

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the Application :
of Duke Energy Ohio, Inc., for : Case No
an Increase in Gas Rates. : 12-1685-GA-AIR

In the Matter of the Application :
of Duke Energy Ohio, Inc., for : Case No.
Tariff Approval. : 12-1686-GA-ATA

In the Matter of the Application :
of Duke Energy Ohio, Inc., for : Case No.
Approval of an Alternative Rate : 12-1687-GA-ATA
Plan for Gas Distribution :
Service. :

In the Matter of the Application :
of Duke Energy Ohio, Inc., for : Case No.
Approval to Change Accounting : 12-1688-GA-AAM
Methods. :

- - -

PROCEEDINGS

before Ms. Christine M. T. Pirik and Ms. Katie
Stenman, Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:00 a.m. on Thursday, May
2, 2013.

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VOLUME IV

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- - -

1	INDEX		
2	- - -		
3	WITNESS		PAGE
4	KERRY J. ADKINS		
	Direct Examination by Mr. Parram		857
5	Cross-Examination by Mr. Sauer		859
	Cross-Examination by Ms. Watts		861
6	Redirect Examination by Mr. Parram		921
	Recross-Examination by Mr. Sauer		927
7	Recross-Examination by Mr. Hart		929
8	JAMES CAMPBELL		
	Direct Examination by Mr. Berger		932
9	Cross-Examination by Mr. McMurray		942
	Redirect Examination by Mr. Berger		990
10			
11	- - -		
12	COMPANY EXHIBITS	IDFD	ADMTD
13	28 - Objections Submitted on Behalf of	865	931
	the Staff in Case No. 08-606		
14			
	29 - 2012 VAP Certified Professional	976	1003
15	Training		
16	30 - Objections to Staff Report	1006	1010
17	- - -		
18	OCC EXHIBITS	IDFD	ADMTD
19	15 - Direct Testimony of	933	1003
	James R. Campbell		
20			
	15.1- Confidential Attachments of	933	1003
21	James Campbell		
22	16 - Mr. Campbell's Photographs	990	1003
23	17 - Direct Testimony of James Gould	1009	1010
	(Public)		
24			
	17.1- Direct Testimony of James Gould	1009	1010
25	(Confidential)		

INDEX (Continued)

1			
2	OCC EXHIBITS	IDFD	ADMTD
3	18 - Objections to the Staff Report	1009	1010
4	19 - Direct Testimony of Steven B. Hines	1009	1010
5	20 - Direct Testimony of Ibrahim Soliman	1009	1010
6	21 - Direct Testimony of Daniel Duann	1009	1010
7	22 - Direct Testimony of David J. Effron	1009	1010
8	23 - Direct Testimony of Scott J. Rubin	1009	1010
9	- - -		
10	KROGER EXHIBIT	IDFD	ADMTD
11	6 - Objections to the Staff Report	1008	1010
12	- - -		
13	STAFF EXHIBIT	IDFD	ADMTD
14	6 - Prepared Direct Testimony of	858	931
15	Kerry J. Adkins		
16	- - -		
17	GREATER CINCINNATI HEALTH COUNCIL EXHIBIT	IDFD	ADMTD
18	1 - Objections to the Staff Report and	1007	1010
19	Statement of Major Issues		
20	- - -		
21	CINCINNATI BELL TELEPHONE EXHIBIT	IDFD	ADMTD
22	1 - Objections to the Staff Report and	1007	1010
23	Statement of Major Issues		
24	- - -		
25			

1 Thursday Morning Session,
2 May 2, 2013.

3 - - -

4 EXAMINER PIRIK: We will go on the
5 record.

6 Mr. Parram, would you like to call your
7 witness.

8 MR. PARRAM: Sure. Your Honor, I would
9 like to call Staff Witness Kerry Adkins to the stand.

10 - - -

11 KERRY J. ADKINS
12 being first duly sworn, as prescribed by law, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Parram:

16 Q. Mr. Adkins, would you please state and
17 spell your full name for record.

18 A. It is Kerry, middle initial J., Adkins,
19 K-E-R-R-Y J A-D-K-I-N-S.

20 Q. By whom are you employed and what is your
21 business address?

22 A. I'm employed by the Public Utilities
23 Commission of Ohio, 180 East Broad Street, Columbus,
24 Ohio 43215.

25 Q. Do you have a document in front of you

1 that's marked Staff Exhibit 6?

2 A. I do.

3 MR. PARRAM: Your Honor, I would like to
4 have marked for purposes of identification the
5 prefiled testimony of Kerry J. Adkins that was filed
6 on April 22, 2013, in this matter as Staff Exhibit 6.

7 EXAMINER PIRIK: The document is so
8 marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Mr. Adkins, did you prepare Staff Exhibit
11 6?

12 A. Yes.

13 Q. And did you -- the questions and answers
14 within Staff Exhibit 6, did you answer them
15 truthfully when you prepared them?

16 A. Yes.

17 Q. And if I were to ask you the same
18 questions here today, would your answers be the same?

19 A. Yes.

20 Q. Do you have any modifications to Staff
21 Exhibit 6?

22 A. I do.

23 Q. What are those modifications?

24 A. On page 4, at line 8, based on the
25 testimony of Duke's Witness Ms. Bednarcik, I believe

1 the operation dates for the manufactured gas plant
2 MGPs were 1963 and 1928, so I would change the
3 "1963" on line 8 to "1928." I have no other -- no
4 other corrections.

5 MR. PARRAM: Your Honor, I move for the
6 admission of Staff Exhibit 6 pending
7 cross-examination and tender Mr. Adkins for cross.

8 EXAMINER PIRIK: Thank you.

9 Do any of the intervenors have
10 cross-examination?

11 OCC, do you have cross?

12 MR. SAUER: Just a couple of questions.
13 Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Sauer:

17 Q. Good morning, Mr. Adkins.

18 A. Good morning.

19 Q. Through the staff's investigation of the
20 East End and West End sites, did you see any
21 documents prepared by Duke that analyzed the costs or
22 benefits of the various remediation technology
23 options for investigating and remediating the two MGP
24 sites?

25 A. No, I did not.

1 Q. And are you familiar with Duke's request
2 to be granted deferral authority for the
3 investigation or remediation costs?

4 A. I am.

5 Q. That was in Case 09-712?

6 A. That's correct.

7 Q. And that application was filed August 10,
8 2009?

9 A. I don't have the document in front of me,
10 but --

11 Q. Subject to check?

12 A. Subject to check, I would accept that.

13 Q. And between the filing of that
14 application and the filing of the application in this
15 case, did staff have any discussions with Duke
16 regarding how much was being spent on investigation
17 and remediation at the MGP sites?

18 A. Not to my knowledge.

19 MR. SAUER: I have no further questions,
20 your Honor.

21 EXAMINER PIRIK: Thank you.

22 Ms. Mohler?

23 MS. MOHLER: No questions.

24 EXAMINER PIRIK: Mr. Hart?

25 MR. HART: No questions.

1 EXAMINER PIRIK: Duke?

2 MS. WATTS: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Watts:

6 Q. Good morning, Mr. Adkins.

7 A. Good morning.

8 Q. Mr. Adkins, counsel for OCC just asked
9 you if you had seen any documents that analyzed
10 different technology options during your
11 investigation in this proceeding.

12 A. I believe he had asked me if I had seen
13 them, and I have not.

14 Q. And do you recall requesting any such
15 documents?

16 A. No, I don't believe we did.

17 Q. Thank you.

18 Could you tell me what testimony you've
19 read in preparation for your testimony here today.

20 A. I have read most of the testimony in the
21 case. I don't know that it was in -- done for
22 preparation of my testimony.

23 Q. Okay. But you have read the testimony
24 that was filed in the proceeding.

25 A. Most of it, yes.

1 Q. Okay. Thank you.

2 Would you tell me, please, what your
3 accounting background consists of?

4 A. My accounting background, I've had some
5 accounting classes, both at the graduate level and at
6 the undergraduate level, but I am not an accountant.
7 Most of my accounting experience is relative only to
8 accounting as it relates to ratemaking. I have been
9 to doing it at the Commission for 24 years, and I
10 have been specifically in the accounting department
11 for over 5.

12 Q. Okay.

13 EXAMINER PIRIK: Mr. Parram, can you hear
14 Ms. Watts?

15 MR. PARRAM: Yes. Maybe a little bit
16 louder.

17 MS. WATTS: Okay. I'll also try to face
18 your direction every once in awhile.

19 Q. Mr. Adkins, do you have any
20 responsibility in your present position for
21 accounting matters?

22 A. Yes.

23 Q. Could you describe that responsibility.

24 A. Again, most of the responsibility for
25 accounting matters is as it relates to ratemaking and

1 I am a -- I manage accounting -- or the Accounting
2 Division of the Utilities Department and most of what
3 we do is we review utility rate requests and it's --
4 I guess we make recommendations to the Commission
5 based on our investigations related to those
6 applications.

7 Q. And I believe you mentioned in your
8 testimony having worked on several rate cases. Is it
9 fair to say you've worked on more than several rate
10 cases in your career with the Commission?

11 A. I guess recently there hasn't been as
12 many rate cases as there used to be, but I have
13 worked on a number of rate cases, a fair number.

14 Q. So it's fair to say you have a good
15 understanding of the general formula that the
16 Commission applies in making rates?

17 A. I believe so, yes.

18 Q. Okay. And during your career have you
19 ever had a position working for a gas company, or
20 have you worked with respect to gas operations for
21 any entity?

22 A. No.

23 Q. Have you ever been employed in the
24 Commission's gas pipeline safety division?

25 A. No.

1 Q. Have you taken any courses related to gas
2 operations or gas pipeline safety?

3 A. Not formal courses. I've taken courses
4 that are general utility applicability examples from
5 all utility regulated -- regulated utility
6 industries.

7 Q. And prior to your work on this case did
8 you have any knowledge related to the existence or
9 the process of remediation of manufactured gas
10 plants?

11 A. I was aware there were gas plants out
12 there, that there was, you know, remediation but not
13 much -- I worked on the Columbia case, that involved
14 remediation, but the technical aspects of it, not
15 much.

16 Q. Okay. So you worked on the Columbia
17 case. Can you tell me what your responsibilities
18 were with respect to that case?

19 A. In Case No. I believe it's 08-606-GA-AAM,
20 Columbia had requested a deferral for causal-related
21 manufactured gas costs. Subsequent -- part of that I
22 believe was a finding and order, it may have been an
23 entry in this case, I don't recall, the Commission
24 required Columbia to file annual reports, and in 2011
25 or 2012, I believe, not sure of the exact date, it

1 was in the same case docket, Columbia filed an annual
2 report. Some of my staff and I reviewed that annual
3 report and made an objection -- filed an objection in
4 that case to one of the -- one of the -- one of
5 the -- I guess the properties that Columbia was
6 seeking to defer.

7 Q. Okay. And so you had direct knowledge
8 and participation in the filing of that -- the
9 objections in the Columbia case.

10 A. Yes. I authored the objections.

11 Q. Okay. Thank you.

12 MS. WATTS: Your Honor, I would like to
13 have this document marked as Duke Energy Ohio Exhibit
14 28, please.

15 EXAMINER PIRIK: The document will be so
16 marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. Mr. Adkins, do you also -- were you here
19 yesterday when there was some testimony with respect
20 to the Columbia entry in the 08-606 case?

21 A. Was it Mr. Wathen's testimony?

22 Q. I believe it was.

23 A. I was here for I think most of
24 Mr. Wathen's testimony but not all of it.

25 Q. Okay. I need you to have in front of you

1 a copy of Kroger Exhibit 5.

2 MS. WATTS: Do you have that, counsel?

3 MR. PARRAM: The entry on rehearing?

4 MS. WATTS: Right.

5 I'm sorry, Devin, it's the entry, not the
6 entry on rehearing, so it's 5.

7 MR. PARRAM: Kroger 5?

8 MS. WATTS: Yeah.

9 A. I now have Kroger Exhibit 5.

10 Q. Okay. Thank you.

11 Mr. Adkins, would you turn to Kroger
12 Exhibit 5, paragraph 5, which I believe is on the
13 second page.

14 MR. PARRAM: Your Honor, objection.

15 EXAMINER PIRIK: Grounds?

16 MR. PARRAM: Relevancy, it's beyond this
17 witness's testimony. I'm not seeing the connection
18 between Case 08-606 and Mr. Adkins's testimony in
19 this specific case as it relates to Duke's recovery
20 of remediation costs.

21 EXAMINER PIRIK: Ms. Watts.

22 MS. WATTS: Thank you, your Honor. It
23 appears to the company that the staff has taken a
24 position in this case that is directly contrary to a
25 position they've taken in another case, and we would

1 like to understand what staff's rationale is for
2 that.

3 EXAMINER PIRIK: Objection overruled.

4 Q. (By Ms. Watts) So, Mr. Adkins, would you
5 turn to paragraph 5, please.

6 A. I'm there.

7 Q. Would you read for me, please, the
8 sentence beginning with the -- actually just that
9 paragraph.

10 A. "On May 19, 2008, Columbia filed an
11 application in this proceeding, requesting authority
12 to defer, on its books, environmental investigation
13 and remediation costs in those situations where
14 Columbia no longer owns the site in question, or
15 where the site is owned by Columbia but is no longer
16 used and useful in the rendition of gas service to
17 customers. Columbia also requests authority to
18 recover carrying charges on the deferred balances."

19 Q. Thank you. Would you agree with me then
20 that the Commission has specifically recognized in
21 the Columbia deferral that the property in question
22 in that deferral is not presently used and useful?

23 A. I would agree that for the purposes of
24 granting the deferral, the Commission made that
25 recognition --

1 Q. Okay.

2 A. -- but specifically recoverability in
3 that case.

4 Q. Right, thank you.

5 And, again, in paragraph 9 the Commission
6 indicates that it reviewed the application and the
7 applicable federal and state rules and statutes and
8 finds that the environmental investigation or
9 remediation costs are necessary business costs. Do
10 you see that?

11 A. I do see it.

12 Q. And do you have any reason to disagree
13 with any part of that statement?

14 A. Again, subject to the Commission
15 discusses recoverability later in the order -- in its
16 entry -- is this an entry or order? In this entry
17 discusses recoverability but in paragraph 9 it says
18 essentially what you say it says.

19 Q. Right. Okay. Thank you. I understand.

20 And the costs in question with respect to
21 the Columbia deferral are MGP remediation costs,
22 correct?

23 A. Yes.

24 Q. Okay. And, now, would you turn to the
25 staff's objections in that same case which I've asked

1 to have marked as Duke Energy Exhibit 28.

2 A. I'm there.

3 Q. And would you turn to page 5 of those
4 objections, please.

5 A. I'm there as well.

6 MR. SERIO: Your Honor, we seem to
7 have --

8 EXAMINER PIRIK: We only have every other
9 page. Is it supposed to be like that, or did we
10 forget to double-side it?

11 MS. WATTS: It's -- I apologize if there
12 is -- we'll provide copies with all of the pages
13 included, but for right now, I only need page 5
14 anyway.

15 EXAMINER PIRIK: I just want to be sure.

16 MS. WATTS: If we can proceed with just
17 page 5.

18 EXAMINER PIRIK: Okay.

19 MS. WATTS: Mine has.

20 EXAMINER PIRIK: Does the court reporter
21 have? Well, what you are crossing on at the moment
22 is on this document, we can move forward, but, I know
23 we are going to need to revise.

24 MS. WATTS: Thank you for your patience
25 with this.

1 Q. (By Ms. Watts) Mr. Adkins, on page 5 of
2 the document that you have, which I now understand is
3 only every other page, so we'll make sure that you
4 have every page before we're done today.

5 EXAMINER PIRIK: Actually while you're
6 crossing him on this, do you have another copy that
7 has every page on it?

8 MS. WATTS: I do.

9 MR. PARRAM: I think he should have the
10 full document.

11 Q. I'll trade you copies, how about that,
12 and you will see page 5 has a sentence underlined --

13 A. I do, I see that.

14 Q. -- for your convenience.

15 Would you read that sentence, please.

16 A. "The rationale for the Staff's objection
17 is twofold. First, the Staff believes that the
18 intent of the Commission's original 2008 Entry was to
19 allow the creation of deferrals for environmental
20 cleanup costs at sites no longer owned by Columbia or
21 no longer in service."

22 Q. So when staff was offering these
23 objections, staff specifically understood that the
24 property in question was not used and useful at the
25 time, correct?

1 A. The staff was aware what the Commission's
2 order said. You know, we are staff of the Commission
3 and the Commission granted a deferral and I believe
4 in its entry the Commission discussed the differences
5 between deferrals related to -- as the original
6 finding in the case the Commission referred back to a
7 1999 case where the Commission had said Columbia
8 already had authority to defer costs associated
9 with -- I'm sorry, collect costs where the plant was
10 used and useful and later in this case was talking
11 about something different where it was no longer used
12 and useful or Columbia no longer owned the property
13 in question, so here the staff is speaking to what
14 our understanding is of what the Commission said.

15 Q. Okay. And so is it your intention with
16 respect to Columbia's application that -- not your
17 intention, let me correct that.

18 Would it be your expectation at some time
19 in the future that staff, in being consistent with
20 this case, would recommend no recovery of Columbia
21 property because it is not used and useful?

22 A. I think that would call for too much
23 speculation on my part. We would have to do our own
24 investigation and investigation -- I think the answer
25 would be speculative. I would prefer not to

1 speculate at this point.

2 Q. Okay. But we do know Columbia's property
3 is not presently in service, correct?

4 A. Well, I think the subject of this staff
5 made an objection some of the property was used and
6 useful and, therefore, fell under the treatment the
7 Commission had already I guess opined on in the '99
8 case so -- so if we do see something, again, similar
9 to what we saw before where some of it was used and
10 useful, the staff would likely object again. But for
11 the properties, I believe it's five properties in
12 this instance, they were no longer used and useful or
13 maybe not even owned by Columbia.

14 This was a long-winded answer.

15 Q. Okay. Well, let's take just a piece of
16 that, if you -- if you will. The piece of Columbia's
17 deferral requests that relates to property that is
18 not used and useful, would it be your expectation
19 that you would not recommend recovery for remediation
20 related to that property?

21 A. Again, I think that requires an
22 inordinate amount of speculation; I am not prepared
23 to do so at this time.

24 Q. Okay. Based on your accounting
25 experience and your work all these years with the

1 Commission, do you have an understanding of what it
2 means when the Commission grants a deferral?

3 A. Yes.

4 Q. Could you tell me what your understanding
5 of that is.

6 A. I believe the best person to speak to
7 that is the Commission and I believe there has been
8 extensive discussions in this proceeding as well
9 regarding the Supreme Court's -- the Ohio Supreme
10 Court's view of deferrals and that they are not
11 ratemaking, so I would -- my understanding is that
12 deferrals in this context are not ratemaking, they
13 are simply an accounting mechanism that provides a
14 tax benefit to utilities and basically helps them
15 look better for investors, so that's the purpose the
16 deferrals are granted. The Commission has emphasized
17 these are not ratemaking.

18 Q. Okay. Can you describe what the tax
19 benefit would be.

20 A. The tax benefit, my understanding of a
21 tax benefit is basically that for financial reporting
22 purposes the company can recognize in the current
23 year an expense and they can defer any associated
24 revenue for the future, so basically their expenses
25 are greater, therefore, they -- it reduces their

1 income for tax purposes and, therefore, they get a
2 temporary tax benefit that sort of reverses itself
3 whenever the revenue starts to be captured.

4 Q. Okay. So you do understand that when a
5 deferral is granted, a utility creates a regulatory
6 asset; is that correct?

7 A. Yes.

8 Q. Okay. And you further understand that
9 when the utility creates a regulatory asset, the
10 investment community, depending on the size of that
11 deferral, the granting of that deferral and the
12 dollars involved, the investment community takes
13 interest in that; is that correct?

14 MR. PARRAM: Objection. Calls for
15 speculation. He wouldn't know what the investment
16 community looks at.

17 EXAMINER PIRIK: Objection overruled.
18 Mr. Parram, you need to speak louder so the court
19 reporter can hear you, but objection overruled.

20 MR. PARRAM: Okay.

21 A. I guess I really wouldn't want to opine
22 on what the investment community may or may not look
23 at.

24 Q. Okay. So having worked at the Commission
25 for how many years is it, Mr. Adkins?

1 A. More than 24.

2 Q. More than 24. Having been an employee
3 with the Commission in several management positions
4 and having responsibility for some accounting
5 processes, is it your testimony today that you have
6 no knowledge of whether the investment community does
7 or does not look at decisions made at the Commission?

8 A. I think it likely would be the investment
9 community does look at decisions the Commission --
10 the financial health of the company, et cetera.

11 Q. Okay. And then potentially one of the
12 elements that they might look at is the granting of a
13 deferral.

14 A. Potentially, I mean, relative to all
15 other things, like balance sheets and other things
16 they may look at, I don't know the proportion, but
17 they may look at it, yes.

18 Q. Right, okay. So we agree that it's
19 something that might catch the attention of the
20 investment community when a deferral is granted.

21 A. It indeed might.

22 Q. And, likewise, if recovery for a deferral
23 is not granted, is that also something the investment
24 community might have an interest in?

25 A. Again, not knowing the relative weight

1 of, you know, of granting a deferral versus not
2 granting a deferral, how an investment community
3 might view that, I don't know. It might be something
4 they would look at, yes.

5 Q. Okay. And if the Commission should deny
6 recovery of the company's request in this case, do
7 you have any understanding of what the impact on the
8 company's financial condition would be as a result of
9 that?

10 A. I have no specific knowledge at all.

11 Q. Thank you.

12 Mr. Adkins, have you ever worked for the
13 Ohio Environmental Protection Agency?

14 A. No.

15 Q. And do you have any experience in
16 managing remediation projects?

17 A. No.

18 Q. Do you have any geological background?

19 A. No.

20 Q. These are easy, right?

21 A. That will be the best kind.

22 Q. Are you familiar at all with Ohio's
23 voluntary action program that is governed by Title
24 XXXVII of the Ohio Revised Code?

25 A. Not beyond what I've learned in this

1 case.

2 Q. Other than what you've learned as a
3 result of working in this case, do you have any
4 knowledge with regard to the history of the voluntary
5 action program or its relative success in Ohio?

6 A. No.

7 Q. And you're the only staff witness that's
8 supporting the staff's response to company's
9 Objection No. 6, correct?

10 A. Yes.

11 Q. Did you do any historical research with
12 respect to MGP sites when you were preparing the
13 Staff Report?

14 A. Yes.

15 Q. Can you tell me what that consisted of?

16 A. It was very little. I went out on the
17 internet and did a Google search, tried to find
18 cases. I believe I found one document that sort of
19 summarized, but it was a fairly old document. I
20 believe it was early '90s. I can't say for certain
21 as I sit here today. I believe it was from the early
22 '90s that sort of captured what somebody, I don't
23 even know who did it, but I saw it was kind of a
24 summary of who -- of what other states had done, what
25 these states had done.

1 Q. Okay. And the result of that research
2 was essentially that you really only gained
3 information with respect to one other state; is that
4 right, what you just said?

5 A. No, no, I'm sorry. My answer I thought I
6 was excluding Ohio, so there was a summary of what
7 other states had done.

8 Q. I see.

9 A. Several states including Ohio.

10 Q. Okay.

11 A. And -- and I can't tell you how many
12 states it was, but it was -- it was a summary
13 document. That's all I can tell you at this point.

14 Q. Was it your understanding in having
15 looked at that research that MGP cost recovery was
16 granted in most of those other states?

17 A. The states that I -- it seemed like it
18 was split. There was, in most instances -- my
19 recollection of that document most instances costs
20 were split between ratepayers and shareholders 50/50,
21 and I guess the amortization period or allocation
22 period was 10 years or more, so the cost was spread
23 out over a 10-year period.

24 Q. That's your general recollection from
25 what you looked at.

1 A. That's my general recollection.

2 Q. Are you able today to point to any
3 particular state or any particular case to support
4 that recollection?

5 A. The only case I'm familiar with is
6 pointed to the State of Indiana that has not granted
7 recovery at all. That's the only two that I'm
8 familiar with.

9 Q. Okay. Do you, as you sit here today,
10 recall any other state that did not grant recovery?

11 A. No. I don't know how many -- similarly I
12 don't know what their rules are regarding used and
13 useful, et cetera, but based on -- just based on that
14 research, no.

15 Q. Do you know how many other MGP sites
16 there are in Ohio?

17 A. No.

18 Q. And you have no reason to dispute the
19 fact that those -- the MGP sites that are located in
20 Duke Energy Ohio's service territory did at one time
21 serve manufactured gas to customers, correct?

22 A. I believe that its customers, whether
23 those were utility customers under utility rate
24 regulation at the time, I believe that's been an
25 issue in this case, but to some customers, yes.

1 Q. If the Utility Commission rules and
2 regulations were inapplicable at that time, would it
3 be your expectation that those plants, when they were
4 operating, would be regarded as used and useful
5 during that time period?

6 A. My recollection is that the used and
7 useful standard, nonlawyer opinion, but my
8 recollection is that used and useful standard comes
9 from a United States Supreme Court in 1937 that the
10 terms used and useful are introduced so I guess --
11 I'm sorry, I lost your question.

12 Q. Well, I appreciate that because you seem
13 to have a better understanding than I might right now
14 as I sit here today. So the "used and useful" lingo
15 or applicability to ratemaking, it's your testimony
16 that came into existence in 1937.

17 A. That's what I recall, United States
18 Supreme Court case. I don't remember whether the
19 concept has been around longer than that, I don't
20 know.

21 Q. So you understand then that the used and
22 useful terminology applies to plant in service,
23 correct?

24 A. Yes. Things associated with plant in
25 service, but, yes.

1 Q. And what exactly do we mean by "things
2 associated with plant in service"?

3 A. I believe expenses associated with plant
4 in service would be -- the only thing that would be
5 recoverable as well. I think expenses have to be
6 directly associated with plant in service to be
7 recovered.

8 Q. Okay. So let's talk about that for a
9 minute. You're aware, aren't you, that the utilities
10 pay a -- and I won't get the term of art correct
11 here, but there is a fee paid every year that
12 supports both the Office of the Ohio Consumers'
13 Counsel and the Commission -- the Commission's
14 budget, correct? I believe it's called an
15 assessment?

16 A. Yes.

17 Q. Okay. And could you describe for me how
18 that assessment is associated with plant in service?

19 A. It's a utility service. I mean, you
20 know, it's the Public Utilities Commission of Ohio
21 and the Ohio Consumers' Counsel both dealing with
22 directly utility related. I mean, we -- the
23 Commission regulates public utilities, public
24 utilities are comprised of their -- and the
25 Commission does not regulate the other parts of the

1 company's business.

2 The Commission only regulates the part of
3 the business that are public utilities, therefore, in
4 the part of the plant in service, that's what the
5 public utility is is it's plant in service, and those
6 apparatus, employees, buildings, facilities,
7 structures related to providing the public utility
8 service.

9 Q. So is it fair to say that it's based --
10 that that's an expense that's a necessary cost of
11 doing business in Ohio?

12 A. It's a requirement. It's a requirement
13 that they -- that the assessment is placed on the
14 utilities for supporting the functions of the Ohio
15 Consumers' Counsel and the Public Utilities
16 Commission.

17 Q. The assessment isn't calculated in any
18 way in a manner that's associated with how much plant
19 in service the company maintains, correct?

20 A. My understanding it is calculated based
21 on utility revenue that is directly related to the
22 plant in service.

23 Q. Okay.

24 A. It doesn't count for, you know, a utility
25 that's -- other sources of revenue. It's only

1 assessed on the revenue that's related to the public
2 utility service.

3 Q. And the taxes that a utility pays, would
4 you regard those as a necessary business expense?

5 A. For public utility purposes only, the
6 taxes paid, for example, property taxes that are paid
7 on a public utility plant that is in service.

8 Q. Okay. In your research and your work in
9 preparation for the filing of the Staff Report in
10 this proceeding, did you talk with any members of the
11 Ohio Environmental Protection Agency?

12 A. No.

13 Q. Do you have any reason to doubt any of
14 the history that's been set forth in Dr. Middleton's
15 testimony in this proceeding?

16 A. No.

17 Q. Is staff questioning any of the prudence
18 of the costs incurred in this proceeding?

19 A. The staff is questioning the
20 recoverability based on, in our view, the West End
21 plant was not associated -- was basically an electric
22 facility and, therefore, it should not be recovered
23 in a gas case, the costs of a gas case. And the East
24 End plant, we believe most of the plant was not used
25 and useful in providing natural gas distribution

1 service.

2 To the extent that those -- I mean,
3 that's our basis, it's more than a used and useful
4 argument, it's not a prudence argument, so I would
5 say no.

6 Q. And you state on page 30 of the Staff
7 Report that the company maintains that it is liable
8 for cleanup. I'll give you a moment to locate that.

9 A. It would be a safe some time if you could
10 point me to where.

11 I've got it.

12 Q. You've got it?

13 A. Yes.

14 Q. And also on page 4 of your testimony you
15 mention that staff did consider the company's
16 potential liability for cleaning up the sites. I
17 just wanted to make sure that that's your testimony.

18 A. Well, I believe whether Duke does or does
19 not have liability is a legal question that is beyond
20 I guess my credentials. I don't want to make a legal
21 opinion, but it is staff's understanding that Duke is
22 likely liable for the cleanup costs.

23 Q. Okay. And you don't have any reason to
24 doubt that representation, correct?

25 A. In the course of this hearing, I learned

1 that the Columbia Gas has perhaps some
2 responsibility. I believe PRP was the term used,
3 potentially responsible party. And at the drafting
4 of the staff report, staff was unaware of Columbia's
5 involvement, but beyond that I believe that Duke has
6 at least some responsibility.

7 Q. Okay. I'm just wanting to make sure
8 staff is not questioning that legal responsibility in
9 any respect.

10 A. I believe I testified that that's a legal
11 conclusion but that's -- the staff is not contesting
12 that.

13 Q. Thank you.

14 Would you turn to page 38 of the Staff
15 Report, please.

16 A. Did you say "38"?

17 Q. 38.

18 A. I am there.

19 Q. Give me one moment because I need to get
20 there. Are you there Mr. Adkins?

21 A. I am.

22 Q. All right. And do we agree that on page
23 38 there is a "Listing of Expenses Related to
24 Remediation at Duke Energy Ohio East End Site"?

25 A. That is the heading -- heading on the

1 table provided, yes.

2 Q. Okay. And do we -- can we agree each of
3 the items listed on that table are expense items?

4 A. They are expense items that Duke provided
5 to the staff representatives as expense items and we
6 did not disagree.

7 Q. Okay. And do you see anything there
8 related to property in service?

9 A. I will -- the Staff Report, for example,
10 air monitoring, those expenses we did relate directly
11 to those air monitoring. It was only related to what
12 the staff considered to be plant in service, which
13 was simply the parcel at the East End site. And the
14 rest of these expenses we allocated based on our
15 percentage of what we determined to be used and
16 useful at the East End site.

17 Q. Okay. I appreciate that. And I
18 understand that was staff's position. I just want to
19 make sure we both agree that the items listed on this
20 table are all expense-related items.

21 A. They are expenses.

22 Q. Okay. Thank you. Mr. Adkins, you
23 visited Duke Energy Ohio MGP sites in October of last
24 year, correct?

25 A. I believe that's correct, yes.

1 Q. Okay. And did you only visit once
2 personally?

3 A. No. I visited the East End site two
4 times and the West End site once. Other staff
5 members visited both sites more.

6 Q. Do you know how many times the sites were
7 visited?

8 A. Not specifically. Our -- it was a
9 separate team that did the plant investigation which,
10 just verifying the plant in service. So I can't say
11 for certain how many times various staff members were
12 there. There was a team that did the MGP
13 investigation. There was a separate team that did
14 the plant investigation. The total number of the
15 staff that comprised those two teams that were at the
16 sites I can't say for certain.

17 Q. Did the team that did the plant
18 investigation for purposes of its recommendation with
19 regard to MGP recovery, was that the same team that
20 would have investigated plant in service for purposes
21 of ratemaking?

22 A. Yes.

23 Q. Are you aware of whether there was any
24 recommendation in the electric or the gas rate case
25 to disallow any plant in service?

1 A. Yes.

2 Q. And do you recall that such a
3 recommendation was made in the Staff Report?

4 A. I believe page 6 of the Staff Report
5 includes items that were recommended for
6 disallowance.

7 Q. Can you point me to where that is again,
8 please?

9 A. It's page 6 of the Staff Report. It
10 starts at the top of page 6 where it says "Hartwell
11 Golf Course Exclusion."

12 Q. Right.

13 A. Staff's proposal to exclude costs
14 associated with a golf course not used and useful in
15 providing utility service for which the company
16 unintentionally left in rate base, the envision
17 center, exclusion, the leasehold improvements, those
18 are items that were excluded from rate base.

19 Q. I appreciate that. I'm just -- let me be
20 more specific. Did staff make any recommendation for
21 disallowance of plant in service related to the MGP
22 sites?

23 A. I believe on page 41 of the Staff Report.
24 I think it's 41. At the bottom of the paragraph that
25 begins "The Eastern Parcel" says the staff made

1 corresponding adjustments to the company plant in
2 service balance in the company's plant.

3 Similar on 43 of the Staff Report.
4 Consistent with -- consistent with this
5 recommendation, the staff made appropriate
6 adjustments to the company plant in service balance
7 to remove the unproductive area of the parcel from
8 the company's plant accounts.

9 Q. And can you show me, Mr. Adkins, where in
10 the B-2 schedule that would be reflected in this
11 case?

12 A. That adjustment was not actually made.
13 It was an omission on my part. I made a mistake.
14 And the omission had -- we briefly considered
15 correcting that omission from the stand with a
16 schedule I would sponsor, but we determined that that
17 would be unfair to the company to spring something on
18 them from the stand, although that's done. I've seen
19 it done in my career.

20 Had the intervening parties objected, I
21 would have sponsored a schedule agreeing with them
22 that it should have been made to the plant in
23 service.

24 Q. We appreciate that, Mr. Adkins. Thank
25 you.

1 And is that the only adjustment to plant
2 in service that you would have recommended in this
3 proceeding?

4 A. I would have recommended -- I would have
5 sponsored a schedule that would have removed from the
6 plant in service balance those parts of the parcels
7 that we -- the staff had determined not used and
8 useful. That's the only part I would have related to
9 the MGP.

10 Q. On page 7 of your testimony you stated
11 that you relied on the testimony of Ms. Bednarcik in
12 determining how you divided up the areas for
13 examination. Do you recall that?

14 A. No. That's not how we determined to
15 divide up the parcels. We note that the company also
16 used the same divisions but those divisions, in our
17 opinion they were there long before the MGP process
18 started.

19 Q. So it's your testimony --

20 A. I'm sorry, remediation process started.

21 Q. Okay. And so Ms. Bednarcik refers to the
22 western parcel, the central parcel, and the eastern
23 parcel of East End as investigative areas.
24 Identified areas; is that correct?

25 A. Yes.

1 Q. And so you used essentially that same
2 reference, correct?

3 A. I believe the Staff Report we said the
4 divisions discussed there were logical so we
5 continued with them, but again, we believe the rate
6 preexisted the remediation efforts.

7 Q. And upon what do you base that
8 understanding?

9 A. Just a -- if you review the historical --
10 I mean, aerial photographs of the site, it's clear
11 that there are fences dividing the properties. We
12 went back to at least 1993 looking at historical
13 aerial photographs from Google, from, I'm sorry,
14 Google Earth and from Hamilton County. You can zoom
15 in on the computer, unfortunately you can't do it on
16 a printed document, but you can zoom in, you can
17 clearly see the fences dividing them.

18 There are streets that divide the parcels
19 and I believe St. Andrews on one side, Pittsburgh
20 Street on the other, at the West End site Mehring
21 divides the site, parking lot north of Mehring Way.
22 There was electrical facilities on the south of
23 Mehring Way. The divisions were -- they were obvious
24 and they preexisted -- they were -- preexisted the
25 remediation effort.

1 Q. And so it's your belief that those fence
2 locations and so forth necessarily divide that East
3 End property up into different -- how would you
4 characterize those different areas then?

5 A. I believe we characterized them fairly
6 clearly in the Staff Report. They were vacant area
7 at least at the eastern parcel, the eastern -- I'm
8 sorry, the East End plant the eastern parcel was
9 largely vacant. The western parcel was largely
10 vacant. And the central parcel was used for gas
11 operations.

12 Q. Okay. You heard Mr. Hebbeler testify
13 yesterday, correct?

14 A. I was here, yes.

15 Q. And did you hear his testimony wherein he
16 said something to the effect that the company treats
17 that site as one big operating area?

18 A. I heard him say that, yes.

19 Q. Do you have any reason to doubt that
20 testimony?

21 A. How the company treats it and how the
22 staff would look at it is not necessarily the same
23 thing. How we look at it, the fences are largely
24 immaterial. They are there because the company
25 accused us of being arbitrary. We are just pointing

1 out we weren't arbitrary.

2 The divisions already existed, but so it
3 wasn't an arbitrary division, but even if the fences
4 weren't there, we still would have made the same
5 conclusions we made and there is still a large vacant
6 area.

7 Q. Okay. Mr. Adkins, have you seen in any
8 document that the company has provided or any
9 document that you've ever looked at with respect to
10 Duke Energy Ohio those parcels divided up in that way
11 other than for remediation purposes?

12 A. Divided up by the company other than the,
13 again, the obvious ones that are there that the
14 company treats them as different, no.

15 Q. And you heard Mr. Hebbeler testify
16 yesterday that the eastern parcel of East End is --
17 is not -- let me -- not "is," was used up until the
18 time of remediation for storage of clean fill dirt
19 that arrived from other gas operations efforts; is
20 that correct? Did you hear that testimony?

21 A. What I heard Mr. Hebbeler say, that the
22 deposit of the clean fill material was discontinued
23 prior to remediation, I believe it was he said during
24 the planning phase perhaps.

25 Q. Okay. So when you were on-site at that

1 property, you would not have observed any clean fill
2 dirt storage, correct?

3 A. There was -- when I was there at the
4 site, both times when I was there it was a vacant
5 parcel with weeds growing, grass growing, and there
6 was no visible clean fill or anything else. It just
7 looked like an empty field.

8 Q. So it was post-remediation, correct?

9 A. When I was there it was post-remediation,
10 I believe that section had already been remediated,
11 yes.

12 Q. Now, on page 41 of the Staff Report and
13 page 16 of your testimony --

14 A. I am at both locations.

15 Q. To summarize, if you will allow me to do
16 so, you looked at where the gas pipelines come into
17 East End at the eastern parcel and you allowed a
18 50-foot buffer for those gas lines, correct, 25 feet
19 from the point in either direction?

20 A. It's unfortunate we use the word "buffer"
21 because "buffer" is not the term we really mean. The
22 term "buffer" is more along the lines of what
23 Ms. Bednarcik or Mr. Margolis described as a buffer
24 between the western parcel at the East End site and
25 what we described as the purchased property.

1 I believe there was a discussion of a --
2 a landscape piece that would provide a buffer so
3 homes being built there wouldn't see the industrial
4 site or the -- located on the central parcel of the
5 East End so there would be kind of a visual buffer.
6 What we mean is more the pipelines were there on the
7 East End. They were in operation while -- while we
8 were visiting the site.

9 And I believe it's Company Exhibit 27, I
10 wouldn't swear to that, but it's the pictures that
11 Ms. Bednarcik took or others took of the site, it
12 showed -- one of the pictures there shows the two
13 lines running side by side. So what we did is we
14 basically, it's the pipes that were in service and a
15 certain amount of distance from those pipes.

16 Those pipes were supported by something,
17 they were supported by the dirt, so how much dirt do
18 you include with those pipes? We included 50 feet,
19 25 feet from the centerline of the pipes was a
20 reasonable distance based on discussions with our gas
21 pipeline safety staff and based on the Sixth Circuit
22 Court of Appeals that are discussed in our case that
23 determined 50-foot zone was reasonable, or there was
24 no other zone identified so that was our rationale

25 So it was not -- it wasn't meant to be a

1 buffer. Unfortunately, there was a lot of confusion
2 or the cause of a lot of confusion. It was the
3 pipelines themselves and the land associated with
4 those pipelines that we determined was the
5 appropriate zone.

6 Q. Okay. Is there a word you would prefer
7 to use today other than "buffer" or shall we just
8 continue with "buffer" for today?

9 A. With that explanation "buffer" is fine.

10 Q. Okay. When you determined what was an
11 appropriate buffer, could you tell me what equipment
12 you anticipated might be used in working on any of
13 those gas pipelines?

14 A. Again, the buffer or the zone really
15 wasn't determined to be -- it was just -- that went
16 to the reasonableness of the sides of the zone. It
17 was that the East End parcel was approximately
18 9.7 acres based on our calculations, and we used
19 those calculations, we used property boundaries
20 identified by Hamilton County. So it was
21 approximately 9.7 acres.

22 9.7 acres when we were there was vacant.
23 There was nothing there. And so how much -- how much
24 was -- the only thing we say that was identified were
25 the pipelines. The pipelines don't need all

1 9.7 acres so what do they need? And in determining
2 what it was was that 50 feet and it was not really
3 designed to allow -- the 50 feet was just reasonable
4 because it would allow the company to work on those
5 pipes if it was necessary. That was all it was
6 designed to do.

7 Q. And I think I understand that, so what I
8 am trying to understand from you is in your rationale
9 you anticipated that there might need to be some
10 maintenance or repair on those pipelines, corrects?

11 A. That wasn't really the basis. It was
12 more what did -- with the lines. What is the
13 property that is used and useful, and it's the
14 pipelines themselves I believe were 20 and 24 inches
15 so that's only going to be about a 4-foot, you know,
16 wide width that didn't seem quite appropriate because
17 the pipelines again are supported by something. They
18 are supported by the dirt and so how much dirt do you
19 use to support that pipeline?

20 We went to look for something so we
21 wouldn't be accused of being arbitrary. We went and
22 found something that was, I guess sustainable or
23 was -- we could point to, and that was 50 feet. And
24 then the only discussion of allowing the company
25 access or whatever, one, it does provide access, but

1 the only point about uncovering the lines or turning
2 equipment or whatever, that was just done to show it
3 is another reason why those zones were reasonable.

4 Q. Okay. So your point being that in order
5 to establish a reasonable zone over the pipeline, you
6 need to allow some access to the pipes and some
7 ability to manage equipment to use in that access,
8 correct?

9 A. That wasn't the primary purpose. That's
10 another reason why 50 feet is reasonable.

11 Q. So we agree that those pipelines may
12 require some maintenance, correct?

13 A. They may require maintenance at some
14 point, yes.

15 Q. And that would include the pipeline as it
16 crosses the Ohio River, correct?

17 A. I don't believe that pipeline is owned by
18 Ohio or Ohio ratepayers are responsible for that, so
19 we didn't consider anything about that pipeline.

20 Q. Okay. So regardless of who may or may
21 not presently own that pipeline, it may require
22 maintenance; isn't that true?

23 A. It may at some point.

24 Q. Okay. And we've -- we are all clear we
25 don't know what that point is right as we sit here

1 today.

2 A. Okay.

3 Q. But we do agree that the pipeline that
4 crosses the river could require maintenance.

5 A. It may indeed.

6 Q. Okay. And when you considered what
7 amount of property to allow over the top of the
8 pipeline, you just generally considered some
9 maintenance but you don't have any specific knowledge
10 as to what equipment might be used to carry out that
11 maintenance, correct?

12 A. And we're talking about the pipelines
13 across the eastern parcel and not near the river?

14 Q. Correct.

15 A. Would you ask your question again.

16 Q. With respect to the pipelines just on the
17 East End parcel where you allowed a 50-foot buffer, I
18 think we agree at some point they may require
19 maintenance, correct?

20 A. Correct.

21 Q. And you allowed a certain amount of space
22 to provide access for that maintenance, correct?

23 A. Again, I believe I stated our purpose was
24 to just try to identify the property that was used
25 and useful. We believe that part of the pipeline was

1 used and useful and the property associated with it
2 was used and useful, but another purpose would have
3 been -- that amount that we allowed is considered
4 used and useful was reasonable was because it would
5 allow maintenance, so with that caveat.

6 Q. Okay. But in making such a determination
7 you don't know what kind of equipment might be
8 required for such maintenance.

9 A. I am generally familiar with it through
10 other work I do here at the Commission. I'm
11 responsible for looking at a number of gas utility
12 replacement projects. I have been out witnessing
13 that so I'm familiar with pipeline -- some pipeline
14 replacement, so I claim no special expertise.

15 Q. Okay. Did you have any discussions with
16 anyone in the gas pipeline safety division with
17 respect to gas pipeline maintenance repair when you
18 made the determination to allow a 50-foot buffer?

19 A. Yes.

20 Q. And who -- with whom were those
21 discussions had?

22 A. John Williams, who is the director of the
23 service monitoring enforcement department and former
24 pipeline engineer. Pete Chase, who is head of gas
25 pipeline safety division. Paul Hollinger, who is a

1 pipeline safety inspector. I believe that was the
2 three of us -- or four, those three and myself.

3 Q. Okay. Thank you.

4 On page 17 of your testimony, do you see
5 footnote 17 on that page?

6 A. Yes.

7 Q. You've cited a number of cases in that
8 footnote, correct?

9 A. Yes.

10 Q. Did you read those cases?

11 A. I read them once.

12 Q. Do you have any understanding of whether
13 those cases -- cases underpin any of the facts in
14 this case?

15 A. The one I recall the most would be --
16 would be the Columbus Southern Ohio Electric Company,
17 No. 83-314-EL-AIR. I actually had a copy of the
18 Staff Report in the docket for that case and in that
19 case the Commission staff recommended, and the
20 Commission accepted staff -- the staff basically
21 divided up electric substations very similar to what
22 the staff did in this case where there were huge
23 sites that the staff determined only small sections
24 were used and useful and the remainder of the
25 property was determined to be not used and useful,

1 therefore, the property itself was taken at a rate
2 base and expenses associated were disallowed.

3 Q. And I assume since that's an electric
4 case, that you would agree with me that there was no
5 MGP remediation involved in that case, correct?

6 A. Correct.

7 Q. And, in fact, the question of cost
8 recovery for MGP remediation has not come before the
9 Commission previously; isn't that correct?

10 A. I believe that's definitely true.

11 Q. Mr. Adkins, you are aware, are you not,
12 with respect to the central parcel at East End and
13 the western parcel at East End, there is some
14 sensitive utility infrastructure involved, correct?

15 A. Yes.

16 Q. And you're aware that there is a need to
17 provide for some significant protection of that
18 sensitive utility infrastructure, correct?

19 A. I believe in this case we have gone to
20 great lengths to avoid even mentioning that.

21 Q. Right. So we all agree that there's good
22 cause not to go too deeply into that topic.

23 A. Regarding any buffers associated with the
24 sensitive infrastructure I am not sure I would agree
25 with, but I agree it's there.

1 Q. Okay. So you dispute the company's
2 recommendations that it needs to protect that
3 infrastructure?

4 A. I dispute -- I think the company can -- I
5 think the company has a duty to protect the
6 infrastructure.

7 Q. Okay. With respect to anything that's
8 done in proximity of that infrastructure, are you
9 aware of any special precautions that the company
10 takes?

11 A. I believe during the remediation the
12 company took precautions by including vibrating
13 monitors around that. I don't know that those
14 vibration monitoring existed prior to.

15 Q. But you don't have any particular
16 geological expertise or education that would help you
17 understand exactly with specificity what kind of
18 protection is required there, do you?

19 A. No.

20 Q. Turning your attention to the West End.

21 A. Okay.

22 Q. West End site, you -- are you aware that
23 the north of Mehring Way parcel of the West End site
24 was used for Duke Energy employee parking prior to
25 remediation?

1 A. I was aware there was a parking lot there
2 prior to sometime in 2011, I believe.

3 Q. Okay. So would you agree with me that it
4 was probably right before the remediation was
5 initiated?

6 A. I believe so, yes.

7 Q. And do you further understand that those
8 employees were both gas and electric Cinergy Ohio
9 employees?

10 A. My understanding from Ms. Bednarcik's
11 prefiled testimony as well as I believe under
12 cross-examination, she indicated that there was
13 several -- employees from several Duke divisions, not
14 just gas and electric. I believe there was also
15 legal, real estate, then a bunch of other things she
16 mentioned.

17 Q. And as a parking lot, would you agree
18 with me there that it is used and useful?

19 A. It was not used and useful to date
20 certain in this case.

21 Q. I understand that's your position. But
22 as a parking lot, prior to that, prior to 2011, would
23 you agree with me it was used and useful?

24 A. Not necessarily. It depends -- portions
25 of it may have been. Those portions that were

1 related directly to either gas utility or gas -- or
2 electric utility, so if staff were able to make a
3 recommendation about that parking lot, it would have
4 been -- it would have been an allocation associated
5 with it based on usage probably.

6 Q. Sure, and I would expect that the company
7 would find that to be a fair -- we would all agree
8 that it needed to be allocated between gas/electric
9 as appropriate, correct?

10 A. Well, and probably not 100 percent
11 allocated to gas, 50 percent gas/50 percent electric,
12 some of it wouldn't be allocated at all because it
13 would not be used by utility personnel.

14 Q. Do you have any understanding of how that
15 parcel will be used once the remediation is complete?

16 A. We asked that question and we were told
17 the parking lot would not be restored. I mean, I
18 understand there was -- there was going to be a
19 surface for major electric transmission lines, but
20 again, that line was not installed. It was not used
21 and useful at the time, and since it's electric, it
22 is not -- it wouldn't be included in this case
23 anyway.

24 Q. Okay. And I believe it's staff's
25 recommendation, and please correct me if I

1 misunderstand this, all of the central parcel at East
2 End was found to be used and useful by staff,
3 correct?

4 A. During the staff site visits, the staff
5 witnessed current gas operations over the entire
6 eastern -- I'm sorry, correct that, central parcel of
7 the East End site.

8 Q. Okay. But there's been no remediation to
9 date on that central parcel, correct?

10 A. My understanding is there might have been
11 one test, dig, I am not sure, drilling, I am not sure
12 exactly what it was. I believe there might have been
13 one and that's it. I don't think there is anything
14 else that I am aware of.

15 Q. Okay. And with respect to I believe you
16 mentioned a little bit earlier the company had used
17 in the process of remediation vibration monitoring
18 and air monitors, correct?

19 A. At the east parcel east -- actually at
20 the East End site, yes.

21 Q. Okay. And staff allowed or recommended
22 that the Commission allow recovery for the expenses
23 of those vibration monitors and air monitors but not
24 all of them, correct?

25 A. That's correct.

1 Q. And can you tell me how you determined
2 which ones should be included and which ones should
3 not?

4 A. Yes. One of our exhibits might help, but
5 I'll describe it. We met with company personnel, I
6 believe the date was October 18. And we had, in
7 response to Staff Data Request 69-001, the company's
8 designation, the company had provided a drawing of
9 the East End -- engineering drawing of the East End
10 site that -- that identified all the facilities, et
11 cetera, at the East End site, it also included the
12 location of the former manufacturing gas plant
13 facilities.

14 On that site Company Witness Bednarcik
15 hand-drew where all the remediation work was and the
16 description, and part of that hand-drawing she
17 included where the air monitor was located and where
18 the vibration monitor was located.

19 So what we did, those that were devoted
20 to the central parcel, since the central parcel which
21 was determined to be used and useful, the staff
22 included the cost for those. I believe it was 5 of
23 10 air monitors were directly related to the central
24 parcel and 7 of 8 vibration monitors were to protect
25 equipment on the central parcel, therefore, the costs

1 for those 100 percent included in our recommendation
2 for recovery.

3 Q. So in your determination you recommended
4 recovery for air monitors and vibration monitoring
5 that were directly adjacent to property that you
6 deemed to be used and useful, correct?

7 A. We believe the expense was incurred to
8 protect property that was -- or employees that were
9 directly related to -- directly -- the property that
10 was in service as used and useful.

11 Q. Okay. And is it your understanding that
12 the vibration monitors and the air monitors that were
13 not located on the central parcel and that were
14 located on property that you deemed not to be used
15 and useful were not present for the safety of Duke
16 Energy Ohio employees that were working on the
17 central parcel?

18 A. Our understanding of those other
19 vibration monitors, I believe one of them was to
20 protect somebody else's sensitive infrastructure and
21 the other air monitors were I believe to protect --
22 basically to see what air -- if nothing was moving
23 offsite, off of the larger parcel, I believe it goes
24 all the way -- we described as the purchased
25 property. I forget where it was, actual placement,

1 but they were not used for protecting Duke employees.

2 Q. And where did you gain that
3 understanding?

4 A. From discussions with, I guess
5 discussions with the company personnel.

6 Q. Can you point to any place in the
7 company's testimony where you see that?

8 A. It was based on we went to the site, we
9 asked, again, our understanding of the purpose for
10 supplying air monitors that were placed at the site
11 boundary, it was determined it was used to make sure
12 that, I guess air particles leaving the site didn't
13 reach above a certain level, so that was not
14 directly -- that was not for protecting Duke
15 employees or employees on the central parcel, that
16 was related to protecting people offsite.

17 Q. Okay. And is it your testimony that it
18 would be imprudent to provide for the safety -- human
19 health and safety of people that are in proximity to
20 the site?

21 A. It wouldn't be imprudent for a company
22 that's doing, you know, some sort of work to protect
23 the surrounding environment but we did allocate some
24 of those costs based on the percentages of property
25 that was used and useful.

1 So we didn't just exclude those costs.
2 We included part of them where based on a percentage
3 of used and useful parcel, so since we couldn't
4 determine specific costs or assign them specifically,
5 we used an average but we did assign part of those
6 costs.

7 Q. Okay. And, again, your assignation of
8 those costs is related to the property you deemed to
9 be used and useful and isn't allocated in some
10 other -- with some other methodology, correct?

11 A. It was based just on the amount that was
12 used and useful.

13 Q. Thank you.

14 With respect to any future remediation
15 that may occur on the central parcel, assuming that
16 company operations continue at that central parcel as
17 they have for many years, would it be your
18 expectation that staff would recommend recovery of
19 that remediation cost?

20 A. Consistent with our arguments in this
21 case and our position in this case, yes.

22 Q. Do you have any knowledge about what the
23 contaminated product was that was removed from the
24 East End?

25 A. My understanding just from discussions

1 during our investigation, from company testimony, and
2 from what I've heard in the course of this hearing, I
3 believe it to be tar-like material and oil-like
4 material and other -- other chemicals.

5 Q. Okay. And based on the testimony you've
6 heard to date, is it your understanding that that
7 tar-like material and oil-like material can move
8 under -- in the earth?

9 A. In my nonexpert opinion, it appears so.

10 Q. Okay. So let me understand something,
11 Mr. Adkins, if the company -- if the staff deems the
12 central parcel to be used and useful, and there's
13 contaminated material under that parcel that is
14 removed, it's my understanding, at least as we sit
15 here today, that consistent with your position you
16 would recommend recovery of those costs, correct?

17 A. Yes.

18 Q. Okay. So let's say that there's
19 contaminated material on that parcel that moves into
20 East End -- eastern parcel or western parcel. Since
21 it's moving from that parcel that you deemed to be
22 used and useful, would you recommend recovery of the
23 removal of that contaminated materials, recovery of
24 costs for removal of that material?

25 A. I think that calls for speculation. It

1 would be the result of an investigation. I think the
2 company's action does keep it from migrating, for
3 example, would raise a question of prudence. So
4 without an investigation, I couldn't -- I couldn't
5 speculate.

6 Q. Do you know of any way that the company
7 could keep it from migrating other than just removing
8 it?

9 A. I don't know.

10 Q. Okay. Now, let me ask you another
11 question, if there's contaminated material on the
12 western parcel or the eastern parcel in areas that
13 you deemed not to be used and useful, if it moves
14 into the central parcel and it's there -- removed
15 from the central parcel, that remediation cost,
16 again, you would recommend recovery for those costs;
17 is that correct?

18 A. I think that's consistent with our
19 position in this case is that expenses incurred
20 should only be recovered from property that is
21 currently used and useful at the date certain.

22 Q. Okay. So one more question, if material
23 moves onto the central parcel and the company removes
24 it, and the staff recommends recovery of the cost for
25 removing that, and then the site is remediated and

1 some years later additional contaminated material
2 moves again into the central parcel, would you --
3 would you recommend recovery of those costs?

4 A. I think it calls for speculation. If the
5 company is aware of a problem and fails to do
6 something about it, then that probably raises a
7 level -- a question of prudence, so I don't know that
8 we would or wouldn't. That would be speculative.

9 Q. Okay. When you were drawing boundaries
10 on the property with respect to what is used and
11 useful, did you consider the movement of the material
12 underneath -- within the property?

13 A. No.

14 Q. And staff recommended recovery of costs
15 based on a cost-per-cubic-foot basis, correct?

16 A. Yes.

17 Q. Can you tell me how you came up with that
18 particular methodology?

19 A. Well, I don't recall it being part of the
20 objections but I'll discuss it. Okay. The
21 methodology, it was -- really didn't have any other
22 way of determining costs. We asked the company if
23 they -- if it could identify costs associated with
24 remediation of one parcel versus another or the zone
25 within a parcel, and we were told that it could not,

1 that the costs were, you know, they were occurring
2 simultaneously and they weren't recorded based on,
3 you know, this project versus this project versus
4 this site -- sorry, I think parcel versus this
5 parcel.

6 So they weren't allocated that way so the
7 costs were -- so we had no other basis, no other way
8 to do it. What we did, we took the cubic feet -- the
9 total cubic feet of the material and then the
10 percentage of basically divided that into the cost.
11 So we ended up getting the cost per cubic foot and
12 then the costs-per-cubic-foot number was applied to
13 the square footage of areas that we deemed to be used
14 and useful.

15 Q. Okay. And so we looked earlier at a
16 table that appears on page 38 of the Staff Report
17 that shows the expenses that were incurred for
18 remediation at East End, correct?

19 A. Yes.

20 Q. And, again, the company provided those
21 expenses on an overall basis? They are not parsed
22 out by any understanding of used and useful property
23 or anything like that, correct?

24 A. Not to my knowledge.

25 Q. So what staff did then was take staff's

1 understanding of how the company should recover those
2 costs and created a methodology to apply that it
3 thought applied to those expenses, correct?

4 A. There were costs that were reported for
5 the East End site, we believe, and they were designed
6 to operate or maintain something. We believe it
7 should have been only to operate or maintain a plant
8 that was in service. We had the total costs but it
9 could not be broken out by parcel or by project, so
10 we did take that number and divide it by the cubic --
11 the square foot.

12 We knew the cubic foot or we were able to
13 average the cubic feet of soil that was replaced or
14 solidified and so we, again, we just averaged all
15 those into a bucket and came up with a single number.

16 Is that responsive to your question?

17 Q. Yes, it is, thank you.

18 Page 24 of your testimony, Mr. Adkins.

19 At line 19 you state that it was reasonable to
20 staff -- for staff to limit the scope of its
21 investigation in this case, correct?

22 A. Yes.

23 Q. And can we agree that you deemed it
24 reasonable because staff doesn't have any expertise
25 in respect to environmental remediation of MGP sites,

1 correct, in terms of the actual work that's done on
2 an -- a remediation site?

3 A. I'm sorry, could you repeat your question
4 again, please?

5 Q. Do we agree that it was reasonable for
6 staff to limit its investigation in this case to
7 appropriate cost recovery in particular because the
8 staff doesn't have any environmental remediation
9 expertise, correct?

10 A. The staff certainly has no expertise in
11 applying environmental standards in this particular
12 instance.

13 Q. And staff is -- staff is accepting the
14 representation of Duke Energy Ohio's certified
15 professional with respect to what was required at
16 this particular site, correct?

17 A. Essentially, yes. I mean, the staff
18 believes that the EPA certified professional, we just
19 have no -- no basis for questioning what is being
20 determined.

21 Q. And with respect to amortization of costs
22 as they are recovered in this case, do you agree that
23 the decision as to what is amortized may or may not
24 be based upon the amount of dollars that are allowed
25 for recovery?

1 A. It's our recommendation here if the
2 Commission were to allow significantly more than ones
3 the staff has recommended, we believe the
4 amortization period should be longer to avoid rate
5 shock.

6 MS. WATTS: I may be done, if I could
7 just have a brief break.

8 EXAMINER PIRIK: Yes. Let's take a
9 10-minute break.

10 (Recess taken.)

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

13 Ms. Watts.

14 MS. WATTS: Thank you, your Honor.

15 Q. (By Ms. Watts) Mr. Adkins, you testified
16 earlier that you read most of the testimony in this
17 case, correct?

18 A. Yes. And the testimony of Ms. Bednarcik
19 is Duke Energy Exhibit 21.

20 Q. Do you have a copy of that up there with
21 you?

22 A. I do not.

23 Q. Just one moment and we'll provide you.

24 Would you turn to page 20 of that
25 testimony, please.

1 A. I'm there.

2 Q. Would you take some time and look at
3 pages 20 to 28 wherein Mr. Bednarcik describes the
4 general process she employed to ensure the
5 reasonableness of costs for MGP period remediation.

6 MR. PARRAM: I'm sorry, are you on her
7 initial testimony? Is this the initial or
8 supplement?

9 MS. WATTS: This is the initial direct
10 testimony.

11 A. Okay.

12 Q. You've reviewed them, and that's the
13 first time you've looked at that, correct?

14 A. No.

15 Q. And do you have any reason to dispute
16 that the process used to ensure the reasonableness of
17 costs in this proceeding was, in fact, a reasonable
18 and prudent process?

19 A. Staff did not object to the -- the
20 process that was used. In the Staff Report. I don't
21 know if I go beyond that.

22 Q. Okay. Thank you.

23 Mr. Adkins, would you turn to page 26 of
24 your testimony. I believe it's question 29. Would
25 you agree with me, I'm just confirming that all of

1 the issues contained in that question and answer have
2 been resolved?

3 A. I did not -- I was not present during the
4 stipulation discussions that were agreed to in this
5 case, and I have to admit I have not read the
6 stipulation, so I don't -- I don't know if they are
7 resolved. I presume that they are but I don't know
8 for certain.

9 Q. Okay. And then one last question,
10 Mr. Adkins, returning again to the issue of the
11 deferral that has been granted to Columbia Gas, we
12 understand that at least some portion of the costs
13 that are in that deferral are related to plant that
14 is not owned or presently operated as utility plant
15 for the company, correct?

16 A. When you say "we understand that," who is
17 the we?

18 Q. You and I.

19 A. My understanding that's what the
20 Commission said in its original entry.

21 Q. Okay. And is it your understanding that
22 the Commission would allow a deferral or approve a
23 deferral for a plant that is not used and useful with
24 an understanding that it would never be allowed for
25 recovery in rates?

1 A. I believe this Commission spoke quite
2 clearly on that issue both 08-606 entry and also in
3 the 09-712 entry, specifically I said it would look
4 at recoverability in the future. The Commission was
5 quite clear that the deferral was simply that, a
6 deferral and not ratemaking.

7 Q. Okay. So it's staff's testimony -- let
8 me just make sure I understand this, that the
9 Commission will allow a deferral for recovery of
10 costs for something which it has absolutely no
11 expectation or no present understanding of whether
12 those costs will be recovered in the future?

13 MR. PARRAM: Objection. Mr. Adkins is
14 not the Commission so he can't speculate as to what
15 the Commission may or may not know.

16 EXAMINER PIRIK: Objection overruled.

17 You can answer, Mr. Adkins.

18 A. I believe the Commission speaks through
19 its entries and orders and the entries and orders in
20 those cases have spoken clearly.

21 Q. And in your understanding that the
22 Commission has spoken clearly, is it your
23 understanding the Commission is saying we will grant
24 a deferral for expenses that you may never recover in
25 any respect in the future?

1 A. I believe the Commission has spoken quite
2 clearly it would deal with the issue of
3 recoverability in the future.

4 MS. WATTS: Okay. Thank you.

5 EXAMINER PIRIK: Mr. Parram?

6 MR. PARRAM: Thank you, your Honor.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. Parram:

10 Q. Mr. Adkins, do you still have in front of
11 you Kroger Exhibit 5? The entry from the Columbia
12 case that we have been referring to?

13 A. I do.

14 Q. If you could turn to paragraph No. 10 on
15 page 3.

16 A. I'm there.

17 Q. And would you read that into the record,
18 please.

19 A. "Since the requested authority to change
20 Columbia's accounting procedures does not result in
21 any increase in rate or charge, the Commission
22 approves this -- this application without a hearing.
23 The recovery of the deferred amounts will be
24 addressed in Columbia's next base rate case
25 proceeding. As the Supreme Court has previously

1 held, deferrals do not constitute ratemaking. See,
2 for example, Elyria Foundry Company versus Public
3 Utilities Commission, 114 Ohio ST 3d 305.(2007)."

4 Q. So when you have been saying in your
5 cross-examination that the Commission spoke in
6 this -- in Case 08-606, you were talking about this
7 paragraph where the Commission said they would
8 address rate recovery at a later time.

9 A. Yes. This, and I believe there was
10 subsequent documents in this case that also made it
11 clear.

12 Q. Okay. And are you aware of Columbia
13 has -- came in and sought to recover rates from
14 customers yet as it relates to their MGP deferral?

15 A. To my knowledge, it has not.

16 Q. Mrs. Watts asked you some questions
17 regarding a PUCO assessment expense as -- as showing
18 an example about expenses that come up in rate cases.
19 Do you recall that question?

20 A. Yes.

21 Q. And -- and the remediation expense that
22 Duke is seeking to recover in this case, would these
23 be considered O&M expenses?

24 A. Duke requested recoverable -- to recover
25 the remediation expenses as operating and

1 maintenance, or O&M cost, expense, yes.

2 Q. Can you distinguish these between a PUCO
3 assessment and what Ms. Watts was asking about?

4 A. An assessment is just that, an
5 assessment. It's not an operating or maintenance
6 expense. I believe -- I believe that that in a rate
7 case is considered part of what's called "taxes
8 other" in the rate base -- I'm sorry, in the revenue
9 requirement calculation. It's "taxes other."

10 Q. And there are other types of expenses
11 that aren't tied to whether or not plant in service
12 is used or useful, correct, besides just O&M
13 expenses; is that correct?

14 A. There are other expenses associated with
15 plant in service. The depreciation expense, there is
16 property tax expense, for example.

17 Q. Okay. And for depreciation expense and
18 property tax recovery is only allowed on the date
19 certain the property was used and useful in providing
20 service for gas customers, correct?

21 A. Yes, the property tax expense, the
22 depreciation expense is only calculated on property
23 that is used and useful at the date certain.

24 Q. And Mrs. Watts asked you some questions
25 about when you made a determination about the 50-foot

1 buffer. You had discussions with individuals from
2 pipeline safety. Do you recall that question?

3 A. Yes.

4 Q. And you mentioned John Williams and Pete
5 Chase specifically. Do you recall that?

6 A. Yes.

7 Q. And John Williams, I believe he is an
8 engineer or was an engineer and was actually employed
9 with Columbia Gas at the time. He worked for I
10 believe some utility or gas utility.

11 A. To the best of my knowledge, John
12 Williams is a pipeline engineer who was formally
13 employed by Columbia Gas of Ohio actually installing
14 pipe.

15 Q. Okay. So it's safe to assume he has a
16 high level of expertise as it relates to what
17 equipment may or may not be needed to maintain a
18 pipeline?

19 A. In my opinion, he does.

20 Q. And I think you also mention Mr. Pete
21 Chase?

22 A. Yes.

23 Q. Who is also an engineer?

24 A. I'm not certain if Pete is an engineer
25 but he is the head of gas pipeline safety division

1 and he has gone through all the requisite training to
2 be a pipeline expert.

3 Q. Okay.

4 A. Safety expert.

5 Q. I believe Ms. Watts asked you some
6 questions about what -- about investment community
7 and paying attention to deferrals and what -- how
8 that may ultimately affect their decision making. Do
9 you recall that question?

10 A. I do.

11 Q. And is it safe to assume the investment
12 community has paid attention to when Duke got
13 deferral authority from the Commission; isn't that
14 correct?

15 A. Presumably, yes.

16 Q. And is it safe to assume that they also
17 were aware of the fact that although the Commission
18 granted deferral authority, they didn't necessarily
19 grant actual rate recovery from customers; is that
20 correct?

21 A. Presumably, yes.

22 Q. And safe to assume that if they were
23 following the deferral of MGP cost, they would have
24 been aware of Duke's potential liability for quite
25 some period of time; is that correct?

1 A. I would say since the deferrals were
2 granted, yes.

3 Q. As far as you are aware, the investment
4 community has still been investing in Duke Energy --
5 Duke even though they have just received deferral
6 authority and they have potential MGP liability?

7 A. I can only assume Duke is an ongoing
8 concern, so I would think, yes, the investment
9 community is continuing to make investment in Duke.

10 Q. I believe -- Ms. Watts asked you some
11 questions about potentially if some of the oil-like
12 material or tar-like material were to seep from the
13 central parcel to another parcel and what would staff
14 do at that time.

15 You've heard testimony in this -- I
16 believe it was from Mr. Wathen some other parties
17 that purchased the property and that it's not
18 currently being used in the provision of gas
19 services. Have you heard that?

20 A. Yes. I would agree it's not being used
21 for gas services.

22 Q. So hypothetically if there were a
23 substance that were to seep from the central parcel
24 to the western parcel all the way to the purchased
25 property and we were to discover that there was

1 material below the purchased property but the
2 purchased property at that time was still not being
3 used and was vacant like it is today, that wouldn't
4 necessarily make the purchased property used and
5 useful, would it?

6 A. It would not.

7 MR. PARRAM: That's all the questions I
8 have, your Honor.

9 EXAMINER PIRIK: Recross, Mr. Sauer?

10 MR. SAUER: Yes, your Honor, thank you.

11 - - -

12 RECROSS-EXAMINATION

13 By Mr. Sauer:

14 Q. Mr. Adkins, do you recall when Mr. Parram
15 was asking you a question about Kroger Exhibit 5,
16 paragraph 10, and the discussion that deferrals do
17 not constitute ratemaking, correct?

18 A. That is what it says here in paragraph
19 10.

20 Q. And when the Commission considers
21 deferrals for recovery at a later time, the
22 Commission often considers prudence when considering
23 recoverability, correct?

24 A. I believe prudence is one of the things
25 the Commission considers. There would be a number of

1 things the Commission might consider.

2 Q. And staff did not review or investigate
3 the prudence of the investigation or remediation
4 costs in this case, correct?

5 A. Would you repeat your question again,
6 please.

7 Q. The staff did not review the prudence of
8 the investigation or remediation costs in this case.

9 A. Not in its specific investigation, no.

10 Q. But staff could have reviewed or -- let
11 me strike that.

12 Staff didn't review prudence because
13 determination was made they didn't have internal
14 expertise on that issue?

15 A. That's the primary reason, yes.

16 Q. But staff could have retained an
17 environmental expert to investigate the prudence
18 issue, could they not?

19 A. Presumably, yes.

20 Q. Staff's retained experts with particular
21 expertise in other case, correct?

22 A. Yes.

23 Q. For example, MP auditors review the
24 prudence in GCR cases?

25 A. Yes.

1 Q. And Mr. Parram was also asking you some
2 questions regarding the assessments for the PUCO and
3 OCC?

4 A. Yes.

5 Q. And I believe when Ms. Watts was asking
6 you some questions along those lines, she was stating
7 that the company pays those assessments? Was that
8 your recollection of her question?

9 A. Yes.

10 Q. Would you agree that those assessments
11 are collected from customers?

12 A. Those costs are ultimately put in rates
13 and collected from customers, yes.

14 MR. SAUER: That's all I have.

15 EXAMINER PIRIK: Ms. Mohler?

16 MS. MOHLER: No questions.

17 EXAMINER PIRIK: Mr. Hart?

18 MR. HART: Just one question.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Hart:

22 Q. Did Duke have the option of capitalizing
23 the remediation costs instead of expensing them?

24 A. I don't recall how they originally asked
25 for it at the Commission. I don't know if they

1 disclosed when they asked for deferral whether they
2 were that detailed or not, capitalized or expensed,
3 so I don't know what authority they had or didn't
4 have.

5 MR. HART: Okay. Thank you.

6 EXAMINER PIRIK: Ms. Watts?

7 MS. WATTS: No redirect -- recross.

8 EXAMINER PIRIK: I do have one question.
9 On page 25 of your testimony.

10 THE WITNESS: Yes.

11 EXAMINER PIRIK: At line 17 you mentioned
12 that if the Commission does not adopt staff's
13 recommendation but authorizes a larger amount, that
14 you think a three-year period should be warranted
15 similar to what OCC is recommending. OCC is
16 recommending a ten-year period. Is staff looking at
17 more of a period between three and ten years or?

18 I don't really have a specific timeframe
19 set in here so I'm trying to get a feel for where
20 staff comes down on the appropriate length of time.

21 THE WITNESS: I believe I testified with
22 Ms. Watts's questioning me about what other states
23 have done. I think I indicated that ten years seems
24 to be a fairly consistent number. I would think 10
25 years -- the entire amount was granted I would think

1 10 years would be -- more appropriate amount.

2 EXAMINER PIRIK: Okay. Thank you very
3 much, Mr. Adkins.

4 With regard to staff -- staff's exhibits.

5 MR. PARRAM: Yes, your Honor. I would
6 move again for the admission of Staff Exhibit 6.

7 EXAMINER PIRIK: Are there any
8 objections?

9 Staff Exhibit 6 will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER PIRIK: With regard to Duke
12 Exhibit 28. Ms. Watts?

13 MS. WATTS: I'm sorry.

14 EXAMINER PIRIK: That's okay. Duke
15 Exhibit 28.

16 MS. WATTS: Yes, we would move that into
17 evidence, please.

18 EXAMINER PIRIK: Are there any
19 objections?

20 Hearing none, it will be admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER PIRIK: I believe the next
23 witness is OCC.

24 MR. BERGER: Yes, your Honor. We would
25 call Dr. James Campbell to the stand.

1 (Witness sworn.)

2 MR. BERGER: Dr. Campbell, do you have
3 your testimony there?

4 THE WITNESS: I do not.

5 MR. BERGER: You might want to bring that
6 up.

7 MR. SAUER: Are we off the record?

8 EXAMINER PIRIK: No. We will go off the
9 record.

10 (Discussion off the record.)

11 EXAMINER PIRIK: We are going to go back
12 on the record.

13 Mr. Berger.

14 MR. BERGER: Thank you.

15 - - -

16 JAMES CAMPBELL

17 being first duly sworn, as prescribed by law, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Berger:

21 Q. Good morning, Dr. Campbell. Would you
22 please state your full name and business address for
23 the record.

24 A. My name is James Campbell. I work at
25 Engineering Management, Inc. That's located in

1 Pittsburgh, Pennsylvania.

2 Q. Would you give your full business
3 address.

4 A. 1500 Ardmore Boulevard, A-R-D-M-O-R-E,
5 Suite 502.

6 Q. And did you cause to be prepared direct
7 testimony and attachments in this proceeding?

8 A. I did.

9 MR. BERGER: Your Honor, at this time we
10 would like to have marked as OCC Exhibit No. 15
11 Dr. Campbell's testimony -- direct testimony, and the
12 attachments which are Attachments 1 through 4 and
13 that concludes -- I guess we would mark the public
14 version as number -- Exhibit 15, and can we mark the
15 confidential version as just Exhibit 15A perhaps?

16 EXAMINER PIRIK: No, it would be 15.1.

17 MR. BERGER: 15.1, thank you.

18 EXAMINER PIRIK: Now, with regard to --
19 are you done with your introductions of the witness?

20 MR. BERGER: No.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 EXAMINER PIRIK: Okay. Go forward.

23 Q. (By Mr. Berger) Dr. Campbell, do you have
24 any changes, additions, or corrections to your
25 testimony either in the public version, Exhibit 15,

1 or in the confidential version Exhibit 15.1?

2 A. I do not.

3 Q. And with -- and is your testimony and are
4 your attachments true and accurate to the best of
5 your knowledge, information, and belief?

6 A. They are.

7 Q. Was this testimony and the attachments
8 prepared by you or provided by you under your
9 supervision?

10 A. Yes.

11 MR. BERGER: Your Honor, at this time we
12 would -- in light of the fact Dr. -- Mr. Fiore
13 provided testimony basically responsive to
14 Dr. Campbell's testimony on April 22, 2013, we have
15 some additional questions for Dr. Campbell with
16 respect to Mr. Fiore's testimony and his commentary
17 on some issues which are intended to directly address
18 Dr. Campbell's testimony. And we would ask that --
19 to provide oral testimony on those issues at this
20 time.

21 EXAMINER PIRIK: Mr. McMurray, is this
22 your witness?

23 MR. McMURRAY: No, this is the OCC --
24 it's my witness for cross-examination, yes. Sorry.

25 EXAMINER PIRIK: So I'm looking for a

1 response to the proposal by OCC.

2 MR. McMURRAY: Duke believes that this
3 request is highly irregular in the light of PUCO
4 proceedings, particularly given that Duke filed
5 testimony in accordance with the attorney examiner's
6 entry, and to now be asked to provide additional
7 testimony at this point seems to be inappropriate.

8 MR. BERGER: Your Honor, may I respond?

9 EXAMINER PIRIK: In just a moment.

10 Mr. Parram, I don't know if you were in
11 the room when Mr. Berger made his motion or request
12 to have further direct. Could you please repeat it
13 because I'm going to ask the other parties if they
14 have a response.

15 MR. BERGER: Yes. We have requested and
16 offered additional testimony from Dr. Campbell in
17 light of the fact that a new witness was presented
18 with new testimony responsive to Dr. Campbell last
19 Monday, April 22, and in light of the fact that the
20 company's testimony which would normally be filed
21 first in a proceeding and OCC's testimony would
22 normally follow that and, therefore, OCC did not
23 previously have an opportunity to provide response to
24 the testimony, so we are asking for the opportunity
25 to do so at this time.

1 MR. PARRAM: Is this additional testimony
2 we've seen before?

3 MR. BERGER: No. This is oral testimony
4 we are asking to present.

5 And I would just note, your Honor, Rule
6 4901 --

7 EXAMINER PIRIK: Just a minute,
8 Mr. Berger.

9 MR. BERGER: Okay. Sorry.

10 EXAMINER PIRIK: Ms. Mohler, do you have
11 anything?

12 MS. MOHLER: I don't.

13 EXAMINER PIRIK: Mr. Hart?

14 MR. HART: No.

15 EXAMINER PIRIK: Mr. Parram, you didn't
16 have a response. I don't know.

17 MR. PARRAM: Considering his initial
18 testimony, I don't think it will be an issue for us,
19 but I would like to reserve the right after hearing
20 the testimony if I have a problem at that time to
21 raise an objection to it and move to strike, but I
22 think it would be better just to proceed and hear the
23 testimony, if I could propose that.

24 EXAMINER PIRIK: How lengthy are the
25 questions, Mr. Berger?

1 MR. BERGER: It will probably be a half
2 an hour to 45 minutes, your Honor.

3 EXAMINER PIRIK: Given that, you know,
4 our ruling was that, in our entry was that parties
5 could file testimony and we set a testimony date and
6 that included the company and we've already ruled the
7 company was allowed to file Mr. Fiore's testimony,
8 the company appropriately filed on the date that they
9 filed Mr. Fiore's testimony, and now what I'm hearing
10 is OCC's desire to do rebuttal testimony to that
11 testimony.

12 While we haven't considered rebuttal
13 testimony, we're certainly open to having that
14 discussion at the conclusion of the hearing,
15 hopefully today, but at this point in time we don't
16 think it's appropriate to have the witness on the
17 stand give rebuttal testimony.

18 If we decide that we are going to have
19 rebuttal testimony, then we'll have it prefiled and
20 all the parties will have an opportunity to have
21 their expert look at that testimony and appropriately
22 prepare cross-examination for that witness if they
23 want to have cross-examination.

24 So to go forward right now, I mean, if
25 you would have said you had three or four questions

1 and it was going to take 5 or 10 minutes, then
2 perhaps that wouldn't be as prejudicial, but it's
3 obvious that the company hasn't had an opportunity,
4 their witness is not present to actually hear what
5 the questions are and give them advice on how they
6 could even cross on such questions.

7 So, you know, at this time we can't allow
8 additional questioning. But like I said, when we're
9 concluded with this portion of the hearing, you know,
10 if there are parties, since all that testimony was
11 filed together at the same time, we would allow some
12 leeway if there is a party that wishes to have
13 additional rebuttal testimony. We would consider it
14 at the conclusion of the hearing.

15 MR. BERGER: Your Honor?

16 EXAMINER PIRIK: Yes.

17 MR. BERGER: I just want to, if you don't
18 mind if I -- I realize you seem to have made your
19 ruling.

20 EXAMINER PIRIK: Yes.

21 MR. BERGER: If I could make an
22 additional argument. Would that be appropriate?

23 EXAMINER PIRIK: I think we've made our
24 ruling. I think it's the right ruling to make so no
25 party is prejudiced and everything gets on the record

1 in the right fashion. It is the process that we
2 employ and have employed for a long time, and so I
3 think rebuttal testimony would be the appropriate
4 place to bring that.

5 I understand that you have some
6 additional legal foundation that you would like to
7 lay out, but at this point in time I think the right
8 process is what we have already laid out.

9 MR. BERGER: Would it be possible to
10 proffer Dr. Campbell's testimony and hold -- so it
11 doesn't have to be put in writing and also so that
12 you can decide subsequently as to its admissibility
13 so that since he's here he would not have to
14 reappear, your Honor? He has traveled from
15 Pittsburgh.

16 We did not -- normally we would have the
17 opportunity to respond to the company's testimony.
18 We did not have that in this case. And he's here and
19 I'm just wondering if we couldn't do a proffer at
20 least and you could rule on the admissibility of the
21 testimony subsequently so that he wouldn't have to be
22 here.

23 EXAMINER PIRIK: I mean, I do understand
24 your concern, but you have to understand our concern
25 is more, you know, allowing parties to put the

1 information on the record and actually have an
2 opportunity to review information. I see what you're
3 saying, you know, but the testimony was filed on
4 February 22.

5 At the point in time when you saw that
6 testimony, you had an opportunity to, between
7 February 22 and today, which is May -- May 2, to
8 actually file a request or submit supplemental
9 testimony so that at least the parties would have had
10 the opportunity to review the testimony before we
11 came here today.

12 The -- and I understand your witness is
13 from out of town and, unfortunately, there really
14 isn't anything that we can do about that today. Had
15 we known about it prior to this moment, perhaps we
16 could have set up a process, even Monday if we would
17 have known we could have perhaps set up a process,
18 you know, so that the witness could have come in at a
19 different time and -- but, you know, it doesn't make
20 appropriate process sense to proffer testimony.

21 I mean, if the company is still going to
22 be given an opportunity to cross-examine the witness
23 after they have had an opportunity to look at
24 whatever direct, additional direct you've put forth
25 which would require the witness to come back at a

1 later time because we are not going to have that
2 cross-examination today.

3 MR. BERGER: And just one other thing I
4 do want to note. In our motion to strike Mr. Fiore's
5 testimony we did ask for alternative relief to
6 provide supplemental testimony. When you made your
7 ruling, we -- we believed that you were reserving
8 judgment on that issue until the appearances
9 occurred. And that's why we were asking to provide
10 additional testimony here today.

11 EXAMINER PIRIK: Okay. I do understand.
12 I understand that you asked for on Monday when you
13 filed -- when you requested that the witness's
14 testimony be stricken. But in that situation too, we
15 need to have some type of prefiled testimony.

16 We can't have testimony on the stand so
17 that the other parties don't have an opportunity to
18 review it and do whatever responses and prepare
19 whatever cross they have for that witness.

20 MR. BERGER: They do have two experts
21 here, your Honor.

22 EXAMINER PIRIK: The answer has been
23 given and at the conclusion of this we will discuss
24 possible supplemental rebuttal testimony.

25 MR. BERGER: Absolutely, your Honor.

1 Thank you very much, and we would move then for the
2 admission of OCC Exhibit 15 and the attachments and
3 OCC Exhibit 15.1 and at attachments subject to
4 cross-examination.

5 EXAMINER PIRIK: Thank you.

6 MR. BERGER: The witness is then
7 available for cross-examination, your Honor.

8 EXAMINER PIRIK: Thank you.

9 Ms. Mohler?

10 MS. MOHLER: No questions.

11 EXAMINER PIRIK: Mr. Hart?

12 MR. HART: No questions.

13 EXAMINER PIRIK: Mr. McMurray?

14 MR. McMURRAY: Thank you.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. McMurray:

18 Q. Good morning, Dr. Campbell.

19 A. Good morning.

20 Q. As you will recall, you and I first met
21 less than two weeks ago when I traveled to Pittsburgh
22 to take your deposition. Hopefully your return
23 travel from Pittsburgh to Columbus was -- was good.
24 I would like to really jump right into your testimony
25 and get to some key issues.

1 In looking at your testimony I believe
2 what you're saying is that you believe that Duke
3 Energy Ohio remediation work at the East End and West
4 End sites was in excess of what you believe was
5 required under Ohio's voluntary action program; is
6 that correct?

7 EXAMINER PIRIK: Mr. McMurray, I am so
8 sorry that I am going to interrupt your
9 cross-examination. In the midst of all our
10 discussion here I forgot to actually rule on the
11 confidential and I want to be sure we get that
12 completed so that the witness is aware and secure in
13 what he can and can't respond to and that you all
14 know.

15 First of all, the Bench appreciates all
16 the hard work that went into preparing the documents
17 and we want to give kudos to the staff of the
18 company. I know they were working late last night
19 when we got our version. We will need another copy
20 so, you know, but when you can provide that, that
21 would be appreciated.

22 We've worked a long time with Duke and in
23 actually looking at the items on here and our first
24 question for the other parties, are there any
25 objections to -- well, I guess I should ask

1 Mr. McMurray to make the argument so we have argument
2 on the record as to why the information that is being
3 proposed is confidential is confidential.

4 MR. McMURRAY: Thank you, your Honor.
5 The information redacted from Dr. Campbell's
6 testimony related to items that are -- relate to
7 sensitive infrastructure on a Duke Energy site that
8 is regulated confidentially through the Department of
9 Homeland Security, therefore, it's essential that
10 information related to the sensitive infrastructure
11 owned by Duke as well as sensitive infrastructure of
12 a municipality within that area that is also asked
13 this information be treated confidentially, that that
14 information not be allowed to be made public. And
15 so, therefore, that's the information related to
16 that.

17 I'm also advised that certain information
18 has been redacted related to bids that were solicited
19 and received as to the dollar amounts on the basis
20 that is a trade secret.

21 EXAMINER PIRIK: Are there any responses
22 from any of the other parties? OCC? With regard to
23 the motion for protective order?

24 MR. BERGER: We certainly don't oppose
25 the motion for prospective order.

1 EXAMINER PIRIK: Staff?

2 MR. PARRAM: No, your Honor.

3 EXAMINER PIRIK: Kroger? Mr. Hart?

4 MR. HART: No.

5 EXAMINER PIRIK: Hearing no objections,
6 the Bench has reviewed the information that has been
7 selected and we appreciate that the company has
8 boiled it down to the very minimum and we will grant
9 the motion for protective order. You can provide the
10 appropriate redacted copies to the court reporter and
11 we will go forward.

12 If there are questions on that portion of
13 the information, we will go into a closed session at
14 the conclusion of the open public record.

15 MS. WATTS: Thank you, your Honor.

16 MR. McMURRAY: Thank you. I don't
17 anticipate any questions that will relate to those
18 matters.

19 EXAMINER PIRIK: Now you may proceed.

20 MR. McMURRAY: Thank you, your Honor.

21 Q. (By Mr. McMurray) Dr. Campbell, we will
22 get -- let me restate the question we were starting.

23 What I was attempting to do was to
24 summarize what I understand your testimony to be, and
25 that is that in your view Duke Energy Ohio's

1 remediation work at the East End and West End MGP
2 sites was in excess of what you believe was required
3 under Ohio voluntary action program; is that correct?

4 A. That's correct. I believe that there are
5 other remediation approaches that will be protected
6 that are more cost effective.

7 Q. Okay. And is -- given that you believe
8 Duke's work exceeded what was required under the
9 voluntary action program, you believe at least some
10 of the costs that Duke has incurred were incurred
11 imprudently; is that correct?

12 A. That's correct.

13 Q. Okay. Do you know what a certified
14 professional is under Ohio voluntary action program,
15 or VAP?

16 A. I do.

17 Q. Are you a certified professional under
18 the VAP?

19 A. I am not.

20 Q. Have you ever been a certified
21 professional under the VAP?

22 A. No.

23 Q. Have you ever applied to become a
24 certified professional?

25 A. I have not had the need to do that.

1 Q. Okay. Are any of your employees
2 certified professionals under the VAP?

3 A. They are not.

4 Q. Are you aware that Ohio EPA offers
5 training through the VAP program?

6 A. I'm aware of the Ohio EPA VAP
7 requirements.

8 Q. My question here related primarily to are
9 you aware that Ohio EPA makes training available
10 primarily to certified professionals but Ohio EPA has
11 training concerning the voluntary action program that
12 it makes available periodically?

13 A. My understanding of the VAP program there
14 are requirements for a CP is that you have requisite
15 experience, requisite college degree and references,
16 all of which I have, and they provide training and an
17 application has to go along with it, and I have not
18 taken the training classes.

19 MR. McMURRAY: I would move to strike
20 that aspect of his testimony. My question was simply
21 was he aware whether there was VAP training
22 available, and the witness was responding concerning
23 what the requirements are to become a VAP certified
24 professional.

25 EXAMINER PIRIK: I'll deny the motion,

1 but the witness can further clarify his answer with
2 regard to what Mr. McMurray actually was asking.

3 Could you rephrase your question, please?

4 Q. My question was are you aware that Ohio
5 EPA offers training concerning the VAP?

6 A. I am.

7 Q. Okay. Have you ever attended any
8 training offered by Ohio EPA on the VAP?

9 A. I have not. I've reviewed some of the
10 on-line modules; I have not attended the training
11 personally.

12 Q. Okay. In working on your -- in reviewing
13 this matter and working on your testimony, did you
14 discuss any of your opinions with any certified
15 professionals under the VAP?

16 A. I did not. There was a confidentiality
17 issue here so I didn't think that was an appropriate
18 step to take.

19 Q. Okay. Not even discussing just general
20 VAP rules and requirements with certified
21 professionals?

22 A. I did not.

23 Q. Okay. And in reviewing this matter in
24 preparing your testimony, did you discuss the VAP
25 rules or requirements with anyone at Ohio EPA?

1 A. I did not.

2 Q. Have you ever been involved in cleaning
3 up a manufactured gas plant under the VAP?

4 A. Under the VAP, I have not. Under their
5 other programs, I have.

6 Q. Okay. Have you ever worked on a project
7 in the VAP?

8 A. I have not.

9 Q. In reviewing this matter and forming --
10 preparing your testimony, did you review information
11 on the cleanup of any other MGP sites in Ohio under
12 the VAP?

13 A. Not to my recollection, no.

14 Q. Have you ever participated in preparing a
15 no further action letter under the VAP?

16 A. I have not.

17 Q. Is this the first time you've provided
18 expert analysis or testimony concerning the VAP?

19 A. I'm certainly familiar with the VAP.
20 This is the first time I have provided expert
21 testimony with regard to the VAP.

22 Q. What did you do to learn about the VAP in
23 order to prepare your testimony?

24 A. I reviewed the rules and the guidance
25 documents and also used my experience with working on

1 coal tar sites. The VAP is not grossly different
2 than other environmental statutes and regulations and
3 so a lot of it I am pretty familiar.

4 Q. Have you been involved in remediating any
5 manufactured gas plant sites under other state
6 programs similar to the VAP?

7 A. I worked as a -- as an expert on a
8 manufactured gas plant site in Massachusetts and my
9 role at that site was in the cost recovery part of
10 that but I did review remediation documents as part
11 of that work, that work prepared by Massachusetts.
12 At that state they call them licensed site
13 professional, or LSP.

14 Q. Are you a licensed site professional in
15 Massachusetts?

16 A. I am not.

17 Q. Do you possess any environmental
18 certifications in Ohio?

19 A. Other than a professional engineer's
20 license that I had in Ohio at one time, I do not.
21 There aren't any that are required specifically.

22 Q. So, for example, you are not a certified
23 professional geologist?

24 A. No. I am an engineer.

25 Q. You are not a certified hazardous

1 materials manager?

2 A. No.

3 Q. You were a professional engineer in Ohio?

4 A. Yes.

5 Q. And when did you cease being a PE in
6 Ohio?

7 A. In 2009 I withdrew that.

8 Q. Okay. And why did you withdraw that?

9 A. Again, that was when I had done a lot of
10 work for General Motors and had lost that work as
11 part of the bankruptcy, so I was cutting back
12 business things that I didn't have a need for at that
13 time.

14 Q. Okay. Have you ever provided testimony
15 in a PUCO ratemaking proceeding?

16 A. I have not.

17 Q. Have you ever provided testimony in a
18 ratemaking proceeding in any other state?

19 A. I have not.

20 Q. One of the issues that obviously exists
21 in this matter and is part of your testimony relates
22 to prudence, and just so that everyone gets to
23 participate in this, the -- what's your definition of
24 "prudence"?

25 A. Well, as part of my testimony

1 preparation, I read the Ohio regulation definition of
2 "prudence" and my recollection is that essentially
3 you put yourself in the shoes of the person at the
4 time making the decision and you review what they
5 knew or should have known and you make a decision
6 which is prudent.

7 Q. What a reasonable person would do based
8 on the information they have at the time?

9 A. And experience that they have, yes.

10 Q. Okay. I think that's pretty consistent
11 with what everyone keeps saying.

12 Let me ask you a few questions about
13 prudence and how it applies to this situation. In
14 your opinion was it prudent for Duke to address the
15 East End and West End MGP sites under the VAP?

16 A. I guess that's really a determination
17 that they need to make. I hadn't really thought
18 about that. One thing I have seen is a lot of
19 testimony about that the VAP requires this and that
20 and you have to follow the certified professional no
21 matter what. And it seems rather inflexible to me.

22 Q. Uh-huh. I believe you have significant
23 experience in addressing sites under the federal
24 Superfund law, correct?

25 A. I do.

1 Q. Is it your opinion that it would have
2 been more prudent for Duke to address these sites
3 under the federal Superfund law?

4 A. I think that the VAP provides -- a lot of
5 my testimony talks about looking at site conditions
6 and looking at variances that the VAP allows and
7 those same variances are available in the Superfund
8 so, and so really what I think I'm saying is that
9 there is an alternate approach to clean up these
10 sites which makes use of variances in different
11 interpretations of regulations and those -- those
12 remedies are available no matter what kind of program
13 you are on.

14 Q. So alternate approaches under the VAP.
15 As opposed to say, for example, you know, another
16 option would be for Duke to seek to have Ohio EPA
17 issue an enforcement order.

18 A. That's certainly an option.

19 Q. Do you think -- would that have been a
20 better approach to addressing the sites than
21 addressing them under the VAP?

22 A. Really to me, prudence doesn't get to
23 which program you are under, it gets to the remedy
24 you are performing, how much money you are spending.
25 So I would look at prudent from that perspective of

1 the end point, of the end product. What's prudent is
2 to do a remedy that protects the environment and is
3 cost effective.

4 Q. Okay. Was it reasonable for Duke to hire
5 companies with VAP certified professionals to assist
6 them in investigating or remediating these two sites?

7 A. I think that's reasonable, yes.

8 Q. Would it be imprudent for Duke to not
9 comply with all VAP applicable standards at these two
10 sites?

11 A. I think you have to comply with the VAP
12 standards, but there are variances that are
13 available, but would suggest a different approach
14 than was followed.

15 Q. I understand, and we'll get a chance to
16 talk about, you know, other potential approaches, but
17 I guess for the specific proposition of would you
18 agree that it would be imprudent for Duke to not
19 comply with VAP applicable standards in performing
20 the work at these sites?

21 A. I think I would really need you to give
22 me a more specific example as to what you're talking
23 about.

24 Q. In your opinion is compliance with the
25 VAP the only factor that should be considered in

1 determining the prudence of Duke's actions?

2 A. I think I talked in my deposition about
3 how the VAP and regulations in general in my terms
4 put margins on the page and then within those margins
5 there are options and choices that are made, and so
6 what prudence requires, again, that you be protective
7 of human health and the environment and be cost
8 effective as well. So as long as you are operating
9 within those margins on the page, then you look at
10 protection and cost effectiveness, that's what leads
11 you to prudence.

12 Q. Well, would it be imprudent for Duke to
13 consider factors other than compliance with the VAP
14 in determining a reasonable course of action?

15 A. Can you give me an example of what you
16 might be referring to?

17 Q. Sure. Would it be reasonable for Duke to
18 consider minimizing risk to its employees in
19 determining what actions it was taking at the two
20 sites?

21 A. I think that's real -- that's a VAP
22 requirement, to be protective of human health and the
23 environment, so I think that's covered by the VAP.

24 Q. Would it be prudent to consider the
25 long-term effectiveness or the remedy selected at the

1 sites?

2 A. Certainly it's one of the so-called
3 balancing criteria that you look at.

4 Q. When you're referring to the balancing
5 criteria, are you referring to criteria in Ohio's VAP
6 or under the federal Superfund law?

7 A. That term comes from the Superfund but
8 the concept is just a general engineering one. You
9 know, engineers use alternative analyses across a
10 whole spectrum of activities they undertake. There
11 is never only one solution to a problem, so when
12 you're evaluating options, you balance their pluses
13 and minuses, so you identify criteria and constraints
14 and objectives and you balance those and select the
15 remedy that provides the best balance.

16 Q. Are there two threshold criteria that
17 need to be met when you're conducting that
18 evaluation; namely, one, compliance with applicable
19 state standards and, two, protection of human health
20 and the environment?

21 A. Those are the two listed in the
22 Superfund, certainly.

23 Q. Okay. And would you agree that those are
24 appropriate factors for consideration at the two Duke
25 sites?

1 A. I do.

2 Q. Okay. Do you think it would also be
3 reasonable to consider actions to minimize potential
4 interruptions of operations at facilities associated
5 with the environmental conditions in determining what
6 is a reasonable course of action?

7 A. It's something that should be on the
8 table when you are doing the alternatives analysis,
9 yes.

10 Q. Would it be prudent to consider
11 minimizing risk to the surrounding community around
12 each of the two Duke sites?

13 A. I think that's a part of the
14 protectiveness requirement.

15 Q. Is it important to consider the imply --
16 implementability of the remedies selected at the
17 sites when deciding what is the appropriate course of
18 action?

19 A. That's the Superfund -- again, a
20 Superfund term you are using implementability goes to
21 technical and administrative implementability, so it
22 is a technology is are they available and are there
23 administrative hurdles to get it done, so we have to
24 look at those things, yes.

25 MR. BERGER: Dr. Campbell, could you

1 please raise your voice, I am having a little bit of
2 difficulty hearing.

3 Q. I'm sure you would agree it would be
4 prudent to consider the cost of the remedial approach
5 in determining what is the best course of action as
6 well.

7 A. Yes.

8 Q. Would it be reasonable to consider
9 actions to minimize the risks of third-party lawsuits
10 in determining what is an appropriate course of
11 action?

12 A. I think that's something the company can
13 look at and certainly not a Superfund criteria.

14 Q. In the work that you've done for some of
15 your clients, have you considered that in determining
16 what would be a recommended course of action to
17 remediating property?

18 A. I know it certainly is discussed, and
19 whether that applies to ratemaking, I guess I'm not
20 sure if that particular criteria, how that fits into
21 the ratemaking procurements. I wouldn't be aware of
22 that.

23 Q. How about from the standpoint of managing
24 environmental risk?

25 A. I think that's the company's specific

1 issue, but cost and risk go together. And so how you
2 might choose to balance cost and risk is one issue,
3 but the Commission needs to consider that from the
4 perspective of rate recovery.

5 Q. Would it be reasonable to consider
6 actions to minimize the risk of governmental
7 enforcement actions in determining what's the
8 appropriate course of action to remediate the sites?

9 A. In this instance I guess you are
10 referring to governmental enforcement actions that
11 would replace working under the VAP. Is that what
12 you were getting to?

13 Q. Yes. Say, an enforcement action by Ohio
14 EPA or USEPA or some other governmental entity.

15 A. I guess it would depend on what the
16 issues were. They may or may not be.

17 Q. Do you know whether performing work
18 pursuant to the VAP is a defense to an enforcement
19 action by Ohio EPA relative to the matters being
20 addressed by the voluntary action?

21 A. I believe as long as you are proceeding
22 along in accordance with the VAP, that it provides
23 you some protection from other enforcement actions.

24 Q. In preparing your testimony did you
25 review the testimony of Ms. Bednarcik?

1 A. I did.

2 Q. Okay.

3 MR. McMURRAY: May I approach the
4 witness?

5 EXAMINER PIRIK: Yes.

6 Q. Dr. Campbell, I am handing you what has
7 been marked previously in this proceeding as Duke
8 Energy Ohio Exhibit 21 which is the direct testimony
9 of Ms. Bednarcik, and I put a flag on it which is at
10 page 20, and I realize that your -- your primary
11 concern with regard to what Duke has done is --
12 relates more to the scope of the remediation, but for
13 a minute what I would like to do is just focus on the
14 action that Duke took in terms of implementing the
15 remediation from the standpoint of the selection of
16 contractors, the bidding process, and other things
17 done to ensure that the costs were effective or were
18 minimized in terms of the work that they had selected
19 to do. And that's covered on pages 20 to 28 of
20 Ms. Bednarcik's testimony. Do you recall reviewing
21 that?

22 A. In general, yes.

23 Q. Okay.

24 A. Maybe I should read that now.

25 Q. If you would like, please.

1 MR. BERGER: Your Honor, is he asking
2 questions about an eight-page piece of testimony? I
3 think that's highly unusual.

4 EXAMINER PIRIK: Mr. Berger, I think what
5 he is doing is just fine and the witness is going to
6 take all the time he needs to review those eight
7 pages that he has already read previously.

8 MR. BERGER: Very well, thank you. Just
9 as long as the witness has plenty of time to do that.

10 EXAMINER PIRIK: Absolutely.

11 MR. BERGER: Thank you.

12 Q. I am not asking -- planning on asking
13 detailed questions about this but take your time.

14 A. I feel like I should read it.

15 Q. Absolutely.

16 A. Okay.

17 Q. Okay. So you've had an opportunity to
18 review the pages from Ms. Bednarcik's direct
19 testimony?

20 A. Yes, I have reviewed pages 20 through 28.

21 Q. Okay. And as I indicated, it's not my
22 intent to delve in any detail. What I really wanted
23 to ask is, you know, you are an environmental
24 professional. You have been involved in managing
25 many products, particularly under the federal

1 Superfund law, and I wanted to ask you do you think
2 that the process that Duke utilized in terms of
3 soliciting proposals, engaging consultants and so on,
4 was that a reasonable process?

5 A. What's described in these pages is that
6 Duke followed a competitive bidding process for the
7 designing and construction approach to the site, and
8 that's typically what's done. I did not look at who
9 they bid it to or what the bid results were or how
10 the selection was made, so I can't comment on those
11 aspects of it. But they did follow the typical
12 process of competitive bidding.

13 Q. Is that the sort of process that you
14 would recommend if you were involved in managing a
15 remediation project?

16 A. Yes.

17 Q. I believe that at the core of your
18 concern over Duke's actions is that you believe that
19 Duke either excavated or solidified more tar-like
20 material and oil-like material than they really
21 needed to do under the VAP; is that a fair summary of
22 your concern?

23 A. Yes, it is.

24 Q. Okay. Now, in -- and I believe you have
25 also expressed a concern that as part of reviewing

1 the documentation provided to you in this that you
2 did not see a report that was a comprehensive
3 evaluation of the different remedial alternatives
4 that Duke -- that might have been available to Duke;
5 is that correct?

6 A. I didn't see documentation of any sort of
7 alternatives analysis comprehensive rule or cursory
8 rule. There didn't seem to be much in the way of
9 alternative analysis, here.

10 Q. Okay. From the documentation you
11 reviewed?

12 A. Yes. And I think we specifically asked
13 for documentation relating to alternatives analysis
14 and were told that there wasn't any.

15 Q. Okay. And so in terms of what you're
16 thinking that, you know, maybe should be there, is --
17 is that akin to what would be considered a
18 feasibility study if this was a federal CERCLA
19 project?

20 A. Feasibility study has certain -- that's a
21 defined term under Superfund and so I think I have
22 been using the term "alternatives analysis." You may
23 not need to comply with some of the administrative
24 requirements of an FS, but, again, it goes back to
25 standard engineering approach when there is no one way

1 to solve a problem so you want to identify alternate
2 solutions that have different effects and different
3 costs and evaluate those in a sort of fair and open
4 process and arrive at a prudent conclusion.

5 Q. Okay. To your knowledge does the VAP
6 require preparation of such an analysis?

7 A. The VAP does not require that. In my
8 opinion prudence does.

9 Q. Okay. Let's just assume for a minute
10 that the VAP required all of the tar-like material
11 and oil-like material to be removed or solidified in
12 place or otherwise treated as performed by Duke. If
13 that was the requirement that Duke needed to meet,
14 how many different remedial alternatives would exist
15 to accomplish those actions?

16 A. It's hard to sit here at this moment and
17 say, but there would be a few, you know, a small
18 number of alternatives that would be available.

19 Q. Would excavation be one of them?

20 A. Excavation is certainly one.

21 Q. Would in situ solidification be one?

22 A. That would be one.

23 Q. Would containment be one of them?

24 A. Containment is an option to comply with
25 the VAP rules certainly.

1 Q. Would containment achieve the objective
2 of removing, treating, or containing the tar-like
3 material and oil-like material?

4 A. I think you said "containing" there, so
5 containment of would take care of the containment.

6 Q. Do you -- are you familiar with the
7 concept of presumptive remedies?

8 A. I am.

9 Q. What does that mean?

10 A. Superfund parlance it's where EPA, to
11 streamline the process, identifies certain remedies
12 for certain types of sites that are presumptive. I
13 will note for MGP sites they looked at establishing
14 presumptive remedies for MGP sites and decided not to
15 do that. They have established presumptive remedies
16 for landfills, for instance.

17 Q. Are there presumptive remedies for
18 addressing free product?

19 A. Not that I am aware of.

20 Q. Other than excavation in situ
21 solidification, and containment barriers, are there
22 any other remedial alternatives that you are aware of
23 that would accomplish the objective with regard to
24 the tar-like material and oil-like material?

25 A. That goes back to the difference of

1 opinion we have of what the objective is. You know,
2 I think what I have come out and said it's the
3 mobility that matters, presence of tar doesn't
4 necessarily require that it be excavated. It's the
5 mobility and it's ability to impact groundwater past
6 the compliance point. That's the driver. So we have
7 a difference of opinion about what the objective is.

8 Q. Okay. Fair enough. In looking at those
9 three remedial technologies, excavation, in situ
10 solidification, and containment, do you have any
11 opinion as to which technology would be most
12 expensive?

13 A. Excavation, likely.

14 Q. Why is that? Why would that be most
15 expensive at these sites?

16 A. You've got the construction that's
17 involved, the effort to dig it out of the ground, and
18 to haul it off to a landfill. It seems like that's
19 the most costly of those options.

20 Q. Do you feel that would be more costly
21 than in situ solidification?

22 A. I believe. I didn't do that comparison
23 of these two sites. I know the numbers are
24 available. I did not compare those two technologies
25 at this site.

1 Q. Have you been involved at any sites where
2 in situ solidification was performed?

3 A. I have certainly been involved where we
4 used solidification. I have not done that on MGP
5 sites. My understanding is basically it's a delusion
6 technique whether you are mixing in Portland cement
7 with the soil to basically dilute the tar down and
8 keep less water from flowing through it.

9 Q. Okay. And where you do you think
10 containment falls on the spectrum of costs?

11 A. Probably the most cost, but again, it
12 depends what kind of containment you are talking
13 about. These terms, without specifics attached to
14 them, it's hard to say what costs are. Containment
15 can take many forms.

16 Q. Good observation. And I think it's
17 important that we're talking about the same
18 technology. The containment as I'm using it is the
19 installation of a barrier wall in the subsurface to
20 prevent the migration of the tar-like material and
21 oil-like material. And so in this instance that
22 would be a barrier wall essentially from the surface
23 down to nearly 100 feet. If that is the containment
24 technology, would that change your opinion on which
25 one is more expensive?

1 A. Well, this really goes back to the
2 mobility question in that the thing that I have been
3 talking about is that the tar that's not mobile
4 doesn't require a containment wall that goes down to
5 100 feet, and I haven't really seen much effort on
6 Duke's part to determine which -- which portions of
7 tar are mobile and which portions are not mobile, and
8 so one of the things I think should have been done
9 before a remedy was picked to do a better handle --
10 get a better handle on mobility.

11 Q. Well, let's talk about that for a minute.
12 At the Duke East End property on the west parcel,
13 wasn't tar discovered in a deep well at 96 feet?

14 A. That's correct.

15 Q. Okay. Sure seems to me to suggest that
16 the tar is moving in the subsurface.

17 A. In that one location it is, yes, but we
18 don't -- we have not done -- there was not enough
19 investigation done to know how widespread that is and
20 the options for material that's that deep are
21 limited.

22 I gave you an example in my deposition of
23 a site in California that I worked on where there was
24 a tarry waste lagoon and below that lagoon tar
25 extended down to about 100 feet below ground surface

1 and so the remedy at that site was to muck out the
2 lagoon to get the tar out, put a cap on it, and get a
3 variance for the tar that was in the ground all the
4 way down to 100 feet. So, you know, removal or
5 containment walls aren't necessarily the answer for
6 that issue.

7 Q. Well, is it possible that that could wind
8 up being part of Duke's remedy at the East End?

9 A. "That" being?

10 Q. The seeking other methods to deal with
11 the tar that is at the much lower depths.

12 A. The first thing that I would want to do
13 would be to do more detailed investigation of the
14 deep issues. Before I could opine on what would be
15 necessary I would have to understand the scope of the
16 problem there.

17 Q. The -- as part of your work on this, did
18 you visit the two Duke Energy sites?

19 A. I did.

20 Q. And when did you visit the sites?

21 A. It was in November of 2012.

22 Q. And did you visit the site along with
23 others on behalf of the OCC?

24 A. I did.

25 Q. Do you recall who represented Duke during

1 the site visit?

2 A. Jessica Bednarcik was our host that day.

3 Q. Okay. And so when you went to the Duke
4 East End site, what was going on at that site when
5 you were -- when you went there?

6 A. The East End site, we met there and had a
7 presentation in a conference room and then we walked
8 around the site and it was basically vacant lots at
9 that point and the remedy had been completed or the
10 phase of the remedy that you've undertaken so far had
11 been completed.

12 Q. Is it your understanding that Duke has
13 completed all of the investigation remediation that
14 needs to be done at the East End?

15 A. No. I think we've stated clearly that
16 the central parcel needs to be investigated still.

17 Q. Is it your understanding that additional
18 work may need to be done on what Duke refers to as
19 the east parcel and the west parcel?

20 A. You know, I don't recall specifically
21 what they said about their future plans for those two
22 parcels.

23 Q. Okay. How about the property that's been
24 referred to as the purchased parcel?

25 A. I don't recall seeing anything about

1 that.

2 Q. Have you seen any data on soil or
3 groundwater testing on the purchased parcel?

4 A. I don't believe so.

5 Q. So when you were at the Duke Energy East
6 End property, you did not have the opportunity to
7 personally observe any tar-like material or oil-like
8 material while you were there, correct?

9 A. I did not.

10 Q. Okay. Do you have any firsthand
11 knowledge of the tar-like material or oil-like
12 material that was present at East End?

13 A. I've read the reports provided by Duke.
14 That would form the basis of my understanding.

15 Q. When you conducted your site visit, did
16 Ms. Bednarcik share with you and the others any
17 photographs or other materials concerning the work
18 that had been performed?

19 A. There were a few photographs as part of
20 the presentation, yes.

21 Q. The -- what I would like to do is hand
22 you, let's see --

23 MR. McMURRAY: May I approach?

24 EXAMINER PIRIK: Yes.

25 Q. -- what's been marked as Duke Energy Ohio

1 Exhibit 27. Just take as long as you like, just flip
2 through. I primarily want to just know are these the
3 materials that you are referring to that
4 Ms. Bednarcik would have shown to you and others
5 while you were there?

6 A. To the best of my recollection, this
7 represents the materials we saw that day.

8 Q. Thank you.

9 Did you also visit the West End site
10 during your visit?

11 A. I did.

12 Q. What was going on at West End when you
13 went there?

14 A. At that -- at that point they were
15 excavating material in the northwest corner of the
16 parcel north of Mehring Way.

17 Q. Had the work south of Mehring Way already
18 been completed at that point?

19 A. You know, I don't recall that.

20 Q. So is it fair to say when you were there,
21 you did not have the opportunity to personally
22 observe any of the tar-like material or oil-like
23 material that was present at West End?

24 A. In fact, the day that I was there, the
25 material they were digging out looked like brown

1 dirt. There was no evidence of oil at all.

2 Q. Okay. And you were observing that from
3 sort of up above the excavation, the work was being
4 done down in the more of a pit area?

5 A. Yeah, but you could clearly see the
6 lagging on the sidewalls, you can clearly see the
7 piled up dirt that was being excavated. It was brown
8 dirt, there was no evidence of any kind of tar impact
9 in it whatsoever.

10 Q. Now, I believe that part of your
11 testimony is that you believe Duke could have
12 obtained a variance that -- under the VAP that would
13 have allowed more of the tar-like material and
14 oil-like material to stay in the ground; is that
15 correct?

16 A. That's correct.

17 Q. Let's turn to pages 23 and 24 of your
18 testimony. And is this the portion of your testimony
19 that describes the variance that you believe Duke
20 could have applied for to minimize the amount of tar
21 and oil that was removed from the site?

22 A. Yes.

23 Q. Okay. Now, have you been involved in
24 obtaining any variances under the VAP?

25 A. No, but I believe they are similar to

1 variances under other programs which I have been
2 involved in.

3 Q. The -- so in order to learn about the
4 variance process, what did you do?

5 A. I read the VAP rules and I list here the
6 requirements for that, and I will note that one of
7 the requirements is if the cost exceeds the
8 economic -- if the benefit -- excuse me, if the cost
9 exceeds the economic benefit, so clearly saying that
10 a variance can be granted when the costs exceed the
11 benefits that would come from those.

12 Q. And I note that it exceeds the economic
13 benefits as opposed to the environmental benefits.
14 Are "economic benefits" defined in the VAP or in this
15 rule?

16 A. I don't believe so. I'm not sure. But
17 the point I think here is that -- is that you can't
18 just -- there's a way to not spend all the money you
19 have. You can look at what you get for your dollar
20 and then use that as part of your decision criteria
21 when you are evaluating alternatives.

22 Q. Clearly cost is a consideration. But
23 further in your summary, and I note this is just a
24 summary of the criteria to obtain a variance, the
25 first technical in feasibility or if the cost to

1 comply with the applicable standards substantially
2 exceeds the economic benefits, okay, that's one
3 aspect.

4 The second aspect seems to go to a topic
5 that we've talked about and that is ensure public
6 health and safety will be protected. Do you agree
7 with that?

8 A. Uh-huh, yes, I do.

9 Q. Let's look at the third criteria. Can
10 you read that into the record, please.

11 A. It says No. 3, "And if the proposed
12 remediation method is necessary to preserve, promote,
13 protect or enhance employment opportunities or the
14 reuse of the affected property."

15 Q. Okay. So the focus on this factor is
16 "employment opportunities or the reuse of the
17 affected property," correct?

18 A. That's what it states, yes.

19 Q. Okay. Do you know applications for a
20 variance are filed?

21 A. Under the VAP the -- let me answer it
22 this way: There are situations similar to what's
23 encountered at the East and West End sites where I've
24 been involved in applying for variances under other
25 programs.

1 Q. Well, are you aware that variance
2 applications are filed with the Property
3 Revitalization Board?

4 A. I am not.

5 Q. Okay. Let's turn to page 24 of your
6 testimony. And on this page I think in support of
7 your -- your opinion that the variance would be
8 appropriate or could be granted is your referencing a
9 training topic entitled "Free Product Considerations
10 Under Ohio VAP," correct?

11 A. That's correct.

12 MR. McMURRAY: At this time what I would
13 like to do is offer Duke Energy Ohio Exhibit 29. And
14 let me give the witness, I flagged two pages just to
15 help move along but feel free to review the entire
16 document.

17 EXAMINER PIRIK: The document will be so
18 marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 EXAMINER PIRIK: While the witness is
21 looking at that, I would like to off the record for a
22 minute.

23 (Discussion off the record.)

24 EXAMINER PIRIK: We'll go back on record.

25 MR. McMURRAY: Thank you.

1 Q. Dr. Campbell, have you had an opportunity
2 to review the exhibit that you were just handed?

3 A. I have.

4 Q. Okay. Do you believe that that is the
5 same document that you were referencing on page 24,
6 lines 3 and 4 of your testimony?

7 A. I believe that it is, yes.

8 Q. And, Dr. Campbell, how did you become
9 aware of this document?

10 A. Through the VAP website. There was a
11 link to their annual training program and this was
12 one of the topics that was covered in the annual
13 training so I clicked on that link and reviewed
14 this -- this presentation.

15 Q. You did not attend this training program
16 either in person or via webinar, did you?

17 A. I did not.

18 Q. Have you talked to anyone at Ohio EPA
19 about the substance of these materials?

20 A. I have not.

21 Q. Have you spoken with either Mr. Garvey or
22 Mr. McKim who appear to be the authors of these
23 materials?

24 A. I have not.

25 Q. Let's -- let's turn to the page that I

1 placed a flag on simply since they are not numbered
2 but it's Section III, "Implications of Free Product
3 Under the VAP."

4 A. Okay.

5 EXAMINER PIRIK: Ours aren't tagged so I
6 don't know where we are.

7 MR. McMURRAY: It's about a quarter to a
8 third of the way back.

9 THE WITNESS: It looks like this.

10 EXAMINER PIRIK: You can go forward as
11 long as the witness has it.

12 Do you have it, Mr. Berger?

13 MR. BERGER: Yes, I have the page, thank
14 you.

15 Q. So, Dr. Campbell, is this the section of
16 the materials that you're referring to in support of
17 your opinion that Duke could have sought a variance?

18 A. This example that -- there are two
19 examples here and one of the examples one of the CPs
20 obviously is recommending that the owner apply for a
21 variance for a free product consideration.

22 Q. And are you aware of what the conditions
23 were at the site that allowed them to make that
24 request?

25 A. The primary consideration as I read these

1 materials was that they did some testing of the DNAPL
2 that was there and found it to be not mobile.

3 Q. Are you aware of whether they had removed
4 a certain amount of free product prior to making this
5 application?

6 A. There's -- there are two examples here,
7 one is a former underground storage tank area where
8 they were remediated free product. I am not even
9 sure if it's the same facility or not.

10 Q. What page are you on there?

11 A. I think that's at your second -- your
12 second tab where you had, there are two -- two -- I
13 think it's the Section IV "Case Studies." There are
14 two examples.

15 EXAMINER PIRIK: I really hate to do
16 this, I really think we need to number the pages
17 because I don't think that the record is going to be
18 clear as to what we are talking about.

19 MR. McMURRAY: I apologize.

20 EXAMINER PIRIK: That's okay, why don't
21 we just take a minute and we'll. So the top page is
22 going to be 1.

23 THE WITNESS: I will start with page 1 on
24 the cover sheet.

25 EXAMINER PIRIK: We came to 33, so

1 hopefully everyone else will too.

2 THE WITNESS: I have the same number,
3 yes.

4 EXAMINER PIRIK: All right.

5 MR. McMURRAY: I did too.

6 EXAMINER PIRIK: Good. Good, we're all
7 set.

8 THE WITNESS: That's three 33s.

9 EXAMINER PIRIK: So just to be clear what
10 you had just discussed what the implications on
11 page -- that began on page --

12 MR. McMURRAY: I believe we started with
13 page 11, which is the "Implications of Free Product
14 Under the VAP," Section III, and then I think we
15 flipped to the next page, page 12, which begins to
16 discuss the implications of free product.

17 Q. (By Mr. McMurray) Would you agree,
18 Dr. Campbell?

19 A. Yes.

20 Q. Okay. And then I believe my question
21 was, first, whether you were aware of the conditions
22 which existed at the site that allowed them to make
23 this request for a variance.

24 A. Again, when I reviewed this particular
25 presentation, and so I was only able to glean what

1 the presentation provides, and my reference to it was
2 more that CPs do recommend variances and recommend to
3 their clients they be applied for in certain
4 circumstances, and so my reference to this was not to
5 say that these conditions were for the same MGP
6 sites; more to the fact that, yes, CPs, do, in fact,
7 recommend applying for variances under certain
8 conditions.

9 Q. But you're not aware of what those
10 conditions are.

11 A. Well, the issue as I read this particular
12 presentation, my understanding of what I read here
13 was that it really had to do with the mobility of the
14 material. That was the primary consideration, that
15 it wasn't very mobile, so that was going to be the
16 basis primarily for their variance application.

17 Q. So you're not aware to what extent they
18 removed free product at one or both of these sites
19 prior to applying for the variance, are you?

20 A. I'm not. I don't know if they, in fact,
21 removed any.

22 Q. You just don't know because you didn't --
23 you didn't talk to either the authors or Ohio EPA.

24 A. It's not discussed in this handout but
25 what's important to me was that there are certain

1 circumstances where a certified professional
2 recommended that a variance be applied for. And that
3 primarily had to do with mobility.

4 Q. Do you believe technical in feasibility
5 was a consideration?

6 A. Let me just take a moment here and take a
7 look at these slides a little bit.

8 Q. Certainly.

9 A. Page 29 of the handout I think really
10 lays out what this particular CP was recommending as
11 an approach at this site. And just to look at that
12 the first point they cite is weight of evidence
13 demonstrates the mobility, and so, again, it goes
14 back to whether this material is moving or not.

15 They talk about a risk mitigation plan
16 which has to do with I believe protecting people that
17 might come in contact with this material in the
18 future. And then they suggest use of an urban
19 setting designation to groundwater or because of lack
20 of groundwater use, so they are really talking about
21 several variances in a risk mitigation plan here, and
22 that's an approach that I thought would be
23 appropriate at these MGP sites.

24 Q. From reviewing these materials, and I
25 understand you don't have any other background, but

1 just from reviewing these materials, can you
2 determine where the free product was located at the
3 property?

4 A. There's some maps that show where that
5 is.

6 Q. Is it located under the building?

7 A. At least partially. But generally I
8 think it's the mobility issue that's the driver here.

9 Q. You don't believe the fact that the free
10 product is located under the building may have a
11 significant factor in determining whether to pursue a
12 variance of this property?

13 A. I have been involved at sites where there
14 has been material under buildings and you put in
15 skimmer systems, so just the fact there is a concrete
16 floor doesn't stop you from doing something if there
17 is something to be done. But if it's immobile
18 already, that's what they are saying, and the
19 groundwater is not being used, then this particular
20 CP is recommending his client apply for a variance.

21 Q. So in this instance in your opinion a
22 critical component of the suitability of a variance
23 is the fact that this tar or free product was
24 immobile, correct?

25 A. That's correct.

1 Q. Okay. I just have a couple of questions
2 and I'll be wrapped up.

3 Let's assume for a minute that the VAP
4 would permit significant amounts of tar to stay in
5 place using some of the approaches that you've
6 suggested, like engineering controls and
7 institutional controls. Based on your experience,
8 are there risks to human health and the environment
9 in terms of leaving the tar in the ground?

10 A. Well, part of my -- what the plan I
11 proposed to follow would be to have a mitigation plan
12 as part of the future and so if there would need to
13 be excavation in some areas, for instance, that that
14 mitigation plan. Would lay out the steps for how you
15 might deal with the soil, the protection requirements
16 how the soil had to be handled, where it would be
17 disposed of, all those things, and so you can control
18 risks to those kinds of exposure through mitigation
19 plans.

20 Q. So would a risk mitigation plan do
21 anything to prevent a continued migration of this
22 material in the subsurface?

23 A. Again, this goes back to the whole
24 mobility issue in that the first -- the one major
25 thing I thought that Duke really didn't do much of

1 was to figure out how much of this was mobile and
2 much of it wasn't. They just said dig it out from
3 the property foundry. In fact, I seen them digging
4 up clean dirt when I was there so there was really no
5 efforts to look at what was mobile and what wasn't.

6 Q. But you haven't observed any of the
7 tar-like material or oil-like material present at the
8 site perhaps other than the materials that
9 Ms. Bednarcik provided during your site visit?

10 A. No, but I've seen plenty of tar, dirt in
11 my life. I have seen excavations of plenty of tar
12 sites so I know that a lot of material at sites is
13 there's brown-stained dirt and that material is not
14 movable, so I am familiar with that from other sites.

15 Q. Do you recall the depth of the bottom of
16 the tar lagoon at the west parcel of the East End
17 property?

18 A. Not specifically. I know there was a
19 clay layer at 20 feet below ground surface. I don't
20 recall whether it went to that or stopped short. I'm
21 not certain of the bottom of the lagoon.

22 Q. And do you recall the depth at which
23 significant amounts of tar was observed below that
24 lagoon?

25 A. My recollection is that the majority of

1 it was above the clay layer at 20 feet.

2 Q. So if I told you that based on the Phase
3 II investigation and the work, it was actually at a
4 depth of 30 to 40 feet, you would disagree with me?

5 A. I said majority. I know that there were
6 some -- I think the maps in the reports talked about
7 OLM and TLM. So this is a field geologist making a
8 visual observation and describing material and then
9 maps were prepared that showed where these
10 observations were noted.

11 That doesn't really get to whether it's
12 mobile or not. So I've certainly seen observations
13 of the clay layer that showed OLM and TLM but there
14 were a lot more of those above the clay layer. Below
15 that, again, if I was doing this, I would have been
16 looking at some mobility tests.

17 Q. Are you aware of whether Duke performed
18 mobility tests or not?

19 A. I did not read any indication that they
20 did.

21 Q. Back to West End just briefly, since
22 there was some work being done when you were out
23 there, and I think you indicated that what you
24 observed was Duke removing what appeared to be brown
25 dirt, correct?

1 A. That's right.

2 Q. Do you know whether there was any
3 contamination in that dirt?

4 A. I don't.

5 Q. Have you reviewed any results of the
6 materials that were being excavated at that time?

7 A. No. But that's exactly the example of
8 the kind of material you deal with a surface cover in
9 a remediation plan. There is no reason to dig that
10 up.

11 Q. Could there be tar-like material and
12 oil-like material in other areas where they were
13 excavating that you didn't observe when you were
14 present?

15 A. Quite possible, yes.

16 Q. This material is not homogenous across
17 the sites, is it?

18 A. No. In fact, another one of my
19 criticisms was that basically at these sites what you
20 find is there are some areas where a whole area of
21 soil is tarry and a lot of other places it sort of
22 skips around.

23 Some of the pictures of the excavation
24 you can see black-stained material but then there is
25 a lot of brown material around it. Tar contamination

1 is not uniform across the site, yet the remediation
2 was performed across the site, so I thought there was
3 a misapplication here.

4 Q. Strictly under the VAP.

5 A. Misapplication of prudence.

6 Q. Have you discussed with Ohio EPA the
7 general sort of approach to use of engineering
8 controls and leaving the free product in the
9 subsurface?

10 A. Not under the VAP, no. But, again, my
11 experience of 30 years of doing this at tar sites,
12 that's an option that's considered and granted in
13 some cases.

14 Q. So is it your opinion that Ohio EPA
15 supports that type of remedial approach leaving free
16 product in the ground?

17 A. Well, again, I would go back and say the
18 training module is an example of where a particular
19 CP thought this was appropriate to apply for one, and
20 I've certainly been involved in instances, not under
21 the VAP, but where material is left in place.

22 The site of Massachusetts I talked about
23 earlier, that was under the Massachusetts voluntary
24 action program. There was a parcel there where there
25 was a large tar storage tank that had releases over

1 the years, so the subsurface was pretty contaminated.

2 The remedy at that parcel was to dig up a
3 couple of tar boils and put a surface cover over it
4 and so there's an example where the state of
5 Massachusetts thought it was fine to follow a cover
6 in remediation plan approach.

7 Q. And the Massachusetts work, were you
8 actually doing the remediation or was that a project
9 that you were acting as an expert?

10 A. I was an expert and I was reviewing
11 the -- the remedy proposal plans prepared by the LSP.

12 MR. McMURRAY: Okay. I don't have any
13 further questions. Thank you, Dr. Campbell.

14 EXAMINER PIRIK: Thank you.

15 Mr. Parram?

16 MR. PARRAM: No questions, your Honor.

17 EXAMINER PIRIK: Okay. Why don't we
18 just -- I am going to stay in the room and if anyone
19 needs to leave for a break, but why don't we take 3
20 or 4 minutes and go off the record and you can.

21 (Discussion off the record.)

22 EXAMINER PIRIK: We'll we go back on the
23 record.

24 Mr. Berger.

25 MR. BERGER: Thank you, your Honor.

- - -

REDIRECT EXAMINATION

By Mr. Berger:

Q. Dr. Campbell, you were asked some questions about the site visit you took at Duke's East End and West End properties. Do you recall that?

A. I do.

Q. And did you take some pictures the day of the site visit of things you saw at those properties?

A. I did.

MR. BERGER: Your Honor, at this time we would like to be marked as OCC Exhibit 16 copies of the photographs taken by Dr. Campbell the day of the site visit.

EXAMINER PIRIK: The document will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER PIRIK: And I note the document does not have page numbers, so why don't we do our exercise again and everyone put page numbers on them.

EXAMINER PIRIK: We should all have 10 pages.

Q. Dr. Campbell, would you tell me what these photos show about your site visit on -- on the

1 day of that visit, which I believe was November 27,
2 2012?

3 A. Yes, it was November in 2012, and as I
4 said earlier, the day we were there excavation was
5 taking place in the northwest corner of the parcel
6 north of Mehring Way.

7 And the first photo here you can see an
8 excavation and bulldozer and the excavator is digging
9 up material to go offsite, and you can see the
10 stockpiles of soil there and it appears to be brown
11 dirt, certainly not tarry stained.

12 The second photo shows workers along the
13 excavation sidewalls. What's shown in the photo is a
14 lighting system to hold back the sidewall of the
15 excavation, and I'll note in this photo that the
16 workers are not wearing chemical protective
17 equipment. There's no PPE, so-called PPE to protect
18 them from exposure to tars.

19 Page 3, again, is just the excavator
20 bucket digging through some soil, and you can see
21 that it's brown with a lack of tar staining.

22 Item 4 again shows workers in typical
23 construction gear, not special protective equipment.

24 5 is more of the same regarding the
25 workers.

1 6. 7 again shows excavation, digging
2 into some material and that -- that material was
3 darker but that really looked more like cinders and
4 fill material, not tarry stained material.

5 And then pictures 8, 9, and 10 show --
6 there is a circular brick structure there is -- which
7 is a former gas holder and the day we were there
8 was -- there wasn't liquid gooey tar present in that
9 gas holder.

10 Q. Dr. Campbell, the pictures on 8 and 9,
11 there looks to be an access road there or access
12 pathway?

13 A. Yes.

14 Q. It looks to be dark in color. Is
15 there -- would they actually use something dark in
16 color as for ingress and egress?

17 A. Soil has all sorts of color, and my
18 recollection from the day we were there was material
19 that was filled already that was placed after
20 excavation, I believe.

21 Q. So it's not easy -- it's not difficult to
22 mistake what might look like tar-like material
23 from -- from dirt in some instances or from gravel;
24 is that right?

25 A. That's right. And there's a lack in all

1 of these pictures of any sort of liquid gooey mobile
2 tar.

3 Q. All these pictures were at the West End
4 site?

5 A. Yes, taken on November 27, 2012.

6 Q. The date of your visit there was no
7 excavation going on at the East End site to observe;
8 is that correct?

9 A. That's correct.

10 Q. Did you take these pictures yourself?

11 A. I did.

12 Q. Are these true and accurate copies of
13 them?

14 A. They are.

15 Q. Okay. Now, you were asked a number of
16 questions about what you knew about the VAP program
17 and how the VAP program applied rules and things of
18 that nature. Can you tell me what the differences
19 are in your experience between a voluntary program
20 and a mandatory compliance program such as the
21 Superfund program you reference?

22 A. The -- there are a lot of VAP rules for
23 the specific requirements written down but the
24 primary difference is really that the VAP is
25 self-implementing and the Superfund is implemented

1 over the oversight of EPA.

2 But as I read through the VAP rules, what
3 was written therein was very familiar to me. They
4 didn't reinvent the rule when they wrote the VAP in
5 the early '90s. It reflects the basic environmental
6 regulatory practice across the country. There are
7 some differences here and there, but everything I
8 read there looked very familiar to me.

9 Q. And is cost of a remedy taken into
10 consideration in the VAP program?

11 A. Certainly in my testimony I referenced
12 two places where cost was considered, one was in the
13 variance program. In the other there was a VAP
14 guidance document that talked about using soil covers
15 in mitigation plans in lieu of excavation, and in
16 that guidance they reference economic feasibility as
17 being a consideration for why you might not excavate
18 all that material.

19 Q. And do both voluntary programs and
20 compliance programs require meeting of applicable
21 standards to protect human health and the
22 environment?

23 A. Absolutely. I haven't seen an
24 environmental program in my experience that doesn't
25 have protection of the environment as a threshold

1 requirement. That's the whole basis of the
2 environmental base.

3 Q. And are the rules applicable in both
4 voluntary programs and compliance programs subject to
5 interpretation?

6 A. Yes, they are.

7 Q. Are there typical -- are there regulatory
8 decisions reflecting that interpretation both in
9 the -- in the voluntary context and compliance
10 context?

11 A. There are.

12 Q. As a general rule, would you -- do both
13 mandatory compliance and voluntary programs provide
14 for use of similar remediation technologies,
15 institutional and engineering controls and variances?

16 A. Yes, they do.

17 Q. How much time did you spend reviewing
18 Ohio VAP requirements and related documentation
19 associated with the expert opinions you provided in
20 this matter?

21 A. A couple of hundred. I don't remember
22 the exact number but I spent a significant amount of
23 time reviewing this information and I had been
24 familiar with the VAP and my other work under
25 compliance programs in Ohio. We had referenced the

1 VAP from time to time as a reference point and so I
2 was familiar with portions of the VAP through my
3 other work.

4 Q. Now, you were asked some questions about
5 the fact that oil-like material and tar-like material
6 was found on the East End site. I think it was on
7 the west parcel at approximately 96 feet in depth.
8 Do you recall that?

9 A. I do.

10 Q. What are the concerns to be addressed
11 when you find oil-like material and tar-like material
12 at such a depth?

13 A. At that point it's really whether the
14 material is going to migrate further or not. It's
15 very difficult to get it out once it's that deep. In
16 fact, one of the issues about this site was the --
17 even with all the excavation that was done, there's
18 still contamination left in place. And that material
19 will be in place for some time in the future.

20 And so the site's not made like it was
21 before the industrial revolution; there is
22 contamination in place that will remain in place.
23 And so if you've got to deal with those issues going
24 forward anyways, it doesn't make sense to me to have
25 completed such an extensive excavation.

1 Q. And what would you have done -- what
2 would you do now to address those situations, knowing
3 that there's tar-like material and oil-like material
4 at that depth?

5 A. The first thing I would do would be to do
6 a further investigation. I think we have a single
7 location where we find it down at 100 feet and so the
8 first question I have is how extensive is that. So
9 you would probably go out and do additional soil
10 borings or monitoring wells in the vicinity of that
11 location and across the site to determine how big the
12 problem was. You can't really design a fix until you
13 know the scope of the problem, so I would want to
14 understand the scope of the problem better.

15 Q. Now, was that -- were those observations
16 of oil-like material and tar-like material, is that
17 necessarily free product in your opinion?

18 A. An observation of OLM and TLM does not
19 mean free product to mean at that one location that
20 depth they are actual thickness of a well. When you
21 read the NAPL guidance, really what that tells you
22 when you read through all the various guidance
23 documents produced by EPA that you can tell whether
24 you have NAPL or not by looking at borings and test
25 bits, but if you really want to know if it's mobile,

1 you have to put a monitoring well in and see if the
2 material flows into the monitoring well.

3 And the VAP puts a measurement
4 requirement on it, and I have never seen anybody
5 reference a measurement of thickness from a
6 monitoring well. So you really -- mobility really
7 means the stuff moves in the environment and just
8 because you have tar in the environment doesn't mean
9 it's mobile. This is a residual concentration
10 saturation that you can have tar up to a certain
11 concentration in the soil and it's not going to go
12 anywhere.

13 Q. And if the tar in the soil remains where
14 it is, what's the concern about the human health and
15 the environment at that point in time?

16 A. Well, at that point in time you're
17 looking at making sure people don't come in contact
18 with it or you have plans in place to mitigate risks
19 if people do come in contact with it. And then you
20 are looking at long-time groundwater impacts so you
21 would have to have groundwater monitoring going
22 forward.

23 Q. So if that -- if that oil-like material
24 or tar-like material is not mobile and likely to
25 carry into the groundwater, then if it's 96 feet

1 down, it's not a big concern, is it?

2 A. Again, it depends on the scope of that.
3 So we have to go and find whether there was a bigger
4 issue there or not.

5 Q. Now, you used the term NAPL. Can you
6 tell us what you mean?

7 A. Yes, probably need to be careful with
8 these definitions. So NAPL stands for nonaqueous
9 phase liquid.

10 Q. And perhaps you could tell us what that
11 means exactly.

12 A. That's basically an organic liquid, so
13 gasoline, for instance, is an NAPL and then in
14 parlance there's LNAPL which is lighter than water
15 and dense, DNAPL, which is denser than NAPL. Tar,
16 liquid tar is the DNAPL. It's denser than water.
17 It's heavier, it tends to sink.

18 Q. And what will be LNAPL?

19 A. LNAPL, gasoline, oil, floats on top of
20 the water table.

21 Q. In addressing free product, does the
22 assessment have to be -- have to be site specific?

23 A. You've got to -- really in any sort of
24 remedy situation you have to understand your site
25 conditions, so the regulations provide general

1 margins on the page and any remedy decision is
2 obviously based on site-specific information and
3 factors.

4 Q. Now, you were asked some questions about
5 the bidding process and the pages 20 to 28 of
6 Ms. Bednarcik's testimony. Do you recall that?

7 A. I do.

8 Q. And that testimony addressed the
9 competitive bids that were made for the remediation
10 work at the property; is that correct?

11 A. That's correct.

12 Q. You've raised concerns in this case to
13 the alternatives analysis. Did those competitive
14 bids address alternatives that were considered before
15 the remediation was sent out for bid?

16 A. Yes. My testimony provides an alternate
17 view of the remedy selection process. I didn't see
18 where Duke really did alternative evaluations to look
19 at different ways of meeting requirements. All the
20 bidding stuff that we talked about earlier today
21 happened after the remedy decision.

22 So the difference of opinion we have is
23 in the remedy selection and that's where I think the
24 mistake was made. As far as bidding, that had
25 already incorporated what I would consider to be

1 where the mistake was made. So it's post, post
2 remedy selection.

3 Q. Now, the VAP has certain technical
4 guidance compendiums. Are you familiar with those?

5 A. I believe.

6 Q. Did you review those in preparation of
7 your assessment and testimony in this case?

8 A. I did. The VAP website lists the actual
9 regulations and then there's a whole maybe 100 or so
10 guidance points that address different aspects of the
11 regulations and so I reviewed the guidance as well as
12 the regulations.

13 Q. And you were also asked questions about
14 where these regulations address cost. Can a remedy
15 meet applicable standards but be imprudent from a
16 cost perspective?

17 A. Yes. I think the examples we have here
18 are such an example.

19 MR. BERGER: Just one minute to review my
20 notes, your Honor. I may be done.

21 EXAMINER PIRIK: Okay.

22 Q. Just one other area, Dr. Campbell. In
23 terms of the variances, do both voluntary programs
24 and mandatory compliance programs both have variance
25 procedures and processes?

1 A. They do.

2 Q. Do generally -- in your experience do
3 generally the same standards apply in assessing those
4 variances?

5 A. Again, it's site specific. Protection of
6 human health and environment is first and foremost
7 and then variances are considered. I don't think I
8 have read a regulation that doesn't have that
9 variance process in it and those variances are
10 granted depending on site visit conditions. It's
11 very site specific and VAP specific but all
12 regulations have a variance procedure.

13 MR. BERGER: That's all. That's all I
14 have, your Honor.

15 EXAMINER PIRIK: Thank you.

16 Recross, Ms. Mohler?

17 MS. MOHLER: No.

18 EXAMINER PIRIK: Mr. Hart?

19 MR. HART: No, ma'am.

20 EXAMINER PIRIK: Mr. McMurray?

21 MR. McMURRAY: Nothing further.

22 EXAMINER PIRIK: Mr. Parram?

23 MR. PARRAM: No, your Honor.

24 EXAMINER PIRIK: Thank you very much.

25 THE WITNESS: Thank you.

1003

1 EXAMINER PIRIK: Exhibit OCC.

2 MR. BERGER: We would move Exhibits 15
3 and 15.1 including Dr. Campbell's public and
4 confidential attachments now that we know that his
5 testimony is all public at this point in time, your
6 Honor, and we would also move OCC Exhibit 16.

7 EXAMINER PIRIK: Are there any objections
8 to these exhibits?

9 Hearing none, they will be admitted into
10 the record.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 EXAMINER PIRIK: Duke?

13 MR. McMURRAY: Duke would move for
14 admission of Duke Energy Ohio Exhibit 29.

15 EXAMINER PIRIK: Okay. Are there any
16 objections?

17 MR. BERGER: No, your Honor.

18 MR. PARRAM: No, your Honor.

19 EXAMINER PIRIK: It shall be admitted to
20 the record.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER PIRIK: We also have a matter of
23 Mr. Gould's testimony that had been filed and had
24 confidential information in it. I believe the
25 company has pared it down to an appropriate. We do

1 not need to mark it as an exhibit, but we would like
2 to rule on it on the record.

3 MR. SAUER: Okay.

4 EXAMINER PIRIK: I think you need,
5 because it's not -- it's not being submitted as
6 testimony in this case; is that correct? We just --

7 MR. SAUER: Actually all of our testimony
8 was going to be submitted onto the record.

9 EXAMINER PIRIK: Okay.

10 MR. SAUER: We would have.

11 EXAMINER PIRIK: Do you have it all
12 marked?

13 MR. SAUER: We will have it, yes.

14 EXAMINER PIRIK: Okay. You have copies
15 for the court reporters?

16 MR. SAUER: Yes.

17 EXAMINER PIRIK: Including the
18 appropriate redacted testimony of Mr. Gould?

19 MR. SAUER: Yes.

20 EXAMINER PIRIK: Okay. Well, then we
21 will start with OCC with regard to marking those --
22 that testimony.

23 MR. SAUER: Start with Mr. Gould. We
24 would like to have Mr. Gould's testimony marked as
25 OCC Exhibit -- are we up to 17? I believe it's 17.

1005

1 EXAMINER PIRIK: Yes. 17 and --

2 MR. SAUER: And 17.1. This is OCC
3 Exhibit 17 and 17.1. Would your Honors prefer just
4 the newly-redacted exhibit or would you like an
5 entire Mr. Gould's testimony?

6 EXAMINER PIRIK: Just the newly-redacted
7 exhibit, and it is okay with us if you just go
8 through the rest of what you want your exhibits to be
9 numbered.

10 MR. SAUER: Okay.

11 EXAMINER PIRIK: And then when we close
12 the record, you can provide the appropriate copies to
13 the court reporters at that time. I think that would
14 probably be more efficient.

15 MR. SAUER: It sounds like an expedient
16 plan.

17 EXAMINER PIRIK: A more efficient plan.
18 I've done this a while.

19 MR. SAUER: Let's see --

20 EXAMINER PIRIK: I would also note we
21 need to mark the objections, so if you could note
22 that for one of your exhibits.

23 MR. SAUER: Okay.

24 EXAMINER PIRIK: That would be
25 appropriate.

1 MR. SAUER: Did you want the statement
2 that was filed on April 22 marked as an exhibit as
3 well?

4 EXAMINER PIRIK: Objections, just the
5 objections.

6 MR. SAUER: Just the objections, yes.

7 EXAMINER PIRIK: Do you need a moment
8 because we can have objections?

9 MR. SAUER: Do you want to do those next?
10 We can do that.

11 EXAMINER PIRIK: No, go ahead and get all
12 of your exhibits together and then we will do that.

13 While OCC is getting their exhibits in
14 order, we do have other objections that we need to
15 have marked for the record.

16 Duke, I don't believe we marked your
17 objections to the Staff Report.

18 MS. WATTS: Is that right?

19 EXAMINER PIRIK: Is it marked?

20 MS. WATTS: Your Honor, that is correct,
21 that is an inadvertent omission. We would like to
22 have them marked, and I believe they would be Duke
23 Energy Exhibit 30.

24 EXAMINER PIRIK: The document will be so
25 marked.

1007

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 EXAMINER PIRIK: We are just going to
3 have everything marked and take objections to the
4 overall documents at that time.

5 Mr. Hart, you have objections, I believe?

6 MR. HART: My objections didn't pertain
7 to the issues that we tried. I can have them marked
8 if you would like, but they dealt with other issues
9 that were absolved by the stipulation.

10 EXAMINER PIRIK: I think we will go ahead
11 and mark the objections for the people we have here
12 today.

13 MR. HART: Okay. I don't have copies but
14 I've already used Exhibit --

15 EXAMINER PIRIK: I don't think I have an
16 exhibit.

17 MR. HART: Yeah, Greater Cincinnati
18 Health Council Exhibit No. 1, and then Cincinnati
19 Bell objections will be Cincinnati Bell Exhibit 1.

20 EXAMINER PIRIK: Okay.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 MR. HART: I may be confusing my cases
23 since I have been in hearing so long.

24 EXAMINER PIRIK: If you could just
25 provide the court reporters a copy of those, that

1 would be appreciated.

2 Ms. Mohler.

3 MS. MOHLER: I don't have copies either
4 but we will mark our objection as Kroger Exhibit 6.

5 EXAMINER PIRIK: It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 EXAMINER PIRIK: Okay. Are we ready,
8 Mr. Sauer?

9 MR. SAUER: I think so. In the fire
10 drill I can't find Dr. Duann's testimony. It may
11 have been left over in the courtroom.

12 EXAMINER PIRIK: We just need to be sure
13 we get them to the court reporter; they are
14 important.

15 MR. SAUER: And we will do that.

16 Let's see, we'll mark --

17 EXAMINER PIRIK: Do you have them already
18 marked or?

19 MR. SAUER: Yes. OCC objections to the
20 staff report will be OCC Exhibit No. 18. The direct
21 testimony of Steven B. Hines would be Exhibit No. 19.
22 The direct testimony of Ibrahim Soliman would be OCC
23 Exhibit No. 20.

24 The testimony of David Effron would be
25 OCC Exhibit 22. The testimony -- the direct

1009

1 testimony of Scott Rubin would be OCC Exhibit 23.

2 EXAMINER PIRIK: Do you have two more?

3 MR. SAUER: Pardon me?

4 EXAMINER PIRIK: Do you have two more?

5 MR. SAUER: Maybe one more.

6 EXAMINER PIRIK: Mr. Hayes was already
7 marked.

8 MR. SAUER: Yeah, Hayes and Ms. Hagans
9 was already marked.

10 EXAMINER STENMAN: Mr.?

11 EXAMINER PIRIK: Daniel.

12 MR. SAUER: Effron was Exhibit 22.

13 EXAMINER PIRIK: Daniel.

14 MR. SAUER: Daniel Duann, Exhibit 21.

15 EXAMINER PIRIK: 21, thank you.

16 I think those are all the exhibits that
17 we have.

18 MR. SAUER: And then -- yeah.

19 EXAMINER PIRIK: That it?

20 MR. SAUER: I think that is it.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 EXAMINER PIRIK: I believe that's all the
23 exhibits we have for all the parties in the room; is
24 that correct? Anything else that we need to mark for
25 the record?

1 Are there any objections to any of the
2 exhibits that have just been marked before entering
3 them into the record?

4 MS. WATTS: No objections, your Honor.

5 EXAMINER PIRIK: No objection. Hearing
6 none, the exhibits that we just marked will be
7 admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 MR. SAUER: And, your Honor, we would
10 have to bring over a copy of Daniel Duann's direct
11 testimony, and I'll get that to the court reporter
12 this afternoon.

13 EXAMINER PIRIK: Yes.

14 MR. SAUER: And I've got Mr. Campbell's
15 confidential testimony that was -- that was 15.1, I
16 believe.

17 EXAMINER PIRIK: Let's go off the record.

18 (Discussion off the record.)

19 EXAMINER PIRIK: We'll go back on the
20 record.

21 It has been decided that the briefing
22 schedule, that there will be no rebuttal testimony,
23 no one has requested rebuttal testimony, so we will
24 not do that phase.

25 The initial briefs will be due on June 6

1 and the reply briefs will be due on June 20. In
2 addition in those briefs we are very hopeful there
3 won't be any confidential references, anything in
4 those briefs whatsoever, and that everything will be
5 able to be in the open record.

6 In the event that there is a need for
7 confidential, we would prefer that it be very, very
8 limited and that you contact the company before you
9 actually file anything, especially with the sensitive
10 information, to be sure that nothing is accidentally
11 going to be on the open record.

12 We are hoping any redactions can be
13 handled before they are even filed. In other words,
14 we would really like it to be cleaned up so we don't
15 have to suppose and have some type of rounds of
16 redactions and whatnot of, you know, I think everyone
17 is pretty aware what our ruling would be on the
18 information. So just be really sensitive to that,
19 but our hope is we won't have any.

20 In addition, the one thing with regard to
21 the confidential transcript, it only covered four
22 pages of the transcript itself, so rather than do
23 further redactions on that and in light of the fact
24 it's sensitive information, the Bench has decided
25 that that whole transcript will be kept confident and

1 the court reporters will handle those accordingly and
2 that will be part of our protective order.

3 We will actually, when the order comes
4 out in this docket, we will actually set the
5 timeframe for how long these protective orders are
6 going to last; so we're not doing that now, we will
7 do that at the time of the order.

8 MR. SERIO: Do you mean the four pages,
9 the entire transcript?

10 EXAMINER PIRIK: Those four pages just
11 whatever was done under seal.

12 MR. SERIO: Thank you.

13 EXAMINER PIRIK: Are there any other
14 questions we need to address on the record before we
15 close the case?

16 Hearing none, that concludes this
17 proceeding, and we thank everyone for their time.

18 (Thereupon, the hearing concluded at
19 1:02 p.m.)

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1013

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Thursday, May 2, 2013,
and carefully compared with my original stenographic
notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-72278)

- - -

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Case No(s). 12-1685-GA-AIR, 12-1686-GA-ATA, 12-1687-GA-ALT, 12-1688-GA-AAM

Summary: Transcript in the matter of Duke Energy Ohio hearing held on 05/02/13 - Volume IV electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.