

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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Gregory Peck,	:
	:
Complainant,	:
	:
vs.	: Case No. 16-2338-EL-CSS
	:
Duke Energy Ohio, Inc.,	:
	:
Respondent.	:

- - -

PROCEEDINGS

Before Daniel Fullin, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at 10:27 a.m.
on Thursday, November 2, 2017.

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APPEARANCES:

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Pro Se Complainant.

Duke Energy
By Elizabeth H. Watts, Esq.
155 East Broad Street, 20th Floor
Columbus, Ohio 43215

On behalf of the Respondent.

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Thursday Morning Session,
November 2, 2017.

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EXAMINER FULLIN: I'll begin by calling the case. The Commission has scheduled for hearing at this time and place Case No. 16-2338-EL-CSS, which is the complaint of Gregory Peck versus Duke Energy Ohio, Inc. My name is Dan Fullin -- or Daniel Fullin, and I'm the Attorney-Examiner assigned to this case.

I think we'll ask each of the parties for appearances on behalf of both parties and then give a brief introduction. Beginning with you, Mr. Peck, if you would begin by giving your name and address for the record.

MR. PECK: My name's Greg Peck, and I am -- I live at 3268 US Highway 52, the postal address is Felicity, Ohio 45120.

EXAMINER FULLIN: Okay. Thank you.
And the appearance on behalf of Duke.

MS. WATTS: Thank you, Your Honor. Good morning. My name is Elizabeth H. Watts, appearing on behalf of Duke Energy Ohio this morning.

EXAMINER FULLIN: All right. Thank you.
I thought I would briefly describe the

1 way I'm expecting to proceed today. I see that,
2 Mr. Peck, you seem to have arrived alone; so I
3 imagine you're doing all the testimony on your own
4 behalf.

5 MR. PECK: That, I am.

6 EXAMINER FULLIN: You're not bringing in
7 a witness?

8 MR. PECK: No, I'm not.

9 EXAMINER FULLIN: And I was wondering if
10 you planned on introducing any documents that you
11 wanted to leave as part of the record in the case.

12 MR. PECK: Well, in speaking with you on
13 the phone, I want to make sure that my recent
14 documents, the Motion to Supplement the Record, and
15 my Notice of State Citizenship have been recorded.

16 EXAMINER FULLIN: Okay. So the reason I
17 was asking is to make sure that we had enough copies
18 and everyone's familiar with those documents, because
19 when the time comes and you want to introduce them,
20 then I'll mark my copy as an exhibit. And,
21 Ms. Watts, if you already have one, then I won't
22 necessarily request that he provide one to you at
23 this time.

24 MS. WATTS: Your Honor, I do have
25 copies, but at the appropriate time I would like to

1 be heard on those.

2 EXAMINER FULLIN: Okay. I guess we
3 might as well wait until he introduces it, but then
4 at that point I'll let you be heard on that.

5 MS. WATTS: Right.

6 EXAMINER FULLIN: So I just wanted to
7 bring that up in case there was any problem with
8 having enough copies or copies available.

9 MS. WATTS: I think we're good with
10 copies.

11 EXAMINER FULLIN: Then the other thing
12 then, again, we intend to proceed -- Mr. Peck, since
13 you brought the complaint you have the burden of
14 proof, and I would expect that you would go first in
15 providing your side of the case.

16 I would allow both parties before you do
17 that to make an opening statement if they want. The
18 purpose of the opening statement is generally just to
19 maybe inform the -- inform me and the record what it
20 is you expect or intend to present today, and I'll
21 let each side make an opening statement, then after
22 opening statements are made you'll have the burden of
23 going forward with your case. I'll swear you in as a
24 witness and allow you to provide your side of the
25 case. You'll be subject to cross-examination by

1 Ms. Watts or examination by me, and then you'll be
2 able to, you know, respond to those questions and
3 really even present additional testimony in terms of
4 answering those questions.

5 Then after that, I'll ask you if you --
6 if you've rested and you're done presenting your
7 case. And if so, then I'll let Duke go forward and
8 they'll be presenting their side of the case, which I
9 expect would be a presentation of your witness along
10 with the prefiled testimony that was filed.

11 MS. WATTS: That --

12 EXAMINER FULLIN: And you'll have a
13 chance -- she'll be allowed to ask him questions with
14 that evidence or any other questions that she has of
15 the witness first, then you'll get a chance for
16 cross-examination, then she'll have a chance to ask
17 follow-up questions based on any questions that
18 you've raised.

19 And then if at that point -- if -- at
20 some point after that, I'll be asking if Duke is
21 ready to rest and they've presented their side of the
22 case, in which case if they do, then I would allow
23 both parties a chance to make a closing statement,
24 which isn't really part of the testimony, but it can
25 be an argumentative statement or any other kind of

1 statement. Generally what it serves is a
2 summarization or -- to kind of remind the Bench what
3 it is that you think you've accomplished by each
4 side -- accomplished by the presentation of testimony
5 today, and then that will probably bring it to a
6 close.

7 I think I'll wait till the end at that
8 point to find out whether either of the parties are
9 interested in filing briefs in the case. The purpose
10 of a brief is similar to a closing argument in that
11 you would be summarizing what it is that you put on
12 the record and making any argumentative points that
13 tie the testimony to the law and makes advice to the
14 Commission on how it should rule on the case, but
15 I'll bring that up at the end. I'm not saying we're
16 going to have briefs, but I'll address it when we're
17 finished, but -- otherwise finished with the case.

18 So I wanted you -- I don't know how
19 familiar you are with Commission procedures -- to
20 know that's what I'm expecting the way we'll proceed
21 today. So don't have anything else.

22 Does either party have any questions at
23 this point before we get started?

24 MS. WATTS: No questions, Your Honor.

25 MR. PECK: No questions.

1 EXAMINER FULLIN: Okay. Well, then I'll
2 allow, beginning with Mr. Peck, if you would like,
3 you can make an opening statement. If you'd rather
4 just begin providing your testimony.

5 MR. PECK: Should I stand? Sit?

6 EXAMINER FULLIN: Well, if you're going
7 to testify, you can -- I think you can both -- all
8 remain seated. The arrangement is such that there's
9 no problem being heard, and it would be just as easy
10 to remain where you are and you can remain seated.
11 Other than when I do swear you in, I'll have you
12 stand to be sworn in, but other than that, you can
13 remain seated at your place.

14 Again, I'm saying that if you want to
15 make an opening statement, this is your chance. If
16 you would rather not make one and just begin
17 presenting your case, I'll swear you in now and you
18 can do that, whichever you'd like.

19 MR. PECK: I'll do an opening statement.

20 EXAMINER FULLIN: Okay. Go ahead.

21 MR. PECK: Okay. Essentially my
22 complaint is a straightforward, simple one. It's
23 based on the invasion of privacy, invasion of privacy
24 without a warrant. More specifically, the complaint
25 even requires if PUCO -- number one, I want to know

1 if PUCO has the authority to allow a private utility
2 company, which essentially is a monopoly, to invade
3 the privacy, to rule on the issue of invading one's
4 privacy, which is -- as far as I'm concerned is a
5 constitutional issue, both in the Federal
6 Constitution of 1791 and the State Constitution of
7 1851.

8 At the same time, while that -- the
9 Commission is ruling on this and before the
10 Commission has ruled on this, they have allowed Duke
11 to charge me a \$30 a month fee because I've demanded
12 a letter stipulating exactly what a smart meter will
13 be used for. I have limitations in terms of what
14 that smart meter should be used for. So essentially,
15 you know, does Duke or does PUCO have the authority
16 in law to rule on a constitutional issue on the
17 invasion of privacy?

18 When the Complainant originally agreed
19 to allow Duke Energy to deliver electricity to his
20 home and install an electric meter, it was understood
21 that the sole purpose of that meter was to measure
22 and record monthly use of electricity for no other
23 purpose of monitoring electric usage. The
24 Complainant contends that anything beyond such use of
25 monitoring electric use is the invasion of privacy.

1 If Duke wishes to enter into the Complainant's home
2 through a smart meter for any purpose beyond monthly
3 electric use, Duke must request and be granted
4 permission to do so.

5 Now, I have submitted a number of
6 articles. There is not much adjudicated in the way
7 of cases on this issue of the invasion of privacy. I
8 want to read just a couple highlights based upon all
9 of the documentation I've submitted where there are
10 expert organizations; one being the Electronic
11 Frontier Foundation, EFF, and the other one is NIST,
12 the National Institute for Standards of Technology.

13 I quote the Electronic -- there's an
14 attorney at the Electronic Frontier Foundation, and
15 his name is Lee Tien, and he makes a comment that
16 smart meters could tell the government, even the
17 police, what's going on in your home. Inside your
18 home is where the government isn't supposed to
19 intrude without some kind of warrant usually, and yet
20 this data is flowing freely outside your home, then
21 the information gets outside that protected boundary
22 and you start to have a problem.

23 The EFF is concerned what a smart meter
24 might do in the future. We don't know. Number one,
25 we know that this technology is moving very quickly

1 forward, and there will be other uses that maybe Duke
2 won't use it, but somebody can enter into a smart
3 meter outside the company of Duke. I'm sure Duke is
4 doing everything possible to try to prevent people
5 from rendering into it, but just the recent case of
6 Equifax and how Equifax was hacked is a perfect
7 example of how somebody can penetrate into a digital
8 network.

9 The other comment I want to make is from
10 NIST, the extent to which this kind of information
11 could violate people's privacy is pretty great. This
12 is Tien, I'm sorry. This is a continuation of Tien.
13 The NIST -- NIST is going to be a group which I have
14 submitted essentially in the supplement that I have
15 offered to supplement the record. I have a number of
16 issues raised by the NIST document as to what the
17 potential of a smart meter is into the future without
18 knowing what it is.

19 There was -- another quote I wanted to
20 use was at a smart grid and clean power conference in
21 Britain. This is a Siemens, largest electric company
22 in -- electric company provider of technology in the
23 European area. We at Siemens have technology
24 recorded energy consumption every minute, second,
25 microsecond, more or less live. From that, we can

1 infer how many people are in the house, what they do,
2 whether they're upstairs, downstairs, do you have a
3 dog, when do you habitually get up, when do you get
4 up this morning, when do you have a shower, masses of
5 private data. So by entering into your -- the smart
6 meter has the potential to enter into your house
7 almost on a live basis. I'll close that.

8 EXAMINER FULLIN: Okay. Thank you.

9 I did have one question. You mentioned
10 in your statement something about EFF, and I don't
11 know if you referenced what that is, but I didn't
12 catch it if you did.

13 MR. PECK: It's in my -- it's in the
14 information that I submitted in my original
15 complaint.

16 EXAMINER FULLIN: That's another thing I
17 wanted to bring up. The complaint is on file, but
18 it's not considered evidence in the case. So to the
19 extent you want things that were included in the
20 docket already to be considered as exhibits, you
21 would probably need to introduce them as exhibits
22 here at the hearing, and then if I allow them into
23 the record then they'll be considered evidence in the
24 case.

25 Otherwise, they're just pleadings that

1 have to do with the way the case will proceed, but
2 they aren't evidence in the case. I wanted you to
3 know that going into your presentation of testimony.

4 MR. PECK: This documentation is
5 recorded in the supplement that I want to introduce
6 as evidence into the record.

7 EXAMINER FULLIN: Yeah. Again, we'll be
8 dealing with that at the time that you go to actually
9 introduce it.

10 MR. PECK: I don't have the exact quote,
11 what that quoted from.

12 EXAMINER FULLIN: The statement that you
13 made, that you read; so that --

14 MR. PECK: I can add that later.

15 EXAMINER FULLIN: -- that's on the
16 record in terms of not as evidence in the case, but
17 as part of your opening remark.

18 MR. PECK: Okay.

19 EXAMINER FULLIN: So again, that's on
20 the record in terms of what you stated in your
21 opening remark.

22 MR. PECK: Okay.

23 EXAMINER FULLIN: The Commission can
24 rely on that to the extent --

25 MR. PECK: I'll submit that in my brief.

1 EXAMINER FULLIN: Okay. So that
2 concludes your opening statement?

3 MR. PECK: Yes.

4 EXAMINER FULLIN: I think I'll allow
5 Duke to make an opening statement, then I'll come
6 back to you to present your case in chief.

7 So, Ms. Watts, would you like to make an
8 opening statement?

9 MS. WATTS: Yes. Briefly, Your Honor.
10 Thank you.

11 With respect to Mr. Peck's concerns
12 regarding security and privacy, these are not new
13 issues before the Commission. In fact, particular to
14 Duke Energy Ohio, the Commission did a review of
15 those concerns in the 10-2326-EL-RDR, I think it was,
16 case, where it did a midterm review of the Company's
17 deployment. At that time, a third party did a very
18 complete and exhaustive audit of the Company's
19 compliance with all of the NIST standards at the
20 time, and indeed there are people within the
21 Commission who have expertise with respect to those
22 NIST standards who are engaged in discussion with the
23 Company on a pretty regular basis in terms of ongoing
24 compliance.

25 Additionally, the Company has made

1 several attempts to provide information and respond
2 to Mr. Peck's concerns. So, you know, it's not as if
3 we have not attempted to make adjustments for him,
4 but the only thing we know to do would be to remove
5 his meter and he prefers that we not do that.

6 I don't think Mr. Peck's complaint
7 alleges any particular violation of Commission rule
8 or law and, therefore, it fails to state a claim that
9 the Commission can address. And for those reasons, I
10 would reiterate that we have a Motion to Dismiss
11 pending and I would, again, ask that the Commission
12 rule in the Company's favor on that motion.

13 EXAMINER FULLIN: All right. Thank you.

14 So we've had opening statements. Now
15 I'd like to give each side the chance in order to
16 present their case in chief, beginning with you,
17 Mr. Peck. I think it would be appropriate to swear
18 you in, and whatever you state from now on will be
19 considered testimony in the case.

20 Do you swear or affirm that the
21 testimony you'll provide today will be the truth, the
22 whole truth, and nothing but the truth?

23 MR. PECK: I do.

24 EXAMINER FULLIN: Thank you. As I said,
25 feel free to testify from your seat if you'd like.

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GREGORY PECK,
being first duly sworn, as hereinafter certified,
deposes and says as follows:

DIRECT TESTIMONY

MR. PECK: Essentially my testimony is,
again, built both within the complaint and the
supplement that I've given. I'm essentially standing
on those particular documents to be my testimony in
this case.

The comment that was made about me
being -- me being given -- or having information and
documentation submitted to me, none of that
documentation addressed the issue which I'm raising
here. I'm raising an issue of the invasion of
privacy.

As far as I'm concerned, based upon the
information I've read and the documentation that Duke
has presented as their way of protecting data of an
individual, an entry into a house is not even
addressed. There is issues of -- there is
documentation that has been submitted to me talking
about how they're protecting my data, which is being
secured by them from third parties, but that isn't
the issue here, the issue is the invasion of privacy.

1 It's coming into your home without a warrant and
2 collecting information about your behavioral
3 patterns. So the bottom line is I do not want a
4 company or anyone entering into my house, whether it
5 be personally or electronically to collect data.

6 That data can be used to identify
7 behavioral patterns. Behavioral patterns is what a
8 lot of people -- there's a lot of people out there,
9 there's a lot of companies out there that would love
10 to know the behavioral patterns of the dwellers in
11 the house.

12 EXAMINER FULLIN: Okay. And anything
13 further at this time that you wanted to add?

14 MR. PECK: Nothing.

15 - - -

16 EXAMINATION

17 BY EXAMINER FULLIN:

18 Q. Okay. Well, let me ask you this:
19 What -- in terms of an advanced versus a traditional
20 meter, what is it that is installed at your house
21 now?

22 A. A traditional meter.

23 Q. Okay. And there's no advanced meter
24 that has been installed or was one installed and
25 removed or --

1 A. No. There's no meter other than what --
2 the meter that was installed when I originally built
3 the house.

4 Q. Okay. And that's what's called a
5 traditional meter, it's not the advanced meter?

6 A. Yeah. An advanced meter, I assume
7 you're meaning a smart meter.

8 Q. Yeah.

9 A. Again, that's --

10 Q. Terminology.

11 A. -- the terminology, yeah, whatever.

12 Q. I think some of the documents you
13 presented it was referred to as advanced.

14 A. As advanced, I intermix the terms.

15 Q. I think we're talking about a smart
16 meter or advanced meter being the same thing.

17 A. Okay. All right.

18 Q. And a traditional meter is one that
19 isn't tied to the network and doesn't give
20 constant --

21 A. It's one that does not have technology
22 to transmit data or receive data from the home.

23 EXAMINER FULLIN: Okay. Now, I think
24 that you made reference to some of the documents that
25 you included with your complaint. Again, I have the

1 feeling that you would like the Commission to be able
2 to read those documents and make whatever judgments
3 it wants to make about whether they're reliable
4 testimony. So I think you're interested in getting
5 those admitted as part of your testimony; is that
6 right?

7 MR. PECK: Yes, I am. Both -- there's
8 two -- they -- Duke in the information provided to me
9 mentions three third parties. One was the EFF -- or
10 NIST was the primary one. They claim that they're
11 relying primarily on NIST information and NIST's
12 analysis of cyber security. The other one was
13 MetaVu. MetaVu is a third party that went out there
14 and did analysis for Duke.

15 The question is did MetaVu go out there
16 and analyze and rule or give information to Duke as
17 to whether a smart meter can analyze the behavioral
18 patterns of the people within the house? And the
19 best I could tell, based upon my examination of those
20 documents that Duke provided to me, I can't tell
21 anywhere in there where the issue of invasion of
22 privacy or the issue of entering into the home and
23 being able to read the behavioral patterns of people
24 was discussed.

25 EXAMINER FULLIN: Okay. So the three

1 entities that you discussed, are these all -- the
2 information that you're talking about there, is this
3 what's entered in -- or what's contained in the
4 document that you submitted that's called Motion to
5 Supplement the Record, or is it elsewhere?

6 MR. PECK: That information would be
7 in -- yeah, in the supplement. That's information I
8 came across when I went through the documentation in
9 Duke's answer, I went out and started digging into
10 each of these documents, and there was an abundance
11 of information there. It took me quite a while.

12 The one documentation primarily is
13 the -- they even mention it in their documentation,
14 it's NIST document, NIST -- what is it? -- NISTIR 7628,
15 that's a NIST document where they analyze entry into
16 your home on an every 15-minute interval. It seems
17 like 15 minutes has become somewhat of a standard by
18 utility companies to enter into the home. There's a
19 number of theories out there why they selected a
20 15-minute granular period, but still the 15-minute
21 period, according to the NIST documents which they
22 are relying on, states that a lot -- or plenty of
23 information in the way of behavioral patterns can be
24 assessed.

25 EXAMINER FULLIN: Okay. So --

1 MR. PECK: The name of that document, by
2 the way, is Guidelines for Smart Grid Cyber Security.

3 EXAMINER FULLIN: Okay. And so you're
4 interested in having the Commission adopt as hearing
5 testimony the document known as Guidelines for Smart
6 Grid; is that right?

7 MR. PECK: Yes. I mean, what I want the
8 Commission to do is I want them to read in detail and
9 not only select those things that Duke highlights as
10 being cyber security. As far as I'm concerned,
11 reading the -- the regulations for the Commission, it
12 doesn't go in the depth on the whole concept of the
13 invasion of privacy and the study of behavioral
14 patterns in the home.

15 EXAMINER FULLIN: Really the reason for
16 my asking this is I'm basically trying to assist you
17 to get you to identify what documents you want to be
18 part of the record so that --

19 MR. PECK: Well, again --

20 EXAMINER FULLIN: If I don't have an
21 argument that -- I can't consider something because
22 you didn't introduce it.

23 MR. PECK: Well, I thought the complaint
24 would have been submitted to the record, but, again,
25 the supplement is sort of a more clearcut, comprised

1 position that I'm taking on the whole concept of the
2 invasion of privacy.

3 EXAMINER FULLIN: Well, again, I'm just
4 trying to make sure I have a complete record, and I'm
5 trying to get an understanding of what it is that you
6 want. She's going to get a chance to object to
7 whatever it is --

8 MR. PECK: Right.

9 EXAMINER FULLIN: -- and have me make a
10 ruling on whether it comes in or out. I'm trying to
11 get you to identify for me what it is that we're
12 considering, and so what I'm hearing is that maybe
13 you would like to have the complaint and everything
14 that's attached to it --

15 MR. PECK: Submitted into the record.

16 EXAMINER FULLIN: -- considered as your
17 Complainant's Exhibit No. 1, and that you're maybe
18 suggesting, and we'll deal with it separately; but
19 probably you're suggesting that the Motion to
20 Supplement the Record you might want to enter in its
21 entirety as Complainant's Exhibit No. 2; and then I
22 don't know about the -- this -- the other document
23 which had to do with the Notice of Citizenship -- or
24 the State Citizenship document, or perhaps you're
25 looking to have that admitted as Complainant's

1 Exhibit No. 3. If all those things were to happen,
2 would that -- then you'd be satisfied that from your
3 point of view you got the documents into the record
4 that you're trying to get into the record?

5 MR. PECK: Yeah. I didn't realize that
6 you had to submit each of the documents presented.

7 EXAMINER FULLIN: Yeah. That's why I'm
8 trying to present it to you now.

9 MR. PECK: I didn't realize that you had
10 to submit all the documents as exhibits.

11 EXAMINER FULLIN: Yeah.

12 MR. PECK: As far as I was concerned,
13 those went onto the record --

14 EXAMINER FULLIN: Yeah.

15 MR. PECK: -- once I submitted them.

16 EXAMINER FULLIN: You know, I think
17 there was a time when I understood things that way,
18 but I think it's safer if we try to do it the other
19 way.

20 MR. PECK: Okay.

21 EXAMINER FULLIN: Because I have come to
22 understand in my practice here that it's best to get
23 documents that you want the Commission to refer to as
24 evidence in the case submitted as exhibits.

25 So I'm going to propose that you

1 enter -- you have -- I'm going to consider that you
2 ask for the adoption of the three exhibits that I
3 explained. And now I'm going to allow Ms. Watts to
4 go through each of the three, raise any objections
5 she has, and make a decision as to whether or not
6 they can be admitted in the form that I've suggested
7 they should be introduced.

8 MS. WATTS: Thank you, Your Honor. I'm
9 going to take them maybe in reverse order.

10 EXAMINER FULLIN: Sure. That's okay.

11 MS. WATTS: The Notice of State
12 Citizenship that Mr. Peck filed on October 31st, we
13 have no issue with that. We're not contesting the
14 citizenship in any respect. So whether that's in or
15 out of the record is not of concern to Duke Energy
16 Ohio.

17 EXAMINER FULLIN: Okay.

18 MS. WATTS: Secondly, Mr. Peck has two
19 separate documents; his complaint, which is 85 pages,
20 only the first two of which are actually a formal, if
21 you'll use the word formal in this context,
22 complaint. The balance of the pages consist of
23 material that has absolutely no support and can have
24 no support in the record because these are
25 third-party documents that are -- constitute hearsay

1 in this case, and Mr. Peck has not properly created a
2 foundation for them to be entered into the record.
3 So we would move to strike that information and we
4 would ask that it not be considered.

5 The second chunk, if you will, or the
6 second category of documents is -- was filed on
7 October 31st, and that was merely two days ago. So
8 the Company hasn't yet had an opportunity to respond
9 to it. I would ask that the -- this be looked at
10 differently than the complaint in that the motion has
11 allegations related to what the Company claims or
12 what the Company says contained within the motion,
13 and there's no record support or basis for those
14 statements, and I would ask that those be stricken.

15 Then separate from that, there are
16 references to, again, third-party documents, none of
17 which are attached to the motion and none of which
18 are actual first-person documents from Mr. Peck, but
19 all are hearsay and there's no proper foundation to
20 have them be entered into the record, and we would
21 ask that those be stricken as well.

22 EXAMINER FULLIN: Okay. Mr. Peck, you
23 can respond to those three objections to each of the
24 three exhibits.

25 MR. PECK: Okay. The information

1 contained with my original complaint and the
 2 supplement both come from the information that Duke
 3 provided to me as the documentations or the
 4 organizations, they come from organizations that Duke
 5 was using as a third party to analyze their cyber
 6 security system. So even though it may be hearsay,
 7 those are documents -- those are taken from documents
 8 that were used in Duke's analysis of cyber security.
 9 So in terms of that being -- that being part of the
 10 record, I think it should be contained within the
 11 record because it was something that Duke was using
 12 as a means to analyze their cyber security.

13 The other question I have is what
 14 specifically in my Motion to Supplement the Record is
 15 where I made a statement that did not reflect what
 16 Duke had said. I would like to know what the
 17 specifics were of that statement that I made within
 18 my motion.

19 EXAMINER FULLIN: Let's do -- let's
 20 break it down one at a time.

21 MR. PECK: Okay.

22 EXAMINER FULLIN: Let's deal first with
 23 the -- what I'll call the supplements to the original
 24 complaint. And your argument is that these came from
 25 documents that Duke provided to you to try to analyze

1 the security; is that right?

2 MR. PECK: Yeah. In the original -- in
3 the original Motion to Dismiss and the answer, Duke
4 attempted to say that they informed me of all of
5 their cyber security. And I never -- the only
6 documentation I had given to me was from Brian
7 Maynard, and that information didn't even come close
8 to covering the issue that I'm raising. All it did
9 is said this is the way a smart grid works, and we're
10 out there trying to protect your data with our cyber
11 security analysis.

12 Well, their analysis is primarily coming
13 from two companies; NIST and MetaVu. I primarily
14 used NIST's documentation throughout my complaint.
15 In order for me -- in the second answer, they finally
16 provided me information as to how they were analyzing
17 or how they went about analyzing the information of
18 cyber -- you know, cyber security information.

19 EXAMINER FULLIN: When did they do that?

20 MR. PECK: In the second answer.

21 EXAMINER FULLIN: There was a second
22 answer?

23 MR. PECK: There was a second answer
24 that they provided to me.

25 EXAMINER FULLIN: Oh, before this became

1 a formal case?

2 MS. WATTS: If I may, Your Honor,
3 Mr. Peck is getting into settlement -- the settlement
4 discussions that we --

5 EXAMINER FULLIN: Oh, I see. I'm not
6 supposed to know about what takes place in
7 discussions during settlement negotiations.

8 MR. PECK: Well, no -- well, okay.

9 EXAMINER FULLIN: That's outside the
10 record and not admissible.

11 MR. PECK: Well, that -- okay.

12 EXAMINER FULLIN: But, again, I am -- I
13 am trying to find out, I think your claim is that the
14 documents that you're seeking to introduce as
15 supplement to your complaint really came from what
16 Duke was providing to you, that's what I'm hearing.

17 MR. PECK: Correct.

18 EXAMINER FULLIN: So I'm interested in
19 understanding how that happened or if that happened,
20 what's your understanding of how that happened, why
21 should I rely on the fact that it came really from
22 Duke in the first place.

23 MR. PECK: Yeah. I --

24 EXAMINER FULLIN: Understanding that
25 it's the third party thing, that they didn't have

1 anything to do with it and that you didn't have
2 anything to do with it.

3 MR. PECK: Yeah. Up on that point, I
4 had no idea how Duke went about analyzing cyber
5 security and what were the issues that they were
6 raising when they analyzed cyber security. So it
7 wasn't until I received that information in the
8 second answer that gave me a clue as to how they went
9 about analyzing cyber security. I immediately went
10 to those documents and started reading the various
11 documents.

12 MS. WATTS: So, Your Honor, there is no
13 second answer in the record; so we are talking about
14 settlement discussion.

15 EXAMINER FULLIN: Right. I would -- you
16 know, maybe there's another way to characterize it,
17 but I don't really want to hear about discussions
18 that happened during settlement, and I don't know of
19 any second answer that -- you know, in a complaint
20 case there's a complaint and then there's an answer,
21 and that's the end of the pleadings in terms of the
22 introduction of the complaint and the answer.

23 So I think you're going to need to find
24 another way to describe it or -- again, if it's
25 really about discussions that happened during

1 settlement, those are separate from things that can
2 be discussed in the record today.

3 MR. PECK: Okay. I assume she's talking
4 about the 15-minute --

5 EXAMINER FULLIN: Again, I think we're
6 talking about what's supplemental to the complaint
7 that was filed. So I don't understand why we come up
8 after the complaint is filed about what they told you
9 during settlement discussions, because you already
10 had included it. And now you're saying your basis
11 for including it was your understanding from what
12 they told you about what their analysis was. So how
13 could you have already known about that when you
14 filed the complaint and you attached it as
15 supplemental to your complaint when you hadn't --
16 until you filed the complaint, you weren't in
17 discussions with them about their analysis.

18 MR. PECK: Well, essentially I had to go
19 on a fact-finding mission. I had to try to figure
20 out exactly what Duke was doing in analyzing the
21 whole concept of data.

22 EXAMINER FULLIN: What I'm hearing is
23 that you did that, but you're trying to tell me that
24 you did it based on what they told you, and that's
25 what I'm not understanding. Did you do it on your

1 own because you needed to understand better what it
2 is that they provided but they didn't really provide
3 you the thing, you had to go exploring on your own,
4 and that's how you came up with the supplemental
5 information that you're seeking to introduce?

6 MR. PECK: Well, yes. I'm saying that
7 the only way I could respond to Duke's answer to my
8 complaint was to go out and investigate the
9 document -- investigate the documentation they
10 supplied to me. So that is the only way I can
11 analyze exactly what their position is on the whole
12 concept of cyber security.

13 EXAMINER FULLIN: Well --

14 MR. PECK: There was no other way to do
15 it.

16 EXAMINER FULLIN: But, again, that's
17 your research --

18 MR. PECK: Yes.

19 EXAMINER FULLIN: -- on how you're going
20 to respond to things they provided, not something
21 that they provided that you're physically analyzing
22 what they provided. You're doing separate research
23 on your own and bringing it in as third-party
24 information to help understand what the -- the
25 documents that they gave you; is that right?

1 MR. PECK: Correct, because I was only
2 given titles of documentations and no specifics of
3 those documents. I had to go into the documents
4 myself.

5 EXAMINER FULLIN: So the identification
6 of the documents that you later attached as the
7 supplement to your complaint were names of documents
8 that you got from the Company, and you'd simply look
9 them up to find out what they said?

10 MR. PECK: Exactly.

11 EXAMINER FULLIN: Did you want to
12 respond to that or give me a better understanding of
13 what that issue is?

14 MS. WATTS: Well, Your Honor, if, in
15 fact, that is -- again, I would move to strike on yet
16 another basis, which is that apparently Mr. Peck's
17 Motion to Supplement the Record is actually a motion
18 to respond to settlement discussions of some sort.
19 As the Bench has recognized, settlement discussions
20 are not proper topic for this hearing.

21 The only thing we have in the record is
22 the Company's answer to the complaint so far and the
23 testimony that was filed seven days ago.

24 Mr. Maynard's testimony has three documents attached
25 to it. I don't believe any of -- one of them is the

1 Commission's document.

2 EXAMINER FULLIN: Which document are we
3 talking about now?

4 MS. WATTS: This would be BRM-1.

5 EXAMINER FULLIN: Is this the
6 supplements to the complaint or the later --

7 MS. WATTS: These are attachments to
8 Mr. Maynard's testimony.

9 EXAMINER FULLIN: To Mr. Maynard's
10 testimony?

11 MS. WATTS: Yeah.

12 EXAMINER FULLIN: Okay. I'm sorry.

13 MS. WATTS: So we have a Commission -- a
14 document that comes off the Commission's website that
15 explains what a smart grid is. We have a document
16 that the Company shares with customers from Itron,
17 Incorporated that explains what an Itron meter is,
18 and we have a fact sheet that the Company shares with
19 customers that answers basic questions about smart
20 grid.

21 I don't think any of these documents
22 actually refer to any of the items that Mr. Peck has
23 attached to his Motion to Supplement. So the only
24 thing that the supplemental -- the Motion to
25 Supplement addresses is his discussions that he had

1 with the Company during settlement, and I don't think
2 that's proper to be admitted in the record.

3 EXAMINER FULLIN: Do you want to respond
4 to what she said?

5 MR. PECK: Oh, yeah. No, there's -- no.
6 My Motion for -- to Supplement the Record is further
7 research and time that I needed to do a more depth
8 analysis of what those documentations that they
9 supplied to me had within them.

10 EXAMINER FULLIN: They supplied them
11 during the settlement discussions?

12 MR. PECK: No. No. That was supplied
13 to me in the second answer.

14 EXAMINER FULLIN: There is no second
15 answer. When did the second answer happen? It's not
16 filed in the docket.

17 MR. PECK: Well --

18 EXAMINER FULLIN: What you're referring
19 to as the second answer, from what I'm understanding
20 and hearing, was something that happened during
21 settlement discussions --

22 MR. PECK: No.

23 EXAMINER FULLIN: -- because what's on
24 the record is the first answer.

25 MR. PECK: No. This was before the

1 settlement. Duke submitted, as far as I can tell --
2 maybe it was -- it was the answer.

3 EXAMINER FULLIN: They filed an answer
4 on the 21st of December of 2016.

5 MR. PECK: Yeah. No. The information --
6 essentially the information contained within my
7 supplement -- the Motion to Supplement the Record is
8 me using the documentation, not having an in-depth
9 analysis of exactly all the documentation that was
10 supplied to me by Duke. I'm trying to find out where
11 they provided me --

12 EXAMINER FULLIN: That's my next
13 question: When did they provide you the information
14 that you're responding to?

15 MS. WATTS: Your Honor, even if, in
16 fact, it was responsive to something the Company
17 provided -- and I don't believe that is the case --
18 but even if that were so, it would still be hearsay.
19 It would still be --

20 MR. PECK: Is there water?

21 EXAMINER FULLIN: Yes.

22 MR. PECK: I have shingles right now.

23 EXAMINER FULLIN: Why don't we take a
24 quick break.

25 (Recess taken.)

1 EXAMINER FULLIN: I think Ms. Watts had
2 the floor, if you know where you want to pick up from
3 here.

4 MS. WATTS: Yeah. Thank you. I was, I
5 believe, in the middle of saying that notwithstanding
6 whether these documents are responding to something
7 that Mr. Peck believes is in the record or not,
8 either way these documents all comprise hearsay,
9 they're all documents that were pulled off the
10 Internet that have no foundation.

11 Mr. Peck himself had no participation in
12 creating any of these documents. None of these
13 people are present in the room to offer the truth of
14 the matter asserted in the documents, and it's -- you
15 know, it's just hearsay. So if the Bench ultimately
16 wants to receive the documents on that basis,
17 they're -- I think the rest of it, whether or not
18 it's responsive or not, is probably irrelevant at
19 this point.

20 MR. PECK: Well, at this --

21 EXAMINER FULLIN: Go ahead.

22 MR. PECK: I'm sorry.

23 EXAMINER FULLIN: No. Go ahead.

24 MR. PECK: Okay. In the reply to
25 Complainant's response of Duke Energy of Ohio --

1 EXAMINER FULLIN: So could you repeat
2 that, what did you just say?

3 MR. PECK: The reply to Complainant's
4 response of Duke Energy Ohio --

5 EXAMINER FULLIN: Okay.

6 MR. PECK: -- there's a footnote.
7 Footnote is, "In the Matter of the Application of
8 Duke Energy Ohio, Inc., to adjust Rider DR-IM and
9 Rider AU for 2010 SmartGrid Costs and Mid-Deployment
10 Review, Case No. 10-2326-GE-RDR, Opinion and Order,
11 (June 13, 2012), (recounting the evidence provided by
12 the Company with respect to data privacy and
13 approving a stipulation that provided for ongoing
14 cyber-security oversight.)"

15 I went to that document, that which was
16 Duke's presentation to PUCO, to give a review of how
17 they were analyzing cyber security and privacy
18 issues. That document -- that document here in the
19 footnote led me off to the articles they was pulling
20 down off of the Internet from documentation that they
21 had in that study or in the matter of the
22 application. Essentially what they're doing is they
23 were coming back to PUCO and they were allowing PUCO
24 to know that, yes, we have analyzed privacy and cyber
25 security and we're relying on these documents. So

1 the documents I've submitted or the -- most all of
2 the documentation I've submitted comes from that
3 particular review.

4 EXAMINER FULLIN: Okay. Well, I don't
5 want to belabor this. I think that I'd like to go
6 ahead and make a ruling on all three of the exhibits,
7 on what I might have labeled as the third, but the
8 one that has to do with the Ohio citizen, the Company
9 stated that they have no objection; so I'm going to
10 admit that into evidence.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 EXAMINER FULLIN: On the proposal to
13 have as Exhibit 1 -- Complainant's Exhibit 1, both
14 the complaint and everything that's included with it,
15 including the supplemental information, I'm inclined
16 to allow it into the record as evidence, but
17 recognize that it does appear to be hearsay. So I'm
18 not too clear how the Board may choose to use that,
19 but I'm not going to -- I'm going to leave it for the
20 Board in making its decision to decide for itself
21 whether it wants to rely on hearsay testimony in that
22 particular case. So I'm allowing it into the record
23 and taking under advisement as hearsay and admitted
24 as an exhibit.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER FULLIN: I'm going to have the
2 same treatment for the Exhibit 2, which is the Motion
3 to Supplement the Record. I recognize it as hearsay
4 testimony, and yet will admit it into the record for
5 the Commission to decide how to weigh it and whether
6 to rely on it in its decision.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 MS. WATTS: Your Honor, is there a way
9 with respect to the Motion to Supplement, 2, if
10 you'll recall we had two separate issues with that;
11 one was the hearsay argument with respect to the
12 documents referred to therein, but the other is a
13 reference to things that Duke Energy Ohio claims,
14 which there is no foundation for, and I had asked
15 that those items be stricken from the motion.

16 EXAMINER FULLIN: I guess I need to look
17 at what we're talking about. This is in the --

18 MS. WATTS: Motion to Supplement the
19 Record.

20 EXAMINER FULLIN: -- Motion to
21 Supplement. So basically, so I'm understanding it,
22 you want stricken from the record any reference in
23 there to what it is that Duke -- Duke's position is,
24 what Duke had said, because Duke is not the one
25 that's speaking and is being attributed to Duke?

1 MS. WATTS: That's correct, Your Honor.
2 For example, the second or third sentence in it says
3 "Claimant believes a smart meter has the capability
4 now and in the future to invade his privacy." Well,
5 strike that.

6 The first full -- second full paragraph
7 says (As read), "Duke Energy Ohio claims it is using
8 the NIST as the standard for cyber security." Any
9 reference to what Duke Energy claims would not be
10 accurate in terms of what Mr. Peck is alleging,
11 there's nothing in the record so far with respect to
12 what the Company claims.

13 EXAMINER FULLIN: Well, what if it was
14 stated in one of your pleadings already. I mean,
15 I --

16 MS. WATTS: Yeah, if it's consistent.

17 EXAMINER FULLIN: I haven't done a
18 complete analysis to figure it out, but there's
19 statements probably in your answer and probably in
20 your Motion to Dismiss and probably in other
21 responses in the file, and he's not allowed to
22 interpret those as claims the Company is making.

23 MS. WATTS: If, in fact, they did refer
24 to something that was in the record, I would not
25 dispute that, but there's a lot more in here than

1 just that.

2 EXAMINER FULLIN: Okay. So, you know,
3 again, I'm tempted to recognize the distinction I
4 just made, maybe allow it into the record because I
5 don't know how to quickly move through the process of
6 analyzing each claim, but as I look at each claim
7 make that distinction that you suggested.

8 If the Board doesn't see -- or the
9 Commission doesn't see that the claim is really
10 stated by the Company, it could decide to not place
11 any kind of weight or balance on that claim, but I
12 don't -- I don't think I want to go through the whole
13 document now and figure out which claims I'm allowing
14 in or out. I think I would like to allow it in, and
15 let the Commission do its own analysis in making its
16 decision based on the -- recognizing the objection
17 you made and having myself and the Board take that
18 under advisement as I'm going through the document.

19 MS. WATTS: Thank you, Your Honor.

20 MR. PECK: I also object that she said
21 that's my belief. It is my belief that there's an
22 invasion of privacy, and also in that same
23 document -- I found the date, it's 24th of January
24 2017; so that was preceding the settlement
25 discussion.

1 EXAMINER FULLIN: What's the date --
2 what date are you referring to?

3 MR. PECK: The date where I was finally
4 able to get the documentation from Duke that they
5 were relying on to analyze their cyber security. And
6 there's also a footnote in that reply to my response,
7 which is on Page 1, it says "In the Matter of the
8 Application of Duke Energy Ohio, Inc. for Approval of
9 a Grid Monitorization Opt-Out Tariff and for a Change
10 in Accounting Procedures Including a Cost Recovery
11 Mechanism, Case No. 14-1160-EL-UNC, and others, et al.,
12 Opinion and Order, April 27, 2016)."

13 So this is the point in time when -- and
14 I had no information about this prior to dealing with
15 Brian Maynard or discussing my original complaint
16 from Duke about how it was that they were analyzing
17 and what they submitted to PUCO. As I said in my
18 opening statement, I question whether or not PUCO has
19 the authority to rule on a constitutional issue of
20 the invasion of privacy. It's --

21 EXAMINER FULLIN: All right. Well, at
22 the beginning of your response there, you were
23 talking about, as I understand it, a portion where
24 you were talking about where you're making a claim,
25 and I think we were addressing the fact that I was

1 allowing everything in, and I was going to be
2 analyzing from the point of view where you're making
3 a claim as to what they're making a claim as to, and
4 noting your objection as I and the Board make a
5 determination as to what weight or merit to give to
6 these pieces of testimony. So, again, I think that
7 I've ruled that I'm allowing that in.

8 MR. PECK: Yeah. I hear you.

9 EXAMINER FULLIN: And I think later in
10 your response you cited to a Commission order. And,
11 again, I think the Commission's always ready to take
12 administrative notice of any order they've already
13 issued. You've raised it probably, as I understand
14 it, in the claim you're making you may or may not be
15 attributing it to something they're raising. That's
16 something I'm going to have to and the Commission's
17 going to have to decide.

18 But I feel satisfied that the ruling
19 I've made allows us to proceed with the three
20 exhibits being admitted into evidence subject to the
21 procedural objections that -- or maybe not
22 procedural -- the substantive or procedural
23 objections that have been raised. So I think we're
24 in a position to move forward.

25 MR. PECK: I just want to make sure that

1 my objection to her objection that the record stands
2 upon the documentation, the reason I'm being charged
3 \$30 a month is because of the documentation that Duke
4 Energy submitted to me. That was the only way I was
5 able to find out how Duke was analyzing.

6 EXAMINER FULLIN: Well, for example, if
7 they cited -- no matter what they cited, if they're
8 authorized by a Commission order to charge you
9 something, then I guess on one level they're
10 responsible because they're the ones that are
11 charging you, but if their authority for doing
12 something is a Commission order or Commission rule,
13 then, again, I think that can be part of the record.
14 Whether you're raising it as an objection, whether
15 you're raising it -- whether the Commission has the
16 authority, you know, I'm going to take all that into
17 consideration and I'm going -- the Commission's in a
18 position to judge its own rulings and rules, and
19 whether you raise them or raise an objection to them
20 at this point or whether the Company states them as
21 support for what they do, I think the Commission will
22 have to sort that out. I'm not going to do it here
23 as an evidentiary matter. Okay?

24 MR. PECK: Fair.

25 EXAMINER FULLIN: So now we have your

1 testimony, we've admitted the three exhibits,
2 Complainant's Exhibits No. 1, 2, and 3. I didn't
3 physically mark them, but I think the record's clear
4 what we're talking about here. And I guess I'm just
5 leaving it for you, do you have anything further that
6 you wanted to present in terms of anything that you
7 want the Commission to consider in terms of testimony
8 or evidence to make a ruling in your case?

9 MR. PECK: Well, I just received late
10 last week a direct testimony of Brian Maynard, and I
11 want to be able to cross-examine Brian.

12 EXAMINER FULLIN: Yes. It's my
13 understanding and assumption that Ms. Watts will be
14 introducing him as a witness, having him introduce
15 that as an exhibit, and when she's done asking him
16 questions you can cross-examine him about that
17 exhibit. So we'll proceed that way. Anything
18 further?

19 I note that you mentioned at some point
20 that you were interested in making some kind of a
21 point or argument on brief; so I'm assuming that
22 probably at the close of this I'll be giving you a
23 chance to file a brief in the case, both parties if
24 they want to. So that will come up later if they
25 want to.

1 Is there anything further that you need
2 to provide in terms of presenting testimony or
3 evidence in your case?

4 MR. PECK: No.

5 EXAMINER FULLIN: Okay. You rest?

6 MR. PECK: I rest my case.

7 EXAMINER FULLIN: Okay. Next we'll have
8 the -- Duke will put on its testimony.

9 MS. WATTS: Your Honor, may I
10 cross-examine the Complainant?

11 EXAMINER FULLIN: Oh, I am sorry. I
12 slipped on that one. Go ahead. She does get to
13 cross-examine you.

14 MR. PECK: Uh-huh.

15 EXAMINER FULLIN: Then that may lead to
16 further questioning after that.

17 MS. WATTS: Thank you, Your Honor.

18 - - -

19 CROSS-EXAMINATION

20 BY MS. WATTS:

21 Q. Mr. Peck, would you tell us what your
22 education is?

23 A. I'm ABD on a interdisciplinary Ph.D. My
24 background from a bachelor's standpoint was in
25 economics, from a master's standpoint was labor

1 economics, and I entered into a more broad spectrum
2 of behavioral science with my Ph.D.

3 I basically achieved the level of
4 finishing coursework, entered into a dissertation.
5 The model that I was using was written by my -- who
6 was going to be chairman of my committee was Alfred
7 Kuhn who had written a number of books, and the model
8 that I was using was called The Logic of Social
9 Systems. Al Kuhn was recognized as an international
10 scholar, not only in economics, but in psychology.
11 His primary background was in economics, and he
12 studied under Kenneth Boulding.

13 So I never achieved the dissertation,
14 but I finished all of the groundwork to get into the
15 point of time of entering into a dissertation, and
16 that was a point in time that Al Kuhn passed away.
17 For one year I was an adjunct professor over at UC
18 teaching his courses, and from that point forward I
19 entered into the business world.

20 Q. And, sir, are you presently employed?

21 A. I am a private contractor where I work
22 with a number of different groups that are interested
23 in doing analysis, primarily in the world of precious
24 metals. I've been studying precious metals for a
25 good 25 years, and there's a couple groups out there

1 that are interested in moving forward with blockchain
2 technology, because I'm familiar with the technology,
3 and moving into the whole world of precious metals.

4 Q. And, sir, you do not have an engineering
5 degree, correct?

6 A. No.

7 Q. Okay. And you've never been employed by
8 a utility?

9 A. No. But my employment was in 1979,
10 1980, I started a company called Invictus
11 Telecommunications, along with someone that was a
12 telecommunications company where I eventually got
13 into the world of satellites. Back at that point in
14 time, very few people were familiar with the whole
15 satellite technology and how that was going to be
16 used.

17 1984 I sold my shares of that company to
18 my partner, started another company with one
19 division, the Teleconferencing Division of Invictus,
20 and from that point forward I created a company
21 called Zenous Communications. We were in the world
22 of -- we were in the world of essentially
23 integrating -- this is preInternet -- communications,
24 data, and audio visual.

25 So those three worlds I saw coming

1 together, and a lot of my interdisciplinary
2 background led me into that direction into the real
3 world -- or into the world of data communications.
4 So, no, I don't have an engineering background, but I
5 have had companies which were essentially
6 communications based.

7 Q. But none of those companies was an
8 electric utility, correct?

9 A. No.

10 Q. And, Mr. Peck, you presently have a
11 traditional meter on your premises, right?

12 A. Correct.

13 Q. And so with respect to that traditional
14 meter, you don't have any privacy or security
15 concerns, correct?

16 A. No.

17 Q. And when you were first advised that
18 Duke Energy was attempting to install a smart meter
19 on your premises, what action did you take?

20 A. When the subcontractors appeared to
21 install the smart meter, I was never notified that
22 that was going to be done. They showed up and
23 luckily I was home that day. I asked them what they
24 were doing, and they said they were going to be
25 removing the existing meter and putting in a new

1 meter. I asked them if it was a -- I don't know if I
2 used the term advanced meter, I don't know if I used
3 the term smart meter, but essentially I was asking
4 them if they were installing a smart meter and they
5 said yes.

6 That was the point in time I said,
7 "Well, I'm not going to permit you to install it
8 until I get some type of documentation from Duke
9 stipulating exactly what that meter's going to be
10 used for."

11 Q. And so did the contractors then leave
12 your premises?

13 A. They did.

14 Q. Then did you contact the Company in some
15 way?

16 A. I did.

17 Q. And do you recall with whom you spoke?

18 A. I spoke with -- I can't remember the
19 first person I spoke with, but eventually I was led
20 to Brian Maynard, and because Brian was the one at
21 the Company who was responsible for taking complaints
22 or taking information in to Duke for people who had
23 concerns about smart meters.

24 Q. And do you recall any part of that
25 conversation?

1 A. The only thing I recall is I told Brian
2 I had no problem of a smart meter being installed,
3 but I wanted a letter stipulating exactly what that
4 smart meter was going to be used for, that my concern
5 was it could be used for an invasion of privacy in
6 other things, essentially the release of data.

7 Q. Do you recall whether or not Mr. Maynard
8 sent you any information after that conversation?

9 A. Well, at that point in time what
10 Mr. Maynard -- when I asked -- or I essentially was
11 demanding a letter, he said that he could not make
12 that decision, that he had to take that back to
13 legal. And I said, "Fine. Take it back to legal and
14 let me know what their opinion is."

15 Well, he did contact me again, and in
16 that contact he told me that he -- that legal
17 instructed him that they could not -- Duke could not
18 provide me with such a letter.

19 Q. So I don't know that your question was
20 responsive. The question I had for you is: Do you
21 recall whether Mr. Maynard provided any information
22 to you?

23 A. Oh, yes, he did after that or it might
24 even have been before that, he did provide the
25 information to me about smart meter technology. And

1 I said -- I may have called him back, I can't even
2 remember, but I said this information's interesting
3 in terms of how a smart meter works, but it really
4 doesn't get into the issues that I had that I was
5 looking for in the form of a letter.

6 I don't recall if I had that
7 conversation with him or not. I just remember
8 getting the information that he provided and said,
9 "This is great marketing information, but it really
10 doesn't get in the deep analysis that I would like to
11 get into."

12 Q. And at some point, were you advised that
13 you would be asked to pay an opt-out charge for using
14 a traditional meter?

15 A. At what point?

16 Q. At some point were you advised?

17 A. No.

18 Q. So how did you become aware that you
19 would be charged an opt-out fee?

20 A. Well, I eventually received a letter
21 from Duke stipulating that if you did not install a
22 smart meter, which is when I filed my complaint, it
23 was about the time that I filed my complaint that I
24 found out that I was going to be charged \$30 a month
25 for not having a smart meter installed. As my

1 original complaint says and as my other documentation
2 states, that I never denied the installation of a
3 smart meter, though I would like to deny it. My
4 concern was what the smart meter is going to be used
5 for.

6 Q. And so you understood then that if you
7 were willing to have a smart meter installed on your
8 premises, you would not have to pay the \$30 fee?

9 A. That was my understanding. But the only
10 way I would have a smart meter installed is that it
11 would be used like a traditional meter, that you
12 would be able to read -- you would be able to
13 record/read monthly usage and be able to retrieve
14 that information.

15 I also would want that information or
16 I'd want that letter to stipulate that the -- there
17 will be no data collected within that smart meter
18 other than that monthly reading.

19 MS. WATTS: Thanks, Your Honor. I have
20 no further questions.

21 EXAMINER FULLIN: Okay. You have a
22 chance to address anything that came up in her
23 questioning that you wanted to provide further
24 information about. You know, essentially when -- if
25 you were a witness and you had an attorney, she'd be

1 asking these questions and the attorney would be
2 allowed --

3 MR. PECK: Yeah, cross-examination.

4 EXAMINER FULLIN: -- redirect or direct,
5 whatever the word is.

6 MR. PECK: Yeah.

7 EXAMINER FULLIN: So basically what it
8 means is that the things she brought up, if there's
9 anything else that you want to add that relates to
10 those questions, this is your chance to bring it up.

11 MR. PECK: No. They were
12 straightforward.

13 EXAMINER FULLIN: Okay. Then I asked
14 you inappropriately before the cross-examination if
15 you rested. Now that you don't have any further --

16 MR. PECK: I have no further questions.
17 I rest my --

18 EXAMINER FULLIN: -- you're done with
19 the presentation --

20 MR. PECK: I rest.

21 EXAMINER FULLIN: -- with your
22 presentation of the case.

23 At this point, I recognize that the
24 Complainant has rested, and now it will be time for
25 the Company to put on its case in chief.

1 MS. WATTS: Okay. Your Honor, before I
2 ask to have this marked, just to be clear -- because
3 as you might understand, each of the
4 Attorney-Examiners has a slightly different policy in
5 this regard -- do I need to have the Company's
6 response to the complaint marked as Duke Energy
7 Exhibit 1?

8 EXAMINER FULLIN: Response to the
9 complaint?

10 MS. WATTS: Yeah. The answer to the
11 complaint, the original answer.

12 EXAMINER FULLIN: Well, again, my
13 understanding is that the pleadings that are on the
14 record are on the record, but they're not evidence.
15 So to the extent you want to refer to them, have them
16 be considered as evidence, then you should probably
17 introduce them.

18 MS. WATTS: Okay. All right.

19 EXAMINER FULLIN: You know, I'm not sure
20 that's the universal policy, whether I'm even on
21 solid ground, but I think that would be safest.

22 MS. WATTS: Okay. So then, Your Honor,
23 I would ask that the answer to the Complainant's
24 complaint in this proceeding be marked as Duke Energy
25 Ohio Exhibit 1.

1 EXAMINER FULLIN: Okay. Is there any
2 objection to having -- well, do you have -- I assume
3 you're going to ask to introduce it next. Yes, it
4 can be marked that way.

5 MS. WATTS: Okay.

6 MR. PECK: Which document?

7 EXAMINER FULLIN: The next question is
8 if she wants to introduce it as an exhibit, do you
9 have any objection?

10 MR. PECK: Which?

11 MS. WATTS: When you filed your first
12 complaint --

13 MR. PECK: There was an answer.

14 MS. WATTS: -- we filed an answer, and
15 it's the answer that I'm introducing, because you --
16 the Attorney-Examiner asked you to introduce your
17 complaint that way.

18 MR. PECK: I have no objection.

19 EXAMINER FULLIN: Okay. Let me go ahead
20 before I forget, introduce it -- I mean, admit it
21 into evidence as Duke's Exhibit No. 1, the answer
22 that was filed in the case.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 MS. WATTS: Okay. That being the case,
25 Your Honor, then we would ask that Mr. Maynard's

1 testimony be marked as Duke Energy Ohio Exhibit 2.

2 EXAMINER FULLIN: Okay. I'm going to
3 be -- I'm not going to physically mark it, but it's
4 going to be considered as Duke's Exhibit 2.

5 MS. WATTS: Okay. And we would call
6 Brian Maynard as a witness.

7 EXAMINER FULLIN: Again, I'll let you
8 stay where you are, but I'll have you stand and be
9 sworn in.

10 Do you swear the testimony you'll give
11 today will be the truth, the whole truth, and nothing
12 but the truth?

13 THE WITNESS: I do.

14 EXAMINER FULLIN: Thank you. Then I'm
15 going to allow Ms. Watts to ask any questions that
16 she has, then you'll get to cross-examine him, she
17 can do redirect, whatever. You can go back and forth
18 until you've exhausted your questions of him, and
19 then I'm sure she's going to move to have his exhibit
20 admitted, and at that time I'll ask you if you have
21 any objections to that.

22 MS. WATTS: Sir, do you need a copy? Do
23 you have one with you?

24 MR. PECK: I already have that.

25 MS. WATTS: Okay.

EXAMINER FULLIN: So you can proceed
with your questions for the witness.

MS. WATTS: Thank you, Your Honor.

- - -

BRIAN R. MAYNARD,
being first duly sworn, as hereinafter certified,
deposes and says as follows:

DIRECT EXAMINATION

BY MS. WATTS:

Q. Mr. Maynard, you have before you what's
been marked as Duke Energy Ohio Exhibit 2.

A. Yes.

Q. And is that your testimony that you
caused to be submitted in this case?

A. Yes, ma'am.

Q. And did you write that testimony?

A. Yes.

Q. And are the questions contained
therein -- the answers to those questions contained
therein true and accurate to the best of your
knowledge?

A. Yes.

Q. And if I were to ask you those questions
again today, would your responses be the same?

A. Yes.

1 Q. And do you have any additions or
2 corrections?

3 A. I do not.

4 MS. WATTS: Mr. Maynard is available for
5 cross.

6 EXAMINER FULLIN: Okay. So now you get
7 to ask Mr. Maynard any questions that you have
8 relating to his testimony.

9 - - -

10 CROSS-EXAMINATION

11 BY MR. PECK:

12 Q. Okay. Brian, can you state for the
13 record your educational background?

14 A. My educational background is I have an
15 undergraduate degree in radio/television
16 broadcasting, and an undergrad degree in finance.

17 Q. Okay. Can you state for the record your
18 work background?

19 MS. WATTS: Your Honor, I would just
20 enter an objection, because all of this is in his
21 prefiled testimony, but we can go over it again if we
22 need to.

23 EXAMINER FULLIN: Yeah. I would rather
24 let him --

25 MS. WATTS: Okay.

1 EXAMINER FULLIN: I see that the
2 questions you've already asked are in there and
3 probably some more are going to be, but I would like
4 to just give him a chance to ask him, go in
5 whatever -- I mean, we're not going to be forever,
6 let's just give him a chance to ask the questions he
7 wants to ask.

8 MS. WATTS: Okay.

9 BY MR. PECK:

10 Q. Again, can you state for the record your
11 work background?

12 A. My work background, just at Duke or --

13 Q. No.

14 A. -- in general?

15 Q. In general, Duke, including anything
16 prior to Duke.

17 A. I worked at Duke Energy since 2007 in
18 Accounting and in SmartGrid, previously worked for
19 WCPO TV, and I think that's probably about it for my
20 professional career.

21 Q. So you don't have an -- do you have an
22 engineering degree?

23 A. I do not.

24 Q. Okay. How long have you -- you've been
25 working at Duke you said for about 10 years?

1 A. Yes.

2 Q. Okay. In the direct testimony you
3 admitted to the record that when asked what is your
4 purpose for giving the testimony in this case, you
5 answered in general, "I'm responding to the
6 allegations contained in the complaint filed by
7 Mr. Peck." That was your answer.

8 A. Yes.

9 Q. Okay. Do you consider yourself to have
10 a high degree of experience and well informed in the
11 capabilities and attributes of smart meter
12 technology?

13 A. In the means of the communication aspect
14 and how they communicate, yes.

15 Q. Are you familiar with the retrieval of
16 data, how the data is stored, how the data's
17 collected, how the data is transmitted through the
18 airwaves?

19 A. I am familiar with how it is
20 transmitted.

21 Q. Okay.

22 A. How it is stored, I am not.

23 Q. Were you ever involved in the process of
24 designing cyber security measures for Duke?

25 A. No.

1 Q. From the communications standpoint,
2 would you agree that a smart meter has many of the
3 same attributes as a basic cell phone as it applies
4 to transmitting and receiving information and data?

5 A. In the sense of the meter that you were
6 intended to get, yes, I would agree that it's
7 similar.

8 Q. Okay. Do you believe that the
9 technology exists to enter into the home through a
10 smart meter to monitor how electricity is being used
11 on a level of near real-time?

12 A. Enter into the home, I would -- from my
13 knowledge, I would say no. As from the -- the meter,
14 from what comes from the pole to the meter or from
15 the transformer to the meter, that would be the --
16 basically all that would -- all the information that
17 would be gathered from --

18 Q. So your testimony is that a smart meter
19 that Duke is installing is not entering into the home
20 on a granular basis?

21 A. It stops at the meter.

22 Q. What stops at the meter?

23 A. The information that it's collecting.

24 Q. Okay. Well, my question -- okay. Let
25 me rephrase my question.

1 Is the information which the smart meter
2 is collecting, is that coming from inside the home?

3 A. No. It's coming from outside of the
4 home.

5 Q. So there's no -- there's no granular
6 entry into the home looking at the electric use?

7 A. Just what is being pulled through the
8 service.

9 Q. Well, my question is: Is there
10 information -- is there data coming from inside the
11 home to the smart meter?

12 A. No.

13 Q. How is the -- how is the information
14 received? How does Duke know what my electric usage
15 is?

16 A. By the electricity flowing through your
17 meter before it gets into your home.

18 Q. Where does that information come from?

19 A. From your -- from the electricity going
20 through your meter, registering the electric usage in
21 your meter before it gets into your home or as it
22 gets into your home.

23 Q. Isn't there information coming from the
24 home into the smart meter, though, in order to
25 determine how much electric use you have?

1 A. Really, no. Just what is being poured
2 into the home. There's no information coming from
3 the home to the meter.

4 Q. So how does the meter know how much
5 electricity you're using?

6 A. By what is being passed through the
7 meter into the home.

8 Q. Correct. So that's my question, there
9 has to be a connection between electric use in the
10 home and the meter.

11 A. I'm not following you.

12 Q. What I'm saying is there -- is there --
13 is the meter reading the amount of electricity used
14 in the home?

15 A. Yes, it is.

16 Q. Okay. So there is data and there's
17 information coming from inside the home to the meter?

18 A. Based on -- based on usage in your home
19 of anything that you ask to bring into the home by
20 turning on a light switch, that would be yes.

21 Q. Okay. Is Duke -- how often is Duke
22 retrieving that information?

23 A. How -- it retrieves that information
24 once a day.

25 Q. It's only retrieving it once a day?

1 A. It retrieves it once a day.

2 Q. Okay. Based on your testimony, you made
3 a statement that you have an understanding that
4 Complainant has concerns of data security and privacy
5 of the usage -- of his usage records. I mean,
6 essentially what I'm doing is I'm asking you to agree
7 or disagree with that statement.

8 A. I agree.

9 Q. Okay. What do you mean by "privacy of
10 his usage records"?

11 MS. WATTS: Your Honor, I would just
12 like to enter an objection. If we're referring to a
13 place in Mr. Maynard's testimony, it would be helpful
14 to have a reference to that.

15 MR. PECK: I probably need it. I might
16 have left it at home.

17 MS. WATTS: Okay.

18 BY MR. PECK:

19 Q. Okay. On -- the question that was
20 raised was "Please briefly summarize your
21 understanding of Mr. Peck's complaint." And within
22 that answer you made the statement that, "...it is my
23 understanding Mr. Peck has concerns about the data
24 security and privacy of his usage records."

25 Okay. So my question is: What do you

1 mean by -- what do you mean by "privacy of his usage
2 records"?

3 A. If we were going to share that with a --
4 a third party, if we would sell it to a third party
5 for whatever reason.

6 Q. Okay. Was it your perception that
7 Mr. Peck's questioning the installation of a smart
8 meter and the privacy issue of a smart meter was
9 related to selling information to a third party?

10 A. Yes.

11 Q. Okay. Did Mr. Peck raise any other
12 issues of privacy other than selling information to a
13 third party?

14 A. He asked -- I believe it came up, I
15 don't recall exactly, but he did ask about security
16 and -- which I believe I responded with the
17 attachments I had here in the FAQ sheet.

18 Q. Okay. You believe that the information
19 that Duke Energy provided to me addressed the issues
20 of privacy that I was raising?

21 MS. WATTS: Objection, Your Honor. I
22 don't know how Mr. Maynard would know what Mr. Peck's
23 thoughts were on that.

24 EXAMINER FULLIN: That makes sense to
25 me. Maybe there's a way to rephrase it or --

1 MR. PECK: Yeah. I'll rephrase it.

2 BY MR. PECK:

3 Q. Do you believe Duke Energy has addressed
4 all of the privacy concerns of Mr. Peck?

5 MS. WATTS: Again, I would object, Your
6 Honor. I don't know that Mr. Maynard would know
7 whether Mr. Peck's satisfied.

8 EXAMINER FULLIN: Well, there's enough
9 to know. I think he has to relay whether his
10 understanding is that they've addressed it, not
11 whether it's true or not. I guess I would allow the
12 question. If we can have it read back or if you want
13 to repeat it.

14 MR. PECK: Well, what I'm trying to get
15 to is that the only thing mentioned within his
16 testimony --

17 EXAMINER FULLIN: Well, now you're
18 testifying. I would rather have you ask him
19 questions.

20 BY MR. PECK:

21 Q. All right. Do you believe that Duke
22 Energy has addressed all of the privacy concerns of
23 Mr. Peck that he has raised in his complaint?

24 A. I believe what -- that I have addressed
25 them from what I was asked of you, Mr. Peck.

1 Q. Based on the information submitted by
2 the Complainant, do you agree that the Complainant is
3 concerned with an invasion of privacy based on the
4 ability to monitor behavioral patterns of people in
5 the home?

6 A. Say that again.

7 Q. Based on the information submitted by
8 Mr. Peck, or the Complainant, do you agree that the
9 Complainant is concerned with an invasion of privacy
10 based on the ability to monitor behavioral patterns
11 of people in the home?

12 A. At that time -- at that time when I
13 was -- I was talking to you on the phone, I did not.

14 Q. Okay.

15 A. It was -- it wasn't until recently that
16 I was made aware that that was more of the concern.

17 Q. Okay. So you are aware of it now?

18 A. I am now, yes.

19 Q. Okay. You're just saying that you were
20 not aware of it --

21 A. In 2014.

22 Q. -- in the initial contact that I had
23 with you?

24 A. (Nods head.)

25 EXAMINER FULLIN: He's nodding, let the

1 record show.

2 THE WITNESS: Yes.

3 BY MR. PECK:

4 Q. Do you believe the potential exists to
5 invade privacy of the home with a smart meter?

6 A. That -- that, I don't know. I'm not --
7 I don't know what could be done to it, if you can
8 manipulate it or -- I don't know.

9 Q. Okay. In your testimony, this is on
10 Page 3 of the testimony -- 2 and 3, there was a
11 question raised, "Did you have an occasion to speak
12 with Mr. Peck about his concerns?"

13 Within that you stated, "Mr. Peck then
14 requested a letter stating that the Company would not
15 give...information to a third party." At that time
16 was there any other reason, other than giving
17 information to a third party, that Mr. Peck discussed
18 with you?

19 A. At that time, no. That was -- that was
20 my understanding of if we were going -- if Duke
21 Energy was going to keep that information to
22 themselves or to a third party.

23 Q. Is most of the information that you sent
24 to Mr. Peck based upon selling third -- selling
25 information to third parties?

1 A. No. The information that I sent to
2 Mr. Peck is just a typical packet that I put together
3 to inform customers just for knowledge sake, but also
4 knowing that in one of the forms the -- I believe
5 it's in the FAQ sheet does state that we do not. I
6 just include the other stuff, that's what I -- that's
7 typically what I do with customers.

8 Q. Okay. So the information you provide --
9 or you provided to Mr. Peck was essentially a
10 formalized package that are sent to people on the
11 whole background of what a smart meter is?

12 A. More or less, yes, to give them -- to
13 give them an idea of what kind of product we use and
14 the -- basically the intentions of the project and
15 why we're installing meters.

16 Q. So the privacy issues that you're now
17 aware of based upon the complaint and supplemental
18 information to the complaint, do you believe that
19 privacy issue goes beyond the whole concept of
20 selling information to a third party?

21 A. I do now that the concern is with a --
22 more of a cyber security -- there is a cyber security
23 concern, and I would suggest along with the Company's
24 ability to -- to or not to sell the customer's
25 information.

1 Q. Okay. So my question is related more
2 directly to the issue of the potential for the
3 invasion of privacy of a smart meter. Are you aware
4 that Mr. Peck has those concerns?

5 A. I am now.

6 Q. Okay. Did you read all of the
7 information submitted by Mr. Peck in the complaint?

8 A. I did not.

9 Q. Okay. Wouldn't the information you sent
10 to the Complainant address the Complainant's primary
11 concern?

12 A. Well, at the time the primary concern
13 was the third-party information being sold. I
14 believe, as I said before, in the Frequently Asked
15 Questions document it states on there -- and I
16 believe I had already -- I had also discussed over
17 the phone that it's on our website that we do not
18 sell the third party -- to a -- or sell customer
19 information to a third party.

20 Q. Okay. So primarily you're -- the
21 information you were sending out dealt with the whole
22 issue of selling information to a third party?

23 A. At that time, yes.

24 Q. Okay. Does any of the information that
25 you sent to Mr. Peck relate to the issues that you

1 now understand him to raise?

2 A. In one of the questions, will my
3 information be kept private and safe from cyber
4 attacks, in the FAQ it does discuss that.

5 Q. Okay. Does it go to -- does it go into
6 any detail?

7 A. It does not.

8 Q. Okay.

9 A. Other -- I -- I do not know what level
10 of detail when speaking to a customer that they want.
11 I supply this and then usually draw off questions
12 they have from it.

13 Q. Okay. Is there anything in that
14 information which discusses the whole concept of a
15 smart meter being able to enter the house on a
16 granular basis to look at behavioral patterns?

17 A. No.

18 Q. Okay. Let me see here. Okay. In your
19 testimony, this is on Page 3, your testimony you
20 stated: Mr. Peck on that day, January 29th, 2014,
21 requested a personal letter stating Duke Energy will
22 only use a smart meter for metering purposes. What
23 do you mean by "metering purposes"?

24 A. For -- for collecting the usage to
25 determine how much electricity Mr. Peck used.

1 Q. Is that on a monthly basis?

2 A. How you're metered and billed?

3 Q. Yeah. You made the statement that Duke
4 Energy will only use a smart meter for metering
5 purposes. My question is: What do you mean by
6 "metering purposes"?

7 MS. WATTS: Your Honor, could I have a
8 reference to where that phrase, "metering purposes,"
9 appears?

10 EXAMINER FULLIN: I just now found it
11 myself. I think we're talking about the bottom of --
12 the paragraph that begins on January 29th.

13 MR. PECK: On January 29th, right.

14 EXAMINER FULLIN: Or the
15 second-to-the-last sentence, middle sentence.

16 MS. WATTS: Thank you.

17 EXAMINER FULLIN: Do you need the
18 question read back?

19 THE WITNESS: Yes, please.

20 BY MR. PECK:

21 Q. Okay. What do you mean by "metering
22 purposes"?

23 A. By determining how much metering or
24 registering how much electricity is being pulled
25 through the meter.

1 Q. On what time -- in using what time
2 intervals?

3 A. I didn't have any time intervals in
4 mind.

5 Q. So the way you addressed Mr. Peck was
6 based upon just a general concept that the smart
7 meter is used for metering purposes in general?

8 A. Yes.

9 Q. And there wasn't any detail --

10 A. It was never addressed.

11 Q. Okay. Do you know if Duke publishes
12 complaints about smart meters in a public forum?

13 A. I'm unaware of it.

14 Q. In your role at Duke, what other
15 concerns do you have that you become aware of with
16 complaints similar to Mr. Peck's?

17 MS. WATTS: Objection, Your Honor. I'm
18 not sure I understand that question.

19 EXAMINER FULLIN: It's pretty hard to
20 follow. Could you try to rephrase it or otherwise --

21 MR. PECK: Okay.

22 BY MR. PECK:

23 Q. In your role at Duke, do you have --
24 what other concerns have you heard from other people
25 about smart meters and complaints about smart meters?

1 A. Typical concerns are privacy, security,
2 and health.

3 MR. PECK: Okay. I'll close my --

4 EXAMINER FULLIN: You're finished with
5 your cross-examination?

6 MR. PECK: Yeah. Close my cross, yeah.

7 EXAMINER FULLIN: Okay. Ms. Watts, you
8 can have a chance to redirect.

9 MS. WATTS: Just a couple questions,
10 Your Honor.

11 EXAMINER FULLIN: Okay.

12 - - -

13 REDIRECT EXAMINATION

14 BY MS. WATTS:

15 Q. Mr. Maynard, the meters that Duke Energy
16 installs -- the smart meters that Duke Energy
17 installs on a customer's premises gather customer
18 usage, correct?

19 A. Correct.

20 Q. So far as you know, that usage is used
21 to provide billing to the customer, correct?

22 A. That is correct.

23 Q. And it's not used for any other purpose?

24 A. That's correct.

25 Q. And is it now your understanding that

1 that's really not what Mr. Peck's concern is?

2 A. Correct.

3 Q. And so with respect to the security of
4 the meter, do you have any understanding of whether
5 the Company is concerned with the meter security?

6 A. I'm aware that they're concerned with
7 the -- the security.

8 Q. Okay.

9 A. That is something that they address and
10 take care of.

11 Q. In the attachments to your testimony,
12 would you turn, please, to Page 5 of 6, BRM-1,
13 Attachment D, Page 5 of 6.

14 Do you see on that page a question that
15 says, "Will my information be kept private and is the
16 equipment safe from cyber attacks?" Do you see that
17 question?

18 A. Yes.

19 Q. Do you see that there's a description
20 under there that describes the efforts the Company
21 undertakes with respect to cyber security?

22 A. Yes.

23 Q. Do you have any reason to doubt anything
24 that's contained in there?

25 A. I don't.

1 MS. WATTS: I have no further questions,
2 Your Honor.

3 EXAMINER FULLIN: All right. Would you
4 like to ask further questions based on what she's
5 asked?

6 MR. PECK: Uh-huh.

7 EXAMINER FULLIN: Not bring up new ones.

8 MR. PECK: Right.

9 - - -

10 RECROSS-EXAMINATION

11 BY MR. PECK:

12 Q. So based upon your response that Duke
13 has taken precautions to protect people's security --
14 you know, privacy and security of data, do you
15 believe the ability does exist technologically
16 speaking to retrieve that information by somebody
17 other than Duke?

18 MS. WATTS: Object, Your Honor. The
19 witness has already said that was not within his area
20 of expertise.

21 EXAMINER FULLIN: I didn't remember him
22 saying that, but I think -- I think, you know, the
23 question is an important area of concern, but he can
24 only address it to the extent he has knowledge about
25 how to answer it.

1 THE WITNESS: Yeah. That is -- I am
2 aware that we have a security team, but I am not
3 knowledgeable on what they do or what is done.

4 BY MR. PECK:

5 Q. But based upon the knowledge you do have
6 of cyber security, do you believe that there is an
7 ability by some other entity other than Duke to
8 retrieve data and information that might be procured
9 by a smart meter?

10 A. I am unaware of it.

11 Q. Okay.

12 EXAMINER FULLIN: Okay. Any other
13 questions?

14 MR. PECK: No.

15 EXAMINER FULLIN: I feel like in order
16 to have a complete record, I feel like there might be
17 things that haven't been covered in terms of whether
18 or not the customer was notified about whether the
19 smart meter was being installed. I don't know that I
20 want to ask the question, but I'm bringing it up as
21 something that maybe the parties want to consider
22 about whether they want to address that.

23 MS. WATTS: I can have Mr. Maynard
24 address that if that's the Bench's desire.

25 EXAMINER FULLIN: I think -- I just feel

1 like -- I don't feel like I've heard the whole -- you
2 know --

3 MS. WATTS: I don't know how --

4 EXAMINER FULLIN: I don't think I have
5 an understanding of how that's been addressed in the
6 record. So I want to make sure that the parties have
7 had a chance to address it in any way they want to.
8 If they're satisfied that it's addressed, then I'm
9 not going to raise it.

10 MS. WATTS: Well, I don't know how it's
11 really relevant to the complaint, but I'm happy to
12 have Mr. Maynard describe to the Bench how customers
13 are made aware that smart meters are to be installed.

14 EXAMINER FULLIN: Or how he was notified
15 when they -- I heard testimony that subcontractors
16 came out and were already installing it, so I'm --
17 and he didn't get notice. So I'm wondering whether
18 the Company has some more to provide me in terms of
19 response to that allegation.

20 MS. WATTS: I could speak to it or the
21 witness can speak to it.

22 EXAMINER FULLIN: Yeah, the witness.

23 THE WITNESS: As we do our project
24 before we go into an area, we have postcards mailed
25 out letting the customer know that we will be in that

1 area to install the meters, and there's contact
2 information on those to either contact us if you are
3 not going to be home or have questions about the
4 project.

5 EXAMINER FULLIN: All right. And I'm
6 also interested even if it's been on -- put on the
7 record, I would like to be reminded about what
8 testimony we have about whether the customer was
9 notified of the -- and how and when the customer was
10 notified about the cost of keeping a traditional
11 meter.

12 MS. WATTS: I believe Mr. Peck spoke to
13 that himself, but I can --

14 MR. PECK: Yeah. And the other thing is
15 I'm -- my complaint, as I addressed in my Notice of
16 State Citizenship, I'm filing this complaint as an
17 Ohio citizen, not necessarily as a customer, but as
18 an Ohio citizen that wants protection under
19 Amendment 4 of the Federal Constitution and
20 Section 14 of the Ohio Constitution. So that was why
21 I filed a notice.

22 My complaint is on a constitutional
23 issue of the invasion of privacy and the potential
24 for the invasion of privacy.

25 EXAMINER FULLIN: Okay. Those were the

1 areas of concern that I still had that I wanted to
2 see addressed before.

3 MR. PECK: Can I address what Ryan said?

4 EXAMINER FULLIN: Yeah. I didn't
5 realize he said something.

6 MR. PECK: He had said that they send
7 out a postcard. I have no recollection of having any
8 notice whatsoever. The only way I was aware that a
9 smart meter was going to be installed is when the
10 subcontractor showed up.

11 EXAMINER FULLIN: Okay. Did you need to
12 further cross-examine him on that issue?

13 MS. WATTS: (Shakes head.)

14 EXAMINER FULLIN: Okay. Has Duke rested
15 in terms of its presentation?

16 MS. WATTS: Yes, Your Honor. Thank you.

17 EXAMINER FULLIN: Then I think we're
18 done with the presentation of testimony in the case,
19 which leaves a chance for both sides -- or either
20 side, if they want to, to make a closing remark. I
21 do think that there's an interest by at least one of
22 the parties to do briefs. So, again, if you would
23 like to make a closing statement or if you'd like to
24 do that within your brief, because one of the
25 purposes of the brief is to pull together what's been

1 presented here in a way -- so you can do it now and
2 in the brief or you can do later in the brief only.
3 I'm leaving that option to the parties.

4 But if you would like to make --
5 starting with you, if you'd like to make a closing
6 statement at this time you can do so.

7 MR. PECK: Well, my closing comment
8 would be essentially the same as my opening comment,
9 whether PUCO has the authority to allow a private
10 utility company, which PUCO has oversight, to invade
11 the Complainant's privacy and grant them the
12 privilege to change the complaint -- to charge the
13 Complainant a \$30 per month fee because the
14 Complainant demands a letter from the Company
15 stipulating exactly what the smart meter will be used
16 for.

17 EXAMINER FULLIN: All right.

18 MR. PECK: That's my closing --

19 EXAMINER FULLIN: Thank you.

20 MR. PECK: -- argument.

21 EXAMINER FULLIN: Ms. Watts, would you
22 like to make any closing statement?

23 MS. WATTS: Well, Your Honor, the
24 complaint seems to morph each time; so I'm not sure
25 what the basis of the real complaint is here. But I

1 would simply point out to the Bench, first of all,
2 that we still have a Motion to Dismiss pending, and
3 we would like to reiterate that we would like a
4 ruling on that motion.

5 Secondly, that there has been no
6 allegation of any particular violation of any
7 Commission rule or law. And the Complainant has the
8 burden of proof in this case and has not met that
9 burden of proof, and so we believe a motion to
10 dismiss would be appropriate or a motion for summary
11 judgment.

12 EXAMINER FULLIN: For summary judgment?

13 MS. WATTS: Yes.

14 EXAMINER FULLIN: You're making the
15 motion now?

16 MS. WATTS: Yes. So I would also make a
17 motion for summary judgment on the facts of the case.

18 EXAMINER FULLIN: All right. Anything
19 further on closing?

20 MS. WATTS: Nothing further, Your Honor.

21 EXAMINER FULLIN: Let's go off the
22 record and discuss briefs among ourselves, and then
23 go back on the record with whatever decision we make.

24 (Discussion held off the record.)

25 EXAMINER FULLIN: During the period we

1 were off the record, we discussed the briefing
2 schedule. The parties have agreed that they would
3 like the opportunity to file one brief each in this
4 case, and we'll set the date for the briefs to be due
5 as Wednesday, December the 13th.

6 With that, I think we can be adjourned.
7 Both parties have given their closing statements,
8 we've got the briefing schedule; so I think we can be
9 adjourned. Thank you.

10 MS. WATTS: Thank you, Your Honor.

11 MR. PECK: Thank you.

12 (Thereupon, the hearing was
13 concluded at 12:12 p.m.)

14 - - -

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, November 2,
2017, and carefully compared with my original
stenographic notes.

Carolyn D. Ross
Carolyn D. Ross,
Registered Professional
Reporter and Notary
Public in and for the
State of Ohio.

My commission expires April 3, 2019.
(CDR-85330)



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Case No(s). 16-2338-EL-CSS

Summary: Transcript Gregory Peck vs. Duke Energy Ohio, Inc., hearing held on November 2, 2017. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Ross, Carolyn D.