

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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	: Case No. 14-375-GA-RDR
In the Matters of the	: Case No. 15-452-GA-RDR
Applications of Duke	: Case No. 16-542-GA-RDR
Energy Ohio, Inc., for	: Case No. 17-596-GA-RDR
Adjustments to Rider MGP	: Case No. 18-283-GA-RDR
Rates.	: Case No. 19-174-GA-RDR

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	: Case No. 14-376-GA-ATA
In the Matters of the	: Case No. 15-453-GA-ATA
Applications of Duke	: Case No. 16-543-GA-ATA
Energy Ohio, Inc.,	: Case No. 17-597-GA-ATA
for Tariff Approval.	: Case No. 18-284-GA-ATA
	: Case No. 19-175-GA-ATA

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PROCEEDINGS

before Ms. Megan J. Addison, Attorney Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-A, Columbus, Ohio, called at 9:00 a.m. on Wednesday, November 20, 2019.

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VOLUME III

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1 Wednesday Morning Session,
2 November 20, 2019.

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

6 Good morning, everyone. We are
7 continuing the hearing for Case Nos. 14-375-GA-RDR,
8 et al. This is our third day of hearing, and I
9 apologize again for the abrupt stop for yesterday's
10 portion of the hearing. I do appreciate everyone's
11 flexibility with working with scheduling conflicts.
12 But we will continue with the cross-examination of
13 Duke Energy Witness Mr. Brown this morning.

14 Ms. Bojko, I believe you still had some
15 questions. And, Mr. Brown, I would remind you you
16 are still under oath.

17 THE WITNESS: Thank you.

18 EXAMINER ADDISON: Thank you.

19 MS. BOJKO: Thank you, your Honor.

20 - - -

1 DAN B. BROWN

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

4 CROSS-EXAMINATION (Continued)

5 By Ms. Bojko:

6 Q. Good morning, Mr. Brown.

7 A. Good morning.

8 Q. Let's turn to page 22 of your testimony,
9 or your direct testimony filed in this proceeding.
10 Before we start with your testimony, yesterday you
11 mentioned to me that you were hired by Duke for not
12 only this proceeding but for the Hamilton County
13 proceeding. Do you recall that?

14 A. Yes, I do.

15 Q. And that you filed an expert report in
16 that proceeding?

17 A. Yes, I think an expert report and
18 rebuttal.

19 Q. And are the topics in that proceeding
20 similar to your testimony in this proceeding?

21 A. Yes. There were a number of similarities
22 between those two proceedings.

23 Q. So in that proceeding you are also
24 discussing the VAP requirements and what Duke's
25 process is to go through those VAP requirements?

1 A. Yes, I believe that I covered those
2 topics as well. Thank you.

3 Q. Did you cover any topics specifically
4 with regard to the insurance proceeds?

5 A. I don't believe so. I cover topics that
6 related to the costs of conducting cleanups so -- and
7 what the costs were associated with Duke's work, but
8 I don't think that was specifically related to what
9 the insurance recovery was.

10 Q. And were you deposed in that proceeding?

11 A. Yes, I was.

12 Q. Turning to -- well, one more question.
13 Is your expert report and your rebuttal confidential
14 in that proceeding? Do you know?

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

16 MR. McMURRAY: I can answer that. It's
17 all subject to a confidentiality agreement between
18 parties.

19 MS. BOJKO: Thank you. That's why I was
20 careful not to ask specifics.

21 MR. McMURRAY: Thank you.

22 Q. (By Ms. Bojko) Now, I believe turning to
23 page 22. The first paragraph of 22, you discuss Duke
24 Energy Ohio. Are you familiar with the regulatory
25 requirements of public utilities?

1 A. I'm not sure what you are specifically
2 referencing. You know, my expertise is primarily in
3 the area of environmental regulations so as they
4 relate to the utility, yes.

5 Q. But there are no special environmental
6 regulatory requirements with respect to public
7 utilities, are there?

8 A. Not that come to mind immediately.

9 Q. And there is not a separate VAP program
10 for public utilities to follow, correct?

11 A. That's correct.

12 Q. And have you been a VP CP for a public
13 utility prior to -- well, you are not the VP CP here,
14 but have you been previously a VP CP for a public
15 utility?

16 A. Yeah. I think you meant to say VAP --

17 Q. Oh.

18 A. -- CP; is that correct?

19 Q. Yes, I apologize.

20 A. Thank you. I just wanted to be sure. So
21 I have not served as the Certified Professional
22 directly for a public utility, although I have worked
23 on VAP projects that related to public utility sites
24 or dealt with historic public utility sites of one
25 sort or another.

1 Q. And on line 4 you state that the Duke
2 East and West sites -- West End sites are unique; is
3 that correct?

4 A. Yes, that's the term I use.

5 Q. And then on line 7 you talk about
6 critically necessary utility services. What are you
7 referencing when you say critically necessary utility
8 service -- services?

9 A. An example might be that at the East End
10 site, natural gas is provided to all sorts of
11 businesses and homeowners and people that rely on,
12 you know, heat, for example, in the winter so that
13 they don't freeze or their children will be taken
14 care of properly or businesses are operated.

15 Similarly in terms of electric power that
16 it's my understanding that the West End site services
17 electricity to most of downtown Cincinnati and it's
18 that kind of need that I would consider to be
19 critically necessary to live.

20 Q. So on -- on lines 8 and 9, you talk about
21 the staging of activities and supported various of
22 the goals and objectives established by -- by Duke.
23 You didn't take part in establishing those goals; is
24 that correct?

25 A. Yeah. I am aware of the goals and

1 objectives that Duke formulated in terms of making
2 decisions about how to proceed to the VAP and how to
3 proceed with the cleanup and activities that occurred
4 there. And I think those are consistent with, you
5 know, what I consider to be prudent in the conduct --
6 conduct of a cleanup of this type. I don't know that
7 I was engaged -- I wasn't hired by Duke to develop
8 those goals and objectives.

9 MS. BOJKO: Your Honor, I move to strike
10 everything prior to I wasn't hired by Duke to provide
11 those goals or maintain those goals. My question was
12 specifically did he take part in establishing the
13 goals that occurred prior to his engagement with
14 Duke.

15 EXAMINER ADDISON: Thank you, Ms. Bojko.
16 I don't believe I've offered Mr. Brown an opportunity
17 to take advantage of the first-bite-of-the-apple
18 rule. So the motion to strike will be denied.
19 However, I will direct Mr. Brown to simply answer
20 Ms. Boy -- Ms. Bojko's or initial additional
21 counsels' questions. Your counsel will have the
22 opportunity to bring out any additional information
23 upon redirect.

24 THE WITNESS: Thank you.

25 EXAMINER ADDISON: Thank you.

1 Q. (By Ms. Bojko) Let's look at page 23 of
2 your testimony. The Question and Answer that begins
3 on line 3 and goes to 18, your response is based on
4 your after-the-fact review of documents as you did
5 not participate in the management of the VAP program
6 at the West End site as it occurred, correct?

7 A. That's correct. That's consistent with
8 how certified professionals are often brought into
9 projects to look at information.

10 Q. But you weren't the VAP that -- CP that
11 managed the activities that occurred prior to you
12 being hired in 2018.

13 A. That's correct. I was just pointing out
14 that it's not uncommon in my industry that I am
15 brought in to look at information generated by other
16 parties.

17 Q. Well, I think you explained to me that
18 you were brought in purely for this litigation and
19 Hamilton County litigation. You were not brought in
20 to continually oversee the Duke MGP site remediation,
21 correct?

22 A. That's correct. I am not overseeing the
23 remediation for Duke.

24 Q. And would your answer be the same to me
25 with regard to your Q and A that begins at the bottom

1 of 23 on line 19 that this is based on your
2 after-the-fact review of documents because you did
3 not and are not managing the VAP remediation efforts
4 at the East End, correct?

5 A. Yes. I reviewed the documents that have
6 been prepared by other consultants and other firms.

7 Q. Can you turn to page 25, please.
8 Beginning on line 8, this Question and Answer.
9 Groundwater or a land use restriction are considered
10 institutional controls under the VAP; is that
11 correct?

12 A. That's correct.

13 Q. And you would agree that an institutional
14 control can be used as an effective tool to eliminate
15 an exposure pathway, correct?

16 A. Yeah. Institutional controls are often
17 used in that regard under the VAP.

18 Q. And if you could turn to page 30, the
19 question starts on line 7. Just as we spoke a minute
20 ago, with regard to this question, you were not
21 on-site during the performance of the -- of the
22 remediation that you speak of starting on line 7,
23 correct?

24 A. I visited the East End site on a day when
25 active remediation was occurring so technically I was

1 on-site during some of the remediation activity that
2 occurred at East End, and I did observe some of the
3 things I am mentioning in line 7 through 10 if that's
4 helpful.

5 Q. No. But I am asking you, you weren't
6 there -- you make -- you state that security
7 measures, air monitoring, and vibration monitoring
8 that were implemented and performed during the
9 remediation. You weren't there during the
10 performance of all of those items throughout the
11 entire remediation, correct?

12 A. Not through the entire remediation.

13 Q. And, again, on -- on page 30, line 11,
14 you note that there are unique conditions at the East
15 End site, correct?

16 A. Yes, there are. I mean, in both East End
17 and West End site there was some very unique
18 conditions relative to the operations there that, you
19 know, made the cleanup much more difficult than you
20 might have at another site.

21 Q. Isn't it true that fact patterns vary
22 with regard to cleanup at MGP sites?

23 A. Well, there's a lot of similarities of
24 MGP sites because the chemicals that are typically
25 the byproducts that you are cleaning up are very

1 similar and the processes that occur are very similar
2 so I think it would be fair to say the fact patterns
3 can vary between sites, but what's interesting about
4 MGP sites, they tend to be very similar in the ways
5 to clean them up and the methodologies to clean them
6 up and type of chemicals and contaminants have a lot
7 of similarities. In fact, it's sort of its own
8 narrow industry within the overall environmental
9 industry because there is so many similarities.

10 Q. And you have not either reviewed after
11 the fact or managed another MGP site that Duke has
12 cleaned up, correct?

13 A. That's correct.

14 Q. And on page 33 of your testimony, you
15 talk about those fact patterns that -- that vary; is
16 that correct?

17 A. Could you just --

18 Q. Page 33, starting on line 15, you
19 reference the varying fact patterns of cleanup sites.

20 A. Yes.

21 Q. And then if you turn over to page 34, you
22 talk about a new bridge. Do you see that at the top,
23 line 1?

24 A. Yes, I do.

25 Q. The new bridge is not being built by

1 Duke; is that correct?

2 A. I don't believe so, no. My understanding
3 that's a bridge to presumably be conducted --
4 constructed by the states of Ohio and Kentucky.

5 Q. And so it's also your understanding it
6 will not be used by Duke to provide utility service,
7 correct?

8 A. I would not think so.

9 Q. And similarly the second line you discuss
10 a residential development that's encroaching. Do you
11 see that?

12 A. Yes, I do.

13 Q. That residential development is not being
14 built by Duke, correct?

15 A. Not that I am aware of.

16 Q. And so that wouldn't be used in the
17 provision of utility service by Duke either, correct?

18 A. I would not think so.

19 Q. Could you turn to the bottom of page 36,
20 please, lines 18 through 22. You mention on line 19
21 that these issues were researched. Who researched
22 these issues that you are referencing in this
23 paragraph?

24 A. I did.

25 Q. Okay. If you could -- well -- so on --

1 we've discussed how, a few times throughout your
2 testimony, you have stated that Duke's sites are
3 unique but then you believe that cleanup costs
4 incurred at similarly-contaminated sites are
5 consistent with the cost to do the clean up that Duke
6 is doing; is that correct?

7 A. Yes.

8 Q. Could you turn to page 15 of your
9 testimony. Page 15, you talk about the process to
10 obtain an NFA letter and also a Covenant Not to Sue.
11 Do you see that?

12 A. Yes, I do.

13 Q. So you describe these processes and as I
14 understand it, Duke could go through all of --
15 complete the VAP, obtain an NFA letter, and -- I'm
16 sorry. So Duke -- let's scratch that one. I will
17 start over.

18 Duke could go through the VAP and
19 complete the VAP and then Duke could decide not to
20 obtain an NFA letter; is that correct?

21 A. Yes. Well, yes, that's true.

22 Q. And the Ohio EPA, as we talked yesterday,
23 could also still issue enforcement orders, correct?

24 A. Just so I understand, you mean could they
25 issue an enforcement letter now or after Duke were to

1 complete the VAP process?

2 Q. Either. There's nothing -- there is no
3 rule in the VAP that prevents the Ohio EPA from
4 issuing an enforcement letter during this process,
5 correct?

6 A. So I would clarify that. I don't think
7 that's entirely correct. You are in the ballpark.
8 So the VAP is a privatized program and the agency
9 recognized it by being a privatized program where
10 they bring Certified Professionals in to oversee
11 cleanup and investigation. It would be possible that
12 projects could be going on that they wouldn't be
13 aware of, so you could have a VAP project, like this
14 one, that the agency isn't involved with.

15 And so they recognize that unknowingly
16 they might issue an order against a site that was in
17 the process of going through the VAP, so they created
18 an aspect of the VAP that would allow the party going
19 through the program to make a defense that they were
20 within the VAP and be shielded or protected against
21 an order.

22 So I don't think it's entirely true to
23 say that the EPA could not -- could issue an order
24 against Duke. If that happened at this time, because
25 Duke has so sort of wisely used this VAP program,

1 they would be able to defend that and prevent the
2 issuance of the order by making a demonstration under
3 Sufficient Evidence which is something I think I
4 talked about yesterday.

5 MS. BOJKO: Your Honor, I move to strike
6 his response as not responsive. I asked if there was
7 a VAP rule that prevented the EPA from issuing an
8 enforcement order throughout the VAP process.

9 MR. McMURRAY: I object to that. I think
10 his answer was very responsive.

11 EXAMINER ADDISON: I agree. I believe he
12 was attempting to respond to your question, although
13 maybe a little more narrative in nature than you were
14 expecting, but I do believe he was trying to answer
15 your question.

16 MS. BOJKO: Well, I still don't think --

17 Q. (By Ms. Bojko) I will ask it this way, is
18 there a VAP -- a VAP rule, you said the rules were
19 written in the Administrative Code; is that correct?

20 A. Well, there is statute and then there is
21 Administrative Code.

22 Q. Okay. Is there a statutory provision or
23 an Administrative Code rule that prevents the EPA
24 from issuing an enforcement letter if an entity is
25 going through the VAP process?

1 A. So I will try my best to answer.

2 Q. It's a yes or no. Is there a rule or
3 statutory provision?

4 A. If you are limiting me to that, I am
5 going to say yes, the rule of Sufficient Evidence in
6 the VAP clearly demonstrates that you could avoid the
7 EPA issuing an order if you can demonstrate you are
8 in the VAP.

9 Q. Right. You have to demonstrate. You
10 have to make a demonstration. So the EPA, there is
11 no rule preventing the EPA from issuing an
12 enforcement letter, correct?

13 MR. McMURRAY: I am going to object. I
14 think that was asked and answered.

15 EXAMINER ADDISON: I will allow the
16 question. You may answer.

17 A. So I am simply trying to answer to the
18 best of my ability. I suppose anyone can do
19 anything. So is it possible some agency could simply
20 write a letter unknowingly, it is, but that would be
21 rescinded and would not continue to stand once it was
22 demonstrated that you were in the VAP. So I don't --
23 it's a difficult answer, I'm sorry, in that yes,
24 someone could issue an initial letter but it would be
25 taken away once the demonstration was made under the

1 VAP so it's not clear that the order actually could
2 be written. An order that's written is one that's
3 enforced, one that's implemented. I guess that's
4 what I am trying to clarify.

5 Q. But even under your own explanation,
6 there's an order that could be issued and then the
7 utility would have to do something, file a claim of
8 Sufficient Evidence to prove otherwise, correct?

9 A. I think in the way you have stated it
10 there, that would be an accurate description.

11 Q. And the utility does not have -- Duke
12 does not have to get an NFA letter, correct?

13 A. Duke is not required to get an NFA letter
14 but, you know, that's the point of the program is
15 that it's -- they can -- they can use it, you know,
16 as an alternative to other regulatory programs.

17 Q. And the point of an NFA is for the EPA to
18 bless the completion of the VAP, correct?

19 A. I just want to clarify that a little bit.
20 The point of the NFA is for a Certified Professional
21 to advise the party undertaking the cleanup that they
22 have met all applicable standards. So specifically
23 that's what the NFA is for.

24 Q. I apologize. The CNS, the Covenant Not
25 to Sue is where the EPA would then bless the VAP

1 remediation efforts as well as the NFA letter issued
2 by the VAP CP, correct?

3 A. Yeah. I would -- I just would clarify
4 and say it's a release from liability so it's not a
5 blessing. It's a -- the Ohio EPA would be releasing
6 the party that submitted the NFA from liability for
7 the contamination covered in that document.

8 Q. So if you don't obtain a release from
9 liability, then you are still liable, correct?

10 A. If you complete an NFA, then I would say
11 that that resolves your liability. It makes a
12 demonstration that you have achieved meeting all
13 applicable standards and, therefore, if someone were
14 to try and order you to do something else, there
15 would be nothing else to do. I mean, so the
16 liability release that you are speaking of relative
17 to the covenant is a release from the State of Ohio.
18 That's one form of liability release.

19 Q. Isn't it true that the NFA letter does
20 not provide a release of liability?

21 A. Well, I think it limits liability. A
22 release from liability can have a broad context. I
23 think if you are talking about relative to, is the
24 state of Ohio releasing you from liability, that
25 covers it with a Covenant Not to Sue.

1 MS. BOJKO: I move to strike the answer
2 as nonresponsive, your Honor.

3 EXAMINER ADDISON: I will allow the
4 answer to stand but I will direct the witness to
5 answer the question yes or no.

6 THE WITNESS: Okay. I'm sorry. Trying
7 to the best. Some of the questions are just not
8 entirely clear.

9 Q. Let's look at your own testimony. Turn
10 to page 16, line 13, you state "although the" --
11 starting on line 12, "Although the VAP rules impose
12 stringent requirements that must be met for a CP to
13 issue the NFA letter for the property, the NFA letter
14 does not provide any release of liability." Did I
15 read your testimony correctly?

16 A. Yes, you did.

17 MS. BOJKO: Your Honor, I have no further
18 questions.

19 EXAMINER ADDISON: Thank you, Ms. Bojko.
20 Ms. Whitfield.

21 MS. WHITFIELD: I have no questions for
22 this witness, your Honor.

23 EXAMINER ADDISON: Thank you.

24 Mr. Boehm?

25 MR. BOEHM: No questions.

1 EXAMINER ADDISON: Thank you and welcome.

2 MR. BOEHM: Thank you.

3 EXAMINER ADDISON: Mr. McNamee?

4 MR. McNAMEE: No questions. Thank you.

5 EXAMINER ADDISON: Redirect, Mr. Murray.

6 MR. McMURRAY: Thank you.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. McMurray:

10 Q. Mr. Brown, I want to go through some
11 things that you discussed with Ms. Bojko and
12 Mr. McKenney yesterday and this morning.

13 Let's start with the questioning that
14 just occurred from Ms. Bojko regarding the difference
15 between an NFA letter and a Covenant Not to Sue. Why
16 did you indicate that an NFA letter does not provide
17 a release of liability in your testimony?

18 MS. BOJKO: Objection. He is leading the
19 witness.

20 MR. McMURRAY: I am pointing to his
21 specific testimony you just asked him about.

22 EXAMINER ADDISON: I think the question
23 is fair. You may answer.

24 A. Could you direct me again to the actual
25 page and line?

1 Q. Page 16, lines 12 through 14.

2 THE WITNESS: If I could have a moment, I
3 just want --

4 EXAMINER ADDISON: You may.

5 A. I am prepared to answer now,
6 Mr. McMurray.

7 So I think if you look at this entire
8 paragraph in context, the intent of it that I was
9 trying to make was I was speaking specifically to the
10 release of liability from the State of Ohio which is
11 what I go on to say in the following sentence. In
12 order to obtain a release of liability from the State
13 of Ohio, a party must request a CNS from the EPA.
14 While in the prior sentence it simply says the NFA
15 does not provide a release from liability.

16 Its intent was to speak as it relates to
17 the release of liability that the Ohio EPA offers. I
18 think it's fair to say that the NFA, which
19 demonstrates that you meet all applicable standards,
20 would be a document that you could use to manage your
21 liability associated with contamination. It's a
22 demonstration that you have cleaned up or that the
23 site in its state does not exceed any applicable
24 standard and that, in itself, is a demonstration of a
25 limit on liability.

1 Q. Under the VAP, who is authorized to issue
2 a release of liability?

3 A. So the State of Ohio is the party that is
4 able to issue a Covenant Not to Sue. If -- as the
5 final step in the VAP process.

6 Q. So only the State of Ohio can issue the
7 release of liability.

8 A. In that context, yes.

9 Q. In the VAP.

10 A. In the VAP.

11 Q. Do you recall discussing yesterday the
12 concept of technical assistance under the VAP with
13 Ms. Bojko?

14 A. Yes, I do.

15 Q. Can you elaborate on why technical
16 assistance is used in some instances in the VAP?

17 A. So technical assistance, and I think I
18 mentioned this yesterday, has a couple important
19 aspects. The people that craft the VAP rules
20 recognize that the rules in and of themselves, the
21 writing, the language of the rules, were not enough
22 to really understand all the different nuances of
23 things that could occur during the course of a
24 project.

25 And so they established a system -- and

1 because it was privatized and Certified Professionals
2 would be trying to interpret these rules, they
3 established a process whereby you could gain input
4 from the agency, from the Ohio EPA, to try and
5 understand some aspect that maybe wasn't plainly
6 clear within the regulations as they are written.

7 And this is a really important aspect of
8 the VAP because it's a complicated program that is,
9 just by reading the rules, not something that you can
10 figure out. And through years of interacting with
11 the agency through technical assistance, through
12 requesting their input on things, as a Certified
13 Professional you learn what those nuances are and you
14 learn and gain an understanding of what these aspects
15 that are sort of between the words that you have to
16 understand in order to successfully get through the
17 NFA and a covenant process.

18 So it's typical that someone would go to
19 pursue technical assistance, in my experience,
20 normally in one of two cases. Just before the NFA is
21 submitted, that's a typical time when you would take
22 all your documents and submit them to the agency for
23 their review so you could be certain of their
24 concurrence or understanding of where you don't have
25 concurrence before you make your formal submittal.

1 And the other time would be if you are
2 uncertain about some aspect of the rule for which you
3 don't think there is a clear precedent, you could go
4 to them for technical assistance to try and
5 understand some, you know, yet-to-be-determined thing
6 that just maybe appeared at your site that hasn't
7 really come up at other times.

8 And a lot of that's occurred because
9 there's been many sites going to the VAP over 25
10 years and this technical assistance has been
11 conducted, you know, as I have many times, you got
12 input and gained knowledge about what those answers
13 are so in a lot of cases you understand it but at
14 some point in your career.

15 Q. Have you used technical assistance at
16 other sites you have been involved in?

17 A. Yes, I have.

18 Q. Has Duke used technical assistance at
19 either the East End or West End sites?

20 A. I don't believe so.

21 Q. Would you have expected Duke to utilize
22 technical assistance by this point in the VAP process
23 at either site?

24 MS. BOJKO: Objection.

25 EXAMINER ADDISON: Grounds.

1 MS. BOJKO: First of all, he is leading
2 the witness very much so. Secondly, he can't speak
3 for Duke and he's -- he's not a Duke employee. It's
4 speculative.

5 MR. McMURRAY: He's A 25-year VAP CP who
6 has a lot of experience in the VAP. He testified
7 he's utilized technical assistance and knows when you
8 would typically utilize it. I think he's an expert
9 and he is in an excellent position to testify whether
10 you would use it by now or not. That's part of the
11 process of the VAP.

12 MS. BOJKO: Your Honor, he was --

13 EXAMINER ADDISON: Thank you. I will
14 allow the question.

15 THE WITNESS: If you could just ask the
16 question again, I am a sorry.

17 MR. McMURRAY: Could you read it back,
18 please.

19 (Record read.)

20 A. So while both sites have significant
21 complexities that I talked about in my testimony, the
22 issues as they relate to the VAP are frankly not
23 terribly complex in terms of their applicability
24 meaning that there is very significant and widespread
25 contamination in both of these sites that clearly and

1 unequivocally exceeds applicable standards and so the
2 need for remediation to address that is -- is obvious
3 and defined and very easy to understand it.

4 So I don't really see any significant
5 nuance to the application of the VAP at this
6 particular site so it would not have been my
7 expectation that technical assistance would be
8 something necessary for, particularly in a case where
9 you have, you know, highly-qualified CPs that are
10 running the project.

11 MS. BOJKO: Objection, your Honor. I
12 move to strike everything before "I don't see" as
13 nonresponsive to his own counsel's question. He
14 spent 5 minutes talking about something not
15 responsive.

16 EXAMINER ADDISON: I think he was simply
17 explaining why he believed his answer to be his
18 answer, so we'll allow the answer to stand as is.

19 MS. BOJKO: Thank you.

20 MR. McMURRAY: Thank you.

21 Q. (By Mr. McMurray) Mr. Brown, do you
22 recall discussing with Mr. McKenney, yesterday, the
23 City of Cincinnati ordinance prohibiting the use
24 of -- the potable use of groundwater wells within
25 city limits?

1 A. I recall the discussion.

2 Q. Would Ohio EPA accept the city's
3 ordinance as an institutional control?

4 A. So under the VAP, while that would be a
5 useful piece of information, it would not be accepted
6 as an institutional control.

7 And if I may, the reason for that is
8 because those kinds of things can change and the VAP
9 requires when a covenant -- when an NFA is issued
10 and/or Covenant Not to Sue is provided by the state,
11 that you must continue to meet applicable standards
12 forever into the future so that responsibility never
13 ends.

14 And the problem with an ordinance is that
15 it can be changed in the future and if you had a VAP
16 NFA that relied on an ordinance as the basis for why
17 no one drinks the water and that could one day change
18 it, could adversely affect the need for having to go
19 back and remediate the site. And so the reason those
20 ordinances aren't accepted is the state would require
21 you to actually get an -- and the NFA would obligate
22 you to have a deed restriction that runs forever with
23 the title of the property in order to provide an
24 institutional control.

25 Q. Thank you.

1 And you mentioned there is a difference
2 between a city ordinance and an Urban Setting
3 Designation.

4 A. Yes. I think that came up as well.

5 Q. What's the purpose of an Urban Setting
6 Designation?

7 A. So an Urban Setting Designation is an
8 aspect of the VAP that was created, a very thoughtful
9 aspect of the VAP that was created to make a
10 technical demonstration that is capable of being
11 relied upon for an NFA or a Covenant Not to Sue that
12 demonstrates that there is no use of groundwater in a
13 particular area and no anticipated use of groundwater
14 in a particular area.

15 Which the term "Urban Setting
16 Designation" also alludes to the fact that it is
17 typically considered to be applicable in urban areas
18 where you have water departments, for example, as the
19 case in Cincinnati, that gets its water from
20 something other than groundwater, for example the
21 Ohio River, and that there is not the expectation
22 that you would ever need to use groundwater for
23 drinking-water purposes in that area. Those are the
24 kind of bases that Urban Setting Designations are
25 established for.

1 Q. So Urban Setting Designations relate
2 solely to potable water use?

3 A. It only relates to the demonstration that
4 people do not use drinking water in the area or there
5 is no potable use of groundwater, yes.

6 Q. So would obtaining an Urban Setting
7 Designation, if available, allow Duke to meet all
8 applicable standards at the sites?

9 A. No, that would not be the case.

10 Q. Why not?

11 A. At this site there are significant other
12 applicable standards than simply just drinking water.
13 In fact, drinking water is maybe the least concerning
14 of all of them. The most concerning being the
15 communication of the mobile contamination with the
16 Ohio River. An Urban Setting Designation would have
17 no bearing whatsoever on the requirement of Duke to
18 meet the applicable standards of surface water and
19 sediment in the Ohio River. It would only establish
20 that there is not a use of drinking water in the --
21 at the site or whatever the area of the Urban Setting
22 Designation would be.

23 Q. Thank you.

24 Do you recall discussing with Ms. Bojko
25 and Mr. McKenney whether Ohio EPA has ordered Duke

1 Energy to remediate either the West End or East End
2 sites?

3 A. Yes, I do.

4 Q. And what was your response?

5 A. I said that I don't believe that there
6 has been an order.

7 Q. And in your experience, does the absence
8 of an Ohio EPA order mean that there is no liability
9 for the contamination?

10 A. No, it does not.

11 Q. And why not?

12 A. Well, because the obligations to clean up
13 relate to the fact that you have contamination that's
14 attributable to your operation, your use of the
15 property, your ownership of the property, there are a
16 number of things that tie you to that; so whether the
17 EPA has cited you for that or not doesn't mean you
18 don't have the liability for them. Sooner or later
19 that responsibility comes home to roost.

20 Q. Thank you.

21 So we've talked about the East End site
22 and West End site and the VAP. We have also talked
23 about in the context of environmental liability.

24 How are you defining the site for
25 purposes of your testimony?

1 A. So that word has been, you know, kind of
2 thrown around a lot over the last couple of days, and
3 just to be clear, you know, there is various
4 interpretations of it.

5 In my interpretation and what I would say
6 and it's common in the environmental industry that
7 the site is the area of the contamination. That's
8 normally what you talk about when you are talking
9 about environmental cleanups, environmental
10 investigations. When people use this common term
11 "the site," they are talking about the areas that are
12 contaminated.

13 I think where that's gotten complicated
14 is it's then similarly used in the context of
15 property ownership where people start to say the
16 on-site and off-site, and that context tends to be
17 tied to property ownership, where I, you know,
18 property that I own and property that I don't own.
19 And I think that's where it gets a little mixed up.

20 Generally the site, and the site that I
21 considered as part of when I am talking about things
22 here is these areas of contamination, the concept of
23 on- and off-property is a concept from the VAP
24 that -- and the concept of on- and off-site which
25 more similarly tie or more relate to the ownership of

1 the property, not where there is contamination.

2 MR. McMURRAY: Thank you. Can I have one
3 minute?

4 EXAMINER ADDISON: You may.

5 MR. McMURRAY: No further questions, your
6 Honor.

7 EXAMINER ADDISON: Thank you very much.

8 Mr. McKenney.

9 MR. MCKENNEY: No further questions, your
10 Honor.

11 EXAMINER ADDISON: Thank you.

12 Ms. Bojko.

13 MS. BOJKO: Thank you, your Honor.

14 - - -

15 RECROSS-EXAMINATION

16 By Ms. Bojko:

17 Q. Given your definition of "site" -- first,
18 let's back up. Do you know how the 2012 Public
19 Utilities Commission of Ohio Order defined the word
20 "site"?

21 A. I would have to go back and look at that
22 specifically, I suppose.

23 Q. So sitting here today, you don't know,
24 correct?

25 A. I mean, I have read the Order and I would

1 just want to look at it because of the nature of your
2 question is very specific and I wouldn't want to
3 misstate it.

4 Q. And so you can't tell me today, correct?

5 A. Without looking at the Order, I don't
6 know that I have a specific answer for you.

7 Q. And you don't know how the Staff Report
8 defined either -- all three of the Staff Reports --
9 have you reviewed the Staff Reports?

10 A. I have reviewed the 2018 and 2019 Staff
11 Reports.

12 Q. So it's fair to say that you don't know
13 how all three Staff Reports define the word "site,"
14 correct?

15 EXAMINER ADDISON: Ms. Bojko, would you
16 just mind clarifying that only two of the Staff
17 Reports were filed in relation to these proceedings?

18 MS. BOJKO: Oh, but, your Honor, if he
19 hasn't reviewed the 2012, I am assuming he doesn't
20 know how that 2012 Staff Report or the two that were
21 filed in this case define the word "site."

22 EXAMINER ADDISON: And I am fine with
23 making that point. Just differentiate the fact -- I
24 don't want people to believe that three Staff Reports
25 were filed in these proceedings.

1 MS. BOJKO: Fair enough. My apologies.
2 I will rephrase the question, your Honor.

3 EXAMINER ADDISON: Thank you very much.

4 Q. (By Ms. Bojko) It's fair to say you don't
5 know how the 2012 Staff Report or the two Staff
6 Reports that were filed in these consolidated
7 proceedings define the word "site"?

8 A. I'm a little more familiar with the 2018
9 and 2019 Staff Reports and their discussion of the
10 site.

11 Q. Sitting here today can you tell me how
12 they define the word "site"?

13 A. I don't know if I can answer in its
14 entirety, but I recall that those Staff Reports
15 attempt to distinguish between work that was done on
16 what has been commonly referred to as the West of the
17 West Parcel and work that's done in the Ohio River as
18 being off-site.

19 Q. And the Commission Order in 2012
20 specifically identified sites and used them as terms
21 of art, correct?

22 A. As I said, without looking more closely
23 at that Order, I am not sure that I can give you a
24 specific answerer in that. I would be happy to look
25 at it and review that and provide an answer; but, you

1 know, I presume it speaks for itself.

2 Q. And it's your understanding that the
3 state cannot release an entity from federal
4 liability, correct?

5 A. Yeah, I think that's a correct statement.

6 Q. And when you were talking about technical
7 assistance, I just want to make sure we're clear.
8 You did not manage and are not currently managing the
9 VAP at the West End of Duke, correct, the West End
10 site of Duke?

11 A. I just want to make sure I understand
12 your question. I am not currently managing as a CP
13 for Duke at the West End site.

14 Q. And you are not currently or have not in
15 the past managed the VAP for Duke's East End site,
16 correct?

17 A. That's correct.

18 Q. And so as I understand your testimony
19 today, Duke -- the Duke sites are complex and unique
20 but no technical assistance is needed, correct?

21 A. Yes, but I would like to explain that a
22 little more clear, if you will allow.

23 Q. No, thank you. And just as I understand
24 Duke's sites are complex and unique, but the costs
25 are in line with other sites, correct? That's your

1 testimony?

2 A. Yes.

3 MS. BOJKO: Your Honor, I have no further
4 questions.

5 EXAMINER ADDISON: Thank you, Ms. Bojko.
6 Ms. Whitfield?

7 MS. WHITFIELD: Nothing, your Honor.

8 EXAMINER ADDISON: Thank you.

9 Mr. Boehm?

10 MR. BOEHM: No questions, your Honor.

11 EXAMINER ADDISON: Mr. McNamee?

12 MR. McNAMEE: No questions.

13 EXAMINER ADDISON: Fantastic. I have no
14 further questions, Mr. Brown. You are excused.

15 THE WITNESS: Thank you, your Honor.

16 EXAMINER ADDISON: Thank you.

17 Mr. McMurray, I believe you had
18 previously moved for the admission of Duke Energy
19 Ohio Exhibit 16; is that correct?

20 MR. McMURRAY: I have, yes.

21 EXAMINER ADDISON: Thank you.

22 Are there any objections to the admission
23 of Duke Energy Ohio Exhibit 16, subject to the
24 motions to strike?

25 MS. BOJKO: Subject to the motions, your

1 Honor.

2 EXAMINER ADDISON: Thank you.

3 Hearing none, it will be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER ADDISON: We will take a short
6 5-minute break in preparation of our next witness.

7 Let's go off the record.

8 (Recess taken.)

9 EXAMINER ADDISON: At this time we will
10 go back on the record.

11 Ms. Watts.

12 MS. WATTS: Thank you, your Honor. Duke
13 Energy Ohio calls Keith Butler to the stand. I
14 believe he is already seated.

15 EXAMINER ADDISON: Thank you. One step
16 ahead of us.

17 (Witness sworn.)

18 EXAMINER ADDISON: Thank you. Please
19 proceed.

20 MS. WATTS: Thank you.

21 - - -

1 KEITH G. BUTLER

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

4 DIRECT EXAMINATION

5 By Ms. Watts:

6 Q. Good morning, sir.

7 A. Good morning.

8 Q. Would you state your name.

9 A. Keith G. Butler.

10 Q. And, Mr. Butler, do you have before you
11 what's been previously marked as the direct testimony
12 of Keith Butler, Duke Energy Ohio Exhibit 22? And,
13 sir, it may not have the 22.

14 A. I do and it does.

15 Q. Okay. Great. And do you also have
16 before you five pieces of testimony written by Keith
17 Bone which have previously been marked as Duke Energy
18 Ohio Exhibits 17, 18, 19, 20, and 21?

19 A. I do.

20 Q. Okay. And are you adopting the testimony
21 of Mr. Bone this morning?

22 A. I am.

23 Q. And is the testimony -- do you have any
24 corrections to any of that testimony?

25 A. No, I do not.

1 Q. And is it true and accurate to the best
2 of your knowledge?

3 A. It is.

4 Q. And if I were to ask you the questions
5 contained therein again today, would your answers be
6 the same?

7 A. Yes.

8 MS. WATTS: Thank you, sir.

9 Mr. Butler is available for
10 cross-examination.

11 EXAMINER ADDISON: Ms. Watts, just to
12 clarify, did we also recognize Mr. Butler's
13 supplemental testimony?

14 MS. WATTS: I'm sorry.

15 Q. (By Ms. Watts) Also, sir, do you have
16 before you what has been marked before you as Duke
17 Ohio Exhibit 23?

18 A. Yes.

19 Q. And that is your supplemented --
20 supplemental testimony you caused to be prepared for
21 this testimony?

22 A. It is.

23 Q. And if I were to ask you all those same
24 questions again, would they be the same?

25 A. Yes.

1 Q. So it's true and accurate and you don't
2 have any corrections.

3 A. I do not, but yes, it is.

4 MS. WATTS: And thank you, your Honor,
5 for that reminder.

6 EXAMINER ADDISON: Thank you, very much.

7 MS. WATTS: Now he truly is available for
8 cross-examination.

9 MR. HEALEY: Your Honor, before we cross
10 this witness, I just want to make a statement on the
11 record regarding some confidentiality issues.

12 Parties are working with Duke to avoid
13 going into confidential session with the insurance
14 witnesses. One -- some members of the Duke team are
15 trying to get us a number that we can potentially
16 stipulate into the record. This is something I was
17 going to ask this witness about. I don't have the
18 number yet, so I would ask if I don't have it by the
19 time I am done cross-examining, you know, we keep him
20 here until we can resolve the issue with
21 confidentiality and he not be released until we
22 resolve that, if that's all right with the parties
23 and your Honor.

24 EXAMINER ADDISON: Thank you. Is that
25 correct, Ms. Watts?

1 MS. WATTS: That's correct, your Honor.

2 EXAMINER ADDISON: Thank you.

3 MR. HEALEY: And I do have some motions
4 to strike if you will entertain those.

5 EXAMINER ADDISON: Please proceed.

6 MR. HEALEY: Thank you.

7 The first motion to strike pertains to
8 Mr. Butler's supplemental testimony, Duke Exhibit 23.
9 And there are several references which I will walk
10 through slowly.

11 The first one is page 4, line 18, and
12 that continues through page 5 to the end of line 7.
13 And then page 5 still, line 12, beginning with the
14 word "Doing" and continuing through line 17 ending
15 with "utility service."

16 Also page 8, line 6, through line --
17 through line 9 ending with the word "shareholders."
18 And then again on page 8, line 14, starting with the
19 word "Accordingly" and through line 16, ending with
20 "because" and then we would capitalize the word "the"
21 after "because" to be a new sentence.

22 And then there's substantially similar
23 testimony in Mr. Butler's March 2019 testimony that
24 would be subject to the same motion to strike. That
25 would be page 10, line 18, beginning with the word

1 "Notwithstanding" through page 11, line 5, ending
2 with the word "proceeds" and then finally page 11,
3 line 13, beginning with "Moreover" and then through
4 the end of line 18.

5 Does anybody need any of that?

6 MS. BOJKO: Just the last one.

7 MR. HEALEY: Sure. The last one was
8 page 11, line 13, beginning with "Moreover" and then
9 through the end of line 18.

10 MS. BOJKO: Thank you.

11 MR. HEALEY: Your Honor, in these
12 sections of Mr. Butler's testimony, he recommends
13 that the Commission divide up the insurance proceeds
14 among customers and Duke or Duke's shareholders.

15 OCC's motion to strike is based on the
16 doctrine of res judicata. These issues were
17 resolved by the Commission in the 12-1685-GA-AIR
18 case. In that case the Commission issued its Opinion
19 and Order on November 13, 2013. Parties in that
20 case, including Duke, made recommendations on the
21 division of insurance proceeds.

22 Duke Witness Wathen, for example, made
23 precisely the same recommendation that Mr. Butler
24 makes here, namely that if any MGP costs are
25 disallowed, Duke shareholders should get to keep some

1 of the insurance proceeds. That was described in the
2 Order at page 66.

3 The Commission rejected this argument in
4 its ruling on this issue. The Commission said "We
5 find that any proceeds paid by insurers or third
6 parties for MGP investigation and remediation should
7 be used to reimburse the ratepayers." And then it
8 continues, "To the extent the proceeds collected from
9 insurers and/or third parties exceed the amount
10 recoverable from ratepayers, Duke should be permitted
11 to retain such amount."

12 There is nothing ambiguous about this
13 ruling, your Honor. The ruling says if there is
14 insurance money, it goes to customers. If the
15 insurance is more than the amount that customers pay,
16 Duke gets whatever is left over. There will be no
17 money left over in this case. And, therefore, Duke's
18 attempt to re-litigate this issue and claim that some
19 of the insurance money should instead go to
20 shareholders or Duke as a result of any potential
21 disallowance is not allowed.

22 The Supreme Court has described the res
23 judicata doctrine in State v. Decapua Enterprises,
24 which is 2019 Ohio 517, as precluding the, quote,
25 re-litigation of a point of law or fact that was at

1 issue in a former action between the same parties and
2 was passed upon by a court of competent jurisdiction.
3 That's exactly what we have here. This precise issue
4 was litigated in the rate case and it was resolved in
5 customers' favor.

6 EXAMINER ADDISON: Thank you.

7 Ms. Watts.

8 MS. WATTS: Thank you, your Honor. Much
9 like many of the issues that we have been discussing
10 for the last few days, if they were as precise as
11 counsel represented, we wouldn't be here in the first
12 place.

13 We, of course, do not agree there is any
14 precise decision with respect to what should be --
15 how the insurance proceeds should be disposed of and
16 Mr. Butler's testimony is -- is designed to address
17 that issue entirely. So I would disagree that it's
18 res judicata and I believe it's very much an open
19 issue that needs to be yet determined by the
20 Commission.

21 EXAMINER ADDISON: Thank you.

22 MS. BOJKO: Your Honor, OMAEG supports
23 the motion to strike on res judicata as well as that
24 the Company's estopped from raising the issues again
25 in this later case. Thank you.

1 EXAMINER ADDISON: Thank you very much,
2 Ms. Bojko.

3 I'm sorry, Ms. Whitfield, please proceed.

4 MS. WHITFIELD: Kroger also supports
5 that. And if there is nothing more clear about what
6 was just read from the 2012 Order as to what the
7 Commission ordered, I am not sure how the Commission
8 could ever have a clear Order. It specifically says
9 all insurance proceeds must be returned to ratepayers
10 net of litigation costs or costs incurred to recover
11 them, and if there is anything in excess of what
12 customers have paid, then that Duke can keep that.
13 There's no ambiguity there. Thank you, your Honor.

14 EXAMINER ADDISON: Thank you.

15 Any additional parties like to weigh in?

16 MR. BOEHM: OEG also supports the motions
17 to strike.

18 EXAMINER ADDISON: Thank you.

19 Consistent with prior rulings, maybe not
20 so much on this exact issue, I will deny the motion
21 to strike. This is certainly an area that can be
22 briefed and I would encourage all parties to make
23 those arguments in the briefs. And if this witness's
24 interpretation of the Commission's 2013 Order is
25 contrary to the Commission's intent described in that

1 Order, I am sure that they will be happy to point
2 that out in their Order for these proceedings. So we
3 will allow the testimony to stand in both the -- in
4 both Duke Energy Ohio Exhibits 22 and 23 as to those
5 two motions to strike.

6 Any additional motions to strike,
7 Mr. Healey?

8 MR. HEALEY: Yes, your Honor. And if I
9 might have a brief voir dire before my next motion?

10 EXAMINER ADDISON: Certainly.

11 - - -

12 VOIR DIRE EXAMINATION

13 By Mr. Healey:

14 Q. Mr. Butler, could you please turn to Duke
15 Exhibit 18, which is Mr. Bone's testimony from Case
16 15-452, please.

17 A. I'm sorry, what page?

18 Q. Page 6 of that testimony.

19 A. I'm there.

20 Q. And on line 6, Mr. Bone notes that Duke
21 had purchased approximately 100 policies between 1940
22 and 1985; is that correct?

23 A. That's what it says.

24 Q. Have you personally reviewed each of
25 these approximately 100 insurance policies?

1 A. I have not.

2 Q. Have you personally reviewed any of them?

3 A. I have reviewed parts of some.

4 Q. And about how many of the 100 have you
5 reviewed parts of them?

6 A. I can't tell you exactly.

7 Q. It was more than 10?

8 A. I don't recall an exact number.

9 Q. So it could be less than 10?

10 A. It could be. It could be more than 10
11 too.

12 Q. Sure. You didn't attach any of these
13 insurance policies to your testimony, correct?

14 A. I did not.

15 Q. And to your knowledge, Duke has not lost
16 or destroyed its copies of these insurance policies,
17 has it?

18 A. Not that I am aware of.

19 Q. In your supplemental testimony you also
20 reference various settlements that Duke has reached
21 with its insurers, correct?

22 A. I'd have to go back and look. I believe
23 that's the case, yes.

24 Q. You are aware that Duke has reached
25 settlements with various of --

1 A. I am --

2 Q. -- insurers, correct?

3 A. Correct.

4 Q. I apologize. I know sometimes you know
5 the question I am going to ask. If you let me
6 finish, it will make a better record.

7 Have you personally reviewed each of the
8 settlements in its entirety?

9 A. Yes, I have.

10 Q. And you did not attach any of them to
11 your testimony though, correct?

12 A. I did not.

13 MR. HEALEY: Your Honor, at this time,
14 OCC moves to strike Mr. Butler's supplemental
15 testimony as follows: This will be Duke Exhibit 23
16 starting at page 4, line 7, and then through line 9,
17 ending with the word -- ending with the word "place."
18 I'm sorry. Through line 10, ending with the word
19 "place." And then also page 8, line 16, beginning
20 with the word "This" and through the end of line 19.

21 And then I would move to strike the
22 similar testimony in his March 2019 testimony, Duke
23 Exhibit 22, page 9, beginning at line 5, and
24 continuing through line 10 with the word, the second
25 instance of the word "contamination." And then page

1 10 --

2 MS. WATTS: Could you slow down, Chris?

3 MR. HEALEY: Yes, yes.

4 MS. WATTS: I am way behind you. Duke
5 Exhibit 22.

6 MR. HEALEY: Sure. On Exhibit 22.

7 MS. WATTS: Which year? '14?

8 MR. HEALEY: Exhibit 22 is the --

9 MS. WATTS: '19.

10 MR. HEALEY: The '19 testimony of
11 Mr. Butler and so the first one on that is page 9,
12 the beginning of line 5, and then continuing through
13 line 10, at the end of that sentence there with the
14 word "contamination." And then that same testimony,
15 page 10, beginning of line 11 through line 14, ending
16 with the word "place." Everyone good?

17 MS. WATTS: Yeah.

18 MR. HEALEY: Your Honor, in these
19 portions of Mr. Butler's testimony, he is purporting
20 to describe the contents of various insurance
21 policies. As we learned through the voir dire, there
22 are in the vicinity of 100 of these policies and
23 Mr. Butler has not reviewed most of them. He said he
24 reviewed some of them in part. He wasn't even sure
25 if he had reviewed more than 10 out of the 100.

1 He clearly lacks personal knowledge of
2 the contents of these insurance policies under Rule
3 of Evidence 602. His lack of personal knowledge is
4 highlighted by, one, his voir dire response that is
5 he did not review these policies; and, two, the fact
6 that he specifically references other witnesses when
7 he comments on the content of these policies
8 including Mr. Lynch.

9 The testimony also violates Rule of
10 Evidence 1002 which requires that to prove the
11 content of a writing be original, writing is
12 required. Sometimes it's referred to as the best
13 evidence rule. We don't allow witnesses to testify
14 as to what is in a document when a document is not
15 produced.

16 The Ohio Supreme Court has applied this
17 rule specifically in the context of insurance
18 policies and ruled a witness may testify as to the
19 contents of a policy only if the policy has been lost
20 or destroyed which we established is not the case
21 with these policies and for that reason -- and for
22 those reasons, I ask that these portions of his
23 testimony be struck.

24 EXAMINER ADDISON: Thank you.

25 Anyone else like to weigh in?

1 MS. BOJKO: I have a question. May I ask
2 a question of Mr. Healey? Did you move to strike in
3 the '19 testimony, line 5, starting with "Again"?

4 MR. HEALEY: What page?

5 MS. BOJKO: Oh, I am a sorry. Page 11.

6 MR. HEALEY: Page 11.

7 MS. BOJKO: Line 5, starting with
8 "Again."

9 MR. HEALEY: I did not move to strike
10 that, no.

11 MS. BOJKO: Your Honor, I would support
12 Mr. Healey's motion to strike but I would also add
13 that sentence for similar reasons. It's based on
14 Mike Lynch's testimony. It seems like we are
15 repeating a lot of other witnesses' testimony.
16 It's -- it's also hearsay. He cannot testify to it.
17 He doesn't have personal knowledge. He lacks the
18 foundation. He didn't review those documents in
19 their entirety. And it is also because he's just
20 repeating what Mr. Lynch says, it would rise to the
21 level of cumulative and unnecessary and prejudicial
22 to the record.

23 EXAMINER ADDISON: Thank you, Ms. Bojko.
24 Just to clarify, you are moving to strike line --
25 on -- Duke Energy Ohio Exhibit 22, page 11, line 5,

1 beginning with the word "Again" through line 8,
2 ending with the word "policy," correct?

3 MS. BOJKO: Yes. Thank you, your Honor.
4 The reference to Mr. Lynch's testimony.

5 EXAMINER ADDISON: Thank you very much.
6 Any additional parties?

7 MS. WHITFIELD: Your Honor, there are
8 other references where he is just reciting
9 Mr. Lynch's testimony, and for the same reasons that
10 Ms. Bojko just referenced, I will give you those as
11 well.

12 In Exhibit 22, it's page 9 which I think
13 might be part of what Mr. Healey -- page 9, line 5,
14 starting with "As" to the end of that paragraph
15 "located." Ms. Bojko just gave you the page 11,
16 lines 5 through 8.

17 And then as to Exhibit 22 -- I'm sorry,
18 23, page 5, line 17, which starts with "As set forth
19 in Michael Lynch's testimony" to 22.

20 Is everybody with me?

21 And page 7 of Exhibit 23, line 4,
22 starting with "As explained in the Direct Testimony
23 of Michael Lynch" through line 12.

24 Again, for the reasons that have already
25 been articulated, this is cumulative. It also

1 amounts to hearsay. Mr. Lynch is here to testify and
2 is up next and can testify about these things, and
3 Mr. Butler has no personal knowledge and thus is not
4 qualified. Thank you, your Honor.

5 EXAMINER ADDISON: Thank you very much.

6 Any additional comments?

7 Ms. Watts, response?

8 MS. WATTS: Yes, thank you, your Honor.

9 It's common in testimony before the Commission for
10 witnesses to hand off to one another and to share
11 areas of testimony where they have different
12 perspectives on those. And that's exactly what's
13 going on with Mr. Butler. Mr. Butler and Mr. Lynch
14 have both worked together to obtain the results of
15 the insurance proceeds over the last few years.

16 I would note that Mr. Butler is the Chief
17 Risk Officer for the Company and therefore has had
18 primary responsibility making sure the insurance
19 process was pursued with diligence and that's his
20 perspective on the overall process so there's no --
21 it's not really duplicative of what Mr. Lynch will
22 testify to.

23 Secondly, it's not hearsay because
24 Mr. Lynch is here in the room and he can be and will,
25 in fact, be the next witness so he can be

1 cross-examined on all of the same issues in any case.

2 With respect to the policies themselves,
3 we are not offering them for the truth of the matter
4 asserted. Mr. Butler is not here to testify with
5 respect to what specifically the terms of those
6 policies were and they are not at issue in this case.
7 He is only referencing the policies with respect to
8 the fact that they existed and they were pursued by
9 the company judiciously. So I don't think any of the
10 motions to strike have a valid basis, and we
11 obviously disagree with the reasons for the motion to
12 strike.

13 EXAMINER ADDISON: Thank you.

14 MR. HEALEY: Your Honor, may I respond?

15 EXAMINER ADDISON: You may very briefly.

16 MR. HEALEY: It is not true that he is
17 simply identifying the existence of insurance
18 policies and stating that Duke has pursued recovery.
19 That would be fine with me if he were doing that.

20 On page 4 of his supplemental testimony
21 he is describing the substance of these policies and
22 claiming, for example at line 8 to 9, that they,
23 "were not directed at any particular parcel or
24 limited to the presence of contamination only where
25 the original MGP operations took place."

1 He's making an argument here that these
2 policies go to the fundamental question of this case
3 of inside or outside the MGP sites. That's not just
4 citing the existence of insurance policies. He is
5 purporting to summarize the contents of those
6 policies to support Duke's position. And that is
7 what I object to is those types of references that
8 attempt to bring the substance of the policies into
9 the case even though he hasn't even looked at the
10 vast majority.

11 EXAMINER ADDISON: Thank you.

12 Any additional comments?

13 I will be denying the motion to strike.
14 As noted by Ms. Watts, Mr. Lynch is available to be
15 cross-examined here today. And I will invite the
16 parties to certainly ask Mr. Lynch, when he is on the
17 stand, to corroborate if this is an accurate
18 characterization of his testimony. I will extend a
19 significant amount of latitude as to questions
20 relating to the statements in Mr. Butler's testimony
21 during his cross as well as Mr. Lynch on this
22 particular point.

23 MR. HEALEY: Your Honor, may I ask, if we
24 get to Mr. Lynch and determine that he similarly
25 lacks knowledge with regard to the 100 policies, can

1 we revisit the motion to strike Mr. Butler's
2 testimony?

3 EXAMINER ADDISON: Absolutely.

4 MR. HEALEY: Thank you.

5 EXAMINER ADDISON: Any additional motions
6 to strike?

7 MR. HEALEY: That's all I have, your
8 Honor.

9 EXAMINER ADDISON: Thank you.

10 MS. WHITFIELD: That's all I have, your
11 Honor.

12 EXAMINER ADDISON: Any additional?

13 MS. BOJKO: I do not have any additional.

14 EXAMINER ADDISON: Any additional motions
15 to strike from other parties?

16 Okay.

17 MR. HEALEY: Can we go off the record for
18 a moment?

19 EXAMINER ADDISON: Let's go off the
20 record.

21 (Discussion off the record.)

22 EXAMINER ADDISON: Let's go back on the
23 record.

24 Mr. Healey.

25 - - -

CROSS-EXAMINATION

By Mr. Healey:

Q. Mr. Butler, are you testifying as an expert witness today?

A. No, I am not.

Q. And given you are not testifying as an expert, you would not claim to have any expertise on the interpretation of legal statutes, correct?

A. That's correct.

Q. And given that you are not testifying as an expert, you are not testifying as a regulatory ratemaking expert, correct?

A. That's correct.

Q. And you are, therefore, not testifying as an expert on the interpretation of legal opinions, correct?

A. That's correct.

Q. And you are not testifying as an expert on the interpretation of administrative orders, correct?

A. Can you repeat that? Can you use the microphone? I am having trouble hearing you.

Q. Sure. That's fine.

MS. WATTS: Also, Chris, can I ask you to slow down?

1 MR. HEALEY: Yes. A little bit of Bryce
2 McKenney rubbing off on me.

3 A. If you could repeat the last question.

4 Q. Sure. Is that better?

5 A. Yes. Thank you.

6 Q. Given that you are not testifying as an
7 expert today, you would agree you are not -- that you
8 are not testifying as an expert in the interpretation
9 of administrative orders, correct?

10 A. That's correct.

11 Q. And since you are not testifying as an
12 expert, you are not testifying as an insurance
13 expert, correct?

14 A. That's correct.

15 Q. Can you turn back to Mr. Bone's testimony
16 from Case 15-452.

17 MS. BOJKO: I'm sorry, which one Chris?

18 MR. HEALEY: 15-452, Duke Exhibit 18.

19 Q. And on page 6 of his testimony, line 6,
20 he notes that Duke Energy Ohio purchased
21 approximately 100 policies covering the -- the period
22 1940 to 1985, correct?

23 A. It says that they purchased 100 policies.
24 It does not refer to -- the question does refer to
25 the period so, yes, that's correct.

1 Q. And you have not personally reviewed all
2 100 of these policies, correct?

3 A. Correct.

4 Q. And, in fact, you have not reviewed any
5 of them in their entirety, correct?

6 A. That's correct.

7 Q. And you can't say for sure how many you
8 have reviewed at all, correct?

9 A. That's correct.

10 Q. And it could be fewer than 10?

11 A. It could but it also could be more than
12 10.

13 Q. And you didn't attach any of the
14 insurance policies to your testimony, correct?

15 A. Correct.

16 Q. Now, you are aware that Duke has reached
17 settlement agreements with various of its insurers
18 related to these cases, correct?

19 A. Correct.

20 Q. And you didn't attach any of those
21 settlement agreements to your testimony, did you?

22 A. I did not.

23 Q. Did you personally negotiate with the
24 insurers to reach these settlement agreements?

25 A. I was directly involved in the

1 negotiation, yes. In some of the negotiations.

2 Q. But not in the capacity as an attorney,
3 correct?

4 A. Not as an attorney, no.

5 Q. I would like to talk a little bit about
6 your experience. You assumed your current role as
7 Senior Vice President, Global Risk Management and
8 Insurance and Chief Risk Officer in 2016, correct?

9 A. That's correct. February 20 of '16.

10 Q. And prior to that, you were Senior Vice
11 President, Tax; is that right?

12 A. That's correct.

13 Q. And in your role as Senior VP, Tax, you
14 did not work on issues related to insurance recovery
15 for Duke's MGP sites; is that right?

16 A. That's correct.

17 Q. When, in your career at Duke, did you
18 begin working on issues related to environmental
19 insurance policies?

20 A. When I assumed the role of Chief Risk
21 Officer and Senior Vice President of Risk Management
22 and Insurance in February 2016.

23 Q. So less than four years ago?

24 A. Correct.

25 Q. You reference in your testimony that you

1 had filed testimony for Duke in Case No. 08-709. Do
2 you remember that?

3 A. I do.

4 Q. And that was an electric rate case,
5 correct?

6 A. That's correct.

7 Q. And I assume that case had nothing to do
8 with MGP sites, correct?

9 A. That's correct.

10 Q. And your testimony in that case was
11 related to tax issues.

12 A. That's correct.

13 Q. And it had nothing to do with insurance,
14 correct?

15 A. I don't believe it had anything to do
16 with insurance in terms of tax issues with insurance
17 but it was primarily related to tax issues.

18 Q. And you also filed testimony in Duke's
19 most recent gas rate case, the 12-1685 case, correct?

20 A. Yes.

21 Q. And that testimony was similarly related
22 to tax issues?

23 A. Can you repeat the question again? I am
24 sorry.

25 Q. Sure. Your testimony in the 12-1685

1 natural gas rate case was also related to tax issues,
2 correct?

3 A. I don't have that testimony in front of
4 me, so I don't recall as I sit here.

5 Q. You don't remember what you testified
6 about in that case?

7 A. I don't recall specifically. I don't
8 have that in front of me.

9 Q. Sure. And you would be fairly sure it
10 wasn't related to MGP insurance issues, though,
11 correct?

12 A. I can't confirm that.

13 Q. And you also testified in Duke's 2007
14 natural gas rate case which was 07-589, correct?

15 A. I believe so, yes.

16 Q. And that testimony similarly would not
17 have been related to insurance issues, correct?

18 A. Correct.

19 Q. You first filed testimony in these
20 consolidated cases in March of 2019? Does that sound
21 right?

22 A. That's correct.

23 Q. And before that, someone named Keith Bone
24 filed testimony on behalf of Duke related to
25 insurance proceeds; is that right?

1 A. That's correct.

2 Q. And you are here, in part, to adopt the
3 previous testimony filed by Mr. Bone; is that right?

4 A. That's correct.

5 Q. And that would be five different sets of
6 testimony from the five previous years?

7 A. Yes.

8 Q. And you are adopting his -- this
9 testimony because he's retired from Duke?

10 A. That's correct.

11 Q. Did Duke ask Mr. Bone if he would be
12 willing to testify at this hearing despite his
13 retirement?

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

15 Q. Did you ask him?

16 A. I did not.

17 Q. Prior to Mr. Bone's leaving Duke, were
18 you involved in these MGP proceedings at all?

19 A. Yes.

20 Q. And what was your role prior to his
21 leaving Duke?

22 A. So he reported to me. He kept me
23 informed as to his testimony and to the proceedings,
24 and I was aware in general of the proceedings and I
25 was aware of his involvement.

1 Q. That would have been in your -- your
2 capacity as your -- in your current role, right, that
3 you start at the beginning of 2016?

4 A. That's correct.

5 Q. So prior to that you had not been
6 involved in these MGP proceedings, correct?

7 A. That's correct.

8 Q. Did you assist Mr. Bone in drafting his
9 testimony in these cases?

10 A. I did not.

11 Q. When was the first time you read the five
12 pieces of testimony that -- of his that you are
13 adopting?

14 A. I don't recall the specific first time
15 but after I came into the role, the current role that
16 I am in, and he was filing these, I did review those
17 and have discussions with him.

18 Q. Have you read each of those pieces of
19 testimony cover to cover?

20 A. I have.

21 Q. And when you were drafting your initial
22 March 2019 testimony in Case 19-174, did you have any
23 conversations with Mr. Bone regarding his prior
24 testimony?

25 A. I don't recall specifically.

1 Q. Did Mr. Bone assist you in drafting that
2 testimony?

3 A. He did not.

4 Q. Did he assist you in drafting your
5 supplemental testimony?

6 A. He did not.

7 Q. Have you had any conversations with
8 Mr. Bone about your supplemental testimony?

9 A. I have not.

10 Q. So you wouldn't know whether he would
11 agree or disagree with it, correct?

12 A. I would not.

13 Q. You testified earlier today that you have
14 not personally reviewed each of the approximately 100
15 relevant insurance policies that Duke identified,
16 correct?

17 A. Correct.

18 Q. And that being the case, you couldn't say
19 for sure what was in the policies and what wasn't in
20 the policies, correct?

21 A. I could not say for sure, but I do have a
22 general understanding of -- of the -- of the policies
23 and what they cover.

24 Q. And that general understanding was gained
25 from reviewing, in part, possibly less than 10 of the

1 100 policies?

2 A. That, and also conversations through the
3 process of settlement, direct conversations with the
4 insurance companies, their counsel, their business
5 folks, of their view of what was in the policies, and
6 the whole process of the settlement process.

7 Q. So your understanding of the policies is
8 based, in part, on the representations of adverse and
9 Duke's company lawyers?

10 A. I wouldn't say they were always adverse.

11 Q. You would not say that when you were
12 seeking coverage from an insurer through litigation
13 that they were adverse to Duke?

14 A. At times they were but at times we were
15 able to reach settlement so they were not always
16 adverse.

17 Q. Would you say that they were -- obviously
18 after the settlement and the case is over, they are
19 not adverse. You would deem an insurance company to
20 be not adverse to you during a settlement negotiation
21 in litigation?

22 A. I think there was some good discussions
23 and at times they were not adverse in the settlement
24 discussions. At times we saw eye to eye on points
25 and we reached agreement.

1 Q. Let's look at page 7 of your supplemental
2 testimony, please.

3 A. I'm there.

4 Q. And on line 7, the last word "the" and
5 going to the next line says the insurance policies
6 were not tied to a specific year. Do you see that?

7 A. I do.

8 Q. Now, again, not having reviewed every
9 single insurance policy, you can't know that for
10 sure, can you?

11 A. That's correct. But the insurance
12 policies -- there were 100 insurance policies but not
13 all 100 were actually resolved as part of the
14 settlement.

15 Q. Do you know about how many of the 100
16 were part of the settlement -- were part of the
17 settlements?

18 A. I do not.

19 Q. So you wouldn't be able to say whether
20 you reviewed all the insurance policies that were, in
21 fact, subject to the settlements, correct?

22 A. That's correct.

23 Q. Now on the same page, same line, you also
24 note that the insurance policies were not tied to a
25 specific boundary of real property. Do you see that?

1 A. I do.

2 Q. And again, not having reviewed all of
3 them in their entirety, you can't say that with
4 certainty, can you?

5 A. I cannot.

6 Q. And the same would go for your comment
7 about them not being tied to a location of
8 contamination or a type of contamination, correct?

9 A. That's correct.

10 Q. To your knowledge, do any of the
11 insurance policies say anything about whether Duke's
12 customers should pay for environmental remediation?

13 A. To my knowledge, they do not.

14 Q. And the insurance policies don't say
15 anything about whether any insurance proceeds, paid
16 to the insured, should be passed on to customers or
17 not, correct?

18 A. To my knowledge, they do not.

19 Q. That would be a fairly unusual provision
20 in an insurance policy, wouldn't it?

21 A. From the insurance policies I have
22 reviewed in detail, that would be very unusual.

23 Q. Now, are you testifying today that
24 customers should not get all of the insurance
25 proceeds in this case?

1 A. I am.

2 Q. And is that your legal opinion?

3 A. I'm not a lawyer so I can't give a legal
4 opinion.

5 Q. And if you have that opinion, are you
6 basing that on any particular statute?

7 A. Repeat the question, please.

8 Q. Sure. Is your opinion that customers
9 should not get all the insurance proceeds based on --
10 based on a particular statute?

11 A. It is not.

12 Q. And is it based on any particular PUCO
13 rule?

14 A. It is not.

15 Q. And is it based on any section of the
16 Ohio Administrative Code?

17 A. It is not.

18 Q. And so while you might think that
19 splitting the insurance proceeds between customers
20 and Duke is fair, you don't actually know whether
21 that would be legally required, correct?

22 A. I do not know that if that's legally
23 required, correct.

24 Q. And, in fact, you wouldn't even know if
25 it's legally permissible, would you?

1 A. I would not.

2 Q. You are aware that Duke has collected
3 more than \$55 million in insurance proceeds through
4 settlements, correct?

5 A. Correct.

6 Q. And you are also aware that Duke is
7 seeking recovery in these cases for 2013 to 2018 of
8 about \$46 million?

9 A. I don't know the exact number.

10 Q. Does the \$46 million sound about right to
11 you?

12 A. I don't know the number so I can't -- I
13 can't answer yes or no.

14 Q. Sure. To your knowledge Duke has not
15 passed any of the insurance proceeds on to its
16 customers, correct?

17 A. At this point we have not.

18 Q. And so, therefore, Duke has in its
19 possession the \$55 million-plus of insurance proceeds
20 that it has collected, correct?

21 A. That's correct.

22 Q. And Duke could be using that money and
23 investing it and earning a return on it, correct?

24 A. It could, yes. I don't know if it is but
25 it could.

1 Q. Has Duke -- has Duke accrued any interest
2 on those proceeds that will be passed on to
3 customers?

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

5 Q. Can you please turn to page 3 of
6 Mr. Bone's testimony from Case 15-452, please.

7 A. I'm there.

8 Q. And on line 15 to 16, there is a
9 reference to comprehensive general liability or
10 umbrella/excess liability policies, do you see that?

11 A. I do.

12 Q. Can you tell me what a comprehensive
13 general liability policy is?

14 A. It's simply a liability policy that
15 broadly covers liability that the Company might have
16 imposed on it.

17 Q. And does Duke currently have that type of
18 policy for its Ohio operations?

19 A. Currently as in right now?

20 Q. Yes.

21 A. Yes, we do.

22 Q. And you would consider it good practice
23 for a large utility, like Duke, to have such a policy
24 at all times, correct?

25 A. Yes.

1 Q. Can you tell me what an umbrella/excess
2 liability policy is?

3 A. It's very similar to a comprehensive
4 general liability. It's just all -- it covers all
5 types of liability.

6 Q. And, again --

7 A. From third -- liability from third
8 parties.

9 Q. And again you would consider it good
10 business practice for a large utility company, like
11 Duke, to have such policies, correct?

12 A. Correct.

13 Q. On page 4 of Mr. Bone's testimony that I
14 just asked you to pull out, starting at line 13, he
15 describes the process that Duke took to locate these
16 historic policies; is that a fair summary?

17 A. Let me just make sure we are on the right
18 line. Line 13 is the end of the question.

19 Q. Sorry. Yeah, line 11 is the question and
20 then the answer starts on line 14.

21 A. Okay. So could you repeat your question
22 again?

23 Q. Sure. I am just stating, just to lay
24 some foundation, he is describing the process that
25 Duke went through to identify and locate the

1 historical policies here, correct?

2 A. Let me take a second and read it, please.

3 Q. Sure.

4 A. That is correct.

5 Q. And on line 16, he states that Duke
6 retained outside coverage counsel, K&L Gates, LLP, to
7 review the Company's insurance files and other
8 sources of available information. Can you tell me
9 what those other sources of available information
10 are?

11 A. I think they would be broker files that
12 we have, so correspondence with our insurance
13 brokers. They would also be just general files where
14 we might have insurance information.

15 Q. So those would all be internal Duke
16 files?

17 A. No. They may be -- they may be broker
18 files. We may have contacted our brokers and asked
19 them what policies that they have.

20 Q. On line 20 of the same page, Mr. -- or I
21 guess it's line 19 to 20, Mr. Bone refers to an
22 insurance archeologist. Can you tell me what an
23 insurance archeologist is?

24 A. They are a specialist who is able to go
25 and research history about insurance policies.

1 Q. Okay. How does one become an insurance
2 archeologist just so I know how to do that?

3 A. I don't know.

4 Q. On page 5 of the same testimony, line 5,
5 Mr. Bone states that there was evidence -- sorry,
6 line 4 to 5, evidence of general liability policies
7 issued to the Company over the period from 1940 to
8 1985. Do you see that?

9 A. I do.

10 Q. And based on your experience and your
11 testimony today, you would expect that Duke almost
12 certainly had general liability policies before 1940,
13 correct? Or Duke's predecessors?

14 A. I can't say that for a fact, no.

15 Q. So you believe it's possible that a
16 sophisticated utility company, operating in the 1920s
17 and 1930s, would have no insurance policies?

18 MS. WATTS: Objection. Assumes facts not
19 in evidence.

20 EXAMINER ADDISON: Mr. Healey.

21 MR. HEALEY: I am asking if he knows. I
22 am not assuming that they do or don't exist. I am
23 asking if he knows.

24 MS. WATTS: I was objecting to the
25 characterization of a sophisticated company in 1940.

1 MR. HEALEY: I will reask.

2 EXAMINER ADDISON: Thank you, Mr. Healey.

3 Q. (By Mr. Healey) Do you believe that
4 companies were not sophisticated in the 1920s and
5 1930s?

6 A. I have no idea. I can't answer that
7 question.

8 Q. Do you have any experience, outside of
9 this case, in the process of identifying historical
10 insurance policies?

11 A. Outside of this specific case?

12 Q. Yes.

13 A. Yes, I do.

14 Q. And can you tell me a little bit about
15 that experience.

16 A. Yes. In another matter where we're also
17 looking at historical policies, I am directly
18 involved in looking and researching and understanding
19 where we might have that information on historical
20 policies.

21 Q. And does that matter relate to MGPs?

22 A. It does not.

23 Q. And in that matter, did you, in fact,
24 locate historical insurance policies?

25 A. We did.

1 Q. And what were the approximate time frame
2 of the policies you located in that other matter?

3 A. These are related to other Duke
4 affiliates so not specific to Duke Energy Ohio, but
5 we were able to locate some policies all the way back
6 to the 1920s.

7 Q. So you are, in fact, aware that companies
8 like Duke and its predecessors, in fact, at least at
9 some point had insurance policies back to the 1920s,
10 correct?

11 A. That's correct.

12 Q. But you don't know whether Duke Ohio or
13 its predecessors had any policies in the 1920s or
14 1930s, correct?

15 A. I do not.

16 Q. And if Duke had policies during that
17 period, for example a general liability policy, then
18 you would have pursued insurance recovery under those
19 policies as well, correct?

20 MS. WATTS: Your Honor, again, I am going
21 to object because Mr. Healey is asking about Duke in
22 earlier years and I think we may be confusing
23 corporate entities from that time period.

24 MR. HEALEY: I will reask, your Honor.

25 EXAMINER ADDISON: Thank you very much.

1 Q. (By Mr. Healey) If Duke had located
2 insurance policies from the 1920s or 1930s that
3 applied to Duke's predecessor at the time, then Duke
4 would have pursued recovery under those policies, as
5 well, in these cases, correct?

6 A. If we believe that it would have provided
7 coverage for this MGP-associated contamination, yes,
8 we would have.

9 Q. And, in fact, it's certainly possible
10 that Duke's predecessors did, in fact, have said
11 policies in the 1920s and 1930s, correct?

12 A. I can't answer that question.

13 Q. You can't answer whether it's possible?

14 A. I can't.

15 Q. So it's possible that it's impossible?

16 A. It's -- it's possible and it's also
17 possible that they did not have that.

18 Q. Right, that's what I am asking.

19 A. Yes.

20 Q. It could go either way.

21 A. It could go either way, correct. I do
22 think that the Company was prudent in hiring an
23 archeologist and looking back and trying to identify
24 all policies that it could claim under this case.

25 MR. HEALEY: Your Honor, I move to

1 strike. There was no question pending.

2 MS. WHITFIELD: I would second that.

3 EXAMINER ADDISON: Thank you.

4 MR. HEALEY: I don't have any more
5 questions, so the one bite couldn't apply.

6 EXAMINER ADDISON: Well, I am very sorry
7 about that. It may help Ms. Bojko, so. But I will
8 allow the answer to stand.

9 Mr. Butler, if you could, from now on,
10 just answer counsel's question and counsel's question
11 only. Ms. Watts will be able to bring up any
12 additional information on redirect. Thank you.

13 MR. HEALEY: Thank you, your Honor.
14 That's all I have.

15 EXAMINER ADDISON: Thank you, Mr. Healey.

16 MS. BOJKO: Your Honor, we are changing
17 the order.

18 MS. WHITFIELD: If that's okay, I am
19 going to jump ahead.

20 EXAMINER ADDISON: Absolutely,
21 Ms. Whitfield.

22 MS. WHITFIELD: Thank you.

23 - - -

24

25

CROSS-EXAMINATION

By Ms. Whitfield:

Q. Just to follow up on what Mr. Healey was talking to you about with respect to the searches, you or Duke is not continuing to search for any additional insurance policies, correct?

A. Not that I am aware of.

Q. Well, you would be aware, aren't you, you are the Chief Risk Officer and you manage the insurance programs at Duke?

A. No. If you are talking about specific insurance policies related to this matter, the answer is no. We are not continuing to search for any additional policies.

Q. And you -- you just referenced the insurance archeologist. Earlier in your testimony you said that it was a specialist that would search for insurance records. Where -- where would they search?

A. They would search our files. They would search broker files. They would contact insurance companies and ask them if they had copies of these policies.

Q. So when you testified earlier that "we," and I took that to mean Duke was searching those

1 files, you actually were referring to the
2 industrial -- or the insurance archeologist, correct?

3 A. Well, I think Duke was looking in its
4 files. The insurance archeologist was doing
5 additional searching for us.

6 Q. And you hired an outside law firm,
7 K&L Gates. Were they also doing searches?

8 A. Yes, I believe they were.

9 Q. You also, earlier in your testimony, said
10 with respect to the 100 insurance policies that not
11 all of them were part of the settlements in the
12 litigation. Do you recall that?

13 A. I do.

14 Q. Okay. And do you recall how many of the
15 100 were part of the settlements?

16 A. I do not.

17 Q. Duke excluded from those settlements,
18 companies, insurance companies that had -- or
19 insurance policies that had arbitration clauses,
20 correct?

21 A. There was one insurance company that had
22 an arbitration clause that we excluded from the
23 litigation because you wouldn't be allowed to file
24 litigation against them because of the arbitration
25 clause, so that's correct.

1 Q. Okay. And you have reached a settlement,
2 and I don't want you to talk about the amount of the
3 settlement, but you have reached a settlement with
4 that one insurance company, correct?

5 A. Correct.

6 Q. And you also excluded -- "you" being
7 Duke, also excluded companies that you believe were
8 insolvent from the litigation, correct?

9 A. That's correct.

10 Q. And approximately how many companies was
11 that?

12 A. I don't know the number.

13 Q. And Duke did reach a settlement with at
14 least one company that was deemed insolvent, did it
15 not?

16 A. It did.

17 Q. And that settlement was reached before
18 the litigation was filed?

19 A. It was but that was a proactive part on
20 behalf of the London-based market and that's an
21 unusual market how that works. But they reached out
22 to potential insurers in that matter and said that
23 they were trying to resolve matters that they were
24 aware of. So it was proactive on their part.

25 MS. WHITFIELD: Your Honor, I would move

1 to strike everything starting with "but" from his
2 answer as nonresponsive to my question. He did have
3 his one-bite-at-the-apple and I am sure Ms. Watts
4 will -- can address those issues.

5 EXAMINER ADDISON: Ms. Watts.

6 MS. WATTS: Your Honor, she asked if the
7 settlement was reached before the litigation was
8 filed and the answer specifically answers that exact
9 question.

10 MS. WHITFIELD: No.

11 EXAMINER ADDISON: Thank you.

12 The motion to strike will be granted
13 starting with the word but." His answer will stand
14 as it was. Ms. Watts, you can certainly bring up
15 those additional points on redirect.

16 Q. (By Ms. Whitfield) And I apologize if
17 Mr. Healey already asked you this, but you do not
18 consider yourself an environmental professional,
19 correct?

20 A. Correct.

21 Q. And you have never held a position in
22 Duke's environmental health and safety risk, have
23 you?

24 A. No, I have not.

25 Q. And you have not had any direct

1 involvement with Duke's investigation and remediation
2 efforts at the MGP sites at issue in this case, have
3 you?

4 A. I'm not sure I understand your question.
5 Could you be more specific, please?

6 Q. Well, you've had no role in the actual
7 cleanup or monitoring or managing the investigation
8 and remediation efforts physically on-site, correct?

9 A. That's correct.

10 Q. Your role has been limited, starting when
11 Mr. Bone retired, to pursuing the insurance coverage
12 for the MGP cleanup, correct?

13 A. That's not correct.

14 Q. Okay. I think you testified that you
15 supervised Mr. Bone, correct?

16 A. Correct.

17 Q. And that you would talk to him about his
18 testimony in the -- how these proceedings, the prior
19 proceedings were proceeding; is that correct?

20 A. That's correct.

21 Q. Is there anything beyond what you already
22 testified that you were doing prior to --

23 A. Yes.

24 Q. Okay. What was that?

25 A. As Chief Risk Officer, I happen to have

1 general knowledge about the various risks of the
2 company, and I view the MGP issue and the cleanup
3 associated with that as a risk of the company so I --
4 I have working knowledge of what was going on.

5 Q. And who did you get that working
6 knowledge from?

7 A. A number of different parties at Duke.

8 Q. Okay. How would that -- can you name any
9 of them? Was it particular departments?

10 A. It was environmental health and safety.
11 It was the remediation team. It was legal counsel,
12 internal and external.

13 Q. And would you get reports from them?

14 A. Mostly discussions.

15 Q. And would those discussions happen on a
16 regular basis?

17 A. Define what you mean by "regular."

18 Q. Were they weekly?

19 A. I don't recall them being weekly, no.

20 Q. Were they monthly?

21 A. I don't recall the exact cadence of the
22 discussions, but in my role as Chief Risk Officer, I
23 had periodic updates of what's going on at the MGP
24 operations and I continue to get periodic updates.

25 Q. You are not -- you're supporting and

1 adopting Mr. Bone's -- all of his testimony in its
2 entirety, correct?

3 A. I am.

4 Q. You had no corrections, correct?

5 A. Correct.

6 Q. Now with respect to the lawsuit that was
7 filed in Hamilton County Court of Common Pleas, do
8 you recall that being filed in July of 2016?

9 A. I do.

10 Q. And you reviewed that complaint before it
11 was filed?

12 A. I don't know if I reviewed the full
13 complaint, no, but I was aware of the complaint being
14 filed.

15 Q. And you authorized the filing of the
16 complaint, correct?

17 A. I did not personally authorize it, no.

18 Q. Okay. Who would have authorized that?

19 A. I don't know.

20 Q. And you have -- you have reviewed the
21 complaint at some point in time?

22 A. I don't recall if I have reviewed it in
23 its entirety but I'm sure I reviewed parts of it.

24 Q. And that lawsuit was filed against 16
25 historical insurers or insurer groups; are you aware

1 of that?

2 A. I don't know if the number 16 is exact,
3 but I do know that we filed them against a number of
4 the insurers.

5 Q. If I could have you turn to Mr. Bone's,
6 it's Exhibit 20 in Mr. Bone's testimony in the '17
7 case.

8 A. Page what?

9 Q. I am getting to it. Just one second. It
10 should be page 4, lines 10 -- well, it starts on
11 line 9, but it says, consequently, on July 18, 2016,
12 Duke Energy Ohio filed a lawsuit in the Common Pleas
13 Court of Hamilton County, Ohio, against 16 of its
14 historical insurers or insurance -- insurer groups.
15 Did I read that correctly?

16 A. You did.

17 Q. And you have no reason to dispute what
18 Mr. Bone said?

19 A. No reason at all.

20 Q. In fact, you are adopting that.

21 A. I am.

22 Q. Duke does not have currently any
23 outstanding insurer claims pending for these MGP
24 sites, does it?

25 A. Not that I am aware.

1 Q. Would you be aware of any such claims
2 that -- if they were pending?

3 A. Most likely, yes.

4 Q. You are not aware of any outstanding
5 arbitrations or upcoming lawsuits related to these
6 insurance policies, are you?

7 A. I am not aware of any.

8 MS. WHITFIELD: Can we go off the record
9 just one second?

10 EXAMINER ADDISON: Yes. Of course.

11 (Discussion off the record.)

12 EXAMINER ADDISON: Let's go back on the
13 record.

14 Ms. Whitfield.

15 Q. (By Ms. Whitfield) And through Duke's
16 efforts, are you aware that Duke has collected
17 \$56,231,987 in insurance proceeds?

18 A. I can't tell you that exact number. I
19 can tell you 56.2 million. Beyond that, I don't know
20 the specific things. If I had a schedule to
21 reference, I could tell you that, but 56.2 million, I
22 am very comfortable saying.

23 Q. Okay. That's fair enough. And that's
24 all I have for you.

25 MS. WHITFIELD: Thank you, your Honor.

1 EXAMINER ADDISON: Thank you,
2 Ms. Whitfield.

3 Ms. Bojko, are you next?

4 MS. BOJKO: Your Honor, I don't have any
5 further questions.

6 EXAMINER ADDISON: Thank you.

7 Mr. Boehm.

8 MR. BOEHM: No questions, your Honor.

9 EXAMINER ADDISON: Mr. McNamee.

10 MR. MCNAMEE: No questions, your Honor.

11 EXAMINER ADDISON: Thank you.

12 Redirect. Ms. Watts?

13 MS. WATTS: Your Honor, may we have a
14 moment?

15 EXAMINER ADDISON: You may.

16 Let's go off the record.

17 (Discussion off the record.)

18 EXAMINER ADDISON: At this time we will
19 go back on the record.

20 Ms. Watts, any redirect?

21 MS. WATTS: No redirect, your Honor.

22 EXAMINER ADDISON: Thank you.

23 I do have just a few additional questions
24 of you, Mr. Butler.

25 - - -

EXAMINATION

By Examiner Addison:

Q. You had indicated that Duke is no longer actively searching for additional policies; is that correct?

A. That's correct.

Q. Is that because you believe that Duke has discovered all applicable policies that would apply to these particular sites?

A. Yes. I believe that Duke has done a thorough job of initially trying to search for all potential policies out there that we could file claims under.

Q. Thank you.

And can you generally -- I know the process is described quite extensively in both Mr. Bone's and your testimony. But can you generally describe how long that process took before you did make the decision to no longer actively search for additional policies?

A. I'm not sure I understand your question. So let me try to answer, and so when we initially decided to file claims against our insurance policies, we had done a lot of detailed searching, hiring -- and oftentimes you don't hire an

1 archeologist but it was a significant matter. So we
2 took those extra steps and did extensive searches so
3 there was a lot of work done in advance of filing the
4 original claims or giving notice to the insurance
5 companies of potential claims. So was that
6 responsive to your question?

7 Q. I think somewhat. I am more
8 interested -- and it may not matter but more
9 interested in just the total amount of time that was
10 dedicated to discovering any applicable insurance
11 policies.

12 A. It was months. I mean, months if not a
13 period of extensive months. So it was probably more
14 than a year that we spent because you do all that
15 research. Then you have to go in-depth through the
16 policies to determine if they apply. You have to
17 look at the history to see if these companies might
18 be insolvent. And then notify the insurers, so it
19 was -- it was an extensive period of time and
20 probably more than a year.

21 Q. Thank you.

22 Is there any way to conclusively
23 determine that all applicable insurance policies have
24 been identified?

25 A. I don't think there is any way to say

1 100 percent that you've identified but I believe the
2 Company was incredibly prudent. Again, as I said,
3 we're doing another matter of a similar nature and we
4 use the same type of process, very extensive research
5 and that one even went back to the 1920s, but it was
6 a different affiliate of Duke where we knew they had
7 insurance back to that time.

8 EXAMINER ADDISON: Thank you very much.
9 Those are all my questions. You are excused.

10 THE WITNESS: Thank you.

11 MS. WATTS: Your Honor, we would move for
12 admission of Exhibit 17 through 23.

13 EXAMINER ADDISON: Thank you. And I may
14 reserve ruling on that motion subsequent to
15 Mr. Lynch's testimony today, given my previous
16 assurances to Mr. Healey to revisit any possible
17 motions to strike at the conclusion of his testimony.

18 MS. WATTS: Thank you.

19 EXAMINER ADDISON: Mr. D'Ascenzo.

20 MR. D'ASCENZO: Thank you, your Honor.
21 For our next witness we would call Michael Lynch.

22 (Witness sworn.)

23 EXAMINER ADDISON: Thank you. Please be
24 seated. If you could just press the button and turn
25 on your microphone. Thank you very much.

1 Please proceed.

2 MR. D'ASCENZO: Thank you, your Honor.

3 May we approach?

4 EXAMINER ADDISON: You may.

5 MR. D'ASCENZO: For purposes of the
6 record, I think we have already marked it as Duke
7 Energy Ohio Exhibit 24, the direct testimony of
8 Michael J. Lynch.

9 EXAMINER ADDISON: We have.

10 - - -

11 MICHAEL J. LYNCH

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

14 DIRECT EXAMINATION

15 By Mr. D'Ascenzo:

16 Q. Okay. Good morning, Mr. Lynch.

17 A. Good morning.

18 Q. Would you please state your name and
19 business address for the record.

20 A. Michael Joseph Lynch; K&L Gates Center,
21 210 Sixth Avenue, Pittsburgh, Pennsylvania.

22 Q. Thank you.

23 Would you please provide just an
24 explanation of your occupation, please.

25 A. I am an attorney.

1 Q. And what your role is in these
2 proceedings.

3 A. I'm here to testify with respect to the
4 work Duke Energy did to seek insurance coverage,
5 discuss the scope of the insurance policies that were
6 involved in that effort, and the scope of the
7 settlement agreements that were reached with Duke's
8 historical insurance companies.

9 Q. Thank you.

10 And so did you cause to file testimony in
11 these proceedings?

12 A. I did.

13 Q. And do you have in front of you a copy of
14 what has been marked as Duke Energy Ohio Exhibit 24?

15 A. I do.

16 Q. And would you please identify that.

17 A. Yes. This is my written testimony that
18 was filed in this matter.

19 Q. And do you have any corrections or
20 changes to that testimony this morning?

21 A. I do.

22 Q. Would you please walk us through those.

23 A. Sure. If you turn to page 2, line 3,
24 there's the phrase "for, collectively, over 100 MGP
25 sites." I would change that to "over 75 MGP sites."

1 That's the first one.

2 Shall I move on to the next one?

3 Q. Yes, yes.

4 A. Okay. If you turn to page 4, line 19 and
5 20, there's a phrase "which is adjacent to the MGP
6 Sites." And that phrase is bracketed by parentheses.
7 I would just strike that phrase for clarity.

8 And then finally if you turn to page 8,
9 line 15, it currently says "No. Duke Energy Ohio is
10 still negotiating with Safety" natural -- excuse me
11 -- "National, whose Policy contained a mandatory
12 arbitration provision." I would strike all that and
13 replace it with the word "Yes." Because we have now
14 settled with Safety National. And those are the only
15 changes I would make.

16 Q. Thank you, Mr. Lynch.

17 And with those changes, if you were asked
18 the same questions this morning, would your answers
19 then be the same?

20 A. They would.

21 MR. D'ASCENZO: And, your Honor, the
22 witness is available for cross-examination.

23 EXAMINER ADDISON: Thank you very much.

24 Mr. Healey.

25 MR. HEALEY: Yes, your Honor. I don't

1 have any motions to strike, so I'll -- if others do,
2 I will defer to them.

3 EXAMINER ADDISON: Certainly.

4 Ms. Whitfield.

5 MS. WHITFIELD: Sure. I have one limited
6 motion to strike. It's on page 8, lines 1 through
7 11, where he talks about has Duke completed its
8 investigation remediation of MGP sites. We just
9 heard Mr. Lynch testify -- testify that he's here to
10 testify today about what Duke did to identify
11 insurance coverage, the scope of those insurance
12 policies, and the scope of any settlement agreements.
13 He's an outside lawyer at a law firm in Pittsburgh.
14 He's a litigator and an insurance coverage attorney.
15 He is not in environmental investigation,
16 remediation, cleanup. He has no -- under Rule 602,
17 he lacks foundation and lack of personal knowledge to
18 provide that testimony, so we would move to have it
19 stricken.

20 MS. BOJKO: What are you moving to
21 strike?

22 MS. WHITFIELD: Page 8, lines 1 through
23 11.

24 MS. BOJKO: The question?

25 MS. WHITFIELD: The question and answer.

1 MS. BOJKO: Thank you.

2 EXAMINER ADDISON: Thank you,
3 Ms. Whitfield.

4 Ms. Watts.

5 MS. WATTS: Mr. D'Ascenzo.

6 EXAMINER ADDISON: Oh, I'm so sorry.

7 MR. D'ASCENZO: It's okay. I consider
8 myself one of the girls. It's all right.

9 Mr. Lynch, as he just explained, has
10 extensive experience with MGP sites. Directly --
11 direct involvement in over 75 of them, I believe he
12 said just now. He is an expert. He has extensive
13 knowledge in MGP remediation. He has been assisting
14 Duke in the -- in its process to acquire insurance
15 proceeds related to the MGP sites. As part of that,
16 he had to acquire knowledge of the MGP sites
17 themselves, what they entailed. And as an expert,
18 he's entitled to, under Rule 703, that he can base
19 his opinion on facts that he perceives.

20 And so, for those reasons, your Honor, he
21 can testify to these matters. It's been established
22 throughout these proceedings here, which Mr. Lynch
23 has been involved with, that remediation continues
24 today.

25 EXAMINER ADDISON: Thank you.

1 Ms. Whitfield, response?

2 MS. WHITFIELD: Sure. Certainly, your
3 Honor. First of all, he is not an expert testifying
4 today about the investigation and remediation of the
5 MGP sites. He is here testifying about the insurance
6 coverage. And actually his reference to the
7 corrected 75 MGP sites was specifically seeking
8 coverage for collectively over 75 MGP sites.

9 This has to do with the actual work that
10 is being the -- environmental cleanup, remediation
11 that is being done at the sites. It would be based
12 on hearsay, out-of-court statements. If he had to
13 make himself knowledgeable, he would have learned it
14 from an outside source, and he has no foundation for
15 it, your Honor, so we move for it to be stricken.
16 Thank you.

17 EXAMINER ADDISON: Thank you very much.

18 The motion to strike will be denied.
19 We've had extensive testimony from experts that have
20 been involved with the remediation efforts at the MGP
21 sites that have come to the same conclusion, and I
22 believe the statement is relevant to the releases of
23 coverage.

24 As noted in line 10 on page 8, "the
25 releases of coverage included in the settlement

1 agreements reached with the Historical Insurers," and
2 that statement is relevant to his testimony regarding
3 the insurance proceeds. So I will be denying the
4 motion to strike.

5 MS. WHITFIELD: Thank you, your Honor.
6 That's all I have.

7 EXAMINER ADDISON: Thank you.

8 Any additional motions to strike?

9 MS. BOJKO: No, your Honor.

10 EXAMINER ADDISON: Okay. Mr. Healey.

11 MR. HEALEY: Thank you.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Healey:

15 Q. Mr. Lynch, are you testifying as an
16 expert today?

17 A. I understand that I am.

18 Q. And what would you consider to be your
19 area of expertise for purposes of your testimony
20 today?

21 A. I should start off by saying that I am a
22 little uncomfortable with the word "expert" simply
23 because in certain jurisdictions there are
24 restrictions on an attorney being able to call
25 himself or herself an expert.

1 I think it's safe to say that I have
2 significant experience, almost 30 years of experience
3 in insurance coverage, seeking coverage for
4 policyholders with respect to environmental claims.
5 In the course of that, I have worked on, as I said at
6 least, 75 MGP -- MGP sites, trying to seek coverage
7 for those including multiple other kinds of
8 environmental sites.

9 The last thing I would say that's sort of
10 the core of my experience but to do that kind of
11 work, one has to become very familiar with, for
12 example, how sites are cleaned up and what CERCLA
13 requires and what state environmental agencies
14 require.

15 So, again, I view that I am an expert on
16 the lives of my children from the ages of 1 to 10
17 and, weirdly, Marvel comic books in the 1960s. Other
18 than that, I am not that comfortable with the word
19 "expert" but I have significant experience.

20 Q. I feel like I have to make some kind of
21 joke but nothing is coming to mind.

22 A. Well, it wouldn't have been hard to top
23 that one, so.

24 Q. Generally speaking, your testimony today
25 is regarding the recovery of insurance proceeds for

1 Duke's MGP liabilities, correct?

2 A. That's certainly part of it.

3 Q. Okay. You did not include in your
4 testimony any opinion on what Duke should do with
5 those proceeds now that it has received them,
6 correct?

7 A. No. That's clearly outside the scope of
8 my testimony and my expertise.

9 Q. Sure. And you are not taking any
10 position on how the proceeds should be used or
11 treated from an Ohio-utility-ratemaking perspective,
12 correct?

13 A. That's correct.

14 Q. Now, Mr. Butler testified that he
15 understood the amount of insurance proceeds collected
16 to date to be approximately 56.2 million. Do you
17 recall that?

18 A. Yes, I do.

19 Q. And you understand that the exact number
20 would be 56,231,987, correct?

21 A. That is correct.

22 Q. Let's look at page 5 of your testimony,
23 please.

24 A. I have it in front of me.

25 Q. And on line 15, you note that Duke

1 provided notice to its historical insurers and
2 requested that they provide coverage. Do you see
3 that?

4 A. I do.

5 Q. When was that notice sent?

6 A. The first notice was sent in the
7 mid-1990s and at that time it was simply a notice to
8 the insurers that the Company -- and this was the
9 predecessor company -- had a number of former MGP
10 sites. It did not purport to tell the insurers that
11 there was any need to investigate or remediate them
12 because, at that time, from my understanding, there
13 was no contamination found.

14 Subsequently, in December of 2012, notice
15 went out, sort of a follow-up notice went out to
16 insurance companies, explaining what the status of
17 the sites were, and then there was yet another
18 notice, doing the same thing for other insurance
19 companies, I believe in February of 2013.

20 Q. Now, you are aware that Mr. Butler
21 testified earlier that Duke, with some assistance,
22 located around 100 insurance policies, correct?

23 A. Correct.

24 Q. Was a notice sent to each insurer for
25 each of those approximately 100 policies?

1 A. Notice was given to all the carriers
2 which there was any reasonable chance of seeking
3 recovery. Sitting here right now, this is going back
4 a number of years, I can't remember whether notice
5 was given to 100. Well, we are -- I'm confusing, you
6 aren't, "policies" and "insurers." I believe that
7 all the insurers that were found were given notice
8 but I can't say that for sure. I can say that all of
9 the insurers, for which there was any reasonable
10 chance of obtaining recovery, were put on notice.

11 Q. Did any of the insurers, that received
12 such a notice, agree to provide coverage in response
13 to that notice alone?

14 A. In the -- immediately no, they did not.
15 Quite adamantly they did not, so.

16 Q. Now, you are aware that Duke filed a
17 lawsuit in the Court of Common Pleas in Hamilton
18 County, Ohio, correct?

19 A. I am.

20 Q. And you generally refer to this as the
21 coverage action?

22 A. Yes.

23 Q. And multiple insurers, I believe it was
24 16, were named as defendants?

25 A. 16 groups of insurers.

1 Q. Thank you for clarifying.

2 A. Sure.

3 Q. You mentioned and Mr. Butler covered the
4 fact that at least some insurers, or perhaps it was
5 only one, had an arbitration clause; is that right?

6 A. One did, correct.

7 Q. Just one?

8 A. Yes.

9 Q. And there was also mention that insolvent
10 insurers were not named as defendants, correct?

11 A. Yeah. By law, you can't do that. You
12 can't sue an insolvent insurer.

13 Q. And do you know how many insurers were
14 insolvent?

15 A. That's actually a more-complicated
16 question than you might think it would be. So let me
17 start with the easy part and then we will move to the
18 deeper waters.

19 There was a relatively small number of
20 domestic insurance companies that were insolvent.
21 The Home was insolvent. There were maybe one or two
22 others. It was very small.

23 Where things become a little more
24 complicated is when you talk about the London market
25 or the London insurance companies, that's not just

1 one policy. Any particular policy that is -- that is
2 sold by the London market is not backed up by one
3 insurer but typically backed up by multiple insurers
4 and what are called syndicates. And if you really
5 want to be put to sleep, I will explain what a
6 syndicate is.

7 But the point of this is, over the course
8 of time, a number of the individual London carriers
9 that subscribe to some of these policies had gone
10 into liquidation. So I haven't counted up that
11 number. Domestic, it's a very small number. London,
12 it would be a bigger number.

13 Q. Let's talk about the domestic ones.

14 A. Sure.

15 Q. When you say "insolvent," do you mean
16 they were subject to pending bankruptcy cases?

17 A. Well, it would depend on the time frame
18 we are talking about. As of the time that we got
19 involved, The Home had been insolvent for many years.
20 I think they went into insolvency in the 90s and so
21 that was the case.

22 I think it is also the case -- I would
23 have to go back and look but I think it's also the
24 case that none of the domestic carriers went into
25 insolvency during the pendency of the lawsuit,

1 although some of the London ones did.

2 Q. Now, you mentioned an insurance company
3 called The Home?

4 A. Yes.

5 Q. Do you know the names of the other
6 domestic insurers that you feel to be insolvent?

7 A. Sitting here right now, I don't. I
8 apologize.

9 Q. That's okay.

10 When you say The Home went into
11 insolvency, do you mean they filed for bankruptcy
12 under the United States bankruptcy code?

13 A. Yeah. They actually went into
14 liquidation, that's the term. It's similar to
15 bankruptcy. But, yes, they did that.

16 Q. And so, The Home just no longer exists as
17 a result of liquidating; is that fair?

18 A. The Home is -- The Home is an inactive
19 insurance company. It no longer exists. There is a
20 liquidator that is continuing, over time, to pay out
21 whatever assets The Home has, but you are right, the
22 company, itself, no longer exists.

23 Q. The liquidation from the 1990s is
24 ongoing?

25 A. Yes. These liquidations can go on for

1 decades.

2 Q. Do you know what the bar date was for
3 filing claims in that bankruptcy case?

4 A. I believe it was back in the 1990s.

5 Q. Duke did not file a claim in that case?

6 A. That was before my time, so I don't know
7 one way or the other.

8 Q. And it's your understanding that Duke has
9 reached a settlement with all of the insurers that
10 were named in the action, correct?

11 A. That's correct.

12 Q. Has Duke filed any other lawsuits other
13 than the coverage action as it pertains to the Ohio
14 MGP sites?

15 A. Not that I am aware of. Certainly if you
16 mean insurance coverage actions --

17 Q. Sorry, yes, insurance coverage actions.

18 A. No, no, I'm sorry, the answer to that is
19 clearly no.

20 Q. Now we've talked about the 100 or so
21 insurance policies from 1940 to 1985, I believe.

22 A. Uh-huh.

23 Q. It's certainly possible that there were
24 insurance policies prior to 1940, correct?

25 A. Well, anything is possible. If that's

1 all you want, yes, it's possible.

2 Q. Sure.

3 A. There was a greater explanation but it's
4 certainly possible.

5 Q. And is there something particular about
6 the year 1940 that that's why the insurance policies
7 start at 1940 as opposed to earlier?

8 A. Well, 1940 was the first policies we were
9 able to find. It's possible there were policies
10 before that but a very, very, very thorough search,
11 done over a number of years, and I heard Mr. Butler's
12 response but it wasn't just over a number of months.
13 It was over a number of years the policies were
14 searched for. So is it possible something is out
15 there, it's possible. But MGPs tended not to get
16 liability policies early until later.

17 Q. Sure. I guess what I am getting at --
18 let's take a step back. In 1986, you understand that
19 the nature of policies that might cover these claims
20 changed, right? Generally.

21 A. Absolutely, yes.

22 Q. Was there a similar event in 1940 that
23 would cause that to be a cutoff?

24 A. No. That's a great question. The answer
25 is no.

1 Q. Now, you are an attorney with the law
2 firm of K&L Gates, correct?

3 A. Yes.

4 Q. And you have never testified before the
5 PUCO prior to today, have you?

6 A. Testified, no.

7 Q. And have you practiced before the PUCO as
8 an attorney?

9 A. I've made presentations to the PUCO every
10 year for the last four or five years, but I don't
11 believe that I practiced in the way you are referring
12 to.

13 Q. Sure. You have not litigated a --

14 A. That's correct.

15 Q. -- pending case.

16 A. That's absolutely correct.

17 THE WITNESS: I apologize. I will do
18 better.

19 EXAMINER ADDISON: Thank you.

20 MR. HEALEY: Your Honor, I would like to
21 mark OCC's next exhibit. I believe we are at 18.

22 EXAMINER ADDISON: I believe that's
23 correct.

24 MR. HEALEY: And if I may, OCC Exhibit 18
25 is Mr. Lynch's -- a copy of his attorney profile from

1 the K&L Gates website. May I approach?

2 EXAMINER ADDISON: You may. It will be
3 so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. (By Mr. Healey) Mr. Lynch, I have handed
6 you what's now been marked OCC Exhibit 18. Do you
7 recognize this as your online profile from your law
8 firm's website?

9 A. I recognize it as a profile. I can't
10 tell you whether it's the most recent one. It could
11 be. I just don't know one way or the other.

12 Q. Okay. Do you see it's -- the top left
13 shows the date that I printed it would be November 6?

14 A. I do see that.

15 Q. Have you updated your profile since
16 November 6?

17 A. I haven't. That doesn't mean the people
18 in my firm have not.

19 Q. Okay. Now, the first sentence of your
20 description says "Mr. Lynch has been a partner in the
21 firm's commercial litigation group for 38 years and
22 in its insurance coverage group for 27 years"; is
23 that right?

24 A. That's what it says.

25 Q. And under your education on the left, it

1 says "J.D. University of Virginia School of Law,
2 1981," correct?

3 A. Correct.

4 Q. And that would be 38 years ago?

5 A. Yes.

6 Q. And so your profile suggests that you
7 graduated from law school and immediately made
8 partner at K&L Gates?

9 A. That is a very good catch. It is safe to
10 say nobody was interested in making me partner, 38
11 years ago, so.

12 Q. So you were not partner immediately upon
13 graduating?

14 A. No, that's a good catch. Our marketing
15 department will hear about this, this afternoon.

16 Q. Sure. Do you know if there is any other
17 embellishments in your online profile?

18 A. I wouldn't agree it was an embellishment.
19 It would be fairly foolish for somebody to
20 intentionally do that. That was a mistake.

21 Q. And I am not suggesting it was
22 intentional. I hope you know that.

23 Let's go -- let's go back to your
24 testimony, please, page 8.

25 A. Yes.

1 Q. Actually, I apologize, page 4. Now,
2 line 19, your counsel asked you if you had any
3 corrections to your testimony, and you previously
4 noted in your testimony that the Ohio River was
5 adjacent to the MGP sites but then you struck that,
6 correct?

7 A. Right.

8 Q. Did you believe that was a true statement
9 when you filed your testimony?

10 A. When I reread it, I realized it was a
11 confusing statement. So I didn't think of it as
12 untrue, but when you go back and read something and
13 realize that it was confusing and in fact misleading.

14 Q. But you believed, at the time you filed
15 your testimony, you believed it to be true, correct?

16 A. Certainly everything in my testimony I
17 believe to be true.

18 MR. HEALEY: Thank you.

19 That's all, your Honor.

20 EXAMINER ADDISON: Thank you, Mr. Healey.
21 Ms. Whitfield.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Whitfield:

25 Q. Good morning, Mr. Lynch.

1 A. Good morning, Ms. Whitfield.

2 Q. I have a few questions.

3 A. Certainly.

4 Q. Your testimony as you -- as you just did,
5 you corrected your testimony to 75 MGP sites that
6 you've represented various utility clients across
7 several states. Do you recall that?

8 A. I do.

9 Q. Okay. Were any of those other utility
10 clients other Duke-affiliated entities?

11 A. Yes. Well, not at the time.

12 Q. Not at the time that you were --

13 A. Representing them.

14 Q. Okay. But they have since become --

15 A. Yes.

16 Q. And have you represented Duke Energy Ohio
17 on any other matters other than this action you are
18 here testifying about?

19 A. I am doing -- currently doing a very
20 small project for them in connection with another
21 matter.

22 Q. Okay. Now, your firm has an
23 environmental, land, and natural resources group,
24 does it not?

25 A. It does.

1 Q. And you are not a part of that group,
2 correct?

3 A. That's correct.

4 Q. And you were retained by Duke Energy Ohio
5 in 2013?

6 A. That's incorrect.

7 Q. When were you retained?

8 A. It was closer to 2010.

9 Q. And how many attorneys from your firm
10 have worked on the insurance coverage issues for Duke
11 Energy Ohio relating to these MGP sites?

12 A. I would -- well, there may be -- it's
13 possible there were small research projects done by
14 junior associates that I am not remembering. I would
15 guess it was in the neighborhood of six.

16 Q. Approximately six attorneys with a
17 give-or-take with maybe some lower-level associates
18 doing some research?

19 A. Yes. This might be more helpful. There
20 was -- it was -- the case was run principally by
21 myself and one of my partners, John Sylvester. For
22 certain discrete matters relating to it, my partner
23 Kay Brady did some work, although that was limited.
24 Another partner, John Hagan, did some work. And then
25 I believe there were -- I believe there were two

1 associates who did more significant amount of work.
2 That's my best recollection.

3 Q. Okay. Thank you.

4 And what was your hourly rate that you
5 charged Duke for your work relating to this
6 proceeding?

7 A. It would have changed over time. And
8 your next question is going to be what it was at one
9 point and I can't tell you. The reason I can't tell
10 you is that I have an hourly rate set by the firm but
11 it is not unusual for us to give discounts to
12 different clients and I am not responsible for that.
13 And our principal relationship with Duke Energy is
14 not out of the Pittsburgh office. It is out of our
15 Charlotte office and they do all the billing so I
16 don't know.

17 Q. So it's possible that Duke Energy was
18 paying your standard hourly rate, that's possible,
19 correct?

20 A. I know that is not the case. I just
21 don't know what they did pay.

22 Q. Okay. And do you know if -- well, you
23 can answer this. Your firm was not handling these
24 matters on a contingency basis, that's fair, correct?

25 A. That's absolutely correct.

1 Q. And I think your reference to possibly
2 discounted hourly rates mean there may have been some
3 type of alternative fee arrangement. You just did
4 not handle that, correct?

5 MR. D'ASCENZO: I am going to object,
6 your Honor. We are starting to get into things that
7 are protected under attorney-client privilege. You
8 know, we are starting to get into issues of relevancy
9 here. So I would suggest that -- or recommend that,
10 you know, this line of questioning be stricken at
11 this point.

12 EXAMINER ADDISON: Ms. Whitfield.

13 MS. WHITFIELD: Yes, with respect to the
14 relevancy argument, the cost of the litigation is
15 directly at issue because the 2002 -- 2012 Order says
16 that all they can net against the insurance proceeds
17 is the cost of recovering those insurance proceeds,
18 so I am trying to gather some information as to what
19 the basis of those costs were, how much he was
20 charging to do this work.

21 As to privilege, the amounts, I am not
22 asking for substance. I did not ask him what the
23 particular work was that his partners did or the
24 different topic areas that they covered. I am just
25 asking what type of pay arrangement there was, if he

1 knows. I think he testified earlier that the Duke
2 relationship is handled outside of the Pittsburgh
3 office, so I'm guessing he probably doesn't know the
4 answer to this but I just want to confirm that.

5 EXAMINER ADDISON: I will allow the
6 question. He can answer if he knows.

7 THE WITNESS: And I apologize, can I have
8 the question back, please?

9 EXAMINER ADDISON: You may.

10 (Record read.)

11 MS. WHITFIELD: I will just restate it.

12 THE WITNESS: Sure.

13 Q. (By Ms. Whitfield) Okay. Is it fair to
14 say that there may have been some type of alternative
15 fee arrangement or discounted fee arrangement with
16 Duke Energy Ohio, but you would not have handled that
17 directly?

18 MR. D'ASCENZO: Objection, compound
19 question.

20 EXAMINER ADDISON: I will provide him
21 significant amount of latitude to answer fully.

22 A. There was definitely a discounted rate.
23 And to the best of my knowledge, and I am fairly
24 confident this is correct, there was no alternative
25 fee arrangement other than the discounted rate. I

1 just don't -- I can't tell you what the percentage
2 discount was.

3 Q. And you don't know what your discounted
4 hourly rate was on these cases, correct?

5 A. That's correct.

6 Q. Now, you testified with -- to
7 Mr. Healey's question about the 100 insurance
8 policies that were located, correct?

9 A. Correct.

10 Q. And with respect to the coverage action
11 which is the Hamilton County Court of Common Pleas
12 case, how many of those 100 policies were covered by
13 that litigation?

14 A. I don't remember the exact number right
15 now. I can provide a little more information but the
16 direct answer to your question is I don't know.

17 Q. Was it more than 50 of those insurance
18 policies?

19 A. There would be more than 50 insurance
20 policies that were involved. Again, depending on how
21 you count the London market. Again, I can explain or
22 not, however you --

23 Q. That's fine. I just was looking for a
24 ballpark.

25 Duke made its first formal settlement

1 demands to its key historical insurers in
2 mid-December of 2014; does that sound right to you?

3 A. Its first formal settlement demands?
4 That may be correct. It would be -- it would have
5 been somewhere between December 2012 and probably
6 that time period. You may absolutely be right.

7 Q. If -- you worked with Mr. Bone while he
8 was at Duke -- Duke Ohio, correct?

9 A. Correct.

10 Q. And if he testified that the first formal
11 settlement demands, in testimony he filed in the '15
12 case which I think is -- you can refer to it if you
13 want, Exhibit 18 up there, if he testified that the
14 first formal settlement demands were in mid-December
15 of 2014, you would not dispute that, correct?

16 A. Yeah, I have no reason to believe that's
17 wrong.

18 Q. And Duke reached one settlement in 2016,
19 correct?

20 A. Correct.

21 Q. That was the first settlement?

22 A. It was.

23 Q. And is there still -- there has been a
24 partial payment on that settlement, correct?

25 A. Well, if we are talking about the Aegis

1 settlement, which is the first one I remember,
2 there's been a complete payment on that. If we are
3 talking about Orion, which was one of the companies
4 in liquidation, you are correct there has been a
5 partial payment on that. And the way these things
6 typically work is payments get paid out over time.

7 Q. And with respect to the Aegis settlement,
8 you believe that was reached in 2016?

9 A. I remember it being -- well, let me take
10 a step back. Our settlement negotiations with Aegis
11 started earlier than with other carriers, other than
12 possibly Orion, and I believe that was the first one
13 we reached. And I believe that it was reached very
14 shortly after the litigation was started but I could
15 be off on a few months by that -- on that.

16 Q. Okay. Was -- Orion was not named in the
17 2016 coverage action, were they?

18 A. Correct. They were in liquidation and
19 you couldn't sue them.

20 Q. And so if you reached a settlement with
21 Orion prior to the litigation being filed, would that
22 surprise you?

23 A. No.

24 Q. And with respect to Orion, there is still
25 a payment to come. I don't want you to say any

1 amounts --

2 A. Yes.

3 Q. -- but there is still a payment
4 outstanding that is going to be paid over time,
5 correct?

6 A. Correct.

7 Q. They have made a partial payment and then
8 there is still more.

9 A. Yes. The one thing I should say though
10 is that when a company is in liquidation and you
11 reached a settlement with them, there typically --
12 there is a couple different ways you can reach
13 settlements. But in the case of Orion, what you are
14 doing is you are estimating the amount which
15 eventually they may pay you. But if their assets
16 aren't sufficient to reach that amount, that's --
17 that's a risk any creditor in liquidation faces.

18 Q. Sure.

19 Now, the coverage action lawsuit in
20 Hamilton County that was filed in July of 2016, it
21 was stayed in 2017, correct?

22 A. Correct.

23 Q. And looking at the -- reviewing the
24 docket in that case, I did not see where any
25 dispositive motions or motions for summary judgment

1 were filed, correct?

2 A. That's correct.

3 Q. And I believe you already testified to
4 this but there are currently no outstanding insurer
5 claims that Duke is pursuing for these MGP sites,
6 correct?

7 A. That's correct.

8 MS. WHITFIELD: That's all I have. Thank
9 you, Mr. Lynch.

10 EXAMINER ADDISON: Thank you,
11 Ms. Whitfield.

12 Ms. Bojko.

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

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Bojko:

17 Q. Mr. Lynch, good afternoon.

18 A. Good afternoon.

19 Q. You -- you are aware that the total
20 amount of -- of insurance settlements paid is
21 approximately \$56.2 million, correct?

22 A. Correct.

23 Q. Are you familiar with a discovery
24 response that Duke provided that lists out the
25 insurance settlements paid and by which entity?

1 A. I think I saw such -- I think Mr. Healey
2 may have shown that to me this morning. I was not
3 previous -- I don't think I had previously seen it.

4 Q. Okay. And so you wouldn't have been the
5 responsible party for this.

6 A. I was not the person who did that. It
7 may have been my partner, Mr. Sylvester, but I can't
8 tell you that for sure.

9 Q. This would have come from your law firm.
10 You or your partner would have created some kind of
11 document to this effect, do you believe?

12 A. That's not necessarily true. Certainly
13 my law firm has that information but so does Duke
14 Energy, and it may be the person to whom we reported
15 and was very much involved on -- in the day-to-day
16 settlements may have created that. I just don't know
17 who created it.

18 Q. Okay. From the -- from the insurance
19 settlements paid, let's just use the 56.2 million,
20 you just mentioned there may be additional payments
21 from Orion for instance; is that correct?

22 A. Yeah. Could I make one clarification? I
23 absolutely agree with you that the total number is
24 56.2 million. I was just saying that I didn't create
25 that chart.

1 Q. Understood. I appreciate that.

2 A. And I'm sorry, what was your question
3 again?

4 Q. So my question is you stated previously
5 that there may be some payments still to be received
6 by Duke, such as a payment from Orion, correct?

7 A. Yes.

8 Q. And those payments would not have been
9 included in the \$56.2 million number, correct?

10 A. That's correct.

11 Q. Okay. How many of those outstanding
12 payments do you believe exist? Is it --

13 A. How many have already been paid or how
14 many will be paid?

15 Q. How many -- first of all, how many
16 entities, that you are aware of, still owe Duke a
17 payment to, I guess, complete their settlement
18 arrangement?

19 A. Sitting here today, I think it's only
20 Orion.

21 Q. Okay. And do you know how many payments
22 then Orion still needs to provide to Duke?

23 A. I don't. In the e-mail that I sent you
24 this morning, it might have some information on that,
25 and that came from my partner, Mr. Sylvester, and if

1 he said it, then you can take it to the bank, but I
2 just don't remember if it said.

3 MS. BOJKO: If you will give me one
4 moment, your Honor.

5 EXAMINER ADDISON: Absolutely.

6 MS. BOJKO: My apologies, your Honor.
7 It's amazing how many e-mails I received since
8 Mr. Lynch's this morning.

9 THE WITNESS: If it would be helpful, I
10 am happy to go get my phone and see if I can find it.

11 EXAMINER ADDISON: Let's, please. Thank
12 you.

13 MR. D'ASCENZO: Your Honor, could we go
14 off the record for just a moment?

15 EXAMINER ADDISON: Let's go off the
16 record.

17 (Discussion off the record.)

18 EXAMINER ADDISON: Let's go back on the
19 record.

20 Q. (By Ms. Bojko) Okay. Do you know -- do
21 you know that --

22 MS. BOJKO: Yeah. Can I go off the
23 record for a minute?

24 EXAMINER ADDISON: Yes.

25 (Discussion off the record.)

1 EXAMINER ADDISON: Let's go back on the
2 record.

3 Q. (By Ms. Bojko) Is it your understanding
4 that the additional payments from Orion would be made
5 within the next two years, if you know?

6 A. If that's what the e-mail says, that
7 would be true. My hesitation is that Mr. Healey
8 approached us this morning to want to make sure that
9 the numbers were updated, and I contacted
10 Mr. Sylvester to make sure I didn't slow you all up.
11 I sent the e-mail out without having a chance to
12 really study it. If that's what it says, that would
13 be true.

14 EXAMINER ADDISON: But you don't know,
15 sitting here today, if you can answer that question.

16 THE WITNESS: That's correct.

17 Q. (By Ms. Bojko) In response to, I think,
18 both Mr. Healey and maybe even the Bench earlier
19 today, you explained that you -- you kept saying
20 worked on MGP sites. And just to be clear, your work
21 on the MGP sites is limited to seeking insurance
22 coverage from the historical insurance carriers,
23 correct?

24 A. Not entirely.

25 Q. Is your work related though to insurance

1 and obtaining proceeds with regard to the MGP sites?

2 A. Not entirely.

3 Q. What other work do you do?

4 A. I've appeared in front of a number of
5 commissions, before PUC commissions as part of a rate
6 case. And so in that case, it's -- it's similar to
7 this that the information that I was either providing
8 or the information that I was helping lawyers behind
9 the scenes with went more to the rate issues than the
10 insurance coverage issues. But I think maybe it's --
11 but it's certainly fair to say that the vast majority
12 of work that I have done with respect to manufactured
13 gas plants is seeking insurance coverage for the
14 cleanup costs.

15 MS. BOJKO: Okay. Thank you, your Honor.
16 I have no further questions.

17 EXAMINER ADDISON: Thank you.

18 Mr. Boehm, any questions?

19 MR. BOEHM: No questions, your Honor.

20 EXAMINER ADDISON: Thank you.

21 Mr. McNamee?

22 MR. McNAMEE: One or two.

23 - - -

24

25

CROSS-EXAMINATION

By Mr. McNamee:

Q. That's not going to work.

Good morning, Mr. Lynch.

A. Good morning, Mr. McNamee.

Q. Your testimony goes to -- excuse me, entirely goes to efforts by Duke to collect MGP remediation kinds of costs from insurance carriers, right?

A. That's certainly the most significant part of my testimony. There's a few other things in there but that's the most significant part.

Q. Okay. You don't know anything about any efforts that Duke may have taken or may not have taken, for that matter, to get equivalent kinds of repayment from other noninsurance parties, do you?

A. I'm sorry. What do you mean by "equivalent types of payments"?

Q. With the insurance carriers, Duke is attempting, not you, to get repaid for MGP-related costs that they've incurred.

A. That's correct.

Q. And you've looked at getting that sort of repayment from insurance carriers.

A. That's correct.

1 Q. Okay. Now, but you haven't looked, and
2 you don't know whether Duke has looked at getting
3 that same sort of recovery from noninsurance parties.

4 A. My confusion is when you say that same
5 kind of recovery. I am aware that Duke Energy has
6 taken some steps to try to seek recovery from parties
7 other than insurance. I don't know the details of
8 it, but I know that they have tried.

9 Q. Okay. You don't know the details though.

10 A. I don't know the details.

11 Q. Okay. That's fine. Thank you.

12 A. You're welcome.

13 MR. McNAMEE: No further questions.

14 EXAMINER ADDISON: Thank you.

15 Mr. D'Ascenzo?

16 MR. D'ASCENZO: Just maybe one, maybe
17 two.

18 - - -

19 REDIRECT EXAMINATION

20 By Mr. D'Ascenzo:

21 Q. Mr. Lynch, do you recall conversations
22 about the 56.2 million as it relates to the Orion
23 payments that are occurring over time?

24 A. I remember, yes.

25 Q. Do you -- sitting here today, do you know

1 whether the 56.2 million that was discussed is the
2 total of all of the settlements versus amounts
3 received to date?

4 A. Probably the fairest answer is no, I
5 don't know.

6 MR. D'ASCENZO: Okay. No further
7 questions.

8 EXAMINER ADDISON: Thank you.

9 Mr. Healey?

10 MR. HEALEY: Yes.

11 - - -

12 RECROSS-EXAMINATION

13 By Mr. Healey:

14 Q. When we discussed -- I believe when we
15 discussed the \$56.2 million number earlier today,
16 your understanding was that was the amount that has
17 been collected to date.

18 A. Yes, but based on the information I
19 received this morning.

20 Q. And that's the conversation we had, prior
21 to today, that we wanted the number that was paid to
22 date.

23 A. Yes.

24 Q. And so any amounts that Duke might
25 receive from Orion in the future, through its

1 insolvent proceeding, would be in addition to that?

2 A. That's my understanding.

3 MR. HEALEY: Thank you. That's all, your
4 Honor.

5 EXAMINER ADDISON: Thank you.

6 Ms. Whitfield?

7 MS. WHITFIELD: I have nothing further,
8 your Honor.

9 EXAMINER ADDISON: Ms. Bojko?

10 MS. BOJKO: Yes, just one, your Honor.

11 - - -

12 RECROSS-EXAMINATION

13 By Ms. Bojko:

14 Q. And the update to the amount from -- to
15 get to the 56.2 million included an additional
16 payment received from Orion, correct?

17 A. Additional beyond what -- what you all
18 had before?

19 Q. Yes.

20 A. Yes.

21 MS. BOJKO: Thank you.

22 EXAMINER ADDISON: Thank you.

23 Mr. Boehm?

24 MR. BOEHM: No questions, your Honor.

25 EXAMINER ADDISON: Thank you.

1 Mr. McNamee?

2 MR. McNAMEE: No questions, your Honor.

3 Thank you.

4 EXAMINER ADDISON: Thank you.

5 - - -

6 EXAMINATION

7 By Examiner Addison:

8 Q. Mr. Lynch, you have reviewed Mr. Butler's
9 testimony. I believe they have been marked as Duke
10 Energy Ohio Exhibits 22 and 23. They were his
11 testimony filed on March 29, 2019, and October 4,
12 2019.

13 A. I believe I reviewed them in that time
14 period, your Honor.

15 Q. And you are aware that he makes several
16 references to your testimony?

17 A. Yes.

18 Q. Based on your review, do you consider the
19 characterization of your testimony to be accurate?

20 A. I do.

21 EXAMINER ADDISON: Thank you. I believe
22 that's all my questions. Thank you. You are
23 excused.

24 THE WITNESS: Thank you, your Honor.

25 EXAMINER ADDISON: Mr. D'Ascenzo.

1 MR. D'ASCENZO: Thank you, your Honor.

2 At this point Duke Energy Ohio moves for admission of
3 Duke Energy Ohio Exhibit No. 24.

4 EXAMINER ADDISON: Any objections to the
5 admission of Duke Energy Ohio Exhibit 24?

6 MS. WHITFIELD: Just noting my prior
7 motion to strike.

8 EXAMINER ADDISON: Of course,
9 Ms. Whitfield, it is noted for the record.

10 Hearing no other objections, the exhibit
11 will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER ADDISON: Ms. Watts, I will
14 allow you to -- you had previously moved for the
15 admission of Duke Energy Ohio Exhibits 17 through 23,
16 I believe; is that correct?

17 MS. WATTS: Correct. And we would
18 re-move again for admission of those exhibits.

19 EXAMINER ADDISON: Thank you, Ms. Watts.
20 Are there any objections to the admission
21 of these exhibits?

22 MR. HEALEY: Yes, your Honor, I would
23 renew my motion to strike, at least in part. Several
24 of the references that Mr. Butler makes in his
25 supplemental testimony regarding the contents of the

1 insurance policies are not tied back to Mr. Lynch's
2 testimony. For example, page 8, I move to strike his
3 supplemental testimony, lines 16 through 18. Those
4 were not references to Mr. Lynch and, therefore,
5 could not be verified by him. And, similarly, in
6 Mr. Butler's March 2019 testimony, page 10 --
7 actually no. That would be it. I would renew it
8 with respect to page 8 of the supplemental testimony,
9 lines 16 to 19, again for lack of personal knowledge.
10 That was not subsequently verified by Mr. Lynch.

11 EXAMINER ADDISON: Thank you.

12 Any additional parties that would like to
13 weigh in?

14 Ms. Watts, will you be making the
15 response for Mr. Healey's objection?

16 MS. WATTS: I will, your Honor.

17 I think Mr. Butler has testified
18 sufficiently with respect to his knowledge of these
19 policies in particular and his experience in
20 representing the Company in obtaining coverage -- or
21 not coverage but payment from the various companies
22 under these policies and the many years of experience
23 he has had in working with them. He has established
24 more than a solid basis for what his knowledge
25 consists of; and, therefore, I believe those

1 references should be allowed to remain in the record.

2 EXAMINER ADDISON: Thank you very much.

3 I believe these particular references
4 were explored through cross-examination quite
5 extensively, and the Commission can certainly look to
6 his responses upon cross and review his testimony and
7 afford the appropriate weight that it deserves.

8 Thank you. Any additional objections to
9 the admission of these exhibits?

10 But your objection will be noted,
11 Mr. Healey.

12 MR. HEALEY: Thank you, your Honor.

13 EXAMINER ADDISON: The Duke Energy Ohio
14 Exhibits 17 through 23 will also be admitted into the
15 record at this time.

16 (EXHIBITS ADMITTED INTO EVIDENCE.)

17 EXAMINER ADDISON: Mr. Healey.

18 MR. HEALEY: Yes, your Honor. OCC moves
19 for the admission of OCC Exhibit 18, please.

20 EXAMINER ADDISON: Are there any
21 objections to the admission of OCC Exhibit 18?

22 MR. D'ASCENZO: No objections.

23 EXAMINER ADDISON: Thank you. It will be
24 admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER ADDISON: I believe this would
2 be an appropriate time for us to take our lunch break
3 today. I will --

4 MS. WATTS: Your Honor, I'm sorry to
5 interrupt. While we are still on the record before
6 we take a break, we have now filed, in the open
7 record, the attachment to Mr. Fiore's testimony and
8 likewise have copies for anybody that needs a copy of
9 what was filed with the Commission.

10 EXAMINER ADDISON: Thank you very much,
11 Ms. Watts. And on a related matter, Duke Energy Ohio
12 had filed a motion for protective order as to that.

13 MS. WATTS: In the cover letter we asked
14 to have that motion redrawn.

15 EXAMINER ADDISON: Thank you very much.
16 And with that we will go ahead and take
17 our lunch break. I will see everyone back around
18 1 o'clock.

19 (Thereupon, at 12:03 p.m., a lunch recess
20 was taken.)

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25

1 Wednesday Afternoon Session,
2 November 20, 2019.

3 - - -

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

6 Duke may call its next witness.

7 MR. D'ASCENZO: Thank you, your Honor.
8 For our next witness we would call Sarah Lawler,
9 please.

10 EXAMINER ADDISON: Welcome. Please raise
11 your right hand.

12 (Witness sworn.)

13 EXAMINER ADDISON: Thank you. Please be
14 seated and if you could just turn on your microphone,
15 Ms. Lawler. Thank you very much.

16 - - -

17 SARAH E. LAWLER
18 being first duly sworn, as prescribed by law, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 By Mr. D'Ascenzo:

22 Q. Good afternoon, Ms. Lawler.

23 A. Good afternoon.

24 Q. Would you please state your name and
25 business address for the record.

1 A. It's Sarah Lawler. 139 East Fourth
2 Street, Cincinnati, Ohio 45202.

3 Q. And do you have in front of you what has
4 previously been marked as Duke Energy Ohio Exhibits
5 25, 26, 27, 28, 29, 30, and 31?

6 A. I do.

7 Q. And just for ease of record and clarity,
8 25 is the direct testimony of Peggy Laub from 14-375?

9 A. Correct.

10 Q. 26 is the direct testimony of Peggy Laub
11 in Case No. 15-452?

12 A. Correct.

13 Q. 27 is the direct testimony of Peggy Laub
14 in 16-542?

15 A. Correct.

16 Q. And 28 is the direct testimony of Sarah
17 Lawler in 17-596?

18 A. Correct.

19 Q. And 29 is the direct testimony of Sarah
20 Lawler in 18-283?

21 A. Correct.

22 Q. And 30 is the direct testimony of Sarah
23 Lawler in 19-174?

24 A. Correct.

25 Q. And 31 is the supplemental testimony of

1 Sarah Lawler in the consolidated cases, correct?

2 A. Correct.

3 Q. Okay. And you are adopting the direct
4 testimony of Ms. Laub that was previously filed in
5 these consolidated cases, correct?

6 A. Yes, I am.

7 Q. Do you have any changes or corrections to
8 any of the testimony in Exhibits 25 through 31?

9 A. I do not.

10 Q. And if you were asked those questions
11 today, would your answers then be the same?

12 A. They would.

13 MR. D'ASCENZO: Thank you, your Honor.

14 The witness is available for cross-examination.

15 EXAMINER ADDISON: Thank you very much.

16 Mr. Healey.

17 MR. HEALEY: Yes, I do not have any
18 motions to strike. I don't know if anyone else does.

19 MS. BOJKO: I do, your Honor.

20 EXAMINER ADDISON: Please proceed.

21 MS. BOJKO: At this time, your Honor,

22 OMAEG moves to strike page 6, line --

23 MR. D'ASCENZO: Which testimony?

24 EXAMINER ADDISON: Which testimony are
25 you on, Ms. Bojko?

1 MS. BOJKO: Oh, that would help.

2 Actually that makes a good point. I have two
3 testimonies to move to strike, so the first one will
4 start at the direct testimony so it's Exhibit 30, and
5 it's --

6 MR. D'ASCENZO: Kim, just for
7 clarification, I am so sorry, which direct testimony?
8 She has three, I believe.

9 MS. BOJKO: I apologize. This is Case
10 19-174.

11 MR. D'ASCENZO: Thank you.

12 MS. BOJKO: Duke Energy Exhibit 30.

13 MR. D'ASCENZO: Thank you.

14 MS. BOJKO: And it's page 6, line 1,
15 through page 7, line 3. One moment, your Honor. I
16 have got my testimonies mixed up.

17 So it's just in the Case No. 19-174, Duke
18 Energy Exhibit 30, direct testimony, that I'm moving
19 to strike and it's those pages, 6, line 1, through 7,
20 line 3.

21 And the rationale, your Honor, is that
22 the issue of carrying costs has already been
23 litigated in the 2012 case. The Commission
24 specifically denied recovery of carrying costs. The
25 witness recognizes that but then challenges that

1 decision and goes on to explain while -- why that's
2 an unfair decision of the Commission, and any
3 information or testimony regarding that or
4 challenging the Commission's decision or reference to
5 that is being unfair in order to somehow affect the
6 current case is inappropriate. It's barred by res
7 judicata collateral estoppel.

8 EXAMINER ADDISON: Thank you, Ms. Bojko.

9 Mr. D'Ascenzo.

10 MR. D'ASCENZO: Thank you, your Honor.

11 Certainly we disagree with Ms. Bojko's
12 characterization of Ms. Lawler's testimony. What she
13 is talking about here, she is acknowledging that
14 carrying costs were indeed denied. She is simply
15 quantifying what that impact has been.

16 Her testimony here clearly says we have
17 been complying with the Commission's Orders to file
18 annual adjustment proceedings; nonetheless, here we
19 are, close to six years later, dealing with those
20 riders for the first time. And all this is saying is
21 this is what the impact of the denial of carrying
22 costs has -- has resulted in. It's factual
23 information. The Commission can certainly give it
24 the weight that the Commission feels is -- is
25 necessary.

1 Certainly at the time that the -- that in
2 2012 when the Commission issued its Order in 2013
3 regarding the issue of carrying costs, I don't think
4 anyone in this room would have thought that we would
5 be here for the first time several years later. So
6 this is just a factual statement of what that -- what
7 that has been in terms of an impact to the Company.

8 EXAMINER ADDISON: Thank you.

9 Ms. Bojko, did you have anything to add?

10 MS. BOJKO: Your Honor, it's not as
11 simple as a factual statement. She opines on what
12 the Commission's decision did and the effect that it
13 has had on the Company and then how that should
14 influence the Commission's decision in this current
15 case and that's where it's inappropriate and it's
16 prejudicial to the record.

17 EXAMINER ADDISON: Thank you very much.

18 I am going to deny the motion to strike.
19 To the extent that you believe this witness is
20 contradicting the Commission's Order in the -- its
21 2013 Opinion and Order in the natural gas rate case,
22 you can certainly make that argument on brief, and
23 the Commission will afford to this testimony the
24 appropriate weight that it deserves.

25 MS. BOJKO: Thank you, your Honor. No

1 other motions.

2 EXAMINER ADDISON: Thank you.

3 Mr. Healey.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Healey:

7 Q. Ms. Lawler, are you testifying as an
8 expert witness today?

9 A. I am.

10 Q. You are not testifying as a legal expert
11 though, I assume, correct?

12 A. I am not a lawyer, no.

13 Q. And not being a lawyer, you would not
14 consider yourself an expert in the interpretation of
15 statutes and regulations, would you?

16 A. I think I have a general understanding of
17 the ratemaking statutes.

18 Q. And would you consider yourself an expert
19 in the interpretation of court rulings?

20 A. I would not.

21 Q. You first filed testimony in these cases
22 in March of 2017; is that right?

23 A. That's correct.

24 Q. And, before that, someone named Peggy
25 Laub filed testimony on behalf of Duke?

1 A. Yes.

2 Q. And you are adopting her testimony, I
3 believe it's three pieces, correct?

4 A. I am, yes.

5 Q. And that's because she retired from Duke;
6 that is right?

7 A. That's correct.

8 Q. And did Duke ask Ms. Laub if she would be
9 willing to testify despite her retirement?

10 A. I am not aware that we did. I know I
11 didn't.

12 Q. And prior to Ms. Laub's leaving Duke,
13 were you involved in these MGP proceedings?

14 A. I had some involvement, yes.

15 Q. And did you assist Ms. Laub in drafting
16 her testimony?

17 A. I did not.

18 Q. And when was the first time you read her
19 three pieces of testimony that you are now adopting?

20 A. I probably read some of it at the time I
21 first drafted my first piece of testimony in the '17
22 case, but I read all of it as I was preparing for
23 these proceedings.

24 Q. And you said you read all of it. Did you
25 read all three pieces, beginning to end?

1 A. Yes.

2 Q. And when you were drafting your first
3 piece of testimony in March 2017, did you talk to
4 Ms. Laub at all?

5 A. Yes.

6 Q. And did she assist you in drafting that
7 testimony?

8 A. I don't recall that she did assist, no.

9 Q. And have you spoken to Ms. Laub about
10 your supplemental testimony, the most recent one?

11 A. I have not.

12 Q. Now, you understand that these
13 consolidated cases involve Duke's request for
14 recovery of costs from 2013 to 2018, correct?

15 A. I do, yes.

16 Q. Have you personally reviewed every
17 invoice from 2013?

18 A. I have -- I have not, no.

19 Q. Have you reviewed any of the invoices
20 from 2013?

21 A. I have looked at some of them, yes.

22 Q. Have you personally reviewed every
23 invoice from 2014?

24 A. No.

25 Q. 2015?

1 A. No.

2 Q. 2016?

3 A. No, but I have reviewed some of them.

4 Q. Have you reviewed all of them from 2017?

5 A. I have looked at all of the invoices from
6 2017. When we are talking "2017" you mean the 2017
7 filing for '16 costs.

8 Q. Sorry. Let's start over and clarify. I
9 am going to talk about the years in which the costs
10 were incurred.

11 A. Okay.

12 Q. So have you reviewed all the invoices
13 from 2013 costs?

14 A. I have looked at some of the invoices
15 from --

16 Q. But not all?

17 A. -- '13, but not all.

18 Q. For 2014, some but not all?

19 A. Same, yes.

20 Q. And some but not all for 2015?

21 A. That's correct.

22 Q. Have you reviewed all of the invoices for
23 2016?

24 A. I have looked through all of the invoices
25 for 2016.

1 Q. And did you -- in reviewing all of the
2 invoices from 2016, did you personally confirm that
3 to the best of your actual knowledge the costs
4 incurred were prudent?

5 A. I did not conduct a prudency review, no.

6 Q. And did you conduct a prudency review for
7 the 2017 invoices?

8 A. I did not.

9 Q. And did you conduct a prudency review for
10 the 2018 invoices?

11 A. I did not.

12 Q. Let's turn to your supplemental
13 testimony, please, page 6.

14 A. Okay. I'm there.

15 Q. On line 5, you state, "To my knowledge,
16 the Company has included all MGP" -- "To my
17 knowledge, the Company has included all MGP
18 investigation and remediation costs related to the
19 Company's East End and West End sites in its Rider
20 MGP filings." Do you see that?

21 A. Yes.

22 Q. You state "to your knowledge." Does that
23 mean you are not sure?

24 A. It doesn't mean that I am not sure. I
25 know, based on reliance on Mr. Bachand, that he has

1 provided all of the invoices to me to put into the
2 template that I include in all of my rider filings.
3 I have no reason to believe that he hasn't.

4 Q. But you are relying on Mr. Bachand for
5 that?

6 A. Yep.

7 Q. So you wouldn't have personal knowledge
8 if he would have missed one, correct?

9 A. I would not.

10 Q. And we established yesterday, during his
11 cross-examination, that there have been times when he
12 omits things, albeit accidentally and being human, he
13 does occasionally omit things when trying to compile
14 invoices, correct?

15 A. He omitted something for a schedule we
16 put together in terms of calculating an estimate. I
17 don't know if we found that he omitted anything from
18 any of the dollars used in the rider filings.

19 Q. But if he had, you wouldn't have any way
20 to know, correct?

21 A. I would not.

22 Q. Do you happen to have a copy of the 2018
23 Staff Report in front of you? There is a lot of
24 piles up there. I will just give you one.

25 A. Okay.

1 Q. If that's okay.

2 A. Sure.

3 MR. HEALEY: May I approach, your Honor?

4 EXAMINER ADDISON: You may.

5 Q. Ms. Lawler, I have handed you the Staff
6 Report from 2018 that was previously marked Staff
7 Exhibit 1. Are you familiar with this document?

8 A. I am, yes.

9 Q. And you read it previously, correct?

10 A. I have.

11 Q. Can you turn to page 3 of the Staff
12 Report, please.

13 A. I'm there.

14 Q. And the last full paragraph starts by
15 stating that "Based on the invoices reviewed, Staff
16 discovered that, in 2014, Duke removed certain costs
17 that were directly identified on the invoices as
18 costs for activities associated with the WOW parcel."
19 Do you see that?

20 A. I do.

21 Q. And you testified that you have not
22 personally reviewed all of the invoices from 2014,
23 correct?

24 A. I have not, that's correct.

25 Q. So you wouldn't have any basis to dispute

1 Staff's statement there, correct?

2 A. I am not aware of any invoices that were
3 associated with the WOW Parcel that were removed from
4 the rider, no.

5 Q. You are not aware but it could have been
6 one of those invoices that you didn't review,
7 correct?

8 A. No. I have had conversations with
9 Mr. Bachand and I believe that we have not excluded
10 any -- any costs associated with the WOW Parcel.

11 Q. Sure. My question is based on your
12 personal knowledge. Not having reviewed all of the
13 invoices from 2014, you can't state whether there was
14 such an invoice that Staff is referring to, correct?

15 A. My personal knowledge comes from
16 conversations too, not just looking at invoices, and
17 from those conversations I don't believe that we
18 excluded any costs associated with WOW Parcel.

19 Q. And so, you are defining "personal
20 knowledge" as information that Mr. Bachand told you.

21 A. Yes.

22 Q. In 2014, you were not working on these
23 cases, correct?

24 A. In 2014, I was not. For costs in 2013?

25 Q. Correct. Can you turn to page 12 of your

1 supplemental testimony, please.

2 A. Okay. I'm there.

3 Q. And on line 6, you note that you are
4 advised by counsel that the Commission's Order in the
5 rate case found that Duke had certain legal
6 obligations. Is your reliance on counsel the
7 exclusive basis for your information there?

8 A. No. I mean, I have read the Order, and I
9 have that same conclusion based on reading the Order.

10 Q. And we established you are not a legal
11 expert though, correct?

12 A. I am not a legal expert, but the
13 Commission's Order clearly says that the Company had
14 a societal and legal obligation to remediate the
15 contamination.

16 Q. Is it your understanding that a societal
17 obligation is different than a legal obligation?

18 A. Yes.

19 Q. And so, a societal obligation would not
20 be legally enforceable then, correct?

21 A. I don't know about that, but a societal
22 obligation is different from a legal obligation.

23 Q. And you say you don't know about that.
24 Do you mean that I am incorrect and you do believe a
25 societal obligation is legally enforceable?

1 A. I mean I don't know.

2 Q. Thank you.

3 And you are not an expert on Ohio
4 environmental law, are you?

5 A. I am not.

6 Q. On the same page, line 10, you state that
7 "The Company's efforts to address this legal and
8 societal obligation are unquestionably costs of
9 rendering utility service and, as the Commission and
10 Ohio Supreme Court found, are recoverable under
11 R.C. 4909.15(A)(4)." Do you see that?

12 A. I do.

13 Q. You are aware that many parties to this
14 case, in fact, question that very thing, correct?

15 A. The Commission Order is clear and the
16 Ohio Supreme Court upheld their ruling that these
17 costs are considered costs of rendering utility
18 service in accordance with R.C. 4909.15(A)(4).

19 Q. So you are telling me it's your view the
20 Ohio Supreme Court ruled on the 2013 to 2018 costs?

21 A. These costs are no different than the
22 costs the Ohio Supreme Court ruled on. They are
23 characterized the same way.

24 Q. My question was, is it your opinion,
25 based on whatever experience you might have, that the

1 Supreme Court was making a ruling in advance on what
2 the '13 to '18 costs would be in these cases?

3 A. I don't think they were making the ruling
4 in advance. I think they said that our remediation
5 and investigation costs were costs of the utility
6 rendering utility service, and these are the same
7 such costs.

8 Q. Well, the costs that were subject to the
9 rate case and the Supreme Court case would have been
10 costs through 2012; isn't that right?

11 A. That's correct; remediation and
12 investigation costs of the East End and West End
13 sites. These are the same -- same remediation and
14 investigation efforts.

15 Q. There's no distinctions whatsoever?

16 A. The only distinction is time.

17 Q. And that's -- when you say there is no
18 distinction, are you making a representation that you
19 are an expert on VAP?

20 A. I am not.

21 Q. VAP certification and remediation?

22 A. I am not.

23 Q. So you wouldn't be qualified to say
24 whether, from an engineering perspective, that all of
25 the investigation and remediation done from '13 to

1 '18 is the same as 2012 and before, correct?

2 A. I am just saying they're MGP
3 investigation and remediation costs at the same sites
4 that were part of the 2012 case.

5 Q. But you are not rendering an opinion as
6 an engineer or an environmental professional in that
7 regard, correct?

8 A. I am not.

9 Q. If the Commission were to rule that Duke
10 cannot charge customers for certain MGP costs in
11 these cases, it's your understanding that Duke would
12 still have an obligation to continue to remediate,
13 correct?

14 A. Correct.

15 Q. And so, therefore, the question of
16 whether Duke has an obligation to remediate and
17 whether they can charge customers, those are
18 different questions, correct?

19 A. The Commission Order and the Court ruled
20 that these costs are a legal obligation that are part
21 of the utility's costs of rendering service. So
22 that's -- it's a legal obligation. It's part of our
23 cost of service.

24 Q. Sure. I don't think that was what I
25 asked. My question previously was, you still have an

1 obligation to remediate even if the Commission denies
2 cost recovery, correct?

3 A. Yes.

4 Q. And so, therefore, whether you have an
5 obligation to remediate and whether you can charge
6 customers, those are not one and the same, correct?
7 Just purely logically speaking, that has to be the
8 case, right?

9 A. Well, this is a legal obligation that the
10 Commission has ordered is part of the utility
11 rendering service. I guess I'm really not
12 understanding the distinction.

13 Q. That's fine if you are not understanding.

14 Is -- is it your contention that there's
15 no conceivable way that any costs Duke spent, from
16 '13 to '18, could be disallowed because they were all
17 preapproved in 2012.

18 A. Any costs?

19 Q. You are saying the costs are the same --
20 it seems to me you are saying there is no reason for
21 us to be here, the Commission has already decided
22 this, there is no conceivable basis that anyone could
23 possibly challenge any costs for '13 to '18; is that
24 your --

25 A. You just said "any costs" and I want to

1 make sure we are talking about remediation and
2 investigation costs.

3 Q. Sure, that's the context of this case.

4 A. Yes.

5 Q. I am not talking about costs completely
6 unrelated.

7 A. Can I have the question again?

8 Q. Sure.

9 You understand that the Commission
10 approved some costs in the 2012 rate case, correct?

11 A. Correct. They -- they approved, for
12 recovery, all of our investigation and remediation
13 costs, yes.

14 Q. And you understand -- I apologize, I
15 didn't mean to speak over you. You understand that
16 the Commission authorized Duke to make these annual
17 rider filings, correct?

18 A. Correct.

19 Q. And you understand in those rider
20 filings, Duke has the burden of proving that the
21 costs, that it is seeking recovery for, were
22 prudently incurred, among other things.

23 A. Yes. Absolutely yes.

24 Q. And so, therefore, it is at least
25 conceivable that the Commission could rule that some

1 of the costs from '13 to '18 in these rider filings
2 were not prudently incurred or otherwise should not
3 be recovered, correct?

4 A. They could rule that they were not
5 prudently incurred, yes. I believe the Staff Report
6 didn't have any issue in terms of the Staff's audit
7 regarding prudence, but yes, they could rule that.

8 MR. HEALEY: Your Honor, I move to strike
9 the comments about the Staff Report. I didn't ask
10 her about the Staff Report.

11 EXAMINER ADDISON: Thank you.

12 Mr. D'Ascenzo.

13 MR. D'ASCENZO: Your Honor, she was just
14 clarifying her answer.

15 EXAMINER ADDISON: I will afford
16 Ms. Lawler the same one-bite-at-the-apple that our
17 other witnesses have had the opportunity to enjoy so
18 but, Ms. Lawler, I will instruct you to please just
19 answer Mr. Healey's questions and his questions only.
20 Mr. D'Ascenzo will certainly bring up any additional
21 information in redirect.

22 THE WITNESS: Okay.

23 EXAMINER ADDISON: Thank you.

24 Q. (By Mr. Healey) Ms. Lawler, let's turn to
25 your direct testimony from March 2019. It's Duke

1 Exhibit 30.

2 A. Okay.

3 Q. And on page 4, line 7, you mentioned that
4 collection under Rider MGP was temporarily sus -- was
5 temporarily suspended by the Ohio Supreme Court in
6 June 2014, but resumed in January of 2015. Do you
7 see that?

8 A. I do.

9 Q. And do you know why collection was
10 temporarily suspended?

11 A. I believe some of the parties, and I
12 might be getting my terminology wrong here, but
13 issued a stay and there was some back and forth about
14 that, but I think because a bond wasn't posted, the
15 Company asked the Commission to reinstate the rider.
16 They did so and then we resumed the rider filing in
17 January of 2015 -- collection under the rider filing.

18 Q. During the time that it was suspended,
19 did that cause any delay in any of the investigation
20 or remediation?

21 A. During the time the collection of the
22 dollars was delayed?

23 Q. Uh-huh.

24 A. I don't believe so, no.

25 Q. Now, on the same testimony, page 6,

1 line 9. Line 9 through 11, you claim that the
2 Company shareholders have lost five years' worth of
3 the time value of money. Do you see that?

4 A. I do.

5 Q. And they would only have lost five years
6 of the time value of money under your theory, which I
7 obviously don't concede, for the costs from 2013,
8 correct?

9 A. Correct.

10 Q. So, for example, the costs from 2017 and
11 2018 wouldn't be five years yet under your theory?

12 A. That's correct, yes.

13 Q. And so when you -- when you say in
14 lines 11 to 12, "The same goes for each subsequent
15 Rider MGP annual filing," the five years wouldn't
16 apply to those, correct?

17 A. Correct.

18 Q. And so it's just counting from whenever
19 those costs were incurred to today.

20 A. That's correct.

21 Q. You are aware that Duke has not yet
22 passed any insurance proceeds back to customers from
23 the 2013 to 2018 time frame, correct?

24 A. Correct.

25 Q. And you heard the \$56.2 million number

1 that was discussed earlier today?

2 A. Yes.

3 Q. And the total amount that Duke is seeking
4 to recover from customers for 2013 to 2018 is about
5 46 million; is that right?

6 A. Yes.

7 Q. And so, Duke's insurance proceeds are
8 greater than the total amount that Duke is seeking to
9 recover in these cases, correct?

10 MR. D'ASCENZO: Your Honor, I am going to
11 object. This is beyond the scope of her direct
12 testimony.

13 EXAMINER ADDISON: Mr. Healey.

14 MR. HEALEY: Your Honor, she stated she
15 is familiar with this. She is the witness testifying
16 on rider charges, and our position in this case is
17 that the insurance proceeds should be used to offset
18 those rider charges so she would be the appropriate
19 witness to discuss this. When I asked the insurance
20 witness earlier about this, he wasn't even sure what
21 the \$46 million number is, so I have to be able to
22 ask somebody.

23 EXAMINER ADDISON: Thank you, Mr. Healey.
24 I will allow the question.

25 THE WITNESS: Repeat the question.

1 MR. HEALEY: Can I have it reread,
2 please.

3 EXAMINER ADDISON: You may.
4 (Record read.)

5 A. So the insurance proceeds, you are
6 correct, are roughly 56.2 million as it stands today.
7 We haven't received everything. We are required --
8 the -- the insurance proceeds that would be
9 ultimately decided upon have to be net of legal
10 costs, so the number in my mind is something more
11 like 50 million dollars and -- so that 50 million,
12 yes, is more than 46 million but it's substantially
13 less than the 46 million, less what Staff is
14 recommending be disallowed. Maybe I said that not
15 very well.

16 Q. Yeah, can you clarify that last
17 comment --

18 A. Yes.

19 Q. -- about Staff's disallowance.

20 A. So if the Staff is disallowing 23 million
21 of that 46 million -- recommending disallowance of
22 the 23 million, then what they are saying is we
23 should only recover roughly 23 million from
24 customers. And so if a substantial portion is
25 supposed to be borne by the shareholders, then the

1 insurance has to be -- should be treated the same
2 way.

3 Q. You are not testifying as Duke's expert
4 on the insurance issue generally, correct?

5 A. I am absolutely not, no.

6 Q. Let's go back to, you said after we net
7 out the legal costs, it's roughly 50 million in net
8 insurance proceeds.

9 A. Roundabout as we sit here today, yes.

10 Q. I think we will get into that with
11 Mr. Adkins perhaps as well on a more precise number
12 but we will say 50 million roughly for now. That, as
13 you acknowledge, is still greater than the
14 46 million.

15 A. It's greater than the 46 million.

16 Q. And so any, quote-unquote, lost carrying
17 costs on the 46 million could more than be made up by
18 the return on investment that Duke could make by
19 investing that 50 million in insurance proceeds that
20 it is holding, correct?

21 A. If the -- if the money were in an
22 interest-bearing account, yes, but it's not.

23 Q. So Duke has \$50 million sitting in an
24 account that bears no interest?

25 A. Correct, for these insurance proceeds,

1 yes.

2 Q. Let's look at Attachment SEL-2 to your
3 March 2019 testimony, Duke Exhibit 30, please.

4 A. Did you say SEL-2?

5 Q. Yes.

6 A. Okay. I'm there.

7 Q. And I just want to walk through some of
8 the numbers to make sure I understand how they were
9 calculated. You have a number for total 2013 to 2018
10 activity of 45,781,966, correct?

11 A. Correct.

12 Q. And that's the approximately \$46 million
13 number we were talking about?

14 A. That's right.

15 Q. And then above that it says annual
16 allocated, 11,445,492, correct?

17 A. Correct.

18 Q. And that would be just a quarter of the
19 45,781,966, correct?

20 A. That's the 45 million divided by 4, yes.

21 Q. And that's because you are proposing a
22 four-year amortization in your '19 testimony.

23 A. That's correct.

24 Q. And so if the Commission were to adopt a
25 different amortization, for example, five years, you

1 would take the \$45 million number and divide that by
2 five, correct?

3 A. Yes, that's right.

4 Q. And, similarly, if the Commission were to
5 approve a different total amount, let's use Staff
6 Witness Crocker's proposal of about 22.9 million, you
7 would do the same, divide that number by whatever the
8 number of years of amortization and that would be the
9 annual allocated, correct?

10 A. That's right, yes. Whatever amortization
11 period was determined by the Commission.

12 Q. And then in the notes section of this
13 page, it says note (a), "From CMS customer count
14 statistics for 12 months ended December 31, 2018,"
15 correct?

16 A. Yes.

17 Q. Can you tell me what "CMS" stands for?

18 A. It's our customer billing system.

19 Q. Now, if the Commission's Order in this
20 case is issued after January 1, as I suspect it will
21 be, will you update the customer count to December
22 31, 2019?

23 A. We could, if the Commission wanted us to
24 do that.

25 Q. You would agree that that would be more

1 accurate, correct?

2 A. Yes.

3 Q. And I would like to turn to your previous
4 testimony, Duke Exhibit 29, from Case No. 18-283,
5 please. And again Attachment SEL-2.

6 A. Okay. This is the 18-283 case?

7 Q. Yes.

8 A. Yep, I'm there.

9 Q. I would like to walk through quickly a
10 similar exercise. The total 2013 to 2017 activity is
11 this 25,977,935, correct?

12 A. Correct.

13 Q. And Vintage 2 on this is for the years
14 2013 and thereafter, correct?

15 A. That's correct.

16 Q. And so when we see the annual allocated
17 for this, it's about 5.2 million, correct?

18 A. That's correct.

19 Q. And that's because in this testimony you
20 were using a five-year amortization, correct?

21 A. That's correct.

22 Q. And you changed to a four-year
23 subsequently?

24 A. That's correct.

25 Q. And I don't want to walk through all the

1 previous ones. Prior to the '19 testimony, you used
2 a five-year amortization, correct?

3 A. Yes.

4 Q. And so the calculation for those other
5 ones would be done similarly?

6 A. Correct, yes.

7 Q. Let's -- same testimony, I would like to
8 turn back to your SEL-1.

9 A. Okay.

10 Q. And given that this was from the '18
11 case, these would be the costs that Duke incurred in
12 2016 and 2017, correct?

13 A. Yes.

14 Q. I would like to look at the East End,
15 line 11. It's described as "Duke MGP PM/Construction
16 Oversight." Do you see that?

17 A. I do.

18 Q. And "PM" would be the project manager?

19 A. Yes.

20 Q. And at this point for 2017 that would
21 have been Ms. Bednarcik, correct?

22 A. For 2017? No.

23 Q. I'm sorry. For 20 -- yes, for 2017 costs
24 that would be Ms. Bednarcik would have been the
25 project manager, right?

1 A. No.

2 Q. Who would be the project manager?

3 A. Well, Mr. Bachand was --

4 Q. You're right. You're right. I am
5 getting it backwards. Mr. Bachand would have been
6 the project manager for 2017, correct?

7 A. I believe so, yes.

8 Q. And the -- this line item for line
9 No. 11, would that all be internal Duke costs then?

10 A. This is all internal Duke costs but it's
11 clearly not just the salary of Mr. Bachand.

12 Q. I mean, if it is, good for him obviously.

13 A. Right.

14 Q. Does it include though his salary?

15 A. I believe that it does. I believe that
16 it does.

17 Q. And -- sorry, go ahead.

18 A. I guess I am not 100-percent confident
19 that his salary is in line 9 or in line 11. I
20 believe it's in line 11.

21 Q. I hope for his sake it is not 9, looking
22 at those numbers.

23 A. Right.

24 Q. Would you agree lines 9 and 10 are Duke
25 internal costs as well?

1 A. Yes.

2 Q. And what about line 7, Miscellaneous,
3 would at least some of those be internal Duke costs?

4 A. No, I don't believe. I believe all the
5 miscellaneous costs are supported by invoices.

6 Q. And would any portion of the remaining
7 lines 1 through 8 be internal Duke costs?

8 A. They would not.

9 Q. And again to shortcut rather than go
10 through every year, is it fair to say that if we were
11 to look at the similar schedule for the previous
12 years and for the subsequent year, the only Duke
13 internal costs would be those three categories, 9,
14 10, and 11, for Internal Expenses, Laboratory Labor,
15 and MGP PM/Construction Oversight?

16 A. Correct for East End.

17 Q. Correct.

18 A. Similar costs on the West End.

19 Q. So West End, it would be lines, on this
20 one lines, 21, 22 and 23, correct?

21 A. Yeah, that's correct.

22 MR. HEALEY: That's all I have, your
23 Honor.

24 EXAMINER ADDISON: Thank you, Mr. Healey.
25 Ms. Bojko.

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

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Bojko:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. Could you explain to me what "used and
8 useful" means.

9 A. "Used and useful" is, I believe, a
10 ratemaking term and it's part of 4909.15(A)(1), I
11 believe, and it's talking about whether or not the
12 plant, the utility plant is being used for utility
13 service.

14 Q. Are you finished?

15 A. Yes.

16 Q. In your role -- you are an accountant,
17 correct?

18 A. I am, yes.

19 Q. And I think you said you are not a
20 lawyer, although I am quite impressed with your
21 reference to the statutory provisions. Correct?

22 A. I am not a lawyer.

23 Q. In your role as an accountant for Duke,
24 do you regularly review statutory provisions?

25 A. Well, my role for Duke right now is not

1 as an accountant. I am a part of the Rates
2 Department. My degree is in accounting but I am not
3 part of the Accounting Department.

4 Q. Fair enough. I will rephrase my
5 question. So as part of the Rates Department, do you
6 regularly review statutory provisions?

7 A. What do you mean by "statutory
8 provisions"?

9 Q. Do you regularly -- you just cited two
10 statutory provisions to me. Do you regularly review
11 and have memorized numerous statutory provisions that
12 apply to the public utilities -- to the public
13 utility, Duke?

14 A. I don't --

15 MR. D'ASCENZO: Objection, your Honor.
16 That's either two, maybe three questions in there.
17 Could we clarify?

18 EXAMINER ADDISON: Please clarify your
19 question. Just break it up. Thank you.

20 MS. BOJKO: I don't have the advantage of
21 seeing it in front of me so I'll just have to
22 rephrase, your Honor.

23 EXAMINER ADDISON: Thank you.

24 Q. (By Ms. Bojko) So as part of the Rates
25 Department, do you typically review statutory

1 provisions that apply to Duke Energy Ohio?

2 A. I am aware of statutory provisions around
3 ratemaking.

4 Q. And do you usually memorize the statutory
5 provisions?

6 A. I don't memorize them, no.

7 Q. And do you -- in your role with Duke, do
8 you typically review Administrative Code sections?

9 A. Not necessarily, no. To the extent that
10 they would relate to ratemaking. I am probably aware
11 of them but, you know, my knowledge is around
12 ratemaking.

13 Q. And do you typically, in your role with
14 Duke, do you typically review Supreme Court
15 decisions?

16 A. If there is a Supreme Court decision that
17 affects any proceeding that I am a part of, yes.

18 Q. Because you believe that you -- you have
19 to follow a Supreme Court decision in implementing
20 the rates for Duke Energy Ohio, correct?

21 A. Well, if there was a Supreme Court Order
22 that ruled as to how we have to implement rates,
23 then, yes.

24 Q. And in this case, the Supreme Court Order
25 adopted the Commission's Order; is that correct?

1 A. Yes. That's my understanding, yes,
2 correct.

3 Q. So you believe you have to follow the
4 Commission Order when implementing rates, correct?

5 A. Yes.

6 Q. And isn't it true that the Commission's
7 Order, and I am talking about the 2012 Rate Case
8 Order. Is that what you are talking about in
9 responding to my question? I apologize.

10 A. In terms of this proceeding, yes.

11 Q. Okay. In terms of this proceeding for
12 the 2012 Rate Case Order, it's your understanding
13 that there were two buckets of costs that the
14 Commission ruled on, one bucket being costs from 2008
15 to 2012; is that correct?

16 A. In terms specifically of the MGP costs in
17 that Order, yes. The MGP costs in question were from
18 2008 to 2012, yes.

19 Q. And I apologize, there were a lot of
20 things in the Rate Case Order. I realize this is an
21 awkward proceeding where we have a Rate Case Order
22 and this issue was litigated separately. So yes, I
23 am talking about MGP. So with regard to MGP
24 remediation, investigation, remediation costs, there
25 were two buckets of costs. One was 2008 to 2012 and

1 then the second bucket would have been from 2013 to
2 2018, correct?

3 A. The Commission didn't order on '13
4 through '18 costs, no.

5 Q. Okay. So there -- that's what I am
6 trying to understand from a conversation you had with
7 Mr. Healey. There was no -- well, there was an
8 Order. The Order was to defer those costs from 2013
9 to '18 correct?

10 A. That's correct, yes.

11 Q. There was no pre-approval of the costs
12 that were allowed to be collected from customers
13 through rates, correct?

14 A. There was no pre-approval. I don't
15 believe I said there was pre-approval.

16 Q. Okay. And, in fact, that Order actually
17 said that the prudence would be determined in later,
18 separate proceedings, correct?

19 A. Correct.

20 Q. And those later, separate proceedings are
21 the annual filing that you were a part of or have
22 adopted testimony of and, in this case, all
23 consolidated into one, correct?

24 A. That's correct.

25 Q. And in that 2012 Order for the 2008 to

1 2012 costs, the Commission did say that certain costs
2 could be collected from customers, correct?

3 A. Correct.

4 Q. And the Commission also in that Order
5 said that there were costs that weren't allowed to be
6 collected from customers, correct?

7 A. They denied certain costs, yes.

8 Q. And in your role it would be upon you to
9 ensure that those costs were not collected from
10 customers, correct?

11 A. Correct.

12 Q. And you -- would you go through the
13 separate invoices to ensure that any costs that the
14 Commission ruled should not be collected from
15 customers were actually not collected from customers?

16 A. There was no need to go through invoices.
17 The Commission was very specific in what they said
18 was disallowed. They disallowed 2008 West End costs,
19 they disallowed the Purchased Parcel premium, and
20 they disallowed carrying costs and that was clearly
21 spelled out. It's in the attachment of my
22 supplemental testimony. It was attached to the
23 tariff that was approved by the Commission and
24 that's -- that was the basis of what we collected the
25 last five years.

1 Q. And that was your interpretation of the
2 Commission's Order is disallowance, correct, or did
3 somebody tell you that interpretation?

4 A. That's my interpretation.

5 Q. Okay. And did you go through the
6 invoices to determine if there were any 2008 costs
7 for the WOW Parcel that happened to be on those
8 invoices?

9 A. We took out all 2008 costs. I wasn't
10 there at the time so I didn't go through invoices but
11 there wouldn't be any need to. We had 2008 costs
12 that we removed. And, you know, it's in a general
13 ledger account by year. Those are the costs that we
14 incurred in 2008. There would be no need to look at
15 invoices for that, no.

16 Q. I asked if you went through invoices to
17 ensure that there were no -- any costs related to the
18 2008 WOW in any of the future cases that you filed or
19 were responsible for.

20 A. If there were 2008 costs in the '17 rider
21 filing?

22 Q. Sure. Did you -- did you make that
23 assessment?

24 A. I don't think I would need to.

25 Q. Okay. So the answer is no, you didn't.

1 A. I wouldn't need to.

2 Q. Okay. And from your reading of the
3 Commission Order, it's your understanding that
4 insurance proceeds were to be reimbursed -- that Duke
5 was required to reimburse customers for insurance
6 proceeds collected, minus legal costs, correct?

7 A. The Commission Order did talk about
8 reimbursing the customers for the insurance proceeds,
9 yes.

10 Q. It didn't just talk about it. It
11 required it, correct?

12 A. Yes.

13 Q. And in that Commission Order for, let's
14 go to the 2008 to '12 costs. In -- with regard to
15 2008 to '12 costs, the Commission Order stated that
16 Duke could collect approximately \$55.5 million from
17 customers; is that correct?

18 A. That's correct.

19 Q. And it was with regard to those costs,
20 the 2008 to '13, that the insurance proceeds were to
21 be reimbursed to customers, correct?

22 A. You said 2008 to 2013?

23 Q. Right. Those are the costs that the
24 Commission stated should be offset by insurance
25 proceeds, correct?

1 A. I don't --

2 MR. D'ASCENZO: Your Honor, I am going to
3 object. She's asking questions about the
4 Commission's Order without the Order in front of her
5 and there's no foundation at this point. If she
6 wants to ask her questions about the Order, she
7 should put the Order in front of her.

8 MS. BOJKO: Your Honor, in her testimony
9 she cited verbatim some things from the Order.

10 EXAMINER ADDISON: Thank you, yes, I
11 agree the questions regarding the Order are
12 completely fair. She cited to the Order numerous
13 places in her testimony but I do agree it would be a
14 courtesy if she would at least have a copy of the
15 Order in front of her.

16 MS. BOJKO: Your Honor, I am not reading
17 from the Order. I am asking her understanding of the
18 Order.

19 EXAMINER ADDISON: I realize that. If
20 she can just have a --

21 MS. BOJKO: I think it should be up
22 there. It's OMAEG Exhibit 2. Oh, Exhibit 1. My
23 apologies.

24 MS. WHITFIELD: We have extra.

25 EXAMINER ADDISON: I gave her an extra

1 one.

2 MS. BOJKO: I don't have one.

3 EXAMINER ADDISON: I have an extra so.

4 And did you want to restate your prior question,
5 Ms. Bojko?

6 MS. BOJKO: I believe just the years need
7 to be changed. I was saying 2008 to 2012. My
8 apologies.

9 EXAMINER ADDISON: Would you care to
10 restate your --

11 MS. BOJKO: Sure. Can I have it reread
12 and I will restate?

13 EXAMINER ADDISON: You may.

14 (Record read.)

15 Q. (By Ms. Bojko) The 2008 to 2012 costs
16 that the Commission deemed recoverable in the 2012
17 case, the Commission -- was about 55.5 million,
18 correct?

19 A. Correct.

20 Q. The Commission also stated that the
21 insurance -- any insurance proceeds collected should
22 be reimbursed to the ratepayers; is that correct?

23 A. It does say here, yes, that the remed --
24 the costs should be used to reimburse ratepayers.

25 Q. And it also says that to the extent those

1 proceeds collected from the insurance -- insurers or
2 third parties exceed the amount recoverable from
3 ratepayers, that Duke should be permitted to retain
4 that excess, correct?

5 A. It does state that, yes.

6 Q. And so the amount, from your reading of
7 the Commission Order, was that the \$55.5 million
8 would be offset by the \$56.2 million received from
9 insurance proceeds, less the legal costs, correct?

10 A. I don't read it that way, no.

11 Q. What other costs would be recoverable
12 that Duke is supposed to net against, or compare, to
13 determine whether Duke gets to keep any?

14 A. Well, at the time this Order was written,
15 we hadn't collected any insurance money from any
16 insurer. And the way I read this we were talking
17 about total insurance and total investigation and
18 remediation costs, not just the costs incurred as of
19 12-31-12.

20 Q. That's what the Commission Entry says or
21 it says recoverable costs?

22 A. It says nothing about costs from 2008 to
23 to '12 only.

24 Q. Well, that's what they were approving in
25 this case, correct, 2008 to 2012 costs? They weren't

1 ruling on the recoverability of any costs from 2013
2 to 2018, correct?

3 A. There is nothing in this Order that says
4 insurance should just be applied to costs through
5 2012.

6 Q. But there's nothing that says it should
7 not apply to the costs from 2008 to 2012, correct?

8 A. I don't know why they would have taken
9 such a narrow focus. There was no insurance even
10 collected at this time.

11 Q. Yeah, but weren't the costs, weren't the
12 55 million -- \$55.5 million in costs collected
13 through summer of 2019?

14 A. Yes.

15 Q. And when did Duke collect the insurance
16 proceeds?

17 A. Oh, we started collecting some insurance
18 in 2016. And, you know, as was discussed today, we
19 are still collecting.

20 Q. How much had been collected June 2019?

21 A. Insurance?

22 Q. Yes.

23 A. I don't know.

24 Q. Would it have been a substantial amount?
25 Would it have been close to the 50 million since we

1 are only in November 2019 and we have 56.2 million
2 now collected?

3 A. No.

4 Q. Did Duke pass any of the insurance
5 proceeds back to customers?

6 A. No.

7 Q. And you stated you have this 50 million,
8 I am assuming you paid the legal fees and consultant
9 fees at this point, so you have approximately
10 50 million just sitting in an account?

11 A. It's in the cash account right now, yes.

12 Q. Does Duke leave \$50 million often in a
13 cash account not bearing interest?

14 A. This \$50 million, associated with these
15 insurance proceeds, is in a noninterest-bearing
16 account.

17 Q. That wasn't my question. I asked if Duke
18 typically leaves \$50 million in a noninterest-bearing
19 account.

20 A. I don't know. I am not in accounting.

21 Q. Well, you are an accountant. Would it be
22 prudent for a company to leave \$50 million in an
23 account that doesn't bear interest?

24 A. This \$50 million associated with the
25 insurance proceeds is not in an interest-bearing

1 account.

2 Q. That's not what my question was.

3 MS. BOJKO: Your Honor, can I have my
4 question reread, please?

5 EXAMINER ADDISON: You may.

6 (Record read.)

7 A. I am not aware of what we do with the
8 rest of our cash. I am not in the Accounting
9 Department. I would have to assume that we have
10 interest-bearing cash accounts, yes.

11 Q. I think you ultimately answered yes to my
12 question; is that correct? I want to make sure the
13 "yes" was to my question and not the end of your last
14 statement.

15 A. I would assume that we have
16 interest-bearing cash accounts, yes.

17 Q. And you would assume that any company
18 would make a prudent decision by putting such a large
19 amount into an interest-bearing account, correct?

20 MR. D'ASCENZO: Objection. Calls for
21 speculation. She can't talk to what any company
22 would do.

23 MS. BOJKO: Your Honor, she is an expert
24 of ratemaking and -- well, she is an accountant.
25 She's testifying as an expert witness. She can tell

1 us, from her background and history and experience,
2 what a company -- what she would recommend the
3 Company do.

4 EXAMINER ADDISON: I think we've spent
5 enough time on this. I think she's basically
6 indicated that she doesn't know. So I think we
7 should just move on. Thank you.

8 Q. (By Ms. Bojko) Several times throughout
9 your testimony you refer to Mr. Bachand; is that
10 correct? And I am looking at your supplemental
11 testimony as an example.

12 A. Do you have a page that you are referring
13 to?

14 Q. Oh, there are several as I just
15 mentioned, but on page 9, lines 10, you say "As more
16 fully explained by Duke Energy Ohio Witness
17 Mr. Bachand," then again on line 14, "as
18 Mr. Bachand," and "as Mr. Bachand explains," and then
19 again on page 10, line 10, "as Mr. Bachand explains."
20 And again on line 19, "Mr. Bachand describes." Do
21 you see all those references to Mr. Bachand?

22 A. I do.

23 Q. So in those provisions when you rely on
24 Mr. Bachand and regurgitate what he has explained in
25 his testimony, you did not make independent

1 conclusions or findings with regard to those issues,
2 correct?

3 A. Could you be more specific which
4 findings?

5 Q. The exclusion of costs through Rider MGP,
6 you are talking about exclusion of costs versus
7 location, and I think you explained to Mr. Healey
8 that you were not a VP manager, you have no
9 environmental experience and you weren't out there
10 managing the VAP -- excuse me, I said VP again -- you
11 weren't out there managing the VAP and that you
12 relied on Mr. Bachand's expertise when he provided
13 you costs and invoices regarding the items you
14 address in your testimony, correct?

15 A. So if I am following the question, I will
16 say yes, I receive the cost information from
17 Mr. Bachand that gets reported on my SEL-1 templates,
18 if that's what you are asking, yes.

19 Q. Right. And you are relying on
20 Mr. Bachand's conclusions regarding the geographical
21 location position that the Company is taking in this
22 case, correct?

23 A. I don't understand the question.

24 Q. Sure.

25 You say "As more fully explained by Duke

1 Energy Ohio Witness Mr. Bachand, the Company does not
2 agree with Staff's recommendations." You are not
3 making that conclusion. You are relying on
4 Mr. Bachand, correct?

5 A. What page are you on?

6 Q. Same page 9.

7 A. What line?

8 Q. 10 through 11.

9 A. So if the -- can you repeat the question?

10 Q. Sure. I am asking if you are relying on
11 Mr. Bachand's conclusion in all of these statements
12 you are making in your testimony. Or did you go out
13 and independently verify what the area referred to as
14 "the Area West of the West Parcel" constitutes?

15 A. I have seen the maps. And I know from
16 the maps that there is an Area West of the West.
17 There is a DCI property. There is an East Parcel, a
18 West Parcel, a Middle Parcel.

19 Q. So you are stating that you actually did
20 make these -- you did Mr. Bachand's job as well which
21 was review the invoices and make sure that the
22 invoices were properly applied to the appropriate
23 parcel?

24 MR. D'ASCENZO: Objection. She is
25 misstating what the witness said.

1 EXAMINER ADDISON: I will allow her a
2 great deal of latitude in her answer to correct any
3 mischaracterizations that may have been --

4 A. My answer was --

5 MS. BOJKO: Your Honor, I am not
6 misstating her testimony. I am asking her if that's
7 what she --

8 EXAMINER ADDISON: I appreciate that. I
9 am just giving her a little more leeway in this
10 particular answer. You may answer.

11 A. My answer was I have looked at maps. I
12 have seen that we have different parcels on the maps.

13 Q. That's not what I asked you.

14 I asked if you drew the conclusions that
15 you have identified in your testimony where you have
16 associated that conclusion with Mr. Bachand. If you
17 independently, with your own personal knowledge, have
18 arrived at the same conclusion that he has.

19 A. And the conclusion that you are
20 specifically referencing right now is this sentence
21 that I have here, "The area that is referred to as
22 the Area West of the West Parcel only constitutes a
23 small portion of the total nine-acre area that was
24 referred to as the 'Purchased Parcel' in the
25 Company's...Base Rate Case," I believe that I can

1 make that conclusion by looking at a map. I don't
2 need Mr. Bachand to tell me that.

3 Q. Okay. And that's what I am asking. You
4 actually made those -- in the Rate Department at
5 Duke, you actually made those conclusions that -- and
6 you made similar conclusions as Mr. Bachand.

7 A. I am just saying this sentence here, I
8 can draw this conclusion on my own. You are asking
9 me for a lot of different conclusions and I am
10 trying --

11 Q. I was trying to shortcut. I am happy to
12 take it one by one. That's fair. I am happy to do
13 it. You kept referring to Mr. Bachand, so I thought
14 you were adopting his positions. I didn't think that
15 you were saying you are personally, based on your
16 personal knowledge, making those conclusions. And
17 that's what you are telling me, right, at least with
18 regard to the first one?

19 A. So this conclusion right here, I think I
20 can look at a map and say that there's different
21 parcels, yes.

22 Q. Okay. So what about the next one? Can
23 you say that the area that required remediation in
24 the Area West of the West Parcel was in fact part of
25 the original MGP footprint and contaminated by MGP

1 impacts?

2 A. Well, I do know that the Area West of the
3 West was originally part of the MGP footprint. Part
4 of the West of the West we owned and we sold to DCI
5 Properties. And then we repurchased it back.

6 Q. And you can state that the remediation
7 was required as on line 15?

8 A. I can't state that part.

9 Q. And you can state that the actual West of
10 the West Parcel was contaminated by MGP impacts?

11 A. I would rely on Mr. Bachand for that. So
12 some of these I can rely on him; some of them I
13 can't. That's why it's good to go through them one
14 by one.

15 Q. Can you -- are you familiar with the
16 exact scope of work that was performed in the Area
17 West of the West Parcel?

18 A. I'm generally familiar that we had
19 remediation there.

20 Q. Are you familiar with the types of
21 remediation?

22 A. Not specifically, no.

23 Q. When did you begin working for Duke?

24 A. I began working for Duke in 2003.

25 Q. Duke Energy Business Services?

1 A. Well, at the time it was Cinergy.

2 Q. So do you -- is your current employer
3 Duke Energy Ohio or Duke Energy Business Services?

4 A. Yes, Duke Energy Business Services.

5 Q. And do you do work in the Rates
6 Department exclusively for Duke Energy Ohio or do you
7 also do work for affiliated companies?

8 A. I do work for Duke Energy Ohio and Duke
9 Energy Kentucky.

10 Q. I don't mean to re-ask this again if you
11 answered this, but is it your testimony here today
12 that you actually go through the invoices and make a
13 determination of whether they are recoverable or not?
14 Recoverable costs, excuse me.

15 A. What do you mean by "recoverable costs"?

16 Q. That they are allowed to be recovered by
17 customers. Do you make that determination yourself?

18 A. I don't necessarily -- when you say "they
19 are allowed to be recovered by customers" of the --

20 Q. Okay. Here is a perfect example. I am
21 giving you a real-life example. So during -- another
22 public utility, I won't name names, had a storm
23 recovery case and, at the end of the storm recovery
24 case, they gave all their employees baseball hats
25 that said you -- great job, way to go. And the

1 Commission determined that that invoice, that invoice
2 for those baseball hats, even though the Company of
3 course thought it was related to the overall
4 remediation efforts of the storm costs recovery, the
5 Commission disallowed that expense.

6 Do you go through all of the invoices
7 that are given to you and determine if there are any
8 of those such costs? Overnight expenses from Duke
9 employees? Baseball hats? Advertisement? Any of
10 those costs? Do you make that determination?

11 A. I don't. I rely on Mr. Bachand for that.

12 Q. I'm sorry, you just have several pieces
13 of testimony. I want to make sure I get through
14 everything.

15 Ms. Lawler, Lawler, sorry, you'd agree
16 with me that you believe the Commission required the
17 insurance proceeds to be passed back to ratepayers,
18 correct?

19 A. The Commission's Order does talk about
20 refunding back to ratepayers, yes.

21 Q. And being as part of the Rate Department,
22 what is the anticipated date that Duke will pass
23 those back to ratepayers?

24 A. I don't know a date.

25 Q. Under what mechanism would you envision

1 that Duke would make that refund to ratepayers?

2 A. Ultimately that would go through Rider
3 MGP.

4 Q. And currently MGP is set at zero; is that
5 correct?

6 A. That's correct.

7 Q. And that's because the \$55.5 million
8 approved in the 2012 Rate Case Order has fully been
9 collected, correct?

10 A. Correct.

11 Q. And you could easily -- if -- since it's
12 at zero, the MGP Rider could be turned into a credit
13 and you could pass those insurance proceeds back to
14 customers in the same manner that you collected the
15 money from customers, correct?

16 A. That's possible, yes.

17 MS. BOJKO: Thank you. I have no further
18 questions, your Honor.

19 EXAMINER ADDISON: Thank you, Ms. Bojko.
20 Ms. Whitfield.

21 MS. WHITFIELD: I don't have any
22 questions, your Honor.

23 EXAMINER ADDISON: Mr. Boehm.

24 MR. BOEHM: No questions. Thank you.

25 EXAMINER ADDISON: Mr. McNamee.

1 MR. McNAMEE: I do but only a couple.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. McNamee:

5 Q. Good afternoon, Ms. Lawler.

6 A. Good afternoon.

7 Q. I bet you don't have a copy of what's
8 been marked for identification as Staff Exhibit 6 in
9 front of you, do you?

10 A. Not that I can see.

11 Q. I bet not.

12 MR. McNAMEE: Your Honor, if I might
13 approach the witness?

14 EXAMINER ADDISON: You may.

15 MR. D'ASCENZO: This one has been marked
16 and not admitted yet; is that correct?

17 MR. McNAMEE: Yes. I tried -- I tried
18 with Witness Bachand and also Bednarcik, yes.

19 MS. WATTS: Third time is a charm, Tom.

20 MR. McNAMEE: I hope so.

21 Q. (By Mr. McNamee) Ms. Lawler, now do you
22 have what's been marked for identification as Staff
23 Exhibit 6 in front of you?

24 A. I do, yes.

25 Q. If you could turn to the second page

1 there, we note the -- it says Person Responsible,
2 Peggy Laub.

3 A. Yes.

4 Q. You are Peggy Laub for our purposes here
5 today.

6 A. Yes. I have adopted her testimony.

7 Q. All I need is you to tell me that I have
8 got a correct copy of this data request that was --
9 answer to the data request.

10 A. I believe this is a correct copy, yes.

11 MR. McNAMEE: That's all I need. Thank
12 you.

13 No further questions. I'm sorry.

14 EXAMINER ADDISON: Thank you,
15 Mr. McNamee.

16 Mr. D'Ascenzo?

17 MR. D'ASCENZO: May I have just a few
18 moments, your Honor?

19 EXAMINER ADDISON: You may.

20 Let's go off the record.

21 (Discussion off the record.)

22 EXAMINER ADDISON: Let's go back on the
23 record.

24 Mr. D'Ascenzo.

25 MR. D'ASCENZO: Just a couple of

1 questions.

2 - - -

3 REDIRECT EXAMINATION

4 By Mr. D'Ascenzo:

5 Q. Ms.-- Ms. Lawler, do you have what Staff
6 counsel just handed to you as Staff Exhibit 6?

7 A. I do.

8 Q. Do you -- I just want to ask a couple of
9 questions from a -- just a foundational standpoint.
10 Do you recognize this document?

11 A. I do.

12 Q. Can you just explain what it is?

13 A. It's a discovery question asking the
14 Company to provide Staff with monthly invoices for
15 portions of the costs in the rider filing.

16 Q. And what kind of costs is this asking
17 for?

18 A. It's asking for costs of the East End and
19 West End sites. The categories are Construction
20 Management; Miscellaneous; Investigation; Project
21 Management/Construction Oversight; Soil Disposal;
22 Fuel.

23 Q. And to your knowledge, Duke provided this
24 response, correct?

25 A. Correct.

1 Q. In looking at the response for East End,
2 specifically looking at part (b), do you know what
3 those costs described there are?

4 A. I do.

5 Q. Can you explain what those are?

6 A. So specifically when it says that in the
7 attachment the monthly charges of 9,115.43 in the
8 months of July through November were incorrectly
9 charged to the MGP project. These were costs for
10 JLL. It's a management services company that we use.
11 They -- these costs got incorrectly included in the
12 rider filing. They weren't remediation/investigation
13 costs. They have nothing to do with any type of
14 remediation and investigation. It's just maintenance
15 costs. It's a maintenance company. As I understand
16 it, they mow the lawn, take care of the grounds.

17 And so, as we were going through
18 responding to this discovery question, we realized
19 that these costs had been incorrectly included in the
20 rider filing. And they were incorrectly included
21 because they had nothing to do with remediation and
22 investigation of MGP.

23 Q. And did the Company make that correction
24 in a subsequent MGP filing?

25 A. We did. Ms. Laub did, and I believe it

1 was in the '15 filing for '14 costs. On PAL-2 she
2 adjusted the 2013 costs that we were proposing to be
3 recovered. So in the 15-452 case, if you look at
4 PAL-2, I believe the 2013 activity would be less than
5 what it was in her original '14 filing by that
6 \$6,300. But, again, these weren't costs related to
7 remediation and investigation. It was a maintenance
8 crew.

9 Q. And do you recall where those costs were
10 incurred?

11 A. The maintenance was conducted at the East
12 End and -- at the East End site but it had nothing to
13 do with remediation and investigation.

14 MR. D'ASCENZO: Okay. No further
15 questions.

16 MS. BOJKO: I am sorry, can I have that
17 question read back, and answer, please.

18 EXAMINER ADDISON: You may.

19 (Record read.)

20 MS. BOJKO: Thank you.

21 EXAMINER ADDISON: Thank you,
22 Mr. D'Ascenzo.

23 Mr. Healey.

24 MR. HEALEY: Nothing further, your Honor.

25 EXAMINER ADDISON: Ms. Bojko.

1 MS. BOJKO: No, thank you, your Honor.

2 EXAMINER ADDISON: Ms. Whitfield.

3 MS. WHITFIELD: No, thank you, your
4 Honor.

5 EXAMINER ADDISON: Mr. Boehm.

6 MR. BOEHM: No questions, your Honor.

7 EXAMINER ADDISON: Mr. McNamee.

8 MR. MCNAMEE: Thank you for the
9 clarification, Ms. Lawler; and no questions.

10 EXAMINER ADDISON: Thank you very much.
11 I have no additional questions, Ms. Lawler. You are
12 excused.

13 Mr. D'Ascenzo.

14 MR. D'ASCENZO: Thank you, your Honor.
15 At this point we would move for the admission of
16 Exhibits 25 through 31.

17 EXAMINER ADDISON: Any objections to the
18 admission of Duke Energy Ohio Exhibits 25, 26, 27,
19 28, 29, 30, and 31?

20 MS. BOJKO: Subject to my motion to
21 strike, your Honor.

22 EXAMINER ADDISON: Thank you, Ms. Bojko,
23 and it is noted for the record.

24 Hearing no additional objections, those
25 exhibits will be admitted.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 MR. McNAMEE: Did we already admit the
3 applications, 1 through 6?

4 EXAMINER ADDISON: Good point,
5 Mr. McNamee.

6 Mr. D'Ascenzo, would you like to move
7 in --

8 MS. WATTS: I was going it try to sweep
9 at the end; but, yes, may we move them now, your
10 Honor?

11 EXAMINER ADDISON: Absolutely. Any
12 objection to the admission of Duke Energy Ohio
13 Exhibits 1, 2, 3, 4, 5, and 6?

14 Hearing none, they will be admitted.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 EXAMINER ADDISON: Thank you.

17 Let's go off the record for a moment.

18 (Discussion off the record.)

19 EXAMINER ADDISON: Let's go back on the
20 record.

21 Mr. McNamee.

22 MR. McNAMEE: Your Honor, I would move
23 for the admission of what's been marked for
24 identification as Staff Exhibit 6.

25 EXAMINER ADDISON: Any objection?

1 MR. D'ASCENZO: No, your Honor.

2 EXAMINER ADDISON: Hearing none, it will
3 be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER ADDISON: And as we discussed
6 off the record very briefly, we will be deviating
7 from our prior previously-determined witness
8 schedule, and we'll be taking the testimony of
9 Mr. Adkins on behalf of OCC.

10 At this time we will take a short break
11 to prepare for Mr. Adkins. Thank you.

12 Let's go off the record.

13 (Discussion off the record.)

14 EXAMINER ADDISON: We will go back on the
15 record.

16 Mr. Healey.

17 MR. HEALEY: Yes, your Honor. OCC calls
18 Kerry Adkins.

19 (Witness sworn.)

20 EXAMINER ADDISON: Please be seated.

21 MR. HEALEY: Your Honor, at this time I
22 would like to mark two exhibits. The first,
23 Exhibit 19, would be the public version of the
24 prefiled direct testimony of Kerry Adkins, filed in
25 these consolidated cases on October 8, 2019.

1 EXAMINER ADDISON: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. HEALEY: And the second exhibit would
4 be marked as Exhibit OCC 20C. That's a confidential
5 version of Mr. Adkins testimony, also filed October
6 8, 2019. And I would just note that the only
7 confidential portion of that would be his attachment
8 KJA-04. There were no redactions in the main body of
9 that.

10 EXAMINER ADDISON: Thank you for that
11 clarification, Mr. Healey, and they will be so
12 marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. HEALEY: And may I approach the
15 witness to give him copies of the testimony?

16 EXAMINER ADDISON: You may.

17 - - -

18 KERRY J. ADKINS

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

21 DIRECT EXAMINATION

22 By Mr. Healey:

23 Q. Mr. Atkins, can you please state your
24 name and address for the record, please.

25 A. My name is Kerry Adkins. My business

1 address is 65 East State Street, 7th Floor, Columbus,
2 Ohio 43215.

3 Q. And on whose behalf are you testifying
4 today?

5 A. On behalf of the Ohio Consumers' Counsel.

6 Q. And you have in front of you what's now
7 been marked OCC Exhibit 19. Can you tell me what OCC
8 Exhibit 19 is, please?

9 A. It is my direct testimony in these
10 consolidated proceedings.

11 Q. And that would be the public version?

12 A. Yes.

13 Q. And you drafted this testimony and caused
14 it to be prefiled, correct?

15 A. I did.

16 Q. And do you have any corrections to OCC
17 Exhibit 19, today?

18 A. I do not.

19 Q. And if I were to ask you the same
20 questions as provided in OCC Exhibit 19, would your
21 answers be the same?

22 A. Yes.

23 Q. Mr. Adkins, do you also have in front of
24 you what has been marked OCC Exhibit 20C?

25 A. Yes.

1 Q. And what is OCC Exhibit 20C?

2 A. OCC Exhibit 20C is the confidential
3 version of my direct testimony filed in these
4 proceedings.

5 Q. And you drafted this testimony yourself
6 as well, correct?

7 A. I did.

8 Q. And do you have any corrections to OCC
9 Exhibit 20C?

10 A. I do not.

11 Q. And if I were to ask you the questions
12 found in Exhibit OCC 20C today, would your answers be
13 the same?

14 A. They would.

15 MR. HEALEY: Thank you. Your Honor, at
16 this time, subject to cross-examination, OCC moves
17 for the admission of OCC Exhibits 19 and 20C.

18 EXAMINER ADDISON: Thank you very much,
19 Mr. Healey. We will reserve ruling on that motion.

20 And just out of habit, I have to ask.
21 Any motions to strike?

22 MR. D'ASCENZO: No, your Honor.

23 EXAMINER ADDISON: Thank you very much.

24 Ms. Bojko, any questions?

25 MS. BOJKO: No, thank you, your Honor.

1 EXAMINER ADDISON: Ms. Whitfield.

2 MS. WHITFIELD: No, thank you, your

3 Honor.

4 EXAMINER ADDISON: Mr. Boehm.

5 MR. BOEHM: No, thank you, your Honor.

6 EXAMINER ADDISON: Mr. McNamee.

7 MR. McNAMEE: That would be fun, but no

8 thank you.

9 EXAMINER ADDISON: Mr. D'Ascenzo.

10 MR. D'ASCENZO: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. D'Ascenzo:

14 Q. Good afternoon, Mr. Adkins. Good to see
15 you again.

16 A. Good afternoon.

17 Q. Mr. Adkins, your testimony contains your
18 recommendations on behalf of OCC with respect to the
19 Company's request to recover costs under its Rider
20 MGP, correct?

21 A. Yes.

22 Q. And all of your recommendations are set
23 forth in your testimony.

24 A. Yes.

25 Q. Your first recommendation, referring to

1 page 3, around line 12 of your testimony, is that the
2 Commission deny Duke recovery of MGP remediation
3 costs incurred outside the boundaries of the two MGP
4 sites known as West End and East End; is that an
5 accurate summary of your first recommendation?

6 A. Yes.

7 Q. Thank you.

8 Your second recommendation is that the
9 Commission order Duke to distribute all the net
10 proceeds from Duke's insurance policies, covering the
11 MGP sites, to customers; is that a fair summary of
12 your second recommendation?

13 A. Yes.

14 Q. And those are the only two general
15 recommendations in your testimony, correct?

16 A. There perhaps could be other
17 recommendations embodied, but those are the two
18 principal ones, yes.

19 Q. So here we go, Mr. Adkins. Do you
20 remember, a couple weeks ago, we took your
21 deposition?

22 A. Yes.

23 Q. And it was around November 7, I believe?

24 A. Sounds about right.

25 Q. And you promised to tell the truth?

1 A. Yes.

2 MR. D'ASCENZO: Okay. Your Honor, may I
3 approach?

4 EXAMINER ADDISON: You may.

5 Mr. D'Ascenzo, do you have a copy for the
6 Bench?

7 MR. D'ASCENZO: I'm sorry? Oh, sure.

8 EXAMINER ADDISON: Thank you.

9 Does anybody else need a copy?

10 MS. BOJKO: Sure. I'll take a copy.

11 Q. (By Mr. D'Ascenzo) All right.

12 Mr. Adkins, I would like to draw your attention to
13 page 11 of your deposition.

14 A. I'm there.

15 Q. Actually let's start on page 10 at the
16 very bottom, line 25.

17 A. Okay.

18 Q. Question: Okay. Your first
19 recommendation is that the Commission deny Duke
20 Energy Ohio's recovery of MGP remediation costs
21 incurred outside the boundaries of the two MGP sites
22 known as West End and East End; is that accurate?

23 Answer: Yes.

24 Question: And your second recommendation
25 is that the Commission order Duke Energy Ohio to

1 immediately distribute to Duke Energy Ohio's
2 consumers all net proceeds from insurance policies
3 covering the MGP sites; is that correct?

4 Answer: That is my recommendation, yes.

5 Question: And those are the only two
6 recommendations in your testimony, correct?

7 Answer: Generally, yes.

8 Did I read that accurately?

9 A. Yes.

10 Q. Thank you.

11 MR. HEALEY: Objection, your Honor.

12 EXAMINER ADDISON: Grounds?

13 MR. HEALEY: I object on the grounds of
14 improper impeachment. Mr. Adkins' response there
15 says "Generally, yes," which is entirely consistent
16 with the response that he just gave that those are
17 generally his recommendations and there might be
18 other recommendations -- other sub-recommendations
19 embodied within them which is exactly what his
20 response was; so that's an improper impeachment.
21 Thank you.

22 EXAMINER ADDISON: Thank you very much,
23 Mr. Healey.

24 The Commission can certainly review the
25 answer in the deposition, as well as the answer

1 Mr. Adkins just gave, and compare the two and
2 determine if there is an inconsistency or not. So
3 please proceed, Mr. D'Ascenzo.

4 MR. D'ASCENZO: Thank you, your Honor.

5 Q. (By Mr. D'Ascenzo) Mr. Adkins, on page 1
6 of your testimony, looking at line 2, you've
7 described that you earned a Bachelor of Arts degree
8 in History with a prelaw option from Ohio University.
9 Do you see that?

10 A. Yes.

11 Q. You are not licensed to practice law,
12 correct?

13 A. I am not.

14 Q. And you are not an attorney, right?

15 A. I am not.

16 Q. Mr. Adkins, do you have any specialized
17 training as it relates to performing environmental
18 remediation?

19 A. No.

20 Q. And you are not testifying as an expert
21 in environment remediation, correct?

22 A. That is correct.

23 Q. And you do not have any training under
24 the Comprehensive Environmental Response,
25 Compensation, and Liability Act known as CERCLA,

1 correct?

2 A. Correct.

3 Q. And you do not have any expertise in
4 terms of what environmental remediation Duke Energy
5 Ohio is required to perform related to manufactured
6 gas plants under CERCLA, correct?

7 A. Correct.

8 Q. And you don't have any -- you do not have
9 any training under Ohio's Voluntary Action Program,
10 correct?

11 A. That is correct.

12 Q. Now, Mr. Adkins, you started working at
13 the Commission in 1989; is that accurate?

14 A. Yes.

15 Q. And you transferred into the Utilities
16 Department in 2008, right?

17 A. Yes.

18 Q. And you retired from the Commission in
19 2018; is that accurate?

20 A. Yes.

21 Q. You have reviewed the Commission's Order
22 in Case No. 2012-1685, the gas rate case, correct?

23 A. Yes.

24 Q. And you have also reviewed the decision
25 of the Ohio Supreme Court related to the appeal of

1 the Company's 2012 gas rate case, correct?

2 A. I reviewed it shortly after it came out
3 and probably at least once since then.

4 Q. Thank you. And if I refer to the
5 "Company's 2012 gas rate case," do you understand
6 that I am referring to Case No. 12-1685?

7 A. Yes.

8 Q. Thank you.

9 You've also reviewed the Company's
10 application in Case No. 16-1106-GA-AAM, where the
11 Company asked for approval to continue deferring its
12 manufactured gas plant remediation costs, correct?

13 A. Yes.

14 Q. And you've also previously reviewed the
15 Commission's Order in Case No. 16-1106-GA-AAM where
16 the Commission granted the Company's first deferral
17 extension request, correct?

18 A. It's been a while but, yes, I have.

19 Q. In your current testimony in these
20 proceedings that counsel just provided to you, I am
21 looking specifically at page 4. I'll give you a
22 moment to get there.

23 A. I'm at page 4.

24 Q. Okay. Looking at the very top there, on
25 line 5, I believe it is, you state that you oversaw

1 the Staff team in the 2012 rate case that
2 investigated Duke's initial proposal to charge
3 customers for MGP remediation costs; is that an
4 accurate statement?

5 A. Yes.

6 Q. So you are familiar with the MGP issues
7 from the Company's 2012 natural gas rate case.

8 A. Yes.

9 Q. And you have basic familiarity with the
10 overall 2012 natural gas rate case, correct?

11 A. My role -- I had one other role. I was
12 also responsible in that case for testimony related
13 to the lead-lag or lack of a lead-lag study in that
14 case, but my role principally was just related to the
15 lead-lag or lack of a lead-lag study, plus the MGP.
16 I didn't have much involvement in any other parts of
17 the case.

18 Q. Okay. That's fair. Thank you for that
19 clarification.

20 Mr. Adkins, would you agree with me that
21 the test year in that 2012 gas rate case was January
22 1, 2012, through December 31, 2012?

23 A. That is my recollection, yes.

24 Q. Thank you.

25 And would you also agree with me that the

1 date certain in the 2012 gas rate case was March 31,
2 2012?

3 A. That is my recollection as well.

4 Q. And in that 2012 gas rate case, the Staff
5 of the Commission conducted an investigation of the
6 Company's application, right?

7 A. Yes.

8 Q. And that's typical of rate proceedings
9 before the Commission, the Staff would do an
10 investigation?

11 A. In most instances, yes.

12 Q. And in that 2012 rate case, the results
13 of Staff's investigation were reflected in a Staff
14 Report that was filed on or about January 4, 2013,
15 correct?

16 A. To the best of my recollection, yes.

17 Q. And a few minutes ago you stated that you
18 were the -- you were responsible for the MGP piece of
19 that investigation. You were also the witness on
20 behalf of Staff with respect to those MGP issues in
21 the 2012 rate case, correct?

22 A. Yes.

23 Q. And you filed testimony in that case,
24 right?

25 A. Yes.

1 Q. And you even testified at the hearing and
2 were cross-examined, correct?

3 A. Yes.

4 Q. Now, as team leader over the MGP issues
5 in that 2012 rate case, you were responsible for
6 drafting all of the sections of the Staff Report that
7 addressed Staff's investigation and recommendations
8 related to MGP recovery, correct?

9 A. There were contributions by other staff
10 members but I was the primary drafter, yes.

11 Q. And so when you say there were
12 contributions by others, that was -- you are
13 referring to managing the team of individuals that
14 reported to you as part of that issue, correct?

15 A. There was that and I believe there was
16 some of the tables that were included in the Staff
17 Report were prepared by people -- members of the
18 team. I just incorporated them into the report.

19 Q. The text of the Staff Report that relates
20 to the MGP issues, that was drafted by you, correct?

21 A. Yes.

22 Q. As part of Staff's investigation in 2012,
23 Staff prepared Data Requests, right?

24 A. Yes.

25 Q. And the Company provided responses to

1 those Data Requests, right?

2 A. Yes.

3 Q. And Staff performed site visits of the
4 two MGP locations, correct?

5 A. Yes.

6 Q. And you personally visited the MGP sites,
7 right?

8 A. Yes.

9 Q. But you have not personally visited the
10 MGP sites since before Staff issued its Staff Report
11 in the 2012 rate case, correct?

12 THE WITNESS: Your Honor, may I have the
13 question reread, please.

14 EXAMINER ADDISON: You may.

15 (Record read.)

16 A. That is correct.

17 Q. Let's go back to your direct testimony
18 here in these cases. Referring back to your first
19 recommendation on page 3. And looking specifically
20 at lines 14 through 16 where you talk about costs
21 incurred outside of the boundaries of the two MPG
22 sites known as West End and East End. Are you there?

23 A. Yes.

24 Q. Okay. Now, your understanding of the
25 West End site comes from the description in the 2012

1 Staff Report, correct?

2 A. My understanding of the West End site was
3 described in the 2012 Staff Report, yes.

4 Q. And your understanding of the West End
5 site is that there are two parcels there, correct?

6 A. Yes.

7 Q. And your understanding of the boundaries
8 of the West End site are what's depicted in the 2012
9 Staff Report, correct?

10 A. It's what's described in the 2012 Staff
11 Report, yes.

12 Q. And you are familiar with the area of
13 land that has been discussed as the Purchased Parcel
14 in the 2012 gas rate case, correct?

15 A. At the East End site, yes.

16 Q. And you would agree with me that the
17 Purchased Parcel is the approximate 9-acre site that
18 was west of the western parcel at the East End site,
19 correct?

20 A. That is my recollection, yes.

21 Q. And that was the area that Duke purchased
22 from a third party prior to -- and I believe -- I
23 believe it was in 2011, correct?

24 A. I'm not sure -- I don't recall the
25 specific date. I do recall it was purchased from a

1 third party, yes.

2 Q. Okay. Thank you. And you would also
3 agree with me, sir, that the area that is referred to
4 as the Area West of the West parcel, or the WOW
5 property as referred to by -- in the Staff Reports in
6 the consolidated MGP cases, is a smaller portion or
7 sub-area of that 9-acre Purchased Parcel, correct?

8 A. Yes. The Area West of the West has been
9 depicted as on this -- the map to my right as the
10 yellow area.

11 Q. And let's talk about East End for a
12 moment.

13 EXAMINER ADDISON: Mr. D'Ascenzo, would
14 you mind just identifying the map for the record that
15 he just referred to?

16 Q. Sure. You are looking at a map that
17 is -- was blown up of JLB-1, correct?

18 A. Yes.

19 Q. Okay.

20 EXAMINER ADDISON: Thank you.

21 THE WITNESS: I apologize, your Honor.

22 Q. And your understanding of the East End
23 site also comes from what was described in the 2012
24 Staff Report, correct?

25 A. Yes. The descriptions provided in the

1 2012 Staff Report, correct.

2 Q. And what is your understanding of the
3 East End site?

4 A. My understanding of the East End site is
5 comprised of what was described in the Staff Reports
6 as the Middle Parcel which includes the propane
7 peaking facility, the West Parcel, and the East
8 Parcel as was described in the Staff Report -- Staff
9 Report in the 2012 case.

10 Q. Going back to the area we talked about as
11 the Area West of the West or WOW, a portion of that
12 was formerly owned by Duke and then sold to that
13 third-party developer, correct?

14 A. Duke represented such in the rate case,
15 yes.

16 Q. Do you have in front of you what was
17 previously marked as OMAEG Exhibit 2?

18 A. Could you tell me which document I am
19 looking for?

20 Q. Should be the 2012 Staff Report.

21 A. It's marked OMAEG 1.

22 Q. The Staff Report.

23 A. Oh, the Staff Report. I do have it. I
24 have it.

25 Q. Thank you.

1 And for clarification, would you agree
2 with me that the pages of the Staff Report that
3 discuss the MGP issues start on page 30?

4 A. Yes.

5 Q. And they go to page 64, correct?

6 A. Yes.

7 Q. All right. If you could just hold onto
8 that for one moment. Referring back to your
9 testimony on page 5, line 6, you state that Duke
10 sought to charge customers approximately 65 million
11 in remediation expenses that it had incurred between
12 January 1, 2008 to December 31, 2012; is that
13 correct?

14 A. Yes. I am quoting from the Staff Report,
15 yes.

16 Q. Okay. Now, if could you please turn to
17 page 30 of the Staff Report, please.

18 A. I'm there.

19 Q. And under the Introduction section where
20 it states "Duke states that it is now seeking
21 recovery of approximately \$45.3 million in actual
22 remediation costs incurred between January 1, 2008
23 through March 31, 2012, \$15 million in projected
24 remediation costs for the period April 1, 2012
25 through December 31, 2012, and approximately

1 \$5 million in carrying costs." Do you see that?

2 A. Yes.

3 Q. And I just want to clarify for the record
4 that the sum of those three items, what you are
5 referring to in your direct testimony where you state
6 "Duke sought to charge customers approximately
7 \$65 million"?

8 A. That is the approximate 65 million that I
9 am referring to in my testimony, what was described
10 in the Staff Report in the 2012 rate case --

11 Q. Thank you.

12 A. -- Staff Report.

13 Q. Thank you.

14 If you could please turn to page 45 of
15 the Staff Report.

16 A. I'm there.

17 Q. Looking under the section that says
18 "Staff's Recommendations for Recovery" and the
19 first -- the first sentence there, please.

20 A. I see the first sentence. First sentence
21 of the first full paragraph, is that what you're
22 referring to?

23 Q. Yes. And would you agree with me that
24 Staff's recommendation for recovery of MGP
25 remediation investigation -- let me restate that.

1 Would you agree with me that Staff's
2 recommendation for recovery of the MGP remediation
3 and investigation in the 2012 gas rate case was
4 limited to expenses related to plant that was in
5 service and used and useful?

6 A. Unfortunately this description is not
7 100-percent complete. Staff's discussion throughout
8 the entire -- entire Staff Report was that the
9 expenses that were sought for recovery during the
10 rate case had to be related to, pursuant to
11 4909.15(A)(4), the expenses had to be related to --
12 had to be related to the utility that -- plant that
13 was in service and used and useful. The idea was
14 recoverable expenses have to be recovered -- have to
15 be related to the current provision of the utility
16 service.

17 At the time, Staff was -- could not
18 determine -- the case involved replacing dirt. Staff
19 was not able to -- Staff couldn't tell what was
20 related to replacing the dirt, was or was not an
21 expense related to utility in service. Therefore,
22 that's where "used and useful" came in was the idea
23 that it had -- the expenses had to be related to
24 plant that was in service and used and useful.

25 Q. Mr. Adkins, you started out your

1 explanation there as saying this is incomplete. You
2 wrote this, correct?

3 A. I did write it, yes. But -- the
4 description unfortunately it used -- it uses a bit of
5 shorthand. It's not 100-percent inclusive. There
6 are other parts throughout the Staff's Report where
7 Staff explains explicitly what it was doing. Here
8 is -- it's almost a summary and, unfortunately, it's
9 somewhat of a misleading summary. It's a bit
10 shorthand that, while essentially accurate, is not
11 complete.

12 Q. And, again, you wrote this, right?

13 A. I did.

14 Q. Thank you.

15 And going to -- back to page 42 of the
16 Staff Report, referring to the discussion of the
17 Central Parcel on -- beginning at the top of 42.

18 A. I'm there.

19 Q. You would agree with me that Staff
20 concluded that all work performed on the Central
21 Parcel of the East End site should be eligible for
22 recovery, correct?

23 A. Staff's recommendation, based on its
24 theory of the case back then, was that all expenses
25 related to the Central Parcel were allowable for

1 recovery in that case.

2 Q. And, again, Staff's theory was the
3 remediation that occurred in those areas were related
4 to property that was used and useful and in service,
5 right?

6 A. It was related to expenses that were used
7 for the current provision of utility service.
8 Therefore, it was related -- since it was related to
9 the current provision of utility service that it
10 was -- they are recovery expenses.

11 Q. So you are saying used and useful had
12 nothing to do with Staff's analysis in 2012?

13 A. I am not saying that at all.

14 Q. So explain how used and useful applied to
15 your analysis for the Central Parcel in 2012.

16 A. Staff started with -- by reviewing the
17 statutory provisions related to the recoverability of
18 utility expenses. The recoverability of utility
19 expenses is included in the Commission's rules, the
20 Commission's prior precedent, and Revised Code
21 4909.15(A)(4). 4909(A)(4) requires utility expenses
22 to be used in the current provision of utility
23 service. That's a statutory requirement.

24 The case in 2012, Duke had recorded
25 remediation -- investigation and remediation expenses

1 as operating and maintenance expenses. Staff looked
2 at the sites. The sites were, by and large, empty
3 fields. There was nothing there other than dirt.
4 They looked like empty football fields. There was
5 nothing there. So, therefore, Staff, in order to
6 determine if expenses were used in the current
7 provision of utility service, Staff looked for
8 utility plant.

9 We analogized something like painting, if
10 you paint something that's an operating and
11 maintenance expense related to. If you paint
12 something that's not owned by the utility and not
13 used for utility service, those expenses, in Staff's
14 opinion back then, should not have been recovered.
15 If you are painting something that is plant in
16 service, is used for utility service, then that would
17 be a recoverable expense in Staff's opinion back
18 then.

19 Here, the indication was about replacing
20 dirt or solidifying dirt, so Staff looked at what the
21 dirt was doing before it was replaced or before it
22 was solidified and in the case -- in this case the
23 Staff looked at the dirt. If the dirt was holding up
24 a utility pipeline that was in service, the Staff
25 recommended that the expenses related to the

1 replacing that dirt was recoverable. It was not
2 related to the pipeline, since the rest of the field
3 was empty, Staff recommended that it was not related
4 to. So the used and useful came in since Staff was
5 trying to find a way to determine whether or not the
6 expenses were related to utility service.

7 Q. Thank you for that clarification.

8 And with respect to the Central Parcel,
9 Staff recommended no -- the Central Parcel of the
10 East End site, Staff recommended no disallowance,
11 correct?

12 A. Staff recommended -- in that case the
13 Staff's opinion was that the entire Central Parcel
14 was related to utility operations that were currently
15 in service and used and useful, therefore any
16 maintenance expenses or operating expenses incurred
17 were properly recoverable under the -- under -- in
18 the rate case.

19 Q. And that Central Parcel area is where the
20 Company's underground propane facilities are located,
21 correct?

22 A. Or some -- some of the propane facilities
23 are located, yes.

24 Q. If you could please turn back to page 34
25 of the Staff Report.

1 A. I'm there.

2 Q. Under the "Land Purchase," that first
3 sentence there, would you agree with me that Duke
4 Energy Ohio acquired the Purchased Parcel, which we
5 previously agreed included the WOW area, in May of
6 2011 from a third party?

7 A. Yes.

8 Q. Thank you.

9 Do you recall when the Company filed its
10 notice of intent for the 2012 gas rate case?

11 A. I don't recall the date, no.

12 Q. Do you know whether the Company was able
13 to perform any MGP investigation on the Purchased
14 Parcel prior to acquiring it in May of 2011?

15 A. I do not know.

16 Q. But you would agree, sir, that the
17 Company did perform MGP investigation in 2011 on the
18 Purchased Parcel, right?

19 A. I don't know that it did or it did not.
20 I recall Staff asked -- back at the rate case, Staff
21 asked the Company to break out costs by parcel and it
22 was unable to do so. So I don't recall that there
23 was anything specific indicating -- that would
24 indicate to Staff that it did perform
25 investigation on --

1 Q. I would like to draw your attention to.

2 EXAMINER ADDISON: Mr. D'Ascenzo --

3 MR. HEALEY: Your Honor, I don't think he
4 was done.

5 MR. D'ASCENZO: Sorry.

6 Q. Continue.

7 A. I don't recall what the finishing -- what
8 it was.

9 THE WITNESS: I'm done, your Honor.

10 EXAMINER ADDISON: Thank you very much.

11 Q. I apologize.

12 A. No trouble.

13 Q. Mr. Adkins, I would like to draw your
14 attention to the Staff Report, page 34. If you look
15 in the middle of that paragraph, the sentence says
16 "The Company states that an investigation in 2011
17 indicated MGP impacts on the acquired land and that
18 more tests were planned in 2012." Do you see that?

19 A. I do.

20 Q. And you included this in the Staff
21 Report, correct?

22 A. I summarize what the Company stated, yes.

23 Q. And the Company stated that it planned to
24 continue investigations on the Purchased Parcel in
25 2012, correct?

1 A. If my summary here is accurate, yes.

2 Q. So assuming -- let me strike that.

3 Would you put something inaccurate in the
4 Staff Report?

5 A. Not knowingly or deliberately.

6 Q. Thank you.

7 Now if we could turn to page 43 of the
8 Staff Report, please.

9 A. I am at page 43.

10 Q. Thank you. One second here. Let's
11 actually go back a moment to page 34. We will go
12 back to 43 in a moment.

13 A. I am back at 34.

14 Q. I want to draw your attention to the
15 formula that is included at the bottom of that
16 section discussing the land purchase. Do you see
17 that?

18 A. I do.

19 Q. And that is -- you would agree with me,
20 sir, that is the calculation of the deferred value of
21 the purchased price that Duke sought to get recovery
22 of in the 2012 rate case.

23 A. This was how Duke represented that it
24 arrived at the 2 -- the approximately 2.3 million
25 dollars that it included for recovery related to the

1 Purchased Property, yes.

2 Q. And that was the total purchase price of
3 \$4,500,000, less the appraised value of \$2,159,000,
4 less the title service of \$9,420, and that's -- that
5 derived the value of the \$2,331,580, correct?

6 A. As described here, yes.

7 Q. And now let's go back to page 43.

8 A. I'm at 43.

9 Q. Under the Purchased Parcel section -- the
10 Purchased Property section. The last sentence there,
11 the Staff recommends that none of the deferred
12 expenses associated with the land purchase should be
13 recovered from customers. Do you see that?

14 A. I do.

15 Q. And you would agree with me, sir, that is
16 the \$2,331,580 that we previously discussed, correct?

17 A. I think this would be more than that. I
18 think the Staff's opinion was anything related to the
19 Purchased Property, any expenses related to the
20 Purchased Property should not have been included. I
21 think the only thing Staff was aware of was the
22 approximately 2.3 million. I think Staff's intent
23 was any expenses associated with the Purchased Parcel
24 should not have been included.

25 Q. But that's not what it says, is it?

1 A. As the person who wrote this, I am pretty
2 sure Staff was only aware of the 2.3 million. The
3 Staff wasn't aware of others. Staff had asked,
4 during the case, that the costs be broken down by
5 parcel. The Company responded it was unable to do
6 so. So if anything would have come up, any other
7 expense -- deferred expenses related to the Purchased
8 Parcel, Staff would have -- would have expected they
9 not be included.

10 Q. And again, the Staff Report acknowledges
11 there were investigation costs on the acquired land
12 in 2011 and that more tests were planned in 2012,
13 correct?

14 A. And based on the Staff's recommendation
15 in the case and based on the Commission's findings in
16 the case, I don't think those costs should have ever
17 been included or recovered. If they were part of the
18 dollars that were recovered, the 55.5 million, in my
19 opinion they should not have been.

20 MR. D'ASCENZO: Your Honor, I am going to
21 ask -- move to strike everything as being -- that the
22 witness just said as nonresponsive. My question was
23 "the Staff Report acknowledges there were
24 investigation costs on the acquired land in 2011 and
25 that more tests were planned in 2012, correct?"

1 EXAMINER ADDISON: Thank you,
2 Mr. D'Ascenzo.

3 I will afford Mr. Adkins the same luxury
4 of having one bite of the apple as our other
5 witnesses have had a chance to use to their
6 advantage. But --

7 MR. HEALEY: Your Honor, can I ask that
8 that one be struck so we could save the apple for
9 later?

10 EXAMINER ADDISON: That's a good one,
11 Mr. Healey. No, you may not.

12 THE WITNESS: I didn't realize I was
13 using my bite.

14 EXAMINER ADDISON: Thank you for asking.

15 Mr. Adkins, I will direct you to simply
16 answer counsel's questions and counsel's questions
17 only. Mr. Healey can bring any additional
18 information onto the record during his redirect.

19 THE WITNESS: My apologies, not my
20 intent.

21 EXAMINER ADDISON: No apologies
22 necessary.

23 Mr. D'Ascenzo.

24 MR. D'ASCENZO: Thank you, your Honor.

25 Q. (By Mr. D'Ascenzo) Where was I?

1 Mr. Adkins, you are familiar with the
2 Commission's Opinion and Order in the 2012 natural
3 gas rate case, correct?

4 A. Yes.

5 Q. You should have in front of you a
6 document that was previously identified as OMAEG
7 Exhibit 1, I believe, which should be a copy of that
8 Opinion and Order.

9 A. I have the Opinion and Order.

10 Q. Okay. Now, I would like to draw your
11 attention to page 26 of that Opinion and Order,
12 please.

13 A. I am at page 26.

14 Q. Thank you.

15 Now, a little bit ago we talked about the
16 statement in your testimony that Duke sought to
17 charge customers approximately \$65 million in
18 remediation expenses. If I could draw your attention
19 to page 26, the last full sentence there. Beginning
20 with "Mr. Wathen." Do you see that?

21 A. I do.

22 Q. So would you agree with me Duke reduced
23 the amount that it was seeking to recover from
24 65 million to \$62.8 million in that rate case?

25 A. I read this as the Commission's summary

1 of an -- an explanation by Mr. Wathen for reducing
2 the proposed costs to 62.8 million.

3 Q. Thank you.

4 And if you can turn to page 77 of that
5 Order, please.

6 A. You said page 77?

7 Q. Yes, sir.

8 A. I am there.

9 Q. Actually let's just go back to 76 real
10 quickly. Do you see where that Order begins with --
11 or, I'm sorry, that page in the middle begins
12 "Conclusions of Law" and there's some numbers below
13 that?

14 A. Yes.

15 Q. Okay. Now, if you could please go to 77.
16 I refer you to the Conclusion of Law No. 9. Are you
17 there?

18 A. Yes.

19 Q. And would you agree with me that the
20 Conclusion of Law No. 9 describes the Commission's
21 authorization of MGP recovery for the Company?

22 THE WITNESS: Could you reask your
23 question or may I have it reread, please?

24 EXAMINER ADDISON: You may.

25 (Record read.)

1 A. Without going through the entire Order
2 and all the concluding paragraphs, I don't know that
3 that's everything but the PUCO does describe here
4 some -- some recovery, yes.

5 Q. Okay. Let's just walk through it then.
6 The statement says that Duke sustained its burden to
7 prove that it should be authorized to recover
8 62.8 million. Do you see that?

9 A. Yes.

10 Q. And that's the same number we talked
11 about a few minutes ago that the Company reduced from
12 the 65, correct?

13 A. Yes.

14 Q. Less the 2,331,580 for the Purchased
15 Parcel, correct?

16 A. Yes.

17 Q. And that's the same calculation we talked
18 about on -- in the Staff Report a few minutes ago,
19 correct?

20 A. It came from that formula, yes.

21 Q. Thank you.

22 The 2008 costs for the West End site, do
23 you see that?

24 A. Yes.

25 Q. And all carrying costs as set forth in

1 the Order, do you see that?

2 A. Yes.

3 Q. And to your knowledge were there any
4 other MGP costs that were approved in this Order for
5 recovery?

6 A. I am not aware of any other costs that
7 were approved. My question is, this number is larger
8 than what the Commission actually approved so I'm
9 just -- it's incomplete. It's one paragraph out of a
10 much larger Order. This number includes the
11 62.8 million but, yet, the Commission only approved
12 55.5, so there is more to it than just this paragraph
13 is my point.

14 Q. Well, there is carrying costs, correct?

15 A. Yes.

16 Q. And so that would be included in that
17 calculation to reduce the 62.8, right?

18 A. Yes, but this paragraph doesn't talk
19 about the removal of the carrying costs. It's
20 elsewhere in this Order but it's not in this
21 paragraph. That's my point.

22 Q. Well, it says "less" and then it lists
23 the three items, less the 2 million -- 2.3 million
24 for the Purchased Parcel, the 2008 costs for West
25 End, and all carrying costs.

1 A. My apology. I misread the Order.

2 Q. Thank you.

3 And in terms of dollars, those -- what's
4 stated in paragraph 9 are the only dollars that the
5 Commission disallowed, correct?

6 A. Related to dollars, that's what my
7 understanding is, yes.

8 Q. If you could please turn to page 60 of
9 the -- I'm sorry, of the Opinion and Order.

10 A. I'm at page 60.

11 Q. And would you agree with me that on
12 page 60, this is where the Commission reaches its
13 conclusion regarding the \$2,331,580 for the Purchased
14 Parcel?

15 A. I agree that that's part of what the
16 Commission is finding here, yes.

17 Q. And the Commission disallowed the
18 recovery of that \$2,331,580, correct?

19 A. The Commission does more than that, but
20 that's part of what the Commission does, yes.

21 MR. D'ASCENZO: Your Honor, I am going to
22 ask that his response be stricken, everything before
23 "yes." My question was "The Commission disallowed
24 the recovery of that \$2,331,580, correct?"

25 EXAMINER ADDISON: Mr. Healey.

1 MR. HEALEY: Yes, your Honor. He is
2 simply providing context that isolating that number
3 it's an incomplete depiction of the Staff -- of the
4 Commission's Order here and that you can't simply
5 give a yes or no when there is additional context to
6 be added and that's what he was doing.

7 EXAMINER ADDISON: Thank you. I'll grant
8 the motion to strike after the word "but." So the
9 answer states "That's part of what the Commission
10 does."

11 MR. D'ASCENZO: Thank you, your Honor.

12 Q. (By Mr. D'Ascenzo) And Mr. Adkins, would
13 you agree with me that in that paragraph the
14 Commission cited two reasons for disallowing recovery
15 of the \$2,331,580?

16 A. I don't know that I would agree it's
17 limited to two.

18 Q. Okay. Well, let's go through that then.
19 Looking at the second sentence in that paragraph, the
20 Commission's Order stated that "Duke failed to prove,
21 on the record, what, if any, of this purchased parcel
22 was, or ever had been, used for the provision of
23 manufactured gas or utility service for the customers
24 of Duke or its predecessors"; is that correct?

25 A. That's what the Commission states, yes.

1 Q. And that's one reason, correct?

2 A. I would agree that's one reason.

3 Q. And going further down where the
4 Commission Order says -- has the word "Moreover"
5 towards the end of that paragraph. Do you see the
6 word "Moreover"?

7 A. I do.

8 Q. The Commission's Order there says that
9 the record reflects that the requested \$2,331,580
10 relates to the price Duke paid to purchase the
11 property from a third-party and not the
12 statutorily-mandated remediation efforts, correct?

13 A. That's what the Commission says but you
14 have left out a whole lot of reasons in between the
15 two. You left out at least 20 lines of worth -- 15
16 to 20 lines' worth of other reasons that the
17 Commission stated.

18 Q. Well, would you agree with me, sir,
19 those -- the lines that I did not talk about, that's
20 all part of the discussion of the first reason that
21 Duke didn't demonstrate on the record?

22 A. I would not agree with that, no.

23 Q. Let's look at the sentence beginning with
24 the word "Moreover," please.

25 A. Okay.

1 Q. And after that, the Commission -- the
2 Commission says "Therefore we, conclude...." Do you
3 see that?

4 A. Yes.

5 Q. That states that "Therefore, we conclude
6 that the requested \$2,331,580 associated with the
7 purchased parcel on the East End site should not be
8 included in the amount of costs to be recovered
9 through Rider MGP approved by the Commission in this
10 Order." Did I read that correctly?

11 A. Yes.

12 Q. And you would agree with me, sir, that it
13 says "associated with the purchased parcel on the
14 East End site," correct?

15 A. Relating to the 2.3 -- approximately
16 \$2.3 million, yes.

17 Q. But it's saying the Purchased Parcel on
18 the East End site, correct?

19 A. It says the \$2.3 million associated with
20 the Purchased Parcel.

21 Q. And it goes on, does it not?

22 A. It goes on to say that the
23 \$2.3 million -- 2.3 million associated with the East
24 Parcel should not be included in the amount of costs
25 to be recovered.

1 Q. And that's my point. It says "the
2 purchased parcel on the East End site," correct?

3 MR. HEALEY: Objection, your Honor, asked
4 and answered multiple times now.

5 EXAMINER ADDISON: I will allow the
6 question. You may answer.

7 A. That's what the Commission's words are,
8 yes.

9 Q. Now, let's go to the next paragraph there
10 that starts with the word "Accordingly." Are you
11 there?

12 A. Yes.

13 Q. And I just want to break that down a
14 little bit here. It says "Accordingly, the
15 Commission finds that any prudently incurred MGP
16 investigation and remediation costs related to the
17 East and West End sites, less costs associated with
18 the Purchased Parcel on the East End site, the costs
19 incurred in 2008 on the West End site, and all
20 carrying costs, should, in accordance with
21 4909.15(A) (4), be considered costs incurred by Duke
22 for rendering utility service and be treated as
23 expenses incurred during the test year." Did I read
24 that correctly?

25 A. I believe so, yes.

1 Q. So, again, let's just break that down.

2 The Commission found that for cost
3 recovery, those costs must be prudently incurred,
4 correct?

5 A. It does say "all prudently incurred." It
6 says "any prudently incurred MGP investigation and
7 remediation costs."

8 Q. Correct. Thank you.

9 They must be related to the East and West
10 End sites, correct?

11 A. Yes.

12 Q. And then the next -- the next phrase
13 there after the comma says "less costs associated
14 with the purchased parcel on the East End site,"
15 correct?

16 A. That is what it says. I believe that
17 includes all costs but that's what it says, yes.

18 Q. Do you speak for the Commission, sir?

19 A. No.

20 Q. And again, it says the "purchased parcel
21 on the East End site," right?

22 MS. BOJKO: Objection, your Honor. Asked
23 and answered.

24 MR. D'ASCENZO: No. I am talking about a
25 different area of the Order.

1 EXAMINER ADDISON: Thank you. You will
2 direct any comments to the Bench.

3 MR. D'ASCENZO: Thank you. Sorry, your
4 Honor.

5 MS. BOJKO: Your Honor, then maybe I just
6 need the citation, please. My apologies.

7 EXAMINER ADDISON: Thank you.
8 You may answer the question.

9 THE WITNESS: Can I have the question
10 reread, please?

11 EXAMINER ADDISON: You may.
12 Can we have the question reread, Karen?
13 Thank you.

14 (Record read.)

15 MS. BOJKO: I'm sorry, your Honor. We
16 are talking about the following paragraph? May I ask
17 for clarification?

18 EXAMINER ADDISON: Beginning with the
19 word "Accordingly."

20 MS. BOJKO: Thank you.

21 A. Again, it says "less costs associated
22 with the purchased parcel on the East End site."
23 Those are the Commission's words.

24 Q. Could you please turn to page 22 of the
25 Order.

1 A. I'm there.

2 Q. And I am -- under paragraph D.,

3 "Litigated Issue." Do you see that?

4 A. I do.

5 Q. I would like to draw your attention to
6 the last sentence there, please.

7 A. Beginning with "Ultimately"?

8 Q. Yes.

9 A. I'm there.

10 Q. And again, in this sentence the order
11 says "the purchased parcel on the East End site,"
12 correct?

13 MR. HEALEY: Objection.

14 EXAMINER ADDISON: Grounds?

15 MR. HEALEY: Your Honor, we've been now,
16 for several minutes, asking nothing but questions of
17 Mr. Adkins to identify a portion of the Staff Report
18 and read it.

19 I believe yesterday or the day before,
20 Ms. Bojko was eliciting cross from one of Duke's
21 witnesses, and we were -- she was instructed to tie
22 it back to the testimony and his -- I don't know
23 which witness it was, I don't recall which one, and
24 tie these types of questions back to something that
25 he was actually testifying about as opposed to just

1 walking through an Order and asking him doesn't it
2 say this.

3 So I would object this is cumulative and
4 unnecessary, and if he wants to ask Mr. Adkins about
5 his interpretation of the Staff Order -- I'm sorry,
6 the Commission Order or Staff Reports as it relates
7 to his testimony, I have no problem with that, but to
8 just walk through the Staff Report and say does it
9 say this, does it say that, I don't know that that
10 serves any purpose.

11 EXAMINER ADDISON: To be fair, I think
12 Mr. Adkins has been inserting his own interpretation
13 of the Commission Order throughout Mr. D'Ascenzo's
14 questions.

15 Would you like to respond to Mr. Healey's
16 objection?

17 MR. D'ASCENZO: Sure, yeah. Thank you,
18 your Honor. Throughout Mr. Adkins' testimony, he
19 discusses the various areas of the -- of the East End
20 site that he believes are off-site. And one of those
21 areas that he discusses is in that -- is the WOW
22 segment, and I am just trying to point out that the
23 Commission Order itself in multiple places states
24 that the Purchased Parcel is on the East End site.

25 EXAMINER ADDISON: Thank you. I will

1 allow you some additional leeway, Mr. D'Ascenzo, but
2 I think to be fair to Ms. Bojko, if we could relate
3 the questioning as it applies to Mr. Adkins'
4 testimony in these proceedings, your questions
5 regarding the 2012 Rate Case Order, that would be
6 more appropriate.

7 MR. D'ASCENZO: Fair enough. Thank you,
8 your Honor.

9 EXAMINER ADDISON: Thank you. But I will
10 allow Mr. Adkins to answer the pending question.

11 MR. D'ASCENZO: Thank you.

12 EXAMINER ADDISON: Do you need that
13 question read back, Mr. Adkins?

14 THE WITNESS: Please, your Honor.

15 (Record read.)

16 A. The sentence reads: "Ultimately, we
17 determine that Duke should be authorized to recover
18 \$62.8 million, minus the amount requested for the
19 purchased parcel on the East End site," and it goes
20 on. I don't think I need to read that.

21 Q. Let's go back to the Staff Report, if we
22 could. And I would like you to turn to page 53 of
23 that Staff Report, please.

24 A. I am at page 53.

25 Q. And Attachment MGP-1 is listed on

1 page 53, correct?

2 A. Yes.

3 Q. And that was prepared at your direction,
4 correct?

5 A. It was.

6 Q. And you would agree that MGP-1 is a
7 Google image of the East End site from 2005, correct?

8 A. That's how it's labeled, yes.

9 Q. And the white lines on MGP-1 were
10 intended to depict easement property boundaries for
11 those parcels, correct?

12 A. I don't recall where the white lines came
13 from. It is my understanding, today, I believe they
14 are historical property lines related to the
15 particular parcels at the East End site, except the
16 Purchased Parcel which I don't concede is part of the
17 East End site.

18 Q. And if you could turn to page 54, please.

19 A. I'm there.

20 Q. Attachment MGP-2.

21 A. I see that.

22 Q. That was also prepared by Staff, correct?

23 A. Yes.

24 Q. And it was prepared at your direction,
25 correct?

1 A. Yes.

2 Q. And again, you would agree MGP-2 is
3 intended to show the East End site as it existed in
4 2012, correct?

5 A. Yes.

6 Q. And again, the white lines are intended
7 to depict the original property boundaries associated
8 with the East End site, correct?

9 A. I believe them to be the historical
10 property lines. I don't know if they are still
11 accurate today or if they were accurate in 2012. I
12 don't know that for a fact.

13 Q. Could you please turn to page 57.

14 A. I am on page 57.

15 Q. And that is Attachment MGP-5, correct?

16 A. That's how it's labeled, yes.

17 Q. And this was intended it show the Eastern
18 Parcel of the East End site, correct?

19 A. Among other things, yes.

20 Q. And this document was also created by
21 Staff, right?

22 A. Yes.

23 Q. And it was created at your direction,
24 correct?

25 A. Yes.

1 Q. And we had a discussion earlier this
2 afternoon about Staff's recommendations for what it
3 considered recoverable; do you recall that?

4 A. I do.

5 Q. And as it relates to this particular
6 attachment, if you could please look at the kind of
7 hash-marked areas in the middle of that drawing. Do
8 you see those?

9 A. I do.

10 Q. And that -- there's a legend at the
11 bottom that says "Gas Pipeline Buffer." Do you see
12 that?

13 A. I do.

14 Q. Now, those hash-marked areas are
15 what's -- you described earlier and what Staff had
16 recommended for recovery in this case, right?

17 A. Staff recommended that Duke be permitted
18 to recover investigation and remediation costs only
19 within the boundaries shown by the hash marks.

20 Q. Thank you.

21 Now, if you could please take a look at
22 the solid black lines surrounding the Eastern Parcel.
23 Do you see those?

24 A. I do.

25 Q. And it's your understanding that those

1 solid lines, dark black lines are depicting the
2 property boundary around the original property of the
3 eastern parcel of the East End site, correct?

4 A. I believe -- I believe this to be the
5 historical property boundary. I don't know -- I
6 believe that's what it's intended to depict. I have
7 no idea if it's accurate today or as it was reported
8 in the Staff Report.

9 Q. You just stated that you don't know if it
10 was accurate as it was reported in the Staff Report.
11 Is it your understanding this could be inaccurate?

12 A. It's my understanding, I don't know if
13 it's current as of 2012 or when it was included in
14 the Staff Report.

15 This particular attachment came from --
16 it was a portion of an engineering drawing that had
17 been provided by Duke in response to a Staff Data
18 Request. The black lines were included there. I
19 believe they are intended to depict the historical
20 property boundaries, but I don't know if the
21 historical boundaries, as shown on the map, were --
22 on the drawing is, you know, were accurate at the
23 time those were included in the Staff Report.

24 Q. Thank you for that clarification.

25 Could you please take a look at page 58.

1 A. I'm there.

2 Q. And again, this is depicting the Central
3 Parcel, correct?

4 A. It is an engineering drawing that shows
5 where the former manufactured gas plant facilities
6 were identified by the Company in the engineering
7 drawing for the Central Parcel at the East End site.

8 Q. And again, if I were to ask you about
9 those solid black lines in the middle of the document
10 around the Central Parcel, is it your understanding
11 that that is intended to depict the original property
12 boundary of the Central Parcel?

13 A. I don't know if it's the original
14 property boundary. I believe this to be the
15 historical property boundary. To represent that, I
16 don't know if it's the original or not.

17 Q. So you are drawing a distinction between
18 historical versus original.

19 A. Correct, and also versus current. I
20 don't know if what's here was current as of the time
21 it was -- the property boundary as it was in 2012
22 when the Staff issued this report. I don't know.

23 Q. Do you know what the difference would be
24 between what the boundary was in 2012 versus
25 historically?

1 A. Historically I believe there might have
2 been individual properties. They may or may not have
3 been owned by Duke or its predecessors in the past
4 since they are individual -- I think we described
5 earlier, we discussed earlier that the East End site,
6 in my opinion, is comprised of the West, Middle, and
7 Eastern parcels at East End. That's one plot of
8 land, if you will, that's been subdivided into
9 smaller sections. I don't know if its historical
10 boundaries still exist or not.

11 Similarly, I don't know if the boundary
12 Duke -- this black border around the Central Parcel
13 on page 58, Attachment MGP-6 in the Staff Report, I
14 don't know if that black border, that extends out
15 into the Ohio River, is still accurate today. I
16 don't know if Duke is allowed to own the Ohio River.
17 I don't know if that's part of the property today or
18 as it was in 2012. I don't know.

19 Q. And so when you say it extends into the
20 Ohio River, you are referring to the dotted line,
21 looking at MGP 6, for example, towards the bottom
22 third of the -- of the attachment where it says "Ohio
23 River," correct?

24 A. I believe the dashed line towards the
25 bottom of the depiction, the drawing, I believe that

1 depicts the -- I guess the border or the boundary of
2 the Ohio River.

3 Q. And your point is the black boundary
4 lines extend into the Ohio River in this attachment,
5 correct?

6 A. They do, but I don't know if that
7 boundary line is still accurate seeing how -- I don't
8 know that Duke owns, pays property taxes, for
9 example, or whatever on land -- on property that's
10 extended into the Ohio River. I simply don't know.

11 Q. Would you agree with me, sir, that the
12 black boundary lines on Attachment MGP-5 and 6 are
13 similar to those depicted on MGP-1 and 2?

14 MR. HEALEY: I am going to object. Vague
15 as to "similar."

16 EXAMINER ADDISON: He can provide some
17 clarification if he deems it necessary.

18 A. I would agree they appear to have the
19 same shape.

20 Q. And again, look at MGP-7, please.

21 A. I am on page 59, yes.

22 Q. Yes. And again, the black boundaries
23 there that are depicting the Western Parcel, would
24 you -- those are also depicting the historic, using
25 your word, boundary of the MGP site, correct?

1 A. That is my understanding that this may
2 represent the historic property boundaries that may
3 or may not be current.

4 Q. And again, comparing MGP-7 to that of
5 MGP-1 and 2, would you agree that the boundary lines
6 depicted on MGP-7, for the Western Parcel, and for
7 MGP-1 and 2 are of the same shape?

8 A. Yes.

9 Q. And so would you agree that they are --
10 they appear consistent?

11 A. They appear to be the same shape;
12 therefore, they appear to be consistent.

13 Q. If we could go back to page 45 of the
14 Staff Report, please.

15 A. I am at page 45.

16 Q. Thank you. Now, a moment ago you had
17 mentioned that Staff had asked Duke, in the 2012 rate
18 case, to break out its remediation costs by parcel,
19 but the Company could not. Do you recall that?

20 A. I do.

21 Q. And Staff performed an analysis to
22 determine what costs were recoverable based upon the
23 areas that Staff considered to be expenses that were
24 appropriate for recovery, correct?

25 A. Based on the information, the data that

1 the Company did provide -- did provide, Staff used
2 its judgment to arrive at a methodology for
3 apportioning the costs, yes.

4 Q. And you would agree with me that Staff
5 used site drawings to determine the location of
6 equipment, correct?

7 A. That is one of the items Staff used, yes.
8 Excuse me.

9 Q. And looking on page 45 in the middle,
10 beginning with the paragraph that says "To determine
11 recoverable expenses." Do you see that?

12 A. I do.

13 Q. Would you agree with me that Staff looked
14 at the location of equipment on the site to allocate
15 costs in terms of recovery?

16 THE WITNESS: May I have the question
17 reread, please?

18 EXAMINER ADDISON: You may.

19 (Record read.)

20 A. Staff looked at a number of items to
21 determine what should -- what was recoverable to
22 arrive at its recommendations for what was
23 recoverable.

24 Q. So let's look specifically about -- at
25 air monitoring. Staff looked at the location of air

1 monitoring equipment on the various parcels to
2 determine whether or not air monitoring costs could
3 be recoverable, correct?

4 A. What Staff did was Staff -- based on the
5 Staff theory that only certain parts of the sites
6 were related to -- the expenses can only be recovered
7 because if they were related to plant that was used
8 and useful, in service for -- they were current
9 utility costs. Based on that, Staff -- and the --
10 what we discussed earlier when we were talking about
11 the hash marks, for example, if an air monitor would
12 have fallen in one of those areas, it was within the
13 hash marks or other areas that the Staff determined
14 to be in an area that -- where the utility expenses
15 were recoverable, then the Staff would have included
16 the air monitoring costs, yes.

17 Q. So in terms of air monitoring, Staff
18 determined that 5 of the 10 air monitors were
19 recoverable, that was their recommendation, correct?

20 A. Yes, based on that analysis I just
21 described.

22 Q. And similarly with vibration monitoring,
23 Staff made a determination that 7 of the 8 vibration
24 monitors were recoverable based upon their location.

25 A. That's my recollection is the majority of

1 the vibration monitors were on or about the propane
2 facilities and the propane cavern and other things on
3 the Central Parcel, Middle Parcel at East End.

4 Q. And with respect to other remediation and
5 investigation work, Staff calculated a
6 cost-per-cubic-foot to determine what was
7 recoverable, correct?

8 A. Yes.

9 Q. Now, ultimately the Commission's Opinion
10 and Order in the 2012 gas rate case did not adopt
11 Staff's recommendations regarding recoverability of
12 remediation and investigation expenses upon the
13 theory that you described, correct?

14 A. Not wholly. The Commission did agree
15 with Staff's recommendation related to the Purchased
16 Parcel.

17 Q. And that's fair. The Commission's
18 Opinion and Order did disallow the \$2.3 million,
19 correct?

20 A. The -- in my opinion it disallowed all
21 costs associated with the Purchased Parcel.

22 Q. Well, I guess that's -- that's what we
23 are debating here today.

24 MR. HEALEY: I am going to move to strike
25 that as argumentative.

1 MR. D'ASCENZO: I withdraw, your Honor.

2 EXAMINER ADDISON: Thank you very much.

3 Q. (By Mr. D'Ascenzo) Let's go back to the
4 Opinion and Order on page 48, please.

5 A. I am at page 48.

6 Q. Do you see the paragraph, it looks like
7 it's the second full paragraph beginning with the
8 words "Staff witness Adkins"?

9 A. Yes.

10 Q. And that's you, correct?

11 A. It is.

12 Q. Would you agree that that paragraph is a
13 shorthand summary of Staff's position in the case?

14 A. I would submit that preceding paragraph
15 is the best summary of Staff's position in the case.

16 Q. And you are saying "According to Staff"?

17 A. "According to Staff, the real issue...."
18 Since that's -- to me that's probably the best
19 description of the Staff's position since this is,
20 according to Staff, the real issue in the case is
21 whether the remediation costs Duke seeks to recover
22 are recoverable expenses under 490 -- Revised Code
23 4909.15(A)(4) as I explained earlier.

24 Q. Let's look at the paragraph that talks
25 about "Staff witness Adkins," please.

1 A. I'm there.

2 Q. I am looking at the sentence that begins
3 "Staff used the following three-step process...." Do
4 you see that?

5 A. I do.

6 Q. Would you agree that that is an accurate
7 shorthand description of the process Staff used to
8 determine whether portions of the remediation work
9 was recoverable?

10 A. I think, reading in conjunction with the
11 preceding paragraph, it's an accurate summary.

12 Q. Mr. Adkins, would you please turn to your
13 deposition, page 70, please.

14 A. I'm at page 70.

15 Q. So this is -- looking at line 19, please.

16 A. Okay.

17 Q. "Question: Okay. Looking at the bottom
18 of that paragraph, fifth line up where it discusses
19 'Staff used the following three-step process....' Do
20 you see that answer?

21 "Yes.

22 "Is that an accurate description of the
23 process that staff used to determine whether portions
24 of the site should be recoverable?

25 "Answer: I think it leaves out a portion

1 where staff is relating to recoverable expenses but
2 it is I guess an accurate shorthand."

3 Did I read that correctly?

4 A. Yes.

5 Q. Thank you.

6 MR. HEALEY: Objection.

7 EXAMINER ADDISON: Grounds?

8 MR. HEALEY: Your Honor, again move to
9 strike on grounds of improper impeachment.

10 Mr. Adkins' response to the question today was that
11 it needs to be read in conjunction with the previous
12 paragraphs, and his response during the deposition
13 was that this response is an accurate shorthand, but
14 it leaves out a portion of Staff's argument relating
15 to recoverable expenses. So the impeachment was
16 improper.

17 EXAMINER ADDISON: Thank you. We will
18 allow the record to stand as is, and the Commission
19 can make that determination.

20 Q. (By Mr. D'Ascenzo) You would agree with
21 me that, in the Commission's 2012 Opinion and Order,
22 the Commission did put some limitations on the
23 Company's recovery of costs, right?

24 A. Yes.

25 Q. And specifically related to MGP, there

1 was a time limitation, correct?

2 A. Yes.

3 Q. And for the deferral for West End, the
4 Commission established a limitation of December 31,
5 2019, correct?

6 A. My recollection is the Commission limited
7 the deferral to -- there was two limits to the
8 deferral that I recall. One limit was the Commission
9 said it had to be limited to the sites, specifically
10 said limited to the sites. There would be no reason
11 for the Commission to use those words unless the
12 Commission intended to limit.

13 The second limit was I believe that there
14 was a limit for 2016, a 10-year period beginning in
15 2016 for the East End site and 2019 for the West End
16 site. I believe that's page 71 of the Order.

17 Q. And you stated it was page 71?

18 A. That's my recollection.

19 Q. Is that correct?

20 A. Let me see if I can find it.

21 Q. Mr. Adkins, would you possibly mean
22 page 73 just for clarity? I'm sorry, 74.

23 A. You are correct. It's page 74, beginning
24 with the paragraph beginning with "Finally." It
25 reads "the Commission finds that Duke should be

1 authorized, pursuant to R.C. 4905.13, to continue to
2 modify its accounting procedures and to defer costs
3 related to the environmental investigation and
4 remediation costs beyond December 31, 2012. Such
5 deferral authority is limited to the East and West
6 End sites and a period" -- conjunctive, "and a period
7 of 10 years beginning with the commencement of the
8 CERCLA" and those dates ended up being December 31 --
9 for the East End site deferral authority was
10 originally scheduled to end December 31, 2016, and
11 for the West End site it was January -- I'm sorry, it
12 was December 31, 2019.

13 Q. Thank you. And you answered my next
14 question. For East End, the original deferral was
15 through December 31, 2016, correct?

16 A. Yes.

17 Q. Now going back to your testimony on
18 pages 4 and 5.

19 A. Okay.

20 Q. Specifically looking on page 4, line 19,
21 Actually, let's go back to the end of 18 where you
22 mention "after previously ordering Duke to complete
23 remediation of the East End by 2016." Do you see
24 that?

25 A. Yes.

1 Q. Isn't it true that the Commission, in its
2 Opinion and Order, set limitations on the deferral of
3 costs but didn't order Duke to complete remediation?

4 A. The -- my understanding of the 2016 date
5 related to deferral authority continuing through
6 December 31, 2016. I don't know that the Commission
7 actually ordered Duke to complete the remediation;
8 just deferral for potential future recovery was
9 limited to 2016.

10 Q. Thank you.

11 And, in fact, the Commission allowed Duke
12 an opportunity to seek an extension of this deferral
13 authority based upon exigent circumstances, correct?

14 A. Yes.

15 Q. Going back to the limitations of the
16 Commission -- the Commission's Order put on MGP
17 recovery, we talked a little bit ago about carrying
18 costs and that the Commission had denied the
19 recoverability of carrying costs. Do you recall that
20 conversation?

21 A. I do.

22 Q. You believe that the Commission denied
23 the recovery of carrying costs to encourage the
24 Company to complete remediation in a timely fashion
25 and to make sure that shareholders shared in the

1 contribution toward the remediation effort, correct?

2 A. I believe that was the Commission's --
3 part of the Commission's intent anyway, yes.

4 Q. Mr. Adkins, are you familiar with the
5 type of byproduct and contamination that is present
6 on the MGP sites?

7 A. Only through my work with these cases.

8 Q. Are you aware that coal tar -- what is --
9 coal tar is one of the items that is being
10 remediated?

11 A. I believe coal tar was a manufactured gas
12 plant -- or a byproduct of the manufacture of gas. I
13 don't know whether there is still tar left on the
14 site. It has been referred to as like tar-like
15 material. Other NAPL, DNAPL, I am aware of the terms
16 if they are still --

17 Q. Do you -- I'm sorry. Go ahead.

18 A. Just whether, you know, those particular
19 remnants, how those items -- whether, you know NAPL,
20 N-A-P-L, or DNAPL, D-N-A-P-L, and tar-like material,
21 oil-like material. I've read Ms. Bednarcik's, I've
22 read Mr. Bachand's testimony and descriptions. I've
23 read -- I think Company had other witnesses', in the
24 original 2012 case, description of the -- the
25 byproducts left over from the manufactured gas plant.

1 That's the extent of my knowledge. I don't know
2 precisely what's being cleaned up. I just know
3 what's been represented as being cleaned up.

4 Q. And that's fair. But would you agree
5 that some of that material is mobile?

6 A. That's my understanding, yes.

7 Q. Mr. Kerry (sic), you are aware that
8 parties to the 2012 gas rate case sought rehearing of
9 the Commission's Opinion and Order, correct?

10 A. Yes.

11 Q. And you are aware that the Commission
12 submitted a brief to the court defending its Opinion
13 and Order, correct?

14 A. I believe the Commission had the Attorney
15 General submitted a brief in support of it, yes, its
16 Order in the 2012 rate case, yes.

17 Q. And based upon your approximate 29 years'
18 experience with the Commission, do you have any
19 reason to believe that the Commission would not be
20 truthful in a brief it submitted to the Ohio Supreme
21 Court?

22 MR. HEALEY: Objection.

23 EXAMINER ADDISON: Grounds?

24 MR. HEALEY: One, calls for speculation.
25 Two, relevance. Three, lack of foundation. The

1 witness has not testified that he has read the brief,
2 is familiar with the brief, has the brief in front of
3 him, incorporated into his testimony or otherwise.

4 EXAMINER ADDISON: Thank you. Sustained.

5 Q. (By Mr. D'Ascenzo) You are aware, sir,
6 that the Ohio Supreme Court affirmed the Commission's
7 decision on MGP cost recovery, correct?

8 A. The matter was taken up at the Supreme
9 Court. The Supreme Court did affirm the Commission's
10 decision, yes.

11 Q. Okay. Let's go back to your testimony on
12 page 4, lines 15 through 19.

13 A. I'm there.

14 Q. You state that you're responsible for the
15 Staff's investigation and recommendations in Case
16 No. 16-1106-GA-AAM, where the Commission authorized
17 Duke to continue to defer remediation costs. Do you
18 see that?

19 A. I do.

20 Q. And in that case, Staff recommended that
21 the Commission not approve the Company's deferral
22 extension request, correct?

23 A. For several reasons, yes.

24 Q. And you have reviewed the Commission's
25 Order in that case, correct?

1 A. It has been a while but yes.

2 Q. And in that Order, the Commission did not
3 agree with Staff's recommendation and granted the
4 continuing deferral authority at the East End site
5 for the Company, correct?

6 A. The Commission did agree that -- that the
7 Commission -- that the Company could continue to
8 deferring -- defer costs incurred at East End through
9 the end of 2019.

10 Q. Thank you.

11 MR. D'ASCENZO: Your Honor, may I
12 approach?

13 EXAMINER ADDISON: You may.

14 MR. D'ASCENZO: Your Honor, for purposes
15 of the record, I would like to mark, as Duke Energy
16 Ohio Exhibit 33, the Commission's Order in Case
17 No. 16-1106-GA-AAM.

18 A. Rocco, did you say this is 33?

19 Q. Yes.

20 EXAMINER ADDISON: Thank you. It will be
21 so marked, and I also note that the Order pertains to
22 to Cases 16-1106-GA-AAM as well as 16-1107-GA-UNC.

23 MR. D'ASCENZO: Thank you, your Honor.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. (By Mr. D'Ascenzo) Do you have that in

1 front of you, Mr. Atkins?

2 A. I have DEO 33.

3 Q. Thank you.

4 And you are generally familiar with the
5 reasons the Company stated in its application to
6 support its deferral extension request in 2016,
7 correct?

8 A. Again, this case was a while ago, but I
9 did -- I was aware back then what the Company's
10 request was.

11 Q. And you would agree with me that the
12 Commission's Order in that case lists some of the
13 Company's reasons for exigent circumstances that the
14 Company stated in its request to extend its deferral
15 authority.

16 A. Perhaps you could point me to where the
17 Commission summarizes the Company's application? I
18 am not finding it immediately.

19 Q. Sure. Let -- if I could draw your
20 attention to the bottom of page 13, carrying over
21 onto 14. I will reask my question.

22 Do you agree that the Commission's Order
23 in this Case 16-1106-GA-AAM and 16-1170-GA-UNC lists
24 some of the Company's reasons for exigent
25 circumstances?

1 A. I see a sentence that begins with "Duke
2 explains in its application" and then there are
3 several reasons that the Commission summarizes here.

4 Q. And let's look specifically at the
5 last -- the beginning of the last sentence on page 13
6 the carries over into 14.

7 A. Okay. "As Duke explains" --

8 Q. Beginning with "Duke further explains
9 that...."

10 A. Yes.

11 Q. Do you see that?

12 A. I do.

13 Q. And carrying over onto 14, would you
14 agree with me that the -- one of the reasons the
15 Company explained as exigent circumstances was that
16 it was unable to reasonably or accurately confirm the
17 level of contamination for that parcel, referring to
18 the Middle Parcel and the Area West of the West
19 Parcel?

20 A. That's part of the Commission's summary,
21 yes.

22 Q. And the Commission ultimately found that
23 Duke had supported exigent circumstances, correct?

24 A. Yes.

25 Q. And, in fact, the Commission says we

1 agree with Duke that these are unexpected
2 circumstances beyond the Company's control, correct?

3 A. It says that in the middle of the
4 paragraph on page 14. I guess the incomplete
5 paragraph on page 14, it says that.

6 Q. And when you say "incomplete paragraph,"
7 you are referring to the fact it starts on page 13?

8 A. Correct.

9 Q. And so the ongoing work of the Area West
10 of the West was one of the reasons that the
11 Commission agreed constituted exigent circumstances
12 to extend deferral authority beyond December 31,
13 2016, correct?

14 MR. HEALEY: Objection.

15 EXAMINER ADDISON: Grounds?

16 MR. HEALEY: Assumes facts not in
17 evidence. There is nothing in this Order that
18 references ongoing work in the West of the West, so
19 that's a mischaracterization and it assumes there
20 was, in fact, ongoing work.

21 EXAMINER ADDISON: Thank you.

22 Would you please rephrase your question,
23 Mr. D'Ascenzo.

24 MR. D'ASCENZO: I will be happy to.
25 Thank you.

1 Q. (By Mr. D'Ascenzo) Let's go back to
2 page 13 of the Order, please. The sentence that
3 begins "As Duke explains in its application," do you
4 see that?

5 A. I do.

6 Q. The Commission recites Duke's explanation
7 that "the composition of the Middle Parcel, which
8 includes sensitive underground infrastructure, has
9 complicated the Company's efforts to undertake the
10 necessary environmental investigation and to identify
11 appropriate remediation techniques for the Middle
12 Parcel and the area west of the West Parcel." Did I
13 read that correctly?

14 A. I believe so, yes.

15 Q. And then on the top of page 14, the Order
16 goes on to say that the Company was unable to
17 reasonably or accurately confirm the level of
18 contamination for that parcel and the Area West of
19 the West Parcel or site specific -- for the specific
20 portions requiring remediation, until assessments
21 were completed in 2014, correct?

22 A. I believe that's an accurate summary of
23 what the Commission said. If I recall, this is only
24 talking about the continuation of deferral authority.
25 Deferral authority is not recovery. Big difference.

1 I mean, in here, continuation of deferral authority
2 has nothing to do with recoverability of the costs
3 and that's what's at issue in this proceeding is
4 recoverability of the costs.

5 MR. D'ASCENZO: Your Honor, I would move
6 to strike everything after the witness's first
7 sentence "I believe that's an accurate summary of
8 what the Commission said."

9 EXAMINER ADDISON: Motion to strike will
10 be granted.

11 Let's go off the record for just a
12 moment.

13 (Discussion off the record.)

14 EXAMINER ADDISON: Let's go back on the
15 record.

16 Mr. D'Ascenzo, whenever you are ready.

17 MR. D'ASCENZO: Thank you.

18 Q. (By Mr. D'Ascenzo) Mr. Adkins, going back
19 to the Staff Report in 2012, would you agree with me
20 that Staff's analysis was not based upon where
21 historic MGP sites were -- MGP operations were
22 located on the two sites?

23 MS. BOJKO: Objection.

24 EXAMINER ADDISON: Grounds?

25 MS. BOJKO: Your Honor, I think Staff

1 made many analyses, so I guess the question is
2 unclear.

3 EXAMINER ADDISON: Thank you. I will
4 provide Mr. Adkins some latitude to give any
5 clarification you find to be necessary.

6 A. I wouldn't agree with that at all. Staff
7 specifically asked the Company to provide engineering
8 drawings that showed the location of the past -- the
9 manufactured gas plant facilities at both East End
10 and the West site -- West site, so I wouldn't agree
11 with that at all.

12 Q. But the recommendations for recovery that
13 Staff made in 2012 were based upon utility operations
14 in 2012, correct?

15 A. It was based on the -- as I indicated
16 earlier, the Staff's recommendations in that case
17 related to 4909.15(A)(4) which required expenses, in
18 order to be recovered, had to be associated with the
19 current provision of utility service, and the
20 Commission found that to be the case when it said it
21 was unwilling to extend 4909.15(A)(4) to include the
22 Area West of the West. So I think that's consistent
23 with what Staff recommended in that case and what the
24 Commission found.

25 Q. Mr. Adkins, you would agree with me that

1 Duke Energy Ohio has filed annual applications to
2 adjust its Rider MGP since 2014, correct?

3 A. That's correct.

4 Q. And you were personally involved in
5 Staff's review of Duke Energy Ohio's annual MGP Rider
6 filings between 2014 through 2017, correct?

7 A. I was the manager assigned to -- I was
8 the manager of the team that reviewed those cases,
9 yes.

10 Q. And in each of those annual reviews,
11 Staff submitted Data Requests, right?

12 A. To the best of my recollection, yes.

13 Q. Now, as it relates to the Company's
14 application in 2014 for recovery of 2013 costs, do
15 you know when Staff completed its review of the
16 Company's application?

17 A. I don't recall specifically, no.

18 Q. Would you agree with me that it was
19 likely in 2014?

20 A. Can you tell me the date that the Company
21 filed the application?

22 Q. Sure. The Company filed its application
23 in March of 2014.

24 A. Staff likely would have completed its
25 investigation in 2014.

1 Q. And, similarly, Duke Energy Ohio filed
2 its application for 2014 costs recovery in March of
3 2015, correct?

4 A. Subject to check, yes.

5 Q. And would you agree with me that it's
6 likely Staff completed its review of the Company's
7 application in 2015?

8 A. Assuming that the Company provided, you
9 know, timely responses to Data Requests, et cetera, I
10 think the Staff would have completed its
11 investigation in 2015.

12 Q. And the Company's third application for a
13 Rider MGP adjustment would have been filed in March
14 of 2016 for recovery of 2015 costs, correct?

15 A. Subject to check, yes.

16 Q. And you would agree with me, sir, that it
17 was likely Staff completed its review of the
18 Company's application in 2016.

19 A. Again, similar to the provisos I included
20 in my response to 2015, yes.

21 Q. And the Company's fourth Rider MGP
22 adjustment would have been filed in March of 2017 for
23 calendar year 2016 costs, right?

24 A. Again, subject to check, yes.

25 Q. And you would agree with me that it was

1 likely that Staff completed its review of the
2 Company's application in 2017.

3 A. My answer is similar to that that I did
4 for 2015 and 2016 costs.

5 Q. And the Company's fifth Rider MGP
6 adjustment was filed in March of 2018 for recovery of
7 2017 costs, correct?

8 A. Again, subject to check, yes.

9 Q. And you would agree with me that Staff
10 completed its review of the Company's application in
11 2018, correct?

12 A. I believe Staff filed a Staff Report
13 in -- I don't recall precisely when in 2018, but
14 Staff did file a Staff Report in 2018 that covered
15 all of the prior years.

16 Q. And -- thank you. And you were the
17 supervisor of Staff for all of those filings,
18 correct?

19 A. I believe, as I indicated in my prefiled
20 direct testimony, I was the supervisor in charge, but
21 the 2018 Staff Report, I had retired as PUCO Staff
22 prior to the issuance of that Staff Report and
23 part -- and also part of that time, once I applied
24 for a position -- open position at OCC, I was
25 conflicted out. Under ethics law, I could no longer

1 work on the case, so I did not participate in the --
2 at least the two months prior to my retirement.

3 Q. But you were involved in reviewing early
4 drafts of Staff's 2018 Staff Report in the
5 consolidated MGP case, correct?

6 A. I did participate in an early draft, yes.

7 Q. And other than -- other than that early
8 draft of the report, you did not prepare any written
9 material regarding those annual filings, correct?

10 A. Nothing beyond the early draft, correct.

11 Q. And the Staff Report that was filed in
12 September of 2018 was the first Staff Report in any
13 of these consolidated MGP cases, right?

14 A. It was the first written and filed
15 report, yes.

16 Q. And that was the first time that Staff
17 recommended any disallowances of the Company's annual
18 MGP investigation and remediation costs, right?

19 A. In a filed report, yes.

20 Q. Let's turn to pages 8 and 9 of your
21 testimony, please.

22 A. I am at page 8.

23 Q. And you have a quote of the Commission's
24 Order at the bottom of page 8, carrying over to 9.
25 Do you see that?

1 A. I believe this to be a partial quote but,
2 yes.

3 Q. And in that quote the Commission states
4 that "The environmental investigation and remediation
5 costs associated with the East and West End MGP sites
6 are business costs incurred by Duke in compliance
7 with Ohio regulations and federal statutes." Do you
8 see that?

9 A. Yes.

10 Q. You do not dispute that, correct?

11 A. I don't dispute it's the Commission's
12 quote.

13 Q. Now, let's look at the bottom of page 9.

14 A. Okay.

15 Q. You have another quote of the
16 Commission's -- partial quote, excuse me, of the
17 Commission's Rate Case Order. Do you see that?

18 A. I do.

19 Q. And you have an -- an ellipses in the --
20 after the -- in the middle of that first sentence
21 there. Do you see that?

22 A. I do.

23 Q. And do you agree with me that the
24 language that you ad -- you omitted there states "We
25 find that the record does not support a recovery of

1 the \$2,331,580 Duke is requesting to be included in
2 the Rider MGP"?

3 A. I'm sorry. Would you reread or restate
4 your question, please?

5 Q. Sure.

6 MR. D'ASCENZO: Please read that back.

7 EXAMINER ADDISON: Thank you.

8 (Record read.)

9 A. I believe the Commission's understanding
10 that the 2.3 million was the only cost associated
11 with the -- the Purchased Parcel included, but I
12 think you did accurately read what the Commission
13 said.

14 MR. D'ASCENZO: Your Honor, I would move
15 to strike everything before "I think you did
16 accurately read what the Commission said" as
17 nonresponsive.

18 EXAMINER ADDISON: Mr. Healey?

19 MR. HEALEY: I'll concede that was not
20 responsive.

21 EXAMINER ADDISON: Thank you very much.

22 Motion will be granted.

23 MR. D'ASCENZO: Thank you.

24 Q. (By Mr. D'Ascenzo) Going back to your
25 testimony on page 15, lines 14 through 16, you state

1 that, going forward, the Commission should direct
2 Duke to record, track, and report all remediation
3 dollars spent at the East End and West End site by
4 parcel. Do you see that?

5 A. I do.

6 Q. So you would agree with me that the
7 Commission's Order in the 2012 gas rate case did not
8 direct Duke to record its costs parcel by parcel.

9 A. There was no specific recommendation, but
10 I do believe that the Commission, by discussing the
11 parcel by parcel throughout its Order and disallowing
12 certain costs associated with parcels, the Commission
13 certainly implied that it -- that Duke should track
14 the costs by parcel.

15 MR. D'ASCENZO: Your Honor, I would move
16 to strike everything after "There was no specific
17 recommendation" as being nonresponsive.

18 EXAMINER ADDISON: Thank you.

19 Mr. Healey?

20 MR. HEALEY: Yes, your Honor. I believe
21 in this instance he was explaining his interpretation
22 of the Order and explaining that it's not as simple
23 as the Commission saying you must track it. But, in
24 fact, given the language in the Order specifically
25 disallowing costs for the Purchased Parcel, it would

1 be interpreted that Duke should do that; so it is not
2 as simple as does it -- it doesn't say those words.
3 He is giving his interpretation that the Order does,
4 in fact, say that but not as directly as
5 Mr. D'Ascenzo would like.

6 EXAMINER ADDISON: Thank you.

7 The motion will be granted. You can
8 bring up that additional information on redirect.

9 MR. D'ASCENZO: Thank you, your Honor.

10 Q. (By Mr. D'Ascenzo) Now, Mr. Adkins,
11 earlier you had stated that Staff had asked Duke to
12 provide remediation costs, parcel by parcel, in the
13 2012 rate case; is that correct?

14 A. Yes.

15 Q. And the Company stated then it could not,
16 correct?

17 A. That's my recollection, yes.

18 Q. And was that issue discussed at the
19 hearing in 2012?

20 A. I don't recall specifically if it was or
21 was not. It likely was.

22 Q. And sitting here today, you cannot point
23 to a specific order from the Commission in the 2012
24 rate case that directed the Company to track costs
25 parcel by parcel, correct?

1 A. I believe the way I would prefer to
2 answer that question has been stricken, but I think
3 the answer would be correct. I can't point to a
4 specific order or a specific directive in the
5 Commission's Order.

6 MR. D'ASCENZO: Your Honor, I would move
7 to strike everything prior to "I think the answer
8 would be correct" as being nonresponsive.

9 EXAMINER ADDISON: I think we are getting
10 a little nitpicky at this point. Motion is denied.
11 We will allow it to stand.

12 Q. (By Mr. D'Ascenzo) Mr. Adkins, you do not
13 have any training or experience in environmental
14 insurance, do you?

15 A. I do not.

16 Q. And you do not consider yourself to be an
17 expert in environmental liability associated with
18 insurance policies, correct?

19 A. That's correct.

20 Q. And you have no opinion whether or not
21 the insurance proceeds received are tied to any
22 specific parcel of land, correct?

23 A. To my understanding, I don't know what
24 the insurance proceeds specifically apply to.

25 MR. D'ASCENZO: If I could have just a

1 moment, your Honor.

2 EXAMINER ADDISON: Of course.

3 MR. D'ASCENZO: No further questions,
4 your Honor.

5 EXAMINER ADDISON: Thank you very much.

6 Mr. Healey, will you have any redirect
7 for this witness?

8 MR. HEALEY: Briefly, yes, three lines of
9 questioning.

10 EXAMINER ADDISON: Perfect.

11 MR. HEALEY: Three questions. Well, some
12 of them might need some slight foundation.

13 EXAMINER ADDISON: Oh, no. I am going to
14 hold you to the three.

15 Please continue, Mr. Healey.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Healey:

19 Q. Mr. Adkins, do you recall questions, just
20 a few moments ago from Mr. D'Ascenzo, about whether
21 the 2012 Rate Case Order directed Duke to segregate
22 costs by parcel?

23 A. I do.

24 Q. And what is your interpretation of the
25 Commission's Order on that issue generally?

1 A. In my opinion I think the Commission made
2 it very clear that the ongoing deferral -- excuse me,
3 the ongoing deferral authority was limited to the
4 East and West End site. The Commission said that
5 plainly and so, therefore, in my opinion, the Company
6 should have and could have reasonably segregated
7 costs by parcel so that -- so that parts of on-site
8 versus off-site costs could have been tracked
9 relatively straightforwardly and relatively easily
10 and should have been -- should have been done so
11 beginning with costs incurred from 2013 forward.

12 Q. Thank you.

13 Do you recall questions from Duke's
14 counsel regarding the Rate Case Order in which he had
15 you read various portions of the Commission Order
16 from 2012 with language to the effect of the
17 Purchased Parcel being on the East End site?

18 A. Yes.

19 Q. Do you have a copy still of the Order in
20 front of you?

21 A. I do.

22 Q. Can you turn to page 73, please.

23 A. I am at page 73.

24 Q. And in the second full paragraph under
25 "Conclusion," can you read the last sentence of that

1 paragraph, please. Starting with "However."

2 A. However, the Commission determined that
3 Duke's request to recover the costs related to the
4 Purchased Parcel located west of the East End site,
5 the cost incurred in 2008 for the West End site, and
6 all carrying costs -- all carrying charges should be
7 denied.

8 Q. And so based on that sentence, would you
9 conclude that the Commission was referring to -- let
10 me restate that.

11 Based on that sentence, what is the
12 Commission's opinion of where the Purchased Parcel is
13 located?

14 A. The Purchased Parcel is located to the
15 west of the East End site.

16 Q. Thank you.

17 Do you recall questions from Duke's
18 counsel about the Order in the 16-1106 case?

19 A. I do.

20 Q. And what was that case about?

21 A. In that case, Duke had requested to --
22 for continue -- for authority to continue to defer
23 costs associated with the East End site beyond the
24 2016 -- I'm sorry, the December 31, 2016, period the
25 Commission had originally authorized Duke to continue

1 to defer costs.

2 Q. And can you explain, based on your
3 experience at the Commission, what the difference is
4 between a deferral and ratemaking?

5 A. There was a specific Supreme Court case
6 that identifies deferrals. Deferrals are simply
7 taking expenses that ordinarily would not be
8 recoverable -- test year in a base rate case where
9 basically those costs are -- those expenses are
10 converted to a capital asset on the Company's balance
11 sheet for -- the expenses that ordinarily wouldn't be
12 recoverable outside of a test year in a base rate
13 case can now be recovered in a future period.

14 And so -- but the Commission has -- the
15 Commission has, numerous times, ruled, and the
16 Supreme Court has affirmed the idea that deferrals
17 are not ratemaking, that the Commission often decides
18 it will -- it will allow costs to be deferred, but it
19 will decide later whether the costs -- the deferred
20 costs can be recovered.

21 Q. And so, in the 16-1106 case, did the
22 Commission approve any charges to customers for the
23 West of the West?

24 A. No, the Commission did not.

25 MR. HEALEY: Thank you. That's all, your

1 Honor.

2 EXAMINER ADDISON: Thank you very much.

3 Ms. Bojko?

4 MS. BOJKO: No questions, your Honor.

5 Thank you.

6 EXAMINER ADDISON: Ms. Whitfield?

7 MS. WHITFIELD: No questions, your Honor.

8 EXAMINER ADDISON: Mr. Boehm?

9 MR. BOEHM: No questions, your Honor.

10 EXAMINER ADDISON: Mr. McNamee?

11 MR. MCNAMEE: No questions.

12 EXAMINER ADDISON: Mr. D'Ascenzo?

13 MR. D'ASCENZO: One maybe, two.

14 - - -

15 RECROSS-EXAMINATION

16 By Mr. D'Ascenzo:

17 Q. Mr. Adkins, can you point to me where, in
18 the Commission's 2012 Order, it defined the East End
19 site?

20 A. I believe throughout the Order the
21 Commission relied on the descriptions provided in the
22 Staff Report, and it specifically excluded the Area
23 West of the West, so that leaves only the parts of
24 the site to the east of the Purchased Parcel which
25 included the West of the West Parcel. So it defined

1 it by exclusion.

2 Q. And that was the Staff Report that was
3 defining what areas were recoverable based upon
4 utility equipment that was used and useful in service
5 in 2012, correct?

6 A. It was based on the descriptions in the
7 Staff Report that defined the boundaries of each
8 parcel. The Staff Report in that case defined there
9 were six parcels, two at West End, four at issue in
10 the case, or there were six parcels at issue in that
11 case, two of them at West End, four parcels at East
12 End. The Commission, in my opinion, specifically
13 concluded in discussions of three of those parcels at
14 East End being part of the site and one parcel being
15 not part of the site.

16 As I just described to my counsel and
17 quoted the Commission's Order, it described the
18 Purchased Parcel as being west of the East End site.
19 So, by exclusion, the Commission defined it.

20 MR. D'ASCENZO: No further questions,
21 your Honor.

22 EXAMINER ADDISON: Thank you,
23 Mr. D'Ascenzo.

24 I have no additional questions,
25 Mr. Atkins. You are excused.

1 THE WITNESS: Thank you, your Honor.

2 EXAMINER ADDISON: Thank you.

3 MR. HEALEY: Your Honor, at this time OCC
4 moves for the admission of OCC Exhibits 19 and 20C.

5 EXAMINER ADDISON: Are there any
6 objections to the admission of OCC Exhibits 19 and
7 20C?

8 MR. D'ASCENZO: No, your Honor.

9 EXAMINER ADDISON: Thank you.

10 Hearing none, they will be admitted.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 EXAMINER ADDISON: And, Mr. D'Ascenzo,
13 you will not be moving Duke Energy Ohio Exhibit
14 No. 33, correct?

15 MR. D'ASCENZO: Correct.

16 EXAMINER ADDISON: Thank you.

17 MR. D'ASCENZO: It's my understanding
18 is -- my understanding is it's practice to not move
19 to admit Orders.

20 EXAMINER ADDISON: That is accurate.
21 Thank you.

22 At this time then we will conclude for
23 the evening. I will see everyone again at 9:00 a.m.
24 tomorrow. Thank you.

25 Let's go off the record.

1 (Thereupon, at 5:07 p.m., the hearing was
2 adjourned.)

3 - - -

4 CERTIFICATE

5 I do hereby certify that the foregoing is a
6 true and correct transcript of the proceedings taken
7 by me in this matter on Wednesday, November 20, 2019,
8 and carefully compared with my original stenographic
9 notes.

10
11 _____
Karen Sue Gibson, Registered
Merit Reporter.

12
13 _____
Carolyn M. Burke, Registered
Professional Reporter.

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15 (KSG-6844)

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Summary: Transcript in the matter of the Duke Energy Ohio, Inc. hearing held on 11/20/19 - Volume III electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.