

4 Q. And then there are other wood shoring  
5 that are shown in the picture that have no staining,  
6 correct?

7 A. Yes.

8 Q. So if there's stains shown on the -- on  
9 the picture on page 8 of DEO Exhibit 27 where there  
10 is no staining, there's no leaching of oil-like  
11 material, tar-like material there, correct?

12 A. No leaching at that specific location.  
13 Of course, there is -- there's another area of about  
14 50 feet north of that, it may not be showing on that  
15 specific board, but we did find impacts in that area,  
16 which is why we addressed it.

17 Q. Yeah, but we have only the pictures to  
18 look at that you included in the slide show, correct?

19 A. Again, the slide show was put together  
20 for the staff visit and the OCC visit because when  
21 they came out to the site, the remediation had been  
22 completed so it was mainly shown -- put together to  
23 show the amount of work and the type of work that had  
24 been completed on the site.

25 Q. And if you turn to page 9 where you -- of

1 DEO Exhibit 27 where you were discussing the nontoxic  
2 cyanide, the blue staining that was showing up on a  
3 board there that is kind of the right side of the  
4 picture.

5 A. Yes.

6 Q. There doesn't appear to be any other  
7 staining around that shoring, is there?

8 A. Based upon this picture right here and  
9 the way it came printed out, yes, it does not appear  
10 there is any other staining, but it doesn't show the  
11 entire southern wall. The purpose of this picture  
12 was again to show what we encountered as we did the  
13 excavation.

14 Q. And on page 10, there are -- at the very  
15 bottom of the picture where the earth moving  
16 equipment is, that looks to be brown dirt, does it  
17 not?

18 A. Based upon this picture it is brown dirt.  
19 Now, as I look at it, I see some areas that are  
20 darker brown that may be black, but we have soil  
21 samples that showed that there was tar-like material,  
22 oil-like material there and/or dissolved constituents  
23 in the soil that may just look like brown dirt.

24 Q. And there appears to be very little  
25 staining on the shoring that's on this picture; is

1       that correct?

2               A.     Which shoring specifically are you  
3       talking about?

4               Q.     The wood retaining wall that is displayed  
5       on page 10.

6               A.     I see staining all throughout the wood  
7       retaining wall and it also depends upon when the  
8       photographs are taken and how hot the time period,  
9       how cold.  Of course, tar-like material is a little  
10      bit more mobile when it's warmer and I don't know  
11      exactly the -- oh, this is taken 9-11, it may have  
12      been a cooler day, warmer day, I'm not exactly sure,  
13      but there is some staining around it.

14              Q.     There is some blue -- would you say the  
15      vast majority of the retaining wall was unstained?

16              A.     I would beg to differ that the vast  
17      majority of the wood panels are -- have some  
18      discoloration on them.

19              Q.     But the discoloration does not  
20      necessarily result from oil-like material or tar-like  
21      material, does it?

22              A.     Without evaluating each individual board  
23      we could not say that, but I would say based on this  
24      picture and being out at the site and seeing what  
25      occurred at the site that most of it was from

1 material that was leaching through the walls.

2 Q. At the time this picture was taken, how  
3 long has this retaining wall been up?

4 A. I don't know exactly. I would have to  
5 look at the construction timeline.

6 Q. Can you take an estimate -- take an  
7 estimate?

8 A. Probably a number of months, two months  
9 maybe. I would again have to look at the  
10 construction timeline.

11 Q. How long did it take them to build this  
12 retaining wall?

13 A. The retaining wall was built in sections.  
14 The very first thing that was done was to put in the  
15 I-beams that are in between the wood build -- wood  
16 blocks, and what they would do is they would start at  
17 the top, excavate, and as they excavated down a  
18 period, then they would do the lagging and the wood  
19 boards up in between.

20 So it was done as you excavate down, you  
21 have to build a retention wall, and as you backfill  
22 back up, you take out a portion of the retention  
23 wall.

24 Q. If you don't excavate below 15 feet, do  
25 you need a retaining wall?



1           A.    A retaining wall is typically needed when  
2           you excavate at depths. I don't know the exact  
3           depth. 15 feet in some areas is good for -- without  
4           a retention wall. That's one of the reasons that I  
5           hire consulting firms who know those regulations and  
6           can do those calculations for me.

7           Q.    Do you reuse the wood planking from one  
8           remediation site to another?

9           A.    No. We may have reused some of the wood  
10          planking on the west parcel of East End, but we do  
11          not move it in between projects, because once it's in  
12          contact with the contaminated material, it,  
13          therefore, becomes contaminated and we have to  
14          dispose of it as if it was -- because it is  
15          contaminated. We can't reuse it and move it from  
16          site to site.

17          Q.    But it's reused within that particular  
18          parcel.

19          A.    In some areas, yes. In some areas, no.  
20          It depends upon how -- depends upon how saturated the  
21          boards are and if they can be reused. Now, the  
22          corner braces, because they are big steel pieces,  
23          those are actually decontaminated and washed off and  
24          scrubbed clean and used at other sites. Not  
25          necessarily Duke sites.

1           Q.    If I look at page 11, again, the dirt on  
2           the floor of the construction area seems to be just  
3           brown dirt; is that correct?

4           A.    Yes.  Because that's the clean backfill  
5           that we were placing in after doing the excavation.

6           Q.    And all the wood planking around that  
7           construction site looks to be unstained; is that  
8           correct?

9           A.    Based upon this photograph looking at it,  
10          we're not -- we are kind of taking away from it.  
11          Based upon this photograph it looks like unstained  
12          but I would have to go up next to the wood planks and  
13          determine whether it was truly stained or not.

14          Q.    Again, if I look at page 12, the shoring  
15          I'm seeing in this picture looks to be unstained.  Is  
16          that true?

17          A.    Based upon today looking at the pictures,  
18          it does appear to be unstained.  But, again, kind of  
19          in the background areas that are even excavated and  
20          re-backfilled with clean material and we are starting  
21          the excavation on the north side.  Of course, as we  
22          go down we get really into the tar lagoon.  That's  
23          where we find other impacts.

24          Q.    Turning to page 20, look at the picture  
25          in the upper left corner.  The wood shoring shown

1       there looks to be unstained throughout as well, does  
2       it not?

3               A.     In the picture on the upper left-hand  
4       corner on page 20, yes.

5               Q.     Yes.

6               A.     The majority of the wood shoring there  
7       does -- does not have staining on it.

8               Q.     Are there any pictures you are showing  
9       here where the employees are wearing any personally  
10      protection -- protective equipment?

11              A.     No.

12              Q.     If I remembered your testimony yesterday,  
13      you were talking about maybe it was a property in  
14      North Carolina where if you just send a crew out to  
15      dig a post hole, you had to send a special crew out  
16      there that had a hazmat. Do you recall that?

17              A.     Yes. Any contaminated piece of property,  
18      any type of MGP site, if work has not been done in a  
19      certain area and there is a probability there is  
20      impacts or known impacts, yes, any time they do  
21      maintenance I do have to send out a crew.

22              Q.     But we've got it -- I don't know how many  
23      of these pictures have your construction workers in  
24      them and none of them were wearing any personal  
25      protective equipment, correct?

1           A.    They are wearing personal protective  
2           equipment in the form of steel-toed boots and in the  
3           form of protective gloves and hard hats and safety  
4           glasses when these photographs were taken. They did  
5           not have on respirators but there are times they have  
6           to wear respirators but they have to have that  
7           HAZWOPER certification.

8           Q.    How many times would you say they have to  
9           wear respirators?

10          A.    It depends upon the material that we come  
11          encounter with. I have had MGP sites where no  
12          respirators were required and then I have been at MGP  
13          sites where respirators have been required for  
14          multiple days.

15          MR. SAUER: Could I have just a minute,  
16          your Honor?

17          Q.    Ms. Bednarcik, do all the pictures that  
18          are depicted in DEO Exhibit 27 reflect work that was  
19          conducted within the identified work zones on the  
20          Staff Report of Investigation page 62 or 64?

21          A.    I'm looking at the staff reports. Excuse  
22          me. Give me a minute, please.

23                All of the photographs, of course, not  
24          the page 2 which is the process flow diagram or the  
25          Google maps or the aerial photographs, but historic

1       photographs, but all of the ones that are either at  
2       East End or West End of the remediation except the  
3       very last photograph which is the air monitoring  
4       program, that was from a different MGP cleanup but it  
5       was a photograph that showed the same type of  
6       equipment that was used on East End and West End.

7               EXAMINER PIRIK: I am going to be sure,  
8       you said the very last one. I have a different last  
9       page.

10              THE WITNESS: Page 25.

11              EXAMINER PIRIK: Yeah, I do, but my last  
12       one is a different page, so you are saying page 25?

13              THE WITNESS: Yes.

14              EXAMINER PIRIK: I have an extra last  
15       page that apparently is really page 24, so we are  
16       fine.

17              THE WITNESS: Okay.

18              Q. Ms. Bednarcik, if you could turn to page  
19       4 of DEO Exhibit 27.

20              A. I am on page 4, yes.

21              Q. Can you see from the photograph the  
22       Corbin property?

23              A. Yes.

24              Q. And where would that be?

25              A. If you are looking at the aerial

1 photograph, you can see the middle parcel is pretty  
2 clear to see it has the red brick building.

3 Q. Uh-huh.

4 A. And then there is the eastern parcel  
5 which you can see on there where actually handling  
6 the clean hard fill and then the black venting is  
7 pretty apparent and then there's a street and then  
8 there's a row house that's kind of sticking up all by  
9 itself, that is the Corbin Park development and then  
10 beyond that is the ball fields.

11 Q. And the row house as you spoke, is that  
12 residential property?

13 A. Yes.

14 Q. And are those new buildings or old  
15 construction?

16 A. The one that's out there kind of by  
17 itself that's skinny is a new building. The one that  
18 are further to the east I believe are older  
19 properties. I don't know when exactly those were  
20 constructed.

21 Q. Before 2006?

22 A. They were there before I started working  
23 on the property, yes, before 2006, 2007.

24 Q. And the new one, do you know when that  
25 building was constructed?

1           A.    I don't know the exact date.

2           Q.    Before or after 2006?

3           A.    I don't remember exactly if that one  
4 building was there when I first visited the site.

5           MR. SAUER:  I have no further questions,  
6 your Honor.

7           EXAMINER PIRIK:  Ms. Mooney?

8           MS. MOONEY:  No further questions.

9           EXAMINER PIRIK:  Ms. Bojko?

10          MS. BOJKO:  Yes, thank you, your Honor.

11                               - - -

12                               RECROSS-EXAMINATION

13   By Ms. Bojko:

14          Q.    Good after, again, Ms. Bednarcik.

15          A.    Good afternoon.

16          Q.    In response to your description of these  
17 pictures you made the comment that remediation had  
18 been completed, and I just want to make sure you  
19 didn't reference any parcel or West End or East End  
20 and I just wanted to make sure I'm clear of when you  
21 believe that remediation has been completed.

22                Can you tell me -- and we'll take it step  
23 by step.  Can you tell me when remediation was  
24 completed for the East End, if it has?

25          A.    The phase of remediation that -- that --

1       which is what these pictures depict for the east  
2       parcel and the west parcel, the soil remediation that  
3       was started at the site based upon our  
4       investigations, I believe that the west parcel the  
5       soil excavation solidification was completed, I'm  
6       going off memory here, I believe it was 2010, maybe  
7       2011. I would have to look at the construction  
8       completion report.

9               The west parcel at East End was completed  
10       for the solid -- or the solidification excavation of  
11       the soil, not groundwater, because we are still  
12       working on groundwater and taking samples plus there  
13       is some oil-like material and tar-like material  
14       that's actually deeper than we excavated that will  
15       have to be addressed in one way or the other going  
16       forward, but the phase of work that is shown in here  
17       was completed on the east parcel in 2012.

18              Q.     Okay, so the East End site only, the east  
19       parcel completed in 2012, the central parcel had no  
20       remediation; is that correct?

21              A.     We are currently investigating the middle  
22       parcel and we do expect that some remediation will be  
23       required there and, again, completed on east parcel  
24       was the soil solidification for the soil there is  
25       additional groundwater monitoring and we do not know



1 if additional work will be needed on the east parcel.

2 Q. Okay. And the west parcel, as I  
3 understood your explanation 2010-'11 with some  
4 ongoing?

5 A. I believe 2011 was when we completed the  
6 excavation on the west parcel. We are continuing to  
7 monitor groundwater and there are areas on the side  
8 where we have tar-like material and oil-like material  
9 that was deeper than the excavation that will be  
10 handled in different future phases.

11 Q. Okay. And before moving to the West End  
12 I just want to understand something, the -- we just  
13 talked about the east, central, and western parcel of  
14 the East End site. Now, the purchased property that  
15 is west of the western parcel, do you now consider  
16 that to be part of the western parcel in all of your  
17 description?

18 A. No. No, the west parcel is only the  
19 area -- we use those nomenclature to help with the  
20 actual remediation, how we -- through the VAP process  
21 you are allowed to take a larger piece of property  
22 and split it up into what is called identified areas,  
23 the VAP allows you to do that.

24 In order to aid in the sequencing of the  
25 work at East End because it's a very large property,

1 we split it into east parcel, middle parcel, and west  
2 parcel only for remediation. Of course, East End Gas  
3 Works is all three of them together.

4 For the property that was purchased in  
5 2011, I know internally we have been discussing that  
6 property and calling it the Keck Street property,  
7 mainly because Keck Street runs right through the  
8 middle of the property.

9 Q. Okay. For -- to answer my question, no,  
10 the purchased property is not considered part of the  
11 western parcel, correct?

12 A. Correct.

13 Q. And it's not considered part of the whole  
14 East End site in the nomenclature; is that correct?

15 A. As the East End it's separate.

16 Q. I'm sorry, I have some sun issues.

17 EXAMINER PIRIK: Which one is it?

18 MS. BOJKO: Thank you.

19 Q. Okay, now let's move to the West End  
20 remediation completed in the West End.

21 A. The area south of Mehring Way in between  
22 the two substations where the new substation is  
23 going, that was completed in 2012 where the soil and  
24 area that was excavated and solidified. Of course,  
25 we are doing additional groundwater monitoring in

1       there and there may be future actions related to  
2       impacts that are deeper. We don't know about that  
3       yet.

4               North of Mehring Way the area that was  
5       shown on the PUCO exhibits, that area that  
6       encompasses the major part was completed in 2012 and  
7       now we are working in what we call, just for  
8       construction purposes, Phase II-A but it's only to  
9       help in our construction. It's exactly where holders  
10      Nos. 2 and 3 are located. We expect that soil  
11      portion to be completed excavation solidification to  
12      be completed in August of this year. And, of course,  
13      we will have additional work in the areas where the  
14      substation transmission towers are located currently.

15             MS. BOJKO: Thank you.

16             Can we go off the record for one second?

17             EXAMINER PIRIK: Yes.

18             (Discussion off the record.)

19             EXAMINER PIRIK: We'll go back on the  
20      record.

21             Q.    Going back to this presentation that was  
22      provided to you by your counsel, this was given after  
23      Duke filed its application in the rate -- in this  
24      case July 9, 2012, correct?

25             A.    Yes.

1           Q.    And did you take the pictures that are in  
2           this -- this presentation?

3           A.    I took some of the pictures but not all  
4           of the pictures.

5           Q.    Okay.  Let's go through it then.  
6           Obviously you did not take No. 2.

7           A.    No.

8           Q.    Page 3 does not have any pictures.  You  
9           did not take No. 4.

10          A.    No.

11          Q.    Is that correct?

12          A.    I did not.

13          Q.    Okay.  But that one does have a date that  
14          Duke placed on the presentation of November, 2010; is  
15          that correct?

16          A.    Yes.

17          Q.    And No. 5 is not a picture you would have  
18          taken.

19          A.    No.

20          Q.    And on page 6 did you take these two  
21          pictures?

22          A.    Yes.

23          Q.    Okay.  Is there a date stamp on these two  
24          pictures?

25          A.    No.

1           Q.    Do you recall the date you took these  
2 pictures?

3           A.    These were done in the investigation  
4 phase, so it would have been in 2007. I don't know  
5 the exact date or month.

6           Q.    In 2007.

7           A.    Yes.

8           Q.    Turn to page 7. Did you take this  
9 picture?

10          A.    No.

11          Q.    Do you know the date this picture was  
12 taken?

13          A.    I would be able to determine it because  
14 we have -- I don't know exactly right now, but every  
15 single day during the construction, my construction  
16 manager for the environmental consulting firm sends  
17 me a construction summary report for that day that  
18 includes pictures and that's where I took this  
19 picture from.

20          Q.    So to your knowledge you have no idea  
21 today sitting here when this picture was actually  
22 taken?

23          A.    That's correct.

24          Q.    Okay. How about page 8, did you take  
25 these two pictures?

1           A.    Yes.

2           Q.    And let's talk about the top one first.

3           The date you took that picture?

4           A.    They were both taken on the same day in  
5           September of 2010. I don't know the exact date. I  
6           would be able to look through my files because I have  
7           them labeled by day of when I took them or what week  
8           actually, I could find that, but I don't know right  
9           now.

10          Q.    In going to page 9, did you take this  
11          picture?

12          A.    Yes.

13          Q.    And what is the date you took this  
14          picture?

15          A.    I don't remember the exact date.

16          Q.    And on page 10, did you take this  
17          picture?

18          A.    I believe I did. I'm not entirely sure  
19          with this one if it was provided by my environmental  
20          consulting group or I took this one. I can't  
21          remember exactly.

22          Q.    Do you know the date this picture was  
23          taken?

24          A.    It was sent in 2011, again, if it was  
25          part of my environmental consulting because they send

1 me daily reports, it would have been part of that.

2 MS. WATTS: Excuse me, pardon me, Kim, is  
3 there something -- in order to expedite the process  
4 is there something we could stipulate to with respect  
5 to these pictures that would maybe expedite the whole  
6 process in order to -- because they are really only  
7 offered for informational purposes and so if you feel  
8 there needs to be something that we can do to address  
9 any of the concerns you have, maybe we can expedite  
10 it.

11 EXAMINER PIRIK: I think she wants to  
12 continue her questioning, which is fine with the  
13 Bench.

14 MS. WATTS: All right. Thank you.

15 MS. BOJKO: Thank you, your Honor.

16 Q. I'm not sure if there is a question  
17 pending, but I believe you said you did not know if  
18 you took the picture on page 10.

19 A. I can't remember.

20 Q. And your -- I think I had asked you  
21 whether you are stating it was taken in September of  
22 2011 because of the heading.

23 A. I put down -- since I prepared this  
24 presentation prior to the PUCO staff visit, if I put  
25 down September, 2011, then that was the month and the

1 year the picture was taken.

2 Q. And how about on page 11, did you take  
3 this picture?

4 A. I did not.

5 Q. Do you know what day it was taken?

6 A. No, sitting here now I don't know the  
7 date it was taken.

8 Q. Thank you. How about page 12, did you  
9 take this picture?

10 A. I believe I did.

11 Q. Do you know when you took this picture?

12 A. It states June of 2011.

13 Q. Do you know the date?

14 A. I do not know the exact date sitting here  
15 right now.

16 Q. Okay. Page 13, did you take this  
17 picture?

18 A. Yes, I did.

19 Q. Do you know date?

20 A. No, not sitting here right now.

21 Q. How about page 14, did you take this  
22 picture?

23 A. Yes.

24 Q. The date?

25 A. I do not have it written down so I do not



1 know it right now.

2 Q. How about page 15?

3 A. Yes, I did take this picture, and it has  
4 on it August of 2011. I do not know the exact date  
5 or the exact week.

6 Q. Now, for the ones you said somebody sent  
7 you pictures, they e-mailed them to you but you did  
8 not take them and you don't know when they were  
9 taken; is that correct?

10 A. They are sent to me on a daily basis. I  
11 assume that my construction manager, because he is  
12 reporting what happened that day that the pictures  
13 actually were taken that day.

14 Q. But that's an assumption you are making;  
15 is that correct?

16 A. That was the directive that I gave to my  
17 construction manager, to send me pictures of the  
18 day -- of what was going on that day.

19 Q. Do you have personal knowledge that the  
20 picture was actually taken?

21 A. I do not have personal knowledge.

22 Q. Okay. Can we go to page 16?

23 A. I am at page 16.

24 Q. Did you take this picture?

25 A. No.

1           Q.    Do you know the date this picture was  
2    taken?

3           A.    No.

4           Q.    Page 17, did you take this picture?

5           A.    Yes.

6           Q.    Do you know the date this picture was  
7    taken?

8           A.    It states in August of 2011.  I do not  
9    know the date, the exact day or the exact week.

10          Q.    Page 18, I am assuming this is not a  
11   picture you took?

12          A.    No.

13          Q.    Page 19, I am assuming this is not a  
14   picture you took.

15          A.    No.

16          Q.    Page 20, did you take either of these  
17   pictures?

18          A.    I do not remember if I am the one who  
19   took these pictures or not.

20          Q.    Do you know the day that they were taken?

21          A.    It says June of 2011 so I assume it was  
22   taken in June of 2011.

23          Q.    But you have no personal knowledge of  
24   that.

25          A.    It is in my files that it was June of

1       2011 or I would not have put that date on there.

2               Q.    I'm sorry, in your computer files?

3               A.    Yes.

4               Q.    And you don't have personal knowledge of  
5 when the picture was actually taken?

6               A.    Sitting here right now I do not know the  
7 exact date.

8               Q.    Okay. How about page 21?

9               A.    I took that picture.

10              Q.    Do you know the date?

11              A.    It was September of 2011.

12              Q.    Do you know the day?

13              A.    I do not know the exact day.

14              Q.    And page 22.

15              A.    I took that picture.

16              Q.    Do you know the date?

17              A.    August of 2011. I do not know the exact  
18 day.

19              Q.    And how about page 23?

20              A.    I did not take this picture.

21              Q.    And this one has actually a digital  
22 camera stamp on it --

23              A.    Yes, it does.

24              Q.    -- it appears; is that correct?

25              A.    Yes, it does.

1           Q.    And that appears to be taken January 12  
2 of 2012.

3           A.    That is what is shown on the picture.

4           Q.    And how about on page 24?

5           A.    I believe I took that picture. It does  
6 not have a stamp on it. It does not have a heading,  
7 so I do not know the exact date.

8           Q.    How about page 25?

9           A.    That is from another manufactured gas  
10 plant site, not East End or West End. I do not --  
11 actually it does have a date stamp on it. I did not  
12 take this picture but it shows 12-15-2009.

13          Q.    But just to be clear, this picture is  
14 not -- this instrument is not on the property, this  
15 particular property and instrument is not on the  
16 property of Duke for the East End and West End sites?

17          A.    This picture was not taken on the  
18 properties in Duke Energy Ohio.

19          Q.    Okay. Do you know where it was taken  
20 from?

21          A.    No, I don't. I don't remember.

22          Q.    Did you take the picture on page 6? You  
23 said those were taken in 2007; is that correct?

24          A.    Yes.

25          Q.    You did not include in this packet any

1 current pictures of the core samples; is that  
2 correct?

3 A. What do you mean by "current pictures of  
4 the core samples"?

5 Q. Anything after 2007 are not included in  
6 this package; is that right?

7 A. That is correct.

8 Q. Had these pictures -- oh, I'm sorry. Was  
9 this presentation a part or attached to your direct  
10 testimony?

11 A. No.

12 Q. How about your supplemental testimony?

13 A. No.

14 Q. Had this been -- had these pictures been  
15 taken in 2011, would you expect the pictures to be  
16 the same, similar?

17 A. As we have remediated and cleaned up the  
18 soil and many -- all the areas where these pictures  
19 were taken, if we were to go out today and take a  
20 soil sample in those locations, it's clean soil or  
21 solidified material.

22 Q. That's not what I asked. In -- some of  
23 these pictures taken in 2011 and some were taken in  
24 '12; is that correct? And in 2007.

25 A. You would have to go through each

1 individual picture again but, yeah, they were taken  
2 at different times.

3 Q. So assume that all of the pictures were  
4 taken in 2011. Would you believe the pictures to be  
5 representative of what you would have found?

6 A. Not necessarily because we had already  
7 started some of the remediation of the cleanup of the  
8 soil on East End at that time.

9 Q. Okay. Let's go back a couple of years  
10 then. What about in 2010, would you have believed  
11 these pictures to be representative of what you  
12 found?

13 A. As the excavation at East End started in  
14 2010, some of the pictures, yes; some of the  
15 pictures, no.

16 Q. And that's fair, so let's go with the  
17 core sample because that one we know was 20 -- well  
18 that one was 2007. So would you have expected that  
19 picture to be depictive of how you would have found  
20 the soil in 2006?

21 A. Yes.

22 Q. And would you have thought that would be  
23 representative of 1996?

24 A. I would assume so.

25 Q. And how about in 1994?

1           A.    I would assume so.

2           Q.    And how about in 1988?

3           A.    I would assume so.

4           Q.    And how about in 1980?

5           A.    I would assume so.

6           Q.    And how about when the plants ceased  
7 operations back in either 1963 or 1928?

8           A.    I don't know.

9           Q.    And we talked about that one in 2007, but  
10 as you pointed out, some of these are more recent and  
11 had already had remediation completed; is that  
12 correct?

13          A.    Yes.

14          Q.    So let's go to page 7.  How about the tar  
15 well you were showing us here and things from the  
16 West End; is that correct?

17          A.    No.

18          Q.    West parcel of the East End.

19          A.    Yes.

20          Q.    Thank you for that clarification.

21                Would -- you stated you don't know when  
22 this picture was taken; is that correct?

23          A.    It was taken -- excuse me.  This was  
24 taken at the start of the remediation at the West End  
25 parcel as we were installing the soldier piles for

1 the earth retention system which was the very first  
2 thing we did at the site when we mobilized to the  
3 site, so it would have been at the beginning of the  
4 actual remediation early in 2010.

5 Q. 2010. And again, you didn't take this  
6 picture.

7 A. No.

8 Q. So assuming that the picture was take in  
9 2010, would you have seen a similar picture had you  
10 taken it in 2009?

11 A. I would assume so.

12 Q. How about in 2007?

13 A. I would assume so.

14 Q. And how about in 2006?

15 A. I would assume so.

16 Q. And how about in 1996?

17 A. I would assume so.

18 Q. And what about in 1994?

19 A. I would assume so.

20 Q. And how about in 1988?

21 A. I would assume so.

22 Q. And how about in 1980?

23 A. I would assume so.

24 Q. And how about in 1963?

25 A. I don't know.



1 Q. And how about in 1928?

2 A. I don't know.

3 Q. I'm sorry, I would have done this as a  
4 package but, as you pointed out, they all have  
5 different dates, so.

6 A. That's fine.

7 Q. It's difficult to do it as a package.

8 A. Not a problem.

9 Q. And if we go to page 8. You stated that  
10 you believed this was taken in 2010. Would this have  
11 been representative of some things you might have  
12 found in 2007 if the work was started then?

13 A. I believe so.

14 Q. And how about 2006?

15 A. I believe so.

16 Q. And how about in 1996?

17 A. I believe so.

18 Q. And '94?

19 A. I believe so.

20 Q. And 1988?

21 A. I believe so.

22 Q. And in 1980?

23 A. I believe so.

24 Q. And you're not sure about 1963 or '28  
25 after the plant ceased?

1           A.    I do not know.

2           Q.    And if we go to page 10, understand --  
3           understanding from your testimony today that  
4           obviously it took some time to build the fence that's  
5           displayed here, so you stated the picture was from  
6           September of 2011, at least with the heading on this  
7           document; is that correct?

8           A.    Are you talking about the fence or the  
9           earth retention system?

10          Q.    Oh, I'm sorry, the earth retention  
11          system.

12          A.    Yes.  It did take a while to construct  
13          that.

14          Q.    Okay.  So had the work been started,  
15          would this picture have been representative of things  
16          that you might have found back in 2007?

17          A.    I believe so.

18          Q.    And 2006?

19          A.    I believe so.

20          Q.    And 1996?

21          A.    I believe so.

22          Q.    And '94?

23          A.    I believe so.

24          Q.    And 1988?

25          A.    I believe so.

1 Q. And 1980?

2 A. I believe so.

3 Q. Okay. And let's turn to page 18, and  
4 this picture that's -- you're not sure what year this  
5 was taken; is that correct?

6 A. I would -- because this is an earth  
7 retention system, it would have been 2011-2012,  
8 during that time period.

9 Q. Okay. So would your answers be the same  
10 for this representation of this picture for all the  
11 years that I have mentioned previously today starting  
12 in 2007 and going backwards?

13 A. Yes.

14 Q. Try and speed it up that way. Thank you.

15 How about on page 17? Would this picture  
16 represent anything prior to 2011 how you would expect  
17 to find it had remediation started earlier?

18 A. Actually this is a picture of some of the  
19 contact water that was generated due to rain and  
20 coming in contact with the impacted material that we  
21 had to, of course, collect, because when the  
22 rainwater comes in contact with the impacted  
23 materials, it is, therefore, impacted and we have to  
24 take it offsite and treat it and dispose of it  
25 properly.

1           Q.    And you would expect a similar thing to  
2   happen in prior years had you done remediation  
3   earlier?

4           A.    Yes.

5           Q.    And would your answers be the same with  
6   regard to completing remediation earlier with regard  
7   to the representations on page 20?

8           A.    Related to would I have found this in the  
9   previous years --

10          Q.    Yes.

11          A.    -- during but not when the plants shut  
12   down?

13          Q.    Correct.

14          A.    Yes.

15          Q.    And the same is true for page 21?

16          A.    Yes.

17          Q.    And for page 22?

18          A.    Yes.

19          Q.    And how about for page 23?

20          A.    Yes.

21          Q.    And for page 24?

22          A.    Yes.

23                MS. BOJKO:  Thank you, those are all the  
24   questions I have.

25                EXAMINER PIRIK:  Mr. Hart?

1 MR. HART: I'll be brief.

2 - - -

3 RECROSS-EXAMINATION

4 By Mr. Hart:

5 Q. If you can turn to page 4, which mine  
6 doesn't have a number but it's the fourth sheet, the  
7 East End Gas Works 11/2010.

8 A. The aerial photograph?

9 Q. Yes.

10 A. Yes, I am there.

11 Q. And just to describe this, am I correct  
12 that vacant land to the left side of the picture is  
13 what's now known as the purchased property?

14 A. Yes.

15 Q. And the black fence would be the border  
16 between identified area A and the purchased property?

17 A. Between -- I can't remember if that was  
18 exactly identified area A, but between the west  
19 parcel and the -- and the purchased property, yes.

20 Q. Okay. I just want to compare this to  
21 photograph 5. And page No. 5 would be what the plant  
22 looked like when it was operating in the '40s?

23 A. Yes.

24 Q. And just note there is a lot more houses  
25 across Eastern Avenue in 1940 than there are today;

1 is that correct?

2 A. That is correct.

3 Q. And it's hard to see, but it looks to me  
4 like there is some houses to the right in what's now  
5 known as the Corbin Park area in the 1940s?

6 A. Based upon this photographs, I would  
7 agree with you.

8 Q. Okay. And those houses aren't there any  
9 more, right?

10 A. Not to my knowledge.

11 Q. Okay. And let's turn to page 17 -- no,  
12 18. This is what the West End plant looked like when  
13 it was operating in around 1935?

14 A. Yes.

15 Q. Okay. And be fair to describe it as  
16 being surrounded by other industrial type properties?

17 A. Yes.

18 Q. And the long building to the north which  
19 is across Pete Rose Way or Second Street is the B  
20 and O warehouse, correct?

21 A. I don't know what it was called at that  
22 time. It's currently called Longworth Hall.

23 Q. Okay. Do you realize that used to be the  
24 B and O warehouse where the railroad yard --

25 A. I'm sorry, B and O, yes, on the side of

1 the building actually says "B and O Railway" on it,  
2 yes.

3 Q. And the 1935 picture, if you look at the  
4 north of it you can actually see the train yard,  
5 correct?

6 A. Yes.

7 Q. Now, if we look at page 19, this is the  
8 same general area in 2010, correct?

9 A. Correct.

10 Q. And just looking at where the generation  
11 station is or the former generation station, to the  
12 right of that is Brent Spence bridge, correct?

13 A. To the east of it up river is the Brent  
14 Spence bridge, yes.

15 Q. And the next piece of property adjacent  
16 up river is the gravel and sand storage facilities?

17 A. That's to my knowledge, yes, that's  
18 correct.

19 Q. Okay. And to the north is still the B  
20 and O warehouse which is now known as Longworth Hall.

21 A. Yes.

22 Q. And what used to be the railroad yard is  
23 now a parking lot?

24 A. Yes.

25 Q. And going to the west or down river from

1 the facility first you encounter a vacant lot and  
2 then a coal pile?

3 A. The vacant lot, yes, and that's owned by  
4 Duke Energy, and then the coal pile is further to the  
5 west.

6 MR. HART: Okay. Thank you.

7 EXAMINER PIRIK: Mr. Parram.

8 MR. PARRAM: No questions.

9 EXAMINER PIRIK: All right. Thank you  
10 very much.

11 THE WITNESS: Thank you.

12 EXAMINER PIRIK: Thank you very much.

13 We are waiting with the testimony  
14 exhibits for Duke until the conclusion of the case in  
15 chief but we will take up Exhibit 27 since it's not  
16 part of the testimony exhibits at this time. So  
17 would the company like to move those into the record?

18 MR. McMURRAY: Yes, your Honor.

19 EXAMINER PIRIK: Yes. You are moving  
20 those into the record. Are there any objections?

21 MS. BOJKO: Yes, your Honor.

22 MR. SAUER: OCC would object, your Honor.

23 EXAMINER PIRIK: Mr. Sauer.

24 MR. SAUER: Exhibit No. 27 is this.

25 EXAMINER PIRIK: Yes.



1 MR. SAUER: Should have been attached to  
2 Ms. Bednarcik's direct testimony or even supplemental  
3 testimony following this case. There's no  
4 verification of the description offered by the  
5 testimony, there is no opportunity to review the  
6 documents to prepare for cross-examination prior to  
7 them being presented at hearing just now.  
8 Essentially the parties have been ambushed. This is  
9 prejudicial and should not be admitted into the  
10 record.

11 EXAMINER PIRIK: Ms. Bojko.

12 MS. BOJKO: Yes, your Honor, in addition  
13 to what counsel just stated, I would say that there  
14 is no chain of custody. Some of the pictures were  
15 from a mailbox that we're not sure who they came  
16 from, where they came from. The witness testified  
17 that she does not know where some of the pictures  
18 came from.

19 One of the pictures is not even relevant  
20 to the site -- sites that we have been discussing  
21 here today. There's no authentication to the  
22 pictures except for two pictures, one of which is not  
23 about these currents sites of Duke Energy Ohio.

24 There is no date stamp of the pictures.  
25 We have labels that can't be authenticated or

1 verified, as Mr. Sauer just said.

2 And, again, we have no chain of custody  
3 or authentication to any of these pictures, and I  
4 would concur that it is very prejudicial and it's  
5 prejudicial to receive these kind -- types of  
6 documentation on recross. Thank you.

7 EXAMINER PIRIK: Mr. McMurray? I'm  
8 confused because I thought this was Mr. McMurray's  
9 witness.

10 MS. WATTS: It is. I was going to speak  
11 to the objections but, Mr. McMurray.

12 MR. McMURRAY: First of all, these were  
13 documents that were given to the OCC so there was  
14 really no prejudice. They had those documents  
15 previously.

16 In my initial examination of  
17 Ms. Bednarcik she identified that she either -- first  
18 of all, she prepared these materials. Secondly, she  
19 either took the photographs or she had personal  
20 knowledge of the conditions at the site. So in terms  
21 of the accuracy of the information, she had firsthand  
22 knowledge and so she is in a position to be able to  
23 authenticate that.

24 In terms of the prejudice, the one thing  
25 I would observe is that the, you know, my redirect of

1 Ms. Bednarcik was maybe 10 or 15 minutes. The cross  
2 of the redirect was probably about an hour and a  
3 half, and so I think they had ample time to ask all  
4 the questions they wanted, so there really was a  
5 thorough vetting of this.

6 But, you know, ultimately this was  
7 offered really as demonstrative evidence simply as an  
8 example of providing explanation concerning what is  
9 tar-like material and oil-like material at the sites,  
10 which was the subject of numerous cross-examination  
11 over the last two days, and so even if it's not  
12 ultimately admitted for the truth, it could be  
13 admitted for as demonstrative evidence simply as what  
14 is tar-like material and oil-like material.

15 EXAMINER PIRIK: Any further response,  
16 Mr. Sauer?

17 MR. SAUER: I guess, your Honor, I would.  
18 We have been provided thousands of documents through  
19 discovery and it's impossible for us to know what  
20 Duke might rely upon at a hearing. They have got the  
21 burden of proof incumbent upon them to establish what  
22 they need to bear that burden and they had  
23 opportunity to attach this to the witness's testimony  
24 in advance and they didn't do it.

25 It's inappropriate to bring it in on

1 redirect of the witness. Our expert didn't have a  
2 chance to review it and look at it and, yeah, we  
3 asked a lot of questions, we were doing it on the  
4 fly. I don't know if we asked good questions or bad  
5 questions. We are doing what we can do.

6 It's just very highly prejudicial to be  
7 presented with this kind of information at this stage  
8 of the proceeding.

9 MS. BOJKO: Your Honor, may I just add  
10 that although counsel said that OCC received the  
11 document, other parties in this case did not receive  
12 the document, and although counsel just stated that  
13 it was merely for the purpose to demonstrate tar and  
14 oil, I don't believe that that's the case.

15 I think there are pictures that go well  
16 beyond an identification of tar and oil and it is  
17 because it was put on like it was with one witness we  
18 have no way to authenticate or verify that the  
19 pictures that we're looking at are actually the tar  
20 and oil.

21 I mean I did not see some of the things  
22 described by Ms. Bednarcik in the pictures so I don't  
23 think it represents what claims it represents and I  
24 don't think that we can allow the prejudicial nature  
25 of these photographs to be in here. The benefit does

1 not substantially outweigh the prejudicial effect  
2 that it has on this case. Thank you.

3 EXAMINER PIRIK: Go ahead, Mr. McMurray.

4 MR. McMURRAY: Ms. Bednarcik has personal  
5 firsthand knowledge of the conditions of the site  
6 because she was at both the sites on a regular basis.  
7 And she under oath testified that those were accurate  
8 depictions of the conditions at the site and so, you  
9 know, I think there is no risk that what we are  
10 looking at are pictures that are not -- of the East  
11 End and West End sites are not of the materials that  
12 were there.

13 Also, on my redirect, I focused only on  
14 those pages that had the tar-like material and the  
15 oil-like material. The other counsel are the ones  
16 who really expanded this to look at the other photos  
17 and then asked questions and so on which really went  
18 beyond the -- my intent, which was merely to address  
19 the numerous questions that had been raised over the  
20 last two days concerning, you know, the tar-like  
21 material and oil-like material, what does it look  
22 like.

23 And so this was offered really as a way  
24 of showing everyone, including your Honors, you know,  
25 what those materials looked like because that is

1 essential to the work that was done at the sites.

2 EXAMINER PIRIK: What I find interesting  
3 about the arguments by the intervenors is that there  
4 was no mention that anything that was brought up on  
5 redirect was beyond the scope of redirect and that it  
6 was inappropriate in any way.

7 I think that there was ample opportunity  
8 to recross on the document. I think, amazingly, we  
9 are at the end of day II and we are kind of early in  
10 the process so this document, if admitted, will, you  
11 know, still be here for when the experts are on the  
12 stand.

13 If parties feel that they need to request  
14 some type of rebuttal on the document at a future  
15 time, then they can do so and we can consider that at  
16 that time. But for now we are going to admit this  
17 document Duke Exhibit 27 into the record.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 MR. McMURRAY: Thank you.

20 EXAMINER PIRIK: Let's go off the record  
21 now.

22 (Discussion off the record.)

23 EXAMINER PIRIK: Oh, we still have a  
24 couple more exhibits. We have staff exhibits.

25 MR. PARRAM: Yes, your Honor. Staff

1 would move for admission of Staff Exhibits 3, 4, 7 to  
2 the record.

3 EXAMINER PIRIK: Are there any  
4 objections?

5 MR. McMURRAY: No objections.

6 EXAMINER PIRIK: Those exhibits will be  
7 admitted into the record.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 MS. BOJKO: Your Honor, Kroger has  
10 Exhibit No. 2. I would move the admission of that  
11 exhibit.

12 EXAMINER PIRIK: Are there any  
13 objections?

14 That document will be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER PIRIK: OCC?

17 MR. SAUER: OCC would move for the  
18 admission of OCC Exhibit Nos. 2 through 9.

19 EXAMINER PIRIK: Are there any  
20 objections?

21 Those exhibits will be admitted into the  
22 record, and please don't forget the confidential  
23 redacted version needs to be provided to the court  
24 reporters tomorrow.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 MS. WATTS: Just so you understand, all  
2 the other documents have been provided to the court  
3 reporter, we just need Mr. Campbell's testimony.

4 EXAMINER PIRIK: Thank you.

5 Now, let's go off record for a moment.

6 (Discussion off the record.)

7 EXAMINER PIRIK: Duke, would you like to  
8 call your next witness.

9 MR. McMURRAY: Yes. Duke calls Shawn S.  
10 Fiore to the stand.

11 (Witness sworn.)

12 EXAMINER PIRIK: I see you brought your  
13 caffeine with you.

14 THE WITNESS: I did.

15 - - -

16 SHAWN S. FIORE

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

19 DIRECT EXAMINATION

20 By Mr. McMurray:

21 Q. Good afternoon, Mr. Fiore. Can you  
22 please state your name for the record?

23 A. Shawn S. Fiore.

24 Q. And who are you employed by and in what  
25 position?



1           A.    I'm employed by Haley & Aldrich, and I am  
2 vice president.

3           Q.    And what is your business address?

4           A.    5755 Granger Road, Suite 320, Cleveland,  
5 Ohio 44131.

6           Q.    Did you cause to be filed written  
7 testimony in this proceeding?

8           A.    I did.

9           Q.    Do you have that written testimony in  
10 front of you now?

11          A.    I do.

12          Q.    Are there any changes or corrections you  
13 would make to the testimony that you have filed?

14          A.    There are.

15          Q.    And what are those changes?

16          A.    On page 2 the question on line 4 I also  
17 reviewed the testimony of James Campbell. That was  
18 inadvertently omitted.

19                MS. BOJKO: I'm sorry. I don't see --  
20 your Honors, I don't see the reference.

21                EXAMINER PIRIK: Is it a different line?  
22 Is it line 8?

23                THE WITNESS: On page 2, the question on  
24 line 4, "What documents have you reviewed in  
25 preparation of your testimony?" Line 9 should also

1 include I also reviewed the testimony of James  
2 Campbell.

3 MS. BOJKO: Thank you.

4 Q. Are there any other changes or  
5 corrections you would make to your written testimony?

6 A. None that I know of.

7 Q. Okay. Other than that correction would  
8 your answers be the same if I asked you the same  
9 questions today?

10 A. Yes.

11 Q. Do you hereby adopt this direct testimony  
12 with the noted correction in your testimony in this  
13 proceeding?

14 A. I do.

15 MR. McMURRAY: Duke Energy moves for  
16 admission of Mr. Fiore's direct testimony which is  
17 identified as Duke Energy Ohio Exhibit 26.

18 EXAMINER PIRIK: Mr. Serio?

19 MR. SERIO: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Serio:

23 Q. Good evening, Mr. Fiore. You work for  
24 Haley & Aldrich, correct?

25 A. Yes.

1           Q.    And your firm was retained by Duke for  
2           purposes of working on remediation of the East End  
3           MGP site, correct?

4           A.    Yes.

5           Q.    And you were retained as the CP for Haley  
6           & Aldrich that was going to work on the project,  
7           correct, certified professional?

8           A.    I was not retained. My company was  
9           retained.

10          Q.    Right. But you were the certified  
11          professional designated by your company to work on  
12          this project, correct?

13          A.    Correct.

14          Q.    And your company was retained and your  
15          work has been only for the East End site, correct?

16          A.    That is correct.

17          Q.    Now, you were asked by Duke to also  
18          provide testimony in this proceeding, correct?

19          A.    Correct.

20          Q.    And who specifically asked you to provide  
21          testimony, if you know?

22          A.    Mr. McMurray.

23          Q.    And when you were asked to provide  
24          testimony, what instructions were you given with  
25          regard to your testimony?

1           A.    I was asked to provide testimony to  
2   discuss the VAP and its implications in these two  
3   sites.

4           Q.    And were you also directed to review  
5   certain documents in response to those documents in  
6   your testimony?

7           A.    Not -- not directly, no.

8           Q.    During the deposition we took last  
9   week --

10          A.    Yes.

11          Q.    -- do you recall me asking you when  
12   you -- when you were asked to provide testimony what  
13   instructions you were given with regard to the  
14   purpose of your testimony?

15          A.    Not specifically.

16               MR. SERIO: May I approach, your Honor?

17               EXAMINER PIRIK: Yes.

18          Q.    I am handing you a 171-page document  
19   titled "Deposition Public Version of the Shawn S.  
20   Fiore" and it's dated April 25, 11:47 a.m., correct?

21          A.    Yes.

22          Q.    Could you turn to page 7.

23               EXAMINER PIRIK: Just to be clear, I want  
24   to be sure in the future if you are going to -- if  
25   you're intent on using depositions with a witness,

1 the Bench needs to have a copy.

2 MR. SERIO: This was only for purposes --

3 EXAMINER PIRIK: I understand, but the  
4 Bench needs to have a copy. You need to be prepared  
5 to make sure that anyone who doesn't have a copy has  
6 one.

7 Q. Page 7.

8 A. Yes.

9 Q. The question on line 14, do you see that  
10 question when you were asked to provide testimony  
11 what instructions were you given with regard to the  
12 purpose of your testimony? Do you see your response  
13 there?

14 A. Yes.

15 Q. You were asked to review documents  
16 provided to you to provide an opinion on that  
17 documentation, correct?

18 A. Yes.

19 Q. Now, among the documentation you were  
20 provided was the testimony of Dr. Campbell, correct?

21 A. Correct.

22 Q. And you were specifically asked to  
23 respond to or rebutt Dr. Campbell's testimony in your  
24 testimony, correct?

25 A. I was asked to provide my opinions on

1       that testimony to Mr. McMurray prior to my  
2       preparation of this testimony that I have in front of  
3       me.

4               Q.     And your work on that testimony began on  
5       approximately April 5 or 6, correct?

6               A.     On my testimony?

7               Q.     On your testimony, yes.

8               A.     Correct.

9               Q.     Now, in preparation of your testimony you  
10       did not review any of the objections to the Staff  
11       Report filed by any of the parties in this case,  
12       correct?

13              A.     Could you restate that.

14              Q.     Sure. Did you review any of the  
15       objections filed by any of the parties to the Staff  
16       Report in preparation of your testimony?

17              A.     I am not sure what you mean, objection to  
18       the Staff Report, specifically the documents I  
19       reviewed are listed herein.

20              Q.     Okay. And you did not review the Staff  
21       Report itself, correct?

22              A.     Correct.

23              Q.     Now, you indicate you know Dr. Campbell,  
24       correct?

25              A.     Yes.

1           Q.    And you've worked with him previously on  
2 projects in Ohio, correct?

3           A.    Yes.

4           Q.    Can you explain to me what those projects  
5 were and what working with him entailed?

6           A.    He was the project manager or financial  
7 manager or in a management position or is a  
8 representative of the PRP group. And we provided  
9 services to the PRP group.

10          Q.    Did you interact with Dr. Campbell as  
11 part of those projects?

12          A.    Yes.

13          Q.    And how long were those projects, if you  
14 recall?

15          A.    Each of them were more than a couple of  
16 years.

17          Q.    Can you explain to me what a PRP project  
18 is?

19          A.    PRP -- a PRP project may be -- is a  
20 project where potentially responsible parties join  
21 together by some mechanism to work at typically a  
22 CERCLA-type site.

23          Q.    Now, at the beginning when we first  
24 started, you indicated that you were only retained to  
25 work at the East End site, correct? Your firm.

1           A.    Yes.

2           Q.    Do you know when your firm was retained  
3 to work at the East End site?

4           A.    Not specifically.

5           Q.    Do you have an approximation?

6           A.    Late 2009 maybe.

7           Q.    Was your company retained to take over  
8 for another CP in this proceeding?

9           A.    I don't think we were specifically  
10 retained to take over for a CP. We were retained to  
11 do their remediation.

12          Q.    Let me ask this way: Did your firm do  
13 any of the investigation work on the East End site?

14          A.    Prior to 2009?

15          Q.    Prior to 2009.

16          A.    No.

17          Q.    And that was done by another CP with a  
18 different company, correct?

19          A.    That is correct.

20          Q.    And that would have been Burns &  
21 McDonnell, the company?

22          A.    One of them, yes.

23          Q.    And then your firm was brought in just to  
24 do the remediation work after the investigation at  
25 the East End site, correct?



1           A.    We were brought in -- we were brought in  
2           to do their remediation work.

3           Q.    So to the best of your knowledge, Burns &  
4           McDonnell did no remediation work at the East End  
5           site, correct? That's been done entirely under the  
6           supervision of your company and you as a CP?

7           A.    It is my understanding that Burns &  
8           McDonnell did no remediation work.

9           Q.    Now, any knowledge that you have on the  
10          West End site, that's not firsthand knowledge,  
11          correct?

12          A.    It's firsthand through review of reports.

13          Q.    But it's not firsthand from you actually  
14          being there to supervise any work or to see it  
15          firsthand for yourself, correct?

16          A.    Correct.

17          Q.    Are you involved in the day-to-day  
18          implementation of the remediation efforts at the East  
19          End site?

20          A.    Not the day-to-day.

21          Q.    Who are the point people that you provide  
22          direction to either from Duke or from your company  
23          that do the actual day-to-day supervision of the  
24          remediation work?

25          A.    I provide support to Tom Plant from Haley

1       & Aldrich, to Ms. Bednarcik from -- from Duke and --  
2       and potentially others.

3               Q.     But those would be the two main folks  
4       that you interact with, correct?

5               A.     Correct.

6               Q.     And Mr. Plant, what's his title with  
7       Haley & Aldrich?

8               A.     I'm not sure of his actual title.  He's a  
9       remediation engineer.

10              Q.     He is not a CP, correct?

11              A.     He is not.

12              Q.     He is an engineer though?

13              A.     That is correct.

14              Q.     Now, prior to your work with Duke at the  
15       East End site, have you ever been involved in the  
16       remediation of an MGP site for an investor-owned  
17       utility?

18              A.     Yes.

19              Q.     And you understand what -- what an  
20       investor-owned utility is, correct?

21              A.     I believe I do.

22              Q.     And can you tell me what other experience  
23       you've had with investor-owned utilities?

24              A.     I think my testimony indicates I've  
25       worked at 20 -- excuse me, 20 MGP sites in Ohio.

1           Q.    And all those 20 sites were utility  
2 related MGP sites?

3           A.    19 were.

4           Q.    19. And you indicate you've worked  
5 investigating on those sites. What do you mean by  
6 "investigating"?

7           A.    Investigating the site following the VAP  
8 protocols and requirements.

9           Q.    So that would have been similar to the  
10 work that Burns & McDonnell did for Duke in this  
11 proceeding? The investigative phase?

12          A.    It would be following the same pathway,  
13 yes.

14          Q.    And then you also indicated that you  
15 worked on remediation of three of those sites, and  
16 were those investor-owned utility sites?

17          A.    Two of them were.

18          Q.    And the remediation there would have been  
19 similar to what you've done for Duke in this case  
20 with remediating the property using different options  
21 provided to you under the VAP rules, correct?

22          A.    The VAP doesn't -- the VAP doesn't  
23 require certain remedial methods so we would have  
24 completed remediation such that the end use would be  
25 consistent with all appropriate requirements under

1 the VAP.

2 Q. Do you know if there is a different CP  
3 that's involved at the West End site?

4 A. I understand there is.

5 Q. And what's that understanding based on?

6 A. Discussions the last couple of days and  
7 my understanding that Burns & McDonnell is doing that  
8 work following the VAP rules.

9 Q. And by "the last couple of days," you  
10 mean since the deposition that we had, correct?

11 A. Correct.

12 Q. Are you familiar with the ratemaking  
13 process that the Public Utilities Commission of Ohio  
14 employs in reviewing the rate request made by public  
15 utilities such as Duke?

16 A. I am not.

17 Q. Have you ever been involved in any  
18 proceedings that were related to any PUCO related  
19 proceedings similar to the Duke rate case that you  
20 are testifying in today?

21 A. I have not.

22 Q. So you would agree with me that you have  
23 no familiarity with the PUCO standard of prudence  
24 that the Commission uses, correct?

25 A. I don't know what their standard is.

1           Q.    Now, you work with the VAP rules every  
2   day as a CP, correct?

3           A.    Yes.

4           Q.    Do the VAP rules in any way require a  
5   company to do any kind of cost analysis looking at  
6   the different remediation options that they have  
7   available to them?

8           A.    As I indicated, the VAP doesn't stipulate  
9   remediation so the VAP doesn't require that kind of  
10   analysis. I know Duke did that kind of analysis but  
11   the VAP rules don't require that.

12          Q.    You indicate that you know Duke did that  
13   kind of analysis. Did you review any kind of  
14   documentation that showed an analysis of different  
15   options that Duke had available as far as remediation  
16   techniques go?

17          A.    No.

18          Q.    Are you aware of any sufficient  
19   documentation?

20          A.    I'm not.

21          Q.    The VAP rules don't specifically require  
22   any type of remediation; they simply set forth the  
23   standards that you have to meet after you're done  
24   with remediation, correct?

25          A.    Correct.

1           Q.    And the VAP rules don't have any guidance  
2           as far as any cost analysis or any review of costs  
3           that you use in order to achieve meeting the  
4           standards that they set forth, correct?

5           A.    The VAP rules are very flexible with  
6           respect to remediation and they were built that way  
7           to allow remediating parties to really work on the  
8           cost end of what remediation might take place with  
9           the CP. They don't themselves stipulate that, that's  
10          correct.

11          Q.    Are you familiar with a no further action  
12          or NFA letter?

13          A.    I am.

14          Q.    And in fact, a no further action letter  
15          is a -- is something you as a CP would submit to the  
16          EPA when you feel that a site has been completely  
17          remediated to meet the standards set forth in the VAP  
18          rules, correct?

19          A.    That's incorrect.

20          Q.    I'm sorry?

21          A.    That is incorrect.

22          Q.    What does a no further action letter do?

23          A.    It simply documents the site meets all  
24          applicable standards.

25          Q.    And those are the standards set forth in

1 the VAP, correct?

2 A. Correct.

3 Q. Now, an NFA letter as set forth in the  
4 VAP rules, that doesn't have any mention regarding  
5 reasonableness of cost in achieving the standards  
6 that are set forth in the VAP, correct?

7 A. As I indicated before, the remediation  
8 used is not part of the VAP. The VAP doesn't select  
9 remedies.

10 Q. Were you ever asked to look at the  
11 reasonableness of the costs associated with any of  
12 the remediation efforts that are being done at the  
13 East End site?

14 A. I was not but I, you know, believe  
15 several CPs have been involved and we all concur that  
16 they are prudent remedies.

17 Q. Your company prepared a proposal in  
18 response to an RFP from Duke in order to get the work  
19 doing the remediation, correct?

20 A. That is correct.

21 Q. Do you know who prepared the proposal  
22 that your company prepared?

23 A. It was prepared by -- excuse me. It was  
24 prepared by a number of people. I believe Tom Plant,  
25 who we previously discussed, was in charge of the

1 preparation of that proposal.

2 Q. So again, he is the same Tom Plant that's  
3 now working on the day-to-day remediation at the  
4 site, correct?

5 A. That is correct.

6 Q. Now, when Mr. Plant prepared the proposal  
7 that Haley & Aldrich submitted, did he put various  
8 different remediation options in the RFP that he  
9 prepared and submitted?

10 A. That is my understanding.

11 Q. And do you know what other alternatives  
12 that Mr. Plant included in the RFP that were not  
13 necessarily selected by the company?

14 A. I do not.

15 Q. Now, Burns & McDonnell was the CP that  
16 did the investigative work. Did you look at any of  
17 the alternatives that they may have had from the  
18 investigative stage suggesting different ways to  
19 potentially remediate the contamination at the East  
20 End site?

21 A. Are you asking if they had a document  
22 that included that?

23 Q. Yes.

24 A. I don't believe I reviewed that, if there  
25 is such a document.



1           Q.    If there would have been such a document,  
2           is that something that, in the course of doing your  
3           remediation work, you would have been made aware of  
4           and given a copy of?

5           A.    Possibly.

6           Q.    Now, I believe you indicated in your  
7           testimony that a CP is an agent of the company -- I'm  
8           sorry, is an agent of the state, correct?

9           A.    Correct.

10          Q.    But the CP is paid for by a company,  
11          correct?

12          A.    I think I corrected myself and said there  
13          are times --

14          Q.    I'm sorry?

15          A.    There are times they are paid by the  
16          company.

17          Q.    And so to the extent that you are paid by  
18          the company but you're an agent for the state, are  
19          you also considered then an agent for the company  
20          that you are working for? In this case Duke?

21          A.    Correct. I have certain duties that I'm  
22          certified to conduct under the VAP and those duties,  
23          regardless of who pays for my time, must be conducted  
24          following a certain code of conduct.

25          Q.    Now, in the course of your work with

1 Duke, you make suggestions to the company, correct?

2 A. I may.

3 Q. And the company ultimately is the one  
4 that will make a decision as to what course of action  
5 they want to take, correct?

6 A. The company in -- as I think  
7 Ms. Bednarcik indicated, the company, in consultation  
8 with their, basically their team, Jessica as  
9 management, Tom Plant, our -- who I just mentioned,  
10 and other people.

11 EXAMINER PIRIK: Mr. Serio.

12 These microphones are really frustrating,  
13 it's not you, it's the microphone. But if you get  
14 too close to it and you talk directly into it, it  
15 will cut out, and that's what you're seeing. So kind  
16 of put it beside -- no, push it back a little bit so  
17 it's like beside your face. And then you are not  
18 directly talking into it. That might help, so kind  
19 of move it around and try it out.

20 THE WITNESS: Is this better?

21 EXAMINER PIRIK: Hopefully you will be  
22 a -- it won't be so distracting for you.

23 All right, I'm sorry. Were you done with  
24 your answer? You don't know?

25 Q. Let me, I think I can pick up.

1                   So Mr. Plant and yourself who are  
2                   employed by Haley & Aldrich would give  
3                   recommendations to the company and then the company,  
4                   including their legal team and whoever else they  
5                   want, they would look at your recommendations and  
6                   then they would make a decision based on your  
7                   recommendations, correct?

8                   A.    I think the team could be larger than  
9                   that, but it's more of a team process but, yeah, the  
10                  ultimate decision would be made by the company.

11                  Q.    Now, in your testimony the word  
12                  "prudence" is included, and when you talk about  
13                  prudence, you're not referring to the PUCO use of the  
14                  word, correct?

15                  A.    I'm referring to my personal definition.

16                  Q.    Is -- is prudence defined in the VAP  
17                  rules at all?

18                  A.    Not to my knowledge.

19                  Q.    Is it possible in your opinion to  
20                  evaluate the reasonableness of a methodology used to  
21                  remediate a site if you don't consider the  
22                  alternative options that might have been available?

23                  A.    Would you restate that.

24                  Q.    Sure. Is it possible to evaluate the  
25                  reasonableness of cost in remediating a site if you

1 do not consider alternatives to the remedy that was  
2 selected?

3 A. I think in certain instances where you  
4 have presumptive remedies that are pretty consistent  
5 throughout the industry, that's part of the process  
6 but you -- but in general, yes.

7 Q. Do the VAP rules say anything about  
8 presumptive remedies?

9 A. The VAP rules do not. The Ohio EPA rules  
10 allude to them in a number of documents.

11 Q. Do the VAP rules or the Ohio EPA define  
12 presumptive remedies at all?

13 A. I think presumptive remedies are defined  
14 in a few OH EPA documents discussing remediation of  
15 certain landfills and other types of facilities.

16 Q. Now, so that we're clear, you are --  
17 you're involved in discussions of remedies to use but  
18 you don't dictate to the company which remedies have  
19 to be used to remediate a site, correct?

20 A. Are you asking me that as a CP?

21 Q. Yes.

22 A. As a CP, my one and only requirement is  
23 to ensure that all appropriate standards are met.

24 Q. And there could be a number of different  
25 pathways to get there. You simply look at the end

1 result and not the route that's taken to get there,  
2 correct?

3 A. Correct. I may help on defining that  
4 route but I don't need to.

5 Q. Now, to the extent that you were brought  
6 into remediation at the East End site, it was through  
7 the investigative phase that the specifics regarding  
8 remediation were determined by Duke, correct?

9 A. To the extent that Haley & Aldrich was  
10 brought in to do the remediation, the investigation  
11 stage did determine what needed to be done.

12 Q. Right. So Haley & Aldrich, your company,  
13 came in, and when you came in, the type of  
14 remediation to do had been determined through the  
15 investigative report, correct, the investigative  
16 stage?

17 A. I think it was based on the investigative  
18 stage.

19 Q. Now, is it your experience that every  
20 remediation under the VAP leads to an NFA letter?

21 A. An NFA letter is -- all remediations do  
22 not need to lead to an NFA letter. An NFA letter  
23 does not need to be written for all sites that meet  
24 applicable standards.

25 Q. And in your experience is it normal for

1       their -- the process to result in an NFA letter or  
2       would you agree that the majority of the time  
3       whatever remediation is done, but there is no NFA  
4       letter?

5               A.     In my experience with the clients I've  
6       worked with and my personal experience is that a  
7       majority of the time projects are completed and all  
8       applicable standards are achieved and no no further  
9       action letter is prepared, although documentation  
10      that all -- all applicable standards have been met is  
11      prepared, it doesn't meet the same standard of a no  
12      further action letter.

13              Q.     And when you say "majority," would you  
14      agree with me that that would be like 80 to  
15      90 percent of the time?

16              A.     It would be a lot, yeah.

17              Q.     How many sites have you worked on re --  
18      for remediation purposes?

19              A.     I don't know the answer to that.  It's --  
20      it's a significant number.

21              Q.     And how many NFA letters have you issued?

22              A.     I've issued one.  Although I have issued  
23      a number of documents that are consistent with the  
24      NFA but they don't meet the NFA standard.

25              Q.     And the NFA letter is the one that

1 actually it could be used by the EPA to then -- that  
2 could potentially lead to a covenant not to sue,  
3 correct?

4 A. If the remediating party or the client or  
5 property owner decides that they want a no further  
6 action and that's in their best interest, it could  
7 be.

8 Q. But without an NFA letter, you can't get  
9 to a covenant not to sue, correct?

10 A. That's correct.

11 Q. I believe you indicated that the reason  
12 that a lot of clients don't go all the way to getting  
13 an NFA letter is because it's costly and onerous,  
14 correct?

15 A. Correct. Especially in cases where we  
16 investigate a site and it already meets all  
17 applicable standards, there is no need to do it. Or  
18 if a site that an industrial entity is going to  
19 maintain the property for a long period of time,  
20 potentially forever, there is no need to do it.

21 Q. That's because if a company owns a  
22 property, it can determine how the property is going  
23 to be used in the future, and having that control  
24 they can determine whether there would be a need to  
25 implement some of the other measures that might

1 otherwise be needed, correct?

2 A. They can also put off having the no  
3 further action letter prepared until some point in  
4 the future when it would make sense. A no further  
5 action letter has a limited shelf life.

6 Q. Now, in your testimony you talk about the  
7 requirements to be a CP and one of those requirements  
8 is a necessary degree, correct?

9 A. Yes.

10 Q. And one is a minimum amount of  
11 experience, correct?

12 A. Correct.

13 Q. And then there is also the requirements  
14 that you have to take a course that's offered by the  
15 EPA, correct?

16 A. That is correct.

17 Q. And that's a one-day eight-hour course,  
18 correct?

19 A. It is.

20 Q. Do you know if there is any kind of  
21 testing that occurs at the end of the day to  
22 determine how much, if anything, anybody learned from  
23 attending that course?

24 A. There's no testing.

25 Q. And then another requirement is that you



1 have to attend ongoing education on an annual basis,  
2 correct?

3 A. That's correct.

4 Q. And do you know if any of that ongoing  
5 annual training requires any kind of testing to  
6 determine if you've learned anything from attending  
7 that course?

8 A. It does not.

9 Q. Now, you also talk about, in your  
10 testimony, the -- that CPs are held to a standard of  
11 conduct that's significantly -- standards of conduct  
12 that uncertified practitioners are not. And when you  
13 refer to "uncertified practitioners," you're  
14 generally referring to anybody who is not a CP,  
15 correct?

16 A. I'm generally referring to people who are  
17 not CPs and people who have not made themselves  
18 regulated by the Ohio EPA like CPs have.

19 Q. Now, the standards of conduct that --  
20 that have -- that the EPA has for CPs, are you  
21 familiar with other standards of conduct that other  
22 professionals have to adhere to?

23 A. Yes.

24 Q. And is it your experience that the  
25 standards of conduct for CPs is significantly

1 different than standards of conduct that other  
2 professionals that you're familiar with have to  
3 adhere to?

4 A. Can you restate that.

5 Q. Are the standards of conduct for CPs  
6 significantly different than the standards of conduct  
7 for the other professionals that you are familiar  
8 with?

9 A. I think the standards are standards, but  
10 the ramifications for not meeting those standards are  
11 different. So the ramifications for a CP not meeting  
12 the standards is they face disciplinary action and  
13 can be significant whereas the ramifications for, for  
14 example, a professional geologist, which I am also,  
15 for not meeting those standards of conduct are much  
16 less onerous.

17 Q. And the standards could even, for other  
18 professionals could even be greater. For example, an  
19 attorney that doesn't meet standards could actually  
20 be disbarred, correct?

21 A. Similarly a CP who doesn't meet standards  
22 can, we recall it, euphemistically, defrocked.

23 Q. Now, you indicated previously you worked  
24 with Dr. Campbell. Is there anything with -- through  
25 your work with Dr. Campbell or the reputation that he

1 has that would lead you to believe that he doesn't  
2 adhere to the standards of conduct that are required  
3 for a CP?

4 A. Well, Dr. Campbell hasn't availed himself  
5 of being regulated by the State of Ohio, and in that  
6 I think we're talking apples and oranges, so it's  
7 kind of like taking a French class. You can say you  
8 take this French class in high school and you may  
9 follow all the rules, but you really can't call  
10 yourself a French speaker, or somebody who follows  
11 all the VAP rules.

12 And I think when you live in France, you  
13 can say, you know, you are a French speaker, and if I  
14 live in the VAP CP world, I can say that I follow all  
15 the rules. I don't know how that would apply to  
16 Dr. Campbell.

17 Q. Okay. What I am asking you is are you  
18 familiar with anything through your work with  
19 Dr. Campbell that would lead you to believe that he  
20 doesn't follow the standards of conduct that a CP is  
21 required to follow?

22 I understand he hasn't applied to be a CP  
23 in Ohio; I am talking about the type of work he does.  
24 Does he do it with the standard of professionalism  
25 that's consistent with the standards --

1           MR. McMURRAY: I just want object to the  
2 extent there has been no foundation as to all of the  
3 conduct required of a CP in Ohio.

4           EXAMINER PIRIK: Can you narrow the scope  
5 of your question?

6           MR. SERIO: Yes.

7           Q. Page 7 of your testimony --

8           A. Yes.

9           Q. -- Mr. Fiore.

10          A. I'm there.

11          Q. You list I think it's five different  
12 items through lines 4 through 14. Those are the  
13 standards of conduct that we're talking about,  
14 correct?

15          A. Correct.

16          Q. And one of them is acting with care and  
17 diligence and fully applying the CP's knowledge and  
18 skills when the services are performed. So if you  
19 would look at this first one, are you familiar with  
20 anything that Dr. Campbell has done that he did not  
21 use care and diligence in applying the knowledge and  
22 skills that he has at the time he performed his  
23 duties?

24          A. Well, I think that statement says must  
25 fully apply the CP's knowledge, and because he is not

1 a CP, that would exclude him from meeting this.

2 Q. I understand but --

3 A. But taking that out, no, I think so. I  
4 think he would meet that.

5 Q. The second one is the CP must hold  
6 paramount public health, safety, and the welfare of  
7 the environment in performance of professional  
8 services. Are you familiar with anything in his  
9 actions in the past that would indicate that he does  
10 not hold the public health, safety, and welfare and  
11 environment -- of -- in a paramount manner?

12 A. Again, because he is not a CP, these  
13 rules don't apply to them and he is not submitted to  
14 regulation by the State of Ohio, so these rules do  
15 not apply to him. But I don't know if I know him  
16 well enough to know this, but from what I have seen,  
17 no.

18 Q. Would you agree that the same answer  
19 would apply to the other three standards here,  
20 instead of going through them one by one?

21 A. My same stipulation; since he is not  
22 regulated by the State of Ohio nor has he agreed to  
23 be, and that he is not a certified professional,  
24 these don't really apply to him, so I don't know how  
25 he would react to those.

1           Q.    But -- you saw nothing in the time that  
2           you worked with him that would lead you to believe  
3           that he doesn't adhere to a standard of conduct that  
4           is comparable to the -- what's listed on your  
5           testimony, correct?

6           A.    As a nonregulated practitioner, correct.

7           Q.    Now, with regards to the Duke East End  
8           site, did you personally prepare the Phase I report  
9           that was done or was it done under your supervision?

10          A.    I believe there -- I believe there have  
11          been several reports done on the Duke East End site.

12          Q.    And have you prepared any of them  
13          personally?

14          A.    I've prepared two.

15          Q.    And the others were prepared under your  
16          supervision?

17          A.    I believe the others, as we discussed  
18          previously, were prepared by other consultants prior  
19          to Haley & Aldrich's involvement.

20          Q.    So the two you did were the two that have  
21          been done during the remediation phase.

22          A.    I'm not sure exactly when they were done.  
23          I don't know the dates off the top of my head.

24          Q.    But it would have been since your firm  
25          wasn't hired until after the investigation phase,

1 would it not be reasonable to assume that the two  
2 Phase I reports you did were done after the  
3 investigation phase and during the remediation phase?

4 A. They were investigation reports done on  
5 parcels that have not yet been remediated.

6 Q. Publication that was done after your firm  
7 was retained in 2009, correct?

8 A. Correct.

9 Q. Now, has there been a risk mitigation  
10 plan prepared for the East End site?

11 A. It's too early to prepare that.

12 Q. Now, we talked about the NFA letter. As  
13 of now, do you know if Duke plans to submit or ask  
14 you to submit an NFA letter for the East End site?

15 A. So how the VAP works is we have to  
16 determine if an NFA letter is applicable. What  
17 you're asking me is essentially -- if I made a  
18 promise to Duke that I would provide an NFA letter.

19 Q. No.

20 A. You cannot --

21 Q. I am not asking is this a promise, I am  
22 asking has Duke indicated to you we want a complete  
23 work at the East End site sufficient so that, when  
24 appropriate, you can submit an NFA letter.

25 A. Because investigation is ongoing, we

1 don't know if we can -- if all applicable standards  
2 can be met.

3 Q. And that's true at the East End site,  
4 correct?

5 A. Correct.

6 Q. Do you know if that's true of the West  
7 End site also?

8 A. I know investigation -- additional  
9 investigation needs to be done but I don't know the  
10 extent of that.

11 Q. Has there been any discussions where Duke  
12 has led you to believe that the end goal for them is  
13 to get an NFA letter for either the East End or West  
14 End site?

15 A. I think we discussed that in the  
16 deposition in testimony that it -- it's undetermined  
17 whether we'll go to that extent.

18 Q. The VAP program is a voluntary program  
19 that a company enters into on its own, correct?

20 A. Correct.

21 Q. And at any point in time the company can  
22 withdraw from that process, correct?

23 A. Correct.

24 Q. At this point in time can you determine  
25 any estimate of the costs necessary on a



1 going-forward basis to finish the remediation  
2 necessary to meet the standards for an NFA letter at  
3 the East End or West End sites?

4 A. Because we don't know -- because the  
5 investigation hasn't been completed, I can't provide  
6 that.

7 Q. Can anybody do that kind of estimate at  
8 this point in time?

9 A. If anybody would do such an estimate, it  
10 would be more along the lines of what Ms. Bednarcik  
11 discussed in her testimony, which would be estimable  
12 and probable, or reasonable and probable, whatever  
13 that is. I'm not certain what that standard is, but  
14 it would be more of an SEC type estimate.

15 Q. Are you familiar with how much has been  
16 spent in the two sites to date?

17 A. Having participated in this hearing, I  
18 am.

19 Q. So you're familiar with the figure of  
20 approximately \$65 million?

21 A. That's the number I've heard.

22 Q. Is it possible it could take another  
23 \$65 million to complete remediation at both sides in  
24 order to meet the standards necessary for an NFA  
25 letter?

1           A.    I don't know the answer to that.  Again,  
2           because the investigation isn't complete, any number  
3           I would give you would be pure speculation.

4           Q.    So it's possible it could -- it could  
5           cost another 65 million, it could be greater, it  
6           could be less.

7           A.    Could be 1 million, it could be greater  
8           than.

9           Q.    Based on the amount of investigation  
10          that's still ongoing, would you, based on your  
11          experience, conclude you that it would be closer to  
12          another 65 million rather than an additional 1  
13          million?

14          A.    Because of the scope of the investigation  
15          left, I really don't know.

16               MR. SERIO:  Your Honor, I'm at a breaking  
17          point, if this is appropriate, before I start getting  
18          into another area.

19               EXAMINER PIRIK:  I think that would be  
20          appropriate.  We have a couple off-record things we  
21          need to discuss, but for today we will recess and we  
22          will convene tomorrow morning at 9:00 o'clock.

23               (Thereupon, the hearing adjourned at  
24          5:55 p.m.)

25               - - -

CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Tuesday, April 30,  
2013, and carefully compared with my original  
stenographic notes.

---

Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-72233)

- - -

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/14/2013 10:31:05 AM**

**in**

**Case No(s). 12-1685-GA-AIR, 12-1686-GA-ATA, 12-1687-GA-ALT, 12-1688-GA-AAM**

Summary: Transcript in the matter of Duke Energy Ohio hearing held on 04/30/13 - Volume II electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.