

FILE

# VORYS

Vorys, Sater, Seymour and Pease LLP  
Legal Counsel

52 East Gay St.  
PO Box 1008  
Columbus, OH 43216-1008  
614.464.6400 | [www.vorys.com](http://www.vorys.com)  
Founded 1909

Stephen M. Howard  
Direct Dial (614) 464-5401  
Facsimile (614) 719-4772  
E-Mail - [smhoward@vorys.com](mailto:smhoward@vorys.com)

February 23, 2009

Ms. Renée Jenkins, Secretary  
Public Utilities Commission of Ohio  
180 East Broad Street, 13th Floor  
Columbus, OH 43215

RECEIVED-DOCKETING DIV  
2009 FEB 23 PM 2:04  
PUCO

Re: Case No. 08-709-EL-AIR, et al  
January 29, 2009 Deposition of Richard Harrell and OCTA Deposition 19

Dear Ms. Jenkins:

Please find attached a copy of the public version of the January 29, 2009 Deposition of Richard Harrell along with OCTA Deposition Exhibit No. 19 in Case No. 08-709-EL-AIR, et al. OCTA Deposition Exhibit No. 20 was designated by Duke Energy Ohio as "Confidential Proprietary Trade Secrets". Pages 55, line 1 through page 74, line 16 related to OCTA Deposition Exhibit 20. Both OCTA Deposition Exhibit 20 and page 55, line 1 through page 74, line 16 of the Deposition Transcript have been redacted, but have been submitted under seal.

A Motion for Protective Order seeking confidential treatment of the redacted information has been filed. No signature page or errata sheet was available from the court reporter.

Sincerely yours,



Stephen M. Howard  
Attorneys for The Ohio Cable Telecommunication  
Association

SMH/bkwjm  
Enclosure

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician TM Date Processed 2/23/2009

Columbus | Washington | Cleveland | Cincinnati | Alexandria | Akron | Houston

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke ) Case No.  
Energy Ohio, Inc., for an Increase in ) 08-709-EL-AIR  
Electric Distribution Rates. )

In the Matter of the Application of Duke ) Case No.  
Energy Ohio, Inc., for a Tariff Approval. ) 08-710-EL-ATA

In the Matter of the Application of Duke ) Case No.  
Energy Ohio, Inc., for Approval to Change ) 08-711-EL-AAM  
Accounting Methods. )

In the Matter of the Application of ) Case No.  
Cincinnati Gas & Electric Company for ) 06-718-EL-ATA  
Approval of its Rider BDP, Backup )  
Delivery Point.

DEPOSITION OF: RICHARD HARRELL

January 29, 2009

9:30 a.m.

REPORTED BY:

Kristina L. Pedersen

1           Deposition of RICHARD HARRELL, a witness herein,  
2 taken by the Intervenor as upon cross-examination  
3 pursuant to the Ohio Rules of Civil Procedure and notice  
4 and stipulations hereinafter set forth, at the offices of  
5 Vorys, Sater, Seymour and Pease, LLP, 221 East Fourth  
6 Street, Suite 2000, Cincinnati, Ohio, at 9:30 a.m. on  
7 Thursday, January 29, 2009, before Kristina Pedersen,  
8 Court Reporter and Notary Public within and for the State  
9 of Ohio.

10                               - - -  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 APPEARANCES:

2 On behalf of Duke Energy:

3 AMY B. SPILLER, ESQ.

4 Duke Energy

5 139 East Fourth Street

6 Cincinnati, Ohio 45202

7

8 On behalf of Intervenor, Ohio Cable  
Telecommunications Association:

9

GARDNER F. GILLESPIE, ESQ.

10

Hogan & Hartson, LLP

11

Columbia Square

12

555 Thirteenth Street, NW

13

Washington, D.C. 20004

14

15

16

17

18

19

20

21

22

23

24

## S T I P U L A T I O N S

1  
2 It is stipulated by and between counsel for the  
3 respective parties that the deposition of RICHARD HARRELL  
4 may be taken at this time by the Intervenor as upon  
5 cross-examination pursuant to the Ohio Rules of Civil  
6 Procedure and pursuant to notice and agreement of counsel  
7 as to the time and place; that the deposition may be  
8 taken in stenotype by the court reporter-notary public  
9 and transcribed by her out of the presence of the  
10 witness; that the deposition is to be submitted to the  
11 deponent for his examination and signature, and that the  
12 signature may be affixed outside the presence of the  
13 notary public-court reporter.

14 - - -  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

I N D E X

1

2 WITNESS:

3 RICHARD HARRELL

4

Page

5 By Mr. Gillespie:

6

6

7

E X H I B I T S

8

Marked

9 Deposition Exhibit Number OCTA 19

8

10 Deposition Exhibit Number OCTA 20

54

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1                   RICHARD HARRELL,  
2 of lawful age, as having been duly sworn, as hereinafter  
3 certified, was examined and testified as follows:

4                   CROSS-EXAMINATION

5 BY MR. GILLESPIE:

6 Q.           Good morning, Mr. Harrell.

7 A.           Good morning.

8 Q.           We've previously met. I'm Gardner Gillespie  
9               representing the Ohio Cable Telecommunications  
10              Association. Would you state your formal name  
11              and address for the record, please.

12 A.          Richard D. Harrell. 10001 Cedarwood Drive,  
13              Union, Kentucky 41091.

14 Q.          Okay. Are you on any medication today?

15 A.          No.

16 Q.          Okay. Is there any reason why we can't rely on  
17              your testimony as being complete, accurate, and  
18              truthful?

19 A.          No.

20 Q.          Have you had your deposition taken before?

21 A.          Yes.

22 Q.          Okay. Well, let me just reacquaint you with the  
23              procedure here. I'm going to ask you a question.  
24              I'm going to need a verbal response, not a

1           nodding of the head or a shaking of the head or  
2           an uh-huh or something like that, all right?

3 A.       Okay.

4 Q.       Please wait until I've finished the question so  
5           that your counsel has an opportunity to object  
6           and so we have a clear record, all right?

7           If you answer I will assume that you've  
8           understood the question. So if you don't  
9           understand it, tell me that, ask me to rephrase  
10          it or something, and we'll get to a question that  
11          is capable of being answered, okay?

12 A.      Yes.

13 Q.      What did you say?

14 A.      Yes.

15 Q.      Okay. I'm going to refer to Duke Energy Ohio and  
16          its predecessor including CG & E as Duke  
17          generally, okay?

18 A.      Yes.

19 Q.      What did you do to prepare for the deposition?

20 A.      I met with Amy Spiller, our counsel. And I  
21          pulled up an old e-mail just to look what the  
22          summary numbers were from the audit.

23 Q.      Okay. Did you talk to anybody other than your  
24          counsel?



1 A. Yes.

2 Q. In preparation for the deposition?

3 A. Yes.

4 Q. Who?

5 A. I spoke with Rick Schuler of our joint use group  
6 to reacquaint myself with how the records were  
7 maintained for joint use rec- -- what the data --  
8 how we maintain the joint use records.

9 Q. Okay. And when you say the joint use records,  
10 what do you mean?

11 A. The database -- the joint use record database, my  
12 question to Rick Schuler was exactly where was  
13 the information for attachees to our poles  
14 maintained.

15 Q. Okay.

16 A. And he reminded me that there's a database for  
17 that.

18 (Whereupon, Deposition Exhibit Number  
19 OCTA 19 was marked for identification.)

20 Q. Okay. We've marked for identification as notice  
21 of rescheduling deposition of Duke Energy Ohio,  
22 which was received by the PUCO on January 13.  
23 We've marked this as Exhibit Number OCTA 19.

24 Now, are you prepared to testify regarding

1 subjects No. 5 and 19 and 20?

2 MS. SPILLER: With the caveat that 19  
3 was modified. That concerns all audits  
4 through 200- -- from 2000 through 2008.

5 MR. GILLESPIE: And the modification is  
6 that he'd be prepared to talk about the audit  
7 that took place in the 2004 to 2006 period  
8 concerning Time Warner Cable, right?

9 MS. SPILLER: Correct, that was the  
10 modification.

11 MR. GILLESPIE: Okay.

12 THE WITNESS: And what number; what did  
13 you say, 19 through...

14 MR. GILLESPIE: 20.

15 MS. SPILLER: 20. 19 and 20.

16 THE WITNESS: 20.

17 A. Yes.

18 Q. Okay. Mr. Harrell, what's your position with  
19 Duke Energy?

20 A. I'm the general manager for gas field services  
21 and system operations.

22 Q. And what are your responsibilities generally?

23 A. I oversee the maintenance and construction of gas  
24 facilities in the Cincinnati and northern

1 Kentucky area and the propane production plants  
2 that also supplement our natural gas supplies.

3 Q. Do you have responsibilities for overhead  
4 electrical plant?

5 A. Not in this new job. I changed jobs four months  
6 ago.

7 Q. Okay. Prior to your taking your new  
8 responsibilities four months ago what was your  
9 position and what were your responsibilities?

10 A. I was the general manager for distribution design  
11 for Duke Midwest field operations and oversaw all  
12 new customer and small project design work for  
13 new distribution facilities.

14 Q. Okay. In that regard you had some responsibility  
15 for overhead electrical plant?

16 A. Yes.

17 Q. Okay. And how long did you have that job?

18 A. I had the job from the completion of the Duke  
19 merger, which I believe was April 1, 2006.

20 Q. And prior to April 1 of 2006 were you employed by  
21 CG & E?

22 A. I was employed by Cinergy Corporation.

23 Q. Okay. And what was your position and  
24 responsibilities there?

1 A. I was the manager for customer projects.

2 Q. And in that job did you have responsibility for  
3 overhead electrical plant?

4 A. In that job I had responsibility for the  
5 engineering resources that did primarily new  
6 customer construction work.

7 Q. What does that mean, new customer construction  
8 work?

9 A. If you were to build a subdivision, a strip mall,  
10 a new home, the engineers that did work for  
11 what's going to basically be new -- brand new  
12 poles, brand new facilities worked in the  
13 customer project group.

14 Q. When plant was extended to a new subdivision,  
15 that would have been your responsibility?

16 A. In some cases the extension of plant was a  
17 responsibility of the customer projects group.  
18 There was a demarcation line that the larger work  
19 was part of a centralized distribution projects  
20 group.

21 Q. Okay. And how long have you been employed by  
22 Duke or Cinergy?

23 A. My utility employment goes back to 1979. As -- I  
24 started as an engineer, two-year technical

1 engineer. So I -- it's 30 years as of  
2 January 15, 2009.

3 Q. Okay. Does Duke require that cable operators pay  
4 to make poles ready for cable operators'  
5 attachment?

6 A. Yes.

7 Q. Okay. And as part of that responsibility of the  
8 cable operators, the cable operators sometimes  
9 have to pay for the installation of new poles?

10 A. Yes.

11 Q. And when new poles are required, is there an  
12 estimated cost for the installation of the new  
13 pole that Duke has?

14 A. Yes.

15 Q. And are those estimates maintained on a computer  
16 database?

17 A. Yes.

18 Q. And can you tell me more about that computer  
19 database?

20 A. Duke Energy uses a tool, an engineering tool,  
21 that is a job estimating tool. And within Duke  
22 Energy it's commonly referred to as JET. The  
23 tool, the computer tool, maintains a database  
24 that houses information that's used to produce

1           job estimates.

2           That database contains information about  
3           material cost. It contains information about  
4           labor hours it typically takes to do a piece of  
5           work. It maintains and houses labor dollars,  
6           labor rates, for workers that would do the work.

7 Q.       Does it also maintain information on loadings?

8 A.       It adds -- it adds the loadings as given to the  
9           engineering group that maintains the JET tool  
10          that information provided to financial folks on  
11          an annual basis.

12 Q.      So is that included in the JET tool though --

13 A.      Yes.

14 Q.      -- annually? So if a cable operator wanted to  
15          attach to an existing 45-foot pole and there was  
16          not space on that pole for the cable operator to  
17          attach even if you transferred facilities around  
18          on the pole, the -- then Duke could make an  
19          estimate as to what it would cost to install a  
20          new pole in place of the existing pole, a new  
21          50-foot pole for example, correct?

22 A.      That is correct.

23 Q.      And that's how the JET system would be accessed  
24          and used?

1 A. That is an example of how it would be used.

2 Q. Okay. And could you plug into the computations  
3 made by JET a simple request for the installation  
4 of the pole as opposed to transferring facilities  
5 from the existing pole to the new pole, for  
6 example?

7 A. Within JET there is ability to do functions as  
8 install new, retire completely, and transfer  
9 facilities.

10 Q. And those can be accessed separately, correct?

11 A. They can be added to the work order agenda  
12 separately, yes.

13 Q. So in my example of a change-out of a 45-foot  
14 pole and replacement with a 50-foot pole, you  
15 could ask JET to estimate the cost of purchasing  
16 and installing a new 50-foot pole?

17 A. Yes.

18 Q. All right. And so the JET system would then come  
19 out with an estimated cost?

20 A. Yes.

21 Q. All right. And if a cable operator then went  
22 ahead with that make-ready project, would there  
23 be -- would the cable operator be billed that  
24 estimated cost or would the cable -- would there

1           be some true up?

2 A.       There -- there's usually a -- this is usually an  
3       estimate. And there's usually a true up against  
4       actual costs on the work order.

5 Q.       But the estimates are based on the company's  
6       experience with actual costs, correct?

7 A.       That's correct.

8 Q.       So if I asked you to tell me what it would cost  
9       Duke under the JET estimating system to install a  
10       new 30-foot pole, you could tell me through the  
11       JET system, right?

12 A.      I could give you the estimate that the JET system  
13       would produce.

14 Q.      Right.

15 A.      Yes.

16 Q.      And could do the same for a 35-foot pole and a  
17       40-foot pole and a 45-foot pole and so on?

18 A.      Yes.

19 Q.      Okay. Do you have a general range of what it  
20       cost Duke to install a 40-foot pole?

21 A.      Yeah, I've -- I've not kept abreast of the  
22       current charges on those individual pieces of  
23       property. So my -- I'd be really giving a wide  
24       guess if I threw a number out there.



1 Q. Well, I don't want a guess. But to the extent  
2 that you can give a range or an estimate, that  
3 would be acceptable.

4 MS. SPILLER: Again, understanding that  
5 you're not here to speculate.

6 A. Yeah, I -- I've not looked at a specific work  
7 order for just a specific pole in a long time.

8 Q. Okay. It's all right. I'll get you or somebody  
9 to do it for me after the deposition, I hope.

10 Let's turn to the 2004 through 2006 audit.

11 Do you recall when that audit began?

12 A. I do not know when the date of the audit began.

13 It was underway when I come to have that  
14 department reorganized under me with the Duke  
15 merger.

16 Q. And that was in April of '06?

17 A. Yes.

18 Q. Okay. Who decided that an audit was necessary?

19 A. The department head of the central projects group  
20 supervisor made the decision to undertake the  
21 pole audits.

22 Q. And when was that decision made; do you know?

23 A. I do not know when he made that decision. It had  
24 been going on before I came to the department.

1 Q. And who was the head of the central projects  
2 group?

3 A. A person by the name of Richard Hoff.

4 Q. Okay. And he's no longer with the company,  
5 correct?

6 A. Correct.

7 Q. Do you know why the audit was undertaken?

8 A. The audit was undertaken to account for contacts  
9 that were being found through routine engineering  
10 work that were previously not known and the  
11 observance through routine engineering work of  
12 National Electric Safety Code violations.

13 Q. And how do you come to this bit of knowledge?

14 A. That was relayed to me by Richard Hoff prior to  
15 his retirement.

16 Q. Okay. Are you aware that prior to the audit  
17 being initiated there was a dispute that had  
18 arisen between Duke and Time Warner Cable  
19 regarding construction by Duke and its affiliate  
20 Current of a BPL system in Cincinnati?

21 MS. SPILLER: I'm going to object to  
22 the relevance. I think that has to do with a  
23 matter that's now being mediated before the  
24 Commission.

1 MR. GILLESPIE: You can answer the  
2 question.

3 MS. SPILLER: Go ahead, if you know.

4 THE WITNESS: Would you repeat that  
5 again?

6 MR. GILLESPIE: Read back, please.

7 (The requested portion of the record  
8 was read by the reporter.)

9 MS. SPILLER: Again, renew my  
10 objection.

11 A. No, I was not.

12 Q. Are you aware that Duke had -- well, let's put it  
13 this way. Do you know whether Duke had an  
14 ownership interest in the BPL system that was  
15 being constructed with Current?

16 MS. SPILLER: Again, object to the  
17 relevancy. Go ahead.

18 A. Yes, I was aware of a business interest, becoming  
19 aware of that sometime in 200- -- late 2006.

20 Q. I'm sorry, what was -- you became aware of it in  
21 late 2006?

22 A. Yes.

23 Q. Do you know when the business arrangement was  
24 entered into?

1 MS. SPILLER: Again, object to the  
2 relevancy. Go ahead.

3 A. No, I do not.

4 Q. Okay. Are you aware that Time Warner Cable had  
5 pointed out to Duke that Duke or Current had  
6 created violations of the National Electrical  
7 Safety Code and it put Time Warner Cable's  
8 attachments into violations in many instances?

9 MS. SPILLER: Again, object to the  
10 relevancy. Go ahead.

11 A. No, I was not.

12 Q. You don't know anything about that?

13 A. That -- repeat the question again?

14 (The requested portion of the record  
15 was read by the reporter.)

16 MS. SPILLER: Again, renew my  
17 objection.

18 MR. GILLESPIE: Let me just make sure  
19 the question is right. I thought I said National  
20 Electrical Safety Code. That's the way it should  
21 read.

22 A. No, I was not.

23 Q. Okay. Who conducted the audit?

24 A. The audit was conducted by contractors that were

1 hired on a -- because there was a limited  
2 contract, a temporary basis to perform the audit.

3 Q. What company?

4 A. I do not know what company they came from.

5 Q. Do you know what directions or instructions were  
6 given to the auditors?

7 A. I do not know the specifics of the instructions  
8 that were given to the auditors.

9 Q. Do you know whether there were any instructions  
10 that were given in writing to the auditors?

11 A. I know -- I know the auditors used the violations  
12 description sheet that also contained the  
13 violation codes as their guide for what to record  
14 as they did the audit.

15 Q. And who prepared the violation codes?

16 A. I believe Richard Hoff and his staff prepared it.

17 Q. Okay. And this was a list of things that the  
18 auditors were to look for?

19 A. Yes.

20 Q. Some of which were related to the National  
21 Electrical Safety Code and some of which were  
22 not; is that right?

23 A. I know -- I believe they were all related to  
24 National Electrical Safety Code, but I am not

- 1           sure of that.
- 2 Q.       Okay. When was the last time you reviewed that
- 3           document?
- 4 A.       Probably at least a year ago.
- 5 Q.       Okay. Do you know whether there was written
- 6           correspondence or e-mails between the auditors
- 7           and Duke about the audit?
- 8 A.       Between the Duke auditors?
- 9 Q.       Between the auditors and Duke about the audit; do
- 10          you understand the question?
- 11 A.       No. The -- who aud- -- who auditors? What
- 12          auditors?
- 13 Q.       Well, I'm talking about correspondence between
- 14          the contractors who did the audit --
- 15 A.       Okay.
- 16 Q.       -- and Duke personnel that were responsible for
- 17          the audit or that were handling the audit for
- 18          Duke.
- 19 A.       I do not know of any electron- -- you said
- 20          cor- -- e-mail correspondence?
- 21 Q.       Or paper correspondence.
- 22 A.       I do not know of any correspondence between the
- 23          contractors and Duke.
- 24 Q.       Have you looked to see whether you -- whether

1 Duke has in its files any paper correspondence or  
2 in its electronic files any e-mails concerning  
3 the audit?

4 A. Not specifically for contractors to Duke, no.

5 Q. Have you looked for other electronic or paper  
6 information concerning the audit?

7 A. I had went looking for information as it  
8 pertained to the original questions and  
9 interrogatory that Amy Spiller had provided me to  
10 accumulate.

11 Q. Okay. And did you locate some documentation?

12 MS. SPILLER: Gardner, as I indicated  
13 in correspondence we are reviewing that for  
14 information that is responsive and relevant. And  
15 I believe I indicated to you that we would  
16 supplement that response.

17 MR. GILLESPIE: Well, I thought I was  
18 going to get that information on Monday. I  
19 thought from -- I thought Dianne Kuhnell told me  
20 that this information was going to be available  
21 on Monday. What you're saying is you're now  
22 still looking, but you --

23 MS. SPILLER: Gardner, it's maps and  
24 spreadsheets. And it isn't anything that we can

1 turn around in a day.

2 MR. GILLESPIE: Well, just so the  
3 record is clear, I mean, that discovery question  
4 has been out there since, I think, the 23rd of  
5 December at least. But what you're saying is  
6 that the company is still looking for that  
7 documentation responsive to the discovery  
8 request?

9 MS. SPILLER: Correct.

10 BY MR. GILLESPIE:

11 Q. Okay. In connection with that discovery request  
12 have you looked through Duke's records to see if  
13 there is correspondence either electronic or in  
14 writing about the audit?

15 A. I assembled the doc- -- the electronic documents  
16 that we had that referenced the audit, which was  
17 a large number, and provided those to our  
18 counsel. I did not specifically review every  
19 document.

20 Q. These documents are in the form of spreadsheets?

21 A. It's -- yeah, there's many spreadsheets.

22 Q. Does the information also include correspondence  
23 and e-mails?

24 A. There are electronic messages in the files.



1 Q. When were those turned over; when did you pull  
2 those documents yourself?

3 A. I'm not sure. It was after Christmas. But I  
4 don't know the date.

5 Q. Sometime between Christmas and New Year's?

6 A. No, it was after New Year's.

7 Q. Just give me an approximation as to how long  
8 after New Year's; any idea?

9 MS. SPILLER: If you know.

10 A. I believe it was the second week of January.

11 Q. Okay. Now, can you tell me how the audit was  
12 conducted by the auditors; in other words, did  
13 they ride by looking at the plant from their  
14 trucks; do you know?

15 A. I do not know how they physically did the audit.

16 Q. Do you know whether they took any measurements?

17 A. I do know some measurements were taken.

18 Q. How many measurements were taken; do you have any  
19 idea?

20 A. No, I do not.

21 Q. How do you know some measurements were taken?

22 A. It was told to me that in instances where they  
23 could not make a judgment on the clearance, they  
24 would measure those locations.

1 Q. Now, who told you that?

2 A. Richard Hoff.

3 Q. Now, let me just make sure that -- Mr. Hoff is  
4 not here, but in terms of your memory of this  
5 discussion, did Mr. Hoff tell you that originally  
6 the plan was that where there were questions  
7 where the auditors found potential clearance  
8 issues or separations issues that Duke was going  
9 to do a ride-out to look at those and actually do  
10 the measurements?

11 MS. SPILLER: I'm going to object to  
12 the extent it misstates his answer.

13 MR. GILLESPIE: I'm not trying to  
14 misstate his answer.

15 MS. SPILLER: Well, you're --

16 MR. GILLESPIE: This is another  
17 question. Do you understand the question?

18 THE WITNESS: No, I do not. Can you  
19 repeat it again for me?

20 MR. GILLESPIE: Yes.

21 Q. Do you know whether Mr. Hoff originally plans to  
22 have Duke conduct its own ride-out after the  
23 audit to do measurements where the auditors had  
24 made preliminary determinations that there was a

1 clearance or separation issue?

2 A. When you say audit, you're saying the contractors  
3 we hired to do the survey; is that correct?

4 Q. When I say auditor?

5 A. Yes.

6 Q. Yes, I'm talking about the contractors.

7 A. The contractors?

8 Q. Yes.

9 A. I'm sorry. I'm still not sure I understand the  
10 question.

11 Q. Well, you said that you -- I believe you  
12 testified that you recall Mr. Hoff saying that  
13 where the contractors could not make a  
14 determination about the separations or clearances  
15 that they would measure?

16 A. Yes.

17 Q. Now, that's not my understanding of the audit.  
18 So I'm just trying to be sure that your  
19 recollection is clear of that. Are you sure that  
20 it was not Duke that was going to go out and do  
21 measurements because the auditors were going to  
22 be looking at these matters from their trucks?

23 MS. SPILLER: Just note my objection  
24 and that Mr. Hoff is here to testify from his

1 recollection and not to debate your understanding  
2 of the audit.

3 MR. GILLESPIE: Mr. Harrell is here to  
4 testify. Mr. Hoff is not here to testify.

5 MS. SPILLER: I'm sorry. Mr. Harrell.

6 MR. GILLESPIE: That's the problem. I  
7 understand. I'm just asking for his  
8 recollection.

9 A. My recollection is the conversation was we  
10 measured for violations where we couldn't make  
11 judgment calls.

12 Q. Okay.

13 A. The "we" could be the contractors that were  
14 performing the work or a tech that was reviewing  
15 the work.

16 Q. And is it your understanding that where there  
17 were questions about the spacing between service  
18 drops as to whether or not 12 inches was  
19 maintained that somebody went out and measured  
20 those?

21 A. Yes. That was one of the items that there were  
22 questions about clearances being maintained.

23 Q. But you don't have any personal knowledge as to  
24 whether or not Duke or the contractors actually

1 measured any of these clearances or separations  
2 violations; isn't that true?

3 A. I have no personal observation.

4 Q. Okay. Was there a contract that was entered into  
5 by the contractors with Duke?

6 A. I do not know if a contract was specifically  
7 entered in for that work.

8 Q. Were there any written instructions given to the  
9 auditors, the contractors, about measuring where  
10 situations were unclear?

11 A. I know of no written instructions besides the  
12 violation table that I described earlier.

13 Q. And what did the contractors charge to do this  
14 audit?

15 MS. SPILLER: I'm going to object to  
16 the relevancy. Go ahead, if you know.

17 A. I do not know what the hourly contractor rates  
18 were for an audit.

19 Q. Was it an hourly rate or was it a per pole rate?

20 MS. SPILLER: Again, objection. Go  
21 ahead.

22 A. It was an hourly rate.

23 Q. Was there any record of any measurement that was  
24 made by contractors of the clearances or

1           separations that they found?

2 A.       The records would be in the spreadsheets that  
3       were maintained on each pole location of the type  
4       of violation that was found.

5 Q.       Okay. And did those records reflect that the  
6       contractors made a measurement?

7 A.       I do not recall how the spreadsheet is columned  
8       and labeled.

9 Q.       Do you recall anything in that spreadsheet that  
10       gave the actual measurements taken -- any actual  
11       measurements taken?

12 A.      There is a notes field in one of the columns.  
13       And there are -- there is data or measurements  
14       numbers in those note fields.

15 Q.      Would those note fields primarily say less -- you  
16       know, less than 40 inches, things like that, or  
17       do they actually give a measured distance?

18 A.      The ones I recall were a measured distance.

19 Q.      Okay. Well, I'm handicapped because these are  
20       documents that have yet to be provided to me.

21               What company conducted the audit?

22               MS. SPILLER: Objection. Asked and  
23       answered.

24 A.      I do not -- I do not know what company they

1 contracted.

2 Q. Okay. Is it customary for Duke to hire  
3 contractors to do a job where there is no written  
4 contract?

5 MS. SPILLER: Object to the relevance.

6 Go ahead.

7 A. The -- Duke will hire contractors through  
8 Manpower-type agencies with contracts with those  
9 agencies.

10 Q. So it would be a contract with the agencies  
11 regarding the work to be performed and the monies  
12 to be paid?

13 A. If there's not a specific contract for a company  
14 or that individual, then the individual would  
15 have been payroll'd through a Manpower-type  
16 company.

17 Q. Well, I'm totally handicapped without having seen  
18 these documents, so -- do you know how the  
19 contractors determined who owned a pole; whether  
20 the pole was owned by Duke or Cincinnati Bell,  
21 for example?

22 A. The contractors had access to our records and  
23 access to Duke Energy employees that could tell  
24 them from our records who owned the pole.

1 Q. Okay. What records did they have access to?

2 A. They could look in our GIS system, which is the  
3 geographical -- is our graph- -- Geographic  
4 Information System, and see the poles and see  
5 some basic data on the poles.

6 Q. And that basic data would include the ownership?

7 A. Not in all cases.

8 Q. And the GIS system, what -- when you say they  
9 could look into the GIS system, did they have  
10 that GIS system with them?

11 A. No.

12 Q. So how would they access a GIS system?

13 A. They would regularly visit the office to return  
14 their maps and paper records that reported the  
15 field findings.

16 Q. Did they have paper maps that they took with them  
17 for the audit?

18 A. Yes.

19 Q. And did the paper maps indicate who owned the  
20 poles?

21 A. Not in all cases.

22 Q. Okay. Now, what do you mean by not in all cases?

23 A. In some instances the GIS system may show that it  
24 was a joint pole, but not indicate ownership in



1 terms of being a joint pole. In those instances  
2 they would have to get a Duke tech to look into  
3 the joint use records database and provide that  
4 information on joint ownership.

5 Q. And how would the tech locate that pole in the  
6 database, the joint records database?

7 A. They would use -- typically they use pole number.  
8 Poles are individually identified.

9 Q. To look at the -- to identify the pole number you  
10 would have to get out of your truck and go over  
11 to the pole and look at it; is that right?

12 A. That is one way to get the pole number.

13 Q. How else would you get the pole number?

14 A. The other way to get the pole number is you have  
15 a map. You may be able to get adjoining pole  
16 number and refer back to the record or look at  
17 the graph- -- again, this is a geographic system.  
18 You could visually look at the map and count the  
19 numbers of poles and where they belong and get  
20 the pole number that way.

21 Q. Well, let me make sure I understand you. There  
22 would be a map; some pole numbers are on the map,  
23 right?

24 A. (No response.)

1 Q. Is that right?

2 A. All pole numbers are available on the GIS system.

3 Q. But what about the maps that the contractors had?

4 A. I do not know the specific details of the maps  
5 that were provided to the inspectors.

6 Q. So you don't know whether they had pole numbers  
7 on them?

8 A. No, I do not know if they had pole numbers on  
9 them.

10 Q. And in order to tell the ownership of a pole  
11 you'd have to access the joint ownership  
12 database; is that right?

13 A. Someone would have to look at the joint ownership  
14 database.

15 Q. And to do that you'd have to have a pole number,  
16 right?

17 A. That is correct.

18 Q. And to have a pole number you'd either have to  
19 look at the pole or you'd have to have access to  
20 the GIS system, right?

21 A. Yes.

22 Q. Is that right?

23 A. Yes.

24 Q. Okay. Do you know whether the auditors went

1 through this process in all cases to determine  
2 who owned the poles?

3 A. The contractors, if they needed to determine  
4 ownership would -- again, would have to go to a  
5 tech to get that.

6 Q. Do you know whether they did that?

7 A. No.

8 Q. Okay. Do you know what the overall cost of the  
9 audit was on a per pole basis?

10 MS. SPILLER: Object to the relevance.  
11 Go ahead.

12 A. I do not know the overall cost.

13 Q. Does this sound right, there was something under  
14 \$3 a pole?

15 MS. SPILLER: Again, object to the  
16 relevance. Go ahead.

17 A. Based on my experience of previous pole contact  
18 audits that would be in the range.

19 Q. Do you know how the auditors determine whether an  
20 attachment on a pole was owned by Time Warner?

21 A. The same joint use database that maintains pole  
22 records for ownership maintains attachment  
23 information.

24 Q. Is this information on the GIS system?

1 A. No.

2 Q. So the joint use database is a database that is  
3 maintained by pole number --

4 A. Yes.

5 Q. -- is that right? And this shows who owns --  
6 this shows what Duke has recorded for who owns  
7 the pole and what third-party attachments would  
8 be on the pole?

9 A. Yes.

10 Q. What other information does it have?

11 A. I -- I'm not familiar with that database and  
12 never manipulated it myself.

13 Q. Okay. Did the auditors have the joint use  
14 database with them when they were in the field  
15 doing the audit?

16 A. No. They would not have the database with them.

17 Q. So in order to determine whether an attachment  
18 was owned by Time Warner, what would they have to  
19 do?

20 A. They would have to review their paper maps with a  
21 joint use tech to confirm who was attached to the  
22 pole they had just audited and how it reflected  
23 in the records.

24 Q. Okay. Just so I understand it. These paper maps

1           that the contractors had, who prepared those  
2           maps?

3 A.       They would have been printed by a Duke Energy  
4           technician.

5 Q.       And where did the information come from on the  
6           maps?

7 A.       It came from our GIS system.

8 Q.       So it would show the location of the poles in the  
9           streets from the GIS system; is that right?

10 A.      Yes.

11 Q.      But it would not contain this other information  
12           about pole ownership or third-party attachers,  
13           right, that would be maintained in the joint use  
14           database, correct?

15 A.      That is correct.

16 Q.      So to determine which third party was attached to  
17           a pole the auditors would have to first be in the  
18           field, look at the paper maps, locate that pole  
19           on a paper map, then talk to a joint use tech.  
20           And the joint use tech would then have to access  
21           the database -- joint use database to determine  
22           whether the attaching party was Time Warner or  
23           someone else; is that right?

24 A.      No, not -- not correctly.

1 Q. Okay. How did I -- how do I have that wrong?

2 A. The process would be -- we would typically talk  
3 to the other vendor.

4 Q. When you talk about the process, is this from  
5 your personal experience, or is this what you  
6 think they would have done?

7 A. This is from my personal experience.

8 Q. For this audit?

9 A. Yes.

10 Q. Okay.

11 A. We get indications of where a third-party  
12 attacher is by talking to the third-party  
13 attacher. I'm in this neighborhood, Wyoming, as  
14 an example.

15 Q. Now, when you say we or you're talking in the  
16 first person, are you referring to --

17 A. Duke Energy.

18 Q. Duke Energy. Are you talking about the  
19 contractors or are you talking about Duke Energy  
20 personnel that hired the contractors?

21 A. Duke Energy personnel.

22 Q. Okay. And this is the audit -- this is the 2005,  
23 2006 audit we're talking about, right?

24 A. Yes.

1 Q. Okay. Go ahead.

2 A. We would get information about where the  
3 third-party attachers' facilities are. We would  
4 produce maps from our system that show the  
5 location of our poles. And although I have not  
6 seen a map from this audit -- a field working map  
7 from this audit, in no case in my previous  
8 make-ready experience have I ever seen maps made  
9 that didn't have the pole number on it.

10 We would then take our maps, the information  
11 we got from third party about we are in this  
12 neighborhood. We would go out and find a  
13 starting point and follow the system out noting  
14 what we find as we follow the system out.

15 Q. Now, you're talking as if Duke Energy personnel  
16 were conducting this audit, right?

17 A. (No response.)

18 Q. Right?

19 A. Duke Energy personnel --

20 Q. Am I right in my question?

21 MS. SPILLER: Gardner, he's allowed to  
22 explain his answer.

23 MR. GILLESPIE: Well, that's fine. I  
24 just want to be sure I'm going to get --

1 MS. SPILLER: Well, if you --

2 MR. GILLESPIE: -- a yes or a no  
3 answer. And, of course, he can explain it.

4 MS. SPILLER: -- well, if you would  
5 allow him the opportunity to answer and not talk  
6 over him, he -- I think that's the appropriate  
7 thing to do. Which you may explain your answer.

8 THE WITNESS: Well, I -- ask your yes  
9 or no question and I'll give you a yes or no  
10 answer.

11 MS. SPILLER: But you may explain your  
12 answer, Rich.

13 THE WITNESS: Sure.

14 MR. GILLESPIE: But --

15 THE WITNESS: Can you have -- repeat  
16 the question again?

17 (The requested portion of the record  
18 was read by the reporter.)

19 A. Duke Energy is conducting the audit through its  
20 personnel and its contractors.

21 Q. Okay. Who went out into the field to look at the  
22 poles; were these contractors or were they Duke  
23 Energy personnel?

24 A. Contractors did principally most the review in



1 the field.

2 Q. Okay. So the contractors have paper maps  
3 available to them that in your experience  
4 elsewhere -- in other experience that you've had  
5 with Duke you believe those maps would have pole  
6 numbers on them, but you haven't seen these  
7 particular maps, right?

8 A. That is correct.

9 Q. Okay. And they would take these maps into the  
10 field and they would -- someone would have, you  
11 believe, called the third parties and try to find  
12 out what neighborhoods they were in so you'd have  
13 some idea of what third party might be there,  
14 right?

15 A. Yes.

16 Q. And then they would look to see what attachments  
17 were on the poles. And would they just assume  
18 that the attachments in that neighborhood were  
19 made by that third party or would they go back  
20 and check; do you know -- do you know whether  
21 they went back to check with the techs to access  
22 the joint use records?

23 A. I do not know if they went back and checked with  
24 the techs on the joint use records.

1 Q. Okay. Now, do you know how the contractors  
2 determine whether an attachment was authorized?

3 A. The findings of the contractors was reviewed by  
4 Duke Energy techs whereby they compared it to our  
5 joint use contact database.

6 Q. Okay. Now, does that mean that the contractors  
7 only determine that there was a third party on  
8 the pole, or did they make a determination as to  
9 which third party was on the pole in their view?

10 A. In most cases you can determine who the third  
11 party is because you have sequential attachments  
12 down the street. Attacher A here is usually also  
13 on this pole. And you can follow his wire and  
14 know it's the same. So once you determine on  
15 Pole A this attacher is on it, you -- it's the  
16 same wire going a mile, you know it's the same  
17 attacher.

18 Q. Okay.

19 A. Does that answer your question?

20 Q. I understand what you're saying. If you start --

21 A. If there was a --

22 Q. -- with the right attacher, you can follow that  
23 line out?

24 A. Correct.

1 Q. Okay.

2 A. Yes.

3 Q. So the contractors would make a determination as  
4 to that third party "X" was on this line of  
5 poles. And would they note that on the map?

6 A. Yes. Who the attacher was.

7 Q. So would the contractor make any initial  
8 determination as to whether or not that third  
9 party was authorized to be on a particular pole?

10 A. The contractors were not making the determination  
11 on whether that attachee should be on that pole  
12 or not.

13 Q. Okay. And that determination was made by  
14 techs -- by Duke techs?

15 A. That was made by review of the documents by Duke  
16 techs.

17 Q. Okay. Are all Duke drop poles numbered?

18 A. I do not believe all Duke drop poles are  
19 numbered.

20 Q. Some of them were simply noted as a "CC" when  
21 they were originally installed; is that right?

22 A. What's a "CC"?

23 Q. I don't know. Is that not your -- do you not  
24 know or is that not to your knowledge?

1 A. I'm not familiar with that terminology.

2 MR. GILLESPIE: Okay. Let's go off the  
3 record for a minute.

4 (A brief recess was taken.)

5 BY MR. GILLESPIE:

6 Q. Do you know whether Duke had ever counted  
7 third-party drop poles in an audit before this  
8 one -- excuse me, let me rephrase that.

9 Do you know whether Duke had ever counted  
10 third-party drop pole attachments in any audit  
11 prior to this one?

12 A. No, I do not.

13 Q. Do you recall that this audit started with  
14 Milford and then went on to other areas?

15 A. I do not know what area it started in.

16 Q. You don't know. Do you know whether Time Warner  
17 complained that the Milford audit was far off  
18 with respect to unauthorized attachments and that  
19 the auditors had misstated pole ownership and had  
20 misstated the ownership of the attachments and  
21 had counted drop poles which had not been counted  
22 previously and had misstated whether Time Warner  
23 Cable had obtained authorization for the  
24 attachments?

1 MS. SPILLER: I'm going to, one, object  
2 to the form and, two, object to the relevancy. I  
3 think this has to do with the dispute that's  
4 subject to mediation before the PUCO. Go ahead.  
5 You can answer.

6 THE WITNESS: Okay. I'm a little  
7 tired, so you're going to have to repeat that one  
8 for me again.

9 (The requested portion of the record  
10 was read by the reporter.)

11 MS. SPILLER: Again, renew my  
12 objection.

13 MR. GILLESPIE: You don't need to renew  
14 your objection after a question has been re-read.

15 MS. SPILLER: Well, I would prefer to.  
16 A. I do not know that Time Warner objected.

17 Q. You don't know anything about that?

18 A. No.

19 Q. Okay. Do you know whether Duke or the  
20 contractors made any effort to examine Time  
21 Warner's charges about the Milford audit?

22 MS. SPILLER: I would again object to  
23 the relevancy. Go ahead.

24 A. I do not know.

1 Q. Do you know whether Time Warner advised Duke that  
2 other phases of the audit were far off regarding  
3 unauthorized attachment counts?

4 MS. SPILLER: Again, objection. Go  
5 ahead.

6 A. I do not know that.

7 Q. Are you aware that Time Warner Cable asserted  
8 that it had randomly reviewed 351 alleged  
9 unauthorized attachments?

10 MS. SPILLER: Object to the relevance.  
11 Go ahead.

12 A. I did not know that.

13 Q. So are you not aware that Time Warner Cable  
14 asserted that of these 351 alleged unauthorized  
15 attachments that 43 had associated permit  
16 applications with them?

17 MS. SPILLER: Object to the relevance.  
18 Go ahead.

19 A. I do not know -- did not know that.

20 Q. So you don't know whether Duke made any efforts  
21 to determine whether or not Time Warner's charges  
22 regarding these randomly reviewed attachments are  
23 correct; is that right?

24 MS. SPILLER: Object to the relevance.

1 Go ahead.

2 A. I do not know that.

3 Q. Are you aware that Time Warner asserted that the  
4 same review showed that 45 of the attachments  
5 were either owned by another party or didn't  
6 exist?

7 MS. SPILLER: Object to the relevance.

8 Go ahead.

9 A. I do not know that.

10 Q. And you don't know whether Duke made any effort  
11 to examine his chart?

12 A. I do not --

13 MS. SPILLER: Object --

14 A. -- know that.

15 Q. Are you aware that Time Warner Cable asserted  
16 that 18 of those attachments were on poles  
17 identified as owned by Cincinnati Bell?

18 MS. SPILLER: Object to the relevance.

19 Go ahead.

20 A. I do not know.

21 Q. Okay. Are you aware that hundreds of the alleged  
22 unauthorized attachments in this audit involved  
23 instances where the auditors claim that Time  
24 Warner Cable's attachments occupied more than a

1 foot of space?

2 MS. SPILLER: Object to the form of the  
3 question, lack of foundation, and relevance. Go  
4 ahead.

5 THE WITNESS: I'm sorry, I'm a little  
6 tired. I didn't hear that.

7 (The requested portion of the record  
8 was read by the reporter.)

9 A. I know there was a dispute over occupation of  
10 more than a foot. I'm not familiar with the  
11 number.

12 Q. Okay. Are you aware that that dispute involved  
13 in part situations where Time Warner Cable's  
14 attachment was located more than one foot above  
15 the telephone attachment below?

16 MS. SPILLER: Object to the relevance.  
17 Go ahead.

18 A. No, I'm not familiar with that piece of dispute.

19 Q. Okay. Do you know what the basis is for claiming  
20 that there's more than one attachment where a  
21 cable attachment is located more than one foot  
22 above the telephone attachment?

23 THE WITNESS: Repeat it.

24 (The requested portion of the record



1                   was read by the reporter.)

2 A.           That dispute relates to the position of the cable  
3           and how much space it occupies or takes up on the  
4           pole that is not usable otherwise.

5 Q.           Is there any basis for charging for more than one  
6           attachment simply because Time Warner Cable's  
7           attachment is more than a foot above the  
8           telephone attachment?

9                   MS. SPILLER: Object. Lack of  
10           foundation. Go ahead.

11 A.           The principle of using more of the pole than  
12           required for the attachment and limiting the  
13           ability to add more attachments is the basis.

14 Q.           And so that would be the basis for charging for  
15           more than one attachment?

16 A.           Yes.

17 Q.           If Time Warner were located more than a foot  
18           above phone, if more space was needed on the  
19           pole, a Time Warner attachment could be relocated  
20           downward; isn't that correct, generally?

21 A.           In some cases Time Warner could be relocated  
22           downward.

23 Q.           Is there any basis in the tariff for charging for  
24           more than one attachment on any pole?

1 MS. SPILLER: I'm sorry, could you  
2 repeat the question?

3 Q. Is there any basis in Duke's existing tariff for  
4 charging Time Warner Cable, for example, for more  
5 than one attachment on any pole?

6 MS. SPILLER: I'm going to object to  
7 this question and questions concerning the tariff  
8 being posed to this witness. Go ahead, Rich, if  
9 you know.

10 A. I'm not familiar with the tariff.

11 Q. Okay. Are you aware that numerous of the  
12 attachments alleged to be unauthorized were on  
13 drop poles?

14 MS. SPILLER: Objection. Go ahead.

15 A. I'm aware that some number of unauthorized  
16 attachments was on drop poles.

17 Q. Do you know whether Time Warner Cable had been  
18 making attachments to drop poles for many years  
19 without further approval, without having these  
20 encountered as an attachment?

21 MS. SPILLER: I'm going to object.  
22 Assumes facts not in evidence. Go ahead.

23 A. I do not know that.

24 Q. Okay. Do you know whether the inventory

1           conducted by Duke in 2000 counted drop pole  
2           attachments?

3                   MS. SPILLER: I'm going to object.  
4           It's beyond the scope of this deposition. Go  
5           ahead, if you know.

6 A.       I do not know that.

7 Q.       Do you know whether the auditors in this case,  
8           the contractors, were instructed to treat as code  
9           violations situations where attachments had been  
10          made prior to a code provision having been  
11          adopted?

12 A.      (No response.)

13 Q.      Do you understand the question?

14 A.      I think I do.

15 Q.      Okay.

16                   MS. SPILLER: Well, make sure you do.

17                   THE WITNESS: Well, that's why I'm  
18          trying to -- one more time.

19                   (The requested portion of the record  
20          was read by the reporter.)

21 A.      The contractors doing the audit apply the current  
22          National Electrical Safety Code as they perform  
23          the audit.

24 Q.      Okay. Are you aware of NESC rule Oath 13B2 which

1 states, quote, Existing installations including  
2 maintenance replacements that currently comply  
3 with prior additions of the code need not be  
4 modified and comply with these rules except "A"  
5 as may be required for safety reasons by the  
6 administrative authority or "B" as required by  
7 Rule 202; are you familiar with that provision?

8 MS. SPILLER: I'm just going to object  
9 in that we don't have a copy of the written  
10 language that you're quoting from.

11 MR. GILLESPIE: Well, he's either  
12 familiar with it or he isn't.

13 THE WITNESS: I under- --

14 MS. SPILLER: Well, I don't know  
15 whether you've quoted the language correctly.

16 Q. Does that sound right?

17 MS. SPILLER: If you don't know without  
18 the benefit of the written document, this isn't  
19 here to test some -- your recollection verbatim  
20 of the code.

21 A. I know there's a provision, but I do not know  
22 the -- that specific language.

23 Q. You don't know the exact wording. But you're  
24 aware that there is basically a grandfather

1 provision for the National Electrical Safety  
2 Code, right?

3 A. Yes.

4 Q. And that if a facility is placed in accordance  
5 with the code at the time that it's -- at that  
6 time, that the facility is not considered to be  
7 in violation of the code simply because the code  
8 is later revised, correct?

9 MS. SPILLER: I'm going to object to  
10 the extent you're calling for a legal  
11 interpretation. Go ahead.

12 A. The grandfathering provision has a number of  
13 attached exceptions and explanations to it that  
14 can circumvent referencing a previous code  
15 attachment.

16 Q. And you know what those exceptions are?

17 A. I do not remember those exceptions.

18 Q. Do you know whether any of those exceptions would  
19 have applied to this particular audit?

20 A. I do not remember those exceptions.

21 Q. Okay. Do you know what instructions were given  
22 to the contractors about potential code  
23 violations by Duke for solely Duke facilities  
24 such as lack of guying or loose guys or lack of

1           guy guards or things like that?

2                       MS. SPILLER: I'm going to object.

3           This is completely beyond the scope of this rate  
4           case, the tariff at issue. This case isn't about  
5           Duke's maintenance of its own system.

6 A.       I do not know the specific guidelines the  
7           auditors were given referring to Duke facilities.

8 Q.       Do you know what instructions were given to the  
9           auditors about potential code violations made by  
10          the phone companies on the poles?

11                    MS. SPILLER: I'm going to again  
12          object. Go ahead, if you know.

13 A.       I do not know what the specific instructions were  
14          given to the contractors.

15 Q.       Would you agree that phones facilities are  
16          typically the lowest on the pole?

17 A.       Yes.

18 Q.       And would you agree that the telephone cables are  
19          typically the heaviest cables on the pole?

20 A.       No.

21 Q.       What cables are heavier than the typical  
22          telephone cables?

23 A.       There can be electrical conductors that are  
24          heavier than the telephone conductors on the

1 pole.

2 Q. Okay. Which are typically the heaviest, or can't  
3 you say?

4 A. I -- I'm -- I can't make a judgment call on that.

5 Q. All right. Would you recognize that it can be  
6 dangerous to have telephone cables hanging too  
7 low over streets?

8 MS. SPILLER: Object to the relevance.

9 Go ahead.

10 A. Yes.

11 Q. Did the auditors report any such situations  
12 having been located in the audit?

13 MS. SPILLER: Again, object to the  
14 relevance. Go ahead.

15 A. Again, I do not -- I do not have any -- I do not  
16 know what the auditors were advised in those  
17 situations.

18 MR. GILLESPIE: This is a response by  
19 Duke to a request for production of documents.  
20 It's entitled OCTA-POD-01-009 Confidential, a  
21 two-page document. I'd like it marked as Exhibit  
22 Number 20.

23 (Whereupon, Deposition Exhibit Number  
24 OCTA 20 was marked for identification.)

Page 55, line 1 through page 74, line 16 of the January 29, 2009 Deposition Transcript of Richard Harrell relate to OCTA Deposition Exhibit 20 which has been designated as "Confidential Proprietary Trade Secrets" by Duke Energy Ohio. These pages have been redacted but have been submitted under seal.



17 MR. GILLESPIE: Okay. I have no  
18 further questions, Mr. Harrell, of you at this  
19 time.

20 MS. SPILLER: We'll take signature,  
21 please.

22 (Deposition concluded at 11:55 a.m.)

23

24

A C K N O W L E D G E M E N T

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

STATE OF OHIO :  
COUNTY OF HAMILTON :

I, RICHARD HARRELL, have read the transcript of  
my testimony given under oath on January 29, 2009.

Having had the opportunity to note any necessary  
corrections of my testimony on the errata page, I hereby  
certify that the above-mentioned transcript is a true and  
complete record of my testimony.

---

RICHARD HARRELL

## C E R T I F I C A T E

1  
2 STATE OF OHIO :  
3 : SS  
4 COUNTY OF HAMILTON :

5 I, Kristina L. Pedersen, the undersigned, a duly  
6 qualified and commissioned notary public within and  
7 for the State of Ohio, do hereby certify that before  
8 the giving of his aforesaid deposition, the said RICHARD  
9 HARRELL was by me first duly sworn to depose the truth,  
10 the whole truth, and nothing but the truth; that the  
11 foregoing is a deposition given at said  
12 time and place by RICHARD HARRELL; that said deposition  
13 was taken in all respects pursuant to notice and  
14 agreement of counsel as to the time and place; that  
15 said deposition was taken by me in stenotypy and  
16 transcribed by computer-aided transcription under my  
17 supervision, and that the transcribed deposition is  
18 to be submitted to the witness for his examination and  
19 signature.

20 I further certify that I am neither a relative  
21 of nor attorney for any of the parties to this  
22 cause, nor relative of nor employee of any of their  
23 counsel, and have no interest whatsoever in the  
24 result of the action.

1           In witness whereof, I hereunto set my hand and  
2 official seal of office at Cincinnati, Ohio, this  
3 \_\_\_\_\_ day of \_\_\_\_\_, 2009.

4  
5  
6  
7  
8  
9  
10 My commission expires:  
    September 8, 2013

\_\_\_\_\_  
Kristina L. Pedersen  
Notary Public

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

RECEIVED-DOCKETING DIV  
2009 JAN 13 AM 10:05

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke  
Energy Ohio, Inc., for an Increase in Electric  
Distribution Rates. )  
) Case No. 08-709-EL-ATA

In the Matter of the Application of Duke  
Energy Ohio, Inc., for a Tariff Approval. )  
) Case No. 08-710-EL-ATA

In the Matter of the Application of Duke  
Energy Ohio, Inc., for Approval to Change  
Accounting Methods. )  
) Case No. 08-711-EL-AAM

In the Matter of the Application of Cincinnati  
Gas & Electric Company for Approval of Its  
Rider BDP, Backup Delivery Point. )  
) Case No. 06-718-EL-ATA

NOTICE OF RESCHEDULING OF DEPOSITION TO DUKE ENERGY OHIO

PLEASE TAKE NOTICE that pursuant to Rule 4901-1-21(f) of the Ohio  
Administrative Code, Intervenor The Ohio Cable Telecommunications Association ("the  
OCTA") will take the deposition of such representative(s) of Duke Energy Ohio ("Duke")  
who is (are) capable of responding fully to questions related to the subjects described in  
the "Subjects for Examination at Deposition" section set forth below before a person  
authorized to administer an oath at the offices of Vorys, Sater, Seymour and Pease LLP,  
221 East Fourth Street, Suite 2000, Atrium Two, Conference Room V, Cincinnati, Ohio  
45202, commencing at 9:00 a.m. on January 28, 2009, or such other date as is agreeable  
to Duke and the OCTA.

This Notice of Deposition supersedes the one filed on December 23, 2008 which  
scheduled a deposition for January 15, 2009. The January 15, 2009 deposition will not  
take place and will be rescheduled to January 28, 2009. If the deposition(s) are not



completed by January 28, they will resume on Thursday, January 29 at 10 A.M. at the same location.

A telephone bridge line will be set up for those who wish to participate by telephone. The call in number is 1-888-590-1240 with a participant code of 614-464-5401. The deposition will be recorded stenographically.

The subjects for examination are set forth below. Duke shall designate and produce for deposition a person or persons who is/are prepared to testify about those subjects. Duke should identify the person who is so prepared and set forth for each such person the matters on which that person will testify and shall provide such information to the OCTA at least five (5) business days before the deposition.

#### DEFINITIONS

1. The term "Duke" shall mean Duke Energy Ohio and all predecessors.
2. The term "Distribution Pole," when referring to a pole fully or partially owned by Duke, means a pole whose investment is contained within FERC Account 364 ("Account 364"), including drop and lift poles.

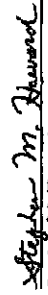
#### SUBJECTS FOR EXAMINATION AT DEPOSITION

1. The Accumulated Deferred Income Taxes reflected by Duke in its FERC filings since 2004.
2. Any communications services provided in Ohio by entities wholly or partly owned by Duke or Duke's affiliates, what services are offered, and the ownership and contractual relationships between such entities and DE-Ohio and its affiliates.
3. The rates, terms and conditions applied by Duke to the attachments of affiliated entities that attach to Duke's distribution poles.
4. Estimates of pole installation costs used by Duke for any purpose since 2000, including under its joint use agreements with public utilities.

5. Make-ready charges imposed by Duke on cable operators since 2000 for pole replacements.
6. Implementation and use of Duke's GIS system for poles, including any pole counts available through the GIS mapping system.
7. The number of distribution poles in Account 364 for each of the years 1993 through 2007, and Duke's records of these numbers of poles.
8. The conversion of Duke's records of distribution pole investment data and the number of poles from the prior system to the current Power Plant system.
9. Any recent or ongoing revisions made to Duke's continuing property records for Account 364 for the period 2000 through 2007.
10. Costs booked by Duke to Account 364 since 1993.
11. Any errors that Duke has discovered it has made in its continuing property records for Account 364 since 1999, when such errors were discovered by Duke and what Duke is doing or has done to correct those errors.
12. Any errors that Duke has discovered it has made in its FERC Form 1 reports for Account 364 since 1999, when such errors were discovered by Duke and what Duke is doing or has done to correct those errors.
13. Any errors that Duke has discovered it has made in its accounting for Account 108 (Accumulated Depreciation) regarding distribution poles since 1999, when such errors were discovered by Duke and what Duke is doing or has done to correct those errors.
14. Any errors that Duke has discovered it has made in its "Summary of CFR - adds and retires for account 364 for the years 2000 through 2007" (prepared by Duke in lieu of providing its continuing property records to OCTA as OCTA had requested, and provided to OCTA as Attach. OCTA-POD-01-004, Page 1 of 1), when such errors were discovered by Duke and what Duke is doing or has done to correct those errors.
15. The rates, terms and conditions applied by Duke to public utilities that attach to Duke's distribution poles.
16. The rates, terms and conditions applied by public utilities to Duke's attachment of facilities to the public utilities' distribution poles.
17. Procedures used by attaching parties, including public utilities, to share information about, or obtain permission for, attaching to Duke's drop poles.

18. Procedures used by Duke to share information about, or obtain permission related to, Duke's attaching to drop poles owned by others.
19. All audits/inspections/inventories, conducted on behalf of Duke in the period 2000 through 2008 related to attachments to Duke's poles.
20. Any unauthorized attachment penalties or penalties for safety violations imposed by Duke on other parties.
21. Duke's audit/inspection/inventory of Time Warner Cable's ("TWC's") attachments in 2000-2001.
22. Duke's billing for additional attachments found in its audit/inspection/inventory of TWC's attachments in 2000-2001.
23. Any adjustments made by Duke to its pole attachment records as a result of its audit/inspection/inventory of TWC's attachments in 2000-2001.
24. Duke's audit/inspection/inventory of Adelphia's attachments in 2004-2006.
25. Duke's audit/inspection/inventory of TWC's attachments in 2005-2006.
26. Duke's records of attachments by third parties to its poles.
27. Duke's practices and plans related to curing safety violations that Duke has created on its poles.
28. Duke's practices and plans related to assisting third party attachers to cure safety violations on Duke's poles.
29. Maintenance expenses booked to Account 593 in 2005-2007 and any unusual overhead plant maintenance expenses in that time period.
30. Duke's answers to OCTA Interrogatory Nos. 1-46.

Respectfully submitted,

  
Stephen M. Howard  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street, P.O. Box 1008  
Columbus, Ohio 43216-1008  
Tel: (614) 464-5401  
Fax: (614) 719-4772  
E-mail: smhoward@vorys.com



Gardner F. Gillespie  
Hogan & Hartson LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, D.C. 20004  
Tel: (202) 637-8796  
Fax: (202) 637-5910  
E-mail: [gf@hhlaw.com](mailto:gf@hhlaw.com)

*Attorneys for The Ohio Cable  
Telecommunications Association*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon the following persons via email, this 13th day of January, 2009.

Stephen M. Howard  
Stephen M. Howard

Paul Colbert, Esq.  
Rocco D'Aceanzo, Esq.  
Amy Spiller  
Elizabeth Watts  
Duke Energy-Ohio  
139 East Fourth Street  
Cincinnati, OH 45201  
[paul.colbert@duke-energy.com](mailto:paul.colbert@duke-energy.com)  
[rocco.daceanzo@duke-energy.com](mailto:rocco.daceanzo@duke-energy.com)  
[amy.spiller@duke-energy.com](mailto:amy.spiller@duke-energy.com)  
[elizabeth.watts@duke-energy.com](mailto:elizabeth.watts@duke-energy.com)

David C. Rinebolt, Esq.  
Colleen L. Mooney, Esq.  
Ohio Partners for Affordable Energy  
337 South Main Street, 4<sup>th</sup> Floor, Suite S  
P. O. Box 1793  
Findlay, OH 45839-1793  
[drinebolt@oel.com](mailto:drinebolt@oel.com)  
[smooney@columbusit.com](mailto:smooney@columbusit.com)

John W. Bentine, Esq.  
Mark S. Yurick, Esq.  
Chester, Wilcox & Saxbe LLP  
65 East State Street, Suite 1000  
Columbus, OH 43215-4213  
[jbentine@cwslaw.com](mailto:jbentine@cwslaw.com)  
[myurick@cwslaw.com](mailto:myurick@cwslaw.com)

Stephen Reilly, Esq.  
Office of the Attorney General  
Public Utilities Commission of Ohio  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, OH 43215  
[Stephen.Reilly@mus.state.oh.us](mailto:Stephen.Reilly@mus.state.oh.us)

Thomas J. O'Brien, Esq.  
Sally W. Bloomfield, Esq.  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[tbobrien@bricker.com](mailto:tbobrien@bricker.com)  
[sbloomfield@bricker.com](mailto:sbloomfield@bricker.com)

David F. Boehm, Esq.  
Michael L. Kurtz, Esq.  
Boehm, Kurtz & Lowry  
36 East 7<sup>th</sup> Street, Suite 1510  
Cincinnati, OH 45202-4454  
[dboehm@bklawfirm.com](mailto:dboehm@bklawfirm.com)  
[mekurtz@bklawfirm.com](mailto:mekurtz@bklawfirm.com)

Ann M. Holz, Esq.  
Jeffrey M. Small, Esq.  
Jacqueline Lake Roberts, Esq.  
Office of Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
[holz@occs.state.oh.us](mailto:holz@occs.state.oh.us)  
[jsmall@occs.state.oh.us](mailto:jsmall@occs.state.oh.us)  
[roberts@occs.state.oh.us](mailto:roberts@occs.state.oh.us)  
[jazztowns@occs.state.oh.us](mailto:jazztowns@occs.state.oh.us)

Mary W. Christensen  
Christensen Christensen Donchatz  
Kestlewell & Owens, LLP  
100 East Campus View Blvd., Suite 360  
Columbus, OH 43235-4679  
[mchristensen@columbuslaw.org](mailto:mchristensen@columbuslaw.org)

Douglas E. Hart  
441 Vine St., Suite 4192  
Cincinnati, OH 45202  
dhart@douglasshart.com

Pamela H. Sherwood  
Vice President of Regulatory Affairs,  
Midwest Region  
tw telecom  
4625 West 86<sup>th</sup> Street, Suite 500  
Indianapolis, IN 46268  
[pamela.sherwood@twtelecom.com](mailto:pamela.sherwood@twtelecom.com)

Albert E. Lane  
7200 Fair Oaks Drive  
Cincinnati, OH 45237-2922  
[aelmiller@aol.com](mailto:aelmiller@aol.com)

OCTA Deposition Exhibit 20 from the January 29, 2009  
Deposition of Richard Harrell has been designated as  
"Confidential Proprietary Trade Secrets" by Duke Energy  
Ohio. This exhibit has been redacted but has been  
submitted under seal.