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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

- - -

PROCEEDINGS

Before Jeanne W. Kingery and Scott E. Farkas, Hearing  
Examiners, at the Public Utilities Commission of Ohio,  
180 East Broad Street, Room 11-C, Columbus, Ohio,  
called at 10:00 a.m. on Wednesday, June 17, 2009.

- - -

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- - -

1 APPEARANCES:

2 Duke Energy Ohio, Inc.  
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5 Anita Schafer, Paralegal  
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7 Columbus, Ohio 43215

8 On behalf of Duke Energy Ohio.

9 Richard Cordray, Ohio Attorney General  
10 By Stephen A. Reilly, Esq.  
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12 180 East Broad Street, 9th Floor  
13 Columbus, Ohio 43215-3793

14 On behalf of the Staff of the PUCO.

15 Office of Ohio Consumers' Counsel  
16 by Ann M. Hotz, Esq.  
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18 Columbus, Ohio 43215-3485

19 On behalf of Ohio Consumers' Counsel.

20 Albert E. Lane, Intervenor  
21 7200 Fair Oaks Drive  
22 Cincinnati, Ohio 45237-2922

23 Pro se.

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1                                   Wednesday Morning Session,  
2                                   June 17, 2009.

3                                   - - -

4                                   HEARING EXAMINER KINGERY:  Let's go on the  
5 record.  The Public Utilities Commission of Ohio has  
6 called for hearing at this time and place Case No.  
7 08-709-EL-AIR being in the Matter of the Application of  
8 Duke Energy of Ohio, Inc., for an Increase in Electric  
9 Distribution Rates, together with other consolidated  
10 cases.  My name is Jeanne Kingery.  This is Scott  
11 Farkas.  We are the Attorney Examiners who are assigned  
12 to hear this case.

13                                   At this point, I would like to remind all  
14 of the parties before we take appearances that the  
15 purpose of this case is to take testimony on the  
16 Schedule A-1 that was filed as a late-filed exhibit and  
17 the clarifying letter that was filed subsequently.  
18 Let's go ahead and take appearances of the parties,  
19 beginning with Duke.

20                                   MS. WATTS:  Thank you, Your Honor.  On  
21 behalf of Duke Energy Ohio, Elizabeth Watts and Amy  
22 Spiller.

23                                   HEARING EXAMINER KINGERY:  Thank you.

24                                   MR. LANE:  Albert Lane.  I'm the  
25 intervenor, and I'm a customer of Duke Energy.  I live

1 in Amberley Village, which is in Greater Cincinnati, in  
2 Hamilton County. Thank you.

3 HEARING EXAMINER KINGERY: Thank you.

4 MS. HOTZ: On behalf of the residential  
5 consumers of Duke Energy Ohio, the Ohio Consumers'  
6 Counsel, Janine Migden-Ostrander, by Ann Hotz and Larry  
7 Sauers, that's S-a-u-e-r-s, 10 West Broad Street,  
8 Columbus, Ohio 43215. Thank you.

9 HEARING EXAMINER KINGERY: Thank you.

10 MR. REILLY: Thank you, Your Honor. On  
11 behalf of the Staff of the Public Utilities Commission  
12 of Ohio, Richard Cordray, Ohio Attorney General, Duane  
13 Luckey, Section Chief, Stephen Reilly and William  
14 Wright, Assistant Attorney General, 180 East Broad  
15 Street, Columbus, Ohio 43215.

16 HEARING EXAMINER KINGERY: Thank you.

17 Does anyone else desire to make an  
18 appearance?

19 Mr. Lane.

20 MR. LANE: What is the name of the OCC  
21 representative?

22 HEARING EXAMINER KINGERY: Ann Hotz.

23 MS. HOTZ: H-o-t-z.

24 HEARING EXAMINER KINGERY: Mr. Reilly.

25 MR. REILLY: Thank you, Your Honor.

1 Before we get started, as a procedural matter we're  
2 here because of the A-1, and there are two clarifying  
3 letters that were filed explaining and clarifying it.  
4 One is the subject of this hearing and one filed by  
5 OCC. To move them into the record as a pure matter to  
6 get the record straight, we would ask that the Court  
7 take administrative notice of the A-1, which was  
8 attached to Duke Energy's motion for admission of a  
9 late-filed exhibit that they filed on May 8, 2009. We  
10 would also ask that the clarifying letter of May 29,  
11 2009, filed by all the parties to the Stipulation  
12 except OCC be admitted as a late-filed -- that the  
13 Court take administrative notice of it together with  
14 the letter filed by OCC of June 1, 2009. These two  
15 letters are expressing all the parties' intent with  
16 regard to the A-1. The stipulated parties believe that  
17 the Commission can rely on the numbers in it.

18 HEARING EXAMINER KINGERY: Is there a  
19 reason why you wish to take administrative notice  
20 instead of marking them as exhibits?

21 MR. REILLY: It's just procedurally  
22 simpler. I mean, it's the reason why we're here. It's  
23 just the basis of the hearing.

24 HEARING EXAMINER KINGERY: I believe they  
25 should be exhibits just like the Stipulation is an

1 exhibit, so we can at this point mark them as exhibits  
2 if you would like to do that.

3 MR. REILLY: We can do that. I guess we  
4 can do that when the witness takes the stand.

5 HEARING EXAMINER KINGERY: That will be  
6 fine.

7 MR. LANE: Point, please.

8 HEARING EXAMINER KINGERY: Yes, Mr. Lane.

9 MR. LANE: I'm willing to let that happen  
10 except I have my notes, and I'd like to go through  
11 sequentially where the same items would be entered from  
12 my notes so I don't get mixed up.

13 HEARING EXAMINER KINGERY: Duke will be,  
14 from a procedural standpoint, putting on its witness  
15 first, and if Duke chooses to mark one of these items  
16 as an exhibit, it can do so. You are welcome then  
17 later to cross-examine. We will not be considering  
18 admission until all the cross-examination is done.

19 MR. LANE: All right.

20 HEARING EXAMINER KINGERY: Did you have  
21 something else, Mr. Reilly?

22 MR. REILLY: No. That's all, Your Honor.

23 HEARING EXAMINER KINGERY: You may call  
24 your first witness.

25 MS. WATTS: Duke Energy Ohio would call W.

1 Don Wathen, please.

2 HEARING EXAMINER KINGERY: Would you raise  
3 your right hand, please?

4 WILLIAM DON WATHEN, JR.,  
5 being by Hearing Examiner Kingery first duly sworn, as  
6 hereinafter certified, testifies and says as follows:

7 MS. WATTS: Your Honor, we would ask that  
8 Mr. Wathen's testimony be marked as Duke Energy Ohio  
9 Exhibit 20, please.

10 HEARING EXAMINER FARKAS: Which  
11 testimony?

12 HEARING EXAMINER KINGERY: I believe  
13 everyone has copies. We're just asking that you  
14 identify it more clearly. He's filed several pieces of  
15 testimony in this proceeding.

16 MS. WATTS: I'm sorry. This is Mr.  
17 Wathen's Second Supplemental Testimony.

18 HEARING EXAMINER KINGERY: It will be so  
19 marked.

20 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION  
21 PURPOSES.)

22 MS. WATTS: Thank you.

23 DIRECT EXAMINATION

24 By Ms. Watts:

25 Q. Do you have a copy?

1           A.     I do.

2           Q.     Mr. Wathen, you have before you Duke  
3 Energy Ohio Exhibit 20 which was just marked as such?

4           A.     I do.

5           Q.     Is this the testimony that we caused to be  
6 filed on your behalf in this proceeding?

7           A.     It is.

8           Q.     And is the material contained within that  
9 testimony true and accurate, to the best of your  
10 knowledge?

11          A.     Yes.

12          Q.     And is it true today as it was when it was  
13 written?

14          A.     Yes.

15                 MS. WATTS: We would offer Mr. Wathen for  
16 cross-examination.

17                 HEARING EXAMINER KINGERY: Thank you very  
18 much.

19                 Mr. Lane, would you like to cross-examine  
20 Mr. Wathen?

21                 MR. LANE: Yes. Thank you. I want to  
22 thank the Public Utilities Commission first for  
23 allowing me to be here today and to become an  
24 intervenor as a customer of Duke Energy of Ohio.

25                 My name is Albert E. Lane.

1 I'll be with you in a second, Mr. Wathen.

2 I am an intervenor in the PUCO aggregated  
3 cases known as 08-0709-EL-AIR. I am also a Duke Energy  
4 of Ohio customer No. 7170-0391-20-0. I live at 7200  
5 Fair Oaks Drive, Amberley Village, Ohio. That's  
6 adjacent to Cincinnati. ZIP code 45327. Today subject  
7 to cross-examination is Schedule A-1 provided by the  
8 Applicant, Duke Energy of Ohio, Incorporated.

9 MS. WATTS: Your Honor, it appears that  
10 Mr. Lane is preparing to make a statement, and I don't  
11 think that that would be appropriate at this stage of  
12 the proceedings because we just offered Mr. Wathen for  
13 cross-examination. I just want to make sure that's not  
14 his cross-examination.

15 HEARING EXAMINER KINGERY: Are you  
16 objecting?

17 MS. WATTS: I am objecting.

18 HEARING EXAMINER WATTS: Mr. Lane, we do  
19 not ordinarily make opening statements. We will allow,  
20 if it's appropriate, at the end of the hearing today  
21 for the preparation of filing briefs, at which point  
22 you will be able to make your position clear.

23 MR. LANE: Thank you.

24

25

CROSS-EXAMINATION

1  
2 By Mr. Lane:

3 Q. Mr. Wathen, what is your full name?

4 A. William Don Wathen, Jr.

5 MR. LANE: I would like to ask the Bench,  
6 has Mr. Wathen been sworn in?

7 HEARING EXAMINER KINGERY: You heard him  
8 be sworn in just a moment ago.

9 MR. LANE: Thank you.

10 Q. Mr. Wathen, what does the English letters,  
11 an acronym, PUCO stand for?

12 A. In the context we're talking about is the  
13 Public Utilities Commission of Ohio.

14 Q. Thanks. What is the PUCO docket?

15 A. I'm not sure what the legal term is. It's  
16 the case number that we use to categorize cases.

17 Q. What is the word case?

18 A. I don't know. It's a --

19 MS. WATTS: Your Honor, I object. These  
20 questions are not appropriate for this witness and not  
21 directed to his testimony.

22 HEARING EXAMINER KINGERY: Mr. Lane, is  
23 there a purpose for these questions?

24 MR. LANE: I will be using these terms,  
25 and I wanted to know if there's a separate point or

1 could they be used synonymously. In other words, can  
2 you use the word docket or case meaning either way.

3 HEARING EXAMINER KINGERY: You may ask  
4 that specific question, and then let's proceed to  
5 cross-examining on his testimony.

6 MR. LANE: Thank you.

7 Q. Do you know the difference between the  
8 word docket and the word case as referenced by the  
9 PUCO?

10 A. There may be some nuance I'm unaware of,  
11 but, no.

12 Q. Would it be all right with you if I use  
13 either one interchangeably, meaning the same thing?

14 A. Sure.

15 Q. Thank you. In addition to the PUCO's  
16 Staff exam stenotypist, I would like to include certain  
17 exhibits by number, Mr. Wathen. Is that all right with  
18 you if I have exhibits?

19 MS. WATTS: Your Honor, we would object.  
20 If Mr. Lane is intending to introduce exhibits through  
21 our witness, that would clearly not be appropriate.

22 MR. LANE: I'll ask the Bench -- thank  
23 you.

24 HEARING EXAMINER KINGERY: We'll see, as  
25 we come to each item, what they are and whether it's

1 appropriate.

2 MR. LANE: Judge, I would like to enter my  
3 Exhibit No. 1.

4 HEARING EXAMINER KINGERY: What is the  
5 item?

6 MR. LANE: Item No. 1 is the Stipulation.

7 HEARING EXAMINER KINGERY: The Stipulation  
8 between the parties I believe is already an exhibit in  
9 this proceeding.

10 MR. LANE: For reference purposes, though,  
11 I would like to call it as -- I prepared my case as  
12 Stipulation -- it's Lane Exhibit No. 1.

13 HEARING EXAMINER KINGERY: Let's go off  
14 the record for a minute.

15 (Discussion off the record.)

16 HEARING EXAMINER KINGERY: Let's go back  
17 on the record. We would suggest that you refer to it  
18 as the Stipulation in common terms, and then everyone  
19 will know what you're talking about. We would have  
20 difficulty re-marking the same item as a different  
21 exhibit number for the same proceeding.

22 MR. LANE: May I ask, then, is the  
23 Stipulation of March 31st, 2009, in the record at this  
24 hearing?

25 HEARING EXAMINER KINGERY: Yes, it has

1 been admitted as an exhibit.

2 MR. LANE: Thank you.

3 HEARING EXAMINER KINGERY: For your  
4 information, Mr. Lane, it has been marked as Joint  
5 Exhibit 1, as far as a designation.

6 MR. LANE: Thank you.

7 Q. Mr. Wathen, in Joint Exhibit No. 1, as it  
8 relates to -- as it did not have included with it A-1  
9 as we're talking about it today, as agreed by all, as  
10 already entered, what was the amount of money that the  
11 settlements met, left an agreement by all the parties  
12 that signed the Stipulation, that would be the electric  
13 distribution rate per year in Ohio? What is -- in  
14 dollars, what is the amount of money that that derives  
15 to?

16 MS. WATTS: Your Honor, I would object to  
17 the question. I don't believe the witness is going to  
18 be able to answer that question.

19 HEARING EXAMINER KINGERY: The witness can  
20 speak for himself as to whether he can answer the  
21 question.

22 MR. REILLY: I would ask the question to  
23 be repeated. I don't understand it.

24 HEARING EXAMINER KINGERY: Would the court  
25 reporter please read back the question?

1 (Question read back.)

2 A. In the Stipulation there was Attachment  
3 No. 1, and on that attachment the resulting rates --  
4 the rates that resulted from the case produced annual  
5 revenues of about \$366 million for distribution.

6 MR. LANE: Judge, I'd like to ask him  
7 another question as it pertains to that.

8 HEARING EXAMINER KINGERY: You may keep  
9 asking questions as you please.

10 MR. LANE: Thank you.

11 Q. The dollar amount was printed in the  
12 Cincinnati papers. Do you know that amount?

13 A. I do not.

14 Q. Do you know the original amount that you  
15 proposed in dollars when you filed this case in '08?

16 A. I don't recall the total annual revenue.  
17 I know what we -- I know the increase we asked for, but  
18 I don't remember the total revenue.

19 Q. How much in dollars did you ask for in  
20 '08, sir?

21 A. How much of an increase?

22 Q. Yes.

23 MS. WATTS: Objection, Your Honor. We're  
24 already beyond the scope of what the purpose of today's  
25 hearing is. We're way outside what's on the A-1

1 Schedule and what was in the Joint Stipulation.

2 HEARING EXAMINER KINGERY: Mr. Lane --

3 MR. LANE: Yes.

4 HEARING EXAMINER KINGERY: -- how does it  
5 connect?

6 MR. LANE: The A-1 Schedule ends up with  
7 dollars with me, as a consumer and an intervenor, and  
8 I -- I want to get into that area because the -- there  
9 is -- there is a differential between the two amounts  
10 on the first Stipulation and -- and when you derive it  
11 into dollars with the one filed with the original  
12 filing that Duke Energy of Ohio made in '08 versus the  
13 March 31st. There's a difference.

14 HEARING EXAMINER KINGERY: You're saying  
15 there's a difference between what was in the original  
16 Stipulation between the parties and the Schedule A-1?

17 MR. LANE: The Schedule A-1, as printed in  
18 the Cincinnati papers for consumers, has an amount. It  
19 had an old amount and a new amount. That's all I'm  
20 asking. That's -- that's what I want to know.

21 HEARING EXAMINER KINGERY: We're going to  
22 allow the question.

23 THE WITNESS: What was the question?

24 HEARING EXAMINER KINGERY: Would you like  
25 the reporter to read it back?

1 MR. LANE: Yes.

2 HEARING EXAMINER KINGERY: Please.

3 (Question read back.)

4 A. On the Schedule A-1 we filed on May 8th,  
5 our initial filing request was the first column in that  
6 filing. The total revenue we asked for, including  
7 miscellaneous revenue, was \$403 million.

8 Q. Let's please refer to Exhibit No. 1. It's  
9 about 35 pages.

10 HEARING EXAMINER KINGERY: Are you  
11 referring to the Stipulation?

12 MR. LANE: Yes, Joint.

13 Q. Did your company tell the Public Utilities  
14 Commission of Ohio and the other parties to the  
15 settlement the amount of money that you wanted per  
16 year? And if so, how much was it?

17 A. I'll go back to Schedule A-1. Our  
18 application asked for \$403 million.

19 Q. Which application?

20 A. The initial application we made last year  
21 in this case.

22 Q. Are you giving the total amount of your  
23 electric distribution or the difference from what it  
24 was from what you wanted it to be in your initial  
25 application in '08?

1           A.     You asked for how much revenue we were  
2 looking for. That's a total amount.

3           Q.     I want the difference from what you were  
4 getting to what -- to what it will be if you got the  
5 original amount you asked for in '08, in your original  
6 application, which I understand is part of this  
7 filing.

8                     Correct, the original application?

9           HEARING EXAMINER KINGERY: The original  
10 application is not a matter for discussion at this  
11 hearing, but there are certain numbers that were in  
12 that filing that appear in the A-1.

13          Q.     What's your answer?

14          A.     Well, on the Schedule A-1 that was filed,  
15 if you just subtract the first column from the last,  
16 it's a \$31 million difference.

17          Q.     Okay. Thank you very much. Thirty-one --  
18 the 31 million figure comes -- is subtracted from what  
19 figure?

20          A.     I subtracted the Total Revenue Requirement  
21 on Line 14 of Schedule A-1 and subtracted from that  
22 the -- the Applicant Filing column from the Settlement  
23 column.

24          Q.     What is that amount that you're  
25 subtracting it from, sir?

1           A.       \$403,216,772 was our initial application.  
2 Our settlement resulted in a revenue --

3           Q.       But you're giving the total revenue of the  
4 entire person's bill. I'm talking about this  
5 particular increase only, the amount you had asked for,  
6 the increase. You're bringing up the deducted amount,  
7 which is all right, but in both cases you're doing it  
8 with the total, and I want it from just what you asked  
9 for, your original application. What amount of money  
10 did you ask for, added to your current electric  
11 distribution rate?

12          A.       I apologize. I was answering your  
13 question. If you're asking for the amount of the  
14 increase requested --

15          Q.       Yes.

16          A.       Our initial request, again, on -- I'll  
17 refer to Schedule A-1, our initial request was \$85.6  
18 million.

19          Q.       Could you repeat that louder for the  
20 stenotypist to hear it?

21          A.       I think she can hear me. \$85.6 million.

22          Q.       Thank you very much. Now, you mentioned  
23 before 31 million. Did you subtract 31 million from  
24 the 85.6 to get at a figure for the Schedule A-1, the  
25 new Schedule A-1 figure? You said you subtracted 31

1 million.

2 A. Well, I did not subtract 31 million.  
3 Thirty-one is the difference between the two.

4 Q. Okay. What is the new Schedule A-1 after  
5 the March 31st in dollars compared apples to apples  
6 like you have the 86.3? What's the new figure?

7 A. The settlement resulted in an increase of  
8 55.3 million in retail rates.

9 Q. Thank you very much. Would you repeat  
10 that again? That's what I asked originally on the  
11 question. Would you repeat it again, please?

12 A. \$55.3 million.

13 Q. And what was it originally asked for?

14 A. 85.6 million.

15 Q. Thank you.

16 I'd like to introduce Exhibit No. 2, Your  
17 Honor.

18 HEARING EXAMINER KINGERY: What item are  
19 you referring to?

20 MR. LANE: This is the August 8th, 2008,  
21 testimony of Mr. Wathen.

22 HEARING EXAMINER KINGERY: That document  
23 is already an exhibit. It's been admitted into the  
24 record in this proceeding.

25 MR. LANE: May I know what it's called,

1 please?

2 HEARING EXAMINER KINGERY: Just a minute.  
3 Is that the First Supplemental Testimony or the  
4 original testimony? What is it called?

5 MR. LANE: What's happening now, Your  
6 Honor, we're getting different numbers, and it's hard  
7 for me to give my cross -- cross-examination because  
8 I'm referring to your numbers and somebody else's  
9 numbers. May I repeat again what I know that we have  
10 and I'm satisfied? We have the Stipulation.

11 HEARING EXAMINER KINGERY: Yes.

12 MR. LANE: We have the original case.  
13 That's part of what we're here for. We have Schedule  
14 A-1, and we have your -- I thought we just had his  
15 present testimony. I'm talking about his original  
16 testimony in '08.

17 HEARING EXAMINER FARKAS: His supplemental  
18 or direct?

19 MR. LANE: This was filed on 8/8/08.

20 HEARING EXAMINER KINGERY: That's the  
21 Direct Testimony.

22 HEARING EXAMINER FARKAS: That's Direct  
23 Testimony.

24 HEARING EXAMINER KINGERY: That has  
25 already been admitted. Unfortunately, our computer did

1 not work as expected, so I don't have the exhibit  
2 number, but it has already been marked and identified  
3 and admitted.

4 MR. LANE: Okay. Has his supplemental  
5 been admitted?

6 HEARING EXAMINER KINGERY: Correct.

7 MR. LANE: Two of his have been admitted,  
8 okay, of his testimony?

9 HEARING EXAMINER KINGERY: Yes, that's  
10 correct.

11 MR. LANE: Okay. So you don't need any of  
12 my documents at this point for the different -- the  
13 court reporter --

14 HEARING EXAMINER KINGERY: Not the items  
15 we mentioned so far. We'll go off the record.

16 (Discussion off the record.)

17 (Recess taken.)

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

20 MR. LANE: You ready, Mr. Wathen?

21 HEARING EXAMINER KINGERY: You may  
22 proceed.

23 MR. LANE: I would like to introduce Lane  
24 Exhibit No. 4. This is a copy of the PUCO docket of  
25 May the 12th, 2009.

1 HEARING EXAMINER KINGERY: Is it in this  
2 proceeding?

3 MR. LANE: It's about -- the subject  
4 matter is A-1 Schedule.

5 HEARING EXAMINER KINGERY: What is the  
6 document?

7 MR. LANE: I received an e-mail from  
8 Mrs. -- Ms. Watts, one of the -- that's you? Yes. And  
9 I responded, and that's why I'm here today, with a  
10 short sentence that was filed that I disapprove of A-1  
11 Schedule. I'd like it to be part of the record.

12 HEARING EXAMINER KINGERY: Do you have  
13 copies of this item?

14 MR. LANE: Yes. I have five copies.

15 HEARING EXAMINER KINGERY: We'll take one  
16 and give one to OCC. Do you have a copy for the  
17 Attorney General?

18 MR. LANE: No. I just brought five.

19 HEARING EXAMINER FARKAS: They can share.

20 HEARING EXAMINER KINGERY: This item will  
21 be marked as Lane Exhibit 4.

22 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION  
23 PURPOSES.)

24 HEARING EXAMINER KINGERY: For the record,  
25 this is a series of e-mails, the last one of which

1 appears to be from Mr. Lane to Ms. Watts dated May 8,  
2 2009, sent at 8:46 p.m.

3 MR. LANE: Thank you.

4 Q. Mr. Wathen, as I've given these items to  
5 you, if they're accepted, when they're accepted, please  
6 hold onto them because I may reference you to them from  
7 time to time as it relates to Schedule A-1. Now,  
8 concerning Schedule A-1, would you please look at that,  
9 Lane Exhibit No. 4, and read in the middle of the page  
10 out loud to the Court the two lines starting May the  
11 8th?

12 A. Just read the text on the -- on your  
13 letter?

14 Q. Yes.

15 A. It says -- this is apparently from you to  
16 Elizabeth Watts, and it says, "May 8, 2009. Ms. Watts,  
17 I disapprove of past and present," quote-unquote,  
18 "'so-called' updated A-1 Schedule as referred to in  
19 your e-mail dated May 7th, 2009. Albert E. Lane,  
20 intervenor. PUCO Case No 0709-EL-AIR."

21 Q. Mr. Wathen, was it within my rights as an  
22 intervenor, which I came to that position by being a  
23 customer of Duke Energy of Ohio, to disapprove the past  
24 and present updated A-1 Schedule? Was it my right?

25 MS. WATTS: Your Honor, I would object.

1 That would be a legal question. That would not be  
2 appropriate for Mr. Wathen.

3 HEARING EXAMINER KINGERY: Mr. Lane, do  
4 you have a response to that objection?

5 MR. LANE: I have to explain to myself and  
6 to the public why I'm here, why I'm sitting here  
7 today.

8 HEARING EXAMINER KINGERY: Ms. Watts has  
9 suggested that you are calling for a legal conclusion  
10 from this witness, who is not an attorney. Do you have  
11 a response to that objection?

12 MR. LANE: Let me reword it and ask a  
13 separate kind of a question.

14 HEARING EXAMINER KINGERY: You may do  
15 that.

16 Q. As an intervenor, do I have a right to be  
17 here today?

18 MS. WATTS: Your Honor, same objection.

19 HEARING EXAMINER KINGERY: The objection  
20 is sustained. This witness is not an attorney.

21 MR. LANE: Okay.

22 Q. Mr. Wathen, are you a university graduate?

23 A. Yes.

24 Q. Where?

25 A. I graduated from the University of

1 Kentucky.

2 Q. Do you have any advanced degrees?

3 A. I have two bachelor's degrees and one  
4 graduate degree.

5 Q. From which university?

6 A. University of Kentucky.

7 Q. What was your major?

8 A. I have a business agree, undergraduate  
9 business degree, a chemical engineering undergraduate  
10 degree, and a Master of Business Administration.

11 Q. Are you an Ohio Certified Public  
12 Accountant?

13 A. I am not.

14 Q. Would you please repeat that last three  
15 words?

16 THE WITNESS: Did you hear that?

17 A. I am not an accountant.

18 Q. Not what?

19 A. I am not an accountant certified in Ohio.

20 Q. The question was are you a Certified  
21 Public Accountant in Ohio?

22 A. I'll repeat it for the third time. I am  
23 not a Certified Public Accountant in Ohio.

24 Q. Thank you. For the record, I want to ask  
25 you something, Mr. Wathen, because when I had all the

1 papers, I didn't quite -- I wasn't quite sure of Duke's  
2 position. Is the 86.3 billion (sic.) and the 56 --  
3 55.6 million -- we talked about it earlier. It's of  
4 record here. Are they per year figures?

5 A. Well, let me put it this way, we're not  
6 asking for \$55 million or \$86 million of an increase a  
7 year. We're asking for a revenue requirement a year,  
8 an overall revenue requirement.

9 Q. That isn't what I asked. You mentioned --  
10 you mentioned the figure 86.3 in your testimony here  
11 today and 55.6, both in millions. My question is are  
12 they per day, per month, per year, or every 10 years?  
13 What do they represent, so we'd have a time frame that  
14 Duke is talking about?

15 A. Well, on an annual basis, the figures we  
16 talked about is the 55.3 million and 85.6 million, are  
17 the two numbers, that that would represent an increase  
18 over what would have been the rates but for this case,  
19 on an annual basis.

20 Q. Are you asking me or you're telling me?

21 A. I'm telling you.

22 Q. Okay. So I get this straight, in the  
23 minutes you talked about 86.3 was the original  
24 application amount, on the exhibit -- what's it  
25 called -- Schedule A-1. That's the original amount

1 that it derives into in dollars? You said that in your  
2 testimony?

3 A. Well, actually, it's 85.6 --

4 Q. Okay.

5 A. -- and it's on Schedule A-1, and that's  
6 the increase in revenue per year that we would have  
7 asked for.

8 Q. What's the 55.6? Is that a year figure?

9 A. Yes. It's an increase of an annual  
10 revenue.

11 Q. Okay.

12 HEARING EXAMINER FARKAS: Just for the  
13 record, it's 55.3; is that correct?

14 THE WITNESS: It's 55.3, right.

15 Q. Mr. Wathen, whom do you work for -- I'm  
16 not sure if it's who or whom. Who do you work for  
17 during each regular workweek, in 2009?

18 A. I'm an employee of Duke Energy Business  
19 Services.

20 Q. Is that a subsidiary of a company?

21 A. It's a subsidiary of Duke Energy Corp.

22 Q. Of what state?

23 A. I'm not sure exactly where, where we're  
24 incorporated.

25 Q. Where does your check come from, paycheck?

1 A. Internet.

2 Q. Who signs it?

3 A. Without looking at it right at the moment,  
4 I couldn't tell you, sir.

5 MR. LANE: I have to go back, stenotypist,  
6 to my first question, how he answered it. Who he works  
7 for, I'd like to have the name of that entity.

8 HEARING EXAMINER KINGERY: Could you read  
9 that back, please?

10 (Answer read back.)

11 Q. Is Duke Energy Business Services an Ohio  
12 corporation?

13 A. I can't say with certainty, but I don't  
14 believe it is.

15 Q. Is it a corporation?

16 A. I'm not sure what the form of the company  
17 is.

18 Q. Do you interchange the word Duke Energy  
19 Business Services with the word Duke Energy of Ohio,  
20 Inc.?

21 A. I don't.

22 Q. Who do you work for?

23 A. I --

24 MS. WATTS: Your Honor, again, I'm going  
25 to object to this line of questioning. It doesn't seem

1 relevant. We've gone off the track of the testimony  
2 relevant to the A-1, and Mr. Wathen has already  
3 answered some of these questions several times.

4 MR. LANE: I'm leading up to the  
5 preparation of A-1, and I would like to know who the  
6 gentleman works for.

7 HEARING EXAMINER FARKAS: I think he's  
8 answered the question who he works for.

9 Q. Is Duke Energy Business Services the  
10 Applicant in this case?

11 A. It is not.

12 HEARING EXAMINER FARKAS: I think we'll  
13 allow a little latitude on this line of questioning,  
14 but --

15 MR. LANE: Your Honor.

16 HEARING EXAMINER FARKAS: Yes. I'm  
17 allowing you to ask more questions.

18 MR. LANE: I understand. Can I respond?  
19 Duke Energy has, at one time, multiple corporations,  
20 and I'm getting mixed up because I don't know whether  
21 he works out of a company, out of their home plate, or  
22 Ohio, and I think I'm entitled to know.

23 HEARING EXAMINER FARKAS: Well, I'm  
24 allowing you to ask the questions to a certain extent.  
25 I think he's indicated who he works for and who that --

1 where that company --

2 Q. Do they have a contract with Duke Energy  
3 of Ohio, the company you work for?

4 THE WITNESS: Are you done?

5 HEARING EXAMINER FARKAS: No, I wasn't.

6 MR. LANE: Oh, I'm sorry.

7 HEARING EXAMINER FARKAS: What I said  
8 was -- what I was trying to say is that I'm allowing  
9 you a little latitude in this questioning. He has  
10 answered your question as to who he works for and he  
11 believes where -- where he believes that corporation or  
12 entity is from, what state, so you can ask your next  
13 question.

14 Q. Where is your office located?

15 A. 139 East Main Street -- or East Fourth  
16 Street rather, Cincinnati, Ohio.

17 Q. Thank you. In the year 2008 and 2009, did  
18 you travel either on company airplanes or company  
19 cars --

20 I'm leading up to something, Your Honor,  
21 as it relates to A-1 as part of the presentation.

22 HEARING EXAMINER FARKAS: Why don't you  
23 ask your question as directly related to the A-1?

24 MR. LANE: That's what it is. It's in  
25 preparing A-1. It has to do with in preparing A-1.

1 HEARING EXAMINER FARKAS: Do you want to  
2 rephrase your question?

3 MR. LANE: One second, please.

4 HEARING EXAMINER FARKAS: Okay.

5 MR. LANE: There's a previously filed  
6 document of testimony of Mr. Wathen given for --  
7 currently, two days prior, that's of record here.

8 HEARING EXAMINER KINGERY: Yes, that we  
9 just made of record this morning. That was Duke  
10 Exhibit 20.

11 Q. As I recall, you were responsible, as the  
12 preparer of subject A-1; is this correct? You stated  
13 that in that document?

14 A. That's correct.

15 Q. Okay. In preparing Schedule A-1, the one  
16 that I rejected, did you travel from Ohio to your  
17 corporate base in Charlotte, North Carolina by plane,  
18 private plane, public plane to help prepare the  
19 papers?

20 MS. WATTS: Your Honor, I would object to  
21 that question as I don't think it leads to anything  
22 relevant here, and it's certainly not relevant to the  
23 Schedule A-1 that's the subject of our hearing today.

24 HEARING EXAMINER FARKAS: What is the  
25 relevance of that question?

1 MR. LANE: I have to go back to the  
2 original merger hearings, Your Honor. The Duke Energy  
3 Company promised the Office of Consumer Counsel that  
4 there was going to be no back rooms taken down to  
5 Charlotte, as I recall, and if that's happening, then  
6 we have the parent company of the Ohio corporation --  
7 I'm trying to determine that as it relates to Schedule  
8 A-1 -- working in concert with this gentleman, who is  
9 employed on Fourth Street for a company that I don't  
10 know the connection, but I accept whatever you said, to  
11 Duke Energy of Ohio. It's very interesting that you  
12 bring that up, because for an individual, be it this  
13 individual or that individual, but when it's a  
14 corporation, they could play it either way. They could  
15 play it's the corporation itself or it's the different  
16 people within the company, and I don't -- and/or the  
17 parent of the smaller corporation; so I don't know.  
18 What I have to know is -- because these expenses --  
19 this is the point, I just thought of it here, the point  
20 is the expenses are somehow or another -- of airplane  
21 trips should be -- are they charged and am I paying, as  
22 an intervenor/customer, for these flights. That's the  
23 question, and somewhere of the 15 parts of Schedule A-1  
24 is expenses to operate the overhead wires -- I'm sorry,  
25 the distribution, and that's the connection. That's

1 the connection, because it is in there. It should be  
2 in there.

3 HEARING EXAMINER FARKAS: Okay. Do you  
4 want to respond?

5 MS. WATTS: I would reassert our objection  
6 in that Mr. Lane's question is extremely far afield of  
7 what we are here today to discuss, and, secondly, I  
8 would move to strike that which was testimony and not  
9 questions in what he just put on the record.

10 HEARING EXAMINER FARKAS: Let's go off the  
11 record.

12 (Discussion off the record.)

13 HEARING EXAMINER KINGERY: We're going to  
14 take a 15-minute recess and come back at 11:15.

15 (Recess taken.)

16 HEARING EXAMINER KINGERY: Let's go back  
17 on the record. We are going to overrule the  
18 objection. You may answer the question as to whether  
19 or not there were any airplane flights taken in the  
20 preparation of the Schedule A-1.

21 A. No flights. I didn't travel anywhere for  
22 the preparation of A-1.

23 Q. Thank you. You must be aware, with your  
24 settlement partners on the Stipulation of March 31st,  
25 2009, that the PUCO has different disciplines working

1 for them in preparing A-1. Where do they get their  
2 data, those different disciplines, when they prepare  
3 their items, of the 15 items, whatever discipline  
4 pertains to the 15, on Schedule A-1 from Duke Energy of  
5 Ohio? Where do they get them? Or from Duke Energy  
6 Business Services. Where are they able to find out  
7 this information? How do they find it out, as it  
8 relates to Schedule A-1?

9 A. The source of the data, all the  
10 information?

11 Q. Do they come down -- let me put it another  
12 way. Do they come down and find out themselves or do  
13 you give it to them from your own books, your  
14 bookkeeping, from your bookkeeping in Ohio?

15 A. It's a little of both. It might be better  
16 if the Staff answers this question, but we give them --  
17 they ask for extensive discovery. We give them a lot  
18 of data that they ask for. They do on-site visits.  
19 They spend quite a bit of time in our offices going  
20 over our books and records. We give them copies of  
21 relevant data. We show them our information technology  
22 tools, a lot of interaction and a lot of -- we give  
23 them a lot of data in the form of copies.

24 Q. I'm taking your word that -- I'm going to  
25 ask you, the copies that you give them, are they

1 correct? Yes, they're correct, or no, they're not  
2 correct.

3 A. To my knowledge, they're all correct.

4 Q. I have to ask you the question for the  
5 record. As it relates to Schedule A-1, is Duke Energy  
6 Business Services' expenses shown in one of the 15  
7 items in Schedule A-1?

8 A. In the -- which column?

9 Q. I'm not as precisely knowledgeable as you  
10 are of this. I'm saying in any of the 15. It doesn't  
11 make a difference which one. Duke Energy -- you work  
12 for Duke Energy Business Services. My question is, is  
13 the expense for Duke Energy Business Services'  
14 employees, whatever, pencils, pens, computers, is it  
15 shown on Schedule A-1? It's like Dupont makes  
16 chemicals. You don't see Dupont. You get the  
17 product. You don't know the Dupont end part of it. So  
18 the question is, is your -- but you pay Dupont. Dupont  
19 gets paid directly. It funnels down to them. So the  
20 question is, how does Duke Energy Business Services get  
21 paid in preparing Schedule A-1?

22 A. I'm going to try to answer your question  
23 this way, and hopefully it will get you the answer  
24 you're looking for, the first column of Schedule A-1,  
25 the Applicant Filing, we did include Duke Energy

1 Business Services' costs in our application. The Staff  
2 Report Mid-Point column, Duke Energy Business Services'  
3 costs were excluded by the Staff. That was their  
4 recommendation. The OCC's column, they did not object  
5 to Staff's recommendation to exclude the Duke Energy  
6 Business Services, and so it was not included in the  
7 OCC column.

8 Q. But --

9 A. Let me finish, please.

10 Q. Go ahead.

11 A. In the Settlement column, it was not  
12 specified either way whether they were included or  
13 not. We agreed to a black box settlement without any  
14 specific reference to that amount.

15 MR. LANE: Go back to No. 1, the first one  
16 you answered. Could you please repeat that, the first  
17 one?

18 (Partial answer read back.)

19 Q. How many employees are there in Duke  
20 Energy Business Services?

21 A. I couldn't tell you off the top of my  
22 head.

23 Q. Do they all work at the same address that  
24 you said you worked?

25 A. No.

1 Q. Where are they?

2 A. Spread throughout the various localities  
3 of corporations we -- that Duke Energy owns.

4 Q. Is that in Ohio?

5 A. Some.

6 Q. What other states would they be in if not  
7 Ohio?

8 A. Again, I couldn't tell you. I know North  
9 Carolina would be one for sure, and Indiana would be  
10 another.

11 Q. Okay. Any other states?

12 A. I'm sure there are. I don't know which  
13 ones.

14 Q. As said in your second testimony two days  
15 prior, you prepared this form, the form that your --  
16 your testimony that's been exhibited already as  
17 Schedule A-1. How are you able to break down the  
18 expenses of Duke Energy Business Services among the  
19 different states so that Schedule A-1 only shows what  
20 Duke Energy of Ohio customers would be applicable in  
21 overhead electric distribution, this case that we're  
22 talking about today?

23 A. Well, like any employee of Duke Energy  
24 Business Services, I, for example, take -- my time is  
25 allocated to -- just off the top of my head, it's

1 allocated to Duke Energy Ohio electric distribution.  
2 It's allocated to Duke Energy electric transmission.  
3 It's allocated to Duke Energy generation, Duke Energy  
4 Ohio gas, and into Kentucky, both electric and gas; so  
5 my time is allocated to the various companies. So a  
6 portion of my time is allocated to other entities, and  
7 a portion of it's allocated to this line of business.  
8 Every other business employee of DEBS has, Duke Energy  
9 Business Services, has the same protocol.

10 Q. Do you and all of them keep charts of whom  
11 you're working for at a given hour?

12 A. We have time sheets.

13 Q. I didn't say time sheets. I mean charts  
14 for which -- which entity, which subsidiary or entity  
15 or side corporation, in which state you're working for  
16 at any given time. What we're -- we're talking about  
17 Schedule A-1, how the expenses get there.

18 A. Again, my time is allocated. It goes  
19 through our labor system as labor dollars, and they get  
20 allocated to Duke Energy Ohio.

21 Q. All of your time?

22 A. A portion of my time.

23 Q. Do you break it down?

24 A. We break -- we estimate the number of  
25 hours, percentage of time we spend on the various

1 entities. It gets allocated to the various entities  
2 based upon the approximate time we do work on -- on  
3 their behalf.

4 Q. Are those accurate figures?

5 A. They're accurate, yes.

6 Q. Are you aware that the PUCO specialists  
7 use those figures?

8 A. I don't -- I can't speak for the PUCO  
9 Staff.

10 Q. Have they come in and asked for them?

11 A. I'm sure that's one of the many data  
12 requests we got.

13 Q. Do you know that they come in and ask for  
14 them or they don't come in and ask for them? Because  
15 they have to formulate, as I understand it, your  
16 settlement figures that you used. You used a lot of  
17 PUCO figures, is that correct, from their specialists  
18 and the different disciplines of the 15 items on  
19 Schedule A-1?

20 A. Among other things listed, the Staff's  
21 information was part of the settlement, yes. I'm not  
22 sure what you're asking.

23 Q. Specifically, the hours worked on Schedule  
24 A-1 by Duke Energy Business Services, are logs kept for  
25 this unknown number of employees that worked on that in

1 Ohio or -- supposedly not elsewhere, just Ohio, you  
2 claim? Is that right, they're only in Ohio working on  
3 this, on Schedule A-1, or is that just you?

4 A. The only Duke Energy Business Service  
5 employee that was involved in A-1, this A-1, was me.

6 Q. Did you keep accurate logs and were those  
7 logs made available to the PUCO's discipline  
8 specialists that arrived at -- I'm not sure if all of  
9 these -- whatever item of the 15 it had slotted --  
10 sooner or later what you get paid gets into one of  
11 those slots. Are you aware of that?

12 A. Well, as I indicated earlier, the -- it  
13 included however much dollars were included for the  
14 Duke Energy Business Services in the settlement was not  
15 specified; so I can't tell you specifically that my  
16 time was included in the rate -- in the overall revenue  
17 requirement.

18 Q. Your testimony says, am I correct -- I  
19 want to ask about your testimony.

20 A. Which testimony?

21 Q. The second one, of two days ago.

22 HEARING EXAMINER KINGERY: So Exhibit 20.

23 MR. LANE: Chair, I don't mean to be  
24 redundant. I just have to get myself clear on these  
25 things.

1 Q. On Page 2 of your testimony of the docket  
2 that's already been filed dated 6/15/09, that's the two  
3 day ago file, on Page 2, Line 18, would you please read  
4 that, from 18 to 22, out loud, please?

5 A. "Yes. I was involved with the  
6 development, preparation and submission of the Schedule  
7 A-1 filed on May 8, 2009. Based upon my training,  
8 experience, knowledge, and involvement in the  
9 proceedings, I believe the Schedule A-1 filed on May 8,  
10 2009, is accurate and representative of the stipulating  
11 parties' positions in reaching a settlement in this  
12 case."

13 Q. Thank you. And you're aware whatever  
14 information you gave the PUCO or didn't give them --  
15 that's my statement, I'm not saying you didn't give it,  
16 but questionably maybe it was omitted, whatever, or  
17 wasn't prepared properly -- I -- a customer has to live  
18 by if the PUCO Commissioners approve of this settlement  
19 of 55 point some million per year. So are you aware of  
20 the position you're in with consumers? It's a  
21 two-part. That's later. The first part is are you  
22 aware of the sensitivity in dollars of what you're --  
23 of what you're doing? That's why the PUCO  
24 specialists -- you ended up using -- let's just take it  
25 separately. Are you aware that the figures that you

1 gave end up with the PUCO specialists, which ends up on  
2 Schedule A-1 somewhere?

3 A. Ultimately, all of the information on  
4 Schedule A-1 emanated from the Company, except for the  
5 Settlement column.

6 Q. You're in charge. It went through your  
7 hand, sir.

8 A. The A-1?

9 Q. Yes.

10 A. Well, Schedule -- two of the columns on  
11 Schedule A-1 are just reproductions of two other  
12 parties' positions, so I --

13 Q. Sir, you're speaking on behalf of all of  
14 the settlement people today. Please respect that.

15 MS. WATTS: Your Honor, I move to strike  
16 that last statement by Mr. Lane as not being correct.  
17 Mr. Wathen is here on behalf of Duke Energy Ohio  
18 today.

19 HEARING EXAMINER KINGERY: Motion granted.

20 Q. Okay. So we can end this on that part. I  
21 want to make sure that I know what your -- you don't  
22 know who works with you, correct, as it relates to  
23 Schedule A-1? It's just you?

24 A. I am the one who prepared A-1.

25 Q. And if there was some data omitted from

1 Duke Energy of Ohio's information that they gave the  
2 PUCO disciplines, what happens?

3 MS. WATTS: Objection, Your Honor. Mr.  
4 Lane is asking Mr. Wathen to assume facts not in  
5 evidence in his question.

6 HEARING EXAMINER KINGERY: Would you  
7 please rephrase your question?

8 Q. I'd have to go to the stenotypist, but  
9 there were certain things you didn't know about the  
10 total costs in Ohio, different people that fed you  
11 information, or maybe they worked on other things at  
12 other times. So are you aware that the log sheets have  
13 to be precise because it reflects down to the Ohio --  
14 the PUCO discipline that used your figures -- they used  
15 your figures. Are you aware of that? Are you  
16 sensitive to that, that it must be precise, the hours  
17 worked on this particular electric case, so that Ohio  
18 consumers don't pay more as it relates to Schedule  
19 A-1?

20 MS. WATTS: Objection, Your Honor. Number  
21 one, again, it asks the witness to assume facts not in  
22 evidence. Number two, I'm not sure what in that  
23 rambling presentation was the question, and, number  
24 three, I'm pretty sure it's very far afield of the A-1  
25 at this point. I'd also move to strike because I think

1 Mr. Lane is testifying rather than asking the  
2 questions.

3 HEARING EXAMINER KINGERY: I'm going to  
4 overrule the motion to strike. It may have been a long  
5 question, but I do not believe that he was testifying.

6 MR. LANE: Let me ask it more succinctly.  
7 I think I can help.

8 HEARING EXAMINER KINGERY: If you can  
9 rephrase.

10 MR. LANE: Right.

11 Q. Does Duke Energy Business Services  
12 prepare -- in Ohio, that part of Duke Energy Business  
13 Services, which is you, in Ohio, do they keep a log of  
14 the hours worked for the information -- the hours  
15 worked to pay these people's expenses that prepared  
16 Schedule A-1? And are those figures given -- the  
17 second part is, are those figures given to the PUCO  
18 disciplines that you settled for, that Duke Energy of  
19 Ohio settled for?

20 MS. WATTS: Objection. The witness has  
21 already answered this question.

22 HEARING EXAMINER KINGERY: The first part  
23 has been answered. I do not believe the second part  
24 has been answered. He has already told you that he has  
25 kept a log and that --

1 MR. LANE: Okay.

2 HEARING EXAMINER KINGERY: -- and that --

3 MR. LANE: That's right.

4 HEARING EXAMINER KINGERY: Okay. You  
5 may --

6 THE WITNESS: What was the second part as  
7 opposed to the first?

8 HEARING EXAMINER KINGERY: Can you read it  
9 back?

10 (Partial question read back.)

11 A. The time I spent working on the A-1  
12 Schedule that's been the subject of this case is way --  
13 is way -- well outside the scope of the period we were  
14 using for the rate case. The Staff has never asked for  
15 any of that information. If they had, I would gladly  
16 give it to them.

17 Q. The question is -- as I understand it, the  
18 question is, is Duke Energy Business Services' expenses  
19 reflected in Schedule A-1?

20 A. I have answered this before. On the  
21 applications we did include Duke Energy Business  
22 Service costs. So the column that says Applicant  
23 Filing, it is included. The next two columns, the  
24 parties proposed not to include it.

25 Q. Okay. As I understand it, on Schedule A-1

1 there's something called wage utilization or -- I may  
2 be saying it wrong -- wage annualization, wage  
3 annualization. The wage annualization derives somehow  
4 in the Schedule A-1; is that correct?

5 A. There's no -- there's no line that I can  
6 see on Schedule A-1 that says wage annualization.

7 Q. No. It derives the cost of the overhead  
8 workers -- the electric distribution workers, doesn't  
9 it? That's your term wage annualization.

10 A. We make an adjustment in our application  
11 to annualized wages.

12 Q. Correct.

13 A. It's not on A-1, but, yes, we make that  
14 adjustment.

15 Q. Wouldn't it be reflected in A-1?

16 A. It would be part of our overall revenue  
17 requirement, but it's not specifically mentioned here.

18 Q. Is that one of the 15 items?

19 A. It's a component of our overall revenue  
20 requirement included in that document.

21 Q. Okay. Thank you.

22 I'm going to try to do this sequentially.  
23 Over the past five years -- four years -- no. Let's  
24 say five years. Let's do it three years since you've  
25 been here, since Duke has owned Cinergy. Duke has

1 owned Cinergy since the beginning of '06. As it  
2 reflects the Schedule A-1, Duke Energy of Ohio has  
3 in-house overhead electric workers that have not been  
4 replaced by attrition. Is this correct?

5 A. I don't know the details of our labor,  
6 labor force. I couldn't tell you specifically.

7 Q. Has there been any reduction in labor in  
8 the past two and a half years?

9 MS. WATTS: Your Honor, this line of  
10 questioning is not relevant to the material that's in  
11 the A-1. It's hardly relevant to the original case as  
12 it was filed, and I would object again.

13 HEARING EXAMINER KINGERY: Mr. Lane, do  
14 you have a response?

15 Q. The question is --

16 HEARING EXAMINER KINGERY: Excuse me.  
17 Just respond to the objection.

18 MR. LANE: Is it relevant? Well, I'm  
19 leading -- I'm trying to -- if Duke Energy has less  
20 workers the following year from the preceding year,  
21 then they've got more money to play around with that  
22 they would have paid employees that was there the year  
23 earlier that they're not paying the succeeding year,  
24 and they are going to say they need more money  
25 possibly, so I don't -- that's what I'm leading

1 towards.

2 MR. REILLY: In that case, Your Honor, we  
3 object that it's beyond the scope of the hearing.

4 MR. LANE: Okay.

5 MR. REILLY: If I might expand on that a  
6 little bit?

7 HEARING EXAMINER KINGERY: Certainly.

8 MR. REILLY: The question of the  
9 Stipulation or the application has long passed. There  
10 was a hearing on the Stipulation. The parties were  
11 here. People took the stand. Mr. Lane wasn't  
12 present. That hearing closed. We are here on the A-1,  
13 its accuracy and whether it was -- whether it's  
14 representative of the parties' intent. The witness has  
15 testified that it is. The scope of the hearing is the  
16 A-1, not the individual components, which is the larger  
17 rate case. So we would submit that the line -- the  
18 line that he wishes to pursue, the ultimate point he  
19 wants to get to is beyond the scope of this hearing, as  
20 described by the Attorney Examiners in their entries.

21 MS. WATTS: And, Your Honor, if I might  
22 add, not only is it beyond the scope of today's  
23 hearing, but it's also arguably beyond the scope of  
24 what was filed in the original rate case. I believe  
25 Mr. Lane is asking questions that are way outside the

1 test year.

2 HEARING EXAMINER KINGERY: With regard to  
3 what time period are you asking?

4 MR. LANE: I'm willing to do it for the  
5 last two to three -- three years. But what I want to  
6 know, Your Honor, if I may say something, I want to  
7 know if the public has a credit.

8 HEARING EXAMINER KINGERY: I'm sorry?

9 MR. LANE: The customers of Duke in Ohio,  
10 do we have a credit? If they have less employees,  
11 there would be a credit on Schedule A-1. There would  
12 be a credit, and I've not heard any answer to that.  
13 That's why I asked if they lose by -- what's that  
14 word -- attrition employees, where does that money go?  
15 Do I get the credit?

16 Q. I'm asking you. Do I get the credit?

17 HEARING EXAMINER KINGERY: We're going to  
18 sustain the objection. That is something that would  
19 have come up in the original hearing, not at this  
20 point.

21 MR. LANE: Okay. I'm sorry if I'm -- I'm  
22 trying to just --

23 Q. How are the expenses of Duke Energy, as it  
24 reflects to Schedule A-1 -- that's what we're talking  
25 about. How are the expenses of Duke Energy of Ohio

1 credited or debited annually as it relates to Duke  
2 Energy work done in Ohio for out-of-state Duke work?  
3 Let me explain to you. Let's say that Duke -- as it  
4 reflects to this Schedule A-1, if you're doing  
5 something in Ohio for Indiana, how does -- so that the  
6 PUCO inspectors know what you're doing, because that's  
7 whose settlement we're using today, do you have a log  
8 of that, what you're doing in Ohio for Indiana, not  
9 your office, but Duke Energy of Ohio, or does it come  
10 down -- am I paying for Indiana's costs? Do you keep  
11 logs?

12 A. As I indicated earlier, we do keep time  
13 logs. If an employee of Duke Energy Ohio, Duke Energy  
14 Business Services, or any other entity does work for  
15 Duke Energy in Indiana, we bill them for it.

16 Q. I'm talking about all the Duke Energy of  
17 Ohio employees. How many are there?

18 A. I couldn't tell you.

19 Q. But you said you keep logs?

20 A. We all keep time sheets.

21 Q. And all that, whatever it ends up with,  
22 that expense for Ohio is for Ohio, and it ends up in  
23 Schedule A-1, in one way or another?

24 A. The allocated -- the appropriately  
25 allocated labor shows up in the overall revenue

1 requirement, yes.

2 Q. Do we pay for the call service that's in  
3 Indiana on Schedule A-1?

4 A. Again, to the extent that the call center  
5 employees in Indiana do work for Ohio, they would be  
6 charged for it, and that would be included in the  
7 overall revenue requirement as well.

8 Q. Do they keep a log in Indiana for Ohio  
9 calls?

10 A. We try to do it -- universally, everybody  
11 keeps time sheets.

12 Q. Do you read and prepare or contribute your  
13 knowledge to being a witness on schedules, charts, and  
14 company memos in English during your regular work? Is  
15 English your language?

16 A. I'm from Kentucky, so it's hard to say.  
17 Yes, it is.

18 Q. What is your title?

19 A. It's Director of Rates Ohio, Kentucky.

20 Q. What company?

21 MS. WATTS: Objection, Your Honor. The  
22 witness has answered this question on several  
23 occasions.

24 HEARING EXAMINER KINGERY: Sustained.

25 Q. Do you keep a log whether you're working

1 for Ohio or Kentucky?

2 A. As I indicated earlier --

3 MS. WATTS: Objection, Your Honor. The  
4 witness has answered this question.

5 HEARING EXAMINER KINGERY: Sustained.

6 MR. LANE: Okay. I just wanted to make  
7 sure because Kentucky wasn't mentioned. All right.  
8 Okay. Now I want to give to the Bench Lane Exhibit No.  
9 5, but I think we already have it. That's the Duke  
10 motion of the PUCO to accept -- the May 8th. Is the  
11 May 8th -- Duke's motion.

12 HEARING EXAMINER KINGERY: You're talking  
13 about the motion made by Duke on May 8th for the  
14 admission of late-filed exhibit?

15 MR. LANE: Let me see if I have that  
16 right. We already have -- the May 8th has already been  
17 accepted, as I recall. Is this correct?

18 HEARING EXAMINER KINGERY: That is a  
19 document that was filed as a motion asking for  
20 admission of the A-1. We have not yet ruled on whether  
21 or not the A-1 will be admitted as a late-filed  
22 exhibit. That's in part what this hearing is about.

23 MR. LANE: Could I --

24 HEARING EXAMINER KINGERY: So the motion  
25 need not be itself made an exhibit.

1 MR. LANE: So I don't have to -- how would  
2 I refer to it in conversation?

3 HEARING EXAMINER KINGERY: You may refer  
4 to it as the motion of May 8th or you may refer to the  
5 attachment as the Schedule A-1. Ultimately, we will be  
6 ruling on that motion as to whether the A-1 is admitted  
7 as an exhibit.

8 MR. LANE: Okay.

9 Q. I want to clarify something. Mr. Wathen,  
10 who do you represent today as it relates to the  
11 Schedule A-1 settlement?

12 MS. WATTS: Again, objection, Your Honor.  
13 Mr. Wathen is here on behalf of Duke Energy Ohio, and I  
14 believe we stated that at least twice in the record so  
15 far.

16 HEARING EXAMINER KINGERY: Sustained.

17 MR. LANE: Well, I have accepted -- well,  
18 that's the end of that. No. 8 -- I would like to enter  
19 PUCO Attorney Examiner docket filing of 5/29/09 as  
20 Exhibit No. 8. That's the one where you announced the  
21 hearing for the 8th. That was your first -- now, has  
22 that already been introduced as part of this?

23 HEARING EXAMINER KINGERY: No. It's not  
24 an exhibit. It's an entry. You may refer to it.  
25 We'll see how you use it, whether or not you can --

1 MR. LANE: Okay. Just so I know how to  
2 refer to it. The same would go as an entry, number --  
3 the one that announced the hearing of today, your entry  
4 of June the 3rd, '09, from the Attorney Examiners.

5 HEARING EXAMINER KINGERY: Same response.

6 MR. LANE: Same thing? Okay. Your Honor,  
7 I'd like to ask -- I would like to ask Mr. Wathen a  
8 question from your entry, the Attorney Examiner's entry  
9 of 6/3/2009.

10 HEARING EXAMINER KINGERY: Do you have a  
11 copy for him to look at?

12 MR. LANE: Yes. It's my No. 9. Do you  
13 want one?

14 HEARING EXAMINER KINGERY: No. We're  
15 fine. Thank you.

16 MR. LANE: Thank you.

17 Q. You have in your hands the June 3rd, 2009,  
18 entry; is that correct, Mr. Wathen?

19 A. That's correct.

20 Q. By the Attorney Examiners. Would you  
21 please refer to Page 3, No. 10? Please read the first  
22 sentence of No. 10.

23 MR. REILLY: Objection. It speaks for  
24 itself.

25 MR. LANE: I can't hear what he said.

1 MR. REILLY: The document speaks for  
2 itself.

3 MS. WATTS: Duke Energy would join in that  
4 objection as well.

5 HEARING EXAMINER KINGERY: I'm going to  
6 overrule it. It doesn't hurt anything for him to read  
7 it so we all hear the same words.

8 A. "If a hearing is going to be held, then at  
9 least one witness shall be made available, by at least  
10 one stipulating party, to testify in support of  
11 Schedule A-1, filed on May 8, 2009, and the clarifying  
12 letter, filed on May 29, 2009."

13 Q. Thank you.

14 I have to clarify something by way of a  
15 question to the witness.

16 HEARING EXAMINER KINGERY: You may ask.

17 Q. If you are testifying today in support of  
18 Schedule A-1 -- is that correct, the settlement?

19 A. That's correct.

20 Q. After just reading No. 10, the item you  
21 just read, that first sentence, which you can refer to,  
22 do you interpret and accept that to mean that you are  
23 testifying for the PUCO Staff?

24 MR. REILLY: Objection. It calls for a  
25 legal conclusion, Your Honor. And if I may read the

1 sentence that was just read, "If a hearing is going to  
2 be held, then at least one witness" -- Mr. Wathen --  
3 "shall be made available, by at least one stipulating  
4 party" -- Duke Energy Ohio -- "to testify in support  
5 of" the A-1. That's exactly what's happening here.

6 MS. WATTS: We would object again also  
7 because Mr. Wathen has stated that he is here on behalf  
8 of Duke Energy Ohio only today.

9 MR. REILLY: And he's asking for a legal  
10 conclusion. I think the document speaks for itself.

11 HEARING EXAMINER KINGERY: We're going to  
12 sustain both objections. You are asking for a legal  
13 conclusion, and this has already been stated by this  
14 witness who he represents.

15 MR. LANE: I have to extend that. I  
16 accept what you said, but there are several other  
17 entities I didn't mention I want the record to know.

18 Q. Do you interpret and accept that you are  
19 testifying for the OCC and other signatures of Schedule  
20 A-1?

21 MS. WATTS: Same objection, Your Honor.

22 MR. LANE: Okay.

23 HEARING EXAMINER KINGERY: This is the  
24 same question. It will be the same result. Sustained.

25 MR. LANE: Okay. Now, the Duke Energy --

1 Chair, Judge, as I understand, we already have the  
2 exhibit of Duke Energy of 5/8/2009. That's the motion  
3 for admission to the docket of Schedule A-1, I guess.  
4 Is that the one?

5 HEARING EXAMINER KINGERY: We just  
6 referred to that, and we are -- we have under  
7 consideration --

8 MR. LANE: Okay. Then --

9 (Discussion off the record.)

10 Q. The document that you're considering  
11 consists of the PUCO entry sheet and five additional  
12 pages of late filed -- late-filed exhibits of Duke  
13 Energy of Ohio, of which the last page is Schedule A-1;  
14 is that correct, Mr. Wathen?

15 A. The May 8th? I don't have that in front  
16 of me. I couldn't tell you.

17 Q. Yes.

18 A. I don't have it in front of me.

19 HEARING EXAMINER KINGERY: Can you please  
20 read back the question?

21 A. There are five pages.

22 HEARING EXAMINER KINGERY: Just a minute,  
23 please.

24 (Question read back.)

25 A. Can you rephrase -- there are five total

1 pages.

2 Q. Is Page 5 -- are we calling Page 5 A-1,  
3 Schedule A-1? I just want to know which -- if Schedule  
4 A-1 is included or not.

5 A. Schedule A-1, that's the subject of the  
6 hearing, is included in that document, yes.

7 Q. Okay.

8 HEARING EXAMINER KINGERY: For the record,  
9 that document that we've just been referring to is not  
10 comprised of a PUCO entry sheet, I believe is what you  
11 called it, with several pages attached. This is a  
12 motion made by Duke. That's the first page. There is  
13 a Memorandum in Support. That's the second page. The  
14 third page is a Certificate of Service and a signature  
15 by Duke's counsel for that Certificate of Service. The  
16 fourth page is a continuation of the list of names on  
17 which service was made. The fifth page is the document  
18 that Duke was seeking to have admitted as a late-filed  
19 exhibit, and that is the Schedule A-1.

20 You may proceed.

21 MR. LANE: That's 5/8/2009, right.

22 Q. I'm a little mixed up, so I may ask a  
23 redundant question, and I'm sorry. I have to get  
24 something clear in my mind, because the Memorandum in  
25 Support on page -- in that document -- I'm asking a

1 question, Mr. Wathen. This is signed by Duke Energy  
2 Business Services, Inc., Elizabeth Watts. In the  
3 middle of that page where it starts with "Counsel" --  
4 do you see the sentence "Counsel"?

5 A. I see it.

6 Q. Elizabeth Watts here is speaking, and I  
7 would like you to read -- she signed what I would like  
8 you to read, starting with "counsel."

9 A. "Counsel for Staff of the Public Utilities  
10 Commission of Ohio" -- The Consumers' Counsel -- "The  
11 Ohio Consumers' Counsel, the City of Cincinnati, The  
12 Ohio Cable Telecommunications Association, The Ohio  
13 Partners for Affordable Energy, and The Greater  
14 Cincinnati Health Council, have no objection to these  
15 documents being admitted."

16 Q. Who is your lawyer on that letter? Who is  
17 the lawyer saying this?

18 A. Well, it's signed by Elizabeth Watts.

19 Q. She's speaking on behalf of the companies  
20 that you just read; correct?

21 MR. REILLY: Objection, Your Honor.  
22 That's incorrect. Ms. Watts is making the  
23 representation she's speaking on behalf of Staff --  
24 speaking for myself, because I was counsel, Miss Watts  
25 called me and asked me if I had an objection or if I

1 would agree to the motion being made, and I said no.  
2 She is reciting here a statement of fact. She's not  
3 representing anybody else, as counsel for -- as a  
4 lawyer in front of this Bench.

5 MS. HOTZ: OCC agrees.

6 HEARING EXAMINER KINGERY: I'll sustain  
7 the objection.

8 MR. LANE: Let's refer to my No. 7, which  
9 is the PUCO clarification document signed by Attorney  
10 Stephen Reilly. Do you have a copy of that?

11 HEARING EXAMINER KINGERY: Yes, we do.

12 MR. LANE: It is an exhibit?

13 HEARING EXAMINER KINGERY: It has not been  
14 marked or made an exhibit, no.

15 MR. LANE: Could I make it an exhibit?

16 HEARING EXAMINER KINGERY: You may ask  
17 that it be marked, yes.

18 MR. LANE: Yes. That's Lane Exhibit  
19 No. 7.

20 HEARING EXAMINER KINGERY: It will be so  
21 marked.

22 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION  
23 PURPOSES.)

24 Q. Mr. Wathen, please open up and go to the  
25 first page where it has Richard Cordray, Attorney

1 General of Ohio. Who signed that letter?

2 A. It's signed by Stephen Reilly.

3 Q. Would you please read the rest of what his  
4 title is?

5 A. It says, "Assistant Attorney General,  
6 Office of Attorney General Richard Cordray."

7 Q. Up above his signature, after -- in  
8 between "Respectfully submitted," what does he say,  
9 starting with "on"?

10 A. After, "Respectfully submitted"?

11 Q. Yes.

12 A. "On behalf of the Staff of the Public  
13 Utilities Commission of Ohio."

14 Q. Therefore, who is Assistant Attorney  
15 General Reilly speaking about?

16 A. It appears he's speaking on behalf of the  
17 Public Utilities Commission of Ohio.

18 Q. Okay. Well, let's read the paragraph  
19 there up above.

20 A. Do you want me to read the paragraph?

21 Q. Yes.

22 A. "The undersigned signatory parties to the  
23 Stipulation filed on March 31, 2009, would like to  
24 clarify that the late filed exhibit docketed on May 8,  
25 2009, settlement numbers represent the actual agreed to

1 dollar amounts for rate base, current operating income,  
2 rate of return, etc. Though Footnote A of Schedule A-1  
3 states that the items shown in the settlement column  
4 are for illustration only, the intent was that that  
5 column show all items included in an A-1 Schedule; and,  
6 the parties do, in fact, agree that the numbers in the  
7 settlement column are accurate numbers that the  
8 Commission can rely" on -- "rely upon for fixing a  
9 reasonable rate in this case."

10 Q. Okay. So Mr. Reilly -- there's one word  
11 in there -- on the second to the last line, right above  
12 the word "case," there's two words. The word right  
13 above "case," what does it say? There's two words I  
14 want you to repeat, starting -- the one that starts  
15 with the letter a.

16 A. There's two words -- "accurate numbers,"  
17 is that what you're referring to?

18 Q. Thank you.

19 A. All right.

20 Q. Does Exhibit 7 connect to Schedule A-1?

21 A. I'm not sure what you're asking. It  
22 refers to A-1. Is that what you're asking?

23 Q. Then would it connect to A-1?

24 A. Would it connect to A-1? It's referring  
25 to Schedule A-1 that was filed on May 8th, 2009.

1 Q. Okay.

2 The two exhibits that the -- Attorney  
3 Examiners, are part of this presentation already;  
4 correct? They're under consideration, the one --

5 HEARING EXAMINER KINGERY: The A-1 is  
6 under consideration, yes.

7 MR. LANE: And the cross-exam -- the two  
8 cross-exam --

9 HEARING EXAMINER KINGERY: Yes. We have  
10 Lane Exhibit 4 and Lane Exhibit 7.

11 MR. LANE: Okay. So they're in there.  
12 Okay.

13 HEARING EXAMINER KINGERY: Just to  
14 clarify, those have been marked as exhibits. They have  
15 not been --

16 MR. LANE: Okay.

17 HEARING EXAMINER KINGERY: -- moved  
18 for --

19 MR. LANE: Okay. I can't remember all  
20 this. Just so I know.

21 Q. Mr. Wathen, why am I being permitted to  
22 cross-examine you today?

23 MS. WATTS: Objection, Your Honor.

24 HEARING EXAMINER KINGERY: Grounds?

25 MS. WATTS: It calls for a legal

1 conclusion.

2 HEARING EXAMINER KINGERY: Sustained.

3 Q. Let's go to Schedule A-1 in your  
4 possession, please.

5 Does everybody have Schedule A-1? Okay.

6 It's hard to read, but at the bottom of  
7 the page it says, "Notes for Settlement Column."  
8 There's a footnote underneath that, the first one,  
9 starting with D. Would you please read that out loud,  
10 that -- two sentences there, two lines, the two lines?

11 A. Footnote A?

12 Q. Yes.

13 A. "The Parties to the Stipulation agreed to  
14 the overall revenue increase, the increases in Pole  
15 Attachment rental fees and the overall revenue  
16 requirement. All other items shown in the Settlement  
17 column are for illustration only."

18 Q. Is Duke Energy of Ohio one of the parties  
19 to the settlement?

20 A. We are.

21 Q. Do you know the names of the other  
22 parties?

23 A. It's in the Order -- I mean, it's in the  
24 Stipulation. If I have it --

25 Q. That's fine. That's fine. Please refer

1 to Schedule A-1, in the column under Line No. -- I said  
2 15 before. I apologize. There's 14. I stand  
3 corrected. How many items are there listed numerically  
4 and sequentially?

5 A. On Line 14?

6 Q. Where it says "Line No.," and then  
7 underneath it there's how many sequential numbers?

8 A. Well, there's 14 lines, 14.

9 Q. Okay. I'll refer to the Assistant  
10 Attorney General's document I just gave you. You  
11 stated that you didn't know the names, but all the  
12 others that are in the document are part of this,  
13 correct, part of this settlement?

14 A. I believe --

15 Q. Except for myself and Time Warner Telecom?

16 A. That's true.

17 Q. The two words that you spelled out for me  
18 several minutes ago in testimony above the word "case,"  
19 that was words "accurate numbers"; is that correct?

20 A. Yes.

21 Q. Mr. Reilly says, which you read, that  
22 they're accurate numbers; is that correct?

23 A. That's correct.

24 Q. What does accurate numbers mean?

25 A. Accuracy has a meaning that they're

1 representing actual numbers. I'm not sure by  
2 definition --

3 Q. In your professional opinion, what does  
4 accurate numbers mean?

5 A. Reliable. They're, I guess, actual  
6 numbers.

7 Q. On the top line between the two bars --  
8 I'm referring to Schedule A-1. For the record, what  
9 does it mean when it says, "Staff Report Mid-Point"?  
10 What does that mean?

11 A. When the Staff issues its report after its  
12 analysis of our case, it produces an A-1 exhibit of its  
13 own. They -- on that exhibit they provide a -- for  
14 comparison, they put our filing on it, just like this  
15 is here, and then they have a range of revenue  
16 requirements that is bounded by revenue -- by the rate  
17 of return they recommend. They traditionally offer  
18 rate of returns over a range, not a precise point. So  
19 they show a low point and a high point, and this is  
20 just the -- this is just the average of the two.

21 Q. Whose staff is that, that that refers to?

22 A. The Public Utilities Commission of Ohio.

23 Q. In that same bar on Schedule A-1, what is  
24 OCC, the acronym for?

25 A. Office of Consumers' Counsel.

1 Q. As it relates to Schedule A-1, what is the  
2 responsibility of the Office of Consumer Counsel?

3 MR. REILLY: Objection. Calls for a legal  
4 conclusion.

5 MS. HOTZ: OCC agrees.

6 HEARING EXAMINER KINGERY: I'm not sure I  
7 understand your question. Can you rephrase it?

8 Q. The Office of Consumer Counsel -- this is  
9 in the form of a question with a statement in front of  
10 it to Mr. Wathen. The Office of Consumer Counsel, the  
11 OCC, like you just defined, is one of the signatures to  
12 the March 31st Stipulation. Who are they?

13 A. Who are they?

14 Q. Yes.

15 A. Typically, as Miss Hotz introduced  
16 herself, she's an advocate for residential consumers in  
17 Ohio.

18 Q. Thank you. Who pays their staff as it  
19 relates to Schedule A-1 work?

20 MS. WATTS: Objection, Your Honor. A,  
21 it's not relevant; B, I don't think Mr. Wathen would be  
22 knowledgeable about such topics.

23 HEARING EXAMINER KINGERY: I'm going to  
24 overrule it.

25 Please answer, if you can.

1           A.     I mean, you'd have to ask the OCC who pays  
2 for the work that went into A-1, their version of A-1.

3           Q.     Is it a private organization?

4           A.     Not to my knowledge.

5           Q.     Who gave them the right to be a signature  
6 to your settlement that you submitted on Schedule A-1?

7           MR. REILLY:  Objection.  Calls for a legal  
8 conclusion.  In one sense, the Ohio General Assembly  
9 did when they made them the statutory representatives  
10 of consumers in Ohio.

11           HEARING EXAMINER KINGERY:  Sustained.

12           Q.     What does "Settlement" mean on this  
13 chart?  In between the two bars there's the word  
14 "Settlement."  What does that mean?

15           A.     That's a representation of the agreed to  
16 amounts that the stipulating parties came to in the  
17 negotiations, that was signed by the parties, save you  
18 and Time Warner Telecom.

19           Q.     Was the company that -- your company is  
20 subcontracted by Duke Energy of Ohio; is that correct?  
21 Duke Energy Business Services, who you work for, is  
22 subcontracted by Duke Energy of Ohio?

23           A.     I'm not sure if I'd characterize it as  
24 subcontract.  We're an affiliate company of Duke Energy  
25 Ohio.

1 Q. I forgot where I was.

2 Read the last statement, please.

3 (Question read back.)

4 Q. Was Duke Energy one of the settlers? Were  
5 they one of the people that signed the settlement?

6 MS. WATTS: Objection, Your Honor. This  
7 question has been asked and answered several times  
8 now.

9 HEARING EXAMINER KINGERY: Can you repeat  
10 the question?

11 (Question read back.)

12 HEARING EXAMINER KINGERY: Sustained.

13 Q. Would you say that the number of Duke  
14 Energy customers in Ohio that you are writing about  
15 when you prepared Schedule A-1 are approximately  
16 500,000 to 650,000 customers of Duke Energy of Ohio?

17 MS. WATTS: Objection. The witness stated  
18 earlier how many employees Duke Energy of Ohio has in  
19 Ohio, and the question assumes facts not in evidence.

20 HEARING EXAMINER KINGERY: He was talking  
21 about customers, not employees.

22 MS. WATTS: I'm sorry.

23 HEARING EXAMINER KINGERY: Okay.

24 Overruled.

25 A. Duke Energy Ohio has 660,000 electric

1 customers (indicating).

2 Q. Thank you.

3 MR. REILLY: I would like the record to  
4 reflect that in giving his answer, the witness made  
5 hand signs that indicated the 660,000 figure was an  
6 approximate.

7 A. Approximately 660,000.

8 HEARING EXAMINER KINGERY: Thank you.

9 Q. Therefore, how many Duke Energy of Ohio  
10 customers are affected by the Stipulation of March  
11 31st, the Stipulation which led to the Schedule A-1  
12 settlement on March -- released March 31st, 2009? How  
13 many people? How many customers, about?

14 A. Well, assuming it's approved, the  
15 resulting rates from the Stipulation would impact all  
16 customers to one degree or another, some customers more  
17 than others.

18 Q. How many customers are there that this  
19 would affect in Ohio?

20 A. I'll restate it, all the customers.

21 Q. I know. What's the numerical number?

22 A. That would be the 660,000 approximate  
23 number that I mentioned earlier.

24 MR. LANE: Judge, I'm going to ask a  
25 question. I'd like to have it clarified, so whatever

1 the answer is it is.

2 Q. Who represents today, at this hearing, the  
3 660,000 Duke Energy of Ohio customers?

4 MR. REILLY: Objection. Calls for a legal  
5 conclusion. The statute is right on point. The  
6 General Assembly, as stated earlier, has declared that  
7 the Office -- creating the Office of Consumers' Counsel  
8 by law represents the residential consumers in Ohio.  
9 That's a legal conclusion. It's a matter of statute.

10 HEARING EXAMINER KINGERY: I'll sustain  
11 the objection.

12 Q. Are you aware that we -- that this is just  
13 a hearing on one subject matter, which is the Schedule  
14 A-1, and the Staff has to make their -- the PUCO has to  
15 make their decision, and then the five PUCO  
16 Commissioners have to make theirs? Are you aware of  
17 that process?

18 A. That's typically the way it happens, yes.

19 Q. Then you are aware of it?

20 A. Yes.

21 Q. You already stated that you furnished some  
22 of the information for Schedule A-1 and someone else in  
23 your department furnished others; is that correct? But  
24 it all came out of Cincinnati?

25 MR. REILLY: Objection. I believe it

1 mischaracterizes his testimony if he's talking about  
2 anything that's the Settlement column.

3 MR. LANE: I can't hear.

4 MR. REILLY: My objection was it  
5 mischaracterizes the testimony if the question is  
6 designed to talk about anything in the Settlement  
7 column. I believe the prior testimony was that the  
8 information coming out of Cincinnati would be found in  
9 the -- would be found, to the extent it was adopted,  
10 which is not clear, it would be in the Applicant's  
11 column, and to the extent it was adopted, it would also  
12 be in the Staff Report and OCC column. To the extent  
13 it was adopted is not clear. The Staff Report speaks  
14 for itself. It's an exhibit in the case. There were  
15 objections filed to the Staff Report which are in the  
16 docket, which includes OCC's numbers. So you have the  
17 numbers as they are in the Staff Report column, in the  
18 OCC column. You have the numbers as they are coming  
19 out of Cincinnati as they are modified by the Staff  
20 Report as people object to the Staff Report. I mean --

21 HEARING EXAMINER KINGERY: Mr. Lane, can  
22 you rephrase your question?

23 MR. LANE: As I understand it, he said  
24 that he prepared his testimony, the Schedule A-1.

25 Q. You, Mr. -- you are responsible for

1 getting it prepared. You did some of it yourself.  
2 There's blocks -- there's 14 times -- let me put it  
3 another way, if I may. There's 14 line items, and  
4 there's 4 blocks; so 4 times 14. There's 56 blocks on  
5 Schedule A-1. Where did that information come from  
6 under your tutelage?

7 A. I've spoke to this earlier today, but I'll  
8 go over it one more time. The Applicant Filing is from  
9 our case. It was filed around June, July of 2008.

10 Q. You mean all -- on all 14 items?

11 A. The 14 lines under the column entitled  
12 Applicant Filing are from our case, our initial case,  
13 about a year ago.

14 Q. Okay.

15 A. The middle column is the average of the  
16 high and low ranges from the Staff Report that was  
17 filed I think it was January or February of 2009.

18 Q. Did you say high and low?

19 A. They have a high and low range on their  
20 return on equity.

21 Q. How did you arrive at a single figure?

22 A. As I explained earlier, it's an average of  
23 the high and low.

24 Q. You mean, like, on rate issue it's a high  
25 and a low and you get an average of the two and then

1 put it in Line 73, on the first line?

2 A. Line 73? Well, the only thing that was  
3 high and low was the return. The rate base is the same  
4 in both cases, high and low.

5 Q. Okay. The fourth line, the percent --

6 A. Right.

7 Q. -- you're saying you took an average?

8 A. That's right.

9 Q. Now, who did this work? You did it?

10 A. The Staff, after analyzing our application  
11 and all the discovery they asked for, they produce  
12 theirs, and there were dozens, at least a couple of  
13 dozens people involved in that from the Staff.

14 Q. So it's not a precise -- this work that  
15 you do on four, the Staff Mid-Point that we're talking  
16 about, is not a precise science? Is it precise?

17 A. This is precise.

18 Q. You took two figures and you averaged  
19 them?

20 MR. REILLY: Objection, Your Honor. To  
21 the extent that this involves objections to the Staff  
22 Report, the time for that has long passed.

23 HEARING EXAMINER KINGERY: I believe at  
24 this point Mr. Lane is attempting to understand what  
25 the figures are on the A-1, so we will allow it.

1                   Continue.

2                   Q.       In other words, like I -- I'm being  
3 precise, there's one person sitting right here, one.  
4 Now you got 5.61 on Item No. 4 under the Staff, from  
5 their information of two different figures, and you  
6 averaged it. So if you had two other figures that got  
7 an average, it would be a different figure than the  
8 5.61. So Schedule A-1 gets settled by all the parties  
9 except Time Warner and Albert Lane, and you're  
10 saying -- your company that you're speaking for today,  
11 you're saying that's correct, and I'm saying it's not  
12 precise. So what is it? Is it precise or is it an  
13 estimate?

14                  A.       Well, first of all, the number is 8.61.

15                  Q.       Okay.

16                  A.       I will state that it is precise.

17                  Q.       It's precise based on two figures averaged  
18 together?

19                  A.       That's right.

20                  Q.       Okay. That's all right. So the Staff  
21 figures, except for the top line of No. 1, are all put  
22 in these blocks by you?

23                  A.       They are --

24                  Q.       Two through 14 are put in by you, with  
25 information given you by PUCO under the Staff heading?

1           A.       Virtually all the numbers from Line 4 to  
2 Line 14 are an average of information in the Staff  
3 Report that I put in.

4           Q.       You put in. Is it connected or  
5 unconnected to your column, under the same 4 to 14? In  
6 other words, he has a column. He gets 4 and 14. Are  
7 yours connected to the figures that you averaged to the  
8 other? Is there any kind of positive comparison?

9           A.       The Staff starts with our case. That's  
10 how they start with their -- before they make any  
11 adjustments, they would have the same numbers we have.  
12 They go through and decide whether or not certain rate  
13 based items are included, O&M are included, whether  
14 taxes are done accurately, all these things. They make  
15 adjustments starting with our case. So their nexus is  
16 there, but it's not -- it's their adjustments to our  
17 case.

18          Q.       Let's go to the OCC column.

19                   HEARING EXAMINER KINGERY: Excuse me a  
20 minute. It is 12:30 at this point. I believe we  
21 should take a break for lunch. Why don't we come back  
22 in one hour.

23                   MR. REILLY: Excuse me, Your Honor. We  
24 would move to go straight through.

25                   HEARING EXAMINER KINGERY: Let's go off

1 the record.

2 (Discussion off the record.)

3 HEARING EXAMINER KINGERY: We will take a  
4 five-minute break and return.

5 (Recess taken.)

6 HEARING EXAMINER KINGERY: Let's go back  
7 on the record.

8 You may proceed.

9 MR. LANE: Thank you.

10 Q. By the way, I want to interject something  
11 before I forget, are you aware that I am one of  
12 660,000?

13 A. I think you introduced yourself to me as a  
14 customer, yeah.

15 Q. So I'm one of 660 -- I just want -- if  
16 you're aware of that.

17 MS. WATTS: I'd like to object because I  
18 think Mr. Lane is claiming to represent more than just  
19 himself here, so I'd like to be clear on who Mr. Lane  
20 purports to represent.

21 HEARING EXAMINER KINGERY: Are you  
22 purporting to represent anyone besides yourself?

23 MR. LANE: No. Just myself.

24 HEARING EXAMINER KINGERY: Okay.

25 MS. WATTS: Thank you.

1           Q.       Who helps the OCC, which we've agreed we  
2 can use that word, get their information for their  
3 blocks? There's eight blocks they filled in. Do you  
4 know where they get -- nine blocks. Do you know where  
5 they get their information?

6           A.       Well, like the Staff and any other  
7 intervenor, they ask us extensive discovery. We give  
8 them a lot of data. They take a lot of data from our  
9 application, and they would have used the Staff Report  
10 information as well, because it would have preceded  
11 their filing.

12          Q.       What does "n/a" mean under the OCC?

13          A.       Not applicable or not available. They did  
14 not provide data in their filing for these line items.

15          Q.       Now let's go to the Settlement column of  
16 the Stipulation of Schedule A-1 that was agreed to on  
17 March 31st, 2009. You've got 14 items and 14 figures.  
18 Please explain to me, like the 963 -- the first one  
19 under item "Rate Base," how is that arrived at?

20          A.       Well, as I indicated in the note,  
21 essentially the only numbers that were really agreed to  
22 in the settlement were the rate -- the magnitude of the  
23 increase, the \$55.3 million in Line No. 8, and  
24 essentially most of the lines from there on down were  
25 agreed to in the settlement.

1 Q. I'm a little mixed up. Would you go by  
2 numbers? Which -- from 1 to 14, as it relates to the  
3 Settlement column, which are pertinent?

4 A. Let me state it this way, from line --  
5 basically the lines that I've identified on here,  
6 starting with Line No. 8 to Line 14 were basically  
7 stipulated to in the document that we're referring to  
8 as the Stipulation.

9 Q. Okay. Now let's start -- 66 billion 300  
10 thousand (sic.) --

11 A. 55.3, 55,300,000?

12 Q. 55, okay. I need my magnifier. Okay.  
13 What is that 55.3? What does that have to do with  
14 OCC's figure, Staff, and Duke's? How is it arrived at  
15 in relation to those three?

16 A. It's -- there's not a particular nexus.  
17 It's the agreed to amount of the increase in the  
18 Stipulation. That's the only nexus.

19 Q. It's not an average of the three?

20 A. No.

21 Q. Does your footnote so state that? Would  
22 you call that an arbitrary amount? Of the signers of  
23 the settlement, all but Time Warner Telecom and myself,  
24 your company signed it. Is the Settlement column from  
25 8 through 14 arbitrary? Do you know what arbitrary

1 means?

2 A. I have a definition in my mind, but -- we  
3 had several negotiations with the parties, and we went  
4 over a lot of numbers, and I think everyone had their  
5 say, and I would not characterize it as arbitrary.

6 Q. All right. You would not consider it  
7 arbitrary?

8 A. That's correct.

9 Q. Precisely where do these figures in the  
10 Settlement column from Nos. 8 through 14, where do they  
11 come from, their numbers?

12 A. They're a product of the negotiations that  
13 we had with the Staff, the OCC, and the other signing  
14 parties to the settlement.

15 Q. Let me see if I have something clear in my  
16 mind. You came up with a figure on Schedule A-1 back  
17 in '08 of how much money -- we defined it before, 80 --  
18 86 --

19 A. It's on the schedule, \$85.6 million.

20 Q. 85.6. Then you come to an agreement that  
21 your company, Duke Energy of Ohio, agrees, concurs  
22 with -- what was it? What's the other figure? It's --  
23 it was 50 something?

24 A. 55.3 was the settled to amount.

25 Q. Okay. The settled to amount has no

1 mathematical relationship other than what was agreed  
2 between the parties that went to the Stipulation  
3 meeting? That's what it amounted to in the end. There  
4 might have been work done; correct? There was work  
5 done, but in the final analysis, how was it arrived at,  
6 those 8 through 14 at this meeting? You're an  
7 accountant. You said you took accounting. Was math  
8 done, precise math, or was it negotiation? Which was  
9 it, negotiation or math?

10 MS. WATTS: Your Honor, I object to this  
11 line of questioning. Mr. Lane had been invited to all  
12 of the settlement discussions of which he is asking  
13 questions and declined to participate. Secondly, the  
14 settlement discussions between the parties are  
15 confidential and the results of the settlement are  
16 embodied in the Stipulation and the offered A-1, and we  
17 think any other discussion with regard to what was  
18 discussed between the parties of the settlement is  
19 inappropriate.

20 MR. REILLY: If I just might add to that,  
21 Your Honor, and I'm reading from the Stipulation  
22 itself, "This Stipulation is a reasonable compromise  
23 involving a balancing of competing positions, and it  
24 does not necessarily reflect the position that any one  
25 or more of the parties would have taken if these issues

1 had been fully litigated." That is from the  
2 Stipulation itself, which the A-1 is trying to reflect  
3 that it will provide for a 55.3 million rate increase.

4 MR. LANE: Where is that --

5 HEARING EXAMINER KINGERY: Do you have a  
6 response?

7 MR. LANE: Yeah. I want to know where  
8 that's stated. I want to read --

9 MR. REILLY: It's in the Stipulation, Page  
10 2, the next to the last paragraph, the second  
11 sentence.

12 MR. LANE: Say that again. Was a  
13 reasonable compromise -- yes, I see. Okay. Thank  
14 you.

15 HEARING EXAMINER KINGERY: We'll sustain  
16 the objection.

17 MR. LANE: I have to ask this again  
18 because I can't remember what the answer was. I'm  
19 sorry.

20 Q. Are the figures in the Settlement column  
21 from No. 8 to 14 precise figures that Duke Energy of  
22 Ohio wants to receive?

23 MR. REILLY: Objection. That was the  
24 second to the last objection. That was sustained by  
25 the Bench.

1 HEARING EXAMINER KINGERY: No, I don't  
2 believe so.

3 MR. REILLY: Objection. Asked and  
4 answered.

5 HEARING EXAMINER KINGERY: Mr. Lane did  
6 preface this by saying that he had failed to remember  
7 the answer to the question, so even if it was asked and  
8 answered, I will allow the witness to answer it again.

9 MR. LANE: What did I ask?

10 HEARING EXAMINER KINGERY: Would you  
11 please read back the last question?

12 (Question read back.)

13 A. I'm not sure I'd characterized as "wants  
14 to receive." We wanted more, but it's the amount we  
15 agreed to receive.

16 Q. Thank you. Let's refer to No. 7.  
17 Attorney General Cordray, by Mr. Stephen O'Neal (sic.),  
18 the Assistant Attorney General, No. 7, my No. 7. You  
19 said that's what you want to receive in Schedule A-1,  
20 No. 8 through 14 on the Settlement column?

21 A. No. I said in the application column is  
22 what we asked for. That was our request.

23 Q. But you signed the Settlement column --

24 A. I said that's what we agreed to.

25 Q. Yes. Now, in relation to Mr. Cordray, you

1 read it to me out loud, on his May 29th filing, above  
2 the word case, do you recall I asked you to read the  
3 two words?

4 A. Yes. I remember the words, right.

5 Q. What were they?

6 A. "Accurate numbers."

7 Q. So now read the first part of that  
8 sentence of Mr. -- Stephen Reilly's letter on behalf of  
9 PUCO Staff, the first sentence.

10 MS. WATTS: Your Honor, the witness has  
11 already been asked to read this entire letter. We're  
12 going back over the same area again. I don't know what  
13 the purpose of this line of questioning could possibly  
14 be, but it seems irrelevant at this point.

15 HEARING EXAMINER KINGERY: Mr. Lane, is  
16 there any reason he needs to read the words again?

17 MR. LANE: Well, the question is, as I see  
18 it, that I want to ask as a question, on Schedule A-1,  
19 Stephen Reilly is writing on behalf of the undersigned  
20 signatory parties, which includes Duke Energy;  
21 correct?

22 MR. REILLY: Incorrect, Your Honor. If I  
23 might speak as to what I wrote. The letter is  
24 signed --

25 MR. LANE: I object to that.

1 MR. REILLY: The letter is signed by every  
2 signatory to the Stipulation except OCC, which filed  
3 their own letter.

4 HEARING EXAMINER KINGERY: Mr. Reilly,  
5 we'll let Mr. Lane finish his statement, and then you  
6 may respond.

7 MR. REILLY: Okay.

8 Q. My question is, as it relates to the  
9 Settlement column 8 through 14, the numbers that are  
10 there which were arrived at, that your company  
11 accepted --

12 HEARING EXAMINER KINGERY: Excuse me. Mr.  
13 Lane, we're not asking the witness a question right  
14 now. Right now we're dealing with an objection that  
15 has been made to your last question.

16 MR. LANE: Well, I can only repeat what  
17 the Honorable Assistant Attorney General wrote. "The  
18 undersigned signatory parties to the Stipulation," to  
19 me means they're accurate numbers.

20 HEARING EXAMINER KINGERY: I'm sorry.  
21 There's been so much I have lost what the original  
22 question was. You had asked the witness to reread this  
23 letter once again or a part of the letter, and the  
24 objection was that it has already been read, and I was  
25 asking you if you had a response as to why you need

1 this witness to read the letter again.

2 MR. LANE: It has to be read again in  
3 relation to the Settlement column because he said they  
4 were -- the witness said that they arrived at by  
5 negotiation. Mr. Reilly is saying they're accurate  
6 numbers.

7 MR. REILLY: Objection. It calls for an  
8 interpretation of the letter.

9 HEARING EXAMINER KINGERY: You are welcome  
10 to remind the witness of something that has been read  
11 previously and then ask your question, but we're not  
12 going to read the letter again. So, to that extent, I  
13 will sustain the objection.

14 MR. LANE: So I don't ask him to read it?  
15 Right.

16 Q. It's a simple question, as I see it, and  
17 maybe I'm not putting it over right, people got  
18 together on March 31st and they agreed, except for Time  
19 Warner Telecom and myself, and they played with words  
20 and arrived at a figure through negotiation, not  
21 precise -- of course, the accounting is a figure that's  
22 arrived at, but it's not done through -- scientific in  
23 any way. It's not -- it's not a science, a precise  
24 science; is that correct? It was arrived by  
25 negotiation, so it couldn't be precise, could it? It's

1 precise that it's there, it's one number, but it wasn't  
2 arrived at by precise fact? I don't know how else to  
3 ask it to you.

4 A. Well, as Mr. Reilly alluded to, the  
5 settlement, it was a compromise of positions.

6 Q. Who said that, Mr. Reilly?

7 A. Yes. It's in the Stipulation.

8 Q. Mr. Reilly says they're accurate figures,  
9 accurate numbers. What does he mean by that? Do you  
10 know what he means? I don't know.

11 MS. WATTS: Objection, Your Honor. Mr.  
12 Wathen cannot testify as to what Mr. Reilly meant.

13 MR. LANE: I know that.

14 HEARING EXAMINER KINGERY: Sustained.

15 On reconsideration, Duke did sign this  
16 letter. It is being referred to here as Mr. Reilly's  
17 letter simply because he penned it and his signature  
18 appears first, but several parties did sign it,  
19 including Duke, which Mr. Wathen represents; so from  
20 that standpoint, Mr. Wathen should be able to testify  
21 as to Duke's interpretation of the term accurate  
22 numbers when Duke signed this document.

23 So you may answer the question.

24 A. The numbers in the Settlement column from  
25 Line 8 to 14 are an accurate representation of what was

1 included in the Stipulation. So the numbers are  
2 accurate insofar as they refer to the Stipulation.

3 Q. As an accountant, are they precise to what  
4 your job is at the Company as it relates to your  
5 original case filing in '08? You got the figures from  
6 someplace for your '08 filing, and now they're \$31  
7 million less.

8 MS. WATTS: Objection. First of all, Mr.  
9 Wathen has testified that he is not an accountant, and,  
10 secondly, he's testified at length where each of the  
11 numbers on this page come from, and consequently, I  
12 don't think Mr. Lane's question is proper. It assumes  
13 facts not in evidence.

14 HEARING EXAMINER KINGERY: Can you  
15 rephrase your question?

16 Q. I will accept that it's a figure in the  
17 Settlement column, exactly what you said, it is a  
18 figure. It is a precise figure, but it's not arrived  
19 at the way Duke is supposed to -- isn't Duke supposed  
20 to follow certain procedures when they apply for a rate  
21 increase of scientific knowledge? Is it -- was it used  
22 here when -- was --

23 HEARING EXAMINER KINGERY: Mr. Lane,  
24 you're asking many questions. Let's let him answer  
25 some of them.

1           A.     I don't know where one ended and one began  
2 there, sir.

3           Q.     I'll try to calm down. We're talking all  
4 along about Schedule A-1, Items 8 through 14 on the  
5 Settlement page. I will accept in cross-examination  
6 that they are precise figures. Haven't you stated that  
7 they came from negotiation?

8           A.     Yes, I did.

9           Q.     Hasn't it before said that as far as  
10 Stephen Reilly's letter on behalf of the Attorney  
11 General and the PUCO Staff that it represents all the  
12 signatures?

13          A.     It represents all the signatures except  
14 for the OCC, who filed a letter the next day or two.

15          Q.     And myself?

16          A.     And yourself.

17          Q.     And Time Warner --

18          A.     You didn't sign the Stipulation, so --

19          Q.     Now, the question is, since you're part of  
20 this letter in this regard on Schedule A-1 filed by Mr.  
21 Reilly on behalf of the PUCO and, for this discussion,  
22 and Duke Energy of Ohio?

23                 MR. REILLY: Your Honor, I object. It was  
24 filed on behalf of all the signatories that signed the  
25 letter.

1 HEARING EXAMINER KINGERY: Let's call it  
2 the clarifying letter.

3 Q. Am I correct in saying -- asking you if  
4 what Mr. Reilly says, when he says "accurate numbers,"  
5 that's in conflict with what you wrote -- what the  
6 Stipulation -- what you requested in your initial  
7 application, Duke Energy of Ohio, and what you stated  
8 here today that they were arrived at by compromise?  
9 There's a bunch of conflicts here. You don't see it?  
10 I could go over it one by one.

11 A. I see no conflict in the letter. The  
12 letter says that the numbers on the Schedule A-1 are  
13 accurate numbers, and they are.

14 Q. They would have to be accurate numbers.  
15 Of course, they're accurate. I'm not talking that  
16 way. I'm saying are they arrived at -- with your  
17 charge, when you apply for a rate case in Ohio, you  
18 have to follow certain procedures, and in that regard,  
19 are these accurate numbers? Duke Energy has to -- they  
20 just can't come out of the wind and just file that we  
21 want a rate increase. You have to have a reason. You  
22 have to justify it. Is that correct?

23 A. The column -- the application column on  
24 Settlement A -- on Schedule A-1 is our filing, and it  
25 follows all the procedures that we're required to

1 follow.

2 Q. But your company is a signature to the  
3 letter that -- you're part of the subject matter of  
4 what the Judge has said. You're part of it, okay, the  
5 undersigned signatures. You're part of it, but you  
6 stated -- is this correct, you're part of it?

7 A. Duke Energy of Ohio is a signatory to that  
8 letter, yes.

9 Q. Is the settlement figure a scientific  
10 figure when the State of Ohio asks for companies when  
11 they want a rate change?

12 MR. REILLY: Objection, Your Honor. I  
13 don't understand the word scientific. It sounds like  
14 it requires a legal conclusion since the formula for a  
15 rate increase is in 4905.15. But I don't understand  
16 scientific regardless.

17 MS. WATTS: We would object as well,  
18 because I think we've been over this ground about five  
19 or six times now. Mr. Wathen has testified that the  
20 numbers represent a settlement amongst the parties. I  
21 don't know how he can be any clearer than that.

22 HEARING EXAMINER KINGERY: We're going to  
23 sustain the objection.

24 Q. Please look at Schedule A-1. There's 14  
25 columns and there's -- 14 topics, 4 columns, some are

1 blank, either with a space or with numbers in them.  
2 Put another way, when you compare Applicant Filing to  
3 Staff Report on the 14, OCC, and Settlement, whether  
4 its sideways, horizontal, or vertical, they're all  
5 different. Is this correct?

6 A. They're all different.

7 Q. Shouldn't they be the same for each  
8 discipline for each of the 14?

9 A. If the Staff and the OCC agreed on  
10 everything we asked for, then they would be the same.  
11 Unfortunately, they see things differently sometimes.

12 Q. Which happened here? That happened here,  
13 didn't it?

14 A. It did.

15 Q. Therefore, you lowered, for discussion  
16 sake, thirty -- Duke Energy of Ohio lowered theirs by  
17 31 million, is this correct, per your testimony?

18 A. We agreed to a revenue increase that was  
19 \$31 million less than we asked for.

20 Q. Are you aware that 660,000 Duke customers  
21 have to understand what you just said?

22 A. I'm aware that 660,000 customers will be  
23 affected by the rate increase. I'm not sure what you  
24 mean by "have to understand."

25 Q. I'm going to go over something here. I'm

1 trying to rush to get the time going. If it's been  
2 objected to, let me know, because I can't remember.  
3 Mr. Reilly says in Exhibit 7, as I interpret his words,  
4 that the PUCO Commission can rely, for fixing a  
5 reasonable rate, in this case from the arbitrary  
6 numbers placed in the Settlement column 8 through 14?

7 MR. REILLY: Objection. It  
8 mischaracterizes the letter on its face.

9 HEARING EXAMINER KINGERY: Mr. Lane, let's  
10 refer to this not as Mr. Reilly's letter or anything  
11 Mr. Reilly is saying. These are the words that are  
12 agreed to by all of the entities that have signed the  
13 letter, so let's -- we can call it a clarifying  
14 letter. You can call it anything else, but it could  
15 have been any signature that was first.

16 MR. REILLY: In addition Your Honor, just  
17 to explain a little further, I guess I should have  
18 added the word argumentative to that, he's  
19 argumentative, because nowhere in the letter does it  
20 talk about any numbers on the A-1 being arbitrary. As  
21 the witness has testified, they are not. They are  
22 clearly accurate and reflected in the settlement.  
23 Arbitrary is Mr. Lane's argumentative statement.

24 HEARING EXAMINER KINGERY: So noted.

25 Q. Let's go back to the original -- your

1 original testimony. I think it's my No. 2.

2 HEARING EXAMINER KINGERY: Are you  
3 referring to the testimony that was submitted for this  
4 hearing today?

5 MR. LANE: His original.

6 HEARING EXAMINER KINGERY: "Original," you  
7 mean that was filed with the application in --

8 MR. LANE: In March, March '08, 8/8/08  
9 (sic.).

10 THE WITNESS: Direct is what he's talking  
11 about.

12 HEARING EXAMINER KINGERY: Okay, Direct  
13 Testimony. For purposes of the record, that would be  
14 Company Exhibit 12.

15 MR. LANE: Here it is.

16 Q. Mr. Wathen, you speak about the word  
17 compromise or we made a settlement, it's not what we  
18 wanted; is that correct?

19 A. That's correct.

20 Q. In the Settlement column on Schedule  
21 A-1 -- you've testified that you understand the English  
22 language; correct?

23 A. Some of it. Yes, I understand the English  
24 language.

25 Q. Well, then a word means what a word means

1 by reasonable people, by definition; is that correct?

2 A. There's usually a reference for a word,  
3 dictionaries, for example, but I'm not sure everybody  
4 would agree on the meaning of the exact same word.

5 Q. A reasonable person would agree that a  
6 word -- the word "word" means word; is that correct?

7 MS. WATTS: Objection, Your Honor.

8 HEARING EXAMINER KINGERY: Can we move  
9 forward?

10 Q. On Page 2 --

11 MS. WATTS: Objection. The witness  
12 doesn't have a copy of this testimony.

13 MR. LANE: I'll give him a copy. I'd like  
14 to introduce it.

15 HEARING EXAMINER KINGERY: It's already  
16 been marked, as I said, as Company Exhibit 12.

17 MR. LANE: I'll give him a copy.

18 Q. Page 2, at the bottom of Page 2, Line 20,  
19 we're talking about Schedule A-1. See Line 16?

20 MS. WATTS: Objection. Your Honor, I  
21 believe the A-1 referenced in the original testimony  
22 would be different than the A-1 which is the subject of  
23 this hearing.

24 HEARING EXAMINER KINGERY: Let's see what  
25 his question is, whether that's the case, because there

1 is a line -- there is a column in the current Schedule  
2 A-1 for the Applicant Filing which this would have been  
3 talking about.

4 Q. Is it correct the present A-1 derived from  
5 the A-1 that you were referring to in this document,  
6 its derivation, the template, the whole thing?

7 A. The A-1 being referred to on Page 2 of my  
8 Direct Testimony is the column that says Applicant  
9 Filing in the settlement -- Schedule A-1 that was filed  
10 May 8th, 2009.

11 Q. Right, and my question is, isn't it  
12 derived from the A -- the facts that are in nine,  
13 derived from your template of what you wanted in '08,  
14 of Schedule A-1?

15 A. Again, the A-1 being referred to here is  
16 represented line for line on the Schedule A-1 that was  
17 filed May 8, 2009; so derived, copied, it's in there.

18 Q. This is '08, this document (indicating).  
19 This is an '08 -- your '08 testimony?

20 A. Right.

21 Q. You made testimony in 2008. This is --  
22 we're not talking about the recent testimony. We're  
23 talking about your prior testimony.

24 A. I guess I'm struggling to wonder what  
25 you're after here. This is the -- this is the schedule

1 I'm talking about, the A-1 Schedule was in our  
2 application filed July -- filed last year.

3 Q. Of '08?

4 A. '08, last year.

5 Q. In your testimony of 8/8/2008 signed by --  
6 it says William Don Wathen, Jr., Direct, on Page 2 at  
7 the bottom. On Line 20, would you please read Line  
8 20? Start with the 85.6 on the line before, on 19.

9 A. "\$85.6 million over current electric  
10 distribution revenue is required to earn a reasonable  
11 rate of" --

12 Q. What does "required" mean?

13 A. That's the amount of revenue that would  
14 allow us to earn the rate of return that we deemed  
15 reasonable in this case.

16 Q. And that's what you filed for in the  
17 application; is that correct?

18 A. It is.

19 Q. In '08?

20 A. In '08.

21 Q. Okay. Would you say the '09 Schedule A-1  
22 from the witness stand is now what's required?

23 A. I can't say that. We have not updated our  
24 case at all. This is the -- we're still talking about  
25 the case that was filed in July of 2008, so nothing has

1 changed in that regard. We've not updated anything for  
2 contemporary data.

3 Q. Didn't your company sign the A-1, the one  
4 we're talking about today, the March 31st one? We're  
5 talking about it.

6 A. We agreed to settle the case that was  
7 presented in July 2008.

8 Q. I'm trying to determine whether the  
9 words -- I guess I'll put it another way. Is the word  
10 settle applicable when you're talking about something  
11 that's required?

12 MR. REILLY: Objection. Irrelevant. What  
13 it meant one way or the other is irrelevant to this  
14 settlement. Whether somebody would use required,  
15 somebody would use some other word, I mean, the witness  
16 used the terms he used. The Company agreed to the  
17 settlement. It's \$31 million less than they asked  
18 for. It's a good settlement for consumers.

19 HEARING EXAMINER KINGERY: I'm going to  
20 overrule that.

21 Do you recall the question?

22 THE WITNESS: Not really.

23 HEARING EXAMINER KINGERY: Can you read  
24 back the question, please?

25 (Question read back.)

1           A.       Well, I mean, "required" is one of those  
2 words that might be arguable by definition. We think  
3 it's required. It's something we agreed to accept to  
4 get to the revenue we needed, and settlement is the  
5 process in doing that.

6           Q.       I'm going to ask a legal term. I don't  
7 mean it in the slang, because I've looked it up. Did  
8 you ever hear of the word fudge as used in legal terms  
9 or in laymen's terms?

10          A.       I've never heard it in legal terms, but --

11          Q.       Do you know what fudge means?

12          A.       It's a chocolate candy.

13          Q.       There's another term. I will ask it to  
14 you. Did Duke Energy fudge when they asked for 86.3  
15 million on the original application?

16          A.       Absolutely not. That was our best case.

17          Q.       Nevertheless, even though it was required,  
18 you have agreed, on the Stipulation of March 31st, '09,  
19 to settle, which is not required; is that correct?

20          A.       I said a number of times we agreed to  
21 settle, yes.

22                   MS. WATTS: Your Honor, we seem to be  
23 covering the same ground over and over and over here.  
24 We have a clear exhibit that shows what the Applicant  
25 Filing was, what the position of the parties was, what

1 the settlement figures were. I just don't understand  
2 where we're trying to get to here. I don't see  
3 anything relevant to be elicited from Mr. Lane's  
4 questions.

5 HEARING EXAMINER KINGERY: Is there a  
6 current question pending?

7 MR. LANE: No.

8 HEARING EXAMINER KINGERY: No. Okay. So  
9 noted. Let's go off the record.

10 (Discussion off the record.)

11 HEARING EXAMINER KINGERY: We're going to  
12 take a break for lunch until 1:45.

13 (Lunch recess taken.)

14 HEARING EXAMINER KINGERY: Let's go back  
15 on the record.

16 Mr. Lane, you may proceed.

17 Can everybody hear Mr. Wathen okay or  
18 should we have the mike turned on? You're okay.

19 MR. LANE: Where did we leave off?

20 HEARING EXAMINER KINGERY: Can you read  
21 back the last question for us?

22 (Question and answer read back.)

23 MR. LANE: Thank you.

24 Q. As far as Schedule A-1, your firm made the  
25 original application in '08, and the 14 slots, which I

1 originally called 15, I meant 14, what you required,  
2 which the testimony showed that you said. Then there  
3 was a settlement on March 31st to Schedule A-1, signed  
4 by everybody, all the intervenors except myself and  
5 Time Warner Telecom, where the information from the  
6 PUCO and the OCC was discussed on the 14 items,  
7 especially 8 through 14, as you testified, and you  
8 arrived at figures. So whose figures were used in  
9 Schedule A-1? That's what's bothering me. Was it your  
10 figures?

11 A. The basis of the settlement was really the  
12 sum of all the figures. I mean, it was -- it was our  
13 position, the OCC's position, the Staff's position, and  
14 the other parties' positions.

15 Q. So your required figures weren't in the  
16 final figures of the Schedule A-1 in the Stipulation of  
17 March 31st?

18 MS. WATTS: Objection. Asked and  
19 answered.

20 HEARING EXAMINER KINGERY: I'm going to  
21 allow the question. I agree it was asked and answered,  
22 but I'm not sure that Mr. Lane understood the answer in  
23 the way that the answer was intended.

24 MS. WATTS: Then, Your Honor, I have an  
25 additional objection which is that Mr. Lane is

1 mischaracterizing what Mr. Wathen testified to when he  
2 uses the word required.

3 HEARING EXAMINER KINGERY: May I hear the  
4 question read back?

5 (Question read back.)

6 HEARING EXAMINER KINGERY: I will allow  
7 the question with the understanding that Mr. Lane is  
8 using the word required merely as a quote of a part of  
9 a sentence in the original testimony filed in this case  
10 by Mr. Wathen.

11 MS. WATTS: Thank you, Your Honor.

12 A. I'm not sure I understand the question  
13 completely, but the figures in A-1, there's -- the  
14 first column is what we said we required to earn the  
15 rate of return we said was necessary. The next two  
16 were what the other two parties on that Schedule A-1  
17 thought we needed to earn -- the return they thought  
18 was required, and the last one is just the settlement,  
19 the compromise of those positions that we all agreed  
20 to.

21 Q. And the compromise is on behalf of me, one  
22 of 660,000 customers, Albert Lane, one of -- you  
23 compromised for whatever the results were in Schedule  
24 A-1 on behalf of me; is that correct? Because it rides  
25 down to me eventually in my bill for my home.

1           A.       Well, I'm not sure of the legal -- who  
2 represents whom, but we compromised on behalf of Duke  
3 Energy Ohio. The OCC compromises on behalf of the  
4 residential customers.

5           Q.       Okay. It's a settlement based on  
6 negotiation, on No. 8 through 14 -- I think we've  
7 already said that 8 through -- 8 through 14 in the  
8 Schedule A-1, and that rides down to me, as a customer,  
9 as an intervenor today on Schedule A-1? In other  
10 words, whatever you arrived at through negotiation,  
11 compromise, the word you used, comes down on -- through  
12 Schedule A-1 eventually to me as an expense, rate; is  
13 that correct?

14          A.       Assuming the Commission approves the  
15 settlement, your rates will be affected, that's true.

16          Q.       Okay.

17                 MR. LANE: I want to introduce Lane  
18 Exhibit No. 10.

19                 HEARING EXAMINER KINGERY: What is the  
20 document?

21                 MR. LANE: It's the testimony of a man by  
22 the name of Louis Brown from the PUCO. He's a  
23 Utilities Specialist.

24                 HEARING EXAMINER KINGERY: Is Mr. Louis  
25 Brown here today?

1 MR. LANE: He was a witness. He was a  
2 witness, and this is his testimony from the docket.

3 HEARING EXAMINER KINGERY: In this case?

4 MR. LANE: Yes.

5 HEARING EXAMINER KINGERY: Its already in  
6 this case, then. It has already been marked and  
7 admitted as an exhibit.

8 MR. LANE: I'll give you the date,  
9 3/30/09.

10 HEARING EXAMINER KINGERY: Mr. Reilly, do  
11 you recall if that was one of the items of testimony  
12 that was already admitted in this case?

13 MR. REILLY: I believe it was not, Your  
14 Honor. I believe that Mr. Brown prefiled testimony in  
15 this case, that's true. I don't know if it's the  
16 testimony that's being referred to, but he never took  
17 the stand. It was never marked. We never offered it  
18 into evidence. It was never accepted into evidence.  
19 Frankly, I don't know what it would have to do with  
20 this matter before the -- in this hearing.

21 HEARING EXAMINER KINGERY: Just a moment,  
22 please.

23 (Discussion off the record.)

24 HEARING EXAMINER KINGERY: We're all  
25 remembering the same thing. I believe at the hearing

1 that we did admit all testimony that was prefiled with  
2 cross-examination waived.

3 MR. REILLY: You're correct.

4 HEARING EXAMINER KINGERY: So his  
5 testimony has already been made a part of the record.

6 MR. REILLY: That's correct.

7 MR. LANE: May I give a copy to the  
8 witness?

9 HEARING EXAMINER KINGERY: Yes.

10 MR. LANE: Because I want to ask him a  
11 question from this document. It's Lane Exhibit 10.

12 HEARING EXAMINER KINGERY: It will be  
13 referred to as whatever it was already identified as in  
14 the previous hearing.

15 Do you have the date on that item, filing  
16 date?

17 THE WITNESS: March 30, '09.

18 HEARING EXAMINER KINGERY: Thank you.

19 Q. I asked you earlier if rate making that  
20 comes out of Schedule A-1 is an exact science or are  
21 there variables that go into the chart on Schedule  
22 A-1. Is it an exact science or are there variables?

23 MR. REILLY: Objection. It's vague. I  
24 don't personally understand what he means by "exact  
25 science." I don't understand how the word science

1 figures into this.

2 HEARING EXAMINER KINGERY: Can you clarify  
3 your question? We want to make sure we're answering  
4 what you asked.

5 MR. LANE: I'm unable to answer that  
6 because I'm not on the witness stand. He's asking  
7 me -- he's --

8 HEARING EXAMINER KINGERY: No one is  
9 asking you anything. He objected.

10 MR. LANE: Oh, okay.

11 HEARING EXAMINER KINGERY: And I can  
12 sustain that objection, and I will do so. I sustain  
13 the objection. I am now advising you to rephrase your  
14 question.

15 MR. LANE: Oh, okay. Exact science, we're  
16 talking about exact science.

17 Q. The rate making in Ohio that consumers are  
18 charged by public utilities companies that are  
19 registered in Ohio is arrived at by certain standards  
20 passed by the state legislature at one time or  
21 another. Do you agree with that?

22 A. There are a number of rules and statutes  
23 that we have to follow to file cases, yes.

24 Q. Where we are here in 2009, at this time of  
25 this hearing, the 17th of June, 2009, does the state

1 require costs, previous costs to be averaged into what  
2 future costs should be on Schedule A-1, whatever topic  
3 we're talking about?

4 MR. REILLY: Objection. Calls for a legal  
5 conclusion. He's asking what the state requires. It's  
6 a matter of statute. Legal conclusion.

7 MR. LANE: Let me put it another way,  
8 ma'am.

9 Q. Are there any requirements as to how you  
10 arrive at the figures by the State of Ohio?

11 MR. REILLY: Objection. Same objection.

12 HEARING EXAMINER KINGERY: It's not a  
13 legal conclusion as to whether there are any  
14 requirements. As a matter of fact, I believe that's  
15 already been asked.

16 Q. What are they?

17 A. Again, as I said earlier, there's some  
18 rules in the Ohio Administrative Code and in the Ohio  
19 Revised Code that dictate how we file a case, what we  
20 file, and how the process is done, so --

21 Q. Could your company -- what's it called? I  
22 forgot the name of it. What's your company called?

23 A. The company I'm representing today?

24 Q. Yes.

25 A. I represent Duke Energy Ohio today. Is

1 that what you're asking about?

2 Q. Your employer, too.

3 A. Duke Energy Business Services.

4 Q. Could Duke Energy Business Services and/or  
5 Duke Energy of Ohio, Incorporated make a mistake on  
6 Schedule A-1?

7 A. In the Applicant -- in the column  
8 Applicant Filing and in the course of the case being  
9 litigated, the Staff does their work and they pointed  
10 out a couple of errors that we made.

11 Q. You have other employees, don't you, at  
12 Duke Energy in Ohio besides yourself?

13 A. We have a few.

14 Q. How many do you have?

15 A. I don't know specifically.

16 Q. Does anyone go over your work on Schedule  
17 A-1 when you prepare it?

18 A. Absolutely.

19 Q. Who?

20 A. Myself. I have three people in my  
21 department that work with me.

22 Q. Are they employees of your company, the  
23 separate company?

24 A. Those three are employees of Duke Energy  
25 Business Services. We have an advance -- financial and

1 accounting staff.

2 Q. They didn't find the mistake if there  
3 would be one? You said that -- do they ever find  
4 mistakes?

5 A. Yes.

6 Q. I heard you earlier in your testimony just  
7 a minute ago say that the PUCO should find it for you.  
8 Is that their job?

9 A. Their job is to validate our filing and  
10 determine whether or not it's reasonable and make any  
11 recommendations they have. Not to speak for the Staff,  
12 but that's --

13 Q. Does Duke Energy pay the PUCO to set up a  
14 Settlement column of the amounts you should charge your  
15 customers? Do you pay the PUCO, just like your  
16 company -- the parent of your subsidiary, whatever it  
17 is called, Duke Services, like you're paid, does your  
18 company pay PUCO, who has all these disciplines for  
19 arriving at a bill -- at a rate on Schedule A-1?  
20 Because that's what's happened, hadn't it? First of  
21 all, do you pay PUCO?

22 A. One of our expenses is a maintenance fee  
23 for the Public Utilities Commission of Ohio, right. We  
24 pay -- Duke Energy Ohio pays a fee to the Public  
25 Utilities Commission of Ohio.

1 Q. For making Schedule A-1?

2 A. For just the general operation of the  
3 Staff. I mean, I can't speak to all the things they  
4 do.

5 Q. Okay. Would you please read from Mr.  
6 Louis' testimony -- Louis Brown?

7 MS. WATTS: Your Honor, I would object to  
8 this. The testimony has been filed in the record. It  
9 speaks for itself.

10 HEARING EXAMINER KINGERY: Can you just  
11 refer all of us to a particular page and line number  
12 instead of having it read? We do all have it in front  
13 of us.

14 MR. LANE: Sure, but only two of us have  
15 it.

16 HEARING EXAMINER KINGERY: I think many  
17 people probably have it.

18 MR. LANE: I've got copies if anyone wants  
19 it.

20 HEARING EXAMINER KINGERY: Does anyone  
21 want a copy?

22 MR. REILLY: We'll take a copy.

23 MR. LANE: I might add that this is the  
24 only one I'm doing like this because there were many.

25 HEARING EXAMINER KINGERY: Okay.

1 Q. On the first page of his testimony of  
2 3/30/09, please read 9 through 18. It gives the  
3 qualifications of this gentleman. He's one of the  
4 disciplines that the PUCO has that your company pays  
5 for, that you just testified in arriving at Schedule  
6 A-1; is this correct?

7 A. Yeah. I'm not sure I'd characterize it  
8 that we pay for him to do this, but we pay a fee to the  
9 PUCO, period, so -- you want me to read the entirety of  
10 that paragraph?

11 HEARING EXAMINER KINGERY: No. We're  
12 going to glance at that section.

13 Q. After you read that exhibit -- you see his  
14 qualifications there?

15 A. (Witness nods head.)

16 Q. Okay. Now, starting with one, two, and  
17 three, do you see where they're talking about poles,  
18 towers, and fixtures on line --

19 A. Where?

20 Q. On Line 3, we're talking about poles,  
21 towers, and fixtures.

22 A. On Page 2 or Page 1?

23 Q. Page 2.

24 A. Poles, towers, and fixtures, right.

25 Q. The Ohio Cable Telecommunications

1 Association filed an objection; is that correct?

2 A. They did.

3 Q. And Mr. Brown's job was to review it; is  
4 that correct?

5 A. I assume that was his job in this case,  
6 yes.

7 Q. Now, this data, when finished, goes into  
8 Schedule A-1, somehow in one of the 14 slots; is that  
9 correct?

10 A. No, it did not. This particular item --  
11 this was not reflected in Schedule A-1 anywhere.

12 Q. Okay. Would you read Line 6 through 18?  
13 If it's irrelevant, then it's irrelevant,  
14 Your Honor, if it's not part of the case, like he's  
15 saying. I haven't heard anything on that.

16 MS. WATTS: I would object and claim that  
17 it is irrelevant.

18 MR. LANE: Is it relevant or irrelevant?

19 HEARING EXAMINER KINGERY: We're going to  
20 let one person talk at a time.

21 MR. LANE: Okay.

22 HEARING EXAMINER KINGERY: I'm sorry, I  
23 could not hear you.

24 MS. WATTS: As the witness stated, this  
25 calculation was not part of the A-1 and was corrected

1 prior to the filing of this particular A-1, and it's  
2 not relevant to this hearing today.

3 HEARING EXAMINER KINGERY: I did not hear  
4 the witness say all of what you said. He said that it  
5 is not in the A-1, but because it is not in the A-1,  
6 and the witness has so testified, then it does not  
7 appear to me that it is relevant to the A-1 we are  
8 considering today, so I will sustain the objection.

9 MR. LANE: Okay. I'm going to summarize  
10 what I've done here, if I may.

11 HEARING EXAMINER KINGERY: We're not doing  
12 closing statements. Are you done asking questions of  
13 this witness?

14 MR. LANE: What is the next step after  
15 this, Your Honor? What happens if I say that?

16 HEARING EXAMINER KINGERY: Let's go off  
17 the record.

18 (Discussion off the record.)

19 HEARING EXAMINER KINGERY: Let's go back  
20 on the record.

21 MR. LANE: Your Honor.

22 HEARING EXAMINER KINGERY: Yes. I was  
23 going to ask if you had any more questions.

24 MR. LANE: No. I'm finished with my  
25 cross-examination.

1 Thank you very much, sir. Thank you.

2 HEARING EXAMINER KINGERY: Ms. Watts, do  
3 you have any redirect?

4 MS. WATTS: We have no redirect, Your  
5 Honor.

6 HEARING EXAMINER KINGERY: Thank you very  
7 much. You may step down.

8 (Witness excused.)

9 MS. WATTS: We do have procedural  
10 matters.

11 HEARING EXAMINER KINGERY: Do you have any  
12 other witnesses?

13 MS. WATTS: We have no more witnesses.

14 HEARING EXAMINER KINGERY: I will hear  
15 your procedural matters at this time.

16 MS. WATTS: Mr. Lane marked as Lane  
17 Exhibit 7 a letter from Mr. Reilly and other parties to  
18 the -- actually, this is what we've been referring to  
19 as the clarifying letter. I would ask that that be  
20 accepted into the record as Lane Exhibit 7, I guess.

21 HEARING EXAMINER KINGERY: So you are  
22 moving for its admission?

23 MS. WATTS: I am moving for its  
24 admission.

25 HEARING EXAMINER KINGERY: Are there any

1 objections to its admission into the record?

2 MR. REILLY: That's fine.

3 HEARING EXAMINER KINGERY: It will be so  
4 admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 MS. WATTS: In addition to that, there's a  
7 document which was docketed on June 1st, 2009, which is  
8 a letter to the Attorney Examiners from Ms. Hotz. It  
9 has not been marked. I'd like to ask that it be  
10 marked, and I'd like to offer it into evidence as  
11 well. We could mark this as Duke Exhibit 21.

12 HEARING EXAMINER KINGERY: We will mark it  
13 as Duke Exhibit -- did you say 21?

14 Yes?

15 MR. LANE: Am I allowed to raise  
16 objections to anything she's saying?

17 HEARING EXAMINER KINGERY: When it's your  
18 turn. So far she's saying she wants to mark it. I  
19 have not --

20 MR. LANE: What's the last number?

21 HEARING EXAMINER KINGERY: Twenty-one.

22 Anything else? I would note that you have  
23 moved in writing for the admission of the A-1, but you  
24 have not identified a number for that. Would you like  
25 to mark it?

1 MS. WATTS: I would, Your Honor. Perhaps  
2 it would be appropriate to call that Duke Exhibit 22.

3 HEARING EXAMINER KINGERY: I was -- joint  
4 exhibit since the Stipulation is Joint Exhibit 1. This  
5 would be an attachment to that.

6 MS. WATTS: So do you want to call that  
7 Joint Exhibit 1 Attachment or do you want to call it --

8 HEARING EXAMINER KINGERY: How about two?

9 MS. WATTS: Two works fine.

10 HEARING EXAMINER KINGERY: Okay.

11 (EXHIBITS HEREBY MARKED FOR IDENTIFICATION  
12 PURPOSES.)

13 HEARING EXAMINER KINGERY: Were you moving  
14 the admission of Duke Exhibit 21 or merely marking it?

15 MS. WATTS: We would move for the  
16 admission of that exhibit as well. To be clear, we  
17 move for the admission of all three exhibits.

18 HEARING EXAMINER KINGERY: We've already  
19 admitted Lane Exhibit 7. We have pending a motion for  
20 the admission of what's now marked as Joint Exhibit 2.  
21 Do I understand that you have now moved for the  
22 admission of Duke Exhibit 21, which is the OCC  
23 clarifying letter?

24 MS. WATTS: Correct, Your Honor.

25 HEARING EXAMINER KINGERY: You also had

1 Duke Exhibit 20.

2 MS. WATTS: Correct. We would move for  
3 that admission as well.

4 HEARING EXAMINER KINGERY: And that is the  
5 Second Supplemental Testimony of Mr. Wathen?

6 MS. WATTS: That's correct.

7 HEARING EXAMINER KINGERY: Okay. With  
8 regard to Duke Exhibit 20, the Second Supplemental  
9 Testimony of Mr. Wathen, are there any objections to  
10 its admission into the record?

11 Hearing none, Duke Exhibit 20 will be  
12 admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 HEARING EXAMINER KINGERY: Let's talk  
15 about Duke Exhibit 21 first, and this is the OCC  
16 clarifying letter. Are there objections to it?

17 MR. LANE: Yes. Is that the paragraph --  
18 is this on record?

19 HEARING EXAMINER KINGERY: Yes.

20 MR. LANE: Okay. I don't have it in front  
21 of me. That's why --

22 HEARING EXAMINER KINGERY: This is the  
23 letter that OCC filed stating that it would not oppose  
24 Schedule A-1.

25 MS. SPILLER: (Indicating.)

1 HEARING EXAMINER KINGERY: Thank you very  
2 much.

3 MR. LANE: I object to that being  
4 submitted. I'm going to use a Latin word. It's quid  
5 pro quo. There's some things that I would like to get  
6 involved with OCC as it relates to Schedule A-1 and  
7 their signature first, before we get into what Duke  
8 Energy wants to submit. It has to do with what she  
9 wrote about and how she said it. There's a lot of  
10 things in this here that have to be discussed before  
11 it's admitted. May I proceed?

12 HEARING EXAMINER KINGERY: We're not going  
13 to talk about those because that would be you  
14 testifying, and at this point we're not getting  
15 testimony. We're talking about the admission of this.  
16 Perhaps what we should do at this point is see whether  
17 you have any witnesses to present.

18 MR. LANE: I don't have any witnesses.

19 HEARING EXAMINER KINGERY: Okay. So  
20 you're not going to present witnesses?

21 MR. LANE: No.

22 HEARING EXAMINER KINGERY: Okay. From the  
23 bench we do have a problem with admitting Duke Exhibit  
24 21 because there has been no testimony supporting  
25 anything about what that letter is. However, we would

1 be willing to take administrative notice of it so that  
2 it can be discussed as a part of this case.

3 MS. WATTS: Then we would respectfully  
4 request that you please take administrative notice of  
5 that exhibit.

6 HEARING EXAMINER KINGERY: Are there  
7 objections to taking administrative notice?

8 MR. LANE: I object.

9 HEARING EXAMINER KINGERY: On what  
10 grounds?

11 MR. LANE: Two reasons, one, you either  
12 sign a paper or you don't sign it. That's the way it  
13 works. They didn't sign it. And that speaks for  
14 itself, period. The paper that Document 21 refers to,  
15 they didn't sign it; so, therefore, to me, I object to  
16 this not being of our record administratively or  
17 otherwise because the facts are that they didn't sign  
18 it, the Attorney General on behalf of the PUCO Staff's  
19 letter, the clarification letter. So that's my point.  
20 I don't think this should be accepted based on that,  
21 because it's either they signed it or they didn't sign  
22 it. If they didn't sign it, there's nothing to talk  
23 about.

24 HEARING EXAMINER KINGERY: You said you  
25 have a second reason.

1 MR. LANE: The second reason, the letter  
2 doesn't make sense. I've read it many, many times, and  
3 I don't understand it. I'm a layperson.

4 HEARING EXAMINER KINGERY: Those are both  
5 substantive issues you have with the content of the  
6 letter. You're welcome to discuss those on brief, if  
7 we decide to have briefs, but we will not take notice  
8 on it on the grounds that you disagree with the  
9 content.

10 MR. LANE: Say that again.

11 HEARING EXAMINER KINGERY: We are going to  
12 take administrative notice of the OCC letter.

13 MR. LANE: Even though they didn't sign  
14 the document?

15 HEARING EXAMINER KINGERY: We understand  
16 that they didn't. It's clear from the face of the  
17 document that they did not sign it.

18 MR. LANE: But the reason -- may I inject  
19 one more thing here today? May I?

20 HEARING EXAMINER KINGERY: Go ahead.

21 MR. LANE: I was never able and I didn't  
22 plan to ask when we had the witness why they didn't  
23 sign it. I would have loved to have asked that  
24 question. That's --

25 HEARING EXAMINER KINGERY: Okay. Mr.

1 Lane, you had marked Lane Exhibit 4, which was a copy  
2 of a series of e-mails. Did you need to have that  
3 moved into admission into the record?

4 MR. LANE: Sure, everything that I  
5 submitted.

6 HEARING EXAMINER KINGERY: Well, the only  
7 exhibits that we marked of yours were Lane Exhibit 4  
8 and Lane Exhibit 7. No. 7 was the clarification  
9 letter. That has already been admitted. Lane Exhibit  
10 4 was a copy of the series of e-mails. Did you wish to  
11 move for its admission?

12 MR. LANE: That plus No. 10 -- oh, you  
13 said it's irrelevant. Ten is irrelevant, so it doesn't  
14 make any difference to move it.

15 HEARING EXAMINER KINGERY: I don't  
16 remember what 10 was -- oh, Brown's testimony, which is  
17 already in the record.

18 MR. LANE: Yes. Thank you for helping.

19 HEARING EXAMINER KINGERY: All right. So  
20 does anyone have an objection to the admission of Lane  
21 Exhibit 4?

22 MS. WATTS: We do not object, Your Honor.

23 HEARING EXAMINER KINGERY: Mr. Reilly?

24 MR. REILLY: No, Your Honor.

25 HEARING EXAMINER KINGERY: It will be

1 admitted.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 HEARING EXAMINER KINGERY: The only  
4 remaining item is the admission of Joint Exhibit 2, the  
5 Schedule A-1. It will be admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 HEARING EXAMINER KINGERY: Let's go off  
8 the record to discuss --

9 MR. REILLY: Before we go off the record,  
10 minor housekeeping matter, the first page of Lane  
11 Exhibit 7 is not part of the clarifying letter. The  
12 clarifying letter in terms of text is a single page  
13 document.

14 HEARING EXAMINER KINGERY: That's  
15 correct. The first page, as I recall, was a printoff  
16 from the Commission's docketing system. Okay. So Lane  
17 Exhibit 7 should be all pages except the first page.

18 MR. LANE: Let me see that a second. I  
19 want this first page to be part of it.

20 HEARING EXAMINER KINGERY: That's not what  
21 was submitted by the parties who submitted it.

22 MR. LANE: Okay. So the first page --

23 HEARING EXAMINER KINGERY: As I was  
24 saying, that is just something that is created by the  
25 PUCO's computer system.

1 MR. LANE: The first page would be Richard  
2 Cordray letterhead?

3 HEARING EXAMINER KINGERY: Correct. With  
4 that, let's go off the record to discuss the next  
5 steps.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 (Discussion off the record.)

8 HEARING EXAMINER KINGERY: Let's go back  
9 on the record. While we were off the record we have  
10 discussed the possibility of filing briefs. No party  
11 present today is desirous of filing a brief; therefore,  
12 there will be no briefing schedule. With that, this  
13 case is submitted on the record, and we are adjourned.

14 (Thereupon, the hearing was concluded at  
15 2:35 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, June 17, 2009, and carefully compared with my original stenographic notes.

\_\_\_\_s/Valerie J. Sloas\_\_\_\_\_  
Valerie J. Sloas, Registered  
Professional Reporter and Notary  
Public in and for the State of  
Ohio.

My commission expires June 8, 2011.

(VJS-638)

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Summary: Transcript Duke Energy 6/17/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Sloas, Valerie J. Mrs.