

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 Wednesday, May  
1, 2013.

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VOLUME III

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1 Wednesday Morning Session,  
2 May 1, 2013.

3 - - -

4 EXAMINER STENMAN: All right. Let's go  
5 back on the record.

6 Mr. Serio.

7 MR. SERIO: Thank you, your Honor.

8 - - -

9 SHAWN S. FIORE  
10 being previously sworn, as prescribed by law, was  
11 examined and testified further as follows:

12 CROSS-EXAMINATION (Continued)

13 By Mr. Serio:

14 Q. Good morning, Mr. Fiore.

15 A. Good morning.

16 Q. I think when we left off yesterday, I was  
17 just about to ask you about user paid technical  
18 assistance. You talk about it in page 8 of your  
19 testimony. Would you explain to me what user paid  
20 technical assistance is.

21 A. User paid technical assistance is  
22 technical assistance provided by Ohio EPA staff  
23 professionals. Their time is paid for by the  
24 remediating party or the property owner.

25 Q. So essentially you as the company or the

1 company that's going to the EPA, you request a  
2 meeting, pay the time, and at that meeting you can  
3 have a conversation with the EPA regarding questions  
4 that you might have about what you're doing as far as  
5 remediation on your property, correct?

6 A. Typically the questions we would ask are  
7 gray areas that aren't really well defined within the  
8 rules, and we would have a conversation or two or  
9 three, whatever -- whatever it would take, to define  
10 an answer that's appropriate foresight on those gray  
11 area questions.

12 Q. And what you basically get from the EPA  
13 is guidance, correct? They don't tell you an  
14 absolute. They just give you --

15 A. In some instances, you get their best  
16 opinion, they have to wait until more information is  
17 available. In some instances you'll actually get a  
18 technical decision which then becomes part of the  
19 technical decision compendium that VAP maintains.

20 Q. Now, to your knowledge has Duke requested  
21 any user paid technical assistance meetings with the  
22 EPA regarding either of the two sites?

23 A. There may have been a meeting with EPA,  
24 but I don't believe there was user paid technical  
25 assistance.

1           Q.    In your experience, how often does a  
2           remediating party request user paid technical  
3           assistance meetings with the EPA?

4           A.    Well, taking that -- if the -- at the  
5           place we are now in the process at these two sites,  
6           which is we are not ready to meet all applicable  
7           standards yet or prepare a no further action letter  
8           most user paid technical assistance is closer to the  
9           end of the project than the middle, so I would say  
10          maybe half.

11          Q.    And when you talk about "gray area" with  
12          the -- that you would talk to the EPA about, can you  
13          give me an example what you mean by "gray area"?

14          A.    Sure. I can give you an example of the  
15          gray area or even a nuance to the VAP because I  
16          know -- I discuss that elsewhere in my opinion. For  
17          instance, the VAP generic numerical standards have a  
18          standard for cyanide, the standard is for free  
19          cyanide, for instance. But the agency has decided  
20          not to allow any certified laboratory to analyze for  
21          free cyanide, only for total cyanide. So some of our  
22          conversations that I've had in technical assistance  
23          is discussing that very issue.

24                It's a nuance where they are making you  
25          compare a standard to a different standard, so

1 analysis result they make you prepare it to a  
2 standard that's not related to that analysis and  
3 that's a nuance of the VAP and it's also one of the  
4 gray areas I've discussed with them.

5 Q. Now, I believe you indicated yesterday  
6 and you just referenced now that one of the reasons  
7 you are not at a point where you might request  
8 technical assistance is because there is still  
9 investigation going on at either or both of the  
10 sites. How long do you think the investigation that  
11 is currently ongoing at the East End site is going to  
12 take? How much longer do you think it will take?

13 A. The VAP doesn't specify a timeframe.  
14 They specify a reasonable process or progress. And  
15 that's really undefined so it could take a couple  
16 years. The groundwater investigation needs to  
17 include some additional analyses and evaluations, so  
18 I can't really put a timeframe on it.

19 Q. Okay. I understand that VAP rules don't  
20 require a timeline. I was asking from your opinion  
21 based upon what's been done so far and the  
22 investigation that you understand still needs to be  
23 done, is there any timeframe of how long you think it  
24 will take to conclude the investigation at the East  
25 End site?

1           A.     There is not. The VAP is an iterative  
2     process so each phase of investigation builds on the  
3     last phase, so say if we were to go out and do some  
4     additional sampling, the results of that sampling  
5     would then allow us to define the next phase and the  
6     next phase and the next phase until we determine what  
7     we need to determine so we don't -- Duke doesn't --  
8     they are very reasonable in how they do something.

9           They don't have us go out and collect a  
10    whole lot of data that's unneeded. We do it in an  
11    iterative phase so we collect only the data that's  
12    needed so we don't overcollect and have  
13    investigations that -- that are just way too  
14    expensive and pricey so we do that in an iterative  
15    phase.

16           Q.     Is the same true of the West End site?

17           A.     That's my understanding.

18           Q.     But you don't have -- your understanding  
19    on the West End site is based more on documentation  
20    and not on anything you're involved with, correct?

21           A.     I am not the CP at the West End site,  
22    that's correct.

23           Q.     Now, you indicated I think one of the  
24    types of investigation that still has to be done is  
25    groundwater testing?

1           A.    It is one of the types, correct.

2           Q.    Is there any reason why the groundwater  
3 testing wasn't begun sooner?

4           A.    Well, again, the VAP doesn't specify  
5 that. What it specifies is meeting all applicable  
6 standards and the way we have managed the project or  
7 the way Duke has managed the project is to meet all  
8 applicable standards moving ahead. The groundwater  
9 has, as I think I've indicated in my testimony, DNAPL  
10 in it, and we wanted to remove the source area before  
11 we really started looking at groundwater.

12          Q.    But it was -- it's been obvious from the  
13 very beginning because of the location of the two  
14 sites next to the Ohio River that there would have to  
15 be groundwater testing done, correct?

16          A.    Well, obvious since the beginning.

17          Q.    Since the company began their remediation  
18 efforts.

19          A.    Again, our remediation is focused on  
20 removing the free product mobile tar. It wasn't  
21 really focused on defining groundwater at that time,  
22 so my project was -- was to find a moving source  
23 material to make sure that we met all applicable  
24 standards in that area.

25          Q.    Now, I think yesterday you indicated that

1 a company can begin the VAP process and go through it  
2 but stop short of an NFA letter, and they often do  
3 because of the cost of finishing the process of  
4 getting an NFA letter. If a company does that, what  
5 are the benefits of the VAP that they can achieve  
6 short of an NFA letter?

7 A. That's a couple of different questions  
8 there. Could you?

9 Q. What benefits are available to a CP that  
10 stops short of an NFA letter but otherwise complies  
11 with the VAP requirements?

12 A. The benefits are that they know that they  
13 have met all applicable standards and would have the  
14 documentation ready to obtain an NFA letter and  
15 presumably a covenant not to sue if they chose to do  
16 so in the future.

17 The reason people get the NFA letters are  
18 various, and often they do transactional type  
19 processes such as buying and selling properties or  
20 refinancing, so the covenants and the NFAs are often  
21 required by third parties. So if there is a  
22 potential it may be needed in the future, the NFA and  
23 CNS, a company can do all the work needed and then  
24 complete the NFA or complete the CNS at a later date.

25 Those documents have a shelf life of I

1 think 180 days, so if you -- you can complete the  
2 documents and you can complete the investigation or  
3 remediation and have all the documentation that  
4 you've met all applicable standards, and then if you  
5 need to meet an NFA in the future, you can. That is  
6 one benefit.

7 Another benefit is you know you have met  
8 all applicable standards and there are no  
9 unacceptable risks to current or reasonably  
10 anticipated land users.

11 EXAMINER STENMAN: I need you to try to  
12 keep your voice up. With the fans going, it's a  
13 little noisy in here.

14 THE WITNESS: Sorry.

15 Q. Now, the -- one of the benefits of an NFA  
16 is an ability to get a covenant not to sue from the  
17 EPA, correct?

18 A. Correct.

19 Q. Now, when you describe the VAP process, I  
20 believe in your testimony you called it a  
21 nonintuitive and a nuanced process.

22 A. Correct.

23 Q. And can you explain what you mean by  
24 nonintuitive?

25 A. Not -- nonintuitive, it is different than



1 other programs in our states. It's different than  
2 other federal programs. It doesn't follow the same  
3 processes or road map -- road maps as other  
4 processes, so it's different and it's not what you  
5 would expect in many cases.

6 Q. What do you mean by "nuanced"?

7 A. As I indicated a bit ago, nuanced are in  
8 my opinion what -- what I meant by "nuanced" are  
9 there are various aspects of the VAP that aren't  
10 really in any regulation and that aren't really  
11 written down that you need to know in order to be a  
12 CP. You can't find this information on the internet.  
13 You can't find this information by reading  
14 regulations. But it's critical in some cases to know  
15 this information and it's kind of nuanced in that you  
16 just don't -- it's not readily available.

17 For instance, when I discuss the free  
18 cyanide/total cyanide, you really can't find that  
19 information anywhere written down. You have to  
20 either know the VAP by practicing the VAP or you need  
21 to contact regulators directly and ask that exact  
22 question. And it's a nuance that if you don't know,  
23 you can go down a wrong path very easily and make  
24 improper decisions based on information that would in  
25 the end not meet all applicable standards.

1           Q.    If you ran into an issue like that  
2 cyanide issue that you mentioned, you could request a  
3 technical paid for conference, and you could talk to  
4 the EPA and get guidance on that through them  
5 directly, correct?

6           A.    Right.  In nuance -- by "nuanced" I mean  
7 you would know enough to know that's an issue.  You  
8 might not even know that's enough to know that's an  
9 issue if you don't practice the VAP.  So in essence  
10 if you practice the VAP enough to know that was an  
11 issue, you could ask for technical assistance on  
12 that.  If you didn't practice the VAP enough to know  
13 that was an issue, you wouldn't even know what you  
14 didn't know.

15          Q.    If you were to read previous decisions of  
16 the EPA, would that give you the basis -- the  
17 additional basis of understanding the nuances of the  
18 VAP?

19          A.    Some of them, maybe; certainly not all.

20          Q.    Now, you indicated yesterday, I think,  
21 that you had worked on 19 or 20 other MGP  
22 utility-related sites.  Do you recall that?

23          A.    I believe I said 19.

24          Q.    Now, can you compare the size and  
25 magnitude of the Duke MGP sites to the other sites

1       that you've worked on?

2               A.     Yeah.  The Duke sites are the largest  
3       I've worked on with respect to size of the  
4       operations, complexity of the geology, and chemistry,  
5       and operational period, and really the entire size of  
6       both operations are most larger of what I have ever  
7       worked on.

8               Q.     And to the extent Duke has spent  
9       \$65 million on the two sites, it would be the most  
10      expensive remediation project that you have been  
11      involved with also, correct?

12              A.     Well, I don't know if I can answer that  
13      because -- I've only remediated 3 of the 20 sites  
14      I'm working on.  I don't know the answer to that.  I  
15      know there are sites that exist in other states that  
16      are much more expensive, much more costly, so I can't  
17      really answer that.

18              Q.     The three that you did remediate, how did  
19      they compare to the spending in this case?

20              A.     They were very simple sites to remediate  
21      and they are much smaller and the contamination was  
22      not very widespread, so the remediation costs were  
23      much less.

24              Q.     Have you ever worked on a nonutility MGP  
25      site?

1           A.     One.

2           Q.     Generally speaking comparing the  
3 nonutility MGP site to utility MGP sites, would you  
4 say that the utility sites are larger and more  
5 complex?

6           A.     I think the processes are the same. The  
7 complexity has nothing to do with who owns it.

8           Q.     In remediating the nonutility site did  
9 you find that it was a comparable size and magnitude  
10 as the utility's sites, larger, smaller?

11          A.     Again, the size of the site doesn't have  
12 anything to do with who owned it in my opinion. It  
13 could be either way. You could have utility sites,  
14 investor-owned utility sites that could be smaller.

15          Q.     Now, is a CP required to be on-site all  
16 the time during a remediation or an investigation?

17          A.     No.

18          Q.     Is there any minimum requirement as to  
19 how much time a CP should spend on a site in either  
20 the investigation or remediation phase?

21          A.     There are requirements for what a CP must  
22 do but the amount of time is not specified anywhere.

23          Q.     How much time do you actually spend  
24 on-site?

25          A.     I think I've spent in the order of 300

1 hours since we've been -- we've worked with Duke.

2 Q. And that's since your firm was retained?

3 A. Yeah.

4 Q. And that would be in 2009?

5 A. The end of 2009, so all told that's about  
6 what I've spent, somewhere in that neighborhood. I  
7 don't know the exact number.

8 Q. And because you're not on-site all the  
9 time, you rely on the site manager to keep you  
10 informed on what's going on, correct, on a day-to-day  
11 basis?

12 A. I rely on Haley & Aldrich's site manager  
13 and on Duke's site management team.

14 Q. How often do you communicate with Haley &  
15 Aldrich's site manager or with the Duke team?

16 A. When work was going on in the field, I  
17 was copied on almost every day when work was  
18 happening. There was a -- oh, a daily update that  
19 went out and I was copied on that just about every  
20 day.

21 Q. Is there any remediation ongoing right  
22 now?

23 A. On the West End site?

24 Q. Yes.

25 A. I don't know. On the East End site?

1 Q. I'm sorry, East End site, you're correct.

2 A. I don't believe so.

3 Q. So you're not getting any kind of updates  
4 right now on a regular basis.

5 A. No. At the moment we're doing  
6 investigation on those sites and that is being done  
7 under my direction, supervision.

8 Q. Now, in your testimony you also talk  
9 about USD or an urban setting designation.

10 A. Yes.

11 Q. Can you tell me what that is?

12 A. It's a designation that the given number  
13 of -- given an area or property or site meets a  
14 number of criteria, the Ohio EPA would allow the  
15 remediating party or CP or property owner to exclude  
16 consideration of drinking water for potable purposes  
17 in a risk analysis.

18 Q. And in a situation like Duke's where you  
19 are remediating two sites that are adjacent to a body  
20 of surface water and you have an indication that  
21 there is actually, I believe, a city ordinance that  
22 requires you to use city water, would something like  
23 an urban setting designation be appropriate for a  
24 remediation job?

25 A. At --

1 Q. At the East End site?

2 A. At the East End site, it would not.

3 Q. And why not?

4 A. I think, as you said, there is an  
5 ordinance that prohibits groundwater withdrawal for  
6 potable purposes in the city of Cincinnati. In  
7 addition, as a part of meeting all applicable  
8 standards, we would likely as -- in an abundance of  
9 caution add on a land use restriction that would  
10 prohibit the same.

11 Q. Now, even with the land use restriction  
12 and the city ordinance, you still need to do  
13 groundwater testing, correct?

14 A. Correct.

15 Q. And that groundwater testing involves  
16 testing water at the edge of the Ohio River, correct?

17 A. It involves testing groundwater to the  
18 extent that impacts are found vertically or  
19 horizontally.

20 Q. And that would include testing the Ohio  
21 River?

22 A. It could. We are not there yet but it  
23 could.

24 Q. What are the circumstances where you  
25 would not need to do any groundwater testing at the

1 East End site for Duke?

2 A. Are -- presuming that we're staying  
3 within the framework of the VAP, there are none.

4 Q. Okay. So within the framework of the  
5 VAP, since there is no circumstances where you would  
6 not need to do groundwater testing, is there a reason  
7 that groundwater testing hasn't begun?

8 A. Well, I think it has begun and as I  
9 indicated previously, this is an iterative process.  
10 We take the process that we have and we use those to  
11 keep building and in order to obtain the information  
12 needed to determine if we met all applicable  
13 standards.

14 Q. Now, when -- in our discussion right now,  
15 are you distinguishing surface water from  
16 groundwater?

17 A. I'm considering groundwater right now.

18 Q. Okay. If I was to ask you the same  
19 question about surface water, go through those same  
20 questions, would your answers be the same or is there  
21 a different view with the surface water?

22 A. We would need to understand -- it would  
23 be a difference. That would be another iteration.  
24 If results of any testing we do in the future would  
25 possibly indicate that surface water would be an



1 issue, then that would be a decision made based on  
2 those results.

3 The decision wouldn't be to go and  
4 imprudently sample all over the place, and you know,  
5 that would be just spending a lot of money. What we  
6 would do, we would sample in the iterative process  
7 like we are doing to determine what's needed and  
8 build on a foundation, that we would keep building on  
9 the data we have rather than just going out and  
10 shotgunning it and taking information we don't need.

11 Q. To the extent you are testing groundwater  
12 today, has any of the testing gone beyond the  
13 boundaries of the East End site?

14 A. Does your definition of the East End site  
15 include the property west of the west parcel?

16 Q. The property that was purchased from the  
17 developer?

18 A. Yes.

19 Q. Well, let's take it in two ways. First,  
20 let's exclude that and look at the East End site with  
21 just the three parcels as designated by the company.  
22 Has there been any groundwater testing outside of  
23 those three parcels at the East End site?

24 A. I believe there has been, yeah.

25 Q. And that testing would have been at the

1 site that was purchased from the developer, correct?

2 A. Correct, the property to the west of the  
3 west parcel.

4 Q. Has any of the groundwater testing to  
5 date been adjacent to the Ohio River?

6 A. It's been on the top of the bank down to  
7 the Ohio River but there's still some distance  
8 horizontally before we reach the Ohio River.

9 Q. Does Duke's property at the East End site  
10 stop at the bank or does it go all the way down to  
11 the edge of the river?

12 A. It goes down actually into the river in  
13 some locations there.

14 Q. So even though the Duke property at the  
15 East End site goes into the river, there's been no  
16 groundwater testing at the edge of the river yet,  
17 correct?

18 A. Correct. As I stated before, it's an  
19 iterative process where we are going to get to the  
20 extent that we need to get, but we don't want to go  
21 out and just throw a lot of samples out there for no  
22 reason.

23 Q. And there's been no testing of surface  
24 water at the edge of the river either, correct?

25 A. Again, correct. That would be another

1 step we would build on iteratively during the Phase  
2 II process.

3 Q. Now, when it rains, the surface water  
4 flows to the Ohio River, correct? Or it seeps down  
5 into the ground, becomes groundwater, and then it  
6 might seep to the Ohio River, correct?

7 A. I don't know if I can answer that.  
8 There's storm sewers there so some of the storm  
9 sewer -- water would, you know.

10 Q. Fair enough.

11 A. Some of it would go some places.

12 Q. If it rains, the only way the water could  
13 get to the river groundwater is seeping down and then  
14 into the river or run off from the surface into the  
15 river, correct?

16 A. Except -- no, that's incorrect.

17 Q. What would be the other way that  
18 rainwater could hit the property and then the East  
19 End site and end up in the river?

20 A. You could have Artesian conditions which  
21 would mean groundwater from beneath the river flowing  
22 up into the river. Colloquially speaking, that's a  
23 spring and a lot of rivers have upward groundwater  
24 flow underneath them. They may.

25 Q. Now, in order to fulfill the requirements

1 of the VAP, at some point you would have to do both  
2 the groundwater and surface water testing, correct?

3 A. I don't know the answer to that yet.  
4 Again, we have to build on that. If we don't see a  
5 need for surface water sampling, we're not going to  
6 go out and just do it.

7 Q. Is one way to avoid the need for  
8 groundwater or surface testing by implementing  
9 institutional and -- institutional controls at the  
10 site?

11 A. No. That's incorrect.

12 Q. So institutional controls cannot in any  
13 way help you avoid the need to do groundwater  
14 testing?

15 A. Not -- not to do groundwater testing.

16 Q. What about surface water testing?

17 A. Again, we don't even know if we need to  
18 do it, but presuming that we would need to do it  
19 which, again, I have no idea yet because we don't  
20 have that data, no.

21 Q. And why can -- why are institutional  
22 controls enough -- alone not enough to avoid the need  
23 to do groundwater testing?

24 A. The VAP requires that we meet all  
25 applicable standards. Some of the applicable

1 standards require testing.

2 Q. But it's not mandatory that you do  
3 testing, groundwater testing.

4 A. No, it is.

5 Q. It is.

6 A. You need to -- you need to meet all  
7 applicable standards, and if applicable standards  
8 indicates that there is groundwater impacts, you need  
9 to meet standards associated with that.

10 Q. Have you -- has the ongoing investigation  
11 determined whether there has been any impact at the  
12 Ohio River from groundwater?

13 A. We haven't iteratively gotten there yet.  
14 We will determine the extent of impacts on an  
15 iterative process during the Phase III. We don't  
16 just want to go out and imprudently grab 100 or 200  
17 or 500 samples and find out we didn't need any of  
18 them, so it's a process where we build a foundation,  
19 and based upon the information we have, we find what  
20 the next steps are. We are still in the  
21 investigation stage. We aren't there yet.

22 Q. The Ohio River is not a stagnant body of  
23 water; it's constantly flowing, correct?

24 A. Correct.

25 Q. And it's possible that any testing that

1       you do -- how do you distinguish between any impact  
2       on the river from the site versus any impact on the  
3       river from anywhere upstream?

4               A.     There are standards in the Ohio EPA rules  
5       on how to sample surface water.

6               Q.     And can the samples distinguish between  
7       oil or tar that's put in the river at one site versus  
8       oil or tar that might be put in the river at a site  
9       further upstream? Can you distinguish between the  
10      oil and tar?

11              A.     Are you asking if I can distinguish  
12      between oil and tar that the source may be  
13      upstream --

14              Q.     Yes.

15              A.     -- rather than? Yeah, the rules want you  
16      to do that, so, yes, that is a goal to do that.

17              Q.     Can it be done with certainty that you  
18      can know for sure that any impact in the river  
19      occurred from this site and not from industrial sites  
20      upstream?

21              A.     Yeah. Yep, with an appropriate sampling  
22      program that would be the goal.

23              Q.     Is that sampling currently being done?

24              A.     No, we are not there yet. Again, we  
25      don't even know if we need to sample surface water

1 yet.

2 Q. Okay. I'm sorry. I thought you said  
3 that in order to meet the VAP, groundwater testing  
4 has to be done.

5 A. Correct.

6 Q. Yet you're telling me you don't know that  
7 you have to do groundwater testing.

8 A. You said surface water sampling.

9 Q. Okay. Groundwater testing.

10 A. Okay.

11 Q. Does it -- is there a mandate that there  
12 has to be groundwater testing before you can meet all  
13 the VAP requirements?

14 A. Yes.

15 Q. Is there a requirement that you have to  
16 do surface water testing?

17 A. No.

18 Q. Okay.

19 A. Except when there's a potential that  
20 there is an impact to surface water. So at any given  
21 site that may not need to be done, but at any given  
22 site it may need to be done. It's based on the  
23 information you get during the Phase II  
24 investigation.

25 Q. To the extent that groundwater testing is

1 mandatory in order to meet the VAP requirements,  
2 wouldn't it make sense to begin the groundwater  
3 testing now?

4 A. It has begun.

5 Q. But it hasn't begun at the river's edge.  
6 It's only being done at the bank, correct?

7 A. Right. We haven't gone the next  
8 iteration yet so we have the Phase II is designed as  
9 an iterative process where we don't just go out and  
10 grab samples every 10 feet and spend a lot of money,  
11 so it's a process where we build on the data we have  
12 to determine the next steps. We're just not there  
13 yet.

14 Q. Now, I understand you don't want to test  
15 every 10 feet, but the 10 feet from the upper edge of  
16 the river and the 10 feet at the lower edge of the  
17 river is much more significant than 10 feet to the  
18 east or west of the upper bank, correct?

19 A. I really don't understand the question.

20 Q. Okay. I think you indicated that testing  
21 at the East End site has been done at the upper edge  
22 of the property, correct?

23 A. No. I said at the top of the bank.

24 Q. The top of the bank.

25 A. Right.



1 Q. But none at the bottom of the bank.

2 A. As far as we've gotten so far is the top  
3 of the bank.

4 Q. Now, wouldn't you agree that the 10 feet  
5 from the top of the bank to the bottom of the bank is  
6 a pretty significant 10 feet? You don't think -- do  
7 you not think that testing right at the river's edge  
8 versus at the top bank would be significant and  
9 important?

10 A. The way that an investigation works under  
11 the VAP is you have source areas. You can mitigate  
12 those source areas and then start testing radially,  
13 but you don't need those to determine what you need  
14 to determine. That's what we've done is we started  
15 testing radially beyond those source areas.

16 We haven't defined the extent yet so  
17 what's been done so far is exactly consistent with  
18 the VAP where we have done an iterative process  
19 defining what's in the groundwater as we go and  
20 determining what's the next step. I don't think  
21 anybody said we're done yet. I think we've all  
22 agreed that there is more work to be done.

23 Q. Now, you indicate you have a little bit  
24 of familiarity with the piece of property to the west  
25 of the East End parcel that was -- that was purchased

1 from a developer, correct?

2 A. Yes.

3 Q. Now, do you know -- Duke initially sold a  
4 piece of that property to the developer and then  
5 later purchased the piece that they sold and an  
6 additional piece back, correct?

7 A. I believe so.

8 Q. Do you know why Duke sold the initial  
9 property to the developer?

10 A. No. I wasn't -- I don't believe Duke  
11 actually sold it and I wasn't -- my involvement with  
12 Duke started in 2009, as we discussed. I believe all  
13 that happened before my involvement.

14 Q. Do you know why Duke purchased the  
15 property back from the developer?

16 A. Just what I've heard during these  
17 proceedings.

18 Q. And a lot of what you heard was from Duke  
19 witnesses under oath?

20 A. Correct.

21 Q. Do you have any reason to doubt that what  
22 you heard from the Duke witness was not correct?

23 A. My understanding it was part of a  
24 confidential settlement.

25 Q. Now, as I understand it, one of the

1 reasons that the East End site needed to be developed  
2 was because there was a change in land use on the  
3 properties adjacent to the East End site, correct?

4 A. Correct.

5 Q. And part of that change was that a  
6 developer in the western parcel to the East End site  
7 wanted to put some residential development on that  
8 site, correct?

9 A. I never spoke to the developer, but  
10 that's my understanding.

11 Q. And that's from talking to Duke, correct?

12 A. Correct.

13 Q. Now, had Duke just purchased that  
14 property initially and held the property so that  
15 there was no residential development on that piece of  
16 property, would there then have been a need to do any  
17 remediation at the East End site?

18 A. Wow, that's really speculative because  
19 there were homes there before the developer knocked  
20 them down to consolidate that area. So I don't have  
21 a guess on what the pathways would be. I would have  
22 to go back and look at where the homes were previous  
23 to the developer building them. It could have been;  
24 I just don't know.

25 Q. If there were homes there previous to the

1 developer's plan, did Duke have to do remediation  
2 prior to the developer's plans which changed the land  
3 use?

4 A. You're asking me if Duke in a voluntary  
5 action program, which is voluntary by nature, had to  
6 do anything. They don't.

7 Q. No, no. As I understand it, the  
8 residential development plan on the western parcel is  
9 what changed the land use designation and that began  
10 the need to begin some remediation at the site,  
11 correct?

12 A. That's my understanding.

13 Q. If there were homes already on that piece  
14 of property prior to the developer, as you alluded,  
15 saying I'm going to do this development, there was a  
16 need for Duke to do the development prior to the  
17 developer saying I want to do residential development  
18 there?

19 A. So there may have been homes there. I  
20 don't know where they were, No. 1. And the second is  
21 I don't know what the need to do remediation is. You  
22 know, my testimony is on the VAP, and I think that's  
23 more of a legal question.

24 Q. Right. But if the developer's plans were  
25 the triggering effect, then whether there were homes

1 existing prior to the developer's plans doesn't  
2 matter, does it?

3 A. I don't understand that question.

4 Q. Do you agree with me that the developer's  
5 plans is what triggered Duke's need to do the  
6 investigation and remediation?

7 A. My understanding -- it's my  
8 understanding.

9 Q. So if there was any structures on that  
10 parcel prior to the developer's plans, if there  
11 wasn't a need to do investigation remediation prior  
12 to the developer making his plans, then those  
13 structures didn't impact the need to do any  
14 remediation, correct?

15 A. I truly don't understand that question.  
16 There -- I feel you are trying to get a legal opinion  
17 out of me.

18 Q. No, no, no, no.

19 A. Which I am not able to give --

20 Q. You are not an attorney.

21 A. -- on whether or not remediation is  
22 required at some point based on something.

23 Q. Prior to the developer's plan was Duke  
24 required to do any investigation or remediation at  
25 the East End site?

1           A.    I think I answered that Duke wasn't  
2 required.  It's a voluntary program.

3           Q.    I didn't ask if they needed to do the  
4 VAP, whether they needed to do any investigation or  
5 any remediation at the site.

6           A.    Again, that would be a legal opinion on  
7 whether it would be required.

8           Q.    Are you familiar with CERCLA?

9           A.    Barely.  I am familiar with the portions  
10 of the CERCLA of implementing the sampling plans in  
11 CERCLA.

12          Q.    Are you familiar with the term "free  
13 product"?

14          A.    Yes.

15          Q.    And what is free product?

16          A.    I think I alluded to it and gave the Ohio  
17 EPA definition in my testimony, if I can find it  
18 here.

19          Q.    I think page 17 of your testimony.

20          A.    Yes.  That's the Ohio EPA's definition  
21 within the VAP of free ride.  It's a separate phrase  
22 liquid hydrocarbon that has a measurable thickness  
23 greater than one one-hundredth of a foot.

24          Q.    And one one-hundredth of a foot, you  
25 would take a foot, divide it by 100, and that would

1 be the measure, right?

2 A. Correct.

3 EXAMINER STENMAN: We are having some  
4 trouble hearing in the back, so everyone will have to  
5 keep their voice up. And if you can't hear, just let  
6 us know. Don't wait.

7 MR. HART: Eh?

8 Q. On page 17 of your testimony you also  
9 referred to "mitigated to the extent practicable."  
10 When you're determining mitigation to the extent  
11 practicable, what are the standards of  
12 practicability?

13 A. Practicability is in certain instances  
14 you cannot remove product from the ground. It's  
15 not -- it's just not feasible. For instance, if free  
16 product were to get into fractured bedrock,  
17 scientific studies over the years have found that you  
18 can't get it out.

19 Q. Is cost a consideration in practicability  
20 at all?

21 A. With respect to considerations to  
22 impracticability, we look at a lot of different  
23 things. Cost is maybe a second-tier assumption.

24 You want to protect human health and the  
25 environment, you want to meet all applicable

1 standards, comply with all rules, and once all of  
2 those are dealt with, we would consider cost. But  
3 it's not specifically for technical -- to make a  
4 technical and impracticability argument to the  
5 agency, they don't necessarily look at cost.

6 Q. So if you went to the EPA and said it's  
7 going to cost me over 50 or 60 million dollars to  
8 remediate this 1 acre site, they wouldn't look at  
9 cost as a factor in saying, well, maybe you don't  
10 need to mitigate -- you don't need to, remediate it  
11 completely. We'll let you do it -- let you do it to  
12 a lesser standard.

13 A. You have to meet all applicable  
14 standards, and one standard is to remove to the  
15 extent possible. There are mechanisms that are very  
16 limited and very infrequent -- infrequent where you  
17 can leave product in the ground. Those instances  
18 don't really matter at the East or West End site. We  
19 don't meet those standards to be able to leave free  
20 product in the ground.

21 Q. So in order to not remove something  
22 completely and to say I was only mitigating to the  
23 extent practicable, you would need a variance from  
24 the EPA, correct?

25 A. Correct.



1           Q.    And you could use a technical assistance  
2 conference to talk to the EPA to see if you could get  
3 some guidance as to whether cost implications could  
4 be something you could factor into your remediation  
5 plan, correct?

6           A.    Cost is not figured into the remediation  
7 plan. You would have to provide -- to prepare a  
8 demonstration for the variance --

9           Q.    Right.

10          A.    -- separately, and you could include cost  
11 in there. I don't really think they would -- would  
12 value that. You need to meet all applicable  
13 standards first and foremost. So you could -- you  
14 could include cost in your demonstration, certainly.  
15 But I'm not sure that would get you anywhere.

16          Q.    To the extent there was tar in the ground  
17 at the East End site, was that tar at a uniform level  
18 throughout or were there varying degrees of -- of  
19 thickness of the tar throughout the site?

20          A.    Because the coal tar migrated through  
21 time and it's very mobile, the thicknesses continued  
22 to be different all over the place. And, in fact,  
23 the coal tar is present from just below ground  
24 surface as we've seen to maybe 100 feet, so, you  
25 know, it's not uniform. Although it is ubiquitous

1 throughout the site, it's not uniform where it is.

2 Q. Would it be fair to say that where there  
3 was a tar well you probably had much thicker  
4 instances of tar and in the areas where there wasn't  
5 a tar well, you probably had less thickness?

6 A. You know, maybe if the tar well leaked,  
7 there would be less in the tar well and there would  
8 be more below the tar well because this stuff is so  
9 mobile, you know, if the tar well leaked, and these  
10 things do or did leak, at the tar well leak you could  
11 have a significant amount of free product 100 feet  
12 deeper than the tar well and very little at the tar  
13 well.

14 Q. That lack of uniformity would have  
15 existed at both the East and West End sites to the  
16 best of your knowledge, correct?

17 A. I think so.

18 Q. Now, do you know if the free product at  
19 the East End site can be completely removed?

20 A. I don't know at this stage.

21 Q. So it's possible that Duke is going to  
22 need a variance because some free product might have  
23 to remain on-site, correct?

24 A. Well, because Duke really did look at  
25 its -- the significant cost that it would be to

1       remove all free product, digging the site down to  
2       100 feet across the site didn't seem to be an  
3       appropriate measure. They went for the source  
4       material, the vast majority of it. So, you know, we  
5       are still looking at what remains on the bedrock and  
6       100 feet deep and other areas. That's part of the  
7       investigation, so.

8           Q.     Right.

9           A.     So once we are done with that  
10       investigation, then we determine what applicable  
11       standards need to be met and how to meet them. It  
12       could include a variance. It might not. It would  
13       really determine on -- be based on the data we gain.  
14       If we can make an argument, that would be great. I  
15       know that variances are difficult to get and there  
16       are only a few of them given. So the demonstration  
17       is very onerous and often not fruitful.

18          Q.     Right. But you acknowledged earlier that  
19       the Duke site is more complex and larger than most  
20       sites you've dealt with. And the size and complexity  
21       of the site could contribute to the basis for needing  
22       a variance, correct?

23          A.     It may or may not. If it's still  
24       practicable -- regardless of the characteristics if  
25       it's still practicable to get the material out, it

1 would be hard to make a demonstration of  
2 impracticability.

3 Q. Are monitoring wells being used right now  
4 at the East End site?

5 A. Well, there are monitoring wells at the  
6 East End site.

7 Q. Do you know when those were installed?

8 A. Not off the top of my head.

9 Q. Do you know how many there are?

10 A. Not off the top of my head.

11 Q. What about the West End site, would your  
12 answers be the same?

13 A. I know there are monitoring wells there.  
14 I can't give you an exact number.

15 Q. Do you know if the monitoring wells at  
16 the East End site go beyond the property boundaries  
17 of just the original three-parcel East End site?

18 A. I believe there are wells beyond that,  
19 like we discussed.

20 Q. Okay. So that would be on the property  
21 that was purchased on the western end of the East End  
22 parcel.

23 Now, in your testimony and I think in  
24 your oral testimony you've indicated that an NFA  
25 letter cannot be issued solely based on

1 implementation of institutional or engineering  
2 controls, correct?

3 A. At these sites.

4 Q. At these sites.

5 A. Yeah.

6 Q. Has anybody in this case suggested that  
7 engineering controls or institutional controls alone  
8 would be sufficient to get an NFA letter?

9 A. No. I don't believe so.

10 Q. One of the controls that could be used to  
11 help meet the VAP rules would be a drainage system at  
12 the East End site, correct?

13 A. I don't know what that means, "a drainage  
14 system." Surface water drainage?

15 Q. Surface water drainage system, would that  
16 be one way of helping to meet the VAP requirements at  
17 the East End site along with other remediation  
18 techniques?

19 A. I suppose it could be a small portion of  
20 a remedy, but I don't see how that in itself would  
21 make much of a difference.

22 Q. Under the VAP rules does an institutional  
23 control act to push out the compliance point?

24 A. Push out the compliance point.

25 Q. To extend it.

1           A.    Extend the compliance point.  Extend the  
2           compliance point.  I'm not sure I understand your  
3           question.

4           Q.    Okay.

5           A.    Compliance points are compliance points.

6           Q.    Let me see if I can explain that.

7           A.    Yeah.

8           Q.    The groundwater standards talk about the  
9           property boundaries.  If you institute institutional  
10          controls, are you still at the property boundaries,  
11          or with institutional controls do you have to go  
12          beyond the property boundaries?

13          A.    Institutional controls can be at the  
14          property boundary, or they can be further from the  
15          property boundary if neighboring property owners  
16          agree.

17          Q.    Now, in this instance because Duke owns  
18          the property to the west of the East End parcel, they  
19          wouldn't need anybody else's agreement to institute  
20          groundwater control, correct?

21                   I'm sorry, to institute institutional  
22          controls.

23          A.    On the portions that they own?

24          Q.    Yes.

25          A.    They would not need anybody's permission

1 to do that.

2 MR. SERIO: Just a minute, your Honor. I  
3 might be done.

4 EXAMINER STENMAN: Okay.

5 MR. SERIO: Could we get 5 minutes so I  
6 can converse with co-counsel?

7 EXAMINER STENMAN: Please try to be  
8 brief.

9 MR. SERIO: Yes.

10 (Discussion off the record.)

11 Q. I just have a couple more questions.

12 Is there a definition anywhere in the VAP  
13 rules to the extent practicable?

14 A. I don't believe there is in the VAP  
15 rules. There is a definition in the EPA rules, Ohio  
16 EPA rules I've seen, but not specifically in the VAP  
17 rules.

18 Q. Okay. Now, you had indicated that for  
19 free product if removal can be done and you generally  
20 need to do it, so if you determine that it was going  
21 to cost another 100 or 200 million dollars to remove  
22 the free product, at some point does cost enter into  
23 that equation as more than just a secondary factor?

24 A. Well, I think the primary factors are,  
25 again, meeting all applicable standards. If you want

1 a no further action letter, you need to meet all  
2 applicable standards. And the protection of human  
3 health and the environment, that would probably be my  
4 first, actually, and all applicable standards in  
5 compliance with the rules would be second. Cost  
6 would come in. It obviously is a consideration  
7 throughout the process on how you would remediate the  
8 free product.

9 Q. Other than the definition in the EPA  
10 rules, you don't have a definition for mitigated to  
11 the extent practicable, do you, one that you use?

12 A. I do not because it's so site specific.  
13 Even the EPA has left it open as you indicated in the  
14 VAP rules. I have to make that demonstration to the  
15 EPA and that demonstration is site specific. So  
16 they've left it -- they have left it open to be site  
17 specific, but they've already not defined it so it  
18 could be site specific.

19 Q. Have you done any testing to date to  
20 determine if there's free product at the East End  
21 site?

22 A. We've seen free product at the East End  
23 site.

24 Q. You've seen it visually in the soil,  
25 correct?



1           A.    And in wells.

2           Q.    Have you done any specific testing for  
3    it?

4           A.    We did field testing which included  
5    mon -- lowering a probe down the well to determine  
6    the thickness of the free product in the well.

7           Q.    Now, you indicated, I think, that surface  
8    water testing has not yet begun, correct?

9           A.    No, I did not. I indicated that we don't  
10   know if surface water testing is needed. Your  
11   question presumes that we made that determination.

12          Q.    What specifically is required in order to  
13   know if you need to do surface water testing?

14          A.    We need to evaluate groundwater to  
15   determine if groundwater is impacting or has the  
16   potential to impact surface water.

17          Q.    So you have to do the groundwater before  
18   you do the surface water.

19          A.    Correct.

20                MR. SERIO: That's all I have, Mr. Fiore.  
21   Thank you very much.

22                THE WITNESS: Thank you.

23                MR. SERIO: A lot less than four and a  
24   half hours, right?

25                EXAMINER STENMAN: Thank you.

1 Ms. Bojko.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Mohler:

5 Q. I have just a few questions for you,  
6 Mr. Fiore.

7 A. I can't hear, I'm sorry.

8 Q. I have just a few questions.

9 You stated previously that you were the  
10 CP that was hired to remediate and investigate the  
11 East End site, correct?

12 A. Incorrect.

13 Q. You're not the CP that investigates or  
14 remediates the East End site?

15 A. I don't remediate. The CP's job is to  
16 determine if all applicable standards are met. I can  
17 support Duke in determining if all applicable  
18 standards are met based on remediation and what  
19 applicable standards need to be met based on  
20 investigation.

21 Q. But you are the CP that was hired to do  
22 that for the East End.

23 A. My company was hired.

24 Q. And then your company selected you to  
25 oversee it.

1           A.    I was designated by my company as the CP,  
2           correct.

3           Q.    So your personal knowledge of the  
4           remediation is limited to the East End site.

5           A.    I have personal knowledge of the West End  
6           site based on documents I reviewed.

7           Q.    So you haven't visited the West End site?

8           A.    I visited the West End site but not  
9           during remediation.

10          Q.    You have no responsibility as a CP for  
11          West End site.

12          A.    That is correct.

13          Q.    That's correct, okay.

14                And it was Duke, not the state, that  
15          asked you to have the CP responsibilities over the  
16          East End site, correct?

17          A.    Right. So the state never designates a  
18          CP.

19          Q.    Okay. So you're an agent of the state,  
20          but a company always hires you to have the CP  
21          responsibilities over a site.

22          A.    A company, property owner, remediating  
23          party that wishes to proceed through the VAP needs a  
24          CP. The CP is hired in that case, correct.

25          Q.    Okay. And it was also Duke, not the

1 state, that hired you to provide testimony here  
2 today.

3 A. Correct.

4 Q. And are you compensated for the  
5 testimony?

6 A. I am.

7 Q. By whom?

8 A. By Duke.

9 Q. Is there compensation for your testimony  
10 in addition to the CP fees that you are provided?

11 A. My compensation is on an hourly rate as a  
12 CP, and I'm bound by the standards of conduct by the  
13 CP -- for CP in both instances.

14 Q. So the answer is "yes," you are receiving  
15 additional money for participating in this hearing?

16 A. Correct. My -- I am paid on an hourly  
17 basis, so the hours that I am here I am being paid  
18 for, correct.

19 Q. The majority of your written testimony  
20 describes generally the VAP requirements and CP  
21 responsibilities, correct?

22 A. I don't know percentage, but I do discuss  
23 that in here.

24 Q. Okay. And you had stated previously that  
25 Duke has the ultimate decision regarding which

1 remediation techniques to follow, correct?

2 A. I stated the VAP does not prescribe  
3 remediation. They only prescribe that the  
4 remediation meets all applicable standards so the  
5 volunteer can make a selection in consultation with  
6 their expert. That's typically done.

7 Q. So yesterday you said you have a  
8 collaborative effort with Duke and discuss the  
9 standards, and after you have a discussion, you come  
10 up with the techniques that are going to be used; is  
11 that correct?

12 A. No, that is incorrect.

13 Q. So Duke comes up with the ultimate  
14 processes that would be used for remediation.

15 A. That is incorrect.

16 Q. Duke does not come up with the ultimate?

17 A. I think I testified yesterday it's a  
18 collaborative process, and various team members may  
19 come up with the processes used. My part in that as  
20 a CP is to provide support on whether those  
21 processes, whichever they are, would help us toward  
22 the end goal of meeting all applicable standards. We  
23 have other professionals involved on Duke's side  
24 on -- there are other experts that would help define  
25 technologies.

1           Q.    But Duke has the final say in what  
2 processes are ultimately used?

3           A.    That is correct, yeah.  Duke goes through  
4 a process in which competitive bids are obtained and  
5 different alternative remedial technologies may be  
6 evaluated to provide the lowest cost and best option  
7 to meet all applicable standards.

8           Q.    So you have input on what actions to  
9 take, but Duke still has the final decision what  
10 actions they will actually take?

11          A.    I provide support, yes.

12          Q.    And can Duke decide not to follow the VAP  
13 standards for remediation?

14          A.    VAP is a voluntary action program, so if  
15 their goal -- the goal in the voluntary action  
16 program is to obtain a no further action letter to  
17 meet all applicable standards.  Duke does not have to  
18 follow the voluntary action program.  It is  
19 voluntary.  It's not compulsory.

20          Q.    And what if Duke decides not to follow  
21 the VAP standards?  Do you have any ramifications for  
22 that?

23          A.    They can -- they can decide to remediate  
24 far above the VAP standards or meet all -- they can  
25 decide to meet all applicable standards and not seek

1 a no further action letter. There is various ways  
2 they can decide to opt out of the program. Most of  
3 them -- in my opinion Duke is doing what is needed to  
4 protect human health and the environment and to move  
5 toward meeting all applicable standards and comply  
6 with all rules. So if they opt out of the program at  
7 some point, that would be the determination that they  
8 would make.

9 Q. So if they don't meet all applicable  
10 standards, they just don't get an NFA letter; is that  
11 correct?

12 A. I cannot provide a -- a CP cannot provide  
13 a no further action letter if a site does not meet  
14 all applicable standards.

15 Q. So the answer is, "yes," Duke can choose  
16 not to meet all applicable standards and not seek an  
17 NFA letter.

18 A. They can choose -- that is correct, they  
19 can choose -- because it's a voluntary program they  
20 can choose not to meet all applicable standards.  
21 They can also choose to meet all applicable standards  
22 and not get an NFA as well.

23 Q. And they can also choose to meet all  
24 applicable standards but in a different manner than  
25 what you recommend to them.

1           A.    Again, I don't recommend remedies. I  
2    just provide support on whether a remedy would meet  
3    the standard. The VAP does not specify remedies.  
4    That's the flexibility that allows Duke to go out to  
5    bid and to seek the most cost effective improvement  
6    on remedial technology out there.

7           They seek those technologies from the  
8    best companies in the business doing the type of work  
9    that is done at the site and that process allows them  
10   the flexibility to do that. The other, you know,  
11   there are other remediation laws in other states, I  
12   understand, that are more prescriptive, but the VAP  
13   doesn't have any prescription to that.

14          Q.    Okay. And to the best of your knowledge,  
15   there is no current formal order from any state or  
16   federal agency requiring Duke to clean up these  
17   sites, correct?

18          A.    That is correct.

19                MS. MOHLER: Okay. Just one moment.

20                I think that's all. Thanks.

21                EXAMINER STENMAN: Thank you.

22                Mr. Hart?

23                MR. HART: No questions.

24                EXAMINER STENMAN: Mr. Parram?

25                MR. PARRAM: No questions, your Honor.



1 EXAMINER STENMAN: Redirect?

2 MR. McMURRAY: Just got a few things.

3 We'll move forward now.

4 EXAMINER STENMAN: Okay.

5 MR. McMURRAY: Keep this moving.

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. McMurray:

9 Q. Okay. Mr. Fiore, what I want to do is  
10 pick up on a few things that were covered in your  
11 testimony yesterday and this morning. First item I  
12 want to talk about is there was some questioning from  
13 Mr. Serio concerning Mr. Campbell and VAP  
14 qualifications and so on. So can you turn to pages  
15 9 -- page 9 of your testimony.

16 A. Got it.

17 Q. And the question that begins at the  
18 bottom of page 9 and continues on to page 10, that  
19 discusses the requirements to become a VAP certified  
20 professional, correct?

21 A. Correct.

22 Q. Okay. And I think when Mr. Serio was  
23 asking you questions about what you needed to be a  
24 certified professional covered some but not all of  
25 the requirements, correct?

1           A.    That is correct.

2           Q.    Okay.  And so let's just review what  
3   is -- what's the first item that needs to be met?

4           A.    One needs to hold a bachelor's degree, at  
5   a minimum, from an accredited school.

6           Q.    Okay.  So --

7           A.    Appropriate discipline.

8           Q.    So that's an objective standard.

9           A.    Correct.

10          Q.    Okay.  What's the next item?

11          A.    Must have eight years of professional  
12   experience including three years as a supervisor or  
13   project manager related to cleanup work.

14          Q.    Okay.  Is that an objective standard?

15          A.    Yeah.  You either have that or you don't.

16          Q.    Okay.  What's the next item?

17          A.    Possess good moral character.

18          Q.    Who makes that determination?

19          A.    I believe the EPA does based on some  
20   questions asked in the application.

21          Q.    Is there an extensive application that  
22   gets completed as part of becoming a certified  
23   professional?

24          A.    My applications to be recertified every  
25   year are on the order of 15 to 100 pages.

1           Q.    Okay.  And do you know what Ohio EPA does  
2           in order to make the determination if you possess  
3           good morale character?

4           A.    I think they request references as well  
5           as ask questions about people's ethical background  
6           and background in maybe disciplines that they might  
7           have had in other -- discipline that might have been  
8           levied against them in other states for professional  
9           practices.

10          Q.    Okay.  And part of Mr. Serio's  
11          questioning related to not your opinion concerning  
12          whether Mr. Campbell would meet this criteria or not  
13          but he asked you questions regarding whether in your  
14          opinion Mr. Campbell in his conduct as a professional  
15          really would meet the standards of conduct applicable  
16          to a CP, correct?

17               MR. SERIO:  Objection.  What I asked was  
18          if he was aware of anything that Mr. Campbell had  
19          done that would disqualify him.  I didn't ask him to  
20          evaluate it the way EPA did or would.

21               EXAMINER STENMAN:  He can answer and he  
22          can clarify.

23          A.    I believe that's correct.

24          Q.    Well, let -- we'll pick that up in just a  
25          minute.

1                   The -- you indicated that part of  
2                   possessing good moral character requires references.

3                   A.     Yes.

4                   Q.     If Mr. Campbell asked you for a  
5                   reference, would you -- do you feel you would be in a  
6                   position to provide that?

7                   A.     I don't believe I know Mr. Campbell well  
8                   enough to provide that reference, and conversely, I  
9                   don't think he knows me well enough where he could  
10                  provide me that reference either.

11                  Q.     Okay. What's the next item?

12                  A.     Possess the professional competence and  
13                  knowledge to perform the tasks required of a  
14                  certified professional. The references would also go  
15                  toward that.

16                  Q.     Okay. Is that an objective or subjective  
17                  standard?

18                  A.     That's subjective.

19                  Q.     Okay. Who makes that determination?

20                  A.     The Ohio EPA makes that determination.

21                  Q.     Okay. And then what's the final item?

22                  A.     The initial training class.

23                  Q.     Okay. And is that objective or  
24                  subjective?

25                  A.     It's -- it's very objective. You either

1 take it or you don't.

2 Q. Okay. So that's the criteria that needs  
3 to be met to be initially certified as a professional  
4 under the VAP, correct?

5 A. Correct.

6 Q. Okay. And then what do you need to do in  
7 order to maintain that certification?

8 A. You need to have continuing education.  
9 You need to provide a renewal application. Moral  
10 character must not have changed, meaning discipline  
11 in other states is -- is looked at, is reviewed as a  
12 criteria, as well as discipline competence in the VAP  
13 as you've done in the last year.

14 So what I mean by that is the performance  
15 of the certified professional in the last year in the  
16 eyes of the Ohio EPA. If you've had a number of NFAs  
17 revoked or your certification suspended or revoked,  
18 certainly that would play into whether they would  
19 recertify you for the next year.

20 Q. And does Ohio EPA put on various training  
21 programs that certified professionals attend in order  
22 to remain up to date on VAP requirements?

23 A. They do.

24 Q. Can you describe some of those programs?

25 A. Certainly. They have an annual meeting,

1 usually October, where the agency puts together a  
2 presentation and invites certified professionals to  
3 speak. And we get to talk about unique gray area  
4 issues and other issues that we've dealt with over  
5 the year on attempting to take a site through the  
6 voluntary action program to a no further action  
7 status.

8 In addition, they have four quarterly  
9 coffees, they call them. I don't know why it's  
10 "coffees." It's noon to, I think it should to be 10  
11 to 2 and we would have coffee, but now it's noon to  
12 4, but the name stuck.

13 In those sessions they will also invite  
14 certified professionals to talk and because they are  
15 always looking for certified professionals to talk,  
16 the topics covered can be quite interesting.

17 Q. And so is it true these programs that you  
18 learn much of the nuance and intricacies of the VAP?

19 A. It's through some of these programs.  
20 Other ways you learn the nuances and intricacies is  
21 by practicing in the VAP and actually failing or  
22 learning as you go or obtaining technical assistance  
23 from the agency.

24 So there is a number of ways, but this is  
25 certainly a good way to learn from others. It's

1 really a pure networking process where you really do  
2 learn a lot from others.

3 Q. Okay. And how long have you been a  
4 certified professional?

5 A. Since 1996.

6 Q. Okay. Let's turn to page 7 of your  
7 testimony. And I believe this is the section that  
8 Mr. Serio was asking you about, whether in your  
9 opinion Mr. Campbell would meet the standards of  
10 conduct of a certified professional.

11 A. Correct.

12 Q. So that is your recollection he asked you  
13 questions on this section.

14 A. Yes, that's my recollection he did.

15 Q. And if we look at the first item that you  
16 list here, it says the "CP must act with care and  
17 diligence and fully apply the CP's knowledge and  
18 skills at the time professional services are  
19 performed."

20 A. Correct.

21 Q. Okay. And do you feel you know  
22 Mr. Campbell well enough to be able to opine on  
23 whether he would meet those standards or not?

24 A. As I said earlier, I don't know --

25 Q. Okay.

1           A.    -- Mr. Campbell that well.

2           Q.    How about the remainder of this -- the  
3 standards of conduct applicable to certified  
4 professionals?

5           A.    Although I've never seen him act in a way  
6 that would be contra to these, I don't know him well  
7 enough to say he would do these.

8           Q.    Okay. And, again, these standards are  
9 what the state imposes on persons who have applied  
10 for and become certified professionals and, thus,  
11 subject to regulation by Ohio EPA, correct?

12          A.    Correct. These standards apply to people  
13 who have agreed to be a certified professional and  
14 agreed to make themselves regulated by the state.

15          Q.    Okay. Thank you. The -- there was some  
16 discussion yesterday concerning whether a report  
17 existed concerning Duke's evaluation of remedial  
18 alternatives at the East End property. Do you  
19 remember that?

20          A.    You mean like a feasibility study? Is  
21 that what we are talking about? It sounds like we  
22 are talking about that.

23          Q.    Well, let's first start with I believe  
24 your testimony was you don't recall seeing a report  
25 that specifically evaluated the different remedial



1 alternatives, correct?

2 A. Correct, that's correct.

3 Q. Okay. And are you aware of situations  
4 where parties do prepare formal evaluations of  
5 different remedial alternatives?

6 A. Certainly I believe that's a requirement  
7 in CERCLA and is a part of the work I have done under  
8 CERCLA.

9 Q. Okay. And what is that document called  
10 in CERCLA?

11 A. That's the feasibility study.

12 Q. And what is a feasibility study?

13 A. It's -- it's an exhaustive evaluation of  
14 potential remedial alternatives and -- versus a said  
15 set of criteria and those criteria include  
16 protectiveness and long- and short-term  
17 effectiveness.

18 There is cost, protection of public  
19 health, welfare, and safety, and a number of other  
20 criteria including implementability, and I think I  
21 have in my testimony here but there's a number of  
22 criteria -- that those -- that document compares  
23 those standards and then lists them comparatively to  
24 one another.

25 The document typically also -- not

1 "typically," often also includes bench scale studies  
2 and laboratory testing and other studies needed to  
3 determine if potential remedy would actually be  
4 effective or implemented.

5 Q. The -- you indicate a feasibility study  
6 is required under CERCLA.

7 A. Correct.

8 Q. And do you know what CERCLA is?

9 A. It's a set of rules that governs historic  
10 and current environmental applicability.

11 Q. Is it a federal statute?

12 A. It is a federal statute.

13 Q. Is this work being done pursuant to  
14 CERCLA?

15 A. It is not.

16 Q. Okay.

17 A. It is being done pursuant to VAP.

18 Q. Are feasibility studies expensive to  
19 prepare?

20 A. They can be. I've worked on some that  
21 have -- when taken as a whole, including bench scale  
22 studies and laboratory testing and other things, I've  
23 worked on feasibility studies that may have ranged up  
24 to half a million dollars.

25 Q. Okay. Are feasibility studies required

1 under the VAP?

2 A. No, they are not.

3 Q. Okay. Notwithstanding that, based on  
4 your involvement at the East End site and your review  
5 of documents, do you believe that Duke did evaluate  
6 different remedial alternatives?

7 A. Yes, they did, and they came up with --  
8 although I wasn't involved in them, my understanding  
9 is they did, I should say, and they came up with a  
10 set of remedies that are pretty obvious and  
11 presumptive in removing this -- this mobile DNAPL  
12 tar, and I'm in concurrence with the other CPs who  
13 have assisted Duke in coming up with those remedies  
14 that were prior to my work on the project.

15 Q. The -- so you indicated that based on  
16 your review and involvement, you would conclude that  
17 Duke did evaluate different remedial alternatives.  
18 The two alternatives that were selected at East End  
19 were excavation and in situ solidification.

20 A. Correct.

21 Q. Were there other more expensive  
22 alternatives that Duke could have elected?

23 A. Certainly. They could have removed all  
24 the material, all the impacted material of the entire  
25 site down to bedrock which would be 100 feet

1 excavation. That would be incredibly expensive.  
2 They could -- they could have put in a containment  
3 structure around that which would have ultimately  
4 failed potentially because of the Ohio River. We  
5 saw -- I think we saw how the Ohio River actually  
6 floods that area and water can get behind a  
7 containment structure and cause a blowout which would  
8 cause a failure of a remedy indicating that another  
9 remedy would have to be put in on top of that which  
10 would be redoing work, which is really expensive if  
11 you are redoing something.

12 There are a lot more. I can go into  
13 detail a dozen or plus more remedial techniques that  
14 are way incredibly more expensive than this.

15 Q. I think you referred to excavation and in  
16 situ solidification as presumptive remedies.

17 A. They are presumptive in that they remove  
18 the DNAPL. They are the lowest cost for the removal  
19 of those materials. They get rid of the source  
20 material. They are so presumptive, in fact, that the  
21 Ohio EPA allows landfills to provide a discount if  
22 you are working under the VAP and you dispose of  
23 material in a landfill, so excavation and disposal is  
24 a presumptive remedy under the VAP.

25 Q. So there was a financial benefit to

1 excavation and disposing of this material under the  
2 VAP.

3 A. Yeah. Actually it's specific to the VAP.  
4 If you are doing a voluntary action program or  
5 remediation in Ohio, the only time you can get this  
6 discount on the disposal cost is if you are doing it  
7 under the VAP, so if you do an excavation and  
8 disposal under CERCLA or under not the VAP so you are  
9 just doing it at risk or on your own, you don't get  
10 this cost increase.

11 Q. Okay. There's also been some discussion  
12 concerning engineering and institutional controls.

13 A. Yes.

14 Q. And I believe your testimony is that  
15 engineering and institutional controls would not in  
16 and of themselves meet VAP applicable standards,  
17 correct?

18 A. That is correct.

19 Q. Okay. Is a sample of an engineering  
20 control capping a site?

21 A. Yes, it is. That is the classic example  
22 of an engineering control, and the Ohio EPA allows  
23 capping of sites, but in and of itself as a cap and  
24 nothing else, the Ohio EPA euphemistically refers to  
25 paving of a site and waving -- or pave and wave, and

1       so it's not the best alternative as a single  
2       alternative.

3               Q.     So what does "pave and wave" mean?

4               A.     Euphemistically I have heard people from  
5       the agency refer to eng -- or caps like such as an  
6       asphalt cap as -- a responsible party or remediating  
7       party would put pavement over a contaminated area  
8       essentially hiding it and preventing direct contact,  
9       I suppose, and then they would wave at the site as  
10      they drove away.

11              It's also known as pave and pray, which  
12      you pave over it, you pray that nobody gets impacted,  
13      and that nobody finds out that there are any issues  
14      remaining. Typically that's why it's not done under  
15      the VAP, because you have the CP who needs to stamp  
16      these documents and agree under penalty of Ohio rule  
17      that all applicable standards are met.

18              Q.     So that type of approach would not meet  
19      VAP applicable standards in your opinion.

20              A.     In certain instances it may. In  
21      instances where the cap could actually cause a  
22      problem, you know, unforeseen problems or not provide  
23      a mechanism to meet all applicable standards it would  
24      not, and that's the case of the Duke sites, it would  
25      not meet all applicable standards.

1           Q.    Have you been involved in any remediation  
2 projects where that was the approach that was  
3 followed?

4           A.    I have. I have. We had a site with some  
5 inorganic compound contamination, meaning metals.  
6 There was no impact to groundwater. There was no  
7 threat of migration of the metals. The metals were  
8 very mobile, so a cap was a sufficient method to  
9 achieve all applicable standards.

10          Q.    And have you been involved in any  
11 situations where that remedial approach ultimately  
12 was not successful?

13          A.    Yes, I have. I have been involved in a  
14 couple of sites. One site a cap was placed on this  
15 liquid material similar to the tar. After a time,  
16 the liquid material migrated beyond where it had been  
17 into a creek which ultimately impacted the Ohio  
18 River.

19                The cleanup on that -- if the cleanup  
20 were done correctly the first time, I think a  
21 significant savings would have been made because the  
22 creek had to be scaveled, meaning we had to go into  
23 the creek and remove the bedrock at the bottom of the  
24 creek because it was so contaminated with this tarry  
25 material it actually caused more harm by

1       inappropriately installing that cap.

2               Q.     So did that remediation wind up costing  
3       more or less than if that approach had been followed  
4       at the beginning?

5               A.     Significantly more, yeah.

6               Q.     Okay. Can you turn to page 20 of your  
7       testimony.

8               A.     Uh-huh.

9               Q.     On lines 15 through 17, you indicate that  
10       "Based on the documents that I have reviewed, the  
11       investigation and remediation work conducted at the  
12       East End MGP appears to have been prudent and  
13       reasonable, and in conformance with VAP regulations."

14               Mr. Serio asked you some questions  
15       yesterday about prudence and whether you were  
16       expressing an opinion about prudence from a PUCO  
17       ratemaking perspective, and your answer I think was  
18       "no"; is that correct?

19               A.     Yeah, because I am unaware of that.

20               Q.     Okay. As you use the word "prudent" in  
21       your answer, what is your definition of "prudent"?

22               A.     Well, prudent is what -- a decision a  
23       reasonable person may make given the circumstances  
24       and facts known at the time that decision is made.  
25       It's a simple definition.



1           Q.    And in your opinion did Duke consider  
2           cost in making the determinations concerning what  
3           work needed to be done at the site?

4           A.    Yes, they did.

5           Q.    Okay.  And what's the basis for that  
6           opinion?

7           A.    Duke competitive -- competitively bids  
8           their work at these sites at various stages during  
9           the completion of the work.  As a part of those bids,  
10          they request, you know, it's lowest bid, they select  
11          qualified contractors and they take typically the  
12          lowest bid, but there are, you know -- I don't -- I  
13          don't know the mechanisms behind that.

14                They make not take the lowest bid if the  
15          bid is unresponsive or the people who are working on  
16          the -- the company that provided that bid is unable  
17          to do the work, but they bid out the project, they  
18          ask the bidders, who are typically national  
19          engineering companies who have done this all over the  
20          place, if they have any ideas better than those  
21          provided in the bid documents.

22                So they are always seeking cost advantage  
23          and additional input as a part of the bid, so they  
24          are getting actually free consulting during the bid  
25          to try to get a better alternative.

1           Q.    And so was that part of the bid that  
2           Haley & Aldrich submitted on the East End site?

3           A.    I know there were some alternatives in  
4           the bid, yes. I do not know what.

5           Q.    And do you work with other businesses  
6           that are involved in investigating and remediating  
7           contaminated properties?

8           A.    I work with many others, yes.

9           Q.    Okay. And in your opinion how -- how  
10          does Duke approach these matters as compared to your  
11          other clients?

12          A.    The majority of my other clients are not  
13          utilities. They are, you know, standard businesses.  
14          And Duke actually approaches the -- their  
15          environmental investigation/remediation process with  
16          a much more diligent, in my opinion, cost.

17                For instance, if I worked for -- some of  
18          my clients if I win the first part of the project, I  
19          have the project until completion, so there is no  
20          other bidding that happens. That doesn't happen with  
21          Duke. They have checks throughout their process  
22          where they rebid sites to see if there are better  
23          ideas or cheaper costs or anything that they can --  
24          can gain by that procurement process, that rebidding  
25          process.

1 I think that's why you see sites with a  
2 couple of CPs on them because they have rebid the  
3 site as it goes along during the process to try to  
4 take advantage of maybe where some contractors might  
5 have a better, more efficient and cost effective and  
6 less expensive investigation. Others may have better  
7 opportunities to provide cost savings in remediation,  
8 so they do a very thorough job.

9 Q. Okay. Thank you. Just a couple other  
10 questions.

11 You're a VAP certified professional in  
12 Ohio. Are you aware, are there other states that  
13 have programs similar to VAP?

14 A. There are others. They are not exactly  
15 the same, of course. But I think Massachusetts has  
16 one and Connecticut, New Jersey now has one.

17 Q. Does Pennsylvania have one?

18 A. They have -- they do not have one similar  
19 to this. Pennsylvania requires a professional  
20 geologist or engineer but it doesn't act like an  
21 agent of a state where Massachusetts, Connecticut,  
22 and New Jersey do.

23 Q. Okay. How about does Michigan have a  
24 comparable program?

25 A. It does not.

1 Q. Indiana?

2 A. It has a Brownfield but -- no, neither  
3 does Indiana.

4 Q. Do you do work in any of these other  
5 states?

6 A. Yes, I do.

7 Q. And when you are doing work in these  
8 states, what do you do to either become familiar with  
9 the state program or involve people who are?

10 A. In -- in some of those states, for  
11 instance, Michigan and Indiana I think we were  
12 discussing, we have offices so I usually bring as our  
13 project team somebody from those local offices that  
14 has that local knowledge similar to my knowledge with  
15 the VAP.

16 I think it's important to have boots on  
17 the ground, people who know the regulators and have  
18 firsthand knowledge and working knowledge of the  
19 rules. So for people in Indiana and Michigan, we  
20 bring those people in the team. For people in  
21 Pennsylvania, we've subcontracted others -- other  
22 firms to assist us with that. We have contacts with  
23 the regulators who know the rules a little bit  
24 better.

25 I don't presume to jump out and just do

1 very complex work without somebody who knows the  
2 rules.

3 MR. McMURRAY: Okay. Thank you.

4 May I have just a minute?

5 EXAMINER STENMAN: You may.

6 MR. McMURRAY: No further questions.

7 EXAMINER STENMAN: Thank you.

8 Mr. Serio.

9 MR. SERIO: Thank you, your Honor.

10 - - -

11 RECROSS-EXAMINATION

12 By Mr. Serio:

13 Q. A couple of follow-up things, Mr. Fiore.  
14 With the certification to be a CP, you said there is  
15 initial training and the ongoing training.

16 A. Correct.

17 Q. I think we agreed the initial training  
18 was a one-day eight-hour course, correct?

19 A. Yes, it is.

20 Q. The ongoing training, what is the  
21 requirement? Is it a multiple-day course, a one-day  
22 course, how many hours?

23 A. That's recently changed. Previously it  
24 had been 24 hours of training over a year. And it's  
25 recently changed to 12 hours more focused training on

1 the VAP. So you can attend a number of courses that  
2 are preapproved by the VAP to obtain information that  
3 they think is suitable for our practice under the  
4 VAP.

5 Q. Would the annual meeting and the  
6 quarterly coffees constitute training to meet those  
7 12 hours?

8 A. It could. It could be used in that 12  
9 hours.

10 Q. Okay. The annual meeting would have  
11 specific courses not just attending but you would  
12 have to go to a specific course at the annual  
13 meeting, correct?

14 A. The annual meeting has a program of  
15 events and all the CPs are in the same room and we  
16 discuss those program of events. There's not like  
17 courses like college or courses where you can choose.

18 Q. Now, the programs at the annual meeting,  
19 is each program designed to meet some of the hourly  
20 requirements? For example, if you attend the annual  
21 meeting for 8 hours, the meeting lasts 8 hours, does  
22 that give you eight hours of credit toward your 12?

23 A. That is the intention of the VAP, yes,  
24 and they have preapproved because they -- they  
25 prepare the documents and -- or they prepare the --

1       what is the right word, the schedule and they  
2       prescreen all the CP -- all the presentations given  
3       by CPs. It is preapproved that that would be worth  
4       eight hours if you were there the whole time.

5               Q.     And then the quarterly coffees, are those  
6       preapproved for hours to meet your 12 hours?

7               A.     Just as I said, because the EPA provides  
8       that content, they preapprove themselves for I  
9       believe it's four hours for each.

10              Q.     Now, you indicated that your application  
11       took 15 a to 100 pages. Was that your initial  
12       application or the annual renewal?

13              A.     That was the more annual renewals.

14              Q.     And of the 15 to 100 pages, how much of  
15       that is things you actually fill out versus pages  
16       that you attach documents to?

17              A.     Yeah, less than 10. I'm not sure of the  
18       total number but certainly it's less than 10.

19              Q.     The majority you are attaching other  
20       documents that show that you meet whatever they are  
21       asking for. For example, if you attended courses,  
22       you would attach documentation you attended the  
23       courses.

24              A.     Correct. And you need to attach  
25       sufficient documentation where they believe that

1       you've attended and participated in that course. For  
2       instance, also if I prepare a course or give a  
3       course, I get hours for those, so I would have to  
4       provide all the slides and materials, so it has to be  
5       enough for them to agree that you've done that work.

6               Q.     There's a cost associated with the  
7       applying to be a CP initially, correct?

8               A.     Yes, there is.

9               Q.     \$2,500, I believe?

10              A.     That's -- it's been so long since I've  
11       applied. I think it's -- I know it's \$2,000 for the  
12       recertification. I think it's 2,500 for the initial  
13       certification.

14              Q.     And the recertification, that's \$2,000  
15       annually, correct?

16              A.     Correct.

17              Q.     Plus the time it would take to fill out  
18       the application and get all the documents together  
19       and attend the training courses.

20              A.     Correct.

21              Q.     Now, you indicated -- you were in the  
22       room when Mr. Margolis and Ms. Bednarcik were on the  
23       stand, correct?

24              A.     Yes.

25              Q.     And you heard questions put to them as to



1 whether they saw any documents that compared cost  
2 analysis of different options, correct?

3 A. Correct.

4 Q. And they indicated they were not aware of  
5 any such documents, correct?

6 A. Correct. I believe I indicated the same  
7 thing in my testimony.

8 Q. Now, you indicated that engineering  
9 controls and institutional controls alone are not  
10 sufficient to meet VAP requirements, correct?

11 A. At this site.

12 Q. At this site.

13 A. Yes.

14 Q. Did Dr. Campbell suggest that engineering  
15 controls and institutional controls alone were  
16 sufficient to meet the requirements at this site?

17 A. I think I already answered that, and my  
18 answer was no.

19 Q. You talked about a pave and wave  
20 situation.

21 A. Right.

22 Q. In a circumstance where you waved, put a  
23 cap on it, wouldn't that generally involve continued  
24 monitoring of the site to determine if the site  
25 warranted further action in the future?

1           A.     Under the VAP if you go through the whole  
2 process and get a no further action letter, it would  
3 include that, correct. But in other instances where  
4 you are just paving over it, maybe not looking to  
5 achieve a no further action under the VAP or not  
6 participating in the VAP, it may not.

7           Q.     You indicated that the majority of your  
8 clients are not utility clients.

9           A.     Correct.

10          Q.     How many of those nonutility clients have  
11 you worked on MGP sites for?

12          A.     One.

13          Q.     So the majority of your experience with  
14 MGP sites was utility related, correct?

15          A.     That is correct.

16          Q.     Now, you indicated earlier also that  
17 sometimes a client will stop short of an NFA letter  
18 because going that last step is very costly, correct?

19          A.     Correct.

20          Q.     Is it possible that you could go through  
21 the qualifications to be a CP but determine that  
22 paying the \$2,000 annually and providing all the  
23 certification is too costly and decide not to do  
24 that?

25          A.     I don't -- I'm certain that you could

1 fill out the application, anybody could do that. I'm  
2 not certain if you could meet all the requirements,  
3 because the EPA makes judgment on a number of  
4 requirements that are subjective.

5 Q. Correct. But what I'm saying is you  
6 could have the education, the experience, and if you  
7 haven't committed any felonies or done anything that  
8 would call your moral character into question, you  
9 could make a determination you just don't do enough  
10 work in Ohio to warrant paying those costs and stop  
11 short of applying for that certification, correct?

12 A. You can't -- and the work you do in Ohio  
13 is unrelated to whether or not you need a  
14 certification, if you are going to practice the VAP  
15 in Ohio you need a certification. If you are not  
16 going to practice the VAP, then I guess it doesn't  
17 matter.

18 Q. Now, you talked about Duke reviewing bids  
19 from an RFP.

20 A. Correct.

21 Q. Did you review the bids that Duke got  
22 from any of the RFPs?

23 A. I did not.

24 Q. So you don't know what was in or not in  
25 any of the bids that Duke got for any of the

1 investigation or any remediation work other than the  
2 bid your company made specifically, correct?

3 A. Correct.

4 Q. And I believe you had indicated yesterday  
5 that the feasibility study looked at the options that  
6 were available and didn't necessarily look at all the  
7 other options that would be available, correct?

8 A. I don't recall I discussed feasibility  
9 study yesterday, did I? I don't recall that if I  
10 did.

11 Q. You were never asked to look at any of  
12 the reasonableness of costs associated with the  
13 remediation efforts that are being done at the East  
14 End site, correct?

15 A. My -- my involvement in the evaluation of  
16 the remedy was to provide support on whether or not  
17 certain remedies met all applicable standards. In  
18 our company when we prepared the bids, we looked at  
19 our own costs, but as you indicated, we did not look  
20 at other costs --

21 Q. So you personally did not look at any of  
22 the costs associated with the remediation efforts  
23 that were being done at the East End site, correct?

24 A. I did not. I looked at the VAP end of  
25 things, which again is related to meeting Ohio

1 applicable standards.

2 Q. Do you know if -- did you or anyone  
3 associated with your company or with Duke look at any  
4 other alternatives to what you ended up doing as far  
5 as the remediation at the East End site?

6 A. Can you read that back to me.

7 Q. Did you or anybody else at your company  
8 or at Duke look at any other alternatives to what you  
9 ended up doing as far as the remediation at the East  
10 End site?

11 A. Yeah. I believe that Tom Plant and  
12 others in our company did look at, as a part of the  
13 proposal process, remediation that was done. I think  
14 we made some good recommendations as well, but I'm  
15 not sure what those are.

16 MR. SERIO: Could I approach, your Honor?

17 EXAMINER STENMAN: You may.

18 MR. SERIO: I did have a copy. I just  
19 forgot.

20 Page 36 of the transcript of the  
21 deposition.

22 Q. (By Mr. Serio) My question was "Do you  
23 know if anybody else either associated with your  
24 company or with Duke looked at other alternatives to  
25 what you ended up doing as far as remediation?"

1                   And your answer in the deposition was I  
2                   believe that would have been prior to your -- to  
3                   our -- your involvement, correct?

4                   A.     Right. I -- that's kind of asking a  
5                   slightly different question. I answered a slightly  
6                   different question so I should answer that question.  
7                   What I answered was whether or not in our proposal  
8                   process we looked at any different alternatives. We  
9                   did. Whether any alternatives were looked at by Duke  
10                  or anybody else when that remedy was selected, not  
11                  the alternatives but when that remedy was selected,  
12                  that was prior to my involvement.

13                  Q.     You indicated that one of the more costly  
14                  options you looked at was potentially going down to  
15                  bedrock, maybe going down 100 feet and removing all  
16                  the soil, correct?

17                  A.     I said a more costly option that could be  
18                  accomplished.

19                  Q.     That could be.

20                  A.     I didn't necessarily look at that, yes.

21                  Q.     Did you look at any analysis that said  
22                  maybe going 10 feet would be sufficient versus going  
23                  20 or 30 or 40 feet?

24                  A.     Well, I didn't look at that but I don't  
25                  believe it would meet all applicable standards.

1           Q.    Was there any cost analysis done saying  
2           if you go to 10 feet, it will cost you this; if you  
3           go to 20 feet, it will cost you this; if you go to  
4           30 feet, it will cost you this?

5           A.    I have not seen any documentation like  
6           that but I don't believe it would meet all applicable  
7           standards. You need to remove the tar.

8           MR. SERIO: That's all I have, your  
9           Honors, thank you.

10          EXAMINER STENMAN: Thank you.

11          Ms. Mohler?

12          MS. MOHLER: Yes.

13                               - - -

14                               RE CROSS-EXAMINATION

15   By Ms. Mohler:

16          Q.    This morning you discussed that there  
17          were alternatives considered to the remediation of  
18          the East and West End sites, correct?

19          A.    My belief is there was -- there were.

20          Q.    You never saw any documentation of those  
21          alternatives?

22          A.    I did not.

23          Q.    And you say you don't provide  
24          documentations to Duke on remediation; is that  
25          correct?

1           A.    What I said is I provide support with  
2 others in our team to determine if specific remedial  
3 alternatives would meet all applicable standards.

4           Q.    In response to a question by Mr. Serio  
5 just a second ago you said you and your firm provide  
6 recommendations to Duke.

7           A.    My firm provided -- I did not. My firm  
8 provided recommendations in a cost proposal.

9           Q.    On the what?

10          A.    In the cost proposal to Duke. After the  
11 remediation scenario was bid out to several bidders,  
12 they asked for if there were any alternatives that  
13 they could do things differently or better and save  
14 money, and I believe we provided alternatives but I'm  
15 not sure what those are. I wasn't involved in the  
16 preparation of those alternatives. I think I've  
17 testified to that.

18          Q.    Have you seen documentation with respect  
19 to the cost of the alternatives or you haven't seen  
20 anything at all?

21          A.    I was not involved in that other than  
22 just to -- you know, just to discuss and provide  
23 support on whether alternatives might meet VAP  
24 standards.

25          Q.    So your belief is that these alternatives



1 is based on your discussion with Duke?

2 A. Can you restate that?

3 Q. You believe that these alternatives were  
4 considered prior to your involvement, correct?

5 A. Yeah, I believe I testified that the  
6 alternatives were -- appear to have been evaluated  
7 definitely prior to my involvement. I was not  
8 involved at that point.

9 Q. And you learned there were these  
10 alternatives from Duke?

11 A. I don't believe I've learned the  
12 alternatives as much as I've learned that they did an  
13 evaluation.

14 Q. And you learned that from Duke.

15 A. Correct.

16 MS. MOHLER: I have nothing further.

17 EXAMINER STENMAN: Thank you.

18 Mr. Hart?

19 MR. HART: No questions.

20 EXAMINER STENMAN: Mr. Parram?

21 MR. PARRAM: No questions.

22 EXAMINER STENMAN: Thank you, Mr. Fiore.

23 I think this would be a good time to take  
24 a 10-minute break.

25 (Recess taken.)

1 EXAMINER STENMAN: All right. Let's go  
2 back on the record.

3 You can call your next witness.

4 MS. WATTS: Gary Hebbeler.

5 - - -

6 GARY J. HEBBELER

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

9 DIRECT EXAMINATION

10 By Ms. Watts:

11 Q. Good morning, Mr. Hebbeler.

12 A. Good morning.

13 Q. Mr. Hebbeler, do you have before you a  
14 document entitled "Second Supplemental Direct  
15 Testimony" and it should be marked Duke Energy Ohio  
16 Exhibit 22C?

17 A. I do.

18 Q. Could you identify that further, please.

19 A. This is "Second Supplemental Direct  
20 Testimony of Gary Hebbeler on behalf of Duke Energy  
21 Ohio."

22 Q. And is that the testimony that you caused  
23 to be prepared for this proceeding?

24 A. I did.

25 Q. And if I were to ask you the questions

1 contained therein, would your responses be the same?

2 A. They would.

3 Q. Do you have any corrections to that  
4 testimony?

5 A. I do not.

6 Q. Are they true to the best of your  
7 knowledge?

8 A. They are.

9 MS. WATTS: Mr. Hebbeler is available for  
10 cross-examination.

11 EXAMINER STENMAN: Thank you.

12 Mr. Berger?

13 MR. BERGER: Thank you.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Berger:

17 Q. Good morning, Mr. Hebbeler.

18 A. Good morning.

19 Q. As you know, I'm Tad Berger from the  
20 Office of the Ohio Consumers' Counsel.

21 EXAMINER STENMAN: Mr. Berger, I am going  
22 to need you to speak up.

23 Q. I previously participated in your  
24 deposition last week, as you'll recall. Just limited  
25 questions for you.

1                   On page -- on page 11 of your testimony,  
2           Mr. Hebbeler, can you turn to that. And down at line  
3           17, approximately, you say that "...remediation  
4           expenses are a current cost of business due to the  
5           Company's current ownership of this property and as a  
6           result of previous MGP utility service provided from  
7           the property"; is that correct?

8                   A.     That's correct.

9                   Q.     You would agree with me, however, that  
10          MGP-related facilities are not currently used at  
11          either of these locations; is that correct?

12                  A.     MGP facilities in the traditional form  
13          that create the hazardous waste, yes.

14                  Q.     No facilities are being used to produce  
15          manufactured gas; is that correct?

16                  A.     No facilities are being used to produce  
17          manufactured gas in the traditional means. However,  
18          at Eastern Avenue, just as a reminder, we do have  
19          that peak shaving propane/air plant in which we  
20          physically mix propane and air together and then we  
21          mix it with natural gas and we supplement the natural  
22          gas mixture.

23                  Q.     And that propane/air plant is not the  
24          source of any of the environmental contamination  
25          that's the subject of the claim in this case for

1 environmental remediation costs; is that correct?

2 A. To the best of my knowledge, that's  
3 correct.

4 Q. And you know that the MGP-related  
5 facilities have not been used for more than 40 years  
6 in both instances; is that correct? I think the  
7 dates were 1928 for the West End plant and 1963 for  
8 the East End plant; is that correct?

9 A. To the best of my knowledge, what was  
10 testified previously, those dates, yes.

11 Q. And you do not know whether ratepayers  
12 paid rates to support the MGP facilities at the time  
13 those MGP facilities were used, do you?

14 A. I don't have personal knowledge of that  
15 but the company would have built infrastructure and  
16 as part of that infrastructure it would have been  
17 used and useful and so they would have produced  
18 natural gas and sold the natural gas, so they would  
19 have recovered those costs somehow.

20 Q. You would agree with me that you deferred  
21 that question when I asked you in the deposition to  
22 Mr. Wathen; is that correct?

23 A. The further question that Mr. Wathen  
24 would -- is the expert on ratemaking and recovery.

25 Q. You would agree you did not answer that

1 question at the deposition when I asked you that  
2 question.

3 A. I don't believe that question -- that  
4 particular question was asked at the deposition.

5 MR. BERGER: Your Honor, if I may  
6 approach to provide copies of the deposition  
7 transcript?

8 EXAMINER STENMAN: You may.

9 Q. Mr. Hebbeler, do you have a copy of the  
10 transcript?

11 A. No, I do not.

12 MS. WATTS: Nor do I.

13 MR. PARRAM: I've got lots of them.

14 EXAMINER STENMAN: Thank you, Mr. Parram.

15 MS. WATTS: Thank you.

16 Q. Mr. Hebbeler, would you turn to page 80.  
17 And at lines 4 through 7, do you see where I asked  
18 you the same question I just asked you?

19 A. I do see that.

20 Q. And did you defer that response to  
21 Mr. Wathen?

22 A. I did in response that he's the expert in  
23 ratemaking.

24 Q. And this is more of a factual question  
25 though, you don't know whether ratepayers paid rates

1 to support those plants or not.

2 A. I do not have personal knowledge of that,  
3 that is correct.

4 Q. Could you speak up, I'm having a little  
5 trouble.

6 A. I do not have personal knowledge. I  
7 didn't review that, that is correct.

8 Q. Okay. And would you agree with me you  
9 don't know whether insurance premiums were paid to  
10 cover the property where those MGP facilities produce  
11 gas; is that correct?

12 A. That is correct.

13 Q. And you deferred that to Mr. Wathen at  
14 the time of your deposition also?

15 A. Mr. Wathen is the expert for ratemaking  
16 and recovery.

17 Q. Would you agree with me because there are  
18 no MGP-related facilities at these plants, there's no  
19 ordinary and recurring costs associated with  
20 operating any MGP-related manufacturing gas  
21 facilities at those locations currently?

22 A. There are facilities from the MGP days.  
23 There are -- there is a structure and there are  
24 pipes, but they didn't manufacture, to the best of my  
25 knowledge, the gas, the manufactured gas.

1           Q.    Would you look down at the bottom of page  
2   80 of your transcript of your deposition where I  
3   asked you that question -- I'm sorry, on page 81, at  
4   line 5. Do you see that question and answer where  
5   you deferred that to Ms. Bednarcik?

6           A.    Yes. And right above that I mentioned  
7   the maintaining the lines that we use today and we  
8   could have transported manufactured gas, and those  
9   would be maintenance costs.

10          Q.    Right, but those facilities are not  
11   currently associated with transporting manufactured  
12   gas; is that correct?

13          A.    That is correct.

14          Q.    Thank you.

15                And the current uses of the property  
16   where those facilities were located is, one, for  
17   sensitive infrastructure; two, for measuring -- for  
18   the measuring station for the propane/air plant; and  
19   three, for the lines to supply the system; is that  
20   correct?

21          A.    Please ask your question again.

22          Q.    Would you agree that the three uses of  
23   the property where the MGP facilities were located  
24   are currently, one, for the sensitive infrastructure;  
25   two, for a measuring station for the propane/air



1 plant; and, three, for the lines you just referred to  
2 that are used to supply the system?

3 MS. WATTS: And, your Honor, I'll object  
4 just for the purpose of asking clarification of what  
5 properties specifically we're talking about.

6 Q. And again, I would say the property --  
7 the land upon which the manufactured gas  
8 facilities -- related gas facilities were located.  
9 Do you understand the question?

10 A. Are you talk -- are we talking about East  
11 End?

12 Q. Yes, I'm talking about the East End.

13 A. Okay. And so please ask your question  
14 again. I didn't understand.

15 Q. With respect is to the East End property  
16 where the manufactured gas facilities were physically  
17 located, would you agree with me that the current  
18 uses of that property are, one, for the sensitive  
19 infrastructure, is that one current use?

20 A. That is correct, that's one current use.

21 Q. A second current use, would you agree,  
22 for that property is for a measuring station for the  
23 propane/air plant?

24 A. That is correct.

25 Q. And a third current use would be for the

1 transmission or distribution lines I think you  
2 earlier referenced that, among other things, move the  
3 propane peaking -- peak shaving gas into the  
4 transmission and distribution system?

5 A. That's correct. There are transmission  
6 lines on I'm going to call it the east -- east  
7 parcel, the East End east parcel, there are sensitive  
8 utility infrastructure on the middle parcel and then  
9 there is the peak shaving plant on the middle parcel.  
10 There are distribution lines on the middle parcel.

11 On the west parcel there are sensitive  
12 utility infrastructure. There is a current vaporizer  
13 and a flaring operation on the west parcel.

14 And then in addition to that, we have the  
15 operations center basically located on the middle  
16 parcel where we park equipment, where the employees  
17 are housed, and where we also have storage for  
18 different types of material.

19 Q. Now, with respect to the uses that you  
20 just identified, none of the MGP-related facilities  
21 that were utilized to manufacture gas in the era  
22 prior to 1960 -- 1963 and before are being used to --  
23 to serve any of those uses; is that correct?

24 A. Again, the distribution lines that would  
25 have come out of the plant, they were used at the

1 time of manufactured gas plants, cast iron that comes  
2 out of the plant in the distribution, and then --  
3 then I would have to defer the structures to  
4 Ms. Bednarcik if it was used in the manufacturing  
5 time, the structures that we housed the operations  
6 in.

7 Q. With respect to those lines that you just  
8 mentioned, have they been replaced since the MGP era  
9 19 --

10 A. To the best of my knowledge, not the  
11 distribution lines that come out of the plant that  
12 are cast iron.

13 Q. Okay. Now, you testified regarding the  
14 area, I think it was 200 feet by 200 feet, that would  
15 be needed on the side of the river to replace the  
16 current transmission lines going across the river; is  
17 that correct?

18 A. That is correct that I testified that if  
19 we chose to replace that river crossing AM2, we are  
20 talking about the East End plant, the East Works  
21 plant, we would need about a 200-by-200 area to set  
22 up a boring operation and we would probably set that  
23 up on the Ohio side and string pipe on the Kentucky  
24 side.

25 Q. Now, you're making this argument for both

1 the East End and the West End locations; is that  
2 correct?

3 A. This is just the East End. Just talking  
4 about the East End.

5 Q. Okay. Is there a similar area needed to  
6 bore the line on the West End location?

7 A. That would be correct. The difference  
8 with the 200-by-200 area we would have to coordinate  
9 that boring operation with the state project, the  
10 bridge project, so it might not just be a 200-by-200  
11 area. It might be a different configuration or some  
12 of the equipment might be away from that entrance  
13 point where the bore rigging sits.

14 Q. So you don't know at this point in time  
15 what would be needed in terms of area in order to  
16 perform that operation; is that what you are saying?

17 A. You need a similar type area, just the  
18 configuration may be different, and it may be moved,  
19 some of that apparatus may be moved away from that --  
20 that entrance point.

21 Q. Now, do you remember at your deposition I  
22 asked you how many other locations the company has  
23 where it has transmission lines, or distribution  
24 lines for that matter, crossing -- crossing rivers.  
25 Do your remember that?

1           A.     In particular what I remember is the Ohio  
2 River, that we have five locations crossing the Ohio  
3 River, and those are transmission lines crossing the  
4 Ohio River.

5           Q.     Do you remember -- there's other rivers  
6 though that Duke crosses in Ohio; is that correct?

7           A.     That is correct.

8           Q.     And do you know in total how many river  
9 crossings there are?

10          A.     I do not.

11          Q.     Do you remember telling me at your  
12 deposition that you would go back and find the exact  
13 number?

14          A.     And my understanding of that that was for  
15 the Ohio River crossing. I apologize if I was  
16 supposed to get all the river crossings. I thought  
17 it was for the Ohio River crossings.

18          Q.     And for the Ohio -- do you know how many  
19 locations in total the company has where it owns the  
20 property on one or both sides of the river?

21          A.     The Ohio River now we are talking about?

22          Q.     Let's talk first about the Ohio River.

23          A.     Okay. On those five river crossings, we  
24 have AM2 at the East End, we own the property on the  
25 Ohio side. AM1 is the crossing at the I-75 bridge,

1 we own that property on the Ohio side. We have a  
2 crossing that we just put in, it's called 338 is the  
3 line designation, and it's at -- we call it the  
4 Foster Station. We own the property at Foster  
5 Station.

6 We replaced the California River  
7 Station -- station and we do not own the property on  
8 either side of that crossing, and Anderson Ferry  
9 crossing, I do not know if we own the properties on  
10 either side of that crossing.

11 Q. And you do not own the property on the  
12 Kentucky side for either AM1 or AM2; is that correct?

13 A. That is correct. We have easements.

14 Q. And the other location, the 338 line I  
15 think you said, you own the property, is that on the  
16 Ohio side?

17 A. That is on the Kentucky side, that is the  
18 side we set the bore rig so we own -- we -- we  
19 have -- we own that property on the Kentucky side.

20 Q. You do not own it on the Ohio side.

21 A. That is correct.

22 Q. And with respect to any other locations  
23 in Ohio that Duke Energy has transmission or  
24 distribution line crossings, do you know whether the  
25 company owns the property on either side of the river

1 at those other locations?

2 A. I do not.

3 Q. At your deposition you provided us or  
4 showed us some pictures of the last dredging  
5 operation in 1986 when you crossed the Miami River  
6 which was the last bridge replace -- or pipeline  
7 replacement you did across the river; is that  
8 correct?

9 A. The pictures I showed you were the last  
10 dredged river crossing and that was across the Great  
11 Miami River.

12 Q. Have there been other crossings since  
13 1986?

14 A. Yes.

15 Q. And all the crossings since 1986 have  
16 been by the boring method that you discuss in your  
17 testimony; is that right?

18 A. There was one river crossing on the  
19 Little Miami River that they -- that they open cut.  
20 It was not bridged, they open cut it. It was low  
21 water. Little Miami doesn't have as high a flow so  
22 they could get equipment out in the river and then  
23 excavate through the river so that was not a dredge  
24 crossing. That was a little bit later and it was  
25 before 1990 but after 1986, but that was not a dredge

1 crossing. And then all of the crossings that I'm  
2 aware of after that had been directional bored.

3 Q. Now, at those locations where you cross  
4 the river but could not have -- own the property on  
5 one or the other side of the rivers, do you need to  
6 obtain easements in order to do those crossings?

7 A. Yes, we do.

8 Q. And would that -- would you agree with me  
9 that generally the typical way to do a river crossing  
10 for a pipeline replacement or new pipeline  
11 construction would be to obtain easements on both  
12 sides of the river?

13 A. I think it would depend on the situation.  
14 For those areas that we have the easements we would  
15 get a permanent easement and we will get working  
16 space. If we have an easement and that working space  
17 reverts back to the property owner and -- then we  
18 maintain a permanent easement through the property.

19 And when I say it depends, I think it  
20 depends on the density. If we are looking at a  
21 downtown where it's very congested, we may choose to  
22 purchase the property if it's a critical area,  
23 critical point, connection into the system.

24 Most of our transmission lines are  
25 critical points in our system, so those exact



1 locations are critical to us. And if you are in a  
2 condensed area, you won't have the opportunity to go  
3 back and purchase additional easements if you need  
4 working space for these boring operations.

5 Q. Mr. Hebbeler, would you turn to page 84  
6 of the deposition transcript. And looking at line 14  
7 and following down to line 22 -- I'm sorry, line 25,  
8 do you see where I asked you "And is that the normal  
9 way in which the company would hold a property  
10 interest and it enabled it to repair or replace  
11 facilities on either side of the river?" and that  
12 would be holding an easement interest?

13 A. Yes, that would be a typical way if you  
14 are not in a condensed, area, I would agree with  
15 that.

16 Q. You made no mention at the time of the  
17 deposition of differences in a congested area. You  
18 would agree with that.

19 A. Yes, that's correct.

20 Q. And you agree with me you don't know what  
21 the cost is of retaining an easement interest, do  
22 you?

23 A. I do not.

24 Q. And you don't know -- you would agree  
25 it's less than \$65 million.

1           A.    I don't know the values of property.

2           Q.    Okay.  And you don't know the cost of  
3 holding the property, the 200-by-200 property you  
4 suggest would be necessary to do the directional  
5 boring at the East End location, do you?

6           A.    I don't know the value.

7           Q.    Is it -- would it be fair to say,  
8 Mr. Hebbeler, ownership of property is generally a  
9 more expensive proposition than the retention of an  
10 easement interest?  Would you agree with that?

11          A.    I would say, yes, owning -- buying the  
12 property or owning the property would be more  
13 expensive than going and getting an easement.

14          Q.    And would you agree with me that the --  
15 that the two primary factors in directional boring in  
16 terms of the size of the property that you would need  
17 to hold on either end of the river would be the width  
18 of the river and the terrain between -- along either  
19 river bank?

20          A.    Ask your question again, please.

21          Q.    Would you agree with me that the two  
22 primary factors associated with the extent of the  
23 property interest you would have to retain whether by  
24 easement or by ownership on either side of the river  
25 for directional boring would be, one, the width of

1 the river, and two, the terrain on either end of the  
2 river?

3 A. That is correct, but there is a minimum  
4 for the boring -- the boring operations. You have to  
5 look at a minimum. It could be more because of those  
6 situations you just mentioned.

7 Q. In your supplemental testimony on page 1  
8 at line 19, do you have that there? You say there  
9 that "Based on discussions with legal counsel, Duke  
10 is responsible for environmental remediation as a  
11 result of its historic and current ownership and  
12 operations of this property." Do you see that?

13 A. I do.

14 Q. Now, based upon your reference to "legal  
15 counsel," do I understand that you do not have an  
16 independent expert opinion from a ratemaking  
17 perspective as to whether Duke is permitted to  
18 recover the costs related to facilities operated in  
19 the past?

20 A. Well, this proceeding is a legal process  
21 to recover those costs. And my part of this process  
22 is really to provide assistance and understanding the  
23 used and useful properties at both sides, and we  
24 disagreed with that, the company disagreed with that  
25 approach.

1           But that's the approach that the staff  
2       took and so we've -- we feel based off of  
3       conversation and advice from legal that those plants  
4       are in the normal cost of doing business and because  
5       we had the customers. However, you know, my whole  
6       process here is to share with everyone the present  
7       facilities at both sites and so I am not the expert  
8       in the ratemaking.

9           Q.     So you would agree with my statement that  
10      you don't have an independent expert opinion as to  
11      the recoverability of costs from past -- related to  
12      past facilities.

13          A.     I would defer that to -- to Don Wathen.  
14      He is the expert in recovering and rates.

15          Q.     All right. Thank you.

16                 And do you know what the life expectancy  
17      of the transmission lines AM1 and AM2 crossing the  
18      river currently are?

19          A.     I don't know in particular those life  
20      expectancies of those two lines. We analyzed those  
21      lines on an annual basis. They are part of the  
22      transmission integrity management program and I don't  
23      know the life of those two lines.

24          Q.     And do you know what the life expectancy  
25      of new transmission lines that might be installed in

1 the future to replace those lines?

2 A. Let me make one clarifying statement: On  
3 the West End pipeline with the bridge project, we do  
4 know we are going to replace that line in conjunction  
5 with that bridge project when that is constructed.

6 Q. And do you know what the life expectancy  
7 of that potential replacement as well as any  
8 potential replacement at the East End site of AM2?

9 A. Theoretically with the new cathodic  
10 protection added, you can say indefinitely, but we  
11 know that's not the case so we are probably more  
12 along the lines realistically of the depreciation  
13 value or maybe -- maybe depreciation plus especially  
14 with the new rules.

15 Just one clarifying statement, I want to  
16 make sure that I'm not saying if a line is less than  
17 that, it's bad, or if it's more than that, it would  
18 be good.

19 Q. Do you know what the current life of AM1  
20 and AM2 are?

21 A. I do not. Except with this -- the  
22 qualifier on the West End, which is AM1, we are going  
23 to replace that with the bridge replacement, so the  
24 life expectancy of that will go with the bridge.

25 Q. My question though is do you know when

1 those lines were last installed?

2 A. 1947 is AM1 and 1974, I believe, is AM2.

3 Q. And you would agree with me that given  
4 the better materials used today and the better  
5 cathodic protection available for transmission lines  
6 today, that there's a good possibility that these  
7 lines could last even longer than the current --  
8 replacement lines could last even longer than the  
9 current lines that have been in the ground or have  
10 been under the river?

11 A. The replacement lines have better  
12 material, and with the cathodic protection they  
13 should last longer than the AM lines that have been  
14 in place if installed properly and maintained  
15 properly.

16 MR. BERGER: Thank you. That's all I  
17 have, Mr. Hebbeler.

18 EXAMINER STENMAN: Thank you.

19 Kroger?

20 MS. MOHLER: Yeah, just a few questions.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Mohler:

24 Q. On page 11, lines 20 to 22 of your second  
25 supplemental testimony, you stated that the East End

1 and West End sites are presently used to serve both  
2 electric and gas customers, correct?

3 A. Okay. Page 11, 20 to 22 is in the  
4 section of the West End site.

5 Q. I may be at the wrong site, but do they  
6 serve both electric and gas customers?

7 A. The West End site serves both gas and  
8 electric customers. The East End site is just gas  
9 customers.

10 Q. Okay. So is there going to be any  
11 allocation of remediation costs associated with these  
12 sites to electric customers?

13 A. If this is turned down in the gas rate  
14 case, I would assume we could go to the electric rate  
15 case customers and share those costs with the  
16 electrical customers.

17 Q. That's not your proposal, is it?

18 A. The proposal is in the gas rate case at  
19 this point.

20 Q. And in the gas rate case, all of the  
21 remediation expense is -- is being allocated to gas  
22 customers.

23 A. Ask your question again, please.

24 Q. Let me back up a little bit.

25 There is 65.3 million in recovery

1 requested in this case, correct?

2 A. That's my understanding.

3 Q. And that's all the remediation expense;  
4 is that correct?

5 A. I don't know if that's all the  
6 remediation costs. There might be some more to come.  
7 But I would defer that to the witnesses that came  
8 prior to myself.

9 Q. This is all the remediation expense  
10 that's being requested in this case though, correct?

11 A. That's my understanding.

12 Q. And is that the total remediation costs  
13 that occurred from I believe the period is January 1,  
14 2008, through March 31, 2012?

15 A. Again, you've had witnesses,  
16 Ms. Bednarcik, she testified to that and I have to  
17 defer to her.

18 Q. Is the company requesting ongoing  
19 continuing remediation costs?

20 A. Again, I'll defer those -- that question  
21 to Ms. Bednarcik.

22 Q. I thought that Ms. Bednarcik said she  
23 doesn't deal with the recovery of the costs.

24 A. Then that would be Mr. Wathen on  
25 recovery.



1           Q.    So the 65.3 million that's being  
2 requested includes 15 million in estimated expenses  
3 from April 1, 2012, through December 31, 2012,  
4 correct?

5           A.    I don't know those details.

6           Q.    You're not sure, okay.  Would those be  
7 better questions for Mr. Wathen?

8           A.    Either Mr. Wathen or Ms. Bednarcik may  
9 have the details.

10          Q.    So you also would not know if the new  
11 transmission line planned for the West End site would  
12 be considered in the estimation of those expenses?

13          A.    The actual installation of the new  
14 transmission line would not be in those expenses.

15          Q.    They would not be?

16          A.    That's correct.

17          Q.    And the new transmission line has not  
18 been installed yet, correct?

19          A.    That's correct.

20          Q.    So that new transmission line doesn't  
21 meet the West End site plant in service because it is  
22 not used and useful at this time; is that correct?

23          A.    There are existing transmission lines  
24 across the river.  AM1 that crossed the river and go  
25 up into that property, go into a measuring station

1 and then go into a distribution system on that  
2 property.

3 Q. And I think the only other question I  
4 have for you is do you know if this is a current  
5 formal order from any state or federal agency to  
6 clean up these sites?

7 A. I don't know that answer to that.

8 MS. MOHLER: I have no further questions.

9 EXAMINER STENMAN: Thank you.

10 Mr. Hart?

11 MR. HART: Yes, thank you.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Hart:

15 Q. Mr. Hebbeler, let's first turn to the  
16 East End site. You talked about the pipelines across  
17 the river. Am I correct those enter the eastern  
18 parcel of the three parcels?

19 A. The East End site, that's correct.

20 Q. And do you know the dimensions of that  
21 parcel?

22 A. I do not have those dimensions.

23 Q. Do you know the acreage of the parcel?

24 A. I don't know the acreage of that parcel.

25 Q. Did I hear you correctly that there is no

1 current plan to replace those pipelines under the  
2 river?

3 A. That is correct.

4 Q. You mentioned in your testimony a propane  
5 flare that you have to occasionally use, I guess to  
6 burn off the excess propane; is that correct?

7 A. When you do maintenance on the lines at  
8 the propane facilities, then you have to purge out  
9 those lines and you use that flaring operation to  
10 purge out those lines.

11 Q. Basically you set fire on a pipe, right?

12 A. That's correct.

13 Q. And I can't find on the maps where that  
14 is. I don't know if you have Ms. Bednarcik's  
15 supplemental testimony at hand. It's got a diagram  
16 of the facility. I would like you to tell us exactly  
17 where that flare is.

18 MS. WATTS: Your Honor, could we go off  
19 the record for one moment?

20 EXAMINER STENMAN: Sure. Let's go off  
21 the record.

22 (Discussion off the record.)

23 EXAMINER STENMAN: Let's go back on the  
24 record.

25 Mr. Hart.

1 MR. HART: Thank you, your Honor.

2 Q. (By Mr. Hart) Mr. Hebbeler, I was trying  
3 to identify the location of the propane flare and we  
4 now have on an easel a map of the East End site,  
5 which I think the printed portion is the same as  
6 Bednarcik Supplement 3, just for purposes of  
7 identification. I was wondering if you could direct  
8 us to where that flare is.

9 A. Are you asking for the new flare?

10 Q. Yes.

11 A. Or the old flares.

12 Q. The one you said you needed a buffer zone  
13 for.

14 A. So we would need it for both -- both the  
15 old and the new, and the new one is approximately  
16 right in this location.

17 Q. And you are pointing to the northern part  
18 of what's labeled as "ammonia plant"?

19 A. Yes.

20 Q. Near the tar well?

21 A. That's pretty close.

22 Q. And that would be just west of  
23 St. Andrews Street or what used to be St. Andrews  
24 Street?

25 A. West of St. Andrews and approximately

1 around the tar well.

2 Q. And that's where the new one will be?

3 A. That's correct. The new piping system is  
4 there right now.

5 Q. Okay. Where is the old one currently?

6 A. The old one is around the words of  
7 "abandoned gas field" -- let's see, "abandoned gas."

8 Q. Cavern well?

9 A. Right up above that, just north of that  
10 and just west of the fence line that runs down  
11 St. Andrews.

12 Q. Okay. And while we are here you also  
13 talked about needing to discharge water that you used  
14 to hold the wellheads down while you are doing  
15 maintenance. Where do you discharge that water?

16 A. That water is discharged west of  
17 St. Andrews, north of the fence line, and probably  
18 south of where we depicted the new flaring operation  
19 is.

20 Q. And the discharge, the hose from a pump  
21 or how do you discharge it?

22 A. There is a -- I don't know the exact  
23 operations but there is a hose that's run from the  
24 wells and is just discharged out on the ground.

25 Q. So the water is poured out onto the

1 ground.

2 A. That's correct. It's municipal water  
3 that we put into the sensitive utility infrastructure  
4 to hold the head down and then when we put the pumps  
5 back in, we have to pump the municipal water back  
6 out.

7 Q. And just for location purposes, where are  
8 the pumps?

9 A. I believe these are the two.

10 Q. You are pointing to what's labeled as the  
11 "valve pit"?

12 A. Yes, I believe those are the two areas.

13 Q. One of which is on the middle parcel and  
14 the other is slightly onto the western parcel?

15 A. Both of them are on the middle parcel.

16 Q. They are both on the middle parcel.

17 A. That's correct.

18 Q. You are saying you need the western  
19 parcel to discharge the water from those -- those  
20 valve pits?

21 A. That's correct. We have operations --  
22 our operation center has material storage down here  
23 and we have people -- our employees are working in  
24 this area so we keep that and make sure they are safe  
25 by keeping it on the western parcel.

1 Q. Okay. Let's go back and sit down.

2 Do you have Duke Exhibit 27 handy? Yes,  
3 if you could turn to page 4 of Duke Exhibit 27. Do  
4 you have an aerial photograph of the East End site?

5 A. I do.

6 Q. Okay. So you're saying that the middle  
7 parcel where we see two buildings near Eastern Avenue  
8 and then some vehicles parked in different areas has  
9 no place that the pump water could be discharged?

10 A. Our procedure is to discharge that pump  
11 water on the western parcel so it seeps down into the  
12 soil is the way our procedure is set up.

13 Q. How many gallons do you discharge?

14 A. I don't know the answer to that.

15 Q. How frequently is it done?

16 A. Maintenance of those pumps and the  
17 electric lines dictate how often that operation is  
18 done. If we have an issue with the pump, naturally  
19 then that operation will be performed. If we have an  
20 issue with the electric that's going into those  
21 pumps, that operation would be performed. Over the  
22 past couple of years it's been performed several  
23 times.

24 Q. I take it the effluence from these pumps  
25 is not a regulated discharge? That you are free to

1 do this without a permit?

2 A. That's my understanding.

3 Q. Is it -- are you able to discharge the  
4 effluence into surface waters?

5 A. My understanding, we can discharge it  
6 onto that -- onto that property, and I don't know if  
7 there is a filter it goes through or not. I don't  
8 know the procedure for that.

9 Q. Just talk a minute about the West End  
10 site. You've talked about some electrical facilities  
11 that are there. I believe there is a picture of them  
12 in here as well, page 19.

13 Really my question for you here is are  
14 some of these facilities for purposes of transmission  
15 as opposed to distribution?

16 A. So is your question is there electric  
17 transmission lines there or distribution?

18 Q. Of the electrical facilities that are  
19 there, I am asking you if you can classify which ones  
20 are transmission and which ones are distribution.

21 A. Yes. I'm not from the electric  
22 department so I don't know how to classify those, but  
23 there are transmission lines there that is really to  
24 serve the customers of Ohio.

25 Q. Okay. You can't tell us which are which?



1 A. I cannot.

2 Q. All right. That's fine.

3 On page 11 of your testimony starting on  
4 line 17 through line 20, I believe you are saying  
5 that these cleanup expenses are cost of business  
6 because you currently own these sites, correct?

7 A. Because the sites are used and useful.

8 Q. But you say it's the current cost of  
9 business due to the company's current ownership of  
10 this property, correct?

11 A. That's correct.

12 Q. Did you understand that even if the  
13 company didn't own these sites, that it would still  
14 have a liability for remediation of those sites?

15 A. That's my understanding.

16 Q. So the current cost of business really  
17 has nothing to do with owning the property currently,  
18 correct?

19 A. My response -- my testimony is in  
20 response to Duke's objection No. 6 to the Staff  
21 Report. And basically using the used and useful  
22 concept and so I'm trying to provide assistance to  
23 understanding that used and useful concept. Again  
24 that wasn't our proposal. That was staff's proposal  
25 to use that as a metric.

1           Q.    But that is your sentence about why you  
2    feel it's the current cost of business.

3           A.    That's correct.

4           Q.    The pipeline that crosses the Ohio River  
5    to the West End site, am I correct that is to the  
6    east of the old generating station building?

7           A.    That's correct.

8           Q.    Do you know if that was installed before  
9    or after the generation station was built?

10          A.    I believe that was installed after.  1947  
11    was when it was installed.

12          Q.    Do you know how far it is from the end of  
13    the generation station to the eastern border of that  
14    parcel?

15          A.    I do not.

16               MR. HART:  That's all I have.  Thank you.

17               EXAMINER STENMAN:  Thank you.

18               Mr. Parram?

19                               - - -

20                               CROSS-EXAMINATION

21    By Mr. Parram:

22               Q.    Good afternoon, Mr. Hebbeler.

23               A.    Good afternoon.

24               Q.    I want to follow up on one of your  
25    responses to Mr. Hart's questions.

1 EXAMINER STENMAN: Mr. Parram, I need you  
2 to speak up.

3 MR. PARRAM: Oh, yeah, I apologize.

4 Q. Can you hear me okay?

5 A. I can.

6 Q. You say it wasn't Duke's proposal to  
7 determine whether the properties were used and  
8 useful, that was the staff's position.

9 A. That was staff's position to use that as  
10 a metric for recovery.

11 Q. What was Duke's original position as  
12 opposed to staff's position?

13 A. Again, I would defer that to Mr. Wathen.

14 Q. Is it your understanding that Duke  
15 believes they are entitled to the recovery of the  
16 remediation costs even if the plant was not used and  
17 useful at the East End site and West End site?

18 A. Again, that's what these proceedings are  
19 all about is the cost recovery.

20 Q. And in response to another question  
21 Mr. Hart asked you as it relates to the West End  
22 site, you indicated that you weren't sure because  
23 you're not -- electric is not your area, that you're  
24 not sure what was electric distribution facilities or  
25 electric transmission facilities at the West End

1 site; is that correct?

2 A. Ms. Bednarcik gave a pretty good  
3 description yesterday of those facilities and I'm  
4 just not the expert on the electric side.

5 Q. So it's fair to say you don't know what  
6 electric facilities are used and useful at the West  
7 End site?

8 A. It's my understanding that the facilities  
9 that Ms. Bednarcik described yesterday are used and  
10 useful.

11 Q. And it's fair to say that you don't know  
12 what electric facilities, either distribution or  
13 transmission, are plant in service at the West End  
14 site?

15 A. It's my understanding that the ones she  
16 described yesterday are all in service.

17 Q. When you say it's your understanding,  
18 where did you get this understanding?

19 A. From discussions with the Duke employees.

20 Q. So you have no personal knowledge of what  
21 facilities -- what electric facilities are plant in  
22 service at the West End site.

23 A. That's correct. I'm not the electric  
24 expert, that's correct.

25 Q. If you can go to page 14 of your

1 testimony, lines 15 and 16 where it indicates that  
2 "The West End site is entirely included as plant in  
3 service for electric customers today." Is it fair to  
4 say you don't personally know what constituted what  
5 is plant in service for electric customers today?

6 A. From discussion with Duke employees,  
7 that's my understanding.

8 Q. I understand you got your understanding  
9 from someone else, but you don't personally know  
10 that.

11 A. No, I do not.

12 Q. Okay. Now, in your testimony you  
13 referred to at the East End site two transmission  
14 lines, and we talked about them briefly here today.  
15 For the East End site these transmission lines are  
16 AM2; is that correct?

17 A. AM02 is one transmission line; there's  
18 two pipelines but one transmission line.

19 Q. And AM02 is referred to in your  
20 testimony, correct? We talked about it in your  
21 testimony.

22 A. That's correct.

23 Q. And this is in the eastern parcel of the  
24 East End site where AM02 is located, correct?

25 A. That is correct.

1 Q. I would like to hand you -- I apologize.

2 MR. PARRAM: Your Honor, I would like to  
3 have marked for identification Staff Exhibit 5. It's  
4 a copy of Attachment MGP-11 from the Staff Report  
5 which has hand markings on it also.

6 Can Mr. Adkins approach?

7 EXAMINER STENMAN: He may. And this is  
8 different from what's in the Staff Report?

9 MR. PARRAM: Yes. This has a handwritten  
10 little marking on it that marks where AM02 is so  
11 that's the only difference.

12 EXAMINER STENMAN: Okay. It will be so  
13 marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. PARRAM: I'll try to explain that on  
16 the record.

17 EXAMINER STENMAN: Thank you.

18 Q. Mr. Hebbeler, do you have a copy of staff  
19 Exhibit 5 in front of you?

20 A. I do.

21 Q. Do you recognize this document?

22 A. Yes.

23 Q. What is it?

24 A. It's Attachment MGP-11 east site -- "East  
25 End Site Remediation Work Zones with Depths."

1           Q.    And you recognize this as a map of the  
2           East End site and breaks apart the three separate  
3           parcels that we have been talking about for the East  
4           End site, the western parcel, the central parcel, and  
5           the eastern parcel? Do you recognize that?

6           A.    I recognized that in those three sites  
7           were broken apart due to the identified areas, the  
8           way the process for the remediation flowed, not from  
9           the operations of those facilities, from a gas  
10          operations standpoint.

11          Q.    Right. I'm trying to just get us on the  
12          same page. We have been talking about an eastern  
13          parcel, a western parcel, a central parcel. For  
14          purposes of discussion during this hearing you  
15          understand three different parcels that are on this  
16          drawing.

17          A.    Yes.

18          Q.    And there is a hand marking that's "AM02"  
19          and a big circle on Staff Exhibit 5. And am I  
20          correct that that is where the AM02 line is in the  
21          eastern parcel or at least where it begins?

22          A.    Yes.

23          Q.    And the AM02 line from where you see the  
24          two pink markings goes from there down south through  
25          the river, the Ohio River, down to Kentucky; is that

1 correct?

2 A. Just make sure I understood what you  
3 said. So the two 16-inch lines that are going from  
4 Ohio under the river over to Kentucky.

5 Q. Yeah.

6 A. Okay. Yes.

7 Q. And you were here yesterday when  
8 Ms. Bednarcik testified regarding the Attachment  
9 MGP-11 and -- strike that.

10 You were here yesterday when  
11 Ms. Bednarcik testified?

12 A. Yes.

13 Q. And Ms. Bednarcik testified regarding  
14 the -- where the remediation work zones were at in  
15 the eastern parcel. Do you recall that?

16 A. Yes.

17 Q. Mrs. Bednarcik indicated the remediation  
18 work zones on Attachment MGP-11 accurately reflect  
19 where remediation work was performed. Do you recall  
20 that?

21 A. I do recall that.

22 Q. And do you see where that AM02 line --  
23 AM02 transmission line that I have circled on Staff  
24 Exhibit 5, there is only that small portion that  
25 falls within the remediation work zone; isn't that



1 correct?

2 A. From the pipeline standpoint that is  
3 correct. But from the excavation that would have  
4 happened from the installation of that line, the  
5 answer is no. The excavation material would have  
6 been way up into the -- into the eastern parcel.

7 Q. Okay. So when you say "from the pipeline  
8 standpoint," there's plant in service at the eastern  
9 parcel, the pipeline would be considered plant in  
10 service, correct?

11 A. Again, I am not the rate expert. My  
12 understanding, the property, if you bought an  
13 easement, goes with it also.

14 Q. Okay. So you don't know what is  
15 considered plant in service?

16 A. Can you ask the question again, please.

17 Q. You don't know what is considered plant  
18 in service.

19 A. My understanding -- the pipelines are  
20 plant in service.

21 Q. Okay. So the pipelines that are  
22 indicated in the circle on AM02 on Staff Exhibit 5,  
23 that small little portion at the very south end of  
24 the remediation work zone is the only portion of AM02  
25 that falls within the remediation work zone; is that

1 correct?

2 A. And that's the only portion of the  
3 pipeline. You have to look at the installation and  
4 you have to look at the material, you would have had  
5 to have purchased, you know, work space if you didn't  
6 own the property, but we own the property so we  
7 didn't have to purchase that work space.

8 Q. When you say "work zone" or the  
9 "excavation," your testimony is that if you need to  
10 replace the AM02, line you need at least a 200-by-200  
11 foot work zone, correct?

12 A. That's correct, for a current directional  
13 joint practice, but when they dredged this line,  
14 that's the way this was installed was a dredge line,  
15 they would have had to open cut or excavate dredge  
16 and they would have had to bring all that material --  
17 if you look at those lines that are approximately  
18 40 feet apart and if you look at 15-foot on each side  
19 of the line, and then you looked at 4-to-1 slope  
20 because of the soil conditions, you know, that comes  
21 out for a pretty good distance.

22 You have to remove that dirt and bring it  
23 up into the property so you can install those lines.  
24 And since that property was owned and it would have  
25 been part of the operations. They had the foresight

1 to make sure they didn't sell any of that off to make  
2 sure they had the ability to replace that line again

3 Q. And you indicated AM02 was installed in  
4 1974?

5 A. I believe that's the date.

6 Q. And you've already testified that you  
7 don't know when the AM02 line is going to be  
8 replaced.

9 A. That is correct. Prior to the  
10 installation in 1974 there was four other lines that  
11 came up through Pittsburgh Street and so those lines  
12 were replaced. I don't know the years those were  
13 installed.

14 Q. So it's your testimony because when they  
15 were installed in 1974 they needed the entire  
16 property, that you are now entitled to the  
17 remediation expenses, the O&M expenses, for the  
18 entire parcel?

19 A. Okay. We own the entire property and so  
20 there was no need to go out and purchase an easement.  
21 They would have used the property best suited for  
22 that construction practice.

23 Q. Okay. So the reason you need the entire  
24 property is if in the future you need to replace  
25 AM02, you have enough room to replace it, correct?

1           A.    Again, I think you have to look at --  
2           that's what I was trying to explain at the beginning  
3           of this, you have to look at all these parcels to  
4           gather from a plant standpoint.

5           Q.    Can we take it parcel by parcel?  First,  
6           I understand it's Duke's position it's all one  
7           parcel.  I'm not contesting that right now.  I'm just  
8           trying to get my -- I am trying to understand your  
9           position as it relates to why for the eastern parcel  
10          you need what's called a layout zone, and correct me  
11          if I'm wrong, your testimony is for the eastern  
12          parcel if you need to replace the AM02, you need at  
13          least 200-by-200 feet, correct?

14          A.    That's for the directional boring rig and  
15          that is correct for replacing the line.

16          Q.    Okay.  I'm just trying to break things  
17          apart.  So for the East End parcel, you are -- your  
18          testimony is you need to have the entire East End  
19          parcel in case you need to do the HDD or horizontal  
20          directional drilling; is that correct?

21          A.    Yes.  We own the parcel.  We would  
22          maintain that parcel.

23          Q.    Okay.

24          A.    For maintenance and, again, there's other  
25          uses of -- I hate to keep splitting them apart but we

1 put clean fill over there. I mean that was another  
2 use.

3 Q. When you say "over there," what are you  
4 talking about?

5 A. On the eastern parcel we used a clean  
6 fill to compact in and that went up two-thirds into  
7 the property. That was used from excavations and  
8 services from our facilities and so it's very  
9 difficult to keep splitting these up when you have to  
10 look at the parcels together from an operations  
11 center, all three parcels.

12 Q. Maybe I'm mixing things up. Which parcel  
13 am I splitting up? Because I am still talking about  
14 the East End parcel.

15 A. Again, I am looking -- I am trying to  
16 explain. It's hard to divvy up parcels on this  
17 property from an operation standpoint. So we looked  
18 at these from an IA, identified area standpoint, but  
19 we don't look at that from an operations standpoint.  
20 I described that to stay consistent but we need to  
21 look at it more holistic than -- than parcel by  
22 parcel.

23 Q. Well, let me ask you this at this point:  
24 If Duke doesn't recover any remediation costs at all  
25 in this case, would you still be able to use the

1 eastern parcel, the central parcel, western parcel if  
2 you need to replace the AM02 line?

3 A. From an operations standpoint you would  
4 physically be able to do that, yes.

5 Q. Okay. So you don't -- remediation cost  
6 you would still be able to use the property to do  
7 what you need to do?

8 A. Yes, but the -- since this is an  
9 operations center, I mean it's really cost of doing  
10 business when you have an operations center like  
11 this. My understanding the discussions with our  
12 attorneys is that we're required to do this and this  
13 is an operations center. We have various activities  
14 on -- on this parcel and so as part of that  
15 operations center it's a cost of business.

16 Q. Okay. And that cost of business, it  
17 doesn't -- is it at all related to whether or not  
18 there is actual plant in service that the remediation  
19 costs need to be tied to?

20 A. Well, the staff looked at it that way.  
21 We disagree with that.

22 Q. So from your position the remediation  
23 costs or the O&M expenses that Duke is seeking to  
24 recover, it doesn't need to be connected to plant in  
25 service?

1           A.    No.  It's a cost for this -- it's a cost  
2   of doing business, and we served customers with that  
3   manufactured gas plant in the past.

4           MR. PARRAM:  Could you read back my last  
5   question, please.

6                   (Record read.)

7           Q.    And your response was what?

8           THE WITNESS:  Can you read back my  
9   response, please.

10                   (Record read.)

11          Q.    Okay.

12          A.    Can you continue on so --

13          Q.    I don't necessarily move to strike all  
14   after the no but I just want to make sure that was  
15   your answer was "no," correct?

16          THE WITNESS:  Can you read back my  
17   answer, please.

18                   (Record read.)

19          Q.    You mentioned a fill site on the eastern  
20   parcel of the East End site.  Was that fill site  
21   being used -- when did that stop being used for a  
22   fill site?

23          EXAMINER STENMAN:  Mr. Parram, I don't  
24   want to cut your cross in half but I think it would  
25   be a good time to take a break, it seems like you

1 wrapped up a line and are moving forward.

2 We do have a Power Siting Board meeting  
3 and also a Commission meeting today so we will take a  
4 break until immediately after the Commission meeting,  
5 that should be at about 1:35, 1:40. I know there is  
6 a presentation going on after the Commission meeting  
7 and that will continue on its own but we will come  
8 back here for hearing. So we'll take lunch.

9 (Thereupon, at 12:33 p.m., a lunch recess  
10 was taken until 1:35 p.m.)

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1                                   Wednesday Afternoon Session,  
2                                   May 1, 2013.

3                                   - - -

4                                   EXAMINER STENMAN: All right. Let's go  
5 back on the record.

6                                   Mr. Parram.

7                                   - - -

8                                   GARY J. HEBBELER  
9 being previously sworn, as prescribed by law, was  
10 examined and testified further as follows:

11                                  CROSS-EXAMINATION (Continued)

12 By Mr. Parram:

13                                  Q. Mr. Hebbeler, I believe we were talking  
14 about the eastern parcel at the East End site before  
15 we broke, specifically talking about the AM02 line.  
16 Do you recall that?

17                                  A. Yes.

18                                  Q. Is the AM02 line a transmission line?

19                                  A. It is a transmission line.

20                                  Q. Interstate transmission line, correct,  
21 from Kentucky to Ohio?

22                                  A. It's not considered an interstate  
23 transmission line.

24                                  Q. Okay. Why is it not interstate? My  
25 understanding was that it -- it was from Kentucky to

1 the state of Ohio, so correct -- explain to me why  
2 it's not interstate.

3 A. You can have a jurisdiction going to  
4 another jurisdiction without it being an interstate  
5 pipeline.

6 Q. Okay. So the pipeline physically goes  
7 from Kentucky to Ohio but it's not considered an  
8 interstate transmission line.

9 A. That's correct.

10 Q. Who owns AM02, the line going under the  
11 Ohio River?

12 A. Duke -- going under the river?

13 Q. The portion that goes under the river.

14 A. The portion that is under the river, I  
15 want to make sure I understand your question.

16 Q. And I mean literally under the river  
17 going from Ohio to Kentucky or Kentucky to Ohio.

18 A. You are saying going from on top of the  
19 bank over to the other bank; is that what you are  
20 asking?

21 Q. Yes.

22 A. Duke Energy Ohio owns a part and Duke  
23 Energy Kentucky owns a part of that line.

24 Q. Okay. And where is the ownership  
25 delineated?

1           A.    It would be -- it would be up on the top  
2 of the bank on the Ohio side.

3           Q.    So you still -- do you still have staff  
4 Exhibit 5 up there?

5           A.    I do.

6           Q.    If you could pull that out, and looking  
7 at the eastern parcel or not the lower southern side  
8 if you start at the very south side of the eastern  
9 parcel and work your way up there's a line that says  
10 "edge of the water." Do you see that?

11          A.    Yes.

12          Q.    Is that where the line would be where it  
13 goes from Duke Energy Ohio to Duke Energy Kentucky?

14          A.    No.

15          Q.    Okay. Where would it be?

16          A.    It would be at a valve where the two  
17 lines come together roughly, the two 16-inch lines  
18 come together, approximately.

19          Q.    So which would be a little bit north of  
20 the line where the remediation work zone boundary is.

21          A.    That's correct.

22          Q.    So everything beneath there is owned  
23 by -- everything beneath that line is owned by who?  
24 By "beneath" I mean south of line that.

25          A.    South of that line? That is owned by

1 Duke Energy Kentucky. However, Duke Energy Kentucky  
2 delivers that commodity to Duke Energy Ohio, delivers  
3 gas into Duke Energy Ohio specifically for Duke  
4 Energy Ohio.

5 Q. Okay. So on whose books is AM0 -- AM02  
6 line everything south of the remediation line?

7 A. I believe that is Duke Energy Kentucky.

8 Q. So, and on that portion of the AM02 line  
9 going south of the remediation zone line, is -- Duke  
10 Energy Kentucky employees perform work on that line?

11 A. All Duke Energy gas operations employees  
12 that are field employees can perform work on that  
13 line.

14 Q. And if a Duke Energy employee goes out  
15 and performs work on that line that is south of the  
16 remediation work zone southern boundary, would --  
17 where would that cost be allocated to, Duke Energy  
18 Kentucky or Duke Energy Ohio?

19 A. It would be Duke Energy Kentucky if it's  
20 on Duke Energy Kentucky line.

21 Q. Okay. So if AM02 -- I keep saying AM02,  
22 AM2?

23 A. Same thing for this conversation.

24 Q. -- is replaced, the cost of AM2 from all  
25 south of the remediation work zone boundary line, who

1 would pay for the cost of replacing that line?

2 A. Based on our past history, we would  
3 change the demarcation line to the state line there,  
4 the edge of the water basically, approximately, and  
5 part of Duke Energy Ohio would pay for that line and  
6 part of Duke Energy Kentucky would pay for that line.

7 Q. So the line would move from the dotted  
8 line or the remediation work zone line would move  
9 down to the edge of the water?

10 A. Approximately, wherever that state line  
11 is.

12 Q. And then -- and then the rest of that  
13 line from the edge of the water line all the way down  
14 to Kentucky would be owned by Duke Energy Kentucky.

15 A. That's correct, if they replace the line.  
16 The interesting fact here is when you excavate, you  
17 move the soil up onto the property. That  
18 construction cost goes to those entities. Even  
19 though the parcels can be owned by Duke Energy Ohio,  
20 that excavation that was moved up into the property  
21 goes to the construction project.

22 But you still need the parcel that's Duke  
23 Energy Ohio. You still need that eastern parcel for  
24 those soil removal if you dredge the line and you  
25 would still need the bore rig to sit on the property

1 on the eastern parcel if you directionally bore the  
2 line. You still need that parcel of property that's  
3 owned by Duke Energy Ohio.

4 Q. So the vast majority of the lines are  
5 owned by Duke Energy Kentucky.

6 A. That's correct. But that's just an  
7 example why you can't split all these parcels  
8 together. It's an operations center and it's still  
9 owned by Duke Energy Ohio. We perform different  
10 functions on there but it's owned by Duke Energy  
11 Ohio, and even to bore the line across for AM2 and  
12 split that appropriately, you would have part Duke  
13 Energy Ohio, part Duke Energy Kentucky charged to the  
14 construction project, but the bore rig would be on  
15 Duke Energy Ohio property.

16 Q. And you've indicated earlier nothing in  
17 this hearing would prevent Duke Energy Ohio from  
18 using that parcel if they needed to stage equipment  
19 to do the horizontal directional drilling?

20 A. That's correct.

21 Q. Okay. And the -- you don't know when  
22 AM -- you have no -- today you know when AM2 will  
23 need to be replaced.

24 A. That is correct. We annually analyze  
25 that line.

1 Q. And you analyze it annually for --

2 A. For transmission lines we have corrosion  
3 rate, leak survey annually, those two annually, then  
4 four times a year we have to patrol the line.  
5 Basically the water you would just look across, but  
6 we do an underwater survey every so many years to  
7 look at erosion in the river bed.

8 Q. To the best of your knowledge AM2 -- AM02  
9 line is not corroded.

10 A. To the best of my -- to the best of my  
11 knowledge, AM2 line has met all the minimum standards  
12 to -- or thresholds and requirements from DOT to  
13 service customers.

14 Q. To the best of your knowledge, AM02 is  
15 not leaking.

16 A. That is correct.

17 Q. And if there was a major corrosion issue  
18 on the AM02 line, you probably would have heard about  
19 this.

20 A. That is correct.

21 Q. And if there was corrosion on the AM02  
22 line, replacements of the entire line wouldn't  
23 necessarily be the only option.

24 A. Ask that question again, please.

25 Q. If there was a corrosion problem on the

1 AM02 line, replacing the entire pipeline would not  
2 necessarily be the only option to remediate the  
3 corrosion problem.

4 A. It is not the only option but you have to  
5 look at all the factors, you have to look if it is  
6 exposed, if there is erosion in the river, that's a  
7 factor. You have to look at the depth of that  
8 pipeline in the soil, if you can even fix -- if it's  
9 too deep because the silt would keep coming in on  
10 you. So you have to take a look at that.

11 There are many factors but replacement is  
12 not the only option. It is an option. It's probably  
13 the most likely option if you have a large area of  
14 corrosion versus a small area of corrosion. If it's  
15 more widespread.

16 Q. And if there was a leak on AM02,  
17 replacement of the pipeline would not be the only  
18 option if there were a leak.

19 A. Yeah. I think that's the same scenario.  
20 You would have to go through that same process with  
21 erosion; the depth, the location of that leak,  
22 whether it was in the center of the channel versus,  
23 you know, back off up into the river bank. It is not  
24 the only option.

25 Again, you would have to look at what



1       caused that leak. If it was corrosion that caused  
2       that leak and it's widespread, replacement may be the  
3       only option.

4             Q.     Now, you stopped using the eastern parcel  
5       as a clean fill site once remediation began, correct?

6             A.     I'm sorry, I didn't hear you.

7             Q.     In your testimony you mentioned that the  
8       eastern parcel was used for a clean fill site.

9             A.     That's correct.

10            Q.     Which you stopped using it for a clean  
11       fill site before remediation began.

12            A.     Before the actual remediation began, that  
13       is correct, because we had meetings and talked about  
14       kind of what was going to be done. And so the  
15       decision was made to stop that clean fill which  
16       extended over at least three/quarters up into the  
17       property, maybe more, from the fence line, and from  
18       the eastern fence line it was going to go through  
19       Pittsburgh Street.

20            MR. PARRAM: Your Honors, I have a couple  
21       of questions that I think need to go on the  
22       confidential portion. I can refer to -- I am going  
23       to be referring to the sensitive infrastructure.

24            MS. WATTS: Devin, do you need to refer  
25       to it as other than sensitive infrastructure?

1 MR. PARRAM: Some of the questions may be  
2 certain descriptions about the sensitive  
3 infrastructure.

4 EXAMINER STENMAN: Is that confidential?

5 MR. PARRAM: I don't intend on being  
6 there a very long time.

7 EXAMINER STENMAN: Okay. What we'll do,  
8 we'll complete direct, cross, redirect, recross, and  
9 then we'll go through and do that again essentially  
10 on the confidential portion of the record, that way  
11 if anyone else has a confidential question, they will  
12 have opportunity to do so.

13 MR. PARRAM: Should I come back to that?

14 EXAMINER STENMAN: Right, do as much as  
15 you can on the open record and then we will do the  
16 confidential at the end.

17 Q. (By Mr. Parram) Okay. I think I might be  
18 able to work through this. So you discuss sensitive  
19 infrastructure in your testimony, correct?

20 A. That's correct.

21 Q. And this sensitive infrastructure, the  
22 location of the sensitive infrastructure, is there --

23 MS. WATTS: We probably ought to save it.

24 MR. PARRAM: I'll just wait. I really  
25 don't want to get in trouble.

1           Q.    If you could look at Staff Exhibit 5 for  
2           me, and specifically the portion that is marked the  
3           "Western Parcel."

4           A.    Okay.

5           Q.    I think earlier you were responding to  
6           some questions from Mr. Hart about flare off valves.  
7           Do you recall that?

8           A.    Piping, yes.

9           Q.    And there was a previous location for the  
10          piping and then there is a new location for the  
11          piping; is that correct?

12          A.    There was more of a portable setup,  
13          that's correct, for the old flaring operations. The  
14          new flaring operations is a permanent setting.

15          Q.    When was the new setup flaring  
16          operations -- when did that become operational?

17          A.    I would say that was sometime after  
18          November 1 of 2012. That's when we commissioned the  
19          new vaporizers so that went in sometime after that,  
20          the exact date I don't know.

21          Q.    And for the old flaring operations piping  
22          that you are referring to, do you know exactly where  
23          that was located as it relates to Staff Exhibit 5?  
24          Would it be south of the portion that was  
25          remediate -- remediated?

1           A.    No.  I mentioned that before when we were  
2           up on the board up there.  I believe it's above, and  
3           I can't read those words there.

4                   THE WITNESS:  Your Honors, may I show him  
5           on that sheet?

6           Q.    Well, why don't we put the board up if we  
7           need to.

8                   EXAMINER STENMAN:  Can you turn that so  
9           the Bench can see it?  Thank you.  It doesn't have to  
10          face out.

11          Q.    (By Mr. Parram) Okay.  What I have put up  
12          here is a blowup of MGP -- Attachment MGP-11 which is  
13          staff investigation -- which is essentially the same  
14          as Staff Exhibit 5 that I handed you earlier that is  
15          a blowup of the eastern parcel -- I'm sorry, the East  
16          End site that has a break -- breakdown of the eastern  
17          parcel, the central parcel, and the western parcel,  
18          and it also has the dotted lines indicating the  
19          remediated work zones.

20                   If you could please come up and indicate  
21          for me where the old flare off valves were and then  
22          the new ones.

23          A.    So the old flare off valve would be  
24          around the word "abandoned."  It would be west of  
25          St. Andrews and just north of the word "abandoned

1 gas," right around that area.

2 Q. Okay. And those were operational until  
3 when?

4 A. They were operational up until we put the  
5 new ones in, whatever that date certain is.

6 Q. Okay. And where is the new flare off  
7 valve?

8 A. The new flare off valve is probably in  
9 that tar -- tar well area, like I described before,  
10 just west of St. Andrews and around the words "tar  
11 well."

12 Q. Thank you. And you can go back.

13 And as you indicated earlier, you have  
14 stated in your testimony that you need a buffer zone  
15 to operate the flare off valves, correct?

16 A. That's correct.

17 Q. And if Duke is not able to recover  
18 remediation costs or any remediation costs in this  
19 case, nothing would prevent them from being able  
20 to -- to operate those flare off valves today,  
21 correct?

22 A. That's correct, but I think there's  
23 two -- when we talk that buffer -- where we are  
24 talking the buffer for the sensitive utility  
25 infrastructure utility, you know, that is all part of

1       that buffer and the buffer for the flare -- flare-up  
2       operations.

3               Q.     If Duke Energy Ohio was not able to  
4       recover any remediation costs at all in this case,  
5       Duke -- Duke would still be able to have adequate  
6       buffer zone for the sensitive infrastructure also,  
7       correct?

8               A.     That is correct.

9               Q.     Do you know if the cost to install the  
10      new flare off valve was capitalized in this case?

11              A.     I don't know for sure, but it's a capital  
12      improvement and I would assume it would have been  
13      capitalized as part of the new vaporizers.

14              Q.     So -- so it was not recorded as an O&M  
15      cost. Was it recorded -- so as far as you are aware,  
16      it was not recorded as an O&M cost in this instance.

17              A.     I don't understand your question.

18              Q.     And let's go back, and the sensitive  
19      infrastructure again, you mentioned a certain buffer  
20      that would need -- that Duke believes that they need  
21      for the buff -- for the sensitive infrastructure; is  
22      that correct?

23              A.     Please ask your question again.

24              Q.     I'm sorry, that was torture.

25                     Duke believes they need an adequate

1 buffer as it relates to the sensitive infrastructure.

2 A. Yes, and that's why that west parcel was  
3 not sold off. It was only whatever easements were  
4 maintained they had the foresight to make sure we  
5 kept control of that western parcel, what we are  
6 calling the western parcel, that that was not sold  
7 off. It was always under our direct control with a  
8 revocable easement, and so we needed to maintain that  
9 buffer for the safety purposes.

10 Q. And that buffer is not based upon any  
11 type of industry standard, correct?

12 A. Not that I know of, and the reason we did  
13 not do calculations was because we feel like we got  
14 enough buffer with that western parcel.

15 Q. You just led to my next question. The  
16 buffer is not based upon any calculation.

17 A. No. Because we had enough buffer with  
18 the western parcel. And, again, I think to chop up  
19 all these parcels is just not an appropriate way to  
20 look at an operation center because we have so many  
21 things going on all three of these that to chop them  
22 up is just not appropriate.

23 They were able to install the vaporizer  
24 building on the western parcel, we were able to  
25 install the flaring unit, we got enough buffer for

1 the sensitive utility infrastructure. And, you know,  
2 even on what we are calling the eastern parcel, we  
3 have to relocate I believe it's line D and so we have  
4 a corridor for line D and we wouldn't be able to do  
5 that just chopping up all these pieces. You can't  
6 run an operation center chopping things up.

7 Q. Okay. And I think you've already  
8 indicated numerous times that if you don't recover  
9 any money in this case, you will still be able to  
10 operate the property as you see fit to provide gas  
11 service for customers; is that correct? Because  
12 we're still going to own the property after this  
13 case; is that correct?

14 A. That is correct. But since we have --

15 Q. Thank you, Mr Hebbeler.

16 THE WITNESS: May I finish?

17 EXAMINER STENMAN: You may.

18 A. Since we have an asset base there, again,  
19 it's -- we looked at it differently that it's the  
20 cost of doing business instead of looking at plant in  
21 service. We responded to the plant in service  
22 because that's the way staff looked at it. But we  
23 disagree with that point of view.

24 Q. Is it safe to say plant in service is a  
25 nonissue? As it relates to whether or not you are



1 entitled to remediation costs?

2 A. I would have to ask staff a question if  
3 it wasn't an issue, why did they look at plant in  
4 service as part of their metric, so to me that's a  
5 huge issue.

6 Q. So plant in service is an issue.

7 A. According to the way staff is looking at  
8 it, that's why I asked that question.

9 Q. From Duke's position plant in service is  
10 not important.

11 A. From the standpoint of remediation, and  
12 again I'll defer recovery to Mr. Wathen, we look at  
13 this as an operations center and as -- on advice from  
14 counsel we were required to do this remediation and,  
15 therefore, on this operation center it would be a  
16 cost of doing business and we have served customers  
17 with the MGP plants for many years.

18 Q. If you could turn to page 10 of your  
19 testimony, I'm sorry, second supplemental testimony,  
20 lines -- line 14 and 15 specifically. I wanted to  
21 talk to you about dispersing water from the pulling  
22 pumps which you briefly discussed with Mr. Hart, I  
23 believe. Do you see where I am at in your testimony?

24 A. I'm sorry, what page again, please?

25 Q. Page 10, lines 14 and 15. Your

1 discussion about the pumps. And dispersing water  
2 from the pumps.

3 A. Yes, I have that.

4 Q. This -- there is no set schedule for  
5 actually pulling the pumps, is there?

6 A. As discussed before, that -- pulling the  
7 pumps depends on the maintenance that's performed  
8 annually on such things as the electric line running  
9 to the pumps and the pumps themselves. If they are  
10 not in the condition to operate, then we have to pull  
11 the pumps and fix them, and so that maintenance of  
12 those other items dictates when those pumps are  
13 pulled.

14 Q. So there is no set schedule for pulling  
15 the pumps.

16 A. There is if maintenance shows you have to  
17 pull the pumps because we have to get this back in  
18 service for the next heating zone or if it's during  
19 the heating season, that's more of an emergency type  
20 of operation. We would have to pull the pumps and  
21 get it back operational.

22 Q. Okay. So there is a set schedule for  
23 pulling the pumps.

24 A. There is a set schedule for the  
25 maintenance performed on those items that run the

1 pumps.

2 Q. So when you perform maintenance, you do  
3 that annually.

4 A. That's correct.

5 Q. And when you do the annual maintenance,  
6 it doesn't always indicate you need to pull the  
7 pumps.

8 A. That is correct.

9 Q. So there is no set schedule for pulling  
10 the pumps.

11 A. Again, when you say "set schedule," once  
12 a maintenance activity triggers that they have to be  
13 pulled, then there is a set schedule. If you are  
14 talking like an annual maintenance for pulling the  
15 pumps, no. If you are talking a schedule once an  
16 activity or an anomaly shows up, then it's yes.

17 Q. And only on those occasions which aren't  
18 set do you need to pull pumps when there is an issue.

19 A. Please ask your question again.

20 Q. Okay. You have annual inspections on the  
21 pumps, correct?

22 A. That's correct.

23 Q. And on -- during certain annual  
24 inspections you determine that you do not need to  
25 pull the pumps out. If there's not an issue.

1 A. That's correct.

2 Q. And so you don't disperse water.

3 A. That is correct.

4 Q. On other occasions you do your annual  
5 inspection and then you find that there is a problem  
6 and on those occasions you have to pull the pump out  
7 and then disperse the water.

8 A. That is correct.

9 Q. So it depends on if you find a problem  
10 during your annual inspection.

11 A. That's correct. And there are few  
12 exceptions. Once in a great while we will have to  
13 pull the pumps, look at the rods that come out, but  
14 that's -- that's a longer period of time. That's not  
15 on an annual inspection. There are some other items  
16 but it's more or less what we described of the annual  
17 inspection.

18 Q. The transmission lines crossing the West  
19 End site, I think -- those are referred to as AM01?

20 A. That is correct.

21 Q. Who owns the majority of AM01?

22 A. Are you talking about on Duke Energy Ohio  
23 property?

24 Q. Who owns the portion of the AM01 line  
25 going under the Ohio River?

1           A.    Under the water now versus bank to bank,  
2           right?

3           Q.    Let's start with the water.

4           A.    Okay.  The water is Duke Energy Kentucky  
5           at the low pool line, the normal pool line.

6           Q.    And is that not up to the bank?

7           A.    No.  There is different levels of that  
8           water.  There's normal pool, flood stage.  If you  
9           want to talk bank to bank, AM2 is owned by Duke  
10          Energy Ohio, there is approximately 320 feet of that,  
11          and if you split it, you just split those in half and  
12          that will get you half and it's almost down to  
13          approximately the state line.

14          Q.    The vast majority of AM01 is owned by  
15          Duke Energy Kentucky.

16          A.    That's correct.  The only -- you know,  
17          you have to have a full pipeline to make sure it's  
18          operational.

19          Q.    And you indicated that you are aware that  
20          the AM01 line is going to be replaced where the  
21          bridge has to be moved.  Is that what you testified  
22          to?

23          A.    That is correct.

24          Q.    But you don't know where -- well, let me  
25          ask it different.  If I say you've indicated you are

1 going to need a certain layout zone or an area to set  
2 up for the horizontal drilling; is that correct?

3 A. That's correct.

4 Q. But you don't know today where that's  
5 going to be laid out.

6 A. I know where the entrance point is going  
7 to be for the bore rig. I mean that's a fixed point  
8 and so the bore rig will be there and probably the  
9 mud pit. The other operations that the compressors  
10 and trailers, those types of things may be able to be  
11 somewhat removed, and we have to coordinate that with  
12 the construction layout of the bridge contractor and  
13 construction.

14 Q. So today the other equipment, you don't  
15 know where that's going to be laid out.

16 A. It will be a close proximity but it may  
17 not be right around that bore rig.

18 Q. You don't know exactly where it's going  
19 to be.

20 A. That's correct.

21 MR. PARRAM: That's all I have, your  
22 Honor.

23 EXAMINER STENMAN: Thank you.

24 Redirect?

25 MS. WATTS: May we have a moment, your

1 Honor?

2 EXAMINER STENMAN: Let's just take a  
3 quick 5-minute break.

4 (Recess taken.)

5 EXAMINER STENMAN: Let's go back on  
6 record.

7 MS. WATTS: I don't have any redirect,  
8 unless Mr. Parram would like to go back and do  
9 recross on the confidential portion.

10 EXAMINER STENMAN: So you have no  
11 redirect on what's been done so far.

12 MS. WATTS: That's correct.

13 EXAMINER STENMAN: Mr. Parram, do you  
14 have confidential questions?

15 MR. PARRAM: Yes, ma'am, a couple very  
16 quick ones.

17 EXAMINER STENMAN: Let's go into a  
18 confidential portion of the transcript.

19 (Confidential portion excerpted.)

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(Public portion.)

EXAMINER STENMAN: I do believe we have  
some exhibits, at least one.

MR. PARRAM: Yes, I move for admission of  
Staff Exhibit 5.

EXAMINER STENMAN: Any objections?

MS. WATTS: No objection.

EXAMINER STENMAN: Staff Exhibit 5 will  
been admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER STENMAN: Duke, you may call  
your next witness.



1 MS. WATTS: Yes, I'm sorry. Duke Energy  
2 Ohio calls William Don Wathen, Jr.

3 - - -

4 WILLIAM DON WATHEN, JR.  
5 being first duly sworn, as prescribed by law, was  
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 By Ms. Watts:

9 Q. Mr. Wathen, good afternoon.

10 A. Hello.

11 Q. Do you have before you what's been marked  
12 as Duke Energy Ohio Exhibit 19C?

13 A. If that's my third supplemental  
14 testimony, I do.

15 Q. Thank you. Would you tell us, is that  
16 the supplemental -- third supplemental testimony that  
17 you caused to be prepared for this proceeding?

18 A. It is.

19 Q. And if I were to ask you the questions in  
20 there again today, would your answers be the same?

21 A. Yes.

22 Q. Do you have any additions or corrections?

23 A. No.

24 MS. WATTS: We offer Mr. Wathen's  
25 testimony into evidence and we offer Mr. Wathen for

1 cross-examination.

2 EXAMINER STENMAN: Thank you.

3 Mr. Sauer?

4 MR. SAUER: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Sauer:

8 Q. Good afternoon, Mr. Wathen. Mr. Wathen,  
9 are you familiar with the Duke deferral case that  
10 established the deferrals for the MGP remediation?

11 A. 09-712 case?

12 Q. That's the one.

13 A. I am.

14 Q. Since the filing of that case, which I  
15 believe was, the application I think was August 10,  
16 2009; is that correct?

17 A. I believe that's correct.

18 Q. And the filing of the rate case, the  
19 notice in June 7, 2012, between those times were  
20 there any conversations with the PUCO staff regarding  
21 how much investigation and remediation costs were  
22 being expended by the company?

23 A. I know the company had meetings with the  
24 staff but I was not personally involved in any of  
25 them, so I don't know what was discussed, so.

1           Q.    To your knowledge there was never a  
2           discussion with the staff then that established for  
3           the staff how much money was being spent  
4           investigating or remediating the sites?

5           A.    I am not aware of any such meeting that  
6           was discussed in numbers.  However, we do record this  
7           information in our Form 1 and it's a regulatory asset  
8           that's identified conspicuously on the regulatory  
9           asset page.

10          Q.    It established as a regulatory asset  
11          identifying self as MGP remediation/investigation, or  
12          remediation costs?

13          A.    That's correct.  That Form 1 is filed  
14          with the PUCO as well.

15          Q.    If we could turn to page 3, lines 5 --

16          A.    Page 3?

17          Q.    Page 3, lines 5 to 8.  You are discussing  
18          there that you believe that all the costs, I believe  
19          you are referring to the remediation cost, correct?

20          A.    That's the subject of this case so, yes.

21          Q.    And those were prudently incurred; that's  
22          your testimony?

23          A.    That's my testimony as far as I  
24          understand the testimony of the other witnesses in  
25          this case.

1           Q.    And is it your understanding that the  
2           company has no written documentation to demonstrate  
3           that there's been any type of a qualitative or  
4           quantitative analysis of the selection process --  
5           processes that resulted in the scope of the  
6           remediation technologies chosen at the East End or  
7           West End sites?

8           A.    I have little to do with that project.  
9           Ms. Bednarcik was the main project person involved in  
10          that. I would have to defer those questions to her  
11          because I was not involved in that.

12          Q.    But you have been in the hearing during  
13          Ms. Bednarcik's testimony, have you not?

14          A.    I have.

15          Q.    And did you hear from anyone testifying  
16          that there was any such analysis performed?

17          A.    I heard multiple times that costs were --  
18          the projects were bid out, that services were bid  
19          out. We used a competitive bid process to get the  
20          most desirable outcome in the costs, so.

21          Q.    But at the time of the RFP process, the  
22          scope of the remediations had been established,  
23          correct?

24          A.    I don't know. I haven't seen the scope.

25          Q.    Are you familiar with the gas cost

1 recovery procedures in Ohio?

2 A. Generally.

3 Q. Have you been involved in Duke GCR cases  
4 in the past?

5 A. Only insofar as my group does those  
6 filings. I don't -- I don't generally look at them  
7 day to day, so.

8 Q. Are you familiar with the management  
9 performance audit that was just performed in the  
10 12-212 case, I believe? 12-218 case?

11 A. This is the audit of the GCR?

12 Q. Yes.

13 A. I'm sure I looked at it at one point. I  
14 wouldn't characterize it with intimate familiarity  
15 with that document.

16 Q. Do you know if Exeter was the MP auditor  
17 that was selected by the PUCO to review the  
18 reasonableness of Duke's gas purchasing practices and  
19 policies in that case?

20 A. Not off the top of my head.

21 Q. Could be. Don't know.

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

23 EXAMINER STENMAN: You may.

24 MR. SAUER: Can I have marked as OCC  
25 Exhibit 10.

1 EXAMINER STENMAN: Did the court  
2 reporters get a copy?

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Have you seen this document before,  
5 Mr. Wathen?

6 A. Again, it looks familiar. It's certainly  
7 not the entire document, I don't think, but it looks  
8 familiar.

9 Q. It is not the entire document. It is --  
10 it is the cover page and the executive summary from  
11 that document, correct?

12 A. That's probably why it didn't look  
13 familiar. It was a little thin.

14 Q. And it looks a little thin because when  
15 there's an MP audit, there is a significant review of  
16 the company's purchasing practices and policies,  
17 correct?

18 A. I've only been tangentially involved in  
19 the audit process. I know it's pretty extensive and  
20 annual or biannual.

21 Q. If -- you agree if you look at the table  
22 of contents, they review all the various items that  
23 are listed in the table of contents under "Management  
24 and Organization" your gas supply planning, audit  
25 period capacity, and procurement activity,

1 transportation service, they look at all those items,  
2 do they not?

3 A. Well, it stands to reason. The table of  
4 contents suggest they do, it's probably in the  
5 document somewhere. But again, it's only a partial  
6 document, so.

7 Q. And do you know offhand on an annual  
8 basis what the company spends on their gas cost  
9 procurement?

10 A. I can -- if memory serves in our rate  
11 case anyway, we had an estimate of \$275 million, give  
12 or take, of purchased gas assumed in the case, but  
13 again the rate case wasn't for gas costs, it was just  
14 for the base rates. But that's what we -- that's  
15 what I remember being in the case and that's just for  
16 SSO supply.

17 Q. And if you look at page vi or on under  
18 the Executive Summary.

19 A. Okay.

20 Q. That first paragraph, could you read that  
21 into the record for me, sir?

22 MS. WATTS: Mr. Sauer, could we stipulate  
23 it into the record?

24 MR. SAUER: We could, that's fine.

25 EXAMINER STENMAN: Okay.

1 A. Can I read it for my own interest?

2 Q. Please.

3 A. Since you might ask me a question about  
4 it.

5 Okay.

6 Q. And if you look at the very bottom, the  
7 next-to-the-last line, the auditor notes, do they  
8 not, that DEO -- "DE-Ohio's decision processes are  
9 well documented." Do you see that?

10 A. I see it.

11 Q. Thank you.

12 Could you turn to page 3 of your third  
13 supplemental testimony, lines 11 and 12, where it  
14 says "In order to avoid any rate shock, the Company  
15 proposes to amortize the costs over a three-year  
16 period." Do you see that?

17 A. I do.

18 Q. And again, those costs are the  
19 investigation or remediation costs in this case,  
20 right?

21 A. It's the -- what I am proposing is to  
22 recover the balance of that at 12/31/2012 of actual  
23 spending.

24 Q. And how much would that be?

25 A. \$62.8 million including the carrying



1 costs at that point. That's in line 13 to my  
2 testimony there.

3 Q. And the three-year time period for  
4 amortizing was based upon the period that the company  
5 believes will exist between rate cases?

6 A. That's -- that's approximately correct.  
7 We expect to be filing a case within around 2015-'16.  
8 Yeah. This was following what we filed in the rate  
9 case too so that was the original genesis, that  
10 period.

11 Q. And the remediation costs are one-time  
12 nonrecurring costs, correct?

13 A. When they're finally concluded I would  
14 say that but it's not -- it's an expense we are going  
15 to have every year for some number of years.

16 Q. If the company was to get authorization  
17 to collect the \$62.8 million that you say has been  
18 spent through 12/31/2012, how do you opine that a  
19 three-year amortization period would avoid rate  
20 shock?

21 A. If you recall, we agreed to an allocation  
22 percentage as well in the stipulation, so if you take  
23 the allocation to every customer class and kind of do  
24 the math, it's about a 3 percent impact on customers'  
25 bills. I think that's a reasonable impact on

1 customers' bills, you know, 10 percent would be  
2 arguably rate shock but 3 percent is manageable.

3 Q. That 3 percent impact includes gas cost,  
4 correct?

5 A. Absolutely.

6 Q. What if that impact was compared to just  
7 base rates only?

8 A. Nobody pays just base rates. They pay  
9 for gas too.

10 Q. But have you done that calculation what  
11 the increase --

12 A. I have not, but it would be -- I mean our  
13 base rates are in the neighborhood of \$400 million,  
14 so call it 5 percent and still -- still not rate  
15 shock.

16 There's another constraint too that I  
17 should mention. There is the -- the approval in  
18 09-712 said we could only get carrying costs up to  
19 the point in time the recovery began. Extending the  
20 period beyond three years significantly diminishes  
21 the present value of that money.

22 You know, we can probably handle three  
23 years but going past three years is getting --  
24 it's -- diminishes the present value to the  
25 shareholder.

1 Q. Could you turn to page 4 of your third  
2 supplemental testimony.

3 A. What line?

4 Q. 7 through 13.

5 A. Okay.

6 Q. Says the company's requesting the  
7 Commission to continue to allow company deferred  
8 costs associated with the required environmental  
9 remediation. Do you see that?

10 A. I do.

11 Q. There would be no -- and let me step  
12 back?

13 The company is also proposing that there  
14 would be a rider for the collection of whatever  
15 authorized remediation costs come out of this case,  
16 correct?

17 A. Well, I think that was two questions but  
18 I'll try to answer them at the same time. We are  
19 asking for -- to start our collection based on the  
20 12/31/2012 balance amortized over three years. What  
21 this is suggesting is we want deferral authority for  
22 costs incurred after 12/31/12 as well that might be  
23 recovered in a future rider.

24 Q. And there's no proposal to try to collect  
25 any new deferrals through the rider that's

1 established in this case or new deferrals, I mean  
2 anything beyond -- spent beyond January 1, 2013?

3 A. Well, assuming -- I think we are assuming  
4 something that isn't necessarily the case yet. We  
5 haven't established the rider yet. So I think the  
6 proposal here was to establish it at zero and we  
7 would come in and formulate the rate at that point,  
8 so, but the initial setting of the rate would be on  
9 12/31/12 balance and that's all we are asking for at  
10 this point.

11 Q. Right.

12 A. I think that was your question.

13 Q. There would be no attempt to recover new  
14 deferrals until there would be a subsequent rate  
15 case.

16 A. Exactly. Not a rate case, a next -- this  
17 would be an annual filing under the rider MGP, if you  
18 will, and every year we would come in and update the  
19 rider for the then-current balance of the reg asset  
20 subject to the review of the Commission.

21 Q. So your proposal is any new investigation  
22 or remediation costs that would be spent beyond  
23 January 1, 2013, would not be subject to a prudence  
24 review?

25 A. I'm not suggesting that at all. I think

1 the Commission -- it would be an application like we  
2 do with most riders. The Commission or any party can  
3 argue that our costs are imprudent and that would be  
4 the subject of whatever proceeding they have at that  
5 point.

6 We're not asking for carte blanche  
7 authority to recover these costs. Any prudence  
8 review would be subject at that time of the filing of  
9 the application. But the prudence would only be  
10 reviewing at that point the new costs because the  
11 prudence of the prior costs would have been already  
12 decided.

13 Q. But a rider case would be much more  
14 condensed and much less detailed than a rate case.

15 A. Well, this is -- this hopefully this week  
16 is an exception in how the MGP hearings will go,  
17 because once we conclude the legality of the recovery  
18 and the process, it should be a relatively  
19 straightforward proceeding, I would expect, to review  
20 the cost expenditures by Ms. Bednarcik's group, what  
21 we've submitted for costs, there would be a prudence  
22 review, the staff, OCC could ask discovery and  
23 hope -- I would expect it to be a much more  
24 streamlined process than what we are doing today. We  
25 have a number of riders that recover much more costs

1       that go pretty quickly, so.

2               Q.     The other riders you are talking about  
3       like the accelerated main replacement riders?

4               A.     Well, again, we have a long list, bad  
5       debt trackers, we have accelerated main replacement  
6       rider, we have a Rider AU, you know, just a lot.

7               Q.     Nowhere near as technical as -- as the  
8       subject of the investigation and remediation of these  
9       MGP sites.

10              A.     I would argue that some of the people in  
11       this room that have been engaged in those hearings  
12       would probably suggest they are just as technical.  
13       The SmartGRID rider, for example, is quite detailed,  
14       so.

15              Q.     Do you know about how much money the  
16       company is spending annually on the SmartGRID?

17              A.     On SmartGRID? I would -- between gas and  
18       electric, north -- it's got to be north of  
19       \$80 million, something like that. I'm guessing but  
20       it's pretty substantial though.

21              Q.     In your SmartGRID case, do you know how  
22       much you're spending in the natural gas side?

23              A.     I'm trying to think. It's probably about  
24       25 percent of the total is gas. All this is a matter  
25       of record. We have a filing out there already so

1       it's -- if you want to know.

2               Q.     If you look at page 6, lines 10 to 13.

3               A.     I'm there.

4               Q.     You talk about the going after proceeds  
5 for the insurance policies associated with the MGP  
6 remediation; is that correct?

7               A.     I don't talk about going after the  
8 policies. I talk about what we would do with the  
9 proceeds.

10              Q.     Okay. And you're suggesting that any  
11 proceeds will be -- what's your recommendation with  
12 regard to -- if the company is successful in making  
13 insurance claims getting proceeds with regards to the  
14 MGP issue, what's your proposal with regards to  
15 proceeds?

16              A.     My proposal is any -- net litigation  
17 proceeds would come -- which would be netted against  
18 the rider. So it essentially will be credited  
19 against the reg asset and it would be that much for  
20 Duke to recover from customers.

21              Q.     What are you including in litigation that  
22 are being netted out from the proceeds?

23              A.     This is kind of like our storm rider  
24 in-house counsel has already based rates but  
25 incremental litigation expend for hiring outside

1 counsel that isn't already in base rates, for  
2 example, any fees, whatever would be netted against  
3 the proceeds.

4 Q. So it's incremental costs are not -- are  
5 what you're netting.

6 A. That's correct.

7 Q. Okay. You were in the room when  
8 Mr. Hebbeler was testifying, correct?

9 A. Most of it. He said my name frequently  
10 so I heard that part, so.

11 Q. He was punting some things to you, you  
12 are correct.

13 Do you know if during the time the MGP  
14 facilities were used to manufacture gas did the  
15 ratepayers pay the costs to support the operation of  
16 those facilities?

17 A. It's hard -- it's hard to say from the  
18 1840s to 1963 who paid what, but generally  
19 businesses don't provide services for free, so I  
20 would assume somebody paid for the gas beginning in  
21 1935ish, you know, the Public Utility Holding Act  
22 came into place.

23 Most utility commissions established a  
24 ratemaking formula and relied on it and it's pretty  
25 much the formula we have today, so I would expect



1       that they paid -- paid their -- the cost of providing  
2       that service at least since 1935 or so.

3               Q.     If you were in the room yesterday there  
4       were -- you heard a lot of discussions about the  
5       parcel that's been described as the "purchased  
6       parcel."

7               A.     I did.

8               Q.     There was a question that was asked if --  
9       if Duke would subsequently sell that purchased  
10      property, what -- how would the proceeds of that sale  
11      be accounted for?

12              A.     I was out of the room but I was told of  
13      that question because I think my name might have come  
14      up on that one too, I heard.

15              Q.     I think it did.

16              A.     That property is recorded on the  
17      company's books as a nonutility plant, so customers  
18      are not going to be asked to pay for it. It is not  
19      part of rate base, the customers have no investment  
20      on it, shareholders have the exclusive investment on  
21      it, so the proceeds in excess or below the value of  
22      that money would go to the shareholders.

23              Q.     If there is subsequent remediation on  
24      that side, are you going to ask customers to pay for  
25      the investigation or remediation costs associated

1 with that?

2 A. Because -- because the remediation  
3 expenses are -- are the necessary business expenses  
4 that the Commission described in its order  
5 establishing our deferral, those necessary business  
6 expenses don't have anything to do with who owns that  
7 plant. So, yes, we would ask that cost be included  
8 in the rider as well.

9 Q. So the company, is it asking customers to  
10 remediate land that is owned by the shareholders?

11 A. The company is asking customers to pay  
12 for -- for the normal legally required business  
13 expenses that were engendered from operating a gas  
14 distribution system that relied on manufactured gas  
15 plants years ago. The Commission, in setting the  
16 deferral authority, characterized it as such, it's a  
17 legal obligation we have, it's a normal -- it's an  
18 expense, and in the Columbia case they -- they  
19 conspicuously noted that ownership is irrelevant.  
20 Used and useful is irrelevant. That the costs are  
21 what they are, so yes, we would ask the customers to  
22 pay for that.

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

24 EXAMINER STENMAN: You may.

25 MR. SAUER: Can I mark a document?

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Are you familiar with this document,  
3 Mr. Wathen, that's been marked as OCC Exhibit No. 11?

4 A. I read it before but not recently, but  
5 I've read it before.

6 Q. And can you -- do you recognize this as a  
7 memo -- a memoranda contra that Duke filed in  
8 response to an application for rehearing that was  
9 filed by the Office of the Ohio Consumers' Counsel  
10 and Ohio Partners for Affordable Energy?

11 A. I think you read the title correct, yes.

12 Q. And the 09-712-GA-AAM case, that is  
13 Duke's deferral case which established the deferrals  
14 for the remediation.

15 A. That's correct.

16 Q. And are you -- I think in your testimony  
17 you also discuss that there was a similar filing by  
18 Columbia, and in 2008 when the Columbia Gas had asked  
19 for deferral authority for their investigation and  
20 remediation costs associated with MGP plants that  
21 they have responsibility for?

22 A. Case 08-606 Columbia Gas asked for  
23 authority to defer expenses associated with a plant  
24 that they neither owned nor was used and useful, and  
25 the Commission granted that authority.

1           Q.    Okay.  And did you -- do you recall from  
2           the order in the Columbia case that the Commission  
3           had put a couple of requirements on Columbia, for  
4           example, I believe they didn't get deferral authority  
5           for the first \$25 million that they spent  
6           investigating or remediating a site, does that sound  
7           familiar?

8           A.    I believe the Commission addressed that  
9           in the rehearing order and Columbia asked for those  
10          conditions and that's why it was not an issue.

11          Q.    And they also had a condition of having a  
12          requirement to do annual reporting, correct?

13          A.    Again, they noted those two conditions as  
14          Columbia asked for and they distinguish these  
15          conditions being asked for from us where we did not  
16          ask for those.

17          Q.    And, in fact, in the memo contra you  
18          argued against those, corrects?

19          A.    Again, unlike Columbia, we did not ask  
20          for those, so.

21          Q.    Although you didn't ask for it, was there  
22          a reason in your mind why you were opposed to doing  
23          annual filings of your annual filings and remediation  
24          expenses?

25          A.    I'm not aware of any.  I wasn't involved

1 in that request so I don't know what the reasons  
2 were, so. I don't know why Columbia asked for those  
3 reasons so I don't know.

4 MS. BOJKO: Mr. Wathen, there is some  
5 activity going on, we can't hear you.

6 THE WITNESS: It feels like I am talking  
7 loud already.

8 MS. BOJKO: There is construction work  
9 down there.

10 MR. SAUER: May I go off the record for  
11 just a minute, your Honor?

12 EXAMINER STENMAN: Yes.

13 (Off the record.)

14 EXAMINER STENMAN: All right let's go  
15 back on the record.

16 Q. (By Mr. Sauer) Mr. Wathen, you didn't  
17 personally perform a prudence assessment yourself,  
18 did you?

19 A. I did not. We've heard from several very  
20 competent people describing the prudence of the  
21 expenses.

22 Q. But you yourself didn't perform any  
23 particular analysis or determine the prudence of the  
24 expenditures?

25 A. I am not an environmental engineer and I

1 don't have that role, so.

2 Q. But you understand the Commission's  
3 ratemaking formula, do you not?

4 A. I hope so.

5 Q. Okay.

6 A. If not, I am way overpaid, so.

7 Q. So we would have to go into a  
8 confidential session to ask you any questions about  
9 that.

10 Mr. Wathen, there's been testimony that  
11 the company has put notices to insurance companies  
12 where there may be potential for claims regarding the  
13 MGP remediation costs; is that true?

14 A. I have a recollection of Ms. Bednarcik  
15 describing some -- you had -- either you or someone  
16 else handed her something, a discovery request that  
17 Keith Bone responded to, yeah.

18 Q. And do you know whether the insurance  
19 premiums were paid by Duke's customers? For those  
20 insurance policies?

21 A. There's really no way to know for sure  
22 without looking at the rate cases from that -- those  
23 times for sure, but I think the reason I -- I'm  
24 offering to include any proceeds is -- is in response  
25 to that.

1 MR. SAUER: No further questions, your  
2 Honor.

3 EXAMINER STENMAN: Thank you.

4 Ms. Mooney, any questions?

5 Ms. Mooney, any questions?

6 MS. MOONEY: I'm reading, I'm sorry.

7 No, I don't. No, thank you.

8 EXAMINER STENMAN: Thank you.

9 Kroger?

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

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Bojko:

14 Q. Good afternoon, Mr. Wathen. If we could  
15 turn to page 2 of your third supplemental testimony,  
16 and I believe all my questions are on your third  
17 supplemental testimony today so if I say "testimony,"  
18 I'm referring you to the third supplemental  
19 testimony.

20 A. Okay.

21 Q. On line 8 of that, you talk about the  
22 stipulation what parties agreed to a zero dollar  
23 overall increase in base rates but left this issue  
24 for litigation. And then on the very next sentence  
25 you say there's an expectation that there will be

1 some amount of recovery related to these costs. Is  
2 that expectation by Duke?

3 A. Well, I think -- with the exception of  
4 the OCC who recommended zero, I think most of the  
5 parties, even the staff, recommended \$6 million, so  
6 there was an expectation by us that some recovery  
7 would be imminent.

8 Q. But that wasn't included in the  
9 stipulation that there was a guaranteed recovery of  
10 some costs; is that correct?

11 A. I don't recall the word "guarantee" in  
12 the stipulation at all.

13 Q. Well, in fact, if we turn to OCC Exhibit  
14 1 which is OCC Witness Hixon's testimony where she is  
15 supporting the stipulation, she specifically states  
16 in that that "If the Commission determines that  
17 customers should pay for MGP remediation costs, that  
18 parties agree that those costs should be collected  
19 through a rider. In addition, any MGP costs would be  
20 charged to customers will be allocated among rate  
21 schedules at the percentages as set forth in the  
22 stipulation."

23 So isn't it true there are other parties  
24 that don't agree with your assessment that  
25 expectation is guaranteed?



1           A.    Well, this is my testimony and I say  
2           there is an expectation. I didn't say all parties  
3           agree that this is an expectation, so take it however  
4           you want it.

5           Q.    That's what I am clarifying. Thank you.

6                   And isn't it true also in Mr. Townsend's  
7           testimony he specifically states that the parties  
8           agreed in the stipulation that if any costs are  
9           deemed approved by the Commission that the  
10          stipulation decides that those should be recovered  
11          from a rider?

12          A.    I only vaguely remember Mr. Townsend's  
13          testimony so I couldn't tell you what's in his  
14          testimony.

15          Q.    And isn't it also true that the entities  
16          approving the deferral said "if any"? You just  
17          referenced the Staff Report as a guaranteed cost  
18          recovery. Isn't it true on page 32 of the Staff  
19          Report, they also said "if any"?

20                MS. WATTS: Objection in that I think --  
21          I think that mischaracterizes what Mr. Wathen said  
22          about the Staff Report.

23                EXAMINER STENMAN: The objection is  
24          overruled. Mr. Wathen can certainly clarify.

25          A.    Will you remind me what I said about the

1 Staff Report that you are referring to?

2 Q. You just stated I believe a couple of  
3 questions ago you said that there was an expectation  
4 because staff stated you should have at least 6.4  
5 million, and isn't it true that staff said "if any"  
6 in the Staff Report?

7 A. Well, I think the staff is wise enough,  
8 like me, to recognize that the Commission will make  
9 its own mind up so. It can end up at zero or \$55  
10 million.

11 Q. Well, isn't that the case when staff in  
12 the Staff Report recognized the Commission's finding  
13 and order that established the deferral as well as  
14 the entry on rehearing and the words "if any" were  
15 actually included in those statements referenced by  
16 staff?

17 A. If any party can choose to qualify  
18 whatever they want to. The Commission will make its  
19 mind up.

20 Q. I -- let's further explore exactly what  
21 the Commission did in those prior orders establishing  
22 the deferral.

23 MS. BOJKO: The finding and order in the  
24 case I would like to have marked for identification  
25 purposes at this time as Kroger Exhibit 3.

1 EXAMINER STENMAN: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MS. BOJKO: May I approach, your Honor?

4 EXAMINER STENMAN: Yes.

5 MS. BOJKO: And this is 09-712-GA-AAM.

6 Q. Mr. Wathen, do you recognize what's been  
7 handed to you as Kroger Exhibit 3?

8 A. I do.

9 Q. And that is the finding and order of the  
10 Commission issued in this case?

11 A. Yes, it's the initial finding and order.

12 Q. Not in this case, in the deferral?

13 A. 09-712 case, yes.

14 Q. And if you look on page 3 of that order,  
15 paragraph 7, second line from the bottom, the  
16 Commission specifically states that "By considering  
17 this application, the Commission is not determining  
18 what, if any, of these costs may be appropriate for  
19 recovery through Duke's distribution rates." Is that  
20 correct?

21 A. That's what they say in that paragraph,  
22 yes. The next paragraph is more interesting to me  
23 though.

24 Q. And if we could go to the entry on in  
25 this case 09-712-GA-AAM.

1 MS. BOJKO: Your Honor, at this time I  
2 would like to have marked for identification purposes  
3 as Kroger Exhibit 4, and it is the entry on rehearing  
4 in 09-712-GA-AAM. May I approach?

5 EXAMINER STENMAN: You may, and it will  
6 be so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Mr. Wathen, do you recognize that to be  
9 the entry on rehearing issued in the same case that  
10 we have been discussing, 09-712?

11 A. It looks like the one I brought with me,  
12 yes.

13 Q. So you are very familiar with it,  
14 Mr. Wathen.

15 A. Very.

16 Q. And if you look at starting on page 1,  
17 the bottom of that page in paragraph 4 it's talking  
18 about denying OP&E's motion to dismiss and noting  
19 that the Commission was not considering what, if any,  
20 of the deferred costs may be appropriate for  
21 recovery.

22 And then if you go on to page 3, in the  
23 top paragraph on that page, the Commission  
24 specifically states "...we reiterate here the point,  
25 which we made in our order, that deferrals do not

1       constitute ratemaking and approval of Duke's  
2       application is not a determination of what, if any,  
3       of these costs may be appropriate for recovery in  
4       Duke's distribution rates." Do you see that?

5             A.     That language is typical in any deferral  
6       order and, again, the Commission authorizing a  
7       deferral must be providing some assurance of recovery  
8       as we rely on that in creating regulatory assets.

9             Q.     I understand that, but you also  
10      understand it's not a guarantee; is that correct?

11            A.     Well, in my view once a deferral is  
12      created, the only question is their prudence. The  
13      question about whether it's a legal obligation or not  
14      is irrelevant because the Commission already  
15      established and in the paragraph (8) in the finding  
16      and order you provided me earlier, the Commission  
17      acknowledges these are legal costs to comply with  
18      state and federal regulations, because they are a  
19      cost of doing business, and the Commission recognizes  
20      that. All the Commission is doing is saying we are  
21      deferring ruling on this but they are not saying they  
22      are disallowed.

23            Q.     Right, but they are also not saying they  
24      are guaranteed because, if you look, although you  
25      just told me that the prior paragraph was standard

1 language, if you now turn to page 5 of that order and  
2 look at paragraph, it's the third paragraph in  
3 section 10, the Commission is specifically again  
4 referring to OPAE, I don't mean to pick on OPAE here  
5 today, but specifically addressing, so they are  
6 talking about the specific facts of this case so it's  
7 not a standard paragraph.

8 The Commission says "As we stated  
9 previously in response to OPAE's first assignment of  
10 error, our approval of Duke's application in this  
11 case is not a determination of what, if any, of these  
12 costs may be appropriate for recovery in Duke's  
13 distribution rates."

14 And, again, they repeat themselves on  
15 page 6 and say as we stated in the order the  
16 Commission has not yet made a determination on what  
17 costs, if any, may be appropriate for recovery. Do  
18 you see that?

19 A. I heard it.

20 Q. And actually I want to go to your  
21 discussion on page 6 now. You talked a little bit  
22 with Mr. Sauer but you also say it on page 6, you  
23 talk about the Columbia case, and isn't it true in  
24 that Columbia Gas proceeding that you reference in  
25 your testimony that the Commission did not approve

1 the costs in that case as well?

2 A. The Commission used virtually exactly the  
3 same language to recognize that the costs being  
4 incurred by Columbia were pursuant to legal  
5 obligations, so in my mind they recognized that these  
6 costs are required by the company to remediate the  
7 MGP facilities.

8 Q. But, Mr. --

9 A. At that point the only question is a  
10 prudence question. It is not a question of whether  
11 they are allowed, how prudently did we incur the  
12 cost.

13 Q. Could you now answer my question now,  
14 please?

15 A. I did.

16 MS. BOJKO: Could you please have my  
17 question repeated, your Honor?

18 (Record read.)

19 A. The Commission approved the deferral of  
20 the costs.

21 Q. Right, the Commission did not approve  
22 actual costs in that case; is that correct?

23 A. They did not approve actual costs, they  
24 will do a similar case that we are doing right now to  
25 determine the prudence of those costs.

1 Q. And isn't it in fact true that the  
2 Commission even went a step further in the Columbia  
3 case to limit what could actually even be deferred?

4 A. As we discussed with Mr. Sauer, the  
5 Commission accepted a proposal by Columbia to -- I  
6 don't know if they limited how much they could defer.  
7 They said you can only defer costs over \$25,000 and  
8 has some reporting requirements, but those are the  
9 only distinct requirements between them and us other  
10 than the fact they don't even own the property.

11 Q. So they didn't -- not only did they not  
12 approve costs in that case, they said that you are  
13 only allowed to defer a certain portion of the costs  
14 that you claim you have; is that correct?

15 A. They -- pursuant to apparently a request  
16 by Columbia, they are deferring costs above \$25,000  
17 per site, so.

18 Q. And so it was interesting to me that you  
19 just stated that the language is almost identical to  
20 yours because have you read the Columbia order  
21 recently?

22 A. Frequently.

23 Q. Frequently.

24 MS. BOJKO: Your Honor, may I have marked  
25 for identification purposes as Kroger Exhibit 5, it's



1 an entry in Case No. 08-606-GA-AAM.

2 EXAMINER STENMAN: It will be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MS. BOJKO: May I approach?

5 EXAMINER STENMAN: You may.

6 A. The language I am referring to is  
7 paragraph 9 in the Columbia order you just handed me  
8 is virtually word for word in paragraph 8 in our  
9 finding and order.

10 Q. And actually what I want to talk about in  
11 this order is, is there anyplace in this order,  
12 Mr. Wathen, that uses the word "if any" when it  
13 discussed the costs that Columbia Gas is allowed to  
14 defer?

15 A. I don't know. If you can point me to the  
16 words, I am sure you know them, so.

17 Q. Well, the entry is actually lacking of  
18 the words, Mr. Wathen. So isn't it true that this --  
19 this case is distinguished, this entry is  
20 distinguishable in the case with Duke where the  
21 Commission specifically said "if any"?

22 A. Your proposition is --

23 Q. No, no --

24 A. -- that Columbia is allowed to defer  
25 these costs and recover them and -- and Duke Energy

1 is not?

2 Q. That is not what I'm stating and I don't  
3 think that this is an appropriate time for you to ask  
4 me questions. I am going to ask you the questions,  
5 Mr. Wathen.

6 A. I am just surmising your question.

7 Q. Isn't it true the order is different with  
8 regard to the fact that "if any" does not appear in  
9 the Commission's order?

10 A. Well, I indicated earlier paragraph 9  
11 is -- isn't identical. It's virtually identical.  
12 Much of the order is very similar.

13 Q. Can you find the words "if any,"  
14 Mr. Wathen? Referencing costs?

15 A. I don't know. I take your word for it  
16 it's not in there, but I don't think that's relevant.

17 Q. And actually to your other point of the  
18 question you just asked me, if you could turn to page  
19 3 of that order and paragraph 10. Doesn't the  
20 Commission state in this order that the recovery of  
21 the deferred amounts will be addressed in Columbia's  
22 next base rate proceeding, so as you mentioned the  
23 costs were not guaranteed either; is that correct?

24 A. I think that constitutes an "if any" per  
25 your earlier question.

1           Q.    Mr. Wathen, I still don't see the word  
2           "if any" in this Columbia entry but I see one, two,  
3           three, four times in the Duke entry.

4           A.    The phrase you just mentioned is an "if  
5           any" -- is an "if any" statement.

6           Q.    But it specifically does not say that the  
7           costs may be deferred if any; is that correct?

8           A.    That's what I am asking if it says if  
9           there is no costs to defer then there will be no  
10          deferral but we do have costs.

11                   By the way can you hear me now or not?  
12          Can you hear me okay?

13          Q.    I can.

14          A.    Okay.

15          Q.    Thank you.

16                   And to your knowledge isn't it true that  
17          Columbia has not actually sought recovery of those  
18          costs through its deferral?

19          A.    I am not aware they have sought recovery  
20          yet. They're sitting in the back though.

21          Q.    I see that. That's why I wasn't  
22          answering your questions, sir.

23                   Now, let's go back to page 3 of your  
24          third supplemental testimony. I want to talk to you  
25          a little bit about the middle part where you talk

1 about the costs, and you have been here I think  
2 almost every minute of this hearing, maybe a little  
3 less; is that right?

4 A. Most of it.

5 Q. You've heard the discussion that we've  
6 all had about the \$65 million number, right?

7 A. I'm very aware of the \$65 million number.

8 Q. And that's the -- that was what was  
9 actually in your application, in Duke's application;  
10 is that correct?

11 A. That's correct.

12 Q. Okay. And to me -- starting on lines 11  
13 to 14 here you're talking about the actual costs  
14 because there was an estimated -- the \$15 million was  
15 the estimation from I believe it was April to the end  
16 of 2012; is that correct?

17 A. That's correct.

18 Q. Okay. So are what -- is what you're  
19 stating here in this paragraph that now that number  
20 is no longer 65 million, that's it's decreased to the  
21 62.8 million because of actual costs?

22 A. Yeah. I think I went over this with  
23 Mr. -- Mr. Sauer.

24 Q. That might have been when I was having  
25 trouble hearing, so I'm sorry.

1           A.     In the case -- at the time of the case we  
2     had had a date certain, which was March 31, 2012. At  
3     that time our carrying costs and actual costs was  
4     about, I don't know, 45 million or so.

5           Looking -- project -- because the test  
6     here was 12 months ended December 31, 2012, we had to  
7     project to the end of the year 65 was the projected  
8     balance at 12/31/2012. What I am reflecting here is  
9     if we are going to go to a rider, then we should only  
10    be recovering actual costs at a date certain,  
11    12/31/12 the actual costs and carrying costs of 68.8.

12          Q.     I never heard that number with Mr. Sauer,  
13    so it is your testimony that under a rider mechanism  
14    it would be the recovery of actual costs; is that  
15    right?

16          A.     That's correct, yeah.

17          Q.     Okay. And then the actual cost number  
18    today which is what you're asking this Commission  
19    today to approve for recovery is 62.8 million?

20          A.     That's the number as of 12/31/12. I  
21    don't know what the number is today, but.

22          Q.     Oh, I'm sorry. But -- but the  
23    application is only for the costs for 2012.

24          A.     The initial MGP rider would be set at  
25    that rate.

1           Q.    I do know you had a discussion with  
2           Mr. Sauer about riders and so it is your intention  
3           now through Duke's proposal that it would be a rider  
4           as you typically do that has annual true-ups; is that  
5           correct, or quarterly true-ups? What are you  
6           proposing?

7           A.    At some point there will probably be a  
8           true-up because, because we are continuing to spend  
9           money, the likelihood is that we'll -- that the rider  
10          would just be reset a given year at a recognized  
11          then-current balance of the regulatory assets a  
12          true-up is only going to happen when you're no longer  
13          spending money and then you have got to compare the  
14          revenue collected to what your actual costs were so  
15          that would be likely well in the future when we have  
16          a true-up, so.

17          Q.    Well, maybe "trueup" is not the correct  
18          word. An annual update, are you going to update the  
19          rider for the actual costs that are spent under the  
20          remediation programs?

21          A.    I can explain it a little bit, if you  
22          would like, how it works.

23          Q.    I mean, is that your proposal here today?

24          A.    Well, my proposal is, and I think I  
25          described it in my testimony, that annually we

1 would -- we would seek to recover -- we would see to  
2 adjust the rate to recover the then-current balance  
3 of the reg asset.

4 Q. Okay. That was -- my question you are  
5 going to adjust the rate to --

6 A. That's correct.

7 Q. -- to seek the actual costs.

8 A. Yep.

9 Q. Okay. And on that same page beginning on  
10 line 15 you talk about the stipulated allocation  
11 factors between the classes; is that correct? Is  
12 that -- are those the percentages that are on 16  
13 through 18?

14 A. These are the percentages from the  
15 stipulation, right.

16 Q. On class allocation.

17 A. That's right. We agreed to this in the  
18 stipulation.

19 Q. Okay. And then on page 19 you say the  
20 company proposes --

21 A. Page 19 or line 19?

22 Q. I'm sorry, line 19 you say the company  
23 proposes, and I just want to make sure that's a  
24 proposal now under your third supplemental testimony  
25 after the stipulation has been entered into that now

1       you're -- you're requesting that we just stated the  
2       stipulation setup, the amount of the allocation  
3       between classes, and now line 19 goes to when you're  
4       within a class, intraclass allocation is going to be  
5       done on a per-bill basis; is that your proposal?

6             A.    I wouldn't characterize it as an  
7       "intraclass allocation." I mean what the costs are  
8       going to be allocated to the classes and then it  
9       would be divided by the bills so --

10            Q.    The number of bills?

11            A.    That's right, and there is no -- there is  
12       no intraclass allocation per se there. It's just  
13       straight bill allocation. That is not in the  
14       stipulation. It's something we are proposing here.

15            Q.    Okay. And just so we're clear on this, I  
16       think you said it, but you would take the revenue  
17       that was allocated per that class and you would  
18       evenly distribute it among each bill, not necessarily  
19       on a customer basis? It's a per-bill basis, not a  
20       per-customer basis; is that correct?

21            A.    First of all, allocating the costs, not  
22       the revenue. Allocating the revenue requirement, if  
23       you will, and I am going to divide that by the number  
24       of bills. Once it's allocated base class -- let's  
25       just say \$65 million and two-thirds of it is going to



1 residential, you know, I will take two-thirds of 65  
2 so I will call it \$44 million, I will divide that by  
3 3, the years we are talking about, and then divide it  
4 by the total number of bills in residential. So  
5 whether you are a switching customer or not, RSI or  
6 not, you are going to get that rate.

7 Q. Thank you. Because you're proposing that  
8 this is a nonbypassable rider; is that correct?

9 A. Of course, yeah. And we essentially  
10 agreed to that in the stipulation because the  
11 allocation includes the transportation customers as  
12 well, so.

13 Q. We -- I'm sorry, we agreed to a  
14 nonbypassable rider?

15 A. Well, you must have. The allocation  
16 includes -- in the stipulation it was RS/RFT and then  
17 GS and FT which is switching customers, so the cost  
18 must have been allocated -- we must have agreed to a  
19 nonbypassable charge, the costs are being allocated  
20 on a customer class basis indistinguishable whether a  
21 customer is switching or not.

22 Q. I was just asking if your terminology  
23 meant that it was on a nonbypassable basis.

24 A. That's correct. I just wanted to explain  
25 why.

1           Q.    On -- if you could turn to page 6 of your  
2 testimony, please.

3           A.    I'm there.

4           Q.    On lines 14 to 16 you state that --  
5 you're talking here about proceeds from insurance  
6 policies; is that correct? In this paragraph?

7           A.    Well, the entire lines 8 to 16 I am  
8 talking about proceeds, right.

9           Q.    Just for insurance policies?

10          A.    Yeah, through the -- in this section I am  
11 just talking about insurance proceeds.

12          Q.    And you state that "to the extent that  
13 any proceeds relate to MGP costs that the Commission  
14 disallowed, the company is under no obligation to use  
15 these proceeds to offset the rider revenue  
16 requirement." So is it -- is it the company's intent  
17 to offset revenue requirement minus legal costs and  
18 things of that nature?

19          A.    Again, I had this discussion with  
20 Mr. Sauer. To the extent we're talking about the  
21 costs that are being recovered from customers and we  
22 get proceeds related to those cost, we would net out  
23 any incremental litigation costs and reduce the reg  
24 asset by that amount to be recovered from customers  
25 in the future.

1 MS. BOJKO: Could you reread just the  
2 first part of his answer, please.

3 (Record read.)

4 Q. I wanted to understand what you mean to  
5 be the extent that you get proceeds for the cost  
6 recovery for customers. So is it your understanding  
7 that if the Commission accepted staff's proposed  
8 amount in this case, the 6.4 million, that you would  
9 not -- or would you somehow allocate a percentage of  
10 the proceeds to say, let's take an example, it might  
11 make it easier if the Commission awarded \$6 million,  
12 round numbers, if the Commission allocated -- awarded  
13 \$6 million and you received \$10 million from the  
14 proceeds of an insurance claim, would you put  
15 6 million of that to reduce the rider to zero?

16 A. No. I think the Staff Report has -- has  
17 a proposal that we can live with which is to prorate  
18 it essentially so if we only get 6 of the 60 million  
19 we spent and get 10 million in net proceeds, the 6 is  
20 10 percent of 60 so we would use 10 percent of the  
21 \$10 million in proceeds to offset the rider. That  
22 was a staff recommendation in the report, so.

23 Q. And you would do the same thing if the  
24 proceeds was less than the amount approved by the  
25 Commission. You would use the percentage allocation

1 that you just described, say the Commission approves  
2 \$6 million and there was only 2 million.

3 A. If it's a dollar or 10 million, it would  
4 be the same ratio.

5 Q. And I think this question was punted to  
6 you twice so I'm going to try you this time.

7 A. Just that one question?

8 Q. One that we keep asking, in -- from  
9 January 1, 2008, to March 31, 2012, the actual  
10 expense was approximately \$880,000 a month but then  
11 when you look at the estimate for the remaining nine  
12 months it's approximately \$1.6 million a month, so  
13 the expenses for the last nine months nearly doubled;  
14 is that correct?

15 A. I have no idea what you are referring to,  
16 so.

17 Q. Well, if you look at what has been  
18 expended to date from January, 2008, to March,  
19 2012 --

20 MS. WATTS: Objection, your Honor.  
21 Perhaps counsel could provide the witness with  
22 something to look at, whatever you are looking at.

23 MS. BOJKO: I am looking at a question we  
24 keep cutting and pasting into a new -- new witness's  
25 cross-examination because they keep punting the issue

1 to him.

2 EXAMINER STENMAN: Just try to be as  
3 clear as you can.

4 MS. BOJKO: I'm sorry.

5 EXAMINER STENMAN: Just try to be as  
6 clear as you can.

7 MS. BOJKO: Well, if you look at the  
8 amount that was expended from March -- from  
9 January 1, 2008, to March 31, 2012, it was -- I'll do  
10 the math for you, then it was \$880,000 a month or  
11 \$45.3 million. But then if you look at the estimate  
12 for the remaining amount, it's \$15 million, so that  
13 equates to 1,600 -- or \$1,600,000 a month. So the  
14 costs have nearly doubled for the estimated portion,  
15 and your actuals didn't come out much different than  
16 that.

17 A. I -- without knowing how you did your  
18 math, I am going to speculate and you tell me where I  
19 am wrong, but my guess is you took 45 million and  
20 divided by some number of months to get an average?

21 Q. Yes.

22 A. That's not representative how the costs  
23 would be incurred at all. I mean, from the beginning  
24 there would be relatively few costs because all they  
25 were doing were studies, and as the program ramped

1 up, they would be spending more and more so there  
2 would be a trajectory on the costs. And it's really  
3 totally inaccurate to compare the prior period  
4 average to a perspective period average because the  
5 way the program would be spending money would be  
6 quite different.

7 Q. And the last nine months then your  
8 amount -- when you -- well, the last nine months it  
9 came out to instead of 15 million it was roughly  
10 reduced down to 12.2; is that right?

11 A. I honestly don't remember how much of  
12 that was carrying cost, but it was probably, you  
13 know, whatever -- \$3 million less than what we  
14 projected, whatever that is.

15 Q. For that nine-month period?

16 A. For the nine-month period of the test  
17 year, right.

18 MS. BOJKO: May I have one minute?

19 EXAMINER STENMAN: Yes.

20 MS. BOJKO: That's all I have.

21 Thank you, Mr. Wathen.

22 EXAMINER STENMAN: Mr. Hart?

23 MR. HART: Thank you.

24 - - -

## CROSS-EXAMINATION

By Mr. Hart:

Q. Mr. Wathen, would you be disappointed if I didn't ask you any questions?

MS. BOJKO: You just did.

A. Yeah, you lost.

Q. I'll have to ask you some.

Page 3 at the bottom, you use the term "billing determinants," and I just want to clarify given the stipulation as to the class allocation would the only unknown billing determinant be the number of customers or number of bills?

A. It would be -- when you talk about customers, it's really a question about whether you as an average or the actual billing determinant because, you know, customers come in and out. But we're -- what we are talking about though is the number of bills which is, you know, a product of customers, right.

Q. That's the only variable that if you know the cost and you know the allocation between classes.

A. That's correct, yeah.

Q. Just wanted to clarify that.

Now, on page 4 at the top, you talk about doing an annual update of your rider. Assuming the

1 Commission allows some amount of recovery, is it your  
2 intent to implement that as soon as possible after  
3 the conclusion of this case?

4 A. That would be my intention.

5 Q. And then you are proposing an annual  
6 update in March using year-end numbers; is that  
7 right?

8 A. That's correct.

9 Q. Now, you are proposing that this be a  
10 three-year rider; what happens if costs continue to  
11 get -- to be incurred beyond the three years?

12 A. Well, I'm not proposing that it's a  
13 three-year rider, I am proposing that the  
14 amortization of the \$62 million be over three years.  
15 The rider would be until we are fully recovered.

16 Q. And what would you do with new costs as  
17 far as amortization periods?

18 A. I think that would have to be a question  
19 at the time because we accumulated these costs over,  
20 you know, several years to get to \$65 million. And I  
21 don't think we want this rider around forever so I  
22 think, you know, if it's an imaginable amount, maybe  
23 we lower the amortization period. But I think that's  
24 something we would have to discuss with the staff and  
25 the Commission once we get the rider permitted.



1           Q.    Let me just give you an example, and  
2           don't take these numbers as a given, but if you're  
3           approved -- if the application as filed is approved,  
4           you would have a rider of around \$22 million a year,  
5           21 million, something like that?

6           A.    Again, I think the way to -- 09-712 order  
7           was written we'd get accrued carrying costs until  
8           rates begin, so we would have \$62.8 million to divide  
9           by 3 in our proposal anyway so it would be \$20.9  
10          million to allocate, right.

11          Q.    And that would be for the first year.  If  
12          the second year you incurred another \$10 million  
13          worth of costs, would -- how much of that would you  
14          add to the rider?

15          A.    Well, when you have -- when you have a  
16          process where you are amortizing amounts you incurred  
17          in consecutive years over -- over the same number  
18          every time, eventually you are going to be at a point  
19          where it's essentially the annual amount, right,  
20          because I am going -- if I took one-third of the new  
21          10 and I am going to incur another 10 the following  
22          year, eventually I am going to be at 10 more a year  
23          anyway so it really -- again, I think rate impacts,  
24          customer allocation, what happens in the next rate  
25          case will all be things that weigh on how they

1       amortized those costs in the future. The Commission  
2       does have, as we all know, considerable authority to  
3       modify that period to the extent they see fit.

4               Q.     Is that an issue you would consider to be  
5       open in each rider update proceeding?

6               A.     I think -- I think it has to be open  
7       because if we one year spend \$20 million and one year  
8       spend 9, you have to mitigate the rate impacts.  
9       That's important to the Commission; it's important to  
10      us.

11              Q.     Now, we've talked somewhat about  
12      crediting the insurance proceeds you might get.  
13      Would you agree to the same treatment for any  
14      third-party recoveries that Duke might receive?

15              A.     If we -- if this is a way -- to me a  
16      third-party recovery most likely is going to be  
17      through litigation anyway, so if we get -- if we get  
18      money that offsets this cost, as long as the company  
19      is fully recovered, I think it's okay.

20              Q.     Now, let's talk about the purchased  
21      property a minute. I believe I heard you say that  
22      the property itself is carried as a nonutility asset?

23              A.     That's my understanding from asset  
24      accounting.

25              Q.     But am I correct that you have booked

1 approximately \$2-1/2 million to the deferral account  
2 with -- which was part of the purchased price of that  
3 property?

4 A. Is that a question?

5 Q. Yes.

6 A. Yeah, my understanding is there was a  
7 premium paid on that property in lieu of litigation  
8 or anticipated litigation and the team -- the team  
9 determined that it was something appropriately  
10 included in the remediation costs. I was not part of  
11 that process but that's my understanding, so.

12 Q. But the way you've accounted for, I am  
13 going to use very round numbers, you've got \$2  
14 million as the land value and \$2-1/2 million in the  
15 deferral account for remedial costs.

16 A. That's correct.

17 Q. Okay. And I thought I heard you say that  
18 if Duke were to sell that property or make a profit  
19 on it, that the shareholders would keep all of the  
20 profit on the land sale; is that what you said?

21 A. That's -- that's my -- that's my belief,  
22 because the premium had nothing to do with the land  
23 value. It has something to do with the litigation  
24 risk.

25 Q. You understand you wouldn't have the land

1 if you hadn't paid the premium?

2 A. I mean, we talked at length, I heard in  
3 the last three days about the process of how the land  
4 came to be sold and how it came to be repurchased.

5 Q. I am not talking about the sale; I am  
6 just talking about the purchase. Do you understand  
7 that Duke wouldn't own that property if it hadn't  
8 paid \$4-1/2 million?

9 A. We have -- my understanding, again based  
10 on testimony I heard early in the work, that we faced  
11 substantial litigation risk if we did not purchase  
12 the property back.

13 Q. But you didn't have the option of just  
14 paying the value of the property; you had to pay the  
15 premium also.

16 A. As part of the settlement to avoid  
17 litigation, yeah.

18 Q. But you're not willing to share any  
19 premium you might get from the sale with the  
20 ratepayers.

21 A. The sale of the land has nothing to do  
22 with the premium in my view anyway.

23 Q. Now, let me ask another question. If you  
24 were to succeed in this application and get full  
25 recovery of your remedial costs from ratepayers, what

1 incentive would Duke have to either pursue insurance  
2 claims or other PRPs?

3 A. What are the incentives?

4 Q. Yes.

5 A. I think we have an extreme incentive to  
6 recovery. We don't know if the Commission may change  
7 its mind on the deferral one day. We cannot be sure  
8 we'll get full recovery of these costs. We really  
9 have to pursue costs by other means.

10 Q. I don't think you understood. Assuming  
11 if you are successful and the Commission grants you  
12 cost recovery of the entire amount you're asking for,  
13 my question is if that happened, then why would you  
14 ever pursue the insurance proceeds?

15 A. You are assuming that authority is  
16 perpetuity and I don't know that's the case because  
17 the legislation may change. Something may change.

18 Q. Let's assume it is a perpetuity.

19 A. Well, we have an interest in keeping our  
20 customer rates low, and to that end, I mean, we would  
21 continue to pursue recovery through insurance  
22 carriers.

23 Q. Why not pursue the insurance recovery to  
24 conclusion before you start charging ratepayers?

25 A. Say that again, I'm sorry.

1           Q.    Why not pursue the insurance recovery to  
2 conclusion before charging ratepayers?

3           A.    Well, it is my understand -- I am not the  
4 insurance person but my understanding is that could  
5 take many, many years to decades to fully litigate  
6 those costs and that's -- that's not an acceptable  
7 solution for the company, so.

8           Q.    Just one other thing about the land sale,  
9 if you're not carrying that as utility property, I  
10 take it that the purchased property is not considered  
11 used and useful either.

12          A.    The property on that site is not part of  
13 our rate base. It is not considered used and useful,  
14 that's correct.

15               MR. HART: Thank you.

16               That's all I have.

17               EXAMINER STENMAN: Mr. Parram, how much  
18 do you have?

19               MR. PARRAM: Just a couple of minutes.

20               EXAMINER STENMAN: Okay, go ahead.

21                               - - -

22                               CROSS-EXAMINATION

23           By Mr. Parram:

24               Q.    Good afternoon, Mr. Wathen.

25               A.    Hello.

1           Q.    I have a quick question on the 62.8  
2 million. I think you already covered this with  
3 Mr. Sauer, but if you are en -- if the Commission  
4 grants complete recovery of the 62.8 million for  
5 remediation costs, there would not be any carrying  
6 costs on the 62.8 going forward; is that correct?

7           A.    Well, under this provision of the order  
8 in 08 -- 09-712, it was very clear that the carrying  
9 costs end on the day recovery begins.

10          Q.    Okay. Just clarifying that --

11               EXAMINER STENMAN: Mr. Parram, we need  
12 you to speak up.

13               MR. PARRAM: Sorry.

14          Q.    Do you have OCC Exhibit 11 in front of  
15 you?

16               MS. WATTS: Mr. Parram, can you remind us  
17 what that is?

18               THE WITNESS: It's the memorandum contra.

19               MR. PARRAM: I believe it's the  
20 memorandum contra.

21               MS. WATTS: Oh.

22          A.    I do.

23          Q.    And if you can turn to page 11 of that  
24 document. Are you there?

25          A.    That's the conclusion section; is that

1 right?

2 Q. Yes, sir.

3 A. Okay.

4 Q. And Amy Spiller and Elizabeth Watts are  
5 counsel for Duke; is that correct?

6 A. They are.

7 Q. And they filed this on behalf of Duke?

8 A. I see Elizabeth's name here, and she  
9 filed it on behalf of Amy, yes.

10 Q. Okay. She's on there, Elizabeth Watts is  
11 on there also, so they had authority to file this on  
12 behalf of Duke; is that correct?

13 A. That's my understanding.

14 Q. Okay. If you jump back to page 2 of OCC  
15 Exhibit 11 -- before I ask you my next question I  
16 think you indicated earlier that in Case 09-712 the  
17 Commission granted deferral authority and -- but they  
18 didn't make any determination as it relates to cost  
19 recovery; is that correct?

20 A. Again, my -- when I read the order, they  
21 say they did -- they are allowing us to defer costs  
22 because the company has a legal obligation under  
23 federal and state statutes. Those legal obligations  
24 are no different than the PUCO and OCC maintenance  
25 fees we charge customers for, and they are again --



1 and those fees are unrelated to gas production.

2 They allowed us to recover those fees  
3 because they are considered business expenses. They  
4 are part of our test year O&M, it would be part of  
5 our rate case, so that's why they allowed us to defer  
6 the costs.

7 Q. And I think you also indicated so the  
8 only -- the only issue to be determined at the actual  
9 case for recovery, this case here, the rate case,  
10 would be whether or not the costs were prudently  
11 incurred?

12 A. That -- when I read the -- when we filed  
13 the application and found out we were doing this  
14 case, my understanding was this was prudence, not  
15 whether costs were used or useful. That's not a  
16 standard the Commission relied on to establish the  
17 deferral. The question was the prudence of the cost.

18 Q. So it's your understanding the Commission  
19 determined in the 09-712 case that the costs -- that  
20 costs -- that the used and useful was determined in  
21 the 09-712 case.

22 A. In my view, knowing that the Commission  
23 mirrored our deferral authority after the Columbia  
24 case where they explicitly recognized that the costs  
25 to be deferred were not used for property that was

1 used and useful and they allowed them to get a  
2 deferral on that, used and useful had no bearing on  
3 the Commission's determination of whether we got a  
4 deferral or not.

5 Q. Okay.

6 A. That's my understanding.

7 Q. And which -- which order came out later,  
8 the deferral for Duke case or the Columbia case? I  
9 can't remember.

10 A. The Columbia is 08-606, and we are  
11 09-712, so Columbia came first.

12 Q. Okay. If you go back to OCC 11, page 2,  
13 the last paragraph, when you go down 1, 2, 3, 4, 5  
14 lines, the sentence that starts, "of course," do you  
15 see where I'm at?

16 A. I see it.

17 Q. And Duke indicated "Of course, there was  
18 no requirement that Duke Energy Ohio prove the  
19 properties' used or useful nature or that demonstrate  
20 that the properties are currently included in its  
21 rate base in this proceeding. This is not an  
22 application for recovery of these costs. This is  
23 merely a request for authority to defer the amounts  
24 so that the recovery can be assessed at a later point  
25 in time." Did I read that correctly?

1           A.    You read it correctly.

2           Q.    Okay.  And if you also --

3           A.    This supports what I have been saying all  
4 along, but yes.

5           Q.    Well, then we are on the same page.  If  
6 you turn to page 8 of the memorandum contra, says  
7 "Recovery Proceeding."  If you go to the second  
8 paragraph of that, it should be four lines down, the  
9 sentence starting "The Commission did not address,"  
10 do you see that?

11          A.    Can I read the whole paragraph?

12          Q.    Sure.

13          A.    Okay, which line?

14          Q.    I'm at four lines down, the sentence  
15 starts in the middle of the paragraph there "The  
16 Commission did not address the."  It states "The  
17 Commission did not address the manner in which the  
18 recovery should be had, if at all.  Whether or not  
19 the deferred costs are appropriate for recovery  
20 through any vehicle or from any particular customers  
21 was not determined by the Commission."  Do you see  
22 that?

23          A.    I see it.  Again, it's not inconsistent  
24 with what I have been saying all along.

25          Q.    Okay.  And if you go to page 9, third

1 paragraph down, this is the second-to-last sentence,  
2 it should be, starts "The Commission stated that it  
3 was not determining." Do you see where I'm at?

4 A. The whole paragraph again, please.

5 Q. The whole paragraph starts --

6 A. I'll read it, that's all right.

7 Q. All right. Go ahead.

8 A. Okay.

9 Q. The sentence starts "The Commission  
10 stated that it was not determining what costs might  
11 be recoverable. There is no reason to believe the  
12 Commission was underhandedly determining the used and  
13 useful nature of the properties, in direct opposition  
14 to other words in the order." Have I read that  
15 correctly?

16 A. Yes. We don't believe the Commission is  
17 underhanded.

18 Q. Good to hear.

19 And then on page 10, last one, starting  
20 at the top of page, 1, 2, 3, 4, 5 lines down the  
21 sentence starts with "The Commission" at the very end  
22 of that line says "The Commission did not consider  
23 whether the property was used and useful." Do you  
24 see that line?

25 A. I do.

1 Q. I read that correctly, right?

2 A. You read it exactly right, yes.

3 Q. Thank you.

4 So in the memorandum contra that was  
5 filed by Duke in the 09-712 case, Duke clearly  
6 indicated that they understood the Commission was  
7 making no determination as it relates to used and  
8 usefulness of the property?

9 A. The way I read that last paragraph is it  
10 supports exactly what I have been saying, the  
11 Commission when it made its determination to defer  
12 those costs did not consider used and useful.

13 Q. And when should the Commission make that  
14 consideration?

15 A. Whether it's used and useful?

16 Q. Uh-huh.

17 A. I think they already have when they  
18 established a deferral.

19 Q. Okay, so used and useful is not related  
20 to this current proceeding.

21 A. That's -- that's -- if you read the order  
22 that establishes the deferral, used and useful was  
23 not a consideration by the Commission in establishing  
24 that deferral. It was not a consideration in  
25 establishing Columbia's deferral, and it couldn't

1 have been because they don't even own the property.

2 MR. PARRAM: I believe that's all I have.

3 EXAMINER STENMAN: Thank you. I think  
4 it's time it for redirect, but I think it's also a  
5 good time to take a break and it is the Bench's  
6 intention to go past 6 tonight so let's take a  
7 15-minute break.

8 (Recess taken.)

9 EXAMINER STENMAN: All right, let's go  
10 back on record.

11 MS. WATTS: Thank you, your Honor. Just  
12 a couple of questions.

13 - - -

14 REDIRECT EXAMINATION

15 By Ms. Watts:

16 Q. Mr. Wathen, a couple of questions.  
17 Mr. Parram's concept of used and useful, do you  
18 recall that series of questions?

19 A. I do.

20 Q. The properties that East End and West End  
21 are located on, is that plant in service?

22 A. All of the East End plants except for  
23 that purchased property is plant in service. It was  
24 in our rate base as in the application. There was no  
25 adjustment made by staff or OCC to exclude any of

1       that from rate base, so it is considered used and  
2       useful property, and the West End it's most of it is  
3       gas. Some of the properties is in the electric rate  
4       base but, again, there was no adjustment to exclude  
5       any of it from rate base.

6             Q.     In either the gas or electric rate case?

7             A.     In either case.

8             Q.     Thank you.

9                     And there was some discussion with  
10       respect to language that the Commission has put in  
11       its -- in its entries and orders dealing with the  
12       deferrals that were granted both to Duke Energy Ohio  
13       and Columbia. Do you recall those discussions?

14            A.     I do.

15            Q.     And can you tell me how a deferral is  
16       treated by a regulated utility when it's granted by  
17       the Commission?

18            A.     It's a very important accounting issue  
19       for companies with a formula. We have to have some  
20       assurance of recovery before we can even create the  
21       regulatory asset. I mean, there is a Financial  
22       Accounting Standard 71 that prescribes the  
23       requirements that you have to have to create a  
24       deferral.

25                     I get a call at least quarterly, maybe

1     annually, to talk to the accountants about these --  
2     about how certain we are of recovery, and we have to  
3     rely on the entries on deferral authority. So when  
4     the Commission issues an order that grants us  
5     deferral, it is something we rely on.

6             And the notion that the Commission would  
7     issue a deferral authority knowing that it was not  
8     going to ultimately grant the -- the authority  
9     because of the condition that it knew at the time  
10    wasn't met would just undermine all deferral  
11    authorities. We would have to pretty much call into  
12    question every deferral we have because there would  
13    be no trust we could get full recovery of the cost.

14            So it's a very, very important issue in  
15    our company. Disallowance of the cost we are talking  
16    about in this case because of this used and useful  
17    concept that wasn't addressed in the deferral  
18    authority in the first place, I mean, it would wipe  
19    out a year and a half of earnings in our company  
20    worth of gas, so. Not counting all the other  
21    deferrals that may be put in question now too.

22            MS. WATTS: Right. No further questions,  
23    your Honor.

24            EXAMINER STENMAN: Thank you.

25            Mr. Sauer?





1 MR. SAUER: No further questions.

2 EXAMINER STENMAN: Thank you.

3 Ms. Bojko?

4 MS. BOJKO: No questions, your Honor.

5 EXAMINER STENMAN: Mr. Hart?

6 MR. HART: Just one thing.

7 - - -

8 RECROSS-EXAMINATION

9 By Mr. Hart:

10 Q. You mentioned the East End facility is on  
11 the gas rate base; is that right?

12 A. Everything -- I am aware of everything at  
13 the East End being part of plant in service except  
14 for the purchased land we discussed earlier.

15 Q. Okay. And the West End you said some  
16 parts gas, some parts electric, how much of each?

17 A. I don't know offhand.

18 Q. Some of the electric and distribution  
19 rate base and some in the transmission?

20 A. If there are transmission facilities  
21 there that are above 69 kV, they would be part of the  
22 transmission rate base.

23 EXAMINER STENMAN: Mr. Parram?

24 MR. PARRAM: No questions, your Honor.

25 EXAMINER STENMAN: Thank you, Mr. Wathen.

1 I believe we have exhibits, and I think  
2 it's probably also a good time to deal with all of  
3 the exhibits.

4 MS. WATTS: Thank you, your Honor. At  
5 this time Duke would move into evidence Duke Energy  
6 Ohio Exhibits 1 through 27.

7 EXAMINER STENMAN: We admitted 27  
8 yesterday. Is there any objections to the admission  
9 of Duke Exhibits 1 through 26?

10 MS. BOJKO: Yes, your Honor. I have an  
11 objection but it was from two, three days ago so give  
12 me a minute.

13 EXAMINER STENMAN: Are there any other  
14 objections other than Ms. Bojko's while she looks?

15 MS. BOJKO: Mine was to Exhibit No. 23  
16 which was the direct testimony of Kevin Margolis.  
17 It -- I'm sorry, I am attempting to recollect my  
18 arguments from that day.

19 EXAMINER STENMAN: Take your time.

20 MS. BOJKO: It's page 15, lines 8 through  
21 10. And I -- if I am recalling correctly, when  
22 Mr. Margolis was on the stand, he stated that he  
23 had -- he does not have specific knowledge about  
24 Duke's strategy to pursue the insurance recovery or  
25 rate recovery or the cost recovery from the PRPs and

1 when those were prudent and reasonable.

2 He was speaking in a general sense, thus,  
3 he does not have personal knowledge of these two  
4 sentences on this line and I move to strike the two  
5 sentences on that line and my objection to the  
6 admission of the testimony. So I would be fine with  
7 the admission of the remaining pieces of testimony.

8 EXAMINER STENMAN: Okay. Response?

9 MS. PASHOS: Yes, just briefly, when  
10 Mr. Margolis was testifying, he made it very clear  
11 that he was talking at a high level, that Duke's  
12 overall strategy to pursue not only rate recovery but  
13 insurance proceed recovery and, you know, any  
14 recoveries from any potentially responsible third  
15 parties is a reasonable strategy in a situation like  
16 this.

17 He made it clear he was not opining on  
18 any specifics but as a general rule, this is a  
19 reasonable strategy and he also relied on  
20 Ms. Bednarcik's testimony which he had reviewed prior  
21 to making this -- this prior to filing this  
22 testimony.

23 MS. BOJKO: I mean, your Honor, the  
24 problem is, as counsel just noted, that he has no  
25 personal knowledge of Duke's activities with regard

1 to insurance recovery. He admitted he had no  
2 knowledge of their activities, if they had been  
3 notified, any of that nature.

4 He admitted he doesn't know about rate  
5 recovery and any of those issues and also admitted  
6 that he wasn't speaking to Duke's specific strategy.  
7 Thus, the sentence is prejudicial and it should be  
8 stricken.

9 EXAMINER STENMAN: I appreciate your  
10 arguments, but the motion to strike will be denied,  
11 and Duke Exhibits 1 through 26 will be admitted.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 MS. BOJKO: Thank you, your Honor.

14 EXAMINER STENMAN: Thank you.

15 MR. SAUER: Move for the admission of OCC  
16 10 and 11.

17 EXAMINER STENMAN: Any objections?

18 MS. WATTS: No objections.

19 EXAMINER STENMAN: Hearing none, OCC  
20 Exhibits 10 and 11 will be admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 MS. BOJKO: Your Honor, I would move -- I  
23 guess it's only appropriate to take administrative  
24 notice of Kroger Exhibits 3, 4, and 5 which are  
25 Commission orders and entries on rehearing.

1 EXAMINER STENMAN: Administrative notice  
2 will be taken.

3 I believe it's Kroger's witness next.

4 MS. BOJKO: Thank you, your Honor. Your  
5 Honor, at this time on behalf of the Kroger Company I  
6 would like to call to the stand Neal Townsend. And  
7 for identification purposes I would like to mark  
8 Mr. Townsend's testimony as Kroger Exhibit No. 1.

9 EXAMINER STENMAN: It will be so marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MS. BOJKO: May I approach?

12 EXAMINER STENMAN: You may.

13 - - -

14 NEAL TOWNSEND

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

17 DIRECT EXAMINATION

18 By Ms. Bojko:

19 Q. Mr. Townsend, do you have before you  
20 what's been identified as Kroger Exhibit 1?

21 A. I do.

22 Q. Could you please identify -- first of  
23 all, could you please state your name and address for  
24 the record?

25 A. Neal Townsend, that's N-E-A-L

1 T-O-W-N-S-E-N-D. My address is 215 South State  
2 Street, Suite 200, Salt Lake City, Utah.

3 Q. And, now, do you have what's in front of  
4 you that's been marked as Kroger Exhibit 1?

5 A. I do.

6 Q. Could you please tell us what that is?

7 A. That is my testimony in -- addressing the  
8 MGP-related costs.

9 Q. Do you have any changes to your testimony  
10 today?

11 A. I do not.

12 Q. If you would turn to page 3,  
13 Mr. Townsend, on page 3 of your testimony you  
14 provided brief background of the MGP issues, and you  
15 referenced the direct testimony of Duke Witness  
16 Jessica Bednarcik. Do you see that?

17 A. Yes, I do.

18 Q. If Ms. Bednarcik was on the stand and  
19 revised her testimony, specifically dates that she  
20 referenced, would those in turn need to be reflected  
21 in the summary of her testimony that you provided  
22 before us?

23 A. Yes.

24 Q. And with that clarification, if I asked  
25 you the same questions provided for in your testimony

1 here today, would the answers be the same?

2 A. They would.

3 Q. And are the answers true to the best of  
4 your recollection and knowledge?

5 A. Yes.

6 MS. BOJKO: At this time I tender the  
7 witness for cross-examination.

8 EXAMINER STENMAN: Thank you.

9 Would Duke like to go first?

10 MS. PASHOS: Sure.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Pashos:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Am I correct from reading your prefiled  
17 testimony you disagree with Duke's proposed  
18 three-year amortization period for recovery of its  
19 MGP remediation expenses?

20 A. Yes.

21 MS. BOJKO: Excuse me, your Honor. I'm  
22 sorry, when you are facing that way, I can't hear  
23 you.

24 MS. PASHOS: I'll try.

25 MS. BOJKO: Thank you.



1           Q.    In connection with that, am I right that  
2           you state, and I'm quoting here, "Theoretically, the  
3           time allowed for recovery could reasonably be  
4           established to match the length of time over which  
5           these costs were incurred, e.g., over 50 years." Is  
6           that a correct reading of your testimony?

7           A.    You're on page 7, yes.

8           Q.    Yes.

9           A.    Line 12.

10          Q.    Yes.

11          A.    Yes.

12          Q.    The MGP remediation costs we're talking  
13          about here though were not incurred over 50 years,  
14          were they?

15          A.    The cost themselves were not the problems  
16          that they are intending to address here.

17          Q.    In fact, the remediation costs we're  
18          talking about here have been incurred just over the  
19          past few years, right?

20          A.    Correct.

21          Q.    Would you agree that in determining an  
22          appropriate amortization period, it would be  
23          reasonable for the Commission to consider the  
24          following factors: The amount of the deferral, the  
25          age of the deferral, the anticipation of additional

1        deferrals being approved in the company's next round  
2        of rate cases, and the proximity of the next set of  
3        rate cases?

4            A.     Among other things, those would be fine.

5            Q.     What other things?

6            A.     Perhaps the nature of the costs involved,  
7        when these costs -- the problems that these costs  
8        were intended to address were incurred. In my  
9        estimation these plants haven't provided service to  
10       utility customers in over decades and the costs --  
11       the problems, the environmental problems themselves,  
12       are decades old as well.

13           Q.     Is that based on your environmental  
14       expertise?

15           A.     No. That's just a reading of the  
16       testimony.

17           Q.     Okay. When was Duke Ohio's last retail  
18       gas rate case order?

19           A.     The last order?

20           Q.     Yes.

21           A.     I would assume it was the '09 case.

22           Q.     Okay. Approximately 2009?

23           A.     Approximately.

24           Q.     Okay. Would you also agree that it would  
25       be reasonable for the Commission in fixing an

1       amortization period to look to not only the  
2       experience of a particular applicant but also to the  
3       experience of the industry as a whole?

4               MS. BOJKO: Your Honor, may I have that  
5       question reread, please.

6               EXAMINER STENMAN: Yes.

7               (Record read.)

8               MS. BOJKO: Your Honor, I am going to  
9       object or seek clarification. I don't understand  
10      what experience she's referencing with regard to the  
11      applicant.

12              MS. PASHOS: Well, I am talking about the  
13      circumstances of the MGP remediation. And I'm  
14      talking about would it be reasonable for the  
15      Commission to look at the particulars of this case  
16      and the occurrence of these costs as well as how the  
17      industry has treated recovery of MGP remediation  
18      expenses.

19              EXAMINER STENMAN: The objection will be  
20      overruled and the witness can answer if he knows and  
21      he can request any clarifications.

22              A. The Commission is free to consider  
23      whatever factors it wants. I think one important  
24      factor is rate impact as well, and they ought to be  
25      thinking about that.

1           Q.     (By Ms. Pashos) And were you here when  
2           Mr. Wathen testified for the company?

3           A.     Yes.

4           Q.     And did you understand him to say that  
5           the company does take that into consideration and  
6           that's one reason they proposed a three-year  
7           amortization period?

8           A.     I understood that his view of a rate  
9           impact may be a little different than mine.

10          Q.     Now, did you also hear Mr. Wathen talk  
11          about the impact if no carrying costs were allowed to  
12          be continued to be incurred and recovered by the  
13          company, that the longer -- a longer amortization  
14          period would have an impact of a financial penalty to  
15          the company?

16          A.     I understand they wouldn't collect  
17          interest on -- during that period.

18          Q.     Right. Have you done an analysis of the  
19          rate impact on an average customer of 3-year versus a  
20          10-year amortization period?

21          A.     I have seen no rate impact analysis  
22          anywhere.

23          Q.     Did you request any of those --

24          A.     I did not.

25          Q.     -- numbers to do your own analysis?

1           A.    No.  I believe that's the company's  
2   responsibility.

3           Q.    Well, but you stated you thought rate  
4   impact was an important consideration and -- but I  
5   guess I am trying to figure out did you use any  
6   analysis in forming your opinion and your  
7   recommendation for a ten-year period?

8           A.    No.  I am quite certain that a 10-year  
9   amortization period versus a 3-year amortization  
10  period would have much less of a rate impact on the  
11  customers.

12          Q.    We could probably --

13          A.    I don't need to do an analysis to prove  
14  that.

15          Q.    You don't know the -- you don't know the  
16  differential.  You --

17          A.    I haven't run any differentials.  I know  
18  the directionally which way it's going to be.

19          Q.    And you haven't looked at the rate shock  
20  that may or may not occur under either scenario?

21          A.    Since I don't know the amount of dollars  
22  that we are going to be recovering here, it could be  
23  zero, it could be 65 million or 62 million.  I  
24  wouldn't --

25          Q.    It's not going to be more than the 62.8

1 million because that's all the company has proposed,  
2 right?

3 A. Well, except they want to keep accruing  
4 the dollars as they keep incurring them, so I am not  
5 really sure what the final total dollar would be.

6 Q. But in this case coming out of this  
7 order --

8 A. In this case it will be 62.

9 Q. If -- if the Commission were to adopt  
10 your proposal and allow amortization over 10 years  
11 instead of 3 but if they also were to authorize the  
12 company to continue to accrue and recover carrying  
13 costs over that 10-year period, would you agree that  
14 the total amount to be recovered from customers would  
15 be larger in total --

16 A. I haven't done that analysis either since  
17 that wasn't my proposal.

18 Q. Isn't that kind of a simple math problem  
19 too though?

20 A. It could be done.

21 Q. I mean, isn't it almost by definition  
22 going to be a larger amount?

23 A. You know, I've learned in this business  
24 never to presume you know the answer until you have  
25 run the numbers.

1           Q.    Unless there is negative interest, I  
2   guess.

3           A.    Well, we are getting close.

4           MS. BOJKO:  Objection, your Honor.  Move  
5   to strike counsel's comments.

6           EXAMINER STENMAN:  Motion denied.

7           Q.    Just one more question, what -- what --  
8   do you believe a 2 or 3 percent annual rate impact on  
9   a customer constitutes unreasonable rate shock?

10          A.    Well, given the nature of these costs  
11   from plants that ceased operation some 50 years or  
12   more ago, I do think that's unreasonable, and I'm not  
13   sure what I would consider the rate impact to be  
14   because I would not be including the gas costs as  
15   part of my rate impact.  I would only be looking at  
16   nongas costs.  So I think the percentage impact may  
17   be a little higher.

18          Q.    I guess my question though is, you know a  
19   2 or 3 percent increase in a customer's bill in  
20   that -- in your view, does that constitute rate  
21   shock?

22          A.    Rate shock is not my term, I am just  
23   trying to mitigate the impact of this cost on  
24   customers today for something -- a problem that  
25   occurred decades ago.

1           Q.    But, I mean, you've testified a lot.  You  
2   are an expert in this field.  I mean, you know what  
3   rate shock means.  You know that companies take that  
4   into consideration, right?

5           A.    Well, yes, companies take that into  
6   consideration.  I find low-income people think rate  
7   shock is one thing, and industrial reps think rate  
8   shock is something else, so there's not a single  
9   definition of rate shock.

10          Q.    But in your wide experience and your  
11   years of experience, I mean, can you really sit there  
12   and say 2 to 3 percent increase in an average bill  
13   constitutes rate shock?

14          A.    Well, like I said, I think the rate impact  
15   might be higher if you look at just the nongas rate  
16   cost.  To make this issue sort of blend into the  
17   background is to stretch out the amortization.

18                MS. PASHOS:  That's all I have.

19                EXAMINER STENMAN:  Thank you.

20                Anything, OCC?

21                MR. SAUER:  No questions, your Honor.

22                EXAMINER STENMAN:  Mr. Hart?

23                MR. HART:  No questions.

24                EXAMINER STENMAN:  Mr. Parram?

25                MR. PARRAM:  No, your Honor.



1 EXAMINER STENMAN: Redirect?

2 MS. BOJKO: Can I have just 2 minutes?

3 EXAMINER STENMAN: Yes.

4 Let's go off the record.

5 (Discussion off the record.)

6 EXAMINER STENMAN: All right. Let's go  
7 back on the record.

8 Any redirect?

9 MS. BOJKO: No, your Honor, I have no  
10 additional questions. Thank you.

11 EXAMINER STENMAN: Okay.

12 MS. BOJKO: I would like to move --

13 EXAMINER STENMAN: Thank you,  
14 Mr. Townsend.

15 MS. BOJKO: I'm sorry.

16 EXAMINER STENMAN: That's okay.

17 MS. BOJKO: I would like to move the  
18 admission of Kroger Exhibit 1, please.

19 EXAMINER STENMAN: Any objections?

20 MS. WATTS: No objections.

21 MR. SAUER: No objections.

22 EXAMINER STENMAN: Kroger 1 will be  
23 admitted.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 EXAMINER STENMAN: I also noticed that no

1 one has moved and we haven't admitted Joint Exhibit  
2 1.

3 MS. WATTS: I would move Joint Exhibit 1.

4 EXAMINER STENMAN: Any objections to the  
5 admission of Joint Exhibit 1?

6 Hearing none, Joint Exhibit 1 will be  
7 admitted.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER STENMAN: OCC.

10 MR. SAUER: Thank you, your Honor. The  
11 OCC calls Kathy Hagans to the stand. I would like to  
12 have her direct testimony marked as OCC Exhibit 12.

13 EXAMINER STENMAN: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 (Witness sworn.)

16 MR. SAUER: Thank you, your Honors.  
17 Could we have OCC Exhibit 12 be Ms. Hagans' direct  
18 testimony and OCC Exhibit 13 be her additional direct  
19 testimony?

20 EXAMINER STENMAN: Yes. Those will be so  
21 marked.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 - - -  
24  
25

1 KATHY L. HAGANS

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

4 DIRECT EXAMINATION

5 By Mr. Sauer:

6 Q. Ms. Hagans, could you state your name  
7 business address for the record?

8 A. Kathy Hagans, 10 West Broad Street, Suite  
9 1800, Columbus, Ohio 43215.

10 Q. And are you the same Kathy Hagans whose  
11 direct testimony was filed in these cases on  
12 April 22, 2013?

13 A. I believe it was filed on February 25,  
14 but, yes.

15 Q. That's correct.

16 And on whose behalf do you appear?

17 A. The Ohio Consumers' Counsel.

18 Q. And do you have your prepared direct  
19 testimony with you on the stand?

20 A. Yes, I do.

21 Q. And do you prepare the testimony or have  
22 it prepared at your direction?

23 A. Yes, I did.

24 Q. And do you have any changes or  
25 corrections to your direct testimony?

1 A. No.

2 Q. And if I asked you the same questions  
3 found in your direct testimony marked as OCC Exhibit  
4 12, would your answers be the same?

5 A. Yes, they would.

6 Q. And did you have your additional direct  
7 testimony on the stand with you today?

8 A. Yes.

9 Q. And the additional direct testimony was  
10 filed --

11 MS. WATTS: 30.

12 Q. -- April 30; is that correct?

13 A. Yes.

14 Q. And are you adopting portions of  
15 testimony from another OCC witness?

16 A. Yes, I am.

17 Q. And who is that witness?

18 A. David Effron.

19 Q. And do you have any changes or  
20 corrections to your adopted -- or additional  
21 testimony?

22 A. No, I don't.

23 Q. And if I were to ask you the same  
24 questions now under oath found in your additional  
25 testimony, would your answers be the same as they

1 appear in the attachment OCC Exhibit 13?

2 A. Yes.

3 MR. SAUER: OCC moves for the admission  
4 of OCC Exhibits 12 and 3 and tenders the witness for  
5 cross-examination.

6 EXAMINER STENMAN: Thank you.

7 Duke?

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Pashos:

11 Q. Hello.

12 A. Hello.

13 Q. I'm looking at what I think is marked OCC  
14 Exhibit 13, and that's your additional direct  
15 testimony where you attach some from -- a portion of  
16 Mr. Effron's testimony; is that right?

17 A. Yes.

18 EXAMINER STENMAN: I need everyone to  
19 remember to speak up.

20 Q. And if you look at the first page of  
21 Mr. Effron's testimony that's attached, it's -- it  
22 says page 9 at the bottom and it's lines 1 through  
23 14. Before you get to the "Manufactured Gas Plant  
24 Costs" piece.

25 A. Yes.

1           Q.    Am I right that we should kind of ignore  
2   that portion?

3           A.    Yes.

4           Q.    Okay.  I just wanted to make that clear.

5           A.    It's only the MGP portion.

6           Q.    Okay.  And as I understand, you're also  
7   proposing a longer amortization period for the  
8   recovery of MGP remediation expenses that's proposed  
9   by Duke, right?

10          A.    Yes.

11          Q.    Duke has proposed 3 years and I think you  
12   said 10 years, or at least 10 years; is that right?

13          A.    Yes, yes.

14          Q.    Now, on page 12 of Mr. Effron's testimony  
15   which is page 5 of 6 of your adopted testimony, I  
16   think you characterized these expenses as "one-time  
17   nonrecurring."  Do you see that on line 4?

18          A.    Yes, I do.

19          Q.    Would you agree that Duke Ohio has  
20   actually been incurring these MGP remediation  
21   expenses for years now and probably will continue to  
22   incur them for at least some time in the future?

23          A.    I don't know the answer to how long --  
24   how much longer they will be incurring them.  I do  
25   know they have been incurring them since about 2007.

1 Q. Okay.

2 A. But in terms of whether they will be  
3 ongoing, you know, like a typical expense in a rate  
4 case, I would still consider them nonrecurring in  
5 that regard and that's how this was meant.

6 Q. Okay. Would you please -- I'll apologize  
7 in advance, these questions may seem a little  
8 familiar but I'm going to ask you some of the  
9 questions -- the same questions I asked Mr. Townsend.

10 Would you agree that in determining an  
11 appropriate amortization period, it would be  
12 reasonable for the Commission to consider the  
13 following factors: The amount of the deferral, the  
14 age of the deferral, the anticipation of additional  
15 deferrals being approved in the company's next round  
16 of rate cases, and the proximity of the next set of  
17 rate cases?

18 A. I could see them -- I could see them  
19 considering those factors and I could see them  
20 considering many other factors too, which I think  
21 Mr. Townsend put it, and I agree with him that there  
22 are -- these are unique, unusual, no company has ever  
23 come in for recovery of these types of costs before  
24 so there's -- there's those kinds of -- I don't know  
25 that I call them mitigating circumstances but there

1 is that aspect of it too.

2 And I also am not sure that I understand  
3 what it is about deferrals that may -- that the  
4 company may recover in future rate cases that would  
5 impact -- impact that, so I am not sure what that  
6 last one pertains to.

7 Q. Okay. I could speculate but I won't.

8 A. Okay. That's fine, I won't either.

9 Q. I get to ask questions here.

10 Would you also agree it would be  
11 reasonable for the Commission in fixing an  
12 amortization period to look not only to the  
13 experience of a particular applicant such as Duke  
14 Energy Ohio and the specific issues here but also to  
15 the experience of the industry as a whole?

16 A. Well, it's my opinion that the Commission  
17 should look to the experience of Ohio -- of other  
18 Ohio utilities but in this instance there is no  
19 recovery experience of other Ohio utilities for  
20 manufactured gas plant costs because the ratemaking  
21 rules and regulations are different in each state,  
22 I'm assuming so.

23 Q. Well -- I don't know, have you done any  
24 research to see how other state commissions have  
25 handled recovery of MGP expenses?



1           A.    No, I have not.

2           Q.    Okay.  Have you done an analysis of the  
3   rate impact of Duke's 3-year amortization period  
4   proposal?

5           A.    What do you mean by "rate impact"?  Rate  
6   impact on whom?

7           Q.    On an average customer.

8           A.    On an average.

9           Q.    On an average bill.

10          A.    Residential customer or commercial  
11   customer?

12          Q.    Either.

13          A.    No.  Neither.  I just know the amount  
14   that Duke proposes to recover each year.  \$21  
15   million, so.

16          Q.    Okay.  Do you have a -- would you agree  
17   that somewhere in the impact -- a bill impact on a  
18   typical customer or an average customer of 2 to  
19   3 percent a year does not constitute rate shock?  
20   Would you agree with that statement?

21          A.    You know, I don't address rate shock.  I  
22   don't -- I don't talk about rate shock in my  
23   testimony and I don't even know what you mean by rate  
24   shock and so I -- I don't feel like I have a response  
25   to that.  I can't respond to that.

1           What I talk about is in terms of  
2       reasonableness and whether ratepayers should pay  
3       these costs in terms of a -- on a reasonable basis  
4       and whether 3 years is reasonable or 10 years is  
5       reasonable. In my opinion 10 years is more  
6       reasonable because of the length of time that's gone  
7       by, the fact that the environmental liability  
8       occurred way long ago and occurred over many, many  
9       years and the current ratepayers are not getting any  
10      benefit from these manufactured gas plants and never  
11      have.

12           So that's -- I'm talking about reasonable  
13      versus unreasonable and what ratepayers should be  
14      expected to pay. I'm not talking about any rate  
15      shock or no rate shock.

16           Q.    Okay. Well let me kind of back up then.  
17      Do you think one of the factors that should go into  
18      the determination of what a reasonable amortization  
19      period is is the impact on rates, on customer rates?

20           A.    Yes.

21           Q.    Okay. And so let me just ask, have you  
22      done an analysis -- have you done an analysis that  
23      led you to conclude that a 3-year amortization period  
24      would result in an unreasonably high rate impact  
25      on -- on an average customer of Duke's?

1           A.     Given the nature of these costs it's my  
2     opinion that a three-year amortization of the full  
3     amount that Duke has proposed would be an  
4     unreasonable impact of ratepayers, yes.

5           Q.     And what -- you know, what is your  
6     analysis you did? What's the average impact that  
7     Duke's proposal, if they recovered the full amount  
8     over three years? What is that average kind of  
9     increased bill amount?

10          A.     I didn't do a calculation.

11          Q.     Okay. Were you here when Mr. Wathen  
12     testified?

13          A.     Yes.

14          Q.     Okay. And do you agree with him that if  
15     Duke -- if the amortization period were lengthened as  
16     you proposed and if Duke were not allowed to continue  
17     to accrue and recover carrying costs, that it would  
18     suffer a financial penalty as a result?

19          A.     Well, I would agree that it wouldn't  
20     recover carrying costs on the -- on the amortized  
21     balance that's not been recovered.

22          Q.     And that would be a hit against earnings,  
23     right?

24          A.     For that particular piece, yeah. You  
25     know, I don't know. I don't know because there are a

1 lot of other things happening within the company at  
2 the same time that, you know, could outweigh so I  
3 don't know what -- what would happen with their  
4 earnings from one year to the next in terms of all of  
5 the different items that impact their earnings.

6 Q. That's fair, but I just want to isolate  
7 this one piece everything else being equal.

8 A. Everything else equal.

9 Q. Hypothetically, this would be a hit  
10 against earnings if you lengthened the amortization  
11 period but did not allow the company to continue to  
12 accrue and recover costs some financial bit.

13 A. Yes.

14 Q. And kind of the flip side of that or  
15 conversely, if -- if the Commission were to grant a  
16 longer amortization period but also allow Duke to  
17 continue to accrue and recover costs, would you agree  
18 the total amount of dollars Duke would then recover  
19 from customers would be larger than if they used a  
20 three-year amortization period?

21 A. With that all-else-being-equal caveat?

22 Q. Yeah, that's a fair caveat.

23 A. Yes.

24 MS. PASHOS: That's all I have. Thank  
25 you.

1 EXAMINER STENMAN: Thank you.

2 Kroger?

3 MS. BOJKO: No questions, your Honor.

4 EXAMINER STENMAN: Mr. Hart?

5 MR. HART: No questions.

6 EXAMINER STENMAN: Mr. Parram?

7 MR. PARRAM: No questions.

8 EXAMINER STENMAN: Any redirect?

9 MR. SAUER: No redirect, your Honor.

10 EXAMINER STENMAN: Thank you. With  
11 respect to the exhibits.

12 MR. SAUER: Yes. Thank you, your Honor.  
13 I would like to have OCC Exhibits 12 and 13 admitted  
14 into the record, please.

15 EXAMINER STENMAN: Any objection to the  
16 admission of Exhibits 12 and 13.

17 MR. HART: No.

18 EXAMINER STENMAN: Hearing none, they  
19 will be admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER STENMAN: You can call your next  
22 witness.

23 MR. SAUER: OCC would call Bruce Hayes to  
24 the stand and would like his testimony marked as OCC  
25 Exhibit 14.

1 EXAMINER STENMAN: It will be so marked.  
2 (EXHIBIT MARKED FOR IDENTIFICATION.)  
3 (Witness sworn.)

4 MR. SAUER: Was the witness sworn, your  
5 Honor?

6 EXAMINER STENMAN: Yes.

7 - - -

8 BRUCE M. HAYES  
9 being first duly sworn, as prescribed by law, was  
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Sauer:

13 Q. Could you please state your full name and  
14 business address for the record?

15 A. Yes. It's Bruce M. Hayes.

16 Q. I'm sorry.

17 A. I work for the Ohio Consumers' Counsel,  
18 and the business address is 10 West Broad Street,  
19 Suite 1800, Columbus, Ohio 43215.

20 Q. Thank you, Mr. Hayes.

21 Are you the same Bruce Hayes whose direct  
22 testimony was filed in these cases on February 25,  
23 2013?

24 A. Yes, I believe.

25 Q. And on whose behalf do you appear?

1           A.    The Office of the Ohio Consumers'  
2 Counsel.

3           Q.    And do you have your prepared testimony  
4 with you on the stand?

5           A.    Yes, I do.

6           Q.    Did you prepare the testimony or have it  
7 prepared at your direction?

8           A.    Yes, I did.

9           Q.    Do you have any changes or corrections to  
10 your direct testimony?

11          A.    Yes, I do.

12          Q.    What would those be?

13          A.    On page 5, line 11, "OCC Objection No.  
14 27" should be changed to "No. 20."

15                Page 18, line 13, replace "A20" with  
16 "Q20." And on line 15, replace "Q20" with "A20."

17                On page 28, line 16, the word  
18 "underlining" should be spelled  
19 "u-n-d-e-r-l-y-i-n-g."

20                And on page 29 I would like to strike the  
21 words "at least as much." It's on lines 8 and 9.

22          Q.    And are those the only changes or  
23 corrections to your direct testimony?

24          A.    Yes.

25          Q.    And if I asked you today the same thing

1       you found in your direct testimony in OCC Exhibit 14  
2       but for the changes or corrections you made, would  
3       your answers be the same today?

4             A.     Yes, they would.

5             MR. SAUER:   The OCC moves for the  
6       admission of OCC Exhibit 14 and tenders the witness  
7       for cross-examination.

8             EXAMINER STENMAN:   Thank you.

9             Duke?

10            MS. PASHOS:   Thank you.

11                               - - -

12                               CROSS-EXAMINATION

13       By Ms. Pashos:

14            Q.     Hello.

15            A.     Hello.

16            Q.     I just have a few preliminary questions  
17       to start with.  You are, reading your testimony, you  
18       are not an accountant; is that right?

19            A.     That is correct.

20            Q.     But you are an engineer.

21            A.     Yes.

22            Q.     Have you ever prepared a rate case?

23            A.     Only in NARUC classes.

24            Q.     Okay.  And so would you give the same  
25       answer if I asked you if you prepared a utility



1 revenue requirement study?

2 A. Yes.

3 Q. So only in NARUC classes.

4 A. Yes.

5 Q. Okay. If you could flip to page 28 of  
6 your testimony, lines 8 through 10. Actually look at  
7 lines 6 through 10.

8 A. Page 28.

9 Q. Yes.

10 A. Lines 6 through 10.

11 Q. Yep.

12 A. All right.

13 Q. You state there that it appears that Duke  
14 Energy Ohio spent a significant amount to remediate  
15 the MGP sites beyond applicable environmental  
16 requirements, right?

17 A. Yes. That's based on Dr. Campbell's  
18 testimony.

19 Q. Yeah. So you refer to Dr. Campbell there  
20 and --

21 A. Yes.

22 Q. I just want to confirm whether you're  
23 independently testifying as to any prudence issues or  
24 reasonableness issues of Duke's actions or is that  
25 statement -- that testimony made solely in reliance

1 on Mr. Campbell's testimony?

2 A. It is made on Mr. Campbell's testimony.

3 Q. Now, you talk in your testimony a little  
4 bit about used and useful, right?

5 A. Yes.

6 Q. And would you agree that at a high level,  
7 a very high level, the traditional formula used in  
8 setting rates in Ohio and really probably in most  
9 jurisdictions in the country is revenue requirements  
10 equals rate base times a fair return plus operating  
11 expenses?

12 A. Plus taxes.

13 Q. Okay. I lump those in with expenses,  
14 but. We'll put all that in expenses on my simple  
15 high level formula, all right?

16 A. All right.

17 Q. And would you agree that in Ohio this  
18 ratemaking formula is codified and contained in Ohio  
19 Revised Code Section 4909.15?

20 A. I believe that's the number. It is  
21 codified in the Revised Code.

22 Q. Now, you recommend disallowance of Duke's  
23 MGP expenses, remediation expenses because in your  
24 view the expenses are not related to current --  
25 currently used and useful property, right?

1           A.    They're not related to currently  
2           providing utility service.

3           Q.    And your rationale is that the  
4           facilities -- the MGP equipment itself is no longer  
5           used and useful if providing to customers?

6           A.    The equipment that caused the problem is  
7           no longer used and useful.

8           Q.    And you cite that Ohio ratemaking formula  
9           statute as support for your position, do you not?

10          A.    As one of my positions, yes.

11          Q.    Part of that formula in that statute  
12          talks about the valuation as a -- of a date certain  
13          of used and useful property, doesn't it?

14          A.    Yes.

15          Q.    And I believe that is Section 4901 --  
16          4909.15(A)(1); is that right?

17          A.    Yes.   Yes.

18          Q.    And the used and useful property in that  
19          section is referring to the valuation of rate based  
20          property, right?

21          A.    Yes.

22          Q.    By MGP remediation expenses are not  
23          property, are they?

24          A.    That's correct.

25          Q.    They are operating expenses, right?

1 A. Yes.

2 Q. And Duke Ohio's not seeking inclusion in  
3 rate base of its old MGP plan and equipment, is it?

4 A. No, it's not.

5 Q. In fact, in this rate case the parties  
6 have stipulated as to the rate base in the return,  
7 right?

8 A. Yes.

9 Q. And they've also stipulated as to most of  
10 the operating expenses, right?

11 A. Most, yes.

12 Q. Other than these fun MGP remediation  
13 expenses, right?

14 A. The big expense, yes.

15 Q. Now, a different section of that Ohio  
16 formula ratemaking statute addresses operating  
17 expense, doesn't it?

18 A. Yes.

19 Q. And that would be Section 4909.15(A)(4);  
20 is that right?

21 A. I believe that's what it says. Cost of  
22 the utility rendering public service for the test  
23 period.

24 Q. So would you agree that that's kind of  
25 the operating expense portion of the statute?

1           A.    Yes.

2           Q.    Okay.  So the expense part of the  
3           equation in the statute is separate and apart from  
4           the used and useful property part of the equation in  
5           the statute, right?

6           A.    Yes.

7           Q.    And under that Ohio statute the  
8           Commission is directed to disallow operating expenses  
9           of a public utility, and I am quoting here, "as are  
10          incurred by the utility through management policies  
11          or administrative practices that the Commission  
12          considers imprudent," is that right?

13          A.    Yes.

14          Q.    And so the primary test for whether or  
15          not expenses should be included in the formula for  
16          determining rates is whether or not the expenses are  
17          prudent, right?

18          A.    In my opinion that's not the only -- the  
19          expenses have to be related to providing utility  
20          service.

21          Q.    Can you point me --

22          A.    And they need to be prudent.

23          Q.    Can you point me to where in the statute  
24          it says operating expenses need to be related to used  
25          and useful property?

1           A.    I believe I state in my testimony that it  
2    is 1409.15(A) (4) .

3           Q.    So it's your position that that (A) (4)  
4    section of the statute states that operating expenses  
5    need to be related to used and useful rate based  
6    property?

7           A.    Not used and useful.  They will to be  
8    used in providing utility service.

9           Q.    Okay.  But that's slightly different  
10   wording, wouldn't you agree?

11          A.    Yes.

12          Q.    And you understand Duke's position is  
13   that addressing these MGP remediation -- addressing  
14   the MGP issues and expending money on remediation is  
15   a cost of doing business.  I mean that's Duke's  
16   position, right?

17          A.    That's Duke's position, yes.  Positions,  
18   excuse me.

19          Q.    Regarding prudence, would you agree with  
20   the following statement:  A prudent decision is one  
21   which reflects what a reasonable person would have  
22   done in light of conditions and circumstances --  
23   circumstances which were known or reasonably should  
24   have been known at the time the decision was made?

25          A.    Yes.

1           Q.    Would you also agree to the prudence  
2           standard contemplates a retrospective factual inquiry  
3           without the use of hindsight judgment into the  
4           decision-making process of the utility's management?

5           A.    Could you read that back, please.

6           Q.    Sure.  Would you also agree that the  
7           prudent standard contemplates a retrospective factual  
8           inquiry without the use of hindsight judgment into  
9           the decision-making process of the utility's  
10          management?

11          A.    I'm not sure I agree with that.

12          Q.    What part of that do you disagree with?

13          A.    It depends on when the hindsight is.  You  
14          say hindsight but the decision is what's made at that  
15          time.  I'm not sure exactly what -- when you're  
16          talking about hindsight.

17          Q.    What I'm kind of asking is does the  
18          typical prudent standard that's applied in utility  
19          ratemaking cases, does it generally say you shouldn't  
20          use a hindsight standard?  You should try to put  
21          yourself back into the circumstances that existed at  
22          the time the decision was made.

23          A.    Yes, I agree with that, yes.

24          Q.    Now, another rationale you put forward  
25          for disallowing Duke's MGP remediation expenses is

1       that the expenses are not normal or recurring  
2       expenses; is that right?

3             A.    Yes.

4             Q.    And I think you state around page 34 of  
5       your testimony that in ratemaking only normal  
6       recurring expenses should be reflected in rates,  
7       right?

8             A.    Yes.

9             Q.    But isn't it true that the recurring  
10      test -- I'm sorry.

11            A.    I'm sorry, where were you on page 34?

12            Q.    Let's see, I'm looking about lines 14  
13      through 16.

14            A.    Yes.

15            Q.    Isn't it true that the recurring test is  
16      only applicable to costs that will be included in  
17      base rates and recovered year after year?

18            A.    You can include some abnormal cost  
19      through an adjustment, adjusted expense.

20            Q.    And isn't it often a rationale to use for  
21      deferring and recovering a cost through a rider is  
22      that they are kind of unusual, atypical, not  
23      necessarily recurring costs?

24            A.    It could be in a rider, yes. In this  
25      case we're talking about recovering a one-time cost



1 of \$63 million.

2 Q. And some -- I think there is some  
3 examples out there that I'm familiar with, and you  
4 probably are too, of costs that aren't necessarily  
5 recurring year after year and so may not be included  
6 in base rates but may be included in a rider or in a  
7 balancing account or something like that, something  
8 like transition costs associated with post-retirement  
9 benefits, things likes that. Are you familiar with  
10 that?

11 A. There can be, yes.

12 Q. Or storm damage.

13 A. I'm not familiar with the storm damage.

14 Q. Okay. On page 35 of your testimony you  
15 state that "Costs associated with Duke's MGP plants  
16 were recovered from past customers," correct?

17 A. Yes.

18 Q. But I -- you have not included any proof  
19 of this with your testimony, have you?

20 A. There are many unknowns about past  
21 history and who paid and who profited.

22 Q. It's pretty hard to figure that out going  
23 back to the 1800s, isn't it?

24 A. Yes, and before regulation.

25 Q. Yeah. So I assume from that you didn't

1 try to research going back 100 years or anything and  
2 figure out, you know, whether costs were included in,  
3 you know, rate cases a long time ago or through  
4 municipal franchise agreements or anything like that?

5 A. No.

6 Q. And just to be clear, the remediate --  
7 the MGP remediation expenses we're talking about  
8 here, they have not been recovered through previous  
9 rates, right? Because they are just being incurred  
10 right now.

11 A. Duke is not recovering, no.

12 Q. Right. I lost some of my notes here.  
13 Hang on a second.

14 If you would look at page 3 and -- 35 of  
15 your testimony.

16 A. Page 35, yes.

17 Q. You state that -- 35, 36 you state that  
18 "despite known risks, Duke did not address  
19 remediation in the past and that shareholders  
20 benefited from that," right?

21 A. That is correct.

22 Q. Now, you've not included any proof of  
23 these known risks in your testimony either, right?

24 A. I believe I've pointed out in footnotes  
25 that Duke has acknowledged that there are risks going

1 back to '96, '97. I am assuming, having worked for a  
2 utility, a gas utility, that as a result of the  
3 radiant report, that Duke began doing at least some  
4 investigation of MGP plants after the radiant report  
5 came out in '85.

6 Q. Okay. I think I may have misinterpreted  
7 your testimony, so your testimony is not suggesting  
8 that Duke's predecessor back in the 1800s or even  
9 1900s up until 1960 knew about these environmental  
10 risks and should have done something about them then?

11 A. They didn't know anything about them  
12 until -- didn't know something more definite probably  
13 until, oh, benzene was declared a hazardous material  
14 in around 1990.

15 Q. Okay. I misunderstood that part of your  
16 testimony. I thought you were going back 100 years  
17 or so.

18 A. No.

19 Q. Now, you also state around page 18  
20 through 22 of your testimony that shareholders  
21 benefited from the sale of MGP byproducts, right?

22 A. Yes.

23 Q. Now, but you haven't included any proof  
24 of that with your testimony either, right?

25 A. No. Only in the early names of

1 Cincinnati Gaslight and Coke, I'm assuming they were  
2 at least selling coke, and I think Dr. Middleton has  
3 provided testimony that they were selling byproducts.

4 Q. But you don't -- you don't have any  
5 evidence that shows how those byproduct revenues were  
6 treated or not treated in ratemaking or anything like  
7 that.

8 A. We just don't know and I don't think the  
9 company at this point knows. Certainly they are  
10 certainly not stating it.

11 Q. Now, you also state "Any insurance  
12 proceeds recovered related to MGP cleanup costs  
13 should be used solely to offset any MGP costs  
14 allocated to customers," right?

15 A. Yes.

16 Q. So you would take issue -- you were here  
17 when Mr. Wathen testified, were you not?

18 A. Yes.

19 Q. So you would take issue with his proposal  
20 that, you know, if the Commission were only to allow  
21 recovery of 50 percent of the costs, then the  
22 insurance proceeds would be shared pro rata too?

23 A. The consumers paid for the insurance  
24 premiums in the rates and, therefore, should receive  
25 benefits of it.

1           Q.    But you didn't include any proof in your  
2           testimony that customers actually, through rates,  
3           paid for insurance premiums, did you?  That's just an  
4           assumption you are making.

5           A.    I did not prove it in my testimony.

6           Q.    And you would agree, or this is your  
7           understanding, that Duke has agreed to offset its  
8           proposed MGP cleanup costs to be recovered through  
9           rates with the net proceeds received from insurance  
10          providers as well as any net proceeds received from  
11          third-party potentially responsible parties?

12          A.    That's Duke's position, yes.

13          Q.    Now, on page 17 I'm looking at footnote  
14          15, you cite a New York State report on remediation  
15          of former MGP plant sites.

16          A.    Yes.

17          Q.    Now, are you aware that New York has  
18          allowed its utilities full recovery of their MGP  
19          remediation expenses?

20          A.    I'm not aware of that.

21          Q.    Have you done any research into how other  
22          states, for ratemaking purposes, how other regulatory  
23          commissions treat recovery of MGP remediation  
24          expenses?

25          A.    We had some legal interns do some

1 research on that and it looks like it's varied across  
2 different states in how they recover them.

3 Q. But would you agree that really all but  
4 one state that's addressed the issue allows recovery  
5 of most or all of the MGP cleanup costs through  
6 rates?

7 A. Indiana is the only state that I'm aware  
8 of that has denied them totally. There could be  
9 others. I am just not aware of it.

10 MS. PASHOS: That's all I have. Thank  
11 you.

12 EXAMINER STENMAN: Thank you.

13 Anything, Kroger?

14 MS. MOHLER: No.

15 EXAMINER STENMAN: Mr. Hart?

16 MR. HART: No.

17 EXAMINER STENMAN: Mr. Parram?

18 MR. PARRAM: No.

19 EXAMINER STENMAN: Redirect?

20 MR. SAUER: Can I have a couple of  
21 minutes, your Honor?

22 EXAMINER STENMAN: Yes.

23 MR. SAUER: Thank you, your Honor.

24 - - -  
25

## 1 REDIRECT EXAMINATION

2 By Mr. Sauer:

3 Q. Mr. Hayes, do you recall when you were  
4 asked some questions regarding whether or not you  
5 know for sure whether Duke's predecessor companies  
6 charged their customers the premiums for insurance --  
7 charged their insurance -- customers for insurance  
8 premiums?

9 A. Yes.

10 Q. And your response was you didn't know; is  
11 that the case?

12 A. Correct.

13 Q. And in a rate case what's your  
14 understanding of who has the burden of proof in a  
15 rate case?

16 A. It's my understanding that the company  
17 has the burden of proof.

18 Q. And you were asked some questions about  
19 whether or not you knew whether -- or how the  
20 treatment of the self-byproducts was handled by  
21 Duke's predecessors?

22 A. Yes.

23 Q. And you didn't know?

24 A. I didn't know.

25 Q. And, again, who has the burden in a rate

1 proceeding?

2 A. Again, the company has the burden of  
3 proof.

4 MR. SAUER: Thank you, your Honor. No  
5 further questions.

6 EXAMINER STENMAN: Thank you.

7 Any recross?

8 MS. PASHOS: No, thank you.

9 EXAMINER STENMAN: Any recross from  
10 anyone else?

11 All right. Thank you, Mr. Hayes.

12 THE WITNESS: Thank you.

13 EXAMINER STENMAN: Exhibits.

14 MR. SAUER: Yes, thank you, your Honor.

15 We move for the admission of OCC Exhibit 14.

16 EXAMINER STENMAN: Any objections?

17 Hearing none, OCC 14 will be admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER STENMAN: Given that we have run  
20 out of witnesses that are available, we will end for  
21 the evening and we will be back here at 9 a.m.  
22 tomorrow morning.

23 Let's go off the record.

24 (Discussion off the record.)

25 (Thereupon, the hearing adjourned at



1 5:20 p.m.)

2 - - -

6 CERTIFICATE

7 I do hereby certify that the foregoing is  
8 a true and correct transcript of the proceedings  
9 taken by me in this matter on Wednesday, May 1, 2013,  
10 and carefully compared with my original stenographic  
11 notes.

14 Karen Sue Gibson, Registered  
15 Merit Reporter.

16 (KSG-72234)

17 - - -

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Summary: Transcript in the matter of Duke Energy Ohio hearing held on 05/01/13 - Volume III  
- Public Version electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc.  
and Gibson, Karen Sue Mrs.