

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-RDR
Level of its Distribution :
Reliability Rider. :

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PROCEEDINGS

before Ms. Katie Stenman and Ms. Christine Pirik,
Hearing Examiners, at the Public Utilities Commission
of Ohio, 180 East Broad Street, Room 11-C, Columbus,
Ohio, called at 10:30 a.m. on Wednesday, May 26,
2010.

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VOLUME II

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This is Case No. 09-1946-EL-RDR

I don't know, I think perhaps Ms. Hotz, to just represent what we just discussed as far as what you're going to do with that and that has been reviewed.

EXAMINER PIRIK: The Bench, after
the document and considering the arguments
lies to the information that was contained

1 within the document, determined that -- and I will
2 list the items that we are granting protective status
3 for and if there are additional items or
4 clarifications I'd ask the parties to step in after
5 my statement.

6 Employee numbers, employee names,
7 specific position description titles, contractor
8 names, any telephone number or address that would
9 reference a contractor.

10 And I believe those are the basically the
11 five items that we have agreed should be redacted
12 from the public version of the document that Ms. Hotz
13 just referenced. Are there any other additions,
14 corrections?

15 MS. WATTS: I do not have anything to add
16 to that, your Honor.

17 EXAMINER PIRIK: So with that list all of
18 the numbers and monetary amounts will be in the open
19 record and the list that I just mentioned will be
20 redacted in the public version. To that extent the
21 motion for protection is granted.

22 I would note for the record that the
23 information that is under protection is subject to
24 Rule 4901-1-24, which permits that this information
25 is protected for a period of 18 months and if a party

1 wishes to have that information extended for a longer
2 period of time, they must file a request 45 days
3 prior to the expiration of the protected period.

4 So we will reiterate this again in our
5 order, but for now I just wanted to put that on the
6 record and put the parties on notice.

7 I believe OCC?

8 MS. HOTZ: OCC would like to call Anthony
9 J. Yankel to the stand please.

10 MS. SPILLER: Your Honor, if I may, on
11 behalf of Duke Energy Ohio we do have some
12 preliminary motions relative to Mr. Yankel's
13 testimony. Wasn't sure when the Court would wish to
14 address those.

15 EXAMINER PIRIK: After the direct, after
16 Ms. Hotz puts him under direct we'll call on you for
17 cross and at that time that will be the appropriate
18 time.

19 (Witness sworn.)

20 EXAMINER PIRIK: Thank you for being so
21 patient.

22 MS. HOTZ: OCC would like Mr. Yankel's
23 testimony to be marked as OCC Exhibit 1 please.

24 EXAMINER PIRIK: I believe since we have
25 a confidential and non-confidential we should mark

1 the public version --

2 MS. HOTZ: 1A, and the confidential
3 version will be marked 1B.

4 EXAMINER PIRIK: So the public version
5 that will be filed today is 1A, and the confidential
6 version is 1B. The documents are so marked.

7 (EXHIBITS MARKED FOR IDENTIFICATION.)

8 - - -

9 ANTHONY J. YANKEL
10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows:

12 DIRECT TESTIMONY

13 By Ms. Hotz:

14 Q. Will you please state your full name and
15 business address for the record?

16 A. Anthony J. Yankel, Y-a-n-k-e-l. 29814
17 Lake Road, Bay Village, Ohio 44140.

18 Q. Are you the same Anthony J. Yankel who's
19 direct testimony was filed in these cases?

20 A. Yes.

21 Q. On whose behalf do you appear?

22 A. The Ohio Office of Consumers' Counsel.

23 Q. Do you have your prepared testimony with
24 you on the stand?

25 A. Yes, I do.

1 Q. Did you prepare the testimony or have it
2 prepared at your own direction?

3 A. I prepared it.

4 Q. Do you have any changes or corrections to
5 your direct testimony?

6 A. I do have one.

7 Q. And what's that?

8 A. Page 22, the first line, take out the
9 first approximately five words, take out "there are
10 two main concerns: 1)."

11 And then following that on line 2 put a
12 period after the word "capitalized." Take out the
13 remainder of that sentence.

14 And after that beginning on line 6, page
15 22 --

16 EXAMINER PIRIK: I'm sorry, Mr. Yankel, I
17 want to be sure; you're taking out from the word
18 "and" on line 2 through the period on line 4?

19 THE WITNESS: Yes. So effectively I'm
20 only leaving in the number "1" that's in it as a
21 sentence.

22 EXAMINER PIRIK: I just wanted to be sure
23 the record was clear. Continue.

24 A. Beginning on line 6 of that same page 22,
25 through page 24, line 7, delete that.

1 Q. If I asked you today the same questions
2 found in your direct testimony in OCC Exhibit 1A and
3 1B, would your answers be the same?

4 A. Yes, they would.

5 MS. HOTZ: The OCC moves for the
6 admission of OCC Exhibit 1A and 1B, and tenders the
7 witness for cross-examination.

8 MS. SPILLER: Your Honor, relative to the
9 request for admission of Mr. Yankel's testimony as
10 written, Duke Energy Ohio does have a motion to
11 strike parts of that testimony which I would like to
12 address now.

13 The first being Mr. Yankel's testimony
14 beginning on page 3, line 14, through page 4, line 6.

15 MS. HOTZ: Could you repeat that, please?

16 MS. SPILLER: Page 3, line 14, through
17 page 4, line 6. Mr. Yankel's testimony is based upon
18 facts that have not been admitted into evidence, and
19 furthermore, are hearsay, particularly he is basing
20 his opinion on a study that is not a document from a
21 public office or agency.

22 It contains evaluative and investigatory
23 information and conclusions of this entity, and
24 consistent with the Commission's finding in Case
25 04-28, we would find that this particular study is in

1 and of itself hearsay and as such this witness cannot
2 formulate and base opinions for admission in this
3 case on that hearsay evidence.

4 MS. HOTZ: Your Honor --

5 EXAMINER PIRIK: My question is do you
6 have several motions to strike?

7 MS. SPILLER: Yes, I do.

8 EXAMINER PIRIK: Are some of them based
9 on a similar argument?

10 MS. SPILLER: There is one other based on
11 a similar argument.

12 EXAMINER PIRIK: I think what I'd like
13 you to do is first of all go through the document and
14 tell me the portions of the testimony that you wish
15 to strike, and then I'd like you to consolidate your
16 arguments and point out specifically which sections
17 you're talking about.

18 And so we will do one argument at a time
19 per issue so that we can look at all of the documents
20 that you're talking about at one time. And, of
21 course, there will be an opportunity to respond.

22 MS. SPILLER: Certainly.

23 Your Honor, then identify those portions
24 of the testimony I would like stricken, consolidate
25 the arguments that may have a common objection.

1 EXAMINER PIRIK: This first motion to
2 strike will be the first portion, that is No. 1. And
3 it doesn't have to be corresponding, let's just go
4 page by page through the second portion will be
5 numbered No. 2 and so on and so forth.

6 MS. SPILLER: No. 2, your Honor, would be
7 testimony beginning on page 5, line 5, through page
8 7, line 19.

9 EXAMINER PIRIK: Okay.

10 MS. SPILLER: The third, your Honor, will
11 be page 16, lines 1 through 3. And that is
12 actually -- yes, lines through the first two words on
13 line 3, "company's earnings."

14 EXAMINER PIRIK: So line 1 beginning at
15 "As Duke Indiana's"?

16 MS. SPILLER: Yes.

17 EXAMINER PIRIK: Through line 3,
18 "company's earnings"?

19 MS. SPILLER: Correct.

20 MS. HOTZ: What was the basis of that
21 one?

22 EXAMINER PIRIK: We haven't gotten to
23 that point yet. We're just identifying them and
24 we'll go back.

25 MS. SPILLER: The next, which would be

1 item No. 4, this would be page 16, line 3, the
2 sentence that begins "Duke witness," and concludes
3 line 5.

4 The next, page 24, it would be the
5 response that begins on line 12, through page 25,
6 line 6.

7 EXAMINER PIRIK: This is request No. 5.

8 MS. SPILLER: That was request No. 5.

9 Request No. 6, page 26, the sentence that
10 begins on line 9 "This is still," concluding on line
11 10.

12 Request No. 7, page 27, line 25, the
13 sentence that begins midway through that line "As
14 pointed out above," through page 28, line 4.

15 The final, your Honor, No. 8, turning to
16 page 43, answer that begins on line 10, through the
17 balance of Mr. Yankel's testimony which concludes on
18 page 44, line 18.

19 MS. HOTZ: What were those lines again
20 please?

21 MS. SPILLER: His answer begins on line
22 10, on page 43, through page 44, line 18.

23 Your Honor, consolidating the argument
24 relative to the testimony that Duke Energy Ohio
25 wishes to be stricken from this document, first I

1 will address item numbers 1, 5, 6, and 7.

2 As indicated, your Honor, it is Duke
3 Energy Ohio's position that the testimony from
4 Mr. Yankel relies upon facts that are not in evidence
5 and that are actually hearsay. Both of these areas
6 of his testimony concern reports or studies prepared
7 by other entities.

8 And this Commission has looked in Case
9 No. 04-28 at this particular issue finding that even
10 in the instance of a public office or agency, if the
11 document does not reflect a simple recitation of the
12 activities of that entity, but instead is an
13 evaluative and investigative report, that it is in
14 fact inadmissible hearsay, as those facts cannot be
15 admitted into evidence. I believe it inappropriate
16 for Mr. Yankel to render his opinion on those
17 matters.

18 MS. HOTZ: Do you want me to argue now?

19 EXAMINER PIRIK: Yes.

20 MS. HOTZ: Under Evidence Rule 703 it
21 states the facts or data in a particular case upon
22 which an expert bases an opinion or inference may be
23 those perceived by the expert or admitted into
24 evidence at the hearing. And this is very common in
25 cases before the Commission where experts rely on

1 studies that were done.

2 EXAMINER PIRIK: Do you want to do your
3 next set?

4 MS. SPILLER: I will, thank you, your
5 Honor.

6 It is along the similar vein but slightly
7 different, it is item No. 4. Here Mr. Yankel is
8 essentially offering a substantive evidence
9 deposition testimony of Duke Energy Ohio witness Don
10 Wathen, however, Mr. Wathen's deposition, first and
11 foremost, was not filed with this Commission
12 consistent with the Administrative Code Rule
13 4901-1-21-n, and I think it's improper for Mr. Yankel
14 to offer the testimony of a witness who was
15 previously on the stand.

16 And furthermore, that's not what
17 Mr. Wathen said, so I think it improper to allow
18 Mr. Yankel to effectively reiterate purported
19 substantive evidence that's not accurate.

20 MS. HOTZ: Your Honor, deposition
21 testimony can be used -- a transcript from a
22 deposition can be used to impeach a witness without
23 being filed and it can be used to support a witness
24 without being filed.

25 Secondly, I believe that it is Duke's

1 obligation to impeach the witness. It is not our
2 obligation, it's not OCC's obligation to prove that
3 this was true, what he said. And we have the
4 transcript before us, if you'd like to hear what he
5 based his statement on.

6 EXAMINER PIRIK: I don't think we need to
7 hear that at the moment.

8 I apologize, I didn't ask you, did Kroger
9 or the staff have anything on any of the numbers that
10 we've talked about so far?

11 MR. REILLY: Thank you, your Honor.
12 Staff has nothing.

13 MR. YURICK: Nothing on behalf of the
14 Kroger Company, your Honor, thank you.

15 EXAMINER PIRIK: Do you have anything
16 else on No. 4, Ms. Hotz? Is that all you had on No.
17 4?

18 MS. HOTZ: Is that all I had for No. 4?

19 EXAMINER PIRIK: I didn't know if you
20 were looking for something else.

21 MS. HOTZ: Well, I'm looking for the
22 statement in the transcript, if you want to hear it?
23 That he based his statement, that Mr. Yankel based
24 his statement on in his testimony. If you would like
25 to see it or hear it.

1 MS. SPILLER: It's page 64, Ann. But I
2 don't think it's proper to try to impeach a witness
3 when that witness has since been excused from the
4 court. That line of questioning was not directed to
5 Mr. Wathen yesterday.

6 MS. HOTZ: Well, I think it's your
7 obligation to impeach Mr. Yankel's testimony that
8 this is what he said in the deposition.

9 EXAMINER PIRIK: With regard to your next
10 grouping?

11 MS. SPILLER: Your Honor, that would be
12 item No. 2 and 3, and in this testimony, Mr. Yankel
13 is comparing and contrasting activities, business
14 decisions that may have been made by an entity other
15 than Duke Energy Ohio, calling for an explanation
16 behind the business decision of an entity other than
17 Duke Energy Ohio, and is in fact relying upon
18 unsubstantiated and inadmissible comments from
19 someone who is not an employee of Duke Energy Ohio or
20 otherwise a witness in this proceeding.

21 As indicated yesterday by Duke Energy
22 Ohio, we do not believe that the rate structure, cost
23 recovery, or business and/or strategic decisions made
24 by an entity that does not engage in business in Ohio
25 and is clearly without -- outside of this

1 Commission's ratemaking authority, that those
2 decisions are irrelevant to and have no place in this
3 proceeding, and thus, would move to strike Mr.
4 Yankel's testimony on this subject.

5 EXAMINER PIRIK: Ms. Hotz?

6 MS. HOTZ: Yes. None of the witnesses in
7 this case were employees of Duke Energy Ohio. In
8 fact I'm wondering if there are any employees of Duke
9 Energy Ohio.

10 I do not believe that the person who
11 spoke in this newspaper article is an employee of
12 Duke Energy Indiana because I tried to find where it
13 indicated thus anywhere. And I was unable to find
14 that.

15 And I believe that anything that
16 Mr. Yankel obtained from the Kentucky record should
17 be admitted as publicly kept records, public records
18 available to anyone.

19 And I think that it should be, I think
20 that this spokesperson Angeline Protogere should be
21 considered an employee of Duke as -- and it should be
22 admitted as an exception to the hearsay rule as an
23 admission of an employee.

24 And that's -- where does 3 start?

25 MS. SPILLER: Page 16, lines 1 and 3.

1 The sentence that begins --

2 MS. HOTZ: 16?

3 MS. SPILLER: Correct. Again, it's a
4 reference to Ms. Protogere and comments that she
5 made, line 1, the sentence that begins "As Duke
6 Indiana" onto line 3, "company's earnings."

7 MS. HOTZ: Well, that goes to the same
8 argument as I was talking about previously.

9 MS. SPILLER: Your Honor, I would very
10 briefly in rebuttal, I don't believe this is an
11 admission against interest of Duke Energy Ohio. This
12 is an individual who was speaking on behalf of a
13 non-party to this proceeding, Duke Energy Indiana.

14 There's been no testimony solicited from
15 the Duke Energy Ohio witnesses that they somehow
16 adopted or acknowledged this statement from
17 Ms. Protogere. In fact, none of the witnesses were
18 asked about the statement itself.

19 The only question that Mr. Wathen -- that
20 was posed was whether he knew who Ms. Protogere may
21 have been. So I don't believe that this qualifies as
22 an exception to the hearsay rule as an admission
23 against the party in this proceeding, Duke Energy
24 Ohio.

25 EXAMINER PIRIK: Do you have anything

1 else, Ms. Hotz?

2 MS. HOTZ: I disagree. I don't believe
3 that there's any evidence that this person isn't
4 employed by anyone other than the rest of the
5 witnesses who testified in this case.

6 MS. SPILLER: The final item, your Honor,
7 is No. 8, the testimony of Mr. Yankel that begins on
8 page 43, line 10, and then through the balance of his
9 testimony. Your Honor, I believe this testimony to
10 be irrelevant from the standpoint that Mr. Yankel is
11 not offering any financial adjustment to the requests
12 made by Duke Energy Ohio.

13 And the purpose of this case is again to
14 ascertain the amount, if any, of the costs incurred
15 by Duke Energy Ohio in responding to the Hurricane
16 Ike storm event in 2008. So it's a case limited to
17 the discrete issue of financial recovery.

18 I believe this recommendation regarding a
19 study is in fact outside of the scope of this
20 proceeding and thus irrelevant.

21 Thank you.

22 EXAMINER PIRIK: Ms. Hotz?

23 MS. HOTZ: I believe that part of the
24 issues in this case deal with the reasonableness and
25 the prudent incurrence of costs, and it's certainly

1 an issue as to whether or not Duke prudently
2 addressed the storm.

3 And I think one possible way to resolve
4 it is to ask for a study. And I don't think it's
5 irrelevant. It's certainly not irrelevant as to
6 whether or not Duke prudently responded to the storm.

7 Thank you.

8 EXAMINER PIRIK: Are there any other
9 arguments by any of the parties with regard to these
10 eight items?

11 MR. REILLY: No, your Honor.

12 MR. YURICK: No, your Honor.

13 EXAMINER PIRIK: I think we need to take
14 a brief break. Hopefully will be no longer than 10
15 or 15 minutes, but Examiner Stenman and I will step
16 out and discuss the motions and we'll be back with a
17 ruling.

18 (Recess taken.)

19 EXAMINER PIRIK: We've viewed the motions
20 to strike and after looking at each of the items, the
21 Bench has determined that the motions to strike
22 should be denied in their entirety and the testimony
23 should go forward.

24 MS. SPILLER: Your Honor, I guess more so
25 a procedural question than anything. The objection

1 that we had with respect to item No. 2 which
2 concerned testimony concerning activities in Duke
3 Energy Ohio, this is certainly the subject of or very
4 closely related to the issue addressed yesterday and
5 pursuant to which Duke Energy Ohio will be taking an
6 interlocutory appeal.

7 Just ask the Court for its preference.
8 Do you wish that I cross-examine Mr. Yankel on those
9 parts of his testimony today understanding I guess
10 our intent relative to the appeal?

11 EXAMINER PIRIK: Yes.

12 MS. SPILLER: Okay, thank you.

13 EXAMINER PIRIK: And do you know at this
14 time what the timing of your appeal is?

15 MS. SPILLER: We received the transcript
16 early morning this morning. Working on that the
17 intention is to get it filed yet today.

18 EXAMINER PIRIK: So if it's filed today,
19 responses will be due on Friday, by the end of the
20 day on Friday.

21 MS. SPILLER: Correct.

22 EXAMINER PIRIK: And just so that we're
23 familiar, assuming that the filing is today and the
24 responses are due on Friday, or whether they're due
25 on Monday, we of course will work with the Commission

1 to get a response as soon as we possibly can, be it
2 next week if in fact it's appropriately going to the
3 Commission, or the following week.

4 But in any event, we are going to find
5 either Friday the 4th or Monday the 7th will be
6 the next hearing date for those witnesses, whether or
7 not the Commission has made a decision, by the end of
8 day we are going to pick one of those two dates for
9 follow-up testimony. And if the Commission hasn't
10 made their decision yet, we're still going to go
11 forward with it. So we need to know witness
12 availability by the end of the day one way or
13 another.

14 You may proceed.

15 MS. SPILLER: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Spiller:

19 Q. Mr. Yankel, referring to page 3, line 10
20 of your testimony, sir, you state there that "All
21 customers did not have their service restored until
22 nine days after the storm hit," correct?

23 A. That is correct.

24 Q. To be clear, sir, not all of the Duke
25 Energy Ohio's customers were without power for nine

1 days following the storm, correct?

2 A. No, the intent there was all of the
3 customers. So obviously some customers were out for
4 a day or two, that type of thing, yes.

5 Q. If we may refer to the end of your
6 testimony, sir, page 44, line 8. You recommend that
7 the Commission order a study of Duke Energy Ohio's
8 procedures and reactions with respect to Storm Ike,
9 correct?

10 A. I don't see line 8.

11 Q. I'm sorry, line 14, page 44.

12 A. Yes.

13 Q. And you base this recommendation on what
14 you believed to have been a slow response to the
15 storm by Duke Energy Ohio, correct?

16 A. Not necessarily that. I mean I only
17 discussed this very briefly in recommending a study.
18 I've only discussed it for about a page or so here.

19 I gave two examples, one of which is the
20 fact that there were repeated outages, more outages
21 occurring long after the storm had hit and subsided.

22 Also, just questions about, again, on
23 page 43, what the company knew when and how it
24 reacted. The fact that it didn't call out its second
25 tier responders until the second day when it should

1 have been known that it was in an extremely
2 significant storm at that point in time on Sunday.

3 I mean there are other things that I read
4 in there, but I think a study would just hopefully
5 look into all those aspects.

6 Q. But, Mr. Yankel, you base the
7 recommendation on a study, do you not, on what you
8 believe to be a slow response time to the storm by
9 Duke Energy Ohio?

10 A. No, I did not say that. I don't believe
11 I said that.

12 Q. On page 43, line 18 of your testimony,
13 sir, you note your concern as "Why did it take until
14 Monday to realize the extent of the damage," correct?

15 A. Correct.

16 Q. And in making this recommendation for a
17 study, you did not personally observe any of the
18 storm as it tore through Duke Energy Ohio's service
19 territory, did you?

20 MS. HOTZ: Objection; not relevant.

21 EXAMINER PIRIK: Objection overruled.

22 A. No, I did not.

23 Q. You did not personally observe any of the
24 damage in Duke Energy Ohio's service territory,
25 correct?

1 A. That is correct.

2 Q. Sir, you have no opinion on whether Duke
3 Energy Ohio should have dispatched its helicopters to
4 start assessing the damage when wind speeds were
5 gusting in excess of 70 miles per hour, correct?

6 A. My testimony doesn't address that. My
7 testimony addresses, again, Mr. Mehring's testimony
8 in the fact that he has in his testimony the number
9 by hour of outages that have taken place, and that
10 was almost 500,000 outages in the middle of the
11 afternoon on Sunday.

12 Again, he said they waited -- I shouldn't
13 say "waited," I don't know what they did, but they
14 didn't call out the second tier responders, which is
15 a normal practice, until Monday. Whether or not they
16 could have put helicopters up in the air, that was
17 not what I was looking at.

18 Q. To be fair though, your testimony is that
19 Duke Energy Ohio was slow in recognizing the extent
20 of the damage from the storm.

21 MS. HOTZ: Asked and answered.

22 EXAMINER PIRIK: Overruled.

23 A. I'm concerned about the response. I
24 don't believe in my opinion what I said was they were
25 slow. I believe that maybe some of the procedures

1 they were going through were inappropriate. I
 2 question the fact how long it took to -- nine days
 3 was an awful long time for people to be out.
 4 Horrible for people to be out, as far as that goes.

5 My understanding there was short periods
 6 of time in Kentucky and Indiana. Why was it so long
 7 in Ohio? I don't know. I'm not saying that -- I did
 8 not say they were slow, but I think a study is
 9 warranted here

10 Q. So you don't know how much of Duke Energy
 11 Ohio's distribution system is in rural areas, do you?

12 A. No, I do not.

13 Q. And you don't know, sir, how long it
 14 would take to physically carry in poles, manually
 15 carry those poles into a distribution line that
 16 needed to be restored in a rural area, do you?

17 A. No, I do not. But then again, there's
 18 Kentucky and Indiana which are also Duke companies
 19 that seemed to recover quicker. Was there something
 20 unique about Ohio? I don't know.

21 Was it the weather that was unique? Was
 22 it the design of the system? I don't know. Study
 23 would, I think, help confirm where Ohio is if changes
 24 need to be made.

25 Q. Where did Duke Energy Ohio stand relative

1 to other Ohio utilities in terms of restoring power
2 to its customers?

3 A. I do not know that.

4 Q. And you don't know how much of Duke
5 Energy Kentucky system was affected by the storm, do
6 you, sir?

7 A. No, I do not.

8 Q. And you don't know how much of Duke
9 Energy Indiana's service territory was affected by
10 the storm, do you, sir?

11 A. Probably less. I did know a little bit
12 about Kentucky at one time. I don't recall right
13 now. Indiana I think I knew a little less.

14 Q. Mr. Yankel, you don't know when it was
15 first safe for Duke Energy Ohio employees and
16 contractors to physically venture out and start the
17 restoration efforts, do you?

18 A. No.

19 Q. And you don't know how long it took after
20 the storm to remove trees so that these employees and
21 contractors could walk parts of the distribution
22 system, correct?

23 A. No.

24 Q. And your professional experience does not
25 include any involvement in storm outage management,

1 correct?

2 A. That is correct.

3 Q. And, sir, you've never worked for a
4 distribution company, correct?

5 A. That is correct.

6 Q. And you've never been involved in the
7 restoration activities following a storm as
8 significant as Hurricane Ike, correct?

9 A. Certainly not. That's correct.

10 Q. Mr. Yankel, do you know whether the
11 Commission has already considered the issue of a
12 study?

13 A. No, I do not.

14 Q. And you are not recommending any
15 adjustment to the storm costs because of Duke Energy
16 Ohio's response time, are you?

17 A. No, I am not.

18 Q. Mr. Yankel, you don't believe that Duke
19 Energy Ohio should recover any of the storm costs
20 related to this response to Hurricane Ike, correct?

21 A. That is my first recommendation, yes.

22 Q. And in forming that opinion, sir, you did
23 not look at the miles of conductor that were
24 repaired, did you?

25 A. No. I think as I said in my deposition,

1 really what I looked at was the dollars involved.
2 Whether it was miles or feet, it didn't make any
3 difference. The conductor, number of poles. It was
4 the dollars that I looked at.

5 Q. And in looking at the dollars, sir, you
6 did not look at all of the invoices or documents that
7 support the 8,000 entries that Mr. Hecker referred to
8 yesterday, did you?

9 A. No, I certainly did not.

10 Q. You were, on behalf of the OCC, invited
11 by Duke Energy Ohio to come and do that, correct?

12 A. I was given the opportunity, yes.

13 Q. Sir, you believe that Duke Energy Ohio
14 should not recover any of its storm costs because the
15 economic loss to its customers in all likelihood
16 significantly exceeded the amount that it cost Duke
17 Energy Ohio to restore service, correct?

18 A. Correct.

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

21 A. No. I did put in that one study data on
22 something like that is extremely hard to come by.
23 It's a study. It's a number. It's been published.
24 So I put this in. But, no, I do not have a number
25 for Ohio.

1 Q. And the number that you put, sir, was
2 simply a dollar number that you multiplied by the
3 number of sustained outages in Duke Energy Ohio's
4 territory, correct?

5 A. I made the assumption also that they were
6 residential customers and just for one hour, again
7 using the study's \$3 figure for outages, yes.

8 Q. And that \$3 figure multiplied by the
9 number of sustained outages, which was 800,000, is
10 2.4 million, correct?

11 A. Yes. And for the number of outages that
12 were there, it was actually 822,000, I think is what
13 was quoted. If I were just to assume that 20,000
14 were for commercial customers, I think the number
15 that they have in that study is \$12,000, it would be
16 24 million just for the first hour for commercial
17 customers, so. I was just looking at residential
18 when I came up with my figure 800,000 for
19 residential.

20 Q. And your focus, sir, is residential
21 customers as the witness on behalf of the OCC,
22 correct?

23 A. Yes.

24 Q. And the document that's been handed to
25 you, sir, Duke Energy Ohio Exhibit No. 7, this is the

1 study that you relied upon, correct?

2 A. This would appear to be it, yes.

3 Q. The Ernest Orlando Lawrence Berkeley
4 National Laboratory Study from November 2003,
5 correct?

6 A. That is correct.

7 Q. Sir, this study, insofar as it concerns
8 residential customers, did not consider at all
9 customers in the midwest, correct?

10 A. Originally I kind of -- my memory thought
11 it did. Going through a second time it hit the
12 northeast, the west, southwest. It hit over 40,000
13 customers but did not hit the midwest, correct.

14 Q. And you do not know the total economic
15 loss to Duke Energy Ohio customers following this
16 storm, do you, sir?

17 A. No. But I certainly believe it's well in
18 excess of the request in this case.

19 Q. In forming this opinion, sir, you did not
20 consider that 40 percent of Duke Energy Ohio's
21 customers had service restored after 48 hours, did
22 you?

23 A. I'm sorry, can you give me the figures
24 again?

25 Q. Sure. You did not consider that

1 40 percent of Duke Energy Ohio's customers had
2 service restored after 48 hours, did you?

3 MS. HOTZ: Is that in evidence?

4 MS. SPILLER: It's in Mr. Mehring's
5 testimony.

6 MS. HOTZ: Okay.

7 A. I didn't think that number was in his
8 testimony. I thought it was 70 percent after four
9 days.

10 Q. Well, sir, did you consider the fact that
11 70 percent of Duke Energy Ohio's customers had
12 service restored after four days?

13 A. Yes, I considered that.

14 Q. Mr. Yankel, in all of your years as
15 testifying in regulatory proceedings, have you ever
16 encountered a regulation that conditions a utility
17 company's ability to recover storm restoration costs
18 to the unidentified financial losses of its customers
19 from that same storm?

20 A. No.

21 Q. Mr. Yankel, the study on which you relied
22 was undertaken to compare overbilling a distribution
23 system that cost customers more money than they are
24 willing to pay to underbilling a system that leads to
25 more outages than customers are willing to bear,

1 correct?

2 A. Correct. The study that I relied on for
3 the \$3 figure isn't exactly ideal for the situation
4 we're here looking at. Again, it was more of a
5 survey of how much would you want to get back if you
6 had a one-hour outage. And sort of the average for
7 me was \$3.

8 I think that's very different than
9 actually going through an outage, what is the impact
10 upon people. But again, numbers like that are I
11 think extremely hard to come by, so this is the best
12 I could do.

13 Q. But this study, sir, I mean it recommends
14 that you not design a distribution system to
15 withstand a storm like Ike that may come around once
16 every hundred years, correct?

17 A. I don't believe it did that. I believe
18 it just tried to present a mechanism for reviewing
19 things like that as opposed to coming up with some
20 kind of conclusions like you're talking about.

21 I think you try to present, again, a
22 mechanism to say here's what you need to be looking
23 at when you're pricing a redundancy in your
24 distribution system and whatnot. It didn't come up
25 saying 74-mile an hour sustained wind for one hour,

1 what have you, that you shouldn't be designing a
2 system to meet that.

3 Q. Sir, in purposes of forming your opinion
4 that Duke Energy Ohio's customers should recover none
5 of their storm costs, you just looked at "pieces and
6 parts," I believe were your words, of this
7 testimony -- or this study that's been marked as Duke
8 Energy Ohio Exhibit 7, correct?

9 A. At one time I had read it. When I relied
10 upon it for my testimony I really just looked at more
11 the summary. And I could have been a little bit
12 beyond the summary page but the executive summary.
13 But I did not read the whole study, reread it.

14 Q. Mr. Yankel, you do not dispute the fact
15 that Duke Energy Ohio is not seeking to recover for
16 overtime already included in base rates through this
17 filing, do you?

18 A. I do not know one way or the other
19 whether they are or -- it had come up during
20 settlement talks and I don't really know where that
21 ended up. I was not disputing that, I guess that's
22 the shorter answer.

23 Q. Thank you.

24 Sir, but you also believe that Duke
25 Energy Ohio should recover none of its storm costs

1 from Hurricane Ike because it already recovers storm
2 costs through its base rates, correct?

3 A. That's one of the factors. Again, there
4 were several factors that I looked at, but that was
5 one of the factors, yes.

6 Q. And you are assuming, Mr. Yankel,
7 relative to that opinion that effectively this all
8 comes out in the wash for Duke Energy Ohio, correct?
9 Some years they may underrecover for storms, some
10 years they may overrecover for storm cost, correct?

11 A. That is correct.

12 Q. And eventually it nets itself out,
13 correct?

14 A. Yes.

15 Q. Sir, do you know the amount of Duke
16 Energy Ohio's storm costs that were included in base
17 rates on September 14, 2008?

18 A. At that time, and I'm just going to
19 guess, but it was 2 million, approximately \$2 million
20 that was included in rates. If you look at what's
21 happened since, as testified to by the company, the
22 last three years, well, '07 and '08 there was over
23 \$5 million, in '09 there was the first time in
24 January apparently 5.7 million, just one storm.

25 So the dollar amounts of the storm damage

1 is going up quite a bit compared to what it was. I
2 assume the next rate case it's going to be
3 significantly higher, that dollar amount that's going
4 to be in base rates. And be more fluctuations around
5 that.

6 Q. How about, sir, if we could focus on 2008
7 and forego the assumption for a future rate case, but
8 do you know whether Duke Energy Ohio has ever
9 overcollected on storm costs that are included in its
10 base rates?

11 A. Other than some of the stuff that I've
12 seen in this case, I don't know whether historically
13 Duke has overcollected or undercollected. There's
14 been some discussion by the company over the last
15 couple of years that suggested they have
16 undercollected.

17 Q. Undercollected?

18 A. Yes.

19 Q. So if Duke Energy Ohio has never, to your
20 knowledge, overcollected on storm costs and base
21 rates, how then, sir, can you say that this all just
22 works out in the end for Duke Energy Ohio?

23 A. I guess I've been involved in rate cases
24 for quite a while and I know that every time expenses
25 are set in a rate case there is an expectation that

1 those will be appropriately collected.

2 These storm costs are a part of, for Duke
3 Energy Ohio a part of account 593; if it's not picked
4 up one way, may be pick up another way.

5 But I'm assuming the company's
6 expectation, when they're filing a general rate case,
7 is they will be covering their costs.

8 Q. Your expectation is that Duke Energy Ohio
9 will include \$28.5 million in O and M expenses
10 incurred in 2008 in their next rate case?

11 A. No.

12 Q. Sir, Duke Energy Ohio will not recover
13 these O and M costs outside of this proceeding,
14 correct?

15 A. I believe they have an opportunity to
16 recover those costs in the future. It may take a
17 while, but again, assuming that storm-related portion
18 of account 593 is, say, \$6 million in the future, in
19 the next rate case and storm damage goes down to 1
20 million, 2 million where it was just a few years ago,
21 again up until about '05 -- 2005 I think, 2006, it
22 was still in about \$2 million range. It goes down at
23 that point going to be overcollecting for a number of
24 years in the future.

25 Q. Mr. Yankel, these costs will not be

1 incurred or included in a future test year, will
2 they?

3 I'm sorry, these costs related to the
4 2008 storm restoration efforts will not be included
5 in a future test year of a rate case, will they?

6 A. I don't know what the company may try to
7 do as far as filing it in a rate case. Oftentimes
8 the utility may go back and say here's the last three
9 years worth of actuals and take the average. If they
10 stick in -- they may try to stick in 28 million into
11 that. What comes out in the wash at the end of the
12 rate case, I don't know.

13 Q. And you believe they would attempt to do
14 that, sir, even though the Commission granted a
15 deferral specific to these requests in January of
16 2009 and instructed the company to institute a
17 separate proceeding, namely this proceeding, to
18 address the issue of storm costs related to Hurricane
19 Ike, correct?

20 A. I think your question suggested that if
21 they didn't collect it here, if the company didn't
22 collect it here, I wouldn't be surprised if they
23 wouldn't come back in in the next rate case and try
24 to get that averaged into the rates. Whether or not
25 they do, I don't know what they will do at the next

1 rate case.

2 Q. And if you're the testifying witness for
3 the OCC, you'd certainly object to that, wouldn't
4 you, sir?

5 A. I would hope the OCC would object to it.

6 Q. Mr. Yankel, you did not believe that a
7 parent company should make the same business
8 decisions for five different utility companies
9 operating in five different jurisdictions, do you?

10 A. I don't believe a parent company should
11 be required to make exactly the same decisions every
12 time for five different operating companies, there's
13 no question about that. That does not mean the same
14 decision shouldn't be made. But I don't believe
15 there's a requirement that they must be.

16 Q. And you agree, Mr. Yankel, that Duke
17 Energy Ohio's business decision should not be
18 dictated by the decisions of another business in a
19 different jurisdiction, correct?

20 A. I'm sorry, read it again please?

21 Q. I will absolutely restate the question.

22 You agree, Mr. Yankel, that Duke Energy
23 Ohio's business decisions should not be dictated by
24 the decisions of another business in an another
25 jurisdiction, correct?

1 A. That is correct. And again, to the
2 extent that is a Duke Energy Ohio decision versus a
3 Duke Energy decision. I'm not sure how much of these
4 decisions are coming from higher up in Duke Energy
5 Ohio or Duke Energy Indiana.

6 Q. But, sir, because Duke Energy Indiana is
7 not requesting recovery of storm costs relative to
8 restoration efforts in Indiana, you believe that Duke
9 Energy Ohio should not -- is not entitled to recovery
10 of storm costs for restoration efforts in Ohio,
11 correct?

12 A. I believe that Duke Energy Ohio has
13 demonstrated no reason why Ohio should be treated
14 differently than Indiana. If they're willing to give
15 Indiana a free ride, they probably should be willing
16 to give Ohio a free ride, or they should have a very
17 good reason why they're not. There's absolutely no
18 reason here given why the two are being treated
19 differently.

20 Q. Mr. Yankel, taking your suggestion then,
21 are you suggesting that all regulatory and rate
22 proceedings in Indiana would have the same force and
23 affect here in Ohio?

24 A. No. But I'm saying there should be some
25 justification for differences between the two.

1 Obviously if Indiana's different from a regulatory
2 standpoint, then it's different from Ohio, those are
3 obvious things. But at this point there's nothing to
4 separate Indiana and Ohio.

5 Q. And you don't know, you don't have any
6 knowledge as to why the decision was made in Indiana,
7 do you?

8 A. No.

9 Q. You are not familiar with Indiana
10 ratemaking, correct?

11 A. That is correct.

12 Q. You have not testified in any Indiana
13 regulatory proceeding, correct?

14 A. Correct.

15 Q. Sir, in inviting the comparison between
16 Duke Energy Ohio and Duke Energy Indiana, you failed
17 to reference Duke Energy Kentucky, correct?

18 A. I'm not sure I talked about Duke Energy
19 Kentucky in my testimony and where that stood. I'm
20 not following your question.

21 Q. You know that Duke Energy Ohio obtained a
22 deferral from the Public Service Commission -- I'm
23 sorry, that Duke Energy Kentucky obtained a deferral
24 from the Public Service Commission of Kentucky for
25 storm costs related to Hurricane Ike, correct?

1 A. Yes. That's in my testimony. I also
2 noticed that -- or, excuse me. The Kentucky staff
3 asking the same questions about what was going on in
4 Indiana.

5 Q. Mr. Yankel, in asking the Ohio Commission
6 to make a business decision for Duke Energy Ohio,
7 which you are doing through your testimony, you
8 wanted to consider only the business decisions of one
9 affiliate and not the other, correct?

10 A. I think it's a pretty important business
11 decision, yes. So, yes. And again, I think the
12 Kentucky Commission staff is doing the same.

13 Q. Sir, you don't have any experience in
14 Kentucky regulatory matters, correct?

15 A. That is correct.

16 Q. You've not testified as an expert on
17 behalf of a Kentucky utility, correct?

18 A. That is correct.

19 Q. You've not in fact, sir, testified in any
20 Kentucky regulatory proceeding, correct?

21 A. That is correct.

22 Q. Mr. Yankel, it's your position as
23 reflected on page 43, line 2, of your testimony, that
24 carrying costs should not accrue until after the
25 Commission issues a decision in this case, correct?

1 A. Yes.

2 Q. And you base this opinion on the
3 Commission's finding and order that allowed the
4 deferral, correct?

5 MS. HOTZ: Where is that? Can you point
6 to that in the testimony?

7 MS. SPILLER: The reference to the
8 finding and order came from his deposition.

9 MS. HOTZ: Could you reference that
10 please?

11 MS. SPILLER: Let me rephrase it.

12 Q. Sir, on what do you base your opinion
13 that the Commission's finding and order -- I'm sorry.

14 On what do you base your opinion that
15 carrying costs should not accrue until after the
16 Commission issues a decision in this case?

17 A. As I believe I said in my deposition, I
18 can't recall exactly, but I did review the order in
19 this case and my recollection in that order is that
20 the interest was to be accrued over 36 months.

21 Q. And you believe, sir, that it says that
22 in the finding and order?

23 A. I guess it will speak for itself.

24 Q. So if it doesn't say that, you would
25 stand corrected?

1 A. Obviously if it doesn't say that, doesn't
2 say that.

3 EXAMINER PIRIK: I want to be sure the
4 record reflects you're referring to OCC Exhibit 4.

5 MS. SPILLER: Yes. Just for clarity of
6 the record may I approach the witness?

7 EXAMINER PIRIK: Yes.

8 MS. SPILLER: Mr. Yankel, I hand you what
9 was previously marked and admitted OCC Exhibit No. 4.
10 Is that the finding and order upon which you relied
11 relative to your opinion regarding carrying costs?

12 A. I believe it is. Want me to go through
13 it?

14 Q. Why don't you double check.

15 A. It appears to be. I was wondering if you
16 wanted me to look at the 36 months.

17 Q. If you'd like.

18 A. Okay. I see where the company proposed
19 to amortize it over three years, and carrying
20 charges. That may be my reference. Unless there's
21 another one that you're aware of, that would be the
22 reference.

23 Q. But that is, OCC Exhibit No. 4, sir, is
24 what you relied upon for purposes of your testimony?

25 A. Yes.

1 Q. Thank you.

2 Mr. Yankel, you do not contest the work
3 that was done by linemen and field crews in restoring
4 power to do Duke Energy Ohio customers, do you, sir?

5 A. No, I do not.

6 Q. And you do not, sir, contest the
7 company's payment to contractors performing this work
8 at overtime or double time rates, do you?

9 A. That is correct.

10 Q. Yet you criticize the supplemental pay
11 that was paid to salaried employees who contributed
12 to the storm restoration efforts, correct?

13 A. Yes.

14 Q. Sir, in forming this opinion you testify
15 on page 10, line 14 of your testimony, that most
16 individuals will tell you that overall they work more
17 than 40 hours per week to get their salary, correct?

18 A. That is correct.

19 Q. You don't know that to be true though,
20 sir, do you?

21 A. I've done no studies. No, I do not.

22 Q. Mr. Yankel, would you agree that Duke
23 Energy employees who work for Duke Energy Ohio are
24 more familiar than out-of-state contractors with Duke
25 Energy Ohio's service territory?

1 A. I would assume that to be the case.

2 Q. Would you agree, sir, that Duke Energy
3 employees who work in Ohio are more familiar than
4 out-of-state contractors with logistics such as
5 homes?

6 A. I would assume that to be the case.

7 Q. And would you agree, Mr. Yankel, that
8 Duke Energy employees who work in Ohio are more
9 familiar than contractors with Duke Energy Ohio's
10 systems and processes?

11 MS. HOTZ: Could you repeat that
12 question?

13 Q. Would you agree, Mr. Yankel, that Duke
14 Energy employees who work in Ohio are more familiar
15 than out-of-state contractors with Duke Energy Ohio's
16 systems and processes?

17 A. I don't really know what systems and
18 processes you're talking about.

19 Q. How about inventory, material handling?

20 A. Okay. I would assume that the people in
21 the material handling and inventory places certainly
22 know a lot more about what's there and what's
23 available and what isn't than the contractors, yes.

24 Q. And this increased familiarity with Duke
25 Energy Ohio's service territory, systems, and local

1 logistics would have helped expedite the storm
2 restoration efforts, correct?

3 A. Certainly. I mean I find it hard to
4 believe they could do without it.

5 Q. But you believe it was imprudent for Duke
6 Energy Ohio to provide supplemental pay to some
7 salaried employees who worked excessive hours
8 responding to the storm, correct?

9 A. I don't recall the exact number. I think
10 I may have it in my testimony, I may not. But I
11 believe the vast -- I shouldn't say the "vast"
12 majority, but the majority of those salaried
13 employees weren't Duke Ohio employees. They were
14 service company employees, they were from the
15 Carolinas, they were a little bit from Kentucky,
16 little bit from Indiana. So are we looking at Duke
17 Ohio employees? No.

18 Q. Well, sir, service company employees
19 could work for Duke Energy Ohio, correct?

20 A. My understanding is they work usually for
21 more than one entity. I'm not sure. Some people may
22 only work for one. I don't know your structure
23 exactly.

24 Again, I think there's a lot of people
25 here that work for the service company. You work

1 just in Ohio or I know Mr. Mehring does three
2 jurisdictions.

3 Q. So, sir, your testimony is that these
4 salaried employees should not -- are not entitled to
5 supplemental pay because they were doing that which
6 they should have been doing all along, correct?

7 A. I thought I did not take offense with the
8 fact that they got paid supplemental pay. That was I
9 thought up to the company. If they wanted to do
10 that, that was fine.

11 What I took exception with is the fact
12 that the ratepayers are being asked to fund that
13 supplemental pay that the company paid or again the
14 business decision to pay those people

15 Q. Sir, given your agreement with the rates
16 that were paid to contractors, are you thus proposing
17 that the company should have used contractors and
18 paid them as much as double time to find hotels,
19 dispatch crews, coordinate material delivery,
20 establish command centers, and locate and mobilize
21 additional labor resources?

22 MS. HOTZ: Objection. She's testifying.

23 MS. SPILLER: I'm not testifying, I'm
24 asking the witness a question.

25 EXAMINER PIRIK: Objection overruled.

1 A. I don't feel like that was where my
2 testimony went. I believe it was the job of as many
3 employees that could contribute to an emergency
4 situation like this to -- that could contribute to
5 the fixing of the system, the restoration of the
6 system as quickly as possible to be involved in the
7 effort.

8 The question is how they were paid. And
9 if some people are paid salaried, that's to me
10 different than people that are paid hourly. Hourly
11 people get an hourly wage.

12 I'm not sure again union contracts or
13 whatever, I've not looked into those, but I would
14 assume that some of those people getting paid time
15 and a half, I don't know if they got double time or
16 not. Again I don't recall one way or the other, but
17 they may have been being paid double time as well.

18 My only problem was with the salaried
19 people. Salaried people tend to get paid a certain
20 fixed dollar amount for a given time frame; one week,
21 two weeks, one month, whatever the salary may be
22 based upon, and it's not a prescribed number of
23 hours.

24 Q. Again, sir, going back to my question,
25 given your agreement with rates paid to contractors,

1 are you proposing that Duke Energy Ohio should have
2 used contractors and pay them as much as double time
3 for logistics, materials handling, material delivery,
4 the recruitment of additional labor resources
5 relative to storm restoration efforts in Ohio?

6 A. No. And I didn't challenge, again,
7 hourly salaries for Duke Energy Ohio or Duke Energy
8 Carolina employees either. I only looked at the
9 salaried employees.

10 Q. Do you think it would be more efficient,
11 Mr. Yankel, both in terms of restoration time and
12 overall costs, to use contract labor at contract
13 rates instead of affiliate labor at cost and with
14 overtime or supplemental pay?

15 A. That was awful long. Just reread it. I
16 might be able to get it a second time.

17 Q. Do you think it would be more efficient
18 both in terms of restoration time and overall costs
19 to use contract labor at contract rates instead of
20 affiliate labor at cost but with overtime or
21 supplemental pay?

22 A. I do not know.

23 Q. I'm sorry, you don't know?

24 A. I don't know whether it would be more
25 efficient or not.

1 Q. Mr. Yankel, you have testified on page
2 15, line 11 of your testimony, that in your opinion
3 the costs for supplemental pay were excessive because
4 these salaried employees were simply doing that which
5 they were paid to do all along, correct?

6 A. Correct.

7 Q. So the salaried employees from the
8 Carolinas to whom you previously referred normally
9 engage in storm restoration efforts in Ohio?

10 A. No. But they would normally I would
11 assume engage in storm restoration efforts
12 occasionally or they certainly wouldn't have come out
13 to Ohio. I would hope they wouldn't bring a bunch of
14 people from the Carolinas that didn't know what they
15 were doing.

16 Q. You don't know, do you though, sir?

17 A. Whether they knew what they were doing?
18 I said I hoped they knew what they were doing. I
19 don't know. I didn't look into that.

20 Q. You also don't know if these employees
21 from the Carolinas normally engage in storm
22 restoration activities or any aspect related to storm
23 restoration activities, correct?

24 A. No. I never looked into what their
25 normal job function is. If it would be different

1 than storm restore -- let's say storm restoration
2 sort of the lineman type thing, field personnel or
3 logistics persons. I did not look into that.

4 Q. You know for 1,800 employees from Duke
5 Energy Ohio and it's affiliates worked on the Ohio
6 storm restoration efforts, correct?

7 A. I don't recall the number. That's
8 probably in the ballpark.

9 Q. Your testimony, sir, page 10, line 6. I
10 believe that's where you identify the numbers of
11 employees both from Duke Energy Ohio and it's
12 affiliates. I'm approximating.

13 A. Okay.

14 Q. On page 12 of your testimony, sir, you
15 state that salaried employees in your opinion were
16 paid both an hourly wage and supplemental pay in
17 connection with their contributions to the storm
18 restoration efforts, correct?

19 A. Some of them. The ones at page 12, yes.

20 Q. But, sir, these employees were not paid
21 both their salary and an hourly wage in addition to
22 supplemental pay, were they?

23 A. These are salaried employees, so I'll
24 give you at least my understanding. So they got
25 their salary, their base salary, they got essentially

1 an hourly rate for hours worked times an hourly rate
2 to be calculated, plus they got an additional
3 supplemental just on a fixed dollar amount
4 supplemental.

5 Q. Sir, you're basing that on the assumption
6 that the column for Ike hours listed on page 12 of
7 your testimony, that that corresponds to an
8 additional hourly wage these people were paid?

9 A. Yes. This is when I added up the numbers
10 to come up with the company's numbers, 800,000 and
11 300,000, those numbers were in there.

12 Q. But, Mr. Yankel, the column for Ike hours
13 actually reflects the amount of direct labor that
14 each of those employees charged to the storm, doesn't
15 it?

16 A. That would be my understanding. And I'm
17 also of the belief, I could be wrong, which would
18 make things worse I guess here, but my belief is
19 these were overtime hours. Or my assumption I think
20 I stated that I assumed they were overtime hours.
21 Over and above.

22 Q. Mr. Yankel, you have been handed what has
23 been marked as Duke Energy Ohio Exhibit No. 8. This
24 is a response of the Duke Energy Ohio to a document
25 request tendered by the OCC, correct?

1 A. Yes.

2 Q. This is document request POD-02-021,
3 correct?

4 A. Correct.

5 EXAMINER PIRIK: Ms. Spiller, would you
6 like this document to be marked as an exhibit? Would
7 you like us to mark it as -- usually you ask the
8 Bench if it's okay to approach the witness and then
9 you ask us to mark an exhibit.

10 MS. SPILLER: I'm sorry.

11 EXAMINER PIRIK: That's fine, I was
12 concentrating on what you were asking and all of a
13 sudden I got a document, so I want to be sure that
14 the record reflects that we're marking it.

15 MS. SPILLER: Yes, your Honor, I would
16 ask that you mark this document, series of or
17 multi-page document as Duke Energy Ohio Exhibit 8.

18 EXAMINER PIRIK: I'm sorry, go ahead.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. And, Mr. Yankel, this is the document
21 upon which you rely for purposes of forming your
22 testimony regarding supplemental pay, correct?

23 A. Correct.

24 Q. And if you look, sir, on what is actually
25 page 1 of 142 where the answer to the company begins.

1 A. Yes.

2 Q. The charts reflect midway through it says
3 they're direct labor from the payroll system,
4 correct?

5 A. Yes.

6 Q. You see that?

7 And employees of Duke Energy Ohio's
8 affiliates are to charge their time related to the
9 Ohio storm restoration efforts consistent with the
10 service agreements between Duke Energy Ohio and its
11 affiliates, correct?

12 A. Yes.

13 Q. So it was in fact proper, sir, for these
14 employees from Duke Carolinas, the service company,
15 to charge time directly to the Storm Ike restoration
16 efforts, correct?

17 A. Correct.

18 Q. And that is directly do so, correct?

19 A. That's what it says, yes.

20 EXAMINER PIRIK: Ms. Spiller, can I ask a
21 question? I just want to be sure the record's clear.

22 At the top of it looks like every page
23 it's marked "Confidential Proprietary Trade Secret."
24 So I want to be sure for the record, are there
25 employee numbers in this document?

1 MS. SPILLER: There are, your Honor.
2 They are the numbers that would be on the far left
3 column commencing on page 3 of page 142.

4 Q. Mr. Yankel, on page 13, line 1 of your
5 testimony --

6 EXAMINER PIRIK: I just want to be sure
7 if we go forward with this document as it is, it's a
8 Duke document, you're presenting it as an exhibit,
9 this document is going to be in the open record.

10 MS. SPILLER: If it's moved for admission
11 into evidence.

12 EXAMINER PIRIK: Well, if you're going to
13 go down the road of cross-examining on this document
14 and referring to things, you've already referred to
15 something on page 1. So you can't continue going
16 down a road referring to a document and then not move
17 it for admission into the record.

18 I mean, in order to keep the record
19 clear, it's going to need to be a document in the
20 record. Which as long as it's all open, or you can
21 move to redact the employee identification numbers.
22 I need to be sure we're consistent.

23 MS. SPILLER: No, your Honor, for the
24 sake of time I will move on and come back to this.

25 EXAMINER PIRIK: Now how do we -- we're

1 at this portion -- off the record.

2 (Off the record.)

3 EXAMINER PIRIK: We'll go back on the
4 record.

5 Ms. Spiller.

6 MS. SPILLER: Thank you, your Honor, and
7 if I may address the matter that in my enthusiasm I
8 neglected to address, and that's the designation of
9 Duke Energy Ohio Exhibit 8 as confidential and
10 proprietary. It is a document that includes 142
11 pages of numeric information as well as a listing of
12 employee numbers.

13 Consistent with prior discussion as well
14 as the motion for protective order that has
15 previously been granted for a limited purpose, we
16 would ask that the employee numbers on this document
17 be redacted and that testimony concerning this
18 exhibit to the extent that testimony concerns that
19 confidential information be noted as such and filed
20 under seal.

21 EXAMINER PIRIK: I believe what you're
22 referring to is the first column on all of the charts
23 beginning on page 3 through page 142. You're asking
24 that that column that includes employee code numbers
25 be redacted and filed separately.

1 MS. SPILLER: Correct, your Honor.

2 Also --

3 EXAMINER PIRIK: Are there any objections
4 to this motion for protection?

5 MR. REILLY: Staff has none.

6 MR. YURICK: No, your Honor.

7 EXAMINER PIRIK: Hearing none, that
8 motion for protection will be granted, and we will
9 then expect a redacted version to be filed in the
10 open record and of course with you filing both of
11 those documents, actually filing them and stating
12 that they're Duke Exhibit 8, you will not need to
13 give a copy of that to the court reporter.

14 When will they be filed so she can
15 reference that in the record?

16 MS. SPILLER: Tomorrow.

17 EXAMINER PIRIK: They will be filed on
18 May 27 and that will be referenced in the record.

19 Now you may move forward.

20 MS. SPILLER: Thank you, your Honor.

21 Q. (By Ms. Spiller) Mr. Yankel, to be clear
22 and get us back on track, you state on page 12 of
23 your testimony you believe the salaried employees
24 were paid both an hourly wage and supplemental pay in
25 addition to their salary in connection with their

1 contribution to the storm restoration efforts,
2 correct?

3 A. Yes.

4 Q. And, sir, if you would refer to page 39
5 of 142 of Duke Energy Ohio's Exhibit 8, the text in
6 the middle of that page, sir, indicates that the
7 regular time costs that were charged to the storm
8 reflect those salaried employees who charge their
9 regular time directly to the storm, correct?

10 A. Says "regular time costs charged to the
11 Ike storm event are where salaried employees charge
12 their regular time directly to the storm. The
13 supplemental compensation is paid --" excuse me, "is
14 payment made to salaried employees for time worked in
15 excess of their normal schedule."

16 Q. And then on page 94 of 142, sir, the
17 question here concerned the amount of pay for
18 overtime hours worked, correct?

19 A. Yes.

20 Q. And there is a listing of employees and a
21 corresponding reference to the amount of overtime
22 that each of these employees worked, correct?

23 A. Yes.

24 Q. And then, sir, if you turn to page 122 of
25 142, this question concerned the supplemental pay

1 that was provided to salaried workers, correct?

2 A. Yes.

3 Q. And again, sir, a listing of employees in
4 the response provided by the company, correct?

5 A. Salaries and compensation, yes,
6 supplemental compensation.

7 Q. And the employees that are reflected in
8 response to question E, which is contained on page
9 122 of 142 of this exhibit, are not the same
10 employees as those reflected in response to question
11 D beginning on page 94 of 142, correct?

12 MR. YURICK: Your Honor, may I ask a
13 question? I apologize. I don't mean to interject,
14 but is this going to make sense in the record if all
15 these employee codes are redacted?

16 I guess my question is Ms. Spiller's
17 asking questions about identifying these numbers
18 versus other numbers and if all the numbers are
19 blacked out, again, I don't mean to -- it's not
20 really an objection, it's just really a more of a
21 concern that the record gets -- is clear.

22 EXAMINER PIRIK: I appreciate that. Can
23 we go off the record?

24 (Off the record.)

25 EXAMINER PIRIK: We'll go back on the

1 record.

2 Ms. Spiller.

3 MS. SPILLER: Thank you, your Honor. For
4 purposes of clarification and to avoid any confusion
5 with respect to an interpretation of the record of
6 this proceeding, Duke Energy Ohio will actually mark
7 as Duke Energy Ohio 8A the public version of this
8 exhibit, it will mark as Duke Energy Ohio 8B the
9 confidential version of this document.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. (By Ms. Spiller) And, Mr. Yankel,
12 returning to the question, sir, the employees that
13 are listed in response to part D, which begins on
14 page 94 of 142, are not the same employees, sir,
15 listed in response to part E of this document request
16 which begins on page 122, correct?

17 A. They should not be the same. Let me add
18 though just a small layer of confusion to everything.
19 What I did was we have employee ID numbers and we
20 have it in about five different locations. We have
21 groups of employee numbers.

22 What I did was I combined all those
23 numbers numerically so that if I had an employee with
24 the same employee ID number in two different places,
25 for example, I could see everything about that

1 employee.

2 In this particular case with E at the end
3 there of page 122, this was strictly a number for
4 supplemental pay to salaried employees. If I was
5 able to, and I'm pretty sure I found that number
6 elsewhere within this, I combined all the data
7 together.

8 So I was really looking at a spreadsheet
9 that took this data and actually folded it together
10 as opposed to separately listing it like this.
11 Unfortunately, I don't have that with me or it would
12 have been easier to pull everything off all at the
13 same time.

14 Q. But, sir, do the question -- and I
15 appreciate the explanation, but the question is
16 whether or not the employees identified in response
17 to subpart D of this interrogatory are also listed in
18 response to subpart E.

19 A. I believe that they are not. But again,
20 there's hundreds of them. So I can't say for sure.
21 I certainly believe the two groupings are different.

22 Q. And your objections with regard to the
23 payment of supplemental compensation to employees
24 extends to employees of both Duke Energy Ohio and
25 Duke Energy Business Services to the extent that

1 latter company or employees of that latter company
2 performed work in Ohio, correct?

3 Want me to try it again?

4 A. Please.

5 Q. Your objection with respect to the
6 payment of supplemental pay extends to both Duke
7 Energy Ohio employees as well as employees of the
8 service company, Duke Energy Business Services, who
9 performed work in and on behalf of -- in Ohio on
10 behalf of the Duke Energy Ohio, correct?

11 A. And North Carolina. I mean all
12 affiliates that were salaried that were charged to
13 Ohio.

14 Q. But if we could focus, sir, on Duke
15 Energy Ohio and those service company employees
16 working for Duke Energy Ohio, in addition to asking
17 the Commission to disallow costs related to
18 supplemental pay, you are asking the Commission to
19 disallow labor loaders associated with that
20 supplemental pay, correct?

21 A. Correct.

22 Q. But the non-incremental portion of fringe
23 benefits for Duke Energy Ohio employees and those
24 employees of the service company who work in Ohio, is
25 not part of the company's pending request, is it?

1 MS. HOTZ: Could you repeat that
2 question?

3 Q. Sure. Sir, the non-incremental portion
4 of fringe benefits for Duke Energy Ohio employees and
5 those employees of the service company who work in
6 Ohio is not part of the company's current request, is
7 it?

8 A. That is correct. That was removed.

9 Q. Mr. Yankel, you've testified on direct
10 examination that you have revised your testimony with
11 regard to the percentage of items that have been
12 recorded in capital accounts, correct?

13 A. I don't believe so. I removed some
14 testimony regarding capital accounts. I don't think
15 I revised percentages.

16 Q. To be clear, you originally, sir, had
17 testified that you thought items may have been
18 recorded both in the O and M accounts as well as in a
19 capital account.

20 A. That is correct. And I have since
21 through discussions actually with the company have
22 determined that they weren't being expensed so that
23 they weren't capitalized. So I removed them.

24 Q. So you agree, Mr. Yankel, that Duke
25 Energy Ohio has properly moved into capital accounts

1 and has properly capitalized material costs related
2 to the restoration efforts, correct?

3 A. Yes. I mean that objection, what have
4 you, has been removed from my testimony. So, yes, I
5 agree.

6 Q. And although you agree with the material
7 costs being moved over properly to capital -- to a
8 capital account, you dispute the amount of labor that
9 was capitalized, sir, correct?

10 A. Correct.

11 Q. And you were present for Beth
12 Clippinger's testimony yesterday, correct?

13 A. That is correct.

14 Q. And you heard her testify that the labor
15 costs used for purposes of the storm restoration were
16 overtime rates, correct?

17 A. Yes, I heard that.

18 Q. You still disagree with the amount of
19 labor, sir, that was moved to the capital accounts?

20 A. Yes. Again, what the company did, and I
21 think she made it very clear, she took essentially an
22 average cost for materials that the company had on
23 its books and capitalized that, which seems fair, in
24 all honesty. I mean, you just take a kind of average
25 cost. Hard to say what each pole costs separately,

1 so that's fine.

2 But on applying the labor, again, she
3 used a standard labor rate, overtime labor rate, be
4 it overtime, but it's not reflective to me of all the
5 costs that were incurred in order to prepare for the
6 materials to be installed.

7 It didn't cover the contract labor at
8 all, it was just a substitute for contract labor and
9 all the other costs that were incurred.

10 I mean, I believe that her explanation of
11 capitalization and capitalization of those types of
12 things was appropriate. I don't disagree with that.
13 It's just that I disagree with the numbers that she
14 was using. I felt that she should have been using
15 more realistic actual numbers that was going on
16 because of the storm.

17 Q. And in terms of what you believe to be
18 realistic or actual numbers, you are recommending
19 that the Commission adopt a capital-to-O and M ratio
20 that is equal to the average of a ratio -- that is
21 equal to the average of the capital-to-O and M ratio
22 of two utilities in Kentucky, correct?

23 A. It's actually the capital to the total
24 cost, but, yes.

25 Q. Okay.

1 A. Yes. And it's the average of two
2 utilities in Kentucky that underwent the same storm.

3 Q. But neither of those Kentucky companies,
4 sir, were Duke Energy Kentucky, was it?

5 A. That's correct. Again, I use that as an
6 approximation. I'm not saying that number is an
7 exact number but I'm using it as an approximation for
8 something that seems a lot more realistic.

9 Q. But, sir, you ignore the ratio of
10 capital-to-overall restoration costs of Duke Energy
11 Kentucky for purposes of arriving at what you believe
12 to be a more accurate number, correct?

13 A. Yes. Again, I believe and I would assume
14 that Ms. Clippinger would have done the same thing
15 with Kentucky of Ohio as it did with Kentucky of --
16 excuse me, Duke Energy Ohio and Duke Energy Kentucky.
17 And I believe that to be inappropriate as far as
18 using those numbers go, that methodology. That's
19 all.

20 Q. You don't know the process that was
21 undertaken in Kentucky though on behalf of Duke
22 Energy Kentucky, do you?

23 A. No. But 4 percent capitalization seems
24 just about as bad as 2 percent.

25 Q. And relying upon this average number that

1 concerns two utility companies in Kentucky, you
2 considered, sir, only a Public Service Commission
3 report that discussed both the 2008 wind storm and
4 the 2009 ice storms, correct?

5 A. That is correct.

6 Q. You didn't look any further than that
7 report for purposes of ascertaining what the
8 capitalization policies of these other companies in
9 Kentucky may be, correct?

10 A. That is correct.

11 Q. You did not consider sir, the
12 capitalization policies of other Ohio utilities, did
13 you?

14 A. No. I felt the capitalization policy of
15 Duke in this particular case was inappropriate. I
16 did not look at other Ohio utilities, no.

17 Q. Sir, I believe you just corrected me in
18 that the capitalization percentage that you are
19 recommending would be the percent of capital costs to
20 the overall total restoration costs, correct?

21 A. That is correct.

22 Q. But, sir, that's not the percentage
23 that's reflected in your testimony with respect to
24 these two Kentucky utilities, is it?

25 A. I thought it was.

1 MS. HOTZ: What page are you talking
2 about?

3 MS. SPILLER: Page 28, line 1.

4 Your Honor, if I may, two documents, may
5 I address the witness?

6 EXAMINER PIRIK: Yes. Do you have copies
7 then for the court reporter?

8 MS. SPILLER: They're coming. I just
9 wanted to --

10 EXAMINER PIRIK: The document will be
11 marked as Duke Exhibit 9.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Mr. Yankel, I saw that you had one with
14 you already, but I handed to you what's been marked
15 as Duke Energy Exhibit 9.

16 A. Yes.

17 Q. This is the report from the Kentucky
18 Public Service Commission on which -- or, to which
19 you referred in your testimony, correct?

20 A. Yes.

21 Q. And on page 28, line 1 of your testimony
22 you are proposing a 31.5 percent figure that you
23 describe as the average capitalization percentage of
24 two entities in Kentucky, LG&E and KU, correct?

25 A. Correct.

1 Q. And you testified, sir, that that
2 percentage reflects the amount of capital as compared
3 to overall restoration costs, correct?

4 A. Yes.

5 Q. Sir, if you would refer to page 23 of
6 Exhibit 9 please.

7 A. 23?

8 Q. Yes, sir.

9 A. I'm there.

10 Q. The top of the column on the right side
11 of the page indicates that these two utilities, they
12 capitalized \$8.4 million in restoration expenses,
13 correct? Page 23?

14 A. I'm looking at that. Yes.

15 Q. Also provides that they deferred
16 \$26.7 million in costs, correct?

17 A. Yes.

18 Q. So total restoration costs would actually
19 be 35.1 million, correct? The sum of 8.4 and
20 26.7 million?

21 A. Yes.

22 Q. And, sir, comparing the capital to that
23 overall restoration cost yields a lower
24 capitalization percentage than reflected in your
25 testimony, correct?

1 A. I came up with approximately 24 percent.
2 I did it quickly.

3 Q. And your testimony, sir, says 31.5.

4 A. Yes, it does. Just give me one moment
5 please.

6 Yes.

7 Q. Mr. Yankel, increasing the portion of
8 storm costs that are capitalized would increase Duke
9 Energy Ohio's distribution rate base, correct?

10 A. You better ask me that again. It didn't
11 sound right.

12 Q. Sure. If you move the amount of storm
13 restoration costs from O and M to capital, as you are
14 proposing, the increase in the amount capitalized
15 would also -- or, would serve to increase Duke Energy
16 Ohio's distribution rate base, correct?

17 A. You would increase distribution rate
18 base, yes.

19 Q. And, sir, if, for example, Duke Energy
20 Ohio were to record even a \$1 investment in rate
21 base, it would earn a return on that investment at
22 its overall cost of capital, correct?

23 A. Yes.

24 Q. And Duke Energy Ohio's overall cost of
25 capital is higher than its debt rate, correct?

1 A. I don't know that.

2 Q. You were present yesterday for Mr.
3 Wathen's testimony, correct?

4 A. Yes.

5 Q. And he testified that Duke Energy Ohio's
6 debt rate is 6.45 percent, correct?

7 A. I'm not sure if I was here for that. I
8 do believe that number's about right. But in all
9 honesty, I don't think I was here when he said that.

10 Q. Have you ever known an Ohio utility to
11 have a debt rate that exceeds its capital structure?

12 A. I'm not a cost-to-capital person so I
13 wouldn't get into that.

14 MS. HOTZ: Excuse me, your Honor, I would
15 I need to make a filing today. And we're getting
16 fairly close to the close of Docketing. And so I'm
17 wondering how much more time the cross is going to be
18 or -- and we may need to continue it next -- tomorrow
19 or something.

20 EXAMINER PIRIK: Can we go off the
21 record?

22 (Off the record.)

23 (Recess taken at 4:20 p.m.)

24 EXAMINER PIRIK: Whenever you're ready,
25 we're ready.

1 Q. (By Ms. Spiller) Mr. Yankel, before we
2 took a break we were discussing capitalization
3 issues. Do you recall that, sir?

4 A. Yes.

5 Q. And, Mr. Yankel, under which of the
6 following scenarios, rate base treatment or
7 regulatory asset treatment, would ratepayers be
8 charged more in the long run?

9 A. It's hard to say. If you're asking where
10 you're better off, people buy assets like houses and
11 whatnot, and for 30 years mortgages. If you look at
12 just the dollar, overall dollar stream, that cost
13 more if you're doing rate base, but if you just count
14 the dollar value of that stream of dollars, it may be
15 cheaper to discount it. Depends on the interest
16 rates you're using and the assumptions you make in
17 the future.

18 Q. Let's then perhaps focus not on a 30-year
19 mortgage for a piece of property but the storm
20 restoration dollars at issue in this proceeding.

21 If pursuant to your suggestion and
22 testimony a greater amount of those dollars are
23 capitalized, Duke Energy Ohio's customers will pay
24 more in the long run, correct?

25 MS. HOTZ: Objection. I think he already

1 answered that question.

2 EXAMINER PIRIK: Objection overruled.

3 A. They will pay more real dollars but in
4 the time value of money it may be cheaper for them.

5 Q. But whether it's cheaper is dependent
6 upon some of the assumptions that you've just
7 described for us, correct?

8 A. Correct.

9 Q. You are suggesting on page 17 of your
10 testimony, sir, that Duke Energy Ohio -- that the
11 Commission reduce Duke Energy Ohio's request by an
12 amount equal to the cost that Duke Energy Ohio may
13 have received from its affiliates in responding to
14 storm restoration efforts in those other states,
15 correct?

16 A. I believe that discussion begins on page
17 17. Yes. I don't think it's on page 17 but the
18 discussion begins there.

19 Q. Is that a fair summary of your opinion,
20 sir, or recommendation?

21 A. Yes. For essentially work that was done
22 in Kentucky of which we have a dollar figure for and
23 an estimate of what may have been done proportionally
24 in Indiana.

25 Q. And the basis for your opinion is simply

1 that of fairness, correct?

2 A. I didn't consider fairness. I guess my
3 thought there is if Duke Ohio is going to charge its
4 customers for work that Duke Kentucky employees did
5 in Ohio, we should get a credit for the amount of
6 money that was paid by Duke Kentucky for Ohio
7 employees working in Kentucky.

8 I guess it's fairness, I guess you could
9 call it "fairness." I see it as a little broader
10 than fairness.

11 Q. Sir, on page 17, line 13, of your
12 testimony, you actually called it "fairness,"
13 correct?

14 A. Yes.

15 Q. And you did not rely upon any Ohio
16 regulation for this proposition, did you, sir?

17 A. Not a specific regulation that I can
18 think of, no.

19 Q. And you are not aware of any regulation
20 that requires an Ohio utility to offset its cost
21 recovery by an amount equal to the charges it makes
22 to another company, are you?

23 A. It seems that it's like cost and revenues
24 within a utility. If a utility's bringing in
25 revenues and if a utility has costs, it seems like

1 similar revenue should be offsetting the costs. I
2 think that's fairly standard practice.

3 It's similar to wholesale sales for
4 resale; if you're purchasing power and you charge the
5 customers for the power you purchased, you also need
6 to give the customers credit for the power you sold.

7 Q. Sir, let's focus maybe, if we could, on
8 the storm restoration dollars at issue here. But
9 you've not relied upon any Ohio regulation for
10 advancing the opinion that you described as being
11 rooted in fairness, correct?

12 A. I have not relied upon any specific Ohio
13 rule, no.

14 Q. And you are aware of the affiliate
15 agreements that Duke Energy Ohio has with its
16 affiliates, are you not?

17 A. Not all of them. I am familiar with the
18 one and I think it does deal with this, which is
19 sending employees to other jurisdictions to do work.
20 Yes.

21 Q. And in that instance, sir, Duke Energy
22 Ohio is charged costs for the labor provided by its
23 affiliates in Ohio, correct?

24 A. And vise-versa, yes.

25 Q. And pursuant to this policy with which

1 you are familiar, labor associated with the Ohio
2 storm would have been expensed to Ohio, correct?

3 A. Labor, for example, by Duke Kentucky
4 employees that would have been done in Ohio would
5 have been expensed for Ohio.

6 Q. And conversely with respect to labor
7 provided in Kentucky by Duke Energy Ohio employees,
8 correct?

9 A. Correct.

10 Q. And when Kentucky, Duke Energy Kentucky,
11 sir, would go in for a rate case, those expenses for
12 affiliate labor would be a factor in its revenue
13 requirement, correct?

14 A. Again depending on how much is
15 normalized, it should be a factor. Again, without
16 looking in the accounting in any given case, I
17 couldn't say. But it should be a factor, yes.

18 Q. Mr. Yankel, you agree that an Ohio
19 utility -- strike that.

20 You agree that the recovery of reasonable
21 and prudently incurred costs is a basic tenet of Ohio
22 regulatory policy, correct?

23 MS. HOTZ: Could you say that again?

24 Q. Sure. You agree that the recovery of
25 reasonable and prudently incurred costs is a basic

1 tenet of Ohio regulatory policy, correct?

2 A. Depending on how you define "prudently
3 incurred" and whatnot, but yes, in general it's
4 certainly non-prudent costs would not be recovered.

5 Q. Mr. Yankel, you are not offering
6 testimony on the depreciation methodology used by
7 Duke Energy Ohio relative to the storm costs in this
8 case, are you?

9 A. No, I am not.

10 Q. And you are not, sir, offering testimony
11 on the payroll tax allocation made by the company,
12 are you?

13 A. No, I am not.

14 Q. Mr. Yankel, you were present yesterday
15 when counsel for the OCC asked Duke Energy Ohio
16 witnesses whether there was a written policy
17 regarding the amount of money that Duke Energy Ohio
18 spent on storm restoration, were you not?

19 MS. HOTZ: Objection. That's not exactly
20 what it was.

21 EXAMINER PIRIK: Objection overruled.
22 I'd would first like to hear whether or not he was
23 present and he has a different characterization of
24 it.

25 THE WITNESS: Could I have that reread?

1 (Record read.)

2 A. I was in the room, probably heard it at
3 least twice, and it seemed like it was more of
4 prudence in respect to the amount of money but with
5 respect to the amount of money spent on storm
6 restoration costs. It seemed to do with prudence or
7 whether the costs were in line, that type of thing.

8 Q. The question, sir, do you recall a
9 question as to whether it was a written policy
10 regarding the amount of money spent on external labor
11 in connection with storm restoration efforts?

12 MS. HOTZ: Objection. That's not what
13 the question was.

14 EXAMINER PIRIK: I'm going to overrule
15 the objection, but on redirect if you'd like to
16 clarify, the witness will be available for redirect.

17 MS. HOTZ: Okay.

18 A. There may have been two different sets of
19 questions: One for written policy with respect to
20 personal -- not personal, intercompany employees and
21 controlling costs, and then the other one on
22 contractor labor and controlling those. I think
23 there may have been two different questions.

24 Q. Mr. Yankel, do you believe that once Duke
25 Energy Ohio spends a particular amount on storm

1 restoration efforts and once it hits that dollar
2 amount, that it should simply stop working?

3 A. No. And I certainly don't think that was
4 the intent of those questions. We're looking for
5 policy, not a dollar figure.

6 Q. You believe, as reflected on page 41 of
7 your testimony, sir, that two-thirds of the cost
8 associated with contractor labor should be excluded
9 from Duke Energy Ohio's request, correct?

10 A. Yes. Because of a number of
11 inconsistencies that I found throughout. Again, that
12 entire exhibit that we have in there showed a lot of
13 problems, the location where --

14 MS. SPILLER: Excuse me, your Honor, I'm
15 going to move to strike the testimony. It was simply
16 a yes or no question that solicited a yes or no
17 response and I think he's offering well beyond what
18 the question contemplated.

19 EXAMINER PIRIK: I'm going to let him
20 finish his answer.

21 A. Again, the testimony goes on. I think I
22 found, at least with Exhibit A, 90 percent of the
23 costs were -- possibly should have been included. I
24 could have excluded -- I came up with a two-thirds
25 number as something less than 90 percent.

1 Again, the two-thirds number, there's
2 nothing overly magical about that, was just a number
3 I thought would be reasonable.

4 Q. And again, sir, so that I understand, you
5 picked two-thirds simply because it was some number
6 less than 90 percent, correct?

7 A. I thought 90 percent may have been
8 pushing the envelope a little bit, so I again didn't
9 have a good feel for where it should be. There isn't
10 enough information within the invoices that I saw to
11 give an indication.

12 So I thought two-thirds would be a good
13 number. There's three jurisdictions sort of
14 involved. I just picked two-thirds also because it's
15 one of three jurisdictions. But mostly because it
16 was less than 90 percent.

17 Q. And that's what you said in your
18 deposition, sir, right?

19 A. I believe so.

20 Q. Would it be helpful to refresh your
21 recollection of that?

22 A. No. I could have picked 75 percent. I
23 could have picked 50. I thought two-thirds, it was
24 less than 90. I thought it was a good number.

25 Q. Mr. Yankel, referring to page 29 of your

1 testimony.

2 MS. SPILLER: And, your Honor, on this
3 page there was redaction concerning a vendor. I will
4 be generic perhaps for purposes of the record to
5 avoid any further complication.

6 Q. But, Mr. Yankel, it's your testimony that
7 the invoices related to the vendor reflected on page
8 29 of your testimony should be excluded from this
9 case, correct?

10 A. Correct.

11 Q. And you base that opinion, sir, on the
12 reference to the PayCo documents produced in
13 discovery as being Duke Energy Indiana, correct?

14 A. In part. That was my first clue that
15 something may have been wrong. And then I dug
16 further into the response to staff data request 5 and
17 in that data response is a listing of various
18 invoices and charges to or from various contractors
19 that weren't in Ohio. Some were in Kentucky -- list
20 was Kentucky as well. I did not find the particular
21 contractor that's redacted there in data response No.
22 5.

23 Q. Sir, if you could turn to page 30 of your
24 testimony. You recommend that various invoices be
25 redacted or excluded from Duke Energy Ohio's request

1 because the PayCo associated with those contractors
2 was Duke Energy Indiana, correct?

3 A. Same answer as the first answer. The
4 fact that the PayCo said Indiana on it which means
5 the company responsible for the charges was my first
6 clue there was something wrong.

7 I went back in again, looked at the other
8 data responses and those invoices didn't show up in
9 other data responses that were given to the staff

10 Q. Let's start with the PayCo designation.
11 You've just testified that PayCo designation
12 identifies the entity responsible for the charge,
13 correct?

14 A. That is my understanding, and from a data
15 response that I think is included in here it did
16 indicate that that PayCo was only valid for company
17 employees, as I recall.

18 There's a lot of entries out of those
19 8,000 entries that don't have a PayCo. It seems that
20 the fact that it did have a PayCo and it was
21 something other than an employee, was significant to
22 me. And again, that was kind of the first indication
23 or that raised the flag the first time.

24 Q. So although the company in discovery
25 responses indicated that the designation of the PayCo

1 has no significance whatsoever with respect to
2 contractor labor, you're recommending that the
3 Commission discount all of the invoices from external
4 labor where the PayCo is Duke Energy Indiana,
5 correct?

6 A. And further, where they -- none of those
7 invoices showed up in the other staff data response
8 listing the contractors that were working in Ohio.

9 MS. SPILLER: Your Honor, we are marking
10 as Duke Energy Ohio Exhibit 10 a document that does
11 include the names of vendors that was listed. It's a
12 discovery response listed as confidential and
13 proprietary.

14 Consistent with other exhibits, I would
15 ask the Bench's permission to mark this I guess Duke
16 Energy Ohio 10A, which would be the public version,
17 and 10B will be the confidential version. We will
18 file redacted copies tomorrow along with the other
19 exhibits.

20 EXAMINER PIRIK: That would be fine.

21 MS. SPILLER: Thank you, your Honor.

22 May I approach the witness?

23 EXAMINER PIRIK: Yes.

24 MS. SPILLER: Thank you.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

1 EXAMINER PIRIK: Just to clarify for the
2 record, the only thing that will be redacted are
3 addresses of the contractors?

4 MS. SPILLER: In this, your Honor, has
5 the listing of vendors as well as dollar amounts
6 associated with those vendors.

7 MS. HOTZ: Could I see a copy of that
8 please?

9 MS. SPILLER: It's coming.

10 EXAMINER PIRIK: Just to be clear so it's
11 clear on the record, Ms. Spiller, the only thing that
12 you're requesting protective treatment of is under
13 the title "Vendor Name, (user created variable)," the
14 names of the vendors that are listed on pages --
15 first page, second, third, and fourth page, the
16 numbers and in the bottom, grand total number is in
17 the open record.

18 MS. SPILLER: Yes, your Honor.

19 EXAMINER PIRIK: And everything else is
20 in the open record.

21 MS. SPILLER: Correct.

22 EXAMINER PIRIK: Then consistent with our
23 previous ruling, we will grant protective status of
24 that for the 18-month period.

25 MS. SPILLER: Thank you, your Honor.

1 Q. (By Ms. Spiller) Mr. Yankel, you have
2 been handed what's been marked as Duke Energy Ohio
3 Exhibit 10B. The "B" designation reflecting this is
4 a confidential document.

5 And, sir, you have reviewed at least some
6 of the responses to the 11 sets of discovery issued
7 by the OCC to Duke Energy Ohio, correct?

8 A. More than once, yes.

9 Q. And the vendor with whom you take
10 exception on page 29 of your testimony is in fact
11 included on the second page of this response as being
12 included within those vendors who provided external
13 labor support for Duke Energy Ohio relative to the
14 storm efforts, correct?

15 A. No, it does not say that. And actually
16 this was summary -- a summation of the information
17 that was on the 8,000 lines we talked about in staff
18 response 1-1. So it does include that contractor in
19 there. And in that other document it says Indiana is
20 where it says.

21 What I was referring to is my second
22 document that I used staff data response to staff
23 data request No. 5 was where it did not appear.

24 Q. But it appears in this document, correct?

25 A. Right. This does not say "Ohio" it says

1 "costs that were incurred as part of the storm."

2 Q. Part of the costs incurred in Ohio
3 relative to the storm, correct?

4 A. Can you show me where it says "in Ohio"?

5 Q. Well, sir, the data request speaks of the
6 contractor costs that were referenced in response to
7 staff data request No. 39-001 from Duke Energy Ohio's
8 distribution case, correct? Case No. 08-709?

9 A. That's what the first line says, yes.

10 Q. The data request goes on to identify the
11 actual -- to seek an identification of the actual
12 contractor costs as referenced in Mr. Mehring's
13 testimony filed in this proceeding, correct?

14 A. Correct.

15 Q. And Mr. Mehring, sir, was offered as a
16 witness to testify as to the costs incurred relative
17 to the Ohio restoration efforts, correct?

18 A. Yes. But again, this is -- the data in
19 here is no different than the summation of what was
20 in the other response of which I said the data
21 indicated it was Indiana for that particular
22 contract.

23 Q. And, sir, you again did not go to
24 Cincinnati, Ohio to review all of the invoices from
25 this particular contractor relative to work performed

1 in Ohio, correct?

2 A. Correct.

3 MS. SPILLER: Your Honor, I will be
4 referring to testimony that begins on page 30 of
5 Mr. Yankel's testimony as well as the exhibit that
6 has been identified for purposes of redaction.
7 Again, I will endeavor to be generic and not use the
8 contractor's name for purposes of the public record.

9 Q. Mr. Yankel, you are challenging the
10 inclusion of the invoices from the contractor whose
11 invoices are attached as an exhibit to your testimony
12 because those invoices were mailed to Erlanger,
13 Kentucky, correct?

14 A. That was again an early flag that I saw.
15 The biggest challenge I have is with respect to the
16 fact that a large number of the actual time sheets
17 from the field had a location listed. They were all
18 whited out.

19 Some of those that weren't whited out
20 very well indicated that it was Kentucky that was the
21 location of where the contractor had worked. The
22 actual man in the field, foreman, or whatever signed
23 it.

24 Q. Let's talk first about the location to
25 which these companies' invoices were mailed. Do you

1 believe, sir, that the fact that invoices were mailed
2 to Kentucky renders those as expenses that should be
3 disallowed relative to the Ohio restoration work?

4 A. In and of itself that probably is not
5 sufficient, I would say. There were some within this
6 grouping that were mailed to Ohio as well as some
7 that were mailed to Kentucky. So they seem to be
8 mailing them to different places.

9 Q. The invoices however, sir, that are
10 reflected as an attachment to your exhibit were all
11 mailed to Kentucky, correct?

12 A. I don't believe so.

13 Q. Agree with me that the mailing address on
14 those documents would speak for itself?

15 A. To speed things up, yes. But I do
16 believe there's at least one of them sent to Ohio.

17 Q. Sir, you would -- strike that.

18 Are you -- sir, you are not recommending
19 that the Commission discount contractor invoices
20 because contractors may have eaten meals or washed
21 their clothes in Kentucky, are you?

22 A. It seems strange when the company has not
23 really produced strong evidence as to where people
24 work when the company has indicated that it simply
25 passes out a storm code and tells people to go to

1 work and they don't have an idea where the locations
2 are where the work was being done.

3 I understand that in a storm case, storm
4 situation, but there's no indication as to where
5 these people worked. So you start looking at other
6 pieces of evidence. And especially when some of this
7 stuff is whited out.

8 Q. Sir, let me go back to my question, if I
9 may. And the question was whether or not you are
10 recommending for disallowance in this proceeding
11 contractor costs because the contractor may have had
12 a meal or washed his clothes in Kentucky.

13 A. Do I know he had a meal or do I know he
14 was working there? I don't know. I'm making a
15 general disallowance. I don't know what he was
16 doing. I can't speculate.

17 I can say he was in Kentucky. I mean, if
18 there's a receipt from Kentucky, I can say he was in
19 Kentucky. That's all I can do.

20 Q. Sir, I'm going to try again a third time.

21 Are you recommending that expenses for
22 contractor invoices be disallowed because the
23 contractor may have had a meal or washed their
24 clothes in Kentucky?

25 MS. HOTZ: He's asking the witness to

1 speculate -- she's asking the witness to speculate.

2 EXAMINER PIRIK: Overruled. I'll let him
3 answer the question.

4 MS. HOTZ: He's answered the question.

5 MS. SPILLER: He's not answered the
6 question.

7 A. I did not look at each of these invoices,
8 although I do have some of them. I looked at
9 receipts and I said there was things from Kentucky
10 here, there's things from Kentucky there which would
11 suggest that people were in Kentucky.

12 My ultimate recommendation/disallowance
13 is just a broad based two-thirds. It was not -- I
14 did not look at a specific invoice and say "Oh, this
15 guy had a meal in Kentucky, therefore we'll disallow
16 it."

17 Q. Do you know where Erlanger, Kentucky is
18 relative to Duke Energy Ohio's service territory,
19 sir?

20 A. Close. It's in Kentucky, it's over the
21 border. It's not right over the border, like right
22 over the border of the bridge, but it's over the
23 border a little ways. I couldn't give you a distance
24 as far as a travel distance. Five miles, eight
25 miles. I don't know. And that's just right over the

1 border from downtown Cincinnati. The service
2 territory's pretty large.

3 Q. Cincinnati -- I'm sorry, strike that.

4 Ohio and Kentucky are separated simply by
5 the Ohio River, correct?

6 A. That is correct.

7 Q. Sir, you've mentioned a reference to
8 information being erased from the invoices that are
9 attached to your testimony. You have no facts, sir,
10 to suggest that Duke Energy Ohio redacted this
11 information, do you?

12 A. I think there's no question it was
13 redacted. And it was done I'm assuming not by the
14 field personnel because it was done over and over
15 again on different time sheets. So I assume that it
16 was systematically done by someone.

17 Whether it was Duke or whether it was by
18 Duke's instruction, whether it was by somebody on
19 this particular contractor's side, I don't know. I
20 don't know who did that, no.

21 Q. Again, sir, my question, you have no
22 facts to suggest that Duke Energy Ohio redacted any
23 information on these invoices, correct?

24 A. Duke Ohio personally did that? No, I
25 have no information whatsoever.

1 Q. And you have no facts, sir, to suggest
2 that Duke Energy Ohio instructed the contractor to
3 white out this information, do you?

4 MS. HOTZ: Objection. How can he
5 possibly know? How can he know?

6 EXAMINER PIRIK: Objection overruled.

7 A. I don't know. I just know that it was
8 done and I know that the invoices lack any
9 specificity regarding where people worked.

10 Q. The invoices, sir, or the time sheets?

11 A. Well, the time sheets seem to indicate
12 that they were working in Kentucky when that was
13 whited out. So it seems certainly on some of them --
14 there was one at least that said Kentucky. So, and
15 then there was two that you could see at the very
16 tail end of it "c-k-y," sounds like "Kentucky," the
17 last three letters of the word. One was a "y."
18 Looked like that was probably Kentucky.

19 Q. And, sir, you know from Mr. Hecker's
20 testimony that non-jurisdictional work has already
21 been removed from Duke Energy Ohio's request,
22 correct?

23 A. No, I don't know that.

24 Q. You don't know that?

25 A. No. He's made some adjustments to or

1 suggested some. Actually the company made the
2 adjustments but he suggested some adjustments for
3 non-jurisdictional work. I think there was a lot
4 more non-jurisdictional than the adjustments he
5 suggests.

6 Q. Sir, there are various reasons why the
7 information could have been erased on those time
8 sheets, isn't there?

9 A. Yes, but obviously it was systemically
10 done. I'm not sure, there's at least eight of them I
11 think that were done that way. That's quite a bit of
12 individual scattered crews that all had the same kind
13 of white out. Again, it could have been any reason.
14 I don't know why it was done.

15 Q. You're just guessing at this point,
16 right?

17 A. I'm saying I don't know why.

18 Q. Mr. Yankel, given the close proximity
19 between Ohio and Kentucky, it would not be uncommon
20 for crews working in Ohio to eat, sleep, or wash
21 their clothes in Kentucky, would it?

22 A. When you're working 16 hour days for
23 seven, eight days in a row, it seems like they
24 wouldn't be spending a whole lot of time traveling
25 too much. I mean there wasn't the luxury of let's go

1 over to Kentucky and have dinner.

2 Q. What if Kentucky was the only location
3 with an empty hotel?

4 A. Well, then they were there for dinner but
5 then that doesn't take care of lunches very well, so.

6 Q. Sir, you're guessing though again, aren't
7 you?

8 A. No, I think some were lunches. So, yes,
9 some of the receipts were lunch time. So again, I
10 don't know, but there are -- there's at least
11 something tangible that we have that says "Kentucky"
12 on it. Other than that the invoices don't address
13 where the crews worked. And some of them seem to
14 have addressed that as Kentucky and that was erased.

15 Q. Mr. Yankel, do you -- you know that
16 Erlanger, Kentucky was used as a staging area for the
17 restoration efforts in Ohio, don't you?

18 A. I don't know that know that. I do
19 believe I've heard that a few times. I don't recall
20 seeing a lot of evidence on that. I have heard it.

21 Q. You have no reason to dispute the fact
22 that Erlanger, Kentucky was used as a staging area
23 for restoration efforts in Ohio, do you?

24 A. I know the company has an operations
25 there. That's all I know.

1 Q. Mr. Yankel, on page 16, line 3 of your
2 testimony, you reference the deposition testimony of
3 Duke Energy Ohio witness Don Wathen, correct?

4 A. Correct.

5 Q. And to be clear, sir, you were present
6 for his deposition, correct?

7 A. Correct.

8 Q. But you prepared and filed your testimony
9 before his deposition was transcribed, correct?

10 A. That is correct.

11 Q. Have you since had an opportunity to
12 review Mr. Wathen's testimony, deposition testimony?

13 A. Yes, I have.

14 Q. And what you attest or attribute to
15 Mr. Wathen on line 3, page 16, of your testimony, is
16 not what he said in deposition, was it, sir?

17 A. It's not a direct quote. I think it's a
18 very good paraphrase of what he said. Which is the
19 best I could do without having the transcript.

20 MS. SPILLER: May I approach the witness,
21 your Honor?

22 EXAMINER PIRIK: Yes.

23 MS. SPILLER: Ann, page 64, line 14, of
24 Mr. Wathen's testimony.

25 Q. Mr. Yankel, Don Wathen did not state in

1 his deposition that it was assumed during the
2 restoration process that the cost of the restoration
3 would fall upon the stockholders or shareholders, did
4 he?

5 A. Would it be best if I just read his
6 answer?

7 Q. Sir, it's a "yes" or "no" question. I'm
8 simply asking if that's what his deposition says.

9 A. He did not use the word -- he said "all
10 shareholder money until we know better." To me a
11 "shareholder" and "stockholder" are the same.

12 Q. Well, that doesn't mean -- well, okay.
13 But he didn't say it was assumed during the
14 restoration process that all costs of recovery fall
15 upon the shareholder.

16 A. Can I read this, because again my -- I
17 paraphrased my testimony. I can read what he said
18 and I can substitute what he said for my testimony as
19 far as that goes as a quote.

20 Q. My question, sir, was simply whether or
21 not what you attested to or attributed to Mr. Wathen
22 in your testimony was what he said actually said in
23 deposition.

24 A. It was a paraphrase of what he said.

25 Q. Thank you.

1 MS. SPILLER: Your Honor, we have nothing
2 further for the witness.

3 EXAMINER PIRIK: Thank you.

4 Mr. Yurick?

5 MR. YURICK: No questions, thank you.

6 EXAMINER PIRIK: Mr. Reilly?

7 MR. REILLY: No questions, your Honor.

8 MS. HOTZ: Could we just have a few
9 minutes outside?

10 EXAMINER PIRIK: A couple minutes. We'll
11 sit right here.

12 (Off the record.)

13 EXAMINER PIRIK: We'll go back on the
14 record.

15 - - -

16 REDIRECT EXAMINATION

17 By Ms. Hotz:

18 Q. Mr. Yankel, do you know why the
19 24 percent capitalization average of the two Kentucky
20 utilities is different than the 31 percent you
21 calculated for your testimony?

22 A. Yes. Since at least one of the breaks I
23 looked into that. I can't find the exact numbers I
24 had but I at least remember the calculation and the
25 calculation I made was one of looking at the

1 percentages of the two utilities and then averaging
2 the percentages as opposed to the way the company
3 did, which was looking at the total dollar amounts
4 and averaging those.

5 The 24 percent I'm happy with. I've got
6 no problem with the 24 percent. It's a different way
7 of doing it. It's better than a 2 percent number.
8 Again, I just calculated differently and I've got no
9 problem with the 24 percent.

10 Q. You were asked several questions about
11 Mr. Wathen's statement during his deposition. Will
12 you please read his statement from the transcript
13 into the record?

14 MS. SPILLER: Your Honor, I'm going to
15 object. I think that's an improper use of
16 Mr. Wathen's deposition. I mean Ms. Hotz can't use
17 that to impeach Mr. Yankel on that particular
18 question. And now perhaps she's not attempting to
19 impeach him but she's trying to offer evidence of a
20 witness and their deposition testimony through this
21 particular witness.

22 MS. HOTZ: I'm attempting to rebut her
23 impeachment of him. And I think if she is permitted
24 to use that to impeach him, I should be permitted to
25 use it to rebut him, and I think the fairest way to

1 deal with it is just to put the actual word on the
2 record.

3 EXAMINER PIRIK: I have to say I agree
4 that that was my first thought when we were going
5 down that road. I think the record's confusing as to
6 what was actually said and I'd rather have the real
7 statement on the record. So I'm going to allow the
8 statement to be read.

9 MS. SPILLER: In that respect, your
10 Honor, I assume for purposes of the clarity is the
11 question and the answer in its entirety then read?

12 EXAMINER PIRIK: Do you prefer to have
13 both of them read?

14 MS. SPILLER: I would prefer, otherwise
15 I'm afraid it would be taken out of context or -- I
16 guess taken out of context.

17 EXAMINER PIRIK: I'm fine with that.
18 Question and answer please.

19 THE WITNESS: I'm on page 64, beginning
20 at line 11.

21 Question: "Yes. To those specific to
22 distribution then, what incentive would the
23 individual have? To save --"

24 Answer: "There's no certainty we're
25 going to get recovery, so I think it is in our

1 interest to keep costs down. Particularly at the
2 time that the storm happened, nobody knew it was
3 going to be \$31 million. So the idea is to keep the
4 costs down. It's all shareholder money until we know
5 better. No difficulty, no."

6 MS. SPILLER: I believe it's
7 "differently."

8 THE WITNESS: "Differently," I'm sorry.

9 EXAMINER PIRIK: Ms. Hotz?

10 MS. HOTZ: That's all we have. Thank
11 you.

12 EXAMINER PIRIK: Ms. Spiller?

13 MS. SPILLER: I don't have anything
14 further, your Honor.

15 EXAMINER PIRIK: Mr. Yurick?

16 MR. YURICK: No questions, your Honor.

17 EXAMINER PIRIK: Staff?

18 MR. REILLY: No questions, your Honor.

19 EXAMINER PIRIK: I think that will be
20 all, thank you.

21 MS. SPILLER: Your Honor, we do have some
22 exhibits, if we may. Duke Energy Ohio Exhibit No. 7,
23 the survey dated November 2003 is referenced in
24 Mr. Yankel's testimony. We would move for the
25 admission of that into evidence.

1 EXAMINER PIRIK: Why don't you go ahead
2 and go down all the rest of them.

3 MS. SPILLER: Certainly. Duke Energy
4 Ohio Exhibit 8A and 8B, both the public and
5 confidential versions of a data request and response.

6 Duke Energy Ohio Exhibit 9 Ike and Ice
7 Report of the Kentucky Public Service Commission.

8 Duke Energy Ohio 10A/B, the data response
9 interrogatory No. 1-008. The "A" and "B"
10 designations reflecting the public and confidential
11 versions of the document.

12 EXAMINER PIRIK: Mr. Yurick, any
13 objections?

14 MR. YURICK: No objections, your Honor.

15 EXAMINER PIRIK: Staff?

16 MR. REILLY: No objections.

17 EXAMINER PIRIK: Ms. Hotz?

18 MS. HOTZ: OCC objects to Duke Energy
19 Ohio Exhibit 10A and 10B because, as Mr. Yankel
20 stated, it's confusing and does not specifically
21 address Ohio.

22 EXAMINER PIRIK: Ms. Spiller?

23 MS. SPILLER: Yes, just very briefly,
24 your Honor. The question was very specific with
25 respect to the contractor costs as referenced in Mr.

1 Mehring's testimony relative to this particular case.

2 His testimony specifically referred to
3 among other categories of damages the external labor
4 costs incurred by Duke Energy Ohio relative to storm
5 restoration efforts.

6 EXAMINER PIRIK: Your request will be
7 noted on the record, however, we will admit Duke 7
8 Duke 8A, Duke 8B, Duke 9, Duke 10A and Duke 10B into
9 the record.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 MS. SPILLER: Thank you, your Honor.

12 MS. HOTZ: OCC would like to move into
13 evidence the direct testimony of Anthony J. Yankel,
14 OCC Exhibit 1A and 1B; 1A being the public version
15 and 1B being the confidential.

16 Tomorrow I am going to file the second
17 filed public version which has less redaction and was
18 negotiated today by the parties and the AEs, and I
19 will be filing it tomorrow.

20 I guess that's it.

21 EXAMINER PIRIK: Thank you.

22 Are there any objections to OCC 1A and
23 1B?

24 MS. SPILLER: No, your Honor.

25 MR. YURICK: No objections, your Honor.

1 MR. REILLY: No objections, your Honor.

2 EXAMINER PIRIK: Hearing none, they will
3 be admitted into the record.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 EXAMINER PIRIK: Just to make the record
6 clear in this one concise area, OCC will be filing
7 OCC 1A, the public version, tomorrow, and Duke will
8 be filing Duke Exhibit 8A, 8B, 10A, and 10B tomorrow.

9 We can go off the record.

10 (Off the record.)

11 EXAMINER PIRIK: We'll go back on the
12 record.

13 We had a couple housekeeping matters
14 before we move on to the schedules. We need to mark
15 OCC's comments, Ms. Hotz.

16 MS. HOTZ: Yes, OCC would like to mark
17 its comments and objections as OCC Exhibit 2, and we
18 request that it be moved into evidence. It was filed
19 on February 23, 2010.

20 EXAMINER PIRIK: I think we're at OCC 10.

21 MS. HOTZ: I'm sorry, yes, OCC
22 Exhibit 10.

23 EXAMINER PIRIK: Document will be so
24 marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 EXAMINER PIRIK: Are there any objections
2 to this exhibit?

3 MR. REILLY: No, your Honor.

4 EXAMINER PIRIK: Hearing none, it will be
5 admitted into the record.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 MS. SPILLER: We would ask Duke Energy's
8 reply comments which were docketed with the
9 Commission March 25, 2010 be marked as Duke Energy
10 Ohio 11 and be admitted into evidence.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 EXAMINER PIRIK: Are there any objections
13 to Duke Energy 11?

14 Hearing none, it will be admitted into
15 the record.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER PIRIK: Ms. Watts?

18 MS. WATTS: Yes, your Honor. We have
19 just provided to the Bench and to the parties in the
20 room today, which includes all the parties that are
21 parties to this particular case, an application for
22 review and interlocutory appeal.

23 In my haste to produce the document this
24 afternoon I neglected to include the correct
25 certificate of service and I also neglected to sign

1 it. However, all the parties in the room were
2 delivered by hand a copy of this document and I would
3 like the record to reflect that it was in fact
4 docketed in a timely manner today and all the parties
5 were in fact served. And we will provide a correct
6 certificate of service for the docket tomorrow.

7 EXAMINER PIRIK: Mr. Yurick?

8 MR. YURICK: Mark Yurick on behalf the
9 Kroger Company, we were served with the interlocutory
10 appeal.

11 MS. HOTZ: So was OCC.

12 MR. REILLY: As was of staff.

13 EXAMINER PIRIK: Thank you.

14 Pursuant to the schedule we set earlier
15 with regard to memo contra, then the memo contra will
16 be due by the end of the day on Friday, and should be
17 electronically served upon all of the parties,
18 including the Bench.

19 Also the rule does not provide for reply
20 to the memorandum contra and the Bench is not calling
21 for one, so there is no time frame that we will be
22 setting for that.

23 In the hopes that there is an item motion
24 to quash, it's an item that is an immediate appeal to
25 the Commission, the Commission -- we will attempt to

1 have the Commission resolve the dispute next
2 Wednesday at their Commission meeting.

3 Irregardless, we're going to go forward
4 and continue this hearing until June 7 at 9:00 a.m.,
5 we're not sure if this will be the hearing room
6 because we don't know what's available, but we will
7 find one.

8 And we will keep in touch with the
9 parties with regard to what the Commission decision
10 is. If in fact they grant the motion to quash, then
11 perhaps we will need to cancel that hearing. But we
12 will wait until that time, assuming that we're going
13 to continue the hearing until June 7.

14 With regard to a briefing schedule, we
15 have set a briefing schedule. The initial briefs in
16 this proceeding will be due on June 15, Tuesday, June
17 15 and the reply briefs will be due on Monday,
18 June 21. For both of those items asking the parties
19 to electronically serve the Bench as well as the
20 other parties in the proceeding.

21 Is there anything else to come before us
22 today?

23 This concludes the hearing today and we
24 will continue to June 7, assuming that we will have
25 witnesses that we will need to hear, depending on the

1 Commission's ruling hopefully next week. Thank you,
2 everyone.

3 MR. REILLY: Thank you, your Honor.

4 MS. SPILLER: Thank you.

5 (Hearing adjourned at 6:24 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, May 26, 2010, and carefully compared with my original stenographic notes.

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

My commission expires February 19, 2013.

(JUL-1569)

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

Summary: Transcript Transcript of Duke Energy Ohio hearing held on 05/26/10. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Hennebert, Julieanna Mrs.