

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Duke Energy:
Ohio, Inc. to Establish :
and Adjust the Initial :Case No. 09-1946-EL-ATA
Level of its Distribution :
Rate Rider DR. :

- - -

DEPOSITION

of Anthony J. Yankel, taken before me, Julieanna
Hennebert, a Notary Public in and for the State of
Ohio, at the offices of Office of Ohio Consumers'
Counsel, 10 West Broad Street, 18th Floor, Columbus,
Ohio, on Thursday, May 20, 2010, at 12:15 p.m

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- - -

1 APPEARANCES:

2 Duke Energy Ohio, Inc.
3 By Ms. Amy B. Spiller
4 139 Fourth Street
5 25 Atrium II
6 Cincinnati, Ohio 45202

7 Duke Energy Ohio, Inc.
8 By Ms. Elizabeth H. Watts
9 155 East Broad Street, 21st Floor
10 Columbus, Ohio 43215

11 On behalf of the Company.

12 Office of Ohio Consumers' Counsel
13 By Ms. Ann Hotz
14 10 West Broad Street, Suite 1800
15 Columbus, Ohio 43215

16 On behalf of the OCC.

17 Richard Cordray
18 Ohio Attorney General
19 By Mr. Stephen A. Reilly
20 Assistant Attorney General
21 Public Utilities Section
22 180 East Broad Street, 9th Floor
23 Columbus, Ohio 43215

24 On behalf of the Staff.

25 ALSO PRESENT:

Mr. Don Wathen
Ms. Kyle Verrett
Mr. Wendell Gingrich

- - -

Thursday Afternoon Session,
May 20, 2010.

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STIPULATIONS

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

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1 ANTHONY J. YANKEL

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

4 EXAMINATION

5 By Ms. Spiller:

6 Q. Mr. Yankel, good afternoon.

7 A. Good afternoon.

8 Q. As you know my name is Amy Spiller and
9 along with my colleague Elizabeth Watts, we represent
10 Duke Energy Ohio in connection with a matter it has
11 pending before the Public Utilities Commission of
12 Ohio under Case No. 09-1946-EL-RDR.

13 Also present this afternoon on behalf of
14 Duke Energy Ohio is Don Wathen, one of the company
15 witnesses in this case.

16 Sir, I'm assuming you have been deposed
17 before.

18 A. Yes.

19 Q. I would just like to, despite that, cover
20 some ground rules before we get started, if I may.
21 The first of those being that if at any time during
22 your deposition you will need a break, please let me
23 know and we will certainly accommodate that request.
24 The only caveat that I have is if there is a question
25 pending, I would ask that you answer that question

1 before we break. That fair?

2 A. Okay.

3 Q. I may ask you a question perhaps
4 inartfully worded. If you don't understand anything
5 I'm asking, please let me know and I will rephrase
6 that question for you.

7 Can you state your name for the record
8 please, sir?

9 A. Anthony J. Yankel, Y-a-n-k-e-l.

10 Q. What is your occupation, sir?

11 A. Consultant.

12 Q. In what industry or area?

13 A. Utilities, primarily electric and gas.

14 Q. What is your professional address please?

15 A. 29814 Lake Road, Bay Village, two words,
16 Bay, Village, Ohio 44140.

17 Q. Can you please share with me your
18 professional background?

19 A. Started off working as an engineer for a
20 company that manufactured air pollution control
21 equipment. Did that for a few years, went back to
22 graduate school. Went to work for the State of Idaho
23 as their chief air quality engineer. I did that for
24 six or eight years, I don't recall exactly.

25 Got an appointment with the, at that time

1 the Lieutenant Governor as the director of the
2 Consumers Office in Idaho. That office was later
3 transferred to the Governor's Office so I worked
4 under the Governor then. Closed that office
5 eventually and went into consulting.

6 By way of background I guess just to
7 clarify, the Consumers Office was for electric rates.
8 Didn't deal with gas.

9 Q. What was your position within the
10 Consumers Office in Idaho?

11 A. I was director.

12 Q. What did you do in that role, sir?

13 A. Well, I both directed the personnel under
14 me, intervened in cases, testified before the Public
15 Utilities Commission of Idaho.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. Mr. Yankel, before we turn our attention
18 to what has been marked as Exhibit 1 to your
19 deposition, why was the office in Idaho, the
20 Consumers Office closed?

21 A. I never had a clear explanation. Again,
22 it was the Governor's choice. There were some
23 political things going on at the time with respect to
24 the chairman of the Public Utilities Commission. And
25 I have an opinion but I have no knowledge.

1 I did meet with the Governor, I mean it
2 was discussed, but exactly why or what his thought
3 process is, I don't know. He never told me.

4 Q. Can you identify please for the record
5 what has been marked as Exhibit 1 to your deposition?

6 A. It's entitled "Duke Energy Ohio's notice
7 to take deposition of Anthony Yankel, witness for the
8 Ohio Consumers' Counsel, upon oral examination and
9 request for production of documents."

10 Q. Have you seen this document before today,
11 sir?

12 A. No, I have not.

13 Q. So counsel for the OCC did not share this
14 with you?

15 A. Not to my knowledge. Sometimes I get
16 e-mails and I don't look at them, but again, I've not
17 seen this.

18 Q. So, sir, do you have any documents that
19 you brought to this deposition this afternoon that
20 are responsive to this notice?

21 A. I don't know what it requests, but I
22 believe I brought everything that I used to the
23 deposition as far as that goes. As far as the
24 documents.

25 Q. When you say everything that you used,

1 used for what purpose?

2 A. For the purpose of my testimony in this
3 case.

4 Q. And what were those documents, sir?

5 A. A number of interrogatory responses,
6 basically. I think all of them from the company to
7 the OCC. Same with production of documents, from the
8 company to the OCC.

9 Staff responses to the staff as well as
10 company's responses to the staff. Some of the
11 computer files that were response to that as well.

12 I brought with me a Kentucky report for
13 the Kentucky Commission regarding the storm. A staff
14 data request from Kentucky to Duke Kentucky regarding
15 the storm.

16 I brought a little bit of a study
17 regarding the cost of outages for consumers.
18 Probably a couple of notes and whatnot here and
19 there. That's about it.

20 Q. Aside from your testimony did you prepare
21 any formal reports or evaluations for the Office of
22 Consumers' Counsel?

23 A. No.

24 Q. When you say you brought "a little bit of
25 a study," did you rely upon a complete study or only

1 parts of the study in forming your testimony?

2 A. Actually, just the first part of the
3 study is all I relied upon. It was like 90-some
4 pages.

5 Q. Did you --

6 A. I didn't look at the whole thing, or if I
7 did at one time, I don't remember exactly. What I
8 did read I knew of the study when I looked at it. I
9 thought the most relevant part was the first part.

10 Q. Did you assist the Office of Consumers'
11 Counsel in preparing responses to the discovery
12 requests propounded upon it by Duke Energy Ohio in
13 this case?

14 A. To a limited degree. I did not --
15 certainly did not draft anything. I recall looking
16 at some of the things after they'd been drafted.
17 There may have been -- and again I'm not sure
18 specifically to the questions. There may have been
19 one or two that were very specifically that I was
20 asked to answer myself.

21 Q. What did you do to prepare for today's
22 deposition?

23 A. I didn't have time, so what I did was I
24 barely read my testimony in whole for the first time.

25 Q. So you'd not had a complete read through

1 of your testimony prior to today?

2 A. That is correct. It was filed two days
3 ago. Yesterday was just not a good day preparing
4 other things. I mean I've certainly gone over pieces
5 of testimony multiple times, but I've never had a
6 complete read, sit down and read the whole thing
7 until today.

8 Q. And in conducting this complete review of
9 your testimony today, sir, are there any changes to
10 that testimony you feel are necessary?

11 A. Not at this time. But I suspect given
12 the deposition we had this morning, that there
13 probably is going to be some changes with respect to
14 some of the capitalization/expense adjustments that I
15 talked about. I just haven't had a chance to confirm
16 that. But I do suspect that there will be a change
17 there, or actually I shouldn't call it "change," it's
18 more of a reduction/removing.

19 Q. Did you talk with anyone in preparation
20 for today's deposition?

21 A. I don't think so.

22 Q. Aside from counsel for the OCC, who else
23 contributed to the content of the testimony you filed
24 in this proceeding?

25 MS. HOTZ: I think you're going into

1 attorney/client privilege and preparation at this
2 point. And I don't think you need to answer the
3 question.

4 Q. I'll rephrase it.

5 Were there individuals other than you and
6 counsel for the OCC who contributed to the
7 preparation of your testimony?

8 A. I do not believe so. There was a couple
9 of people I talked to maybe a few weeks ago I
10 mentioned things to, but as far as testimony goes,
11 no, I think it's all counsel.

12 Q. How many times have you testified on
13 behalf of the OCC in regulatory proceedings in Ohio?

14 A. I'm going to just guess 40 to 50. I
15 don't know.

16 Q. Have you ever testified on behalf of the
17 regulated utility in connection with regulatory
18 proceedings in Ohio?

19 A. I have worked on behalf of regulated
20 utilities in Ohio. And there was I'm thinking one
21 case in particular, it was a case number associated
22 with that also. I worked on a number of court cases
23 in Ohio for utilities.

24 Q. In any of those instances in which you
25 were involved on behalf of utilities, did the issue

1 concern the restoration of distribution service
2 following a major storm?

3 A. No.

4 Q. In any of those other instances, sir, in
5 which you worked on behalf of a utility company in
6 Ohio, did the issue concern the storm management and
7 storm response of that utility?

8 A. No.

9 Q. In any of those instances, Mr. Yankel,
10 when you worked on behalf of a utility company in
11 Ohio, did the issues concern the maintenance of
12 overhead distribution lines?

13 A. No.

14 Q. Have you ever provided expert service on
15 behalf of a utility in Kentucky?

16 A. No.

17 Q. Have you ever testified as a witness in a
18 regulatory proceeding in Kentucky?

19 A. No.

20 Q. Have you ever, sir, worked on behalf of a
21 regulated utility in the state of Indiana?

22 A. No.

23 Q. Have you ever testified on behalf of a
24 utility in the state of Indiana?

25 A. No.

1 Q. Have you ever testified in Indiana in
2 connection with a regulatory proceeding?

3 A. No.

4 Q. Sir, you are familiar with the OCC's
5 responses to the discovery requests propounded upon
6 it by Duke Energy Ohio, correct?

7 A. I've not looked at them recently, so.
8 I've seen them, but am I familiar? At this point I
9 would have to say almost no. Just where my head's
10 at.

11 Q. In their reponses, the OCC indicates that
12 you specialize in utility matters. Would you agree
13 with that?

14 A. Yes.

15 Q. Could you explain for me in greater
16 detail exactly what it is you do in your role as a
17 consultant?

18 A. There are probably two general areas in
19 which I work. Of course, the first you're probably
20 not interested in at the moment, but it's rate design
21 allocation type work.

22 The second one you're probably more
23 interested in, is reg and requirement type issues,
24 how costs are incurred. Appropriate costs that are
25 incurred, reasonable costs that are incurred. Both

1 for new service, budgets, just whenever revenue
2 requirement needs one.

3 I'm not an accountant so I don't do
4 accounting type work, as far as auditing and that
5 type of thing.

6 Q. So the areas in which you provide
7 consultant services on utility matters in Ohio
8 concern rate design, allocation, and revenue
9 requirements, correct?

10 A. Yes.

11 Q. You do not provide consulting services
12 with respect to a distribution company's response to
13 a major outage caused by a storm, do you?

14 A. That is correct.

15 Q. Sir, based upon your testimony just a few
16 moments ago regarding your professional background,
17 fair to say that you've never held a position in an
18 electric distribution company?

19 A. That would be correct.

20 Q. And you have no professional experience
21 with regard to restoring power to an overhead
22 distribution service, correct?

23 A. Certainly no direct experience, correct.

24 Q. You do not have any experience in
25 managing electric system outages, do you?

1 A. Again, since I've never worked for a
2 utility, no.

3 Q. How many storm restoration events have
4 you personally participated in?

5 A. None.

6 Q. Mr. Yankel, would you agree with me that
7 an Ohio public utility is permitted to recover from
8 its customers reasonable and prudently incurred
9 costs?

10 A. Yes. That's definitely a standard.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. SPILLER: Can we go off the record
13 for a moment?

14 (Off the record.)

15 Q. Mr. Yankel, we will try again. What's
16 been handed to you is Exhibit No. 2 to your
17 deposition. I will represent that the cover page as
18 well as the table of contents have been removed from
19 this deposition because those included some notes
20 that were made during a confidential settlement
21 conference in this proceeding.

22 This document are the objections and
23 comments by the Office of the Consumers' Counsel
24 filed in connection with this case, correct?

25 A. Yes.

1 Q. And, sir, you're familiar with this
2 document, are you not?

3 A. Yes.

4 Q. I'd like to turn your attention, if I
5 may, to page No. 11 of Exhibit 2, particularly
6 comment J. The comment or objection indicates that
7 Duke Energy's application fails to properly report on
8 the number of customers experiencing outages,
9 correct?

10 A. Yes.

11 Q. Also discusses or references the length
12 of time of these outages, number of outages creating
13 inconsistencies and confusion, correct?

14 A. Yes.

15 Q. Do you have any opinion in support of
16 this objection that you are offering in connection
17 with this case?

18 A. I have offered some opinions at the last
19 probably Q and A or second-to-last Q and A of my
20 testimony dealing in general with what's in here.
21 Not specifically the wording that's in here, but the
22 concerns I have that still remain.

23 Q. But let's focus specifically on the OCC's
24 objection J.

25 A. Okay.

1 Q. Are you offering an opinion in support of
2 this objection in connection with the proceedings?

3 MS. HOTZ: Objection. His position is in
4 his testimony and it speaks for itself.

5 MS. SPILLER: Well, I realize that, but
6 his testimony really addresses a different objection.
7 So I'd just like to be clear.

8 A. Again, I use a lot of the same numbers, a
9 lot of the same concerns are there. Again, more
10 specifically I think the concerns that I've raised in
11 testimony begin on page 43.

12 I think J in this other document on
13 Exhibit 2 is more of a generic statement. So I
14 believe what's in my testimony is included in the
15 generic statement but it's a little more refined in
16 my testimony.

17 Q. Other than what is set forth in your
18 testimony, sir, do you have any other facts to
19 support the objection -- to support objection J
20 reflected in Exhibit 2?

21 A. Primarily what's in my testimony.
22 There's other background but it's -- my testimony
23 summarizes it. I don't really have -- I don't feel
24 like I've taken issue. It's not asked for any kind
25 of adjustment as far as that goes, dollar adjustment.

1 I'm raising a concern for the Commission and
2 suggesting that it be looked into, that's all.

3 Q. But, sir, you just said your testimony
4 primarily reflects the facts on which you rely in
5 forming an opinion. I just would like to know
6 whether there are other facts.

7 MS. HOTZ: I don't understand. Why would
8 there be other facts?

9 MS. SPILLER: Well, I'm just asking the
10 witness who qualified his answer as "primarily."

11 A. Mr. Mehring's testimony, probably
12 Exhibit 1 or Attachment 1 to his initial testimony
13 has the graph in there and then followed by hourly
14 numeric data, we had a data request that was
15 responded to by the company which extended that data
16 further or at least a week, as far as that goes.

17 So even though my testimony discusses a
18 portion of that just a couple hours, actually, those
19 documents in total represent my concerns. So when I
20 said there's more, it's those documents. This shows
21 a couple of examples that's in those two documents,
22 that's all.

23 Q. Does your testimony completely reflect
24 the opinion that you have relative to OCC's objection
25 J as set forth in Exhibit 2?

1 A. Yes.

2 Q. If you could, sir, turn to Exhibit --
3 objection K on Exhibit 2. This comment reads "Duke
4 does not properly explain what the term 'new cases'
5 means and what 'new customer outages by hour' means,
6 nor does Duke explain why significant levels of new
7 outages were occurring two full days after the storm
8 was over." Correct?

9 A. Correct.

10 Q. And you're offering an opinion on this
11 particular -- in support of this objection, sir?

12 A. Again, it will be the same testimony
13 starting at page 43 of my . . .

14 Q. And your testimony that starts on page 43
15 and carries over to 44, does that, sir, reflect your
16 complete opinion in connection with OCC's objection
17 J? I'm sorry, K.

18 MS. HOTZ: I think he's already answered
19 that question.

20 Q. Well, it's a different objection.

21 A. Could you just rephrase or reread it?

22 Q. My question, sir, is whether or not your
23 testimony -- strike that.

24 My question is whether the entirety of
25 your opinion that supports the OCC's objection K is

1 set forth in your testimony.

2 A. Instead of the word "opinion," I would
3 say my "position." I just don't know. My opinion is
4 just a broad thing. The position I put forth is
5 supporting K. Yes.

6 Q. I don't mean to be difficult, but how is
7 your position different than your opinion?

8 A. Well, you say my entire opinion. I could
9 be going back to what I learned in college and
10 things. I mean, this is -- my opinion encompasses
11 just a lot more thought process, I guess, than my
12 position.

13 To me, and again this is maybe just
14 semantics, but my position is a result of a host of
15 different opinions. If that makes any sense. The
16 thought process is information.

17 I mean, this doesn't say everything the
18 way I thought through the entire problem and whatnot,
19 just this is a summation of the problem

20 Q. But accurately captures your position
21 relative to the OCC's objection K.

22 A. Yes.

23 Q. Turning to page 13 of Exhibit 2, sir, the
24 OCC's objection L reads "Duke does not explain why it
25 did not realize the extent of the damage until the

1 day after the storm occurred." Correct?

2 A. Correct.

3 Q. On page 43 of your testimony in this case
4 you do address this particular objection, correct?

5 A. Correct.

6 Q. On what specific facts, sir, did you
7 arrive -- or, I'm sorry. On what specific facts did
8 you rely upon in forming your position in connection
9 with this particular topic?

10 A. I think it is stated in my testimony and
11 more specifically page 43, lines 15 through 17, which
12 was Mr. Mehring's testimony.

13 Q. Any other facts upon which you relied
14 other than those set forth in your testimony
15 beginning on page 43, relative to OCC's objection L?

16 A. No. That would be it.

17 Q. Where were you, sir, when the storm tore
18 through Duke Energy Ohio's service territory on
19 September 14, 2008?

20 A. I was in my daughter's wedding shower.

21 Q. And where was that please?

22 A. Bay Village, Ohio.

23 Q. And Bay Village is about four, four and a
24 half hours north of Cincinnati?

25 A. Yes.

1 Q. You did not personally observe any of the
2 storm in Cincinnati, Ohio, correct?

3 A. Correct.

4 Q. You did not personally observe any of the
5 damage in the Cincinnati area, did you?

6 A. That is correct.

7 Q. You did not observe any of the damage
8 caused by the wind storm in Duke Energy Ohio's
9 service territory, correct?

10 A. Correct.

11 Q. Mr. Yankel, do you think it's appropriate
12 to dispatch helicopters when wind speeds are gusting
13 in excess of 70 miles per hour?

14 A. I'm not a pilot or a dispatcher, so, of
15 airplanes, whatnot. So I couldn't tell you.

16 Q. So you have no position or opinion on
17 whether that's safe, something safe to do?

18 MS. HOTZ: Objection. He said that he --
19 he's not a pilot.

20 Q. Do you think it's safe to put helicopters
21 in the air when Cincinnati National Airport grounded
22 planes?

23 MS. HOTZ: Objection. It's the same
24 question.

25 MS. SPILLER: It's a different one.

1 Q. Go ahead.

2 A. Seems if planes were grounded, they
3 weren't supposed to be flying. Again, I don't know
4 what the rules are.

5 Q. Do you know how much of the Duke Energy
6 Ohio's distribution system are in rural areas?

7 A. No, I do not.

8 Q. Do you know how much of Duke Energy's
9 distribution system had to be physically walked in
10 order to detect faults or problems?

11 A. No, I do not.

12 Q. Do you know whether it was safe for Duke
13 Energy Ohio employees and contractors to physically
14 venture out to walk parts of the Duke Energy Ohio's
15 distribution system?

16 A. No, I do not.

17 Q. Do you know how long it took after the
18 storm to remove trees, fallen trees and limbs so that
19 Duke Energy Ohio employees and contractors could walk
20 parts of the company's distribution system?

21 A. No, I do not.

22 Q. Do you know when the city streets in
23 Cincinnati were first passible for vehicle traffic
24 after the wind storm in '08?

25 A. No, I do not.

1 Q. Mr. Yankel, turning to page 14 of
2 Exhibit 2 to your deposition, is the OCC's objection
3 M as in "Mary." Correct?

4 A. Yes.

5 Q. Are you in your testimony offering a
6 position in connection with this objection, sir?

7 MS. HOTZ: Which objection was that?

8 MS. SPILLER: M as in "Mary."

9 A. And I'm sorry, the question?

10 Q. Are you offering a position in support of
11 this objection in your testimony, sir? Or through
12 your testimony.

13 A. I would say primarily, no. There is some
14 discussion about personnel used during the storm and
15 whatnot, but in the context of M, I'm not doing that.

16 Q. The final objection, sir, that I would
17 like to discuss with you is N, on page 15 of
18 Exhibit 2. Are you offering a position in support of
19 OCC's objection N through your testimony in this
20 case?

21 A. I think indirectly in the fact that I'm
22 asking for some kind of investigation. But
23 specifically the wording that's there, no, I'm not.

24 Q. And to the extent there may be some
25 support for this objection indirectly through your

1 testimony, your complete position is set forth in
2 your testimony, correct?

3 A. I did not raise this in my testimony.
4 That's correct.

5 Q. Mr. Yankel, you would agree with me that
6 Duke Energy Ohio is not, through the application it
7 filed in this matter, seeking to recover for overtime
8 costs that are already included in its base rates,
9 correct?

10 MS. HOTZ: Say that again.

11 MS. SPILLER: Sure. I'll rephrase it.

12 Q. Duke Energy Ohio is not, through this
13 filing, seeking to recover for overtime costs already
14 included in base rates, correct?

15 A. I cannot say correct or not. I do not
16 know, I did not investigate that one way or the other
17 as far as what's in base rates and overtime. I know
18 it was discussed a bit with staff and whatnot. I
19 personally did not look into that.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Mr. Yankel, I'll hand you what has been
22 marked Exhibit 3 to your deposition. This is a
23 contract for your professional services relative to
24 this proceeding, correct?

25 A. Correct.

1 Q. And you were retained by the OCC on
2 August 27, 2009, correct?

3 A. If that's what it says. I don't recall
4 the date. This is the contract.

5 Q. And the contract, the amount of the
6 contract is for up to \$40,000, correct?

7 A. Correct.

8 Q. How much have you been paid to date by
9 the OCC? Relative to your work in this proceeding.

10 MS. HOTZ: Objection. I don't know how
11 that's relevant. How's that relevant?

12 MS. SPILLER: Well, this is discovery so
13 we certainly have indulged the OCC in connection with
14 a fair amount of latitude. But I'm certainly
15 entitled to inquire into the financial arrangements
16 between an entity and their expert witnesses.

17 MS. HOTZ: Go ahead.

18 A. I can't answer that, but maybe I can help
19 you by saying I know I've used more than 40,000.
20 There's one more billing to go out there that hasn't
21 gone out. How much has been paid thus far, I don't
22 know. But I know the last billing will finish up the
23 40,000.

24 Q. Mr. Yankel, if you exceed the \$40,000
25 contract amount, are you essentially working for free

1 at that point?

2 MS. HOTZ: Objection.

3 A. I'm working for free today, yes.

4 Q. Well, today. But my question is more
5 specifically if the \$40,000 contract amount is
6 exceeded, do you then work for free?

7 A. Yes.

8 Q. Mr. Yankel, if you could turn to the
9 final page of Exhibit 3. Deliverable No. 6 is that
10 you will "Draft testimony consistent with OCC's
11 position in this docket that presents critiques of
12 Duke's activities and decision-making process that
13 describes how the activities and decisions affected
14 the efficiency of Duke's restoration efforts and
15 affected the financial losses to residential
16 customers." Correct?

17 A. Yes.

18 Q. And consistent with that deliverable that
19 was given to you four months before the case was even
20 started, it's your opinion, sir, that Duke Energy
21 Ohio should recover none of the costs that it
22 incurred in responding to the 2008 wind storm,
23 correct?

24 A. That is my first position, yes.

25 Q. And you're of the opinion that Duke

1 Energy Ohio should not recover any of its storm costs
2 because customers had economic losses from the storm,
3 Duke Energy Ohio recovers some amount of storm costs
4 in base rates and because of the actions of companies
5 outside of Ohio, correct?

6 A. Certainly because of those three, yes.

7 Q. Was there anything else, sir?

8 A. That seemed to cover it pretty good.

9 Q. Mr. Yankel, what critical decisions were
10 made by Duke Energy Ohio that affected the
11 restoration of the service in its service territory
12 following the wind storm?

13 MS. HOTZ: Could you repeat that
14 question?

15 (Record read.)

16 A. I'm not sure what you're asking. I mean,
17 the decisions Duke made are pretty much laid out in
18 Mr. Mehring's testimony. Not sure what you're
19 asking.

20 Q. Sir, if you look at deliverable No. 3
21 which is on the second-to-last page of the document.
22 The deliverable in which you were to assist the OCC
23 in drafting discovery requests to identify critical
24 decisions made by Duke Energy Ohio, correct?

25 A. Yes.

1 Q. We have as a -- marked as an exhibit to
2 your deposition testimony, sir -- or, to your
3 deposition, a copy of your testimony that you have
4 filed in this proceeding, but in fact you and I have
5 both been referring to that testimony for a while now
6 correct?

7 A. Correct.

8 Q. And you have in front of you, sir, a copy
9 of your testimony that was filed on May 18 in this
10 case, correct?

11 A. Yes.

12 Q. In asserting the opinion that Duke Energy
13 Ohio should not recover any of the storm costs it
14 incurred relative to the 2008 wind storm, you have
15 set forth in your testimony, sir, that the economic
16 loss to Duke Energy Ohio's customers in all
17 likelihood significantly exceeded the amount it cost
18 Duke Energy Ohio to restore service, correct?

19 A. Correct.

20 Q. But you do not know the total economic
21 loss to Duke Energy Ohio's customers, do you?

22 A. No, I do not have a figure.

23 Q. Rather, sir, what you did was take a
24 \$3 estimate from one study and multiply that by the
25 8,000 sustained -- 800,000 sustained outages reported

1 by Duke Energy Ohio, correct?

2 A. Correct.

3 Q. And the study on which you relied,
4 Mr. Yankel, didn't review residential customers in
5 the midwest, did it?

6 A. I thought it did. Seemed like there was
7 an area as I recall southeast of Chicago which I
8 considered midwest.

9 Q. In connection with the assessments
10 pertaining to residential customers?

11 A. To that I don't recall. My recollection
12 of the study, it's been a while, there's about at
13 least six studies that I looked at and gathered data
14 from. So it wasn't just one study, it was trying to
15 look at other studies and bring in the data for
16 commercial, industrial, and residential.

17 Q. But as you sit here today you do not know
18 whether that study actually captured information
19 pertaining to residential customers in the midwest,
20 do you?

21 A. As I sit here today, no.

22 Q. I am also not an accountant, but the math
23 \$3 times 800,000 is 2.4 million, correct?

24 A. That's what's in my testimony, yes.
25 That's for one hour.

1 Q. How, then, do we get to the conclusion
2 that customers' economic losses significantly
3 exceeded the \$28.5 million in costs that Duke Energy
4 Ohio incurred in responding to this storm?

5 A. I assume that there was well over 24
6 hours of average outage for the customers. If I
7 would take simply ten hours times that 2.4 million,
8 I'm up to 24 million at that point, so. Again, I did
9 not have a specific listing of how many customers
10 were out for how many hours. And the study did not
11 give a breakdown that way.

12 Q. Is it your contention, Mr. Yankel, that a
13 utility company is responsible for the economic
14 losses of its customers?

15 MS. HOTZ: Objection. That's a legal
16 question.

17 MS. SPILLER: He is in essence claiming
18 as much relative to his opinion.

19 MS. HOTZ: No, he's not claiming as much.

20 MS. SPILLER: I think he is.

21 MS. HOTZ: Actually he's talking about
22 the utility collecting money from customers. He's
23 not talking about the utility reimbursing customers.

24 Q. Sir, your opinion is that because it
25 perhaps cost customers more in economic loss, Duke

1 Energy Ohio should not recover its storm costs from
2 those same customers, correct?

3 A. In part, yes. There were certainly other
4 parts to that. But, yes, that was certainly
5 something part of what I came up in my conclusion
6 based upon, yes. Also the Indiana --

7 Q. Let's just focus on this particular
8 issue.

9 You are of the opinion that Duke Energy
10 Ohio should not recover any storm costs from its
11 customers because the economic loss to its customers
12 allegedly exceeded the \$28.5 million in storm costs,
13 correct?

14 A. No.

15 Q. What is your opinion then, sir?

16 A. I'm of the opinion that should be
17 factored into the overall decision made by the
18 Commission. The position of collecting zero is based
19 upon several different things, that being one of
20 them. Each one individually may not make nearly as
21 much difference as you put them all together.

22 Q. Sir, in all of the cases in which you
23 have testified on behalf of Consumers' Counsel or
24 other entities here in Ohio, are you aware of any
25 regulation in which a utility company's costs are

1 dependent upon economic losses to their customers?

2 A. I'm unaware of any.

3 Q. Sir, you would agree with me that Duke
4 Energy Ohio's customers cannot recover losses related
5 to their being without electric service from Duke
6 Energy Ohio.

7 A. No, I'm not in agreement with that.

8 Q. Sir, if you could turn to page 4 of your
9 testimony. The sentence that begins midway through
10 line 3 and concludes on line 6.

11 A. I'm sorry?

12 Q. Page 4.

13 A. And again, line?

14 Q. Line 3, midway through that line is the
15 sentence that concludes on line 6.

16 A. Yes.

17 Q. You state there "It's somewhat
18 presumptuous for Duke Ohio to fully recover all of
19 the costs it claims it incurred from the same
20 customers that have little or no recourse to recover
21 losses related to being without electrical service
22 for up to nine days."

23 Did I read that correctly?

24 A. Yes.

25 Q. So do these customers -- I'm just trying

1 to make sure I understand your testimony. Do they
2 have the ability -- strike that.

3 These customers cannot recover their
4 economic losses from Duke Energy, Ohio relative to
5 the outage, correct?

6 MS. HOTZ: That's not what he says in his
7 testimony.

8 Q. Why don't you tell me what you said then.

9 A. I said "have little or no recourse." I
10 mean, there may be recourse. I'm aware of cases, not
11 Duke because I don't live in the Duke area, but
12 certainly in the Cleveland area where people have
13 gotten some reimbursement from the utility for
14 outages.

15 Q. Do you know the cause of those outages?

16 A. Not specifically, no.

17 Q. So you don't know --

18 A. I mean, I don't remember the cause of the
19 outages.

20 Q. So you don't know whether in those
21 instances where recovery was allowed, the outages
22 were caused by something within the company's
23 control? Utility company's control?

24 A. When you say "allowed," that's probably
25 not the right word for -- "allowed" would kind of

1 refer back to the Commission. This wasn't allowed,
2 it was more the utility company agreeing to pay.

3 Q. So, a settlement.

4 A. Settlement, yes.

5 Q. People make all different decisions in
6 the context of settlement discussions, don't they?

7 A. Yes, they do.

8 Q. I believe, sir, you said you did not
9 fully investigate the issue. Do you know the total
10 that's included in Duke Energy Ohio's base rates for
11 storm costs --

12 MS. HOTZ: Wait a minute.

13 Q. -- as of 2008?

14 MS. HOTZ: Those are two questions I
15 think.

16 MS. SPILLER: Sure. I'll rephrase it.

17 Q. Mr. Yankel, do you know what the total
18 for storm costs was that was included in Duke Energy
19 Ohio's base rates in 2008?

20 A. I don't recall. There was a data
21 response, I just don't recall what the . . .

22 Q. You were present for Mr. Wathen's
23 deposition Monday of this week?

24 A. Yes.

25 Q. Do you recall testimony that Mr. Wathen

1 indicated it was about \$2 million in storm costs
2 reflected in base rates?

3 A. I do not recall.

4 Q. You have no reason to disagree with the
5 estimates or numbers provided by Mr. Wathen, do you?

6 A. Because I'm, quote, trying to recall, I
7 do have a disagreement because I recall a number more
8 like 5 million. But that's just a reaction. I'm not
9 disagreeing with him. If I had to guess, I would say
10 the number is 5 million.

11 Q. In rates.

12 A. In base rates.

13 Q. Mr. Yankel, if I understand your
14 testimony correctly, one of the reasons that you say
15 that Duke Energy Ohio should recover none of its
16 storm costs in this case is because it already
17 recovers storm costs in base rates and some years
18 underrecovers, some years it overrecovers. So it all
19 kind of works out in the end?

20 A. Yes, I said something like that. That
21 was a good paraphrase.

22 Q. And that was certainly my paraphrase,
23 sir, but I just wanted to make sure I captured that
24 opinion.

25 A. Yes.

1 Q. Do you know what Duke Energy Ohio's storm
2 costs were in 2008 exclusive of the wind storm?

3 A. No. Again, there was a discovery
4 response on that. If I had to guess, I'd throw out a
5 number like 5 to 8 million.

6 Q. Would you agree with me, sir, that
7 assuming Duke Energy Ohio's storm costs as reflected
8 in base rates for 2008 was \$5 million, that they
9 would grossly underrecover given Ike alone cost
10 \$28.5 million?

11 A. They would underrecover, yes.

12 Q. Take a while to eventually catch up with
13 that difference between 28.5 million and 5 million,
14 correct?

15 A. Yes.

16 Q. And certainly reserving all objections to
17 this issue, Mr. Yankel, you state that Duke Energy
18 Ohio should not recover any of its storm costs from
19 the 2008 storm event because of decisions made by
20 another company in another state, correct?

21 A. I'm not sure if I actually said that in
22 there. I think I said Duke as opposed to Duke
23 Kentucky. Meaning it would have been the parent
24 company's ultimate decision. And since you have the
25 same parent, parent made the decision one way or the

1 other.

2 Q. So you're saying that a parent company
3 should make the same decision for utility companies
4 that operate in five different jurisdictions.

5 A. No. It doesn't have to make the same,
6 but seems like it should explain the difference.

7 Q. Again reserving all objection to the
8 issue, Mr. Yankel, would you agree with me that the
9 decisions that Duke Energy Ohio makes relative to its
10 regulated operations here in the state of Ohio should
11 not be dictated by business decisions in another
12 jurisdiction?

13 MS. HOTZ: Objection. I don't think
14 that's what his -- I don't think his testimony
15 reflects that.

16 MS. SPILLER: Well, it's still a fair
17 question. I'm not asking if that's what his
18 testimony reflects, I'm asking if he agrees with the
19 statement.

20 A. Could I have the statement read?

21 (Record read.)

22 A. I would agree.

23 Q. Mr. Yankel, in forming your opinion or
24 position that Duke Energy Ohio should not recover any
25 of its storm costs, did you consider the extent of

1 the storm damage?

2 A. Yes.

3 Q. Did you consider, sir, the miles of
4 overhead conductor that needed to be repaired?

5 A. No. I considered the 28.5 million.
6 That's what I considered.

7 Q. You'll have to explain that to me.

8 A. Well, you asked me what I considered. I
9 didn't go through and look at the amount of poles
10 that had to be replaced and the amount of conductors.
11 But I looked at the dollar amount that the company
12 was claiming. And I compared that to the dollar
13 amount that Indiana was claiming. And they didn't
14 seem to be that far off.

15 I mean, my opinion would be, and again
16 it's an opinion, but in Indiana they didn't look at
17 the number of poles and say it's only three poles,
18 therefore, we won't request it. They looked at the
19 \$17 million and made a business decision based upon
20 the dollar amount.

21 Q. Again reserving all objection on the
22 issue, you don't know what was factored into that
23 decision in Indiana, do you, sir?

24 A. No, I do not.

25 Q. Mr. Yankel, is it fair to say that you

1 have an alternative position, as reflected in your
2 testimony?

3 A. Yes.

4 Q. Your primary position being that Duke
5 Energy Ohio should recover none of the storm costs
6 from this major event, correct?

7 A. Correct.

8 Q. Second testimony being that if -- I'm
9 sorry. Second position being that if there is some
10 recovery, it should be a certain dollar amount,
11 correct?

12 A. Correct.

13 Q. And if I read your testimony correctly,
14 sir, you're not challenging the costs that were
15 incurred by the linemen and field crews in physically
16 restoring the power, correct?

17 A. That's my understanding. I really did
18 not go after the hours worked, what they got done,
19 anything of that nature.

20 Q. And, sir, because you didn't go after the
21 hours that they may have worked or the costs
22 associated with that work, you're not challenging the
23 costs incurred by the linemen and field crews in
24 responding to the outage, correct?

25 MS. HOTZ: Could you read that again

1 please?

2 (Record read.)

3 A. I'm not challenging the dollar amount of
4 the costs. I'm challenging some of the accounting
5 treatment of the cost, jurisdictional treatment of
6 the costs and whatnot. But as far as hours worked,
7 how much work they got done, whether they got paid
8 double time or time and a half, I didn't look at
9 those types of questions at all.

10 Q. So you have no opinion, sir, on whether
11 it was appropriate for Duke Energy Ohio to pay
12 contractors overtime or double time, correct?

13 A. I took no position on that, no.

14 Q. Mr. Yankel, if we could refer to page 10
15 of your testimony please. And in this part of your
16 testimony you begin to discuss the supplemental pay
17 that was paid to salaried employees who contributed
18 to the storm restoration efforts, correct?

19 A. Correct.

20 Q. On line 13, page 10, of your testimony,
21 you state "Most individuals that are paid based upon
22 a salaried rate (as opposed to an hourly rate) will
23 tell you that overall they work more than a 40 hour
24 workweek -- 40 hour week in order to get their
25 salary."

1 Did I read that correctly?

2 A. Correct.

3 Q. And on what do you rely in asserting that
4 most individuals will tell you they work more than 40
5 hours per week?

6 A. Because most people I talk to that are
7 salaried tell me that. Whether they do or not, I
8 don't know. But they certainly tell me that.

9 Q. So you don't have any personal knowledge
10 as to whether those statements are true, do you?

11 A. Yes, I believe them to be true, so.

12 Q. Insofar as you're concerned.

13 A. As far as I'm concerned, as far as I
14 know. Back when I was a salaried person as well,
15 that seemed to be the case. It was just you worked
16 until the job's done as opposed to your 40 hour week
17 is up and you stop.

18 Q. But there are salaried employees who when
19 their 40 hour week is up, they stop, right?

20 A. There probably are. I don't know of any
21 but I can't argue that there aren't some.

22 Q. Sir, is it your opinion that the costs
23 for supplemental pay to salaried employees was
24 excessive because these salaried employees were
25 simply doing what they were paid to be doing all

1 along?

2 A. I think the answer is yes. I just didn't
3 fully follow it.

4 MS. HOTZ: Do you have a reference? A
5 line reference where he says that?

6 Q. Sure. Page 12 -- actually the sentence
7 begins at the bottom of page 11, line 16, carries
8 over to page 12, lines 1 through 3.

9 A. Again the question? Reworded.

10 Q. Sure. Is it your opinion that the costs
11 for supplemental pay to salaried employees is
12 excessive because these salaried employees were
13 simply doing that which they were paid to be doing
14 all along?

15 A. That's what my testimony is, yes.

16 Q. Is there some point in a workweek, sir,
17 that the amount of time spent working becomes
18 excessive in your opinion?

19 A. Actually I would consider it more of a
20 daily thing. There could be times when it becomes
21 excessive. Twenty-four hours starts to get
22 excessive. Does that mean the person gets paid
23 extra? There's a difference there between getting
24 paid extra and how much a person should be worked, I
25 guess.

1 So I guess I'm disagreeing with the fact
2 that if a person worked ten hours or 20 hours extra
3 in a week, automatically they should get paid extra.
4 I mean, if that was in their contract, that's
5 understandable, I've got no objection to it. But --
6 if they have a contract that says that. But if they
7 don't, I think it's the company's discretion.

8 Q. What in your opinion is the average
9 workweek for a salaried employee?

10 A. I don't have a number. A lot of
11 employees I know also take off, salaried employees.
12 If they work overtime one week, they'll take off a
13 day or two next week, so. They still get paid their
14 same, quote, salary whether or not they took the time
15 off or not. So I don't have a number. I've not done
16 a study, basically.

17 Q. Again without waiving any objection to
18 this line of questioning or the issue that has been
19 raised by the OCC, Mr. Yankel, you claim that Duke
20 Energy Ohio's costs should be reduced by some amount
21 because Duke Energy Ohio employees were providing
22 storm restoration efforts in Indiana, correct?

23 MS. HOTZ: What line is that? Page and
24 line?

25 MS. SPILLER: Page 17 -- not 17.

1 Actually it is page 20.

2 MS. HOTZ: Page 20.

3 MS. SPILLER: Looks like line 17.

4 A. Yes, it begins there.

5 Could do you the question again?

6 Q. Again, reserving all objection to the
7 issue raised by the OCC, you're of the opinion or
8 position, sir, that Duke Energy Ohio's costs should
9 be reduced by some amount because Duke Energy Ohio
10 employees were providing storm restorations in
11 Indiana in September 2008, correct?

12 A. I estimated that they were doing some
13 work in Indiana, yes.

14 Q. Mr. Yankel, you were present for Beth
15 Clippinger's deposition this morning, correct?

16 A. Correct.

17 Q. Would you agree with Duke Energy Ohio's
18 policy of capitalizing poles that have been replaced
19 in connection with a wind storm?

20 A. I'm not sure what part of the policy
21 you're talking about.

22 Q. Do you believe that poles that are
23 replaced, that those new poles should be capitalized?

24 A. I believe they should be capitalized,
25 yes.

1 Q. Duke Energy Ohio in fact has done that
2 here, correct?

3 A. I don't know for sure as I sit here, just
4 because I have not reviewed our conversation in any
5 great detail. She made a good argument today that
6 that cost was in there and I just need to check on
7 that. As far as the material cost goes, yes.

8 Q. You indicate, sir, on page 24 of your
9 testimony, beginning on line 2, that, and I'm
10 paraphrasing, but that in your opinion Duke Energy
11 Ohio is both capitalizing poles and including them in
12 the O and M expense account for purposes of
13 recovering in this case, correct?

14 A. Correct.

15 Q. On what facts did you rely in forming
16 that opinion or position?

17 A. I believe the facts as pretty well laid
18 out here in the previous two pages, however, again,
19 this is the stuff that I'm looking at that I probably
20 will remove.

21 Q. Okay. And your facts -- I'm sorry, does
22 the testimony on the preceding pages that would
23 follow the question 26 as posed on page 22, line 6,
24 does that testimony, sir, reflect all of the facts
25 upon which you rely on forming this position?

1 Regarding the capitalization of poles?

2 A. Of the material cost of poles, yes.

3 Q. And, sir, when you go back in and review
4 in light of Ms. Clippinger's testimony, are you
5 intending to look beyond the poles to cross arms and
6 all of the other items reflected in the \$700,000
7 figure?

8 A. I'm not planning on going through the
9 other materials. I mean, I am assuming that if the
10 material for poles is correct, then the rest of it's
11 correct. So I don't make that assumption.

12 Again, I'm looking for material cost, I'm
13 not necessarily there on where there's a disagreement
14 as far as I'm concerned on the labor costs. But as
15 far as the material cost goes, I think we're probably
16 in agreement. And that would include cross arms and
17 everything else.

18 Q. Mr. Yankel, there is a reference in your
19 testimony, page 24, line 18, to "non-affiliated Duke
20 companies." Can you identify what entities you mean
21 by that label?

22 A. That would be below this, lines 21 and
23 22, Louisville Gas and Electric and Kentucky
24 utilities. That's what that's referring to.

25 Q. And again reserving all objections to the

1 references to other jurisdictions raised by the OCC,
2 you're of the opinion that Duke Energy Ohio did not
3 capitalize enough labor costs because companies in
4 other states charged a larger percentage of their
5 costs to capital accounts, correct?

6 A. That would be one basis, yes.

7 Q. What are the other bases, sir, on which
8 you base that opinion?

9 A. Well, the labor costs just looks too low,
10 to begin with. But I think as I've kind of indicated
11 in my testimony and as was testified to this morning,
12 those costs are some kind of standard costs used by
13 the company as far as the cost of installation that
14 was not a standard operation at all.

15 The storm damage was certainly done at
16 overtime rates, time and a half, lot of contractors
17 were involved, much more expensive. In addition
18 there's a lot of clearing efforts, that's in my
19 testimony as well.

20 Normally when you're putting in poles,
21 it's the entire cost of putting them in. It's not
22 just simply putting them into the hole and whatnot.
23 But everything that's associated with putting in the
24 line. So seems like it should be quite a bit higher.

25 Q. Do you have any reason, sir, to dispute

1 Ms. Clippinger's testimony that when the poles were
2 moved over to the capital accounts, the associated
3 labor for the installation of those poles was
4 capitalized?

5 MS. HOTZ: What do you mean by
6 "associated labor"?

7 Q. Well, the labor involved in installing
8 the pole.

9 A. I believe what she told me to the extent
10 of what she told me. What I have difficulty with is
11 the fact that she used a standard number for labor to
12 move that over. And it's that standard number that I
13 take issue with.

14 I believe that she did the math correctly
15 or moved it over and it was included appropriately.
16 I'm not challenging that.

17 Q. And your challenge to the use of a
18 standard number versus some different number is based
19 upon what specific facts, sir?

20 A. The fact that, one, a lot of the company
21 labor was working either time and a half or could
22 have been double time, I don't recall, contract labor
23 was coming in oftentimes working double time. Those
24 costs I believe are probably a lot higher than the
25 company costs as far as hourly rates go.

1 Bringing in other equipment, contractors
2 did a lot of the work. And they're not -- those
3 costs are not included. The numbers she used were
4 strictly a standard number for the installation of a
5 pole. The standard internal company number.

6 Q. And again reserving all objection on the
7 issue, the different number that you would propose is
8 a number used by a Kentucky utility. It's the
9 average of two Kentucky utilities, correct?

10 A. Correct.

11 Q. You don't know, sir, whether that was a
12 standard number that those -- an average of a
13 standard number that those utilities ordinarily use,
14 do you?

15 A. I do not, no.

16 Q. And in arriving at your position
17 regarding the percentage that should be used, you
18 relied solely upon a report prepared by a utility
19 commission in that other state in Kentucky, correct?

20 A. Yes.

21 Q. You did not, sir, go beyond that report
22 and conduct any additional inquiry or investigation,
23 correct?

24 A. No.

25 Q. And did you not, sir, consider the

1 capitalization policies of other Ohio utilities in
2 response to the 2008 wind storm, correct?

3 A. Correct.

4 Q. Based upon your analysis or application
5 of the Kentucky percentage, Mr. Yankel, it's your
6 opinion that Duke Energy Ohio's total request in this
7 case \$8,696,072 should be capitalized, correct?

8 A. Show me. I mean, if that's the number,
9 that's the number. I just don't know.

10 MS. HOTZ: What page was that?

11 MS. SPILLER: I'm getting there, Ann.
12 28, line 4.

13 A. Yes.

14 Q. So, Mr. Yankel, you don't dispute these
15 costs, you just believe they are included in the
16 wrong category, namely the O and M expense category,
17 correct?

18 A. Generally speaking, I do dispute a lot of
19 the costs. What I've got multiplied there is
20 actually the company's full request times percentage.
21 Some of those costs I've actually disputed elsewhere.
22 But no, I'm saying 31 percent of whatever costs the
23 Commission finds should have been incurred or more
24 prudently incurred should be capitalized.

25 Q. And when an amount is capitalized, sir,

1 what is the impact on Ohio ratepayers?

2 A. I'm not sure it's exact number with
3 distribution could be amortized over 35 years, 40
4 years depending on the assets involved. Put in rate
5 base, is a better way of putting it.

6 Q. And when put in rate base does the
7 utility company earn a return on that investment?

8 A. Yes. And there's depreciation.

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16 Q. Okay.

17 A. The starting point being that it didn't
18 look right that it was Duke Energy Indiana. I went
19 further into other responses to the staff's data
20 request 5, found that those weren't there as well.
21 So the fact that they weren't provided to the staff
22 originally kind of makes -- it's a double suggestion
23 that they don't belong on it.

24 Q. Let's start first with the PayCo Duke
25 Energy Indiana. How was that relevant to your

1 opinion in light of the discovery response provided
2 by the company and that you reference in your
3 testimony, sir, beginning on line 5, page 29?

4 A. I'm not following. Do you want me to
5 respond my thoughts in your response? I'm not sure
6 exactly what you're asking.

7 Q. Sure. I'll rephrase it.

8 The PayCo is listed as Duke Energy
9 Indiana. Correct?

10 A. Correct.

11 Q. And from that did you conclude that the
12 services must have been performed in Indiana?

13 A. Not from that, no. We then asked the
14 interrogatory regarding that. The company indicated
15 that the only thing under PayCo that makes sense is
16 with respect to labor as I recall.

17 Q. Company labor.

18 A. Company labor. Therefore, at least my
19 interpretation of the data response is that the
20 designation of Duke Energy Indiana didn't make sense,
21 at least that's what it seems like the company was
22 trying to tell me, or was a meaningless response.

23 Then looking further into the staff --
24 the response to staff data request 5, those numbers
25 did not appear there either. I think it was supposed

1 to be a listing of all the invoices that were paid
2 for Ohio to contractors.

3 So the company did not come back in that
4 instance and say that these people were being paid
5 for work done in Ohio. So kind of combination of
6 two.

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5 Q. So the fact that the invoices may have
6 been made to Erlanger, Kentucky, is that significant
7 at all to you in connection with Duke Energy Ohio's
8 request here?

9 A. It's significant. It's by itself it's
10 not significant enough to warrant an adjustment, but
11 it's in relationship to a lot of other stuff that
12 was. That was kind of like the first red flag that I
13 saw.

14 Q. Do you know where Erlanger, Kentucky is
15 located relative to Cincinnati, Ohio?

16 A. Not very far. It's south of there and
17 across the river. Kind of across a bridge and off
18 the side a little bit.

19 Q. You know, Mr. Yankel, from the discovery
20 responses that line crews who were performing work in
21 Ohio were instructed to mail their invoices to
22 Erlanger, Kentucky, correct?

23 A. Did you say in response to data responses
24 or was I just aware of that? I'm sorry, just the
25 question. I lost it.

1 Q. Based upon your -- you know from
2 discovery responses, from your review of the
3 discovery responses.

4 A. No. Looking at the discovery responses,
5 they were mailed to different places. Some of them
6 were mailed to Ohio.

7

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16 Q. The question, sir, is, that statement
17 notwithstanding, is that these contractor crews were
18 actually told to mail the invoices to Erlanger,
19 Kentucky, correct?

20 A. That I do not know. I would assume they
21 are probably told to mail them to wherever they
22 mailed them to. But I don't know.

23 Q. Mr. Yankel, do you know where Holiday Inn
24 Eastgate is located?

25 A. No, I do not.

1 Q. You don't know whether it's near
2 Cincinnati, Ohio or in Kentucky?

3 A. No, I do not.
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19 Q. If I understand your testimony correctly,
20 Mr. Yankel, you're challenging the inclusion of this
21 invoice because it was mailed to Erlanger, Kentucky,
22 correct?

23 A. No.

24 Q. Are you challenging it because someone
25 had a meal in Kentucky?

1 A. There was a meal in Kentucky and then
2 there was also, whatever, as I recall a taxi ride in
3 Kentucky.

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23 Q. I guess to be clear, are you saying that
24 if a contractor has a meal in Kentucky during the
25 course of performing restoration work in Ohio over a

1 course of days, that all of that work is not related
2 to the Ohio storm restoration efforts?

3 A. I didn't say that. I said that basically
4 there was a lot of missing information. There wasn't
5 a lot of good information as to where people worked
6 as far as from the invoices that I saw.

7 And the fact that there were receipts in
8 Kentucky, in some cases Kentucky and Ohio as far as
9 that goes, some of the contractors, calls it into
10 question as to where did these people really work.

11 Q. And the charge code associated with this
12 \$19,672.77 was the Ohio storm code, correct?

13 A. Yes. But a storm code is a storm code.
14 I mean, they -- anybody could be given a storm code,
15 that particular storm code, and be told to go out and
16 do some work someplace else.

17 They're not going to say I can't go
18 because I've got the wrong accounting code to write
19 this down to. They're going to go where they are
20 sent, appropriately.

21 Q. So I guess you have the same opinion with
22 respect to utility lines construction services,
23 correct?

24 A. Correct.

25 Q. That because they may have actually

1 consumed a meal and washed their clothes in Kentucky,
2 that they were not actually performing restoration
3 services in Ohio?

4 A. Makes it unclear as to where they were.
5 I did not say specifically they were in Ohio or not
6 in Ohio. As I recall in that particular one there
7 were some receipts for both.

8 Again, it's just clarification as to
9 where they -- where those people worked, what they
10 did. Again, there's no clarification as to were they
11 doing capital work or expense work. They were just
12 working, period. That's all we have. They were
13 hired, they worked 18 hours a day or whatever, 16
14 hours a day.

15 Q. Mr. Yankel, on what do you base the
16 opinion that two-thirds of the charges associated
17 with contractor costs should be disallowed? And I'm
18 referencing page 41, line 11, of your testimony.

19 A. It was under 90 percent, for lack of a
20 better term.

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Q. From the 90 percent figure you just
selected another percentage.

A. A percentage less than that, yes.

Q. You have not, sir, reviewed all of the

1 contractor invoices that have been generated relative
2 to the storm restoration efforts, correct?

3 A. Reviewed I think all of the ones that
4 were sent to the staff. Again, the staff did not ask
5 for all of them. They may have asked for half. I'm
6 not sure what the difference was.

7 Q. And the OCC, sir, was given the
8 invitation to come and review all of those
9 expenses -- I'm sorry, all of those invoices,
10 correct?

11 A. Correct.

12 Q. And to your knowledge, sir, that has not
13 been done by or on behalf of the OCC, correct?

14 A. I certainly have not done that.

15 Q. Mr. Yankel, with respect to your
16 testimony, page 42, line 4, you indicate, sir, that
17 the OCC has proposed adjustments that have been
18 accepted to by Duke Energy Ohio, correct?

19 A. Yes.

20 Q. Not a fair statement though, is it, sir?

21 A. Slightly sloppy wording. I guess I
22 considered proposed the fact that we had asked the
23 interrogatory, the company removed it. I felt it was
24 at least something that was based upon what we were
25 doing. But again, we did not propose it. We did not

1 have the opportunity to propose it.

2 Q. Why did you feel compelled, sir, to
3 address in your testimony reductions to its request
4 that Duke Energy Ohio had made even before your
5 testimony was filed?

6 A. Because I thought it was appropriate to
7 show that which we had done within this case. I felt
8 the company went out of its way to ignore some of the
9 adjustments that we had proposed, so I thought I'd
10 put them in.

11 Q. Any other reason?

12 A. No. That was the reason.

13 Q. Sir, you have seen the finding and order
14 from the Commission regarding Duke Energy Ohio's
15 request for this deferral, correct?

16 A. Yes.

17 Q. And that finding and order, sir, does not
18 impose a time limitation on when carrying costs will
19 occur, correct?

20 A. I thought it did. I've not seen it
21 lately. I thought it did. I thought it said 36
22 months or something.

23 Q. Sir, again, you've indicated that you
24 were present for the deposition of Mr. Wathen on
25 Monday of this week, correct?

1 A. Yes.

2 Q. And your testimony, sir, was prepared
3 before you had the benefit of his actual deposition
4 testimony, correct?

5 A. No. It was in the process but it was
6 certainly not prepared.

7 Q. Sir, if we could turn to page 16 of your
8 deposition -- your testimony please, line 3. You
9 state "Duke witness Don Wathen during his deposition
10 in this case also stated that during the restoration
11 process it was assumed that the cost of the
12 restoration would fall upon the stockholders."

13 Did I read that correctly?

14 A. Yes.

15 Q. Sir, that's not what he testified to, is
16 it?

17 A. That's my recollection of what I heard on
18 Monday.

19 Q. So you formed this testimony based upon
20 your recollection of his testimony and not the actual
21 deposition transcript, correct?

22 A. I sat --

23 MS. HOTZ: Objection. It wasn't
24 available.

25 MS. SPILLER: That's fine.

1 A. I sat through the deposition and that's
2 what I thought I heard him say.

3 MS. SPILLER: Can we go off the record
4 please?

5 (Off the record.)

6 MS. SPILLER: Mr. Yankel, I don't have
7 any further questions for you today. I appreciate
8 your time.

9 I do have I guess just more of a
10 procedural matter because in part of your deposition
11 referenced specific contractors that Duke Energy Ohio
12 has retained, and I know in your testimony consistent
13 with the discovery responses that information is
14 confidential and you have redacted it. We will
15 redact those portions.

16 Thank you.

17 Steve, did you have any questions?

18 Sounds like he's gone.

19 (Signature not waived.)

20 (Deposition concluded at 2:15 p.m.)

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

3 I, Anthony J. Yankel, do hereby certify that I
4 have read the foregoing transcript of my deposition
5 given on Thursday, May 20, 2010; that together with
6 the correction page attached hereto noting changes in
7 form or substance, if any, it is true and correct.

8 _____
9 Anthony J. Yankel

10 I do hereby certify that the foregoing
11 transcript of the deposition of Anthony J. Yankel was
12 submitted to the witness for reading and signing;
13 that after he had stated to the undersigned Notary
14 Public that he had read and examined his deposition,
15 he signed the same in my presence on the _____ day
16 of _____, 2010.

17 _____
18 Notary Public

19 My commission expires _____, _____.
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1 CERTIFICATE

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

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

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

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my seal of office at Columbus, Ohio,
15 on this 20th day of May, 2010.

16 Julieanna Hennebert, Registered
17 Professional Reporter and RMR and
Notary Public in and for the
State of Ohio.

18 My commission expires February 19, 2013.

19 (JUL-1565)

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Case No(s). 09-1946-EL-RDR

Summary: Transcript Transcript of Duke Energy of Ohio hearing held on 05/20/10. Deposition of Anthony Yankel. electronically filed by Mrs. Jennifer Duffer on behalf of Duke Energy Ohio, Inc.