

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the	:	
Complaint of:	:	
	:	
Jeffrey Pitzer,	:	
	:	
Complainant,	:	Case No. 15-298-GE-CSS
	:	
vs.	:	
	:	
Duke Energy, Ohio, Inc.,	:	
	:	
Respondent,	:	

- - -

PREHEARING CONFERENCE

before Ms. Sarah Parrot, Hearing Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at 9 a.m.
on Thursday, January 14, 2016.

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

APPEARANCES:

Droder & Miller Co., LPA
By Mr. Donald A. Lane
125 West Central Parkway
Cincinnati, Ohio 45202

On behalf of the Complainant.

Duke Energy Ohio, Inc.
By Ms. Amy B. Spiller
Deputy General Counsel
139 East Fourth Street, 1303-Main
Cincinnati, Ohio 45201-0960

Eberly McMahon Copetas, LLC
By Mr. Robert A. McMahon
2321 Kemper Lane, Suite 100
Cincinnati, Ohio 45206

On behalf of the Respondent.

Bruce J. Weston, Ohio Consumers' Counsel
Office of the Ohio Consumers' Counsel
By Mr. Terry L. Etter
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

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

On behalf of the Residential Customers of
Duke Energy Ohio, Inc.

- - -

INDEX

- - -

OCC EXHIBIT

IDENTIFIED

1 - Compilation of Interrogatories, 14
Requests for Production of Documents,
and Notices to Take Depositions

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Thursday Morning Session,
2 January 14, 2016.

3 - - -

4 EXAMINER PARROT: Let's go on the record.
5 The Public Utilities Commission of Ohio has set for
6 prehearing conference, at this time and place,
7 Case No. 15-298-GE-CSS, being in the Matter of the
8 Complaint of Jeffrey Pitzer versus Duke Energy Ohio,
9 Inc. My name is Sarah Parrot. I'm the attorney
10 examiner assigned by the Commission to hear this case
11 and preside -- excuse me, preside at this prehearing
12 conference this morning.

13 At this time let's start with just brief
14 appearances of the parties and we'll start with the
15 Complainant.

16 MR. LANE: Yes. Donald Lane on behalf of
17 the Complainant, Jeffrey Pitzer.

18 EXAMINER PARROT: Thank you.

19 OCC.

20 MS. BOJKO: Thank you, your Honor. Kim
21 Bojko with the law firm Carpenter Lipps & Leland, on
22 behalf of the Office of the Ohio Consumers' Counsel,
23 and I expect Terry Etter, Assistant Consumers'
24 Counsel, to be joining as well.

25 EXAMINER PARROT: Okay.

1 And on behalf of the Respondent.

2 MS. SPILLER: Thank you, your Honor. Amy
3 Spiller and Robert A. McMahon on behalf of Duke
4 Energy Ohio.

5 EXAMINER PARROT: Thank you.

6 We have a few outstanding procedural
7 matters to take up today which is the reason this
8 prehearing conference has been scheduled. Some of
9 the motions that I'm intending to address today
10 include a motion to compel discovery that was filed
11 by Duke, I believe it was on November 3rd, 2015.

12 We also have outstanding a motion filed by
13 the Complainant to compel additional discovery that
14 was filed on December 23rd, 2015.

15 And then it's also my understanding that
16 OCC has, I guess, alluded to additional discovery
17 issues that we may need to address this morning as
18 well. So let's maybe start with those first,
19 Ms. Bojko, so I'll turn to you.

20 MS. BOJKO: Thank you, your Honor. The
21 only thing I'd ask how you would like to handle is
22 one of the motions for protection is about the Byndon
23 deposition. I intend -- and I know that Mr. Lane
24 also has some concerns with the confidentiality of
25 that. It's been filed completely under seal. I

1 don't want to address anything in the open record. I
2 don't believe anything I'm going to discuss is
3 confidential, but given that it was filed under seal,
4 I guess I would ask for your guidance on how to
5 handle that.

6 EXAMINER PARROT: That's a very good
7 question, Ms. Bojko. I don't know. I'm still
8 waiting. I assume Duke will be filing a motion for
9 protective order with respect to the deposition?

10 MR. LANE: Actually, we took --

11 EXAMINER PARROT: I understand the
12 Complainant filed a motion for protective order, but
13 it's Duke's information, it's Duke that's claiming
14 the information is confidential. So it's my
15 preference or I should say my expectation that Duke
16 will also be filing a motion for protective order
17 explaining why the deposition in its entirety should
18 be held as a confidential document. So I guess I'll
19 start there. Is that --

20 MS. SPILLER: And, your Honor --

21 EXAMINER PARROT: -- forthcoming?

22 MS. SPILLER: Your Honor, we are happy to
23 file that. I think just in respect of some of the
24 comments that were raised by the OCC in their
25 response last evening, there was a question raised as

1 to why a joint motion was not filed.

2 We were not aware of Mr. Lane's intention
3 to file the deposition transcript. He filed it on
4 the same day on which he moved for a subpoena
5 directed to Marion Byndon. And there's every
6 expectation that Ms. Byndon will appear before the
7 Examiner in respect of this hearing. And given that
8 Ms. Byndon will provide oral testimony, her
9 deposition would not be deemed evidence in this case.

10 So because of the concurrent filing of the
11 request for subpoena and the notice of filing of the
12 deposition, we thought that the deposition filing a
13 bit premature at that point. We are more than happy
14 though to respond to your Honor's request and file a
15 motion for protective order relative to that
16 deposition.

17 EXAMINER PARROT: And that, again, is my
18 expectation that that would happen. It's also my
19 expectation that the deposition would be redacted.
20 It's not at all my intent to keep the entire document
21 as a confidential document in the -- in the docket.

22 With that, I guess to get back to your
23 point, Ms. Bojko. Let's do our best I think today,
24 given that I will give Duke the opportunity to file a
25 motion before there's any kind of ruling on specific

1 information in the deposition that may be treated as
2 confidential, and I think we need to tread carefully
3 perhaps today.

4 I don't know where this is going, I guess,
5 at this point, so I'm going to look to Duke, I guess,
6 if you feel like we're getting into information that
7 may be confidential I think just kind of give me a
8 heads-up at that point and we'll take any necessary
9 measures at that point. I don't think we have issues
10 with needing to clear anybody from the room or that
11 sort of thing. We will close the door and indicate
12 on the record of the prehearing this morning that
13 we're dealing with allegedly confidential subject
14 matter.

15 MS. BOJKO: Okay. Sure.

16 EXAMINER PARROT: So let's go carefully.
17 I mean, it's not very helpful, I'm sure --

18 MS. BOJKO: Right.

19 EXAMINER PARROT: -- but let's see where
20 this goes, Ms. Bojko.

21 MS. BOJKO: Thank you. The guidance is
22 helpful. As we've explained in the memo contra that
23 we filed yesterday, we don't believe the document is
24 confidential and it was difficult for us to ascertain
25 what would be deemed a trade secret. So, please,

1 just let me know if I am talking about anything of
2 that nature.

3 And I would also note for the record that
4 the deposition transcript that we received was not
5 marked confidential, it didn't say it was under a
6 confidential session, so that's why we were not aware
7 of it in using it in our testimony either.

8 EXAMINER PARROT: Okay.

9 MS. BOJKO: And obviously --

10 MR. McMAHON: Real briefly, your Honor, on
11 that issue. That issue came up in discussions
12 between me and Mr. Lane and the court reporter,
13 because when I first saw the transcript
14 electronically on my computer screen, I didn't see a
15 designation either, even though we had agreed, before
16 starting the deposition, that it would be treated
17 confidentially.

18 The court reporter indicated to me that
19 the program is set up that on your screen it doesn't
20 say it, but if anyone prints it or tries to create a
21 PDF from it, that designation would appear on every
22 page. And when we printed it, it came up on the
23 page. So I'm not exactly sure what Ms. Bojko
24 obtained. Because that's how the court reporter
25 explained it to us because it was a concern we raised

1 promptly when we got the transcript.

2 MR. LANE: And I can probably clarify
3 that. We got the original transcript from the court
4 reporter. Every page does say "Confidential" and
5 there was an agreement on the record ahead of time
6 that it would be filed under seal.

7 MS. BOJKO: And, your Honor, OCC was not
8 privy to those conversations, and the copy of the
9 transcript that we have, that I printed off that we
10 got from the court reporter doesn't have
11 "Confidential" on any page. So there was a
12 discussion on page 5, but --

13 EXAMINER PARROT: I saw that.

14 MS. BOJKO: -- when utilizing the
15 deposition before it was filed under seal, we did not
16 intentionally try to use the information in any way
17 that was inappropriate. We did not know it to be the
18 entire document to be confidential. So I do have
19 printed copies if you want to see. But I don't know
20 if it's the court reporter on her end, the copy we
21 were given or not, but, you know, I have those to
22 review if necessary.

23 MR. McMAHON: And I don't know if it
24 matters for purposes of this morning, but I'm not
25 sure what Counsel is referring to, because she was on

1 the phone call, the deposition was conducted
2 telephonically, and she was on the record,
3 participating in the phone call when the discussion
4 was had. So to indicate that the OCC was not privy
5 to that agreement is simply not true.

6 MS. BOJKO: Your Honor, my reference was,
7 first of all, I don't think page 5 of the transcript
8 says exactly what Counsel said. It says to the
9 extent that information is deemed confidential then
10 that portion of the transcript will be deemed
11 confidential. That's what I was under the impression
12 of.

13 So when our witness reviewed the
14 deposition, he was not aware that the whole thing
15 would be filed under seal. We did not understand --
16 it's not our practice in front of the Commission to
17 file the entire thing under seal. So that was not
18 our understanding.

19 And we were not privy to any conversations
20 before the phone call started which is my
21 understanding happened and we also were not privy to
22 any conversations that occurred after you received
23 the transcript that you found out that it wasn't
24 deemed to be confidential on every page and then
25 decided to discuss it with Complainant.

1 EXAMINER PARROT: Okay. Well, I mean, I
2 appreciate this all being out there on the record, so
3 to speak, but, you know, again, I will reiterate it
4 again, my expectation is that the document will be
5 redacted. I'm not on board with blanket withholding
6 of the document in the record in terms of what's
7 available to the public and to the Commission easily,
8 as well, in this matter, so that's where we're going
9 with this. So anything else on this subject though,
10 I guess?

11 MS. BOJKO: No. The only --

12 EXAMINER PARROT: Hopefully we can move
13 passed it.

14 MS. BOJKO: In light of your decision, I'm
15 assuming you would also just want us to withhold any
16 discussion of confidential treatment with respect to
17 Mr. Carmosino, because we obviously also don't
18 believe that the information that was redacted, and
19 I'm assuming, your Honor, you don't want to take this
20 up at this time either.

21 EXAMINER PARROT: No.

22 MS. BOJKO: Okay. So I will just do my
23 best to not refer to any confidential information.
24 Thank you.

25 EXAMINER PARROT: Yes. Let's see if we

1 can, again, avoid going into it. We may need to. If
2 we do, we'll cross that bridge when we get there.

3 MS. BOJKO: Thank you, your Honor.

4 I believe some of OCC's issues do, in
5 fact, overlap with the Complainant's issues. When
6 one party issues discovery requests, out of
7 efficiencies of the Commission, it is not the
8 practice for another party to issue the same
9 discovery requests. So we review those requests and
10 we choose whether to do follow-up questions or not.
11 But just because we don't have a motion pending,
12 doesn't mean that we don't have similar concerns that
13 were raised in the motion, the fourth motion to
14 compel filed by the Complainant.

15 And with that, we actually, given the
16 Byndon deposition, we did indeed ask follow-up
17 questions and that was in our fourth set. Duke did
18 produce responses to that fourth set, albeit late,
19 but they did produce them yesterday -- or, actually,
20 Tuesday. I'm sorry, it's Thursday. They produced
21 them Tuesday, I believe, and those were some of the
22 discovery requests that we indicated we would be
23 filing a motion to compel. We expected the answers
24 that occurred and that's why we couldn't file the
25 motion to compel until they actually gave us

1 responses.

2 And then we also have concerns with
3 related interrogatories that were contained in Set 3.
4 So I'll start with Set 4 and work our way backwards.

5 I also, your Honor, for ease of our
6 discussion, I brought packets of the discovery
7 requests and the responses at issue. May I approach?

8 EXAMINER PARROT: You may.

9 MS. BOJKO: At this time I would like to
10 mark, I think for the ease of discussion, if we mark
11 the packet as OCC Exhibit 1.

12 EXAMINER PARROT: All right.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. BOJKO: So in the fourth set, the
15 first request you have is Interrogatory 04-002 and
16 this is with regard to Ms. Byndon's deposition,
17 Exhibit 1, page 11. There was a designation on that
18 exhibit, and I'm not going to say the reference
19 because that's deemed, I believe, confidential. But
20 that reference is, in fact, on Exhibit 1, page 11.
21 And Ms. Byndon recognized that it was on the document
22 and she said she could not tell us what that
23 reference was to.

24 So we did issue a follow-up discovery
25 request. Duke has said they could not locate the

1 reference. I'm not sure why Duke can't locate the
2 reference. Ms. Byndon located it and I also located
3 it last night in Exhibit 1 to Ms. Byndon's
4 deposition.

5 MS. SPILLER: And, your Honor, are we
6 going to address these one by one?

7 EXAMINER PARROT: I think that's -- well,
8 not having seen it, that was probably, I think, how
9 we should go about this. Unless there's a way to
10 kind of group them? Does that make sense to you,
11 Ms. Bojko? Since you know what's in this set of
12 discovery.

13 MS. BOJKO: I appreciate that. I think we
14 are going to have to. There are some that can be
15 grouped later.

16 EXAMINER PARROT: Okay.

17 MS. BOJKO: And there are some attached in
18 the packet just because they reference each other, so
19 those will be able to be handled more quickly.

20 EXAMINER PARROT: Okay. All right.

21 MS. BOJKO: I did bring a copy of the
22 deposition if we need to take time to look at
23 Exhibit 1, page 11, but the reference is clear in the
24 middle of the screenshot.

25 MR. McMAHON: Do you want me to explain?

1 MS. SPILLER: No. I'm happy to explain.
2 I just wasn't sure if Ms. Bojko was done.

3 MS. BOJKO: Well, I don't understand why
4 you can't find it. I think it's a fair discovery
5 request. I don't know what else to say about that.

6 MS. SPILLER: Well, I guess a couple of
7 things. You're saying that we're contending that we
8 can't find the document when the response simply
9 indicates that what you state is in the document is
10 not in the document. Those four letters are not
11 "PEND."

12 MS. BOJKO: Okay.

13 MS. SPILLER: And if you were to have
14 looked at the transcript, that was discussed between
15 Mr. McMahon and Mr. Lane, but Mr. Lane did not care
16 to pursue the issue further.

17 MS. BOJKO: I guess I'll have to disagree.
18 I found it. It's on page 55 of Ms. Byndon's
19 deposition.

20 MS. SPILLER: Right. Mr. Lane asked a
21 question and then the exchange was that's not the
22 word.

23 MS. BOJKO: That wasn't the exchange.

24 Your Honor, would you like a copy of the
25 deposition?

1 EXAMINER PARROT: I have one.
2 Unfortunately, I'm not sure which page number it is
3 in this.

4 MR. LANE: What line are we on?

5 MS. BOJKO: Yeah. I'm sorry.
6 Unfortunately, there weren't page numbers.

7 EXAMINER PARROT: Hopefully mine line up
8 with yours.

9 MS. BOJKO: It's page 55. There's a
10 discussion. It says -- did you say the acronym on
11 the record? I don't know if I'm allowed to say the
12 acronym on the record.

13 EXAMINER PARROT: Okay. I see it. Go
14 ahead. I'm with you.

15 MS. BOJKO: She said I'm not sure what
16 that references, so she didn't know the reference.
17 So we asked to Duke to see if they had another
18 corporate witness that could answer what the
19 reference was regarding. It's on Exhibit 1. It's
20 right in the middle of the screenshot. I've
21 highlighted it on my copy. It's page 11. I don't
22 understand what the objection would be to.

23 MS. SPILLER: Your Honor, I guess I'll try
24 again. Perhaps my explanation was not as eloquent as
25 it could have been. The question was "What did this

1 acronym refer to?" And Ms. Byndon indicated that she
2 didn't know. And what we're asking about is the
3 document, not the deposition, but the document.

4 That document, Exhibit 1, page 11, those
5 four letters are not the acronym. And if Ms. Bojko
6 would have continued to read the deposition, it's
7 indicated that Mr. McMahon identified what that
8 pertained to, but Mr. Lane did not wish to pursue
9 further. And taking cues from the OCC that we're not
10 required to provide a roadmap for them, we simply
11 answered their question. "PEND" does not occur on
12 Exhibit 1, page 11.

13 MS. BOJKO: It does, your Honor. Would
14 you like me to show you? I have it highlighted.

15 MS. SPILLER: That's not the acronym, Kim.
16 I don't know what else -- I can't say that any other
17 way.

18 MR. McMAHON: If Mr. Lane had provided a
19 clear copy of the exhibit, you will see what it says.
20 It does not say "PEND."

21 MS. BOJKO: Well, could you be helpful and
22 tell us what it does say?

23 MR. McMAHON: I did.

24 MS. SPILLER: He did.

25 MR. McMAHON: During Ms. Byndon's

1 deposition I explained it very specifically to
2 Mr. Lane. He got upset, claiming that I was trying
3 to testify. I directed him to the customer's bill
4 where the four letters appear, what it refers to, and
5 he refused to ask any follow-up questions.

6 MR. LANE: Well, let's be fair about this.
7 You weren't under oath, Mr. McMahon. And I seem to
8 recall that during the Complainant's deposition, if I
9 tried to be helpful and explain things, you told me
10 to, quote/unquote, be quiet. So I wasn't interested
11 in your testimony that day. I was interested in what
12 your designee witness had to say about the documents.

13 MR. McMAHON: Okay. I'm not --

14 MS. BOJKO: But, your Honor, I think --

15 MR. McMAHON: -- I'm not trying to argue
16 with you about a deposition that's not relevant to
17 today's discovery conference. I'm trying to explain
18 how we did, during the course of Ms. Byndon's
19 deposition, try to bring to your attention and to the
20 attention of anyone else participating, including the
21 OCC, what the acronym actually said.

22 You're misreading it. It did not say
23 "PEND." The witness could not identify that. So I
24 indicated look at the bill, this is what it says.
25 The bottom line is page -- Exhibit 1, page 11, does

1 not say "PEND"; hence, the company's discovery
2 response.

3 MS. BOJKO: Your Honor, first of all, it's
4 not the Commission's practice, I don't believe, to
5 have two attorneys advocating on behalf of one party.
6 I don't think that's fair, particularly when we're on
7 the record.

8 Secondly, I read the whole deposition and
9 I think the discussion that Mr. McMahon is talking
10 about is regarding a different acronym, I think it's
11 later in the deposition, and I can't find it.

12 But if that is truly the response then I
13 don't understand why Duke could not explain what the
14 phrase or acronym is. I mean, it seems like they're
15 just playing a game. If you don't ask it the exact
16 way they want it then they're going to say it doesn't
17 exist. I have it highlighted on my copy on page 11.
18 I don't read the deposition the way that Duke is
19 recollecting it.

20 EXAMINER PARROT: Yeah, I guess I'm
21 confused as well, because I think I see what you're
22 referring to, Ms. Bojko. So I'm wondering is it just
23 the legibility of it that's the problem here?

24 MR. McMAHON: Yeah.

25 EXAMINER PARROT: So you're saying it's

1 not "PEND," it's something else, but you don't want
2 to tell them what it is. Is that --

3 MS. SPILLER: Well, we did.

4 EXAMINER PARROT: Is that what this is
5 about, really?

6 MR. McMAHON: We did tell them what it is.
7 I can say it right now.

8 MS. SPILLER: No. Your Honor, I think
9 it's important to put this in perspective from the
10 standpoint that the OCC is accusing us of playing
11 games in discovery, and yet to borrow from the OCC,
12 we don't have to provide that which is already in
13 their possession which has been shared with them
14 through discovery. Kim, these are not my words; they
15 are your words. And so, they have literally answered
16 questions that we have posed or not answered
17 questions that we have posed.

18 Given that there was a conversation in
19 which Consumers' Counsel was present concerning this
20 particular acronym, we answered the question
21 consistent with information already in their
22 possession.

23 MS. BOJKO: First of all, your Honor, if
24 you ask a discovery request, that can be used in a
25 hearing. Counsel's comments in a deposition, if they

1 did exist, which I think it was about a different
2 acronym, but if it does exist are not and cannot be
3 used as evidence in this case. So if we --

4 EXAMINER PARROT: I agree, Ms. Bojko.
5 Sorry. I agree. You know, I think I'm going to
6 instruct you to clear this up through a response to
7 OCC's interrogatory.

8 MS. SPILLER: That's fine, your Honor.

9 EXAMINER PARROT: It seems like something
10 that should be easily clarified. I agree, we're kind
11 of getting into what I consider to be trivialities, I
12 guess, at this point, so.

13 MS. BOJKO: Thank you, your Honor.

14 POD-04-003. The question again was a
15 follow-up to words that were used in Ms. Byndon's
16 deposition. Ms. Byndon stated that there are special
17 conditions that can be included and appeared to be
18 included on the Easterling account in the Customer
19 Database system.

20 We asked, and we asked it about all the
21 systems we learned through the deposition, there is a
22 Customer Database system, there's a Mobile Up system,
23 we think there might be another system. So we tried
24 to follow up with what we didn't think to be clear in
25 the deposition.

1 I believe Ms. Byndon said that she
2 couldn't see what those special conditions were given
3 the screenshot that was available to her. So we
4 asked a follow-up question as to what those special
5 conditions are, and provide a witness that can
6 explain that to us in a discovery response.

7 Duke objected. They said it was too
8 broad. We're talking about the Easterling account.
9 If a customer calls in and asks to have a medical
10 certification put on the record or if they have a
11 daughter that needs to call in to say I would like to
12 be contacted in case of a disconnect procedure, those
13 all would be noted on the account. There isn't a
14 time parameter associated with that to our knowledge.
15 We referenced only the Easterling account. And it
16 was something that was in Byndon's deposition, so we
17 used her words. Duke is claiming that they can't
18 answer it because it's too broad

19 MR. LANE: For the record, that testimony
20 starts on page 44, line 15 of the deposition, and it
21 carries over to page 47, line 15.

22 EXAMINER PARROT: Did you say 44 or 45?

23 MR. LANE: 44. The question's about those
24 notes. There were actually three sets of notes. It
25 begins on page 44, line 15.

1 MS. BOJKO: And the direct reference to
2 the special conditions is on 45, your Honor.

3 EXAMINER PARROT: Okay. Response?

4 MS. SPILLER: Thank you, your Honor. To
5 begin, the deposition of Ms. Byndon was one that was
6 taken following parameters established with the Bench
7 in November of 2015. Those parameters were such that
8 the testimony would concern the time period relevant
9 to this case, August 2011 through November 20, 2011.

10 It was indicated in the deposition of
11 Ms. Byndon, and certainly clear from those records
12 that are in Counsel's possession, that different
13 dates are reflected on those records, on those CMS
14 records. You have a date when a particular activity
15 may have occurred. You have a date that indicates
16 when an account has been finalized. You have a date
17 that indicates when the particular record may have
18 been pulled or printed that day.

19 In this particular case, we also have a
20 circumstance where there have been changes of
21 occupancy at that property. We have activity on the
22 account that occurs post-November 20, 2011.

23 This particular request, although
24 Ms. Bojko says it concerns just one account, it is
25 not limited to the time period relevant to this

1 proceeding. There was no indication in Ms. Byndon's
2 deposition that special conditions were, in fact, on
3 this account for the relevant time period. So given
4 the overly broad nature of this request, we asserted
5 the objection that we did.

6 MR. LANE: But, your Honor, we don't know
7 that those special conditions weren't on the account
8 during that time period. And if they were entered at
9 a prior time, but they continued in effect during
10 that relevant time, they'd certainly be relevant and
11 certainly discoverable.

12 And that's one of the problems here, too,
13 is that I believe and, you know, I will admit that I
14 am not a PUCO practitioner, but based on general
15 principles of discovery that I've known since 1987
16 when I began practicing law, the theory is what is
17 discoverable is what may reasonably lead to the
18 discovery of admissible evidence.

19 Duke doesn't get to decide what's relevant
20 and what's not relevant. They can object to
21 admissibility when we get to the hearing. We need
22 these account records. We need the full account
23 records and it was clear from Ms. Byndon's deposition
24 that we don't have them.

25 MS. SPILLER: And, your Honor, I

1 appreciate what Mr. Lane is saying. The struggle
2 here is that the questions are not phrased
3 appropriately. Ms. Bojko tendered this discovery on
4 December 23rd. It was due Tuesday. The answers were
5 provided yesterday. Since that time we have not had
6 a discussion with her whatsoever. She has not come
7 back and said can you answer for this period.

8 EXAMINER PARROT: And that's what we're
9 here to do today. So I think we can shortcut some of
10 the talk on this and see. And that's what I was just
11 about to ask is I think I heard maybe if we narrow
12 this a bit, reframe it in terms of special conditions
13 that would have been in place during the period of
14 time we're all basically looking at here. I think --

15 MS. BOJKO: Your Honor --

16 EXAMINER PARROT: -- maybe I'm hearing an
17 agreement on that?

18 MS. BOJKO: Yes. And we did define the
19 Easterling account in our discovery requests.

20 EXAMINER PARROT: And I see that, so it's
21 narrowed in that sense, I agree with you there. But
22 I am speaking as to a time period. I think I heard
23 from you, Mr. Lane, maybe if we are trying to get at
24 special conditions that would have been in effect.
25 So either maybe they did go on the account before

1 that August to November 2011 time period, but if they
2 were in effect at that point that's kind of what
3 we're looking for here. Is that what I'm hearing
4 right?

5 MS. BOJKO: Yes. In fact, those would
6 have been good words to use, "in effect during the
7 relevant period," which we, again, I think we said
8 this at the last conference, we disagrees with Duke
9 on what is relevant and the time frame that was put
10 upon -- or, Duke's interpretation of what the
11 Examiner's time frame was put upon Byndon's
12 deposition. We disagree with that, and I'll explain
13 a little more later, through other discovery, why we
14 disagree with that. But yes, in effect during 2011.
15 If we would have just put the year 2011, they would
16 have said it was put on in 2010, but it was in effect
17 in 2011.

18 EXAMINER PARROT: In effect in 2011.

19 MS. BOJKO: Yes.

20 EXAMINER PARROT: All right.

21 MR. LANE: Your Honor, perhaps we want to
22 broaden this a little bit. During that point in
23 Ms. Byndon's deposition, if you look at page 44,
24 line 15, through page 47, line 15 of her transcript,
25 we've identified missing account notes, missing

1 information on special conditions. So she really
2 identifies a few different things. And actually the
3 account note issue is something that is pervasive
4 through her testimony and other points as well.
5 There's another example of that on page 21, line 5,
6 through page 23, line 9.

7 So I think, you know, rather than handling
8 these piecemeal, we identified in our letter, to try
9 to resolve the discovery dispute after the
10 conference, places where missing account notes and
11 that sort of thing show up in the deposition. So I
12 think we're heading toward a situation where we have
13 an agreement that any account notes that were put on
14 that would have been relevant during that time frame,
15 regardless of when they were put in, need to be
16 produced.

17 MS. SPILLER: And, your Honor, I will say
18 the one account note that was identified on
19 September 22nd, 2011, is irrelevant, but it's been
20 produced. And so, there's this suggestion that
21 somehow the company is withholding information. If
22 there's not information to be provided, we cannot
23 provide it. And I appreciate that they're looking
24 for something, and I don't know exactly what they
25 hope to find, but the account note that was mentioned

1 in the CMS records in Ms. Byndon's deposition was
2 provided, and it is, by all accounts, irrelevant.

3 MS. BOJKO: Your Honor, if I may be heard
4 on this issue because this does go to a group of
5 mine. First of all, I would note that OCC believed
6 that these issues were before the Commission in the
7 Complainant's fourth motion to compel regarding these
8 issues.

9 I would add there, I think that
10 Ms. Spiller is misrepresenting the Bench. There are
11 other screenshots and other account notes from other
12 databases specifically discussed by Ms. Byndon, and I
13 have a list of a few. Pages 21 to 23, 36 to 37, 44
14 to 45, 46 to 47, 50 to 51, and 57 are ones that I
15 immediately found that reference either another
16 screenshot or notes are available, but I can't see
17 them given the screenshot or the document that's put
18 in front of me.

19 MR. LANE: And I have some additional
20 ones. I'm sorry.

21 MS. BOJKO: No, no. So that is one of our
22 concerns and we believe that was in the Complainant's
23 fourth motion to compel, so it is wrapped up in this
24 issue, but that is one thing we do believe that is
25 already pending before you.

1 EXAMINER PARROT: All right. Well, I
2 still think, I guess we need to go through one by one
3 here, I suppose. Unless you all have another way of
4 going about this at this point. But with respect to
5 POD-4-003, I think with the narrowing of it as we
6 discussed, I think I will direct Duke to respond.
7 Again, so we're looking at any special conditions on
8 the Easterling account that would have been in effect
9 during 2011.

10 MR. LANE: And would that also be true
11 with respect to account notes?

12 EXAMINER PARROT: Well, I guess I need to
13 see. I'm -- that's why I'm saying I'm not sure going
14 forward in any fashion other than one by one, because
15 I do need to see a specific discovery request for
16 that information, I think, before we kind of get
17 there, Mr. Lane. So I will get to your motion to
18 compel. So I think, as Ms. Bojko noted, I'm hearing
19 it's encompassed within that as you both anyway are
20 looking at it. So we will get there, but I think I
21 do need to go one by one so I have something in front
22 of me to get through.

23 MS. BOJKO: And I have more of those, your
24 Honor, regarding this exact issue --

25 EXAMINER PARROT: Okay.

1 MS. BOJKO: -- in the packet.

2 EXAMINER PARROT: Keep going then.

3 MS. BOJKO: So POD-04-005, "Please provide
4 documents or other data that Duke has that reference
5 or explain the cancellation of the gas disconnection
6 for the Easterling account," again as defined in the
7 document.

8 Duke provided one additional document that
9 merely references the cancellation. But on
10 Ms. Byndon's deposition, page 58, we believe that,
11 again, there's more data behind the disconnection.
12 She said that -- she testified that there are likely
13 more documents and data explaining the cancellation,
14 but those documents are not in front of me. So,
15 again, they did not produce documents that Ms. Byndon
16 referenced in her deposition.

17 EXAMINER PARROT: Ms. Bojko, what page of
18 the deposition are you looking at again?

19 MS. BOJKO: Page 58. She says, on line 8,
20 "It shows me that the gas was cancelled and electric
21 was completed." And then it goes on to ask more
22 information about the cancellation. "Do you know why
23 there would be an order issuing the shut off?" She
24 says no. She said that would be the group that works
25 with the orders. So she's referencing that there's

1 another group, another batch of orders.

2 We've since learned that we believe that
3 "orders" is called the "Mobile Up system" and that's
4 their work order system that Duke has, and that's why
5 we crafted our discovery request to include the
6 Customer Database, the CMS that we've discussed, the
7 Mobile Up system, or any other systems.

8 EXAMINER PARROT: Thank you.

9 MR. LANE: And if I might clarify. She
10 referred to it as the "Mobile Up system," she also
11 referred to something as a "work order database," and
12 I'm not sure if those are the same thing or not.

13 MS. BOJKO: Good point. Thank you.

14 EXAMINER PARROT: Okay. So what was the
15 confidential attachment?

16 MS. SPILLER: It was another screenshot,
17 if you will, your Honor, from the CMS records.

18 EXAMINER PARROT: Okay. Response?

19 MS. SPILLER: Your Honor, we have produced
20 that which exists. I would first note that the lack
21 of disconnection of gas service on November 4, 2011,
22 is not an issue in this case. When Mr. Lane filed
23 the amended complaint back in November, that was not
24 an allegation. So I think we need to start with the
25 fact that the status of that service is irrelevant

1 for purposes of the claims filed by or on behalf of
2 Mrs. Easterling and her son.

3 But the fact remains this case was filed
4 in 2015, almost four years, a little more than four
5 years after the incident. We will produce records;
6 we have produced records that we have. If they don't
7 exist any longer, they cannot be produced.

8 MS. BOJKO: Your Honor, if I may respond
9 quickly. Again, the relevancy issue, I think it's
10 not up to Duke to decide the relevancy, and I think
11 you ruled that at the last prehearing conference we
12 were at.

13 While Complainant may have amended his
14 complaint to state that he didn't believe that the
15 gas was disconnected, if you recall at the last
16 conference I said OCC was trying to gather
17 information to confirm that.

18 But then, more importantly, there are
19 certain procedures and rules that Duke has to follow
20 as a combination-utility company. So our request for
21 some additional information is to see if they did, in
22 fact, follow the rules that are in front of the
23 Commission with regard to combination utilities, and
24 also to alleviate our concern which Counsel said --
25 Duke's Counsel said at the last hearing I should

1 know, I should be aware that the gas was not
2 disconnected. Again, we were trying to follow up
3 with that.

4 Ms. Byndon did actually imply, many places
5 in her deposition, that these documents do still
6 exist. Again, maybe it's a definitional. She did
7 change between "work order system" and "Mobile Up
8 system" throughout her deposition, but I guess that's
9 what we're trying to ask. And if that is the case
10 then Duke could explain to us. In no way in their
11 response do they say these documents do not exist and
12 that's what we're trying to understand. She
13 referenced notes and documents in a different system
14 that wasn't put in front of her and that's what we're
15 trying to locate, what those documents are.

16 MS. SPILLER: And, your Honor, I just,
17 procedurally, the complaint in this case has to shape
18 the discovery. It has to inform the discovery. We
19 are talking about an allegation that the company
20 wrongfully disconnected electric service on
21 November 4, 2011. And there are very specific
22 Commission regulations and orders cited in the
23 complaint filed on behalf of the Easterling family.

24 The OCC doesn't have any claims against
25 the company in this case and, yet, we're using this

1 somehow as a fishing expedition in respect of company
2 policy and procedure. Ms. Byndon was there to
3 testify as to CMS records. She was not there to
4 testify as to every database that the company may
5 have. She's indicated that that is not her
6 department. She's not responsible for work orders or
7 how those are processed or maintained.

8 We have answered, I believe, this
9 question, albeit an irrelevant question,
10 appropriately by providing documents we have.

11 MS. BOJKO: Your Honor, I would just add
12 that the -- first of all, it was a corporate
13 designee, so Duke chose to produce the witness that
14 they did. But understanding that that was not in her
15 knowledge that's the exact reason why we followed up
16 with the discovery request. She said she didn't
17 know, so we asked the company to provide the
18 documents to explain it and that is why we did.

19 Even though I don't agree that this
20 discovery conference limited the deposition of Byndon
21 to one database. I don't think any of us appreciated
22 at the time that there was one -- not only one
23 database. I don't think that that is a proper
24 characterization of your Honor's order in the first
25 discovery conference.

1 With that said, we recognized, and that's
2 why we didn't ask her any more questions in the depo,
3 we recognized she didn't have the information, so we
4 asked the company to provide it through discovery.

5 MS. SPILLER: Your Honor, I suppose we
6 could continue to debate, but we were very clear in
7 the record as to the designee because there had been
8 much back and forth with Mr. Lane as to exactly what
9 he was looking for in terms of that corporate
10 designee, and it was indicated that he wanted someone
11 to testify as to acronyms and abbreviations in the
12 CMS records.

13 MR. LANE: And matters relating to the
14 account. That phrase keeps getting dropped off every
15 time Duke talks about this.

16 EXAMINER PARROT: I understand there
17 clearly -- we thought we had an agreement on
18 November 10th, we clearly did not, so we will have to
19 go forward from here, and we will do that, we will
20 get to that point. Again, we'll go through these one
21 by one, though.

22 I think with respect to this one, again
23 with the narrowing in terms of the time frame, we'll
24 limit it to 2011, but again I'm going to direct Duke
25 to provide any documents it has in response to

1 POD-04-005 for 2011.

2 MS. BOJKO: Thank you, your Honor.

3 Now my requests turn to the third set.

4 This is relating to OCC Interrogatory 03-12 through
5 -14, as well as POD-03-005 through -07 in your
6 packet. These interrogatories, the reason why I had
7 to put the interrogatory first is to get the question
8 and then obviously the POD, the request for
9 production follows.

10 We were asking Duke whether Duke provided
11 personal notice of the disconnection and, if so,
12 identify the name of the resident to whom the Duke
13 employee provided notice. Duke either referenced
14 prior interrogatories in the responses or they
15 referenced to previous screenshots produced that are
16 nonresponsive and suffer from the same problems that
17 we've already discussed. They're incomplete.

18 The interrogatories -- we'll stop at that.
19 So 03-012 asked for -- I had to put them all because
20 they refer to each other, but we're requesting Duke
21 to provide personal notice and tell us who they
22 actually provided that notice to and they've refused
23 to answer that.

24 And then we also asked them to produce the
25 relevant documents demonstrating that they did, in

1 fact, provide written notice, and they've objected to
2 that or they've directed us to Pitzer 01-014
3 Confidential. If you look at that, it's just the
4 same screenshots that we've already been discussing.
5 It's not relevant to the discussion. It doesn't
6 answer the question.

7 MS. SPILLER: So, Kim, I'm sorry, what is
8 the total grouping?

9 EXAMINER PARROT: Yeah, I'm not sure I
10 completely -- go through it one more time.

11 MS. BOJKO: Well, it's Interrogatories, if
12 you start, it's 3 through 12. I'm sorry.
13 Interrogatory 03-012 through -14.

14 EXAMINER PARROT: Okay.

15 MS. BOJKO: Ask if the Duke employee
16 provided personal notice.

17 EXAMINER PARROT: Notice, okay.

18 MS. BOJKO: And instead of answering that
19 one, they objected and they said notice was required
20 under, and they gave an Administrative Code cite.
21 They didn't answer the question whether he did, in
22 fact, provide notice. It says it was provided under
23 18-06, which is different.

24 Then we go and ask them to provide the
25 identity of the name of the resident whom they

1 provided notice to. If you look at 03-13, they just
2 refer us back to 03-12.

3 EXAMINER PARROT: Okay.

4 MS. BOJKO: Then if you look at 03-14,
5 then here we asked them some more information about
6 Duke's attempt to provide personal notice and they
7 said there was no response to the actions of Josh
8 Danzinger while at the property. So they answered
9 affirmatively that they provided notice, but then
10 they said there was no response to the actions
11 without explaining what those actions were.

12 We wanted the documentations; we wanted
13 the notice provided. We wanted -- Mr. Danzinger
14 references notes that he's made on his laptop
15 throughout this whole process. And if that is the
16 response, then we would like those notes.

17 If you read them, the answers really do
18 not flow together and they're not consistent, but
19 they don't answer the ultimate question, which person
20 did he hand the notice to, and if it is not a person,
21 what did he do and where are the notes or the backup
22 documentation to demonstrate his actions, whatever
23 they may have been.

24 MR. LANE: And what makes that interesting
25 is Mr. Danzinger, in his testimony that they filed,

1 said he doesn't have any independent recollection of
2 what occurred that day, but he did state in several
3 points in his testimony that he took notes on a
4 laptop. If you couple that with Ms. Byndon's
5 testimony that there's a separate work order
6 database, all of this sort of ties together and leads
7 to the question of where are the work order documents
8 and is Mr. Danzinger's notes or are Mr. Danzinger's
9 notes part of those documents. And, you know, that's
10 clearly relevant because all of this occurred the day
11 the electric was disconnected at the premises.

12 MS. BOJKO: Just to follow up, your Honor,
13 the PODs that I referenced are asking for the
14 documents that explained that process, and the
15 responses back to the Pitzer-01-014 which is just a
16 screenshot.

17 EXAMINER PARROT: That's what I was going
18 to ask, what is -14.

19 MS. BOJKO: It's just the same screenshots
20 that are attached to the Byndon deposition.

21 EXAMINER PARROT: To the deposition, okay.
22 So those are POD-03-005, -006, and -007.

23 MS. BOJKO: Yes.

24 EXAMINER PARROT: Okay. All right.

25 Response?

1 MS. SPILLER: Your Honor, thank you. And
2 again, I will harken back to the words of Ms. Bojko
3 that we are not required in discovery to produce that
4 which we don't have, that which has already been
5 shared between the parties through discovery.

6 And I'm also going to level set in that
7 Ms. Bojko's question is a false premise that we are
8 obligated, before every disconnection, to hand
9 someone, on that day, a disconnection notice. So her
10 question assumes that the rule requires we must
11 physically give the day-of-disconnection notice to
12 the customer before we can do anything, and that is
13 not what the rule requires.

14 But let's look at the responses in total
15 that have been provided to the OCC. It's indicated
16 we've identified and have identified, since July of
17 last year, the individual, the employee who went to
18 the premises on November 4. He has been identified
19 as Josh Danzinger. That's indicated in these
20 responses.

21 Mr. Danzinger, it's indicated in these
22 responses, went to the property. There were no
23 responses to his actions when he went to disconnect
24 the service. So he could not have given, physically
25 given the notice to anybody, nor was he required to

1 physically give the notice to anybody.

2 Ms. Bojko has the date of -- the
3 date-of-disconnection notice; that is and has been in
4 her possession. Ms. Bojko now has and has had, since
5 December 30th, the testimony of Mr. Danzinger. And
6 Mr. Danzinger does not state in that testimony that
7 he's creating a bunch of notes and entering them into
8 his laptop. He indicates arrival time; he indicates
9 completion time. That is what is done. It's an
10 electronic transmittal. It's reflected in the CMS
11 records that the parties have in their possession.
12 There is nothing more to produce. We have answered
13 these questions.

14 MR. LANE: So I guess we're getting to the
15 point where we have to ask the question, does a work
16 order database exist and were there records
17 concerning these residents during that period of time
18 that have not been produced from that work order
19 database. Ms. Byndon certainly testifies that there
20 is one.

21 MS. BOJKO: And I think Mr. Danzinger
22 does, too. And he goes on, if you read his -- I'll
23 let the testimony speak for itself. He says if there
24 was some kind of activity, he would have noted it in
25 his record. If there was a hostile resident, he

1 would have left the premises and then noted it in the
2 record.

3 So I think there was fair indication that
4 he did do more than just the date. And I guess I'm
5 going to have to disagree with the premise. If you
6 read all of the interrogatories, we actually say if
7 you didn't speak to a resident then did you provide
8 it or did you attach it to the door. So I disagree
9 with Counsel's interpretation of the Commission's
10 rules, but we did do every scenario in our questions
11 in order to not get in a situation of what she's
12 saying that we don't agree on what the actual
13 Commission's rules state.

14 MR. LANE: And what's interesting is that
15 Ms. Spiller made the comment that Mr. Danzinger said
16 that no one responded to him, but yet, in his
17 testimony that was filed before the Commission, he
18 says he doesn't recall what occurred. I didn't see
19 any records, including the one to which we've been
20 referring, that say anything about getting no
21 response. The only thing that record to which we've
22 been referring says is that he was there four
23 minutes.

24 So supposedly in the span of four minutes,
25 which Ms. Byndon confirmed in her testimony that that

1 record shows he was there four minutes, he tried to
2 ascertain that no one was home, which the rule
3 clearly requires, left a notice, sealed the meter,
4 made notes on his laptop and then left.

5 You know, again, that leaves open the
6 ultimate question of whether there is some written
7 record of what he did while he was there. Ms. Byndon
8 has testified there is a work order database that may
9 contain those records. Mr. Danzinger testified he
10 made notes on a laptop, but yet, we don't have
11 anything.

12 MS. SPILLER: And, your Honor, perhaps
13 we're now parsing. The response was "There was no
14 response to the actions of Josh Danzinger while at
15 the property...."

16 Had someone answered the door, had someone
17 made payment, had someone had any affirmative contact
18 there would have been notations. The absence of any
19 notation, the fact that the order was actually worked
20 and completed, confirms that there was no response to
21 the actions taken by Mr. Danzinger that day.

22 So there is somehow this inference that we
23 are hiding information; that we have done something
24 wrong. I can't produce, again, that which does not
25 exist. The best I can --

1 EXAMINER PARROT: But you can say that in
2 the response, correct? And I've not seen that here.
3 So I kind of understand the concern, I guess.

4 MS. SPILLER: But this question asked
5 about did they attempt to provide personal notice.
6 That was the question. And again, we objected
7 because of the false premise and then indicated that
8 there was no response to his actions, but that, in
9 fact, they have the date-of-disconnection notice that
10 was posted. They have the explanation from
11 Mr. Danzinger as to what he did with every single
12 DNP.

13 MR. LANE: But not this one.

14 MS. BOJKO: Yeah. That's the exact -- if
15 that's the answer, your Honor, that's exactly what
16 we're trying to figure out. I don't think the
17 evidence lays out what Ms. Spiller just laid out. I
18 don't think we have that evidence and that's the
19 exact reason we're asking the question. I mean,
20 these are follow-up questions to depositions, other
21 discovery requests. I mean, that's what we're trying
22 to get to. There's no reference to a work order
23 system here that's unavailable.

24 There's no reference to -- I mean, the
25 next request, 03-15 asks if a personal notice was not

1 provided. So I don't know what the premise -- we
2 were asking all provisions of the Commission's rules.
3 If the notice was -- if personal notice was given to
4 a resident. Then we asked if it wasn't, was it
5 attached. This one he said yes. So then we go back
6 to the POD asking for information to demonstrate
7 that. Where's the evidence that he did do that. If
8 it's in the notes, like Ms. Spiller claims it would
9 have been, then that's what we requested.

10 MS. SPILLER: And, your Honor, we have
11 provided what exists.

12 MR. LANE: There's no document that I saw
13 that Duke provided that says there was no response.

14 MS. BOJKO: Right. Or that they don't
15 exist anymore.

16 MS. SPILLER: But there's no requirement
17 that we maintain a database with all of that
18 information.

19 MR. LANE: But their witness testified
20 that there is such a database, whether there's a
21 requirement or not.

22 MS. SPILLER: A request was made in 2015
23 in respect of an incident that happened in 2011,
24 Mr. Lane. The database exists. This particular work
25 order, that was an awfully long time ago.

1 MS. BOJKO: She's still falling short of
2 saying it doesn't exist. She's not even saying it
3 here today.

4 EXAMINER PARROT: Okay. All right. I'm
5 going to direct --

6 MS. SPILLER: Fine, your Honor. I will
7 say it does not exist.

8 EXAMINER PARROT: Okay. Well, I'm going
9 to direct you to respond to Interrogatories 03-012
10 through -14 and the associated requests for
11 production of documents.

12 MS. SPILLER: Which are? I'm sorry.

13 EXAMINER PARROT: If there are no
14 documents, then please state that in the response.

15 MS. BOJKO: 03-005, -6, and -7.

16 EXAMINER PARROT: Thank you.

17 MS. BOJKO: Your Honor, the last set of
18 requests were OCC Interrogatory 03-017 through -022,
19 and these questions are about gas and electric
20 deposits on the Easterling account and these
21 questions remain unanswered. Duke says that these
22 questions were already answered in Interrogatory
23 01-004, which you should also have for your
24 convenience.

25 EXAMINER PARROT: I see that.

1 MS. BOJKO: The problem with Duke's
2 response is that Duke never answered the request.
3 They objected that it was too broad. So what OCC did
4 was they narrowed the request the second time around.
5 So in the first set they wouldn't answer 01-004
6 through -007. So we went back and narrowed our
7 request and refined our question so that Duke
8 wouldn't object to it. But now Duke is responding
9 and referring us back to the question or
10 interrogatory that they didn't answer.

11 And again, I think this is all very
12 relevant. There are -- the company keeps or wants
13 the Bench to think that gas and electric are
14 different services, which they are, but there are
15 certain requirements that combination utilities have
16 to meet, particularly in the winter heating season.

17 And this is one of the issues we will
18 bring up and present to the Commission during the
19 hearing phase and so these questions are very
20 relevant. There are different processes in place
21 depending on what deposit has or has not been either
22 on the account or requested from the customer during
23 a disconnect process.

24 And just so you're clear, your Honor, I'm
25 requesting that OCC Interrogatory 03-17 through -22

1 be answered. I merely provide 01-004 through -007
2 because of the reference in the responses.

3 EXAMINER PARROT: Anything on this,
4 Mr. Lane?

5 MR. LANE: No.

6 EXAMINER PARROT: Response?

7 MS. SPILLER: Thank you, your Honor. With
8 all due respect to Counsel, I fail to see how 03-017
9 provides an appropriate limitation in respect of the
10 issues in this particular case. It's asking about
11 security deposits from Estill Easterling, the named
12 individual into whom the account was placed and who
13 was the company's customer of record, Dorothy
14 Easterling, who was not a customer, or Estill
15 Easterling III, who was not a customer.

16 There are no date parameters that have
17 been provided. The natural gas service, again, is
18 not an issue in this case as confirmed by the amended
19 complaint filed by the Complainant in this
20 proceeding. Be all of that as it may, if we refer
21 back to the answer 01-004, an answer was provided
22 over the objection.

23 I would further note that the existence of
24 a security deposit, should one have potentially been
25 requested or required of Mr. Easterling decades ago

1 when the account was established prior to his death,
2 which I understand could have been upwards of 30
3 years ago, that's irrelevant.

4 That security deposit becomes relevant if,
5 in fact, it's on an account when that account is
6 finalized. This account did not reach that status at
7 all in 2011. And I was holding back because I don't
8 want to go further in terms of subsequent activity on
9 the account.

10 MS. BOJKO: Your Honor, understanding the
11 word "initiated," like the time initiated would have
12 been too far back in time, that is what the
13 difference in the questions are. We were saying did
14 you ever receive one from those three individuals,
15 not just the address. So we attempted to try to
16 narrow the request. I mean, I believe that the
17 account should be able to tell you if there's a
18 security deposit pending on the account or still on
19 the account during the disconnect which is 2011.

20 MS. SPILLER: But, your Honor, I think the
21 comment from Ms. Bojko indicates that part of the
22 struggle here. This wasn't even related to that
23 property or that account. I mean, this clearly
24 reflects -- I mean, this is so overly broad. And
25 again, we have provided information. The existence,

1 though, is irrelevant for purposes of this case.

2 MS. BOJKO: Your Honor, we'd be willing to
3 narrow the request to "in effect." If there was a
4 deposit in effect during 2011. That wasn't our
5 intent. We were trying to narrow it to individuals
6 that may have applied it to the account during that
7 period.

8 EXAMINER PARROT: And specifically,
9 though, for the Orchard Street account as well, to
10 get to --

11 MS. BOJKO: Yeah. I mean, we were --

12 EXAMINER PARROT: Not looking for --

13 MS. BOJKO: -- trying to write it
14 different ways.

15 EXAMINER PARROT: -- other addresses and
16 that sort of thing.

17 MS. BOJKO: Yes, your Honor.

18 EXAMINER PARROT: All right. With that
19 narrowing, I am going to direct the company to
20 respond to OCC Interrogatories 03-017 through -022.

21 MS. SPILLER: I guess, your Honor, to be
22 clear, notwithstanding the information that's already
23 been provided in respect of 01-004, the instruction
24 is to the extent we're able to answer if a security
25 deposit was on the account for the relevant time

1 period at the subject property?

2 EXAMINER PARROT: Yes.

3 MS. SPILLER: Thank you.

4 MS. BOJKO: Thank you, your Honor.

5 The next issue I have for the Bench is
6 that OCC properly issued notices of deposition, and
7 at the deposition Duke refused to provide documents
8 requested pursuant to the properly-noticed
9 deposition. This is regarding our concern -- our
10 concern is regarding now we have all the discovery
11 requests -- or, some responses too, but our concern
12 is regarding the notice of deposition that asked the
13 witnesses to bring all notes and documents that they
14 relied on when drafting their testimony.

15 And so, if the witness relied on a certain
16 document or if there was a bill insert or if there
17 were notes to the account that led them to make the
18 conclusions they did in their testimony, that is what
19 we instructed.

20 Duke instructed -- apparently they
21 instructed Witness Carmosino not to bring any
22 documents with him to the deposition. He didn't even
23 have his own testimony with him at the deposition.
24 This clearly violates the notice of deposition.

25 OCC did forward his testimony to the

1 reporter; his public version. We did not send the
2 confidential version because we believe that would
3 not be consistent with the confidentiality agreement
4 that we have. So we asked him if he had the
5 confidential version with him; he did not. As you
6 can imagine, it was a telephonic deposition, so this
7 made it quite difficult to ask him questions when he
8 claimed to not have his testimony in front of him.

9 Duke explained, in correspondence with
10 Counsel, that because the notice of deposition was
11 not issued 20 days prior to the actual deposition
12 occurring, Duke is under no obligation to bring the
13 requested documents.

14 So, obviously, we disagree with this
15 interpretation. It's not the Commission practice.
16 Usually, 90 percent of the time a deposition notice
17 occurs after the discovery cut-off date, it's after
18 testimony is filed, it's after we decide if we want
19 to depose a witness. In this case, testimony was not
20 filed 20 days before the scheduled hearing.

21 This is a very important precedential
22 issue. We can't have companies or any party not
23 bring any documents with them because the notice of
24 deposition was not filed 20 days prior. I think
25 that's an incorrect interpretation of the discovery

1 rules. I think it's an incorrect interpretation of
2 the Commission's practices.

3 Yes, the Commission has, in one case
4 prior, stated that you cannot use a notice of
5 deposition to thwart the discovery rules, meaning you
6 can't ask them for documents you haven't received
7 when the time hasn't expired. But in this case we're
8 requesting the underlying documents to the testimony,
9 not any of those discovery requests.

10 So after reviewing the testimony we
11 decided to call or depose certain witnesses. With
12 regard to Ms. Porter, OCC even asked for certain
13 documents referenced, directly referenced in her
14 testimony. We asked for that informally and we were
15 hoping to get those documents in lieu of even having
16 a deposition. Duke refused. And so, we ended up
17 going forward with the deposition, but Ms. Porter
18 also did not bring any documents with her that were
19 responsive to the notice of deposition.

20 And again, we're only looking for the
21 documents that they actually referenced in their
22 testimony was the point of that, so we could question
23 them on those documents.

24 So even with that, even with Counsel's
25 misinterpretation of the discovery rules, we did, in

1 fact, request these documents per the Commission's
2 discovery rules. We requested them on July 28th. So
3 even assuming that Ms. Spiller's interpretation of
4 the discovery rules is correct, which it's not, but
5 even assuming that, the 20-day response expired a
6 long time before we had the deposition.

7 If you look at OCC-POD-02-001, -002,
8 INT-02-002, and OCC-INT-02-003, we ask for any
9 documents underlying the witnesses' testimony. We
10 also ask for them to bring any kind of CVs that they
11 may have with them and answer any questions regarding
12 testimony that they may have filed in other
13 proceedings.

14 So we properly requested the testimony
15 documents way before the witnesses were even
16 notified. Duke did not supplement its responses.
17 And OCC also requested supplemental under the
18 Commission's rules under 16(D)(5). We requested,
19 both in the instructions and in the interrogatories,
20 that when the information becomes available, i.e.
21 when the witnesses are known, to supplement your
22 discovery responses to tell us those and then to
23 supplement the request for production of documents to
24 provide us all of the documents that the witnesses
25 relied on.

1 So I have gone through, I don't know if
2 you want to make a general ruling, but after
3 requesting this discovery conference on January 11th,
4 Duke did provide some supplemental information. They
5 provided one additional bill insert that Ms. Porter
6 relied on.

7 But I have a list here of things. I've
8 looked through Porter's testimony and I've looked
9 through Carmosino's testimony, those are the two
10 witnesses we deposed, and I looked for where they
11 referenced a document. And I think that falls under
12 multiple, it falls under our notice of deposition
13 request as well as all the other interrogatories I
14 cited to, and I think those are included in your
15 packet as well. So I don't know how you want to --

16 EXAMINER PARROT: Well, what are you
17 looking for here, Ms. Bojko?

18 MS. BOJKO: Sure.

19 EXAMINER PARROT: Are you looking for just
20 the documents at this point?

21 MS. BOJKO: Yes.

22 EXAMINER PARROT: Are you asking to be
23 able to reconvene the depositions --

24 MS. BOJKO: No. I'm just --

25 EXAMINER PARROT: -- and having the

1 documents there and the ability to ask questions on
2 the documents at that point? I just want to be very
3 clear on what you're seeking here.

4 MS. BOJKO: I understand. Obviously, we
5 need to see the documents before we can make that
6 decision, but, your Honor, given the timing of when
7 we had this discussion with Counsel, we were just
8 seeking the documents themselves.

9 EXAMINER PARROT: Seeking the documents,
10 okay.

11 MS. BOJKO: I don't believe it would be
12 necessary to have another deposition, although I do
13 think it's within our rights, but I don't think that
14 would be necessary.

15 EXAMINER PARROT: Okay.

16 MS. BOJKO: So if we look at Ms. Porter's
17 testimony on page 3.

18 EXAMINER PARROT: Hang on just a second.
19 Page 3?

20 MS. BOJKO: Yes.

21 EXAMINER PARROT: Okay.

22 MS. BOJKO: She said she reviewed
23 information maintained in the CMS system. She did
24 not include this information, direct us of what she
25 did review, nor did she provide it. On page 4, she's

1 talking about CMS generated an electronic file based
2 on relevant customer information that is sent to an
3 outside vendor. We requested this information. She
4 did not include it or provide it.

5 Page 8, she referenced a log, and this log
6 was not provided by Duke. And if you look at Duke's
7 supplemental responses we received on Monday or
8 Tuesday of this week, Duke is refusing to provide
9 this log. They claim that it's irrelevant and
10 confidential. We obviously object to that, but we do
11 have a confidentiality agreement with them.

12 So again, it's not Duke's position to
13 decide what is or is not available through discovery.
14 They can object to those regarding the admissibility
15 of such information at the time of the hearing.

16 And attachment and testimony MP-1 to
17 Ms. Porter's testimony she lists documents that were
18 inserted in the bill and this is the exact bill that
19 she's claiming should be sent to the Easterlings. So
20 if you look at that MP-1, we asked for all of the
21 inserts, the bill inserts that are listed there so we
22 could see what information was provided, as they
23 claim, to the Easterlings.

24 There are two missing documents that we
25 can see. There's a disconnect remit insert that we

1 do not have and there's a gas customer choice
2 document that we do not have. And again, the intent
3 and the reason we need these documents will become
4 apparent at the hearing. Those are needed, all the
5 bill inserts she references are needed. They also
6 did not provide a holiday train document initially,
7 and then on Monday or Tuesday they did provide that
8 one insert. So we're still missing two inserts.
9 Those are all for Ms. Porter.

10 Then I have a similar list for
11 Mr. Carmosino

12 EXAMINER PARROT: Okay. Go ahead.

13 MS. BOJKO: Through discovery and through
14 deposition notice, OCC asked for all the documents
15 referenced in Mr. Carmosino's testimony. And as I
16 explained, Mr. Carmosino brought no documents that he
17 utilized or relied upon to draft his testimony. But
18 at page 17 of his testimony, he makes assertions
19 about written notices being provided by Danzinger,
20 but he didn't produce the documents. We're looking
21 for those written notices that he claims were
22 provided by Mr. Danzinger. That's all for
23 Mr. Carmosino.

24 As for Mr. Danzinger, we did not depose
25 him, so we requested the information through our

1 discovery request not through the notice of
2 deposition. But as we stated earlier today,
3 throughout Mr. Danzinger's testimony he references
4 notes taken on his laptop. Those were not produced.
5 And if we need a specific page number, I think it was
6 around page 3 or 4 of his testimony.

7 And also on page 5 of his testimony -- the
8 notes are on pages 3 and 4, and then if you turn to
9 page 5 of his testimony, he lists a laminated list of
10 payment centers and that has not been produced, a
11 copy of it has not been produced. Then on page 8, he
12 references Duke's records that he relied on to draft
13 his testimony and those were not produced. And,
14 obviously, we're just looking at those records that
15 relate to Mr. Danzinger and his testimony. He states
16 that he reviewed certain documents to make the
17 conclusions that he's made and those were not
18 produced. That's all I have, your Honor.

19 EXAMINER PARROT: Where is that last one?
20 It's page 8, right?

21 MS. BOJKO: It's page 8, line 1. He talks
22 about Duke Energy's records regarding the DNP worker
23 who disconnected.

24 EXAMINER PARROT: I see that. Thank you.

25 Mr. Lane, anything you wish to add on

1 this?

2 MR. LANE: Nothing, except, you know, I
3 think the last point Ms. Bojko made goes back to this
4 issue of records that may exist from the day of the
5 disconnection that Mr. Danzinger testified about.
6 That's something we're particularly interested in.

7 EXAMINER PARROT: Response?

8 MS. SPILLER: Thank you, your Honor. I
9 would like to begin with Ms. Bojko's contention
10 concerning this notice of deposition. And throughout
11 this proceeding the communications that have been had
12 with Ms. Bojko, she has insisted on adherence to the
13 rules.

14 And with respect to the notice of
15 deposition, I don't think the rules at all, your
16 Honor, suffer from any ambiguity and it does, in
17 fact, allow a party to be deposed pursuant to a
18 notice of deposition that includes a document request
19 or a notice of deposition duces tecum. The rule does
20 indicate that that notice, should it be tendered,
21 needs to be done in compliance with the rules
22 concerning document requests; that is, the notice
23 needs to allow sufficient time for the deponent to
24 respond to a document request.

25 Consistent with that rule, we actually had

1 issued a notice of deposition to the OCC in
2 mid-December. Understanding that there would be a
3 20-day time period. If, in fact, after the
4 disclosure of witnesses and review of testimony the
5 deposition would not have been necessary, it would
6 not have gone forward, but we were putting the OCC on
7 notice, timely notice, of our intentions.

8 In connection with the depositions of
9 Ms. Porter and Mr. Carmosino, those requests for
10 documents are perhaps an exception from the rule or a
11 discussion about whatever practice Ms. Bojko is
12 referring to never occurred. We were not asked
13 whether we would be amenable to producing documents.

14 Prior to the deposition I will say there
15 was a -- a sidebar here, a question concerning the
16 inserts. And at that point in time, Mr. Etter
17 identified a holiday train insert as well as an
18 insert about gas customer choice, indicating that if
19 we didn't give them, we would be issued a subpoena.

20 My response was that the OCC has already
21 in their possession the customer choice insert. It
22 is in the discovery previously provided to Ms. Bojko.
23 The holiday train is irrelevant to the issues in this
24 case. It is not an insert that Ms. Porter relied
25 upon for purposes of forming her testimony. And as

1 was shared with OCC's counsel, we did not redact the
2 attachment to Ms. Porter's testimony to exclude the
3 irrelevant holiday train insert or the gas customer
4 choice insert because of the Bench's admonitions
5 against redactions. Be that as it may, Ms. Bojko has
6 the holiday train insert that was not at all relied
7 upon by Ms. Porter for purposes of her testimony.

8 With respect to Ms. Porter's testimony --
9 I'm sorry, her deposition that occurred last week,
10 Thursday, it was indicated that we did not believe
11 that the notice of deposition was, in fact,
12 appropriately issued.

13 But I would like to reiterate Ms. Porter
14 did come with her direct testimony in front of her.
15 The final notice at issue in this case is reflected
16 in CMS records already in the possession of the
17 Consumers' Counsel. They have the information.

18 With respect to how the CMS process may
19 transmit information to a third-party vendor, there's
20 no review that occurred. That was simply a
21 discussion of what happens. And Ms. Bojko had the
22 opportunity to elicit further information from
23 Ms. Porter during her actual deposition last week.

24 With respect to the log, your Honor, that
25 is an error log that Ms. Porter indicated she

1 reviewed, did not show any errors whatsoever in
2 respect of the mailings that went out, mailings that
3 would have included the Easterling bill that was
4 prepared on I believe October 4, 2011.

5 That log contains information wholly
6 unrelated to, in many instances, Ohio, because RR
7 Donnelley does this print vending for all of the
8 regulated jurisdictions. The sensitivity to that
9 error log is that it contains information for which
10 Duke Energy Ohio doesn't hold the protection. It's
11 not -- there are other regulated entities with
12 concerns over the confidential nature of that
13 information. There's nothing on there to indicate an
14 error.

15 And respecting the confidences of entities
16 that are not before this Commission, it was not
17 produced. And we have indicated we are more than
18 happy to share that with the Bench for purposes of an
19 in-camera review.

20 With respect to Mr. Carmosino, again, the
21 notice of deposition was not provided consistent with
22 the Commission's regulations that Ms. Bojko asked us
23 to strictly follow. I would indicate that the
24 evening prior to Mr. Carmosino's deposition,
25 Consumers' Counsel identified and shared with us the

1 exhibits that they intended to use during the
2 deposition. They did not at that time indicate that
3 they would be also seeking the use of the
4 confidential transcript -- or, I'm sorry, the
5 confidential direct testimony of Mr. Carmosino.

6 As such, when we went into that deposition
7 last Friday morning, we understood the OCC would have
8 three exhibits. They had given those to the court
9 reporter and, as is customary practice, the court
10 reporter had copies to provide to the witness.

11 With respect to Mr. Carmosino and the
12 documents that Ms. Bojko has just identified, the
13 final notice generated on October 19 is in their
14 possession. A copy of the date of disconnection
15 notice is in their possession. The CMS records
16 relevant to the disconnection are in their
17 possession. I'm not certain what else Ms. Bojko
18 thinks has not been provided and that has not been
19 relied upon by Mr. Carmosino for purposes of his
20 testimony. She has it.

21 Mr. Danzinger indicated that he knew he
22 was identified in the CMS records as the individual
23 who went to the property on November 4. It is not
24 his job to review the CMS records, but the CMS record
25 that reflects that information is in the Consumers'

1 Counsel's possession and it has been since, I
2 believe, September. Again, Mr. Danzinger identified
3 a copy of the day of disconnection notice that he
4 posted on that premises on November 4, 2011.

5 The payment center -- the pay center
6 locations, that laminated document, it's irrelevant,
7 your Honor. He's describing a process. But no one
8 contacted us in respect of making payments. There
9 was no need to direct anyone at the Easterling
10 property to a pay agent or a pay center because there
11 was no communication with them.

12 MS. BOJKO: Your Honor, if I may respond.

13 EXAMINER PARROT: You may.

14 MS. BOJKO: Again, we're talking about
15 relevancy, the log, it's not Duke's ability at this
16 stage of the hearing to determine what's relevant and
17 what's not and what parties get to see or what they
18 don't get to see. That comes at the admissibility
19 phase of the hearing.

20 You know, Ms. Spiller said a lot of things
21 that sound like testifying and evidence. What we're
22 trying to do is actually see the documents where
23 these witnesses got the information. Nowhere on
24 page 8 of Danzinger's testimony does it say "CMS
25 record," so we asked for the record. I mean,

1 sometimes if the response is it is the CMS record and
2 you already have it, then, you know, that's a
3 response that actually helps in our review of this
4 case.

5 She referenced Carmosino already provided
6 written notices. That's just not true. Carmosino
7 says a notice was actually sent to the Easterlings.
8 We have not yet seen a notice that was actually sent
9 to the Easterlings. That's what we're trying to ask.
10 What are these witnesses basing their claims and
11 assertions on. So that's exactly what we are looking
12 for.

13 She didn't address the laptop notes.
14 That's clearly in here. He states he has a document
15 of the payment centers. Again, whether Duke believes
16 it's relevant to the case or not, that's for us to
17 prove at the hearing. With all of the information we
18 have requested, I believe I have a way to make that
19 argument for you, your Honor.

20 MS. SPILLER: Your Honor, if I may.
21 Mr. Danzinger was asked whether he knew he was
22 identified in the records as the individual who went
23 to the property and he said that he was. Again, with
24 respect to laptop notes, they indicate a time of
25 arrival and then he would indicate when he was

1 completed and moving on to the next job. That
2 information, as Counsel has acknowledged today and
3 already discussed today, is in their possession via
4 the CMS records, so they have the information.

5 Ms. Bojko is asking and Mr. Lane is asking
6 for a particular notice with a specific name,
7 address, account number. If that doesn't exist, it
8 cannot be provided. And, your Honor, we have, again,
9 given them copies of the final notice. We have given
10 them copies of the original or initial disconnection
11 notice, bill insert, final notice, day of
12 disconnection notice. I'm not certain what else they
13 expect us to give at this point.

14 MS. BOJKO: Your Honor, it's not the CMS
15 record, though, that I think is important to the
16 Danzinger testimony. I think it's -- it doesn't say
17 "CMS record," but I believe it's the work order which
18 is the exact thing we've explained all day today that
19 we are trying to obtain are the work orders and the
20 notes regarding Danzinger's work and what his
21 responsibilities are.

22 MR. LANE: And I think it's, you know, a
23 bit of a misrepresentation to say that he only talked
24 about when he arrived and when he left. For
25 instance, on page 4 of his testimony it says "After

1 completing a particular assignment, I would record
2 the details of that assignment in my laptop." I
3 mean, "details" certainly suggest more than I arrived
4 and I left.

5 And, you know, there have been a lot of
6 statements that have been made by Ms. Spiller today
7 that he went to the door and didn't get a response.
8 That is not in the record anywhere and it's also not
9 in any of the documents that have been produced. So
10 we don't even know where that information comes from
11 and we don't even know what details he's talking
12 about in his testimony, but he certainly said he put
13 them in his laptop. And then if you couple that,
14 again, with Ms. Byndon's testimony that there's a
15 separate work order database, here we are at the same
16 place again.

17 MS. BOJKO: And it's not just his personal
18 laptop. He says he hits send and he transmits the
19 information to Duke's system on page 4.

20 MR. LANE: And that one screen that Duke
21 keeps referring to that does contain information
22 about when he arrived and when he left, the four
23 minutes that he was there, but it doesn't provide any
24 other details other than that. And Ms. Byndon
25 testified that those details would be in the work

1 order database. So it all kind of ties together.

2 MS. SPILLER: Ms. Byndon did not indicate
3 that details from that day, November 4, 2011, would
4 be, today, in a database. That is not what she said.
5 But I think it's also an unfair characterization that
6 the CMS records only indicate the time he arrived and
7 the time he left. They indicate an order was
8 completed; they indicate a reading. So there's other
9 activity that is, in fact, indicated --

10 MR. LANE: What they don't --

11 MS. SPILLER: -- on the CMS records.

12 MR. LANE: What they --

13 MS. SPILLER: I'm sorry.

14 MR. LANE: I'm sorry. What they don't
15 indicate is contact with the customer or attempted
16 contact with the customer which the rules clearly
17 require.

18 MS. SPILLER: And, your Honor, had there
19 been contact with the customer, it is likely -- we
20 could speculate a lot as to what would have happened.
21 The absence of any further activity, the fact that
22 the order was completed, is indicative of a lack of
23 contact, a lack of response by the customer, or any
24 consumer at the property.

25 MR. LANE: That's a pretty big assumption.

1 MS. BOJKO: Yes. And, your Honor, we have
2 no documentation to support that.

3 MR. LANE: Especially when the rules
4 require not only contact but someone has to ascertain
5 that no one is at home.

6 MS. SPILLER: Well, and, your Honor, there
7 is, it feels, an undercurrent here to turn the
8 tables. The Complainant in this case has the burden
9 of proof, and so far we've not seen any indication
10 from the evidence from the plaintiffs or even from
11 the OCC that somehow there was contact that was made,
12 that somehow they are disputing that, in fact, there
13 was an overture on behalf Mrs. Easterling or her son
14 in respect of the status of this account.

15 EXAMINER PARROT: Ms. Spiller, do you have
16 the exception log with you right now?

17 MS. SPILLER: I do, your Honor. May I
18 approach?

19 EXAMINER PARROT: You may.

20 MS. SPILLER: Feel free to separate this.
21 It's a document that goes this way. I couldn't quite
22 get a piece of paper that large, so.

23 EXAMINER PARROT: And do you have
24 something that speaks to the confidentiality
25 agreement that may exist between Duke Energy Ohio and

1 the other entities you've referred to?

2 MS. SPILLER: I'm sorry?

3 EXAMINER PARROT: In the response, and I'm
4 sorry, I'm looking specifically at trying to get the
5 right one, OCC-POD-02-002, and there in response Duke
6 states that it's concerned that the log contains
7 information that's confidential to Duke Energy Ohio
8 as well as other entities. So I'm asking you, do you
9 have something that speaks to that point beyond just
10 your representation?

11 MS. SPILLER: Well, your Honor, at this
12 moment it is my representation. If we look at some
13 of these entries they are specific to jurisdictions
14 outside of Ohio. And so, this is information, and
15 that is part of the hesitation, there's a
16 sensitivity. I can't -- it --

17 EXAMINER PARROT: Okay. And what's the
18 basis for the claim of the confidentiality, I guess I
19 would ask?

20 MS. SPILLER: Your Honor, this is
21 information that is internal to, and it would be Duke
22 Energy Business Services, in respect of a contract
23 that it has with a third-party vendor on behalf of
24 regulated utilities. This is information that
25 concerns the workings of that relationship as between

1 Duke Energy Business Services and the third-party
2 vendor. This is not information that is at all put
3 out into the public domain. It is all kept
4 confidential. It is internally maintained so as to
5 assess vendor relationships.

6 And certainly if this information is
7 disclosed, I think there is a concern as to the
8 commercial relationship between Duke Energy Business
9 Services and that third-party vendor, and certainly
10 don't want any concerns that somehow Duke Energy
11 Business Services is publishing actions on behalf of
12 that vendor that could, in fact, work a financial
13 commercial harm to that entity.

14 EXAMINER PARROT: And the confidentiality
15 agreements that have been reached between Duke Energy
16 Ohio and OCC and Duke Energy Ohio and Complainant in
17 this case, I think I heard from you, Ms. Bojko, it
18 was your thought anyway that that would apply with
19 this type of, as you understand this document given
20 you haven't seen it, but from what you understand
21 it's your belief your confidentiality agreement
22 should provide adequate protection and so forth. I
23 mean, I think I heard that from you at one point?

24 MS. BOJKO: Yes. Obviously, we haven't
25 seen the document, but absolutely.

1 EXAMINER PARROT: I guess that's what I'm
2 trying to figure out here. Not having seen your
3 confidentiality agreements, I don't know what the
4 breadth of those may be.

5 MS. SPILLER: They refer to documents, and
6 for Duke Energy Ohio this one goes well beyond that.

7 EXAMINER PARROT: Okay.

8 MS. SPILLER: But certainly your
9 admonition again from November and preference against
10 redaction, we did not venture to do that here --

11 EXAMINER PARROT: Right.

12 MS. SPILLER: -- pending the proposed
13 in-camera review. So I don't know, and I don't have
14 the confidentiality agreement committed to memory,
15 but typically they concern specific parties and not
16 beyond that.

17 EXAMINER PARROT: Okay. Anything from
18 you?

19 MR. LANE: I'm going to defer to Ms. Bojko
20 on this issue.

21 MS. BOJKO: I mean, of course the
22 protective agreement has to be with somebody, so I'm
23 assuming it would be with Duke Ohio, but I don't
24 think that that in any way alleviates anything
25 produced by Duke Ohio.

1 EXAMINER PARROT: I was just wondering if
2 that addresses affiliate companies and that sort of
3 thing. Again, I haven't seen it, so I'm counting on
4 all of you to inform me as to what it may encompass.

5 Ms. Spiller, to get to your point, you're
6 right, in our prior prehearing conference note it was
7 not my expectation that there would be any redactions
8 made on Duke's part. You know, we could deviate from
9 that if it's an understanding among all of us
10 involved here that it makes sense under different
11 circumstances.

12 Here we are dealing with information that,
13 from my limited review of it, I understand your
14 concerns, so I guess I'm wondering at this point if
15 there is a way to, for this particular document,
16 maybe redact the information that pertains to other
17 jurisdictions. I'm not sure, that may get to mostly,
18 it sounds like, address your concerns. I don't know.
19 I guess I'm looking to you.

20 MS. SPILLER: And I appreciate that, your
21 Honor. I think I would certainly solicit guidance in
22 respect also of the topic of relevance, particularly
23 given the date parameters that are identified in some
24 of these. The critical date for purposes of
25 Ms. Porter's testimony would be October 4, 2011, when

1 the disconnect bill and disconnect pink bill insert
2 were prepared, generated, and mailed to the
3 Easterling property.

4 And then, your Honor, to the extent there
5 is a reference to the generation of the final
6 disconnection notice, again, that was generated
7 October 19, 2011.

8 MS. BOJKO: I'm sorry? October?

9 MS. SPILLER: 19.

10 EXAMINER PARROT: I guess I'm not --
11 looking at the date, I ultimately agree they may not
12 be relevant, but I think that's a decision for
13 another day but not for where we're at now in the
14 process.

15 MS. SPILLER: And then there are also,
16 your Honor, it looks like there's one that would pull
17 in Duke Energy Ohio. It looks like it's three lines
18 down, the second shaded box, that does not concern
19 residential customers at all.

20 EXAMINER PARROT: Well, again, I think I'm
21 trying to look for some agreement we can all reach
22 here. I think I have heard a willingness from OCC
23 and Counsel for the Complainant to narrow with
24 respect to your concern about the time frame, to
25 narrow things in that respect. So I expect we may

1 have the same willingness with respect to this
2 document also to limit it to residential issues and
3 thinking that may be a reasonable request.

4 MS. BOJKO: Yes, your Honor.

5 MR. LANE: Yes, your Honor.

6 EXAMINER PARROT: So I think we maybe do
7 make some redactions to the document.

8 MS. SPILLER: Certainly, your Honor.

9 EXAMINER PARROT: And then provide it to
10 OCC and Counsel for the Complainant with the
11 understanding it is subject, of course, to the
12 confidentiality agreements.

13 MS. SPILLER: And to the extent that the
14 confidentiality agreements do not go beyond Duke
15 Energy Ohio proper to include affiliated companies,
16 I'm assuming that the parties would be amenable to an
17 amendment of those agreements.

18 MS. BOJKO: Again, I haven't seen the
19 document, but I thought you just said redact the
20 non-jurisdictional entities; is that not correct?

21 EXAMINER PARROT: If we can do that.

22 MS. SPILLER: Okay.

23 EXAMINER PARROT: I think I'm waiting to
24 hear from -- you know, I don't understand this to the
25 extent you all do.

1 MS. SPILLER: We can redact.

2 EXAMINER PARROT: So if you think you can
3 do that, I think that maybe solves the problem.

4 MS. SPILLER: Okay. We can redact.

5 EXAMINER PARROT: I want to make sure that
6 eliminates your concerns, Ms. Spiller, with respect
7 to the contract --

8 MS. SPILLER: That's fine, your Honor.

9 EXAMINER PARROT: -- you have with the
10 vendor or I should say your affiliate has with the
11 vendor.

12 MS. BOJKO: Without seeing it, I just
13 can't offer --

14 EXAMINER PARROT: Right.

15 MS. SPILLER: We can do that, your Honor.

16 EXAMINER PARROT: All right. I think
17 that's a reasonable resolution on that issue.

18 MS. BOJKO: Your Honor, I may be able to
19 help on one of the bill inserts. Gas customer
20 choice, Ms. Spiller just indicated we have it. I
21 guess part of the problem is we're looking for the
22 actual bill insert that went into this particular
23 mailing. I found a gas customer choice insert in
24 POD-01-009, if that's what she's referring to. I
25 just -- there's 25 pages to one of the documents;

1 there's 19 to another. I guess we were trying to
2 understand what the actual insert to the bill was.

3 So if she wants to agree or state that
4 everything produced in POD-01-009 is what she's
5 referring to, or if she wants to tell me the
6 particular pages, you know, they don't have to
7 reproduce it if you just tell me where the location
8 of the document is.

9 MS. SPILLER: And, your Honor, I guess I'm
10 just a little befuddled given the OCC's ongoing
11 remarks to us that they don't have to -- I mean, when
12 they supplemented their responses they said you have
13 it or you can go get it, is essentially their
14 response and that they're not required to give me a
15 roadmap. You know, I'm just perplexed, your Honor.

16 MS. BOJKO: I have no idea what she's
17 referencing. We requested a specific document that's
18 actually been identified. If the response is that we
19 already have it, all I'm asking for is a citation to
20 where I can find it because we want a specific
21 document that was a bill insert. I'm not asking her
22 to reproduce it, which is very consistent with
23 whatever she's reading from. I'm asking her to
24 indicate where that specific document is.

25 MS. SPILLER: And the other, just to close

1 the loop on Ms. Porter. Ms. Bojko indicated that she
2 did not have a disconnect remit, despite the
3 testimony from Ms. Porter last week that that, in
4 fact, is a return envelope --

5 MS. BOJKO: Thank you.

6 MS. SPILLER: -- provided to customers who
7 may e-bill, which would not include at all the
8 Easterling property. I just want to be clear that
9 she's continuing to seek that return envelope.

10 MS. BOJKO: I'm sorry. I don't understand
11 your reference to the e-bill. Are you saying it's
12 just a return envelope for those that do not e-bill?

13 MS. SPILLER: It's a return envelope, as
14 Ms. Porter indicated last week, for customers who
15 e-bill.

16 MS. BOJKO: Why would you have a return
17 envelope if you're electronically e-billing? I'll
18 take the representation that's a reply envelope. I
19 don't need a copy of a reply envelope. I guess I
20 don't believe the evidence or the statement of
21 Ms. Spiller that they did or did not receive it, I
22 guess, is the part in question. She doesn't need to
23 provide me with the reply envelope.

24 EXAMINER PARROT: All right. I'm just
25 trying to figure out how best to go about this, I

1 guess.

2 All right. I think I agree, Ms. Bojko,
3 that the list of, let's call it a list of documents
4 that you sort of gave us a run-through earlier in
5 response to references in the testimony of Duke's
6 witnesses, I think it's fairly -- I'm looking at
7 OCC-POD-02-002, I think what you're asking for is
8 within the scope of that particular discovery request
9 and I am going to direct Duke to provide the
10 documents.

11 In terms of how we go about that, though,
12 I think I'm open to suggestions. I don't know, you
13 kind of quickly ran through them all, Ms. Bojko. It
14 may be easier for the company to respond if we get
15 something perhaps in writing. I don't know. Unless
16 Counsel were carefully jotting that down. It was a
17 fairly lengthy list of references you provided. So I
18 think, I was trying to go through what you have here,
19 and from best I can tell you haven't actually reduced
20 all that to writing in some fashion, is that correct,
21 at this point?

22 MS. BOJKO: Your Honor, I have it in my
23 notes. I'd be happy to cut and paste it and actually
24 even eliminate a couple of items, like the disconnect
25 remit envelope, from that list, and e-mail it to

1 Counsel.

2 EXAMINER PARROT: All right. I think
3 that's a good way to go about it.

4 All right. Anything else from OCC?

5 MS. BOJKO: That's all I had, your Honor.
6 Thank you very much.

7 EXAMINER PARROT: Let's go to the motion
8 to compel discovery that was filed by Duke back in
9 November if I can find it. I guess I will start, I
10 mean, this was filed a few months back, so I don't
11 know if there have been, in light of obligations to
12 supplement discovery responses, any other
13 developments that may have occurred since early
14 November. I don't know if there has been any
15 movement, let's say, since that time on anything, or
16 is Duke still seeking to compel responses to the list
17 of items in its motion?

18 MS. BOJKO: Your Honor, may I have the
19 date? I'm sorry.

20 EXAMINER PARROT: It was November 3rd, I
21 believe. Yes, November 3rd. Duke filed its motion
22 on November 3rd. If you recall, Ms. Bojko, we had
23 maybe intended to cover it at the last prehearing
24 conference but ran out of time given the parties had
25 limited availability on that date, so we reserved

1 that matter for another day. You filed your
2 memoranda contra on that same date of the prehearing
3 conference on November 10th. So I've had quite a bit
4 of time to mull that over. I don't need further
5 arguments or anything --

6 MS. BOJKO: Okay.

7 EXAMINER PARROT: -- if that was your
8 concern about it. I just want to know, before I
9 issue a ruling, I just want to know if there are any
10 changes that have occurred. It's possible that, you
11 know, given, I think, in some of the responses OCC
12 had indicated that it had not yet had sufficient --
13 that there wasn't yet sufficient information
14 available to it to respond.

15 So I'm asking, you know, there are
16 supplementation requirements and things in the
17 Commission's rules. I'm just asking if there's been
18 any further response from OCC as far as the company
19 is concerned with respect to the discovery requests
20 that are the subject of that November 3rd motion.

21 MS. BOJKO: I don't have that motion in
22 front of me. I do have our response to that motion.

23 EXAMINER PARROT: Okay.

24 MS. BOJKO: We have supplemented. I know
25 there was some discussion about requests for

1 admissions, and I believe we supplemented since that
2 date. We also supplemented, after our testimony was
3 filed, answering those questions.

4 I don't know -- we have had, to answer
5 your first question, your Honor, we have had no
6 discussions. OCC was not aware that any of these
7 were still outstanding or that the company was still
8 seeking these. So it might be helpful if they
9 indicate the numbers that they are still seeking.

10 EXAMINER PARROT: Well, that's what I'm
11 essentially asking for, I guess. You answered my
12 question, there has been some supplementing, so
13 that's helpful to know.

14 MS. SPILLER: Your Honor, I think the time
15 frame is important here in connection with the
16 motions. The OCC first answered discovery on
17 October 20, 2015. The company then filed its motion
18 to compel; that was filed on November 3rd. The OCC
19 then responded to that motion to compel via a filing
20 on November, I'm sorry, November 10th, 2015. The OCC
21 then provided supplemental responses on November
22 20th, 2015. They then supplemented on January 8th,
23 2016.

24 Of the 73 discovery requests that were
25 initially issued to the OCC, three were supplemented

1 in January, and those concern the identity of fact
2 witnesses, expert witnesses and documents relative to
3 the testimony of such witnesses.

4 The OCC did not supplement any of their 50
5 requests for admissions that were tendered. So on
6 January 8, although it had previously indicated that
7 it was still inquiring, that it didn't have
8 information in its possession, it did not supplement
9 any of those responses.

10 Subsequent to the OCC's reply to the
11 company's motion to compel as well as their
12 supplemental responses back in November 2nd, 2015, as
13 the Bench is aware, the Complainant filed an amended
14 complaint, narrowing the issues in this case to the
15 disconnection of electric service, also indicating
16 expressly in that document who Mr. Lane believes the
17 customer to have been at the time of disconnection.

18 Since that time, the OCC apparently claims
19 that it still cannot admit or deny that Estill
20 Easterling III was not a customer; that's Request for
21 Admission No. 6. It cannot admit or deny that the
22 account was in arrears or had past due balances as of
23 November 4, 2011, when the electric was disconnected;
24 Request for Admissions Nos. 12 and 28. It cannot
25 admit that no payment was received between

1 October 13, 2011 and November 4, 2011; Request for
2 Admission 13. It cannot admit that gas service was
3 not disconnected on November 4, 2011; Request for
4 Admission No. 18.

5 Now, the OCC is privy to all of this
6 information and in some places it says it can't admit
7 or deny because it does not have personal knowledge.
8 It has the information in its possession; testimony
9 from witnesses, company records. It can admit that
10 it believes Mrs. Easterling was a customer, but
11 seemingly cannot admit that Mr. Estill Easterling III
12 was not a customer. So we believe that these
13 requests for admissions, as addressed in the motion
14 to compel, should, in fact, be revisited.

15 With respect to the 18 interrogatories
16 that were tendered to the OCC. Three were
17 supplemented -- two were supplemented on January 8.
18 The OCC still has not identified who it believes are
19 people with knowledge. In answering the question it
20 has indicated to the extent you're asking about fact
21 witnesses we intend to call, there aren't any. That
22 is not the question. The question simply is who do
23 you know has information relevant to this case and
24 they have not identified that.

25 They have not identified any facts

1 relating to or persons with knowledge that would tend
2 to substantiate that gas may have been disconnected,
3 that the account was current, that the company failed
4 to restore service after November 4, 2011.

5 Of the four document requests that were
6 tendered, the OCC supplemented one, and the response
7 concerned the documents relevant to the testimony --
8 no, I'm sorry. Documents that the OCC intends to
9 introduce at hearing. Reference was made simply to
10 the direct testimony of Mr. Williams filed in the
11 case and its attachments. The parentheticals there
12 were you already have a copy of the attachments or
13 the documents mentioned in Mr. Williams' testimony,
14 all of which are available through the PUCO's
15 website.

16 Your Honor, this particular case, some of
17 these requests, and I'm going to refer, for example,
18 to requests concerning communications as between OCC
19 and/or its counsel, and Mr. Lane and/or his clients.

20 Mr. Lane has admitted in discovery that
21 those conversations occurred. But the joint -- the
22 joint defense agreement was signed I believe in
23 October. Conversations occurred before that date.
24 We have no indication, not even an acknowledgment
25 from the OCC that those conversations occurred, no

1 identity as to the individuals who may have been
2 present for those conversations.

3 Instead, the response to our request, just
4 for information as to the number of communications
5 and who was there, the response was that our request
6 is the epitome of overly broad and that the OCC
7 should not be asked to identify the existence of that
8 information because doing so would run afoul of --
9 or, strike that -- seeking that the Commission
10 protect it from annoyance, embarrassment, oppression,
11 or undue burden and expense.

12 It's a very simple question. Tell us
13 about conversations that occurred before a joint
14 defense agreement was executed. Conversations about
15 this case. Conversations that are, pursuant to prior
16 Commission ruling, discoverable. That joint defense
17 agreement cannot and does not attach back to those
18 earlier conversations. So we don't believe that this
19 is the epitome of overly broad. We don't believe it
20 oppressive for the OCC to, in fact, share that
21 information.

22 And, your Honor, I'm more than happy to go
23 through the 72 discovery requests, but I don't know
24 that that's the best use of the Bench's time today

25 EXAMINER PARROT: It's not.

1 MS. BOJKO: Would you like me to briefly
2 respond?

3 EXAMINER PARROT: I was going to ask. But
4 anything else, first, Ms. Spiller?

5 MS. SPILLER: I think just again, your
6 Honor, not to overly beat this horse, but this notion
7 of, you know, claiming when we need to and don't need
8 to supplement. The rules are pretty specific with
9 respect to what they require in respect of
10 supplementation. If there's a claim that you didn't
11 know the information at the time you answered your
12 question, but later discover the information, you're
13 obligated to supplement. Certainly obligated to
14 supplement with respect to the identity and locations
15 of persons having knowledge or when your answer may
16 have been wrong.

17 And we can go through the list of
18 interrogatories, request for admissions for which the
19 OCC had asserted either they didn't have the
20 information or they were still working on it. But we
21 would certainly indicate that the OCC, in our
22 opinion, does have an affirmative obligation to go
23 back and appropriately supplement.

24 EXAMINER PARROT: Okay.

25 MS. BOJKO: Your Honor, I'm not going to

1 reiterate all the objections that were properly laid
2 out in each response, but overall, admissions are a
3 tricky things. Admissions have legal consequences.
4 And when we're sitting in a discovery conference
5 that's now going on over two hours, it's apparent
6 that we don't believe we have all the documents to
7 make some of the determinations.

8 Counsel disagrees with us. They disagree
9 with our interpretation. They disagree that there's
10 a gas component to this complaint case. They
11 disagree with many aspects. I can't help that they
12 disagree. That's what the hearing is for.

13 But I'm not going -- we're constantly
14 searching for discovery responses, discovery requests
15 to narrow down our arguments and our positions, all
16 of which fall under trial prep, work doctrine, et
17 cetera.

18 So I do not believe, from a legal
19 perspective, that Duke is correct that someone may or
20 may not be a customer of Duke. That is a legal
21 interpretation. And just because Duke doesn't like
22 my answer, doesn't make it wrong. I disagree with
23 Duke on that.

24 There's also a factual disagreement and
25 we're looking for evidence to support or not to

1 support the claim whether the account was in
2 arrearages or not at the level it needed to be in
3 arrearages for a disconnection.

4 There's also a disagreement about when
5 payments were received and actions that Duke needed
6 to take at the time. Those are all things that are
7 still being discovered. As we've talked about today,
8 we're trying to find notes and things on the account
9 to make these decisions.

10 As for the one question of all people who
11 have any knowledge, Ms. Spiller claimed that me not
12 putting a year was overly broad. That doesn't have
13 any year attached to it. It says "all people with
14 knowledge." I have no idea even what that means. So
15 we indicated a witness that is testifying. I guess
16 anything else I would say would be attorney-client
17 privilege, work product, trial prep. We put forth a
18 witness. You know, he was going to be deposed. I'm
19 sure he will now be deposed with the continuance.
20 Those questions can be asked to him.

21 But what are the names and addresses and
22 telephone numbers, which, frankly, is inappropriate
23 in a public document, of all people who have
24 knowledge of any facts relating to the complaint. I
25 just don't even know how to respond to that. Are

1 they talking about within OCC? Outside of OCC?
 2 Within witnesses that we've identified? Are they
 3 talking about attorneys? It's just actually an
 4 answer that can't be answered -- a question that
 5 can't be answered.

6 We did file a supplemental response
 7 indicating that Jim Williams does, in fact, have
 8 knowledge from a witness perspective which should be
 9 the intent of that kind of question.

10 As far as any communications, I think
 11 those are objected to, excuse me, quite clearly in
 12 our motion. There's a common interest doctrine that
 13 this Commission has recognized on many instances. I
 14 would say that any discussions that did happen, if
 15 they did, would have fallen under trial prep and the
 16 common interest doctrine. I think that the
 17 objections with regard to common interest doctrine
 18 and joint defense agreements are laid out in my
 19 motion. I'm not going to repeat that.

20 Those are the only specific ones that I
 21 recorded that Ms. Spiller mentioned today. We did
 22 supplement twice. And as for requests for
 23 admissions, it's not fair to require a party to admit
 24 or deny in a way that would produce legal strategies,
 25 and that seems to be what Ms. Spiller is asking for.

1 As far as evidence or documents, I mean,
2 we haven't made any decisions at this point what we
3 will or will introduce, and Duke has made the same
4 objections about documents it will introduce at the
5 hearing. So I think that's a little bit of a red
6 herring for a motion to compel.

7 MS. SPILLER: Your Honor, if I may
8 briefly. So it's curious to me that Ms. Bojko says
9 requests for admissions cannot be used for legal
10 conclusions. I believe the rule allows that to
11 happen. And in this case, in fact, it did,
12 selectively though by the OCC. They were more than
13 willing to render conclusions, admissions, in respect
14 of the status of Dorothy Easterling as a customer or
15 not, but seemingly here they cannot do this with
16 respect to her son. I just struggle to understand
17 the claimed distinction there. And I would note it's
18 not for the OCC, as I've heard Ms. Bojko remark
19 today, to decide what's relevant when answering
20 discovery.

21 The complaint and the particular question
22 that she had cited was specific. Identity of people
23 with knowledge relating to the allegations in the
24 complaint. The allegations in the complaint are
25 quite narrow and that's what we were looking for.

1 And if the answer from the OCC is we're only aware of
2 the identity of Jim Williams, that's fine, but tell
3 me that.

4 There's no indication -- and these
5 responses were given by the OCC, the purported three
6 supplements, on January 8, 2016, less than a week
7 before the hearing. So certainly at that time, with
8 Ms. Bojko knowing what she did with respect to the
9 account, I believe had an obligation to answer.
10 There were two different questions about arrearages
11 or payments due on the bill. One was arrearages; one
12 was a past due balance. She claims she is not
13 capable of answering either one of those; not
14 withstanding the testimony from Mrs. Easterling's
15 family that there were, in fact, past due balances on
16 that bill.

17 To the extent someone is going to come in
18 and say there were not past due balances on that
19 bill, I would like to know that before we go into the
20 hearing, and I think the discovery questions posed to
21 the OCC were appropriately narrowed in that regard.

22 And I understand, in respect of joint
23 defense agreements, the Commission's prior rulings.
24 I am not asking for and would not, absent an
25 in-camera review, seek the information after the

1 agreement was entered into. But clearly, per the
2 admissions of Mr. Lane, there were prior
3 conversations that we're entitled to discover.

4 EXAMINER PARROT: All right. As much as I
5 was hoping not to have to do this, I think we will go
6 through them one by one in terms of rulings.

7 Now, I don't have the benefit of having
8 any supplementation that has happened other than what
9 was included in the responses attached to the motion
10 to compel and the memorandum contra, so you'll have
11 to kind of maybe interrupt if you have some of that,
12 but I'll go through them one by one as they stand for
13 me anyway.

14 MS. BOJKO: Are you looking one by one in
15 the motion to compel? I don't have the motion to
16 compel in front of me. I have the response. I just
17 didn't know what you're referencing, which document.
18 Like, we grouped them in our memo contra.

19 EXAMINER PARROT: I'm looking at the
20 actual discovery requests that were attached to
21 Duke's motion.

22 MS. BOJKO: Okay.

23 EXAMINER PARROT: Let's start with the
24 Request for Admission No. 1. As best as I can tell
25 from OCC's supplemental response, a response was

1 provided, so on that we are denying Duke's motion to
2 compel.

3 Skip to Request for Admission No. 3.
4 Again, this is one where you have a supplemental
5 response provided by OCC. And so, with respect to
6 RA No. 3, Duke's motion is denied.

7 Request for Admission No. 4. OCC provided
8 a supplemental response which I believe was
9 responsive, so Duke's motion to compel is denied.

10 Request for Admission No. 5. Same thing,
11 OCC provided a supplemental response that I believe
12 was responsive, so Duke's motion to compel is denied.

13 Request for Admission No. 6. This is
14 one -- I'll give you a moment, Ms. Bojko -- where OCC
15 had indicated that the information known to OCC was
16 insufficient to enable it to either admit or deny the
17 request. I feel that's a proper response, but I will
18 point you to the duty to supplement pursuant to Ohio
19 Administrative Code 4901-1-16(D) (3).

20 If, at this point, OCC has additional
21 information and can supplement its response, I'm
22 directing you to do so. So I'm just basically asking
23 you to take another look at that one. Given that
24 some time has passed, there has been additional
25 discovery that has occurred. Hopefully OCC has a

1 better understanding of things at this point. So on
2 that one, again that's Request for Admission No. 6,
3 I'm asking OCC to take a look and supplement if its
4 appropriate to do so.

5 MS. BOJKO: Your Honor, a point of
6 clarification.

7 EXAMINER PARROT: Yes.

8 MS. BOJKO: It says "at any time." That's
9 one of our concerns with this discovery request. We
10 can't possibly know to make the assertion at any time
11 -- we don't even know when he started living there.
12 So that's our concern with this one is saying "yes"
13 or "no" with the "at any time" out there.

14 MS. SPILLER: Your Honor, and I'm going to
15 be as respectful as I may to the public record, so I
16 apologize now for what may come across as some rather
17 cryptic conversation or comment. Ms. Bojko
18 understands the circumstances pertaining to Estill
19 Easterling III. And so, I guess I'm a bit -- I just
20 don't understand why we can't go back and look at
21 that response, knowing today what she knows.

22 MS. BOJKO: Actually, with all due
23 respect, I guess I've never met the gentleman. I
24 don't know the level of functionality. I have no
25 idea if his functionality is the same today as it was

1 20 years ago. I have no idea.

2 MR. LANE: He's deceased.

3 MS. BOJKO: I thought you were referencing
4 the -- Estill IV.

5 MR. LANE: Just to be clear, and I know
6 there's been some confusion about this from the
7 outset. So Estill Easterling, Junior, is Dorothy
8 Easterling's husband who was deceased for many years.
9 Estill Easterling III is her son, who was deceased on
10 the same day she was.

11 MS. BOJKO: Oh.

12 MR. LANE: And we appreciate Ms. Spiller
13 being respectful in the public record, but although
14 he was an adult, he was dysfunctional.

15 MS. BOJKO: Your Honor, how would I
16 possibly know that?

17 MS. SPILLER: It was in Ms. Gail Lykins'
18 testimony, her deposition.

19 MS. BOJKO: I don't recall if she went
20 back to his whole history, but I think that's a lot
21 to ask if we say at any time did he ever live on his
22 own and was he ever a DEO customer, I have no idea.

23 MS. SPILLER: She indicated his residency
24 with his mother.

25 MS. BOJKO: Ever?

1 MS. SPILLER: Yes.

2 MS. BOJKO: Well, clearly, your Honor, we
3 don't know. The duty to supplement is when knowledge
4 becomes available. As indicated here, I don't have
5 that knowledge and I'm not comfortable making that
6 admission.

7 MS. SPILLER: Well, and based upon the
8 discovery exchanged in this case, Ms. Bojko, I think
9 if you could answer in respect of the time that
10 Ms. Lykins talked about, perhaps that is one way to
11 approach this.

12 MS. BOJKO: Well, that's not what the
13 discovery request says, as you pointed out many times
14 today.

15 MS. SPILLER: But you were able to
16 indicate that Mrs. Easterling was allegedly -- was
17 not, at any time, a customer.

18 So again, your Honor, I just feel we're
19 kind of picking and choosing when the objection as to
20 overly broad is appropriate and when it's not.

21 MS. BOJKO: Your Honor, I think they're
22 completely different situations. As I explained,
23 there's an intervening situation with regard to one
24 as regard to the other.

25 EXAMINER PARROT: All right. Well, I've

1 already instructed OCC to go through and take another
2 look at this one. In the light of the discovery it's
3 obtained, the testimony that's been filed to this
4 point, go through, look at this one again.

5 MS. BOJKO: Yes, your Honor.

6 EXAMINER PARROT: Same thing on Request
7 for Admission No. 7 and No. 8.

8 No. 12, kind of moving to a different
9 subject area. Same sort of response, though, was
10 provided by OCC that it was not able to respond based
11 on the information known to it at the time. So
12 again, you know, I do feel that is a response that
13 was appropriate back in November, but I am going to
14 ask OCC to look at No. 12 as well, and if it has new
15 information available to it as this point, pursuant
16 to the rule, I am going to ask you to supplement your
17 response on that one as well

18 MS. BOJKO: And I would just add, your
19 Honor, some of these words definitionally, we found
20 out even just as late as Friday that there's a
21 disagreement of what the term means.

22 EXAMINER PARROT: Okay. And that is
23 something I think you can address in your response.

24 MS. BOJKO: Okay.

25 EXAMINER PARROT: No. 13. Same sort of

1 thing. If OCC has additional available -- has
2 additional information available to it as this point,
3 it should supplement its response.

4 No. 14. I believe that OCC already
5 responded in its supplemental response, so Duke's
6 motion to compel is denied

7 MS. SPILLER: Your Honor, if I may pause
8 there. The response was that they had not identified
9 any evidence.

10 EXAMINER PARROT: Okay. Very good. Thank
11 you, Ms. Spiller. So subject to the same caveat that
12 OCC is under an obligation to supplement pursuant
13 4901.1-16.

14 Same on 15.

15 No. 16. OCC responded in its supplemental
16 response, so Duke's motion to compel is denied.

17 MS. BOJKO: I'm sorry, your Honor.

18 EXAMINER PARROT: I'm sorry.

19 MS. BOJKO: Just a point of clarification.
20 Are you saying we have to admit or deny? We don't
21 have to produce evidence? Isn't that trial prep or
22 work product?

23 EXAMINER PARROT: It's a request for
24 admission. So basically OCC had said that it had not
25 identified any evidence at this time. So I kind of

1 take that as a fair response, but Duke is just noting
2 that there is a duty to supplement. So if that has
3 changed things in any respect, you should respond.
4 But it is a request for admission, so it would be
5 either an admission or a denial.

6 Request for Admission No. 16. In its
7 supplemental response OCC did respond, so Duke's
8 motion to compel is denied.

9 Same response on 17. OCC did give a
10 response, so Duke's motion to compel is denied.

11 18 is another one where OCC indicated that
12 it had insufficient information to respond, so again,
13 if OCC has new information available to it, the duty
14 to supplement applies.

15 The same on 19. If OCC is able to
16 supplement its response, it should do so.

17 20 is one where OCC had indicated that it
18 didn't have any evidence at that point. The duty to
19 supplement would apply.

20 The same for 21. If OCC can supplement,
21 it should do so; otherwise, we're going to consider
22 that one fulfilled.

23 22. OCC, in its supplemental response,
24 did not -- provided a denial, so Duke's motion to
25 compel is denied.

1 Request for Admission 25, OCC denied the
2 statement, so Duke's motion to compel is denied.

3 27 is another one where OCC indicated it
4 had insufficient information. If circumstances have
5 changed, the duty to supplement would apply.

6 Same for 28. The duty to supplement would
7 apply if OCC has new information available to it.

8 31. Same thing. If OCC has new
9 information, it should supplement its response.

10 Same for 33. Duty to supplement would
11 apply if OCC has new information available to it.

12 35. OCC denied the request. Duke's
13 motion to compel is denied.

14 No. 43. OCC denied the statement, so
15 Duke's motion to compel is denied.

16 Duke's motion to compel with respect to
17 No. 44 is denied because OCC provided its response in
18 the prior Request for Admission No. 43.

19 And same with respect to No. 45, where OCC
20 provided a response with respect to Request for
21 Admission No. 43.

22 All right. Moving on to interrogatories.

23 All right. I think I heard quite a bit on
24 No. 2, which is the request for names, addresses, and
25 telephone numbers of all people who have knowledge of

1 any facts relating to the allegations in the
2 complaint. I think this is one where we can properly
3 narrow it if we put a specific time frame around the
4 request.

5 Obviously, OCC's already provided its
6 witness list, but if there are others beyond
7 Mr. Williams, other individuals with knowledge of the
8 facts related to the complaint, then I'm going to
9 instruct OCC to provide a response, and I will narrow
10 it to the relevant time period which has essentially
11 been identified as August 2011 through November 2011.

12 MR. ETTER: Your Honor, a point of
13 clarification. Does that include -- can we exclude
14 all persons who have already been identified by Duke
15 and the Complainant in this case?

16 EXAMINER PARROT: As witnesses, anyway --

17 MR. ETTER: Yeah.

18 EXAMINER PARROT: -- I think that's
19 reasonable because we know who those individuals are.
20 If there's anyone that OCC is aware of beyond the
21 witnesses that have been identified by the parties,
22 that I'm directing OCC to provide to the company.
23 Again, for that time period we're talking about.
24 We're not going to back into --

25 MR. ETTER: And how about OCC employees

1 who have been involved in this case?

2 MS. BOJKO: Yeah, exactly.

3 MR. ETTER: You know, that's been our
4 problem. It's been a very general question.

5 EXAMINER PARROT: Okay. Well, let's try
6 to figure this out right now, I guess. We're all
7 here. That's what we're here to do.

8 Is that the type of information Duke is
9 looking for is names of OCC employees? I think to
10 the extent we can really get, you know, what it is
11 the company is looking for.

12 MR. ETTER: Because much of what the OCC
13 employees have discussed and have learned through
14 this case has been through, you know, is under
15 attorney-client privilege.

16 EXAMINER PARROT: And I'm not asking for
17 information that's purely -- I'm not asking you to
18 reveal names that have come to light purely through
19 attorney-client privileged conversations,
20 communications.

21 MS. BOJKO: Are we talking about personal
22 knowledge? I guess I just don't understand the
23 question.

24 EXAMINER PARROT: Well, I guess then it's
25 clear that there's maybe not an understanding of what

1 it is the company is looking for.

2 MS. SPILLER: And we're happy to restate.
3 We just want to know the universe of people who know,
4 who have facts, possess information relevant to the
5 allegations in this complaint.

6 So hypothetically -- I'm assuming the
7 answer would be negative -- hypothetically, if
8 someone contacted the OCC in response to the
9 information provided on the disconnection notice or
10 the pink bill insert or the final notice, I would
11 expect them to identify that individual.

12 That's the sort of information we're
13 looking for here. Who has information, who has facts
14 relative to the allegations in the complaint that
15 concern alleged improper notice of a disconnection.
16 I'm not asking for conversations that may have
17 occurred within the OCC as between their counsel.

18 EXAMINER PARROT: That's helpful. Thank
19 you.

20 MR. ETTER: Members of the general public,
21 and not OCC employees or people who have already been
22 identified in this case?

23 MS. SPILLER: Well, can you identify them
24 by name? We're asking for people you know of who
25 have knowledge.

1 MR. ETTER: Well, you know, that's been
2 our problem is it is a universal question and, you
3 know, do we need to limit it to people outside of
4 OCC? Is that what you're looking for?

5 MS. SPILLER: No. If people within the
6 OCC, for example, would have been contacted in
7 October or November of 2011 in response to the
8 disconnection notices, we absolutely want to know
9 that. The OCC has not indicated, to date, that any
10 such contact has occurred, so I'm assuming that it
11 hasn't, but I don't know that based upon the response
12 here.

13 And I would --

14 MR. ETTER: Well --

15 MS. SPILLER: -- I would note, your Honor,
16 if there was a question as to the scope, that could
17 have been addressed. I mean, the OCC answered this
18 by simply saying if you're asking about who we're
19 going to call as witnesses, see our other discovery
20 response, and that wasn't the question. But we're
21 happy to go back and narrow.

22 MS. BOJKO: Your Honor, clearly, we didn't
23 understand the question and assumed that they could
24 only be possibly talking about OCC employees during
25 the period of the complaint. Now we're finding out

1 that they're talking about OCC employees back in 2011
2 and any other residential consumers that may have
3 called OCC back in 2011. That's --

4 MS. SPILLER: No, no. I'm not --

5 MS. BOJKO: -- not what we read.

6 MS. SPILLER: No, no, no, no. We're not
7 asking about any residential customer who called you
8 in 2011. We're asking about this complaint, the
9 allegations in this complaint, the time period
10 relevant to this complaint. Duke Energy Ohio's
11 customer of record, Mr. Easterling, family members,
12 anyone who may have contacted you, in respect,
13 hypothetically, of this complaint. So we're asking
14 about people you know of who possess facts relevant
15 to the issues in the case.

16 MS. BOJKO: Well, your Honor, with all due
17 respect, fact witnesses were already due, we had to
18 do a witness list, so I don't see how we could say
19 there would have been anybody at this time that knew
20 some fact that now we can bring in in this case. But
21 we can attempt to answer it with the new
22 understanding that's not how we read the question,
23 and we'll go look and see for contacts during 2011.

24 MS. SPILLER: And, your Honor, if I may
25 just briefly, on a point from Ms. Bojko. She said

1 we've identified our witness list. She's identified
2 the witnesses she will call to testify on her behalf
3 in this case. That doesn't mean, again
4 hypothetically, that there are people out there they
5 know of who possess information that's not helpful to
6 their case. So that's all I'm trying to discern.

7 EXAMINER PARROT: Okay. I think the next
8 is Interrogatory No. 5. It appears to me that OCC
9 provided a supplemental response on this. Is that --
10 I'm not sure what that is, I guess, so.

11 MS. SPILLER: The supplemental response is
12 simply see all the other responses that we've given
13 you. And again, these other responses don't indicate
14 if they believe that we have unlawfully disconnected
15 the service, tell us the facts and documents that
16 support the claim. That's not been articulated,
17 certainly not in their response to the requests for
18 admissions. And there have been no documents
19 provided by the OCC. The only documents referenced
20 are those that would have been tendered on
21 December 30, relative to Mr. Williams, Mr. Williams'
22 direct testimony. Certainly documents that would not
23 have been relevant to when the OCC supplemented this
24 response on November 2nd, 2015.

25 MS. BOJKO: Your Honor, these are

1 identical questions from the requests for admission.
 2 So now we're getting into -- so they asked us to say
 3 yes or no, and now we're getting into legal strategy
 4 of identify every fact and document that you might
 5 use to support your claim at hearing.

6 We went back and we said if there's a
 7 relevant yes or no question regarding the requests
 8 for admissions which were supplemented, then that
 9 would apply hereto. That's what the supplemental
 10 response is referring to, the supplemental responses
 11 to the request because they're identical questions.

12 And anything beyond that, which, you know,
 13 I even think is arguably trial prep, but anything
 14 beyond making us answer "yes" and "no" is trial prep,
 15 it's work product, putting our case together and
 16 determining what the legal strategy is and what we'll
 17 bring or present at hearing is the exact thing
 18 they're seeking which is improper.

19 MS. SPILLER: Excuse me, Ms Bojko. But,
 20 your Honor, here's where I get whipsawed, right?
 21 Ms. Bojko has indicated to me, just point it out,
 22 tell me where it is if you've already given it to me,
 23 and her response that she's standing on now still
 24 this morning is I've already given it to you, go
 25 figure it out.

1 MS. BOJKO: Your Honor, it repeats the
2 request for admissions almost verbatim that were
3 supplemented.

4 MS. SPILLER: And that's not uncommon,
5 Ms. Bojko. If I tender a request for admission and
6 you don't respond with an unqualified admission, it's
7 not uncommon to know what's behind your response in
8 terms of information, documents, and people with
9 knowledge. And that's all we're trying to accomplish
10 here, your Honor.

11 EXAMINER PARROT: I think on this one, OCC
12 did provide its response at the time, actually with
13 its initial answer, and also indicated though that it
14 was still compiling information on the case. So I
15 would give this one my caveat that if there's
16 information that's now come to light, OCC does have a
17 duty to supplement, but otherwise the motion to
18 compel with respect to No. 5 is denied.

19 I would give the same response with
20 respect to No. 6. OCC did provide a response and
21 also, though, indicated it was still compiling
22 information, so the duty to supplement applies. If
23 there is any new information available to OCC, it
24 should provide it.

25 Let's move on to No. 7. I would give the

1 same response on that. OCC did provide a response,
2 but also indicated it was still compiling
3 information, so the duty to supplement would apply.

4 MS. BOJKO: Your Honor, do you have
5 supplemental responses to all of these?

6 EXAMINER PARROT: Yes.

7 MS. BOJKO: Okay. Because we did add
8 additional information.

9 EXAMINER PARROT: Yeah, I have that as
10 well. I'm just pointing out that even in your
11 initial answer I'm finding that it was sufficient at
12 the time, but OCC did indicate that it was still
13 looking at the case, so I'm just putting on the
14 record there is the requirement in the Commission's
15 rules that there is a duty to supplement. I'm
16 putting that out there in light of the fact that OCC
17 basically indicated, you know, at the time anyway,
18 that it was still looking at things. So if
19 circumstances have changed based on new information
20 that has come to light, I'm putting that on the
21 record.

22 MS. BOJKO: Thank you.

23 EXAMINER PARROT: No. 8, same thing. I
24 believe that OCC did provide a response. The duty to
25 supplement would apply in light of the fact that OCC

1 responded it was still compiling information.

2 Same on No. 9. The motion to compel is
3 denied. OCC did provide a response. The duty to
4 supplement does apply, of course.

5 Same on No. 10. OCC did provide a
6 response, but indicated it was still compiling
7 information, so the duty to supplement applies.

8 No. 14. OCC also there provided a
9 response to the interrogatory, so the motion to
10 compel is denied.

11 All right. Let's look at No. 17. Here
12 I'm going to grant the motion to compel in part and
13 direct OCC to provide the names and dates of any
14 meetings that occurred. Respecting, though, the
15 joint defense agreement that's been entered into
16 between Complainant and OCC. I'm going to deny
17 Subparts C through F. But I do appreciate,
18 Ms. Spiller, you noted that you're also requesting
19 any information that may have occurred before the
20 date of the joint defense agreement, so, on that, I
21 will instruct OCC to respond.

22 MS. SPILLER: Thank you, your Honor.

23 MS. BOJKO: Wait, I'm sorry. I didn't
24 hear that last part.

25 EXAMINER PARROT: To the extent that OCC

1 can provide a response on any of these subparts, A
2 through F, with respect to conversations that
3 occurred prior to execution of the joint defense
4 agreement, I'm directing OCC to respond.

5 MS. BOJKO: And not recognizing the common
6 interest doctrine then?

7 EXAMINER PARROT: I'm directing OCC to
8 respond, Ms. Bojko. I'm going to leave it at that.

9 MS. BOJKO: Thank you.

10 EXAMINER PARROT: All right. With respect
11 to Request for Production of Documents No. 3, I think
12 consistent with the ruling I just issued, I've
13 already basically directed OCC to provide any
14 documents that would predate the date of the joint
15 defense agreement. I guess you would say that one,
16 the motion to compel is granted, in part, on that.

17 MS. BOJKO: And, your Honor, just a point
18 of clarification. Any e-mails that counsel would
19 have been -- all counsel would have been included on,
20 I'm assuming we don't have to reproduce all of that?

21 EXAMINER PARROT: That's fine.

22 Then finally, Request for Production of
23 Documents No. 4. This is another one, I think, in
24 light of the fact that witness lists have now been
25 filed in the case, I think that helps to narrow this

1 one. I'm also going to put a time frame kind of a
2 parameter around this one. If we limit this to the
3 period of August 2011 through November 2011, I'm
4 going to instruct OCC to respond

5 MS. SPILLER: Thank you, your Honor.

6 EXAMINER PARROT: Did I miss any?

7 MS. SPILLER: No, your Honor.

8 EXAMINER PARROT: Anything else that is
9 specific between the company and OCC?

10 MS. BOJKO: Your Honor, in conversations
11 with Ms. Spiller, there seems to be a disagreement
12 with the duty to supplement, and given all your
13 rulings today of OCC's ongoing duty to supplement for
14 discovery, either requests for admissions or
15 interrogatories, I guess I would ask that the Bench
16 instruct Duke to do the same.

17 EXAMINER PARROT: Yes, I think --

18 MS. SPILLER: I thought we did.

19 EXAMINER PARROT: -- that's across the
20 board to everyone. I'm trying to highlight on the
21 record that the Commission does have a rule that
22 addresses situations that do necessitate parties to
23 supplement their discovery responses, specifically
24 with respect to discovery requests where a party
25 indicated it was looking into things further, didn't

1 have sufficient information available to it at the
2 time, I'm just purely pointing out that the rule does
3 require, as new information comes to light, the party
4 does have a duty to supplement, and that's across the
5 board.

6 MS. SPILLER: Thank you, your Honor.

7 MS. BOJKO: Thank you, your Honor.

8 MR. McMAHON: Your Honor, the other issue
9 that involves all parties that I mentioned was
10 scheduling.

11 EXAMINER PARROT: Scheduling. Let's save
12 that for the end.

13 MR. McMAHON: All right.

14 EXAMINER PARROT: Mr. Lane, let's see
15 where we're at. I think maybe with respect to some
16 of the issues in the Complainant's fourth motion to
17 compel, we maybe addressed some of that through
18 Ms. Bojko's concerns, but I think we may need to have
19 some further discussions, so let's turn to that.

20 MR. LANE: Actually, we've covered quite a
21 bit of it.

22 EXAMINER PARROT: Okay.

23 MR. LANE: In the fourth motion to compel,
24 we attached the discovery that's been served in this
25 case and also a prior subpoena that's been served on

1 Duke. I realize there's some difference of opinion
2 between Duke and the Complainant concerning whether
3 or not certain information has been requested. I'm
4 certainly willing to -- I don't want to waive
5 anything that's put in our motion, but I would like
6 to direct your attention, your Honor, specifically to
7 the first set of discovery that's attached to the
8 motion to compel that was served on Duke on May 4th
9 of 2015.

10 Interrogatory 10 says "Identify" -- I'm
11 sorry. Interrogatory 14 says "Identify any and all
12 records, transcripts, notes, entries, and/or any
13 other form of documentation that you have in your
14 possession relating to the disconnection of the
15 utility services at the residence on or about
16 November 4 of 2011."

17 And then Document Request 10 refers to
18 that interrogatory and says "Produce any and all
19 documents that in any way relate to your response to
20 Interrogatory 14."

21 So as we've discussed at several points
22 this morning, Ms. Byndon testified that a work order
23 should exist concerning the disconnection as part of
24 the work order database. That's at page 50, line 20,
25 through page 51, line 7 of her testimony.

1 In addition to that, Mr. Danzinger, in his
2 testimony filed in this matter, testifies that he
3 does not recall the disconnection at issue; however,
4 he also states -- and by the way, that reference
5 begins on page 7, line 19 of his testimony. He also
6 states throughout his testimony that he kept notes on
7 a laptop as we've discussed. This, we would assume,
8 would have been part of the work order system and we
9 do not have any of those notes. That appears at
10 pages 2 through 7 of his testimony in several
11 respects.

12 So what we're asking, once and for all, is
13 for Duke to supplement the response to those
14 interrogatories and document requests concerning
15 whether or not any work orders concerning the
16 disconnection appear in that work order database or
17 if the notes from Mr. Danzinger's laptop still exist,
18 we would like to see those as well.

19 In addition to that, Ms. Byndon testified
20 that information relating to the disconnection, and
21 we can't only focus on the day of the disconnection
22 itself, obviously there are a series of steps as
23 Ms. Byndon testified, as Mr. Carmosino testified, as
24 Mr. Danzinger testified, that led up to the
25 disconnection. And so, that information that's in

1 the customer service database or in this work order
2 database would be relevant to those particular
3 discovery requests and others.

4 At page 16, lines 11 through 25,
5 Ms. Byndon testified that there is missing payment
6 information in the customer service database. Now,
7 during the deposition Duke's counsel pointed out that
8 we have a bill. But Ms. Byndon said the payment
9 information is also in the database. We can't take
10 at face value whether the bill is correct. If
11 there's different payment information in the
12 database, then, obviously, we have a problem.

13 Page 19, lines 10 through 15 of her
14 testimony she identified a late payment charge. We
15 don't have the charge information from the database.

16 Page 21, line 5, through page 23, line 9
17 of her deposition she talks about missing account
18 notes. Page 23, lines 9 through 17, again, a late
19 payment charge. Page 24, lines 14 through 18, again,
20 a late payment charge. Page 34, lines 14 through 17,
21 again, a late payment charge.

22 Page 37, lines 3 through 10, information
23 concerning the disconnection. In particular, I
24 believe that testimony related to the 10-day notice.
25 I believe she testified that the actual notice that

1 was delivered would have been in the database. We
2 haven't seen that.

3 Page 44, line 15, through page 47, line
4 15, we talked about this earlier today, these are
5 missing account notes, missing information on special
6 conditions concerning the account. Obviously, those
7 conditions certainly would relate to the
8 disconnection we're all here about.

9 Page 56, line 6, through page 37, line 18,
10 notes about the disconnection order itself.

11 Page 60, lines 2 through 24, this would be
12 information on a service request that appear in the
13 account on the actual date of disconnection. Now, I
14 believe in looking at Ms. Byndon's testimony that may
15 have related to the gas service; however, insofar as
16 there was a service request on the date of the
17 disconnection, let's not split hairs, we want to see
18 that information about the service request.

19 So those are the documents that we're
20 missing, your Honor, and that's what really forms the
21 basis of our motion to compel.

22 At this time, your Honor, based upon the
23 testimony that was provided by Mr. Carmosino and
24 others after we filed the motion to compel, we don't
25 believe it's necessary to call a witness to answer

1 the questions that there was an instruction not to
2 answer, so we're waiving that part of our motion to
3 compel.

4 In addition to that, we're going to waive
5 at this time that part of our motion to compel
6 relating to the production of another witness on the
7 customer service database.

8 That's all I have.

9 EXAMINER PARROT: Anything from OCC on
10 this?

11 MS. BOJKO: I guess, just again, we try
12 not to duplicate efforts, and I guess I would like to
13 see the documents before making the determination of
14 whether other witnesses may or may not be necessary.

15 I objected during the deposition to
16 Ms. Porter being instructed not to answer questions.
17 I wanted to actually contact your Honor to discuss
18 the issue, and it was decided that we would handle it
19 in a conference like today. So I guess I don't feel
20 comfortable knowing that was out there, waiving that
21 right, I'd like to see the documents first.

22 MR. LANE: And, your Honor, just from our
23 perspective, I went back and looked at the questions
24 where there was an instruction not to answer and
25 compared that with what we heard from, in particular,

1 Mr. Carmosino last week, and I also looked at
2 Mr. Danzinger's testimony that was filed.

3 With respect to those questions, and also
4 the questions concerning the fact that Ms. Byndon did
5 not have knowledge, I mean, we believe that all those
6 questions were within the scope of what we agreed on
7 November 10th. We're not saying that we don't think
8 that was within the scope of her deposition as we
9 agreed, but at this point, we, on behalf of
10 Mr. Pitzer, don't believe that's necessary.

11 Of course, Ms. Bojko participated in the
12 deposition and if the OCC decides to pursue those
13 questions for which there was an instruction, that's
14 their prerogative. But with respect to those
15 particular questions, we looked back, we don't
16 believe an additional deposition is necessary at this
17 point or re-calling Ms. Byndon. Also, we've issued a
18 subpoena for her to appear at the hearing so we can
19 ask her those questions then.

20 EXAMINER PARROT: So just so I understand,
21 Mr. Lane, a point of clarification, I guess. You've
22 pointed me to Interrogatory No. 14, that you
23 believe --

24 MR. LANE: Correct.

25 EXAMINER PARROT: -- these documents would

1 be encompassed by this particular discovery request.

2 MS. BOJKO: Yes. And there are others as
3 well, your Honor, but those in particular relate to
4 the disconnection and what led up to the
5 disconnection.

6 EXAMINER PARROT: That's what I'm trying
7 to get at. So we're limiting what you're requesting
8 now to the disconnection. So we're not trying to go
9 back to -- that's what wasn't clear to me from the
10 motion to compel. It said something like -- I got it
11 right here. On the motion to compel, you know,
12 you're asking for documents relating to the account
13 prior to November 2011, so it gets back to that kind
14 of point of trying to pinpoint the time frame we're
15 talking about in the case.

16 MR. LANE: Well, here's the time frame,
17 your Honor. It's fairly clear at this point that
18 there were steps that led up to the disconnection.
19 All right?

20 EXAMINER PARROT: Right. I get that.

21 MS. BOJKO: So, you know, we did ask for
22 these documents early on, even before we were before
23 you, in a prior case in Hamilton County --

24 EXAMINER PARROT: Right.

25 MR. LANE: -- to do our due diligence.

1 And then in this case, back in May, we asked for
2 documents. Besides Interrogatory 14 and Document
3 Request 10, we can also identify Interrogatory 7 --
4 I'm sorry, yes.

5 THE INTERPRETER: Interrogatory 7, 8, 10,
6 15, 16, and 21. In addition, Document Request 4, 5,
7 6, 7, 10, and 12.

8 However, with respect to the documents
9 that we discovered that were missing from
10 Ms. Byndon's testimony and also from the testimony
11 that Mr. Danzinger subsequently filed, which actually
12 was after we brought the motion, those in particular
13 relate to the period from August through November
14 that led up to the disconnection.

15 EXAMINER PARROT: Okay.

16 MR. LANE: So Interrogatory 14 and
17 Document Request 10 in particular, without, of
18 course, waiving the others we mentioned in our
19 motion, talk about anything relating to the
20 disconnection. I mean, obviously, we can't read that
21 solely to mean what happened on the date of the
22 disconnection.

23 EXAMINER PARROT: Itself, right.

24 MR. LANE: A fair reading would be what
25 led up to that from the time --

1 EXAMINER PARROT: I agree.

2 MS. BOJKO: -- that a late payment was
3 allegedly made or a payment was allegedly missed, up
4 to the disconnection itself. And that's -- Duke
5 responded that we hadn't asked for this information.
6 So I thought it was necessary, in particular, to
7 highlight that interrogatory and that document
8 request because clearly those we have. We've also
9 asked for it in other forms which were mentioned in
10 the motion. So we're looking for the time period
11 from August through November.

12 And now we have the benefit, after having
13 served the discovery in May, of having Ms. Byndon's
14 and Mr. Danzinger's testimony demonstrating that, in
15 fact, there are documents missing. A lot of that
16 we've covered today. What I want to put in the
17 record, just to make it clear, that we did ask for
18 those and that they're missing.

19 Now, you know, Ms. Spiller made the
20 comment quite some time ago today that the documents
21 don't exist. Duke needs to supplement the responses
22 and indicate that the work order documents,
23 Mr. Danzinger laptop documents, and all these file
24 notes that Ms. Byndon referenced in her testimony
25 don't exist; or, if they do, they need to be

1 produced.

2 EXAMINER PARROT: Okay. Response?

3 MR. McMAHON: Well, it's a little bit
4 difficult where to begin here, your Honor. I mean,
5 we strongly disagree with any mischaracterizations
6 that either Marion Byndon or John Danzinger testified
7 either in a deposition or their direct testimony that
8 any documents are missing. But you've already
9 addressed that issue with respect to some of the
10 OCC's discovery and indicated what Duke Energy Ohio
11 should do, so I think any concerns that Mr. Lane may
12 have with respect to his client's discovery request
13 will be addressed by those.

14 But when we answered, when Duke Energy
15 Ohio answered the discovery requests actually
16 propounded by Mr. Lane, the company responded
17 accurately with all of the information that it had at
18 that time.

19 So when he asked for information -- one
20 thing I just want to reiterate from what Ms. Spiller
21 said, you know, the amended complaint that's filed in
22 this case is about the disconnection of electric
23 services on November 4, 2011.

24 So when he asks for information about
25 disconnection of utility services in November of

1 2011, that only relates to electric, nothing else was
2 disconnected as we've explained time and time again
3 and as is admitted in the amended complaint. Gas
4 service was not disconnected nor is it at issue in
5 the amended complaint.

6 So all of this stuff about disconnection
7 of gas services doesn't apply to this case. With
8 that said, you've already instructed us to go back,
9 and if there are any documents about that stuff, we
10 will produce it, so.

11 As to information, I think you also
12 already touched on whether anything about work
13 orders, database, or whatever. We're going to go
14 back and answer those things as you've already
15 instructed us to do.

16 I don't understand Ms. Bojko's comments,
17 because I thought she referred to Melissa Porter or
18 Ms. Porter, maybe she just misspoke instead of saying
19 Ms. Byndon, I'm not aware of any time that Ms. Porter
20 was instructed not to answer any questions, but I
21 could be wrong in my recollection.

22 MS. BOJKO: I'm sorry. I might have
23 misspoke.

24 MR. McMAHON: I'm sorry?

25 MS. BOJKO: I must have misspoke. I'm

1 sorry.

2 MR. McMAHON: Okay. With respect to
3 Ms. Byndon, I think we properly addressed it in our
4 memorandum in opposition the three limited
5 circumstances where she was instructed not to answer.
6 And keep in mind, Ms. Byndon was a corporate designee
7 provided by the company at the notice of Mr. Pitzer.
8 This was not a general discovery deposition.

9 So we had a lot of back and forth, and
10 came before your Honor, back in November at the
11 prehearing conference, as to what any corporate
12 designee provided by Duke Energy would be required to
13 testify to. I believe there was, in fact, an
14 agreement that was expressly stated on the record
15 during the prehearing conference and that was limited
16 testimony to the time period of August 2011 through
17 November 2011, with respect to acronyms and
18 abbreviations and the account notes and related
19 account activity. That seemed pretty clear to me.

20 So when Mr. Lane inquired of Ms. Byndon
21 about information outside the scope of that
22 agreement, we properly objected and instructed her
23 not to answer. And, by definition, asking a
24 corporate designee witness about other information
25 that may or may not be found somewhere in CMS or

1 elsewhere in the company records, by definition is
2 not information found in the documents that were
3 attached to the corporate designee notice of
4 deposition, so that's why we instructed at the time.
5 And I think that objection is consistent with the
6 rules with respect to corporate designee depositions
7 and the agreement and, quite frankly, the order
8 entered by the Bench at the prehearing conference.

9 So I think we have properly addressed all
10 of Mr. Pitzer's concerns -- or, Mr. Lane's concerns,
11 I'm sorry, with respect to Mr. Pitzer's discovery.
12 They will be further addressed with respect to the
13 Court's directives today about some of the discovery
14 propounded by the OCC.

15 MR. LANE: Your Honor, I mean, just so
16 we're clear though, in addition to the
17 supplementation that's going to occur with respect to
18 the discovery requests that Ms. Bojko identified,
19 we'd like supplementation in particular of those two
20 responses in light of Ms. Byndon's testimony and
21 Mr. Danzinger's testimony and that would be No. 10
22 and No. 14 -- or, No. 14 and No. 10. Interrogatory
23 14 and Document Request 10.

24 MR. McMAHON: Interrogatory 14 and
25 Interrogatory 10.

1 MR. LANE: No. Document Request 10.

2 MR. McMAHON: I'm sorry. You said that,
3 sorry.

4 I believe your Honor has already indicated
5 to all parties that in line with the Commission's
6 rules regarding supplementation, if any party has
7 information that has come into its possession since
8 it answered a discovery request, it has an obligation
9 to supplement and we will do so, if that, in fact,
10 applies.

11 EXAMINER PARROT: Yes, that's correct. In
12 light of my earlier rulings with respect to
13 Ms. Bojko's discovery issues she raised, I'm going to
14 ask the company to do the same thing with respect to
15 Mr. Lane's concerns.

16 Mr. Lane, I think Ms. Bojko was going to
17 provide the company something in writing just to make
18 sure nothing gets overlooked in the shuffle, a list
19 of the references she provided to the testimony
20 that's been filed and so forth. If you wish to do
21 the same thing, feel free to do that.

22 MR. LANE: That's fine.

23 EXAMINER PARROT: Yours were a little more
24 narrow maybe, but you did go through the deposition
25 transcript rather quickly, so if you wish to do that,

1 it may help to facilitate the process.

2 MR. LANE: That's fine. Before we brought
3 the motion, we sent --

4 EXAMINER PARROT: Okay.

5 MR. LANE: -- a letter to Duke.

6 EXAMINER PARROT: That's been attached.

7 MR. LANE: Right. That's been attached.

8 The only difference is there's some additional
9 information that Mr. Danzinger identified, we didn't
10 have his testimony at the time we issued the letter,
11 so we will do it with respect to his letter.

12 EXAMINER PARROT: Okay. And that's what I
13 mean, like, a comprehensive list of --

14 MR. LANE: Right.

15 EXAMINER PARROT: And again, I think I
16 said this earlier, there may be no records that Duke
17 can produce, but I want the company to affirmatively
18 state that in its discovery responses if that's the
19 case.

20 MS. BOJKO: Your Honor, just for the
21 record, I strongly disagree with Counsel's
22 interpretation of the last prehearing conference and
23 what that deposition was supposed to be or not to be.

24 EXAMINER PARROT: And I'm not even going
25 there.

1 MS. BOJKO: Okay.

2 EXAMINER PARROT: Go ahead and add your
3 two cents as well, Ms. Bojko. I've heard from the
4 others if you wish to add something, too. I will say
5 this, though, I did read the transcript and I think,
6 Ms. Bojko, it was actually you that proposed a call
7 to myself at the time, and I do want to say for those
8 of you in the room, that is an appropriate course of
9 action to do that.

10 So I was in my office on December 3rd, I
11 would have been around to answer your questions and
12 we maybe would have obviated the need for some of
13 this today. I think we would have been here anyway,
14 so I guess, at the end of the day, it doesn't matter
15 so much. But just for future reference, don't
16 hesitate to pick up the phone and reach the examiner
17 when these issues arise.

18 MR. LANE: And, your Honor, I appreciate
19 that. I would have taken advantage of that
20 opportunity but for the fact that I knew we would end
21 up here anyway --

22 EXAMINER PARROT: Anyway.

23 MR. LANE: -- because of the missing
24 documents, et cetera, et cetera, so I thought it
25 would be best to consider it all at one time instead

1 of piecemeal.

2 MS. BOJKO: Your Honor, the only other
3 thing I wanted to add is the company -- Duke is
4 choosing its words very carefully with regard to
5 supplementation.

6 And I have letters, I brought copies for
7 you if you like, of Duke's interpretation of the
8 supplementation rule. And I have concerns that we're
9 going to end up right back here in a little bit
10 because Duke believes it only has to supplement under
11 certain circumstances. And in correspondence between
12 Ms. Spiller and myself, we can't arrive on what that
13 supplementation looks like. So Mr. McMahon just said
14 we will supplement if we're required to do so. I'm
15 just concerned that there's a disagreement with
16 the -- if we're required to do so by the rules.

17 EXAMINER PARROT: There very well could
18 be, I guess, Ms. Bojko, but I have issued rulings
19 today that I am directing the company to go through
20 with respect to the documents that have been referred
21 to in testimony and the depositions, asking them to
22 go through and to provide those documents to the
23 extent they have them; they may not.

24 I recognize there are retention policies.
25 There has been a considerable passage of time here.

1 That may, unfortunately, work against us to some
2 extent in this case. If it does, I want the company
3 to put that in its discovery responses so that's
4 there and available to OCC and to the Complainant to
5 make use of during the hearing for what its worth.

6 If we end up here again for a conference,
7 I hope not, but I guess so be it.

8 MS. BOJKO: Thank you.

9 MR. LANE: So by way of example, to the
10 extent that Mr. Danzinger identified notes he put
11 into a laptop, if Duke is going to supplement their
12 responses with respect to those notes and claim that
13 the notes are no longer in existence, Duke has to
14 provide information as to when those notes would have
15 been purged --

16 EXAMINER PARROT: I would expect that.

17 MR. LANE: -- in the ordinary course of
18 business.

19 EXAMINER PARROT: It's reasonable to back
20 that claim up with what its retention policies look
21 like.

22 MS. BOJKO: Thank you.

23 EXAMINER PARROT: Anything else before we
24 talk about the schedule, scheduling issues?

25 MR. LANE: Your Honor, this may dovetail

1 with the schedule. We did request issuance of a
2 subpoena on Ms. Byndon. The one we filled out was
3 obviously for today.

4 EXAMINER PARROT: For today. So I guess,
5 Mr. Lane, if you wish to amend that with our new -- I
6 was wondering about that issue, but I guess I want to
7 know what your scheduling issues are before we talk
8 about how best to go about it. I thought maybe you
9 would bring one for me to sign today.

10 MR. LANE: You know, the thought crossed
11 my mind yesterday and it left my mind. We'll file
12 one.

13 EXAMINER PARROT: File one with whatever
14 our date is. I guess let's start there.
15 February 1st, that was the date that was proposed by
16 OCC. Mr. Lane, it's my understanding, didn't have
17 any objection to OCC's motions, and I kind of took
18 from that that included the February 1st date.

19 MR. LANE: That's fine.

20 EXAMINER PARROT: I didn't hear anything
21 in the company's memorandum contra to OCC's motion,
22 so I kind of took from that there was probably not
23 much of a problem with the February 1st date,
24 although I do know you have issues then, I think,
25 starting on the 11th that may factor into briefing

1 and that sort of thing. But in terms of the hearing
2 date itself.

3 MR. McMAHON: Well, there's the rub. My
4 understanding of complaint cases and certainly in
5 other complaint cases that I've handled is that there
6 is no post-hearing briefing of any kind. This is not
7 a gigantic rate case. This is not, you know, 40
8 experts and days of testimony or whatever. So I
9 don't know how your Honor intends to conduct the
10 matter here.

11 And my concern is by moving the hearing to
12 February 1st, as we explained at the November 10th
13 prehearing conference, and which is why you picked
14 January 14th, is because of both attorneys' schedules
15 in February for Duke Energy Ohio, and as of
16 February 11th through March 5th, we are, back to
17 back, out of the office and, in fact, out of the
18 country.

19 So if we are conducting a hearing on the
20 1st and the 2nd, and then conducting some type of
21 briefing, unless it's, you know, if it's just
22 expedited and it's one brief per side, fine.
23 But, you know, personally I don't know why briefing
24 would be necessary in a case of this nature, but
25 that's why we're raising the question to you today so

1 that we can better decide when to proceed.

2 We have confirmed with all four witnesses
3 on our side, including Ms. Byndon who's been
4 subpoenaed by the Complainant, that our folks are
5 available during the week of January 25. Any two
6 days, back to back, that week would work for all of
7 the Duke Energy employee personnel and would provide
8 the parties an extra week should the Bench want some
9 type of post-hearing briefing and give us an
10 opportunity to do that before Duke Energy Ohio's
11 attorneys, at least, are unavailable for a three-plus
12 week period.

13 MS. BOJKO: I'm sorry. Could you provide
14 the dates you are unavailable? This is the first
15 time I'm hearing of the unavailability.

16 MR. McMAHON: Well, we didn't go into the
17 details at the prehearing conference, but I'm getting
18 married on February 13th, and I'm out of the office
19 the 11th and the 12th. I'm on my honeymoon the
20 following week. And then that Saturday, when I come
21 back into town, Ms. Spiller departs for her extended
22 vacation for the following two weeks.

23 MS. SPILLER: So through March 5th.

24 MS. BOJKO: Well, your Honor, we obviously
25 believe briefs are an important part of complaint

1 cases. I'm not sure what complaint cases -- maybe
2 pro se complaint cases don't have briefs, but --

3 EXAMINER PARROT: In cases where, you
4 know, we have factual disputes, that may be correct,
5 Mr. McMahon, that we may not tend to always have a
6 briefing schedule.

7 Here, I think it's clear we have a dispute
8 about the Commission's rules and how they're applied
9 and I think that's more of a legal debate we're
10 getting into, so it was my expectation that we would
11 have some type of briefing. I think your idea for
12 maybe just one simultaneous brief from all parties
13 may be sufficient, so we can talk about that.

14 I guess that would be one option is we
15 leave the date as it is now, February 1st. Set a
16 briefing deadline for that next week before you're
17 out of the office and that then is the end of the
18 briefing; that sort of takes care of the issue.

19 Or you've put out another proposal which
20 would be to maybe bump the hearing up into the prior
21 week and maybe that would allow for both an initial
22 and a reply brief if that's the preference --

23 MS. BOJKO: Well, I guess --

24 EXAMINER PARROT: -- on this side of the
25 room.

1 MS. BOJKO: Sorry. I guess we typically
2 wait two weeks until the hearing transcripts are put
3 in the record, so I'm not really understanding --

4 EXAMINER PARROT: That's right. That
5 factors into it as well.

6 MS. BOJKO: So if we wait, assuming that
7 it's February 1st and 2nd, that's the 16th, and then
8 if you give us two or three weeks to draft an initial
9 brief, I think we're out of the time zone of concern,
10 right?

11 EXAMINER PARROT: Out of the time period
12 anyway.

13 MS. SPILLER: Well, yes and no, from the
14 standpoint of if we have dailies of the transcript,
15 you're eliminating an opportunity for us to work on
16 the brief. I mean, we can't -- I mean, so in the
17 period of time when you're writing the brief, we
18 can't be writing the brief.

19 MS. BOJKO: I don't understand that. If
20 you're getting dailies of the transcript, you can be
21 writing the brief the first two weeks.

22 MS. SPILLER: Right. So I don't
23 understand your --

24 MS. BOJKO: We're not getting dailies of
25 the transcripts. We don't get it until it's filed

1 with the Commission two weeks later. So, I mean, we
2 don't -- and that's what's particularly done in
3 complaint cases is that you give two weeks for the
4 transcript to be filed. I mean, I don't understand
5 if you're paying for dailies, why you couldn't write
6 the brief before you leave if that's your choice;
7 otherwise, I just don't understand why -- I can't
8 imagine that the two people sitting here are actually
9 the people who would write the brief anyway, so I'm
10 not understanding the issue. Just as other people
11 had to make arrangements for colleagues to do things
12 today, I'm assuming you could, as well.

13 MS. SPILLER: Well, the assumption is
14 incorrect. We would be the authors of the brief.
15 And in respect of the transcript, we have to cite to
16 the formal transcript. And to the extent that there
17 are revisions between the daily and the final, which
18 can occur, we would want to be sure that we had the
19 benefit of the accurate final transcript.

20 I guess the question, I think, is
21 simply, you know, is the week of -- is there a
22 concern with the week of January 25?

23 MR. LANE: I have several conflicts that
24 week and I have not talked to my clients about that
25 week either.

1 MS. BOJKO: I have, which I already
2 explained to Ms. Spiller, I have a conflict on two
3 days of that week, and we obviously haven't discussed
4 it with our witness under the circumstances. But we
5 did vet the 1st. I mean, we purposely had a couple
6 of dates when we were trying to figure out when to
7 file.

8 But I guess I still don't understand if
9 Ms. Spiller wants to wait until the two weeks to get
10 a final transcript for the final page references,
11 you're still running into the same problem if you
12 move it up a week. It almost makes it worst.

13 MS. SPILLER: Your Honor, I would like to
14 complete this before the February activities that we
15 have. I think that's simply --

16 EXAMINER PARROT: So is the company
17 offering to put the transcripts into the record?

18 MS. SPILLER: To utilize the dailies?
19 That's fine.

20 EXAMINER PARROT: I think if that's the
21 case, I think, you know, I'm planning for no more
22 than a two-day hearing, I think, with the witnesses I
23 know of anyway. I think two days is probably
24 reasonable. So if the transcript is available to
25 everyone at the end of the day on February 2nd, we

1 could set a briefing deadline of February 10th --

2 MR. McMAHON: February 10th.

3 EXAMINER PARROT: -- perhaps, is what I
4 was looking at, yes, which I think is reasonable if
5 the company is going to put the transcript into the
6 record.

7 (Discussion off the record.)

8 MS. BOJKO: So could we go the
9 11th instead of the 10th?

10 EXAMINER PARROT: Yeah, I think that's
11 okay. I'm open to a deadline during that second week
12 of February. So I think the 11th is fine.

13 MS. BOJKO: And then no reply briefs? Is
14 that what you're -- or reply briefs a week later?

15 MR. McMAHON: We would request no reply
16 briefs.

17 EXAMINER PARROT: I think simultaneous
18 briefs from everyone, filed on February 11th, is
19 sufficient.

20 MS. BOJKO: Thank you.

21 EXAMINER PARROT: Anything else?

22 All right. Thank you all.

23 MS. BOJKO: Thank you, your Honor.

24 MS. SPILLER: Thank you, your Honor.

25 EXAMINER PARROT: We'll see you on

February 1st.

MR. McMAHON: Thank you.

(Thereupon, at 12:18 p.m., the prehearing conference was adjourned.)

- - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, January 14, 2016, and carefully compared with my original stenographic notes.

Carolyn M. Burke, Registered
Professional Reporter, and
Notary Public in and for the
State of Ohio.

My commission expires July 17, 2018.

- - -

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/26/2016 9:03:09 AM

in

Case No(s). 15-0298-GE-CSS

Summary: Transcript in the matter of Jeffrey Pitzer vs. Duke Energy Ohio, Inc. hearing held on 01/14/16. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn