

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Commission's Investigation:
into Verde Energy USA :
Ohio, LLC's Compliance :
with the Ohio : Case No. 19-958-GE-COI
Administrative Code and :
Potential Remedial Actions:
for Non-Compliance. :

- - -

PROCEEDINGS

before Mr. Gregory Price and Ms. Anna Sanyal,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-C,
Columbus, Ohio, called at 10:00 a.m. on Wednesday,
October 16, 2019.

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VOLUME I

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On behalf of the Consumers of the State
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On behalf of the Interstate Gas Supply,
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On behalf of the Staff of the PUCO

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1 7th Floor, Columbus, Ohio 43215.

2 Also here with us today as Special
3 Counsel for the Ohio Consumers' Counsel Kimberly
4 Bojko of Carpenter Lipps & Leland, 280 Plaza, Suite
5 1300, 280 North High Street, Columbus, Ohio 43215.
6 Thank you.

7 EXAMINER SANYAL: Thank you, Ms. O'Brien.

8 MR. NUGENT: Good morning, your Honors.
9 Michael Nugent on behalf of Interstate Gas Supply,
10 Inc., 6100 Emerald Parkway, Dublin, Ohio 43016.

11 MR. LINDGREN: And on behalf of the
12 Commission Staff, Ohio Attorney General Dave Yost by
13 Thomas G. Lindgren and Andrew B. Shaffer, Assistant
14 Attorneys General at 30 East Broad Street, 16th
15 Floor, Columbus, Ohio 43215.

16 EXAMINER SANYAL: Thank you,
17 Mr. Lindgren.

18 And before we went on the record, OCC let
19 us know that we have some consumers here who would
20 like to testify, and the parties are all amenable to
21 doing that first.

22 So the floor is yours, Ms. O'Brien.

23 MR. PROANO: Just one clarification. I
24 have co-counsel here with me at the table, Rachael
25 Hooper from our Houston office; Alexis Keene, General

1 Counsel for Verde.

2 EXAMINER SANYAL: Thank you for being
3 here.

4 MR. NUGENT: Briefly, your Honor, before
5 we begin, if I could just go on record, Verde and IGS
6 continue to attempt to settle this dispute but have
7 not had sufficient time given the current procedural
8 schedule, some of the back and forth that has taken
9 place in the last couple of weeks.

10 While we are hopeful that settlement is
11 possible, it would have been our preference that the
12 hearing in this proceeding be delayed to permit IGS
13 to obtain more complete discovery, explore
14 settlement, and to prepare a case to take a position
15 on this settlement to the extent that we cannot
16 resolve our issues with Verde.

17 However, we recognize the Commission's
18 desire to resolve the matters in the current
19 Stipulation expeditiously. Therefor, we ask that IGS
20 not be prejudiced to bring in a later individual
21 complaint against Verde to the extent that settlement
22 cannot be reached.

23 EXAMINER PRICE: Mr. Proano.

24 MR. PROANO: David Proano, Verde Energy,
25 we are negotiating with IGS. We object obviously to

any request to delay the hearing at this point. As for a request for an advisory opinion that a complaint can later be brought, I'm not sure that's an appropriate ruling for this Bench, but on that basis I do object.

EXAMINER PRICE: We'll defer ruling on their reservation of rights until the conclusion of the hearing.

MR. NUGENT: Thank you, your Honor.

EXAMINER PRICE: Ms. O'Brien.

MS. O'BRIEN: First, I would like to call Mr. William Bown. Whichever way works for you.

(Witness sworn.)

EXAMINER PRICE: Please be seated and state your name for the record.

THE WITNESS: My name is William Bown, B-O-W-N, not Brown.

EXAMINER PRICE: Please proceed.

- - -

WILLIAM BOWN

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

DIRECT EXAMINATION

By Ms. O'Brien:

Q. Good morning, Mr. Bown. Thank you for

1 coming today. Can you please tell me where you are
2 employed.

3 A. I'm retired, retired CPA.

4 Q. Okay. Great. And can you tell us a
5 little bit about your experience with Verde Energy
6 Ohio USA Ohio, LLC.

7 A. Like I said, I'm a retired CPA and I
8 worked in industry and for CPA firms all my life and
9 so I've dealt with businesses and business practices
10 and I was just appalled with the phone call I got
11 from a representative of Verde. Just from the top of
12 the mountain, it was innocuous. It was misleading.
13 He lied to me. It was very unprofessional. He
14 should be fired, and they should be sued.

15 Back -- give you the call. I was sitting
16 at my desk working, paying bills, and the call comes
17 in. And he says congratulations. He says for paying
18 your bill promptly you have earned a 30 percent
19 discount. Now, that's retarded. You can't -- no
20 company can exist giving 30 percent discounts like
21 that, so you know he is lying to you right away. So
22 then he implies that he is working for AEP. It
23 literally took me probably four different times to
24 ask him exactly who do you work for. And he -- he
25 blew me off three, and I finally told him I was going

1 to hang up if you don't tell me who you work for.

2 So he finally told me he was working for
3 Verde Energy, but he's got a deal for me, you know.
4 This is going to be great. So he starts through his
5 spiel, and he asked me if I have my -- my electric
6 bill in front of me. And I said, yes, I do.

7 So I pull -- I had a paid bill file, so I
8 pulled it out, and so he proceeds to put together --
9 explain to me how I am going to get this huge
10 discount by picking numbers off my bill that are
11 unrelated and adding them together and I am going
12 these don't -- these aren't the same things what you
13 are telling me.

14 So I finally told him that I didn't think
15 he knew what he was talking about, that he was lying
16 to me, and he should be fired. That's about it.

17 It was amazing that you could have a
18 person have that script for business practices, you
19 know. It's almost like we used to have businesses,
20 they made money by providing goods and services to
21 their customers, you know. Now, it's like they want
22 to figure out how to screw their customer. And
23 people who do this need to be punished, and I mean
24 punished. They need to pay, not just -- not just
25 work some deal that everybody goes fluff, fluff,

1 fluff. You need to see them cough up money so.

2 That's about it. Any questions?

3 EXAMINER PRICE: Thank you. Tell me
4 about the approximate time frame when you received
5 this call.

6 THE WITNESS: Oh, see, I don't have my
7 notes originally I had because the -- originally I
8 called the PUCO, and I had copious -- not copious
9 notes, but I had notes, and then they told me we were
10 going to go to trial. And then a day before that
11 trial scheduled, I got a call I didn't have to come
12 down and testify because there had been a settlement,
13 and all was well and good, you know.

14 My fault for not asking what all well and
15 good is but because I don't think they got hammered
16 hard enough. But time frame I would try to --
17 sometime earlier this year, I believe -- well, let me
18 put it this way, you figure out when the original
19 case was settled, it was probably two or three months
20 before. So that's the best I can tell you.

21 EXAMINER PRICE: Thank you.

22 EXAMINER SANYAL: And, sir, you didn't
23 actually sign up with service with Verde, correct?

24 THE WITNESS: Do I look like a loser?
25 No. The guy -- why would I do business with somebody

1 that wants to lie to me? You know, I'm sorry, but
2 that's just -- I'm just adamant about this, that you
3 guys got to figure out how to hammer them, please,
4 for us because you are the public for -- and we are
5 the public, you represent us so.

6 EXAMINER SANYAL: Okay.

7 Q. (By Ms. O'Brien) And, Mr. Bown, you
8 mentioned that you didn't accept Verde's offer of
9 service.

10 A. Correct.

11 Q. And you mentioned before that you are a
12 retired CPA.

13 A. Yes, ma'am.

14 Q. So you would say you have -- would you
15 consider yourself knowledgeable in, for example, you
16 know --

17 A. In business practices?

18 Q. Exactly.

19 A. Yes. For those of you in Columbus, are
20 from Columbus, I worked for a Columbus firm that you
21 might recognize. I was controller for Worthington
22 Industries, kind of a large-sized company you might
23 notice so in a lot of business practices, a lot of
24 business issues, contracts, buying and selling
25 companies, so, you know, when somebody is giving you

1 a line of BS, you know, and this young man who was
2 talking to me, you know, I have been BSed by experts,
3 and he wasn't one of them, let me tell you.

4 MS. O'BRIEN: Thank you, Mr. Bown. I
5 have no further questions.

6 EXAMINER PRICE: Verde?

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Proano:

10 Q. Hello. My name is David Proano, counsel
11 for Verde Energy. Who told you that quote all is
12 well and good?

13 A. Where did I say -- what context?

14 Q. You said you had been contacted the day
15 before some kind of hearing.

16 A. Oh, oh, I see. Someone from the PUCO who
17 had contacted me about testifying and, again, I'm
18 sorry, I don't have those notes because once it was
19 done, they said, you know, settlement was in and so
20 you don't have to testify. I don't know. You would
21 see somebody from the PUCO's records, obviously would
22 tell who I talked to so.

23 Q. And what did you understand when PUCO
24 staff said all is well and good?

25 A. They settled it.

1 Q. Did you ever get a phone call from anyone
2 claiming to be from Verde after that date you
3 received that phone call?

4 A. Oh, no.

5 Q. Were you aware that Verde put you on a do
6 not call list after that complaint was filed?

7 A. I could see why.

8 Q. Does your number end with the last three
9 digits 112?

10 A. Yes.

11 Q. Was that the number that this person
12 called you at?

13 A. Yes.

14 Q. Were you aware that PUCO was represented
15 to by Verde representatives that no call was made by
16 any vendors of Verde to that phone number?

17 A. I'm not sure what you are asking me, but
18 if you are telling me nobody from Verde called me,
19 then I disagree with that. How's that?

20 Q. What was the name of this person that
21 called you?

22 A. Again, I'm sorry. I don't have my notes.
23 It was a young man. He had a slight Spanish accent,
24 knew my name, et cetera. That's the best I can tell
25 you.

1 Q. And the only basis you have for believing
2 this call came from a Verde representative was
3 because this person told you?

4 A. Well, the reason I think it was because I
5 had -- he first inferred three times that he worked
6 for AEP. He didn't say it, but you can tell when
7 somebody is ducking questions, and finally he said,
8 okay, well, we are really a Verde -- I work for Verde
9 Energy I think he said -- I don't know what he said,
10 if he told me where, where Verde was from but that is
11 correct.

12 Q. That's the source of your information.

13 A. Yes.

14 MR. PROANO: No further questions.

15 EXAMINER PRICE: IGS?

16 MR. NUGENT: No questions, your Honor.

17 EXAMINER PRICE: Staff?

18 MR. LINDGREN: No questions, your Honor.

19 EXAMINER PRICE: Redirect?

20 MS. O'BRIEN: Just a follow-up question.

21 - - -

22 REDIRECT EXAMINATION

23 By Ms. O'Brien:

24 Q. You mentioned that someone from the PUCO
25 contacted you indicating that you didn't have to come

1 in and testify because there was a settlement. Were
2 you initially subpoenaed by --

3 A. Yes.

4 Q. -- the Illinois Attorney General's
5 Office?

6 A. Or Illinois?

7 Q. I'm sorry, the Illinois. I apologize,
8 the Ohio Attorney General's Office?

9 A. Yes. I received a subpoena. Again, but
10 once they told me I didn't have to testify, then, you
11 know, I threw that out so.

12 Q. And it wasn't the Ohio Consumers' Counsel
13 that told you that you didn't need to come and
14 testify.

15 A. No. It was the person from the PUCO
16 contact I had gotten from -- and that person had
17 called me about willingness to testify, et cetera.

18 MS. O'BRIEN: Okay. Thank you very much.
19 No further questions.

20 EXAMINER PRICE: Recross?

21 MR. PROANO: Nothing further. Thank you.

22 EXAMINER PRICE: Recross?

23 MR. LINDGREN: Nothing, your Honor.

24 EXAMINER PRICE: Thank you, sir. You are
25 excused. Thank you for coming down.

1 THE WITNESS: Thank you very much.

2 EXAMINER SANYAL: Ms. O'Brien, you may
3 call your next witness.

4 MS. O'BRIEN: Your Honors, I would like
5 to call Mr. Dennis Poffenberger.

6 EXAMINER SANYAL: Good morning, sir.
7 Would you raise your right hand.

8 (Witness sworn.)

9 EXAMINER SANYAL: Okay. You may be
10 seated. If you would tell us your name and spell out
11 your last name for the record.

12 THE WITNESS: Dennis Poffenberger, we
13 live in Laurel, Ohio, and we are DP&L customers.
14 Last name is P-O-F-F-E-N-B-E-R-G-E-R. And our
15 situation was a little bit different than his.

16 EXAMINER SANYAL: Hang on just one
17 moment.

18 Ms. O'Brien, you may.

19 - - -

20 DENNIS POFFENBERGER

21 being first duly sworn, as prescribed by law, was
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 By Ms. O'Brien:

25 Q. Good morning, Mr. Poffenberger. Thank

1 you for being here today. Can you tell me are you
2 currently employed?

3 A. No. I'm retired.

4 Q. Okay. And what was your -- what was your
5 profession before you retired?

6 A. I worked from Local 82 as an electrician.

7 Q. And can you tell us about your experience
8 with Verde?

9 A. Yes. We -- we received a letter I am
10 going to say in like 2017 offering a change from DP&L
11 to Verde, and they quoted us a less kilowatt-hour
12 payment. So actually we changed, and we were happy
13 with them at first, you know, and then once our
14 contract ran out, we kept getting a higher bill. I
15 never paid any attention. My wife takes care of the
16 bills, and I didn't think it was any big deal because
17 it was like December and January. Our -- we got
18 total electric, so our bills are high anyway. But my
19 wife, she kept saying our bill is way too high.

20 So she called DP&L and they said, well,
21 your contract ran out and they are charging you like
22 18 cents a kilowatt-hour, so we had been paying 18
23 cents kilowatt-hours for maybe three or four months
24 and I didn't pay any attention.

25 So DP&L told us that there was nothing we

1 could do. We would have to call Verde and cancel
2 with them, and then we could go back to DP&L. So
3 that's what we done. I called Verde, canceled. We
4 went back to DP&L, and our bills went down like half
5 of what they was while we were with Verde.

6 And then a few -- maybe a month or two
7 later I did get a call from a Verde rep again wanting
8 us to switch, but when I told him how much our bill
9 went up, then he -- that was the end of that
10 conversation.

11 Q. Now, you mentioned that you were on a
12 contract and that your rates were stable for a while.

13 A. Yes, while the contract was -- it was
14 like a two-year contract.

15 Q. Okay. And do you recall receiving an
16 expiration notice from Verde?

17 A. If we did, I didn't pay any attention to
18 it so.

19 MS. O'BRIEN: Okay. No further
20 questions.

21 EXAMINER SANYAL: Thank you.

22 Mr. Proano.

23 - - -

CROSS-EXAMINATION

By Mr. Proano:

Q. Mr. Poffenberger, good morning.

A. Hi.

Q. I'm David Proano. I represent Verde Energy. Could you have received a letter; you just didn't notice?

A. Yes.

Q. Did you sign up for natural gas service with Verde?

A. No. We just had total electric.

Q. When you initially signed up for Verde Energy with electric service, did you agree to their services?

A. Yes.

Q. You mentioned that the contract ran out for three or four months, there was a higher rate, and you mentioned not paying attention. Why were you not paying attention?

A. My wife takes care of the bill, and we usually have high bills come wintertime. Our bills are always high anyway, so I didn't think it was that big a deal.

Q. When you canceled your contract with Verde, did they penalize you in any way? Did they?

1 A. No.

2 Q. Early termination penalty?

3 A. No. When I first signed up, there was no
4 cancellation penalty.

5 Q. So Verde freely let you cancel the
6 contract at that point?

7 A. They would have, but it was already
8 expired.

9 Q. And you are not --

10 EXAMINER PRICE: Did Verde promptly
11 return you -- did Verde promptly return you to Dayton
12 Power's service?

13 THE WITNESS: It took us -- we had to
14 wait a month. Once I called them it was a month
15 before DP&L could take back over.

16 EXAMINER PRICE: Thank you.

17 THE WITNESS: So it cost us another high
18 electric bill for the next month.

19 Q. (By Mr. Proano) When Verde contacted you
20 again after you had switched back to DP&L regarding
21 returning to Verde and you said no, was that the end
22 of that conversation?

23 A. Yes. I just explained to him that my
24 bill was -- they had raised my rates from 4-1/2 to
25 like 18 and that was the end of it. When I told him

1 that, that was the end of the conversation.

2 Q. That was the end of the conversation.

3 A. Yes.

4 MR. PROANO: No further questions.

5 EXAMINER SANYAL: Mr. Nugent?

6 MR. NUGENT: No questions, your Honor.

7 EXAMINER SANYAL: Mr. Lindgren?

8 MR. LINDGREN: No questions, your Honor.

9 EXAMINER SANYAL: Questions, Ms. O'Brien.

10 MS. O'BRIEN: No further questions, your
11 Honors.

12 EXAMINER SANYAL: Okay. Thank you
13 Mr. Poffenberger.

14 THE WITNESS: Thank you.

15 MS. O'BRIEN: Okay. Your Honors, I would
16 like to call Mrs. Brenda Poffenberger, please.

17 EXAMINER SANYAL: Good morning,
18 Ms. Poffenberger. If you would raise your right
19 hand.

20 (Witness sworn.)

21 EXAMINER SANYAL: If you will be seated
22 and if you'll let us know your name and your address
23 for the record.

24 THE WITNESS: Brenda Poffenberger, I am
25 Dennis's wife. We live outside of Laurel, Ohio, and

1 we were Dayton Power and Light customers before we
2 had Verde.

3 - - -

4 BRENDA POFFENBERGER

5 being first duly sworn, as prescribed by law, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 By Ms. O'Brien:

9 Q. Now, Ms. Poffenberger, first, thank you
10 for coming this morning. You mentioned that you're
11 Mr. Poffenberger's wife, and I believe he testified
12 that you primarily handle the bills.

13 A. Yes.

14 Q. Is that correct? Can you tell us about
15 your experience with Verde.

16 A. Well, they -- they had -- it had been
17 being pretty -- after Dennis was the one that decided
18 to switch and it had been being pretty decent. And
19 then like one month I had a -- like in November, I
20 want to say, the bill was around a couple -- a couple
21 hundred dollars. And then the month of December I
22 get a bill, and I am like, oh, my goodness, Dennis.
23 I look at it and it was like 690 some dollars or
24 something like that. I got it in here with me.

25 But anyway, so I told him. Well, he's

1 like, yeah, well, you know, it's winter. I said but
2 it hasn't been any colder, and I said this is
3 ridiculous.

4 So I called Dayton Power and Light. I
5 explained and then she asked me my account number and
6 I gave it to her and then she said, well -- I said I
7 don't understand this because I said we can't afford
8 this kind of electric bills. And she -- I said we
9 keep our thermostat set at like 65 and I said it's
10 cold in our house and we are running a propane
11 fireplace still and we are still freezing.

12 And so anyway she said, well, I can tell
13 you have Verde Energy as your supplier. And she said
14 if you would have been with Dayton Power and Light,
15 would have been 4. something cents per kilowatt-hour,
16 and she said but they are charging you 18. something.
17 I forget.

18 Anyway then she -- I said, well, what can
19 we do? She's like, well, there is really nothing
20 that we can do for you other than you have to pay it.
21 And I said we have to pay that? And she said yeah.

22 So she told me I could call the PUCO if I
23 wanted to and complain. She said it probably won't
24 do much good for you, but she said maybe it will help
25 somebody in the future, so I did. And then that's

1 when the guy wanted my account number that I talked
2 to and I gave it to him and then he called me back
3 and said, yes, that we had been charged a lot more
4 money than what we should have been. So he said that
5 they would -- he would send it to their investigation
6 department, and I figured that wasn't going to do any
7 good, you know. It was just something that they
8 would say.

9 But a few weeks later they did call me
10 back and he asked me had I heard from them and I said
11 no. He said, well, let's give them another month or
12 so, but he said they should be contacting you. So
13 then about I think it was beginning of March -- that
14 was like in December and January. Beginning of
15 March -- oh, and the woman from Dayton Power and
16 Light told me we have -- we cannot -- you cannot
17 switch over from Verde until after your next meter
18 reading which was like a month away. And she said
19 probably your next bill will be even worse. Well, it
20 was.

21 So but then the PUCO guy called me -- or
22 called me back and he said I should be hearing from
23 them and then we did after that, we did in March. We
24 got a check, but it laid -- I thought it was just
25 another scam deal and I left it lay and my husband

1 thought it was just -- we almost threw it in the
2 trash, although I did decide to open it and see if it
3 was something trying to give us another real good
4 electric deal because it said Spark Electric on the
5 outside of the envelope. But I opened it, and it was
6 a check from them for reimbursement of some of the
7 money overcharged that they charged us.

8 Q. Okay. And do you recall ever receiving a
9 contract expiration notice from Verde?

10 A. I don't remember seeing one. It's not --
11 I mean, I would not swear that I didn't get one and
12 just didn't know what it was and threw it in the
13 trash because we get a lot of junk mail, but I
14 don't -- I don't remember seeing one.

15 Q. And do you recall when you initially
16 enrolled for services with Verde, do you recall
17 whether or not you received a written contract from
18 Verde?

19 MR. POFFENBERGER: We did.

20 A. I don't -- I don't know. I don't
21 remember seeing one, but we may have. Honestly I
22 don't remember.

23 MS. O'BRIEN: Okay. Thank you very much.
24 No further questions.

25 EXAMINER SANYAL: Mr. Proano.

CROSS-EXAMINATION

By Mr. Proano:

Q. Ms. Poffenberger, good morning.

A. Good morning.

Q. I am David Proano. I represent Verde Energy. You had mentioned a conversation with Dayton Power and Light where they indicated to you it would take about a month to switch back to them. Do you recall that?

A. Yes.

Q. Do you understand that it is the utility that determines the timing of the switchback from a competitive supplier like Verde back to utility service?

A. I didn't know that. She just told me I would have to wait until after the next meter reading before they could switch me back. That's what she told me and that's what happened because the next bill was more also.

Q. And are you aware that it's not Verde Energy's decision when that switch occurs after you cancel but the utility's?

A. No, I was not aware of that.

Q. I'll represent to you the refund check you received was dated February 8, 2019. Does that

1 sound about the right time frame?

2 A. I have that. I have that receipt right
3 here. Actually it was -- the date on this is 3-4-19.

4 Q. What is the amount of that check?

5 A. 1,886.33.

6 Q. \$1,886.33?

7 A. \$1,886.33.

8 Q. Thank you. And who was that check made
9 out to?

10 A. I believe it was made out to my husband,
11 but it doesn't show on here. I say it was made out
12 to him because our power bill is in his name.

13 Q. Why do you think you received that \$1,800
14 check from Verde Energy?

15 A. Why do I think I received it? Because I
16 felt like they charged us a whole lot more money than
17 what they should have been charging us for quite a
18 long time.

19 Q. Do you feel that the Company Verde Energy
20 tried to make things right by sending you that check?

21 A. I felt like they were paying us back what
22 they -- I didn't -- what they felt like they owed us.

23 Q. After you received that check, did you
24 complain that it wasn't enough to PUCO Staff or Verde
25 Energy?

1 A. No. I just figured that was all we was
2 going to get, so I took that and figured that's
3 better than nothing because I didn't figure we would
4 get anything.

5 Q. Did you cash that check?

6 A. We did.

7 Q. You had mentioned you don't know whether
8 or not there was a contract for your services of
9 Verde Energy?

10 A. Correct. I don't remember saying -- my
11 husband was the one that signed up with that, and I
12 don't usually argue with him over things that he does
13 to try to save us money, but I let him know whenever
14 something he did don't save us any money.

15 EXAMINER PRICE: We can recall you as a
16 witness if you would like to respond to that.

17 Q. Ms. Poffenberger, did you read the Verde
18 contract you had with them?

19 A. I don't remember seeing one. I honestly
20 don't.

21 Q. So you don't know whether or not that 18
22 cents per kilowatt-hour was part of the contract, do
23 you?

24 A. No. All I know is that my husband told
25 me that it was going to save us like a lot of money

1 by them being our supplier. And I -- on -- I just
2 said okay, but I don't remember seeing a contract.

3 Q. And you don't remember receiving a notice
4 of termination or notice of renewal, but it could
5 have been sent to you, correct?

6 A. I guess it could have been, but I'm the
7 one that pay -- pays the bills every month and I
8 usually just open like the Dayton Power & Light bill
9 and I take out the bill and all that other garbage, I
10 throw it in the garage and keep the envelope and send
11 them a check because I don't -- we get -- like I
12 said, we get a lot of junk mail and I -- I don't like
13 dealing with that, so I could have put it in the
14 trash.

15 MR. PROANO: No further questions.

16 MS. O'BRIEN: I just --

17 EXAMINER SANYAL: I am just going to
18 check and see if Mr. Nugent or Mr. Lindgren have
19 questions.

20 MR. LINDGREN: I have no questions.

21 MR. NUGENT: No.

22 EXAMINER SANYAL: Go ahead, Ms. O'Brien.

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REDIRECT EXAMINATION

By Ms. O'Brien:

Q. Ms. Poffenberger, you just testified you did receive a refund from Verde; is that correct?

A. Yes, yes.

Q. What would have happened if you didn't complain about your high rates?

A. What would have happened? I'm sure nothing would have ever happened. I mean, we paid the bill, you know, because Dayton Power and Light said that we had to pay, so I went ahead and paid it. And the next one was even higher, and we paid that one, but I just figured that, I mean, that's the way it was. And I told my husband, I said next time you get a letter or a phone call don't buy nothing because we don't need to save no more money.

Q. And ultimately you didn't save any money, did you?

A. No.

MS. O'BRIEN: Thank you, Ms. Poffenberger. No further questions.

MR. PROANO: No further questions.

EXAMINER SANYAL: Okay. Thank you, Ms. Poffenberger.

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EXAMINATION

By Examiner Price:

Q. I do have one question before you step down. Were you satisfied with the amount of the refund check you received?

A. Well, I didn't really know because I didn't go back and look at all the bills.

Q. You didn't do any comparison what you should have paid?

A. No, I didn't because I just figured that that was what we were going to get. I didn't really look to see if like because -- like I said, in the wintertime our bill does go up, but after we went back on Dayton Power and Light, it was back down to about 300 some dollars so I don't know because sometimes we're outside a lot so we are not in the house that much so I don't -- I didn't really pay that much attention.

EXAMINER PRICE: Okay. Thank you. Thank you for coming to Columbus.

THE WITNESS: Okay. Thank you.

MS. O'BRIEN: And, your Honor, we have no more public witnesses at this time.

EXAMINER PRICE: Thank you. What is counsel's preference? We have outstanding rulings

1 and motions to quash. Would you care to take those
2 up next or take up Ms. Alexander is a date certain
3 witness?

4 MS. O'BRIEN: Our preference would be to
5 discuss the motions to quash, if that's okay with
6 your Honors, and then move on to Ms. Alexander.

7 EXAMINER PRICE: Who's arguing the
8 motions? Mr. Healey.

9 MR. HEALEY: I am.

10 EXAMINER PRICE: Awesome. Mr. Healey.

11 MR. HEALEY: It's their motion, your
12 Honor, so I would ask they make their argument on
13 their motion, and I would be happy to respond.

14 EXAMINER PRICE: We already have the
15 written motion and the written response. Do you have
16 anything you care to add to your response?

17 MR. HEALEY: You know, I guess I would
18 just argue that at least with respect to Verde's
19 motion to quash, because we have two different
20 motions to quash here, with respect to Verde's motion
21 to quash, the gist of their motion seems to be that
22 no one can ever subpoena any out of state witness to
23 come to a PUCO hearing. And that's simply not the
24 way that it works.

25 PUCO rules do not say that nor do the

1 Civil Rules. Civil Rules plainly allow for out of
2 state subpoenas under Rule 4.3(A) that provides for
3 service of process outside the state upon a person
4 who at the time of service of process is a
5 nonresident, and under Ohio Revised Code 4903.082,
6 the Rules of Civil Procedure generally apply to PUCO
7 hearings.

8 EXAMINER PRICE: Let's back up for a
9 second and let's do the noncontroversial parts of
10 these motions first.

11 MR. HEALEY: Sure.

12 EXAMINER PRICE: Sorry, Mr. Lindgren. I
13 am calling your motion noncontroversial. Nonetheless
14 in light of the pleadings the parties have filed on
15 the motion to quash the Staff witnesses, consistent
16 with our ruling in PALMco, the motion to quash will
17 be denied subject to the one condition which is any
18 question that these -- that you can only pose
19 questions to Ms. Bossart that the initial Staff
20 witness is unable to answer. You can only pose
21 questions to Mr. Fadley if Ms. Bossart is unable to
22 answer. So we have sort of whittling down process,
23 subject to follow-ups and -- of course.

24 So then we have the three subpoenas to
25 which the motion to quash were filed. Mr. Healey,

1 let's set aside the issue as to Ms. Jordan --

2 MR. HEALEY: Sure.

3 EXAMINER PRICE: -- and talk about two
4 and three of your subpoena asking them to designate a
5 witness.

6 MR. HEALEY: Yes, your Honor.

7 EXAMINER PRICE: Can you point to me
8 where in the Administrative Code you are relying upon
9 to ask them to designate a witness to appear at
10 hearing?

11 MR. HEALEY: We -- that would be the
12 subpoena rule under 4901-1-25 which allows generally
13 for --

14 EXAMINER PRICE: Can you show me where?

15 MR. HEALEY: Sure. 4901-1-25(A) provides
16 that a subpoena shall command the person to attend
17 and give testimony at the time and place specified
18 therein.

19 EXAMINER PRICE: Right. It doesn't say
20 may demand a corporation to designate a witness to
21 attend as opposed to the deposition rule, if you take
22 a look at 4901-1-21(F). A party may in the notice
23 and in a subpoena name a corporation, partnership,
24 association, government agency, or municipal
25 corporation and designate with reasonable

1 particularity the matters on which examination is
2 requested. That language is not in the subpoena
3 rule. That relates solely to depositions; isn't that
4 correct?

5 MR. HEALEY: Yes, your Honor, that is the
6 rule on depositions.

7 EXAMINER PRICE: So can you point to a
8 subpoena rule in terms of a parallel rule for
9 witnesses at trial?

10 MR. HEALEY: I'm not aware of a rule
11 specifically allowing subpoena on a corporation. I
12 would certainly argue that the subpoena rule under
13 4901-1-25 properly served on a corporation would give
14 the Attorney Examiner and the Commission the
15 authority to subpoena a generic corporate witness.

16 Certainly Verde Energy by doing business
17 in this state has subjected itself to the
18 Commission's jurisdiction. It would seem I would
19 have to say wildly unfair if corporations could do
20 business in Ohio, refuse to identify specific
21 witnesses, and then argue that no generic corporate
22 witness could be subpoenaed to --

23 EXAMINER PRICE: Why is that wildly
24 unfair? Why is it that you cannot do as was done in
25 PALMco, request them to designate a witness for

1 deposition and then introduce the deposition --
2 provided it's three days before the hearing,
3 introduce that deposition as evidence in the
4 Commission in lieu of calling the witness?

5 MR. HEALEY: That's certainly an option,
6 your Honor, but I don't think Verde and companies
7 that do business in Ohio should have the right to
8 demand that that's the only way that they can provide
9 witnesses.

10 I would also note under Revised Code
11 4928.09 the consent to jurisdiction includes consent
12 to service of summons and subpoenas. So I think that
13 if not found in the PUCO's rules, the Revised Code
14 would, in fact, allow for a corporate subpoena.

15 EXAMINER PRICE: Which is not the way the
16 courts of appeals interpreted it in McGuire versus
17 Draper, Hollenbaugh & Briscoe, L.P.A., 2002-Ohio-6170
18 or in Burgess versus Prudential Insurance Companies,
19 1988-Westlaw-68686; is that correct?

20 MR. HEALEY: In the Burgess and McGuire
21 questions cases, your Honor, they were issuing
22 subpoenas to specific employees by name and serving
23 them on the corporate entity. In the A.O. Smith
24 case, that's what we have here.

25 EXAMINER PRICE: A.O. Smith case was for

1 a deposition not for trial; is that correct?

2 MR. HEALEY: It was for a deposition, but
3 the issue -- the same rule applies to subpoenaing for
4 a deposition as it does --

5 EXAMINER PRICE: But not in our rules.

6 MR. HEALEY: No.

7 EXAMINER PRICE: Not in our rules. There
8 is no designated witness.

9 MR. HEALEY: Not in our rules. But the
10 A.O. Smith case is a case that described what you
11 need to do to properly serve a witness under the
12 Civil Rules, and in that case it made a dis --
13 distinguish between service of the subpoena for an
14 individual witness by name and service on a
15 corporation.

16 EXAMINER PRICE: For a deposition.

17 MR. HEALEY: Sure.

18 EXAMINER PRICE: A deposition which is
19 different than bringing them in. Depositions can be
20 done by telephone. There is a uniform deposition
21 act, I don't have the correct title, but allows you
22 to do a deposition of a witness in an out of state
23 jurisdiction by telephone and then file that
24 deposition at the hearing or trial.

25 MR. HEALEY: I agree with all of that,

1 your Honor. That's certainly one option. Our
2 position is that -- that Verde is an entity operating
3 in the state, should be required to produce a witness
4 to answer to the allegations.

5 EXAMINER PRICE: But Prudential Insurance
6 was regulated by the insurance industry, the
7 insurance -- the Department of Insurance.

8 MR. HEALEY: Correct.

9 EXAMINER PRICE: That also had an agent
10 for service of process rule. That's not the way the
11 court of appeals interpreted that. I like where
12 you're going where I have more power than a court of
13 common pleas judge, but I'm just not buying it.

14 MR. HEALEY: I don't agree -- I don't
15 agree that I'm asking for you to have more power. I
16 am asking for you to have the same power.

17 EXAMINER PRICE: I think you're actually
18 saying I have more power that a federal district
19 court judge because when I look at the federal rules,
20 the federal rules although a subpoena can be served
21 anywhere in the United States, says you can only
22 bring people in for hearing from 100 miles or within
23 the state in which they reside or do business.

24 MR. HEALEY: There certainly will be
25 inconsistencies between the federal rules and the

1 state rules. In some of those instances the state
2 rules may provide --

3 EXAMINER PRICE: But somehow you
4 interpret the federal rules and the state rules as us
5 having more power than an Article III court and that
6 just seems not correct.

7 MR. HEALEY: I would disagree that it
8 seems not correct. I believe you do have that
9 authority. I believe they are doing business in this
10 state. The federal rules don't necessarily account
11 for that situation here. We have an entity who is
12 working in Ohio, is charging customers money in Ohio,
13 is subject to at least some of the PUCO's
14 jurisdiction, and then coming in and saying you can
15 never bring any of our out of state witnesses or
16 employees here to testify.

17 And I would note we learned during
18 Mrs. Jordan's deposition they don't have any Ohio
19 employees, so it's a nice way to avoid ever having to
20 really answer and sit here in a public forum and say
21 here is what we do, here is what our business is, and
22 here is how we should be judged.

23 EXAMINER PRICE: I would like to compare
24 the language. You had seemed to indicate that
25 because you served Ms. Jordan personally with a

1 subpoena actually through her -- through their
2 general counsel at the place of business, that that's
3 a valid subpoena. And 4901-1-25(B) says a subpoena
4 may be served at any place within the state. How do
5 you interpret that as serving a subpoena in Texas?

6 MR. HEALEY: I think we addressed this in
7 our papers, your Honor. That -- the purpose of that
8 sentence is to state that the entire state is fair
9 game for subpoenas of people who are within the state
10 as in you don't have to serve them at a corporate
11 address or their personal address. You can find them
12 at McDonald's or wherever you want and serve them.
13 It says nothing at all about --

14 EXAMINER PRICE: So you would add the
15 rest of the words or in the rest of the known
16 universe are implied to service in this state.

17 MR. HEALEY: I would say that that
18 sentence is only about what applies to in the state,
19 and then out of state is a separate rule that's not
20 specifically denominated there. As I pointed out in
21 our briefs, you know, if the rules --

22 EXAMINER PRICE: So you are not relying
23 on 25 at all for this subpoena?

24 MR. HEALEY: I am relying on 25(B) which
25 explains how you can make service of a subpoena.

1 EXAMINER PRICE: That's the rule that
2 says it may be served in the state.

3 MR. HEALEY: Correct. It doesn't say
4 anything about whether it can or cannot be served out
5 of state. If I say you may go to Wal-mart, that
6 doesn't mean that you can't go to Target. A
7 permissive sentence in a rule permits you to do that
8 thing, but it does not exclude you from doing all
9 other things.

10 EXAMINER PRICE: I think that's not a
11 very good analogy. I think the better analogy would
12 be the Federal Rules of Civil Procedure Rule 45
13 demonstrates I think the proper way. If an entity
14 intended to serve something in the United States,
15 (B) (2) it says service in the United States, it says
16 the subpoena may be served at any place within the
17 United States. If the Commission had intended to
18 make the entire country eligible for service of a
19 subpoena, would we not have said a subpoena may be
20 served anywhere in the United States as the federal
21 rules do?

22 MR. HEALEY: They certainly could have
23 said that, and they certainly also could have said
24 you may only serve people within the state of Ohio.
25 They chose not to use that language either. And

1 obviously I am not arguing you can subpoena anyone in
2 the known universe. I'm arguing that you can
3 subpoena the employees of someone who has
4 specifically subjected themselves to the jurisdiction
5 of Ohio. So there's no risk that we're going to
6 start subpoenaing everyone on the planet from
7 throughout the country and throughout the -- you
8 know, the known universe.

9 EXAMINER PRICE: So you think the courts
10 of appeals were wrong in Hollenbaugh and Burgess and
11 the other one, McGuire.

12 MR. HEALEY: I don't think they were
13 wrong. I think we have -- we have a specific statute
14 here, 4928.09 that says you consent to Ohio
15 jurisdiction and subpoenas.

16 EXAMINER PRICE: Okay.

17 MR. HEALEY: So when you -- Verde --

18 EXAMINER PRICE: Let's say I agree with
19 you, hypothetically for the sake of argument, and I
20 don't quash the subpoena. How does that play out?

21 MR. HEALEY: How does it play out?

22 EXAMINER PRICE: What's next?

23 MR. HEALEY: What's next is Verde -- the
24 witness has been subpoenaed and is ordered to produce
25 the witness and appear here.

1 EXAMINER PRICE: He declines. Mr. Proano
2 declines to produce the witness. Now what?

3 MR. HEALEY: Then I suppose we move for
4 some kind of sanctions against Mr. Proano for
5 refusing --

6 EXAMINER PRICE: Wouldn't you have to go
7 in a common pleas court to enforce this?

8 MR. HEALEY: Presumably, your Honor, yes.

9 EXAMINER PRICE: Not presumably. That's
10 what the law says, right?

11 MR. HEALEY: Yes.

12 EXAMINER PRICE: The law says you have to
13 go -- you have to get an application from a
14 Commissioner and file -- and pursue sanctions -- or
15 pursue enforcement in the common pleas court; is that
16 right?

17 MR. HEALEY: Correct.

18 EXAMINER PRICE: And so you would have us
19 stay this hearing while you proceeded to get your
20 enforcement?

21 MR. HEALEY: I would certainly hope that
22 your Honor would encourage counsel for Verde to
23 comply with what has been deemed a valid subpoena.

24 EXAMINER PRICE: He's got every right to
25 argue that it's not a valid subpoena, and the common

1 pleas court would be where he would make that
2 argument. So you file an action in the common pleas
3 court to enforce this. Mr. Proano files a response
4 and says this is an illegal subpoena. He's not --
5 you're not following McGuire. You're not following
6 Burgess. It's plainly obvious the Commission does
7 not have more power than the common pleas court which
8 I think a judge is going to buy but let's say you win
9 at the common pleas court. He can appeal.

10 MR. HEALEY: Sure.

11 EXAMINER PRICE: How long is it going to
12 take an appeal to run?

13 MR. HEALEY: I don't know, your Honor.
14 That's the legal system we deal with and that's
15 the -- those are the --

16 EXAMINER PRICE: But you would agree that
17 he could take that there's -- he would be -- would
18 have the opportunity to take that on appeal.

19 MR. HEALEY: Sure. Every party has the
20 right to pursue all legal rights of said appeal.

21 EXAMINER PRICE: So months later the
22 courts of appeals hand down the decision. And then
23 you need to go to Texas to enforce that judgment?

24 MR. HEALEY: That would probably be right
25 if she is located in Texas, yes.

1 EXAMINER PRICE: And you win in the Texas
2 common pleas court. And then Mr. Proano appeals
3 again to the Texas judicial system. When does this
4 case end if I follow your advice? If I follow my
5 advice, if I follow what we did in PALMco, this case
6 ends in a month. If I follow your advice, it sounds
7 like -- if we follow your advice, it sounds like this
8 case ends sometime in 2026.

9 MR. HEALEY: That -- that may be the
10 case, your Honor, but parties have rights and that
11 includes the rights of appeal as you explained and
12 doing what gets a case over immediately and quickly
13 is not always the right legal result. That's why we
14 have a multi-tiered appellant review in this country
15 and that's just the way it is. Unfortunately
16 sometimes things take a while to get done.

17 And if you rule that we cannot ever
18 effectively subpoena any witness from out of state
19 and that renders what I've been citing,
20 4928.09(A)(1)(A) almost irrelevant because you cannot
21 subpoena one of -- any of Verde's people to ever show
22 up or any other supplier that works out of state
23 which is many of them.

24 EXAMINER PRICE: That's the system we
25 have, as you said. Sometimes things don't work out

1 well.

2 MR. HEALEY: Sure. My point is --

3 EXAMINER PRICE: If we look back at the
4 subpoena rules on motions -- at the Civil Rules
5 motions to quash since you're relying on the Civil
6 Rules, it indicates in (C) (5), 45(C) (5), if a motion
7 is made under Division (C) (3) (C) or (C) (3) (D) of this
8 rule, the court shall quash or modify the subpoena
9 unless the party in whose behalf the subpoena is
10 issued shows a substantial need for the testimony or
11 materials otherwise -- cannot otherwise be met
12 without undue hardship.

13 You have a deposition of Ms. Jordan. Why
14 is that not sufficient for purposes of this
15 proceeding? I don't get to have her appear before me
16 and that's unfortunate. Ms. Sanyal doesn't get her
17 chance to have her appear before you, but for your
18 purposes why is that insufficient?

19 MR. HEALEY: It's insufficient for a
20 couple of reasons, your Honor. One, the purpose of
21 these hearings is in part to provide the public with
22 information and insight into what's going on at the
23 Public Utilities Commission proceedings.

24 EXAMINER PRICE: I assume you asked all
25 the right questions in your deposition.

1 MR. HEALEY: Sure.

2 EXAMINER PRICE: I have great faith in
3 you.

4 MR. HEALEY: Sure. And that -- if that
5 deposition transcript gets admitted, then it gets
6 admitted, but we're not there yet.

7 So, you know, the other downside is when
8 you have a cross-examination before an Attorney
9 Examiner, then you have a cleaner process, a more
10 fair process where parties have a reasonable
11 opportunity to object. In deposition opportunities
12 to object are generally more limited. We potentially
13 have situations where you are in a deposition,
14 counsel objects, we don't know if that objection is
15 going to get granted. So then now we have to either,
16 one, move on and hope that we win that objection at a
17 later time or proceed down a line of asking so many
18 questions over and over and over until we get one
19 that's not objectionable and that's a burden on the
20 parties.

21 And there is a reason that Ms. Jordan's
22 deposition went seven and a half hours. She wouldn't
23 have been cross-examined for seven and a half hours
24 in all likelihood if she were here but we had to ask
25 every question five times.

1 EXAMINER PRICE: I don't think a seven
2 and a half hour deposition is out of the known length
3 of deposition before this Commission.

4 MR. HEALEY: Sure. And --

5 ATTORNEY EXAMINER: Let me -- it's more
6 for OCC than just the issues you've raised. You
7 believe that they -- in your motion -- in your
8 memoranda contra you believe they should have to go
9 through the process of attending this state and
10 appealing at hearing under oath, that that's part of
11 the punishment, part of the -- part of the process;
12 is that correct?

13 MR. HEALEY: I don't know if I would call
14 it part of the punishment. It's certainly -- the
15 Commission ordered them to appear and show cause at
16 this hearing which would include producing a witness
17 in our opinion; so, yes, I think that's part of the
18 process.

19 Can I make one more point on the --

20 EXAMINER PRICE: Absolutely.

21 MR. HEALEY: -- deposition issue, your
22 Honor? The purpose of a deposition in part is to
23 discover information that we didn't previously know.
24 So you go through a deposition, find out what a
25 witness knows. So there is really two types of

1 deposition questions, as you are probably aware. One
2 is exploring for information, and one is pinning a
3 witness down so that you can use it for impeachment
4 at a hearing. We don't get to really use that first
5 one very effectively in a deposition as compared to a
6 cross-examination because we don't know what she is
7 going to say. The whole point of a cross-examination
8 as every good lawyer knows don't ask a question you
9 don't know the answer to. But that doesn't apply at
10 a deposition.

11 EXAMINER PRICE: Why don't you -- why
12 don't you seek to recall her, force Mr. Proano to put
13 her back up again, another deposition which would be
14 more of your evidentiary deposition or choose to have
15 her come up here? That puts him on the horns of the
16 dilemma.

17 MR. HEALEY: I certainly think we would
18 be met with strong opposition to a second deposition
19 for purposes of cross-examination and repeated asked
20 and answered objections.

21 EXAMINER PRICE: It might be better than
22 having her come here.

23 MR. HEALEY: I'm not aware of any Civil
24 Rule or rule in the Ohio Administrative Code that
25 allows you to do one real -- one exploratory

1 deposition followed by this one is really for
2 cross-examination purposes deposition. I certainly
3 think that's administratively burdensome.

4 EXAMINER PRICE: If you have new
5 information that was discovered, it certainly could
6 be good cause shown, couldn't it?

7 MR. HEALEY: If you are willing to make
8 that ruling, we would be happy to depose the witness
9 again, your Honor.

10 EXAMINER PRICE: I'm just exploring the
11 range of opportunities.

12 MR. HEALEY: I don't know that we
13 considered that a realistic opportunity in terms of
14 having that -- were we to request that, I don't think
15 that we would realistically have expected that to be
16 an option from the Bench, but obviously we are
17 willing to explore that, if you would prefer.

18 I would also note that, you know, Verde
19 clearly is able to bring people from Texas as their
20 counsel from Texas is here, so it's not that much of
21 a burden for Verde to bring someone from Texas to
22 here.

23 EXAMINER PRICE: That's not remotely
24 relevant more than your four attorneys here indicates
25 anything on behalf of the OCC other than you have

1 four people here.

2 Mr. Proano.

3 MR. PROANO: Your Honor, I agree with
4 everything you've said.

5 EXAMINER PRICE: You have to understand
6 sometimes I think things speculatively. It's not
7 what I mean.

8 MR. PROANO: I do want to -- just one
9 piece of information that could assist, your Honors,
10 in making a decision. Ms. Jordan has already been
11 deposed on the topics through a corporate designee
12 notice that are the subjects of -- almost word for
13 word of the subpoenas No. 2 and subpoenas No. 3.
14 Subpoenas No. 2 said, you know, all persons, which
15 itself is broad and improper, but all persons who
16 have knowledge about Verde's responses to OCC's sixth
17 discovery response. That was topic No. 5 in the
18 corporate rep notice that on October 10 Kira Jordan
19 appeared for as a corporate designee on that topic,
20 that specific topic. So that testimony has already
21 been taken. It was filed by OCC yesterday as a
22 matter of record in this court.

23 Same thing with subpoena No. 3 which
24 requests a person to appear here today to discuss the
25 spoofing complaints on page 11 of the PUCO's Staff

1 Report. Topics A, B, C, and D of the corporate rep
2 notice dated October 7 listed specifically those four
3 spoofing -- spoofing complaints on page 11 of the
4 PUCO report.

5 So as a matter of fact, the OCC has
6 already gotten that testimony from a corporate
7 designee. We did not object to it. Even though it
8 was served very close in time, we prepared her, and
9 she answered all the questions that OCC posed. I at
10 no time instructed the witness not to answer a single
11 question. All attorneys, all counsel for all parties
12 were present at the deposition. They all had the
13 opportunity to cross-examine the witness. IGS
14 cross-examined the witness. PUCO Staff's counsel had
15 the opportunity to do so.

16 There was no dispute during the testimony
17 that required your guidance and I don't believe there
18 will be. And we certainly -- even though it was
19 filed late we certainly don't object to --

20 EXAMINER PRICE: Oh, I might.

21 MR. PROANO: You might.

22 EXAMINER PRICE: I might.

23 MR. PROANO: We don't. It's up to your
24 Honor whether you accept a late-filed transcript. We
25 certainly have no objection. We have cooperated in

1 the process that's laid out for obtaining out of
2 state witness depositions. And this -- these
3 subpoenas are clearly improper. Thank you, your
4 Honor.

5 EXAMINER PRICE: Let's just explore one
6 topic and that is if to satisfies OCC's objections we
7 were to -- would you object to the recall of
8 Ms. Jordan so that he can ask the sort of questions
9 he would have asked if she personally appeared rather
10 than in his exploratory deposition?

11 MR. PROANO: I thought that was exactly
12 what the deposition was for. That was the
13 understanding among counsel that this was a
14 deposition of out of state witness that was going to
15 be filed as a matter of record in this case.

16 MR. HEALEY: I would disagree with that,
17 your Honor. At the time of the deposition we had an
18 outstanding subpoena and it had not been quashed, so
19 we were taking a deposition and the tenor of this
20 case at that point was that witness would appear.
21 Obviously we understand that we had discussed at the
22 prehearing and perhaps off the record that that
23 admitting the deposition transcript might be an
24 option, but at the time of the deposition that had
25 not yet been decided.

1 MR. PROANO: Obviously we disagree, your
2 Honor. We were all here October 7, and I believe it
3 was on the record that it was made known that the
4 Attorney Examiners were inclined to follow the intro
5 case, and certainly OCC was on notice that the
6 deposition of Ms. Jordan may be the only opportunity
7 to get her testimony into the record.

8 EXAMINER PRICE: Are you -- you have
9 filed the deposition.

10 MR. HEALEY: Correct.

11 EXAMINER PRICE: Is that correct?

12 MR. HEALEY: Yes.

13 EXAMINER PRICE: And you did not file it
14 within with the required time frame.

15 MR. HEALEY: I would disagree with that,
16 your Honor.

17 EXAMINER PRICE: Why is that?

18 MR. HEALEY: If you would like to hear me
19 on that.

20 EXAMINER PRICE: It says three days
21 before the hearing.

22 MR. HEALEY: It says three days before
23 the hearing, which was a Sunday, and then Monday was
24 Columbus Day, so it pushes forward to Monday, and
25 then into Tuesday which was yesterday when we filed

1 it. That's Rule 4901-1-07. Says if a deadline falls
2 on a Sunday, it goes to the next business day.

3 EXAMINER PRICE: That's fair.

4 MR. HEALEY: Obviously good cause and I
5 think also since the deposition took place Thursday
6 and we got the transcript Friday at 5:00 p.m. So the
7 three-day rules does --

8 EXAMINER PRICE: I was curious if you
9 were holding off waiting to see how you did on the
10 motion to quash.

11 MR. HEALEY: No, not at all. The
12 deposition finished at 5:30 on Thursday. We got the
13 transcript about 5 o'clock on Friday. We had to
14 review it for confidentiality and filed it as soon as
15 we could on the next business day.

16 EXAMINER PRICE: Okay. I don't think
17 anybody is going to be surprised the motion to quash
18 will be granted as to parts 2 and 3 of the motion for
19 subpoena. The Commission rules -- OCC has not
20 demonstrated the Commission rules allow them to
21 subpoena a corporate designee. Certainly you can do
22 that in a deposition, and they did so. It is not
23 clear, OCC has not demonstrated to the Bench the
24 Commission rules allow them to do that in a hearing.

25 As to the Ms. Jordan, the A.O. Smith

1 decision that OCC relies upon is not relevant. It
2 related to a deposition rather than a subpoena for
3 hearing.

4 On the other hand, as we indicated
5 earlier, Burgess versus Prudential Insurance Company
6 of America 1988 Westlaw 68686 and McGuire versus
7 Draper, Hollenbaugh & Briscoe, 2002 Westlaw 31521750,
8 2002-Ohio-6170 indicate that in a Civil -- a
9 situation where the Civil Rules apply, parties can
10 use an out of state deposition -- subpoena a witness
11 for an out of state deposition, obtain their
12 testimony, and file it in the trial court.

13 We will follow that as a safe route to
14 obtain this testimony. And I wish you good look at
15 the Supreme Court to demonstrate that we should have
16 the ability to subpoena out of state witnesses, but I
17 just do not see that under the current law.

18 With that.

19 MR. HEALEY: Your Honor, would now be a
20 good time to address our -- our request to admit the
21 deposition transcript into the record?

22 EXAMINER PRICE: Pardon me?

23 MR. HEALEY: We would like to mark the
24 deposition transcript now as an OCC exhibit and seek
25 admission unless you prefer to do that later.

1 EXAMINER PRICE: Let's wait until Staff
2 has had a chance to put on its case. We are taking
3 Ms. Alexander out of order, but for the rest of the
4 hearing we will try -- unless you need it for the
5 Staff witnesses.

6 MR. HEALEY: I don't think so.

7 EXAMINER PRICE: Okay. Then let's try to
8 get back to regular order after Ms. Alexander.

9 MR. HEALEY: Thank you, your Honor.

10 EXAMINER PRICE: Thank you.

11 MS. O'BRIEN: So, your Honors, at this
12 time I would like to call OCC Witness Ms. Barbara R.
13 Alexander.

14 May I approach, your Honors?

15 EXAMINER SANYAL: Yes, you may.

16 (Witness sworn.)

17 EXAMINER SANYAL: Thank you. You may be
18 seated.

19 And, Ms. O'Brien, you may proceed
20 whenever you are ready and thank you for printing
21 this out for us.

22 MS. O'BRIEN: Does anyone else need
23 copies?

24 So, your Honors, I would like to at this
25 time mark OCC Exhibit 1 which is the direct testimony

1 of Barbara R. Alexander in opposition to the
2 settlement which was filed on October 2, 2019.

3 EXAMINER SANYAL: It is so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 - - -

6 BARBARA R. ALEXANDER

7 being first duly sworn, as prescribed by law, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 By Ms. O'Brien:

11 Q. Ms. Alexander, do you have in front of
12 you what has been marked as OCC Exhibit 1?

13 A. I do.

14 Q. And do you recognize this document as
15 your testimony?

16 A. I do.

17 Q. And was this testimony prepared by you or
18 under your direction?

19 A. Yes.

20 Q. And on whose behalf are you testifying
21 today?

22 A. The Office of the Ohio Consumers'
23 Counsel.

24 Q. And since you filed your testimony, do
25 you have any changes to make?

1 A. No.

2 Q. And if I were to ask you the same
3 questions today as they appear in your testimony,
4 would your answers be the same?

5 A. Yes.

6 MS. O'BRIEN: At this time, your Honors,
7 I would like to move for admission of Exhibit 1,
8 subject to cross-examination.

9 EXAMINER SANYAL: Okay. Let's go with
10 cross first.

11 Mr. Proano.

12 MR. PROANO: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Proano:

16 Q. Ms. Alexander, my name is David Proano.
17 I represent Verde Energy. Good morning. When were
18 you hired to provide an opinion in this case?

19 A. After the Staff Report was issued.

20 Q. How soon after?

21 A. I don't have a date.

22 Q. Was it May or June? Just get an
23 approximation.

24 A. I believe the original Staff Report was
25 issued May 3. It probably was several weeks after

1 that.

2 Q. What is your billable rate or
3 compensation arrangement with OCC for your work on
4 this case?

5 A. I charge a rate of \$150 per hour plus
6 actual travel expenses and so forth, yes.

7 Q. OCC paying you that rate?

8 A. Yes, they do.

9 Q. Are the documents you reviewed in this
10 case limited to those listed as exhibits to your
11 testimony?

12 A. No.

13 Q. Do you recall what other documents you
14 reviewed that are not listed?

15 A. I've reviewed all of the OCC discovery.

16 Q. The responses to those as well?

17 A. Yes, I have.

18 Q. Including the supplemental ones provided
19 last week?

20 A. Yes, and the deposition transcript.

21 Q. Did you write your own direct testimony?

22 A. I do.

23 Q. Did anyone else contribute to that direct
24 testimony?

25 A. No.

1 Q. Are you currently licensed to practice
2 law in any state?

3 A. Not at this time. I am registered as
4 inactive in the state of Maine after many years of
5 being a member of the Maine Bar.

6 Q. Have you ever been licensed in the state
7 of Ohio?

8 A. No.

9 Q. You're familiar with the three-prong test
10 the Commission uses to review proposed settlements,
11 correct?

12 A. I am.

13 Q. There's nothing in your testimony
14 regarding the Joint Stipulation on prong one of the
15 test which is the arm's length negotiations between
16 competent counsel, correct?

17 A. I did not address that matter.

18 Q. Did you personally investigate any of the
19 complaints mentioned in the Staff Report?

20 A. No.

21 Q. Did you ever communicate with PUCO Staff
22 or its counsel about the Staff Report?

23 A. No.

24 Q. You mentioned in your testimony that you
25 were previously hired as a witness in three of the

1 proceedings that you list in your report for
2 affiliated companies of Verde Energy, correct?

3 A. Yes.

4 Q. You were hired by the Office of Consumer
5 Advocate and the Attorney General in Respond Power in
6 Pennsylvania, correct?

7 A. Yes.

8 Q. You were hired by the Office of Consumer
9 Advocate and Attorney General in HIKO Energy
10 proceeding in Pennsylvania, correct?

11 A. Yes.

12 Q. And you were hired by the Office of
13 People's Counsel in the Major Energy proceeding in
14 Maryland, correct?

15 A. Yes.

16 Q. And is it your understanding that the
17 three entities at issue in those investigations may
18 have been affiliates of Verde Energy?

19 A. They currently are affiliates of Verde --
20 of Spark Energy, the headquarters.

21 Q. At the time of those investigations, were
22 those companies affiliates of Spark Energy?

23 A. I do not know the answer to that
24 question. I would have to research my records in
25 those cases. I don't recall specifically.

1 Q. And you didn't check for purposes of your
2 direct testimony before drawing the Commission's
3 attention to those three cases as evidence that the
4 Commission should take more severe action in this
5 case?

6 MS. O'BRIEN: Objection, argumentative.

7 EXAMINER SANYAL: Overruled.

8 A. What I did check is to determine that
9 they are affiliates of Spark Energy at this time.

10 Q. What you didn't check is whether or not
11 they were affiliates of Spark Energy during the
12 relevant time of these investigations in Pennsylvania
13 and Maryland, correct?

14 A. I didn't check that because I didn't find
15 that relevant to any of the concerns that I'm raising
16 in my testimony.

17 Q. So you don't consider it relevant to
18 point out that -- to point the Commission to
19 proceedings that may not have even involved Spark
20 Energy?

21 A. Spark Energy currently owns and -- these
22 companies and operates them out of its Houston,
23 Texas, headquarters and is, therefore, responsible in
24 my opinion for the history of those companies when it
25 seeks to do business in Ohio.

1 Q. Okay. So you don't know whether or not
2 during the time period of these three investigations
3 Spark Energy was actually the ultimate parent company
4 of those three entities, correct?

5 A. I said that I didn't look that
6 information up. I would have to go back to the
7 records in those cases, and I did not do that.

8 Q. And so you expect the Commission to give
9 weight to your testimony regarding those three
10 proceedings even though Spark Energy may not have
11 been the corporate parent at the time of the
12 underlying allegations in those cases, correct?

13 A. Yes, I do.

14 Q. In each of those investigations your
15 position was adverse to the companies in those
16 investigations, correct?

17 A. I was an expert witness for the
18 consumers' counsel's offices in those states,
19 evaluating the evidence that was gathered, and
20 discovery that was conducted, and I gave my expert
21 opinion about what I found in the evidence in
22 question and compared it to the policies and programs
23 in place in those particular states that regulated
24 those retail energy suppliers.

25 Q. And it was your understanding that the

1 entities that hired you in these three investigations
2 were taking positions adverse to those three
3 companies?

4 A. Well, they took positions adverse to the
5 companies based on the evidence in the record and my
6 expert review of that evidence, yes.

7 Q. And you were paid for your work in those
8 three investigation, correct?

9 A. Absolutely.

10 Q. Just like you are being paid by OCC for
11 this fourth investigation against what you claim to
12 be an affiliate of Spark Energy?

13 A. Yes.

14 Q. How many times have you been hired to
15 provide expert services or testimony against a
16 competitive supplier in any state?

17 A. I believe I provided that information in
18 my CV attached to my testimony.

19 Q. What's your recollection? Give me a
20 ballpark.

21 A. Well, Illinois, Pennsylvania, Maryland.
22 Let's see, offhand I would have to double-check, but
23 the record that I provided you would allow the answer
24 to that question.

25 Q. Could you turn to your CV and point that

1 out, please, for the record.

2 A. Sure, I can. I can do that.

3 Q. Just tabulate how many times you've
4 testified against competitor suppliers to date in any
5 state.

6 A. Well, if you are asking me if -- what
7 states have I conducted expert analysis of the
8 conduct of competitive suppliers and reached
9 conclusions about that conduct, I can point you to
10 the -- I'm reviewing it carefully. I don't want to
11 miss one for you. Just a minute. And I am skipping
12 over my publications but going to the actual
13 litigated proceedings. I would point you to the
14 appearance in Illinois in 2008 on behalf of the
15 Illinois Citizens -- excuse me, Utility Board and
16 AARP.

17 Q. What's the page number at the top
18 right-hand corner?

19 A. 10 of 22.

20 Q. Thank you.

21 A. This was a proceeding involving
22 complaints and analysis of the conduct of U.S. Energy
23 Savings Corporation. I'm looking. The next one is
24 probably going to be Delaware. Starting on page 18
25 you will see the Maryland proceeding involving Major

1 Energy Electric Services. The Maryland proceeding
2 following Xoom, Capital X-0 -- O-O-M Energy in
3 Maryland, the Respond Power proceeding in
4 Pennsylvania, the IDT Energy proceeding in
5 Pennsylvania; the Blue Pilot Energy proceeding in
6 Pennsylvania, and the Blue Pilot Energy proceeding in
7 Pennsylvania.

8 The next page on 19, Blue Pilot Energy in
9 Maryland, I testified on behalf of the Delaware
10 Public Advocate in a proceeding involving a supplier
11 that I have not seen in my quick review here but that
12 occurred in about 2012, I think. And, of course, the
13 PALMco Energy proceeding here in Ohio. Is that
14 responsive to your question?

15 Q. Does that complete your answer?

16 A. It does unless I have a missed one but
17 those are certainly the major cases.

18 Q. So on at least 10 occasions you submitted
19 testimony against a competitive supplier.

20 A. I submitted testimony as an expert
21 witness evaluating the conduct of the energy supplier
22 on behalf of residential customers.

23 Q. Before you were hired for this case, had
24 you reached an opinion about how Spark Energy
25 companies operate?

1 A. Before I engaged in the proceeding of
2 this case?

3 Q. Correct.

4 A. I was familiar with Spark Energy's name.
5 I follow the developments of enforcement and rule
6 makings and activities involving the retail market
7 generally. And I probably knew about the existence
8 of many of the cases that I've mentioned here. But I
9 had not had an occasion to evaluate Spark Energy as a
10 holding company prior to this case, no.

11 Q. That wasn't my question. My question was
12 had you reached an opinion how the Spark Energy
13 companies operate in different states?

14 A. I haven't had an occasion to come to a
15 conclusion about Spark Energy as a conclusory matter.
16 I am aware and have been aware for some years of the
17 volume of state proceedings involving Spark Energy
18 companies.

19 Q. So even though you were -- provided
20 testimony in at least three of the proceedings that
21 you claim are related in some way to Spark Energy,
22 you're telling the Commission you formed no opinion
23 about how Spark Energy-related companies operate?

24 A. You asked me if I came to that conclusion
25 before this proceeding.

1 Q. Correct.

2 A. In the context of this proceeding, I have
3 had occasion to look more carefully into the
4 management policies of Spark Energy companies through
5 their headquarters in Houston.

6 EXAMINER PRICE: Ms. Alexander, if we
7 could have less lawyerly, more direct answers to
8 counsel's questions, the proceedings will go much
9 more quickly, and we will all be able to end the day
10 on a timely fashion.

11 THE WITNESS: I will continue to give
12 answers that I'm comfortable giving, your Honor.

13 EXAMINER PRICE: And we make rulings on
14 motions to strike that we are comfortable giving.

15 THE WITNESS: I understand, sir.

16 EXAMINER PRICE: Thank you.

17 Q. (By Mr. Proano) Could you turn, please,
18 to your testimony at page 10. If you will look at
19 line 10. Before I ask a question, you reviewed the
20 Joint Stipulation and Recommendation in this
21 proceeding, correct?

22 A. I did.

23 Q. And you are familiar with these terms?

24 A. Yes. I -- yes, in the sense that I would
25 want to have the Stipulation in front of me if you

1 are asking me a question about it specifically; but,
2 yes, of course, I reviewed that in some detail in
3 preparing my testimony.

4 Q. Do you recall in the Stipulation that
5 there was a provision for a compliance plan 90 days
6 prior to resuming marketing in the state of Ohio by
7 Verde Energy?

8 A. It's called an action plan.

9 Q. You say here starting at line 11 "There
10 is no process set forth in the Settlement that would
11 allow the PUCO to conclude that Verde Energy has
12 adopted any specific reforms and corrected the lack
13 of managerial oversight documented by the Staff
14 Report." Did I read that correctly?

15 A. You did.

16 Q. Do you believe that the action plan is
17 not a forum by which Verde Energy can address the
18 allegations raised in the Staff Report?

19 A. Not in the form that this Stipulation has
20 proceeded, no.

21 Q. And do you believe that PUCO Staff is
22 simply just going to accept whatever Verde Energy
23 submits in terms of an action plan as provided by
24 paragraph 5 on page 4 of the Joint Stipulation?

25 MS. O'BRIEN: Objection, speculation.

1 EXAMINER SANYAL: Overruled.

2 THE WITNESS: Am I answering the
3 question?

4 EXAMINER SANYAL: Yes. And if you need
5 the question read back, we can do that.

6 A. My concern that we have no idea what the
7 consent and corrective measures are going to be
8 included in the action plan and there is no way for
9 the public or the OCC to have any role in the review
10 of the action plan to determine if it does, in fact,
11 correct the extensive series of alleged violations in
12 the Staff Report.

13 Q. Do you believe PUCO Staff is competent,
14 capable in their jobs?

15 A. I would prefer to rely on the kind of
16 language that is repeated in many of the stipulations
17 I have referred you to in my testimony that actually
18 outline exactly what the prohibited conduct is and
19 what criteria will govern Verde's ability to conduct
20 its business in Ohio in the future.

21 MR. PROANO: I move to strike the answer,
22 your Honor.

23 EXAMINER SANYAL: I am going to grant
24 that motion.

25 MR. PROANO: Could you have the question

1 read back from the reporter, please.

2 EXAMINER SANYAL: Thank you.

3 (Record read.)

4 A. I have no idea.

5 Q. Have you dealt at all with PUCO Staff as
6 in your many, many years of providing expert
7 testimony across the country?

8 A. Not in this context, no.

9 Q. Do you have any faith that PUCO Staff
10 will seek to do the right thing in working with Verde
11 Energy on an action plan for compliance as set out in
12 paragraph 5 in the Joint Stipulation?

13 MS. O'BRIEN: Objection, speculation.
14 She doesn't --

15 EXAMINER SANYAL: I am going to grant
16 that. Let's move on.

17 MR. PROANO: Your Honor, on that issue,
18 the witness in the very next sentence says "The
19 settlement has no teeth," and I am trying to
20 understand where she believes --

21 EXAMINER SANYAL: Well, ask that
22 question.

23 MR. PROANO: Sure.

24 Q. (By Mr. Proano) Ms. Alexander, you say in
25 the following sentence on line 14 of page 10 of your

1 testimony, "The settlement has no teeth." Do you see
2 that?

3 A. I certainly do.

4 Q. Do you believe PUCO Staff doesn't have
5 the ability to make sure Verde Energy submits an
6 appropriate action plan as required by paragraph 5 of
7 the Joint Stipulation and Recommendation?

8 A. I have no idea what the Staff is going to
9 do as a result of this Stipulation because it doesn't
10 specifically require any reforms or correct the lack
11 of managerial oversight documented in the Staff
12 Report which is my next sentence. It doesn't settle
13 any of the findings that the Staff alleged occurred.

14 Q. Do you believe PUCO Staff are well aware
15 of the allegations in their own report in this case?

16 A. I'm sure the Staff has read their own
17 report.

18 Q. And are you saying that today, sitting
19 here today, you do not have any faith that PUCO Staff
20 would ensure that action plan for compliance will
21 address issues raised in the Staff Report?

22 MS. O'BRIEN: Objection, asked and
23 answered.

24 EXAMINER SANYAL: Overruled.

25 A. I do not have any faith in a Stipulation

1 that does not identify specifically what the harms
2 that have occurred and the conduct that is going to
3 be reformed and the methodology by which those
4 actions or commitments in the future can be reviewed
5 by the members of the public that is here today in
6 this proceedings.

7 MR. PROANO: Your Honor, I move to strike
8 that response as well.

9 EXAMINER SANYAL: You know, I actually
10 lost track of that, so can I have the question and
11 answer read back.

12 (Record read.)

13 MS. O'BRIEN: May I just say one thing?
14 You know, she's answered his question. It's not the
15 answer he wants, but she's answered his question.

16 EXAMINER SANYAL: I agree. Your motion
17 is denied.

18 Q. (By Mr. Proano) Ms. Alexander, the Joint
19 Stipulation mandates Verde Energy to voluntarily
20 cease all marketing and customer enrollment in Ohio
21 for an 18 month period, correct?

22 A. I want to go look at the language of
23 that, please.

24 EXAMINER SANYAL: Do you have copies of
25 the Stipulation?

1 MR. PROANO: I think Mr. Lindgren has a
2 copy.

3 A. I will just say the only issue I want to
4 clarify, is this both electric and gas and so forth,
5 so let me just take a look at that language.

6 MR. PROANO: May I approach, your Honor?

7 EXAMINER SANYAL: Yes.

8 A. Yes.

9 EXAMINER SANYAL: Shall we just mark this
10 as we are at it?

11 MR. PROANO: Joint Exhibit 1 if your
12 Honors are okay with it?

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 A. And so the answer to your question is,
15 yes, it is all marketing and customer enrollment. I
16 would presume that means electric and gas.

17 Q. So we are looking at Joint Exhibit 1,
18 correct, Ms. Alexander?

19 A. That's correct.

20 Q. Just so the record is clear we are
21 looking at page 3, Section III, paragraph 1, correct?

22 A. That is correct.

23 Q. What is it about an 18 month voluntary
24 marketing stay that "has no teeth"?

25 A. That is not the issue with my concern.

1 Q. So you are not concerned about the 18
2 month marketing stay.

3 A. Not necessarily. I didn't raise that
4 issue in my testimony. It's the conditions under
5 which it will seek to resume marketing of that I
6 identified.

7 Q. So you didn't submit any testimony on the
8 18 month stay specifically, correct?

9 A. I don't think so.

10 Q. Paragraph 2 talks about Verde Energy
11 withdrawing from Dominion's MVR program for at least
12 one year, correct?

13 A. It says that.

14 Q. And what about that paragraph "has no
15 teeth"?

16 A. I did not address that paragraph.
17 Mr. Williams did in his testimony.

18 Q. So your testimony doesn't address the
19 propriety of paragraph 2 on page 3 of the Joint
20 Stipulation?

21 A. No, it does not.

22 Q. Looking on page 4 of the Joint
23 Stipulation, paragraph 3, I am going to paraphrase,
24 requires re-rating electricity customers enrolled
25 with Verde from October 1, 2018, through April 30,

1 2019, correct?

2 A. The conditions of the rewrite I
3 specifically addressed as weak and inappropriate in
4 my testimony.

5 Q. What about requiring more than a million
6 dollars of re-rate to go back to Ohio customers "has
7 no teeth"?

8 A. Because it's probably not sufficient.

9 Q. Is it enforceable?

10 A. It says approximately, and in the
11 deposition it was repeatedly stated that this was an
12 estimate and not the real number, so I have no basis
13 for assuming that 1 million means anything.

14 Q. And do you recall in Ms. Jordan's
15 deposition she said the actual number will be higher
16 than 1.068 million?

17 A. She thought it would be.

18 MS. O'BRIEN: Objection. Objection,
19 hearsay. He -- he's testifying as to what the
20 deposition says.

21 MR. PROANO: The witness read it and
22 knows what it said.

23 A. The issue here is not --

24 EXAMINER SANYAL: Okay. Ms. Alexander,
25 we have an objection pending.

1 THE WITNESS: Sorry. Excuse me.

2 EXAMINER SANYAL: Ms. O'Brien, I feel
3 like your co-counsel may have additional -- are you
4 done making?

5 MS. O'BRIEN: I'm done.

6 EXAMINER SANYAL: Okay. Mr. Proano, what
7 was your response?

8 MR. PROANO: The witness testified to
9 Kira Jordan's deposition testimony and clearly she
10 had read it and I wanted to point out that Ms. Jordan
11 also testified that the actual number is likely going
12 to be higher.

13 EXAMINER SANYAL: Okay. We are going to
14 overrule the objection because Ms. Alexander actually
15 did answer the question.

16 MS. O'BRIEN: Your Honor, may I ask a
17 question? Could I get Mr. Proano to use the
18 microphone? It's very hard to hear him over here.

19 MR. PROANO: Is it?

20 MS. O'BRIEN: Or speak up.

21 MR. PROANO: I will talk louder.

22 MS. O'BRIEN: That would work. Thank
23 you.

24 MR. PROANO: Could we have the question
25 read back, Ms. Reporter?

1 (Record read.)

2 A. That number in her testimony about that
3 is as I described. She did say she thought it would
4 be higher. But the calculation of the required
5 rewrite is improper and unconscionable in my opinion
6 as described in this paragraph.

7 Q. So you agree -- you disagree with the
8 time period and the re-rate methodology and what
9 customers are included in the re-rate under paragraph
10 3, correct?

11 A. I primarily am concerned about the lack
12 of any mention of rewriting for natural gas
13 customers. That's No. 1. No. 2, I am concerned
14 about using this -- not using default service prices
15 as the basis for the re-rate and for the reduction in
16 the rewrite amount for so-called rewards provided by
17 Verde Energy as part of its shopping rewards program.

18 Q. Would you agree with me that if the
19 Commission approves this Stipulation, the re-rate
20 required by paragraph 3 is enforceable?

21 A. What -- I don't understand your using of
22 the word "enforceable."

23 Q. You use the term "unenforceable terms" on
24 line 15, page 10 of your testimony.

25 A. Line --

1 MS. O'BRIEN: Your Honors, I am going to
2 object. This calls for a legal conclusion.

3 EXAMINER SANYAL: I'm sorry. Mr. Proano,
4 your response?

5 MR. PROANO: Sure. I'll kind of give
6 some more background for the witness.

7 Q. (By Mr. Proano) If you look at page 10,
8 line 14 of your testimony, you say "It," meaning the
9 settlement, "contains so many vague and unenforceable
10 terms and it does not resolve or 'settle' any of the
11 Staff's findings set forth in the Staff Report."

12 EXAMINER SANYAL: Okay. Ms. Alexander,
13 do not answer. Your objection is overruled because
14 he is referring to a specific statement she made in
15 her testimony.

16 MS. O'BRIEN: Can I just ask for and in
17 the future if you could just give me a line
18 reference, that would be helpful when he is referring
19 to specific parts of the testimony.

20 EXAMINER SANYAL: Sure. I am sure
21 Mr. Proano will do so moving forward.

22 MR. PROANO: Thank you, your Honor.

23 Q. (By Mr. Proano) Did I read your testimony
24 correctly?

25 A. You did.

1 Q. And you use the word "unenforceable
2 terms," correct?

3 A. Right. And that is not the issue with
4 paragraph 3.

5 Q. Okay. So you are not concerned -- you're
6 not concerned that paragraph 3 is unenforceable?

7 A. It is an improper provision, but it is
8 enforceable, yes.

9 Q. And the 18 month marketing stay is
10 enforceable, correct?

11 A. In terms of dates, yes.

12 Q. And the MVR withdrawal for one year is
13 enforceable, correct?

14 A. Again, I did not look at that provision
15 in any --

16 Q. Correct?

17 A. I am not understanding the MVR program.
18 I did not testify on that.

19 Q. Okay. And then paragraph 4 of the
20 Stipulation which provides "Verde Energy will not
21 transfer or sell customer contracts to another entity
22 during the stay-out period without the prior consent
23 of PUCO Staff," that's enforceable too, correct, if
24 this is approved?

25 A. Yes.

1 Q. And paragraph 5 requires Verde Energy to
2 submit an action plan for compliance at least 90 days
3 prior to resuming marketing and customer enrollment
4 in Ohio if this is approved by the Commission, that's
5 enforceable, correct?

6 A. The term "action plan" is not enforceable
7 in my opinion.

8 Q. Why not?

9 A. Because it has no meaning. It is not
10 defined, no details of what will be included. No
11 corrective actions are specifically identified. That
12 is vague and unenforceable. It's -- it could mean
13 whatever Verde Energy decides it means.

14 Q. Have you talked to PUCO Staff about their
15 understanding of what action plan means?

16 A. I don't need to. No, I have not.

17 Q. And so you don't know what they
18 understand it to mean, do you?

19 A. It doesn't matter what they think.

20 Q. That's evident from your testimony.

21 A. I am looking at this document --

22 EXAMINER PRICE: Mr. Proano.

23 MS. O'BRIEN: Your Honor, move to strike.

24 MR. PROANO: I strike -- I strike that
25 comment. I'm sorry.

1 Q. (By Mr. Proano) So your testimony is the
2 action plan is not enforceable?

3 A. That is correct.

4 MS. O'BRIEN: Your Honors, I am going to
5 object, asked and answered.

6 Q. And your testimony is it's not
7 enforceable --

8 EXAMINER SANYAL: Mr. Proano, there was
9 an objection pending.

10 MR. PROANO: Okay.

11 EXAMINER SANYAL: Let's rule on that.
12 That's granted. She did answer it so let's move on.

13 MR. PROANO: Thank you, your Honor.

14 Q. (By Mr. Proano) If you look at the
15 paragraph 6, there's a notification required, right,
16 of the Stipulation, page 4, to certain customers
17 enrolled during a certain time period notifying them
18 that PUCO Staff has alleged Verde Energy may have
19 misled customers in Ohio during the marketing of its
20 product and there is a certain time by which the
21 notice has to be sent. Do you see that?

22 A. I do.

23 Q. Is paragraph 6 enforceable if this is
24 approved by the Commission?

25 A. The fact that there is a notice is

1 enforceable. The contents of the notice and the
2 rights people have are not set forth, and so the
3 vagueness of this provision leads me to my criticism.

4 Q. And is your criticism really leveled at
5 the PUCO Staff's ability to make sure Verde Energy
6 submits a proper notice as required by paragraph 6?

7 A. I'm more concerned about Verde Energy and
8 its actions from the point of view of the public
9 participation in this proceeding, not --

10 Q. And not --

11 A. -- not the actions of Staff that are not
12 available to the public.

13 Q. Have you asked PUCO Staff or has OCC, to
14 your knowledge, asked PUCO Staff how they intend to
15 work with Verde Energy to send out this notice
16 required by paragraph 6?

17 A. No.

18 Q. And have you asked PUCO Staff or has OCC,
19 to your knowledge, asked PUCO Staff how they intend
20 to work with Verde Energy on the action plan for
21 compliance set forth in paragraph 5?

22 A. No.

23 Q. Paragraph 7 of the Stipulation on page 4
24 requires Verde Energy to pay a forfeiture of \$675,000
25 upon approval of the Stipulation. Do you see that?

1 A. I do.

2 Q. Is that enforceable?

3 A. Yes, it is.

4 Q. Do you care to revise your statement "The
5 settlement has no teeth" now that I have reviewed
6 these seven provisions of the Settlement Agreement?

7 A. No.

8 Q. You reviewed the supplemental discovery
9 responses provided by Verde Energy to OCC last week
10 on October 9, 2019, relating to the rewards program,
11 correct?

12 A. Yes.

13 MR. PROANO: May I approach, your Honor?

14 EXAMINER SANYAL: Yes.

15 A. Yep.

16 EXAMINER SANYAL: Mr. Proano, you are
17 marking this?

18 MR. PROANO: Yes, your Honor. We will
19 mark this as Verde Exhibit 1.

20 MS. O'BRIEN: And, your Honor, I would
21 just have a question. Well, I guess this is up to
22 Verde, they marked this as confidential, so if they
23 are fine with putting this in the record.

24 EXAMINER SANYAL: Mr. Proano, you --
25 would you like --

1 MR. PROANO: We do not object to the
2 public submission of this document, your Honor.

3 EXAMINER SANYAL: So this is no longer
4 deemed confidential?

5 MR. PROANO: Correct.

6 EXAMINER SANYAL: Okay.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. PROANO: Just for the record Verde
9 Exhibit 1 is Verde Energy USA Ohio, LLC's amended
10 responses to interrogatories propounded by the Office
11 of the Ohio Consumers' Counsel (fourth and seventh
12 sets) dated October 9, 2019, verified by Kira Jordan
13 on that same date providing amended responses to OCC
14 Interrogatories 4-42, 4-43, and 7-54.

15 Q. Do you see that document in front of you,
16 Ms. Alexander?

17 A. I do.

18 Q. Did you review it before today?

19 A. I did.

20 Q. Did you see a need to supplement your
21 testimony in any way given this information provided
22 last week by Verde Energy?

23 A. No.

24 Q. You criticize the shopping rewards
25 program adjustment provided in paragraph 3 of the

1 stipulated Settlement, correct?

2 A. Yes.

3 Q. And you criticize it, and I am
4 paraphrasing, on the basis that it's vague or
5 ephemeral are some of the terms you use, correct?

6 A. Yes.

7 MS. O'BRIEN: Your Honor, could I get a
8 reference to testimony where he is finding that in
9 her testimony?

10 MR. PROANO: Ms. O'Brien, page 34, line
11 3, the phrase "ephemeral 'shopping rewards'" is used.

12 A. Could you just do that again?

13 Q. Sure, page 34.

14 A. 34.

15 Q. Line 3 through 4.

16 MS. O'BRIEN: And, your Honors, I would
17 just like to note for the record these are
18 supplemental discovery responses that were provided
19 on Friday to us well after the October 2 date for
20 testimony.

21 EXAMINER SANYAL: Thank you for that but
22 it appears that the witness has reviewed these,
23 correct?

24 MS. O'BRIEN: Yeah.

25 THE WITNESS: Last week, yes, but not the

1 10th or whatever day they came in, yes.

2 Q. (By Mr. Proano) Ms. Alexander, you
3 understand that when you submit your direct testimony
4 at a hearing such as this hearing, you do have the
5 opportunity at the start per the questions asked by
6 your counsel to supplement or amend your testimony,
7 correct?

8 A. I do understand that.

9 Q. And you were specifically asked that
10 question, correct?

11 A. That is correct.

12 MS. O'BRIEN: Objection, your Honor.
13 That's not what I asked her. I asked her if she
14 had -- if she had any mistakes she wanted to correct.

15 EXAMINER SANYAL: Overruled. Move on.

16 Q. (By Mr. Proano) And you chose having read
17 this amended response on the rewards program
18 adjustment not to do so, correct?

19 A. That is correct.

20 Q. Now, let's look at the actual responses
21 that you have in front of you as Verde Exhibit 1.

22 A. Yes.

23 Q. I am going to read it for the record so
24 it's clear, Interrogatory 4-42 provides "In reference
25 to paragraph 3, page 4 of the Joint Stipulation and

1 Recommendation, for customers who will be re-rated
2 and who have received 'rewards' under Verde's
3 shopping rewards program, please explain fully how
4 Verde will adjust the customers' re-rates to account
5 for the rewards."

6 A. Yes.

7 Q. Did I read that correctly?

8 A. Yes, you did, and the answer does
9 describe how you are going to calculate it.

10 Q. And could you for the record describe how
11 Verde Energy said under oath they are going to
12 calculate that adjustment.

13 MS. O'BRIEN: Objection, your Honor.
14 This is hearsay and they can -- you know, his exhibit
15 speaks for itself. I mean -- and they can't use
16 their own discovery to impeach our witness.

17 EXAMINER SANYAL: Okay. Ms. Alexander,
18 you reviewed these -- this discovery response?

19 THE WITNESS: I did.

20 EXAMINER SANYAL: And in response to
21 Interrogatory 4 point -- 4-42, what is your
22 understanding how Verde will re-rate customers?

23 THE WITNESS: They -- they are claiming
24 that they are going to reduce the re-rate by 70 cents
25 for each month -- for each month the customer was

1 enrolled in the rewards program claiming that this is
2 their actual out-of-pocket costs per customer of
3 providing this rewards program benefits. My
4 statement in my testimony that this is ephemeral is
5 exactly correct. And I will explain that, if I am
6 allowed to do that.

7 EXAMINER SANYAL: Sure. I'll allow you
8 to briefly explain that.

9 THE WITNESS: Ephemeral because there is
10 no evidence anywhere that customers actually use the
11 rewards program. This is a marketing ploy by the
12 Company to offer something to customers that they
13 have no data on how customers actually made use of
14 these so-called rewards which are discounts of some
15 amount or buy one get one free kind of coupons that
16 people get for merchants in Ohio.

17 So this is a marketing cost that Verde
18 has chosen to incur and pay someone to provide it as
19 part of their marketing in Ohio and that's their
20 choice. But to claim that customers have actually
21 used this program or received any benefit from it is
22 what is ephemeral and that is why my testimony should
23 be read without any amendment to it.

24 MR. PROANO: Your Honor, I move to strike
25 that entire answer. This witness has no personal

1 knowledge how the rewards program is used.

2 EXAMINER SANYAL: Your motion is denied.

3 MR. PROANO: I would like to establish,
4 your Honor, the factual predicates for this statement
5 the witness just made regarding her statements about
6 the rewards program because, your Honor, Verde Energy
7 submits they are inaccurate.

8 MS. O'BRIEN: Your Honor, I am going to
9 object. Verde had ample opportunity to file
10 testimony in this proceeding regarding their claim.

11 EXAMINER SANYAL: I am going to ask her a
12 question. Ms. Alexander, do you know how Verde
13 rewards program works?

14 THE WITNESS: We asked discovery exactly
15 about how this program worked. That is not reflected
16 in this particular document.

17 EXAMINER SANYAL: In your knowledge -- in
18 your knowledge how does the rewards program work?

19 THE WITNESS: I would have to get the
20 answers in front of me on discovery that the OCC
21 conducted, but we specifically asked if Verde knows
22 how people use the rewards program, and the answer
23 was, no, they do not. So these are little coupons or
24 other e-mail related matters that are provided to
25 customers once they sign up with Verde. Verde

1 doesn't know how they are used. They are just handed
2 out to people.

3 EXAMINER SANYAL: I am assuming, Mr.
4 Proano, you will have some follow-up questions?

5 MR. PROANO: I will, your Honor. We are
6 just going to locate the discovery responses that
7 Ms. Alexander is referring to.

8 Your Honor, may I approach?

9 EXAMINER SANYAL: Yes. And feel free to
10 do so freely during your examination of this witness.
11 Okay. And this is Verde Exhibit 2?

12 MR. PROANO: Yes, your Honor. For the
13 record it is Verde Energy USA Ohio, LLC's amended
14 objections and responses to interrogatories and
15 requests for production of documents propounded by
16 the Office of the Ohio Consumers' Counsel -- I'm
17 sorry. I am reading the wrong document. I
18 apologize, your Honor. This document, Verde Exhibit
19 2, is Verde Energy USA Ohio, LLC's objections and
20 responses to interrogatories and requests for
21 production of documents propounded by the Office of
22 the Ohio Consumers' Counsel (seventh set). These are
23 dated October 2, 2019, and verified under oath by
24 Ms. Jordan.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. Ms. Alexander, have you seen Verde
2 Exhibit 2 before today?

3 A. Yes.

4 Q. Is this the discovery response you just
5 referred to as saying Verde doesn't know supposedly
6 per your recollection how the rewards program points
7 are used?

8 A. No. There are other responses earlier in
9 this proceeding. I do not have those numbers in
10 front of me, but I am looking at this, and I don't
11 see that you provided any information here. Am I
12 missing something that actually says how people used
13 reward points?

14 MR. PROANO: Your Honor, I am not under
15 cross-examination here.

16 EXAMINER SANYAL: Yes.

17 A. I am just trying to be helpful.

18 EXAMINER SANYAL: I think she is just
19 trying to ask for a page reference.

20 MS. O'BRIEN: Yes. I would like a page
21 reference too.

22 MR. PROANO: Let's just make sure the
23 record is clear.

24 Q. (By Mr. Proano) On what pages of these
25 responses do you see responses related to rewards

1 program points?

2 A. The pages aren't numbered.

3 EXAMINER SANYAL: Actually,
4 Ms. Alexander, before you answer that have you
5 reviewed this particular discovery response?

6 THE WITNESS: Yes. I remember seeing
7 this.

8 EXAMINER SANYAL: Okay. Okay.

9 THE WITNESS: Absolutely.

10 EXAMINER SANYAL: I just wanted to make
11 sure.

12 EXAMINER PRICE: Counsel also pointed out
13 the discovery response is confidential. So are you
14 waiving this?

15 MR. PROANO: Yes, sir; yes, your Honor.

16 EXAMINER PRICE: Okay.

17 A. I apologize. The page that I am looking
18 at -- and you can point me to any page you care for
19 me to review.

20 Q. Sure.

21 A. -- is not labeled by a page number, but
22 it's the answer to G.

23 Q. Okay. And my question was where in this
24 document, and you said you didn't feel it was in
25 here. Does it say that Verde Energy does not know

1 how the rewards program points are used?

2 A. Right. This -- you gave me this
3 document. This document is not the one I was
4 thinking of to answer your prior question.

5 Q. Okay. Well, let's find it then.

6 MR. PROANO: Mark that Verde Exhibit 3,
7 your Honor.

8 EXAMINER SANYAL: And I think we are
9 going to have the same question. It's marked
10 confidential at the moment.

11 MR. PROANO: Let me take just one moment
12 to go through it.

13 EXAMINER SANYAL: Sure.

14 MR. PROANO: Your Honor, we will waive
15 our confidential designation on this document.

16 EXAMINER SANYAL: Okay. Thank you.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. (By Mr. Proano) Ms. Alexander, have you
19 seen Verde's Exhibit 3 before today?

20 A. Yes.

21 Q. Verde Energy USA Ohio, LLC's initial
22 objections and responses to requests for admission,
23 interrogatories, and requests for production of
24 documents propounded by the Office of the Ohio
25 Consumers' Counsel (third set) dated September 19,

1 2019, and verified by Ms. Jordan on the same day.

2 Is this the document you were thinking of
3 when you said under oath that you believe Verde
4 Energy had no idea whether or not its rewards
5 programs were used?

6 A. It might being one of them. I am looking
7 at page 20.

8 Q. Which one?

9 A. Page 20.

10 Q. Thank you.

11 A. Excuse me. I need to lean forward and
12 speak into the microphone too. However, if -- if you
13 want me to find all the potential data responses that
14 I'm relying on for my statement, I think we need to
15 take a break, and I will go find them but this helps
16 move the ball forward. If you look at page 20, it
17 says what customers can do and that they have no cash
18 value and it tells how many you gave out; but, again,
19 it doesn't provide any information on whether
20 customers use them and there is a response early in
21 this process in which Verde agreed that it did not
22 know how customers actually used these reward points
23 that it sent out.

24 Q. Ms. Alexander, I am still at a loss where
25 you get information for that last statement because

1 I -- it's certainly not here on page 20 of Exhibit 3,
2 correct?

3 MS. O'BRIEN: Your Honor, objection. If
4 Verde would like to put on a rebuttal witness to
5 rebut Ms. Alexander's testimony, we don't have an
6 objection to that.

7 EXAMINER SANYAL: I think we might be
8 going down that path because I think this witness has
9 kind of stated a few times that she does not
10 specifically recall which document she relied on.

11 MR. PROANO: Your Honor, the witness is
12 stating under oath that Verde Energy has in sworn
13 discovery responses stated that they have no idea
14 whether customers use reward points, and I would
15 submit as an officer of the court, your Honor, no
16 such statement has ever been made in discovery
17 responses to OCC's requests; and, your Honor, we are
18 entitled to cross-examine this witness on the factual
19 basis of her testimony.

20 EXAMINER SANYAL: I will allow you some
21 brief leeway.

22 MR. PROANO: Thank you, your Honor.

23 EXAMINER SANYAL: But I agree with
24 Ms. O'Brien that you are allowed to put on rebuttal.

25 MR. PROANO: Thank you, your Honor.

1 Q. (By Mr. Proano) I will make this short,
2 Ms. Alexander. Sitting here today can you tell me
3 where Verde Energy has supposedly said specifically
4 that it doesn't know whether or not customers use
5 rewards points?

6 A. I do not have the document in front of
7 me, sir. I've made that clear. And I will go find
8 it if we take a break, and I will bring it back and
9 show it to you, but I can't do that out of thin air
10 here.

11 Q. Ms. Alexander --

12 EXAMINER PRICE: The answer to his
13 question is, no, you cannot tell him what document
14 you are referring to.

15 THE WITNESS: I cannot -- I cannot at
16 this time give you the number of the document and the
17 specific Bates number of the data response, that is
18 correct.

19 EXAMINER PRICE: But we will have an
20 opportunity for redirect.

21 THE WITNESS: Very good.

22 Q. (By Mr. Proano) Ms. Alexander, is there
23 anything vague about the figure 70 cents per month
24 per customer which is the actual out-of-pocket cost
25 to offer the rewards programs to Ohio customers that

1 Verde Energy says it will -- it will use as part of
2 paragraph 3 of the Joint Stipulation?

3 MS. O'BRIEN: Your Honor, objection,
4 asked and answered.

5 EXAMINER SANYAL: You know, I am going to
6 overrule that because I honestly cannot remember.

7 So, Ms. Alexander, if you will answer.

8 A. The number is not in the Stipulation.
9 The number is not vague, but the basis for the number
10 is very vague.

11 Q. And has OCC requested the documentation
12 that supports that number to your knowledge?

13 A. Since the answer to that question just
14 came in the 9th or 10th of October, I don't think so.

15 Q. And you are aware OCC was able to serve
16 discovery all the way up to the date of this hearing,
17 correct, Ms. Alexander?

18 MS. O'BRIEN: And, your Honors, I am
19 going to object because the fact is we served sets of
20 discovery early on, and we engaged in lengthy
21 discovery battles with Verde over them not wanting to
22 provide answers to discovery.

23 EXAMINER SANYAL: What is your objection?

24 MS. O'BRIEN: It's -- I guess I don't
25 have an objection other than to say he is just being

1 argumentative.

2 EXAMINER SANYAL: Okay. That's
3 overruled.

4 Mr. Proano, I have forgotten your
5 question. Can you?

6 MR. PROANO: Reporter, could you please
7 read it back.

8 EXAMINER SANYAL: Can we have it read
9 back.

10 (Record read.)

11 A. I am presuming that is correct. I do not
12 work for the OCC, so I don't know for sure, but
13 I'm -- it's probably correct that it is.

14 Q. Ms. Alexander, if the Joint Stipulation
15 is approved by the Commission, would it provide some
16 benefit to Ohio consumers?

17 A. Yes.

18 MR. PROANO: No further questions at this
19 time, your Honor.

20 EXAMINER SANYAL: Okay. Any questions
21 from IGS or Staff?

22 MR. NUGENT: No, your Honor.

23 MR. LINDGREN: Your Honor, I have a few
24 questions.

25 EXAMINER SANYAL: Okay.

CROSS-EXAMINATION

By Mr. Lindgren:

Q. Good afternoon, Ms. Alexander. My name is Tom Lindgren. I am counsel for the Staff in this case.

A. Thank you.

Q. Ms. Alexander, you didn't do any independent investigation of the facts in this case, did you?

A. I don't know what you mean by independent.

Q. You didn't contact any witnesses on your own or interview them?

A. No.

Q. Thank you. Ms. Alexander, on page 34 of your testimony, beginning on line 4, you state that "The PUCO should also order Verde Energy to pay a substantial forfeiture and rescind its operating certificate/license so that it cannot participate in the Ohio retail markets." Did I read that correctly?

A. Yes.

Q. Thank you. Would you agree with me that the \$675,000 forfeiture provided in the Stipulation is a substantial forfeiture?

A. I have no idea.

1 Q. You use the term "substantial
2 forfeiture." What did you mean by that?

3 A. I was referring to the Staff Report which
4 sought at a minimum 1.5 million.

5 Q. You also recommend here that the PUCO
6 rescind Verde's operating certificate/license; is
7 that correct?

8 A. Yes.

9 Q. Ms. Alexander, you've attached a number
10 of decisions to your testimony, decisions from other
11 state commissions; is that right?

12 A. Yes.

13 Q. And can you tell me in which of them the
14 relevant state commission permanently rescinded or
15 revoked the license of the entity that it was
16 addressing?

17 A. I don't think that any of them
18 permanently revoked.

19 Q. Thank you.

20 A. But they did revoke or agree to suspend
21 based on criteria that are very specific and that are
22 missing from this settlement and that's my main
23 concern here.

24 Q. So to be clear, in none of these other
25 decisions was the company's license or certificate

1 permanently revoked; is that correct?

2 A. That is correct.

3 Q. Thank you. And, Ms. Alexander, are you
4 aware this is the first time that Verde has been
5 before this Commission in a case involving alleged
6 violations of the marketing rules?

7 A. I am not aware of that, but I'll accept
8 your statement on that regard.

9 Q. Thank you. Ms. Alexander, would you
10 agree with me that there could be a value to settling
11 a case as opposed to going forward with litigation?

12 A. Yes.

13 Q. Thank you. And while you were with the
14 Maine Commission, did you ever settle with any
15 companies?

16 A. I was not in a position to settle formal
17 investigatory proceedings. I was part of the staff
18 that investigated and brought advocacy-type proposals
19 to the Commission for starting investigations, but
20 settlements are a very common proceeding obviously at
21 every regulatory commission.

22 Q. Thank you.

23 A. Yes.

24 Q. And if you don't enter into a settlement
25 and go forward with litigation, you don't have any

1 guarantees of the outcome, do you?

2 A. That determination would vary widely by
3 those engaging in the settlement and would certainly
4 have an impact on the content of the settlement
5 itself. But that is not -- it's not a yes or no.
6 It's a range of risks given the evidence that is
7 available in the record.

8 Q. So there are -- are risks going forward
9 with litigation; is that right?

10 A. One would presume that they would be,
11 yes.

12 Q. Thank you. And the Commission in this
13 case could modify the Stipulation and impose even a
14 lower penalty, for example, the forfeiture or the
15 suspension period; is that right?

16 A. I find that highly unlikely in this
17 particular case.

18 Q. But it is possible though, isn't it?

19 A. How would I know what's possible? I am
20 telling you my opinion is that it's highly unlikely
21 given the Staff Report that is on the record here.

22 Q. But you don't know for sure what -- how
23 the Commission is going to rule, do you?

24 MS. O'BRIEN: Your Honors, I am going to
25 object. She can't say what the Commission is going

1 to do.

2 MR. LINDGREN: That's what I am asking.

3 MS. O'BRIEN: He's asked her, and she's
4 answered it.

5 EXAMINER SANYAL: I am going to overrule.
6 I will give you one more opportunity to rephrase your
7 question.

8 MR. LINDGREN: Thank you.

9 Q. (By Mr. Lindgren) Ms. Alexander, any time
10 you go forward with litigation as opposed to
11 settling, you don't know the ultimate outcome by the
12 decision maker, do you? Yes or no.

13 A. I don't, no.

14 MR. LINDGREN: Thank you. I have no
15 further questions.

16 EXAMINER SANYAL: Okay. Redirect? Do
17 you need some time?

18 MS. O'BRIEN: Yeah. If we could take a
19 break, that would be great. If lunch is appropriate,
20 that's fine or whatever, your Honor.

21 EXAMINER SANYAL: Let's finish up with
22 Ms. Alexander before lunch. Do you need 10 minutes?

23 MS. O'BRIEN: Yeah. That would be great.

24 EXAMINER SANYAL: Let's take 10 minutes.

25 MR. HEALEY: Can we get 15?

EXAMINER SANYAL: Yeah. We will come back around 12:28.

(Recess taken.)

EXAMINER SANYAL: Let us go back on the record. And, Ms. O'Brien, whenever you are ready to proceed.

- - -

REDIRECT EXAMINATION

By Ms. O'Brien:

Q. Ms. Alexander, do you recall some questions from Verde's counsel regarding specific provisions of the settlement and whether or not you thought they would be enforceable?

A. Yes.

Q. Can we just take a look at those again. If you can turn to page --

A. I think that I don't have them, but they are coming to me. Sorry.

Q. I'm sorry. Now, isn't it true that you have no idea what Staff will or will not do with respect to the settlement?

A. That's correct.

Q. And if you turn to page 3 of the settlement and if you look at paragraph 1, what about that provision do you believe is vague or has no

1 teeth?

2 A. The provision No. 1 with regard to
3 voluntarily ceasing all marketing, first of all, I
4 think it should say electric and natural gas, but
5 that's a separate -- that's an important
6 clarification that is not here.

7 EXAMINER PRICE: Why do you say that?

8 THE WITNESS: Because there are
9 provisions in the Stipulation that appear to
10 specifically apply only to electric customers so I'm
11 never quite clear what was intended.

12 EXAMINER PRICE: Okay. So you are not
13 talking about some third service. You are just
14 saying make it clear the one that appears here
15 applies to gas and electric.

16 THE WITNESS: That is correct.

17 EXAMINER PRICE: Thank you.

18 A. And but the suspension will continue
19 until October 30, 2020, and that date is not linked
20 to an approved compliance plan, and we don't know the
21 conditions under which Verde is going to continue to
22 market after that date. We don't have any assurances
23 that they will fix any of the behaviors that the
24 Staff identified in its Staff Report.

25 Q. Okay. And now moving on to the second

1 paragraph, No. 2 on page 3 under the joint
2 recommendations of the signatory parties, what do you
3 find vague about this paragraph?

4 A. The -- this paragraph allows Verde to
5 roll -- enroll retail customers through Dominion's
6 MVR program at the conclusion of the one-year period
7 and the criteria for making sure that its prior
8 conduct is documented in the Staff Report will not be
9 replicated is not here.

10 Q. And, now, let's move on to page 4 of the
11 settlement and paragraph 3 at the top. What do you
12 find vague about this particular paragraph?

13 A. The paragraph is not vague, but it is
14 deficient and lacking in important consumers'
15 protects. The -- the paragraph applies only to
16 electric. We don't have any re-rating here for
17 natural gas customers which is not explained anywhere
18 as the basis for that decision.

19 Second, it refers to an un -- a re-rate
20 comparison to their price to the second lowest
21 12-month fixed 100 percent renewable price shown on
22 the PUCO's historic Apples-to-Apples chart for the
23 week of December 17, 2018. That is not a vague
24 statement, I agree. However, it is not an
25 appropriate method of rewriting. It has -- we do not

1 know the financial implications to the customers by
2 using this as opposed to default service. We have no
3 information on what the real re-rate should be and
4 which PALMco agreed to do in its Stipulation not a
5 month ago.

6 And the second adjustment is this
7 ephemeral, and I will continue using that word,
8 rewards program where you are charging people for the
9 expenses of offering a program, and you don't know
10 how they've actually used it.

11 Q. Okay. And would your recommendation be
12 that any rewriting be to the standard -- the utility
13 standard offer?

14 A. Yes.

15 Q. Let's move on to paragraph 4. What is
16 vague on -- what is vague with respect to this
17 paragraph?

18 A. Well, it allows evidently the transfer of
19 its customer contracts to another supplier with the
20 prior consent of the PUCO Staff which we don't
21 know -- I mean, there is no public basis for
22 determining whether that would be proper or what the
23 conditions of the transfer would be.

24 Q. Okay. Moving on to paragraph 5, how do
25 you -- how do you believe this particular provision

1 has no teeth?

2 A. Well, as I repeatedly stated, the term
3 action plan is not defined. It is completely without
4 regard to any of the excellent investigation and
5 documentation of alleged violations and conduct. The
6 facts of that conduct, whether you agree they are
7 violations or not, was very clearly set forth in the
8 Staff's Report and there are -- there are -- there is
9 no Stipulation involving any of the Spark family of
10 companies that does not specifically describe the
11 conduct that needs to be fixed and the methodologies
12 for reviewing, determining how it will be fixed in
13 the future.

14 Q. Okay. And just moving back up to
15 paragraph 3 again, with respect to the statement
16 "This will result in refunds of approximately
17 \$1,068,000." Tell me a little bit more about why you
18 think this provision is vague or not sufficient.

19 A. Well, we don't know -- the correct
20 rewrite is default service, so we don't know in what
21 manner we should compare this lower number, clearly
22 it will be lower than the one that is the most --
23 that the Staff recommended be done in its own Staff
24 Report and that was reflected in the PALMco
25 settlement. So, you know, we don't know if this is a

1 fair number because we don't know what -- how to
2 compare it with what it should have been which is
3 default service.

4 Q. And do you know how many customers would
5 be provided restitution?

6 A. In this case we -- it's only available to
7 retail electric customers for this time period, and I
8 don't know why they cut it off, by the way, April 30,
9 2019, when the Staff Report was submitted --
10 supplemented with 100 more customer complaints later
11 in May at the very least ought to include all those
12 customers as well.

13 Q. Okay. Thank you. And do you recall some
14 questions by Verde's counsel regarding the rewards
15 program?

16 A. Yes.

17 Q. And I think your testimony was that you
18 recall that there was a discovery response that led
19 you to believe that Verde wasn't aware of what the
20 amount of the rewards program would be? Or you can
21 correct me if I am wrong.

22 A. Not aware of how customers --

23 MR. PROANO: Objection.

24 A. -- have been using the reward --

25 Q. Okay.

1 A. -- points.

2 Q. And I think --

3 MS. O'BRIEN: If I may approach?

4 EXAMINER SANYAL: You may.

5 MS. O'BRIEN: I think we've found one of
6 the discovery responses, and I just want to show it
7 to Verde really quick because it was marked
8 confidential. I apologize. We don't have copies of
9 this.

10 MR. HEALEY: We do. One page.

11 MS. O'BRIEN: It's just the first page.
12 That's all the copies, okay. I just want to show it
13 to Verde first to make sure. I won't hover over you.

14 We will go ahead and mark this as OCC
15 Exhibit 2. And is it confidential?

16 MR. PROANO: We don't see a problem
17 waiving the confidentiality for this one page.

18 MS. O'BRIEN: Yes.

19 EXAMINER SANYAL: And can you just for my
20 notes let me know what this response -- which set --
21 discovery set since this is just one page.

22 MS. O'BRIEN: It would be the fourth set
23 of discovery.

24 EXAMINER SANYAL: Okay.

25 MS. O'BRIEN: It looks like it would be

1 Interrogatory 4-45.

2 EXAMINER SANYAL: Okay.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. (By Ms. O'Brien) Okay. Ms. Alexander,
5 was this one of the discovery responses that formed
6 the basis of your testimony?

7 A. Yes.

8 Q. Okay. And can you tell me what about
9 this response supports your prior testimony?

10 A. Yes.

11 MR. PROANO: Objection.

12 EXAMINER SANYAL: Is there an objection,
13 Mr. Proano?

14 MR. PROANO: What prior testimony?

15 MS. O'BRIEN: Her prior testimony
16 regarding Verde's rewards program.

17 Q. You recall that Verde asked you a number
18 of questions about why your testimony is -- or why
19 you believe the rewards program is a ephemeral
20 program. I can't recall exactly what your testimony
21 was, but do you recall that testimony?

22 A. I do.

23 Q. Okay. So -- and is this one of the
24 discovery responses that formed the basis of that
25 testimony?

1 A. Yes.

2 Q. Okay. And can you tell me why?

3 A. Yes. The question was fully described
4 and explained how Verde maintains records regarding
5 each customer's rewards. And the answer says that
6 Verde submits a daily file of active customers to the
7 rewards program vendor. And then it says, the last
8 sentence, individual reward program accounts are
9 maintained by the reward program third-party vendor.

10 Q. Okay.

11 A. So Verde does not have and did not
12 provide here and has never provided any information
13 as to how customers actually use the rewards that
14 they are giving them through this program.

15 MS. O'BRIEN: Okay. Thank you.

16 EXAMINER PRICE: That wasn't the question
17 asked though. The question says "how Verde maintains
18 records regarding each customer's rewards," and they
19 said "Individual rewards program accounts are
20 maintained by the rewards program third party
21 vendor." How do you infer from that they don't know
22 how customers use the awards program? You don't ask
23 here do you get any other records or any other
24 information from the third-party vendors. That
25 wasn't the question that was asked.

1 THE WITNESS: I did not think it was
2 necessary to ask that information since it says right
3 here that the individual accounts are maintained by
4 the third-party vendor.

5 EXAMINER PRICE: So you inferred from
6 that --

7 THE WITNESS: By definition --

8 EXAMINER PRICE: So you inferred from
9 this they have no knowledge what's in those
10 third-party accounts, accounts maintained by a
11 third-party vendor.

12 THE WITNESS: The question was how they
13 maintain records regarding each customer's rewards
14 and here they have no records of the individual
15 customers' rewards. They are maintained by the
16 rewards program third-party vendor.

17 EXAMINER PRICE: Your bank maintains
18 records of your checking account. That doesn't mean
19 you don't know how you use your money, does it?

20 THE WITNESS: I'm sorry. Please ask --

21 EXAMINER PRICE: Your bank maintains the
22 records from your checking account. That does not
23 mean that you do not know how you use your money,
24 does it?

25 THE WITNESS: The -- well, in that case I

1 do know how my money is used because I am allowed
2 access to my account by the bank, that is correct.

3 EXAMINER PRICE: And you are inferring
4 they do not have access --

5 THE WITNESS: I didn't say they didn't
6 have access. I said they don't have the information
7 available to them to answer the question about
8 what -- regarding each customer's rewards.

9 EXAMINER PRICE: I don't think that's
10 what you said, but the transcript will prove that up
11 at the end of the day, so we don't need to explore
12 that further.

13 Q. (By Ms. O'Brien) And then just one
14 follow-up question on that but isn't it -- isn't it
15 true as well that Verde doesn't know even if the
16 customers are using the rewards?

17 MR. PROANO: Objection, lack of
18 foundation.

19 EXAMINER SANYAL: Ms. O'Brien, I will let
20 you rephrase the question. How about that?

21 Q. (By Ms. O'Brien) Ms. Alexander, does
22 Verde know how its customers are using the rewards
23 for the rewards program?

24 MR. PROANO: Objection, outside the scope
25 of the personal knowledge and lack of foundation.

1 EXAMINER SANYAL: I am overruling that
2 objection.

3 Q. (By Ms. O'Brien) You can answer.

4 A. All of the discovery we did on the
5 rewards program failed to determine any information
6 from Verde about how customers used its rewards.

7 Q. Or if they used the rewards.

8 A. Or if they've used these rewards. That
9 was my point from day one.

10 Q. Okay.

11 A. Thank you. So if they have that
12 information, they should provide it, but they
13 haven't.

14 MS. O'BRIEN: Okay. Thank you,
15 Ms. Alexander.

16 Just briefly. I have no further
17 questions.

18 EXAMINER SANYAL: I assume you have some
19 follow-up?

20 MR. PROANO: I do.

21 EXAMINER SANYAL: Go ahead.

22 - - -

23 RECROSS-EXAMINATION

24 By Mr. Proano:

25 Q. Let's start with the rewards program

1 since this is the topic we are on currently. Before
2 the break you had testified that you believed you saw
3 something in Verde's responses that stated that Verde
4 does not know whether or not a customer uses rewards
5 points. Do you recall that testimony?

6 A. Well, the question is along the lines of
7 those you've asked me, yes.

8 Q. And do you recall you said at the end of
9 the -- right before the break that sitting here you
10 couldn't specifically identify the document that
11 purportedly gave rise to this belief on your behalf.

12 A. Yes.

13 Q. And is the OCC exhibit referencing
14 Interrogatory 4-045 the document that you believed
15 formed the basis of that information?

16 A. It -- it's the one that we could locate
17 in the 10 or 15 minutes we had available to us, and I
18 am comfortable relying on this document, yes.

19 Q. So where in the response does Verde
20 Energy say in this document that it does not know
21 whether or not customers use their rewards points?

22 A. The answer speaks for itself, and I
23 answered that question.

24 Q. That's not my question. I am asking in
25 this response where does it say that Verde Energy

1 does not know whether a customer uses their rewards
2 points?

3 A. I -- the answer is that Verde doesn't
4 have the records about how it -- its rewards points
5 are used, and they are maintained by the rewards
6 program third-party vendor.

7 Q. Where does it say that Verde Energy does
8 not have the records relating to how rewards program
9 points are used?

10 A. The question asks for records, and you
11 did not provide them. You said that somebody else
12 had them.

13 Q. Do you know whether or not Verde Energy
14 can ask its third-party vendor for information
15 regarding the rewards program in which customers use
16 the points?

17 A. I do not know the answer to that
18 question.

19 Q. So it could be that Verde Energy has that
20 right and, thus, has the right to access that
21 information, correct?

22 A. Well, we'll issue a Data Request and try
23 to get that information from you shortly.

24 Q. That's not -- that's not my question. My
25 question is you do not know whether or not Verde

1 Energy has the ability to obtain that information
2 regarding the rewards program or its use by its
3 customers from its third-party vendor, do you?

4 A. I don't have that information because you
5 didn't provide it.

6 Q. Was it -- do you see anything here that
7 specifically requests it?

8 A. In my opinion, it does.

9 Q. At the end of the day the -- whether or
10 not a customer had a certain number of points or used
11 their points or didn't use their points doesn't
12 matter with respect to the adjustment that Verde
13 Energy is going to make, correct?

14 A. According to the way the Stipulation is
15 written, every customer will be docked 70 cents a
16 month for the program whether they used it or not.

17 Q. So regardless of whether or not a
18 customer had a certain number of points or didn't
19 have a certain number of points or used them or not
20 used them, the adjustment is only going to be 70
21 cents per month per customer per the sworn discovery
22 responses by Verde Energy, correct?

23 A. Yes, that is correct.

24 Q. Looking back at the Joint Stipulation,
25 you went through it again with your counsel, and I am

1 going to have to backtrack because I believe my
2 recollection was your testimony was a little
3 different this morning, so I want to talk about it.
4 First of all, before you were subject to redirect,
5 did you have discussions with your counsel regarding
6 the substance of the redirect questions she asked you
7 on the stand a few minutes ago?

8 MS. O'BRIEN: Objection. This is
9 privileged discussions. The conversations
10 Ms. Alexander has with me or my other counsel is not
11 proper.

12 MR. PROANO: I believe under the Ohio
13 rules you cannot during the course of a witness's
14 testimony plan out redirect. I believe that's
15 improper, your Honor.

16 MS. O'BRIEN: Your Honor, we certainly
17 have a right to discuss with our witness what we want
18 to redirect on.

19 EXAMINER SANYAL: I am going to sustain
20 your objection. Let's try a different path.

21 MR. PROANO: Thank you, your Honor.

22 Q. (By Mr. Proano) Going to the Joint
23 Stipulation that's Joint Exhibit 1, Ms. Alexander,
24 you see paragraph 1 it says in the very first
25 sentence "Verde Energy has voluntarily ceased all

1 marketing and customer enrollment activities in
2 Ohio." Is there any ambiguity about the word "all"?

3 A. I think I've explained this three times.
4 There are provisions in this Stipulation that
5 apparently apply only to gas and some to electric. I
6 understand that the word all probably means both gas
7 and electric, but I've made the point that in light
8 of these distinctions, it would be more appropriate
9 to make that absolutely clear in this provision.

10 Q. So you believe the use of the word all,
11 which is all marketing and all customer enrollment
12 activities in Ohio, is vague and not clear enough; is
13 that your testimony?

14 MS. O'BRIEN: Objection, asked and
15 answered.

16 EXAMINER SANYAL: You know, may I have
17 that question reread.

18 (Record read.)

19 A. I've answered this many times. I think
20 it would be better --

21 EXAMINER SANYAL: Ms. Alexander, there is
22 an objection pending so thank you.

23 THE WITNESS: Oh, I'm sorry.

24 EXAMINER SANYAL: Let me make that
25 determination.

1 THE WITNESS: I'm sorry.

2 EXAMINER SANYAL: I am going to sustain
3 that objection.

4 Q. (By Mr. Proano) With respect to natural
5 gas and electricity customers, do you think paragraph
6 1 excludes either natural gas or electricity
7 customers from the marketing and customer enrollment
8 stay?

9 A. I see no language that would exclude, no.

10 Q. You also talked about in your redirect
11 the fact that Verde Energy can begin marketing and
12 enrolling again after the 18 month stay. Do you see
13 that?

14 A. Yes.

15 Q. And you said there was no link to
16 remarketing and re-enrollment to any kind of
17 compliance plan; wasn't that your testimony right
18 now?

19 A. No. I said it was not linked to any
20 specific behavioral changes that would govern its
21 future marketing in Ohio.

22 Q. Okay. But you do agree that there is a
23 link to restarting marketing and customer enrollment
24 in Ohio and the compliance plan in paragraph 5 of the
25 Joint Stipulation?

1 A. Well, if you look at paragraph 5, there
2 is nothing about what will happen and who will
3 approve this plan prior to your unilateral right in 1
4 to resume marketing in October of 2020.

5 Q. My question was was there a link between
6 the action plan and reassuming marketing in Ohio?

7 A. No, not in this Stipulation.

8 Q. Even though it says in paragraph 5 that
9 the action plan must be submitted 90 days prior to
10 resuming marketing and customer enrollments in Ohio.

11 A. That is correct.

12 Q. So you had testified under redirect that
13 you have no idea what Staff will or will not do,
14 correct?

15 A. That is a statement of fact since I do
16 not work with the Staff.

17 Q. So you don't know whether or not Staff is
18 going to make sure that action plan addresses the
19 allegations in the Staff Report, do you?

20 A. I don't know that and that's a defect in
21 the Stipulation.

22 Q. Let's look at paragraph 2. You reference
23 a vagueness objection to the MVR program language.
24 What is vague about withdrawing for one year from
25 Dominion's MVR program as stated in this paragraph 2?

1 A. I didn't say that the withdrawal for one
2 year was vague.

3 Q. Okay. Going to paragraph 3 then of the
4 Joint Stipulation, you testified that you believe the
5 appropriate rate was the utility price to compare,
6 correct?

7 A. Yes, standard service.

8 Q. Do you believe that PUCO Staff was wrong
9 in taking into account that Verde's product is in the
10 100 percent renewable price product?

11 A. Yes.

12 MS. O'BRIEN: Objection, calls for --
13 objection, calls for speculation.

14 EXAMINER SANYAL: Overruled.

15 Q. Your answer?

16 A. My answer is that it is wrong to use this
17 particular price in this manner, in this Stipulation
18 as written.

19 Q. And do you --

20 A. And let me -- can I explain?

21 MS. O'BRIEN: Yeah, if we could let
22 Ms. Alexander finish.

23 EXAMINER SANYAL: Ms. Alexander may
24 finish her answer.

25 A. The reference here is to the second

lowest 12-month fixed 100 percent renewable price shown on a chart in December 2018. There is no basis for concluding that that has any relationship to the inclusion of renewable energy in these electric contracts. We don't know how much you pay to include that. We don't know where those renewables are actually located. And we have no basis for concluding that the second lowest 12-month fixed 100 percent renewable price in December is "fair" to the customers impacted by the pricing of your products as documented in the Staff Report.

Q. Is it your understanding that renewable products in Ohio are generally more expensive than nonrenewable products?

A. Don't have to be.

Q. That's not my question. Is it your understanding that on -- generally renewable products are more expensive?

MS. O'BRIEN: Your Honor, objection. This is beyond the scope of redirect.

EXAMINER PRICE: Why do you say that?

EXAMINER SANYAL: I disagree. Help me understand why you are making that objection.

MS. O'BRIEN: I'll withdraw the objection then.

1 EXAMINER SANYAL: Thank you.

2 MS. O'BRIEN: I will withdraw the
3 objection.

4 A. I have no current or historical knowledge
5 about the cost of renewable energy certificates in
6 the Ohio market. You asked me a hypothetical
7 question, and my answer was it doesn't have to be
8 more expensive. That's all I am telling you. Beyond
9 that I have no numbers to provide to you or
10 particular knowledge. I have not looked at the
11 historical costs of RECs, and I particularly don't
12 know them in December 2018.

13 Q. So you have no knowledge one way or the
14 other on that issue, correct?

15 A. I didn't claim that I did. No, I do not.

16 Q. And so are you aware whether or not PUCO
17 Staff conducted that analysis before agreeing to use
18 this specific price for the re-rate?

19 A. I don't know.

20 Q. So you don't know whether or not PUCO
21 Staff did such an analysis in agreeing that the
22 lowest 12-month fixed 100 percent renewable price for
23 that week PUCO's historic Apples to Apples chart was
24 appropriate?

25 A. No.

1 EXAMINER PRICE: Do you know whether
2 Verde only exclusively offers 100 percent renewable
3 energy contracts for electric?

4 THE WITNESS: Do I know?

5 EXAMINER PRICE: Yeah.

6 THE WITNESS: Oh, no, I don't.

7 Q. You mentioned PALMco in your redirect
8 testimony. Do you know whether or not PALMco offered
9 100 percent renewable energy products or not?

10 A. Oh, they offered renewables, I distinctly
11 recall that. Whether every product they offered was
12 that, I do not remember.

13 MR. PROANO: Give me one minute.

14 Q. The final question, Ms. Alexander, the
15 1.068 million referenced in paragraph 3 of the Joint
16 Stipulation, that is not a cap, correct?

17 A. That is true.

18 MR. PROANO: No further questions.

19 EXAMINER SANYAL: Any questions?

20 MS. O'BRIEN: No further questions.

21 EXAMINER SANYAL: Anyone else?

22 MR. NUGENT: No questions.

23 EXAMINER SANYAL: Okay.

24 MS. O'BRIEN: And, your Honors, I'm
25 sorry, I just had something to add. During

1 Ms. Alexander's testimony, we had an additional
2 public witness arrive, and we were wanting to know if
3 he could be -- he would be allowed to provide his
4 testimony.

5 EXAMINER SANYAL: Yes. I think we can do
6 that, but it really depends on whether you guys want
7 to take a lunch now or do the public. My Co-Attorney
8 Examiner would like to take the public witness now so
9 that's what we will do.

10 Ms. Alexander, thank you. You are
11 excused.

12 THE WITNESS: I'm all set. Thank you.
13 Thank you.

14 MS. O'BRIEN: And, your Honor, also at
15 this time I would like to move for the admission of
16 OCC Exhibit 1 and 2.

17 EXAMINER SANYAL: 1 and 2.

18 MR. PROANO: Which were those documents?

19 MS. O'BRIEN: Ms. Alexander's testimony
20 and the discovery response.

21 MR. PROANO: The one pager?

22 MS. O'BRIEN: Yes.

23 EXAMINER SANYAL: Any objections to those
24 being admitted?

25 MR. PROANO: No objection.

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MR. LINDGREN: No objections.

EXAMINER SANYAL: OCC Exhibits 1 and 2
are admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER SANYAL: You may call your
witness.

MS. O'BRIEN: OCC would like to call
Mr. Tomas Quintana.

(Witness sworn.)

EXAMINER SANYAL: Okay. Please be seated
and then if you will state your name for the record
and if you could spell out your last name.

THE WITNESS: Tomas Quintana, T-O-M-A-S
Q-U-I-N-T-A-N-A.

EXAMINER SANYAL: And you may proceed,
Ms. O'Brien.

THE WITNESS: Excuse my attire. I was
not sure what I was walking into.

EXAMINER SANYAL: We saved the Crew.

THE WITNESS: I'm so sorry already.

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TOMAS QUINTANA

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

DIRECT EXAMINATION

By Ms. O'Brien:

Q. Thank you for coming today, Mr. Quintana.
Would you tell us your story about Verde.

A. Yeah. The reason I got involved and even
showed up here today, my niece was going to be a
witness and she had reached out to me a few months
back because she had just gotten her first apartment
and she looked up her electric account and she had
chosen a supplier, so she was familiar with that, you
know, as most people in Ohio now are.

And then what she had sent to me were
text messages showing welcome letters from Verde
company, and she was puzzled because she said I've
never talked to them. I have no clue who they are.

So what was related to me somebody had
knocked on their door. Her roommate was the one that
was home. She spoke to them. She said, you know, we
already have a supplier selected. And they said, oh,
yeah, yeah. We are just here verifying that
enrollment and they had her provide copies of the
bill and she said again that's -- the bill is not in

1 my name. Oh, it's cool. You can pretend to be her.

2 So back to where I got involved is when
3 she sent me those welcome letters which showed her
4 electric at 9.75 per kilowatt, so automatically I
5 would assume she would not go from -- she sent me
6 that she had signed up for 5.55 so that would make no
7 sense to voluntarily, you know, increase your
8 electric rate by over 4 cents.

9 And then on top of that, she had also
10 received a welcome letter for them as a gas supplier
11 which she said that they never even spoke to her
12 roommate about gas or supplying gas. So that was
13 another surprise on top of that. So her thing was,
14 hey, I never wanted to switch to them and definitely
15 never even discussed the gas.

16 So she reached out to me and then I said,
17 hey, the steps that I know you would do would be to
18 reach out to PUCO and, you know, I showed her the
19 website and then she filed her complaint and here we
20 are today. I was going to accompany her, but she
21 couldn't get off of work, so she couldn't make it
22 today.

23 MR. PROANO: Your Honor, respectfully I
24 would like to move to strike the hearsay in that
25 response. There is a lot of people talking, third

1 parties talking, and statements made that are not
2 within this witness's personal knowledge and were not
3 made by the witness. So basic hearsay rules do not
4 provide that kind of testimony should be permitted,
5 so I would respectfully request that your Honors
6 limit this witness's testimony to statements he made
7 or he heard personally with respect to this issue.

8 MS. O'BRIEN: Your Honor -- oh, I'm
9 sorry. Were you done?

10 MR. PROANO: Yes.

11 MS. O'BRIEN: Your Honor, this is -- this
12 witness is a member of the public. He mentioned his
13 niece can't be here today because she has to work.
14 Your Honors can certainly give his testimony the
15 weight that it deserves or choose not to give it the
16 weight it deserves.

17 EXAMINER SANYAL: I am going to deny that
18 objection -- overrule that objection because the
19 Rules of Evidence are -- they do not strictly bind us
20 and Mr. Quintana has testified that he did review the
21 welcome letters and so I am going to let his
22 testimony stand and let the Commission review it and
23 give it the weight it deserves.

24 Do you have any questions, however, of
25 this witness?

1 MR. PROANO: If he's done, I do, yes.

2 EXAMINER SANYAL: Yes. Did you have
3 anything else?

4 THE WITNESS: No. Those welcome letters,
5 I don't know how this process works, but I do have
6 copies of them so that's how I became aware of, you
7 know, the rates that she had.

8 EXAMINER SANYAL: Okay.

9 THE WITNESS: I am not sure how that
10 weighs in here.

11 EXAMINER SANYAL: We will just have
12 Mr. Proano ask you some questions.

13 MR. PROANO: Sure. What was the name --

14 EXAMINER PRICE: Hold on one second. Do
15 you want to put those letters in?

16 MS. O'BRIEN: Yes. Actually we would
17 like to, if we can.

18 EXAMINER SANYAL: Okay. Do we have
19 copies?

20 MS. O'BRIEN: I believe he probably only
21 has the one copy so. If we could mark them as Public
22 Exhibits 1 and 2.

23 EXAMINER PRICE: OCC Exhibit, they are
24 your exhibits.

25 MS. O'BRIEN: I'm sorry?

1 EXAMINER PRICE: OCC.

2 EXAMINER SANYAL: It is going to be OCC
3 Exhibit 3.

4 MS. O'BRIEN: OCC Exhibit 3, that's fine.
5 (EXHIBITS MARKED FOR IDENTIFICATION.)

6 MR. PROANO: Your Honor, do you mind if I
7 review these documents?

8 EXAMINER SANYAL: Not at all.

9 MR. PROANO: May I approach?

10 EXAMINER SANYAL: Yes.

11 MR. PROANO: Are you done with your
12 direct, Ms. O'Brien?

13 MS. O'BRIEN: Yes, I am. Thank you.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Proano:

17 Q. Mr. Quintana, my name is David Proano. I
18 am an attorney. I represent Verde Energy in this
19 proceeding. Good afternoon. The relative you
20 mentioned, is her name Nathaly?

21 A. Nathaly.

22 Q. Nathaly Leyton spelled N-A-T-H-A-L-Y --

23 A. Yes.

24 Q. -- L-E-Y-T-O-N?

25 A. Yes.

1 Q. And the handwriting on these documents,
2 is that your handwriting or Nathaly's?

3 A. That is my handwriting.

4 Q. And do you know if Ms. Leyton complained
5 to the PUCO or OCC about this?

6 A. Correct. I believe I stated that
7 earlier, that how I got involved she reached out to
8 me and said what can I do about it assuming that I
9 can find the resources, and then I pointed to PUCO to
10 file the complaint.

11 Q. Do you know what happened with that
12 complaint?

13 A. Here we are. That's all I know.

14 Q. Do you know specifically what happened
15 with her complaint?

16 A. No, sir.

17 Q. Do you know whether or not Verde Energy
18 addressed this complaint?

19 A. No. I would not know what Verde did.

20 MR. PROANO: No further questions.

21 EXAMINER SANYAL: IGS? Staff?

22 MR. LINDGREN: No questions, your Honor.

23 EXAMINER SANYAL: Before we give those
24 exhibits to the court reporter, do you think I could
25 look at them real quick?

1 Do you have any more questions,
2 Ms. O'Brien?

3 MS. O'BRIEN: I have no more questions.

4 EXAMINER SANYAL: Okay. So there is
5 actually two different. One is for gas. One is for
6 electric. So should we mark one as OCC 3 and one as
7 OCC 4?

8 MS. O'BRIEN: That would -- yes, please.

9 EXAMINER SANYAL: Gas as OCC 3. So the
10 gas will be OCC 3, and electric will be OCC 4.

11 Okay. Ms. O'Brien, you have no other
12 questions of this witness?

13 MS. O'BRIEN: No, I don't.

14 EXAMINER SANYAL: Thank you,
15 Mr. Quintana, for coming down.

16 THE WITNESS: Thank you.

17 EXAMINER SANYAL: And are you going to
18 move the exhibits?

19 MS. O'BRIEN: Yes. We would like to move
20 for admission of OCC 3 and 4 and then was -- I don't
21 know. It's up to Verde if they are going to move for
22 admission of their exhibits.

23 EXAMINER SANYAL: Right. So, first of
24 all, you probably have objections to 3 and 4 or?

25 MR. PROANO: No objections.

1 EXAMINER SANYAL: Okay, okay. So any
2 objections to 3 and 4 being admitted?

3 MR. LINDGREN: No objections.

4 EXAMINER SANYAL: Okay. Those are
5 admitted.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 EXAMINER SANYAL: And then I think we
8 have Joint Exhibit 1 and Verde Exhibits 1, 2, and 3
9 that are outstanding.

10 MR. PROANO: Yes, your Honor. We move
11 for the admission of those exhibits, please.

12 EXAMINER SANYAL: 1, 2, and 3.

13 MR. PROANO: And Joint Exhibit 1.

14 EXAMINER SANYAL: Any objections to
15 those?

16 MR. LINDGREN: No objections.

17 MS. O'BRIEN: No objection.

18 EXAMINER SANYAL: So Joint Exhibit 1 and
19 Verde Exhibits 1, 2, and 3 are admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER SANYAL: Okay. Rest of the day.
22 Shall we take 45 minutes for lunch and then?

23 MS. O'BRIEN: Yeah. That's acceptable to
24 OCC.

25 EXAMINER SANYAL: Shall we take Staff

1 witnesses at that point?

2 MS. O'BRIEN: Yes. That would be our
3 preference.

4 EXAMINER SANYAL: Okay. So we shall do
5 that, and we will go until 6:00 p.m.

6 EXAMINER PRICE: Pending Mr. Nugent's
7 objections.

8 MR. NUGENT: We are good to go. I'm
9 sorry.

10 EXAMINER SANYAL: Excellent. So we will
11 see everyone back here at 1:55.

12 (Thereupon, at 1:11 p.m., a lunch recess
13 was taken.)

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1 Wednesday Afternoon Session,
2 October 16, 2019.

3 - - -

4 EXAMINER SANYAL: Let's go on the record.
5 And I think we've decided to go with
6 Staff witnesses for the afternoon so, Mr. Lindgren.

7 MR. LINDGREN: Thank you, your Honor.
8 The Staff calls Nedra Ramsey to the stand.

9 (Witness sworn.)

10 EXAMINER SANYAL: Please be seated.

11 - - -

12 NEDRA RAMSEY
13 being first duly sworn, as prescribed by law, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Lindgren:

17 Q. Good afternoon, Ms. Ramsey.

18 A. Good afternoon. I'm just going to be
19 short.

20 EXAMINER SANYAL: Take your time. If you
21 need to adjust it.

22 THE WITNESS: It's a different chair.

23 EXAMINER SANYAL: There are a few other
24 chairs.

25 THE WITNESS: Whatever.

1 EXAMINER SANYAL: We just want you to be
2 comfortable. You will be in there for a while.

3 THE WITNESS: Oh, lord. Okay.

4 Q. (By Mr. Lindgren) Could you please state
5 your name for the record.

6 A. Nedra Ramsey.

7 Q. Thank you. And where are you employed?

8 A. The Public Utilities Commission of Ohio.

9 Q. Thank you. Did you file testimony in
10 this proceeding?

11 A. I did.

12 Q. Thank you.

13 MR. LINDGREN: May I approach the
14 witness?

15 EXAMINER SANYAL: Yes, you may.

16 MR. LINDGREN: Let the record reflect I
17 am handing the witness what was marked for
18 identification as Staff Exhibit 1.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. (By Mr. Lindgren) Ms. Ramsey, do you
21 recognize this document marked as Staff Exhibit 1?

22 A. I do.

23 Q. And is that your testimony?

24 A. It is.

25 Q. And was this testimony prepared by you or

1 at your direction?

2 A. Yes, it was.

3 Q. Thank you. Do you have any changes or
4 corrections to this testimony?

5 A. I do just for point of clarification.
6 It's -- I'm sorry. I am going to refer to mine.
7 It's question 8, the third bullet, line 81.

8 Q. Is that on page 5?

9 A. I'm sorry, yes, page 5.

10 Q. Thank you.

11 A. Should read "Verde will re-rate all
12 electric residential customers." And then between
13 line 84 and 85 beginning in line 84 "apples-to-apples
14 charts for the week of December 17, 2018, in the
15 customer's respective electric distribution utility
16 territory, adjusted for any rewards provided by
17 Verde."

18 Q. Could you read the whole sentence the way
19 it is with the corrections.

20 MS. O'BRIEN: Could I possibly ask that
21 she use the microphone? It's very hard to hear you.

22 EXAMINER SANYAL: Yes. Ms. Ramsey, I
23 actually am having a little trouble hearing you so.

24 THE WITNESS: I mean, is it on?

25 EXAMINER SANYAL: If it's not on --

1 THE WITNESS: Oh, okay.

2 EXAMINER SANYAL: Okay. Just speak up
3 generally as well.

4 A. Okay. So it should read "Verde will
5 re-rate all electric residential customers who
6 enrolled between October 1, 2018, and April 30, 2019,
7 to the second lowest 12-month-fixed 100 percent
8 renewable price shown on the PUCO's historic
9 apple-to-apples charts for the week of December 17,
10 2018, and the customer's respective electric
11 distribution utility territory, adjusted for any
12 rewards provided by Verde."

13 Q. Thank you. Did you have any other
14 corrections?

15 A. I do not.

16 Q. Thank you. Then if I were to ask you all
17 these same questions today, would your answers be the
18 same?

19 A. Yes.

20 MR. LINDGREN: Thank you. I have no
21 further questions, and the witness is available for
22 cross-examination.

23 EXAMINER SANYAL: Thank you. We will go
24 with -- OCC, any additional questions, or would you
25 like Mr. Proano?

1 MS. O'BRIEN: I would like Mr. Proano to
2 proceed.

3 EXAMINER SANYAL: Okay.

4 MR. PROANO: At this time we have no
5 questions, subject to cross, depending on what OCC
6 asks.

7 MS. O'BRIEN: You know, your Honors, I am
8 going to object to that. I mean, Verde is on the
9 same side. They are in support of the Stipulation as
10 well. We should have the right to have them proceed
11 first.

12 MR. PROANO: As I said, I have no
13 questions at this time, but I reserve the right
14 depending on what OCC asks.

15 EXAMINER SANYAL: Okay. Let's do this --
16 Mr. Healey, do you have --

17 MR. HEALEY: I would say it's not
18 Commission practice to allow parties on the same side
19 to reserve their rights to effectively redirect after
20 opposing parties' cross-examination. I have never
21 seen that in the many hearings I've participated in.

22 EXAMINER PRICE: He can do redirect
23 before -- redirect before you do your recross.

24 MR. HEALEY: Well, he can't do redirect
25 examination, that's not his...

1 EXAMINER PRICE: He'll get a turn, he
2 will go after you -- or before you. Assuming we are
3 way ahead in the future, you are doing cross. Staff
4 will do redirect. He will get a chance to follow
5 Staff on redirect. You will get a chance to do
6 recross.

7 MR. HEALEY: Right. That's what we were
8 objecting to.

9 EXAMINER SANYAL: And your basis is
10 because he's not doing any cross right now?

11 MR. HEALEY: Our basis is his opportunity
12 to cross the witness is right now as the party on the
13 same side, and it's Commission practice in every
14 hearing I have been in, and I am sure Ms. Bojko,
15 every hearing she's been in, that the parties on the
16 same side cross-examine witnesses first, and they
17 don't get to reserve their rights to cross-examine
18 their witness based on our cross.

19 EXAMINER SANYAL: I think what he is
20 saying he will participate in any redirect based on
21 your cross.

22 MR. HEALEY: And our response to that he
23 is not a member of Staff, so he can't do a direct
24 examination of a witness that's not a Verde witness.
25 He can do a cross-examination.

1 EXAMINER PRICE: Ms. Bojko will confirm
2 that is not consistent with standard Commission
3 practice.

4 MS. BOJKO: I like this though, your
5 Honor.

6 EXAMINER PRICE: I am sure you do in this
7 case, Ms. Bojko, but we'll remember for your next
8 case.

9 EXAMINER SANYAL: We have long memories.
10 That objection is overruled so let's proceed with
11 your cross.

12 MS. O'BRIEN: Okay.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. O'Brien:

16 Q. Good morning, Ms. Ramsey -- or, I'm
17 sorry, afternoon.

18 A. Afternoon.

19 Q. I'm sorry. I am a little spacey.

20 MR. NUGENT: Your Honor, I'm sorry. I
21 tried to jump in a moment ago.

22 MS. O'BRIEN: I apologize.

23 MR. NUGENT: It's fine. I am happy to go
24 ahead if OCC would like.

25 EXAMINER SANYAL: Thank you. I forgot to

1 ask you so go ahead.

2 MR. NUGENT: Not a problem.

3 MS. O'BRIEN: That's fine.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Nugent:

7 Q. Good afternoon, Ms. Ramsey.

8 A. Good afternoon.

9 Q. Thank you for joining us this afternoon.

10 You participated in the Commission's investigation of
11 Verde Energy in this proceeding, correct?

12 A. Yes, I did.

13 Q. Okay. And generally speaking you played
14 a roll in evaluating the conduct that Verde undertook
15 in Ohio during the period of October 1, 2018, through
16 April 12 of 2019; is that also correct?

17 A. On behalf of Staff, yes.

18 Q. I'm sorry. Do you mind speaking up too?
19 I am battling a little bit of a cold so I am
20 having --

21 EXAMINER PRICE: She's objectively
22 speaking very softly. You need to --

23 A. On behalf of Staff, yes.

24 Q. Thank you. And that conduct was detailed
25 in the Staff Report that was initially filed in this

1 proceeding on May 3, 2019; is that correct?

2 A. Yes.

3 Q. And do you have a copy of that Staff
4 Report before you today?

5 A. Not the May 3 Staff Report.

6 Q. Do you have a copy of the corrected Staff
7 Report?

8 A. I do.

9 Q. Okay. In the course of your
10 investigation, you obtained and reviewed audio
11 recordings of automated messages that Verde used to
12 solicit electric products to Ohio consumers, correct?

13 A. I'm sorry. Say that again.

14 Q. Sure. In the course of your
15 investigation you obtained and reviewed audio
16 recordings of automated messages that Verde used to
17 solicit electric products to Ohio consumers; am I
18 correct?

19 A. Not auto -- automated audio recordings?

20 Q. Yeah.

21 A. There was one --

22 Q. Pardon me. Go ahead. Just one?

23 A. Yeah.

24 Q. Okay.

25 A. I listened to one automated recording.

1 Q. Thank you. And in that one instance you
2 reviewed and compared the pricing disclosures that
3 were made by a Verde sales representative against a
4 complaining party's actual residential electric and
5 natural gas rates at the time that solicitation was
6 made, correct?

7 A. Yes.

8 Q. Okay. And you were also responsible for
9 notifying Verde of the allegations of spoofing as
10 well as its misrepresentation of local utility rates
11 that staff would eventually raise against Verde; is
12 that correct?

13 A. Do you have that information?

14 Q. It's in a footnote in the Staff Report,
15 yes. I believe you contacted them by e-mail.

16 A. Regarding -- you said regarding spoofing?

17 Q. Yes.

18 A. Yes.

19 Q. Okay.

20 MR. PROANO: I'm sorry. Which footnote
21 are you referring to, Mr. Nugent?

22 MR. NUGENT: Give me just a moment here.

23 EXAMINER PRICE: I think we are already
24 going down a bad path here because you are
25 referencing a document that's not been marked.

1 MS. O'BRIEN: Well, if I may interject.

2 EXAMINER PRICE: If you are going to mark
3 it eventually --

4 MS. O'BRIEN: I was.

5 EXAMINER PRICE: -- why don't we do that
6 now so that in the future it will make sense
7 together.

8 MR. NUGENT: Okay.

9 MS. O'BRIEN: Sure. Would you like me to
10 mark it?

11 MR. NUGENT: Yeah, if you want to.

12 MS. O'BRIEN: May I approach?

13 EXAMINER SANYAL: Yes, you may.

14 MS. O'BRIEN: So this is OCC Exhibit --
15 what I am marking as OCC Exhibit 5 and it is the May
16 29 corrected Staff Report in this proceeding.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. NUGENT: David, I am looking at
19 footnote 10 on page 11.

20 MR. PROANO: Thank you. Footnote 10.
21 Thank you.

22 Q. (By Mr. Nugent) And, Ms. Ramsey, for the
23 record you also participated in the investigation of
24 Verde's door-to-door sales marketing and enrollment
25 procurements, correct?

1 A. Yes.

2 Q. And am I correct that Staff's
3 investigation into Verde identified 517 total
4 customer contacts that were made to the PUCO's call
5 center regarding Verde between October 1, 2018, and
6 April 17 of 2019?

7 A. Can you tell me where you are looking at?

8 Q. Sure. The first full paragraph on page
9 9. That paragraph begins with "Staff began its
10 investigation" and I did some math between -- from
11 the second and third sentences.

12 A. Oh, okay. Yes. I was like where did you
13 get 500? Okay.

14 Q. I'm sorry. I added them together. Did
15 you or another member of Staff attempt to quantify
16 how many of those 517 customers were customers of a
17 competitive retail natural gas or competitive retail
18 electric service provider prior to enrolling with
19 Verde?

20 A. We did not.

21 Q. Okay. So it would be fair to say then
22 you also did not attempt to quantify how many of
23 those 517 customers were customers of IGS with Verde?

24 A. I did not.

25 Q. Okay. And in the course of Staff's

1 investigation did you or any other member of Staff
2 evaluate whether Verde, its parent Spark Energy
3 Holdings, LLC, or any of Spark's affiliates were the
4 subject of compliance actions in any other state that
5 were similar to the one at issue in this proceeding?

6 A. Yes, we did.

7 Q. In what states did those actions take
8 place?

9 A. Per the Staff Report page 24 and 25 were
10 identified Connecticut and New York.

11 Q. Thank you. And in the course of Staff's
12 investigation, did you or any other member of Staff
13 ask Verde to identify each and every one of its
14 vendors that engaged in misconduct detailed in the
15 Staff Report?

16 MR. PROANO: Objection, alleged
17 misconduct.

18 EXAMINER SANYAL: Rephrase, Mr. Nugent.

19 Q. (By Mr. Nugent) Did you or any other
20 member of Staff ask Verde to identify each and every
21 one of its vendors that engaged in the alleged
22 misconduct detailed in the Staff Report?

23 A. The answer to your question is no.

24 Q. Okay. Did Verde identify or volunteer --
25 voluntarily provide the names of vendors?

1 A. Yes, they did.

2 Q. And of those vendors that Verde provided,
3 did you or any other member of Staff ask whether
4 Verde severed its business relationship with those
5 vendors?

6 A. I know we know that some -- they severed
7 relationships with some vendors. I am not sure if
8 they -- from us asking or. We do know they severed
9 some relationships.

10 Q. And do you know the number of vendors
11 that were provided?

12 A. I'm sorry?

13 Q. The quantity of vendors, how many
14 different vendors that they volunteered. Was it one?
15 Two? Three? Four different vendors? Or were there
16 more than that?

17 A. Like can you say the whole question
18 because, I mean, you are just asking how many vendors
19 do they have or how many vendors they severed
20 relationships with?

21 Q. No. I'm sorry. I'll try to rephrase
22 here. We are referring to the alleged misconduct,
23 and so within the scope of that, I would like to know
24 whether or not we -- we've already -- you indicated
25 to me that Verde did share with you that it had --

1 there were certain vendors that engaged in the
2 alleged misconduct, correct?

3 A. Yes.

4 Q. How many vendors engaged in that alleged
5 misconduct?

6 A. I can -- I mean, I believe there were
7 three but that's -- you know, I would have to check.

8 Q. Okay. And did Verde confirm that that
9 was the entirety, that each -- that there were no
10 additional vendors that may have engaged in the
11 alleged misconduct?

12 A. No, they didn't confirm.

13 Q. Okay. Did you or any other member of
14 Staff evaluate whether any of the Verde vendors that
15 engaged in the alleged misconduct detailed in the
16 Staff Report continue to solicit products and
17 services on behalf of Verde, its parent Spark Energy
18 Holdings, LLC, or any of Spark's affiliates in any
19 other state?

20 A. We did not.

21 Q. Okay. I would like to turn to your
22 testimony now, if I could. And I am looking at page
23 5 and lines 87 through 88. Let me know when you are
24 there, please.

25 A. I'm there.

1 Q. Okay. And there you reference the
2 provision in the Stipulation that requires Verde to
3 submit an action plan for compliance to PUCO Staff at
4 least 90 days prior to resuming marketing and
5 customer enrollment in Ohio. Do you see that?

6 A. Yes, I do.

7 Q. Okay. And turning over to the next page,
8 page 6, you believe this provision benefits the
9 public interest because it ensures Verde will have
10 processes in place to reduce the prospect of
11 systematic violations in the Commission's rules; is
12 that also correct?

13 A. Yes.

14 Q. Okay. And am I correct that the hope is
15 that by entering into this Stipulation Verde and its
16 affiliates will cease from engaging in future rules
17 violations that were discussed and outlined in the
18 Staff Report?

19 MR. PROANO: Objection, alleged rules
20 violations.

21 MR. NUGENT: Would you like me to
22 rephrase?

23 MR. PROANO: My objection stands.

24 EXAMINER SANYAL: Okay. We are going to
25 rephrase the question.

1 MR. NUGENT: Yes. Pardon me, rephrase
2 the question. Thank you.

3 Q. (By Mr. Nugent) And am I correct that the
4 hope is that by entering into this Stipulation Verde
5 and its affiliates will cease from engaging in
6 alleged violations discussed in the Staff Report?

7 A. It's in Verde's best interest to.

8 Q. Sure. Can you tell me will Staff define
9 and/or dictate the terms in that action plan, or does
10 the Staff allow Verde to submit an outline?

11 A. Verde has to submit an action plan. If
12 Staff finds that it's not sufficient, we will request
13 that they add additional information and.

14 Q. Okay. So just so I'm clear, Verde
15 effectively gets to take the first crack at it; is
16 that correct? So they will submit a draft proposal,
17 if you will, to Staff for review?

18 A. That's generally how it happens.

19 Q. Okay. And let's say, for example, Verde
20 has gone ahead and submitted that action plan. Will
21 Staff require the action plan -- will Staff require
22 Verde as part of its action plan to obtain a
23 dedicated compliance manager to oversee all Verde's
24 sales and marketing programs in Ohio?

25 A. It's Verde's responsibility to manage

1 their staff and plan how they see fit. We're not --
2 that's generally not part of the plan where we
3 require that they hire someone to do specific things.
4 If their staff is capable of carrying out the
5 compliance plan, then their staff is capable of doing
6 that.

7 Q. Understood. Has Staff discussed whether
8 the action plan will -- will require Verde to reform
9 its disclosure documents so, for example, contract
10 expiration notices?

11 A. If Staff has issues with the notice
12 itself, then, yes, we would.

13 Q. But you have not had those discussions,
14 correct?

15 A. On how to reform it? We have not had
16 discussions on what's going to be included in the
17 action plan.

18 Q. Okay. Must that action plan be formally
19 approved by the Commission before Verde can resume
20 its sales and marketing activities in Ohio?

21 A. Verde has to submit an action plan for
22 compliance to Staff.

23 Q. Must that plan be formally approved by
24 the Commission?

25 A. Not by the Commission.

1 Q. Okay. And can you tell me if there is a
2 venue or forum that IGS or any other interested party
3 might have to provide input regarding the decision to
4 allow Verde to reenter the Ohio competitive market?

5 A. I guess if you had joined the Stipulation
6 maybe. I mean.

7 Q. So just to be clear, do you anticipate
8 requiring Verde to file the action plan in this
9 proceeding or perhaps in a separate docket?

10 A. No.

11 Q. Okay. Can you tell me, is there anything
12 in the Stipulation that will prevent Verde's parent,
13 so Spark Energy Holdings or its affiliates, from
14 marketing and enrolling electric and natural gas
15 customers in Ohio?

16 A. No, not Spark Energy.

17 Q. Okay. Or its affiliates?

18 A. Or its affiliates.

19 MR. NUGENT: Thank you, Ms. Ramsey.
20 That's all I have.

21 MS. O'BRIEN: Excuse me. Give me just
22 one minute.

23 EXAMINER SANYAL: That's okay. Take your
24 time.

25 - - -

CROSS-EXAMINATION

By Ms. O'Brien:

Q. Okay. Good afternoon, Ms. Ramsey.

A. Afternoon.

Q. Could you turn to page 2 of your testimony, please. And I am going to refer you to line 11. Let me know when you are there.

A. I am there.

Q. Okay. Now, here you state you work with the PUCO in the Reliability and Service Analysis Division of the Service Monitoring and Enforcement Department; is that correct?

A. Yes.

Q. If I refer to your Division as SMED, S-M-E-D, will you understand my meaning?

A. Well, it's the department but, yes.

Q. Okay. And on the same page if you move down to lines 13 through 16, you state that you're responsible for analyzing service quality performance, as well as recommending and enforcing competitive service quality and consumer protection policies and rules for competitive retail natural gas and electric providers; is that correct?

A. Yes.

Q. And if I refer to competitive retail

1 electric service as C-R-E-S or CRES and competitive
2 retail natural gas service as C-R-N-G-S or CRNGS,
3 will you understand my meaning?

4 A. Yes, I will.

5 Q. Okay. Great. Aside from the instant
6 proceeding, what other enforcement actions have you
7 been involved in?

8 A. Many.

9 Q. Could you describe some of them.

10 A. Well, there is an action against Great
11 American Power and Gas, National Gas and Electric.

12 Q. And are -- are these enforcement actions
13 against suppliers or other companies?

14 A. Suppliers.

15 Q. Okay. And in your role, your current
16 role, would -- how many would you say? Would you say
17 it was 10? 20? More than that? I am trying to get
18 an idea.

19 A. I would say at least 10.

20 Q. Okay. Now, further down on page 2, lines
21 16 to 19, here you state that you're responsible for
22 supervising and providing direction to the subject
23 matter experts responsible for CRES and CRNGS; is
24 that correct?

25 A. Yes.

1 Q. Okay. Do you consider yourself to be an
2 expert with respect to Ohio's CRES and CRNGS rules?

3 A. I do, yes.

4 Q. Can you please tell me what happens
5 within SMED when a customer calls in to complain
6 about a particular CRES or CRNGS provider?

7 A. Well, the call center will log the
8 complaint based on what the customer's complaint is.
9 They will take it as an investigation and request
10 documentation and information from whatever companies
11 the complaint is against.

12 Q. And then does SMED create a kind of
13 record about a particular complaint?

14 A. Yes.

15 Q. What kind -- what type of record does it
16 create?

17 A. Well, it will include the demographics of
18 the customer, the utility or the entity the complaint
19 is against. There's case notes. There's company
20 responses, and then there's a closing contact with
21 the customer.

22 Q. And if I were to refer to these records
23 as customer records, would you understand my meaning?

24 A. Yes.

25 MS. O'BRIEN: May I approach?

1 EXAMINER SANYAL: Yes, you may.

2 MS. O'BRIEN: Your Honors, I would like
3 to mark as OCC Exhibit 6 the Staff's April 16, 2019,
4 letter filed in Case Nos. 11-5886-EL-CRS and
5 13-1264-GA-CRS.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. (By Ms. O'Brien) Okay. Ms. Ramsey, can
8 you tell me what this document is?

9 A. It is the Staff letter that was filed in
10 Verde's CRES and CRNGS application or case.

11 Q. Okay. And why was this letter filed in
12 Verde's CRES and CRNGS application proceedings?

13 A. It was to recommend that the Commission
14 open a Commission-ordered investigation.

15 Q. And this letter was subsequently filed in
16 this proceeding; is that correct?

17 A. Yes.

18 Q. And my understanding is that the Staff
19 letter was filed with the PUCO due to an increase in
20 customer contacts regarding Verde's provision of CRES
21 and CRNGS services to Ohio consumers; is my
22 understanding correct?

23 A. Yes.

24 Q. And my understanding is also that during
25 the period between October 1, 2018, and April 12,

1 2019, there were 481 customer contacts regarding
2 Verde's service; is that correct?

3 A. Yes.

4 Q. And of those contacts, 231 or
5 approximately 57 percent involved complaints related
6 to enrollment disputes, misleading information, and
7 false representations wherein Verde purported to be
8 another utility; is that correct?

9 MR. PROANO: Objection, alleged.

10 EXAMINER SANYAL: Rephrase the question.

11 Q. And those -- and of those contacts 231,
12 approximately 57 percent involved alleged complaints
13 related to enrollment disputes, misleading
14 information, and false representations wherein Verde
15 purported to be another utility; is that correct?

16 A. That is what's stated in the letter.

17 Q. Now, could you please tell me what your
18 role was in investigating Verde during the October 1,
19 2018, to April 12, 2019, time frame?

20 A. I reviewed the customer contacts, sent
21 Data Requests to Verde, reviewed the documentations
22 that Verde submitted in response to the Data
23 Requests, helped draft the Staff Report, participated
24 in settlement discussions, and I drafted testimony.

25 Q. Okay. And can you tell me how the time

1 period of October 1, 2018, to April 12, 2019, was
2 chosen?

3 A. Well, monthly my team reviews competitive
4 complaints, and they'll draft a report to upper
5 management detailing what type of complaints we're
6 getting, the call center is getting, and we started
7 noticing in October -- I mean, prior to October Verde
8 had pretty much little to no complaints and then we
9 realized in about October -- well, actually let me
10 just back up.

11 Over the review then in March, we were
12 notified, you know, we found that they were -- not
13 March, excuse me, December, December and January we
14 realized they spiked really high. So we went back
15 and looked at the reports to see when did this --
16 when did the increase start. And it slowly began in
17 about October, then just a few; in November, December
18 really spiked and January. So that's kind of our
19 time frame that was spiked.

20 Q. And when you say "spiked," can you be
21 more specific about what you mean by that?

22 A. It went from having 0, 1 complaint to
23 probably 20 to I think maybe the highest might have
24 been 80 in probably December and then more in
25 January.

1 Q. So is it fair to say Staff was concerned?

2 A. Yes.

3 Q. Did PUCO Staff investigate Verde prior to
4 October 2018?

5 A. We had no reason to investigate prior to
6 October.

7 Q. Now, did you -- did you review the April
8 17, 2019, PUCO entry opening this investigation?

9 A. Yes.

10 Q. And so you are aware that that entry
11 directed Staff to conduct an investigation into Verde
12 and to file a Staff Report?

13 A. Yes.

14 Q. And you and other Staff members conducted
15 that investigation; is that correct?

16 A. Correct.

17 Q. Do you believe that you and the other
18 staff members who conducted this investigation
19 conducted a thorough investigation?

20 A. Yes.

21 Q. Now, I would like to refer you to what
22 has been previously marked as OCC Exhibit 5 which is
23 the May 29 Staff Report. Now, you are familiar with
24 this document, correct?

25 A. Yes, I am.

1 Q. Is this the type of report that PUCO
2 Staff regularly creates during the course of its
3 business?

4 A. A Staff Report?

5 Q. Uh-huh.

6 A. Yes.

7 Q. And it creates these reports at the
8 request of the PUCO, correct?

9 A. Yes.

10 Q. Would you agree with me that the Staff
11 Report thoroughly explains what Staff reviewed in
12 conducting its investigation against Verde?

13 A. Yes.

14 Q. It thoroughly explains the applicable
15 CRES and CRNGS rules; is that correct?

16 A. Correct.

17 Q. It thoroughly explains how Verde
18 allegedly violated those rules; is that correct?

19 A. Yes.

20 Q. The Staff Report also explains
21 aggravating factors regarding Verde's managerial
22 capabilities to operate in Ohio; is that correct?

23 A. That's correct.

24 Q. And these aggravating factors relate to
25 similar allegations against companies owned by the

1 same company that owns Verde; is that correct?

2 A. Correct.

3 EXAMINER SANYAL: Ms. O'Brien, do you
4 have a page number for me?

5 MS. O'BRIEN: For the Staff Report?

6 EXAMINER SANYAL: Yeah, so I can follow
7 along.

8 MS. O'BRIEN: Oh, yeah. The aggravating
9 factors, I apologize, begin at -- at page 24.

10 EXAMINER SANYAL: Thank you.

11 MS. O'BRIEN: And they go onto page 25.

12 Q. (By Ms. O'Brien) And, finally, the Staff
13 Report makes various recommendations and conclusions
14 based on its investigation, correct?

15 A. Correct.

16 Q. And do you believe that the Staff Report
17 is true and accurate to the best of your knowledge?

18 A. Yes.

19 Q. And the staff -- and the Staff Report
20 explains that SMED conducted the investigation; is
21 that right?

22 A. Yes.

23 Q. And I think you testified earlier that
24 you reviewed customer contacts related to Verde in
25 the course of your investigation?

1 A. Yes.

2 Q. How many customer contacts did you
3 review?

4 A. More than 80.

5 Q. Would you have more than 80?

6 A. More than 80 contacts I personally
7 reviewed.

8 Q. Okay. And would you have been -- would
9 you have been responsible for reviewing all of the
10 contacts?

11 A. Not me personally. I personally reviewed
12 80. Others on my team reviewed many of the others.

13 Q. And who -- who specifically reviewed the
14 customer contacts?

15 A. Alla Tempesta-Magaziner.

16 Q. I'm sorry?

17 A. Alla Tempesta-Magaziner and Melissa
18 Scarberry.

19 Q. And are these -- are these people that
20 report to you?

21 A. Yes, they do.

22 MS. O'BRIEN: Your Honor, at this point I
23 would like to mark for completion of the record the
24 case reports associated with Verde's investigation,
25 and I have four boxes containing 502 reports. And

1 they've been completely redacted for customer
2 information and other account numbers and customer
3 specific information. I would like to mark them for
4 the record, and OCC would like to follow the process
5 that it did in the PALMco proceeding to ultimately
6 file these for the record in this case.

7 EXAMINER SANYAL: Subject to the
8 limitations that we placed on those.

9 MS. O'BRIEN: Yes, and I believe that --
10 if I am correct --

11 EXAMINER SANYAL: Let's mark them for
12 now. And when you go to admit them, take it up. So
13 is this 7?

14 MS. O'BRIEN: Can I just have a moment?

15 And just -- I apologize. I am clarifying
16 these -- I realize in PALMco one of the things we did
17 we filed them as a late-filed exhibit because there
18 were certain redactions that needed to take place for
19 customer account information, other customer specific
20 information. We have taken care of that with all
21 these records.

22 EXAMINER SANYAL: I understand. I
23 believe in that case our ruling was there were
24 certain hearsay limitations with regard to those --
25 with that exhibit. I can go and refresh my memory,

1 but I do believe -- yeah. So I think, you know, AE
2 Price just refreshed my memory I think we had made a
3 ruling that hearsay objections could be made by
4 opposing counsel, and it would go to the weight of
5 the evidence.

6 MS. O'BRIEN: Okay. That's fine. We
7 would argue they are business records and public
8 records created by the Staff in the course of their
9 business. But in any event I just don't have -- I
10 don't have several copies to provide the court
11 reporter and the Attorney Examiners the four bankers
12 boxes.

13 EXAMINER SANYAL: You don't have 16 boxes
14 for us?

15 MS. O'BRIEN: No. I'm sorry.

16 EXAMINER SANYAL: We will mark them as
17 OCC Exhibit 7.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MS. O'BRIEN: I do have a copy for the
20 court reporter for the record.

21 EXAMINER SANYAL: Okay.

22 MR. PROANO: When that is moved for
23 admission, we will make our objections as necessary.

24 EXAMINER PRICE: Nobody has -- we've
25 marked them. That's all we have done. Nobody has

1 identified them. Nobody has authenticated them. We
2 haven't had a question on them.

3 MS. O'BRIEN: I'm sorry. I didn't hear
4 that.

5 EXAMINER PRICE: I said we've marked
6 them. That's all we've done.

7 MS. O'BRIEN: Yes.

8 Q. (By Ms. O'Brien) Okay. Ms. Ramsey, I
9 think we just discussed this and I just want to make
10 sure that I have laid the proper foundation for the
11 case reports and we will be referring to several
12 throughout my cross-examination. And you will be
13 able to take a look at them, but I just wanted to go
14 back over with you as part of your responsibilities
15 with SMED, I believe your testimony was that when a
16 customer calls in and makes a complaint, that records
17 are kept regarding that complaint and then Staff
18 creates a document that contains notes regarding that
19 particular complaint as well as communications; am I
20 understanding your testimony, or am I recollecting
21 your testimony correctly?

22 A. That's the process. I am just not sure
23 what you mean by would create the record.

24 Q. Well, when -- again, when a customer
25 calls in with a complaint, what -- what happens

1 within SMED?

2 A. They log the complaint. The intake or
3 investigator will log the complaint and then if -- if
4 an investigation needs to be opened, they will open
5 an investigation, contact the utility company --
6 excuse me, utility company requesting information,
7 review the information they receive, and then
8 ultimately contact the customer with the resolution.

9 Q. And does someone within SMED create a
10 different report that contains a summary of what
11 happened with respect to those communications?

12 A. There are various reports that we could
13 create out of the platform we use to log the
14 complaints.

15 Q. Okay. Okay. Thank you. Now, I think
16 you mentioned that you reviewed more than 80 you said
17 Verde case reports associated with this proceeding?

18 A. Yes.

19 Q. And is it your understanding that in
20 addition to the 481 customer contacts identified in
21 Staff's April 16 letter, there have been additional
22 customer contacts since the opening of this
23 investigation?

24 A. Per the Staff Report, it looks like we
25 identified I think 36 additional since it was opened.

1 Q. Okay. And so, as I believe you stated,
2 you agreed with IGS's counsel earlier that that's a
3 total of 517 contacts?

4 A. If that's the amount, that's the math.

5 Q. So it would be 517 contacts and
6 complaints.

7 A. Yes.

8 MR. PROANO: Objection. They are only
9 contacts.

10 MS. O'BRIEN: Your Honor, she already
11 answered.

12 EXAMINER SANYAL: She did.

13 MR. PROANO: That's not the rule. I
14 still object to the answer as not proper.

15 MR. HEALEY: Your Honor --

16 MR. PROANO: The testimony was clear 517
17 contacts.

18 MR. HEALEY: Your Honor, counsel is
19 testifying now.

20 EXAMINER PRICE: Well, Mr. Healey, you
21 don't get to argue when he's -- to her objections.
22 No double teaming. Only the Bench gets to do that.

23 MR. HEALEY: You're right.

24 MS. O'BRIEN: Well, I think regardless
25 the Staff letter and the Staff Report makes clear

1 that there are both contacts and there are
2 complaints.

3 EXAMINER SANYAL: Okay. I am going to
4 strike Ms. Nedra's answer. Let's ask the question --
5 rephrase that question so she can answer.

6 MS. O'BRIEN: I can't even remember what
7 the question was. Could I have it reread back to me,
8 please.

9 (Record read.)

10 MS. O'BRIEN: I'll move on.

11 EXAMINER SANYAL: Actually no. I
12 asked -- I said Ms. Ramsey's answer was struck, so
13 you can rephrase the question --

14 MS. O'BRIEN: Oh, okay.

15 EXAMINER SANYAL: -- based on
16 Mr. Proano's objection so let's rephrase the question
17 so she can answer.

18 Q. (By Ms. O'Brien) So is your understanding
19 that there are 517 customer contacts related to
20 Verde?

21 A. Yes.

22 Q. And were some of those complaints?

23 A. Yes.

24 Q. Thank you. Now, could you please tell me
25 who drafted the Staff Report.

1 A. Well, the first draft was drafted by me
2 and then there were input from other Staff members.

3 Q. Okay. So it's fair to say you had
4 primary drafting responsibilities for the Staff
5 Report?

6 A. I drafted the first draft, and then Staff
7 had input in the final document.

8 Q. Okay. Did you draft the introduction
9 section?

10 A. I did not draft the -- I mean, no, I
11 don't think I drafted the intro, but I did have input
12 into the intro.

13 Q. Okay. Who did draft the introduction?

14 A. Honestly I don't know.

15 Q. You don't know who drafted?

16 EXAMINER PRICE: What's the relevancy of
17 who drafted?

18 THE WITNESS: I don't know.

19 EXAMINER PRICE: Because -- let me finish
20 and then you can respond. You subpoenaed two
21 witnesses. We've agreed the procedure is you can ask
22 her any question regarding the Staff Report you want
23 that's relevant to the outcome of this case, and if
24 she can't answer it, you can ask Ms. Bossart. If
25 Ms. Bossart can't answer it, Mr. Fadley will answer

1 it. Clearly a lot of people's hands were involved in
2 this. It's of no relevancy whether she drafted
3 Section 3, 4, 5 or whether she answered the
4 questions.

5 MS. O'BRIEN: Okay. Fair enough. I'll
6 follow-up with Ms. Bossart or Mr. Fadley.

7 Q. (By Ms. O'Brien) Okay. So I see from the
8 Staff Report under the "Discussion of Violations"
9 section there are five primary categories of alleged
10 rule violations; is that correct?

11 EXAMINER SANYAL: Ms. O'Brien, may I
12 trouble you for a page number?

13 MS. O'BRIEN: Well, I am just actually
14 looking at page 3, the Table of Contents.

15 EXAMINER SANYAL: Oh, okay.

16 A. Yes.

17 Q. And I think, as we've already gone over,
18 there's a section titled "Aggravating Factors
19 Regarding Managerial Capability"?

20 A. Correct.

21 Q. And there's a section titled
22 "Recommendations," correct?

23 A. Yes.

24 Q. Okay. So I would like to discuss with
25 you now some of the findings and recommendations in

1 the Staff Report in relation to your testimony in
2 support of the Joint Stipulation between the PUCO
3 Staff and Verde. If I refer to the Joint Stipulation
4 as the settlement, would you understand my meaning?

5 A. Yes.

6 Q. Now, if you could get the settlement and
7 turn to page 3. And about midway through the page
8 there's a recital that states "Verde Energy and Staff
9 engaged in serious and lengthy settlement
10 negotiations on numerous occasions to address the
11 issues raised in the Investigation and Staff Report
12 and have reached a resolution of all issues." Do you
13 see that?

14 A. I do.

15 Q. Do you believe that the Staff -- that the
16 settlement resolves all the issues identified in the
17 Staff Report?

18 A. Yes, I do.

19 Q. And if you could move to your testimony
20 at page 4, lines 53 to 54. Let me know when you are
21 there.

22 A. I'm sorry. What page and lines?

23 Q. Page 4, lines 53 to 54.

24 A. I'm there.

25 Q. And here you state that the settlement

1 represents a comprehensive compromise of the issues
2 raised by parties with adverse interests; is that
3 correct?

4 A. "Diverse interests."

5 Q. Or, I'm sorry, adverse interests --
6 "diverse," you're right. I apologize. Is that
7 correct?

8 A. That's what it says.

9 Q. Now, the settlement was signed by Staff
10 and Verde, correct?

11 A. Correct.

12 Q. No consumers or consumer groups signed
13 the settlement; is that correct?

14 A. That's correct.

15 Q. Did any consumers who were allegedly
16 harmed by Verde's actions sign the settlement?

17 A. No.

18 Q. Now, I would like to turn to the
19 "Recommendations" section of the Staff Report. I
20 believe it starts at page 25. You would agree with
21 me that the Staff Report applies to Verde's provision
22 of both CRES and CRNGS services in Ohio; is that
23 correct?

24 A. Can you repeat the question.

25 (Record read.)

1 A. Yes.

2 Q. And in the Staff Report, did Staff allege
3 that Verde violated the PUCO's rules in its provision
4 of marketing of retail electric and retail natural
5 gas to Ohio consumers?

6 A. Yes.

7 Q. And as a result, Staff made a number of
8 recommendations to the PUCO regarding what Verde
9 should do to address Staff's alleged violations; is
10 that correct?

11 A. Yes.

12 Q. Now, if you could look on page 25 of the
13 Staff Report. Are you there?

14 A. Uh-huh, yeah.

15 Q. Okay. Great. One of these
16 recommendations is that Verde "provide restitution to
17 customers enrolled during the above noted timeframes
18 by refunding the difference between the electric
19 distribution and/or natural gas utility's default
20 rate, as applicable, and the rate Verde actually
21 charged them." So Staff's recommendation here was
22 that Verde provide restitution to both electric and
23 natural gas customers; is that correct?

24 A. That is what the Staff Report says.

25 Q. Now, if you could take a look at page 4

1 of the settlement, paragraph 3. Let me know if you
2 are there.

3 A. I'm there.

4 Q. This paragraph states "For all retail
5 electric residential customers enrolled by Verde
6 Energy in Ohio from October 1, 2018, through April
7 30, 2019, Verde Energy will re-rate those customers."
8 Is that what it says?

9 A. That's what it says.

10 Q. Okay. This paragraph says nothing about
11 re-rating Verde's natural gas customers, does it?

12 A. It does not.

13 Q. Where does the settlement address the
14 re-rating of natural gas customers enrolled by Verde?

15 A. It does not.

16 Q. Okay. If you could go back to your
17 testimony and turn to page 5 and specifically at
18 lines 85 and 86. You state that "The re-rates will
19 result in a total refunded amount -- refund amount of
20 approximately \$1,068,000." Do you see that?

21 A. I do.

22 Q. Did you conduct the re-rating analysis
23 that results in the \$1,068,000 number?

24 A. I did not.

25 Q. Who did?

1 A. Verde provided Staff with a spreadsheet.

2 Q. And are you aware of whether that
3 re-rating includes Verde's natural gas customers?

4 A. It does not include natural gas
5 customers.

6 Q. Does the re-rating include all of Verde's
7 CRES customers?

8 A. It includes customers that were enrolled
9 between October 1, 2018, and April 30, 2019, which is
10 the time frame we identified as the issue in this
11 matter.

12 Q. Do you know how many CRES customers Verde
13 served during that time period?

14 A. Sitting here today I don't know the
15 number.

16 Q. Who does know?

17 A. Well, if you wanted me to go check, I
18 could figure it out.

19 Q. Well, I am asking you do you know who
20 within Staff knows?

21 A. I can't tell you what Staff knows. I
22 mean, we have the information. I'm saying sitting
23 here today I don't know the number of customers.

24 EXAMINER PRICE: Could you give a
25 ballpark figure? More than 10 thousand? Less than

1 10?

2 THE WITNESS: Honestly I have no idea.

3 EXAMINER PRICE: Okay. That's fine.

4 Q. (By Ms. O'Brien) Okay. Now, if you could
5 go back to paragraph 3 of the settlement. Let me
6 know when you are there.

7 A. You said paragraph 3 of the settlement?

8 Q. Yeah. It's page 4, paragraph 3 at the
9 top of the page.

10 A. Oh, okay. I'm sorry. I had the wrong
11 document.

12 Q. Do you have it? Okay. Now, paragraph 3
13 of the settlement states that re-rates will be
14 adjusted for any rewards provided by Verde Energy to
15 re-rated customers as part of Verde Energy's shopping
16 rewards program. Do you see that?

17 A. I do.

18 Q. Can you explain to me your understanding
19 of Verde's shopping rewards program?

20 A. For customers that enroll with Verde,
21 they have the option of participating in the rewards
22 program.

23 Q. But do you know what that rewards program
24 entails?

25 A. Like generally it's -- I think it's

1 discounts or something like that off of different
2 products or restaurants and.

3 Q. Do you know if any of the rewards have a
4 cash value to them?

5 A. No, I don't believe they have a cash
6 value.

7 EXAMINER PRICE: What do you mean by a
8 cash value, Ms. Ramsey?

9 THE WITNESS: I mean like a customer
10 can't, you know, cash in the reward and get cash for
11 them. I mean, they can't go to Verde and say here is
12 the reward, give me cash, or any entity, I guess.

13 Q. Okay. So is it fair to say that you
14 don't understand how the -- how the rates will be
15 adjusted for the shopping rewards?

16 MR. PROANO: Objection.

17 A. No.

18 EXAMINER SANYAL: Okay. There is an
19 objection. So hold off.

20 Mr. Proano, basis?

21 MR. PROANO: That's not what she
22 testified to.

23 MS. O'BRIEN: I'm not asking her what she
24 testified to. I am asking her what her understanding
25 is.

1 EXAMINER SANYAL: Okay. I don't believe
2 that was the question, so I will let you rephrase
3 that question.

4 Q. (By Ms. O'Brien) Okay. How do you
5 believe the re-rates will be adjusted for Verde's
6 shopping rewards program?

7 A. This -- the witness earlier testified --
8 I mean, what's her name, Kira Jordan described how
9 it's going to be adjusted. It's like 70 cents per
10 month.

11 Q. Yeah.

12 A. I guess I don't understand what you are
13 asking.

14 Q. I am asking you what your understanding
15 of how customers will be re-rated.

16 A. 70 cents per month that they were
17 enrolled in the program will be deducted from the
18 re-rate.

19 Q. And did Staff conduct that analysis to
20 come up with that figure?

21 A. Verde conducted that analysis and
22 provided it to Staff.

23 Q. When did Verde provide that information
24 to Staff?

25 A. I don't know.

1 Q. Do you know what the total refund amount
2 to Verde's customers will be after there have been
3 the adjustments for the shopping rewards?

4 A. That hasn't been determined yet.

5 Q. Now, if we could move back to the Staff
6 Report and I am going to direct your attention
7 generally to the section regarding unfair,
8 misleading, deceptive, and unconscionable activities
9 that begins at page 5. Are you there?

10 A. I'm there.

11 Q. Did you draft this section of the Staff
12 Report?

13 A. I participated in the drafting of this
14 part of the Staff Report.

15 MR. PROANO: Your Honor, could I just ask
16 for maybe a way to speed this along? The Staff
17 Report says what it says and if there is a specific
18 question about it, that's great, but I am just trying
19 to speed this along and would ask that OCC consider
20 asking specific questions if they want to know
21 answers about instead of going page by page of the
22 Staff Report.

23 MS. O'BRIEN: Your Honor, if I could
24 respond? I am not going page by page. I am
25 directing her to a specific section of the Staff

1 Report, and I plan to ask her specific questions
2 about it. I think part of the time -- you know, a
3 lot of times I feel like we, you know -- I want to
4 avoid any confusion, and I want to avoid any
5 admonitions from the Bench that I am not laying the
6 proper foundation or anything. It's just for clarity
7 purposes. I am not reading the Staff Report at all,
8 and if Mr. Proano would just let me move on with my
9 questions, we could get through it a lot quicker.

10 EXAMINER SANYAL: Okay. Let's -- we've
11 only been at it for about 40 minutes so -- 45 minutes
12 so let's see where this goes, but we will take that
13 under advisement.

14 MR. PROANO: Thank you.

15 MS. O'BRIEN: Now it's -- give me a
16 minute to get back to where I was.

17 EXAMINER SANYAL: Sure. Take your time.

18 Q. (By Ms. O'Brien) Now, you would agree
19 with me -- let's see just a second. Now if you flip
20 to page 9 of the Staff Report.

21 A. Just real quick, can I get my Pepsi?

22 Q. Oh, absolutely.

23 THE WITNESS: Thank you.

24 Q. Are you there?

25 A. Yes.

1 Q. Okay. So here the Staff Report cites an
2 example of Verde's misleading practices, as an
3 example of Verde's alleged misleading practices, an
4 automated call to a consumer from Verde indicating
5 that the customer is a valued customer of AEP, was
6 eligible for up to a 30 percent discount of their
7 monthly bill. Do you see that?

8 A. Yes, I do.

9 Q. And just to paraphrase, the Staff Report
10 goes on to describe how Verde's -- how the Verde
11 sales representative allegedly misled the consumer by
12 claiming that she was currently paying rates higher
13 than she actually was. Do you see that?

14 A. I do.

15 Q. And footnote 5 references a March 26,
16 2019, e-mail from Barbara Bossart to you?

17 A. It does.

18 Q. Okay.

19 MS. O'BRIEN: Your Honors, I would like
20 to mark OCC Exhibit 8.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. (By Ms. O'Brien) Ms. Ramsey, could you
23 describe this document for me.

24 A. It's an e-mail from Barbara Bossart to me
25 regarding her interaction with a Verde sales

1 representative on March 26.

2 Q. Okay. And so am I correct in reading
3 this e-mail that Barbara Bossart is actually the
4 complaining consumer in this case?

5 A. Yes.

6 Q. And who is Barbara Bossart?

7 A. My chief.

8 Q. Now, this e-mail complaint indicates that
9 the Verde sales rep told Ms. Bossart that she would
10 be saving \$30 to \$35 a month in electric and \$20 to
11 \$25 per month in gas; is that correct?

12 A. That's what the e-mail sales.

13 Q. And according to this e-mail, the Verde
14 representative also misrepresented to Ms. Bossart how
15 much she was currently paying; is that correct?

16 MR. PROANO: Ms. O'Brien, where are you
17 reading?

18 MS. O'BRIEN: It's an e-mail. There are
19 no lines.

20 MR. PROANO: I'm sorry. Could you point
21 us to which sentence you are looking at?

22 MS. O'BRIEN: Well, if you go back to the
23 Staff Report and page 9 where this e-mail is
24 referenced in footnote 5, it says she was also
25 offered to enroll her gas account at a rate of \$0.699

1 per 100 cubic feet of natural gas and was advised she
2 was currently paying around .8 Ccf to .85 Ccf. In
3 reality the customer was only paying .054 per
4 kilowatt-hours for electric and .485 Ccf for natural
5 gas services. So that's -- and I think in the e-mail
6 here that reflects that.

7 EXAMINER PRICE: Where does it say what
8 the customer was paying for natural gas and electric
9 services in the e-mail?

10 MS. O'BRIEN: I don't see a specific
11 reference to it in the e-mail, but it's a question
12 that I can ask Ms. Bossart if your Honors --

13 EXAMINER PRICE: I thought you said it
14 was in the e-mail.

15 MS. O'BRIEN: Well, it's in the Staff
16 Report. I apologize if I misspoke, your Honor. It's
17 definitely in the Staff Report. The Staff Report
18 references this e-mail in the footnote.

19 Q. (By Ms. O'Brien) So I guess that raises
20 the question does -- is the Staff Report referring to
21 this e-mail in footnote 5?

22 A. Yes, it is.

23 Q. Okay. So what is the basis for the Staff
24 Report statement here "In reality, the customer was
25 only paying .054/kilowatt-hour for electric and

1 0.485/Ccf for natural gas services"?

2 A. It would be based on Ms. Bossart's
3 account of what happened.

4 Q. Okay. So -- well, we can move on. I
5 actually have a follow-up question here so, but
6 regardless you would agree with me that the e-mail
7 complaint indicates that the Verde sales rep told
8 Ms. Bossart she would be saving 30 to 35 in electric
9 and 20 to 25 per month in gas, correct?

10 A. That is what the e-mail says.

11 Q. And is it a violation of the Commission's
12 rules to offer a consumer a discount that they won't
13 receive, that they won't actually receive?

14 MR. PROANO: Objection to the extent it
15 calls for a legal conclusion.

16 MS. O'BRIEN: Your Honor, she testified
17 that she is an expert of the PUCO's CRES and CRNGS
18 rules.

19 EXAMINER SANYAL: Objection overruled.

20 THE WITNESS: That means I answer it?

21 EXAMINER SANYAL: Yes, you may.

22 A. The rule actually says a company can't
23 promise a savings they can't deliver on; I mean, not
24 quoting it but that's generally what it means.

25 Q. Generally or --

1 A. That's what it means.

2 Q. Okay. So if a customer is paying less
3 and a supplier tells them that in actuality they are
4 paying more and that supplier says I can save you \$30
5 a month in gas or \$30 a month in electric, that would
6 be a violation of the Commission's rules.

7 A. Staff would consider that a violation.

8 Q. Okay. Thank you.

9 EXAMINER PRICE: If it were not true.

10 THE WITNESS: And if it was not true,
11 yes.

12 EXAMINER PRICE: If it were not true.

13 THE WITNESS: If it were not true. You
14 can't promise a savings if -- if the customer doesn't
15 save.

16 Q. Okay. Now, if you could look at the last
17 sentence of this e-mail. The last sentence indicates
18 that some -- that the sales rep -- that the sales rep
19 supervisor advised Ms. Bossart to say yes to the
20 third-party verification questions in order to
21 receive her "new low rates"; is that correct?

22 MR. PROANO: Ms. O'Brien, could you -- I
23 just object because I think that paraphrasing was not
24 accurate.

25 MS. O'BRIEN: It's a direct quote. It's

1 a direct quote.

2 Q. (By Ms. O'Brien) I will just read the
3 last line of the e-mail. It says "They were going to
4 send me through the verification process for my
5 reduction. I was transferred to the supervisor who
6 talked to me what the verification question would be
7 and to clearly say yes or no, but to say yes to get
8 my new low rates." Do you see that?

9 A. Yes, I do.

10 Q. Okay. Now, would -- is coaching a
11 customer on how to answer a third-party verification
12 call against the Commission's rules?

13 EXAMINER PRICE: Can you be more specific
14 which rule you believe that violates?

15 MS. O'BRIEN: I'm sorry. I can't hear
16 you.

17 EXAMINER PRICE: There's dozens of pages
18 of rules. Can you be more specific about which rule
19 you are asking her if it violates?

20 Q. (By Ms. O'Brien) We can go back to the
21 Staff Report, and I think the Staff Report sites a
22 number of rules beginning at -- actually this is --
23 if you go to the third-party verification section --
24 well, let me just state generally would that violate
25 the Commission's third-party verification rules?

1 MR. PROANO: I am going to object. It
2 either violates a specific rule, or it doesn't.

3 MS. O'BRIEN: Your Honor, she's testified
4 she's an expert on the CRES and the CRNGS rules. I
5 am not an expert on the CRES and the CRNGS rules. I
6 am asking her in her opinion if a sales
7 representative telling a customer to say yes to the
8 third-party verification calls in order to receive
9 new low rates violates the Commission rules.

10 EXAMINER SANYAL: Okay. Mr. Proano, your
11 objection is overruled.

12 Ms. Ramsey, if you know which -- if there
13 is a rule which states this and if you think that's a
14 violation, go ahead and answer it; and if you don't
15 know, you don't know.

16 A. Okay. I am not aware of a specific rule
17 that says you cannot coach or tell a customer to say
18 yes to all -- the point of the third-party
19 verification is to determine the customer's
20 understanding of what was offered and to acknowledge
21 they agreed to enroll under those terms and
22 conditions.

23 Q. And would you agree with me it would be
24 wrong for a sales representative to tell a customer
25 to say yes to all of the third-party verification

1 rules?

2 MR. PROANO: Objection. The e-mail says
3 "the supervisor who talked to me what the
4 verification question would be and to clearly say yes
5 or no," so on that basis I believe that's -- OCC's
6 counsel is not representing what's stated in the
7 e-mail properly.

8 MS. O'BRIEN: No. I would just add if
9 you look at the next line, it says "but to say yes to
10 get my new low rates." Mr. Proano conveniently left
11 that part out.

12 MR. PROANO: That's a different issue.
13 The issue --

14 EXAMINER SANYAL: Your objection is
15 overruled.

16 Proceed, Ms. O'Brien.

17 MS. O'BRIEN: Was -- can I have the
18 question reread back to me, please.

19 EXAMINER SANYAL: Yes, you may.

20 MS. O'BRIEN: I am not sure whether there
21 was a question.

22 (Record read.)

23 A. If a company provided a third-party
24 verification script or sales script to me or my staff
25 and said that -- and it said to tell a customer to

1 say yes, we would recommend they change that.

2 Q. Thank you. Now, would you consider --

3 EXAMINER PRICE: Whoa, whoa. No.

4 THE WITNESS: I don't know.

5 EXAMINER PRICE: Would you recommend that
6 they would change that because you want them to be
7 definitely on safe ground, or would you recommend
8 that you would change that because you believe
9 sitting here today that's a violation of the
10 third-party verification rules?

11 THE WITNESS: I don't know how to answer
12 that except, I mean, I would bring it before the
13 Commission and say Staff believes this is a rule
14 violation. We would have to have the Commission say
15 is that a rule violation because there is no specific
16 rule that says they cannot coach the customer.

17 Q. (By Ms. O'Brien) Okay. Well, let's take
18 the coaching part out of it. Is there a rule that
19 precludes suppliers from telling customers that they
20 should say yes to the third-party verification rules?

21 MR. PROANO: I am going to object again
22 because the e-mail says yes or no.

23 MS. O'BRIEN: Your Honors, my question
24 has nothing to do with the e-mail.

25 EXAMINER PRICE: So you are asking her a

1 hypothetical.

2 MS. O'BRIEN: No. I am asking her what
3 she -- what her opinion is.

4 EXAMINER PRICE: Are you asking her
5 opinion about a hypothetical situation, or are you
6 asking her about something that's more to the Staff
7 Report?

8 MS. O'BRIEN: I am asking her as an
9 expert of Ohio's CRES and CRNGS rules whether it is a
10 violation for a supplier to tell a customer to answer
11 yes to the third-party verification rules.

12 A. Okay. I am looking at the -- I'm sorry.

13 EXAMINER SANYAL: There was an objection
14 pending.

15 Yeah. For the record your objection is
16 overruled.

17 Ms. Ramsey, to the extent you know,
18 please answer.

19 A. Okay. So I am looking at the -- in the
20 Staff Report telephonic enrollment rules, and one of
21 the rules says that a CRES has to get a verbal
22 statement and the customer's acknowledgment that the
23 call is being recorded. That's a question --
24 question that has to be asked and a customer needs to
25 respond in the affirmative in order for it to be a

1 valid TPV, then verbal questions, and the customer's
2 acknowledgment that the customer is the customer of
3 record, customer's electric utility is authorized to
4 switch, so they have to answer yes or no to these
5 questions.

6 Q. Well, let me ask you this, is it bad
7 business practice for a supplier to have its sales
8 rep tell a customer to answer yes to every
9 third-party verification question?

10 MR. PROANO: Objection.

11 EXAMINER SANYAL: Sustained.

12 Q. Well, I'll move on. You know Ms. Bossart
13 personally, correct?

14 A. Yes, I do.

15 Q. Okay. And would you consider her to be a
16 knowledgeable consumer with respect to retail
17 electric and natural gas supply services?

18 A. I do.

19 Q. Okay. And the e-mail that we've been
20 discussing indicates that Ms. Bossart didn't complete
21 the verification process; is that correct?

22 A. That's correct.

23 Q. Now, I will give you a hypothetical.
24 What if the customer instead of Miss Bossart had been
25 an average everyday consumer who wasn't as

1 knowledgeable about the Commission's CRES or CRNGS
2 rules and what if that person had accepted this
3 particular offer of service?

4 MR. PROANO: Objection.

5 EXAMINER SANYAL: Overruled. Ms. Ramsey,
6 to the extent you know what a customer would have
7 done, you may answer based on your experience.

8 A. I think I am going to need that read back
9 because I -- actually I didn't hear a question.

10 (Record read.)

11 EXAMINER PRICE: Can I have that back
12 again.

13 (Record read.)

14 A. I mean, then they accepted that offer.

15 EXAMINER SANYAL: I think, Ms. O'Brien,
16 you probably just need to rephrase the question or
17 break it up.

18 Q. (By Ms. O'Brien) Okay. Well, I think you
19 testified Ms. Bossart is a knowledgeable consumer
20 with respect to CRES or CRNGS rules; is that correct?

21 A. Yes.

22 Q. And you would agree with me other
23 consumers might not be as knowledgeable; is that
24 correct?

25 A. That's possible.

1 Q. And what if one of those consumers who is
2 not as knowledgeable about CRES or CRNGS rules were
3 to accept this offer of service, what would happen?

4 A. They would have that offer for service.

5 Q. Would they end up paying higher rates?

6 A. If they were offered 69.9 cents and their
7 rate was lower, then it would be higher.

8 Q. Okay. Thank you. Now, you would agree
9 with me that there are similar complaints against
10 Verde in this regard during the October 2018 to April
11 2019 time frame.

12 MR. PROANO: Objection.

13 EXAMINER SANYAL: Basis?

14 MR. PROANO: It's similar in what way?
15 Same fact pattern? Same issues? I think the
16 question is vague.

17 MS. O'BRIEN: Your Honors, the e-mail is
18 clear. It's referenced --

19 EXAMINER SANYAL: So your question is
20 were there other complaints similar to Ms. Bossart.

21 Q. (By Ms. O'Brien) Were there similar
22 complaints during the time frame?

23 A. Yes.

24 EXAMINER PRICE: How were they similar,
25 Ms. Ramsey?

1 THE WITNESS: Customers had alleged that
2 they received an automated call offering a discount
3 off their bill, and the rate that they were
4 ultimately offered did not appear to be a discount.

5 EXAMINER PRICE: Thank you.

6 Q. (By Ms. O'Brien) And those other
7 complaints are cited in the Staff Report; is that
8 correct?

9 A. What section are you referring to?

10 Q. The section that applies to what we were
11 just discussing, the one that applies to unfair,
12 misleading, deceptive, or unconscionable activities.

13 A. Okay. I see the one we were just talking
14 about. Then bullet 3 says a customer was offered
15 a -- to save 20 percent on their AEP, 40 percent on
16 Dominion.

17 Q. Any more?

18 A. The last bullet says a sales rep informed
19 the customer that she would save on money -- save
20 money on her bill.

21 Q. And would you agree with me that the
22 complaints cited in the Staff Report are not -- do
23 not represent all the complaints against Verde?

24 A. Yes.

25 Q. Ms. Ramsey, can you tell me what in the

1 settlement prevents Verde from offering savings or
2 price advantages to customers where no such savings
3 or price advantages exist?

4 A. I'm sorry. Can you repeat that?

5 MS. O'BRIEN: Could you reread the
6 question, please.

7 (Record read.)

8 A. The entire Stipulation does.

9 Q. What specific provision in the
10 Stipulation prevents that?

11 A. Well, the fact that the Company, you
12 know, it's approved by the Commission will pay a
13 forfeiture of \$675,000. All the customers are being
14 notified that they may have been misled by Verde, so
15 they have the right to cancel the contract without
16 penalty. Verde has ceased marketing in Ohio. They
17 will not be participating in the MVR. Customers will
18 be -- electric customers will be re-rated. So the
19 Stipulation as a whole is a deterrent in any alleged
20 violations of the Ohio Administrative Code.

21 Q. You would agree with me nothing in the
22 settlement specifically says that Verde cannot offer
23 savings or price advantages to customers where no
24 such savings or price advantages exist; is that
25 right?

1 A. I don't agree. I believe the whole
2 Stipulation.

3 Q. Where in the settlement does it say that?

4 MR. LINDGREN: Objection. She has
5 answered this already.

6 MS. O'BRIEN: Your Honor, I am asking her
7 to tell me where in the settlement it says that Verde
8 cannot offer savings or price advantages to customers
9 where no such savings or price advantages exists. I
10 am asking her to point me to a specific section that
11 says that in the settlement.

12 EXAMINER SANYAL: Ms. Ramsey, to the
13 extent you can point to an area in the Stipulation,
14 you may, or you may explain yourself.

15 A. I will -- okay. I believe the whole
16 Stipulation prevents Verde from offering a discount
17 that would not be realized by the customer as well as
18 the Ohio Administrative Code. It's a violation of a
19 rule.

20 Q. So nothing in the settlement says in
21 black and white that Verde cannot offer savings or
22 price advantages to customers --

23 MR. LINDGREN: Objection.

24 Q. -- where no such savings or price
25 advantages exist?

1 MR. LINDGREN: Objection, asked and
2 answered.

3 EXAMINER SANYAL: Yes. It's sustained.

4 EXAMINER PRICE: Ms. Ramsey, it would
5 take an incredible lack of sight for a company that's
6 already paid a \$675,000 civil penalty to think they
7 could engage in behavior that violates the rules and
8 that the Staff is not strictly scrutinizing its
9 activities, wouldn't it?

10 THE WITNESS: I agree with you.

11 Q. Okay. Ms. Ramsey, would you agree with
12 me nothing in the settlement prevents Verde from
13 engaging in solicitations that lead the customer to
14 believe that the sales representative is acting on
15 behalf of a utility?

16 A. I don't agree with you.

17 Q. Again --

18 A. I believe the Stipulation is a deterrent
19 from any future violations.

20 Q. So is your answer --

21 A. I disagree with you.

22 Q. Okay. And the settlement also doesn't
23 say anything about Verde engaging in solicitations
24 that lead the customer to believe the sales
25 representative is asking -- acting on behalf of

1 another supplier, does it?

2 A. The Ohio Administrative Code has a
3 specific rule against that, and I believe the
4 Stipulation is a deterrent from the Company
5 committing future violations such as that.

6 Q. Okay. If you could turn to page -- well,
7 you may already be there -- page 10 of the Staff
8 Report. We are going to be looking at page 10 and 11
9 of the Staff Report. Are you there?

10 A. Yes, I'm there.

11 Q. Okay. And this section deals with caller
12 identification spoofing and misrepresentation as a
13 local utility. Can you tell me what your
14 understanding of the term spoofing is.

15 A. It is changing the display number on a
16 Caller ID in such a way it would encourage a customer
17 to answer if they otherwise may not have. So that's
18 it.

19 Q. Is it a misleading practice?

20 A. I believe it is.

21 MR. O'BRIEN: May I approach?

22 EXAMINER SANYAL: Yes, you may.

23 MS. O'BRIEN: I would like to mark OCC
24 Exhibit 9.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. (By Ms. O'Brien) Ms. Ramsey, can you tell
2 me what this document is?

3 A. It is an e-mail from me to Verde's
4 regulatory contacts regarding spoofing complaints we
5 received.

6 Q. And request you read that first sentence
7 for me.

8 A. "Over the last week, staff of the Public
9 Utilities Commission of Ohio have received an
10 alarming number of complaints from consumers stating
11 that Verde Energy's telemarketers are 'spoofing' AEP
12 Ohio's customer service number when soliciting them."

13 Q. What do you consider to be an alarming
14 number of complaints?

15 A. Actually any complaints regarding this
16 matter I would have a concern with.

17 Q. Okay. Thank you.

18 EXAMINER PRICE: So one would be bad.

19 THE WITNESS: One in my opinion would be
20 bad.

21 Q. Do you know -- I'm sorry. Do you know
22 how many complaints there were regarding spoofing
23 against Verde?

24 A. I don't know the exact number.

25 Q. Can you describe some of the complaints.

1 A. Yes.

2 Q. Can you give some examples.

3 A. Well, there is one example in the e-mail
4 that was AEP's customer service number. Another was
5 described in the Staff Report on page 11 where it
6 appeared the IRS was calling a consumer.

7 Q. Any others you can think of?

8 A. They are listed there in the Staff
9 Report. Making it appear someone local was calling,
10 so for customers in Cincinnati using the 513 area
11 code, 287, that's a specific area code and prefix of
12 Cincinnati, and it's actually used by Duke Energy.

13 Then the third bullet is regarding
14 spoofing the Illuminating Company's phone number.

15 Q. And you would consider all of these
16 alarming.

17 A. Yes.

18 Q. Now, in the e-mail that we just marked as
19 an OCC exhibit, this was to, it looks like,
20 kwhite@sparkenergy. Did -- what was Verde's response
21 to your e-mail?

22 A. I did not get a specific response to this
23 e-mail, and I honestly didn't ask for one.

24 EXAMINER PRICE: You were not expecting a
25 response to this e-mail?

1 THE WITNESS: No. It was basically
2 putting them on notice we are looking into this
3 matter.

4 Q. (By Ms. O'Brien) But Verde didn't have
5 anything to say to you about it.

6 MR. PROANO: Objection.

7 Q. Or didn't respond to this specific
8 e-mail. I will rephrase.

9 MR. PROANO: Objection, asked and
10 answered.

11 EXAMINER SANYAL: I'm sorry.

12 MS. O'BRIEN: Your Honor, I rephrased it.

13 EXAMINER SANYAL: Okay. What was your
14 rephrased question?

15 Q. Okay. Verde did not respond to this
16 e-mail; is that correct?

17 MR. PROANO: Objection, asked and
18 answered.

19 EXAMINER SANYAL: I am going to overrule
20 it.

21 You may answer, Ms. Ramsey.

22 A. They did not respond to this specific
23 e-mail.

24 MS. O'BRIEN: May I approach?

25 EXAMINER SANYAL: Yes, you may.

1 MS. O'BRIEN: I would like to mark OCC
2 Exhibit 10.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. (By Ms. O'Brien) Ms. Ramsey, could you
5 tell me what this document is?

6 A. This is an e-mail forwarded to me from
7 Barb Bossart. The author of the initial e-mail was
8 Scott Nicholson.

9 Q. Okay. And he sent a picture of his
10 Caller ID.

11 EXAMINER PRICE: This is the e-mail
12 that's documented on note 11, page 11 of the Staff
13 Report; is that right?

14 THE WITNESS: Yes, that's correct.

15 Q. (By Ms. O'Brien) Did you communicate with
16 Verde regarding the allegations that its sales
17 representatives spoofed an IRS number?

18 MR. PROANO: Objection, allegedly.

19 Q. Did you communicate with Verde regarding
20 the allegations that its sales representatives
21 allegedly spoofed the IRS number?

22 A. I actually don't recall if I specifically
23 sent this to Verde. I know we have it in the Staff
24 Report.

25 Q. Do you know if Verde provided any

1 specific response to staff regarding this particular
2 allegation?

3 MR. PROANO: Objection. She -- the
4 witness just said she didn't remember sending it to
5 Verde.

6 MS. O'BRIEN: That doesn't mean that
7 Verde -- she may not be aware of a response from
8 Verde on the topic.

9 EXAMINER SANYAL: I will overrule it.
10 Ms. Ramsey, to the extent you know.

11 A. I don't recall.

12 MS. O'BRIEN: May I approach?

13 EXAMINER SANYAL: Yes, you may.

14 MS. O'BRIEN: I would like to mark OCC
15 Exhibit 11.

16 EXAMINER SANYAL: And, Ms. O'Brien, you
17 don't need to ask me. You are free to move around.

18 MS. O'BRIEN: Thank you. I don't want to
19 get yelled at.

20 EXAMINER PRICE: She's much nicer.

21 MS. O'BRIEN: I don't want to get yelled
22 at by you either. I get yelled at enough at home.

23 There you go.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. (By Ms. O'Brien) Ms. Ramsey, can you tell

1 me what this document is?

2 A. It's an e-mail chain that was forwarded
3 to me from Ms. Bossart regarding spoofing.

4 Q. Okay. And does this e-mail string
5 contain the e-mail referenced in footnote 11 of the
6 Staff Report?

7 A. This is not the e-mail that's referenced
8 in footnote 11.

9 EXAMINER SANYAL: I think it's footnote
10 12.

11 MS. O'BRIEN: Oh, I'm sorry. Footnote
12 12, thank you.

13 A. It is footnote 12.

14 Q. Okay. So okay. And do you see -- do you
15 see midway down the page where Barbara Bossart says
16 to you "More spoofing from VERDE"?

17 A. Yes.

18 Q. What does that mean?

19 A. It's additional spoofing from Verde.

20 Q. And this e-mail involves a person who
21 works with Duke Energy; is that correct?

22 A. Yes.

23 Q. Do you know the Scott Nicholson from Duke
24 Energy who complained about Verde's alleged spoofing?

25 A. I think I might have saw him in a meeting

1 once; but, no, I don't know him personally.

2 Q. Okay.

3 EXAMINER PRICE: Ms. Ramsey, in the
4 course of your investigation, were you ever able to
5 tie a spoofed solicitation -- to a solicitation with
6 a spoofed number, I will resay that, to an actual
7 enrollment by Verde?

8 THE WITNESS: By -- I mean, tied, we did
9 get a complaint where the customer alleged that when
10 we investigated, there was an enrollment so.

11 EXAMINER PRICE: From Verde.

12 THE WITNESS: From Verde. So the
13 customer did allege the Caller ID was spoofed and
14 there was an enrollment.

15 EXAMINER PRICE: And there was a
16 subsequent enrollment so the answer is, yes, you were
17 able to verify one.

18 THE WITNESS: Yeah.

19 EXAMINER PRICE: Thank you.

20 THE WITNESS: As much as we could
21 possibly verify spoofing, I mean.

22 EXAMINER PRICE: I understand.

23 THE WITNESS: Yeah. Okay.

24 MS. O'BRIEN: Okay. I would like to mark
25 11.

1 EXAMINER PRICE: 12.

2 MS. O'BRIEN: 12.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. (By Ms. O'Brien) Ms. Ramsey, do you
5 recognize this document?

6 A. It is a case history report that can be
7 generated.

8 EXAMINER PRICE: Do you recognize this
9 specific case history report?

10 THE WITNESS: The problem is it's
11 redacted. If you had an unredacted version and I had
12 a customer name, I could --

13 MS. O'BRIEN: Well, here, I think I can
14 secure that, your Honor.

15 Q. (By Ms. O'Brien) Yes, we did redact all
16 the customer information because we want to protect
17 the customers, but if you look at the case report
18 number up at the top under the "Case Detail," it says
19 Case No. 00248892?

20 A. Yeah, I see the case number.

21 Q. Okay. And I think here in the Staff
22 Report if you look at footnote 14, I believe that you
23 can confirm for me whether or not this corresponds to
24 PUCO Call Center Case ID referenced in footnote 14?

25 A. Yes.

1 Q. Did you review this case report?

2 A. I did.

3 Q. And is this the type of report that SMED
4 typically creates when a customer calls with a
5 complaint regarding a supplier or another utility?

6 A. This is the information that's in the
7 system.

8 Q. What does that mean?

9 A. Well, I mean, to actually create a
10 report, there is another step to actually generating
11 the report. Otherwise this information is in our
12 contact system.

13 Q. Okay. But does -- does SMED typically
14 create these reports of these data compilations?

15 A. I mean, we have access to this
16 information. And if I needed to run a report to --
17 you know, in a physical form, I could create that --
18 this report in a physical form.

19 Q. Okay. Well, it says at the top here
20 Public Utilities Commission of Ohio. So does the
21 Commission create these reports as part of its
22 business?

23 EXAMINER PRICE: I think you need to ask
24 her if she created this report as part of her
25 business.

1 MS. O'BRIEN: Well, I will ask her -- I
2 will ask her if she knows about it.

3 Q. (By Ms. O'Brien) Well, okay. Do you
4 create these reports as part --

5 EXAMINER PRICE: No, this report. Did
6 you create this report?

7 THE WITNESS: I could possibly have
8 created this report. I mean, we've responded to
9 public records requests or whatever, and I
10 participated in generating the information.

11 Q. (By Ms. O'Brien) Okay.

12 A. What I am saying to you is we have a
13 system. If nobody asks for the report, we are not
14 going to generate this report.

15 Q. I understand.

16 A. Okay.

17 Q. Okay. No, that's fine and that makes
18 complete sense. But in responding to public records
19 requests, would SMED or someone else within Staff
20 create these reports?

21 A. Yes.

22 Q. Okay. Thank you. Okay. Now, this has
23 the case report that's referenced in note 14 to the
24 Staff Report; is that correct?

25 A. It is.

1 Q. And I think that you testified that you
2 reviewed it?

3 A. I did.

4 Q. Okay. And if you take a look at the case
5 report, would you agree with me it reflects another
6 customer complaint or a customer contact regarding a
7 call from Verde that was reflected on the Caller ID
8 as AEP?

9 A. Yes.

10 Q. Do you recall whether Verde specifically
11 responded to Staff regarding this particular
12 complaint?

13 A. It -- yes, they did respond.

14 Q. And what was their response?

15 A. It reads "Unfortunately, we are unable to
16 locate a sales call for PUCO Case No. 248892 with the
17 information I was provided. If you can provide the
18 telephone number that the sales agent called from and
19 any additional information that may be able to assist
20 us in providing a response."

21 EXAMINER PRICE: Where is that at?

22 THE WITNESS: It's page 25.

23 Q. (By Ms. O'Brien) Do you know why Verde
24 would be unable to locate the sales call from the
25 PUCO complaint?

1 A. No.

2 Q. Now, you would agree with me that the
3 complaints that we've just discussed as well as those
4 cited in the Staff Report regarding alleged spoof --
5 Verde's alleged spoofing activities are just
6 examples.

7 A. I'm sorry. Can you repeat?

8 Q. I'm sorry. I will rephrase. It was
9 inartfully asked. You would agree with me that the
10 complaints that we've just discussed regarding
11 spoofing, these aren't the only complaints against
12 Verde in this regard.

13 MR. PROANO: Objection, alleged spoofing.

14 Q. Alleged spoofing.

15 A. They are not.

16 EXAMINER PRICE: Well, I think the record
17 is clear there was spoofing.

18 MR. PROANO: It's alleged in the reports.
19 It's not established.

20 Q. (By Ms. O'Brien) Now, can you tell me
21 what in the settlement specifically addresses the
22 alarming number of complaints regarding spoofing by
23 Verde sales representatives?

24 MR. PROANO: Objection.

25 EXAMINER SANYAL: Basis?

1 MR. PROANO: Again, just alleged
2 spoofing.

3 Q. (By Ms. O'Brien) What in the settlement
4 addresses Verde's alleged spoofing?

5 A. The entire settlement addresses the
6 alleged spoofing.

7 Q. Did you -- again, the word spoofing
8 doesn't appear in the settlement, does it?

9 A. No, but all of the items that are in the
10 Stipulation is a deterrent.

11 Q. Okay. Okay. Okay. If you could turn to
12 the Staff Report, I would like to reference you to
13 page 11 to 12. Here it indicates in conducting its
14 investigation, Staff requested copies of Verde's
15 sales telemarketing calls to customers for the week
16 of December 17, 2018. Is that your understanding?

17 A. Yes, that's what the report says.

18 Q. Was Verde able to provide all the
19 telemarketing calls that Staff requested?

20 A. No, they were -- they were not.

21 MS. O'BRIEN: I would like to mark OCC
22 Exhibit 13.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. (By Ms. O'Brien) Ms. Ramsey, can you tell
25 me what this document is.

1 A. This is an e-mail to me from April Lusk
2 who is a Verde employee regarding the Data Requests.

3 Q. And this is the e-mail referenced in note
4 15 to the Staff report?

5 A. Yes.

6 Q. Now, if you look at this e-mail, Verde
7 states here that "Unfortunately, because we no longer
8 have working -- have a working relationship with Dark
9 Star, CJ Consulting, ETM, and Vestra we were
10 unsuccessful in obtaining the sales calls from them."
11 Do you see that?

12 A. I do.

13 Q. Now, my question is even if Verde no
14 longer has a working relationship with these vendors,
15 why would Verde not be able to access its own records
16 and sales calls?

17 A. I don't know.

18 Q. And is my understanding correct that the
19 Commission's rules require Verde to produce copies of
20 the sales calls when requested by staff?

21 A. Yes.

22 EXAMINER PRICE: One of their third-party
23 agents was named Dark Star? Okay then.

24 Q. Okay. Now, if you can turn to page 15 of
25 the Staff Report. This section of the Staff Report

1 addresses Verde's alleged failure to maintain
2 required records and evidence of customer consent.
3 Did you draft this section of the Staff Report?

4 A. I helped draft this section.

5 MS. O'BRIEN: Okay. I would like to mark
6 OCC Exhibit 14.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Ms. Ramsey, can you tell me what this
9 document is.

10 A. This is an e-mail from April Lusk, a
11 Verde employee, to me regarding a Data Request.

12 Q. Is this the e-mail referenced in note 25
13 to the Staff report?

14 A. Yes.

15 Q. Now, correct me if I am wrong, in this
16 e-mail thread it appears that you are asking for
17 signed contracts resulting from Verde's door-to-door
18 solicitation; is that correct?

19 A. That's correct.

20 Q. And in your response and in response to
21 your request, it appears that April Lusk from Verde
22 informed you that unfortunately we do not have the
23 signed contracts for the door-to-door enrollments.
24 Do you see that?

25 A. I do.

1 Q. Can you tell me why would Verde not have
2 the signed contracts for door-to-door enrollments?

3 A. I don't know.

4 Q. And is Verde required under the PUCO's
5 rules to obtain signed contracts for door-to-door
6 sales?

7 A. Yes, they are.

8 Q. During Staff's investigation of Verde,
9 did Verde ever take the position that it was not
10 required to obtain signed contracts for the
11 customers?

12 A. They did.

13 Q. Now, can you tell me what in the
14 settlement specifically addresses Verde's failure to
15 maintain its records and provide them to Staff when
16 requested?

17 MR. PROANO: Objection, alleged.

18 MS. O'BRIEN: Your Honor, she just
19 testified they didn't provide the records when
20 requested, so it's not allegedly.

21 MR. PROANO: Only the Commission
22 determines a violation or failure.

23 EXAMINER SANYAL: How about we do this,
24 from now until the end of the hearing, we will
25 make -- let's just, you know, the Bench is making

1 clear that all violations are alleged, and so if we
2 have any slipups during questions, we have taken that
3 under advisement and.

4 MR. PROANO: Thank you, your Honor.

5 EXAMINER SANYAL: Would that work for
6 you, Mr. Proano?

7 MR. PROANO: That would work for us.
8 Thank you, your Honor.

9 EXAMINER SANYAL: Thank you.

10 Q. (By Ms. O'Brien) Do you need the question
11 reread? I can ask it again.

12 A. Yeah.

13 Q. Okay. When -- what in the settlement
14 specifically addresses Verde's alleged failure to
15 maintain its records and provide them to Staff when
16 requested?

17 A. The entire Stipulation addresses that
18 issue.

19 Q. But there is no specific provision in the
20 settlement that addresses that, does it?

21 A. Those words aren't used, but the entire
22 Stipulation addresses those issues.

23 Q. Okay. Now, if I could get you to turn to
24 page 13 of the Staff Report. Let me know when you
25 are there.

1 A. I'm there.

2 Q. Okay. Now, this is the section that
3 address Verde's alleged failure to properly inform
4 customers that they have seven calendar days to
5 rescind a CRES contract or seven business days to
6 rescind a CRNGS contract after the contract has --
7 has been signed; is that your understanding?

8 A. That is my understanding.

9 Q. Did you draft this section of the Staff
10 Report?

11 A. I helped draft this section of the Staff
12 Report.

13 Q. And would you agree with me that this
14 section summarizes some of the complaints regarding
15 Verde's alleged failure to properly inform customers?

16 A. It does.

17 Q. And, again, what in the settlement
18 specifically addresses these issues?

19 A. The entire settlement.

20 Q. But, again, there is nothing -- no
21 specific provision in the settlement that requires
22 Verde to inform customers that they have seven
23 calendar days to rescind a CRES contract or seven
24 business days to rescind a CRNGS contract; is that
25 correct?

1 A. Again, I believe the entire settlement
2 addresses that issue. If you want those specific
3 words, those specific words are not used but the
4 entire Stipulation addresses.

5 Q. Okay. Thank you. Now, if you could turn
6 to page 17 of the Staff Report -- I'm sorry. Excuse
7 me, page 17 of the Staff Report. And the Staff
8 Report on pages 17 to 22 contains a section regarding
9 Verde's alleged violations of the PUCO's third-party
10 verification rules.

11 EXAMINER PRICE: Can we go back to page
12 13 real fast --

13 MS. O'BRIEN: Sure.

14 EXAMINER PRICE: -- counsel?

15 Ms. Ramsey, directing your attention to
16 footnote 18, there appear to have been one, two,
17 three, three sales calls recordings in the footnote,
18 that are referenced in footnote 18; am I reading that
19 correctly? Or is it just one?

20 THE WITNESS: No, it's three.

21 EXAMINER PRICE: It's three, okay. Did
22 you personally listen to any of those three?

23 THE WITNESS: I am pretty sure I did.

24 EXAMINER PRICE: Pardon me?

25 THE WITNESS: I am pretty sure I did.

1 EXAMINER PRICE: You are pretty sure you
2 did?

3 THE WITNESS: Yes.

4 EXAMINER PRICE: And when you listened to
5 those three, do you believe they did not provide the
6 proper time?

7 I'm sorry. I've got the wrong violation.
8 My mistake. This is lower rate. I'm sorry. Okay.
9 I jumped ahead. I'm sorry, page 15, footnote 22.
10 Did you listen -- personally listen to that phone
11 call?

12 THE WITNESS: I'm pretty sure I did.

13 EXAMINER PRICE: And did you verify they
14 did not provide the proper time?

15 THE WITNESS: Yes.

16 EXAMINER PRICE: Thank you. Thank you,
17 counselor.

18 MS. O'BRIEN: Thank you, your Honor.

19 Q. (By Ms. O'Brien) Okay. So back to the
20 Staff Report at pages 17 to 22, this contains a
21 section regarding Verde's violations of the PUCO's
22 third-party verification rules. Now, if you could
23 flip to page 21 of the Staff Report, there's a
24 statement here that says Staff found many instances
25 where the Company's TPV recording did not contain all

1 of the elements required by the PUCO's rules -- or
2 the Commission's rules. Do you see that?

3 A. "Required by the Ohio Administrative
4 Code."

5 Q. I'm sorry. I apologize. I was
6 paraphrasing there, by the Ohio Administrative -- but
7 you see that sentence?

8 A. I do.

9 Q. Okay. Great. Did you draft this section
10 of the Staff Report?

11 A. I helped draft the section.

12 Q. Okay. And did you review the third-party
13 verification calls associated with Verde during the
14 relevant time frame?

15 A. Yes, me and other Staff members did.

16 EXAMINER PRICE: Did you review the tape
17 as identified in footnote 26?

18 THE WITNESS: Yes.

19 EXAMINER PRICE: You personally?

20 THE WITNESS: Me personally.

21 MS. O'BRIEN: Your Honors, I would like
22 to mark OCC Exhibit 15.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Ms. Ramsey, do you recognize this
25 document?

1 A. Like specifically the content of this
2 document?

3 EXAMINER SANYAL: Is this the same case
4 as in footnote 27?

5 MS. O'BRIEN: That was my next question.

6 EXAMINER SANYAL: Okay. There you go,
7 Ms. Ramsey.

8 Q. (By Ms. O'Brien) And just for ease of
9 reference, the case reports and the case numbers line
10 up with the case numbers in the Staff Report.

11 Ms. Ramsey, do you recognize this to be the case
12 report referenced in note 27 to the Staff Report?

13 A. Yes.

14 Q. Did you review this document?

15 A. I am pretty sure at some point I did.

16 EXAMINER PRICE: No. Do you have a
17 present recollection reviewing this? Don't guess.
18 Do you have a present recollection of reviewing this
19 document.

20 Q. So take your time. Look it over.

21 EXAMINER PRICE: Take your time. Look it
22 over.

23 MS. O'BRIEN: And, your Honor, I
24 apologize. A lot of these reports have blank pages
25 or things like that. But to keep the records

1 complete, we went ahead and printed out the entire
2 reports so that's why some of them are more
3 voluminous.

4 EXAMINER PRICE: I am sure it's an
5 artifact of our wonderful sales force program, not
6 anything to do with OCC.

7 EXAMINER SANYAL: Which we all love.

8 EXAMINER PRICE: Which we all love.

9 EXAMINER SANYAL: We all love for the
10 record.

11 MS. O'BRIEN: But at least they are all
12 page numbered.

13 EXAMINER PRICE: Small. Not really. At
14 least some of them are.

15 A. Without knowing the customer's name, I
16 can't say that I actually reviewed this one.

17 Q. But, again, you drafted this section --
18 or assisted in drafting this section of this Staff
19 Report, right?

20 A. Yes.

21 Q. And this Case No. 00255307 corresponds
22 with the case number referenced in footnote 27 --

23 A. Yes.

24 Q. -- of the section you drafted?

25 A. Yep.

1 EXAMINER PRICE: Can you provide her the
2 name of the -- without doing it on the record.

3 MS. O'BRIEN: I mean -- we have a master.
4 We have the master copies that were provided to us
5 from the public records request from Staff, and we
6 have --

7 EXAMINER PRICE: I mean, right now can
8 you provide --

9 MS. O'BRIEN: No. I don't have it
10 offhand. I would have to check our records. I mean,
11 we took painful steps to make sure that the customer
12 information was completely redacted from these
13 documents so.

14 So I'm sorry. Was there a question
15 pending?

16 THE REPORTER: No.

17 Q. (By Ms. O'Brien) Now, if you take a look
18 at page 2 of this case report --

19 EXAMINER PRICE: She does not have a
20 recollection of seeing this. You have not laid a
21 foundation to ask her questions.

22 MS. O'BRIEN: Your Honor, I just asked
23 her if she drafted the portion of the Staff Report
24 that references this particular document.

25 EXAMINER PRICE: It doesn't matter. She

1 doesn't have a recollection of handling this
2 particular document.

3 MS. O'BRIEN: Okay.

4 EXAMINER PRICE: You need to lay a
5 foundation before you can ask her a question, lay a
6 foundation she has seen this particular document
7 before, if it was one of the 80 she reviewed.

8 Q. (By Ms. O'Brien) Ms. Ramsey, do you
9 recall if you reviewed this particular document?

10 A. I would need a customer name to like --
11 so this document and the contents in it, I can't say
12 that I reviewed this specific one but it...

13 Q. Okay. Then flipping back to the Staff
14 Report at page 23, you'll see a bullet point. And
15 here it says "A customer asked Verde when she will
16 get the paperwork and was advised by Verde," and then
17 it goes on to state what the customer's complaint
18 was. Do you see that?

19 A. Yes, I see that.

20 Q. Okay. And do you see where it says
21 "However," and I am going to add in the term
22 allegedly, "Verde failed to send the terms and
23 conditions until nine days after enrollment. In
24 fact, Staff did not find any evidence during its
25 review that Verde had sent the terms and conditions

1 within the one day required time frame." Do you see
2 that?

3 A. Yes.

4 Q. Does that in any way refresh your
5 recollection of about this document?

6 A. I can say it's in the Staff Report. I
7 reviewed the cases that are in the Staff Report. I
8 can say that that bullet is what was found in that
9 case.

10 Q. Okay. Could you please turn to page 53
11 of what's been marked as OCC Exhibit 15 for this
12 specific case report.

13 A. Okay.

14 Q. Let me know when you are there.

15 A. I'm there.

16 MR. LINDGREN: Objection. She still
17 hasn't laid the foundation for asking any questions
18 about this document.

19 MS. O'BRIEN: Your Honors, if we are
20 going to be penalized for redacting customer
21 information out of the documents, that's --

22 EXAMINER PRICE: Nobody is penalizing
23 you. The rules of evidence are the Rules of
24 Evidence.

25 MS. O'BRIEN: We laid the foundation --

1 we laid the foundation that she -- this is the
2 document that's --

3 EXAMINER PRICE: Mr. Lindgren does not
4 believe you have laid the foundation.

5 MR. LINDGREN: That's correct.

6 MS. O'BRIEN: I respectfully disagree.

7 EXAMINER PRICE: Why do you believe you
8 laid a proper foundation?

9 MS. O'BRIEN: Well, in fact, actually --
10 this actually just -- I will withdraw that.

11 MR. PROANO: Your Honors, would this be a
12 good time for a break?

13 EXAMINER PRICE: Why? We are right in
14 the middle of a question.

15 MR. PROANO: We can keep going. I was
16 just suggesting.

17 EXAMINER PRICE: We need to break soon,
18 but I don't want to do it in the middle a question
19 and objection hanging.

20 EXAMINER SANYAL: I do think Attorney
21 Examiner Price asked you a question to help --

22 MS. O'BRIEN: I'm sorry. What was --

23 EXAMINER SANYAL: He asked you why do you
24 believe you have laid a foundation to ask this
25 witness the questions that you are asking now on page

1 53, or were going to.

2 MS. O'BRIEN: Okay.

3 MR. PROANO: I'm sorry. Go ahead.

4 MS. O'BRIEN: I questioned Ms. Ramsey
5 what -- if she drafted this particular portion of the
6 Staff Report. She indicated that she assisted in it.
7 She indicated that she reviewed the case reports that
8 are cited in the footnote. She indicated that she is
9 familiar with the customer complaint that's in the
10 bullet point in page 23. And it seems like the only
11 thing that is holding us up is the fact that there is
12 not a customer name on this which --

13 EXAMINER SANYAL: I think --

14 MS. O'BRIEN: Actually, you know, we have
15 it now.

16 EXAMINER SANYAL: Okay. Good. Would you
17 like to provide her the name off the record?

18 MS. O'BRIEN: Yes.

19 EXAMINER SANYAL: How about we go off the
20 record for 30 -- a minute.

21 MS. O'BRIEN: Would you like me to just
22 hand it to her on a Post-it, or do you want to go off
23 the record?

24 EXAMINER PRICE: That's even better.

25 EXAMINER SANYAL: Yes. Go off the record

1 and hand it to her on a Post-it, yes.

2 (Discussion off the record.)

3 EXAMINER SANYAL: Okay. Let's go back on
4 the record.

5 And, Ms. Ramsey, does the Post-it refresh
6 your recollection about this particular exhibit?

7 THE WITNESS: I know this name.

8 MS. O'BRIEN: Okay. Excellent. Thank
9 you.

10 EXAMINER SANYAL: Okay. Mr. Lindgren, do
11 you have any continuing objection, foundational
12 objection?

13 MR. LINDGREN: Not at this point, your
14 Honor.

15 EXAMINER SANYAL: Okay.

16 Q. (By Ms. O'Brien) Okay. So if you could
17 turn to page 53 of the document. Actually it's going
18 to begin at page 52. And if you could just take a
19 moment to review page 52 and 53. Let me know when
20 you are done.

21 A. Okay.

22 Q. Okay. And do you see on page 53 the
23 document -- and do you see here where Verde admits
24 that its third-party verification for this customer
25 did not comply with the PUCO's rules?

1 A. Yes, I see that.

2 Q. And is your understanding with respect to
3 this complaint that because the third-party
4 verification did not comply with the PUCO's rules,
5 Verde authorized a refund to the customer?

6 A. I see that.

7 EXAMINER PRICE: Ms. Ramsey, just so the
8 record is clear, in this case they authorized a
9 refund to the customer; is that correct?

10 THE WITNESS: Yes, they did.

11 EXAMINER PRICE: And would this have been
12 the same rate at which the customers were re-rated in
13 the Stipulation, or would a different amount have
14 been used to calculate the baseline for the refund?

15 THE WITNESS: Per Verde's response it
16 looks like the utility's rate was used to calculate
17 the refund.

18 EXAMINER PRICE: Thank you. Now maybe
19 would be a good time to take up the question of
20 break. How many more instances do you have to go
21 through?

22 MS. O'BRIEN: Well, your Honor, I am not
23 going through all 502 case reports obviously. If you
24 are asking me how much more cross I have, I probably
25 have, you know, I would say maybe another half hour

1 to 45 minutes of cross.

2 For what it's worth I could stand a break
3 too.

4 EXAMINER SANYAL: Yes. We are going to
5 take a break. Let's take a 10-minute break and a
6 true 10-minute break and be back here at 4:31. Let's
7 go off the record.

8 (Recess taken.)

9 EXAMINER SANYAL: Ms. O'Brien, whenever
10 you would like to proceed.

11 MS. O'BRIEN: Okay. I would like to mark
12 OCC Exhibit 16.

13 EXAMINER SANYAL: 16, you are correct.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. O'BRIEN: And I've received customer
16 names for these so.

17 Q. (By Ms. O'Brien) Ms. Ramsey, do you
18 recognize this document? I will give you a minute to
19 review it.

20 A. Do you have a name?

21 Q. I actually do have a name. Would you
22 like me to provide it to you off the record?

23 EXAMINER SANYAL: Just do what we --
24 let's go off the record, put it on a Post-it just so
25 we are all safe.

1 So let's go off the record for a minute.

2 (Discussion off the record.)

3 EXAMINER SANYAL: Okay. Let's get back
4 on the record.

5 Ms. Ramsey, do you now remember this case
6 report?

7 THE WITNESS: Unfortunately I don't.

8 Q. (By Ms. O'Brien) Okay. So this document
9 wouldn't be one that you would have reviewed in your
10 investigation of Verde?

11 A. I can't say that, but I just don't
12 recall.

13 Q. You know, we'll move on from that one.
14 You would agree with me, would you, Ms. Ramsey, that
15 the examples that are cited in the Staff Report as
16 well as the case report that we just discussed that
17 those are not the only examples where Verde
18 allegedly -- where Verde's TPV calls allegedly do not
19 comply with the Commission's rules?

20 A. I agree.

21 Q. And, again, can you tell me what in the
22 settlement specifically requires Verde's TPV calls to
23 comply with the Commission's rules?

24 A. I believe the entire Stipulation
25 addresses that issue.

1 Q. But, again, nothing -- you don't see TPV
2 calls referenced in the settlement, do you?

3 A. TPV is not specifically listed as one of
4 the items, but the entire Stipulation addresses the
5 TPV issues.

6 Q. So let's turn now to pages 22 to 24 of
7 the Staff Report. Let me know when you are there.

8 A. It's 22 to 24 of the Staff Report?

9 Q. Yes.

10 A. I'm there.

11 Q. Okay. And this section deals with
12 Verde's alleged failure to provide required contract
13 and contract expiration notices? Do you see that?

14 A. Yes, I do.

15 Q. Did you draft this section of the Staff
16 Report?

17 A. I helped in drafting this section of the
18 Staff Report.

19 Q. Now, if you turn to page 23 of the Staff
20 Report, you see where it states that "Staff requested
21 that Verde provide expiration notice for each
22 customer that had been placed on a month-to-month
23 variable rate after their fixed-term contract had
24 expired"? Do you see that?

25 A. Yes.

1 Q. Do you recall what Verde's response to
2 Staff was?

3 A. Verde's position was that their
4 contract -- that a term in their contract did not
5 require them to send a separate notice.

6 Q. And did Staff tell Verde that their
7 interpretation of the Commission's rule was wrong?

8 A. Staff's position is that a separate
9 notice does have to be sent.

10 EXAMINER PRICE: And what rule requires
11 that, Ms. Ramsey?

12 THE WITNESS: For electric Staff believes
13 that 4901:1-21-11(G) requires a notice between 45, I
14 believe, and 90 days and then 4901:1-20 -- no, that's
15 not it. Sorry.

16 EXAMINER PRICE: You believe there is a
17 comparable gas rule.

18 THE WITNESS: Yes. I believe there is in
19 29.

20 EXAMINER PRICE: And you believe that
21 even if the contract says at the end of it a fixed
22 term of X, you will roll over to a monthly variable
23 rate with no cancellation fee?

24 THE WITNESS: Staff's position is that a
25 separate notice is required.

1 EXAMINER PRICE: Thank you.

2 MS. O'BRIEN: Your Honors, I would like
3 to mark OCC Exhibit 17.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 EXAMINER PRICE: Do you have your sticky
6 note ready?

7 MS. O'BRIEN: Actually it relates to one
8 of the public witnesses that came in today. I don't
9 know. Should we -- should I give her the name on a
10 sticky, or should I just say it?

11 MR. HEALEY: Do the sticky.

12 MS. O'BRIEN: I'll do the sticky.

13 MR. PROANO: I just note for the record
14 there is a -- middle of the first page an e-mail
15 that's not been redacted just for the OCC's benefit.

16 EXAMINER SANYAL: Where?

17 MS. O'BRIEN: You know, I apologize, your
18 Honor. You know, we did everything we could to --

19 EXAMINER SANYAL: One moment. Where is
20 the --

21 MR. PROANO: If you look at contact
22 information in the middle of the first page.

23 EXAMINER SANYAL: So we will just remove
24 that. Let's strike that e-mail in the middle of the
25 page.

1 EXAMINER PRICE: If you could just after
2 the conclusion of the hearing file a late-filed
3 exhibit with -- properly with that one.

4 MR. HEALEY: Yes, we'll do that.

5 MS. O'BRIEN: That's fine.

6 EXAMINER SANYAL: Thank you for bringing
7 it to our attention, Mr. Proano.

8 EXAMINER PRICE: Now we all know who it
9 was.

10 EXAMINER SANYAL: Also just as an
11 administrative matter, can we make sure those
12 Post-its, you collect them at some point so they are
13 not just sitting up there.

14 MS. O'BRIEN: Sure.

15 EXAMINER SANYAL: Okay. Perfect.

16 Q. (By Ms. O'Brien) Ms. Ramsey, have you had
17 a chance to review this document?

18 A. Yes.

19 Q. Are you familiar with this document? I
20 recognize the name, but to be clear it was from today
21 when he testified.

22 EXAMINER SANYAL: Her recollection was
23 from today's testimony.

24 THE WITNESS: I looked it up.

25 EXAMINER PRICE: Okay. One more time.

1 After his testimony, you looked up this report?

2 THE WITNESS: While they were testifying.

3 EXAMINER PRICE: Well, that's fine.

4 That's fine.

5 Q. So you have knowledge of this report?

6 A. Yes.

7 Q. Okay. Great. You would agree with me
8 this document describes a customer complaint that a
9 customer received a large electric bill and
10 discovered she was suddenly paying 19 cents a
11 kilowatt-hour; is that correct?

12 A. That is the customer's complaint.

13 Q. Now, if you could turn to page 59 of this
14 case report. And I want you to review specifically
15 page 59 to 64. Let me know when you are done.

16 MR. PROANO: I'm sorry. You said 59 to
17 64?

18 MS. O'BRIEN: Yeah, 59 actually to 65.

19 MR. PROANO: I don't know if anyone else
20 has this issue. My copy is missing pages 58, 59, 60.

21 MS. O'BRIEN: Here. You can have mine.
22 Here you go.

23 Q. (By Ms. O'Brien) Ms. Ramsey, does yours
24 have the correct page numbers?

25 A. Yes, it does.

1 Q. Okay. And have you had a chance to
2 review those pages?

3 A. I'm on 61.

4 Q. Okay. Sorry. Let me know when you are
5 done.

6 A. I'm ready.

7 Q. Okay. Now, would you agree with me pages
8 59 through 65 of this case report reflect
9 communications between Alfred Thompson and PUCO Staff
10 and Louise Bourgeois of Verde?

11 A. Yes.

12 Q. And if you turn to page 62, do you see
13 the statement by Louise Bourgeois saying "Per the
14 attached Terms of Service under Section 1, it states
15 that after the first 12 billing cycles, the
16 customer's account would auto renew on a
17 Month-to-Month variable rate plan without notice.
18 Verde does have products that renew on a
19 Month-to-Month basis; therefore there would not be
20 renewal notices to provide for" the customer's
21 "account"?

22 A. Yes.

23 Q. Do you see that? And I think you just
24 testified that that's not consistent with Staff's
25 position.

1 A. That is not consistent with Staff's
2 position.

3 EXAMINER PRICE: I have a couple of
4 questions about this. On page 59 they indicated they
5 would process a refund; is that correct?

6 THE WITNESS: Yes.

7 EXAMINER PRICE: And that communication
8 took place in February; is that correct?

9 THE WITNESS: That's correct.

10 EXAMINER PRICE: And that was before the
11 Stipulation was entered into in this case.

12 THE WITNESS: Yes, that's correct.

13 EXAMINER PRICE: And the Company
14 indicates that although they don't agree that they
15 violated the rules, they are processing a refund
16 anyways.

17 THE WITNESS: Yes.

18 EXAMINER PRICE: And maybe you can clean
19 up something that's been hanging over our heads. To
20 the best of your knowledge, are all of Verde's
21 electric contracts 100 percent renewable in the state
22 of Ohio, renewable energy?

23 THE WITNESS: I know the majority of the
24 contracts that I actually reviewed did indicate 100
25 percent renewable.

1 EXAMINER PRICE: But you can't say all of
2 their contracts are 100 percent renewable.

3 THE WITNESS: I can't say like -- no, I
4 can't say that.

5 EXAMINER PRICE: Okay. And just in your
6 experience with the Staff, it is -- is it your
7 understanding that generally 100 percent renewable
8 contracts cost more than the Standard Service Offer?

9 THE WITNESS: Generally, yes.

10 EXAMINER PRICE: May be exceptions out
11 there but that's true as a general principle.

12 THE WITNESS: Correct.

13 EXAMINER PRICE: Thank you.

14 Thank you, counselor.

15 Q. (By Ms. O'Brien) Ms. Ramsey, as your
16 Honor just noted, I believe if you go to page 59,
17 Verde's response is "After careful review, although
18 Verde believes the customer was properly notified of
19 the contract expiration, we agree to process the Cost
20 Analysis." Now, and your testimony was that that's
21 inconsistent with Staff's position that that separate
22 contract notice requirement is required; is that
23 correct?

24 A. Staff's position is that a separate
25 notice is required.

1 Q. Okay. What in the Staff -- what in the
2 Stipulation will require Verde to provide contract
3 expiration notices to customers who are moving off
4 fixed-rate contracts on to month-to-month variable
5 rate contracts?

6 A. The entire Stipulation addresses that
7 issue.

8 Q. But, again, the terms don't specifically
9 reference contract expiration notices, do they?

10 A. Not specifically but they are required to
11 file an action plan. They are being charged a
12 forfeiture. Those are pretty big deterrents from
13 violating the Ohio Administrative Code.

14 Q. I would like you to take a look at the
15 Staff Report on page 25. Let me know when you are
16 there.

17 A. I'm there.

18 Q. And do you see there under the section
19 entitled "Recommendations" -- first of all, did you
20 draft this section?

21 A. I helped draft this section.

22 Q. Okay. And do you see there that one of
23 the recommendations made by staff is PUCO "Suspend,
24 conditionally rescind, or rescind Verde's
25 certification"?

1 A. Yes.

2 Q. Now, if you could move back to your
3 testimony, I am going to direct you to page 4. We're
4 going to start at line 63. And here -- are you
5 there?

6 A. Yes, I'm there.

7 Q. Okay. And here you explain how Verde has
8 suspended all marketing and customer enrollment
9 activities in Ohio and agrees to continue this
10 suspension until October 30, 2020, for a total of 18
11 months. Do you see that?

12 A. Yes, I do.

13 Q. Do you know when Verde ceased marketing
14 and customer enrollment activities for CRESs in Ohio?

15 A. We were notified of the exact date. I
16 believe it was -- to the best of my recollection, it
17 was like May 3.

18 Q. And do you know when Verde ceased
19 marketing and customer enrollment activities for
20 CRNGS in Ohio?

21 A. Same date.

22 Q. Okay. Can you tell me what the basis was
23 for the 18 month stay-out period?

24 A. It was a negotiated settlement.

25 Q. So the 18 months, who proposed the 18

1 months?

2 MR. LINDGREN: Objection.

3 EXAMINER SANYAL: Sustained.

4 Q. (By Ms. O'Brien) Although my -- my
5 understanding is correct that even though Verde will
6 not market and enroll customers, it will still
7 continue to serve its existing customers; is that
8 correct?

9 A. They can continue to serve their existing
10 customers, but all existing customers will be
11 receiving -- well, the ones that were enrolled I
12 believe since June 1 of 2018 will receive a notice
13 advising them that they can cancel the contract
14 without penalty should they choose.

15 Q. Okay. Now, is it possible for customers
16 who enrolled prior to the time frame provided in the
17 settlement for customers who enrolled on a fixed-rate
18 contract prior to the time frame in the settlement
19 and their contract expires and they're moved onto a
20 month-to-month variable rate contract, would those
21 customers receive the notice under the settlement?

22 A. Prior to June 1?

23 Q. Yes, if they enrolled prior to June 1.

24 A. The Stipulation has a date of June 1.

25 Q. So is your answer that a customer who

1 enrolled prior to June 1 on a fixed-rate contract
 2 would not be notified that Staff alleged
 3 misleading -- misleading conduct on behalf of Verde?

4 EXAMINER PRICE: June 1, 2018.

5 A. June 1, 2018, yes.

6 Q. Yes. So those customers -- those
 7 customers wouldn't receive notice under the
 8 settlement.

9 A. That's correct. We don't have any
 10 indication that those customers were misled. They
 11 were a part of this.

12 Q. But would you -- would you agree with me
 13 that it would be possible that there could be a
 14 customer who enrolled onto a fixed rate contract
 15 prior to June 1, 2018, and then their contract
 16 expires and they're moved on a month-to-month
 17 variable rate contract -- I'm -- those customers
 18 wouldn't receive the notice under the settlement,
 19 right? That's correct?

20 A. That's correct.

21 Q. Okay. But it would be possible under
 22 Verde's position that they might not receive the
 23 contract expiration notice.

24 MR. PROANO: Objection.

25 Q. Is that correct?

1 MR. PROANO: Objection.

2 EXAMINER SANYAL: Basis?

3 MR. PROANO: She's speculating
4 possibility of what Verde may do to some customers.
5 I just -- totally without foundation.

6 MS. O'BRIEN: No, it's not, your Honor,
7 because we just went through the fact that Verde has
8 taken a position that contract expiration notices are
9 not always required. And Ms. Ramsey testified that
10 it's Staff's position that they are required. So
11 what I'm asking is it possible if there is a customer
12 who enrolled prior to June 1, 2018, whose on a
13 fixed-rate contract, whose contract then expired, and
14 they don't receive the customer expiration -- or
15 contract expiration notice, they could be moved onto
16 a month-to-month variable rate.

17 EXAMINER SANYAL: Okay. Thank you. Got
18 it. Objection is overruled. To the extent,
19 Ms. Ramsey, you know, please respond.

20 A. It is possible that they could have
21 received an expiration notice or couldn't. I mean,
22 as indicated in this Staff Report, management changed
23 so I don't -- I mean, I do know that there were
24 customers when we asked for an expiration notice that
25 we did receive an expiration notice and then there

1 were others where the Company took the position that
2 they didn't have to send an expiration notice.

3 Q. But regardless -- I'm sorry. Were you
4 finished?

5 A. Yes, sure.

6 Q. I didn't mean to cut you off. But,
7 regardless, if the customer enrolled prior to June 1,
8 2018, they wouldn't receive notice under the
9 settlement; is that correct?

10 MR. LINDGREN: Objection. This has been
11 asked and answered.

12 EXAMINER SANYAL: I -- yes, sustained.
13 Let's move on.

14 EXAMINER PRICE: Ms. Ramsey, on page 25
15 Staff Report, Staff recommends in the first bullet
16 point the Commission do one of three things, suspend,
17 conditionally rescind, or rescind Verde's
18 certification. Is there any functional difference
19 between the Commission deciding to suspend their
20 certification and Verde's voluntarily suspending all
21 marketing operations?

22 THE WITNESS: There's no functional
23 difference. Suspend is suspend and it's -- I mean,
24 it's defined in the OAC.

25 EXAMINER PRICE: Thank you.

1 MS. O'BRIEN: Your Honor, can I proceed?

2 EXAMINER PRICE: You may.

3 Q. (By Ms. O'Brien) Then I would like to
4 turn to your testimony at page 5.

5 EXAMINER SANYAL: Ms. O'Brien, what are
6 we --

7 EXAMINER PRICE: Testimony.

8 EXAMINER SANYAL: Testimony page?

9 MS. O'BRIEN: Testimony page 5.

10 EXAMINER SANYAL: Thank you.

11 MS. O'BRIEN: Line 75.

12 Q. (By Ms. O'Brien) Are you there,
13 Ms. Ramsey?

14 A. Yes, I'm there.

15 Q. Great. Now, here you state that "Verde
16 will withdraw from Dominion Energy Ohio's" -- I'm
17 sorry. Oh, okay. "Will withdraw from Dominion
18 Energy Ohio's monthly variable rate program for a
19 period of one year." And you go on to state that
20 "This will reduce Verde's revenue stream and assist
21 in deterring Verde from engaging in future allegedly
22 non-compliant activities." Do you see that
23 testimony?

24 A. I do.

25 Q. Isn't it true though that under the

1 settlement Verde gets to continue to serve its
2 existing customers that it has been assigned under
3 the MVR program?

4 A. Yes.

5 Q. And can you tell me when Verde withdrew
6 from the MVR program?

7 A. The official date I believe is September
8 5 or 6, something like that. It's the date from the
9 last time Dominion assigned a customer to Verde.

10 Q. Okay. So is your testimony that they
11 will be -- that they will not be able -- or that
12 Verde will not be able to participate in the MVR
13 program for one year from September 5?

14 A. Subject to check, yes.

15 Q. And can you tell me what Verde -- its MVR
16 rate is?

17 EXAMINER PRICE: When? It's a monthly
18 variable rate.

19 A. No.

20 Q. So you wouldn't be able to tell me how it
21 compares with Dominions's standard offer?

22 A. Without having a specific date and access
23 to the information, I can't tell you that.

24 Q. Fair enough. Okay. So we are going to
25 stay on page 5 of your testimony and you can go to

1 line 87. And here you state that "Verde will submit
2 an action plan for compliance to PUCO Staff at least
3 90 days prior to resuming marketing and customer
4 enrollment in Ohio." Do you see that?

5 A. I do.

6 Q. And according to your testimony, you say
7 "It ensures that Verde will have processes in place
8 to reduce the prospect of systematic violations of
9 the Commission's rules." Did I read that right?

10 A. Yes.

11 Q. Is that your testimony? Is that correct?

12 A. I didn't follow you as you were reading,
13 so my testimony kind of says what it says.

14 Q. Okay. That's fine. It speaks for
15 itself. Who within the PUCO Staff would be
16 responsible for reviewing and approving Verde's
17 action plan?

18 A. The main reviewer will be RSAD, Barb
19 Bossart's team.

20 Q. And I think that you testified earlier
21 and when counsel for IGS was questioning you, and you
22 can correct me if I am wrong, that there hasn't been
23 a draft of the action plan yet; is that correct?

24 A. Not that we've received.

25 Q. And my understanding is also from your

1 testimony earlier today is that Verde will take the
2 first steps to draft that action plan; is that
3 correct?

4 A. That's what I would expect to happen.

5 Q. And then Staff would comment on it?

6 A. Correct.

7 Q. Would Staff be opposed to allowing the
8 OCC to participate in the review of Verde's action
9 plan?

10 MR. PROANO: Objection. I am not sure
11 that's appropriate at this time but.

12 EXAMINER SANYAL: Overruled.

13 A. Staff hasn't taken a position on that.
14 If you were in the Stipulation, I guess look at it
15 but. I mean, I don't -- yeah, we posed that to Staff
16 for us to make a determination on that, and I can't
17 make that determination right here today.

18 Q. Okay. Who would make that determination?

19 A. I'm sure probably as a team we will make
20 that determination.

21 Q. Okay. Let's move on to your testimony on
22 page 6. We will stay on page 6.

23 A. I'm sorry. You said page 6?

24 Q. Yeah. Hold on just a second. Okay.
25 Let's -- okay. On page 6 of your testimony, line

1 100, you indicate that "Verde will pay a forfeiture
2 of \$675,000 to the State of Ohio"; is that correct?

3 A. Yes.

4 Q. And what was the basis for the \$675,000
5 amount?

6 MR. LINDGREN: Objection.

7 EXAMINER SANYAL: Basis?

8 MR. LINDGREN: That's a negotiated -- it
9 goes into the negotiations, confidential settlement
10 negotiations.

11 MS. O'BRIEN: Your Honor, it really
12 doesn't. I am just asking her if she knows if there
13 was a basis for \$675,000.

14 EXAMINER SANYAL: I am going to sustain.

15 MS. O'BRIEN: I am not asking her to
16 divulge settlement discussions.

17 EXAMINER SANYAL: I am going to sustain
18 that objection.

19 MS. O'BRIEN: Let me see. Can I just
20 have one minute?

21 EXAMINER SANYAL: Yes, you may. Would
22 you like to go off the record?

23 MS. O'BRIEN: Yeah.

24 EXAMINER SANYAL: Sure. Let's go off the
25 record.

1 (Discussion off the record.)

2 EXAMINER SANYAL: Okay. Let's get back
3 on the record.

4 Q. (By Ms. O'Brien) Okay. Ms. Ramsey, do
5 you remember some questioning previously about the
6 rewards program, Verde's rewards program?

7 A. Yes.

8 Q. And I think -- I think you mentioned that
9 there's a 70 -- there will be an adjustment I think
10 of 70 cents per customer for the re-rating? Do you
11 recall that testimony? If I'm getting your testimony
12 wrong, let me know.

13 EXAMINER PRICE: Ms. Ramsey, you have to
14 answer orally. You can't just nod.

15 THE WITNESS: It was so long ago.

16 EXAMINER SANYAL: If you want to take a
17 minute and look through your testimony, do so.

18 MS. O'BRIEN: I think I can try to
19 clarify this.

20 EXAMINER SANYAL: Okay.

21 Q. (By Ms. O'Brien) Before we discussed the
22 rewards program specifically with respect to the
23 re-rating under the Stipulation, okay -- and let me
24 go back to the -- get my settlement out. I believe
25 it's paragraph 3 of the settlement. If you look at

1 paragraph 3 on page 4.

2 A. Yes.

3 Q. Do you have that in front of you?

4 A. Yes.

5 Q. Okay. And this discusses the re-rating
6 adjusted for any rewards provided by Verde Energy to
7 re-rated customers as part of Verde Energy's shopping
8 rewards program and this will result in a refund of
9 approximately \$1,068,000?

10 A. Yes.

11 Q. Okay. And do you recall -- I believe I
12 asked you some questions about what the -- if the
13 shopping rewards had a particular cash value. And
14 you mentioned a 70 -- 70 cents.

15 A. I believe --

16 MR. PROANO: Objection.

17 EXAMINER SANYAL: Yeah. That's
18 sustained. I believe she said that the rewards don't
19 have a cash value.

20 MS. O'BRIEN: Okay. If that's her
21 testimony, that's fine.

22 EXAMINER SANYAL: I think you are trying
23 to ask her a different question.

24 MS. O'BRIEN: No. If her testimony is
25 they don't have a cash value and that's her

1 understanding, then that's fine.

2 EXAMINER SANYAL: Is that correct,
3 Ms. Ramsey?

4 THE WITNESS: I believe that's what I
5 said, there is no cash value.

6 EXAMINER SANYAL: I do have that written
7 down so.

8 Q. Now, with respect to the million dollars
9 and 68 thousand dollars re -- re-rate amount, I
10 believe your testimony was that Verde provided you
11 with a spreadsheet with those calculations; is that
12 correct?

13 A. Yes.

14 Q. And that Staff did perform its own
15 analysis with respect to the re-rates?

16 A. I mean, we reviewed the spreadsheets --
17 no, we didn't do -- recalculate everything.

18 Q. Okay. Did Staff do an independent review
19 or analysis of the information provided to Ver --
20 provided to you by Verde with respect to the million
21 dollars 68 thousand dollar amount?

22 A. Well, we had no reason to believe Verde
23 was lying to us during negotiations.

24 Q. Okay. So your testimony is that nobody
25 within Staff has conducted that analysis?

1 A. I -- I have not.

2 Q. Okay. I want to go back to the spoofing
3 issue. We talked about spoofing a little bit earlier
4 and we talked about settlement and I want to know
5 what provisions in the settlement are a specific
6 deterrent to spoofing.

7 A. Every provision in the settlement is a
8 deterrent.

9 Q. But how are they a deterrent to spoofing?

10 A. Staff believes that spoofing is
11 misleading and deceptive and that is what we are here
12 for and that's what the settlement is about so
13 paying, re-rating customers, suspending marketing
14 activity, paying a civil forfeiture, withdrawing from
15 the MVR, all of that is a deterrent to violating any
16 provision of the Ohio Administrative Code.

17 Q. But those provisions don't actually
18 require Verde's third-party vendors or whoever is
19 doing their telemarketing to refrain from using the
20 technology or to engage in spoofing behavior; am I
21 right?

22 A. I disagree.

23 Q. And going back to -- switch back now, we
24 had some discussion about fixed-rate contracts and
25 then how they expire and can move onto variable rate

1 contracts. Do you remember that? Those questions?

2 A. Yes.

3 Q. Okay. Is there such a thing as a
4 renewable contract for natural gas service?

5 A. I was made aware that there are. How it
6 works I don't know but, yes, there are marketers who
7 offer some type of contract which is considered
8 renewable. However, some I am not sure.

9 Q. Are you aware if Verde provides those
10 types of contracts?

11 A. I have seen Verde contracts that were gas
12 that did say renewable.

13 Q. Now, you were involved in a similar
14 investigation and Commission-ordered investigation
15 and Staff investigation for the supplier PALMco; is
16 that correct?

17 A. I had a limited role in PALMco.

18 Q. Can you tell me what your role was?

19 A. Actually answering any questions that
20 Staff had.

21 Q. Okay.

22 A. I mean, I didn't -- I didn't participate
23 as much as I did in Verde.

24 Q. Are you familiar with the settlement in
25 the PALMco proceeding?

1 MR. LINDGREN: Objection, relevancy
2 grounds. We are not here about PALMco today.

3 EXAMINER SANYAL: Response?

4 MS. O'BRIEN: Your Honor, it goes to the
5 just and reasonableness of this particular settlement
6 in this case.

7 EXAMINER SANYAL: I am going to sustain
8 that objection.

9 Q. (By Ms. O'Brien) Do you know whether in
10 the PALMco proceeding PALMco offered 100 percent
11 renewable product?

12 MR. LINDGREN: Objection, relevancy.

13 EXAMINER SANYAL: Sorry, what was -- may
14 I have the question read back, please.

15 (Record read.)

16 EXAMINER SANYAL: Do you have a response?

17 MS. O'BRIEN: It goes to the second and
18 third prongs of the settlement, whether the
19 settlement is in the -- to the benefit of the
20 customers and whether it is against regulatory
21 principles and practices.

22 EXAMINER SANYAL: Whether PALMco offers
23 renewable?

24 MS. O'BRIEN: To the extent they had a
25 settlement that was more beneficial --

1 EXAMINER SANYAL: The objection is
2 sustained.

3 MS. O'BRIEN: -- than what is being
4 offered here.

5 EXAMINER SANYAL: Objection sustained.

6 Q. (By Ms. O'Brien) Okay. I want to go back
7 to the settlement provisions regarding Verde's
8 participation in the Dominion MVR program. Isn't it
9 true that Verde sent a notification withdrawing from
10 Dominion's MVR program on May 2019?

11 A. I believe there was communication to
12 Dominion in May. I don't know the exact date.

13 Q. And I think your testimony just a little
14 while ago -- well, strike that.

15 Isn't it true Verde was assigned and had
16 served a customer on the MVR in September?

17 A. They were assigned to a customer in
18 September.

19 EXAMINER PRICE: Well, I am going to ask
20 why were they assigned a customer in September?

21 THE WITNESS: We don't know why Dominion
22 assigned a customer after the notice was sent.

23 EXAMINER PRICE: So you believe Dominion
24 made a mistake.

25 THE WITNESS: I can't say that. I did

1 see an e-mail to Dominion -- hold on. I might be
2 misspeaking. Okay. I'm for sure that PALMco
3 informed us that they notified --

4 EXAMINER PRICE: Verde.

5 THE WITNESS: Sheesh. I messed up.
6 Verde notified Staff they may have forwarded an
7 e-mail but -- I am not 100 percent sure that, you
8 know -- where Staff saw the communication, but I do
9 know that Verde represented to Staff that they
10 notified Dominion in May at the same time that they
11 ceased marketing, and then verifying when the last
12 customer was assigned, determined that they were
13 assigned a customer in September.

14 EXAMINER PRICE: And so will the
15 suspension begin in September and move forward after
16 that?

17 THE WITNESS: It's my understanding it's
18 September. And I believe that's what the Verde
19 witness testified to as well.

20 EXAMINER PRICE: We haven't had a Verde
21 witness yet.

22 THE WITNESS: Strike that.

23 EXAMINER PRICE: But we will.

24 MS. O'BRIEN: I can't hear what you are
25 saying, your Honor.

1 EXAMINER PRICE: Just cautioned the Verde
2 witness's testimony has not been submitted yet.

3 MS. O'BRIEN: Okay.

4 THE WITNESS: Really?

5 EXAMINER PRICE: I don't get to see the
6 depositions.

7 THE WITNESS: I have knowledge that's
8 Verde's understanding.

9 EXAMINER PRICE: Go ahead, counsel.

10 Q. (By Ms. O'Brien) I just have a few more,
11 and then we will wrap this up. So we discussed the
12 forfeiture amount under the settlement is \$675,000;
13 is that right?

14 A. Yes.

15 Q. Okay. And the re-rate for the electric
16 customers is approximately 1.68 million; is that
17 correct?

18 A. That was the estimate we received a
19 couple months ago.

20 Q. Okay. So the total money that Verde will
21 pay out of pocket as a result of the settlement will
22 be about 1.8 million; is that correct?

23 A. If that's the two figures added up, I'm
24 not a math person, then it is at least that amount.

25 Q. Okay. So, yes, that would be --

1 A. Then it is at least the amount you said.

2 Q. Okay. And the total harm caused to
3 customers as a result of Verde's conduct, that could
4 have been greater than 1.8 million; is that correct?

5 MR. PROANO: Objection. I am not sure
6 how they are defining harm.

7 MS. O'BRIEN: Your Honors, I would just
8 say look at the Staff Report.

9 EXAMINER SANYAL: I am going to overrule
10 the objection.

11 Ms. Ramsey, you may answer.

12 A. I don't know.

13 Q. So when you say that the re-rate and the
14 forfeiture are a deterrent, that might not be true
15 because Verde's profit from the misconduct could be
16 greater than the amounts paid under the settlement;
17 is that correct?

18 MR. PROANO: Objection, foundation.

19 EXAMINER SANYAL: Yeah. I am actually
20 not -- that question was really long and maybe we can
21 rephrase.

22 Q. (By Ms. O'Brien) Okay. Your testimony is
23 that the re-rates in the settlement provision acts as
24 a deterrent to Verde's alleged behavior; is that
25 correct?

1 A. That is my position.

2 Q. But if Verde is permitted to profit from
3 its misconduct or alleged misconduct, then how is
4 paying a forfeiture and a re-rate amount amounting to
5 approximately \$1.8 million --

6 EXAMINER PRICE: You're assuming a fact
7 not in evidence. There is no evidence that they are
8 profiting at all.

9 MS. O'BRIEN: It's a hypothetical.

10 EXAMINER PRICE: If you have got a
11 witness that can demonstrate they profited from the
12 misconduct, then you can ask the question.

13 Q. (By Ms. O'Brien) Okay. Ms. Ramsey, does
14 Verde continue to serve customers?

15 A. Yes. Their existing customers are
16 served.

17 Q. Okay. And we established that under
18 paragraph 3 of this settlement the re-rating does not
19 apply to natural gas customers; is that correct?

20 MR. PROANO: Objection. It's paragraph
21 3, not 7.

22 EXAMINER SANYAL: Sure, paragraph 3.

23 A. I'm sorry. What was your question?

24 Q. Under paragraph 3 of the settlement on
25 page 4, it states "For all retail electric

1 residential customers enrolled by Verde Energy in
2 Ohio from October 1, 2018, through April 30, 2019,
3 Verde Energy will re-rate those customers." It
4 doesn't say anything about natural gas customers,
5 does it?

6 MR. PROANO: Objection, asked and
7 answered, maybe three times already.

8 EXAMINER SANYAL: I think you do --

9 MS. O'BRIEN: If you want me to rephrase
10 it, I am trying to rephrase it as best I can. I am
11 sure I can get it from the record that we already
12 have.

13 EXAMINER SANYAL: I think Ms. Ramsey has
14 stated that it does not include natural gas customers
15 so let's get to your next question.

16 Q. (By Ms. O'Brien) Okay. And under the
17 settlement the re-rate is worth approximately 1.68
18 million, correct?

19 A. That's correct.

20 Q. And we established that there is a for --
21 we established there is a forfeiture of \$675,000,
22 right?

23 A. Correct.

24 Q. And that amounts to approximately \$1.68
25 million, correct?

1 A. Okay. Yes.

2 Q. Now, my question is if Verde can make
3 more money serving its existing customers or continue
4 making money serving its existing customers, how does
5 the forfeiture amount in the re-rate amount serve as
6 a deterrent for its alleged behavior set forth in the
7 Staff Report?

8 MR. PROANO: Objection, foundation.

9 EXAMINER SANYAL: Do you have a response?

10 MS. O'BRIEN: Your Honor, I rephrased it
11 every way to Sunday; and, you know, he's objecting
12 that it's asked and answered. I am trying to make it
13 as clear as possible but, you know, that's --

14 EXAMINER SANYAL: I think the issue that
15 you are having is the foundation with regard to
16 profiting. And I just don't think you are going to
17 get there at this point, so I will sustain that
18 objection.

19 MS. O'BRIEN: Okay. No further questions
20 at this time.

21 EXAMINER SANYAL: Okay.

22 MR. LINDGREN: Can we have a few minutes
23 to confer?

24 EXAMINER SANYAL: Sure. You may have 3
25 minutes. Is that enough? Would you like 5?

1 MR. LINDGREN: 5 would be better.

2 EXAMINER SANYAL: You have 5 minutes.

3 (Recess taken.)

4 EXAMINER SANYAL: Let's get back on the
5 record.

6 Mr. Lindgren, the floor is yours.

7 MR. LINDGREN: Thank you, your Honor.

8 - - -

9 REDIRECT EXAMINATION

10 By Mr. Lindgren:

11 Q. Hello again, Ms. Ramsey.

12 A. Hello.

13 Q. If Verde should happen to violate a
14 Commission rule, one of the rules that was cited in
15 the Staff Report, is it still going to be a violation
16 even if it's not expressly stated in the Stipulation?

17 A. Yes.

18 Q. Thank you. And the Staff could still
19 pursue an enforcement action against Verde for that
20 alleged violation even if it's not expressly spelled
21 out in the stipulation; is that right?

22 A. Absolutely.

23 Q. Thank you. And would Staff do so?

24 A. Absolutely.

25 Q. Thank you. Ms. Ramsey, did Staff verify

1 with Dominion when they stopped assigning customers
2 to Verde through the MVR?

3 A. Yes.

4 Q. Thank you. And does the suspension from
5 the MVR run from that date?

6 A. Yes, that is my understanding, Staff's
7 understanding.

8 Q. Thank you. And did Staff confirm that
9 date with Dominion?

10 A. Yes.

11 Q. Do you recall what date that was?

12 A. Oh, gosh, be September, like September
13 5 -- oh, the date we verified with Dominion?

14 Q. No, the date that Dominion ceased
15 assigning customers.

16 A. Subject to check, September 5.

17 Q. Thank you.

18 A. We have -- we have a definite date.

19 Q. Whatever the date is, their suspension
20 will run from that date; is that correct?

21 A. That is correct.

22 MR. LINDGREN: Thank you. I have no
23 further questions.

24 EXAMINER SANYAL: Mr. Proano?

25 MR. PROANO: Yes, thank you.

RECROSS-EXAMINATION

By Mr. Proano:

Q. Ms. Ramsey.

A. You have 15 minutes.

Q. I have 15 minutes.

EXAMINER SANYAL: And then there will be recross.

A. We're done there.

Q. I'm David Proano, counsel for Verde Energy. You believe the Staff did a thorough job with the Staff Report in this case?

A. Yes, I do.

Q. And do you believe the truth of the statements and conclusions made by the Staff in that report?

A. Yes.

Q. You believe the Staff Report is fairly broad and comprehensive and covers a lot of different customers' contacts and complaints?

A. It does.

Q. Given all that knowledge of the truth in your view of the statements in the Staff Report and the breadth and extensiveness of the Staff Report, you believe that the settlement in this case is appropriate, correct?

1 A. Yes, I do.

2 Q. And you also believe that the settlement
3 in this case satisfies the three-part Commission test
4 that's at issue in this hearing, correct?

5 A. Correct.

6 Q. You answered a number of questions
7 relating to whether or not the settlement addressed
8 specific alleged misconduct on the part of Verde
9 Energy. Do you remember those questions?

10 A. Yes.

11 Q. And you remember answering that the
12 Stipulation as a whole acted as a deterrent for
13 future alleged violations of Ohio rules regarding
14 marketing and enrollment of customers in Ohio,
15 correct?

16 A. Correct.

17 Q. And do you have the Stipulation in front
18 of you?

19 A. I do.

20 Q. Could you please turn to page 2.

21 A. I'm there.

22 Q. Could you look at the last sentence at
23 the end of the paragraph that runs from page 1 that
24 starts with "If approved." "If approved by the
25 Commission," do you see that sentence? Page 2, right

1 before the start of "Although the signatory parties"?

2 A. Oh, yes.

3 Q. Could you read that sentence for the
4 record, please.

5 A. "If approved by the Commission, the
6 Stipulation resolves all of the issues raised in the
7 Investigation and Staff Report."

8 Q. Is that an accurate statement?

9 A. Yes, it is.

10 Q. And then could you also read the last
11 sentence of the next paragraph starting with "The
12 primary objective."

13 A. "The primary objective of this
14 Stipulation is to avoid, to the extent reasonably
15 possible, the potential for future customer
16 complaints resulting from marketing, solicitation,
17 and customer enrollment practices by Verde Energy to
18 consumers of power and gas in Ohio."

19 Q. Do you believe that's a true statement?

20 A. Yes, I do.

21 Q. You also mentioned in response to some
22 questions that the Stipulation represents a big
23 deterrent to Verde Energy. Do you remember saying
24 that?

25 A. I do.

1 Q. What did you mean by big deterrent and
2 what provisions were you thinking of?

3 A. Well, provision 1, Verde stopped
4 marketing in Ohio to gas or electric customers, and
5 they will continue until October 30, 2020. Verde's
6 not being assigned MVR customers which is impacting
7 their revenue. Electric customers will be re-rated.
8 And if Verde wants to transfer customers, they have
9 to give Staff prior consent, and they have to submit
10 an action plan 90 days before marketing. Then all of
11 their customers who were enrolled from June 1, 2018,
12 will receive notice that they can drop without
13 penalty, in addition to paying a forfeiture of
14 \$675,000. Those are all huge deterrents from future
15 violations.

16 Q. You are familiar, are you not, with other
17 settlements with electricity and gas competitive
18 suppliers in the state of Ohio relating to potential
19 violations by those suppliers, correct?

20 A. Yes.

21 Q. And on the scale of those kind of
22 settlements, where would you place this settlement in
23 your knowledge, personal knowledge, of those other
24 settlements?

25 MS. O'BRIEN: Your Honors, I would like

1 to object. We weren't allowed to ask about other
2 settlements, and we weren't allowed to ask about
3 PALMco.

4 MR. PROANO: Ms. O'Brien asked her
5 specifically about these 10 other settlements, your
6 Honor. She put it fair game for my
7 cross-examination.

8 EXAMINER SANYAL: I'm sorry.

9 MS. O'BRIEN: I don't understand that.

10 EXAMINER SANYAL: I didn't hear.

11 MR. PROANO: Ms. O'Brien specifically
12 asked the witness what other settlements with other
13 suppliers.

14 EXAMINER PRICE: She has other
15 enforcement actions.

16 MR. PROANO: Other enforcement actions
17 that resulted in settlement, had she been involved,
18 which she asked about so.

19 MS. O'BRIEN: Your Honor, that's not what
20 I said.

21 MR. PROANO: And I'm trying to understand
22 in the range of all those settlements where does this
23 one land. She is calling these big deterrents, and I
24 am trying to understand from the PUCO Staff's
25 perspective.

1 EXAMINER SANYAL: Thank you, Mr. Proano.
 2 I am going to sustain that objection. I believe she
 3 referred to enforcement actions, and you are
 4 specifically getting to the settlement so.

5 Q. (By Mr. Proano) Okay. Were there --

6 EXAMINER SANYAL: Move on.

7 MR. PROANO: Thank you, your Honor.

8 Q. (By Mr. Proano) Were there settlements in
 9 these other enforcement actions?

10 MS. O'BRIEN: Your Honor, objection.
 11 This is out of the scope of redirect.

12 EXAMINER PRICE: It's out of the scope of
 13 cross, if anything. He is on redirect. We already
 14 established --

15 MS. O'BRIEN: He could have asked all
 16 these questions during his cross.

17 MR. PROANO: I am just responding to
 18 questions posed by Ms. O'Brien, these 10 enforcement
 19 actions.

20 EXAMINER PRICE: Let me see if this helps
 21 to cut through this. Questions on settlements, and
 22 leaving aside PALMco, are you aware of whether this
 23 would be the largest civil forfeiture ever assessed
 24 by the Commission against a competitive retail
 25 service provider whether settled or went to full

1 litigation?

2 THE WITNESS: Okay. So the one that's
3 pending I don't -- I don't know --

4 EXAMINER PRICE: Leaving aside PALMco.

5 THE WITNESS: Yes.

6 EXAMINER PRICE: Then what --

7 THE WITNESS: This would be the largest
8 forfeiture assessed to a --

9 EXAMINER PRICE: CRES provider.

10 THE WITNESS: CRES provider.

11 EXAMINER PRICE: Would this also be the
12 largest against a competitive retail natural gas
13 supplier?

14 THE WITNESS: Yes, it would be.

15 MR. PROANO: Thank you, your Honor.

16 Q. (By Mr. Proano) Real briefly, the
17 settlement discusses an action plan. When you were
18 asked by Ms. O'Brien whether or not there had been a
19 specific action plan submitted to PUCO Staff, your
20 testimony was not -- not yet, correct?

21 A. Correct.

22 Q. And your testimony was that Ms. Bossart
23 and her team would be responsible for reviewing those
24 action plans, correct?

25 A. Correct.

1 Q. There is a practice before the PUCO Staff
2 with suppliers regarding action plans, correct?

3 A. Correct.

4 Q. And so there is a well worn and well
5 understood process for how those action plans get
6 submitted, how they get commented on, and how PUCO
7 Staff has the ability to provide comments to the
8 supplier about those plans, correct?

9 MS. O'BRIEN: Your Honor, objection.
10 This is friendly cross. He is leading the witness.

11 MR. PROANO: Do you want me to rephrase?

12 EXAMINER SANYAL: Yes. Let's rephrase.
13 I know it's late in the day. We all want to go home.

14 MR. PROANO: Trying to save time, your
15 Honor. Thank you. I'll rephrase.

16 Q. (By Mr. Proano) Could you describe what
17 the practice is at PUCO Staff with respect to action
18 plans.

19 A. Everything I just said. The Company will
20 submit the plan to our Staff for our review. We will
21 read TPV scripts, sales scripts. We look over
22 contracts. We want to know how it -- telemarketers
23 using outside -- or third-party vendors, we want to
24 know how they are monitoring those third-party
25 vendors. When they receive a complaint, we want to

1 know what their process is, how they analyze the
2 different complaints they receive and take action on
3 a larger scale before Staff finds the issues.

4 I mean, they are getting each individual
5 complaint. We expect the suppliers to look at those
6 complaints, determine is there a pattern, is there
7 something they need to address with any of their
8 vendors, any of their sales representatives. We
9 expect them to take action. And the compliance plan
10 needs to show that they are in compliance with all
11 rules.

12 Q. Is it your understanding today that
13 normal procedure for reviewing action plans and
14 commenting on them would be applied to this
15 settlement?

16 A. Absolutely.

17 Q. And so this isn't anything novel or new,
18 is it?

19 A. It is not.

20 Q. Is it also true that PUCO Staff's
21 expectation is the action plan will address specific
22 allegations in the Staff Report?

23 A. Yes.

24 Q. There was a couple questions about some
25 re-rates provided to some customers that had

1 complained to PUCO.

2 EXAMINER PRICE: I really think that
3 you're -- this better be -- this is really close on
4 adverse questions. Her friendly cross was well taken
5 here. You are not supposed to be asking her
6 softballs so this better be a very hostile question.

7 MR. PROANO: Let me rephrase.

8 Q. (By Mr. Proano) You recall OCC's Exhibits
9 15 and 17 regarding certain PUCO complaints just
10 generally? And you are welcome to look at them.

11 A. I am sure it's one of these, yes.

12 Q. Do you recall during cross-examination
13 that you were asked about how the re-rate was
14 calculated for those complaints that are listed or
15 addressed in OCC Exhibits 15 and 17?

16 A. Yes.

17 Q. And do you recall that your understanding
18 was that the utility price to compare rate was used
19 for the re-rate?

20 A. Correct.

21 Q. Is the re-rate number, the rate that's
22 being used for the re-rate in paragraph 3 of the
23 Stipulation a product of arm's length negotiations
24 between PUCO Staff and Verde Energy?

25 A. As well as I can understand that

1 question, yes.

2 Q. And given everything you know and believe
3 to be true in the Staff Report, your position is that
4 re-rate number that's in paragraph 3 is appropriate?

5 MS. O'BRIEN: Your Honor, I am going to
6 object again. This is just more friendly cross.

7 MR. PROANO: Let me rephrase, your Honor.

8 Q. (By Mr. Proano) Given everything you know
9 in the Staff Report and everything you believe to be
10 true about it, is the re-rate number in paragraph 3
11 of the Stipulation appropriate in your view?

12 A. It is.

13 MS. O'BRIEN: And --

14 EXAMINER PRICE: Are you objecting or
15 not?

16 MS. O'BRIEN: Well, she answered. Yeah,
17 I have an objection and basically the objection is
18 this, it's got nothing to do with the way he is
19 phrasing the question. It's got to do with the
20 substance of the question.

21 EXAMINER SANYAL: What's the -- what's
22 your objection about the substance?

23 MS. O'BRIEN: He's bolstering the Staff
24 witness. He's basically rehashing her testimony. We
25 can read her testimony.

1 EXAMINER PRICE: It's friendly cross is
2 what you're saying.

3 MS. O'BRIEN: It's friendly cross. I
4 mean, I am happy to stay here until -- all night,
5 but, I mean, this is --

6 EXAMINER SANYAL: Okay. I think,
7 Mr. Proano, you're hearing the objection. Can we
8 move on and ask questions that are more appropriate
9 for redirect?

10 MR. PROANO: I believe this is
11 appropriate, your Honor. I am just trying to get her
12 understanding that the rate -- there was a question
13 specifically asked about whether utility rates were
14 used to re-rate customers, and I am just trying to
15 get the witness -- witness's understanding as the
16 witness testifying in support of the settlement for
17 PUCO Staff that the re-rate number in paragraph 3 is
18 appropriate given everything.

19 EXAMINER PRICE: Again, you are on the
20 Stipulation with Staff. This is just friendly
21 questioning. You are not asking anything to clarify
22 the record. You are just asking questions to bolster
23 the Stipulation.

24 MS. O'BRIEN: And, your Honor, I would
25 also like to add if they wanted to provide testimony

1 in support of the settlement, they could have done
2 so. They chose not to. So there's that.

3 EXAMINER PRICE: I don't know where that
4 gets you but that's okay.

5 MR. PROANO: I will just respond Section
6 30 of the rules only requires one signatory party to
7 provide testimony. PUCO Staff has done that, but I
8 will move on.

9 EXAMINER SANYAL: Move on. Otherwise we
10 will have motions to strike so let's move on.

11 MR. PROANO: Thank you, your Honors.

12 Q. (By Mr. Proano) There was a question
13 about whether or not PUCO Staff analyzed the re-rate
14 calculation that Verde Energy provided showing the
15 approximate amount of 1.68 million for the re-rate to
16 customers, correct?

17 A. Yes.

18 Q. And you testified that to your
19 recollection, you didn't know whether or not anyone
20 did the analysis, and you trusted Verde Energy's
21 representation on that matter, right?

22 A. Correct.

23 Q. Did Verde Energy provide you a detailed
24 spreadsheet underlying data on customer usage,
25 customer data, customer names, rates, and the re-rate

1 calculation to support that \$1.068 million re-rate
2 number?

3 A. Yes.

4 Q. There was a question posed by the OCC
5 about whether or not the rewards program points had
6 any cash value. Do you recall that question?

7 A. I do.

8 Q. Do you recall that your answer was you
9 didn't believe they had cash value?

10 A. That's my belief.

11 Q. Now, does the cash value of -- or noncash
12 value of those rewards points doesn't matter for
13 purposes of paragraph 3 of the Stipulation?

14 A. I mean, it's -- it's there, so I guess it
15 matters.

16 MS. O'BRIEN: Sorry. What do you want?

17 Q. Let me just ask a follow-up question.
18 You understand that Verde Energy has represented that
19 the adjustment for the rewards program benefits is
20 going to be 70 cents per customer per month?

21 A. Yes.

22 MS. O'BRIEN: Objection, your Honor, more
23 friendly cross.

24 EXAMINER SANYAL: She already responded
25 so. I heard the "yes."

1 EXAMINER PRICE: The witness, if you hear
2 an objection, you need to wait and let us rule on the
3 objection. Otherwise --

4 EXAMINER SANYAL: Or pause before you
5 answer.

6 THE WITNESS: Okay. I am just trying to
7 get us out of here.

8 Q. Ms. Ramsey, did you review the deposition
9 transcript of Ms. Jordan?

10 MS. O'BRIEN: Objection. This is beyond
11 the scope of redirect -- or cross --

12 EXAMINER SANYAL: I agree.

13 MS. O'BRIEN: -- and redirect.

14 EXAMINER SANYAL: That objection is
15 sustained.

16 Q. (By Mr. Proano) Ms. Ramsey, there was a
17 question about whether or not Verde offered 100
18 percent renewable products in the state of Ohio. I
19 believe your answer was you didn't know whether that
20 was true.

21 MS. O'BRIEN: Again, I am going to
22 object. This is beyond Mr. Lindgren's redirect.

23 MR. PROANO: This was the subject of
24 OCC's cross-examination.

25 EXAMINER SANYAL: Yes.

1 EXAMINER PRICE: You have to stay within
2 his redirect. You are on recross. You have to stay
3 within his redirect.

4 MR. PROANO: I have no further questions.

5 MS. O'BRIEN: I have no further
6 questions.

7 EXAMINER SANYAL: Okay.

8 - - -

9 EXAMINATION

10 By Examiner Price:

11 Q. I just have a couple of questions. If
12 you can look at OCC 17, it was the last of the
13 investigative reports which you looked at that you
14 could confirm.

15 A. Do you know what the case number was?

16 Q. Yeah, the one with the customer's e-mail
17 address.

18 A. Yep. Got it.

19 Q. Perfect. Prior to working in RSAD, you
20 worked in the Division, which I don't know the actual
21 title, supervises the hotline stuff, the hotline
22 staff; is that correct?

23 A. That's correct.

24 Q. And at that time investigative reports
25 such as this were prepared by you or at your

1 direction; is that correct?

2 A. Correct.

3 Q. And you no longer work in that section;
4 you now work in RSAD.

5 A. Correct.

6 Q. And so investigative records are not
7 prepared by you or at your direction.

8 A. Yeah, not at my direction.

9 Q. Thank you. My last question is the four
10 boxes that have been marked as OCC 7, do you have any
11 idea, any personal knowledge what's in those boxes?

12 A. Which one is that?

13 Q. They have four boxes back there. Do you
14 have any knowledge what's in those boxes?

15 A. Oh, personal -- no, I don't have personal
16 knowledge what's in those boxes.

17 EXAMINER PRICE: Thank you.

18 EXAMINER SANYAL: We have some exhibits
19 to take care of just administratively. I have Staff
20 Exhibit 1. Are we moving?

21 MR. LINDGREN: Yes, your Honor. I move
22 for admission.

23 EXAMINER SANYAL: Any objection to Staff
24 Exhibit 1 being moved into the record?

25 MR. PROANO: No objections.

1 EXAMINER SANYAL: Okay. Hearing none,
2 that is moved into the record.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER SANYAL: And then I have OCC has
5 several exhibits from you, but I suspect you won't be
6 moving all of them so let me know which ones.

7 MS. O'BRIEN: Yeah. We intend to move
8 all of them.

9 EXAMINER SANYAL: Okay.

10 MR. PROANO: We will object to some of
11 them, your Honor.

12 EXAMINER SANYAL: Right. Okay. So let's
13 go with objections, which ones you are objecting to.

14 MR. PROANO: I believe we had already
15 done -- admitted OCC 3 and 4 earlier today?

16 EXAMINER SANYAL: Right. I think we are
17 going 5 onward, to 5, 6, 7, 8, 5 through 17
18 essentially.

19 MR. PROANO: I can state Verde's
20 position. Verde has no objection to OCC 5, which is
21 the Staff Report, or its admission.

22 EXAMINER SANYAL: Any objections -- let's
23 go one by one, okay? So that one is admitted.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 MR. LINDGREN: Your Honor, actually Staff

1 Exhibit -- OCC Exhibit 5 is the Staff Report and by
2 Commission rule that became a part of the record when
3 it was filed. Point that out.

4 EXAMINER SANYAL: Thank you.

5 6?

6 MR. PROANO: Verde has no objection to
7 OCC Exhibit 6, the Staff letter from April 16, 2019.

8 EXAMINER SANYAL: Any objections to that?
9 Okay. That one is admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER SANYAL: I believe 7 will be the
12 contentious one.

13 MR. PROANO: We will object to that one,
14 your Honor.

15 EXAMINER SANYAL: Okay. I know we have
16 OCC -- do you intend on calling additional Staff
17 witnesses based on Ms. Ramsey's testimony today?

18 MS. O'BRIEN: Briefly, very briefly.

19 EXAMINER PRICE: I never heard her say
20 she couldn't answer a question.

21 MS. O'BRIEN: Actually there were several
22 questions that she couldn't answer.

23 EXAMINER PRICE: We'll talk about that.

24 EXAMINER SANYAL: Okay. So why don't we
25 wait for the admission of that exhibit until --

1 EXAMINER PRICE: No. She's moving it.
2 Let's deal with it.

3 EXAMINER SANYAL: Okay. We are dealing
4 with it now.

5 EXAMINER PRICE: Let's do the ones we can
6 agree upon and come back.

7 EXAMINER SANYAL: So 8, any objections to
8 8?

9 MR. PROANO: Verde has no objection to
10 Exhibit 8, the March 26, 2019, e-mail from
11 Ms. Bossart to Ms. Ramsey.

12 EXAMINER SANYAL: Okay. That one is
13 admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER SANYAL: What about 9 through
16 11? Those are all e-mails.

17 MR. PROANO: Verde has no objection to
18 these three e-mails, Exhibits 9, 10, 11 from OCC.

19 EXAMINER SANYAL: Okay. Hearing no other
20 objections, those are admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 EXAMINER SANYAL: 12 is a case report
23 associated with footnote 14.

24 MR. PROANO: Your Honor, I believe the
25 testimony was that Ms. Ramsey didn't recognize this

1 complaint, so we object to its admission on the
2 foundational basis.

3 MS. O'BRIEN: And, your Honors, we --

4 EXAMINER PRICE: Let's come back to the
5 ones we don't agree upon. Cash in with the little
6 victories we have while we can.

7 EXAMINER SANYAL: Okay. 13 and 14 are
8 communications from Ms. April Lusk.

9 MR. PROANO: Your Honor, Verde Energy has
10 no objections to the admission of those two exhibits.

11 EXAMINER SANYAL: Okay. Hearing no
12 objection, those are admitted.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 EXAMINER SANYAL: And then 15 is the case
15 report associated with footnote 27.

16 MR. PROANO: My recollection was that the
17 witness remembered reviewing this.

18 EXAMINER SANYAL: Right.

19 MR. PROANO: So we have no objection to
20 its admission, your Honor.

21 EXAMINER SANYAL: Okay. Hearing no
22 objection, 16 -- I mean, 15 is admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER SANYAL: And then I believe 16
25 is one that Ms. Ramsey did not remember.

1 MR. PROANO: Correct. My recollection
2 was Ms. O'Brien didn't even ask questions about it.
3 She just moved on, so we object to the admission of
4 OCC 16.

5 EXAMINER SANYAL: Are you still proposing
6 to move that one?

7 MS. O'BRIEN: Yeah. We will still
8 propose and, you know, it's part of -- it's actually
9 part of Exhibit 7 so.

10 EXAMINER SANYAL: Okay. Well, let's move
11 on to 17. Any objections to that one?

12 MR. PROANO: Your Honor, from Verde
13 Energy we do not have objections to OCC 17 since the
14 witness remembered reviewing this.

15 EXAMINER SANYAL: Okay.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER PRICE: We are down to 7, 12, 16
18 are in dispute. Okay. Let's go with 7 first.

19 MS. O'BRIEN: Your Honors, we move for
20 admission of the case reports that were provided to
21 us as part of Staff's public records production to
22 us. And these --

23 EXAMINER PRICE: Nobody -- I understand
24 the basis of your moving them, but you haven't proven
25 that point. I mean, I understand you got it from

1 Staff. I am not disputing you got them from Staff,
2 but you haven't put on a witness that said we gave
3 these to OCC.

4 MS. O'BRIEN: And, your Honor, Ms. Ramsey
5 when I -- showing her the Staff Report, she agreed
6 that these were documents that Staff created.

7 EXAMINER PRICE: She doesn't know what's
8 in those boxes. That's why I asked her the question.

9 MS. O'BRIEN: And I would be happy to
10 pull out each and every one of those but, your
11 Honors, following the precedent in PALMco --

12 EXAMINER PRICE: The facts are totally
13 different from what was going on in PALMco. You
14 can't just rely on PALMco. That's a different
15 hearing. That's a different transcript. This is a
16 different transcript all together.

17 MS. O'BRIEN: They're case reports
18 related to this proceeding and --

19 EXAMINER PRICE: And Ms. Bojko did a
20 wonderful job of getting them in.

21 MS. O'BRIEN: Your Honor, and I know that
22 you are -- you are trying to say that in PALMco you
23 admitted the case reports subject to two caveats.
24 One is that they were redacted which we have
25 completely handled in this case minus the -- to the

1 best of our ability we have redacted these. And two
2 was that we work with Docketing to make sure that
3 they were filed. There were no hear -- you admitted
4 those exhibits over any foundational objections by
5 the AG.

6 EXAMINER PRICE: But there were
7 questions -- you didn't ask Ms. Ramsey any questions
8 about the boxes. You stood up and you said I have
9 four boxes of documents. I am marking them as 7, and
10 then you sat down.

11 MS. O'BRIEN: No, your Honor. With due
12 respect that is not correct. I tied them to the
13 customer contacts that are related in -- that were
14 cited in the Staff letter.

15 EXAMINER PRICE: You tied a limited
16 number of ones. The ones she could not recall
17 were -- we haven't even ruled on yet.

18 MS. O'BRIEN: Your Honor, I asked her
19 questions specifically related to what -- what
20 contact -- or what case reports she reviewed, did she
21 review them all as part of her investigation.

22 EXAMINER PRICE: She only -- she
23 reviews -- she said she reviewed 80. She didn't
24 review all 400. You didn't even ask her about the 80
25 she reviewed.

1 MS. O'BRIEN: Well, your Honor, if you
2 would allow me the time then, we can go through each
3 one of them, and I will ask her about the 80 she
4 reviewed. I mean, this is the only witness that
5 Staff is providing. If you are telling me that we
6 can't admit the case records --

7 EXAMINER PRICE: She sat down. I honest
8 to goodness was waiting for you to ask questions
9 about these exhibits.

10 MS. O'BRIEN: She's supporting the Staff
11 Report which cites that there are 481 contacts or
12 complaints against Verde.

13 EXAMINER PRICE: They were not a part of
14 the Staff Report. They were relied -- I'm not --
15 they were evidence in the Staff Report, and the ones
16 that she could identify we admitted. We just did.

17 MS. O'BRIEN: So is your Honor -- your
18 Honor is deviating from past precedent in the PALMco
19 decision to -- to admit these case reports?

20 EXAMINER PRICE: That's a different
21 record all together. I am not deviating from
22 anything. First of all, we haven't even made a
23 ruling. I am just saying you haven't -- until -- I'm
24 trying to get where you think you laid a foundation.

25 MS. O'BRIEN: I asked her specifically

1 regarding specific types of the reports. I said is
2 this the type of report that you created as a part of
3 your -- as a part of SMED, I said what happens --

4 EXAMINER PRICE: We can fix this. I am
5 really not trying to screw up here, but I really
6 would like to remotely adhere to the Rules of
7 Evidence. Mr. Williams is coming on tomorrow. I
8 assume that Mr. Williams can authenticate these
9 documents were received from Staff as part of the
10 public records request. That's all I am looking for.

11 MS. O'BRIEN: Okay.

12 EXAMINER PRICE: You know, but it's --
13 you are just missing a huge step in the process.

14 MS. O'BRIEN: Fair enough.

15 EXAMINER PRICE: We will allow you to ask
16 that on direct.

17 MS. O'BRIEN: Okay.

18 MR. HEALEY: Thank you, your Honor.

19 EXAMINER PRICE: Okay.

20 EXAMINER SANYAL: Okay. 12 and 16 are
21 the ones left. So 16 Ms. Ramsey had no recollection
22 and they are both related -- I think are 12 and 16
23 also part of 7?

24 MS. O'BRIEN: Yeah, they are part of 7.

25 EXAMINER SANYAL: Okay. So do you think

1 we could clear that up tomorrow?

2 MS. O'BRIEN: Yes, absolutely.

3 EXAMINER PRICE: If 7 comes in.

4 EXAMINER SANYAL: Okay. So we are
5 reserving ruling on 7, 12, and 16 pursuant to our OCC
6 witness tomorrow.

7 Are there any other matters that we would
8 like to discuss before we go off the record today?

9 EXAMINER PRICE: While we're on the
10 record, I just want to be clear that Mr. Proano gets
11 a shot at Mr. Williams asking questions about
12 authenticating the record, and I am not trying to
13 deprive them of saying, oh, no, he doesn't get to ask
14 questions. He will get his chance to cross-examine
15 and try to undermine Mr. Williams.

16 EXAMINER SANYAL: Okay. Well, we are off
17 the record. Thank you.

18 (Thereupon, at 6:06 p.m., the hearing was
19 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, October 16,
2019, and carefully compared with my original
stenographic notes.

Karen Sue Gibson
Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6827)

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/30/2019 10:51:22 AM

in

Case No(s). 19-0958-GE-COI

Summary: Transcript Volume I - In the Matter of the Commission's Investigation into Verde Energy USA Ohio, LLC's Compliance with the Ohio Administrative Code and Potential Remedial Action for Non-Compliance, hearing held on October 16th, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.