

FILE

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Duke Energy:
Ohio to Modify its : Case No. 06-986-EL-UNC
Market-Based Standard :
Service Offer. :

Consolidated Duke Energy : Case Nos. 03-93-EL-ATA
Ohio, Inc. Rate : 03-2079-EL-AAM
Stabilization Plan Remand : 03-2081-EL-AAM
and Rider Adjustment : 03-2080-EL-ATA
Cases. : 05-724-EL-UNC
: 05-725-EL-UNC
: 06-1068-EL-UNC
: 06-1069-EL-UNC
: 06-1085-EL-UNC

- - -

DEPOSITION

of Charles R. Whitlock, taken before me, Maria
DiPaolo Jones, a Notary Public in and for the State
of Ohio, at the Offices of the Ohio Consumers'
Counsel, Ten West Broad Street, 18th Floor, Columbus,
Ohio, on Tuesday, January 9, 2007, at 1:20 p.m.

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On behalf of the Ohio Hospital
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20 ALSO PRESENT:

21 Ms. Anita Schafer.

22 - - -

23

24

Tuesday Afternoon Session,
January 9, 2007.

- - -

STIPULATIONS

It is stipulated by and among counsel for the
respective parties that the deposition of Charles R.
Whitlock, a witness called by the Office of
Consumers' Counsel under the applicable Rules of
Civil Procedure, may be reduced to writing in
stenotypy by the Notary, whose notes thereafter may
be transcribed out of the presence of the witness;
and that proof of the official character and
qualification of the Notary is waived.

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1 CHARLES R. WHITLOCK

2 being by me first duly sworn, as hereinafter
3 certified, deposes and says as follows:

4 EXAMINATION

5 By Mr. Small:

6 Q. This deposition is taken by subpoena of
7 Duke Energy Retail Sales, LLC, which I will refer to
8 as "DERS." Do you understand that?

9 A. I do.

10 Q. The terminology. Good.

11 The subpoena was issued in 06-986-EL-UNC
12 as well as 03-93-EL-ATA and numerous dockets that
13 were consolidated with the 03-93 case. The subpoena
14 was issued for last week, January 3rd, 2007; by
15 agreement with counsel it was moved to today, January
16 9th.

17 MR. SMALL: The easiest way to explain
18 the beginning of this portion, I'm just going to
19 attach, there won't be any questions about it, the
20 subpoena as Deposition Exhibit 1.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. And I think the way we're going to
23 progress here is if I have exhibits, I will give them
24 to counsel and then you can use them to answer the

1 question, and then if you would just set them aside,
2 because in some questions we may go back to an
3 earlier exhibit. Once you put them in a pile and
4 we're done, you give it to the court reporter, those
5 will be her exhibits, all right?

6 A. (Witness nods head.)

7 Q. You don't need to look at that, but that
8 will be the first one.

9 MR. PAHUTSKI: That's the subpoena?

10 MR. SMALL: Yes. Just a copy.

11 Q. Would you please state your name and
12 spell your last name for the record?

13 A. Charles Robert Whitlock, W-h-i-t-l-o-c-k.

14 Q. My name is Jeff Small, and I represent
15 the office of the Ohio Consumers' Counsel.

16 Mr. Whitlock, have you ever had your deposition
17 taken?

18 A. No, sir.

19 Q. Have you ever testified?

20 A. No.

21 Q. However, you have submitted testimony; is
22 that correct?

23 A. I have submitted testimony.

24 Q. You've submitted testimony in one of the

1 consolidated cases that had been consolidated with
2 03-93, correct?

3 A. I have.

4 Q. All right. Well, due to those
5 circumstances I think it may be more important, than
6 other circumstances, to go through a few ground
7 rules. Please respond to my questions audibly; it
8 makes it easier for the reporter to take down your
9 answers. Let me know if you don't understand the
10 question. Let me know if you think of something that
11 requires a revision of one of your earlier responses.

12 Let me know if you need a break. We can
13 take a break as long as there is no question pending.
14 I expect we'll take at least one break; I may need it
15 with my voice. Today I may need the break more than
16 you do.

17 Also we're reviewing documents for our
18 counsel here, we're reviewing documents and there
19 will probably be a short break and then we'll ask
20 additional questions having to do with those
21 documents.

22 Your counsel may interject objections.
23 After the objection please respond to the question
24 unless your counsel instructs you to not respond.

1 Do you have any impairment, medication,
2 or anything else that would reduce your ability to
3 respond to my questions here today?

4 A. No.

5 Q. This next question's a little bit
6 unusual, but who is your counsel? And I ask you that
7 question because I notice Mr. Colbert is listed as
8 the trial attorney, Mr. D'Ascenzo is listed as
9 another counsel in a motion for protection filed by
10 DERS, and later on January 2nd Mr. Pahutski and
11 Ariane Johnson were on a separate pleading. So could
12 you clear up that matter?

13 A. I mean, there are a variety of attorneys
14 that DERS uses, all of those attorneys are employees
15 of Duke Energy Shared Services and so we make
16 ourselves -- we use any one of those attorneys, but
17 Michael Pahutski is my attorney for the deposition.

18 Q. Fine. So you are referring to all four
19 of those have represented DERS at one point or
20 another.

21 A. Yes, sir.

22 MR. SMALL: Go off the record for a
23 second.

24 (Discussion held off the record.)

1 MR. SMALL: Let's go back on the record.

2 Q. You mentioned, I believe it was Duke
3 Energy Shared Services; is that correct?

4 A. Yes, sir.

5 Q. That was a reference -- were you
6 referring to they have a common legal department
7 among the Duke affiliates?

8 A. Yes.

9 Q. And which other attorneys have
10 represented DERS besides the four that we just
11 mentioned?

12 A. I don't recall any others. I don't know.

13 Q. Don't know of any others that have
14 represented DERS?

15 A. I'm not sure if others have. There might
16 have been others, but I'm not sure.

17 Q. I'm, of course, aware that there has been
18 a lawsuit filed against Duke Energy Corporation in
19 Cincinnati, and in that complaint in paragraph 14
20 there's a reference to the vice president and general
21 counsel, "counsel" is spelled like an attorney. Can
22 you tell me who that vice president and general
23 counsel of Commercial Business, can you tell me what
24 that person's name is?

1 MR. PAHUTSKI: Objection. Chuck has been
2 called here to, and in accordance with the subpoena,
3 to testify to matters regarding these proceedings and
4 regarding certain contracts that DERS may or may not
5 have entered into. He's not here to testify
6 regarding any other complaint that may be filed
7 against the company. I'm going to have to instruct
8 the witness not to answer that question.

9 MR. SMALL: My question was not about the
10 complaint. My question was who is the vice president
11 and general counsel of the Commercial Business unit.

12 MR. PAHUTSKI: We'll permit him to answer
13 that question as you have just stated it.

14 A. I believe it's Jeffrey Gollomp.

15 Q. Could you spell that last name, please?

16 A. G-o-l-l-o-m-p.

17 Q. And he is an attorney?

18 A. I believe so.

19 MR. PAHUTSKI: Can we go off the record
20 for a second?

21 MR. SMALL: Sure.

22 (Discussion held off the record.)

23 MR. SMALL: Let's go back on the record.

24 Q. When we went off the record, counsel for

1 DERS made a statement about Mr. Gollomp, who is no
2 longer hired with the Duke-affiliated companies; is
3 that fair to say?

4 MR. PAHUTSKI: That's fair to say.

5 MR. SMALL: Okay.

6 Q. And he stated that he is not, Mr. Gollomp
7 is not the vice president and general counsel of
8 Commercial Business unit. It's not clear to me, is
9 that because he doesn't work with the company
10 anymore, or because he was never in that position?
11 Did he ever have that position?

12 MR. PAHUTSKI: May I assist?

13 MR. SMALL: Yes.

14 Q. Well, I'm really -- I really would like
15 to know where you got the name Jeff Gollomp. You're
16 the one who came up with the name.

17 A. Yeah, he was the vice president and
18 general counsel of the Commercial Business unit.

19 Q. At one point in time.

20 A. Yes, sir.

21 Q. And you're not aware of when he left
22 or -- that position.

23 A. Other than when we just went off the
24 record and I became aware of that.

1 Q. That response was something like December
2 2006 that he left the company, right?

3 A. (Witness nods head.)

4 Q. This is not from your personal knowledge,
5 it's --

6 A. Yes.

7 Q. Okay. Now, Mr. Whitlock, you are the
8 president of DERS, correct?

9 A. Yes.

10 Q. All right. When I refer to "DERS" for
11 the purposes of this deposition, I'm going to be
12 referring to Duke Energy Retail Sales, LLC as well as
13 its predecessor, Cinergy Retail Sales. Did that have
14 an LLC on it, too?

15 A. I believe so.

16 Q. Okay. But I mean both of the entities;
17 do you understand that?

18 A. I do.

19 Q. And if there's a distinction, if I ask a
20 question and there's a distinction between DERS and
21 CRS, please point it out to me, in other words, if
22 the response would be different for one company
23 versus the other, all right? Otherwise, I'll be
24 referring to them collectively as "DERS." Do you

1 understand that?

2 A. I do. The only distinction would be one
3 of time.

4 Q. Okay.

5 A. All right. So --

6 Q. Okay. Do you have a business card?

7 A. I do.

8 Q. Could I see it?

9 Okay. This card labels you as President
10 of Commercial Asset Management, Duke Energy Americas.
11 Can you explain what that position is?

12 A. Yeah. In that position I have the
13 responsibility to manage the commodity risk
14 associated with Duke Energy's nonregulated generation
15 fleet as well as all the commercial analytics related
16 to that generation fleet.

17 Q. I am a little confused with that answer.
18 The reason is that you've submitted testimony in
19 05-725 as well as other cases where you refer to your
20 association with the provision of services for Duke
21 Energy - Ohio's market-based standard service offer;
22 is that correct?

23 A. Can I see the document that you're
24 referring to?

1 Q. Sure. I'm looking at the bottom of page
2 1 and the top of page 2 where it reads "Specifically,
3 I have responsibility to maintain the safe, reliable,
4 and economic supply of fuel, power, emission
5 allowances, and capacity to Duke Energy - Ohio's" --
6 abbreviated DE-Ohio -- "marked-based standard service
7 offer" -- abbreviated MBSSO -- "consumers." I'll
8 give you the entire document.

9 A. That's fine.

10 Okay.

11 Q. It's not meant to be an exhibit. Why
12 don't you give it back?

13 A. I'm sorry.

14 Q. The question is you just used -- in
15 response to my earlier question you used the term
16 "nonregulated business." Did you mean to include in
17 the nonregulated business the supply of services to
18 the customers of the MBSSO?

19 A. I did.

20 Q. Now, do you have any other business
21 cards, for instance one that shows that you're the
22 president of DERS?

23 A. I don't.

24 Q. This is the business card that you

1 normally use?

2 A. Yes.

3 Q. Okay.

4 MR. PAHUTSKI: Can we go off the record
5 for a second?

6 MR. SMALL: Sure.

7 (Discussion held off the record.)

8 MR. SMALL: Let's go back on the record.

9 Q. Mr. Whitlock, I believe you want to make
10 a clarification.

11 A. Yeah, the card says "President." Those
12 cards are dated. Now the title's changed from that
13 card.

14 Q. What's your title now?

15 A. It's either Group Vice President or
16 Senior Vice President. I believe it's Senior Vice
17 President. It recently changed.

18 Q. And that title, Senior Vice President, is
19 of the Commercial Business unit for Duke Energy
20 Americas; is that correct?

21 A. Commercial Asset Management.

22 Q. Okay. So everything else except for the
23 title's right on the card.

24 A. Yeah.

1 Q. Yes.

2 MR. PAHUTSKI: Can we go off the record
3 once more?

4 MR. SMALL: Sure.

5 (Discussion held off the record.)

6 MR. SMALL: Let's go back on the record.

7 Q. Any more clarifications?

8 A. No.

9 Q. Okay. Who is Duke Energy Americas?
10 What's their relationship to other corporations? For
11 instance, are they owned by another Duke corporation?

12 A. I don't know.

13 Q. What does Duke Energy Americas do?

14 A. It holds Duke Energy's unregulated
15 businesses.

16 Q. How many employees does Duke Energy
17 Americas have?

18 A. I don't know.

19 Q. Do you have an approximate number? Is it
20 a thousand? A hundred? Ten?

21 A. I want to say north of 2,000.

22 Q. Two thousand plus?

23 A. I believe so.

24 Q. And are you counting just the Duke Energy

1 Americas or all of the unregulated affiliates that it
2 owns?

3 A. Your question was Duke Energy Americas.

4 Q. Yes, it was.

5 A. That's how I answered it.

6 Q. What's the relationship between Duke
7 Energy Americas and DERS?

8 A. I don't know.

9 Q. Well, you stated that it holds Duke's
10 unregulated businesses. Is DERS an unregulated
11 business?

12 A. DERS is an unregulated business.

13 Q. Should I conclude from that, then, that
14 it is owned by -- either directly or indirectly by
15 Duke Energy Americas, or you don't know?

16 A. I don't know the relationship of Duke
17 Energy Americas. I can tell you how DERS is related
18 to Cinergy Capital and Trading, LLC and Cinergy
19 Investments, but I don't know how those three
20 entities are related to Duke Energy Americas.

21 Q. Let's go through that. DERS is owned by
22 Cinergy Capital and Trading, Incorporated; is that
23 correct?

24 A. Yes.

1 Q. And Cinergy Capital and Trading,
2 Incorporated is owned by Cinergy Investment,
3 Incorporated; is that correct?

4 A. Yes.

5 Q. Cinergy Investment, Incorporated is owned
6 by Cinergy Corporation; is that correct?

7 A. I believe so.

8 Q. Cinergy Corporation is owned by Duke
9 Energy Corporation; is that correct?

10 A. Yes.

11 Q. That, of course, I've taken from your
12 certificate case at the Public Utilities Commission.
13 Where does Duke Energy Americas fit into that?

14 A. I don't know.

15 Q. Do you have any position or title with
16 any of the entities that I just named?

17 A. Yes.

18 Q. Which corporation, and what is the title?

19 A. I'm the president of DERS.

20 Q. All right.

21 A. I'm a vice president of Cinergy Capital
22 and Trading.

23 Q. All right. Is that it?

24 A. Yes.

1 Q. So in the Duke-affiliated companies you
2 hold three positions, one with DERS, one with Cinergy
3 Capital and Trading, and one with Duke Energy
4 Americas; is that correct?

5 A. Yes.

6 Q. Who issues your paycheck?

7 A. Duke Energy Shared Services.

8 Q. That's a different corporation than the
9 three names that you just gave me, isn't it?

10 A. Yes.

11 Q. Then you must have a position with a
12 fourth entity, Duke Energy Shared Services, don't
13 you?

14 A. Yes.

15 Q. And what position is that?

16 A. With Duke Energy Shared Services?

17 Q. Yes.

18 A. Senior Vice President and Commercial
19 Asset Management.

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

22 MR. SMALL: Okay, let's go off the
23 record.

24 (Discussion held off the record.)

1 MR. SMALL: Let's go back on the record.

2 Q. I don't mean to -- did your consultation
3 result in any clarification?

4 A. No.

5 Q. Is the title that you just gave me the
6 same title that you have for Duke Energy Americas, or
7 are you a senior vice president?

8 MR. PAHUTSKI: We're going to object at
9 this point. You know, we're here to answer questions
10 regarding the subject matter of the subpoena, so if
11 it's a matter of knowledge that DERS had regarding
12 these proceedings that the subpoena's filed or issued
13 under, or agreements that DERS may or may not have
14 entered into, this -- this other material we're
15 getting to simply isn't appropriate under the
16 subpoena to be getting into these other areas of the
17 Duke Energy family of companies.

18 I'm going to instruct the witness not to
19 answer that question.

20 Q. Well, you've been instructed not to
21 answer; that doesn't mean that we won't at some point
22 want to revisit that at another time, that will be a
23 matter for the Commission. In other words, I am not
24 conceding that we can't investigate the relationship

1 between the corporate entities in this deposition.

2 MR. PAHUTSKI: Mr. Small, are we still on
3 the record?

4 MR. SMALL: Let's go off the record.

5 (Discussion held off the record.)

6 MR. SMALL: Can I have the last question
7 read back, please?

8 (Question read.)

9 MR. SMALL: I'm going to mark Deposition
10 Exhibit 2, it's a filing by Duke Energy Retail Sales,
11 LLC received at the Commission August 3rd.
12 Actually, the document's dated August 2nd, but it's
13 received at the Commission August 3rd, in case
14 04-1323-EL-CRS, the certification case for DERS. In
15 this case it was Cínergy Retail Sales -- I'm sorry,
16 it was DERS.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. PAHUTSKI: Can we go off the record?

19 (Discussion held off the record.)

20 MR. SMALL: Let's go back on the record.

21 Q. (By Mr. Small) We may be coming back to
22 this document from time to time during this
23 deposition. I have a question for you right now.
24 Could you turn to page 10 of that application? I'm

1 not sure exactly what you call it. A certification
2 application, yes. Page 10 and 11 are affiliates of
3 DERS. Why don't I find Duke Energy Shared Services
4 here listed on this exhibit?

5 A. I don't know.

6 MR. PAHUTSKI: Can I go off the record
7 for a second?

8 MR. SMALL: Sure.

9 (Discussion held off the record.)

10 MR. SMALL: Let's go back on the record.

11 Q. I think you had a clarifying answer.

12 A. Yeah. Duke Energy Shared Services
13 doesn't -- this is a list of companies that provide
14 electric at wholesale or retail in North America, and
15 Duke Energy Shared Services does not do that.

16 Q. The Shared Services provides expertise of
17 various kinds, but doesn't actually supply commodity
18 gas or electricity; is that the idea?

19 A. Yes.

20 Q. And one of these affiliates that it
21 provides those services to is DERS; is that correct?

22 A. Yes.

23 Q. Okay. I'd like to ask a few questions
24 about your personal background so we'll understand

1 that part. I understand you have a Bachelor's of
2 Business degree in accounting from Alaska at
3 Anchorage; is that correct?

4 A. Yes.

5 Q. And you attended the Mahler School of
6 Advanced Management Skills program?

7 A. Yes.

8 Q. Can you tell me what that is?

9 A. Executive charm school, really.

10 Q. How long did it last?

11 A. It was four weeks. It lasted over a
12 year, and it was five days of class over four
13 different weeks.

14 Q. And you attended the Center for Creative
15 Leadership's Developing Strategic Leadership program;
16 is that correct?

17 A. Yes.

18 Q. Can you tell me what that is?

19 A. More of the same, executive charm school.
20 It's really about leadership in Colorado Springs.

21 Q. How long did that last?

22 A. I want to say it was four days, again.

23 Q. Four days total?

24 A. I believe so.

1 Q. And you've studied business management?
2 You've studied business management as well, at
3 Harvard?

4 A. Yeah, I took like five classes at Harvard
5 when I lived in Boston.

6 Q. No degree came from that.

7 A. No, sir.

8 Q. Are there any other --

9 A. Unfortunately.

10 Q. Any other educational experiences that
11 led to degrees?

12 A. I attended a Bible college for two years
13 and I got a, some kind of -- I don't think it's a
14 degree, but I went for two years and I got some kind
15 of diploma from there, or a certificate of
16 graduation.

17 Q. Do you hold any licenses?

18 A. Driver's license.

19 Q. Nothing like a CPA or anything like that.

20 A. No.

21 Q. And you started with Cinergy in May 2000;
22 is that correct?

23 A. Yes.

24 Q. And what positions did you have

1 chronologically for that six-year period?

2 A. I was a manager of Realtime Price Risk; I
3 managed Day-Ahead Power book; then I began
4 supervising the short-term traders; then I had a
5 responsibility for managing all of the proprietary
6 trading business.

7 Q. What does "proprietary trading business"
8 mean?

9 A. Speculative trading business.

10 Q. What period of time are we up to at this
11 point?

12 A. January 2004ish.

13 Q. Okay. And after that?

14 A. Then I had responsibility for managing --
15 I was a vice president of Portfolio Optimization,
16 which is a precursor to the Commercial Asset
17 Management Group, and that was in February of 2004.

18 At the merger with Duke I became the
19 president of Commercial Asset Management.

20 Q. That was 2006?

21 A. Yes, sir.

22 I became president of Duke Energy Retail
23 Sales June 14th of 2006. Or June.

24 Q. Okay. That's a bunch of groups, but are

1 those all Shared Services positions?

2 MR. PAHUTSKI: Objection. We're, again,
3 heading down this path of really deviating quite far
4 from the confines of the subpoena. Mr. Whitlock,
5 again, is here as a Duke Energy Retail Sales
6 representative to answer questions regarding these
7 proceedings as well as questions on contracts that
8 may or may not have been entered into.

9 We want to limit this to the matters that
10 were noted in the subpoena as well as limited by the
11 Attorney-Examiner's entry in this proceeding as well.

12 I'm going to ask Mr. Whitlock not to
13 answer any further questions regarding any companies
14 other than Duke Energy Retail Sales at this point.

15 MR. SMALL: Well, I consider these to be
16 foundation questions to find out what his capacity
17 is. DERS has represented that he has certain
18 knowledge, I think I'm entitled to find out what his
19 background is.

20 MR. PAHUTSKI: We're not representing
21 that he is an expert witness. He's simply here to
22 represent DERS and DERS's knowledge regarding the
23 matters mentioned in the subpoena, and that's what
24 he's here for today.

1 MR. SMALL: All right. Well, I'll put on
2 the record that I can't fully explore my -- the
3 agreements that we're here to discuss unless I get
4 foundation of who it is that I'm deposing here today,
5 so we may have to just disagree about those
6 foundation questions and we may have to reconvene
7 regarding that.

8 I will do my best to make the questions
9 that I have consistent, but I do have other
10 additional questions having to do with Mr. Whitlock's
11 background.

12 Q. (By Mr. Small) In your capacity as
13 president of DERS who do you report to?

14 A. Tom O'Connor.

15 Q. And what is Mr. O'Connor's position?

16 A. Actually, could I clarify that? I mean,
17 in my capacity at DERS I report to the CEO who is
18 Paul Barry right now, but he's now -- he's been moved
19 out of that position and Tom O'Connor has taken his
20 position, and I don't think we've made officer
21 appointments to make Tom O'Connor my boss, right?
22 Does that help?

23 Q. All right. Let me see if I can get that.

24 A. Okay.

1 Q. I think maybe, as I understood your
2 answer, the official stated CEO was Paul Barry. Can
3 you spell that last name? B-e-r-r-y?

4 A. I believe it's B-a-r-r-y.

5 Q. Okay. Functionally he's been replaced.
6 Tom O'Connor --

7 A. Yes.

8 Q. -- is serving in that capacity as CEO?

9 A. Yes.

10 Q. Likely to be named in that position in
11 the near future?

12 A. Yes.

13 Q. And that's CEO of DERS; is that correct?

14 A. Yes.

15 Q. Is there any other chain of command that
16 goes above that? Does he report to anybody?

17 A. I don't know.

18 Q. Who reports to you at DERS?

19 A. I don't have any employees.

20 Q. You mean to say that DERS has no
21 employees?

22 A. Right.

23 Q. How does DERS get its work done without
24 any employees? Who does the work for DERS?

1 A. Again, it relies on Duke Energy Shared
2 Services.

3 MR. SMALL: I'm going to mark an exhibit.
4 This is a letter dated April 19th, 2005, received
5 by the Commission April 25th, 2005. It's a
6 submission, again, in 04-1323-EL-CRS. It's the
7 certification case, again.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Are you ready?

10 A. Yeah.

11 Q. Mr. Whitlock, the document that I gave
12 you appears to be a notice of current officers as of
13 the date of the filing. First of all, as a matter of
14 clarification, can you explain the redactions in the
15 document?

16 A. I can't.

17 Q. I want to be clear. Do you know why
18 portions of this document were redacted?

19 A. I don't.

20 Q. Do you know the information that has been
21 redacted from this document?

22 MR. PAHUTSKI: Just to note that if --
23 Mr. Whitlock's answer may very well be designated
24 confidential. If he knows the answers, knows what

1 was redacted, we'll have to hold that in confidence.

2 MR. SMALL: I'm very confused by this
3 document because I can't figure out why titles of
4 officers are redacted.

5 Let's go off the record.

6 (Discussion held off the record.)

7 MR. SMALL: Let's go back on the record.

8 Q. Do you --

9 A. Could you repeat your question?

10 Q. Let's start again.

11 A. Okay.

12 Q. Do you understand why materials, why a
13 title for a person would be redacted in the document?
14 It does not appear to be explained by the document.

15 A. I do not.

16 Q. Okay. Is this list up to date? In other
17 words, have there been any changes since this
18 document was filed?

19 A. Yes.

20 Q. Okay. What are those changes?

21 A. I'm an officer. I'm currently President
22 of DERS.

23 Q. Okay. Did you replace Ms. -- I'm not
24 sure -- Mr. Good?

1 MR. PAHUTSKI: Object; there's no
2 evidence that Ms. or Mr. Good had been president on
3 this sheet here. Object to the form of the question.

4 Q. All right. Who did you replace in your
5 position as President of DERS?

6 A. I don't know.

7 Q. There's always a possibility this wasn't
8 redacted, it just looks that way on the Commission
9 website. Or it could be shaded, not redacted, which
10 sort of would eliminate the objection for
11 confidentiality.

12 MR. SMALL: What was our last question?

13 (Question read.)

14 Q. Can we have a response to that question?

15 A. I don't know.

16 Q. Which of these individuals continues to
17 have a capacity with DERS?

18 A. None of these people, I believe, are
19 currently officers of DERS.

20 Q. Has there been some filing that states
21 who the officers of DERS are?

22 A. I don't know.

23 MR. SMALL: Let's go off the record here.

24 (Discussion held off the record.)

1 (Hearing Examiners Kingery and Farkas
2 joined via speakerphone.)

3 EXAMINER FARKAS: We don't feel that the
4 OCC should be limited under cross-examination
5 regarding DERS and its affiliates and its
6 relationship to DE-Ohio, and we reviewed the subpoena
7 and believe that it doesn't necessarily limit OCC's
8 cross-examination on that along those lines.

9 Notwithstanding that, this isn't to say
10 that evidence that would be presented at a hearing in
11 cross-examination or regarding evidence would
12 necessarily be considered relevant and/or admissible.
13 So we would agree to allow OCC to continue its
14 cross-examination, but putting everybody on notice
15 that that doesn't necessarily mean that that would be
16 admissible at the hearing.

17 MR. SMALL: Scott, may I ask a clarifying
18 question?

19 EXAMINER FARKAS: Sure.

20 MR. SMALL: Of course there is, to my
21 knowledge, I haven't inquired entirely into this, but
22 to my knowledge there isn't any direct -- I haven't
23 seen a document that says there's a, you know,
24 100 percent ownership or something relationship like

1 that between DERS and DE-Ohio, and -- I just want to
2 make sure. You know, there are a lot of affiliates
3 around. The deponent has basically stated today that
4 he's in one way or another affiliated with four
5 different Duke affiliates.

6 You made the statement that the OCC can
7 inquire into matters as far as a link between DERS
8 and -- well, somewhere in there was a statement about
9 its connection with DE-Ohio, and I wanted to make
10 sure that we didn't get off the phone here and then
11 have another problem because I wasn't talking about
12 DERS or DE-Ohio, but, you know, that affiliate --
13 those affiliates that kind of stand in relationship
14 to those entities, that I couldn't inquire into those
15 as well.

16 EXAMINER FARKAS: No; you can inquire
17 into those as well.

18 MR. SMALL: I think I'm clear.

19 Do you have any questions?

20 EXAMINER FARKAS: I don't have any
21 questions.

22 MR. SMALL: I'm sorry, Scott, I was
23 talking to Mike.

24 EXAMINER FARKAS: Okay.

1 MR. PAHUTSKI: Just to be clear, so what
2 your ruling is, is that OCC may inquire into the
3 relationship of DERS and affiliates of DERS with
4 DE-Ohio.

5 EXAMINER KINGERY: I think the entire
6 corporate structure should -- I don't see any reason
7 why --

8 EXAMINER FARKAS: There should be any
9 limitation on that.

10 EXAMINER KINGERY: Right. This is only
11 discovery at this point.

12 MR. PAHUTSKI: Well, that helped to
13 clarify that.

14 MR. SMALL: I guess we're done. Thank
15 you very much.

16 EXAMINER FARKAS: Okay.

17 EXAMINER KINGERY: Okay.

18 MR. PAHUTSKI: Thank you.

19 MS. BOJKO: Thank you.

20 EXAMINER KINGERY: Just so that you all
21 know, neither one of us is necessarily here past
22 4 o'clock.

23 MR. SMALL: We understand. Thank you.

24 EXAMINER KINGERY: Okay.

1 MS. BOJKO: Thanks.

2 (Discussion held off the record.)

3 MR. SMALL: Let's go back on the record.

4 Q. (By Mr. Small) Mr. Whitlock, I'm going to
5 go back and ask a few questions having to do with the
6 Duke family of companies. A little while back you,
7 and I apologize, I've lost my train of thought here a
8 little bit in that period of time, but we went over a
9 number of your positions with Cinergy since May of
10 2000, or with what we're calling now the
11 Duke-affiliated companies. Your association started
12 in May 2000, and you named a number of positions.
13 Now, those positions that you named, what corporate
14 affiliation were they with?

15 MR. PAHUTSKI: We're going to object and
16 voice a standing objection. We're going to allow the
17 witness to answer, but we're going to object as to
18 the relevance of any of the questions that are --
19 with respect to Duke Energy Retail Sales and its
20 relationship to affiliates and corporate structures
21 of Duke Energy Companies.

22 But we'll permit the witness to answer
23 the question.

24

1 Q. Mr. Whitlock?

2 A. Can you read the question, or you repeat
3 the question, or somebody read it back to me?

4 MR. SMALL: We'll let the court reporter.

5 (Question read.)

6 A. Duke Energy Shared Services or the
7 precursor of that, so it might have been Cinergy
8 Shared Services.

9 Q. All those positions.

10 A. Yes.

11 Q. With the exception of the DERS
12 appointment in June 2006?

13 A. Yes.

14 Q. All right. In your capacity as the
15 commercial asset -- strike that.

16 Getting back on track with where we were
17 in the questions, I asked some questions and you
18 responded with names of Paul Barry and Tom O'Connor.
19 Do you remember those questions and answers?

20 A. Yes.

21 Q. Now, I believe your response was you
22 didn't know who they reported to, but in the chain of
23 corporate affiliations would the head of, I think you
24 called it a CEO, the head of DERS report to somebody

1 in Cinergy Capital and Trading, the company that owns
2 DERS?

3 A. I don't know, but that seems logical to
4 me.

5 Q. Okay. Do you have any -- what services
6 in your position with Duke Energy Shared Services do
7 you provide to DE-Ohio? When I say "DE-Ohio," I'm
8 referring to the distribution company that provides
9 electricity to residential, commercial, and
10 industrial customers in the Cincinnati area.

11 A. Could you repeat the first part of the
12 question?

13 Q. What services do you provide, what link
14 do you have between what you do and the business of
15 DE-Ohio?

16 A. The link's the MBSSO.

17 Q. And what do you do regarding the MBSSO?

18 A. It was probably articulated most clearly
19 in the testimony that I filed in the case that you
20 showed me earlier, right?

21 Q. Would you give a little summary of that?

22 A. Yeah. I mean, I try to maintain a
23 reliable and economic supply of energy and I do that
24 through managing commodity price risks, so I buy all

1 the fuel, I manage the emission allowance position
2 related to the generation that was dedicated under
3 the MBSSO or the rate stabilization plan to Duke
4 Energy - Ohio.

5 Q. So you're basically making decisions
6 concerning purchases for inputs for DE-Ohio, the
7 provider of services?

8 A. Sure, I manage the SRT, the -- you know.

9 Q. And who do you report to in your
10 capacity -- in that capacity?

11 A. Tom O'Connor. I should say for the
12 record, right, I mean we talked about Duke Energy
13 Americas, and I'm going to get lost between the
14 functional organization, right? So Duke Energy
15 Americas and the legal entities. I am not an expert
16 on the legal structure of the Duke Corporation -- the
17 Duke Energy Corporation, so if my answer seemed
18 nonresponsive, it's just because candidly I don't
19 know.

20 Q. That's fine. My questions will be, the
21 next one will be about just what relationships you
22 have.

23 A. Okay.

24 Q. You report to Mr. O'Connor in your

1 capacity as an employee of Duke Energy Shared
2 Services; is that correct?

3 A. I do.

4 Q. And what is Mr. O'Connor's capacity, the
5 capacity that you report to?

6 A. He's my boss. I'm not sure what his
7 title is. I think he's Group Vice President. I'm
8 not sure.

9 Q. And what does that group do that he's the
10 vice president of?

11 A. He's, obviously, my boss. He's
12 responsible for an inside-of-the-fence generation
13 company we have called Duke Energy Generation
14 Services. He is responsible for our international
15 assets. He was responsible for our proprietary
16 trading; that has been sold. He has responsibility
17 for a broadband-through-power-lines business. I'm
18 just trying to think in my head through his direct
19 reports.

20 Q. How many people are in this functional
21 group that Mr. O'Connor manages?

22 A. I'm going to say it's about the same
23 number that we said before in that Duke Energy
24 Americas, so I think it's in the north of 2,000

1 employees.

2 Q. Okay. And in that capacity, I mean your
3 capacity having to do with Duke Energy Shared
4 Services, are there people who report to you?

5 A. Yes, sir.

6 Q. How many?

7 A. Approximately 50.

8 Q. Are they subdivided into groups?

9 A. Yeah, I have four direct reports.

10 Q. I'm sorry?

11 A. I have four direct reports.

12 Q. And who --

13 A. A commodity logistics organization, a
14 risk management organization, a commercial analytics
15 and fundamentals organization, and then a realtime
16 operations organization.

17 Q. Could you describe, summarize what those
18 four groups do?

19 A. Sure. I mean the first one, the
20 Commodity and Logistics group does the commodity and
21 logistics, so schedules the coal, schedules natural
22 gas.

23 Q. Buying those commodities.

24 A. Schedules them. Handles the logistics.

1 Q. Schedules the delivery of them?

2 A. Yes.

3 The next group is the Risk Management
4 group that monitors markets, buys and sells
5 commodities whether it's emission allowances, coal,
6 natural gas power capacity --

7 Q. Okay.

8 A. -- FTRs are in there.

9 And then the Commercial Analytics and
10 Fundamentals group builds the models that we use to
11 generate our positions, does structuring of
12 transactions, and provides fundamental analysis on
13 markets.

14 Q. Modeling? Modeling of markets?

15 A. The fundamental analysis on modeling, no.
16 Fundamental analysis on markets.

17 Q. I'm asking if they're a modeling group.

18 A. Yeah. That was the first thing I said, I
19 believe.

20 Q. Okay.

21 A. And then the last group is the Operations
22 group that handles the generation dispatch unit
23 commitment and interfaces with MISO, forecasts load,
24 and there's two meteorologists in that organization.

1 Q. Do you know who Mr. O'Connor reports to
2 in his group vice presidency position?

3 A. Again, I'm not sure if he's a group vice
4 president, but I do.

5 Q. Pardon?

6 A. I do know who he reports to. I don't
7 know if he's a group vice president.

8 Q. All right. You just, I think I used the
9 terminology you have, but you're not sure that's his
10 title.

11 A. Yeah. That's what I said in the previous
12 answer I believe.

13 Q. And who does he report to?

14 A. Jim Rogers.

15 Q. What is his title?

16 A. I believe CEO, Duke Energy.

17 Q. Okay. You're performing functions for
18 DE-Ohio? I'll continue to use "DE-Ohio" as being the
19 distribution company; do you understand that? It
20 will be the distribution company that provides
21 electricity to residential, commercial, and
22 industrial customers.

23 A. I understand that.

24 Q. All right. You provide services to them.

1 Do you have any reporting responsibilities to
2 DE-Ohio, the distribution company?

3 A. I don't.

4 Q. Who do you -- do you deal with anyone at
5 the distribution company; DE-Ohio?

6 A. I mean, we have code of conduct between
7 the wire side of our business and the generation side
8 of our business, so I don't -- no, I don't deal with
9 them.

10 Q. All right. I think what you're saying is
11 you're on the generation side of the business.

12 A. Right.

13 Q. That generation you're talking about is
14 owned by the distribution company, though.

15 A. It's --

16 MR. PAHUTSKI: Let me object here. The
17 notion that DE-Ohio is a distribution company, I
18 think that's causing some confusion.

19 MR. SMALL: I realize that the
20 terminology is loose. I mean DE-Ohio.

21 MR. PAHUTSKI: The regulated utility?

22 MR. SMALL: The regulated -- well, that's
23 difficult terminology in itself. I will attempt to
24 use "DE-Ohio" when I'm referring to the company that

1 provides electric service to residential, commercial,
2 and industrial and not other customers, we'll skip
3 the characterization of what functions they serve.

4 MR. PAHUTSKI: Okay. I think
5 Mr. Whitlock is still somewhat confused. Can you
6 restate that?

7 Q. (By Mr. Small) DE-Ohio owns the power
8 plants; is that correct?

9 A. Yes.

10 MR. PAHUTSKI: So for clarity, Mr. Small,
11 when you refer to "DE-Ohio," you'll be referring to
12 the legal entity that provides generation,
13 transmission, and distribution services to retail
14 residential --

15 MR. SMALL: Customers.

16 MR. PAHUTSKI: -- yeah, commercial,
17 industrial customers.

18 MR. SMALL: Correct.

19 Q. That's clear?

20 A. Yes. For now it's clear. I'm sure it
21 will get fuzzy again.

22 Q. All right. Are there people at DE-Ohio
23 that you deal with regarding generation since you
24 seem to be on the generation side of things?

1 A. Yes.

2 Q. And who are those individuals?

3 A. Curtis Davis. The power plant managers.

4 Q. He's one of them?

5 A. He --

6 Q. Or is he over all of them?

7 A. Over all of them, and then they have
8 power plant managers that I deal with.

9 Q. And you deal with them because you're
10 doing -- your function is to provide logistics and
11 also purchasing of inputs for those plants; is that
12 correct?

13 A. Yeah, and then I monetize the outputs
14 and -- yeah.

15 Q. Could you describe "monetize the
16 outputs"?

17 A. Sell power, excess power.

18 Q. Excess power generated that isn't needed
19 by DE-Ohio's customers. I'm just trying to define
20 what "excess power" is.

21 A. Yeah, power that's not committed under
22 the MBSSO.

23 Q. Okay. And, I'm sorry, what's your
24 relationship with Mr. Davis?

1 A. We're peers.

2 Q. Peers? And you're providing shared
3 services to DE-Ohio in that capacity.

4 A. I don't understand the question.

5 Q. You're kind of a technical expert for
6 them; is that the gist of your job?

7 A. Yes. Technical expert.

8 Q. Do you know who Mr. Davis reports to?

9 A. He reports to Tom O'Connor.

10 Q. Mr. O'Connor reports to Mr. Rogers.

11 A. Yes.

12 Q. Do you know who the president of DE-Ohio
13 is? I ask because I don't see a president in the
14 link -- in the chain that you just gave me.

15 A. Yeah, I think the president of DE-Ohio is
16 Sandra Meyer.

17 Q. Yes. Where does she fit into that chain?

18 A. She's not in that chain.

19 Q. Doesn't Mr. Curtis Davis, is he an
20 employee of DE-Ohio?

21 A. I don't believe so.

22 Q. Are all the people that you named Shared
23 Services people?

24 A. I believe so. I've got to be candid with

1 you, man, I barely know who I work for. I care who
2 pays my paycheck and I don't know, you know, I really
3 don't know, but I believe he is an employee of Duke
4 Energy Shared Services.

5 Q. Would you move back to Exhibit 2, it's in
6 your packet? It's a thick one.

7 A. Is this it?

8 Q. Yeah. Could you verify, is the
9 information on page 1 of -- you're looking at the
10 letter and I'm going to move to the application
11 itself, the form, which is also labeled page 1.
12 Could you verify the information on page 1? Is the
13 information correct there?

14 A. It is.

15 Q. Okay. Do you see the website address
16 there, cres.duke-energy.com?

17 A. Yes.

18 Q. When I go to that address, I reach an
19 invitation to contact DERS to buy five megawatts of
20 load individually or in aggregate accounts. Have you
21 been to that web address?

22 A. I have not.

23 Q. Do you know what happens if a user
24 provides a name, company, and e-mail address that's

1 requested on that form?

2 A. I don't.

3 Q. Do you have something on the order of
4 customer contact representatives -- and when I say
5 "you," I mean DERS, I realize that you have no
6 employees. But in the capacity of taking shared
7 employees from Duke Energy Shared Services is there
8 something like a customer contact that provides
9 services to DERS?

10 A. No. Not right now.

11 Q. Okay. Was there ever a person in that
12 capacity? The website invites a customer to contact
13 them. Was there ever anybody on the other side to
14 respond to that inquiry?

15 A. There are contacts for the company. I
16 mean, we fill out our annual report, Uma Nanjundan is
17 the contact person that's referenced on our -- and
18 you can call her and contact her at that number.

19 Q. And there's a telephone number listed on
20 the website; 800-920-5039. What happens if I call
21 that number?

22 MR. PAHUTSKI: Object; the question
23 assumes facts not established. We don't have the
24 website in front of us.

1 Q. What happens if I call the telephone
2 number that's on the website?

3 A. I don't know. I've never called it.

4 Q. DERS doesn't have an 800 number?

5 A. I've never called -- I've never called
6 the 800 number listed here, so I don't know what
7 happens.

8 Q. Do I understand -- do I understand your
9 answer that the only way to get ahold of DERS is to
10 contact the people listed on your certification
11 application? You mentioned Ms. -- this is a woman,
12 right? -- Nanjundan. That's a woman, right? That's
13 a woman.

14 A. Yes, it is a woman.

15 Q. Is she the contact person for DERS with
16 customers?

17 A. She's the contact person for Commission
18 Staff use.

19 Q. I know. That wasn't the question.

20 A. What was the question?

21 Q. Is she the contact person for customers?

22 A. Customers could contact her, but . . .

23 Q. Is there anybody else?

24 A. I don't know.

1 Q. Let's take this back in time a little
2 bit. Do you know whether there's ever been a person
3 that contacted a customer -- in a customer contact
4 capacity at DERS or its predecessor, CRS?

5 A. Yes.

6 Q. And who would that person be?

7 A. Jason Barker.

8 Q. When was he serving in that capacity?

9 A. I don't know.

10 Q. How do you know that Mr. Barker filled
11 that role?

12 A. How do I know he filled that role?

13 Q. Well, I mean, you came up with a name.

14 You just didn't come up with that --

15 A. I'm trying to --

16 Q. You must know Mr. Barker.

17 A. I do know Mr. Barker. I'm trying to
18 figure out how I knew that he was the contact. I
19 don't know how I knew that.

20 Q. And when did he stop being the contact?

21 A. I don't remember when he stopped being --
22 I presume when he left the company.

23 Q. When was that?

24 A. I don't know.

1 Q. Was it part of the merger situation?

2 A. I don't know. I believe it was before
3 the merger.

4 Q. And Mr. Barker worked with Shared
5 Services, again?

6 MR. PAHUTSKI: Could I ask you to repeat
7 that question? I'm sorry.

8 Q. Did Mr. Barker work for Shared Services?
9 And really what I mean is his paycheck was issued by
10 Shared Services.

11 A. I don't know who paid Jason.

12 Q. And are you saying that he filled that
13 capacity, but nobody replaced him when he left?

14 MR. PAHUTSKI: Objection; that
15 mischaracterizes the witness's testimony. He didn't
16 say --

17 MR. SMALL: It's a question.

18 A. I said I didn't know, I believe, and I'll
19 tell you the same thing, I don't know.

20 Q. Do you know who Kim Twele, T-w-e-l-e, is?

21 A. Kim Twele, yes, I do.

22 Q. And who is that?

23 A. She's a contract administrator.

24 Q. Is she still a contract administrator for

1 DERS?

2 A. Again, I believe she works for Duke
3 Energy Shared Services, but I'm not sure.

4 Q. She is providing services to DERS?

5 A. She or other contract administrators
6 would provide services to DERS --

7 Q. And what is --

8 A. -- if they need it.

9 Q. What does a contract administrator do?

10 A. Administers contracts.

11 Q. What does that mean?

12 A. I mean, we have enabling agreements with
13 counterparties, we have forms that need to be filled
14 out, and they will maintain those forms and submit
15 those forms, they'll -- I mean, that's basically what
16 they do.

17 Q. What is an enabling agreement?

18 A. An ISDA is an enabling agreement.

19 Q. I'm sorry, I didn't --

20 A. An ISDA.

21 Q. ISDA. What is an ISDA --

22 A. I believe it's the International Swap
23 Dealers Agreement.

24 Q. That's a trading agreement.

1 A. Yes. EEI is on --

2 Q. Are these agreements with DERS or some
3 other entity?

4 A. They could be for any of those entities.
5 You were asking me what a contract administrator did,
6 so I was trying to answer that. In the capacity --
7 again, I thought their capacity was a Duke Energy
8 Shared Service employee.

9 Q. Does DERS have any ISDA, I-S-D-A,
10 agreements?

11 A. Not to my knowledge.

12 Q. So those services would be provided to
13 one of the other companies.

14 A. Yeah.

15 Q. Okay. What does Miss Twele do for DERS?
16 I notice she's listed on Exhibit 2 --

17 A. Right.

18 Q. -- as the person who submitted this.
19 What capacity was she filling when she submitted
20 that? Is this one of the forms?

21 A. Yeah. This would be a form, sure.

22 Q. Okay. Who is -- you kind of jumped the
23 gun here. Who is Uma Nanjundan, or what are her
24 duties?

1 A. Right now she buys all of the natural gas
2 for our gas assets.

3 Q. And is that purchasing natural gas to be
4 burned by DE-Ohio's power plants?

5 A. Yes. She also in her capacity for DERS
6 did most of the work on the financial statements,
7 most of the heavy lifting on the financial
8 statements. She did structuring for various
9 transactions that the CRS has looked at in the past
10 and will likely do that kind of structuring for deals
11 that we'll look at in the future.

12 Q. What past deals are you referring to?

13 A. I'm sorry?

14 Q. I think you were referring to past deals
15 that then would be done again in the future.

16 A. Well, for example, I mean the DERS has
17 looked at participating in retail auctions in states
18 outside of Ohio. She did a lot of the heavy lifting
19 around the analysis. She probably -- she did a lot
20 of the historic pricing analysis to figure out what
21 our offer was going to be in those auctions.

22 She did analysis in the Illinois auction.
23 She, I believe, has done some analysis on other
24 utilities in Ohio about whether or not there was an

1 opportunity for us to use the CRS or DERS to
2 aggregate load in those jurisdictions.

3 Q. Has DERS participated in any auctions?

4 A. Have we participated or won any auctions?

5 Q. First, participation.

6 A. I believe so.

7 Q. Which ones?

8 A. I believe the New Jersey auction.

9 Q. The BGS auction?

10 A. Yeah. And I'm not sure if they did the
11 Illinois auction or not.

12 Q. And did the DERS, did it gain any
13 customers or any load through those auctions?

14 A. Not to -- no.

15 Q. Let's go on to Exhibit 4.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. Now, Exhibit 4 is a letter filed at the
18 Commission in the certificate case 04-1323, it's
19 dated August 8th, 2005, received by the Commission
20 August 9th, 2005. I see Mr. Barker listed there,
21 was he -- did he have Ms. Nanjundan's position before
22 her position?

23 A. No. Again, I mean, you had asked earlier
24 about the contact person for the --

1 Q. Yes.

2 A. -- for the CRS or for DERS, and I stated
3 that it was Jason Barker and, indeed, from this
4 document it appears to me that he indeed was that
5 person, and this person -- and he's -- effective
6 August 9th, 2005, says that Mr. John Deeds will
7 assume responsibility as the contact person for
8 Cinergy Retail Sales.

9 Q. Wasn't the contact person we just spoke
10 about, wasn't that Uma Nanjundan?

11 A. We talked about her being the contact
12 person for the Commission requests.

13 Q. I see.

14 A. I think there are various points of
15 contact, right? I mean, they could contact me as the
16 president, or they could contact the CEO, Tom
17 O'Connor.

18 Q. Let's go back to Exhibit 2.

19 MR. PAHUTSKI: Excuse me, exhibit which
20 number, Mr. Small?

21 Q. Exhibit 2.

22 A. That's the thick one?

23 Q. Yes. I'm looking at what's labeled page
24 2 of the form, it's the third page on your

1 attachment. Do you know why the Residential box is
2 marked on this form, and Commercial, Mercantile,
3 Industrial are not marked?

4 A. Yes.

5 Q. Why is that?

6 A. This is a change, right? And,
7 previously, we had selected the other boxes,
8 Commercial, Mercantile, and Industrial, and we didn't
9 select Residential, and this is a change to say that
10 we're going to include -- in the text of the letter
11 it says "This Application also includes the addition
12 of the Residential class under Section A-10." So
13 it's basically simply the CRS wants to do business
14 with residential customers.

15 Q. And the CRES we're referring to is DERS?

16 A. Yeah. I'm going to use those
17 interchangeably as you do.

18 Q. I've never used the term "CRES."

19 A. Whatever. Cinergy Retail Sales, right?

20 Q. Oh, I'm sorry. "CRES" means competitive
21 retail electric supplier.

22 A. Fair enough.

23 Q. So that's a little bit confusing.

24 A. Okay. Our CRS.

1 Q. Yes. Which is maybe the reason why we
2 should stick with DERS --

3 A. Okay.

4 Q. -- because it's easily distinguished from
5 that word that starts with a C. The world of
6 acronyms.

7 A. I didn't invent them.

8 Q. Has DERS provided any services to a
9 residential customer?

10 A. We have not.

11 Q. At any point in time?

12 A. No. I would say no, not to the best of
13 my knowledge.

14 Q. On the form it refers to Exhibit B-1 of
15 the form, not to be confused with our Exhibit 2 which
16 is what I've labeled it, Jurisdiction of Operations,
17 it's labeled as page 15 of the form. Are you there?

18 A. I believe so. Page 15?

19 Q. Yes.

20 A. Yep.

21 Q. And it references ". . . qualified to do
22 business in Ohio, Delaware, Illinois, and New
23 Jersey." I just want to make sure, are the
24 operations in those states, did you previously state

1 what those operations are, which is -- I believe you
2 said participation, but no customers in New Jersey,
3 and you didn't know whether there was participation
4 in the Illinois auction. Does that summarize the
5 operations in those jurisdictions?

6 A. Yeah. I mean, this exhibit says that we
7 are qualified to do business in Ohio, Delaware,
8 Illinois, and New Jersey.

9 Q. Right, and I'm asking what business you
10 actually do in those states.

11 A. We have no current business in those
12 states.

13 Q. No current customers?

14 A. No, sir.

15 Q. And no current revenues.

16 A. No, sir.

17 Q. Have you ever had customers -- ever had
18 any revenues? And when I say "you," I mean DERS, its
19 predecessor CRS.

20 A. I don't know.

21 Q. Could you, to the best of your knowledge,
22 could you give a history of DERS, that is landmarks
23 in its development and so forth? For instance, its
24 formation, when did that take place?

1 A. In 2003.

2 Q. I don't mean to disagree with you, could
3 it be January 2004?

4 A. I believe it was in 2003 is when it was
5 incorporated.

6 Q. Okay. Incorporation in Delaware.

7 A. Yeah.

8 In about 15 minutes I'm going to, or 10
9 minutes, so whenever you get to a point that you can
10 break, I'd like to take a break. A bio break.

11 Q. Understandable. We're approaching a
12 breaking point.

13 A. Okay.

14 Q. What was its first business operation or
15 attempt to make a business operation? For instance,
16 you mentioned the BGS auction. What was its first
17 auction?

18 A. I don't know. I mean, I assumed
19 responsibility for this organization in 2006, right?
20 So the history, I mean, I can tell you about
21 significant things in the history, but I don't know
22 when -- I can tell you why it was formed.

23 Q. I'm sorry?

24 A. I said I can tell you why it was formed.

1 Q. Okay. Why don't you tell me that.

2 A. It was formed because in Ohio, right, and
3 in other states, generation was being deregulated and
4 we needed a vehicle to participate in retail
5 auctions, and that was why this company was created.

6 Q. And when did it become -- when did CRS
7 become DERS? Presumably sometime after the April
8 2006 merger.

9 A. Indeed.

10 Q. And probably soon afterwards? Long
11 enough to make the name changes and that sort of
12 thing, correct?

13 A. Yeah.

14 Q. Summer of 2006, something like that?

15 A. I believe so.

16 MR. SMALL: Let's try Exhibit 6. There's
17 no Exhibit 5; I'm just going to live with that.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. SMALL: I'm just not going to use an
20 Exhibit 5. Just, there is no Exhibit 5. I don't
21 want to disrupt my numbering system.

22 Q. Mr. Deeds -- do you have Exhibit 6? And
23 have you ever visited the Duke Energy website showing
24 the list of certified suppliers?

1 A. I think I stumbled across it one time,
2 yeah.

3 Q. You notice that your company is listed
4 there in the third --

5 A. Yes.

6 Q. -- row. And it shows a C under Active
7 Marketing; do you see that?

8 A. Yes.

9 Q. Do you know what that designation means?
10 Is DERS engaged in some activity that would be
11 described as active marketing?

12 A. Could you repeat the question?

13 Q. Is DERS engaged in some activity that
14 would be described as active marketing?

15 A. I don't know.

16 Q. Do you know who provided the information
17 to Duke Energy --

18 A. I don't.

19 Q. -- regarding DERS?

20 A. I don't.

21 Q. Okay.

22 MR. SMALL: Let's take a break until 10
23 to, something like that.

24 (Recess taken.)

1 MR. SMALL: Let's go back on the record.

2 Q. At this point I'm going to ask you a few
3 people whose names have popped up from various
4 exhibits and filings at the PUCO having to do with
5 DERS. Can you tell me who Timothy Duff is? Do you
6 know Mr. Duff?

7 A. I've met Mr. Duff.

8 Q. And what position does he hold? Is he
9 currently an employee of Duke-affiliated companies?

10 A. Yes.

11 Q. And what position does he hold?

12 A. I have no idea.

13 Q. He works for -- I'm going to abbreviate
14 this, I'm going to say "Shared Services" every time I
15 mean Duke Energy Shared Services; do you understand
16 that?

17 A. (Witness nods head.)

18 Q. Okay. Does he work for Shared Services?

19 A. I don't know.

20 Q. How do you know Mr. Duff?

21 A. I've been at a couple of meetings with
22 Tim.

23 Q. What capacity did he serve in those
24 meetings?

1 A. To be honest with you, I don't remember.

2 Q. And you haven't had any business dealings
3 with him other than seeing him at meetings.

4 A. No, I've talked to -- I've talked to Tim
5 when I was reviewing some of these documents that we
6 were going to provide or have provided for you, I
7 talked to him about -- because his name will appear
8 on those. So I talked to him about his perspective
9 on those agreements in preparing for this deposition.

10 Q. Okay. And what was his connection with
11 the documents?

12 A. He prepared the option agreements that we
13 have with various counterparties, he prepared
14 Exhibits A and B, which is the strike and the option
15 premium.

16 Q. We are going to get to those agreements
17 in a little bit, but do you mean the payment by the
18 DERS?

19 A. Yeah, the premium that we pay for the
20 option that we have to put power to these customers.

21 Q. I apologize, did you say that he set
22 those?

23 A. No, he crafted -- he wrote the exhibits.

24 Q. He wrote the exhibits. And do you know

1 that from conversations that you've had with him, or
2 is his name on some documents, or --

3 A. A conversation that I had with him.

4 Q. How did you know to speak with him in the
5 first place regarding those agreements?

6 A. I don't remember.

7 Q. I take it that Mr. Duff has something to
8 do with DERS if he was crafting their agreements,
9 right?

10 A. Yeah. I mean, those agreements are
11 between the CRS and the counterparties, so he helped
12 write Exhibits A and B, right.

13 Q. Do you recall when your first contact
14 with Mr. Duff was?

15 A. No.

16 Q. When was your last contact with him?

17 A. Two days ago.

18 Q. And that was regarding the --

19 A. It was in preparation for this
20 deposition.

21 Q. Had he helped to identify documents to be
22 produced here?

23 A. I don't know.

24 Q. Have you ever had any telephone

1 conversations or e-mail traffic with Mr. Duff? Any
2 other communications other than personal?

3 MR. PAHUTSKI: Objection; that question
4 mischaracterizes Mr. Whitlock's testimony.
5 Mr. Whitlock never said that he had communications
6 regarding his personal matters with Mr. Duff.

7 MR. SMALL: Personal matters? I didn't
8 mention any personal matters.

9 A. Anyway --

10 MR. PAHUTSKI: Could you repeat the
11 question?

12 (Question read.)

13 MR. SMALL: When I said "personal," I
14 mean head to head, not --

15 MR. PAHUTSKI: Person to person.

16 MR. SMALL: Yeah.

17 MR. PAHUTSKI: Okay.

18 A. I would say -- repeat the question again,
19 sorry.

20 (Question read.)

21 A. Yes.

22 Q. And what were those communications over?

23 A. I don't remember.

24 Q. Did they have anything to do with the

1 agreements?

2 A. I just told you about a conversation that
3 I had with him about these agreements in preparing
4 for this deposition.

5 Q. And that would be a telephone
6 conversation.

7 A. Yeah.

8 Q. Okay.

9 A. Yes.

10 Q. Did you call him, or did he call you?

11 A. I called him.

12 Q. How did you know to call him?

13 MR. PAHUTSKI: Objection; asked and
14 answered.

15 Q. Who else did you have contact with
16 regarding the documents that were prepared for today?

17 A. I talked to some accountants.

18 Q. Please, names if you have them.

19 A. Talked to Mark Krabbe.

20 Q. He's an accountant?

21 A. Yes, sir.

22 I talked to Brian Savoy, his boss.

23 Q. You said his boss?

24 A. Uh-huh.

1 I talked to Uma Nanjundan. And, again,
2 these conversations are all in preparation, right?
3 Because I was trying to get the history of the CRS
4 and these people were all involved and I'd seen their
5 names on documents.

6 Q. For instance, the documents we've been
7 looking at that have been filed at the Commission?

8 A. Yeah. So I didn't -- so I talked to Uma
9 and I believe she's the one that told me, when I was
10 talking about the option agreements, that I should
11 call Timothy, but I don't -- Tim Duff, but I don't
12 recollect who specifically told me.

13 Q. Okay. What did your contact with
14 Mr. Mark Krabbe amount to? What did you discuss?

15 A. I asked him about the financial
16 statements. I asked him if I could see the trial
17 balances for the company off the ledger so that I
18 could verify -- so that I could have an understanding
19 of the financials of the company.

20 Q. Okay. Are those financial agreements in
21 the materials or provided?

22 MR. PAHUTSKI: Objection. I think you've
23 characterized them as "financial agreements."

24 THE WITNESS: I'm talking about the --

1 MR. SMALL: "Financial statements" are I
2 think his words.

3 Q. I'm referring to whatever financial
4 statements you just responded.

5 A. No; what I was talking about there was
6 the 2005 annual report that we submitted that's a
7 matter of public record --

8 Q. Okay.

9 A. -- already, so that's what I was talking
10 to him about.

11 Q. Okay.

12 A. I don't know if they're in these
13 documents, I don't think they are, but it's public
14 record.

15 Q. It's upcoming.

16 A. I'm sorry?

17 Q. It's upcoming. I have it in my stack.

18 A. Okay.

19 Q. What transpired between you and Mr. Brian
20 Savoy?

21 A. I talked to Brian to see if Mark Krabbe
22 was the guy to talk to. I assumed that it was and I
23 went to Brian, his boss, to make sure that that was
24 the right individual.

1 Q. And he confirmed that.

2 A. Yes.

3 Q. And what transpired between you and Uma
4 Nanjundan?

5 A. I asked -- again, I was trying to get
6 historical perspective about the agreements that we
7 were producing here and her historical knowledge of
8 activities that the CRS participated in -- that DERS
9 has participated in, and particularly these
10 agreements.

11 Q. Okay. What information did she provide?
12 What did you get out of your contact with her?

13 A. A historical perspective, that she did
14 the structuring, she did a lot of the structuring.
15 She was the structurer that was involved in pricing
16 the option agreements and doing the analysis of the
17 loads for the customers that we have these option
18 agreements with.

19 Q. What do you mean by "pricing option
20 agreements"?

21 A. Valuing the options. There's a value for
22 those options and she helped determine the value of
23 the options.

24 Q. Are those reported in some documents,

1 that valuation?

2 A. I don't know.

3 Q. Did you have any conversation with her
4 about that?

5 A. I didn't.

6 MR. SMALL: Does counsel know whether
7 those are included in the documents? I believe
8 they're covered by --

9 MR. PAHUTSKI: I don't know.

10 MR. SMALL: Let's go off the record.

11 (Discussion held off the record.)

12 MR. PAHUTSKI: Just seeking
13 clarification, when you say "those documents," which
14 are you referring to, Mr. Small?

15 MR. SMALL: I understand from the witness
16 that Uma Nanjundan did some valuation and, you know,
17 presumably that valuation that Mr. Whitlock just
18 referred to is committed to paper in some fashion.

19 MR. PAHUTSKI: I think Mr. Whitlock
20 testified that he wasn't sure whether or not there
21 was paper.

22 MR. SMALL: I know.

23 MR. PAHUTSKI: I don't know whether or
24 not that is in this stack.

1 MR. SMALL: Because it appears to be
2 covered by the subpoena, could you check on that for
3 me?

4 MR. PAHUTSKI: Well, you have the
5 documents as well, you can determine whether they're
6 in there. I'd have to look through these, you know,
7 one by one to determine whether that is in there.

8 MR. SMALL: Okay. Tried to shortcut the
9 process a little bit by just asking, but we can look
10 through the documents.

11 Q. (By Mr. Small) Okay, Mr. Whitlock, do you
12 know Jim Gainer?

13 A. I've met Jim.

14 Q. Okay. Have you had dealings with
15 Mr. Gainer in connection with DERS business?

16 MR. PAHUTSKI: Objection. Mr. Gainer is
17 and has been acting as an attorney with the company
18 and any of those communications would be subject to
19 attorney-client privilege.

20 MR. SMALL: Well, I asked the witness who
21 his attorneys were, and Mr. Gainer's name never came
22 up.

23 MR. PAHUTSKI: The witness also said
24 there are perhaps other attorneys working for DESS

1 who have represented DERS from time to time and,
2 nevertheless, even if -- well, although Mr. Whitlock
3 did not name Jim Gainer as one of the attorneys
4 representing DERS, Mr. Gainer may have had
5 communications with Mr. Whitlock regarding other
6 matters.

7 I'm instructing the witness not to answer
8 that question.

9 MR. COLBERT: DE-Ohio would also point
10 out that Mr. Gainer is an attorney of record in these
11 proceedings.

12 Q. Why don't we ask the witness, the
13 president of DERS, have you sought legal advice from
14 Mr. Gainer?

15 A. No.

16 Q. So your contacts with him have been
17 nonlegal.

18 MR. PAHUTSKI: Objection. Whether or not
19 he's had contact with Mr. Gainer is still the subject
20 of attorney-client privilege.

21 Instruct the witness not to answer that
22 question.

23 MR. SMALL: I'll mark this as a matter
24 that might have to be inquired into in a repeat of

1 this deposition to the extent that Mr. Gainer's not
2 serving as an attorney, the company isn't able to --
3 isn't entitled to claim an attorney-client privilege,
4 and I believe the witness just said he didn't deal
5 with him in a legal capacity.

6 MR. PAHUTSKI: Mr. Gainer has in the past
7 served as an attorney. I don't know whether he is
8 now or not serving as an attorney for the company,
9 but he has, and any of those past communications
10 would be subject to attorney-client privilege.

11 MR. SMALL: Just for the record, although
12 this is a delicate matter, I think we could delve
13 into Mr. Gainer's activities that are legal and
14 separate it from his nonlegal capacities, but I'll
15 move on with this.

16 Q. You recognize the title Managing Director
17 of Commercial Asset Management? That's you, right?

18 A. No.

19 Q. No? Do you recognize that title?

20 A. I don't.

21 Q. Okay. How about you mentioned Vice
22 President and General Counsel of the Commercial
23 Business, I think you identified that as Jeff Gollomp
24 previously. Is there a position like that today?

1 A. Not to my knowledge.

2 Q. Do you recognize the title Director of
3 Regulatory Initiatives?

4 A. No.

5 Q. Vice President of Trading?

6 A. Yes.

7 Q. Is that Mr. -- would that be Mr. Farley?

8 A. I was Vice President of Trading at one
9 time.

10 Q. At one time?

11 A. Yeah.

12 Q. Okay.

13 A. I don't know if we covered that in the
14 previous question, but you can add it.

15 Q. I recall you saying that you had a couple
16 positions in the trading capacity.

17 A. Okay.

18 Q. Who succeeded you in that position?

19 A. Kevin Paley.

20 Q. Kevin Paley? Could you spell that last
21 name?

22 A. P-a-l-e-y.

23 Q. Is that Mr. Paley currently employed as a
24 vice president of Trading?

1 A. No.

2 Q. Okay. Was he succeeded by somebody?

3 A. Yes.

4 Q. Who was that?

5 A. I believe it was Jack Farley.

6 Q. Okay. And has Mr. Farley left that
7 position?

8 A. He's no longer an employee of the Duke
9 companies.

10 Q. Did somebody succeed him in that
11 position?

12 A. We sold the business.

13 Q. Now, at various times, and we're going to
14 have a look at an option agreement later on, but
15 you've referred to option agreements. Generally
16 speaking, option agreements have provided for
17 payments by DERS to certain other parties to those
18 option agreements; is that correct?

19 (CONFIDENTIAL PORTION EXCERPTED.)

20

21

22

23 Q. Okay.

24 MR. PAHUTSKI: We need to designate that

1 answer as confidential under the confidentiality
2 agreements we signed with the parties here and the
3 protective agreements signed with OCC here today.

4 MR. SMALL: Okay.

5 MR. PAHUTSKI: And a continuing
6 designation, again, any discussion regarding the
7 option agreements or the predecessors will be
8 designated confidential material, among other things.

9 MR. SMALL: We will have a series of
10 questions here, so I'll consider all these questions
11 to be covered by the confidentiality agreement.

12 MR. PAHUTSKI: Thank you, Mr. Small.

13 MR. COLBERT: If I might, will everything
14 from this point on be confidential, Mr. Small, or is
15 there a way that we could do it so that we aren't
16 going back and forth to the public part of the
17 transcript?

18 MR. SMALL: I can't tell. I just don't
19 know. We're getting towards that part where sections
20 of it will be, but I can't completely anticipate how
21 you will treat or how Mr. Pahutski will treat
22 matters.

23 MR. COLBERT: I was trying to make it
24 easy for the court reporter.

1 MR. SMALL: I tried to segregate this to
2 the end of the deposition, and we are getting to that
3 portion, but there may or may not be sections that
4 are still confidential coming up.

5 MR. PAHUTSKI: Let's try this: We shall
6 on the record designate all of this material to be
7 confidential from this point forward unless -- until,
8 Mr. Small, you identify something that perhaps is
9 not, as you've framed the question, doesn't pertain.

10 MR. SMALL: Okay.

11 MR. PAHUTSKI: That way --

12 MR. SMALL: I have something coming up
13 and I will ask him again.

14 MR. BOEHM: Excuse me, can I interrupt
15 and ask a housekeeping question I guess? Maybe it's
16 in one of the subpoenas or answers. How long do you
17 folks expect to go this afternoon, Jeff?

18 MR. SMALL: I think it may be around
19 6 o'clock.

20 MR. BOEHM: 6 o'clock.

21 MR. SMALL: The court reporter was asked
22 to be here until 6 o'clock.

23 MR. BOEHM: Okay. If we're not finished
24 today, do you plan to continue to tomorrow or the --

1 MS. JOHNSON: No, this is not a
2 continuing deposition.

3 MR. SMALL: I think we'll be able to
4 complete this today.

5 MR. BOEHM: Okay.

6 (CONFIDENTIAL PORTION EXCERPTED.)
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(OPEN RECORD.)

MR. SMALL: Well, I've kind of overshoot
the mark, but the real question is are we out of
confidential information? I'm not sure we are.
We're looking at -- we're looking at public
documents.

1 MR. PAHUTSKI: Yeah, I would consider
2 these public documents not to be confidential.

3 MR. SMALL: This is not part of the
4 confidential record.

5 (OPEN RECORD.)

6 Q. Do you see the four employees on that
7 sheet?

8 A. I do.

9 Q. Do you know why it says four employees?

10 A. I assume because they had four employees.

11 Q. At what point in time? And the "they,"
12 this is DERS; is that correct?

13 A. Correct. I'm saying at this time, right,
14 I don't know when this document was prepared, but at
15 the time of this document there were four employees
16 in DERS, or at this time Cinergy Retail Sales.

17 Q. The date I've got on this for docketing
18 in the PUCO is October 3rd, 2006, not very long
19 ago.

20 A. Okay. This is a D&B report, and I'm
21 saying I don't know the date of this D&B report --

22 Q. I see.

23 A. -- right? I mean, this D&B report, you
24 can print it out of D&B. This looks like a printout

1 off of their website, indeed in the lower left-hand
2 corner is dnb.com/scripts. I have no idea when this
3 was done.

4 Q. Is it also -- it's possible that it's
5 incorrect as well? It's not an internal document.

6 A. It's a D&B document.

7 Q. Okay. I'm asking whether it could be
8 incorrect.

9 A. I don't know.

10 Q. Do you know if there's ever been an
11 employee of DERS?

12 A. We talked about some of the employees.
13 Jason Barker was an employee of DERS.

14 Q. Actually employed by DERS?

15 A. No. Wait a second. Sorry, he was a
16 Shared Service employee.

17 Q. Right.

18 A. Well, I don't know.

19 Q. Okay. You don't know of any employees of
20 DERS.

21 A. No.

22 Q. And annual sales, I think from our
23 previous questions and answers we established DERS
24 has had zero revenues. Do you know where the 300

1 comes from?

2 A. No idea.

3 Q. All right. Let's go of the record.

4 (Recess taken.)

5 MR. SMALL: Let's go back on the record.

6 I have a couple of -- in order to best segment the
7 record into confidential and nonconfidential, I have
8 a couple of follow-ups on things I'm pretty sure are
9 nonconfidential and then we'll go into the
10 agreements, okay?

11 Q. Previously you made a statement, well,
12 actually you made statements about not knowing
13 certain people's functions in the Duke-affiliate
14 structure. Regarding this separation of the
15 generation and the -- what did you call it, the wires
16 function? Does that sound fair?

17 A. I don't remember. Go ahead and ask your
18 question.

19 Q. The generation from the nongeneration
20 portion of it. How do you know what side of the
21 business somebody's on so you know whether you can
22 talk to them or not?

23 A. Well, let me say this, right, I mean the
24 people that I talk to -- I sit on a very wide-open

1 floor that is restricted, has restricted access,
2 there are places that I just can't go, so I know
3 those places that I can't go because my card key, you
4 know, alarms will go off and people will -- so that's
5 one way I know.

6 The other way I know is that, you know,
7 I'm trying to -- that's primarily the way. But the
8 people that I deal with day in and day out, I have
9 the ability to deal with. And if I have to have
10 conversations with somebody where I have a question,
11 I'll typically consult an attorney to find out that
12 I'm not going to get in the briar patch of code of
13 conduct.

14 Q. That's when you're going further afield?

15 A. If I had a question, I would ask. So I
16 would say I generally know who I can talk to. If I
17 have a question about who I can talk to, I will ask
18 someone.

19 Q. There's no guide, there's no book,
20 there's no --

21 A. There's all kinds of training on code of
22 conduct, right? I mean, I --

23 Q. That's not what I meant. I meant books
24 that would identify a person with one side of the

1 business or another.

2 A. I don't want to say there isn't. If
3 there is, I haven't seen it.

4 Q. Okay. I have a couple of other names
5 that I would like to know if you can identify these
6 individuals. Jim Ziolkowski, Z-i-o-l-k-o-w-s-k-i.

7 A. I've seen his name on some of the
8 documents that we produced for you on the payments.

9 Q. Yes.

10 A. So I recognize his name.

11 Q. He's labeled Rate Services, does that
12 tell you where he works?

13 A. Sounds like Rate Services.

14 Q. What is Rate Services?

15 A. I don't know.

16 Q. I thought you might know better than I
17 do, but okay.

18 You don't know him personally.

19 A. No.

20 Q. Okay. And you don't know whether he has
21 any connection or not with the DERS.

22 A. Well, he has a connection in that he
23 processes the payments, right, but --

24 Q. Processes payments?

1 A. Well, I mean, let's go to one of the
2 documents. I thought I saw his name on some of these
3 documents.

4 I might have been mistaken.

5 Q. But you previously described people who
6 were able to -- I believe we had some questions and
7 answers regarding the authorization of certain
8 payments --

9 A. Right.

10 Q. -- and you discussed there would be
11 certain people, accounting type people, processing
12 type people, who could authorize those payments or
13 who process those payments, and are you saying
14 Mr. Ziolkowski is one of those people?

15 A. I seem to remember seeing a document with
16 his name on it and it was processing a payment.

17 Q. Okay.

18 MR. SMALL: I believe this is the time.

19 MR. PAHUTSKI: Thank you.

20 Mr. Small has indicated that we're going
21 to begin a discussion of the option contract or the
22 contracts that DERS may or may not be entered into,
23 and we consider all of the answers to these questions
24 and perhaps the questions themselves, to the degree

1 they reference substantive matters with respect to
2 those contracts, to be confidential under the
3 confidentiality agreement signed by the parties today
4 and the protective agreement signed by OCC and DERS
5 today.

6 MR. SMALL: And, therefore, this portion
7 will be marked as Confidential in the transcript.

8 MR. PAHUTSKI: Yes. Thank you.

9 (CONFIDENTIAL PORTION EXCERPTED.)
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4 (OPEN RECORD.)

5 MR. SMALL: Mr. Whitlock, my questions
6 are at an end, and I thank you very much for your
7 cooperation. I know it's been a little bit long and
8 that my voice has been kind of hard to hear.

9 MR. PAHUTSKI: While we're still on the
10 record, we do not waive signature. We would like to
11 get a copy of the transcript and review that, have an
12 opportunity to review it and sign the transcript, so
13 while on the record we would like that to be
14 recorded.

15 (Thereupon, the deposition concluded at
16 6:06 p.m.)

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1 State of Ohio :
2 County of _____ : SS:

3 I, Charles R. Whitlock, do hereby certify that
4 I have read the foregoing transcript of my deposition
5 given on Tuesday, January 9, 2007; that together with
6 the correction page attached hereto noting changes in
7 form or substance, if any, it is true and correct.

6

7

Charles R. Whitlock

8

9 I do hereby certify that the foregoing
10 transcript of the deposition of Charles R. Whitlock
11 was submitted to the witness for reading and signing;
12 that after he had stated to the undersigned Notary
13 Public that he had read and examined his deposition,
14 he signed the same in my presence on the _____ day
15 of _____, 2007.

13

14

Notary Public

15

16 My commission expires _____, _____.

17

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1 CERTIFICATE

2 State of Ohio :
3 County of Franklin : SS:

4 I, Maria DiPaolo Jones, Notary Public in and
5 for the State of Ohio, duly commissioned and
6 qualified, certify that the within named Charles R.
7 Whitlock was by me duly sworn to testify to the whole
8 truth in the cause aforesaid; that the testimony was
9 taken down by me in stenotypy in the presence of said
witness, afterwards transcribed upon a computer; that
the foregoing is a true and correct transcript of the
testimony given by said witness taken at the time and
place in the foregoing caption specified and
completed without adjournment.

10 I certify that I am not a relative, employee,
11 or attorney of any of the parties hereto, or of any
12 attorney or counsel employed by the parties, or
financially interested in the action.

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my seal of office at Columbus, Ohio,
on this 11th day of January, 2007.

15 Maria DiPaolo Jones
16 Maria DiPaolo Jones, Registered
17 Diplomate Reporter, CRR and
Notary Public in and for the
State of Ohio.

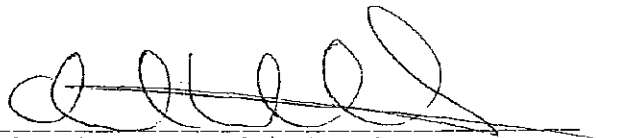
18 My commission expires June 19, 2011.

19 (MDJ-2046)

20 - -

1 State of Ohio :
2 County of HAMILTON : SS:

3 I, Charles R. Whitlock, do hereby certify that
4 I have read the foregoing transcript of my deposition
5 given on Tuesday, January 9, 2007; that together with
6 the correction page attached hereto noting changes in
7 form or substance, if any, it is true and correct.

8 
Charles R. Whitlock

9 I do hereby certify that the foregoing
10 transcript of the deposition of Charles R. Whitlock
11 was submitted to the witness for reading and signing;
12 that after he had stated to the undersigned Notary
13 Public that he had read and examined his deposition,
14 he signed the same in my presence on the 30th day
15 of JANUARY, 2007.

16 
Notary Public

17 My commission expires



18 **ANITA M. SCHAFER**
19 Notary Public, State of Ohio
20 My Commission Expires
21 November 4, 2008
22
23
24

ERRATA SHEET


Please do not write on the transcript. Any changes in form or substance you desire to make should be entered upon this sheet.

TO THE REPORTER:

I have read the entire transcript of my deposition taken on the 9th day of January, 2007, or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the signature page and authorize you to attach the same to the original transcript.

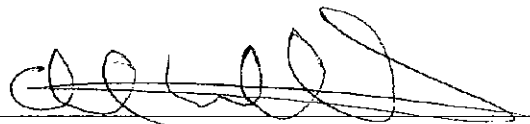
Page	Line	Change	Reason
2	3	Americas, LLC should be Shared Services, Inc.	correction
2	5	Americas should be Retail Sales, LLC	correction
2	9	Delete hyphen (-) should be Duke Energy Ohio, Inc.	correction
2	10.5	Corporation should be Shared Services, Inc.	correction
2	12.5	Corporation should be Retail Sales, LLC	correction
14	3	Mr. Gollomp assumed new responsibilities with the merger of Cinergy Corp. and Duke Energy Corporation on April 3, 2006 at which time he was no longer Vice President General Counsel of the Commercial Business Unit	clarification
21	5	I also hold positions in Brownsville Power I, LLC, Duke Energy Marketing America, LLC, Duke Energy Ohio, Inc. and Ohio River Valley Propane, LLC	correction
21	18	and should be of	grammar
26	4	like should be approximately	correction
32	19	Delete the first yes. No, this list is not up to date. Yes, there have been changes since the document was filed.	Clarification of 2 questions asked.

Date JANUARY 30, 2007 Signature



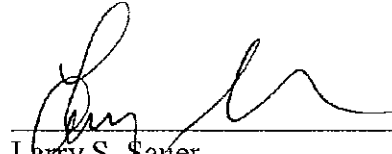
Page	Line	Change	Reason
41	7	Group Vice President should be Group Executive & President Commercial Businesses	correction
49	4	Shared Services should be Business Services, LLC. The plant managers and Mr. Rogers are employees of Duke Energy Shared Services, Inc. Mr. O'Connor is an employee of Duke Energy Business Services, LLC	correction
51	14	it should be she	grammer
78	13-18	Move to Confidential Portion. Confidential Cover Sheet Date should be January 9	correction
90	18	wholesale should be retail	correction
117	11	further should be for the	spelling
121	22	No should be yes	correction

Date JANUARY 30, 2007 Signature



CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Deposition Transcript and Exhibits of Charles R. Whitlock, Public Version*, was served electronically (according to the Hearing Examiner's electronic service list) the 13th day of February, 2007.



Larry S. Sauer
Assistant Consumers' Counsel

EXHIBIT

06-1085- EL-UNC
06-1069- EL-UNC
06-1068- EL-UNC
06-986- EL-UNC
05-725- EL-UNC
05-724- EL-UNC
03-2081- EL-ATA
03-2080- EL-ATA
03-2079- EL-ATA
03-93- EL-ATA

were prefiled and can be located with the

Date Filed

- 1 - Subpoena Duces Tecum
- 2 - 8/2/06 letter from Twele;
Certification Application
- 3 - 4/19/05 letter from Barker
- 4 - 8/8/05 letter from Barker
- 7 - DERS Renewal Application

Oct 3, 2006



List of Certified Suppliers - Electric

Listed below are Certified Suppliers (i.e., suppliers that have been certified by the Public Utilities Commission of Ohio and approved by Duke Energy) who have applied to serve customers within the Duke Energy service area.

	Active	Not Active
Approved Certified Supplier Name, Address, Web Address and E-mail	Marketing	Not Marketing
Constellation NewEnergy 250 E. Broad St. Suite 1400 Columbus, OH 43215 (888) 638-2210 http://www.newenergy.com/ohio@newenergy.com	©	
Dominion Retail, Inc. P. O. Box 298 Pittsburgh, PA 15230 (866) 645-9809 http://www.dom.com/	®	
Duke Energy Retail Sales 139 E. Fourth Street - EA 503 Cincinnati, OH 45202 (800) 920-5039 http://www.cres.cinergy.com/cres@cinergy.com	©	
FirstEnergy Solutions Corp 395 Ghent Rd. Akron, OH 44333 (888) 254-9227 http://www.firstenergysolutions.com/first_choice@firstenergysolutions.com	©	
MidAmerican Energy Company Unregulated Retail Services Attn: Customer Service P. O. Box 4350 Davenport, IA 52808 Attn: Customer Service - RCS (800) 432-8574 http://www.midamericanchoice.com/customer-service-retail@midamerican.com	©	
Strategic Energy, L.L.C. 2 Gateway Center Pittsburgh, PA 15222		

DEPOSITION
EXHIBIT
#6

WHITLOCK

(888) 925-9115 http://www.sel.com/ sel@sel.com	©	
WPS Energy Services, Inc. 1716 Lawrence Drive DePere, WI 54115 (800) 397-8072 http://www.wpsenergy.com/ cincinnati@wpsenergy.com	©	

Certified Suppliers can have a status of:

- **Active** - Certified Supplier is currently accepting new customers
- **Not Active** - Certified Supplier approved to participate in Duke Energy's Electric Customer Choice Program, but is not currently marketing to customers

The symbols of ® and © indicate the customer groups a supplier has enrolled or is currently targeting with its marketing efforts.

® = Supplier is serving residential customers

© = Supplier is serving commercial and industrial customers

✓ = Not Active

Note: A Certified Supplier listed as Active may or may not be currently enrolling new customers. Customers will always need to contact the Certified Supplier directly to verify that new customers are being accepted. This list is subject to change as suppliers are added or deleted and does not constitute an endorsement by Duke Energy of any listed supplier.

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