

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 Thursday, November 21, 2019.

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VOLUME IV

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

- - -

1 APPEARANCES:

2 Duke Energy Ohio, Inc.
3 By Mr. Rocco D'Ascenzo,
4 Ms. Elizabeth Watts,
5 and Ms. Larisa M. Vaysman
6 139 East Fourth Street, ML 1303
7 Cincinnati, Ohio 45202

8 and

9 Frost Brown Todd LLC
10 By Mr. Kevin N. McMurray
11 301 East Fourth Street
12 Great American Tower, Suite 3300
13 Cincinnati, Ohio 45202

14 On behalf of Duke Energy Ohio, Inc.

15 Bruce J. Weston, Consumers' Counsel
16 Office of the Ohio Consumers' Counsel
17 By Mr. Christopher Healey,
18 Ms. Amy Botschner-O'Brien,
19 and Mr. Bryce McKenney,
20 Assistant Consumers' Counsel
21 65 East State Street, 7th Floor
22 Columbus, Ohio 43215

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

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

On behalf of Ohio Manufacturers'
Association Energy Group.

Carpenter Lipps & Leland LLP
By Ms. Angela Paul Whitfield
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of The Kroger Company.

- - -

1 APPEARANCES:

2 Ohio Partners for Affordable Energy
3 By Ms. Colleen Mooney
4 P.O. Box 12451
5 Columbus, Ohio 43215

6 On behalf of Ohio Partners for Affordable
7 Energy.

8 Boehm, Kurtz & Lowry
9 By Ms. Jody Kyler Cohn,
10 Mr. Michael L. Kurtz,
11 and Mr. Kurt J. Boehm
12 36 East Seventh Street, Suite 1510
13 Cincinnati, Ohio 45202

14 On behalf of Ohio Energy Group.

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1 Thursday Morning Session,
2 November 21, 2019.

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4 EXAMINER ADDISON: We will go on the
5 record.

6 Good morning, everyone. It is our fourth
7 day of hearing for Case Nos. 14-375-GA-RDR, et al.

8 I believe we will be beginning with
9 Dr. Campbell's testimony this morning; is that
10 correct, Mr. McKenney?

11 MR. McKENNEY: That's correct. OCC calls
12 Mr. James Campbell, your Honor.

13 EXAMINER ADDISON: Thank you very much.

14 MR. McKENNEY: Dr. James Campbell.

15 EXAMINER ADDISON: You may approach the
16 witness stand. Welcome, Dr. Campbell.

17 (Witness sworn.)

18 EXAMINER ADDISON: Thank you. Please be
19 seated and if you could just turn on your microphone.

20 THE WITNESS: Good morning.

21 MR. McKENNEY: We would ask that
22 Dr. Campbell's direct testimony be marked as OCC
23 Exhibit 21.

24 - - -

25

1 JAMES R. CAMPBELL, Ph.D.

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

4 DIRECT EXAMINATION

5 By Mr. McKenney:

6 Q. Good morning, Dr. Campbell. How are you
7 this morning?

8 A. I am doing fine. Yourself?

9 Q. Good. Could you please state your name
10 and business address for the record.

11 A. Yes. James Campbell, 1500 Ardmore
12 Boulevard, Pittsburgh, Pennsylvania.

13 EXAMINER ADDISON: And, Mr. McKenney,
14 sorry, I just want to note on the record officially,
15 Dr. Campbell's testimony will be marked as OCC
16 Exhibit No. 21.

17 MR. McKENNEY: Thank you, your Honor.

18 EXAMINER ADDISON: Thank you, I
19 apologize.

20 MR. McKENNEY: No. My apologies. I tend
21 to go quickly.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. (By Mr. McKenney) Dr. Campbell, do you
24 have in front of you what has previously been marked
25 OCC Exhibit No. 21?

1 A. I do.

2 Q. Is that your prefiled direct testimony in
3 this case?

4 A. Yes.

5 Q. Do you have any corrections to your
6 testimony?

7 A. I do not.

8 Q. If I were to ask you these same questions
9 today, would your answers be the same?

10 A. They would.

11 MR. McKENNEY: Your Honor,
12 Mr. Campbell -- Dr. Campbell is available for
13 cross-examination.

14 EXAMINER ADDISON: Thank you very much.

15 And Mr. McKenney, just to verify, when
16 Dr. Campbell's testimony was first filed in this --
17 in these proceedings, there was confidential portions
18 but his testimony is now completely public; is that
19 correct?

20 MR. McKENNEY: That is correct. It has
21 been refiled. This is the refiled version. I will
22 confirm with Mr. McMurray, that is correct?

23 MR. McMURRAY: That is correct.

24 MR. McKENNEY: Yes, your Honor.

25 EXAMINER ADDISON: Thank you to you both.

1 Any motions to strike to address this
2 morning?

3 Wonderful.

4 Ms. Whitfield, any questions?

5 MS. WHITFIELD: No, your Honor.

6 EXAMINER ADDISON: Ms. Kyler Cohn.

7 MS. COHN: None, your Honor. Thank you.

8 EXAMINER ADDISON: Thank you very much.

9 Mr. McNamee.

10 MR. McNAMEE: No questions, Your Honor.

11 Thank you.

12 EXAMINER ADDISON: Mr. McMurray.

13 MR. McMURRAY: Thank you, your Honor.

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15 CROSS-EXAMINATION

16 By Mr. McMurray:

17 Q. Good morning, Dr. Campbell.

18 A. Good morning.

19 Q. Do you remember a couple weeks ago, on
20 November 8, that we met in Pittsburgh so that I could
21 take your deposition in this proceeding?

22 A. I do.

23 Q. Did you prepare written testimony and
24 testify on behalf of the OCC in the hearing in the
25 2012 natural gas rate case, Case No. 12-16 --

1 1685-GA-AIR, involving Duke Energy's request for
2 recovery of costs to investigate and remediate the
3 two MGP sites in Cincinnati, Ohio?

4 A. I don't recall the case number but, yes,
5 I previously filed testimony.

6 Q. Thank you.

7 So if I refer to the 2012 natural gas
8 rate case, do you understand that to be the case that
9 you testified in previously?

10 A. I do.

11 Q. Did that previous testimony include your
12 recommendations on behalf of the OCC for what you
13 believe would be a prudent approach to conducting the
14 investigation and remediation of the two Duke MGP
15 sites?

16 A. It did.

17 Q. Are the recommendations for how you
18 believe Duke should have investigated and remediated
19 the two MGP sites in your testimony filed in this
20 proceeding, different from the previous testimony
21 that you prepared in connection with the 2012 natural
22 gas rate case?

23 A. Not substantially, no.

24 Q. So when you say "not substantially," do
25 you mean that the remedial approaches that you are

1 recommending are identical?

2 A. They are the same, yes.

3 Q. Thank you.

4 Do you believe that the conditions that
5 Duke Energy has been addressing during the period of
6 2013 through 2018 are materially different than the
7 conditions that were addressed as of the 2012 natural
8 gas rate case proceeding?

9 A. I didn't go back and do an individual
10 comparison of every soil boring between the areas
11 that were remediated previously versus what was done
12 this time but they were substantially similar.

13 Q. Okay. Fair enough. And when I say
14 "materially different," what I am referring to is
15 different in a way that would cause there to be
16 different applicable standards under the VAP. Is
17 that how you would define "materially different"?

18 A. I guess the one thing I'll say is that in
19 this instance I specifically focused on the soil
20 remedy because that's what the costs that were being
21 sought to -- for rate recovery here had to do with,
22 the soil remedy, so my most-recent testimony focuses
23 on the soil side of things.

24 MR. McMURRAY: Your Honor, I think he had
25 his one-bite-of-the-apple on this with regard to the

1 answer to that question.

2 MR. McKENNEY: Can I respond?

3 EXAMINER ADDISON: You may.

4 MR. McKENNEY: I don't think -- I think
5 his answer was actually responsive to the question
6 asked. I don't -- I am not trying to save a bite at
7 the apple for later.

8 EXAMINER ADDISON: Thank you.

9 MR. McKENNEY: But I don't think this
10 should be struck.

11 EXAMINER ADDISON: I think it was a
12 pretty broad question. You were asking his
13 definition of what constitutes materially different.
14 I will allow you to ask your question again and I
15 will instruct the witness to provide maybe a more
16 narrow answer to your question, but I will allow the
17 answer to stand.

18 MR. McMURRAY: Thank you.

19 Q. (By Mr. McMurray) In preparing your
20 current testimony, did you review your previous
21 testimony?

22 A. I did.

23 Q. Did you review the PUCO's November 13,
24 2013, Opinion and Order in the 2012 natural gas rate
25 case?

1 A. I did.

2 Q. Did you review the PUCO's January 8,
3 2014, Entry on Rehearing in the 2012 natural gas rate
4 case?

5 A. I don't recall that.

6 Q. Did you review the PUCO's Staff Reports
7 issued in 2018 and 2019 in this proceeding?

8 A. I did.

9 Q. Did you review the August 2014 Focused
10 Remedial Alternatives Analysis report for Middle
11 Parcel and the Area West of the West Parcel at the
12 East End site prepared by Haley & Aldrich?

13 A. I did.

14 Q. Did you review the November 2017 Focused
15 Remedial Alternatives Analysis report for the Phase 3
16 and Tower Areas at the West End site prepared by CH2M
17 HILL?

18 A. I did.

19 Q. Did you review Shawn Fiore's testimony
20 filed in March?

21 A. Yes.

22 Q. Did you review Dan Brown's testimony
23 filed in March?

24 A. Yes.

25 Q. Did you visit the sites -- the two Duke

1 MGP sites since your previous testimony?

2 A. Not since 2012 or '13, no.

3 Q. Did you discuss the sites or your
4 recommendations with anyone at Ohio EPA?

5 A. I did not. But, again, it's a
6 confidential matter so I didn't feel it was
7 appropriate.

8 Q. Did you discuss the sites or your
9 recommendations with any party other than the OCC?

10 A. I did not.

11 Q. So, Dr. Campbell, your recommendations
12 both in the 2012 natural gas rate case and in the
13 current proceeding are based on what you believe is
14 required under Ohio Voluntary Action Program or VAP
15 to remediate the two Duke sites, correct?

16 A. Correct.

17 Q. At the time of the last hearing, you were
18 not a Certified Professional under Ohio VAP, correct?

19 A. Correct.

20 Q. I understand that you currently are a CP
21 under the VAP?

22 A. Yes, I am.

23 Q. You became a CP in March of 2014, shortly
24 after the Commission's Order in the 2012 case?

25 A. I don't remember the exact date but

1 something like that, yes.

2 Q. You do not recall when you first became a
3 CP?

4 A. Not specifically. I think it was
5 February maybe. I don't recall specifically.

6 Q. Of 2014?

7 A. Yes.

8 Q. And why did you decide to become a CP?

9 A. Specifically for this case and in general
10 for the credential.

11 Q. So can you just briefly describe for me
12 the process of becoming a CP under the VAP?

13 A. Sure. You have to have an application
14 that demonstrates your experience and knowledge and
15 you have to go through certain training.

16 Q. Training specific to the VAP?

17 A. Yes.

18 Q. Can you describe that training that's
19 specific to the VAP?

20 A. Yeah. Ohio EPA conducts what's called
21 initial training when they talk through the elements
22 of the VAP and then the other parts of the training
23 can be more generally environmentally related.

24 Q. So are you referring to the eight-hour
25 initial CP training that Ohio EPA puts on for the

1 VAP?

2 A. When you start, yes. The first training
3 course you take.

4 Q. So as part of the application process, is
5 it required to have any recommendations?

6 A. It is.

7 Q. Do you recall whether Bruce Hayes, a
8 regulatory analyst with the OCC, was a reference in
9 your application to --

10 MR. McKENNEY: Objection.

11 Q. -- become a CP?

12 MR. McKENNEY: Objection, your Honor. I
13 am not sure his representation of Bruce Hayes -- I
14 think the question could be narrowed to Bruce Hayes'
15 recommendation. I don't know about the
16 representation that he is currently an OCC employee.

17 EXAMINER ADDISON: Thank you,
18 Mr. McKenney.

19 I'll allow Dr. Campbell to answer the
20 question but I will provide him some latitude to
21 clarify if he needs to. Thank you.

22 THE WITNESS: So what was the question
23 again?

24 MR. McMURRAY: Can you read the question
25 back?

1 (Record read.)

2 MR. McMURRAY: I can reask the question.

3 EXAMINER ADDISON: Please rephrase.

4 Thank you, Mr. McMurray.

5 Q. (By Mr. McMurray) Do you recall whether
6 Bruce Hayes, then a regulatory analyst with the OCC,
7 provided a reference in your application to become a
8 CP?

9 A. You asked me this during the deposition
10 and I, at that time, responded that I don't really
11 recall who my reference was, and I didn't go back and
12 look that up.

13 Q. Okay. Fair enough. Do you recall
14 whether you performed any work under the VAP for
15 Mr. Hayes or for the OCC?

16 A. I provided this testimony, the testimony
17 in these two cases for the OCC.

18 Q. So your testimony would be the -- the
19 testimony that you provide in this proceeding under
20 the VAP -- or in this proceeding, constitutes work
21 under the VAP?

22 A. I guess I'm just telling you that I
23 provided testimony in this matter.

24 Q. Fair enough.

25 So is there a cost to become CP under the

1 VAP?

2 A. There is.

3 Q. What is that cost?

4 A. I think it's \$2,500 to apply is my
5 recollection. I am not certain of that either.

6 Q. So after the initial certification, what
7 is the process for maintaining your certification as
8 a CP?

9 A. There's an annual training requirement
10 and then a reapplication process.

11 Q. Is there a fee associated with the
12 renewal?

13 A. There is.

14 Q. Do you know what that fee is?

15 A. I think it's \$2,500.

16 Q. And what is the continuing education
17 component required?

18 A. I think it's 12 hours of continuing
19 education.

20 Q. Is that provided by the Ohio EPA or by --
21 can you get it online?

22 A. There are -- I think the -- I think it
23 used to be eight hours of Ohio-sponsored, now it's
24 six, I believe.

25 Q. So have you maintained your certification

1 continually since you were initially certified?

2 A. I left it lapse one year.

3 Q. And when did you let it lapse?

4 A. I think it was the year before this one
5 so it would have been 2017, I think. But I am not
6 sure.

7 Q. So if I indicated that your certification
8 lapsed from March 11, 2018, through February 5, 2019;
9 would that seem accurate?

10 A. That's accurate, yes.

11 Q. Why did you let it lapse?

12 A. I just didn't get around to it that year.

13 Q. Were you performing any VAP work at the
14 time the certification lapsed?

15 A. I was not.

16 Q. So why did you decide to renew your
17 certification?

18 A. This matter came up and it was also just
19 a matter of keeping the credential in place.

20 Q. So while you've been a CP under the VAP,
21 have you taken any classes or training on the
22 investigation and cleanup of MGP sites under the VAP?

23 A. Not of MGP sites in particular. I have
24 taken VAP training courses though.

25 Q. So are you familiar with the VAP CP

1 Coffees that Ohio EPA puts on?

2 A. Yes, I am.

3 Q. Have you attended any of those VAP CP
4 Coffees?

5 A. I've done a couple on the internet.

6 Q. Okay. You have not attended any in
7 person?

8 A. I have not.

9 Q. Did you attend the annual VAP CP training
10 that was held a couple weeks ago?

11 A. I did not.

12 Q. So, Dr. Campbell, what is your
13 understanding of what it means to be a Certified
14 Professional in the VAP?

15 A. It means you have the experience and
16 understanding of the VAP regulations to -- to run a
17 self-implementing program under Ohio's regulations.

18 Q. So are Certified Professionals, under the
19 VAP, authorized to do things that people who are not
20 certified under the VAP can't do?

21 A. That's correct.

22 Q. So let's walk through some of the things
23 that that might include. So are Certified
24 Professionals authorized to issue voluntary action
25 opinions?

1 A. They are.

2 Q. And can you describe for me what it means
3 to issue a voluntary action opinion?

4 A. Again, we went through this in the
5 deposition. I am not sure exactly what that term
6 means to you, but Certified Professionals review and
7 sign off on reports that are submitted under the VAP
8 or developed under the VAP so that the investigation
9 reports are signed off on by the CP, risk
10 assessments, remedy approaches, NFAs, those sorts of
11 things.

12 Q. So do you know whether Ohio EPA has
13 defined what is a voluntary action opinion?

14 A. I didn't specifically look that up, no.

15 Q. Certified Professionals are authorized to
16 issue NFA letters under the VAP, correct?

17 A. Correct.

18 Q. What does it mean to issue an NFA letter
19 under the VAP?

20 A. That comes at the end of the
21 investigation and remediation process. That
22 basically says that the site is -- has been
23 remediated or there are controls in place to protect
24 the environment for things that are more long term.

25 Q. So in order to issue an NFA letter, does

1 a site have to meet all applicable standards under
2 the VAP or just some?

3 A. It has to have a methodology to meet all
4 applicable standards and so you can meet some today
5 and you can have a program in place to make sure you
6 meet some of the ones in the future.

7 Q. But at the end of the day, the site has
8 to meet all applicable standards under the VAP,
9 correct?

10 A. At the end of the day, whenever that is.
11 That could be many years into the future.

12 Q. Thank you.

13 Are Certified Professionals authorized to
14 issue Covenants Not to Sue under the VAP?

15 A. That's the State's responsibility.

16 Q. So who issues the Covenant Not to Sue?

17 A. The State of Ohio.

18 Q. And do you know what a Covenant Not to
19 Sue is?

20 A. That means you are -- you are -- you can
21 be released from liability for the site by the State.

22 Q. So it is a release of liability from the
23 State of Ohio?

24 A. Right.

25 Q. Certified Professionals act as agents of

1 the State of Ohio in issuing NFA letters, correct?

2 A. Correct.

3 Q. Are Certified Professionals, under the
4 VAP, subject to rules of conduct?

5 A. They are.

6 Q. Can you describe for me what those rules
7 of conduct generally are?

8 A. I don't -- I didn't review those recently
9 but generally it means you have to be an outstanding
10 professional and follow the regulations and the
11 rules.

12 MR. McMURRAY: Your Honor, may I approach
13 the witness?

14 EXAMINER ADDISON: You may.

15 MR. McMURRAY: Your Honor, we are going
16 to mark this as Duke Energy Exhibit 34.

17 EXAMINER ADDISON: Can you provide just a
18 quick description?

19 MR. McMURRAY: I was actually going to
20 have Dr. Campbell identify it. So, Duke Energy Ohio
21 Exhibit 34 is a copy of the Certified Professional
22 Certificate for James R. Campbell, issued on February
23 5, 2019, expiring on February 5, 2020.

24 EXAMINER ADDISON: Thank you very much.
25 It will be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. McMurray) So, Dr. Campbell, do
3 you recognize the document I just handed you?

4 A. I do.

5 Q. And what is that?

6 A. It's the Certified Professional
7 Certificate for me.

8 Q. Does that look true and accurate to you?

9 A. To my recollection, yes.

10 Q. So what does it say at the bottom of the
11 first page, with the first page being the one that
12 has your name and "Certified Professional" on it?

13 A. It says "Scope, limitation, obligations
14 and responsibilities of certification on reverse
15 side."

16 Q. Okay. Can we flip to the reverse side.

17 A. Okay.

18 Q. So we were just talking about the rules
19 of conduct that Certified Professionals are subject
20 to. Does -- looking at the back page, does that help
21 you recall what those requirements might be?

22 A. Well, it lists what it says are the
23 obligations and responsibilities if that's the
24 question.

25 Q. So there are a number of

1 responsibilities, correct?

2 A. Correct.

3 Q. And under the "Scope," that provides
4 limitations on what a Certified Professional can do,
5 correct?

6 A. Yes.

7 Q. And when you review the "Scope" and the
8 "Limitation" section, what does it indicate to you
9 that Certified Professionals are authorized to do?

10 A. Well, it says it applies to the VAP
11 program and doesn't apply to other things.

12 Q. Okay. And does it also indicate that
13 Certified Professionals are authorized to render
14 voluntary action opinions, with "voluntary action
15 opinions" being in italics?

16 A. Yes.

17 Q. Is the fact it's in italics, is that
18 suggestive to you that may be a defined term under
19 the VAP?

20 A. That would suggest that, yes.

21 Q. So, Dr. Campbell, have you ever issued a
22 voluntary action opinion?

23 A. No.

24 Q. Do you believe that your testimony today
25 expresses an opinion concerning compliance with the

1 VAP?

2 A. My testimony is really a critique of
3 Duke's remedial approach at the East and West End
4 sites and offers an alternative way of looking at the
5 VAP program.

6 Q. Okay. So just so I understand, your
7 testimony is not what you believe is required to meet
8 applicable standards under the VAP. Your testimony
9 is a critique of the remedial approach that Duke
10 Energy has implemented at the two MGP sites?

11 A. That's part of my testimony. And the
12 other part of it is there is an alternative approach
13 that I believe to be consistent with what the VAP
14 requires.

15 Q. And does your opinion express an --
16 strike that.

17 Does your testimony express an opinion
18 concerning compliance with VAP standards other than
19 soil standards?

20 A. In this instance, we looked at the remedy
21 that was conducted by Duke that's being sought in
22 this action, it has to do with the soil at the site,
23 so my comments relate to the remedy that Duke
24 conducted that it's seeking cost recovery for.

25 Q. So you focused solely on compliance of

1 the soil standards.

2 A. Correct.

3 Q. You have never prepared an NFA letter
4 under the VAP, correct?

5 A. I have not.

6 Q. Do you know what you would need to do in
7 order to be able to prepare an NFA letter?

8 A. You have to complete all of the -- all of
9 the investigations and remediation of the site.

10 Q. So an NFA letter, if you have not seen
11 one, you can think that's like a one-page letter. Is
12 that what an NFA letter really is?

13 A. I wouldn't think that it was a one-page
14 letter.

15 Q. Have you ever seen an NFA letter?

16 A. I think they might have shown us those in
17 some of the training courses, but they are quite
18 voluminous. You have to attach all the reports
19 you've done to document what you have done at the
20 site.

21 Q. So that would be attaching documents such
22 as a Phase I property assessment, a Phase II property
23 assessment, a risk assessment, other documents?

24 A. Correct.

25 Q. As a Certified Professional, do you know

1 what is required in order to be able to certify that
2 a property meets all applicable standards?

3 A. You have to demonstrate how you've met
4 the standards and then sign off on that.

5 Q. But my question is, you, as the Certified
6 Professional, what are you required to do because
7 presumably you are reviewing other people's
8 documents, correct?

9 A. Or maybe in the same company, you are
10 reviewing your own company's documents that you
11 reviewed as they are being developed.

12 Q. So you are reviewing a lot of documents.
13 Are there things you need to do to make sure those
14 documents are accurate?

15 A. You have to follow what the VAP rules
16 require you to do, use the right laboratories, right
17 techniques, follow the right procedures.

18 Q. So, under the VAP, as the CP, are you
19 required to ensure that all those documents come to
20 you under an affidavit?

21 A. I don't know that for certain.

22 Q. So if you have not prepared an NFA
23 letter, I'm assuming you have not applied for a
24 Covenant Not to Sue under the VAP?

25 A. Correct.

1 Q. Have you worked on any project where a
2 party has sought a Covenant Not to Sue under the VAP?

3 A. I have not.

4 Q. So if you have not issued an NFA letter
5 and you have not issued any voluntary action
6 opinions, have you performed any work under the VAP
7 other than perhaps your testimony in this proceeding?

8 A. I have not.

9 Q. Have you participated in any projects
10 being conducted under the VAP, not as a CP, but in
11 some other role?

12 A. I have not.

13 Q. So is your experience under the VAP then
14 limited to obtaining your certification and then
15 providing the testimony in this proceeding?

16 A. That and, from time to time, at other
17 sites in Ohio we look at some of the VAP regulations
18 as sort of a guidepost, if you will.

19 Q. So what you are referring to is
20 situations where a party may be doing work to meet
21 VAP standards but aren't necessarily in the VAP?

22 A. If you are doing work under the Federal
23 Government under the EPA or the Ohio EPA Findings and
24 Orders, for instance, you might look at VAP rules as
25 kind of -- the VAP rules don't apply to those sites

1 because they are not in the VAP but you could look at
2 those as a guidance. Get some idea.

3 Q. Would you agree that the VAP standards
4 have become the customary standards that parties look
5 to in determining, you know, what is appropriate
6 cleanup levels at properties in Ohio?

7 A. It could be.

8 Q. Are there other standards you would look
9 at?

10 A. Well, if you are doing an EPA site, for
11 instance, you look at EPA standards or you look at
12 risk assessment-based standards.

13 Q. So in those situations, if you are under
14 an order or something with U.S. EPA or Ohio EPA,
15 different standards could apply.

16 A. Correct.

17 Q. Can you turn to page 2, lines 12 and 13
18 of your testimony.

19 A. Okay.

20 Q. And on those -- on those lines you
21 indicate you've provided expert analysis in
22 approximately 220 Superfund cases, 12 of which were
23 MGP sites, correct?

24 A. Correct.

25 Q. Did the expert analysis you reference

1 involve you personally designing or implementing any
2 remediation systems?

3 A. No. Most of that expert work had to do
4 with allocation-related matters.

5 Q. And so your experience as a -- in matters
6 involving allocation, refers to disputes between
7 parties where the cost of the cleanup would be
8 allocated between various responsible parties?

9 A. Correct.

10 Q. Were any of the 12 MGP sites, that you
11 reference, in Ohio?

12 A. I think one was.

13 Q. Do you know whether that site was
14 remediated under Ohio's Voluntary Action Program?

15 A. I don't know. I was involved with that
16 site a long time ago. I remember there being
17 Findings and Orders in place at the time.

18 Q. So if there were Findings and Orders,
19 then that would most likely preclude participation in
20 the VAP, correct?

21 A. At least while the Findings and Orders
22 were effective, at least.

23 Q. And your work at that site involved the
24 expert analysis allocation issue we just discussed?

25 A. Correct.

1 Q. Have you reviewed information on any
2 other MGP sites in Ohio that were taken through the
3 VAP?

4 A. Not that I can think of.

5 Q. Have you reviewed any information on MGP
6 sites remediated in Ohio under other regulatory
7 programs?

8 A. I don't remember. So I worked at Koppers
9 Company in the '80s and they are sort of the -- what
10 I used to say the "Kings of Coal Tar." They designed
11 and built a lot of the MGPs in the country in the
12 first half of the 20th Century and then ran allied
13 tar distillation and wood treating plants, so there
14 was -- their whole legacy portfolio has to do with
15 coal tar in the ground. So I worked on, probably had
16 100 sites under my tutelage when I was at Koppers
17 Company. So I have worked on coal tar sites all over
18 the country.

19 Q. So is that in the 1980s?

20 A. '80s and into the '90s.

21 Q. Do you know when Ohio's Voluntary Action
22 Program was enacted?

23 A. In the '90s.

24 Q. If I said September 1994, would that seem
25 accurate to you?

1 A. It might be. It's around that time.

2 Q. So have you attended any conferences,
3 over the last five years, on the remediation of MGP
4 sites?

5 A. I have not. I continue to work on MGP
6 sites though, so.

7 Q. Have you attended any conferences or
8 programs on the remediation at MGP sites over the
9 last 10 years?

10 A. I don't think so.

11 Q. So when you say that you continue to work
12 on MGP sites, are you involved in the design and
13 implementation of remedial activities at those sites?

14 A. Yeah. I have a site in Milwaukee that
15 has a PRP group. I represent one of the PRPs at that
16 site in Milwaukee.

17 Q. So does that involve allocation or does
18 that involve something else?

19 A. That involves the site is going through
20 the RFS and remedy process under -- it's an EPA
21 Superfund site.

22 Q. And what is the remedy of that site?

23 A. Actually at that site there was a PRP
24 group and there was a utility in that and the utility
25 went off and did its own negotiations with EPA and

1 pulled out of the site so they are conducting their
2 remedy on their own.

3 EXAMINER ADDISON: Can you define for the
4 record what "PRP" stands for?

5 THE WITNESS: Sorry. Potentially
6 Responsible Party.

7 EXAMINER ADDISON: Thank you very much.

8 Q. (By Mr. McMurray) So you indicated the
9 utility pulled out to do its own remedy. Does that
10 mean you don't know what the remedy is at that site?

11 A. I know what the remedy is.

12 Q. So what is the remedy?

13 A. It's in-situ stabilization.

14 Q. Or ISS?

15 A. Or ISS.

16 Q. So is that to address tars and oils in
17 the subsurface at that site?

18 A. It's unclear to me what exactly -- why
19 they are doing what they are doing there. I think
20 they are spending a lot of money that doesn't need to
21 be spent is what I think.

22 Q. Is that property being taken through that
23 State's equivalent of the VAP?

24 A. No. It's being done as a removal action
25 under EPA authority.

1 Q. So that's U.S. EPA?

2 A. Yes.

3 Q. So is that under CERCLA?

4 A. Yes.

5 Q. So that is an alternative -- an
6 alternative to going through a program like the VAP
7 would be to be doing work under orders from the
8 U.S. EPA or Ohio EPA or state EPA?

9 A. Correct.

10 Q. Do you have any opinion whether it's
11 preferable to be going through a program like the VAP
12 or to be under orders?

13 A. I think it just depends on your
14 circumstances.

15 Q. Okay. I want to turn now to your
16 testimony concerning some of the specific work at the
17 site. So I'm going to summarize what I believe your
18 recommended remedy is but I want you to tell me if I
19 am summarizing this incorrectly. And so I'm pulling
20 this from page 25 and 26 of your testimony.

21 My interpretation is that your
22 recommended remedy for the Phase 2A area at the West
23 End site is to use engineering controls in the form
24 of the existing fence around the property, the
25 construction of a 2-foot soil cover, and the

1 placement of institutional controls in the form of an
2 environmental covenant limiting use of the property
3 to commercial/industrial uses only, prohibiting
4 potable use of groundwater, and to utilize a risk
5 mitigation plan for future excavation work at the
6 site; is that correct?

7 A. That's correct.

8 Q. This is essentially the same remedy that
9 you recommended back in 2013 relating to other
10 portions of the West End site, correct?

11 A. Correct.

12 Q. And you refer to this as a soil remedy in
13 your testimony, correct?

14 A. Correct.

15 Q. And is it your opinion that the work that
16 Duke has been conducting is only a soil remedy?

17 A. They haven't addressed the groundwater,
18 that's for sure.

19 Q. Have they addressed the river?

20 A. They have not.

21 Q. And so if Duke is taking the West End
22 site through Ohio's Voluntary Action Program, doesn't
23 Duke need to consider all applicable standards and
24 not just some?

25 A. Correct. But, again, the activities that

1 are in play in this matter relate to the Phase 2
2 Area -- relate to excavation stabilization of soil in
3 the Phase 2 Area. Duke didn't address mobile tars or
4 groundwater or the Ohio River as part of what they
5 are claiming in this action.

6 MR. McMURRAY: Your Honor, I would move
7 to strike his testimony after the answer "correct."

8 EXAMINER ADDISON: Thank you.

9 Mr. McKenney.

10 MR. McKENNEY: Can I hear the answer back
11 before we --

12 EXAMINER ADDISON: You may.

13 MR. McKENNEY: How about the answer and
14 question actually.

15 (Record read.)

16 MR. McKENNEY: Your Honor, he asked about
17 the West End site. I think he is clarifying what he
18 is trying to ask and what's being addressed in this
19 case. So I don't think this is -- should be struck.
20 I think his answer should be allowed to stand. He is
21 trying his best to answer the question that was
22 asked.

23 EXAMINER ADDISON: Thank you,
24 Mr. McKenney.

25 MR. McMURRAY: The question --

1 EXAMINER ADDISON: Thank you. I am ready
2 to give my ruling. I will allow Dr. Campbell to use
3 his one-bite-of-the-apple at this time. I will allow
4 the answer to stand.

5 Using the word "but" is a huge red flag
6 to me that you are expanding upon counsel's question.
7 So I will direct you, Dr. Campbell, to simply answer
8 counsel's question and counsel's question only.
9 Mr. McKenney can certainly bring up any information
10 on redirect.

11 THE WITNESS: Okay.

12 EXAMINER ADDISON: Thank you.

13 Please proceed.

14 MR. McMURRAY: Thank you, your Honor.

15 Q. (By Mr. McMurray) And so just to confirm,
16 with regard to your opinion and testimony in this
17 case, your recommended remedy is not designed to meet
18 all applicable standards but just, rather, soil
19 standards, correct?

20 A. Correct.

21 Q. You indicated earlier that you have
22 reviewed Dan Brown and Shawn Fiore's testimony,
23 correct?

24 A. Correct.

25 Q. They identify more than just soil

1 standards as the applicable standards to be met under
2 the VAP of these sites, correct?

3 A. Correct.

4 Q. Do you disagree with their analysis as to
5 the applicable VAP standards at these sites?

6 A. I haven't read their testimony in several
7 months, so it's hard to say whether I would agree
8 with what they say. I don't recall what they said
9 specifically.

10 Q. So would the remedy, that you are
11 recommending, protect the critical resource
12 groundwater that underlies both of the sites?

13 A. The upper aquifer is already contaminated
14 and the deeper groundwater is not and has not been
15 with the material that's been in place for decades.
16 I think that the lower aquifer is safe the way it is.

17 Q. Do you know whether Duke Energy has
18 sampled the deeper critical resource groundwater at
19 either of the sites?

20 A. I'm not certain of that.

21 Q. The remedy that you are recommending in
22 this testimony, would that protect the Ohio River?

23 A. The Ohio River hasn't been -- hasn't come
24 up as an issue in this matter yet.

25 Q. Why do you say that?

1 A. Because Duke hasn't addressed it yet.

2 Q. So you don't believe that the remedial
3 work that Duke is doing to remove or solidify the
4 tars and oils in the subsurface is designed to, in
5 part, protect the Ohio River?

6 A. Duke hasn't demonstrated that's necessary
7 to protect the Ohio River so, I mean, the thing in
8 play in this matter is what are they doing and why
9 are they doing it, and it's not clear to me that you
10 have demonstrated you need to do what you are doing.

11 Q. Okay. So the remedies that you are
12 recommending would leave all of the tars and oils and
13 other contaminants in the ground, correct?

14 A. Correct. And, again, Duke has done the
15 same thing. They have just put cement around it, but
16 those tars and oils are still under the ground under
17 what Duke has done as well.

18 Q. Hasn't Duke removed significant amounts
19 of tars and oils at both sites and then solidified,
20 through the ISS process we talked about earlier,
21 materials in the ground so they can't move?

22 A. Duke has excavated down to, I think,
23 20 feet which they consider to be the excavation
24 depth where utility workers might contact the
25 material. It's not clear to me that that demarcation

1 was made based on anything to do with mobile tar.

2 Q. Did Duke also utilize ISS at both of the
3 sites?

4 A. They did but the tar remains in place.

5 Q. Tar below the depth of the ISS.

6 A. ISS doesn't remove tar. It just adds the
7 Portland cement to the soil.

8 Q. Doesn't the ISS prevent the tar from
9 moving?

10 A. It does but it's not clear that it's
11 moving under the current conditions either.

12 Q. Do you know how deep the ISS process has
13 been at the East End site?

14 A. East End site? I thought it was 40 feet
15 but I would have to go back and look.

16 Q. And so it would have solidified in place
17 the tars and oils down to that depth but the ISS
18 obviously wouldn't have dealt with what's below that,
19 correct?

20 A. Correct.

21 Q. How about the West End site, do you know
22 how deep the ISS process has been?

23 A. I thought it was the same depth but,
24 again, I would have to go back and look.

25 Q. So turning to the Middle Parcel at the

1 East End site, are you recommending the same remedy
2 for the Middle Parcel that we just discussed with
3 regard to the Phase 2A Area at the West End site?

4 A. Correct.

5 Q. And, again, this remedy would leave all
6 of the tar and oils and other contaminants in the
7 ground at that site, correct?

8 A. Much as is currently the case after
9 Duke's remedy, yes.

10 Q. And you are aware that there are tars and
11 oils down 100 feet along the Ohio River at that site,
12 correct?

13 A. I remember at least one location where
14 it's 90-feet down, but it's not clear whether it's
15 still mobile or not. Duke hasn't done the testing
16 necessary to determine whether it's mobile.

17 Q. And then just to close the loop on this,
18 the final area that's referred to as the Area West of
19 the West Parcel. Setting aside the PUCO-related
20 issues about whether that's, you know, covered as
21 part of this proceeding, if we assume that it is, the
22 remedy that you are recommending for the Area West of
23 the West Parcel is the same remedy you're
24 recommending for the Middle Parcel at East End and
25 the Phase 2 Area -- Phase 2A Area at West End,

1 correct?

2 A. Correct.

3 Q. And, again, these remedies are
4 essentially the same remedy that you recommended back
5 in the 2012 natural gas case, correct?

6 A. Correct.

7 Q. Can we flip to Exhibit JRC-3 in your
8 testimony.

9 A. Okay.

10 Q. And can you describe for me what
11 Attachment JRC-3 is?

12 A. It's a cost estimate for remediation of
13 the Phase 2 Area.

14 Q. At the West End site?

15 A. Yes. Phase 2A Area to be specific.

16 Q. Believe me, I think we have all come to
17 realize there's a lot of terminology here on
18 Phase 2, Phase 2A and so on, so I understand.

19 So with regard to these calculations, are
20 these the same cost assumptions that you utilized
21 when you came up with your recommended remedy for the
22 2012 natural gas rate case with the addition of an
23 inflation factor?

24 A. Some of the unit costs are the same, and
25 other ones I used different -- I used updated ones.

1 Q. So can you point me to the ones you
2 updated?

3 A. Give me a second to read through it all.
4 I think there are four different cost estimating
5 tables here, so give me a second to catch up with
6 what I did on each one.

7 It looks like I updated the Duke Internal
8 Charges item which is footnote 10.

9 Q. Okay. It looks like, with regard to all
10 the other footnotes, that it's based upon costs
11 during the 2010-2011 time period?

12 A. The unit rates are based on that and I
13 adjusted for inflation and I took the quantities
14 based on the -- based on the actual measurements for
15 Phase 2A Area.

16 Q. So let's turn, while we are here, to
17 JRC-4.

18 A. Okay.

19 Q. So similar to what we just went through,
20 can you describe what this is?

21 A. Again, this is a cost estimate for
22 remediation of the West of West Parcel and the Middle
23 Parcel of the East End MGP site.

24 Q. And are these calculations based on the
25 same cost assumptions used in your 2012 testimony but

1 with the addition of the inflation factor and then
2 updated Duke internal costs?

3 A. The unit costs were largely from last
4 time. I may have updated. I am not sure what I
5 updated on this. I would have to look through it all
6 but, again, the specific quantities are based on the
7 current -- current work for these particular parcels.
8 The footnotes speak for themselves as to what I did.

9 Q. So, in general, is it fair to say that
10 the assumptions that you used and the calculations
11 you made are the same as what you prepared for the
12 2012 natural gas rate case?

13 A. What's the same are the unit costs that
14 were taken from actual costs incurred by Duke for the
15 same kind of actions, and I updated those based on an
16 inflation factor.

17 Q. But with regard to the scope of the work
18 recommended, that's the same?

19 A. It's -- the work covers the same. It's a
20 2-foot soil cover and institutional controls, that
21 sort of thing.

22 Q. So aren't the conditions that are being
23 addressed at the Middle Parcel and the Area West of
24 the West Parcel essentially the same, meaning the
25 same applicable VAP standards would apply to the

1 conditions that were addressed at the West Parcel --
2 yeah, the West Parcel and the East Parcel at the East
3 End site?

4 A. To the best of my recollection, yes.

5 Q. And has Duke Energy's remedial approach
6 at the Middle Parcel and the Area West of the West
7 Parcel been consistent with the remedial approach for
8 the West Parcel and the East Parcel?

9 A. Can you say that again?

10 MR. McMURRAY: Sure.

11 Can you read that question back?

12 EXAMINER ADDISON: Thank you.

13 THE WITNESS: Too many Easts and Wests in
14 there.

15 MR. McMURRAY: Understood.

16 (Record read.)

17 A. So you are asking me what Duke did in the
18 previous case is the same as what they did for this
19 case as far as the remediation they conducted?
20 That's essentially your question?

21 Q. It is. I am just asking -- understanding
22 every site is different, but is the remedial approach
23 that Duke is following with regard to the Middle
24 Parcel and the Area West of the West Parcel,
25 generally consistent with what Duke did at the West

1 Parcel and the East Parcel?

2 A. If I recall last time, in the East Parcel
3 they excavated down way deep, using significant
4 shoring which is way over the top, and then I think
5 for the West Parcel they switched to a shallower
6 excavation and stabilization.

7 THE WITNESS: Can I take a timeout and
8 get my water bottle from the table?

9 MR. McMURRAY: Certainly.

10 Sorry.

11 EXAMINER ADDISON: Absolutely. I won't
12 take offense.

13 MR. McMURRAY: Sorry, your Honor.

14 EXAMINER ADDISON: You should really have
15 your counsel bring it to you.

16 THE WITNESS: Okay. That's better.

17 MR. McMURRAY: Ready to go?

18 THE WITNESS: Yes.

19 Q. (By Mr. McMurray) So when I asked the
20 question, you described that it may have been a
21 little different in the East parcel, the excavation
22 depth was deeper, may have been a little shallower at
23 the West Parcel, but the remedial technologies of
24 excavation and the use of ISS, that's consistent,
25 correct?

1 A. Correct.

2 Q. So similarly, if we turn to West End,
3 is -- aren't the conditions in the Phase 2A Area at
4 the West End site essentially the same, meaning the
5 applicable VAP standards would not be different as
6 the conditions that were remediated in the other
7 areas of the West End site that were part of the 2012
8 natural gas rate case?

9 A. Again, I didn't do a boring-by-boring
10 comparison but the -- they both are MGP-impacted.

11 Q. And so is the remedial approach that Duke
12 has taken at the Phase 2A Area at the West End site
13 comparable to the remedial approach taken at the
14 other areas at the West End site that were part of
15 the prior proceeding?

16 A. They both involve excavation and ISS.

17 Q. So if the remedial approaches taken for
18 the Middle Parcel, the Area West of the West Parcel,
19 the East End site and the Phase 2A -- Phase 2A Area
20 at the West End site, are comparable to or very
21 similar to the approaches that Duke had taken at the
22 East End site and the West End site previously, what
23 is the basis for claiming now that Duke is being
24 imprudent with regard to how it's remediating those
25 areas?

1 A. I took a fresh look at these -- these
2 sites and I didn't agree with how you were spending
3 the money last time and I don't agree with it this
4 time.

5 Q. And do you recall that the Commission
6 determined that Duke had been prudent in how it went
7 about investigating and remediating the East End site
8 and West End site?

9 A. That's the conclusion of the Commission
10 last time, yes.

11 Q. And so when you say that you have taken a
12 fresh look, how is it a fresh look if it's
13 recommending the same thing you were recommending
14 previously?

15 A. Well, a "fresh look" means you read the
16 matter at hand, right? So last time I didn't -- I
17 looked at the documents that you submitted this time,
18 so I looked at all the documents, the conditions
19 there, and concluded the remedy approach that I
20 recommended last time was appropriate still.

21 Q. But the conditions -- I think we've
22 established the environmental conditions in the
23 Middle Parcel Area, the Area West of the West Parcel,
24 and the Phase 2 Area are essentially the same as the
25 conditions that were remediated in the other areas of

1 those two sites previously, correct?

2 A. They are similar to.

3 Q. Do they all have tars and oils and other
4 MGP contaminants in the subsurface?

5 A. To some extent, yes. I didn't compare --
6 again, like I told you earlier, I haven't compared
7 the soil borings to look at the degree of
8 contamination from one parcel to the other.

9 Q. Do you not need to do that in order to be
10 able to assess whether those areas of the property
11 would meet VAP standards?

12 A. I didn't say I didn't do that. What I
13 said is I didn't compare the two portions against
14 each other.

15 Q. Fair enough.

16 Let's turn to page 5 of your testimony,
17 lines 4 and 5.

18 A. What page again?

19 Q. Page 5, lines 4 and 5.

20 A. Thank you.

21 Q. So in your testimony you indicate "My
22 testimony demonstrates that Duke's expenditures were
23 excessive and imprudent for MGP remediation." Is
24 that correct?

25 A. Yes.

1 Q. And is the basis for that statement
2 simply that you believe Duke has undertaken more
3 remediation work than you believe is required to meet
4 the soil standards at those sites?

5 A. Correct.

6 Q. When you are evaluating what is prudent
7 or not, do you look at things other than just what
8 the VAP might require in Ohio?

9 A. The issue of prudence in my mind really
10 gets to -- at any given site there is multiple ways
11 to be protective and some cost more money and some
12 cost less money, and so what I am saying is there are
13 more cost-effective ways to be protective than --
14 than -- Duke chose a more-expensive way to be
15 protective. I think there are less-expensive ways to
16 be protective.

17 Q. Okay. So let's take that. So you are
18 focused on cost, right? So let's ask a couple
19 questions about that. So is prudence determined only
20 by looking at the cost of the environmental work
21 today and not over the longer term?

22 A. Prudence really has to do with what would
23 a reasonable person do. That's really what the
24 definition is as I recall.

25 Q. If I go back to my question though,

1 prudence, are you looking at just what is the current
2 cost or are you considering not only the current cost
3 but what the cost might be over the entire time
4 period that you need to address these conditions?

5 A. I think it's fair to say that for the
6 soil remedy that no matter what time frame you are
7 talking about, what I am -- my recommended remedy
8 would be more cost effective.

9 Q. I am not sure you answered my question.

10 A. I think I did.

11 Q. Okay. So let's take that for a minute.
12 So the approach that you've recommended, which is
13 utilizing engineering and institutional controls,
14 that would leave the contamination in the ground,
15 correct?

16 A. Correct.

17 Q. Do you consider that to be remediation?

18 A. Yes.

19 Q. Isn't it really that it's precluding
20 human exposure to those contaminants?

21 A. That's a form of remediation.

22 Q. So when you utilize engineering and
23 institutional controls, do you need to do anything
24 over the longer-term period to ensure that that human
25 exposure doesn't occur?

1 A. Sure. You have to have a risk mitigation
2 plan in place.

3 Q. Do you need to utilize an operation and
4 maintenance plan to implement the engineering and
5 institutional controls?

6 A. Yes.

7 Q. And is that -- is that operated pursuant
8 to an O&M agreement with Ohio EPA or who the
9 regulatory agency is?

10 A. Correct.

11 Q. Does that require ongoing monitoring and
12 reporting to the agency?

13 A. Correct.

14 Q. Did you include costs for ongoing O&M
15 work at the East End and West End site in your
16 calculations for the recommended remedy and total
17 cost?

18 A. I believe I did. I did say that -- O&M
19 for contaminants remedies is pretty -- pretty cheap.
20 What I did say in here was if there would be an
21 exposure to utility workers in the future, you could
22 conduct excavation at that time. So if there were
23 costs incurred in the future, those would be subject
24 to a matter down the road.

25 Q. Okay. Again, your remedy is just focused

1 on the soil remedy. You're leaving, for another day,
2 Duke addressing groundwater, the Ohio River, the deep
3 critical resource aquifer, you are leaving all that
4 work for another day, correct?

5 A. Just like Duke has.

6 Q. I don't believe Duke is looking at it
7 that way.

8 MR. McKENNEY: Objection, your Honor.
9 Move to strike.

10 EXAMINER ADDISON: Granted.

11 Q. (By Mr. McMurray) Why do you believe Duke
12 is looking at this as only a soil remedy?

13 A. Duke's own documents say it's not a
14 groundwater remedy and your own submissions in this
15 matter state that you haven't addressed the Ohio
16 River yet.

17 Q. Before we leave the prudence discussion
18 we were having, in your opinion would it be imprudent
19 for a public utility to consider other factors in
20 determining the appropriate remedial approach such as
21 minimizing risk and harm to employees?

22 A. I think prudence can take a lot of things
23 into account. I don't recall seeing Duke mentioning
24 that particular factor in the documents that I read.

25 Q. Would -- in your opinion would that be an

1 appropriate factor?

2 A. It could be.

3 Q. How about minimizing risk and harm to
4 members of the public?

5 A. The contaminant remedy does meet both of
6 those things.

7 Q. So you are saying that would be an
8 appropriate factor to consider?

9 A. Correct.

10 Q. How about considering long-term
11 cost-effectiveness?

12 A. Sure.

13 Q. How about balancing short-term and
14 long-term costs?

15 A. Correct.

16 Q. How about minimizing disruption to
17 business operations?

18 A. Correct.

19 Q. How about preventing third-party
20 lawsuits?

21 A. I don't know that I've seen that come
22 into play into any government-led cleanups.

23 Q. How about preventing government
24 enforcement actions?

25 A. Again, that's not really an environmental

1 remediations requirement. It's not an environmental
2 remediation standard.

3 Q. My question is whether it would be
4 prudent to consider that possibility in developing
5 your remedial approach.

6 A. Yeah. I think it's -- it's not imprudent
7 to not consider it. Put it that way.

8 Q. Okay. Let's turn to page 7 of your
9 testimony. And in particular looking at lines 1 and
10 2.

11 A. Okay.

12 Q. And you indicate there that -- well,
13 let's back up to the bottom of page 6, carrying over
14 onto page 7. The sentence that states "Duke
15 conducted remedial alternative evaluations for the
16 Middle and WOW Parcels as well as Phase 3 and Tower
17 areas, after being heavily criticized by OCC and PUCO
18 for not doing so during previous efforts." Do you
19 see what I just read?

20 A. I do.

21 Q. As you may recall at your deposition, I
22 asked you if you could reference me where the PUCO
23 heavily criticized Duke for failing to do what you
24 said there. Have you been able to identify where
25 that -- that criticism occurred?

1 A. I have, and there probably is more
2 chiding than heavily criticizing.

3 Q. Can you reference me, in the PUCO Opinion
4 and Order, where it says that?

5 A. Page 64.

6 Q. Let's turn to page 64. You should have,
7 in front of you, the Opinion and Order.

8 A. It's Exhibit 1?

9 Q. Is that OMAEG 1?

10 A. Yes.

11 EXAMINER ADDISON: That's it.

12 Q. So point me to what you are referring to.

13 A. Give me a second here to find it. I'm
14 not finding it as I am sitting here, but my
15 recollection is what it says is that Duke didn't
16 document that they considered a range of remedies but
17 that they ultimately concluded there had been some
18 evaluation done.

19 Q. So wasn't the testimony and criticism,
20 that you are recalling from the OCC, that there was
21 not a report documenting the evaluation of the
22 remedial alternatives more so than there had not been
23 an evaluation?

24 A. Correct. It was about documentation.

25 Q. Okay. Thank you.

1 MR. McMURRAY: Your Honor, I would like
2 to approach the witness.

3 EXAMINER ADDISON: Of course.

4 MR. McMURRAY: So we will be marking this
5 as Duke Energy Exhibit 35.

6 MR. McKENNEY: Could we go off the record
7 real quick?

8 EXAMINER ADDISON: Let's go off the
9 record for a moment.

10 (Discussion off the record.)

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

13 Mr. McMurray.

14 MR. McMURRAY: Thank you, your Honor.

15 Q. (By Mr. McMurray) So, Dr. Campbell, what
16 I have handed you, which has been marked as Duke
17 Energy Ohio Exhibit 35, is entitled "Focused Remedial
18 Alternatives Analysis, East End Gas Works," dated
19 August 7, 2014, prepared by Haley & Aldrich. Are you
20 familiar with this document?

21 A. I have read it, yes.

22 EXAMINER ADDISON: Mr. McMurray, I am so
23 sorry. I will just officially note that it has been
24 marked as Duke Energy Ohio Exhibit 35.

25 MR. McMURRAY: Thank you.

1 EXAMINER ADDISON: My apologies.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. (By Mr. McMurray) Did you review that
4 document in preparing your testimony?

5 A. I did.

6 Q. So going back to the discussion we had
7 concerning the criticism over the lack of a report
8 documenting a remedial alternatives analysis in the
9 2012 case, is this the sort of report that you
10 thought was missing the prior time?

11 A. From a documentation perspective, yes.
12 The -- my criticism last time really was
13 process-oriented more than document-oriented.

14 Q. Is the report that you have in your hand
15 now required by the Voluntary Action Program?

16 A. I don't believe so.

17 Q. Is this sort of report required by other
18 environmental programs that you are aware?

19 A. It's pretty much standard fair for
20 evaluating alternatives to clean up sites.

21 Q. Under CERCLA?

22 A. Under CERCLA and other state programs as
23 well.

24 Q. So let's turn to Figures 2 through Figure
25 4. We'll just spend a little bit of time on each.

1 Do you have Figure 2 in front of you?

2 A. I do.

3 Q. And can you generally describe what this
4 figure is depicting?

5 A. Figure 2 is entitled "Extent of OLM or
6 TLM in Fill and Clay."

7 Q. And what is OLM and TLM?

8 A. I believe it stands for oil-like material
9 and tar-like material.

10 Q. And so this figure is depicting the
11 horizontal extent of the OLM or TLM in the fill and
12 clay, correct?

13 A. Yeah. The -- in the legend it indicates
14 that the areas outlined in red dashes are potential
15 limits of OLM and TLM in fill and clay.

16 Q. So from your experience, what does it
17 mean when it says "potential limits"? That it could
18 extend further?

19 A. Or it could be less.

20 Q. I also notice on this figure that there's
21 some shaded areas such as two big circles in the
22 Middle Parcel called "Gas Holder" and then to the
23 west of that it says "Tar Well" and so on. Do you
24 know what those items are?

25 A. I do.

1 Q. And what are those items?

2 A. Well, the gas holder is where the -- when
3 they manufactured the gas, that went into the gas
4 holder tanks before it was sent out for distribution.

5 Q. So is that reflecting former manufactured
6 gas plant equipment or structures?

7 A. It is.

8 Q. And do you have any idea how Haley &
9 Aldrich might know where those -- that equipment was
10 located since this site operated as an MGP in the
11 late 1800s and to the middle of the 1900s?

12 A. Sanborn maps and former plant drawings.

13 Q. Are those pretty standard historical
14 resources that you would utilize to evaluate what
15 might have occurred historically at a property?

16 A. When you say "those," you mean Sanborn
17 maps and the plant drawings?

18 Q. I do, yes.

19 A. Yes, yes, I do.

20 Q. And are Sanborn maps 100-percent
21 accurate?

22 A. 100 percent is the high standard.

23 Q. But they are a resource you turn to in
24 order to have some idea of what might have been
25 there, correct?

1 A. Correct.

2 Q. Okay. Let's turn to Figure 3. Can you
3 just generally describe what this depicts?

4 A. The title of Figure 3 is "Extent of OLM
5 in Outwash Deposits."

6 Q. So the red dashed lines reflect
7 horizontally the extent of the oil-like material,
8 correct?

9 A. Yeah. The legend defines the red dashed
10 lines as potential limits of OLM in outwash.

11 Q. And outwash is at a deeper depth than the
12 fill and clay that was reflected in Figure 2,
13 correct?

14 A. At this site I believe that's the case.

15 Q. And in looking on the southern edge down
16 towards the Ohio River, there is a dashed line that
17 has question marks in it. Do you know what that
18 represents?

19 A. Usually question marks represent where we
20 don't have borings to define it.

21 Q. So it looks like that's on the riverbank
22 area?

23 A. That's what it appears.

24 Q. Okay. Let's turn to Figure 4. Can you
25 just briefly describe what this depicts?

1 A. Figure 4 is entitled "Extent of OLM on
2 Bedrock."

3 Q. And so bedrock is deeper than the outwash
4 deposits and deeper than the fill and clay, correct?

5 A. Correct.

6 Q. So these three figures together are
7 depicting the horizontal extent of OLM and, in some
8 instances, TLM through the various vertical horizons
9 at the site, correct?

10 A. Correct. As defined by Haley & Aldrich.

11 Q. Do you have any reason to believe that
12 Haley & Aldrich has not accurately defined the
13 extent?

14 A. No. Every consultant uses different
15 terms, globules of oil versus stains or sheens. I
16 don't think that these figures denote mobility of
17 these materials.

18 Q. Let's talk about mobility for a minute.
19 So do you know what the depth of bedrock is at the
20 East End site?

21 A. Off the top of my head, I do not.

22 Q. If I said it was 90 to 100 feet below
23 ground surface, would that seem fair?

24 A. About right.

25 Q. So Figure 4 is showing OLM on bedrock at

1 90 to 100 feet below ground surface. How would the
2 OLM have gotten there if it was not mobile?

3 A. The point -- the important
4 characterization is "was and is." It got there
5 because it was mobile. The question, from the
6 remediation perspective, is it still mobile.

7 Q. So let's turn to Section 1.8 in that
8 document.

9 A. Okay.

10 Q. On page 8. Are you there?

11 A. I am.

12 Q. So let's look at the paragraph right in
13 the middle. And really the middle of the middle
14 paragraph that says "Based on review of site data, it
15 appears that the MGP residuals have migrated beyond
16 the extent of the former MGP footprint (horizontally)
17 and below the native clay layer (vertically),
18 indicating that vertical conduits (which could
19 include fractured clays or desiccation cracks in
20 unsaturated clay as well as former MGP structures,
21 such as gas holder foundations, tar well foundations,
22 et cetera) may exist." Do you see that language?

23 A. I do.

24 Q. Do you disagree with that statement by
25 Haley & Aldrich?

1 A. Let me just read it again.

2 I think the data shows that MGP residuals
3 certainly migrated in the past. I don't know -- I
4 didn't go back and look at how Haley & Aldrich
5 defined the extent of that, again whether this was
6 sheens and stains or globules, that sort of thing,
7 and they don't really address whether it is still
8 mobile which, from a remediation perspective, is very
9 important.

10 Q. So going down to the next paragraph, it
11 says "If a continual source of residual material is
12 present, the horizontal migration of the residual
13 materials in the subsurface is expected to continue
14 along the zones of increased porosity and/or
15 permeability, and downward through the vertical
16 conduits." Do you disagree with that statement?

17 A. I -- I couldn't keep up with you there.
18 Where are you reading from?

19 Q. It's the next paragraph that starts with
20 "If a continual source."

21 A. Okay. Give me a second. If the material
22 is still mobile, that's correct. But mobility is
23 normally determined by doing transmissivity testing,
24 so you would install wells in areas where there are
25 oily and tarry materials and then you do

1 transmissivity testing to determine whether it is
2 still mobile or not.

3 Q. So you do not know whether Duke has done
4 such testing or not, correct?

5 A. I didn't see reference to that in
6 anything I read.

7 Q. So let's turn to Table I. Do you
8 recognize what this table is?

9 A. Table I is entitled "VAP Applicable
10 Standards and Remedial Considerations."

11 Q. Did you consider all of these applicable
12 standards in your testimony that was developed to
13 have a recommended remedy?

14 A. Again, this does include several
15 groundwater standards which in this document it says
16 that Duke's not addressing in this part of the
17 remedy.

18 Q. Where does it say that Duke is not
19 addressing these other items in the remedy?

20 A. It's in my testimony. Let me just find
21 it. So on page 11 of Haley & Aldrich report in
22 Section 2.2, the last bullet says that they did not
23 evaluate the potential for site groundwater to impact
24 downgradient receptors.

25 Q. Well, sticking in that section, so this

1 section is entitled "Remedial Action Objectives,"
2 correct?

3 A. Correct.

4 Q. And so the bullets that are identified in
5 Section 2.2 are the remedial action objectives that
6 Duke was considering as part of this work, correct?

7 A. Correct.

8 Q. So if you go down to the fourth bullet,
9 what does that say that objective is?

10 A. "Mitigate the potential for COCs in soil
11 to leach into groundwater."

12 Q. And what are COCs?

13 A. It usually stands for contaminants of
14 concern. I am not sure how they define it here.

15 Q. So, in our case, that could be the TLM,
16 the OLM, or other contaminants associated with the
17 MGP operations?

18 A. Correct.

19 Q. How about the next bullet?

20 A. "Mitigate NAPL impacts to groundwater and
21 the potential for migration of NAPL off-site."

22 Q. So while you pointed to the last bullet
23 in Section 2.2, the two bullets that you just read
24 from indicate that remedial action objectives are not
25 just for soil remedy but rather to mitigate NAPL

1 impacts to groundwater and the potential for
2 migration of NAPL off-site which in this case could
3 be the Ohio River or elsewhere, correct?

4 A. I guess what's confusing to me is that's
5 listed here as an RAO, Remedial Action Objective, but
6 I don't know that H&A has ever defined that the NAPL
7 is moving off-site. So that's a little puzzling when
8 I read that. And I think in some of the other
9 documents they talk about the leaching component is
10 not -- not considered further so, again, that
11 particular REO puzzles me as well.

12 Q. Well, on that one, let's turn to Exhibit
13 JRC-9 which is what I think you are referring to.
14 And are you able to identify the report that you have
15 excerpts included in your testimony from?

16 A. Yes. JRC-9 is the Human Health Risk
17 Assessment completed by AECOM for the West End site.

18 Q. And so you refer to this document with
19 regard to your evaluation of the leaching pathway,
20 correct?

21 A. Correct.

22 Q. And what in this section do you rely
23 upon?

24 A. The last sentence in Section 6.3.4
25 states: Therefore, due to the above-listed reasons,

1 no further evaluation of the leaching pathway is
2 recommended.

3 Q. Does it say that no further work on the
4 leaching pathway is required or did it just say no
5 further evaluation is required based upon the actions
6 that precede that sentence?

7 A. Well, earlier in that same paragraph it
8 states "Constituents present in soil at the Site have
9 been in place for 100 years and any leaching from
10 soils to groundwater is likely to have already
11 occurred." So I think they are saying they are not
12 worried about that pathway anymore.

13 Q. Does the next sentence say "Furthermore,
14 planned remedial actions will significantly reduce
15 the mass of constituents in soil and will reduce
16 their potential to impact groundwater"?

17 A. It does but the sentence before says it
18 doesn't really matter because if it's going to
19 happen, it's already happened.

20 Q. Let's turn to Section 3.1 of the report.

21 A. Okay.

22 Q. Can you describe for me what this section
23 consists of?

24 A. Section 3.1 is entitled "General Response
25 Actions." This typically looks at broad categories

1 of potential remedial approaches.

2 Q. So technologies that should be considered
3 in developing the remedial approach, correct?

4 A. Yeah. Even stepping back from
5 technology, it really describes technology types or
6 categories.

7 Q. Do you believe that Haley & Aldrich
8 failed to consider any potential applicable
9 technologies or approaches?

10 A. I don't think they failed to consider
11 them. I disagree with the conclusion.

12 Q. All of the technologies you have
13 recommended are noted in this section, correct?

14 A. Correct.

15 Q. Let's look at the sixth -- fifth bullet,
16 "Removal." The last sentence in that bullet says
17 "The VAP encourages removal actions by not requiring
18 subsequent actions beyond the receipt of the NFA or
19 CNS." Do you see that?

20 A. I do.

21 Q. Do you disagree with that statement?

22 A. I think that's generally, regulatory
23 agencies, they encourage you to do that. That
24 doesn't mean you have to do it that way.

25 Q. The next bullet, "Treatment." The last

1 sentence says "The VAP encourages treatment actions,
2 through use of consolidated site permits and by not
3 requiring subsequent actions beyond the receipt of
4 the NFA or CNS." Do you see that?

5 A. Again, regulatory agencies encourage that
6 but they are not trying to make everybody in the VAP
7 spend tens of millions of dollars to clean up sites
8 and that's not the purpose of the VAP. The VAP's
9 purpose is to keep properties in the -- in the stream
10 of commerce so that environmental liabilities don't
11 hold up property transactions and business
12 transactions. So those statements don't mean you
13 have to spend tens of millions of dollars. That's
14 not the purpose of the VAP.

15 Q. I think you went beyond the question that
16 I asked. Do you disagree with that statement itself?

17 A. Again, I think regulatory agencies
18 encourage you to do things but that doesn't mean you
19 have to do that or that's the intent of the
20 regulatory program.

21 Q. Thank you.

22 Let's -- let's move on to Section 3.2.
23 Can you describe for me what that section does?

24 A. Section 3.2 is entitled "Technology
25 Screening Criteria."

1 Q. And so the criteria that is used in
2 screening the technology consists of effectiveness,
3 implementability, and cost, correct?

4 A. Correct.

5 Q. Do you have any disagreement with the
6 factors that -- or the criteria that are indicated in
7 this section?

8 A. No. Just with the conclusions.

9 Q. Let's turn to Table II in the report.
10 Are you there?

11 A. I am.

12 Q. And so what does Table II represent?

13 A. Table II is entitled "Remedial Technology
14 Screening."

15 Q. And so is this a table that then
16 essentially implements the discussion that occurred
17 in 3.2 in the text?

18 A. This table includes H&A's evaluation of
19 these General Response Actions relative to the
20 criteria that they identified.

21 Q. Okay. And, again, the criteria is
22 effectiveness, implementability, and cost?

23 A. Correct.

24 Q. So were institutional controls considered
25 in this screening?

1 A. They were.

2 Q. Were engineering controls considered?

3 A. Yes.

4 Q. Do you believe that Haley & Aldrich
5 failed to consider any remedial technologies or
6 approaches?

7 A. No. I just disagree with the
8 conclusions.

9 Q. Let's turn to section 4 in the report.
10 This is the section where the "Remedial Alternatives"
11 were analyzed, correct?

12 A. Section 4 is entitled "Remedial
13 Alternatives."

14 Q. And were various alternatives developed
15 in this section?

16 A. So in the front part they identify what
17 the alternatives are and they lay out the evaluation
18 criteria. And then they do the evaluation.

19 Q. Do you have any disagreement with the
20 substance of this section?

21 A. They identify the range of technologies
22 from less expensive to more expensive. They
23 identified the Superfund evaluation criteria for
24 feasibility studies. I haven't read the descriptions
25 of their evaluation in quite a while but obviously we

1 disagree on what our -- our conclusion is.

2 Q. Let's take a look at Alternative 2 on
3 page 15 which is called "Durable Covers,
4 Institutional and Engineering Controls and
5 Groundwater Monitoring."

6 A. Okay.

7 Q. Isn't this essentially the approach that
8 you are recommending?

9 A. Yes.

10 Q. And in that section doesn't -- doesn't it
11 say "Similar to the No Action alternative, this
12 alternative does not meet all RAOs or address all
13 applicable VAP standards"?

14 A. That might be what it says. But,
15 remember, what I am talking about is that if -- you
16 would have to have a risk mitigation plan in place so
17 that if there would be a need to excavate soil in the
18 future, you can do that. I also talked in my
19 different testimony about if there are particular
20 areas of soil where there was really gooey tar, you
21 might excavate that out, and if there was mobile --
22 mobile tar in the ground, you put in some NAPL
23 recovery wells so this isn't exactly what I've
24 recommended.

25 Q. So let's turn to the top of page 16, so

1 in the same alternative, top bullet, third line, it
2 references that this would include a soil
3 management/risk mitigation plan for future intrusive
4 activities. Isn't that the risk mitigation plan you
5 are recommending?

6 A. Give me a second to catch up with you
7 here.

8 Q. Sure.

9 A. Yeah, they reference a risk mitigation
10 plan here.

11 Q. Okay. And turning back to the prior
12 page, the language that I had read earlier, where it
13 said that it would not address all applicable VAP
14 standards. Do you see that?

15 A. Which page are you on now?

16 Q. It's page 15.

17 A. Okay.

18 Q. It's the second line from the bottom,
19 "this alternative does not meet all RAOs or address
20 all applicable VAP standards...." Do you see that?

21 A. I do.

22 Q. So doesn't that suggest to you that Haley
23 & Aldrich is considering all applicable VAP standards
24 and not just soil standards?

25 A. That's what that sentence says but I

1 don't in fact know what they did.

2 Q. Okay. Final part from this report, let's
3 turn to Table III. Are you there?

4 A. I am.

5 Q. So this is entitled "Detailed
6 Alternatives Analysis, East End Gas Works Site." Do
7 you see that?

8 A. I do.

9 Q. So I think as you indicated previously,
10 although not a VAP requirement, this is the sort of
11 analysis that is commonly done to evaluate potential
12 remedial approaches, correct?

13 A. Correct.

14 Q. Do you have any disagreement with the
15 consideration, the criteria that are identified in
16 the column "Criteria"? Do you have any disagreement
17 with the various criteria that were considered?

18 A. No. Those are the standard Superfund
19 criteria.

20 Q. And one of the criteria considered is
21 cost?

22 A. Yes.

23 Q. Alternative 5 scored higher than the
24 other alternatives, correct?

25 A. That's what the table says, yes.

1 Q. Do you know whether Alternative 5 is the
2 approach that Duke implemented at the East End site?

3 A. I'm not certain which of these
4 alternatives was implemented. I'd have to look at
5 it.

6 Q. Fair enough. But from looking at this
7 analysis that considered a very large number of
8 criteria as reflected in the far left column and then
9 balancing all of those, coming up with a total
10 numerical score, would it seem reasonable that you
11 would choose the one that had the highest score when
12 it considers all the various criteria?

13 A. I think, as we talked about in my
14 deposition, I am not a big fan of numerical scoring.
15 I think that you can make that come out any way you
16 wish. So I don't -- I am not a big fan of numerical
17 scoring. I think you have to look at these things in
18 a different way. So I don't -- I don't like
19 numerical scoring.

20 Q. Would you have a more objective way to do
21 this?

22 A. The issue I have with numerical scoring
23 is selection of a remedy is based on site conditions
24 and experience and the numbers suggest that there's
25 more exactitude than there is. So one of the reasons

1 I don't like numbers is that it puts a certain patina
2 of exactness on it and the process is much more site
3 specific and less amenable to putting numbers on it.
4 Like, is it really Alternatives 2 and 3 are at .5
5 apart? Is that real? What does that even mean?

6 Q. But don't all environmental professionals
7 have to apply their experience --

8 A. Right but --

9 Q. -- at the same --

10 A. But the numbers are false. They give you
11 a false impression of exactitude. It's just not
12 there.

13 Q. Okay. You can put that down.

14 MR. McMURRAY: Your Honor, may I approach
15 the witness?

16 EXAMINER ADDISON: You may.

17 MR. McMURRAY: And can we go off the
18 record for 30 seconds?

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 Q. (By Mr. McMurray) So, Dr. Campbell, I
25 have handed you what has been marked as Duke Energy

1 Ohio Exhibit 36 which is entitled "Focused Remedial
2 Alternatives Analysis for the Phase 3 and Tower
3 Areas," Duke Energy West End Property, dated November
4 2017. Do you have that in front of you?

5 A. I do.

6 EXAMINER ADDISON: And it has been so
7 marked.

8 MR. McMURRAY: Sorry. Thank you, your
9 Honor.

10 EXAMINER ADDISON: Thank you.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Are you familiar with this document?

13 A. Yes.

14 Q. Did you review it in preparing your
15 testimony?

16 A. Yes.

17 Q. Is this the sort of report that you
18 thought was missing back in 2013 during the prior
19 proceeding?

20 A. It represents the process that I thought
21 was missing in the prior testimony.

22 Q. Would you consider this document to be
23 very similar to the Focused Remedial Alternatives
24 Analysis report that we just discussed on the East
25 End site?

1 A. In general, yes.

2 Q. Rather than going through each section
3 like we just did, is there anything in this report,
4 other than the ultimate conclusion, that you disagree
5 with?

6 A. The word "anything" is awfully broad.
7 Like we talked about on the last report, they used
8 the Superfund criteria and the form of the remedial
9 alternatives according to the Superfund process. As
10 far as all the statements in here, I couldn't say
11 specifically I agree or disagree with any one of
12 them.

13 Q. Fair enough. So let's just take a look
14 at Section 4. 2 which is entitled "Description of
15 Selected Alternatives."

16 A. Okay.

17 Q. Are any of the alternatives that are
18 identified in this section what you are recommending
19 be done at the West End site?

20 A. Not exactly. But probably Alternative 4
21 is probably the closest one. They don't exactly line
22 up.

23 Q. So is that Alternative 4 in the Tower
24 Area section or the Phase 3 Area section?

25 A. It's in the Tower Area, although

1 Alternative 4 includes excavation of 20 feet which I
2 don't think is necessary.

3 Q. Your approach is really more of a
4 combination of Alternatives 2 and 3, correct?

5 A. Correct.

6 Q. And how did CH2M HILL evaluate
7 alternatives 2 and 3?

8 A. I am not sure what you are asking me.

9 Q. Well, down further on page 4-3, where
10 they did their evaluation of Alternatives 2 and 3,
11 didn't they conclude in both of those this
12 alternative will not meet applicable VAP standards or
13 be protective of human health and the environment?

14 A. That's what they concluded.

15 Q. So similar to the Haley & Aldrich
16 evaluation, in reviewing this in its entirety how do
17 you conclude that Duke was focused only on a soil
18 remedy when it was looking at all applicable
19 standards?

20 A. Well, again, that's what they say they
21 are doing but they also -- Duke's also said they
22 haven't addressed groundwater at this site and the
23 Ohio River so, by their own statements, they haven't
24 included everything.

25 Q. You can put that down. So let's just go

1 back very briefly to the figures from the Haley &
2 Aldrich Remedial Alternatives Analysis report we
3 discussed. So Figure 2, 3, and 4.

4 A. Okay.

5 Q. These figures, as we discussed, depict
6 the horizontal extent of the OLM and, in some cases,
7 TLM at the site, correct?

8 A. That's what the figures are entitled,
9 yes.

10 Q. So under the VAP, in order to meet all
11 applicable standards, Duke is going to be required to
12 delineate the full extent of the MGP impacts,
13 correct?

14 A. Correct.

15 Q. Whether that's confined to its property
16 or it extends into the river or onto someone else's
17 property, they would be required under the VAP, in
18 order to do an investigation, define the extent,
19 correct?

20 MR. McKENNEY: Objection. That assumes
21 facts not in evidence. I don't think there is --
22 anyone has ever testified there is a requirement or
23 at least a requirement for the VAP maybe.

24 MR. McMURRAY: That was a hypothetical to
25 the expert on what the VAP requires from the

1 standpoint of investigation to meet standards.

2 MR. McKENNEY: He didn't say for the VAP.
3 I don't know what requirement he is talking about.

4 EXAMINER ADDISON: I think he did say
5 required under the VAP.

6 Do you need that question reread?

7 THE WITNESS: I need that question again.

8 EXAMINER ADDISON: Thank you.

9 (Record read.)

10 MR. McKENNEY: My apologies. I withdraw
11 the objection. I apologize, Mr. McMurray.

12 EXAMINER ADDISON: I have a way to cheat.

13 MR. McKENNEY: I don't have that, yes.

14 A. Correct.

15 Q. And looking at these figures, they are
16 clearly depicting that OLM and, in some instances,
17 TLM are extending onto what is denoted the West of
18 the West Parcel and maybe extending to the riverbank
19 and beyond, but we don't know for sure because there
20 is question marks in the dashes, correct?

21 A. Haley & Aldrich has drawn red lines
22 outside of the property of the site. The one thing I
23 will note about these figures, though, it doesn't
24 suggest that it's solid OLM and TLM from ground
25 surface down to depth.

1 These things are drawn based on
2 soil-boring observations and typically in a soil
3 boring you'll have tar oil observations at certain
4 depth intervals but not continuously. So these are
5 usually drawn based on the observance of some depth
6 interval but that doesn't mean it's continuous all
7 the way down, so the presence of these materials
8 tends to be sort of splotchy, if you will.

9 Q. Fair enough. And you are correct, that's
10 what's reflected on Figure 5, 6, 7, 8, which we
11 didn't go through but those figures actually depict
12 what was observed vertically in the various boring
13 locations, correct?

14 A. Correct. And again, I didn't go back and
15 look at what those observations mean, is it a stain
16 or a sheen, which typically isn't a big deal, or does
17 it mean there are globules or free material which
18 would be more important.

19 Q. Thank you.

20 MR. McMURRAY: Your Honor, can I have
21 20 seconds?

22 EXAMINER ADDISON: Absolutely.

23 MR. McMURRAY: Your Honor, I have no
24 further questions for this witness.

25 EXAMINER ADDISON: Thank you very much.

1 Mr. McKenney, any redirect?

2 - - -

3 REDIRECT EXAMINATION

4 By Mr. McKenney:

5 Q. Dr. Campbell, just a few questions, and
6 while we are on the topic, you still have that
7 Duke 35 report in front of you?

8 A. That's the H&A one?

9 Q. Yes.

10 A. Yes, I do.

11 Q. That's my question. Who prepared this
12 report?

13 A. Haley & Aldrich.

14 Q. Do you know who is doing the remediation
15 at the East End site?

16 A. The remediation company, I believe, is
17 Haley & Aldrich, I believe.

18 Q. Do you know who hires the VAP CP? Let me
19 rephrase. Do you know who has -- what firm has
20 employed the VAP CP for the East End site?

21 A. Haley & Aldrich.

22 Q. Do you know when Haley & Aldrich started
23 the remediation work for Duke?

24 A. A number of years ago.

25 Q. Do you know when this report was created?

1 A. After the remediation started.

2 Q. What year was that?

3 A. 2014.

4 Q. Do you also remember when Mr. McMurray
5 was talking to you about a report created by CH2M
6 HILL?

7 A. Yes.

8 Q. When was this report conducted?

9 A. November 2017.

10 Q. Do you know when remediation began at the
11 Phase 3 and Tower Areas?

12 A. I think that has not been done yet, I
13 believe.

14 Q. I am going to ask you to turn to
15 Table III, the Detailed Alternatives Analysis.
16 Alternative 2 is Institutional Controls. I will give
17 you a minute to get there, Dr. Campbell.

18 A. Yep.

19 Q. Are you recommending just institutional
20 controls?

21 A. I am not.

22 Q. Are you -- then the next one over is
23 Alternative 3. Do you see that?

24 A. I do.

25 Q. Are you recommending just engineering

1 controls?

2 A. I am not.

3 Q. So -- but your recommendation fall --
4 where would your recommendation fall in a column on
5 this chart?

6 A. Somewhere between 3 and 4.

7 Q. At the third column up from the bottom,
8 do you see that one that says "Cost"?

9 A. Yes.

10 Q. What's the cost for Alternative 3?

11 A. Low.

12 Q. What's the cost for Alternative 4?

13 A. Medium.

14 Q. Do you see that second column or second
15 row -- I'm sorry I said column -- row on the first
16 column where it says "Balancing Criteria Combined
17 Score"?

18 A. Yes.

19 Q. What was the Balancing Criteria Combined
20 Score for Alternative 4?

21 A. 24.5.

22 Q. I am sorry. The one above that.

23 A. Sorry. 17.5.

24 Q. And how about for Alternative 5?

25 A. 17.

1 Q. The Balancing Criteria for Alternative 4
2 is higher than the Balancing Criteria for Alternative
3 5; is that right?

4 A. On this table, yes.

5 Q. On the next page there is another table.
6 Same exercise. Alternative 2, are you recommending
7 just institutional controls?

8 A. I am not.

9 Q. Are you recommending just engineering
10 controls?

11 A. I am not.

12 Q. Is there a column on this chart that
13 would most likely represent what you are recommending
14 be done?

15 A. It would fall between Alternatives 3 and
16 4.

17 Q. What about Duke's remediation, what
18 column would it fall under if you know?

19 A. Actually I don't.

20 Q. Okay. Nothing further on those. We are
21 going -- more questions. Nothing further on those.

22 EXAMINER ADDISON: Thank you.

23 Q. Dr. Campbell, Mr. McMurray asked you a
24 number of questions regarding your experience. Do
25 you remember that?

1 A. I do.

2 Q. How long have you been doing this?

3 A. 37 years.

4 Q. Do you think you're experienced enough to
5 give an opinion on how an MGP site should be
6 remediated?

7 A. I think so.

8 MR. McMURRAY: I am going to object
9 because my questions were specifically focused on his
10 experience under the VAP. I did not ask him about
11 his experience beyond that.

12 MR. McKENNEY: Your Honor, he has already
13 answered. I was asking whether he considered himself
14 qualified and he is a VAP Certified Professional so,
15 we'll get there, but part of being a VAP CP is your
16 experience outside of the VAP to get the
17 certification.

18 EXAMINER ADDISON: Thank you. I think we
19 did touch upon his experience outside of strictly the
20 Ohio VAP, so I will allow the question.

21 Q. (By Mr. McKenney) We will clear this up.
22 Do you have enough experience to be certified as a
23 VAP CP?

24 A. I do.

25 Q. Are you a VAP CP?

1 A. I am.

2 Q. In the remediations you've overseen, does
3 remediation have to occur under the VAP?

4 A. If the site didn't have enough risk, you
5 would not have to do remediation.

6 Q. Does every site in Ohio have to proceed
7 under the VAP for remediation?

8 A. Does it have to proceed -- if you are in
9 the VAP, do you need remediation? Is that --

10 Q. Do you have to follow the VAP?

11 A. No. You can choose to be in a different
12 arena or program if you want to be.

13 Q. Can you explain what you mean by your
14 allocation experience with remediation?

15 A. Sure. So allocation involves figuring
16 out how different companies who operated at a site or
17 disposed of waste at a site, how they are going to
18 split the cost. And you typically look at how those
19 entities operated at the site.

20 Like with the MGP sites, for instance,
21 usually it's a matter of multiple parties operating
22 the MGP. And so the allocation gets into when they
23 operated, how much product and waste they produced,
24 how management -- management of -- waste management
25 techniques changed over time, how they would have

1 disposed of their wastes, those sorts of factors. So
2 you look at how they were in the plant and how they
3 managed their waste and what part of the mess they
4 caused.

5 Q. Okay. And, Dr. Campbell, Mr. McMurray
6 then asked you about prudence of considering
7 long-term costs. Do you remember that?

8 A. I do.

9 Q. Does considering the -- is considering
10 long-term costs required to meet all applicable
11 standards under the VAP?

12 A. It's not.

13 Q. In your opinion, should customers be
14 charged for remediation exceeding what is required
15 under the VAP?

16 A. They should not.

17 MR. McKENNEY: Nothing further, your
18 Honor.

19 EXAMINER ADDISON: Thank you,
20 Mr. McKenney.

21 THE WITNESS: May I step down?

22 EXAMINER ADDISON: Not quite yet.

23 Ms. Whitfield?

24 MS. WHITFIELD: No questions, your Honor.

25 EXAMINER ADDISON: Ms. Kyler Cohn?

1 MS. COHN: None, your Honor.

2 EXAMINER ADDISON: Mr. McNamee?

3 MR. McNAMEE: No questions.

4 EXAMINER ADDISON: Mr. McMurray?

5 - - -

6 RECROSS-EXAMINATION

7 By Mr. McMurray:

8 Q. I just have one because I think there may
9 have been confusion, but I will give you the
10 opportunity to clarify.

11 So when Mr. McKenney was asking you about
12 the East End site, you testified your belief that the
13 remedial alternatives analysis was completed after
14 the remediation work for the Middle Parcel and the
15 Area West of the West Parcel; is that correct?

16 A. I testified that remedial work had
17 already -- had already been completed at the East End
18 site.

19 Q. In other areas.

20 A. Yes.

21 Q. Is it your understanding that this
22 remedial alternatives analysis report for the Middle
23 Parcel and the Area West of the West Parcel predated
24 the remedial work in those areas?

25 A. Yeah. I mean, the title of it just talks

1 about remedial alternatives evaluation for the East
2 End site, so is it specific to just those two parcels
3 or is it more site -- general site concerns.

4 Q. Well, you would need to look at it. It's
5 the Middle Parcel and the Area West of the West
6 Parcel. So is it your understanding that if that's
7 true, that this was prepared before the remediation
8 work in those areas?

9 A. I would have to go look that up. I don't
10 know the answer to that question whether -- specific
11 timing of when they remediated the Middle Parcel and
12 the WOW Parcel versus this August 2014 date, I would
13 have to look that up.

14 MR. McMURRAY: Okay. Fair enough.

15 No further questions, your Honor.

16 EXAMINER ADDISON: Thank you very much.
17 I have no additional questions.

18 Dr. Campbell, you are excused at this
19 time.

20 MR. McKENNEY: Your Honor, we would move
21 for the admission of Dr. Campbell's testimony which
22 is OCC Exhibit 21.

23 EXAMINER ADDISON: Any objection?

24 Hearing none, it will be admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER ADDISON: Mr. McMurray.

2 MR. McMURRAY: So Duke moves for
3 admission of Exhibits 34, 35, and 36.

4 EXAMINER ADDISON: Any objections?

5 MR. McKENNEY: No objection, your Honor.

6 EXAMINER ADDISON: Thank you. They will
7 be admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 EXAMINER ADDISON: Let's take a brief
10 break before we bring on our next witness.

11 Let's go off the record.

12 (Recess taken.)

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

15 Mr. McNamee.

16 MR. McNAMEE: Your Honor, at this time,
17 excuse me, Staff would call Nicci Crocker to the
18 stand.

19 EXAMINER ADDISON: Thank you. Welcome,
20 Ms. Crocker.

21 MS. CROCKER: Thank you.

22 (Witness sworn.)

23 EXAMINER ADDISON: Thank you. Please be
24 seated.

25 MR. McNAMEE: There we go.

1 - - -

2 NICCI CROCKER

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

5 DIRECT EXAMINATION

6 By Mr. McNamee:

7 Q. Ms. Crocker, would you state and spell
8 your name for the record, please.

9 A. Nicci Crocker, N-I-C-C-I C-R-O-C-K-E-R.

10 Q. By whom are you employed and in what
11 capacity?

12 A. The Public Utilities Commission of Ohio
13 as Utility Specialist.

14 Q. Okay. What's your business address?

15 A. 180 East Broad Street, Columbus, Ohio
16 43215.

17 Q. Okay. Ms. Crocker, I think you have
18 before you a document that's previously been marked
19 for identification in the case as Staff Exhibit 1
20 denominated "Report by the Staff of the Public
21 Utilities Commission of Ohio, September 28, 2018?"

22 A. I do.

23 Q. What is that?

24 A. This is the first Staff Report that was
25 issued in 2018.

1 Q. It was prepared by you?

2 A. Yes.

3 Q. Do you have any corrections that you
4 would make to that document?

5 A. Not at this time.

6 Q. Okay. Are the contents of what's been
7 marked for identification as Staff Exhibit 1, true to
8 the best of your knowledge and belief?

9 A. Yes.

10 Q. All right. Turning to, do you have
11 before you what's been marked for identification as
12 Staff Exhibit 2, that being a -- a document entitled
13 something. "Staff Report," the Staff Report dated
14 July 12, 2019?

15 A. Yes.

16 Q. What is that?

17 A. This is the second Staff Report that was
18 issued earlier this year.

19 Q. Was that drafted by you?

20 A. Yes.

21 Q. Do you have any corrections that you
22 would make to that document?

23 A. Yes. I would like to add on page 5,
24 footnote 6, where I discuss the boundaries --

25 Q. In the footnote?

1 A. Yes.

2 Q. Okay.

3 A. That I also relied on the Commission
4 Order.

5 Q. Oh, okay. Okay. With that -- with that
6 noted, are the contents of what's been marked for
7 identification as Staff Exhibit 2 to the -- correct
8 to the knowledge -- correct to the best of your
9 knowledge and belief? I am having trouble talking
10 this morning.

11 A. Yes.

12 MR. McNAMEE: Okay. Good. Thank you.

13 All right. At this time, your Honor, the
14 Staff would ask to have marked for identification as
15 Staff Exhibit 8, a document denoted "Prefiled
16 Testimony of Nicci Crocker" filed on October 16,
17 2019.

18 EXAMINER ADDISON: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. McNAMEE: Does anyone need that?
21 Anybody? I know the reporter does.

22 Q. (By Mr. McNamee) Okay. Ms. Crocker, you
23 have before you what's been marked for identification
24 as Staff Exhibit 8?

25 A. Yes.

1 Q. What is that?

2 A. This is the testimony I filed in this
3 case.

4 Q. Okay. So prepared by you?

5 A. Yes.

6 Q. Okay. Do you have any corrections that
7 you need to make to that document here this morning?

8 A. Yes. I have two.

9 Q. Could you tell us the first one, please.

10 A. On page 10, line 1, after the Revised
11 Code reference, instead of "Staff is," it should say
12 "We are." It was a misquote.

13 Q. Where was that again?

14 A. Page 10, line 1.

15 Q. Yes.

16 A. It says "Staff is." That should read "We
17 are."

18 Q. Okay. And the second correction you
19 wanted to make.

20 A. Page 11, at the bottom, this is also an
21 incorrect quote, line 19, the word "which" should be
22 removed. And after the word "costs," it should say
23 "to achieve those proceeds, e.g., litigation costs.
24 Footnote 21."

25 Q. Okay.

1 A. The words "litigation and attorney fees
2 should be reimbursed to customers" should be removed.

3 Q. I'm sorry. What was that again?

4 A. The words after the word "costs."

5 Q. Oh, yes.

6 A. -- should be removed, and the footnote
7 reference on page 12 after line 2 should be removed.

8 Q. Okay. Close the footnote.

9 EXAMINER ADDISON: I'm sorry,
10 Ms. Crocker. Which footnote are you referring to on
11 page 12?

12 THE WITNESS: On page 12 it appears as
13 footnote 21.

14 EXAMINER ADDISON: Thank you.

15 Q. (By Mr. McNamee) Okay. Are those all the
16 corrections?

17 EXAMINER ADDISON: I'm sorry,
18 Mr. McNamee. Could I just have you then read
19 lines 18 and 19 as you have corrected them so
20 everyone is on the same page?

21 THE WITNESS: Yes. "'...investigation
22 and remediation should be used to reimburse the
23 ratepayers...should be net of the costs to achieve
24 those proceeds, e.g., litigation costs.' Footnote
25 21."

1 EXAMINER ADDISON: Thank you very much
2 for indulging me, Mr. McNamee. Please continue.

3 MR. McNAMEE: All right.

4 Q. (By Mr. McNamee) Okay. With those
5 corrections as noted, are the -- are the contents of
6 what's been marked for identification as Staff
7 Exhibit 8 true to the best of your knowledge and
8 belief?

9 A. Yes.

10 Q. If I were to ask you the questions that
11 are contained within what's been marked for
12 identification as Staff Exhibit 8 again here this
13 morning, would your answers be as represented
14 therein?

15 A. Yes.

16 MR. McNAMEE: That's hard to say.

17 With that, your Honor, the witness is
18 available for cross.

19 EXAMINER ADDISON: Thank you very much.

20 And just as I have invited with every
21 other witness, are there any motions to strike at
22 this time?

23 MS. WATTS: None from us, your Honor.

24 EXAMINER ADDISON: Thank you very much,
25 Ms. Watts.

1 OCC?

2 MR. HEALEY: Yes, briefly, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Healey:

6 Q. Ms. Crocker, can you turn to page 4 of
7 your testimony, please.

8 A. Yes.

9 Q. And on line 13 you start the line with
10 "In the annual filings in 2014 and 2015." Do you see
11 that?

12 A. Yes.

13 Q. And that would be for the 2013 and 2014
14 costs, correct?

15 A. Correct.

16 Q. And then similarly on line 16 when you
17 say "costs pertaining to WOW in 2014 and 2015," you
18 are referring to the 2014 and 2015 filings, correct?

19 A. Correct.

20 Q. And then same thing for line 17, when you
21 say "2016 through 2019," you are referring to the
22 case number, not the year of the costs, correct?

23 A. That's correct.

24 Q. Thank you for that clarification.

25 Can you turn to page 12 of your

1 testimony, please. And I would like to understand
2 lines 10 through 12. You state "Staff recommends
3 that the Commission net the refund granted in these
4 cases against any allowances permitted in this
5 proceeding." You're referring to the insurance money
6 there, correct?

7 A. That's correct.

8 Q. And you are aware that the net insurance
9 proceeds are approximately \$50 million, correct?

10 A. Correct.

11 Q. And Duke is seeking about \$46 million in
12 costs through these cases?

13 A. Correct.

14 Q. And so assuming, for purposes of
15 argument, that even if Duke gets the full 46 million,
16 the 50 million would offset that entire amount?

17 A. That's correct.

18 Q. And the additional 4 million roughly,
19 would that -- under Staff's recommendation would that
20 go through the rider as a credit to customers?

21 A. That's correct.

22 Q. Thank you.

23 Do you recall -- do you recall Duke
24 testifying that the insurance proceeds in this case
25 are not in an interest-bearing account?

1 A. I do.

2 Q. Does Staff have a position on whether
3 that's a prudent use of funds?

4 A. I do not.

5 MR. HEALEY: That's all I have, your
6 Honor.

7 EXAMINER ADDISON: Thank you, Mr. Healey.
8 Ms. Whitfield?

9 MS. WHITFIELD: No questions, your Honor.

10 EXAMINER ADDISON: Ms. Kyler Cohn?

11 MS. COHN: None, your Honor.

12 EXAMINER ADDISON: Ms. Watts?

13 MS. WATTS: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Watts:

17 Q. Good morning, Nicci.

18 A. Good morning.

19 Q. You and I have a lot of pressure. The
20 only thing standing between everybody and lunch is
21 you and me, right?

22 A. That's right.

23 Q. Just so we're efficient ahead of time, do
24 you have a copy of the 2012 Staff Report up there on
25 the bench also?

1 A. Yes.

2 Q. Okay. Is there also a 2012 Opinion and
3 Order up there somewhere?

4 A. Yes.

5 Q. Okay. Just wanted to make sure it's
6 still there. Now, Ms. Crocker, you -- your testimony
7 explains that you are responsible for investigating
8 and reviewing Duke Energy Ohio rider applications
9 from 2014 through 2019, correct?

10 A. Correct.

11 Q. And did you also have involvement with
12 Duke Energy Ohio's natural gas base rate proceeding
13 in 2012?

14 A. I did.

15 Q. And so, first of all, when I talk about a
16 rate case, can we agree that I will be referring to
17 that particular case?

18 A. Yes.

19 Q. And that case was 12-1685-GA-AIR?

20 A. That's correct.

21 Q. Okay. Can you tell me what your
22 involvement with that case was?

23 A. Yes. My primary assignments were plant
24 investigation, labor, and some revenue analysis. For
25 the MGP purposes, I was asked to participate in a

1 team that went down to a site visit. We spent the
2 full day taking photographs and interviewing Duke
3 personnel regarding the project and the site.

4 My role at that time was to take notes
5 and to provide the team leader with information so
6 that he could complete his analysis. I did no
7 further analysis at the time, but I am familiar with
8 the site, had been to the site at that time, and was
9 aware in general of some of the issues, but I did not
10 contribute in any other way to the report for that
11 topic.

12 Q. Thank you. And what was your purpose in
13 actually going to the site that day?

14 A. I think there were several purposes. It
15 was a good opportunity for new Staff to be out in the
16 field and to see what gas operations look like. It
17 was a live rate case, and several of the plant team
18 members had been down to the site. So even though
19 this was an expense-related meeting, it was an
20 opportunity to review and see some plant assets as
21 well.

22 And my -- the goal -- or I think you
23 asked the purpose -- was to be one of 15 plus or
24 minus team members who could help the team leader
25 hear what was being discussed by the Duke employees.

1 There were multiple Duke employees and it's -- it was
2 a very complicated -- it is a very complicated
3 project and there were lots of facts and figures and
4 the team leader just asked several people to come and
5 take notes and listen and provide him, I guess,
6 confirmation with things he might have heard during
7 that meeting.

8 Q. Okay. Was the team leader at that time
9 Mr. Adkins who testified earlier?

10 A. Yes.

11 Q. Okay. And was at least one of the
12 reasons you were there to observe where Duke Energy
13 was currently engaged in operations to provide
14 service to its distribution gas customers?

15 A. Yes.

16 Q. Did you help Mr. Adkins prepare the Staff
17 Report for the rate case?

18 A. Not that portion, no, I had no input
19 there.

20 Q. Okay. Have you read the Staff Report?

21 A. I have.

22 Q. Have you read the Commission's Opinion
23 and Order in that case?

24 A. I have.

25 Q. Now turning your attention to this case,

1 there are two Staff Reports that we're concerned with
2 in this case as well, correct?

3 A. Correct.

4 Q. And I believe we have marked those as
5 Staff Exhibits 1 and 2.

6 A. Yes.

7 Q. And you have those up there on the Bench.

8 A. I do.

9 Q. Okay. Both of these Staff Reports were
10 signed by Commission Staff person Tammy Turkenton,
11 correct?

12 A. Correct.

13 Q. Did you prepare the Staff Reports for her
14 signature?

15 A. I did.

16 Q. And who else may have worked on the Staff
17 Reports at the time?

18 A. Well, the first Staff Report was started
19 when Mr. Adkins was my manager and there were
20 discussions and drafts and topics that we talked
21 about before he retired. The report itself, however,
22 and the final information that was included in the
23 report happened after he left, so Kerry played some
24 role in the information in the first report but, of
25 course, I had other Staff review for, I want to say

1 accuracy and so forth, but I was really the sole team
2 member involved with the actual investigation.

3 Q. And in preparing those two reports, you
4 did not return again to the sites in Cincinnati,
5 correct?

6 A. That's correct.

7 Q. And, Ms. Crocker, you are the only Staff
8 witness supporting these two reports today, correct?

9 A. That's correct.

10 Q. And for the years 2014 through 2018, you
11 have worked on these MGP Rider cases along with
12 Mr. Adkins, correct?

13 A. I would say I was the sole person working
14 on the actual investigation. I am the one that
15 issued Data Requests in consultation with my manager.
16 So he provided guidance and general information.
17 Since I was not -- he had more familiarity with the
18 actual MGP project from the rate case, he could
19 provide some insight into the connection that might
20 exist there, but the actual investigation and
21 reviewing of invoices and reviewing of vendor
22 information, I did that alone.

23 Q. Okay.

24 A. I'm sorry, I did have an intern help with
25 maybe the 300 to 400 pages of Rumpke invoices at one

1 point to ascertain the veracity of that, but yeah,
2 aside from that, I was the only person.

3 Q. And sometimes when Staff does an audit,
4 they ask initially for sort of an Excel spreadsheet
5 that has literally thousands of lines of invoices on
6 it. Did you initiate the investigation in that same
7 way for purposes of these rider proceedings?

8 MR. HEALEY: Objection.

9 EXAMINER ADDISON: Grounds?

10 MR. HEALEY: That assumes facts not in
11 evidence regarding Staff's typical process in these
12 types of investigations. Ms. Watts seems to be the
13 one testifying on what -- that Staff might, in some
14 instances, ask for such a spreadsheet.

15 MS. WATTS: I can rephrase, your Honor.

16 EXAMINER ADDISON: Thank you, Ms. Watts.

17 Q. (By Ms. Watts) Ms. Crocker, have you
18 worked on other Staff audits and investigations other
19 than MGP?

20 A. Yes.

21 Q. And in some cases does Staff issue its
22 initial Data Request for an Excel spreadsheet that
23 has all of the invoices that are related to that
24 particular area of cost for whichever rider is being
25 investigated?

1 A. I would say it really depends on what's
2 being investigated. For plant, we don't start asking
3 for invoices. You start looking at lines of data so
4 that you can figure out and kind of narrow down the
5 scope or figure out the pieces of the plant. The
6 first request is not invoices, so.

7 Q. Understood. Okay. For purposes of MGP
8 expenses, did you ask for such a spreadsheet?

9 A. The initial audit requested samples, so
10 the initial audit -- in each annual filing, the
11 Company would provide an attachment that included
12 costs broken out by month, by category. And for the
13 first year or two there was a sample requested to do
14 a sample auditing, so not the entire list.

15 I can say that the -- in the year that I
16 discovered the handwritten notes that were excluding
17 some of the DCI properties, that's really what
18 triggered an interest in seeking all invoices because
19 it was clear there were pieces of information that
20 may or may not have been overlooked by the Company in
21 terms of what Staff thought should have been removed
22 or at least evaluated. So -- your question was --
23 the first Data Request is not thousands of lines and
24 all invoices always.

25 Q. Okay. So I appreciate your answer. I

1 think we've muddied things a little bit because we
2 have got a lot of years here.

3 A. Yeah.

4 Q. So let's start with 2014. Did you ask
5 for such a spreadsheet to begin your audit in 2014?

6 A. You are talking about for costs for '13,
7 correct?

8 Q. Correct.

9 A. In 2014, the rider was initiated by a
10 colleague, and he requested a sample -- samples. I
11 started evaluating in the '15 rider, which would have
12 been '14 costs, that's when I noticed what I
13 described earlier about some of the anomalies, I will
14 call them, and I went back and re-audited the '13
15 costs in their entirety, and I had already requested
16 a sample in the '14 costs but requested the remainder
17 also in that year. And then, for the next years,
18 requested all invoices.

19 Q. Okay. And so looking at your audit of
20 2014, so it would have been the 2015 case where you
21 were auditing 2014 costs, you referred to observing
22 some anomalies, I think you used. Is that -- can you
23 tell me more in greater detail what you were
24 referring to there?

25 A. That's when I noticed that -- two things.

1 There were handwritten notes provided by the Company
2 that said "remove DCI" and there were costs
3 associated and they were excluded from the rider but
4 they were handwritten on top of in these invoices.

5 And in addition there were other tasks
6 and some of the invoices marked "DCI" or there were
7 headers on the vendor invoices that said "West of the
8 West." I think the first few years it was DCI, and
9 then later it would have become West of the West.

10 And seeing the name DCI and knowing from
11 the rate case that that was treated differently,
12 that's -- I think -- I am trying to remember what
13 your question was, but I think that's -- that's what
14 the anomaly was. There were line items that called
15 out that special nomenclature of a property that
16 appeared to not be part of what Staff thought should
17 be included in recovery.

18 Q. Okay. And so your -- the first thing you
19 did, when you observed those notes, was to ask for
20 more invoices, correct?

21 A. Well, I think the first thing we did was
22 have a phone call with the Company and spoke with
23 Company personnel to ask questions to -- I think at
24 that time was when we asked if it would be possible
25 to have some of the information distributed by parcel

1 so we could identify those costs or maybe narrow the
2 audit and that's when the Company said that they
3 could not do that.

4 Q. Okay. And then just based on your
5 observation of those documents, what was your
6 understanding then about why those costs were being
7 called out on the invoices by the Company?

8 A. I'm not sure the Company provided an
9 explanation at that time, so I don't have the
10 Company's perspective on that.

11 Q. Okay. I am not asking for the Company's
12 perspective. I am wanting to understand when you saw
13 that the DCI expenses were delineated or there were
14 hand references to DCI on these documents, what did
15 you believe was the purpose of specifying those
16 differences on the document?

17 A. I believe that the Company was following
18 the Commission Order, and in that regard I believe or
19 Staff believes the Commission Order calls the
20 Purchased Parcel or treats it separately from the
21 rest of the East End site, as I state in my testimony
22 and I think the Staff Report, and I thought the
23 Company initially was following the Commission Order
24 properly.

25 And, therefore, when I noticed they

1 didn't pull all costs out, that's when I began
2 looking for -- I could see there were other costs
3 that hadn't been pulled out, and I began looking for
4 the rest of them or others that might be related.

5 Q. Okay. Ms. Cocker, you have listened to
6 the testimony for the last three days in this case,
7 correct?

8 A. Yeah.

9 Q. And so is your understanding of the
10 Company's view of what costs should be included as
11 opposed to the Staff's view, is it your understanding
12 there is a difference there?

13 A. I think that we have different
14 perspectives.

15 Q. Right. So we agree that that's an issue
16 that needs to be resolved in this case.

17 A. Yes.

18 Q. Okay. I am going to back up a little
19 bit. So, Ms. Crocker, you have been with the
20 Commission for 16 years?

21 A. Yes.

22 Q. So is it safe to say you have a working
23 knowledge of the regulations and statutes that apply
24 to the work of the Commission?

25 A. Yes.

1 Q. Okay. Would you pick up the 2012 Staff
2 Report that should be in front of you.

3 A. I have that.

4 Q. And would you turn to page 40 of that
5 report, please.

6 A. I'm there.

7 Q. About eight lines up from the bottom is a
8 statement that says "Staff's determination of the
9 reasonableness of the MGP-related expenses was
10 limited to verification and eligibility of the
11 expenses for recovery from natural gas distribution
12 rates." Do you see that?

13 MR. HEALEY: Objection.

14 EXAMINER ADDISON: Grounds?

15 MR. HEALEY: Lack of foundation. This
16 witness testified she was not part of the Staff team
17 that drafted the 2012 Staff Report as it pertains
18 to -- as it pertains to MGP issues.

19 EXAMINER ADDISON: Ms. Watts.

20 MS. WATTS: That's not my recollection of
21 what the witness said.

22 EXAMINER ADDISON: I will allow the
23 question.

24 THE WITNESS: Can you repeat the question
25 or have it reread, please?

1 EXAMINER ADDISON: Absolutely.

2 Q. If you look at the Staff Report on
3 page 40, about eight lines up from the bottom, there
4 is a sentence that begins with "The Staff's
5 determination of the reasonableness of the
6 MGP-related expenses was limited to verification and
7 eligibility of the expenses for recovery from natural
8 gas distribution rates." Do you see that?

9 A. I see the sentence.

10 Q. The next sentence says "The Staff did not
11 investigate or make any finding or recommendations
12 regarding necessity or scope of the remediation work
13 that Duke performed." Do you see that?

14 A. I see that sentence.

15 Q. And in respect of the rider proceedings
16 leading up to this year, so I am including all of
17 them, did Staff make any such determination of those
18 cases?

19 A. No, I don't think we did.

20 Q. Okay. And you, yourself, do not have any
21 knowledge or expertise or training in respect of
22 environmental remediation, correct?

23 A. Correct.

24 Q. And while we are clarifying things, Staff
25 does not dispute that Duke Energy Ohio has legal

1 liability with respect to the Ohio EPA laws and
2 regulations and CERCLA requirements, correct?

3 A. The Staff Report does not address that.

4 Q. Thank you.

5 A. I should clarify. The Staff Report in
6 2018 and '19, for the current cases, do not address
7 that.

8 Q. Perfect. Thank you.

9 So turning to page 2 of your testimony,
10 lines 10 through 14.

11 A. Okay.

12 Q. You explain there that you reviewed
13 expenditures to ensure that ratepayers were not
14 charged for costs associated with investigation or
15 remediation of the areas outside the boundaries of
16 the East End and West End sites based on the
17 Commission's Opinion and Order in Case No. 12-1685.
18 Do you see that?

19 A. Yes.

20 Q. And there's no footnote after that
21 statement, correct?

22 A. That's correct.

23 Q. So you're generally citing to the
24 Commission's Order, but you don't provide any
25 particular sentence or paragraph that you are citing

1 to, correct?

2 A. In this paragraph, I do not.

3 Q. Do you recall, as you sit there, any
4 particular language that you relied upon for -- to
5 reach that conclusion?

6 A. Yes. I think in both Staff Reports, and
7 perhaps later in my testimony, I refer to language in
8 the Commission Order.

9 Q. Continuing in your testimony on
10 pages 2 -- I'm sorry. Were you finished?

11 A. Yeah.

12 Q. Okay. Continuing in your testimony on
13 pages 2 to 3, you describe identified areas that were
14 used for reference in the previous rate proceeding,
15 correct?

16 A. Correct.

17 Q. So in 2012 in that case, with respect to
18 the Staff Report and the testimony that was filed on
19 behalf of Staff, the Staff was relying upon the
20 Company's representation of what those identified
21 areas were, correct?

22 A. I can't answer for certain. I wasn't a
23 part of the Staff Report portion of the 2012 rate
24 case.

25 Q. Okay.

1 A. If you will allow, I can expand that the
2 only reason I went back was that it was clear, after
3 Staff filed its report in 2018, that there was a --
4 the Company and Staff had a different definition for
5 the sites.

6 I was operating under a certain
7 assumption for five years of the investigation.
8 When, upon reading the Company's comments in 2018, it
9 was clear that we did not define things the same, and
10 so I sought to understand -- not having been a part
11 intimately of the 2012 rate case and not having
12 reviewed testimony and so forth, things at that time,
13 I attempted to have a greater understanding for where
14 the Company was coming from and what the questions
15 they brought up in the comments, how they were
16 related.

17 And that's what led me to, first, the
18 Commission Order which referenced Bednarcik's
19 testimony and then I believe the Commission Order
20 also referenced Hebbeler's testimony and the Staff
21 Report. So I tried to look to see where there were
22 inconsistencies and so I can't answer what Staff used
23 in the 2012 report. My purpose in bringing them
24 forth here was to, I guess, identify that I thought I
25 was using the same nomenclature that the Company had

1 and I thought we were being consistent from the 2012
2 rate case.

3 Q. Okay. Thank you. And so is it your
4 testimony that when you read the Company's comments
5 in respect of the 2018 Staff Report, that was the
6 first time you became clear that there was that
7 disconnect between Staff's view and the Company's
8 view?

9 A. I -- I started -- throughout the five
10 years preceding the report, it was clear, through
11 Data Requests responses, that there was a disconnect
12 but I wasn't clear what the disconnect was until the
13 comments were filed.

14 Q. So Staff is basing its review of what is
15 allowable for purposes of cost recovery for
16 remediation and investigation of MGP sites, Staff's
17 review is geographically- or property-boundary based,
18 correct?

19 A. As I state in my testimony, I relied on a
20 specific map or set of maps that were provided by the
21 engineering firm, Haley & Aldrich, I believe, for at
22 least for the East End site.

23 And the reason those maps were used, they
24 were maps that the Company, in some form, presented
25 to Staff on that site visit that I participated in,

1 so I was familiar with those maps from that
2 particular visit in the 2012 case. Those were maps
3 that were physically given to Staff, and Staff had
4 those in hand as I was looking -- I had them in hand
5 from the case. I think I reference in a footnote a
6 sample of one of those maps or drawings and that was
7 what I believed Staff used in the '12 case because
8 the Company presented it, and that's what I used in
9 this case, and I believe that they were -- they were
10 bound by property boundaries as what your question
11 was, yes.

12 Q. And you believe that in respect of the
13 2012 case, or do you presently believe that now?

14 A. Well, I didn't make that determination in
15 the 2012 case, but in reading the testimony from the
16 various witnesses and the Staff Report and what I
17 think the Commission described, there -- there was a
18 separation of the Purchased Parcel from the other
19 three parcels specifically on the East End site
20 and -- and one of the witnesses that I referenced
21 makes it clear that it extends along the river, in
22 other words, we were looking at land-based
23 remediation.

24 There was -- I believe it was clear that
25 it was not considering this Purchased Parcel or the

1 West of the West piece of that parcel or anything
2 that might be in the river, for example.

3 Q. Can you think of any reason right now why
4 you would have thought that it did not include
5 anything in the river?

6 A. Because -- yes, because the 2012 case,
7 when we went to the site and we visited the site, it
8 was all -- remediation discussions at that time
9 appeared to discuss expenses related to moving earth
10 and soil and digging. And it was all land-based.

11 And in the few years -- the beginning of
12 the audit years, most of the documents that I read
13 appeared to refer to moving earth and remediating
14 soil and things of that nature.

15 Q. And so your understanding at that time
16 was that because you were reviewing documents that
17 related to earth and soil, that was the only
18 remediation that needed to occur?

19 A. No. I can't speak to what needed to
20 occur in terms of remediation. I'm not -- I can say
21 that what was presented in the Commission report
22 talked about parcels and they talked about land and
23 that was -- and the maps we had been given by the
24 Company in the 2012 visit and that I later referred
25 to or referenced in my investigation had property

1 boundaries clearly marked and there was a boundary
2 that said river's edge, for example, and that's --
3 most of the work, in the initial documents I obtained
4 from the contractors, indicated phases that were on
5 the land.

6 Q. And did you obtain those documents in the
7 earlier years or in recent years?

8 A. Throughout but in -- I would say by the
9 third year we recognized there was some difference
10 between -- I recognized there was a difference
11 between what the Company was describing and what
12 Staff had -- what the Commission had ordered, I
13 thought, in the 2012 Order. And so we -- I requested
14 copies of the contractor -- I think they were the
15 bidder portfolio or whatever you call it for Haley &
16 Aldrich, for both the East and West Site, for the
17 other contractor as well.

18 Q. Okay. I want to back up a little bit
19 again. I thought you said, and correct me if I am
20 wrong, that your understanding of what the sites were
21 for -- let's isolate to East End, for instance. For
22 East End was based on your observation of what work
23 was going on when you were on site.

24 A. In part. I think I also said the Order
25 described it and the testimony from the other Duke

1 witnesses in the 2012 case that I've gone back to
2 look at.

3 Q. Are you aware of any place in the
4 Commission's Order where it says that the remediation
5 is limited to on-land remediation?

6 A. No.

7 Q. And so far as you know in that 2012 case,
8 the Staff relied upon maps that were provided to
9 Staff by the Company, correct?

10 A. Yes.

11 Q. Would you turn to page 3 of your
12 testimony, please.

13 A. Yes.

14 Q. At the bottom of page 3, "When Duke
15 refers to 'off-site activities in testimony and in
16 response to data requests," this is a quote from your
17 testimony, "the Company refers to activities that
18 take place outside property lines and outside the
19 parcel boundaries as the Company currently defines
20 them, and not as the property lines and parcel
21 boundaries where defined in the Rate Case." Do you
22 see that?

23 A. Yes.

24 Q. Can you tell me what informed that
25 statement?

1 A. Yes. So for the rate -- the rate case,
2 the Commission Order and the descriptions and my
3 understanding of reading 2012 witness testimony and
4 the maps all informed the second part, the property
5 lines and the parcel boundaries from the rate case.

6 The first part of that sentence talks --
7 refers to various Data Requests and testimony where
8 the Company discusses off-site and because there
9 were -- all the off-site that I observed was in the
10 river, because the maps showed a river's edge
11 boundary that I assumed was the property line and I
12 think is indeed the current property line, that's
13 what I think I defined by "off-site" or why that's
14 outside the property boundary.

15 Q. So it's your understanding right now that
16 the current property line is right at the river's
17 edge?

18 A. That's my understanding.

19 Q. Is it your understanding the river's edge
20 ebbs and flows, up and down?

21 A. Yes.

22 Q. So referring back to the 2012 Staff
23 Report, and I am not referring to any particular
24 place in that Staff Report but just from your general
25 understanding, is it your understanding that Staff

1 recommended recovery of costs only as related to
2 property that Staff observed to be used and useful in
3 the current provision of utility service at that
4 time?

5 A. I think that's generally what was -- I
6 can't say specifically but that's my general
7 understanding. That was Staff's recommendation, yes.

8 Q. And so, again, the reference was to
9 utility property that was currently being used for
10 utility service and not to property that had been
11 used for MGP remediation in earlier years.

12 MR. McNAMEE: I might object here. I
13 believe the witness has indicated she was not
14 involved in this aspect --

15 EXAMINER ADDISON: She can --

16 MR. McNAMEE: -- so she would have no
17 knowledge.

18 EXAMINER ADDISON: Thank you,
19 Mr. McNamee.

20 You may answer if you -- if you know.

21 THE WITNESS: Can I have the question
22 reread?

23 EXAMINER ADDISON: Of course.

24 (Record read.)

25 A. I think the first part of that you were

1 asking me, though, if that's what Staff relied upon,
2 and I can't say what Staff relied upon for the 2012
3 case. I think that's what you were asking.

4 Q. Well, let me ask it a different way then.

5 A. Okay.

6 Q. For purposes of the 2012 case, Staff made
7 a recommendation for cost recovery, correct?

8 A. Uh-huh.

9 Q. And the Staff's recommendation was based
10 upon recovery of costs associated with property that
11 was currently being used for utility distribution gas
12 service, correct?

13 A. I think so.

14 Q. Okay. So -- and we both understand in
15 earlier years there was an MGP natural -- or gas
16 operation occurring on that property.

17 A. There was a natural gas operation?

18 Q. Yes. In the early 1900s.

19 A. Oh, yes.

20 Q. Way back.

21 A. Yes.

22 Q. And so, Staff's recommendation was based
23 on current utility operations and not on how that
24 property was used in the early 1920s.

25 A. I can't speak exactly to the Staff's --

1 what went into Staff's recommendation. I believe
2 that generally that they did apply the standard of
3 what was current used and useful, yes.

4 Q. Okay. And you have read the Staff
5 Report, correct?

6 A. Yes.

7 Q. From 2012?

8 A. Uh-huh.

9 Q. And did you -- do you recall that there
10 were maps that were included in that Staff Report?

11 A. I did.

12 Q. And the maps had specific hash-marked
13 areas that were deemed to be used and useful at that
14 time, correct?

15 A. Can you be more specific about which
16 maps?

17 Q. Yeah. So let's turn to page 57, for
18 instance.

19 A. I'm there.

20 Q. Okay. Do you see an area -- first of
21 all, this is labeled "East End Site - Eastern Parcel
22 Gas Pipeline Buffers." Do you see that?

23 A. Yes.

24 Q. And there are some areas in that eastern
25 parcel that have stripes through them.

1 A. Yes. I see that.

2 Q. And is it your understanding that those
3 are the areas that Staff deemed to be used and useful
4 at that time?

5 A. I believe so.

6 Q. Again referring to the 2012 Staff Report,
7 to the extent Staff was unable to break down annual
8 costs and assign to particular parcels, Staff used
9 the total of the remaining costs and calculated an
10 average cost per cubic foot of remediation. Do you
11 recall that?

12 A. I recall reading it.

13 Q. Okay. And then Staff took this average
14 cost for soil remediation and multiplied it by the
15 cubic feet of soil that was remediated within the
16 areas determined to be used and useful in the various
17 parcels, correct?

18 MR. McNAMEE: If I may object. Again,
19 this -- this witness was, I believe, not involved in
20 the Staff Report, and the question is asking for her
21 to speculate about an activity she was not involved
22 with.

23 EXAMINER ADDISON: Ms. Watts?

24 MS. WATTS: Your Honor, this witness has
25 been on site at these properties and had some

1 involvement in the preparation of the Staff Report
2 even though she didn't write the MGP portion of it,
3 and she had involvement with the Company's
4 applications and rider proceedings since 2013ish. So
5 if anybody knows more about this, I don't know who
6 that would be.

7 EXAMINER ADDISON: Thank you, Ms. Watts.

8 I will note for the record that she has
9 indicated she may not be familiar with the details of
10 the Staff Report as she did not help draft this
11 particular Staff Report. I will allow the question
12 if she has a general understanding, and she can
13 answer if she knows.

14 THE WITNESS: Can I have that question
15 reread?

16 EXAMINER ADDISON: Of course.

17 (Record read.)

18 A. I have no recollection of the specific
19 details. I remember there was allocations, and I
20 remember there was an effort to pursue an allocation
21 at that time, but I don't -- I don't recall the
22 details.

23 Q. Okay. So you relied on the Staff Report
24 for purposes of determining what your -- what the
25 sites were.

1 A. That's correct. I think I specified even
2 page numbers. I really looked at the written
3 descriptions of the parcels, yes.

4 Q. But as to how costs were determined, you
5 have no recollection of that as you sit there today?

6 A. Not specifics. For cost recovery, I
7 relied specifically on the Commission Order and the
8 language in the Order. For cost recovery in the
9 current cases.

10 Q. I understand.

11 A. That's what you are asking?

12 Q. Yes, yes. So you didn't, at any time,
13 undertake to understand how Staff parsed out costs in
14 the 2012 rate case for Staff purposes.

15 A. Not in detail.

16 Q. Is it your understanding that the
17 Commission did not rely upon Staff's recommendation
18 in its decision in that case?

19 A. My understanding is the Commission made a
20 different determination than Staff had proposed, yes.

21 Q. Is it your understanding that the
22 Commission determined that the regulatory concept of
23 "used and useful" was not applicable in determining
24 whether remediation costs were recoverable?

25 A. I don't believe my Staff Reports or my

1 testimony used the word "used and useful" and I don't
2 believe that was part of my investigation for the
3 last six years.

4 Q. I am not sure you answered my question.

5 MS. WATTS: Could we have the question
6 read back, please?

7 EXAMINER ADDISON: Of course. Thank you.

8 (Record read.)

9 A. I'm not certain that I have a full
10 understanding of how the Commission came up with its
11 determination about "used and useful" from the 2012
12 rate case. I do know they made a different
13 determination than what Staff recommended.

14 Q. Fair enough. Thank you.

15 So as you were proceeding through the
16 various rider applications year after year, when
17 you -- beginning as early as 2014, Staff asked the
18 Company to break out costs by parcel, correct?

19 A. Correct.

20 Q. And each year, the Company responded that
21 had it was not practical to do that, correct?

22 A. Correct. Initially we had a phone
23 conversation with the Staff and discussions with
24 personnel involved to determine what was available or
25 feasible. Then the Company explained that that was

1 not going to be possible.

2 However, I could read in testimony, for
3 example, that there were still mention of off-site
4 and West of West, and so trying to understand -- to
5 understand the costs pertaining to those areas, we
6 pursued each year to request that information. We
7 made it clear that would have been our preference if
8 they could have, as far back as 2014, divide those
9 costs up.

10 Q. When Staff was unable to obtain a
11 dividing-up-of-costs by the Company, Staff then
12 undertook to apply its own methodology for parsing
13 out those costs, correct?

14 A. There were many steps that happened
15 between those two events that you describe. So I
16 think I've explained in testimony and reports that I
17 attempted to look at the invoices, and the invoices,
18 depending on the vendor, would often describe which
19 site, East or West End, and sometimes they would
20 include more recently like Ohio River sediment, so it
21 was very clear and sometimes it would say Middle
22 Parcel and West of the West and they would be
23 together.

24 And then I would -- there were maybe
25 tasks or generic items like review report or 16 hours

1 of a person or things that weren't tied to a task
2 that I could figure out or understand what was
3 happening.

4 And so reading, for example, the
5 engineering -- I call it a contract. I think it was
6 the bidder portfolio that had all the description of
7 the kind of work over the years that they were going
8 to do. I tried to tie the year to the description
9 based on the invoice at the time. It was not always
10 clear what was being applied though in each year. As
11 we have described earlier, there were a lot of
12 nomenclature that used phases 1 and 2 and Roman
13 numeral and the number but then there were often no
14 additional detail. It would just say Haley &
15 Aldrich, Middle Parcel and West of the West and there
16 would be a dollar amount in the current period.

17 So I also went back and reread testimony
18 and then sent Data Requests to see if there was a way
19 to obtain some specificity. The Company did in some
20 cases in the Data Request say, well, here are the
21 functions that took place. They maybe couldn't
22 provide some dollars, but they could provide some
23 description of functions.

24 So I kind of looked at several sources
25 within the investigation to -- and it was clear

1 initially I would have just gone line item if it said
2 West of the West, removed that if I could. Or the
3 other side, if it said Middle Parcel or Eastern
4 Parcel, I would have kept it in is how I normally did
5 the investigation.

6 But there were many costs that I call
7 them indirect costs I think in my testimony that were
8 not listed on an invoice but there were costs
9 incurred such as Duke internal labor or Duke
10 construction management oversight. Even the
11 laboratory costs and even some of the design
12 development, those kinds of things, there were not
13 specific costs that had line items that said river or
14 West of the West in this case, but they were clearly
15 involved and somehow a part of that project in that
16 year and there was perhaps indication in testimony or
17 Data Requests or a vendor contract that would have
18 indicated there may have been work in that year also.

19 So in order to fairly apportion costs
20 since I was removing costs related to West of the
21 West and river that were direct, I made a -- what I
22 thought was a reasonable attempt to apportion the
23 other costs that could not be specifically
24 identified, I am calling those indirect, and because
25 I could not come up with a direct, you know,

1 correlation, I thought 50 percent seemed reasonable
2 in the years that there were lists of activities in
3 those areas.

4 And I think I point out in maybe the
5 Staff Report, in one year a large portion of the
6 activity appeared to be focused on the West of the
7 West. That percent was 70 percent in that year. But
8 in all other years, there were tasks listed that
9 could have and may have pertained to the river or
10 West of the West, so there was an allocation
11 provided. So there was a lot that happened in
12 between not being able to get the information and my
13 development of an allocation.

14 Q. Okay. So you testified just now that at
15 some point you determined, with respect to costs,
16 that you could not clearly see a sign of a particular
17 parcel, you reached a determination that 50 percent
18 of those costs was reasonable to recommend for
19 disallowance, correct?

20 A. Yes.

21 Q. So did you do any -- you don't have
22 anything attached to your testimony that shows how
23 you arrived at that 50 percent, correct?

24 A. No. I used words to describe. I think I
25 looked at the amount of work, the testimony, how it

1 would have described what was happening, the Data
2 Request responses that would have described it and
3 the invoices themselves for the amount of work that
4 was contained on there.

5 Q. And there's nothing attached to your
6 testimony that provides a sample of invoices or a
7 spreadsheet or anything that would demonstrate the
8 reasonableness of 50 percent as an allocation, is
9 there?

10 A. No.

11 Q. So it's fair to say, since you have not
12 gone back and reviewed the allocation methodology
13 that Staff used in the 2012 Staff Report, you would
14 not have thought about that as a methodology for the
15 subsequent rider proceeding.

16 A. No, that's correct, I did not tie that
17 into the current investigation.

18 Q. Can you tell me how Staff deems a cost
19 prudent or imprudent?

20 A. So I think in this case or I guess in all
21 cases I would look at -- look at what was expected or
22 required maybe by regulatory reasons or by contract
23 that was hired or whatever the purpose was, whatever
24 reason I am evaluating, whether it's a rider or
25 plant, and I will take a look at the invoices to

1 ensure that the Company spent the money they said
2 they were going to spend.

3 But I would also rely on if there were
4 documents that were provided ahead of time describing
5 a program, for example, I would look at what the
6 parameters of that program were and evaluate if the
7 expenditures fit that particular program or if they
8 exceeded or did not exceed.

9 But really it was focused on a cost
10 understanding. Did the Company pay someone to do
11 what they said they were going to do and what's the
12 reason they are doing it, it's because they had a
13 contract to complete that work.

14 Q. And is that how you applied your concept
15 of prudence in respect of these rider proceedings?

16 A. Yes.

17 Q. So for purposes of costs associated with
18 the West of the West Parcel, is it your testimony
19 that costs spent to remediate that parcel were
20 imprudent?

21 A. I don't believe I say that, no. I do say
22 that they were not recoverable. They were not
23 MGP-related costs, for example, but I didn't say they
24 were imprudent.

25 Q. So for your purposes, if they are not

1 recoverable by -- under what your understanding of
2 the Commission's order is, they are not MGP costs?

3 A. Just now I was speaking -- when you said
4 West End site, I was thinking of the items I would
5 call capital costs that were things that could be or
6 should be recovered perhaps in other areas. They
7 were not specific to the recovery or remediation or
8 investigation. Yeah.

9 Q. Okay. I apologize if I said West End.

10 A. Oh.

11 Q. What I meant was West of the West.

12 A. Oh, I'm sorry. I heard West End. I may
13 have answered that incorrectly.

14 Q. I do a lot of that. So with respect to
15 costs that were incurred in the West of the West
16 Parcel, it's not your testimony that those were
17 imprudent, correct?

18 A. Correct.

19 Q. And you are saying they are not
20 recoverable.

21 A. Correct.

22 Q. Are you also saying they are not MGP
23 costs?

24 A. No, I am not saying that, no.

25 Q. If asked, are you able to explain, for

1 the year 2014, for instance, what remediation
2 activity took place on the various parcels?

3 A. I would have to look. I have notes, but
4 subject to check, I would have to maybe review what I
5 did for that year.

6 Q. When you were determining whether a
7 particular cost should be allowed or recommended for
8 disallowance, were there some keywords you relied
9 upon in reviewing the various expenses?

10 A. Well, I think I mentioned if it said --
11 in the invoices if they used words like "Ohio River
12 sediment," more recently "West of the West." In the
13 early years the word -- the acronym "DCI" was used
14 frequently so. And then I would tie that with the
15 testimony if it said "off-site" or if it described
16 work in the Area West of the West, then I would also
17 know to be looking for the different vendors or
18 activities to see if there were functions being
19 performed that seemed to match that.

20 Q. And based upon all of these years of
21 review of all of these invoices, do you have a
22 general understanding of the relative costs of such
23 things, such, for instance, as soil borings?

24 A. Relative to I would say the cost
25 categories, for instance, I can say some of the cost

1 categories tend to have larger dollar amounts than
2 others, but I don't know specifically what soil
3 borings would cost.

4 Q. You read Mr. Bachand's testimony,
5 correct?

6 A. Correct.

7 Q. Would you turn your attention to the
8 Staff Report for 2019, please.

9 A. Yes.

10 Q. On page 9 of that Staff Report, I believe
11 it shows that the Company requested recovery of
12 \$17,022,976 of costs; is that correct?

13 A. I'm sorry. Where?

14 Q. Page 9.

15 A. Oh. On page 9?

16 Q. Yes.

17 A. You are talking about the first table?

18 Q. Yeah.

19 A. Yes. Or the second.

20 EXAMINER ADDISON: Ms. Watts, where are
21 you?

22 MS. WATTS: I'm sorry. Let me be more
23 specific.

24 EXAMINER ADDISON: Thank you.

25 Q. (By Ms. Watts) Page 9, top table, the

1 request for recovery for year 2018 --

2 A. Yes.

3 Q. -- was \$17,022,976, correct?

4 A. Yes.

5 Q. And Staff recommended a disallowance of
6 9 million 366 dollars and 276 cents (sic).

7 A. Correct.

8 Q. Do you see that?

9 A. Yeah.

10 Q. Do you know what parcel -- what work was
11 done on the parcels at East End in 2018?

12 A. My recollection is that there were -- was
13 work -- the invoices, I believe, from Haley & Aldrich
14 specifically use words like "Middle Parcel" and "West
15 of West" and there were several phases identified,
16 but for the 12-month period I think it was work in
17 general on both of those pieces that they seemed to
18 indicate that level of detail.

19 Q. So you can't describe the actual work
20 that was done that year.

21 A. Sitting here not -- not in detail. I
22 mean, I could -- I recognize some of the descriptions
23 and invoices, but I couldn't recall that level of
24 detail.

25 MS. WATTS: Okay. Your Honor, may we

1 approach?

2 EXAMINER ADDISON: You may.

3 Q. (By Ms. Watts) Just to make sure,
4 Ms. Crocker, that we -- you have the right document.
5 I am hoping that you have a Staff Data Request
6 04-001.

7 A. I do.

8 Q. Does this look familiar to you?

9 A. Yes, it does.

10 EXAMINER ADDISON: Has this been
11 previously marked, Ms. Watts?

12 MS. WATTS: It has not, your Honor. I
13 think we have to have it marked. I am just trying to
14 figure out what number. May we have this marked Duke
15 Energy Ohio Exhibit 37, please.

16 EXAMINER ADDISON: It will be so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. HEALEY: Your Honor, I think this
19 might be OCC Exhibit 13.

20 MS. WATTS: There is another one.

21 MR. HEALEY: There is another one?

22 MS. WATTS: Almost identical. One is
23 from 2018. One is from 2019.

24 EXAMINER ADDISON: I think that's what
25 threw me off as well.

1 MR. HEALEY: Gotcha.

2 Q. (By Ms. Watts) Just to be clear, this is
3 from Case No. 19-0174. We are all looking at the
4 same.

5 A. Yes.

6 Q. And, Ms. Crocker, that Data Request is
7 regarding costs associated with MGP remediation from
8 2018, correct?

9 MR. HEALEY: Objection.

10 EXAMINER ADDISON: Grounds?

11 MR. HEALEY: Hearsay, your Honor. This
12 is a Duke document created by a Duke witness and we
13 are now asking Staff to testify about it. It's one
14 thing to ask a Duke witness to testify about their
15 own document, but Duke cannot, under the hearsay
16 rules, produce its own out-of-court statements and
17 then cross-examine the Staff witness with it.

18 EXAMINER ADDISON: Well, at the very
19 least, we need to lay some foundation for this
20 particular exhibit, and I believe that's where
21 Ms. Watts was going so.

22 MS. WATTS: Yeah.

23 EXAMINER ADDISON: Please proceed.

24 Q. (By Ms. Watts) So, Ms. Crocker, does this
25 document include a Data Request from Staff?

1 A. It does.

2 Q. And have you seen the response to this
3 Data Request before?

4 A. I have.

5 Q. And does it appear to have an accurate
6 reproduction of the interaction between Staff and the
7 Company in your investigation?

8 A. Yes.

9 Q. Do you happen to remember this particular
10 one?

11 A. Yes.

12 Q. So, again, these -- this particular Data
13 Request relates to costs associated with 2018
14 remediation, correct?

15 A. Correct.

16 MR. HEALEY: Objection.

17 EXAMINER ADDISON: Grounds?

18 MR. HEALEY: Your Honor, the foundation
19 objection and hearsay objection are not the same. I
20 wasn't disputing foundation that she had seen the
21 document. The point is that it is a hearsay
22 document. The fact that the foundation is laid for
23 it does not overcome the fact this is hearsay under
24 the rules and this is an out-of-court statement
25 provided by a Duke witness, not by Ms. Crocker, that

1 Duke is now attempting to introduce into the record
2 for the truth of whatever matters are asserted in
3 here, particularly the remediation that took place in
4 2018.

5 EXAMINER ADDISON: Thank you.

6 Ms. Watts, response?

7 MS. WATTS: I would note that OCC has an
8 identical document that it put into evidence that --
9 OCC 13 is the same exact document.

10 MR. HEALEY: Yes, your Honor, and we put
11 it into evidence with a Duke witness who produced the
12 document and, therefore, it wasn't hearsay. That's
13 the distinction.

14 EXAMINER ADDISON: Thank you. Would you
15 like to specifically respond to the hearsay argument,
16 Ms. Watts?

17 MS. WATTS: I think we've overcome the
18 hearsay with the fact that the Staff -- this is an
19 interaction between Staff and the Company that was
20 directly with this particular witness, and she
21 recalls receiving it.

22 EXAMINER ADDISON: Thank you. I'll allow
23 the question.

24 MS. WATTS: Thank you, your Honor.

25 EXAMINER ADDISON: Do we need the

1 question read back?

2 THE WITNESS: Yes, please.

3 EXAMINER ADDISON: Yes, of course.

4 (Record read.)

5 EXAMINER ADDISON: It seems we do not
6 have a pending question.

7 MS. WATTS: Thank you, your Honor.

8 EXAMINER ADDISON: Please proceed.

9 Q. (By Ms. Watts) Ms. Crocker, looking at
10 the Company's response to this Data Request, do you
11 see that it refers to 21 monitoring wells at the East
12 End site, two of which are located in the Area West
13 of the West Parcel?

14 A. Yes.

15 Q. Do you also see that there was no active
16 remediation activity conducted in the Area West of
17 the West Parcel and that's a response under item 5 of
18 that Data Request?

19 A. That's what it says, yes.

20 Q. Does that refresh your recollection about
21 what work might have happened in the West of the West
22 Parcel for that year?

23 A. Well, I think the testimony for that
24 year, that was filed by the witness in this case,
25 listed specifically that work in the Area West of the

1 West continued in regards to the overall site, so
2 there was a reference of the West of the West in his
3 testimony.

4 And then specifically the Haley & Aldrich
5 invoices list West of the West and Middle, and when
6 the costs are provided there's no breakdown of
7 exactly what costs go where. It was a lump sum for
8 the various costs for that year. And sometimes they
9 listed like a Phase 2, which I know we have talked
10 about was West of the West, and sometimes they listed
11 other acts and activities like reporting or
12 monitoring or some other things so it was unclear to
13 me there was -- whether or not there was activity in
14 the Area West of the West in this specific instance.

15 Q. Okay. So just -- just for purposes of
16 the understanding the process, the Company filed an
17 application with supporting testimony, correct?

18 A. Yes.

19 Q. And then the Staff issues Data Requests
20 subsequent to that.

21 A. That's right.

22 Q. And so you would have had an opportunity
23 to clarify any of those points, correct?

24 A. Well, at the time we asked was there work
25 being conducted outside the sites, and the Company

1 would respond no, but we were not using the
2 definition the same so I am not certain that my
3 question would have received the response because we
4 were maybe not -- we were talking past each other in
5 terms of question and answer at that time.

6 So I did ask if there were other costs
7 outside the site and it was identified as no, and
8 this identifies specific activities but the invoices
9 also list activities, and I believe the testimony has
10 a sentence in there that says work continued in the
11 West of the West so I made my investigation relying
12 on all those resources.

13 Q. Okay. This Data Request indicates that
14 soils were not ex -- excavated in the Area West of
15 the West Parcel, correct?

16 A. Correct.

17 Q. It also indicates no vibration monitoring
18 activities were conducted in the Area West of the
19 West Parcel, correct?

20 A. Correct.

21 Q. Do you know why the Company conducts
22 vibration monitoring?

23 A. I have a general understanding.

24 Q. Would you explain that?

25 A. Well, there are caverns that need to be

1 protected and there is work that's taking place in
2 the -- in an effort to protect the caverns, and heavy
3 equipment that's being mobilized on the top of the
4 earth, there's vibration monitors to measure the
5 sensitivity of what's happening so there's -- so the
6 caverns are protected, my general understanding.

7 Q. So would you expect if there was activity
8 occurring, there would need to be vibration
9 monitoring going on simultaneously?

10 A. It's possible.

11 Q. Ms. Crocker, would you look at the map
12 that's on the easel next to you. I think that map is
13 a representation of an exhibit that we've labeled
14 JLB-1. Is that your understanding?

15 A. The exhibit number I don't know; but,
16 yes, it was provided, yeah.

17 Q. Does that look like a reasonable
18 representation of the East End -- eastern portion of
19 the eastern -- East End site?

20 A. Well, this is a map that was provided by
21 the Company witness in the 2019 filing, but, prior to
22 that filing, different versions of the maps were
23 provided and this was not the map that was provided
24 and it's not the map that I relied upon for
25 evaluation throughout the time of the investigation.

1 Q. Let's look at the 2012 Staff Report then,
2 please. And just give me a moment so I can find the
3 map in there. Would you turn to page 63 of the 2012
4 Staff Report, please.

5 A. I'm there.

6 Q. Do you agree with me there are sort of
7 four major parcels on that page?

8 A. There are.

9 Q. Okay. And there's an Eastern Parcel, a
10 Central Parcel, a Western Parcel, and the Purchased
11 Property Parcel. Do you see that?

12 A. Yes.

13 Q. Just in relative terms, that Purchased
14 Parcel is significantly smaller than the Central
15 Parcel, correct?

16 A. Well, it appears from this map that the
17 Purchased Parcel is not represented in its entirety,
18 so it's hard for me to say.

19 Q. You've familiarized yourself with the
20 site, correct?

21 A. In general, yes.

22 Q. And so you know generally what the
23 Purchased Parcel looks like.

24 A. Yes.

25 Q. Can you agree with me that it's smaller

1 than the Central Parcel?

2 A. I am not sure that I can say for sure. I
3 can't really say that for sure.

4 Q. Now, you understand, Ms. Crocker, there
5 was a location of a substation on the west -- on the
6 western -- I'm sorry. Let me change that reference.
7 The West End site, now we are off the East End site,
8 we are talking about the West End site. There was a
9 substation relocation at that site, correct?

10 A. Yes.

11 Q. And were you aware, prior to this week,
12 that the Ohio Department of Transportation had paid
13 the costs for that relocation?

14 A. No, I was not. I was aware that ODOT --
15 there was a bridge project, but I wasn't aware of the
16 costs involved and who paid what.

17 Q. On page 7 of your testimony at line 2 --
18 give you a minute to get there.

19 A. Okay.

20 Q. You refer to costs that you recommended
21 for disallowance that you referred to as
22 "re-remediation costs." Do you see that?

23 A. Yes.

24 Q. Can you tell me what costs those -- what
25 specifically those costs were?

1 A. I believe those were costs related to
2 removing soil and new poles and footings related to
3 the substation that were submitted in I think -- I
4 don't know if it was '14 or '15, I can't quite
5 remember what year. And when asked, the Company said
6 that this was something that had already been
7 remediated, so it appeared that there was a second
8 remediation happening, and our perspective was that
9 ratepayers should not pay twice for the same cleanup
10 activity so that, again, those costs should be
11 recovered elsewhere.

12 Q. And so it was Staff's understanding that
13 the costs of those poles and footings had been
14 included in the Rider MGP costs, correct?

15 A. Yes.

16 Q. Did Staff understand that it was the
17 costs associated with managing and disposing of
18 previously solidified soils that were excavated and
19 moved?

20 A. I don't know the extent, but it had to do
21 with soil. There was some soil excavation, yes.

22 Q. And do you have any knowledge as to what
23 is required of removing and storing
24 already-solidified soil for environmental purposes?

25 A. I do not.

1 Q. Do you have a copy of the Commission's
2 Finding and Order in the 2012 rate case?

3 A. Yes.

4 Q. Would you turn to that, please.
5 Particularly would you turn to page 71, please. I
6 promise we are not going to go over this word by
7 word.

8 A. I'm there.

9 Q. In the second half of that page there's a
10 paragraph that begins "Duke requests authority." Do
11 you see that?

12 A. I do.

13 Q. And the second sentence begins "As we
14 determined in the Duke Deferral Case, and continue to
15 support in this Order, the environmental
16 investigation and remediation costs associated with
17 the East and West End MGP sites are business costs
18 incurred by Duke in compliance with Ohio regulations
19 and federal statutes." Did I read that correctly?

20 A. Yes, that's the sentence.

21 Q. So is it Staff's understanding that the
22 costs for remediation of the East End and West End
23 are expenses that Duke Energy Ohio pays in compliance
24 with Ohio and federal regulation?

25 A. I'm not certain that I can make -- have

1 an opinion on that, but I think those were costs that
2 were incurred. Whether they were incurred because of
3 the laws with regard to the environmental portion,
4 I'm not -- I am not certain I can say for sure.

5 Q. Can you think of any other reason the
6 Company would be incurring such costs?

7 MR. HEALEY: Objection. That calls for
8 speculation.

9 EXAMINER ADDISON: I agree, Ms. Watts.

10 MS. WATTS: I will withdraw, your Honor.

11 EXAMINER ADDISON: Thank you very much.

12 Q. (By Ms. Watts) Would you agree that these
13 are costs that Duke Energy Ohio records as a business
14 expense on its books and records?

15 A. Yes.

16 Q. And so they are costs that are incurred
17 regardless of whether they are recovered from
18 customers, correct?

19 A. It seems so.

20 Q. And so do you agree then that the
21 environmental costs that Staff has recommended be
22 excluded are associated with the East and West End
23 sites?

24 THE WITNESS: I'm sorry. May I have the
25 question reread?

1 EXAMINER ADDISON: You may.

2 (Record read.)

3 A. I think specifically I'm disallowing --
4 recommending disallowance of specific MGP-related
5 cleanup costs that pertain only to the East and West
6 End of the site.

7 Q. Okay. You have no reason to think that
8 the remediation is caused by something other than MGP
9 operations on those properties, correct?

10 A. I have no knowledge of that, yes.

11 Q. Okay. Would you turn to page 10 of your
12 testimony, please.

13 A. I'm there.

14 Q. On that page you state that "Staff is not
15 willing to entertain Duke's unsubstantiated request
16 for recovery of cost related to property that has
17 been shown on the record in these cases to provide
18 either in the past or in the present utility services
19 that caused statutorily-mandated environmental
20 remediation." Do you see that?

21 A. I'm sorry.

22 EXAMINER ADDISON: Ms. Watts, I'm sorry
23 to interrupt, you may -- I believe you may have cited
24 to the uncorrected testimony.

25 MS. WATTS: Yes, I probably have it typed

1 out incorrectly here because it was changed, but I do
2 understand it was changed.

3 EXAMINER ADDISON: Of course. Thank you.

4 MS. WATTS: So we can discuss that to be
5 clear.

6 EXAMINER ADDISON: Thank you very much.

7 MS. WATTS: I wondered why you were
8 reacting.

9 MR. McNAMEE: Well, yes. I don't want to
10 make things messy around here.

11 MS. WATTS: Yeah, okay.

12 Q. (By Ms. Watts) Nicci, Ms. Crocker, I do
13 understand that you corrected this portion of your
14 testimony to be more accurately reflecting what your
15 quote of the Commission's statement is, correct?

16 A. Correct.

17 Q. Okay. So I'm going to be asking you
18 questions of the corrected version, not otherwise.

19 A. Okay.

20 Q. Okay. Is it Staff's opinion, with
21 respect to its 2018 and '19 Staff Reports, that an
22 environmental remediation expense must relate to
23 property in some way?

24 A. In general, I can't really speak to that.
25 I really, on this case, was tasked with reviewing

1 what the Commission ordered and then what the Company
2 is presenting for each of the years and that was tied
3 to, in my interpretation, specific property, so I
4 don't know in general about environmental costs and
5 property; no, I can't really speak to that.

6 Q. What are the properties you believe those
7 expenses must be tied to for recovery?

8 A. Specifically for the MGP case, it's the
9 East End and West End site.

10 Q. And how are you defining "site" for that
11 purpose?

12 A. The site is defined by the property
13 boundaries that were presented and I think I
14 presented a specific -- referred to a specific map,
15 but it would be the property boundaries in a
16 real-estate version of boundaries that was provided
17 to me by Company personnel on their maps that had the
18 parcels laid out.

19 Q. And you've heard discussions today,
20 probably, and previously with respect to the oil-like
21 and tar-like material that exists on these MGP sites,
22 correct?

23 A. I have heard that discussion.

24 Q. And you've heard discussion about uplands
25 versions of those sites, correct?

1 A. I'm not sure that I have heard discussion
2 this week on uplands.

3 Q. Okay. Do you understand what is meant by
4 generally referring to the uplands' portions of these
5 properties?

6 A. I think so.

7 Q. Could you describe that?

8 A. I believe that it's intended to describe
9 land -- the land, the firm-earth version of what's
10 being remediated versus something that might be in --
11 subdued -- covered with water.

12 Q. So is it your understanding these
13 substances move?

14 A. I have no real understanding or knowledge
15 of the substances and what they do or don't do. And
16 how they relate to the cleanup.

17 Q. If I were to represent to you that they
18 tend to move, would you have any reason to dispute
19 that?

20 MR. McNAMEE: Objection.

21 EXAMINER ADDISON: Sustained.

22 MR. McNAMEE: She has indicated she
23 doesn't know.

24 EXAMINER ADDISON: Sustained.

25 Q. (By Ms. Watts) Can you point me to the

1 map that you used to determine what the sites are for
2 your purposes?

3 A. Well, I refer to it in a footnote. I am
4 not sure it's been provided. I think a version of it
5 was actually provided to Mr. Campbell and --
6 Mr. Campbell, in the cross, in the HCS packet that
7 was given, there are versions of that map in there.
8 I don't know. I do refer to a specific map, but the
9 HCS maps were generally the maps that were what Staff
10 used, so some version of.

11 MR. McNAMEE: If we can go off the record
12 for just a moment?

13 EXAMINER ADDISON: Let's go off the
14 record.

15 (Discussion off the record.)

16 EXAMINER ADDISON: Let's go back on the
17 record at this time.

18 Ms. Watts.

19 Q. (By Ms. Watts) Ms. Crocker, I am going to
20 withdraw that question for a moment and go to a
21 different question.

22 You stated, I believe, and correct me if
23 this is not right, that you relied on the Company's
24 maps for determining where the sites are in this
25 case.

1 A. Correct.

2 Q. You've been here in the hearing room for
3 some period of time. Have you -- is it your
4 understanding that the Company defines those sites
5 differently than you do?

6 A. I think that the Staff and the Company
7 have a different perspective on what the sites
8 included.

9 Q. Okay. And is it your understanding that
10 the Company -- and have you heard testimony to the
11 effect that the Company believes it needs to follow
12 the remediation -- it needs to follow the MGP impacts
13 regardless of where they are for remediation
14 purposes?

15 A. I am not sure I heard that statement
16 exact, no.

17 Q. Is it your understanding that the Company
18 is remediating these sites consistent with its
19 requirement under the Ohio Voluntary Action Program?

20 A. I have heard a lot about the Ohio VAP
21 this week, but I can't attest to what exactly it
22 means. I'm not clear on all of that.

23 Q. Is it your understanding that the Company
24 is attempting to remediate these sites to be in
25 compliance with Ohio and federal law?

1 A. Again, I can't really speak to the
2 federal law that pertains to, an Ohio law that
3 pertains to the environmental cleanup. My task was
4 to look at what I think the Commission Order allowed
5 and what was being filed and specifically that, in my
6 judgment, came down to what was in and out in terms
7 of a geographic perspective.

8 Q. So is it your testimony that you have no
9 knowledge about what the Company's ultimate goal is
10 here?

11 A. I have general knowledge based on what
12 has been filed in the case and reading, you know, the
13 2012 Order.

14 Q. And what is that general knowledge then?

15 A. That there is historic MGP operations
16 somewhere in the Duke territory and that the Company
17 is cleaning them up and they have requested deferral
18 authority and today we are here to talk about
19 recovery of those deferrals.

20 Q. Okay. Now, you also testified, going
21 back to the previous question, that you have referred
22 to maps before that describe, for instance, the East
23 End site.

24 A. I have referred to maps that -- yes.

25 Q. And do you have any recollection of the

1 relative size of the Purchased Parcel versus the
2 remaining portion of the West of the West Parcel?

3 A. I believe the West of the West is a
4 small -- smaller or less than half, I would say,
5 portion of the Purchased Parcel. It does not
6 comprise the whole parcel for sure, I guess that's
7 probably the safest thing I can say. I know the West
8 Parcel of the west piece does not comprise the whole
9 Purchased Parcel.

10 Q. Is the West of the West Parcel smaller
11 than the other parcels?

12 A. I'm not sure I can say that from a map.
13 It sometimes appears that way, but I really don't
14 know. The maps I have looked at have the different
15 phases, and I think I have heard testimony this week
16 that sometimes the size doesn't necessarily correlate
17 with cost because it's depending on the work and the
18 types of things that go on in that footprint and what
19 the tasks are. So I don't know specifically if it's
20 bigger or smaller than the other three parcels that
21 are a part of this discussion.

22 MS. WATTS: Thank you, Ms. Crocker. I
23 have no additional questions.

24 EXAMINER ADDISON: Thank you, Ms. Watts.

25 Mr. McNamee, any redirect?

1 MR. McNAMEE: I doubt it. If we could
2 have a moment to chat with the witness.

3 EXAMINER ADDISON: Of course.

4 Let's go off the record.

5 (Discussion off the record.)

6 EXAMINER ADDISON: We'll go back on the
7 record at this time.

8 Mr. McNamee, any redirect?

9 MR. McNAMEE: No redirect, your Honor.
10 Staff would move for the admission of Staff Exhibits
11 1, 2, and 8.

12 EXAMINER ADDISON: Thank you. But I do
13 have just a few follow-up questions before we get to
14 that. Thank you.

15 - - -

16 EXAMINATION

17 By Examiner Addison:

18 Q. If I may, Ms. Crocker, I think you
19 discussed some allocation factors with Ms. Watts. Do
20 you recall that?

21 A. Yes.

22 Q. In your experience at the Commission, is
23 it typical for Staff to determine allocation factors
24 for indirect costs as you've described them in your
25 testimony today?

1 A. I've not had a case of this type at all
2 before. In general there's usually an asset or an
3 activity that's directly tied to something and in the
4 absence of that, that's where an allocation was
5 suggested was -- I introduced an allocation because
6 there were clearly costs that were contained in those
7 other portions, but I had no ability, with the
8 invoices that were provided, to tie specific tasks to
9 that, so I couldn't -- in the absence of my ability
10 to be specific, I had to delineate something that I
11 thought was reasonable, and so an allocation seemed
12 most reasonable.

13 Q. Thank you. And you did note that you
14 used a 50-percent allocation factor for most years;
15 is that correct?

16 A. Yes.

17 Q. Do you recall how many of the years that
18 are the subject of these proceedings you used a
19 50-percent allocation factor?

20 A. So for the East End site, I think that
21 50 percent was for every year but one. For the West
22 End site, I don't think I applied -- I applied an
23 allocation only in the years where there was
24 reference -- heavy references to off-site or river
25 work as I perceived it. That may have been in one or

1 two years, so there were a few years on the West site
2 where it appeared an allocation would be more
3 reasonable. And then on the East End site, I believe
4 each year, except one, where I went to 70 percent.

5 EXAMINER ADDISON: Thank you very much.
6 That's all my questions. You are excused.

7 Mr. McNamee.

8 MR. McNAMEE: Now Staff would move for
9 the admission of Staff Exhibits 1, 2, and 8.

10 EXAMINER ADDISON: Any objections to the
11 admission of Staff Exhibits 1, 2, or 8?

12 MS. WATTS: No objection.

13 EXAMINER ADDISON: Thank you. They will
14 be admitted.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 MS. WATTS: Your Honor, with respect -- I
17 didn't mean to interrupt, Mr. McNamee. Do you have
18 anything else?

19 MR. McNAMEE: I was just going to say
20 Staff has nothing further.

21 EXAMINER ADDISON: Thank you very much.

22 Ms. Watts.

23 MS. WATTS: With respect to Duke Energy
24 Ohio Exhibit 37 that was marked during Ms. Crocker's
25 cross-examination, that document is, in fact, already

1 in evidence as TLB-5 in Mr. Bachand's supplemental
2 testimony, so I don't need to have it admitted
3 otherwise.

4 EXAMINER ADDISON: Thank you for making
5 that note for the record, Ms. Watts.

6 And I believe that includes all of the
7 exhibits that have been previously marked; is that
8 correct? No additional exhibits need to be moved at
9 this time?

10 MS. WATTS: I hope they are all in.

11 EXAMINER ADDISON: Thank you, Ms. Watts.

12 MS. WHITFIELD: Can I ask, was Staff
13 Exhibit 3?

14 MR. McNAMEE: No. That was one I marked
15 but didn't move.

16 MS. WHITFIELD: Okay.

17 EXAMINER ADDISON: And that's what I have
18 as well, Mr. McNamee. Thank you.

19 Let's go off the record for a moment.

20 (Discussion off the record.)

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

23 After a quick discussion off the record,
24 the parties have agreed to a briefing schedule in
25 these proceedings. Initial briefs will be due

1 January 17 --

2 MR. McNAMEE: Excuse me, your Honor. I
3 just had a thought. Could we move it to February
4 14 -- February 14 is Valentine's Day. That's
5 probably bad. 15th perhaps? I am going to be on
6 vacation. Can we bounce it for a week additionally
7 on the reply?

8 EXAMINER ADDISON: Thank you. I think
9 given the extensive amount of record evidence in this
10 case, that would be appropriate.

11 MR. McNAMEE: Thank you.

12 EXAMINER ADDISON: So we will be -- the
13 initial brief deadline will remain January 17, and
14 reply briefs will now be due February 15.

15 MS. WHITFIELD: That's a Saturday.

16 EXAMINER ADDISON: Well, February 14 it
17 is, Mr. McNamee.

18 MR. McNAMEE: Okay. Happy Valentine's
19 Day.

20 EXAMINER ADDISON: Thank you. Do we have
21 anything else to discuss before adjourning for today?

22 All right. Thank you, all.

23 We are adjourned.

24 (Thereupon, at 1:01 p.m., the hearing was
25 adjourned.)

1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Thursday, November 21, 2019,
5 and carefully compared with my original stenographic
6 notes.

7
8

Karen Sue Gibson, Registered
Merit Reporter.

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Carolyn M. Burke, Registered
11 Professional Reporter.

12 (KSG-6846)

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Case No(s). 14-0375-GA-RDR, 15-0452-GA-RDR, 16-0542-GA-RDR, 17-0596-GA-RDR, 18-0283-GA-RDR

Summary: Transcript in the matter of Duke Energy Ohio, Inc. hearing held on 11/21/19 -
Volume IV electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and
Gibson, Karen Sue Mrs.